Comments

SIDNEY BLUMENTHAL

HOWREY SIMON ARNOLD & WHITE LLP
ATTORNEYS AT LAW

1299 Pennsylvania Ave., NW
Washington, DC 20004-2402
Phone 202.783.0800
Fax 202.383.6610
A Limited Liability Partnership

Dimitri J. Nionakis
Partner
202.383.7133
nionakisd@howrey.com

January 11, 2002

United States Court of Appeals
For the District of Columbia Circuit

FILED JAN 11 2002

Special Division

HAND DELIVERY

Ms. Marilyn R. Sargent
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: In re Madison Guaranty Savings & Loan (In re Monica Lewinsky)

Dear Ms. Sargent:

On behalf of Mr. Sidney Blumenthal, I enclose his comments to the report in the above-referenced matter.

If you have any questions, please call me at 202.383.7133.

Thank you.

Very truly yours,

Dimitri J. Nionakis

Enclosure

COMMENT OF SIDNEY BLUMENTHAL TO
OFFICE OF INDEPENDENT COUNSEL REPORT
IN RE MADISON GUARANTY SAVINGS & LOAN
(IN RE MONICA LEWINSKY)

Comment to page xxii, footnote 86:

Mr. Blumenthal was also interviewed by the Office of Independent Counsel on August 24, 1999.

LAURA L. CALLAHAN

RALPH L. LOTKIN
ATTORNEY AT LAW

Capitol Hill West Building
201 Massachusetts Avenue, N.E.
Suite C-1
Washington, D.C. 20002
Phone (202) 547-9225
Fax (202) 547-9228
E-mail: LotkinLaw@aol.com

November 20, 2001

UNDER SEAL

Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Re: Laura L. Callahan

Dear Mr. Langer:

This responds to your letter dated October 5, 2001 in which you notified me and my client, Ms. Laura L. Callahan, as to the submission of a Final Report by the Independent Counsel in Division No. 94-1, *In Re: Madison Guaranty Savings & Loan Association (Regarding Monica Lewinsky and Others)*. You indicated that Ms. Callahan and I could review portions of the Report in which Ms. Callahan is mentioned and submit to you "any comments or factual information for possible inclusion in an appendix to the Report."

Having undertaken a review of the relevant portions of the Final Report with Ms. Callahan on November 19, 2001, and pursuant to my telephone conversation of this date with Julie Thomas, Esq., Deputy Independent Counsel, I Callahan respectfully submit the following brief comments on behalf of my client:

(1) On Page v of Appendix D, the reference to "Laura Crabtree Callahan" should be corrected to "Laura L. Crabtree". At all times while employed by the Executive Office of the President my client was known as Laura L. Crabtree since she was not married at the time and had not changed her last name to Callahan.

(2) Two reports of the Independent Counsel have now been submitted which separately include an appendix addressing the White House email matter. In the first Independent Counsel Report (the subject of the Court's order of April 27, 2001) the White House email situation is discussed without conclusion or recommendation by the Independent Counsel. The most recent report also references the email matter but goes on to conclude that there was insufficient evidence upon which to support any charge concerning so-called threats to Northrup Grumman

Corporation employees. Obviously, this is a conclusion with which Ms. Callahan agrees and has vigorously so contended from the outset.

Unfortunately, however, release of the first Independent Counsel Report without reference to the conclusions contained in the second Report will likely give rise to renewed speculation and criticism of Ms. Callahan's role and conduct in the email matter. Only the second Report finally puts the issue to rest with a clear and concise statement that insufficient evidence was adduced supporting any of the allegations against her. To date, Ms. Callahan has endured the spurious allegations with quiet dignity and without comment. Her patience should be rewarded with an effort by either the Independent Counsel or the Court to foreclose the possibility of further discomfort to her and her family.

In this light, I request consideration be given to either merging the relevant portions of the two appendices into one document or, if not possible, referring to the latter document (and its conclusion) as an editor's note to the first document in order to avoid the likely revitalization of efforts to disparage Ms. Callahan prior to release of the second Independent Counsel Report.

In my discussion with Ms. Thomas, I understood her to appreciate our concerns. She also suggested that we present this issue in a formal communication to the Court so that it may be considered by the appropriate individuals.

Should you have any questions, please do not hesitate to contact me. Again, we appreciate the courtesy extended to Ms. Callahan and trust these comments will be given appropriate consideration.

Sincerely,

Ralph L. Lotkin
Counsel to Laura L. Callahan

ROBERT HILL

HATFIELD & LASSITER
ATTORNEYS AT LAW
401 WEST CAPITOL AVENUE, SUITE 502
LITTLE ROCK, ARKANSAS 72201
TELEPHONE: (501) 374-9010
FACSIMILE: (501) 374-8510
WWW.HATFIELD-LAW.COM

January 9, 2002

United States Court of Appeals
Mark J. Langer, Clerk
District of Columbia Circuit
333 Constitution Avenue Northwest
Room 5409
Washington, D.C. 20001-2866

RE: Madison Guaranty Savings & Loan Association (Regarding Monica Lewinsky and Others)
My client: Robert Hill

Dear Mr. Langer:

Having reviewed the draft of the Office of Independent Counsel's report I hereby submit the following comments on behalf of Mr. Hill.

COMMENTS FOR INCLUSION IN AN APPENDIX TO THE REPORT

Mr. Hill takes exception to the Report's characterization of "contumacious conduct" on his behalf for his noncompliance with a grand jury subpoena issued under exceptional circumstances. Mr. Hill also takes exception to the assertion that his conduct delayed the investigation by more than six months. Mr. Hill refused to comply with independent counsel's subpoena in that it appeared to be

totally unrelated to independent counsel's grant of authority. Mr. Hill's actions must be viewed in context. At the time of his noncompliance there were many unanswered questions concerning the boundaries of independent counsel's jurisdiction including significant constitutional issues. The only avenue to obtain clarification from the Eighth Circuit concerning these significant issues was by refusing to comply with the subpoena.

On June 28, 1995 the Office of Independent Counsel served grand jury subpoenas duces tecum on Robert M. Hill individually and Robert M. Hill, P.A. (Mr. Hill's inactive professional association through which he once practiced accounting). The subpoenas requested document production evidencing contributions by him and his relatives to the 1990 William Jefferson Clinton gubernatorial campaign and Mr. Clinton's 1992 presidential campaign. The subpoena also requested document production evidencing transfers of funds from Mr. Hill and his P.A. to certain listed persons, for the most part relatives. On July 18, 1995 Mr. Hill filed under seal a motion to quash or modify the subpoenas.. On August 17, 1995 the United States District Judge overseeing the matter entered an Order under seal denying the motion to quash or modify the subpoena. Several days later the Office of Independent Counsel asked the Court for an order compelling Mr. Hill to produce by a date certain the documents called for by the subpoenas. The Court ordered Mr. Hill to produce the documents called for on August 31, 1995. Mr. Hill and Mr. Branscum who had received similar subpoenas and filed the same motions did not comply. The Office of Independent Counsel filed a show cause motion. Following a hearing before the supervising

Judge on September 8, 1995 Mr. Hill and Mr. Branscum were given one week to comply. In order to proceed to the Eighth Circuit they refused and were held in contempt and ordered to pay daily fines. Having been held in contempt Mr. Hill and Mr. Branscum could then proceed to the Eighth Circuit with the significant issues raised in their motions to quash. Constitutional issues of first impression were raised in the Eighth Circuit and resolved in that Court's opinion.

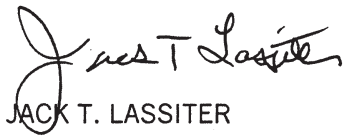
At trial Independent Counsel's case rested primarily on the testimony of a former bank president compromised by a cooperation agreement struck with the Office of Independent Counsel. His testimony conflicted with Mr. Hill's and Mr. Branscum's and obviously the jury did not trust this individual enough to convict either Mr. Hill or Mr. Branscum. Following the trial in which a jury acquitted Mr. Hill and Mr. Branscum on certain counts and hung on others, the Office of Independent Counsel received permission from the court to interview jurors. After interviewing jurors that were agreeable to speak with them the court and defendant were notified that the Office of Independent Counsel would not retry the case.

The Office of Independent Counsel issued in excess of 144 grand jury subpoenas in preparation of this indictment and trial. They also subpoenaed before the grand jury Mr. Hill's 16 year old son and 76 year old mother along with numerous other relatives and friends. The cost of trial of this matter and the investigation was in the millions of dollars.

This prosecution had no relation to the original grant of authority to the Office of Independent Counsel to investigate the Clinton's, James McDougall, the

Whitewater Land Development and Madison Guaranty and demonstrates the potential for abuse of prosecutorial authority inherent under the former Independent Counsel law. Since the cash at issue in the CTR counts was neither deposited nor withdrawn in relation to criminal activity, whether or not a CTR should have been generated under normal circumstances would have constituted a regulatory issue with the FDIC at worst.

Sincerely,



JACK T. LASSITER

JTL:vl

DAVID E. KENDALL

LAW OFFICES
WILLIAMS & CONNOLLY LLP
725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

DAVID E. KENDALL
(202) 434-5145
dkendall@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

January 11, 2002

By Hand Delivery

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals, District of Columbia Circuit
United States Courthouse—Fifth Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

In re: Madison Guaranty Savings & Loan Assn.
Report (Regarding Monica Lewinsky and Others
(Div. 94-1))

Dear Mr. Langer:

Pursuant to 28 U.S.C. § 594(h)(2) and the sealed Order of the Division for the Purpose of Appointing Independent Counsels, entered October 5, 2001, please accept this letter which I file on my own behalf, since I am a person mentioned in the Report Regarding Monica Lewinsky and Others (In re: Madison Guaranty Savings & Loan Assn. (Div. No. 94-1)), prepared by the Office of Independent Counsel ("OIC"). This letter constitutes written comments and factual information that I request be included in an appendix to the Final Report.

I respond here to only a single point in the OIC's Report: the assertion in Appendix C of the Report that the President's legal team had made "unfounded" and "unsubstantiated" allegations that the OIC had wrongfully leaked sealed grand jury information. This assertion is demonstrably untrue. As the OIC knows, there was no final adjudication of this matter because the OIC itself requested in March 2001 that the President withdraw the show cause motions he had filed. The President agreed. There remain, however, numerous undisturbed judicial findings that there is, in fact, probable cause to believe that the OIC engaged in the illegal dissemination of sealed grand jury information.

In late January and early February of 1998, numerous stories suddenly began appearing in the media containing detailed and highly prejudicial information about the OIC's grand jury investigation. The stories revealed matters being presented before the grand jury, as well as the aims of the investigation. The provenance of these stories was no mystery: reputable news organizations do not make up attributions like "Sources in Ken Starr's office" and "Sources in Starr's office." As one respected journalist has recently written, "[many] reporters . . . benefited from the prosecutor's leaks in the days before the scandal broke and immediately thereafter. The press was clearly in collusion with the prosecutor,

receiving extremely damaging information while refusing to divulge its sources . . . .

