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UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
APR 12 2001
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ATTORNEYS AT LAW
ROBERT S. STRAUSS BUILDING
NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 887-4000
FAX (202) 887-4288
www.ahkgump.com
DIRECT DIAL NUMBER (202) 887-4388
E-MAIL ADDRESS

FILED APR 12 2001

Special Division

RIYADH (AFFILIATE)

April 12, 2001

UNDER SEAL

VIA HAND DELIVERY

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

Re Division No 94-2
Alphonso Michael (Mike) Espy

Dear Mr. Langer:

I am in receipt of your letter of March 16, 2001 and the Order of the Court of the same date.

On March 23, 2001 I examined portions of the report in which I was mentioned. The Appendix B at page 3 indicates that a former client, Richard Douglas, was asked whether I leaked to the press Grand Jury matters under seal and reports that Mr. Douglas refused to answer the question claiming attorney-client privilege. Not surprisingly, the assertion by the Independent Counsel that I leaked Grand Jury matters to the press is false. I did not possess Grand Jury matters under seal and did not violate the seal of the District Court.

I have enclosed a letter from Elliot Peters, Esquire who represented Mr. Douglas at the time of his questioning by the Independent Counsel. His letter accurately portrays the context and circumstances of the questioning of Mr. Douglas and exposes the obvious distortions in the Appendix. I request that Mr. Peters' letter be made part of the record and the Report.

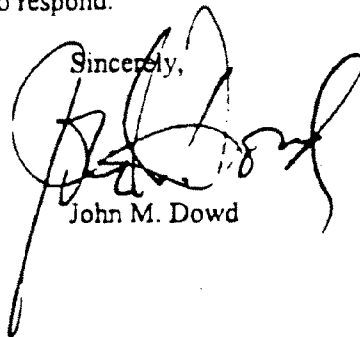
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This specious effort to accuse me of wrong doing smacks of retribution against an advocate who called into question, on many occasions, in court filings and letters to the Attorney General the abusive tactics and conduct of this Independent Counsel and his Chief Deputy.

I thank the Court for the opportunity to respond.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Dowd". The signature is stylized with large loops and a long vertical stroke extending downwards from the bottom left.

John M. Dowd

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
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LAW OFFICES
KEKER & VAN NEST
L.L.P.
710 SANSOME STREET
SAN FRANCISCO, CA 94111-1704
TELEPHONE (415) 391-5400
FAX (415) 397-7188

ELLIOT R. PETERS
(415) 676-2273
erp@kvn.com

April 10, 2001

UNDER SEAL

VIA FEDERAL EXPRESS

John Dowd, Esq.
Akin, Gump, Strauss, Hauer & Feld
1333 New Hampshire Blvd., N.W.
Washington, D.C. 20036

Re *United States of America v. Richard Douglas*

Dear John:

I have been made aware of the language contained in Appendix B on page 3, footnote 2 of the Draft Report of the Independent Counsel (Espy) regarding questioning of Mr. Douglas regarding "leaks by his former counsel John Dowd to the press of grand jury matters under seal."

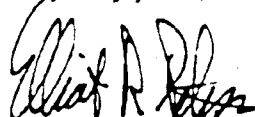
I was present during debriefings of Mr. Douglas conducted by Mr. Smaltz and his representatives. I recall Mr. Douglas being asked what he knew about the content of certain newspaper articles discussing the Espy investigation. I also recall Mr. Douglas being asked specifically whether he had had any conversations with his attorneys regarding these newspaper articles. At that time I instructed Mr. Douglas and the questioners that Mr. Douglas would not effectuate any waiver of the attorney-client privilege and that I would not permit him to discuss any conversations he had had with his counsel or any information he had received from his counsel during the course of a privileged communication. I then invited the questioners to ask Mr. Douglas what unprivileged information he had regarding the newspaper articles at issue. It is my best recollection that Mr. Douglas replied that he had no such information.

To the extent that the wording of the language contained in Appendix B on page 3, footnote 2, suggests that Mr. Douglas gave, or that I am aware of, any information which would fairly permit the Independent Counsel to suggest that there were any "leaks" by you or members of your firm, or even that you had access to "grand jury matters under seal" I do not believe such a suggestion has a factual basis, or is at all fair. It appears to me, for what it is worth, that the

language in the report has been carefully crafted to suggest -- incorrectly and unfairly -- that there were leaks of grand jury matters under seal. I am not aware of any factual basis for such a suggestion. Nor do I believe it is fair or proper to seek to draw any inferences from someone's valid assertion of a privilege.

I hope that the foregoing is helpful. Please contact me if I can provide any further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elliot R. Peters". The signature is stylized and somewhat cursive.

ELLIOT R. PETERS

ERP:aap

1 recommendation required the Independent Counsel's determination "in his sole and unfettered
2 discretion, that Richard Douglas has provided substantial assistance to the investigation and
3 prosecution undertaken by this office, and [that] Richard Douglas has fully complied with the
4 understandings specified in [the Plea] Agreement" *Id.* The government cannot make such a
5 recommendation. Rather, the view of the government is that the Court should sentence Mr
6 Douglas to six months incarceration. For the Court's consideration, this memorandum provides
7 the reasons for the government's decision.

8 As a threshold matter, Mr. Douglas met with interviewers on the occasions requested by
9 the government, at which times he was given letters of immunity (and, in the Grand Jury,
10 statutory immunity) and responded to questions.²

11 Where Mr. Douglas has failed to fully cooperate is in the crucial area of completely and
12 truthfully responding to all questions. For whatever reason, Mr. Douglas's testimony has been
13 lacking in certain meaningful particulars.³

14 There are two primary problems with Mr. Douglas's testimony. First, he purported to tell
15 the government about the involvement of certain government officials with a Napa Valley winery.
16 He disclaimed any knowledge of his own involvement with that winery in receiving wine in
17 October, 1993, that he requested for and on behalf of Secretary Espy and was delivered to him.
18 In that regard, Mr. Douglas's testimony was not truthful and there is independent evidence that

19
20 ² Mr. Douglas met with representatives of the Office of Independent Counsel on March
21 16, 1998, on March 30 and 31, 1998, on May 6, 1998, and on July 15, 1998. Pursuant to
22 subpoena and an immunity order compelling his testimony, Mr. Douglas appeared in the Grand
23 Jury on July 16, 1998. To the extent that the government requested his appearance, Mr. Douglas
24 has fully complied with the terms of the Plea Agreement. Similarly, pursuant to grants of
25 immunity, Mr. Douglas has responded to all questions put to him by the government, with the
26 single exception of questions put to him regarding leaks by his former counsel, John Dowd, to the
27 press of grand jury matters under seal. With respect to those questions, Mr. Douglas asserted
28 attorney-client privilege. With regard to the issue of the source of the NBA basketball tickets that
are the subject of the second false statement alleged in the criminal information, however, Mr.
Douglas did waive his attorney-client privilege so that the government could question Mr.
Douglas's original counsel, Fred Fielding.

³ In part, the government has been able to corroborate information that Mr. Douglas has
provided and, in part, Mr. Douglas has admitted culpability for events that he could have denied.
For example, Mr. Douglas admitted his involvement in the James Lake contribution scheme, of
which the jury found him not guilty at trial.