

NLWJC - Kagan

Counsel - Box 020- Folder 003

Smaltz letter

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	David Kendall to Donald Smaltz re: Quote, draft (2 pages)	12/20/1994	P6/b(6)
002. letter	David Kendall to Donald Smaltz re: Quote, draft (2 pages)	12/20/1994	P6/b(6)
003. letter	David Kendall to Donald Smaltz re: Quote, draft (2 pages)	12/20/1994	P6/b(6)
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005. letter	Judge Mikva to Donald Smaltz re: Joseph Hendrickson, draft (2 pages)	n.d.	P5

COLLECTION:

Clinton Presidential Records
 Counsel's Office
 Elena Kagan
 OA/Box Number: 8286

FOLDER TITLE:

Smaltz Letter

2009-1006-F
kh568

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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THE WHITE HOUSE

WASHINGTON

December 19, 1994

Donald C. Smaltz, Esquire
Independent Counsel
One Columbus Circle, N.E.
Room C-747
Washington, D.C. 20544

Dear Mr. Smaltz:

I recently read press reports quoting statements attributed to you about allegations by a former Tyson Foods Inc. employee, Joseph Henrickson. These reports quote you several times as commenting on Mr. Henrickson's allegations as well as the substance of your interview with Mr. Henrickson, including the following quotation in Time Magazine: "Based upon the way [Henrickson's] story unfolded, it has a ring of truth to it."

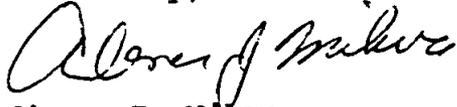
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This type of conduct goes directly against what I understand to be the proper behavior of a federal prosecutor; I had thought that federal prosecutors present their evidence to grand juries and try their cases in court, and not through comments to the press about the credibility of particular evidence or allegations.

Indeed, federal policy forbids the types of comments being attributed to you. The Code of Federal Regulations states (28 C.F.R. § 50.2) that Justice Department prosecutors "should refrain from making available * * * [s]tatements concerning the * * * credibility of prospective witnesses [and] [s]tatements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial."

I would hope that you would refrain from using the press and would confine your advocacy to appropriate places.

Sincerely,

A handwritten signature in cursive script, appearing to read "Abner J. Mikva".

Abner J. Mikva
Counsel to the President

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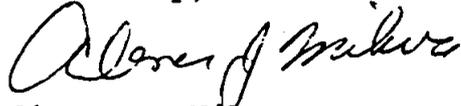
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White House counsel assails special prosecutor over comments on witness

By William Neikirk Chicago Tribune

WASHINGTON In a strongly worded letter, White Counsel Abner Mikva told a special prosecutor he was out of line in appearing to support a witness' allegations about payments to Bill Clinton when he was Arkansas governor.

Mikva described himself as being "extremely dismayed" that independent counsel Donald Smaltz should go public with unsupported charges made by a former pilot for Tyson Foods Inc.

Time magazine this week quoted Smaltz as saying that the story about alleged payments told by Joseph Henrickson, a former Tyson Foods pilot, "has a ring of truth to it."

In addition to dressing down the prosecutor, Mikva, a former federal appeals judge, told Smaltz he was violating federal policy. He cited the code of federal regulations barring Justice Department prosecutors from commenting on the credibility of witnesses and their statements.

Time reported that Smaltz was looking into allegations by Joseph Henrickson, 43, a former pilot at Tyson, who said that he carried sealed white envelopes from Tyson's headquarters in northwest Arkansas to Little Rock on six occasions in the 1980s.

According to Time, Henrickson said he held up the envelopes to the light and said each appeared to be stuffed with \$100 bills, which he believed were intended for Clinton. There is no evidence that Clinton received any such envelopes.

When the Time story appeared, White House officials were angry over what they regarded as flimsy allegations and said that Smaltz had given them credibility. One official expressed doubt that anyone could determine the denomination of money in an envelope, or that the contents were indeed money.

Clinton's private attorney, James Kendall, protested in a letter to Smaltz for making the story public. But the comments by the White House counsel add the greater weight of that office to the protests.

"I was extremely dismayed to read these quotations from you regarding both the nature and credibility of Mr. Henrickson's allegations," Mikva wrote the special prosecutor in his letter, a copy of which was obtained by the Tribune.

He said that if the news stories about Smaltz's comments were inaccurate, "I would be interested in so learning. Otherwise, I am disturbed that a special prosecutor would, during the investigatory stages of a criminal matter, make observations to the press indicating the prosecutor's views of the nature and strength of allegations by potential witnesses."

Smaltz, 57, a former Los Angeles attorney, was appointed to investigate allegations that Agriculture Secretary Mike Espy received favors from Tyson Foods and other companies. But now the probe has broadened to include Tyson's relationship with Clinton when he was governor, Time reported.

Tyson, the world's largest poultry producer, had close ties to the Clintons, and some of its executives helped finance his campaigns. In addition, James Blair, one of the company's attorneys, gave Hillary Rodham Clinton investment advice that enabled her to make huge profits in commodities trading.

Regarding Smaltz's comments, Mikva said "this type of conduct goes directly against what I understand to be the proper behavior of a special prosecutor; I had thought that federal prosecutors present their evidence to grand juries and try their cases in court and not through comments to the press about the credibility of particular evidence or allegations."

Body of woman fighter pilot recovered after crash

Michael Kilian Chicago Tribune

WASHINGTON The U.S. Navy Wednesday recovered the wreckage of the F-14 Tomcat flown by Lt. Kara Hultgreen, the United States' first woman carrier fighter pilot who was killed at sea Oct. 25 in a landing accident 50 miles off San Diego.

The accident occurred as Hultgreen, 29, was making a final approach to the deck of the USS Abraham Lincoln after a routine flight from Miramar Naval Air Station, her home base.

Both she and her radar intercept officer, Lt. Matthew Klemish, ejected, but only he survived. Because the plane rolled onto its back as it went out of control, Hultgreen was ejected directly into the sea and was killed instantly.

Her body was recovered Nov. 12 in 3,700 feet of water not far from the sunken jet. She was buried with full honors at Arlington National Cemetery.

This was the Navy's third attempt to retrieve the aircraft, a Navy spokeswoman said. Recovery was made using undersea robotic equipment that attached cables to the 62-foot-long fighter.

The F-14 was taken to North Island Naval Air Station at San Diego, where it will be examined by a team of experts from the Naval Safety Center in Norfolk, Va. According to reports from witnesses and a videotape of the landing attempt, the aircraft may have had engine failure when it was at dangerously low speed and altitude some 200 yards astern of the carrier. The jet yawed to the left, went nose up and winged over to the left before plunging into the sea. A puff of smoke also was sighted.

A Navy spokeswoman said the accident investigation could take several weeks. The results will be turned over to the Navy high command, which will determine whether they will be made public. Hultgreen's mother, San Antonio lawyer Sally Spears, would be informed immediately, however, the spokeswoman said.

After the accident, a still anonymous caller provoked a media controversy by charging that the Navy had lowered standards to allow Hultgreen to qualify for carrier duty in a move to appeal to "political correctness."

The charges evaporated after Hultgreen's fellow aviators and commanding officer defended her as an excellent pilot, and her mother released official flight records showing that Hultgreen had qualified third-highest in a group of seven with an above-average score 30 points over the minimum requirement.

Hultgreen, an aerospace engineering graduate of the University of Texas, spent her early childhood in Lincolnshire, Ill.

Elders entitled to job back despite flap, UAMS' officials say

BY CHRIS REINOLDS
Democrat-Gazette Staff Writer

Some state legislators have questioned the return of ousted U.S. Surgeon General Joycelyn Elders to the University of Arkansas for Medical Sciences, but school officials say they have no grounds to reject her.

Elders was not a university spokesman when she made the statements that led to her firing by President Clinton, and she is protected under the university's academic freedom policy, said



Elders

Elders' performance as surgeon general is in a sense irrelevant

Dr. Barry Lindley, UAMS vice chancellor for academic affairs.

"The university should not exact any retribution," Lindley said Thursday. "I think that Dr.

as her duties as a faculty member."

Clinton fired Elders Dec. 9 over a statement she made on teaching students about masturbation. Elders plans to return to UAMS as a professor of pediatrics Jan. 3, 1995.

The UAMS faculty handbook says:

"Mere expressions of opinion, however vehemently expressed and however controversial, shall not constitute cause for dismissal. The threat of dis-

missal will not be used to restrain faculty members in their exercise of academic freedom or constitutional rights."

On Monday a few Republican and conservative state legislators blocked approval of the school's 1995-96 budget until UAMS Chancellor Harry Ward appears before the Joint Budget Committee to answer questions about Elders. Ward is to attend the committee's Jan. 5 meeting.

Gov. Jim Guy Tucker has said that Elders is a tenured profes-

sor and has a right to return to the university.

Although the university guarantees faculty members academic freedom, the handbook states that professors should not teach material inappropriate or unrelated to the course and says faculty members should try to be accurate and use good judgment and restraint.

Elders took tenured leave to become surgeon general. UAMS will grant a leave of absence for

a maximum of one year. The leave can be renewed each year, Lindley said.

Tenured faculty members have the right to continuous appointment as long as their obligations are met, Lindley said. But tenure can be lost if a faculty member resigns, is let go because of severe budget problems or grossly neglects academic responsibility, he said.

Lindley added that tenure is not absolute protection for an instructor.

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OA/Box Number: 8286

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ADM -

" PLS. SEE JOEY/DOUG

ABOUT THIS BEFORE

RESPONDING TO

DAVID KENDRAH.



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LAW OFFICES
WILLIAMS & CONNOLLY

725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005
(202) 434-5000

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1927-1978)

NICOLE K. SELIGMAN
(202) 434-5064
FAX (202) 434-5061

TELECOPY

TO: Abner Mikva

FIRM OR COMPANY: White House

TELECOPY NUMBER: (202) 456-6279

FROM: Nicole K. Seligman

TELEPHONE: (202) 434-5064

DATE: December 20, 1994

MATTER NUMBER: 29522.0001

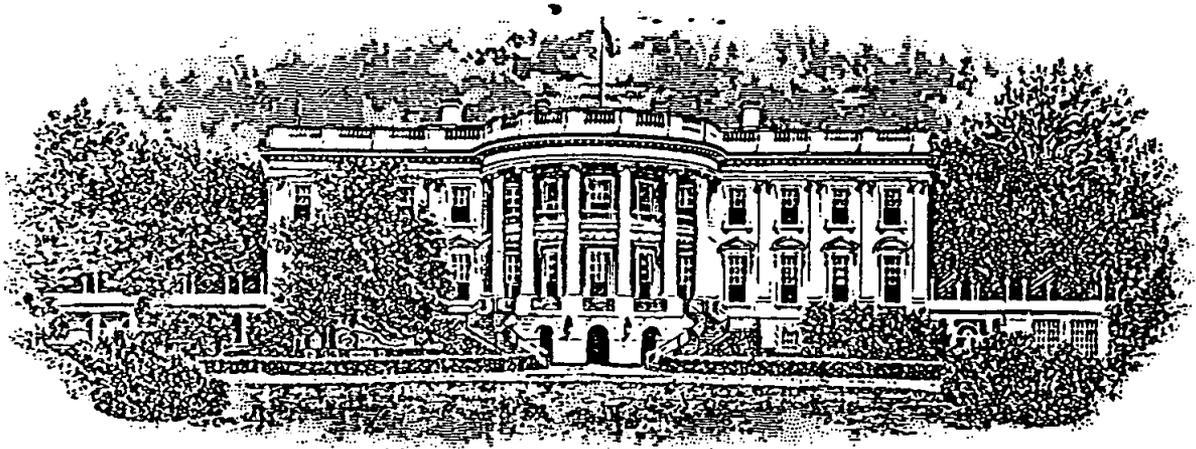
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WILLIAMS & CONNOLLY TELECOPY NUMBER: (202) 434-5029

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 12/20

TO: David Kendall/Nicole Seligman

FACSIMILE NUMBER: 434-5029

TELEPHONE NUMBER: 434-5064

FROM: DOUGLAS LETTER

TELEPHONE NUMBER: 456-7901

PAGES (WITH COVER): 3

COMMENTS: _____

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PAUL H. CONNOLLY (1922-1976)

NICOLE K. SELIGMAN
(202) 434-5064
FAX (202) 434-5061

TELECOPY

TO: Douglas N. Letter

FIRM OR COMPANY: _____

TELECOPY NUMBER: (202) 456-1647

FROM: Nicole K. Seligman, Esquire

TELEPHONE: (202) 434-5064

DATE: December 20, 1994

MATTER NUMBER: _____

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Tyson pilot tells tale of cash-filled envelopes for Clinton

BY D.R. STEWART
Democrat-Gazette Business Writer

The special prosecutor investigating Agriculture Secretary Mike Espy distanced himself Monday from allegations that Tyson Foods Inc. sent envelopes filled with cash to Bill Clinton when he was Arkansas governor. Investigators for Donald Smaltz have interviewed Joseph Henrickson, 43, of Fayetteville, a former Tyson Foods pilot who told *Time* magazine that he ferried six such payments, mostly during the 1980s.

