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~~— UNDER SEAL —~~

January 29, 1999

Hon. Norma Holloway Johnson, Chief Judge
United States District Court for the
District of Columbia
Third Street and Constitution Avenue
Washington, D.C. 20001

Dear Chief Judge Johnson:

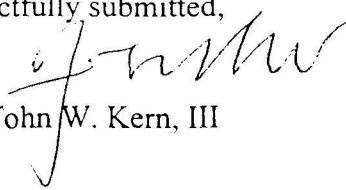
I hereby submit a final report on the Rule 6(e) inquiry you ordered to be undertaken by me as Special Master in your Order of September 25, 1998.

Enclosed is a copy of OIC's Concluding Statement, which it filed on December 23 to summarize its rebuttal evidence and arguments, and an article that OIC's counsel has asked me to add to the record. I have marked the article as SM Exhibit 12.

With these enclosures, it is our understanding that you have copies of all of the briefs and evidence submitted by OIC, all of the Special Master's exhibits, the transcripts of the hearing held in December, and the movants' October 15 submission. After we confirm that fact with your clerks, we would like to have the Court's permission to destroy our copies of those documents.

I also enclose statements reflecting the time expended by both me and my counsel, Mr. McMurray, and the administrative expenses we incurred in carrying out your Order.

Respectfully submitted,


Hon. John W. Kern, III

cc: Donald T. Bucklin (with final report) ✓

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
In re:)	Misc. Nos. 98-55, 98-77, and
)	98-228 (NHJ) (consolidated)
Grand Jury Proceedings)	
)	UNDER SEAL
_____)	

REPORT OF THE SPECIAL MASTER ON RULE 6(e) INQUIRY

PROCEDURAL BACKGROUND

1. Judge Johnson's September 25 Order

This matter concerns disclosures contained in twenty-four news reports published between January 23, 1998 and June 2, 1998¹ that Judge Norma Holloway Johnson, Chief Judge of the United States District Court for the District of Columbia, has found to be prima facie violations of Rule 6(e) of the Federal Rules of Criminal Procedure. In an Order to Show Cause issued on September 25, 1998 ("September 25 Order"), Chief Judge Johnson ordered the Office of Independent Counsel ("OIC") to show cause why it should not be held in contempt for these prima facie violations, and appointed the undersigned as a Special Master "to collect and review evidence" pertaining to them. September 25 Order at 20.

¹ The twenty-four news reports are compiled in a binder that has been designated SM ["Special Master's"] Ex. 1.

Chief Judge Johnson instructed the Special Master "to submit a report of his findings in order to assist the Court in determining whether the OIC has violated Rule 6(e)." Id.

In his final report, the Special Master shall detail the evidence that he has collected and assess whether members of the OIC have violated grand jury confidentiality in specific instances. The OIC will be afforded the opportunity to review and to respond in camera to the Special Master's final report.

Id.

The September 25 Order authorized the Special Master "to subpoena documents" from the OIC or other relevant parties, and "to gather testimony from present or former members of the OIC or any other relevant persons . . . whether through interviews of witnesses or pursuant to subpoena ad testificandum. Id. at 20-21. The Special Master was directed "to keep a record of all the evidence gathered for the Court's further review." Id. at 21.

As ordered by Chief Judge Johnson and the United States Court of Appeals for the District of Columbia Circuit,² this proceeding has been held ex parte and in camera - that is, without the movants' direct participation. The Chief Judge, however, invited the movants "to submit proposed questions directed to [OIC] that pertain to the alleged Rule 6(e) violations." However, any questions so proposed would be solely

² In Re: Sealed Case, 151 F.3d 1059, 1075 (D.C. Cir. 1998).

for the Special Master's guidance, and the Special Master would not be obligated to ask them. Id.

2. The Special Master's Inquiry

On October 15, 1998, the movants submitted three binders and a file of questions and supporting materials, which the Special Master has reviewed and used as guidance as he has deemed appropriate.

On November 2 and November 30, 1998, OIC filed written submissions intended to rebut the twenty-four prima facie violations identified by the Court.³ The submissions included briefs, affidavits from all 141 OIC personnel employed from January 1 through August 1, 1998, and a substantial body of documentary evidence. The Special Master has reviewed all of the evidence submitted by OIC.

The Special Master held an in camera hearing on December 14-16, 1998 receiving testimony from four OIC attorneys with particularized knowledge of OIC's press practices and the circumstances surrounding some of the prima facie violations at issue.⁴ Counsel for OIC was present at the hearing. The Special Master found all four witnesses to be credible and forthcoming

³ The November 2, 1998 submission addressed the nine prima facie violations that were not the subject of a motion for reconsideration that OIC filed concerning the September 25 Order. After the Court denied the motion for reconsideration, the Special Master ordered the OIC to file its rebuttal of the remaining fifteen prima facie violations.

in their testimony. OIC filed a written Concluding Statement, summarizing its evidence and legal points, on December 23, 1998.

In addition to the written submissions, testimony and documentary evidence received from OIC, the Special Master also pursued certain other evidence, as described below in connection with a few specific News Reports.

RULE 6(e), FEDERAL RULES OF CRIMINAL PROCEDURE

1. The Scope of Rule 6(e)

Rule 6(e)(2) of the Federal Rules of Criminal Procedure provides in relevant part:

[A]n attorney for the government, or any person to whom disclosure is made under paragraph 3(A)(ii)⁵ shall not disclose matters occurring before the grand jury, except as otherwise provided by this rules. . . . A knowing violation of Rule 6(e) may be punished as a contempt of court.

It is fundamental that "the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings. Douglas Oil Co. of California v. Petrol Stops Northwest, 441 U.S. 211, 218, 99 S.Ct. 1667 (1979). Grand jury secrecy is "a

⁴ Those witnesses were [redacted] Jackie Bennett, Michael Emmick, Stephen Binhak and [redacted]

⁵ Rule 6(e)(3)(A)(ii) provides:

FOIA(b)(6)
FOIA(b)(7) - (C)

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to -

* * *

(ii) 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.

long-established policy . . . older than our Nation itself."

Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395, 399, 79 S.Ct. 1237 (1959). There are several reasons supporting this practice.

First, 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 full 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 by or exonerated by the grand jury will not be held up to public ridicule.

Douglas Oil Co., 441 U.S. at 219, 99 S.Ct. at 1667. Maintaining grand jury secrecy also helps to assure that the grand jury's deliberations and decisions are made free of outside influences and pressures. Lance v. United States, 610 F.2d 202, 213 (5th Cir. 1980).

The D.C. Circuit has described the scope of Rule 6(e) as follows:

[T]he scope of the secrecy is necessarily broad. 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 deliberations or questions of the jurors, and the like."

Fund for Constitutional Govt. v. National Archives and Records Service, 656 F.2d 856, 869 (D.C. Cir. 1981), quoting SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1382 (D.C. Cir. 1980) (en banc). The protection afforded to "matters occurring before the grand jury" extends "not only [to] what has occurred and what is occurring, but also what is likely to occur." In Re Motions of Dow Jones & Company, Inc., 142 F.3d 496, 500 (D.C. Cir. 1998); accord Lance, 610 F.2d at 216-17.

There are certain legal principles concerning Rule 6(e) that are particularly applicable to the facts of this case. First, while public dissemination of protected information does not automatically remove it from Rule 6(e) protection, there comes a point at which widespread public knowledge will do so. See Dow Jones, 142 F.3d at 505. That point comes, for instance, when a witness's own attorney makes public pronouncements revealing otherwise protected information. Id.

Second, discussions of actions taken by law enforcement officials, such as "a recommendation by [government attorneys] that an indictment be sought against an individual, does not reveal any information about matters occurring before the grand jury." Lance, 610 F.2d at 217 and n.5.

Third, we must bear in mind that Rule 6(e) does not apply to anyone not enumerated in the Rule. Thus, grand jury witnesses and their attorneys or other representatives face no

sanctions under Rule 6(e) for disclosing grand jury information to the media or to anyone else. Id. at 217. As will be discussed further below, a number of individuals not covered by Rule 6(e) took full advantage of their freedom to discuss their knowledge of the evidence in the case, their contacts with the grand jury and/or their contacts with OIC.

Finally, Rule 6(e) is not so strict as to forbid prosecutors involved in a grand jury investigation from engaging in any press contacts whatsoever. It only forbids disclosure of matters occurring before the grand jury. The high-profile nature of an investigation sometimes compels prosecutors to speak to reporters or directly to the public about their actions - albeit in a way that does not disclose matters occurring before a grand jury.

For instance, accusations of prosecutorial misconduct or personal attacks on prosecutors undermine the integrity of the government's activities and may warrant a limited response. Holder and Ohlson, Dealing with the Media in High-Profile White Collar Crime Cases: The Prosecutor's Dilemma, White Collar Crime, at B-1 to B-2 (1995).

Another valid reason for a prosecutor to speak with the press is to obtain leads from reporters who have knowledge that the prosecutor does not have. OIC at times obtained leads from reporters that aided its investigation. Starr Decl. SM Ex. 2,

Tab 1, para. 24. In short, talking to the press is not in and of itself a Rule 6(e) violation. But, as this matter demonstrates, doing so may have negative consequences.

