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Washington, D.C. 20530

January 6, 1998

Mr. Donald C. Smaltz  
Independent Counsel  
P.O. Box 26356  
103 Oronoco Street, Suite 200  
Alexandria, Virginia 22313

Dear Mr. Smaltz:

By letter dated February 24, 1995, you advised the Attorney General that Deputy Independent Counsel Charles G. Bakaly III had received a press inquiry regarding the denial of your request to the Attorney General for expanded jurisdiction. You expressed concern that there had been an unauthorized disclosure of "not only the fact but also the nature of communications" between your office and the Attorney General concerning jurisdictional issues, including a possible disclosure of a letter from an Associate Independent Counsel to the Public Integrity Section dated January 20, 1995, and the Attorney General's response dated February 17, 1995. Since those documents contained grand jury information protected by Rule 6(e), Fed. R. Crim. P., you expressed concern that the leak could constitute a criminal offense.

By letter of March 2, 1995, Assistant Attorney General Jo Ann Harris advised that your allegation had been forwarded to this Office for appropriate consideration. Two OPR attorneys and I met with you on March 14, 1995, and obtained additional information regarding your investigation and the evidence suggesting that grand jury information had been leaked. On March 22, 1995, after reviewing the available information, this Office requested the assistance of the FBI in identifying individuals who had access to the Independent Counsel's letter of January 20, 1995, and the Attorney General's response of February 17, 1995.

On May 18, 1995, we received the requested report, which identified 78 individuals who had access to the letters in question, and an additional 14 individuals who may well have had access to sensitive investigative information regarding the investigation. While OPR was evaluating the investigative report provided by the FBI to determine whether further investigation had a reasonable possibility of determining the source of the leak, additional leaks occurred. Published reports disclosed that the

court had issued sealed orders quashing portions of subpoenas issued by the Independent Counsel. The sources for this information were variously identified as "law enforcement sources close to the case," "lawyers close to the investigation," and "sources familiar with the orders."

On July 10, 1995, you wrote to Louis J. Freeh, Director of the Federal Bureau of Investigation (FBI), and requested that the FBI initiate an investigation into these disclosures, which you believed to constitute violations of grand jury secrecy and possible obstruction of justice. The Assistant U.S. Attorney overseeing the investigation requested that OPR conduct no interviews on the March 1995 leak until the criminal investigation had been completed. OPR therefore stayed its investigation of the earlier leak until April 1997 when OPR was advised that the criminal probe was concluded. Thereafter, OPR obtained the FBI reports and other documents gathered in the criminal investigation.

Based on our review of these materials, this Office has concluded that there is no reasonable probability that further investigative efforts will lead to the identification of the person or persons who divulged confidential information to representatives of the news media. With respect to the March 1995 leak, the information obtained by the reporters in question (specifically, that the Attorney General had denied a request to expand the Independent Counsel's jurisdiction to reach certain allegations involving Tyson Foods) was widely distributed. The reports on this development contain no information from which one can conclude that the reporters had obtained access to the January 20, 1995 letter supporting the requested expansion. Each article states that the exact scope of the expansion sought was not known.<sup>2</sup>

With respect to the July 1995 leak, news articles revealed significant details about documents sought in grand jury subpoenas, the contents of sealed pleadings, and the court's sealed rulings, including direct quotations from the court's orders.<sup>2</sup> While the Washington Post cited "law enforcement sources close to the case" in its story, the information contained in the articles was also available to defense attorneys. The FBI's investigation failed to develop evidence identifying the source of that information.

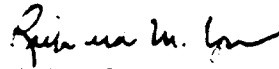
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News articles appeared in the Legal Times (March 27, 1995), the Washington Post (March 28, 1995), and the Los Angeles Times (March 29, 1995).

Articles appeared in the Washington Post (July 1, 1995), the New York Times (July 2, 1995), the Washington Times (July 1 and 2, 1995), the Wall Street Journal (July 3, 1995), and the Legal Times (July 3, 1995).

Based on our review of the results of these two inquiries, we have concluded that further investigative efforts are unlikely to prove fruitful. Accordingly, we consider these matters closed. Should you need additional information, please contact me on (202) 514-3365.

Sincerely,



Richard M. Rogers  
Acting Counsel