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## OFFICE OF THE INDEPENDENT COUNSEL

Date of transcription 2/1/98

Clifford Howard Bernath, [REDACTED], was advised of the identity of the interviewers and the nature of the interview. Mr. Bernath was interviewed at the Pentagon in the presence of Department of Defense (DOD) Attorney Brad Wiegman. He provided the following information.

Mr. Bernath is the Primary Deputy Assistant Secretary of Defense for Public Affairs, United States Department of Defense. He is the second in command in the DOD Public Affairs office underneath Ken Bacon, who is the Assistant Secretary of Defense for Public Affairs. Mr. Bernath's duties entail the day to day operations of the Public Affairs office. In this capacity, Mr. Bernath would have oversight over the employees in the Public Affairs office.

There are two other Deputy Assistant Secretaries of Defense for Public Affairs in addition to Mr. Bernath. They are Doug Wilson, who is the Deputy Assistant Secretary of Defense for Public Affairs (Communication) and Captain Michael Doubleday, U.S. Navy, who is Deputy Assistant Secretary of Defense for Public Affairs (Information).

Monica Lewinsky was the Confidential Assistant to Ken Bacon. Confidential Assistant is more or less a secretarial position. Although Ken Bacon was Monica Lewinsky's direct supervisor, Mr. Bernath wrote Ms. Lewinsky's performance appraisals. After he wrote the performance appraisal, he would give it to Mr. Bacon for review and signature.

The performance appraisals at DOD have five possible ratings. They are Outstanding, Exceeds Fully Successful, Fully Successful, Satisfactory, and Unsatisfactory. Monica Lewinsky received a performance rating of Exceeds Fully Successful on her one performance appraisal during her eighteen month stint at DOD.

Although Exceeds/Fully Successful is the second highest rating on DOD performance appraisals, it has become more of an average or middle of the road rating.

Her main job was supporting Mr. Bacon, and Mr. Bacon

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Investigation on 1/28/98 at Arlington, VA File # 29D-OIC-LR-35063, Sub46  
 by [REDACTED] Date dictated 2/1/98

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never offered any complaints to Mr. Bernath about her performance. However, he did occasionally receive complaints on her performance from other employees in the Public Affairs office. On several occasions, Mr. Bernath spoke with Ms. Lewinsky to address problems with her job performance. In particular, he advised her that she had too many personal calls, spent too much time sending e-mail not related to her job, and was ignoring incoming telephone calls. Ms. Lewinsky was not an organized person and at times was overwhelmed by the tasks of her job.

Monica Lewinsky was tasked on several occasions to work on foreign trips made by the Secretary of Defense. These foreign trips required Ken Bacon to accompany the Secretary. Lewinsky's job was to assist Mr. Bacon on these trips by typing transcripts, preparing faxes and various other administrative duties. Ms. Lewinsky accompanied Mr. Bacon on approximately one third of the foreign trips made by Mr. Bacon while she worked at DOD. Other support staff, which consisted of military personnel, would rotate assignments for these foreign trips with Ms. Lewinsky. Cliff Bernath did not travel on these foreign trips, because his job was to keep the Public Affairs office functioning in Mr. Bacon's absence. After one trip in particular, Mr. Bernath received numerous complaints regarding Monica Lewinsky's job performance. He had to counsel her regarding her performance on this particular trip. Ms. Lewinsky explained her poor performance to personal problems and stated it wouldn't happen again.

The Confidential Assistant position has a high burnout level. Because of the demands of the job, especially on foreign trips when the Confidential Assistant must stay up late at night typing transcripts, it is difficult to keep people in the position for a long period of time. It is because of the burnout level of the job that Clifford Bernath and Ken Bacon agreed to hire a younger person after the Confidential Assistant prior to Monica Lewinsky, Jean Wetzel, left the job for a position at the National Security Counsel (NSC).

Once Mr. Bernath discovered Jean Wetzel was leaving her job at DOD, he called the DOD Liaison to the White House, Charlie Duncan. The Confidential Assistant position is a Schedule C or political appointment and serves at the discretion of the Secretary of Defense. Therefore, the White House is always

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contacted regarding any Schedule C openings in order that the White House can recommend candidates for the particular position. The only name Charlie Duncan provided to Clifford Bernath from the White House was Monica Lewinsky.

In addition to Monica Lewinsky, three other candidates were interviewed by Mr. Bernath and Ken Bacon. Since there is no formal process to recruit candidates for Schedule C positions, except to contact the White House to advise of the vacancy, any other candidates who express an interest in a Schedule C position learn of the job by word of mouth.

Mr. Bernath does not recall contacting Monica Lewinsky's supervisor at the White House, but believes that he more than likely did contact the supervisor to discuss Ms. Lewinsky's job performance while working at the White House. Mr. Bernath was never advised why Ms. Lewinsky left the White House and did not attempt to find out of his own volition.

Monica Lewinsky was selected by Ken Bacon and Clifford Bernath for the Confidential Assistant position based upon her youth. Although her typing skills were substandard, by her own admission, Mr. Bernath believes that skills of that nature can be taught. He was more interested in the position being filled by someone with good interpersonal skills. Ms. Lewinsky was gregarious and outgoing.

Mr. Bernath does not know who Monica Lewinsky may or may not have socialized with at work or away from work. He was not aware of any personal relationships she had with DOD employees. He did not hear any rumors of that nature either. He observed Ms. Lewinsky and Linda Tripp speak together on occasion, but never thought it to be anything more than a normal co-worker relationship.

Although Mr. Bernath knew that Monica Lewinsky was a Clinton enthusiast, the only time Ms. Lewinsky ever discussed President Clinton was on a few occasions when the President was on television and Ms. Lewinsky would point out to others in the office that the President was wearing the tie she had purchased for him.

Mr. Bernath only knew of Ms. Lewinsky visiting the

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White House when invitations were sent to most of the political appointees at the DOD. These events occurred approximately twice per year.

Mr. Bernath could provide no further information relating to any possible relationship between President Clinton and Monica Lewinsky.

Ms. Lewinsky gave notice in November of 1997 that she would be leaving her job at the end of the year. She stated that she was leaving to be with her mother, who lived in New York. She advised that she was going to find a job in New York, but did not ask Mr. Bernath for a reference or possible job leads.

A few weeks before she left the DOD, Ms. Lewinsky appeared distraught at work. So distraught that Clifford Bernath called her into his office to determine the nature of her problem. He asked Ms. Lewinsky if there was anything he could do to help her, but she advised that she would work out her own problems. She stated that she was feeling better and did seem to be in a better disposition the remainder of her time at the DOD.

Mr. Bernath was asked to comment on the comment made by Willie Blacklow, who was the Deputy Assistant Secretary of Defense for Public Affairs (Communications) prior to Doug Wilson. Mr. Blacklow had stated to a news reporter that it was a mystery to him how someone with Monica Lewinsky's youth and inexperience had landed that position at the Pentagon. Mr. Bernath explained Mr. Blacklow's comment as typical of the type of overblown statements Mr. Blacklow was known to make. When Mr. Blacklow was at the DOD, the people in the Confidential Assistant Position were more experienced than Monica Lewinsky. Cliff Bernath and Ken Bacon made a deliberate decision to hire someone more youthful because of the high burnout level of the position. Mr. Blacklow's statement was nothing more than his disagreement with a management decision.

The Confidential Assistant subsequent to Monica Lewinsky, Melanie Shender, was also hired from the White House. She is twenty-two (22) years old. Ms. Shender left the White House for the DOD because she wanted a more challenging position.

Clifford Bernath, 5/21/98

Deposition

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CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

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OFFICE OF THE INDEPENDENT COUNSEL  
 DEPARTMENT OF JUSTICE  
 Thursday, May 21, 1998  
 Washington, D.C.  
 Department of Justice  
 CLIFFORD H. BERNATH  
 before the Independent Counsel, held at the Office of the  
 Independent Counsel, in Suite 400-North, 111 Pennsylvania  
 Avenue, N.W., Washington, D. C. 20004, beginning at  
 10:19 a.m. When present:  
 For the Independent Counsel:  
 JAMES N. CRANE, ESQUIRE  
 Associate Independent Counsel  
 THOMAS A. CORCORAN, ESQUIRE  
 Associate Independent Counsel  
 Court Reporter: Elizabeth A. Eastman

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employ. So, that is important to keep in mind.  
 The type of individuals that appear before a grand  
 jury are target, subject, and witness. A target is an  
 individual about whom the grand jury has acquired sufficient  
 information that they are ready to become, or likely to  
 become, a defendant. You are not a target of the grand jury  
 investigation.  
 The second category is a broad category of  
 individuals whose conduct comes within the ambit of the grand  
 jury investigation, and they are called subjects. You are a  
 subject of the grand jury investigation. And a subject can  
 be, to give an example, anyone from a bank teller, for  
 example, in a bank robbery who witnesses the burglar come in  
 and give a demand note: give me all your money.  
 A Uh-huh.  
 Q Even a teller could be a subject, as well as a  
 witness, in a grand jury investigation. Is all of that clear?  
 A I think so.  
 Q Then, without further elaboration, Ms. Corcoran  
 will ask you some fact-based questions. And from time to  
 time I will jump in and follow up.  
 A Okay.  
 BY MS. CORCORAN:  
 Q To begin with, could you tell us what your title is  
 and position?

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PROCEEDINGS  
 WHEREUPON  
 CLIFFORD H. BERNATH  
 having been called for examination by the Office of the  
 Independent Counsel, and having been first duly sworn by the  
 notary, was examined and testified as follows:  
 EXAMINATION BY COUNSEL FOR THE INDEPENDENT COUNSEL  
 BY MR. CRANE:  
 Q Sir, state your full name, please.  
 A Clifford H. Bernath.  
 Q And your middle name is?  
 A Howard.  
 Q I am Jim Crane. I'm an Associate Independent  
 Counsel here. Present with me is Julie Corcoran, also an  
 Associate Independent Counsel. We are prosecutors for the  
 government involved in a grand jury investigation.  
 As you probably know, we work for the Office of the  
 Independent Counsel. We are prosecutors for the government  
 and we have special or a limited area of jurisdiction. It is  
 a criminal investigation into allegations of perjury,  
 subornation of perjury, and obstruction of justice in  
 relation to Monica Lewinsky and William Jefferson Clinton, in  
 relation to a civil lawsuit, Paula Jones versus William  
 Jefferson Clinton, et al. And that is what we are looking  
 into generally.

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A My current title is Director of the American Forces  
 Information Service. My title at the time of the -- until a  
 month ago was Principal Deputy Assistant Secretary of Defense  
 for Public Affairs.  
 Q And how long were you in that position?  
 A Almost five years.  
 Q Could you describe some of your primary  
 responsibilities in that position?  
 A Yes. I was the number two public affairs official  
 in the Department of Defense. I had responsibility for the  
 day-to-day operations of the Office of the Assistant  
 Secretary of Defense for Public Affairs.  
 I also was responsible for media relations insofar  
 as they cover military operations, exercises, and war. I was  
 responsible for the DOD national media pool and all public  
 affairs planning and guidance for military operations.  
 I was responsible for a partnership for peace  
 initiative, which helped developing democracies form a proper  
 relationship with their medias in those countries. I had  
 administration, all the administration, personnel, logistics  
 under me. I also had Freedom of Information and security  
 review under me.  
 Q Let's begin with the week of January 22nd and 23rd.  
 When did you become aware that the Office of Independent  
 Counsel had issued a subpoena for the production of Monica's

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What we are talking about here today are some  
 computer issues and we will get into a number of factual  
 issues.  
 Is all of that information about our jurisdiction  
 and so forth clear to you?  
 A It is.  
 Q All right. As Ms. Corcoran said before we went on  
 the record, this is a grand jury proceeding, or a grand jury-  
 like proceeding. We asked you to come here today to this  
 deposition. But, as Ms. Corcoran said, the court reporter  
 will produce a record, a transcript of the proceedings, and  
 all or part of that will be made available to the grand jury.  
 This is a grand jury proceeding. So, unlike a  
 civil deposition, there is no lawyer representing you present  
 here today, although Mr. Brad Wiegmann from the general  
 counsel's office, as I understand it, is present outside in  
 the waiting room. Is that correct?  
 A Yes, it is.  
 Q Did you have any other counsel here with you today?  
 A No, I don't.  
 Q Now, you may go and consult with Mr. Wiegmann.  
 But, since he is a government attorney, anything you say to  
 him, or he says to you, is not necessarily covered by the  
 attorney/client privilege, the way it would with a private  
 attorney, which you may employ or have employed or could

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computer and other related documents for Linda's computer?  
 A It was -- I was out of town when the subpoena came  
 in. So, I was made aware of it a few days later. I don't  
 remember the exact date, but I think your subpoena came in  
 like the 21st or --  
 Q The 22nd.  
 A -- 22nd. Can you tell me what day of the week that  
 was?  
 Q The 22nd was a Thursday.  
 A Okay. So, I was out of town Thursday, Friday and  
 Saturday, I believe, and I came back Sunday. So, it would be  
 the following Monday that I became aware of it.  
 Q Who informed you first that there had been a  
 subpoena issued by this office?  
 A I believe it was Captain Mike Doubleday.  
 Q Do you recall specifically what he had said to you  
 in that meeting?  
 A Just that, that he had received it and in my  
 absence he had given -- he had met with Pat Bursell and  
 Bonnie Nicholson. I can't remember if there were any other  
 people in that meeting, because I wasn't there, but that he  
 had met with them and that he had started the process of  
 record collection going.  
 Q Did he request that you take over any of the  
 responsibilities in terms of producing documents pursuant to

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the subpoena?  
 A No. I think that we thought that since he had already begun the process that it was better for him to just keep it going, and I received like progress reports, but not independently.  
 Q Did you have any input into how the documents were going to be produced? Did you express any concern regarding the production?  
 A No.  
 Q On Monday, January 26th, when you heard about the subpoena, did you attend any meeting with any other individuals at the DOD regarding the production?  
 A We had a meeting again with Mike Doubleday, Bonnie, Pat Bursell. I can't remember if Nancy Gorski was there or not. But it was a small group of people, and they just went over what they were doing.  
 Q Do you recall the substance of the discussion?  
 A They had gone out to the directorate and asked for any documents and equipment that were listed in the subpoena, and they had coordinated with the general counsel's office to make sure that what they were doing was in compliance with the subpoena.  
 Q At any time during this period were you in contact with the general counsel's office regarding the subpoena?  
 A I can't remember a specific, but I would think that

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Q Who directed you to produce those documents?  
 A Well, the initial tasking memorandum that Mike Doubleday had pertained to the front office, my office as well as all the other offices. So, everybody in the office had to do their own searches.  
 Q Did everybody in the office receive this task memo?  
 A Yes.  
 Q When did you receive the task memo?  
 A It was waiting for me when I got back.  
 Q After you produced the documents in accordance with the task memo, what other involvement did you have in the production of Monica's computer or Linda Tripp's?  
 A No direct. I made sure that Pat had enough people to help make copies. That was quite a logistics exercise. So, it was mainly just making sure that she had the assets that she needed to comply.  
 Q At any time were any concerns raised regarding preserving the integrity of Monica's and Linda's original computer?  
 A Both computers were actually set aside in accordance with the subpoena.  
 Q Do you recall when they were set aside?  
 A They had been set aside when I got back. So, as soon as they got the subpoena, I would imagine they set those aside. I don't know the exact date.

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I must have talked to them. I must have talked to Brad Wiegmann. It would have been normal for me to do that.  
 Q Normal, in terms of?  
 A Normal, since, since I was the principal deputy, that I would have -- if there were any instructions or anything, Brad would have called me. But I can't remember a specific conversation. If there was a specific conversation, it would have been along the lines of we are working on the documents.  
 Q Were you relying on other individuals to keep you informed on the progress?  
 A Yes.  
 Q Was it your general responsibility and duty to keep Brad Wiegmann and the general counsel's office aware of that progress?  
 A No, not necessarily. It's more like coordination.  
 Q Coordination?  
 A Right.  
 Q You don't recall any conversation during this time period though with Brad Wiegmann regarding the coordination?  
 A I don't, no.  
 Q Are you familiar with any policies that exist at the DOD relating to when an employee leaves, concerning their computer and the backup of data on that computer?  
 A No. We didn't have a written policy. I can tell

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Q But, to your knowledge, you're not sure?  
 A No.  
 Q When you returned on Monday, do you recall seeing anybody accessing Monica's or Linda's original computer?  
 A No.  
 MR. CRANE: Do you have anything else?  
 MS. CORCORAN: Not at the moment. Do you have any questions? I just want to think.  
 MR. CRANE: On that issue?  
 MS. CORCORAN: Yes.  
 BY MR. CRANE:  
 Q I did have one. You guys discussed it a minute ago. Mr. Bernath, I believe you said something to the effect that when an employee leaves, the disk drive was wiped clean for the next person?  
 A Yes.  
 Q Can you describe who would do that? Who would wipe the disk drive clean, and how and why would that be done?  
 A It would be done by our Information Resources Management branch, Bonnie's, Bonnie Nicholson's crew. It could have been her or a contractor. I don't know who would do it. Well, and the reason is that we reuse the computers. So, people should start off with a, you know, just the clean computer with the normal file system on it.  
 Q All right. But if there is routine work-related

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you what the normal procedure was.  
 Q Please.  
 A Normally, the computer did not become the main file archiving mechanism. Everything, all official papers and everything were printed out and signed and then put in files.  
 Q Our normal procedure was that when a person left, they got rid of their personal notes. They got rid of their personal e-mail, and then the disk drive was wiped clean for the next person coming in.  
 Q To your knowledge, was a backup of Monica's computer done when she left the DOD?  
 A Yeah, I believe there was. I believe there was a -- we have regular backups. I don't remember the -- I guess, I don't know if they're weekly, but there is a regular tape and it's, it goes into a rotation for archiving. And I believe that that did happen.  
 Q Going back to the subpoena that Monday, after the meeting on Monday that you attended, what further role did you have, or participation did you have in the production of documents pursuant to the subpoena?  
 A I provided documents that were in my possession in accordance with the subpoena.  
 Q Those documents were?  
 A Files, counseling, any e-mails that I had in my system, personal notes.

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documents, and someone, an employee is taking over his or her predecessor's duties, wouldn't archive copies of what they have done previously be useful to the new person?  
 A There is a judgment call on whether or not -- what documents should be left on the machine. When I say "wiped clean", in some cases they are wiped clean, I guess. But in a lot of cases there are probably -- all of the personal items are removed. Anything that is not duty-related, anything that the successor may not need would be eliminated.  
 Q And who makes that judgment call?  
 A Normally the individual who is leaving.  
 Q Okay. So, if you have -- for example, in the legal field we have a lot of what we call boilerplate documents that we tend to use again and again with relatively minor changes. In your field, would there be similar documents that would be quite useful to the next person that you would not want to delete?  
 A I'm sure there are. When I left, I left some documents like that.  
 Q Okay.  
 MR. CRANE: Ms. Corcoran, did you have some followup?  
 MS. CORCORAN: I have some other questions.  
 BY MS. CORCORAN:  
 Q The Tuesday following the Monday of your return,

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[1] was there another meeting that was held regarding Monica's  
 [2] and Linda's computer?  
 [3] A There may well have been. There may have been a  
 [4] discussion about since -- about replacing the computer on  
 [5] Monica's desk for the next, getting a new computer for the  
 [6] other person.  
 [7] Q On Tuesday?  
 [8] A On Tuesday. I say there may have been. I don't  
 [9] remember specifically.  
 [10] Q The substance of the meeting, you don't recall the  
 [11] specifics?  
 [12] A Well, I'm not even sure if there was a meeting.  
 [13] But we did discuss at one point, well, if we're taking  
 [14] Monica's computer off that desk, we've got to have another  
 [15] computer on the desk for the new person to work.  
 [16] Q Do you recall anybody requesting of you or asking  
 [17] you to have another individual delete or erase any files off  
 [18] of Monica's or Linda's computer?  
 [19] A No. No.  
 [20] Q Are you aware of anyone who may have deleted or  
 [21] erased any files off of Monica's or Linda's computer?  
 [22] A No.  
 [23] Q So, as of Tuesday, the meeting, when would you say  
 [24] your last involvement with the production of documents  
 [25] pursuant to the subpoena was?

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[1] A The last involvement was when the records were  
 [2] boxed up and shipped up to the general counsel's office. I  
 [3] don't remember the date, but it was a pallet load of  
 [4] documents and I just looked at the pallet, and said, wow,  
 [5] it's a lot of documents.  
 [6] Q Did somebody come and inform you that the documents  
 [7] had been hand-delivered to the general counsel's office?  
 [8] A Pat Bursell.  
 [9] Q Pat Bursell?  
 [10] A Right.  
 [11] Q Did she inform you of any other information at that  
 [12] time?  
 [13] A No.  
 [14] Q And that would have been the last time that you had  
 [15] discussed the subpoena or the documents?  
 [16] A I can't remember having a discussion after that.  
 [17] Q So, going back to a question I had asked earlier,  
 [18] you don't recall any conversations with the general counsel's  
 [19] office or any individual there regarding the production of  
 [20] these documents?  
 [21] A No, I don't.  
 [22] Q To your knowledge, who was the individual who was  
 [23] in charge of producing these documents?  
 [24] A Pat Bursell.  
 [25] Q Who made you aware that she was in charge of

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[1] producing the --  
 [2] A Mike Doubleday.  
 [3] Q Mike Doubleday?  
 [4] A (Witness nodded indicating an affirmative  
 [5] response.)  
 [6] Q Okay.  
 [7] MS. CORCORAN: I think that's all I have.  
 [8] BY MR. CRANE:  
 [9] Q I just have some sort of general followup  
 [10] questions. Did you work with Monica Lewinsky?  
 [11] A I did.  
 [12] Q What sort of interactions did you have with her?  
 [13] A Daily. She worked in the immediate office, same  
 [14] office I worked with. She was Ken Bacon's confidential  
 [15] assistant. So, I would give her guidance on a daily basis,  
 [16] and she would consult with me.  
 [17] Q All right. And she was there for approximately how  
 [18] many months? When I say "there", I mean in your office.  
 [19] A It was about a little over a year, as I recall.  
 [20] Q All right. Was she a good employee?  
 [21] A She was an adequate employee. She was, she was a  
 [22] fully successful employee.  
 [23] Q How did she get hired?  
 [24] A Ken Bacon and I hired her.  
 [25] Q How did that come about?

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[1] A Her predecessor had given us notice that she was  
 [2] leaving. Ken and I decided the type of person that we  
 [3] wanted. We went to our White House liaison in the Pentagon  
 [4] and we went to other sources in the Pentagon. We had a list  
 [5] of four. I think four people, maybe five people who we  
 [6] interviewed, and we selected Monica.  
 [7] Q Who's the White House liaison?  
 [8] A That's a person who works in the Pentagon who is  
 [9] part of the administration who liaises with the White House  
 [10] on personnel issues.  
 [11] Q And who is that person?  
 [12] A At the time it was Charles Duncan.  
 [13] Q And he has since gone --  
 [14] A I'm sorry. It might have been Liz Bailey at that  
 [15] time.  
 [16] Q And who is Liz Bailey's successor, if there is one?  
 [17] A Liz is still there.  
 [18] Q Liz is still there?  
 [19] A Yes.  
 [20] Q And Charles Duncan, what is his title or position?  
 [21] A He was the liaison. I'm not sure what he's doing  
 [22] now.  
 [23] Q Did Monica ever get admonished or anything for  
 [24] needing to improve her performance, anything like that?  
 [25] A I, I counseled her on some parts of her duty, yes.

