

Screened by NARA (RD-F) 07-25-2018
FOIA RD 56806 (URTS 16302) DOCID:
70104916

Ginberg

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

Ⓐ precedent - FISKE - closed investigation

Ⓑ 302's ^{not PT}
^{not BN}
want Secret Service

⊗ docs protocol

⊗ no 302's

⊗

MEMORANDUM

TO: ALL OIC-DC Attorneys
ALL FBI-DC

FROM: Brett Kavanaugh

RE: Congressional Requests for Documents

DATE: May 31, 1995

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

MEMORANDUM

TO: Judge Starr
Mark Tuohey

FROM: Brett Kavanaugh

RE: Letter to Senators D'Amato and Sarbanes

DATE: April 18, 1995

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

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

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

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

MEMORANDUM

TO: OIC Attorneys
Professor Dash

FROM: Brett Kavanaugh

RE: 302's to Congress

DATE: April 24, 1995

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

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

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

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

MEMORANDUM

TO: OIC-DC Attorneys
Professor Dash

CC: Bill Duffey

FROM: Brett Kavanaugh

DATE: March 28, 1995

RE: 302's -- FOIA and Congress

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

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

The Court then considered the Government's argument that an assurance of confidentiality is inherently implicit whenever a source provides information to the FBI in a criminal

investigation -- an interpretation that would render virtually all 302's automatically exempt from FOIA disclosure. The Court did not go as far as the Government wished; the Court stated: "[W]e have determined that it is unreasonable to infer that all FBI criminal investigative sources are confidential, [but] we expect that the Government can often point to more narrowly defined circumstances that will support the inference. . . . We agree that the character of the crime at issue may be relevant to determining whether a source cooperated with the FBI with an implied assurance of confidentiality. So too may the source's relation to the crime." *Id.* at 2023. The Court did not spell out this standard in much greater detail, however.

Exemption 7(D) clearly applies when we provide an express assurance of confidentiality to witnesses. (Perhaps we should provide such an assurance as a matter of course in this investigation, albeit with a caveat about the potentially necessary use of a 302 at a subsequent judicial or congressional proceeding.) Absent an express assurance of confidentiality, we still have strong arguments, given the nature and magnitude of this investigation, that many of our witnesses have "furnished information with the understanding that the FBI would not divulge the communication except to the extent the Bureau thought necessary for law enforcement purposes." *Id.* at 2020. We have especially strong arguments with respect to information provided by persons "on the inside" who may face reprisals of one form or another if their information becomes public. See *Landano*, 113 S. Ct. at 2023 (listing such examples).¹

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

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

¹ In addition to Exemption 7(D), Exemption 7(C) of FOIA also will apply to names and other identifying information contained in 302's. Exemption 7(C) covers records the release of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy," a standard that requires the balancing of privacy concerns against the public interest in disclosure. In *Safecard Services v. SEC*, 926 F.2d 1197 (D.C. Cir. 1991), the court held that the identities of individuals who appear in law enforcement files need not be disclosed unless "there is compelling evidence that the agency . . . is engaged in illegal activity" because disclosure of the information would virtually never be "very probative of an agency's behavior or performance." Under that standard, even with respect to 302's where Exemption 7(D) does not apply, certain identifying information such as names of witnesses and the like can be redacted from 302's.

but to turn over the 302's), as opposed to investigating the underlying facts. I fear that a policy of producing 302's that would not otherwise be disclosed under FOIA will hinder and impede our continuing investigation and cause harm to future investigations: Witnesses no doubt will be quite wary of providing information when they know that the information might someday be disseminated to Congress and the public.

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

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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May 26, 1995

By Facsimile

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

Dear Mr. Freeh:

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

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

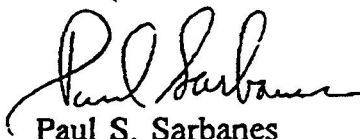
To the extent that FBI officials have gathered records from individuals and locations throughout the agency, please indicate where and from whom each of those records was obtained. It would also be helpful if you provide a list of the records that you are submitting so that the Committee and your office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

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

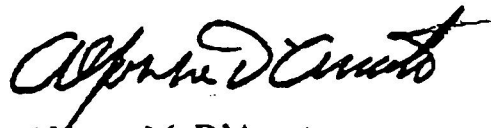
If you have any questions concerning this request, please contact Michael Davidson, Senate Legal Counsel, at 224-4435. This request is an initial request and may be supplemented by additional ones. We recognize that you may wish to designate a FBI official who will be responsible for responding to this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

Your cooperation in this matter is greatly appreciated.

Sincerely,



Paul S. Sarbanes
Ranking Member



Alfonse M. D'Amato
Chairman

Enclosure

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
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WASHINGTON, DC 20510-6075

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 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR

May 26, 1995

By Facsimile

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

Dear Madam Attorney General:

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

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

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

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

- (i) Philip B. Heymann, Webster Hubbell, or David Margolis of DOJ, or any member of their respective staffs and
 FOIA RD 56806 (URTS 16302) DocId: 70104916 Page 11

(ii) any individual at the White House.

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

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

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

Your cooperation in this matter is greatly appreciated.

Sincerely,



Paul S. Sarbanes
Ranking Member



Alfonse M. D'Amato
Chairman

Enclosure

ATTACHED BY EMAIL: NEW YORK - HARRISON

FROM SHAMM TEXAS
 RICHARD C. SHULTZ ALABAMA
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 LAURENCE F. CLOTH, NORTH CAROLINA
 BENNETT, UTAH
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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
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WASHINGTON, DC 20510-6075

HOWARD A. MENELL, STAFF DIRECTOR
 ROBERT J. GRIFFIN, JR., CHIEF COUNSEL
 PHILIP L. BFCHEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR

May 26, 1995

By Facsimile

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

Dear Chief Langston:

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

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

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


recipients, and subject matter of any such records, and the basis for the privilege asserted.

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


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

Your cooperation in this matter is greatly appreciated.

Sincerely,



Paul S. Sarbanes
Ranking Member



Alfonse M. D'Amato
Chairman

Enclosure

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
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WASHINGTON, DC 20510-6075

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 PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR

May 26, 1995

By Facsimile

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

Dear Mr. Bowron:

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

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

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


recipients, and subject matter of any such records, and the basis for the privilege asserted.

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

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

Your cooperation in this matter is greatly appreciated.

Sincerely,



Paul S. Sarbanes
Ranking Member



Alfonse M. D'Amato
Chairman

Enclosure

2 June 1995

NOTE

To: Steve Kubiowski
From: Monica Burke *MKB*
cc: Tim Elliott
Subject: Senate Banking Committee's request of 5/26/95 for documents re: V. Foster investigation

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

I hope the attached information will permit you to determine which if any documents are particularly sensitive. Please advise me of the results of your review after it is concluded. I can be reached at 208-4471 or faxed at 219-1790. Thanks.

U.S. Park Police Documents
Responsive to Senate Banking Committee Request of 5/26/95

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

<u>Doc. No.</u>	<u>Description</u>
14-15	Supplemental Criminal Incident Record (SCIR) summarizing investigation and concluding death was a suicide. Dated 8/5/93.
29	SCIR summarizing interview with Bernard Nussbaum. Dated 7/21/93.
30-31	SCIR summarizing interview with Betsy Pond, Staff Assistant to Bernard Nussbaum. Interview took place 8/22/93.
32-33	SCIR summarizing interview with Deborah Gorham, Executive Assistant to Vince Foster.
34	SCIR summarizing interviews with Tom Castleton and Linda Tripp. Interviews conducted 7/22/93.
36-37	SCIR describing review of Documents from Vince Foster's office. Review took place 7/22/93.
41-42	SCIR summarizing interview with Berl Anthony, Vince Foster's brother-in-law. Dated 7/29/93.
43	SCIR describing meeting with B. Nussbaum re: search of Foster office and discovery of note. Dated 8/2/93.
44	SCIR summarizing interview with Jim Hamilton, Foster family attorney. Dated 8/1/93.
45-46	SCIR summarizing interview with Steven Neuwirth, Assistant White House Counsel. B. Nussbaum was present and answered questions. Interview conducted 7/29/93.
50	SCIR describing examination of Foster telephone log. Examination conducted 7/30/93.
52-53	SCIR summarizing phone log for 7/20/93. Callers: Buck, Lyons, Rather.
60	Mobile Crime Lab Report Supplement (MCLRS) describing handling of evidence including clothing and note. Dated 7/29/93.
63	MCLRS describing treatment of original and copies of note. Dated 7/30/93.
64-66	Laboratory Examination Results summary re: handwriting identification. Dated 7/29/93.
67	MCLRS describing treatment of note. Events took place 8/1/93.
68	Copy of handwritten note.
69-70*	FBI memo re: examination of 27 pieces of paper (note). Dated 8/2/93.
71*	FBI results on examination of 28 pieces of paper (note). Dated 8/2/93.
84*	USSS report on Office alarm system. Dated 7/21/93.
85*	USSS map of West Wing Second Floor. Dated 1/25/93.

86* USSS log of persons entering Mr. Foster's office.
Dated 7/21/93.

87 Phone log. Dated 7/20/93.

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

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

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

110 Note containing Nussbaum phone number. Undated.

111 Watkins business card

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

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

372* DOJ undated reproduction of Foster note.

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

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

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

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

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

420-21 Handwritten copy of note. Dated 7/28/93.

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



Office of the Independent Counsel

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

June 6, 1995

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

Dear Chairman D'Amato and Senator Sarbanes:

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

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

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

Very truly yours,

Kenneth W. Starr
Independent Counsel

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

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STEVEN D. HARRIS, DEMOCRATIC STAFF DIRECTOR

AND CHIEF COUNSEL

United States SenateCOMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

June 13, 1995

By Facsimile and Mail

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

Dear Steve:

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



Lancc Cole
Democratic Deputy Special Counsel

Very truly yours,



Robert J. Giuffra, Jr.
Chief Counsel

Attachment

UNITED STATES SENATE
SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS
SECURITY PROCEDURES

1. **Categories of documents**

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

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

2. **Access to documents**

A. **Original production sets:**

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

B. **Highly Confidential Documents:**

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

- i. The four copy sets of Highly Confidential Documents will be copied by the Chief Clerk onto special paper bearing a shaded "SHC" (for "Senate Highly Confidential") pattern. During the preliminary phase of the Committee's investigation (i.e., prior to public hearings), the Committee will not permit: (a) any further copying of Highly Confidential Documents without the approval of the Chairman or the Ranking Member; or (b) the removal of Highly Confidential documents from the specially-designated secure document rooms for Highly Confidential Documents (except for depositions and witness interviews or for review by the Chairman or Ranking Member, as provided in Paragraph 2.B.iv.).

- ii. Only designated staff will have access to the secure document rooms containing the Highly Confidential Documents. The designated staff will be limited to the Majority and Minority Special Counsels to the Special Committee and the Majority and Minority Staff Directors, Chief Counsels and the Chief Clerk of the Banking Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than six additional persons employed by either the Special Committee or the Banking Committee to have access to Highly Confidential Documents. The Chairman and Ranking Member may agree to increase the number of designated persons who may review Highly Confidential Documents during the period prior to public hearings. A 24-hour Capitol Police guard (discussed in Paragraph 5) will control access to the specially-designated secure document rooms for the Highly Confidential Documents and will maintain an access log for those rooms.
- iii. The specially-designated secure document rooms for Highly Confidential Documents may contain computers and printers, but will not contain telephones, copiers or telecopy machines.
- iv. Only designated staff can transport Highly Confidential Documents to depositions and witness interviews, or to the offices of the Chairman and Ranking Member for their personal review. The designated staff will be limited to the Majority and Minority Special Counsels to the Special Committee and the Majority and Minority Staff Directors, Chief Counsels and the Chief Clerk of the Banking Committee. In addition, the Chairman and Ranking Member, respectively, may each designate not more than three additional persons employed by either the Special Committee or the Banking Committee to transport Highly Confidential Documents. After the removal of any such Highly Confidential Documents from the specially-designated secure document rooms, the documents must be returned promptly to those rooms. No copies of Highly Confidential Documents will be made while they are removed from the specially-designated secure document rooms, and no copies of Highly Confidential Documents will be attached to deposition transcripts.
- v. The persons designated in Paragraph 2.B.ii. may remove work product, including computer disks, from the specially-designated secure document rooms. Work product must be prepared on non-white paper, and the confidentiality of any such work product must be maintained.

C. Confidential Documents:

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

- i. The copy sets of Confidential Documents maintained in the specially-designated secure document rooms will be copied by the Chief Clerk onto special paper bearing a shaded "SC" (for "Senate Confidential") pattern.
- ii. The specially-designated secure document rooms for Confidential Documents may contain computers, printers, and copiers, but will not contain telephones or telecopy machines. Telephones and telecopy machines may be maintained within the Majority and Minority office suites outside of the specially-designated secure document rooms.
- iii. Only Special Committee staff who have signed confidentiality agreements (as provided for in Paragraph 4) will have access to Confidential Documents. Such staff may copy Confidential Documents, but must maintain those copies within the specially-designated secure document rooms, except as provided for in Paragraph 2.C.iv.
- iv. Designated staff (as defined in Paragraph 2.B.iv.) can transport Committee Confidential Documents to depositions and witness interviews, or to the offices of the Chairman and Ranking Member for their personal review. After the removal of any such Confidential Documents from the specially-designated secure document rooms, the documents must be returned promptly to those rooms. No copies of Confidential Documents will be made while they are outside of the specially-designated secure rooms in the Majority and Minority office suites, and no copies of Confidential Documents will be attached to deposition transcripts.
- v. The persons designated in Paragraph 2.C.iii. may remove work product, including computer disks, from the specially-designated secure document rooms. Work product must be prepared on non-white paper, and the confidentiality of such work product must be maintained.

3. Classification of documents

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

4. **Confidentiality agreements**

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

5. **Capitol Police Security**

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

**UNITED STATES SENATE
SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

CONFIDENTIALITY AGREEMENT

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

Signature

Name (Printed)

Office or Committee

Social Security Number

Date

SENATE COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS

534 Dirksen Building, Washington, D.C. 20510

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

TO: Stephen A. Kubiakowski, Esq.NUMBER FAXED TO: 202/514-8802FROM: Robert J. Giuffra, Jr.DATE: 6.13.95NUMBER OF PAGES. 7
(Including this cover sheet)

MESSAGE:

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

Mark, John, Alex, Steve:

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

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

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

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

[FOIA(b)(7) - (C)]

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
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WASHINGTON, DC 20510-6075

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STEVEN G. HARRIS, DEMOCRATIC STAFF DIRECTOR
AND CHIEF COUNSEL

June 20, 1995

6/26 - Jof
Fax to Kelleher

VIA FACSIMILE AND MAIL

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

Dear Mr. McNamara:

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

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

- (a) the offices of William Kennedy, Associate Counsel; Sylvia Mathews, National Economic Council; Patricia L. Thomasson, Special Assistant to the President for Management and Administration and Director of the Office of Administration; and David Watkins, Assistant to the President for Management and Administration;
- (b) the suite of the Chief of Staff to the President, including, but not limited to the offices of Thomas F. McLarty, Chief of Staff, William Burton, Deputy Chief of Staff, and Roy Neel, Assistant to the President;
- (c) the suite of the Chief of Staff to the First Lady, including, but not limited to the office of Margaret Williams, Chief of Staff; and
- (d) the suite of the Director of Communications, including, but not limited to the offices of Mark Gearan, Director of Communications, and Dee Dee Myers, Press Secretary.

Robert M. McNamara, Jr., Esq.
June 20, 1995
Page 2

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

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

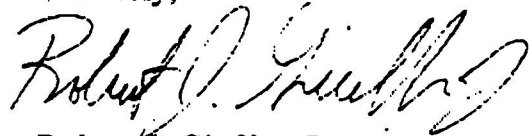
The records should be delivered to Joseph Kolinski, Chief Clcrk, 534 Dirksen Senate Office Building.

Your continued cooperation in this matter is greatly appreciated.



Lance Cole
Democratic Deputy Special Counsel

Sincerely,



Robert J. Giuffra, Jr.
Chief Counsel



DEPARTMENT OF THE TREASURY
OFFICE OF THE ASSISTANT GENERAL COUNSEL (ENFORCEMENT)
15TH & PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20220

DATE: 6/30/95

NUMBER OF PAGES TO FOLLOW: _____

TO: Alex Azar

ADDRESSEE'S FAX NUMBER: 514-8802

ADDRESSEE'S CONFIRMATION NUMBER:

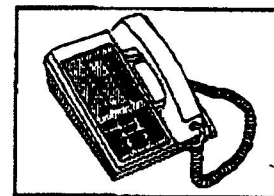
FROM: Bob McNamara

SENDER'S FAX NUMBER: 622-1944

SENDER'S CONFIRMATION NUMBER: 622-

COMMENTS/SPECIAL INSTRUCTIONS:

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



*** ACTIVITY REPORT ***

RECEPTION OK

TX/RX NO.	7157
CONNECTION TEL	202 622 1944
CONNECTION ID	
START TIME	06/30 12:30
USAGE TIME	01'14
PAGES	3
RESULT	OK

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AND CHIEF COUNSEL

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

June 21, 1995

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

Dear Independent Counsel Starr:

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

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

Sincerely,



Alfonse M. D'Amato
Chairman

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN
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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR
AND CHIEF COUNSEL

June 21, 1995

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

Dear Mr. Adair:

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

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

Thank you in advance for your assistance.

Sincerely,



Alfonse M. D'Amato
Chairman

cc: Honorable Kenneth Starr
Honorable John E. Ryan

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN
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AND CHIEF COUNSEL

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

June 21, 1995

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

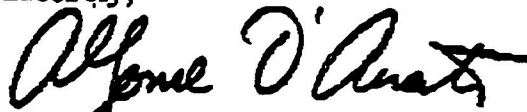
Dear Mr. Renick:

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

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

Thank you in advance for your assistance.

Sincerely,



Alfonse M. D'Amato
Chairman

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

Steve:

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

1. He was happy about Hubbell and Lindsey.
2. July 18 is the target date for hearings.
3. Someone named Becky on his staff will coordinate transcripts. He asked who would pay for the transcripts. How do we handle that with the House?
4. He was very coy about asking agencies whether they had provided all documents that had been provided to the OIC. He first stated that the Senate did not have to follow our request. He then backed off and said simply that there was a fine line between (a) asking someone to make sure that there were no more responsive documents that might have been provided to the OIC and (b) asking someone to provide all documents that had been given to the OIC.

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

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

Brett

cc: Alex, John

2 **Issues with Congress on Foster documents investigation while investigation is still open**

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

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

1. Interview Reports

Starr 302's and Sworn Statements

-- NO

Fiske 302's and Sworn Statements

-- NO

FBI 302's (July-August 1993)

-- maybe (have they been previously produced?)

(are we a continuation of this investigation?)

Park Police reports (July-August 1993)

-- maybe (have they been previously produced?)

