



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

THIS IS THE BEGINNING OF MUR # 4617

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Rangel for Congress Committee) MUR 3974
and Richard A. Brown, as treasurer)
Charles Rangel)
)
Mike Espy for Congress and) MUR 3971
Michelle E. Matlock, as treasurer)
Tom Espy, formerly acting as treasurer)
Mike Espy)
)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This Report relays the status of the two remaining matters stemming from referrals from the Department of Justice's ("DOJ") House Bank Task Force.¹ MUR 3974 involves Congressman Charles Rangel and his campaign committee ("Rangel Committee") and relates to the use of cash to make committee disbursements as well as recordkeeping and reporting violations. MUR 3971 involves former-Congressman and former-Secretary of Agriculture Mike Espy as well as Mike Espy for Congress and Tom Espy, acting as treasurer ("the Espy Committee"). The case involves extensive misreporting of Espy Committee disbursements and committee contributions made in the name of the candidate.

¹¹ Two other related matters were referred to the Commission by the House Bank Task Force: MURS 3972 and 3973. MUR 3972 involved the Wilson Committee and four unreported loans and an advance totaling \$36,500 that were made by the committee to the candidate. The Commission successfully conciliated that matter, collecting a \$90,000 civil penalty, and reported over the matter to the House Ethics Committee for further action within its jurisdiction. MUR 3973 involved former Congressman Robert Davis and his committee's use of \$22,708 in petty cash over four years. The Commission took no further action and closed MUR 3973 because, *inter alia*, it appeared that former candidate's personal involvement with his committee's petty cash practice was *de minimus*.

1 and 2. The response includes affidavits from Congressman Rangel and Jim Capel, the Committee's campaign manager. Attachment 1 at 7-10.

The responses provide some further information regarding the 21 checks issued to cash. The information has been used to draft the attached chart, which lists each check, its date, amount, purpose, endorser and any notations made on the checks by Congressman Rangel at the time he wrote them. Attachment 3. Based on the materials at hand, it appears that at least 14 of the 21 checks made payable to "cash" were negotiated by Congressman Rangel (or by a member of his campaign or congressional staff) and the cash was later spent, either by Congressman Rangel or one of the Rangel Committee's agents. Attachment 3 at 1.² Of the remaining seven checks issued to cash, five, totaling \$400, appear to have been given directly to the persons or vendors who provided the goods or services to the Rangel Committee (checks numbered 1043, 4487, 4514, 1914 and 1827). With respect to the remaining two checks, totaling \$404, they were endorsed by a vendor or staff member, and the resulting cash was disbursed in whole or in part to the vendor and in part to others (checks numbered 1252 and 1841).

Regarding the \$15,000 disbursed in connection with both federal and nonfederal election day activities during 1990, 1991 and 1992 (checks numbered 2000, 2682 and 4661), although Congressman Rangel endorsed the three checks and cashed them, Mr. Capel received the cash and either spent the funds or provided cash to others. Attachment 1 at pages 3-4. According to Mr. Capel's affidavit, the cash derived from the three checks was used for election-related literature

² These 14 checks are numbered 4661, 1861, 1862, 1877, 1879, 1914, 2000, 2059, 2307, 2517, 2513, 2682, 2248 and 2342. Attachment 3 at 1. Three of the 14 checks, numbered 1862, 1877 and 2248, lack any endorsement, and the Rangel Committee is unable to identify who negotiated the checks. However, this Office assumes that they were negotiated by Congressman Rangel or someone on his congressional staff as each was cashed at either the now-defunct House Bank or at the Wright-Patman Congressional Credit Union; both are physically located in the Capitol complex.

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distribution, get-out-the-vote efforts and headquarters operations. Attachment 1 at 10. Mr. Capel submitted a memoranda he had provided to Congressman Rangel after the start of the DOJ House Bank Task Force investigation, in which he lists the general categories and amounts of these expenditures, *i.e.*, \$2,300 for "Election Day Operation," \$1,200 for "Literature Distribution." *Id.* at 11. Mr. Capel claims that the amounts eventually received by individuals ranged from \$25 to \$200. However, his affidavit does not list any specific payment amounts or identify any recipients. *Id.*³ As for the documentation related to the \$15,000 in election day expenditures and disbursements, in his 1992 memorandum to Congressman Rangel, Jim Capel acknowledged that if receipts in support of such disbursements were "maintained at all," it was for a "very short period solely for political reasons or reference." Attachment 1 at 11.

Congressman Rangel's affidavit provides somewhat more specificity regarding the remaining eighteen checks issued to cash, which totaled \$4,554. Attachment 1 at 7-9. According to the Congressman's affidavit, the cash was used for various purposes, including travel advances, staff reimbursements, a number of gratuities payments, and several holiday contributions to needy constituents and groups aiding the homeless in his district.⁴ Attachment 1 at 7-9. As the attached chart demonstrates, with respect to nine of these disbursements, totaling \$1004, at least some specific information has been provided about the amounts given and the recipients are at least

³ In at least one respect Mr. Capel's submission conflicts with information that Congressman Rangel previously provided in connection with the DOJ House Bank Task Force. In a letter dated May, 13 1993, Congressman Rangel recalled that \$3,000 of the election day disbursements was provided to three local candidates in increments of \$1,000 each. See First General Counsel's Report, dated May 4, 1994 ("FGCR"), Attachment 28 at page 69.

⁴ Some of these expenditures, on their face, raise questions of personal use. However, this Office makes no recommendation regarding the applicability of 2 U.S.C. § 439a's prohibition against personal use because Congressman Rangel was a Member of Congress on January 8, 1980 and qualified under the "grandfather" provision of Section 439a during the time the expenditures were made.

generally identified, *i.e.*, "Lenox Terrace staff member." Attachment 3 (checks numbered 1043, 4487, 4514, 1252, 1841, 1861, 1914, 1827, 1914). However, regarding the remaining nine of these eighteen checks, totaling \$3,550, little or no information has been provided regarding the recipients and the specific amounts of the cash disbursements that they received. Although the Respondents claim that the cash eventually provided to any single recipient from these eighteen checks was almost always \$100 or less per transaction, nine of the checks listed were in amounts in excess of \$100. *Id.* Attachment 3. The response and referral materials also indicate that the Rangel Committee did not maintain any records related to these disbursements.

The Respondents concede that the Rangel Committee violated the Act's recordkeeping requirements at Section 432(c)(5) by failing to maintain adequate documentation for disbursements. They assert, however, that such violation was "unintentional and de minimus." Attachment 1 at 2. Moreover, they contend that there was no violation of the check disbursement rule at Section 432(h)(1). Although they acknowledge that 21 checks totaling \$19,554, including the three in the amount of \$5,000 each, were issued to "cash," they argue that the making of these disbursements was permissible. They claim that "virtually all" of the disbursements that were ultimately made were for \$100 or less. *Id.* In making this argument, they rely on 11 C.F.R. § 102.11, which permits cash payments of up to \$100 per transaction when made from a petty cash fund. Respondents also argue that such cash disbursements were necessitated by the nature of the Rangel Committee's activities.⁵

⁵ Respondents explain that in some instances, the Congressman's travel schedule required that he expend Committee cash because out-of-town checks were impracticable. Other cash expenditures, such as the \$15,000 used for "election day expenses" over three years, were needed because of the nature of the congressional district; vendors are sometimes unwilling to accept checks from campaign committees, and many of the Rangel Committee's campaign workers do not maintain bank accounts, making it difficult for them to cash committee checks for per diem payments and expense reimbursements.

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Respondents further assert that there was no violation of the itemization requirements at Sections 434(b)(5)(A) and (6)(A), based on the claim that these expenditures "aggregated \$200 or less per payee, i.e., under the itemization threshold." *Id.* at 2. The two violations which Respondents contest are discussed in turn below.

1. Section 432(h)(1) Violation: Cash Disbursements

The Act prohibits committee disbursements to be made in any form other than by check drawn on an account established at a designated depository. 2 U.S.C. § 432(h)(1). The sole exception to Section 432(h)(1)'s check disbursement requirement is for disbursements from a petty cash fund; under 2 U.S.C. § 432(h)(2), a committee may maintain a petty cash fund from which expenditures of \$100 or less to any person, per transaction, may be made. 11 C.F.R. § 102.11.

Both the Act and the evidence at hand contradict Respondents' assertion that most of the cash disbursements at issue were permissible. First, the Committee's reliance on Section 432(h)(2) is misplaced. The funds at issue were not petty cash derived from a petty cash fund. A petty cash fund consists of currency and is maintained for "small day-to-day cash expenses." CF. FEC'S Financial Control and Compliance Manual for Presidential Primary Candidates, 1992, page 123, 1987, page 115 ("Compliance Manual").⁶ Most of the cash at issue was used for major election day campaign spending and other large purchases, not for minor day-to-day expenses totaling \$100 or

⁶ The standard definitions of "petty cash" also negate Respondents' contentions. "Petty cash" is defined as: "currency maintained for expenditures that are conveniently made with cash on hand. A fund used by business to pay small expenses for such items as travel, stationary, etc." BLACK'S LAW DICTIONARY 1032 (5th ed. 1979). Similarly, an accounting text discussing the basic operating procedure for petty cash funds states that: A check is written for a round amount such as \$50 or \$100, which will cover the small expenditures to be paid in cash for a period of two or three weeks. This check is cashed and the money kept on hand in a petty cash box or drawer in the office. ACCOUNTING: THE BASIS FOR BUSINESS DECISIONS 319 (Donald G. Mason et al., eds. 1979).

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less. In addition, the cash at issue did not come from a petty cash fund, but rather from pre-signed, blank checks routinely carried by the Congressman and issued to cash when deemed necessary. Pre-signed blank checks issued to cash do not constitute a petty cash fund. To treat these cash payments of major campaign expenditures as petty cash disbursements would directly contradict the Act's requirement that all disbursements be made from a check issued from a political committee's designated account. See 2 U.S.C. § 432(h)(1).⁷

Second, statements from the Rangel Committee's own bookkeeper, Ms. Patricia Bradley, directly refute the assertion that these were petty cash disbursements. Ms. Bradley informed the DOJ Task Force that during the years at issue the Committee maintained a petty cash fund to meet small, day-to-day expenses, but such fund contained no more than \$50 at any one time and the largest petty cash expenditure involved \$29 for a roll of postage stamps. See FGCR, Attachment 28 at page 12. Moreover, Ms. Bradley indicated that Congressman Rangel had never received any proceeds from the petty cash fund. *Id.* As none of the cash disbursements were drawn from the Rangel Committee's self-identified petty cash fund, they can not be analyzed as petty cash disbursements.

Finally, despite Respondents' assertions, there is no support for their claim that most of the cash at issue was disbursed in amounts of \$100 or less. Indeed, documents related to the disbursements do not exist because the Committee failed to create and/or maintain records for many, if not all, of these disbursements. In addition, there is evidence that contradicts the claim that all of

⁷ The purpose of Section 432(h)(1)'s requirement is clearly frustrated by this case as none of these disbursements are traceable or were properly reported. Indeed, the Committee's bookkeeper informed the DOJ that she was unaware that these checks were even cashed by the Congressman until she received the bank statements. See FGCR, Attachment 29 at page 4. This situation shows that, as the Compliance Manual warns, a committee should "Never issue a check payable to cash." 1992 Compliance Manual at page 123.

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the \$15,000 spent by Mr. Capel on election day was in increments of \$100 or less. First, Congressman Rangel has previously informed the DOJ Task Force that the \$15,000 included three \$1,000 contributions given to local candidates. FGICR, Attachment 23 at page 69. Secondly, even Mr. Capel's affidavit indicates that there were disbursements in excess of \$100, as he only claims that most of the \$15,000 he spent was in amounts from \$25 to \$200 (not less than \$100). Attachment 1 at 10. In light of all of the above, it appears that the Respondents violated Section 432(h)(1).⁸

2. Reporting Violations: Failure to Itemize

Of the twenty-one checks made payable to cash, only four, totaling \$550, were itemized and even those were reported incompletely.⁹ Seven of the twenty-one checks, totaling \$17,000, were in excess of \$200. Counsel contends that no violation of the Act's itemization requirements occurred because "virtually all" of the remaining cash was ultimately disbursed in amounts aggregating less than \$200 per person, below the Act's itemization threshold. Attachment 1 at 2. However, as previously stated, with respect to the majority of the funds at issue, the Rangel Committee has no recollection or documentation regarding who received the cash or the amount that they received. Nor has the Committee offered any documentary support for its claim that the disbursements and

⁸ As noted, even though all the checks were issued to cash, there is some evidence that five of the checks, totaling \$400, may have been given directly to persons who had provided goods or services to the Rangel Committee (checks numbered 1196, 4487, 4614, 11914 and 1127).

⁹ The four checks that were itemized, checks numbered 11961, 11914, 1127 and 1162, totaling \$550, were reported as disbursements to "cash" and the purpose was marked as "contribution DNC 250" and "political photos: 300." Attachment 8 at 5.

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expenditures were in amounts of \$200 or less. Also as previously noted, that claim is inconsistent with Congressman Rangel's previous statements to the DOJ that \$3,000 of such money was disbursed in \$1,000 increments to local candidates for their election day use. See FGCR, Attachment 28 at page 69.

It further appears that, contrary to the Respondents' assertions, a portion of the cash at issue was received by individuals or committees that had received sufficient other Rangel Committee disbursements to cause all subsequent disbursements to become itemizable regardless of their amount. See 2 U.S.C. § 434(b)(5)(A) and (6)(A). Relying on Congressman Rangel's affidavit, the endorsements on the checks, materials produced by Congressman Rangel to the House Bank Task Force and FEC disclosure reports, this Office has identified eight recipients of either cash or checks made payable to "cash who received in excess of \$200 from the Rangel Committee during the same calendar year."¹⁰ In summary, the Committee failed to itemize at least seven checks, totaling \$17,800, each which were in excess of \$200.

3. Discussion of Conciliation

Counsel for these Respondents has requested that the Commission take no further action; but in the alternative they have requested preprobable cause conciliation. As demonstrated above, it is clear that the Rangel Committee violated the Act's recordkeeping and check disbursement requirements with regard to approximately \$19,000 in disbursements. The Committee also failed to itemize at least seven checks, totaling \$17,800, each which were in excess of \$200. Attachment 4 at

2. Counsel argues that this is a *de minimus* amount as compared to the Rangel Committee's overall disbursements of approximately \$1,168,153 over the three year period from 1989-1992.

¹⁰ Those recipients include Al Beckett, Eugene Daniels, Vivian Jones, Angelo Del Torro, Sylvia Woods/Sylvia's Restaurant, Keith Wright, Martin Luther King Democrats Club and the 369th Veterans Association.

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Respondents' practice of issuing pre-signed blank checks to cash and failing to even keep track of such payments runs contrary to the very purpose and essence of the FECA. As a result of this practice, Respondents are unable to account for nearly \$20,000 in expenditures over the three year period. In light of the circumstances and the candidate's heavy personal involvement, the Office of the General Council believes that conciliation is the appropriate course in this matter. Accordingly, attached is a preprobable cause conciliation agreement

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III. MURKIN: THE ESBY NUMBER
I. DOUBTFUL DISBURSEMENTS

As indicated in the First General Counsel's report in this matter, a comparison of Espy Committee reports with Espy Committee checks provided by the DOJ for selected months during 1989-1991 suggested that \$55,305.16 in disbursements were not reported, and that the Committee reported \$37,432.20 in disbursements for which there were no corresponding checks. An additional \$6,421.08 in disbursements were reported twice, \$56,241.00 was all reported in round-numbered disbursements and \$3,201.28 in disbursements were reported with inaccurate dates. The Committee also did not prepare or maintain records with regard to reimbursements from the Espy Committee to Mike Espy. In addition, the referral revealed that Mike Espy made \$3,500 in contributions to candidates which were subsequently reimbursed by the Committee. Of that amount, \$1,750 was reported by the Espy Committee as direct contributions by it to federal candidates. The remainder of the contributions were reported as itemized reimbursements made to Mike Espy, but not as contributions to the particular candidates who received such funds.

Based on the foregoing information, the Commission found reason to believe the Espy Committee violated the Act's recordkeeping and reporting requirements found at 2 U.S.C. §§ 432(c)(5), 434(b)(4) and 434(b)(5)(A), and that the Espy Committee violated 2 U.S.C. § 441f with regard to the reimbursements. The Commission also found reason to believe that Mike Espy violated 2 U.S.C. § 441f.

The Respondents do not contest the reporting or recordkeeping violations, but offer several explanations. Attachment 55 at 11-41. They state that they have "not attempted a check by check or entry by entry analysis but have provided general considerations" that they believe are mitigating. Attachment 55 at 11. Regarding the inconsistencies between the Committee's disbursements as indicated by its checks and as disclosed by its reports, the Committee asserts that when completing

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disclosure reports the staff did not always rely on the checks actually used to make the disbursements, but instead relied on lists of disbursements or receipts provided by others, which were apparently not always accurate. The response also suggests that when Committee checks would be issued to Mike Espy or some other staff member for reimbursement of an expense they had made, the disclosure reports frequently would only identify the vendor or other recipient of the underlying payment for such expense not the reimbursed party. From our review of the information at hand, it appears that the amount of unreported disbursements closely approximates the amount of reported disbursements not reflected in the Espy Committee's checkbook.

The Committee's response also suggests that some of the reporting errors can be attributed to lack of documentation. Attachment 5 at 3. It claims that an office move and four break-ins during 1991 meant that some receipts were lost.¹² Counsel concedes, however, that records in the form of notes and receipts "were not kept beyond their need for listing in the reports." *Id.* at 2. With regard to the round-numbered reimbursements, counsel states that such payments were made for amounts less than what was owed and that the Espy Committee did not over-reimburse anyone, including then-Congressman Espy. *Id.* at 3.

Regarding the \$3,500 in contributions for which Mr. Espy was reimbursed, there is information indicating that \$1,000 went to non-federal candidates. Attachment 5 at 7.¹³ Counsel

¹² In a follow up request, this Office requested supporting documentation for the period November 1991 through March 1992, all times following the last reported break-in at the Espy Committee offices. However, counsel was unable to provide those materials either, as the Espy Committee apparently stopped paying rent on its storage facility and the items were disposed of by the facility operator.

¹³ Counsel for Respondents produced a copy of a \$500 check issued by Mr. Espy in connection with a state election. Attachment 5 at 7. Counsel also informed this Office by telephone that another \$500 was provided to two state candidates in the amount of \$250 each. Although counsel identified the candidates, he did not produce copies of Mr. Espy's contribution checks.

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argues that with regard to the remaining \$2,500 in federal contributions, the Espy Committee's reporting of the underlying reimbursements to the candidate shows that there was no attempt to conceal such contributions. *Id.* at 4.

Although nothing in the response vitiates these violations, most of the Espy Committee's explanations appear credible. Unlike in MUR 3974, this matter does not involve a candidate distributing sizable amounts of cash in connection with elections and for which there was no attempt to itemize or maintain any records. Moreover, it has now been almost four years since Mr. Espy left Congress to become Secretary of Agriculture, and two years since Mr. Espy resigned from that Cabinet position after an Independent Counsel ("IC") was appointed to investigate his acceptance of corporate gifts. Thus far, various corporations and individuals have been successfully prosecuted by the IC or at least indicted. See Attachment 7 (news articles). As discussed *infra*, at pages 14-15, Mr. Espy is still the subject of that ongoing criminal investigation by the IC. Attachment 7.¹⁴ Given all the foregoing, this Office recommends that the Commission exercise its prosecutorial discretion and take no further action with respect to the Espy Committee's violations of 2 U.S.C. §§ 432(c)(5), 434(b)(4), 434(b)(5)(A), 441f and Mike Espy's violation of 2 U.S.C. § 441f and close the file.

2. Personal Use Issue

In the course of preparing this Report, this Office discovered evidence of a more recent potential violation of the Act. Specifically, the Espy Committee's 1995 disclosure reports reveal that it made a \$30,244 payment to the law firm of Steptoe and Johnson on October 11, 1995.

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This Office also received a referral from the IC, MUR 4331, which involved a 2 U.S.C. § 441f scheme related to the campaign committee of Mr. Espy's brother, Henry Espy, who has been indicted. The Section 441f violations in MUR 4331, which involved James Lake and others, were successfully conciliated with civil penalties totaling \$17,000 and that matter was closed on June 14, 1996.

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Attachment 8 at 11. That is not the law firm that represents the Respondents in this matter, and Commission indices show that the Espy Committee has previously paid counsel for this matter separately. ¹⁵ If the \$30,244 payment was for legal services related to the IC investigation and that investigation does not involve issues related to Mr. Espy's activities as a federal candidate or a Congressman, it raises an issue of personal use.¹⁶

Excess campaign funds may not be converted to any person to any personal use, other than to defray and ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. 2 U.S.C. § 439a. The regulations further define "personal use," describing it as the use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officer or holder. 11 C.F.R. § 113.1(g) (February 9, 1995). With regard to legal expenses, the Commission's regulations provide for a case-by-case determination as to whether committee payments for legal fees constitute personal use. 11 C.F.R. § 113(g)(1)(ii)(A). Under the Act, the term "Federal office" includes the office of a Representative to Congress, but does not include the offices of Cabinet Secretaries, including that of the Secretary of Agriculture. 2 U.S.C. § 431(3).

It appears from all the information at hand that the Espy Committee's payment of \$30,244 to Slopan and Johnson for "legal fees" may relate to the ongoing investigation by the IC. Although the IC's investigation appears to focus on many issues, as previously noted, that investigation was

¹⁵ A payment for legal fees to counsel which represented these Respondents in MUR 3971, in the amount of \$85,000, was made on November 22, 1994. Attachment at 8 at 4.

¹⁶ If the legal services had been performed in connection with this matter, or for some other case involving the candidate or for his committee relating to potential violations of the Act, then the use of campaign funds would have been appropriate. See Advisory Opinion 1993-15 (contributions are to be used to pay legal fees for DOJ investigation of FECA violations).

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completely unrelated to the issues and violations in MUR 3971 and is much more current, this Office recommends that the Commission open a new MUR to address this issue. Accordingly, this Office recommends that the Commission open a MUR and find reason to believe that Mike Espy, Espy for Congress and Michelle E. Matlock, as treasurer, have violated. 2 U.S.C. § 439a.

IV. RECOMMENDATIONS

A. With respect to MUR 3974:

1. Deny Respondents' motion to take no further action in this matter.
2. Enter into conciliation with the Rangel for Congress Committee and Richard A. Brown, as treasurer, and with Charles Rangel, prior to a finding of probable cause to believe.
3. Approve the attached proposed conciliation agreement.
4. Approve the appropriate letters.

B. With respect to MUR 3971:

1. Take no further action against Mike Espy for Congress and Tom Espy, acting as treasurer, with respect to violations of 2 U.S.C. §§ 432(c)(5), 434(b)(4), 434(b)(5)(A) and 441f.
2. Take no further action against Mike Espy with respect to his violation of 2 U.S.C. § 441f.
3. Close the file in MUR 3971.
4. Approve the appropriate letters.

C. With respect to the New Espy MUR:

1. Open a MUR.
2. Find reason to believe that Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, violated 2 U.S.C. § 439a.
3. Approve the attached Factual and Legal Analysis (1).

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4. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date: 11/8/97

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Letter from Rangel Counsel dated August 11, 1994, responding to the Commission's reasons to believe findings.
2. Letter from Rangel Counsel dated April 14, 1995, providing additional information.
3. Spreadsheet outlining information regarding Rangel checks made payable to "Cash."
4. Proposed combined Conciliation Agreement for the Rangel for Congress Committee, Richard A. Brown as treasurer, and Charles Rangel.
5. Responses from Espy Committee/Mike Espy
6. Factual and Legal Analysis (Mike Espy and Espy Committee)
7. News Articles
8. HEC reports

Staff assigned: Xavier McDowell

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Note: Attachments 1-5 not relevant to MUR 46377

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In the Espy Probe, Questions of Where

By Sandra Torrey
Washington Post Staff Writer

Chalk up one for the defense against Donald C. Smaltz, the independent counsel whose investigation of former agriculture secretary Mike Espy has drawn bitter complaints of prosecutory overreaching.

While defense motions to transfer trials are rarely granted, a federal judge in New Orleans has ordered that Henry Espy, Mike Espy's brother, be tried in his home state of Mississippi—not in New Orleans, where Smaltz sought to try the case.

U.S. District Judge Edith Brown Clement ruled earlier this month that the transfer best served the "interest of justice," in part, because the alleged wrongdoing occurred in Mississippi, and Henry Espy and the major witnesses live there. Espy is accused of making false statements to a bank in Clarksdale, Miss., where he was mayor, to illegally obtain a \$75,000 loan to cover campaign debts in his unsuccessful bid to succeed his brother in Congress.

The battle over the trial's locale—led by Henry Espy's D.C. attorney, Abbe D. Lowell—opened a new front in the escalating war between defense lawyers and Smaltz, who was appointed in September 1994 to determine whether Mike Espy abused his position by accepting gifts and favors from the companies his department regulated.

Espy, now 42, resigned from President Clinton's Cabinet in 1994. He has not been indicted.

But like the Energizer Bunny, Smaltz has kept on going, presenting evidence to grand juries in Washington, San Francisco, New Orleans and Mississippi, and gaining indictments against 14 people. Defense lawyers have accused him of roving wildly beyond his original mandate concerning Mike Espy. Smaltz's defenders say he is just doing his job.

But now, some of defense attorneys representing his targets have raised a new complaint.

In a transfer motion, Lowell argued that Smaltz had created "some appearance" of "forum shopping"—avoiding judicial districts in Mississippi, where Espy—who is black—is well known and where the minority population is about twice that of the Eastern District of Louisiana, where the indictment was brought.

In a motion opposing the transfer, Smaltz led that Espy's "true aim" was to "capacitate that jury in Mississippi."

"I am sure that lawyers find it necessary to raise the race issue every time they make a venue decision," Bill Fahey said in an interview. "It is very simple. Cases were

Independent Counsel Donald C. Smaltz has had a stormy tenure since 1994, when he investigated whether then-agriculture secretary Mike Espy had accepted gifts from firms his department regulated. Recently,

two defense lawyers accused him of "forum shopping"—indicting defendants where he has a tactical advantage at trial. A Smaltz spokesman says the office brings cases "where the crimes were committed."

The office of independent Counsel Donald Smaltz doesn't want to try Richard Douglas, who is black before a black jury in the District.

—John M. Dowd, attorney for Richard Douglas, a former executive accused of illegally giving gifts to Mike Espy

"Prosecutors have enormous power; play games to find a place unfamiliar or inconvenient to a defendant, a place where a jury of his peers, be they ethnic or political brothers and sisters does not exist."

—Abbe D. Lowell, attorney for Henry Espy, brother of Mike Espy



argument. But in granting the transfer on Nov. 6, she agreed with Lowell that the "nerve center" of the indictment's first six counts was Mississippi.

Meanwhile, a similar Smaltz-inspired drama is unfolding on the West Coast, where another D.C. lawyer, John M. Dowd, is representing Richard Douglas, a former executive with Sun Diamond Growers and a longtime friend of Mike Espy.

In September Sun Diamond, a major fruit and nut producer based in California, was convicted in federal court in the District of showing Espy with nearly \$6,000 in gifts. The gifts were given by Douglas and expensed to the company.

