

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA )

v. )

McDONNELL DOUGLAS )  
CORPORATION and DOUGLAS )  
AIRCRAFT COMPANY, )

Defendants )

Criminal No. 99-0353(PLF)

**REPORT # 2 OF THE SPECIAL MASTER**  
**[November 1, 2001]**

Pursuant to the Order of Reference to Special Master issued by the Court on July 2, 2001, the Special Master hereby files this Report to advise the Court of the status of the proceedings before the Special Master.

**I. Motions Ruled Upon in the Past Thirty Days**

***A. Memorandum Opinion and Order #4 of the Special Master***

On October 30, 2001 the Special Master issued Memorandum Opinion and Order #4 denying the **Motion of McDonnell Douglas Corporation and Douglas Aircraft Company to Compel Production of Information Regarding Altered Documents**. In the Memorandum Opinion, the Special Master:

1. indicated that there was not a sufficient basis for the relief requested by Defendants, and
2. ordered the Government, in accordance with its own suggestion, to produce a list of the exhibits that the Government intends to use in its case-in-chief to the Defendants at a date to be set by the Court.

The purpose of this Order to the Government was to permit the parties to resolve any disputes relating to authentication that may arise from the use of documents that contain notations, alterations, highlighting, translations, or other changes from the original documents, well in advance of the start of the trial.

***3. Memorandum Opinion and Order #5 of the Special Master***

On October 30, 2001 the Special Master issued Memorandum Opinion and Order #5, denying the **Motion of McDonnell Douglas Corporation and Douglas Aircraft Company to Compel Compliance with Special Master Order #1**, which granted in part and denied in part Defendants' Motion for a Bill of Particulars.

***4. Memorandum Opinion and Order #6 of the Special Master***

On October 31, 2001 the Special Master issued Memorandum Opinion and Order #6. Defendants filed a **Motion to Amend Special Master Order #3**, which set forth procedures for the parties to follow when making and responding to filings made pursuant to Section 4 of the Classified Information Procedures Act. Douglas requested that Order #3 be amended to provide the following:

**IT IS FURTHER ORDERED** that the classification, declassification and downgrading of classification of all information considered in connection with, and pleadings under, Section 4 of the Classified Information Procedures Act shall be in

compliance with the requirements of Executive Order 12958 and all applicable regulations, and all pleadings under the Classified Information Procedures Act, and all documents that are the subject of such pleadings, be subjected to classification review by the originating agency, pursuant to applicable regulations and Executive Orders, to determine if the information may be declassified or have its classification downgraded.

The Government did not file an Opposition Memorandum within the requisite time period set forth in LCrR 47.1, and Douglas filed a **Motion to Grant Its Motion to Amend as Conceded**. The Special Master therefore granted the Motion to Amend as conceded.

## **II. New Motions Filed With the Special Master In the Past Thirty Days**

On October 5, 2001, the Government filed Motion to Extend Time to produce to Defendants the materials identified in Special Master Memorandum Opinion and Order #2 (discovery order). After consultation between the parties, Defendants indicated that they would not oppose the Motion to Extend Time if the Government agreed to search for and produce documents in discovery on a rolling basis and the tasking letters that the Government sent to the agencies to locate discoverable material would be produced by October 30, 2001 as set forth in Order #2. The Special Master granted the Government's Motion for Extension of Time on October 10, 2001.

## **III. Other Matters**

On October 30, 2001, the Government submitted *in camera* and pursuant to Memorandum Opinion and Order #2, the discovery tasking letters issued by the prosecution to the various governmental agencies. The Special Master currently is in the

process of reviewing these letters to determine whether they sufficiently encompass the discovery requests made by Douglas and comply with Brady and Fed. R. Crim. P. 16.

Date:

Respectfully submitted,

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Hon. Richard A. Levie (Ret.)  
Special Master

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