[T]he public often had no idea . . . [of] the motivation of those who leaked it."[1]

The following are simply representative samples (with emphasis added):

> [F]ederal law enforcement sources tell NBC News they're prepared to offer the young intern a choice between immunity and prosecution. One law enforcement source put it this way, quote, 'We're going to dangle an indictment in front of her and see where that gets us.' [David Bloom, "Newest Clinton Sex Scandal Causing Republican Calls for Impeachment," NBC Nightly News, January 21, 1998]
>
> Prosecutors painted a different picture [of Vernon Jordan's assistance]. 'Monica says . . . that she dealt directly with the President, who set the assistance in motion,' one lawyer said, speaking on condition of anonymity." [Thomas Galvin, "Monica Keeping Mum -- For Now Fends Off Query on Affairs," New York Daily News, January 23, 1998]
>
> [S]ources in Ken Starr's office tell us that they are investigating [a report that at some point someone caught the president and Ms. Lewinsky in an intimate moment], but they haven't confirmed it. [Claire Shipman, "Still No Deal Between Monica Lewinsky and Whitewater Prosecutor Ken Starr Regarding White House Sex Scandal," NBC News Special Report, January 25, 1998]
>
> For example, sources in Starr's office told me yesterday they had drawn up a subpoena for Ronald Perelman, the Revlon head who put Clinton pal Vernon Jordan on his board. [New York Post, January 27, 1998]

---

[1] Marvin Kalb, One Scandalous Story: Clinton, Lewinsky, & 13 Days That Tarnished American Journalism 64 (2001). Kalb notes the OIC's use of "carefully timed leaks to key reporters, to disclose information helpful to Starr's case and harmful to the President's." Id. at 117. Another commentator has noted that the OIC released a great deal of "misinformation" during this period: "All of this misinformation had a distinct purpose—to persuade official Washington, and Lewinsky herself, that Starr had a strong case." Jeffrey Toobin, A Vast Conspiracy 285 (1999).

> The decision to drop Monica Lewinsky from the Paula Jones case has no impact on the investigation of whether President Clinton lied under oath about an alleged affair, a source in Whitewater counsel Kenneth Starr's office said yesterday. [Thomas Galvin, "Impeachment? Case Vs. Clinton Is Still A Bit Fuzzy," New York Daily News, January 31, 1998]
>
> Some members of Mr. Starr's legal team are also concerned that Ms. Lewinsky's 'proffer,' the summary of her proposed testimony, does not reflect some snippets of conversations that she claimed to have had with Mr. Clinton on 20 hours of tapes secretly recorded by a friend. But one lawyer insisted that the omissions 'are not significant.' [Don Van Natta, Jr. & John M. Broder, "Lewinsky Would Take Lie Test in Exchange for Immunity Deal." New York Times, February 2, 1998]
>
> One official involved in the discussions about whether Ms. Lewinsky would cooperate with the investigation by Kenneth W. Starr, the Whitewater independent counsel, said prosecutors had set a deadline of Friday at noon for her lawyers to indicate whether she would talk to prosecutors. If the deadline passes without a deal, the official said, Ms. Lewinsky could face prosecution on charges of lying under oath about her relationship with the President. [Don Van Natta, Jr. & James Bennet, "Starr Turns Down Limit on Questions to Clinton's Aides," New York Times, February 5, 1998]
>
> Sources in Starr's office [are] suggesting that if Monica Lewinsky does not negotiate an immunity deal quite soon they are prepared to go ahead and press charges against her. [John King, "Investigating the President: Lewinsky Immunity Talks Collapse," CNN Early Edition, February 5, 1998]

Many journalists sourced their stories directly to the OIC and the law enforcement officials working with the OIC. Nevertheless, the OIC denied it was the source of these leaks. In a February 6, 1998, letter to me responding to remarks I had made at a press conference earlier that day announcing the filing of a show

cause motion to find the source of the numerous grand jury leaks, Independent Counsel Starr declared: "From the beginning, I have made the prohibition of leaks a principal priority of the Office. It is a firing offense, as well as one that leads to criminal prosecution. In the case of each allegation of improper disclosure, we have thoroughly investigated the facts and reminded the staff that leaks are utterly intolerable." An earlier press release from the OIC, dated January 21, 1998, had been categorical in its denials: "Independent Counsel Kenneth W. Starr issued the following statement today from his office in Washington, D.C.: 'Because of confidentiality requirements, we are unable to comment on any aspect of our work.'"

The facts turned out to be otherwise. In a series of sealed show-cause motions, counsel for the President identified 111 instances of illegal grand jury leaks, and after several hearings, the District Court entered a sealed order dated June 19, 1998[2] finding that movants had established "that several articles establish prima facie violations" of Criminal Rule 6(e)[3], governing grand jury secrecy. Slip op. at 6. The Court found that the nature of disclosures to the media of Rule 6(e)

---

[2] In re Grand Jury Proceedings, Misc. No. 98-55 (consolidated with Misc. No. 98-177 and Misc. No. 98-228) (D.D.C.).

[3] Federal Rule of Criminal Procedure 6(e) states that "an attorney for the government . . . shall not disclose matters occurring before the grand jury" except under very limited circumstances, all of which are for court or investigation purposes. Rule 6(e) does not allow for disclosures to the press absent a special disclosure hearing.

material had been "serious and repetitive," and that "the OIC defines material protected by Rule 6(e) too narrowly," id. at 5 (footnote omitted).

In a subsequent Order issued on June 26, 1998, the District Court set a hearing date of July 6 for the OIC to appear and "show cause why it should not be held in contempt for violating this Court's orders that sealed judicial decisions shall not be revealed to the public as well as alleged violations of Rule 6(e)," Slip op. at 5. The Court allowed movants a very limited right to participate in discovery relating to the illegal leaks, and it explicitly warned that "[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." Id. at 2 n.1. The Court declined to stay the contempt proceedings, declaring that:

> while there is a substantial public interest in continuing the grand jury investigation expeditiously, there is also a substantial public interest in stopping the many leaks that have come out of this case. Not only do the leaks damage the investigations' targets and its witnesses, each leak erodes respect for the judiciary and the orders sealing the pleadings and hearings in this grand jury matter.[4]

---

[4] In re Grand Jury Proceedings, Misc. Action No. 98-55 (consolidated with Misc. Action. Nos. 98-177 and 98-228) (July 9, 1998) (Slip op. at 10). Chief Judge Johnson noted the OIC's contention "that '[i]t is impossible to disclose what the United States may have represented to press sources without revealing protected information,'" but she ruled that "[g]iven that the Order does not require release of privileged Rule 6(e) material and in fact forbids this, the Court fails to understand

The OIC took an emergency appeal, applying for a writ of mandamus from the Court of Appeals for the District of Columbia Circuit to limit movants' participation in the discovery process. The Court of Appeals granted this relief, noting, however, that "the IC does not contest the district court's finding that the movants have satisfied their burden to establish a prima facie case . . . or that a show cause hearing is now required . . . ." In re: Sealed Case No. 98-3077, 151 F.3d 1059, 1067 (D.C. Cir. 1998).[5] It observed that it was "keenly aware that allegations that a government official has violated Rule 6(e)(2) are not to be taken lightly" and quoted Justice Frankfurter's observation that "'[t]o have the prosecutor himself feed the press with evidence . . . is to make the State itself through the prosecutor, who wields its power, a conscious participant in trial by newspaper, instead of those methods which centuries of experience have shown to be indispensable to the fair administration of justice.'" Id. at 1059 (quoting Stroble v. California, 343 U.S. 181, 201 (1952) (dissenting opinion)). The Court of Appeals remanded for further evidentiary proceedings, noting that the District Court "may, if it so chooses,

---

why it would be 'impossible' to disclose OIC contacts with the press without revealing Rule 6(e) material." Id. at 7.

[5] The Court of Appeals emphasized that "[t]he only issue before us . . . is not whether a show cause hearing will go forward in the district court as to whether the IC or members of his staff have made unauthorized disclosures to the press but rather the manner in which the hearing will be conducted." 151 F.3d at 1067.

appoint a special master or other individual to collect evidence and submit a report to the district court for its review and adjudication." 151 F.3d at 1076.

On remand, Chief Judge Johnson made numerous findings. In all of the media reports it addressed, the District Court found prima facie violations by the OIC of the rule mandating grand jury secrecy. Order, September 25, 1998, In Re Grand Jury Proceedings, Misc. No. 98-228, 1998 U.S. Dist. LEXIS 17290, at *32. The Court found, variously, statements "directly breaching grand jury confidentiality;" revealing witness testimony; revealing "the scope, focus, and direction of the grand jury investigation;" disclosing the status of immunity negotiations with a potential target; disclosing the possible indictment of the target; disclosing "the credibility of the testimony of a potential target;" disclosing "the content of a witness's proffer gathered as a result of the grand jury investigation;" and disclosing a host of other information, all amounting to improper prima facie violations of Rule 6(e). Id. at **8-28.

The Court emphasized that the secrecy requirements of Rule 6(e) are vital to the proper functioning of the grand jury system; they serve "several distinct interests," promoting honest and open testimony, as well as protecting the reputations of "persons who are accused but exonerated by the grand jury." Id. at

*3. "Therefore," the Court held, "enforcing Rule 6(e) is of the utmost importance to the integrity of our grand jury process." Id.[6]

Chief Judge Johnson termed the prima facie violations "serious and repetitive," and held that "a complete and thorough review of these allegations must be undertaken." Id. at *32. The Court appointed a Special Master to investigate the leaks. See id. The Court charged the Special Master with collecting and reviewing evidence, and with submitting a report to the Court when his investigation was concluded. The Court chose to focus on 24 of the media reports counsel had identified -- not because others were innocuous or proper, but "in order to avoid overburdening the Special Master." Id. at *12 n.4. The Special Master's

---

[6] This is a well-established principle of law. See, e.g., United States v. Smith, 123 F.3d 140, 148 (3rd Cir. 1997) (secrecy is necessary "to the proper functioning of the grand jury system"); Finn v. Schiller, 72 F.3d 1182, 1190 (4th Cir. 1996) ("compromising grand jury secrecy is a serious matter. . . . Courts must not tolerate violations of Rule 6(e) by anyone," especially government prosecutors, who may make improper disclosures "in an effort to pressure a target into a plea agreement"); United States v. Eisen, 974 F.2d 246, 261 (2d Cir. 1992) ("breach of grand jury secrecy can jeopardize the defendant's right to a fair trial"); In re Grand Jury Proceedings, 841 F.2d 1264, 1268 (6th Cir. 1988) (listing "several distinct interests" served by grand jury secrecy, including protection of persons exonerated by grand jury); Anaya v. United States, 815 F.2d 1373, 1379 (10th Cir. 1987) ("purpose for grand jury secrecy is to protect the sanctity of the proceeding and to protect the participants from detrimental publicity").

investigation was conducted in camera over a period of approximately two and a half years. Movants were not involved.[7]

In February 2001, the OIC asked the President and the other plaintiffs to withdraw the cases related to the 1998 leaks, since other outstanding issues had been settled. We agreed to do so because two and a half years had passed, the President had left office, another Independent Counsel was in office, and it was time to move on. As I noted at the subsequent hearing on the withdrawal of the

---

[7] During this time, movants filed one more show-cause motion, over a New York Times article, entitled "Starr Is Weighing Whether to Indict Sitting President," which appeared during the President's impeachment trial on January 31, 1999. In its responsive pleadings, the OIC acknowledged that the information disclosed in that article was "confidential," and that such disclosures, if by someone from within the OIC, "would have been unauthorized and improper." Opposition to Motion for Order to Show Cause, at 2. However, a sworn declaration by OIC staffer Charles G. Bakaly, III was suddenly withdrawn by the OIC on March 8, 1999. On March 11, Bakaly resigned, and the OIC was ordered to show cause why it should not be held in contempt. The OIC appealed the ruling.