2. Rule 6(e) Show Cause Proceedings

The D.C. Circuit has adopted specific procedures for conducting a Rule 6(e) inquiry. First, the movants must make a prima facie showing 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.

Barry v. United States, 865 F.2d 1317, 1321 (D.C. Cir. 1989) quoting United States v. Eisenberg, 711 F.2d 959, 963 (11th Cir. 1983); In Re Sealed Case, 151 F.3d 1059, 1066 (D.C. Cir. 1998). Once a prima facie showing is made, the district court must hold an in camera, ex parte show cause hearing at which the government bears the burden of coming forward with sufficient evidence to negate the prima facie case. Id. at 1066, 1075.

With the burden now upon OIC to address the prima facie case against it, the Court of Appeals has ruled that OIC:

must negate at least one of the two prongs of the prima facie case - by showing either that the information disclosed in the media reports did not constitute "matters occurring before the grand jury" or that the source of the information was not the government

Id.

There are many ways it may do so. By way of example only, a government agency may (1) submit sworn affidavits from the relevant attorneys or investigators denying that they were the source of the disclosures, (2) present evidence as to the actual source of the disclosure, or (3) demonstrate that the information disclosed was inaccurate and therefore unlikely to have come from government personnel with actual knowledge of the grand jury investigation. See Barry v. United States, 740 F.Supp. 888, 890-94 (D.D.C. 1990). OIC has submitted these and other types of evidence to assist in its rebuttal of the prima facie case against it.

FACTUAL BACKGROUND

1. OIC And Its Policies Prior To The Lewinsky Matter

In early January, 1998, the Washington D.C. office of OIC consisted of approximately sixteen attorneys and a similar number of support staff. Tr. 117. The office worked with a grand jury that had been empanelled in late 1997 to investigate the "Travelgate" and "Filegate" matters. Tr. 85-86. OIC also ran an office in Little Rock, Arkansas, which was conducting a grand jury investigation into the "Whitewater" matter and whether Webster Hubbell, a former high-ranking Justice Department official, received anything of value to insure his silence concerning the Whitewater matter. Tr. 84-85.

When Kenneth Starr first became Independent Counsel, he took steps to limit his office's press contacts by authorizing a specific Deputy Independent Counsel to screen and respond to all media inquiries. Starr Decl., SM Ex. 2, Tab 1, para. 5. Under this policy, no other OIC employees could speak to the press without specific authorization. Id., para. 6. When the Lewinsky matter broke, the responsibility for press relations was held by Jackie Bennett, who was also in charge of the day-to-day operations of the Washington office. Id., para. 5; Bennett Decl., SM Ex. 2, Tab 2, para. 3; Tr. 83, 88, 126.

Mr. Bennett has been a federal prosecutor for thirteen years, and in 1994 received the Department of Justice's John Marshall Award for trial litigation. Tr. 315. By his own admission, however, handling the media was not "what I was trained for." Tr. 123-24. Indeed, his training was mostly on-the-job, observing his predecessor, John Bates, handle press calls. Tr. 89-93.

Consistent with the practice of his predecessors, Mr. Bennett generally spoke to the media "off the record," which he understood to mean that the reporter (1) could not report anything in his exchange with Mr. Bennett and (2) could not use information gained from that exchange to confirm other information obtained from someone else. Bennett Decl., SM Ex. 2, Tab 2, para. 13. Bennett also believed that by beginning a

conversation with a reporter off the record, he could determine exactly what information was being sought and whether such information could be revealed. Id., para. 15. He described his task as "verbal ju-jitsu", saying as little as possible yet answering press questions consistent with Justice Department policy and Rule 6(e). Tr. 91-92.

Prior to January 21, 1998, the OIC Washington office received less than half a dozen telephone calls each week from the media. Tr. 21. When the number of press inquiries thereafter rocketed upwards, OIC sought someone with media experience to handle them, eventually hiring Charles Bakaly, III in April 1998 to undertake that task. Bennett Decl., SM Ex. 2, Tab 2, para. 8. The Special Master notes that the great majority of the prima facie violations at issue in this inquiry occurred prior to Mr. Bakaly's employment.

During the time period relevant to this inquiry, OIC had measures in place to assure that its personnel understood the importance of their Rule 6(e) obligations. As a general matter, all OIC employees were required to sign a statement agreeing to follow the secrecy requirements of Rule 6(e), and to sign a separate confidentiality agreement prohibiting them from discussing, relaying or disclosing any information regarding the OIC investigation to anyone outside the OIC. Id., para. 4, and Tabs B-C.

Internal OIC memoranda and press releases have reiterated OIC's policy of confidentiality. For instance, on April 16, 1996, then-Deputy Independent Counsel John Bates issued a memorandum reminding all OIC staff of their Rule 6(e) obligations, and further advising them that they should be guided by applicable ethics rules and DOJ policies regarding the disclosure of investigative information. Id., para. 4 and Tab A. The memorandum explained that those rules "generally forbid public statements regarding a grand jury or other pending criminal investigation beyond what is necessary to confirm the existence and general scope of an already public investigation." SM Ex. 2, Tab 13.⁶

Certain OIC press releases issued prior to January 1998 contained language to the effect that:

It is the normal practice of the Office of the Independent Counsel not to comment on any aspect of our investigation, including any reports which may appear in the media.

A statement of "no comment" neither affirms nor denied the substance of the question posed. That will continue to be this Office's practice to ensure the integrity and confidentiality of the investigation.

⁶ In June 1998, Mr. Bennett recirculated the 1996 memorandum authored by Mr. Bates because Mr. Bennett felt it appropriate to do so "as the press intensity on OIC grows . . ." SM Ex. 2, Tab 2, Tab D.

SM Ex. 8; see also SM Ex. 7. Likewise, a press release issued on January 21, 1998, the day that the Lewinsky matter became public, stated:

Because of confidentiality requirements, we are unable to comment on any aspect of our work.

SM Ex. 6.

As we will see below, OIC's press policies and practices were placed under severe strain after the Lewinsky matter exploded onto the public scene.

2. The Press Deluge

On Monday, January 12, 1998, a series of events occurred that not only transformed dramatically the operation of OIC in Washington, but resulted in the impeachment of the President of the United States some eleven months later.

A federal government employee, Linda Tripp, contacted OIC on that day and asserted that she had information suggesting (1) that the President and Vernon Jordan were counseling another federal employee, Monica Lewinsky, to answer questions falsely in the Paula Jones civil action, (2) that Mr. Jordan, allegedly on the President's behalf, was attempting to obtain new employment for Ms. Lewinsky, and (3) that Ms. Tripp had recorded a series of conversations with Ms. Lewinsky that described what was taking place. Bennett Decl., SM Ex. 2, Tab 2, para. 32; Tr. 216-17.

With Ms. Tripp's approval, the OIC arranged for a special FBI team to place a recording device on her body and accompany her to a meeting on Tuesday, January 13 with Monica Lewinsky. Bennett Decl., SM Ex. 2, Tab 2, para. 33. In the view of OIC, the involvement of Jordan in providing job assistance to someone who had apparently testified falsely (and favorably) in the President's on-going litigation bore a striking resemblance to Jordan's alleged role in assisting Webster Hubbell to obtain lucrative business contracts subsequent to his alleged unwillingness to assist in the Whitewater matter. Tr. 379-82.

On Thursday, January 15, 1998, OIC attorneys briefed high officials in the Department of Justice about what was afoot, and discussed whether further investigation of the alleged witness tampering should be undertaken by OIC. Tr. 216-19. On the same date, both OIC attorneys and a DOJ attorney began to listen to the contents of the body-wire tape. Tr. 219-20, 376-82.

On Friday, January 16, 1998, DOJ informed OIC that it would seek expansion of OIC's jurisdiction from the Special Division of the United States Court of Appeals for the District of Columbia Circuit. Bennett Decl., SM. Ex. 2, Tab 2, para. 35. That same day, the Special Division granted OIC authority to investigate "whether Monica Lewinsky or others suborned perjury, obstructed justice, [or] intimidated witnesses . . . in the

civil case of Jones v. Clinton." Starr Decl., SM Ex. 2, Tab 1, para. 2.

Later that day, OIC attorneys confronted Ms. Lewinsky at the Ritz Carlton Hotel in the Pentagon City Mall to seek her cooperation in the investigation. This meeting with Ms. Lewinsky is addressed further below in connection with News Report 12.

In the meantime, an investigative reporter for Newsweek magazine, Michael Isikoff, revealed to OIC on approximately January 15 that he knew of Ms. Tripp's allegations and the contents of certain of her tapes, that he knew of the body wire interception even before it was going to take place, that he intended to seek comment not only from OIC, but also from the White House and Mr. Jordan, and that a story would be published imminently. Recognizing that such contacts would destroy the investigation, OIC spent a significant amount of time and energy to convince Newsweek to delay publication. Newsweek temporarily agreed to do so. These events are discussed in greater detail in connection with News Report 9.

On Saturday, January 17, 1998, President Clinton gave a deposition in the Paula Jones case in which he was asked by Ms. Jones' lawyers, among other things, about his relationship with Ms. Lewinsky. Tr. 270.