(are we a continuation of this investigation?)

after closed - DOJ issue

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

from Starr -- NO

from Fiske -- NO

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

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

3. Agency Notes and Reports of Communications with Prosecutors

with Starr -- NO

with Fiske -- NO

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

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

4. Non-Interview-Report Documents

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

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

from White House -- OK, subject to #3

from Secret Service -- OK, subject to #3



SENATE COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS

534 Dirksen Building, Washington, D.C. 20510

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

TO: Brent Kavanaugh, OIC

NUMBER FAXED TO: 202/514-8802

FROM: Robert J. Giuffra

DATE: 3/20/95

NUMBER OF PAGES: 4
(Including this cover sheet)

MESSAGE:

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

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

STEVEN B. KARRIS, STAFF DIRECTOR AND CHIEF COUNSEL
HOWARD A. MENELL, REPUBLICAN STAFF DIRECTOR

June 22, 1994

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

Dear Mr. Cutler:

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

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

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

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

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

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

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

Lloyd N. Cutler
June 22, 1994
Page Two

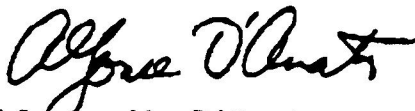
Additionally, we request that you provide to the Committee any written policies or descriptions of those policies issued by the White House Chief of Staff or the White House Counsel's Office, in effect now or to your knowledge previously, concerning communications between White House officials and officials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

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

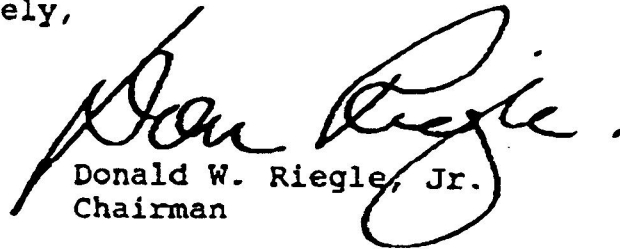
If you have any questions concerning this request, please call Michael Davidson, Senate Legal Counsel, at 224-4435. This request is, of course, an initial request and may be supplemented by additional ones.

Your cooperation in this matter is greatly appreciated.

Sincerely,



Alfonse M. D'Amato
Ranking Member



Donald W. Riegler, Jr.
Chairman

Enclosure

ATTACHMENT

Bruce R. Lindsey
Assistant to the President and Senior Advisor

George R. Stephanopoulos
Senior Policy Advisor to the President

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

Harold Ickes
Assistant to the President and Deputy Chief of Staff

Mark D. Gearan
Assistant to the President for Communications

John D. Podesta
Assistant to the President and Staff Secretary

Clifford Sloan
Associate Counsel to the President

Stephen R. Neuwirth
Associate Counsel to the President

Betsy Pond
Office of White House Counsel

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

Margaret Ann Williams
Chief of Staff to the First Lady

Lisa M. Caputo
Press Secretary to the First Lady



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

June 23, 1995

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

Dear Messrs. Giuffra and Kravitz:

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

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

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

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

In addition, I understand that the Committee would like to depose former Deputy Attorney General Philip Heymann, Associate Deputy Attorney General David Margolis, Counsel to the Deputy Attorney General Roger Adams, Deputy Associate Attorney General Nancy McFadden, and former Special Assistant to the Deputy

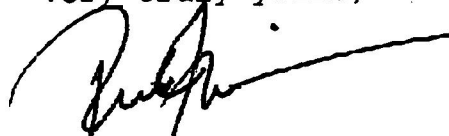
Attorney General Cynthia Monaco. As we discussed on Friday, Mr. Margolis underwent emergency coronary by-pass surgery last Thursday and will be unavailable for at least several weeks. In addition, Mr. Heymann left Tuesday for a long-scheduled trip to Indonesia. He will return to the United States on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

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

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

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

Very truly yours,



Paul J. Fishman
 Counsel to the Deputy
 Attorney General

next Thursday

he set it up

Dave Stewart

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

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See, we have this idea that Democrats rejected about 40 years ago, and that is families can do a better job of spending their own money than you do for them.

Now that sounds alien in Washington, DC, but in Little Rock, AR, people are beginning to think maybe that is the way we ought to do things.

Mr. DORGAN. I wonder if the Senator from Arkansas would yield to me?

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

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

The PRESIDING OFFICER. The Chair would say, the hour of 10:30 having arrived, morning business was to close.

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

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

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

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

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

Well, in the House of Representatives, in the tax bill under the contract, they zero it out and they say, "No more alternative minimum tax. You big companies, you make \$5 billion, it is all right if you pay zero in taxes." But at same time they do that, they say, "But we can give those companies"—incidentally, about 2,000 companies—"the equivalent of \$2 million each in tax breaks. We can afford to do that, but we cannot afford to provide student aid, as we used to, so we will have to ask kids who are going to go to college who do not have any money to pay for it, we will make it harder for kids to go to college because we cannot afford investing in kids who go to college, as we used to, but we do have the money to provide the equivalent of a \$2 million tax break for each of 2,000 corporations by saying to those corporations, You no longer have to worry about a little thing called the alternative minimum tax. You can zero it out, if you like."

I am guessing the Senator from Texas just forgot about that.

And there are a dozen more like it, little old things that I am sure folks

would show up to show their appreciation for, but they are the kinds of things that represent priorities—the priorities that say we really believe in the big interests here, we really think the big interests need a lot more help because if we rain on big interests somehow it will all seep down to the little folks that are trying to send their kids to college. That is what I think has been forgotten in this equation and this discussion between the Senator from Texas and the Senator from Arkansas.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

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

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

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

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

Mr. D'AMATO. Will the time start to run as of now?

The PRESIDING OFFICER. It is when the Senator submits the resolution to the desk.

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

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

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

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. D'AMATO. Mr. President, Whitewater is a very serious matter. Some questions raised by Whitewater go to the very heart of our democratic system of government. We must determine whether the public trust has been abused. We must ascertain whether purely private interests have been placed above the public trust. The American people have a right to know the full facts about Whitewater and related matters.

After the Banking Committee's hearings last year, many important questions still remain. The American people have a right and a need to know the answers to these questions.

Congress has the responsibility to serve as the public's watchdog. We would be derelict in our duties if we did not pursue these Whitewater questions. The Senate must proceed in an even-handed, impartial, and thorough manner. We have a constitutional responsibility to resolve these issues.

Mr. President, we now bring before the Senate a resolution that authorizes a special committee administered by the Banking Committee to continue the Whitewater inquiry that was started but not completed during the last Congress.

I thank my distinguished colleague, Senator SARBANES, for his hard work and cooperation in the preparation of this resolution. We have jointly prepared a resolution that is balanced and fair and that will allow the special committee to search for the truth. I am confident that Senator SARBANES and I will continue the Banking Committee's bipartisan approach to the Whitewater matter.

Mr. President, our pursuit of these questions must be and will be fair, straightforward, and responsible. The American people expect and deserve a thorough inquiry committed to the pursuit of truth. That is the American way.

Last summer, the Banking Committee met these vigorous requirements. Our examination of the Whitewater matter was impartial, balanced, and thorough. That is our goal in this Congress. I am confident that we will meet these goals.

During last summer's hearings, many facts were uncovered. We learned that certain top administration officials were not fully candid and forthcoming with the Congress. That is an undisputed fact. The public has a right to expect more from those in positions of trust. We also learned that senior Treasury Department and Clinton White House officials mishandled confidential law enforcement information concerning Madison Guaranty. That is another undisputed fact. Madison is now defunct; it is a defunct S&L at the heart of the Whitewater matter. The failure of this Arkansas S&L eventually cost American taxpayers more than \$47 million.

Mr. President, the American people have a right to know the answers to

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many serious questions still remaining about Whitewater and related matters. We have a constitutional obligation to seek the answers to these questions. That is why I am offering this resolution today.

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

Mr. President, this resolution encourages the special committee to coordinate its activities with those of the independent counsel, Kenneth Starr. Senator SARBANES and I have met with the independent counsel, Judge Starr has indicated to us that he has no objection to the special committee's plan to inquire into the handling of Mr. Foster's papers. Senator SARBANES and I are committed to coordinating the committee's activities with those of the special counsel.

This resolution authorizes the special committee to pursue answers to other questions raised during the Banking Committee's hearings last year.

We will explore the scope and impact of the improper dissemination of confidential law enforcement information concerning Madison Guaranty. How widely did the Clinton administration officials communicate this confidential information? Did any high-ranking officials inform targets of criminal investigations? If so, did this impact any ongoing investigations? The public has a right to know the answers to these questions.

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

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

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

Mr. President, this resolution authorizes the special committee to explore whether the Resolution Trust Corporation and other officials in Washington tried to interfere improperly with RTC staff in Kansas City responsible for investigating wrongdoing

at Madison. If such interference occurred, who authorized it, and why? The public deserves answers to these questions.

During last summer's hearings, the Banking Committee learned that the Treasury inspector general furnished the Clinton White House, at the White House counsel's request, transcripts of the inspector general's depositions. That is an undisputed fact.

The committee will now look into whether these deposition transcripts were used to coach administration witnesses before they appeared in front of the committee. That would be wrong. The public has a right to know if it happened.

All of these matters that I have discussed so far involve events that occurred after January 1993 when President Clinton took office. There are also serious questions regarding events that occurred in Arkansas in the 1980's when President Clinton was Governor. This resolution also authorizes the special committee to examine these matters. Some of these Arkansas matters are complex and will require the committee's close review of many thousands of pages of documents.

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

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

Did the firm have a conflict of interest, and did American taxpayers lose money in the process?

We will also examine Capital Management Services and its president, David Hale, a former Arkansas judge and Clinton appointee. Hale has publicly charged that the President pressured him to make Small Business Administration loans that were used to prop up Madison.

Did this happen? Did Hale also make improper Small Business Administration loans to current Arkansas Gov. Jim Guy Tucker?

Then there is the matter of the financing of the 1990 Arkansas gubernatorial campaign. We now know that the president of the Perry County Bank, Neal Ainley, has pleaded guilty to violating Federal laws in connection with the handling of certain large cash transactions for the Clinton campaign.

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

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

This resolution provides \$960,000 to fund the special committee through February 29, 1996. If additional money is needed, the special committee will make a recommendation not later than January 15, 1996, and the majority and minority will meet to determine the time for any vote.

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

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

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

I see that my distinguished colleague and ranking member, Senator SARBANES, is here. We have allocated up to 2 hours, equally divided.

I yield the floor.

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

The PRESIDING OFFICER (Mrs. HUTCHISON). There are 2 hours, of which 15 minutes has already been used.

Mr. SARBANES. There is an hour now remaining on this side?

The PRESIDING OFFICER. That is correct.

Mr. SARBANES. I thank the Chair.

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

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

On March 17, 1994, a little over a year ago, the Senate adopted a resolution by a vote of 98-0 expressing the sense of the Senate that hearings should be held on all matters relating to Madison, to Whitewater, and to Capital Management.

Then, to carry out that resolution, at least in part, on June 21 of last year,

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the Senate agreed to Senate Resolution 229, which authorized hearings to be held into certain areas. Those hearings were done last summer. We had 6 days of public hearings. We had extensive analysis of documents that were provided to the inquiry committee in order to enable it to carry out its responsibilities.

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

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

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

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

do in that regard. But obviously we will abide by their decision.

We have also provided in the resolution which is now before us, and which shortly will be adopted, for rules and procedures of this committee which essentially will be the rules and procedures of the Senate, the Standing Rules of the Senate, and the rules of procedure of the Committee on Banking, Housing, and Urban Affairs. That is, in effect, the rules framework, procedural framework within which we will operate. There are in the resolution sections that cover aspects of the process that the special committee will follow; these are matters it was deemed important that we spell out in the resolution how they were going to be dealt with. Those involve questions of subpoena powers, questions of how the hearings will be conducted—important questions about immunity. I want to underscore that because that is a matter we have had to address before.

We provide that to grant a witness immunity—I want to read this section because it is an important matter. The special committee has the power: "To grant a witness immunity under section 6002 and 6005" of title 18, United States Code, "provided that the independent counsel has not informed the special committee in writing that immunizing the witness would interfere with the ability of the independent counsel successfully to prosecute criminal violations."

We also provide for staffing of the committee. There is power to appoint special committee staff including consultants, assistance from the Senate legal counsel, assistance from the Comptroller General. There is a provision whereby the committee can draw on other Government agencies, Government personnel, and on other congressional staff. And we hope, through a combination of all of these sources, that we will have an adequate staff to carry out a proper inquiry and investigation.

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

Finally, the money asked for in this resolution, just under \$1 million, \$950,000, is to cover the salaries and other expenses of the special committee carrying out this inquiry, beginning on the date of the adoption of this resolution—I assume today—and ending February 29, 1996.

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

Mr. President, let me just make a couple of further, more general observations. I have very quickly gone through the resolution and I think

most of it is straightforward. I think Members of the Senate upon reviewing it will conclude that is the case. Many of the provisions are what one might call boilerplate for such an inquiry, and track previous provisions that have been used in various Senate resolutions establishing committees to carry out inquiries or investigations of the sort that is being authorized here.

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

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

These hearings will make an effort to get the facts out fully and impartially. We anticipate that the administration will cooperate with this effort. They certainly have indicated that is what they intend to do. Last year they made every document available that was requested, as I recall. I think I am correct in that statement. Now the time has come to move forward, to begin our hearings, to begin, in effect, to examine these various questions and allegations and ascertain with respect to each of them whether there is any factual grounding behind them or whether they simply raise questions that people can ask. And that, of course, is the purpose of the inquiry which we will be undertaking here with this provision of \$950,000 to carry out this investigation in the period between now and February 29. The resolution provides that the special committee shall make every reasonable effort to complete,

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not later than February 1, 1996, the investigation, study, and hearings authorized by section 1.

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

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

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

Madam President, I yield the floor.

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

The PRESIDING OFFICER. Only by unanimous consent.

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

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FAIRCLOTH addressed the Chair.

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

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

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

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

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

Nothing in this resolution allows us to probe the circumstances surrounding the death of Vince Foster. When we held the hearings last year in the Senate, a key witness, Captain Hume, sim-

ply did not show up at the hearings the day he was supposed to be there. The hearings had been planned for months. Captain Hume was out of town that day. He was supposed to be there. Our ranking member at the time demanded that they bring him back for several days. But they did not bring him back. The hearings adjourned and we never heard from him. I do not think this was a thorough airing of the issues, and I think we need to do it again.

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

Madam President, the Congress also needs to probe the \$100,000 profit in the commodities market that came to Mrs. Clinton courtesy of Red Bond and Jim Blair, the general counsel of Tyson Foods. This is not mentioned in the resolution, and it should be.

Just recently, I discovered that a friend of the Clintons, Barbara Holum, was conveniently installed as acting head of the CFTC before the story of Mrs. Clinton's commodity trades broke.

There are many confusing issues. Now we find that Red Bond, who did the commodity trading, who is practically bankrupt, was able to pay off \$7 million in back taxes just 2 months before the commodity trading story became public. To me, the evidence on this is just too much to believe that all of this is a coincidence.

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

If you can believe this, Vince Foster and Mrs. Clinton were hired by the Federal Government to sue Dan Lasater. The same Dan Lasater that was a close friend of the Clintons. That is right, Mrs. Clinton was hired by the Federal Government to sue Dan Lasater in connection with the failure of First American Savings & Loan in Illinois. Mrs. Clinton participated in the decision to lower the amount of money the Government would recover from Dan Lasater from \$3.3 million to \$200,000, and we do not know yet what percentage of that went to her as attorney's fee because the records were sealed.

The Government spent over \$100 billion to resolve the savings and loan crisis. With crooks like Dan Lasater involved and with Mrs. Clinton acting on behalf of the taxpayers, suing a friend, it is no wonder the cost was so high.

I want to again state my strong support—and I say this not necessarily in the language as we often use in the Senate—but of my good friend, fellow member of the Banking Committee and our chairman, ALFONSE D'AMATO. He truly is a good friend, and he has given us the leadership we need.

I hope, and I know that before this hearing is over, under his leadership, we will have probed all aspects of Whitewater in a fair manner so that the American people understand what

happened, when it happened, and who knew it when it happened. I look forward to the hearings.

Mr. D'AMATO addressed the Chair.

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Madam President, I thank my good friend, my colleague from New York.

Madam President, as we begin the debate on this resolution authorizing a second round of Whitewater hearings, I thought it would be helpful to review why the Senate and the committee need these issues to be aired.

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I wish to summarize for my colleagues some points that are particularly important to me and have come from my experience with the first round of hearings and also with the hearing back in February where we asked the questions that began some of the process in finding out what has gone on in the administration.

As most of the Nation now knows, Madison Guaranty was a Little Rock savings and loan which went belly-up at the cost of nearly \$50 million, and was owned by James McDougal—the business partner of the Clintons' in the Whitewater real estate deal.

Madison Guaranty was the classic S&L story of insider dealing, reckless loan policies and ultimate failure with the U.S. taxpayers picking up the tab. It is a part of the \$105 billion cost of the S&L debacle, and in that way is a story repeated in many communities around the country.

But one part of this case has made it famous—many of its borrowers, directors, and counsel were prominent figures in Arkansas politics and government.

The tangled web of Madison, Jim McDougal, and the Clintons has led to two sets of criminal referrals, an ongoing civil liability investigation by the RTC, a potential conflict of interest case for the First Lady's former law firm, a conviction of a Little Rock judge who improperly loaned SBA money to McDougal and Whitewater, several other recent guilty plea agreements and an ongoing investigation by independent counsel Starr.

Since these issues first came to light, I have said over and over that the American people have a right to know what happened to the millions of dollars lost, and we, in Congress, must fulfill our obligation and get the facts out into the open.

Last year the Senate was engaged in a lengthy struggle over what questions and areas the Banking Committee would be allowed to address as Whitewater—Madison hearings begin. Unfortunately, the Democratic leadership at that time did everything in their power to limit the scope of the hearings, and to block our efforts to get at the truth—particularly as it relates to what Clinton administration officials have done to control or interfere with investigations.

The questions we asked last year remain as relevant today as they did last May:

Did Whitewater Development Corp. benefit from taxpayers insuring of Madison Guaranty deposits?

Did any of Madison's federally insured funds go to benefit the Clinton campaigns?

Were the bank regulatory agencies operating in an impartial and independent manner as they handled Madison Guaranty?

How did the Resolution Trust Corporation handle the criminal referrals on Madison—both under the Bush administration as well as the Clinton administration?

How did the Resolution Trust Corporation and the FDIC handle potential civil claims against Madison—both under the Bush administration as well as the Clinton administration?

How did the Department of Justice handle the RTC criminal referrals it received, again both under the Bush administration and the Clinton administration?

What were the sources of funding and lending practices of Capital Management Services, and how did the SBA regulate and supervise it, particularly as it related to loans to Susan McDougal and her company, Master Marketing.

Full hearings on the Whitewater-Madison affair are needed so that all these questions can be fairly asked and answered. What happened in Arkansas, what happened in the 1992 Clinton campaign in their efforts to keep the lid on about the actions in Arkansas, and what has the administration done to manage the Madison-Whitewater issues since they took office.

If we are to finally get to the bottom of the story as to what happened with the criminal referrals, I believe that we need to start with the first criminal referral on Madison Guaranty which was already in the Justice Department, awaiting action when the Clinton administration took office.

Remember, Madison Guaranty had failed in 1989 and had been first taken over by the FDIC, and then in August 1989 when Congress passed the S&L bailout bill the newly created RTC took over Madison.

The RTC's mission was to close down failed thrifts, sell the assets, pay off the depositors and then seek out criminal or civil wrongdoing that may have occurred. If they found criminal wrongdoing—fraud, or attempts to enrich, they referred their findings to the Department of Justice for further action. If they found civil wrongdoing—for example, law firms or accounting firms who helped institutions stay open by providing misleading, incomplete or incorrect information to regulators or the S&L's board members—the RTC would pursue those cases.

Thus from August 1989 the RTC had Madison Guaranty on its plate. No action was taken by the RTC on potential civil claims, but several criminal referrals were developed. In one case Jim McDougal and two others were accused of fraud, but were acquitted, in another case a board member plead guilty to falsifying documents.

Then came March 1993 when the New York Times reported a series of potential misdealings in Madison Guaranty and spurred the RTC to take another look at the institution. This second look caused the first criminal referral to be sent to Justice in the fall of 1992, and it was this referral which awaited final action when the Clinton administration came into office in January 1993.

