UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY PROCEEDINGS	)	**Misc. No. (NHJ)**
	)	**(UNDER SEAL)**

MOTION OF WILLIAM J. CLINTON FOR CONTINUANCE

William J. Clinton, through undersigned counsel, hereby moves this Court for a two-week continuance, to August 11, 1998, of the return date of a subpoena delivered to his counsel seeking the President's testimony today, July 28, 1998, before the grand jury. The reasons why this Motion should be granted are set forth in the accompanying memorandum.

Respectfully submitted,

David E. Kendall (#252890)
Nicole K. Seligman
Max Stier
Alicia L. Marti
WILLIAMS & CONNOLLY
725 12th Street, N.W.
Washington, DC 20005
(202) 434-5000

Counsel for Movant William J. Clinton

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

	)	
	)	**Misc. No. (NHJ)**
IN RE GRAND JURY PROCEEDINGS	)	
	)	
	)	
_____	)	**(UNDER SEAL)**

ORDER

Upon consideration of the Motion of William J. Clinton for Continuance and any opposition thereto, the motion is GRANTED.

It is hereby ORDERED that the return date of the subject subpoena is continued to August 11, 1998.

SO ORDERED on this the _____ day of _____, 1998.

_____
NORMA HOLLOWAY JOHNSON

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE GRAND JURY PROCEEDINGS	)	**Misc. No. (NHJ)**
	)	**(UNDER SEAL)**

MEMORANDUM IN SUPPORT OF
MOTION OF WILLIAM J. CLINTON FOR CONTINUANCE

For the first time, a sitting President has been subpoenaed to testify before a grand jury. On Friday evening, July 17, 1998, the Office of Independent Counsel ("OIC") delivered a subpoena to counsel attempting to compel President William J. Clinton to testify before the grand jury today, Tuesday, July 28, 1998. In response, President Clinton, through counsel, has indicated a willingness to provide voluntary testimony for the grand jury. Despite this response, the OIC has refused to continue or withdraw the subpoena returnable today, necessitating this request to the Court. This refusal creates the prospect of a constitutional confrontation that, with a short continuance, may well be avoided. Accordingly, President Clinton moves this Court for a two-week continuance of the return date of the subpoena, to August 11, 1998, to permit the parties to seek such a resolution or adequately to prepare appropriate legal papers if a resolution cannot be reached.

I. Background

Six times after January 21, 1998, the OIC invited President Clinton to testify before the grand jury investigating the Monica Lewinsky matter. See Exhibit 1 (correspondence between Mr. Kendall and the OIC regarding the President's testimony). In response, counsel for President Clinton outlined serious concerns to be addressed before any such testimony would be

considered, including issues that had arisen over the origin and conduct of the OIC's Lewinsky investigation. The OIC's most recent mention of the possibility of such testimony was almost four months ago, on April 3, 1998, with a response by Mr. Kendall on April 17, 1998. See Exhibit 1. The OIC did not respond to the April 17 letter and did not raise the issue with counsel for the President in any way in the almost four months since its last letter.

After this long period of silence, on Friday, July 17, 1998, without warning, the OIC delivered a subpoena to counsel for the President purporting to require President Clinton to testify before the grand jury today, July 28. Exhibit 2 (subpoena and accompanying letter). At the time, President Clinton was traveling outside of Washington, D.C., and he did not return until early Tuesday, July 21, 1998. In light of the need to consider properly the serious issues presented by the subpoena, counsel for President Clinton telephoned Mr. Bittman (of the OIC) on July 22, 1998, and requested that the OIC provide another week, until August 4, for counsel to respond to the July 17 delivery. On July 23, 1998, the OIC offered three more days, if the President would agree not to seek any additional time from the OIC or the Court. Exhibit 3 (July 23, 1998 Letter of Mr. Bittman).

On July 24, 1998, counsel for President Clinton informed the OIC that the President "is willing to provide testimony for the grand jury, although there are a number of questions relating to the precise terms and timing of the testimony which must be worked out." Exhibit 4 (July 24, 1998 Letter of Mr. Kendall). Counsel for the President also requested that the subpoena be withdrawn while these issues were resolved. The OIC declined to withdraw the subpoena. Exhibit 5 (July 24, 1998 Letter of Mr. Bittman). Subsequently, by letter yesterday, Mr. Kendall wrote to the OIC with a detailed and specific proposal regarding both the format and timing of potential testimony by the President. Exhibit 6 (July 27, 1998 Letter of Mr. Kendall).

Despite this responsive and good faith offer, and the prospect of immediate continuing negotiations, the OIC refused to withdraw or even continue the return date of the subpoena beyond 1:30 p.m. today unless "the President commits in writing to testify on a date certain on or before August 7, 1998.". See Exhibit 7 (July 27, 1998 Letter of Mr. Bittman).

II. Argument

The OIC's denial of a brief continuance here is wholly unreasonable. There is a very real possibility that the President and the OIC will be able to agree on timing and procedures whereby the President may provide information to the grand jury. The subpoena plainly raises fundamental separation of powers concerns, see Exhibit 8 ("Starr Subpoena Poses Constitutional Conflict," Chicago Tribune, July 27, 1998); (Interview of Professor Paul Rothstein, ABC News, July 26, 1998), which have not previously been presented to a court and adjudicated. The Supreme Court observed in the Paula Jones case that "although Presidents have responded to written interrogatories, given depositions, and provided videotaped trial testimony . . . no sitting President has ever testified, or been asked to testify in open court." Clinton v. Jones, ___ U.S. ___, 117 S.Ct. 1636, 1643 n.14 (1997). There may, however, be no need to resolve the novel question whether a President may be compelled to testify before a grand jury. But more time is needed to explore whether a resolution short of litigation is possible.

The OIC's assertion that it needs the President's testimony on or before August 7, 1998, is patently unfounded. The Whitewater investigation has dragged on for more than four years. The OIC last raised the question of the President testifying in early April, and it then did not respond in any way to counsel's April 17 letter on this subject. As the OIC well knows, in the past when the President's testimony has been sought, it has taken weeks to schedule an appropriate date, because of the President's many commitments and because of the length of time his schedule is set in advance. In the present case, counsel have presented the OIC with a

"date certain" for his testimony which is consistent with the President's schedule and other obligations. The OIC has stated that an earlier date is necessary. Because the President has not immediately agreed, the OIC has refused to continue today's return date at all. This obstinate refusal demonstrates a desire to precipitate a possibly needless battle, rather than a statesmanlike effort to avoid one.

The OIC's position is particularly arbitrary here because there are no impending deadlines, no statutes of limitations are about to run, and no trials are imminent. There is simply no justification for the OIC's deadline except its own fiat. This captious and cavalier treatment is particularly inconsistent with the OIC's often professed "profound respect for the institution of the Presidency."[1] While the OIC has stated that it "fully acknowledge[d] that the President has immense and weighty responsibilities" and that it "want[ed] in every way to take fully into account those grave duties of state,"[2] its actions here belie these sentiments and also show how hollow is the OIC's recent representation that if the President will agree to testify "we and the grand jury -- as we have previously stated -- will accommodate [the President's] schedule if he cannot appear on the 28th [of July]."[3]

For whatever reasons, the OIC insists that the President agree in writing by 1:30 p.m. today to testify on or before August 7. As explained in detail in a letter from counsel to the President provided yesterday to the OIC, see Exhibit 6, that date is wholly unacceptable, given the President's schedule and the need for the President to prepare properly for his testimony.

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1 Exhibit 1 (Letter of Robert J. Bittman, Esq., to David E. Kendall, Esq., dated March 13, 1998).

2 Exhibit 1 (Letter of Robert J. Bittman, Esq., to David E. Kendall, Esq., dated March 2, 1998).

3 Exhibit 2 (Letter of Robert J. Bittman, Esq., to David E. Kendall, Esq., dated July 17, 1998).

When the Supreme Court indicated last year that a civil case could proceed against a sitting President, it nevertheless insisted that the "high respect that is owed to the Office of the Chief Executive . . . should inform the conduct of the entire proceeding," and it stressed the importance of avoiding "interference with the President's duties." Jones v. Clinton, ___ U.S. ___, 117 S.Ct. 1636, 1650-51 (1997). The Court of Appeals for this Circuit only yesterday, in a case arising from the OIC's investigation, emphasized the "deference due to the President" as he seeks to meet both public and private legal obligations and ruled that a court "must accommodate the unavoidable, virtually full-time demands of the office." In re: Bruce R. Lindsey (Grand Jury Testimony), No 98-3060 (D.C. Cir. July 27, 1998) (slip op. at 36, 38).[4]

Given the constitutional significance of the issues presented by the subpoena, the lack of any colorable reason to deny a short continuance, the possibility that an agreement might be reached which would accommodate the concerns of both the OIC and the President, and the long delay which will certainly follow if a legal confrontation is forced, we respectfully submit that the OIC's refusal to continue the subpoena is irresponsible, unreasonable, and oppressive. When the Supreme Court decided the Jones case, it did so on the basis of an explicitly stated assumption that any testimony from the President "may be taken . . . at a time that will accommodate his busy schedule," Clinton v. Jones, supra, 117 S.Ct. at 1643. It is just such an accommodation that movant seeks and that the OIC arbitrarily resists.

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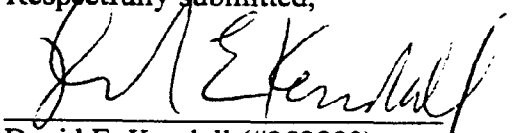
[4] The Court of Appeals noted that "there is a tradition of federal courts' affording 'the utmost deference to Presidential responsibilities.'" Id. at 39.

CONCLUSION

For the foregoing reasons, President Clinton's motion for a two-week continuance should be granted.

Respectfully submitted,



David E. Kendall (#252890)
Nicole K. Seligman
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(202) 434-5000

Counsel for Movant William J. Clinton

CERTIFICATE OF SERVICE

I certify that I have this 28th day of July 1998 caused one copy of the foregoing Motion of William J. Clinton for Continuance, memorandum in support thereof, and proposed Order to be hand delivered to:

Robert J. Bittman, Esquire
Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, DC 20004

David E. Kendall

Tab 1

Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, DC 20004
(202) 514-8688
Fax (202) 514-8802

February 2, 1998

HAND DELIVERED

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

As you know, President Clinton has publicly pledged to cooperate fully with the investigation involving Monica Lewinsky. Last Wednesday, January 28, I invited President Clinton, on behalf of the grand jury, to testify before the grand jury this Thursday, February 5, concerning matters relating to Ms. Lewinsky. You indicated in our conversation that you would get back to me as to whether the President will so testify. The grand jury awaits the President's decision; please advise me as soon as possible what the President decides.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

Office of the Independent Counsel

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Suite 490-North
Washington, DC 20004
(202) 514-8688
Fax (202) 514-8802

February 4, 1998

HAND DELIVERED

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

Although the President has declined the invitation to testify before the grand jury tomorrow, the grand jury's investigation continues apace. On behalf of the grand jury and in an effort to accommodate the President's schedule, we respectfully invite the President to testify before the grand jury next Tuesday, Wednesday, or Thursday, February 10 to 12.

The grand jury would like to complete this investigation, as the President stated, "sooner rather than later. . . . [and] as quickly as we can." Kindly advise me by noon this Friday as to whether the President accepts the invitation to testify.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

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Fax (202) 514-8802

February 9, 1998

HAND DELIVERED

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

Last Wednesday, we, on behalf of the grand jury, extended a second invitation to the President to testify before the grand jury about his relationship with Monica Lewinsky. You did not respond to the invitation by last Friday, as requested in my letter. The grand jury's work continues. Notwithstanding your failure to respond, the grand jury would be pleased to accommodate the President's testimony any day or time this week.

Let me make our request specific and clear: the grand jury deserves to know whether the President will respond, favorably, to the invitation. Such an invitation is, of course, fully consistent with our profound respect for the Presidency in our system of separated powers. To that end, we have consulted with the Chief Judge, and she has assured us that the grand jury can accommodate the President's scheduling needs should the President choose to tell his story to the grand jury.

For planning purposes, kindly let me know if the President wishes to testify before the grand jury this week. If the President cannot appear this week, please let me know by Friday, February 13, whether the President wishes to testify

before the grand jury, and if so, when. If I do not hear from you by that date, we will assume that the President will not voluntarily provide testimony before the grand jury. In that event, we will inform the grand jury of this turn of events.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

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DAVID E. KENDALL
(202) 434-5145

February 13, 1998

CONFIDENTIAL
RULE 6(e), F. R. CRIM. P. GRAND JURY SUBMISSION

By Hand

Robert J. Bittman, Esq.
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

Dear Bob:

This will respond to your letters dated February 4 and 9, 1998. I was unable to respond to your February 4 invitation by the Friday deadline you had indicated in your letter because I was in the process of dealing with prejudicial and false leaks of information about your investigation. I set forth my position on that matter in brief public remarks Friday afternoon and in a 15 page letter to Judge Starr which I hand-delivered to your office that same afternoon. These leaks are highly unfair and prejudicial to the President and others, and, as you may know, on Monday I filed a sealed motion with the Chief Judge seeking judicial remedies in an effort to enforce the secrecy and confidentiality of the investigative process.

I acknowledge your invitation for the President to appear before the grand jury next week. The President has the greatest respect for the grand jury. However, under the circumstances, it is impossible to accept this invitation. The situation in Iraq continues to be dangerously volatile, and this has demanded much of the President's time and attention. The President also has a heavy travel schedule at present. Our access to him has necessarily been limited. Moreover, as I informed you during our February 3 telephone conversation concerning this matter, we have simply had inadequate opportunity to prepare so that we may give our client the informed advice of counsel which he, like every other citizen, deserves. Your recent letter references your

office's "profound respect for the Presidency in our system of separated powers." However, I am certain that you understand why, in light of the well-publicized and questionable investigative techniques of your office, we feel we would be derelict in our professional duty to a client unless we assured ourselves that we had adequate opportunity to advise that client appropriately.

In the event you decide to "inform the grand jury of this turn of events", as stated in your letter, I would respectfully request that you also read my letter to the grand jury and make my letter part of the grand jury record.

I thank you for your courtesy.