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[1] Q What --  
 [2] A Admonishment is not the right word. Counsel is a  
 [3] better word, I think.  
 [4] Q Okay. What was that counseling?  
 [5] A Kind of normal things that I counsel people about.  
 [6] Sometimes spending too long on a phone conversation,  
 [7] sometimes not being responsive enough, all very minor things,  
 [8] you know. Nothing, nothing that would warrant any kind of  
 [9] action or anything like that.  
 [10] Q What about promotions? Was she promoted while she  
 [11] was there in Public Affairs?  
 [12] A No.  
 [13] Q Did she want to be promoted?  
 [14] A Yes.  
 [15] Q What was the outcome? Were there any discussions  
 [16] about that?  
 [17] A Yes, with me, and my determination was that she was  
 [18] hired at a specific grade, and that was the appropriate  
 [19] grade, and I was not supportive of a promotion.  
 [20] Q Why were you not supportive of a promotion? What  
 [21] was she doing or not doing that would not, after a year more  
 [22] or less --  
 [23] A Well, first of all, in the political system -- in any  
 [24] system, but in the political system in this case, people  
 [25] aren't automatically entitled to a promotion. You are hired

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[1] as a GS-9, and unless you accrue extra duties or have some  
 [2] physical reason to warrant a promotion, you don't get it.  
 [3] So, there was no, no reason to warrant it. She was still  
 [4] doing the job that she was hired to do in accordance with her  
 [5] job description. There was no basis for a promotion.  
 [6] Q All right. But she wanted to be promoted?  
 [7] A Oh, yes.  
 [8] Q Describe what conversations you had with her about  
 [9] her desire for a promotion.  
 [10] A Well, she asked, she felt that she had been at work  
 [11] for a sufficient time and she felt she was performing her  
 [12] duties sufficiently well that she should have a promotion.  
 [13] And basically I explained why that's not the way the system  
 [14] works. It's the same conversation I have with lots of  
 [15] employees, by the way.  
 [16] Q All right. She was a GS-9, is that correct?  
 [17] A Yes.  
 [18] Q She's on the GS scale, but she was a political  
 [19] appointee, is that correct?  
 [20] A That's correct.  
 [21] Q Okay. Do the criteria for evaluating a political  
 [22] appointee, are they the same as for a regular GS employee?  
 [23] A Once they are hired?  
 [24] Q Yes.  
 [25] A Yes.



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[1] Q Okay. So, what were the reasons that she could not  
[2] be promoted or get a step increase or a --  
[3] A No, a step increase is different, and she did get  
[4] step increases.  
[5] Q Okay.  
[6] A Step increases are based on time, in-service time  
[7] and grade. So, they are fairly routine. When a certain  
[8] amount of time passes, unless you've done anything egregious,  
[9] you get a step increase.  
[10] Q All right.  
[11] A So, that's a pay increase. A raise would be like  
[12] going from GS-9 to GS-11.  
[13] Q I see.  
[14] A Okay. And that's what I objected to. To go from a  
[15] GS-9 to a GS-11, I would have to show that she substantially,  
[16] that her job description substantially changed to make it  
[17] warrant that higher grade, and that didn't happen. She  
[18] stayed in the same position.  
[19] Q Right. About how much time would she spend on  
[20] personal phone calls, that sort of thing?  
[21] A It depended. If the office was busy, none. You  
[22] know, she was pretty good about matching the pace of the  
[23] office. If it was not busy, then she might have one, two,  
[24] three personal calls.  
[25] Q About how long would they be?

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[1] her to be experiencing that.  
[2] Q All right. Now, did she travel with you or with  
[3] Mr. Bacon, or --  
[4] A With Mr. Bacon.  
[5] Q Okay. Did she ever travel with you abroad?  
[6] A No.  
[7] Q So, when she travels with Mr. Bacon, what is this  
[8] transcribing? What does that involve?  
[9] A When she travels with Mr. Bacon, it's when Mr.  
[10] Bacon is traveling with the Secretary of Defense. That's  
[11] always the precipitator. So whenever they do a media  
[12] interview on the plane, whenever they do a press conference,  
[13] any type of media, a speech, those get transcribed and sent  
[14] back to the Pentagon.  
[15] Q So, Monica Lewinsky, as confidential assistant,  
[16] would transcribe from an audio tape, is that it?  
[17] A That's correct.  
[18] Q So, what does she have to do, sit in a hotel room  
[19] and --  
[20] A And we've got a transcriber, and she types and then  
[21] e-mails it back to us.  
[22] Q Did she ever complain about her job duties, that  
[23] she was working too hard, or there was too much transcribing,  
[24] that she told to you or related to another person that you  
[25] heard about?

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[1] A Well, I don't, I mean, I, I counseled her one time  
[2] because I, I knew about one phone call that seemed to go on  
[3] too long, maybe 15 minutes. So -- but I don't, you know, I  
[4] couldn't physically see her from my office. I didn't watch  
[5] her all the time. I, I felt this was one phone call, I'm  
[6] just going to talk to her about it. So, that's the nature of  
[7] the conversation.  
[8] Q Okay.  
[9] A It wasn't based on my, on my knowledge of many  
[10] phone calls. I think that one phone call was too many like  
[11] that, unless she had a good reason.  
[12] Q And what was her reaction to your talking to her,  
[13] or counseling her about that phone call?  
[14] A It was fine. It was okay, and I understand.  
[15] Q She didn't dispute it, or, you know, say that she  
[16] thought maybe it was a little unfair, anything like that?  
[17] A Oh, she certainly may have. You know, she was 22,  
[18] 23 years old. I'm sure that I was, I probably looked like  
[19] her father to her and, you know -- but, to me, it was just a  
[20] counseling session and, and it passed on.  
[21] Q Right. You didn't have any personal knowledge, or  
[22] hearsay knowledge, did you, of her activities, alleged  
[23] activities with the President?  
[24] A No.  
[25] Q Until the news broke in the paper in --

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[1] A I would, I would say that she complained a lot less  
[2] than most of her predecessors. It's not a great job.  
[3] Q When she was hired initially back whenever that  
[4] was, did you all check out any of her previous references?  
[5] A I did call the people at the White House who she  
[6] worked for. She didn't have a long job history. She had  
[7] just gotten out of college. So, I did talk to the person  
[8] that she worked for, yes.  
[9] Q Who was that?  
[10] A I don't remember her name. It was a woman. I  
[11] don't remember her name.  
[12] Q What sort of references did she get?  
[13] A They said that she got along well with people and  
[14] did a, you know, a decent job, and that she had a lot of  
[15] energy. And the reason -- what we were looking for was  
[16] somebody just like that. We had tried a couple of different  
[17] models. I said that we -- you know, people last about a  
[18] year, year and a half.  
[19] The person before her was closer to my age. She  
[20] thought that a lot of the duties were beneath her, that it  
[21] was drudgery and it was very hard on her. When she left, Ken  
[22] and I got together and said, let's find somebody young with  
[23] almost no record and let's mold her, and see if that model  
[24] works better. And that's what we did.  
[25] Q That's who you hired after Monica left?

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[1] A That's correct.  
[2] Q -- January of this year, is that correct?  
[3] A That's correct.  
[4] Q Did you know she was close friends with Linda  
[5] Tripp?  
[6] A I didn't.  
[7] Q Is Linda Tripp in your immediate work area, or is  
[8] she in a different area?  
[9] A She is in Public Affairs, but she worked on a  
[10] different floor.  
[11] Q All right. Now, was Monica job-hunting to go  
[12] elsewhere?  
[13] A The reason that she gave me that she was leaving  
[14] was that her mother had moved to New York and that she wanted  
[15] to move to New York with her, and that she would leave as  
[16] soon as she found a job.  
[17] Q All right. Did you get the impression that she was  
[18] unhappy in her job?  
[19] A I think she was unhappy that I wouldn't promote  
[20] her, and that, and that maybe, you know, it had just -- it's  
[21] a job that you can burn out at. It's a job with long hours,  
[22] a lot of travel that's not very, you know, you go to  
[23] interesting places, but you stay in a hotel room and you  
[24] transcribe mainly. So, people don't last in this job more  
[25] than a year, two years. So, it was about the right time for

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[1] A No, after Monica's predecessor left.  
[2] Q All right.  
[3] A That's also the same model that we hired after  
[4] Monica left.  
[5] Q When you were hiring Monica, did you ever learn  
[6] anything adverse from her previous supervisors at the White  
[7] House?  
[8] A No, no.  
[9] Q Nothing derogatory?  
[10] A Nothing.  
[11] Q No one related anything to you that she was less  
[12] than a fully successful employee what --  
[13] A No.  
[14] Q -- soever?  
[15] A No.  
[16] Q Do you know about how many people you would have  
[17] talked to at the White House?  
[18] A We only talked to one. I only talked to one.  
[19] Q Okay. And it was a woman, but you don't remember  
[20] her name?  
[21] A That's correct.  
[22] Q Do you know, did Mr. Bacon or the White House  
[23] liaison, would they have had some conversations?  
[24] A I don't know.  
[25] Q But presumably the White House liaison was the

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person who put you in touch with the White House?  
 A Well, I never -- oh, no. Actually, it was -- I asked during Monica's interview with me, I asked who was her supervisor, and that's how I got that name. Through the early part of this, as I recall, Ken was out of town. So, I did most of the initial interviewing and coordination with the White House liaison.  
 Q Okay. But to even get Monica to the interview stage, the White House liaison would --  
 A Provided that name.  
 Q -- call over there and get a list of names, or one or two names?  
 A That's correct.  
 Q Okay. Have you ever heard of bit-imaging? It's a computer term which I myself just learned about.  
 A No, I don't believe so, no.  
 Q Slack space, file slack? Do any of those ring --  
 A No.  
 Q Okay. Monica Lewinsky, would you describe her as emotional?  
 A No.  
 Q When --  
 A And let me explain that though. In the course of a year, spending 12, 14-hour days together and a lot of weekends, you know, you see a lot of people. So, you know,

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do we get angry every once in a while? Certainly. But across the spectrum of the year, I would not describe her as that.  
 Q Were there any occasions when she would start crying on the job?  
 A No, I've never seen her cry on the job.  
 Q Did you ever hear about her crying, getting upset? Not when you were present, but when someone else was there that they later told you about?  
 A On trips. Sometimes things got very tense on trips. And, again, you have to put that in perspective. I -- her predecessor cried more than once in my office and on trips. It's a very high pressure.  
 Q What trips did Monica cry on?  
 A I can't remember. I mean -- no, I can't remember.  
 Q Who told you she had cried, or how did you learn that?  
 A One of the military assistants, whichever one was traveling at that time. I always got a back-brief on trips, how they went, what do we need to do to make it better next time.  
 Q Who would typically travel with her, what other support-level staff?  
 A The only other support-level staff is one of the military assistants, and that's not really administrative

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support. That's support to Mr. Bacon, mainly in working with the media. But the military assistant would also help the confidential assistant when needed.  
 Q Who were the military assistants that would have traveled with her, or the one?  
 A They rotated. So, there were three who rotated. I can't -- you mean the names?  
 Q Yes, please.  
 A Col. Ed Veiga, V-E-I-G-A, Commander Jamie Graybeal, and Lt. Col. Donna Bolts, who is no longer with us, were the three during her tenure.  
 Q Where did Donna Bolts go?  
 A She went to Command Corps -- to a, I think she went to the War College at Carlisle Barracks, Pennsylvania. And she's getting ready to go to another assignment now.  
 Q Okay. Back to the issue of counseling Monica. About how many times, over the year plus or minus that she worked for you, did you have counseling sessions with her?  
 A I tried to have two counseling sessions a year with everybody who worked for me.  
 Q So, she would have only had two?  
 A Yeah. Now, that's -- you know, on a day-to-day basis, I'll walk around, you know, and make course corrections wherever I see. So, you know, there's daily you-need-to-do-this, you know. But I would have at least two

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formal counselings a year.  
 Q All right. But those would be what every employee would get?  
 A Right.  
 Q Okay. But was Monica getting something, some sort of counseling above and beyond that, or exactly the same as every other employee?  
 A On the formal counseling, she was getting the same as everybody else. But the nature of my job is that people, all of them, all 126, come in. I'm a sounding board. So, you know, if she had a problem, she would come in, you know, this doesn't work, I'm frustrated, or something like that. I don't think I counseled her in any excessive way. I mean, I don't think she required more than a normal employee.  
 Q Did you ever have to like do write-ups on her for her evaluation file?  
 A Yes. Ken Bacon is actually her rater. I would do the draft patterns for Ken.  
 Q And what sort of comments did you make about her in her evaluation file, or her personnel file?  
 A Basically good. There, there are four, I guess, ratings, where you go from outstanding -- I guess there's five, from outstanding to unsatisfactory. She got the second highest level, which is "exceeds fully successful". So, her ratings were generally good.

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Q Okay. Was the issue of e-mail and telephone calls sort of a recurring theme that would come up with Monica Lewinsky while she was working for you?  
 A I had to counsel her more than once on it.  
 Q And again, what was her response when you would -- I assume you would tell her something to the effect of, Monica, you're talking on the phone too much, personal calls?  
 A Right.  
 Q And what sort of response would she make?  
 A She reacted like a young person, you know. She would say, oh, okay, you know, and maybe sometimes offer an excuse, but -- and then she was over it. Like there were never residuals, never, you know, hard feelings afterwards, or we didn't speak, or anything like that.  
 Q All right. That's all I can think of at the moment. We will shortly go off the record. We appreciate you coming today. We don't know, we can't promise you that you won't have to come back again to a further proceeding. Every witness is subject to being called back again, but we appreciate you coming and being available for us today.  
 A Okay.  
 MR. CRANE: Thank you.  
 (Whereupon, at 11:00 a.m., the proceedings were concluded.)

## Page 0

CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC  
 I, Elizabeth A. Eastman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me electronically and thereafter reduced to typewriting by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.  
 NOTARY PUBLIC FOR THE  
 DISTRICT OF COLUMBIA  
 My Commission Expires:  
 July 31, 2000

Clifford Bernath, 6/25/98

Grand Jury Transcript

Page 1 to Page 166

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CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

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## Page 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA  
Grand Jury Number 97-3

June 25, 1998

The testimony of CLIFFORD H. BERNATH was taken in the presence of a full panel of the Grand Jury beginning at 9:37 a.m.

DAVID BARGER  
Associate Independent Counsel

JIM CRANE  
Associate Independent Counsel

ED PAGE  
Associate Independent Counsel

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Q You have an attorney present outside the Grand Jury room here today. Is that correct?

A I do.

Q And for the record, what is his name?

A William Hardy.

Q Hardy, H-A-R-D-Y?

A Yes.

Q All right. You understand that you may request a reasonable number of breaks to stop and consult with him. Is all that clear?

A Yes.

Q Okay. You understand that secrecy provisions of Rule 6(e) apply to the attorneys, the members of the Grand Jury, and the court reporter, but you are free to discuss your testimony with any person you choose to. Is that clear?

A Yes.

Q Okay. And you are here today as a subject of the Grand Jury investigation, meaning that you conduct is within the scope of the matters being examined by the Grand Jury. Is that clear to you?

A I believe it is.

Q All right. Can you tell us where you're employed?

A I'm the director of the American Forces

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PROCEEDINGS

Whereupon,  
CLIFFORD H. BERNATH  
was called as a witness and, after first being duly sworn by the Foreperson of the Grand Jury, was examined and testified as follows:

EXAMINATION  
BY MR. CRANE:

Q Good morning, Mr. Bernath.

A Good morning.

Q My name's Jim Crane and I have met you on an earlier occasion of a deposition. Before we go over your rights and responsibilities again, could you just state your full name and spell your last name for the court reporter?

A It's Clifford H. Bernath, B-E-R-N-A-T-H.

Q And your middle initial, H, stands for?

A Howard.

Q Howard. All right. You have previously come to a deposition at the Office of the Independent Counsel in Washington, D.C., that's correct?

A Correct.

Q And you gave sworn testimony concerning a number of issues but, in particular, the computers that Monica Lewinsky and Linda Tripp used.

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Information Service in Old Town Alexandria

Q All right. And that's referred to as A-F-I-S or AFIS?

A AFIS.

Q AFIS?

A Yes.

Q Okay. And you've recently come to that job. Is that correct?

A That's correct.

Q When was that, sir?

A That was April 13th.

Q All right. So that was just about -- almost a month to the day after the incident involving the release of Linda Tripp's personnel information?

A That's true.

Q Okay. And tell us what your responsibilities are at AFIS.

A The American Forces Information Services provides new information and entertainment to military and civilian personnel, primarily stationed overseas, so that they can get the same type of information that they would get if they were here in the United States.

Q Okay. And what are your responsibilities there as -- you are the director?

A I am the director, I'm the head of the

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We'll just wait till this person comes in.

Okay.

FOREPERSON: That's our final Grand Juror.

MR. CRANE: Right, our final Grand Juror. And just for the record, we are properly quorumed. There are no unauthorized persons in the Grand Jury room?

FOREPERSON: That's right. We have 17 now.

We had 16 when we began.

MR. CRANE: All right.

BY MR. CRANE:

Q And at that point, all your rights and responsibilities were read to you and explained to you on the record in some detail. Is that correct?

A That's correct.

Q Okay. Then I will go over them more quickly, however. If you need to hear them in more detail, be sure to stop. But since we've been through this once before, I won't go into quite as much detail.

This is the Grand Jury. The Foreperson has just sworn you in. The court reporter is at the end of the table there. You understand you have a Fifth Amendment right not to give any answer that would tend to incriminate you. Do you understand that?

A Yes.

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agency, so I, I set policy, I work with the people who run the Stars and Stripes newspapers overseas, the American Forces radio and television service, Armed Forces Network in Korea, the Defense Information School at Fort Meade, Maryland.

Q All right. And how many employees are employed -- work at AFIS altogether?

A About 750.

Q Okay. And what is your GS or your, your SES status? Could you explain that?

A I'm a Senior Executive Service level 6.

Q Okay. And what does level 6 mean? How many levels are there?

A There are six levels and I'm at the senior level.

Q All right. And above that in terms of moving up in the government, you would have to be, what, a cabinet official or what --

A Or a Presidentially appointed political appointee.

Q Okay.

A Confirmed by Congress.

Q As part of your duties at AFIS, do you deal with the Freedom of Information Act or do you deal with the Privacy Act?

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A No, not really.  
 Q All right. Tell me about your previous position at the Public Affairs Office in Pentagon, DOD.  
 A Prior to my current job, I was the Principal Deputy Assistant Secretary of Defense for Public Affairs. That's the number 2 position in the Secretariat. I was responsible primarily for the day-to-day operations of the Public Affairs in the Department of Defense.  
 Q All right. And your boss was who?  
 A Mr. Kenneth Bacon.  
 Q All right. And he is a Presidentially appointed -- that is a Presidentially appointed position that he occupies. Is that correct?  
 A It's an executive level confirmed by Congress. He was appointed by the Secretary of Defense and approved by the President, confirmed by Congress.  
 Q All right. So, he is a political appointee?  
 A Yes, he is.  
 Q Okay. And how long were you the Deputy Assistant Secretary of Defense, Public Affairs?  
 A Since -- the title changed a couple of times but, but the duties I had since about August of '93.  
 Q Okay. Can you just tell us the change in your titles?

to more than one service, then the Freedom of Information people up at the Department of Defense level would take care of it. If it was only Army, it would just go the Army people.  
 Q All right. Now, at one point in time, is this correct, sir, that you were a political appointee and then you, you have gone back to being a career senior civil servant?  
 A That's correct.  
 Q Okay. Can you describe that for us?  
 A When -- at the end of the Bush Administration and the beginning of the Clinton Administration, I -- prior to the Clinton Administration, I was political. Actually, I spent 21 years in the Army and I retired from the Army. I became a career public service person. So, I was career probably up to '93. When the entire front office, immediate office left because they were all political. I was the senior career person.  
 Q Okay.  
 A And, and so, I was asked by the then-coming-in-Secretary of Defense Aspen, by his staff, if I would assume these duties. In order to assume those duties, I was made a political appointee with full reinstatement rights after that was over.  
 Q All right. So, it was under the Clinton

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A First, I was an Acting Deputy Assistant Secretary to the Secretary of Defense. The "to the" just means it's a level down from being an Assistant Secretary of Defense level. When, when the office was changed to Assistant Secretary of Defense for Public Affairs, I became the Principal Deputy Assistant Secretary for Public Affairs.  
 Q All right. So, from '93 until just last month in '98, so you were in that job just short of five years?  
 A Correct.  
 Q Now, a minute ago we were talking about AFIS and you said something, that you don't really deal with the Freedom of Information Act or the Privacy Act there. Is that correct?  
 A I don't have any level of responsibility for it and the provisions don't usually come up in terms of our people there.  
 Q All right. But in terms of the day-to-day operations, I realize you've only been there a month, you might get from time to time Freedom of Information Act requests in written form?  
 A I haven't had any since I've been there, but I can imagine instances where that would happen.  
 Q All right. And do you have a person or

Administration that you converted to being a political appointee?  
 A Yes.  
 Q Okay. And then how long did you remain in that status before you changed back?  
 A About 2 to 2 years.  
 Q Okay. And what would be the reason for converting back once Secretary of Defense Aspen had asked you to assume that position?  
 A The, the Directorate for Public Affairs and the, and the -- at that time it was the Perry Administration -- Secretary Aspen had left and died and Secretary Perry took over -- determined that this position should be a career position because it was continuity and they didn't want to happen what happened during the last time, where everybody leaves and there's nobody there to take over. So, for continuity, they made the principal deputy a career position.  
 Q All right. Tell us briefly about your prior uniformed military experience. I believe you said you had 21 years?  
 A That's correct.  
 Q And describe that.  
 A I went in the Army after college, in 1968. I was commissioned in 1969. I served as a basic training

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persons or a division that deals with FOIA, Freedom of Information Act, requests?  
 A No, not specifically. No.  
 Q Who would deal with that?  
 A It depends on the request came in. If it came in for information about the school, the Defense Information School, I would send it to the commandant of the school. If it came in about Stars and Stripes, I would send it to the people at Stars and Stripes.  
 Q All right. But you would -- AFIS would have some way to comply with the Freedom of Information Act and the Privacy Act?  
 A Yes. The way it would work is that the request would come in to the director of Freedom Information and Security Review, which used to be under Public Affairs, is no longer under Public Affairs. They would be the controllers of the request and they would farm it out to whatever agencies may have documents that correspond and that comply with it.  
 Q Department of the Army, Department of the Navy, whatever particular agency would have it?  
 A Yes. Now, each of the departments, the services, have their own Freedom of Information activities, but, but -- so it depends on the level. If the information requests information that, that applies

company commander, I served as an infantry captain in Vietnam, served in Turkey, Fort Riley, Fort Leonard Wood, Missouri. Came to the Pentagon in about 1979 the first time, then was stationed there for a couple year. I went back to Turkey for two years, came back to the Pentagon.  
 Q All right. During your years as -- what was your highest rank, colonel or light --  
 A Lt. Colonel.  
 Q Lt. Colonel, light colonel?  
 A Yes.  
 Q During those years of uniformed military experience, did you ever have any occasion to deal with the Privacy Act?  
 A Yes. Not in, not in official capacities, but certainly I had knowledge of -- that it existed and, you know, basically what it was.  
 Q Okay. And there are a lot of government documents that come with a little stamp, I say a stamp or a warning that says Privacy Act protected. Are you familiar with that?  
 A I don't know that I've ever seen a, a stamp. I mean, there are certainly statements on some forms that, that give Privacy Act information, releaseable, releaseable instructions.