I give this brief history in order to put things into perspective. Last year,

Senator SPECTER and I offered amendments to the Whitewater Committee resolution which would have allowed the Banking Committee to pick up story at this point, and follow the trail of the first referral as it made its way through the Government, and then to follow the trail of the second referral as it was developed throughout 1993, up to and including the improper contacts by Treasury officials with White House staff. This of course would entail questioning the RTC officials involved, Justice Department officials involved, as well as Treasury and White House staff.

Because we must remember that on the day that the Clinton administration officials walked in the door on January 21, 1993, a criminal referral on Madison Guaranty was sitting in the Department of Justice.

I for one still want to know:

How did the Department of Justice handle this referral?

Was the White House informed and if so when and by whom?

Who in Justice was assigned to monitor the Madison case, and what actions did they take?

And then, as we know now, just months after taking office, a second set of referrals was being developed—and it too was sent off to the Clinton Justice Department by RTC officials in Kansas City.

I want to know why the RTC decided to stay on the case. What happened to get a series of RTC officials reassigned and taken off the case? Is there a pattern of special treatment for politically sensitive cases? And again, how did the Department of Justice handle the second referral?

I want to know why did the Clinton appointed Little Rock U.S. attorney Paula Casey, along with Webb Hubbell, delay their recusals until after the decision not to prosecute Madison was made? I also want to know the details about Paula Casey and Webb Hubbell's phone contacts during the period when Casey was deciding what to do with the referrals, and did either one of them have any contact with the White House on the referrals at any time?

And now, just in the past weeks we have seen reported by the Associated Press that:

Preparing for televised Whitewater hearings last summer, White House attorneys consulted confidential depositions from a Treasury investigation in an effort to reconcile differing accounts of administration officials who were about to testify.

Former White House counsel Lloyd Cutler acknowledged this week that the depositions were used to identify discrepancies in the recollections of presidential aides before the congressional hearings.

White House lawyers would then "confront" the aides with information they had obtained from the depositions without revealing the sources, he told The Associated Press.

"If we found inconsistencies, we would go back to White House officials, and go back over testimony they gave us," Cutler explained. "and then we would say 'we have heard other reports.'"

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This of course brings into play several other issues which I have been following since the close of the hearings last August. As we know now, confidential information was again turned over by Treasury to the White House—this time under the guise of a Treasury Department inspector general's investigation.

This calls into question not only the independence of the IG, but also the willingness of this administration to politicize what is supposed to be an internal watchdog.

It also calls into question the entire testimony offered by White House officials before the Senate Banking Committee—as they were given another heads up in order to best tailor their testimony to help the boss.

Last November I wrote to then Chairman Riegle and ranking member D'AMATO about what I had discovered. In my letter I stated:

As you know, over these past several months I have continued my efforts to resolve outstanding questions which were raised during the Banking Committee's Whitewater hearings. Initially I became concerned upon discovering during our hearings that the Treasury Inspector General had turned over to the White House—at Lloyd Cutler's specific request—transcripts of all the testimony taken by the investigators a full week before the Office of Government Ethics (OGE) report was made public. At the time we learned this, several former Inspectors General expressed amazement at this unprecedented action. However, no further review of the incident was undertaken.

During my investigation of this disclosure, I discovered that not only were the documents released to the White House at the specific request of White House Counsel Lloyd Cutler, but, in doing so, the Treasury turned over confidential RTC information to the White House.

On Saturday, July 23, 1994, the Department of the Treasury gave the White House all of the sworn depositions of Treasury, White House, and RTC personnel. These depositions were unedited.

According to the RTC, it was not until July 26 or 27 that the RTC became aware of the fact that RTC depositions had been provided to the White House.

July 26, after reviewing the information provided by the Treasury I.G., Lloyd Cutler testified before the House Banking Committee.

July 28 and 29, Counsel to the RTC Inspector General Patricia Black redacted all the Treasury, RTC, and White House depositions in order to remove confidential RTC information.

July 31 the OGE report, with edited testimony, was provided to Congress and subsequently made public.

Given that the focus of our hearings this past August was the improper transmittal of confidential information from the RTC to the White House regarding Madison Guaranty and the Citatons, I must tell you I am appalled that the same Treasury Department, acting under specific direction from Secretary Bentsen, would again provide nonpublic information about the Madison Guaranty case directly to the White House.

In addition, I found it extraordinary that the White House, which was itself under investigation, would be given nonpublic information prior to Congressional hearings—particularly when Congress itself was not given the information.

And now of course we have discovered that Mr. Cutler and others used this information not only to assist in the drafting of Mr. Cutler's testimony—but to help White House staff with the inconsistencies in their own stories.

I find this entire episode just another example of the extraordinary lengths the White House was willing to go to keep the facts from Congress, keep the facts from the American people, and ultimately to protect the administration.

As I have said on this floor before, breaching the public trust is as serious an offense as committing a crime, or being found liable for financial penalties. Governments in free societies have a fundamental pact with the governed. In exchange for the powers and responsibilities which is given the Government, the people expect fairness, evenhanded justice, impartiality, and they held the innate belief that those in power can be trusted to be good stewards of their power.

Our form of democracy relies on checks and balances to keep too much power from ending up in just one place—and Congress, as the people's closest link to their Government has the responsibility to keep a sharp eye out for abuses and breaches of the people's trust.

Thus every Member of Congress takes an oath of office, to uphold the Constitution—and certainly part of that duty to be ever watchful for abuses of power. Interestingly, and not surprisingly, it nearly always falls to the party out of power to be the more diligent in watching out for abuses.

No one disputes this.

But one other fact should also be noted. As important it is for the general public to believe in and trust that their elected leaders are performing their jobs in an ethical, truthful, and fair manner—we, in Congress, must also believe that those in high positions of responsibility are telling us the truth. When we ask questions or make inquiries we must trust that administrations will tell the truth, will be honest, and that when we get an answer, it is a full and complete one.

Unfortunately, Madam President, it is this standard that inevitably some administration officials seem unable to comprehend.

Instead of cooperation and truthfulness we have seen evasions, omissions, misstatements, and possibly outright lies.

And the story of potential abuse of the public trust, the politicization of independent agencies and investigations, the use of confidential material for political gain—it only seems to get worse the deeper you look.

Madam President, the next rounds of hearings will go a long way toward clearing the air, and I commend the chairman of the Banking Committee for bringing this matter back into the public eye.

I reserve the remainder of my time and I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Madam President, I yield 5 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 5 minutes.

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

Madam President, let me begin these brief remarks by commending our colleagues from New York and Maryland for what I think is a very fair and balanced resolution. Obviously, matters such as this are a source of deep controversy and can get out of hand. The fact that they have presented us with a resolution that is balanced and fair is a credit to both the Senator from Maryland and the Senator from New York. Any discussion of this ought to begin with an expression of appreciation on the part of all of us in this body, particularly those of us who will serve on the special committee and who will be working during this calendar year to carry out the mandates and requirements of this resolution. Now I would like to make a few brief observations about the resolution.

As my colleagues know, Madam President, there was a vote by 98 to 0 on March 17 of last year to look into these matters, and what we are talking about here is a continuation of that process. This resolution is simply another step in a process designed to help the American public know the facts about Whitewater.

Second, I would like to point out, Madam President, that the President has fully cooperated in this process. We ought to commend him for this unprecedented level of cooperation.

Many of us recall other Presidents who, when confronted with similar situations, have clogged up the courts of this land, fighting everything along the way. This administration has not done that. In fact, the administration has been entirely forthcoming.

As we discuss these matters, it is important to make it clear that, unlike previous situations where there was a constant conflict between the executive branch and the legislative branch over documents and testimony, that has not been the case here. The administration has complied with every document request, answered every question that has been submitted to it, and I am confident is ready and willing to cooperate in this second stage of the proceeding.

I think that is an important point to make because, as we look down the road, there is the potential for a prolonged and nasty conflict between the executive and legislative branch.

Third, Madam President, I think last year's hearings, despite moments of passion and emotion, were credible and fair. I think it is important to point out and to state emphatically that it was the conclusion of the committee

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last year that there had been no violation of criminal statutes or ethical standards.

Of course, individual Members may have their own particular opinions on those matters, and certainly that is their right. But, as a conclusion of the committee, let me restate, Madam President, there were no violations of any criminal statute or any ethical standards. That was the conclusion of last year's hearings.

Now we are going to go to a second phase. I have listened to some who are suggesting that there must have been some wrongdoing, or, even worse, they have already reached the conclusion that there was wrongdoing. Quite simply, that is inappropriate. The purpose of the hearings is to determine whether there was wrongdoing—we must not prejudge the matter.

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

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

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

Last year, the Senate held thorough hearings, as I mentioned earlier. The committee heard from 30 witnesses, generating 2,600 pages of testimony; 33 witnesses were deposed, generating some 7,000 additional pages of testimony.

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

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

Last year, the facts were presented fully and impartially. That must be our goal this year. The public, in my view, is fed up with the partisanship that seems to cloud every issue.

As we go through this process, I urge my colleagues to avoid that partisan pitfall. Because we are entering a presidential campaign cycle, that may be difficult for some. But we must all try. The President is sadly correct, and I suspect most of my colleagues, regardless of their political persuasion, would agree when he says that the politics of personal attack are alive and well. I

agree with the President that the best way to put this matter behind us is to address the facts candidly.

Madam President, I ask for 2 additional minutes.

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

Mr. DODD. I thank my colleague. I will wrap this up.

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

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

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

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

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

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

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

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

The Banking Committee spent about \$400,000 last year, and this resolution authorizes another \$360,000. But even that amount is only a fraction of what the independent counsel is spending. We are looking at almost \$10 million spent by the independent counsel and that is just the beginning of it. That figure will go higher.

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

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

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Madam President, at this time, I ask for the yeas and nays. The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. I yield to the Senator from Pennsylvania 10 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania has 10 minutes.

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

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

I recognize the sensitivity of a congressional inquiry on a matter which is being handled by an independent counsel, also known as the special prosecutor. But the functions are very, very different where you have an investigation which is handled through grand jury proceedings which are secret and which are directed at indictments. I know that field with some detail, having been a district attorney myself and

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having run grand jury investigations. That is very, very different from a congressional inquiry where we are inquiring into matters in the public record for the public to see what is going on in Government with a view to legislative changes.

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

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

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

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

The PRESIDING OFFICER. Without objection, it is so ordered.
(See exhibit 1.)

Mr. SPECTER. I thank the Chair.

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

I agree with the distinguished Senator from Connecticut when he talks about the presumption of innocence. I think that is indispensable as a matter

of fairness to all concerned. But these are questions which need to be answered, and questions do not imply an answer of any sort; they raise issues which ought to be answered. We ought to let the chips fall where they may. And in a Government based on a Constitution which elevates the separation of powers among the Congress in article I, and the executive branch in article II, and the judiciary in article III, the congressional oversight function is a very, very important function. Now, finally, we will be in the context where we will be able to inquire into these matters and to find out what those answers are.

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

I thank the Chair and yield the floor.

EXHIBIT 1

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

(The following is a partial transcript of the above proceedings)

Senator SPECTER. Thank you, Mr. Chairman. Attorney General Reno, as you know, I had intended to ask you questions about the handling by the Department of Justice in the matter involving David Hale in this oversight hearing, and I may be able to cover the principal points of my interest without undue specification, or at least undue specification from your point of view.

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

(The letter referred to follows:)

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 28, 1994.

HON. JANKI RENO,
Attorney General, Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL RENO: I have just noted that you are scheduled to testify before the Judiciary Committee on Thursday, July 28, at 2:00 p.m. at an oversight hearing.

In that hearing I intend to ask questions on the Justice Department's role in investigations of Madison Guaranty and/or "Whitewater." While I have not had access to many of the relevant documents, I have seen a few and am alerting you to those documents which will formulate at least some of the basis for my questions.

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

Sincerely,

ARLEN SPECTER.

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

(The letter referred to follows:)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE INDEPENDENT COUNSEL,
Little Rock, AR, July 27, 1994.

HON. ARLEN SPECTER,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SPECTER: The Department of Justice has sent over to me a copy of your letter of July 26, 1994 to Attorney General Reno, together with the index of documents enclosed with it.

It is apparent from a review of the documents of that index that they relate to the handling by the Department of Justice of a particular criminal referral from the RTC. Based upon interviews we have had with representatives from the Kansas City Field Office of the RTC, we are currently actively investigating this matter. Accordingly, I would respectfully request that you not go into this subject with the Attorney General at your hearing tomorrow since to do so might prejudice our ongoing investigation. (For similar reasons we request that you not go into the matter referenced by documents #20 and #21.)

We have made a similar request to both the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs which, as you know, are in the process of conducting Whitewater hearings. Both of those Committees have agreed not to go into this subject until we have completed our investigation.

Respectfully yours,

ROBERT B. FISKE, Jr.,
Independent Counsel.

Senator SPECTER. At the outset, I want to say for the record that I do not agree with the deference which the Congress has accorded the independent counsel because I believe that Congress has independent status, and at least equal status, if not more important status, on matters of public policy than the criminal prosecutions. But the Senate has decided otherwise as a political matter, in my opinion.

As I reviewed the charter of Mr. Fiske, it seemed to me that questions about oversight on what happened with David Hale were not within his charter, his charter being to investigate matters of possible criminal or civil wrongdoing. I am advised to the contrary on that, and we may get into that in some specificity.

So let me start in an effort to ask the questions in a generalized way, but candidly as they arise off David Hale's matter. I refer to a memorandum from RTC investigator Jean Lewis to Richard Iorio which quotes officials within the Department of Justice, which is why I ask you about this, specifically, Ms. Donna Henneman in the Office of Legal Counsel. Without making anything more specific as to the Hale matter, my question to you as a general matter is, any time a referral comes in to the Department of Justice that would make the Department look bad or has political ramifications, it goes to the Attorney General. Is that true?

Attorney General RENO. I don't know whether any time something comes in to the Department that would make the Department look bad it comes to the Attorney General.

Senator SPECTER. Well, if you don't know, who does, Attorney General Reno?

Attorney General RENO. I would suspect that each one of the 95,000 people who hear something that might make the Department look bad, I think your question is a little bit broad. I cannot answer it. As I have tried to say from the very beginning, when I appointed Mr. Fiske I tried to make sure that he was as independent as possible. I have continued to try to do that, and I think the

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worst thing that I could do would be to comment or talk about matters that he is pursuing. I should be happy, because I have great respect for the Senate and for you, at the conclusion of the matter to try to respond to anything, including the specifics.

Senator SPECTER. Well, I don't think that is sufficient, Attorney General Reno, because I think this is a legitimate matter for Judiciary Committee oversight, and we don't have very much of it. But I accept your point that my question was too general, so I will be specific.

The investigator, L. Jean Lewis, of RTC, had many conversations with representatives of the Department of Justice, as reflected in the number of the memoranda which I sent on to you. So if it is too general as to whether any time a referral comes in that would make the Department look bad or has political ramifications it goes to the Attorney General, I would ask you, were you personally informed about the referral from the RTC on the check kiting case involving Madison Guaranty?

Attorney General RENO. As I indicated to you, Senator, I made a determination when I appointed Mr. Fiske that I would not comment or make any comment. He has expressed to you that he would prefer that I not comment on the specific matters. I do not want to do anything that would impair his independence. I do think you have an oversight function with respect to the Department of Justice, and when it would be appropriate for me to comment I would look forward to the opportunity to do so.

Senator SPECTER. Well, tell me, Attorney General Reno, has would it impair Mr. Fiske's investigation or prosecution for you to answer a question as to whether you had personal knowledge of a referral to the Department of Justice?

Attorney General RENO. I can't tell you, sir, because I have tried to do everything in my power to make sure that Mr. Fiske's investigation is independent and I don't know what his investigation involves. Therefore, I am not going to say anything that could possibly interfere with his investigation.

Senator SPECTER. Well, my question to you is how could it possibly interfere with his investigation to answer a question as to when you had knowledge of a referral to the United States Department of Justice.

Attorney General RENO. I don't know, sir, because I am not going to take the chance of interfering with it. You would have to ask Mr. Fiske because I don't want to do anything at this time that would interfere or impair that investigation. I do not know the nature of the process of that investigation and it would be inappropriate for me to comment, but I do—

The CHAIRMAN. Put another way, Senator, how would it shed any light in this oversight if the Attorney General answered that question? What the hell difference does it make now?

Senator SPECTER. Well, the hell difference that it makes now is on an earlier question which I asked that whenever there is a matter with political ramifications that it goes to the Attorney General—and I asked that question in its broadest terms and was told that it was too general, so that is when I came back to the specific question.

The CHAIRMAN. Let me ask the question the other way to the Senator. Mr. Fiske's investigation in this matter is likely to be wrapped up. He has been moving expeditiously. Does it matter to the Senator whether or not the Attorney General speaks to this issue today or in two weeks or a month, or whenever it is when Mr. Fiske settles this part of his investigation? I don't know when he is going to settle that, but I mean he has been moving very rapidly.

In terms of oversight for next year's budget and last year's activities, it seems to me the Senator would have plenty of time to ask these questions as it would impact on the outcome of the Senator's view as to what the Attorney General should or shouldn't do in the future.

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

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

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

Attorney General RENO. An experienced prosecutor, Senator, doesn't comment about something that she doesn't know about. I don't know about the details of Mr. Fiske's investigation. But if Mr. Fiske doesn't have any problem with it, what I would suggest that we do is prepare the questions, submit them to Mr. Fiske. If he has no objection to my answering them, then we will try to answer them because I honor your oversight function and I would want to be able to honor that and to not interfere with Mr. Fiske's investigation.

Senator SPECTER. Attorney General Reno, I did not say that Mr. Fiske did not have a problem. He specifically told me that he would like the field to be totally left alone. What I said to you was that after talking to Mr. Fiske, I had no doubt that these questions were appropriate, in my judgment, on oversight by the Judiciary Committee.

Let me ask you this, Attorney General Reno. In terms of the charter that Mr. Fiske has about investigating matters which may involve a violation of the criminal or civil law, is the handling by the Department of Justice of David Hale's matter something that falls within that charter?

Attorney General RENO. I have tried to, again, let Mr. Fiske define that based on the charter that we described so that I would not in any way impair his independence.

Senator SPECTER. Well, do you have any interest in whether any current employees of the Department of Justice are subject to an investigation which might be within Mr. Fiske's charter for possible criminal wrongdoings?

Attorney General RENO. Yes.

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

Attorney General RENO. It depends on what they are, sir.

Senator SPECTER. Well, suppose they were obstruction of justice?

Attorney General RENO. It depends on the nature of the facts and the circumstances, sir.

Senator SPECTER. Well, do you know anything about that on the Hale matter?

Attorney General RENO. Again, sir, I can't comment on the Hale matter.

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

Attorney General RENO. That would be commenting, sir, and what I would suggest, if we want to pursue this, is that you pose the questions and then let's see whether Mr. Fiske thinks that they would in any way interfere with the investigation. I am delighted to answer them if they don't interfere.

Senator SPECTER. Well, I am not going to follow the way you would like me to proceed. I make a judgment as to what I think a Senator ought to do by way of oversight, and if you have a concern about that I am prepared to discuss it with you, but I am not prepared to take your instruction or your suggestion.

The question that I pose on an investigation by Mr. Fiske as independent counsel within his charter to investigate crimes, obstruction of justice, within the Department of Justice is not something which bears on anything which could conceivably implicate the underlying facts on what David Hale is doing.

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

Attorney General RENO. Yes, sir, she is.

Senator SPECTER. Is she the subject of a criminal investigation by Mr. Fiske?

Attorney General RENO. You would have to talk to Mr. Fiske.

Senator SPECTER. Do you know whether or not she is the subject of a criminal investigation by Mr. Fiske?