Sincerely,

David E. Kendall

Office of the Independent Counsel

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February 21, 1998

VIA FACSIMILE

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

We regret the President's decision not to appear before the grand jury at this time. In light of the President's past and continuing pledges to cooperate with this investigation, we again invite the President to testify before the grand jury about his relationship with Monica Lewinsky. We make this invitation fully sensitive to the important duties and responsibilities of the President. Moreover, as stated in my last letter, I have discussed this matter with Chief Judge Johnson, and she has indicated that the grand jury will accommodate any special scheduling needs of the President. We are ready to hear the President's testimony. Kindly let me know by Friday, February 27, whether the President will agree to testify before the grand jury at any time.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

Office of the Independent Counsel

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March 2, 1998

HAND DELIVERED

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

Based on your previous declinations and your failure to respond within the time outlined in my letter of February 21, 1998, we assume that the President has declined our invitation to testify before the grand jury. With this letter, we again invite the President to provide the grand jury with information concerning its ongoing investigation.

In regard to the various explanations you have been kind enough to advance for declining our four invitations, I note that (1) the state visit of Prime Minister Blair has passed; (2) the "situation in Iraq" has, thankfully, eased; and (3) you have now had some six weeks to "prepare" the President. See letters to Robert J. Bittman from David E. Kendall dated February 4 and February 13. We fully acknowledge that the President has immense and weighty responsibilities. We want in every way to take fully into account those grave duties of state. Yet since this matter arose, the President has -- with all respect -- found time to play golf, attend basketball games and political fundraisers, and enjoy a ski vacation. We assure you that the grand jury's inquiry of the President will not take long, and we and the grand jury remain -- as we have always been -- eager to accommodate the President's schedule.

Kindly advise me by noon Wednesday, March 4, 1998, whether the President will accept this invitation. If I do not hear from you by that time, I will assume the President declines the invitation. I look forward to your early -- and, I hope favorable -- reply.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

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March 4, 1998

CONFIDENTIAL
RULE 6(e), F.R.CRIM.P. GRAND JURY SUBMISSION

Robert J. Bittman, Esq.
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

By Hand

Dear Bob:

This will respond to your letters dated February 21 and March 2, 1998. I apologize for my delay in responding. The fault is mine: as you know, we filed a lengthy reply on Friday in the sealed "leaks" matter, responding to your opposition to our original motion for contempt sanctions. That matter simply absorbed my time, but I am now able to give your correspondence the attention it deserves.

As I hope you are aware, the President has the greatest respect for the grand jury. I appreciate your own acknowledgement in your March 2 letter of the "grave duties of state" which are uniquely the President's and the "immense and weighty responsibilities" he must discharge. The buck really does stop with the President for decision-making on a vast range of issues that are critical to this country's safety and economic security.

While it is true that not every moment of the day is absorbed by the duties of office, the President is extraordinarily busy on a range of important public issues, some of which are visible and some of which are not. In our judgment, our ability to have access to the President is simply insufficient at the present time for purposes of representing him adequately in the matters with which you are concerned.

Accordingly, he will, on our advice, not be able to accept your invitation for him to testify at this time. I am certain you would agree that the President deserves the same right to the informed assistance of private counsel as does every other citizen.

Your most recent letter remarks that the situation in Iraq has "thankfully, eased." While there are some respects in which this may be true, the situation remains highly volatile, as a glance at today's newspapers will reveal. The continuing Southeast Asian economic crisis and the Bosnian situation also demand a great deal of the President's time, as do other national security issues, many of which are highly confidential.

On the domestic front, the President's schedule is equally congested. The Administration's proposed budget was submitted to Congress last month, and the President is in the midst of major negotiations with the Republican majorities over key budgetary objectives, such as reserving the bulk of the budgetary surplus for Social Security. Other Administration initiatives are at critical stages. The President is attempting to hammer out national legislation around a tobacco liability settlement. More "town hall" meetings are scheduled concerning the President's race initiative, which will focus on the need for strengthening the Equal Employment Opportunities Commission and the Civil Rights Division of the Justice Department. There is also currently in the White House a sustained focus on major health care proposals (expanding Medicare coverage to persons age 55-64 who have lost their health coverage due to no fault of their own; securing passage of an HMO patient "bill of rights"), on new education legislation (enacting strong national educational standards; trying to improve math and science achievement), and on highway legislation/auto safety bills (federal standards for a lower blood alcohol definition in DUI cases).

The President also has an extremely heavy foreign and domestic travel schedule. He will be out of the country for nearly three weeks this month and next in Africa and South America. These are major State visits to key strategic parts of the world, and a considerable amount of pre-departure preparation, review, and study is required, which will absorb a significant amount of the President's time in this country.

Moreover, as I indicated in my earlier letter, we remain concerned about some of the well-publicized and questionable investigative techniques used by your office. Events of recent days have done nothing to alleviate this concern, and this necessarily affects our judgment as to the

degree of preparation necessary to assure the President has adequate and informed legal assistance at the present time. As you are no doubt aware, you have subpoenaed the investigator retained by this firm and by the law firm defending the President in the Paula Jones suit, and the focus of your questioning was on criticism directed at your office. This investigator was retained for lawful, legitimate, and well-recognized purposes, and your subpoena is, in our view, a blatant and unwarranted attempt to intrude into and violate the legal privileges enjoyed by every citizen, including the President, in litigation where that citizen is personally being sued or investigated. No more reassuring is your recent interrogation of Mr. Sidney Blumenthal, who works at the White House, to inquire into criticisms of your office in the press. Finally, I have received no response to my letter (a copy of which is attached hereto) sent to the Independent Counsel more than two weeks ago, inquiring as to contacts his law firm (Kirkland & Ellis) had with the lawyers for Ms. Paula Jones and legal assistance it had rendered to her. Some news reports raise troubling issues of possible conflict of interest, and I would like to get these resolved just as soon as possible.

You do, of course, have a copy of the President's deposition given on January 17, 1998, in the Jones case, and his sworn testimony there addresses at length the Monica Lewinsky matter. You have also, as I understand, requested multiple copies of the videotape of this deposition. I believe, therefore, that the grand jury in fact already has access to sworn testimony given by the President about this topic. The questions asked the President by Ms. Jones' counsel were, in fact, surprisingly detailed and particularized. As you may know, there have been news reports suggesting that Ms. Linda Tripp spent most of the Friday before the President's deposition with lawyers and agents from your office, after the apprehension of Ms. Lewinsky at a meeting with Ms. Tripp. At the end of her day with your personnel, again according to press reports, Ms. Tripp, with the apparent acquiescence of your office, met in Maryland with lawyers for Ms. Jones. There, she reportedly told them of the tapes she had secretly made of her conversations with Ms. Lewinsky, shared with them the contents of these secret tapes, and helped them devise questions to ask the President at his deposition next day, the transcript of which you have. We believe that, at least by this time, Ms. Tripp was well aware that such tapings were illegal and a felony under Maryland law. We are in the process of investigating all the legal implications of these apparent facts.

Again, I would respectfully ask you to read this letter, with its attachment, to the grand jury and to make them part of the grand jury record, if your letters to me are shared with the grand jury.

I thank you for your courtesy.

Sincerely,

David E. Kendall

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DAVID E. KENDALL
(202) 434-5145

February 17, 1998

The Honorable Kenneth W. Starr
Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

BY HAND

Dear Judge Starr:

I write with an inquiry in the wake of a Chicago Tribune article which appeared on February 11 (copy enclosed), and I am making this request in an effort to obtain accurate information so that I may decide how to proceed. The article reports that one of your partners in Kirkland & Ellis, Mr. Richard Porter, may have provided legal advice and services to plaintiff Paula Corbin Jones in her civil suit against President Clinton. The article also reports that someone at the law firm FAXed a copy of a draft affidavit in the Jones case to the Tribune prior to the affidavit's filing in court, an action which would, if true, suggest that the firm has indeed been involved in the legal prosecution of the Jones case. Finally, the article reports that one of the Jones lawyers, Joseph Cammarata, received advice from Mr. Porter on several occasions about legal issues in the Jones case. This recent report is particularly surprising in view of previous news articles in which your partners at Kirkland & Ellis were quoted as saying that the firm would not become involved in the Jones case ("'We don't feel it's appropriate for the firm to be involved in any civil litigation directly involving the president,' [Kirkland & Ellis partner] Jay Lefkowitz [said]." The Washington Post, Aug. 12, 1994). (Copy enclosed).

Additionally, there have been reports of your own participation in legal discussions with Ms. Jones' lawyers, prior to the time you were appointed Independent Counsel.

I emphasize that I am not now addressing the fact that you planned to file an amicus brief for the Independent Women's Forum after the Jones complaint was filed, something that has been previously reported. See, e.g., "Friend of Court Is Foe of Clinton," Washington Times, June 8, 1994, at 1A.

Instead, my present inquiry focuses on recent reports that you gave legal advice to Ms. Jones' lawyers pertaining to her own lawsuit against the President. For example, the Associated Press reported on January 28, 1998, that you gave legal advice to Ms. Jones' lawyers "on 'the legal question of whether the president is accountable in a private lawsuit,' according to Gilbert K. Davis, who no longer represents Mrs. Jones." (Copy enclosed.) On January 30, 1998, the Associated Press reported that Ms. Jones' lawyers "acknowledge consulting with Starr after filing the lawsuit, but said that was only to seek advice from the constitutional scholar on how to address Clinton's claim that he was temporarily immune from lawsuits . . . . The lawyers said they contacted Starr . . . before he was named Whitewater prosecutor." (Copy enclosed.) That same day, The Washington Post reported that "Jones's former lawyers now . . . say that Starr even consulted with them in two or three telephone calls that dealt with the legal arguments to be made against Clinton's immunity claim." (Copy enclosed.)

You apparently believed that, even before the recent expansion of your jurisdiction, you were somehow entitled to investigate the Paula Corbin Jones matter. It was reported last summer, before the January 16, 1998, expansion of your jurisdiction, that your investigation was focusing in some way on Ms. Paula Corbin Jones. For example, The Washington Post reported the following on June 25, 1997:

> "The [Arkansas state] troopers said investigators asked about 12 to 15 women by name, including Paula Corbin Jones, a former Arkansas state employee who has filed a civil lawsuit against Clinton alleging he sexually harassed her in 1991.
>
> . . . . . .
>
> In addition, [Roger Perry] said, 'They [your investigators] asked me about Paula Jones, all kinds of questions about Paula Jones, whether I saw Clinton and Paula together and how many times.'"

(Copy enclosed.)

I would be grateful if you could inform me whether any of these many news reports are accurate, and I would also request that, if any of the above reports are accurate, you inform me whether such information was presented to the Attorney General or the Special Division prior to the Court's January 16, 1998, expansion of your jurisdiction. As I know you will recall, the Special Division has been quite sensitive to the appearance of conflict. In its August 5, 1994, Order appointing you, that Court stated that it had determined that a continuation of Mr. Fiske's appointment "would not be consistent with the purposes of the Act:"

> "This reflects no conclusion on the part of the Court that Fiske lacks either the actual independence or any other attribute necessary to the conclusion of the investigation. Rather, the Court reaches this conclusion because the Act contemplated an apparent as well as an actual independence on the part of the Counsel. As the Senate Report accompanying the 1982 enactments reflected, '[t]he intent of the special prosecutor provisions is not to impugn the integrity of the Attorney General or the Department of Justice. Throughout our system of justice, safeguards exist against actual or perceived conflicts of interest without reflecting adversely on the parties who are subject to conflicts.' S. Rep. No. 496, 97th Cong., 2d Sess. at 6 (1982) (emphasis added). Just so here. It is not our intent to impugn the integrity of the Attorney General's appointee, but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict."

(Second emphasis added.)

In addition, the Independent Counsel Statute imposes certain restrictions on both the person appointed as IC and that person's law firm. For example, 28 U.S.C. § 594(j)(1)(A) provides that "[d]uring the period in which an independent counsel is serving under this chapter (i) such independent counsel, and (ii) any person associated with a firm with which such independent counsel is associated, may not represent in any matter any person involved in any investigation or prosecution under this chapter." Moreover, under elementary principles of partnership law in Illinois, Arkansas, and the District of Columbia, a legal representation of a client by one partner is attributable to all other partners.

Application of these legal standards to the facts set forth in the recent news articles quoted above raises serious and troubling questions about the propriety of your serving as

Independent Counsel to investigate matters pertaining to the Jones case. You have in the past investigated the Jones matter, according to The Washington Post. The recent expansion of your jurisdiction explicitly requires you to investigate events "concerning the civil case Jones v. Clinton." You have, since your appointment as Independent Counsel, remained an active partner in the Kirkland & Ellis law firm, as was your right. The partnership includes Mr. Porter.

I hope you can therefore perceive why I am requesting accurate and specific information (i) concerning your own, Mr. Porter's, and any other Kirkland & Ellis lawyer's, employee's or agent's contacts with and assistance to Ms. Paula Corbin Jones and/or her attorneys or agents or supporting groups, and (ii) concerning what was conveyed to the Attorney General and the Special Division in January, 1998, about any such contacts and assistance, when you sought an expansion of your jurisdiction to encompass the Jones v. Clinton case.

I thank you for your courtesy.

Sincerely,

David E. Kendall

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March 13, 1998

HAND DELIVERED

David E. Kendall, Esq.
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Re: William Jefferson Clinton

Dear David:

By your letter last Wednesday, March 4, 1998, the President has now declined five invitations to testify and tell his story to the grand jury.

As time goes on, now eight weeks into the investigation, your claim that the President continues not to have time to prepare his testimony about Ms. Lewinsky is increasingly difficult for us to understand. We mean no disrespect whatever, mindful as we are of the President's constitutional obligations, but as stated in my letter of March 2, 1998, since the Monica Lewinsky matter began the President has found time to play golf, attend basketball games and political fundraisers, and enjoy a ski vacation. On January 17, 1998, the President was deposed for nearly a full day in the Jones v. Clinton lawsuit. Your co-counsel, Bob Bennett, has even moved to expedite the trial date in that case. In addition, as you remember, despite the President's weighty responsibilities we had no trouble scheduling the President's depositions for other Whitewater-related matters, and we were able to schedule his testimony in the two trials in Little Rock with relative ease. In those trials, of course, he was summoned as a defense witness, not by the United States.

You may recall that when the grand jury issued a subpoena for Mrs. Clinton's testimony in January 1996, you and White House Counsel complained that she, at minimum, should have first been given the opportunity to appear voluntarily. You and White House Counsel urged alternatives in lieu of a grand jury

appearance. As to the President and the Lewinsky matter, however, you have declined five invitations to testify voluntarily. Moreover, you have suggested no alternatives.

Until last week, the President had repeatedly pledged his full cooperation in connection with the Monica Lewinsky investigation. Last Thursday, March 5, 1998 -- one day after the President declined our fifth invitation to appear voluntarily before the grand jury -- the President publicly declared he had "given all the answers that matter" relating to Ms. Lewinsky. The President has also invoked executive privilege under circumstances exceedingly difficult to justify under settled principles of our constitutional system. We are, in consequence, constrained to say this: We now question whether the President ever intends to cooperate with this investigation, as promised, and testify.