Speaking through his wife, Mary Ann, in a lengthy telephone interview with the *Democrat-Gazette* Sunday, Henrickson confirmed that he had spoken to the FBI in Fayetteville just before Thanksgiving about the alleged cash transfers.

Henrickson declined to be interviewed directly, but let his wife speak for them both while he stood by. He said he had spoken with reporters all day Sunday since the *Time* article appeared.

The 15-year Tyson employee, fired by the company in April 1983 for alleged rudeness to customers, said he was sought out by the FBI after it learned he had filed a lawsuit against the company for wrongful discharge. The lawsuit was dismissed in October. Smaltz's investigators have subpoenaed Henrickson to appear before a grand jury under a

'Joe Henrickson is a disgruntled former employee who is considered by many people who know him to be a pathological liar.'
— Tyson spokesman
Archie Schaffer III

gra it of immunity from prosecution.

Monday, Smaltz said in a statement: "It is far too early for any conclusions or inferences to be made as to our office's evaluation of any of the statements reported by *Time* magazine."

In the *Time* report, Smaltz had said Henrickson's story "has a ring of truth to it" and said the matter was "very high on my radar screen."

The magazine interviewed all 11 current and former Tyson Foods Inc. pilots who flew with Henrickson and said it found no eyewitness corroboration of the even s he described.

Archie Schaffer III, who is Tyson's spokesman, and President Clinton's attorney denied Henrickson's charges.

"The allegations made by Joe Henrickson as irresponsibly reported by *Time* magazine are absolutely and totally false," Schaffer said Sunday in a written

statement.

"Joe Henrickson is a disgruntled former employee who is considered by many people who know him to be a pathological liar. He had tried to attack the company through the courts and been unsuccessful because his lawsuit has no merit, so he has chosen to try and injure us through Mr. Smaltz and the media."

Schaffer's statement called *Time*'s story irresponsible and questioned Smaltz's fairness and his fitness as an independent counsel.

"We are currently exploring our options and are considering legal action against a number of individuals and entities involved in spreading these malicious lies," Schaffer said.

David E. Kendall, the personal lawyer for the president and Hillary Rodham Clinton, told *The Washington Post*: "I'm extremely surprised that these vague and baseless allegations are being irresponsibly bandied about. They are totally false and do not merit further comment."

Henrickson, speaking through his wife, said that after he was fired, he hired a Fayetteville lawyer, Marcia Brinton, to represent him in his lawsuit against Tyson.

In July, he said, Brinton told Henrickson and his wife that she had met with four Tyson employees she wouldn't identify.

The Tyson employees told her Tyson officials would swear under oath that Henrickson transported drugs in Tyson's corporate jets if he didn't drop his lawsuit.

Brinton, reached at her home Sunday, said she had no comment on Henrickson's allegations. She confirmed that Henrickson remains her client.

The Henricksons said their revelation of transporting money-filled envelopes between Tyson's Springdale headquarters and Little Rock was only a footnote in their conversations with the FBI. But it was immediately seized upon by federal agents, who questioned them extensively about the money transfers, they said.

Henrickson told the FBI that he flew to Little Rock with sealed white envelopes about six times on regular business trips in the 1980s. The envelopes were a quarter-inch thick, he said. When he held them to the light to examine the contents, he saw \$100 bills.

Henrickson told federal authorities he received no receipts for the envelopes and he didn't know what became of them after he turned them over — sometimes to receptionists, sometimes to plainclothes state troopers — at Midcoast Aviation, formerly the Little Rock Air Center.

Henrickson said that in one instance a Tyson executive at the Tyson corporate hangar in Fay-

etteville said, "This is for Governor Clinton," as he handed him one of the envelopes.

In its story, *Time* said neither the receptionists at Midcoast Aviation nor several current and former Tyson pilots could recall deliveries of any such white envelopes.

The magazine also noted discrepancies in the way Henrickson had described the envelopes: At one point, Henrickson said the envelopes always had Clinton's name on them; later, after meeting with Smaltz, he said the envelopes were always blank.

By telephone Sunday, Mary Ann Henrickson said the money exchanges would never have come out except for the lawsuit and the subsequent threats by Tyson officials.

"At that point, we got scared," she said. "We didn't know if they were going to put drugs in our house, our car. We didn't know who to talk to. We finally talked to an FBI agent in Little Rock. We just wanted to make them aware of the situation so that if we were found with drugs, we would be on record as having reported it."

Their initial conversation with the FBI was in September by telephone, the Henricksons said.

In late November, with Smaltz's investigation into alleged gratuities given Espy by Tyson gathering steam, FBI agents interviewed Henrickson in Fayetteville.

Henrickson, a senior captain and the second-highest in command of Tyson's aviation division when he was fired, said he did not set out to hurt Tyson or Clinton. He said he voted for Clinton in the 1992 presidential election.

Time quoted several Tyson employees as having said Henrickson was disruptive, he strong and unreliable.

Randy Parette, a longtime protégé of Henrickson, described him as "a 600-pound gorilla who pretty much did what he wanted in the face of rules and common sense."

Mary Ann Henrickson said her husband discussed the cash envelopes with her during the time he was delivering them.

"We didn't know how important it was. I didn't know — I still don't know — if it was illegal, but apparently it is a big deal," she said. "I thought that maybe it was honest ... But when the FBI questioned him, that's when we knew it was a big deal ... And we know Tyson Inc. representatives are going to try and paint this picture of him that's just not true."

"Later, we figured the only possible reason they wanted to scare us off (with the allegation of drug-running) was because of the money. We couldn't think of anything else, and we still can't."

But if we ever got to a jury trial, something of this would come out because Joe has been around there for 15 years."

Machiavellian Gingrich Is No Prince

Jeffrey Klein is the editor in chief of Mother Jones magazine.

By Jeffrey Klein = Special to Newsday=

Brilliant and ruthless Newt Gingrich isn't a mere creature of the moment, a Rush Limbaugh dittohead with the legislative arm of the religious right. Gingrich is nobody's tool. He has commanded a 20-year war to seize the Speakership of the U.S. House of Representatives. Only recently have troops and lieutenants joined his campaign.

Gingrich is hell-bent on domination. He wants to end his new bipartisan relationship with President Clinton in the same manner that he severed his first marriage. As Mother Jones magazine first reported in 1984, Gingrich, R-Ga., campaigned for Congress on the issue of family values, while cheating on his wife. After the election, he ditched her, then appeared at her hospital bedside after she had a cancer operation to present his terms for a divorce.

Gingrich's likely terms to Clinton: Gingrich keeps the House and gets the White House as well; Clinton leaves town humiliated, with more defeated Democratic senators and representatives in tow.

Gingrich's favorite chess move is the fork, a simultaneous attack on two of the opponent's pieces. He has forked the Clinton administration by forcing the president to choose between the Democrats' traditional pro-underdog stances and the surging conservative, anti-government populism. Gingrich is encouraging Clinton to move rightward so the president will lose his base and look like a follower.

At the same time, Gingrich has forked Senate Majority Leader-in waiting Bob Dole, R-Kan., by supporting the successful candidacy of Trent Lott, R-Miss., for majority whip. When Dole hits the road to campaign for president, Lott will push his buddy Gingrich's agenda. When Dole stays in Washington to retain control, Gingrich's favorite presidential candidate, Sen. Phil Gramm, R-Texas, will have a more open field. Gramm might even serve as a stalking horse.

Meanwhile, Gingrich will use his "Contract With America" to solidify his image as a tough guy who can deliver discipline. Voters today fear that government has become too soft, unable to resist demands from its weakest citizens. Clinton's postelection bipartisan concessions deepen the impression Gingrich wants aired: that Clinton is a coward.

Why is the history professor who was denied tenure at West Georgia College shrewder than Clinton and his fellow Rhodies? In 1989, as part of a magazine expose, Gingrich was followed to a meeting of doctors and insurers complaining about Medicare. Gingrich sarcastically explained that the left is "very smart. They always conceal their greed for power in the language of love."

Gingrich doesn't mind greed, power or concealment. He urges his staff to read Machiavelli's "The Prince." Gingrich's contempt is for the language of love, especially when the American electorate prefers subliminal slogans of hate.

But the next act may prove painful for the electorate to watch as the two protagonists lock into a political drama that has kinky undertones. The discipline Gingrich has promised to impose on Washington and the welfare class is not entirely dissimilar from the kind advertised by sadists and, sadly, Clinton is proving to be a situational masochist. He'd rather feel his own pain than risk challenging potent enemies.

Before their births, both Clinton and Gingrich were torn from their natural fathers. Both experienced primal abandonment, then were reared by abusive stepfathers. In order to ward off feelings of helplessness, both felt compelled to join the ranks of the powerful. But whereas son-of-a-salesman Bill will do anything to be loved, Newt

(whose stepfather was an authoritarian Army officer) will do anything to be feared.

Machiavelli says that "it is far better to be feared than loved if you cannot combine them." Why? Because bonds of love are readily broken "but fear is strengthened by a dread of punishment, which is always effective."

Gingrich wants to punish Clinton publicly. As he did on last session's campaign reform bill, Gingrich may privately pledge support on some bipartisan solution, perhaps on welfare reform. But, once Clinton commits, Gingrich will savage the measure as diseased, a threat to healthy Americans. Counter-accusations of vicious duplicity won't faze Gingrich because they feed his world view.

Gingrich's own staff describes him, ironically, as a Leninist. The description fits. Gingrich has warned that "if America fails, our children will live on a dark and bloody planet." But no other outcome seems plausible to him. With his implacable cold will, Gingrich no doubt believes that history is on his side. Since he is the future, all his acts of destruction must be unquestionably right.

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One floor below the Clintons

White House bullet

By **CORRY SIEMASZKO**
Daily News Staff Writer

One of four bullets fired at the White House pierced the window of the State Dining Room — only one floor below the First Family's residence.

The 9-mm. bullet was not discovered immediately after the Saturday shooting because the hole it made in the window was concealed by a Christmas wreath. Secret Service spokesman Carl Meyer said.

The other three bullets were found on the landing of a first-floor balcony, a driveway outside the back door and beneath a nearby Christmas tree — places where President Clinton routinely walks.

Police believe they have found all the bullets fired at the White House.

Clinton and his family, who were asleep in their top-floor rooms during the 2 a.m. shooting, were never in danger, Meyer said.

The President attended church yesterday with his

family, then headed out for a round of golf — seemingly unaffected by the weekend's events.

But this, the third security breach at the White House since September, is likely to spur more calls for beefed-up security.

Investigators held out little hope yesterday of capturing whoever fired at the White House on Saturday.

"If someone out there starts bragging, maybe we'll get somebody," a law enforcement official said. "Right now, we have nothing to go on."

Today ballistics experts will study the rounds and try to determine what kind of gun it was fired from.

Nine-millimeter ammunition can be fired from some handguns, shoulder-strap weapons and rifles. The dis-

SECRET SERVICE agent stands next to presidential limousine yesterday as he waits for President Clinton to depart for a round of golf. On Saturday, at least four bullets were fired at the White House.