Given this swirl of activity, and the number of people with knowledge about the allegations of the President's affair with Ms. Lewinsky, it was inevitable that the matter would become public. It first saw publication in the so-called Drudge Report, an internet gossip column, on approximately January 19, 1998. The mainstream media shortly picked up the story, and the press frenzy was on.

The Special Master can confidently take judicial notice that, commencing approximately January 21, 1998, the airwaves and print media were saturated daily with stories about the alleged relationship between the President and Ms. Lewinsky, the expansion of OIC's jurisdiction and subsequent grand jury investigation, Linda Tripp's tapes of Monica Lewinsky, immunity discussions between OIC and Ms. Lewinsky's attorneys, and a host of other related matters. Media trucks and reporters surrounded the United States Courthouse in which the grand jury sat. The comings and goings of grand jury witnesses were chronicled in detail and broadcast for the world to see.

3. Multiple Sources Disclosed Information To The Press

In the days and weeks following the initial public disclosure of the allegations against the President, it is clear that the press was receiving and disseminating a great deal of information about the Lewinsky matter, and about OIC's involvement in the investigation - some of it true and some of

it false. The difficulty is in determining whether OIC was the source for any of it.

In analyzing that question, it is important to understand that there were many individuals outside of OIC who, at the time that the articles at issue here were published, had intimate - even superior - knowledge about the Lewinsky matter, and about OIC's activities. Many of these individuals made no secret of their inside knowledge or their willingness to disclose it to the press.

For instance, Ms. Lewinsky's attorney, Williams Ginsburg, became a media fixture almost immediately after the Lewinsky story broke. He talked to the press routinely about such matters as how his client was treated when OIC first confronted her at the Ritz Carlton Hotel on January 16, 1998, and the status of immunity negotiations between his client and OIC. See, e.g., SM Ex. 2, Tabs 23, 35-39.

Linda Tripp was another key player with first hand knowledge of the Lewinsky matter. She taped her conversations with Monica Lewinsky and thus knew their contents well. Likewise, she had knowledge of the so-called "talking points" because she was the one to whom they were directed.

Ms. Tripp was represented by literary agent Lucianne Goldberg, with whom Ms. Tripp shared the details of her conversations with Ms. Lewinsky. Ms. Tripp provided Ms. Goldberg

with at least two of the tapes as early as October of 1997, and Ms. Goldberg arranged for Ms. Tripp to meet with Mr. Isikoff of Newsweek that same month. Ramey Decl., SM Ex. 2, Tab 8, para 3. As a result, Ms. Isikoff knew about the Lewinsky matter well in advance of OIC. Ms. Goldberg has proudly admitted not just to leaking information to the press, but to "pouring it out in buckets." Ramey Decl., SM Ex. 2, Tab 8, para. 2; see also SM Ex. 3, Tab 19 (Nov. 17, 1998 Washington Post article).

Certain of Ms. Tripp's attorneys also were in contact with the press during the time period relevant to this inquiry. One of her attorneys played at least one of the tapes for Newsweek employees in Newsweek's offices in the early morning hours of January 16 - before the story became public. Ramey Decl., SM Ex. 2, Tab 8, paras. 5-6. Subsequent attorneys for Ms. Tripp, who were present at Ms. Tripp's OIC debriefings and preparation for her grand jury testimony, were also in contact with the press and participating in radio talk shows. Tr. 403-412.

It is also clear from the questions asked by Paula Jones's attorneys at President Clinton's deposition that someone had briefed those attorneys about intimate details surrounding the President's affair with Ms. Lewinsky prior to January 17, 1998 - that is, before the Lewinsky matter even became public.

Certain details of OIC's investigation were also known to employees of the Department of Justice and of the FBI who were

not assigned to OIC and over whom OIC had no control. Indeed, in connection with News Reports 14 and 17, OIC strongly suggests that the sources of certain disclosures were the Department of Justice and the FBI, respectively.

OIC also alleges that White House attorneys and President Clinton's personal attorneys debriefed grand jury witnesses or their counsel pursuant to joint defense agreements, thus further increasing the number of individuals with knowledge of the grand jury's proceedings. OIC Br. at 5-6. OIC's proof as to this allegation is based largely on newspaper articles, and we make no finding as to its truth. But, the fact remains that there were many individuals outside of OIC providing the press with detailed inside information about the Lewinsky matter and OIC's investigation of it. A reporter could accurately refer to Mr. Ginsburg, Ms. Goldberg, Ms. Tripp and others as "sources close to the investigation," or "sources with knowledge of the investigation," or similar appellations that were used in many of the articles at issue here.

4. OIC's Response To The Media Frenzy

When OIC suddenly became the target of intense press scrutiny and a tidal wave of requests for information (Bennett Decl., SM Ex. 2, Tab 2, para. 7; Tr. 121-22), it was overwhelmed by, and unprepared for, the onslaught. As a result, OIC's

attempts to respond to them were at times ad hoc, clumsy, unwise, and inconsistent with OIC's declared policies.

Instead of five or six calls a week, OIC began to receive hundreds of press calls per day. Tr. 121-22. A staff person in OIC's Little Rock office was assigned to the Washington office to receive press inquiries and enter them into a log. Bennett Decl., SM Ex. 2, Tab 2, para. 6; Tr. 122-23. Mr. Bennett engaged in a "sort of triage" answering only those calls he deemed necessary to answer. Tr. 134.

A large portion of the flood of press inquiries concerned rumors about the personal lives of certain OIC attorneys. Bennett Decl., SM Ex. 2, Tab 2, paras. 16; Tr. 133, 137-46. Mr. Bennett spent a great deal of time in off the record contacts with members of the press attempting to dissuade them from publishing these rumors. Id. He reasonably believed that failure to respond to the personal attacks on the attorneys in his office "would have been incredibly demoralizing" to his staff. Tr. 142.

Instances of some questionable decisions that appeared to result from OIC's efforts to deal with the overwhelming volume of press calls are discussed below in connection with certain of the news reports at issue. In general, however, it is plain to the Special Master that the practice of handling all press calls

off the record, while at times appropriate - such as when the press was inquiring into rumors about the personal lives of OIC attorneys - made OIC an easy target for allegations that it was leaking information. Indeed, when this practice was highlighted in the Brill Pressgate article (News Report 6), it provided strong support for the movants' claims against OIC.

We note also that OIC's attempt to respond to the mass of press inquiries was contrary to the statements in its press releases that OIC generally does not respond to press inquiries. Tr. 180-83. This inconsistency again made OIC a target for allegations that it was "leaking" information and acting surreptitiously.

It appears that the policy of controlling all press contacts by funneling them through Mr. Bennett also partially broke down under the strain. One OIC attorney testified that he was authorized - and that he believed that authorization came from Judge Starr - to speak to certain reporters, for instance, to explain a legal position or to rebut allegations that Judge Starr was "some sort of right-wing fanatic." Tr. 340-42. This same OIC attorney, perhaps confused about to whom he was authorized to speak, violated OIC's policies and engaged in certain unauthorized contacts with at least one other member of the press in late January and early February of 1998. These

unauthorized contacts are discussed in connection with News Report 20, below.

While the Special Master concludes that this OIC attorney did not violate Rule 6(e) in connection with the disclosures of the information at issue in News Report 20, it is also a matter of concern that OIC did not conduct an adequate investigation to determine the true scope of his unauthorized contacts once they were partially uncovered. This failure is also discussed in connection with News Report 20.

5. DOJ's Refusal To Conduct A Leak Investigation

OIC's failure to follow up on the unauthorized contact of the OIC attorney does not mean, however, that OIC turned a blind eye to the movants' allegations against it. Shortly after counsel for the President first complained to the OIC about leaks in early February 1998, Judge Starr and Mr. Bennett asked the Department of Justice to have DOJ's Office of Professional Responsibility conduct a leak investigation. DOJ declined to do so. Starr Decl., SM Ex. 2, Tab 1, paras. 19-20; Tr. 95-104. When asked by OIC again several weeks later, DOJ again declined. Tr. 96-97.

The Special Master is troubled by DOJ's response to what may fairly be termed as a law enforcement crisis. The integrity of OIC and its investigation were brought into serious question by the movants' allegations that the OIC was leaking grand jury

information. The Special Master has not questioned DOJ officials on their reasons for refusing to act, as it is not essential to his conclusions on whether OIC has rebutted the case against it. DOJ's decision not to act, however, allowed the leak allegations to continue unresolved, thus necessitating this time-consuming show cause proceeding, or at least depriving the Special Master and the Court of the benefits of DOJ's expertise in conducting leak investigations.

THE SPECIAL MASTER'S ANALYSIS OF THE PRIMA FACIE VIOLATIONS

We turn now to analysis of each of the twenty-four news reports at issue.

1. Thomas Galvin, Monica Keeping Mum - For Now Fends Off Query On Intern-al Affairs, New York Daily News, Jan. 23, 1998.

The portions of the report that the Court has identified as prima facie violations include:

Prosecutors painted a different picture. "Monica says . . . that she dealt directly with the President, who set the assistance in motion," one lawyer said, speaking on condition of anonymity.

