



## Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 12, 2001 United States Court of Appeals  
For the District of Columbia Circuit

FILED JUN 12 2001

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

Special Division

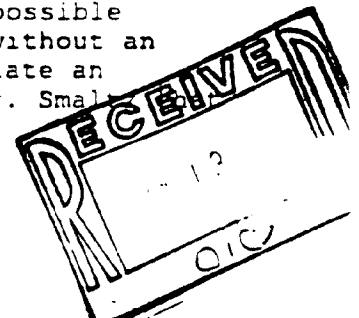
UNDER SEAL

Dear Mr. Langer:

This is in response to your letter of March 16, 2001, informing me that the Court, Division for the Purpose of Appointing Independent Counsels, had issued an order authorizing me to examine those portions of Independent Counsel Donald C. Smaltz's Final Report in Division No. 94-2, *In Re: Alphonso Michael (Mike) Espy*, that mentioned my name and to submit comments for possible inclusion in an appendix to that Report. My comments follow.

On August 6, 1998, Mr. Smaltz wrote to former Attorney General Janet Reno criticizing a decision I had made, when I served in the Department of Justice's Office of Professional Responsibility (OPR), not to pursue a complaint he had made to her. The complaint pertained to comments that appeared in the *New York Times* and that were attributed to senior Department of Justice officials. The comments were critical of Mr. Smaltz and other independent counsels.

On November 16, 1998, Attorney General Reno replied to Mr. Smaltz's letter. She wrote that although she recognized that he was dissatisfied with my decision, the Office of Professional Responsibility's review of his complaint and its conclusions were consistent with Department of Justice practice, that is, that OPR's investigative authority is premised on the possible violation of specific rules of conduct and that, without an allegation of such a violation, OPR does not initiate an investigation. Attorney General Reno also told Mr. Smaltz



she had found the comments in the *New York Times* distressing and had taken steps to let her senior staff know of her disapproval of the comments and of the necessity to avoid such comments in the future.

My earlier letter to Mr. Smaltz had specifically told him that he should not draw from OPR's decision not to initiate an investigation into his allegations the conclusion that OPR found the comments in the *New York Times* to be appropriate. Inappropriate or unwise comments do not, however, automatically merit the initiation of an inquiry by an investigative body to find and discipline those who made the comments. Particularly when an insufficient predicate has been offered as the basis for initiating such an inquiry, officials have an obligation to refrain from directing such action, no matter how strongly or vociferously a dissatisfied complainant may disagree. In this instance, Attorney General Reno admonished her senior staff regarding the need to avoid any such statements to the media about independent counsels in the future. Official action -- measured and sufficient to deal with the complained of conduct -- was taken by Attorney General Reno.

Respectfully submitted,



Richard M. Rogers  
Senior Counsel to the  
Assistant Attorney General