

WITNESS ACCESS TO GRAND JURY TRANSCRIPTS

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June 23, 1995

BY FACSIMILE

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Brett M. Kavanaugh, Esquire
Associate Independent Counsel
Office of the Independent Counsel
Suite 490-North
1001 Pennsylvania Avenue, N.W.
Washington, D.C.

Re: Whitewater Investigation

Dear Mr. Kavanaugh:

As you know, I have requested on behalf of [redacted] a copy of [redacted] testimony before the grand jury [redacted]. I expect that [redacted] will be named in the Final Report to be issued by the Independent Counsel's Office in connection with the second phase of the above investigation, as [redacted] in the first phase. I also expect that [redacted] will testify in connection with the Senate's Special Committee to Investigate Whitewater Development Corporation and Related Matters, on the same matters about which [redacted] testified before the grand jury. I am sure your Office appreciates the importance to any witness of having the opportunity to review prior sworn statements before testifying under oath on the same subject before a different governmental body.

As you explained, your Office has denied [redacted] request for [redacted] own grand jury testimony (and will deny other witnesses' requests) because (1) your investigation is not complete, and (2) you wish to avoid any appearance that the Independent Counsel's Office is assisting witnesses in preparation for Senate hearings. We disagree on the applicability of In Re Sealed Motion, 880 F.2d 1367 (D.C. Cir. 1989), which you contend does not apply because [redacted] does not seek [redacted] transcript in connection with a "judicial proceeding." It is my position that both the

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issuance of a Final Report by the Independent Counsel and the hearings in the Senate are "judicial proceedings" as that term is broadly defined.

In any event, I believe [redacted] has a general right to a copy of [redacted] own testimony, and, as a matter of due process, [redacted] should not be placed in a position where [redacted] will be examined under oath by the government on the same subject twice without any opportunity to review [redacted] prior testimony. This is true notwithstanding the fact that [redacted] is neither a subject nor a target of the grand jury investigation. Frankly, I do not understand the rationale for refusing to release to [redacted] a copy of [redacted] own testimony, even while your investigation is on-going. If [redacted] had any desire to disclose [redacted] testimony, [redacted] would be free to do so at any time regardless of whether [redacted] had a copy of the transcript.

Please consider [redacted] request for a copy of [redacted] testimony to be continuing in nature, so that, in the event the Independent Counsel determines that its investigation is complete, that a Final Report will be issued, or that grand jury transcripts will be released for any other reason, I will be immediately notified and provided a copy of [redacted] transcript.

I appreciate your courtesy and timely attention to this matter.

Sincerely,



David E. Mills

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