The suggestion in your letter that our possession of the President's deposition in the Jones v. Clinton case provides the grand jury "access" to the President's information about the Lewinsky matters is, with all respect, disingenuous. The President was questioned in his deposition about a single, narrow issue involving Ms. Lewinsky. As you know, the Special Division -- upon the specific request of the Attorney General -- defined our jurisdiction to include "whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law . . . in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case Jones v. Clinton." Our inquiry is by law much broader than the narrow issue about which the President was questioned in his deposition.

Let me reiterate: we have profound respect for the institution of the Presidency. Yet, as I am sure you agree, the grand jury is entitled to "every man's evidence." See United States v. Nixon, 418 U.S. 683 (1974); United States v. Burr, 25 Fed.Cas. 20 (No. 14,692) (C.C. Va. 1807). It is urgent that we receive the President's testimony in this matter as soon as possible.

Kindly advise me by noon Tuesday, March 17, 1998, whether the President will testify in any manner about the matters involving Ms. Lewinsky. If, as I indicated briefly above, alternatives to a grand jury appearance have occurred to you, then we are prepared to discuss them at your earliest

convenience. In particular, a deposition format -- should the President refuse his right to present his testimony to the grand jury and face his fellow citizens eye to eye -- is an arrangement we stand ready to discuss. We are ready and able to accommodate any issues of Presidential dignity, as well as security, which of course can be readily accomplished at the United States Courthouse.

Nothing, in short, should stand in the way of the truth's coming out. As should be apparent, we continue to seek -- on behalf of the grand jury -- the President's truthful testimony before that body, which stands ready to sustain any inconvenience in order to respect the President's schedule, while at the same time carrying out its solemn function under our system of law.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

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March 18, 1998

CONFIDENTIAL
RULE 6(e), F.R.CRIM.P., GRAND JURY SUBMISSION

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By Hand

Dear Bob:

Thank you for your letter dated March 13, 1998. I will be equally frank in response.

For over four years now, the President has cooperated in every possible way with the investigation of the Independent Counsel. He has voluntarily given testimony under oath on three separate occasions to the Independent Counsel and twice to defendants (on each occasion, he was cross-examined by the Independent Counsel), he has submitted written interrogatory answers, he has produced more than 90,000 pages of documents, and he has provided information informally in a variety of ways.

I, too, have dealt in good faith with your investigation for more than four years. Until the recent expansion of jurisdiction to cover the Lewinsky matter, I have not had occasion to raise, nor have I raised, the kind of concerns I have adverted to in recent correspondence. I will be more specific: the actions of the Office of Independent Counsel in the past several weeks (as distinct from the actions of the grand jury) lead me to believe that your investigation may not, in fact, be an even-handed search for justice but rather may be, for whatever reason, a campaign to embarrass and harass the President. I believe he is now plainly the object of your investigation.

You state that it is "disingenuous" to assert that the President's deposition transcript (including the videotape of the deposition, which you likely will soon have access to) in Jones v. Clinton allows you to obtain the President's information on the Lewinsky matter. We continue to believe that the forty deposition pages of testimony (pp. 48-86, 202-204) on this topic set forth the essentials of this matter, although there are doubtless more questions you might be able to devise.

Of more serious concern to us is evidence that your office contrived to obtain the President's deposition testimony through improper and illegal means. Based upon what we have been able to learn thus far (see, e.g., the page one Washington Post article on February 14, 1998, headlined "Linda Tripp Briefed Jones Team on Tapes"), your office, your agent Linda Tripp, and the Paula Jones lawyers apparently colluded to use the fruits of Tripp's felonious audiotaping (see Md. Code Ann. § 10-402 (1997)) of Lewinsky against the President at his deposition on Saturday, January 17, 1998. Curiously, Tripp appears to have been given immunity by your office immediately after she contacted you. She then secretly recorded at least one conversation with Lewinsky, an act that (unlike her previous audiotapings) does not appear to have been in violation of wiretap law. According to the Washington Post's February 14 article, Tripp arranged to have Lewinsky apprehended by your agents about noon on Friday, January 16, then put off a meeting with the Jones lawyers until (we believe) it became clear that Ms. Lewinsky would not herself agree to wear a recording device to gather evidence against others. At some point late in the afternoon, Tripp "sent word" to the Jones lawyers that she would talk to them, and she was transported to her home in Maryland (perhaps by one of your agents) where she proceeded to share both the existence of the illegal tapes[1/] and their contents with the Jones lawyers, who were able to use this information the next day to question the President.[2/]

[1/] Under the Maryland electronic surveillance statute which makes one-party telephone call taping a felony, it is a violation of the statute to disclose that an illegal tape has been made, since the term "contents" (the disclosure of which are forbidden) is defined to include "any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication." Md. Code Ann. § 10-401(7) (1997)(emphasis added).

[2/] Indeed, the Washington Times observed that "With the information from Mrs. Tripp, the Jones lawyers were able to ask Mr. Clinton in his deposition specific questions about

The Ethics in Government Act provides in Sec. 593(c)(1) a carefully defined procedure for expanding the jurisdiction of an independent counsel. If a new matter is not "related" to an existing subject of investigation (and the Lewinsky matter plainly was not), the statute does not allow a free-roving investigation beyond the limits of an independent counsel's present jurisdiction. For example, there would be no statutory justification to "wire" a cooperating witness to investigate further a matter not within the jurisdiction of the independent counsel. Section 593(c)(2)(A) of the Act provides that "[i]f the independent counsel discovers or receives information about possible violations of criminal law by [covered persons] which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit such information to the Attorney General," and the Attorney General "shall then conduct a preliminary investigation of the information in accordance with the provisions of section 592" (emphasis added). While the Attorney General "shall give great weight to any recommendations of the independent counsel" (ibid.), the determination whether to recommend to the Special Division an expansion of jurisdiction is the Attorney General's alone.

Under the circumstances here, there was no need for a hasty and informal presentation to the Attorney General--unless the OIC was hoping to use Tripp (and perhaps Lewinsky) to somehow obtain incriminating evidence against the President whose deposition in the civil case was fast approaching. We believe that the Attorney General was not properly informed about the circumstances which ostensibly justified the expansion of jurisdiction sought, and that your recent investigation has in fact been a contrivance to justify post facto the grant of jurisdiction that your office obtained from the Special Division.

It appears to us that you did not seek, the Attorney General did not approve, and the Special Division did not authorize the

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his relationship with and gifts to Miss Lewinsky, according to a person informed about the President's testimony." (The Washington Times, Feb. 15, 1998.) At the deposition, when the President remarked after a series of highly specific questions concerning Ms. Lewinsky, "I don't even know what you're talking about, I don't think," Ms. Jones' lawyer, James Fisher, replied, "Sir, I think this will come to light shortly, and you'll understand." Deposition transcript, at 85.

extension of your jurisdiction based on any specific and credible evidence of criminal activity by a covered person. As you surely know, the expansion of jurisdiction approved by the Special Division, on the basis of an oral application, was to investigate "whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law . . . in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case of Jones v. Clinton." No "covered person" was involved in this matter unless and until the President gave testimony which might be regarded by your office as suspect. The Attorney General's written application to the Special Division, submitted after the Court was informed orally of the request, states that the Attorney General had determined that it would be a conflict of interest, under 28 U.S.C. § 591(c)(1) for the Department of Justice to investigate. However, it was still incumbent upon the Attorney General to conduct an appropriate "preliminary investigation" to determine that there was specific evidence from a credible source to warrant further investigation. We do not believe the Attorney General was provided adequate information about Tripp's illegal audiotaping or her general credibility or about the efforts by your office to acquire evidence which could be used to support the expansion of jurisdiction. We do not believe that such a bootstrap acquisition of jurisdiction as apparently occurred here was ever contemplated by the Ethics in Government Act.

We have another serious concern about the expansion of jurisdiction in this matter, and I have adverted to this in my letter to you dated March 4, 1998. As you know, I attached a copy of a letter to the Independent Counsel which I had hand-delivered on February 17, 1998, and which sought certain basic information relating to the Independent Counsel's relationship to the Jones v. Clinton civil case. Like your office, I am interested in "the truth's coming out." It is over a month later, however, and I still have received no response of any kind from the Independent Counsel. The Special Division's Order dated January 16, 1998, specifically recites that it approves "an expansion of prosecutorial jurisdiction in lieu of the appointment of another Independent Counsel." The point of my February 17 letter to the Independent Counsel was precisely whether he (as opposed to some other qualified person) should have been appointed by the Special Division under the facts of this case. The Ethics in Government Act explicitly provides that "[d]uring the period in which an independent counsel is serving under this chapter (i) such independent counsel, and (ii) any person associated with a firm with which such independent counsel is associated, may not represent in any matter any person involved in any investigation or prosecution under this chapter."

28 U.S.C. § 594(j)(1)(A)... As my February 17 letter to the Independent Counsel made clear, the Chicago Tribune reported six days earlier that one of the Independent Counsel's partners in Kirkland & Ellis, Mr. Richard Porter, may have provided legal advice and services to Paula Jones in her suit against the President. I have written the Independent Counsel seeking information concerning this and other news reports concerning his own relations with Ms. Jones' lawyers. I specifically requested information "(i) concerning [the Independent Counsel's] own, Mr. Porter's, and any other Kirkland & Ellis lawyer's, employee's or agent's contacts with and assistance to Ms. Paula Corbin Jones and/or her attorneys or agents or supporting groups, and (ii) concerning what was conveyed to the Attorney General and the Special Division in January, 1998, about any such contacts and assistance, when [the Independent Counsel] sought an expansion of . . . jurisdiction to encompass the Jones v. Clinton case." I have heard nothing in response.

I will not repeat here my description of the many grave duties of state which are uniquely the President's. As I noted in my March 4 letter, "[w]hile it is true that not every moment of the day is absorbed by the duties of office, the President is extraordinarily busy on a range of important public issues, some of which are visible and some of which are not." The President leaves on a long-scheduled state visit to Africa this weekend, and he will be gone until April 3. He then is in South America on another state visit from April 15 to 20. Such trips require not only travel time but a great deal of preparation time, study, and analysis in advance and after the trip.

I believe that a meeting to discuss my concerns, as well as yours, would be fruitful, and I am available at your convenience for that purpose.

Again, I would respectfully ask you to read this letter to the grand jury and to make it part of the grand jury record, if your letter to me is shared with the grand jury.

I thank you for your courtesy.

Sincerely,

David E. Kendall

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April 3, 1998

HAND DELIVERED

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Re: William Jefferson Clinton

Dear David:

I write in response to your letter of March 18, 1998, in which you declined our sixth invitation for the President's testimony, and in response to our meeting of March 20, 1998, during which you declined to answer my question whether the President will ever voluntarily testify about the matters involving Monica Lewinsky.

As you know, upon receipt of your letter I immediately called you to take you up on your offer to meet and discuss our mutual concerns regarding our six invitations to the President. Notwithstanding the numerous misstatements in your letter -- which are addressed herein -- I was hopeful that in light of the President's public pledges of cooperation we could finally arrange terms under which the President would voluntarily testify about the matters involving Ms. Lewinsky. My hopes were dashed at our meeting when you simply refused to discuss any of the "issues." Not only did you merely repeat some of the inflammatory allegations in your letter, you avoided even addressing -- much less answering -- the question I began our meeting with: Will the President ever voluntarily testify about the matters involving Monica Lewinsky? You refused several times to answer this question. Indeed, when I asked if we were to address the "concerns" outlined in your letter to your satisfaction would the President then agree to testify, you still refused to answer. This exercise, in the context of the backpedaling and misdirection of your letters and the President's public statements, makes clear that the President has no

intention -- and never has had any intention -- of cooperating with this grand jury or this investigation. We, of course, regret the President's apparent decision.

Now I will turn to the variety of irrelevant charges raised in your letter against this Office, the Independent Counsel, and Judge Starr's private law firm. Because our addressing these matters is evidently not dispositive for you, I will address them only briefly.

First, you suggest that the President's deposition in the Jones case amply substitutes for grand jury questioning. You are incorrect. As you are well aware, the jurisdiction of this Office and the scope of discovery in the Jones case are far from coextensive. While the deposition bears on matters within our jurisdiction, the grand jury investigation has unearthed many significant issues not addressed in the deposition.

Second, you accuse this Office of having "contrived to obtain the President's deposition testimony through improper and illegal means." This, too, is flatly incorrect. All evidence gathered in this investigation has been obtained lawfully and properly.

Third, you charge that this Office, Linda Tripp, and Richard Porter of Kirkland & Ellis "colluded" with attorneys for Paula Jones. As authority, you cite a number of the notoriously inaccurate media accounts of this investigation, many of which have been based upon statements by "unnamed presidential advisers." Let me set the record straight: This Office has not colluded with Ms. Jones's attorneys -- not directly, not indirectly, and not through Ms. Tripp, Mr. Porter, or any other person. With nothing more than a sheaf of newspaper articles in hand, it is irresponsible of you to charge otherwise.

Fourth, you contend that this Office has undertaken investigative steps without proper authority. We disagree. The expansion of our jurisdiction by the Special Division was preceded by a presentation of information to the Attorney General, a preliminary investigation of such information by her, and a subsequent recommendation to the Special Division. We, unlike you, believe the Attorney General knows and follows the law. She followed the law in this case. As your complaint is a legal argument about our authority to investigate, we suggest you raise it in a judicial forum.

Fifth, you assert that the President has "cooperated in every possible way" with this investigation. You know, of course, that this is not true. You and the President have failed to produce financial records that have been under subpoena for several years. The Rose Law Firm billing records, for example, were "re-discovered" at the White House in January 1996 and had been under subpoena for many months. Jane Sherburne, then of the White House counsel's office, testified before the Senate that after the records' "re-discovery" she suggested to you that the forensic integrity of the records be preserved. Senate Hearing, 2/8/96, at 69-71. Ms. Sherburne further testified that her suggestion was dismissed. Id. You testified that you "did not regard this as a forensic matter," id. at 72, and, of course, the forensic value of the records was in fact compromised after handling by your office. In addition, as you know, I wrote you on March 6, 1998 and March 25, 1998, requesting that the President fully comply with subpoena number V002 and its instructions so that the grand jury can determine whether the President ever had any documents or things in response to the subpoena that have not been produced. You thus far have responded with only a vague statement that the President "might have given the President a few additional items, such as ties and a pair of sunglasses, but we have not been able to locate these items. The President frequently does not see and is not aware of numerous items which are sent to him by friends and supporters." This response is unsatisfactory and not in compliance with the subpoena. The grand jury needs the additional information demanded by the subpoena's instructions.