Attorney General RENO. You would have to talk to Mr. Fiske. I have avoided having anything to do with Mr. Fiske's investigation in terms of any information that he may have so that I do not impair his independence.

Senator SPECTER. Would you continue a United States attorney operating actively if that United States attorney were the subject of a criminal investigation?

Attorney General RENO. It would depend on the circumstances.

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

Attorney General RENO. It would depend on the circumstances. Again, you get into a situation of hypotheticals and it is far better that we look at the actual facts, and I would be happy at the appropriate time to do that with you.

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

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

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

Senator SPECTER. Everything I may say is in my opinion. You can add that to everything. I don't speak for anybody but myself, but I do speak independently for myself.

I took a look at an extensive series of correspondence which has gotten to the Department of Justice and gotten to the FBI and gotten to the United States attorney's office and gotten to the executive office and gotten to the Office of Legal Counsel, according to these documents, which I sent to you as soon

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as I know there would be this hearing so you would have an opportunity to review them. I promptly advised the chairman as to what I intended to do there would be no surprises about it.

The CHAIRMAN. That is correct.

Senator SPECTER. When I pursue the matter and find I have a telephone call and a letter from the independent counsel, I call him and then I am told that it is within his charter, that there is an investigation which is underway for obstruction of justice.

As I review the facts of this matter, I am struck with wonderment as to how officials in the United States attorney's office decline to have immunity granted to David Hale, and then independent counsel comes in and in a short time has a grant of immunity. Then officials in the United States attorney's office in Little Rock recuse themselves in a later matter, and I wonder how can they recuse themselves in a later matter without having recused themselves in an earlier matter, given their relationship to subjects of the investigation.

I ran a big office myself as a prosecutor, and if I had any reason to believe anybody in my office had any problem, I wouldn't wait for anybody to cleanse it totally and thoroughly and immediately. I do not believe that the charter to the independent counsel takes away any of the authority or the responsibility of the Attorney General to act in that circumstance.

In my opinion—everything I say is in my opinion—the questions which I have asked you are entirely appropriate questions, and I give some additional background because I think these are matters which ought to be answered, and I intend to pursue them and I don't intend to wait.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

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

You are answering, in my opinion, totally appropriately, and you have done what I don't know many others have been willing to do. You have said to this committee, without having to have some big show on the floor, that when Mr. Fiske says he is finished with this phase of the investigation you will come back and you will answer questions. It seems to me you are being totally appropriate, but that is why there are Democrats and Republicans, chocolate and vanilla, good and bad, right and wrong, different points of view. Our opinions are different.

I respect this man. He did notify me. Stick to your guns, don't answer his questions, in my opinion.

Senator SPECTER. If I might have just one sentence?

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

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

The CHAIRMAN. Well, it may not have to do with good and bad, but it has to do with what one considers to be the appropriate way for you to respond. I think you are responding appropriately because I think you are in the ultimate catch-22 position. At the request of all of us in the Senate, you appointed a Republican named Fiske. Now, the Republican named Fiske tells you, please don't respond to anything having to do with this. You are being asked to respond to

something having to do with this, and if you respond or don't respond, you are in deep trouble in the minds of whoever wants to view you as being in trouble. I think you are doing just fine. My view is worth no more, probably a little less in this circumstance, than the Senator from Pennsylvania's, but good job, General.

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1. RTC Chronology of Criminal Investigation.

2. Letter of September 1, 1993 from L. Richard Iorio (RTC-KC) to Steve Irons (FBI) transmitting criminal referral.

3. Letter of September 1, 1993 from L. Richard Iorio (RTC-KC) to Charles A. Banks (DOJ) transmitting criminal referral.

4. RTC Internal Memorandum, May 3, 1993. Background remarks and conversation with AUSA Bob Roddey's Office re: Madison Guaranty Savings referral.

5. RTC Internal Memorandum, May 12, 1993. Additional conversation with Office of Legal Counsel for U.S. Attorney's U.S. Justice Department, Washington, D.C. No record of Madison criminal referral at Washington DOJ.

6. RTC-KC E-Mail, May 19, 1993. Madison matter forwarded to Donna Henneman in "Legal Counsel." Referral submitted to that office "because of the political ramifications and political motivations."

7. RTC-KC E-Mail, May 23, 1993. Follow-up call from Donna Henneman (DOJ). RTC advised by an FBI agent in Little Rock that it was a "very solid case of check kiting, and was highly presentable." Henneman was growing increasingly frustrated by the situation, because she had seen the information, knew that it had come in, and couldn't understand why she was having such a hard time tracking where the referral and exhibits had gone.

8. RTC-KC E-Mail, June 8, 1993. Conversation with Donna Henneman (DOJ). Madison Referral has reappeared on her desk. Criminal Division has sent memo to Doug Frazier (in Deputy, Atty. General Heyman's office) advising him that there was "no identifiable basis for refusal of the U.S. Attorney in the Eastern District of Arkansas." Referral sent to Frazier for review and final decision.

9. RTC-KC E-Mail, June 23, 1993. Conversation with Donna Henneman (DOJ). Package returned from Frazier. Frazier appointed U.S. Attorney in Florida.

10. RTC-KC E-Mail, June 23, 1993. Further conversation with Donna Henneman (DOJ). Spoke with Doug Frazier. Decision made to return the referral back to the Arkansas-U.S. Attorney. No basis for refusal.

11. RTC-KC E-Mail, June 29, 1993. Source indicates Madison referral has been returned to Little Rock. Acting U.S. Attorney will not act on referral. It is being held until U.S. Attorney designee Paula Casey takes office.

12. RTC-KC E-Mail, September 23, 1993. Conversation with Donna Henneman (DOJ). Washington DOJ would like to be copied on all future transmittal letters concerning Madison referrals with an additional one paragraph summary of the content of the referrals with the transmittal letters, so that Henneman will be aware of those with "sensitivity issues."

13. RTC-KC E-Mail, September 29, 1993. Conversation with Donna Henneman (DOJ). DOJ would like copies of all future Madison referrals sent to Washington in addition to sending to U.S. Attorney in Little Rock. Henneman will confirm this in writing.

14. RTC-KC E-Mail, September 29, 1993. Conversation with Donna Henneman (DOJ). Washington DOJ withdrawing request for referrals to be sent directly to Washington, but would still like copies of transmittal letters with addendum summary paragraph.

15. RTC-KC E-Mail, October 27, 1993. Conversation with Donna Henneman (DOJ). Inquiry on whether declination letter had arrived from Little Rock U.S. Attorney.

16. Letter of October 27, 1993 from Paula J. Casey (U.S. Attorney) to L. Jean Lewis (RTC). Declination letter on the Madison referral.

17. Letter of November 1, 1993 from L. Jean Lewis (RTC) to Paris J. Casey (U.S. Attorney). Confirmation of declination letter and the stipulation from October 27th letter that the matter was concluded prior to the beginning of Paula Casey's tenure and that the RTC had never been advised of such result. Chronology of correspondence between RTC and DOJ.

18. RTC-KC E-Mail, November 15, 1993. Transmittal of white paper outlining chronology of events related to 1992 Madison referral. Challenges news article indicating that decision to decline Madison referral had been prior to Paula Casey's appointment.

19. RTC-KC E-Mail with attachment, January 8, 1994. Discussion of contact with reporter.

20. Letter of September 15, 1993 from Randy Coleman (David Hale Attorney) to Paula Casey. Coleman has been trying to negotiate a plea and senses that Casey is reluctant because of "political sensitivity."

21. Letter of September 20, 1993 from Randy Coleman to Michael Johnson. Reiterates interest in plea negotiations, offering David Hale's information and willingness to participate in undercover activities.

Mr. SARBANES. What is the time situation, Mr. President?

The PRESIDING OFFICER. The Senator from Maryland has 31 minutes; the Senator from New York has 20 minutes.

Mr. SARBANES. Mr. President, I yield 10 minutes to the Senator from Arkansas, Senator PRYOR.

Mr. PRYOR. Mr. President, we have come to a point in this debate when we are about to vote on this particular resolution. If I might, I would like to talk for a few moments about the public's right to know, as the distinguished chairman of the Banking Committee from New York has made reference to.

He says the public has a right to know what happened in the Whitewater matter. The public has a right to know who did what, when, and whatever. I can assure you that the Senator from Arkansas does not disagree.

But I think also the public has a right to know something else. I think the public has a right to know in this case exactly how much money of the taxpayers' dollars we are spending in the so-called Whitewater matter. I think the public has a right to know that with this resolution, if it passes and if the funding goes through—and we all assume it will—the Senate alone will have spent, up through January or maybe February of next year, in the Whitewater matter \$1.268 billion of Senate money to investigate this matter. I do not have available the amount of money the House of Representatives has spent and will spend in the future. And we do not know exactly how much the cost of the independent counsel will be. But here are some figures I might throw out for the Record at this time. To the best of our knowledge, Mr.

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President, thus far, as of August 31, 1994, the independent counsel, Mr. Starr and Mr. Fiske, combined, spent \$1.879 million. Projected funding for the independent counsel for the 1995 fiscal year is \$6.3 million, which is a subtotal of \$8.129 million, and a total, adding all the figures up, Mr. President, for both the Senate and the independent counsel to investigate so-called Whitewater, comes to almost \$10 million in taxpayers' dollars.

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

In the first round of hearings last summer, the committee heard from 30 witnesses generating 2,600 pages of testimony, deposing 38 witnesses, generating 7,000 pages of testimony.

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

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

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

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

Mr. President, I think for a Senator to come to the floor who is a member

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

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

I hope we can keep our eye on the ball. I am hoping, Mr. President, that we can keep our eye focused on the issue of Whitewater and the particular mission under which carefully this resolution has basically pointed out would be the scope of this particular hearing.

I am also concerned that one of our colleagues has referred to the "the miserable job of Mr. Fiske." Those remarks were made earlier on this floor. Of course, they refer to Mr. Fiske, who was allegedly fired from this investigation as special counsel because he was not finding out enough, bringing forward enough, to satisfy some of our colleagues.

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

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

I yield the floor.

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

Mr. DASCHLE. Mr. President, I thank the ranking member. Let me

say, I did not have the opportunity to hear all of his remarks, but let me commend the distinguished Senator from Arkansas for what I have heard him say. Let me associate myself with each and every one of his words. He speaks from the heart, and he certainly speaks for all Members in representing what we hope will be the ultimate goal of this committee as we begin this ever once more.

This resolution provides a sum of \$950,000 for the purpose of completing the work on the Whitewater matter. I think it needs to be emphasized again, as we consider the funding, that this resolution includes every issue related to Whitewater that has any credence whatever. There ought not be any question about its work, its scope, and the effort undertaken after today by the Banking Committee.

The funding will expire on February 29 of next year. It is an adequate amount to fund and an ample allowance of time to permit comprehensive and thorough hearings, while providing also for the completion of this issue.

In the 103d Congress, the Senate voted on March 17, 1994, on a bipartisan vote of 8 to 0, to authorize hearings on the Whitewater matter. Senate Resolution 229, adopted in June of last year, authorized a first round of hearings which were subsequently held by the Banking Committee.

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

Chairman D'AMATO will also chair this special committee. Senator SARBANES will serve as the ranking member.

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

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

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

What is at stake is the integrity and credibility of the U.S. Senate. The last Senate recognized this by voting unanimously to authorize hearings when questions were raised that deserved examination. This Senate should follow that example.

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The Senate has the constitutional obligation to see that the facts are brought out. It has the moral obligation to do so fully and impartially. If we do less, we risk reinforcing the unfortunate impression that Senators care more about partisanship than about conducting the Nation's business in the best interests of all the people.

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

The administration cooperated fully and extensively with hearings last year and stands ready to do so again this year. Last year, the President ordered his administration to cooperate and all parties did so. Every document request was honored. Every question raised by the committee was answered.

Americans have the right to know the facts of Whitewater. But Americans care about other matters which are also on the Senate agenda, a great deal more than they do about this.

Americans are now facing a budget which seeks to dramatically alter Medicare and student aid programs, as well as virtually every other thing the Government does. They are anxious about the future, because so many millions of Americans are either Medicare enrollees or have parents who are Medicare enrollees. They are anxious to see the Senate begin the debate over the budget soon.

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

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

I thank the ranking member for yielding.

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

I think it is important to point out that what one of my colleagues, the Senator from North Carolina, Senator FAIRCLOTH, pointed out is a matter of public record. That is that Judge Starr is reexamining all matters reviewed by Special Counsel Fiske, including Vincent Foster's death.

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

As it relates to what the committee did and did not find last year, I think

it is important to note that the Republican minority did make findings on the three major areas where there were questions of misconduct and malfeasance. I will not attempt to enunciate all of them now, but that was a very strong finding.

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

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

Why did they do that? Without going through the entire history, it was because it was clear and evident—and, by the way, we have sent to Mr. Fiske and to his successor, Mr. Starr, those areas, we being the Republicans on the committee, the minority—that those areas of concern, that, at the very least, there was testimony that was disingenuous, if not outright false. And that is being reviewed.

So, to say that there were no findings of any wrongdoing, that everything was OK, or to imply that there was nothing wrong, is simply an oversimplification and is not an accurate or fair representation of the situation.

Now, I do not intend, nor is it my job and duty, to defend the work of the special counsel. The special counsel was appointed because the Attorney General concluded that it was necessary. It was not this Congress. I thought it was. I believe it was. There were leading Democrats who spoke to the necessity—Senator MOYNIHAN, Senator BRADLEY, and others—as it relates to dealing with this. But as it relates to the expenditures of money, let us look at the record.

This committee, I think, has been very judicious. The Democratic leadership working with Republicans last year authorized \$400,000. We only spent \$300,000. This year we have set \$350,000. I hope we spend less than that. We have been very judicious in using taxpayers' money. So to date we have spent \$300,000. Although that is not an inconsequential sum, we have been extremely judicious.

With regard to the expenditures and what has taken place with the special counsel, let me just indicate, first, that David Hale pleaded guilty. He was a municipal judge and has made some extremely serious allegations. The special counsel is reviewing his allegations with respect to why he made certain loans that were illegal or inappropriate, who asked him to do so, and so forth.

Webster Hubball, the third ranking official in the Attorney General's office, pleaded guilty to charges that

emanated, again, from this investigation.

Nell Ainley, president of the Perry County Bank, where large sums of money, \$180,000, were taken out to fund campaign activities, pleaded guilty.

Chris Wade, a real estate agent who was the sales agent for Whitewater Development, pleaded guilty in a bankruptcy matter. Robert Palmer, last December, a Little Rock real estate appraiser, pleaded guilty to conspiracy charges relating to backdating and falsifying appraisals for Madison Guaranty.

I make these remarks because I do not believe that it is fair to leave the impression that this has just been a big waste of time and that there was no wrongdoing. Five individuals, at this early and preliminary stage of these investigations, have already pleaded guilty, some in very high, responsible positions. That is the work of the special counsel. He has to defend the appropriateness of the expenditures which he makes.

However, I think for the record it is fair to reflect that several individuals have pleaded guilty to various charges. As it relates to our work, I am going to reiterate that I believe this committee has properly set forth the venue, the scope and the way in which it intends to move forward in a bipartisan manner to find out the truth and get the facts. Was there an attempt to impede legitimate investigations undertaken at RTC? Why were certain people taken off the case? Why were certain RTC investigators disciplined? Why was information about confidential criminal referrals made public? Was there a failure to go forward? These are legitimate questions. There may be appropriate reasons. But, then again, we might discover inappropriate action.

So these areas are within the scope. We are not going to attempt to dig up something that does not appear to be really connection to the matters that we have set forth. And it is our hope, depending upon the schedule of the special counsel as he goes through the materials, that we can wind this up sooner rather than later, and conduct the business of the people in a manner which reflects credibly on our constitutional obligations as Senators.

Mr. President, I am prepared to yield the remainder of my time. My colleagues may have something to do. I am prepared to vote on the resolution.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I will take just a couple of minutes, I say to my distinguished colleagues from New York.

First of all, I want to underscore the positive and constructive way in which the chairman of the Banking Committee and members of his staff interacted with us in trying to address the question of working out a resolution that we would bring to the floor of the Senate. Obviously, it is not an easy thing to do, and Members of the Senate have

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differing views about this matter. But I do think we were able to, in the end, work out a rational approach to this inquiry and investigation, which I indicated in a sense had been committed to last year.

Obviously, you always have to work out carefully the scope questions, which has been done in this resolution, because the scope could be infinite, in a sense, if you leave it to people's imagination. So there were candidates for scope that I think went beyond the horizon, and they are not included. But we have tried to, in effect, put a focus here.

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

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

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

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

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

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

Mr. SARBANES. I do not think it was issued for him so he did not, as it were, ignore a subpoena. And he went on a hunting and fishing trip and could not be located, is what happened.

In the end, I think it was judged that given we had 300 pages worth of deposi-

tion it was not worth having another hearing simply to bring Captain Hume in. I mean it is a small matter, but I only mention it to show that sometimes when you really examine the facts you discover that something that looked amiss at first has a very simple, plausible, and reasonable explanation for it.

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

But I do again want to underscore the, I think, responsible way in which the chairman and members of the staff have worked with us in order to try to frame a resolution which we could bring to the floor of the Senate today which I think carries forward the legitimate requirements imposed upon us in terms of carrying out an investigation without straying beyond what most people regard as reasonable bounds.

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

Mr. President, how much time is remaining?

The PRESIDING OFFICER. Ten minutes.

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

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I thank the distinguished Senator from Maryland for yielding.

Mr. President, when I was a student in law school I remember studying criminal law. There never had been a lawyer in my family. So I knew nothing about any kind of law. But I remember the professor about the second day said, "Remember, the presumption of innocence is the hallmark of our system of criminal jurisprudence." It is not presumption of guilt.

I asked the question, "Should I defend somebody if they came into my office and told me they were guilty?"

He said that will be a personal call, but you bear one thing in mind. That person may not know whether he or she is guilty under the law. They may think they are and are not.

I am going to vote for this resolution. I have no objection whatever to a fair, open hearing giving everybody a chance to answer the questions of this committee. But I have heard some names thrown around here this morning.

Mr. President, in cases like this, all you have to do is throw out a name. Oftentimes you have destroyed a person or at least destroyed their reputation.

And there has been entirely too much of that surrounding this case.

So let me admonish my friends in the U.S. Senate, and especially on this special committee, lawyers and nonlawyers, to ask yourself when you are making some of these speeches and you are throwing out names, why did not this happen, why did not that happen? Well, hindsight is a wonderful thing. But ask yourself when you are throwing names around and wondering whether or not you are destroying that person, a perfectly innocent person for life, you ask yourself this question: "How would you like to be in that somebody's shoes and hear your name bandied around on the floor of the Senate which carries with it the connotation of some wrongdoing or some guilt?"

I hope the Members of this body will rise above that sort of thing, and when they say something and use some of these names in regard to this hearing, make awfully sure they are not destroying some innocent person needlessly and wrongfully.

I look forward to the hearings. I look forward to the people having an opportunity to say what they want to say and answer the questions of the Members of this committee. But for God's sakes do not prejudge everybody that is going to be called as a witness before they get there and have an opportunity to answer the questions.

I yield the floor.

Mr. SARBANES. Mr. President, I yield 2 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the distinguished chairman for yielding me 2 minutes. I had not planned to speak again. But the distinguished chairman of the committee made reference to three or four individuals who have either pled guilty or have been indicted, et cetera. I would like to talk about some of those.

Nell Ainley worked with a bank in Perryville about 50 miles from Little Rock. He pled guilty to four counts, but not one of those counts related to Whitewater; not even close to Whitewater. One was his so-called failure to file with the Internal Revenue Service a withdrawal of cash for the 1990 Clinton campaign; nothing whatsoever to do with Whitewater.