Last month in San Francisco, Douglas was indicted on several counts connected with the gifts, as well as an alleged fraud to obtain a mortgage from a San Francisco mortgage brokerage.

"What we are asking [Smaltz] is... 'Why have you moved the case you just tried against Sun Diamond in the District of Columbia to California?' " Dowd said in an interview last week. "The only reason is, they don't want to try Richard Douglas, who is black... before a black jury in the District."

Accusing Smaltz of racial motivations, Dowd has asked Attorney General Janet Reno to investigate and remove him from office.

Sources in Smaltz's office said California

against Douglas could have been brought pointing to the counts involving the mortgage broker.

"For all of Mr. Dowd's baseless accusations he has yet to file a motion for change of venue or to split the trial," Fahey said. "We will spend... when and if" a motion is filed.

Dowd said last week that the charges involving alleged illegal gifts should never have been combined with the mortgage issue. "Two matters are not part of a common scheme or plan," said Dowd, who said a motion to sever the counts will be filed soon. The prosecutors combined them "so they can get a win with telling the press the venue is California."

As the Douglas dual continues in San Francisco, two new players—who get advances from the defense bar—have joined battle.

John Keiser, a San Francisco lawyer known in Washington as the lead prosecutor in the Iran-contra case against Oliver North, joined Douglas's defense team. And Chief District Court Judge Thelton Henderson, known among lawyers for fairness and even-handedness, is scheduled to preside at the trial. No date has been set.

The American Association of Attorneys... the District-based group represents

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IN THE
UNITED STATES

TITLE: BUSINESS GIANT CONVICTED FOR ILLEGAL GIFTS TO ESPY
BYLINE: AP
EST. PAGES: 2
DATE: 039 225 1996
DOCID: SIM0621690337
SOURCE: St. Louis Post-Dispatch, SLMC
EDITION: BENE STAS LIT. SECTION: NEWS; PAGE: 01A
Copyright 1996

A federal jury convicted a California agribusiness giant Tuesday in the first trial stemming from the investigation of illegal corporate gifts to former Agriculture Secretary Mike Espy.

Sun-Diamond Growers of California was convicted on eight out of nine counts of making illegal gifts and campaign contributions. Prosecutors said the decision sent a strong signal to other companies doing business with federal agencies.

Regardless of party, these permanent corrupters of government must be stopped," said prosecutor Theodore S. Greenberg, a member of the team led by Donald C. Smalts, an independent counsel.

The jury took 9 1/2 hours to convict Sun-Diamond of making illegal gratuities worth up to \$5,900 directly to Espy between early January 1993 and early March 1994.

Although the company faces fines of up to \$3 million, no one will be jailed. Company President Larry Busboom testified under immunity, and no one else has been charged.

The jury also found Sun-Diamond guilty of making \$5,000 in illegal contributions to the failed congressional campaign of Henry Espy, Espy's brother, concealing the contributions and fraudulently using interstate communications to carry out the illegal transactions.

Sun-Diamond is the sales and governmental-affairs arm for fig, hazelnut, prune, almond and walnut growers' cooperatives in California and Oregon. Its affiliates include Sun Maid raisins, Summit prunes and Diamond Walnut.

It has had broad dealings with the Agriculture Department, and in the past, has continued sales - more than \$670 million last year - have put it in the Fortune 500.

The Agriculture Department has a voice in pesticide regulations and trade matters that can affect the growers. It also makes school lunch purchases and dispenses export promotion funds, of which Sun-Diamond members were beneficiaries.

The gifts included \$2,295 in tickets and transportation of the U.S. Open tennis tournament, \$2,427 worth of luggage, \$225 worth of meals and a \$524 bowl, all made through Richard Douglas, a senior vice president and a close friend of Espy's.

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ATTACHED 7
Page 1 of 1

Douglas also made gifts to Espy's girlfriend, Patricia Dempsey, the indictment says.

The only count for which a not-guilty verdict was returned alleged that Sun-Diamond illegally paid \$3,100 for Dempsey to accompany Espy on a trip to Greece. Defense attorneys produced evidence that another organization, the International Nut Council, paid for the trip.

Espy resigned in December 1994 because of the ongoing investigation. Smaltz was appointed as independent counsel in September 1994.

The prosecution did not prove that Sun-Diamond received any favors from the department, nor was the proof needed, according to prosecutors and U.S. District Judge Ricardo M. Urbina.

But defense attorney Richard Hibey said he would recommend an appeal based on how the law was interpreted. He argued that the gifts had to be for official acts, not because of someone's official position.

The defense argued that some favors weren't even given. It said that one was a legal honorarium, when Espy was still a member of Congress, and that the company was unaware of others, even though it approved expenses issued by Richard Douglas, the senior vice president who lavished all the gifts.

Douglas and Espy were close friends and Hibey argued that the gifts were based on that friendship, not corporate goals.

ART: PHOTO;

Caption: (1) Color Photo Headshot - Mike Espy (2) Color Photo Headshot- Mike Espy, Received illegal gifts (This outline ran with the preceding photo in the THREE STAR Edition.)

DESCRIPTORS: COURT TRIAL; DECISION; RULING CONVICTION ILLEGAL GIFT GOVERNMENT

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ATTACHMENT 7
Page 3 of 6

TITLE: Lobbyist Indicted in Gifts to Espy
BYLINE: LOS ANGELES TIMES
EST. PAGES: 1
DATE: 10/17/96
DOCID: NDAY296045
SOURCE: Newsday; NDAY
EDITION: NASSAU AND SUFFOLK; SECTION: NEWS; PAGE: A69
ORIGIN: Washington
(Copyright Newsday Inc., 1996)

Washington - The former chief Washington lobbyist for Sun-Diamond Growers of California has been indicted by a federal grand jury on charges he gave more than \$10,000 in illegal gifts to Mike Espy, the Clinton administration's first secretary of agriculture.

The charges against Richard Douglas were announced yesterday by Independent Counsel Donald Smaltz, who is moving toward seeking an indictment of Espy.

The 19-count indictment of Douglas, which Smaltz said was returned late Tuesday by a grand jury in San Francisco, came three weeks after Sun-Diamond was convicted in federal court of giving more than \$5,900 in meals, transportation, luggage and other gratuities to Espy, all through Douglas.

Sun-Diamond, the giant agricultural cooperative, also was convicted of making illegal campaign contributions to Espy's brother, Henry, in his unsuccessful race for Congress in 1994. Douglas also is charged with concealing that illegal corporate donation. He also is accused of making false statements to FBI agents during the investigation.

Washington attorney John Dowd, representing Douglas, called the charges "frivolous and without merit." Dowd said the indictment is based on "meals and other nominal things of value (exchanged) between two successful black men who have been close friends for 26 years."

Douglas, 48, and Espy, 42, met as students at Howard University in the early 1970s, Dowd noted.

Espy resigned from office two years ago after Smaltz' investigation had begun.

If convicted on all counts, Douglas could face a maximum sentence of more than 60 years in prison and fines exceeding \$3 million.

REGION: CA US NME PRM; CALIFORNIA; UNITED STATES; NORTH AMERICA; PACIFIC RIM
DESCRIPTORS: GIFT; MIKE ESPY; SUN DIAMOND GROWERS; CALIFORNIA; LOBBYING; RICHARD DOULGAS; INDICTMENT; ; CHARITIES, COMMUNITY & CIVIC GROUPS; LAW & LEGAL ISSUES

ATTACHMENT 7
PAGE 1 of 1

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B9 (11)

INVESTIGATIONS

On Fresh Ground

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

By RICHARD L. CLAYMAN, FAVETTEVILLE



ORIGINAL TARGET
Espy leaves office Dec. 31

THE INCIDENTS THAT started the investigation of Agriculture Secretary Mike Espy were relatively small things: as political scandals go, they were about as trivial as they could be. In 1988, Espy's secretary (Chicago Bulls player) had a relationship with a corporate executive who was one of the largest items

of the largest items was a \$1,200 withdrawal for his girlfriend. At first, the situation seemed as if it might be tossed off easily. For accepting those gifts 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, probed 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 them 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 of the ties are already known: Tyson executives helped finance Clinton's campaign, and James Blair, one of the firm's lawyers, guided Hillary Rodham Clinton's successful commodities trade. Smaltz, 57, a former prosecutor from Connecticut, was expected to finish the current probe within six months, serve his collection of the large battery of allegations that he must finish the task before 1993. He is working seven days a week with the help of 100 employees, including six lawyers and eight FBI agents. Last week the commission office that he describes as "intimidating" in Fayetteville, Arkansas, just a few miles from the headquarters of Tyson, the world's largest poultry producer (1992 sales: \$4.7 billion).

Smaltz has served more than 10 grand jury subpoenas on individuals and groups ranging from the National Broiler Council, a chicken-industry trade group, to a

by the Tyson company, to the Arkansas Workers Compensation Commission, the state agency that handles disability claims by Tyson employees. Among the many aims of Smaltz's inquiry are whether Tyson induced Espy to delay tough inspector rates 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. Just Tyson Foods, through intermediaries, helped persuade the Secretary to sign a letter that moved the chicken off the pavement into the grocery stores.

A far more provocative allegation comes from Joseph Henrickson, 43, a pilot who arrived only 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 northwestern 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 1993

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 Clinton's 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-

boning," 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 1983 a fellow pilot was fined for what Henrickson and other pilots feel was a minor infraction. Henrickson tried to intervene. Two months later, his case was filed. He then brought the lawsuit, claiming retaliatory dismissal. His personnel records were clear, reflecting regular raises and promotions, but the suit was dismissed in October. "Unlawful transfer, Arkansas law, Joe's case is impossible," points out Henrickson's attorney, Marra Britton.

Last summer, despite the company's strong legal position, Britton 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 appeared in court. Other Tyson pilots discuss the drug-trafficking charge against Henrickson as propititious. Henrickson believes the threat was intended to scare him away from talking about the alleged deliveries to Clinton. He claims he's being blackballed in the industry, a tale 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 envelope 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, Eppy remains a major focus of the probe. Smaltz says he is investigating more than 30 allegations against the Agriculture Secretary. Eppy's lawyer, Herb Weingarten, declared that Smaltz's growing staff and multiple subpoenas "suggest an investigation out of control or one with a fuzzy agenda." His client, who leaves office Dec. 31, certainly files a far longer suit for a resolution than nearly anyone imagined a few months ago.



FORMER TYSON PILOT Joseph Henrickson alleges that each envelope he flew contained the 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 couldn'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 1988. Henrickson's wife Mary Ann insists that her husband discussed the deliveries with her as they occurred. "The envelope 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.

SCHEDULE B

FINANCED DISBURSEMENTS

Use separate schedules for each category shown on General Summary Page
 PAGE 1 OF 1
 FOR LINE NUMBER

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)
Nike Easy for Congress

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A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month day year)	Amount of Each Disbursement This Period
Steptoe & Johnson Washington, D.C.	Legal Fees Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	10/11/95	\$ 30,244.47
B. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date (month day year)	Amount of Each Disbursement This Period
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TOTAL of Disbursements This Page (optional) _____
 TOTAL This Report (see page 100 and Summary page) **\$ 30,244.47**
 ATTACHMENT: 8
 Page 1 of 1

REPORT OF RECEIPTS AND DISBURSMENTS

REC'D
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COMMERCIAL
MAY 1958
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USE FOR MAILING LABEL

1. NAME OF CHARITY (Full)
 2. ADDRESS (Street and City)
 P. O. Box 9242
 CITY, STATE and ZIP CODE
 JACKSON, MS. 39208

4. TYPE OF REPORT

April 15 Quarterly Report
 July 15 Quarterly Report
 October 15 Quarterly Report
 January 31 Year-End Report
 July 31 Mid-Year Report (for states requiring)

This report covers activity for _____

5. Charitable Purpose	6. Amount Received	7. Amount Disbursed
1. For the Charitable Purpose of _____		
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 TITLE: _____

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APPROVED: _____
 SIGNATURE: _____
 TITLE: _____

REPORT OF RECEIPTS AND DISBURSEMENTS

PLAN 31

EGUARM

USE PEC MARKED LABEL OR PRINT

NAME OF CANDIDATE
MIKE EBY FOR CONGRESS
 ABOVE IS (number of copies) Check if different from person of interest

P. O. BOX 9942
 CITY, STATE and ZIP CODE
JACKSON, MS. 39286

STATE DISTRICT
MS/02

117-72
 3-25-116-18

4. TYPE OF REPORT

Initial Report (first report)

Subsequent Report (second or subsequent reports)

Candidate's Quarterly Report

Candidate's Year End Report

Candidate's Mid Year Report (if applicable)

Other (specify):

SUMMARY

	Beginning Period	Ending Period	COLUMN A This Period	COLUMN B Calendar Year
(1) Total Cash Receipts (plus other funds)	7/1/94	12/31/94	0	
(2) Total Cash Disbursements (minus other funds)			0	
(3) Total Operating Expenses (minus other funds)			5,150.00	
(4) Total Operating Disbursements (minus other funds)			5,150.00	
(5) Cash on Hand at Close of Reporting Period (from Line 2)			109,286.07	
(6) Loans and Obligations Owed to the Candidate (minus all on Schedule C and/or Schedule D)				
(7) Loans and Obligations Owed BY the Candidate (minus all on Schedule C and/or Schedule D)				

I hereby declare I have examined this report and to the best of my knowledge and belief it is true and correct.

Name of Candidate

Michelle E. Matlock

Michelle E. Matlock

ATTACHMENT

Page 3 of 5

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Any amount shown on this Form is subject to the provisions of the Internal Revenue Code and may be used as credit by any person for the amount of such amount in accordance with the rules and regulations of any professional accounting firm, such as the AICPA.

NAME OF COMMITTEE (or Fund)

MIKE ESPY FOR CONGRESS

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date Month (Mo. Year)	Amount
Mary Accounting Service P. O. Box 9442 Jackson, Ms. 39286	Accounting Service Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	9 / 2 94	150.00
Markins, Indig & Stennis State Street Jackson, Ms. 39205	Attorney Fees Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	11 / 22 94	5,000.00
C. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date Month (Mo. Year)	Amount
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date Month (Mo. Year)	Amount
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date Month (Mo. Year)	Amount
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date Month (Mo. Year)	Amount
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date Month (Mo. Year)	Amount
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date Month (Mo. Year)	Amount
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	Date Month (Mo. Year)	Amount

6-11-94 10:40 AM

TOTAL of Disbursements (This Page) (Enter -)

TOTAL This Period (Last page this form number only)

ATTACHMENT

Page 16 of 5



FEDERAL ELECTION COMMISSION
Washington DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. ENMONS/BONNIE ROSIS
COMMISSION SECRETARY

DATE: JANUARY 14, 1987

SUBJECT: MURs 3874 & 3877 - General Counsel's Report dated 1/8/87.

The above-captioned document was circulated to the Commission
on Thursday, January 09, 1987

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

- Commissioner Atkins _____
- Commissioner Elliott XXX
- Commissioner McDonald XXX
- Commissioner McGarry XXX
- Commissioner Thomas XXX

This matter will be placed on the meeting agenda for

Tuesday, January 28, 1987.

Please notify us who will represent your Division before the Commission on this matter.

9804300394

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Rangel for Congress Committee) MUR 3974
and Richard A. Brown, as treasurer;)
Charles Rangel;)
)
Mike Espy for Congress and) MUR 3971
Michelle E. Matlock, as treasurer;)
Tom Espy, formerly acting as treasurer;)
Mike Espy)

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on January 28, 1997, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions with respect to MURS 3974 and 3971:

A. With respect to MUR 3974:

1. Deny Respondents' motion to take no further action in this matter.
2. Enter into conciliation with the Rangel for Congress Committee and Richard A. Brown, as treasurer, and with Charles Rangel, prior to a finding of probable cause to believe.
3. Approve the proposed conciliation agreement recommended in the General Counsel's January 8, 1997 report.
4. Approve the appropriate letters recommended in the General Counsel's January 8, 1997 report.

(continued)

9804360395

B. With respect to MUR 3971:

1. Take no further action against Mike Espy for Congress and Tom Espy, acting as treasurer, with respect to violations of 2 U.S.C. §§ 432(c)(5), 434(b)(4), 434(b)(5)(A) and 441f.
2. Take no further action against Mike Espy with respect to his violation of 2 U.S.C. § 441f.
3. Close the file in MUR 3971.
4. Approve the appropriate letters recommended in the General Counsel's January 8, 1997 report.

C. With respect to the New Espy MUR:

1. Open a MUR.
2. Find reason to believe that Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, violated 2 U.S.C. § 439a.
3. Approve the Factual and Legal Analysis recommended in the General Counsel's January 8, 1997 report.

(continued)

9804300396

4. Approve the appropriate letters
recommended in the General
Council's January 8, 1987 report.

Commissioners Wilkins, Elliott, McGarry, and Thomas
voted affirmatively for the decision; Commissioner
McDonald was not present.

Account:

1-31-87
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

9804300397



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 5, 1987

Robert E. Hauberg, Jr., Esquire
Watkins Ludlam & Stennis
633 North State Street
Post Office Box 427
Jackson, Mississippi 39205-0427

RE: MUR 4617
Mike Espy;
Mike Espy for Congress;
Michelle E. Matlock, Treasurer

Dear Mr. Hauberg:

On January 28, 1987, the Federal Election Commission found that there is reason to believe Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, your clients, violated 2 U.S.C. § 439a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

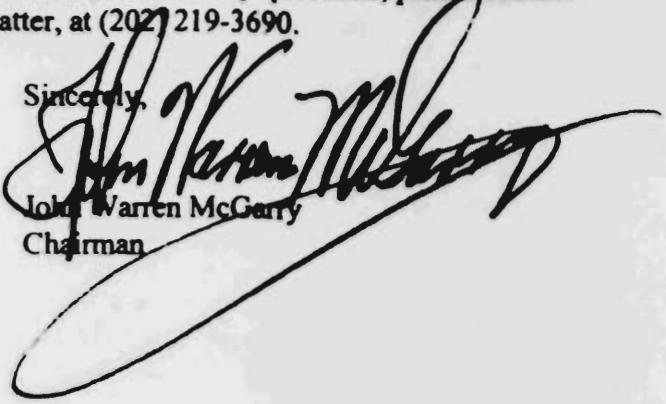
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Xavier McDonnell, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,


John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Procedures

98043000399

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mike Espy
Mike Espy for Congress
and Michelle E. Matlock, as treasurer

MUR 4617

I. GENERATION OF MATTER

This matter was generated by the Commission in the normal course of carrying out its supervisory duties. 2 U.S.C. § 467g(a)(2). Disclosure reports for Mike Espy for Congress and Michelle E. Matlock, as treasurer, reveal that they made a \$30,244 payment to the law firm of Steptoe and Johnson on October 11, 1995.

II. APPLICABLE LAW

Excess campaign funds may not be converted to any person to any personal use, other than to defray and ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. 2 U.S.C. § 4639a. The regulations further define "personal use," describing it as the use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 11 C.F.R. § 113.1(g) (February 9, 1995). With regard to legal expenses, the Commission's regulations provide for a case-by-case determination as to whether committee payments for legal fees constitute personal use. 11 C.F.R. § 113(g)(1)(ii)(A). Under the Act, the term "Federal office" includes the office of a Representative to Congress, but does not include the offices of Cabinet Secretaries, including that of the Secretary of Agriculture. 2 U.S.C. § 461(b).

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III. ANALYSIS

It appears from all the information at hand that the payment of \$30,244 to Steptoe and Johnson for "legal fees" may relate to the ongoing investigation by the Independent Counsel ("IC"). Although the IC's investigation appears to focus on many issues, it was triggered by and continues to focus on Mr. Espy's activities as Secretary of Agriculture. Given that the aspects of the IC's investigation that involve Mike Espy would appear to relate primarily, if not exclusively, to his activities as Secretary of Agriculture, it appears that most, if not all, of the legal fees in question would exist "irrespective" of whether Mr. Espy "was a federal candidate or federal officeholder." If so, the payment of such fees with campaign funds is in violation of 2 U.S.C. § 439a. In light of the above, there is reason to believe that Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, have violated 2 U.S.C. § 439a.

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

FEB 14 1 30 PM '97

In the Matter of)
)
)
Mike Espy)
Mike Espy for Congress)
Michelle E. Matlock, Treasurer)

MUR 4617

SENSITIVE

On January 28, 1997, the Commission found reason to believe that Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, violated 2 U.S.C. § 439a. The finding relates to \$30,244 payment for legal fees to Steptoe and Johnson that was disclosed on the campaign's 1995 reports. As it appears that the legal fees would have existed irrespective of the candidate's campaign or duties as a Federal officeholder, that use of campaign funds for that purpose appears to have been in violation of Section 439a. See 11 C.F.R. § 113.1(g).

On February 10, 1997, Mike Espy for Congress filed its 1996 Year End Report. That disclosure report reveals an additional payment to Steptoe and Johnson for legal fees, this one for \$20,000 on December 4, 1996. See Attachment. As the use of campaign funds for this \$20,000 in legal fees also may be in violation of Section 439a, it shall be included in this matter.

2/13/97
Date


Lois G. Lerner
Associate General Counsel

Attachment

Staff Assigned: Xavier K. McDonnell

90043000402

SCHEDULE B

ITEMIZED CONTRIBUTIONS

(Indicate whether) (Check one) (Check all that apply) (Type)

Any information copied from such Reports and Statements may not be used to identify any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

Mike Espy for Congress

98043080403

A. Full Name, Mailing Address and ZIP Code	Type of Contribution Lump Sum <input checked="" type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
Stephoe & Johnson Washington, D. C.	<input checked="" type="checkbox"/> Lump Sum <input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	12/4/96	20,000.00
B. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
C. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
D. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
E. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
F. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
G. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
H. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period
I. Full Name, Mailing Address and ZIP Code	<input type="checkbox"/> Recurring <input type="checkbox"/> Other <input type="checkbox"/>	Date (month, day, year)	Amount of Each Contribution This Period

SUBTOTAL of Contributions This Page (not total)

TOTAL This Period (not page this line number only)

20,000.00

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4617

NAME OF COUNSEL: RELD WEINGARTEN

FIRM: STEPHENS & JOHNSON LLP

ADDRESS: 1330 CONN. AVE. NW

WASHINGTON D.C. 20036-1793

TELEPHONE: (202) 429-6238

FAX: (202) 429-3902

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

2/17/97
Date

Melvin Egan
Signature

RESPONDENT'S NAME: ALTONSO MIKAEL ESPY
(MIKE ESPY FOR CONGRESS)

ADDRESS: CROSTWAIT TERRY

P.O. BOX 2378

JACKSON, MS. 39201

TELEPHONE: HOME _____

BUSINESS (601) 552-5533

98043680404

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February 19, 1997

Lucien L. Bourgoin
Thomas S. Cordin
Donald Clark, Jr.
Bill Cole
Frank O. Crosthwait, Jr.
T. Walton Dallas
Jack R. Dodson III
John F. England
J. Lawson Hester
Sheila A. Jones
Samuel W. Keyes, Jr.
Amy E. Kalpatrick
James L. Pettis, III
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Of Counsel:
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Gordon L. Lyon (1889-1973)
Champ Terney (1939-1996)

Xavier McDonnell, Esq.
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: MUR 4617
Mike Espy for Congress

Dear Mr. McDonnell:

I am writing in response to your February 5 letter to Robert Hauberg, Jr. advising of the FEC's finding that there is reason to believe that a payment of \$30,244 to Steptoe & Johnson for legal fees may have violated 2 U.S.C. § 439a, which prohibits use of campaign funds for personal use unrelated to a candidate's duties as a Federal officeholder.

Steptoe & Johnson has represented me in connection with numerous matters relating to the activities of my Congressional office. Some of these matters arose outside of the Independent Counsel investigation—for example, the FEC's investigations into my 1990 and 1992 campaigns. Other matters arose in the context of the White House inquiries and the Independent Counsel investigation, but related directly to my service as a Congressman. The payment of the concomitant legal fees could not constitute "personal use" within the meaning of 11 C.F.R. § 113.1(g), since such fees were not "a commitment, obligation or expense ... that would exist irrespective of [my] campaign or duties as a Federal officeholder."

In light of the ongoing Independent Counsel investigation, I am not in a position to waive my attorney-client privilege with respect to such representation. However, Steptoe & Johnson's services have included substantial work on the following issues, including but not limited to:

1. The FEC investigation into my campaign committee.

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

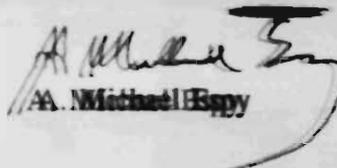
Mr. Xavier McDonnell, Esq.
February 19, 1997
Page 2

2. The lease of a Jeep Cherokee by my Congressional office.
3. The employment of Ron Battley and others by my Congressional office.
4. An analysis of my travel to Mississippi while I was a Congressman.
5. Review of records from my Congressional office.
6. An analysis of my relationship with various individuals which relate to my service as a Congressman.
7. An analysis of my participation on the House Agriculture Committee.
8. A review of agricultural legislation (crop insurance) I introduced while a Member of Congress.
9. A review of House Ethics Rules.

In addition, the payment in question constitutes only a small fraction of my total legal fees owed to Steptoe & Johnson. This payment was properly allocable to matters relating to the work of my Congressional office, and permissible under Section 439a of the FECA.

I hereby request pre-probable cause conciliation pursuant to 11 C.F.R. § 1.18(d). I look forward to a meeting with you and any other appropriate HEC officials to discuss this matter.

Yours truly,


A. Michael Espy

ME/loc

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 26, 1997

VIA FAX AND FIRST CLASS MAIL

Reid Weingarten, Esquire
Steptoe & Johnson, LLP
1330 Conn. Ave., NW
Wash. DC 20036

RE: MUR 4617
Mike Espy
Mike Espy for Congress
and Michelle E. Matlock, as treasurer

Dear Mr. Weingarten:

This is to confirm the substance of our telephone conversation earlier today regarding the above-captioned matter. I indicated that to demonstrate the purposes of the legal fees in question, your clients could produce redacted copies of contemporaneous invoices. The redacted portions would be those unnecessary to the resolution of this matter, i.e., names of witnesses interviewed. I also indicated that we could meet with you and your client after the submission of such documentation. You informed me that only Mr. Espy could authorize the release of such documentation. You also stated that you would submit a response by Friday, March 7, 1997. Please note that, as we have previously discussed, this Office also seeks contemporaneous documentation substantiating the allocation of the legal fees in question.

If you have any question, I can be reached at (202) 219-3400. Our fax number is (202) 219-3923.

Sincerely,


Xavier K. McDonnell
Attorney

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STOE & JOHNSON LLP

ATTORNEYS AT LAW

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REID H. WEINGARTEN
(202) 429-6238

March 7, 1997

By Hand Delivery

Xavier K. McDonnell, Esq.
Federal Election Commission
Suite 657
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4617
Mike Espy for Congress

MAR 7 3 42 PM '97

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Mr. McDonnell:

In July 1994, Mike Espy retained this firm to assist him in addressing allegations that he had engaged in improper activities while serving as Secretary of Agriculture. Our representation initially involved responding to White House and press inquiries. In September 1994, a Special Panel of the U.S. Court of Appeals appointed an Independent Counsel ("IC") to investigate the allegations against Mr. Espy, and our representation focused on defending Mr. Espy in connection with the Independent Counsel investigation (the "IC Investigation").