...ence a bullet can travel depends on the type of weapon used.

Investigators believe the four shots were fired from the same weapon, Meyer said. And the bullets were in good condition, indicating that they were fired from a great distance.

Chief of staff Leon Panetta speculated that the incident

was a drive-by shooting. A public street loops behind the White House grounds less than 100 yards from where the bullets were found.

But investigators also noted that the bullets were found within a few hundred feet of each other, suggesting the gunman took aim at the White House.

Two months ago a Colorado

man allegedly tried to kill Clinton by spraying the White House with automatic gunfire. One shot hit the press room window in the West Wing.

In September, a Maryland pilot committed suicide by crashing a stolen single-engine airplane into the south lawn of the White House.

With News Wire Services

Ex-pilot's tale of pay-offs to Gov. Clinton probed

By **CORRY SIEMASZKO**
Daily News Staff Writer

Independent counsel Donald Smaltz is investigating claims by a former Tyson Foods pilot that he flew pay-offs from the company to then-Arkansas Gov. Bill Clinton, according to a published report.

"It's very high on my radar screen," Smaltz told Time magazine in today's edition.

But, the newsmagazine also

reports, 43-year-old Joseph Henriksen's story is full of holes.

Henriksen, fired from Tyson's aviation division last year and suing the company, told Smaltz and a team of FBI agents that the white envelopes "always had Clinton's name on them and no return address," the magazine reported.

Henriksen said the envelopes, on six occasions, were

a quarter of an inch thick and appeared to be stuffed with \$100 bills.

Henriksen, however, gave no proof that the cash landed in Clinton's pockets.

Later, Henriksen contradicted himself by saying the envelopes were blank. And he could not recall exactly how many of them he dropped at the Little Rock airport where the Arkansas-based Tyson makes deliveries.

Also, Time interviewed Tyson's 11 current and former pilots and could find no eye-witnesses to support Henriksen's story. Plenty of them, however, called Henriksen a bully and a liar.

"Personally, I wouldn't put it past Joe to lie if it benefited him," said former Tyson pilot Tony Lundquist.

Despite that, Smaltz maintained Henriksen's story

"has a ring of truth to it."

Smaltz was appointed by a three-judge panel in September to investigate whether Agriculture Secretary Mike Espy, who has since resigned, swapped favors for gratuities from Tyson — the world's largest poultry producer — and other companies.

Time quoted lawyers for both Clinton and Tyson Foods as saying the allegations were "totally false."

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Morvison v. Olson

Bergen 295 US 88

Williams 952 F2 421
962 F2 45

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170 units affordable. In October, HUD approved a \$4.5 million loan, with one third earmarked for repairs. It also pledged nearly \$500,000 a year in increased rental subsidies to the Kargmans' partnership.

The tenant association protested, saying landlords of a project marred by crumbling foundations, flooded basements, dilapidated stairwells and a "Cockroach Superhighway" did not deserve such favorable treatment from the government. It also said the proposed rent increases would drive out moderate-income tenants, as they have in other Title II developments. But HUD stood by its decision, and declined to order additional repairs.

"It's an absolute outrage," said Peter Catalano, 43, a disabled engineer who lives at the Burbank. "If this is how HUD does business, no wonder it's in so much trouble."

William Kargman, a partner and manager at eight Title II properties in Massachusetts, defended the program as "a wonderful vehicle for preserving affordable housing" that justly compensates landlords for 20 years of cooperation with HUD. He said the cost of Title II pales in comparison to the cost of building new housing, or providing rental vouchers to evicted tenants who cannot pay market rates.

The loans are determined by HUD appraisals of a project's highest possible value, and Kargman said he was proud his developments have qualified for more than \$62 million in loans.

"We got that value because we maintain quality housing," he said. "Making a profit is not a dirty word. We made an investment, and we deserve a return on our investment."

If all Title II landlords did convert their

buildings to market rate housing, as many as 30,000 low-income tenants in Massachusetts could face eviction. For this reason, many critics of Title II propose reform rather than repeal, including HUD Secretary Henry Cisneros.

Proposals include giving rent vouchers to displaced tenants, replacing equity loans with grants for project improvements and revising rules to encourage more sales to tenants. Critics like Boston HUD Tenant Alliance director Michael Kane say the problem is simply poor administration by HUD.

HUD's general counsel last week agreed with Kane's criticism of HUD's appraisal process, and said he would instruct the Boston office to change its approach to rent control. Kane said HUD saved \$7 million at four Boston projects after a 1993 audit forced the agency to consider rent control, but said HUD could have saved \$26 million more if it had done so properly.

Kane said he will ask HUD to reconsider the appraisals he analyzed - Cummins Towers in Roslindale, the Burbank Apartments, High Point Village in Hyde Park and Brandywine Village in East Boston - as well as the Georgetowne Houses in Hyde Park.

"This is a way to cut windfall profits without hurting poor people," Kane said. "It shows a way out of the whole mess."

Congress replaced Title II in 1990 with Title VI, which has a heavier emphasis on tenant sales and a simpler appraisal process. But critics say Title VI is only a slight improvement, and does not apply to projects eligible for benefits before 1990. Documents show that HUD has approved only one application in Massachusetts under Title VI so far.

Ex-Employee Accuses Tyson Foods

Investigator Says He Will Follow Report of Cash Intended for Clinton

By Serge F. Kovalski
Washington Post Staff Writer

Independent counsel Donald C. Smaltz said yesterday that he is investigating allegations made by a former pilot for Tyson Foods Inc. that he ferried envelopes from the company that were full of cash destined for Bill Clinton while Clinton was governor of Arkansas.

The pilot, Joseph Henrickson, who was fired from Tyson last year and later sued the company, alleges that on at least six occasions, mostly in the 1980s, he carried sealed white envelopes intended for Clinton from Tyson's headquarters in Springdale, Ark., to an airstrip in Little Rock.

Henrickson contends that in each case, Tyson officials told him that the envelopes, which he said were a quarter-inch thick and filled with \$100 bills, were for Clinton. Most of the times he gave the envelopes to receptionists at the airstrip, but once Henrickson said he handed an envelope to a plainclothes state trooper who was waiting on the tarmac for the drop-off.

"It all started in the early '80s. I remember just saying 'What's going on, what are you doing?' and he said that he hauled envelopes full of \$100 bills to Little Rock," Henrickson's wife, Mary Ann, said in an interview yesterday. "He did it at least a half-dozen times that he remembers and each time [Tyson managers] said [the envelopes] were for Clinton."

Joseph Henrickson's allegations are contained in this week's issue of Time magazine. Although the 43-year-old pilot declined to discuss the charges that he outlined in the magazine, his wife, who said that she was very knowledgeable

about the situation, agreed to talk about many of the details.

Mary Ann Henrickson said that in each instance her husband held the envelopes up to the light to examine the contents and that they appeared to contain \$100 bills. She also said that her husband had no evidence that any of the envelopes were ever delivered to Clinton or any knowledge as to the purpose of the money shipments.

The magazine noted that so far no eyewitnesses, including a captain

her husband has been subpoenaed to appear before a grand jury and was given a two-page letter of immunity. She said that the couple is willing to take a polygraph test.

"I think [Smaltz] bought himself a pig in a poke," Green said.

David E. Kendall, the personal lawyer for the president and Hillary Rodham Clinton, said: "I'm extremely surprised that these vague and baseless allegations are being irresponsibly bandied about. They are totally false and do not merit further comment."

Henrickson's suit against Tyson, in which he charges the company with wrongfully firing him after 15 years of service, was dismissed by a county circuit court in October. Henrickson's attorney has subsequently filed an appeal.

Mary Ann Henrickson said yesterday that her husband contacted the FBI after a Tyson official allegedly threatened to accuse him of running drugs into the United States from Mexico if he did not drop his suit against the company.

During three days of interviews with the FBI and Smaltz, the pilot provided details about ferrying the money-filled envelopes to Little Rock. Smaltz's investigators came upon Henrickson after discovering his lawsuit against the company.

Smaltz was appointed by a three-judge panel last September to investigate whether outgoing Agriculture Secretary Mike Espy, whose resignation becomes effective Dec. 31, provided favors in return for accepting gratuities from Tyson and other companies. That seemingly narrow focus has gone beyond Espy to include Tyson and its relationship with Clinton as Arkansas governor.

The allegations "are totally false and do not merit further comment."

— Clinton lawyer David E. Kendall

whom Henrickson said he showed an envelope to during their flight, has corroborated his story.

Some Tyson pilots described Henrickson as a "bully" and a disruptive individual while he worked in the agricultural giant's flight division.

"It takes two to fly an airplane and there's not another pilot who says that it's true," Tyson attorney Thomas Green said yesterday. "He is obviously a disgruntled former employee. Henrickson is totally unreliable and unbelievable and God only knows why he is engaging in this kind of crazy conduct."

Smaltz declined to comment on the case yesterday, except to say that he was investigating Henrickson's allegations.

Mary Ann Henrickson said that

GAO Criticizes Welfare Training Effort

Programs Don't Reach Many at High Risk of Long-Term Dependency

Associated Press

Education and training programs for single mothers on welfare are failing to reach many women at highest risk of long-term dependency, particularly teenagers and drug abusers, according to a study by congressional investigators.

The General Accounting Office report, dated today, also finds that these state-run programs are not establishing strong links to local employers that could help welfare recipients find jobs.

Of the 4 million parents receiving support from the Aid to Families with Dependent Children program, only about 11 percent were participating in the education and training program known as JOBS (Job Opportunities and Basic Skills) from 1991 through 1993, the congressional watchdog agency said.

Spending on JOBS totaled \$1.1 billion last year. But the program generally does not view employment as its bottom line and is not reaching out to many welfare recipients with the biggest barriers to entering the work force—such as learning disabilities and emotional problems—or to teenagers.

Rapid increases in the number of people on welfare in recent years and concerns about extended stays on welfare have focused national attention on the nation's welfare system. Republican lawmakers say reform will be high on the agenda

when they take control of Congress in January.

Teenage parents are considered to be among those at high risk of long stays on welfare because of their low levels of education and work experience, and the young age of their children.

Yet a 1992 review of 16 states containing most of the nation's AFDC teenage mothers found that only 24 percent overall were in enrolled in JOBS, the GAO said.

Also at risk of long-term dependency are welfare recipients who have low education and literacy levels and barriers to self-sufficiency such as a lack of self-esteem, limited life skills or little motivation.

JOBS also is failing to widely serve these women, the GAO said.

The GAO also criticized the program for failing to focus on employment as its ultimate goal.

"Most local JOBS programs nationwide have not forged the strong links with employers that may help get jobs for their participants," the GAO said.

Instead, the system is based on participation in program activities and not on whether participants get and keep jobs.

Under the law, states are held accountable for the number and type of participants enrolled in JOBS activities, such as training, and can lose a portion of their federal funds if they don't meet those standards, the report said.

"As a result, JOBS programs may focus more on getting clients into program activities than off AFDC and into jobs," the report said.

The Department of Health and Human Services disputed some of those findings, saying that GAO overlooks or plays down some of the accomplishments of the states and federal government.

June Gibbs Brown, the HHS inspector general, said the 1988 law that established the JOBS program moved the welfare system from one focused on "income maintenance" to one that is concerned about the self-sufficiency of recipients.

She said that while funding problems and caseload increases have made it more difficult to achieve all of the goals of the law, "progress in moving towards an employment-focused system has been significant and should not be underestimated."

TODAY IN CONGRESS

SENATE

Not in session.
Committees: none.

HOUSE

Not in session.

Committee:

Small Business—10 a.m. Subc. on regulation, business opportunities & technology. Causes of disparities in claims denial rates by private insurance companies that process physician claims for Medicare program. 2237 Rayburn House Office Bldg.

—From Reuter

Partisan Battles on Banking Panel Unlikely—Except Over Whitewater

Incoming House Chairman Leach, a Moderate, May Aim at Regulations

By Jonathan D. Glater
Washington Post Staff Writer

In the past, banking industry officials dreaded being hauled before the House Banking Committee, where they might be lectured on such topics as the importance of community reinvestment or other regulatory requirements.