The Court of Appeals reversed, holding that the Times statements -- which concerned OIC prosecutors' opinions on the feasibility of indicting President Clinton for obstruction of justice and perjury -- were too remote from the grand jury to constitute protected reports of secret grand jury proceedings. The Court did not deal with the leaks under investigation by the Special Master or generally exonerate the OIC; rather, it noted specifically that Rule 6(e) covers matters "likely to occur" or "clearly anticipated" to occur before a grand jury. Id. at 1002-03. The Court also noted that internal DOJ guidelines bar the disclosures the OIC made in connection with the Times article, though such guidelines are not enforceable through contempt proceedings. See id. at 1003.

show-cause motions, "there are some controversies . . . best left to history."[8] But the OIC was never exonerated in connection with those leaks, and the leaks were never explained. The undisturbed judicial findings that Chief Judge Johnson made and that are a matter of public record give the lie to the Report's assertion that the leak allegations were "unfounded" or "unsubstantiated."

Sincerely,

David E. Kendall

[8] Transcript, at 4, In re Sealed Cases, Misc Docket Nos. 98-55, 98-177, 98-228, 99-214 (March 6, 2001).

MONICA S. LEWINSKY

MONICA S. LEWINSKY

11 February 2002

Ms. Marilyn Sargent
U. S. Court of Appeals for D.C. Circuit
333 Constitution Avenue, N.W. Room 5409
Washington, DC 20001

Dear Ms. Sargent:

Please find attached my response to Independent Counsel Robert Ray's Report Re: Madison Guaranty Savings & Loan (Regarding Monica Lewinsky and Others).

Thank you for all of your kind assistance.

Sincerely,

Monica S. Lewinsky

UNDER SEAL

Response to
Independent Counsel Robert Ray's Report
In re: Madison Guaranty Savings and Loan
(Regarding Monica Lewinsky and Others)

SUBMITTED BY:

Monica S. Lewinsky
MONICA S. LEWINSKY

11 February 2002
DATE:

RESPONSE FROM MONICA LEWINSKY
RE: INDEPENDENT COUNSEL ROBERT RAY'S FINAL REPORT

The prosecutor has more control over life,
liberty and reputation than any other person in America.
-- Justice Robert H. Jackson

From a speech delivered at
Second Annual Conference of US State
Attorneys 1 April 1940

I am grateful for the opportunity to respond to the Final Report of independent Counsel Ray.

PROSECUTORS SERVING JUSTICE OR SERVING JUST US?

I. ATTORNEY CLIENT PRIVILEGE AND THE RIGHT TO COUNSEL

I respectfully object to the labeling of the motion to quash Francis D. Carter's subpoenas for testimony and work product, as it pertained to his representation of me, as "spurious." I was within my full rights to assert my attorney/client privilege and I believe Judge Johnson's ruling that the crime fraud exception applied to my communications with Mr. Carter was wrong. Even as she ruled in the Office of the Independent Counsel's (OIC) favor on this point, Judge Johnson did not rule nor suggest my attempt to preserve the privilege was a frivolous/spurious claim.

The second issue which arose from the subpoenaing of Mr. Carter dovetails with the issue of whether the OIC acted improperly in their approach to me on 16 January 1998 -- more specifically, with regard to my being a represented person and whether or not there was a possible violation of my 6th Amendment right to an attorney. There can be no question that I was represented by counsel on 16 January and that the subject matter of that representation coincided with the OIC/FBI sting. I expressed a desire to speak to my attorney. My requests were discouraged strongly and with veiled threats.

II. ALLEGATIONS OF MISCONDUCT

After an initial reading of the Independent Counsel Ray's final report, I requested to view four documents that are referenced as footnotes in the report: Jo Ann Harris' Special Counsel Report re: 16 January 1998 (requested with names redacted for privacy), Memo from H. Marshall Jarrett in the Office of Professional Responsibility to Atty. General Janet Reno re: allegations against Independent Counsel Starr, 15 October 1999 letter form Attorney General Janet Reno to Independent Counsel Starr, and all documents currently under seal re: subpoena of Frank Carter, Esquire.[1] Independent Counsel Ray's response was that he "could not comply with my request" because the documents relating to allegations of professional misconduct by an attorney in his office were protected by the privacy act of 1974 and subsequently, the correspondence between the Independent Counsel and the Attorney General are confidential on these matters.[2] Being denied access to the information that was used to weigh the veracity of the allegations greatly hindered my ability to accept or even understand these findings; I was disappointed, to say the least.

The overriding purpose of a report such as this one is to shine the disinfectant light of day on government proceedings. Much was made for the need to dispense with ordinary citizens' rights to privacy in the pursuit of truth and justice. How, then, can a claim for privacy for the prosecutors be made now? I ask that all the underlying documentations supporting the OIC's conclusions that there was no misconduct on 16 January 1998, be made public.

If there is any doubt as to the OIC's desire to marginalize the issue of my treatment under questioning that day, one has to go no further than to the prohibitions of my immunity agreement. I was expressly prevented from making any public comment directly relating to 'the matter' or investigation. Even after I was finally given modified permission to speak to a few journalists, a provision was intact that 16 January 1998 among some other topics, was still off limits. I was not released from those provisions until 21 January 2001. It is not difficult to infer from that that they themselves were aware their conduct would be scrutinized and perhaps, found unacceptable.

III. 302s AND STARR REPORT

Rather than revisit all of the highly personal and offensive information that was publicly aired in the Starr report, Mr. Ray understandably states, "The facts have already been recorded by this Office in its Impeachment Referral (and exhibits) to Congress that is in excess of

---

[1] Letter from M. Lewinsky to Independent Counsel Ray, 30 November 2001 See Appendix
[2] Letter from Independent Counsel Ray to M. Lewinsky, 14 December 2001 See Appendix

8,000 pages... that is the official record, and does not begin to encompass the vast public record on the subject."[3] Because I was precluded from commenting on the accuracy of the Starr report when it was published and to the extent the Ray report incorporates the Starr report, which it assuredly does, I wish to comment now to ensure an accurate record.

The factual basis of Independent Counsel Kenneth Starr's report to Congress relies in large measure on my direct sworn testimony and information gleaned from FBI 302s created by FBI agents following my debriefing sessions. These 302s create the false impression of accurately recording my statements: e.g. "According to Ms. Lewinsky...in Ms. Lewinsky's recollection... and Ms. Lewinsky recalls." Many of the facts and statements attributed to me were supported in part by the interviews the OIC conducted where the debriefing was simply noted by an agent in an FBI 302 report. None of these debriefing sessions were tape recorded or transcribed.

The 302s are memoranda memorializing the impressions of the agent who was present. Furthermore, there is an illusion that my attorney and/or I have adopted these reports by naming the attorney present in the report when neither of us was ever given an opportunity to verify any of them for accuracy. *Let me state clearly that I do not adopt them, and I stand only by my testimony that I have given sworn under oath.*

My testimony and that of my friends who were dragged before the grand jury should have sufficed. By supplementing testimony with the inaccurate 302s, they were guaranteed to be included in the appendix which almost insured their public release. Not only did I not have the knowledge of their inclusion in the report and therefore possible release to public, but I didn't have the opportunity to verify or request redactions of private information.

The 302s paint me in the worst light. For example, there is an obsessive focus on one particular sexual act and emphasis on a small portion of telephone calls of a sexual nature that are reflected in the 302s and ultimately in the Starr report. The incomplete pictures drawn by the 302s and then echoed in the Starr report have left the indelible impression that I was eager to divulge the details of my personal life for legal purposes and then, most egregiously, public consumption. The focus on this one act contributed to the already erroneous impression that the relationship had been a one-way servicing arrangement rather than a mutual relationship.

---

[3] Ray Report page 17

In addition, I do not vouch for the accuracy of the transcripts of the so called Tripp Tapes for the following reason: I had to listen to the 20 hours of tape recorded conversations between Linda Tripp and myself. Unbeknownst to my attorney and me, it was just days before the report was to be turned over to Congress. There were a number of occasions where errors in transcription occurred, errors that did not alter the content but added to the humiliation, nonetheless. They were pointed out to the attorney in attendance and she concurred; they would be fixed. The transcripts were never corrected before they were sent to Congress, nor was a correction addendum ever attached, even at a later date.

CONCLUSION

I believe that during the main part of this investigation from its inception, to my "sojourn" at the Ritz Carlton, (as it has been so inaccurately characterized) to the nation's "sojourn" through the banal private details of two people's mistake and their attempt to cover it as a result of one woman's venom (people often forget that the Paula Jones' team would have had no idea about me had it not been for Linda Tripp) the judges of this country may have found that no law was broken; but I will forever contend that the spirit of the law was abused. In my opinion, it is not as the final report states, "If any one lesson is to be learned from this office's experience, it is that a prosecutor can serve only one function – to seek justice under the criminal law,"[4] rather it's a lesson in a quintessential Orwellian groupthink. The venerable Justice Robert Jackson was more prescient in the beginning of the paragraph of his famous quote that "the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility" where he continues says most eloquently, "The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway."

[4] Ray Report page 61

TAB 1

MONICA S. LEWINSKY

30 November 2001

The Honorable Robert Ray
Independent Counsel
Washington, D.C.
By fax 202. 514.8802

Dear Mr. Ray:

I would like to formally request from you the opportunity to review the following documents so that I may understand fully and prepare accurately a response to your report submitted under seal to the three-judge panel:

- Joanne Harris Report Re: 1.16.98 filed 12.6.01 (*with names redacted if you wish)
- Memo from H. Marshall in OPR at the Justice Dept. to Atty. General Janet Reno Re: allegations against Independent Counsel Starr
- 10.15.99 letter from Atty. General Janet Reno to Independent Counsel
- All documents currently under seal re: Subpoena of Frank Carter, Esq.

You refer to all of these documents in the body and footnotes of your report but do not include the reports with the appendices; this makes parts of the report impossible for me to comprehend.

It is my understanding that Mr. Cacheris requested the Harris report on my behalf from your office on 10 November 2001, and Ms. Thomas informed us the next week that this document would not be made available to me. You stated in the report, and I'm paraphrasing, that part of the reason the report was necessary was to ensure the public's confidence in the integrity of the prosecutorial decisions of the Independent Counsel's Office. Am I not part of that public?

Respectfully,

Monica Lewinsky

Monica Lewinsky

cc: Plato Cacheris, Esq.

TAB 2

Office of the Independent Counsel

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

December 14, 2001

CONFIDENTIAL
REFERS TO MATTERS UNDER SEAL

VIA FACSIMILE TRANSMISSION (202-807-9581)

Monica S. Lewinsky

Re: Your letter of November 30, 2001

Dear Ms. Lewinsky:

I write in response to your letter dated November 30, 2001, a copy of which is attached for your convenience. By letter dated December 12, 2001, Plato Cacheris, your counsel, consented to my responding directly to your letter rather than through him. In your letter you requested the opportunity to review certain documents referenced in our final report.

As independent counsel, I have a statutory obligation to file final reports that fully and completely describe the work of this office. *See* 28 U.S.C. §.594(h)(1)(B). Mindful of that statutory obligation and mindful as well of the confidential and sensitive nature of the work of this office, my staff and I prepared a report that tried to balance the need to disclose information to ensure the public's understanding with the need to protect the rights of persons and government agencies named in the report. *See* 28 U.S.C. § 594(h)(2). While no balancing can be perfect or satisfy everyone, I believe that the report fully satisfies the public's need for information to understand the work of this office.

