

# HOGAN & HARTSON L.L.P

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June 4, 2003

Via Facsimile and U. S. Mail

Mr. Allan J. Favish  
22406 Holly Court  
Santa Clarita, CA 91390-4202

Re: Office of Independent Counsel et. al. v. Allan J. Favish  
Supreme Court Case Number: 02-954

Dear Mr. Favish:

We received your letter dated May 29, 2003 declining to give consent to our filing of an amicus brief on behalf of Teresa Earnhardt in the above-referenced appeal. We ask that you reconsider your decision in light of this response to the two objections you have expressed.

Your first objection is premised on your belief that the case of the Earnhardt family is different from your case, which you state hinges on whether or not Congress intended to protect the privacy interest of survivors in adopting FOIA Exemption 7(C). You are correct that the Earnhardt family has no special expertise, interest, or experience in the technical interpretation of Exemption 7(C) or the congressional intent behind the meaning of the word "privacy" in that exemption. The amicus brief to be submitted on behalf of Mrs. Earnhardt would not so suggest. In any event, our understanding is that the only case in which the petition for certiorari has been granted is Case No. 02-954, filed by the Solicitor General on behalf of the Office of the Independent Counsel. This case presents one question:

Whether the Office of Independent Counsel properly withheld, under Exemption 7(C), photographs relating to the death of former Deputy White House Counsel Vincent Foster.

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Your issue has thus not been raised by the Solicitor General's petition; and in fact we understand that your petition (Case No. 02-409) raising that issue has been opposed by the Solicitor General.

While an administrative or technical interpretation of FOIA Exemption 7(C) is admittedly not relevant to the Earnhardt matter, the Earnhardt family does have interest, expertise and experience in the general policy issues that may be considered by the U.S. Supreme Court in this appeal. It is for this reason that Mrs. Earnhardt seeks your consent to an amicus brief.

Your second concern is more specific, and is directed toward the factual differences between the two cases. We agree that the facts of the two cases are different. However, even though the facts are different, the fundamental policy issues remain the same: how to strike an appropriate balance between the public's ability to access autopsy and other death scene photographs, and the intrusion upon family privacy that any such disclosure would occasion.

In light of these facts, we again ask for your consent to the filing of an amicus brief on behalf of Mrs. Earnhardt. We would be happy to arrange a conference call to discuss this matter if you believe it would be helpful. In any event, please advise if you will reconsider your decision, and grant consent to our filing of an amicus brief on behalf of Mrs. Teresa Earnhardt. Thank you.

Sincerely,

*Carol A. Licko*  
Carol A. Licko