BROWN GOLDSTEIN LEVY

Andrew D. Freeman
adf@browngold.com

August 14, 2018

Via Hand Delivery

The Honorable Chief Judge Beryl A. Howell
United States District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington D.C. 20001

Re: Emergency Request to Unseal Special Master's Report Concerning Allegations of Improper Disclosures of Grand Jury Materials by Independent Counsel Prosecutors in Connection with 1998 Investigation of President Clinton

Dear Chief Judge Howell:

We are counsel for American Oversight, a nonpartisan organization committed to promoting transparency in government, ensuring the accountability of government officials, and educating the public about government activities through various means, including the publication of government materials.

On American Oversight's behalf, we write with an emergency request to unseal a report to then-Chief Judge Norma Holloway Johnson, authored by Special Master John W. Kern III in 1999, concerning allegations that prosecutors within the Office of Independent Counsel leaked confidential information to the press in connection with their 1998 investigation of then-President Clinton ("Special Master's Report" or "Report"). Independent Counsel Kenneth Starr and his team of attorneys conducted the OIC investigation. One of the OIC prosecutors who was a subject of the Special Master's investigation and report is the Honorable Brett M. Kavanaugh, whose nomination to the position of Associate Justice of the Supreme Court of the United States is pending, with confirmation hearings set to begin on September 4, 2018. Judge Kavanaugh's potential involvement in the OIC misconduct is a matter of great public importance and current national debate. Continued secrecy of this Report, authored and submitted to this Court nearly two decades ago, is unnecessary and harmful to the public interest. Given that the Supreme Court confirmation hearings for Judge Kavanaugh will begin in under three weeks, we seek resolution of this request as expeditiously as possible, as outlined below.

I. Proposed Procedure for Handling Emergency Request for Unsealing of Special Master's Report

American Oversight requests the unsealing of the Special Master's Report, which was associated with (but not included on) the three dockets previously ordered unsealed by the Court in *In re Application to Unseal Dockets Related to Independent Counsel's 1998 Investigation of President Clinton* ("*In re Application to Unseal Dockets*"), 308 F. Supp. 3d 314 (D.D.C. 2018),

stayed pending appeal, D.C. Cir. Case No. 18-5142. Following the procedure of that proceeding, we submit this letter as a request for the unsealing of grand jury material, as provided in Local Criminal Rule 6.1, or in the alternative, as a request for the unsealing of a judicial record.[1] We ask that the Court, as was done in that case, generate a miscellaneous case number, list American Oversight and the Department of Justice as interested parties, and order that the matter be unsealed given the lack of any need to keep the proceedings secret. We further request that the Court set an expedited schedule that would facilitate resolution of this request within a week, to allow time for a possible expedited appeal prior to the start of the confirmation hearings. In the alternative, we can file a Complaint as a miscellaneous case, together, with a motion for a temporary restraining order in light of the urgency of the request.

Yesterday, in an effort to expedite resolution of this matter, we contacted Elizabeth J. Shapiro, the Deputy Director of the DOJ Federal Programs Branch, who represented the Government's interests in *In re Application to Unseal Dockets*. Ms. Shapiro suggested that the first step should be to locate a copy of the Special Master's Report. To that end, we respectfully request that a copy of the Report provided to former Chief Judge Johnson (if it can be located in the Court's files, Judge Johnson's files, or elsewhere) be provided to the Court and the DOJ for review pursuant to Federal Rule of Criminal Procedure 6(e)(3)(E)(i). We also understand that, "[u]pon termination of the Office of Independent Counsel, the active independent counsel was obligated to transfer all records which had been created during its tenure to the Archivist of the United States." *Judicial Watch, Inc. v. Nat'l Archives and Records Admin.*, 214 F. Supp. 3d 43, 52 (D.D.C. 2016) (citing 28 U.S.C. § 594(k)(1)). As a result of that transfer of records, the copy of the Report provided to the OIC's counsel, Donald Bucklin, may currently reside at the National Archives. If the Report cannot be promptly located in either the Court's files or the Archives, we respectfully suggest outreach to Mr. Bucklin and to Judge Kern's former assistant (recipients of two of the four paper copies of the Report, as described below). To the extent an evidentiary hearing is necessary or appropriate to locate a copy of the Report, we request that the Court commence one promptly to increase the likelihood that this matter can be resolved prior to the end of Judge Kavanaugh's confirmation process.

II. Factual Background

In 1998, former President Clinton, Sidney Blumenthal (former Assistant to the President), and Bruce Lindsey (former Deputy White Counsel) each moved for a show-cause order to the OIC, alleging that its prosecutors and/or staff had leaked grand jury material in violation of Federal Rule of Criminal Procedure 6(e), which protects the secrecy of "a matter occurring before the grand jury." The three motions were docketed separately as miscellaneous cases—

[1] We do not believe that this request for unsealing the Special Master's Report should be filed under seal, as similar requests to this Court have not been sealed. *See, e.g.*, *In re Application to Unseal Dockets*, Misc. No. 18-00019 (BAH) (D.D.C.), Dkt. No. 1; *In re Petition of Kutler*, Misc. No. 10-00547 (RCL) (D.D.C.), Dkt. No. 1.

Misc. No. 98-55, Misc. No. 98-177, and Misc. No. 98-228—and assigned to then-Chief Judge Johnson. These cases were consolidated, and on June 19, 1998, Chief Judge Johnson issued an order to the OIC and its individual members to show cause why they should not be held in contempt for violations of Rule 6(e). *See* Chief Judge Johnson's Order (June 19, 1998), attached as Exhibit 1. The Court found that the following six media reports constituted *prima facie* violations of Rule 6(e) or of the Court's own orders prohibiting disclosure of grand jury information:

1. Thomas Galvin, "Monica Keeping Mum – For Now Fends Off Query on Internal Affairs," *New York Daily News*, January 23, 1998;
2. Don Van Natta, Jr. & John M. Broder, "Lewinsky Would Take Lie Test in Exchange for Immunity Deal," *New York Times*, February 2, 1998;
3. Claire Shipman, "Ken Starr Rejects Lewinsky's Immunity Deal," *NBC Nightly News*, February 4, 1998;
4. *Fox News Broadcast*, May 6, 1998;
5. Scott Pelly, "Exclusive Information About Kenneth Starr's Next Moves," *CBS Evening News*, May 8, 1998; and
6. Steven Brill, "Pressgate," *Brill's Content*, August 1998.

The June 19, 1998, Order and a subsequent order outlined procedures for the show-cause proceedings.

The OIC appealed these orders. In its decision, the D.C. Circuit noted that the OIC "does not contest the district court's finding that the movants have satisfied their burden to establish a *prima facie* case of [Rule 6(e) violations]" by submitting various news articles that contained leaked information. *In re Sealed Case No. 98-3077*, 151 F.3d 1059, 1068 (D.C. Cir. 1998). On remand, Chief Judge Johnson issued another Order to Show Cause to the OIC members. *See* Chief Judge Johnson's Order (Sept. 25, 1998), attached as Exhibit 2. The court found an additional 18 *prima facie* violations of Rule 6(e) by OIC based on publicly available news reports that contained leaked grand jury material. Heeding advice from the D.C. Circuit, it further directed that Special Master Kern prepare a "report of his findings and conclusions" regarding his investigation of the leaks. *Id.* at 20. The court ordered that the report be submitted *in camera* to the court, with a copy to the OIC.

On January 29, 1999, the Special Master finalized the Report. As explained in Chief Judge Johnson's subsequent order, the Special Master prepared "exactly four copies of his report"—"one held by the Special Master; another retained by the Special Master's assistant; a third hand-delivered by the Special Master's assistant to the Court; and a fourth hand-delivered by the Special Master directly to the OIC's attorney, Donald Bucklin." *See* Chief Judge Johnson's Order (Feb. 12, 1999), attached as Exhibit 3. To ensure secrecy of the Report, "no copy of the Special Master's report was filed with the Clerk of Court nor served on the movants." *Id.* at 1. The existence of the Special Master's investigation was made public in the

media. *See* Susan Schmidt & Dan Morgan, *Starr: Witnessing for the Prosecution*, WASH. POST (Nov. 19, 1998), attached as Exhibit 4.

Remarkably, the substance of the sealed Special Master's Report was also leaked to the press. In an article entitled "The Survivor," published three weeks after the issuance of the Special Master's Report, Howard Fineman wrote that "[Independent Counsel Kenneth Starr] may have dodged another bullet, however: NEWSWEEK has learned that a 'special master' investigating leaks from Starr's team has delivered a report to Judge Norma Holloway Johnson in which he details inappropriate disclosures to the press, but no criminal leaks of grand-jury material. Johnson must still decide whether to accept the conclusions."[2] Howard Fineman, *The Survivor*, NEWSWEEK (Feb. 21, 1999), attached as Exhibit 5. While this summary of the conclusions of the Special Master's Report was reported by the press, the Report itself has remained under seal since its completion in January 1999.

As you know, earlier this year, CNN and one of its journalists requested, via a letter to your Honor, the unsealing of eight dockets related to the Independent Counsel's 1998 investigation of former President Clinton. Former President Clinton intervened and, in a status update to the Court, requested the unsealing of three additional sealed dockets closely related to the eight identified by CNN—those concerning the contempt litigation initiated by President Clinton and his staff against the OIC that resulted in the Report that is subject of the current request. *See* DOJ Response to CNN's Petition to Unseal, attached as Exhibit 6. The Department of Justice, an interested party to the proceeding, did not oppose former President Clinton's request to unseal those three additional dockets. Status Report of Former President Clinton, attached as Exhibit 7. It explained that, "to the extent Rule 6(e) materials were discussed in connection with alleged leaks, the underlying information and testimony was included in the [OIC Report to Congress.] Accordingly, Rule 6(e) no longer applies to these materials, and the Department has no objection to the requested unsealing." *Id.* at 8.

On April 16, 2018, this Court issued a decision unsealing in substantial part the 11 miscellaneous dockets associated with the OIC's 1998 investigation. *See In re Application to Unseal Dockets* (D.D.C. 2018). The Court relied on its inherent authority to disclose grand jury materials outside of Rule 6(e), analyzing the non-exhaustive list of factors outlined in *In re Craig*, 131 F.3d 99 (2d Cir. 1997), and used by judges of this Court. In unsealing the three related dockets concerning the contempt litigation, the Court explained that maintaining secrecy

[2] More recently, in a 2011 book about the OIC investigation, author Ken Gormely wrote, "Confidential sources would later confirm that the Kern Report 'did not paint a rosy picture' of OIC's dealings with the media . . . Although Judge Kern stopped short of concluding that the Starr prosecutors had violated the law or illegally disclosed grand jury information, a reliable source confirmed that the special master believed OIC had acted overaggressively—and perhaps irresponsibly—in responding to perceived attacks by the White House." Ken Gormley, THE DEATH OF AMERICAN VIRTUE: CLINTON VS. STARR 659 (2011).

was unwarranted given that the grand jury investigation ended almost twenty years ago and the contempt litigation did not involve core grand jury material but rather improper leaks of that material. *In re Application to Unseal Dockets*, 308 F. Supp. 3d at 329.

III. The Special Master's Report Should be Unsealed

The Special Master's Report should be unsealed for at least three reasons. First, the Court should unseal the Report under its "inherent authority" to unseal records related to grand jury proceedings, as well as its inherent authority over records related to its own proceedings. Second, the Court should provide access to the Report under the common law right of access to judicial records. Third, the Court should unseal the Report under the First Amendment right of access to judicial proceedings, including contempt proceedings.

A. "Inherent Authority" to Unseal Records

As outlined in *In re Application to Unseal Dockets*, the Court possesses an "inherent authority to unseal and disclose grand jury material not otherwise falling within the enumerated exceptions to Rule 6(e)." 308 F. Supp. 3d at 323. Whether the Special Master's Report qualifies as grand jury material or as a judicial record,[3] the Court should use its inherent authority to unseal it.

When considering whether to order the disclosure of grand jury materials outside of Rule 6(e), judges of this Court consider the following *Craig* factors:

> (i) the identity of the party seeking disclosure; (ii) whether the defendant to the grand jury proceeding or the government opposes the disclosure; (iii) why disclosure is being sought in the particular case; (iv) what specific information is being sought for disclosure; (v) how long ago the grand jury proceedings took

[3] There is some question as to whether the Special Master's Report is grand jury material, subject to the confidentiality provision in Rule 6(e). On the one hand, the D.C. Circuit has interpreted the scope of grand jury secrecy rather broadly; it "encompasses not only the direct revelation of grand jury transcripts but also the disclosure of information which would reveal the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberation or questions of the jurors, and the like." *Fund for Constitutional Gov't v. Nat'l Archives and Records Serv.*, 656 F.2d 856, 867 (D.C. Cir. 1981) (citation omitted). As a report in a collateral proceeding designed to investigate leaks of confidential information, it arguably falls under the protection of Rule 6(e). On the other hand, the underlying information contained in the Report—the leaks to the press—have long since been made public, so Rule 6(e) may no longer apply to these materials. Furthermore, the Report was commissioned for the sole purpose of assisting Chief Judge Johnson in deciding whether to hold the OIC members in contempt and thus may be more fairly characterized as a judicial record. *See infra* n.5.

> place; (vi) the current status of the principals of the grand jury proceedings and that of their families; (vii) the extent to which the desired material—either permissibly or impermissibly—has been previously made public; (viii) whether witnesses to the grand jury proceedings who might be affected by disclosure are still alive; and (ix) the additional need for maintaining secrecy in the particular case in question.

In re Application to Unseal Dockets, 308 F. Supp. 3d at 326 (quoting *In re Petition of Kutler*, 800 F. Supp. 2d 42, 47–48 (D.D.C. 2011). Furthermore, the D.C. Circuit has stated that its "case law . . . reflects the common-sense proposition that secrecy is no longer 'necessary' when the contents of the grand jury matters have become public." *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1138, 1140 (D.C. Cir. 2006); *see id.* (citing *In re North*, 16 F.3d 1234 (D.C. Cir. 1994)). In explaining this proposition, the D.C. Circuit highlighted its earlier decision holding that the OIC counsel did not violate 6(e) in leaking materials grand jury material because that information was "already common knowledge." *Id.* (quoting *In re Sealed Case*, 192 F.3d 995, 1001–05 (D.C. Cir. 1999)).

As *In re Application to Unseal Dockets*, here the *Craig* factors strongly favor unsealing the Special Master's Report. Most critical is the significant passage of time and the fact that the underlying information has already been disclosed to the public. In unsealing the related dockets, the Court noted that the grand jury investigation "concluded nearly two decades ago" and the "subject matter of this litigation did not involve consideration of secret grand jury materials but rather the improper disclosure of such information on the public record." *In re Application to Unseal Dockets*, 308 F. Supp. 3d at 329. Those same facts pertain here. Notably, the DOJ did not oppose unsealing those related documents because, as it explained, "to the extent Rule 6(e) materials were discussed in connection with alleged leaks, the underlying information and testimony was included in the [OIC Report to Congress.]" The same leaks, which by definition are public, were the subject of the Special Master's Report at issue. Further, as noted, a summary of the Special Master's Report has already been disclosed in the press and other publications such as *The Death of American Virtue*. Given that the "contents of the grand jury have become public," the Special Master's Report should be unsealed. *In re Grand Jury Subpoena, Judith Miller,* 438 F.3d at 1140.

