

**Tab 77**





**OFFICE OF THE ATTORNEY GENERAL  
FACSIMILE TRANSMITTAL COVER SHEET**

**DATE:** AUGUST / 24 / 1998

**TO:** JACKIE BENNETT

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**NUMBER OF PAGES INCLUDING COVER SHEET** 8

**COMMENTS:**

DRAFT - August 19, 1998 [5:00 p.m.]

This letter sets forth the terms of agreement between the Department of Justice (Department), the Secret Service, and the Office of Independent Counsel (OIC) regarding the OIC's desire to obtain information from Secret Service personnel that is relevant to its Monica Lewinsky-related investigation. This agreement is designed to facilitate the OIC's information-gathering process and, at the same time, to ensure that the Department and the Secret Service are discharging their law enforcement responsibilities in an appropriate manner.

I. Obtaining Information from Secret Service Personnel Not Previously Examined by the OIC

1. The OIC agrees to limit the questioning of additional Secret Service personnel by seeking information only from those agents and officers who served in a protective capacity in the vicinity of the Oval Office on six specified dates, during specified times. The Secret Service has identified 87 current and 2 retired agents and officers who served in such a capacity.<sup>1</sup> The OIC agrees not to seek information from agents and officers who served in a protective capacity on different dates, unless, in the future, it receives new information that provides probable cause to believe that evidence of a crime would be obtained by increasing the number of dates above six or speaking to additional Secret Service employees about events that occurred on dates other than the original six specified dates. The OIC agrees that prior to increasing the number of dates above six or speaking to additional Secret Service employees about events that occurred on dates other than the original six specified dates, the OIC will provide its basis for doing so, consistent with its obligations under Rule 6(e) of the Federal Rules of Criminal Procedure, to the Attorney General and Director Merletti, who, along with Kenneth W. Starr (and such other personnel as each may designate), will enter into good faith discussions on the need to increase the number of dates. If agreement cannot be reached on the need to increase the number of dates, the dispute will be presented to Chief Judge Johnson for resolution.

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<sup>1</sup> To select such personnel, the Secret Service identified: (i) from official records the Uniformed Division personnel who were listed as occupying the posts specified by the OIC for the six specified time periods; (ii) from Protective Operations Activity and Personnel reports the Presidential Protective Division personnel who, for the six specified time periods, were listed as being assigned to the immediate shift protecting the President; and (iii) in an effort to be over inclusive rather than under inclusive, from Protective Operations Activity and Personnel reports the Presidential Protective Division personnel who, for the six specified time periods, were listed as being assigned to a specific Secret Service command center or were listed as participating in orientation.[deletion]

2. As promptly as possible, the Secret Service will require each of the 87 current agents and officers to complete the questionnaire attached at Tab A. Each current agent and officer will be required to swear to the contents of the questionnaire under penalty of perjury. After completing the questionnaire, the agents and officers will be directed to place the completed questionnaire in an envelope, seal the envelope, and send the envelope to the OIC. The OIC agrees that the questionnaire does not need to be sent to one of the two retired officers due to the OIC's prior contact with that officer. As for the other retired officer, the Secret Service will mail the questionnaire and a modified cover letter (attached at Tab B) to his last known mailing address.

3. The OIC agrees that the information provided by agents and officers in the questionnaires will be treated as sensitive and confidential information. At the Department's request, the OIC will provide the Department with copies of the completed questionnaires.
4. The OIC is entitled, in its sole discretion, to interview any agent or officer who does not answer each of the queries on the questionnaire in the negative. Consistent with past practice, prior to the OIC interviews, Department and Secret Service attorneys may, at their discretion, meet with any such agent or officer for the sole purpose of ascertaining whether the agent or officer possesses potentially relevant information that is covered by a currently-recognized testimonial privilege or otherwise implicates sensitive information about Secret Service security measures.
5. The OIC interviews will be conducted in the offices of the OIC in the presence of OIC attorneys and/or an FBI agent. [Jackie-we need to discuss this paragraph] Attorneys from the Department or the Secret Service may, at their discretion, accompany the agents and officers to the interviews and be available outside the interview room for consultation. The OIC agrees that the information provided by agents and officers in the interviews will be treated as sensitive and confidential information.
6. The OIC is entitled, in its sole discretion, to depose under oath any agent or officer who it has interviewed. These depositions, which shall not be videotaped, will be conducted in the offices of the OIC in the presence of OIC attorneys and a stenographer. Attorneys from the Department or the Secret Service may, at their discretion, accompany the agents and officers to the depositions and be available outside the deposition room for consultation. The OIC agrees that the information provided by agents and officers in the depositions will be treated as sensitive and confidential information.
7. The OIC agrees that it will not examine before the Grand Jury any agent or officer who it has interviewed in the absence of prior consultations in good faith between Kenneth W. Starr, Lewis C. Merletti and the Attorney General (and such other

personnel as each may designate). [The last sentence of this paragraph has been deleted]

II. Obtaining Information from Department Attorneys Regarding Secret Service Personnel Previously Examined by the OIC

1. The Department agrees to proffer orally to OIC attorneys information covered by the putative protective function privilege, which Department attorneys previously obtained during interviews of Secret Service officers.
2. The OIC agrees that the proffers will be treated as **sensitive and confidential information**.