The midterm elections changed that. Those same officials now say they will look forward to testifying before the committee—on the importance of weakening such regulations.

The Republican takeover in November has reshaped the committee. It will convene in January with a new name, many new members and a radically different set of

CHANGING OF THE GUARD

HOUSE BANKING AND FINANCIAL SERVICES COMMITTEE

legislative priorities. But it also will have a moderate Republican leader, who is far from Democrats' worst nightmare. Even consumer groups, upset by the elimination of the consumer credit and finance subcommittee, concede that things could be a lot worse.

Other House committees have been drastically altered by the Republican restructuring and agenda outlined in the "Contract With America." But the renamed Banking and Financial Services Committee (formerly known as the House Committee on Banking, Finance and Urban Affairs) has a jurisdiction that generally falls outside the purview of the contract. And disputes before the committee, which in the past have generally split along industry rather than party lines, will probably continue to be free of partisan wrangling—except for one powder keg: Whitewater.

The change in committee philosophy is captured by the change in chairmen. Outgoing Chairman Henry B. Gonzalez (D-Tex.) is a populist who regularly railed against Federal Reserve monetary policies and called for more regulation, including consumer-protection rules more stringent than the banking industry has liked. Incoming chairman Jim Leach (R-Iowa) is a moderate Republican, a soft-spoken, thoughtful Princeton graduate and 18-year veteran of the committee, who has voiced support for the Fed for staying "above politics" and who has worried that too much regulation stifles the banking industry.

But the committee is likely to be at its partisan worst when the committee holds hearings on Whitewater next summer, according to Leach, who will discuss his agenda in further detail at a news conference today. "The Banking Committee in some ways isn't exactly a partisan committee," he said. "Ironically, we have in our jurisdiction the hottest political potato."

Sen. Alfonse M. D'Amato (R-N.Y.), Leach's counterpart on the Senate Banking Committee, has said he plans to hold hearings later in the legislative session.

Under Leach, the jurisdiction of the Banking and Financial Services Committee will not change much: The committee will still oversee the banking industry, housing and monetary policy, but now will be able to exercise some authority over the securities industry. The committee, which will have 27 Republican and 23 Democratic members, has shrunk by only one. The staff, which in 1993 consisted of just under 100 people, will be slashed by about one-third.

But the committee's structure will change slightly. The committee, which used to have six subcommittees, will now have five: financial institutions and consumer credit; capital markets, securities and government-sponsored enterprises; housing and community opportunity; general oversight and investigations; and domestic and international monetary policy. Significantly, the consumer credit and insurance subcommittee has been rolled into the financial institutions panel, reassuring banks that they may not have to worry about hostile hearings like those Rep. Joseph P. Kennedy II (D-Mass.) held last year on community reinvestment requirements and lending discrimination.

That change has consumer lobbyists worried. "I look forward to simply maintaining the consumer protections that we have," said Susannah Goodman, legislative advocate at Public Citizen, the public interest lobby. "We'll be lucky if we do that." For example, she said, the committee probably will not hold hearings on provision of basic banking services, such as check cashing, to the poor, or on extending community reinvestment rules to non-bank lenders, including mortgage banks and credit unions.

All that is fine with bankers, who hope Leach will roll back what they see as excessive rules. "There is going to be a serious look by the representatives at what in the consumer laws might be counterproductive," said Edward

Yingling, executive vice president for government relations at the American Bankers Association. Leach has already said the committee will review recent fair lending enforcement by the Justice Department, which has drawn fierce industry criticism.

Leach may find himself under pressure from more conservative Republicans to pursue a more hard-line agenda, lobbyists and other congressional observers say. Conservative Republicans could try to push Leach to go much further, eliminating community reinvestment requirements, disclosure rules and other regulations that banks have long criticized.

No one is sure how Leach will react to that pressure. "Dear Mr. Leach, you're Mr. Moderate," said Public Citizen's Goodman, "What are you going to do in the land of the Gingrich?"

"Obviously within political parties on all issues there are differences of judgment," Leach said in an interview. "The conservatives hold the vibrant edge for direction-setting [in the Republican Party] just as the liberals do in the Democratic Party, but America has historically found extremes unattractive."

Leach said that "early in the Congress, perhaps on the first day," he will introduce legislation to reform Depression-era laws that prohibit a major investment bank, like Merrill Lynch & Co., from owning or merging with a commercial bank and a commercial bank, in turn, from owning or merging with an investment bank. An effort to remove restrictions could pit big banks, which want to trade and underwrite securities, against securities firms, who say the additional competition would be fair only if they can in turn provide retail banking services. Previous efforts to change these laws have been stymied by Rep. John D. Dingell (D-Mich.), chairman of the Energy and Commerce Committee, but the Republican victory has removed that obstacle.

The battle lines in this debate—involving small banks, big banks and Wall Street—are typical, and they have little to do with party lines. In the past, on legislation Leach oversaw that will make it easier for banks to cross state lines, party politics were not a major factor, either.

Leach said he also plans to propose legislation on derivatives, the well-publicized financial instruments whose value is linked to—or "derived" from—an underlying asset. Both banks and investment houses have voiced opposition to legislation that would restrict derivatives dealing, and regulators have echoed their concerns.

"The trouble with legislation is that it is very likely in this type of market to become rapidly obsolete, and could very readily become counterproductive to the required flexibility that we need to address the types of problems that we are addressing," Federal Reserve Chairman Alan Greenspan told a congressional committee two weeks ago. "This is a rapidly changing financial structure."

"My own personal view is that derivatives are extremely useful instruments of finance," Leach said. But serious losses resulting from excessive risk-taking or plain confusion about what determines derivatives' value indicate that further oversight may be necessary, he added.

The committee also will consider reducing the number of bank regulators. Currently banks are regulated by three agencies—the Fed, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corp.—and savings and loans are regulated by the Office of Thrift Supervision. Banks have long complained that rules are often redundant or conflicting and create excessive paperwork. The committee also will have to oversee the demise of the Resolution Trust Corp., the agency that was created to deal with massive failures in the savings and loan industry and that will be absorbed by the FDIC at the end of next year.

Relatively low on Leach's agenda is addressing a difference in the size of premiums paid by banks and thrifts for deposit insurance. The thrift industry has warned that because bank premiums will probably decline next year and thrift premiums will not, thrifts will be at a severe competitive disadvantage. If the premium differential is not eliminated, thrift executives say, profits would fall and some thrifts could be forced to close.

Further down the legislative pipeline is a new version of a "national treatment" bill that would require foreign governments to give U.S. banks operating abroad the same privileges foreign banks enjoy here. A version of that bill, which died in the Senate earlier this year, would have given the Treasury Department the power to deny requests made by a foreign bank if the foreign bank's home government discriminated against U.S. banks operating there. Although the expanded General Agreement on Tariffs and Trade passed by Congress earlier this month covers financial services for the first time, specific market-opening agreements remain to be negotiated.

Staff writer Peter Behr contributed to this report.

INVESTIGATIONS

On Fresh Ground

The probe of Mike Espy widens to include new allegations against chicken producer Tyson Foods

by RICHARD BEHAR FAYETTEVILLE



ORIGINAL TARGET: Espy leaves office Dec. 31

THE GOODIES THAT started the investigation of Agriculture Secretary Mike Espy were relatively small things as political scandals go: sky-box seats at a Dallas Cowboys game, tickets to a Chicago Bulls play-off, a ride on a corporate jet and lodging at a lakeside cabin. One of the largest items was a \$1,200 scholarship for his girlfriend. At first, the situation seemed as if it might be cleared up quickly. For accepting those gratuities from Tyson Foods and other companies, some of which Espy had reimbursed, the White House demanded his resignation. Independent counsel Donald Smaltz, appointed by a three-judge panel last September, promised a low-profile and speedy inquiry to see whether evidence could be found that Espy did anything illegal in accepting the items and whether he provided favors in return.

That seemingly narrow task, however, has expanded into a full-scale investigation that has gone beyond Espy to include Tyson Foods and its relationship with Bill Clinton as Arkansas Governor. Many close ties are already known: Tyson executives helped finance Clinton's campaigns, and James Blair, one of the firm's lawyers, guided Hillary Rodham Clinton's successful commodities trades. Smaltz, 57, a former prosecutor from Los Angeles who was expected to finish the current probe within six months, says he has collected such a large battery of allegations that he may not finish the task before 1996. He is working seven days a week and has hired nearly 30 employees, including six lawyers and eight FBI agents. Last week he opened an office that he describes as "a toehold" in Fayetteville, Arkansas, just a few miles from the headquarters of Tyson, the world's largest poultry producer (1993 sales: \$4.7 billion).

Smaltz has served more than 50 grand-jury subpoenas on individuals and groups ranging from the National Broiler Council, a chicken-industry trade group dominated

by the Tyson company, to the Arkansas Workers Compensation Commission, the state agency that handles disability claims by Tyson employees. Among the many areas of Smaltz's inquiry are whether Tyson induced Espy to delay tough inspection rules for poultry, and why Espy intervened on Tyson's behalf in a chicken-labeling dispute in Puerto Rico. TIME has learned that Smaltz is also investigating a charge made by a former Tyson pilot that he helped convey cash payments from the company to Clinton while Clinton was Governor of Arkansas.

The reaction to the expanding probe of Tyson Foods has been swift and furious. In a prepared statement, company spokesman Archie Schaffer accused Smaltz of going "outside the scope of the independent counsel's charge" and of "taking off on a politically motivated witch-hunt." Tyson has hired Thomas Green, a top Washington white-collar defense attorney, to represent the company. Smaltz, however, says he was given the jurisdiction to look into any criminal charges arising from his original inquiry. "It's a very broad mandate," he said in an interview.

In the Puerto Rico scandal, as reported in TIME last July, a commonwealth official had refused to permit several million pounds of chicken parts from mainland U.S. to leave the docks in January 1993 because the importers' names were missing from the food labels, a violation of local law. Espy was in office only one week at that point, but Tyson Foods, through intermediaries, helped persuade the Secretary to sign a letter that moved the chicken off the piers and into the grocery stores.

A far more provocative allegation comes from Joseph Henrickson, 43, a pilot who served until last year as the second-highest member of the company's aviation division. The former captain alleges that on six occasions, mostly in the 1980s, he carried sealed white envelopes from Tyson's headquarters in northwest Arkansas to Little Rock while making regular business flights. In each instance, he claims, he held the envelopes up to the light in order to examine the contents. Each envelope, he says, measured about a quarter-inch thick and appeared to be filled with \$100 bills. In each case, Henrickson believed the envelopes were intended for delivery to Clin-



SPECIAL PROSECUTOR Smaltz, who was expected to conclude the probe within six months, says he may not finish before 1996

ton, though there is no evidence he ever received them nor any allegation as to the purpose for which the money was intended. In confirming that he is looking into the accusation, Smaltz told TIME, "It's very high on my radar screen." *

Both Clinton and Tyson Foods vehemently deny the charges. "I'm extremely surprised that these vague and baseless allegations are being irresponsibly bandied about in this way," says David Kendall, the Clintons' personal lawyer. "They're totally false and don't merit further comment." Tyson's lawyer, Green, said in a letter to TIME: "These allegations are totally false."

The former Tyson captain provided the details of his charge during three intense days of interviews with Smaltz and a team of FBI agents shortly before the Thanksgiving holiday in Fayetteville, where Henrickson lives with his wife and two children. "I nearly fell off my chair when I heard Joe make the allegation. I took over the ques-

tioning," recalls Smaltz. Henrickson also spoke with TIME on several occasions before and after his contacts with the federal investigators. Smaltz told the Washington Post earlier this month that he is not investigating Clinton. Last week he explained that in the case of Henrickson's allegations, he is investigating only the alleged "gratuity giver," Tyson Foods, but not the alleged "gratuity receiver."

Henrickson says the envelopes were typically given to him by Tyson employees at the company headquarters in Springdale. In one case, he says, a Tyson executive handed him an envelope of cash in the company's aircraft hangar in Fayetteville and said, "This is for Governor Clinton." Henrickson says he usually delivered the envelopes to receptionists working at Mid-

mer mentor as "a 600-lb. gorilla who pretty much did what he wanted in the face of rules and common sense."