In the 32 months that we have represented Mr. Espy, this firm has billed Mr. Espy an aggregate of \$316,463.99 for legal fees and expenses. Mr. Espy has paid

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Xavier K. McDonnell, Esq.
March 7, 1997
Page 2

\$50,000 of these legal fees and expenses from excess campaign funds held by the Mike Espy for Congress campaign. The Commission has recently challenged the payment of these legal fees as improper "personal use" of campaign funds. We believe that Mr. Espy's payment of an allocated portion of his legal fees from campaign funds was proper under FEC regulations because the payment fulfilled an obligation that would not have existed "irrespective of" Mr. Espy's service as a congressman.

I. THE APPLICABLE LEGAL STANDARD

The Federal Election Campaign Act ("FECA") provides that excess campaign funds may not be converted to "personal use." 2 U.S.C. § 439a (1994). FEC regulations define "personal use" as the use of funds "to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal official or agent..." 111 C.F.R. § 113.1(g)(1996) (emphasis added). Legal fees may or may not constitute "personal use" under this standard, depending upon the circumstances. 111 § 113.1(g)(1).

The FEC has on several occasions issued advisory opinions indicating that payment of legal fees from campaign expenses was permissible. For example, in FEC Opinion No. 1996-24 (Issue 271, 1996), the Commission approved the use of campaign funds to pay legal fees incurred by a congressional candidate in responding to press allegations of wrongful personal conduct. The Commission stated that "the activities of candidates and officials may receive heightened scrutiny" that "would not exist

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Xavier K. McDonnell, Esq.
March 7, 1997
Page 3

irrespective of the candidate's campaign or officeholder status," and that it was permissible for a candidate to use campaign funds to pay legal expenses "that would not exist absent his candidacy or officeholder status." The Commission indicated that it would also consider permitting the use of campaign funds for post-campaign legal expenses based upon the "specific purposes and circumstances of the services provided."

In FEC Opinion No. 1995-23 (July 20, 1995), the Commission permitted a congressman to use campaign funds for post-campaign legal expenses arising from a lawsuit challenging certain activities allegedly engaged in during the campaign. The Commission found that the legal expenses arose from the individual's "status as a candidate." In Mr. Espy's case, certain of his legal fees are directly attributable to his tenure in Congress and his "duties as a Federal officeholder." Accordingly, the use of campaign funds to pay such legal fees is permissible.

II. THE INDEPENDENT COUNSEL INVESTIGATION

As the Commission's "Factual and Legal Analysis" states, the IC Investigation was "triggered by" and relates "primarily" to Mr. Espy's activities as Secretary of Agriculture. However, as the Commission acknowledges, "the IC's investigation appears to focus on many issues." In fact, the IC investigation has become an extraordinarily broad inquiry that has sought to reach back to events that occurred

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Xavier K. McDonnell, Esq.

March 7, 1997

Page 4

many years before Mr. Espy became Secretary of Agriculture.¹¹ From the beginning, issues were raised relating to Mr. Espy's activities as a member of Congress and the appropriateness of his continuing certain activities as Secretary of Agriculture, where different ethical rules applied. At the center of the Independent Counsel's investigation has been the question of whether or not Mr. Espy properly adapted his behavior from the environment on Capital Hill to the Executive Branch. See attached articles.

Mr. Espy does not contend that it would have been appropriate to use campaign funds to cover all, or even a majority of, his legal expenses in responding to the IC Investigation. However, Mr. Espy did, and does, believe in good faith that a significant portion of his legal expenses in connection with the IC Investigation directly relate to, and arise solely because of, his service as a member of Congress.

In particular, the defense of the IC Investigation has involved extensive factual and legal research and development of responses to inquiries regarding: (1) positions taken by Mr. Espy on poultry regulation, crop insurance and other agricultural issues while Mr. Espy was a congressman serving on the House Agriculture Committee; (2) industry and professional contacts that Mr. Espy made while he was a congressman; (3) personnel who served on Mr. Espy's congressional staff; (4) the ethical standards to which Mr. Espy was subject as a congressman, and how those differed from the standards to which he was subject as Secretary of Agriculture; (5) Mr. Espy's lease of a Jeep while a

¹¹ One of the IC's early subpoenas, for example, sought records of a former Tyson pilot who had not worked for Tyson since 1984.

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Xavier K. McDonnell, Esq.

March 7, 1997

Page 5

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congressman, and the appropriateness of his continuation of that lease after leaving Congress; and (6) Mr. Espy's travel to Mississippi while he was a congressman. We also represented Mr. Espy in negotiations and court proceedings relating to the Independent Counsel's access to Mr. Espy's records from his years in Congress and Mr. Espy's personal diary, which contains several references to matters arising during his tenure in Congress. The legal services relating to these issues, and the concomitant legal fees, would not have been required but for Mr. Espy's service in Congress -- i.e., the obligations would not exist "irrespective of the candidate's campaign or duties as a Federal officeholder" within the meaning of the FEC regulations.

III. THE FEC INVESTIGATION

In addition to representing Mr. Espy in the IC Investigation, this firm has worked with Robert Haulberg, Esq. of the Jackson, Mississippi firm Watkins Ludlum & Stennis, P.A. in connection with Mr. Espy's response to a recently closed FEC investigation (MUR 39711) regarding HBC reports filed in connection with Mr. Espy's 1996 congressional campaign. These legal expenses directly related to Mr. Espy's campaign and their payment was permissible under the FECA.

IV. THE LEGAL BILLS

The pendency of the IC Investigation, a criminal investigation that has already resulted in convictions and indictments of persons other than Mr. Espy, severely

Xavier K. McDonnell, Esq.

March 7, 1997

Page 6

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hampers Mr. Espy's ability to respond to the Commission's current inquiry. The contents of Mr. Espy's legal bills from this firm are subject to the attorney-client privilege,² and Mr. Espy is not in a position to waive that privilege and thereby reveal critical information about the analysis and strategies of his counsel. Accordingly, Mr. Espy cannot submit his legal bills to the Commission while the IC Investigation is proceeding. Mr. Espy seeks to respond to the Commission's concerns in as open and specific a manner as possible without waiver of the privilege. We also respectfully suggest that the Commission consider a stay of this matter pending the conclusion of the IC Investigation, when Mr. Espy would be in a position to waive his privilege as to the content of his legal bills.

A. Research re Congressman Espy's Regulatory Positions and Initiatives

A critical facet of the representation of Mr. Espy has been extensive research regarding the regulatory positions espoused by Mr. Espy as a congressman, the speeches and other statements he made as a member of Congress, and the legislation and other initiatives that he introduced while in Congress. This firm's bills to Mr. Espy contain entries on six dates in February and March 1996 for research on Mr. Espy's

² See Clarke v. American Commerce Nat'l Bank, 974 F.2d 127, 129 (9th Cir. 1992) (citing In re Grand Jury Witness, 695 F.2d 359, 361-62 (9th Cir. 1982) ("bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege"); United States v. Keystone Sanitation Corp., 885 F. Supp. 672, 675 (M.D. Pa. 1994); Riddell Sports, Inc. v. Brooks, 158 F.R.D. 555, 560 (S.D.N.Y. 1994).

Xavier K. McDonnell, Esq.

March 7, 1997

Page 7

positions "during his tenure as a congressman," "while a member of the House of Representatives", or bearing similar explicit references. Numerous other billing entries reflect research regarding these policy issues without specific reference to the time period under review, but relate in part to analysis of Mr. Espy's activities as a member of Congress. This extensive factual research would not have been required but for Mr. Espy's service as a member of Congress.

B. Congressional Records

In May 1995, the IC sought access to records from Mr. Espy's former congressional office. Attorneys at this firm had discussions with Deputy IC Ted Greenberg and Mr. Espy's Mississippi counsel Robert Hauberg regarding the "ground rules" for IC access to the documents, as reflected in billing entries on four dates in May and June 1995. These issues would not have arisen in the IC Investigation but for Mr. Espy's service as a member of Congress. In addition, we represented Mr. Espy in connection with court proceedings relating to the Independent Counsel's access to Mr. Espy's personal diary, which contains many references to matters relating to his tenure in Congress.

C. Congressional Lease of Jeep

One of the initial allegations against Mr. Espy involved his continued lease of a Jeep that he had leased as a congressman. This issue came under extraordinarily

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Xavier K. McDonnell, Esq.
March 7, 1997
Page 8

extensive scrutiny in the press and at the White House. This firm's work on this issue involved interviews with current and former congressional staff, review of House of Representatives lease documents, research regarding rules applicable to members of Congress, response to press inquiries, and preparation of submissions to the White House on this issue. There are eleven billing entries in September and October 1994 for time spent addressing these allegations. These legal services would not have been required but for the lease that the House of Representatives entered into on Mr. Espy's behalf while he was serving in Congress.

D. Interviews Relating to Mr. Espy's Congressional Years

In connection with our representation, we also interviewed former members of Mr. Espy's congressional staff and/or their counsel. Many other interviews involved questions and issues relating to Mr. Espy's service as a congressman and Mr. Espy's relationships with executives in regulated industries while in Congress. Indeed, the Independent Counsel's investigation includes allegations that Mr. Espy received things of value from individuals he first knew as a Congressman. Thus, an important part of our work was to ascertain the full relationship between these individuals and Mr. Espy during Mr. Espy's tenure in Congress. Again, the need for these legal services would not have existed "irrespective of" Mr. Espy's service in Congress.

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Xavier K. McDonnell, Esq.
March 7, 1997
Page 9

E. FEC Representation

Mr. Espy's billing records reflect three entries explicitly referencing work on the FEC investigation of Mr. Espy's 1990 campaign -- one entry in September 1994, one in November 1994 and one in July 1995. In addition, there were numerous other conferences with Mr. Espy's Mississippi counsel Robert Hauberg that related in part to discussion of the FEC investigation.

F. Allocation of Fees

As of October 10, 1995, when the Espy for Congress campaign issued a check for \$30,000 to Steptoe & Johnson, Mr. Espy's total outstanding bills for legal fees and expenses through August 1995 were in excess of \$178,000. As of December 4, 1996, when the Espy campaign paid Steptoe & Johnson an additional \$20,000, Steptoe & Johnson had submitted more than \$115,000 in additional legal bills to Mr. Espy.

A precise allocation of attorney time is impossible, since many legal services (e.g., a witness interview or research project) related in part to Mr. Espy's congressional tenure and in part to his tenure as Secretary of Agriculture. We have spent many, many hours with Mr. Espy to review all relevant issues, including Congressional issues. There is no practical way to precisely divide the "Congressional time" from the "USDA time" for this work. Nevertheless, Mr. Espy believes that the fraction of the fees paid from campaign funds is a conservative, good-faith allocation consistent with FEC regulations and pronouncements regarding use of campaign funds to pay legal fees.

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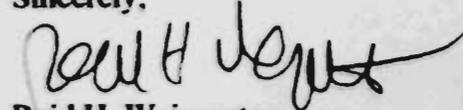
Xavier K. McDonnell, Esq.
March 7, 1997
Page 10

V. CONCLUSION

The \$50,000 in legal fees that Mr. Espy paid to Steptoe & Johnson from excess campaign funds did not constitute "personal use" of campaign funds by Mr. Espy. The related legal services were directly related to Mr. Espy's services as a congressman and would not have existed irrespective of his "duties as a Federal officeholder."²

We would be happy to meet with you in person to discuss any questions you may have. Mr. Espy will be in Nigeria until March 17th but could attend a meeting at any time after that date.

Sincerely,



Reid H. Weingarten

² We request confidential treatment of this submission pursuant to 11 C.F.R. §1114(a)(1996).

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1ST STORY of Level II printed in FULL format.

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The Washington Post

August 12, 1994, Friday, Final Edition

SECTION: FIRST SECTION; PAGE A1A

LENGTH: 686 words

HEADLINE: White House Bans Gifts, Free Travel For Appointees;
Changes Tune on Espy

SERIES: Occasional

BYLINE: Ruth Marcus, Sharon LeFranc, Washington Post Staff Writers

BODY:

The White House yesterday said political employees may no longer accept gifts or trips from companies they regulate even if they later pay the companies back, part of a new effort by the administration to distance itself from the ethics problems of Agriculture Secretary Mike Espy.

Officials, speaking on condition of anonymity, also said that President Clinton believed that Espy had made "some errors in judgment" by accepting transportation, lodging and tickets to sporting events from companies regulated by his department, including Tyson Foods Inc.

The officials said the White House strongly believes Espy should repay the firms not only for his expenses but also those of a family friend who accompanied him.

"There's no doubt that he has made some mistakes in judgment as a minister," one senior official said. The official said Espy delayed repaying Tyson, creating "the appearance of impropriety. At this point, the president thinks he's done a good job in spite of those errors in judgment."

The official suggested that Espy, a former Mississippi congressman, had failed to understand he was operating under "different rules" as a Cabinet secretary.

"Clearly these are the kinds of things that companies get away with," the official said. "I don't think he was sensitive enough to the different standard that is applied when one is a Cabinet secretary or in the executive branch."

Another senior official, asked if the White House is happy with Espy's conduct, said, "It's unhappy with what it knows. I don't think we can do rest yet."

Those comments were strikingly different in tone from the public support the White House gave Espy as recently as yesterday. They reflected the distress of White House officials at having to deal with another case of possible misconduct on the heels of the Whitewater Hearings that ended last week.

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Espy's private attorney and his spokesman at the Agriculture Department had no comment yesterday on the statements from White House officials.

As of yesterday, Espy had personally reimbursed Tyson for a \$ 60 football game ticket he accepted during a January stopover in Dallas. The Agriculture Department apparently has repaid Tyson for Espy's expenses on a May 1993 trip to Arkansas because Espy was on official business. The firm provided Espy with a night's lodging at its management center and a seat on its corporate jet for the flight back to Washington.

Espy previously has said he does not believe he had to reimburse Tyson for the expenses of his friend, Patricia Dempsey, who accompanied him on both trips, because she is not a government official.

And he has not reimbursed the chief executive officer of Quaker Oats Co. for a \$ 45 ticket to a 1993 professional basketball playoff game, according to a firm spokesman.

The White House decision to issue the new ethics rules, which cover Cabinet secretaries and other presidential appointees, follows its disclosure Wednesday that it would ask the independent Office of Government Ethics (OGE) to review Espy's actions. White House counsel Lloyd N. Cutler said yesterday that the White House is hoping for a quick determination.

But another administration official said OGE would be forced to hold off its administrative inquiry if a three-judge panel appoints an independent counsel to look into whether Espy broke any criminal laws, as Attorney General Janet Reno requested Tuesday. If OGE did find Espy violated ethics regulations, it could recommend that Clinton take action, but would not specify what type, the official said.

Cutler said the new White House policy is necessary because ethics rules that became effective in February 1993 do not expressly forbid federal officials from taking gifts from government-regulated firms as long as they repay the fair market value of what they receive.

"It seemed to us that should be covered and banned, at least for presidential appointees," Cutler said. He said with advance approval by an ethics officer, an official could obtain an exemption from the ban on official trips or when there is no other practical means of travel.

LANGUAGE: ENGLISH

LOAD-DATE: August 17, 1994

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The Charleston Gazette

September 23, 1994, Friday

SECTION: Editorial; Pg. 4A

LENGTH: 423 words

HEADLINE: LEGAL BRIBES CONGRESS CAN ; CABINET CAN'T

BYLINE: Dan Radmacher

BODY:

WHEN HE BECAME SECRETARY OF AGRICULTURE, THE RULES CHANGED.

Espy, however, apparently did not.

MIKE Espy is suffering

a bit of culture shock.

A three-term congressman, he was accustomed to working in an atmosphere where the strongest ethics rules merely limit the extent and nature of bribes that are permissible.

But when he became secretary of agriculture, the rules changed

. Espy, however, apparently did not.

Congressmen can take lobbyist-paid junkets. Cabinet officials may not. Congressmen can accept Super Bowl tickets and other expensive gifts from special interests. Cabinet members cannot.

Espy did. He accepted free Super Bowl tickets from an Atlanta museum. He was chauffeured to The Greenbrier. He rode for free on a corporate jet owned by Tyson. His girlfriend was the beneficiary of gifts from Tyson and other companies as well (not to mention a job with a company that lobbies the Agriculture Department for its clients).

Espy also couldn't understand that congressmen and Cabinet

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members have different standards for travel reimbursement. Congressmen need to get back to their districts often (and should probably spend as little time in Washington as possible). Members of the Cabinet have less reason to travel home and bill the taxpayers. That didn't stop Espy, who took 89 trips back to Mississippi, charging the government each time. Espy has said that each trip was for "official business," but that strains credibility to the breaking point.

Espy isn't stupid. Surely he knew that rules for Cabinet members were different. Yet he acceptantly accepted freebies. Therefore, his investigation by a special prosecutor is richly deserved.

So far there is no indication that the gifts or travel influenced Espy's actions as head of the Agriculture Department. The minute any credible evidence of that nature is uncovered, President Clinton should show Espy the door.

Until then, Espy is tainted by the appearance of impropriety, the same appearance, actually, that taints a good portion of Congress. Congress is working on changing the rules. Both houses passed laws prohibiting lobbyists from leaving gifts on senators and representatives. The bill still has to go through conference committee, but we hope it becomes law by the end of the year. Then members of Congress will have to give up a lot of the freebies and perks they've been receiving from lobbyists. For Espy, that sacrifice must come much sooner.

LOAD-DATE: January 10, 1998

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Time is long past for conclusion to Espy investigation

ERIC STRINGFELLOW ASSISTANT METRO EDITOR THE CLARION-LEDGER

For more than a year, Mike Espy, one of Mississippi's favorite sons, has been haunted by suspicions about his character.

Espy, who made history by being the first black person, the first Southerner and the youngest person to serve as U.S. secretary of agriculture, was forced from the post in December.

The Yazoo City native became a liability to President Clinton after it was reported that Espy accepted gifts that could have clouded his judgment in regulatory matters.

For example, Espy apparently attended a Dallas Cowboys football game in January 1994 as a guest of Tyson Foods Inc., the country's largest poultry firm. Tyson also provided Espy lodging and the agriculture secretary returned to Washington on a Tyson jet.

Espy, 42, who in 1986 became Mississippi's first black congressman since Reconstruction, also accepted Chicago Bulls tickets from Quaker Oats and Super Bowl tickets from an Atlanta museum with a Forest Service contract.

Members of Congress are accustomed to being wined and dined by those seeking influence. But as agriculture secretary, even though the gifts involve nickel and dime amounts, Espy should have known the standards were different.

While Espy's behavior was less than exemplary, his actions are not something for which a person should be destroyed.

\$3 million into probe; still counting

Special Prosecutor Donald C. Smaltz of Los Angeles is not so sure. He seems to believe Espy's conduct amounted to more than bad judgment, even if the amounts were miniscule. Smaltz has five lawyers working full time on the Espy investigation with five FBI agents.

Smaltz, appointed 13 months ago, has spent nearly \$3 million probing Espy's conduct. That's right, \$3 million, and there has been no clue of when the investigation might end.

Last week Smaltz revealed he is looking at \$14,000 in gifts and favors Espy allegedly received from Sun Diamond Growers and its executives. Richard Douglas, a Sun Diamond vice president, was Espy's college roommate at Howard University, and the two have been friends for 25 years.

The Wall Street Journal last week reported that Espy received an expensive set of luggage, a crystal bowl and free tickets to the 1993 U.S. Open Tennis Tournament.

Espy's attorneys have argued the gifts merely reflected the close bond between Espy and Douglas.

Another newspaper, *The Washington Post*, said Smaltz is using James H. Lake, a lobbyist, to pressure Douglas to turn against Espy. Lake has pleaded guilty to participating in an illegal campaign scheme to restore the debts from Henry Espy's campaign to succeed brother Mike in Congress.

I know all of this is confusing, but that's the nature of high-stakes Washington politics.

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Either bring charges or exonerate

One thing that's clear, though, is that it's past time for Smaltz to either bring charges against Espy or exonerate him. That would be only fair to Espy and the people of Mississippi who believe in him and who he has represented well.

It is wrong for the federal government to use its countless resources to probe officials for infinite amounts of time.

Espy once was one of America's brightest young political stars. He seemed destined for waters uncharted because of his ability to build coalitions that transcended race.

He has served his state and his country well and has the right to know as soon as possible whether he can get on with his life or whether he must prepare to answer charges.

Most of us Mississippians want to know as well. Some of us are counting on Espy to be an agent of change for our state. The uncertainty has hurt all of us, and we want it to end.

Please, Mr. Smaltz, what is the status of the Espy investigation? We are tired of waiting.

Eric Stringfellow's column appears each Tuesday. To contact him, call 961-7236.

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Year=1995; Month=11; Month=Nov; Day=7; Day=TU; Book=8; Source=Staff; Byline=Stringfellow Eric;
Person=Mike Espy; City=Yazoo_City; State=Mississippi;

Aspect=Clarion-Ledger; Aspect=Local; Aspect=Nov; Aspect=TU; Aspect=8; Aspect=Staff;
Aspect=Stringfellow Eric; Aspect=Mike Espy; Aspect=Yazoo_City; Aspect=Mississippi;

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Secretary Espy Drove U.S.-Leased Auto For Personal Use, Violating Strict Rules

By Bruce Ingersoll
and Mveca Nwani

Staff Reporters of The Wall Street Journal

WASHINGTON—Agriculture Secretary Mike Espy drove a government-leased car for personal purposes in Mississippi last year in violation of a strict federal prohibition against such use, according to Agriculture Department officials.

At Mr. Espy's request, the department picked up the monthly \$67.56 lease payments on the car — a 1991 Jeep Cherokee — for a six-to-seven month period in 1993, the officials said. During this period, the former Democratic congressman made frequent trips home for speaking engagements and other public appearances, and to visit his family.

Mr. Espy is being investigated by a special counsel for alleged ethics issues. His lawyer, Reid Weingarten, confirmed that Mr. Espy had made personal use of the car on occasion.

The secretary had become attached to the \$25,000 car while he was in Congress. His congressional office had leased the auto from the spring of 1991 through September of 1992 for use in his district,

according to congressional records. It is unclear from the records whether Mr. Espy or somebody else paid for the car during his last few months in Congress and during his first months in the Clinton administration.

While the department was footing the bill — from the spring of 1993 until the fall of that year — the car was kept in Jackson, Miss., according to Mr. Weingarten.

The department's general counsel began looking into the Jeep Cherokee matter recently after receiving a complaint about it. The issue further complicates Mr. Espy's legal and political problems arising from his acceptance of gifts and favors from department-regulated companies, including Arkansas-based Tyson Foods Inc.

Mr. Espy's use of the car as a congressman was entirely permissible. But under federal law, any department employee caught using a government-owned or leased car for personal purposes is automatically suspended from employment for a minimum of 30 days.

Mr. Espy couldn't be reached for comment, but Mr. Weingarten defended Mr. Espy's use of the department-leased car in Mississippi as saving the taxpayer money.

"He wanted transportation," Mr. Weingarten said. "He didn't want people manufacturing him around. The USDA

picked up the lease. He reasonably anticipated it would be cheaper."

There was an occasion or two when the secretary used the Jeep (for personal reasons), primarily to ferry his kids around," added Mr. Weingarten, a partner in the law firm of Steptoe & Johnson. "To avoid the slightest appearance of impropriety, the government has been made whole."

Just recently, Mr. Espy paid the department \$6,200 for the use of the car last year, Mr. Weingarten said. In September or October of 1993, he bought the car from the leasing company and now has it in Washington.

Meanwhile, the public-interest group Common Cause asked the Office of Government Ethics to investigate possible violations of ethics by Ronald Blackley, a senior Espy aide. As reported by The Wall Street Journal, the Agriculture Department's inspector general's office is investigating several instances of intervention by Mr. Blackley last year on behalf of Mississippi farmers trying to collect crop subsidies or disaster payments.

9804360424

BEFORE THE FEDERAL ELECTION COMMISSION

May 20 4 27 PM '97

In the Matter of)
)
Mike Espy) MUR 4617
Mike Espy for Congress and)
Michelle E. Matlock, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 28, 1997, the Commission found reason to believe that Mike Espy for Congress and Michelle E. Matlock, as treasurer ("Espy campaign") and Mike Espy, (collectively "Respondents") violated 2 U.S.C. § 439a by using campaign funds for legal services that would appear to have existed "irrespective" of whether Mr. Espy was a federal candidate or federal officeholder. The campaign funds used for the legal services total \$50,244. See General Counsel's Report, dated February 13, 1997. A response has been submitted. Attachment 1.

II. SUMMARY OF RESPONSE

Respondents acknowledge that \$50,244 in campaign funds was provided to the attorney who represents Mike Espy in the ongoing criminal investigation by the Independent Counsel ("IC"). Attachment 1 at 1-2. Mr. Espy retained the attorney at issue in July of 1994, over one year after he had left Congress to become Secretary of Agriculture. Respondents acknowledge that most of the IC's investigation has focused on Mr. Espy's activities while he was Secretary of Agriculture. They contend, however, that the \$50,244 was for legal services provided in connection with aspects of the IC's investigation that focused on facts and activities related to Mr. Espy's time as a federal officeholder and federal candidate. *Id.* at 2, 9-10.

The Respondents do not claim that the Espy campaign was billed separately or directly for the legal services totaling \$50,244. Rather, they assert that the \$50,244 paid with campaign

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funds was the allocable portion of the total amount Mr. Espy has thus far incurred to the law firm. Respondents indicate that Mr. Espy has been billed an aggregate of \$316,463 for legal fees and expenses in connection with the IC investigation. Attachment 1 at page 1. Counsel informed this Office though that the \$50,244 received from the Espy campaign has been the only payment received for handling Mr. Espy's defense to the IC investigation.

During our discussions with counsel, this Office requested copies of the law firm's invoices and documentation created contemporaneous with the legal services that would substantiate the basis of the allocation. Attachment 2. The Respondents asserted that such documents were protected by the attorney-client privilege and expressed concern that the requested documents might be subpoenaed by the IC.¹ This Office therefore informed the Respondents in writing that the law firm invoices could be redacted to eliminate specific information related to the IC's investigation that was unnecessary to the resolution of this matter, i.e., names of witnesses interviewed, specific legal or factual issues researched. Attachment 2.

In their subsequent written response, the Respondents were unwilling to provide the redacted documents, relying on the attorney-client privilege and citing Clarke v. American Commerce Nat'l Bank, 974 F.2d 127 (9th Cir. 1992). Attachment 1 at 6. However, in Clarke the Ninth Circuit held that information of the kind this Office requested, i.e., legal invoices

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Thus, this Office agreed to accept documents redacted to omit any specific information of the kind that might jeopardize Mr. Espy's defense in the criminal case.

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which contained only the name of the client, the amount of the fee and the general nature of the services performed, were not protected by the attorney client privilege. *Id.* at 130.² Thus, this Office's request for redacted law firm invoices was in keeping with the holding in *Clarke*.