III. General Agreements

1. The OIC agrees that, by adhering to the procedures described above, the Department and the Secret Service do not waive any possible claim of government attorney-client privilege, work product privilege, or protective function privilege.
2. The OIC agrees that the procedures outlined above will be the exclusive method by which the OIC henceforth obtains information from Department, Secret Service, or Treasury Department attorneys, agents, officers and personnel, unless the OIC receives new information that provides it with probable cause to believe that it would obtain new evidence of obstruction of justice, perjury, or making false statements arising from the OIC's efforts to obtain information from Secret Service personnel.
3. The OIC agrees that this exclusive method of obtaining information from Department of Justice, Treasury and Secret Service personnel obviates the need for the production of additional materials pursuant to any document subpoena served upon the Secret Service prior to the date of this agreement. The OIC, however, reserves the right to serve document subpoenas in the future for additional information deemed by the OIC as necessary to the grand jury investigation.
4. Attorneys from the Department, the Secret Service, or the Treasury Department who have obtained, or will obtain, information from the OIC or Secret Service agents and officers as a result of the procedures outlined above will, consistent with past practice, maintain that information as **sensitive and confidential** and restrict its dissemination only to those who have a compelling need to know it within the Department, the Secret Service, and the Treasury Department.

5. The parties to this agreement understand that, at any time in this process, including prior to completing the questionnaire, Secret Service personnel are entitled, at their discretion, to retain private counsel. OIC recognizes that private counsel who may be retained by Secret Service personnel in this matter are not parties to this Agreement and, accordingly, involvement by such counsel could result in proposals by them to modify the manner in which information from their individual clients will be provided to the OIC.
6. Should a dispute arise regarding the interpretation or application of the terms of this Agreement, the OIC, the Department and Secret Service agree that Kenneth W. Starr, Lewis C. Merletti and the Attorney General (and any such other personnel as each may designate) will engage in good faith consultations in an effort to resolve any such dispute. If any such dispute can not be resolved, the issues will be presented to Chief Judge Johnson for resolution.

[Memorandum to select Secret Service personnel:]

Independent Counsel Kenneth W. Starr has been authorized to investigate "whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses or otherwise violated federal law . . . concerning the civil case Jones v. Clinton." As part of that investigation, the Office of the Independent Counsel (OIC) is attempting to ascertain whether Secret Service officers or agents who worked in a protective capacity on a limited number of dates, during specified times, are in possession of information that may be relevant to its investigation. The OIC, the Department of Justice, and the Secret Service have agreed to a multi-step information-gathering process.

You have been identified as a Secret Service agent or officer who worked in a protective capacity on the list of dates and times that have been provided by the OIC. To determine whether you possess information that is relevant to the OIC's investigation, you are required to complete the attached questionnaire within three days of receiving it. Your responses to the questionnaire must be sworn to under penalty of perjury.

If you have any questions regarding the questionnaire, you may consult with attorneys from the Secret Service Office of Chief Counsel, at (202) 435-5771. Please note that these attorneys cannot represent you in your personal capacity, but would be representing the United States and its interests that may be implicated by the OIC's inquiry. As with any other potential witness, you have the right to retain private counsel at any time, including prior to completing the questionnaire. If you do retain private counsel, the Department of Justice will consider a request for reimbursement of private counsel fees, which will be authorized if the Department determines, in its sole discretion, that your request is in the interests of the United States.

The OIC has advised us that your responses to the questionnaire **will be treated as sensitive and confidential**. After you have completed the questionnaire, place it in the enclosed envelope, seal the envelope, and mail it to the OIC. Please be advised that, depending upon your answers to the questionnaire, the OIC may elect to interview you and/or obtain your testimony under oath, either in its offices or in front of the Grand Jury. Should the OIC elect to do so, the Secret Service Office of Chief Counsel will contact you individually to inform you of this fact and of how the OIC's information-gathering process will proceed from that point.

**QUESTIONNAIRE**

1. Print your full name.

\_\_\_\_\_

2. Do you recall ever speaking with Monica Lewinsky?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to this question is "Yes," but your conversations with Monica Lewinsky were limited to the exchange of casual greetings or idle chit-chat about matters such as the weather, please describe those conversations on a separate page.

3. Do you recall, prior to January 21, 1998, ever observing Monica Lewinsky via a Secret Service video camera or closed-circuit monitoring device?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Do you recall, prior to January 21, 1998, ever observing Monica Lewinsky and President Clinton together?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to this question is "Yes," but your observations with Monica Lewinsky and the President were limited to those at widely-attended events, please describe those observations on a separate page.

5. Do you recall, prior to January 21, 1998, ever observing Monica Lewinsky inside, or in the vicinity, of the Oval Office suite of offices?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to this question is "Yes," but your observations with Monica Lewinsky and the President were limited to those at widely-attended events, please describe those observations on a separate page.

6. Do you recall, prior to January 21, 1998, ever hearing the President, any current or former White House or Secret Service employee, or any advisor or visitor to the White House

(excluding President Clinton's private attorneys), speak about or discuss any one of the following five topics: (i) a relationship between Monica Lewinsky and the President; (ii) Monica Lewinsky being alone with President Clinton at any location; (iii) Monica Lewinsky being inside, or in the vicinity, of the Oval Office suite of offices; (iv) Linda Tripp; or (v) any matter related to President Clinton, Monica Lewinsky, Linda Tripp, or Kathleen Willey being deposed, submitting affidavits, being a witness in, or otherwise being connected with the Paula Jones v. William Jefferson Clinton litigation?

Yes \_\_\_\_\_ No \_\_\_\_\_

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date