The first three documents that you request relate to certain allegations that persons in this office may have violated rules of professional conduct. Such allegations are necessarily sensitive and confidential, as are the internal documents regarding investigations of such allegations. The Department of Justice does not release such information to the public. Such documents have been found to be prohibited from public disclosure under the Privacy Act of 1974. *See* 5 U.S.C. § 552a.

Persons accused of professional misconduct have a substantial privacy interest in documents regarding those allegations. The attorney general and the independent counsel have a strong expectation of confidentiality in the contents of their correspondence regarding sensitive issues. Because of the confidential and sensitive information in these documents, none of them

would be appropriate for public disclosure absent a clear legal right and some compelling reason in support of disclosure.

In your request for review, you assert that while these three documents are mentioned in the report, your not having access to them "make parts of the report impossible for [you] to comprehend." As to the allegations of professional misconduct leveled against members of this office, the report informs the reader that nine specific allegations were investigated by the Department of Justice. The Department found eight of them unworthy of further action and referred the ninth back to this office. This office appointed Jo Ann Harris to examine that allegation, and that allegation has been resolved as described in the report.

While I can understand your desire to examine the underlying documents, the details contained in these documents are not required for the public to understand the events described in the report and outlined above. I therefore cannot find a compelling reason to publicly disclose these documents and cannot do so, absent an appropriate order of the court, in view of the substantial interest of certain individuals under the Privacy Act in keeping the documents confidential. In short, I cannot comply with your request to review these documents.

Finally, you also seek to review "All documents currently under seal re: Subpoena of Frank Carter, Esq." I cannot release sealed documents without the permission of the court nor could I disclose matters occurring before the grand jury without a court order. If you believe that you have a legal basis for seeking such orders from the court, you will have to pursue your remedies there.

While I therefore must decline your request, I hope that you can understand the substantial privacy and confidentiality constraints under which I must act.

Very truly yours,

Robert W. Ray
Independent Counsel

cc: Hon. David B. Sentelle
Hon. Peter T. Fay
Hon. Richard D. Cudahy
Plato Cacheris, Esq.

FRANCIS T. MANDANICI

FRANCIS T. MANDANICI
ATTORNEY AT LAW

Residence:
180 Pearsall Place
Bridgeport, CT 06605
(203) 368-1775

January 10, 2002

Ms. Marilyn R. Sargent,
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
3rd and Constitution Ave., N.W.
Washington, D.C. 20001

Re: Appendix To Final Report
Division for the Purpose of Appointing Independent Counsels, Division No. 94-1
In Re: Madison Guaranty Savings & Loan Association
(Regarding Monica Lewinsky and Others)

Dear Ms. Sargent:

With reference to your letter of October 5, 2001, please find enclosed my comments in the form of a Reply which I am requesting be included in the appendix to the Final Report of Independent Counsel Robert W. Ray. My request is made pursuant to 28 U.S.C., Sec. 594(h)(2), which states that people named in any Final Report of an Independent Counsel can submit comments or factual information to be included in an appendix to the Final Report. This reply concerns the Final Report in the above matter *Regarding Monica Lewinsky and Others* in which I am mentioned in Appendix C, xiv-xviii, Appendix E, i-xiii, and Appendix F, iv. Regarding an earlier Report by Mr. Ray mentioned in your letter to me of April 27, 2001, I have not filed a reply.

Sincerely,

Francis T. Mandanici

In Re: Madison Guaranty Savings & Loan Association
(Regarding Monica Lewinsky And Others)

Reply By Francis T. Mandanici
To Final Report By Independent Counsel Robert W. Ray Summarizing
Ethical Complaints Against Kenneth W. Starr

The Independent Counsel Robert W. Ray in his Final Report concerning the Whitewater investigation offers a summary of my ethical grievances against former Whitewater Independent Counsel Kenneth W. Starr that is as flawed as President Clinton's first summary of his sexual relationship with Monica Lewinsky. Ray, much like Clinton, fails to provide the whole truth.

Ray in his Report refers to only four of the five grievances that I filed in the United States District Court in Arkansas and Ray fails to mention a fifth grievance that I filed which, as explained later, apparently resulted in six federal judges filing their own grievance against Starr or his office that was pending at the time that Starr resigned as Independent Counsel. But that grievance was never publicly disclosed, possibly because it might appear that Starr's resignation was as a result of the judges' pending grievance.

Concerning the four grievances that Ray does mention in his Report, Ray states that in those four grievances I charged that Starr (1) was subject to conflicts of interest in connection with his investigation involving the Resolution Trust Corporation (RTC) because his law firm had been sued by the RTC; (2) Starr's planned acceptance of the deanship at the School of Public Policy at Pepperdine University reflected a conflict of interest (but Ray does not mention that the conflict involved Richard Mellon Scaife who was a severe critic of President Clinton and who funded Starr's deanship by providing over one third of the start up costs for the school); (3) Starr's Independent Counsel's Office had improperly leaked grand jury material about Susan McDougal and Hillary Clinton; (4) Starr or his staff solicited false

testimony from McDougal and Julie Hiatt Steele; (5) Starr violated the Independent Counsel Act in his testimony before the House Judiciary Committee regarding a referral pursuant to the Independent Counsel Act; and (6) Starr had a conflict of interest because of his representation of the tobacco companies at the same time that he was Independent Counsel (but Ray fails to mention that the tobacco companies who hired and paid Starr had as their most powerful enemy the target of Starr's investigation, President Clinton).[1]

Without giving any more details as to my actual allegations, Ray concluded in his Report that all of the above grievances were dismissed as "without merit" [2], "emphatically rejected" by the court [3], and Ray stated that a court labeled my ethical charges against Starr as "ridiculous", "the stuff that dreams are made of", indicating "no suggestion of bias or conflict" and finally "nonsense".[4]

The partial truth is that one judge did say those things but the whole truth is that other judges and Starr's own personally chosen ethics expert disagreed. Ray mentions that my earlier three grievances were addressed by the federal court in Arkansas and dismissed because the court found that there was an alleged "absence of specific evidence".[5] However, Ray fails to disclose that a federal judge in that case agreed with me that Starr suffered from at least an appearance of a conflict of interest because the deanship that he was offered at Pepperdine University's School of Pubic Policy after he finished his investigation of President Clinton was funded in large part by Scaife who was a severe critic of President

---

[1] Ray provided this summary in the Report's Appendix C, pages xiv-xv, wherein he also listed the dates of the four grievances as September 11, 1996, March 11, 1997, June 19, 1997, and June 4, 1999.
[2] Ray Report, Appendix C, page xiv, Appendix E, page vii, App. F, page iv.
[3] Ray Report, Appendix C, page xviii.
[4] Ray Report, Appendix C, page xviii.
[5] Ray Report, Appendix C, page xv.

Clinton. Judge G. Thomas Eisele of the United States District Court in Little Rock addressed the merits of my claim in a dissenting opinion from the dismissal on technical grounds and noted that news reports revealed that Scaife "has used his fortune to press a media campaign discrediting President Clinton" and that his foundation had contributed "1.1 million dollars toward the 2.75 million dollars in start up costs for the school of public policy" where Starr had been offered the deanship after he finished his investigation of President Clinton.[6]

Judge Eisele further proclaimed that

> "it is difficult to argue that Mr. Starr is not laboring under at least an appearance of conflict.... In the situation before the Court, Mr. Scaife, said to be a bitter opponent of President and Mrs. Clinton, especially with respect to Whitewater-related issues, has apparently helped to arrange and make possible the very career opportunities that Mr. Starr wants to pursue as soon as he completes his work as Independent Counsel. It appears that Mr. Starr may be involved in a third-party conflict of interest-that is, the independent counsel has an obligation to a non client third party that could compromise the independent counsel's neutrality in a matter under investigation...
>
> Even if not true in fact, there is the **inevitable appearance that Mr. Starr may consciously or subconsciously tailor his prosecutorial decisions to please his benefactor**."(Emphasis added.)[7]

Judge Eisele later stated that "I believe that Mr. Starr is laboring under the appearance of a serious conflict of interests stemming from the Pepperdine-Scaife allegations. No one has challenged that conclusion."[8]

---

[6] In Re Starr (Starr I), 986 F.Supp. 1144, 1153(E.D. Ark. 1997)(decision by Judge Wilson disqualifying himself from considering my grievance since he knew President Clinton, which contained a preliminary opinion of Judge Eisele concerning my ethical charges. In a later ruling where my grievance was dismissed on technical grounds, Judge Eisele in a dissenting opinion adopted his earler opinion. In Re Starr (Starr II), 986 F.Supp. 1159, 1163, 1168(E.D. Ark. 1997)).

[7] Starr I, supra, 986 F.Supp. at 1154.

[8] Starr II, supra, 986 F.Supp. at 1168.

Despite Judge Eisele's statement that Starr suffered from at least the appearance of a conflict of interest, three other judges dismissed the grievance without appointing a lawyer to investigate the matter which I contended was mandatory under the court's grievance rules.[9]

Since Judge Eisele clearly stated that Starr suffered from at least the appearance of a conflict of interest, I attempted to appeal the dismissal of my grievance that was based on grounds other than on the merits. Unfortunately, three judges on the United States Court of Appeals For The Eighth Circuit stated that I had no standing to appeal in that I was only a private citizen with no connection to any Whitewater case.[10] However, the federal appellate judge who wrote the opinion dismissing the appeal on technical grounds felt that the merits of the case were so important that he publicly stated that he agreed with Judge Eisele's opinion that Starr suffered from at least the appearance of a conflict of interest. Judge Theodore McMillian of the Eighth Circuit in a lengthy footnote stated that he agreed with Judge Eisele's conclusion that "Mandanici's allegations, if true, demonstrate that Starr suffered under at least an appearance of conflict with respect to the Pepperdine-Scaife issue, thereby triggering the district court's duty to refer the matter for investigation [under the court's grievance procedure rule]."[11] Judge McMillian agreed with Judge Eisele that the "alleged Pepperdine-Scaife conflict ... has nothing to do with Mr. Starr's political views.

---

[9] Starr II, supra, 986 F.Supp. at 1160. Rule V(A) of the court's Model Federal Rules of Disciplinary Enforcement states that "[w]hen misconduct or **allegations of misconduct** which, if substantiated, would warrant discipline on the part of the attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by **complaint** or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge **shall** refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate." (Emphasis added.) Starr II, supra, 986 F.Supp. at 1160, note 2. Despite the mandatory nature of the word 'shall', the court ruled that it had the discretion not to appoint counsel to conduct even a preliminary investigation. Starr II, supra, 986 F.Supp. at 1160.

[10] Starr v. Mandanici, 152 F.3d 741, 748-750(8th Cir. 1998).

[11] Starr v. Mandanici, supra, 152 F.3d at 746, note 15.