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Q All right. And also during your years as a uniformed military officer, did you have any responsibilities -- apart from your knowledge of the Privacy Act, was it ever your duty to see that it was complied with, to develop regulations, to implement it, anything like that?

A When I was at Fort Riley, that was right after Vietnam, '74, '75, that's when the, the Freedom of Information Act came into effect and the office that I was running had inherited responsibility for that. So, we, we did a lot with Freedom of Information Act. The Privacy Act, that was kind of always -- kind of a subset of it, although that's not really what it is.

Q Okay. And in many government offices, is it your understanding that they're often called FOIA Privacy Office because they deal with very similar issues?

A Yes. None of the ones I worked with had that. What we dealt with in Public Affairs was Freedom of Information and security review, was the, the office.

Q Okay. Freedom of Information, FOIA, for one thing. What does security review mean?

A Security review is a, a subset of the Freedom of Information Act. If somebody requests information

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that happens to be classified, then there's an automatic security review function to say is this information properly classified, can it be declassified and released or should it remain classified.

Q All right. Back to your years as a uniformed military officer, did you ever have any training or any other experience dealing with either Freedom of Information Act or the Privacy Act?

FOREPERSON: Excuse me.

MR. CRANE: Yeah, someone's knocking at the door, so let's take --

FOREPERSON: Mr. Barger.

MR. CRANE: Okay. Yeah, Mr. Barger from my office, an attorney from my office has just entered.

BY MR. CRANE.

Q Any other experience by way of a course, a seminar, information that you read?

A I, I have certainly read information. Although I can't remember a specific course, I can't say that I haven't been to one. I just don't remember being to one.

Q All right. Now, I believe you mentioned a moment ago that FOIA was passed in 1974. Is that your understanding?

A No. What I said was I was dealing with it in

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that 1974 to '75 time frame. So, it was around there. I don't remember the date of it.

Q All right. What is your understanding about the Privacy Act. How long has it been a law?

A I don't know.

Q During your career, do you remember it any time where you first heard about it or has it sort of always been in your, in your consciousness?

A I don't remember a first time, so -- but it's, it's been in my consciousness for a long time.

Q All right. After you left uniformed military service, that was '68 to '78-79?

A '79.

Q Okay. What was your first position at DOD?

A I was director of Information Resources Management, which was the computer and automation section for the Public Affairs.

Q Okay. And how long were you there?

A About a year.

Q Okay. And where did you go then?

A I became the director for Management and Public Affairs.

Q Okay. And how long were you in that position?

A I guess about two years, maybe a little more.

## Page 16

Q Okay. And after that, where did you go?

A That's when I became the principal deputy.

Q Okay. And then you stayed there about five years?

A Yes.

Q So, for about the last 5, 6, 7, 8 years, you were generally working in a management position within Public Affairs. Is that correct?

A That's correct.

Q Okay. What about your years, both -- let's, let's start first in the Army. Did you ever have occasion to deal with personnel issues?

A Yes.

Q Okay. And you were a, you were a colonel at least for some of your years in the uniformed Army?

A Lt. Colonel, yes.

Q A lt. colonel. So, you had, obviously, supervisory duties over enlisted men?

A Yes.

Q People below you in rank?

A Yes.

Q And you must have had to deal with their personnel files, hiring, demotion, possibly discipline, all those sorts of personnel issues?

A Yes.

## Page 17

Q Okay. What about dealing with the media? When did you first have any responsibility in your career for dealing with either the media directly or media issues?

A Not until I came up to be the principal deputy.

Q All right. Now, you yourself, I assume, must have a security clearance of some sort?

A I do.

Q And would that be top secret?

A Yes.

Q Okay. And how long have you had that for?

A Many years, I take it?

A Many years. I had it in the military and I've had it ever since I've been out.

Q Okay. And those security clearances get reviewed periodically. Is that correct?

A That's correct.

Q Now, do you recall when you last filled out or renewed your top secret security clearance form what type of form it was, either by the number or what it looked like?

A It was the DD Form, Department of Defense Form 398 and it was -- I think I had to do one when I took the, the job as principal deputy.

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Q All right. And it's my understanding that a few years ago the 398 was discontinued in favor of a different form. Is that familiar to you or --

A No.

Q -- you're just -- the last you had to deal with it, it was still a 398?

A Yes. Are you thinking of the 171?

Q No. I was thinking of a different one called an SF 56 that I've heard some mention of.

A I'm not familiar with it.

Q All right, we'll leave that then. The 171, of course, is the government standard r, sum, form --

A That's right.

Q -- that has, to some extent, been discontinued?

A That's correct.

Q Now, when you filled out your 398, do you recall seeing the Privacy Act statement on one of the pages with a general warning, Privacy Act, some language on that?

A Yes.

Q Okay. And what did that mean to you when you filled out your 398 and you saw that it was Privacy Act?

A It gave the general protections and the

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general instances under which it would be -- could be released.

Q Okay. And back then when you filed out your 398 to, to get or to get renewed your top secret clearance, in common sense terms, what did that mean to you, that it was Privacy Act protected?

A That it would not be released without, without consideration of the terms of the Privacy or that -- that meant to me that nobody would ever see that information.

Q All right. Okay, let's change the subject just for a moment and tell us about your workplace in Public Affairs. As I understand it, both Monica Lewinsky and Linda Tripp worked there at the same time as you did. Is that correct?

A That's correct.

Q Can you give us a general time frame -- you're there for roughly a five-year period. What is the general time frame, you don't have to get the exact month or date, but that Monica Lewinsky is working there?

A Monica came in mid-1996, I think.

Q All right. And who did she go to work for?

A She worked as the confidential assistant to Ken Bacon.

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Q All right. And confidential assistant is?

A Just secretary.

Q Secretary. And what were her duties, generally?

A She performed secretarial duties: answered phones, typed memoranda. She traveled overseas when the Secretary of Defense and Ken Bacon traveled and she provided administrative assistance. Transcribing briefings was the main duty.

Q All right. And although she was confidential assistant or secretary, it's my understanding that that was actually a political appointee or a Schedule C position?

A That's correct.

Q And she transferred there from the White House. Is that correct?

A Yes.

Q So, Monica Lewinsky worked there from mid-96 until about --

A December of '97.

Q All right. And do you know why she left?

A The reason she gave me was that her mother had moved to New York and she wanted to be nearer her.

Q All right. And during her year, year and a half there, she received, as I understand it,

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satisfactory or fully successful type evaluations?

A Yes.

Q Okay.

A I, I think the -- if I recall it correct, she was an exceeds fully successful. It's the second highest rating.

Q All right. Were there some problems, though, with her work while she was there?

A She was not a perfect worker. She was -- you know, she did her job well but she was also pretty young and she -- this was her first real job, so she was not accustomed to the discipline of a job like that. So, there were things that she was counseled on, yes.

Q What was she counseled on?

A Oh, sometimes being on the phone too long, personal phone calls. Sometimes being on the Internet, looking around. Some of her duties involved getting information off the Internet, some of it didn't. Keeping her work area neat. Kind of the typical things that a young person doesn't know when they have a first job.

Q All right. Now, you said a couple times this is her first job, but she actually had a job, as I understand it, and correct me if I'm wrong, in the in

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the White House or, rather, in the Legislative Affairs within the White House where she had a paid position.

A Well, first job is maybe the wrong way to characterize it. I think that working in the Pentagon is a much more disciplined place than, than a lot of other places. So, getting accustomed to the way it's done in the military and in the Department of Defense is different than other places.

Q All right. Even more disciplined than the White House?

A I've never worked at the White House. I have no idea.

Q All right. Were there also some complaints that she was sending too much e-mail?

A Certainly, spending time on e-mail. Whether she was sending or receiving. I don't know.

Q All right. Were there some occasions when she would become emotional, leave the office in tears, that sort of thing?

A I never saw that.

Q Did you hear about it?

A Somebody -- yeah, there was one occasion when, when it was brought to my attention that she was upset. But when I called her in a little later and asked, she was calm and rational and she said that she

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wasn't upset. So, I never saw anything like that.

Q Okay. Now, do you know how she got the job?

A Yes.

Q How is that?

A Her predecessor had indicated that she wanted to leave, she did leave. Ken Bacon and I sat down and decided what type of person we wanted to hire and we decided that because, because the position had been filled with fairly senior people, mature, in the mid-forties before that and they'd always been unhappy with the job after a few months, it was too low level for them, we decided that what we wanted was somebody young and inexperienced, who was smart enough to be trained to do these things. And we, we kind of knew that this was never going to be a position that anybody wanted for their whole life. It's too, too rigorous. The travel is hard and everything. But a younger person might, might do better with it mentally. So that's what we looked for.

We asked the White House liaison at the Pentagon if they had anybody, since it was a political position, and we went out in the Pentagon and asked -- and solicited other people who were in jobs like that to interview with us.

Q All right. Did you ever find out while

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Monica Lewinsky was working there that she was spending a lot of time on the phone, talking to people at the White House?

A No.

Q Did that ever come to your attention in any way?

A No, it didn't.

Q And then just to reiterate, did anyone, you know, ever say to you second- or third-hand Monica is -- something like Monica is on the phone to the White House a lot?

A No.

Q No? Okay, tell us generally about Linda Tripp and what area of Public Affairs she worked in.

A Linda Tripp was also a political appointee assigned to us by the White House. I think through the White House. The first year or so that she worked for us she worked with another political appointee on setting up media activities for the Secretary and the Deputy Secretary of Defense, and mainly radio and TV. So, a TV show like "Larry King" would say I'd like the Secretary to be on and she would be the coordinator for that, one of the two people who did the coordination for that. And --

Q I'm sorry. Who was her immediate supervisor?

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Was that Lynn Reddy?

A Yes, it was.

Q During that period?

A That's correct.

Q Okay, go ahead.

A After that, we did a little reorganizing in that area and she assumed duties as the director for the Joint Civilian Orientation Conference which is a program that the Department has organized for, for successful opinion leaders throughout the country to, to tour bases and get briefings from senior people so that they have a better understanding of the Department of Defense.

Q All right. And she was the organizer or -- what was her title?

A Her title was director of the program.

Q Okay. But it was basically Linda and maybe one other person working with her?

A At different times through the year, the strengths were different. When we were actually gearing up the conference which is going on right now, it's usually a June conference, the three, four months ramping up to it the staff gets bigger. We have augmentation from the military services. During the rest of the year, it's -- it was Linda and one other

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Q Okay. Is this a fair or unfair characterization: that basically that other person whose name we can't remember sort of had her job divided in half and some of it was given -- half of her job was given to Linda and then this other person kept the other half?

A That's certainly the way the two characterized the tension between them.

Q Okay. So, this other person felt that someone had just come and like, sort of taken away some of their turf. Is that an accurate --

A That's a part of it, and another part of it was that once it was taken over she felt that Linda had so many constraints about what time she could come to work, what time she had to leave work, what types of parts of the job she wanted to do or didn't do. So, the real -- there were a whole lot of things meshed up in that.

Q All right. Now, it's -- is this accurate or inaccurate: that when Linda Tripp was leaving the White House, is it your understanding -- let me ask that in a question form -- that Linda worked at the White House also before she came --

A Yes.

Q -- to the Pentagon?

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person usually.

Q Okay. And that was -- was there a Mr. Coughter, C-O-U-G-H-T-E-R? Did he work with her or--

A He worked in the same office but he was not part of the JCOC.

Q Okay. I'm sorry, I'm getting my names mixed up. Who was the individual that worked with her? I believe he's recently retired or had been recently retired from one of the uniformed services. Does that name -- all right, it doesn't matter. I can't remember the name either.

Who was Kathleen DeLasky?

A Kathleen DeLasky was the Assistant Secretary-- she was under the old title, Assistant to the Secretary of Defense for Public Affairs, before Ken Bacon. She was Ken Bacon's predecessor.

Q Okay. And before Ken Bacon, just to put it in historical context, there was a guy named Pete Williams?

A Pete Williams was under the Bush Administration and he left at the end of that Administration.

Q All right. And he's the guy that's now an NBC correspondent of some sort?

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A Yes.

Q That a job was basically created or made up for her at the political appointee level?

A That's correct.

Q That the position that she had, there was not another person, another body doing that job and that person left to take another job or retire or something?

A That's correct.

Q Okay. And was it the White House or was it the Pentagon that just decided, however they did, we need to create a job for Linda Tripp at the Pentagon?

A I can only tell you my part of it.

Q Sure.

A I was contacted by the White House liaison. There's a White House personnel person in the Pentagon and, and that person said I have a priority placement, she's going to go to Public Affairs, create a job for her.

Q And did they actually use those words, "create a job for her," or not --

A Certainly, certainly, words to that effect. I can't remember the exact words.

Q All right. Now, this is asking you to speculate a little bit. In, in retrospect, the fact that both Monica and Linda Tripp were at the White

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A That's correct.

Q Now, was Linda a problem employee?

A Yes, during -- certainly, during her first year.

Q All right. How so?

A When she came, she, she had a lot of problems getting along with people. She was very threatening. She felt threatened. And she -- almost everybody who, who came in contact with her ended up in a fight with her. She, she was kind of demanding of what types of office furnishings and things she should have, parking passes. She felt like she should be treated better than, than the other people. And we worked, we worked very hard with her during that year to try to bring her into the team and make her feel much more comfortable.

Q All right. Now, during that first year were her duties somehow divided up with or shared with another individual?

A Yes.

Q And who was that again?

A The name will come to me.

Q All right. It's --

A It's another political appointee and --

Q Okay. I can't think of the name either.

A Maybe it'll pop into my head in a second.

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House and then ended up in Public Affairs, I understand that was not your personal doing, but does it now, in retrospect, strike you odd that somehow these problem employees got dumped over at the Pentagon?

A No, I wouldn't agree with that

characterization. Monica didn't get dumped on us, we, we selected her from, from a group of people. And I would also say that she was no more -- the things that I said I counseled her for, I counseled other people for the same thing. I did not, in my mind, you know, I didn't think she was great, but I didn't think she -- I never characterized her in my mind as a problem employee.

So, you know, in retrospect, that these two things happened may be odd but they're unrelated.

Q All right. I don't know if you're aware of this. During your hiring process involved with Monica Lewinsky, did you find out that she had been fired from the White House?

A No.

Q And none of the -- whoever did the hiring never came across that information or learned that she had been terminated unsuccessfully or out and out fired--

A No.



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Q -- from the West Wing of the White House?  
 A No, absolutely not.  
 Q And what about Linda Tripp? Did you ever learn that there was some sort of effort or need, for whatever reason, she's a bad employee, good employee, whatever, but that she needs to be away from the White House?  
 A I was never given any reason why, why she was assigned to the Pentagon. You know, Linda Tripp herself kind of made allusions, but even -- that was all they were. She never said anything definite.  
 Q And what sort of allusions with Linda Tripp make?  
 A It must have been her first day or her second day, she said, you know, I'm, I'm involved in the Vince Foster and I'm involved in a lot of things and I know a lot of things and this is why I need privacy and this is why I should be treated differently.  
 Q All right. And was it during that first year that she was sort of sharing the job with this other employee that she had to go testify before Congress? Does that ring a bell? Do you recall that?  
 A I didn't monitor her day by day, so I don't remember her going out to testify. She was, you know, she certainly indicated that she was, you know, on tap

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to do so and that she had a lawyer and things like that, but I don't remember her actually testifying.  
 Q All right. So, in your view, who was responsible for getting Monica and Linda hired in Public Affairs? Would it be the White House liaison? Was it Ken Bacon? How did it come -- who was the one who made the decision?  
 Let's break it down because we're talking about two people. Who made the decision that a job essentially would be created for Linda Tripp and she would be hired in Public Affairs?  
 A That came to me from the White House liaison.  
 MR. BARGER: Who was that? You're talking about somebody that worked physically at the Pentagon?  
 WITNESS: Worked physically at the Pentagon, but he was the, the personnel liaison to the White House.  
 MR. BARGER: Do you remember his name?  
 WITNESS: Charlie Duncan.  
 BY MR. CRANE:  
 Q And he's since gone on to --  
 A And the other person is Susan Wallace.  
 Q Susan Wallace?  
 A Yes.  
 Q Okay.

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A That's the person whose name we couldn't remember.  
 Q Right, okay. And for the members of the Grand Jury, Susan Wallace is the person who ended up sort of sharing a job with Linda Tripp --  
 A That's correct.  
 Q -- and with whom Linda had lots of friction, I take it?  
 A Yes.  
 Q Is that correct?  
 A That's correct.  
 Q Charlie Duncan, the White House liaison, works at the Pentagon or works at the White House? How is the liaisoning done?  
 A He, he worked at the Pentagon, and I don't know how he liaised with the White House but he was my contact.  
 Q And now there's a woman who has that position as White House liaison --  
 A Yes.  
 Q -- and I also can't recall her name.  
 A Liz Bailey.  
 Q Right, Elizabeth Bailey.  
 A Right.  
 Q Okay. Did you ever find out any other

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reasons why -- let me back up. So, in your understanding, it's Charlie Duncan. He had the authority to just tell Public Affairs, you, Ken Bacon -- a job will be created for Linda Tripp?  
 A Yes.  
 Q Okay. And that was created at the GS-15 level?  
 A That's correct.  
 Q Fairly high on the GS scale?  
 A Yes.  
 Q And she gets paid, what, 80-some -- \$88,000 a year?  
 A Yes.  
 Q But she's both on the GS scale, but she's also a Schedule C employee?  
 A Yes.  
 Q And what does that mean again?  
 A Schedule C is a political appointee. Once they're appointed, though, they come under the -- the General Schedule, GS, wage that all the other career and civil servants are under --  
 Q All right.  
 A -- unless they're above that level, the executive level.  
 Q And that was quite a step up in salary for

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Linda at the time she came to Public Affairs, wasn't it?  
 A That was my understanding, yes.  
 Q Okay. Now, I understand that there was lots of friction with Linda Tripp and she can be, for lack of a better word, brash or maybe hard to deal with. Is that accurate?  
 A Yes.  
 Q But as I understand it, her work was uniformly rated pretty highly, wasn't it?  
 A Yes, it was.  
 Q Was that accurate? I mean, were her evaluations accurate or was there fudging or --  
 A I, I think that had everything been equal, the ratings would have been much lower. But because she came in directed, because there was enough power, wherever it came from, to determine that slot be created, because there was enough power to give her a raise that was kind of above what would normally happen, and because she was so hard to get along with and so -- always threatening lawsuits, it, it would have been a major effort in time and -- to, to give her anything less. I think that's as honest as I can be on it.  
 Q All right. And her evaluations were

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excellent, outstanding? What was --  
 A Outstanding.  
 Q Okay. And you were -- were you her rating supervisor?  
 A No.  
 Q Who was that?  
 A Lynn Reddy.  
 Q Okay, Lynn Reddy is the one who actually fills out her evaluation, and Linda is there from -- how many rating periods would she have had? Did she get outstanding a couple years in a row?  
 A Yes, she did.  
 Q Okay. Now, after Lynn Reddy does the evaluation, did you or anyone else look over all the evaluations of the line supervisor?  
 A I looked over them to make sure that they were administratively correct, and then all of the ratings for all the civilian personnel are -- actually the final rater is Ken Bacon, the Assistant Secretary of Defense.  
 Q Okay. Now, a moment ago you said something like other things being equal her evaluation might have been somewhat or considerably lower. Did Lynn Reddy ever tell you something to the effect that I want to give Linda Tripp an average rating but I know that I

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[1] have to -- or how do you arrive at this conclusion that  
 [2] other things being equal she would have gotten a lower  
 [3] evaluation?

[4] A Lynn Reddy and I had discussed it, yes, and  
 [5] there were a -- there were times that Lynn -- Linda had  
 [6] been counseled a lot. She had -- but -- and I agreed  
 [7] with her that, that sometimes it's, it's too hard, it's  
 [8] a fight that you can't win. Now, whether that was a  
 [9] correct assessment, I don't know, but that was our  
 [10] assessment at the time.

[11] Q Okay. What exactly do you remember Lynn  
 [12] Reddy saying about the way Linda Tripp was evaluated?

[13] A She -- I mean, I don't remember the exact  
 [14] words, but she would have liked to have given her a  
 [15] lower rating. She was, she was hard to work with.  
 [16] It's not that she's a bad person, she was hard to work  
 [17] with.

[18] Q Okay. So, Lynn Reddy says something to the  
 [19] effect that she would have liked to give Linda a lower  
 [20] rating but -- but what? The White House will make me,  
 [21] or who, who is putting this pressure on Lynn Reddy?

[22] A I, I think that, that nobody put the  
 [23] pressure. I think that the pressure was, was there  
 [24] knowing that, that Linda Tripp would have raised enough  
 [25] of a problem after -- if she had anything other than an

[1] abrasive and abusive relationship.

[2] Q Okay. Who else did she threaten to sue?

[3] A I can't remember specifics. There were other  
 [4] times when she would -- she wouldn't threaten to sue.  
 [5] She would say you know I have a lawyer and you know  
 [6] that -- it would be inuendo like that, not -- with  
 [7] Susan, it was I'm going to sue. The other times it was  
 [8] these veiled threats.

[9] Q Did she ever threaten to sue you?

[10] A No.

[11] Q Any other supervisor that was threatened, Ken  
 [12] Bacon, directly or indirectly, to your knowledge?

[13] A Not Ken, no.

[14] Q So, basically, Susan Wallace?

[15] A This was -- sue?

[16] Q Right.

[17] A Yes.

[18] Q Anyone else that you heard that she

[19] threatened to sue?

[20] A No.

[21] Q Okay. Now, a minute ago I think you said  
 [22] something about the problems with Linda were discussed  
 [23] with the White House liaison?

[24] A Yes.

[25] Q Was this at the time she was hired? Later?

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[1] outstanding that that it -- and because of all the  
 [2] things that had happened already, the fact that, that a  
 [3] job was created, the fact that she had these  
 [4] promotions, the fact that there didn't seem to be any  
 [5] will anywhere to rein her in that, that we weren't  
 [6] going to win this one.

[7] MR. BARGER: And you stated there didn't seem  
 [8] to be any will to rein her in from -- who, who did you  
 [9] perceive that to be? Is that something that you just  
 [10] sort of place on yourself or is that something, is that  
 [11] something you saw?

[12] WITNESS: We, we had discussed the problems  
 [13] with the White House liaison.

[14] MR. BARGER: Mr. Duncan?

[15] WITNESS: Yes.

[16] MR. BARGER: All right. Did you have any  
 [17] sense or -- and I don't know whether it's a fair  
 [18] characterization, but a sense like there's a little bit  
 [19] of, a little bit of fear of Ms. Tripp? What was your  
 [20] understanding or your sense of where her power base  
 [21] was? In other words, if, if you confronted Ms. Tripp  
 [22] or Mrs. Tripp or if you neglected -- or if you gave a  
 [23] rating you thought that might be more accurate, what  
 [24] was your sense of what she might do? Did you have any  
 [25] sense of, of who she would go to in the White House or

[1] Both?

