



Hugh's News

Documents reveal judges' deliberations on a death

by Hugh Turley

Vincent Foster, former president Bill Clinton's deputy White House counsel, died nearly 17 years ago, and his death was ruled a suicide. But recent research has revealed that the judges who appointed the independent counsel investigating his death were worried about "be[ing] charged as conspirators in the cover-up," in the words of Judge John Butzner.

Butzner was part of a three-judge panel on the Special Division of the District of Columbia Circuit that had appointed Kenneth Starr to investigate several matters relating to the Clintons' Whitewater land deal, an inquiry that grew to include Foster's 1993 death.

Notes between the now-deceased Butzner and his colleagues Peter Fay and David Sentelle are part of the collection of Butzner's papers at the University of Virginia's law library. They show discussion about whether to include the testimony of Whitewater grand jury witness Patrick Knowlton, who had been at Fort Marcy Park the day Foster's body was found. As a passerby, he testified that Foster's Honda was not at the park at the time of death. Foster therefore could not have driven to the park in his car, as claimed by Starr.

Knowlton asked the judges to include additional evidence based on official records contradicting Starr's report: Other witnesses did not see Foster's car, the gun found was not his, there was a bullet hole in his neck, crime scene photographs and X-rays had disappeared. Knowlton provided evidence he was the victim of witness intimidation by Starr's staff.

On Sept. 24, 1997, Judge Sentelle sent his colleagues Knowlton's motion to include comments and factual information as an appendix to the report on Foster's death. Sentelle told them: "The question of what to do with his comments is not an easy one. ... If I were forced to decide the question alone, it would be my inclination to deny the motion."

Judge Fay disagreed with Sentelle. "[Knowlton] does comment on specific findings and conclusions in the report," he argued. "He contradicts specific factual matters and takes issue with the very basics of the report filed by the [Independent Counsel]."

The following day Butzner concurred. "I suspect if we deny the motion we will be charged as conspirators in the cover-up," he wrote. "I suggest we let the motion and the attachments speak for themselves."

That afternoon, Sentelle faxed his colleagues a message that, after reviewing their memos, he had changed his mind and agreed to draft an order granting the motion. So on Sept. 26, the court ordered that Knowlton's comments and evidence be included in Starr's report. On Sept. 29, Starr filed a motion appealing the order. It was denied the next day, marking the first time in history that an Independent Counsel was ordered to include in his report evidence of a cover-up by his own investigators.

After Starr's motion was denied and before the report was made public, Knowlton and his attorney visited the Associated Press office to show the reporter on the case the evidence contradicting Starr that had been ordered part of the final report.

They were not prepared for his response. "[The reporter] told us the story was already written and [the cause of death] was suicide," Knowlton told the *Life & Times*. "We did not believe the press could ignore the court-ordered attachment."

Now, for 13 years, the American press has not reported on the Knowlton appendix, and the attachments did not "speak for themselves" as Butzner envisioned. But the press *has* reported the latest news about Kenneth Starr — he will become the president of Baylor University this June.