Rather it puts Mr. Starr's personal, financial, and career interests in possible conflict with his duty as independent counsel to exercise his prosecutorial power and discretion fairly and even-handedly."[12]

However, not only did Ray ignore the opinions of Judge Eisele and Judge McMillian who clearly contradicted the judge that Ray chose as the authority on the Scaife conflict, but on another issue raised in my grievance Ray totally ignores Starr's personally chosen ethics expert who resigned because he believed that Starr had violated the Independent Counsel Act and abused the powers of his office in aggressively seeking the impeachment of President Clinton. Ray stated that one of my claims that was rejected by a court was that "Starr violated the Independent Counsel law in his testimony before the House Judiciary Committee regarding a referral under the [Independent Counsel Act]".[13]

But Ray in a classic example of the sin of omission, fails to mention that it was not I who originally claimed that Starr violated the Independent Counsel law regarding his testimony but it was Starr's own personally chosen ethics expert, Samuel Dash, who not only made that claim but resigned because of it. As the nation knows, Starr appeared before the House Judiciary Committee to advocate that Congress should impeach President Clinton based on the grounds that Starr provided in his impeachment report that Starr had earlier supplied to the Committee pursuant to the Independent Counsel Act.

---

[12] Starr v. Mandanici, supra, 152 F.3d at 746, note 15. Judge James Loken disagreed with Judge McMillian's view that there appeared to be a violation of ethical rules. Judge Loken stated that "[s]ome of the most successful [prosecutors] were activists with well-publicized political ambition" which was a good thing since the "very reason political activists are effective prosecutors is because of their 'impure' political motives." Starr v. Mandanici, supra, 152 F.3d at 754-755.

[13] Ray Report, Appendix C, page xv.

Dash in his resignation letter to Starr dated November 20, 1998, stated that he had advised Starr that he was resigning because Starr had rejected his "strong advise" and personally appeared before the House Judiciary Committee and "serve[d] as an **aggressive advocate** for the proposition that ... President [Clinton] committed impeachable offenses." (Emphasis added.)[14] In his letter to Starr, Dash stated that

> "**you have violated your obligations under the Independent Counsel statute and have unlawfully intruded** on the power of impeachment which the Constitution gives solely to the House. As Independent Counsel you have only one narrow duty under the statute relating to the House's power of impeachment. **That one duty, under Section 595(c) of the statute, is to objectively provide for the House substantial and credible information that may constitute grounds for impeachment**.
>
> The statute does not, and could not constitutionally give the Independent Counsel any role in impeachment other than this single informing function....
>
> But your role and authority as a provider of information to the House stopped there. **You have no right or authority under the law, as Independent Counsel, to advocate for a particular position** on the evidence before the Judiciary Committee or **to argue that the evidence in your referral is strong enough to justify the decision by the Committee to recommend impeachment**....
>
> **By your willingness to serve in this improper role you have seriously harmed the public confidence in the independence and objectivity of your office**. Frequently you have publicly stated that you have sought my advice in major decisions and had my approval. I cannot allow that inference to continue regarding **your present abuse of your office** and have no other choice but to resign." (Emphasis added.)

Starr responded with a letter to Dash defending his actions. The statute that Dash mentioned, 28 U.S.C., Sec. 595(c), states that an independent counsel has the obligation to provide the Congress with "substantial and credible information which such independent counsel receives ... that **may** constitute grounds for an impeachment." (Emphasis added.)

In his prepared written Statement to the Judiciary Committee released prior to his testimony, Starr stated that on many occasions President Clinton lied, made false statements

---

[14] *See* attached letter from Dash to Starr, dated November 20, 1998.

and obstructed justice. But of much greater significance is the fact that Starr strongly advocated that President Clinton's actions deserved impeachment and to buttress that opinion Starr exerted a great deal of effort to persuade the Judiciary Committee to adopt his views as to the proper standards for impeachment and to view him as an authority on the issue since he was a former federal judge.

In a subsequent article published in Newsweek magazine, Dash stated that

> "Starr's opening statement before the committee ... was an **aggressive indictment accusing the president of impeachable offenses**... I do not question the substance of Starr's argument for impeachment. I **strongly objected to his inserting himself into the political format of the Judiciary Committee inquiry** and serving as the committee's chief prosecution witness." (Emphasis added.) Newsweek article of November 30, 1998.

Concerning the official referral report, known as the Starr Report, that Starr had submitted to Congress, Dash in a letter to the Editor published in the Washington Post stated that he had been

> "successful in getting the initial accusatory language advocating impeachment out of the report. The referral report that finally was sent to the House was an entirely different presentation than Mr. Starr's testimony **advocating impeachment**....
>
> [T]he [referral] report did not - and could not, as Mr. Starr's opening statement did - charge that the president committed impeachable offenses.
>
> The difference is fundamental. Mr. Starr's referral report was lawful and mandated by statute. That mandate, however, did not convert Mr. Starr, as The Post alleges, 'into Congress's impeachment investigator.'....
>
> [T]he executive branch independent counsel [should] not ... become the **accuser advocating impeachment before the committee**. Mr. Starr's willingness to play that role **violates not only separation of powers principles**, but the Constitution's demand that the sole power of impeachment is in the House. Having sent his narrative referral report to the House - strong as it was - Mr. Starr **could not lawfully intrude on the impeachment process itself by abandoning the carefully drafted narrative of the referral and arguing, as an accuser, that the president *had* committed impeachable offenses.** Nowhere in the referral report was that accusation made." (Emphasis added.) Washington Post letter to the Editor, published November 24, 1998.

Thus Dash's basic accusation was that the referral statute, 28 U.S.C., Sec. 595(c), only allowed Starr to provide information that "may" constitute grounds for impeachment but Starr went far beyond that by aggressively advocating that President Clinton "*had* committed impeachable offenses."

But Ray never mention's Dash's resignation or Dash's charge that Starr violated the Independent Counsel Act and abused the powers of his office.[15] It certainly weakens Ray's claim that all my grievances were found to be without merit when Ray fails to mention that one of my claims was based on the formal opinion of Starr's ethics expert that he had violated the law and abused the powers of his office. For Ray not to mention Dash's resignation letter is like President Clinton forgetting about the dress.

Regarding my claim that Starr had a conflict of interest in investigating the RTC since the RTC had sued his law firm[16], Ray fails to mention that the Justice Department found that Starr "may have suffered a technical conflict of interest ... [but] no such conflict exists at this point" and thus the matter was not of such an "extreme" nature as to require the Justice Department's exercise of its statutory power to remove Starr as independent counsel.[17] Although the conflict was not so severe as to require the firestorm of the Justice Department trying to remove Starr as Independent counsel, it still was a conflict that constituted an ethical violation.

Regarding the single judge that Ray selected as the authority on my ethical complaints against Starr, that judge was appointed to address my fourth grievance that I filed

---

[15] It is possible that Ray mentions Dash in other parts of his Report but I was allowed to review only the parts of the Report pertinent to my grievances and Dash was not mentioned in those parts.

[16] Ray Report, Appendix C, pages xiv-xv.

[17] Starr I, supra, 986 F.Supp at 1146.

which added the charge by Starr's own ethics expert Dash that Starr had violated the Independent Counsel Act and abused the powers of his office. In that fourth grievance I also asked the court to reconsider my earlier grievances that had been dismissed on grounds other than on the merits. Also, Stephen Smith and Julie Hiatt Steele who both had been prosecuted by Starr and thus had more standing to file complaints adopted my grievance.[18] However, rather unexpectedly, all the federal judges in Little Rock, even those who had presided over Paula Jones' lawsuit against President Clinton and the trial of McDougal and Governor Jim Guy Tucker, disqualified themselves.[19] The formal disqualification of all the judges apparently because they had some type of conflict of interest, raises the question of whether such a conflict of interest should have caused them to disqualify themselves from all Whitewater matters including the trial of McDougal and Tucker.

After all the judges disqualified themselves, the chief judge of the United States Court of Appeals For The Eighth Circuit appointed Judge Warren Urbom from Nebraska to preside over the grievances filed by myself, Smith and Steele.[20] Then there was another surprise when Judge Urbom disqualified himself stating that "after becoming appraised of the nature of the matters involved in these assignments and reflecting upon my relationship with the identifiable persons whose legitimate interests are at stake, I am confidant that I must disqualify myself... My impartiality might reasonably be questioned".[21]

Then came the appointment that gladdened Starr's heart in the same way as if President Bush or former Vice President Gore could have selected a single justice on the Supreme Court to decide the Florida recount issues that probably determined the election.

---

[18] Ray Report, Appendix C, pages xiv, xv.
[19] Ray Report, Appendix C, page xvi.
[20] Ray Report, Appendix C, page xvi.
[21] Ray Report, Appendix C, pages xvi-xvii.

The chief judge of the Eighth Circuit chose Judge John F. Nangle from Missouri to decide the grievances. Nangle prior to being appointed to the federal bench had been the Republican of the Year in Missouri and the President of the Missouri Association of Republicans.[22]

Disregarding the opinions of Judge Eisele and Judge McMillian that Starr suffered from at least the appearance of a conflict of interest regarding Scaife and also minimizing the expert opinion of Starr's personally chosen ethics expert that Starr had violated the Independent Counsel Act, Nangle dismissed my complaint as being without any merit and labeled my charges against Starr as "ridiculous", "absurd", "frivolous", "nonsense", and "the stuff that dreams are made of".[23]

Nangle dismissed the grievance without first referring the matter to counsel to conduct some type of investigation despite the fact that the court's grievance procedure rule states that "[w]hen ... **allegations of misconduct** which, if substantiated, would warrant discipline on the part of an attorney ... come to the attention of a Judge ..., the Judge **shall** refer the matter to counsel for investigation ..." (Emphasis added.)[24] However, to get around the disciplinary rule that required referring any "allegations of misconduct" to counsel for an investigation, Nangle interpreted the rule as not requiring a referral to counsel for an investigation unless the person who files the grievance not only alleges misconduct but actually substantiates or proves it. Nangle stated that "allegations must be substantiated

---

[22] *See* Almanac of the Federal Judiciary.
[23] Ray Report, Appendix C, page xviii, Mandanici v. Starr, 99 F.Supp.2d 1019, 1031, 1033, 1028, note 17, 1035, 1033(E.D.Ark. 2000).
[24] Rule V(A) of the Model Federal Rules of Disciplinary Enforcement, Mandanici v. Starr, supra, 99 F.Supp.2d at 1026, note 11.

before counsel is appointed".[25] Thus Nangle placed the burden on the person filing the grievance to first have enough evidence to already discipline the attorney without any investigation. Thus according to Nangle there would never be any need to refer the matter to counsel for an investigation since the person who filed the grievance had already proved the misconduct and the court could then discipline the attorney.