When Henrickson took part in his first alleged cash delivery for Clinton in the early 1980s, the captain at the wheel of the Citation II aircraft was Haskell Blake, Henrickson says. "[Blake] showed me the envelope outside the airplane," maintains Henrickson. "We held it up to the light." But Blake, now an Indianapolis-based pilot, recalls nothing of the sort; "I like Joe, but I don't know where he came up with that," says he.

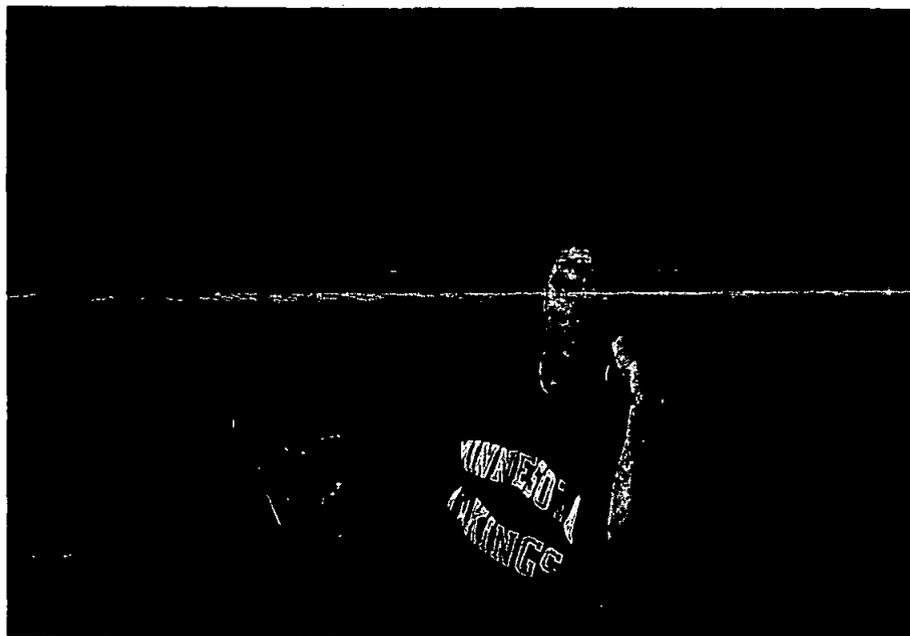
Moreover, Henrickson's tale has had some discrepancies. In his first interview with TIME, Henrickson recalled that the envelopes "always had Clinton's name on them and no return address." After meet-

Henrickson's relationship with his immediate boss had grown strained in recent years. Then in 1993 a fellow pilot was fired for what Henrickson and other pilots felt was a minor infraction. Henrickson tried to intervene. Two months later, he too was fired. He then brought the lawsuit, charging retaliatory dismissal. His personnel records were clean, reflecting regular raises and promotions, but the suit was dismissed in October. "Under current Arkansas law, Joe's case is impossible," points out Henrickson's attorney, Marcia Brinton.

Last summer, despite the company's strong legal position, Brinton says she was invited for coffee by some current Tyson employees, whom she refuses to identify, who made "an implication" that if Henrickson didn't drop his lawsuit, they would step forward and testify that he transported drugs aboard Tyson airplanes. Nobody has followed through with the threat, which Henrickson reported to the FBI, even though Henrickson has appealed his case. Other Tyson pilots dismiss the drug-running charge against Henrickson as preposterous. Henrickson believes the threat was intended to scare him away from talking about the alleged deliveries to Clinton. He claims he's being blacklisted in the industry, a fate he says his former colleagues might suffer if they backed him up. "It's easy to control people who don't know where their next house payment is coming from," he says.

Smaltz has served Henrickson with a subpoena to appear before a grand jury and given him a two-page letter of immunity, which protects the pilot from criminal charges and subjects him to perjury charges if he is lying. The former Tyson captain has also volunteered to take a lie-detector test. In his first conversation with TIME, Smaltz did not admit to knowing Henrickson. But when asked about the letter of immunity and presented with information that TIME had gathered, the independent counsel spoke with unusual candor. He found Henrickson's story "very interesting," he said, partly because in their first meeting, Henrickson did not mention the envelopes until the day was nearly finished. "Based upon the way his story unfolded, it has a ring of truth to it," said Smaltz. "If a guy's got an agenda, usually he can't wait to tell you about it."

Meanwhile, Espy remains a major focus of the probe. Smaltz says he is investigating more than 30 allegations against the Agriculture Secretary. Espy's lawyer, Reid Weingarten, declared that Smaltz's growing staff and multiple subpoenas "suggest an investigation out of control or one with a funny agenda." His client, who leaves office Dec. 31, certainly faces a far longer wait for a resolution than nearly anyone imagined a few months ago. ■



FORMER TYSON PILOT Joseph Henrickson alleges that on six occasions he flew sealed white envelopes containing cash from Tyson's headquarters to Little Rock

coast Aviation, formerly called the Little Rock Air Center, where Tyson lands its planes. In another instance, Henrickson says, he handed an envelope to a man who appeared to be a plainclothes state trooper who was waiting on the tarmac.

So far, no eyewitness has corroborated Henrickson's story to TIME. Receptionists at Midcoast Aviation cannot recall any cash drop-offs. In interviews, all 11 current and former Tyson pilots who flew with Henrickson during his 15-year tenure at the company denied having any knowledge of such events. Most describe Henrickson as a bully and a "disruptive force" while he worked in the flight division. "Personally, I wouldn't put it past Joe to lie if it benefited him," says Tony Lundquist, a former Tyson pilot who now runs Wal-Mart's aviation division. A onetime protégé of Henrickson's, Tyson pilot Randy Parette, refers to his for-

ing with Smaltz, he now says the envelopes were "always blank." Similarly, Henrickson initially could recall only two or three deliveries. After meeting with Smaltz, he now remembers six deliveries from 1982 until as late as 1991. Henrickson's wife Mary Ann insists that her husband discussed the deliveries with her as they occurred. "The envelopes bothered me at the time," she recalls. "I would ask Joe, 'You're taking cash? Don't you get a receipt? Someone could steal it.'" Henrickson, a former Marine, says it was not in his nature to ask questions. "I just did what I was told," he says. "It was none of my business. I was one of the boys." The Henricksons maintain that they are both Clinton supporters.

Smaltz's investigators came upon Henrickson when they discovered a lawsuit the pilot had filed against his former employer and called him in for questioning about it.

§49.3

of the person upon whom the demand has been served, may, by agreement between such persons and the custodian, be reproduced by such person, in which case the custodian may require that the copies so produced be duly certified as true copies of the original of the material involved.

§49.3 Examination of material.

Material produced pursuant to the Act, while in the custody of the Custodian, shall be for the official use of officers and employees of the Department of Justice in accordance with the Act, but such material shall, upon reasonable notice to the Custodian, be made available for examination by the person who produced such material or his duly authorized representative during regular office hours established for the Department of Justice. Examination of such material at other times may be authorized by the Assistant Attorney General or the Custodian.

§49.4 Deputy Custodians.

Deputy Custodians may perform such of the duties assigned to the Custodian as may be authorized or required by the Assistant Attorney General.

PART 50—STATEMENTS OF POLICY

Sec.

- 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.
- 50.3 Guidelines for the enforcement of title VI, Civil Rights Act of 1964.
- 50.5 Notification of Consular Officers upon the arrest of foreign nationals.
- 50.6 Antitrust Division business review procedure.
- 50.7 Consent judgments in actions to enjoin discharges of pollutants.
- 50.8 Policy with regard to criteria for discretionary access to investigatory records of historical interest.
- 50.9 Policy with regard to open judicial proceedings.
- 50.10 Policy with regard to the issuance of subpoenas to members of the news media, subpoenas for telephone toll records of members of the news media, and the interrogation, indictment, or arrest of, members of the news media.
- 50.12 Exchange of FBI identification records

28 CFR Ch. I (7-1-94 Edition)

- 50.13 Procedures for receipt and consideration of written comments submitted under subsection 2(b) of the Antitrust Procedures and Penalties Act.
- 50.14 Guidelines on employee selection procedures.
- 50.15 Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities.
- 50.16 Representation of Federal employees by private counsel at Federal expense.
- 50.17 Ex parte communications in informal rulemaking proceedings.
- 50.18 [Reserved]
- 50.19 Procedures to be followed by government attorneys prior to filing recusal or disqualification motions.
- 50.20 Participation by the United States in court-annexed arbitration.
- 50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.

AUTHORITY: 5 U.S.C. 301, 552, 552a; 15 U.S.C. 16(d); 21 U.S.C. 881(f)(2); 28 U.S.C. 508, 509, 510, 516, 517, 518, 519; E.O. 12250.

§50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.

(a) *General.* (1) The availability to news media of information in criminal and civil cases is a matter which has become increasingly a subject of concern in the administration of justice. The purpose of this statement is to formulate specific guidelines for the release of such information by personnel of the Department of Justice.

(2) While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the Government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment by those responsible for administering the law and by representatives of the press and other media.

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Justice has a long history of providing information to the public. This area, the Department of Justice, has a long history of providing information to the public. This area, the Department of Justice, has a long history of providing information to the public.

Because of the importance of this information, the Department of Justice has established a policy of providing information to the public. This policy is based on the principle that the public has a right to know about the activities of the Department of Justice.

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3.C. 301, 552, 552a; 15 U.S.C.
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3) Inasmuch as the Department of Justice has generally fulfilled its responsibilities with awareness and understanding of the competing needs in this area, this statement, to a considerable extent, reflects and formalizes the standards to which representatives of the Department have adhered in the past. Nonetheless, it will be helpful in ensuring uniformity of practice to set forth the following guidelines for all personnel of the Department of Justice.

(4) Because of the difficulty and importance of the questions they raise, it is felt that some portions of the matters covered by this statement, such as the authorization to make available Federal conviction records and a description of items seized at the time of arrest, should be the subject of continuing review and consideration by the Department on the basis of experience and suggestions from those within and outside the Department.

(b) *Guidelines to criminal actions.* (1) These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

(2) At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.

(3) Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:

- (i) The defendant's name, age, residence, employment, marital status, and similar background information.
- (ii) The substance or text of the charge, such as a complaint, indictment, or information.
- (iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.

(iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

(5) Because of the particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.

(6) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department should refrain from making available the following:

- (i) Observations about a defendant's character.
- (ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.
- (iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.
- (iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.
- (v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

****DOCUMENT 2****

January 14, 1993

TO: Holders of United States Attorneys' Manual, Title 1

FROM: Office of the Attorney General

William P. Barr

Attorney General

RE: Media Guidelines

NOTE: 1. This is issued pursuant to USAM 1-1.550

2. Distribute to Holders of Title 1

3. Revised Chapter

AFFECTS: 1-7.000 Media Relations

PURPOSE: Bluesheet 1-7.000 sets forth revised Media Policy for the Department of Justice.

The following media policy replaces Chapter 7, Media Relations, in Title 1 of the United States Attorneys' Manual dated October 1, 1988.

1-7.000

MEDIA POLICY

I. PURPOSE

The purpose of this policy statement is to establish specific guidelines consistent with the provisions of 28 CFR 50.2 governing the release of information relating to criminal and civil cases and matters by all components (FBI, DEA, INS, BOP, USMS, USAO, and DOJ divisions) and personnel of the Department of Justice. These guidelines are: 1) fully consistent with the underlying standards set forth in this statement and with 28 CFR 50.2; 2) in addition to any other general requirements relating to this issue; 3) intended for internal guidance only; and 4) do not create any rights enforceable in law or otherwise in any party.

II. GENERAL PRINCIPLES

A. Interests Must Be Balanced

These guidelines recognize three principle interests that must be balanced: the right of the public to know; an individual's right to a fair trial; and, the government's ability to effectively enforce the administration of justice.

1. Need for Confidentiality

Careful weight must be given in each case to protecting the rights of victims and litigants as well as the protection of the life and safety of other parties and witnesses. To this end, the Courts and Congress have recognized the need for limited confidentiality in:

a. On-going operations and investigations;

- b. Grand jury and tax matters;
- c. Certain investigative techniques; and,
- d. Other matters protected by the law.