Finally, you reiterate that the President is a busy man. We do not disagree, and indeed are well aware that the President has weighty responsibilities besides his obligation to assist a federal grand jury investigating possible criminal conduct. Nonetheless, we believe that he has found and can continue to find the time to testify in judicial fora -- particularly given that we will work with you to time his appearance so as to reduce disruption to his schedule.

Those are our views on the matters raised in your letter. Since January 28, 1998, when we first invited the President to testify, the grand jury has grown increasingly eager to hear the President's testimony.

Having tried and tried, I will now try once again. Please give me a straightforward yes or no answer to the following question: Will the President ever agree to testify voluntarily about the matters involving Ms. Lewinsky? If the President chooses again not to give his testimony, so that the grand jury may at least receive some of his evidence, please provide this Office with any and all exculpatory evidence you may have.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

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April 17, 1998

CONFIDENTIAL
RULE 6(e), F.R.CRIM.P., GRAND JURY SUBMISSION

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By Hand

Dear Bob:

Thank you for your letter of April 3, 1998. I will try once again to make clear our position with regard to the President's providing testimony on the Lewinsky matter, beyond the transcript and videotape of his deposition in Jones v. Clinton, which your Office now has and is free to submit to the grand jury. I have attempted to do this in my previous correspondence and in our meeting at the federal courthouse on March 20, 1998.

In my several letters and in our meeting, our position could not have been more clearly stated: we have serious objections to the origin and conduct of your Lewinsky investigation, and until those are satisfactorily addressed, we cannot, as a matter of professional duty to our client, allow the President to give further testimony at the present time. The issue remains open, however, and depends on your Office. We remain entirely respectful of the grand jury. Indeed, from recent press accounts, it appears that the grand jurors themselves are performing their civic duty with admirable commitment and at some sacrifice to their personal lives. Quite frankly, I believe if your Office were to provide the information I have sought over the past several months, this would lighten the burden on us, on you, and on the grand jurors.

Since your letter states it will address my concerns only "briefly", I will not restate here the issues I have raised at some length in my previous correspondence. I would note only that, once again, your letter stonewalls my request for information concerning contacts between members of the Independent Counsel's law firm (Kirkland & Ellis) and the Paula Jones lawyers as of the January 16, 1998, expansion of your Office's jurisdiction to encompass the Lewinsky matter in the Paula Jones civil suit. My need for this information is obvious: if in fact personnel at Kirkland & Ellis have provided legal assistance in some way to the Jones side of the civil suit, Judge Starr would not have been qualified under the Ethics in Government Act to serve as independent counsel on the Lewinsky matter--some other individual, with no connection to the Jones litigation, would have had to have been selected. The information I seek is obviously in your custody and control: Judge Starr need only ask his law partners, if he is not in fact privy to it himself. I first wrote him on February 17, 1998, requesting this information, and I still have not had an answer to my letter. You will recall that I appended a copy of that letter to my March 4, 1998, letter to you--I will not do so again.

This matter is highly important under the statute, because when Congress enacted the independent counsel legislation, it permitted such counsel to remain in their private law firms and to take on the appointment as a part-time job. I do not fault nor have I criticized the Independent Counsel for remaining at his law firm (where, according to news reports, he has made $1 million a year while serving as independent counsel, see, e.g., Time, Feb. 2, 1998)), but it is, obviously, extremely important that the conflict rules that permit such continued employment under the Act be followed. The statute provides that no person associated with the independent counsel's law firm may "represent in any matter any person involved in any investigation or prosecution under this chapter." 28 U.S.C. § 594(j)(1)(A)(ii). Thus, if someone at Kirkland & Ellis had "in any matter" represented Ms. Jones, Judge Starr could not properly have been appointed to investigate the Lewinsky matter.

It is true, as your recent letter asserts, that I have based my inquiry on media accounts. I do not have any reason to believe that (for example) the February 11, 1998, account is "notoriously inaccurate," as you suggest, since it appears in the Chicago Tribune, a reputable newspaper. The Tribune's report was in fact quite specific:

> "The Chicago-based law firm whose partners include Whitewater independent Counsel Kenneth Starr has begun an inquiry into whether a partner provided unapproved assistance to lawyers representing Paula Jones in her sex harassment case against President Clinton . . . .
>
> [T]he law firm's internal inquiry is focusing on Richard Porter, a partner in the Chicago office and a former senior aide to President George Bush and Vice President Dan Quayle . . . .
>
> John Corkery, associate dean at Chicago's John Marshall Law School, said the ethical issues raised are complicated ones. But in general, he said, 'If an attorney at the Kirkland firm is doing something that amounts to legal work for Jones, that creates a problem for Starr as the independent counsel because Starr's partner is pursuing a related matter in private practice that Starr has the obligation to investigate as part of his official duties.'
>
> 'The acts of Starr's partner in the practice of law are Starr's acts, by virtue of their partnership,' Corkery said."

You also assert that many statements in the accounts I cited in my February 17 letter are sourced to (in your words) "unnamed presidential advisers." With all respect, I do not see any such sources in these articles, although the February 11, 1998, Chicago Tribune article is in part based upon an unnamed "Kirkland & Ellis source".

I am also surprised at your cavalier dismissal of press reports as a basis for further inquiry. Your own Office has been quite willing even to take legal action on the basis of press accounts, when it has suited your purposes. For example, you successfully moved to disqualify Judge Henry Woods in the Court of Appeals for the Eighth Circuit "with nothing more than a sheaf of newspaper articles in hand" (to borrow your phrase), although you had chosen not to make such a motion to the Judge himself. As the Court of Appeals noted, "[t]he Independent Counsel relies primarily on newspaper articles to support his request." United States v. Tucker, 78 F.3d 1313, 1322-23 (8th Cir. 1996). By their very nature, questions involving possible conflicts of interest often arise because of media reports. In a proceeding in Arkansas last year involving the question whether the Independent Counsel suffered a conflict of interest because a job he had accepted in the future at Pepperdine University was

partially funded by a virulent opponent of President Clinton, Judge Eisele, a Republican United States District Court judge, commented: "[H]aving reviewed the media accounts regarding the Pepperdine issue, I find that it is incumbent upon the Court to make some kind of inquiry." In re Starr, 986 F. Supp. 1144, 1153 (E.D. Ark. 1997). Judge Eisele also observed that "[i]t is even possible that Mr. Starr, as Independent Counsel, should receive more exacting scrutiny regarding his professional responsibilities than other prosecutors," since the Special Division indicated (when it appointed him to replace Mr. Robert Fiske) that "'the Act contemplates an apparent as well as an actual independence on the part of the Counsel.'" 986 F. Supp. at 1155.

Your letter asserts that the expansion of your jurisdiction to include the Lewinsky matter was approved by the Attorney General and you suggest that this means that the Attorney General has in fact ratified your application. However, one of the very questions I have been asking for over two months--without receiving an answer of any kind--is precisely what the Attorney General was told when your Office suddenly requested an expansion of its jurisdiction in January. I have no idea whether the Attorney General was in fact informed of any contacts between Kirkland & Ellis personnel and the Paula Jones camp. The Attorney General is obviously not clairvoyant: if she were not informed of any such contacts, she could hardly be expected to know about them and to have made a decision as to whether, under the circumstances, Judge Starr was in fact the appropriate Independent Counsel to conduct the Lewinsky investigation. It is quite significant, I believe, that the Attorney General's application to the Special Division recites that "Independent Counsel Starr has requested that this matter be referred to him" (emphasis added). Thus, your office affirmatively and purposefully sought to extend its jurisdiction over the Lewinsky matter. This expansion request did not originate with the Attorney General.

Instead of providing responsive information, you have advised that we should "raise [this issue] in a judicial forum." We will accordingly assume that we will receive no further response to my February 17 letter and will proceed accordingly.

I will not repeat here my previously expressed concerns about your Office's investigative techniques in the Lewinsky matter. Recent press reports indicate that you plan to have Ms. Tripp testify before the grand jury. Should you have Ms. Tripp testify, I would respectfully request that you brief the grand jury concerning the illegality of Ms. Tripp's one-party taping of

Ms. Lewinsky's telephone conversations in Maryland, the reasons your office wired Ms. Tripp to tape record Ms. Lewinsky's conversations, your knowledge of how the contents of this tape "leaked" to the news media, your knowledge of the reasons Ms. Tripp sought out your office rather than the United States Attorney's Office, the timing and details of your federal law immunity agreement with Ms. Tripp, and the restrictions (if any) you placed upon Ms. Tripp's transmittal of illegally acquired taping information (including the existence of illegally made tapes) to the Paula Jones lawyers in the week before the President's deposition.

I have responded to your comments concerning subpoena V002 in a letter dated April 13, 1998, and will not do so again here. I have also set forth fully in a letter to the Independent Counsel dated April 10, 1998, my concerns about having your Office investigate recent allegations concerning David Hale. In its April 9 letter to Judge Starr, the Department of Justice noted that "the United States Attorney's Office for the Western District of Arkansas was recently provided with information suggesting that David Hale, who we understand is a witness in various matters under your jurisdiction, may have received cash and other gratuities from individuals seeking to discredit the President during a period when Hale was actively cooperating with your investigation." The Department's letter also noted "suggestions that your office would have a conflict of interest, or the appearance of a conflict, in looking into this matter, because of the importance of Hale to your investigation and because the payments allegedly came from funds provided by Richard Scaife [the virulent opponent of President Clinton whom I referred to above]." The Independent Counsel's withdrawal from his Pepperdine commitments does not begin to solve the many problems that have been noted. For the reasons set forth in my April 10 letter, which involve both fairness and the perception of fairness, your Office should not have <u>any</u> involvement whatsoever in the investigation of this matter.

For over four years, the President has cooperated fully with the investigation of the Independent Counsel, which has now gone on longer than a Presidential term. He has voluntarily given testimony under oath on three different occasions to the Independent Counsel and twice to defendants (on each occasion, he was cross-examined by the Independent Counsel), he has submitted written interrogatory answers, he has produced more than 90,000

pages of documents[1], and he has provided information informally in a variety of ways. This amounts to unprecedented cooperation[2] with an investigation of unprecedented duration,

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1/ You assert that we "have failed to produce financial records that have been under subpoena for several years." This is simply false. You have not specified, nor could you, any such record in our possession that we have not produced.

2/ Because your letter contains an unwarranted and false ad hominem charge concerning the Rose Law Firm billing records, I respond here simply for the sake of the record, and I do not ask you to read this footnote to the grand jury, unless you choose to do so. I do not complain that you appear to have imperfectly complied with the Independent Counsel's publicly expressed philosophy (viz.,"I have a job to do and you will never hear me besmirching anyone's reputation. Not once, never in all of this four years of activity, have I ever said anything to besmirch anyone's reputation. . . . And you will never find us doing that. And when I say me, I'm not meaning to personalize that. I mean my colleagues with whom I'm very privileged to serve." CNN, Special Event Transcript, April 2, 1998)(emphasis supplied). My point is instead that your smear is simply false.

You write that "the forensic value of the [Rose Law Firm billing] records was in fact compromised after handling by [my] office." You reference the highly partisan Senate inquiry chaired by Senator D'Amato, but you distort the meaning of the very testimony you quote. If you had reviewed the D'Amato testimony more carefully, you would have observed that the billing records were produced in accordance with procedures jointly agreed upon by me, Ms. Sherburne, and Mr. Schuelke. Moreover, your Office was in fact able to do fingerprint analysis of the billing records, because it made this evidence available to Senator D'Amato's Committee under cover of an undated letter from the FBI which Senator D'Amato released on June 4, 1996. The fact that your Office had identified Mrs. Clinton's fingerprints on the billing records (not surprisingly, since she was the billing partner on the account) was somehow leaked to the news media (see, e.g., Newsweek, May 6, 1996; Washington Times, April 30, 1996). In retrospect, this appears to be a preview of the highly prejudicial leaks we have experienced in the last three months. In any event, two years ago, I

(continued...)

intrusiveness, and indefiniteness. That you now request we submit "exculpatory" evidence is perfectly consonant with the occasionally Alice-in-Wonderland nature of this whole enterprise. I am not aware of anything the President needs to "exculpate."

I would respectfully ask you to read this letter to the grand jury and to make it part of the grand jury record, if your recent letter to me is shared with the grand jury.

I thank you for your courtesy.

Sincerely,

David E. Kendall

[2/](...continued)
wrote strenuous letters of protest, dated April 29 and 30, 1996, to the Independent Counsel about these leaks, receiving in reply a soothing response dated May 3, 1996 ("Your concerns are noted, and they are shared by this Office") and no further action.

Tab 2

Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, DC 20004
(202) 514-8688
Fax (202) 514-8802

July 17, 1998

HAND DELIVERED

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

As you know, beginning January 28, 1998, we, on behalf of the grand jury, have invited the President six times to testify voluntarily about the matters involving Monica Lewinsky. Despite his previous cooperation with other aspects of our investigations and his public pledges to cooperate fully with this investigation and provide "more rather than less, sooner rather than later," the President has unfortunately chosen to decline each and every invitation to give his information to the grand jury. The grand jury simply can wait no longer for the President's voluntary cooperation.

Pursuant to § 9-11.150 of the United States Attorneys' Manual and with all the requisite approvals thereunder, enclosed please find a subpoena for President Clinton to appear and give testimony before the grand jury on Tuesday, July 28, 1998, at 9:15 a.m. If the President agrees to comply with the subpoena and testify, we and the grand jury -- as we have previously stated -- will accommodate his schedule if he cannot appear on the 28th.

We believe you are aware of the status of your client. We would be pleased to state explicitly the status of the President if you desire.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

Enclosure

CO 293 (Rev. 8/91) Subpoena to Testify Before Grand Jury

United States District Court

FOR THE DISTRICT OF COLUMBIA

TO: William Jefferson Clinton

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	COURTROOM
United States District Court for the District of Columbia Third & Constitution Avenue, N.W. Washington, D.C.	Grand Jury, Third Floor
	DATE AND TIME July 28, 1998/9:15 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

☐ *Please see additional information on reverse.*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE OR CLERK OF COURT	DATE
Nancy M. Mayer-Whittington, Clerk (BY) DEPUTY CLERK: Margaret Mercier	July 17, 1998 D1424
This subpoena is issued upon application of the United States of America.	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY Robert J. Bittman, Deputy Independent Counsel Office of the Independent Counsel 1001 Pennsylvania Avenue, N.W., Suite 490-North Washington, D.C. 20004 (202) 514-8688

*If not applicable, enter "none."

