

2015

Tab 41

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1 BY MR. HEATON:

2 Q Mr. Ginsburg, tell the Court what it is, precisely, that
3 Ms. Lewinsky did in reliance on the agreement that was reached
4 on February 2nd, 1998.

5 A What she did?

6 Q Yeah. The reference is that she has acted in reliance --
7 or suffered in reliance on that agreement which you testified
8 occurred on the evening of February 2nd, including suffering
9 with respect to her rights under the Fourth, Fifth and Sixth
10 Amendments. I would like for you to tell the Court what it is
11 that she has suffered since that agreement went into effect.

12 A An egregious invasion of her right of privacy and the
13 requirement that she expose to you and to everyone working with
14 you the most personal details of everything and anything that
15 she did in a consensual sexual act. I can't think, sir, of
16 anything more egregious and more damaging to one's psyche and
17 ego and constitutional rights than that.

18 Q Explain to the Court, sir, how it is that her rights under
19 the Fifth and Sixth amendments have been harmed as a result of
20 what you just described.

21 A I do not want to go into an interpretation of the Fifth and
22 Sixth Amendments except to say that when one has to admit
23 certain things that they shouldn't ordinarily have to admit,
24 they may be giving up their right to confront the people who
25 are accusing them, they may be giving up the right to self-

1 incrimination, they may be giving up the right to procedural
2 and substantive due process, and in so doing, because this may
3 be used in a grand jury proceeding and other proceedings, they
4 may well be giving up their right to counsel under the Sixth
5 Amendment.

6 I mean, we can argue and debate that, but I think the
7 Fourth, Fifth, Sixth and Fourteenth Amendments are very much
8 involved in the proffer process.

9 Q If I understand you correctly, sir, you're talking about
10 things that you perceive could possibly happen, as opposed to
11 things that have happened. Is that right, sir?

12 A No, sir, I am not. The Fourth Amendment guarantees us an
13 absolute right to security in our person, in our property, and
14 our papers. And I think the Fourth, Fifth, and Fourteenth
15 Amendments, in particular, embody the right of privacy. And
16 she, in reliance on this process and this agreement, has
17 essentially given up what I consider to be her right of
18 privacy, which I consider to be the most valuable right we
19 have.

20 Q And it's on that basis that you have concluded that she has
21 suffered in reliance on this agreement that occurred on
22 February 2nd. Is that right?

23 A I think she has suffered greatly based on her reliance on
24 your word, yes. You, plural, meaning the Office of Independent
25 Counsel.

1 Q And this would be our oral word as you've conveyed it
2 today, spoken by Mr. Udolf, is that right? At the conclusion
3 of a two-week process.

4 A Your oral word as confirmed in an agreement integrating
5 your oral word into a writing.

6 Q Mr. Ginsburg, you made various statements to the press, did
7 you not, at or about the time of this purported agreement?

8 THE COURT: Let me just say this. He may or he may
9 not have. And unless it goes to the heart of what we're
10 discussing here, just move on to the issue. In other words,
11 did you state to someone, if you have such information.

12 BY MR. HEATON:

13 Q Isn't it true, Mr. Ginsburg, that you told various members
14 of the press over the period February 3rd and 4th that you were
15 waiting on Mr. Starr and/or the Office of Independent Counsel
16 to get back to you in terms of whether you had an agreement?

17 A Which date, sir?

18 Q February 3rd and 4th.

19 A That was part of our agreement. Yes.

20 THE COURT: Part of whose agreement?

21 THE WITNESS: The Independent Counsel's Office, Your
22 Honor, told me that they did not want me to tell the press that
23 we had an agreement. They wanted me to stay away from the
24 press with regard to the agreement that we had struck on the
25 evening of February the 2nd. "Do not say anything to the

1 press," they said, "please, about this agreement that we've
2 struck." So when asked questions about it, I said, "We have no
3 agreement at this time." And I stayed away from the issue of
4 the entering into the agreement.

5 THE COURT: They, who? In other words, who in the
6 Office of Independent Counsel told you that?

7 THE WITNESS: Mr. Udolf or Mr. Emmick. I cannot
8 remember between the two who said to me, please, keep this away
9 from the press. My best memory, Your Honor, is Mr. Udolf
10 said -- it may even have been Mr. Bittman; I simply cannot
11 recall the exact person -- said, "You have been talking a lot
12 to the press. Please do not tell the press about this immunity
13 agreement." I said, "You have my word on that. I won't."

14 So when the press made inquiries about this -- and
15 they were around my home, they were around the place I was
16 staying, they were everywhere I went, airports, everywhere. I
17 said to them, "We have no agreement." And I denied the
18 existence of the agreement in order to protect the sanctity of
19 what I had promised. There is no question I did that.

20 BY MR. HEATON:

21 Q Mr. Ginsburg, just so we're clear here, it's your testimony
22 that based on a statement made by Mr. Emmick or Mr. Udolf, or
23 both of them, not to reveal the existence of an immunity
24 agreement, you then stated to various reporters, including, for
25 example, A.P., things to the effect of "We are waiting for

1 Starr to call us. We are not begging for immunity. We would
2 like immunity. If he chooses to grant us immunity, that is
3 fine."

4 A I did everything to keep my word, including deflect all
5 questions of any kind about the immunity agreement.

6 Q Including lie about what the situation was; is that
7 correct?

8 A I don't consider that a lie, sir. I consider that a
9 necessary function of keeping my agreement. I also consider it
10 part of the process.

11 Q You consider it a necessary part of your function to say
12 something other than what is true to protect the secrecy of
13 this agreement. Is that right?

14 A Yes, sir, I did at the time.

15 Q And is it the same standard that you apply in general with
16 respect to the representation of your client? It's consistent
17 with your function, when necessary, to say something other than
18 what is the truth?

19 A I will not tell a fib under perjury, sir -- penalty of
20 perjury. But I will do what is necessary to protect my client
21 at all times as a vigorous advocate.

22 Q Including lie.

23 A Sir, I never lie. I do what is necessary to protect my
24 client. You have to define the word "lie" for me before I can
25 answer that.