The second individual the distinguished chairman mentioned is Chris Wade. If I am not mistaken, Chris Wade was a real estate broker I believe in Mountain Home near the Whitewater development area. Chris Wade, subsequent to these many years of dealing with the lots at Whitewater, filed bankruptcy; not related to Whitewater in any way. But in the bankruptcy filing he failed to disclose either an asset or a debt. I do not know all the facts, but this matter is unrelated, totally unrelated to Whitewater; no relationship whatsoever to the President and Mrs. Clinton. But yet

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the prosecution has now had him plead guilty.

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

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

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

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

I yield the floor.

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

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

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

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

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KENNEDY] is necessarily absent.

The legislative clerk called the roll.

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

The result was announced—yeas 96, nays 3, as follows:

[Rollcall Vote No. 171 Leg.]

YEAS—96

- | | | |
|-----------|------------|--------------|
| Abraham | DeWine | Inouye |
| Akaka | Dodd | Jeffords |
| Ashcroft | Dole | Johnston |
| Bancus | Domenici | Kamubham |
| Bennett | Dortch | Kempthorne |
| Biden | Enon | Kerry |
| Bond | Faircloth | Kerry |
| Boxer | Fetagold | Kohl |
| Bradley | Feinstein | Kyl |
| Breaux | Ford | Launtzberg |
| Brown | Frist | Leahy |
| Bryah | Gorton | Levin |
| Bumpers | Graham | Lieberman |
| Burns | Grassm | Loft |
| Byrd | Grassley | Lozano |
| Campbell | Gregg | Mack |
| Chafee | Harkin | McCain |
| Coats | Hatch | McConnell |
| Cookman | Hatchfield | Mikulski |
| Cohen | Heflin | Momley-Brann |
| Conrad | Helms | Moyahon |
| Coverdell | Hollings | Murkowski |
| Craig | Hutchinson | Murray |
| D'Amato | Inhofe | Nickles |
| Danahoe | | Nunn |

- | | | |
|-------------|----------|-----------|
| Packwood | Roth | Spector |
| Pell | Santorum | Stevens |
| Preslar | Sarbanes | Thomas |
| Fryer | Shelby | Thompson |
| Reid | Simpson | Thurmond |
| Robb | Smith | Warner |
| Rockefeller | Stevens | Wellstone |

NAYS—3
Biseman, Glenn, Simon
NOT VOTING—1
Kennedy

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

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

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

The motion to lay on the table was agreed to.

Mr. THURMOND addressed the Chair. The PRESIDING OFFICER. The Senator from South Carolina.

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

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

Mr. THURMOND. I thank the Chair. (The remarks of Mr. THURMOND pertaining to the introduction of S. 812 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DOLE addressed the Chair. The PRESIDING OFFICER. The majority leader is recognized.

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

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

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

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

UNANIMOUS CONSENT REQUEST

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to consideration H.R. 483 under the following time agreement: 1 hour on the bill to be equally divided between the chairman and ranking member of the Finance Committee, with one amendment to be offered by Senator ROCKEFELLER relative to Medicare, 1 hour for debate to be equally divided in the usual form, and that no motion to table be in order; further, that following disposition of the Rockefeller amendment, the bill be advanced to third reading and that final passage

occur without any intervening action or debate.

The PRESIDING OFFICER. Is there objection?

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

EXTENDED USE OF MEDICARE SELECTED POLICIES—MOTION TO PROCEED

Mr. DOLE. In light of the objection, I move to proceed to the consideration of H.R. 483.

The PRESIDING OFFICER. The question is on the motion to proceed. Is there debate on the motion?

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

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

Second, there is a study on Medicare Select which is going to be completed by the end of the summer, and it is not a frivolous study or a frivolous problem. It is a serious problem involving seniors and Medicare supplementary insurance. Currently, 15 States are participating in the 3½-year experimental Medicare Select Program. This bill would expand Medicare Select to all 50 States for 5 years.

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

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

Now, theoretically, if seniors are having their care actually managed, the Medicare Program would realize savings from the lower use of health care services.

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104TH CONGRESS
1ST SESSION

S. RES. 120

IN THE SENATE OF THE UNITED STATES

Mr. D'AMATO (for himself _____

_____) submitted the following resolution; which was

RESOLUTION

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

1 *Resolved,*

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1 SECTION 1. ESTABLISHMENT OF SPECIAL COMMITTEE.

2 (a) **ESTABLISHMENT.**—There is established a special
3 committee administered by the Committee on Banking,
4 Housing, and Urban Affairs to be known as the “Special
5 Committee to Investigate Whitewater Development Cor-
6 poration and Related Matters” (hereafter in this resolu-
7 tion referred to as the “special committee”).

8 (b) **PURPOSES.**—The purposes of the special commit-
9 tee are—

10 (1) to conduct an investigation and public hear-
11 ings into, and study of, whether improper conduct
12 occurred regarding the way in which White House
13 officials handled documents in the office of White
14 House Deputy Counsel Vincent Foster following his
15 death;

16 (2) to conduct an investigation and public hear-
17 ings into, and study of, the following matters devel-
18 oped during, or arising out of, the investigation and
19 public hearings concluded by the Committee on
20 Banking, Housing, and Urban Affairs prior to the
21 adoption of this resolution—

22 (A) whether any person has improperly
23 handled confidential Resolution Trust Corpora-
24 tion (hereafter in this resolution referred to as
25 the “RTC”) information relating to Madison
26 Guaranty Savings and Loan Association or

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1 Whitewater Development Corporation, including
2 whether any person has improperly commu-
3 nicated such information to individuals ref-
4 erenced therein;

5 (B) whether the White House has engaged
6 in improper contacts with any other agency or
7 department in the Government with regard to
8 confidential RTC information relating to Madi-
9 son Guaranty Savings and Loan Association or
10 Whitewater Development Corporation;

11 (C) whether the Department of Justice has
12 improperly handled RTC criminal referrals re-
13 lating to Madison Guaranty Savings and Loan
14 Association or Whitewater Development Cor-
15 poration;

16 (D) whether RTC employees have been im-
17 properly importuned, prevented, restrained, or
18 deterred in conducting investigations or making
19 enforcement recommendations relating to Madi-
20 son Guaranty Savings and Loan Association or
21 Whitewater Development Corporation; and

22 (E) whether the report issued by the Office
23 of Government Ethics on July 31, 1994, or re-
24 lated transcripts of deposition testimony—

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1 (i) were improperly released to White
 2 House officials or others prior to their tes-
 3 timony before the Committee on Banking,
 4 Housing, and Urban Affairs pursuant to
 5 Senate Resolution 229 (103d Congress); or

6 (ii) were used to communicate to
 7 White House officials or to others con-
 8 fidential RTC information relating to
 9 Madison Guaranty Savings and Loan As-
 10 sociation or Whitewater Development Cor-
 11 poration;

12 (3) to conduct an investigation and public hear-
 13 ings into, and study of, all matters that have any
 14 tendency to reveal the full facts about—

15 (A) the operations, solvency, and regula-
 16 tion of Madison Guaranty Savings and Loan
 17 Association, and any subsidiary, affiliate, or
 18 other entity owned or controlled by Madison
 19 Guaranty Savings and Loan Association;

20 (B) the activities, investments, and tax li-
 21 ability of Whitewater Development Corporation
 22 and, as related to Whitewater Development
 23 Corporation, of its officers, directors, and
 24 shareholders;

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1 (C) the policies and practices of the RTC
2 and the Federal banking agencies (as that term
3 is defined in section 3 of the Federal Deposit
4 Insurance Act) regarding the legal representa-
5 tion of such agencies with respect to Madison
6 Guaranty Savings and Loan Association;

7 (D) the handling by the RTC, the Office of
8 Thrift Supervision, the Federal Deposit Insur-
9 ance Corporation, and the Federal Savings and
10 Loan Insurance Corporation of civil or adminis-
11 trative actions against parties regarding Madi-
12 son Guaranty Savings and Loan Association;

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

19 (F) the bond underwriting contracts be-
20 tween Arkansas Development Finance Author-
21 ity and Lasater & Company; and

22 (G) the lending activities of Perry County
23 Bank, Perryville, Arkansas, in connection with
24 the 1990 Arkansas gubernatorial election;

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1 (4) to make such findings of fact as are war-
2 ranted and appropriate;

3 (5) to make such recommendations, including
4 recommendations for legislative, administrative, or
5 other actions, as the special committee may deter-
6 mine to be necessary or desirable; and

7 (6) to fulfill the constitutional oversight and in-
8 formational functions of the Congress with respect
9 to the matters described in this section.

10 **SEC. 2. MEMBERSHIP AND ORGANIZATION OF THE SPECIAL**
11 **COMMITTEE.**

12 (a) **MEMBERSHIP.—**

13 (1) **IN GENERAL.—**The special committce shall
14 consist of—

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

17 (B) the chairman and ranking member of
18 the Committee on the Judiciary, or their des-
19 ignees from the Committee on the Judiciary.

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

25 (b) **ORGANIZATION OF SPECIAL COMMITTEE.—**

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1 (1) CHAIRMAN.—The chairman of the Commit-
2 tee on Banking, Housing, and Urban Affairs shall
3 serve as the chairman of the special committee
4 (hereafter in this resolution referred to as the
5 “chairman”).

6 (2) RANKING MEMBER.—The ranking member
7 of the Committee on Banking, Housing, and Urban
8 Affairs shall serve as the ranking member of the
9 special committee (hereafter in this resolution re-
10 ferred to as the “ranking member”).

11 (3) QUORUM.—A majority of the members of
12 the special committee shall constitute a quorum for
13 the purpose of reporting a matter or recommenda-
14 tion to the Senate. A majority of the members of the
15 special committee, or one-third of the members of
16 the special committee if at least one member of the
17 minority party is present, shall constitute a quorum
18 for the conduct of other business. One member of
19 the special committee shall constitute a quorum for
20 the purpose of taking testimony.

21 (c) RULES AND PROCEDURES.—Except as otherwise
22 specifically provided in this resolution, the special commit-
23 tee’s investigation, study, and hearings shall be governed
24 by the Standing Rules of the Senate and the Rules of Pro-
25 cedure of the Committee on Banking, Housing, and Urban

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1 Affairs. The special committee may adopt additional rules
2 or procedures not inconsistent with this resolution or the
3 Standing Rules of the Senate if the chairman and ranking
4 member agree that such additional rules or procedures are
5 necessary to enable the special committee to conduct the
6 investigation, study, and hearings authorized by this reso-
7 lution. Any such additional rules and procedures shall be-
8 come effective upon publication in the Congressional
9 Record.

10 **SEC. 3. STAFF OF THE SPECIAL COMMITTEE.**

11 (a) APPOINTMENTS.—To assist the special committee
12 in the investigation, study, and hearings authorized by this
13 resolution, the chairman and the ranking member each
14 may appoint special committee staff, including consult-
15 ants.

16 (b) ASSISTANCE FROM THE SENATE LEGAL COUN-
17 SEL.—To assist the special committee in the investigation,
18 study, and hearings authorized by this resolution, the Sen-
19 ate Legal Counsel and the Deputy Senate Legal Counsel
20 shall work with and under the jurisdiction and authority
21 of the special committee.

22 (c) ASSISTANCE FROM THE COMPTROLLER GEN-
23 ERAL.—The Comptroller General of the United States is
24 requested to provide from the General Accounting Office
25 whatever personnel or other appropriate assistance as may

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1 be required by the special committee, or by the chairman
2 or the ranking member.

3 **SEC. 4. PUBLIC ACTIVITIES OF THE SPECIAL COMMITTEE.**

4 (a) **IN GENERAL.**—Consistent with the rights of per-
5 sons subject to investigation and inquiry, the special com-
6 mittee shall make every effort to fulfill the right of the
7 public and the Congress to know the essential facts and
8 implications of the activities of officials of the United
9 States Government and other persons and entities with re-
10 spect to the matters under investigation and study, as de-
11 scribed in section 1.

12 (b) **DUTIES.**—In furtherance of the right of the pub-
13 lic and the Congress to know, the special committee—

14 (1) shall hold, as the chairman (in consultation
15 with the ranking member) considers appropriate and
16 in accordance with paragraph 5(b) of rule XXVI of
17 the Standing Rules of the Senate, hearings on spe-
18 cific subjects, subject to consultation and coördina-
19 tion with the independent counsel appointed pursu-
20 ant to chapter 40 of title 28, United States Code,
21 in Division No. 94-1 (D.C. Cir. August 5, 1994)
22 (hereafter in this resolution referred to as “the inde-
23 pendent counsel”);

24 (2) may make interim reports to the Senate as
25 it considers appropriate; and

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1 (3) shall make a final comprehensive public re-
2 port to the Senate which contains—

3 (A) a description of all relevant factual de-
4 terminations; and

5 (B) recommendations for legislation, if
6 necessary.

7 **SEC. 5. POWERS OF THE SPECIAL COMMITTEE.**

8 (a) **IN GENERAL.**—The special committee shall do ev-
9 erything necessary and appropriate under the laws and the
10 Constitution of the United States to conduct the investiga-
11 tion, study, and hearings authorized by section 1.

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

17 (1) **SUBPOENA POWERS.**—To issue subpoenas
18 or orders for the attendance of witnesses or for the
19 production of documentary or physical evidence be-
20 fore the special committee. A subpoena or order may
21 be authorized by the special committee or by the
22 chairman with the agreement of the ranking mem-
23 ber, and may be issued by the chairman or any other
24 member of the special committee designated by the
25 chairman, and may be served by any person des-

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1 ignated by the chairman or the authorized member
2 anywhere within or outside of the borders of the
3 United States to the full extent permitted by law.
4 The chairman, or any other member of the special
5 committee, is authorized to administer oaths to any
6 witnesses appearing before the special committee. If
7 a return on a subpoena or order for the production
8 of documentary or physical evidence is incomplete or
9 accompanied by an objection, the chairman (in con-
10 sultation with the ranking member) may convene a
11 meeting or hearing to determine the adequacy of the
12 return and to rule on the objection. At a meeting or
13 hearing on such a return, one member of the special
14 committee shall constitute a quorum. The special
15 committee shall not initiate procedures leading to
16 civil or criminal enforcement of a subpoena unless
17 the person or entity to whom the subpoena is di-
18 rected refuses to produce the required documentary
19 or physical evidence after having been ordered and
20 directed to do so.

21 (2) COMPENSATION AUTHORITY.—To employ
22 and fix the compensation of such clerical, investiga-
23 tory, legal, technical, and other assistants as the
24 special committee, or the chairman or the ranking
25 member, considers necessary or appropriate.

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1 (3) MEETINGS.—To sit and act at any time or
2 place during sessions, recesses, and adjournment pe-
3 riods of the Senate.

4 (4) HEARINGS.—To hold hearings, take testi-
5 mony under oath, and receive documentary or phys-
6 ical evidence relating to the matters and questions it
7 is authorized to investigate or study. Unless the
8 chairman and the ranking member otherwise agree,
9 the questioning of a witness or a panel of witnesses
10 at a hearing shall be limited to one initial 30-minute
11 turn each for the chairman and the ranking mem-
12 ber, or their designees, including majority and mi-
13 nority staff, and thereafter to 10-minute turns by
14 each member of the special committee if 5 or more
15 members are present, and to 15-minute turns by
16 each member of the special committee if fewer than
17 5 members are present. A member may be permitted
18 further questions of the witness or panel of wit-
19 nesses, either by using time that another member
20 then present at the hearing has yielded for that pur-
21 pose during the yielding member's turn, or by using
22 time allotted after all members have been given an
23 opportunity to question the witness or panel of wit-
24 nesses. At all times, unless the chairman and the
25 ranking member otherwise agree, the questioning

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1 shall alternate back and forth between members of
2 the majority party and members of the minority
3 party. In their discretion, the chairman and the
4 ranking member, respectively, may designate major-
5 ity or minority staff to question a witness or a panel
6 of witnesses at a hearing during time yielded by a
7 member of the chairman's or the ranking member's
8 party then present at the hearing for his or her
9 turn.

10 (5) TESTIMONY OF WITNESSES.—To require by
11 subpoena or order the attendance, as a witness be-
12 fore the special committee or at a deposition, of any
13 person who may have knowledge or information con-
14 cerning any of the matters that the special commit-
15 tee is authorized to investigate and study.

16 (6) IMMUNITY.—To grant a witness immunity
17 under sections 6002 and 6005 of title 18, United
18 States Code, provided that the independent counsel
19 has not informed the special committee in writing
20 that immunizing the witness would interfere with the
21 ability of the independent counsel successfully to
22 prosecute criminal violations. Not later than 10 days
23 before the special committee seeks a Federal court
24 order for a grant of immunity by the special commit-
25 tee, the Senate Legal Counsel shall cause to be de-

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1 livered to the independent counsel a written request
2 asking the independent counsel promptly to inform
3 the special committee in writing if, in the judgment
4 of the independent counsel, the grant of immunity
5 would interfere with the ability of the independent
6 counsel successfully to prosecute criminal violations.
7 The Senate Legal Counsel's written request of the
8 independent counsel required by this paragraph shall
9 be in addition to all notice requirements set forth in
10 sections 6002 and 6005 of title 18, United States
11 Code.

12 (7) DEPOSITIONS.—To take depositions and
13 other testimony under oath anywhere within the
14 United States, to issue orders that require witnesses
15 to answer written interrogatories under oath, and to
16 make application for the issuance of letters rogatory.
17 All depositions shall be conducted jointly by majority
18 and minority staff of the special committee. A wit-
19 ness at a deposition shall be examined upon oath ad-
20 ministered by a member of the special committee or
21 an individual authorized by local law to administer
22 oaths, and a complete transcription or electronic re-
23 cording of the deposition shall be made. Questions
24 shall be propounded first by majority staff of the
25 special committee and then by minority staff of the

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1 special committee. Any subsequent round of ques-
2 tioning shall proceed in the same order. Objections
3 by the witness as to the form of questions shall be
4 noted for the record. If a witness objects to a ques-
5 tion and refuses to answer on the basis of relevance
6 or privilege, the special committee staff may proceed
7 with the deposition, or may, at that time or at a
8 subsequent time, seek a ruling on the objection from
9 the chairman. If the chairman overrules the objec-
10 tion, the chairman may order and direct the witness
11 to answer the question, but the special committee
12 shall not initiate procedures leading to civil or crimi-
13 nal enforcement unless the witness refuses to answer
14 after having been ordered and directed to answer.

15 (8) DELEGATIONS TO STAFF.—To issue com-
16 missions and to notice depositions for staff members
17 to examine witnesses and to receive evidence under
18 oath administered by an individual authorized by
19 local law to administer oaths. The special committee,
20 or the chairman with the concurrence of the ranking
21 member, may delegate to designated staff members
22 of the special committee the power to issue deposi-
23 tion notices authorized pursuant to this paragraph.

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

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1 (A) any department, agency, entity, officer,
2 or employee of the United States Government;

3 (B) any person or entity purporting to act
4 under color or authority of State or local law;

5 or

6 (C) any private person, firm, corporation,
7 partnership, or other organization;

8 to produce for consideration by the special commit-
9 tee or for use as evidence in the investigation, study,
10 or hearings of the special committee, any book,
11 check, canceled check, correspondence, communica-
12 tion, document, financial record, paper, physical evi-
13 dence, photograph, record, recording, tape, or any
14 other material relating to any of the matters or
15 questions that the special committee is authorized to
16 investigate and study which any such person or en-
17 tity may possess or control.

