

FEB 09 1998

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES,
:
Plaintiff,
:
v.
:
WILLIAM JEFFERSON CLINTON
:
and
:
DANNY FERGUSON,
:
Defendants. :

CIVIL ACTION
NO. LR-C-94-290

Judge Susan Webber Wright
(UNDER SEAL)

OPPOSITION TO SUBPOENA OF THE OFFICE OF INDEPENDENT COUNSEL

President Clinton, through the undersigned counsel, hereby submits this opposition to the subpoena of the Office of Independent Counsel ("OIC") dated February 4, 1998. See Exhibit 1 hereto. For the reasons set forth below, we respectfully submit that, in certain respects, the subpoena is overbroad and should be circumscribed.

Specifically, we object to OIC's request for a copy of the videotape version of President Clinton's deposition. The OIC already has the written transcript of the President's deposition, and we have no objection to the OIC's viewing the videotape in the Courthouse in Little Rock or other secure location. We do object to providing the OIC with its own copy of the videotape, however, because of the substantial continuing leaks from the grand jury in violation of Rule 6(e) of the Federal Rules of

Criminal Procedure. Since January 21, 1998, the day the OIC's expanded investigation first became public knowledge, there have been egregious abuses of the grand jury secrecy rules which we believe fully demonstrate why the OIC cannot be trusted to possess a copy of the videotape deposition of the President of the United States.

Indeed, just today, the Independent Counsel held a press conference at which he acknowledged the possibility of leaks from his office. See Exhibit 2 hereto (full transcript not yet available). This press conference followed news reports today in the Washington Post, the New York Times and other media outlets detailing the purported substance of information and testimony allegedly provided to the OIC and the grand jury by Betty Currie, the President's personal secretary. See, e.g., Exhibit 3 hereto, Washington Post, Feb. 6, 1998, at 1; Exhibit 4 hereto, the New York Times, Feb. 6, 1998, at 1-3. Other egregious examples of leaks of grand jury information are fully catalogued in another document that will be provided to the Court under separate cover.

Thus, the abuse of the grand jury process has been substantial. A similar leak of the videotape deposition of the President would severely impede this Court's ability to seat a fair and impartial jury. At the same time, any incremental advantage to the OIC of obtaining its own copy of the videotape version of the President's deposition is very small. The OIC's investigation was expanded, in part, for the purpose of reviewing

certain portions of the record in Jones v. Clinton for alleged inconsistent statements. See Exhibit A to OIC's Motion for Limited Intervention and Modification of October 30, 1997 Protective Order, attached hereto at Exhibit 5. Because the OIC already has full access to the President's testimony, however, there is no need for the OIC to obtain the videotape version of that testimony to fulfill its investigatory purpose.

In addition, the videotape depicts the sitting President of the United States testifying as a defendant in a civil lawsuit for the first time in the history of the United States. Pending the disposition of summary judgment or other events in this litigation, that deposition might never be seen publicly. To put a copy of it into the hands of this OIC, however, which repeatedly has demonstrated beyond speculation a total disregard for the rules governing grand jury secrecy, is to guarantee that some or all of the videotape will be made public. In these circumstances, given the balance of considerations, especially where the OIC does not need its own copy of the videotape version of the President's deposition to fulfill its investigatory purpose, they should not be permitted to obtain one.

If the Court nonetheless believes it has no discretion to deny OIC's subpoena demand for its own copy of the videotape, we respectfully submit that a copy should be provided to the OIC only under the most stringent conditions, taking every precaution to avoid leaks, and to ensure that if a leak were to occur, the OIC would be held accountable. Given the OIC's gross abuses of

the grand jury rules to date, we believe the President is entitled to, at a minimum, the following protections by Order of the Court.

The Court should order that: (1) the OIC shall be provided with one copy of the original videotape that was made by the President's videographer; (2) the Court shall provide the original videotape to Robert Dunn, 2701 Kavanaugh, Suite 204, Little Rock, Arkansas 72205, who shall make one copy of the videotape on Monday, February 9, 1998 under Court supervision; (3) the copy of the videotape for the OIC shall be made in such a fashion that it cannot be duplicated; (4) Michael Emmick, or another associate independent counsel, who must be specifically identified in advance in writing to the parties and Judge Wright, shall personally appear at Judge Wright's chambers on the morning of Tuesday, February 10, 1998 to obtain the OIC's copy of the videotape; (5) Mr. Emmick, or the other associate independent counsel designated pursuant to subpart 4 above, personally shall return the OIC's copy of the videotape to the Court when the OIC no longer has any need for it; (6) the OIC shall not make or attempt to make any sound or visual copy of the videotape whatsoever; (7) the videotape shall remain in the personal custody of Mr. Emmick, or the other associate independent counsel designated pursuant to subpart 4 above; (8) Mr. Emmick, or the other associate independent counsel designated pursuant to subpart 4 above, shall maintain personal custody of the videotape by keeping it in a secure facility comparable to that used for classified docu-

ments and accessible only to that person; (9) Mr. Emmick, or the other associate independent counsel designated pursuant to subpart 4 above, shall maintain a record of each and every time he removes the videotape from the secure facility, including that person's name and signature, the time and date of its removal and return, the name and signature of the person returning the videotape, the purpose for which it was removed, and the identity of each and every person who viewed any portion of the videotape; (10) Mr. Emmick, or the other associate independent counsel designated pursuant to subpart 4 above, shall agree to be bound by this Order and to observe all of the conditions herein; and (11) upon return of the videotape, Mr. Emmick, or the other associate independent counsel designated pursuant to subpart 4 above, shall provide a written certification to the Court and the parties, that he and the OIC have complied with the Order.

In light of the egregious leaks of grand jury information, the above conditions are essential to provide some assurance that the videotape of the President's deposition will not be leaked. These conditions also would ensure that, if any leaks were to occur, the OIC, through Mr. Emmick or the other designated associate independent counsel, would be held accountable.

Respectfully submitted,

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Dated: Washington, D.C.
February 6, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February 1998,
a true and correct copy of the Opposition to Subpoena of the
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Exhibit 1