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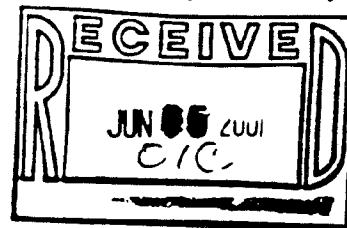
Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re: Comments By Ronald Blackley and Sharon Blackley in Response to
Final Report Filed by Independent Counsel Smaltz in Alphonso Michael
Mike Espy Division No. 94-2

Dear Mr. Langer

This letter is being written in response to the opportunity provided to us to comment on the portions of the above-entitled Final Report relating to Ronald Blackley and Sharon Blackley. Assertions contained in the Final Report are inconsistent with statements made by the government's own witnesses during the Ronald Blackley trial. We are not surprised to see these assertions in the Final Report, since IC Smaltz has had a pattern of overstating or misstating the record.

The most disturbing aspects of the Final Report relate to assertions that Ronald Blackley: 1) was forced to resign from USDA in 1987 when his superior discovered that he was using his USDA position to benefit his personal business; 2) was improperly serving from May 1989 to December 1992 simultaneously as Congressman Espy's agricultural representative and as a consultant to farmers; 3) ordered subordinates at USDA to review adverse decisions of former agricultural clients; and 4) concealed payments he had received from former agricultural clients. As set forth below, statements made by the government's own witnesses during the Blackley trial clearly establish that these assertions are improperly made.



1. Independent Counsel Smaltz Incorrectly Asserted that Mr. Blackley Was Forced to Resign From USDA in 1987 Because His Supervisor Discovered that He Was Using His USDA Position to Benefit His Personal Business.

Independent Counsel Smaltz asserted on page 213 of his Final Report that Mr. Blackley was forced to resign from the Washington County USDA Field Office when his supervisor discovered that he was using his position to benefit his personal business. This assertion omits certain critical information that is contained in the testimony during the Blackley trial of Steven Lamar Melton, Blackley's supervisor in 1987 at the time he resigned. Melton acknowledged on cross-examination that Mr. Blackley was hired on a part-time basis (November 20, 1997 Transcript at 31); that he [Blackley] had been hired with the specific understanding that he could continue his rice business (November 20, 1997 Transcript at 31 and 32); that Mr. Melton felt that Mr. Blackley did good work and that he had no first hand knowledge of any problems (November 20, 1997 Transcript at 31 and 32); and that Mr. Blackley decided to resign when Mr. Melton gave him the choice of giving up his business and continuing on a part-time basis at a part-time salary or leaving to conducting his own business (November 20, 1997 Transcript at 32). There was no evidence in the record to support the assertion that Mr. Blackley was forced to resign because he used his position to benefit his personal business.

2. Independent Counsel Smaltz Incorrectly Asserted That Mr. Blackley Improperly Served Simultaneously as Congressman Espy's Agricultural Representative and as a Consultant to Farmers.

On page 213 of the Final Report, IC Smaltz indicated that Ronald Blackley had improperly served as Secretary Espy's agricultural representative at the same time that he ran two separate businesses. While the government tried to establish through Mr. Melton's direct testimony that this was somehow a conflict of interest, Mr. Melton had previously testified before the grand jury that he did not see it as an issue (November 20, 1997 Transcript at 35). The government also introduced into evidence a memorandum from Mr. Blackley to Secretary Espy in which the specific arrangement surrounding his part-time employment arrangement was described:

"When I started with your office, I already had a client base, which I continued to serve and to charge for these services. I was employed by you to work with farmers in your district and to begin preparation for the 1990 farm bill. Farmers that I came into contact with for the first time through your office were consulted



with and assisted through your office during my first year of employment.

"In the second year of employment, your constituent problems had grown and demanded additional time, which caused me to cut back on the services I could provide my clients, restricting me to doing paperwork such as farm plans.

