

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS: HONORABLE SODY CLEMENTS,)
an Individual and Oklahoma Resident on behalf of)
herself and others similarly situated; LT. GENERAL)
(Ret.) RICHARD A. BURPEE, an Individual and)
Oklahoma Resident on behalf of himself and others)
similarly situated; JAMES PROCTOR, an Individual and)
Kansas Resident on behalf of himself and others)
similarly situated; RODD A. MOESEL, an Individual and)
Oklahoma Resident on behalf of himself and others)
similarly situated; RAY H. POTTS, an Individual and)
Oklahoma Resident on behalf of himself and others)
similarly situated; BOB A. RICKS, an Individual and)
Oklahoma Resident on behalf of himself and others)
similarly situated.)

CAUSE No. PUD 201500344

FILED
SEP 16 2015

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

RELIEF SOUGHT: VACATE OR MODIFY OKLAHOMA)
CORPORATION COMMISSION ORDER No. 341630,)
CAUSE No. PUD 260; AND REDETERMINE ISSUES)
FOLLOWING INTRINSIC FRAUD)

IN THE MATTER OF THE APPLICATION OF)
HOWARD W. MOTLEY, JR., FOR AN INQUIRY)
INTO THE EFFECT OF THE 1986 TAX)
REFORM ACT ON OKLAHOMA UTILITIES)
)

CAUSE No. PUD 860000260

IN THE MATTER OF THE APPLICATION OF)
HOWARD W. MOTLEY, JR., FOR AN INQUIRY)
INTO THE RATES AND CHARGES OF)
SOUTHWESTERN BELL TELEPHONE)
COMPANY.)

CAUSE No. PUD 890000662

Affidavit and Deliberations Review of Record by Commissioner Bob Anthony

I, Corporation Commissioner Bob Anthony, of lawful age and being first duly sworn, to the best of my knowledge and belief, upon my oath say:

Fraud, Bribery, Payoffs, Illegal Cash Contributions, Evidence of Crimes, Wrongdoing, False Statements under Oath, Illegal Gifts, Conspiracy, Unclean Hands or "cash for votes" involving Southwestern Bell Telephone Company (SWBT) attorneys or officers is indicated by sources including the FBI, the US Department of Justice, Federal Courts, the Special Master of Oklahoma Supreme Court, Affidavits, Title III wiretaps, FBI transcripts, trial evidence, court testimony and case filings:

1. A “Guilty” Judgment in a Criminal Case [CR-93-137-A] was issued by the United States District Court [WDO] against Oklahoma Corporation Commissioner Bob Hopkins for “Accepting Money to Influence a Vote” in SWBT case PUD 260. [Exhibit 1A] This corrupt, tainted and bribed vote made on the record in the Commission’s main courtroom by Commissioner Bob Hopkins on September 20, 1989 in Cause No. PUD 260 constitutes **intrinsic fraud**.

2. A “Bribery” Judgment in a Criminal Case [CR-93-137-A] was issued by the United States District Court [WDO] against Bill Anderson [SWBT attorney of record in PUD 260]. [Exhibit 1B]

3. “Findings of Fact” were stated in the October 5, 1993 Report of Oklahoma Supreme Court Special Master William S. Myers. [Exhibit 2] According to Judge Myers, “the cash” [Exhibits 3 and 4] “accompanied by false lists” [Exhibits 5A-D, Exhibits 5E-H (FBI 302 reports) and Exhibit 5-I (from attorney Glen Glass deposition)] that was given to Commissioner Anthony on February 21, 1989 during the pendency of SWBT case PUD 260 “was no more or no less than an effort to have him look with favor on [SWBT] pending rate matters.” On February 21, 1989 at the time SWBT Vice President Dave Miller personally delivered the cash to me, he indicated the money came from himself, “our lawyer [Glen Glass] and my boss [President Royce Caldwell].” In his “Conclusions of Law” the Special Master explicitly refers to “illegal cash contributions or wrongdoing on the part of SWBT [.]”

4. Attorney General Susan Loving issued a statement [Exhibit 6] on the same day in 1993 that the Report of Special Master was filed. In part, she states:

Judge Myers’ order shows a real sense of natural justice. ... He found, as a matter of fact, that a Southwestern Bell attorney and a Southwestern Bell vice president gave illegal gifts to Commissioner Anthony, to “have him look with favor on their pending rate matters.” Our position from the outset has been that **Southwestern Bell shouldn’t be able to profit from its own wrongdoing**. We are very pleased that Judge Myers has recognized the validity of our position. (emphasis added)

5. As a sworn statement under oath, I, Commissioner Bob Anthony say as follows: Not only were three SWBT officials identified as sources of the money when cash was delivered to me illegally on February 21, 1989, but Glen Glass as one of them (and as the lead attorney of record for SWBT in PUD 260 and PUD 662 and later in these same matters before the Oklahoma Supreme Court in 1991) was even identified earlier as one of the

SWBT planned contributors. In fact, on February 2, 1989 SWBT Vice President Dave Miller indicated “we could do it in cash” with falsified names “and it wouldn’t get traced.” Furthermore, on February 3, 1989 with the SWBT PUD 260 case actually being heard by the Administration Law Judge in the courtroom next to my office, SWBT attorney Bill Anderson came into my Corporation Commission office and indicated details of the illegal scheme to get me money. Anderson told me of his conversations with SWBT Vice President Dave Miller about how to conduct the transaction. Twice on this February 3, 1989 occasion Anderson indicated that he and Dave Miller had talked about three SWBT officials being the source of the money, namely Miller himself, President Royce Caldwell and SWBT in-house attorney Glen Glass. [In the interests of constitutional duty and responsibility, the Corporation Commission needs to determine the proper outcome if the lead attorney of record for SWBT has committed **intrinsic fraud** in PUD 260 or PUD 662 or at the Oklahoma Supreme Court while representing SWBT in *State ex rel. Henry v. Southwestern Bell Telephone Co., 1991 OK 134*. Also, it may be **intrinsic fraud** if SWBT attorney Glen Glass made a false statement under oath in his May 21, 1993, PUD 662 deposition [Exhibit 5-I] by saying, “No ... No... No” when asked if he gave the name of his wife’s mother as a phony campaign contributor. The Commission should examine Exhibits 5A and 5E-H and compare them to Exhibit 5-I (especially comparing pages 20-21, the Glen Glass deposition signature and the Witness Errata Sheet handwriting). In this same PUD 662 deposition, SWBT attorney Glass does explain that he did contribute cash to the money delivered illegally by Miller; however, he denied that he provided the name of his Springfield, Missouri mother-in-law to the “false lists” of contributors. (Oklahoma Supreme Court Special Master William S. Myers uses the term “false lists” in his Findings Of Fact. [Exhibit 2])]

6. In an Affidavit with transmittal addressed to “DIRECTOR, FBI” [FBIHQ in Washington, DC], the FBI Oklahoma City Field Office requested approval of Title III federal wiretap authorization noting issues that “will be brought before the Oklahoma Corporation Commission”. [Exhibit 7] [The entire Affidavit was filed by Commissioner Anthony’s office on October 29, 2001 in response to an Open Records Request in Cause No. PUD 960000039.] The FBI Affidavit states, “There is probable cause to believe that William L. Anderson, also known as Bill Anderson; ... Glen A. Glass; ... Bob Hopkins; ... Dave Miller; ... and others yet unknown, have committed, are committing or are about to commit offenses involving interference with commerce by extortion ... racketeering ... bribery ... receipt of bribes ... felonies under the laws of the State of Oklahoma ... and conspiracy ...” [Regarding the Corporation Commission, Article 9 (Sections 17-18) of the Oklahoma Constitution states, “each of said commissioners ... will to the best of his

ability, faithfully and justly execute and enforce the provisions of this Constitution, and all the laws of this State concerning ... corporations over which said Commission has jurisdiction ... and be charged with the duty of ... correcting abuses and preventing unjust discrimination and extortion by such companies]

7. In a Motion and Supporting Brief filed on October 13, 1993 at the Oklahoma Supreme Court in Cause No. 80,333, Attorney General Susan Loving on page 14 states, "Because Coonan, Ellis, Miller and Glass acted as agents for SWBT, their knowledge of wrongdoing is also imputed to the **corporation.**" (emphasis added) [Exhibit 8] During this time frame Southwestern Bell used the advertising slogan "Reach Out and Touch Someone." In this same Motion and Supporting Brief, regarding the Special Master's Report, Attorney General Loving on page 14 states:

Judge Myers found that but for Bell's own illegal conduct, the grounds on which Bell bases its disqualification proceeding would never have arisen. Bell does not approach this remedy with just unclean hands, but with filthy, putrid hands, which, virtually from the moment that Commissioner Anthony took office, sought to reach out and touch and corrupt Commissioner Anthony with illegal cash contributions.

In the same case before the Oklahoma Supreme Court, Attorney General Susan Loving had earlier filed an October 1, 1993 Motion to Reopen the Record [Exhibit 9] and on pages 1-2 she states:

And yet previously unavailable information provides dramatic evidence that SWBT's representatives not only knowingly engaged in illegal actions intended to influence Commissioner Bob Anthony, but when Anthony reported those illegal activities to SWBT's Oklahoma President, he not only failed to report the matter to appropriate authorities or to seek Anthony's recusal, but affirmatively sought to keep the matter quiet.

8. The criminal conviction of Corporation Commissioner Bob Hopkins was affirmed by the US Court of Appeals for the Tenth Circuit in its Order and Judgment filed February 14, 1996, (Case No. 95-6120), wherein the Court writes, in part:

The record contains substantial testimony ... describing the **payoff procedure** and how Murphy shared cash payments with Mr. Hopkins. The 1991 tapes, properly admitted under Fed. R. Evid. 801(d) 2(E), detailed efforts to conceal **the payoffs** from the FBI. From those tapes [tapes of the FBI's Title III wiretaps], the jury heard recorded conversations among

Hopkins, Anderson, Murphy and other **Southwestern Bell executives plotting their “story” in the event federal agents questioned them.** (emphasis added) [Exhibit 10]

9. **PUD 260 SWBT Attorney arranges \$15,000 each for Two OCC Commissioners**

Money for Commissioner Hopkins: The Government Trial Brief of the United States filed on November 3, 1994 stated evidence will show a conspiracy to influence the PUD 260 vote of Commissioner Bob Hopkins. [Exhibit 11] The crime described by the Brief began at an Applewood's Restaurant in the early part of September, 1989. The plan involved enlisting a third party to approach and influence Commissioner Hopkins in connection with his vote on PUD 260 [specifically, Commission Order No. 341630], a matter then pending before the Commission. In furtherance of that conspiracy, attorney William L. Anderson called Michael R. Murphy and asked him to approach Hopkins and offer him \$10,000 if the Commissioner voted for the position advanced by Anderson. Murphy also received a call from Jewel Callahan, who told Murphy that he had \$5,000 more for Hopkins in the event of such a vote. Murphy agreed to act as the "go-between" or "bagman" between the Anderson/Callahan duo and Commissioner Hopkins. Within days, Murphy contacted Hopkins and advised that Anderson and Callahan had **\$15,000** that he and Hopkins could "split" if Hopkins would vote for "reinvestment" in the PUD 260 case. On or about September 18, 1989, Hopkins joined the conspiracy when he agreed to the offer. The vote in PUD 260, Order No. 341630, occurred on September 20, 1989.

10. **PUD 260 SWBT Attorney arranges \$15,000 each for Two OCC Commissioners**

Money for Commissioner Anthony: [A few months before actual commencement of the Federal bribery trial of SWBT attorney Bill Anderson and Corporation Commissioner Bob Hopkins (Case No. CR-93-137-A)] on March 25, 1994 the US Attorney for the Western District of Oklahoma (WDO) filed “Government’s Notice of Intent to Utilize Evidence of Other Crimes, Wrongs or Acts Under Federal Rules of Evidence” listing nine numbered paragraphs. The Notice states “that the evidence ... shows the defendant’s intent to influence commissioner conduct through payment of funds, and that this was part of Anderson’s overall plan and scheme to influence or reward commissioner conduct.” [Exhibit 12] “In or about September, 1989,” is how Paragraph 7 of the Notice starts. The bribed PUD 260 vote occurred on September 20, 1989. Paragraph 7 goes on to describe a **\$15,000** offer by a SWBT attorney, with money to go to Commissioner Anthony’s administrative aide or later to Commissioner Anthony [myself]. The US Attorney Notice

indicates "Anderson advised Anthony that he had withdrawn \$7,500 (avoiding the triggering of the filing of a currency transaction report) and then conditionally offered Commissioner Anthony the \$7,500 in case it were needed [politically or otherwise] some time in the future." Therefore, the 1989 bribery activities surrounding PUD 260 were not directed exclusively at Commissioner Bob Hopkins. To repeat, FBI records show that on September 15, 1989 Bill Anderson, then an attorney of record for SWBT in PUD 260, told me (Commissioner Bob Anthony) by telephone that he had **\$7,500 for me in a briefcase in the trunk of his car.** On September 18, 1989, Anderson once again told me he had \$7,500 in cash for me, to be used politically or otherwise. These felonious offers occurred only a few days before the September 20, 1989 actual vote on the PUD 260 Corporation Commission order. As a part of this Affidavit, I do not find fault with the facts as stated herein by the US Attorney, and I believe, to the best of my knowledge, the details are true and correct.

11. Exhibit 13 contains transcript pages from a deposition of **Southwestern Bell Corporation** attorney William J. Free taken in the Corporation Commission case PUD 662. Transcript pages 10-11 indicate that from 1969 to 1974 Free was an attorney for SWBT in the Oklahoma City area office, and in addition, from 1979-1986, he was SWBT general attorney for the state of Oklahoma. On page 23, Free indicates that not only did he work with attorney Bill Anderson back in the earlier period of his employment in Oklahoma, but Anderson was even loaning money to him. On page 32 he specifies, "From approximately July 1, 1990 until current, I am Senior Vice President and Associate General Counsel of **Southwestern Bell Corporation.**" (emphasis added)

12. A letter dated February 5, 1991 addressed to Mr. William J. Free from William L. Anderson is printed on stationery that reads "ANDERSON & WADDELL, P.C." with "ATTORNEYS AT LAW" shown beneath the law firm name. [Exhibit 14] In 1991, Bill Anderson personally gave me a copy of this letter. In it Bill Anderson, SWBT attorney of record in PUD 260, discusses the results of his bribery, telling **Southwestern Bell Corporation** attorney William J. Free the following, in part:

... I know from personal knowledge that he [Miller] did not keep an agreement that he and I had made on behalf of Bell Telephone Company, which I kept, and, it cost me several thousands of dollars ... [page 3]

Bill [Free], right now, Bell called in all of its politically "due bills" and then some, in the tax docket [PUD 260], when we secured [a]uthority to invest the excess earnings in rural upgrade rather than refund. [page 4]

Bell Telephone Company has been good to the Anderson family, and I like to hope that I have made you some money in the past, and do know that without my efforts you probably would not have been authorized to reinvest the tax over earnings [PUD 260] on one-party upgrade rather than refund. [page 5]

13. The February 5, 1991 letter to attorney William J. Free [Exhibit 14] considered in conjunction with the wiretap tapes played at the Federal bribery trial raises a serious question when this Senior Vice President and Associate General Counsel of **Southwestern Bell Corporation** states in his August 11, 1993 SWBT PUD 662 sworn deposition that “The only thing I know is what I have read in the papers about allegations of contributions to commissioners.” If this Southwestern Bell attorney has made a false statement under oath, a question of intrinsic fraud presents itself.

14. As a sworn statement under oath, I, Commissioner Bob Anthony say as follows: After SWBT requested for me to meet with SWBT counsel and its Oklahoma Vice President Dave Miller, I did agree to meet with them at the C.R. Anthony Co. general office at 701 N. Broadway in Oklahoma City on April 10, 1991. [Exhibit 15] The meeting lasted over an hour and a half. At the direction of the FBI, I covertly tape recorded the meeting with FBI equipment. **Southwestern Bell Corporation** Vice President and Assistant General Counsel Liam S. Coonan accompanied Dave Miller to my office at 8:10 AM. Coonan identified himself as the number two attorney in the **Corporation**. Miller had already been visited by FBI agents. I made it clear to the two Southwestern Bell officials that money delivered to me by Miller was a serious concern because it occurred after I had been sworn in as a Corporation Commissioner. Miller replied that “discreetness was a big concern, legality was not a concern to me.” (During a May 6, 1993 Deposition [Exhibit 16] taken in Corporation Commission case PUD 662 regarding SWBT rates, Oklahoma Vice President Dave Miller was asked if he made this exact statement in the presence of Coonan and Anthony on April 10, 1991. He exercised his Fifth Amendment rights and declined to answer, just as he did when asked about the cash and a list of purported contributors.) More than once in the conversation with Coonan the topic of \$10,000 or \$15,000 to Commissioner Bob Hopkins came up. Coonan said, “We have never ever I don’t believe ever paid that kind of money to any kind of a political race.” I raised the issue of how to explain money to Commissioner Hopkins just prior to a vote on a 30 million dollar deal [PUD 260]. Whether or not it was bribery was discussed. Mr. Coonan, the number two attorney for **Southwestern Bell Corporation** said, “The timing is abysmal,” and at one point he also said, “I wish all of this were different, I mean I wish I wasn’t here.”

15. As a sworn statement under oath, I, Commissioner Bob Anthony say as follows: (I am repeating some of what I told the Oklahoma Supreme Court Referee on July 23, 2014 and also some of what is found in Exhibit 17 of Petitioners' Appendix in Cause No. 112,973 at the Oklahoma Supreme Court regarding the PUD 260 bribery matter.) The Attorney General's Motion to Reopen the Record for the Admission of Additional Evidence [Exhibit 9 herein] filed on October 1, 1993 (with its exhibits) in Oklahoma Supreme Court Cause No. 80,333 described my March 28, 1990 afternoon meeting(s) with then-new Oklahoma President of SWBT J.B. Ellis. He acknowledged money from SWBT people to a commissioner outside the legal time period, then said, "... which can be a little touchy." He described SWBT attorney Bill Anderson as "kind of a dangerous guy." Ellis also acknowledged Dave Miller, Glen Glass and Royce Caldwell as contributors. He also said he knew of money raised for Commissioner Hopkins. He said he had "made copious notes of all of this." Ellis also said, "what transpired, transpired" and "I'm not on a witch hunt." His final statement to me that day was "let's let sleeping dogs lie." Three or four days later Ellis stopped by my Corporation Commission office (without an appointment) and told me he had destroyed his notes.

16. A few days before October 2, 1992 a Federal Grand Jury subpoenaed records related to SWBT outside attorney William L. Anderson. It was **Southwestern Bell Corporation** Vice President and Assistant General Counsel Liam Coonan who gave a response to the subpoena. [Exhibit 17]

17. On October 2, 1992 in the Corporation Commission main courtroom, on the record in SWBT Cause No. PUD 260, I, Commission Chairman Bob Anthony, made a formal statement addressing "serious irregularities and unethical conduct" involving PUD 260 and told of bar complaints I had filed the day before against two attorneys associated with SWBT. The full text of my statement [Exhibit 18] is printed as Footnote "1" of an Oklahoma Supreme Court case entitled *Southwestern Bell Telephone Co. v. Oklahoma Corp. Comm., 1994 OK 38, 873 P.2d 1001*. Referring to a March 28, 1990 meeting I had with SWBT Oklahoma President J.B. Ellis and the April 10, 1991 meeting I had with **Southwestern Bell Corporation** attorney and corporate officer Liam Coonan, my statement included the following:

Furthermore, I will report that more than a year ago I separately advised a Southwestern Bell senior corporate officer and then later a senior corporate attorney with Southwestern Bell of the conduct of persons associated with their firm.

Because this statement was true and correct, questions of **intrinsic fraud** are raised if SWBT has otherwise given untrue statements in the record of PUD 260 or PUD 662 about the illegal conduct of their attorneys or officers. Again, I make note of the legal opinion stated by Attorney General Susan Loving in her Motion and Supporting Brief [Exhibit 8] filed on October 13, 1993 at the Oklahoma Supreme Court [No. 80,333] in which on page 14 she says:

The Statements and Knowledge Of SWBT Attorneys and Officials Are Imputed To **The Corporation**. (emphasis added)

... Because Coonan, Ellis, Miller and Glass acted as agents for SWBT, their knowledge of wrongdoing is also imputed to the corporation.

18. Contrary to the aforementioned legal opinion of Attorney General Loving, at the Supreme Court of the United States, October Term, 1994, No. 94-73 (at page 3, footnote 1, SWBT Petition for Writ of Certiorari, *Southwestern Bell Telephone Company v. Oklahoma Corporation Commission* [Exhibit 19]), SWBT tells the Court:

For the record, Southwestern Bell's position is this: Any impropriety that may have been committed was not authorized by or attributable to it.

In further contrast, the National Association of Regulatory Utility Commissioners (NARUC) filed its Amicus Curiae Brief [Exhibit 20] at the Supreme Court of the United States in this same case (No. 94-73) and on page 3 referred to SWBT as:

... the regulated entity most heavily implicated in the 1989 "cash for votes" scheme ...

19. On November 21, 1994 during the Federal bribery trial of Commissioner Bob Hopkins (Case No. CR-93-137-A), FBI Special Agent John Hippard testified regarding a Title III FBI wiretap of a March 19, 1991 conversation between SWBT attorney of record in PUD 260 Bill Anderson and **Southwestern Bell Corporation** Vice President and Assistant General Counsel Bill Free. An excerpt of the wiretap recording was introduced as "Government's Exhibit No. 211" and was played for the jury. The tape is currently located in the Oklahoma City office of the FBI. Pages from Volumes IV, V and VI of the Reporter's transcript of the trial proceedings [Exhibit 21] contain references to this wiretap recording of Bill Anderson's telephone call received by Bill Free at his residence in St. Louis at 7:09 pm on March 19, 1991. In the conversation attorney Bill Anderson talks to attorney Bill Free about Southwestern Bell efforts to "**pay off Hopkins.**" Anderson

mentions the retainer of \$5,000 per month he has been receiving as an attorney for Southwestern Bell. He also mentions the FBI. Anderson says that [Glen] "Glass knew the whole deal." He goes on to say, "We all knew." Referring to Southwestern Bell officials Dave Miller, Glen Glass, and Royce Caldwell, Anderson says, "They all knew we were trying to work something." Anderson tells Bill Free, "Royce said he didn't want to know the details." Anderson continues quoting Royce Caldwell [Oklahoma Division President of SWBT from October 1988 to December 1989 according to Caldwell PUD 662 deposition] as having said, "**Do it and don't let me know how you do it.**" [After Caldwell left Oklahoma, he went to St. Louis, MO and after July 1992 served as a **Southwestern Bell Corporation** Executive Policy Council Officer and President of Southwestern Bell Services.] (emphasis added)

20. Jurisdiction

State ex rel. Henry v. Southwestern Bell Telephone Co., 1991 OK 134 was decided by the Oklahoma Supreme Court [825 P.2d 1307] and begins with the statement, "¶1 The issues to be resolved in this appeal are: (1) ... (7) ..." The Court [at 825 P.2d 1309] states, "¶7 The State, AARP and SWB each seek corrective relief from various portions of the Commission's order. For the reasons to be stated we affirm in part, reverse in part and remand this cause for further proceedings." (emphasis added) Although various parties have said the Corporation Commission lost jurisdiction of the entire case on appeal, it is noted here that only "portions" of the PUD 260 Commission Order No. 341630 were appealed. *Stetler v. Boling*, 1915 OK 625, 52 Okla. 214, 152 P. 452 in its Syllabus states, "When the Supreme Court acquires jurisdiction of a case by appeal, the jurisdiction of the trial court is ousted as to any question involved in the appeal; but jurisdiction of collateral matters, not involved in the appeal, or matters happening subsequent to the appeal, remains with the trial court."

21. Intrinsic Fraud

Leck v. Continental Oil Co., 1989 OK 173, 800 P. 2d 224 was a case containing an allegation of fraud at the Oklahoma Corporation Commission. The decision by the Oklahoma Supreme Court states:

¶6 ... we find that the appellants' allegations are in the nature of intrinsic fraud for which relief, if any, must be sought in the forum where the fraud allegedly occurred.

¶22 Relief from intrinsic fraud must be made by direct attack in the same case in which the fraud was committed. Since the Oklahoma Corporation Commission has the power and authority of a court of record in this state, it naturally follows that if intrinsic fraud occurred during an adversarial trial before the commission, then under our holding in *Chapman*, the proper forum to hear allegations of the intrinsic fraud and rule upon them is the commission.

The United States Court of Appeals for the Tenth Circuit in *Optima Oil & Gas Company, LLC v. Mewbourne Oil Company*, No. 11-6230 (D.C. No. 5:09-CV-00145-C) (W.D. Okla.) filed on October 23, 2012 also addresses an Oklahoma Corporation Commission case alleging intrinsic fraud. The Tenth Circuit Federal Court states:

We conclude, however, that *Leck* considered a public right, because the essence of the claim was intrinsic fraud on a tribunal. Since we conclude that intrinsic fraud is at issue in this case, we also conclude that a public right is at issue. Additionally, we note the *Leck* plaintiff sought money damages for the misrepresentations to the OCC. *Leck*, 800 P.2d at 229. Therefore, nothing in *Leck* precludes Optima from also seeking damages from the OCC.

22. Power to “set aside fraudulently begotten judgments”

Justice Black delivered the opinion of the United States Supreme Court on June 12, 1944 in *Hazel-Atlas Glass Company v. Hartford Empire Company*, 1944, 64 S.Ct. 997, 322 U.S. 238, 88 L.Ed. 1250. “This case involves the power of a Circuit Court of Appeals, upon proof that **fraud** was perpetrated on it by a successful litigant, to vacate its own judgment entered at a prior term and direct vacation ...” It states, in part, (with emphasis added):

Every element of the fraud here disclosed demands the exercise of the **historic power of equity to set aside fraudulently begotten judgments**. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford’s sworn admissions, we find a **deliberately planned and carefully executed scheme to defraud** not only the Patent Office but the Circuit Court of Appeals. (64 S.Ct. at 1001, 322 U.S. at 245.)

The United States Supreme Court thought it immaterial that Hazel-Atlas may not have exercised proper diligence in uncovering the fraud. It first points out that the case did not concern only private parties and that there are “issues of great moment to the public in a patent suit.” (64 S.Ct. at 1001, 322 U.S. at 246.)

Furthermore, **tampering with the administration of justice** in the manner indisputably shown here involves far more than an injury to a single litigant. It is a **wrong against the institutions set up to protect and safeguard the public**, institutions in which **fraud cannot complacently be tolerated consistently with the good order of society**. Surely, it cannot be that **preservation of the integrity of the judicial process** must always wait upon the diligence of litigants. The public welfare demands that the **agencies of public justice** be not so impotent that they must always be mute and helpless **victims of deception and fraud**.

23. **Southwestern Bell Corporation**

The front cover of its “1993 Annual Report to Our Shareowners” [Exhibit 22] stated, “Southwestern Bell builds value. Your \$100 investment has grown to \$733 in 10 years. And we are ready for another decade of growth.” On page 1 the Report gave Financial Performance and Contents. Page 45 begins a listing with photographs of “Officers and Executives of Southwestern Bell Corporation and its Subsidiaries” including the aforementioned Liam S. Coonan, William J. Free and Royce S. Caldwell.

24. This Affidavit and Review is true and correct to the best of my knowledge and belief. Furthermore, it supplements and incorporates by reference and is a continuation of the “Affidavit of Corporation Commissioner Bob Anthony” that was filed on July 14, 2014 at the Oklahoma Corporation Commission in Cause No. PUD 860000260 (PUD 260) and Cause No. PUD 890000662 (PUD 662) as well as at the Oklahoma Supreme Court in Cause No. 112,973.

FURTHER AFFIANT SAYETH NAUGHT.

Bob Anthony

Commissioner Bob Anthony

Subscribed and sworn to before me this 16th day of September, 2015.



Joyce I. Conner

Notary Public

My Commission Expires: _____ Commission No. _____

United States District Court
Western District Of Oklahoma

FILED
MAR 06 1995

UNITED STATES OF AMERICA
V.

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

ROBERT E. HOPKINS

Case Number: CR-93-137-A

U.S. DISTRICT COURT, WESTERN DISTRICT OF OKLA.
DEPUTY CLERK
AP

(Name of Defendant)

Kenneth R. Nance
Defendant's Attorney

THE DEFENDANT: Robert E. Hopkins

- pleaded guilty to count(s) _____
- was found guilty on count(s) One of the Superseding Indictment after a plea of not guilty.

PACKETED

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC § 666(a)(1)	Accepting Money to Influence a Vote	September, 1989	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).
- Count(s) 3 of the Superseding Indictment (is)(are) dismissed on the motion of the United States.
- It is ordered that the defendant shall pay a special assessment of \$50.00, for count(s) One of the Superseding Indictment, which shall be due immediately as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 441-26-1092

Defendant's Date of Birth: 02-03-29

Defendant's Mailing Address:

Rt 1, Box 116

Edmond OK 73003

Defendant's Residence Address:
Same as above

March 3, 1995

Date of Imposition of Sentence

Wayne E. Alley
Signature of Judicial Officer

WAYNE E. ALLEY, U. S. DISTRICT JUDGE
Name & Title of Judicial Officer

3/6/95

Date

EXHIBIT
1A

United States District Court
Western District Of Oklahoma
RECEIVED

RECEIVED
DALLAS
COMMUNITY CORRECTIONS
OFFICE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V. '95 APR 17 AM 10:43 (For Offenses Committed on or After November 1, 1987)

WILLIAM L. ANDERSON
UNITED STATES MARSHAL
WESTERN DISTRICT OF OK

Case Number: CR-93-137-A

Rec'd USMS
02/27/95

(Name of Defendant)

D. C. Thomas
Defendant's Attorney

FILED

THE DEFENDANT: William L. Anderson

pleaded guilty to count(s) _____

was found guilty on count(x) two (2) of the Superseding Indictment
plea of not guilty.

FEB 24 1995

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OK
BY DEPUTY

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC §§ 666(a)(2) and 2	Bribery	September, 1989	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

Count(x) 3 of the Superseding Indictment (is)(are) dismissed on the motion of the United States.

