

that such material accidentally or intentionally could be leaked before the Court has an opportunity fully to consider at that time whether to seal any or all of the discovery after trial, and to enter an appropriate order.

During the November 19 conference call, the Court also expressed doubt as to whether it could seal civil discovery materials in order to protect the privacy of parties or witnesses. We wish to direct the Court's attention to certain sources which would support sealing discovery materials at any time based on privacy interests:

1. Rule 26(c)(6) by its express terms authorizes the Court to "make any order which justice requires to protect a party or person from annoyance, embarrassment [or] oppression," including "that the discovery or disclosure not be had" or "that a deposition, after being sealed, be opened only by order of the court." Fed. R. Civ. P. 26(c)(1), (6) (emphasis added). This language has been held to encompass protective orders issued to preserve the privacy of parties and third-parties. Seattle Times v. Rinehart, 1467 U.S. 20, 35 n.21 (1984).

2. Seattle Times held that a protective order may issue to seal civil discovery materials on the grounds of the parties' and witnesses' interest in privacy, or to prevent humiliation and undue embarrassment. Id. at 35-36. The Supreme Court there observed that civil discovery provides the opportunity "for

litigants to obtain -- incidentally or purposefully -- information that not only is irrelevant but if publicly released could be damaging to reputation and privacy," and held that such an order serves the government's "substantial interest in preventing this sort of abuse of its processes." Id. at 35 (emphasis added). A protective order issued with good cause prior to trial may in appropriate circumstances also be extended to maintain the confidentiality of civil discovery materials after trial has concluded. See Tavoulreas v. The Washington Post Co., 111 F.R.D. 653 (D.D.C. 1986) (issuing, upon a showing of good cause, a post-trial protective order for all pre-trial discovery materials that were not used at trial).

3. In the present case, plaintiff insists on dragging through the mud a number of people who are innocent bystanders to this litigation, and probing intimate details of their private lives, simply because they have been identified by the tabloid press as colleagues or friends of President Clinton. We continue to believe that the Court should exercise its authority under Rule 26(c) to preclude depositions such as this, which invade third parties' privacy, altogether. This is all the more justified because these depositions are unlikely to lead to relevant, admissible evidence, and because there is substantial doubt that any protective order could safeguard the confidentiality of this type of discovery in this unusually high-profile, highly-politi-

cized case. However, if the Court does permit these depositions to go forward, sealing pre-trial discovery materials on grounds of privacy, as well as on the basis of assuring an impartial jury, would minimize the embarrassment, annoyance and humiliation to which these witnesses are being subjected both by being mentioned in connection with the litigation and by being deposed themselves.

Respectfully submitted,

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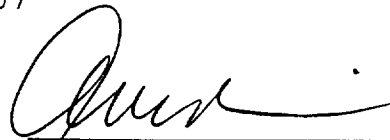
Dated: November 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 1997, a true and correct copy of President Clinton's Request With Respect To Discovery Materials Subject To Seal was served via Federal Express and first class United States Mail postage pre-paid to:

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