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June 4, 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 June 4, 2003 requesting my consent to your filing of an amicus curiae brief in OIC v. Favish.

You state that my "issue has thus not been raised by the Solicitor General's petition" Contrary to your understanding, Supreme Court Rule 14 (1.) (a) states, in part: "The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court." The issues I set forth in my letter to you and the issues set forth in my petition for certiorari are all subsidiary questions fairly included within the broad question set forth in the Solicitor General's petition. Therefore, all of the issues raised by the parties will be before the Supreme Court. Moreover, my petition for certiorari and that of Lisa Foster Moody and Sheila Foster Anthony are still pending. They will be disposed of in a manner consistent with the Court's disposition of the case.

If the Supreme Court decides that Mr. Foster's survivors have a privacy interest in the death scene photographs, and release of the photographs would intrude on that interest, then the issue will be how to strike an appropriate balance between the public's interest in accessing the photographs and the intrusion upon the survivors' privacy interest.

This is a fact-dependent process. I have no reason to question the ability of the Earnhardt Family to speak out about this fact-dependent process in the context of its own case, or the propriety of its doing so. However, because of the factual differences between the cases, I do not see what the Earnhardt Family can add to the arguments and factual representations already made by Ms. Moody and Ms. Anthony.

I do not believe that a conference call would be helpful, but I am willing to talk about the matter if you like. Any weekend would be the best time for me.

Sincerely,



Allan J. Favish