*U.S.GPO: 1993-0-350-792/80398

Advice of Rights

- The grand jury is conducting an investigation of possible violations of Federal criminal laws involving: perjury, subornation of perjury, obstruction of justice, witness tampering, and other Federal criminal laws.

- Your conduct is being investigated for possible violations of Federal criminal law.

- You may refuse to answer any question if a truthful answer to the question would tend to incriminate you.

- Anything that you do say may be used against you by the grand jury or in a subsequent legal proceeding.

- If you have retained counsel, the grand jury will permit you a reasonable opportunity to step outside the grand jury room to consult with counsel if you so desire.

Tab 3

Office of the Independent Counsel

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Fax (202) 514-8802

July 23, 1998

HAND DELIVERED

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

I write in regards to your request yesterday for additional time to respond to the grand jury's subpoena to President Clinton. Although I conveyed to you yesterday that we had decided not to give any additional time, you asked me to let you know by the close of business Friday, July 24, 1998, if our views changed. We are responding today to give you as advance notice of our decision as possible.

We have carefully reviewed your request and balanced it against the grand jury's desire -- and responsibility -- to complete this investigation as thoroughly and expeditiously as possible. We offer to withdraw the current subpoena to the President and issue a new subpoena with an appearance date of Friday, July 31, 1998, at 9:15 a.m. if you agree that you will not request any additional time or another continuance, either from this Office or the Court. As before, if the President agrees to comply with the subpoena and testify, we and the grand jury will accommodate his schedule if he cannot appear on the 31st. We believe this extension of time is entirely reasonable given that the President has been on notice since January that the grand jury wished his testimony and given that all the President must necessarily decide by July 31 is whether he will comply with the subpoena and testify. Kindly advise me by 4:00 p.m. tomorrow whether the President wishes to accept our proposal; otherwise, the current subpoena will remain in effect.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

Tab 4

LAW OFFICES
WILLIAMS & CONNOLLY
725 TWELFTH STREET, N.W.
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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

DAVID E. KENDALL
(202) 434-5145

July 24, 1998

CONFIDENTIAL

Robert J. Bittman, Esq.
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

By Hand

Dear Bob:

I write in response to your letter of yesterday, which I believe to be now moot.

The President is willing to provide testimony for the grand jury, although there are a number of questions relating to the precise terms and timing which must be worked out. If you are willing to work within the framework of the last three times the President provided such testimony and if you are sincere in your statement that you will work to accommodate his schedule, we should quickly be able to finalize the arrangements.

I will get to you by 4:00 p.m. Tuesday, but sooner if possible, a more detailed letter, which will include a date for testimony which will accommodate the President's other existing obligations.

I request that you withdraw the pending subpoena, since the issue of the subpoena itself is quite important to us. The precedential effect of such a subpoena is not an issue I have addressed in previous correspondence with you (which ended with my April 17 letter), but I will do so in my next letter.

Sincerely,

David E. Kendall

Tab 5

Office of the Independent Counsel

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Fax (202) 514-8802

July 24, 1998

HAND DELIVERED

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

We are gratified by your response to my letter of yesterday, and we are pleased by the President's decision to provide testimony for the grand jury.

You indicate in your letter that the President "is willing to provide testimony for the grand jury" and you suggest that such testimony take place in a forum outside the grand jury, on an uncertain future date. We are happy to discuss arrangements for the President's testimony that will be consistent with concerns of security and dignity of the Office of the President. We remain interested, however, in obtaining a prompt commitment to a date certain for that testimony. As you know, we have invited the President on six occasions to testify before the grand jury, and its work continues apace. As a result, we are currently not inclined to withdraw the subpoena. Nevertheless, we would be happy to consult with you at your earliest convenience before next Tuesday morning to work out an acceptable schedule for the President's testimony.

Sincerely,

Robert J. Bittman
Deputy Independent Counsel

Tab 6

LAW OFFICES
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DAVID E. KENDALL
(202) 434-5145

July 27, 1998

By Hand

Robert J. Bittman, Esq.
Deputy Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004

CONFIDENTIAL

Dear Bob:

This will acknowledge your letter dated July 17, 1998, enclosing a subpoena for the President to appear before the grand jury on July 28 and will follow up on my letter to you dated July 24, 1998.

As you are well aware, this extraordinary subpoena poses grave and literally unprecedented constitutional questions. While we are obviously cognizant of the holdings in United States v. Nixon, 418 U.S. 683 (1974) and Clinton v. Jones, ___ U.S. ___, 117 S.Ct. 1636 (1997), no case has ever held that a sitting President may be compelled by subpoena to provide testimony for a grand jury, much less to testify before a grand jury. In the past, Presidents have voluntarily provided information to prosecutors for legal proceedings in a variety of ways. President Clinton has twice given testimony at the request of defendants in criminal proceedings, after he had voluntarily given testimony to the Office of Independent Counsel on similar subjects, in circumstances where the defendants plainly had certain Sixth Amendment rights "to have compulsory process for obtaining witnesses in [the defendant's] favor." But neither this nor any other President has been compelled to give testimony to a grand jury by subpoena.

One of the most troubling aspects of this subpoena is its plain conflict with the impeachment provisions of the Constitution, since it is obvious that from the outset of the latest phase of your investigation you have considered the President to be a "target" of your investigation. We believe that the conclusion of then-Solicitor Bork in the investigation of Vice-President Agnew twenty-five years ago is the correct one:

the "remarks [of the framers] strongly suggest an understanding that the President, as Chief Executive, would not be subject to the ordinary criminal process . . . . Their assumption that the President would not be subject to criminal process was based upon the crucial nature of his executive powers." Memorandum for the United States Concerning the Vice President's Claim of Constitutional Immunity, at 6, In Re Proceedings of The Grand Jury Impaneled December 5, 1972, Civ. No. 73-965 (D.Md.)(Oct. 5, 1973).

Accordingly, under circumstances in which you have apparently "targeted" your investigation on a sitting President, enforcement of a grand jury subpoena would violate the most fundamental separation of powers principles because it would invade the exclusive prerogatives of the Congress. Under Article I, the House "shall have the sole power of impeachment" and the Senate "shall have the sole power to try all impeachments." Under Article II of the Constitution, the President is duty-bound to uphold the separation of powers framework against unreasonable encroachment by other branches or by an unelected Independent Counsel. In order to protect the institution of the Presidency, we are prepared to litigate to preserve these important principles.

We hope that will not be necessary. For the past four years, we have worked with your Office to devise ways for the President to cooperate with the investigations of the Office of Independent Counsel in a manner that did not infringe his Article II responsibilities. He has voluntarily and unstintingly provided an enormous amount of information in response to a great many requests from the OIC. He has, without the compulsion of subpoena, given testimony under oath on three different occasions to the Independent Counsel. He has twice given testimony for defendants in criminal proceedings and been subject to cross-examination by the Office of Independent Counsel. He has provided more than 90,000 pages of documents to the OIC, he has submitted interrogatory answers, and he has provided information informally in a variety of ways. This amounts to extraordinary and unprecedented cooperation with an investigation of extraordinary and unprecedented duration, intrusiveness, and indefiniteness.

In my letters to you over the last few months, I have set forth in detail my concerns about your Office's investigation. I will not reiterate those here, but my reservations, as set forth in my correspondence, are substantial and, I believe, well-founded. Regarding leaks, for example,

Chief Judge Johnson's findings with respect to our three show-cause motions provide dramatic confirmation of my concerns.

Despite our serious and enduring concerns about the OIC's investigation, as I indicated in my July 24 letter, the President remains willing to provide the grand jury with the information it seeks, so long as he can do so in a way that is consistent with the obligations of his Office. We believe that, with your assistance, the serious constitutional questions presented here by a subpoena may be mooted. Our proposal is made in good faith and after serious deliberation. It reflects a meaningful attempt to accommodate both your needs and those of the Presidency. We are not suggesting other more limited options utilized by Presidents in the past, such as written interrogatories, which while precedented and defensible, would, we believe, be less satisfactory. The President is prepared to provide the information you seek under conditions that (1) are consistent with the precedents established in this investigation and (2) preserve the constitutional questions both for your Office and the President for later formal legal determination, if necessary.

In our correspondence during the last few months, you have stated that the OIC "fully acknowledge[d] that the President has immense and weighty responsibilities" and that the OIC "want[ed] in every way to take fully into account those grave duties of state." (Your letter to me of March 2, 1998). You stated you wanted to "reiterate" that the OIC had "profound respect for the institution of the Presidency." (Your letter to me of March 13, 1998). We believe that the respect for the Office of the President, which you acknowledge, and which we share, requires that any testimony of the President be given under the following conditions:

1) The subpoena must be withdrawn. The President has on three different occasions voluntarily given sworn testimony when requested by the OIC. On two other occasions (in 1996), the President testified at the behest of two defendants by videotape at their trials. In our view, however, the constitutional considerations raised by your July 17 subpoena are quite different since, for example, a defendant has a Sixth Amendment right to compulsory process to present witnesses in his defense. For the separation of powers reasons discussed above and to avoid a precedent harmful to the institution of the Presidency, we believe that any testimony which the President provides now must be on a voluntary basis.

2) Any testimony by the President must be given by deposition at the White House, under the conditions of the first three OIC interviews. We anticipate that the examination will be (as it has been in the past) respectful, non-repetitive, and given within a specific time period (perhaps three hours). You will inform us of the specific areas you intend to cover (although, obviously, not of the questions you intend to ask). You will make a good faith effort to provide us documents in advance about which you plan to question the President, so he does not have to waste time at the deposition reading them for the first time.

3) Safeguards to prevent leaks must be devised. The President's January 17, 1998, deposition in the Paula Jones case was leaked to the press in flagrant violation of a court order. In this investigation, Chief Judge Johnson has entered orders for the OIC to show cause why it or individuals therein should not be held in contempt for violating Rule 6(e), Fed. R. Crim. P.: "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." (June 19, 1998, Order, at 5). Moreover, "[s]hould the Court find a direct violation of Rule 6(e), the Court reserves the right to take any appropriate steps, including referring the matter to the United States Attorney, the Department of Justice, or a special master for criminal contempt investigation and proceedings." (June 26, 1998, Order, at 2 n.1). We do not seek to require impossible conditions or guarantees, but in light of the nature of the subject matter, the intense and corrosive media interest, and the history of leaks, there must be strict safeguards as to attendance, handling of the transcript (perhaps lodging the only copy with the court until it is presented to the grand jury), dissemination, etc.

4) This testimony will be given only after the President has an adequate time to prepare for it. In Clinton v. Jones, supra, the Supreme Court remarked the "'unique position in the constitutional scheme'" that the Presidency occupies and noted that the President "occupies a unique office with powers and responsibilities so vast and important that the public interest demands that he devote his undivided time and attention to his public duties." 117 S.Ct. at 1646. The Court held in that case that "[t]he high respect that is owed to the office of the Chief Executive, though not justifying a rule of categorical immunity, is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery," id. at 1650-51 (footnote omitted), and its holding was based upon its assumption "that the testimony of the President, both for

discovery and for use at trial, may be taken at the White House at a time that will accommodate his busy schedule," id. at 1643.

I last wrote you three months ago concerning the possibility of the President testifying, and I have heard absolutely nothing from you in the interim. In that and other letters, I have made clear that the President's schedule is an extremely full one that is set well in advance. Nevertheless, suddenly and without any advance notice, I received your subpoena at 6:00 p.m. on Friday, July 17, while the President was away on a long-scheduled trip to Arkansas and Louisiana, and with other significant travel scheduled, seeking his grand jury testimony a mere ten days later. This has recently been an exceptionally busy period, with the trip to China, the continuing Asian debt crisis, the well-publicized events in Russia, tensions in the Middle East and in Ireland, and a host of domestic concerns, such as the drought and a pressing legislative agenda before this Congress ends. We would be derelict in our professional duties if we allowed the President to give testimony without adequate preparation. (Unlike the OIC, the President is one person, with many different public responsibilities). Given his present schedule and duties, it is inconceivable that he would be able to testify in the immediate future. Between today and August 15, the President is already scheduled to be out of town for six days and has an exceptionally busy schedule while here. He has a long-scheduled family vacation between August 15 and 30, but much of this will be absorbed with preparation for a critical trip to Russia and Ireland from August 31 through September 6. The first date the President could conceivably testify consistently with his other obligations would be Sunday, September 13, although we would, in simple fairness, request that his testimony occur on Sunday, September 20. While we are not aware of the witnesses who remain to be interviewed by the OIC, we believe that the pending legal disputes which are now sub judice will plainly not be resolved before mid-September, and so we do not believe that a mid-September date for the President's testimony would itself unduly delay the completion of your investigation. It certainly would be sooner than any date you might anticipate were you to precipitate a legal confrontation.

I look forward to talking with you at your earliest convenience.

Sincerely,

David E. Kendall

Tab 7

Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, DC 20004
(202) 514-8688
Fax (202) 514-8802

July 27, 1998

VIA HAND DELIVERY

David E. Kendall, Esq.
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Re: William Jefferson Clinton

Dear David:

Thank you for your letter of July 27, 1998, which we received at 1:30 p.m. today. Although there is much in your letter with which we disagree, there is no reason at this point to engage in an extended discussion. Instead we wish to remain focused on the subject of obtaining the President's testimony for the grand jury.

Although we remain willing to accommodate the President's security and dignity concerns, we cannot agree with the other restrictions and conditions you suggest. Most importantly, we cannot agree to delay the testimony for another seven-plus weeks. The President has been aware since late January that the grand jury wants to hear his story, and he has declined numerous invitations to provide his testimony voluntarily. Therefore, further extensive delay of the type you propose is simply unacceptable. As a result, we will not withdraw the existing subpoena (as continued per today's telephone call, to 1:30 p.m. on July 28th). If, however, by tomorrow at 1:30 p.m., the President commits in writing to testify on a date certain on or before August 7, 1998, then we will continue the subpoena until that date. If the President agrees to a date certain, we will of course work closely with you to accommodate the logistical concerns that you have raised.

Sincerely,

Robert J. Bittman
by

Robert J. Bittman
Deputy Independent Counsel

Tab 8

103RD STORY of Level 1 printed in FULL format.

Chicago Tribune

July 27, 1998 Monday, NORTH SPORTS FINAL EDITION

SECTION: NEWS; Pg. 1; ZONE: N

LENGTH: 1137 words

HEADLINE: STARR SUBPOENA POSES CONSTITUTIONAL CONFLICT

BYLINE: By Naftali Bendavid, Washington Bureau.

DATELINE: WASHINGTON

BODY:

In subpoenaing President Clinton, Independent Counsel Kenneth Starr has delved into new legal territory and ignited a chain of events that ultimately could lead to a constitutional crisis.