The other applicable factors further support disclosure. It is highly unlikely that the defendant in the grand jury proceeding would oppose disclosure, as it was former President Clinton who requested that the three related dockets be unsealed earlier this year. The identity of the party seeking disclosure supports unsealing. Seeking disclosure of the Special Master's Report falls squarely within American Oversight's mission of promoting transparency in government and accountability of government officials, as it very likely contains information relevant to Judge Kavanaugh's fitness for the highest judicial position in the country. Likewise, the specific information being sought weighs against secrecy—even more so than with the related dockets. It is undoubtedly in the public interest that the Special Master's Report be made

available and considered prior to and as part of Supreme Court confirmation hearings.[4] In the words of the D.C. Circuit, "stale information is of little value . . . ." *Payne v. Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1998). In addition to the pressing need, there is also a historical interest in learning more about the OIC investigation of President Clinton, which standing alone justifies the request. *Craig*, 131 F.3d at 105 (nothing "prohibits historical interest, on its own, from justifying release of grand jury material"). Lastly, there is no additional reason for maintaining secrecy of the Report in this particular case.

In short, the need for secrecy of the Report is minimal, if not non-existent, given the significant passage of time and the fact that the underlying leaks and testimony have long been part of the public domain. Indeed, this Court found these factors persuasive when unsealing the substantively related dockets earlier this year. Accordingly, the Court should use its inherent authority to disclose the Special Master's Report.

B. Common Law Right of Access

If the Special Master's Report does not qualify as grand jury material, it should nonetheless be unsealed pursuant to the common law right of access. The United States has a "common law tradition of public access to records of a judicial proceeding." *United States v. Hubbard*, 650 F.2d 293, 314 (D.C. Cir. 1980).[5] This right "is a fundamental element of the rule of law, important to maintaining the integrity and legitimacy of an independent Judicial Branch."

[4] In the context of motions for temporary restraining orders in situations similar to the present one, courts in this district have held that the non-disclosure of information constitutes an irreparable injury. *See, e.g., Elec. Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 41 (D.D.C. 2006) ("EPIC will also be precluded, absent a preliminary injunction, from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of the Administration's warrantless surveillance program."); *Washington Post v. Dep't of Homeland Sec.*, 459 F. Supp. 2d 61, 75 (D.D.C. 2006) ("Because the urgency with which the plaintiff makes its FOIA request is predicated on a matter of current national debate, due to the impending election, a likelihood for irreparable harm exists if plaintiff's FOIA request does not receive expedited treatment."). The fast-approaching date of the Senate confirmation hearings for Judge Kavanaugh thus supports the emergency nature of this request.

[5] "[W]hether something is a judicial record depends on the role it plays in the adjudicatory process." *Metlife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 666 (D.C. Cir. 2017) (internal quotation marks and citations omitted). Here, the Special Master's Report played a central role in the court's decision-making process regarding the contempt proceedings. The court relied on the Report in making its decision regarding the OIC and its members. Accordingly, the Report can be considered a judicial record subject to the common law and First Amendment rights of access discussed herein. *See id.* at 666-69 (finding briefs and joint appendix to be "judicial records" because they affect the court's decision-making process).

Metlife, Inc. v. Fin. Stability Oversight Council, 865 F.3d 661, 663 (D.C. Cir. 2017). "[T]here is a 'strong presumption in favor of public access to judicial proceedings'" that can only be overcome by competing interests in certain circumstances. *Id.* at 665 (quoting *Hubbard*, 650 F.2d at 317). In *Hubbard*, the D.C. Circuit established a six-factor test to evaluate a motion to unseal:

> (1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.

E.E.O.C. v. Nat'l Children's Ctr., Inc., 98 F.3d 1406, 1409 (D.C. Cir. 1996) (citing *Hubbard*, 650 F.2d at 317-22); *see also Metlife*, 865 F.3d at 665. Here, each of those factors weighs in favor of unsealing the Special Master's Report.

First, as noted above, in order to assess Judge Kavanaugh's fitness for the highest judicial position in the country, the public has a need for all relevant information regarding Judge Kavanaugh, his professional experience, and allegations of professional misconduct. Second, while the public has not had formal access to the Special Master's Report, the substance of the Report was leaked to the press. Exhibit 5. The public should not have to rely on leaked, and thus possibly incomplete or politically slanted information in evaluating Judge Kavanaugh, so this factor, too, weighs in favor of unsealing the Report. Third, undersigned counsel are unaware at this time of anyone who would object to the unsealing of the Special Master's Report. Similarly, fourth, if no one objects to the unsealing, there are no privacy interests that may be asserted. As Judge Kavanaugh is a candidate for one of the highest-ranking positions as a public servant in our democracy, he can have little privacy interest in maintaining the secrecy of a nearly 20-year-old report concerning his professional conduct. Fifth, there is no ongoing litigation in which the unsealing of this Report would cause prejudice. Finally, the Special Master's Report was commissioned by Chief Judge Johnson for purposes of determining whether to hold the OIC members in contempt for leaking confidential information regarding its investigation. Thus, the Report was integral to the Court's decision, and there is "an obvious public interest" in how that decision came about. *Nat'l Children's Ctr., Inc.*, 98 F.3d at 1410 (quoting *Johnson v. Greater Se. Cmty. Hosp. Corp.*, 951 F.2d 1268, 1278 (D.C. Cir. 1991)).

Because all six *Hubbard* factors weigh in favor of unsealing the Special Master's Report, the presumption in favor of public access to judicial records holds in this case, and the Court should disclose the Report.

C. First Amendment Right of Access to Judicial Proceedings

There is also a First Amendment right of access to the courts that argues in favor of releasing the Special Master's Report. Closed proceedings should be rare, and "[t]he presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enter. Co. v. Superior Court of California, Riverside Cty.*, 464 U.S. 501, 510 (1984). Courts in this Circuit consider two factors in deciding whether there should be public access to judicial proceedings: "(i) 'the place and process have historically been open to the press and general public'; and (ii) 'public access plays a significant positive role in the functioning of the particular process in question.'" *In re Special Proceedings*, 842 F. Supp. 2d 232, 238 (D.D.C. 2012) (quoting *Press–Enterprise Co. v. Sup. Ct. of Cal.*, 478 U.S. 1, 8 (1986)). Again, both of these factors support unsealing the Report.

First, criminal proceedings have historically been open to the press and general public. *See generally Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564-69 (1980). While some special proceedings, such as grand juries, rely on secrecy, *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 218 (1979), as discussed above, such secrecy is no longer necessary in this case due to the passage of time and the public's knowledge of information leaked from the grand jury proceedings at issue. *See In re Special Proceedings*, 842 F. Supp. 2d at 241 (finding that public should have access to report investigating prosecutorial misconduct when public had access to the prosecution at issue). Moreover, "[t]he First Amendment right of access 'serves an important function of monitoring prosecutorial or judicial misconduct.'" *Id.* at 242 (quoting *Washington Post v. Robinson*, 935 F.2d 282, 288 (D.C. Cir. 1991). That right is heightened here, where possible findings of prosecutorial misconduct are directly relevant to a judicial candidate's fitness for higher office. The public thus has a right to access a report that informed a court's decision as to whether criminal contempt charges against OIC members were warranted.

Second, access to the Special Master's Report will play a positive role in the public's understanding of why criminal contempt proceedings were not instituted against the OIC, and how that decision reflects on Judge Kavanaugh's nomination to the Supreme Court. *See In re Special Proceedings*, 842 F. Supp. 2d at 243–44 ("access to the Report will also play a positive role in the public's understanding of the Court's decision with respect to criminal contempt proceedings in this case"). It is also "not insignificant" that the Special Master's investigation and report were completed at public expense. *See id.* at 244. "It would be a disservice to the public to require the public to bear these costs, only to deny it the right to access the previously undisclosed facts relevant" to the OIC's actions and the Special Master's conclusions. *Id.* At a time when the public will also bear the cost of hearings and congressional investigation regarding Judge Kavanaugh's nomination, they deserve access to all information germane to those proceedings.

Again, the presumptive right of access under the First Amendment is overcome only by a compelling interest that closure is necessary and narrow tailoring to serve that interest. *Press-Enter. Co. v. Superior Ct. of Cal., Riverside Cty.*, 464 U.S. at 510. Here, there is no compelling interest that would require the continued sealing of a report completed nearly two decades ago, focused on information that had already been leaked to the public. However, if, after reviewing the Special Master's Report, the Court finds it necessary to maintain some aspects of the Report under seal, the Court could narrowly tailor its order in a fashion that would protect the interest at issue while giving the public access to the information necessary to fully evaluate Judge Kavanaugh's qualifications to be a Supreme Court Justice.

IV. Conclusion

For the foregoing reasons, American Oversight requests that the Special Master's Report be unsealed as expeditiously as possible. We appreciate your consideration of this emergency request and stand ready to provide any additional information that may be of assistance to the Court.

Sincerely,

Andrew D. Freeman
Kobie A. Flowers
Jean M. Zachariasiewicz
Neel K. Lalchandani[6]

ADF/ld
Encs.
cc: Elizabeth J. Shapiro (by email, w/encs.)

[6] Mr. Flowers is admitted to practice in the District of Columbia and to the bar of this Court (Bar No. 991403). Upon the creation of a miscellaneous case, Mr. Flowers will sponsor the other listed attorneys to appear *pro hac vice*.

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY PROCEEDINGS	Misc. No. 98-55 (NHJ) (consolidated with Misc. No. 98-177 and Misc. No. 98-228) ~~UNDER SEAL~~

ORDER TO SHOW CAUSE

Presently before the Court are three motions requesting that this Court order the Office of the Independent Counsel ("OIC") to show cause why it, or individuals therein, should not be held in contempt for violations of Federal Rule of Criminal Procedure 6(e)(2).[1] The first motion for order to show cause, Misc. No. 98-55, was filed on behalf of President Clinton by his personal counsel Mr. Kendall on February 9, 1998, and on March 3, 1998, the Court granted Ms. Lewinsky's motion to intervene in this action. The second motion for order to show cause, Misc. No. 98-177, was filed on May 6, 1998, on behalf of President Clinton by his personal attorneys Mr. Kendall and Mr. Bennett, the White House, Mr. Lindsey, and Mr. Blumenthal. These parties and Ms. Lewinsky are collectively "movants." On June 16, 1998, the parties who filed Misc. No. 98-177 filed a third motion for order to show cause, Misc. No. 98-228. The Court will consolidate these three motions into a single action and address them together at a show cause hearing. See Fed. R. Civ. P. 42(a).

I. Standards for Establishing a Prima Facie Violation of Rule 6(e)(2)

The United States Court of Appeals for the District of Columbia Circuit has held that a

[1] Rule 6(e)(2) prohibits prosecutors, grand jurors, and certain individuals other than witnesses from disclosing "matters occurring before the grand jury." Fed. R. Crim. P. 6(e)(2).

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district court "must conduct a 'show cause' hearing" if a motion for order to show cause establishes a prima facie violation of Rule 6(e)(2). See Barry v. United States, 865 F.2d 1317, 1321 (D.C. Cir. 1989). To establish a prima facie case, movants must show that "media reports disclosed information about 'matters occurring before the grand jury' and indicated that the sources of the information included attorneys and agents of the Government." Id. (citations omitted). Once a prima facie case is established, the Government must "come forward with evidence to negate the prima facie case" at a show cause hearing to avoid being held in contempt. Id. The show cause hearing helps the court determine whether the Government was responsible for the alleged leaks of Rule 6(e) material. If the Court finds the Government violated Rule 6(e)(2), it may order appropriate relief such as contempt sanctions and equitable relief. See id.

A. "Matters Occurring Before the Grand Jury"

In order to establish a prima facie case, movants must first demonstrate that the media reports disclosed "matters occurring before the grand jury." Id. The D.C. Circuit recently reaffirmed that "matters occurring before the grand jury" include "not only what has occurred and what is occurring, but also *what is likely to occur*." In re Motions of Dow Jones & Co., Nos. 98-3033 and 98-3034, 1998 WL 216042, *3 (D.C. Cir. May 5, 1998) (emphasis added). Such past, current, or future matters before the grand jury include "the identities of witnesses or jurors, the substance of testimony," "actual transcripts," "the strategy or direction of the investigation, the deliberations or questions of jurors, and the like." Id. (citations omitted). In addition to a witness's identity, "the fact that he was subpoenaed to testify, the fact that he invoked [a] privilege in response to questions, [and] the nature of the questions asked" of him are also secret matters. Id. at *4. The D.C. Circuit has also held that "naming or identifying grand jury

witnesses; quoting or summarizing grand jury testimony; evaluating testimony; discussing the scope, focus or direction of the grand jury investigations; and identifying documents considered by the grand jury and conclusions reached as a result of the grand jury investigations" are also matters protected by Rule 6(e)(2). Fund for Constitutional Gov't v. Nat'l Archives & Records Serv., 656 F.2d 856, 869 (D.C. Cir. 1981).

Furthermore, testimonial or documentary information given to OIC investigators or FBI agents working for the OIC by witnesses who have been subpoenaed to appear before the grand jury, whether such information is given before or after their testimony, is protected by Rule 6(e)(2). See Dow Jones, 1998 WL 216042, at *3; In re: The Special February 1975 Grand Jury (Baggot), 662 F.2d 1232, 1238 (7th Cir. 1981), aff'd on other grounds, 463 U.S. 476 (1983). Although in its previous submissions to the Court the OIC has denied that Rule 6(e)(2) applies to such information,[2] the Independent Counsel himself recently conceded this application, noting that "[w]hat we [the OIC] must avoid, and what we do avoid, is discussion of information sought from or provided by witnesses — whether in the form of *investigative interviews*, grand jury appearances, or *documents* provided to this Office." Letter from Mr. Starr to Editor of Brill's Content of June 16, 1998, at 2 (emphasis added). Rule 6(e)(2) also protects investigative reports, including FBI reports, "where they are closely related to the grand jury's investigation itself and where disclosure would reveal the identities of targets and other witnesses." Martin v. Consultants & Administrators, Inc., 966 F.2d 1078, 1097 (7th Cir. 1992).[3]

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[2] See, e.g., Opp'n to First Show Cause Motion at 14-15, 36.

[3] The OIC disputes that Rule 6(e)(2) applies to FBI materials, citing three cases, but the Court finds these cases unpersuasive and distinguishable. See Davies v. Comm'r of Internal

B. Attribution of Source

In addition to establishing that media reports disclosed "matters occurring before the grand jury," movants must also show that such reports "indicated that the source of the information included attorneys and agents of the Government." Barry, 865 F.2d at 1321. When deciding whether movants have met their burden, the Court must treat all statements in the news reports as true with respect to what was disclosed and by whom. See Lance, 610 F.2d at 219. Thus, if a news report explicitly identifies the source of information protected by Rule 6(e)(2), the Court must accept this attribution as correct for purposes of the prima facie case. While an article expressly identifying a government official as the source of the Rule 6(e) information clearly supports a prima facie case, "[i]t is not necessary for [an] article to expressly implicate the Justice Department [or other governmental entity] as the source of the disclosures if the nature of the information disclosed furnishes the connection." Barry, 865 F.2d at 1325 (citations omitted). For instance, "[t]he precise attribution of a source in one . . . may give definition of a vague source reference in others because of their context in time or content." Id. at 1326 (citations omitted). Additionally, "attorneys and agents of the Government" need not be the only source of the disclosure of Rule 6(e) material, but need only be "included" among the sources. Id. at 1321.

