WIDUP
CONSULTING

PUBLIC CORRUPTION INVESTIGATIONS TRAINING PROGRAM

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In 1961, with regard to proposed legislation governing the receipt of gratuities by government officials, President John F. Kennedy stated:

> "…No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public business. There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest. This principle must be followed not only in reality but in appearance. For the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter…"

The mission of the Offices of Inspectors General or a law enforcement agency's Internal Affairs Division and the others who conduct public integrity investigative and audit functions are the cornerstones of preserving this trust and/or addressing those who violate the trust. No law enforcement administrator can perform his or her duties effectively without having such a unit they can rely on - as the public is entitled to a government that is free of corruption and mismanagement. And if not, perhaps the words of Plato may be of note:

> **The servants of the nation are to render their services without any taking of presents . . . The disobedient shall, if convicted, die without ceremony**. – *Plato, Laws 955d*

How do we get there? One of the more significant tools is training our law enforcement through courses like this one. If we can provide you with one more tool to add to your investigative toolbox, then we have been successful here. In gathering these tools please be aware of another resource that is in front of you which is the ability to add your colleagues in this class to your investigative portfolio (team). Don't forsake this opportunity, as you will cross paths again and again through your law enforcement careers.

You will create many relationships and contacts throughout your law enforcement career, preserve them and maintain them as you never know when they may be in a

position to help you in the completion of a public corruption investigation. For example, some of the people that I have met through my career and still maintain a relationship with are: Judge Jan Patterson, Texas Court of Appeals; Eric Holder, US Attorney General; James Cole, Deputy Attorney General; Reid Weingarten, defense lawyer; David Kendall, defense lawyer; Judge Amy St. Eve, N/IL; Pat Fitzgerald, United States Attorney; Robert W. Ray, former Independent Counsel; Kenneth Starr, former Independent Counsel; Leon Panetta, Secretary of Defense; Judge Phil Simon, N/IN; numerous special agents/investigators who are now Special Agents in Charge, Inspectors General and/or Chiefs of Police and others.

Sources of Information

As you progress in your investigative career and make contacts along the way, consider making your own personal resource guides on conducting investigations. In this day of the so-called "electronic highway" - embrace the information that is there. I have included a number of websites and contacts with this class but remember none is the best one, the right one, or "the end all to be all." The point is they are available when you need to pull them out and use them (remember they change too). Share with each other, you never know the one that will be the missing piece you need to pull that big investigation together. However, don't ever forget that no computer can conduct an interview, evaluate a witness, or piece together the investigation for you. Know your playbook, be able to talk and write about it, and pull it together in the end to make sense in as concise of a manner as possible. You are the one that will have to sell it to your boss, the prosecutor, the judge/jury and often the public too.

The sources of information highlight reel should begin with what we can get through the government resources, as they are free and often available only to you (as a law enforcement officer) and progress to specific search engines and informational guides:

1. FINCEN - http://www.fincen.gov/ can obtain Currency Transaction Reports (CTR) and Suspicious Activity Reports (SAR) for you to use in your investigation. CTR reports are for over $10K and SAR reports are for aggregate of $5K
2. For Inspectors General - your agency records, available upon demand or by coordinating with the IG of the agency responsible for the records
3. Your colleagues IG agency records, if appropriate, are also available upon demand
4. NCIC/NLETS, CLEAR, TECS, etc., - know all you can about your subjects
5. Americans for Effective Law Enforcement (AELE) data base, housed in Chicago at http://www.aele.org/index.html
6. National Internal Affairs Investigators Association (NIAIA) at http://niaia.us/
7. Federal law enforcement agencies (in no particular order)
    a. USMS – prisoner and warrant records (JADIS, WIN, PTS)
    b. OIGs – all Departments and many agencies
    c. BOP – inmate records
    d. JTTF – Intelligence records (even from the Intel community)
    e. DEA – EPIC and others
    f. USSS – TAVIS and others
    g. US State Dept. – transactions, vouchers, etc.
    h. USDA, HUD, DHHS, etc. – benefit records
    i. BATFE – gun tracing, explosives, etc.
    j. FBI – SPIN records, 302s, Intel, etc.
    k. FAA – Aircraft, pilot licensing
    l. ICE – Immigration records, TECS for entry into the country, FINS, etc.
    m. IRS records – if you can meet the need

8. DOJ – US Attorney's Manual (USAM) – describes elements of a crime and more. Helps an investigator to know the prosecutors prosecutorial guides (playbook), http://www.justice.gov/usao/eousa/foia_reading_room/usam/
9. Google and other search engines - Zabasearch.com, Paladium.net, etc.
10. Web Quick Links Guide for the Intelligence Analyst
11. Guide – What to do if the subject of an OIG Investigation
12. Financial Disclosure Statements both Public and Confidential
13. Private data bases – Choice Point, Accurint, Lexus Nexus and more

Bad Morale: The Facts Now Known
New Research Dispels Myths and Offers Solutions
By Neal Trautman, Ph.D.

Thomas Jefferson once said, “We should never be afraid of the truth, regardless of where it leads us.” How true, especially when referring to something that hurts the majority of law enforcement and corrections agencies daily. The definition of workplace morale has evolved somewhat throughout time. Researchers have defined it as “an attitude of satisfaction with the desire and willingness to strive for the goals of a group or organization.”

