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May 29, 2003

Carol A. Licko
Hogan & Hartson L.L.P.
Barclays Financial Center
1111 Brickell Ave., Suite 1900
Miami, FL 33131

Re: Office of Independent Counsel, et al. v. Allan J. Favish, Supreme Court case nos. 02-409, 02-599, 02-954

Dear Ms. Licko:

This is in response to your letter dated May 28, 2003 requesting my consent to your filing of an amicus curiae brief in OIC v. Favish.

I appreciate your interest in my case and my condolences to the Earnhardt Family. However, I do not consent to your filing of the brief. Unlike the Earnhardt Family's case, my case hinges on the congressional intent of the United States Congress that drafted the federal Freedom of Information Act in 1966. In particular, the issue is what did that Congress mean when it used the word "privacy" in Exemption 7(C) in the FOIA. According to the United States Supreme Court, that Congress defined the word as the right to control information about yourself. See *Department of Justice v. Reporters Committee*, 489 U.S. 749, 103 L.Ed.2d 774 (1989). Unless the Supreme Court is going to now hold that the 1966 Congress had something else in mind when it used the word "privacy" that the Court neglected to tell us about in 1989, I don't see how Vincent Foster's survivors have any privacy interest in the photographs at issue in my case given that there is no information about them in the photographs.

If Vincent Foster's survivors do not want the photographs released to the public, they should urge Congress to amend the FOIA to add another exemption that will cover a situation like theirs. I see from your letter that the Earnhardt Family urged the Florida Legislature to change Florida's law. Urging the relevant legislature to change the law is preferable over urging the courts to misinterpret the law and "legislate" from the bench.

I have not researched the specifics of the Earnhardt Family's case. Therefore, assuming that it involves a Florida open records act that has a privacy exemption, I cannot say what the Florida Legislature had in mind when it used the word "privacy" in the Florida law. But I do know that it is irrelevant to the issue in my case.

Moreover, unlike the Earnhardt Family's case, my case does not involve autopsy photographs.

Also, any balancing in my case of the public's right to access against any privacy interest of the survivors will be different than any such balancing done in the Earnhardt Family's case. This is because in my case the facts give the public a much stronger justification for disclosure than I imagine exists in the Earnhardt Family's case. In my case there was a mysterious violent death of a high federal government official during the workday with the body found at a government park and partially investigated by two federal law enforcement agencies, the United States Park Police and the Federal Bureau of Investigation. Mr. Foster was working for the public, the public paid his salary, the public owned the park land upon which his body was found, the public paid for the maintenance of the park, and the public paid the salaries of the USPP and FBI agents who worked on his case. The public paid

for the photographs that are at issue in my case, which were taken by USPP officers. The public also paid for the investigations of the death by the offices of Robert Fiske and Kenneth Starr. The reports issued by those two offices are significantly deceptive and untrustworthy. Both of those reports, when compared with the government's own underlying investigative documents, prove that both of those offices were at best, extremely negligent, and at worst, intentionally deceptive. Yet, the government is denying the public the right to see the photographs. I don't believe any of these factors are involved in the Earnhardt Family's case.

Please feel free to contact me if there is something about the Earnhardt Family's case that I have missed that would make an amicus curiae brief from you worthwhile in my case.

Sincerely,

A handwritten signature in black ink that reads "Allan J. Favish". The signature is written in a cursive, flowing style.

Allan J. Favish