2. Need for Free Press and Public Trial

Likewise, careful weight must be given in each case to the constitutional requirements of a free press and public trials as well as the right of the people in a constitutional democracy to have access to information about the conduct of law enforcement officers, prosecutors and courts, consistent with the individual rights of the accused. Further, recognition should be given to the needs of public safety, the apprehension of fugitives, and the rights of the public to be informed on matters that can affect enactment or enforcement of public laws or the development or change of public policy. These principles must be evaluated in each case and must involve a fair degree of discretion and the exercise of sound judgment, as every possibility cannot be predicted and covered by written policy statement.

III. AUTHORITY FOR MEDIA RELATIONS

A. General Responsibility

Final responsibility for all matters involving the news media and the Department of Justice is vested in the Director of the Office of Policy and Communications (OPC) who will designate principal points of contact within the Office of Public Affairs, a component of OPC. The Attorney General is to be kept fully informed of appropriate matters at all times. Responsibility for all matters involving the local media is vested in the U.S. Attorney.

B. Designation of Media Representative

Each United States Attorney's Office and each field office of the various components of the Department shall designate one or more persons to act as a point of contact on matters pertaining to the media. In United States Attorneys' offices or field offices where available personnel resources do not permit the assignment of a full time point of contact for the media, these responsibilities should be assigned to a clearly identified individual. (This, of course, could be the United States Attorney or field office head.)

IV. COORDINATION WITH THE OFFICE OF POLICY AND COMMUNICATIONS

A. Department of Justice Components

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he public affairs officers at the headquarters level of the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, Bureau of Prisons, United States Marshals Service, Office of Justice Programs, and Community Relations Service are responsible for coordinating their news media effort with the Director of OPC.

B. United States Attorneys

Recognizing that each of the 93 United States Attorneys will exercise independent discretion as to matters affecting their own districts, the United States Attorneys are responsible for coordinating their news media efforts with the Director of OPC in cases that transcend their immediate district or are of national importance. (See IV.C, below.)

C. Procedures to Coordinate with OPC

In order to promote coordination with the OPC, all components of the Department shall take all reasonable steps to insure compliance with the following:

1. International/National/Major Regional News

As far in advance as possible, OPC should be informed about any issue that might attract international, national, or major regional media interest. However, the OPC should be alerted not to comment or disseminate any information to the media concerning such issues without first consulting with the United States Attorney.

2. News Conferences

Prior coordination with OPC is required of news conferences of national significance.

3. Requests from National Media Representatives (TV, Radio, Wire Service, Magazines, Newspapers)

OPC should be informed immediately of all requests from national media organizations, including the television and radio programs (such as the nightly news, Good Morning America, Meet the Press and Sixty Minutes), national wire services, national news magazines and papers (such as the New York Times, U.S.A. Today, and the Wall Street Journal) regarding in-depth stories and matters affecting the Department of Justice, or matters of national significance.

4. Media Coverage Affecting DOJ

When available, press clippings and radio/television tapes involving matters of significance should be forwarded to OPC.

5. Comments on Specific Issues (i.e., New Policies, Legislative proposals,

Budget)

OPC should be consulted for guidance prior to commenting on new policies and initiatives, legislative proposals or budgetary issues of the Department. This should not be interpreted to preclude recitation of existing well-established Departmental policies or approved budgets.

V. COORDINATION WITH THE UNITED STATES ATTORNEYS

A. In instances where OPC or the headquarters of any division, component or agency of the Department issues a new release or conducts a news conference which may affect an office or the United States Attorney, such division, component, or agency will coordinate that effort with the appropriate United States Attorney.

B. In instances where local field officers of any division or component plans to issue a news release, schedule a news conference or make contact with a member of the media relating to any case or matter which may be prosecuted by the United States Attorney's office, such release, scheduling of a news conference or other media contact shall be approved by the United States Attorney.

VI. RELEASE OF INFORMATION IN CRIMINAL AND CIVIL MATTERS

The following policies shall apply to the release of information relating to all criminal and civil matters by components and personnel of the Department of Justice to the news media.

1. Non-Disclosure of Information

At no time shall any component or personnel of the Department of Justice furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

2. Disclosable Information

Department personnel, subject to specific limitations imposed by law or court rule or order and consistent with the provisions of these guidelines, may make public the following information in any criminal case in which charges have been brought:

a. The defendant's name, age, residence, employment, marital status, and similar background information;

b. The substance of the charge, limited to that contained in the complaint, indictment, information, or other public documents;

The identity of the investigating and/or arresting agency and the

length and scope of an investigation;

d. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest. Any such disclosures shall not include subjective observations; and

e. In the interest of furthering law enforcement goals, the public policy significance of a case may be discussed by the appropriate United States Attorney or Assistant Attorney General.

In civil cases, Department personnel may release similar identification material regarding defendants, the concerned government agency or program, a short statement of the claim, and the government's interest.

3. Disclosure of Information Concerning Ongoing Investigations

a. Except as provided in subparagraph (b) of this paragraph, components and personnel of the Department shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document.

b. In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare, comments about or confirmation of an ongoing investigation may need to be made. In these unusual circumstances, the involved investigative agency will consult and obtain approval from the United States Attorney or Department Division handling the matter prior to disseminating any information to the media.

4. Disclosure of Information Concerning Person's Prior Criminal Record

Personnel of the Department shall not disseminate to the media any information concerning a defendant's or subject's prior criminal record either during an investigation or at a trial. However, in certain extraordinary situations such as fugitives or in extradition cases, departmental personnel may confirm the identity of defendants or subject and the offense or offenses. where a prior conviction is an element of the current charge, such as in the case of a felon in possession of a firearm, departmental personnel may confirm the identity of the defendant and the general nature of the prior charge where such information is part of the public record in the case at issue.

5. Concerns of Prejudice

Because the release of certain types of information could tend to prejudice an adjudicative proceeding, Department personnel should

refrain from making available the following:

- a. Observations about a defendant's character;
- b. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;
- c. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or forensic services, including DNA testing, or to the refusal by the defendant to submit to such tests or examinations;
- d. Statements concerning the identity, testimony, or credibility of prospective witnesses.
- e. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;
- f. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea of a lesser offense.

VII. ASSISTING THE NEWS MEDIA

A. Other than by reason of a Court order, Department personnel shall not prevent the lawful efforts of the news media to photograph, tape, record or televise a sealed crime scene from outside the sealed perimeter. In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, Department personnel with the prior approval of the appropriate United States Attorney may assist the news media in photographing, taping, recording or televising a law enforcement activity. The United States Attorney shall consider whether such assistance would:

1. unreasonably endanger any individual;
2. prejudice the rights of any party or other person; and
3. is not otherwise proscribed by law.

C. A news release should contain a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

VIII. FREEDOM OF INFORMATION ACT (FOIA)

Nothing contained herein is intended to control access to Department of Justice records which are publicly available under provisions of the Freedom of Information Act (FOIA).

(28. U.S.C. 509) (Order No. 469-71, 367 F.21028, No. 3, 1971, Amended by Order No. 602-75, 40 FR 22119, May 20, 1975)

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(d) Assistance of Department of Justice.—

(1) **In carrying out functions.**—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.

(2) **Payment of and reports on expenditures of independent counsel.**—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

(e) **Referral of other matters to an independent counsel.**—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept such referral if the matter relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

(f) **Compliance with policies of the Department of Justice.**—An independent counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) **Dismissal of matters.**—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

June 30

PUBLIC LAW 103-270 [S. 24]; June 30, 1994

**INDEPENDENT COUNSEL REAUTHORIZATION
ACT OF 1994**

*For Legislative History of Act, see Report for P.L. 103-270 in
U.S.C.C. & A.N. Legislative History Section.*

An Act to reauthorize the independent counsel law for an additional 5 years, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Counsel Reauthorization Act of 1994".

SEC. 2. FIVE-YEAR REAUTHORIZATION.

Section 599 of title 28, United States Code, is amended by striking "1987" and inserting "1994".

SEC. 3. ADDED CONTROLS.

(a) **COST CONTROLS AND ADMINISTRATIVE SUPPORT.**—Section 594 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(1) **COST CONTROLS AND ADMINISTRATIVE SUPPORT.**—

"(1) **COST CONTROLS.**—

"(A) **IN GENERAL.**—An independent counsel shall—

"(i) conduct all activities with due regard for expense;

"(ii) authorize only reasonable and lawful expenditures; and

"(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

"(B) **LIABILITY FOR INVALID CERTIFICATION.**—An employee making a certification under subparagraph (A)(iii) shall be liable for an invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

"(C) **DEPARTMENT OF JUSTICE POLICIES.**—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

"(2) **ADMINISTRATIVE SUPPORT.**—The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related

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(c) **INDEPENDENT COUNSEL EMPLOYEE PAY COMPARABILITY.**—Section 594(c) of title 28, United States Code, is amended by striking the last sentence and inserting: "Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES-4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the District of Columbia under section 5304 of that title regardless of the locality in which an employee is employed."

(d) **ETHICS ENFORCEMENT.**—Section 594(j) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(5) **ENFORCEMENT.**—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection."

(e) **COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.**—Section 594(f) of title 28, United States Code, is amended—

(1) by striking "shall, except where not possible, comply" and inserting "shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply";

(2) by adding at the end the following: "To determine these policies and policies under subsection (1)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice,"

(3) by striking "An independent" and inserting the following:

"(1) **IN GENERAL.**—An independent"; and

(4) by adding at the end the following new paragraph:

"(2) **NATIONAL SECURITY.**—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material."

(f) **PUBLICATION OF REPORTS.**—Section 594(h) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(3) **PUBLICATION OF REPORTS.**—At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Public Printer shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44."

(g) **ANNUAL REPORTS TO CONGRESS.**—Section 595(a)(2) of title 28, United States Code, is amended by striking "such statements" and all that follows through "appropriate" and inserting "annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made".

(h) **PERIODIC REVISION.**—Section 596(b)(2) of title 28, United States Code, is amended by striking "at the end of the following year" and inserting "at the end of the following year, if the independent counsel has not made a report to the court shall determine whether it is appropriate under the circumstances to require the appointment of a successor independent counsel for the succeeding 2-year period."

(i) **AUDITS BY THE ATTORNEY GENERAL.**—Section 596(c) of title 28, United States Code, is amended—

(1) by striking "The independent counsel shall, on or before December 31, prepare a state of affairs report" and inserting "The independent counsel shall, on or before December 31, prepare a state of affairs report"; and

(2) by striking "The Comptroller General shall, on or before December 31, conduct an audit of the independent counsel's financial records" and inserting "The Comptroller General shall, on or before December 31, conduct an audit of the independent counsel's financial records"; and

(3) by striking "The Committee on Government Operations of the House of Representatives shall, on or before December 31, report to the Committee on Appropriations of the House of Representatives" and inserting "The Committee on Government Operations of the House of Representatives shall, on or before December 31, report to the Committee on Appropriations of the House of Representatives"; and

(j) **THRESHOLD IN STATE CODE.**—Section 594(f) of title 28, United States Code, is amended by striking "30" and inserting "30".

(k) **RECUSAL.**—Section 594(j) of title 28, United States Code, is amended by striking "30" and inserting "30".

(1) **WHEN RECEIVED UNDER THE NEXT MOST AVAILABLE PERSON.**—If information is received under the next most available person who is not also recused, this chapter to the extent that it applies to that person shall not apply to that person.

(2) **IF INFORMATION IS RECEIVED FROM A PERSON WITH WHOM THE ATTORNEY GENERAL HAS A FINANCIAL RELATIONSHIP.**—If information is received from a person with whom the Attorney General has a financial relationship, the Attorney General shall determine whether recusal is required. The Attorney General shall report the results of this determination to the Committee on Government Operations of the House of Representatives.

(3) **REQUIRE PERSONAL APPEARANCE.**—The Attorney General shall personally make a determination with respect to whether recusal is required by the Attorney General. The Attorney General shall report the results of this determination to the Committee on Government Operations of the House of Representatives.