[2] A Later.

[3] Q Okay. And how would that --

[4] A This was after, after a pattern of problems  
 [5] were developing. I went up and talked to him and said,  
 [6] you know, what can we do about this?

[7] Q Okay. And again, this is Charlie Duncan.

[8] right?

[9] A Yes.

[10] Q And what would you -- what did Charlie Duncan  
 [11] tell you?

[12] A Basically, this was my problem and we had to  
 [13] deal with it.

[14] Q Did he tell you anything like she can't be  
 [15] fired, she's untouchable or --

[16] A No.

[17] Q Nothing like that?

[18] A No.

[19] Q But just that it's your problem? Could you  
 [20] fire her?

[21] A No, I didn't feel I could.

[22] Q You didn't feel you could?

[23] A Well, I couldn't.

[24] Q Okay. Who can fire a Schedule C employee?  
 [25] Given the structure in Public Affairs, who would have

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[1] complain to, for example?

[2] WITNESS: I didn't have that sense, but, but  
 [3] we certainly had a sense that somebody, you know,  
 [4] whether it's the White House liaison -- that's the only  
 [5] one I ever dealt with, that's the only one who ever  
 [6] told me, but somebody made a decision to give her what  
 [7] would be an extraordinary raise and, and to put her  
 [8] into this position. That's not a low level -- that's  
 [9] not in my level. I can't do that. And, and the fact  
 [10] that she was always threatening to sue people. I mean,  
 [11] that's, that's a huge threat, you know.

[12] BY MR. CRANE:

[13] Q Describe those? What, what did she threaten  
 [14] to sue about?

[15] A She threatened to sue Susan Wallace over -- I  
 [16] can't remember which fight it was that they had, but  
 [17] they were in my office and counseled about, about that.

[18] And --

[19] Q What would she sue her for?

[20] A I don't remember the circumstances. I mean,  
 [21] there was -- during that first year there were a lot of  
 [22] confrontations and, and -- I don't know how to describe  
 [23] it in detail. I can describe it in feeling. Everybody  
 [24] has to be with somebody who is constantly threatening  
 [25] and constantly not getting along. So, it makes an

[1] the authority to do it?

[2] A The way it would work is I, is I would go to  
 [3] the White House liaison and he and whatever circle of  
 [4] people he deals with would, would make that decision,  
 [5] whether not to fire, whether to reassign, whether to--

[6] Q Okay.

[7] A But my contact was only with the one person.

[8] Q All right.

[9] MR. BARGER: When Mr. Duncan said you had to  
 [10] deal with it, what did you understand him to mean?

[11] WITNESS: Just that, that this is my problem  
 [12] and that she's going to remain with me.

[13] MR. BARGER: So, in other words, you can't  
 [14] get rid of her, you're just going to have to learn to  
 [15] cope. Is that sort of a fair characterization?

[16] WITNESS: Well, I mean, the characterization  
 [17] is that she's my problem.

[18] MR. BARGER: But you, but you felt that  
 [19] meant, and correct me if I'm wrong, you felt that  
 [20] basically you weren't going to be able to get rid of  
 [21] her?

[22] WITNESS: That's correct, I was not able to  
 [23] get rid of her at that time.

[24] BY MR. CRANE:

[25] Q Did you ever say to Charlie Duncan, you know,

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[1] this woman is extremely difficult to deal with, we  
 [2] would like to replace her? Anything to that effect?  
 [3] A Pretty close to that, yes.  
 [4] Q And again, I take it his response was, as  
 [5] you've just said, it's your problem and you're kind of  
 [6] stuck with her or you deal with her?  
 [7] A Again, whether those are the words, I don't  
 [8] remember, but that's certainly an accurate  
 [9] characterization.  
 [10] Q And did you have this type of conversation  
 [11] with Charlie Duncan just on one occasion or multiple?  
 [12] A It was more than once. I don't remember a  
 [13] number. After a while, it didn't make much sense to,  
 [14] to pursue it much more.  
 [15] Also, I would say, you know, that after  
 [16] the-- after we got her into a different job and, and  
 [17] really worked to make this work, she settled down.  
 [18] And, and although it wasn't a great relationship, it  
 [19] was a much more acceptable relationship that we had  
 [20] with her.  
 [21] Q All right.  
 [22] A It was, it was a rough first year.  
 [23] Q Okay. And this would coincide with her  
 [24] taking over the JCOC program?  
 [25] A Yes.

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[1] the entire government to, to give her the outstanding.  
 [2] It didn't matter because she was, you know -- it didn't  
 [3] matter that much.  
 [4] Q All right. Now, Monica's --  
 [5] A That's not the way we deal with, with most  
 [6] people. And had she been a career person, we would  
 [7] have gone through this process. We'd have gone through  
 [8] the pain of a --  
 [9] Q Monica's evaluation, on the other hand, that  
 [10] was more or less accurate?  
 [11] A Yes.  
 [12] Q She got whatever it was, exceeds expectations  
 [13] or whatever you call it?  
 [14] A Exceeds, fully successful.  
 [15] Q So, during the time prior to the  
 [16] Lewinsky/Tripp story breaking, sounds like there was  
 [17] probably a lot of resentment of Linda Tripp within  
 [18] Public Affairs, that she might have alienated a lot of  
 [19] people?  
 [20] A No, I wouldn't, I wouldn't say that. What  
 [21] I'm describing, the really hard times, was the first  
 [22] year. By the, by the end of the second and third year,  
 [23] we had all learned to live together pretty comfortably.  
 [24] And Linda spent a lot of time in my office briefing me  
 [25] on the JCOC. I would -- from my perspective, I'd have

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[1] Q Okay. And in that position, she didn't have  
 [2] to essentially share a job or compete with another  
 [3] person the way she had with Susan Wallace.  
 [4] A That's correct.  
 [5] Q Is that accurate? And as far as her running  
 [6] the program, she did a good job?  
 [7] A She did a good job. You know, I would say  
 [8] kind of the same words that I used with Monica. It  
 [9] wasn't a great job but it was, it was very acceptable  
 [10] and we were comfortable with it.  
 [11] Q Was it outstanding?  
 [12] A No. And the reason was again -- I mean, the  
 [13] program was very successful, and I say successful  
 [14] because a lot of people were involved in it and Linda  
 [15] did a lot of hard work on it. But the -- but there  
 [16] were a lot of problems with her relationships with the  
 [17] people who had -- she had to coordinate with and I  
 [18] would spend a lot of time and Lynn Reddy would spend a  
 [19] lot of time patching up relationships that she had made  
 [20] kind of stormy in building this, this program. So, for  
 [21] that reason, it wasn't outstanding but, you know, did  
 [22] she do a good job of technically, you know, putting  
 [23] together the schedules and, and making sure that we had  
 [24] the best deals and the best, you know, the itineraries  
 [25] were good? Yes, absolutely.

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[1] described the relationship as pretty good.  
 [2] Q Oh, okay. Well, did she go from -- if she  
 [3] had been like really evaluated, you know, the way you  
 [4] guys saw it, she would have gone from average/below  
 [5] average to -- she improved a lot?  
 [6] A I definitely think she did.  
 [7] Q Okay. But she still -- is this an accurate  
 [8] characterization: that she's doing a good job but she  
 [9] still has a very brash, loud, outspoken personality?  
 [10] A Yes, that's an accurate statement.  
 [11] Q Okay. And she rubs a lot of -- whether she's  
 [12] doing her job or not, Linda Tripp rubs a lot of people  
 [13] the wrong way. Is that -- would you agree with that  
 [14] or--  
 [15] A Yes, I would agree with that.  
 [16] Q So, again my questions was whether she's  
 [17] doing an outstanding, truly outstanding job or just a  
 [18] good or below average job, seems like there's a lot of  
 [19] people that don't like Linda Tripp?  
 [20] A It's a hard one for me to answer.  
 [21] Q Did you like her?  
 [22] A Yes, I was -- yeah, I did, and I would have  
 [23] told anybody -- I didn't tell people that, you know, we  
 [24] were getting along fine.  
 [25] Q You liked her but you had gone to Charlie

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[1] Q I'm still having a little trouble  
 [2] understanding why Lynn Reddy and then you, as the next  
 [3] line up supervisor, wouldn't just evaluate her the way  
 [4] you really saw it. Why not give her just a good, or  
 [5] maybe even a below average or unsuccessful evaluation?  
 [6] Why is there -- why are you all fudging on her  
 [7] evaluation?  
 [8] A The -- again, it may not, it may not have  
 [9] been accurate. It was our feeling at the time that to  
 [10] do anything less than the outstanding would have meant  
 [11] that we would be doing nothing for the next six months  
 [12] but going through an appeals process that we weren't  
 [13] going to win, we felt.  
 [14] Q But if she's a political appointee as opposed  
 [15] to a career government service GS employee, doesn't she  
 [16] serve at the pleasure of the Administration, at the  
 [17] pleasure of the President?  
 [18] A That's certainly the theory behind it.  
 [19] Q So, what would be her avenues of appeals if  
 [20] you and Lynn Reddy, her supervisors in Public Affairs,  
 [21] decide to end her employment?  
 [22] A She, she still has some rights under the  
 [23] Civil Service, at least concerning the, the ratings.  
 [24] The bottom line was we just felt that it was going to  
 [25] be too hard. It was easier and probably cheaper for

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[1] Duncan a couple times to kind of like see if she could  
 [2] be fired?  
 [3] A During the first year. In the first year, I  
 [4] didn't like her, but as we, as we worked through a lot  
 [5] of the problems, I think she learned to trust us or at  
 [6] least appeared to trust us. I learned more about, you  
 [7] know, how to, how to motivate her and how to have a  
 [8] positive relationship. And we had actually gone on a  
 [9] couple of these JCOCs together, the week-long trips,  
 [10] got to know each other better. I would have described  
 [11] it as a good relationship.  
 [12] Q Okay. Let's jump ahead now. January 21,  
 [13] 1998, is when the -- I'd represent to you that's the  
 [14] date that the Lewinsky/Tripp story breaks, first in  
 [15] the-- report and then in the mainstream media. Now,  
 [16] what has been the attitude toward Linda Tripp since  
 [17] this story has broken within the office? Are people  
 [18] happy with her? Are they unhappy with what she did,  
 [19] with the fact that she sits at home now and doesn't  
 [20] come into the office? Just describe what is the  
 [21] attitude towards Linda Tripp in the office, generally.  
 [22] A I guess I'm a little uncomfortable  
 [23] characterizing other people's feelings.  
 [24] Q I know, but that's -- you know, from what you  
 [25] understand from their body language, what people say,

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are they, are they happy with the Flexiplace agreement that she has that she doesn't have to come into the office anymore, et cetera, et cetera?

A I think that, that certainly there have been a lot of problems with Linda since January 21st. She requested a Flexiplace assignment. We, we did that, we put that into place. There was resentment that she has not done hardly any work during -- since January 21st and that she's getting paid for it. And, and it has been difficult, if not impossible, to get her to do any work. She's spending a lot of time, I understand, with the Independent Counsel, but the terms of the Flexiplace are that anytime that she's not with the Independent Counsel she should be doing the duties under the Flexiplace. So, and, and a lot of people have to do a lot of things in the office to, to make sure that she's being treated fairly, like box up materials so that she can work and get it out to her place, put computers in, teach her how to use computers from home. And there isn't any, anything coming back to the office. A lot of -- the dealings that people have had with her have not been pleasant in terms of electronic mail and, and phone calls. It just has not been a happy relationship.

Q All right. Now, she had been the director of

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the JCOC and she was relieved of that title?

A I do not -- I don't characterize it like that.

Q How do you characterize it?

A When she requested the Flexiplace assignment, she -- the, the reason was that she could not come into the office, she could not -- that she was -- she felt threatened and, and needed protection. So, the, the planning for the program had to go on. It couldn't have been done from -- by the telephone. It's a lot of personal meetings. It's going out to hotels, it's going, you know, to make the arrangements. It's meeting with members of the other services. It's dealing with the -- these very senior opinion leaders who are nominees for the program.

So, so, in order to make the Flexiplace work, we came up with a set of duties that were commensurate with Flexiplace. In other words, what can you do from your home and still spend a large portion of your time at the Independent Counsel? You know, that's what Flexiplace is.

Q Right.

A It was to give her the flexibility to do that. She could not do the job of director of, of JCOC. We tried to keep her involved by phones, but

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that was difficult to do.

Q Okay. Did you know that -- do you know of any threats that were made on Linda Tripp?

A No.

Q Did she report that to you?

A That was in one of the letters from her lawyer, that due to the threats against her that she had been moved to a safe house and that she needed this Flexiplace assignment. So that's --

Q All right.

A But no, I don't know of any personally.

Q And when you say safe house, what do you understand that to mean?

A I, I don't know what that meant, I mean, other than --

Q That's just what her lawyer represented to you?

A Right.

Q So, as I understand it, they came up with, as you say, a set of duties under JCOC but it was sort of, and you tell me if this is accurate, it was sort of a make-work assignment? Linda, you sit at home and write a manual of some sort. Is that correct?

A I don't think it was make-work. It was, it was something -- first of all, if you're familiar with

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the military and you're familiar with Department of Defense standing operating procedures are just that. Every office has them. And, and the idea is because in the military people change jobs every two, three years that you don't want to constantly be reinventing the wheel -- learning a new job. There should be something that a person can read when they come in and say this is how the job is performed, these are the people to contact, phone numbers. And, and --

Q Okay. So, she writing standard operating procedures for the JCOC program?

A That's correct. Who would be in a better position to do that and who would have -- you know this is, this is the perfect opportunity. It's a job that can be done at home. It can be done when she has the time, when she's not with the Independent Counsel. To us it was not make-work, it was a project that we needed and that this was an opportunity for both of us.

Q All right. Now, but Public Affairs had gotten along without a set of standard operating procedures heretofore for the JCOC program?

A That's correct, and, and we suffered for it. And this was not the first time that we had ever talked about an SOP, but the person who handled it before her was long term. And, and then when she took it over,

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that person was still there. There was some continuity. But, but the idea of having this, this book is -- to me, it's not make-work. We should have had it all along.

Q Okay. Why don't we get ready to take a break in a minute but before we break, if there are any questions about the areas that we've covered thus far, if either Mr. Page --

GRAND JUROR: I have one.

MR. CRANE: Yes, sir?

GRAND JUROR: Explain in just brief, brief detail explain the JCOC function?

WITNESS: Yes.

GRAND JUROR: I hear these terms but I don't know what they mean.

WITNESS: Okay. The Joint Civilian Orientation Conference is a program that was established by the Secretary of Defense almost 40 years ago. It's an annual event where we get -- take 60 very accomplished opinion leaders from different parts of the country and different types of jobs. We try to make sure that it's a good mix of men and women, it's racially represented. And these people -- the idea is, and it's becoming more and more true in the military, that the civilian society does not know the military

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anymore. It's not like after World War II where everybody had served, or even after Vietnam. A lot of people are growing up now and are in positions of leadership who have never served and don't even know people who served.

So, this program takes these 60 people, and it's a 7-day program. The first day they spend at the Pentagon and they get briefings by the Secretary of Defense, the Chairman of the Joint Chiefs, the senior leadership. What are their concerns, what's going on? Then we take them to a Coast Guard base, an Army base, Navy base. We take them out to a carrier and a Marine base. And they spend a day with the troops, training and getting to know the equipment, getting to know the people.

At the end of the week, they have a better understanding and then, you know, our hope is that they will go out and tell people what they saw.

GRAND JUROR: Thank you very much.

GRAND JUROR: What was Mr. Bacon's position before this current position?

WITNESS: He was with The Wall Street Journal. He was a reporter and financial editor.

GRAND JUROR: Who did Monica Lewinsky's evaluations? Did you do them or did someone else?

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WITNESS: I would normally draft comments for Mr. Bacon, but he was the --

GRAND JUROR: Okay, because she reported directly to him?

WITNESS: That's correct.

GRAND JUROR: And what grade was Sue Wallace?

WITNESS: A 15, a GS-15.

GRAND JUROR: She was a 15 as well?

WITNESS: Yes.

GRAND JUROR: In the Flexiplace agreement with Linda Tripp, does it call for quantifiable work products? Are there milestones and dates or --

WITNESS: I haven't read it recently, but it outlined the way the SOP or the manual should be written. It gave examples of other SOPs. And we have asked for her to, to deliver to us first a -- just a rough kind of table of contents, what she thinks it should include. And the, and the idea was that then we could go over that and, and start saying well, maybe we don't need to cover this, maybe you should cover this. To my knowledge -- and again, I've been out -- I have not been in the loop for -- since April 13th, but to my knowledge, nothing has been submitted. Certainly, by the time -- at the time I left the Pentagon, nothing had been submitted.

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GRAND JUROR: But at the time this was drafted, you thought, under the, under the unusual circumstances, that this was reasonable, that this was a reasonable --

WITNESS: Absolutely, absolutely.

GRAND JUROR: If I'm understanding the process of how Monica and Linda came to the Pentagon, correct me if I'm wrong, what I thought I heard your testimony to be was that when Monica came you and Mr. Bacon talked about the kind of person you wanted for the job, you thought about having a younger person versus a middle-age person and the growth the job offers, and you said --

GRAND JUROR: It wasn't the age, though, it was really the expectations that somebody who had been in the government a longer time would have about a job versus the expectations of somebody who was newer.

GRAND JUROR: Okay, but basically, you selected from a pool of people, you interviewed Monica from the job?

WITNESS: Yes, ma'am.

GRAND JUROR: In contrast with Linda coming to the Pentagon, you basically needed to create a position for her?

WITNESS: That's correct.

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GRAND JUROR: How many people did you interview, do you recall?

WITNESS: It was -- yes, four or five.

MR. BARGER: Let me go back to Mr. Duncan just briefly. Concerning Linda Tripp, when he contacted you, either in your initial contact or subsequently, did he ever say anything to you to indicate who at the White House he had been in contact with about having Linda Tripp placed at the Pentagon?

WITNESS: No.

MR. BARGER: Was it your sense that he had been in contact with someone at the White House and just didn't know who they were or, or was your sense that this was solely a result of Mr. Duncan's activity, if you understand my question? In other words, is having Linda Tripp moved from the White House to the Pentagon solely Mr. Duncan's idea or did you have the sense that it was coming from somewhere else without not necessarily knowing the identity?

WITNESS: Well, my assumption is that since he was the White House liaison he was liaising with the White House. I don't know that I know any more than that.

MR. BARGER: Is it fair to say -- I believe just to -- and I don't want to -- I'm going to try not

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to be too repetitive. Is it fair to say that he characterized it as a priority placement?

WITNESS: Yes. Yes, priority placement is the term.

MR. BARGER: Did he give you any sense of why it was a priority?

WITNESS: No.

MR. BARGER: When you say priority, what did you understand that -- what did you understand it to mean? In other words, did it -- was it priority because it was something that had to be done quickly or in what sense was it a priority, if you know?

WITNESS: My understanding of the priority placement is a term giving -- you know, saying that this person has to be placed.

GRAND JUROR: Mr. Bernath, have you had requests like this from the White House counsel -- excuse me, White House liaison before Linda Tripp?

WITNESS: Priority placement is not, it's not common but it's not unheard of either, so it had been done before. I can't, I can't remember any examples of it during my term up there in Public Affairs. Again, while it's not the norm, it's not unheard of either.

GRAND JUROR: Is it probably fair to say that priority placements also took place during the Reagan

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and Bush Administrations?

WITNESS: I think that's fair to assume.

Again, I wasn't working at this level that I would know about that, but I think it's fair to assume.

GRAND JUROR: While Monica Lewinsky was not a priority placement or anything, were you to find her a job somewhere? I mean, if you couldn't -- what was exactly the --

GRAND JUROR: We, we were never under any pressure to hire her. Nobody had ever said anything. We, we selected her and it got processed through. So, my assumption would be that if we didn't hire her that we wouldn't have hired her.

GRAND JUROR: Does priority placement necessarily go hand in hand with a high salary, like \$80,000? Or could you have priority placement with slightly less: 60-, 50-?

WITNESS: I again don't know the exact answer to that, but my, my assumption is that no, the two are separate.

MR. BARGER: Who chose -- oh, I'm sorry. Who chose the grade for her, for Linda Tripp?

WITNESS: That, that was -- that came with her through the White House liaison. We had nothing to do with that.

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GRAND JUROR: Did I earlier hear that Monica Lewinsky was fired from the White House? Did you use that term earlier?

WITNESS: No, I didn't. The question was had she, and I said I was not aware of anything like that.

GRAND JUROR: Well, does anyone know? Is it important or was she or wasn't she?

WITNESS: I mean, my understanding was that we hired her and she came over because of that. I, I had never heard anything about firing.

MR. CRANE: Other than -- until I represented that to you here today, had you -- since January 21, had you heard about Monica being fired from any other source? Not at the time that you hired her, but since January 21, long after Monica -- or two months after Monica left?

WITNESS: No. I mean, I certainly read the newspaper articles that have all the allegations, but I have not heard that through any source or anything.

MR. CRANE: All right.

MR. BARGER: Did you contact -- oh, I'm sorry, there's a question for you back over here.

GRAND JUROR: Do you know what Linda Tripp's salary was at the White House just prior to coming to the Pentagon?

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WITNESS: I don't know what her salary was, but, but I think, I think she was around a GS-12 level at the White House, but I am not sure of that.

GRAND JUROR: And as a Schedule C appointee was she not subject to -- grade restrictions and all that?

COURT REPORTER: I'm sorry, I didn't -- you have to speak up.

GRAND JUROR: As a Schedule C appointee, was she not under the same restrictions as to grade and time in grade, so that she would have spent so many years as a 12 or 13 or a 14 before she could be appointed a 15?

WITNESS: The Schedule C system is a little looser than the Civil Service system. However, in general, even in the career, you don't get promoted necessarily every year. You may get a within grade increase but your job is, is designated as a GS-12 and as long as you're doing that job, you're going to be a GS-12. A GS-12 can compete for a higher level job, like even a 15, if they're qualified and then get promoted that way. But you don't get promoted in the government just for staying in a job a certain number of years.

GRAND JUROR: I may have missed this, but

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Q That for the first year had been Lynn Reddy?

A Yes. The only time that I was her first-line supervisor was for a short period after the Flexiplace agreement was signed.

Q Okay, after the Lewinsky/Tripp scandal hit the papers?

A Yeah, after the Flexiplace assignment was signed, I was her first-line supervisor for not more than a week or so.

Q Okay. And then what -- why only for a week? Then who became her first-line supervisor?

A Doug Wilson became her first-line supervisor.

Q Okay. When -- is this early January or later?

A No. The Flexiplace agreement really didn't go into -- I don't remember the exact date. It was in February. Took a while to coordinate it through all the lawyers and all the management people and go back and forth.

Q Okay. So, why did Doug Wilson become her supervisor?

A After the -- Ken Bacon and I released the information in conjunction with The New Yorker, Ms. Tripp, through her lawyers, requested that I not be her supervisor since I was involved in this other

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what was Monica Lewinsky's grade schedule?

WITNESS: She was a GS-9.

MR. CRANE: Let me just ask one other question, then I think -- is everyone ready for a break?

MR. BARGER: I've got a couple more.