* * *

Meanwhile, a source close to Starr said investigators are waiting to see whether Lewinsky wants to cut a deal in exchange for immunity. If she does, the case could be wrapped up in months. If not, the investigation could take a year.

* * *

Starr wanted to launch a sting to catch Clinton and Jordan telling Lewinsky to lie about her alleged affair

with the President. Sources familiar with the probe said Starr wanted the ex-intern to wear a secret recording device and discuss first with Jordan and then with Clinton why she should lie to Jones' lawyers.

Every current and former OIC employee has sworn under oath that he or she is not the source of these disclosures.

In addition, OIC logs showed that Mr. Galvin called OIC's office on January 22, 1998 - the day before the article was published - and received a "no comment" to his inquiry into whether OIC had intended to tape President Clinton and Mr. Jordan. Gershman Decl., SM Ex. 2, Tab 7, para 7; Bennett Decl., SM Ex. 2, Tab 2, para. 41 and Tab H.

OIC also argues that the portion of the article stating that OIC intended to launch a sting designed to record conversations between Ms. Lewinsky and President Clinton or Mr. Jordan is inaccurate - and therefore that OIC was not the source - because OIC had no such intention. Bennett Decl., Ex. 2, Tab 2, paras. 39-40; Tr. 201-05.

OIC's sworn rebuttals, the "no comment" given to Mr. Galvin when he called on January 22, and the inaccuracy of the "sting"

allegation are sufficient to rebut the prima facie conclusion that OIC was the source of the disclosures in this article.⁷

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

This article discusses the status of immunity negotiations between OIC and Ms. Lewinsky. It identifies the source of the information as "lawyers involved in the talks" or "lawyers involved in the case." The thrust of the article is that OIC was allegedly dissatisfied with Ms. Lewinsky's proffers⁸ because it did not contain certain "snippets" of evidence that "one lawyer" insisted "are not significant."

All OIC personnel state under oath that they were not the source of the information in this article.

Furthermore, the information disclosed is inaccurate. OIC did not believe that the missing information was insignificant. Bennett Decl., Ex. 2, Tab 2, para. 45. But, that was certainly consistent with Mr. Ginsburg's position.

⁷ OIC also takes Mr. Galvin to task for sloppy reporting and for lifting the first disclosure from an Associated Press article written by Pete Yost that had appeared the day before. The Yost article, however, suggested that the information came from Linda Tripp's tapes which, by that time, were in the hands of numerous people outside of OIC. We see no need to explore that argument further, except to comment that Mr. Bennett also denies speaking with Mr. Yost about the disclosures at issue in this article. Tr. 214-15.

⁸ It is important to note that at this point, the proffers consisted only of Ms. Lewinsky's written proffer, and Mr. Ginsburg's oral proffer. At the time of the article, no interview of Ms. Lewinsky had yet taken place. Bennett Decl., Ex. 2, Tab 2, paras. 42, 45.

Evidence suggesting that Mr. Ginsburg, who participated in the settlement discussions, was the source for the article is also found in the fact that he used the word "snippets" in five separate television interviews around the same time period. See Ex. 2, Tabs 35-39. This use of the same colloquialism tends to suggest that the article in question was quoting Mr. Ginsburg.

In light of OIC's sworn denials, the inaccuracy of the information, and the evidence suggesting that Mr. Ginsburg was the source of the information in the article, the Special Master finds that OIC has successfully rebutted the prima facie case against it as to this article.

3. Claire Shipman, Ken Starr Rejects Lewinsky's Immunity Deal Saying Her Information Is Not Enough As More Information About Tripp Memo Surfaces, NBC Nightly News, Feb. 4, 1998.

Three separate portions of this report are at issue:

[1.] Well, first of all, the Associated Press is reporting tonight that Ken Starr's office has rejected an immunity deal put forward by Monica Lewinsky's lawyers, and sources in Starr's office have told NBC News that the information Lewinsky's lawyers were offering was simply not enough. They say as - that had been the case all along, they say. The two sides aren't even on the same page. They don't rule out an eventual deal, but they say right now Starr wants to focus on accelerating his investigation.

* * *

[2]. Sources in Starr's office and close to Linda Tripp say they believe the instructions [i.e., the "talking points"] came from the White House. If true, that could help support a case of obstruction of justice. But sources also tell NBC New Lewinsky has

not agreed to discuss any of that with Starr. . . .
[3.] One theory, Lewinsky wrote it on her computer, but with the help of someone else, most likely a lawyer. Sources say that's one reason why Ken Starr seized Lewinsky's computer. And they also tell us from Starr's office that they figure the most (sic) corroborating evidence they gather, either that helps their case against the president, or it will help make a better deal with Monica Lewinsky.

With respect to the first item, Mr. Bennett recalls that Ms. Shipman called him to say that Mr. Ginsburg had informed her that immunity negotiations had broken down because OIC was being "unreasonable". Mr. Bennett responded to Ms. Shipman, off the record, that OIC was not being unreasonable, and that the problem was Mr. Ginsburg's refusal to provide sufficient information on which to make an informed decision. Mr. Bennett may have said something to the effect that the two sides were "not on the same page," although he does not recall the precise words he used to make that point. Bennett Decl., Ex. 2, Tab 2, para. 48; Tr. 235-40.

Mr. Bennett's limited response to the public statements of Mr. Ginsburg that OIC was being unreasonable does not constitute a violation of Rule 6(e). While one may argue whether it was wise to respond to these accusations in an ad hoc, off the record manner, Mr. Bennett's comments did not reveal any actual or potential grand jury testimony or the contents of the proffer. Tr. 243-44. Disclosure about a government agency's attempts to bargain with a witness does not constitute a Rule

6(e) violation. Lance v. United States, 610 F.2d at 217 and n.5.

As for the other two disclosures, Mr. Bennett denies having spoken to Ms. Shipman about either the talking points or the consensual search of Ms. Lewinsky's apartment. Bennett Decl., Ex. 2, Tab 2, paras. 52, 55; Tr. 242-43, 250. The declarations of all other OIC personnel also deny that they were the source of these disclosures.

There is further evidence of the unreliability of Ms. Shipman's suggestion that OIC was the source of the second and third disclosures. After watching Ms. Shipman's report on the NBC Nightly News, Mr. Bennett became angry that Ms. Shipman had identified OIC as her source. Tr. 244-47. He telephoned Ms. Shipman immediately after the story aired. Tr. 244-47. Ms. Shipman denied that she had attributed the information to OIC, and offered to fax her script to OIC to prove the point. Tr. 247. Bennett Decl., SM Ex. 2, Tab 2, paras. 52-55; Tr. 246. The faxed script is contained at Tab J to Mr. Bennett's Declaration (SM Ex. 2, Tab 2). The script does not attribute the disclosures about the talking points or the search of Ms. Lewinsky's apartment to OIC.

Rather, with respect to the talking points, the script states that "sources close to Starr's office wonder whether the instructions came from the White House." Bennett Decl., SM Ex.

2, Tab 2, Tab J. Potential sources outside OIC who had knowledge of the talking points and who could be described as "close" to OIC - in the sense that they were in contact with OIC attorneys - included Mr. Ginsburg and Ms. Tripp. Bennett Decl., SM Ex. 2, Tab 2, para. 54.

Likewise, Ms. Shipman's script attributes the information about the search of Ms. Lewinsky's apartment to "sources," not to someone "from Starr's office. Again, a "source" with knowledge could include Mr. Ginsburg, with whom OIC attorneys had discussed the consensual search. See Binhak Supp. Decl., Ex. 3, Tab 12, para. 11.

Because of Ms. Shipman's very specific reference to the OIC as a source of her story, and because at least some of the information disclosed was subject to Rule 6(e), the Special Master contacted Ms. Shipman to request her cooperation in this inquiry. After conferring with NBC's management, Ms. Shipman declined to do so. Given the small chance of success in compelling a reporter to reveal her sources, and given the evidence provided by OIC, the Special Master did not pursue Ms. Shipman's testimony further.

The denials of OIC and the discrepancies between Ms. Shipman's script and her on-air identification of her sources

are sufficient to rebut the prima facie case regarding the second and third disclosures in this article.⁹

4. Fox News Broadcast, May 6, 1998.

This newscast reported, as did other media sources, that when asked to comment about the Court's May 4 executive privilege opinion, Mr. Starr said "magnificent."

Mr. Starr's affidavit contains an apology to the Court, and explains the inadvertence of the remark .

These events provide the background for my brief comment on the morning of May 6, 1998 in my driveway. I had seen news reports on the executive privilege opinion the evening before. I had read comprehensive coverage about the opinion in four morning newspapers. A crowd of media, larger than the usual morning contingent I had come to expect, was outside my house. As I was getting into my car, the questions rang out from the media. I responded on the spur of the moment, without consideration for the meaning or effect of my words. On reflection, my position should have remained "no comment," notwithstanding the extensive publicity already given the Court's opinion.

My statement was a mistake. It was a momentary lapse. I sincerely apologize to the Court for this spur of the moment error, and I respectfully ask for the Court's indulgence. My comment was in no way intended to run afoul of the Court's sealed order or Rule 6(e).