INDEPENDENT COUNSEL REAUTHORIZATION ACT OF 1987

P.L. 100-191, see page 101 Stat. 1293

DATES OF CONSIDERATION AND PASSAGE

House October 21, December 2, 1987

Senate November 3, 20, 1987

**House Report (Judiciary Committee) No. 100-316,
Sept. 23, 1987 [To accompany H.R. 2939]**

**Senate Report (Governmental Affairs Committee) No. 100-123,
July 24, 1987 [To accompany S. 1293]**

**House Conference Report No. 100-452
Nov. 20, 1987 [To accompany H.R. 2939]**

Cong. Record Vol. 133 (1987)

The House bill was passed in lieu of the Senate bill after amending its language to contain much of the text of the Senate bill.

The Senate Report (this page), the House Conference Report (page 2185), and the Signing Statement of the President (page 2206) are set out.

SENATE REPORT NO. 100-123

[page 1]

The Committee on Governmental Affairs, to which was referred the bill (S. 1293) to amend the Ethics in Government Act of 1978 to provide a continuing authorization for independent counsel and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. PURPOSE

The purpose of S. 1293, the Independent Counsel Reauthorization Act of 1987, is to amend the Ethics in Government Act to provide a continuing authorization for the independent counsel process and to clarify and strengthen the provisions governing that process.

II. BACKGROUND

A. HISTORY OF THE INDEPENDENT COUNSEL STATUTE

Legislation establishing the independent counsel process was first enacted by Congress in 1978, after the Watergate scandal, as Title VI, 28 U.S.C. 591-98, of the Ethics in Government Act, Public Law 95-521.

The Ethics in Government Act seeks to preserve and promote public confidence in the integrity of the federal government by,

INDEPENDENT COUNSEL REAUTH. ACT

P.L. 100-191

[page 24]

Requests for Expanded Jurisdiction.—Under the existing statute, if an independent counsel receives or uncovers information about criminal conduct which is outside but “related to” his or her prosecutorial jurisdiction, the independent counsel may ask either the Attorney General or the special court for expanded authority to investigate the new matter. The special court, in *In re Olson*, significantly restricted this provision where, as explained earlier, it ruled that its authority to grant a request for expanded jurisdiction does not extend to cases in which the Attorney General has previously denied the same request.

In light of this case law and concerns about the Attorney General’s failure to accord sufficient importance to the request of the independent counsel, the bill amends subsection (e) to require independent counsels to present all requests for expanded jurisdiction first to the Attorney General. The bill then requires the Attorney General to conduct a preliminary investigation of the new matter for no longer than 30 days. After this investigation, the Attorney General must decide whether to grant the request for expanded jurisdiction and refer the matter to the existing independent counsel, to request the appointment of a new independent counsel, or to close the matter because “there are no reasonable grounds to believe that further investigation is warranted.” In making this decision, the legislation requires the Attorney General to accord “great weight” to any recommendations from the sitting independent counsel.

The bill deletes the authority of the special court to grant, on its own, a request for expanded jurisdiction and instead rests this decision with the Attorney General. By lodging final decisionmaking authority with the Attorney General, but also requiring the Attorney General to give “great weight” to the recommendations of the sitting independent counsel, the bill establishes a process by which a request for expanded jurisdiction is handled not only within the constraints of the Constitution, but also with assurance that the independent counsel is given a meaningful role in the decisionmaking process.

DOJ Policies.—Subsection (f) requires independent counsels to comply with the written or other established policies of the Department of Justice respecting the enforcement of criminal law. This provision strengthens current law, which requires independent counsels to comply with these policies “except where not possible.”

The purpose of this change is to emphasize that independent counsels should follow the same rules in their investigations as apply to other federal criminal investigations, so that the subjects of the investigations are treated in the same manner as other persons. Some examples are Department policies: listing the factors a prosecutor must consider in deciding whether to commence prosecution in a case and prohibiting indictment unless the admissible evidence “will probably be sufficient to obtain a conviction.”

By obligating independent counsels to comply with the Department’s policies on law enforcement, however, the policies are not intended to be transformed into mandatory directives; they are intended to retain their character as important guidelines which should be followed unless an unexpected situation or other good reason justifies making an exception. Finally, the provision is not

LEGISLATIVE HISTORY
SENATE REPORT NO. 100-123

[page 25]

intended to provide the Department of Justice with a legal basis for assuming control over the prosecution strategy of independent counsels in order to enforce compliance with the Department's policies. The provision is not directed to the Justice Department but to the independent counsels, instructing them in the policies that must guide their law enforcement efforts.

Ethical Violations.—Another new provision is subsection (h). It permits an independent counsel to refer possible violations of federal ethical standards to the Office of Government Ethics and any other appropriate federal agency or officer. While the Committee believes existing laws already authorize such referrals, this provision is included because at least one independent counsel has indicated his belief that current law is inadequate. Under the new provision, it is not the role of an independent counsel to become expert in ethics rules or to make ethical findings in a particular case. The subsection only provides that, if an independent counsel suspects that an ethical violation may have occurred, he or she may refer the matter to the appropriate agencies.

Reports.—Subsection (i) is a modified provision which increases the accountability of independent counsels by expanding their reporting obligations. Under current law, independent counsels are required to file a final report before terminating office. The new provision requires an independent counsel to file an "initial report" within 30 days of appointment and an "status report" every 60 days thereafter, as well as the "final report" required under current law. These reports are filed with the special court, which controls their release.

The new reports require independent counsels to estimate the length of their investigations, staff needs, and future expenses, as well as to explain subsequent, major unexpected expenses. The purpose of the new reports is to require independent counsels to plan and justify their expenditures; to increase the independent counsels' accountability for the length and costs of their investigations; and to enable Congress to keep better track of the independent counsels' activities and costs.

Materials from Closed Cases.—Another new provision is subsection (k). It is a needed housekeeping measure governing what happens to the materials compiled by independent counsels. Essentially, it instructs each independent counsel, upon terminating office, to transfer the records created or received by that office to the Archivist of the United States.

By specifying the transfer of "records" to the Archivist, the statute intends the independent counsel to be able to rely on an existing body of law to define that term. See, e.g., 44 U.S.C. 3301. It includes books, papers, documentary materials, sound recordings, films, photographs, charts, exhibits, models, maps, works of art, computer tapes and other materials.

By requiring the transfer of records "which have been created or received by the independent counsel office," the statute means to encompass the whole of the materials collected or produced by the office. However, this provision is also intended to be applied in a reasonable fashion; it requires the independent counsel to act with reasonable diligence to ensure the transfer of all items which fall

MORRISON, INDEPENDENT COUNSEL *v.*
OLSON ET AL.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 87-1279. Argued April 26, 1988—Decided June 29, 1988

This case presents the question of the constitutionality of the independent counsel provisions of the Ethics in Government Act of 1978 (Act). It arose when the House Judiciary Committee began an investigation into the Justice Department's role in a controversy between the House and the Environmental Protection Agency (EPA) with regard to the Agency's limited production of certain documents that had been subpoenaed during an earlier House investigation. The Judiciary Committee's Report suggested that an official of the Attorney General's Office (appellee Olson) had given false testimony during the earlier EPA investigation, and that two other officials of that Office (appellees Schmults and Dinkins) had obstructed the EPA investigation by wrongfully withholding certain documents. A copy of the Report was forwarded to the Attorney General with a request, pursuant to the Act, that he seek appointment of an independent counsel to investigate the allegations against appellees. Ultimately, pursuant to the Act's provisions, the Special Division (a special court created by the Act) appointed appellant as independent counsel with respect to Olson only, and gave her jurisdiction to investigate whether Olson's testimony, or any other matter related thereto, violated federal law, and to prosecute any violations. When a dispute arose between independent counsel and the Attorney General, who refused to furnish as "related matters" the Judiciary Committee's allegations against Schmults and Dinkins, the Special Division ruled that its grant of jurisdiction to counsel was broad enough to permit inquiry into whether Olson had conspired with others, including Schmults and Dinkins, to obstruct the EPA investigation. Appellant then caused a grand jury to issue subpoenas on appellees, who moved in Federal District Court to quash the subpoenas, claiming that the Act's independent counsel provisions were unconstitutional and that appellant accordingly had no authority to proceed. The court upheld the Act's constitutionality, denied the motions, and later ordered that appellees be held in contempt for continuing to refuse to comply with the subpoenas. The Court of Appeals reversed, holding that the Act violated the Appointments Clause of the Constitution, Art. II, § 2, cl. 2; the limitations

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essary to operate her office. The Act specifically provides that in policy matters appellant is to comply to the extent possible with the policies of the Department. §594(f). ✓

Third, appellant's office is limited in jurisdiction. Not only is the Act itself restricted in applicability to certain federal officials suspected of certain serious federal crimes, but an independent counsel can only act within the scope of the jurisdiction that has been granted by the Special Division pursuant to a request by the Attorney General. Finally, appellant's office is limited in tenure. There is concededly no time limit on the appointment of a particular counsel. Nonetheless, the office of independent counsel is "temporary" in the sense that an independent counsel is appointed essentially to accomplish a single task, and when that task is over the office is terminated, either by the counsel herself or by action of the Special Division. Unlike other prosecutors, appellant has no ongoing responsibilities that extend beyond the accomplishment of the mission that she was appointed for and authorized by the Special Division to undertake. In our view, these factors relating to the "ideas of tenure, duration . . . and duties" of the independent counsel, *Germaine, supra*, at 511, are sufficient to establish that appellant is an "inferior" officer in the constitutional sense.

This conclusion is consistent with our few previous decisions that considered the question whether a particular Government official is a "principal" or an "inferior" officer. In *United States v. Eaton*, 169 U. S. 331 (1898), for example, we approved Department of State regulations that allowed executive officials to appoint a "vice-consul" during the temporary absence of the consul, terming the "vice-consul" a "subordinate officer" notwithstanding the Appointment Clause's specific reference to "Consuls" as principal officers. As we stated: "Because the subordinate officer is charged with the performance of the duty of the superior for a limited time and under special and temporary conditions he is not thereby transformed into the superior and permanent offi-

487 U. S.

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Opinion of the Court

of the "executive and duty to "take under Article II. dding, and in its purely executive" ident at will if he l role.²⁹ See 272 in *Wiener*:

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ner as "quasi-legislative" or "quasi-judicial" in large part reflected our judgment that it was not essential to the President's proper execution of his Article II powers that these agencies be headed up by individuals who were removable at will.³⁰ We do not mean to suggest that an analysis of the functions served by the officials at issue is irrelevant. But the real question is whether the removal restrictions are of such a nature that they impede the President's ability to perform his constitutional duty, and the functions of the officials in question must be analyzed in that light.

Considering for the moment the "good cause" removal provision in isolation from the other parts of the Act at issue in this case, we cannot say that the imposition of a "good cause" standard for removal by itself unduly trammels on executive authority. There is no real dispute that the functions performed by the independent counsel are "executive" in the sense that they are law enforcement functions that typically have been undertaken by officials within the Executive Branch. As we noted above, however, the independent counsel is an inferior officer under the Appointments Clause, with limited jurisdiction and tenure and lacking policymaking or significant administrative authority. Although the counsel exercises no small amount of discretion and judgment in deciding how to carry out his or her duties under the Act, we simply do not see how the President's need to control the exercise of that discretion is so central to the functioning of the Executive Branch as to require as a matter of consti-

³⁰The terms also may be used to describe the circumstances in which Congress might be more inclined to find that a degree of independence from the Executive, such as that afforded by a "good cause" removal standard, is necessary to the proper functioning of the agency or official. It is not difficult to imagine situations in which Congress might desire that an official performing "quasi-judicial" functions, for example, would be free of executive or political control.

power to remove a counsel is limited.³⁴ Nonetheless, the Act does give the Attorney General several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel. Most importantly, the Attorney General retains the power to remove the counsel for "good cause," a power that we have already concluded provides the Executive with substantial ability to ensure that the laws are "faithfully executed" by an independent counsel. No independent counsel may be appointed without a specific request by the Attorney General, and the Attorney General's decision not to request appointment if he finds "no reasonable grounds to believe that further investigation is warranted" is committed to his unreviewable discretion. The Act thus gives the Executive a degree of control over the power to initiate an investigation by the independent counsel. In addition, the jurisdiction of the independent counsel is defined with reference to the facts submitted by the Attorney General, and once a counsel is appointed, the Act requires that the counsel abide by Justice Department policy unless it is not "possible" to do so. Notwithstanding the fact that the counsel is to some degree "independent" and free from executive supervision to a greater extent than other federal prosecutors, in our view these features of the Act give the Executive Branch sufficient control over the independent counsel to ensure that the President is able to perform his constitutionally assigned duties.