The benefits of enhancing morale are very significant. Decreasing citizen complaints and internal grievances, preventing civil litigation, reducing employee turnover, increasing productivity, preventing misconduct and improving the quality of life for everyone are potential benefits. Combine these payoffs with the indirect consequences of saving substantial money and safeguarding the job security for chief administrators and you have an undertaking worthy of any department.

Why Bad Morale is so Common

Although most departments suffer from bad morale, leaders often ignore it. This indifference can have devastating consequences. Officers who commit misconduct frequently rationalize their behavior by convincing themselves the unfairness within their agency justifies their behavior. To make matters worse, they use the internal problems that everyone is angry about to encourage others to violate policies.

There are two primary reasons administrators do not do more to resolve morale problems. The first reason is not understanding how to determine the extent and causes of employee anger and frustration. Self-centeredness and laziness is the other reason that some top leaders ignore significant department needs.

Lack of Knowledge

In this instance, ignoring poor morale happens because leaders just do not know what to do, even though they have the desire. This lack of ability is usually caused by insufficient training.

The second reason some leaders don’t do more about clear ethical problems is that they believe bringing attention to their integrity needs could hurt them personally. Encouraged by the hope they will escape scrutiny and criticism if no one brings attention to the situation, their self-centeredness becomes more important than maintaining integrity.

The administrative indifference to bad morale takes three distinct forms. The first is leaders who do nothing to resolve the anger and frustration of officers, but are not negative role models themselves. The second level is leaders who intentionally look the other way and ignore acts of indiscretion by workers, even though they continue to grow

in severity and frequency. The last and most harmful group is those who role-model misconduct themselves.

Intentionally ignoring obvious ethical problems is primarily caused by two problems: a lack of knowledge and self-centeredness. Although these leadership failures usually lead to devastating consequences, they can be prevented and corrected.

CASE STUDIES

Ronald Tellez (former Police Officer) – Murder for Hire

In early 1986, convicted organized crime enforcer John Branco (Branco), who was serving a life sentence in the California Department of Corrections, reached out from prison for the local office of the Federal Bureau of Investigation (FBI). Branco wanted to make a deal with the FBI in order to gain lenient treatment for his daughter Connie Branco Mueller (Connie) from prosecutors in Illinois. Branco had been under investigation by the Illinois State Police (ISP) since 1982 and was a well-known organized crime member.

Branco told the FBI that his daughter had hired Blue Island Illinois Police Officer Ronald Tellez to murder her husband, George Archer Mueller. Tellez was Connie's lover and had expressed the desire to become a "hit man for the mob." Branco agreed to cooperate with the FBI to include wearing a wire against Tellez for prosecutorial consideration on behalf of his daughter. The FBI referred the matter to the Chicago Field Office for further investigation. The investigation was conducted by Special Agent Wayne Zydron, FBI, Chicago Division, Organized Crime Squad, Chicago, IL.

(Zydron is the source of the information contain herein through a discussion that he had with retired US Marshal Kim Widup for the purpose of this training as well as the use of news media and other reports of the case).

> *<u>Note</u>: Branco (originally a part of the Chicago outfit) later became a significant informant for the FBI and was responsible for providing much of the information that led to the arrest and conviction of numerous defendants in Las Vegas, NV and Los Angeles, CA.*

The FBI met with Branco and ultimately had him furloughed into their custody for the purposes of continuing the investigation into Tellez. Connie was brought in and confessed to her role in the matter and agreed to cooperate in the investigation against Tellez. Connie had secretly married Mueller, who was a very wealthy individual, but did not want his children to know he had remarried. Connie wanted Tellez to commit the murder so she could inherit 60% of his estate and to be free to continue her relationship with Tellez; although, she admitted that she was just using him through the relationship to commit the murder. Connie paid Tellez less then $1000 to commit the contract killing, which he did on Good Friday, 1986.

The FBI arranged for Branco to meet with Tellez as a "job interview" to ultimately work for organized crime. Tellez knew that Branco was affiliated with organized crime and believed that he had been temporarily furloughed from prison for a health matter. Tellez knew Branco was Connie's father.

The meeting between Branco and Tellez occurred at a hamburger restaurant in Chicago during which Branco was wearing a recording device under the direction and control of the FBI. During the meeting Tellez admitted to Mueller's murder and his involvement in at least two other homicides. Tellez was very animated in his attempts to impress Branco and to gain employment with the "outfit" (organized crime). Tellez fully described the "hit" on Mueller and told where he had disposed of the murder weapon. At the end of the meeting Branco indicated he was favorable towards Tellez but that Tellez would have to meet with one of his associates who was permanently on the "outside." Tellez was anxious to do so and ultimately a meeting was set up with and outfit enforcer who was "on the outside." This "enforcer" was FBI Special Agent John "Jack" Bonino who appeared to be of Italian origin.

Special Agent Bonino working in an undercover capacity met with Tellez and Tellez admitted to the completion of another homicide as well as reaffirming his admissions that he made to Branco. The FBI made the decision in concert with the U.S. Attorney's Office and the ISP to take the case to the States Attorney in Cook County instead of seeking federal prosecution. The States Attorney accepted the case and Tellez was arrested and prosecuted in Cook County.

Tellez took the case to trial and tried to claim as a defense that he was conducting his own investigation into the murders and was not involved himself. Tellez claimed he was working undercover to solve the case. During the trial Tellez could not explain why he claimed to have committed the very murders he was investigating. He further admitted that he had falsified entries in a diary to make it appear that he was conducting an undercover investigation during the years 1986-87. Two of Tellez's friends testified that Tellez had tried to pay them to provide false testimony at trial.