During our discussions, Counsel suggested that an additional reason he did not wish to produce the requested law firm invoices was because they would not explain the basis of the allocation. He stated that even the law firm invoices would not indicate exactly how much time was spent on legal services which the Respondents claim were related to Mr. Espy's duties as a federal official or on for his campaign. Indeed, the written response indicates that "a precise allocation of attorney time" was not undertaken, asserting that "there is no practical way to precisely divide the 'Congressional time' from the 'USDA time'" for this work. Attachment I at 9. They also assert that the allocation was a "conservative, good faith estimate." *Id.*

Rather than producing documentation that was created contemporaneous with the legal services rendered, Respondents submitted a general description of the activities that they claim were permissibly paid with campaign funds. Counsel has divided these descriptions into five areas. First, Respondents claim that "entries on six dates in February and March 1996" contain "explicit references" to "research regarding regulatory positions espoused by Mr. Espy as a congressman." Attachment II at page 6. Second, Respondents assert that "billing entries on four dates in May and June of 1995" relate to efforts by the IC to access records from Mr. Espy's former congressional office, and that there were additional court proceedings to contest efforts by

² The court, relying on prior cases, assumed that invoices revealing specific research or litigation strategy would be protected. *Clarke*, 974 F.2d at 129. We also note that the burden of establishing that information is protected by the attorney-client privilege rests with the party asserting the privilege. *Id.*

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the IC to obtain Mr. Espy's diary, which "contains references to matters relating to his tenure in Congress." *Id.* at 8. Third, counsel indicates that there are eleven billings in September and October of 1994 for time spent addressing allegations regarding a Jeep first leased by Mr. Espy while he was in Congress. Fourth, Respondents contend that the legal services at issue included interviewing former members of Espy's Congressional staff and examining his relationship with business executives while in Congress. Finally, counsel asserts that law firm bills cover activities in September and November of 1994, and July of 1995 that explicitly reference work on an HRC investigation of the Espy campaign (MUR 3971-now closed). Attachment 11 at 55 and 199.³³ In response to a request for contemporaneous documentation that would set out the basis of the allocation, counsel recalled only a letter he issued to his client but stated that it contained no more information than what appears in Respondents' submission. Respondents suggest that the Commission consider a stay of this matter pending the conclusion of the IC's investigation.

III. ANALYSIS

Nothing in the Respondents' submission establishes that the use of \$50,224 in campaign funds was permissible. To begin with, they have not produced any contemporaneous documentation that demonstrates the basis for the allocation of these legal fees. In fact, thus far the Respondents have not produced any documentation whatsoever in support of their claim. Without documentation setting forth the basis of the allocation, it is not possible to determine whether it was permissible. Moreover, the information provided thus far strongly suggests that

³³ Respondents' designated counsel in MUR 3971 was Robert E. Hauberg from Watkins, Ludlum & Stennis. Counsel who represents Respondents in this matter, Reid Weingarten of Steptoe and Johnson, claims that his firm also provided services to Mr. Espy in connection with MUR 3971, apparently by consulting with Mr. Hauberg in that matter.

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the law firm did not allocate the legal services in question at the time they were rendered. Specifically, as noted, counsel suggested that his hesitancy to provide the requested documentation can be attributed in part to an absence on the law firm invoices of any information setting forth the basis of the claimed allocation.⁴ In addition, the response contains an acknowledgment that the allocation was not "precise," that it was based only on a "good faith estimate" and that there is "no practical way to precisely divide" the attorney time. Finally, although Mr. Espy has incurred legal fees totaling \$316,463, the \$50,244 at issue is the only amount paid to date. This means that campaign funds have been used to pay all of the legal fees thus far paid by Mr. Espy.

In summary, to date no documentary evidence has been offered in support of the Respondents' claim that the campaign funds, totaling \$50,244, were used to pay for legal services related to Mr. Espy's activities as a candidate or Congressman or for the investigation in MUR 3971. Nor have the Respondents offered any documentary evidence in support of the accuracy or legitimacy of the allocation, and the response suggests that little if any exists. Moreover, the allocation does not appear to have been undertaken contemporaneously with the services rendered. In addition, according to counsel, Mr. Espy has been unable to personally pay

⁴ During several conversations in March and April, counsel for the Respondents has indicated that he would attempt to gain permission from his client to provide redacted copies of the law firm invoices. However, no such documentation has been provided to date. The written response itself suggests that the law firm invoices may not be too probative regarding the basis for the allocation. Respondents claim that six entries on law firm invoices make "explicit references" to actions taken by Mr. Espy while he was in Congress and three entries reference work on an FEC matter. Attachment 1 at 6-7, and 9. However, the response does not even offer any information about the number of hours spent on such services, or the costs incurred. Moreover, the Respondents do not claim that such "explicit references" were made for the numerous other entries, which suggests that none exist.

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In the event that the Respondents are unwilling to settle this matter at this stage of the enforcement process, formal investigation will be necessary. To facilitate resolution of this matter, this Office also recommends that the Commission approve the attached Subpoenas and Orders at this time. Attachment 4. These Subpoenas and Orders will be issued only if the Respondents indicate that they are not interested in settling this matter through preprobable cause conciliation. The Subpoenas for Documents and Orders for Written Answers are addressed to the Respondents as well as the law firm which represents Mike Espy in the IC investigation and the law firm which represented these Respondents in MUR 3971. Finally, in light of our above analysis of this matter and our preceding recommendations, and given that the IC's investigation may continue for years and that this matter involves an entirely distinguishable and discrete issue, this Office does not recommend that this matter be held in abeyance.

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V. RECOMMENDATIONS

1. Deny the request of Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, to hold this matter in abeyance pending the conclusion of the Independent Counsel's investigation.
2. Enter into conciliation with Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, prior to a finding of probable cause to believe.
3. Approve the attached conciliation agreement with Mike Espy and the attached conciliation agreement with Mike Espy for Congress and Michelle E. Matlock, as treasurer.
4. Approve the attached Subpoenas for Documents and Orders for Written Answers to Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, and to Steptoe and Johnson and Watkins, Ludiam & Stennis, P.A.
5. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

5/2/97
Date

BY: [Signature]
Lois G. Lerner (by doc.)
Associate General Counsel

Attachments

1. Responses from Espy Campaign and Mike Espy
2. Letter to Respondents, dated February 26, 1997
3. Conciliation Agreements
4. Subpoenas and Orders

Staff Assigned: Xavier McDonnell

93043080433



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA DAVIS
COMMISSION SECRETARY

DATE: JUNE 5, 1997

SUBJECT: MUR 4617 - General Counsel's Report dated May 30, 1997.

The above-captioned document was circulated to the Commission
on Monday, June 02, 1997

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda for
Tuesday, June 10, 1997.

Please notify us who will represent your Division before the Commission on this
matter.

98043800434

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4617
Mike Espy;)
Mike Espy for Congress and)
Michelle E. Matlock, as)
treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 24, 1997, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 4617:

1. Deny the request of Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, to hold this matter in abeyance pending the conclusion of the Independent Counsel's investigation.
2. Enter into conciliation with Mike Espy, Mike Espy for Congress and Michelle E. Matlock, as treasurer, prior to a finding of probable cause to believe.
3. Approve the conciliation agreement with Mike Espy and the conciliation agreement with Mike Espy for Congress and Michelle E. Matlock, as treasurer, as recommended in the General Counsel's May 30, 1997 report

(continued)

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4. Approve the Subpoenas for Documents and Orders for Written Answers to Mike Espy, Mike Espy for Congress and Michelle E. MacLack, as treasurer, and to Steptoe and Johnson and Watkins, Ludlum & Stennis, P.A., as recommended in the General Counsel's May 31, 1997 report.
5. Approve the appropriate letters as recommended in the General Counsel's May 31, 1997 report.

Commissioners Aikens, Elliott, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald dissented.

Attest:

6-25-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

9804360436



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 26, 1997

VIA FAX AND FIRST CLASS MAIL

Reid Weingarten, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

RE: MUR 4617
Mike Epsy
Mike Epsy for Congress
and Michelle E. Muhlbeck, ~~astromer~~

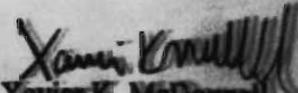
Dear Mr. Weingarten:

On June 24, 1997, the Commission denied your request to hold MUR 4617 in abeyance pending the conclusion of the Independent Counsel's investigation. On the same date, the Commission determined to enter into pre-probable cause negotiations directed towards reaching conciliation agreements in settlement of this matter.

Enclosed are conciliation agreements which the Commission has approved in settlement of this matter. If your clients agree with the provisions of the enclosed agreements, please sign and return them, along with the civil penalties, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreements, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreements, please contact me at (202) 219-3690.

Sincerely,


Xavier K. McDonnell
Attorney

Enclosure
Conciliation Agreements

9304360437

STEPTOE & JOHNSON L.L.C.

ATTORNEYS AT LAW

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TELEPHONE: (602) 257-2200
FACSIMILE: (602) 257-2200

REID H. WEINGARTEN
(202) 424-6236

July 17, 1997

VIA HAND DELIVERY

Xavier K. McDonnell, Esq.
Federal Election Commission
Suite 657
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4617
Mike Espy for Congress

Dear Mr. McDonnell:

On behalf of Mike Espy, we hereby request that the Federal Election Commission reconsider its proposal

98043600430

Xavier R. McDonnell, Esq.
July 17, 1997
Page 2

As further documentation that the IC investigation is not limited to Mr. Espy's tenure as Secretary of Agriculture, but has extended back many years, Mr. Espy provides herewith an index of documents recently reviewed by the Independent Counsel. See Attachment A. The IC's review related to documents generated during the period of time that Mr. Espy served as congressman, including congressional schedules and itineraries, congressional position papers and correspondence, congressional staff assignments, congressional district reports, and legislative proposals. If Mr. Espy had not served as a congressman, he would not have to incur legal fees in connection with review of these issues - i.e., the fees would not exist "irrespective of the candidate's campaign or duties as a Federal officeholder."

The Commission staff has suggested that the only adequate documentation that Mr. Espy could provide would be legal bills covered by Mr. Espy's attorney-client privilege. However, production of these bills is simply not a viable course of action for Mr. Espy at this time. Mr. Espy is likely to be indicted in the immediate future. The Independent Counsel has been extremely aggressive in his investigation, and would be likely to argue that such production constituted a blanket waiver of the attorney-client privilege. If the IC were to obtain access to Mr. Espy's legal bills, such a review would reveal defense counsel's contacts and strategy and have a material adverse effect on Mr. Espy's ability to defend himself.

Mr. Espy strongly wishes to cooperate with the Commission and to reach a resolution of this matter short of litigation. Mr. Espy believes that the most equitable resolution would be to hold this matter in abeyance pending resolution of the IC investigation, when Mr. Espy can produce his legal bills for Commission review without prejudicing his criminal defense. This course of action would not appear to cause any prejudice to the Commission, which would retain all rights to proceed against Mr. Espy. Moreover, this approach is fair to Mr. Espy, whose ability to make a living and financial resources have already been disastrously affected by the pendency of the IC investigation and who would, if this proceeding goes forward at this time, suffer further negative publicity on the eve of his indictment and trial.

Mr. Espy respectfully requests that the Commission reconsider this matter and (1) decline to proceed with its proposed enforcement action, or (2) stay the enforcement action pending completion of the IC proceeding. Mr. Espy and I look forward to meeting with you on Friday at 11:00 am to discuss these issues further.

Sincerely,

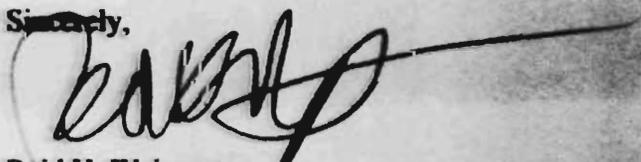

Reid H. Weingarten

EXHIBIT AEspy Congressional Records Pulled During 6/97 Document Review

(* - complete file in OIC possession)

BOX	FILE	ITEM
1	Espy Schedule*	(1) 1/1/90 - 1/31/90 itinerary (2) 2/14/90 - 2/28/90 itinerary
1	Unlabeled file	11/21/90 memo to "all district/DC staff" from @John Fitzgerald re: staff retreat meeting (attached to 8/22/90 Letter to Espy from Bucky Murphy)
1	Miss Home Corporation*	4/6/89 itinerary.
1	Misc. Correspondance	8/8/88 fax of 8/7/88 - 8/28/88 itinerary.
1	Mike Espy*	3 page bio on Mike Espy
1	Housing Info	5/31/90 fax of 5/31/90 - 6/8/90 itinerary.
1	Publications	10/9/90 Memo to all House Members from Committee on Standards of Official Conduct re: "Solicitation under the Ethics Reform Act of 1985."
2	Social Security Office of Hearings and Appeals	Handwritten document bearing name of Hollis Hest
2	Unlabeled file*	1/4/93 memo to Ron Blackley from Sharon Longino re: "Positions Requested by District Staff" (3 copies).
2	Service Deliver Information	12/11/89 fax of 12/6/89 memo to "All Staff" from Wardell re: "Full Staff Meeting, Sunday, December 17" (2 copies)
2	Miss. Forward Foundation - Cashmere*	(1) 9/25/88 memo to Wardell Townsend from George W. Oliver re: MFF dinner (attaching budget, menus, and cost estimates); (2) handwritten document
2	Lobbying Restrictions*	1/19/90 17:10 fax (9 pages) re: "New Restrictions on Lobbying (DEC 1989)."
2	Congressman Espy's Schedule - June 1990*	(1) 6/13/90 - 7/1/90 itinerary (2) 6/8/90 - 7/1/90 itinerary bearing notation "Sharon, corrected copy, delete others."

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BOX	FILE	ITEM
2	Report on FmHa*	(1) Congressional Briefing on Sunflower County; (2) 12/4/89 fax to Mike Alexander from Sharon L. re: the emergency food and shelter national board program; (3) 12/4/89 fax cover sheet to Sharon Longino from Mike A. re: "Info on Housing;" (4) 12/1/89 - 12/31/89 itinerary; (5) Resume for George Irvin, Sr.
6	Current Schedule*	8/29/88 fax of 8/30/88 - 9/30/88 itinerary
6	Congressman's Schedule*	(1) 11/6/87 - 11/9/87 itinerary; (2) 2/1/88 - 2/29/88 itinerary (2 copies); (3) 5/30/89 fax of 6/1/89 - 6/30/89 itinerary.
6	Attendance signed sheets	3/25/87 FmHa/ASCS Meeting attendee list with addresses and phone numbers.
6	Schedule*	(1) 5/8/91 fax of 5/9/91 - 5/30/91 itinerary; (2) 1/4/91 fax of 1/4/91 - 1/12/91 itinerary; (3) 7/1/91 fax of 7/1/91 - 7/31/91 itinerary.
6	Unlabeled file	1/3/90 fax of 1/4/90 - 1/16/90 itinerary.
6	Faxed materials	(1) 6/7/91 fax of 6/7/91 - 6/12/91 itinerary; (2) 3/29/91 fax of 3/29/91 - 4/8/91 itinerary; (3) 5/31/91 fax of 5/31/91 - 6/3/91 itinerary.
6	Unlabeled file	7/1/91 fax of 7/1/91 - 7/31/91 itinerary.
6	Sharon	5/24/91 - 5/25 itinerary.
6	Sharon	1/16/92 letter to Charles Mitchell from Mike Espy re: MFF.
8	8/7-13/88	8/12/88 letter to Ara Carlsale from Mike Espy re: Norris Faust contact concerning disability benefits.
21	2/11-17/90	2/13/90 letter from Mike Espy to Ms. Shawn Sullivan re: meeting to discuss advancement of the MS delta.
21	4/22-28/90	4/26/90 letter from Mike Espy to Rodolton Hart re: meeting to discuss advancement of the MS delta.
21	4/20/-5/5/90	4/30/90 letter from Mike Espy to Hiram Eastland re: meeting to discuss advancement of the MS delta.

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BOOK	FILE	ITEM
21	6/17-23/90	6/22/90 letter from Mike Espy to Ronald Chandler requesting assistance on behalf of INS for an employee of Mr. Lindsey Reid.
32	Not in file	5/9/92 newspaper article regarding Mike Espy and the House Bank check problem.
35	Unlabeled file	(1) 10/10/88 "Espy for Congress" fax entitled "Telephone list;" (2) 1/4/90 itinerary.
39	Housing	1/8/90 fax of 1/9/90 - 1/18/90 itinerary.
39	101 Congress	DSG Special Report, 101st Congress Legislation (12/3/90)
39	Filing Needed	(1) 11/21/89 news release; (2) 11/22/89 fax of 11/27/89 - 11/30/89 itinerary; (3) 11/15/89 fax of "Town Hall Meeting Schedule 1989;" (4) information on D.A.R.E.
38	Faxed materials from Sharron	10/26/90 fax from Sharron to Wardell with cover of "Highlights of the Ethics Reform Act of 1989."
44	Staff memorandums	(1) Memo to Mike Espy and Wardell Townsend summarizing 9/30-10/1 staff retreat; (2) 4/18/91 memo to Wardell from Oleta and Sharon attaching document entitled "Staff Assignment."
48	Mississippi Forward Foundation Assistance*	(1) 2/13/90 letter to Shawn Sullivan from Mike Espy re:MFF; (2) 2/6/90 Case Intake Form for Shawn Sullivan referencing MFF; (3) 1/9/90 letter to Brewer Vaught, Jr. from Mike Espy re:MFF.
52	(Correspondence from Bob Boyd)	5/10/91 fax of "More Quitman County Flood Notes from Bob Boyd" referencing Norris Faust as Dist. 1 Supervisor.
52	Mike Espy's Schedule March - April, 1990	(1) 3/29/90 fax of 3/30/90 - 4/6/90 itinerary; (2) 3/29/90 fax of 3/30/90 - 4/15/90 itinerary.
52	(Unlabeled file)	3/8/90 fax of 3/9/90 - 3/14/90 itinerary.
52	Filing	(1) 9/17/89 - 9/19/89 itinerary; (2) 2/6/90 fax of 2/6/90 - 2/28/90 itinerary.

BOX	FILE	ITEM
54	Memos to D.C. 1991	Document entitled "Projects for 1992."
54	Interoffice memos	(1) 4/18/91 memo to Wendell from Oleta and Sharon; (2) 11/21/90 memo to "all District/D.C. staff" from Oleta Fitzgerald attaching memo to Mike Espy and Wendell Townsend summarizing 9/30-10/11 staff retreat.
56	Agricultural Advisory Committee	House of Rep. "Second Congressional District Agricultural Advisory Committee Members" List (2 copies).
56	Committee on Standards of Official Conduct	(1) Highlights of the Ethics Reform Act of 1989; (2) 6/5/91 memo to all House Members from Committee on Standards of Official Conduct re: "New Ethics Committee Procedures;" (3) 4/24/91 memo to all House Members from Committee on Standards of Official Conduct re: "Teaching Guidelines;" (4) 4/23/91 memo to all House Members from Committee on Standards of Official Conduct re: "Ban on Compensated Professional Services Involving a Fiduciary Relationship;" (5) 4/25/91 memo to all House Members from Committee on Standards of Official Conduct re: "House in Ban."
56	Espy statements	10/3/91 newspaper article re: Mike Espy leaving checks at the House Bank.
56	Mississippi Forward Foundation	Program for "Mississippi Forward Foundation, 1st Annual Partnership Dinner" dated 12/12/87
60	Fax 1990	3 fax coversheets with attached 10/23/90 fax re: "Congressman Mike Espy Staff Listing (House and personal phone)."
60	Mtg. Lists/Thanks	(1) 6 page list of names having hand-written notation: "Register for NBF Forward Foundation Dinner" (2 copies); (2) 4/18/91 memo to Wendell from Oleta and Sharon attaching document entitled "Staff Assignment."
60	Staff Assignments	4/18/91 fax of "Staff Assignment"
61	Issue assignments*	4/18/91 document entitled "Staff Assignment"
63	Aug. 10, 1987 - Aug. 14	8/10/87 letter to James McPherson from Mike Espy re: Norris Faust contact concerning disability benefits.

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BOX	FILE	ITEM
71	Mr. Faust, Norris - Quitman*	11/25/91 letter to Norris Faust, Jr. from Mike Espy enclosing requested materials from the Small Business Administration.
75	Misc.	(1) 11/9/92 letter to Warren Christopher and Clinton/Gore Transition Team from Clinton/Gore Agricultural and Rural America Working Group re: structure of USDA; (2) DSG Special Report, House Legislative Action for 8/14/92 referencing Ethics & Government Operations.
75	Projects for 1992*	Document entitled "Projects for 1992" referencing MFF (2 copies - 1 with corresponding staff member written next to projects).
76	Not in file	6/6/89 Letter from Mike Espy to Vivian J. Brown re: contact with Norris Faust over Social Security claim.
76	Irvin, George E., Rural Housing Chief - FHA*	(1) 8/21/89 letter to Sox Johnson from Mike Espy recommending George Irvin for position of Rural Housing Chief for the MS Farmers Home Administration; (2) Handwritten draft of 8/21/89 letter to Johnson; (3) Letter to Mike Espy from George Irvin thanking him for his help and enclosing a resume; (4) Resume for George Irvin.
76	Unlabeled file	(1) 11/27/87 Unsigned letter from Mike Espy to Eliza Doolittle re: banquet to announce the formation of MFF; (2) 12/8/87 press release re: Mike Espy's announcement of the formation of MFF.

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BOOK	FILE	ITEM
76	Wattin file	<p>(1) 6/11/91 Memo to all House Members from Committee on Standards of Official Conduct re. "Staff Campaign Outlays;"</p> <p>(2) 6/5/91 Memo to all House Members from Committee on Standards of Official Conduct re: "New Ethics Committee Procedures;"</p> <p>(3) 4/24/91 Memo to all House Members from Committee on Standards of Official Conduct re: "Teaching Guidelines;"</p> <p>(4) 4/23/91 Memo to all House Members from Committee on Standards of Official Conduct re. "Ban on Compensated Professional Services Involving a Fiduciary Relationship;"</p> <p>(5) 4/25/91 Memo to all House Members from Committee on Standards of Official Conduct re "Honoraria Ban - Further Guidance."</p>
84	U/Unfiled file	4/8/92 Quarterly District Report by Bettye W. Oliver.
84	U/Unfiled file	<p>(1) March 29, 1991 - memo from Townsend to Espy (overview of tasks for 102nd Congress);</p> <p>(2) 11/25/92 Clinton/Gore fax of 11/24/92 memo to "Political Department Staff" from Karen Sullivan re: "Submitting recommendations for the Cluster team & department/agency liaison positions."</p>
84	Memo from Wendell	11/17/89 fax to Sharon Longino from Sharon Harris attaching 9/18/89 "Record of the staff meeting held on Friday, September 15, 1989."
84	Wattin file	10/10/90 letter to James Clayton, President of Planters Bank & Trust Company from Mike Espy recommending bank grant FudHA loan on behalf of Rodalton Hart.
85	Tranchesi/R. Hinchman	Tranchesi, Inc. Income Statement and Balance Sheet dated 12/31/89.
89	Cargill Scholarship Program (Norris Faust)	2/20/90 letter to Norris Faust from Mike Espy enclosing information and an application for the Cargill Scholarship Program.

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BOX	FILE	ITEM
89	Agriculture Advisory Committee	7/24/87 fax of 7/23/87 memo to "Members of the Second Congressional District Agricultural Advisory Committee" from Mike Espy re: "Proposed Changes in Payment Limitations - Definition of a 'person.'"
89	Meetings	2/17/87 letter to Oleta Fitzgerald from Alvin Chambliss, Jr. re: Committee of 100 for Mike Espy PAC.
97	Longino memos	12/14/90 fax of 12/14/90 - 12/31/90 itinerary.
97	News releases	11/15/89 fax of 11/10/89 news release re: reforming MFF.
100	Schedule Congressman Espy - 1989*	(1) 6/8/89 fax of 6/9/89 - 6/12/89 itinerary; (2) 3/10/89 fax of 3/9/89 - 3/15/89 itinerary; (3) 4/10/89 fax of 4/11/89 - 4/19/89 itinerary; (4) 2/3/89 fax of 2/3/89 - 2/28/89 itinerary; (5) 1/27/89 fax of 1/28/89 - 2/2/89 itinerary; (6) 1/6/89 fax of 1/5/89 - 1/18/89 itinerary.
100	Special Events	2/29/88 fax of 3/9/88 - 3/11/88 itinerary.
100	Inaugural Activities*	1/12/93 fax of 52nd Presidential Inaugural Calendar of Public Events (2 copies - 1 with routing slip to Betty Oliver).
104	Description - MS Forward Foundation*	(1) Descriptive document entitled "The Mississippi Forward Foundation" (5 copies); (2) 12/12/87 Press release re: Espy naming the Board of Directors to MFF attaching 7 pages of info on Welcoming Dinner; (3) 10/31/88 letter to Pamela D. Moore from attorney for Watkins Ludlum & Stennis enclosing response from Dept. of Treasury re: tax-exemption (attached - IRS Notice 88-85 re: "Major New Tax Law Changes Affecting Exempt Organizations" and document re: 1988 MFF Partnership Dinner).
104	MS River Dev. Committee	5/15/92 IRS letter to MFF re: private foundation status.
104	Fax messages	MFF form letter re: Leadership Development Seminars 12/7/91.

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BOX	FILE	ITEM
104	Mike Espy's schedule*	(1) 12/12/89 fax of 12/12/89 - 12/31/89 itinerary (2 copies); (2) 2/2/90 fax of 2/3/90 - 2/5/90 itinerary; (3) 2/9/90 fax of 2/10/90 - 2/21/90 itinerary; (4) 3/1/90 fax of 3/1/90 - 3/31/90 itinerary.
108	Oliver	(1) 4/8/92 Quarterly District Report by Bettye W. Oliver; (2) fax of 2/7/92 memo to Mike Espy from Washington Staff on proposed projects for 1992.
108	Time sheets	(1) 6/29/90 letter from Committee on Standards of Official Conduct re: policy on use of volunteers; (2) 9/7/90 memo from Committee on Standards of Official Conduct re: Honoraria ban of the Ethics Reform Act; (3) 10/9/90 memo from Committee on Standards of Official Conduct re: Solicitation under the Ethics Reform Act; (4) Text of "Highlights of The Ethics Reform Act of 1989."
108	Anthony Harmon	"Telephone Response, Mississippi Forward Foundation Board Members."
109	3 ring binder labeled "VA. Retreat"	Entire binder on "Congressman Mike Espy's Congressional Retreat, January 30, 1987."
113	Not in file	House Ethics Manual, 102d Congress, 2d Session, April 1992.
115	Academy	(1) Brochure - "Congressman Mike Espy sponsors the 4th Annual Military Academy luncheon" on 3/16/91; (2) 2/23/90 letter to Ramona Suttler from Bettye Oliver on MPF letterhead enclosing \$600 check to cover cost of catering luncheon for the Military Academy Nominees luncheon.
115	Academy 91	1/2/91 facsimile copy of news release "Espy announces military academy nominees."
116	House Bank*	(1) 3/31/92 news release "Espy Releases House Bank Records," (2) Report of the Committee on Standards of Official Conduct entitled "Inquiry into the Operation of the Bank of the Sergeant-at-arms of the House of Representatives."