⁹ Mr. Bennett also produced for the Special Master's review a memorandum to the file dated October 30, 1998. SM Ex. 9; Tr. 248-49. The memorandum reflects a telephone call to Mr. Bennett's home by a USA Today reporter, Tom Squitieri, who told Mr. Bennett's wife that he was calling on behalf of Claire Shipman who had just learned of Judge Johnson's show cause ruling, and who wanted Mr. Bennett to know that she had never identified OIC as a source. Mr. Bennett thought this was curious, given her February 4 broadcast in which she clearly identified OIC as a source. The Special Master places no weight on this quadruple hearsay, but merely brings it to the Court's attention.

Mr. Starr's comment was injudicious and understandably vexing to the Court, which had placed the order under seal. However, it is outside of the Special Master's mandate to address whether Mr. Starr's mistake violated an order of the Court.

As for Rule 6(e), OIC argues that the Court's opinion had already been reported widely on the evening news and in the subsequent morning's newspapers. Specifically, the night before his remark, ABC, NBC and CBS all ran lead stories, albeit somewhat sketchy on details, about the opinion and that the opinion was favorable to OIC. See SM Ex. 2, Tabs 44-46. Major newspapers gave front page coverage to the opinion the next morning. SM Ex. 3, Tabs 4-7. Because of these numerous media reports in the hours before Mr. Starr's remark, OIC takes the position that the Court's opinion and its content had lost its status as protected Rule 6(e) material.

The Special Master, however, need not reach the issue of whether sketchy information that has been publicly known only for hours loses its Rule 6(e) status. Rather, the Special Master concludes that the remark, which revealed little of substance, was inadvertent and therefore not a "knowing" violation of Rule 6(e). See U.S. v. Bellomo, 944 F.Supp. 1160, 1168 (S.D.N.Y. 1996).

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

This report stated, among other things, that:

Investigators have spent months checking out Tripp's story and now claim she is, quote, "completely reliable."

OIC personnel uniformly deny under oath being the source of this information. Furthermore, as discussed above, the fact that Ms. Tripp was meeting regularly with OIC investigators was a fact well-known to many others, including Tripp's own representatives.

Finally, the story itself states that "[t]he independent's (sic) counsel's office refused to comment on this story tonight" This suggests that OIC was not the source of the story.

Based on these facts, the Special Master concludes that OIC has offered a successful rebuttal as to this media report.

6. **Steven Brill, Pressgate, Brill's Content, Aug. 1998.**

This is a long article based in part on an interview with Judge Starr. Of particular concern to the Court was the admission, confirmed by the evidence gathered in this inquiry, that certain OIC attorneys, particularly Mr. Bennett, were in regular off the record contact with reporters to discuss matters concerning the investigation.

The Court's September 25 Order at 7, n.3, states:

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.

We have already discussed our concerns about OIC's practice of routinely responding to press inquiries off the record. However, because this article was not in and of itself a prima facie 6(e) violation, no ruling on OIC's proffered rebuttal is required.

7. David Bloom, Newest Clinton Sex Scandal Causing Republican Calls For Impeachment, NBC Nightly News, Jan. 21, 1998.

The portion of this report that the Court has found to be a prima facie violation reads as follows:

Tonight, federal law enforcement sources tell NBC News they're prepared to offer the young former 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."

All OIC employees deny under oath that they were the source of this disclosure. We find these denials constitute sufficient rebuttal. We note further that, as discussed below in connection with News Report 14, there were other "law

enforcement" personnel outside of OIC who, by this time, had detailed knowledge of the investigation.¹⁰

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, Jan. 22, 1998.

The Court found the following language to constitute a prima facie violation of Rule 6(e):

Prosecutors 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."

As with the previous news report by David Bloom, all OIC personnel deny that they were the source of this disclosure. The Special Master finds these sworn denials sufficient to rebut the prima facie case, but also notes that, as with the prior

¹⁰ OIC has submitted as evidence the transcript of a television program in which Mr. Bloom denied that he ever spoke with Mr. Bennett about the OIC investigation. SM Ex. 3, Tab 22; see also SM Ex. 2, Tab 49 (Washington Post article containing denial by Bloom that "Starr's deputy" had briefed him when the Lewinsky matter broke). This hearsay evidence is entitled to no particular weight, but is merely brought to the Court's attention for its information.

news report, there were government "prosecutors" outside of OIC who had knowledge of the so-called "talking points."

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

This article is a description of how the Lewinsky matter became public. The portions of article that the Court has found to be prima facie violations of Rule 6(e) are:

It's 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.

Mr. Bennett readily admits to talking to Michael Isikoff prior to the publication of this article, but not to being the source of any discussion about the talking points or about the negotiations between OIC and Ms. Lewinsky's attorneys. Rather, his purpose was to implore Mr. Isikoff and Newsweek to delay

publishing his article so that it would not destroy OIC's nascent investigation.

A brief review of the chronology of events is in order. Linda Tripp contacted OIC for the first time on January 12 with her information about Ms. Lewinsky, Vernon Jordan, the President, and the general contents of her tapes. OIC arranged for Ms. Tripp to meet Ms. Lewinsky the next day, January 13, at the Ritz Carlton. Mr. Tripp wore a "body wire," and the conversation between the two women corroborated what Ms. Tripp had told OIC the day before. OIC attorneys met with high ranking officials of the Department of Justice on January 15 to determine what course of action to take. In the meantime, OIC attorneys were preparing for another meeting at the Ritz Carlton between Ms. Lewinsky and Ms. Tripp on January 16, at which time OIC attorneys would confront Ms. Lewinsky to seek her cooperation.

Mr. Isikoff appeared in the middle of this tumultuous period to inform OIC that he knew about the allegations against the President and Mr. Jordan, that he even knew that Ms. Tripp had worn a body wire two days earlier, and that he intended to contact the leading players for their comment. Doing so would destroy OIC's nascent investigation of serious allegations of misconduct. Tr. 268. Thus, OIC found itself in a very difficult situation.

It is appropriate here to quote directly from Mr. Bennett's Declaration (SM Ex. 2, Tab 2) at paras. 22-26.

22. My first media-related task in this investigation was to try to convince Mr. Isikoff and Newsweek not to publish what they knew, and not to contact key people associated with the White House, before the OIC had the chance to evaluate all possible investigative efforts it could undertake. This was critical because investigative opportunities would be destroyed as soon as the matter became public.

23. Someone outside the OIC informed Mr. Isikoff about the existence of our investigation, including the fact that Ms. Tripp would be wearing a "body-wire" to record a conversation with Ms. Lewinsky. In my initial conversation with Mr. Isikoff on January 15, 1998, he told me that he had learned about this even before that event occurred. When I heard this from Mr. Isikoff, I became angry because his knowledge of and involvement in a proactive investigation threatened its integrity. In particular, he had already made some telephone calls to the White House inquiring about gifts Ms. Lewinsky had sent the President. He told us that he intended to call others. He also indicated that someone outside the OIC had briefed him about a body-wire conversation between Ms. Tripp and Ms. Lewinsky recorded on January 13, 1998. He further told us he knew that, in a recorded conversation, Ms. Lewinsky had told Ms. Tripp that Vernon Jordan had urged Ms. Lewinsky to lie about her relationship with the President. Mr. Isikoff stated that the allegation about Mr. Jordan was critical to include in the story he was doing. He indicated that he planned to contact Mr. Jordan, The President's attorney Robert Bennett, and the White House to obtain their comments on the allegation that the President and "a crony" had suborned perjury.

24. Thus, at the very beginning of our investigation, even before we had the opportunity to brief the Justice Department about what our dealings with Tripp had revealed, we learned that a reporter for a national weekly magazine knew virtually everything we knew, including significant contents of a secret body-wire recording. Although unknown to the OIC at the

time, Ms. Tripp has confirmed to us that she disclosed these details to Lucianne Goldberg.

25. I made every effort to convince Mr. Isikoff not to contact Mr. Jordan, Mr. Bennett, or others before we had an opportunity to determine whether we might be able to obtain information relevant to the investigation. These discussions were essential to prevent the premature disclosure of our investigation. In my view, this effort did not violate Rul 6(e). In fact, we advised Deputy Attorney General Eric H. Holder, Jr. of Newsweek's intention to publish the story in its next edition. In response, Public Integrity Section Chief Lee J. Radek notified us that the Attorney General herself was prepared to intervene personally with Mr. Isikoff's editors to dissuade Newsweek from running the story.

26. In the course of my efforts to persuade Mr. Isikoff not to make his information public, he became aware that we had commenced an investigation and that we were considering actions that involved Ms. Lewinsky, Ms. Tripp, and others. He also had learned this information from persons outside the OIC including, as Mr. Isikoff later acknowledged, a "colleague" who obtained some information from the Department of Justice. During these discussions, we did not disclose the substance of any information that we had obtained from any witness. Newsweek eventually agreed to hold off publication of Mr. Isikoff's report, allowing the Oic to approach Ms. Lewinsky at the Ritz Dcarlton Hotel in Pentagon City on Friday, January 16, 1998 and to arrange to meet with her lawyers later that weekend. Details of the Lewinsky matter, albeit sketchy, first appeared in the Drudge Report on the internet late that weekend, and any opportunity to conduct further undercover activities was lost. Our meetings with Mr. Isikoff not only commenced prior to any grand jury investigation, but also preceded the expansion of jurisdiction by the Special Panel of the U.S. Court of Appeals authorizing the OIC to fully investigate the Lewinsky allegations.