It is ordered that the defendant shall pay a special assessment of \$50.00, for count(s) Two of the Superseding Indictment, which shall be due immediately as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 446-18-3818

Defendant's Date of Birth: 08-14-19

Defendant's Mailing Address:

5809 N. Barnes

Oklahoma City OK 73112

Defendant's Residence Address:
Same as above

February 24, 1995

Date of Imposition of Sentence

Wayne Alley
Signature of Judicial Officer

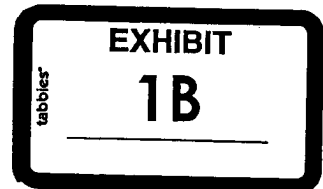
WAYNE E. ALLEY, U. S. DISTRICT JUDGE
Name & Title of Judicial Officer

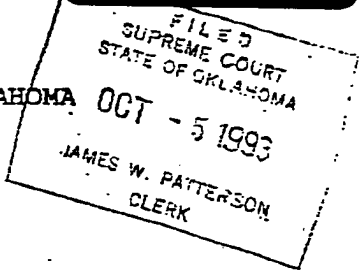
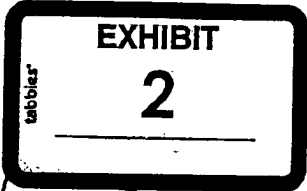
2/24/95

Date

ATTEST: A true copy of the original
Robert D. Dennis, Clerk

By [Signature]
Deputy





IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SOUTHWESTERN BELL TELEPHONE COMPANY,

Appellant,

v.

OKLAHOMA CORPORATION COMMISSION and STATE OF OKLAHOMA,

Appellees.

No. 80,333 (Cons. w/Nos. 80,334, 80,340 80,342 and 80,345)

SOUTHWESTERN BELL TELEPHONE COMPANY,

Petitioner,

v.

OKLAHOMA CORPORATION COMMISSION,

Respondent.

No. 81,735

SUSAN B. LOVING, ATTORNEY GENERAL,

Petitioner,

v.

OKLAHOMA CORPORATION COMMISSION,

Respondent.

No. 81,783

REPORT OF SPECIAL MASTER

This matter came on for hearing pursuant to a referral Order of the Oklahoma Supreme Court dated June 28, 1993, directing the special master to conduct a hearing and to submit findings of fact and conclusions of law as to the following questions:

1. Was Commissioner Anthony an FBI informant during the

period of time Commission Cause No. PUD-662 was pending before the Corporation Commission, including both the evidentiary and deliberative phase?

2. When did Southwestern Bell Telephone Company know, or should have known, of his involvement as an informant?

3. What was the earliest date of that actual or imputed knowledge?

The special master was not directed to consider any evidence of wrongdoing on the part of SWBT. The evidentiary hearing was held on September 3, 1993. Based on the evidence introduced at that hearing, the special master makes this report.

FINDINGS OF FACT

1. The parties stipulated that Commissioner Anthony did serve as an informant for the Federal Bureau of Investigation (FBI) from December, 1988, to at least October 2, 1992, in connection with an investigation of suspected wrongdoing at the Corporation Commission.

2. Commissioner Anthony was actively assisting the FBI during the entire time that PUD-662 was pending before the Commission.

3. Commissioner Anthony's activities in connection with the FBI investigation included contacts with representatives of Southwestern Bell Telephone Company (SWBT), among others. In this connection evidence was received at the evidentiary hearing that Commissioner Anthony made recordings of his conversations and

meetings with SWBT agents and employees. Such evidence was that Commissioner Anthony had received illegal cash contributions (which he immediately gave to the FBI) from William Anderson, attorney for SWBT in PUD-260 and PUD-662 pending before the Commission during the period in question and from David Miller, SWBT's Vice President in Oklahoma for Governmental and Regulation Affairs and also a registered lobbyist for SWBT. The further evidence in this regard was that the cash was accompanied by false lists of contributors. This was given for the asserted purpose of having "access" to him, which was no more or no less than an effort to have him look with favor on their pending rate matters.

4. There was no evidence that SWBT or any of its agents or employees learned of Commissioner Anthony's role as an informant until he publicly announced his cooperation with the FBI on October 2, 1992. On the issue of whether SWBT should have known that Commissioner Anthony was cooperating with the FBI, there was ample evidence submitted in the evidentiary hearing concerning Mr. Anthony's efforts to maintain the secrecy of his role as an informant, such evidence being sufficient to outweigh any assertions that SWBT should have, in the exercise of reasonable diligence, discovered Anthony's role with the FBI prior to his public announcement on October 2, 1992.

5. Even if it should be determined that SWBT should have had some suspicions that Commissioner Anthony was cooperating with the FBI, a diligent attempt by SWBT to confirm such suspicions would

have revealed nothing since, again, Mr. Anthony was certainly trying to keep that relationship a secret. Moreover, the FBI, under its established policies, would not have revealed anything about his cooperating with them.

6. Due to the very limited scope of the special master's inquiry mandated by the Supreme Court, it should be noted that SWBT did not offer any evidence, if they had such evidence, to rebut the testimony of Commissioner Bob Anthony relating to illegal contributions to him by William Anderson and David Miller.

7. When Mr. Anthony voted in PUD-662 by Order 367868 to reduce SWBT's rates by \$93.7 million dollars annually and order SWBT to refund \$184.4 million dollars to its customers, SWBT brought this lawsuit asking for a new trial on the grounds that it did not know that Mr. Anthony was acting as an FBI informant. SWBT contends that Anthony's actions denied them "due process" as he was biased and consequently they did not receive a fair hearing, and if they had known of such activities on his part they would have sought to disqualify him from participating in their case.

CONCLUSIONS OF LAW

1. Based on the facts set out above, the issues submitted for resolution by the special master are answered as follows:

1. Was Commissioner Anthony an FBI informant during the period of time Commission Cause No. PUD-662 was pending before the Corporation Commission, including both

the evidentiary and deliberative phase? Answer: Yes.

2. When did Southwestern Bell Telephone Company know, or should have known, of his involvement as an informant? Answer: October 2, 1992.

3. What was the earliest date of that actual or imputed knowledge? Answer: October 2, 1992.

2. From the greater weight of the evidence heard by the special master as set out above, it is concluded that SWBT knew that Commissioner Anthony has ostensibly accepted what he believed to be illegal cash contributions from their employees which would certainly have been grounds for SWBT to move for his disqualification prior to any hearings and prior to his decision in those hearings. Obviously SWBT believed it to be in its best interests not to seek his disqualification.

3. Once Commissioner Anthony had voted against SWBT's interests and publicly announced his four (4) years of full cooperation with the FBI's investigation of the Commission, SWBT seeks in this case to receive a new trial. This raises many issues and questions. One question is whether a party to an action can require that the trier of the facts be disqualified because of such party's own wrongdoing. If there had been no illegal cash contributions or wrongdoing on the part of SWBT, then certainly SWBT would not have any reasonable grounds for believing Commissioner Anthony would be biased against it.

4. If the only issue the Oklahoma Supreme Court wants to

consider is whether Commissioner Anthony was assisting the FBI in an investigation of the Commission and this was not known or could not have been known by SWBT, then it is respectfully submitted that a new trial before the Commission should be granted. It is further recommended by the special master that such new trial should not be de novo unless the Supreme Court is of the opinion that Commissioner Anthony's alleged or presumed bias did in some way affect the evidentiary hearing conducted by Administrative Law Judge Goldfield or his decision.

5. On the other hand, if the Supreme Court determines that the other questions raised in the evidentiary hearing before the special master should be resolved before this appeal can be decided, then it is suggested that another evidentiary hearing will be necessary to determine these issues:

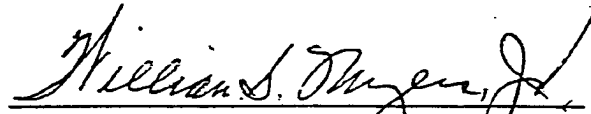
1. Where a party has knowledge which is grounds for the disqualification of a Commissioner but does not ask for disqualification until after an adverse ruling has been made, can such party then seek the disqualification of the Commissioner on another ground?

2. As a matter of law, is a judge, or a Commissioner, automatically disqualified from hearing a case based on the misconduct of the party seeking to disqualify him?

It is suggested that an additional evidentiary hearing would be necessary so as to afford SWBT an opportunity to rebut

Commissioner Anthony's testimony and to have the law fully briefed on these issues.

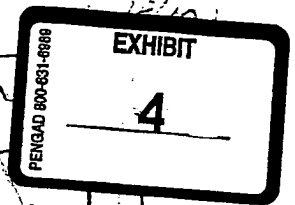
Respectfully submitted this 5th day of October, 1993.



Judge William S. Myers, Jr.
Special Master

OC 194A-463

Edited by Bob Anthon
Dec. 15, 1990



Naga in RA's desk
(occ 2nd floor office)

Date: 2/21/89
Time: 2:00 p.m.
RA: RA
DM: DM
(U): Unintelligible

RA: Okay, umm, I think that'll be fine, okay.
(Loud dragging noise) (closing desk front middle drawer)

DM: Can I get you for a second?

RA: Yeah, come in, come in.

DM: How are you sir?

RA: Good, good to see you.

DM: And I mean just a second and I'll get out of your way.

RA: Alright, um. Let me have just a second. That's, take, if, if that's that call we were expectin' tell 'em to call back in five minutes 'er somehin'. (door slam) (walking)

DM: Boy that's hard back there (U) like that...I kept it to

RA: Okay.

DM: According to Billy, you said a hand full of people, so...

RA: Well, I wanted to, kinda of ah, keep to a real small number of people, I think that's, ah...

DM: Yeah, I mean it's like myself and our lawyer and my boss...

RA: Ah huh...

DM: And that's it.

RA: Okay, alright, well I appreciate...

DM: A bunch of names you can use too, whatever you wanna do with that.

RA: Okay, umm, and ah, is that cash?

DM: Mu hum.

~~let~~ let me

RA: Okay, let me just ah, just to kinda keep accurate records, I'm gonna count it out.

DM: Okay, it should be 2450.

RA: Okay, umm. Well I appreciate the help, I'll tell ya...

DM: Well... we're glad to have you here, and d,

~~RA: (U)...~~

DM: → And I, the reason I talked to you the other day is, is I wanna (U)...

RA: Sit down.

DM: I'm not tryin' to buy votes, I just, all I want is access to you... ✓

RA: Right. (Laugh)

DM: We can talk over things, but ah...

RA: Okay, ah, I'm, just grew up in a store where I count money, when it comes in.

DM: (Laugh)

RA: 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22. 21,22,3, okay, what did you say?

DM: 2450.

RA: That's what it came to. Ahh...

DM: I hope that helps...

RA: Ah, well I think it ah, certainly would. And ah, you know, I guess I don't have much familiarity with Bill Anderson, he's ah, I guess, been around here a long time...

DM: Well, he's former, Chief Council out here and...

Counsel

RA: -But, but he actually represents lots of the, companies, they, he, I think he's mentioned he, ah, you know, to rep, represent bein' an attorney that he's ah, representing you all too.

DM: Yeah, Bill does some work for us on certain issues, ah, he works, does some work for Alltell. He does some (loud noise) work for ah, Oklahoma Communications, ahh, he does a little work for ONG. Ah, we just use him on

special type things, you know with, or, our lawyers are tied up, and it's a one issue a type...

RA: Yeah...

DM: Like that. Umm, Bill knows a lot of ropes. Now he's a died in the wool democrat, I mean on my God...

RA: Yeah.

DM: He doesn't thing, but if he ever finds out how I'm registered, he'll probably hang me... (laugh)

RA: Ah huh, well really, anytime he comes by, ah, or talks to me he, he's, he's ah, kinda pretty visible about that 'er, 'er, expresses himself at ah, goll' you don't know, the, you know, even when he talked to me, ah, it's a ah, you know I'm a democrat, he said, and I'm gonna help ya out. Well I just can't vote for a republican or, you know he'll...

DM: I'm thinking he had a death bed promise to his daddy or somethin'...

RA: I, don't know... ah...

DM: You know, but he would never, and he just, normally when he says republicans it's God damn republicans.

RA: Yeah.

DM: (Laugh)

RA: Um, that is, that is right. But anyway he's been ah, he's been ah, pretty ah, helpful and he's given me a ~~fair~~ *certain* amount of advice and, he's ah, you know, given us some literature and so forth.

DM: He's, I, I enjoy visiting with Billy, he's knows a lot, I, I don't, don't go along with him on everything he says, but, he, he knows a lot of history and how certain things came about, and, why things are a certain way and ah, ah, and he's kinda, for, for 69 years old he...

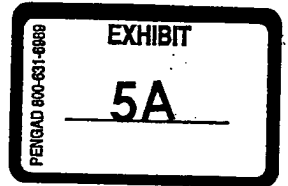
RA: Ah huh.

DM: Goes and goes, I'll tell ya...

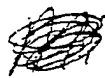
RA: Is that right?

DM: Yeah, he's...

RA: Ahh. He is ah, pretty interesting.



Dr. R. Ned White
3634 Cherry
Springfield Mo. ~~65809~~



Mildred B. White
806 S. Weller
Springfield Mo 65804

~~Robert~~ Robert Finnigsmier
1300 Heritage
Hastings, NB

Eric B White
6222 Oakridge
Lincoln, NB

Al Tison
2817 Manchester Dr.
Oklahoma City, Ok.

Mary Tison
12734 N MacARTHUR
Oklahoma City, Ok.

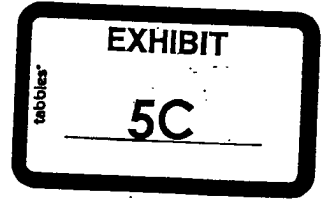
Floy Bushere
Cinnamon Village
Kingfisher, Ok.

Christine Richardson
4816 NW 56 Terrace
Oklahoma City, Ok.

Mr. Ken Moore
412 Kensington
Norman, OK 73072

Mr. Richard Shires
General Delivery
Roland, OK 74954

Mr. Dale Welch
1120 Meryman Green
Norman, OK 73069



Paula Fall

328 Elmwood Dr.

Edmond 73013

Julie Hall

1920 Elmwood

9801

Edmond, Okla. 73034

Laney Hare

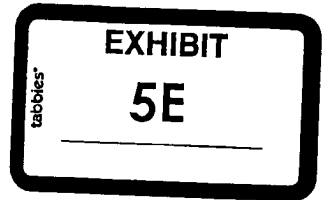
1304 Cedar Ridge

Edmond, 73013

EXHIBIT

5D

tabbies



- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/29/92

RAYMOND NED WHITE, also known as NED WHITE, 3634 Cherry Street, Springfield, Missouri, 65809, home telephone number (417) 869-7126, was apprised of the identity of LARRY S. HURST, Special Agent (SA), FEDERAL BUREAU OF INVESTIGATION (FBI), as well as the fact that the interview was relating to an investigation being conducted concerning bribery of public officials at the Oklahoma Corporation Commission, and that the interviewee's name had been used in this matter, however, his name may have been used in error or possibly by someone else. WHITE was further cautioned against making any false statements to an FBI agent. WHITE provided the following information:

WHITE provided the following biographical information:

Name	RAYMOND NED WHITE
Also known as	NED WHITE
Address	3634 East Cherry Street, Springfield, Missouri, 65809
Home telephone	(417) 869-7126
Sex	Male
Race	White
Eyes	Hazel, wears glasses
Hair	Gray
Height	5'10"
Weight	175 pounds
Date of Birth (DOB)	November 21, 1907
Place of Birth (POB)	Brighton, Missouri
Social Security Account Number (SSAN)	488-54-4568

Investigation on 8/12/92 at Springfield, Missouri File # 194A-OC-463

by SA LARRY S. HURST:dai Date dictated 8/12/92

00460

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EXHIBIT "20"

44A-OC-463

Continuation of FD-302 of RAYMOND NED WHITE, On 8/11/92, Page 2

Employment Retired doctor, obstetrician/
gynecologist.

Question #1 Did anyone contact you and
tell you that the FBI might
interview you regarding this
matter?

Response No

Question #2 Have you ever contributed any
money to an Oklahoma
Corporation Commissioner or
candidate for Oklahoma
Corporation?

Response No

Are you willing to take a
polygraph?

Response Yes

Question #3 Have you ever told anyone that
they could use your name on a
list of contributors for a
political candidate in
Oklahoma or anywhere else?

Response No

Question #4 Have you ever given any money
for any reason to the
following present or former
Oklahoma Corporation
Commissioner: BOB HOPKINS,
BOB ANTHONY, JIM TOWNSEND,
J.C. WATTS, or CODY GRAVES?

Response No

44A-OC-463

Question #5

Do you know anyone who works for a telephone company, gas company, or electric company in Oklahoma?

Response

WHITE advised that GLEN GLASS, 5805 Dundee Court, Edmond, Oklahoma, 73034, who lives across from the Oak Tree Golf Course, home telephone number (405) 348-0300, is his son-in-law. He married WHITE's daughter JINNY in 1946. They have two children, ALLISON and MELISSA. GLASS works as a chief attorney, state of Oklahoma, SOUTHWEST BELL TELEPHONE.

Question #6

Have you ever given person mentioned in question #5 above money for any reason?

Response

WHITE advised that the only money that he has given to his daughter and son-in-law is money for their birthdays or Christmas presents. WHITE advised that he has provided them with \$75 for their birthday presents and \$35 for their Christmas presents. WHITE advised that he provided this present in the form of a gift certificate or a check. WHITE advised that he would have drawn the check on the COMMERCE BANK, Springfield, Missouri. WHITE advised that he has provided no other monies to GLEN or JINNY GLASS.

4A-OC-463

Continuation of FD-302 of RAYMOND NED WHITE, On 8/11/92, Page 4

Question #7

Do you know one or all of the following: GLEN GLASS, DAVE MILLER, ROYCE CALDWELL, CLAUDE WEST, TED D'ANDRIOLE, BOB WHITE, TOM WHITE, BOB CASALI, LOU SCHINDLER, or BILL ANDERSON?

Response

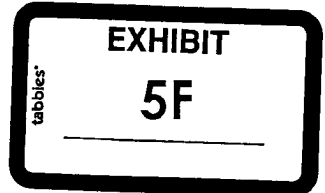
The only person that WHITE knows is GLEN GLASS.

Question #8

If interviewee knows any of the persons in question #7 above, determine all details regarding relationship and whether or not interviewee has ever given that person any money for an Oklahoma Corporation Commissioner or for any other reason.

Response

WHITE advised that he has not provided any money to GLASS or anyone for an Oklahoma Corporation Commissioner, or for any other reason other than described above, for birthday and Christmas presents.



FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/29/92

MILDRED FRANCES WHITE, nee BRUHN, also known as MILDRED BRUHN, also known as MILDRED B. WHITE, was apprised of the identity of LARRY S. HURST, Special Agent (SA), FEDERAL BUREAU OF INVESTIGATION (FBI), as well as the fact that the investigation is being conducted concerning bribery of public officials at the Oklahoma Corporation Commission, and that the interviewee's name had been used in this matter, however, her name may have been used in error or possibly by someone else. WHITE was further cautioned against making any false statements to an FBI agent. WHITE provided the following information:

WHITE provided the following biographical information:

Name	MILDRED FRANCES WHITE
Also known as	MILDRED BRUHN WHITE, MILDRED B. WHITE
Maiden Name	BRUHN
Address	806 South Weller, Springfield, Missouri, 65802
Home telephone	(417) 865-1635
Sex	Female
Race	White
Date of Birth (DOB)	August 23, 1915
Place of Birth (POB)	Mt. Vernon, Missouri
Social Security Account Number (SSAN)	492-46-9853
Employment	Retired nurse

Investigation on 8/11/92 at Springfield, Missouri File # 194A-OC-463-711

by SA LARRY S. HURST:dai Date dictated 8/12/92 00464

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EXHIBIT 21

194A-OC-463

Continuation of FD-302 of

MILDRED FRANCES WHITE

, On 8/11/92

, Page 2

Question #1

Did anyone contact you and tell you that the FBI might interview you regarding this matter?

Response

No

Question #2

Have you ever contributed any money to an Oklahoma Corporation Commissioner or candidate for Oklahoma Corporation?

Response

No

Are you willing to take a polygraph?

Response

Yes

Question #3

Have you ever told anyone that they could use your name on a list of contributors for a political candidate in Oklahoma or anywhere else?

Response

No

Question #4

Have you ever given any money for any reason to the following present or former Oklahoma Corporation Commissioner: BOB HOPKINS, BOB ANTHONY, JIM TOWNSEND, J.C. WATTS, or CODY GRAVES?

Response

No

Question #5

Do you know anyone who works for a telephone company, gas company, or electric company in Oklahoma?

00465

44A-OC-463

Continuation of FD-302 of MILDRED FRANCES WHITE, On 8/11/92, Page 3

Response
WHITE advised that her son-in-law, GLEN A. GLASS, who has married their daughter VIRGINIA, also known as JINNY, works for the SOUTHWESTERN BELL TELEPHONE COMPANY. He is an attorney.

Question #6
Have you ever given person mentioned in question #5 above money for any reason?

Response
WHITE advised that she has given each adult, JINNY and GLEN, \$20 as birthday presents. She would have written a check on her BOATMEN'S BANK account in Springfield, Missouri. WHITE advised that she has provided no other money to GLEN or JINNY.

Question #7
Do you know one or all of the following: GLEN GLASS, DAVE MILLER, ROYCE CALDWELL, CLAUDE WEST, TED D'ANDRIOLE, BOB WHITE, TOM WHITE, BOB CASALI, LOU SCHINDLER, or BILL ANDERSON?

Response
GLEN GLASS is her son-in-law.

Question #8
If interviewee knows any of the persons in question #7 above, determine all details regarding relationship and whether or not interviewee has ever given that person any money for an Oklahoma Corporation Commissioner or for any other reason.

00486

194A-OC-463

Continuation of FD-302 of MILDRED FRANCES WHITE, On 8/11/92, Page 4

Response

WHITE advised that the only money that she has provided to GLEN and JINNY is described above. She has never provided any money for the Oklahoma Corporation Commission nor authorized anyone to provide money in her name.



FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/24/92

ROBERT J. FINNIGSMIER, date of birth December 14, 1936, 1300 Heritage Place, Hastings, Nebraska, was interviewed at his place of residence. After being advised of the nature of the interview and the identity of the interviewing Agent, FINNIGSMIER provided the following information:

FINNIGSMIER is not aware of any public corruption that has taken place in the state of Oklahoma.

He has not been contacted by anyone in reference to an investigation done by the Federal Bureau of Investigation in Oklahoma in relation to public corruption or any other matter.

FINNIGSMIER does not contribute money to political campaigns or candidates, although he remembers giving approximately \$10 or \$15 to the BOB KERREY campaign in Nebraska for his presidential nomination.

FINNIGSMIER has no knowledge of his name being used on a list for campaign contributors.

In relation to names that were supplied by the interviewing Agent, FINNIGSMIER said that JIM TOWNSEND rang a bell in his mind, but he did not know for sure where he had heard the name or who the individual was.

FINNIGSMIER knows one person who works for a telephone company in Oklahoma. His name is GLENN GLASS and he is an attorney for that company. FINNIGSMIER could not remember the name of the telephone company, just that he worked there and that he was an attorney. GLASS is the cousin of FINNIGSMIER's wife, JUDY. He has never given GLASS any money for any purpose and the last time he saw FINNIGSMIER was approximately two or three years ago at a Nebraska/Oklahoma football game.

Two other names rang bells in FINNIGSMIER's mind: a TOM WHITE who lives in Nebraska and is originally from Hastings,

Investigation on 8/22/92 at Hastings Nebraska File # OM 194A-463 -

by SA W. E. FACER:dlc Date dictated 8/21/92

6044

DM 194A-463

Continuation of FD-302 of ROBERT J. FINNIGSMIER On 9/20/92 Page 2

Nebraska, and BILL ANDERSON, who lives in Hastings, Nebraska. FINNIGSMIER knows of no one with those two names in Oklahoma.

FINNIGSMIER has not contributed any money to any individual in Oklahoma for any campaign reasons or any other reason.

FINNIGSMIER is willing to sign an affidavit in relation to what he has stated in this interview.

00443

EXHIBIT
5H

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 08/26/92

ERIC B. WHITE, 3906 Woodridge, Lee's Summit, Missouri was contacted at his place of employment, FEDERAL HIGHWAY ADMINISTRATION, 6301 Rockhill Road, Kansas City, Missouri. After being advised of the identity of the interviewing agent and the nature of the interview, WHITE provided the following information:

WHITE has not been contacted by anyone regarding the OKLAHOMA CORPORATION COMMISSION, nor has he received any indication that the FEDERAL BUREAU OF INVESTIGATION might interview him regarding the possible bribery of individual corporation commissioners. Prior to being contacted by the interviewing agent, WHITE had never heard of the OKLAHOMA CORPORATION COMMISSION. WHITE has never contributed any money to an Oklahoma Corporation Commissioner or a candidate for the OKLAHOMA CORPORATION COMMISSION, nor has he ever told anyone that they could use his name on a list of contributors for a political candidate in Oklahoma or anywhere else. WHITE has contributed money to Republican candidates in the past; however, none of these contributions were made in Oklahoma.

WHITE has never given any money to, nor is he familiar with, BOB HOSKINS, BOB ANTHONY, JIM TOWNSEND, J. C. WATTS, and CODY GRAVES.

WHITE's brother-in-law, GLEN GLASS, is an in-house counsel for AT&T in Edmund, Oklahoma. WHITE is not particularly close to his brother-in-law and has not seen him since Thanksgiving 1990. WHITE is aware that GLASS is involved in a big rate case; however, he had never discussed this matter with his brother-in-law and only knows of it through his (WHITE's) mother. WHITE has never discussed politics with GLASS, nor has he ever given him any money for any reason.

Investigation on 08/25/92 at Kansas City, Missouri File # 194A-OC-463 - 1 -

by JEFFREY R. HARRIS:tmg

Date dictated

08/25/92

00458

EXHIBIT "19"

194A-OC-463

Continuation of FD-302 of

ERIC B. WHITE

. On

08/25/92

. Page

2

WHITE does not know DAVE MILLER, ROYCE CALDWELL, CLAUDE WEST, TED D'ANDRIOLE, BOB WHITE, TOM WHITE, BOB CASALI, LOU SCHINDLER, or BILL ANDERSON.

WHITE was stationed at Fort Sill, Oklahoma from December 31, 1990, through June 20, 1991, when he was called up to active duty for Operation Desert Storm. This was the only time WHITE had lived in Oklahoma. Since June 1991, WHITE has resided in the Kansas City area.

The following information regarding ERIC B. WHITE was obtained through observation and interview:

Race	White
Sex	Male
Date of Birth	October 21, 1944
Place of Birth	Norfolk, Virginia
Social Security Account Number	492-48-4184

00459

1 A p p e a r a n c e s: (Cont'd)

2 For AT&T Communications of the
3 Southwest, Inc.

4 ROBERT D. ALLEN, Esquire
5 Equity Tower, Suite 300
1601 Northwest Expressway
Oklahoma City, OK 73118

6 For Public Utilities Division
7 Oklahoma Corporation Commission:

8 MARIBETH SNAPP, Esquire
2101 N. Lincoln, Suite 400
9 Oklahoma City, OK 73105

10 For the Oklahoma Attorney General:

11 RICK D. CHAMBERLAIN, Esquire
12 Office of the Attorney General
State Capitol Building
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14 For MCI Telecommunications:

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20 Oklahoma City, OK 73112-8097

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I N D E X

WITNESS

Page

GLEN A. GLASS, ESQ.

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EXHIBITS

NONE

1 GLEN A. GLASS, ESQ.,
2 being produced, sworn and examined on behalf of the
3 Applicant, deposeseth and saith as follows:

4 DIRECT EXAMINATION

5 BY MR. LEE:

6 Q. Would you state your name, please.

7 A. Glen A. Glass.

8 Q. What is your address, Mr. Glass?

9 A. 7116 Nicki Court, Dallas, Texas 75252.

10 Q. What is your present occupation?

11 A. I am an employee, an attorney for
12 Southwestern Bell Telephone Company.

13 Q. What is your position as an attorney for
14 Southwestern Bell Telephone Company?

15 A. You mean what do I do?

16 Q. Well, do you have a particular title that
17 is attached to with the status of being an attorney
18 for Southwestern Bell?

19 A. Senior Attorney in Southwestern Bell's
20 Dallas office.

21 Q. How long have you been in the Dallas
22 office?

23 A. Since October 1st, 1992.

24 Q. What are your duties as Senior Attorney for
25 Southwestern Bell in the Dallas office, Mr. Glass?

1 A. I'm responsible for all the labor and
2 litigation matters for the North Texas Region, which
3 is from El Paso to the -- I guess it would be the
4 eastern part of Texas.

5 Q. What did you do for Southwestern Bell
6 before you went to the Dallas office?

7 A. I began with Southwestern Bell in 1977, as
8 an attorney in St. Louis, held various positions in
9 St. Louis from 1977 until 1983. Then I was
10 transferred to Dallas, Southwestern Bell Telephone
11 Company's legal department in 1984, let's see, the
12 fall of 1984, I worked as an attorney for
13 Southwestern Bell Mobile Systems, Incorporated, in
14 Dallas, until October of 1986, and I was transferred
15 to Oklahoma.

16 Q. So you came to Oklahoma in October of 1986;
17 was that your testimony?

18 A. Yes.

19 Q. What position did you assume in Oklahoma in
20 October 1986?

21 A. I was general attorney for Oklahoma.

22 Q. Does that mean you were the top attorney
23 for Southwestern Bell in the Oklahoma area?

24 A. Yes.

25 Q. Do you know a man named Bill Anderson?

- 1 A. Yes.
- 2 Q. How long have you known Mr. Anderson?
- 3 A. The first time I met him was in 1985.
- 4 Q. That's when you were in the Dallas office?
- 5 A. That's when I was with Southwestern Bell
- 6 Mobile Systems.
- 7 Q. In Dallas?
- 8 A. Yes.
- 9 Q. What was the occasion for you getting to
- 10 know Mr. Anderson when you were in Dallas?
- 11 A. We had a cellular regulatory matter in
- 12 Oklahoma, and I -- it was on that occasion when I
- 13 was up here that I met Mr. Anderson.
- 14 Q. Did you become friends with Mr. Anderson at
- 15 any point in time?
- 16 A. Yes. I mean I don't know how you define
- 17 "friend," but, yes, I was acquainted with him and
- 18 knew him.
- 19 Q. Have you ever come to the point where you
- 20 consider Mr. Anderson to be a social friend of
- 21 yours?
- 22 A. No.
- 23 Q. You never visited in his residence?
- 24 A. I have been to his residence.
- 25 Q. On social occasions?