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BOOK	SERIAL	ITEM
116	Edwards Bank	(1) list of individuals including Henry Espy; (2) 8/22/89 fax of "Information and Disclosure Statement" for Capital Investment Corporation.
116	Amer. Industrial Plastics	(1) 5/16/90 cover sheet to Tom Espy from Oletta; (2) 5/16/90 letter to Raymond Kiefer, President Alliance Insurance Company from Mike Espy re: assistance to American Industrial Plastics Products Incorporated.
118	Rodolfin Hart	(1) 6/6/91 letter to Lindsay Read enclosing report on "Toward a New National Weather Service," (2) 10/10/90 letter to James Clayton, President of Plasters Bank & Trust Company from Mike Espy recommending bank grant FDIA loan on behalf of Rodolfin Hart (2 copies).
120	News releases	11/19/92 fax of news release captioned "Espy attends dinner with President-Elect Clinton."
		10/16/91 letter to Marjorie Everett from Mike Espy re: House Bank (attaching 2 pages of Congressional Record)
		(1) 6/29/90 letter from Committee on Standards of Official Conduct re: policy on use of volunteers; (2) 9/7/90 memo from Committee on Standards of Official Conduct re: Honoraria ban of the Ethics Reform Act; (3) 10/9/90 memo from Committee on Standards of Official Conduct re: Solicitation under the Ethics Reform Act.
		7/19/88 newspaper-styled document entitled "The Mike Espy Record"

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REDACTED

STEPTOE & JOHNSON III

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July 21, 1997

VIA HAND DELIVERY

Jonathan Bernstein, Esq.
Xavier McDonnell, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4617
Mike Espy for Congress

Gentlemen:

As we discussed at our meeting last week, the Independent Counsel ("IC") has advised us that the IC expects to indict Mr. Espy within the next several weeks. Upon this indictment, Mr. Espy will have rights to extensive discovery of documents relating to the IC investigation, including documents subpoenaed by the grand jury and eventually witness statements. We strongly believe that the indictment and these discovery materials will provide substantial documentation demonstrating that the IC investigation has involved broad and detailed inquiry into Mr. Espy's activities and conduct as a congressman. For example, we believe that the IC has questioned numerous witnesses about alleged conduct by Mr. Espy while in Congress. This additional evidence should permit us to show convincingly that a substantial portion of Mr. Espy's legal defense fees in anticipation of this indictment were properly allocable to legal issues that arose directly from Mr. Espy's tenure as a Congressman and would not have existed "irrespective of the candidate's campaign or duties as a Federal officeholder." 111 C.F.R. § 113.1(g) (1996).

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Jonathan Bernstein, Esq.
Xavier McDonnell, Esq.
July 21, 1997
Page 2

Mr. Espy has sought to comply fully with the Commission's regulations and to cooperate fully with the Commission in this proceeding. As Mr. Espy explained at our meeting, he made a good-faith effort to assess that portion of his legal defense fees properly allocable to issues arising from his congressional tenure and to pay only that amount from his excess campaign funds.¹ However, the pendency of the IC proceeding has made it infeasible for Mr. Espy to produce his legal bills without substantial risk of waiver of the attorney-client privilege. Under these circumstances, we believe it fair to permit Mr. Espy an opportunity to present to the Commission the more complete evidence that will become available to him after his indictment, rather than to sanction him on the basis of incomplete information on the eve of his indictment. Moreover, a stay of the Commission's enforcement proceeding would not cause any prejudice to the Commission, which would retain all rights to proceed against Mr. Espy if it found the evidence to be insufficient.

We greatly appreciate the time you took to meet with us on Friday, and your careful consideration of our request. Please let me know if we can be of further assistance in your evaluation of this matter.

Sincerely,

Reid H. Weingarten

Reid H. Weingarten

¹ To the extent that this allocable portion of Mr. Espy's legal expenses was legitimately attributable to issues arising from his congressional tenure, his right to use excess campaign funds for such legitimate expenditures should not be affected by his ability or lack of ability to pay other legal fees from other resources.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mike Espy) MUR 4617
Mike Espy for Congress and)
Michelle E. Matlock, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

II. BACKGROUND

On January 28, 1997, the Commission found reason to believe that Mike Espy ("candidate"), Mike Espy for Congress and Michelle E. Matlock, as treasurer ("Espy campaign") (collectively "respondents") violated 2 U.S.C. § 439a by using campaign funds, totaling \$50,244, for personal use. The legal fees were used to pay for Mr. Espy's criminal defense to an investigation by Independent Counsel ("IC") Donald Smaltz. Of the over \$300,000 in legal fees incurred by Mr. Espy in response to the IC's investigation, the \$50,244 paid with campaign funds is the only amount that has thus far been paid.

On June 24, 1997, the Commission denied the respondents' request to hold this matter in abeyance pending the outcome of the IC's investigation. At the same time, the Commission determined to enter into probable cause conciliation with the respondents

The respondents have indicated that they are not interested in settling this matter at this time. Attachment 1 at 2. Instead, they have requested that the Commission not pursue this matter further, or, in the alternative, they again request that it be held in abeyance. Id. at 1, 2, 12 and 13. For the reasons

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stated herein, this Office recommends that the Commission deny respondents' requests and proceed to the next stage of the enforcement process.

II. SUMMARY OF RESPONSES

As in their earlier submission, the respondents assert that the use of campaign funds for these legal fees was in conformance with Commission regulations and claim that such fees would not have existed if Mr. Espy were not a member of Congress. Attachment 11 at 11. Also as in their earlier submission, the respondents do not offer any support for this contention. In requesting that the Commission hold this matter in abeyance, the respondents reiterate that producing the law firm invoices before resolution of the investigation is "not a viable course of action" for Mr. Espy because it may constitute waiver of his attorney client privilege and would permit the IC to obtain information about "defense counsel's contacts and strategy." Attachment 11 at 2. The respondents contend that once Mr. Espy is indicted, which they state is "in the immediate future" or within approximately 60 days,¹ he will have access to extensive documents relating to the IC's investigation, i.e., the indictment and witness statements, which, they claim, will show that the payment was permissible. Attachment 1 at 2 and 12. Based on the foregoing factors, the respondents request that the Commission either "decline to proceed" or, "stay the enforcement action pending completion of the" IC's investigation. *Id.* at 2 and 13.

III. ANALYSIS

Nothing in the respondents' submissions suggests that any information that might be made available after Mr. Espy's indictment, or even after any trial or appeals that might follow, will significantly address the personal use issue in this matter. First, if and when the

¹ News reports indicate that the IC expects to indict Mr. Espy shortly. See Attachment 2.

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law firm invoices are produced, they will be of little assistance to resolution of this issue. As noted in the prior General Counsel's Report, the respondents have already acknowledged that the invoices do not distinguish between services rendered to Mr. Espy in his defense to allegations of wrongdoing while he was Secretary of Agriculture and those claimed to be related to his tenure in Congress. See GCR, dated May 30, 1997, at page 5. Respondents have also admitted that the idea of using campaign funds for these legal services only occurred to them after such services were already provided and that the allocation was undertaken post hoc. *Id.* In addition, at a more recent meeting held at this Office, Mr. Espy confirmed that he personally allocated the legal services and that it was, in effect, a rough estimate made by him after reviewing the law firm invoices. Mr. Espy further indicated that he does not have any documentary evidence that might explain the basis of his allocation. Thus, the law firm invoices will not contain an accurate description of the legal services rendered and no supporting documentation for the allocation appears to exist. In any event, given Mr. Espy's valid concerns about waiving the attorney-client privilege, it is unlikely that he will be willing to produce the invoices until after any indictment, trial or appeals that might follow, which could take years.

Second, the production of any relevant documents that may be within the IC's possession will shed little light on the underlying issue in this matter. Although Mr. Espy asserts that he will produce such documents after his indictment, even if such documents showed that the IC investigated Mr. Espy's conduct in his capacity as a Congressman, they would only be of minimal value. The documents within the IC's possession would not indicate whether the legal services provided by respondents' counsel related to such issues.

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Nor could such documents possibly explain the basis of the legal fees charged by Mr. Espy's counsel, let alone the method by which the respondents allocated such fees. After all, it was respondents' counsel, not the IC, who provided the services in question that were paid with campaign funds. As noted above, however, according to the respondents themselves the law firm invoices which should provide such information, will be of only limited assistance.

Third, and most significantly, the information provided by the respondents in their prior submission indicates that most of the legal services at issue relate to an obligation that would exist irrespective of Mr. Espy's having been a member of Congress, making the use of most of these campaign funds a violation of Section 439a. The respondents' earlier submission described various categories of legal services rendered which they believe could be paid with campaign funds: research of Mr. Espy's legislative positions while in Congress, reviewing House Rules, examination of the terms of a Jeep that he first leased while in Congress and conducting interviews with persons he first knew while he was in Congress. See GCR, dated May 30, 1997, Attachment 1, at 6-8.² However, nothing in that submission suggests that these services were provided in response to the IC's investigation of wrongdoing by Mr. Espy while he was executing his duties as a Congressman. *Id.*³ To the contrary, it appears that

²² At this point, it appears that respondents' counsel rendered legal services with respect to two areas which may have been permissibly paid for campaign funds: litigation related to the IC seeking Congressional documents and services related to MUR 3971 (another matter involving these respondents that is now closed). Respondents' recent submission also provides a list of numerous documents which they claim have been "recently reviewed by" the IC that relate to Mr. Espy's role in Congress. Attachment 1 at 2. However, any legal services related to the recent production of such documents were provided after the payment of the \$50,244 in legal fees at issue and are not directly relevant to this inquiry.

³³ In their most recent submission, the respondents contend that the IC's investigation involves a "broad and detailed inquiry into Mr. Espy's activities and conduct as a congressman." Attachment 1 at 12. This assertion is inconsistent with the description of the legal services

these legal services were provided to gather background information about Mr. Espy's connections and in an effort to show that although Mr. Espy moved from Congress to a Cabinet position he was not aware of the differing rules relating to the acceptance of gifts. Respondents' view of the significance of these services to Mr. Espy's defense is summarized in their earlier submission as follows: "At the center of the Independent Counsel's investigation has been the question of whether or not Mr. Espy properly adapted his behavior from the environment on Capital Hill to the Executive Branch." (GCR, dated May 30, 1997, Attachment 1 at 4.

In short, to the extent that most of the legal services at issue related to Mr. Espy's role in Congress at all, they were provided in an effort to build a defense to charges of wrongdoing by Mr. Espy while he was Secretary of Agriculture. Thus, such services were not provided in response to an investigation of Mr. Espy's conduct as a federal official. Rather, Mr. Espy has chosen to make such conduct an issue as a defense to the IC's investigation. Although such a defense to the criminal charges might be an effective strategy, it does not alter the fact that almost none of the legal services at issue were rendered in defense of actions undertaken by Mr. Espy in his capacity as a Congressman. It thus appears that the

provided in the respondents' earlier submission and discussed above. It also differs from their earlier claim that such services merely "relate to, and arise solely because of, his service as a member of Congress." GCR, dated May 30, 1997, Attachment 11 at 4. It appears that after receiving an explanation at a recent meeting of this Office's view of the application of Section 439a to the legal services at issue, the respondents have changed their assertions regarding the purpose of the legal services. As noted, however, the respondents have not produced any evidence that the \$50,244 worth of law firm services at issue were provided in response to the IC's investigation of Mr. Espy's conduct while acting in his capacity as a Congressman.

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respondents have violated Section 439a by using campaign funds for legal services other than for Mr. Espy's campaign or to defend his conduct as a federal officeholder. See 11 C.F.R. § 113.1(g); AO 1997-12 (Campaign funds may be used for legal services provided to a candidate or federal officeholder when responding to press inquires or for legal services related to allegations of wrongdoing while a federal officeholder is executing official duties); AO 1996-24 (Commission opines that it would violate the personal use ban at Section 439a to use campaign funds for expenses "such as presenting a legal defense" to possible liabilities or violations of law that are unrelated to campaign or officeholder status).

For the foregoing reasons, this Office recommends that the Commission deny the respondents' request to take no further action or hold this matter in abeyance.⁴ Instead, this Office will shortly be sending out General Counsel's Briefs.

IV. RECOMMENDATIONS

1. Deny the respondents' request to take no further action.
2. Deny the respondents' request to hold this matter in abeyance.

⁴ The Commission has previously approved Subpoenas and Orders directed at respondents and their counsel which sought law firm invoices and other information about the legal services in question. For the reasons set forth in the analysis above, i.e., apparent lack of probative value of such documents, this Office does not intend to issue such discovery. If, during the course of the next stage of the enforcement process the respondents submit evidence which indicates that some of the legal services paid for with the campaign funds was appropriate, this Office will address that issue.

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3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

8/14/97
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachment:

- 1. Responses from Mike Espy and the Espy Campaign
- 2. News article

Staff Assigned: Xavier K. McDonnell

9804000497

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mike Espy;) MUR 4617
Mike Espy for Congress and)
Michelle E. Matlock, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 19, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4617:

1. Deny the respondents' request to take no further action.
2. Deny the respondents' request to hold this matter in abeyance.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated August 14, 1997.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

8-19-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., August 14, 1997 1:32 p.m.
(Circulated to the Commission: Thurs., August 14, 1997 4:00 p.m.
Deadline for vote: Tues., August 19, 1997 4:00 p.m.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 21, 1997

Reid Weingarten, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

RE: MUR 4617
Mike Epsy
Mike Epsy for Congress
and Michelle E. Matlock, as treasurer

Dear Mr. Weingarten:

On June 24, 1997 you were notified that the Commission determined to enter into negotiations directed toward reaching a settlement of this matter prior to a finding of probable cause to believe. On that same date, you were sent conciliation agreements offered by the Commission in settlement of this matter. Thereafter, you have requested that the Commission not pursue this matter further, or in the alternative, again request that it be held in abeyance.

The Commission considered your requests, including your responses dated July 17, 1997 and July 21, 1997. On August 19, 1997, the Commission denied the request to take no further action, denied the request to hold this matter in abeyance, terminated conciliation negotiations, and determined to move to the next stage of the enforcement process. This Office will shortly forward to you General Counsel's Briefs with respect to the legal and factual issues of the case.

Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Xavier McDonnell

Xavier K. McDonnell
Attorney

9804300459



OFFICE OF INDEPENDENT COUNSEL

DONALD C. SMALTZ

In re Secretary of Agriculture Espy

P.O. Box 26356
103 Oronoco Street, Suite 200
Alexandria, VA 22313
(703) 706-0010
(FAX) 706-0076

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

August 28, 1997

Federal Elections Commission
Attn: Lois G. Lerner or Jonathan Bernstein
999 E Street, N.W.
Room 607
Washington, D.C. 20463

Dear Lois

MUR 4617

Enclosed please find a copy of the indictment of A. Michael Espy as per a request made to us by Jonathan Bernstein. If I can be of any other serve to you, please feel free to call me at (703) 706-0010.

Very Truly Yours,

Special Agent John R. Cantalupo
Federal Bureau of Investigation
Office of the Independent Counsel

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLDING A CRIMINAL TERM
GRAND JURY 97-1, SWORN ON JANUARY 31, 1997

UNITED STATES OF AMERICA :

INDICENTENTI

v. :

Criminal No. **97-0325**

ALPHONSO MICHAEL ESPY, :

Violations:

Defendant. :

18 U.S.C. §§ 1343, 1346
(Wire Fraud)
[COUNTS 1-7]

18 U.S.C. §§ 1341, 1346
(Mail Fraud)
[COUNT 8-12]

18 U.S.C. § 201(c)(1)(B)
(Greasy to Public Official)
[COUNTS 13-25]

23 U.S.C. § 672
(Near Inspection Act)
[COUNTS 26-28]

18 U.S.C. § 1582
(Travel Act)
[COUNTS 29-33]

18 U.S.C. § 1001
(False Statement)
[COUNTS 34, 35-37]

18 U.S.C. §§ 1512(b)(1)(A)&
(B); 1512(b)(3)
(Tampering With a Witness)
[COUNT 38]

18 U.S.C. § 2
(Causing an Act to be Done)
[COUNTS 1-28, 34, 35, 37 & 38]

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URBINA, J. RMU

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

JUN 27 1997

Case Related To 95-267- and 96-193

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

THE GRAND JURY CHARGES:

BACKGROUND TO ALL COUNTS

At all times relevant to this Indictment:

1. The United States Department of Agriculture ("USDA") was a department of the United States Government. The mission of the USDA was, among other things, to improve and promote agricultural development and production in the United States.

2. From on or about January 22, 1993 until on or about December 31, 1994, defendant ALPHONSO MICHAEL ESPY ("ESPY") was the Secretary of Agriculture. Defendant ESPY was selected by the President-Elect to be Secretary of Agriculture on or about December 24, 1992.

3. The Secretary of Agriculture was the senior official in charge of the USDA, a member of the President's Cabinet, and ninth in line to succeed the President of the United States should it be necessary.

The Duty of Honest Services

4. Public service is a public trust. As the Secretary of Agriculture, an employee and official of the United States and the Executive Branch, the honest services owed by defendant ESPY to the United States, its citizens, the officials of the Executive Office of the President, and the USDA included the duties to:

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~~((A))~~ neither solicit nor receive gratuities in violation of federal law; (B) perform his job as a Cabinet official free from deceit, fraud, dishonesty and self-enrichment; ~~((C))~~ obey the criminal and civil laws of the United States and regulations promulgated by the authority of the President and Executive Branch agencies in the performance of his official duties; and (D) disclose to the government and the public material information as required by law and regulation.

5. Beginning on or about January 5, 1993 and continuing thereafter through on or about February 16, 1995, in the District of Columbia and elsewhere, defendant ESPY and others known and unknown to the Grand Jury did devise, and intend to devise, a scheme and artifice: (1) to defraud and to deprive the United States, its citizens, the officials of the Executive Office of the President, and the USDA of their right to honest services; and (2) to obtain money and property by means of false and fraudulent pretenses, representations and promises.

6. The rights of the United States, its citizens, the officials of the ~~Executive Office of the President, and the USDA~~ contravened by defendant ~~ESPY's~~ scheme and artifice included, but were not limited to:

- a. the right to defendant ESPY's conscientious, loyal, faithful, disinterested services, actions, and performance

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- of his official duties, free from dishonesty, ~~deceit~~,
official misconduct, willful omission, and ~~fraud~~;
- b. the right to have defendant ESPY conduct his official
duties in accordance with the relevant laws and
regulations, free from his receipt of gifts and ~~gratuities~~
from persons, firms and entities that were: (i) ~~seeking~~
official action from the USDA; (ii) doing business with
the USDA; (iii) conducting activities regulated by the
USDA; (iv) having interests that may be substantially
affected by the performance of the official duties of the
Secretary of Agriculture and the USDA; and (v) ~~having~~
interests that may be substantially affected by the ~~non-~~
performance of the official duties of the Secretary of
Agriculture and the USDA (collectively hereinafter
sometimes referred to as "prohibited sources") (all as is
more fully set forth within the text of 5 U.S.C. § 7352);
- c. the right to not have the Secretary of Agriculture ~~use~~
government assets and expend public funds for his
personal benefit;

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- d. the right to accurate and complete personal financial information disclosed by defendant ESPY as was required by law and regulation, including, but not limited to, Executive Branch Public Financial Disclosure Report, Standard Form 278, so that the public, and responsible officials, agencies, and departments of the federal government would have sufficient information concerning defendant ESPY's interests and activities to make an informed judgment with respect to defendant ESPY's compliance with applicable conflict-of-interest laws and standards of conduct regulations; and
 - e. the right to truthful and complete responses from defendant ESPY when inquiries were made by representatives of the President, the USDA Office of Inspector General ("USDA Inspector General") and the Federal Bureau of Investigation ("FBI"), concerning whether defendant ESPY received or solicited gifts, gratuities, or other things of value.

The Solicitation and Receipt of Gratuities

7. From on or about January 5, 1993, after the President-Elect announced that defendant ESPY was selected for appointment as Secretary of Agriculture, and continuing through his term as Secretary of Agriculture, defendant ESPY sought, solicited, received, and accepted gifts, gratuities and things of value for himself and for his girlfriends and family members, from corporations and individuals seeking official action by, doing or seeking to do business with, and conducting activities regulated by the USDA.

8. The prohibited sources from whom defendant ESPY solicited and received gifts, gratuities and things of value, directly or indirectly, and who had interests that could be substantially affected by performance or nonperformance of defendant ESPY's official duties included, among others:

- a. Sun-Diamond Growers of California ("Sun-Diamond") and its officers and agents. Sun-Diamond is a California agricultural cooperative corporation comprised of five member cooperatives -- Diamond Walnut, Sun-Maid Growers of California, Sunsweet Growers, Inc., Valley Fig Growers, and Hazelnut Growers of Oregon -- with approximate annual revenues of \$648 million. Sun-Diamond did business with,

was seeking official action by, and was regulated by the USDA on a variety of matters;

- b. Richard Douglas ("Douglas"), the Senior Vice President for Corporate Affairs for Sun-Diamond. Douglas was in charge of and responsible for (1) communicating with the Secretary of Agriculture and other decision-makers at the USDA; and (2) directing Sun-Diamond's federal government lobbying activities and representatives. Douglas was seeking official action by the USDA on behalf of Sun-Diamond, its member cooperatives and others;
- c. Tyson Foods, Inc. ("Tyson Foods") and its officers and agents. Tyson Foods is a corporation with approximately \$5 billion in annual revenues and which does business from facilities in Arkansas, 17 other states, and in these foreign countries. Tyson Foods processes, produces and markets poultry and red meat and conducts activities regulated by, and did business with, the USDA;
- d. Jack L. Williams ("Williams"), a registered lobbyist for Tyson Foods in Washington, D.C. and elsewhere. Williams was

seeking official action by the USDA on behalf of various organizations, including Tyson Foods, whose activities were regulated by the USDA;

- e. Oglethorpe Power Corporation ("Oglethorpe Power") and its officers and agents, which included but was not limited to, Smith Barney, Inc. ("Smith Barney"), an investment, securities banking and brokerage firm. Oglethorpe Power is a Georgia electrical power cooperative serving approximately 2.3 million customers, with approximate annual revenues of over \$1 billion. Oglethorpe Power was seeking official action by the USDA on various matters, including the refinancing of over \$3 billion in Rural Electrification Association ("REA") bonds;
- f. EOP Group, Inc. ("EOP") and its officers and agents. EOP is a Washington, D.C. political and business consulting company with approximate annual revenues of \$2 million. EOP was seeking official action by the USDA on behalf of various organizations, including Oglethorpe Power, whose activities were regulated by the USDA;

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g. Quaker Oats Company ("Quaker Oats") and its officers and agents. Quaker Oats, headquartered in Chicago, Illinois, is a corporation with approximately \$5.7 billion in annual revenues, does business in the areas of grain-based cereals and snacks, and has a food division that processes red meat products. Quaker Oats' business is regulated by the USDA; and

h. Fernbank, Inc. ("Fernbank") and its officers and agents. Fernbank is a private non-profit organization which runs the Fernbank Museum of Natural History in Atlanta, Georgia, and was doing business with the USDA by virtue of a \$71,000 Federal Financial Assistance Grant for the 1994 Smokey Bear Exhibit.

9. The gifts, gratuities, and things of value solicited and received, directly and indirectly, by defendant ESPY for himself, his family and his girlfriends from the specified prohibited sources, which totaled in value approximately \$35,458, were all for the benefit of defendant ESPY and included, but were not limited to, those listed hereinafter:

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a. **SUN-DIAMOND/DIOPHGLAS:**

	<u>DATE*</u>	<u>THINGS OF VALUE</u>	<u>VALUE**</u>
(1)	3/14/93	Luggage	\$ 2,427
(2)	5/13/93	Cash to defendant ESPY's girlfriend	\$ 3,200
(3)	9/11/93	Limousines in New York	\$ 246
(4)	9/11-12/93	U.S. Open Tennis Tickets	\$ 4,200
(5)	11/10/93	Tickets to Washington Bullets-New York Knicks National Basketball Association ("NBA") Game	\$ 222
(6)	1/17/94	Waterford Crystal Bowl	\$ 173
(7)	4/1/94	Contributions to defendant ESPY's brother	\$10,000
		<u>TOTAL VALUE:</u>	<u>\$20,468</u>

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* All dates in this Indictment are "on or about."
** All values in this Indictment are approximate.

b. **TYSON FOODS/WILLIAMS:**

<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
	<u>Inauguration</u>	
(1) 1/18/93	Four seats at Presidential Inaugural Dinner	\$ 6,000
	<u>Russellville Birthday Party</u>	
(2) 5/14/93	Round trip airfare from Washington National Airport to Russellville, AR for defendant ESPY's girlfriend	\$ 830
(3) 5/16/93	Lodging, meals and entertainment at the Tyson Management Development Center ("TMDC") for defendant ESPY and his girlfriend	\$ 1,726
	<u>Scholarship</u>	
(4) 1/4/94	Check to defendant ESPY's girlfriend	\$ 1,200
	<u>Dallas Trip</u>	
(5) 1/15/94	Airfare from Washington National Airport to Dallas, TX for defendant ESPY's girlfriend	\$ 1,009
(6) 1/15-16/94	Limousines and parking charges in Dallas, TX	\$ 968

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(7) 1/16/94 Skybox Tickets to Dallas \$ 110
Cowboys-Green Bay Packers
National Football League ("NFL")
Playoff Game

TOTAL VALUE: \$ 11,843

c. **OGLETHORPE POWER/EOP/SMITH BARNEY:**

<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
1/30/94	Super Bowl Ticket	\$ 2,200

d. **EOP:**

<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
5/1/93	Employment for defendant ESPY's girlfriend	Not assigned

e. **QUAKER OATS:**

<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
6/18/93	Tickets to Chicago Bulls-Phoenix Suns NBA Championship Game	\$ 90

f. **FERNBANK:**

<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
1/30/94	Super Bowl Tickets	\$ 857

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The Concealment of Material Information and Use of False Pretenses

10. To ensure confidence in the integrity of the Federal Government, the Ethics in Government Act (the "Act") imposed upon government officials, including defendant ESPY, a duty to fully and accurately disclose publicly their personal financial interests. This duty included, but was not limited to, the duty to accurately prepare and file yearly, and at other times, a Public Financial Disclosure Report, SF-278, that required disclosure of, among other things, "all gifts aggregating \$250 or more in value . . . from any one source." A purpose for such reports is to ensure that the public and responsible officials, agencies, and departments of the federal government are given sufficient information by reporting individuals concerning the nature of their outside interests and activities so that an informed judgment can be made with respect to compliance with applicable conflict-of-interest laws and standards of conduct regulations. In contravention of this duty, and to conceal his receipt of things of value, gifts and gratuities solicited and received in violation of law, defendant ESPY:

- a. on or about June 15, 1994, prepared, signed and submitted a Public Financial Disclosure Report, SF-278, for the 1993 calendar year which failed to disclose the receipt of approximately \$9,561 in gratuities, gifts and things of value

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received by defendant ESPY from Tyson Foods, Williams, Sun-Diamond, Douglas and others; and

- b. on or about February 16, 1995, prepared, signed and submitted a Public Financial Disclosure Report, SF-278, for the 1994 calendar year which failed to disclose the receipt of approximately \$3,191 in gratuities, gifts and things of value received by defendant ESPY from Tyson Foods, Williams, Oglethorpe Power, EOP, Smith Barney and Fernbank.

