

FOR DISTRICT OF COLUMBIA CIRCUIT
MAY 21 2001
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United States Court of Appeals
For the District of Columbia Circuit

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Special Division

Via First Class Mail

Mark J. Langer, Clerk
United States Court of Appeals for the
District of Columbia Circuit
United States Courthouse
3rd & Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re. In re Alphonso Michael (Mike) Espy

Dear Mr. Langer:

On behalf of my clients William D. Smithburg and the Quaker Oats Company, I have reviewed those portions of the Final Report of Independent Counsel Donald C. Smaltz, Esq. that were made available pursuant to 28 U.S.C. § 594(h)(2) and the March 16, 2001 Order of this Court. Pursuant to the above-cited statutory authority and Order, I offer the following written comments and requests on behalf of my clients. We urge that particular portions of the Report be clarified and modified as set forth below.

Although we request that each of the proposed modifications is incorporated in the body of the Report and not merely added as an appendix thereto, we are most particularly concerned about the inaccurate statement (at pp. 129-33) that the OIC "conferred immunity upon Mr. Smithburg to secure his testimony before the grand jury." This simply is not true; immunity was neither conferred nor requested. The inaccurate suggestion that Mr. Smithburg sought immunity creates an inappropriate and unfair impression that Mr. Smithburg was in any fashion concerned about fully cooperating with the OIC investigation and voluntarily providing testimony as requested. This inaccuracy is particularly troubling in view of Mr. Smithburg's long-established prominence and well-developed reputation for impeccable integrity within the national business community. Consequently, we urge most strenuously that this unfair and inaccurate statement be deleted from the body of the Report.

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Our comments and proposed clarifications to the sections of the Report that we were permitted to review are as follows:

1. pp. 129-33: The OIC Report states that, at a June 3, 1993 dinner in Washington, D.C., Messrs. Molpus, Smithburg and Espy discussed "the food processing and manufacturing business in general *and Quaker Oats in particular*." During his testimony and government interviews, Mr. Smithburg consistently stated that he has no recollection of discussing any aspect of Quaker Oats' business with Secretary Espy during their June 3, 1993 dinner with Mr. Molpus in Washington, D.C. We request that the OIC Report be modified to reflect that Mr. Smithburg has no recollection of discussing Quaker Oats at the dinner meeting with Secretary Espy.
2. pp. 129-33: At the conclusion of the section captioned "Prosecution Decisions", the OIC Report states that the "OIC thereafter *conferred immunity* upon Smithburg to secure his testimony before the grand jury." This is inaccurate. Mr. Smithburg neither requested nor received immunity at any time during the OIC investigation. Mr. Smithburg voluntarily appeared and provided testimony, both before the grand jury and at the trial of Secretary Espy, pursuant to duly-issued subpoenas. We request that the OIC Report be corrected and that this inaccurate sentence be deleted from the Final Report.
3. pp. 129-33: The Report fails to mention that Mr. Smithburg consistently advised the OIC, as he testified at Secretary Espy's trial, that Mr. Smithburg did not believe there was anything improper about complying with Secretary Espy's request for the basketball tickets. We request that the Report be modified to include this important aspect of Mr. Smithburg's testimony.
4. pp. 228, 251, 283, 286, 288-89: At several points in the OIC Report, the Report states that the basketball tickets were provided by or received from Quaker Oats. This is incorrect. As stated elsewhere in the Report, the basketball tickets were provided by Mr. Smithburg, not by Quaker Oats. The two tickets provided to Secretary Espy were Mr. Smithburg's personal tickets, which he himself purchased and which were not expensed to Quaker Oats. We ask that the OIC Report be corrected, at each of the cited pages, to reflect that the tickets were provided by or received from Mr. Smithburg personally, as opposed to Quaker Oats.

On behalf of Mr. Smithburg and Quaker Oats, I thank you in advance for your consideration. Please advise me as appropriate with respect to any determinations made with respect to the proposed modifications to the Report.

Very truly yours,



Mark D. Pollack

cc: William D. Smithburg
Michael T. Welch, Esq.