1 A. No, mostly business. I mean if your
2 question is did I talk to him about anything other
3 than business over those seven years, the answer is
4 "yes."

5 Q. When was it that you first went to his
6 residence?

7 A. I can't recall.

8 Q. Would it have been after you came to
9 Oklahoma City in October, 1986?

10 A. It would have been after '86, yes.

11 Q. Where was the residence address, where you
12 saw him?

13 A. I don't know his address. It's off of --
14 it's off of Penn at about, I don't know, 56th
15 Street.

16 Q. Approximately how many times did you go to
17 Mr. Anderson's residence during the time you have
18 known him?

19 A. I don't know.

20 Q. More than ten?

21 A. Probably not.

22 Q. Between five and ten times?

23 A. I don't know.

24 Q. And on all those occasions that was to
25 discuss business with him?

1 A. Yes.

2 Q. Did you ever go to his law office --

3 A. Yes.

4 Q. -- in Oklahoma City? When was the first
5 time you had been to Mr. Anderson's law office?

6 A. 1985.

7 Q. And did you go to Mr. Anderson's law office
8 after you became the general attorney for Oklahoma
9 in Oklahoma of 1986?

10 A. Yes.

11 Q. Do you have any way of estimating how many
12 times after October of 1986 that you physically went
13 to Mr. Anderson's law office?

14 A. No, I don't.

15 Q. Dozens of times?

16 A. I don't know, more than ten times.

17 Q. Where was your office when you were general
18 attorney for Southwestern Bell in Oklahoma City?

19 A. 800 North Harvey in Oklahoma City.

20 Q. What would be the occasion for you going to
21 Mr. Anderson's law office?

22 A. To talk with him or Mr. Waddell concerning
23 legal matters affecting the telephone company.

24 Q. Why would you go to Mr. Anderson and
25 Mr. Waddell's office rather than them coming to the

1 Q. Yes, the second one is what I am talking
2 about.

3 A. I believe other individuals in the company
4 gave; is that your question?

5 Q. Yes, sir.

6 A. Yes, other individuals in the company gave,
7 but I'm not sure who, and I can't remember who.

8 Q. Did you ever see a list of contributors
9 that Mr. Miller had with the names of the people who
10 were --

11 A. No.

12 Q. Do you know somebody named Mildred White?

13 A. Yes.

14 Q. Who is that?

15 A. That's my wife's mother.

16 Q. Where does she live?

17 A. Springfield, Missouri.

18 Q. Did you ever give Mr. Miller the name of
19 Mildred White for him to use --

20 A. No.

21 Q. -- as being a person who would be --

22 A. No.

23 Q. -- a contributor?

24 A. No.

25 Q. Okay. Do you know how Mr. Miller would

1 have obtained the name of Mildred White?

2 A. No, other than I was in Springfield a lot
3 at her -- stay there when we are at her -- that's
4 where my wife's family lives, and I am there a lot
5 and talked to him from there and to the office from
6 there.

7 Q. But I mean did you ever specifically
8 discuss with Mr. Miller that a person named Mildred
9 White was your mother-in-law?

10 A. Probably. But I don't recall when.

11 Q. Back to this March 1991 meeting that you
12 had with the Federal Bureau of Investigation in
13 their office. Can you remember anything else about
14 the meeting that was discussed?

15 A. Other than what I have told you?

16 Q. Yes, sir.

17 A. I can't remember the specifics; I mean they
18 asked about the campaign contributions, in general,
19 who I had made them to.

20 Q. Had you made any to anybody else beside Mr.
21 Anthony?

22 A. Yes.

23 Q. Any of the other members of the Corporation
24 Commission?

25 A. Yes.

1 he wanted to on behalf of Southwestern Bell
2 Telephone Company?

3 A. No.

4 Q. Okay. So there were certain restrictions
5 on what he was allowed to do during that time?

6 A. Yes.

7 Q. Okay.

8 A. Which was true for all outside counsel.

9 Q. All right. And I am trying to understand
10 where those limitations or restrictions came from.

11 A. Well, Mr. Anderson wasn't engaged to do any
12 workers' compensation defense work for us, so he
13 didn't do any, for example. And there's a thousand
14 of those things he didn't do. He provided legal
15 advice and assistance with respect to regulatory
16 matters at the commission.

17 With respect to Anderson & Waddell, the
18 firm, it included utilization of both Mr. Anderson
19 and Mr. Waddell. That did not generally include any
20 actual hearing work or entries of appearance
21 formally in commission cases, however.

22 Q. Did it involve discussions with
23 commissioners or staff members?

24 A. It could.

25 Q. Okay. And did you instruct Mr. Anderson

1 A. Absolutely. We did research on it,
2 prepared a memo on it.

3 Q. And who is that memo to, do you recall?

4 A. It was to Mr. Caldwell at that time.

5 Q. Okay. You have identified Mildred White as
6 your mother-in-law. Do you know whether or not she
7 was ever interviewed by the FBI?

8 A. Yes.

9 Q. Do you know when that was?

10 A. No.

11 Q. You have no recollection whatsoever?

12 A. It was 1992, the summer of 1992.

13 Q. I'm sorry?

14 A. The summer of 1992.

15 Q. Did she call you and discuss that
16 afterwards?

17 A. No.

18 Q. Did she discuss it before?

19 A. No.

20 Q. Did she discuss it with you at all?

21 A. No.

22 Q. So she was interviewed by the FBI and she
23 thought nothing of it and didn't discuss it with
24 anyone; is that your testimony?

25 A. No, that's not my testimony.

1 Q. Who did she discuss it with; do you know?

2 A. My wife.

3 Q. Did your wife discuss it with you?

4 A. Yes.

5 Q. Okay. Can you tell me what that discussion
6 involved?

7 A. Yes. That her mother had been interviewed
8 by the FBI concerning campaign contributions.

9 Q. Do you know what your mother-in-law told
10 the FBI?

11 A. No, I don't.

12 Q. Did she tell them that she had made the
13 contributions?

14 A. No, she didn't tell them that.

15 Q. So we can assume that she told them she
16 didn't make the contributions?

17 A. If they asked her that, she told them that.

18 Q. Okay. Let's talk about the contributions
19 to Commissioner Hopkins for his 1989 labor
20 commissioner race. Was that another instance where
21 Mr. Miller was collecting money?

22 A. Yes.

23 Q. Okay. And do you recall who besides
24 yourself and Mr. Miller were making contributions?

25 A. I do not recall.

1 was it.

2 Q. At one time. And would that have been
3 generally the situation in November of 1989 and
4 January 1990?

5 A. To the best of my recollection, that's
6 correct.

7 Q. Now, I take it from your testimony that you
8 personally were solicited by Commissioner Anthony's
9 campaign to contribute to retire his campaign debt,
10 accumulated for his election run in November of
11 1989; is that right?

12 A. That's correct.

13 Q. And early in January you made a hundred
14 dollar or a hundred fifty dollar cash contribution.

15 A. Correct.

16 Q. Now, I take it that you, if I understand
17 your testimony correctly, you gave the money,
18 physically gave the money to David Miller expecting
19 that he would put it together with some other funds
20 and see that it was contributed to Mr. Anthony's
21 campaign, correct?

22 A. I gave it to Mr. Miller, yes.

23 Q. And that's what you expected him to do with
24 the money?

25 A. Yes.

1 Q. Do you remember the date you gave him the
2 money?

3 A. Well, it was probably no later than January
4 the 5th.

5 Q. And why are you able to fix the date as no
6 later than January the 5th, probably?

7 A. Well, we were aware of the obligation to
8 make any contributions prior to him becoming a
9 Corporation Commissioner. I also recall that the
10 5th was a date -- I had forgot even to get a check
11 and the 5th was the day I do my banking, anyway, and
12 I went to the bank and just gave cash.

13 Q. Did David Miller accompany you to the bank?

14 A. No -- I don't think so.

15 Q. All right.

16 A. I mean he could have been in the car -- no,
17 I don't think so.

18 Q. Was it in your mind and consciously part of
19 your consideration in making this cash contribution
20 that one must do it before the swearing in?

21 A. Yes, I was aware of that. I mean every
22 waking moment I didn't think that, but he, yes.

23 Q. No, I mean were you familiar enough with
24 the law and comfortable enough with your
25 understanding of the law that you contributed the

1 cash without reviewing the written memoranda on the
2 subject, or did you go back and look at the
3 research?

4 A. I was very aware -- I was very well aware
5 of the existence of the memoranda and what our
6 research had done when I made the contribution.

7 Q. And did you believe at the time you gave
8 the cash money to David Miller that if it were
9 promptly delivered to the campaign, it would have
10 been a legal contribution?

11 A. Yes.

12 Q. Do you know when the money was delivered to
13 the campaign?

14 A. No.

15 Q. Have you --

16 A. I mean what exact date, no.

17 Q. Have you ever undertaken to determine when
18 the money was delivered to Commissioner Anthony's
19 campaign?

20 A. Yes.

21 Q. And what have you done to try to find out
22 that date?

23 A. I asked Mr. Miller; Mr. Miller and I
24 discussed it.

25 Q. And what did Mr. Miller tell you?

1 MR. COATS: To which we object because of
2 the problems with the work-product privilege and the
3 attorney-client privilege. I advise the witness he
4 need not answer.

5 MR. STAKEM: I appreciate that, Mr. Coats,
6 and I don't mean to tread on that. For my client's
7 purpose, I am willing to commit to the limited
8 waiver proposal that you announced earlier. I don't
9 know that that's the case with everyone or that they
10 are going to be able to decide that today. I would
11 defer now asking more questions in recognition of
12 that advice, but I would like to have the
13 opportunity to have those questions answered in some
14 convenient way if everyone else at some point could
15 agree with your stipulation. Could we have that
16 understanding?

17 MR. COATS: Yes, I think we can. We have
18 had -- Mr. Glass has been up here once and then
19 released from deposition, had to come back.

20 THE WITNESS: Been up here twice.

21 MR. COATS: And so I hate to hesitate to
22 have to call him back, however, I understand that
23 you may not be willing to agree today to accept a
24 limited waiver we suggested; it's the only way that
25 we believe that the notes and his recollection of

1 those meetings can be released.

2 So I think we can agree that assuming
3 everyone got together and you all decided you could
4 agree to it and would accept the limited waiver, we
5 could probably make arrangements to do Mr. Glass
6 either on the telephone or something, or have him
7 here.

8 MR. STAKEM: That's fine from my
9 perspective, Mr. Coats, thank you. And Mr. Glass, I
10 have no further questions, thank you, too.

11 MR. LEE: I have no further questions.

12 MR. COATS: No further questions?

13 I have got just a couple questions.

14 CROSS EXAMINATION

15 BY MR. COATS:

16 Q. Did you have any previous knowledge prior
17 to October 2nd, 1992, that Commissioner Anthony was
18 going to file a bar complaint against you?

19 A. Absolutely not.

20 Q. Did you have any knowledge prior to that
21 date that Mr. Anthony thought you had done anything
22 unethical or improper before he filed the bar
23 complaint?

24 A. Absolutely not.

25 Q. Did you have any knowledge at any time that

1 Commissioner Anthony was operating as a covert,
2 cooperating participant in an investigation of
3 Southwestern Bell prior to October 2nd, 1992?

4 A. No, I did not.

5 MR. COATS: Okay. I believe that's all I
6 have except we have one other thing. We want to
7 have a conference for a moment about the notes.

8 (An off-the-record discussion was here had.)

9 MR. COATS: I think we have completed
10 Mr. Glass, and I believe he will read and sign.

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Glen A. Glass

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GLEN A. GLASS, ESQ.

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10 STATE OF OKLAHOMA)

11) ss.

12 COUNTY OF OKLAHOMA)

13

14

15 Subscribed and sworn to before me this

16 5th day of June, 1993.

17

18

19

Henry L. Scott

20

21 Notary Public, State of Oklahoma

22

23

24 My commission expires 8-28-96.

25

C E R T I F I C A T E

1
2 STATE OF OKLAHOMA)
3) ss.
4 COUNTY OF OKLAHOMA)

5 I, Maynard E. Peterson, a Certified
6 Shorthand Reporter within and for the State of
7 Oklahoma, do certify that the witness in the
8 foregoing deposition, GLEN A. GLASS, ESQ., was duly
9 sworn to testify the truth, the whole truth and
10 nothing but the truth, in the within-entitled cause;
that said deposition was taken at the time and place
herein named; that the deposition is a true record
of the witness's testimony as reported by me and
thereafter transcribed into typewriting by computer.

11 I do further certify that I am not
12 counsel, attorney or relative of either party, or
13 clerk or stenographer of either party, or otherwise
14 interested in the event of this suit.

15 I do further certify that I am a duly
16 qualified and acting Certified Shorthand Reporter
17 within and for the State of Oklahoma, Certificate
18 No. 00325.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and affixed my CSR stamp at my office in
21 Oklahoma City, Oklahoma, this 28th day of May, 1993.

22 *Maynard E. Peterson*
23 _____
24 Oklahoma Certified Shorthand Reporter
25 *by Dorothy Peterson*

22 COSTS: \$ _____
23 Paid by Applicant

_____ Maynard E. Peterson
Oklahoma Certified Shorthand Reporter
Certificate Number 00325
Exp. Date: December 31, 1994

1 WITNESS ERRATA SHEET

2 GLEN A. GLASS, ESQ.

3 Application of Howard W. Motley, Jr.-SWB

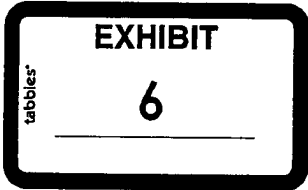
4 PUD No. 890000662

5 Pg.: Line : Changed From : Changed to : Reason

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23	:	:	:	:	:

24 June 8, 1993
25 Date

Glen A. Glass
Signature of witness



SUSAN B. LOVING
ATTORNEY GENERAL OF OKLAHOMA

FOR IMMEDIATE RELEASE
OCTOBER 5, 1993
CONTACT: Gerald Adams
(405) 521-3921

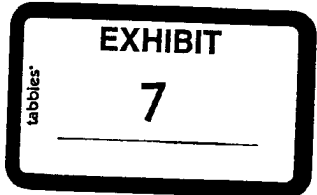
STATEMENT BY ATTORNEY GENERAL SUSAN LOVING

"Judge Myers' order shows a real sense of natural justice. He stayed within the confines of the Supreme Court's directive to him, yet, at the same time, suggested that the issues are more complicated. He found, as a matter of fact, that a Southwestern Bell attorney and a Southwestern Bell vice president gave illegal gifts to Commissioner Anthony, to 'have him look with favor on their pending rate matters.'

"Our position from the outset has been that Southwestern Bell shouldn't be able to profit from its own wrongdoing. We are very pleased that Judge Myers has recognized the validity of our position. We're confident that the Supreme Court will adopt it as well."



FBI



TRANSMIT VIA:

- Teletype
- Facsimile
- AIRTEL

PRECEDENCE:

- Immediate
- Priority
- Routine

CLASSIFICATION:

- TOP SECRET
- SECRET
- CONFIDENTIAL
- UNCLAS E F T O
- UNCLAS

Date 1/3/90

1 TO : DIRECTOR, FBI
 2 ATTN: CRIMINAL INVESTIGATIVE DIVISION,
 3 WHITE COLLAR CRIME SECTION,
 4 PUBLIC CORRUPTION UNIT

5 FROM : SAC, OKLAHOMA CITY (194A-463) (P)

6 SUBJECT : WILLIAM L. ANDERSON, aka,
 7 DAVID H. MILLER, aka;
 8 UNSUBS;
 9 State of Oklahoma Corporation Commissioners;
 10 CSLPO-SL; MF;
 11 OO: Oklahoma City

Re Oklahoma City teletypes to Director, dated 12/4/90 and 12/17/90.

REQUEST OF FBIHQ

It is requested that the enclosed affidavit be expeditiously reviewed and approved by FBIHQ in accordance with established procedures for approval of Title III applications. It is noted that in mid to late January 1991, several issues pertinent to this case will be brought before the Oklahoma Corporation Commission and it is believed that Title III coverage, by that time, will be extremely critical to the successful resolution of this case.

Enclosed for the Bureau are five copies of an affidavit in support of an application for Title III coverage of telephone numbers 405/840-1288, 405/840-1289, 405/843-1000, 405/843-1014, 405/843-1030 and 405/842-2256.

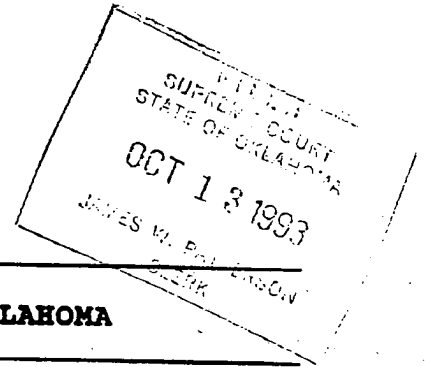
- 3 - Bureau (Enc. 5)
- 3 - Oklahoma City 463
- JRH/tas (2) 194A-436
- (6) (1-194A-436 sub-E-463)

Searched _____
 Serialized LS
 Indexed _____
 Filed LS

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

194A-463-307

No. 80,333
(Cons with 80,340, 80,344
80,342 and 80,345)



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SUSAN B. LOVING, ATTORNEY GENERAL,

Appellant,

v.

OKLAHOMA CORPORATION COMMISSION AND
SOUTHWESTERN BELL TELEPHONE COMPANY

Appellee.

ATTORNEY GENERAL'S MOTION AND SUPPORTING BRIEF TO DENY
SOUTHWESTERN BELL'S BIAS-BASED CHALLENGE TO CORPORATION
COMMISSION ORDER NO. 367868, OR IN THE ALTERNATIVE,
FOR AN EVIDENTIARY HEARING

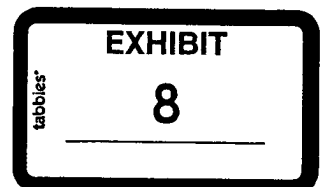
SUSAN B. LOVING
ATTORNEY GENERAL OF OKLAHOMA

ROBERT BUTKIN, OBA #10042
ASSISTANT ATTORNEY GENERAL

112 State Capitol Building
Oklahoma City, OK 73105
(405) 521-3921

ATTORNEYS FOR APPELLANT

October 13, 1993



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CASES CITED

<u>Bailey v. Gulf Insurance Co.</u> , 389 F.2d 889 (10th Cir. 1968)	14
<u>Ellenberg. v. Brockway, Inc.</u> 763 F.2d 1091 (9th Cir. 1985)	8
<u>Estate of Braz v. First Bank and Trust Co. of Sand Springs</u> , 821 P.2d 387 (Okl. Ct. App. 1991)	14
<u>Franklin Bond Corporation v. Smith</u> , 20 P.2d 912 (Okl. 1933)	14
<u>Grigg v. Robinson Furniture Co.</u> , 260 N.W.2d 898, 78 Mich. App. 712 (1978)	7
<u>Guyton v. Irwin</u> , 253 P.2d 556 (Okl. 1953)	3
<u>Hall v. Burkett</u> , 391 F.Supp. 237 (W.D. Okl. 1975)	5
<u>Huff v. Standard Life Insurance Co.</u> , 643 F.Supp. 705 (S.D.Fla. 1986)	5
<u>Kerin v. Udolf</u> , 334 A.2d 434 (Conn. 1973)	7
<u>Ohio Oil Co. v. Sharp</u> , 135 F.2d 303 (10th Cir. 1943)	7
<u>Oklahoma Retail Grocer's Ass'n. v. Wal-Mart Stores</u> , 605 F.2d 1155 (10th Cir. 1979)	8
<u>Phillips v. Amoco Oil Co.</u> , 799 F.2d 1464 (11th Cir. 1986), <u>cert denied</u> , 481 U.S. 1016 (1987)	5
<u>Southwestern Bell Tel. Co. v. Oklahoma Corp. Com'n.</u> , Original Action No. 80,579 (May 25, 1993)	6
<u>Wickham v. Simpler</u> , 180 P.2d 171 (Okl. 1946)	7

STATUTES CITED

12 O.S. 1991, § 655 3
12 O.S. § 2801(4)(b)(4) 14
17 O.S. § 177 9, 10

OTHER AUTHORITY

Pomeroy, Treaty on Equity Jurisprudence,
Volume II (5th edition), at 397 7

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SUSAN B. LOVING, ATTORNEY GENERAL,)	
)	
Appellant,)	
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)	(Cons. with 80,340
OKLAHOMA CORPORATION COMMISSION,)	80,344, 80,342 and
and SOUTHWESTERN BELL TELEPHONE-)	80,345)
COMPANY,)	
)	
Appellees.)	

ATTORNEY GENERAL'S MOTION AND SUPPORTING BRIEF TO DENY
SOUTHWESTERN BELL'S BIAS-BASED CHALLENGE TO CORPORATION
COMMISSION ORDER NO. 367868, OR IN THE ALTERNATIVE,
FOR AN EVIDENTIARY HEARING

On October 5, 1993, following an evidentiary hearing, Special Master William S. Myers, Jr., issued his report pursuant to a referral Order of the Oklahoma Supreme Court. The Attorney General submits that Judge Myers' findings of fact and conclusions of law are fatal to Southwestern Bell's post-hearing challenge to Commission Order No. 367868, and that Bell's challenge should now be rejected by this Court. Alternatively, the Attorney General requests that this Court instruct Judge Myers to hold an additional evidentiary hearing, as suggested by the Special Master, to determine 1) whether, given Bell's knowledge of grounds to disqualify Commissioner Anthony during the rate proceeding below, and Bell's failure to do so until after the Commission had issued an adverse ruling, Bell is now barred from the relief it seeks before this Court; and 2) whether a Commissioner is automatically disqualified from hearing a case where the grounds for

disqualification existed only as a result of the moving party's illegal activities.

It is clear from the Special Master's Report that the ultimate issue of when Bell had reason to know of Commissioner Anthony's potential bias cannot be resolved by a narrow focus on when SWBT learned that Anthony was cooperating with the FBI. It may be that Bell did not have reason to know of Anthony's cooperation with the FBI until following the issuance of Order No. 367868 on August 26, 1992. But this is but one evidentiary snippet against a backdrop of evidence that, as Judge Myers recognized, showed that Bell had grounds for seeking disqualification "prior to any hearings and prior to [Commissioner Anthony's] decision in those hearings." Special Master's Report (Report), p. 5, Conclusion of Law No. 2.

The ground for seeking recusal that was known to Bell was Bell's own deliberate efforts to make illegal cash payments to a sitting Commissioner during the pendency of the proceeding below. Bell clearly intended these illegal payments to render Commissioner Anthony biased in its favor. Had Bell sincerely wished to have a neutral and detached adjudicator, it should have sought recusal as soon as it had knowledge of its own efforts to corrupt the sitting Commissioner. But Bell instead sat on its rights in the hopes that its effort to corrupt Anthony would succeed. The Special Master concluded: "[O]bviously SWBT believed it to be in its best interests not to seek his disqualification." Report, p. 5, Conclusions of Law No. 2.

The Special Master's Report points to an additional, if related reason, that SWBT's bias-based challenge must be rejected. Judge Myers found that but for Bell's own illegal conduct, the grounds on which Bell bases its disqualification proceeding would never have arisen. Bell does not approach this remedy with just unclean hands, but with filthy, putrid hands, which, virtually from the moment that Commissioner Anthony took office, sought to reach out and touch and corrupt Commissioner Anthony with illegal cash contributions. Bell cannot and should not prevail when the rights which it now asserts derive from its own illegal conduct in the same proceeding.

I. THE SPECIAL MASTER'S FINDINGS ARE FATAL TO A CLAIM THAT SOUTHWESTERN BELL DID NOT HAVE REASON TO KNOW OF COMMISSIONER ANTHONY'S BIAS UNTIL AFTER THE END OF THE RATE PROCEEDINGS BELOW.

Bell's challenge, based on the alleged bias of Commissioner Anthony, can succeed only if Bell can prove that prior to the close of the rate proceeding below, it did not have reason to know of grounds for Commissioner Anthony's disqualification. This Court recognized the evidentiary burden on the utility when it held, in its Order of February 9, 1993:

[Bell's] motion to amend the petition in error and to supplement the record is treated as a request for leave . . . to proceed below with an application to challenge, by after-discovered proof of his bias, Commissioner Anthony's qualification to sit in Cause No. PUD 000662 (emphasis in original).

See also, 12 O.S. 1991, § 655; Guyton v. Irwin, 253 P.2d 556 (Okla. 1953).

In his report of October 5, 1993, the Special Master found that prior to the end of the rate proceedings, Bell did have reason to know of grounds for disqualification of Commissioner Anthony. Judge Myers found that the evidence showed that during the pendency of the rate proceeding, a Bell attorney and executive officer deliberately sought to corrupt Commissioner Anthony in hopes that Anthony would be biased in Bell's favor on its pending rate matters:

Such evidence was that Commissioner Anthony had received illegal cash contributions (which he immediately gave to the FBI) from William Anderson, attorney for SWBT in PUD-260 and PUD-662 pending before the Commission during the period in question and from David Miller, SWBT's Vice President in Oklahoma for Governmental and Regulation Affairs and also a registered lobbyist for SWBT. The further evidence in this regard was that the cash was accompanied by false lists of contributors. This was given for the essential purpose of having "access" to him [Commissioner Anthony], which was no more or no less than an effort to have him look with favor on their pending rate matters. (emphasis added.)

Special Master's Report, pp. 2-3, Finding of Fact No. 3.

Judge Myers' evidentiary finding led him to the conclusion of law that Bell had grounds to seek Commissioner Anthony's disqualification before the end of the Commission rate proceeding in Cause PUD 000662, but sat on its rights in the hopes that its efforts to corrupt Commissioner Anthony would succeed:

From the greater weight of the evidence heard by the special master as set out above, it is concluded that SWBT knew that Commissioner Anthony has ostensibly accepted what he believed to be illegal cash contributions from their employees which would certainly have

been grounds for SWBT to move for his disqualification prior to any hearings and prior to his decision in those hearings. Obviously, SWBT believed it to be in its best interests not to seek his disqualification.

Report, p. 5, Conclusion of Law No. 2 (emphasis added).

While Bell may not have known of Anthony's cooperation with the FBI until following the conclusion of the rate proceeding, there is no doubt but that Bell previously had reason to know that Anthony would not be acting as a neutral and impartial jurist. It was Bell's own attorneys and officers who deliberately sought to compromise Commissioner Anthony's impartiality through illegal cash payments, which Judge Myers found to be nothing more than an illegal effort to have the Commissioner look with favor on Bell in its pending rate proceedings.

A party must proceed with absolute diligence to raise the disqualification of a judge at the earliest possible moment after learning of facts giving rise to a belief of bias or prejudice indicating disqualification. See, Huff v. Standard Life Insurance Co., 643 F.Supp. 705 (S.D.Fla. 1986); Hall v. Burkett, 391 F.Supp. 237, 241 (W.D. Okl. 1975); Phillips v. Amoco Oil Co., 799 F.2d 1464 (11th Cir. 1986), cert denied, 481 U.S. 1016 (1987). In Phillips, the court noted that a party, knowing of facts which would support a recusal, cannot "lie in wait, raising the recusal issue only after learning the trial court's ruling on the merits." Id. at 1472.

In the instant case, SWBT had the duty to act in good faith, and to promptly seek Commissioner Anthony's recusal as soon as it

had reason to know that the Commissioner's posture as a "neutral and detached adjudicator" had been compromised. The Attorney General submits that this duty to seek a disqualification must arise when a party has reason to know that a judge or Commissioner is improperly biased in its favor, just as the duty arises when a party has reason to know that a judge or Commissioner is biased against him. The result apparently sought by Bell in this case is that it may remain silent in the face of the efforts of its own attorneys and officers to corrupt a sitting judge in its favor, and was not required to seek recusal until after Commissioner Anthony had voted against Bell's interests, and after it had learned that the Commissioner was cooperating with the FBI. This result would undermine the very purpose of recusal motions -- the protection of the integrity of the ratemaking process -- and would reward a wrongdoer whose efforts to corrupt a sitting judge apparently backfired.

Judge Myers' Report makes it abundantly clear that the underlying issue before this Court cannot be resolved by a focus on the simple issue of when Bell knew that Commissioner Anthony was cooperating with the FBI, in the light of SWBT's knowledge that its employees had provided illegal cash contributions which "would certainly have been grounds for SWBT to move for his disqualification." Report, p. 5.)

II. SOUTHWESTERN BELL'S POST-HEARING CHALLENGE BASED ON COMMISSIONER ANTHONY'S ALLEGED BIAS MUST BE DENIED FOR THE ADDITIONAL REASON THAT SWBT HAS UNCLEAN HANDS. JUDGE MYERS FOUND THAT BUT FOR BELL'S OWN ILLEGAL ACTIVITIES IN CONNECTION WITH THE RATE PROCEEDING, BELL WOULD HAVE NO GROUNDS FOR SEEKING COMMISSIONER ANTHONY'S DISQUALIFICATION.

Judge Myers concluded that it was only because of SWBT's own corrupt activities that it had any reasonable grounds for believing Commissioner Anthony would be biased against it:

If there had been no illegal cash contributions or wrongdoing on the part of SWBT, then certainly SWBT would not have any reasonable grounds for believing Commissioner Anthony would be biased against it.

Report, p. 5, Conclusion of Law No. 3 (emphasis added).

It is well settled that relief will be denied to a party if it appears that the right sought to be protected is the product of its own inequitable or wrongful conduct. Ohio Oil Co. v. Sharp, 135 F.2d 303, 307 (10th Cir. 1943) (Murrah, J.); Wickham v. Simpler, 180 P.2d 171 (Okl. 1946) (equity will not lend its aid and in any way to one who has been guilty of unlawful or inequitable conduct in a transaction from which he now seeks relief.)

This doctrine, that a party cannot benefit from his own wrongdoing, has its origin in the principle of equity jurisprudence known as the unclean hands defense. "He that hath committed inequity shall not have equity." Pomeroy, Treaty on Equity Jurisprudence, Volume II (5th edition), at 397. The courts have recognized that the unclean hands defense is available to defeat applications for remedies at law, as well as traditional equity remedies. Grigg v. Robinson Furniture Co., 260 N.W.2d 898, 903, 78 Mich. App. 712 (1978); Kerin v. Udolf, 334 A.2d 434, 437 (Conn.

1973). See also, Oklahoma Retail Grocer's Ass'n. v. Wal-Mart Stores, 605 F.2d 1155 (10th Cir. 1979) (equity clean hands defense available to defeat suit based on statutory violation of the Oklahoma Uniform Sales Act).