MR. CRANE: Okay. We may -- I might have one in a couple minutes, but -- okay. Well --

MR. BARGER: You want to go first or you want me to go first?

MR. CRANE: Yeah, let me go first. Let me go first.

BY MR. CRANE:

Q Back to the Flexiplace agreement, okay, after January 21 when it became public that Linda Tripp was a cooperating witness, had taped Monica Lewinsky, and allegations involving the President, et cetera, her lawyer wrote you a letter that she had been threatened and she had been in a safe house. Is that correct?

A I can't remember the exact words of the, of the letter.

Q Something to that effect?

A Yes.

Q Okay.

A Something about that, yeah.

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matter.

Q Okay. And that's when Doug Wilson was put in?

A That's correct.

Q Okay. And so, the Flexiplace didn't -- you said it was about a week, so sometime the latter part of February?

A I don't remember the -- I mean, that, that whole period has been kind of a, a whirlwind, so I don't remember the exact dates, but --

Q Okay.

A -- I do know I have a copy of it.

Q So, is this accurate: For a short period of time, you were her line supervisor, and then you were removed and Doug Wilson put in as her line supervisor?

A That's correct.

Q And then a few weeks later, month later, you go off to work at -- to be the director of AFIS?

A Sequentially, that's true, but the, the fact is that job with AFIS had been in the mill for more than a year.

Q Okay.

MR. CRANE: Why don't -- I know there's lots of other questions, but I think -- why don't we take a break?

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Q And then you, you, supervisors in Public Affairs, and Linda Tripp came up with the Flexiplace agreement. Is that correct?

A She, through her lawyer, requested this arrangement and we, through management, agreed and we came up with a set of duties in an agreement that she had to sign and that we had to sign.

Q Okay. Now, since then, has Linda requested to come back to the Pentagon?

A I, I don't know about that exactly. When I was there, she had not requested.

Q Okay.

A And I have not been involved with any of this since I left.

Q Okay. Now, before you left, did you continue to supervise her? You're there for roughly another month, until April 13th?

A Right.

Q Were you her supervisor or was there someone else that was in there?

A I was her supervisor only for a short time.

And but --

Q Her line supervisor, her first-line supervisor?

A Her first-line supervisor.

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MR. BARGER: I have a couple.

MR. CRANE: Well --

MR. BARGER: I'm not going to be coming back.

MR. CRANE: Okay. Well, let's have a couple more and then take a break.

MR. BARGER: I want to go back briefly just to Mr. Duncan. Other than Linda Tripp, has Mr. Duncan ever made any other request to you to place any employees from the White House?

WITNESS: Well, all the, all the political appointments were coordinated through Mr. Duncan to me. Linda Tripp, I believe, I believe Linda Tripp is the only priority placement that I --

MR. BARGER: And just briefly going back to Monica Lewinsky, how did, how did she come to your attention as a, as a prospective employee?

WITNESS: We went to Charlie Duncan and said is there anybody on the -- in the White House pipeline and we went out to other people in the Pentagon, let him know that this job was open. The only name that came down through the White House pipeline was Monica Lewinsky's.

MR. BARGER: And why would you go to Mr. Duncan to ask if there's anybody at the White House or in the White House pipeline who might be interested?

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Just: just good --  
 WITNESS: It's --  
 MR. BARGER: -- good business sense? I  
 do --  
 WITNESS: No. That's the standard way you  
 proceed. Whenever you have a political vacancy,  
 there's always people -- through that chain, there's  
 always people through the Secretary of Defense chain,  
 people who are looking for jobs. So that's, that's  
 kind of the normal way to do it.  
 MR. BARGER: And the secretary of Mr. Bacon.  
 I believe you had said, was a political appointee --  
 WITNESS: Yes.  
 MR. BARGER: -- spot, so that made sense to  
 go to the White House --  
 WITNESS: Exactly.  
 MR. BARGER: -- liaison as a possible source?  
 WITNESS: Right.  
 MR. BARGER: That's all I have.  
 GRAND JUROR: May I ask one very brief? And  
 to your knowledge, do other cabinet agencies have White  
 House liaisons?  
 WITNESS: I believe they do. I've never  
 dealt with any of them.  
 GRAND JUROR: One very brief question.

Q -- mentioned earlier?  
 A Yes, it is.  
 Q Okay. And what is that form used for?  
 A That's used as the basis for security -- for  
 investigations for security clearances.  
 Q All right. Okay, continue. So, you were  
 having this conversation with Mr. Bacon.  
 A Right. So, he mentioned that -- he said that  
 he would -- he told Jane Mayer that he would get back  
 in touch with her in the morning and he asked me if I  
 would see that through, if I would follow up on that.  
 He mentioned that he had talked -- he already had made  
 a phone call to the director for Headquarter Services,  
 Mr. David Cooke and, and that Dr. Cooke -- it's Doc  
 Cooke, he goes by initials. D-O-C, you know, had  
 indicated that he would look into it first thing in the  
 morning, so he asked me to follow up on it.  
 Q Okay. And what did you do that evening, if  
 anything?  
 A I didn't do anything that evening. It was  
 starting to get late. It was almost 8:30 by the time  
 we were ready to leave, so I left.  
 Q Okay. Did you talk to anybody else? Did you  
 talk to Doc Cooke or anyone that evening?  
 A No.

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please. We've heard reference a couple times to this  
 letter from Linda Tripp's attorney. Are we to see that  
 as evidence or is that going to remain as loosely  
 referred to as hearsay?  
 MR. CRANE: We have a number of exhibits.  
 We have -- that's sort of why I'm being a drill  
 sergeant and hurrying people along. I don't think that  
 is one, but I have -- it's probably literally hundreds  
 of pages.  
 GRAND JUROR: You understand the reason for  
 my question?  
 MR. CRANE: Right. I'm not sure that I have  
 that one labeled as an exhibit.  
 GRAND JUROR: Thank you.  
 MR. CRANE: Okay. How long a break?  
 FOREPERSON: Can we get by with 10 or do we  
 need 15?  
 GRAND JUROR: Fifteen.  
 FOREPERSON: How about 15?  
 MR. CRANE: Fifteen minutes.  
 FOREPERSON: And we will be back promptly.  
 MR. CRANE: So, at just about 11:18.  
 (Whereupon, at 11:03 a.m., the Grand Jury was  
 recessed and subsequently reconvened at 11:19 a.m.)  
 MR. CRANE: Okay, it's 11:19 and we're back

Q Okay. Just Mr. Bacon?  
 A That's correct.  
 Q Okay. And you didn't -- you also did not  
 talk to Jane Mayer?  
 A No.  
 Q Okay. Now, what is your understanding, why  
 is he looking into Linda Tripp's security clearance  
 form?  
 A Why is Mr. Bacon?  
 Q Right.  
 A My understanding is that he was looking at it  
 because that was the question that the reporter asked.  
 Q Okay. But what about the Privacy Act  
 protecting personnel files?  
 A I guess I have to say two things. One is at  
 the time, we, we had not considered this a Privacy Act  
 issue. This was another in dozens, hundreds of phone  
 calls that we had been answering from the media since  
 January 21st about all sorts of things. And the phone  
 calls had been coming not only during the day, and our  
 workday was 6:00 in the morning till about 8:00 or 8:30  
 at night, but then when we'd get home and on weekends.  
 And when I was on leave, we'd get called back from  
 leave to answer questions. So, this was not an  
 isolated question. This was one of many, many

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on the record, and it appears we are properly quorumed  
 and without any authorized persons -- unauthorized  
 persons.  
 BY MR. CRANE:  
 Q Okay, let's -- I'm going to start talking a  
 little faster and we'll try to push ahead, Mr. Bernath.  
 As you can tell, we spent an hour, hour and a half  
 covering essentially background. Let's go into the  
 events of March 12th and March 13th and talk about  
 those. And then we'll have a number of specific  
 questions to ask you.  
 What happened on March 12th with reference to  
 the release of Linda Tripp's security clearance form or  
 what conversation did you have?  
 A I had been out of town during the day on the  
 12th. That was a Thursday. I got back to the office  
 at about 7:30 in the evening and Ken Bacon was still  
 there. He and I talked about what went on during the  
 day. He said that he had received a phone call from  
 Jane Mayer of The New Yorker asking a question about  
 the manner in which Linda Tripp completed a, a  
 question, answer to question on a her security  
 questionnaire, her security form.  
 Q Is that the Form 398 that we --  
 A Yes, it is.

questions that we'd been answering over the few-month  
 period that this happened.  
 Q Okay. But heretofore, you hadn't released  
 any information from a -- Ms. Tripp's security  
 clearance form, had you?  
 A We had never been asked about a question on  
 it. This was a specific question. This was the -- we  
 did not release the form. It was a specific question  
 on how she answered the question. So, so, it just  
 didn't trigger to us that this was Privacy Act.  
 The second thing that I want to make clear is  
 that although neither Ken Bacon nor I are experts on  
 Privacy Act, the -- what, what my understanding of the  
 Privacy Act is, if there is nothing that is absolutely  
 covered by the Privacy Act. In other words, there is a  
 balancing act between the public's right to know and  
 the, the individual's right to have information  
 protected.  
 Q Where do you get that from? Does that -- is  
 that some training you've had or where does that come  
 from?  
 A It's my understanding, and I would image -- I  
 can't remember specifically being trained on it but  
 this is my understanding, this is my basis.  
 Q Okay. Let me ask you a specific question

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about Thursday evening, March 12th. Does Mr. Bacon say that he wants to release this information to the reporter or do you understand him to be looking for the information for internal DOD purposes?

A No. My understanding is that, that we are trying to respond to the reporter's query.

Q Okay. Now, what did Mr. Bacon tell you the reporter had said? Just the -- she wants to know the answer to what sort of question?

A That she wanted to know the answer to the question how did -- the question was have you ever been arrested or convicted of a crime, words to that effect. And he said she indicated that --

Q She being?

A She being Jane Mayer. -- that there might be information about something in her past. Nothing more specific than that.

Q Something -- the question is about arrests or convictions, so --

A That's right.

Q -- apparently the reporter has some sort of angle that --

A A reporter rarely asks a question that they, that they don't have some reason for asking.

Q Okay.

to Ken's question the night before. He said he hadn't and he'd get back with me. He called back, I think probably a half hour later. I'm not real sure of the times, but about a half hour later, I think, and said he had some information based on her 171, which is that personnel, like a resume form that's, that's -- where they ask a similar question on that form. At the end it says have you ever been convicted or arrested, and she had answered on that form no. So, I went ahead and gave that information to Ken. He said okay, but the question was the security form, do we know what she -- how she answered that question?

So, I went back to Doc. Doc arranged for me to look at a security file that's kept in the Pentagon, and the 398 is not in there either. So, I guess the, the people who were -- who had that file said you need to call up this other, Les Blake I think was his name, at Defense Security Services and see what -- because he's got the file.

So, I called him up. He said yes, I've got the file; yes, she answered no to the questions. I said can you fax me a copy of that so that I make sure that I'm -- you know, that I have the, the right information. He faxed that to me. I went in, discussed it with Mr. Bacon, and said you know, do you

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A So, you know --

Q So, is this -- you said that you believe there's some sort of balancing test, that you all balanced the public's right to know about Linda Tripp's criminal past?

A No. I'm saying that, that in, in the case of this question, in the case of this total of maybe 20 minutes out of my life, we didn't consider the Privacy Act. It didn't trigger in our minds.

So, the reporter asked a question. The answer to the question was no, I've never been convicted or arrested, and we said that's how she answered. It didn't trigger that that was bad information to say I was never arrested or convicted.

Q Okay. Did Mr. Bacon say anything to you about the Privacy Act on Thursday, March 12th?

A I don't believe we ever discussed the Privacy Act.

Q Did he say anything to the effect, talking to you, Cliff will you look into this or will you check on it to see if we can release this information?

A No, that's not my recollection.

Q Okay. Did he say anything about FOIA, Freedom of Information Act?

A No.

want to call her back or should I call her back? He said why don't you call her back? I did and, and that's about it.

Q Okay. And what did she say -- what did Ms Mayer or Meyer say to -- what was your conversation on the phone?

A It was very short.

MR. PAGE: First, where do you call her?

WITNESS: I had a phone number from her query the night before.

MR. PAGE: And is she a Washington, D.C., reporter?

WITNESS: I don't remember whether -- what the area code was when I called her. In fact, I probably didn't call her. I probably had somebody place the call.

MR. PAGE: And, and connect --

WITNESS: Right.

MR. PAGE: -- you?

WITNESS: Yeah. So, I, I don't know where I was talking to her.

MR. PAGE: So, it could have been Washington, D.C., or it could have been some other place?

WITNESS: Or it could have been in New York.

yes.

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Q Did he say anything to you, let's check with the lawyers, anything along those lines?

A No.

Q Okay.

A You know, in retrospect, these are questions that we should have asked. The fact is that in this short period of time we did not ask those questions.

Q Okay. What happens next? I guess we're on to --

A We're on to --

Q -- March 13th?

A We're on to Friday morning, the 13th. DocCooke arrived at 8:30 in the morning. We hadn't discussed this at all prior to that, you know. We, again, arrived at 6:00 in the morning and were just working. This, this was pretty much to me, and I believe to Ken, kind of a routine thing. Doc came in about 8:30 --

Q I'm sorry. Did he come up to your offices or did you go down to his office?

A I called Doc on the phone.

Q Okay, you called him on the phone?

A Yes.

Q Okay.

A And asked if he had done anything in response

MR. PAGE: And this reporter worked for whom?

WITNESS: The New Yorker magazine.

MR. PAGE: Magazine.

WITNESS: Right.

MR. PAGE: Had you had any previous experience with this reporter --

WITNESS: No.

MR. PAGE: -- before these dealings?

WITNESS: No.

MR. PAGE: Had you heard of her?

WITNESS: No.

MR. PAGE: Had you ever read The New Yorker magazine yourself?

WITNESS: Oh, I've looked at copies of it but I'm not a regular reader.

So, the conversation was I'm getting back to you on your phone call with Ken last night, I've got the information and the answer is she answered no to those questions. She said if I have information to the contrary, would this be a serious offense? And I said well, if, if it's proved that she has lied on this, then that would be a serious matter and there would have to be an investigation into it.

BY MR. CRANE:

Q And why did you say that?



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A Because that's true.  
 Q Okay, true enough. If, if --  
 A I mean, if there's -- if you -- well, there's also -- on the bottom of the form it, it says, you know, there's a warning right by the signature block that says, you know, I affirm that this is true to the best of my ability. If I don't -- if it isn't, there are penalties involved.  
 Q Okay. My question is, though, if a government employee is suspected of making a false statement on a security form or a personnel form, isn't that a matter for internal review? Why would you speculate to the reporter about the status of a criminal investigation into Linda Tripp if you didn't know about it?  
 A No, no, no. What I'm saying -- what I said to her was that if it were true, then there would be -- then that would be a serious matter and it would have to be investigated. I didn't say I was going to investigate or who was going to investigate. It would just be a matter that would be investigated.  
 Q Now, what time of day was it that you had this conversation? Is it morning or afternoon?  
 A This is probably late, late morning.  
 Q All right. But normally, if there's some

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sort of an internal investigation of an employee --  
 A But there was none at this time.  
 Q No. But wouldn't you normally say something to the effect of we have no comment, that's being looked into by the Office of the Inspector General?  
 A But nothing was being looked into. I didn't know that there was -- that she lied. I didn't have any -- this was just a would this be a serious offense? Yes, this would be a serious offense and it would be investigated.  
 Q Okay. You guys didn't know that she had lied?  
 A No.  
 Q But the reporter had kind of indicated that she had information to that effect, that Linda Tripp had some sort of --  
 A She said if I have information to the contrary, would this be a serious offense, yes.  
 Q And she had earlier told that to Ken Bacon?  
 A That she may have something, yes.  
 Q Right, she had some arrest or some criminal activity on the part of Linda Tripp?  
 A I don't know exactly what she told him, but yes, there was some, some indication.  
 MR. PAGE: When you get the fax the day

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before --  
 WITNESS: No, the morning.  
 MR. PAGE: That morning?  
 WITNESS: Yes.  
 MR. PAGE: Excuse me. And then you go and see whom?  
 WITNESS: Mr. Bacon.  
 MR. PAGE: And can you tell the members of the Grand Jury the substance of your conversation, when you have this fax in your hand, with Mr. Bacon?  
 WITNESS: It was about a one-minute meeting. It was, you know, I've got the information requested, this is what it looks like. We both kind of looked at it and I said, you know, do you want to call her back or should I? And he says go ahead and call her back.  
 MR. PAGE: So that was the end of that conversation?  
 WITNESS: Yes.  
 MR. PAGE: Had the form had on it that Tripp had been arrested, what would your approach have been?  
 WITNESS: Frankly, that would have triggered something different. That would have said oh-oh, there's a problem here, let's get this to the lawyers and investigate it. The fact that she had not done anything wrong, and I would assume that that would be

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the most -- the most accurate information would be this sworn form. So, to me, when she said I had done nothing wrong, to me that was good information to release.  
 BY MR. CRANE:  
 Q Now, after -- how many phone calls did you have with Ms. Mayer? Was it one or more?  
 A I think I had two. I had one early in the morning, just letting her know that that I was going to be following up on her phone call to Ken last night, and then the second one when I gave her the information.  
 Q Okay. And what did she say to you in that first phone call when you told her you would be the one to follow up?  
 A I don't, I don't recall it being much more than a one- or two-minute call.  
 Q Okay. Did she say anything about what she was going to write or that she had some information about Linda Tripp in that first phone call on March the 13th?  
 A No. I don't recall that, no.  
 Q Okay. Now, you do or you don't deal with the media very often as part of your job?  
 A Dealing with the media is, is not a normal

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part of my job, although if it's an area within my cognizance, then I will.  
 Q All right. Now, within Public Affairs, there is another individual named Michael Doubleday. Is that correct?  
 A Yes, correct.  
 Q And does he have a higher profile role in dealing with the media?  
 A Yes.  
 Q Okay. And why was it that he was not involved in this decision?  
 A As I recall, he may have been out of town with the deputy secretary, but -- I think that that's true. The more immediate was that I just happened to come into the office Thursday night and be the only one in the office when Ken had gotten this call and I kind of got the task or, or, you know, asked to help.  
 Q Okay. Just off the top of your head, what are the other sorts of questions that are asked, asked of the applicant or the person filling out Form 398? What other sort of areas do they ask about?  
 A Oh, it's -- they ask everywhere you've lived for the past 10 or 15 years, what schools you went to. You put down -- they ask about drugs. Kind of the typical things that, that investigators would want to

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know if they were going to grant you a security clearance. It's a total background check of information.  
 Q Okay. And they ask about a number of pretty personal areas of your life, don't they? Doesn't the form?  
 A Yeah, I guess. Depends on how you define that.  
 Q Well, hospitalization in a mental hospital?  
 A Yes.  
 Q Isn't that a pretty personal type of area?  
 A It is.  
 Q Prior marijuana and drug use?  
 A Correct.  
 Q Other substance abuse? Is that your understanding?  
 A Yes.  
 Q Prior criminal activity was the question relating to Linda Tripp. Personal bankruptcy, the form asks if you've ever filed personal bankruptcy or been declared bankrupt?  
 A I didn't remember that one, but --  
 Q And the purpose of the 398 is for the government to decide if you are a security risk in dealing with classified information. Is that correct?

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A That's right.  
 Q And all of these personal areas, drug use, mental illness, prior arrests, are what the government uses to determine if an individual is a good risk to have secured or classified information. Is that correct?  
 A That's right.  
 Q Okay. And Linda Tripp had filled out this form in 1987. Is that right?  
 A I believe that's right.  
 Q Okay. We will look at the exhibits later, so a lot of these questions will come up. So, we'll just try to get an overview. What I don't understand is why wasn't the answer on the Form 171 -- again, 171 is the standard form, standard r, sum, form that federal employees have to fill out. And on it somewhere it says no, I've never been arrested. Why wasn't that sufficient? Why did you have to go to the security form?  
 A My understanding of the question was how did she answer the security form, so that's what we went to.  
 Q So, is it the reporter that just can determine whatever information she wants to get? You know, the reporter asks for whatever she wants on Linda

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Tripp and she gets it because that's what she asked for? Aren't there any checks or rules that come into play?  
 A Well, there are checks and rules. You know, there's -- but in dealing with the media, there's no, there's no guide that says this is what you do, this is what you don't do. In general, you're always making decisions. In, in this case, the, the information, (a) it just didn't trigger in our minds that this was Privacy.  
 And again I would say that as you look at this as one isolated incident, it's, it looks a lot clearer than it does when you're looking at this as one of hundreds of questions in 15 or 20 minutes total activity over, you know, in one, in one short time over, you know, taken out of context of a much bigger picture. At this time it was one more media question. It did not seem like it was information that, that was harmful to the individual. In fact, it seemed like it was information that was not harmful to the individual and we did it.  
 Q How --  
 A You know, with no more motivation than that.  
 Q Okay. As I understand it, and after having read The New Yorker article, Linda Tripp was portrayed

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both as an individual with a criminal past -- or a criminal arrest in her past and as having lied about that. How would that not be considered harmful?  
 A Well, the information that we -- first of all, I had no information that she had been arrested. I had no information that she lied. At the time that we released the information, that information was not available to us.  
 Q I thought the reporter told you she had information?  
 A The information -- she said that she had some information that related to that and that -- and certainly, we knew that she was asking the question for a reason, but I had no knowledge that, that the information that Linda gave on the form was not true. I assumed it to be true.  
 Q All right. Now, when you talked to Mr. Blake, did you tell him that you were going to use Linda Tripp's 398 for official purposes?  
 A Mr. Blake asked if, if this request was for official purposes. In my mind, that meant am I going to use it within the official capacity of my job. Yes, I was going to use it within the official capacity of my job, which is dealing with the media and, and releasing information.

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Q Okay. And you also told him that it was -- when he asked further that it was for official use?  
 A I'm sorry, that was the same question.  
 Q Official purposes and official use?  
 A I don't know the distinction.  
 Q Okay. So, no distinction between using Linca Tripp's 398 for official purposes and making official use of it. Those are synonymous terms?  
 A I'm not sure that I see it again.  
 Q Okay. So, your understanding is that releasing this information to a reporter was, in fact, an official purpose?  
 A Yes.  
 Q And that was, in fact, an official use?  
 A Yes.  
 Q Okay. And you had been interviewed by the Inspector General for the Pentagon on this same issue. Is that correct?  
 A I have.  
 Q And at one point -- I have a copy of it if you want to look, but I'll just read you, in the interest of time -- they asked you about this same issue and you said, "Yes, I'm official and I'm going to use it for official purposes." Is that -- that's your understanding that that's what you told Mr. Blake?