With respect to the media reports identified in the first motion for order to show cause, the OIC has submitted affidavits from its employees in an effort to rebut any prima facie

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Revenue, 68 F.3d 1129, 1130 (9th Cir. 1995); In re Grand Jury Matter, 682 F.2d 61 (3d Cir. 1982); In re Grand Jury, 510 F. Supp. 112, 115 (D.D.C. 1981). While it is true that disclosure of information obtained from a prior FBI or other governmental investigation may not violate Rule 6(e), see In re Grand Jury Investigation, Lance, v. Dep't of Justice, 610 F.2d 202, 217 (5th Cir. 1980), here FBI agents, like OIC investigators, are directly involved in this ongoing grand jury investigation and thus are bound by Rule 6(e)(2).

violations. The Court finds that the affidavits fail to rebut the prima facie violations of Rule 6(e)(2) established by the first show cause motion. Affidavits denying allegations in a news report that establishes a prima facie case can, but do not necessarily, rebut the prima facie case.

> The inability to show a definite source for some of the information contained in the articles *might* cause a prima facie case to fail if a *responsive* affidavit denying the allegation is made. At the same time, *even with such a response*, the detail as well as the seriousness of the disclosure may militate in favor of a further investigation of its source in the form of an evidentiary hearing.

Lance, 610 F.2d at 219 (emphasis added). The Court finds that the serious and repetitive nature of disclosures to the media of Rule 6(e) material strongly militates in favor of conducting a show cause hearing.

The affidavits from the OIC do not deny that OIC employees were the source of articles in which the OIC was explicitly identified as such.[4] Moreover, the affidavits merely deny disclosing "any of the information quoted in Mr. Kendall's motion that is subject to Rule 6(e)." However, the OIC's submissions to the Court regarding the show cause motions make plain that the OIC defines material protected by Rule 6(e) too narrowly.[5] Therefore, the affidavits disavow disclosing only material that the OIC deems to be "subject to Rule 6(e)," not what this Court holds to be protected by Rule 6(e).

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[4] Instead, the OIC claims that the information attributed to OIC sources in the first show cause motion is not covered by Rule 6(e). See, e.g., Opp'n to First Show Cause Motion, at 35-41.

[5] In its Opposition to the first show cause motion, the OIC insisted that Rule 6(e) does not apply to information provided by a witness *before* he or she has testified. See, e.g., Opp'n to First Show Cause Motion, at 36 ("The first [part of the article] concerns a remark purportedly made by Ms. Lewinsky, and Movant cites no evidence that she has testified before the grand jury."). The OIC also incorrectly maintained that Rule 6(e) does not apply to FBI materials developed for a grand jury investigation. See id. at 14 and see supra at 3 n. 2.

Movants in the first show cause motion, counsel for the President and Ms. Lewinsky, have requested access to the ex parte affidavits filed by the OIC. The OIC filed 98 affidavits with this Court. Because 96 of the affidavits use exactly the same language and only two of the 98 affidavits use different language, the Court will grant movants access to three affidavits: one representing 96 of the affidavits and the two others that used different language. In response to the concerns of the OIC, the Court has redacted from the affidavits the names and job titles of any OIC employees involved in this grand jury investigation. See United States v. Eisenberg, 711 F.2d 959, 964 (11th Cir. 1983).

II. Application of Standards to Motions for Order to Show Cause

Based upon the three motions for order to show cause, the OIC's responses in opposition to such motions, and the oral argument of counsel at the sealed hearing held on March 12, 1998, the Court finds that movants have established prima facie violations of Rule 6(e)(2). Although the Court finds that several articles establish prima facie violations, the Court notes that a prima facie case may be established by only one article. See Barry, 865 F.2d at 1321, 1325-26. Examples from the first show cause motion that establish prima facie violations of Rule 6(e)(2) include Tabs 1, 2, and 5. Tab 1 is an NBC Nightly News report aired on February 4, 1998, that directly identifies "sources in Starr's office" and discloses information regarding a subpoenaed witness's potential testimony before the grand jury, evaluations of such potential testimony, and the strategy and direction of the OIC's investigation. See Dow Jones, 1998 WL 216042, at *3; Fund for Constitutional Gov't, 656 F.2d at 869. Tab 2, a New York Daily News article published on January 23, 1998, and Tab 5, a New York Times article published on February 2, 1998, also identify OIC prosecutors as the sources of the reports and also improperly disclose what a

subpoenaed witness has told the OIC during investigative interviews. Id.

With respect to the second show cause motion, the Court finds that CBS News White House Correspondent Scott Pelley's report that "investigators have spent months checking out Tripp's story and now claim she is, quote 'completely reliable'" establishes a prima facie violation of Rule 6(e)(2).[6] Tab L, May 8, 1998, Transcript. Although the report does not explicitly identify the OIC as the source, it does identify "investigators." The attribution to "investigators" strongly implies that the source was investigators from the OIC, particularly given that the "nature of the information disclosed furnishes the connection" to the OIC. Barry, 865 F.2d at 1325. OIC investigators are the most likely "investigators" to "have spent months checking out Tripp's story" and have the greatest interest in suggesting to the public that Linda Tripp is a reliable source of information. Given that Ms. Tripp is virtually certain to testify before the grand jury, discussing the nature and credibility of her potential testimony violates Rule 6(e)(2). See Dow Jones, 1998 WL 216042, at *3; Fund for Constitutional Gov't, 656 F.2d at 869 (noting that evaluations of testimony are covered by Rule 6(e)(2)).

The Court also finds that the Fox News report aired on May 6, 1998, regarding Mr. Starr's comment to the press about the Court's Opinion on executive privilege establishes a prima facie violation of Rule 6(e)(2) and a violation of the Court's order that the parties receiving the Opinion not discuss it with the press. Within a day of the Court's releasing the Opinion on May 4, 1998, the press began reporting that the Court had issued a ruling with regard to President Clinton's executive privilege claim and that the Court had denied the claim. See, e.g., The day

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[6] The Court finds that the Fox News Broadcast aired on May 5, 1998, does not establish a prima facie violation and therefore will not entertain further argument regarding this report.

after the leaks, Mr. Starr told reporters in front of his home that he believed the Opinion was a "a magnificent ruling." This comment not only confirmed for the press that the Court had indeed made a decision but also revealed that the substance of that decision was favorable to the OIC. The fact that information about the Opinion had already been leaked at the time of Mr. Starr's comment in no way authorized him to make statements confirming or denying such leaks. See Dow Jones, 1998 WL 216042, at *8 ("Rule 6(e) does not create a type of secrecy which is waived once public disclosure occurs") (citations omitted); Barry v. United States, 740 F. Supp. 888, 891 (D.D.C. 1990) ("The Government is obligated to stand silent regardless of what is reported, accurate or not, by the press.). Confirming the existence and substance of a sealed court ruling presents a prima facie violation of Rule 6(e)(2) and a violation of a court order not to discuss the ruling.

With respect to the third motion, the Court finds that it provides further support for the prima facie violations of Rule 6(e)(2) established by the first and second motions. The Independent Counsel's admission to journalist Steven Brill that he and Deputy Independent Counsel Jackie Bennett speak to reporters on condition of anonymity and his statement to Mr. Brill that Rule 6(e) does not apply to "what witnesses tell FBI agents or us [the OIC] *before* they testify before the grand jury" bolster the Court's findings of prima facie violations of Rule 6(e)(2) by the OIC. See Steven Brill, "Pressgate," Brill's Content, Aug. 1998, at 132.[7] Mr. Brill's assertions that he has "personally seen internal memos from inside three news organizations that cite Starr's office as a source" and that "six different people who work at mainstream news

[7] Although the Independent Counsel has responded to Mr. Brill's article, he has not disputed that he made these statements in his interview with Mr. Brill.

organizations have told [him] about specific leaks" also support the Court's findings of prima facie violations. Id. at 131, 150.

III. Procedures for the Show Cause Hearing

The three motions establish prima facie violations of Rule 6(e)(2) and thereby require the Court to conduct a show cause hearing. Barry, 865 F.2d at 1321. Given that the motions identify a significant number of news reports and in order to facilitate an efficient show cause hearing, the Court asks movants to identify a limited number of such reports that they intend to focus on at the show cause hearing. Movants shall identify such news reports for the Court by June 24, 1998. If movants would like this Court to consider at the show cause hearing additional news reports that have not been identified in the three motions,[8] movants shall have until June 24, 1998, to file another show cause motion. The OIC shall have until June 30, 1998, to submit any additional responses to the allegations raised by the news reports identified by movants for the show cause hearing and by any additional show cause motions.

The Court will not hear deposition testimony at the hearing but will permit live testimony. Movants and the OIC shall submit witness lists to the Court by July 1, 1998. As the parties have agreed, the show cause hearing shall be held on July 6, 1998, at 10:00 a.m. and shall be sealed. The Court will release a redacted transcript of the hearing, and to that end, the parties shall submit their proposed redactions seven days after they receive the official transcript.

Upon consideration of the entire record in this matter, it is this 19th day of June 1998,

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[8] For example, at the scheduling conference on June 15, 1998, counsel for Mr. Lindsey expressed interest in having a Los Angeles Times article dated June 12, 1998, considered at the show cause hearing.

ORDERED that the three motions for order to show cause in Misc. Nos. 98-55, 98-177, and 98-228 be, and hereby are, granted; it is further

ORDERED that the three redacted affidavits be, and hereby are, released to movants in the first show cause motion, counsel for the President and Ms. Lewinsky; it is further

ORDERED that movants shall identify for the Court by June 24, 1998, a limited number of news reports that they intend to focus on at the show cause hearing; it is further

ORDERED that any additional show cause motions to be considered at the July 6 hearing must be filed by June 24, 1998; it is further

ORDERED that the OIC shall respond to movants' June 24 submissions by June 30, 1998; it is further

ORDERED that movants and the OIC shall submit witness lists to the Court by July 1, 1998; it is further

ORDERED that representatives of the OIC appear to show cause why the Office or individuals therein should not be held in contempt for violation of Federal Rule of Criminal Procedure 6(e)(2) at 10:00 a.m. in Courtroom 4 on July 6, 1998; it is further

ORDERED that the hearing shall include counsel for President Clinton, Ms. Lewinsky, the White House, Mr. Lindsey, Mr. Blumenthal, and the OIC. If there are objections to the participation of any of these parties, such objections shall be filed by June 24, 1998; it is further

ORDERED that the parties shall submit proposed redactions to the transcript of the show cause hearing within seven days of receiving the official transcript; and it is further

ORDERED that the parties shall submit proposed redactions of all their pleadings regarding the motions for order to show cause by July 20, 1998.

Norma Holloway Johnson

NORMA HOLLOWAY JOHNSON
CHIEF JUDGE

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY PROCEEDINGS	Misc. No. 98-55 (NHJ) (consolidated with Misc. No. 98-177 and Misc. No. 98-228) **UNDER SEAL**

ORDER TO SHOW CAUSE

On June 19, 1998, the Court ordered the Office of the Independent Counsel ("OIC") and individual members therein to show cause why they should not be held in contempt for violations of Federal Rule of Criminal Procedure 6(e)(2). The Court also set forth procedures to be followed at a show cause hearing that would include the participation of counsel for President Clinton, the White House, Monica Lewinsky, Bruce Lindsey and Sidney Blumenthal (collectively "movants").[1] In a second Order, entered on June 26, 1998, the Court clarified its June 19 Order and outlined further procedures related to the show cause hearing including permitting the movants to undertake limited discovery of press contacts with the OIC. The OIC appealed the Court's procedural rulings permitting movants to take discovery and to participate in the show cause hearing. In its emergency appeal, the OIC did not contest the Court's finding that prima facie violations of Rule 6(e) had been established by at least six news reports. Rather, the OIC strenuously objected to the procedures that the Court had adopted in order to conduct the show cause hearing; the OIC argued that any show cause hearing and related discovery must be conducted ex parte and in camera. The Court of Appeals vacated the procedural aspects of the

[1] Monica Lewinsky has withdrawn her motion for an order to show cause and therefore she is no longer included among the movants in this matter.

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Court's June 19 and June 26 Orders and remanded for further proceedings consistent with its Opinion. See In re Sealed Case, Nos. 98-3077, 98-3078, 98-3079 and 98-3081, 1998 WL 455602 (D.C. Cir. August 3, 1998) (per curiam).

Presently before the Court is the OIC's ex parte memorandum requesting that the Court outline further procedures for the OIC and its members to show cause why they should not be held in contempt. The Court will now determine which additional press reports raised in movants' motions to show cause constitute prima facie violations of Rule 6(e) and will set forth the procedures, in accordance with the decision of the Court of Appeals, that will guide the Court in deciding movants' motions. Such procedures shall include referral to a Special Master.

I. Standards for Establishing a Prima Facie Violation of Rule 6(e)(2)

Rule 6(e) provides, in relevant part, that "an attorney for the government, or any [such government personnel . . . as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law] shall not disclose matters occurring before the grand jury, except as otherwise provided in these rules. . . . A knowing violation of Rule 6 may be punished as a contempt of court." Fed. R. Crim. P. 6(e)(2) & 6(e)(3)(A)(ii). It is clear that the secrecy requirements of Rule 6(e) apply to the OIC. In re Sealed Case, 1998 WL 455602, at *16 n.2 (citing In re North, 16 F.3d 1234, 1245 (D.C. Cir. 1994)).

Our courts have consistently recognized the importance of secrecy to the proper functioning of our grand jury system, specifically noting "several distinct interests served by safeguarding the confidentiality of grand jury proceedings." Douglas Oil Co. of Calif. v. Petrol Stops N.W., 441 U.S. 211, 218 (1979). The Supreme Court outlined the "several distinct

interests" protected by Rule 6(e) as follows:

> [f]irst, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.

Id. at 219. Therefore, enforcing Rule 6(e) is of the utmost importance to the integrity of our grand jury process.

For this reason, the Court of Appeals has held that a district court "must conduct a 'show cause' hearing" if a motion for order to show cause establishes a prima facie violation of Rule 6(e)(2). Barry v. United States, 865 F.2d 1317, 1321 (D.C. Cir. 1989) (emphasis added). To establish a prima facie case, movants must show that "media reports disclosed information about 'matters occurring before the grand jury' and indicated that the sources of the information included attorneys and agents of [OIC]." Id. (citations omitted). Once a prima facie case is established, "the burden of rebutting the prima facie case will lie with the [Independent Counsel], who must now come forward with evidence, in whatever form the district court requires (including affidavits, depositions, production of documents, or live testimony) to rebut the inferences drawn from the news articles that established the prima facie case of a Rule 6(e) leak to the press by personnel in or 'close to' the [Independent Counsel's] office." In re Sealed Case, 1998 WL 455602, at *14. If the Court finds that a member of the OIC violated Rule 6(e)(2), it may order appropriate relief such as contempt sanctions and equitable relief. See Barry, 865 F.2d at 1321.