"In the third year, your constituent base continued to grow. Due to the fact that you were the only congressman in the state that had someone who specialized in agricultural programs, my time was restricted even further as far as my personal business was concerned. This limited me to mostly seasonal rice sales and very limited consulting on a personal basis.

"During the four years that I have worked for you, I have assisted your constituents in all types of actions, ranging from telephone calls to the different agencies to sitting in on appeals with Farmers Home Administration and ASCS at county, state, and national levels. While acting on any cases for any of your constituents, I received no monetary gain, other than my congressional salary.

"During these years, I believe we shared the same concerns, that farmers be treated fairly and consistently by agencies they had to work with. I have always strived to represent your interests with the highest moral and ethical standards.

"As casework and constituent concerns grew, so did my responsibility to serve them as best I could in a timely manner. If the concern is that I had monetary gain by being associated with your office, I can assure that just the opposite occurred. From the first date, if there was not a clean separation of my business from your office, I did not charge any fees."

The government introduced no evidence that contradicted the arrangement described in Mr. Blackley's memorandum to Secretary Espy. Thus, any suggestion by IC Smaltz that there was something improper about Mr. Blackley's employment arrangement is totally unwarranted and derives no support from the record.

3. Independent Counsel Smaltz Incorrectly Asserted that Mr. Blackley Improperly Ordered Subordinates at USDA to Review Adverse Decisions of Former Agricultural Clients.

There are a number of points in the Final Report where assertions are made that Mr. Blackley improperly continued to pursue appeals filed on behalf of former agricultural clients after he became Secretary Espy's Chief of Staff, and "ordered two subordinates at USDA to review [various decisions]." See, e.g., pp. 212 and 217. These statements also derive no support from the evidence presented in the Blackley trial. First of all, Michael Kelly, the Associate General Counsel at USDA, testified that he met with Mr. Blackley as soon as he came to work at USDA to finalize the terms for Mr. Blackley's withdrawing from representations of any of his former clients and to prepare a letter confirming the withdrawals. Mr. Kelly testified that Mr. Blackley supported this arrangement (November 20, 1997 Transcript at 106). Equally significant, Bruce Randall Weber, the career staff member who was assigned the responsibility of reviewing the appeals of Mr. Blackley's former clients after he withdrew from any further involvement, testified on cross-examination that the reviews he made were handled on the merits and without any involvement of or pressure by Mr. Blackley:

Q And Mr. Blackley never asked you to resolve this matter in a certain way, did he?

A No, he did not.

Q Did you ever feel pressure to make the decision that was made by your office in any particular way?

A I didn't feel that I was being pressured.

Q And was the decision that was made here made on the professional judgment of your office as to what was appropriate?

A Yes, it was.

4. Independent Counsel Smaltz Incorrectly Asserted that Mr. Blackley Concealed that He had Received Payments from Former Agricultural Clients.

IC Smaltz has also incorrectly asserted in the Final Report that Mr. Blackley concealed the fact that he had received payments from former agricultural clients. See, e.g., pp. 4, 7, 212, and 216. What IC Smaltz failed to acknowledge is the fact that he and his staff attempted unsuccessfully to suppress the fact that Mr. Blackley reported payments from former clients when he filed his initial financial disclosure form covering the time period from 1992 to the first several months of 1993. In that initial filing, Mr.



Blackley reported estimated income of \$27,550 from his Mississippi Rice Services business (November 20, 1997 Transcript of cross-examination of Michael Kelly at 122).

As each of these points illustrate, IC Smaltz has been more than willing to stretch the truth or omit essential information in his Final Report in an apparent attempt to justify his overreaching and abuse of office while he served as Independent Counsel. It will not work. Abuses by IC Smaltz and other independent counsel properly led to the demise of the independent counsel statute. Try as he may to justify his actions, IC Smaltz cannot reconstruct his poor record as an independent counsel. History will not treat him kindly.

Sincerely,

Sheldon Krantz

Counsel for Ronald Henderon Blackley
and Sharon Blackley

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