

to include: "authority to investigate . . . whether Monica Lewinsky or others suborned perjury, obstructed justice, [or] intimidated witnesses . . . in the civil case *Jones v. Clinton*." Order (D.C. Cir., Spec. Div., Jan. 16, 1998). (Exhibit A).

In light of the entry of the Fed. R. Civ. P. 26(c) protective order in this matter, several parties and witnesses have indicated to the OIC uncertainty as to their legal authority to respond to the OIC's investigative inquiries.

The OIC respectfully submits that it cannot discharge its jurisdictional mandate without a modification of the protective order to permit it access to the material described in the first paragraph of this motion. This is necessary because as part of its investigation, the OIC must, for example, determine the veracity of depositions, affidavits and other sworn filings before this Court. Further, the OIC needs access to an unredacted docket sheet in order to determine whether it will need to examine any other material beyond that specifically identified above.

Though no legal authority appears directly on point, ample legal authority exists to establish that parties must, for example, respond to a lawful grand jury subpoena notwithstanding the existence of a protective order entered in a civil suit. *See In re: Grand Jury Subpoena Served on Meserve, Mumper & Hughes*, 62 F.3d 1222 (9th Cir. 1995) (enforcing federal grand jury subpoena to law firm seeking sealed discovery material); *In re: Grand Jury Proceedings*, 995 F.2d 1013 (11th Cir. 1993) (enforcing federal grand jury subpoena for court reporter's notes, notwithstanding Rule 26(c) protective order); *In re: Grand Jury Subpoena*, 836 F.2d 1468 (4th Cir. 1988) (enforcing grand jury subpoena seeking depositions in pending civil case notwithstanding order that depositions "shall not be made available to any state or federal investigating agency or authority"). Without in any way seeking to denigrate the significance of

the value of protective orders in facilitating the resolution of private disputes, we respectfully submit that the cloak of a protective order must, in the end, give way to the need for evidence in criminal matters. *See In re: Grand Jury Subpoena*, 995 F.2d at 1015 ("the essential and historic purpose served by the grand jury outweighs the utility served by Rule 26(c) protective orders"). Allowing "protective orders to be enforced at the expense of grand jury subpoenas would yield little benefit, at great cost." *In re: Grand Jury Subpoena*, 62 F.3d at 1226.¹

The OIC emphasizes that if the Court grants this motion, the OIC is obliged to keep confidential any non-public material to which it gains access. The OIC's obligation of confidentiality springs from the nature of its mandate pursuant to the Special Division's January 16, 1998 Order.

In sum, the Court should grant the instant motion. The Special Division specifically identified the "civil case *Jones v. Clinton*," and authorized the OIC to investigate whether, among other things, Monica Lewinsky or others suborned perjury or intimidated witnesses concerning this case. Simply put, the OIC cannot conduct its investigation without the freedom to, among other things, examine the statements of President Clinton, Monica Lewinsky and

¹ The many arguments supporting this analysis are convincingly summarized in *In re: Grand Jury Subpoena*, 62 F.3d at 1223-27.

Linda Tripp. The OIC also requests that this motion, any responses thereto and the Court's order hereon be filed under seal.

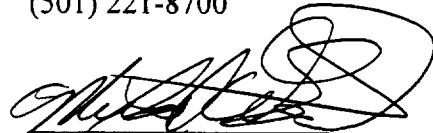
Dated: January 27, 1998

Respectfully submitted,

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By:



Michael W. Emmick
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Certificate of Service

I certify that a copy of the foregoing "MOTION OF THE UNITED STATES FOR LIMITED INTERVENTION AND FOR MODIFICATION OF OCTOBER 30, 1997 PROTECTIVE ORDER" was served upon

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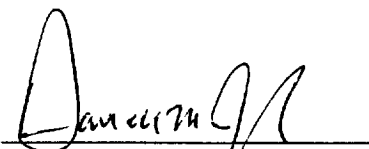
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via facsimile and federal express, next business day delivery service, on this the 27TH day of January, 1998.



Darrell M. Joseph
Associate Independent Counsel

attorneys, or others concerning the civil case Jones v. Clinton.

(3) The Independent Counsel shall have jurisdiction and authority to investigate related violations of federal criminal law, other than a Class B or C misdemeanor or infraction, including any person or entity who has engaged in unlawful conspiracy or who has aided or abetted any federal offense, as necessary to resolve the matter described above.

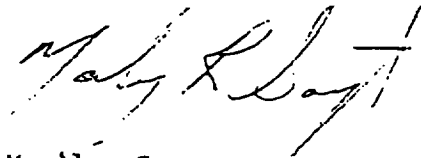
(4) The Independent Counsel shall have jurisdiction and authority to investigate crimes, such as any violation of 28 U.S.C. § 1826, any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, arising out of his investigation of the matter described above.

(5) The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994.

It is further ORDERED that this document and its contents be and remain UNDER SEAL absent further Order of this Court.

This the 16th day of January, 1998.

Per Curiam
For the Court:



Marilyn Sargent
Chief Deputy Clerk