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A Yes.  
 Q Mr. Les Blake?  
 A Right.  
 Q Now --  
 A Now, I have to say, in retrospect, I understand now he was asking a different question, but in the phone call when he said is this for official use and I say well, what am I? I'm an official who releases information. This is official, yes.  
 Q And you didn't tell Mr. Blake you were going to release the information to a reporter?  
 A I don't believe that ever came up.  
 Q And no conversation about I want this information to get to the media or something more general like that?  
 A No.  
 Q Okay. Now, Mr. Bacon had told you to handle this as a priority matter?  
 A Yes.  
 Q Okay. Why was that? Why was Linda Tripp's alleged answer on the form a priority matter?  
 A Linda Tripp's answer on the form was not the priority. The priority was a reporter working on a deadline and we would -- when a reporter says I've got a deadline, we consider that a priority. So, the

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priority had nothing to do with Linda Tripp or the form or anything like that. It was responding to a media request. Sometimes reporters are working on a story that's three weeks out. That's not a priority. We can -- we've got a couple of days to play with that one. If they're on a tight deadline, then we try to help.  
 Q But aren't reporters almost always on a tight deadline?  
 A No.  
 Q No?  
 A No.  
 Q So, if a reporter calls Public Affairs and says they're on a deadline, they get sort of expedited service?  
 A Sure. There are many times that, that somebody's working on a story and we'll be there till 9, 10, 11:00 at night trying to find out information for them.  
 Q All right. Now, had you ever released information from anyone else's Standard Form 398?  
 A Have I?  
 Q Yes.  
 A No. I've never been asked before either.  
 Q And again, you'd been in there about five

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years, in Public Affairs?  
 A True.  
 Q So, this was a pretty unusual type of request. It had never happened?  
 A It's unusual if you think about it in retrospect. Knowing everything you know now, it's unusual. It was not unusual in, in the context of the time that we were dealing with and the quantity of information that we were dealing with.  
 Q Okay. But it seems that there were a number of sort of like stop signs or warning signals up until the point where you give the information to Ms. Mayer over the telephone. You had -- both you and Mr. Bacon had overnight to sleep on it or think about it, is that correct, from the 12th to the 13th?  
 A Yes, but it was -- again, it was not a matter that, that we would think about when we left. It was just another query, you know, it wasn't something that, that had triggered anything other than we've got a query, we're going to answer it.  
 Q Right. And not to argue with you, but it was just another query but it was the type of query you'd never gotten in your career on anyone?  
 A Well, that's, that's not exactly true.  
 Q It's-- it was the only query that I've gotten on a

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398, but the 398 didn't trigger anything special. It was, it was another in a lot of information that we -- that had been asked and released on this matter, so in the context of the information, it just didn't seem that unusual.  
 Q Okay. Let's kind of continue on, get an overview, and then we can come back and ask some specific questions.  
 A After you talked to Jane Mayer on the telephone, do you type something up, some -- I think you call it public affairs guidance?  
 A Correct.  
 Q What is that and what does it do?  
 A Whenever we ask a question in the media, we, we type up what we call a guidance. This was the question, these are the answers that we gave, and we give that to the rest of our public affairs officers so that if they get queries they know that this information, this is what was said on it. That way, we can -- everybody's putting out accurate information and they don't have to do research again on the same question that's been asked.  
 Q Okay.  
 A So, I did that based on my phone call with Jane Mayer.

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Q All right. And we have that as an exhibit that we'll get to in a bit, but it basically is question: How did Linda Tripp answer Form 398 question 21(a), something to that effect?  
 A Correct.  
 Q And just as you recall it, what sort of answer did you give?  
 A I can't remember exactly. Maybe it's better to read it, but that I answered the question and it's just a short thing.  
 Q Okay. That she answers, "No, I've never been arrested." And then there's the following --  
 A And then there's the following question that-- can you, can you re-read the question to me so that I have the accurate question?  
 Q Okay. And then there's also the part about Linda Tripp will -- if true, she will have to be investigated.  
 A Oh, yeah, that last part of it about the --  
 Q Okay.  
 A That we've already discussed.  
 MR. PAGE: Did Mayer ask you for that Form 398?  
 WITNESS: No.  
 MR. PAGE: Did she ask you to send any part

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of it to her?  
 WITNESS: No.  
 MR. PAGE: Would you have had she?  
 WITNESS: I don't think I would have. I can't answer that question definitely, but I don't think I would have. That, that isolated question is all we considered.  
 MR. PAGE: I'm sorry?  
 WITNESS: That isolated question is all we considered.  
 MR. PAGE: And what if she said cut that out and fax it to me?  
 WITNESS: I don't see any reason to speculate on that. I don't know. It wasn't asked, it wasn't done.  
 BY MR. CRANE:  
 Q Okay. Who was the first person within Public Affairs that alerted you that this was a Privacy Act violation?  
 A When I brought the, the -- let me recharacterize that.  
 Q Okay.  
 A Who was the first person who alerted that this might have Privacy Act implications?  
 Q Okay.

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A When I brought the guidance back to the -- to one of the desk officers who -- the media officers, she looked at it and she said, you know, this may have Privacy Act implications.  
 Q And who is that?  
 A Susan Hanson.  
 Q H-A-N-S-O-N or S-E-N?  
 A S-O-N. I believe.  
 Q Okay. And what is her position? Do you know what GS level she would be?  
 A She's a GS-14.  
 Q Okay. And she is a desk public affairs officer. Is that --  
 A A press officer.  
 Q Okay.  
 A Her job, her job is daily handling of the press, answer inquiries.  
 Q Okay. And she essentially will read these public affairs guidance statements to the press or fax them to the press, however? How does she do her job?  
 A A number of different ways. She -- the desk officers have areas of expertise. And so, a question will come in and the person who has that area of expertise will deal with it. In, in this case, this was kind of after duty hours by the time this had been

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done and I guess Susan must have been the duty officer. It was just happenstance that she was the one that I gave it to.  
 Q Okay. So, she is one of the employees that you supervise?  
 A I don't directly supervise her, no.  
 Q Somebody else -- who's in her, her chain of command?  
 A There's a director for Defense Information. He's an Army colonel.  
 Q COL Bridges?  
 A Dick Bridges.  
 Q Okay.  
 A And then Dick Bridges works for Mike Doubleday.  
 Q All right. So, what did -- what exactly did Susan Hanson say to you?  
 A Basically, that was it. She said, you know, this might have a Privacy Act implication.  
 Q Okay. And what did you do?  
 A It was after hours, but the first thing I did next day or the next morning was I called the Defense lawyers and I called the Freedom of Information people and the Privacy Act people and got everybody together and said this is what I've done.

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Q Okay. What further dealings did you have with Ms. Hanson?  
 A None.  
 Q None?  
 A None.  
 Q Okay. Did you redraft or do something with the guidance form?  
 A Oh, yeah, when I gave her the guidance form the first time, it actually had the question no. she didn't -- she answered no to the question. And when she said this may have Privacy Act implications, I deleted that part of the question from the guidance because I didn't want that to go out anymore --  
 Q Okay.  
 A -- until we check it out with the lawyers the next day.  
 Q So, did you come back into her office the second time or something to talk to her, like the way you revised the guidance or --  
 A I gave it to her. I don't remember any conversation of any substance.  
 Q Do you remember going in and tearing up a form in front of her?  
 A Tearing up the old one?  
 Q Right.

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process of keeping people informed of what's been said, preparing this Public Affairs guidance, for instance, so that everybody knows, it gets very difficult if you've got 20 people answering questions. So, when we have a high media impact thing, we try to establish a team that'll work on it, and that's what we did here.  
 Q All right. It seems here, though, that the line -- what happened was that the line desk officer, Susan Hanson, sort of knew the rules but the higher ups, you and Mr. Bacon, didn't know the rules, you didn't know the Privacy Act. Is that what happened?  
 A That's that's not an unfair characterization. She was definitely much more familiar handling things like that on a day-to-day basis than we were. But because I was involved in the hiring and knew a lot of the background about when Linda Tripp and Monica Lewinsky and because I had dealt with the White House liaison and had -- you know, I had kind of the working knowledge of this, it was just decided that, that the group would be at that level because we were the people who had the most information about it initially anyway.  
 Q Okay. And you all had a number of meetings with the Department of Defense General Counsel's Office attorneys on the release of their information. Is that

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A The one that said no. Yeah. I don't remember tearing it up. I probably did. It was just, you know, because it's the old kind, this was no longer good, the one that we had revised that didn't have any Privacy Act problem on it was the good one.  
 Q Okay. When you went in the second time she was talking on the phone and you tore up the form in front of her and then walked out. Is that what happened?  
 A I guess -- I mean, I don't, I don't truly remember this, but my recollection was that I brought in the new one, took the old one, tore it up and left.  
 Q Okay. Were you angry at her?  
 A No, absolutely not.  
 Q Although she had essentially said that, you know, this was a violation of, of criminal law?  
 A No, she didn't say that. She said this may have been a Privacy Act implication, and I'm not mad at somebody who brings that to my attention. She brought it to my attention and, and then I took action to, to make sure that everything that could be done was done.  
 Q All right.  
 A No, I was absolutely not mad at her.  
 Q Now, after the story of Monica Lewinsky and Linda Tripp broke on January 21st, within Public

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correct?  
 A Yes, we did.  
 Q Okay. Who, in particular, did you meet with from the General Counsel's Office?  
 A I met with Don Perkal who was the personnel lawyer; Stu Aly; Doug Dworkin a little bit.  
 Q Okay. And just for the record, Dworkin is spelled D-W-O-R --  
 A -- O-R-K-I-N.  
 Q All right. And I take it this is relatively early on in the media crisis, media frenzy, if you will?  
 A Yes.  
 Q That this working group of the four deputies-- Mr. Bacon and the three deputies, plus COL Bridges, I'm not sure what his title is, when you meet with the General Counsel, and what sort of things did you all talk about?  
 A (No verbal response)  
 Q Let me just ask you, did you talk about what information could be released from Linda Tripp's personnel file?  
 A I think it was more general. It was -- we did have some discussions about types of information that could be released, not necessarily from what file

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Affairs you set up a little committee to handle the deluge of media inquiries. Is that correct?  
 A We determined that, you know, only a few people should be involved in answering the questions because it was easier to keep a smaller group informed of all the, all the things that were coming in.  
 Q Okay. Who was in that group?  
 A Ken --  
 Q Ken Bacon?  
 A Ken Bacon, I guess Mike Doubleday, Dick Bridges, me. I think that might have been it.  
 Q Oh, all right. Ken Bacon, you, Mr. Bernath, COL Bridges, and Michael Doubleday?  
 A Correct.  
 Q Okay, and they're the higher ups. Is that fair to say?  
 A Yes.  
 Q Okay. And why is it that just not anyone would have access to disseminating information about Monica? Why was -- why did you create this work group or subcommittee?  
 A Whenever we have a high media impact case, like a plane crash or sexual misconduct or the Marine blood -- or something like that, when you know you're going to be getting a lot of inquiries, you know, the

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or what category. But, but actually, most of the conversations that I was in on with the lawyers were much more to do with the Flexiplace agreement and, and what could be done, you know, how to set up a rating chain, how to set up a job description. My, my contacts with the lawyers were along the personnel lines.  
 Q Okay. Did you ever have any, any discussions with the lawyers about the media inquiries on Monica and Linda?  
 A I, I don't remember specific ones. I'm sure I, I was in on those, but --  
 Q What about --  
 A -- I can't remember specifically.  
 Q -- the other members of the working group?  
 A Was there someone else that met with the lawyers on the issue of what sort of information on Linda and Monica could be released?  
 A I think Dick Bridges had most of the contact with the lawyers on specific information.  
 Q Okay. And from January 21, for the next month, six weeks, there was a feeding frenzy, if you will, of information, reporters trying to get information --  
 A Yes.

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Q -- about Linda and Monica?  
 A Correct.  
 Q It was a big national scandal. Is that correct?  
 A Correct.  
 Q And you're deluged with faxes, FOIA requests, informal demands, all sorts of -- they even want to know who Monica's replacement is?  
 A Correct.  
 Q But after time went on, that feeding frenzy sort of died down. Is that correct?  
 A It, it certainly tapered off, yes.  
 Q So, by March 13th, you're almost two months into the Tripp/Lewinsky story?  
 A Yes.  
 Q Okay. And heretofore, the information you had been releasing about Monica and Linda was pretty routine, like names, pay grade, dates of employment?  
 A No. We had been releasing their, their rating standards. We'd been releasing how they got promoted and when they got step increases. A lot of information about jobs, a lot of information.  
 Q Okay. A lot of information, but my characterization that it was pretty routine, about what their job was, when they were promoted, what their pay

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grade was, nothing about their criminal histories?  
 A We didn't know anything about their criminal histories, so no.  
 Q But --  
 A But, but things related to the job generally, you know, we released, yeah.  
 Q You say you didn't know about criminal histories but, obviously, in, in an employee's personnel file there's all sorts of stuff. There's a 398, a 171. Is that right?  
 A Yes.  
 Q So, there's lots of tidbits of information. Every address you've ever had. Is that correct?  
 A Yes, it's correct, but it's not something that we ever looked at either.  
 Q And you didn't release that sort of information, every address Monica and Linda ever had?  
 A No, but we, we were never asked that information and we probably wouldn't have released it. But, you know, the -- you're trying to tie all the information to a specific form and I'm saying that, that the information was not form specific that we dealt with.  
 Q Okay. But early on in this media frenzy crisis, hadn't the working group set up some sort of

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guidelines, together with the lawyers, very carefully that this is what we can release about Linda, this is what we can release about Monica?  
 A I, I don't know that it was ever that formal, but what we, what we had going during the crisis period that kind of -- that fell through when it was -- when we hit this less intense period that we were talking to lawyers much more about each, each inquiry. As things died down, that lapsed and that's where this difficulty was. The difficulty, in my mind, wasn't that we -- whether or not we released this information; the difficulty was that we didn't follow the procedure that we had been following of checking everything with the lawyer first.  
 Q All right.  
 MR. CRANE: Let's see, it's about 5 after 12. Why don't I open the floor for questions and we take some questions? And then if there is some time before lunch, we can start going over some of the exhibits. Is that --  
 GRAND JUROR: With regard to the question yes or no with regard with past criminal history or arrested, however it was formulated, what is the usual procedure for checking out the answers on a public record? I'm assuming it is all public record. Who

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would be responsible for that? That would be -- or what?  
 WITNESS: You mean for determining the correctness of the answer itself?  
 GRAND JUROR: And routinely looking into the criminal background, if any, of anybody who's making application for a security clearance?  
 WITNESS: I, I'm not an expert on this, but I would imagine it's some sort of combination of the FBI, the Defense Investigative Services, the Defense investigative agency, the, you know, the investigators.  
 GRAND JUROR: So, you were not directly in the loop involving this particular function, to begin with, if I understand you correctly. That was really a function of some other department head. In this case, would you have had any reason for questioning the accuracy of that answer?  
 WITNESS: No, just the opposite. The fact that she had put that down on a sworn statement and then been awarded the clearance, to me, means that the information on there has been validated.  
 GRAND JUROR: My point exactly. Thank you.  
 GRAND JUROR: I have a couple questions, if you'll bear with me, because there's so much we've heard. Okay, on the evening of the 12th when you

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were -- when you came back from your trip and you were speaking with Mr. Bacon, did he indicate that the reporter, Mayer, was seeking information about whether -- how do I want to say this? -- whether she had falsified information or not? Was your conversation with Mr. Bacon about the fact that the reporter was wondering whether her response was true or false?  
 WITNESS: No.  
 GRAND JUROR: Am I making myself clear?  
 WITNESS: I think you are. The, the question was how did she answer a specific question on a specific form.  
 GRAND JUROR: Okay.  
 WITNESS: And, and that was the information we were looking at.  
 GRAND JUROR: Okay. So, from what I'm hearing -- understanding of your testimony is the point where you sort of had a heads-up as to whether her response was true or false was when you talked to the reporter, Mayer, and she said something about well if I have information that this was false, that was when you responded well, if you have that information then we'd investigate it or that would --  
 WITNESS: Yeah, that's essentially true. Let

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me see if I can clarify the sequence. When I talked to Ken on Thursday evening, he said that he had this -- the question and the question was how did she answer this question on the security form. And he indicated that, that she may have some information about this, which is kind of what you know when you're answering the question. No reporter's going to ask a question that, that they don't have a reason for asking and a motivation behind it. It's not our job to, to discover the motivation behind a question.  
 So, then the next morning, whenever I talked to her again and I gave her the answer, she answered no to that question, then she said what if I had information to the contrary.  
 GRAND JUROR: But you didn't have that conversation with Mr. Bacon. He didn't infer that the reporting was saying that she had conversation that she may have answered it to the contrary the night before. You basically were responding to what was her answer?  
 WITNESS: Yes, on that question, that's correct.  
 GRAND JUROR: Okay. Okay, so now, when you fill out the form for the Public Affairs Office and Ms. Hanson says that there may be Privacy implications, was -- did you then have any conversation with

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11 Mr. Bacon that -- after Ms. Hanson had looked at the  
12 typical form that you fill out that there could be,  
13 there could be problems as far as Privacy?

14 WITNESS: Yeah, I did. It's not a form that  
15 we fill out; it was just a typewritten memorandum of  
16 the conversation. And -- and, you know, I showed that to  
17 Mr. Bacon first and then I went back to Susan Hanson  
18 and gave it to her. She said hey, this answer here and  
19 the fact that you're answering this question could have  
20 Privacy implications. So, I went back, I changed the  
21 the Public Affairs guidance, ran that by Mr. Bacon and  
22 said, you know, Susan's raised this as a problem. And  
23 then I took that back to Susan and I guess ripped it  
24 up.

25 GRAND JUROR: But when you showed it to  
Mr. Bacon, he, he didn't say there could be Privacy  
implications?

WITNESS: Neither of us knew any -- had  
given -- had any indication of a Privacy implication  
until Susan --

GRAND JUROR: Until Susan, okay.

WITNESS: -- mentioned it.

GRAND JUROR: You said you write letters the  
next -- and said this is what I've done?

WITNESS: Right.

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GRAND JUROR: What did they say to you?

WITNESS: They said that, that -- I was  
concerned about a couple of things. One is, you know,  
if I did something wrong, I want to know about it. And  
two, I want other people to know about it because, you  
know, it's -- it wasn't my intent to do anything wrong,  
it wasn't my intent to hide anything, to do anything  
wrong.

They said basically that, that this sounded  
like a procedural error, like -- but not a -- I forget  
the word -- not, not a criminal error. That  
procedurally I should have gone to the legal people and  
run this through them. But we talked about then this  
balancing act, too, about, you know, public figures  
have less right to Privacy than private figures. Now,  
you know, it's far beyond my purview to decide who's a  
public figure and who's not, but the, the implication  
in a lot of the papers is that this is an automatic  
illegal thing to do, and I don't believe that's the  
case.

GRAND JUROR: Was there ever a Justice  
Department investigation of the -- an internal  
investigation of this?

WITNESS: The Department of Defense Inspector  
General --

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GRAND JUROR: Defense, I meant, not Justice.

WITNESS: Yes. Yeah, they, they -- that  
investigation is ongoing.

GRAND JUROR: Okay.

GRAND JUROR: I have a couple questions. You  
said that the 12th you arrived back at the office, you  
had been out of town and you arrived back in the office  
about 7:30 at night, and then you went in and talked to  
Mr. Bacon. And was this the only thing you talked  
about?

WITNESS: No. The conversation wasn't that  
long. It was obviously getting late and we both wanted  
to go home. But, you know, I told him about my trip a  
little bit, he told me what's been going on during the  
day and this was kind of a oh -- you know, he had the  
memorandum of the phone call, you know, the please call  
back phone call. And he said oh, by the way, I got  
this call from Jane Mayer, and that conversation.

GRAND JUROR: Now, was it one -- I'm not sure  
how to phrase this. From the mission statement, if you  
will, of the Public Affairs Office, does it say  
anything about relationships with the press?

WITNESS: Yes.

GRAND JUROR: And that would be -- what is  
your mission as far as relations with the press?

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WITNESS: We have principles of information  
that each Secretary of Defense signs, and basically it  
says that we'll release all information -- I can't  
remember the exact wording but, you know, our job, our  
job is to make sure that the American people, through  
the media, it's the best way we have of getting the  
information out. The American people know what's  
happening in the Department of Defense, how we're  
operating, the good, the bad, and everything else.

So, consistent with national security and  
with Privacy and with Freedom of Information, you know,  
and consistent with the law, we release the maximum  
amount of information. Our job is not to hide  
anything. One of the things it specifically says is we  
don't hide information just to prevent embarrassment of  
our officials.

So, we do tend to be proactive in releasing  
information when the media call. If you talk to the  
media, you would find that we have a pretty good  
reputation about doing that. It's not -- we don't do  
it in a reckless way, but we do do it in a proactive  
way. And most of the scandals that you read about,  
Tail Hook included, are scandals that the media found  
out because we released information.

GRAND JUROR: So, because you want to give

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accurate information to the public and the best vehicle  
is the press, does that mean that, in general, you --  
your office is to, when -- as far as possible, maintain  
good relations with the press, cooperate with the  
press? I mean, obviously, in a way you've just said  
that --

WITNESS: Somewhat.

GRAND JUROR: -- but -- so, if somebody calls  
up and says I want one question answered and, and would  
it be part of the overall philosophy that okay, this is  
a fairly quick thing to respond to, let's get it done  
and, and cooperate with the press and, and maintain our  
good working relationship so that we can get accurate  
information out?

WITNESS: Yeah, I think that's fair. It's  
not to say that we answer all questions. I don't want  
to leave you with that --

GRAND JUROR: Right.

WITNESS: You know, there are times when we  
have to say that's, you know, that's classified or I  
can't talk about that. But generally, yes, you're,  
you're correct.

GRAND JUROR: But so, the overall tone of  
your office is not to be antagonistic with the press?  
WITNESS: That's right.

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GRAND JUROR: This is a very picky question,  
I guess. Mr. Crane talked about the 171 and questions  
on that about arrest or conviction. I don't know if  
you'll remember this, I'm trying to remember it myself,  
but let me ask do you recall whether it says on the  
171, as opposed to the 338, have you been arrested  
versus have you been convicted, of any felony?

WITNESS: I don't recall the exact wording on  
the 171.

GRAND JUROR: So that the --

WITNESS: The questions were similar but they  
were not exact.

GRAND JUROR: Okay. That's -- Mr. Crane, do  
you have a 171 that we could --

MR. CRANE: Right. I have about 50 exhibits,  
and I can't pull it out right now because I can't  
remember where it is, but we'll look at all of those.

GRAND JUROR: Okay. Thank you.

GRAND JUROR: May I ask one question? Am I  
correct in assuming, number one, that the criminal  
record of an individual making application for either  
employment federally with a 171 or for a security  
clearance with a 398, the checking of that information,  
would that not be a matter of public record off of  
various police records? I don't know, that's why I'm

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asking the question.

WITNESS: I don't know either. I don't know what records they check to verify the information on --

GRAND JUROR: I was curious whether, in and of itself, asking a question relating to something which would presumably be public record, if that would be a violation of either Privacy or whatever else might be brought into this picture. I mean, out of context, by itself, it would seem a rather innocuous question.

WITNESS: Well, out of context, the question was innocuous and that's why it didn't trigger anything.

BY MR. CRANE:

Q Are you familiar -- this is a very technical point -- exemption number 6 from Freedom of Information Act?

A If you'd read it to me, maybe. I certainly don't know all the exemptions.

Q It's the, the one dealing with personnel files and personal information. I actually don't have it right there in front of me.

A I'm generally familiar that there is an exemption. None of the exemptions are absolute. All of them are subject to some test.

Q Okay. So, you believe that when the -- when

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we say the exemption, that means under the Freedom of Information Act you can release this unless it's exempt, and then there are six to nine -- how many is it? Nine exemptions?

