



OFFICE OF INDEPENDENT COUNSEL

DONALD C. SMALTZ

In re Secretary of Agriculture Espy

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February 17, 1995

By Facsimile Transmission and U.S. Mail

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
9th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

Thank you for your letter dated February 17, 1995, which I received this afternoon. I regret that you could not agree with the positions that we advanced at my meeting with Lee Radek on January 19, 1995, and in my office's subsequent letter to Mr. Radek dated January 20, 1995. As was there explained, we are satisfied that we have jurisdiction to investigate Tyson Foods, Inc.'s ("TFI") gifts of money and favors to public officials.

The core offenses in our jurisdictional mandate involve Espy and his receipt of gratuities. Gratuity offenses, as set forth in 18 U.S.C. § 201, necessarily have two sides -- the alleged receiver (Espy), and the various givers (TFI, among others). The intent of both sides is a significant factor, and that's why TFI's patterns and practices concerning giving gratuities to public officials is both relevant and related to our investigation.

The detailed information set forth in our January 20 letter relating to allegations of misconduct by Tyson is clearly "demonstrably related to the factual circumstances that gave rise to the Attorney General's investigation and request for the appointment of the Independent Counsel . . ." *Morrison v. Olson*, 487 U.S. 654, 679 (1988). Indeed, your Application for the Appointment of an Independent Counsel states that the Department's "[i]nvestigation developed evidence that Secretary Espy accepted gifts from Tyson Foods . . ." Application at p.2. Reasonable minds may disagree over legal and factual issues but, with all due respect, I believe that you read the word "related" too narrowly and that, if your interpretation were accepted, it would essentially eviscerate § 404(b), F.R.Evid.

You have filed, I'm told, a copy of your letter, and perhaps something else, with the Special Tribunal, but not our original letter. We requested a copy of whatever was filed from Mr. Radek, but were told we could not have a copy because it was filed under seal. I am puzzled by this procedure and at a loss to understand why your office would file a copy of something that presumably relates to our jurisdiction but refuse to tell us what it is and provide us with a copy.

Please be advised that we will take appropriate steps under the Independent Counsel Reauthorization Act of 1994 to attempt to resolve this conflict between the Department and this Office of Independent Counsel.

Cordially,

Donald C. Smaltz
Independent Counsel

Enclosure

cc: The Honorable David B. Sentelle