11. To further conceal his acceptance of gratuities, gifts, and things of value from prohibited sources, defendant ESPY made false representations and pretenses regarding his travel and the necessity of his attendance in his official capacity at certain functions including, but not limited to:

- a. on or about May 14, 1993, for the purpose of justifying his travel to and presence at the TMDC in Russellville, Arkansas at the 40th birthday party of a Tyson Foods' official, defendant ESPY accepted an invitation to speak in his official capacity to the Arkansas Poultry Federation, while in truth defendant ESPY was in Russellville to attend the weekend birthday celebration as a guest of Tyson Foods;

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- b. on or about January 14, 1994, for the purpose of justifying his presence in Dallas, Texas, defendant ESPY arranged to meet with a local agent of the USDA Inspector General to discuss official USDA business, while in truth the reason defendant ESPY was in Dallas, Texas was to attend a playoff football game as a guest of Tyson Foods; and
 - c. on or after January 21, 1994, defendant ESPY was advised that there were no official USDA events scheduled for the Super Bowl in Atlanta. Thereafter, defendant ESPY caused his staff to schedule and attempt to schedule various meetings in Atlanta during the weekend of January 29 through 30, 1994 to justify his travel to Atlanta, Georgia and his attendance at the Super Bowl.

12. Once questions arose on or after March 17, 1994, with the publication of an article in *The Wall Street Journal*, as to whether and to what extent defendant ESPY had accepted gratuities, gifts, and things of value from prohibited sources, including Tyson Foods, defendant ESPY made false statements to various Executive Branch members and officials as follows:

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- a. on or about April 11, 1994, when questioned by Special Agents of the USDA Inspector General about events surrounding his travel to Russellville, Arkansas on the weekend of May 14 through May 16, 1993, defendant ESPY concealed the fact that he and his girlfriend were at the TMDC as guests of Tyson Foods for a weekend birthday party, complete with lodging, food, drink and professional musical entertainment, and falsely stated that he returned to Washington, D.C. on a Tyson Foods' jet because there were no available commercial facilities, when in truth defendant ESPY's staff had previously made commercial reservations for ESPY's return which defendant ESPY had directed to be canceled so he could fly in a Tyson Foods' jet;
- b. on or about April 18, 1994, in response to a request by Special Agents of the USDA Inspector General to produce a copy of defendant ESPY's travel itinerary for the weekend of January 15 through 16, 1994, defendant ESPY caused to be made and delivered to the USDA Inspector General Special Agents an altered travel itinerary which deleted all references to

defendant ESPY's girlfriend, the Chairman of Tyson Foods, limousine service provided by Tyson Foods and the Green Bay v. Dallas 2nd Round National Football Conference football game which defendant ESPY and his girlfriend attended as guests of Tyson Foods;

- c. on or about June 1, 1994, when questioned by Special Agents of the FBI about the source and nature of certain gifts provided to defendant ESPY and his girlfriend by Tyson Foods' Chairman and others, defendant ESPY falsely stated that he attended the NBA Championship playoffs in Chicago in 1993 with a ticket provided by Richard Douglas, and that defendant ESPY could not recall any time when he accepted favors, benefits or gifts from any organizations or companies other than Tyson Foods when in truth defendant ESPY directed a member of his staff to solicit NBA Championship game tickets from the Chairman of Quaker Oats, and defendant ESPY had accepted the gratuities, gifts, and things of value from the organizations and companies specified in paragraphs 9.a., and 9.c. - 9.f., above; and

d. on or about September 30, 1994, when questioned by the Chief of Staff of the President of the United States concerning his receipt and solicitation of gifts, gratuities, and things of value from prohibited sources, defendant ESPY, in substance and among other things, stated "there's nothing else out there," well knowing at the time such statement and representation was false when made and that he had concealed and covered up the gifts, gratuities, and things of value he had received from the entities and individuals set forth in paragraphs 9.a., 9.b.(1), (3), (5), 9.c., and 9.d.

13. Further, as questions arose as to whether and to what extent defendant ESPY had accepted gratuities, gifts, and things of value from prohibited sources and as those questions and concerns were published in media accounts and made known to defendant ESPY through interviews by the USDA Inspector General and the FBI, defendant ESPY made payments to the prohibited sources for certain of the gratuities, gifts, and things of value in order to conceal, cover up and disguise his activities and intent regarding his solicitation and receipt of the gratuities, gifts, and things of value. Moreover, in response to these published reports, defendant ESPY also made payments to the USDA to disguise his intent to take,

convert and misappropriate public funds for his personal benefit for transportation.

Defendant ESPY's deceptive payments included, but were not limited to the

following:

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- a. March 18, 1994 payment of \$68 to the Chairman of Tyson Foods for the January 16, 1994 Dallas Cowboys - Green Bay Packers NFL Playoff Game Ticket, which payment followed an article in *The Wall Street Journal* on March 17, 1994;
 - b. June 2, 1994 payment of approximately \$69 to the Arkansas Poultry Federation for lodging at the TMDC on May 15, 1993, which payment followed the June 1, 1994 interview of defendant ESPY by Special Agents of the FBI, wherein defendant ESPY was questioned about his travel to Russellville;
 - c. August 25, 1994 payment of \$90 to the Chairman of Quaker Oats for tickets to the Chicago Bulls - Phoenix Suns NBA Championship game on June 16, 1993, which payment followed published press reports on or about August 7, 1994 stating that the Chairman of Quaker Oats was the source of the tickets used by defendant ESPY and Douglas;

- d. September 14, 1994 payment of \$700 to a Trustee of the Fernbank Museum for four tickets to the January 30, 1994 Super Bowl following the appointment of the Independent Counsel on September 9, 1994 to investigate, *inter alia*, defendant ESPY's acceptance of gratuities, gifts and things of value, including tickets to sporting events; and
- e. September 15, 1994 payment of approximately \$6,204 to the USDA for defendant ESPY's personal use of a Jeep Cherokee vehicle, leased by the USDA, following the September 9, 1994 appointment of the Independent Counsel.

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**The Use of Government Assets and
Expenditure of Public Funds for Personal Benefit**

14. From on or about January 22, 1993 through on or about February 16, 1995, defendant ESPY used government assets and expended public funds for his personal benefit including, but not limited to, a Jeep Cherokee as follows:

(i) while serving as a member of the United States House of Representatives from Mississippi, defendant ESPY was entitled to lease an automobile for official use at the expense of the House of Representatives; (ii) on December 21, 1992, three days prior to the President-Elect's announcement of defendant ESPY as his selection for appointment as Secretary of Agriculture, defendant ESPY obtained in Mississippi a lease on a 1993 Jeep Cherokee valued at approximately \$27,000; (iii) upon assuming the position of Secretary of Agriculture, defendant ESPY was entitled to a USDA-leased limousine and a USDA driver; (iv) wanting to keep the Jeep Cherokee in Mississippi for his personal use, defendant ESPY, on or about January 22, 1993, requested the USDA to assume the lease payments, falsely representing to officials of the USDA that he would use the Jeep Cherokee in the Washington, D.C. area as his official automobile, eliminating the necessity for the USDA to furnish him with a limousine and driver; (v) in reliance upon defendant ESPY's representations, the USDA paid a total of approximately \$6,200 for the

Jeep Cherokee for the months of February 1993 through September 1993; and (vi) contrary to defendant ESPY's representations, (1) defendant ESPY did not bring the Jeep to the Washington, D.C. area but, instead, it remained in Mississippi through in or about November 1993 where he used the vehicle for non-official purposes, and (2) on or about April 5, 1993 and continuing through on or about December 31, 1994, defendant ESPY requested and used a USDA limousine and driver in Washington, D.C.

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COUNTS ONE THROUGH SEVEN

WIRE FRAUD

15. Paragraphs 1 through 14 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

16. On or about the dates set forth below, in the District of Columbia and elsewhere, defendant ESPY, for the purpose of executing and intending to execute the aforesaid scheme and artifice to defraud the United States, its citizens, the officials of the Executive Office of the President and the USDA of the intangible right of honest services and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire communications in interstate commerce writings, signs, signals, pictures and sounds, the following:

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
ONE	5/4/93	Telephone communications between the USDA in Washington, D.C. and Tyson Foods in Springdale, Arkansas, to accept Tyson Foods' invitation to a weekend birthday party hosted by Tyson Foods.

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- TWO** 5/12/93 Facsimile communication between Tyson Foods in Springdale, Arkansas and the USDA in Washington, D.C. to provide defendant ESPY travel and lodging arrangements for a weekend birthday party hosted by Tyson Foods.
- THREE** 6/17/93 Telephone communications between the USDA in Washington, D.C. and Quaker Oats headquarters in Chicago, Illinois to solicit two 1993 NBA Championship tickets from Quaker Oats.
- FOUR** 1/18/94 Facsimile communication between the USDA Office of Inspector General in Temple, Texas and in Washington, D.C. to report the results of a meeting between defendant ESPY and an official of the USDA Inspector General in Dallas, Texas.
- FIVE** 1/27/94 Facsimile communication from the President of Oglethorpe Power in Tucker, Georgia to defendant ESPY at the USDA in Washington, D.C., transmitting a letter and map, and to confirm a meeting on January 29, 1994 at Oglethorpe Power corporate headquarters.
- SIX** 1/27/94 Telephone communications between the USDA in Washington, D.C. and Fernbank Museum in Atlanta, Georgia to request a total of four 1994 Super Bowl tickets.

COUNTS EIGHT THROUGH TWELVE

MAIL FRAUD

17. Paragraphs 1 through 14 of this Indictment are ~~re-alleged and~~ incorporated by reference as though fully set forth herein.

18. On or about the dates set forth below, in the District of Columbia and elsewhere, defendant ESPY, for the purpose of executing and ~~intending to execute~~ the aforesaid scheme and artifice to defraud the United States, its citizens, the officials of the Executive Office of the President and the ~~USDA of the intangible~~ right of honest services and to obtain money and property by means of ~~false and~~ fraudulent pretenses, representations and promises, and attempting to do so, did place and cause to be placed in an authorized depository for mail matter, the items described in Counts Eight through Twelve, to be sent, as ~~addressed by the United~~ States Postal Service, and did knowingly cause to be ~~delivered by mail according~~ to the direction thereon, as described in each of the ~~Counts Eight through Twelve,~~ such mail matter described below:

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<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
EIGHT	4/6/93	Purchase Order for \$6,204 for the period of February 1993 through September 1993 sent from the USDA, 14th & Independence Ave., S.W., Rm. 1547, South Building, Washington, D.C. 20250 to Chrysler Credit, P.O. Box 1050, Ridgeland, Mississippi 39158-1050, for the lease of a 1993 Jeep Grand Cherokee.
NINE	3/18/94	Handwritten note from defendant ESPY, Department of Agriculture, 14th Street & Independence Avenue, S.W., Rm. 200-A, Washington, D.C. 20250, to P.O. Box 2020, Springdale, Arkansas 72765, with a \$68 personal check as payment for the January 16, 1994 Dallas Cowboys -Green Bay Packers NFL Playoff game.

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<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
TEN	6/2/94	Letter from Speaking/Travel Coordinator, Department of Agriculture Office of the Secretary, Washington, D.C. 20250, to the Arkansas Poultry Federation, P.O. Box 1446, Little Rock, Arkansas 72203, containing defendant Espy's personal check in the approximate amount of \$69 for lodging expenses at the TMDC on May 15, 1993.
ELEVEN	8/25/94	Letter from defendant ESPY to The Quaker Oats Company, P.O. Box 049001, Chicago, Illinois 60604-9001, stating that tickets to the Chicago Bulls - Phoenix Suns NBA Playoff game provided to defendant ESPY and Douglas had not been repaid due to an oversight, and containing defendant ESPY's personal check for \$90.

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<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
TWELVE	9/14/94	Letter from defendant ESPY to Trustee, Fernbank Museum of Natural History, 767 Clifton Road, N.E., Atlanta, Georgia 30307-1221, stating that defendant ESPY is sending his personal check to reimburse the Fernbank Museum for four tickets to the Super Bowl on January 31, 1994, and including a personal check for \$700.

(In violation of 18 United States Code §§ 1541, 1546 and 2)

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COUNTS THIRTEEN THROUGH TWENTY-FIVE

ILLEGAL GRATUITIES

19. Paragraphs 1 through 14 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

20. On or about the dates set forth below, in the District of Columbia and elsewhere, defendant ESPY, having been selected to serve and while serving as Secretary of Agriculture, other than as provided by law for the proper discharge of official duties, directly and indirectly demanded, sought, received, accepted and agreed to receive and accept the following things of value, totaling approximately \$25,458, and the benefit thereof personally from the respective entities and persons listed below, for and because of official acts performed and to be performed by defendant ESPY:

a. **SUN-DIAMOND GROWERS/DOUGLAS:**

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
THIRTEEN	3/14/93	Luggage	\$2,427
FOURTEEN	5/13/93	Cash to defendant ESPY's girlfriend	\$3,200
FIFTEEN	9/11- 12/93	U.S. Open Tennis Tickets and Limousines	\$4,446

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<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
SIXTEEN	11/10/93	Tickets to Washington Bullets-New York Knicks NBA Game	\$ 222
SEVENTEEN	1/17/94	Waterford Crystal Bowl	\$ 173

b. TYSON FOODS/WILLIAMS:

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
EIGHTEEN	1/18/93	Four seats at Presidential Inaugural Dinner	\$6,000
NINETEEN	5/14- 16/93	Russellville birthday party, including airfare, meals, lodging and entertainment	\$2,556
TWENTY	1/4 94	Check to defendant ESPY's girlfriend	\$1,200
TWENTY-ONE	1/15- 16/94	Weekend trip to Dallas, TX, including airfare, limousines and tickets to Dallas Cowboys - Green Bay Packers NFL Playoff Football Game	\$2,087

c. OGLETHORPE POWER/EOP/SMITH BARNEY:

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
TWENTY-TWO	1/30/94	Super Bowl Ticket	\$2,200

1491004004

d. **KOP:**

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
TWENTY-THREE	5/1/93	Employment for defendant ESPY's girlfriend	Not assigned

e. **QUAKER OATS:**

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
TWENTY-FOUR	6/18/93	Tickets to Chicago Bulls-Phoenix Suns NBA Championship Game	\$ 90

f. **FERNBANK:**

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
TWENTY-FIVE	1/30/94	Super Bowl Tickets	\$ 857

(In violation of 18 United States Code §§ 201(c)(1)(B) and 2)

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COUNTS TWENTY-SIX THROUGH TWENTY-EIGHT

MEAT INSPECTION ACT

21. Paragraphs 1 through 14 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

22. On or about the dates set forth below, in the District of Columbia and elsewhere, defendant ESPY, while serving as Secretary of Agriculture, an official and employee of the USDA authorized to perform the duties prescribed under the Meat Inspection Act, did knowingly receive and accept the gifts and things of value totaling approximately \$4,221 set forth below from the respective persons, firms, and corporations engaged in commerce and subject to the Act:

a. **TYSON FOODS/WILLIAMS:**

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
TWENTY-SIX	5/15- 16/93	Russellville birthday party, including airfare, meals, lodging and entertainment	\$2,044
TWENTY-SEVEN	1/15- 1/16/94	Weekend trip to Dallas, TX, including Airfare, Limousines and Tickets to Dallas Cowboys - Green Bay Packers NFL Playoff Game	\$2,087

98043001493

b. **QUAKER OATS:**

<u>COUNT</u>	<u>DATE</u>	<u>THINGS OF VALUE</u>	<u>VALUE</u>
TWENTY- EIGHT	6/18/93	Tickets to Chicago Bulls - Phoenix Suns NBA Championship Game	\$ 90

(In violation of 21 United States Code § 622 and 18 United States Code § 2)

98043360494

COUNT TWENTY-NINE THROUGH THIRTY-THREE

TRAVEL ACT

23. Paragraphs 11 through 14 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

24. On or about the dates set forth below, in the District of Columbia and elsewhere, defendant ESPY traveled in interstate commerce as set forth below with intent to promote, manage, establish and carry on, and to facilitate the promotion, management, establishment and carrying on of unlawful activities, that is, the unlawful acceptance and receipt of unlawful things of value in violation of 18 U.S.C. § 201(c) and 21 U.S.C. § 622, and thereafter defendant ESPY accepted and received the following:

<u>COUNT</u>	<u>DATE</u>	<u>TRAVEL</u>		<u>THINGS OF VALUE</u>
		<u>From</u>	<u>To</u>	
TWENTY-NINE	5/15/93	Washington, DC.	Russellville, AR	Lodging, Entertainment and Airfare
THIRTY	6/18/93	Washington, DC.	Chicago, IL	Chicago Bulls-Phoenix Suns NBA Championship Game Tickets

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<u>COUNT</u>	<u>DATE</u>	<u>TRAVEL</u>		<u>THINGS OF VALUE</u>
		<u>From</u>	<u>To</u>	
THIRTY- ONE	9/11/93	Washington, D.C.	New York, NY	U.S. Open Tickets and Limousines
THIRTY- TWO	1/15/94	Washington, D.C.	Dallas, TX	Dallas Cowboys- Green Bay Packers NFL Playoff Tickets and Limousines
THIRTY- THREE	1/29/94	Washington, D.C.	Atlanta, GA	Super Bowl Tickets

(In violation of 18 United States Code § 1952)

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COUNT THIRTY-FOUR

FALSE STATEMENT

25. Paragraphs 1 through 14 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

26. The USDA Office of Inspector General was a law enforcement organization charged with investigating potential violations by USDA employees of federal laws and, among other things, applicable Executive Branch and USDA ethics regulations. Beginning on or about March 17, 1994, USDA Inspector General Special Agents were conducting an investigation regarding the acceptance by USDA employees of gifts and gratuities from Tyson Foods, a "prohibited source." It was material to the USDA Inspector General investigation to determine whether Tyson Foods had given, and USDA employees had accepted, anything of value and whether defendant ESPY had received anything of value from Tyson Foods.

27. On or about April 1, 1994, in Washington, D.C., defendant ESPY was interviewed by Special Agents of the USDA Office of Inspector General and made false statements and representations. During the interview, defendant ESPY referred to trip itineraries for official travel he undertook in May 1993 and January 1994. At the conclusion of the interview, defendant

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ESPY was asked to produce these trip itineraries. On or about April 8, 1994, defendant ESPY caused to be delivered to USDA Inspector General Special Agents an altered and false trip itinerary for the weekend of January 15 through 16, 1994, which concealed and covered up material facts.

28. From on or about April 1, 1994 until on or about April 8, 1994, in the District of Columbia, defendant ESPY knowingly and willfully falsified, concealed and covered up by trick, scheme and device material facts and made false, fictitious and fraudulent statements and representations to a department and agency of the United States, the USDA Inspector General, in a matter within its jurisdiction, namely, its investigation of allegations of the unlawful receipt of gratuities by defendant ESPY in that:

- a. On or about April 1, 1994, defendant ESPY, in response to questions posed by Special Agents of the USDA Inspector General, stated and represented that following an overnight stay at the TMDC, on Sunday, May 16, 1993, Tyson Foods flew him back to Washington National Airport in its corporate jet because defendant ESPY was directed to return to the White House for dinner with the President and there were no available commercial airline facilities to

return him to Washington, D.C. in time to attend the dinner.

In truth and fact, (1) as early as May 6, 1993, defendant ESPY had planned to return to Washington, D.C. on a Tyson Foods' corporate jet; (2) commercial airline flights were available to defendant ESPY from Arkansas to the Washington National Airport; and (3) defendant ESPY's staff had previously made commercial reservations from Arkansas to the Washington National Airport which defendant ESPY had directed to be canceled.

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- b. On or about April 8, 1994, defendant ESPY caused his staff to prepare and deliver to the USDA Inspector General an altered and false trip itinerary which concealed and covered up material facts, in that references on Saturday, January 15, 1994, to: (1) defendant ESPY's girlfriend, (2) arrangements for "Limo service" in Dallas, Texas, (3) the Chairman of Tyson Foods and his girlfriend at the "Mansion on Turtle Creek," and references on Sunday, January 16, 1994, to (4) a "brunch at Stadium in Irving, Texas," (5) the "Green Bay vs. Dallas 2nd Round National

Football Conference Playoffs," and (6) defendant ESPY's girlfriend were deleted and deliberately concealed from the USDA Inspector General.

(In violation of 18 United States Code §§ 1001, 2)

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COUNT THIRTY-FIVE

TAMPERING WITH A WITNESS

29. Paragraphs 1 through 14 and 26 through 28 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

30. On or about April 8, 1994, in the District of Columbia, defendant ESPY engaged in misleading conduct toward another person, that is, an employee of the USDA, with the intent to:

- a. withhold a record, document, and other object from an official proceeding, that is, an investigation by the USDA Inspector General;
- b. cause and induce that person to alter, destroy, mutilate and conceal an object with intent to impair the object's integrity or availability for use in such official proceeding; and
- c. hinder, delay and prevent the communication to law enforcement officers of the United States, that is, Special Agents of the USDA Inspector General, information

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relating to the commission and possible commission of
Federal offenses by defendant ESPY.

(In violation of 18 United States Code §§ 1512(b)(2)(A)
and (B); 1512(b)(3) and 2)

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COUNT THIRTY-SIX

FALSE STATEMENT

31. Paragraphs 1 through 14 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

32. On or about June 1, 1994, in the District of Columbia, defendant ESPY knowingly and willfully made material false, fictitious and fraudulent statements and representations to a department and agency of the United States, that is the FBI, in a matter within its jurisdiction, that is, an investigation of allegations of wrongdoing by defendant ESPY.

33. It was material to the FBI to determine whether defendant ESPY received anything of value from companies or individuals regulated by the USDA, including companies or individuals defined as "prohibited sources."

34. On or about June 1, 1994, in the District of Columbia, defendant ESPY, in response to questions posed by Special Agents of the FBI, **falsely, fictitiously and fraudulently stated and represented that:**

- a. **he attended the NBA Championship Playoffs in Chicago in 1993 with his friend Richard Douglas who provided the tickets, when in truth and fact, as defendant ESPY well knew, defendant ESPY had directed a member of his staff**

to solicit the playoff basketball tickets from the Chairman
of Quaker Oats; she had in fact done so; and the Chairman
of Quaker Oats made two playoff basketball tickets
available to defendant ESPY; and

- b. he could not recall any time when he accepted favors,
benefits or gifts from any organizations or companies other
than Tyson Foods, when in truth and fact, as defendant
ESPY well knew, he had solicited and accepted favors,
benefits and gifts from the organizations and companies
specified in paragraphs 9.a., and 9.c. - 9.f., above.

(In violation of 18 United States Code § 1001)

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COUNT THIRTY-SEVEN

FALSE STATEMENT

35. Paragraphs 1 through 14 are realleged and incorporated herein by reference as though fully set forth herein.

36. In the calendar year 1993, for purposes of the Ethics in Government Act, 5 U.S.C. App. 6 §§ 101 *et seq.*, defendant ESPY received gifts and gratuities totaling approximately \$6,761, which are listed herein below:

	<u>DATE</u>	<u>REPORTABLE GIFT</u>	<u>SOURCE</u>	<u>VALUE</u>
(1)	1/18/93	Seat at Presidential Inaugural Dinner	Tyson Foods	\$ 1,500
(2)	3/14/93	Luggage	Sun Diamond	\$ 2,427
(3)	5/15/93	Entertainment at TMDC	Tyson Foods	\$ 500
(4)	9/11/93	Limousines in New York	Sun Diamond	\$ 123
(5)	9/11-12/93	U.S. Open Tennis Ticket	Sun Diamond	\$ 2,100
(6)	11/10/93	Ticket to Washington Bullets-New York Knicks NBA Game	Sun Diamond	\$ 111

37. In addition, in the spring of 1993, defendant ESPY received as a gift an inscribed hand-colored monotype entitled "Spring Light" from artist William Dunlap with a value of approximately \$2,800.

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38. It was material pursuant to the Ethics in Government Act that defendant ESPY report all sources of gifts so that those having responsibility for the review of reports filed pursuant to the Act could make an informed judgment about defendant ESPY's compliance with applicable conflict of interest laws and standards of conduct regulations.

39. On or about June 13, 1994, in the District of Columbia, defendant ESPY, knowingly and willfully, in a matter within the jurisdiction of the USDA, a department of the United States, falsified, concealed, and covered up by trick, scheme, and device material facts and made false, fictitious and fraudulent statements and representations, and made and used a false writing and document knowing the same to contain false, fictitious and fraudulent statements and entries, in that defendant ESPY, as required by law, prepared, signed and submitted to the USDA a Public Financial Disclosure Report, SF-278 (covering the calendar year 1993), on which he certified that the statements made were "true, complete and correct" to the best of his knowledge and belief. In truth and fact, as defendant ESPY well knew, said

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Public Financial Disclosure Report failed to disclose the receipt of approximately \$9,561 on Schedule B, Part II.

(In violation of 18 United States Code §§ 1001 and 2)

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COUNT THIRTY-EIGHT

FALSE STATEMENT

40. Paragraphs 1 through 14 are realleged and incorporated herein by reference.

41. In the calendar year 1994, for purposes of the Ethics in Government Act, 5 U.S.C. App. 6 §§ 101 *et seq.*, defendant ~~ESPY~~ received gifts and gratuities totaling approximately \$3,191, which are listed herein below:

	<u>DATE</u>	<u>REPORTABLE GIFT</u>	<u>SOURCE</u>	<u>VALUE</u>
(1)	1/15-16/94	Limousines and Parking Charges in Dallas, TX	Tyson Foods	\$ 484
(2)	1/30/94	Super Bowl Ticket	Oglethorpe Power/EOP/ Smith Barney	\$2,200
(3)	1/30/94	Super Bowl Tickets	Fernbank	\$ 507

42. It was material pursuant to the Ethics in Government Act that defendant ~~ESPY~~ report all sources of gifts so that those having responsibility for the review of reports filed pursuant to the Act could make an informed judgment about defendant ~~ESPY~~'s compliance with applicable conflict of interest laws and standards of conduct regulations.

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43. On or about February 16, 1995, in the District of Columbia, defendant ESPY, knowingly and willfully, in a matter within the jurisdiction of the USDA, a department of the United States, falsified, concealed, and covered up by trick, scheme, and device material facts, made false, fictitious and fraudulent statements and representations, and made and used a false writing and document knowing the same to contain false, fictitious and fraudulent statements and entries, in that defendant ESPY, as required by law, prepared, signed and submitted to the USDA a Public Financial Disclosure Report, SF-278 (covering the calendar year 1994), on which he certified that the statements made were "true, complete and correct" to the best of his knowledge and belief. In truth and fact, as defendant ESPY well knew, said Public Financial Disclosure Report failed to disclose the receipt of approximately \$3,191 on Schedule B, Part II.

(In violation of 18 United States Code §§ 1001 and 2)

COUNT THIRTY-NINE

FALSE STATEMENT

44. Paragraphs 1 through 14 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

45. It was material to officials of the Executive Office of the President whether and to what extent defendant ESPY received anything of value from companies or individuals regulated by the USDA, including companies or individuals defined as "prohibited sources."

46. On or about September 30, 1994, in the District of Columbia, defendant ESPY, knowingly and willfully in a matter within the jurisdiction of the Executive Office of the President, within the Executive Branch, a department of the United States, falsified, concealed and covered up by trick, scheme, and device material facts and made false, fictitious and fraudulent statements and representations in that defendant ESPY, in response to questions by the President's Chief of Staff and Counsel concerning his receipt and solicitation of gifts, gratuities, and things of value from prohibited sources, in substance and among other things, stated "there's nothing else out there," well knowing at the time such statement and representation was false

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when made and that he had concealed and covered up the gratuities he had received as set forth in Paragraphs 9.a., 9.b.(1), (3), (5), 9.c, and 9.d.