A Nine or so, yeah. But the exemptions don't mean you can't release them, it just means that you've got to go through another step before you release them, if they're releaseable. Somebody has to make a determination.

Q Okay. Now, earlier you had actually written some regulations on the Freedom of Information Act, hadn't you?

A I had?

Q Yeah. Some implementing regulations?

A When?

Q In your past.

A I, I guess you're talking about back at Fort Riley, back in '79 -- is that when you're talking about?

Q I don't remember exactly --

A I certainly didn't write any -- I mean, I didn't write any implementing instructions when I was up in Public Affairs here.

Q No.

A When the Freedom of Information Act came into being, I oversaw the writing of the implementation for

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Fort Riley.

Q And you actually drafted them, didn't you?

A I don't recall if I drafted them or -- but I was in the, in the supervisory chain of those who did certainly.

Q Okay. And this was right after FOIA was passed in -- whenever it was, '72 or '74?

A Right.

Q And it was sort of a new law then?

A Right.

Q And you were sort of on the cutting edge of writing the regulations that would give guidance to line people as to how to apply --

A That's correct, yeah.

Q So, basically, had been kind of dealing with this information for over 20 years?

A No, that's not accurate.

Q No?

A I dealt with it for a short period of time, then didn't deal with it again for a long, long time afterwards.

Q Okay. But exemption number 6, which we can go into in some detail later, says that there is no discretion in its release and the regulation -- if I represent that to you, does that sound familiar, that

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exemption 6 dealing with personnel information has no discretion?

A I don't know that.

Q You don't know that? And that there is no balancing? If I represent to you that the regs, DOD Regulation 5400.7-R says if the information qualifies as exemption 6 information, there is no discretion in its release, is that something you've never heard of?

A I don't -- that does not strike me as familiar, and I'd want to see the thing in the, in the whole, not just one quote out of it.

Q Okay.

MR. CRANE: Were there some other questions?

GRAND JUROR: The lady asked wasn't that criminal record public information, that anybody could have gotten that information to use for their purpose.

WITNESS: You mean whether or not she actually had a conviction?

GRAND JUROR: Right, right.

WITNESS: I, I believe that Ms. Mayer got it in some way. I don't know how she got it but --

GRAND JUROR: It was, in turn, investigated before she could have clearance. Shouldn't the FBI or -- have gotten that information, too?

WITNESS: I would think so. I would think

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so. But --

GRAND JUROR: So, something happened why she got a clearance, unless it was purged from her record or something like that.

WITNESS: I just -- I don't have enough information to answer that.

GRAND JUROR: From, from March 12th, from that evening until the time that the information was given to Jane, was anything said about that this information was going to be released in an article? To you, was anything said to you from anyone?

WITNESS: I certainly knew that it was going to be used in an article that she was writing. Certainly.

GRAND JUROR: But you didn't know -- you thought it was going to be no or --

WITNESS: Again, whenever a media person asks a question, they have an answer in their mind and you know they do. You know that they've got an ulterior -- they're either checking to confirm a fact or they're checking to, to confirm that something is wrong. So, I can't say that, you know, I didn't know that there was something in the back of her mind. But that's not really a factor that we use in whether we're going to answer a question or not.

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GRAND JUROR: Did she tell you after you said that the answer was no -- you said, you said that she said if, Did she ever come out and say what it was she had --

WITNESS: No.

GRAND JUROR: -- to you?

WITNESS: When I, when I learned the extent of that was when she faxed out -- when The New Yorker actually faxed out articles to the media and to us, I read the article.

GRAND JUROR: That's when you first --

GRAND JUROR: When you talk to someone, as this woman, and ask --

COURT REPORTER: I'm sorry, can you -- ma'am, I can't -- excuse me, I'm not getting your question on the record. Can you speak up a little?

GRAND JUROR: Oh, sure. I'm sorry.

COURT REPORTER: That's all right. I couldn't hear you.

GRAND JUROR: When you talk to someone like

Ms. Mayer, can you ask her if you can speak off the

cuff and if you can find out what's in her mind? Do

you do that with the press people?

WITNESS: Can I speak, can I speak to her off the record and, and get more information?

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GRAND JUROR: Yeah.

WITNESS: We do that occasionally. Mainly, we do that when the question is kind of unspecific and we're trying to figure out what is it that you're really asking, so that we can get you with the right person to answer the question.

GRAND JUROR: So, you do do that on -- basis--

WITNESS: Yes.

GRAND JUROR: -- to protect your people, so to speak?

WITNESS: To what?

GRAND JUROR: To protect your people.

WITNESS: No, no, no, that's not the, the reason we do it. We do it because sometimes a reporter will call in with a question and you can tell by the question that they're not sure what it is that they're asking. And so, they want to talk to X Assistant Secretary of Defense and you'll be thinking, wait, that question doesn't pertain to that person. What is it you really want to know? And we'll start asking them questions just to help narrow down what the field is so that we can get them with the right person to answer the question. We don't -- but we, we don't get in the habit of asking them what they're writing just so that

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we can determine whether or not to answer the question. You see the distinction that I'm making?

GRAND JUROR: I think so, but that would be a good safeguard.

WITNESS: Well, but it would -- they have a First Amendment right to ask these questions and it's not our right to weigh, weigh the legitimacy of the question.

GRAND JUROR: Just get everything out on the table, though.

WITNESS: But they don't --

GRAND JUROR: There are certain --

GRAND JUROR: That's not the way our government works.

WITNESS: They have protections against that.

GRAND JUROR: When you said you only learned of the article's context when it was faxed to you, how soon after that -- when did that --

WITNESS: That was late Friday, probably around 6 or 7:00 Friday night.

GRAND JUROR: So, it came right back?

WITNESS: Yes. The way a lot of the magazines do things, when they have what they consider to be a hot story, is they'll fax it to other members of the media so that the media -- this article wasn't

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going to be published in The New Yorker till Monday, but over the weekend it generated a lot of media coverage of it, so that when it hit the newsstand on Monday there was a bigger market for it.

GRAND JUROR: I just want to go back to this gentleman's question which was like a hypothetical. When he asked -- when you told Jane the answer and if she had asked would you fax me the paper, you said you don't know.

WITNESS: Well, he said would I fax part of the paper.

GRAND JUROR: Right.

WITNESS: I certainly would not have faxed the form. You know, the question pertained to one fact and, and everything else on that form did not pertain to it, so there would be no reason to give her the rest of that information. Certainly, I would never have released all the information because, as he said, some of it is clearly sensitive and clearly would have would have triggered a Privacy Act thought. This particular question did not trigger that. That's the distinction here.

MR. CRANE: Let me just jump in. We can go on as long as we want, but it's 12:30. We'll come back and certainly have many more questions after lunch.

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Let me just jump in with one. I'll read you a provision of the Freedom of Information Act, Mr. Bernath. It says, "This section does not apply to matters that are," and I'll jump down to number 6, "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Let me just hand you that, and I've put a star and circled that portion.

GRAND JUROR: Excuse me, Mr. Crane. When you said this section, do you mean this section of the Privacy Act?

WITNESS: No, this is the Freedom of Information Act. And again, I am not an expert, but my, my understanding is that this says the information that cannot be released under the Freedom of Information Act. The Privacy Act is different and, and -- so, when, when, when this excludes something, then the provisions of the Privacy Act then kick in and you go under the, the Privacy Act rules then.

BY MR. CRANE:

Q Okay.

A And again, I'm not an expert but this just says that you don't release it under the Freedom of Information. It doesn't say you don't release it under

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the Privacy.

Q Okay. But you do understand that -- did you understand that information you were releasing was a personnel -- it's not a medical file, I guess, but a personnel and similar file?

A I did not -- see, I did not release any file. I did not release a file. I released an answer to one question on one, on one form from a file. I did not release a form or a file.

Q Okay. But did you consider it to be a -- the information you were reading over the phone, not faxing or giving in hard copy, but did you consider it to be personnel or -- a personnel file or a similar file?

A See, that's the point. I didn't consider it to be anything other than a piece of information. I did not consider it to be Privacy Act or Freedom of Information Act. And whether I should have at the time, that's a different question. The fact is I didn't. And none of us did.

Q Okay.

GRAND JUROR: There's a further provision that you read about when this would be harmful. Finish the sentence.

MR. CRANE: Yeah, the sentence -- again, I'll read the whole Act -- or the whole sentence again.

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"The following are not subject to" -- the section does not apply, meaning you do not disclose "Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Now, I think that the Juror's -- Grand Juror's question was regardless of what sort of file this came from, security, personnel, similar, isn't it kind of an invasion of Linda Tripp's, you know, personal privacy to dig around about what she reported about arrests?

GRAND JUROR: Actually, that was not my question. My question was did he feel since it did not seem to be an invasion of personal privacy --

MR. CRANE: Okay, that's the question.

GRAND JUROR: That was the question.

GRAND JUROR: Do you have a Privacy Act?

MR. CRANE: Yes.

GRAND JUROR: So, could we compare the two?

MR. CRANE: Sure.

GRAND JUROR: See, you're picking that Act and try to apply it to what he have done. So, we need more proof of the two Acts and see.

MR. CRANE: Yeah, we can, we can look at all of them.

GRAND JUROR: Will we have -- before lunch,



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will we have the opportunity to ask you some questions with Mr. Bernath out of the room?

MR. CRANE: If you want to. That's up to you -- as to how we want to do the lunch break. It's now going on 12:35. What do you all want to do?

GRAND JUROR: I think, I think we should break now for lunch. There are some people who --

GRAND JUROR: Hungry.

GRAND JUROR: -- who are hungry and there are some people who have medical reasons to eat on a regular basis.

MR. CRANE: Okay. So, we break --

GRAND JUROR: But that's my feeling.

GRAND JUROR: No, we want to eat.

GRAND JUROR: I think, I think if we don't break, we could go on and on and on. So, I'd like to break now. And --

GRAND JUROR: Ask your questions before the beginning -- well, before we begin in the afternoon, will we have an opportunity to ask you a couple of questions without the witness present?

GRAND JUROR: How can we pick up that thread, though?

GRAND JUROR: Well, I -- no, that's okay, I can hang onto it. I don't know if you can, but --

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write it down.

MR. PAGE: Can we agree on a time to come back and reserve a section for questions before Mr. Bernath continues?

GRAND JUROR: I, I would rather take 45 minutes and then an hour after we get back take a 10-minute break, instead of at -- because I think we are all interested in moving this along. What is the consensus? Forty-five minutes?

GRAND JUROR: Sure, I agree.

GRAND JUROR: Sounds good. Be back at 20 after.

GRAND JUROR: Twenty after? Okay. And we will talk to Mr. Crane first, and then we will resume asking Mr. Bernath questions.

MR. CRANE: Okay.

(Whereupon, at 12:35 p.m., the Grand Jury recessed and subsequently reconvened at 3:15 p.m.)

BY MR. CRANE:

Q It's now about 3:15. Sorry about the delay. We had a number of other issues. We will try to wrap up in about a half an hour.

Let me show you what I've labeled as Grand Jury Exhibit Number 1. Take a look at this.

MR. CRANE: And I would represent to the

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members of the Grand Jury that is the 398 form pertaining to Ms. Tripp. And I'll ask Mr. Bernath to look at that.

BY MR. CRANE:

Q And is that, in fact, the form?

A Looks like it, yes.

Q Okay. And that's the form that you obtained on March 13th. Is that correct?

A Yes, I believe so.

Q Okay. Now, which is -- if you would look on what's going to be page 3, I believe, answer 20 or 21, could you read the answer as -- the one that you read to the reporter?

A Can I ask a question first?

Q Certainly.

A I don't know if this is germane but it, I think, kind of goes back to the original rights and everything. I'm not exactly sure, given the scope of what you're looking at, which is possible misconduct by the White House -- as you know and I think the Grand Jury knows, I've been deposed for six hours by Larry Klayman --

Q Right.

A -- under oath. I went through all this. The Department of Defense Inspector General has deposed me

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under oath for many hours and that investigation is to determine whether all this was right or wrong.

Q Right.

A It seems -- you know, my logic says the scope of what we're doing here is was the White House involved and was there any misconduct. I'm not sure why this is germane to, to this --

Q Well, yeah, I don't know that I can answer that. The scope of the Grand Jury investigation is, you know, to look at a number of possible violations. So that -- at this point, that's all I can say.

A Investigations going into this.

Q Right. Now, what was the portion of 21(a) that was released?

A The portion of it is the, is the part that says no.

Q Okay. What is the, the line?

A "Have you ever been arrested, charged, cited or held by federal, state or other law enforcement or juvenile authorities, regardless of whether the citation was dropped or dismissed or you were found not guilty, including all courts martial or nonjudicial punishment while in the military service? You may exclude minor traffic violations for which a fine or

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forfeiture of \$100 or less was imposed."

Q Okay. Now, did you read it to Ms. Mayer that way or did she read it to you or did she refer to 21(a)? How did you both get on the same wave length since she doesn't have the form directly in front of her?

A She -- her question was how did she answer the question on the form. When I asked her -- when I told her the answer was no, she, she had me read it to her. She wanted to make sure of the wording.

Q Just the way -- the same way that I have here? Read the entire question: Have you ever been arrested, charged --

A Yes.

Q Okay. Now, in a subsequent call from -- I don't recall his name, Retica or something, who is the fact checker from The New Yorker, this was later in the afternoon, he called me up and -- I guess this is the way they verify their information. He said Mayer has given me this information, this information, and he wanted to verify it. I can't -- somehow there is a discrepancy.

Q How so?

A Oh, okay. I know what the discrepancy was. When I read -- I think when I read the form the first

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time, the question -- I'm not sure. Here's what happened. I don't know how it happened. One time when I read her the question it was off of a different version of this form, an older version -- or a newer version, rather.

Q You mean one that Linda Tripp herself had filled out or simply a blank form?

A I think it might have been a blank form. I don't remember exactly, but it was a different form. And when I actually was -- when Retica had read it back to me, it was different from this wording and I gave him this wording. I can't remember the sequence of which one, but at that time we noticed -- I noticed that it was a different question, in a different form.

Q Okay. Are you talking about the answer on the 171 form?

A No, I'm talking about this question here.

Q About prior criminal involvement?

A Yeah. On a newer form the question was worded slightly differently, and I think that's what I gave Jane Mayer the first time. So, when he read it back and I was looking at this form, the wording was different. I gave him the wording that was on this form.

Q Okay. Now, was that a form actually signed

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1 by Ms. Tripp, the way this one is, or was it --  
 2 A I don't recall whether it was off of a blank  
 3 form that I had or, or it might have been even one that  
 4 I had on myself. I just can't remember, but, but there  
 5 was that discrepancy when Retica called back and I  
 6 realized that he didn't have the wording and it was off  
 7 of this particular form.  
 8 Q Okay. I would represent to you I'm unaware of  
 9 any other security clearance/background form signed by  
 10 Ms. Tripp.  
 11 A Yeah. And that's what I'm saying. I don't  
 12 think that this was the one. I think it might have  
 13 been one that I had on myself or it might have been a  
 14 blank one.  
 15 Q Okay. So, you were just reading her the  
 16 language about how the question about prior arrests --  
 17 A That's right.  
 18 Q -- had been -- how it, how it's phrased in  
 19 the form?  
 20 A Right.  
 21 Q And then when you eventually found this form,  
 22 you told her that Ms. Tripp's answer in 21(a) was no?  
 23 A No.  
 24 Q Another question, again, I may have asked  
 25 this, but it's getting late in the day. Did Ms. Mayer

1 consideration of the Privacy Act.  
 2 Q Okay.  
 3 A And there is an investigation going on now to  
 4 see whether that was correct or not. But I can't argue  
 5 the legal aspects of this.  
 6 Q All right. That's fine, you don't have to.  
 7 Let me just show you one page of the Freedom  
 8 of Information Act which I'm going to label Exhibit 3.  
 9 I'm going to label the front page of it 3. And I would  
 10 draw your attention -- take your time to read as much  
 11 of it as you need to. It's page 730 here, the portion  
 12 that I was most interested in. Take a look at Exhibit  
 13 Number 3, if you can.  
 14 GRAND JUROR: What is Exhibit 3 a copy of?  
 15 MR. CRANE: It is a copy of the Freedom of  
 16 Information Act, and I'll read --  
 17 BY MR. CRANE:  
 18 Q All right, Mr. Bernath, we'll read aloud the  
 19 provision. Let me know when you've had enough time,  
 20 Mr. Bernath.  
 21 A Okay.  
 22 Q Okay. The provision, for the members of the  
 23 Grand Jury, says, "This section does not apply to  
 24 matters," and I'm jumping down to number 6, exemption  
 25 number 6, "personnel and medical files and similar

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1 refer to the question by number? Did she say to you  
 2 Mr. Bernath, I would like to know the answer to 21(a)  
 3 on Form 398? How did they know to go to this form?  
 4 A I don't believe she ever asked by number. I  
 5 don't believe she did. And, and I don't recall ever  
 6 hearing her say a form number; she said security form.  
 7 Q Okay. Now, let me show you a portion of the  
 8 Act. You've already, to some extent, given your  
 9 explanation about balancing, the balancing interests.  
 10 And I'm going to label this as Exhibit 2. Just one  
 11 second. This is, I'll represent to you, a copy of the  
 12 Privacy Act and I'm going to show you a portion of it.  
 13 MR. PAGE: Can you pass this around?  
 14 MR. CRANE: Yes, we can pass around Exhibit  
 15 Number 1 to the Grand Jurors.  
 16 BY MR. CRANE:  
 17 Q Okay, I'm going to show you what I've now  
 18 labeled as Exhibit 2, the Privacy Act. You can read  
 19 the entire thing, but the portion that I wanted to ask  
 20 you about is subsection (b) here on page 737. Take as  
 21 much time as you need to, looking at Government Exhibit  
 22 Number 2.  
 23 Okay, my question is a portion on page 737 I  
 24 underlined. I'll read it just for the record since the  
 25 Grand Jurors don't have it in front of them. "No

1 files, the disclosure of which would constitute a  
 2 clearly unwarranted invasion of personal privacy."  
 3 Now, my question is while you were the appellate  
 4 authority for FOIA at the Department of Defense, did  
 5 you ever have occasion to grant or deny FOIA appeals  
 6 dealing with provision number 6?  
 7 A I think there's one other portion that you  
 8 may want to read, and I'm not sure how it applies but  
 9 it's relevant. It says, "Any reasonably segregable  
 10 portion of a record shall be provided to any person  
 11 requesting such record after a deletion of the portions  
 12 which are exempt under this subsection. The amount of  
 13 information deleted shall be indicated on the released  
 14 portion of the record." It goes on to explain how, how  
 15 to delete -- how to do that.  
 16 Q Okay.  
 17 A So, this was a segregable part of it.  
 18 Once again, I would say that there are people  
 19 who deal with the Freedom of Information Act on a day-  
 20 to-day basis. There is a body of law that goes around,  
 21 there are lawyers devoted to it. There is a body of  
 22 law on the Privacy Act that is very difficult to  
 23 define. There is no -- I do not believe that there is  
 24 anything that says X is always private and never shall  
 25 be released. That's, that's what a court determines.

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1 agency shall disclose any record which is contained in  
 2 the system of records by any means of communication to  
 3 any person or to another agency, except pursuant to a  
 4 written request by or with the prior written consent of  
 5 the individual to whom the record pertains, unless such  
 6 disclosure would be" and then we have exceptions 1  
 7 through 12.  
 8 Now, did you -- were you familiar with this  
 9 portion of the law that a system of records can't be  
 10 disclosed? This portion of the Privacy Act or was this  
 11 all kind of news to you?  
 12 A I certainly had not read this prior to doing  
 13 the release and, and was not -- I was not conversant  
 14 with the details. However, I would say that I did not  
 15 release a record or a system of records. I released  
 16 specific information from a record.  
 17 Q Okay.  
 18 A So, no record was released.  
 19 Q All right. What about -- what are your  
 20 thoughts on when the statute says "by any means of  
 21 communication"? Wouldn't that include reading  
 22 something over the telephone?  
 23 A I go back to my original statement. I didn't  
 24 read this. I don't claim to be an expert. The fact is  
 25 we released this -- these pieces of information without

1 Q But my question to you --  
 2 A And so, yes, I dealt with, with cases that--  
 3 of information that had to be released. And when those  
 4 cases come up, we look at the specific parts of the,  
 5 the act that are germane. I'm not, I'm not saying that  
 6 I'm not responsible but what I'm looking at is the  
 7 staff work of the staff officers who present the case  
 8 and who are making the recommendation as to whether  
 9 something should be released or not released.  
 10 Q Okay. But my question was while you were the  
 11 appellate authority, did you grant or deny appeals  
 12 based on this subsection number 6? I sort of lost your  
 13 answer in the -- in what you said.  
 14 A Is the question have I released information  
 15 from personal files?  
 16 Q The question was while you were the appellate  
 17 authority did you grant or deny appeals of FOIA denials  
 18 based on exemption number 6?  
 19 A Which is personnel/medical files?  
 20 Q Right.  
 21 A We had, we had FOIA requests, and I can't  
 22 cite the cases but they would be pertaining to medical  
 23 files on, on personnel killed in, in combat or killed  
 24 in accidents, and we certainly did release some  
 25 information from those files about --

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Q The causes of the death or injury?  
 A Yes. And, and if there were any other factors leading to the death.  
 Q Okay.  
 A So, there are cases where this has been done.  
 Q All right. Let me retrieve that exhibit from you and show you now Exhibit 4. This is, I would represent to you, a portion of a security clearance form that was sent to Ms. Tripp, that I would represent to you is the SF 86, Standard Form 86, Questionnaire for National Security Positions, which is -- my understanding, it is the successor form to 398.  
 A I've never seen this form before.  
 Q Okay. Can you look at the answer -- excuse me, the question about criminal history where it asks about prior arrests, et cetera? I wanted to go back to one kind of small detail we were talking about earlier.  
 A The part that says, "Have you ever been charged with or convicted of any offenses?" That's alcohol, drugs.  
 Q Yeah. Is that the -- was a question like that that you read the reporter the first time?  
 A No.  
 Q Was it like any of the other subparts A, B, C, D, E or F? Like, for example --

[1] Grand Jury have any questions as to what we've done so far, the exhibits that we're passing around and so forth?  
 Mr. Page?  
 BY MR. PAGE:  
 Q Mr. Bernath, when you saw the letter, how was it distributed within your place of work?  
 A This letter from Brad Weigman?  
 Q Yes, sir. Let me try to help you. Do you have an in-box there or a bunch of individual boxes for the employees --  
 A No.  
 Q -- in your department?  
 A No. It may have been in a read file with other information that we get every morning.  
 Q For you and Mr. Bacon and, and others in similar positions?  
 A Right.  
 Q Well, what's your routine practice with your read file?  
 A I look through it. I can't say I memorize it or, you know, it's -- but, you know, I'm generally aware of what's in it.  
 Q But after you read, do you toss or do you keep or it's at your discretion?