Most starkly, a subpoena is a court order that, if defied, is punishable by imprisonment. But it seems clear that the president of the United States cannot be imprisoned under the Constitution because that would amount to the republic paralyzing its leader. So the meaning of this subpoena is unclear.

More broadly, the Constitution specifically provides a way to pursue criminal charges against a president--the impeachment process, under which Congress can subpoena the president if it chooses. To many scholars, that suggests that an ordinary prosecutor or even an independent counsel may not summon the president to testify.

"This is an open constitutional-law question," said Georgetown University law professor Paul Rothstein, an expert in constitutional and criminal law. "We are sailing blindly on a dark sea. We don't know what will be found to be the constitutional solution."

Meanwhile, White House officials Sunday continued their refusal even to confirm that Clinton has been served with a subpoena. Despite widespread reports that Starr issued such a summons last week, top advisers, including Rahm Emanuel, would say only that negotiations are under way on how Clinton can provide Starr the information he seeks.

Starr's subpoena may be little more than a bargaining move, a way to force a reluctant Clinton to give his version of the events surrounding the allegations that he lied under oath about a supposed affair with White House intern Monica Lewinsky.

If the negotiations fail, Clinton could decide to fight the subpoena. That would set up a clash between the judicial and executive branches that, while echoing President Richard Nixon's defiance when ordered to turn over the Watergate tapes, would be essentially unprecedented.

A small group of scholars argues that Starr has every right to subpoena Clinton. The president has declined to voluntarily appear before the grand jury, these observers note, and that leaves an official summons as the only way for Starr to obtain testimony vital to his investigation.

The whole point of our system of government, this argument goes, is that no person is above the law.

"The government is entitled to every person's testimony," said Mark Tushnet, a constitutional-law expert at Georgetown University. "If there is a sufficient showing of need for his testimony, he ought to be treated the same as any other citizen."

While Clinton certainly could not be imprisoned, this camp argues he could be punished in many other ways if he disobeys the subpoena.

The president could be fined, for example, which would not interfere with his ability to run the country. And if nothing else, the political consequences to the president of flouting a court order would be so high he would be reluctant to do it.

"In the real world, there are sanctions other than putting someone in jail," Tushnet said. "There would be, as they called it in Watergate, a firestorm of public criticism. There would be the threat of impeachment. Those are appropriate things for the legal system to take into account."

Still, most experts believe it is constitutionally dubious for a prosecutor to issue a presidential subpoena or at least to try to enforce it.

The executive and judicial branches, along with the legislative, are supposed to be roughly co-equal, and the notion of a president at the mercy of a court makes many observers nervous.

Bruce Fein, a constitutional lawyer who served in the Justice Department during the Ronald Reagan administration, ridicules the notion that the president is just like any other citizen under the law.

"He is not like every other citizen," Fein said. "It's absurd. He was elected to be president."

The appearance of the president before the grand jury would bring his presidency to a halt, Fein argued, and the Constitution says that can only be done by Congress in an impeachment proceeding.

"The political fallout of having a president appear before a grand jury would be paralysis," Fein said. "The whole country would be consumed. It would place the Clinton presidency in rigor mortis, which is something that can be done but only through an impeachment proceeding."

In a grand jury proceeding, witnesses are questioned in secret by one or more prosecutors without their attorneys present. Witnesses uniformly describe the experience as intimidating.

It is dangerous to subject the president, with his knowledge of national

security and other sensitive matters, to that sort of rapid-fire questioning, according to University of Chicago law professor David Strauss.

"In an imaginary world, you could have the president step outside the grand jury room after each question and meet with the head of the CIA and the head of the Joint Chiefs of Staff and say, 'What do you think?' " said Strauss, who assisted Clinton's legal team in the Paula Jones sexual-harassment case.

In the real world, that can't happen, Strauss added. "It's hard to think it was the constitutional plan for the president to answer questions like that," he said.

Only twice, scholars say, have the nation's courts seen an issue even remotely like this. In 1807, President Thomas Jefferson was subpoenaed to give information in the trial of Aaron Burr, who was charged with treason. Jefferson declined to testify, but he supplied documents that seemed to satisfy prosecutors.

In 1974, the Watergate special prosecutor sought tapes Nixon had made of conversations in the Oval Office. Nixon fought the subpoena, but the Supreme Court ruled 8-0 against him.

Some say the Nixon case suggests that Clinton must respond to Starr's summons. But others emphasize the difference between a president turning over evidence such as tapes and appearing in person to be peppered with questions.

"This is a big game of chicken, as all negotiations between lawyers are," Tushnet said. When it comes down to it, he added, even top scholars have absolutely no idea how the courts would rule.

The issue highlights yet again the quirky nature of the independent counsel system. No ordinary federal prosecutor would be likely to subpoena the president because the president is his boss and could order him not to do so.

To Strauss, the gravity of the constitutional issues contrasts sharply with the triviality of the underlying allegations, which involve possible perjury in a case that was dismissed by a court.

"I can't imagine there is a real-life prosecutor who would spend more than 10 minutes on a case like this," Strauss said, "let alone establish a new constitutional precedent."

THE LAW.

LANGUAGE: ENGLISH

LOAD-DATE: July 27, 1998

123RD STORY of Level 1 printed in FULL format.

ABC NEWS

SHOW: ABC GOOD MORNING AMERICA SUNDAY (10:00 am ET)

JULY 26, 1998

Transcript # 98072605-j02

TYPE: INTERVIEW

SECTION: NEWS

LENGTH: 614 words

HEADLINE: PRESIDENTIAL SUBPOENA ISSUES

GUESTS: PAUL ROTHSTEIN

BYLINE: AARON BROWN

HIGHLIGHT:
LAST DANCE ON LEWINSKY CASE ABOUT TO BEGIN

BODY:

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

AARON BROWN, Host: Well, it does indeed seem like the last dance on the Lewinsky case is about to begin. So we're going to talk a bit about Kenneth Starr's attempt to subpoena the President. He has issued the subpoena. There are lots of questions here, as we've been suggesting this morning, legal and political. Some of those tend to run together.

Joining us this morning is Georgetown law professor Paul Rothstein. He joins us from Washington. Good morning, sir.

Prof. PAUL ROTHSTEIN, Georgetown University: Good morning, Aaron.

AARON BROWN: Well, I guess because we are in uncharted waters, it's hard to give

a clean answer to the most basic question, which to me is, does he have the right to subpoena the President?

Prof. PAUL ROTHSTEIN: Well, the question is an open one under constitutional law. He can probably issue the subpoena, but the big question is whether the President can be forced to comply with it. What are you going to do, throw a president in jail if he doesn't comply with it? That would tie up the whole country. That would disable the people's president.

The Constitution provides for the only way to get a president out, which is impeachment. There a separation of powers in the Constitution. One branch of government, the courts, is not supposed to intrude on the other branches, the executive, which is the President. But we just don't know.

In the Nixon case, President Nixon was commanded to give up tapes, and in the Paula Jones case, the Supreme Court said President Clinton must respond to a civil lawsuit. But that's all different than requiring the person of the President to appear in a criminal inquiry before a grand jury, where he is the probable target.

AARON BROWN: And -- which is another question. I mean, isn't the argument -- or might the argument from the prosecutor's office be, "Well, we don't intend to indict the President. We're not sure we can. That's really the Congress's job. So he's not really a target of the investigation"?

Prof. PAUL ROTHSTEIN: Well, that would be one of the arguments. The constitutional law question is open. But that would be an argument on one side. But I don't think either side wants to have push come to shove and take this on up to the Supreme Court and maybe lose it. You know, both sides see there's a risk of loss and embarrassment and delay. Starr wouldn't want delay, so maybe that's why they're negotiating, you know, over something less than full grand jury testimony.

AARON BROWN: Read some tea leaves for me, because I'm a little befuddled, which is not unusual in my case, that he went for the President first and not Ms. Lewinsky to start the end game. What do you think his strategy, him, Starr, being here, what is his strategy?

Prof. PAUL ROTHSTEIN: Well, you see, the President is probably getting a lot of information from witnesses themselves as they appear before the grand jury. And then the President will try to fashion his testimony to be consistent with that, insofar as he can, whether he's a guilty president or an innocent president.

So if Lewinsky went first, the President would have that additional...

AARON BROWN: Got it.

Prof. PAUL ROTHSTEIN:... piece of the jigsaw puzzle.

AARON BROWN: Paul, thanks. Paul Rothstein, a law professor at Georgetown University, helping us understand what is quite a complicated legal and political question that both Kenneth Starr and the White House face this morning now.

(Commercial Break)

LANGUAGE: ENGLISH
LOAD-DATE: July 26, 1998

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VIA HAND DELIVERY

Robert J. Bittman, Esquire
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Received by: Monique Acuna
Date: 7/28/98
Time: 1:10

UNDER SEAL

Tab 53

SEALED SEALED SEALED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	Misc. No. 98-267
MOTION TO CONTINUE	Washington, D. C. July 28, 1998 4:30 p.m.

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE NORMA HOLLOWAY JOHNSON
CHIEF JUDGE, UNITED STATES DISTRICT COURT

APPEARANCES:

For the Office of Independent Counsel:
ROBERT BITTMAN, ESQUIRE
SAUL WISENBERG, ESQUIRE
JOSEPH DITKOFF, ESQUIRE

For the Movant, President Clinton:
DAVID E. KENDALL, ESQUIRE
NICOLE SELIGMAN, ESQUIRE
MAX STIER, ESQUIRE
ALICIA MARTI, ESQUIRE

Official Court Reporter:
GORDON A. SLODYSKO
4806-A U. S. Courthouse
Washington, D. C. 20001
(202) 273-0404

Computer-Aided Transcription of Stenographic Notes

PROCEEDINGS

THE COURT: Good afternoon.

COUNSEL: Good afternoon, Your Honor.

THE DEPUTY CLERK: Miscellaneous Case Number 98-267, In re Motion to Continue. Representing the Office of the Independent Counsel are Robert Bittman, Saul Wisenberg, and Joseph Ditkoff. Representing President Clinton is David Kendall, Nicole Seligman, Max Stier, and Alicia Marti.

THE COURT: All right.

Counsel, I received this afternoon President Clinton's motion for continuance. I'm sure the Office of Independent Counsel would like a chance to respond to that motion. In the interest of time, and certainly in light of the public interest in moving this matter expeditiously, I will allow each side to present oral argument on the motion for continuance rather than asking the parties to submit written responses. I will hear from each of you for I hope not more than ten minutes a side and then make my ruling. If you need more than ten minutes, I certainly will grant you additional time. But I would hope that we could do it in about ten minutes a side.

And since it is the President's motion, I will hear from Mr. Kendall first.

MR. KENDALL: May it please the Court. We've moved for a two-week continuance of a subpoena ad testificandum delivered to counsel for the President on Friday, July 17th.

In some ways, Your Honor, I regret the need to burden you with this motion; I think it was unnecessary. But we were unable to get a continuance worked out with the Office of Independent Counsel.

I would like to explain a little about the background of this, if I may. This is not the first time the President's testimony has been sought. Indeed, on three different occasions he has given testimony at the behest of the Independent Counsel during the Whitewater investigation. The first time this occurred was in June of 1994, when Mr. Fisk was Independent Counsel. The second time was in April of 1995, after the present Independent Counsel was appointed on August 5th, 1994. And the third time was in July of 1995. Now, on each occasion we were able to work out a mutually acceptable way of providing for this testimony.

The President also testified twice by videotape in criminal trials of defendants indicted by the Whitewater grand jury in Arkansas. And on those occasions, the Independent Counsel was able to cross-examine the President.

As is clear from our motion, we had correspondence with the Independent Counsel earlier this spring about the President voluntarily appearing. I had many concerns about this. They were set forth in the correspondence. That correspondence really lapsed in April. The next thing we heard was the letter attached to the subpoena which was delivered to

me at approximately 6:00 p.m. Friday, July 17th.

Your Honor, I initially sought time because this is the summer. Various people are somewhat scattered. Mr. Kantor, for example, is in China. He's been in China --

THE COURT: Mr. who?

MR. KENDALL: Mr. Mickey Kantor.

THE COURT: Oh, okay.

MR. KENDALL: One of the President's private attorneys who has been advising on this matter.

We were, however, able to make a quite specific proposal to the Independent Counsel, which was delivered yesterday, and that is at Tab 6 of our papers. This is a letter in which I try to outline some of our concerns, how they may be met. It provides a date, a specific date for the President to give testimony and an alternative date. And that, I hoped, would be a good faith offer that would allow us to negotiate, as we have in the past, and settle on both the timing and terms of the President's testimony.

I was surprised that the Independent Counsel refused to withdraw or suspend this subpoena, and therefore, I made this motion. I think it unseemly for the President of the United States to be in any way in violation of legal process. I think there are obvious reasons for that. And therefore, in an effort to avoid that, we made a motion for a brief continuance.

Your Honor, there are no deadlines, there are no statutes of limitation, there are no pending trials. There is really nothing substantive to warrant the denial of this very brief continuance.

I think that we may not in fact need the two weeks. It may be possible that we can very quickly work with the Independent Counsel to come to an agreement on the terms and timing. But as the motion papers make clear, this is a literally unprecedented legal act. The testimony of the President has never been compelled before a grand jury before, and there are very serious constitutional questions, the litigation of which would be quite time-consuming. We don't necessarily want to have to tackle those questions if we can come to an agreement that would allow both sides -- this has happened often in this investigation -- to maintain their positions but work together to get by a common problem.

The President of the United States -- I would be making this motion if it were anybody, in order to get the requisite time to try and work something out; and if things can't be worked out, to get the input of the people necessary to determine the proper arguments to be made on behalf of the President of the United States. The President is the President, however. He has public duties. And the language of the Jones case, the Clinton versus Jones case, is, I think, quite on point here because, while the Supreme Court did rule

that the President while in office could be subjected to civil litigation, it also ruled that the conduct of that litigation had to be undertaken by the supervising judge with great sensitivity to the President's duties and great deference to the many demands on his time.

It is difficult to convey -- I have represented busy people before. It is difficult to convey how busy the President is, how many demands there are on his time. And in the past it has taken us time to work out not only a time for the President to testify, but a time in which he can be adequately prepared, because he has many duties and many demands. And every client deserves the effective assistance of counsel in getting them ready to testify so they can testify as effectively and accurately as possible.

We quoted some of the language in Clinton versus Jones. One of the things the Court stated was it articulated the assumption that any testimony from the President may be taken at a time that will accommodate his busy schedule. Your Honor, again, I think that the -- we've set forth in the letter the considerations that are important to us, considerations about the President's schedule. And we respectfully submit that this continuance is not lengthy. It may in fact make unnecessary other litigation. And we respectfully would request that the Court grant us a two-week continuance.