Mr. Bennett felt uncomfortable speaking to Mr. Isikoff about the investigation, but believed that if he did not, OIC's

investigation would be destroyed. Tr. 279-80. Certainly, in asking Mr. Isikoff and Newsweek to delay publication so that potential witnesses and targets would not be tipped off, Mr. Bennett impliedly confirmed that there was an investigation involving allegations against the President and Mr. Jordan, and lent credibility to the information that Mr. Isikoff already had. See Tr. 260-61. His sworn testimony, however, is that he did not provide the substance of any information provided by any witness. Bennett Decl., SM Ex. 2, Tab 2, para. 26. He did not discuss the talking points with Mr. Isikoff, nor did he state that OIC was considering whether to indict Ms. Lewinsky for perjury. Tr. 261-62.¹¹

¹¹ The Special Master is in receipt of a letter sent to the Court by a local law firm at the direction of one of its clients. The letter states that a driver for a local car hire company had picked up Michael Isikoff at OIC's offices on January 15. Mr. Isikoff used the car's telephone and reportedly stated that:

he, Isikoff, had been at Mr. Starr's office "all afternoon," had been listening to tapes and "it was worse than you ever could have imagined." Isikoff stated that he had been at Mr. Starr's offices for 4 to 5 hours.

The letter provided telephone numbers for the driver at his home and in his car. The Special Master attempted over the course of several weeks to contact the driver at these numbers, but both were disconnected. The Special Master then contacted the driver's company, and was told that the driver no longer worked there. The company had no information as to where its former employee could be located. The Special Master did not pursue the driver further. Given the state of the record, the Special Master credits Mr. Bennett's testimony that OIC did not play the tapes for Mr. Isikoff, and is convinced by the evidence that Mr. Isikoff knowledge about Ms. Tripp's tapes arose prior to January 15.

All other OIC declarations also deny being the source of the disclosures at issue.

Two other points are noteworthy. First, Attorney General Reno had offered to intervene and attempt to persuade Newsweek to delay publication if OIC was not successful in doing so. Bennett Decl., SM Ex. 2, Tab 2, para. 25. It is also noteworthy that at the time of OIC's conversations with Mr. Isikoff, OIC's mandate had not yet been expanded, and thus there was not yet a grand jury investigation of these new allegations. Bennett Decl., SM Ex. 2, Tab 2, para. 26.

Under these circumstances, we must conclude that OIC has rebutted the prima facie case against it. Asking Mr. Isikoff to delay publication of a story in order to protect an investigation, where

- Mr. Bennett did not provide the substance of what witnesses told him;
- Mr. Bennett's plea to Mr. Isikoff only impliedly confirmed or gave credence to what Mr. Isikoff already knew;
- the situation was sufficiently dire that the Attorney General herself was willing to speak to Newsweek; and
- there was not yet a grand jury investigation into the allegations in the Lewinsky matter;

does not constitute disclosure of matters occurring before a grand jury.

10. Francis X. Clines & Jeff Gerth, Subpoenas Sent as Clinton Denies Reports of an Affair At the White House, New York Times, Jan. 22, 1998.

The Court found that the following portion of this article constituted a prima facie violation of Rule 6(e):

Details 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 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.

All OIC personnel swear under oath that they are not the source of these disclosures.

Furthermore, OIC has established that by the date of this article, Ms. Tripp's tapes, which appear to be the main focus of this article, were in the possession of several other people, including Ms. Tripp, her attorney Mr. Moody, and Ms. Goldberg.

Mr. Moody played at least one of the tapes for Newsweek employees as early as January 16. Ramey Decl., SM Ex. 2, Tab 8, para. 6. And, it will be remembered that Ms. Goldberg has stated that "she had not been 'leaking' information to the media, but rather had been 'pouring it out in buckets.'" Id., para. 2.

Likewise, the fact that that the FBI was seeking interviews or that OIC was issuing subpoenas was known to the White House and Pentagon employees from whom the interviews were sought.

Under these circumstances, the Special Master finds that the OIC has successfully rebutted the prima facie against it as to this news report.

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

The Court found that the following excerpt from this article constituted a prima facie violation of Rule 6(e):

Dan, 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.

We first note that the sources identified in this article are vague: "two sources familiar with the Independent Counsel's investigation" and "our sources" could include any one of an unfortunately sizeable group of people outside of OIC. All OIC employees swear under oath that they were not the source of the disclosure.

Under the circumstances, we find these denials successfully rebut the prima facie case, but note further that the likelihood that the source was someone outside the OIC is increased by: (1) the unlikelihood that OIC would describe its own efforts as "dally"ing; and (2) the fact that the article itself says that Judge Starr had no comment.

12. Susan Schmidt and Peter Baker, Ex-Intern Rejected Immunity Offer In Probe, Washington Post, Jan. 24, 1998.

The disclosures at issue here are:

Federal 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 they 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, Lewis [Ms. Lewinsky's mother] 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."

OIC admits that it was the source for portions of this article, but that it was justified in doing so, and that no Rule 6(e) information was disclosed.

Specifically, as the article itself reports, on January 23 Mr. Ginsburg began publicly accusing OIC of trying to "squeeze" his client, and said that OIC's conduct at the January 16 meeting "should frighten anyone." SM Ex. 1, Tab 12. Aside from contacting the print media, Mr. Ginsburg appeared on at least four television networks that day to make his accusations about his client's treatment. Id.

Faced with Mr. Ginsburg's accusations, about which OIC began to receive a multitude of press inquiries, Tr. 22-23, OIC believed that the continued integrity of its investigation demanded a response. Tr. 17-19, 185, 198. At first, OIC responded simply by issuing a press release (found at Bennett Decl., SM Ex. 2, Tab 2, Tab F) in the afternoon or early evening

of January 23. Emmick Supp. Decl., SM Ex. 3, Tab 12, para 4; Tr. 21. The one-page release describes a fairly benign meeting, but does not provide a great deal of detail. See Bennett Decl., SM Ex. 2, Tab 2, Tab F.

After the issuance of the press release, OIC made the decision to provide more detail later in the day. Tr. 188-89. Mr. Bennett instructed Michael Emmick, an Associate Independent Counsel, to speak with Susan Schmidt of the Washington Post and David Willman of the Los Angeles Times and give them the "full details" surrounding OIC's first contact with Ms. Lewinsky at the Ritz Carlton on January 16. Emmick Supp. Decl., SM Ex. 3, Tab 12, paras. 4-5; Bennett Supp. Decl., SM Ex. 3, Tab 11, paras. 11-12; Tr. 21-23, 185.¹² Mr. Bennett chose Mr. Emmick for this task because Mr. Emmick was the attorney charged with seeking Ms. Lewinsky's cooperation at the Ritz-Carlton meeting, and who therefore had the most contact with her on that day. Tr. 15-16.

Consistent with OIC practice, the contacts with Ms. Schmidt and Mr. Willman were to be off the record. Tr. 21-27. Mr. Emmick's sworn testimony is that he gave "full details," as instructed, but stuck to a description of the encounter and how Ms. Lewinsky was treated. Tr. 32-35, 56-57; Emmick Supp. Decl.,

SM Ex. 3, Tab 12, paras. 3-4. He did not describe any interrogation of Ms. Lewinsky because none had taken place. Tr. 56-57, 77-78. He did state to Ms. Schmidt that immunity had been offered to Ms. Lewinsky and turned down (the first disclosure at issue in this Washington Post article). Emmick Supp. Decl., SM Ex. 3, Tab 12, para. 8; Tr. 35.

He also informed Ms. Schmidt of Ms. Lewis's "what's the big deal" remark. Emmick Supp. Decl., SM Ex. 3, Tab 12, para. 9; Tr. 40-43, 78. It is noteworthy that a review of the transcript of Ms. Lewis's grand jury testimony reveals no reference to this comment.

Mr. Emmick has no recollection of talking to Ms. Schmidt about the search of Ms. Lewinsky's apartment, and states with a "high degree of certainty" that he did not do so. Tr. 44-45; see also Emmick Supp. Decl., SM Ex. 3, Tab 12, para. 10. He had, however, discussed the consensual search with Mr. Ginsburg before it took place. Emmick Supp. Decl., SM Ex. 3, Tab 12, para. 11; Tr. 46-48.

The Special Master concludes that it was not a violation of Rule 6(e) for Mr. Emmick to discuss the details of the encounter at the Ritz Carlton, which were provided to rebut public

¹² Mr. Emmick remembers that Mr. Bennett asked him to speak to a third reporter, whose name Mr. Emmick could not remember. He did not contact that reporter, however, as it became too late at night to do so. Tr. 31.

allegations by Mr. Ginsburg that OIC had mistreated his client. We note that counsel for the President has acknowledged the right of a prosecutor to defend himself against allegations of misconduct during an investigation. For this reason, Mr. Kendall specifically stated to the Court of Appeals that his client did not challenge the press release issued on January 23 in which OIC denied mistreating Ms. Lewinsky. SM Ex. 3, Tab 29 at 37.