Considering the weakness of Nangle's rulings, which using his own words could be labeled as absurd, ridiculous and nonsense, I filed an appeal with the United States Court of Appeals For The Eighth Circuit but Ray had the appeal dismissed not on the merits but on technical grounds that I never was directly affected by any of Starr's actions. Ray claimed that the appeals court should "dismiss the appeal of Francis T. Mandanici because he lacks standing, which therefore deprives this Court of jurisdiction."[26] Ray claimed that the court "lacks subject matter jurisdiction over this appeal because there is no 'case' in which Mandanici is a party. He is simply an informant or witness who lacks standing."[27]

The Court of Appeals adopted Ray's argument that my appeal should be dismissed without considering the merits. The Court stated that "[t]he appeal is dismissed for lack of jurisdiction."[28]

Thus Nangle's opinion that my charges against Starr were absurd, frivolous and nonsense were never affirmed on appeal because Ray was quick to move to have the appeal cut short and dismissed on a technical ground. Nangle's opinion that my charges were

---

[25] Mandanici v. Starr, supra, 99 F.Supp.2d at 1027.
[26] Motion Of The United States To Dismiss Appeal For Lack Of Subject Matter Jurisdiction, page 1, Francis T. Mandanici vs. Kenneth W. Starr, United States Court of Appeals For The Eighth Circuit, docket # 00-2545.
[27] Motion Of The United States To Dismiss Appeal, page 4.
[28] Judgment dated July 19, 2000, Francis T. Mandanici vs. Kenneth W. Starr, United States Court of Appeals For The Eighth Circuit, docket # 00-2545.

without merit does not have much of the weight of the law behind it since it was never ratified on appeal and simply was one judge's opinion. That opinion was not only minimized by the lack of appellate oversight but was weakened by the very nature of the words used. The rhetoric in the opinion was more of that of a radio talk show host or Republican Man of The Year than a federal judge. None other than Justice Scalia has noted that "judges have been know to be" "politically partisan".[29]

But what is perhaps most shocking is that at approximately the same time that Nangle was dismissing my ethical claims as ridiculous, absurd, and nonsense, he was also dismissing the ethical claims filed by six federal judges against Starr or his office but Nangle refused to disclose that decision that would have placed me in the company of six federal judges. Nangle's scathing criticism of me would have fallen on deaf ears if the public knew that he also was dismissing the ethical charges of six judges as being also "without merit."

When I was allowed to review the parts of the Ray Report concerning myself, I learned for the first time that the chief judge of the Eighth Circuit had originally appointed Judge Urbom to address a grievance filed by six of the seven federal judges in Little Rock against the Independent Counsel's Office. In his Report, Ray publicly discloses for the first time that

> "[a]ll of the judges of the Eastern District of Arkansas, except for Judge Howard, had initiated a **separate ethical inquiry** and in connection with it, sought material from a grand jury investigation related to this office in the Western District of Arkansas conducted by Michael E. Shaheen, Jr. See Petition For Disclosure of Grand Jury Testimony, No GJ 99-24(Western District, Arkansas, November 12, 1999... All of the judges of the Western District recused themselves from consideration of that petition resulting in the appointment of Judge Urbom to consider the petition". (Emphasis added.)[30]

---

[29] Morrison v. Olson, 487 U.S. 654, 730, 108 S.Ct. 2597, 101 L.Ed.2d 569(1988)(Scalia, J., dissenting).

[30] Ray Report, Appendix C, page xvii. There are six other judges in the Eastern District other than Judge Howard. Those judges are Susan Webber Wright, Stephen M. Reasoner, William R. Wilson, James M. Moody, G. Thomas Eisele, and Henry Woods.

Ray discloses in his Report that the six federal judges in the Eastern District were among the complainants who filed requests seeking "the **appointment of special counsel to investigate alleged prosecutorial misconduct** against [the Independent Counsel's] office" but Ray notes that "[n]o counsel was ever appointed". (Emphasis added.)[31]

Judge Urbom then recused himself and the chief judge of the Eighth Circuit then appointed Judge Nangle to address the grievance of the six judges as well as the grievance of myself, Smith and Steele.[32]

Ray initially noted in his Report that Nangle dismissed the judges' grievance as being without merit [33], but Ray later in his Report gives more details about the grievance filed by the six judges. Ray states that Starr resigned as Independent Counsel on October 18, 1999, and then Ray states that concerning "the petition filed against the Office of Independent Counsel for access to grand jury material and the **subsequently filed ethics complaint against the Office of Independent Counsel by judges from the United States District Court for the Eastern Distinct of Arkansas**, the petition for access to grand jury materials was eventually withdrawn and the ethics complaint was found to be without any merit". (Emphasis added.)[34] Ray does not disclose the date when the judges filed their ethical complaint nor when Nangle dismissed it as being without merit. However, it appears that the judges' petition for the disclosure of grand jury testimony was filed in February, 1999 [35], which was prior to Starr's resignation in October, 1999.

---

[31] Ray Report, Appendix C, page xiv.
[32] Ray Report, Appendix C, page xvii.
[33] Ray Report, Appendix C, page xiv.
[34] Ray Report, Appendix E, page xviii.
[35] Ray Report, Appendix C, page xvii.

Thus Dash's basic accusation was that the referral statute, 28 U.S.C., Sec. 595(c), only allowed Starr to provide information that "may" constitute grounds for impeachment but Starr went far beyond that by aggressively advocating that President Clinton "*had* committed impeachable offenses."

But Ray never mention's Dash's resignation or Dash's charge that Starr violated the Independent Counsel Act and abused the powers of his office.[15] It certainly weakens Ray's claim that all my grievances were found to be without merit when Ray fails to mention that one of my claims was based on the formal opinion of Starr's ethics expert that he had violated the law and abused the powers of his office. For Ray not to mention Dash's resignation letter is like President Clinton forgetting about the dress.

Regarding my claim that Starr had a conflict of interest in investigating the RTC since the RTC had sued his law firm[16], Ray fails to mention that the Justice Department found that Starr "may have suffered a technical conflict of interest ... [but] no such conflict exists at this point" and thus the matter was not of such an "extreme" nature as to require the Justice Department's exercise of its statutory power to remove Starr as independent counsel.[17] Although the conflict was not so severe as to require the firestorm of the Justice Department trying to remove Starr as Independent counsel, it still was a conflict that constituted an ethical violation.

Regarding the single judge that Ray selected as the authority on my ethical complaints against Starr, that judge was appointed to address my fourth grievance that I filed

---

[15] It is possible that Ray mentions Dash in other parts of his Report but I was allowed to review only the parts of the Report pertinent to my grievances and Dash was not mentioned in those parts.

[16] Ray Report, Appendix C, pages xiv-xv.

[17] Starr I, supra, 986 F.Supp at 1146.

Department has been provided information that David Hale, a key witness for Starr in his Whitewater investigation

> "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... [which might constitute] possible criminal witness tampering.... We are concerned that if he was quoted accurately by the press, one of the participants in these alleged payments has made what could reasonably be interpreted as a threat against a witness....
>
> Section 597(a) [of the Independent Counsel Act] permits an independent counsel to refer matters, in writing, back to the Department of Justice. There have been suggestions that your office would have a **conflict of interst**, or the appearance of a conflict, in looking into these matters, because of the importance of Hale to your investigation and **because the payments allegedly came from funds provided by Richard Scaife**. Should you believe that this matter would be better investigated by the Department of Justice, we would be prepared to accept a referral from you."(Emphasis added.) [38]

Starr responded in a letter dated April 16, 1998, that "we have concluded that any investigation of these allegations may involve at most the **appearnce of a conflict of interest**". (Emphasis added.)[39]

Judge Eisele in a letter to me dated September 8, 1998, referred to an earlier letter in which he had stated that my complaint was premature since it would be appropriate for the court to wait until the Attorney General and Starr could come to an agreement as to who should control the investigation.[40] In the second letter, Judge Eisele noted that the Attorney General and Starr had reached an agreement that the person that Starr had designated, Michael Shaheen, could conduct the investigation. Judge Eisele stated that it was the

> "Court's view that Mr. Shaheen was given the power, the resources, and the independence to conduct the investigation in a thorough and professional manner. That conclusion also made it clear that it would not be necessary or appropriate for this Court to pursue on its own any separate investigation. Therefore, **assuming no change in circumstances, this Court will not separately investigate your letter complaints of April 21 or August 21, 1998**." (Emphasis added.)

---

[38] *See* attached letter from Holder dated April 9, 1998.
[39] *See* attached letter from Starr dated April 16, 1998.
[40] *See* attached letter from Judge Eisele dated September 8, 1998.

However, Judge Eisele perhaps as a prophet then concluded that

> "[w]e understand that the investigation by Mr. Shaheen is under way and that the results thereof will eventually be reported to an independent panel of judges. After that, we can determine whether any **further action by this Court is warranted**." (Emphasis added.)

A copy of the above letter from Judge Eisele to me was mailed to Starr.[41] Thus Starr and Ray were aware of my ethical charge that Starr had a conflict of interest in being involved in or having any influence over the investigation by Shaheen involving Starr's former benefactor Scaife.

Judge Eisele is a judge for United States District Court For The Eastern District Of Arkansas, which is the court where the six judges preside who filed the "ethical inquiry" involving Shaheen's investigation.

Thus since Judge Eisele mentioned that "further action" might be necessary after the Shaheen report was filed, then it appears that the further action was the "ethical inquiry" involving Shaheen's investigation filed by Judge Eisele and the other judges of the Eastern District of Arkansas.

It is unclear why the six judges apparently requested the "appointment of special counsel to investigate alleged prosecutorial misconduct" or why they withdrew their request for access to grand jury material involving Shaheen's investigation or why Nangle found that their ethics complaint was without any merit.[42] We do know that Ray's decision not to prosecute President Clinton was dependent upon Clinton resigning as a lawyer and member of the state bar in Arkansas for five years.[43] We do not know whether the ethical inquiry of

---

[41] *See* attached letter from Judge Eisele dated September 8, 1998, notation as to who was mailed copies.

[42] Ray Report, Appendix C, page xiv, Appendix E, page viii.

[43] New York Times, article by Neil A. Lewis, published January 20, 2001.

the six judges had anything to do with Starr's resignation or whether Starr's resignation caused any of the judges involved to conclude that the ethical complaint was moot since Starr no longer had any control over Shaheen or his investigation involving Scaife. However, it is interesting to note that Starr's status as a lawyer in the Eastern District of Arkansas is presently listed as "inactive", apparently at his request so that he would not have to pay a $10.00 fee to maintain active status.

Some of the above questions might be answered after Ray's Report becomes public but at the time that I am writing this Reply, the portions of the Report that I reviewed are still confidential and I cannot make any inquires in which I might disclose the reasons for any questions that I might ask. Once Ray's Report is published, then it would appear that not only I but many others would be interested in knowing the circumstances involving the "ethical inquiry" filed by the six federal judges and whether it had anything to do with Starr's resignation at a time when he had to wait six months before his old law firm would take him back.

However, it is not only ironic but outrageous that Starr was obsessed with investigating and exposing what many would consider the private matter of Clinton's sex life, *but* the Office of Independent Counsel was successful at hiding an "ethical inquiry" filed against it by six federal judges. The six judges apparently were among the complainants who sought the appointment of a "special counsel to investigate" the special prosecutor's office.

But even if Starr's resignation had nothing to do with the "ethical inquiry" by the six federal judges, Ray's conclusion in his Report that all the ethical charges against Starr were without merit is a conclusion that ignores not only reality but two federal judges who stated that Starr suffered from at least an appearance of a conflict of interest involving Scaife.

Ray's conclusion also ignores Starr's personally chosen ethics expert who stated that Starr violated the Independent Counsel Act and "abuse[d]" the powers of his office by aggressively advocating for the impeachment of President Clinton.

January 10, 2002

Francis T. Mandanici
Bridgeport, Ct.

GEORGETOWN UNIVERSITY LAW CENTER

Samuel Dash
Professor of Law

November 20, 1998

Honorable Kenneth W. Starr
Independent Counsel
Suite 490 N.
1001 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Ken:

I hereby submit my resignation as outside consultant and advisor to you and your Office of Independent Counsel, effective at noon today.

My decision to leave has nothing whatsoever to do with the many unfounded and misinformed attacks on your conduct as Independent Counsel. Through most of your tenure, I have been fully informed by you and your staff on all major decisions made by your office. I have advised you on these matters and have approved most of the decisions made. On some I agreed with you and your staff at the outset. As to others, where I disagreed, you showed your willingness to be open to my advice and you came to different decisions. From my special vantage point, as an experienced professional outsider with no personal or professional stake in the outcome of your investigations, I found that you conducted yourself with integrity and professionalism as did your staff of experienced federal prosecutors.