The classic formulation of the unclean hands defense requires that the party against whom it is asserted be tainted with bad faith or inequitableness relative to the matter in which he seeks relief:

In applying the doctrine, "what is material is not that plaintiff's hands are dirty, but that he dirtied them in acquiring the right he now asserts, or that the manner of dirtying renders inequitable the assertion of such rights against the defendants." Republic Molding Corp. v. B.W. Photo Utilities, 319 F.2d 347, 349 (9th Cir. 1963). Thus, equity requires that those seeking its protection shall have acted fairly and without fraud or deceit as to the controversy in issue.

Ellenberg. v. Brockway, Inc. 763 F.2d 1091 (9th Cir. 1985).

In the instant case, there is no doubt that SWBT's misconduct falls within the classic formulation of the unclean hands defense, and thus bars the remedy it seeks. SWBT "dirtied its hands" in acquiring the right it now asserts, as its own efforts to corrupt Commissioner Anthony led to Anthony's cooperation with law enforcement. In fact, Judge Myers found the closest causal connection known to law, a "but for" connection, between SWBT's illegal cash contributions to Commissioner Anthony and the existence of the grounds asserted by Bell for believing Commissioner Anthony would be biased against it.

III. THE EVIDENCE SUPPORTS JUDGE MYERS' CONCLUSION THAT PRIOR TO THE CONCLUSION OF THE UNDERLYING SWBT RATE CASE, SWBT HAD GROUNDS FOR SEEKING THE DISQUALIFICATION OF COMMISSIONER ANTHONY.

The evidence of record supported the Special Master's finding of fact that prior to the end of the rate proceeding below, SWBT had knowledge of grounds to move for Commissioner Anthony's disqualification. This evidence falls generally into two categories: 1) evidence of efforts by Bell to corrupt Commissioner Anthony such that he would not discharge his duty in a neutral and impartial manner; 2) communications from Commissioner Anthony to SWBT officers and agents where Commissioner Anthony indicated his belief that SWBT was engaged in illegal activity.

1. Bell Attempted To Corrupt Commissioner Anthony.

William Anderson was an attorney of record for SWBT in two major rate proceedings before the Corporation Commission, PUD 000260 and PUD 000662 (Tr. 12-14, 21-22).¹ David Miller was a Vice President for SWBT's Oklahoma Division and also a registered lobbyist for Bell and Vice-Chairman of SWBT's Political Action Committee (Tr. 27).

Commissioner Anthony was sworn into office on January 9, 1989 (Tr. 24). This date is significant, as 17 O.S. § 177 prohibits a regulated utility or a person with interests in such a utility,

¹References are to the Transcript (Tr.) of the September 3, 1993 proceeding before Judge William Myers. The appendix to this motion contains the relevant pages of the transcript, trial exhibits, and depositions that are cited in this brief.

from giving money to a sitting Corporation Commissioner, except during a sixty-day period prior to an election.

On January 26, 1989, Mr. Anderson, the Bell attorney, appeared at Commissioner Anthony's door and offered to raise \$10,000.00 for him (Tr. 19). When Commissioner Anthony told him about the prohibitions of 17 O.S. § 177, Anderson responded that he would "take care of that" by using the names of relatives as contributors. (Tr. 19-21; Anthony Ex. 9).

Subsequently, on February 2, 1989, Bell executive David Miller came to Commissioner Anthony's office to discuss the money which Anderson planned to give to Anthony. (Tr. 26). Four days later, on February 6, Bell attorney Anderson met with Commissioner Anthony at his Corporation Commission office and handed him fifty hundred dollar bills, with a list of phony "Anthony contributors" on the top. (Tr. 28). On February 21, 1989, Bell executive Miller gave Commissioner Anthony a second cash installment on the \$10,000.00 payment. This amount was \$2,450 in cash. Bell executive Miller also provided the Commissioner a list of phony names, having previously indicated that since it was illegal for a public utility to give money to a sitting Commissioner, he would provide names such as those of his family members. (Tr. 34-36). At this meeting, Bell executive Miller told Anthony that he did not "want to buy his vote" but wanted "access." (Tr. 34-37).

On August 3, 1989, Bell attorney Anderson engaged in a scheme to transfer \$15,000.00 to buy Commissioner Anthony's aide, William Nicholson, a new car in exchange for Commissioner Anthony's

issuance of a "quiet" dissent in the PUD 000260 case. (Tr. 38). Upon learning that Nicholson was leaving the Commission, Anderson told Anthony that he would keep the money for Anthony himself. (Tr. 39)

In March, 1991, the FBI began questioning SWBT employees concerning illegal payments. Glenn Glass, Southwestern Bell's General Attorney and another counsel of record in the rate proceeding, told Bell attorney Anderson that his relationship with Bell was terminated because of the FBI investigation. Glass knew that the FBI had interviewed Bell executive Miller about Bell attorney Anderson, and about the possible bribery of a public official. (Glass deposition, pp. 12-15, 45-46).

On or about March 14, 1991, Liam Coonan, Senior Vice President and Assistant General Counsel of SWBT and one of its two highest ranking attorneys, came to Oklahoma City and commenced an internal investigation in response to the FBI probe. Coonan knew that the FBI was interested in Bell executive David Miller's previous payment of money to Anthony, and in particular Miller's knowledge of the contributors of that money. (Tr. 155, 176, 180). At a meeting between Bell attorney Coonan, Bell executive Miller and Commissioner Anthony on April 10, 1991, Miller said, regarding the money that Miller gave to Anthony after he was sworn into office, "discreetness was a big concern to him [Miller], but that illegality was not a concern." (Tr. 60). Coonan reacted "physically" to this remark. (Tr. 59-60).

In July and August, 1992, the FBI began interviewing the individuals who were on the phony contributor list that Bell executive Miller had given to Anthony. (Tr. 67-68). Bell attorney Coonan learned in July 1992, that the Grand Jury wanted to hear from a number of SWBT employees concerning the matter, and on August 4, 1992 that the FBI was speaking to relatives and friends of employees (Tr. 193-194). Bell attorney Coonan was aware at this time that the individuals listed as contributors had not, in fact, made any contributions to any Commissioners. (Tr. 164). Bell executive Miller was asked to retire from SWBT on August 19, 1992. Bell attorney Coonan testified that the "sole reason" that Miller was asked to retire was the list of phony names he had provided to Anthony in conjunction with the \$2,500 cash payment made in 1989. (Tr. 169).

2. **Prior To The End Of The Rate Proceeding Below, There Were Communications Between Commissioner Anthony and Southwestern Bell Such That Bell Should Reasonably Have Known Of Anthony's Belief That Bell Had Engaged In Wrongdoing.**

On March 19, 1990, Commissioner Anthony, for the first time, met J.B. Ellis, the newly arrived Oklahoma Division President of SWBT. At this first meeting, Commissioner Anthony told Ellis that there were some serious situations involving Bell officials (Tr. 43). At a later meeting, on March 28, 1990, Anthony explicitly informed Ellis that "Dave Miller had arranged some cash contributions that were illegal at the time." (Tr. 45). Anthony also advised Ellis that when the Corporation Commission was voting

on PUD 260, Bell attorney Bill Anderson had made \$7,500 in cash available to William Nicholson, Anthony's aide. (Tr. 45).

Following these revelations, Bell President Ellis told Anthony that if "David Miller did what Dave Miller did, he's gone like that." (Tr. 46). However, when Mr. Ellis left the meeting, he told Anthony, "Let sleeping dogs lie." (Tr. 47). Several days later, Bell President Ellis told Anthony that he had destroyed his notes of their conversation on March 28, a conversation in which Anthony told Ellis of illegal campaign contributions made to him by a Bell official. (Tr. 48-49).

On April 5, 1991, Commissioner Anthony and David Miller had a meeting. At this meeting, Anthony told Bell executive Miller of his belief that Miller's previous cash contribution was illegal, since it was given after Anthony took office. (Tr. 51-53).

Following this meeting, Miller, Coonan and Anthony met on April 10, 1993, at the request of Southwestern Bell. Prior to this meeting, Coonan had asked the FBI for permission to meet with Anthony. (Tr. 54, 187). At this meeting, Bell attorney Coonan told Anthony that SWBT's position was that Miller's contributions to Anthony had been lawfully given, i.e., before Anthony was sworn into office. (Tr. 57). When Coonan made this statement, Anthony proceeded to "shoot holes in it," explaining that the money had been illegally given after the time that he was sworn in. (Tr. 56-59). During this conversation, Bell executive Miller and Bell attorney Coonan acknowledged that the money had been given to Anthony in Anthony's Corporation Commission office in the Jim

Thorpe Building. Anthony reminded them that he did not move into that office until after he was sworn in. (Tr. 59).

3. **The Statements and Knowledge Of SWBT Attorneys and Officials Are Imputed To The Corporation.**

In the evidentiary hearing before Judge Myers, Liam Coonan, an attorney for SWBT, testified directly about his involvement as counsel representing SWBT in respect to the FBI investigation of illegal campaign contributions. Coonan's statements are admissible against the party he represents. See, 12 O.S. § 2801(4)(b)(4).

At the hearing, Commissioner Anthony also testified concerning statements made to him by Miller, Coonan, Ellis and Glass, all SWBT officials at the time the relevant statements were made. These statements were also admissible since they were offered against a party, and were made by the party's agent or servant concerning a matter within the scope of the agency or employment, and made during the existence of the employment or agency relationship. 12 O.S. 1991, § 2801(4)(b)(4).

Because Coonan, Ellis, Miller and Glass acted as agents for SWBT, their knowledge of wrongdoing is also imputed to the corporation. See, e.g., Franklin Bond Corporation v. Smith, 20 P.2d 912, 914 (Okl. 1933); Estate of Braz v. First Bank and Trust Co. of Sand Springs, 821 P.2d 387, 391 (Okl. Ct. App. 1991); Bailey v. Gulf Insurance Co., 389 F.2d 889, 891 (10th Cir. 1968).

IV. IN THE ALTERNATIVE, THE ATTORNEY GENERAL REQUESTS THAT THIS COURT INSTRUCT THE SPECIAL MASTER TO CONDUCT AN EVIDENTIARY HEARING TO DETERMINE THE ISSUES RAISED IN THE SPECIAL MASTER'S REPORT.

The Attorney General believes that Judge Myers' findings 1) that SWBT had reason to seek Commissioner Anthony's disqualification before the conclusion of the proceedings below; and 2) but for SWBT's own illegal conduct, SWBT would never have had any basis for belief that Anthony would be biased against it, are fatal to Bell's post-hearing bias-based challenge.

In the alternative, the Attorney General requests that this Court conduct an evidentiary hearing, as suggested by the Special Master, to determine the issues which Judge Myers identified as follows:

1. Where a party has knowledge which is grounds for the disqualification of a Commissioner but does not ask for disqualification until after an adverse ruling has been made, can such party then seek the disqualification of the Commissioner on another ground?

2. As a matter of law, is a judge, or a Commissioner, automatically disqualified from hearing a case based on the misconduct of the party seeking to disqualify him?

Respectfully submitted,

SUSAN BRIMER LOVING
ATTORNEY GENERAL OF OKLAHOMA



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FYI Business	2
Markets	3
Stocks	3
Mutual Funds	5

BUSINESS

SWB Accused of Offering Illegal Contributions

By Chuck Ervin
World Capitol Bureau

OKLAHOMA CITY — A special master appointed by the Supreme Court said Tuesday unrefuted evidence shows that Southwestern Bell Telephone attempted to influence Corporation Commission member Bob Anthony with illegal cash contributions.

But Special Master Dist. Judge William Myers said the court had not instructed him to make any determination about alleged illegal activity by the telephone company.

Southwestern Bell is seeking to overturn a Corporation Commission order that it must repay \$164 million in over-

charges to its customers and lower its rates by \$94 million annually. Bell contends that Anthony's role as an informant for the FBI prejudiced him against the telephone company. The company wants a new rate hearing.

It also wants Anthony disqualified. Myers' findings Tuesday were not a clear victory for Southwestern Bell or Anthony, although both sides claimed victory.

The special master told the court that if the only issue is whether Anthony was an informant for the FBI and Southwestern Bell had no way of knowing about it, then there should be a new rate hearing before the Commission. But he said there is no need to start from scratch before an administrative law judge, who heard

lengthy testimony in the rate case, unless the court believes the judge was affected by Anthony's alleged bias.

And Myers said that if the court believes other issues should be explored, then it should order a new evidentiary hearing.

One of those issues is whether Bell can disqualify Anthony now, even though it knew of grounds for potential disqualification and did not take action until after the commission's adverse ruling.

The other is whether someone can use his own misconduct as grounds for disqualifying a commissioner.

"If there had been no illegal cash contributions or wrongdoing on the part of SWBT, then certainly SWBT would not have any reasonable grounds for believ-

ing Commissioner Anthony would be biased against it," Myers wrote.

Myers also said evidence showed Anthony was given illegal cash contributions, which he turned over to the FBI, from Southwestern Bell attorney William Anderson and Southwestern Bell Vice President David Miller.

"This was given for the asserted purpose of having access to him, which was no more or no less than an effort to have him look with favor on their pending rate matters," Myers wrote.

Myers noted that Southwestern Bell did not offer any evidence to refute Anthony's testimony about illegal contributions by Anderson and Miller.

He said an additional evidentiary hearing would be necessary to give South-

western Bell an opportunity to rebut Anthony's testimony.

Myers said there was no dispute on whether Anthony was an FBI informant. And he said telephone company officials had no way of knowing that until Anthony publicly revealed it Oct. 2, 1992, because Anthony and the FBI were trying hard to keep it secret.

Anthony contended Bell officials should have known he was an informant long before he revealed it.

Even though Bell officials didn't know Anthony was an informant, they did know he believed he had been offered illegal cash contributions by their employees, Myers wrote.

That certainly would have been See Bell on Business 6.



Oil, Gas Industry Expects Better Days

By Roy Tuttle
World Staff Writer

OKLAHOMA CITY — While 1992 was a grim year for the industry,

infrastructure — its highways and public facilities — but we can't find the money to pay for it. Our state wants to emerge in the next century with one of the na-

\$10 billion a year if the interstate laws were less restrictive.

. . . Bell

Continued from Business 1

grounds for them to seek his disqualification prior to his vote on their rate case, Myers added.

"Obviously SWBT believed it to be in its best interests not to seek his disqualification," he wrote.

"We think it's a great victory," Bell attorney Andy Coats said of Myers' report to the Supreme Court.

"He answered the questions exactly as we thought they should be answered," he said.

"This clears the way to get the case back to the commission for a fair and impartial hearing."

Coats was asked about the other possibility — that the court might order a new hearing on the other issues cited by Myers.

"If they want an additional hearing, we're ready to go forward," he said.

Coats also was asked about evidence presented to Myers about alleged illegal cash payments by Bell employees.

"We assume that if there was something illegal, someone will bring an action on it," he said. "Nobody has."

Former Commissioner Bob Hopkins and Anderson were indicted by a federal grand jury earlier this year for alleged bribery on another rate case involving Southwestern Bell.

Skip Nicholson, Anthony's administrative assistant, also claimed a victory.

"We're very happy with it," Nicholson said of Judge Myers' report. "The judge cut through the rhetoric and the PR and got to the heart of the issue."

He said the question of whether Bell should be able to use its own misconduct to disqualify Anthony is "the central point."

Attorney General Susan Loving said Myers' order "shows a real sense of natural justice."

"He found, as a matter of fact, that a Southwestern Bell attorney and a Southwestern Bell vice president gave illegal gifts to commissioner Anthony to have him look with favor on their pending rate matters," she said.

"Our position from the outset has been that Southwestern Bell shouldn't be able to profit from its own wrongdoing," she added.

"We are very pleased that Judge Myers has recognized the validity of our position. We're confident that the Supreme Court will adopt it as well," she said.



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Downtown, 502 S. Main
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SUSAN B. LOVING
ATTORNEY GENERAL OF OKLAHOMA

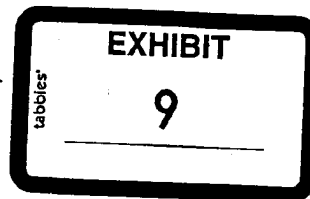
FOR IMMEDIATE RELEASE
OCTOBER 5, 1993
CONTACT: Gerald Adams
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STATEMENT BY ATTORNEY GENERAL SUSAN LOVING

"Judge Myers' order shows a real sense of natural justice. He stayed within the confines of the Supreme Court's directive to him, yet, at the same time, suggested that the issues are more complicated. He found, as a matter of fact, that a Southwestern Bell attorney and a Southwestern Bell vice president gave illegal gifts to Commissioner Anthony, to 'have him look with favor on their pending rate matters.'

"Our position from the outset has been that Southwestern Bell shouldn't be able to profit from its own wrongdoing. We are very pleased that Judge Myers has recognized the validity of our position. We're confident that the Supreme Court will adopt it as well."

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SOUTHWESTERN BELL TELEPHONE)
COMPANY,)
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Appellant,)
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v.)
))
OKLAHOMA CORPORATION COMMISSION)
AND STATE OF OKLAHOMA,)
))
Appellees.)

No. 80,333
(Cons. with 80,334,
80,340, 80,342
80,345)

ATTORNEY GENERAL'S
MOTION TO REOPEN THE RECORD
FOR THE ADMISSION OF ADDITIONAL EVIDENCE

The Attorney General of the State of Oklahoma, Susan B. Loving, respectfully requests the Special Master to reopen the record in this case for the limited purpose of allowing the admission of certain evidence which is relevant to this proceeding but which was heretofore unavailable to the parties.

I. PREVIOUSLY UNAVAILABLE EVIDENCE CONCLUSIVELY SHOWS THAT SWBT'S REPRESENTATIVES KNOWINGLY SOUGHT TO INFLUENCE ANTHONY THROUGH ILLEGAL CASH PAYMENTS, THAT ANTHONY ADVISED SWBT'S PRESIDENT OF THE ILLEGAL ACTIVITIES, BUT THAT SWBT'S PRESIDENT SOUGHT TO CONCEAL THE MATTER RATHER THAN REPORT IT TO LAW ENFORCEMENT AUTHORITIES OR REQUEST ANTHONY'S RECUSAL.

In its post-hearing brief, Southwestern Bell Telephone Company ("SWBT") denies any claims of criminal wrongdoing by its representatives and labels as "outrageous" any suggestion that SWBT's representatives attempted to cover-up any such wrongdoing. (SWBT Brief, pp. 2 & 5). And yet previously unavailable information provides dramatic evidence that SWBT's representatives not only knowingly engaged in illegal actions intended to influence Commissioner Bob Anthony, but when Anthony reported those illegal

activities to SWBT's Oklahoma President, he not only failed to report the matter to appropriate authorities or to seek Anthony's recusal, but affirmatively sought to keep the matter quiet.

On September 23, 1993, the Motion of Defendant William Anderson to Dismiss Indictment Because of Impermissible Selective Prosecution ("Anderson's Motion") was filed in the case of U.S. v. William Anderson, Jewel Callaham, Robert "Bob" Hopkins, Case No. CR-93-137-A, U.S. District Court, Western District of Oklahoma. Attached to Anderson's Motion were excerpts from the transcripts of recorded conversations between Commissioner Anthony and David Miller, and between Anthony and SWBT's then Oklahoma President, J.B. Ellis. These excerpts were not available to the public until filed with Anderson's Motion, and have only recently come to the Attorney General's attention.

These excerpts not only corroborate the sworn testimony of Commissioner Anthony in the instant case, but clearly contradict SWBT's denial that they knew of any wrongdoing. It appears from these excerpts that the highest levels of SWBT's Oklahoma management were not only aware of efforts to influence Commissioner Anthony, but ratified those actions by failing to report them to law enforcement authorities.

One of the recorded conversations occurred on February 2, 1989, almost one month after Commissioner Anthony was sworn into office, between Anthony and David Miller, SWBT's Assistant Vice President for Revenue and Public Affairs. A true and correct copy of the excerpt attached to Anderson's Motion is attached hereto as

Exhibit "A." In the conversation between Anthony ("BA") and Miller ("DM"), the following exchange took place:

DM: This, this is a funny conversation to have with you. I understand from talking with Bill Anderson that you got some debt.

BA: Uh-huh.

DM: And you know I got to know a lot of people that wanna help, a lot of 'em around the phone company and so forth but I also know what the law says.

BA: Um-hum.

DM: And I don't want anything to look like we're tryin' to buy votes, cause we're not trying to buy votes, we just don't, all we want is access to you....

BA: Yeah.

DM: Uh and I don't wanna do anything that would offend you but if uh through some friends and relatives who could gather up some money, do you have a problem with that?

BA: Well now how did Bill Anderson say he could handle it?

DM: Well the best way would probably be, we could do it in cash. And we'll give you names and addresses and relatives or ever [sic], nobody that works for the telephone company.

Exhibit "A," pp. 1 & 2 (emphasis added).

Once he was comfortable that Anthony was not "offended" by his offer, Miller went on to describe how he intended to funnel the money to Anthony:

DM: And it will all be, will be names that'll be below two hundred dollars but the way I understand it, that once you're sworn in.

....
DM: You know Glen [Glass] gave you, I gave you [a] little, ...but once you're sworn in you really can't take money from us.

BA: That's right....so what kind of source uh would we have on this then?

....

DM: It'll be individuals, and I may give you my daughter's name or my mother's name....

Id. pp. 2 & 3 (emphasis added). These excerpts indicate that David Miller knowingly sought to buy "access" to Anthony on behalf of SWBT through illegal means.

True to his word, the attached transcripts indicate that Miller delivered cash to Anthony on February 21, 1989, as shown by another excerpt from Anderson's Motion attached hereto as Exhibit "B." In the transcript Miller identified the actual source of the funds as being "myself and our lawyer [Glen Glass] and my boss [Royce Caldwell]" Exhibit "B." Miller also made good on his promise to deliver a list of names to circumvent the law:

DM: A bunch of names you can use too, whatever you wanna do with that.

BA: Okay, umm, and ah, is that cash?

DM: Mu hum.

Id.

Even more astounding than Miller's actions were the statements of J.B. Ellis, the new President of SWBT's Oklahoma Division, when confronted with the truth by Commissioner Anthony on March 28, 1990, as shown by a third excerpt from Anderson's Motion attached hereto as Exhibit "C." When asked his understanding of Anthony's relationship with SWBT, Ellis' answer clearly indicates knowledge of the nature of Miller's actions: "[A]nd there has been some

political support since you've been on this job....Which can be a little touchy." Exhibit "C" at p. 5.

Anthony goes on to make the nature of Miller's actions perfectly clear, only to learn that Ellis is already aware of them:

BA: Now...who was it that informed you of the help that I got from Bell...on the campaign deficit after I took office?

JE: Dave [Miller].

BA: Okay. Cause...you know he...did...arrange some cash contributions which...were illegal at the time....

....

JE: Yeah I think that's right.

Id. at p. 15 (emphasis added).

According to the transcript, Anthony went on to tell Ellis about Anderson's efforts to influence Anthony's vote in connection with the SWBT PUD 260 case, which Ellis was apparently unaware of.

Id. Anthony then goes on to confirm Ellis' knowledge that the "top people" at SWBT were involved, including Miller, Glen Glass and Royce Caldwell, Ellis' predecessor as President of SWBT's Oklahoma Division. Id. at pp. 21 & 22.

Rather than being concerned about the illegality of the actions of Miller, Anderson and others, Ellis' concern is that no one find out:

JE:My position is, is what has transpired, has transpired.

....

JE: I have made copious notes about all of this and I have put them away...and only one person has access to 'em and that's me. Their [sic] not at the

office...their [sic] not anywhere but I have made copious notes about everything, as far as I'm concerned it's over.

Id. at p. 41. Ellis goes on to state: "What transpired, transpired, there were a lot of people involved in it," and "So far as I'm concerned it's over....never to be dealt with again." Id. at p. 42 (emphasis added).

II. THE ADDITIONAL EVIDENCE WAS NOT AVAILABLE AT THE TIME OF THE EVIDENTIARY HEARING IN THIS PROCEEDING, IS CLEARLY RELEVANT TO THE ISSUES IN THIS PROCEEDING, IS COMPETENT AND SERVES THE INTERESTS OF JUSTICE.

The decision to reopen the evidentiary record in a proceeding is addressed to the sound discretion of the trial court or, in this case, the Special Master. Johnson v. Johnson, 674 P.2d 539, 545 (Okla.1983). The taking of additional evidence is proper where the additional evidence is relevant, competent, was not available at the time of trial in the exercise of due diligence, and advances the ends of justice. Johnson, supra; Harper-Turner Oil Co. v. Bridge, 311 P.2d 947, 951 (Okla. 1957); Railway Express Agency v. Stephens, 83 P.2d 858, 859 (Okla. 1938).

The evidentiary hearing in this proceeding was held September 3, 1993. Although the evidence contained in Exhibits "A," "B" and "C" hereto was available to the defendants in U.S. Anderson prior to September 23, 1993, it was not available to the public, including the Oklahoma Attorney General, until that date when it was filed of record with the Office of the Court Clerk for the United States District Court for the Western District of Oklahoma. Thus, the additional evidence attached hereto could not, in the

exercise of due diligence, have been procured and introduced at the evidentiary hearing in this cause.

The additional evidence is also clearly competent. Commissioner Anthony was present for each of the conversations, he recorded the conversations himself and then reviewed the transcriptions for accuracy. Commissioner Anthony is competent to testify as to the authenticity and the accurateness of the evidence attached hereto. Okla. Stat. tit. 12, § 2601 et seq. (1991). Further, the attached exhibits are not hearsay because the statements therein are offered against SWBT and are the statements of SWBT's own representatives. Id. § 2801(4)(b)(1) & (4). The testimony required for the admission of Exhibits "A," "B" and "C" should be very brief and should not unduly delay this proceeding.

The evidence attached to this motion is also clearly relevant to this proceeding on several grounds. First, it contradicts and rebuts SWBT's denial of wrongdoing and shows that, in fact, the very highest level of SWBT's Oklahoma management was aware of such wrongdoing. As was argued in the Attorney General's pre-trial and trial briefs, illegal actions carry with them certain consequences as a matter of law. "There is always the general presumption that public officers have performed, or will perform, their duties." State v. Ford, 116 P.2d 988, 990 (Okla. 1941). Commissioner Anthony was under a legal duty to report the actions of SWBT's representatives to law enforcement authorities and the law charges SWBT with such knowledge. SWBT cannot now be heard to complain

that they are prejudiced because they didn't know nature and extent of Anthony's cooperation.

Secondly, the evidence attached to this motion provides conclusive proof that SWBT created the error of which they now complain by illegally attempting to influence Commissioner Anthony. Under the doctrine of invited error, as argued in the Attorney General's pre-trial and trial briefs, SWBT is precluded from raising Anthony's cooperation with law enforcement authorities as an error on appeal when it was the actions of SWBT's own representatives which required Anthony to cooperate with law enforcement authorities.

Thirdly, although Ellis knew of Anthony's belief that Miller and others had attempted to illegally influence him, and even though this knowledge was conveyed during the pendency of the case below, Ellis made no effort to recuse Anthony from the case. In fact, the evidence attached hereto shows that Ellis' primary concern was keeping the information quiet. By these actions, Ellis and SWBT waived any right they might have to challenge Anthony's impartiality in this case as previously demonstrated in the Attorney General's pre-trial and trial briefs.

Finally, despite SWBT's claim that its wrongdoing is not relevant to this proceeding, justice demands that any decision in this case be rendered in light of the whole sordid factual picture. It is one thing for a party to challenge the impartiality of a Corporation Commissioner who wrongfully believes the party to have acted illegally. It is quite another matter for a party who tries

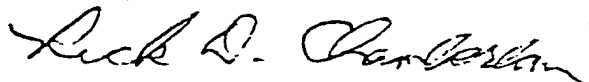
to illegally influence a Commissioner, and then to cover up those attempts, to challenge that Commissioner's impartiality merely because they didn't know he was cooperating with law enforcement authorities. Justice demands that SWBT not benefit from its own wrongdoing in the case below.

CONCLUSION

For the reasons stated above, the Attorney General respectfully requests the Special Master to reopen the evidentiary record for the limited purpose of admitting the previously unavailable evidence attached hereto as Exhibits "A," "B" and "C." The requested relief will not unduly delay this proceeding and will not prejudice SWBT.

Respectfully submitted,

SUSAN BRIMER LOVING
ATTORNEY GENERAL OF OKLAHOMA



RICK D. CHAMBERLAIN, OBA #11255
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CERTIFICATE OF SERVICE

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RICK D. CHAMBERLAIN

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

FEB 14 1996

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
ROBERT (BOB) H. HOPKINS,)
)
Defendant-Appellant.)

No. 95-5120
(D.C. No. CR-93-137-A)
(W.D. Oklahoma)

ORDER AND JUDGMENT*

Before PORFILIO, ANDERSON, and KELLY, Circuit Judges.

Robert E. "Bob" Hopkins appeals his conviction for accepting a bribe while serving as a commissioner on the Oklahoma Corporation Commission, claiming the district court erred in denying his motion for severance. The issue in this case is whether Mr. Hopkins is entitled to severance when the jury will hear prejudicial evidence admissible only against a codefendant. We conclude the district court did not abuse its discretion by denying severance and AFFIRM.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

EXHIBIT

10

tabbles

I.

Mr. Hopkins was indicted for accepting a bribe in violation of 18 U.S.C. § 666(a)(1) to influence his vote on a public utilities rebate case pending before the Oklahoma Corporation Commission. Mr. Hopkins was tried jointly with codefendant William Anderson, an attorney who represented Southwestern Bell in Corporation Commission matters. Mr. Anderson was charged with paying the bribe.

Prior to trial, Mr. Hopkins moved for severance, claiming he would be prejudiced in a joint trial because the government planned to present evidence in the form of tape recorded statements made by Anderson which implicated Mr. Hopkins. Because Mr. Anderson was not going to testify at trial, Mr. Hopkins argued his confrontation rights would be compromised. The court denied the motion, and the government presented the tape recorded evidence at trial without further objection. When the tapes were offered into evidence and again in the closing charge, the court instructed the jury the tapes were to be considered as evidence against a defendant only where that defendant is a participant in the taped conversation, and not otherwise.