THE COURT: What do you want to do with the two weeks?

You know, you ask me for a two-week continuance. Are you asking me to give you two weeks to let the President respond to the subpoena, or are you asking me to give you two weeks to determine how you wish to respond to the subpoena? Just what are you asking me for?

MR. KENDALL: I think the former, Your Honor. I think it's the former.

THE COURT: Well, since I've said a couple of things, you'd better tell me what my former is.

MR. KENDALL: The former, Your Honor, as I understood it, was to enable the President to determine how most appropriately to respond to the subpoena.

It may be -- and I don't know what the -- because I didn't -- I've had communications with Mr. Bittman. I don't know. My own view is that we should take testimony as we have done it before. That has the great value of precedent. And I think not only judges, but lawyers, there's a value in doing things the way they've been done in the past. I think if we can do that and find a date, the rest of the motion will be moot and we will come to agreement on a time and terms. That's what I hope will happen. We will try to make that happen.

Now, it's possible that we will not be able to come to those terms. A subpoena has been issued here. It's possible that the response would be some kind of a motion. And that would be done at the end of that two-week period.

So, I think what happens at the end of the two weeks really depends on what goes on during it.

THE COURT: So you're really not seeking just a two-weeks continuance of the return of the subpoena. You are actually seeking two weeks to determine what you want to do with respect to the subpoena.

MR. KENDALL: Your Honor, I think that's correct, although --

THE COURT: Because the way I understand it -- I could be wrong, because I haven't seen the subpoena, and I haven't asked anybody to see it, but the way I understand it, the subpoena that he received in July stated that he should appear in person today. Is that correct?

MR. KENDALL: That's correct, Your Honor.

THE COURT: Okay. So, what you're saying to me is you're not asking me to just continue that appearance for two weeks. You're asking me to give you two weeks to raise further or additional legal argument.

MR. KENDALL: Your Honor, I don't know. It seems to me that I am asking you to continue it as well. What we don't want to have is the President in violation of the subpoena. And therefore, in the normal case you would phone up the prosecutor and say, "You've subpoenaed my client for Monday;, she's going to be in Chicago that day. Could you move it to Wednesday?" And normally, that's possible.

THE COURT: Yes.

MR. KENDALL: Depending on the grand jury.

Here, I think if we can get the continuance, in the interim I hope we will be able to work out an agreement whereby we won't have to come back to the Court at all, we will do the testimony. If we can't, then at the end of that period we would file a motion.

THE COURT: All right.

MR. KENDALL: Thank you, Your Honor.

THE COURT: Thank you.

I'll be happy to hear from you now, Mr. Bittman.

MR. BITTMAN: Good afternoon, Your Honor. Robert Bittman, on behalf of the United States.

Let me clarify something as to how we got involved in the chronology of what occurred. It was exactly six months ago today that we invited the President the first time to appear before the grand jury. Six months ago today.

Mr. Kendall correctly referred to the fact that our office has received testimony from the President before. That was via negotiation. But it was always with an invitation first, which the President accepted immediately, and then we hammered out some of the details as to when and how the President would testify.

In this case, we, and the grand jury, I might add, felt it necessary to issue a subpoena to the President because

the President had refused six invitations to testify. They were, frankly, just, in my words, stringing us along, and the grand jury. The President publicly stated that he was prepared to cooperate with the investigation and give information sooner rather than later, more rather than less, and yet he refused -- or declined, rather, six consecutive invitations to testify.

As you know, the grand jury has been working very, very hard, at great sacrifice to them. It has had effects on their families; it has had job effects. And they've been working very, very hard. They have been very gracious in allowing us extra days and extra time recently.

This litigation -- or, pardon me, this investigation has also had a number of parties assert various privileges that have burdened not only this Court but the Court of Appeals, and some of them have gone all the way to the Supreme Court.

And we have tried to move things along as expeditiously as possible. The grand jury has been working very hard. And it is time to receive the President's testimony, if he so chooses.

THE COURT: And you say there have been six invitations?

MR. BITTMAN: There have been six invitations.

THE COURT: All right. And how did those invitations go? Were they in writing, as opposed to oral?

MR. BITTMAN: The first invitation was oral. The

other five were all in writing. And I believe Mr. Kendall appended all of the invitations to his pleading. All of them are in there.

THE COURT: All right.

MR. BITTMAN: And then Mr. Kendall's responses are all there, also.

THE COURT: All right.

MR. BITTMAN: With regard to the President's schedule, he is a very busy person. And the Jones v. Clinton case makes it clear that the justice process should accommodate the President's schedule and should defer to him in his official capacity. I'm sure Mr. Kendall knows the President's schedule better than I do, but we have done some research, even in terms of when we set today, to make sure that he was in town. We've checked it in the future, too. And our understanding is that the President, for example, is going away this weekend for some fund-raising events and for some rest and relaxation, and then he's taking a two-week vacation in August.

We do not want to interrupt the President's foreign trips or any official business that the President, obviously, will be involved in. But we think the timing is right. The grand jury, you know, has been working, once again, as I said, very hard. And I don't think I want to reveal to Mr. Kendall exactly why the grand jury wishes the President's testimony now. And we're certainly not obligated to, and we're not going

to. But this is the time.

We have tried to accommodate the President's schedule. We have offered innumerable dates through August 7th. We will go -- well, we haven't worked out the exact, precise details of how we would receive the President's testimony, but I'm confident we can do that if we get an agreement from the President that he will appear before -- in the very near future. And that just hasn't been forthcoming.

The date offered by Mr. Kendall in mid-September is just unacceptable. It is just unacceptable to the grand jury's schedule and to the grand jury's investigation. We just cannot wait that long for the President's testimony.

The investigation is very, very important. The President has so stated that. And I don't think that the investigation should wait for him to play golf, for fund-raising events, and for his vacations.

Mr. Kendall in his papers discusses that this could raise some sort of a constitutional crisis. We don't believe so. We have thoroughly reviewed the law and we believe we are absolutely entitled, with the grand jury's approval, to issue a subpoena to the President. The Nixon case made clear that the President of the United States may be subpoenaed in a criminal trial. The Jones v. Clinton case itself authorizes a court to -- that the President appear at a deposition in a civil case. Clearly, if he has to appear in a civil case and answer

to civil charges, he would have to answer a criminal grand jury subpoena.

The President also, as we've discussed, has appeared before. He's provided depositions to us. He's appeared in criminal trials. He was subpoenaed by the defense in two trials in Arkansas. He testified in those trials -- after being deposed, but he testified. And then in this case, we issued a grand jury subpoena duces tecum, for documents, to the President early on in the investigation and he complied with that subpoena. I think it's odd now to all of a sudden say, well, he's not going to comply with this one.

So, unless Your Honor has any questions for me. We just want to get this resolved. We wish to know exactly what the President is going to do.

THE COURT: So what I understand from you is that you do maintain that the grand jury wants to have the President appear before it.

MR. BITTMAN: Yes.

THE COURT: And that you're saying you need it now.

MR. BITTMAN: Yes.

THE COURT: Rather than in September.

MR. BITTMAN: Yes.

THE COURT: Do you have any idea -- and if you don't, I can understand, because I do know enough about grand juries to know that you can't always tell how many questions a grand

jury may choose to ask or anything like that. Do you have any sense of how long he might be required to appear before the grand jury? Do you have any sense?

MR. BITTMAN: I think it would be several hours. Less than -- well, I don't know. It would be several hours.

And let me amend one of my answers with regard to the grand jury's wishes as to whether the President actually appear before them. Without revealing too much of what goes on in the grand jury --

THE COURT: Certainly.

MR. BITTMAN: -- that is their belief now. But we believe that if given a concrete offer by the President, that is, that he, the President, is willing to do this, to a deposition, perhaps in front of the grand jurors in an area outside the grand jury room, perhaps a deposition, obviously under oath, just before attorneys from our office, something like that in the immediate future, we believe that we can gain the -- that we would speak to the grand jury and see if that were acceptable to them.

THE COURT: Well, let me just say, I know that even those type of issues could seriously be considered Rule 6(e). But I just wanted to get some sense.

That subpoena was issued by the grand jury, is that correct?

MR. BITTMAN: Yes.

THE COURT: And that was the subpoena that was returnable today.

MR. BITTMAN: Yes.

THE COURT: At 1:30.

MR. BITTMAN: It was actually returnable originally for 9:15, and then I permitted Mr. Kendall till 1:30. I extended it to 1:30.

THE COURT: All right. So your position is that the grand jury wishes to hear from him sooner than later.

MR. BITTMAN: Oh, yes. They have been kept informed throughout about our invitations and the President's declinations. And Your Honor knows that the grand jury's investigation has proceeded. And it is time to hear from this particular witness, the President.

THE COURT: Very well. Thank you.

MR. BITTMAN: And we at minimum wish, obviously, a response to whether the President is going to testify and then some concrete terms, because we just can't have this open-ended thing where, okay, in two weeks they may file a motion to quash which is going to further delay the investigation. If a motion to quash is to be filed, we wish to litigate it right away. And, frankly, we would ask Your Honor, if one is filed, for an expedited briefing schedule and expedited hearing, because we want this very, very quickly.

THE COURT: Very well. Thank you.

Mr. Kendall, I'll be happy to hear anything further that you wish to say on this issue.

MR. KENDALL: Thank you, Your Honor.

I regret that these somewhat voluminous papers probably hit your desk this afternoon.

THE COURT: Believe me, they did.

MR. KENDALL: They hit it with a thud, I'm sure.

THE COURT: Yes, they did.

MR. KENDALL: Your Honor, at Attachment 6, when Mr. Bittman says --

THE COURT: Which I have not been able -- I have not read your attachments yet, but I have read your motion.

MR. KENDALL: Okay. I would simply direct the Court's attention to that because that was our attempt -- Mr. Bittman and I had conversations and he wanted a specific proposal. This is a specific proposal. It proposes both a time and terms. It's as specific, really, as we can get it.

Your Honor, it's simply not the case that this matter has been in discussion since January. It was in discussion in late January to April, and then we heard -- my last letter, which I've appended here, was not responded to. So there was a long three months, plus, pause in this, and then suddenly we got the subpoena. And so it is not --

THE COURT: Let me ask you, what about letters from the grand jury? I understand that the grand jury was sending

him a written invitation?

MR. KENDALL: Well, we received invitations from the Office of Independent Counsel. We never got anything from the grand jury itself.

THE COURT: But I mean the invitations from the Office of Independent Counsel indicated, though, that the purpose was for him to appear before the grand jury, wasn't it?

MR. KENDALL: They did, Your Honor.

THE COURT: And you didn't consider that to be from the grand jury?

MR. KENDALL: Well, Your Honor, I did. We responded to each one of those. And we responded -- we had many questions. And this Court is familiar with certain of our concerns about this investigation --

THE COURT: Certainly.

MR. KENDALL: -- and the way it's progressed. We had, and continue to have, very serious concerns about certain aspects of it. I don't want to have to litigate the constitutional questions, but they are important, they are unresolved. I am reminded when Mr. Bittman -- and, you know, I don't think the Court wants to hear those arguments today. We haven't filed them. But --

THE COURT: No. Just the motion for continuance.

MR. KENDALL: Every pancake has two sides, Your Honor, as is well known. And we stand ready to make those at an

appropriate time. But I think the --

THE COURT: But, you see, that's one of the things that caused me to ask you gentlemen to come in here today. I wasn't sure what you meant by give you until such-and-such a time, and I really needed you to come in here and tell me, what do you mean? Do you mean that you will be prepared to respond to the subpoena by that day, or do you mean that "I'm going to give this further thought and then two weeks from now I'm going to tell you what I think?" I need to know precisely what you mean.

And I think you have made it clear to me that the motion for continuance that you filed today is not designed to just continue the personal response to the subpoena. In other words, you're not saying, "If you give me two weeks, the President will respond by coming in to see the grand jury or having the grand jury come to see him." And, God knows, I would say to you, recognizing the duties of his office, if it were more convenient, more secure for the grand jury to go to him than for him to come to the grand jury -- and you know what type of atmosphere we have around this building -- then that's one thing. But if what you're saying is "I need two weeks to consider how I'm going to deal with this," then that's another question.

MR. KENDALL: Your Honor, again, the letter at Attachment 6 is a very --

THE COURT: As I said, I'll read it tonight.

MR. KENDALL: Yes. It's a very specific offer. And it's premised -- we've worked this out, really, three times in the past successfully. I think that both our concerns and the Independent Counsel's concerns were met. I think the letter is a good faith attempt to do that again. And I hope that after discussion, we can work out a way -- reserving our questions. I mean, these are negotiations in which both sides want to reserve their option. But three times before, we've had the President testify and that has --

THE COURT: Three times before testified with respect to what? This case?

MR. KENDALL: With respect to this investigation. This is the Whitewater -- in other words, he gave testimony about various phases of it, Vincent Foster and David Hale and the 1990 gubernatorial campaign.

THE COURT: But I don't think this grand jury wants to ask any of those questions.

MR. KENDALL: Oh, no. No. I understand that, Your Honor. This is the Lewinsky --

THE COURT: Yes.

MR. KENDALL: And that's what we're talking about here. My only point is, we've been able to work this out three times in the past. And it's my hope that based upon the proposal we've made in the letter at Tab 6, that we can do it

again, and so we won't be coming back to Your Honor.

THE COURT: Well, let me just say, apparently -- and I've got to believe this -- with your letter dated July 27th, which was yesterday, they have had an opportunity to read that letter before they got your papers that you filed in the court today around midday. Isn't that true? Every reason to believe they've had an opportunity to read that.

MR. KENDALL: That's correct, Your Honor.

THE COURT: And even though they have had that opportunity to read it, their stated position on the record is to the contrary of what you're saying -- of what you say your letter says: That they can work it out. In fact, what I heard Mr. Bittman say is that he needs the testimony. You're saying you think you can work it out.

MR. KENDALL: Your Honor, we are trying to work it out to give them the testimony.

THE COURT: Let me just ask you something, Mr. Bittman. Had you read this letter before you came in here today?

MR. BITTMAN: Yes, Your Honor. We responded to it.

THE COURT: Oh, you did? And is it here, too?

MR. BITTMAN: Yes.

THE COURT: Okay.

MR. BITTMAN: That's at Attachment 7.

THE COURT: I haven't read the attachments, all right?

I will read them before I leave here this evening, though, okay?