I resign for a fundamental reason. Against my strong advice, you decided to depart from your usual professional decision-making by accepting the invitation of the House Judiciary Committee to appear before the committee and serve as an aggressive advocate for the proposition that the evidence in your referral demonstrates that the President committed impeachable offenses. In doing this you have violated your obligations under the Independent Counsel statute and have unlawfully intruded on the power of impeachment which the Constitution gives solely to the House. As Independent Counsel you have only one narrow duty under the statute relating to the House's power of impeachment. That one duty, under §595(c) of the statute, is to objectively provide for the House substantial and credible information that may constitute grounds for impeachment.

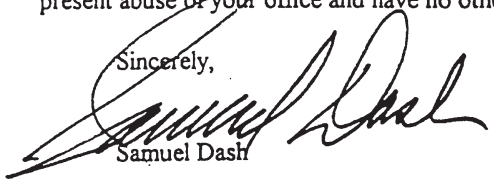
The statute does not, and could not constitutionally give the Independent Counsel any role in impeachment other than this single informing function. The House is not dependent on the Independent Counsel for information related to its impeachment role. It can get its information

600 New Jersey Avenue NW Washington DC 20001-2075
202-662-9070 FAX: 202-662-9444

from many sources, including through its own process, and does not need a referral of information from the Independent Counsel before it can decide to have an impeachment inquiry. The referral you made to the House was proper under the statute. But your role and authority as a provider of information to the House stopped there. You have no right or authority under the law, as Independent Counsel, to advocate for a particular position on the evidence before the Judiciary Committee or to argue that the evidence in your referral is strong enough to justify the decision by the Committee to recommend impeachment. Constitutionally, as you have recognized, the House has the *sole* power of impeachment. As an executive branch independent prosecutor you may not intrude on that sole power, even if invited by the Committee.

Your referral to the House under the statute presented all the evidence you had about the Lewinsky matter which you believed was substantial and credible. As I have said, that was your only lawful responsibility under the statute governing your office. The House Committee has excellent lawyers advising it and did not need you to summarize your referral and to argue for impeachment. Indeed the Committee does not have a right to impose upon you as Independent Counsel to be its prosecuting counsel for impeachment. By your willingness to serve in this improper role you have seriously harmed the public confidence in the independence and objectivity of your office. Frequently you have publicly stated that you have sought my advice in major decisions and had my approval. I cannot allow that inference to continue regarding your present abuse of your office and have no other choice but to resign.

Sincerely,



Samuel Dash

Office of the Deputy Attorney General
Washington, D.C. 20530

April 9, 1998

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

Dear Judge Starr:

As you are aware, 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. In addition to being possible criminal witness-tampering, see, e.g., 18 U.S.C. § 201(b)(3-4), (c)(2-3), 18 U.S.C. § 1512(b), this information may be of a sort that you have an affirmative obligation to disclose to parties matters being handled by your office, and may, of course, influence your future deliberations on the various matters still pending under your jurisdiction. We are also concerned that if he was quoted accurately by the press, one of the participants in these alleged payments has made what could reasonably be interpreted as a threat against a witness. After confirming that the information warranted further investigation, we are therefore providing you with all information on this matter in our possession at this time.

It is our view that you have investigative and prosecutorial jurisdiction over these allegations, because your jurisdiction specifically encompasses obstruction and witness tampering matters arising out of your investigation, which this does. Since the matter appears to us to be within your jurisdiction, and given these unique facts, the Department lacks jurisdiction to investigate it. 28 U.S.C. § 597(a).

In the course of your exploration of these allegations, however, should you develop any evidence of misconduct by any member of your staff, including FBI agents assigned to assist you, the Office of Professional Responsibility (OPR) is prepared to take appropriate action. In light of the Department's potential supervisory role in this matter, please inform OPR of

the results of your investigation of these allegations. I am also forwarding a copy of this letter to OPR. This will help to assure the public that these allegations were properly handled by those with appropriate jurisdiction over them.

Section 597(a) permits an independent counsel to refer matters, in writing, back to the Department of Justice. There have been 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. Should you believe that this matter would be better investigated by the Department of Justice, we would be prepared to accept a referral from you.

If you have any questions or concerns about this referral, please feel free to contact me.

Sincerely,

Eric H. Holder, Jr.
Deputy Attorney General

cc. Richard Rogers, Acting Counsel,
Office of Professional Responsibility

Office of the Independent Counsel

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

April 16, 1998

VIA HAND DELIVERY

Attorney General Janet Reno
U.S. Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, DC 20004

Dear Attorney General Reno:

This is in response to Deputy Attorney General Holder's letter of April 9, 1998, referring to the Office of the Independent Counsel ("OIC") certain allegations that David Hale, a witness who has been cooperating with our office, may have received cash and other gratuities from individuals seeking to discredit the President. While noting that our jurisdiction explicitly includes obstruction of justice and witness tampering in connection with our investigation, Mr. Holder suggests that the OIC "would have a conflict of interest, or the appearance of a conflict, in looking into this matter."

Preliminary information indicates that most if not all of the alleged FBI-supervised contacts between David Hale and Parker Dozhier occurred prior to August 1994 -- i.e., while the investigation was being conducted under the auspices of the Department of Justice. To the extent that any activity of potential investigative interest may have taken place, it thus appears -- at least initially -- that it occurred almost entirely before the point at which I became Independent Counsel.

Nonetheless, after reviewing the allegations that have been made regarding Mr. Hale, we have concluded that any investigation of these allegations may involve at most the appearance of a conflict of interest on the part of the OIC. We also note, however, that the Department of Justice may have not only an appearance problem but multiple actual conflicts of interest in connection with an investigation of Mr. Hale, including (1) a conflict potentially arising from the fact that the Department of Justice, which under the Ethics in Government Act is statutorily precluded from investigating the matters that the OIC is

currently looking into, would itself be investigating the OIC; (2) a conflict potentially arising from the fact that Mr. Hale has provided information that is damaging to the President of the United States; and (3) a conflict arising from the fact that, because the alleged FBI-supervised contacts between David Hale and Parker Dozhier appear largely to have been prior to August of 1994, any activity of investigative interest that may have occurred took place primarily during the time that the investigation was being conducted on behalf of the Department of Justice.

We are deeply concerned that the above considerations would create actual conflict of interest problems in any investigation of these allegations by the Department of Justice, particularly when viewed in combination with the positions that the Department has taken on the various testimonial privileges that are hindering our investigation.

To address these important issues, the OIC has developed several proposed alternate mechanisms for investigating this matter in a manner that comports fully with our respective obligations and with the public's interest in the proper and honest administration of justice. We believe it is appropriate for the OIC and the Department of Justice to attempt to reach agreement on which of these mechanisms should be implemented, to assure public confidence in the discharge of our responsibilities in our respective investigative jurisdictions. I look forward to the opportunity to meet with you, at your earliest convenience, to discuss these alternate mechanisms and our mutual interest in a complete, thorough, and unbiased investigation.

Sincerely,

Kenneth W. Starr
Independent Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
U.S. POST OFFICE & COURTHOUSE
P.O. BOX 3684
LITTLE ROCK, ARKANSAS 72203

G. THOMAS EISELE
SENIOR JUDGE

September 8, 1998

Mr. Francis T. Mandanici
180 Pearsall Place
Bridgeport, CT 06605

Dear Mr. Mandanici:

This will acknowledge the receipt of your letter of August 21, 1998, in which you inquire as to the status of your "grievance" dated April 21, 1998. In your August 21, letter you noted my original response dated May 5, 1998. That response, in toto, states:

> This will acknowledge receipt of your letter-complaint of April 21, 1998.
>
> Since I have no "Whitewater" or "Independent counsel" cases pending before me, I am treating your current letter-complaint as a matter for the Court as a whole to resolve. This response is therefore, being written to you at the direction of the non-recusing members of this Court.
>
> We are of the opinion that your complaint, insofar as it relates to the conduct of the prospective investigation of the Hale-Dozhier-Scaife-Independent Counsel allegations, is, at a minimum, premature. It would be inappropriate for the Court even to consider your complaint until the Attorney General and Mr. Starr determine who shall be in control of, or participate in, that investigation.
>
> Trusting that you understand the reasons for the Court's position on your request, I am.

As you are probably aware, the Attorney General and the Independent Counsel ultimately agreed upon a mechanism under 28 U.S.C. § 597(a) to investigate the allegations that Mr. Hale may have received cash or other gratuities from individuals seeking to discredit the President during a period when Hale was actively cooperating with Mr. Starr's investigation. See Mr. Holder's letter to Mr. Starr dated April 9, 1998, a copy of which you attached to your letter of April 21, 1998. As you noted, this would entail an investigation into the role, if any, of Mr. Scaife or organizations associated with him.

When the arrangement finally agreed upon between the Attorney General and the Independent Counsel was made known to this Court, the judges participating unanimously accepted it as a reasonable and fair way, under all of the facts and circumstances, to effectively

conduct that investigation. It was our Court's view that Mr. Shaheen was given the power, the resources, and the independence to conduct that investigation in a thorough and professional manner. That conclusion also made it clear that it would not be necessary or appropriate for this Court to pursue on its own any separate investigation. Therefore, assuming no change in circumstances, this Court will not separately investigate your letter complaints of April 21 or August 21, 1998.

We understand that the investigation by Mr. Shaheen is under way and that the results thereof will eventually be reported to an independent panel of judges. After that, we can determine whether any further action by this Court is warranted.

Trusting that this explains the position of this Court, I am,

Sincerely yours,

For the Court

G. Thomas Eisele

cc: Attorney General Janet Reno
Independent Counsel Kenneth Starr
Mr. Michael Shaheen
Eastern District Judges

CHERYL D. MILLS

LAW OFFICES
MURPHY & SHAFFER
SUITE 1400
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3109

WILLIAM J. MURPHY
WMurphy@murphyshaffer.com

TELEPHONE (410) 783-7000
FACSIMILE (410) 783-8823

January 11, 2002

HAND DELIVERY

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
United States Courthouse-Fifth Floor-Room 5409
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

RE: In re: Madison Guaranty Savings & Loan Assn. (Report regarding Monica S. Lewinsky and others), Div. No. 94-1.

Dear Mr. Langer:

Pursuant to 28 U.S.C. § 594(h)(2) and the sealed Order of the Division for the Purpose of Appointing Independent Counsels, entered October 5, 2001, please accept this letter filed on behalf of my client, Cheryl D. Mills, a person mentioned in the Office of Independent Counsel's Report Regarding Monica Lewinsky and Others in the referenced matter. This letter constitutes written comments and factual information that I request be included in an appendix to the Final Report.

I respond here to only a single point of the OIC's Report. Footnote 106 to the main body of the Report describes a pager message that Ms. Mills sent to Ms. Betty Currie on January 24, 1998. To the extent the OIC report suggests or implies anything other than the following, it is inaccurate:

Ms. Currie and Ms. Mills were and are long-time personal friends. On January 24, 1998, Ms. Mills paged Ms. Currie to check on her, out of concern for her well-being at a time when Ms. Currie's role in the matters under investigation had suddenly placed her in the national media spotlight. Ms. Mills wanted Ms. Currie to know that she remained available to her as a friend during a time of personal crisis. The message, as quoted in Ms. Mills' grand jury testimony, makes that abundantly clear.