The original indictment included a conspiracy charge in violation of 18 U.S.C. § 1512(b)(3), alleging Anderson and Mr. Hopkins conspired to prevent agents of the FBI from learning about the illegal payments. Ultimately, the conspiracy charge was

dismissed. At the close of trial, however, the district court made a finding that the evidence showed a common plan involving Mr. Hopkins, Mr. Anderson and others. Consequently, the court determined acts or statements of one member of the joint venture were admissible against the other parties to the venture.

Mr. Hopkins now appeals the district court's denial of his severance motion, claiming the joint trial compromised his confrontation rights and prevented the jury from making a reliable judgment about his guilt or innocence. Essentially, Mr. Hopkins contends the severance rule set forth in *Bruton v. United States*, 391 U.S. 123 (1968), should not be limited strictly to cases involving codefendant confessions. Rather, the procedural protection should be extended to all cases involving codefendant statements that implicate a defendant and are protected from cross-examination because of the privilege against self-incrimination. Mr. Hopkins also argues the evidence was not admissible as coconspirator statements under Fed. R. Evid. 801(d)(2)(E) because the taped statements were not made in the furtherance of the conspiracy. He contends they were simply narrative statements that "spilled the beans" after the fact and fell outside the scope of the conspiracy.

II.

Where joinder of defendants is proper under Fed. R. Crim. P. 8(b), severance is permissible only upon a showing of prejudice under Fed. R. Crim. P. 14. The rule does not require severance even if prejudice is shown; rather, it leaves any decision to

grant severance to the sound discretion of the trial court. *Zafiro v. United States*, 506 U.S. 534, ___, 113 S. Ct. 933, 938 (1993). Thus, we review denials of severance motions for abuse of discretion. *United States v. Scott*, 37 F.3d 1564, 1579 (10th Cir. 1994), cert. denied, 115 S. Ct. 773 (1995). To establish abuse of discretion, more is required than a mere showing that separate trials might have given defendants a better chance for acquittal. *Id.*

Mr. Hopkins contends the trial court abused its discretion to grant severance and erroneously admitted Anderson's tape recorded statements because the statements implicated Mr. Hopkins and he had no opportunity to cross-examine Anderson at trial, citing *Bruton*, 391 U.S. at 126. *Bruton* held that a defendant is deprived of his rights under the Confrontation Clause when his non-testifying codefendant's incriminating confession is introduced at their joint trial, even when the jury is given clear, concise, and understandable instructions to consider that confession only against the codefendant: By its context, *Bruton* is limited to codefendant's confessions. Although Mr. Hopkins urges us to extend *Bruton* to all incriminating codefendant statements by asking us to apply its protection to the government's tape recorded evidence, we decline to do so.

This court has consistently limited the application of *Bruton* to codefendant confessions. *United States v. Hill*, 901 F.2d 880, 883 (10th Cir. 1990). Arguments in favor of extending the rule's application to codefendant statements of admission have been rejected. *United States v. Rogers*, 652 F.2d 972, 976 (10th Cir.

1981). The *Bruton* Court recognized that a jury must be relied upon to follow limiting instructions and can be expected to disregard information at the court's direction. However, the devastating impact of a codefendant's confession creates a situation "in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." *Bruton*, 391 U.S. at 135.

Here, the jury was not faced with Mr. Anderson's sworn confession. Moreover, it was instructed to consider various tape recorded conversations between Mr. Anderson and another Corporation Commissioner as evidence against Mr. Anderson exclusively. Although Mr. Anderson's admissions implicated Mr. Hopkins, we find no reason to conclude the jury was incapable of following the court's clear and thorough directive.

Further, the jury was restrained from using only some of the tape recorded evidence against Mr. Hopkins. In several of the taped conversations, Mr. Hopkins was a participant, and the jury was properly instructed that those tapes were admissible against him. Also, the conversations recorded in 1991, which involve discussions between Anderson and others including Mr. Hopkins, are directly related to the conspiracy to obstruct the FBI investigation. Even when a conspiracy is not charged, or dropped as in the present case, statements made by codefendants in the furtherance of a conspiracy are admissible where the existence of a conspiracy is independently established. *United States v.*

Cotton, 646 F.2d 430, 433 (10th Cir.), cert. denied, 454 U.S. 861 (1981). Here, the district court determined the conspiracy was independently established. The 1991 tapes involving the FBI investigation were, therefore, admissible against Mr. Hopkins under Fed. R. Evid. 801(d)(2)(E).

III.

Finally, the government argues that any prejudice suffered by Mr. Hopkins due to the erroneous admission of Anderson's taped conversations was harmless error. We agree. Even if error occurred in the admission of the Anderson tapes not covered by Fed. R. Evid. 801(d)(2)(E), the statements were not of constitutional dimensions and "the error is deemed harmless unless it had a substantial influence on the outcome or leaves one in grave doubt as to whether it had such effect." *United States v. Flanagan*, 34 F.3d 949, 955 (10th Cir. 1994).

The record contains substantial testimony by a witness, Mike Murphy, describing the payoff procedure and how Murphy shared cash payments with Mr. Hopkins. The 1991 tapes, properly admitted under Fed. R. Evid. 801(d)(2)(E), detailed efforts to conceal the payoffs from the FBI. From those tapes, the jury heard recorded conversations among Hopkins, Anderson, Murphy and other Southwestern Bell executives plotting their "story" in the event federal agents questioned them. In light of the substantial evidence presented at trial and the repeated limiting instructions

given by the trial judge, we are satisfied that any potential error was harmless.

AFFIRMED.

U. .

Entered for the Court

John C. Porfilio
Circuit Judge

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FEB 21 1996
U.S. ATTY. WU/OK

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 WILLIAM L. ANDERSON, and)
)
 ROBERT E. "BOB" HOPKINS,)
)
 Defendants.)

No. CR-93-137-A

NOV 03 1994
ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKL
BY _____, DEPUTY

EXHIBIT
11

GOVERNMENT TRIAL BRIEF

INTRODUCTION

The Government's evidence will show the existence of a conspiracy to influence the vote of Oklahoma Corporation Commissioner Robert E. Hopkins on a pending action known as PUD-260. Count 1 of the Indictment charges Hopkins with agreeing to accept something of value, intending to be influenced or rewarded, while Count 2 charges defendant William L. Anderson with offering something of value, with intent to influence or reward Hopkins in connection with the PUD-260 vote. Count 1 is a violation of Title 18, United States Code, Section 666(a)(1); Count 2 is a violation of Title 18, United States Code, Section 666(a)(2) and Section 2.

The crime was discovered in mid-1990 during a conversation between Anderson and Commissioner Robert Anthony, who was cooperating in an FBI investigation. Anderson confided to Anthony that money had been paid to Commissioner Hopkins in connection with his vote; subsequent conversations provided additional details, including the identity of other participants.

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The Government's evidence will show that the conspiracy to pay the bribe began in early September, 1989, and ended in early May, 1990, when the last funds were paid. Defendant Hopkins joined in the conspiracy by agreeing to accept a reward in connection with the performance of his official duties, and thus statements made by other co-conspirators, during the course of the conspiracy, are admissible against him to prove that he agreed to, and did accept a thing of value.

Statements made by Anderson to Anthony and others, against his own penal interests and implicating Hopkins, will also be offered by the Government against both defendants, and are admissible to prove the allegations of the crime itself, pursuant to Federal Rule of Evidence 804(b)(3).

In March 1991, when the FBI investigation was near completion, a second conspiracy, to obstruct the investigation into the commission of the crimes charged in Counts 1 and 2, began. Although Anderson is charged, this conspiracy has been severed for purposes of trial; nevertheless, evidence of this crime will be offered by the Government to prove both defendants' consciousness of guilt as to Counts 1 and 2. Hopkins became a co-conspirator during conversations with Anderson where he sought an agreement from Anderson not to reveal the facts, agreed with Anderson that neither would talk to the FBI if approached but would instead meet and confer between themselves, and later implicitly agreed on a false exculpatory version of the events surrounding the PUD-260 vote.

I. CO-CONSPIRATOR HEARSAY

A. The Conspiracy Need Not be Charged To Trigger Availability of Rule 801(b)(2)(E) for the Admission of Co-conspirator Hearsay Statements

The declarant of the co-conspirator hearsay statement does not need to be an indicted co-conspirator for the statement to be admissible under Rule 801(d)(2)(E). United States v. Adkins, 842 F.2d 210, 213 (8th Cir. 1988). In fact, statements of partners in a criminal joint venture are admissible even when a conspiracy has not been charged at all. United States v. Blankenship, 954 F.2d 1224, 1230 (6th Cir., cert. denied, ___ U.S. ___, 113 S.Ct. 288, 121 L.Ed.2d 213 (1992)).

Whether or not a conspiracy has been charged, such statements are admissible if the district court finds that "it is more likely than not that the declarant and the defendant were members of a conspiracy when the hearsay statement was made, and that the statement was in furtherance of a conspiracy."

United States v. Ortiz, 966 F.2d 707, 715 (1st Cir. 1992), cert. denied, ___ U.S. ___, 113 S.Ct. 1005, 122 L.Ed.2d 154 (1993), citing United States v. Petrozziello, 548 F.2d 20, 23 (1st Cir. 1977).

In United States v. Buchanan, 787 F.2d 477, 482 (10th Cir. 1986), the Tenth Circuit held that the uncharged conspiracy does not even have to be a "federal conspiracy," ruling that hearsay declarations regarding an arson conspiracy were properly admitted under Rule 801(d)(2)(E). See United States v. Magnuson, 680 F.2d 456, 58 (8th Cir. 1982), cert. denied, 494 U.S. 1088, 110 S.Ct. 182, 108 L.Ed.2d 958 (1990). See also United States v. Dworken, 855 F.2d 12, 24 (1st Cir. 1988) ("the existence of the

particular conspiracy charged in the indictment [was] not necessary for the admission of co-conspirator statements"); United States v. Trowery, 542 F.2d 623, 627 (3rd Cir. 1976), cert. denied, 429 U.S. 1104, 97 S.Ct. 1132, 51 L.Ed.2d 555 (1977) ("absence of a conspiracy count has no bearing on the court's determination of the competence of co-conspirator evidence.")

In United States v. Potts, 840 F.2d 368, 371-72 (7th Cir. 1987) the defendant was not charged with a conspiracy, but much of the evidence against him came from an inmate who testified as to conversations he had had with defendant's co-conspirator inside the prison. These statements were properly admitted as co-conspirator statements because the statements included defendant's prison drug "service," how much was owed him, how he was to be paid, and how he could help in the future.

The Government intends to offer evidence that a conspiracy between William L. Anderson and others began at a meeting at Applewood's Restaurant in the early part of September, 1989. The plan involved enlisting a third party to approach and influence Oklahoma Corporation Commissioner Robert E. Hopkins in connection with his vote on PUD 260, a matter then pending before the Commission. In furtherance of that conspiracy, Anderson called Michael R. Murphy, asked him to approach and offer Hopkins \$10,000 if the Commissioner voted for the position advanced by Anderson. Murphy (now a government witness) also received a telephone call from Jewel Callaham, who told Murphy that he had \$5,000 more for Hopkins in the event of such a vote. Murphy agreed to act as the "go-between" or "bagman" between the Anderson/Callaham duo and Commissioner Hopkins.

Within days, Murphy contacted Hopkins and advised that Anderson and Callaham had \$15,000 that he and Hopkins could "split" if Hopkins would vote for "reinvestment" in the PUD 260 case. At this time, on or about September 18, 1989, Hopkins joined the conspiracy when he agreed to the offer.

Actions and statements by Anderson and Callaham to meet with and pay Murphy were in furtherance of the conspiracy and are admissible against Anderson and Hopkins, then members of the conspiracy. This conspiracy continued to on or about May 9, 1990, when Anderson met with Murphy and wrote him a \$500 check, advising that Hopkins had directed the balance of the money due be paid to Hopkins' son.

A second conspiracy began on or about March 13, 1991, after the FBI, in a planned strategy, began to confront many of the players in the initial scheme. The Government's evidence will establish that on or about March 13, 1991, Commissioner Anthony, cooperating in the investigation, confronted Hopkins about allegations concerning improper influence by Anderson of Hopkins in connection with the PUD-260 matter. Although denying the allegations to Anthony, he attempted to contact Bill Anderson within an hour and a half. Anderson and Hopkins talked the evening of March 13, 1991, and Hopkins told Anderson that the two of them had a very serious problem that needed to be discussed personally early the following morning. In a conversation on the 14th, while referring to the allegations of Anthony, Hopkins refused to discuss specifics over the phone and instructed Anderson not to talk to anyone else.

The Government's evidence will establish that on or about March 14, 1991, Callaham contacted defendant Anderson and advised him of the presence of FBI agents in his office inquiring about "the Applewood deal." Almost immediately after this conversation, Anderson contacted Hopkins, advised him of the existence of a "hot" FBI investigation, attempted to set up a meeting, and agreed with him not to discuss the matter with investigators.

In later conversations that evening, Callaham agreed to call Murphy and tell him "not to say much," and Anderson contacted others having knowledge of the scheme. These conversations by Anderson with others, including Hopkins, served to spread, refine and perpetuate a concocted story and enlist the cooperation of others in the plan to impede the investigation. Hopkins actively participated by impliedly agreeing that the false statements should be given the FBI, and by calling Murphy to recite the false statement to him in late April, 1991.

As both defendants Hopkins and Anderson became members of the conspiracy, the statements spreading, refining, and perpetuating the false story were made in furtherance of the conspiracy and are probative of defendants' consciousness of guilt on Counts 1 and 2, and are admissible against both defendants.

B. Predicate for Admission

Co-conspirator hearsay statements are properly admitted if the Government establishes by a preponderance of the evidence that: (1) a conspiracy existed, (2) the declaration is by the defendant or other member of the conspiracy, and (3) the statement was made in the course and in furtherance of the objects of the

conspiracy. United States v. Petersen, 611 F.2d 1313, 1330 (10th Cir. 1979), cert. denied, 447 U.S. 905 (1980); United States v. Davis, 766 F.2d 1452, 1457 (10th Cir.), cert. denied, 474 U.S. 908, 106 S.Ct. 239, 88 L.Ed.2d 240 (1985).

There is no requirement of "independent evidence" to establish the conspiracy. Bourjaily v. United States, 107 U.S. 2775, 2781 (1987). There the Supreme Court held that "a court, in making a preliminary factual determination under Rule 801(d)(2)(E), may examine the hearsay statements sought to be admitted."

The evidentiary standard now followed by the Tenth Circuit was enunciated in United States v. Brown, 943 F.2d 1246, 1254 (10th Cir. 1991), rev'd on other grounds, and United States v. Mobile Materials, Inc., 881 F.2d 866, 869 (10th Cir. 1989). These Tenth Circuit cases hold that a trial court may consider independent evidence as well as the hearsay statements themselves.

The appropriate procedure to be followed by the court at trial in making the determination of admissibility is to consider a proffer by the United States, if needed, of evidence as it relates to the conspiracy. This will obviate the necessity of conducting a full pretrial evidentiary hearing. This would allow the United States to present evidence at trial, in a logical, cogent fashion, regarding statements made by the alleged co-conspirators, subject to being connected under Fed. R. Evid. 104. This practice has been specifically approved by the Tenth Circuit. See United States v. Rivera, 778 F.2d 591, 594-96 (10th Cir. 1985), cert. denied, 475 U.S. 1068, 106 S.Ct. 1384, 89 L.Ed.2d 609 (1986).

So long as the declarant and the party against whom the statement is offered in court were members of a conspiracy, any

witness who heard the statement may recount it at trial, whether the statement was made to a conspiracy member or not, and regardless of whether the witness was a member of the conspiracy. For instance, statements to a government informant who never intended to aid in a conspiracy is admissible so long as the declarant and another had joined in concert prior to the statement. United States v. D'Antoni, 874 F.2d 1214, 1218 (7th Cir. 1989); United States v. Beech-nut Nutrition Corp., 871 F.2d 1181, 1198 n.99 (2nd Cir. 1989).

C. All Co-conspirators Are Responsible for All Acts and Statements Made in Furtherance of the Conspiracy Regardless of Time of Joining

Statements made by Anderson, Callaham, Murphy, and others, organizing the conspiracy and furthering its objects, prior to the actual acceptance by Hopkins of Anderson's offer, are admissible against both defendants. Once a conspiracy is established, statements and acts in furtherance, even though made or done prior to the joining of some to the conspiracy, become admissible against all as declarations or acts of co-conspirators in aid to the conspiracy. United States v. United States Gypsum Co., 333 U.S. 364, 393 (1948). This means that statements made by co-conspirators, in furtherance of the conspiracy, are admissible against a defendant even though made prior to the defendant's involvement in the conspiracy. United States v. Masse, 816 F.2d 805, 810-11 (1st Cir. 1987).

As noted in United States v. Adamo, 882 F.2d 1218, 1230 n.31 (7th Cir. 1989), one "who joins a conspiracy [takes] the conspiracy as he found it. When he joined and actively

participated in it he adopted the previous acts and declarations of his fellow co-conspirators."

In United States v. Brown, 943 F.2d 1246 (10th Cir. 1991), cert. denied, 112 S.Ct 1745 (1992), the defendant claimed that hearsay statements of two co-conspirators should not have been admitted against him since he was not a member of the conspiracy when the statements were made. The Tenth Circuit noted the "prevailing view" among the circuits, that previous statements made by co-conspirators are admissible against a co-defendant who subsequently joins the conspiracy. They held: "We join in that holding. The fact that appellant may have joined the conspiracy after its inception does not make his co-conspirators' previous statements inadmissible." Brown, 943 F.2d at 1255. Thus, the statements or acts made or done by any co-conspirator prior to Hopkins joining either the conspiracy to influence and be influenced, or the conspiracy to obstruct the investigation, are admissible against him.

The statements made during the first conspiracy are those primarily of Anderson and Callaham recruiting Murphy to play a role in the presentation of the scheme to Commissioner Hopkins. Statements recruiting accomplices are "in furtherance," United States v. Turner, 871 F.2d 1574, ___ (11th Cir. 1989). Statements made by Hopkins to Murphy accepting the offer, and warning Murphy of the consequences of a lack of secrecy, are admissible against Anderson as in furtherance of the conspiracy. All are probative as to Counts 1 and 2 to show preparation, intent, and to clearly and fully set out the circumstances of the conduct.

Statements sought to be admitted under the second conspiracy are those made by Anderson and Hopkins to others during the development and perpetuation of the false statement to be given the FBI. These are admissible against all co-conspirators, and are probative of a consciousness of guilt as to Counts 1 and 2.

Because of the unusual nature of Commissioner Anthony's role, the Government may introduce evidence of the second conspiracy earlier in the trial than evidence of the first conspiracy. While Anthony was cooperating with the FBI in its investigation, Anderson sought to enlist him in the conspiracy to obstruct the investigation by advising him what others had been telling the FBI and telling him what to say if contacted, even though Anthony had had no involvement in the bribery of Hopkins.

Evidence of the first conspiracy will come in through a member of that conspiracy, Mike Murphy, who will testify relatively early in the Government's case-in-chief. He will relate statements made to him by Anderson refining the false exculpatory statement, and that Hopkins called him and recited the false exculpatory story. All statements by these members of the second conspiracy are admissible against the defendants to show a consciousness of guilt as to Counts 1 and 2.

These statements are narratives of past events which do not qualify for admission under the co-conspirator exception to the hearsay rule. See: United States v. Wolf, 839 F.2d 1387, 1393 (10th Cir. 1988) [narratives are statements relating past events, even those connected with the operation of the conspiracy, which serve no immediate or future conspiratorial purpose]. The

statements are admissible, however, as statements against penal interest under Fe 804(b)(3).

II. STATEMENTS AGAINST PENAL INTEREST BY CO-DEFENDANT

Rule 804(b)(3) provides that:

(b) The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

. . . .

(3) A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, . . . that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

The Government intends to introduce tape-recorded admissions by defendant Anderson to Commissioner Anthony, who was cooperating with the Government and recording their conversations. During their many contacts, Anderson made significant inculpatory statements and described the payoff of Hopkins through Murphy with regard to the PUD 260 case. During the Title III portion of the investigation, Anderson made inculpatory admissions to others, which will also be introduced. Admission of these statements is governed by Rule 804(b)(3), Fed. R. Evid., commonly referred to as the statement-against-interest exception to the hearsay rule.

On numerous occasions, Anderson admits that he enlisted Murphy to contact Hopkins and promise Hopkins money in exchange for his vote on the PUD 260 issue. He confides that it was in fact done, and makes numerous detailed statements about the manner in

which the money was delivered to Murphy to deliver to Hopkins. Ruling on the admissibility of Anderson's statements against Hopkins requires an analysis of the applicability of the Confrontation Clause and the hearsay rule.

Bruton v. United States, 391 U.S. 123 (1968), holds that the Sixth Amendment confrontation right of a defendant is violated if a nontestifying co-defendant makes a confession that implicates the defendant, and the government introduces the confession into evidence at their joint trial. In dealing largely with the effectiveness of limiting instructions, Bruton provides no authority for excluding the statements sought to be admitted here, as Anderson's statements are not confessions to a law enforcement official as was in Bruton, but are non-custodial, non-coerced admissions by Anderson, admissible against him and his co-defendant Hopkins.

The Tenth Circuit has previously noted that Bruton's scope was limited and that testimony admissible under the conspiracy exception falls outside its ambit. United States v. Roberts, 583 F.2d 1173, 1175 (10th Cir. 1978), cert. denied, 439 U.S. 1080, 99 S.Ct. 862, 59 L.Ed.2d 49 (1979). The Tenth Circuit has also directed that admissibility of a confession of a co-defendant, as substantive evidence against a defendant, should be analyzed as set forth in Lee v. Illinois, 476 U.S. 530 (1986), rather than Bruton. United States v. Hill, 901 F.2d 880, 883 n.1 (10th Cir. 1990). In Lee, the state sought to use hearsay evidence, a confession by an accomplice, as substantive evidence against the accused. The Court recognized the potential applicability of its decision in Ohio v. Roberts, 448 U.S. 56

(1980), but found that the circumstances contained neither a firmly-rooted hearsay exception, nor particularized guarantees of trustworthiness. Lee, 476 U.S. at 543-44.

In Bourjaily v. United States, 483 U.S. 171, 181-182 (1987), the Supreme Court rejected a defendant's Confrontation Clause argument regarding admission of co-conspirator hearsay. The Court noted that the co-conspirator exception to the hearsay rule was firmly enough rooted in U.S. jurisprudence that a court need not independently inquire into the reliability of such statements; the fact that the statements were co-conspirator hearsay rendered them admissible.

The Seventh Circuit has explicitly held that the statement-against-penal-interest exception to the hearsay rule [804(b)(3)] is firmly established and well-rooted within the meaning of Ohio v. Roberts, 448 U.S. 56 (1980), and Bourjaily. United States v. York, 933 F.2d 1343, 1363 (7th Cir.), cert. denied, ___ U.S. ___, 112 S.Ct. 321, 116 L.Ed.2d 262 (1991). In analyzing the admissibility of out-of-court statements sought to be admitted under that rule, the Seventh Circuit has adopted a three-part test for admissibility: (1) the declarant's statement was against his penal interest; (2) corroborating circumstances indicate its trustworthiness; and (3) the declarant is unavailable. United States v. Gio, 7 F.3d 1279-1288 (7th Cir. 1993). Gio objected to the admissibility of tape recorded conversations between a cooperating defendant and a co-defendant in which Gio was implicated. The court found that the statements by Gio's co-defendant were clearly against his penal interests, and that his status as a defendant rendered him unavailable. Trustworthiness

was established by the presence of independent corroborating evidence and the lack of motivation to lie. Gio, 7 F.3d at 1288.

In United States v. York, 933 F.2d 1343, 1360 (7th Cir.), cert. denied, ___ U.S. ___, 112 S.Ct. 321, 116 L.Ed.2d 262 (1991), the defendant York had conspired with a woman named Maher to blow up a jointly-owned lounge. At trial, two associates of Maher (killed in the explosion) testified that the decedent had told them that she and York had planned to blow up the lounge to collect the insurance proceeds. The circuit court found that statements that tend to implicate the declarant in a conspiracy are against his penal interests, citing United States v. Layton, 720 F.2d 548, 560 (9th Cir. 1983), cert. denied, 465 U.S. 1069, 104 S.Ct. 1423, 79 L.Ed.2d 748 (1984), and statements that demonstrate a declarant's inside knowledge of a crime are also against the declarant's penal interest. Id.; United States v. Barrett, 539 F.2d 244, 252 (1st Cir. 1976). The York court found the circumstances surrounding Maher's statement "imminently trustworthy" because they were made to acquaintances unconnected to law enforcement.

The foundational case for modern evidentiary rulings defining the relationship between the Confrontation Clause and the hearsay rule with its many exceptions is Ohio v. Roberts, 448 U.S. 56 (1980), dealing with the admissibility at trial of testimony from a preliminary hearing when the witness could not be found at time of trial.

When overcoming the Confrontation Clause objection to otherwise admissible hearsay, the prosecution must produce or demonstrate unavailability of the declarant. Once the witness is unavailable, the clause permits the admission of only such hearsay

as bears adequate indicia of reliability. Ohio v. Roberts, 448 U.S. at 65-66.

The first prong of the test, unavailability, is met because while Anderson and Hopkins are literally "produced" in court, their rights not to testify against themselves make each effectively unavailable for cross-examination by the other. Douglas v. Alabama, 380 U.S. 415, 419 (1965). Former defendant Callahan is practically unavailable due to the presence of unresolved criminal charges and advice from his attorney that he will refuse to testify if called.

The second prerequisite imposed by the Confrontation Clause, reliability, can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception"; those exceptions rest on such solid foundations that admission of virtually any evidence within them comports with the substance of the constitutional protection. Ohio v. Roberts, 448 U.S. at 66; Mattox v. United States 156 U.S. at 237, 244 (1895); Pointer v. Texas, 380 U.S. 400, 407 (1965) (dying declarations).

When the inculpatory portion of the statement is also against the declarant's interest, or when it is neutral because the declarant has not attempted to diminish his own role, there is little reason to suspect that portion of an otherwise reliable statement is untrustworthy. York, 933 F.2d at 1363.

So long as the incriminating and inculpatory portions of a statement are closely related, . . . if the circumstances surrounding the portion of a declarant's statement inculcating another are such that the court determines that the inculpatory portion of the statement is just as trustworthy as the portion of the statement directly incriminating the

declarant, there is no need to excise or sever the inculpatory portion of the statement.

York, 933 F.2d at 1364.

The Ninth Circuit has reserved the question of whether corroboration is required when the hearsay statements offered fall squarely within the two prongs of 804(b)(3). United States v. Nazemian, 948 F.2d 522, 530-31 (9th Cir. 1991), cert. denied, ___ U.S. ___, 113 S.Ct. 107, 121 L.Ed.2d 65 (1992). Here, the Ninth Circuit considered the propriety of admitting a confidential informant's recitation of a statement by a dead declarant/co-conspirator. The declarant's statement was admitted since the portion of the statement implicating the defendant was closely entwined with the declarant's solidly inculpatory admission of his involvement and other evidence and testimony at trial corroborated the declarant's statement. Id. at 531.

The Ninth Circuit has also enumerated circumstances under which statements may not be sufficiently against interest and/or lack reliability, such as (1) made under custody; (2) an attempt to curry favor from authorities; (3) government offer to reduce sentence for cooperation; and (4) statements trivialize the declarant's role. United States v. Magana-Olvera, 917 F.2d 401, 409 (9th Cir. 1990). The statement in Magana-Olvera sought to be introduced was made by a declarant in custody, motivated to seek favor from federal authorities, encouraged by the government by an offer of shortened prison time, and who gave statements trivializing his own role.

In United States v. Holland, 880 F.2d 1091, 1094 (9th Cir. 1989), the Ninth Circuit set out circumstances which supported

a finding of reliability of a tape recording made by a cooperating witness in a conversation with two men responsible for "padding" the payroll of the Port of Sacramento. The tape made by the cooperating witness was admitted against the parties to the conversation and a co-defendant inculpated in the conversation, but not present. In concluding that the tape was admissible the court noted that: (1) the conversation was between friends, without a suggestion of involuntariness; (2) although sometime after the substantive offenses, the conversation occurred contemporaneously with the conspiracy to obstruct justice; (3) the declarants' remarks amounted to a confession of crime, a factor especially important; (4) these statements were corroborated by other evidence on the record, (5) the remarks by the declarants were purportedly based on personal knowledge; (6) the remarks were largely spontaneous, although elicited in part; and (7) the declarants had no reason to lie to the cooperating witness.

Applying this analysis to the case at bar, it is clear that the statements by Anderson and Hopkins should be admitted. None of the statements were made while the declarants were in custody. There is no suggestion of an attempt to curry favor from federal or other authorities; there was no negotiation with the Government to reduce their sentence or otherwise reward the statement; and the statements have clearly incriminated the declarants. On the other hand, suggesting reliability, the statements are voluntary, between friends; although after the substantive offense, the consensual conversations were close in time, and the Title III conversations were contemporaneous with the conspiracy to obstruct justice; the statements amounted to

confession of a crime; the statements are corroborated by other evidence, most importantly the direct testimony of Mike Murphy and others; the remarks are purportedly based on personal knowledge; they, although elicited in part by Anthony, were largely spontaneous; and neither Anderson nor Callaham had any reason to lie.

The Tenth Circuit has, in fact, dealt with the precise issue being advanced by the Government. In Jennings v. Maynard, 946 F.2d 1502, 1505 (10th Cir. 1991), a statement was given to a law enforcement officer by a declarant who assisted Jennings in planning and facilitating a burglary. After finding that the declarant was unavailable (he refused to testify due to threats from the defendant), the Tenth Circuit noted that the lower courts, including the state district court, the Oklahoma Court of Criminal Appeals, and the federal district court of the Western District of Oklahoma, had:

. . . each individually held that the reliability of Ballew's statement may be inferred because the statement falls within the firmly rooted hearsay exception commonly referred to as the statement-against-interest exception.

Id. at 1505.

The Tenth Circuit made the specific finding that the statement-against-interest exception is a firmly rooted hearsay exception. Id. at 1506. The Jennings court also noted other indications of reliability, such as evidence corroborating this statement and the fact that the declarant had received threats -- most likely from the defendant.

The Government urges this Court to make a finding of admissibility of the statements by defendants Anderson and Callaham to Anthony and others, consistent with the rulings in Ohio v. Roberts, Bourjaily, and Jennings. These statements are offered under Fed. R. Evid. 804(b)(3), as statements against penal interest, and are admissible against both Anderson and Hopkins.