VI

In sum, we conclude today that it does not violate the Appointments Clause for Congress to vest the appointment of independent counsel in the Special Division; that the powers exercised by the Special Division under the Act do not violate

³⁴With these provisions, the degree of control exercised by the Executive Branch over an independent counsel is clearly diminished in relation to that exercised over other prosecutors, such as the United States Attorneys, who are appointed by the President and subject to termination at will.

****DOCUMENT 7****

1-7.000 MEDIA RELATIONS

1-7.400 PRESS INFORMATION GUIDELINES FOR CRIMINAL CASES

October 1, 1988

The guidelines for release of information to the media-by press releases or in any other way-are found in 28 C.F.R. Sec. 50.2(b). The criminal guidelines follow:

1. These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.
2. At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such statement or information may reasonably be expected to influence the outcome of a pending or future trial.
3. Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:
 - 32,24,4 (i) The defendant's name, age, residence, employment, marital status, and similar background information.
 - 32,24,4 (ii) The substance or text of the charge, such as a complaint, indictment or information.
 - 32,24,4 (iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.
 - 32,24,4 (iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest. Disclosure should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.
4. Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.
5. Because of the particular danger of prejudice resulting from statements in

the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.

6. The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department shall refrain making available the following:

32,24,4 (i) Observations about a defendant's character.

32,24,4 (ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.

32,24,4 (iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

32,24,4 (iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.

32,24,4 (v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

32,24,4 (vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

7. Personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.

8. This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.

9. Since the purpose of this statement is to set forth generally applicable guidelines, there will, of course, be situations in which it will limit the release of information which would not be prejudicial under the particular circumstances. If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.

News to Learn
Pat Griffin
SEC enforcement
Section
Overall Policy

document name: smaltz.1e1 Douglas Letter

letter from Judge Mikva to Donald Smaltz, Independent Counsel

I recently read press reports quoting statements assertedly made by you about allegations by a former Tyson Foods Inc. employee, Joseph Hendrickson. According to the press reports, Hendrickson claims that he carried sealed envelopes containing large sums of cash, intended for delivery from Tyson to then-Governor Clinton. These reports quote you several times as commenting on these allegations and the substance of your interview with Mr. Hendrickson, including a quote in Time Magazine: "Based upon the way [Hendrickson's] story unfolded, it has a ring of truth to it."

I was extremely dismayed to read these quotations from you regarding both the nature and credibility of Mr. Hendrickson's allegations. Government officials can be misquoted, and, if these news stories concerning your comments are totally false, I would be interested in so learning. Otherwise, I am disturbed that a federal prosecutor would, during the investigatory stages of a criminal matter, make observations to the press about the nature and strength of allegations by potential witnesses. This type of conduct goes directly against what I understand to be the proper behavior of a federal prosecutor; I had thought that federal prosecutors present their evidence to grand juries and try their cases in court, and not through comments to the press about the credibility of particular evidence or allegations.

Indeed, federal policy forbids the types of comments being attributed to you. The Code of Federal Regulations states (28 C.F.R. § 50.2) that Justice Department prosecutors "should refrain from making available * * * [s]tatements concerning the * * * credibility of prospective witnesses [and] [s]tatements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial." The most recent version of the United States Attorneys' Manual in Sec. 1-7.000, addressing release of information in criminal and civil matters, recognizes that in some unusual instances a prosecutor can confirm that an investigation is ongoing. But, again, the Attorney General's policy stated there is that federal prosecutors should refrain from making public statements concerning the credibility of prospective witnesses and evidence in a case.

My understanding is that Independent Counsel are to follow the established policies of the Department of Justice, unless doing so would be inconsistent with the purpose of the Independent Counsel statute. See 28 U.S.C. § 594(f); Morrison v. Olson, 487 U.S. 654, 696 (1988) ("the Act requires that the counsel abide by Justice Department policy unless it is not 'possible' to do so"). I do not see how making comments to the press at this stage describing Mr. Hendrickson's inflammatory

allegations as credible is in any way consistent with the purposes of the Independent Counsel statute. Even if you were not bound by the Attorney General's standards, I would think that you would find them a good guide to your own conduct as a federal prosecutor. See S. Rep. No. 100-123, 100th Cong. 1st Sess., 24 (1987) (emphasizing that "independent counsels should follow the same rules in their investigations as apply to other federal criminal investigations, so that the subjects of the investigations are treated in the same manner as other persons").

I hope in the future you will, as a federal prosecutor, refrain from making these types of improper public comments, and will instead follow the recognized code of behavior that is appropriate for such important officials.

****DOCUMENT 1****

May 3, 1993

TO: Holders of United States Attorneys' Manual. Title 1

FROM: United States Attorneys' Manual Staff

Anthony C. Moscato
Director

RE: Media Guidelines

NOTE: 1. This is issued pursuant to USAM 1-1.550

2. Distribute to Holders of Title 1

3. Insert in front of affected section.

AFFECTS: 1-7.000 Media Relations

PURPOSE: This interim Bluesheet augments Bluesheet 1-7.000 dated January 14, 1993, by setting forth additional Media Policy for the Department of Justice at 1-7.000, VII,

The following interim Bluesheet is intended to spell out Justice Department policy with respect to media presence at the execution of search and arrest warrants, or preparations therefore.

This matter was not specifically addressed in Bluesheet 1-7.000, Media Relations, dated January 14, 1993. The following additional guidance should be brought to the attention of all Department personnel in your district who may deal -with the press.

Please insert the additional language in your United States Attorneys' Manual at 1-7.000, VII. D.

VII. ASSISTING THE NEWS MEDIA

D. In cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition will also apply to operations in preparation for the execution of warrants, and to any multi-agency action in which Department personnel participate.

If news media representatives are present, Justice Department personnel may request them to withdraw voluntarily if their presence puts the operation or the safety of individuals in jeopardy. If the news media declines to withdraw, Department personnel should consider cancelling the action if that is a practical alternative.

Exceptions to the above policy may be granted in extraordinary circumstances by the Office of Public Affairs.

****DOCUMENT 3****

1-7.000 MEDIA RELATIONS

1-7.001 Public Comments by Department of Justice Employees Regarding Investigations, Indictments, and Arrests

October 1, 1988

Public out-of-court comments by employees of the Department of Justice regarding investigations, indictments, arrests, and ongoing litigation, should be minimal, consistent with the Department of Justice responsibility of keeping the public informed.

Because charges that result in an indictment or arrest should be argued and proved in court, and not in a newspaper or broadcast, public comment from the Department on such charges should be limited. Section 50.2 of Title 28 of the Code of Federal Regulations defines the types of information that may be and the types of information that may not be made available to the news media about pending civil and criminal cases by employees of the Department of Justice.

All employees of the Department of Justice should familiarize themselves with the guidelines and instructions contained in Section 50.2 of Title 28, Code of Federal Regulations and adhere to them in both letter and spirit. In reviewing Section 50.2, all employees should note that it devotes considerable attention to the need to avoid prejudicing the rights of defendants of fair trials.

Fairness, accuracy, and sensitivity to the rights of defendants, as well as the public's right to know, must prevail in all dealings with the news media. Favoritism should be shown to no member of the media.

To ensure that overall Departmental policy is consistent and known by all, including U.S. Attorneys and personnel of the Federal Bureau of Investigation and the Drug Enforcement Administration, the following additional policies shall be followed:

A. Unless there are unusual circumstances, news conferences should not be held to announce investigations, indictments, or arrests. Unusual circumstances might involve a publicized fugitive from justice. As 28 C.F.R. Sec. 50.2(8) indicates, broader leeway is permitted in the release of information about a defendant who is a fugitive. The possibility of news conferences under such circumstances should be discussed when possible with the Director of the Office of Public Affairs (OPA) through agency or headquarters public information offices (PIOs). If such a news conference is held, extreme care should be taken to avoid statements that brand fugitives as guilty of crimes for which they have not been convicted.

As is also noted in 28 C.F.R. Sec. 50.2(9), occasions may arise in which a representative of the Department may feel that release of information beyond

the limits of 28 C.F.R. Sec. 50.2 is necessary for the fair administration of justice and the law enforcement process. In such cases, the representative of the Department should request permission for such release from the Attorney General or the Deputy Attorney General or the Director of Public Affairs through agency or headquarters PIOs.)

B. Information about investigations, indictments and arrests should be provided equally to all members of the news media, subject to specific limitations imposed by law or court rule or order. Written news releases relating the essentials of the indictment, complaint, warrant, or pleading may be prepared and distributed, along with copies of those documents when appropriate. U.S. Attorneys, or Assistant U.S. Attorneys with permission of the U.S. Attorney, may answer legitimate questions about indictments or arrests, either in press conferences or in discussions with individual reporters, but answers should not go beyond explanation of what is in the public document or the confines of 28 C.F.R. Sec. 50.2.

C. Except for unusual circumstances, radio actualities and TV announcements may be made in connection with indictments or arrests. Any U.S. Attorney may adopt or continue a policy of not making such appearances, but if utilized; great caution and restraint should be exercised in any such broadcast situation. (This policy of allowing the option of reading for broadcast such items is a change from previous Department policy.) It should be emphasized that the policy directive has been approved only on the understanding that it be implemented with restraint. There will still be cases where such appearances might not be appropriate in light of the Department's commitment not to prejudice the rights of defendants. Any questions should be discussed with the Director of Public Affairs through agency or headquarters PIOs.

D. Whenever possible, press releases should be coordinated with interested agencies of the Department and credit and recognition should be given to all appropriate investigative agencies when announcing indictments or arrest. All releases on major cases should be reviewed in advance of use by the Office of Public Affairs.

E. Generally, even the existence of particular criminal investigations should not be acknowledged or commented on.

1. In situations in which the Department undertakes an investigation or inquiry as a result of a referral from another agency or individual, and the agency or individual has publicly said that such a referral has been made to the Department for investigation, the Department may upon inquiry acknowledge the existence of the investigation or inquiry.

2. Past practice has seen a broad exception to the no-acknowledgement rule develop in which particular antitrust and civil rights investigations have been publicly acknowledged. Such particular investigations of individuals should adhere to the no-acknowledgement rule. In the civil rights context, a

limited exception may be in situations where a particular incident that causes a civil rights investigation has itself been publicized and thereby thrust in the public domain, or the matter is one which is under review pursuant to the Department's dual prosecution policy. In the antitrust area, while investigations of individuals or particular companies should be subject to the general no-acknowledgment rule, investigations may be acknowledged of overall industry or market practices.

Other possible exceptions may arise that will have to be decided on a case-by-case basis. On the latter, field offices should consult with the Director of the Office of Public Affairs through agency or headquarters PIOs. The reasons for this policy are obvious. To acknowledge even the existence of an investigation may harm the rights of an individual or prejudice a case. This policy is sometimes difficult for the media to understand. For example, some may question if it is the wise course to respond "no comment" to an inquiry when the subject of the inquiry is not under investigation. But, if the questioner is told the subject of his/her inquiry is not under investigation and then is told "no comment" on another inquiry about another subject who is under investigation, the questioner can soon determine who is under investigation. The fundamental root of this policy is its sensitivity to the rights of individuals, and the belief that the Department of Justice has a particular responsibility to these principles.

F. The policies set out above, which supplements 28 C.F.R. Sec. 50.2, do not preclude in any way news conferences or participation in media programs by personnel that concern Department or field office policies, issues, and priorities.

Department of Justice policy is one of openness, fairness, decency, and civility to all. This directive is designed to carry out and enhance that policy.