A. "Matters Occurring Before the Grand Jury"

In order to establish a prima facie case, movants must first demonstrate that the media reports disclosed "matters occurring before the grand jury." Id. The D.C. Circuit has held that the scope of grand jury secrecy is necessarily broad in order to properly effectuate the several distinct objectives of Rule 6(e). Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 869 (D.C. Cir. 1981). "It compasses not only the direct revelation of grand jury transcripts but also the disclosure of information which would reveal 'the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like.'" Id. (quoting SEC v. Dresser Indus., Inc., 628 F.2d 1362, 1382 (D.C. Cir. 1980) (en banc)) (emphasis added). In light of the "broad reach of grand jury secrecy," the Court of Appeals has held that Rule 6(e) covers "naming or identifying grand jury witnesses; quoting or summarizing grand jury testimony; evaluating testimony; discussing the scope, focus and direction of the grand jury investigations; and identifying documents considered by the grand jury and conclusions reached as a result of the grand jury investigations." Id. (emphasis added).

In addition, "the fact that [a witness] was subpoenaed to testify, the fact that he invoked [a] privilege in response to questions, [and] the nature of the questions asked" of him are "according to our precedent 'matters occurring before the grand jury.'" In re Motions of Dow Jones & Co., Inc., 142 F.3d 496, 501 (D.C. Cir. 1998) (citing SEC v. Dresser Industries, Inc., 628 F.2d at 1382). Furthermore, statements by prosecutors which disclose when an indictment will be presented to the grand jury, who will be charged in the indictment and what crimes will be charged also violate the secrecy requirement of Rule 6(e). See In re Grand Jury Investigation,

Lance, v. Dep't of Justice, 610 F.2d 202, 218 (5th Cir. 1980). "[T]he touchstone is whether disclosure would tend to reveal some secret aspect of the grand jury's investigation." Senate of the Commonwealth of Puerto Rico v. United States Dep't of Justice, 823 F.2d 574, 582 (D.C. Cir. 1987) (citation omitted).

Moreover, the Court of Appeals recently reaffirmed that "matters occurring before the grand jury" include "not only what has occurred and what is occurring, but also what is likely to occur." In re Dow Jones, 142 F.3d at 499-500 (citing SEC v. Dresser Indus., Inc., 628 F.2d at 1382 and Fund for Constitutional Gov't, 656 F.2d at 869) (emphasis added).[2] Clearly the prohibition on disclosure found in Rule 6(e) would have little force if prosecutors could reveal with impunity the substance of a prospective witness's testimony and comment on his or her credibility prior to the witness's appearance before the grand jury.

B. Attribution of Source

In addition to establishing that media reports disclosed "matters occurring before the

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[2] The Court notes that, in the course of addressing proper procedures for the present show cause hearing, the Court of Appeals quoted the foregoing language from In re Dow Jones and then cautioned of "the problematic nature of applying so broad a definition [of 'matters occurring before the grand jury'], especially as it relates to the 'strategy or direction of the investigation,' to the inquiry as to whether [the OIC] has made unauthorized disclosures." In re Sealed Case, 1998 WL 455602, at *16 n.12. However, for nearly two decades, controlling law in the D.C. Circuit has explicitly and repeatedly recognized that the necessarily broad reach of Rule 6(e) confidentiality encompasses "the strategy or direction of the investigation," in other words "what is likely to occur" during the course of the grand jury investigation. See In re Dow Jones, 142 F.3d at 499-500; Senate of the Commonwealth of Puerto Rico, 823 F.2d at 582; Fund for Constitutional Gov't, 656 F.2d at 869-70; SEC v. Dresser Indus., Inc., 628 F.2d at 1382. Moreover, as the OIC did not appeal this Court's interpretation of "matters occurring before the grand jury," the Court of Appeals footnote on this topic is mere dictum. Therefore, the Court does not believe that the dictum in this footnote was intended to overrule sub silentio the well-established law of this Circuit. See In re Sealed Case, 1998 WL 455602, at *3 (stating that such a method of overruling established legal precedent is "implausible").

grand jury," movants must also show that such reports "indicated that the source of the information included attorneys and agents of the [OIC]." Barry, 865 F.2d at 1321. When deciding whether movants have met their burden, the Court must treat all statements in the news reports as true with respect to what was disclosed and by whom. See Lance, 610 F.2d at 219; see also Barry, 865 F.3d at 1326 (noting that "complainants in Rule 6(e)(2) cases 'almost never have access to anything beyond the words of the [news] report.'") (quoting Lance, 610 F.2d at 219). Thus, if a news report explicitly identifies the source of information protected by Rule 6(e)(2), the Court must accept this attribution as correct for purposes of the prima facie case.

While an article expressly identifying the OIC as the source of the Rule 6(e) information clearly supports a prima facie case, "[t]he article submitted need only be susceptible of an interpretation that the information reported was furnished by an attorney or agent of the [OIC]; in fact, '[i]t is not necessary for [an] article to expressly implicate the [OIC] as the source of the disclosures if the nature of the information disclosed furnishes the connection.'" In re Sealed Case, 1998 WL 455602, at *16 n.7 (quoting Barry, 865 F.2d at 1325) (emphasis added). For instance, "[t]he precise attribution of a source in one [press report] . . . may give definition of a vague source reference in others because of their context in time or content." Id. at 1326 (citations omitted). Additionally, "attorneys and agents of the Government" need not be the sole source of the disclosure of Rule 6(e) material, but need only be "included" among the sources. Id. at 1321.

II. Application of Standards to Movants' Motions for Order to Show Cause

In its June 19 Order to Show Cause, the Court found that the following six media reports constitute prima facie violations of Rule 6(e) or violations of this Court's orders prohibiting

disclosure of information relating to the grand jury investigation:

1. Thomas Galvin, "Monica Keeping Mum — For Now Fends Off Query on Internal Affairs," New York Daily News, January 23, 1998;

2. Don Van Natta, Jr. & John M. Broder, "Lewinsky Would Take Lie Test in Exchange for Immunity Deal," New York Times, February 2, 1998;

3. Claire Shipman, "Ken Starr Rejects Lewinsky's Immunity Deal," NBC Nightly News, February 4, 1998;

4. Fox News Broadcast, May 6, 1998;

5. Scott Pelley, "Exclusive Information About Kenneth Starr's Next Moves," CBS Evening News, May 8, 1998; and

6. Steven Brill, "Pressgate," Brill's Content, August 1998.[3]

In its June 19 Order, the Court also directed movants to identify other press reports that they believe establish additional prima facie violations of Rule 6(e) by the OIC. In response, movants identified 18 additional media reports. See Movants' Listing of Key News Reports for

[3] While the "Pressgate" article may not, in and of itself, constitute a Rule 6(e) violation, it provides further support for the prima facie violations of Rule 6(e) established by the other media reports at issue. In other words, it helps to provide the context for the other press reports. The Independent Counsel's admission to Mr. Brill that he and Deputy Independent Counsel Jackie Bennett speak to reporters on condition of anonymity and his statement to Mr. Brill that Rule 6(e) does not apply to "what witnesses tell FBI agents or us [the OIC] before they testify before the grand jury" strongly supports the Court's findings of prima facie violations of Rule 6(e) by the OIC. See "Pressgate," at 132. Mr. Brill's assertions that he has "personally seen internal memos from inside three news organizations that cite Starr's office as a source" and that "six different people who work at mainstream news organizations have told [him] about specific leaks" also lends support to the Court's findings of prima facie violations. Id. at 131, 150.

July 6, 1998, Show Cause Hearing, June 24, 1998.[4] Pursuant to the above-cited law governing Rule 6(e) show cause motions, the Court will now review these reports and determine whether they also constitute prima facie violations of Rule 6(e).

7. **David Bloom, "Newest Clinton Sex Scandal Causing Republican Calls for Impeachment," NBC Nightly News, January 21, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In his report, Mr. Bloom stated that "federal law enforcement sources tell NBC News they're prepared to offer the young intern a choice between immunity and prosecution. One law enforcement source put it this way, quote, 'We're going to dangle an indictment in front of her and see where that gets us.'" (emphasis added). The report identifies the sources as members of federal law enforcement which, given the context and content of these statements, likely refers to attorneys or agents of the OIC. Moreover, the substance of the statement indicates that an indictment is being considered and identifies a target of the grand jury investigation. The leak from the law enforcement source also reveals the strategy or direction of the investigation.

8. **David Bloom, "President Clinton Faces Allegations of Affair with Former White House Intern, Then Telling Her to Lie About It," NBC News at Sunrise, January 22, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this television segment, Mr. Bloom reported that:

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[4] In the interest of judicial economy and in order to avoid overburdening the Special Master, the Court has chosen to focus on the 24 "key news reports" identified by movants, rather than making prima facie determinations regarding 111 different press reports raised by movants in five separate submissions. See Motions for Order to Show Cause of February 9, May 6, and June 16, 1998; and Supplemental Memoranda in Support of Motions for Order to Show Cause of May 12 and June 24, 1998.

> [p]rosecutors suspect the president and his longtime friend, Vernon Jordan, tried to cover up allegations that Mr. Clinton was involved sexually with former White House intern Monica Lewinsky and other women — which is why this document, obtained last night by NBC News, could be a smoking gun. It's called "Points to Make in Affidavit." Prosecutors say it might as well be called "How to Commit Perjury in the Paula Jones Case." . . . Where did this document come from? Prosecutors suspect the president's allies of witness tampering. (emphasis added).

The report explicitly identifies "prosecutors" as disclosing evidence gathered as part of the grand jury investigation. This evidence, the "talking points" document, was likely to be presented to the grand jury. The law in this Circuit makes it perfectly clear that government attorneys may not reveal documentary evidence that is likely to be presented to the grand jury. Furthermore, these statements also reveal the scope, focus, and direction of the grand jury investigation — a plain violation of Rule 6(e).

9. **Michael Isikoff, "Diary of a Scandal," Newsweek (America Online ed.), January 22, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this online news article, Mr. Isikoff reports:

> It is not clear who prepared these talking points, but Starr believes that Lewinsky did not write them herself. He is investigating whether the instructions came from Jordan or other friends of the president. . . . NEWSWEEK told Starr's deputies that the magazine was planning to run with the story in the issue that appeared that Monday. . . . Starr's deputies asked NEWSWEEK to hold off. . . . Starr was hoping to confront Lewinsky and persuade her to cooperate as a witness for the prosecution. Starr's deputies did not want to tip off Lewinsky or Jordan or the White House. . . . According to Starr's deputies, the fear that Lewinsky's name would become widely known was enough to torpedo the negotiations between Starr and her Lewinsky's [sic] lawyers. As of now, Lewinsky is not cooperating. According to knowledgeable sources, Starr is now considering whether to indict her for perjury. (emphasis added).

Here, Starr's deputies are directly cited as one of the sources for this story. Furthermore, the

attribution to "knowledgeable sources" regarding the potential indictment of Ms. Lewinsky and Mr. Starr's beliefs about the authorship of the talking points, particularly given the context of the entire article and the nature of the information disclosed, strongly suggests a source within the OIC. Moreover, the substance of the statements relating to possible indictments and the strategy or direction of the grand jury investigation constitutes "matters" covered by Rule 6(e).

10. **Francis X. Clines & Jeff Gerth, "Subpoenas Sent as Clinton Denies Reports of an Affair with Aide at White House," New York Times, January 22, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this news article, it is reported that:

> [d]etails spilled out through the day, fueled by more than a dozen tape recordings of the intern that a friend had secretly made, some of them with a hidden F.B.I. tape recorder, said lawyers close to the investigation. Late tonight, F.B.I. agents sought interviews with people with whom the intern might have confided in at the White House and the Pentagon . . . . Mr. Starr, whose office was busy today issuing subpoenas and considering possible immunity for key witnesses, was reportedly investigating possible evidence that the President himself left in the alleged affair, including telephone messages subsequently re-recorded secretly for prosecutors. Lawyers familiar with the contents of some of the tapes said that Ms. Lewinsky told of the President advising her that if anyone asked about the affair, she was absolutely to deny it. (emphasis added).

Although this article does not contain direct attribution to sources within the OIC, there is a strong inference that at least one of the sources was an attorney or agent of the OIC, particularly in light of the disclosure of information known only to members of the OIC such as what FBI agents and attorneys in Mr. Starr's office were thinking and actively investigating. The substance of these leaks relates to evidence being gathered pursuant to grand jury subpoenas and the consideration of immunity deals for potential grand jury witnesses. Such matters are

protected by Rule 6(e). Furthermore, the Independent Counsel has admitted that OIC attorneys speak to reporters on a not-for-attribution basis. This admission reinforces the already strong inference that the information came from the OIC.

11. **Phil Jones, "Independent Counsel Kenneth Starr Moves Quickly in His Investigation Regarding President Clinton and Intern Monica Lewinsky," CBS Evening News, January 23, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). Mr. Jones reports that "two sources familiar with the Independent Counsel's investigation tell CBS News that Kenneth Starr is, quote, 'absolutely convinced that Monica Lewinsky was telling the truth when she was recorded by her friend, Linda Tripp.' . . . Starr isn't commenting on anything publicly, but our sources say he is aware that he must move quickly on this matter; that he can't dally on the Lewinsky case like he has on other matters. Starr wants to grant Lewinsky immunity, but not until she provides information on what truthful facts she would give in return for immunity." (emphasis added). Mr. Jones' "sources familiar with the Independent Counsel's investigation" purport to disclose the Independent Counsel's thoughts on several topics that are clearly covered by Rule 6(e), including the credibility of Ms. Lewinsky, a likely grand jury witness, and also the status of immunity negotiations with this witness. This insight into the strategy or direction of the grand jury investigation implicates attorneys or agents working for the OIC as the sources.

12. **Susan Schmidt and Peter Baker, "Ex-Intern Rejected Immunity Offer in Probe," The Washington Post, January 24, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this article, it is reported that:

> [f]ederal investigators last week offered former White House aide Monica Lewinsky immunity from prosecution if she would cooperate in their investigation into whether President Clinton tried to persuade her to deny an affair under oath, but Lewinsky turned the offer down. The offer was described yesterday by sources close to independent counsel Kenneth W. Starr . . . . For all of yesterday's the (sic.) public jousting between the lawyers, a source said Starr's investigators searched her Watergate apartment with her family's permission on Thursday and came away with a variety of personal items, including letters, that [Starr's investigators] hope might help establish a link between Clinton and the young woman. According to sources familiar with the investigation, Lewinsky has said that the president gave her a pin and a book of poetry, ... According to a source close to the prosecutors, [Ms. Lewinsky's mother Marcia Lewis] was puzzled about why they were intent on making a criminal case at all, saying "What's the big deal? So she lied and tried to convince someone else to lie." (emphasis added).

Statements in this article are repeatedly attributed to sources close to the Independent Counsel, sources familiar with the investigation, and sources close to the prosecutors. Given the nature of the information disclosed, attorneys or agents of the OIC are implicated as the sources. Moreover, the article strongly suggests that some of the disclosures come from sources who are themselves receiving information from attorneys or agents of the OIC. If at anytime the members of the OIC were disclosing protected information to "sources," who in turn were passing that information on to reporters, that of course would also constitute violations of Rule 6(e). In substance, the information revealed in this article details immunity negotiations with a potential grand jury target and also reveals the scope, focus, and direction of the grand jury investigation.