During the trial of Tellez the jury heard many recordings of conservations Tellez had with undercover agents. On one of them Tellez said after committing the murder of Mueller, he rushed home, shaved and took a shower and reported for duty with the Blue Island Police Department within ½ an hour after the killing. Tellez was one of the first officer's responding to Mueller's Blue Island office after the body was discovered.

Tellez was convicted and sentenced to life in prison. The States Attorney sought the death penalty and the jury certified Tellez to be death penalty eligible but the court decided on a term of life imprisonment for Tellez because of some issues concerning the firearms evidence.

Connie Branco pled guilty of solicitation of murder and was sentenced to 10 years in prison as the result of the plea bargain. She was the person that provided Tellez the keys to her husband's office. She also testified that Tellez had agreed to

commit the murder in exchange for the opportunity to meet Branco's organized crime-connected father so Tellez could prove to him that he could "kill like the Mafia does."

Unfortunately for Tellez, he discovered that by crossing the line, tarnishing his badge and attempting to be one of the "bad guys" results in officers like those in this class focusing their investigative efforts on him and preserving the trust of the public for those who uphold the law.

"***When a man assumes a public trust, he should consider himself as public property***" – Thomas Jefferson, American President and Author of the Declaration of Independence.

As recent as September of 2011, the Appellate Court for the First Judicial District of Illinois re-affirmed the conviction of Tellez and denied his appeal based on his claim of newfound evidence.

Investigation of Alphonso Michael Espy
Secretary of Agriculture

(Excerpted from OIC report)

Summary of Investigation

The Office of Independent Counsel's (OIC) investigation into the receipt of gifts and gratuities by former Agriculture Secretary Alphonso Michael Espy revealed a pervasive pattern of improper behavior by Secretary Espy and his top aide, and by persons and companies regulated by or with business before the United States Department of Agriculture (USDA). The investigation disclosed that, among other offenses, companies with financially important matters pending before USDA gave Secretary Espy - either directly or via members of his family or his girlfriend - numerous gifts in an effort to garner his favor.

OIC's investigation culminated in the return of a 39-count indictment against Espy, charging multiple violations arising out of his acceptance of things of value from persons and entities regulated by USDA, his concealment of these gifts from the public, and other abuses of his office. The indictment charged that he had received more than $30,000 in gifts and benefits from agricultural interests. At trial, Espy did not dispute receipt of the gifts, but he argued that these gifts did not affect the decisions he made and that he did not have the criminal intent required for a conviction. After a two-month trial, the jury found former Secretary Espy not guilty on all counts.

All told, OIC charged thirteen individuals (including Espy) and six business entities with criminal violations regarding the provision of gifts and gratuities to the former Secretary of Agriculture, the concealment of gratuities from federal investigators, and/or related offenses. Of these, 14 were convicted of or pleaded guilty to one or more offenses, and four were acquitted of all charges; one person was placed into a pre-trial diversion program. OIC also instituted civil prosecutions against two corporations and referred several matters to other federal enforcement agencies.

In addition to the gratuities given directly to Espy and his girlfriend, the investigation focused on election campaign contributions given to the account of Espy's brother, Henry Espy. The donors were persons and companies regulated by the Department of Agriculture who saw Henry Espy's campaign debt and Secretary Espy's personal concern over that debt, as an avenue to gain the Secretary's favor. Beyond the impropriety of seeking to gain an advantage before a governmental agency in this manner, many of these contributions and related activities were substantively illegal under the election laws and other federal statutes. The illegal contributions exceeded $50,000. Consequently, this area of the investigation resulted in several prosecutions and convictions.

The investigation further disclosed that Secretary Espy's chief of staff, Ronald Blackley, accepted money from persons with business before USDA and concealed this

fact from the public, and that Mississippi farmers with ties to Secretary Espy defrauded USDA of federal subsidies. This part of the investigation resulted in criminal convictions of Blackley and several persons and one corporation he had represented.

OIC's investigation led to a number of significant prosecutions. The investigation of Crop Growers Corporation, then the second-largest private seller of federal multi-peril crop insurance, led to the first indictment and conviction in an Independent Counsel proceeding of a publicly-held company and resulted in the largest fine, $2 million, secured by any Independent Counsel up to the time. OIC's prosecution of John J. Hemmingson, Crop Growers' chief executive officer, and Alvarez T. Ferrouillet, a Louisiana lawyer who chaired an effort to retire the congressional-campaign debt of Secretary Espy's brother Henry, was the first to charge and convict individuals for money laundering in connection with illegal federal-election campaign contributions. OIC's investigation later led to the first conviction in approximately 100 years for giving a gratuity to a sitting Cabinet member, with the guilty plea of Tyson Foods, Inc., the nation's leading poultry producer. The plea resulted in a $4 million criminal fine and a $2 million payment toward OIC's investigative costs. The prosecution of Sun-Diamond Growers of California, a large, multi-crop agricultural cooperative, resulted in a Supreme Court decision clarifying the scope of the federal gratuities statute. The civil actions OIC brought against Smith Barney, Inc. and Robert Mondavi Corporation, Inc. were apparently the first instances in which an Independent Counsel resolved charges through civil litigation.

In total, OIC collected more than $10 million in criminal fines, civil recoveries, and restitution orders for the United States Treasury. OIC also referred three matters to the Department of Justice for prosecution and one matter to the Federal Election Commission for civil disposition, resulting in the recovery of an additional $560,000 for the United States.