III. SUMMARY CHARTS

The Government will offer certain summary charts pursuant to Rule 1006, Fed. R. Evid. The charts will be introduced primarily through the testimony of Special Agent John Hippard of the FBI. The charts are derived exclusively from competent testimony and exhibits which will have been previously admitted. An FBI agent's testimony regarding his analysis of documents is admissible under Rule 1006. United States v. Evans, 572 F.2d 455, 491-2 (5th Cir. 1978), cert. denied, 439 U.S. 870.

All information to be included in the charts was provided to the defendants pursuant to open-file discovery. It has long been the rule that the trial court, in its discretion, may allow the presentation of summary evidence to guide and assist the jury in understanding and judging the factual controversy. United States v. Cooper 464 F.2d 648, 656 (10th Cir. 1972), cert. denied, 409 U.S. 1107 (1973). It is only necessary that the summary chart be based on admissible documents that have been previously made available to the defendant so that the correctness of the summary may be tested on cross-examination. United States v. Goodwin, 470 F.2d 893, 899 (5th Cir. 1972), cert. denied, 411 U.S. 969 (1973); United States v. Foley, 598 F.2d 1323, 1337-38 (4th Cir. 1979),

cert. denied, 444 U.S. 1043 (1980). When a chart used to accompany an opening statement does no more than assist the jury in understanding the nature of the proof it is about to hear, use of the chart should be permitted. See United States v. Churchill, 483 F.2d 268, 274 (1st Cir. 1973); United States v. Rubino, 431 F.2d 284, 289-290 (6th Cir. 1970), cert. denied, 401 U.S. 910 (1971).

A foundation for the admission of each chart will be laid through the testimony of a witness or witnesses who will testify that the chart accurately reflects information contained in documents already identified. The foundation for the admission of a chart under Rule 1006 was reviewed in United States v. Behrens, 689 F.2d 154, 161-2 (10th Cir. 1982), cert. denied, 459 U.S. 1088. It is not necessary that the witness presenting the chart be an expert witness or have some specialized knowledge about which he or she is testifying when the chart does not contain complicated calculations which would require the need of an expert for accuracy. United States v. Jennings, 724 F.2d 436, 443 (5th Cir. 1984), cert. denied, 467 U.S. 1227.

The Government will move to have the summaries themselves admitted into evidence and sent to the jury during deliberation. Summary charts may be admitted into evidence when the summary is based on admissible evidence. Rule 1006, Fed. R. Evid.; United States v. Scales, 594 F.2d 558, 562-3 (6th Cir. 1979), cert. denied, 441 U.S. 946. The jury may take charts, like other evidence, with them into the jury room. United States v. Stephens, 779 F.2d 232, 240 (5th Cir. 1985); United States v. Orłowski, 808 F.2d 1283, 1289 (8th Cir. 1986), cert. denied, 482 U.S. 927; United States v. Scales, 594 F.2d at 564 n.3.

Courts have repeatedly allowed the use of charts similar to the ones the government intends to use in this case. See, e.g., United States v. Kaatz, 705 F.2d 1237 (10th Cir. 1983) (chart summarizing the defendant's income); United States v. Harenberg, 732 F.2d 1507 (10th Cir. 1984) (chart summarizing the government's tax calculation); United States v. Stephens, 779 F.2d 232 (simple flowcharts tracing the defendant's use of loan proceeds); United States v. Orlovski, 808 F.2d at 1289 (charts "tracing the disposition of the checks generating [defendant's] receipts" and "reflecting [defendant's] total unreported income"); United States v. Lemire, 720 F.2d 1327, 1346-49 (D.C. Cir. 1983), cert. denied, 467 U.S. 1226 (summary of complex cash flow through companies based on letters, invoices, bank drafts and testimony); United States v. Scales, 594 F.2d at 562 (summary of indictment). Courts allow the charts because the evidence involves numerous exhibits which are difficult to examine in court without the charts and the charts are helpful to the jury. United States v. Stephens, 779 F.2d at 239; United States v. Scales, 594 F.2d at 564.

IV. ADMISSIBILITY OF EVIDENCE AGAINST ONLY ONE DEFENDANT

During the course of trial, the Government expects to offer some evidence which may be admissible against only one defendant or the other. An example would be certain testimony of Robert Anthony about the early course of dealings with defendant Anderson, some of which was specifically mentioned in the Government's Rule 404(b) Notice. The Government has previously responded to motions by both defendants to sever them from one

another for the reason of prejudicial joinder under Rules 8(b) and Rule 14, Federal Rules of Criminal Procedure. The Government opposed such motion because the very language of Rule 8(b) and Rule 14 assumes certain evidence may be admitted against one defendant and not necessarily applicable to another. United States v. Haggard, 369 F.2d 968, 973 (8th Cir. 1966).

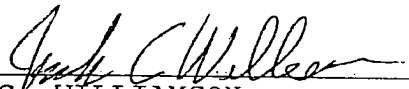
In fact, case law provides examples in which a defendant has been found properly joined with co-defendants even though the moving defendant did not participate in several of the underlying charges facing his co-defendants. United States v. Chavis, 772 F.2d 100, 111 (5th Cir. 1985).

The focus of the Rule 8(b) and Rule 14 inquiry is on the degree of overlap of the issues and evidence underlying the charges against multiple defendants. The link between defendants sufficient to support joinder under Rule 8(b) and Rule 14 can be established by common evidence as to various counts. United States v. Rogers, 921 F.2d 975, 984 (10th Cir. 1990), cert. denied, 112 L.Ed.2d 83, 111 S.Ct. 113 (1993). The commonality here is apparent; Count 1 charges the defendant Hopkins with being a recipient of a bribe, and Count 2 charges defendant Anderson with the payment of that same bribe. The Government respectfully suggests that in all those circumstances where evidence may be admissible against one defendant and not the other, that a limiting, cautionary instruction, given to the jury at the time of the admission of the evidence, is sufficient to remove the prejudice which might follow. Allegations of "prejudicial spillover" and a jury's inability to follow cautionary instructions have been consistently rejected by the Tenth Circuit as a

sufficient basis to grant a motion for severance. See United States v. Cardall, 885 F.2d 656, 667 (10th Cir. 1989); United States v. Hack, 782 F.2d 862, 870 (10th Cir.), cert. denied, 476 U.S. 1184 (1986).

It is respectfully submitted that the substantial majority of the evidence to be offered is admissible against both defendants, but in those circumstances where it may be admissible against only one, a limited, cautionary instruction would remove any prejudice from the defendant against whom the evidence is not admissible.

Respectfully submitted,

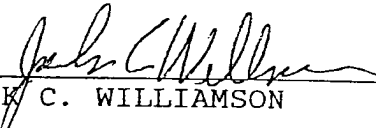


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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing pleading was served on each of the parties herein by mailing the same to them or to their attorneys of record as follows: **D.C. Thomas**, Suite 504, Bank of Oklahoma Plaza, 201 Robert S. Kerr, Oklahoma City, Oklahoma 73102; and **Stephen Jones**, Jones & Wyatt, 114 East Broadway, Suite 1100, P.O. Box 472, Enid, Oklahoma 73702-0472, counsel for defendant Anderson; and **Kenneth R. Nance**, 5224 South Western Avenue, Oklahoma City, Oklahoma 73109, counsel for defendant Hopkins; on November 1, 1994.



JACK C. WILLIAMSON

HLS:nlw

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

MAR 25 1994

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY _____ DEPUTY

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 WILLIAM L. ANDERSON,)
 JEWEL B. CALLAHAM, and)
 ROBERT E. "BOB" HOPKINS,)
)
 Defendants.)

No. CR-93-137-A

**GOVERNMENT'S NOTICE OF INTENT
TO UTILIZE EVIDENCE OF OTHER CRIMES,
WRONGS OR ACTS UNDER FEDERAL RULES OF
EVIDENCE 404(b) AND/OR THAT ARE NOT
"EXTRINSIC" TO THE CRIME CHARGED**

COMES NOW the plaintiff, United States of America, by Vicki Miles-LaGrange, United States Attorney for the Western District of Oklahoma, through H. Lee Schmidt, Assistant United States Attorney, and pursuant to request of defendants and the government's agreement to provide further reasonable notice of the general nature of evidence arguably subject to Rule 404(b) of the Federal Rules of Evidence, submits as follows:

1. In or about January, 1989, the defendant Anderson caused the delivery of One Thousand Dollars cash to Corporation Commissioner Robert Anthony in an envelope purporting to contain the name of five Two-Hundred-Dollar contributors. Anderson led Anthony to believe that persons other than Anderson had made the contribution and that such contributions would not have to be reported by name under Oklahoma state law.

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EXHIBIT
12

2. In or about January, 1989, defendant Anderson advised Anthony that he could raise \$10,000 for Anthony and that the delivery of said money would be "all cash" with a "list of names".

3. In or about February, 1989, defendant Anderson transferred Five Thousand Dollars from his business/corporate account to his personal account and then delivered the cash to Robert Anthony.

4. In or about February, 1989, William L. Anderson contacted Anthony, again referenced the \$10,000 (see paragraph 2), and advised Anthony who would be delivering the cash.

5. In or about February, April and May, 1989, William L. Anderson "coordinated" the delivery of \$10,050 cash to Anthony from Anderson, Dave Miller, and Dick Moore.

6. In or about August, 1989, defendant Anderson caused the transfer of corporate Anderson and Waddell funds to Cody Waddell under the guise of a bonus distribution, caused Waddell to cash the check, and return the proceeds to Anderson for the stated purpose of making a campaign contribution to Robert H. Hopkins.

7. In or about September, 1989, defendant Anderson offered to purchase an automobile for William Nicholson and/or offered to pay Nicholson \$15,000 for the purchase of an automobile. When the purchase was not consummated because Nicholson left the Commission, Anderson advised Anthony that he had withdrawn \$7,500 (avoiding the triggering of the filing of a currency transaction report) and then conditionally offered Commissioner Anthony the \$7,500 in case it were needed some time in the future.

8. In or about May, 1991, defendant Anderson made a false statement to an agency of the United States, that is, the Federal Bureau of Investigation, by denying that he had paid defendant Hopkins money in connection with an issue before the Oklahoma Corporation Commission.

9. In or about March, 1991, William L. Anderson conspired to and did attempt to induce witnesses, including Robert Anthony, Mike Murphy, defendant Callaham, defendant Hopkins, Cody Waddell and others to make false statements to the FBI. (This would become direct evidence of Count 3 in the Indictment, in the event that Count 3 is rejoined with Counts 1 and 2).

ADMISSIBILITY

The evidence offered under paragraphs 1, 2, 3, 4, 5, and 7 above is not extrinsic to the crime charged, and form an "integral and natural part of the witness' account of the circumstances surrounding the offenses for which the defendant was indicted." United States v. Costas, 691 F.2d 1358, 1361 (11th Cir. 1982). As stated in United States v. Richardson, 764 F.2d 1514, 1521-22 (11th Cir. 1985), cert. denied. 474 U.S. 952 (1985):

Rule 404(b) does not apply because the previous crimes had to be mentioned in order to present adequately the evidence concerning the charged crime. The testimony would have been confusing and incomplete without the mention of the prior acts.

(See also, United States v. Secord, 873 F.2d 1353 (10th Cir. 1988).

As such, it is not necessary to cite a specific 404(b) exception for such evidence. However, the government states that the evidence falls within an exception under 404(b) insofar as each shows the defendant's intent to influence commissioner conduct through payment of funds, and that this was part of Anderson's overall plan and scheme to influence or reward commissioner conduct.

Paragraphs 7 and 8 also fall within the scope of Costas, are not extrinsic to the witnesses' testimony, and are admissible even if they were not exceptions identified in Rule 404(b). However, these incidents illustrate defendant Anderson's intent, preparation and plan to influence Commissioner Hopkins. In addition, they corroborate other testimony, and such corroboration is a permissible purpose for evidentiary offers under 404(b), United States v. Porter, 881 F.2d 878, 886 (10th Cir. 1989).

Evidence described in paragraphs 7, 8, and 9 are clearly not extrinsic to the witnesses' testimony concerning the primary charge, and are thus admissible under Costas. However, in addition, under Federal Rule of Evidence 404(b) they are admissible to prove the defendant's intent, knowledge, absence of mistake or accident, and to corroborate other testimony as permitted by Porter.

Analysis of admissibility of 404(b) evidence was greatly simplified in this Circuit by Huddleston v. United States, 485 U.S. 681, 691-92 (1988) and United States v. Record, 873 F.2d 1363, 1374-75 (10th Cir. 1989).

The protection from unfair prejudice emanates not from the preliminary findings requested by defendant, but:

. . . from four other sources: first, from the requirement of Rule 404(b) that the evidence be offered for a proper purpose; second, from the relevancy requirement of Rule 402--as enforced through Rule 104(b); third, from the assessment the trial court must make under Rule 403 to determine whether the probative value of the similar acts evidence is substantially outweighed by its potential for unfair prejudice, . . . and fourth, from Federal Rule Evidence 105, which provides that the trial court shall, upon request, instruct the jury that the similar acts evidence is to be considered only for the proper purpose for which it was admitted.

Pursuant to Huddleston, Record, and United States v. Easter, 981 F.2d 1549, 1554 (10th Cir. 1992), this court should consider the proper purpose, relevancy, and weigh the probative value versus the potential for unfair prejudice, in the context of other evidence offered.

CONCLUSION

For the above and foregoing reasons, the government submits that the specific instances of misconduct fall either within the complete exception from 404(b) as described in Costas, Richardson, and Secord, or falls within the specific exceptions

described in Rule 404(b). The proper evidence should therefore be admitted.

Respectfully submitted,

VICKI MILES-LAGRANGE



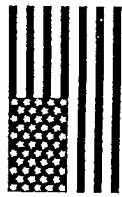
H. LEE SCHMIDT
Assistant U.S. Attorney

MAILING CERTIFICATE

This is to certify that a true copy of the foregoing pleading was served on each of the parties herein by mailing the same to them or to their attorneys of record as follows: D.C. Thomas, Suite 504, Bank of Oklahoma Plaza, 201 Robert S. Kerr, Oklahoma City, Oklahoma 73102; and Stephen Jones, Jones & Wyatt, 114 East Broadway, Suite 1100, P.O. Box 472, Enid, Oklahoma 73702-0472, counsel for defendant Anderson; Jerry L. McCombs, 17 South Central Avenue, P.O. Box 59, Idabel, Oklahoma 74745; and Robert K. McCune, Stipe, Gossett, Stipe, Harper, Estes, McCune & Parks, P.O. Box 53567, 4111 North Lincoln Boulevard, Oklahoma City, Oklahoma 73152, counsel for defendant Callaham; and Kenneth R. Nance, 5224 South Western Avenue, Oklahoma City, Oklahoma 73109, counsel for defendant Hopkins; on March 25th, 1994.



H. LEE SCHMIDT
Assistant U.S. Attorney



THE DAILY OKLAHOMAN

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U.S. Prosecutors Detail Allegations Focusing On Ex-Bell Attorney

By Ed Godfrey
Staff Writer

Federal prosecutors allege in court documents that ex-Southwestern Bell attorney William Anderson provided cash and a phony campaign contributor list to Corporation Commissioner Bob Anthony and also offered to buy a new car for an Anthony aide. Documents were filed in federal court Friday.

Prosecutors also claim Anderson "coordinated" the delivery of \$10,050 cash to Anthony from himself, former Southwestern Bell executive Dave Miller and ex-Arkansas Louisiana gas official Dick Moore, who is now dead.

Anderson was indicted by a federal grand jury in June and accused of bribing former Oklahoma Corporation Commissioner Bob Hopkins to

vote in Southwestern Bell's favor in a \$30 million rate case. Hopkins also was indicted and accused of accepting the bribe.

Prosecutors intend at next month's trial to present evidence of other crimes not charged in the indictment, according to court documents.

Prosecutors say they plan to use the evidence to show Anderson's "intent to influence commis-



William Anderson
Prosecution conduct through the payment funds, and that it was part of Anderson's overall plan and scheme to influence and reward commissioner conduct."

The government alleges in its motion that in January 1989, Anderson caused the delivery of \$1,000 cash to Anthony.
See ATTORNEY, Page 2

Attorney

From Page 1

"In an envelope purporting to contain the name of five \$200 contributors. Anderson led Anthony to believe that persons other than Anderson had made the contribution and that such contributions would not have to be reported by name under Oklahoma state law."

Under state law, any contribution of \$200 or less does not have to be reported to the Oklahoma Ethics Commission.

Also that same month, prosecutors claim Anderson advised Anthony he could raise \$10,000 for Anthony and that the delivery of that money would be "all cash" with a "list of names."

Anderson is accused in February 1989 of transferring \$5,000 from his business and corporate account to his personal account and then delivering the cash to Anthony.

Prosecutors allege Anderson contacted Anthony and advised him who would be delivering the cash. Anderson then coordinated the delivery of \$10,050 in cash from himself, Miller and Moore, prosecutors claim.

In August 1989, Anderson caused the transfer of corporate funds to his former law partner Cody Waddell "under the guise of a bonus distribution, (and) caused Waddell to cash the check and return the proceeds to Anderson for the stated purpose of making a campaign contribution to Robert H. Hopkins," the motion states.

It is against state law for corporate funds to be given as campaign contributions. Prosecutors have only three years to file state misdemeanor charges of illegal campaign contributions.

Waddell, a former administrative law judge for the Oklahoma Corporation Commission, is listed as a government witness in the case.

Federal prosecutors also allege Anderson offered in September 1989 to pay \$15,000 to William "Skip" Nicholson, an Anthony aide, for the purchase of an automobile.

When the purchase was not made because Nicholson left the commission, "Anderson advised Anthony that he had withdrawn \$7,500 (avoiding the triggering of

the filing of a currency transaction report) and then conditionally offered Commissioner Anthony the \$7,500 in case it were needed some time in the future," the motion states.

Nicholson has since returned to the commission as administrative aide for Anthony.

Prosecutors also claim Anderson made false statements to the FBI by denying he paid Hopkins in connection with an issue before the commission. Anderson also attempted to induce witnesses to make false statements to the FBI, prosecutors allege.

Anderson's attorney, D.C. Thomas, said he had not reviewed the motion and could not comment. His co-counsel, Stephen Jones of Enid, also declined comment.



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BEFORE THE CORPORATION COMMISSION OF THE
STATE OF OKLAHOMA

IN THE MATTER OF THE)
APPLICATION OF HOWARD W.)
MOTLEY, JR., FOR AN INQUIRY)
INTO THE RATES AND CHARGES OF)
SOUTHWESTERN BELL TELEPHONE)
COMPANY.)

COPY

No. PUD 890000662

DEPOSITION OF WILLIAM J. FREE, ESQ.,
taken on behalf of the Oklahoma Attorney General,
pursuant to agreement of the parties, on
Wednesday, August 11, 1993, at the
law offices of Crowe & Dunlevy, 1800 Mid-America
Tower, Oklahoma City, Oklahoma, before me,
Maynard E. Peterson, Certified Shorthand Reporter
within and for the State of Oklahoma.

A p p e a r a n c e s :

For the Applicant:

No appearance

For the Respondent:

ANDREW M. COATS, Esquire
RICHARD C. FORD, Esquire
Crowe & Dunlevy
1800 Mid-America Tower
20 N. Broadway
Oklahoma City, OK 73102
and
MELANIE S. FANNIN, Esquire
800 North Harvey, Room 310
Oklahoma City, OK 73102

For Public Utilities Division
Oklahoma Corporation Commission:

DONNA D. McLAIN, CPA
Assistant General Counsel
Oklahoma Corporation Commission
2101 N. Lincoln, Suite 400
Oklahoma City, OK 73105

1 A p p e a r a n c e s (Cont'd):

2 For the Oklahoma Attorney General:

3 RICK D. CHAMBERLAIN, Esquire
 4 Office of the Attorney General
 5 State Capitol Building
 2300 N. Lincoln Blvd., Suite 112
 Oklahoma City, OK 73105-4894

6 I N D E X

7	WITNESS	Page
8	WILLIAM J. FREE, ESQ.	
	Direct Examination by Mr. Chamberlain	4
9	Cross Examination by Ms. McLain	31
10	Cross Examination by Mr. Coats	37
11	EXHIBITS	NONE

12

13

14 MR. COATS: It is 9:35. Let the record

15 reflect that we are furnishing and providing

16 witnesses in accordance with the Court order of July

17 27th, for the depositions that were contemplated. I

18 am appearing for the company as well as for the

19 witnesses and others who have appeared but are not

20 here have been given notice for these proceedings

21 and have chosen for one reason or another not to

22 appear.

23 MR. CHAMBERLAIN: Counsel, when you said

24 you are appearing for the company, is that

25 Southwestern Bell Telephone Company?

1 MR. COATS: Yes, they are the ones that are
2 in there. If I need to appear for the corporation,
3 I will also do that.

4 MR. CHAMBERLAIN: Okay.

5 MR. COATS: But I am appearing for
6 everybody that had to do with the company and I am
7 also appearing for the witnesses with the consent
8 and at the request of both the witnesses and the
9 companies.

10 MR. CHAMBERLAIN: And am I correct in my
11 understanding that you are not going to produce any
12 documents?

13 MR. COATS: Yes. The Attorney General has
14 requested that these witnesses produce certain
15 documents and gave us a letter indicating which
16 documents, categories of documents he or she
17 wanted. We believe the Court's order did not
18 contemplate document production and have thus
19 declined to produce any documents and we have
20 advised the witnesses that they need not produce any
21 documents, that this was our understanding this was
22 intended in a very limited manner to ascertain the
23 knowledge of the witnesses as to Commissioner
24 Anthony's activities with the FBI during the
25 investigation of Southwestern Bell and that the

1 Court did not require nor make any provision for
2 document production.

3 MR. CHAMBERLAIN: And I will state for the
4 record that obviously the Attorney General disagrees
5 with Bell's characterization of the order. The
6 order did not preclude document production.
7 Certainly, whenever you do depositions, it is
8 implicitly assumed, I think, that you could ask the
9 witnesses to bring documents. That's what we have
10 done. Bell has refused to comply with that and we
11 have filed a motion with the Special Master asking
12 that Bell be compelled to produce those documents
13 and we will take that up with the judge at a later
14 time.

15 WILLIAM J. FREE,
16 being produced, sworn and examined on behalf of the
17 Oklahoma Attorney General, deposes and saith as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. CHAMBERLAIN:

21 Q. Would you state your name, please.

22 A. William J. Free, F-r-e-e.

23 Q. Mr. Free, my name is Rick Chamberlain, and
24 I am representing the Attorney General here today.
25 I understand that you are represented by Mr. Coats

1 Q. Okay. So in June of '91, mid-'91?

2 A. Yes. As I indicated earlier, in mid-'91,
3 I think it was July 1, I moved to the corporation.

4 Q. Okay. And you took the position that you
5 now hold at that time?

6 A. I took the position that I now hold, a
7 slightly different title.

8 Q. During the time period '86 to 1990, when
9 you were vice president of Revenue & Public Affairs
10 in Texas, did you have occasion to participate in
11 any of the regulatory proceedings in Oklahoma?

12 A. No, sir.

13 Q. Okay. Did you participate in any
14 legislative or other types of activities in
15 Oklahoma?

16 A. No, sir.

17 Q. Okay. At any time throughout your career
18 with Bell, have you participated in any regulatory
19 or legislative activities in Oklahoma?

20 A. Yes, sir.

21 Q. Okay. Could you tell me when that was?

22 A. Yes, sir. From 1969 to 1974, I was an
23 attorney for Southwestern Bell Telephone Company in
24 the Oklahoma City area office. And at that time I
25 had some minor regulatory responsibility. In

1 addition, from 1979 through 1986, I was general
2 attorney for the state of Oklahoma. And in that
3 position, I had overall responsibility for
4 regulatory activities for the state.

5 I might add when I said overall regulatory
6 responsibilities, I mean it from the lawyer's
7 standpoint, I handled all the legal work in front of
8 the regulatory agencies.

9 Q. Okay. During the period 1969 to 1974, to
10 whom did you report?

11 A. Mr. Robert Allen.

12 Q. How about the time period from 1979 to 1986
13 when you were the general attorney for Oklahoma, who
14 did you report to?

15 A. Subject to check, I think Wayne Babler was
16 the Vice President and General Counsel of
17 Southwestern Bell Telephone Company, and I reported
18 to him.

19 Q. Okay. During the period 1986 to 1990, to
20 whom did you report?

21 A. I reported to the President of the
22 Telephone Company's Texas operations, and that was
23 Jim Adams for some of that time and Paul Roth for
24 the remaining portions of my tenure in Texas.

25 Q. Okay. To whom do you report now?

1 Q. During the time period 1988 to the present,
2 did you know or were you aware that contributions
3 were being made to the Oklahoma Corporation
4 Commissioners?

5 A. The only thing I know is what I have read
6 in the papers about allegations of contributions to
7 commissioners.

8 Q. Okay.

9 A. Since -- from '88 to present.

10 Q. Were you -- I'm sorry?

11 A. Since reading about those, I have also had
12 some discussions with my attorneys regarding the
13 allegations.

14 Q. And those are attorneys other than
15 Mr. Coats?

16 A. Well, either with Mr. Coats or with
17 Mr. Coonan, both of whom representing me and are my
18 attorneys.

19 Q. Were you aware that David Miller was
20 contacted by the FBI in early 1991?

21 A. No.

22 Q. Okay. Were you aware that Mr. Miller and
23 other employees met with federal authorities during
24 the period March to April of '91?

25 A. '91? No.

1 1992, because I wasn't aware of anything until I got
2 this notice in February of '92.

3 Q. Did you provide Mr. Coonan with any
4 documents?

5 A. In connection with the grand jury
6 appearance -- I think the only documents I provided
7 him was a note and a release of that note.

8 Q. Promissory note?

9 A. Promissory note.

10 Q. Okay.

11 A. And a release of that note. I provided him
12 no other documents, that I recall.

13 Q. Okay. Could you tell me, generally, what
14 the note involved?

15 A. It dealt with a financial transaction
16 between Mr. Anderson and me back in the earlier
17 period of my employment in Oklahoma.

18 Q. I'm sorry?

19 A. That dealt with a financial transaction
20 back in the earlier period of my employment when I
21 worked in Oklahoma.

22 Q. Okay. And was that an instance where you
23 were loaning money to Mr. Anderson or he was loaning
24 money to you?

25 A. He was loaning money to me.

1 Maribeth Snapp, generally, representing the
2 Corporation Commission. When I was first starting
3 to take notes this morning, you made a comment that
4 you worked for approximately six months in 1990 as a
5 Vice President and Associate General Counsel for
6 Southwestern Bell Telephone Company; is that
7 correct?

8 A. That's right. That is correct, yes, ma'am.

9 Q. And then from that position, so I will
10 presume late 1990 until what time, what was your
11 position?

12 A. From approximately July 1, --

13 Q. Of 1990?

14 A. -- 1990 until current, I am Senior Vice
15 President and Associate General Counsel of
16 Southwestern Bell Corporation.

17 Q. Okay. Then that's where there was a
18 conflict in my notes, because I thought you had said
19 since July of 1991, you had been Senior Vice
20 President, Assistant General Counsel and Assistant
21 Secretary.

22 A. Then I'm sorry if I misspoke. I went to --
23 and I wish my memory were better, but I went to
24 general headquarters approximately July 1 -- I mean
25 January 1 of 1991. Okay? I was Vice President and

1 Associate General Counsel until approximately the
2 end of June 1991, and then I went with the
3 Corporation.

4 Q. Okay. So at one point in time you were
5 with the Telephone Company and then you were with
6 the Corporation, --

7 A. Yes, ma'am.

8 Q. -- but in the same period of time you were
9 still in St. Louis?

10 A. Yes.

11 Q. Okay.

12 A. Yes. My job stayed in St. Louis, I moved
13 from one building to another building and then later
14 we moved to San Antonio, Texas, when Southwestern
15 Bell Corporation relocated there.

16 I apologize if I confused you.

17 Q. It very well may be my notetaking. You
18 also indicated that you were represented by
19 Mr. Coonan beginning in either late February, well,
20 March of 1992 after you received the letter that the
21 FBI had tapped your phone, and that he was
22 representing you, you were both employees of the
23 Southwestern Bell Corporation and it appeared that
24 you were lateral employees or on the same level
25 corporately.

ANDERSON & WADDELL, P.C.
ATTORNEYS AT LAW
2212 N. W. 50th, SUITE 163
OKLAHOMA CITY, OKLAHOMA 73112

WILLIAM L. ANDERSON, ATTORNEY
CODY B. WADDELL, ATTORNEY

February 5, 1991



OFFICE (405) 843-1000
FAX (405) 843-8090

Mr. William J. Free
Vice President,
Southwestern Bell Telephone Company
1010 Pine Street
St. Louis, Missouri 63101

Dear Bill:

I enjoyed your visit week before last in Oklahoma. It brings back fond memories of better times insofar as Southwestern Bell's relationship in regulatory matters, when you and I were representing Bell. I wish the visit could have been under more favorable circumstances and hope you can come back sometime for us to just sit and talk "old times."

Bill, you have asked me to frankly give you my opinion as to the situation insofar as Southwestern Bell's regulatory problems in the State of Oklahoma at this time. As you know, I have participated in most of the major rate matters involving Southwestern Bell in Oklahoma since 1957. During the early part of that time I was General Counsel of the Corporation Commission, and since 1970, I have participated as an attorney for Bell in most of the rate matters.

During most of that period, both while I was at the Commission and since I left, Bell had a reputation for integrity, honesty and reasonableness in their requests, and the relationship with the adversary parties, such as the Commission's Staff, the Attorney General and the Consumer Public, was very good. We did not always get all we asked for, but, on the whole we received reasonable treatment and were able to leave the Hearing with some good will on all sides and the feeling that we might have left a "little money on the table," giving us room to come back again when it was absolutely necessary.

At those times, we did not push for the last dollar, and recognized that there was some merit on the side of the Commission's Staff, the Attorney General and Protestants, as well as on the side of Bell, and that somewhere between those extremes was that nebulous thing called justice and were able to arrive at solutions which enabled us to survive and make a reasonable profit and furnish a good grade of service, yet, leave a good feeling with all of the parties.

Mr. William J. Free
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I am sorry to say that in the last four years, things have really deteriorated at Bell. Bill, when you were here, thanks to you, John Parsons, Tom White, Charlie Sutter, Bob Stafford, Frank Morrison and several others, we had a company that was generally liked and respected and above all, both the Commission and its staff and the Attorney General, respected our integrity and basic honesty and did not feel like we were trying to "pull a fast one" on them, or, that we were being overbearing, or "high handed." That same relationship generally existed between Bell and the Independent Telephone Companies.