You see, what I -- I mean just applying a little common sense here, if you sent this letter yesterday, they received it, they read it, they responded to it. Still, the subpoena remained outstanding, and the grand jury, who actually was the only body that could authorize that subpoena, apparently was waiting for the subpoena to be responded to today. Then we get your request. And, as I said, you asked me for two weeks and I just didn't quite understand what that two weeks meant. I understand now, based upon your statement to me, what you mean by giving you that additional two weeks, but that does not take into consideration the body which sought the subpoena. You see, that's what concerns me, Mr. Kendall.

I'm not saying -- and I want you to understand, I'm not saying that this grand jury has a right to subpoena the President of the United States. I'm sure that they have subpoenaed the President of the United States. And what I am not hearing from you is that "We oppose this subpoena because the grand jury does not have that right." You're saying, "Just give me two weeks to think about something, and then two weeks from now I'll tell you something." And then if two weeks from now you say, "Well, I don't really think they have the right to subpoena the President, and therefore, Your Honor, may I have two more weeks to file a motion to quash the subpoena." I just

think that based upon what we all know about this case, the sooner we make a decision, the better.

MR. KENDALL: Your Honor, may I respond to that?

THE COURT: Surely you may.

MR. KENDALL: And I will respond, I hope, in a factual way. I'm not saying that I want a limitless set of extensions. I think that these are very important constitutional questions. If we go to war over them --

THE COURT: No question about it, but the question is, do we have to deal with the constitutional issue? Because if we do, let's do that head-on.

MR. KENDALL: But, Your Honor, if we go to war over that, that is going to take a lot of time.

THE COURT: We're not going to go to war, and we're going to do it the same way the Court of Appeals has you do things. I just find it so interesting. Everybody needs 10, 12 days if you are here in the district court, but I understand that those judges on the Court of Appeals give two days or three days. I said, "Why can't I exercise that power? I have a commission too." So, no, we aren't going to be in it forever, okay? All right.

I'm being facetious, of course.

MR. KENDALL: My only point is, Your Honor, if the object is to get the testimony to the grand jury, I think some statesmanship on both sides is necessary. And I say that about

us as well as the Independent Counsel. I think that if we can work this out, we are obligated to do so, because that really is our civic duty. We've done it three times --

THE COURT: You all have had a long time, apparently, to do that, Mr. Kendall, if what Mr. Bittman says is correct. Mr. Bittman says that there was a subpoena issued one time. Was that correct?

MR. KENDALL: Your Honor, only on the 17th of July. A week ago.

THE COURT: Yes. Only the one on July 17th?

MR. KENDALL: Yes. I'm sorry. He mentioned -- excuse me, Your Honor. He did mention a subpoena for certain objects that was issued in January.

THE COURT: Oh, yes, duces tecum, and that was taken care of. But I understand that there have been about six invitations from the grand jury. So, apparently the President has known for some time that the grand jury wished to speak with him.

Now, I don't know, because, God knows, you know, I may have to go up there and see if they have water and a few other things from time to time, but I don't know what goes on before the grand jury as you know. But I would think if somebody had received six letters inviting him to appear before the grand jury, that person -- and I don't mean to be unkind, but certainly his counsel must know that somebody is going to get

tired of written invitations and look to other sources. I mean, that's just common sense.

MR. KENDALL: Your Honor, we've tried in Tab 1 to give you the complete correspondence, because it states our concerns and the responses. And I think in fairness, that correspondence terminated when I sent a letter on April the 17th. I didn't know what the answer was. And a very long time elapsed.

My only point here, Your Honor, is that I --

THE COURT: Are you saying that there were no invitations from the grand jury since April 17th?

MR. KENDALL: April 3rd, in fact, Your Honor, was the last.

THE COURT: Was the last letter from the grand jury?

MR. KENDALL: Yes. And then all of a sudden, without any warning, we get a subpoena. And that old lawyer's trick, Your Honor, delivering it late Friday night so you can have that date of the week and say, "We served it on July 17th." It came in about 6:00 o'clock. That is what is forcing this issue.

In the past, we have been able to resolve this. I don't think it's seemly or statesmanlike, or even very reasonable, to put us under the gun of saying, as they say in their response to the letter of yesterday, "Well, you just commit to this date," and it's an unreasonable date in terms of the President's schedule. We're going to have to file a

motion. I don't think we should be in the position of having to file a motion which, if we can resolve the other issues, may be unnecessary.

THE COURT: Well, why do you need so much time to resolve the other issues?

MR. KENDALL: I'm not sure we do, Your Honor. I'm not sure we do. I'm not sure that we can't do this very speedily. But the scheduling really is a problem.

THE COURT: What you're saying is, you have not as yet made the decision whether you are going to challenge the constitutionality of this subpoena.

MR. KENDALL: We have made a decision, Your Honor, that we've testified in the past, we believe we can testify at this time. But we don't know what their position is and they may force us to challenge this, and then we'll challenge it.

I used the "war" metaphor. We're not going to go to war. But we'll file motions to quash. And my only point is, it is unreasonable -- you wouldn't do this in the normal case, Your Honor. You wouldn't refuse to continue a subpoena for a short time to see if it all was going to be unnecessary. And that's really all we're seeking. And at the end of the day, we may have to file a motion to quash, to bring on the constitutional issue, to preserve the institutional concerns of the Article II entity, person that we represent. It hasn't been necessary in the past; I don't believe it necessarily will

be necessary now. But it could be.

THE COURT: Well, you say it may not be necessary, the amount of time you're seeking, but you still seek that time.

MR. KENDALL: I do, Your Honor.

THE COURT: All right. Anything else?

MR. KENDALL: The only thing I would say is, in reference to Mr. Bittman's statement about the President's schedule, it is true, he does have a vacation planned for late August. It's a well-deserved vacation. It, unfortunately, is right on the eve of his Russia trip and Ireland trip. That's a trip from August 31 to September the 6th. Both those countries are very important. A lot of that vacation is going to be absorbed with preparing for the Russia trip.

Again, we are trying -- we've given them the date in September. We are aware from other parties who have been subpoenaed that the grand jury's work is going on. There are many other legal questions which are in the process of being resolved. We really don't think that this date will delay the grand jury's work, and we want to make it possible, if we can, to give the President's testimony as soon as possible.

THE COURT: Well, let me just say this. You know, even I don't know what the grand jury is doing. And I'm certain that Mr. Bittman has some sense because he knows what has been presented to the grand jury and what he wishes to present to the grand jury. But I haven't the foggiest notion

of what they have presented or what they wish to present. I learn most of what I know about that grand jury the same way most citizens in this city do, and we don't know how accurate that is, but that's from the local press.

Now, what concerns me is this: This case is unlike the Jones case. It truly is unlike the Jones case. And even though it is quite unlike the Jones case, we know what the Supreme Court felt about even a civil action of the type that we have there. Here, we have a criminal investigation going on. Here, we know from just reading the press that perhaps witnesses who have been called in before this grand jury have been testifying about certain conduct. I don't know what that grand jury thinks, but it perhaps thinks that "We citizens have been brought from our regular responsibilities and asked to listen to certain evidence, and we have decided, based upon what we have heard, that we need to hear from the President."

Now, maybe they don't have any legal right to hear from the President. Maybe that is an issue we will have to resolve before this subpoena can be honored. But what we need to do, I think, is to move forward, and move forward expeditiously.

Apparently, the President has been given, if you'll excuse this slang, a heads-up by the number of invitations. Did I determine that those invitations were in writing?

MR. KENDALL: Some of them were, Your Honor. They are

reflected, I think, in the correspondence in Tab 1.

THE COURT: As I said, I'll read this. But some of it -- at any rate, he's received six invitations. And apparently the grand jury has determined that "Although we would like to honor your position as our President by simply asking you to appear voluntarily, we have now reached the point where we believe that you will not honor us with your presence voluntarily, but we do believe that in our search for the truth, we need to hear from you." And now, for him to say, "Give me two weeks to think whether I'm going to challenge this legally or what I'm going to do, give me two weeks to see if I can work this out with the prosecutor, give me two weeks to see whatever I need to do," but by the time that two weeks is up, Mr. Kendall, you're saying to me he will -- I don't know whether he's going to the Cape this year or not, but I know that's where he generally goes. Whether he will be at the Cape by the time the two weeks is up. And, clearly, I've been told that after leaving the Cape, he'll be going to Russia. So, when, if ever, unless somebody directs him, will he be willing to respond to this grand jury? Or if he isn't willing to respond to the grand jury, tell me.

MR. KENDALL: Your Honor, it's a fair question.

THE COURT: Tell me. And then we will do what we have to do.

MR. KENDALL: We've given two dates. I think that's a

very fair question. You'll see in the letter at Tab 6 --

THE COURT: The July 27th letter?

MR. KENDALL: Exactly.

THE COURT: All right.

MR. KENDALL: We have said, because of the Russia trip, because of the vacation and other travel. And, again, it's very easy to sit there, whether you're reading a newspaper, you're in the Office of Independent Counsel, and say, well, that trip's not necessary, that's just a fund-raising trip, and that's a political trip, and, look, I don't think Ireland is such an important country. Those concerns are the President's, and the President's alone, to balance. And courts -- I mean, again, the teaching of Clinton v. Jones, I think, is that a court must try to accommodate and give deference to the President's schedule.

THE COURT: That's true. And as I said, I understand that very, very clearly, because we know that as President of these United States, this gentleman has concerns that none of us know about. We know that there are issues of state that none of us know about. We know all of that. But I also know this: If he can vacation for a couple of weeks, he can appear before a grand jury, too, you know.

And God knows, he needs a vacation. I know that. I know he needs a vacation. And I don't know that the grand jury will -- he doesn't know how -- the grand jury may just want to

see him. I don't know. They may not have any questions at all.

MR. KENDALL: We did try to make a very specific offer, including a date that would be consonant with his schedule.

THE COURT: But that's sometime in September.

MR. KENDALL: It is.

THE COURT: Well, as I said, you see, I don't know the interest of the grand jury, either. But one thing is for sure: The grand jury has apparently attempted, even though you've maintained that because there was no further response to some letter you wrote in April, that, therefore, he could think that maybe they didn't want him any more.

MR. KENDALL: Your Honor, I would like to distinguish, if I could, between concerns. We, obviously, would like to help the grand jury in its endeavors. The Office of Independent Counsel we have our differences with about a number of things. They are set forth in the letter. Those concerns have not been responded to. We are willing to forgo some of those or litigate them in other forums. We really did try, however, to get a good faith offer that was specific in terms of place, way of taking testimony, issues -- and leaks are one of the things that we are concerned about. But we believe that there can be safeguards. This is not an impossible task. And time. And the time is really very critical. But we have tried

to put that all in a very specific proposal for the Independent Counsel and for the Court.

THE COURT: All right. Thank you very much.

MR. KENDALL: Thank you, Your Honor.

THE COURT: Mr. Bittman, I'll hear from you finally.

MR. BITTMAN: Thank you. I'll be brief. Robert Bittman on behalf of the United States.

Your Honor, in all respect, I think saying that we are being unreasonable by issuing a grand jury subpoena with the grand jury's approval is a little -- and that we're not willing to accommodate or even give a little bit with regard to the President's schedule, we are, we have been. I think that that argument would have a lot more merit had there not been six invitations.

We've tried to get his testimony since January. We've tried. Since January 27th, we have tried. We've invited him. And we made clear in all those invitations that we will accommodate the President's schedule. And now, for the President to -- and then after six invitations, you know, we in the grand jury decide to issue a subpoena to the President because that's within our power. You know, we tried to accommodate him, we've tried all means necessary to avoid any constitutional confrontation or something like that, but he declined the invitation. What are we left to do? And we have -- back then, when we extended these invitations, we have a lot

of room to negotiate in terms of when and how and where and that kind of stuff. Well, now we're at the end of the investigation, or near the end of the investigation, we decide, with the grand jury's approval, to issue a subpoena to the President. We don't have many options any more.

And so for them to come in here and say, "Oh, we want them to be more reasonable," we were reasonable back then. And they were the ones that said, "No, we're not going to do it. We're not going to agree to this." So I think it is disingenuous, with all respect.

I did notify Mr. Kendall last weekend -- and I might also say, if they were really serious about trying to work something out -- and Mr. Kendall did put forward a very specific date. I agree with that. And that's in his correspondence. But the date simply is not acceptable. That's the bottom line. It's unacceptable. We told him it was unacceptable.

THE COURT: That's the September date?

MR. BITTMAN: That's the September date. That is unacceptable. And we have the power, we, with the grand jury, have the power to compel the President. That's what we've decided to do. We didn't want to do that. That's why we issued the six invitations. But they put us in a box. We had to do it because they weren't going to agree anyway. Now, we have a limited opportunity in terms of time.

I notified Mr. Kendall that if they really wanted to work out a date, an acceptable date with us, that we would be available all weekend. Apparently Mr. Kendall -- I read that Mr. Kendall was not available over the weekend. But we responded within hours of his letter to me, and we said we're available to work this out, to work out an acceptable date. They didn't provide us with an acceptable date. It's that simple.

We still are willing to work out an acceptable date, but we're not going to wait two weeks for it. We have to move this along.

THE COURT: Well, I think Mr. Kendall is asking for a little more than two weeks, isn't he?

MR. BITTMAN: He is, because --

THE COURT: You see, that's why I really had to have you all in here today, because I wanted to be certain of what you meant. You could read Mr. Kendall's motion to maybe suggest that, well, we'll be ready to go on that date, and I said and you could also read it to mean that you won't be ready to go, "but I'll be ready to tell you where I want to go two weeks from now."

And I certainly have a duty to the President, but I also have a duty to the grand jury. And here, this third branch stands behind the first and the second branches, but, you know, I do have a duty myself.

So, anything else you want to say? I'll have to take this matter under advisement, but let me just say, I'm in a better position to take it under advisement, having had you come today, than I was just based on the papers alone.

MR. BITTMAN: Nothing else from me. Thank you, Your Honor.

THE COURT: Anything else from you, Mr. Kendall?

MR. KENDALL: Thank you, Your Honor.

THE COURT: Okay. Well, thank you very much.

Let me just say, what I hope to do is call you first thing in the morning and tell you -- I hope to be able to call you first thing in the morning and tell you to come down and pick up my decision or pick up an order or whatever the case may be relative to today's hearing. Okay? I really hope to be able to do it. And if you haven't heard from me by 11 o'clock -- well, let me just say this. If you haven't heard from me by 11 o'clock -- no, that isn't what I want to say.

If you have not received a telephone call from me before 11 o'clock, I will try to do a conference call at 11 o'clock. That's what I want to say. Okay? Thank you very much.

(Proceedings concluded at 5:20 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcription from the record of proceedings in the above-entitled matter.

Official Court Reporter