Initial Allegations and Investigations

Allegations of Espy's official improprieties first appeared in a March 17, 1994 *Wall Street Journal* article entitled "Tyson Foods, With a Friend in the White House, Gets Gentle Treatment From Agricultural Agency." Tyson Foods, Inc., the nation's largest poultry producer and also a pork and beef processor, is based in Arkansas, the home state of President Clinton. Exploring the apparent close ties between Tyson Foods and President Clinton, the article reported that the company was a major Clinton supporter, having flown him on its aircraft and contributed to his gubernatorial campaigns. Further, according to the article, President Clinton had received $22,000 for his presidential campaign from Tyson Foods executives and board members. The article also alleged that Tyson Foods had received very favorable treatment from Clinton during his tenure as Governor of Arkansas.

With regard to USDA, the article first noted that Don Tyson, chairman of Tyson Foods, had recently entertained Patricia Jensen, an Assistant Secretary of USDA, in his skybox at the University of Arkansas in Fayetteville during a college basketball game.

The article quoted Jensen, who was under consideration to become the USDA official in charge of meat and poultry inspection, as saying that she felt she was being "looked over" by Tyson.

The article then disclosed that Espy "acknowledged meeting with Tyson Foods lobbyists 'all the time,'" that Tyson Foods earlier in 1994 had feted Espy at a Dallas Cowboys football game, and that company executives had contributed $4,000 to Espy's brother's unsuccessful campaign for Congress. At the same time, the article alleged, Tyson Foods was enjoying very favorable treatment from USDA in several aspects of USDA's regulation of poultry and meat: "Few corporations in America have stronger personal ties to Bill Clinton than Arkansas-based Tyson Foods, Inc., and few have fared better in their dealings with his Agriculture Department."

The *Wall Street Journal* article specifically mentioned that a USDA "blitz" of surprise sanitation inspections of meatpacking facilities over the previous year had bypassed chicken processors, including Tyson Foods' 66 plants. It also reported that USDA had favored Tyson Foods' position in a dispute over a California regulation regarding whether to permit poultry frozen at or above zero degrees Fahrenheit to be labeled "fresh." The article added that Espy had ordered USDA employees working on a "zero tolerance" fecal-matter policy for chicken processing (similar to one he had partially imposed for red meat), to drop the initiative and turn over their work, including information on computers, to an Espy aide.

Investigation by the Office of Inspector General, USDA

The *Wall Street Journal* article caught the attention of USDA's Office of Inspector General (OIG). OIG is a separate agency within USDA charged with preventing and detecting fraud and abuse in USDA programs and operations and providing security protection for the Secretary and Deputy Secretary. OIG investigates alleged or suspected violations of federal criminal law relating to the employees, programs and operations of USDA and may refer matters to the Department of Justice (DOJ). OIG is headed by the Inspector General, who reports directly to the Secretary of Agriculture.

The article prompted OIG to interview Assistant Secretary Jensen on March 21, 1994. Jensen was responsible for USDA's Marketing and Inspection Services, which included the Food Safety and Inspection Service (FSIS). She was prohibited by federal law (21 U.S.C. § 622) from receiving gifts from a firm regulated under the Federal Meat Inspection Act, such as Tyson Foods.

Jensen informed OIG agents that she met Jack Williams, a consultant for Tyson Foods and the Mid-American Dairymen Association (MADA), in late 1993. At Williams's invitation, she traveled on January 31, 1994 to Kansas City, Missouri to address MADA and, the next day, to Fayetteville to visit Tyson Foods. Jensen said that, while in Fayetteville, she attended a basketball game between the University of Arkansas and Vanderbilt University, using a ticket that Archibald Schaffer, Tyson Foods' director of Media, Public and Governmental Affairs provided to her through Williams. At the game,

she met Don Tyson and, after a brief conversation, sat at the front of Tyson Foods' skybox to watch the game. Jensen said she insisted on paying for the ticket, and ultimately mailed a personal check to Williams for $13, the value of the ticket according to Williams.

Jensen said that, on the morning after the game, she gave a speech to representatives of the Arkansas Poultry Federation and toured Tyson Foods' facilities. She then flew to Nashville, Tennessee, where she met up with Williams, who obtained their boarding passes for the flight to Washington, D.C. She received an upgrade to first class on the flight and sat next to Williams. She assumed Williams arranged her upgrade through a frequent-flyer program but was unclear about the details.

On March 22, 1994, the day after their interview with Jensen, OIG agents interviewed Williams. Williams said he represented issues before governmental agencies and Congress as a lobbyist for various industrial clients, including Tyson Foods. He then confirmed that he gave Jensen a ticket to the basketball game in Fayetteville and provided her upgrade to first class on the flight from Nashville to Washington, D.C., using his frequent-flyer upgrade stickers. Williams said that Jensen sent a check to him as reimbursement for the basketball game and that he endorsed the check to Tyson Foods. Williams stated that he offered to upgrade Jensen as a token of his goodwill, not as a bribe, and that in his view the "stickers" had no real value to him. He said he did not submit an invoice to Tyson Foods for the cost of the upgrade.

OIG Agents asked Williams if he knew anything about Espy attending a Dallas Cowboys football game with Don Tyson (an incident that had been reported in the *Wall Street Journal* article). Williams replied that he did not know whether Espy had gone to Dallas and attended a football game, except for what he had heard through rumor and news reports.