13. **Claire Shipman, "Still No Deal Between Monica Lewinsky and Whitewater Prosecutor Ken Starr Regarding White House Sex Scandal," NBC News Special Report, January 25, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this television segment, Ms. Shipman reported that "sources in Ken Starr's office tell us that they are investigating [a report that at some point someone caught the president and Ms. Lewinsky in an intimate moment], but they haven't confirmed it." (emphasis added). In this report, the attribution to the OIC is explicit and the OIC sources reveal a specific detail of the strategy or direction of their investigation, directly breaching grand jury confidentiality.

14. **Howard Fineman & Karen Breslau, "Sex, Lies and the President," Newsweek, February 2, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this article, it is reported that "[a]t the direction of special prosecutor Starr, the FBI placed a 'wire' listening device on Lewinsky's friend Linda Tripp. The resulting tape of Lewinsky-Tripp conversations could be especially strong evidence in a federal court. And on one of them, to which NEWSWEEK gained access, Lewinsky gives clues to what might be an effort to silence her, involving the president and his close friend Washington lawyer Vernon Jordan." Although not directly attributed to a source in the OIC, the content and context of the report suggests that Newsweek gained access to the FBI tape through an attorney or agent of the OIC as this tape was made under the direction of agents working for the OIC. The testimony on this tape from a potential target of the grand jury investigation clearly is evidence likely to presented to the grand jury and therefore is protected from disclosure by Rule 6(e).

15. **Francis X. Clines, "Stephanapoulos Testifies as Beset Lewinsky Flies Home," The New York Times, February 4, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this article, it is reported that "'[w]e are trying to get to the truth of what would be, if proven, serious charges,' Mr. Starr declared in a brief interview today with CNN. His investigators are pursuing a number of leads, including forensic testing of items taken from Ms. Lewinsky, who reportedly said on the tapes that she had a dress that had been stained by the President in a sexual encounter. One of her dresses was recently tested, with negative results, said one Federal investigator, who would not say what else might be tested." (emphasis added). The nature of this information regarding specific leads and investigative methods of the OIC investigation strongly suggests that the Federal investigator cited in the story is working with the OIC. The substance of these leaks also reveals the scope, focus, and direction of the grand jury investigation.

16. **Jackie Judd, "Clinton Team on the Offensive," World News Tonight with Peter Jennings, January 30, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this television segment, Ms. Judd reports that "[a]ccording to law enforcement sources, Starr so far has come up empty in a search for forensic evidence of a relationship between Mr. Clinton and Lewinsky. The sources say a dress and other pieces of clothing were tested, but that they had all been dry cleaned before the FBI picked them up from Lewinsky's apartment." (emphasis added). A source for the story is identified as a member of law enforcement. Given the context and nature of the investigatory information disclosed, the law enforcement sources are likely to

be attorneys or agents working for the OIC. Moreover, the substance of the story pertains to evidence being gathered as part of the grand jury investigation, a matter within the protection of Rule 6(e).

17. **Scott Pelley, "Talks between Monica Lewinsky's Attorney and Prosecutors at an Impasse," CBS Morning News, January 30, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this story, it is reported that "the prosecution acknowledged what it hoped would be key evidence is not. . . . CBS news has learned that no DNA evidence or stains have been found on a dress that belongs to Monica Lewinsky. The dress and other clothes were seized by the FBI from Lewinsky's apartment after she told a friend they may contain some evidence. But again, the FBI lab has found no DNA evidence." (emphasis added). This report directly attributes information regarding physical evidence to a prosecution source and the disclosure reveals the scope, focus, and direction of the grand jury investigation.

18. **John King, "Investigating the President: Lewinsky Immunity Talks Collapse," CNN Early Edition, February 5, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this report, Mr. King states that "[s]ources in Starr's office suggesting (sic.) that if Monica Lewinsky does not negotiate an immunity deal quite soon that they are prepared to go ahead and press charges against her." (emphasis added). Mr. King attributes his reporting directly to sources in Starr's office. According to this news report, these OIC sources disclosed the status of immunity negotiations with a potential target of the grand jury and the possible indictment of this target.

19. **Don Van Natta, Jr. & James Bennet, "Starr Turns Down Limit on Questions to Clinton's Aides," New York Times, February 5, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this article, it is reported that "[o]ne official involved in the discussions about whether Ms. Lewinsky would cooperate with Mr. Starr's investigation said prosecutors had set a deadline of Friday at noon for her lawyers to indicate whether she would talk with prosecutors. If the deadline passes without a deal, the official said, Ms. Lewinsky could face prosecution." (emphasis added). This disclosure regarding the status of immunity negotiations with a grand jury target and her possible indictment by the grand jury is attributed to an official involved in the immunity negotiations. The only officials who would have been involved in these negotiations are members of the OIC. In addition, these disclosures reveal the strategy or direction of the investigation.

20. **Susan Schmidt & Peter Baker, "Starr Rejects Proposal on Lewinsky Testimony," Washington Post, February 5, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this article, it is reported that:

> [i]ndependent counsel Kenneth W. Starr yesterday rejected a proposed cooperation agreement from Monica S. Lewinsky's lawyers and gave them until the end of the week to make the former White House intern available for questioning or let her face possible prosecution, according to sources with knowledge of the investigation. Prosecutors decided the written statement from Lewinsky was not solid enough to form the basis of an agreement because it contained inconsistencies and contradictions. Lewinsky acknowledged having a sexual relationship with President Clinton in the statement, the sources said, but she gave a muddled account of whether she was urged to lie about that relationship to lawyers in the Paula Jones sexual harassment suit. (emphasis added).

Much of this article is attributed to sources with knowledge of the investigation. The confidential information disclosed includes the status of immunity negotiations, the possible indictment of a target of the grand jury investigation, the credibility of the testimony of a potential target, and the content of a witness's proffer gathered as part of the grand jury investigation. The content and context of many of these background statements, particularly revelations about the prosecutors' reasons for rejecting Ms. Lewinsky's proffer, suggest that the disclosures came from members of the OIC.

21. **Lisa Myers, "Possible Indictment of Monica Lewinsky by Kenneth Starr Discussed," Today, February 24, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this television segment, Ms. Myers reports that:

> NBC news has learned that, for the first time, Ken Starr now is seriously considering indicting the former intern. . . . [S]ources close to the investigation tell NBC news that [Ms. Lewinsky may never be called before the grand jury], that instead of calling her as his key witness, Starr may bring criminal charges against her. . . . Lawyers close to the investigation say Starr's team lost what little trust they had in Monica's lawyer, William Ginsburg, and thought Monica's mother, Marcia Lewis, was not entirely forthcoming after she got immunity, a preview of what Monica might do. . . . At this point, sources say prosecutors are not sure they would get the truth from Monica. So some see indicting her as, quote, "the least bad option." (emphasis added).

Ms. Myers attributes her reporting to sources close to the investigation. These background sources disclose the status of immunity negotiations and the possible indictment of a target of the grand jury investigation. These sources also reveal the strategy of Mr. Starr and other prosecutors regarding the scope, focus, and direction of the grand jury investigation. Given the nature of the information leaked and the Independent Counsel's admission that members of his

office talk to reporters on a not-for-attribution basis, there is a reasonable inference that these disclosures came from within the OIC.

22. **John Ellis, "It's the Beginning of the End for Clinton's Presidency," Boston Globe, February 7, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this article, Mr. Ellis writes that "Betty Currie is not the only White House staff member cooperating with the Office of the Independent Counsel. According to one reliable source, three other White House employees have spoken at length and in detail with Starr's office about the president's relationship with Lewinsky and his efforts to keep that relationship secret." (emphasis added). In a statement made the next day at a seminar at Harvard's Kennedy School of Government, Mr. Ellis claimed that the reliable source for his column was "a person in the special prosecutor's office." See Lars-Erik Nelson, "Kenneth Starr's Leaky Boat Looks Like It's Sinking," New York Daily News, February 13, 1998. According to Mr. Ellis' statements at Harvard and in his column, a member of the OIC disclosed to him the nature of the testimony of several witnesses that was gathered as part of the grand jury investigation. Such disclosures by members of the OIC, if not satisfactorily rebutted, violate Rule 6(e).

23. **Scott Pelley, "Kathleen Willey's Grand Jury Testimony Contradicts the President's Sworn Deposition," CBS Evening News, March 13, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). Mr. Pelley reports that "sources tell CBS news that prosecutors are now building a perjury case against the president, based on the testimony of Kathleen Willey before the grand jury earlier this

week. CBS news is told that Willey did, in fact, repeat her allegations under oath to the grand jury and those allegations flatly contradict what the president said in his sworn deposition." (emphasis added). In the context of this report and given the Independent Counsel's admission that members of his office talk to reporters on background, there is a reasonable inference that this unattributed leak came from within the OIC. The substance of the information disclosed pertains to the testimony of a grand jury witness, the prosecutors' strategy, and the scope, focus, and direction of the grand jury investigation.

24. **Lisa Myers, "Ken Starr Asks for an Emergency Hearing on Executive Privilege from the Supreme Court, and Monica Lewinsky Fires Lawyer Ginsberg, Hiring Two New Attorneys," NBC Nightly News, June 2, 1998**

The Court finds that this news report constitutes a prima facie violation of Rule 6(e). In this television report, Ms. Myers states that "[s]ources close to the case say it is not too late for Lewinsky to get a deal if she tells the full story. But so far prosecutors see few signals that Lewinsky herself is in a mood to be helpful. Remember her visit to the FBI last week to provide fingerprint and handwriting samples? Law enforcement sources say the session took an hour longer than usual, because Lewinsky was, at times, uncooperative. Tonight, sources close to the investigation say it will be almost impossible for Lewinsky to get immunity without providing evidence damaging to the president, that she must choose between protecting herself and protecting Mr. Clinton." (emphasis added). In this report, disclosures are attributed to sources close to the case, law enforcement sources working with the OIC, and sources close to the investigation. The context and substance of these statements implicate a member of the OIC or an FBI agent working with the OIC as a source of the disclosures, particularly given revelations

ORDERED that the Special Master and any other persons assisting him shall be bound by the secrecy provisions of Rule 6(e) and shall keep any information learned in the course of their duties in strict confidence. All documentary evidence and transcripts of testimony gathered in this matter shall be maintained under seal; it is further

ORDERED that the Special Master shall submit a progress report to the Court on the thirtieth day of each month, or the next business day if the thirtieth day falls on a weekend or holiday, beginning October 30, 1998. Such progress reports shall be submitted in camera by letter directed to the Court with a copy provided to the OIC; it is further

ORDERED that the Special Master shall submit a final report of his findings and conclusions to the Court in an expeditious manner, preferably by the end of November 1998. This report and any supporting evidence shall be submitted in camera to the Court with a copy provided to the OIC; it is further

ORDERED that the OIC may file a response to the Special Master's final report within fifteen days after the report is delivered to the OIC, or the next business day if the fifteenth day after the report is delivered falls on a weekend or holiday; it is further

ORDERED that the Special Master's fees and costs shall be divided evenly between movants (50%) and the OIC (50%) and shall be paid when and as due. The Court retains discretion to reallocate the fees and costs pending the determination of the motions for order to show cause; and it is further

ORDERED that the parties shall submit proposed redactions of the foregoing Order by October 1, 1998.

Norma Holloway Johnson

NORMA HOLLOWAY JOHNSON
CHIEF JUDGE

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY PROCEEDINGS	Misc. No. 98-55 (NHJ) (consolidated with Misc. No. 98-177 and Misc. No. 98-228) **UNDER SEAL**

ORDER TO SHOW CAUSE

On January 29, 1999, the Special Master appointed by this Court filed a report detailing findings and conclusions regarding allegations that the Office of the Independent Counsel ("OIC") violated Federal Rule of Criminal Procedure 6(e)(2). The Special Master has informed the Court that exactly four copies of his report were prepared: one held by the Special Master; another retained by the Special Master's assistant; a third hand-delivered by the Special Master's assistant to the Court; and a fourth hand-delivered by the Special Master directly to the OIC's attorney, Donald Bucklin. Pursuant to this Court's Order of September 25, 1998, the Special Master's inquiry and report were to be kept strictly confidential and under seal. In order to insure secrecy in this delicate inquiry, no copy of the Special Master's report was filed with the Clerk of Court nor served on the movants.

In light of these facts, the Court was deeply disturbed to discover that the existence and substance of the Special Master's report have been leaked to the press. In an article entitled *The Survivor*, found in the February 22nd edition of Newsweek, Howard Fineman reports that "[Starr] may have dodged another bullet, however: NEWSWEEK has learned that a 'special master' investigating leaks from Starr's team has delivered a report to Judge Norma Holloway Johnson in which he details inappropriate disclosures to the press, but no criminal leaks of grand-

jury material. Johnson must still decide whether to accept the conclusions." Given this disclosure of the Special Master's closely guarded report, the Court must once again order the OIC to show cause why it, or individuals therein, should not be held in contempt for violation of this Court's Order that this matter remain strictly confidential and under seal.

Upon consideration of the entire record in this matter, it is this 22nd day of February 1999,

ORDERED that the Office of the Independent Counsel show cause why it, or individuals therein, should not be held in contempt for violation of this Court's Order that the details of the Special Master's inquiry and final report be kept strictly confidential and under seal; and it is further

ORDERED that the Office of the Independent Counsel file a brief addressing the disclosure of the existence and substance of the Special Master's report by 4:00 p.m. on Monday, March 1, 1999. After reviewing the response of the Office of the Independent Counsel to this Order to Show Cause, the Court will determine whether to schedule a contempt hearing in this matter.

Norma Holloway Johnson

NORMA HOLLOWAY JOHNSON
CHIEF JUDGE

Exhibit 4

The Washington Post

STARR: WITNESSING FOR THE PROSECUTION

By Susan Schmidt; Dan Morgan November 19, 1998

Independent counsel Kenneth W. Starr was squeamish. During the frenetic 24-hour days of late August and early September, as his office scrambled to finish the report to Congress that would bear his name, the debate kept circling back to the sexually explicit testimony of Monica S. Lewinsky.

"Ken wanted to exclude as much of this as possible," recalled a senior adviser. But several prosecutors who had spent hours debriefing the former White House intern about her affair with the president were adamant. They couldn't suggest to the House of Representatives that Bill Clinton had committed impeachable acts unless they included the details necessary to prove their main contention that the president lied under oath.

The cigar, the phone sex, Clinton's fondling of Lewinsky -- all of it eventually ended up in the 453-page report delivered to Congress Sept. 9, and all of it was released to the public two days later. But the lawyerly calculation that the sex was necessary to make the impeachment case turned out to be a two-edged sword. While the details undermined Clinton's previous denials and legalisms, they also focused much of a shocked public's attention on sex rather than on impeachable offenses, and on Starr's conduct in addition to Clinton's.

Today, as the first witness in the House Judiciary Committee's truncated impeachment hearings, Starr will be able to publicly defend himself and his report for the first time. And it was clear from his opening statement, released last night, that he will aggressively confront the accusations of Clinton supporters that he is some sort of Puritan Lone Ranger who, together with an office full of overzealous prosecutors, abused his power in a single-minded attempt to throw the president out of office.