For the OIC to imply, however obliquely, anything improper or unethical about this communication says more about the OIC's bias than about Ms. Mills' conduct.

Very truly yours,

William J. Murphy

KATHLEEN WILLEY SCHWICKER

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

**Division For The Purpose of
Appointing Independent Counsel
Ethics in Government Act of 1978, As Amended**

Division No. 94-1

**In Re: Madison Guaranty Savings & Loan
(Regarding Monica Lewinsky and Others)**

Before Sentelle, Presiding, Fay & Cudahy, Senior Judges

Comments of Kathleen Willey Schwicker

NOW COMES KATHLEEN WILLEY SCHWICKER and, pursuant to the Order of this Honorable Court filed October 5, 2001 in the above entitled cause, respectfully submits her comments and factual information for possible inclusion in an Appendix to the Final Report of Robert W. Ray, Esquire, the Independent Counsel appointed October 18, 1999.

It is the position of this witness that the Final Report is both misleading and factually deficient. Although certain selected facts and occurrences are described, the Report neglects to address many significant incidents, persons and situations connected with Kathleen Willey's four years as an important and respected cooperating witness of the Office of Independent Counsel ("OIC"). Over that four year period, Ms. Willey spent many hours being interviewed by OIC's federal investigators. Moreover, she testified fully and completely before two federal grand juries, and told her story several times on national

television.

The information and testimony furnished by Kathleen Willey directly and specifically contradicted testimony given under oath by President William Jefferson Clinton in the course of his deposition given in the case of Jones v. Clinton. The matter concerned an encounter between the President and the witness. Ms. Willey alleged that the President assaulted her physically; she identified several acts of physical contact, all of which were sexual and unwanted. In his deposition, President Clinton categorically denied each and every allegation. Because Ms. Willey's charges were so detailed and because President Clinton's denials were so unequivocal, it is clear that one of the other was lying. It appears from the Report that the OIC has concluded that Ms. Willey's credibility is not such as to support a conviction of the President for perjury or for witness tampering.

Thus, the Report states:

> . . . Linda Tripp's testimony that Willey had a previous romantic interest in President Clinton (and appeared to view his alleged advances positively) departed from Willey's testimony. Tripp's co-operation with this office in the Lewinsky Investigation ultimately yielded evidence about President Clinton's conduct with Monica Lewinsky that was contrary to the President's testimony. Thus, evidence supplied by Linda Tripp regarding Willey that was consistent with President Clinton's testimony would likely be favorably received by a jury.

Any attempt to pit Linda Tripp's credibility against that of Ms. Willey is disingenuous at best.

First: Ms. Tripp originally testified that Ms. Willey

"viewed positively" the President's advances. She has, however, repeatedly amended that testimony. She has been quoted as saying that she could have been wrong and may have misread Kathleen Willey's flustered demeanor. Furthermore, during an interview on television with Larry King, Ms. Tripp stated, "Oh, you can believe Kathleen Willey; she's an honest woman."

With reference to Ms. Willey's alleged "romantic interest in President Clinton" there is not one shred of evidence to support that conclusion. Ms. Willey's sole interest in Governor, later President Clinton, was political. She and her husband were both die-hard Democrats who campaigned for Mr. Clinton in his presidential campaign. After the election, Ms. Willey volunteered to work for the Clinton Administration in the Old Executive Office Building.

The only "romantic interest" was shown not by Ms. Willey, but by Mr. Clinton. During the campaign, Mr. Clinton made several (documented) phone calls to Ms. Willey attempting to meet her, though she did not know it at the time, the meetings were not intended to discuss policy or tactics.

While it is true that Linda Tripp's testimony (and tapes) eventually proved perjury and subornation of perjury against the President, there is no reason to believe that any of Tripp's testimony would cast doubt upon Kathleen Willey's credibility. On the contrary, Linda Tripp's testimony, together with that of

other witnesses known to the OIC, actually corroborated Ms. Willey's account of the Oval Office encounter. The President, in the words of the Report, "emphatically denied making any sexual advances toward Willey . . . he agreed they had physical contact, but not of a sexual nature." The witnesses who saw Ms. Willey when she came out of the Oval Office, including Ms. Tripp, testified that she was ruffled, flustered and seemed to be confused. Ms. Tripp even referred to the President's "advances".

The Report further addresses the alleged differences between Ms. Willey's deposition and her grand jury testimony and her "acknowledgment of false statements to the OIC". The Report states:

> Concerns about the probative effect of Willey's testimony would likely be sufficient to negate a conclusion that the person [charged] probably be found guilty, by an unbiased trier of fact."

When the facts are known, neither the foregoing allegations, not the conclusion can be sustained. Prior to giving her deposition in the Jones case, Ms. Willey was subjected to an ongoing harassment calculated to force her either to refuse to testify altogether or to falsify her testimony. Shortly after receiving the deposition subpoena, her attorney was visited by one of the President's lawyers, who suggested that Ms. Willey assert her Fifth Amendment Privilege to avoid testifying. Soon an unsolicited package was received by Ms. Willey's attorney. It contained a form Motion to Quash the subpoena, a form Affidavit

and a Memorandum of Law.

While the pressure was being applied to Ms. Willey's attorney, she was being afflicted with thinly veiled attempts to scare her into complying with the President's wishes: her automobile tires were flattened by a nail gun; an unidentified female tried to obtain custody of Ms. Willey's animal; (a cat that mysteriously disappeared); an individual tried to get directions to the witness' home from the local post office, and became abusive when he couldn't get the information; a long time friend of President Clinton tried to coax Ms. Willey to change or reconsider her statements about President Clinton; and private investigator, Jarred Stone, using an alias, called Ms. Willey and told her to be careful because "there are people out to hurt you".

As the date for her deposition approached, Ms. Willey was becoming more and more frightened for herself, her lawyer and her family. Then the final blow fell. As she was walking her dogs in a secluded area, she was approached by a man in a jogging suit. During the ensuing conversation, the "jogger" displayed an intimate knowledge of Ms. Willey, her missing cat (by name), the vandalized tires, her children (by name), her lawyer (by name) and his children (by name). Not only was the stranger intimidating, he also hinted at dire results unless the witness cooperated. As she ran away, he called after her, "You're just

not getting the message, are you?"

Kathleen Willey was originally a reluctant witness in the Jones case. She had no desire to relive the encounter with the President, and to become involved in the scandal that was developing. The unrelenting intimidation to which she had been subject added real terror to that reluctance. As a consequence, she fenced with the Ms. Jones' attorney during the first part of the deposition. When the judge cleared the court after a recess, she told, as best she could, her account of the events. Even then, her fear compelled her to omit some of the more embarrassing elements of the President's behavior. She tried to tell the truth and hoped that the omission of details might satisfy those who had been attacking her. That hope was dashed two days later, in the early morning, when Ms. Willey found the skull of a small animal on her front porch facing the door.

Approximately two months later, Kathleen Willey told the same story, but in greater detail. The deposition had been a defining moment and she realized that she must go all the way. She had been given a grant of immunity by the OIC and promised protection as long as she remained a witness.

The false statement to the OIC is likewise insufficient to affect general credibility. Four years after her husband's suicide, Ms. Willey found herself in a relationship with a younger man. The relationship was short and Ms. Willey felt

angry and victimized. When the OIC investigators later asked her about "other relationships", she became embarrassed and disavowed any relationship because she felt it was unimportant. When she was confronted with the evidence, she readily admitted the facts and her reasons for not bringing it out earlier. This venial deviation is insufficient to affect Ms. Willey's credibility adversely, particularly in view of other evidence and opinions that the OIC chose to ignore.

The FBI investigators assigned to the OIC told Ms. Willey that she was the most investigated witness that they had ever been assigned to interview. They estimated that she had experienced more than 75 hours of interrogation over a period of about one year. In all those hours, the only matter that was concealed is the humiliating experience of a failed short relationship.

In this connection, the Report's observation concerning Ms. Willey's two polygraph examinations is likewise misleading. The Report states that the first examination was "deemed" inconclusive, and the second "suggested" the witness was being truthful. We submit that the verbs should be reversed. When the OIC suggested that Kathleen Willey submit to a polygraph examination, she enthusiastically agreed, despite the vehement objections of her attorney. The first test was given in Richmond by an agent with little experience. A single question was poorly

worded and therefore ambiguous. Confused, Ms. Willey hesitated before answering, and that hesitation caused the result that the test was inconclusive. Five days later, Ms. Willey was retested in Washington by the FBI's top polygrapher. The test was fully successful and Ms. Willey was deemed to be truthful.

Inexplicably, the OIC that now would cast a shadow over Ms. Willey's credibility, vouched for that credibility when she testified for the prosecution in the case of United States v. J. Steele. Significantly, that case involved a charge of perjury based upon an alleged conversation with Ms. Willey. All of the witnesses supported and corroborated Ms. Willey's testimony. The Report asserts that Ms. Steele, "was not acquitted". True, she was not; the jury was hung nine to three for conviction. This is another misleading statement calculated to denigrate an honest witness. Yet all of Ms. Willey's testimony in the Steele trial was fully corroborated by at least six other witnesses.

But more: the Report states:

> "In short, there was insufficient evidence to prove . . . that President Clinton's testimony regarding Kathleen Willey was false. Accordingly, the OIC declined prosecution and the investigation of potential criminal wrongdoing relating to Willey's allegations is now closed.

In opposition to that conclusion, the witness Kathleen Willey Schwicker respectfully requests that, in addition to the foregoing, the following facts and circumstances likewise be included in an Appendix to the Report in the interest of fairness

and completeness:

First: An attorney for one of the President's friends hired investigator Jarred Stone to investigate Ms. Willey and "find dirt". He did investigate exhaustively, and none was found.

Second: Clinton aide, Sidney Blumenthal, said to journalist Christopher Hitchens the day after Ms. Willey's appearance on "60 Minutes", "Willey may have high numbers now, but they will be down by the end of the week". That day, Willey's letters to the President were illegally released to the press.

Third: Ms. Willey was interviewed for several hours by attorneys and investigators from the House of Representatives Committee on the Judiciary during the impeachment inquiry into President Clinton. The interview consisted, for the most part, of specific and searching cross-examination. After the impeachment was voted in the House, Ms. Willey was informed that she was to be one of the principal witnesses against President Clinton in the Senate trial of the impeachment charges. The Senate refused to permit live witnesses to appear, so she was never called.

In summary, the Report as submitted, is both misleading and woefully destitute of facts to support the conclusions of the OIC concerning the alleged "problems" with the credibility of

Kathleen Willey. It is obvious that, for one reason or another, the OIC has elected to forego indicting William Jefferson Clinton for perjury, obstruction of justice and witness tampering. That is a decision peculiarly in the discretion of the prosecutor. When, however, that decision is based upon relatively insignificant facts, culled selectively from a mass of credible evidence; and when from those incomplete facts, misleading, if not false conclusions are employed to denigrate and humiliate a witness who cooperated at the risk of her reputation and physical safety, justice and fairness demand that the full story be made a part of the record.

WHEREFORE, the witness KATHLEEN WILLEY SCHWICKER, respectfully request that these comments be made a part of the Appendix to the Final Report of the Independent Counsel.

Respectfully submitted,

Kathleen Willey Schwicker 1/7/20

KATHLEEN WILLEY SCHWICKER