On March 22, 1994, on the basis of the information provided by Jensen and Williams, OIG formally opened an investigation regarding "Gratuities to USDA officials by Tyson Foods, Inc., Springdale, AR." As to the allegations regarding Tyson Foods providing football tickets to Espy, OIG concluded that any substantial investigation of Espy should be handled by DOJ and therefore did not open a formal investigation into this matter. OIG agents decided, however, to meet with Espy to question him generally about the items raised in the *Wall Street Journal* article, to determine if there was a basis to refer the matter to DOJ.

On March 22, 1994, OIG informed USDA Counsel and Deputy Secretary Richard Rominger of its need to meet with Espy to discuss the *Wall Street Journal* allegations at a mutually convenient time. Two days later, OIG informed DOJ's Public Integrity Section of the status of its investigation of Jensen and of its intention to interview Espy. DOJ suggested some questions to ask Espy.

On April 1, 1994, OIG agents interviewed Espy in his office. The agents first informed Espy of the status of the Jensen investigation and then asked him about the

Dallas football game that the *Wall Street Journal* article had reported. Espy said that a week of official travel concluded on Friday, January 14, 1994, in Lubbock, Texas. The USDA personnel traveling with him returned to Washington, but Espy remained in Texas for the weekend. Espy stated that he paid for his own hotel and meals and that on Sunday, January 16, 1994, he attended the Dallas Cowboys-Green Bay Packers playoff game at Texas Stadium. Espy acknowledged that Tyson Foods provided him with a skybox ticket and that he watched the game from its skybox, but he said nothing about his girlfriend meeting him in Dallas and accompanying him to the game as a guest of Tyson Foods.

Espy further stated that after his office received an inquiry from a reporter for *The Wall Street Journal* regarding the game, he asked one of his assistants to determine the value of his ticket. The day after *The Wall Street Journal* printed the article reporting his attendance at the game, Espy reimbursed Tyson Foods $68 for the cost of his ticket.

After the discussion of the Dallas trip, the agents asked Espy if he had received any other tickets or things of value from outside sources. Espy stated he was limiting his response to his acceptance of things from Tyson Foods. He said that in late spring 1993, after speaking at two graduation ceremonies in Mississippi, he traveled to Arkansas, where he spoke to the Arkansas Poultry Federation, and then traveled to a Tyson Foods management-training center in Russellville, Arkansas, where he had dinner and stayed the night. Espy explained that he received a call the next day from the White House requesting his presence at a dinner being held for the Cabinet, and that because there were no available airline facilities Tyson Foods flew him back to Washington National Airport in its corporate jet. Espy stated that he had USDA reimburse Tyson Foods for the lodging and the equivalent of a first-class fare for the jet. Espy did not identify anyone else as accompanying him to Russellville.

During the April 1, 1994 interview, Espy consulted certain documents, which he did not show the OIG agents, and which the agents presumed were official USDA trip itineraries. Espy was asked to provide copies of all itineraries in support of the two trips discussed, and Espy agreed. The agents informed Espy that they would prepare a memorandum following the interview and forward it to DOJ and that the information he provided would be enclosed with the memorandum. A week later, OIG agents received the itineraries from Espy's office. As the agents had not seen the original itineraries, they were unaware that Espy had directed his staff to redact the copies provided to exclude all references to Tyson Foods and Espy's girlfriend.

On April 19, 1994, OIG's Assistant Inspector General for investigations formally referred to DOJ both the Jensen investigation and the Espy inquiry. The referral relayed the relevant facts and the information provided by Espy and stated in pertinent part:

> We are asking that you determine whether the Federal Meat Inspection Act is applicable to the actions of these two officials. We also understand that even if you find that the act is not applicable, the conduct may fall under the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. 2635). Thus,

we believe that these public integrity questions involving two of the highest officials of this Department can only be resolved with your prompt guidance and advice.

The OIC investigation culminated in the indictment and eventual trial by jury of Espy. Theodore "Ted" Wells and Reid Weingarten represented him. He was acquitted on all counts. It is my opinion that we made several **fatal** mistakes beginning with *overcharging him*. My personal "rule of thumb" is to try to keep an indictment to less than five counts and certainly no more than 10. A small victory was obtained when we persuaded the Independent Counsel to reduce the charges from over 100 to 39, but it was still too many.

The Charges

On August 2, 1997, a District of Columbia grand jury returned a 39-count indictment against Espy. Although the counts charged a variety of offenses under different statutes, the unifying theme was that Espy had received things of value in violation of his obligations as a public official, concealed that conduct from the public, and lied about that conduct when questioned by government agents.

The first set of charges (counts 1 through 12) alleged that Espy committed honest services fraud, which is prosecutable under the mail and wire fraud statutes. This type of fraud derives from the principle that public service is a public trust. Federal government officials work for, and owe fiduciary duties to, the United States and its citizens, and the public has a right to the honest services of its employees.

Most honest services fraud charges previously brought against public officials have involved instances where a public official intentionally failed to disclose his personal interest in a matter upon which he voted, or where a public official "sold" his office by taking a particular official action in exchange for a bribe. However, a public official also commits honest services fraud where he accepts unlawful gifts (in violation of either criminal statutes or ethical regulations) and then conceals his action from the public, in contravention of an affirmative duty to disclose such gifts. The public official is then performing an official duty aware that his actions are not in the best interests of the public while concealing his transgression from the public.

The Trial

On October 1, 1998, trial before a jury began and lasted 30 trial days. The prosecution called 71 witnesses. The defense did not call any witnesses, and Espy did not testify.