OIC went further than issuing a mere press release and authorized an Associate Independent Counsel to give more details to the press off the record. While we have reservations about the wisdom of proceeding in this manner, rather than issuing a more detailed press release or conducting a public press conference, we cannot conclude that it led to violations of Rule 6(e). The discussion with Ms. Schmidt was, in essence, just a more fulsome explanation of what OIC had already addressed in its press release. If the press release was not a Rule 6(e) violation, and even the President's counsel concedes it was not, then the discussion with Ms. Schmidt as described by Mr. Emmick in his sworn testimony was also not a violation.

Turning to the specific disclosures at issue here, Mr. Emmick's discussion of the immunity offer to Ms. Lewinsky was not a violation of Rule 6(e) because it concerned the actions of

OIC, not matters occurring before the grand jury. U.S. v. Lance, 610 F.2d at 217 and n.5.

Mr. Emmick's disclosure of Ms. Lewis's comment also did not concern a matter occurring before the grand jury. The comment was not considered by OIC to be evidence and therefore was never presented to the grand jury. See Tr. 40-41.

As for the disclosure about the search of the apartment, Mr. Emmick's denial, and the denials of all other OIC personnel, coupled with evidence discussed above that Mr. Ginsburg discussed the apartment search with the media, are adequate rebuttal.

Thus, for all of the foregoing reasons, the Special Master finds that OIC has rebutted the prima facie case against it with respect to this article.

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

The disclosure at issue is found in the following portion of this report:

Brokaw: At the White House now, NBC's Claire Shipman.

Claire, there's an unconfirmed report that at some point someone caught the president and Ms. Lewinsky in an intimate moment. What do you know about that?

Claire Shipman reporting:

Well, sources in Ken Starr's office tell us that they are investigating that possibility, but that they haven't confirmed it. . . .

This report explicitly identifies OIC as the source of the information, but OIC responds that this is another example of Ms. Shipman's "erroneous reporting." OIC Br. at 45. Mr. Bennett's affidavit explains that Ms. Shipman, as well as several other reporters, had called on January 25 asking for comment on this rumor. Mr. Bennett states under oath that while he does not remember the specific conversation with Ms. Shipman, he was certain that he responded to her in the same way that he responded to all of the inquiries about that rumor - i.e., that he could not confirm the report. Bennett Decl., SM Ex. 2, Tab 2, para. 59. Ms. Shipman added her own embellishment by reporting that OIC was investigating the matter. Id.; OIC Br. at 44.

All other OIC personnel similarly swear that they were not the source of the disclosure. These sworn denials are adequate rebuttal of the prima facie case against OIC as to the disclosures in this article.¹³

14. Howard Fineman and Karen Breslau, Sex, Lies and the President, Newsweek, Feb. 2, 1998.

This article discloses information about the conversations recorded by the FBI when it placed a "body wire" on Linda Tripp:

¹³ We have previously explained that Ms. Shipman declined to provide any testimony on her contacts with OIC.

At the direction of special prosecutor Starr, the FBI placed a "wire" listening device on Lewinsky's friend Linda Tripp. The resulting tapes 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.

OIC's brief states that "we did not provide Newsweek with access to the "body-wire" tape." OIC Br. at 54-58. The sworn declarations of all OIC personnel support OIC's denial. We find these denials sufficient to rebut the prima facie case against OIC, but bring to the Court's attention evidence that OIC relies upon to suggest that the disclosure came from DOJ.

As explained above, OIC attorneys met with senior DOJ officials¹⁴ on January 15 to discuss Linda Tripp's accusations, the fact that the body wire tape appeared to confirm some of them, and whether OIC's mandate should be expanded to investigate these new issues. Tr. 215-18. The OIC attorneys shared information from the body wire tape, but did not leave a copy of the tape or a transcript (which was still being prepared) with DOJ. Tr. 218-19.

Late in the day on January 15, a senior DOJ attorney visited OIC's offices. Stephen Binhak, an Associate Independent

¹⁴ Because OIC's suggestion that DOJ was the source of the leaks is, ultimately, speculation, we do not include in this report the names of the DOJ attorneys to whom OIC disclosed the contents of the body wire tapes. Those names are, of course, available to the Court upon request.

Counsel, played the tape and shared his notes about it with the senior DOJ attorney. Binhak Decl., SM Ex. 2, Tab 5, para. 24; Tr. 218, 376-86. According to Mr. Binhak, the DOJ attorney focused his attention on certain phrases contained in the tapes that later appeared in the Newsweek article. Binhak Decl., SM Ex. 2, Tab 5, para. 25-30; Tr. 379-83. Furthermore, certain information disclosed by Mr. Binhak to the DOJ attorney, but not found on the tape, also appear in the Newsweek article. Binhak Decl., SM. Ex. 2, Tab 5, para. 27.

We draw no conclusions as to whether any DOJ employee or official was responsible for the disclosures. See generally, Tr. 228-29, 230-31. The foregoing illustrates, however, the fact that at this early point in the investigation, there were multiple sources outside of OIC with knowledge of the investigation. Linda Tripp was a participant in the body wire recording. She and her representatives were in contact with Michael Isikoff of Newsweek prior to the publication of this article. And, Ms. Tripp's attorney appeared at Newsweek's offices to provide information to its reporters on the night of January 15 or early in the morning on January 16. Ramey Decl., SM Ex. 2, Tab 8, para. 6. Thus, there were many possible sources of the disclosure at issue here.

15. Francis X. Clines, Stephanopulous Testifies as Beset Lewinsky Flies Home, New York Times, Feb. 4, 1998
16. Jackie Judd, Clinton Team on the Offensive, World New Tonight, Jan. 30, 1998
17. Scott Pelley, Talks Between Monica Lewinsky's Attorney and Prosecutors at an Impasse, CBS Morning News, Jan. 30, 1998

The crux of all of these stories is that FBI tests on one of Ms. Lewinsky's dresses produced negative results.¹⁵ All OIC personnel state under oath that they were not the source of this disclosure.

We find these denials sufficient to rebut the prima facie case against OIC, but note further that OIC has submitted evidence about a possible source of the leak that requires mention. Specifically, after the Court unsealed its September 25 Order, a producer for ABC News (whose name is not used in this report, but who is named in OIC's supplemental brief at 37 and Mr. Bennett's Declaration at para. 15) contacted Mr. Bennett to state that ABC did not obtain the information on the negative test results from OIC. Rather, the source was an employee within the FBI crime lab. Bennett Supp. Decl., SM Ex. 3, Tab 11, para. 15.

As of the date of the hearing on this matter, OIC had not yet informed the FBI of this alleged leak from its lab. Tr. 290.

¹⁵ A dress tested at a later date provided positive results for DNA evidence.

Counsel for OIC has assured the Special Master that the information will be turned over to the FBI for investigation. Tr. 294-95.

18. Leon Harris, John King Investigating the President: Lewinsky Immunity Talks Collapse, CNN Early Edition, Feb. 5, 1998.
19. Don Van Natta, James Bennett, Starr Turns down Limit on Questions to Clinton's Aides, New York Times, February 5, 1998.

Mr. King reports in his February 5 newscast that:

Sources 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.

Likewise, the Van Natta/Bennett New York Times article of the same date states that:

One 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."

For reasons already explained, the general statement that OIC would pursue an indictment in the absence of an immunity deal is not protected by Rule 6(e). United States v. Lance, 610 F.2d at 217 and n.5. Furthermore, the fact that OIC and Ms. Lewinsky were engaged in immunity discussions had already been broadcast publicly by Ms. Lewinsky's own attorney, and thus lost

whatever Rule 6(e) protection it might otherwise have had. Dow Jones, 142 F.2d at 505.

In any event, all OIC personnel have stated in their sworn declarations that they are not the source of these media reports. Accordingly, OIC has rebutted the prima face against it as to these two articles.

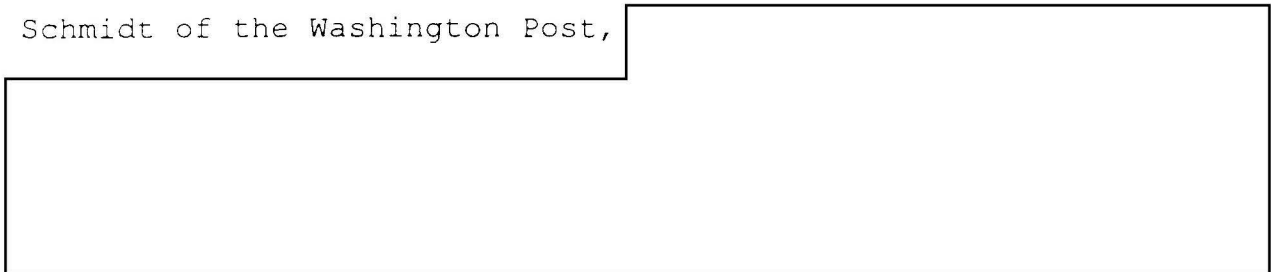
20. Susan Schmidt and Peter Baker, Starr Rejects Proposal on Lewinsky Testimony, Washington Post, Feb. 5, 1998.

The disclosure at issue here is as follows:

Independent 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.