Today, and I am sorry to say it, with the exception of Charlie Sutter, Bob Stafford and Glen Glass, you do not have any people, and I mean any, that deal on a day to day basis with the Commission, or appear before them, that are liked, respected and trusted by the Commission's Staff, as well as many members of the Commission. The same thing goes insofar as the relationship with the Independents. As you and know, at one time our relationship with the Independent Telephone Industry was pretty good. We had a few "sore heads" that were against Bell on anything, but, a large nucleus of them, including my four Independent clients, thought that Bell had treated the Independents fair and were willing to work out any differences on some amicable basis. However, with the retirement of Frank Morrison, and placing new Independent Company relations people in his place, we saw a decided change in sentiment over the years, whereby, today, there probably is not one Independent Telephone Company in Oklahoma that has got any trust in Bell and has any liking for the people assigned to deal with them on a day to day basis.

The same thing has developed with the Staff of the Commission. Tom White was the key to good relations with the auditing staff of the Commission. Tom has retired. As long as Tom was there, the Commission Staff knew that Tom was going to tell them the exact truth and be reasonable and aware of the Commission's views and respect those views, and more times than not come to some accommodation that was fair to all parties. The Attorney General also felt the same way about Tom. Tom's successor may be technically a good man, and mean well, but, the truth is that at least two of the accounting people that deal most with Bell, do not trust the man and feel that he has not "shot" fair with them, and all of them feel that he has an arrogant attitude that makes it hard to be able to get along.

I have conveyed this information to Bell's management, both as to the trouble with the Independent Telephone Companies and the care that should be made in picking a successor for Tom White. But, apparently they felt that they knew best and persist

Mr. William J. Free
page 3

in sending people to the Commission, or dealing with the Independents that are not well received by either the Independents or the Attorney General.

Bill, I have always felt that the larger a company is, the ~~more modest and fair it should be. Or, at least it should have~~ the appearance of being modest and fair. Right now you have people in high places in Bell Telephone Company, and you know who I am referring to, who appear to be overbearing, overreaching and awful demanding. I have found that people will do more for you if they like you and respect you, but that free Americans will do damn little for you just because they fear you.

In the past, you and I always recognized that the primary obligation of the Commission was to protect the consumer. It seems to me that some of the present people in Bell have not kept that criteria in mind, but, rather expects the Commission to exercise a role that first, promoting the financial well-being of Bell and only incidentally the interest of the ordinary consumer.

If we expect fair treatment from the Commission, we have got to recognize their true function and depend on their keen sense and good judgment to keep us financially able to furnish a good grade of service.

Right now, at the top, and apparently you have management who countenances or at least encourages this arrogant, overbearing attitude of many of the people that Bell sends to the Commission, which at sometimes reaches more than just an over zealous presentation of Bell's position, but, includes an actual misrepresentation of the facts. There is one man, and you know who I am talking about, that an aide to a Commissioner advised you in my office, that he had just recently misrepresented things to the Commissioner, and had followed a persistent pattern of conduct of arrogance and bad manners in his dealings there, and was frankly, not welcome. That same man, as I understand it, has made some misrepresentations to certain Independent Companies, who, heretofore had been friendly to him, and, I know from personal knowledge that he did not keep an agreement that he and I had made on behalf of Bell Telephone Company, which I kept, and, it cost me several thousands of dollars, because, I'm old fashioned in belief in keeping my agreement. The present top management of Bell knows about that agreement, and it was not kept, and presumably knows about the misrepresentation to one of the Commissioners, but persists in maintaining him in his position with the company, exercising authority, and I can only assume that this action in thinking represents the attitude of the top management of Bell Telephone Company, in Oklahoma, but, certainly

Mr. William J. Free
page 4

not that of many of the thousands of good, loyal employees.

Bill, right now, Bell called in all of its politically "due bills" and then some, in the tax docket, when we secured Authority to invest the excess earnings in rural upgrade, rather than refund. Now, in our earnings review, we are in a situation where we've got few, or any, friends at the Corporation Commission, including the members of the Commission and a very bitter, able and forceful, antagonistic Attorney General of Oklahoma, as well as certain consumers groups. All Bell can hope for right now in Oklahoma, in my opinion, is to cut their losses, or keep them at a minimum, and hope to come out of it with the foundation laid to promote some good will to get back the standing that we had a few years ago.

I will be so presumptuous as to make a suggestion to you as to what we should do towards trying to recapture some of the lost prestige and standing that we had for years. First, we must remember that when we have a product to sell, and it's a hard product to sell, we should have a salesman that is knowlegable, liked by the customers, and, more than that, trusted by them. Except for Bob Stafford, Charlie Sutter and Glen Glass, and possibly, Fred Lowrey, I do not think you have an individual from Bell in Oklahoma, that approaches the Commission that can meet that criteria. I would suggest this for your and the management's consideration that in the earnings review now pending before the Commission that you endeavor to employ Tom White to come back, especially for this case, to handle all of the auditing, accounting matters, including testimony and in the negotiations with the Commission's Staff. They know that Tom is more familiar with the accounting problems of South-western Bell Telephone Company in Oklahoma, than any man alive, and above that, they believe him and like him. If you would get Tom back, and let Tom, Bob Stafford, Charlie Sutter, Glen Glass and I sit down and develop an overall strategy for presenting our accounting data and rate of return so as to arrive at revenue requirements and determine the best policies for cross-examining and rebuttal testimony for the Attorney General and other competing groups.

Then, on a day to day basis, since Glen will be tied up and busy with many other duties, have Cody Waddell, from our office, work with Tom White, Bob Stafford and Charlie Sutter on the daily dealings with the Commission's Staff, since Cody and Tom are liked and respected by the Commission's Staff. Then, Glen and I try the lawsuits in a low key, but firm manner, honestly presenting our views, with respect to the views to other people and make a good record, where, if necessary we can appeal, but at the same time not be so antagonistic as to get everybody "up in arms" with us.

Mr. William J. Free
page 5

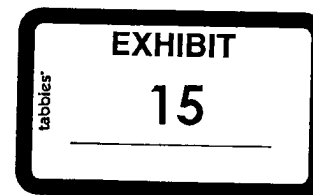
We are faced with a different Commission today than you dealt with. There are three entirely new ones. It is my understanding that two of them, right now would be inclined to vote against Bell, all things being equal. I know that a lot of this has been brought on by the attitude and conduct of certain Bell people. The third Commissioner is an "unknown quantity" at this time. However, I think all three of these Commissioners, if we approach them on a low key, realistic and practical mind, would endeavor to come up with some kind of a decision, but leave us economically viable and provide for a good telephone industry, both Bell and the Independents and leave the door open for us to come in in the future for any necessary relief and smooth the path of the day to day workings with the Commission.

We have an ambitious Attorney General, who, as I understand it, wants to run for United States Senate two years from now. He is intelligent and has a capable assistant, Robert Butkin, who is handling utility matters. Mr. Butkin is well trained, a hard worker and persistent. However, I think if a right, realistic approach were made to Mr. Butkin that some accommodation could possibly be worked out. If that is done, the approach, in my opinion, should be limited to Glen Glass and nobody else -- and I mean nobody else connected with Bell, since he does not like them, but he does have a certain respect and affection for Glen, and I would be glad to help him in anyway I can. You might not want to pursue this, but, I wouldn't discount the influence of the Attorney General, not only in the Hearing before the Commission, but in the Supreme Court in the event there was an Appeal.

I know, Bill, that you have a hard job. Glen Glass has a hard job. I feel sorry for Glen. He is a loyal Bell employee, but I think he can see the path they are going and that the effect of it is beginning to "snowball" and he feels helpless in stopping it. If Glen were left to his own devices, I don't think we would be in the situation we are in now. What with the people that management sends out to the Commission and their requirement that he have Dave Miller at his side for advice on most legal matters, when Miller would not recognize a legal issue if he saw it walking down main street at high noon, is certainly frustrating.

Bill, for over twenty years I have been proud representing Bell Telephone Company. Two of my boys work for Bell Telephone Company. Bell Telephone Company has been good to the Anderson family, and I like to hope that I have made you some money in the past, and do know that without my efforts you probably would not have been authorized to reinvest the tax over earnings on one-party upgrade rather than refund. However, I am at the point where there is not much I can do to help you as long as every turn I try to make, I find people in Bell making life long friends I have at the Commission and the Attorney General's office, mad

LIAM S. COONAN
ATTORNEY AT LAW
56 MUIRFIELD
CREVE COEUR, MISSOURI 63141



April 17, 1991

Mr. Bob Anthony
C.R. Anthony Company
General Office
701 N. Broadway Avenue
Oklahoma City, OK 73102-6091

Dear Mr. Anthony:

Thank you for the opportunity to brief you last Wednesday. You have a demanding schedule and I appreciated your courtesy and attention.

As promised, I am enclosing a business card. (I welcome the opportunity to reduce my card inventory, if by only one--my family has refused to take any more.)

If you have any questions concerning events subsequent to our discussion (they went well), I would be delighted to respond.

Sincerely,

A handwritten signature in cursive script that reads "Liam S. Coonan".

Enclosure

Southwestern Bell Corporation

Liam S. Coonan
Vice President and
Assistant General Counsel

One Bell Center
St. Louis, Missouri 63101-3099
Phone (314) 235-8266

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BEFORE THE CORPORATION COMMISSION OF THE
STATE OF OKLAHOMA

IN THE MATTER OF THE)
APPLICATION OF HOWARD W.)
MOTLEY, JR., FOR AN INQUIRY)
INTO THE RATES AND CHARGES OF)
SOUTHWESTERN BELL TELEPHONE)
COMPANY.)

ORIGINAL

No. PUD 890000662

DEPOSITION OF DAVID H. MILLER,
taken on behalf of the Applicant, pursuant to
agreement of the parties, on Thursday,
May 6, 1993, at the law offices of Crowe & Dunlevy,
1800 Mid-America Tower, Oklahoma City, Oklahoma,
before me, Maynard E. Peterson, Certified Shorthand
Reporter within and for the State of Oklahoma.

A p p e a r a n c e s :

For the Applicant:

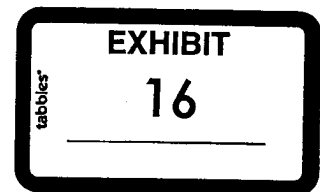
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Southwestern Bell Corporation
San Antonio, Texas



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3

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9 Oklahoma Corporation Commission:

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11 2101 N. Lincoln, Suite 400
12 Oklahoma City, OK 73105

13

14 For the Oklahoma Attorney General:

15

16 RICK D. CHAMBERLAIN, Esquire
17 Office of the Attorney General
18 State Capitol Building
19 2300 N. Lincoln Blvd., Suite 112
20 Oklahoma City, OK 73105-4894

21

22 For MCI Telecommunications:

23

24 RONALD E. STAKEM, Esquire
25 Clark, Stakem, Pherigo & Douglas
101 Park Avenue, Suite 1000
Oklahoma City, OK 73102

26 For AARP:

27

28 ERIC R. KING, Esquire
29 King & King
30 3330 E. French Park Drive
31 Edmond, OK 73034

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1 A p p e a r a n c e s: (Cont'd)

2 For OCSI Alltel Chickasaw Pine Telephone Co.:

3 CODY B. WADDELL, Esquire
4 Huffman, Arrington, Kihle, Gaberino & Dunn
5 2212 N.W. 50th Street, Suite 163
6 Oklahoma City, OK 73112-8097

7 For the Deponent:

8 PATRICK M. RYAN, Esquire
9 Ryan, Corbyn & Geister
10 Suite 900
11 119 North Robinson Avenue
12 Oklahoma City, OK 73102-4608

13 I N D E X

14	WITNESS	Page
15	DAVID H. MILLER	
16	Direct Examination by Mr. Lee	3
17	EXHIBITS	NONE

18 DAVID H. MILLER,
19 being produced, sworn and examined on behalf of the
20 Applicant, deposeth and saith as follows:

21 DIRECT EXAMINATION

22 BY MR. LEE:

23 Q. Would you state your name, please.

24 A. David H. Miller.

25 Q. What is your residence address, Mr. Miller?

1 A. 6016 Marlow Lane, Oklahoma City, Oklahoma.

2 Q. What is your occupation, Mr. Miller?

3 A. I'm retired from Southwestern Bell and
4 currently Director of Public Relations for the
5 Education And Employment Ministry.

6 Q. When did you retire from Southwestern Bell?

7 A. August 19th, 1992.

8 Q. Why did you retire from Southwestern Bell?

9 A. I was asked to retire.

10 Q. Why were you asked to retire from
11 Southwestern Bell?

12 MR. RYAN: I object, calling for
13 speculation.

14 Q. (BY MR. LEE) I would like to ask the
15 witness to answer the question.

16 (Sotto voce colloquy was here had between
17 counsel and the witness.)

18 MR. RYAN: David, as I mentioned to you
19 yesterday afternoon in our telephone conversation,
20 Mr. Miller is going to exercise his Fifth Amendment
21 rights during this deposition. And he's going to
22 decline to answer that question, or any other
23 question that relates to his employment with
24 Southwestern Bell or his dealings with the
25 Corporation Commission or any of the commissioners

1 under the his constitutional rights under the Fifth
2 Amendment.

3 MR. LEE: I accept Mr. Ryan's
4 representation, although in this regard, I would
5 like to ask a few more questions to make sure that
6 that applies to a few areas.

7 MR. RYAN: Okay.

8 Q. (BY MR. LEE) Mr. Miller, when did you
9 first meet Commissioner Bob Anthony?

10 MR. RYAN: The same advice. When I make
11 the statement to Mr. Lee that you are going to
12 decline to answer these questions under your
13 constitutional rights, I think we ought to assume
14 for the record that he is going to follow that
15 advice unless you want to pursue it further.

16 MR. LEE: All right.

17 Q. (BY MR. LEE) Mr. Miller, on February 21st,
18 1989, did you convey to Commissioner Anthony \$2,450
19 in cash?

20 MR. RYAN: He's going to decline to answer
21 that question.

22 Q. (BY MR. LEE) Mr. Miller, did you know that
23 the conveyance of \$2,450 to Commissioner Anthony on
24 February 21st, 1989 was illegal?

25 MR. RYAN: He's going to decline to answer

1 that question.

2 Q. (BY MR. LEE) Mr. Miller, on February 21st,
3 1989, in conjunction with your conveyance to
4 Commissioner Anthony of \$2,450 in cash, did you also
5 provide Commissioner Anthony with a list of people
6 who were purported to be contributors and people who
7 contributed to the \$2,450 in cash?

8 MR. RYAN: He's going to decline to answer
9 that question.

10 Q. (BY MR. LEE) Mr. Miller, who is Mary
11 Tyson?

12 MR. RYAN: He's going to decline to answer
13 that question as well.

14 Q. (BY MR. LEE) Mr. Miller, was Mary Tyson
15 one of the people on the list that you conveyed to
16 Commissioner Anthony on February 21st, 1989, along
17 with the \$2,450 in cash?

18 MR. RYAN: He will decline to answer that
19 question.

20 Q. (BY MR. LEE) Mr. Miller, have you been
21 interviewed by agents of the Federal Bureau of
22 Investigation within the last three years?

23 A. Yes, I have.

24 Q. When was the last time you were interviewed
25 by the Federal Bureau of Investigation?

1 A. The last time was probably in April of '91.

2 Q. From the time period after February of
3 1989, when was the first time that you were
4 contacted by agents of the Federal Bureau of
5 Investigation?

6 MR. RYAN: Can we have that question read
7 back again, please.

8 (The last question was read by the reporter.)

9 A. The first time I was contacted was in March
10 of 1991.

11 MR. CHAMBERLAIN: Sorry, I can't hear you.

12 MR. RYAN: March, 1991, is his best
13 recollection.

14 Q. (BY MR. LEE) Were you ever contacted by or
15 interviewed by agents of the Federal Bureau of
16 Investigation at any time other than the two times
17 you have just mentioned, April of 1991 and March of
18 1991?

19 A. I was initially contacted in March of '91.
20 I had a subsequent meeting with the FBI shortly
21 after that. And then there was the one, the last
22 one which was in April of '91, to the best of my
23 recollection.

24 Q. In 1992, was there ever an attempt by the
25 Federal Bureau of Investigation to interview you?

1 A. Not that I'm aware of.

2 Q. Mr. Miller, at any time have you ever
3 received written notice from the United States
4 Government that any conversation that you
5 participated in had been monitored by electronic
6 surveillance?

7 A. Yes, I have.

8 Q. And when was that that you received notice
9 of that?

10 A. I'm not sure.

11 Q. Would it have been in 1991?

12 A. I think so.

13 Q. Would it have been in 1992?

14 A. I think it was in the latter part of 1991.

15 Q. How many times have you been notified by
16 the United States Government that a conversation
17 that you participated in was the subject of
18 electronic surveillance?

19 A. Once.

20 Q. Just one time?

21 A. Yes, sir.

22 Q. On April the 10th, 1991, did you have a
23 meeting with Commissioner Bob Anthony and Liam
24 Coonan of Southwestern Bell?

25 MR. RYAN: He will decline to answer that

1 question.

2 Q. (BY MR. LEE) At that April 10th, 1991
3 meeting, with Commissioner Anthony and Liam Coonan,
4 did you make the comment with regard to your
5 activities in conveying cash to Commissioner Anthony
6 that "discreetness was a big concern, legality was
7 not a concern to me"?

8 MR. RYAN: He will decline to answer that
9 question.

10 Q. (BY MR. LEE) In the summer of 1992, were
11 you aware that the FBI interviewed Mary Tyson?

12 MR. RYAN: He will decline to answer that
13 question.

14 Q. (BY MR. LEE) Mr. Miller, isn't it true
15 that you were discharged from Southwestern Bell
16 because of the illegal contribution you made to Bob
17 Anthony in 1989?

18 MR. RYAN: He will decline to answer that
19 question.

20 Q. (BY MR. LEE) Mr. Miller, did you ever or
21 were you ever aware of any attempt by any
22 representative of Southwestern Bell to ask
23 Administrative Law Judge Bob Goldfield to delay
24 issuing his administrative law judge report in the
25 PUD 662 rate case?

1 MR. RYAN: He will decline to answer that
2 question.

3 Q. (BY MR. LEE) Mr. Miller, were you ever
4 aware of any representative of Southwestern Bell
5 conducting conversations with any member of the
6 Oklahoma Corporation Commission in 1992 concerning a
7 contemplated settlement of the PUD 662 rate case?

8 MR. RYAN: He will decline to answer that
9 question.

10 MR. LEE: Mr. Ryan, is it your position
11 that you intend to advise your client to continue to
12 keep invoking the Fifth Amendment privilege against
13 self-incrimination with regard to your client with
14 regard to questions along this tenor?

15 MR. RYAN: Yes, at least at this time. As
16 you know, there is an investigation that is ongoing;
17 perhaps, once that's all been concluded, Mr. Miller
18 may very well answer these questions you have asked
19 and others, but at this time he's invoking his
20 rights.

21 MR. LEE: I have no further questions.

22 MR. COATS: Our next witness is not due
23 until 10 o'clock. So we have a little bit of a
24 hiatus here.

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ORIGINAL

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David H. Miller

DAVID H. MILLER

STATE OF OKLAHOMA)

) SS.

COUNTY OF OKLAHOMA)

Subscribed and sworn to before me this
22 day of May, 1993.

Lela M. Craig
Notary Public, State of Oklahoma

My commission expires 1-28-96.

C E R T I F I C A T E

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STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

I, Maynard E. Peterson, a Certified Shorthand Reporter within and for the State of Oklahoma, do certify that the witness in the foregoing deposition, DAVID H. MILLER, was duly sworn to testify the truth, the whole truth and nothing but the truth, in the within-entitled cause; that said deposition was taken at the time and place herein named; that the deposition is a true record of the witness's testimony as reported by me and thereafter transcribed into typewriting by computer.

I do further certify that I am not counsel, attorney or relative of either party, or clerk or stenographer of either party, or otherwise interested in the event of this suit.

I do further certify that I am a duly qualified and acting Certified Shorthand Reporter within and for the State of Oklahoma, Certificate No. 00325.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my CSR stamp at my office in Oklahoma City, Oklahoma, this 11th day of May, 1993.



Oklahoma Certified Shorthand Reporter

COSTS: \$ ~~28~~ ²⁰
Paid by Applicant

Maynard E. Peterson
Oklahoma Certified Shorthand Reporter
Certificate Number 00325
Exp. Date: December 31, 1994

1 WITNESS ERRATA SHEET

2 DAVID H. MILLER

3 Application of Howard W. Motley, Jr.-SWB

4 Case No. PUD 890000662

5 Pg.: Line : Changed From : Changed to : Reason

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7	6	11	Tyson	Tison	Spelling correction	
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24 May 27, 1993 

25 Date Signature of witness



ONE IN A SERIES

Say YES to a strong Oklahoma economy.



Oklahoma is on the road to economic recovery. However, one key factor that's missing is a statewide, state-of-the-art telecommunications network. Southwestern Bell Telephone has proposed a plan that will provide Oklahoma with a more up-to-date network. The plan is called TeleState/21 and is designed to provide twenty-first century service for *all* of Oklahoma . . . now.

Here's what TeleState/21 would do:

- ◆ Freeze prices for five years on basic local telephone service for business and residence customers.
- ◆ Put a cap on prices for long distance calls within Southwestern Bell Telephone's service areas. Prices could be *cut* but *not* increased.
- ◆ Bring digital, computerized central offices to more than 100 communities over a five-year period.
- ◆ Expand Oklahoma's digital network and install 600 miles of fiber optic cable.
- ◆ Establish a discount life-line program for low-income Oklahomans.

What's in this for Bell?

We're betting that this investment will help stimulate the Oklahoma economy. Because we expect to benefit from that investment, we're willing to spend up to \$80 million to seize this opportunity for the state.

In exchange for all of the above, we are asking for some pricing flexibility on optional services, and we're proposing revisions in the regulatory process.

We propose replacing the current regulatory system with one that focuses on prices, not profits. That would protect our customers and our owners. Both are important to us.

TeleState/21

We are *not* asking for deregulation. If TeleState/21 is approved, the Oklahoma Corporation Commission would continue to oversee the telephone business in Oklahoma. The commission would continue to monitor service quality, approve rate changes, and serve as a sounding board for consumer concerns.



David H. Miller, assistant vice president — revenues and public affairs, is a native of Shawnee and earned a BBA degree from the University of Oklahoma. Miller and his staff developed the TeleState/21 plan for Oklahoma.

David H. Miller
Assistant Vice President — Revenues and Public Affairs

For more information or to express your opinion about this program, call your SWBT local manager or write to David H. Miller, 806 N. Harvey, Room 420, Oklahoma City, Oklahoma 73102.

Marches On

Pesticides Deadline
Business ... B-8

Local Tragedy
City/State ... A-3

Mostly Sunny
High: Lower 90s
Low: 50s-60s

TULSA WORLD

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88th Year - No. 286 • Tulsa, Oklahoma, Tuesday, June 29, 1993 • Entire Contents © 1993 World Publishing Company 35 Cents

Ex-Bell Exec Takes Fifth in Bribery Probe

By Chuck Ervin
World Capitol Bureau

OKLAHOMA CITY — A former Southwestern Bell vice president, who resigned under fire, took the Fifth Amendment 13 times during questioning about his role in alleged bribery and corruption at the Corporation Commission, according to records the Oklahoma Supreme Court unsealed in an order issued Monday.

The court also took an evidentiary hearing on allegations that Commissioner Bob Anthony was prejudiced against

Southwestern Bell away from the commission and handed it over to a special master.

Bell has charged that Anthony's role as an FBI informant prejudiced him against the telephone company in a 1992 rate case. The commission ordered Bell to pay back to its customers \$148 million in overcharges, lower its rates by \$97 million a year and spend \$85 million to upgrade its system over a five-year period.

Bell is appealing based on its contention that Anthony's role as an informant and his allegations of illegal activity by Southwestern Bell in an earlier 1989 case made it impossible for him to be unbiased in the 1992 case.

The Supreme Court ordered records unsealed, including depositions by Anth-

ony, his top aide, Skip Nicholson, former Bell Oklahoma Division President J.B. Ellis, former Bell Oklahoma General Counsel Glen Glass and Bell Vice President David Miller.

The court appointed retired District Judge William Myers of Oklahoma City, as a special master and told him to take over the evidentiary hearing on Anthony's alleged bias.

It said the special master hearing would be limited to determining if Anthony was an FBI informant during the Bell rate case and when the telephone company knew, or should have known, about his role as an informant.

In his deposition, Anthony said he informed Ellis of illegal activity by Bell representatives before the rate hearing. The Supreme Court ordered all hear-

ings conducted by Myers to be open to the public and gave him 60 days to report his findings to the court.

At his deposition, Miller was asked by David Lee, Anthony's attorney, why he had retired from Southwestern Bell.

"I was asked to retire," Miller said. Lee then inquired why Miller had been asked to retire, and Miller's attorney objected.

"He's going to exercise his Fifth Amendment rights, and he's going to decline to answer that question, or any other question that relates to his employment with Southwestern Bell or his dealings with the the Corporation Commission or any of the commissioners under his constitutional rights under the Fifth See Bell on A-3

Rates Frozen for Homes
For Elderly Retarded

Agency Layoffs Planned,
State Union Chief Charges

...Bell

Continued from A-1
Amendment," said Pat Ryan, Miller's lawyer.

Miller also took the Fifth Amendment when asked by Lee when he had first met Anthony.

"On Feb. 21, 1989, did you convey to Commissioner Anthony, \$2,450 in cash?" Lee asked.

Miller took the Fifth.

In his deposition, Anthony said Miller delivered the money to him.

"Mr. Miller, did you know that the conveyance of \$2,450 to Commissioner Anthony on Feb. 21, 1989 was illegal?" Lee asked.

Miller took the Fifth.

"Did you provide Commissioner Anthony with a list of people who contributed the \$2,450 in cash?" Lee asked.

Miller took the Fifth.

Anthony had testified that Miller and his secretary supplied a list of phony contributors to cover cash payments.

Miller also declined to answer if he had attended an April 10, 1991, meeting with Anthony and Liam Coonan, a Bell attorney who conducted an internal investigation into Anthony's allegations.

Anthony testified that the meeting was an attempt to gloss over Miller's activities.

Miller also took the Fifth when asked if he was discharged by Bell "because of illegal contributions you made to Bob Anthony in 1989" and again, when he was asked if he knew of any attempt by Bell to get an administrative law judge at the commission to delay issuing his report on the Bell rate case.

In his testimony, Ellis said Miller was asked to leave because he had not told internal investigators all he knew about campaign contributions to commissioners.

Ellis, himself, soon took yearly

retirement after less than two years as president of the Bell Oklahoma Division.

Anthony testified that Bill Anderson, a private Oklahoma City attorney who represented Bell and other public utilities, told him about a bribe paid to former Commissioner Bob Hopkins and promised an illegal payment to Nicholson.

"He (Anderson) made a deal, to use his word, with me regarding the manner in which I would vote in this matter (1989 Bell case), which basically involved providing \$15,000 to get my administrative aide (Nicholson) a car," Anthony said.

"And he (Anderson) indicated that \$10,000 had been given to Commissioner Hopkins for Commissioner Hopkins' vote in this matter," Anthony stated.

He added that, apparently, Anderson was confident about the position former Commissioner Jim Townsend would take in the 1989 case in which Bell eventually was ordered to repay \$30 million.

A federal grand jury has indicted Hopkins for accepting a \$10,000 bribe and Anderson with paying the alleged bribe. Anderson also has been indicted along with Broken Bow businessman Jewel Callaham for allegedly tampering with a government witness in the investigation.

Anthony also testified that on one occasion Bell representatives "provided me with several thousands of dollars in cash, and there was reason to believe Mr. Glass was involved in that as well."

That was a reference to Glen Glass, Bell's senior attorney in Oklahoma, who was transferred to Texas about the time Miller and Ellis retired.

Ellis testified that he thought Anderson was "a strange fellow" and a "dangerous guy" and that he "didn't like him from day one."

But Glass, who let Anderson go after learning of the FBI probe, recalled it differently when asked if Ellis had expressed concern about Anderson.

"No, he never discussed his reservations (about Bell using Anderson to represent it)," Glass said.

...Rates

Continued from A-1
lawmakers did not budget it.

The commission also froze reimbursement rates for private intermediate care facilities for the mentally retarded, now at \$57.59 per patient per day.

Bonnie Page, the director of the Center of Family Love, which operates a 52-bed intermediate care facility in Okarche, warned that the commission's failure to increase the rate to \$61.34 per day would result in the closing of her facility.

Patients now at the Okarche facility will probably be forced to move into state-run facilities, which cost the state more money to operate, Page said.

The Rates and Standards Committee had recommended that the commission freeze rates for the intermediate care facilities until the DHS completes a "findings" process to determine whether the proposed increase was justified. The DHS Medical Services Division, however, had recommended that rates for intermediate care facilities be increased until a new way to determine rates can be developed.

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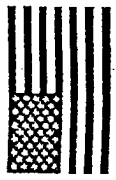
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THE DAILY OKLAHOMAN

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The State Newspaper Since 1907

OKLAHOMA CITY, OK

TUESDAY, JUNE 29, 1993

32 PAGES

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Ex-Bell Official Took 5th Amendment, Transcript Shows

By Paul English
Capitol Bureau

A one-time Oklahoma executive of Southwestern Bell Telephone Co. has refused to answer under oath 13 questions about allegations that he made illegal payments to a member of the Oklahoma Corporation Commission, a transcript showed Monday.

And, another former Bell executive testified he had been told "some travel expenses of spouses of commission employees were being picked up" by Bell.

The transcript of the deposition of David H. Miller was made public shortly after the state Supreme Court ordered the unsealing of all records filed against the commissioner by Bell. Bell is trying to get Commissioner Bob Antho-

ny disqualify from hearing its rate case after he revealed he has been an FBI informant in its probe of Bell's relationship with the commission.

State Attorney General Susan Loving said earlier this month in a brief that there was "uncontroverted evidence" that Miller and Bill Anderson, a former Bell attorney, offered bribes to Anthony.

Miller's attorney, Patrick M. Ryan, said at Miller's deposition hearing that Miller would exercise his Fifth Amendment rights to decline to answer questions relating to his employment

with Bell, his dealings with the commission or any of the commissioners.

