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Office of the Independent Counsel

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April 17, 1998

VIA HAND DELIVERY

Eric H. Holder, Jr., Esq.
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, Northwest
Room 4111
Washington, DC 20530

Dear Mr. Holder:

I write to express my profound concerns with respect to the deposition of Secret Service Officer Robert Almasy, which took place on April 16, 1998, in our offices. What occurred was, in brief, regrettable and grossly unprofessional. The effect of what happened yesterday was to hinder and impede this investigation.

As you know, we have for some time now been negotiating with the Department and the Secret Service over the testimony of Secret Service personnel. Since the beginning of this investigation, we have received -- and continue to receive -- numerous and credible reports that Secret Service officers and agents have evidence relevant to this investigation. In an effort to accommodate the concerns of the Department and the Secret Service, we have generally been questioning Secret Service personnel in a deposition format in our offices, subject to standard grand jury procedures such as the absence of defense counsel, Rule 6(e) secrecy, and so forth. Yesterday's episode involved unprofessional conduct that was utterly beyond the pale.

Officer Almasy's deposition, which we were unable to finish on April 16, consumed a total of six hours and twenty minutes. Of that time, two hours and fifteen minutes was spent on the record. The remainder -- four hours and five minutes -- was used for consultations between Officer Almasy, the Department of Justice attorney, and the Secret Service attorneys who were present outside the deposition room. In a number of instances, Officer Almasy halted the deposition to consult with his

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attorneys for periods of thirty minutes and longer. Virtually every question that was asked of Officer Almasy caused him to leave the deposition room and engage in such consultations. This was the single most disruptive appearance by any witness in any phase of our investigation.

As I mentioned previously, we have been conducting these depositions with the understanding that the Secret Service employees being questioned are to be treated as grand jury witnesses. According to the Department of Justice's Federal Grand Jury Practice Manual, a grand jury witness's consultations with his attorneys "should not be allowed to interfere unduly with the grand jury proceedings and may be appropriately regulated. . . . Although the parameters of the witness's right to consult with counsel outside the grand jury room are unclear, prosecutors and courts generally permit the witness consultation of reasonable length and frequency." The Manual goes on to state that

[u]nreasonable consultations should not be permitted to obstruct orderly questioning of the witness. A witness who insists upon leaving the grand jury room frequently to consult with an attorney at length may be taken to the court for an order directing the witness to discontinue such a practice and, if necessary, to establish ground rules for such consultations.

Officer Almasy's lengthy and repeated consultations with his attorneys were flatly inconsistent with the Department's policies.

Furthermore, I am even more concerned that, by all appearances, the Secret Service and Department of Justice attorneys that attended Officer Almasy's deposition may have attempted to use it as a discovery device with regard to our investigation. This and other practices we observed in connection with Officer Almasy's deposition are what we would expect to see of criminal defense attorneys who wish to conceal relevant evidence or otherwise stonewall a grand jury investigation. They are most emphatically not what we expected of career attorneys employed by the Department of Justice.

Let me be frank: We have bent over backwards to accommodate the Secret Service's concerns in our questioning of its personnel. We have conducted many weeks of negotiations. We have refrained from calling active duty Secret Service personnel before the grand jury. Each of these actions was taken in good faith. But yesterday, at the same time that you were publicly emphasizing in your press briefing that the Department of Justice

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is not "impeding the investigation," we were being blocked from obtaining important evidence.

What happened yesterday was, in my view, an effort by sworn officials of the Executive Branch to hinder this investigation. After careful consideration, we have regretfully concluded that it will henceforth be necessary for us to compel the testimony of Secret Service personnel before the grand jury. I ask that you take appropriate steps to ensure that our investigation is not impeded further.

Sincerely,

A handwritten signature in black ink, appearing to read "Jackie M. Bennett, Jr.", written in a cursive style.

Jackie M. Bennett, Jr.
Deputy Independent Counsel

cc: Gary G. Grindler, Esq.
Deputy Assistant Attorney General
Civil Division

