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Prosecutors subpoena 5 Starr staff members; State seeks their testimony to help determine when Tripp received immunity

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State prosecutors have subpoenaed former members of the independent counsel's office to testify in hearings about their involvement in the immunity deal given to Linda R. Tripp of Columbia.

Acting on a request from prosecutors, Howard County Circuit Judge Diane O. Leasure yesterday signed and certified the subpoenas asking four lawyers and one investigator from former independent counsel Kenneth W. Starr's office to appear. The next hearing date is scheduled Dec. 13.

Those being called are Jackie M. Bennett Jr., Stephen Binhak, Bruce Udolf, Steve Irons and Stephen Bates. They could be called that day or soon after, depending on pending motions and schedules.

The hearings will resolve a key issue in the case: when Tripp's immunity deal started. The outcome of that hearing will decide whether the tape Tripp made of Monica Lewinsky -- the case's crucial piece of evidence -- can be used in court.

Tripp was indicted in July on two counts of violating Maryland's wire-tapping statute by tape-recording Lewinsky on Dec. 22, 1997, and then having her attorney disclose the tape to Newsweek magazine. Her disclosures led to Starr's investigation and the eventual impeachment of President Clinton.

Prosecutors intend to show that Tripp did not receive official, court-ordered immunity until Feb. 19, 1998 -- 34 days after she received a promise from Starr's office that she would not be prosecuted. They say they can use the tape against Tripp, as well as other evidence, if Leasure rules that Tripp did not receive immunity until that date.

But if Leasure rules that Tripp's immunity started Jan. 16 -- when she received Starr's promise -- their case is in danger because the tape would be protected by that agreement.

Tripp's attorneys are seeking to have the indictment tossed out of court. They argue that her immunity started Jan. 16 and that the evidence gathered by state prosecutors cannot be used against her. They also claim that widespread news coverage and the independent counsel's investigation tainted the Maryland prosecution.

David Irwin, a Tripp lawyer, said that he welcomed the chance to question Starr's prosecutors.

"We'll be looking forward to seeing them," Irwin said. "They gave her immunity that Ms. Tripp was counting on."

At the last hearing, Nov. 19, Leasure also ordered that state prosecutors will have to prove they did not use Tripp's immunized testimony or other protected material. That hearing will take place after Leasure decides what date Tripp's immunity started.

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