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June 18, 2001

Mr. Mark J. Langer
Clerk
United States Court of Appeals for the
District of Columbia Circuit
Washington, D.C. 20001-2866

**Re: *Independent Counsel Report re Secretary Espy – Submission on Behalf of
Steven B. Carosso***

Dear Mr. Langer:

We appreciate the opportunity to review relevant portions of the Final Report of Independent Counsel Smaltz prior to publication. We respectfully request that the Report be modified to incorporate the proposed changes attached to this letter. We also request that this letter be included in the appendix to the Report so that the public may have a fair and accurate understanding of the events.

Mr. Carosso, who was formerly with Smith Barney, was never charged or sanctioned in connection with the Espy Independent Counsel investigation. The Final Report does, however, make a number of references to him, some of which are in error or otherwise fail to state his side of the story.

The Final Report states (p. 129) that the Office of Independent Counsel ("OIC") declined to pursue Mr. Carosso because, *inter alia*, of credibility questions surrounding key witnesses and conflicting evidence surrounding key events relating to the dealings of Smith Barney and Oglethorpe Corp. with the Department of Agriculture and other government agencies. Nevertheless, the Final Report (generally at pp. 123-128) makes allegations in a manner that implies that those allegations are proven facts. But the facts relating to the alleged provision of a 1994 Super Bowl ticket to Secretary Espy always have been very much in dispute.

I. *Carosso Did Not Know that O'Bannon Intended to Provide Secretary Espy With a Ticket to the 1994 Super Bowl*

The Final Report essentially contends that Carosso and Smith Barney provided Super Bowl tickets to Michael O'Bannon of EOP knowing that they were to be given to Secretary Espy. This is false and the Report should at least refer to the consistent denials of Carosso and Smith Barney.

There is no dispute that Michael O'Bannon solicited and received three 1994 Super Bowl tickets from Oglethorpe Corp. and Smith Barney. Although the ultimate price of the tickets was higher than normal entertainment expenditures, there was nothing unusual about a consultant seeking entertainment from an investment banker. Investment bankers routinely provide clients and consultants with tickets to theater and sporting events. Because the request for tickets came so close to the time of the game, however, Carosso had to pay a premium for the tickets.

Carosso consistently has denied, however, that he or anyone else at Smith Barney ever had any knowledge that O'Bannon intended to provide any tickets to Espy. It was well known at the time that Espy had made prior arrangements to attend the Super Bowl. Indeed, it was the fact of Espy's previously arranged trip to Atlanta for the purpose of attending the Super Bowl that made the meeting with Oglethorpe a possibility in the first place. The parties also were aware that Espy was not attending the game alone, but had received tickets for others in his party. Thus, there was no reason for Carosso to know or to even suspect that any ticket provided by Smith Barney to O'Bannon would be given to Espy or anyone in Espy's party. In short, Carosso believed that he was providing the tickets for O'Bannon's personal use.

II. *Changes to the Bowne Invoices Were Unrelated to Espy*

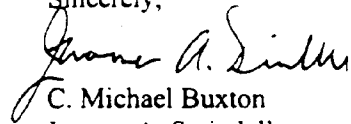
Carosso consistently has denied ever receiving the March 1, 1994 invoice from Bowne containing the reference to "Super Bowl tickets." There is no evidence of what actually happened to that invoice. Carosso does not dispute that later in June 1994, he directed Bowne to change the invoice he had received. This change, however, was wholly unrelated to Espy. The sole reason for the change was to expedite the internal processing of a legitimate invoice that was now six months past due. Although, as discussed above, providing entertainment for consultants is something that is done in the normal course of business, the price of the late-acquired Super Bowl tickets was significantly higher than normal entertainment events. Given the six-month delay in paying Bowne, Carosso decided that the more expedient course of action was to provide a description that would get the bill paid quickly. There simply was no connection to Espy.

III. *Espy Was Acquitted of Charges Relating to the Super Bowl Ticket*

Finally, it must be remembered that the jury repudiated the OIC's case and acquitted Espy of all charges, including charges related to the 1994 Super Bowl ticket. This fact alone should compel the OIC to write its Final Report with an emphasis on what was alleged and refrain from reciting allegations as if they were admitted, undisputed, or proven in a court of law. This is particularly true when the reputations of uncharged individuals, such as Mr. Carosso, are at stake.

Thank you for the opportunity to make these comments.

Sincerely,



C. Michael Buxton
Jerome A. Swindell

Attorneys for Steven B. Carosso

Proposed Changes to Final Report

I. Page 114, Paragraph 1

The fourth sentence should be modified as follows: "At the same time, ~~Smith Barney and EOP solicited things of value from Smith Barney facilitated Espy's receipt of things of value, specifically a ticket to the January 1994 National Football League Super Bowl, that eventually was given to Espy.~~"

II. Page 120, Paragraph 1

After the third sentence, the following should be added: "Oglethorpe and Smith Barney asserted that they understood that the tickets were for O'Bannon and did not know that O'Bannon intended to provide any tickets to Espy."

III. Page 123, Paragraph 2

The first sentence should be modified as follows: "~~In concert with Oglethorpe and Smith Barney,~~ EOP also gave Espy a 1994 Super Bowl ticket that EOP obtained from Oglethorpe and Smith Barney."

IV. Page 124, Paragraph ending at top of page

After the last sentence of footnote #44, the following should be added: "Smith Barney and Carosso denied that they were ever told that the ticket was intended for Espy."

V. Page 125, Paragraph 2

After the last sentence, the following should be added: "Carosso denies that he received the first invoice from Bowne, dated March 1, 1994, and asserts that changes to later Bowne invoices were for reasons unrelated to Espy."

VI. Page 125, Paragraph 3

The first two sentences should be modified as follows: "According to D'Amico, on June 6, 1994, Carosso instructed him ~~D'Amico~~ to delete the reference to Super Bowl from Bowne's invoice to Smith Barney. As a result of Carosso's alleged instruction, D'Amico completed an "Invoice Inquiry", an internal Bowne form, to change the description of the invoice."

VII. Page 126, Paragraph 2

The fourth sentence should be the beginning of a new paragraph and be modified as follows: "In a later interview, Carosso claimed that the tickets were for O'Bannon, that he did not know of O'Bannon's intent to provide any tickets to Espy, that he never saw the first invoice from Bowne, and that the change in the invoices had nothing to do with Espy."

VIII. Page 129, Paragraph 3

The first sentence should be modified as follows: "Oglethorpe (through the acts of its principals) and Carosso provided to O'Bannon the Super Bowl ticket that O'Bannon later gave to Espy participated in getting the Super Bowl ticket to Espy and in altering the Bowne invoices. Carosso attempted to conceal the purchase of the tickets, but denies that it had anything to do with Espy."

IX. Page 316, Paragraph 1

The second sentence should be modified as follows: "The factual recitation alleged that detailed how Smith Barney on behalf of its client Oglethorpe Power Corporation arranged to give Espy a National Football League Super Bowl ticket at a time when Oglethorpe sought and received Espy's support in its attempt to have the federal government forgive prepayment penalties Oglethorpe would have had to pay if it retired a multi-billion-dollar loan the company had received from a federal agency."