Among other issues likely to be explored are the circumstances under which Starr's mandate to investigate the Clintons' Whitewater land dealings was expanded to include investigation of the president's relationship with Lewinsky, and the treatment of Lewinsky by prosecutors in their initial encounter.

Interviews in recent weeks with current and former employees of Starr's office provide revealing glimpses behind a curtain that is still mostly drawn over these and other controversial episodes of its work, and decisions Starr and his staff made at crucial moments in the last few months.

They include:

The office's unpublicized decision in April to draw its four-year investigation of Hillary Rodham Clinton's role in the Whitewater land deal to an end after concluding there was insufficient evidence to charge her with any crime.

The reservations expressed by key lawyers in July that without Lewinsky's still unsecured testimony they lacked sufficient evidence to support the planned impeachment report to Congress.

The intense preparation undertaken by prosecutors for the questioning of Clinton before the grand jury in August, and the initial concerns when it was over that they had failed to pin him down.

The internal debates over what details to include in the final report, and a last-minute rewrite to add new language to one of its most controversial counts, alleging presidential "abuse of power." The interviews also revealed the unwavering conviction of Starr's team, after months of criticism, in the correctness of its course. There is no public second-guessing.

"The office feels that it did its job," said Starr spokesman Charles G. Bakaly III. "To a person, they did their duty. We did what we were supposed to do."

Starr's close advisers acknowledge they have irreparably lost part of the perception battle. "To some extent, the attacks have succeeded," said Sam Dash, the Watergate veteran who is now a paid consultant to the independent counsel. But Dash and other Starr lawyers say their problem has been one of bad public relations. "The entire investigation is the subject of so much spin, and there is such a myth of wrongdoing by the office," Dash lamented. Questions From the Start

It was still the early days of the Lewinsky investigation when Clinton adviser James Carville openly declared "war" on the independent counsel, branding Starr a "sex-obsessed" prosecutor.

Throughout Starr's tenure as independent counsel, questions have been raised, not only by the president's supporters, about his motives and actions. In 1994, he was selected for the job of investigating the Clintons' long-ago Arkansas land dealings by an appellate court panel that included two conservative judges with ties to Clinton opponents in Congress. He had begun his initial investigation of the Lewinsky matter before seeking Justice Department approval for expanding his mandate. Once he did seek it, he failed to explicitly remind Attorney General Janet Reno of his earlier contacts with attorneys for Paula Jones -- whose sexual harassment case against the president had led to Lewinsky. His prosecutors had played hardball with Lewinsky when they first questioned her in January following a sting they conducted at an Arlington hotel.

Once the Lewinsky case was under way, David E. Kendall, the president's private attorney who has fought Starr since the early days of Whitewater, blasted the independent counsel for alleged leaks to the media designed to damage the president, and asked Chief U.S. District Judge Norma Holloway Johnson to investigate. Johnson named a special master -- sources said he is U.S. Appeals Court Senior Judge John W. Kern III -- to determine whether Starr and his lawyers illegally revealed grand jury information. That probe is still under way.

Starr has provided responses to many of these criticisms, and some already have been examined and discarded as baseless by the Justice Department.

But in April, pressure on the Office of the Independent Counsel (OIC) was intense. The Lewinsky matter remained murky, and many believed Clinton -- who had categorically denied a sexual relationship with Lewinsky -- was being unjustly persecuted. Contributing to this belief was the long-running and still inconclusive Whitewater investigation. While there had been a number of indictments, and 14 convictions, in the four-year investigation, the probe had not yielded charges against the president or Hillary Clinton.

Starr's grand jury in Little Rock, where the Whitewater investigation was based, was set to expire and disband on May 7. On Saturday, April 25, the independent counsel, his chief Little Rock deputy, W. Hickman Ewing Jr., and three other lawyers had questioned Hillary Clinton in the Yellow Room of the White House. Two days later, the entire OIC legal team from Washington and Arkansas gathered for a marathon session in Starr's headquarters at 1001 Pennsylvania Ave. Although no one outside the office knew it at the time, they closed the book that day -- barring new evidence -- on the investigation of the first lady.

The conference lasted from 8 a.m. until midnight, before breaking up with a consensus decision: The OIC had insufficient evidence to charge Hillary Clinton with any wrongdoing connected to her work at the Rose Law Firm in Little Rock. Although Starr's statement prepared for today's hearing says he found insufficient evidence for charges against the president related to the Whitewater investigation, it draws no such conclusion about Hillary Clinton. Critics say that Starr abandoned work on Whitewater, without ever giving an accounting after four years of effort, when a better scandal came his way. His zeal for the unsavory Lewinsky matter, they say, is evidence of his personal quest to destroy the president.

Many of those who have worked closely with Starr behind the locked doors on Pennsylvania Avenue insist that description misses the essence of Starr's operation. They point to the decision not to indict Hillary Clinton as an example of prosecutorial restraint. In choosing to put virtually all the office's resources into the Lewinsky probe, they see a desire to bring an end as quickly as possible to an investigation slowed by a White House bent on delay.

And, these Starr colleagues say, the Hillary Clinton decision shows that Starr is not a Lone Ranger making decisions based on personal motives, but the coordinator of a team whose deliberative discussions are marked by open debate and objective weighing of the facts. When a big decision is at hand, each of the 30 or so lawyers in the office, whether involved in the issue or not, is expected to examine all the evidence, come to the table with an opinion, and make himself heard.

Starr, his colleagues suggest, is a scholarly but involved senior partner who makes the final call only after hearing from his diverse group of subordinates -- street-wise career government prosecutors and brainy professors, Democrats and Republicans.

"The process calls upon each attorney -- drawing upon his or her background and experience -- to offer views on issues in question," Starr says in his prepared testimony. "This deliberative process is laborious, sometimes tedious. But it is an attempt to ensure that our Office makes the best decisions it can. I have drawn upon a vast

array of experienced prosecutors and investigators because I was sensitive to . . . the fact than an independent counsel exists outside the Justice Department and is an unusual entity within our constitutional system."

Starr's statement says that "at the end of the day, I -- and no one else -- was responsible for our key decisions." But there is no question that the team he assembled, composed of two distinct groups, is an aggressive one, and that its feelings of being engaged in a virtual war against the White House increased as time went on.

One half of the team is a tightly knit "brain trust" made up of highly pedigreed academic attorneys, some with a taste for the intellectual stimulation of constitutional battles. They include University of Michigan law professor Ronald J. Mann; former Senate Watergate counsel Dash; and Brett M. Kavanaugh, a young Starr protege who worked with him at the solicitor general's office in the early 1990s and clerked at the Supreme Court. One of the early brain trusters was University of Illinois professor Ronald D. Rotunda, brought on board in 1997 at a retainer of $115,000 a year. An expert on impeachment, Rotunda has argued in legal writings that a sitting president can be indicted.

The brain trust also includes University of Illinois professor Andrew D. Leipold; a friend of Mann's from their Supreme Court clerk days; and Stephen Bates, who moonlights as literary editor for the Wilson Quarterly.

These academics, some of whom have come and gone on a consulting basis, others who have been with Starr from the start, worked on -- and won -- a proliferation of constitutional litigation sparked by the Lewinsky investigation, from executive privilege and Secret Service testimony, to the subpoenaing of Lewinsky's book purchases. Leipold, Kavanaugh and Bates would eventually be on the core team writing the impeachment report.

Like many in the cloistered office, the front-line prosecutors sometimes felt under siege, a feeling engendered in part by what Starr charged -- and the White House denied -- were attempts to smear their careers with leaks to the media raising ethics questions. Starr's prepared statement maintains that "the character and conduct of the men and women of our Office . . . have been badly distorted."

The prosecution group includes Jackie M. Bennett, an aggressive former top prosecutor in the Justice Department's public integrity section; former Anne Arundel County prosecutor Robert J. Bittman; and Michael W. Emmick, a Starr recruit from the U.S. attorney's office in Miami.

Starr is likely to be grilled today about reports that his prosecutors have mistreated witnesses, including Lewinsky herself. Lewinsky's first lawyer, William H. Ginsburg, claimed that after prosecutors confronted her for the first time in a sting arranged with the help of her onetime confidante, Linda R. Tripp, they improperly held her "hostage" for 12 hours without an attorney. This episode gave rise to an entire secret court fight -- part of a larger battle to enforce an immunity deal with Starr -- about whether Lewinsky had been mistreated by Bennett and Emmick. Ginsburg lost the immunity argument, but the ruling is still under seal.

Months later, after Lewinsky began cooperating with Starr, she told the grand jury that when she asked to call her mother that night, Bennett replied: "You're 24; you're smart, you're old enough, you don't need to call your mommy." Recounting the experience was so painful to her that she asked Emmick to leave the grand jury room when she testified. The Lewinsky Deal

In early August, "Hick" Ewing, the head of the OIC's Little Rock office and chief Whitewater investigator, was summoned to Washington for a star performance. The man perhaps most reviled by the White House -- Clinton adviser Sidney Blumenthal publicly branded him "a religious fanatic" -- would play the president in Starr's moot court as the team prepared to question Clinton.

Only a month earlier, some key Starr advisers were in doubt as to the future of the investigation, and progress had seemed agonizingly slow. An impeachment report had been in the works for months, but Dash and Kavanaugh raised a red flag in early July, writing memos that raised serious questions about whether such a report should proceed in the absence of more evidence -- especially testimony from the still-silent Lewinsky.

Those sentiments helped pave the way for two decisions. On July 17, Starr sent an unprecedented subpoena to Clinton, who had evaded numerous earlier, less legally irresistible attempts to secure his testimony. And, on July 22, Starr himself telephoned Lewinsky lawyer Jacob A. Stein in an effort to end months of legal wrangling over her testimony.

The OIC had been wrestling for months over what to do about Lewinsky. What would the prosecutors do if, in the end, she simply refused to cooperate? If they indicted her for perjury -- based on her Jones case affidavit denying a sexual relationship with Clinton -- they'd face a firestorm of public criticism and a jury might refuse to convict her. But if they immunized her and compelled her testimony, they would forgo the right to proceed against her with no assurance she'd tell the truth.

The deal they finally made with her accepted the offer she had first made in February -- she would testify as to the details of a sexual affair, but would deny specifically being told to lie under oath by the president in the Jones case. On July 27, the prosecutors flew to New York to meet with Lewinsky. The next day, the deal was signed. Emmick and Karin Immergut, a former Portland, Ore., assistant district attorney, took the lead in questioning Lewinsky in interviews, a role they would continue before the grand jury,

"There were no hard camps on Monica's cooperation. Once we had the New York interview, no one opposed doing the deal," said one attorney. But that unanimity about how to proceed might have fallen apart had Lewinsky balked or had prosecutors doubted her veracity. "We would have had to move to Plan B -- that's where there would have been drama and problems," he said.

Lewinsky's cooperation -- and the blue dress she handed over containing the president's DNA -- presented a problem for Clinton: How would he reconcile his own sworn Jones testimony with the story that Lewinsky now was prepared to tell under oath and the evidence Starr had amassed.

At the White House, lawyers and political aides were unaware of the breakthrough with Lewinsky as they pondered Starr's subpoena and Clinton finally agreed -- against his lawyers' advice -- to testify "voluntarily" if the subpoena were withdrawn. By the time the agreement was announced July 29, Monica had already signed up.

Clinton's testimony was scheduled for Aug. 17; as prosecutors began to prepare they decided Ewing was a natural to play the president in their practice runs. He knew Clinton best. He had interviewed scores of Clinton's Arkansas friends and associates -- many of them repeatedly -- in the four years he spent overseeing the Whitewater investigation. He had interviewed Clinton about Whitewater and the death of former White House counsel Vincent W. Foster Jr., and had had plenty of opportunity to judge the ways the president responded to probing questions.

The lawyers selected to question the president were Starr's three Washington deputies: Bittman, who had day-to-day management responsibility for the Lewinsky probe and a matter-of-fact interviewing style; Solomon L. Wisenberg, regarded in the office as a facile inquisitor with mastery of the grand jury testimony; and Bennett, a hardballer often called on to question hostile witnesses. Starr would look on from above the fray.

They conducted three mock sessions at the Pennsylvania Avenue office, each four hours long -- precisely the amount of time they would be allowed to question Clinton. The lawyers tried to anticipate every possible response he might give and submitted to critiques from their colleagues. "I don't think an alternative existed we didn't discuss," said Rotunda.

Starr was concerned that his team appear respectful of the presidency and wanted to proceed gingerly, but Wisenberg, Bakaly and several others argued -- with some success -- for a more conventional cross-examination, several lawyers said.

Among their scenarios: Clinton would admit he lied about Lewinsky; he would continue to deny a relationship; or he would make a statement containing admissions but insisting his earlier testimony had been legally accurate. The last scenario was the correct one.

"Hick had him down pretty good," said Rotunda. "It looked like Hick was running the clock, which is what Clinton did."

When Aug. 17 arrived, the OIC team -- minus Ewing -- arrived at the White House just after noon. A foretaste of the battle came as Kendall took Starr aside for a private message, according to Rotunda and several other OIC lawyers who heard about it later.

"If you get into detail, I will fight you to the knife both, here and publicly," said Kendall. The confrontation stunned the courtly Starr. "Four hours later Starr came back and met with all the lawyers, 20 or 25 of them. It was the first thing he said," Rotunda recalled.

The president's intention to make some admission of an "inappropriate" relationship with Lewinsky had already been telegraphed in news reports, and he kept his temper throughout the four-hour session. But his feelings about it were on display that night, when he went on national television to charge that his privacy had been invaded as part of a partisan investigation that had gone on too long.

The OIC lawyers who interviewed Clinton initially came away from their encounter feeling much the way the public did when the videotape of the testimony was released by the House in September: that Clinton had acquitted himself fairly well considering the circumstances, and had largely avoided being pinned down. But on paper, when the transcripts came back, the prosecutors thought they had built a strong case.

"Given the route he took, I thought we did pretty good," said Rotunda. "Some people weren't sure, but when they saw the {transcripts of the} testimony, they were. . . . Clinton made important admissions, he said some things that just didn't ring true, and he refused to answer some things."

The decision about what to do next was unanimous.

"Nobody felt the standard had not been met to file an impeachment report," said one OIC lawyer. Writing the Report

As Starr and his staff wrestled with how to write their impeachment referral, the independent counsel was wary about Lewinsky's explosive testimony. Immergut, New York lawyer Mary Anne Wirth and Emmick had spent hours with her, and were most familiar with her story. They made the case that much of the sexual detail was relevant. "It is the detail that makes the thing ring true," was how they put it, according to Rotunda.

Lewinsky's testimony was more believable, they argued, precisely because some of the acts she described -- such as Clinton talking on the phone while receiving oral sex -- were debasing to her. "Some of the women prosecutors said, You have to put in the information about phone sex, it shows an intimate relationship between them,' " said Rotunda.

The debates took place in a deadline frenzy. The OIC, in overdrive since January, had become a 24-hour shop. "It was like a supermarket, we were there all the time," said Rotunda. "Paralegals and chaired professors were sitting around proofing. At the end, we had to draft everybody."