(In violation of 18 United States Code § 1001)

DATED: August 27, 1997

Washington, D.C.

A TRUE BILL

[Signature]
FOREPERSON

[Signature]
DONALD C. SMALTZ
Independent Counsel

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 17, 1997

Reid Weingarten, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

RE: MUR 4617
Mike Espy
Mike Espy for Congress
and Mike Espy, as treasurer

Dear Mr. Weingarten:

As you were notified by letter dated August 21, 1997, the Commission denied your request to take no further action or hold this matter in abeyance, and determined to move to the next stage of the enforcement process. After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that Mike Espy, Mike Espy for Congress and its treasurer violated 2 U.S.C. § 439a.

The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a reconciliation agreement.

Should you have any questions, please contact Xavier K. McDonnell, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble by
AAS
Lawrence M. Noble
General Counsel

Enclosure:
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
)
Mike Espy) MUR 4617
Mike Espy for Congress)
and Mike Espy, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On January 28, 1997, the Commission found reason to believe that Mike Espy ("candidate"), Mike Espy for Congress and its treasurer ("Espy campaign") (collectively "Respondents") violated 2 U.S.C. § 439a by using campaign funds, totaling \$50,244, to pay legal fees for personal use. The legal fees were used to pay for Mr. Espy's criminal defense team investigation by Independent Counsel ("IC") Donald Smaltz.

II. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended (the "Act") provides that campaign funds may not be converted to any person to any personal use, but may be used to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. 2 U.S.C. § 439a. The Commission's regulations define "personal use," describing it as the use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 11 C.F.R. § 11311(g) (February 9, 1995). With regard to legal expenses, the Commission's regulations provide for a case-by-case determination as to whether committee payments for legal fees constitute personal use.

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11 C.F.R. § 113.1(g)(1)(ii)(A). Under the Act, the term "Federal office" includes the office of a Representative to Congress, but does not include the offices of Cabinet Secretaries, including that of the Secretary of Agriculture. 2 U.S.C. § 431(3).

In Advisory Opinion ("AO") 1996-24, the Commission opined that it would violate the personal use ban at Section 439a to use campaign funds for expenses "such as presenting a legal defense" to possible violations of law that are unrelated to campaign or officeholder status. In AO 1997-12, the Commission ruled that a requester who was a candidate and member of Congress could use campaign funds for: (i) 100% of legal services provided to a candidate or federal officeholder when directly and exclusively responding to the press; (ii) 100% of legal services related to allegations arising from campaign or federal officeholder activity; and (iii) 50% of legal expenses not directly related to allegations arising from campaign or federal officeholder activity if incurred by a candidate or federal officeholder providing substantive responses to the press.

III. FACTS

Mike Espy represented Mississippi's 2d Congressional district until January of 1993, at which time he was nominated by President Clinton to serve as Secretary of the United States Department of Agriculture ("USDA" or "the Cabinet"). In July of 1994, following reports that Mr. Espy had accepted illegal gratuities while in the Cabinet position, he retained the law firm of Steptoe and Johnson ("law firm"). In September of 1994, an IC was appointed to investigate the allegations. Mr. Espy resigned as Secretary of USDA in December of 1994. The Espy campaign's reports disclose payments to the law firm for legal fees totaling \$50,244: \$30,244 was paid on October 11, 1995 and \$20,000 on December 4, 1996.

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The Respondents indicate that by March of 1997, Mr. Espy had been billed an aggregate of \$316,463 for legal fees and expenses in connection with the IC's investigation. Mr. Espy was indicted on August 27, 1997. The grand jury indictment includes 39 counts, among them accepting over \$35,000 in illegal gratuities, wire fraud, mail fraud, making false statements and tampering with a witness. All 39 counts of the indictment refer to actions undertaken by Mr. Espy in connection with his position at USDA. Respondents acknowledge that \$50,244 worth of campaign funds were provided to the law firm which represents Mike Espy in the criminal investigation. They also acknowledge that as of July of 1997, the \$50,244 in campaign funds was the only amount that had been paid to the law firm.

The Respondents claim that the use of campaign funds for these legal fees was in conformance with Commission regulations, arguing that such fees would not have existed if Mr. Espy had not been a member of Congress. Respondents claim that the amount paid with campaign funds was based on an allocated estimate. They acknowledged that the Espy campaign itself was not billed for the portion of the legal fees paid with campaign funds. They indicate that in several instances the law firm invoices contain entries which state that the services relate to things such as Mr. Espy's positions "during his tenure as a congressman" or similar explicit references. However, they acknowledge that the law firm invoices do not distinguish the services rendered to Mr. Espy in his defense to allegations of wrongdoing while he was Secretary of Agriculture and those claimed to be related to his tenure in Congress. Respondents have also indicated that the idea of using campaign funds for these legal services only occurred to them after such services were already provided, that the

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allocation was a post hoc estimate and that they lack documentation which will reliably support their assertions.¹

The Respondents have presented various categories of legal fees which they contend were permissibly paid with campaign funds. These include:

- (1) research of regulatory positions espoused by Mr. Espy as a Congressman;
- (2) research of House rules;
- (3) interviews, investigative work and responses to the press and to the White House related to Mr. Espy's lease of a Jeep;
- (4) interviews of former members of Mr. Espy's Congressional office and interviews pertaining to his relationships with executives in regulated industries while in Congress;
- (5) litigation related to the IC's seeking Mr. Espy's personal diary, which allegedly contains references to matters relating to his tenure in Congress, or persons he knew while in Congress;
- (6) negotiations with the IC related to access to records from Mr. Espy's former Congressional office;
- (7) discussions with other counsel, including about services related to a separate FEC investigation of the Espy campaign (MUR 3971).

IV. ANALYSIS

We note at the outset that Mr. Espy was neither a candidate for federal office nor a federal officeholder when these legal services were provided. In fact, he had left this

¹ The respondents have also claimed that the law firm invoices and a letter from counsel at the law firm related to the use of campaign funds are protected by the attorney-client privilege and work-product doctrine, relying on Clarke v. American Commerce National Bank, 974 F.2d 127 (9th Cir. 1992). However, nothing in the Clarke decision would prevent disclosure of the type of information necessary to resolve this issue, i.e., general description of the services and the amount of the fee. Moreover, the Respondents have acknowledged that the law firm's records will offer little if any support for their claims and that there are no documents which could substantiate or explain the allocation itself.

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Congressional seat approximately one year and a half before the law firm was even retained and these fees were first incurred. In addition, all 39 counts of the indictment in the underlying criminal case relate to Mr. Espy's conduct as Secretary of Agriculture, and none of the counts relate to Mr. Espy's Congressional campaign, his conduct as a federal candidate or his execution of duties while in Congress. From publicly available information, the prosecutions brought by the IC thus far have involved activities that occurred after Mr. Espy left Congress, i.e., prosecutions of Sun Diamond Growers and Jack Williams of Tyson Foods, Inc. (for gifts allegedly given to Mike Espy while in the Cabinet) and that of Henry Espy (for activities in connection with his Congressional campaign). Indeed, the Respondents never even claim that the IC investigated Mr. Espy for actions taken in his capacity as a Congressman or a candidate.

We further note that several other factors cast a negative light upon the Respondents' claims, including the failure to create documentation that would reliably establish or explain the nature and costs of the legal services alleged to be permissible, that the decision to use these campaign funds was made after such services were rendered and that the allocation was a post hoc estimate.

More importantly, the evidence at hand indicates that most of the legal services that the Respondents admit were paid with campaign funds were provided in response to allegations of wrongdoing by Mr. Espy while he was executing his duties as a Cabinet official, not in defending his actions as a Congressman or a federal candidate. Thus, there is no evidence that Mr. Espy was investigated in his capacity as a Congressman with respect to the services identified in categories #1-#4 *supra* at page 4. Specifically, there is nothing which suggests

that Mr. Espy was investigated for his actions connected to his Congressional votes or positions (category #1), his leasing of a Jeep while he was in Congress (category #3)², his relationships with executives in regulated industries while in Congress (category #4) or any violations of law or ethical standards while he served in Congress that would require examination of House rules (category #2).

In arguing that the use of campaign funds was permissible, the Respondents claim that but for Mr. Espy's having served in Congress, the services in question would not have been provided. For example, they assert that the use of campaign funds was permissible because some of the allegations or issues in the underlying criminal case relate to persons Mr. Espy first knew while he was in Congress (industry executives), that the services related to allegations about the Jeep were properly paid with campaign funds because he first leased a Jeep when he was a member of Congress. They also claim that payment for research of House rules was permissible because Mr. Espy had been a member of Congress just prior to when the activities under investigation occurred and that he failed to appreciate the differing rules relating to the acceptance of gifts for members of Congress and members of the Cabinet.

Despite these arguments, the Respondents have failed to show that the legal services at issue would not have been necessary but for Mr. Espy's having served in Congress. Indeed, research of rules/laws related to the acceptance of gifts that were applicable during an earlier

² The Respondents indicate that part of the services related to the Jeep issue were for press statements, but because Mr. Espy was neither a candidate nor a federal officeholder at the time the services were rendered, it was not permissible to use campaign funds for such services. Cf. AO 1997-12 (Commission rules that portion of campaign funds may be used for press statements by candidate or sitting Congressman). In addition, we note that the fact that some of the legal services were in response to a White House investigation, rather than that of the IC, does not change this Section 439a analysis.

occupation, interviews of long-standing business associates and the review of the terms of an auto lease executed during some earlier employment (but which came under scrutiny only in the context of a subsequent Cabinet position) are precisely the types of services that a law firm might well deem appropriate or necessary when responding to a criminal investigation of a Cabinet official irrespective of such official's prior occupation. Thus, the same legal services may well have been deemed appropriate or necessary if, prior to his appointment to the Cabinet, Mr. Espy had been a lobbyist or a corporate executive. In short, these services were not provided in defense of Mr. Espy's conduct as a Congressman or candidate, but rather they appear to have been provided essentially in an effort to build a defense to charges of wrongdoing by Mr. Espy while he was Secretary of Agriculture. Although information about Mr. Espy's understanding of the House rules and establishing the nature of his earlier relationships with industry executives may aid in his defense to the criminal charges, there is no support for the Respondents' claim that Section 439a would permit campaign funds to be used for such a purpose. As the Commission has previously stated, campaign funds may not be used to finance a legal defense "to possible violations of law that are unrelated to campaign or officeholder status." See AO 1996-24. As these services were not provided in response to an investigation of wrongdoing by Mr. Espy while he was acting as a Federal candidate or as a member of Congress and the obligation to respond to these charges would have therefore existed irrespective of Mr. Espy's having been a candidate or member of Congress, the use of campaign funds for the services listed in categories 1-4 was in violation of Section 439a.

With respect to the legal services for litigation surrounding Mr. Espy's personal diary, (see *supra* category # 5 at page 4), although the Respondents assert that such services related

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to protecting the IC from access to "references to matters relating to his tenure in Congress," they have not even claimed that the diary relates to the time-frame when Mr. Espy served in Congress, let alone that it contains any information related to his execution of duties as a Congressman that were the subject of the IC's investigation.

Regarding category #6 (see supra at page 4), the Respondents claim that the legal services were for negotiations/discussions with the IC concerning documents relating to Mike Espy's tenure in Congress. However, there is nothing which shows that such documents related to Mr. Espy's execution of his duties while in Congress nor that they were subject to the IC's investigation.³ Accordingly, nothing has been presented which suggests that campaign funds were permissibly used for the legal services in categories #5-6.

Regarding category #7, the Respondents have claimed that the law firm has "worked with Robert Hauberg," the Espy campaign's designated counsel in MUR 3971 (now closed). They assert that the legal fees were for work provided by Steptoe and Johnson related to FEC reports filed in connection with Mr. Espy's 1990 Congressional campaign. However, the response also states that there were "numerous other conferences" with Mr. Hauberg that related in part to the FEC investigation in MUR 3971. To the extent that the law firm of Steptoe and Johnson, either directly or through Mr. Hauberg, provided legal services to Mr. Espy or his campaign related only to the investigation in MUR 3971, the use of campaign

³ In July of 1997, the Respondents provided to this Office a list of numerous documents which they claimed had been "recently reviewed by" the IC and that relate to Mr. Espy's role in Congress. The list indicates that the documents were "pulled" for the IC in June of 1997. The legal services related to the production of these documents appear to have been provided long after the payment of the \$50,244 in legal fees at issue here, and are thus not directly relevant to this inquiry.

funds would appear to have been permissible. The response, however, suggests that some of these legal services provided in conjunction with Mr. Blautberg related to other issues, perhaps aspects of the IC's investigation rather than to MUR 39771. The use of campaign funds for that portion of such services would appear to have been impermissible.

In summary, Respondents have acknowledged that they do not have records which will reliably indicate how they determined the amount of campaign funds that were used to pay these legal fees. Moreover, almost none of the legal fees at issue were provided to the law firm in defense of actions undertaken by Mr. Espy in his capacity as a Congressman or a Federal candidate. Respondents have thus violated Section 439a. For the foregoing reasons, this Office recommends that the Commission find probable cause to believe that Mike Espy, Mike Espy for Congress and Mike Espy, as treasurer, violated 2 U.S.C. § 439a.

V. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Mike Espy, Mike Espy for Congress and Mike Espy, as treasurer, violated 2 U.S.C. § 439a.

9/17/97
Date

Lawrence M. Noble by
Lawrence M. Noble
General Counsel
AAS

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STEP TOE & JOHNSON LLP

ATTORNEYS AT LAW

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MAR-4617

September 29, 1997

By Facsimile 202/219-0260 and First Class Mail

Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
Washington, D.C. 20463

Oct 1 1 13 PM '97
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Mr. Noble:

I am responding to your letter of September 17, 1997, informing me that the Commission has decided to move to the next stage of the enforcement process in connection with the Espy matter. As you may know, we are in the middle of discovery/pre-trial motions in the Espy criminal case -- a most time-consuming process. I, therefore, respectfully request a 20-day extension to consider our response to your September 17th notice.

Sincerely,

Reid H. Weingarten

RHW/pk

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX AND FIRST CLASS MAIL

October 1, 1997

Reid Weingarten, Esq.
Septon & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

RE: MUR 4617
Mike Espy
Mike Espy for Congress
and Mike Espy, as treasurer

Dear Mr. Weingarten:

This is in response to your letter of September 29, 1997 regarding the above-captioned matter. As you were informed by letter dated August 21, 1997, the Commission determined to move to the next state of the enforcement process. On September 17, 1997, this Office sent you a General Counsel's Brief in this matter. Your letter of September 29th requests an additional 20 days to respond to the Commission's notice of September 17th. Given the reason set out in your letter, this Office shall grant your request. Accordingly, your response to the General Counsel's Brief is due on October 27, 1997.

Should you have any questions, please call me at (202) 219-3400.

Sincerely,

Xavier K. McDonnell
Xavier K. McDonnell
Attorney

960460524

STEPTOE & JOHNSON LLP

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REID H. WEINGARTEN
(202) 429-6238

October 28, 1997

BY HAND DELIVERY

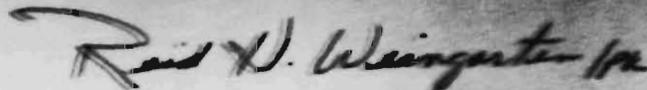
Xavier K. McDonnell, Esq.
Federal Election Commission
Suite 657
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 46177
Mike Espy for Congress

Dear Mr. McDonnell:

Enclosed please find a copy of our reply brief in connection with the above-referenced matter. Thank you again for the extension to file.

Sincerely,



Reid H. Weingarten

RHW/pk
enclosure

Oct 28 11 46 AM '97

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Mike Espy)
Mike Espy for Congress)
and Mike Espy, as treasurer)

MUR 4617

DEC 20 11 48 AM '94

BRIEF OF RESPONDENT MICHAEL ESPY

Mr. Espy's limited use of excess campaign funds to pay a portion of his legal fees in connection with an Independent Counsel ("IC") investigation did not violate the "personal use" ban of 2 U.S.C. § 439a. Mr. Espy, in good faith and in conformance with the Commission's regulations, allocated campaign funds to pay only a portion of his legal fees that was properly allocable to legal issues that arose directly from Mr. Espy's tenure as a Congressman and would not exist "irrespective of the candidate's campaign or duties as a Federal officeholder." 111 C.F.R. § 113.1(g) (1996).

I. INTRODUCTION

Mr. Espy served as a member of Congress, representing Mississippi's Second Congressional District, from 1987 to 1993. President Clinton appointed Mr. Espy as Secretary of Agriculture in January 1993, and Mr. Espy served as Secretary until his resignation in December 1994.

In July 1994, Mr. Espy retained the law firm of Steptoe & Johnson LLP (the "firm") to provide advice and representation in connection with allegations that he had accepted improper gratuities from regulated interests while serving as Secretary of Agriculture. The firm's

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representation initially involved responding to White House and press inquiries. In September 1994, a Special Panel of the U.S. Court of Appeals appointed an Independent Counsel ("IC") to investigate the allegations against Mr. Espy, and the IC commenced an extensive and lengthy investigation (the "IC investigation"). Mr. Espy was indicted on August 27, 1997.

Over the course of this lengthy investigation, Mr. Espy incurred very substantial legal fees and expenses. Although the IC's investigation and indictment focused primarily upon Mr. Espy's activities as Secretary of Agriculture, the IC's investigation, and Mr. Espy's preparation of his defense, involved extensive review and analysis of Mr. Espy's actions, policy positions and personal contacts as a member of Congress. On two occasions, in October 1995 and December 1996, Mr. Espy made a good-faith, conservative estimate of the portion of his legal fees that were attributable to review and analysis of his activities as a member of Congress. Based upon these estimates, Mr. Espy paid the firm \$30,244 on October 11, 1995, and \$20,000 on December 4, 1996, from excess campaign funds held by the Mike Espy for Congress campaign. The payments constituted only approximately one-sixth of Mr. Espy's then outstanding legal fees relating to the IC investigation.

In January 1997, the Commission informed Mr. Espy and his campaign that the Commission believed that the payment of these legal fees might constitute an improper "personal use" of campaign funds. However, Mr. Espy's use of campaign funds to pay the estimated allocated portion of his legal fees was fully appropriate under FEC regulations because the payments satisfied an obligation that would not have existed "irrespective of" Mr. Espy's service as a congressman.

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III. THE APPLICABLE LEGAL STANDARD

The Federal Election Campaign Act ("FECA") provides that excess campaign funds may be used to defray necessary expenses incurred in connection with the official's duties as a holder of Federal office, but may not be converted to "personal use." 2 U.S.C. § 439a (1994). FEC regulations define "personal use" as the use of funds "to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officer or other." 11 C.F.R. § 113.1(g) (1997) (emphasis added). Whether or not legal fees constitute "personal use" under this standard is determined on a case-by-case basis. *Id.* § 113.1(g)(1)(ii)(A).

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The FEC has on several occasions opined that the payment of legal fees from excess campaign funds was permissible. For example, in FEC Advisory Opinion 1996-24 (June 27, 1996), the Commission approved a congressman's use of campaign funds to pay legal fees incurred in responding to allegations of earlier personal wrongdoing. The Commission stated that "the use of campaign funds to pay legal expenses that would not exist absent [the individual's] candidacy or officeholder status would be permissible." The Commission recognized that "the activities of candidates and officeholders may receive heightened scrutiny and attention" that "would not exist irrespective of the candidate's campaign or officeholder status."¹¹ The Commission further stated that it would consider permitting the use of campaign funds for post-campaign legal expenses based upon "the specific purposes and circumstances of the services provided."

¹¹ See the FEC Advisory Opinion 1997-12 (August 15, 1997) ("the Commission recognizes that the activities of candidates and officeholders may receive heightened scrutiny," and "[t]he obvious need for a candidate to respond to allegations carried in the news media which result (from this elevated scrutiny) would not exist irrespective of the candidate's campaign or officeholder status").

Similarly, in FEC Advisory Opinion 1995-23 (July 20, 1995), the Commission approved a congressman's use of campaign funds to pay post-campaign legal expenses attributable to a lawsuit challenging activities allegedly engaged in during the campaign. This payment of legal fees was not a "personal use" of campaign funds because the fees were directly attributable to the individual's "status as a candidate."

In this case, a substantial portion of Mr. Espy's legal fees was directly attributable to extensive review and analysis of Mr. Espy's tenure as a congressman, and would not have been incurred absent his "duties as a Federal officer." Accordingly, the use of campaign funds to pay such legal fees was permissible.

III. ANALYSIS

A. The IC Investigation Encompassed Mr. Espy's Congressional Activities

Although the IC's three-year investigation focused primarily on Mr. Espy's activities as Secretary of Agriculture, the breadth of the IC investigation covered the entire record. The IC intensively investigated many areas of Mr. Espy's life, including Mr. Espy's activities as a member of Congress. The legal expenses that Mr. Espy incurred with respect to these activities would not have arisen absent Mr. Espy's status as a congressman.

Specifically, the IC investigated, among other things: (1) positions taken by Mr. Espy on poultry regulation, crop insurance and other agricultural issues while Mr. Espy was a congressman serving on the House Agriculture Committee; (2) industry, professional and personal contacts that Mr. Espy made while he was a congressman; (3) personnel who served on Mr. Espy's congressional staff; (4) potential violations of congressional ethical standards, and how such standards differed from those to which Mr. Espy was subject as Secretary of

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Agriculture; (5) Mr. Espy's lease of a Jeep while a congressman, and the appropriateness of his continuation of that lease after leaving Congress;² (6) Mr. Espy's travel to Mississippi as a congressman; and (7) how Mr. Espy financed his congressional campaigns.

In preparing to defend Mr. Espy, the firm conducted factual and legal research into these areas. For instance, the firm performed research regarding Mr. Espy's regulatory positions while a member of Congress, including speeches he made and legislation he introduced while in Congress. When the IC sought access to records from Mr. Espy's former congressional office, the firm negotiated with Deputy IC Ted Greenberg regarding the document review. Furthermore, the firm interviewed former members of Mr. Espy's congressional staff and/or their counsel. The firm made inquiry of many people who dealt with Mr. Espy as a congressman.

The firm also represented Mr. Espy in court proceedings relating to the IC's access to Mr. Espy's personal diary, portions of which relate to matters that first arose during his service in Congress. The firm also performed a significant amount of work relating to allegations involving Mr. Espy's lease of a Jeep while he was in Congress, including researching rules applicable to members of Congress, responding to press inquiries, reviewing lease documents, responding to the White House and interviewing members of Mr. Espy's former congressional staff.

The firm also represented Mr. Espy in connection with an FEC investigation (MUR 3971) concerning Mr. Espy's 1990 campaign. The legal fees attributable to this work were directly related to Mr. Espy's campaign and, as the General Counsel acknowledges, could

² Mr. Espy's use of a Jeep that he originally leased when he was in Congress constituted the basis for one of the counts of the IC's indictment.

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permissibly be paid by campaign funds under the FECA. See General Counsel's Brief ("GC Brief") at 8-9.

The General Counsel asserts that there is "nothing which suggests that Mr. Espy was investigated for" his actions while in Congress. GC Brief at 5-6. To the contrary, Mr. Espy has previously provided the Commission with documentation that the IC investigation encompassed Mr. Espy's tenure in Congress, in the form of an index of documents reviewed by the Independent Counsel. See Attachment A to July 17, 1997 letter from Reid Weingarten to Xavier Widdomeall ("July 17, 1997 Letter"). As the index demonstrates, the IC reviewed a large number of documents generated during the period of time that Mr. Espy served as congressman, including congressional schedules and itineraries, congressional position papers and correspondence, congressional staff assignments, congressional district reports, and legislative proposals. If Mr. Espy had not served as a congressman, he would not have incurred legal fees in connection with review of these issues -- i.e., the fees would not exist "irrespective of the candidate's campaign or duties as a Federal officeholder."² Moreover, subsequent to Mr. Espy's recent indictment, the IC provided Mr. Espy with boxes of "discovery" materials that include, as we anticipated, extensive documents generated during or relating to Mr. Espy's service in Congress, including documentation relating to the policy positions he took in Congress, the financing of his congressional campaigns, his congressional vehicle loans and his banking records while in Congress.

Although the General Counsel asserts that the IC's ultimate indictment focused upon Mr. Espy's service as Secretary of Agriculture, the IC's investigation was not so limited. At

² The General Counsel suggests that because the index postdated the payment of legal fees, the index is "not directly relevant to this inquiry." GC Brief at 3 n.8. This misses the point. The documents clearly demonstrate that the IC was investigating Mr. Espy's activities in Congress, and Mr. Espy was entitled to anticipate and prepare to defend charges relating to such activities.

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the time Mr. Espy made a good faith attempt to estimate and pay that fraction of his legal fees attributable to his tenure in Congress -- a year and a half prior to the indictment -- the IC was actively investigating issues relating to Mr. Espy's status and activities as a congressman. Given the IC's broad jurisdictional mandate, Mr. Espy had ample reason to believe that he was being investigated in part for activities while he was a congressman. As such, Mr. Espy's legal fees relating to review and analysis of these congressional activities would not have existed "irrespective of" Mr. Espy's "duties as a Federal officer."⁴

The General Counsel suggests that Mr. Espy's claim should be disallowed because Mr. Espy did not "create" documentation to support use of campaign funds at the time the services were performed. This is simply not the statutory test. If the legal fees were attributable to Mr. Espy's tenure in Congress, and eligible to be paid with campaign funds, they may be paid with campaign funds irrespective of whether the allocation was made before or after the services were rendered. Similarly, to the extent that this allocable portion of Mr. Espy's legal expenses was legitimately attributable to issues arising from his congressional tenure, his right to use excess campaign funds for such legitimate expenditures should not be affected by his ability or lack of ability to pay other legal fees from other resources. Mr. Espy did not pay all of his legal fees with campaign funds, but only a small portion of his legal fees that he believed in good faith was attributable to his service in Congress.

FEC regulations provide that campaign funds may be used to pay legal fees that would not exist irrespective of the official's duties as a Federal officeholder. 111 C.F.R.

⁴ The General Counsel suggests that review of a target's "earlier occupation" is standard in defending a criminal investigation, and that such review here is not attributable to Mr. Espy's service in Congress. However, Mr. Espy's service in Congress, which included service on the House Agriculture Committee, involved extensive activity unique to serving as a congressman that would not have existed had he been in the private sector.

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§ 113.1(g). Each of the activities discussed above in defense of Mr. Espy would not have been necessary but for Mr. Espy's status and tenure as a member of Congress, and Mr. Espy's use of campaign funds to pay an allocated portion of his legal fees for services directly related to his service as a member of Congress was permissible.