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

23 (A) the willful failure or refusal of any per-
24 son to appear before it, or at a deposition, or

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1 to answer interrogatories, in compliance with a
2 subpoena or order;

3 (B) the willful failure or refusal of any
4 person to answer questions or give testimony
5 during the appearance of that person as a wit-
6 ness before the special committee, or at a depo-
7 sition, or in response to interrogatories; or

8 (C) the willful failure or refusal of—

9 (i) any officer or employee of the
10 United States Government;

11 (ii) any person or entity purporting to
12 act under color or authority of State or
13 local law; or

14 (iii) any private person, partnership,
15 firm, corporation, or organization;

16 to produce before the special committee, or at
17 a deposition, or at any time or place designated
18 by the committee, any book, check, canceled
19 check, correspondence, communication, docu-
20 ment, financial record, paper, physical evidence,
21 photograph, record, recording, tape, or any
22 other material in compliance with any subpoena
23 or order.

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1 (11) CONSULTANTS.—To procure the tem-
2 porary or intermittent services of individual consult-
3 ants, or organizations thereof.

4 (12) OTHER GOVERNMENT PERSONNEL.—To
5 use, on a reimbursable basis and with the prior con-
6 sent of the Government department or agency con-
7 cerned, the services of the personnel of such depart-
8 ment or agency.

9 (13) OTHER CONGRESSIONAL STAFF.—To use,
10 with the prior consent of any member of the Senate
11 or the chairman or the ranking member of any other
12 Senate committee or the chairman or ranking mem-
13 ber of any subcommittee of any committee of the
14 Senate, the facilities or services of the appropriate
15 members of the staff of such member of the Senate
16 or other Senate committee or subcommittee, when-
17 ever the special committee or the chairman or the
18 ranking member considers that such action is nec-
19 essary or appropriate to enable the special commit-
20 tee to conduct the investigation, study, and hearings
21 authorized by this resolution.

22 (14) ACCESS TO INFORMATION AND EVI-
23 DENCE.—To permit any members of the special
24 committee, staff director, counsel, or other staff
25 members or consultants designated by the chairman

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1 or the ranking member, access to any data, evidence,
2 information, report, analysis, document, or paper—

3 (A) that relates to any of the matters or
4 questions that the special committee is author-
5 ized to investigate or study under this resolu-
6 tion;

7 (B) that is in the custody or under the
8 control of any department, agency, entity, offi-
9 cer, or employee of the United States Govern-
10 ment, including those which have the power
11 under the laws of the United States to inves-
12 tigate any alleged criminal activities or to pros-
13 ecute persons charged with crimes against the
14 United States without regard to the jurisdiction
15 or authority of any other Senate committee or
16 subcommittee; and

17 (C) that will assist the special committee
18 to prepare for or conduct the investigation,
19 study, and hearings authorized by this resolu-
20 tion.

21 (15) REPORTS OF VIOLATIONS OF LAW.—To re-
22 port possible violations of any law to appropriate
23 Federal, State, or local authorities.

24 (16) EXPENDITURES.—To expend, to the ex-
25 tent that the special committee determines necessary

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1 and appropriate, any money made available to the
2 special committee by the Senate to carry out this
3 resolution.

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

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

13 (a) NONDISCLOSURE.—No member of the special
14 committee or the staff of the special committee shall dis-
15 close, in whole or in part or by way of summary, to any
16 person other than another member of the special commit-
17 tee or other staff of the special committee, for any purpose
18 or in connection with any proceeding, judicial or otherwise,
19 any testimony taken, including the names of witnesses tes-
20 tifying, or material presented, in depositions or at closed
21 hearings, or any confidential materials or information, un-
22 less authorized by the special committee or the chairman
23 in concurrence with the ranking member.

24 (b) STAFF NONDISCLOSURE AGREEMENT.—All mem-
25 bers of the staff of the special committee with access to

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1 confidential information within the control of the special
2 committee shall, as a condition of employment, agree in
3 writing to abide by the conditions of this section and any
4 nondisclosure agreement promulgated by the special com-
5 mittee that is consistent with this section.

6 (c) SANCTIONS.—

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

13 (2) STAFF SANCTIONS.—Any member of the
14 staff of the special committee who violates the secu-
15 rity procedures of the special committee shall imme-
16 diately be subject to removal from office or employ-
17 ment with the special committee or such other sanc-
18 tion as may be provided in any rule issued by the
19 special committee consistent with section 2(c).

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

22 (1) all employees of the special committee;

23 (2) all staff designated by the members of the
24 special committee to work on special committee busi-
25 ness;

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1 (3) all Senate staff assigned to special commit-
2 tee business pursuant to section 5(b)(13);

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

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

8 **SEC. 7. RELATION TO OTHER INVESTIGATIONS.**

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

10 (1) to expedite the thorough conduct of the in-
11 vestigation, study, and hearings authorized by this
12 resolution;

13 (2) to promote efficiency among all the various
14 investigations underway in all branches of the Unit-
15 ed States Government; and

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

19 (b) SPECIAL COMMITTEE ACTIONS.—To carry out
20 the purposes stated in subsection (a), the special commit-
21 tee is encouraged—

22 (1) to obtain relevant information concerning
23 the status of the investigation of the independent
24 counsel, to assist in establishing a hearing schedule
25 for the special committee; and

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1 (2) to coordinate, to the extent practicable, the
2 activities of the special committee with the investiga-
3 tion of the independent counsel.

4 **SEC. 8. SALARIES AND EXPENSES.**

5 A sum equal to not more than \$950,000 for the pe-
6 riod beginning on the date of adoption of this resolution
7 and ending on February 29, 1996, shall be made available
8 from the contingent fund of the Senate out of the Account
9 for Expenses for Inquiries and Investigations for payment
10 of salaries and other expenses of the special committee
11 under this resolution, which shall include not more than
12 \$750,000 for the procurement of the services of individual
13 consultants or organizations thereof, in accordance with
14 section 5(b)(11). Payment of expenses shall be disbursed
15 upon vouchers approved by the chairman, except that
16 vouchers shall not be required for the disbursement of sal-
17 aries paid at an annual rate.

18 **SEC. 9. REPORTS; TERMINATION.**

19 (a) **COMPLETION OF DUTIES.—**

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

24 (2) **EVALUATION OF PROGRESS.—**The special
25 committee shall evaluate the progress and status of

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1 the investigation, study, and hearings authorized by
2 section 1 and, not later than January 15, 1996,
3 make recommendations with respect to the author-
4 ization of additional funds for a period following
5 February 29, 1996. If the special committee re-
6 quests the authorization of additional funds for a pe-
7 riod following February 29, 1996, the Majority
8 Leader and the Democratic Leader shall meet and
9 determine the appropriate timetable and procedures
10 for the Senate to vote on any such request.

11 (b) FINAL REPORT.—

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

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

22 (3) CONCLUSION OF BUSINESS.—After submis-
23 sion of its final report, the special committee shall
24 promptly conclude its business and close out its af-
25 fairs.

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1 (c) RECORDS.—Upon the conclusion of the special
2 committee's business and the closing out of its affairs, all
3 records, files, documents, and other materials in the pos-
4 session, custody, or control of the special committee shall
5 remain under the control of the Committee on Banking,
6 Housing, and Urban Affairs.

7 **SEC. 10. COMMITTEE JURISDICTION AND RULE XXV.**

8 The jurisdiction of the special committee is granted
9 pursuant to this resolution, notwithstanding the provisions
10 of paragraph 1 of rule XXV of the Standing Rules of the
11 Senate relating to the jurisdiction of the standing commit-
12 tees of the Senate.

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

PHIL GRAMM, TEXAS
 RICHARD C. SHELBY, ALABAMA
 CHRISTOPHER S. BOND, MISSOURI
 CONNIE MACK, FLORIDA
 LAUCH FAIRCLOTH, NORTH CAROLINA
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HOWARD A. MENELL, STAFF DIRECTOR
 ROBERT J. GIUFFRÀ, JR., CHIEF COUNSEL
 PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

July 5, 1995

VIA FACSIMILE

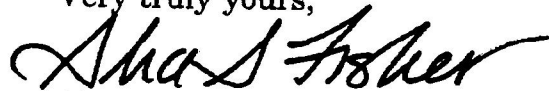
Stephen A. Kubiатовski, Esq.
 Assistant Independent Counsel
 Office of the Independent Counsel
 Suite 490-North
 1001 Pennsylvania Avenue, NW
 Washington, DC 20004

Dear Mr. Kubiатовski:

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

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

Very truly yours,


 Alice S. Fisher

List of White House Deponents

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

SENATE COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS

534 Dirksen Building, Washington, D.C. 20510

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

TO: Mr. Stephen KubiakowskiNUMBER FAXED TO: 514-8802FROM: Alice S. FisherDATE: 7/5/95NUMBER OF PAGES. 3
(Including this cover sheet)

MESSAGE:

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

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN
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United States Senate
 COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS
 WASHINGTON, DC 20510-6075

HOWARD A. MENELL, STAFF DIRECTOR
 ROBERT J. GIUFFRÀ, JR., CHIEF COUNSEL
 PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR
 AND CHIEF COUNSEL

**SPECIAL COMMITTEE TO INVESTIGATE
 WHITEWATER AND RELATED MATTERS**
 (202) 224-0218 (MAIN TELEPHONE) (202) 228-0017 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

DATE: July 11, 1995

TO: Kenneth W. Starr, Esquire

FAX NUMBER: (501) 221-8707

FROM: Richard Ben-Veniste/Michael Chertoff

CONFIRM ARRIVAL: YES, Please contact me at 224-0218
 NO

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER SHEET: 3

MESSAGE:

ALFONSE M. DAMATO, NEW YORK, CHAIRMAN

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PATTY MURRAY, WASHINGTON

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

HOWARD A. MENELL, STAFF DIRECTOR
ROBERT J. CIUFFRA, JR., CHIEF COUNSEL
PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR
AND CHIEF COUNSEL

July 11, 1995

BY FACSIMILE AND FIRST-CLASS MAIL

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

Dear Judge Starr:

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

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

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

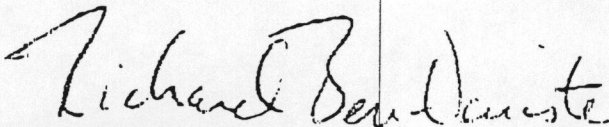
Kenneth W. Starr, Esquire
July 11, 1995
Page 2

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

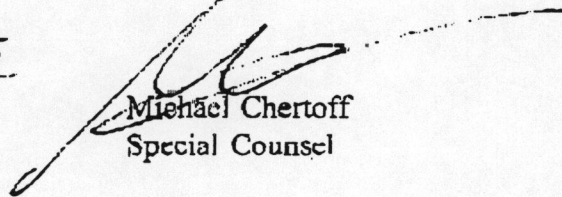
We recognize that you may not wish to provide the report of the polygraph examiner to the Special Committee, however, we request that you provide us with the questions asked and the answers given together with the expert's conclusion regarding truthfulness as to each.

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

Sincerely yours,



Richard Ben-Veniste
Democratic Special Counsel



Michael Chertoff
Special Counsel

*** ACTIVITY REPORT ***

RECEPTION OK

TX/RX NO.	7332
CONNECTION TEL	501 221 8707
CONNECTION ID	INDEP COUNSEL
START TIME	07/11 17:17
USAGE TIME	01'42
PAGES	4
RESULT	OK



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

July 12, 1995

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

Dear Messrs. Giuffra and Cole:

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

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

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

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

4. You have asked for the name of the FBI agent who analyzed the Foster note for fingerprints. The analysis was performed by Louis Hupp who also is the expert who has performed a variety of analyses at the direction of both Mr. Fiske and Judge Starr. Mr. Hupp is available on Friday July 14, at 9:30 a.m. Per my conversations with Mr. Ben-Veniste and with Mr. Kubiawski of OIC, it is my understanding that Mr. Hupp's deposition will be limited to the analysis he performed in July and August of 1993.

5. Although Mr. Margolis may return to work at the end of July, his doctor has advised him not to be interviewed or deposed until at least the second week in August.

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

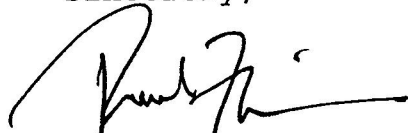
It is my understanding that the subject of the interview will be limited to the Attorney General's personal knowledge of the events relating to the death of Vincent Foster, including any contact with the White House; the review of documents in Mr. Foster's office; the role of the Department of Justice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

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

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

Please call me if you have any other questions.

Sincerely,



Paul J. Fishman
Counsel to the Deputy
Attorney General

cc: Steve Kubiowski, OIC
Andrea Simonton



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

July 14, 1995

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

Dear Messrs. Giuffra and Ben-Veniste:

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

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

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

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

Sincerely,

Charles J. Sgro
Special Assistant to the
Deputy Attorney General

cc: Steve Kubiowski, OIC
Andrea Simonton, FBI



Office of the Independent Counsel

*Two Financial Centre
10825 Financial Centre Parkway, Suite 134
Little Rock, Arkansas 72211
(501) 221-8700
Fax (501) 221-8707*

July 18, 1995

FOR IMMEDIATE RELEASE

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

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

United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

My Dear Senator:

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

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

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

At the direction of the Chairman

Respectfully,

HOWARD A. MENELL,

Staff Director

GPO: 1993 07-041 (m)

SENATE COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS

534 Dirksen Building, Washington, D.C. 20510

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

TO: Steve Kubiowski, Esq.NUMBER FAXED TO: 514-8802FROM: Robert GiffraDATE: 7-17-95NUMBER OF PAGES. 2
(Including this cover sheet)

MESSAGE:

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

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START TIME 07/17 10:56

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PAGES 2

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 AND CHIEF COUNSEL

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
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WASHINGTON, DC 20510-6075

July 18, 1995

BY FACSIMILE AND FIRST-CLASS MAIL

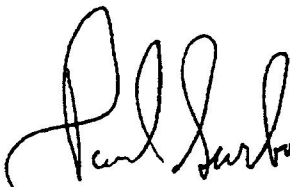
Kenneth W. Starr, Esquire
 Office of the Independent Counsel
 Two Financial Centre
 10825 Financial Centre Parkway, Suite 134
 Little Rock, Arkansas 72211

Dear Judge Starr:

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

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

Thank you very much.



Paul S. Sarbanes
 Ranking Member

Sincerely yours,



Alfonse D'Amato
 Chairman

Enclosure

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

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 AND CHIEF COUNSEL

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

July 11, 1995

BY FACSIMILE AND FIRST-CLASS MAIL

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

Dear Judge Starr:

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

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

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

Kenneth W. Starr, Esquire
July 11, 1995
Page 2

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

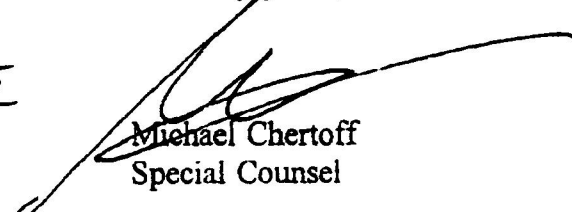
We recognize that you may not wish to provide the report of the polygraph examiner to the Special Committee, however, we request that you provide us with the questions asked and the answers given together with the expert's conclusion regarding truthfulness as to each.

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

Sincerely yours,



Richard Ben-Veniste
Democratic Special Counsel



Michael Chertoff
Special Counsel

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

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER AND RELATED MATTERS**
(202) 224-0218 (MAIN TELEPHONE) (202) 228-0017 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

DATE: 7.18.95

TO: Kenneth Starr

FAX NUMBER: _____

FROM: Senators Sarbanes/D'Amato

CONFIRM ARRIVAL: YES, Please contact me at _____
 NO

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER SHEET: 4

MESSAGE:

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL
1001 Pennsylvania Avenue, N.W., Suite 490N
Washington, D.C. 20004
telephone (202) 514-8688 facsimile (202) 514-8802

Date: July 18, 1995

TO: Richard Ben-Veniste, Democratic Special Counsel

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

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

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

Number of Pages: 3 (including this cover sheet)

Message: _____

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START TIME	07/18 14:47
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PAGES	3
RESULT	OK



Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
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(202) 514-8688
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July 18, 1995

BY FACSIMILE

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

Dear Messrs. Chertoff and Ben-Veniste:

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

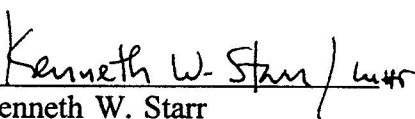
We respectfully decline these requests. As we have informed you on this and previous occasions, we will not disclose to the Congress any investigative work product from this active and ongoing investigation. As you know, we must abide by the strictures of grand jury secrecy contained in Federal Rule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

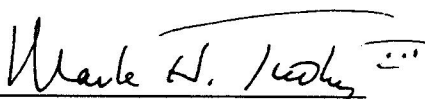
We note, moreover, that our policy on these issues is not based on whether the requested information is exculpatory or incriminating, but rather is made in accordance with long-standing Executive prerogatives to protect the internal work of this Office with respect to an active and ongoing investigation and to protect the privacy of individuals.

You also had jointly requested on behalf of the Committee the use of Mr. Foster's briefcase. As an accommodation to the Committee's investigative needs, we provided the briefcase to the Committee yesterday. Such pre-existing evidence, which was neither created nor modified by this Office or Mr. Fiske's office, is in our view readily distinguished from investigative work product. Moreover, in circumstances where such evidence cannot be obtained from any other source and where disclosure of it would not hinder or impede our ongoing investigation, we believe it appropriate to disclose such evidence to the Committee upon its joint request. We have adhered to this policy thus far, and do not believe that there has been any inconsistency in our responses to the Committee's joint requests.

Thank you for your cooperation.

Respectfully yours,


Kenneth W. Starr
Independent Counsel


Mark H. Tuohey III
Deputy Independent Counsel

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL
1001 Pennsylvania Avenue, N.W., Suite 490N
Washington, D.C. 20004
telephone (202) 514-8688 facsimile (202) 514-8802

Date: July 18, 1995

TO: Michael Chertoff, Special Counsel

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

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

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

Number of Pages: 3 (including this cover sheet)

Message: _____

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Office of the Independent Counsel

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

July 19, 1995

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

Dear Chairman D'Amato and Senator Sarbanes:

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

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

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

We note, moreover, that our policy on these issues is not based on whether the requested information is exculpatory or incriminating, but rather is made in accordance with long-standing Department of Justice policy to protect the internal work of this Office with respect to an active and ongoing investigation and to protect the privacy of individuals.

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

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

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

Respectfully yours,

Kenneth W. Starr

Kenneth W. Starr
Independent Counsel



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

July 27, 1995

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

Dear Mr. Chertoff and Mr. Ben-Veniste:

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul J. Fishman", with a long horizontal flourish extending to the right.

Paul J. Fishman
Counsel to the Deputy
Attorney General

cc: Andrea Simonton, FBI
Steve Kubiowski, OIC



U. S. Department of Justice
The Deputy Attorney General

Washington, D.C. 20530

FACSIMILE COVER SHEET

DATE: 4-7-27-95

TO: Steve Kubiakowski

Office of the Independent Counsel

FAX NUMBER: 4-8802

PHONE NUMBER: _____

FROM: Paul Fishman

FAX NUMBER: (202) 514-6897

PHONE NUMBER: _____

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Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
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(202) 514-8688
Fax (202) 514-8802

July 31, 1995

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

Dear Messrs. Chertoff and Ben-Veniste:

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

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

Sincerely yours,

A handwritten signature in black ink that reads "Mark H. Tuohey III" followed by a stylized flourish.

