

United States Court of Appeals  
For the District of Columbia Circuit

UNDER SEAL

FILED JUN 18 2001

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BY HAND DELIVERY

Mark J. Langer, Clerk  
United States Courts of Appeals  
District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue N.W.  
Washington, DC 20001-2866

Re: Comments of Archibald R. Schaffer, III, to the Final Report  
issued by Independent Counsel in the Espy Matter

Dear Mr. Langer:

Pursuant to the order issued under seal on March 16, 2001, by the United States Court of Appeals for the District of Columbia Circuit, this letter sets forth the comments of Archubald R. Schaffer, III, to the Final Report issued by Independent Counsel Donald C. Smaltz in the matter In Re Alphonso Michael Espy. Mr. Schaffer was indicted by Independent Counsel on various offenses relating to the alleged provision of gratuities by Tyson Foods, Mr. Schaffer's employer, to then Secretary of Agriculture Alphonso Michael Espy.

Mr. Schaffer comments to correct a repeated — and fundamental — error in the Final Report: that he was finally "convicted" of a crime. See e.g., Final Report at pp. 6, 352. Surprisingly, the nearly four-hundred-page Final Report omits any mention of this Court's en banc opinion concluding that because the appeals process had been terminated prematurely by President Clinton's pardon of Mr. Schaffer, the Independent Counsel was simply "wrong" in advancing the "odd suggestion" that "Mr. Schaffer's conviction is established as a matter of law." United States v. Schaffer, 240 F.3d 35, 38 (D.C. Cir. 2001) (en banc) (per curiam). Thus, because "[f]inality was never reached on the legal question of Mr. Schaffer's guilt," the en banc Court "vacate[d] all opinions, judgments, and verdicts of this court and the District Court relating to the Meat Inspection Act charge," the only charge upon which Mr. Schaffer had not been acquitted. On February 6, 2001, a panel of this Court denied as moot Mr. Schaffer's motion to remand the case to determine whether Meat Inspection Act charge should stand because, the

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panel explained, the en banc Court had “vacated ‘all opinions judgments, and verdicts . . . of the District Court relating to the Meat Inspection Act charge.’” United States v. Schaffer, Appeal Nos. 00-3112, 00-3117 (D.C. Cir. Feb. 6, 2001). On February 7, 2001, the District Court, on explicit instruction from the en banc Court, dismissed the case against Mr. Schaffer as moot, stating that “[n]o further action appears necessary to vacate the ‘opinions, judgments and verdicts’ of this Court as they were all vacated by operation of the Court of Appeals order.” United States v. Schaffer, Cr. No. 96-314 (D.D.C. Feb. 7, 2001).

In light of the fact that the Final Report erroneously states that Mr. Schaffer was finally convicted of a crime — and omits to mention three orders, including an en banc opinion and order of this Court, that demonstrate the contrary — Mr. Schaffer respectfully requests that the Division for the Purpose of Appointing Independent Counsels, pursuant to 28 U.S.C. § 594(h)(2), exercise its discretion to include these comments in an appendix to the Final Report.

Sincerely,



William H. Jeffress, Jr.

Counsel for Archibald R. Schaffer, III

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