When the debating was over, not all of the sex stayed in. Starr allowed mention of the phone sex conversations, for example, but vetoed including their content.

After Clinton's Aug. 17 testimony, Starr had wanted the report sent to Congress as soon as it could be pulled together. Late September was too close to the election, Starr believed. The office decided to shoot for delivery to Congress Sept. 9, the first day the House would be in session after its August recess.

The sense of urgency was heightened, several lawyers said, when Kendall publicly threatened in early September to go to court to block delivery of the report.

Brain trusters Leipold, Kavanaugh, and assistant independent counsel Julie Myers wrote a section laying out possible grounds for an impeachment, getting constant updates about Lewinsky's ongoing testimony from Immergut, Wisenberg and Emmick. The longer narrative section of the report -- which had been in preparation since April -- was principally written by Bates and assistant independent counsel Craig Lerner. Everyone in the office read the documents. Starr was the ultimate editor.

They met their self-imposed deadline: Delivery Day was on Sept. 9. The referral remained unread by anyone, under lock and key on House premises, until Sept. 11, when House leaders decided to post it on the Internet at the same time it was distributed to Congress.

"We had no way of knowing in advance of submitting the referral, and we did not know, whether the House would publicly release both the report and the backup materials," Starr said in the testimony prepared for today's hearing. "As a result, we respectfully but firmly reject the notion that our office was trying to inflame the public."

But even now, after all the hue and cry, some of Starr's advisers show little inclination to second-guess the inclusion of explicit details. "It's clinical, not graphic. I can't imagine anyone getting a rise out of this," argued Rotunda. "The president was parsing the English language -- he was slicing the baloney very thin."

Soon, the sensation generated by the narrative about the Clinton-Lewinsky relationship overshadowed the second chapter of the report, which laid out 11 "acts that may constitute grounds for an impeachment."

That bill of particulars offered conclusions that White House allies and some legal experts have argued are not necessarily supported by the testimony and evidence cited.

And another criticism quickly emerged: Starr may have exceeded his mandate in the way in which the report was written. Portions are interpretive, and Democrats argued that Starr had strayed far from his earlier public promise to offer up "just the facts."

The independent counsel statute is silent about how evidence should be packaged or presented -- it says only "an independent counsel shall advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment" -- and Starr's report was the first time the provision has been used.

"We debated what was the right way to do this," said Bakaly. "Starr felt there was a duty to explain his analysis and his judgment."

Ground 11 contended that Clinton should be impeached because he had failed to "faithfully execute the laws." The grab-bag charge, including Clinton's insisting to the American public that he never had sex with "that woman," looked to many critics like an attempt to throw the president out of office simply for mounting a vigorous defense. The strongest criticism was directed at Starr's contention that the president's assertion of executive privilege to shield some aides from testifying was in itself illegal. That criticism was hardly anticipated by the OIC. In fact, Ground 11 was being rewritten even as government vans were waiting to take the finished report up to Capitol Hill. Dash, the old Watergate hand, urged the changes, arguing Ground 11 would be strengthened by saying that the president "unlawfully" invoked executive privilege.

A last-minute debate ensued: Dash argued the president's use of executive privilege was an "unlawful" abuse of his office because his intent was to deceive the grand jury. Some of the brain trusters disagreed, but Dash, lawyers said, prevailed upon Starr and the change was made.

The government vans rolled up to Capitol Hill with the report, an hour later than planned. CAPTION: President Clinton is subject of prosecutor's referral. ec CAPTION: Kenneth W. Starr sent report to Congress on alleged offenses. ec CAPTION: In September, U.S. Capitol police escorted boxes of documents detailing what independent counsel Kenneth W. Starr called impeachable offenses. ec

Exhibit 5

NEWS

THE SURVIVOR

BY **HOWARD FINEMAN** ON 2/21/99 AT 7:00 PM

SHARE

NEWS

He's done it again. Born lucky, smart and reckless, Bill Clinton routs his foes and wins his Senate trial. But his real reckoning--the one with history--is still to come.

ON THE DAY Bill Clinton was acquitted, the White House was like a college dorm after finals. Everyone was rushing out the door and into the rest of his life. The lawyers treated themselves to a fancy lunch. A top political aide took his sons to the rodeo. The press secretary drove home early. Al Gore was off on a trip to Albany. By sundown there was almost no one of importance left in the mansion--except, of course, the man who lived there, his wife and his mother-in-law.

When the Rev. Jesse Jackson arrived, the president was alone at his desk in the Oval Office, making calls and penning thank-you notes to the senators in his party who had locked arms and saved him from conviction. Jackson, a Baptist minister, discussed political redemption. He urged the president to focus on the plight of the rural poor by traveling down to Appalachia, the Mississippi Delta and the Rio Grande Valley. He then asked Clinton to move out from behind his desk, and the two huddled on a couch to pray. The president had faced a fearsome storm, Jackson said, but had followed Jesus' advice to his disciples: remain calm, have faith. God had heard and answered his prayers. And now, as the Psalmist wrote, ""joy cometh in the morning."

But this does not feel like morning. There is too much damage to assess, too many new tests to pass. Clinton left the Rose Garden podium last week a survivor, but his real reckoning is still to come--with the Republican-led Congress, with voters who will assess his legacy at the polls in 2000, with the judgment of history to be written. The president must balance a thirst for revenge with a need for legislative accomplishment--and with his promise to help Democrats win back the Congress at all costs. He must enable Vice President Al Gore to succeed him--and, perhaps, his wife to win a Senate seat in New York. He must do it all without bitterness, or regret, or even any joy. Not long before the Senate's vote a friend, law professor Susan Estrich, soothingly told him that his long ordeal seemed almost over. ""It will never be over," the president replied, and he is right.

The Senate vote itself was anticlimactic. Everyone in Washington knew the outcome in advance. All 45 Democrats would stick together; there was, therefore, no way the Senate could reach the two thirds necessary for his ouster. In the end, 10 Republicans abandoned the GOP and voted against convicting Clinton of perjury (making the vote 55-45 against); five Republicans voted ""not guilty" on obstruction of justice (making the vote 50-50). As a result, presidential aides were able to point out--without gloating, of course--that neither count had earned a majority.

The staging that followed in the Rose Garden was simple, spare. The president had worried through many drafts of a statement, but hadn't told anyone exactly what he'd wanted to say or how he would say it. When he did come forward, there was no one by his side and no crowd but for the sullen media horde. He delivered a mere four sentences, expressing how ""profoundly sorry" he was for ""what I said and did to trigger these events," and vowing to lead the nation toward ""reconciliation and renewal." Rather than thank the White House aides in person--a party might break out--Clinton sent them all an e-mail.

Born with brute stamina, and lacking the gene that produces embarrassment in the human soul, Clinton had once again outlasted his enemies. Politics, Clinton knows, is a game of comparison; next to Ken Starr, Linda Tripp and the House managers, he was, by far, the lesser evil in the eyes of most Americans. As usual, he called on the better angels of the nature of his friends, asking for loyalty from allies he'd lied to--and they gave it to him. He was, as usual, good at his day job, with sound economic and diplomatic stewards who kept the economy humming and the world at peace. The bottom line: an approval rating in the new NEWSWEEK Poll of 66 percent, second highest of his tenure.

But Clinton is a damaged survivor in a field of rubble. He confronts Republican distrust and enmity. GOP leaders were furious at White House allies who spent millions ridiculing the impeachment trial and have noted that Democratic strategists are eager to exact vengeance. ""That doesn't sound like reconciliation," said GOP Senate Majority Leader Trent Lott. Meanwhile, Starr is still lurking. He has written a letter to Attorney General Janet Reno protesting the Justice Department's plan to investigate him. Starr's circle thinks the probe is a vendetta, and that leaks from Justice prove it. Starr proposes that a special, independent investigator handle the matter.

He may have dodged another bullet, however: NEWSWEEK has learned that a ""special master" investigating leaks from Starr's team has delivered a report to Judge Norma Holloway Johnson in which he details inappropriate disclosures to the press, but no criminal leaks of grand-jury material. Johnson must still decide whether to accept the conclusions.

The damage to Clinton's legacy is already apparent. In the NEWSWEEK Poll, 71 percent say he will be remembered primarily for the Lewinsky scandal and impeachment--no matter what he accomplishes now. During the last year voters have lost respect for the world of politics he embodies. Fifty percent say they have a ""less favorable" view of the political process. (The media took an equally big hit: 56 percent have a dimmer opinion.) The only winner in the public's esteem: Hillary Rodham Clinton, whom 33 percent now view more favorably.

For now, the First Lady is the hottest commodity in post-impeachment politics. Influential Democrats, urged on by Clintonites such as Harold Ickes, want to see her run for the Senate in New York in 2000. Insiders who recently dismissed the idea no longer do so. She hasn't ruled it out, they say, and will now take what one called a ""very serious look" at the matter. Residency is no problem (she need only establish it by Election Day), and neither is money. ""Are you kidding?" said a top New York fund-raiser. ""She'd raise a fortune in an instant."

A Hillary candidacy, though, could complicate her husband's--and her party's--larger aims. Clinton has vowed an all-out effort to win back the Congress. That would include knocking off as many conspicuous GOP enemies as possible--a few House managers, for example, or particularly nettlesome GOP senators. Hillary, with her star power and fund-raising ability, would be a crucial ally in such a nationwide effort. ""Poughkeepsie's nice, but we need her everywhere," said one top Democratic strategist. So does Gore, whose success is the Clintons' prime political goal. ""If she runs we'd wish her well," said a top Gore aide. ""But we could sure use her help."

As for Clinton, his new campaign begins in--of all places--New Hampshire. He speaks there this week on the seventh anniversary of the primary in which, dogged by scandal, he finished a distant second--and yet convinced the world that he was the ""Comeback Kid" because his campaign refused to die. The nickname stuck, and in many ways he deserves it more than ever. He is, after all, not only the first elected president ever to have been impeached. Now, after a harrowing year in the life of the nation, he's the first to have been acquitted.

In the new NEWSWEEK Poll, 71% believe Clinton will always be remembered for the Lewinsky scandal, and only 20% think he can repair his legacy

59% believe the Republicans were hurt by handling of impeachment; only 25% think Clinton and Congress will be very productive in the next two years

FOR THIS NEWSWEEK POLL, PRINCETON SURVEY RESEARCH ASSOCIATES INTERVIEWED 752 ADULTS FEB. 11-12. THE MARGIN OF ERROR IS +/- 4 PERCENTAGE POINTS.

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION TO UNSEAL DOCKETS RELATED TO THE INDEPENDENT COUNSEL'S 1998 INVESTIGATION OF PRESIDENT CLINTON	)	Misc. No. 18-0019 (BAH)

DEPARTMENT OF JUSTICE RESPONSE TO CNN'S PETITION TO UNSEAL

INTRODUCTION

Petitioner Cable News Network, Inc. ("CNN") and its journalist Katelyn Polantz seek to unseal certain Miscellaneous matters arising from Independent Counsel Kenneth W. Starr's investigation in 1998 of then-President William Jefferson Clinton. *See* Letter to Chief Judge Beryl A. Howell from Drew Shenkman, dated Feb. 9, 2018. This Court docketed the correspondence and ordered that the Department of Justice ("Department") respond to the petition by providing its views "as to whether the documents remaining under seal in the eight Miscellaneous dockets at issue may be unsealed." Order, Feb. 12, 2018, at 5. The Court further granted the motion of former President William Jefferson Clinton to intervene in the proceedings, who requested that three additional dockets be considered for unsealing. The Court ordered the Department to review these additional files, and provide views with respect to whether they, too, might be unsealed. *See* Minute Order, Feb. 16, 2018. After seeking a thirty day extension of time to respond, the Department hereby provides its views.

LEGAL STANDARD

I. Federal Rule of Civil Procedure 6(e)

Federal Rule of Criminal Procedure 6(e) "codifies the traditional rule of grand jury secrecy." *United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 425 (1983). As the Supreme Court has explained,

> Grand jury secrecy * * * is as important for the protection of the innocent as for the pursuit of the guilty. Both Congress and this Court have consistently stood ready to defend it against unwarranted intrusion. *In the absence of a clear indication in a statute or Rule, we must always be reluctant to conclude that a breach of this secrecy has been authorized.*

Sells Engineering, 463 U.S. at 424-425 (emphasis added).

Rule 6(e) prohibits all non-witness participants in a grand jury proceeding from disclosing any "matter occurring before the grand jury," "[u]nless these rules provide otherwise." Rule 6(e)(2)(B). The Rule then enumerates the specific circumstances in which disclosure of grand jury materials is permissible. Most of these exceptions apply without need for a court order. For example, the Rule provides for disclosures to other attorneys in the federal government, Rule 6(e)(3)(A), to other federal grand juries, Rule 6(e)(3)(C), and to federal national security officials, Rule 6(e)(3)(D), without any requirement of consultation with the court.

A final group of exceptions, outlined in Rule 6(e)(3)(E), grants district courts discretion to order disclosure of grand jury matters in five specifically enumerated circumstances. The first listed exception provides that district courts may order disclosures "preliminarily to or in connection with a judicial proceeding." Rule 6(e)(3)(E)(i). The second exception permits district courts to order disclosures "at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury." Rule 6(e)(3)(E)(ii). The

remaining three exceptions allow release of grand jury materials at the request of the federal government: the federal government may seek release of grand jury materials "when sought by a foreign court or prosecutor for use in an official criminal investigation," Rule 6(e)(3)(E)(iii), and to share with state, foreign, tribal, or military officials upon a showing that the material "may disclose a violation of" the criminal laws of their respective jurisdictions, Rule 6(e)(3)(E)(iv), (v).

Rule 6(e) neither authorizes, nor provides a mechanism for, the disclosure of grand jury materials for reasons of public interest or historical significance. Although some courts have relied on their "inherent authority" to reach outside the textual confines of Rule 6(e),[1] the Supreme Court has made clear that a district court's inherent authority "does not include the power to develop rules that circumvent or conflict with the Federal Rules of Criminal Procedure." *Carlisle v. United States*, 517 U.S. 416, 426 (1996); *accord Bank of Nova Scotia v. United States*, 487 U.S. 250, 254 (1988). That is especially true of Rule 6(e), which was enacted in relevant part directly by Congress, and which has been carefully refined and modified over decades by Congress and the Supreme Court itself in its rulemaking capacity. A district court enjoys no discretion to circumvent the policy judgments embodied in Rule 6(e) by "elect[ing] to analyze the question under the supervisory power." *Bank of Nova Scotia*, 487 U.S. at 254 (quoting *United States v. Payner*, 447 U.S. 727, 736 (1980)).

[1] *See, e.g.*, *In re Craig*, 131 F.3d 99 (2d Cir. 1997); *Carlson v. United States*, 837 F.3d 753 (7th Cir. 2016); *In re Petition of Kutler*, 800 F. Supp. 2d 42 (D.D.C. 2011). Cases presenting the issue of whether a district court may rely on its inherent authority to authorize grand jury disclosures outside the contours of Rule 6(e) are pending in the 11th Circuit, *see Pitch v. United States*, No. 17-15016 (11th Cir.), and most relevant here, in the D.C. Circuit. *See McKeever v. Sessions*, No. 17-5149 (D.C. Cir.).