OIC acknowledges that this article was based, in part, on an unauthorized telephone call on February 4, 1998 between Ms. Schmidt of the Washington Post,



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FOIA(b)(7) - (C)

[redacted] informed Mr. Bennett of the conversation with Ms. Schmidt shortly after Mr. Bennett had called a meeting on February 5 to warn OIG personnel about unauthorized contacts with the press. [redacted]

[redacted] admits that [redacted] either told Ms. Schmidt or confirmed that OIG had given Ms. Lewinsky's attorneys a deadline to reach an immunity agreement, and that the proffers made to OIG contained contradictions. [redacted]

[redacted] denies discussing any of the details of the proffer. [redacted]

[redacted] Nor, did [redacted] say that Ms. Lewinsky had given a "muddled account" of whether Ms. Lewinsky had been asked to lie. [redacted]

[redacted] appeared before the Special Master and was carefully questioned about [redacted] telephone call with Ms. Schmidt. Based on the Special Master's evaluation of [redacted] demeanor and credibility, the Special Master believes that [redacted] has accurately portrayed what [redacted] said and did not say to Ms. Schmidt regarding the disclosures at issue here. The question then becomes whether what [redacted] told Ms. Schmidt constitutes a Rule 6(e) violation.

For reasons already explained, we do not believe that [redacted]
[redacted] disclosure that Ms. Lewinsky must cooperate or face
prosecution, although unauthorized [redacted] amounts to a
violation of Rule 6(e). See Lance v. United States, 610 F.2d at
217, n.5.

The fact that there were unspecified contradictions in Ms.
Lewinsky's proffer, while bad practice to disclose, also does
not provide any information about the scope or direction of the
grand jury's investigation, the evidence before the grand jury,
or any other matter occurring before the grand jury.

One further matter deserves mention, however. [redacted]
[redacted]

The Special Master was
surprised to learn, however, that [redacted] superiors did not
attempt at the time to determine whether [redacted] had engaged
in other unauthorized contacts. [redacted] This was a
mistake.

During the course of questioning [redacted] the Special
Master learned that [redacted] had engaged in unauthorized
contact with Ms. Schmidt on almost a daily basis for
approximately one week prior to the February 4 contact. [redacted]

[redacted]¹⁶ Aside from news report no. 12, which we have already discussed and which arose from a telephone contact between another OLC attorney, Michael Emmick, and Ms. Schmidt, there are no other news articles at issue in this proceeding that were authored by Ms. Schmidt. Accordingly, there was no basis for the Special Master to inquire further into the facts surrounding those telephone calls. See In Re Sealed Case, 151 F.3d at 1075, n.17. (in order to limited the district court's function to adjudication, rather than investigation, we find it entirely appropriate to limit any findings to those articles."). OLC's counsel, however, has agreed that these additional unauthorized contacts with Ms. Schmidt will be brought to Judge Starr's attention for evaluation and, if necessary, appropriate action. [redacted]

21. Lisa Myers, Possible Indictment of Monica Lewinsky by Kenneth Starr Discussed, Today (NBC), Feb. 24, 1998

This newscast contains the following prima facie violation:

. . . . 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 instead of calling her as his key witness, Starr may bring criminal charges against her.

¹⁶ [redacted] had also been authorized, [redacted] believes by Judge Starr himself, to talk to [redacted] on various issues. [redacted]
[redacted] Those conversations do not pertain to the articles at issue here.

* * *

. . . 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."

The identification of sources here is vague, and we note once again that there were several sources outside OIC who could have provided these disclosures. The declarations of all OIC personnel contain denials that they were the source of these disclosures. We find these denials sufficient to rebut the prima facie case against OIC as to this news report.

22. John Ellis, It's The Beginning Of The End For Clinton's Presidency, Boston Globe, Feb. 7, 1998.

This column, authored by John Ellis, states:

Betty Curie is not the only White House staff member cooperating with the Office of 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.

A Daily News columnist, Eric-Lars Nelson, reported several days later that Mr. Ellis attended a seminar at the Harvard School of Government the day after his column appeared. When allegedly asked by a professor how he knew about the three

witnesses, Ellis is reported to have replied "I was told by a person in the special prosecutor's office." See SM Ex. 1, Tab 22.

All OIC affidavits deny being the source of the disclosure by Mr. Ellis about the White House witnesses. OIC has also conducted an analysis of the testimony of White House employees interviewed either informally or before the grand jury between January 21, 1998 - when witness interviews began - and February 7, 1998 - the date of Ellis's column. Of these ten, only one ever claimed to have any knowledge of the relationship. Bennett Decl., SM Ex. 2, Tab 2, para. 70. The falsity of Ellis' report, when contrasted with what OIC knew, suggests that OIC was not the source of the information.

However, because of Mr. Nelson's report that Mr. Ellis allegedly admitted to having a source in OIC, the Special Master contacted Mr. Ellis to determine whether he would testify on the matter. Mr. Ellis, through his attorney, informed the Special Master that he would not, and would move to quash any subpoena attempting to compel his testimony.

Weighing OIC's sworn denials and the inaccuracy of the reports against the hearsay contained in Mr. Nelson's article, the Special Master finds that OIC has rebutted the prima facie case as to this news report.

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

This CBS report includes information about grand jury testimony:

[S]ources tell CBS News that prosecutors are 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.

All OIC personnel deny being the source of this report, which does not specifically identify OIC as the source of the information. These denials are supported by the further fact that the day before this story aired, Ms. Willey was interviewed by CBS newsman Ed Bradley for "60 Minutes." The upcoming "60 Minutes" program on the Willey interview was previewed at the beginning of the CBS Evening News on March 13. SM Ex. 3, Tab 42.

Mr. Bradley's preview segment on the CBS Evening News strongly suggests that Ms. Willey was the source of the CBS News report about the substance of her grand jury testimony. See id. The report also states that Ms. Willey had given the same information to Paula Jones' attorneys. Id. These individuals, or any number of other individuals outside of OIC, could have been the source of the report that prosecutors were building a perjury case against President Clinton.

Based on these facts, we find that OIC has rebutted the prima facie case against it as to this news report.

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

Sources close to the case say that 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 her 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 Ms. Lewinsky to get immunity without providing evidence damaging to the president, that she must choose between protecting herself and protecting Mr. Clinton.

All OIC personnel deny that they were the source of these disclosures. These include the two OIC personnel who attended the referenced evidence-gathering session at the Los Angeles office of the FBI. Page Supp. Decl., SM Ex. 3, Tab 21, para. 2; Fallon Decl., SM Ex. 2, Tab 9, para. 2.

We find these denials sufficient, but make two additional observations. First, it is noteworthy that other FBI personnel who were not detailed to OIC were present when Ms. Lewinsky visited the FBI's Los Angeles offices. They would have been

aware of what happened during the session. See Page Supp.


Decl., SM. Ex. 3, Tab 21, paras. 2-9.¹⁷

Furthermore, for reasons set forth above, the speculation about whether Ms. Lewinsky would enter into an immunity agreement and the consequences about not doing so are not protected by Rule 6(e).

CONCLUSION

For the foregoing reasons, the Special Master concludes that OIC has rebutted the prima facie showing that it was the source of the disclosures identified in the Court's September 25 Order.

Respectfully submitted,



Hon. John W. Kern, III
Special Master

Counsel to the Special Master:
Christopher M. McMurray

January 29, 1999

¹⁷ As for the information about what occurred during Ms. Lewinsky's visit to an FBI office in Los Angeles to give handwriting, voice, and fingerprint samples, Ms. Lewinsky's representatives made no secret that the visit would take place. SM Ex. 3, Tab 46. Ms. Lewinsky's visit to the FBI offices was therefore widely covered by the press - indeed, she refused an FBI to enter and the office through the garage entrance. SM Ex. 3, Tab s 47-48. Rather, Ms. Lewinsky, her father, and her attorneys entered and exited the building through the front entrance and in front of the assembled media. Page Supp. Decl., SM Ex. 3, Tab 21, paras. 2 and 10.

SPECIAL MASTER'S EXHIBITS

- SM Ex. 1: Binder containing the twenty-four news articles at issue in this case
- SM Ex. 2: OIC's Appendix of Evidence (November 2, 1998)
- SM Ex. 3: OIC's Supplemental Appendix of Evidence (November 30, 1998)
- SM Ex. 4: Letter dated February 4, 1998 from Kenneth Starr to David E. Kendall
- SM Ex. 5: Memorandum dated March 24, 1989 from Edward S.G. Dennis, Jr. to All Employees, Criminal Division, re: Contacts with the Media
- SM Ex. 6: OIC Press Release, dated January 21, 1998
- SM Ex. 7: OIC Press Release, dated February 18, 1997
- SM Ex. 8: OIC Press Release, dated August 28, 1995
- SM Ex. 9: Memorandum to File from JMB [Jackie M. Bennett] dated October 30, 1998
- SM Ex. 10: Memorandum, FBI Logo, to Kenneth Starr, dated January 27, 1998
- SM Ex. 11: Missing page from Tab 15 of SM Ex. 2
- SM Ex. 12: Wall Street Journal Article, dated July 7, 1998 (with cover letter from Donald T. Bucklin)