The prosecution argued that Espy accepted items of value from persons and entities regulated by USDA while he was Secretary of Agriculture-designate and then throughout his USDA tenure. It also argued that he concealed his actions from the public by various means. The government emphasized the magnitude of decisions

pending before USDA at the time of the gifts, the financial impact these decisions would have on the gift givers, and the intangible value of the gifts, such as tickets to the NFL Super Bowl, the U.S. Open tennis tournament, and the 1993 NBA finals game. The prosecution further argued that Espy's true motive and intent were most clearly revealed through his attempts to conceal his acceptance of these gifts, particularly his instruction to a member of his staff to delete incriminating information from one of his travel itineraries before providing it to investigating agents, and his request to Richard Douglas of Sun-Diamond to falsely tell government agents that Douglas provided Espy with his ticket to the NBA finals game. The prosecution stressed to the jury that it did not need to and was not attempting to prove that Espy granted any person or entity favorable treatment in exchange for the gifts they provided.

The defense argued that Espy felt, as the first black Secretary of Agriculture, that he would be more closely scrutinized and subject to more criticism than his predecessors.

Therefore, according to defense counsel, Espy took extra efforts to be a very good Agriculture Secretary and this kept him very busy, routinely traveling throughout the United States and the world. As a consequence, the defense claimed, he left many details to be handled by his staff, making some honest mistakes because of his schedule, and some of these matters slipped through the cracks. The defense also argued that Espy thought the gifts Douglas gave him were personal gifts from Douglas, given out of friendship, and not gifts from Sun-Diamond. The defense further asserted that Espy did not know about or could not control the acceptance of gifts by his girlfriend, Patricia Dempsey. The theme often repeated by the defense was that Espy was, in fact, a good Secretary of Agriculture and that he did not do any favors for any of the companies involved.

On November 24, 1998, the trial court ruled on Espy's motion for judgment of acquittal on all counts. It held that OIC had failed to present sufficient evidence to sustain counts 4, 5, 6, 12, 17, 20, 25, 33 and 34a, but found that, as to the remaining 31counts, a rational jury could find Espy guilty beyond a reasonable doubt based upon the evidence presented. The district court restricted each side to only three hours to deliver closing arguments and denied repeated requests by OIC for additional time because of the length of its case, the number of witnesses, and the complexity of the charges. On November 30, 1998, the case went to the jury, which on December 3, 1998 returned a verdict of not guilty on all remaining counts.

Investigation of William Jefferson Clinton

President of the United States

(Excerpted from OIC report)

Please allow me to start this section where it ended with the statement by Independent Counsel Robert W. Ray to the nation via the news media:

> *Fifteen months ago I promised the American people that I would complete this investigation promptly and responsibly. Today I fulfill that promise.*
>
> *President Clinton has acknowledged responsibility for his actions. He has admitted that he knowingly gave evasive and misleading answers to questions in the Jones deposition and that his conduct was prejudicial to the administration of justice; he has acknowledged that some of his answers were false; he has agreed to a five year suspension of his Arkansas bar license; and he has agreed not to seek attorneys' fees in connection with this matter.*
>
> *The nation's interests have been served. And therefore, I decline prosecution.*
>
> *In doing so, I have tried to heed Justice Robert Jackson's wisdom: "The citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."*
>
> *I trust that the decision made today meets the expectations of the American people, who deserve a resolution that acknowledges the President's conduct, respects America's institutions, and demonstrates sensitivity to our constitutional system of government.*
>
> *This matter is now concluded. May history and the American people judge that it has been concluded justly.*
>
> *Televised Statement of*
> *Independent Counsel Robert W. Ray*
> *Friday, January 19, 2001*

Sufficient Evidence Existed to Prosecute President Clinton

The Independent Counsel's judgment that sufficient evidence existed to prosecute President Clinton was confirmed by President Clinton's admissions and by evidence showing that he engaged in conduct prejudicial to the administration of justice. In his Agreed Order of Discipline, President Clinton admitted he "knowingly gave evasive and misleading answers, in violation of Judge Wright's discovery orders, concerning his relationship with Ms. Lewinsky," and "that by knowingly giving evasive and misleading answers, in violation of Judge Wright's discovery orders, he engaged in conduct that is prejudicial to the administration of justice." In his January 19, 2001 statement, President Clinton admitted, "certain of my responses to questions about Ms. Lewinsky were false." More specifically, the Independent Counsel concluded that President Clinton engaged in conduct that impeded the due administration of justice by: testifying falsely under oath in *Jones v. Clinton* that:

- Monica Lewinsky's sworn affidavit denying a sexual relationship with him was "absolutely true";
- He could not recall ever being alone with Monica Lewinsky;
- He had not had a sexual affair or engaged in sexual relations with Monica Lewinsky;
- Making statements to Betty Currie at a White House meeting, following his deposition in *Jones v. Clinton.*

At the grand jury, President Clinton asserted his conduct "did not constitute sexual relations as he understood that term to be defined at [his] deposition" because he had not touched or kissed Monica Lewinsky's breasts or genitalia. Lewinsky's testimony directly contradicted these declarations. Reviewing President Clinton's testimony in the *Jones* case, Judge Wright found: "The President's deposition testimony regarding whether he had ever been alone with Lewinsky was *intentionally false,* and his statements regarding whether he had ever engaged in sexual relations with Lewinsky likewise were *intentionally false,* notwithstanding tortured definitions and interpretations of the term 'sexual relations.'"

