



Office of the Attorney General  
Washington, D. C. 20530

February 17, 1995

Donald C. Smaltz, Esquire  
Independent Counsel  
Office of the Independent Counsel  
103 Oronoco Street, Suite 200  
Alexandria, Virginia 22313

Dear Mr. Smaltz:

During a meeting on January 19, 1995, with Lee J. Radek, Chief of the Public Integrity Section and in a letter dated January 20, 1995, from Associate Independent Counsel Elizabeth Taylor, you informed the Department that you had received allegations suggesting possible past crimes by Tyson Foods, Inc. You stated, however, that the information did not involve alleged criminal conduct of Secretary Espy, nor did it provide specific and credible evidence of crimes committed by any other covered person.

You requested that the Department of Justice refer investigation of these new matters to you pursuant to section 594(e) of the Independent Counsel Reauthorization Act of 1994 as matters "related" to your prosecutive jurisdiction. Alternatively, you requested that if the Department determined these matters were not sufficiently related to your jurisdiction to warrant referral under section 594(e), that I seek an expansion of your prosecutive jurisdiction pursuant to section 593(c) of the Act.

After careful consideration of the facts and legal analysis that you have provided, and giving great weight to your views as required by the Act, I find that I cannot agree with your position. It appears that the investigation of Tyson Foods proposed in your letter does not involve matters that are related to the jurisdiction set forth in the Order issued by the Special Division of the Court on September 9, 1994. I have also determined that based upon the information you have provided, it would not be appropriate to seek an expansion of your prosecutive jurisdiction.

The Independent Counsel Act is a measured response to a limited but serious problem --- the inherent conflict that is

perceived whenever senior Executive Branch officials are to be investigated by the Department of Justice. In recognition of this conflict, the Act expressly identifies a small group of high-level Executive Branch officials, and seeks to instill public confidence in our system by placing the investigation and prosecution of allegations involving those people into the hands of an individual who is not within the Department. In your case, Secretary Espy is the covered person as to whom the Department is presumed, by statute, to have a conflict of interest; and in accordance with the statutory intent your jurisdiction, as determined by the Special Division of the Court, focuses on his actions. Specifically, you and your staff were given a mandate to investigate whether Secretary Espy has committed any violation of federal criminal law relating to his acceptance of gifts from organizations or individuals with business pending before the Department of Agriculture.

As you have acknowledged, the new matters you have raised do not involve Secretary Espy. Nor are they "related" to your jurisdiction within the meaning of the Act. The legislative history with respect to an independent counsel's authority to investigate "all related matters" makes clear that the intent of the provision was to give independent counsels "adequate authority to fully investigate the case for which they have been appointed." H.R. Conf. Rep. No. 452, 100th Cong., 1st Sess. 28. That, also, is the basis for the referral provision. The provision contemplates that an independent counsel should have the authority to fully investigate any matter which would further develop the matter he was appointed to investigate. Yet there is nothing in the information you have provided which bears directly on the matters you are charged with investigating. I have therefore concluded that these matters are not sufficiently related to your current jurisdiction to justify a referral to you under section 594(e).

In the alternative, you have requested that I seek an expansion of your jurisdiction from the Special Division of the Court. As you are aware, I can only invoke the provisions of the Act if I receive specific and credible information about an individual covered by the provisions of the Act, 28 U.S.C. §§ 591(a)(b) and 593(c)(2), or if I determine that an investigation or prosecution by the Department of Justice of this new information would result in a personal, financial, or political conflict of interest. 28 U.S.C. § 591(c)(1).

As you acknowledge in Ms. Taylor's letter, you do not purport to refer to the Department any specific and credible information concerning a covered person. Nor do I have a sufficient basis to invoke section 591(c)(1). You suggest that Don Tyson and Tyson Foods are major political contributors to the President, justifying an inference of a political conflict. However, substantial political contributions are made by numerous

individuals and entities. It has never before been suggested that the Department is disqualified from investigating someone who is a political supporter of the President simply by virtue of that relationship, and there is no indication that the Independent Counsel Act was intended by Congress to reach so broadly. Accordingly, despite the great weight I have given your request, I do not believe it is appropriate to seek an expansion of your jurisdiction.

The Department, however, is committed to ensuring that the matters you described are thoroughly investigated. Accordingly, if you believe that you have developed allegations which warrant further investigation, please contact the Public Integrity Section at your earliest convenience. We are particularly interested in any evidence of criminal conduct within the relevant statute of limitations period. During the course of our investigation, if we develop any information falling within the provisions of the Independent Counsel Act, we will take appropriate action in accordance with the requirements of the Act.

Thank you very much for consulting with the Department on this matter. We look forward to providing you with whatever assistance you may require in the future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno".

Janet Reno