B. Mr. Espy Is Not in a Position to Waive His Attorney-Client Privilege With Respect to His Legal Bills

Mr. Espy wishes to respond to the Commission's inquiry in an open and cooperative manner. However, Mr. Espy is hampered because he cannot produce his legal bills to the Commission without waiving the attorney-client privilege. As the Commission is aware, Mr. Espy is currently under indictment and facing prosecution by the IC. Until the conclusion of his criminal case, Mr. Espy is unable to turn over his bills without severely prejudicing his defense.²

As many courts have recognized, "correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the [attorney-client] privilege." Clarke v. American Commerce Nat'l Bank, 974 F.2d 127, 129 (9th Cir. 1992); United States v. Keystone Sanitation Co., 885 F. Supp. 672, 675 (M.D. Pa. 1994); Riddell Sports, Inc. v. Brooks, 158 F.R.D. 555, 560 (S.D.N.Y. 1994).

Voluntarily producing privileged material to a government agency has the devastating effect of waiving the attorney-client and work product privileges in subsequent proceedings. For instance, in a case where a corporation had voluntarily disclosed privileged materials to the SEC, the court

² Recognizing the difficulties involved in responding fully to the Commission's inquiry prior to resolution of the IC proceeding, Mr. Espy respectfully requested a stay of the Commission's proceedings until the conclusion of the IC proceeding. See July 17, 1997 Letter. The Commission denied Mr. Espy's request.

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held that by doing so the corporation waived both the attorney-client and work product privileges and allowed discovery of such materials in a subsequent civil lawsuit. In re Subpoenas Duces Tecum, 738 F.2d 1367, 1369-75 (D.C. Cir. 1984); see also Westinghouse Elec. Corp. v. Republic of the Philippines, 9511 F.2d 1414, 1423-31 (3d Cir. 1991); In re Steinhardt Partners, 9 F.3d 230, 234-36 (2d Cir. 1993).

The Independent Counsel has been extremely aggressive in his investigation. If Mr. Espy provided his legal bills to the Commission, the IC would be likely to argue that such production constituted a blanket waiver of the attorney-client privilege. If the IC were to obtain access to Mr. Espy's legal bills, such a review would reveal defense counsel's contacts, analysis and strategy and have a material adverse effect on Mr. Espy's ability to defend himself. The stakes in the criminal proceeding are simply too high to risk a waiver by submitting Mr. Espy's bills to the Commission.

The General Counsel suggests that Mr. Espy could "resolve this issue" by providing the Commission "with a general description of the services and the amount of the fee." GC Brief at 4 n.1. In fact, Mr. Espy has already provided the General Counsel's office with specific information about relevant billing references to the extent compatible with maintenance of the attorney-client privilege. See March 7, 1997 letter from Reid Weingarten to Xavier McDonnell. The General Counsel thus appears to be taking the position that the only adequate documentation would be Mr. Espy's actual legal bills, at a time when Mr. Espy is not in a position to provide the Commission with his legal bills. See GC Brief at 4-5.

Mr. Espy believes that the firm's billing records demonstrate substantial work relating to congressional matters. Because certain of the legal services — including witness interviews and research projects — related in part to Mr. Espy's activities as a congressman and

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in part to his activities as Secretary of Agriculture, a precise allocation of time is infeasible. In estimating the amount of his legal fees directly attributable to his tenure in Congress, Mr. Espy acted conservatively and in good faith, and paid only a minor fraction of his total accumulated fees with campaign funds. As of October 11, 1995, the date of the first \$30,244 payment to the firm, Mr. Espy's total outstanding bills for legal fees and expenses were in excess of \$178,000. As of December 4, 1996, the date of the \$20,000 payment, Mr. Espy had accumulated more than \$115,000 in additional legal bills. Thus, Mr. Espy paid only approximately one-sixth of his total legal bills from his excess campaign funds.

IV. CONCLUSION

Mr. Espy has sought to comply fully with the Commission's regulations and to cooperate fully with the Commission in this proceeding. Mr. Espy made a good-faith effort to assess that portion of his legal defense fees properly allocable to issues arising from his congressional tenure and to pay only that amount from his excess campaign funds. These payments did not constitute a "personal use" of campaign funds because the legal services provided would not have been required irrespective of Mr. Espy's duties as a Federal officeholder. In sum, Mr. Espy did not violate 2 U.S.C. § 439a.

Respectfully submitted,



Reid H. Weingarten
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

Date: October 27, 1997

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
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Nov 17 9 44 AM '97

In the Matter of)
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Mike Espy) MUR 4617
Mike Espy for Congress)
and Mike Espy, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On September 17, 1997, this Office sent a General Counsel's Brief to Mike Espy ("candidate"), Mike Espy for Congress and its treasurer ("Espy campaign") (collectively "Respondents"). See General Counsel's Brief ("GC Brief" or "Brief"), incorporated herein by reference. The Brief recommends that the Commission find probable cause to believe that Respondents violated 2 U.S.C. § 439a by using campaign funds, totaling \$50,244, to pay for Mr. Espy's criminal defense to an investigation by Independent Counsel ("IC") Donald Smaltz.¹ On October 28, 1997, the Respondents submitted a Brief ("Respondents' Brief" or "Response Brief") denying the violations. Attachment 1.

II. **DISCUSSION OF RESPONSE BRIEF**

Respondents acknowledge that most of the legal fees at issue, totaling \$50,244, were incurred in response to the IC's investigation, and that all 39 counts of the criminal indictment stemming from that investigation relate to Mr. Espy's actions while he was a Cabinet official.

¹ The Commission previously attempted to settle this matter prior to a finding of probable cause, but the Respondents indicated that they did not wish to conciliate and instead requested that this matter be held in abeyance or dismissed. Attachment 2 at page 11. The Commission denied those requests on August 21, 1997. After receiving the GC Brief, the Respondents called this Office and made a verbal request for conciliation, which, under Commission procedures, could not be considered.

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Respondents also acknowledge that Mr. Espy had left Congress and ceased to be a candidate years prior to when the IC's investigation began.

The Respondents nevertheless contend that the use of the campaign funds was permissible. As in their prior responses, they assert that the campaign funds in question were used to pay for various legal services, such as research into Mr. Espy's regulatory positions and speeches, interviews of industry contacts and Congressional staff, examination of the terms of a Jeep lease and responding to proceedings or inquiries relating to the time frame when Mr. Espy served in Congress. Although the description of the legal services is essentially the same as in earlier submissions, the Response Brief more forcefully claims that the IC investigated "Mr. Espy's activities as a member of Congress." (Compare attachment 1 at 4-5 with attachment 2 at 5-8. However, nothing in the Response Brief supports that claim or otherwise contradicts the conclusion in the GC Brief that although these legal services may have touched on or related to Mr. Espy's contacts or actions while in Congress, they were essentially provided to prepare and build a defense to the IC's investigation of Mr. Espy's conduct as a Cabinet official. As we conclude in the GC Brief, providing such services would have been equally necessary irrespective of whether Mr. Espy served in Congress or in some other profession. The Respondents assert that Mr. Espy's services in Congress were "unique" and the need to review his past activities would not have been necessary in the private sector. Attachment 1 at 7, n. 2. Yet research of Mr. Espy's contacts and actions in his prior position may well have been deemed equally necessary if, for instance, Mr. Espy had previously been a lobbyist for a firm regulated by the Department of Agriculture.

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Moreover, the Respondents have not produced any evidence to support their claim that the \$50,244 in question was used for legal services related to the IC's investigation of Mr. Espy's actions as a Congressman or a candidate. The Respondents assert that Mr. Espy would like to cooperate by producing the law firm invoices, but can not do so without waiving the attorney-client privilege. Attachment 1 at 8. Yet, as the Response Brief and our prior discussions with Respondents make clear, the law firm invoices do not describe or delineate the legal services which they claim were permissibly paid with campaign funds. Attachment 1 at 9-10; Attachment 2 at 9-10. Instead, the law firm invoices make only general references to Mr. Espy's time in Congress, and do not distinguish between those services or amounts claimed to have been permissible and those that are not. Attachment 2 at 6-9. In fact, the Respondents have acknowledged that they never even considered using campaign funds until after the services were rendered.

The Respondents assert that their failure to create documentation at the time the services were rendered should not be dispositive. Attachment 1 at 7. They argue that creating contemporaneous documentation is "not the statutory test," but whether the legal fees are "attributable to Mr. Espy's tenure in Congress." *Id.* Contrary to the Respondents' assertions, the GC Brief does not state that the failure to create contemporaneous documentation is itself enough to discredit their claim, but rather that it casts doubt upon it. See GC Brief at 5. The Respondents have not only failed to present contemporaneous documentation regarding the \$50,244 in campaign funds, but have failed to produce any documentation at all. The Espy campaign has also conceded that the allocation was a post hoc estimate and that no documentation was created that might explain or verify how it was determined. In addition, as

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campaign funds have to date been the only source of payment to the law firm, it is questionable whether there was any real allocation.

In support of their claim that the IC was investigating Mr. Espy's actions in Congress, Respondents refer to a list of documents which they claim were provided to the IC. The documents appear to relate in part to the time-frame when Mr. Espy served in Congress and include apparent references to his execution of duties while in Congress. Attachment 2 at 13-20. However, there is no evidence that the campaign funds at issue were used to pay for the legal services provided in connection with the production of those documents. In fact, the Respondents never make that claim. Indeed, although the campaign funds, totaling \$50,244, were disbursed in October of 1995 and December of 1996, the documents on the list were not provided to the IC until June of 1997.²

Mr. Espy has been indicted, and Respondents are now in possession of the IC's extensive discovery materials which, they previously claimed, would "show convincingly that a substantial portion of" the fees were properly paid with campaign funds. Attachment 1 at 6; Attachment 2 at 22. Notably, the Response Brief does not provide any additional information or documents which suggest that the campaign funds in question, totaling \$50,244, were used to pay fees for such services.

The Commission's regulations provide that whether the use of campaign funds violates the personal use ban depends on whether the expense would exist irrespective of whether a person is a candidate or federal officeholder. 11 C.F.R. § 113.1(g). In addition, the regulations

² The Respondents provide no explanation about such documents or their production and how they might arguably relate to the IC's alleged investigation of Mr. Espy's execution of duties while in Congress.

provide that whether the use of campaign funds for legal fees is permissible shall be determined on a case-by-case basis. 11 C.F.R. § 113.11(g)(1)(ii)(A). If the personal use ban is to be enforceable, then those who spend campaign funds on legal fees must provide some evidence to support their claim. Given the lack of documentation or other support for the Respondents' claim, and that it appears that most of the legal services paid for with these campaign funds would have been equally necessary irrespective of Mr. Espy's having been a candidate or served in Congress, the Office of the General Counsel recommends that the Commission find probable cause to believe that Mike Espy, Mike Espy for Congress and Mike Espy, as treasurer, violated 2 U.S.C. § 439a.

III. DISCUSSION OF PROBABLE CAUSE CONCILIATION

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IV. RECOMMENDATIONS

- 1. Find probable cause to believe that Mike Espy, Espy for Congress and Mike Espy, its treasurer, violated 2 U. S.C. § 439a.
- 2. Approve the attached conciliation agreements.
- 3. Approve the appropriate letter.

11/15/97
Date

Lawrence M. Noble (LP)
Lawrence M. Noble
General Counsel

- Attachments:
- 1. Response Brief
 - 2. Prior Responses
 - 3. Conciliation Agreements

Staff Assigned: Xavier K. McDonnell



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM MARJORIE W. EMMONS/LISA DAVIS 
COMMISSION SECRETARY

DATE NOVEMBER 20, 1997

SUBJECT MUR 4617 - General Counsel's Report

The above-captioned document was circulated to the Commission
on Monday, November 17, 1997.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	—
Commissioner McDonald	<u>XXX</u>
Commissioner McGarry	—
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda for
Tuesday, December 02, 1997.

Please notify us who will represent your Division before the Commission on this
matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) NUR 4617
Mike Espy;)
Mike Espy for Congress)
and Mike Espy, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 2, 1997, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in NUR 4617:

1. Find probable cause to believe that Mike Espy, Espy for Congress and Mike Espy, as treasurer, violated 2 U.S.C. § 439a.
2. Approve the conciliation agreements attached to the General Counsel's November 14, 1997 report.
3. Approve the appropriate Letter as recommended in the General Counsel's November 14, 1997 report.

Commissioners Aikens, Elliott, McDonald, and Thomas voted affirmatively for the decision; Commissioner McGarry dissented.

Attest:

12-3-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

98043680543



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 5, 1997

Reid Weingarten, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

RE: MUR 4617
Mike Espy
Mike Espy for Congress
and Mike Espy, as treasurer

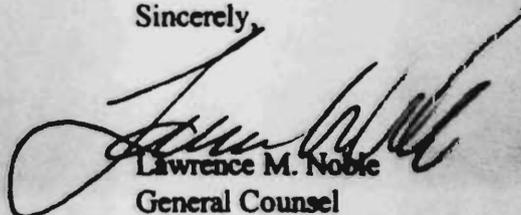
Dear Mr. Weingarten:

On December 2, 1997, the Federal Election Commission found probable cause to believe that Mike Espy, Mike Espy for Congress and Mike Espy, as treasurer, violated 2 U.S.C. § 439a in connection with the use of campaign funds for legal expenses.

The Commission has a duty to attempt to correct such violations for a period of at least 30 days and no more than 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement after 30 days, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed are conciliation agreements that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreements, please sign and return them, along with the civil penalties, to the Commission within ten days. I will then recommend that the Commission accept the agreements. Please make the check for the civil penalties payable to the Federal Election Commission. If you have any questions or suggestions for changes in the enclosed conciliation agreements, or if you wish to arrange a meeting in connection with mutually satisfactory conciliation agreements, please contact Xavier K. McDonnell, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,


Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement:

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STATEMENT OF DESIGNATION OF COUNSEL

NR 4617
NAME OF COUNSEL: Abbe David Lowell
ADDRESS: 923 Fifteenth Street, NW
Washington, D.C. 20005
PHONE: 202-662-9700

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

1/29/93
Date

Mike Espy
Signature

AGENT'S NAME: Alfonso MICHAEL (MIKE) ESPY
ADDRESS: P.O. Box 24205
JACKSON, Ms. 39225
PHONE: _____
FAX: 601 352-5533

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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March 25 1998

Mike Espy
Mike Espy for Congress
and its treasurer

MUR-4617

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On December 2, 1997, the Commission found probable cause to believe that Mike Espy ("candidate"), Mike Espy for Congress and its treasurer ("Espy campaign") (collectively "Respondents") violated 2 U.S.C. § 439a by using campaign funds totaling \$50,244 to pay for Mr. Espy's criminal defense to an investigation by Independent Counsel ("IC") Donald Smaltz. On the same date, the Commission approved conciliation agreements in settlement of this matter with Mike Espy and the Espy campaign. After several months and a change of counsel, on March 25, 1998, the Respondents submitted the attached signed agreement which this Office recommends that the Commission accept. Attachment 2. The civil penalty has not yet been received.

II. DISCUSSION OF CONCILIATION

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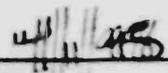
this Office recommends that the Commission accept the attached agreement and close the file in this matter.

III. RECOMMENDATIONS

- 1. Accept the attached agreement with Mike Espy, Mike Espy for Congress and its treasurer.
- 2. Approve the appropriate letter.
- 3. Close the file.

Lawrence M. Noble
General Counsel

BY: 
 Lois G. Lerner
 Associate General Counsel


 Date:

Staff Assigned: Xavier McDonnell

Attachments

- 1. Letter from counsel, dated January 30, 1998
- 2. Proposed signed conciliation agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4617
Mike Espy;)
Mike Espy for Congress)
and its treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 7, 1998, the Commission decided by a vote of 4-0 to take the following actions in MUR 4617:

1. Accept the agreement with Mike Espy, Mike Espy for Congress and its treasurer as recommended in the General Counsel's Report dated April 1, 1998.
2. Approve the appropriate letter as recommended in the General Counsel's Report dated April 1, 1998.
3. Close the file.

Commissioners Aikens, Elliott, McDonald, and Thomas voted affirmatively for the decision; Commissioner McHenry did not cast a ballot.

Attest:

4-7-98
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Thur., April 2, 1998	10:35 a.m.
Circulated to the Commission:	Thur., April 2, 1998	4:00 p.m.
Deadline for vote:	Tues., April 7, 1998	4:00 p.m.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 9, 1998

Abbe Lowell, Esquire
Brand, Lowell & Ryan
923 Fifteenth Street, NW
Washington, DC 20005

RE: MUR 4617
Mike Espy
Mike Espy for Congress
and its treasurer

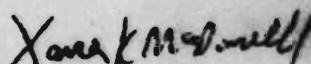
Dear Mr. Lowell:

On April 7, 1998, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. § 439a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt. Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,


Xavier K. McDonnell
Attorney

Enclosure
Conciliation Agreement

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF THE
SECRETARY

MAR 27 9 49 AM '98

BEFORE THE FEDERAL ELECTION COMMISSION

Intitle: Matter of the)
) MUR 4617
Mike Espy)
Mike Espy for Congress)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that Mike Espy and Mike Espy for Congress ("Respondents") violated 2 U.S.C. § 439a.

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding and this agreement has been entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Mike Espy was a U.S. Congressman who represented Mississippi's 2d Congressional District.

2. Mike Espy for Congress (or "Espy campaign") is the authorized political committee for former Congressman Mike Espy, within the meaning of 2 U.S.C. § 431(f).

3. In January of 1993, Mike Espy was nominated by President Clinton to serve as Secretary of the United States Department of Agriculture ("USDA" or "the Cabinet").

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4. In July of 1994, following news reports that Mr. Espy accepted illegal contributions in his capacity as secretary of the USDA, he retained the law firm of Steptoe and Johnson ("law firm"). In September of 1994, an Independent Counsel ("IC") was appointed to investigate the allegations. Mr. Espy resigned as Secretary of USDA in December of 1994;

5. On August 27, 1997, Mr. Espy was indicted for 39 counts of violations of various federal laws. All 39 counts of the indictment related to activities undertaken by Mr. Espy in connection with his capacity as Secretary of the USDA.

6. Under the Federal Election Campaign Act of 1971, as amended ("the Act"), excess campaign funds may not be converted by any person to any personal use, other than to defray the ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. 2 U.S.C. § 439a. Under the Act, the term "Federal office" includes the office of a Representative to Congress, but does not include the office of Cabinet Secretaries, including that of the Secretary of Agriculture. 2 U.S.C. § 431(3).

7. The Commission's regulations define "personal use," as the use of any funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 11 C.F.R. § 113.1(g) (February 9, 1995). With regard to legal expenses, the Commission's regulations provide for a case-by-case determination as to whether committee payments for legal fees constitute personal use. *Id.* at (1)(ii)(A).

8. The Espy campaign's reports disclose payments to the law firm of Steptoe and Johnson for legal fees totaling \$50,244. Specifically, the Espy campaign reported a payment of \$30,244 to the law firm on October 11, 1995, and \$20,000 on December 4, 1995. On January 28,

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1997, the Commission initiated an investigation to determine if the use of the \$50,244 in campaign funds paid to the law firm was in violation of the personal use ban at 2 U.S.C. § 439a.

9 The Respondents contend that the \$50,244 was only a portion of the amount Mr. Espy owed to the law firm for his defense to the IC's investigation, and that by March of 1997, the total amount owed was in excess of \$300,000. The Respondents additionally contend that the \$50,244 paid with campaign funds was a good faith estimate of the portion owed to the law firm that was for legal services that would not be necessary but for Mr. Espy having been a Congressman or federal candidate.

10 Although the Respondents contend that legal invoices and other documentation in their possession would show that the use of campaign funds was permissible, they have not produced documents related to the law firm services at issue, citing the need to preserve the attorney-client privilege in the ongoing IC criminal investigation.

11. Based upon the available evidence, the Commission found probable cause to believe that Mike Espy and Mike Espy for Congress violated 2 U.S.C. § 439a. In making its determinations, the Commission concluded that the Respondents' specific description of the legal services indicated that they were provided to assist Mr. Espy in his defense to the IC's investigation of potential violations of law while he executed his duties as a Cabinet official, not as a Congressman or Federal candidate. The Commission also considered that: (a) all 39 counts of the indictment were for violations of law by Mr. Espy while acting in his capacity as Secretary of the USDA; (b) the amount paid with campaign funds was not a precise or reliable allocation because, as the Respondents acknowledged, the use of campaign funds was not even contemplated until after the services were rendered and the \$50,244 was based only upon a post

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Now estimate undertaken by Mr. Espy, (c) the amount paid with campaign funds was the only amount paid to the law firm, and (d) the Espy campaign was never billed for the services alleged to have been rendered to it.

122. According to the Respondents, after Mr. Espy's indictment and the Commission's finding of probable cause in this matter, the IC subpoenaed former Espy campaign staff to testify before a grand jury and subpoenaed law firm records relating to legal services, which are the subject of this matter. Thus, the Respondents now contend that the IC appears to be investigating the same activities which are the subject of this matter.

V. In light of all of the foregoing and for the sole purpose of settling this matter expeditiously, Mike Espy and Espy for Congress no longer contest in this setting the Commission's findings that they violated 2 U.S.C. § 439a by using campaign funds for the legal services at issue.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Fifty Thousand Dollars (\$50,000), pursuant to 2 U.S.C. § 437g(a)(5)(A), as follows:

1. \$10,000 will be derived from Mike Espy's personal funds; and
2. \$40,000 will be derived from the Espy for Congress campaign.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matter at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

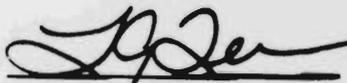
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IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

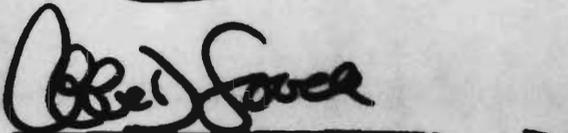
Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

4/8/98
Date

FOR THE RESPONDENTS:


Mike Espy


Name Albe D. Lovell - Counsel for
For the Committee

5-25-98
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

THIS IS THE END OF MUR # 4617

DATE FILMED 5/14/92 CAMERA NO. 1

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Date: 5/19/98
5/21/98

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Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4617

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

CLOSED

May 14, 1998

VIA FAX AND FIRST CLASS MAIL

Abbe Lowell, Esquire
Brand, Lowell & Ryan
923 Fifteenth Street, NW
Washington, DC 20005

RE: MUR 4617
Mike Espy
Mike Espy for Congress
and its treasurer

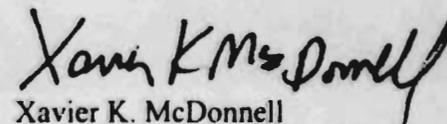
Dear Mr. Lowell:

On April 7, 1998, the Federal Election Commission and Mike Espy, Mike Espy for Congress, and its treasurer ("your clients") entered into a conciliation agreement in settlement of violations of 2 U.S.C. § 439a. According to the agreement, Mike Espy was to pay \$10,000 with his personal funds and Espy for Congress was to pay \$40,000. The conciliation agreement provided that the civil penalties were due within 30 days of execution of the agreement.

On May 11, 1998, your assistant called this Office and stated that your clients would attempt to make the payments this week. As the agreement was executed on April 8, 1998, the payments are already overdue. Please be advised that, pursuant to 2 U.S.C. § 437g(a)(5)(D), violation of any provision of the conciliation agreement may result in the institution of a civil suit for relief in the United States District Court. Thus, absent prompt payment by your clients, this Office will be recommending that the Commission institute a civil suit for relief.

To speak to me about this matter, you may call (202) 694-1650.

Sincerely,


Xavier K. McDonnell
Attorney

9804360861

FEDERAL ELECTION COMMISSION

MAY 19 14 12 PM '98

BRAND, LOWELL & RYAN

A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

CLOSED

**CONFIDENTIAL -
SUBMITTED FOR SETTLEMENT PURPOSES ONLY**

May 19, 1998

MAY 20 3 12 PM '98

HAND DELIVERED

Xavier K. McDonnell, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

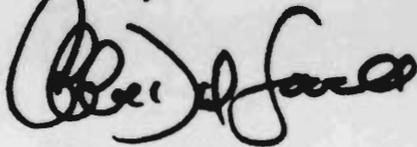
Re: **MUR 4617**

Dear Mr. McDonnell:

Enclosed please find two checks written to the FEC as payment by Mr. Espy and the Espy for Congress Campaign as part of the resolution of this matter.

Thank you for your attention and consideration.

Sincerely,



Abbe David Lowell

RECEIVED
FEDERAL ELECTION
COMMISSION OFFICE
ACCOUNTING
MAY 20 9 00 AM '98

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THE BACK OF THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED IN A SPECIAL WHITE INK.

OFFICIAL CHECK

HOLD THE DOCUMENT AT A SMALL ANGLE TO SEE THIS SECURITY FEATURE.



DEPOSIT GUARANTY NATIONAL BANK

406796135

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Remitter DGNB - Mike Espy for Congress Committee Date May 18, 19 98

Pay to the Order of Federal Election Committee \$ **40,000.00**

D.G.N.B. \$ 40000 DOLS 00 CTS

DRAWER DEPOSIT GUARANTY NATIONAL BANK

Registered Virginia Upm

Authorized Signature Michele J. Maloney
Michele J. Maloney

ISSUED BY INTEGRATED PAYMENT SYSTEMS INC. 1000 ...
TO CITIBANK (NEW YORK STATE) BURT A.D. NY

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MIKE ESPY
3 MORNING BREEZE CT
SILVER SPRING, MD 20904

CMA Cash Management Account

209

5/15 1998

25 80 440

PAY TO THE ORDER OF FEDERAL ELECTION COMMISSION \$ 10,000.00

Ten thousand and no DOLLARS

BANK ONE Merrill Lynch

BANK ONE, 600 ONE COLUMBUS PK
COLUMBUS, OH 43271

MEMO spil fine

Mike Espy





FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

CLOSED

May 20, 1998

MAY 20 2 12 PM '98

TWO WAY MEMORANDUM

TO: OGC Docket
FROM: Rosa E. Swinton *RES*
Accounting Technician
SUBJECT: Account Determination for Funds Received

We recently received a check from **Mike Espy for Congress Committee**, check number **406796135**, dated **May 18, 1998**, for the amount of , **40,000.00**. A copy of the check and any correspondence is being forwarded. Please indicate below which a account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

TO: Rosa E. Swinton Leslie D. Brown
Accounting Technician Disbursing Technician
FROM: OGC Docket */rd*
SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$40,000 the MUR Case number is 4619 and in the name of Mike Espy for Congress Comte. Place this deposit in the account indicated below:

- Budget Clearing Account (OGC), 95F3875.16
- Civil Penalties Account, 95-1099.160
- Other: _____

Retha L. Nixon
Signature

5-20-98
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

May 20, 1998

TWO WAY MEMORANDUM

TO: OGC Docket
FROM: Rosa E. Swinton *RES*
Accounting Technician
SUBJECT: Account Determination for Funds Received

We recently received a check from **Mike Espy for Congress Committee**, check number **406796135**, dated **May 15, 1998**, for the amount of **10,000.00**. A copy of the check and any correspondence is being forwarded. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

=====

TO: Rosa E. Swinton Leslie D. Brown
Accounting Technician Disbursing Technician

FROM: OGC Docket */rd*

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$10,000.00, the MUR/Case number is 4067 and in the name of Mike Espy. Place this deposit in the account indicated below:

- Budget Clearing Account (OGC), 95F3875.16
- Civil Penalties Account, 95-1099.160
- Other: _____

Retha L. Nison
Signature

5-20-98
Date

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