Grand jury secrecy, however, can be waived through an otherwise authorized disclosure. Where a waiver has occurred, the information no longer falls within Rule 6(e). *See, e.g.*, *In re Grand Jury Subpoena, Judith Miller*, 493 F.3d 152, 154 (D.C. Cir. 2007) (denying request, based on the public interest, to release grand jury testimony not presented at trial, but finding that "when once-secret grand jury material becomes 'sufficiently widely known' it may 'los[e] its character as Rule 6(e) material.'") (internal citations omitted).

II. Unsealing Court Records

This Circuit applies the traditional "*Hubbard*" factors when considering whether to unseal court records. *See United States v. Hubbard*, 650 F.2d 293, 314 (D.C.Cir.1980). In *Hubbard*, the Court of Appeals "identified six factors that might act to overcome [the] presumption" of public access to court records. These six factors are:

> (1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property or privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.

U.S. ex rel. Schweizer v. Oce, N.V., 577 F. Supp. 2d 169, 171–72 (D.D.C. 2008), citing *Hubbard.*

THE DEPARTMENT'S VIEWS WITH RESPECT TO UNSEALING

Counsel has reviewed each of the files at issue. To the extent information remains subject to Rule 6(e) and/or sealing, an in camera, ex parte submission accompanies this response that details proposed redactions and the reason for them. As detailed below and in

its ex parte submission, where no redactions or withholdings are proposed, the Department does not object to the unsealing.[2]

1. Misc. No. 98-095, 98-096, 98-097, and 98-278

These files contain pleadings and documents relating to the grand jury testimony of Bruce Lindsey, Sidney Blumenthal, Nancy Hernreich, and Lanny Breuer. Because these proceedings reflected matters occurring before the grand jury, including who was being called to testify before the grand jury, the substance of the testimony sought, and any privileges asserted, they were at the time protected by Criminal Rule 6(e). *See Fund for Constitutional Gov't v. National Archives and Records Services, et al*, 656 F.2d 856, 869 (D.C. Cir. 1981) (Rule 6(e) "encompasses not only the direct revelation of grand jury transcripts but also the disclosure of information which would reveal 'the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like.'") (internal citation omitted).

On July 7, 1998, however, the D.C. Circuit authorized the Independent Counsel, under Fed. R. Crim. P. 6(e)(3)(C)(i) ("preliminarily to or in connection with a judicial proceeding"),[3] to disclose to the House of Representatives all grand jury material he deemed appropriate under his statutory charge. *See* Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) Submitted by

[2] Some material in the files does not directly relate to the subject of the Independent Counsel investigation. The Department in its ex parte submission proposes the withholding of such material. In addition, placeholders in some files indicate that Chief Judge Johnson on occasion received certain materials from the Office of Independent Counsel and others, ex parte, for the purpose of showing need or establishing privilege. The ex parte materials themselves were not included in the files made available to counsel, and the views expressed herein do not address whether they are appropriate for release.

[3] Fed. R. Crim. P. 6(e)(3)(C)(i) is now codified as Fed. R. Crim. P. 6(e)(3)(E)(i).

the Office of the Independent Counsel, September 9, 1998 ("Referral"), Appendices, Part I, Tab B at p. 10. The House of Representatives publicly published the Referral, the Appendices, and the Supplemental Materials, which included the grand jury testimony of Mr. Lindsey, Mr. Blumenthal, Ms. Hernreich, and Mr. Breuer. Accordingly, their testimony is public and no longer protected by Rule 6(e).

Once removed from the restrictions of Rule 6(e), there is no reason that the dockets may not be largely unsealed.[4] The subject matter of the litigation is known, and a portion of the pleadings already has been unsealed in redacted form. Further, the individuals whose testimony was at issue do not object to the unsealing.[5] Accordingly, the weight of the *Hubbard* factors favor unsealing.

2. Misc. No. 98-148

This file concerns litigation over the testimony of Secret Service personnel. The testimony of the majority of personnel at issue was publicly disclosed in the Supplemental Materials accompanying the Independent Counsel Referral, and discussed in the Referral itself. The protective function privilege litigation was also discussed in the Final Report of the Independent Counsel, *In Re: Madison Guaranty Savings & Loan Association*, Appendix C ("Regarding Monica Lewinsky and Others") at 115-116. For those Secret Service employees who do not appear in the Referral, their identities remain protected by Rule 6(e) and personal privacy. Appropriate redactions are therefore

[4] One small portion of a May 4, 1998, Memorandum Opinion (a redacted version of which is already public), remains subject to Rule 6(e) and the current sealing order. In its ex parte submission accompanying this response, the Department has proposed a redaction to account for that information. The same Memorandum Opinion appears in both Misc. No. 98-096 and 98-097.

[5] As directed by the Court, undersigned counsel contacted the individuals (and/or their attorneys) whose interests are implicated by the proposed unsealing, including Mr. Lindsey, Mr. Blumenthal, Ms. Hernreich, Mr. Breuer, and counsel for President Clinton, and none objected.

proposed in the Department's ex parte submission. In addition, one Secret Service lawyer litigated the governmental attorney client privilege in response to a grand jury subpoena. No testimony from that attorney was included in the Referral. Accordingly, redactions are also proposed to protect information in connection to him that remains subject to Criminal Rule 6(e).

3. Misc. No. 98-202

This file concerns multiple document subpoenas, one of which was disclosed in the Referral and accompanying Appendices. Appropriate redactions to protect material still covered by Rule 6(e) are proposed in the Department's ex parte submission.

4. Misc. No. 98-267

The subpoena to President Clinton (the subject of this file) and the correspondence between the Office of Independent Counsel and counsel for President Clinton, were discussed in the Referral and the accompanying Appendices. President Clinton's August 1998 grand jury testimony was also included in the Supplemental Materials to the Referral. Counsel for President Clinton does not object to the unsealing of this file.

5. Misc. No. 98-077

This file concerns a subpoena issued to Terry Lenzner. Although the subpoena to Mr. Lenzner was mentioned in an Appendix to the Referral, with a brief summary of a motion to quash, the Referral neither reproduces nor relies on the subpoena, nor any testimony of Mr. Lenzner. Mr. Lenzner's name does not appear in the Table of Names that opens the Referral, and no testimony is included in the "Index of Publicly Released Materials Produced to Congress with the 595(c) Referral," that prefaces the Supplemental

Materials to the Referral. Accordingly, materials that reflect proceedings before the grand jury in connection with Mr. Lenzner remain fully protected by Criminal Rule 6(e). The Department therefore opposes the unsealing of this file. Counsel for Mr. Lenzner concurs with this determination.

6. Misc. Nos. 98-55, 98-177 and 98-228

These files concern allegations that the Office of Independent Counsel improperly disclosed to the media information protected by Criminal Rule 6(e). Many of the documents in these files are unsealed. Further, to the extent Rule 6(e) materials were discussed in connection with alleged leaks, the underlying information and testimony was included in the Referral, its Appendices and Supplemental Materials. Accordingly, Rule 6(e) no longer applies to these materials, and the Department has no objection to the requested unsealing.

* * *

The Department has endeavored to ensure that its objections to unsealing are limited to information not otherwise disclosed by the Independent Counsel in accordance with the court order he obtained authorizing the disclosure of grand jury information for purposes of the Referral. To the extent Petitioner or Intervenor objects to any redactions pursuant to Criminal Rule 6(e), the Department's view – consistent with the text of Rule (e) – is that the Court lacks the authority to unseal grand jury materials for reasons of "extreme public interest," *see* Letter to Chief Judge Beryl A. Howell from Drew Shenkman, dated Feb. 9, 2018 at 3, or any other reason outside the reticulated exceptions to secrecy set forth in Rule 6(e). *See Carlson v. United States*, 837 F.3d 753 (7th Cir. 2016) (Sykes, J., dissenting); *In re Special Grand Jury 89-2*, 450 F.3d 1159, 1178 (10th

Cir. 2006) (noting that the Supreme Court has not explicitly recognized a court's authority to release grand jury materials outside the strictures of Rule 6(e)). The court can also deny the unsealing of these materials based on the fact that the events underlying the grand jury proceedings are relatively recent and concern living individuals. *C.f.*, *In re Craig*, 131 F.3d 99 (2d Cir. 1997) (setting forth extra-statutory, judicially-created criteria to consider in determining whether to disclose Rule 6(e) materials, including the age of the investigation and privacy interest of living individuals). Alternatively, the court could delay any decision pending resolution of the *McKeever* case in the D.C. Circuit, *supra*, n.1.

Dated: March 23, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JESSIE K. LIU
United States Attorney

/s/ Elizabeth J. Shapiro
ELIZABETH J. SHAPIRO
United States Department of Justice
Civil Division, Federal Programs Branch
Tel: (202) 514-5302
Fax: (202) 616-8460
elizabeth.shapiro@usdoj.gov
Attorneys for the United States

Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION TO UNSEAL DOCKETS RELATED TO THE INDEPENDENT COUNSEL'S 1998 INVESTIGATION OF PRESIDENT CLINTON	Misc. No. 18-0019 (BAH)

STATUS REPORT OF FORMER PRESIDENT CLINTON

On February 16, 2018, the Court granted the motion to intervene of former President William Jefferson Clinton ("Movant"), and ordered that Movant provide by February 23, 2018, "his views as to whether the documents remaining under seal in the Miscellaneous dockets at issue may be unsealed." Feb. 16, 2018 Minute Order. On behalf of Movant, we hereby submit this Status Report in response to the Court's order.

Undersigned counsel has discussed with the Department of Justice ("Department") the obvious practical problem that, because the dockets at issue are sealed, Movant cannot at present meaningfully address their contents. Movant believes that a great deal of the material at issue has already been made public almost twenty years ago in the 211-page Starr Report[1], the two-volume, 3183-page Appendices to the Starr Report[2], and the three-volume, 4610-page

[1] Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c), House of Representatives Committee on the Judiciary (Sept. 11, 1998), House Document 105-310 (105th Cong., 2d Sess.).

[2] Appendices to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) Submitted by the Office of the Independent Counsel,

Supplemental Materials to the Starr Report[3]. However, there may be in the sealed dockets material that is still appropriately protected by Rule 6(e) of the Federal Rules of Criminal Procedure, and that is a judgment the Department necessarily needs to make in the first instance. We understand that the Department is now in the process of reviewing the voluminous sealed materials, and Movant has not objected to its request for an extension of time to complete this process. Without opposition, the Court has granted the Department an extension until March 22, 2018. As soon as the Department's review is completed, we believe it would be appropriate for the Department to notify Movant of any putatively protected Rule 6(e) materials that affect Movant, and to allow counsel to review these materials pursuant to appropriate confidentiality protections (*e.g.*, a non-disclosure agreement). Movant will then be in a position to give the Court knowledgeable notice (in a sealed pleading, as appropriate) of its views.

Movant further submits that there are additional sealed dockets which are closely related to those identified by Cable News Network, Inc. ("CNN") and which should now be unsealed. Movant requests that they be unsealed and respectfully submits that the Department should include these dockets in its review. These include *In re Grand Jury Proceedings*, Misc. No. 98-55 (D.D.C.) (under seal), *In re Grand Jury Proceedings*, Misc. No. 98-177 (D.D.C.) (under seal), and *In re Grand Jury Proceedings*, Misc. No. 98-228 (D.D.C.) (under seal).[4] These case files

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September 9, 1998, House of Representatives Committee on the Judiciary (Sept. 18, 1998), House Document 105-311 (105th Cong., 2d Sess.).

[3] Supplemental Materials to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code, Section 595(c) Submitted by the Office of the Independent Counsel, September 9, 1998, House of Representatives Committee on the Judiciary (Sept. 28, 1998), House Document 105-316 (105th Cong., 2d Sess.).

[4] After the Independent Counsel's investigation turned (in its fifth year) to the Lewinsky matter in January 1998, a great deal of confidential grand jury material from the Office of the Independent Counsel ("OIC") was exposed in the news media. *See, e.g.*, NBC Nightly News (2/4/98) ("[S]ources in Starr's office have told NBC News that the information Lewinsky's

contain materials relating to litigation between then-President Clinton and the OIC concerning improper disclosures ("leaks") by the OIC of grand jury material protected by Rule 6(e). Numerous rulings were made by Chief Judge Norma Holloway Johnson, and an appeal was taken by the OIC, resulting in an opinion that, with eight redactions, is publicly available. *In re: Sealed Case No. 98-3077*, 151 F.3d 1059 (D.C. Cir. 1998). This opinion (unlike the Starr Report and its voluminous appendices and supplements, *see* notes 1–3) describes with considerable factual detail the leaks litigation in the District Court. The Court of Appeals noted that the OIC "does not contest the district court's finding that the movants have satisfied their burden to establish a prima facie case [of Rule 6(e) violations] through the submission of various news articles indicating that information relating to grand jury proceedings or witnesses was obtained from sources associated with the [OIC] . . . ." *Id.* at 394. It remanded for the Rule 6(e) investigation to be conducted *in camera* by a special master.

The case for disclosure is further bolstered by the fact that the grand jury investigation at issue concluded nearly two decades ago. Moreover, the subject matter of this litigation did not

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lawyers were offering was simply not enough . . . . Sources in Starr's office . . . say they believe . . . . And they also tell us from Starr's office that they figure the most corroborating evidence . . . ."); NY Daily News (1/23/98) ("Prosecutors painted a different picture [of one witness' activities] . . . .); NY Post (1/27/98) ("[S]ources in Starr's office told me yesterday they had drawn up a subpoena [for an identified grand jury witness]"); NY Daily News (1/31/98) ("The decision to drop Monica Lewinsky from the Paula Jones case has no impact on the investigation . . . . a source in Whitewater counsel Kenneth Starr's office said yesterday"); NY Times (2/2/98) ("Some members of Mr. Starr's legal team are also concerned [about Lewinsky's proffer] . . . . But one lawyer insisted that the omissions 'are not significant.'"). On February 9, 1998, counsel for President Clinton filed a motion to show cause why the OIC should not be held in contempt for violating Rule 6(e), Fed. R. Crim. P. (Misc. No. 98-55); a second motion on May 6, 1998 (Misc. No. 98-177); and a third motion on June 16, 1998 (Misc. No. 98-228). The litigation over these motions was complicated and contentious and led to the OIC's appeal to the Court of Appeals, which resulted in *In re: Sealed Case No. 98-3077*, 151 F.3d 1059 (D.C. Cir. 1998). There were no leaks from these sealed Rule 6(e) proceedings.

involve consideration of secret grand jury materials but rather the improper disclosure of such information on the public record.

Respectfully submitted,

/s/ David E. Kendall

David E. Kendall (D.C. Bar No. 252890)
Katherine M. Turner (D.C. Bar No. 495528)
Stephen L. Wohlgemuth (D.C. Bar No. 1027267)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
dkendall@wc.com
kturner@wc.com
swohlgemuth@wc.com

Counsel for Former President Clinton

February 23, 2018

CERTIFICATE OF SERVICE

I, David E. Kendall, counsel for Former President Clinton, certify that, on February 23, 2018, a copy of this Status Report was filed via the Court's electronic filing system, and served via that system upon all parties required to be served.

/s/ David E. Kendall
David E. Kendall