The Principles of Federal Prosecution Authorize Declination of Criminal Matters Even When Evidence Sufficient to Obtain and Sustain a Conviction Exists

This case involved the exercise of the full law enforcement authority of the Attorney General vested in the Independent Counsel by statute to address allegations of criminal conduct by high-ranking government officials. The subject of those allegations in this case was the President of the United States, the highest-ranking public official under the Constitution, whose constitutional obligations include "taking Care that the Laws be faithfully executed." After reviewing the facts and applicable law, the Independent Counsel determined that while there were substantial federal interests to be served by prosecution, there were "adequate, non-criminal alternatives to prosecution." The Independent Counsel therefore determined that prosecution of

President Clinton for matters involving his testimony in the *Jones v. Clinton* civil lawsuit and the federal grand jury was not warranted.

There Were Substantial Federal Interests to be Served in the Prosecution of President Clinton

The United States Attorneys' Manual lists various factors to be considered in determining whether an otherwise sustainable prosecution should be declined because the contemplated prosecution would serve no substantial federal interest. The Independent Counsel concluded that the nature and seriousness of the offenses investigated and the deterrent effect of prosecution were substantial federal interests which would have been served by prosecution of President Clinton.

In reaching this conclusion, the Independent Counsel considered the admonition of the Principles that limited federal resources not be spent in prosecuting "inconsequential cases or cases in which the violation is only technical." In this case, the Independent Counsel concluded that the case was not inconsequential and that the violation was not simply technical.

The Independent Counsel also considered the countervailing requirement that he weigh the actual or potential impact of the offense on the community. In the Independent Counsel's view, President Clinton's offenses had a significant adverse impact on the community, substantially affecting the public's view of the integrity of our legal system.

The Independent Counsel also was mindful of the deterrent effect a prosecution of President Clinton would have on future similar conduct of others. Deterrence, "whether it be criminal activity generally or a specific type of criminal conduct, is one of the primary goals of the criminal law." The Independent Counsel recognized President Clinton's conduct might be viewed as the result of embarrassment over an extramarital sexual affair. He was, nevertheless, of the view that President Clinton's conduct, "if commonly committed," would severely undermine our system of justice. As President George Washington said upon his own farewell from office, "oaths . . . are the instruments of investigation in courts of justice." The Independent Counsel concurred with Judge Wright's view that President Clinton's conduct; "coming as it did from a member of the bar and the chief law enforcement officer of this Nation, was without justification and undermined the integrity of the judicial system." Thus, the Independent Counsel concluded that a substantial federal interest would be served by the presentation of criminal charges relating to President Clinton's conduct.

President Clinton Received Significant Administrative Sanctions for His Actions in the Civil Deposition and Before the Federal Grand Jury.

The Independent Counsel also considered whether there were adequate non-criminal alternatives to prosecution. The commentary to the Principles of Federal Prosecution notes:

> When a person has committed a federal offense, it is important that the law respond promptly, fairly, and effectively. *This does not mean, however, that a criminal prosecution must be initiated.* In recognition of the fact that resort to the criminal process is not necessarily the only appropriate response to serious forms of antisocial activity, Congress and state legislatures have provided civil and administrative remedies for many types of conduct that may also be subject to criminal sanction. Although on some occasions they should be pursued in addition to the criminal law procedures, on other occasions they can be expected to provide an *effective substitute for criminal prosecution.* In weighing the adequacy of such an alternative in a particular case, the prosecutor should consider the *nature* and *severity* of the sanctions that could be imposed, the *likelihood* that an *adequate* sanction would *in fact be imposed*, and the *effect* of such a non-criminal disposition on *federal law enforcement interests.*

The Department of Justice Principles of Federal Prosecution expressly contemplate that alternative sanctions may vindicate federal law enforcement interests and provide an appropriate substitute for the initiation of criminal charges. This determination, however, is one of judgment and is not susceptible to mathematical precision.

As a consequence of his conduct in the *Jones v. Clinton* civil suit and before the federal grand jury, President Clinton incurred significant administrative sanctions. The Independent Counsel considered seven non-criminal alternative sanctions that were imposed in making his decision to decline prosecution: (1) President Clinton's admission of providing false testimony that was knowingly misleading, evasive, and prejudicial to the administration of justice before the United States District Court for the Eastern District of Arkansas; (2) his acknowledgement that his conduct violated the Rules of Professional Conduct of the Arkansas Supreme Court; (3) the five-year suspension of his license to practice law and $25,000 fine imposed on him by the Circuit Court of Pulaski County, Arkansas; (4) the civil contempt penalty of more than $90,000 imposed on President Clinton by the federal court for violating its orders; (5) the payment of more than $850,000 in settlement to Paula Jones; (6) the express finding by the federal court that President Clinton had engaged in contemptuous conduct; and (7) the substantial public condemnation of President Clinton arising from his impeachment.169 President Clinton's conduct was indeed serious, but President Clinton already suffered serious and, in the Independent Counsel's view, sufficient sanctions.

On September 9, 1998, the Office of the Independent Counsel submitted a Referral to the United States House of Representatives pursuant to 28 U.S.C. § 595(c) presenting "substantial and credible information" that might warrant impeachment of President Clinton. As a result of this referral, the House of Representatives voted to impeach President Clinton on December 19, 1998. His trial before the United States Senate began on January 7, 1999 and ended February 12, 1999. This public record and the sanction of President Clinton resulting from his impeachment form a portion of the alternative sanctions already imposed on President Clinton prior to the Independent Counsel's prosecutorial decision.

