

THE TYSON STORY: AN UPDATE

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In its Winter 2000 edition, the *Drake Journal of Agricultural Law* (“*Journal*”) published *The Tyson Story: Building an Effective Ethics and Compliance Program*.¹ As the article detailed, Tyson Foods’ entertaining of former United States Secretary of Agriculture, Mike Espy (“Espy”), resulted in the company’s indictment and subsequent guilty plea to one count of giving a public official an illegal gratuity.² In addition to paying a multimillion dollar fine, the company received four years probation.³ A condition of the probation required Tyson Foods to establish an ethics department and a corporate code of conduct.⁴

Two persons associated with Tyson Foods were indicted and subsequently prosecuted by Independent Counsel, Donald Smaltz. Jack Williams (“Williams”), a Tyson Foods’ lobbyist, was acquitted of improperly giving gifts to Secretary Espy. He was, however, convicted of making false statements to federal agents who investigated the Espy matter.⁵ Williams was fined five thousand dollars (\$5,000).⁶

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1. See generally John D. Copeland, *The Tyson Story: Building an Effective Ethics and Compliance Program*, 5 DRAKE J. AGRIC. LAW 305 (2000) (explaining why and how to build an effective ethics and compliance program, specifically Tyson’s compliance program).

2. See *United States v. Tyson Foods, Inc.*, Case No. 97-0506, Judgment in a Criminal Case, at 1 (D.D.C. Jan. 12, 1998); see also Copeland, *supra* note 1, at 306.

3. See *Tyson Foods, Inc.*, Case No. 97-0506, Judgment in a Criminal Case, at 2; see also Copeland, *supra* note 1, at 306.

4. See Copeland, *supra* note 1, at 306.

5. See *United States v. Williams*, 29 F. Supp.2d 1, 2 (D.D.C. 1998).

6. See *id.*, see also *United States v. Schaffer*, No. 98-3126 (D.D.C. 1999) available at <<http://www.cadc.uscourts.gov/common/opinions/199907/98-3123a.txt>> (last visited Oct. 24, 2001); Jane Fullerton, *Tyson Exec Schaffer Offers Espy as Witness, Wants New Trial*, ARKANSAS DEMOCRAT-GAZETTE, Nov. 11, 1999, at _____ available at <<http://www.ardemgaz.com/search5%today/nat/bfxschaffer03.html>> (last visited Oct. 24, 2001); *United*

In the summer of 1998, Tyson's Director of Media, Public and Governmental Affairs, Archibald R. Schaffer, III ("Schaffer"), was found guilty of violating the anti-bribery provision of the Meat Inspection Act⁷ and of providing unlawful gratuities to a public official.⁸ When the Winter 2000 *Journal* went to press, Schaffer's 1998 conviction was on appeal.⁹

The Tyson Story would not be complete without reporting the extraordinary legal events that occurred after publication of the original article. Jack Williams and Archie Schaffer received full and unconditional pardons from former President of the United States of America, William J. Clinton.¹⁰ The United States Court of Appeals for the District of Columbia Circuit, as a matter of law, vacated all opinions, judgments and verdicts previously rendered against him.¹¹ In effect, after years of legal travail, including a jury trial, numerous hearings and appeals, Schaffer was never convicted of anything.

The legal basis for the foregoing conclusion is found in the February 2, 2001, opinion rendered by the United States Court of Appeals for the District of Columbia Circuit in which the court granted Schaffer's Motion to Dismiss as Moot.¹² The court's well-reasoned opinion detailed the numerous legal proceedings that followed Schaffer's 1998 conviction.¹³ While it is beyond the scope of this update to explain in detail the previous legal proceedings, the following summarizes some of the more significant legal events.

Although Schaffer and Williams were convicted regarding Tyson's entertaining of Espy, Espy was acquitted of all charges.¹⁴ Based largely on arguably exculpatory testimony later offered by Espy, the trial court granted Schaffer's Motion for a New Trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.¹⁵

States v. Williams, 7 F. Supp.2d 40, 43 (D.D.C. 1998).

7. See 21 U.S.C. § 622 (1999).

8. See United States v. Schaffer, 214 F.3d 1359 (D.C. Cir. 2000) ("Schaffer II"); United States v. Schaffer, 183 F.3d 833 (D.C. Cir. 1999) ("Schaffer I"); United States v. Schaffer, 234 F.3d 36 (D.D.C. 2000) (en banc) (per curiam order); United States v. Schaffer, 121 F. Supp.2d 29 (D.D.C. 2000); United States v. Schaffer, 83 F. Supp. 2d 52 (D.D.C. 1999).

9. See generally Jeff Niese, *Schaffer Set For 'Normal Life'*, THE MORNING NEWS, Dec. 23, 2000, at 3A. (discussing the controversial effect of the Schaffer and Williams prosecutions in Northwest Arkansas where many incensed residents purchased and presented "FREE ARCHIE" bumper stickers).

10. President Clinton pardoned Archie Schaffer on December 22, 2000, and Jack Williams on January 20, 2001. See *Those Pardoned by Clinton Range from the Unknown to the Famous*, FIVE STAR LIFT EDITION, Jan. 23, 2001.

11. See United States v. Schaffer, 240 F.3d 35, 38 (D.C. Cir. 2001) (deciding on motion to dismiss as moot).

12. See *id.*

13. See *id.* at 37.

14. See *id.*

15. See *id.*

The independent counsel appealed. On June 27, 2000, a panel of judges for the United States Court of Appeals for the District of Columbia Circuit reversed the trial court's verdict and remanded the case for sentencing.¹⁶ On September 25, 2000, the trial court sentenced Schaffer to the minimum sentence required by law, a term of imprisonment of one year and one day.¹⁷

On July 19, 2000, however, Schaffer filed petitions for re-hearing and re-hearing *en banc* of the June 27, 2000, decision.¹⁸ On November 22, 2000, the full court granted Schaffer's petition for hearing *en banc*, vacated the panel's June 27, 2000, decision and scheduled oral arguments for April 4, 2001.¹⁹ When Schaffer received his pardon on December 22, 2000, the question of his guilt was still in issue.²⁰

In granting Schaffer's Motion to Dismiss as Moot, the court of appeals noted that finality was never reached on the legal question of Schaffer's guilt because the court had granted Schaffer's petition for an *en banc* review.²¹ As a result, Schaffer's presidential pardon made vacatur just and appropriate.²² The court stated, "[g]iven this posture of the case, the efficacy of the jury verdict against Schaffer remains only an unanswered question lost to the same mootness that the independent counsel so readily concedes. The same is true of Schaffer's claim of innocence. That claim will never again be tried."²³

16. See Schaffer II, 214 F.3d at 1359; see, e.g., Schaffer, 240 F.3d at 37 (discussing the procedural history of the case).

17. See Schaffer, 121 F. Supp.2d at 35. In sentencing Schaffer, the trial court judge, Honorable James Robertson, lamented the fact that he lacked the discretion to depart from the Federal Sentencing Guidelines to impose a lesser sentence. See *id.* Judge Robertson stated "[t]hus, drug dealers, informants, and cooperating witnesses may be given departures below statutory minimums, but Mr. Schaffer – who realized no personal gain from his offense and has been an extraordinarily good citizen – may not." *Id.*

18. See Schaffer, 240 F.3d at 37.

19. See *id.*

20. See *id.* at 37-8.

21. See *id.* at 38.

22. See *id.*

23. See *id.*