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A I mean, it was, it was the same type of question: "Have you ever been convicted of a felony or felony offense, but it wasn't off of this form and it had more provisions to it. But I have never seen this form before."  
 Q Number F is, just for the members of the Grand Jury. "In the last 7 years, have you been arrested or charged with or convicted of any offenses not listed in responses to A, B, C, D or E above. Leave out traffic fines of less than \$150 unless the violation was alcohol and drug related." But again, your answer is it wasn't any of these forms, it was --  
 A This form had nothing to do with the case.  
 Q Okay. Now, let me just draw one attention. On these security forms, there is -- I call a stamp. I don't know if it's a stamp or it's printed on there, but it's a warning or an -- I don't know what it is. It says, "Privacy Act information." Are, are you used to seeing that on Privacy Act forms or was that the first time you'd ever seen --  
 A I don't know that I've seen this stamp before. Was it on the form that's being passed around? Or was it on the 398?  
 Q It was not stamped on there. I'll represent it wasn't. There was a separate --

[1] A Well, it's a read file that goes -- it's circulated, so --  
 Q You check off, you're saying, and then you pass on?  
 A Right.  
 Q Oh, I see. And you get it near in time to the date on the letter?  
 A I mean, it's -- I don't know. Sometimes we don't get the letter here -- to the date on the letter.  
 Q So, I would assume that the read file is put together based on the information that comes in -- on what we get today.  
 Q And is it your testimony for the Grand Jury that you do have a recollection of reading the letter?  
 A Yes, I, I have the recollection of reading the letter. How, how specifically I read it, I don't recall. I'm guessing that it was a read file.  
 Q Can you tell the members of the Grand Jury what your thoughts or impressions were when you read the letter?  
 A Well, I don't know that I had any thoughts about it. It was, it was just another letter. There's a lot of -- you know, another piece of information that had come down.  
 MR. PAGE: Where's our letter? Could you

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A So, there was nothing on that form that said, you now, this is Privacy Act.  
 Q Right. Let me show you Exhibit Number 5, a letter from the Office of the Independent Counsel to the Department of Defense, Office of General Counsel. And we'll take a minute for the witness to read the exhibit.  
 Okay. Were you, were you aware that the Office of the Independent Counsel had asked Department of Defense, through your lawyers, the general counsel, not to release information that was subject to subpoena?  
 A Yes, I was in the early days of this. By the time this happened, it, it didn't connect up.  
 Q So, you -- had you just sort of forgotten about the subpoena or what -- I'm not quite sure what you mean when you say it didn't connect up.  
 A I mean that form -- that letter went around, and it's one of I don't know how many thousands of things that I've seen since then and before then. So, again, if it's early days, I probably was aware of this. By April, by the time this happened, it -- I never had a complete knowledge of everything that had been under subpoena and that letter did not come up.  
 MR. CRANE: All right, do the members of the

[1] tell me the date?  
 GRAND JUROR: March 3rd.  
 BY MR. PAGE:  
 Q Right, that letter's dated March 3rd.  
 Mr. Bernath. Now, the, the Lewinsky/Tripp matter had been in the news since on or about January 21st, 1998, correct?  
 A Correct.  
 Q So that's approximately 10 or so days, I believe, plus the 28 in February, so that would give you about 38 days from the letter at least to the date of -- I'm sorry, from when the matter was publicized until the date of the letter. And then we'll add on a couple days after that, give or take some, for it to get delivered. In, in those 30 days, were you aware that the Office of Independent Counsel, Starr, was in existence and was looking into the Lewinsky matter as a result of all the publicity that was in the paper and on the TV?  
 A Sure.  
 Q So, does anything click in your head when you get the letter in relation to that this is a big newsworthy event? See what I'm saying?  
 A I see what you're saying, but it takes everything out of context. It takes everything and

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puts it in a context that maybe you want to hear but that's not the context that reality exists in.

Q Well, please put it in context.  
A The context is that (a) we didn't release any information that -- any records that had been subpoenaed. We responded to a query. It was, it was not a significant event in our lives. You know, in retrospect, this has been the most significant event of my life. You know, it's taken it over and it's caused, you know, us to have lawyers and it's caused us to miss work, it's -- and it's caused extreme emotional difficulties for my family. So, in retrospect, that 15 minutes has changed our lives. But at the time that it happened, it was just another media query. It was just another little piece of information that we were releasing. It was a piece of information that did not look significant on the surface. It was a piece of information that under, under her sworn testimony said no, I didn't. And, and then we moved on with our lives and we answered other questions about other things that were going on, you know, about military engagements, about war in, in Bosnia. We got on with our lives. It was just 15 or 20 minutes of something that happened. That's the perspective. It wasn't that we were looking at this under a microscope a few weeks later for any

9:15 a.m., Elaine Sciolino," spelled S-C-I-O-L-I-N-O, first bullet, "story to run tomorrow." Second bullet, "Leaving with quote from her year book about pet peeve being a certain fair-weather friend." And what does that refer to?

A Elaine Sciolino was New York Times and she called up and asked some question which I didn't record and I don't remember, but it was about -- it was -- she was going a -- at that time a lot of people were doing backgrounders on Linda Tripp. I forget what was in the news -- but as, as they start to become newsworthy people want to do stories on them. And that's what she told me. She said she was going to lead with this story, that she found something from the year book, did I know anything about it. I said no, I never heard of her year book.

Q When you wrote in here, the next entry sequentially, "9:25 a.m. to 9:30, security has only a few records, all of which have been subpoenaed by the Office of the Independent Counsel," did that give you any cause that oh, this is stuff that the Grand Jury's looking into; oh, you know, maybe --

A None of the records -- (a) it didn't give me enough pause and (b) none of the records that, that we talk about there were the ones that got released.

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intent or purpose. That's the context.

Q All right, I understand --  
A And, and the thing -- and, you know, the thing that we should have done, we wish we would have done is that we wish we would have run this by a lawyer, but we didn't.

BY MR. CRANE:  
Q Okay, let me just jump in here. Now, you said it was a, you know, a momentary thing that took 15 or 20 minutes. I'm looking at your day planner and it looks to me that you were working on this from at least 8:30 in the morning on the morning of March 13th, 8, 9, 10, 11, 12:00. One o'clock there's an entry that the facts checker for The New Yorker calls, and that does not go into what, whatever transpired on the 12th. So, to me, it looks like you all were spending more than the 15 or 20 minutes.

A No, because you can't tell on there, and the date planner doesn't accurately describe time frames because it doesn't do it down to the minutes. But --

Q Well, it says, for example, 8:55 a.m. to 9:05 a.m., Jane Mayer.

A That's because I can't do a one, a one-minute thing on the day timer. It doesn't record small amount of times like that. So, so, I give it a designation.

Q What are you saying? That the 398 had not been subpoenaed?

A No, the 398 wasn't part of that group of records that I looked at to --

Q Okay. You mean that because it was not physically at the Pentagon at the time you all first gathered up documents and sent them over to us?

A No, it was just a statement. He said, he said these records here that we've looked at -- I forget what the first sentence was, but they'd all been subpoenaed and it was a separate incident.

Q So, but how -- my question is you actually thought that her 398 had not been subpoenaed?

A No, I just never thought about it, whether it was or wasn't.

Q Okay. Well, I don't understand why you wrote it then in your -- you took enough time to write in your day planner, actually, to type in or however you do it, that --

A I was just, I was just taking notes on the phone with whoever. Was it Doc Cooke?

Q Yes, Doc Cooke.

A He, he, he said it, I wrote it down. I didn't think about it.

Q Okay. So, he was the one that told you that

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But, in fact, the first phone call to Doc Cooke about less than a minute. The reviewing the records, it took me longer to walk down the hall than it did to look at the records. The Jane Mayer phone call was two minutes long. None of these were long things. I was doing other things in between.

Q Let me just read a quote: "9:25 a.m. to 9:30 a.m., security has only a few Tripp records, all of which have been subpoenaed by the Office of the Independent Counsel." Did you write that?

A Um-hum. That was, that was based on some information that -- I think from Doc. Is that where it comes from?

Q Right. And you wrote that on March 13th in your day planner?

A Um-hum.

Q Okay. Let me ask you about another one. Okay, in your conversation with Jane Mayer at 8:55 a.m. to 9:05 a.m., "Told her I was working on answer to her question and Ken has made clear it's a priority."

Okay, you wrote that. Is that correct?

A Correct. Do you want me to explain again what that priority was?

Q I think you've explained that several times. Let me go on to some other questions. "9 a.m. to

all the records had been subpoenaed?

A That the records that we had looked at specifically had been --

Q Okay. And then from 10, 10 a.m. to 10:25, the entry is "Steve O'Toole, director of Personnel Security." "Reviewed Tripp's security file" is the next entry. "Security clearance," et cetera. So, I take it you had a conversation with him as well?

A That was actually I walked down to his area. That's why it took so long.

Q Okay.

MR. PAGE: Tell us, Mr. Bernath, what files you're talking about that you had looked at?

WITNESS: These -- at Steve O'Toole's?

MR. PAGE: No, the earlier entry with Doc.

WITNESS: It was the, it was the -- I hadn't looked at any of them. Doc had looked at records and said that -- and, and I think that was mainly the ones that we want, but I don't know exactly which records those were.

MR. PAGE: What else did he have at the time or should he have had?

WITNESS: Again, I don't know. The records that he looked at, which I think was the 171 -- which, by the way, the 171 had been released to the media.

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MR. PAGE: Is that at the Pentagon or --  
 WITNESS: Yes.  
 MR. PAGE: -- is that what -- is it DDS or --  
 had sent over?  
 WITNESS: No, no, this is before DDS.  
 MR. PAGE: Okay. So, this is exclusively  
 then at this juncture --  
 WITNESS: That's right.  
 MR. PAGE: -- the --  
 WITNESS: That's right, that's the first --  
 event --  
 MR. PAGE: Physically --  
 WITNESS: -- before -- that's right.  
 MR. PAGE: I'm sorry, we talked over each  
 other, but would you say that again?  
 WITNESS: I'm saying that this was -- this  
 information was before Steve O'Toole and it was before  
 Les Blake.  
 MR. PAGE: And you hadn't physically seen  
 this stuff. You're taking down what Doc Cooke tells  
 you --  
 WITNESS: That's correct.  
 MR. PAGE: -- he has seen?  
 WITNESS: Yes.  
 MR. PAGE: Which you understand to be an

Q Okay. And this is immediately after about  
 five entries concerning Linda Tripp, her personnel  
 file.  
 A Um-hum.  
 Q What, what all did you talk about?  
 A I don't know. Is that one that's blanked out  
 or --  
 Q No. Do you recall?  
 A I can't recall every conversation. If you  
 can give me a hint, I can tell you --  
 Q Okay. It's RE phone call from Mr. Zaccanini.  
 A Oh, okay.  
 Q Tripp's lawyer?  
 A Yeah.  
 Q Okay. What -- how does that tie in?  
 A It doesn't tie into, to this at all. It ties  
 into her Flexiplace assignment.  
 Q All right. And there's something about, I'm  
 quoting, "Told Don I received call from Zaccanini  
 regarding Linda's new duties. Agreed that if Linda  
 wanted to talk to me about the detail of the job she  
 should do so directly with me. If there were legal  
 questions, this should be lawyer to lawyer. He will  
 call Zaccanini."  
 A Right.

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SF171?  
 WITNESS: Yes.  
 MR. PAGE: And is it fair to say that if the  
 398 had been at the Pentagon you wouldn't have had to  
 call -- is it DDS?  
 WITNESS: DSS.  
 MR. PAGE: I'm sorry, DSS. Is that accurate?  
 WITNESS: I'm not sure if I understand the  
 question.  
 MR. PAGE: Okay. Well, if Cooke is saying  
 here are these files and this is -- these are the files  
 that are under subpoena, okay, and if you had to go  
 ahead and call DSS to get the contents of the 398 faxed  
 to you, is it fair to -- later on, is it -- to make the  
 disclosure, is it fair to say then that the 398 was not  
 one of the documents that was at the Pentagon at the  
 time you had this conversation with Doc Cooke?  
 WITNESS: It was not in the files that Doc  
 Cooke had. To this day, I don't know where DSS is, but  
 it is a Defense agency. It's the Defense -- but I  
 don't know if they're located in the Pentagon or not.  
 MR. PAGE: Have you had other occasions in  
 other, you know, situations to know that the only kind  
 of security information kept at the Pentagon for this  
 kind of person would be the -- just the SF 171?

Q Okay. So, did you refer to Mr. Perkal the,  
 the legal questions involving the release of her --  
 A No, this conversation had nothing to do with  
 the release of information. It had only to do with the  
 Flexiplace assignment.  
 Q Okay. But from 8:55 until 10:25, you had  
 been dealing with this 398 release issue. It didn't  
 come up in any way?  
 A No.  
 Q And you mention in your own notes that the  
 documents were under subpoena.  
 A The, the first documents that, that Doc Cooke  
 had looked at, yes.  
 Q And -- but it never dawned on you to ask him  
 oh, by the way, a reporter wants the form Linda Tripp  
 filled out to get her top secret security clearance?  
 A No. I had been working with Don on the  
 Flexiplace agreement and that's what I talked to him  
 about.  
 Q Okay. Then, from 12:30 to 12:50 it says,  
 "Martha Brandt, RE Tripp, Newsweek." Does that mean  
 she's a reporter at Newsweek?  
 A Yes.  
 Q And you talked to her about Linda Tripp?  
 A I guess so. Again, if you'll read it, I can

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WITNESS: For what kind of person?  
 MR. PAGE: Tripp.  
 WITNESS: No, that's not true.  
 MR. PAGE: All right, what else is kept there  
 routinely?  
 WITNESS: She, she has a personnel file  
 there.  
 MR. PAGE: Okay, but, but security-wise,  
 beyond the SF 171?  
 WITNESS: Maybe I'm out of my league here. I  
 don't know what files are kept in addition to that. I  
 don't know. Probably -- I don't know what other files  
 would be kept. I'm not an investigator.  
 BY MR. CRANE:  
 Q Okay, continuing on your day book planner  
 from March 13th, there's an entry at 11:20 to 11:30,  
 Don Perkal. Who's Don Perkal?  
 A He is a lawyer from the General Counsel's  
 Office.  
 Q Okay. It was my understanding that I thought  
 you hadn't talked to any lawyers. I'm confused.  
 A Why?  
 Q In your day planner it says Don Perkal and  
 he's a lawyer from the General Counsel's Office?  
 A Um-hum.

tell you what it was about, but I don't remember.  
 Q "Details of current job in response to  
 Tripp's charge that we are downgrading her."  
 A Yes.  
 Q Okay.  
 MR. PAGE: Mr. Bernath, in all of the media  
 requests for information about Tripp that you handled,  
 did you ever deny a representative of the media any of  
 their requests?  
 WITNESS: Yes. Maybe not denied, but I  
 never, I never told anybody the information that I told  
 you all today about her problems the first year or any  
 kind of personnel problems.  
 MR. PAGE: Can you give us -- do you remember  
 any specific examples where you said whatever your  
 standard line is, no comment or can't disclose --  
 WITNESS: With, with Brandt I never -- she  
 asked the exact same types of questions about what type  
 of employee was she and I gave her a fairly innocuous  
 answer.  
 MR. PAGE: Do you recall what it was?  
 WITNESS: It's probably in there.  
 MR. PAGE: Any other examples you can recall  
 where you said --  
 WITNESS: Yeah.

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MR. PAGE: -- deny --  
 WITNESS: Yes.  
 MR. PAGE: What is your standard response anyway? How do you handle reporters who have an angle but you're -- you know that you can't say anything?  
 WITNESS: I don't speculate, so -- and I don't -- and, and I try not to, you know, I try to speak to the facts only and, and release factual information. I try not to get into areas that are gray. I try not to speculate on, on reasons why did she release the, the tapes, did she hate Monica? I stay away from questions like that.  
 MR. PAGE: All right, but how do you stay away? Do you say I don't speculate or --  
 WITNESS: Yeah. Yeah.  
 MR. PAGE: Do you say no --  
 WITNESS: I say I don't want to comment on that.  
 MR. PAGE: All right, so no comment, I don't speculate. What other standard lines do you use?  
 WITNESS: I don't know, just, just comments like that. I mean, I don't have a dozen favorite comments that I use.  
 MR. PAGE: Does --  
 MR. CRANE: Let me jump in a minute.

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it's, it's certainly been -- ever since this incident, it's been foremost in my mind. And, and on obvious Privacy Act issues. I s. On, on this one, as I've said about a dozen times, it didn't. That's all I can say on it.  
 BY MR. CRANE:  
 Q Okay let's see if we have just a few more things to go over. Okay, let me read from your day book. From 1 to 2 p.m. on March 13th under the, the entry "Aaron Retica" spelled R-E-T-I-C-A, "fact checker for New Yorker." Second bullet: "Went over fax. Based on copy of Tripp's 398 faxed to me, determined that wording of questions and warnings were different on the version of the form she signed. Made corrections." Okay, we discussed this before, I know. I'm still not sure -- it appears that the person on the other end of the phone has a form in front of them.  
 A No.  
 Q No?  
 A No. The person on the other end of the phone, Aaron Retica, had the information that I gave to Jane Mayer earlier and was reading it back to me to make sure that it was correct.  
 Q Okay. And were they just re-reading it wrong, like not getting the words right or --

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BY MR. CRANE:  
 Q On the issue of speculation, I mean, it's my impression, and you correct me, that when you say to a reporter if this is true she will have to be investigated, in my, you know, understanding --  
 A Can I see the 398? Is that out still?  
 GRAND JUROR: Is this it?  
 BY MR. CRANE:  
 Q Okay, let me finish my question. You can take time to look at the exhibit.  
 A Okay.  
 Q But you're saying to a reporter if true she will have to be investigated.  
 A If I --  
 Q Let me finish my question. If true, she will have to be investigated. At the time you said that to Ms. Mayer, I understand that it was your testimony that you didn't know that that was true. You didn't know, in fact, that she had been arrested when she was 19 years old --  
 A That's correct.  
 Q -- in 1969. So, you were speculating?  
 A No. I'm saying that if, if there's a violation, then it would have to be investigated.  
 That's not speculation, that's fact. And in fact, it

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A No. And again, I'm not sure where -- which form I read to Jane Mayer earlier, but the -- it was a different version of the form, different date on the, on the version number so the, the wording was slightly different. So, when I looked at it again when he was reading it back to me, I said oh, no, that's different wording. So, I gave him the exact wording off of the form.  
 Q Okay. Let me ask you about an entry you made on March 16th, about three days -- the 13th was a Friday, Friday the 13th. So, we had 14, 15, Monday, March 16th, a telephone call with Jane Mayer at 2:45 to 2:55 p.m. The second bullet is "Received a called from Tucker Carlson of the Weekly Standard questioning DOD's release of information from Tripp's security form."  
 Now, that is -- is this correct, that Jane Mayer is relating to her that she received a call from Tucker Carlson?  
 A Yes.  
 Q Okay. The second -- or the next bullet is "Mayer said Carlson is a rabid anti-Clintonite." What was the relevance -- why was she giving you this information?  
 A I don't know.  
 Q Why did you write it down?

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was investigated.  
 Q But --  
 A It says here "I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both." Now, that's, that's the penalty. So, if, if something -- and they, they've told us that from the time, you know, I came into the military when you filled this out, you know, if anything goes wrong, if you, if you lie, this'll be investigated. That's -- to me, that's not speculation, that's a statement of fact.  
 MR. PAGE: In your other --  
 WITNESS: I'm not speculating whether she's guilty and I'm not speculating how the investigation will come out, I'm just -- I'm stating that there would be an investigation. That's the procedure.  
 MR. CRANE: Okay.  
 MR. PAGE: In your other refusals to give the media information about Tripp, what, what is guiding you when you do that, when you say no comment or I refuse to speculate?  
 WITNESS: What's guiding me is to stick to factual information.  
 MR. PAGE: Is the Privacy Act guiding you?  
 WITNESS: It is when, when it kicks in. And

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A I, I don't know always why I write certain things down and why I didn't write other things down. It just -- I'm writing it down. It's the, the, the bane or the blessing of the new computer age where you can just type things in and there they are.  
 Q The final bullet for that time period is "Wants to know how to respond. Doesn't want to cause me any problems." What is that referring to?  
 A She -- when, when he called her, she started to get concerned about, you know, whether I was going to be in trouble for this. I thought that was kind of generous of her since I never met her before, but I told her do what you have to do, you know, tell him what you -- I don't know how reporters tell other reporters things, but do what you want to do.  
 Q All right. Since this incident occurred, have you had some contacts with Mr. Bacon? Have you had, excuse me, discussions with Mr. Bacon about releasing this information?  
 A Yes.  
 Q And what has he told you?  
 A He told me that he, he, like I, wished that we had talked to a lawyer before we released it.  
 Q The other way, as I understand it, is that you can ask for the person's permission to release

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information. For example, in the case of someone dying, quite often you may contact next of kin or something and -- talking about some sort of graphic injuries to a pilot, that sort of thing. Was there any point where you tried to call Ms. Tripp or her lawyer to --

A No.

Q Well, why not?

A Because we didn't look at this information in light of the Privacy Act. We looked at it in light of the multitude of other questions and answers that we had given out.

Q Did you have some conversations with Mr. Bob Tyrer about this incident?

A I did.

Q And what did he, what did he tell you?

A He was unhappy, he was irate that we had released the information. I believe he said it was a stupid release. And his main concern was that Secretary Cohen had not been advised about it.

GRAND JUROR: Excuse me.

MR. CRANE: Yes, other questions at this point?

GRAND JUROR: Who was the -- Mr. -- who was--

## CERTIFICATE OF COURT REPORTER AND TRANSCRIBER

I, BARBARA LORD, the reporter for the United States Attorney's Office, do hereby certify that the witness whose testimony appears in the foregoing pages was first duly sworn by the Foreperson or the Deputy Foreperson of the Grand Jury when a full quorum of the Grand Jury was present; that the testimony of said witness was taken by me, and thereafter, reduced to typewritten form; and that the transcript is a true record of the testimony given by said witness.

Barbara Lord,  
Official Court Reporter

Lou Deosaran,  
Official Transcriber

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WITNESS: Tyrer?

GRAND JUROR: Yes. What was his position?

WITNESS: He's a special assistant to Secretary of Defense Cohen.

BY MR. CRANE:

Q Now, was his -- was your moving to another position in any way related -- did Mr. Tyrer say that he wanted to move you to a different position?

A No. The move had been in progress for more than a year. We were just waiting for the person I replaced to formally announce his retirement.

Q And since this event has happened, have you-- or shortly after it happened, did you call Ms. Tripp to tell her that you had made a mistake?

A No.

MR. CRANE: That's all the questions I have right now. Any other questions from the members of the Grand Jury? Yes, ma'am?

GRAND JUROR: Why did you not call Ms. Tripp? Because you said you were very friendly with her at that point.

WITNESS: Well, by the time -- ever since January 21st, the only conversations that most of us had with Linda Tripp were through a lawyer. Relations after that -- it was very difficult to talk to her.

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GRAND JUROR: I understand.

GRAND JUROR: I have a question for Mr. Page actually.

MR. CRANE: Yeah, we'll do that after the witness --

GRAND JUROR: I don't think it's legal, though.

MR. CRANE: Yeah, but if it's -- even if it's factual, we have to do it after the witness has left. I'm sorry.

Any other questions of the witness? I think what we will do is just ask him to step out for a moment.

And then if there are no further questions, in a couple minutes we can excuse you for the day, Mr. Bernath.

WITNESS: Excuse me for the --

MR. CRANE: Well, you can leave the courthouse for the day.

May he step outside?

FOREPERSON: Yes. Thank you.

(Whereupon, the witness was excused at 4:10 p.m.)