On November 13, 1998, the parties to the *Jones* case agreed to a settlement of the lawsuit. Under that agreement, Ms. Jones was paid $850,000.00. This settlement was $325,000 more than the relief sought by the plaintiff in her Amended Complaint. The Independent Counsel considered this substantial payment in excess of the relief requested as a second component of the alternative sanction imposed upon President Clinton.

On April 12, 1999, Judge Susan Webber Wright filed a Memorandum Opinion and Order finding President Clinton in civil contempt of court, pursuant to Fed. R. Civ. P. 37(b)(2), for his willful failure to obey certain discovery Orders of the Court. Judge Wright explained: "The record demonstrates by clear and convincing evidence that the President responded to plaintiff's questions by giving false, misleading and evasive answers that were designed to obstruct the judicial process." In finding that President Clinton gave "intentionally false" testimony, Judge Wright rejected President Clinton's justification for his conduct—his belief that the *Jones* case was an illegitimate, "politically inspired lawsuit." Judge Wright instead found:

> The President never challenged the legitimacy of plaintiff's lawsuit by filing a motion pursuant to Rule 11 [relating to frivolous or improper pleadings] . . . and it simply is not acceptable to employ deceptions and falsehoods in an attempt to obstruct the judicial process, understandable as his aggravation with plaintiff's lawsuit may have been.

Relying on these factual findings, Judge Wright found President Clinton in contempt and fined him:

> …Not only to redress the President's misconduct, but to deter others who might themselves consider emulating the President of the United States by engaging in misconduct that undermines the integrity of the judicial system.

The Independent Counsel considered Judge Wright's findings, because they required President Clinton to compensate Ms. Jones for the consequences of his wrongdoing, and because they constituted a significant public sanction. In the view of the Independent Counsel, Judge Wright's judicial opinion itself was a significant alternative sanction imposed upon President Clinton.

On January 27, 2000, the Supreme Court of Arkansas ordered the Arkansas Committee on Professional Conduct to commence formal disciplinary proceedings against President Clinton. A year later on January 19, 2001, President Clinton agreed to settle the disbarment proceedings, accept "a five year suspension, pay [ ]…a $25,000 fine (as legal fees for the Committee's outside counsel), and formally acknowledge a violation of one of the Arkansas Rules of Professional Conduct." The Committee also required President Clinton to admit "that he knowingly gave evasive and misleading answers" concerning his relationship with Monica Lewinsky. Specifically, the Agreed Order of Discipline found that President Clinton had engaged in misconduct in violation of Rule 8.4(d) of the Arkansas Rules of Professional Conduct, which defines professional misconduct, in part, as "conduct that is prejudicial to the administration of justice."

President Clinton resolved the bar proceeding by accepting a five-year suspension of his license to practice law in Arkansas and a $25,000 fine. That resolution followed a December 27, 2000 meeting in the Map Room at the White House between President Clinton and the Independent Counsel. Also in attendance at that meeting were a Deputy Independent Counsel, this **Office's Chief of Investigations**, President Clinton's private counsel, and the White House Counsel. At that meeting, the Independent Counsel told President Clinton what actions would be required for the Independent Counsel to exercise his discretion to decline prosecution. The Independent Counsel informed President Clinton that he would resolve the matter without further proceedings if the President agreed to (1) a substantial suspension of his bar license; (2) appropriate admissions regarding his conduct in the *Jones* case; and (3) a settlement of any claim to attorneys' fees incurred in connection with the Lewinsky matter.

On January 19, 2001, the Independent Counsel announced that he would decline prosecution after the Pulaski County Circuit Court entered the Agreed Upon Order of Discipline (containing certain admissions and imposing a $25,000 fine). President Clinton issued a separate statement admitting that some of his answers in his *Jones* case deposition were false, and he agreed not to seek any fees incurred in connection with the Lewinsky matter. The Independent Counsel was satisfied for the reasons stated herein that the sanctions imposed and President Clinton's admissions were sufficient,185 consistent with the Principles of Federal Prosecution, to decline prosecution.

These sanctions were severe, immediately imposed, and made a definitive as well as an important official statement while President Clinton was still in office that "the integrity of the legal system demands a policy of zero tolerance for lying under oath."186 The Independent Counsel considered this concrete resolution a significant component of his assessment of the adequacy of the alternative sanctions imposed upon President Clinton.

Finally, President Clinton issued a written public statement, one of the last documents now included in the official papers of his presidency, in which he admitted

for the first time that “certain of [his] responses to questions about Ms. Lewinsky were false.” President Clinton’s admission laid to rest longstanding questions as to his veracity. In the Independent Counsel’s view, a resolution that definitively resolved many of the factual issues over President Clinton’s conduct substantially served the public interest.

Thus, the Independent Counsel ultimately determined the nature and severity of these alternative sanctions were adequate substitutes for criminal prosecution. The Agreed Order of Discipline, the written statement of President Clinton, and the contempt citation issued by Judge Wright adequately addressed the substantial federal law enforcement interests of promoting truthfulness and honesty before judicial tribunals. President Clinton’s payment of fees, fines, and a significant civil settlement, effectively addressed the monetary harms visited on the plaintiff in the civil suit and the damages suffered by the federal and state courts.

Based upon a consideration of all of these factors, the Independent Counsel determined he would exercise his discretion to decline criminal prosecution of President Clinton, with prejudice. This investigation, begun more than three years ago, is now closed.