Mark H. Tuohey III
Deputy Independent Counsel

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AND CHIEF COUNSEL

July 31, 1995

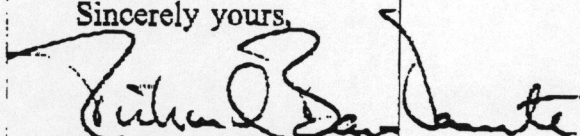
VIA FACSIMILE AND FIRST-CLASS MAIL

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

Dear Mr. Fishman:

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

Sincerely yours,



Richard Ben-Veniste
Minority Special Counsel

cc: Mike Chertoff, Esq.

08/01/95 07:37
07-31-95 01:34PM

202 514 6897

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TO 95146897

P001

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United States Senate
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STEVEN S. HARRIS, DEMOCRATIC STAFF DIRECTOR
AND CHIEF COUNSEL

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER AND RELATED MATTERS**
(202) 224-0218 (MAIN TELEPHONE) (202) 228-0017 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

DATE:

July 31, 1995

TO:

Paul J. Fishman

FAX NUMBER:

(202) 514-6897

FROM:

Richard Ben-Veniste

CONFIRM ARRIVAL:

YES, Please contact me at _____

NO

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER SHEET: 2

MESSAGE:

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

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TO: Steve Kulrafowski
Office of the Independent Counsel

FAX #: () 4-8802 VOICE #: _____

FROM: Paul Johnson
Office of the Deputy Attorney General

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

THIS TRANSMISSION CONTAINS 3 SHEETS INCLUDING THIS SHEET

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

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

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STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR
AND CHIEF COUNSEL

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

July 31, 1995

BY FACSIMILE AND FIRST-CLASS MAIL

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

Dear Judge Starr:

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

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

We wish to call your attention to a change in circumstance since our last request for this information. Last week both Officer O'Neill and Margaret Williams testified about the events of July 20, 1993 in open hearings before our Special Committee and made reference to their prior FBI interviews. (A transcript of their hearing testimony is enclosed.) As the record now stands, only you have the ability to provide information that might shed light on whether the Senate testimony of Officer O'Neill and Ms. Williams, about these interviews and the substantive information contained therein, is consistent with prior statements to law enforcement officials.

Kenneth Starr, Esquire
July 31, 1995
Page 2

In view of our concerns, and taking into consideration the fact that now both Officer O'Neill's and Ms. Williams's conflicting versions of these events, as well as references to their prior FBI interviews, are in the public record, we ask again that you provide the requested materials at your earliest convenience.

Thank you very much.

Sincerely yours,



Paul S. Sarbanes
Ranking Member



Alfonse D'Amato
Chairman

Enclosures



Office of the Independent Counsel

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

August 1, 1995

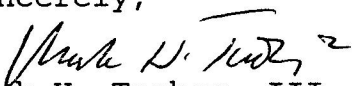
Michael Chertoff, Majority Special Counsel
Richard Ben-Veniste, Minority Special Counsel
Special Committee to Investigate
Whitewater and Related Matters
United States Senate
534 Senate Dirksen Office Building
Washington, D.C. 20510-6075

Dear Messrs. Chertoff and Ben-Veniste:

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

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

Sincerely,


Mark H. Tuohey, III
Deputy Independent Counsel

cc: Paul J. Fishman, Department of Justice
Andrea Simonton, Federal Bureau of Investigation



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

August 1, 1995

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

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

Dear Mr. Kubiowski:

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

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

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

Steve Kubiowski, Esq.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea M. Simonton". The signature is fluid and cursive, with a large initial "A" and "M".

Andrea M. Simonton
Deputy General Counsel

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

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RICHARD C. SHELBY, ALABAMA
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CAROL MOSLEY BRALIN, ILLINOIS
PATTY MURRAY, WASHINGTON

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

HOWARD A. MENELL, STAFF DIRECTOR
ROBERT J. GIUFFRÀ, JR., CHIEF COUNSEL
PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR
AND CHIEF COUNSEL

July 31, 1995

VIA FACSIMILE AND FIRST-CLASS MAIL

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

Dear Mr. Fishman:

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

Sincerely yours,



Richard Ben-Veniste
Minority Special Counsel

cc: Mike Chertoff, Esq.



Office of the Independent Counsel

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

August 3, 1995

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

Dear Mr. Chairman and Senator Sarbanes:

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

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

As we stated in our letter to you of July 19, our position reflects a time-honored policy first expressed by President Washington and subsequently reaffirmed by or on behalf of Presidents Jefferson, Jackson, Lincoln, Theodore Roosevelt, Franklin Roosevelt, and Eisenhower, among others. See "History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress" (Part I), 6 Op. O.L.C. 751 (1982). The reason for this policy is as simple as it is fundamental: the Executive Branch is obligated to protect its Article II responsibility to prosecute the laws fully and fairly. If Congress is apprised of details of an investigation while that investigation is ongoing, there is a distinct danger that congressional pressures will influence, or will be perceived to influence, the course of that investigation. Accordingly, the

The Honorable Alfonse M. D'Amato
The Honorable Paul S. Sarbanes
August 3, 1995
Page 2

Executive Branch has, as a matter of course, declined to provide Congress with access to, or copies of, open law enforcement files. See generally, Memorandum for Oliver B. Revell, Re: Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations, Op. O.L.C., at 5 (March 24, 1989).

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

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

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

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

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

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

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

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

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

Respectfully yours,



Kenneth W. Starr
Independent Counsel



Office of the Independent Counsel

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

August 3, 1995

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

Dear Mr. Chairman and Senator Sarbanes:

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

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

Respectfully yours,



Kenneth W. Starr
Independent Counsel

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL

1001 Pennsylvania Avenue, N.W., Suite 490N

Washington, D.C. 20004

telephone (202) 514-8688

facsimile (202) 514-8802

Date: August 3, 1995

TO: Michael Chertoff

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

Fax Number: 202-224-5137 Telephone Number: 202-224-0440

FROM: Kenneth W. Starr, Independent Counsel

Number of Pages: 4 (including this cover sheet)

Message: _____

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USAGE TIME	02'40
PAGES	4
RESULT	OK

TELECOPY COVER SHEET

OFFICE OF THE INDEPENDENT COUNSEL
1001 Pennsylvania Avenue, N.W., Suite 490N
Washington, D.C. 20004
telephone (202) 514-8688 facsimile (202) 514-8802

Date: August 3, 1995

TO: Richard Ben-Veniste

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

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

FROM: Kenneth W. Starr, Independent Counsel

Number of Pages: 4 (including this cover sheet)

Message: _____

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*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO.	7818
CONNECTION TEL	92280017
CONNECTION ID	
START TIME	08/03 14:49
USAGE TIME	02'46
PAGES	4
RESULT	OK



Office of the Independent Counsel

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

August 7, 1995

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

Dear Mr. Chertoff and Mr. Ben-Veniste:

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

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

As to the use of the briefcase during the hearings, we appreciate that there may be differing opinions within the Committee as to the most appropriate way to use the briefcase. This Office cannot and does not take any position on the proper use of the briefcase during the hearings. We reiterate our request that the briefcase be maintained in a secure place when not in use at the hearings, that it not be lost or physically damaged, and that it be returned to this Office after completion of the hearings.

Thank you for continuing to ensure that the Senators on the Committee have full and accurate information about this Office's dealings with the Committee.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark H. Tuohey III". The signature is written in a cursive style with a prominent initial "M" and a long horizontal stroke at the end.

Mark H. Tuohey III
Deputy Independent Counsel



Office of the Independent Counsel

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

September 6, 1995

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

Dear Bob:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "SA Kubiowski", written over a horizontal line.

Stephen A. Kubiowski
Assistant Independent Counsel

cc: Lance Cole

13
DRAFT OF SEPTEMBER 10, 1995

PRELIMINARY LIST

POTENTIAL WITNESSES:

I. THE HANDLING OF RTC CONFIDENTIAL INFORMATION THE PROCESSING OF RTC CRIMINAL REFERRALS AND

RTC

- 1) Jean Lewis - Criminal investigator
- 2) Lee Aussen - Criminal investigator
- 3) Richard Iorio - Field Investigations Officer
- 4) Julie Yanda - Chief, Professional Liability Section
- 5) Karen Carmichael - Criminal Coordinator
- 6) April Breslaw - Professional Liability Section
- 7) Ellen Kulka - General Counsel, Washington
- 8) Andy Tomback - Deputy Counsel, Washington
- 9) Jim Thompson - Vice-President RTC, Kansas City
- 10) Bill Roelle - Senior Vice-President in Washington
- 11) Jim Dudine - Criminal investigations chief, Washington
- 12) Albert Casey - CEO
- 13) Randy Knight - investigator
- 14) Gilion Curtis - Acting RTC Counsel
- 15) Tom Hindes - Counsel

- 16) David Swiss - Senior Counsel
- 17) Russell Kaufman - Senior Counsel
- 18) John Ryan - Deputy CEO
- 19) Michael VanValkenburg - Director of Tulsa investigations
- 20) Ken Faust - Investigator, Kansas City Investigative Office
- 21) Carl Gamble - National Criminal Coordinator?
- 22) Phillip Adams - Professional Liability Attorney, Kansas City,
- 23) Mike Carron - Criminal investigator, Kansas City
- 24) Mark Gabrellian - Professional Liability Section supervisor
- 25) L.J. Wilson - Criminal Investigator
- 26) Thomas Murray - Civil Review Investigator

FBI

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

DOJ

FOIA(b)(7) - (C)

- 1) Paula Casey - U.S. Attorney, E.D. AR
- 2) Mark McDougal - DOJ Frauds Section attorney
- 3) Charles Banks - former U.S. Attorney, Little Rock
- 4) Richard Pence - Acting U.S. Attorney, E.D. AR between Banks and Paula Casey

- 5) Donna Henneman - Ethics Program Manager in the DOJ Executive Office for U.S Attorneys
- 6) Mack Dotson - AUSA, Little Rock
- 7) Donald McKay - Frauds Section, DOJ
- 8) Deborah Westbrook - EOUSA supervisor
- 9) Anthony Moscato - Executive Director EOUSA
- 10) Webster Hubbell - former Associate Attorney General

WHITE HOUSE

- 1) Bernard Nussbaum
- 2) Bruce Lindsey

OTHERS

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

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

- 1) Lloyd Bentsen - former Secretary of the Treasury
- 2) Lloyd Cutler - former White House Counsel
- 3) Jim Cottos - Chief Treasury Investigator
- 4) Francine Kerner - Counsel to the Inspector General
- 5) Robert Cesca - Acting Inspector General, Department of Treasury
- 6) Patricia Black - RTC Deputy Inspector General
- 7) Stephen D. Potts - Director, Office of Government Ethics

- 8) Steve J. McHale - Deputy assistant general counsel Treasury
- 9) Staff and attorneys of the White House Counsel's staff who participated in the preparation of congressional testimony

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

- 1) James T. Clark, national bank examiner, Controller of the Currency and examiner in charge of the 1986 Federal Home Loan Bank Board examination of Madison Guaranty
- 2) Dawn Pulcer, Field Manager of the Office of Thrift Supervision, Detroit who assisted James Clark in the 1986 examination of Madison
- 3) Sarah Hawkins, Federal Home Loan Bank examiner in charge of the 1984 examination of Madison Guaranty and subsequent director of Madison from 1985-1989
- 4) James McDougal
- 5) John Latham and other board members of Madison
- 6) Marlin Jackson - State Banking Commissioner
- 7) Beverly Bassett Schaffer - Arkansas Securities Commissioner
- 8) Pat Heritage - loan officer for Madison
- 9) Bill Brady - staff attorney, Arkansas Securities Commission
- 10) Rick Massey - Rose Law Firm Lawyer (worked on proposed stock offering)
- 11) Nancy Jones - Assistant Securities Commissioner, Arkansas
- 12) R.D. Randolph
- 13) Seth Ward
- 14) Robert Palmer

IV. ACTIVITIES, INVESTMENTS AND TAX LIABILITY OF WHITEWATER

- 1) Pillsbury, Madison employees who handled investigation on behalf of RTC
- 2) RTC employees working with the Pillsbury Madison firm
- 3) Charles James - registered agent for Whitewater
- 4) James and Susan McDougal - partners in Whitewater
- 5) James Lyons - advised on Whitewater issues
- 6) Leslie Patten - accounting work on Whitewater
- 7) Yoly Redden - accounting work on Whitewater
- 8) Betsy Wright
- 9) Susan Thomases
- 10) Bruce Lindsey
- 11) Employee of Frost & Company
- 12) Chris Wade - real estate agent for Whitewater

V. ROSE LAW FIRM REPRESENTATION OF MADISON AND THE RTC

- 1) John Adair - RTC Inspector General
- 2) Patricia Black - Counsel to the RTC Inspector General
- 3) Clark Blight - Assistant Inspector General for Investigation
- 4) Sharon Vander Vennot - Assistant Inspector General for Audit
- 5) James Renick - Inspector General of the FDIC
- 6) Carolyn Ryals - Deputy Inspector General, FDIC

- 7) Thomas Coogan - Deputy Counsel to the Inspector General
- 8) John Almond - Audit Manager
- 9) Webster Hubbell

VI. CAPITAL MANAGEMENT/DAVID HALE

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

VII. LASATER AND ARKANSAS DEVELOPMENT FINANCE AUTHORITY

- 1) Dan Lasater
- 2) Employees of ADFA
- 3) Patsy Thomasson

**VIII. PERRY COUNTY BANK & CLINTON CAMPAIGN
ACCOUNT**

- 1) Bruce Lindsey
- 2) Neal Ainley

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

PHIL GRAMM, TEXAS
 RICHARD C. SHELBY, ALABAMA
 CHRISTOPHER S. BOND, MISSOURI
 CONNIE MACK, FLORIDA
 LAUCH FAIRCLOTH, NORTH CAROLINA
 ROBERT F. BENNETT, UTAH
 ROD GRAMS, MINNESOTA
 BILL FRIST, TENNESSEE

PAUL S. SARBANES, MARYLAND
 CHRISTOPHER J. DODD, CONNECTICUT
 JOHN F. KERRY, MASSACHUSETTS
 RICHARD H. BRYAN, NEVADA
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 PATTY MURRAY, WASHINGTON

HOWARD A. MENELL, STAFF DIRECTOR
 ROBERT J. GIUFFRÀ, JR., CHIEF COUNSEL
 PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
 STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR
 AND CHIEF COUNSEL

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

September 14, 1995

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

Dear John:

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

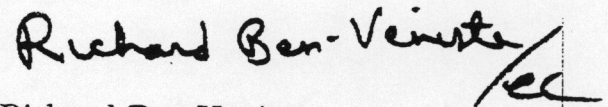
I referred you to Mr. Dennis' statement to the Committee that he had been advised that Ms. Williams had passed her FBI polygraph examination (July 26, 1995 hearing transcript at page 206). I also referred you to Officer O'Neill's sworn testimony that on each of the five or six occasions he was interviewed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

John Bates, Esq.
September 14, 1995
Page 2

release of the underlying material would constitute an appropriate exception to your previously stated policy.

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

Very truly yours,

A handwritten signature in cursive script that reads "Richard Ben-Veniste". The signature is written in dark ink and includes a stylized flourish at the end.

Richard Ben-Veniste

cc: Robert J. Giuffra, Jr., Esq.

*** ACTIVITY REPORT ***

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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER AND RELATED MATTERS**
(202) 224-0218 (MAIN TELEPHONE) • (202) 228-0017 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

DATE:

September 14, 1995

TO:

John Bates, Esq.

FAX NUMBER:

(202) 514-8802

FROM:

Richard Ben-Veniste, Esq.

CONFIRM ARRIVAL:

- YES, Please contact me at _____
- NO

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER SHEET: 3

MESSAGE:



Office of the Independent Counsel

1001 Pennsylvania Avenue Ave., NW
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Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

September 27, 1995

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

Dear Mr. Chairman and Senator Sarbanes:

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

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

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

The Honorable Alfonse M. D'Amato, Chairman
The Honorable Paul S. Sarbanes, Ranking Member
September 27, 1995
Page 2

McDougal and the other defendants relating to Madison Guaranty and CMS. Similarly, any Committee inquiry into Whitewater subject matters would involve an exploration of activities and transactions of Mr. McDougal and Madison Guaranty.

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

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

Accordingly, we must respectfully adhere to the concerns we previously have expressed about investigations and hearings into the six subject matters identified above. As prosecutors, we are bound to do no less. At the same time, we confirm our willingness to continue to review proposals from your staff regarding Committee investigations and hearings on some of the other seven subject matters identified in Senate Resolution 120. We have informed the Committee that hearings on these subject matters will not hinder or impede our investigations.

The Honorable Alfonse M. D'Amato, Chairman
The Honorable Paul S. Sarbanes, Ranking Member
September 27, 1995
Page 3

You also have asked when our concerns in any of the six areas discussed above might change. The trial in United States v. James B. McDougal, et al. is the most significant upcoming event affecting that issue with respect to hearings on Madison Guaranty, Whitewater and CMS subjects. Although pending and anticipated motions make it unlikely that the trial will commence on October 10, 1995, as presently scheduled, we will urge that it occur as soon as practicable. However, that decision rests ultimately within the discretion of the District Court. The completion of that trial will significantly reduce our concerns, barring additional relevant developments. The concerns we have expressed on three other subject matters listed in Senate Resolution 120 may well change appreciably in the next ninety days.

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

Respectfully yours,



Kenneth W. Starr
Independent Counsel

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United States Senate

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WASHINGTON, DC 20510-6075

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AND CHIEF COUNSEL

October 2, 1995

By U.S. Mail and Facsimile

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

Dear Judge Starr:

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

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

Senate Resolution 120 encourages the Special Committee, to the extent practicable, to coordinate its activities with the investigation of the Independent Counsel. As a result, over the past four months, the Special Committee has delayed its investigation into the vast bulk of the matters specified in Section 1(b) of Senate Resolution 120. We held public hearings this past summer into the handling of documents in Mr. Foster's office following his death only after you indicated that your investigation would not be hindered or impeded by such hearings.

The Senate has directed the Special Committee to make every reasonable effort to complete its investigation and public hearings by February 1, 1996. (S.R. 120 § 9(a)(a)(1)). Your letter of September 27th asks the Special Committee to forebear, until some unspecified time, any investigation and public hearings into the bulk of the matters specified in Senate Resolution 120.

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

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

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

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

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

matters specified in Senate Resolution 120 with the intention of holding public hearings thereon beginning in January 1996.

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

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

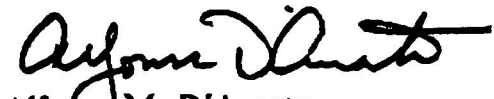
As you know, the Special Committee has solicited the views of your office prior to making requests for documents. We will continue to take into account, where practicable, your views with regard to the public disclosure of particular documents.

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



Paul S. Sarbanes
Ranking Member

Sincerely yours,



Alfonse M. D'Amato
Chairman



SENATE COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS

534 Dirksen Building, Washington, D.C. 20510

- Main Number (202) 224-7391
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TO: Kenneth W. Starr, Esq.

NUMBER FAXED TO: 514-8802

FROM: Chairman D'Amato and Ranking Member Sarbanes

DATE: October 2, 1995

NUMBER OF PAGES. 4
(Including this cover sheet)

MESSAGE:

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

2 U.S.C. 190d, which directs all standing committees of the Congress to engage in continuous legislative oversight of the administration and application of laws within their respective jurisdictions, and "may require a Government agency" to assist in doing so. In 1955, the Attorney General of the United States opined that the authorization required by the Trade Secrets Act was "reasonably implied" under § 190d.¹⁰⁹ A second source is the rules of each House authorizing committee oversight.

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

Congressional oversight of the conduct of civil and criminal enforcement matters by agencies, and most particularly the Department of Justice (DOJ), has raised sensitive questions respecting the exercise of prosecutorial discretion by the executive and interference with protected rights of individuals who may be the subject of such enforcement actions. However, a review of congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years, from the Palmer Raids and Teapot Dome to Watergate and through Iran-Contra and Rocky Flats,¹¹⁰ demonstrates that DOJ has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in DOJ or elsewhere. A number of these inquiries spawned seminal Supreme Court rulings that today provide the legal foundation for the broad congressional power of inquiry.¹¹¹ All were contentious and involved Executive claims that committee demands for agency documents and testimony were precluded on the basis of constitutional or common law privilege or policy.

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

¹⁰⁹ 41 Op. Atty. Gen. 221 (1955).

¹¹⁰ See Morton Rosenberg, "Legal and Historical Substantiality of Former Attorney General Civilette's Views as to the Scope and Reach of Congress' Authority to Conduct Oversight of the Department of Justice," CRS, October 15, 1993, reprinted in Hearing, "EPA's Criminal Enforcement Program", before the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, 103d Cong., 1st Sess. 12-41 (1993). For an in-depth description of the most recent investigation of the DOJ, see Staff Report, *Damaging Disarray: Organizational Breakdown and Reform in the Justice Department's Environmental Crimes Program*, House Subcomm. on Oversight and Investigations, Comm. on Energy and Commerce, 103rd Congress., 2d Session (Dec. 1994) (Comm. Print No. 103-T).

¹¹¹ See notes, 13-20, *supra*, and accompanying text for a review of *McGrain v. Daugherty* and *Sinclair v. United States*.

closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations and the surveillance and arrests of suspects, and documents presented to grand juries not protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, among other similar "sensitive" materials.

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

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

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

¹¹² A leading statement of the executive branch position is found in an opinion of Attorney General Robert Jackson. 40 Op. A.G. 45 (1941).

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

¹¹⁴ *Hutcheson v. United States*, 369 U.S. 599, 617 (1962).

¹¹⁵ *Sinclair v. United States*, 279 U.S. 263, 294 (1929).

continuance or a change of venue, to deal with the publicity problem.¹¹⁶ For example, the court in one of the leading cases, *Delaney v. United States*, entertained "no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it" but went on to describe the possible consequences of concurrent executive and congressional investigations:

We think that the United States is put to a choice in this matter: If the United States, through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a person awaiting trial on a pending indictment, then the United States must accept the consequences that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of the prejudice may reasonably be thought to have been substantially removed.¹¹⁷

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

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

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

¹¹⁷ 199 F.2d 107, 114 (1st Cir. 1952). The court did not fault the committee for holding public hearings, stating that if closed hearings were rejected "because the legislative committee deemed that an open hearing at that time was required by overriding considerations of public interest, then the committee was of course free to go ahead with its hearing, merely accepting the consequence that the trial of *Delaney* on the pending indictment might have to be delayed." 199 F.2d at 114-5. It reversed *Delaney's* conviction because the trial court had denied his motion for a continuance until after the publicity generated by the hearing, at which *Delaney* and other trial witnesses were asked to testify, subsided. See also, *Hutcheson v. United States*, 369 U.S. 599, 613 (1962)(upholding contempt conviction of person who refused to answer committee questions relating to activities for which he had been indicted by a state grand jury, citing *Delaney*.)

utility: Congress it is informing itself so that it may take appropriate legislative action; it is informing the Executive so that existing laws may be enforced; and it is informing the public so that democratic processes may be brought to bear to correct any disclosed executive laxity. Also, if as a result of such legislative hearing an indictment is eventually procured against the public official, then in the normal case there would be a much greater lapse of time between the publicity accompanying the public hearing and the trial of the subsequently indicted official than would be the case if the legislative hearing were held while the accused is awaiting trial on a pending indictment.¹¹⁸

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

¹¹⁸ 199 F.2d at 115.

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

¹²⁰ See, e.g., *Pillsbury Co. v. FTC*, 354 F.2d 952 5th Cir. (1968).

¹²¹ See e.g., *ATX, Inc. v. Department of Transportation* 41 F.3d 1522 (D.C. Cir. 1994); *State of California v. FERC*, 966 F.2d 154 (9th Cir. 1992); *Peter Kiewit Sons' v. U.S. Army Corps of Engineers*, 714 F.2d 163 (D.C. Cir. 1983); *Gulf Oil Corp. v. FPC*, 563 F.2d 588 (3d Cir. 1977), *cert. denied*, 434 U.S. 1062 (1978); *United States v. Armada Petroleum Corp.*, 562 F.Supp 43 (S.D. Tex. 1982). See also, Morton Rosenberg and Jack Maskell, *Congressional Intervention in the Administrative Process: Legal and Ethical Considerations* (CRS Report No 90-440A, Sept. 7, 1990).

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

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

Initially, it must be noted that the Supreme Court has rejected the notion that prosecutorial discretion in criminal matters is an inherent or core executive function. Rather, the Court noted in *Morrison v. Olson*,¹²³ sustaining the validity of the appointment and removal conditions for independent counsels under the Ethics in Government Act, that the independent counsel's prosecutorial powers are executive in that they have "typically" been performed by Executive Branch officials, but held that the exercise of prosecutorial discretion is in no way "central" to the functioning of the Executive Branch.¹²⁴ The Court therefore rejected a claim that insulating the independent counsel from at-will presidential removal interfered with the President's duty to "take care" that the laws be faithfully executed. Interestingly, the *Morrison* Court took the occasion to reiterate the fundamental nature of Congress' oversight function (" . . . receiving reports or other information and oversight of the independent counsel's activities . . . [are] functions that we have recognized as generally incidental to the legislative function of Congress," citing *McGrain v. Daugherty*.)¹²⁵

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

¹²² See remarks of Independent Counsel Lawrence E. Walsh, *supra n.66* and accompanying text.

¹²³ 487 U.S. 654 (1988).

¹²⁴ *Id.* at 691-92.

¹²⁵ *Id.* at 694.

¹²⁶ 9 F.3d 743 (9th Cir. 1993).

constitutionality of the *qui tam* provisions of the False Claims Act vesting enforcement functions against agencies by private parties.¹²⁷

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

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

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

9 F.3d at 751 (emphasis supplied).

and, if so, "whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress'." ¹²⁸

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

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

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

D. Access to Grand Jury Materials

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

¹²⁸ *Nixon v. Administration of General Services*, 433 U.S. 425,423 (1977); *Commodity Futures Trading Commission v. Schor*, 487 U.S. 833, 851 (1986); *Morrison v. Olson*, 487 U.S. 654, 693-96 (1988).

¹²⁹ *U.S. v. Nixon*, 418 U.S. 683, 705-706, 711-712 (1974).

¹³⁰ *Gulf Oil Corp. v. FPC*, 563 F.2d 588, 610 (3d Cir. 1977).



SENATE COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS

534 Dirksen Building, Washington, D.C. 20510

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

TO: Brent Kavanaugh, OIC

NUMBER FAXED TO: 202/514-8802

FROM: Robert J. Giuffra

DATE: 3/20/95

NUMBER OF PAGES: 19
(Including this cover sheet)

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

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

**CHRONOLOGY OF SENATE BANKING COMMITTEE CORRESPONDENCE
REGARDING VINCENT FOSTER DOCUMENTS**

June 22, 1994	Letter from the Senate Banking Committee to Janet Reno, Attorney General of the United States , requesting all DOJ records, including all records of the FBI, that relate to, among other subjects, "the way in which White House officials handled documents in the office of Vincent Foster at the time of his death." The Committee also requested records relating to the handling of documents from the Treasury Department, the White House, the RTC and the U.S. Park Police.
July 1, 1994	Letter from the Senate Banking Committee to Robert B. Fiske, Jr., Office of the Independent Counsel , requesting all records that relate to, among other subjects, "the way in which the White House officials handled documents in the office of Vincent Foster at the time of his death."
July 1, 1994	Letter from Lloyd N. Cutler, Special Counsel to the President, to the Senate Banking Committee in response to the Committee's document request of June 22, 1994. The White House is producing documents previously gathered in response to subpoenas issued by Mr. Fiske. In accordance with the understanding reached at the June 29, 1994 meeting, White House staff members to whom the Committee made individual requests do not need to produce separately documents that they previously provided to the Office of White House Counsel in response to Mr. Fiske's subpoenas. The White House production does not, however, include any personal documents that these individuals may have provided to Mr. Fiske. ¹
July 1, 1994	Letter from Jeffrey D. Robinson, Deputy Assistant Attorney General, to the Senate Banking Committee in response to the Committee's document request of June 22, 1994. Mr. Fiske will directly provide to the Committee DOJ documents generated in his investigation. DOJ will directly provide documents in its possession to the Committee only after Mr. Fiske has reviewed DOJ's proposed production.

who ¹ Individual requests for documents were made to 12 present and former White House Staff members; only Betsy Pond, Office of the White House Counsel, and Patsy L. Thomasson, Special Assistant to the President, did not provide individual responses.

July 5, 1994	Letter from Timothy S. Elliott, Deputy Associate Solicitor, U.S. Department of Interior, to Michael Davidson, Senate Legal Counsel in response to the Committee's document request of June 22, 1994. Enclosed are certain U.S. Park Police records. Documents relating to the handling of documents by the White House, however, are not included. "The Park Police advised the Independent Counsel they would not release documents that might interfere with any ongoing investigation being conducted by him. We understand Mr. Fiske still has under consideration matters that might implicate the handling of certain documents. We believe the documents in our files may be part of his investigation."
July 11, 1994	Letter from Robert B. Fiske, Jr., Independent Counsel, to the Senate Banking Committee in response to the Committee's document request of July 1, 1994. Enclosed are copies of records in the possession of the OIC pertaining to the completed investigation into the death of Vincent Foster. "I cannot yet release to you records pertaining to the possible mishandling of documents in the office of Vincent Foster because...the document investigation is ongoing."
July 18, 1994	Letter from John C. Keeney, Deputy Assistant attorney General, to the Senate Banking Committee in response to the Committee's document request of June 22, 1994. Enclosed are DOJ records relating to the death of Vincent Foster. This response does not include documents solely in the custody and control of Mr. Fiske. DOJ will produce documents relating to the handling of documents in the office of Vincent Foster at the time of his death "as soon as Mr. Fiske determines that disclosure will not interfere with his ongoing investigation."
July 27, 1994	Letter from John C. Keeney, Deputy Assistant Attorney General, to the Senate Banking Committee regarding the DOJ's refusal to produce FBI documents relating to the handling of documents in the office of Vincent Foster at the time of his death. "As stated previously, the Department will produce these documents as soon as Mr. Fiske determines that disclosure will not interfere with his ongoing investigation."

DONALD W. RIEGLE, JR., MICHIGAN, CHAIRMAN

PAUL F. SARDANES, MARYLAND
 CHRISTOPHER J. DODD, CONNECTICUT
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 ROBERT F. BENNETT, UTAH
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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL
 HOWARD A. MENELL, REPUBLICAN STAFF DIRECTOR

June 22, 1994

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

Dear Madam Attorney General:

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

- (a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;
- (b) the Park Service Police investigation into the death of Vincent Foster; and
- (c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

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

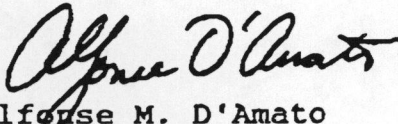
The records should be delivered to Kelly Cordes, the Committee's Chief Clerk, 534 Dirksen Senate Office Building.

The Honorable Janet Reno
June 22, 1994
Page Two

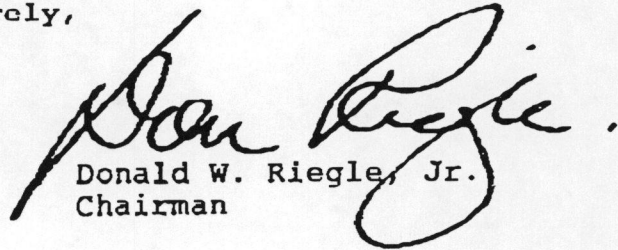
As you know, Senate Resolution 229 provides that public hearings on this matter begin no later than July 29, 1994. Therefore, it is necessary that these documents be received by the Committee no later than July 1, 1994, and prior to that date, if possible. If you have any questions concerning this request,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

Your cooperation in this matter is greatly appreciated.

Sincerely,



Alfonse M. D'Amato
Ranking Member



Donald W. Riegler, Jr.
Chairman

Enclosure

DONALD W. RIEGLE, JR., MICHIGAN CHAIRMAN

PAUL S. SARBANES, MARYLAND
CHRISTOPHER J. DODD, CONNECTICUT
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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

July 1, 1994

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL
HOWARD A. MENELL, REPUBLICAN STAFF DIRECTOR

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

Dear Mr. Fiske:

On June 21, 1994, the Senate passed Resolution 229, a copy of which is enclosed, directing the Committee on Banking, Housing, and Urban Affairs to conduct hearings on matters specified in the resolution.

In preparation for the hearings, we request that you provide to the Committee all records that are within your custody, control or possession, regardless of format, that relate in any manner to the following subjects:

- (a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;
- (b) the Park Service Police investigation into the death of Vincent Foster; and
- (c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

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

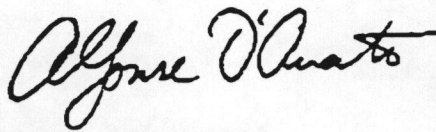
If you at one time had records on the matters listed above, but have provided them to someone else, please advise us in writing, by July 11, 1994, to whom you provided those records and furnish us a list of the records provided.

Robert B. Fiske, Jr.
July 1, 1994
Page Two

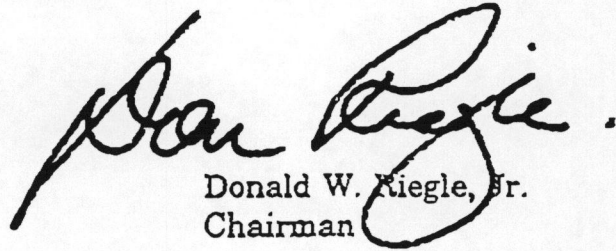
If you have any questions concerning this request, please call Michael Davidson, Senate Legal Counsel, at (202) 224-4435. This request is, of course, an initial request and may be supplemented by additional ones.

Your cooperation in this matter is greatly appreciated.

Sincerely,



Alfonse M. D'Amato
Ranking Member



Donald W. Riegle, Jr.
Chairman

Enclosure

*Committee
confidential*

THE WHITE HOUSE
WASHINGTON

July 1, 1994

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

Dear Chairman Riegle and Senator D'Amato:

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

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

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

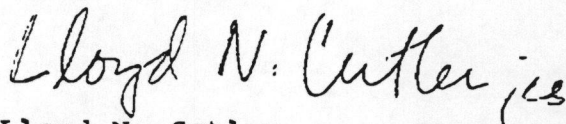
As you requested, we are providing a list that identifies each document produced and its source.

The White House is making this document production with the understanding that, until the time of the Senate Banking Committee hearing:

- (1) the documents will be treated as if they are classified material;
- (2) they will be maintained in a secure reading room that is guarded or locked at all times;
- (3) access to the documents will be limited to Committee Members, one or two designated members of the staff of each Committee Member, Mr. Codinha and his staff, and Mr. Chertoff and his staff;
- (4) all staff members will be required to sign an appropriate confidentiality agreement before being given access to the documents;
- (5) documents will be maintained in a safe within the reading room; Messrs. Codinha and Chertoff and one additional person from each of their staffs will be the only individuals with the combination to the safe;
- (6) documents will not be copied or removed from the room except for the limited purpose of temporary use at a deposition or interview;
- (7) deposition transcripts will be treated in the same manner as documents;
- (8) there will be two stand-alone computers in the reading room for use by staff; no print-outs may be taken out of the room.

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

Sincerely yours,



Lloyd N. Cutler
Special Counsel to the President



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 1, 1994

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

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

Dear Mr. Chairman and Senator D'Amato:

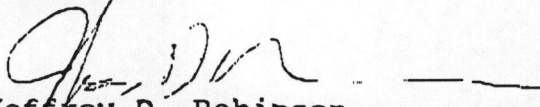
This is in response to your letter of June 22, 1994 to Attorney General Reno requesting that the Committee be provided documents relating to the following subjects:

- (a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;
- (b) the Park Service Police investigation into the death of Vincent Foster; and
- (c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

Representatives of the Department met today with majority and minority staff of the Committee and Senate Counsel Michael Davidson concerning production of these materials. It was noted that documents generated in the investigation of these matters by Independent Counsel Robert B. Fiske, Jr. would be provided directly to the Committee by Mr. Fiske. Documents in the possession of Department would be provided by the Department.

The Department has set July 11 as its goal for production of the documents. But as was noted at the meeting, Mr. Fiske will review our proposed production to assure it will not interfere with his investigation. We hope to adhere as closely as possible to the target date.

Sincerely,



Jeffrey D. Robinson
Deputy Assistant Attorney General



United States Department of the Interior

OFFICE OF THE SOLICITOR

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

JUL 5 1994

Dear Mr. Davidson:

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

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

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

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

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

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

in the Report of the Independent Counsel.

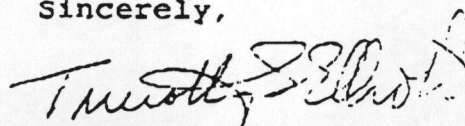
We have not included copies of the contents of Mr. Foster's wallet. These are personal items, most of which were listed generically in the Independent Counsel's Report. The only added information photocopies would reveal are details such as PIN numbers, shopping habits, and charge card numbers.

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

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

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

Sincerely,



Timothy S. Elliott
Deputy Associate Solicitor

Enclosure



U. S. Department of Justice

Office of the Independent Counsel

John P. ...

202 512 8688

...

...

July 11, 1994

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

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

Dear Senators Riegle and D'Amato:

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

Much of the material provided to you today is in the form of "FBI FD-302s" -- records of witness interviews conducted by FBI agents and attorneys on my staff. In an effort to expedite a production to you and to avoid needless repetition, I am not at this time producing the "backup" to these forms -- handwritten notes of the agents, memos to file, communications between members of my staff, or other material that reflects the deliberative process of this Office or is traditionally protected attorney work product. I am similarly not producing documents that I know are being produced to you from their original sources and documents such as newspaper articles that are publicly available.

I have attempted to release as much information as is possible today. In many instances, witnesses were interviewed on more than one topic, and the records of their interviews have had to be redacted to the extent that they reflect either Grand Jury or ongoing investigation material. In the interest of expediency, to the extent that a record consists primarily of such material, it is being withheld in its entirety at this time.

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

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

Respectfully yours,

Robert B. Fiske, Jr.
Independent Counsel

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

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 18, 1994

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

Dear Senators Riegler and D'Amato:

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

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

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

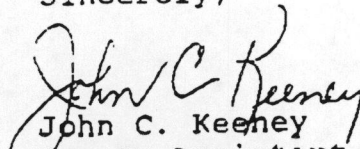
We have redacted very limited information, consisting mainly of home addresses and telephone numbers, because of the concern for the privacy of persons named. Please feel free to contact me if you would like to review the redacted information. By

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producing these materials to the Committee, the Department of Justice does not intend to waive any claims it may otherwise raise pursuant to FOIA.

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

Sincerely,



John C. Keeney

Deputy Assistant Attorney General

Enclosures



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 27, 1994

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

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

Dear Mr. Chairman and Senator D'Amato:

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

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

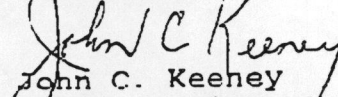
In response to your question as to where in the Department Park Police records were located, the following components had copies of Park Police records: Office of the Deputy Attorney

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General; Executive Secretariat Office; Office of Professional Responsibility; the Criminal Division; and the FBI.

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

Sincerely,



John C. Keeney
Deputy Assistant Attorney General