"Among the questions he declined to answer was whether he had told Anthony on April 10, 1991, that in conveying cash to Anthony 'discreteness was a big concern, legality was not a concern to me.'"

David W. Lee, Anthony's attorney, asked Miller, "... on Feb. 21, 1989, did you convey to commissioner Anthony \$2,450 in cash?"

Miller declined to answer.
Miller also remained silent when, asked if he had provided Anthony with a list of people who were purported to have contributed part of the \$2,450 in cash.

The former Bell official did acknowledge that he had been interviewed by the FBI in April

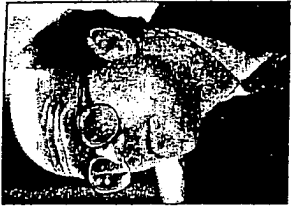
1991. He also said he had been informed by the FBI in late 1991 that some of his conversations had been monitored by electronic surveillance. Anthony has said that he informed Bell officials of his concerns about the payments by Miller and Anderson.

A deposition by James B. Ellis, former president of the Oklahoma division of Southwestern Bell, said Anderson was on a \$60,000 a year retainer to Bell's legal department and was "a strange fellow."

"I didn't like his approach, and so ... it doesn't surprise me that I might have said he was a dangerous guy," Ellis said.

Asked if he had told Anthony in a March 29, 1990 deposition that he did not want to know

See TRANSCRIPT, Page 2

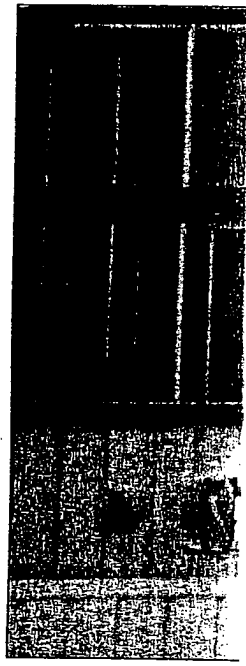


Bob Anthony

Mom, 4 Kids Found Slain in Home

Child Spoke Of Abuse, Teacher Says

By Jack Money



Husband Held In Killings

By Charolette Aiken, Penny Owen, Jack Money and Nolan Clay Staff Writers

Liam S. Coonan
Vice President and
Assistant General Counsel

**Southwestern Bell
Corporation**

One Bell Center
St. Louis, Missouri 63101-3099
Phone (314) 235-8266

October 16, 1992

Mr. John Hippard
Special Agent
Federal Bureau of Investigation
P.O. Box 54511
Oklahoma City, Oklahoma 73154



Re: September 29th Grand Jury Subpoena

Dear Mr. Hippard:

Assistant U.S. Attorney, Lee Schmidt, advised I could provide these documents to you in response to the September 29, 1992 Grand Jury Subpoena directed to the Custodian of Records of Southwestern Bell Corporation.

From the records of Southwestern Bell Telephone Company ("SWBT"), I am providing true and correct copies of invoices, vouchers and canceled checks responsive to the subpoena. You will notice that a few of the canceled checks are illegible. We were unable to get a good microfiche picture of the checks for the voucher of \$5,743.90 with a payment date of December 21, 1984 and for the voucher of \$3,323.75 with a payment date of May 29, 1985. The invoices, checks and vouchers cover the time period from 1977 through 1985.

Also enclosed is a SWBT computer summary listing drafts paid that are responsive to the subpoena. This summary covers the period from 1983 through 1985. SWBT only retains computer records of draft payments for a ten-year period. On the computer print-out summary you will find two transactions for \$10,000 for which there are no corresponding invoices or checks. One of the \$10,000 entries is a debit and the other is a credit. I expect that the debit entry was a mistake which was corrected by the off-setting credit entry, but at this time, I am unable to confirm that this is in fact what occurred.

Excerpts from SWBT Form M filings with the FCC which reflect payments to either William L. Anderson or Anderson & Waddell are enclosed. I am enclosing copies of the Form M filings for two years that may not be responsive to the subpoena. The 1966 Form M reflects payment(s) to a "John L. Anderson"; and the 1977 Form reflects payment(s) to a "William R. Andersen". I frankly do not know whether

these Forms reflect typographical errors or whether these entries reflect payments to some other Mr. Anderson/en.

Southwestern Bell Mobile Systems (SBMS) has two pages of its Item Analysis Register and three pages of its Detailed General Ledger which are responsive to the subpoena. SBMS does not retain vouchers showing invoices from or payments to any companies prior to 1986.

In addition, SBMS came across a document that is arguably responsive to paragraph 3 of the first subpoena we received and was not produced at that time due to inadvertence. The document consists of correspondence from Cody Waddell to Jerry Brantley dated March 9, 1987 and attaches a March 4, 1987 letter from Bob McCoy to William Babb as well as a copy of House Bill No. 1171.

Very truly yours,

Liam S. Coonan
Vice President and
Assistant General Counsel

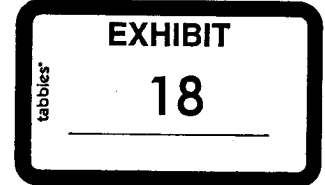
Enclosures

cc: Lee Schmidt (w/o attachments)



Southwestern Bell Telephone Co. v. Oklahoma Corp. Comm.

1994 OK 38
873 P.2d 1001
65 OBJ 1340
Case Number: 80579
Decided: 04/13/1994
Supreme Court of Oklahoma



Cite as: 1994 OK 38, 873 P.2d 1001

SOUTHWESTERN BELL TELEPHONE COMPANY, PETITIONER,
v.
OKLAHOMA CORPORATION COMMISSION, RESPONDENT.

APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF PROHIBITION

¶0 Petitioner seeks this Court's assumption of original jurisdiction and petitions for writ of prohibition to disqualify Corporation Commissioner Anthony from further participation in PUD-260 and all pending or future cases involving petitioner before the Commission.

APPLICATION TO ASSUME ORIGINAL JURISDICTION GRANTED. PETITION FOR WRIT OF PROHIBITION DENIED.

REHEARING GRANTED AND OPINION OF THE COURT ISSUED MAY 25, 1993, IS WITHDRAWN AND THIS OPINION ORDERED SUBSTITUTED THEREFOR.

Andrew M. Coats, Richard C. Ford, Crowe & Dunlevy, Melanie S. Fannin, Roger K. Toppins, Oklahoma City, for petitioners.

Maribeth D. Snapp, Patricia A. Morris, Oklahoma Corp. Com'n, Rick Chamberlain, Office of the Atty. Gen., Robert D. Allen, Ronald E. Stakem, Clark, Stakem, Pherigo, & Douglas, Ron Comingdeer, Oklahoma City, Eric R. King, King & King, Edmond, Jerry Cord Wilson, Nancy Thompson, Oklahoma City, Major Kenneth C. Kitzmiller, Staff Judge Advocate, Tinker AFB, Laurence M. Huffman, Elizabeth S. Wood, McAfee & Taft, William J. Bullard, Williams, Box, DeBee, Forshee, Synar & Bullard, Cody Waddell, Anderson & Waddell, David Lee, Lee & Fields, Michael J. Hunter, Oklahoma Corporation Commission, Oklahoma City, for respondents.

SIMMS, Justice:

[873 P.2d 1003]

¶1 In this original proceeding Southwestern Bell Telephone Company (SWB) seeks this Court's order disqualifying Corporation Commissioner Anthony (Anthony) from further participation in Corporation Commission proceeding PUD-260, a rate hearing, as well as in all pending and future SWB cases. SWB asserts that Anthony is biased and prejudiced against it, and his continued participation in cases where its substantive rights are at issue will deny SWB its right to due process of law because it will not be able to receive a fair hearing from an impartial tribunal.

Footnotes:

¹ That statement [by Commissioner Bob Anthony on October 2, 1992] in its entirety follows:

"As Chairman of this Commission, I feel compelled by judicial ethics to advise the parties to Southwestern Bell case PUD 260 that there have been serious irregularities and unethical conduct involving this matter while it has been before the Commission. There is evidence that one or more commissioners were involved in improper conduct, and I have given this evidence to the FBI. Furthermore, I have filed a bar complaint against two attorneys who have been associated with Southwestern Bell and who may have been engaged in improper activities. The parties to this case should pursue whatever remedies are necessary to protect their rights.

"As an additional matter which has at least partial bearing on the PUD 260 case or other Southwestern Bell cases, I am advising the parties that since late 1988 I have worked with the FBI to investigate corruption at the Corporation Commission. On numerous occasions since I became a commissioner in 1989, individuals associated with regulated companies have offered me cash or inducements.

"With the FBI advised in advance, on several occasions, I have received thousands of dollars in cash which I immediately gave to the FBI as evidence in their investigation. In cases where cash was received, a utility attorney, a utility lobbyist, and/or a utility officer was involved.

"Furthermore, I will report that more than a year ago I separately advised a Southwestern Bell senior corporate officer and then later a senior corporate attorney with Southwestern Bell of the conduct of persons associated with their firm.

"I have delayed making this announcement for as long as possible in order to avoid compromising the Federal investigation. I have been advised a limited announcement pursuant to my commission responsibilities should have no adverse consequence on the FBI's investigation. I come forward at this time because the parties to cases at the Corporation Commission have rights which must be protected."

No. 94- —

IN THE
Supreme Court of the United States

OCTOBER TERM, 1994

SOUTHWESTERN BELL TELEPHONE COMPANY,
Petitioner,

v.

OKLAHOMA CORPORATION COMMISSION,
Respondent.

Petition for Writ of Certiorari to the
Supreme Court of Oklahoma

PETITION FOR WRIT OF CERTIORARI

JAMES D. ELLIS
LIAM S. COONAN
MELANIE S. FANNIN
ROGER K. TOPPINS
PAUL K. MANCINI
SOUTHWESTERN BELL
TELEPHONE COMPANY

ANDREW M. COATS
RICHARD C. FORD
CROWE & DUNLEVY
1800 Mid-America Tower
20 N. Broadway
Oklahoma City, OK 73102

Dated: July 12, 1994

KENNETH W. STARR
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ROBERT R. GASAWAY
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655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5000
Attorneys for Petitioner

IN THE
Supreme Court of the United States

OCTOBER TERM, 1994

No. 94—

SOUTHWESTERN BELL TELEPHONE COMPANY,
Petitioner,

v.

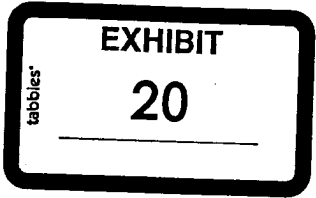
OKLAHOMA CORPORATION COMMISSION,
Respondent.

Petition for Writ of Certiorari to the
Supreme Court of Oklahoma

PETITION FOR WRIT OF CERTIORARI

¹ This expectation has not been realized. The FBI's investigation has concluded, and no current or former Southwestern Bell employees have been indicted as a result of it. The one figure connected to SWB who was indicted, a lawyer who formerly served SWB and other regulated companies as outside counsel, has yet to be tried. For the record, Southwestern Bell's position is this: Any impropriety that may have been committed was not authorized by or attributable to it.

footnote from page 3



No. 94-73

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

SOUTHWESTERN BELL TELEPHONE COMPANY,
Petitioner,

v.

OKLAHOMA CORPORATION COMMISSION,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Oklahoma Circuit

**BRIEF OF THE NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS
AS AMICUS CURIAE IN SUPPORT OF RESPONDENT**

WILLIAM PAUL RODGERS, JR.
GENERAL COUNSEL & COUNSEL OF RECORD

CHARLES D. GRAY
ASSISTANT GENERAL COUNSEL

JAMES BRADFORD RAMSAY
DEPUTY ASSISTANT GENERAL COUNSEL

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
Post Office Box 684
Washington, D.C. 20044-0684
(202) 898-2200

Counsel for Amicus Curiae

Dated: August 15, 1994

Congress and the federal courts have long recognized that NARUC is a proper party to represent the collective interest of State regulatory commissions.¹

NARUC's member commissions, which includes the Oklahoma Corporation Commission (OCC), are obligated under State law to ensure that the rates charged to retail consumers are just and reasonable. NARUC's mission is to serve the public interest by seeking to improve the quality and effectiveness of public utility regulation in America.

NARUC submits this brief as *amicus curiae*² in support of the OCC -- respondents to the petition for certiorari filed by Southwestern Bell Telephone Company (SWB) -- because of the deleterious impact upon the ability of State regulatory commissions to effectively scrutinize and regulate

¹ See, e.g., *U.S. v. Southern Motor Carrier Rate Conference*, *et al.*, 471 U.S. 48, 53 (1985) at 10, "[t]hroughout this litigation, the NARUC has represented the interests of the Public Service Commissions..."; *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976); *U.S. v. Western Electric Co., et al.*, 569 F.Supp. 1057 (D.C. D.C. 1983) at note 17; *National Association of Regulatory Utility Commissioners v. FCC*, 423 U.S. 836, (1975).

² Pursuant to Rule 37.2, U.S. Supr.Ct. Rule 37, 28 U.S.C.A. (1994), NARUC has obtained the consent of the parties to the filing of this brief. Copies of the letters of consent have already been filed with the Clerk of the Court.

utilities that could potentially ensue should this Court chose to review and ultimately reverse the decision below.

STATEMENT OF THE CASE

The OCC derives its authority directly from the Oklahoma Constitution and is subject to the direct and exclusive appellate jurisdiction of the Oklahoma Supreme Court. In October 1992, Robert Anthony, one of three popularly elected OCC commissioners, announced that he had been cooperating as a witness in an Federal Bureau of Investigation probe of the agency since 1988. According to his statement, industry representatives paid him thousands in cash, usually in the guise of purported "campaign contributions", in exchange for influence. Where cash was received, the FBI received the funds immediately. Mr. Anthony's statement came six weeks after an August 1992 \$93.7 million rate reduction and \$183 million refund order, in OCC Docket PUD-260, directed to the regulated entity most heavily implicated in the 1989 "cash for votes" scheme -- telecommunications giant SWB.

Although in 1990, well in advance of his announcement, Mr. Anthony advised a SWB senior corporate officer of improper conduct by SWB spokesmen, and, in 1991, discussed the "ongoing FBI investigation" with a SWB

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EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

- VS -

No. CR-93-137-A

ROBERT E. "BOB" HOPKINS, et al.,

Defendants.

VOLUME IV

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

HAD ON FRIDAY, NOVEMBER 18, 1994

UNITED STATES COURTHOUSE

OKLAHOMA CITY, OKLAHOMA

BEFORE: THE HONORABLE WAYNE E. ALLEY, U. S. District Judge

(Sitting with a Jury)

APPEARANCES:

MR. JACK C. WILLIAMSON and MISS TANYA K. NORTHRUP,
Assistant U. S. Attorneys, appeared on behalf of the Plaintiff.

MR. KENNETH R. NANCE, Attorney at Law, appeared on behalf
of the Defendant Hopkins.

MR. STEPHEN JONES, MR. D. C. THOMAS, and MISS JULIA A.
SIMS, Attorneys at Law, appeared on behalf of the Defendant
Anderson.

TIM HOLMES. CSR. CM

3102 UNITED STATES COURTHOUSE
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OKLAHOMA CITY, OK 73102 • 405 232 5000

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1 A On February 21 of 1991.

2 Q Now, can you just keep this thing on there indefinitely or
3 is there some sort of time limitations involved?

4 A Initially it was for 30 days.

5 Q Do you know when the wiretap was taken off Mr. Anderson's
6 phones?

7 A I believe it was March 21st of 1991, it could have been
8 the 20th.

9 Q Now, in this particular situation, with Mr. Anderson being
10 an attorney, were there any special complications in the
11 process -- or any special precautions, I should say, that you
12 and your agency were required to look at and take?

13 A Yes. Because an attorney's firm was involved in this, we
14 were sensitive to any attorney/client privilege, so there were
15 special safeguards put in for that. And we instructed the
16 monitors to turn the recording equipment off when certain
17 conversations occurred.

18 Q That were deemed to be attorney/client privileged
19 communications?

20 A Yes.

21 Q Now, you mention the word "monitor." Could you tell us
22 just very briefly, if you will, once the recording on the
23 wiretap starts, the phone is picked up, how does that process
24 actually work, as far as the monitoring and the tape recording
25 of those conversations?

1 Q Now, first of all, I'd ask, what is the significance of
2 March 14th, 1991 in this investigation?

3 A That was the day that we had agents go to three different
4 people and conduct interviews regarding this investigation.

5 Q And what -- did you interview some people in southeastern
6 Oklahoma, specifically in and around Idabel, Oklahoma?

7 A Yes, in that area. We interviewed Mr. Callaham, as well
8 as Mike Murphy.

9 Q And that's the same Mike Murphy who's previously
10 testified; is that correct?

11 A That's correct.

12 Q Now, tell us about the two calls on March 14th, please.

13 A Okay. There were two calls, one was at 12:06, it was from
14 Pine Telephone Company, the office of Mr. Callaham, to the law
15 firm of Mr. Anderson.

16 Then the other call was from the same party -- well, or at
17 least from the same telephone, Mr. Callaham's office, to
18 Mr. Anderson's residence; it was at 5:05 P.M.

19 Q Would that have been after the FBI had already spoken with
20 Mr. Callaham or before?

21 A The 5:05 call would have been after.

22 Q Okay. Were there any other calls from Mr. Callaham on
23 March Four -- or Mr. Callaham's telephone number on March
24 14th?

25 A Yes. There was another call to Mr. Murphy's furniture

MR. HIPPARD - DIRECT - MISS NORTHRUP

1 Q Now, was there also several calls to Mr. Murphy from
2 Mr. Anderson's residence during this time period after March
3 14th of '91?

4 A Yes.

5 Q And have you highlighted those calls?

6 A I have highlighted those calls.

7 Q And finally on this document, referring to 3/19/91, was
8 there a phone call to a Bill Free in St. Louis?

9 A Yes, there was.

10 Q And have you highlighted that call?

11 A I did.

12 Q Now, turning to 13.01 quickly.

13 THE COURT: Before doing that, are we going to
14 hear from this or some other witness who Mr. Free is?

15 MISS NORTHRUP: You'll be hearing from this witness;
16 yes, sir.

17 A I have 13.01.

18 Q (BY MISS NORTHRUP) And could you tell us, are those
19 subscriber toll records for the Anderson-Waddell law firm?

20 A Yes.

21 Q And what time period are they for?

22 A October and -- well, they reflect calls in September,
23 October and November of '89; they also have subscriber info
24 for December of '89.

25 Q Were there any phone calls placed from the law firm

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
UNITED STATES OF AMERICA,
Plaintiff,
- VS - No. CR-93-137-A
ROBERT E. "BOB" HOPKINS, et al.,
Defendants.

VOLUME V

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
HAD ON MONDAY, NOVEMBER 21, 1994
UNITED STATES COURTHOUSE
OKLAHOMA CITY, OKLAHOMA

BEFORE: THE HONORABLE WAYNE E. ALLEY, U. S. District Judge
(Sitting with a Jury)

APPEARANCES:

MR. JACK C. WILLIAMSON and MISS TANYA K. NORTHRUP,
Assistant U. S. Attorneys, appeared on behalf of the Plaintiff.

MR. KENNETH R. NANCE, Attorney at Law, appeared on behalf
of the Defendant Hopkins.

MR. STEPHEN JONES, MR. D. C. THOMAS, and MISS JULIA A.
SIMS, Attorneys at Law, appeared on behalf of the Defendant
Anderson.

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1 APPEARANCES:

2 MR. JACK C. WILLIAMSON, Assistant United States Attorney,
3 Third Floor, 1100 Commerce Street, Dallas, TX 75242; and
4 MISS TANYA K. NORTHRUP, Assistant United States Attorney,
5 207 U. S. Federal Building, 1205 Texas Avenue, Lubbock, TX
6 79401, appeared on behalf of the Plaintiff.

7 MR. KENNETH R. NANCE, Attorney at Law, 5224 South Western
8 Avenue, Oklahoma City, OK 73109, appeared on behalf of the
9 Defendant Hopkins.

10 MR. STEPHEN JONES and MISS JULIA A. SIMS, Attorneys at
11 Law, 1100 Broadway Tower, 114 East Broadway Avenue, Enid, OK
12 73702; and MR. D. C. THOMAS, Attorney at Law, 504 Bank of
13 Oklahoma Plaza, 201 Robert S. Kerr Avenue, Oklahoma City, OK
14 73102, appeared on behalf of the Defendant Anderson.

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Tim Holmes, C.S.R., C.M.

3102 UNITED STATES COURT HOUSE
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MR. HIPPARD - DIRECT - MISS NORTHRUP

1 conversation; is that correct?

2 A That's correct.

3 MISS NORTHRUP: We'd seek to play 211.

4 (A TAPE RECORDING MARKED PLAINTIFF'S EXHIBIT 211 WAS
5 PLAYED IN OPEN COURT IN THE PRESENCE AND HEARING OF THE JURY)

6 Q (BY MISS NORTHRUP) Now, Agent Hippard, moving one more
7 day ahead to March the 20th, 1991, did you have an occasion,
8 through your wiretap, to record a conversation between
9 Mr. Anthony, Commissioner Anthony, and Bill Anderson?

10 A Yes.

11 Q And could you tell us, please, when that phone call
12 occurred.

13 A At 1:27 P.M.

14 Q On the 20th?

15 A On March 20th, 1991; yes.

16 Q And could you tell us how the phone call came to be, from
17 what location was it placed and who placed the call?

18 A It was Mr. Anthony returning a call to William Anderson at
19 his residence, 842-2256.

20 Q And is the recording of that conversation contained in
21 Government's Exhibit Number 212?

22 A Yes.

23 MISS NORTHRUP: We'd seek to play 212 at this time.

24 (A TAPE RECORDING MARKED PLAINTIFF'S EXHIBIT 212 WAS
25 PLAYED IN OPEN COURT IN THE PRESENCE AND HEARING OF THE JURY)

Tim Holmes, C.S.R., C.M.

3102 UNITED STATES COURTHOUSE
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

- VS - No. CR-93-137-A

ROBERT E. "BOB" HOPKINS, et al.,
Defendants.

VOLUME VI

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
HAD ON TUESDAY, NOVEMBER 22, 1994
UNITED STATES COURTHOUSE
OKLAHOMA CITY, OKLAHOMA

BEFORE: THE HONORABLE WAYNE E. ALLEY, U. S. District Judge
(Sitting with a Jury)

APPEARANCES:

MR. JACK C. WILLIAMSON and MISS TANYA K. NORTHRUP,
Assistant U. S. Attorneys, appeared on behalf of the Plaintiff.

MR. KENNETH R. NANCE, Attorney at Law, appeared on behalf
of the Defendant Hopkins.

MR. STEPHEN JONES, MR. D. C. THOMAS, and MISS JULIA A.
SIMS, Attorneys at Law, appeared on behalf of the Defendant
Anderson.

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1 there?

2 A Yes.

3 Q And to Sallisaw?

4 A Yes, sir.

5 Q Does that number match up with the Sallisaw First National
6 Bank again?

7 A Yes, it does. And that's on September 21, 1989, at
8 10:10 A.M.

9 Q The day after the signing agenda?

10 A Yes.

11 MR. NANCE: I would move Exhibit 81 into
12 evidence, Your Honor, the phone call list.

13 MISS NORTHRUP: No objection.

14 THE COURT: That's received.

15 MR. NANCE: No further questions, Your Honor.

16 THE COURT: For Mr. Anderson?

17 MR. THOMAS: With the Court's permission, Your
18 Honor, I'll need to stand by the blackboard as I question this
19 witness.

20 THE COURT: You may.

21 CROSS-EXAMINATION

22 BY MR. THOMAS:

23 Q Mr. Hippard, yesterday, in particular, the various tapes
24 that were played, various names were mentioned throughout the
25 tapes; and I wanted to ask you in regard to some of the names

1 so that I would have more of an understanding and possibly the
2 Jury would. All right?

3 A Okay.

4 Q Now, one of the tapes that was mentioned yesterday was a
5 call between Mr. Anderson and a Mr. Free. Do you remember
6 that tape?

7 A Yes, sir.

8 Q Okay. Do you remember his name to be William Free?

9 A Yes, sir.

10 Q All right. Who, when that tape was made, was he
11 associated with?

12 A Southwestern Bell.

13 Q Still is, isn't he, today?

14 A I haven't heard recently, but I would expect that to be
15 true.

16 Q Last you heard he was, wasn't he?

17 A Yes.

18 Q David Miller, who was he associated with in 19 -- when the
19 PUD matter was going on?

20 A Southwestern Bell.

21 Q Okay. I believe Mr. Anthony testified as to his name, and
22 I believe the tapes also testified to his name; is that
23 correct?

24 A Yes.

25 Q And I believe I heard this right, Glen Glass. I believe

1 "Glass" is the correct last name. Is that first name
2 correct?

3 A Yes.

4 Q Who was he involved with?

5 A He was employed with Southwestern Bell.

6 Q What position, do you know?

7 A He was their legal counsel in Oklahoma.

8 Q Okay. And I believe also, I'm not sure on the tape, but
9 if my memory serves me right as far as Mr. Anthony's
10 testimony, the name of "Liam," rather unusual name, Liam
11 Coonan; do you remember that name coming up?

12 A Yes, sir.

13 Q I'm going to try to spell it right.

14 THE COURT: I think it's "Liam," sir, L-I-A-M.
15 Little bit less unusual name since the movie Schindler's List.

16 Q "Coonan," is that right?

17 A Yes, sir.

18 Q Who was he associated with?

19 A Southwestern Bell.

20 Q Now, what did he do for them?

21 A He is employed in St. Louis also, as one of their legal
22 counsel, officers. I believe he's a vice-president also.

23 Q Vice-president, as you remember, and legal counsel from
24 St. Louis.

25 A Yes, sir.

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- 1 Q All right. And a -- if there was a first name I missed it
2 on the tape when you was playing it yesterday -- Caldwell, a
3 Mr. Caldwell. Does that name ring a bell to you?
- 4 A Yes.
- 5 Q Who was that? Who was he associated with, first?
- 6 A He was associated with Southwestern Bell.
- 7 Q What would his position with them have been, or be now?
- 8 A He was the president in Oklahoma of Southwestern Bell.
- 9 Q President of the company?
- 10 A Yes, in Oklahoma; back in, I think, '89.
- 11 Q Is he there now?
- 12 A No, sir.
- 13 Q Do you know where he is?
- 14 A I'm not real sure, no.
- 15 Q And J. B. Ellis, do you remember that name being mentioned
16 also, I think even on the tape yesterday; is that correct?
- 17 A Yes.
- 18 Q All right. Who is he associated with?
- 19 A Southwestern Bell.
- 20 Q What position did he hold?
- 21 A He was the president for Oklahoma after Mr. Caldwell.
- 22 Q Okay. Where is he now?
- 23 A He retired.
- 24 Q He's retired now?
- 25 A Yeah.

1 Q Now, none of these persons that I've listed here, am I
2 correct, was arrested; is that correct?

3 A That's correct.

4 MR. THOMAS: I believe that's all, Your Honor.

5 MISS NORTHRUP: Nothing further.

6 THE COURT: You may step down, sir.

7 THE WITNESS: Thank you.

8 (WITNESS EXCUSED)

9 MISS NORTHRUP: The Government would rest.

10 MR. THOMAS: Your Honor, the Government having
11 rested, I would like to approach the bench, if I could, and
12 make a motion or two.

13 THE COURT: Oh, let's do that in greater comfort
14 than whispering here, and recess insofar as the Jury is
15 concerned.

16 Well, we'll just combine this with an ordinary afternoon
17 recess, so it will be a total of about 20 minutes, Ladies and
18 Gentlemen.

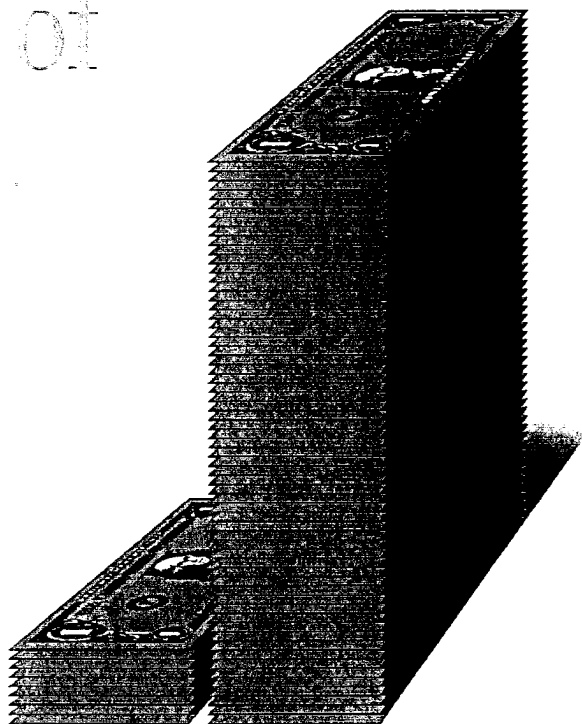
19 You may retire. Would all others remain seated.

20 (JURY RECESSED. THE FOLLOWING PROCEEDINGS WERE HAD
21 BETWEEN COURT AND COUNSEL OUTSIDE THE PRESENCE AND HEARING OF
22 THE JURY:)

23 THE COURT: All right, the Jury has gone.

24 MR. THOMAS: Your Honor, comes now the Defendant
25 William Anderson, the State having rested, and would move for

Southwestern Bell
builds value. Your \$100
investment has grown to
\$733 in 10 years. And we
are ready for another
decade of
growth.



\$100
January 1,
1984

\$733*
December 31,
1993



1993 Financial Performance

Per Share of Common Stock	1993	1992 ¹	Change
Income before extraordinary loss and cumulative effect of changes in accounting principles	\$ 2.39	\$ 2.17	10.1%
Extraordinary loss ²	\$ (.25)	—	—
Cumulative effect of changes in accounting principles ³	\$ (3.55)	—	—
Net income (loss)	\$ (1.41)	\$ 2.17	(165.0)%
Dividends	\$ 1.51	\$ 1.46	3.4%
Book value ⁴	\$ 12.68	\$ 15.50	(18.2)%
Year-end stock price	\$ 41.50	\$ 37.00	12.2%

Financial Information (dollars in millions)	1993	1992	Change
Total operating revenues	\$ 10,690.3	\$ 10,015.4	6.7%
Total operating expenses	\$ 8,310.7	\$ 7,818.0	6.3%
Income before extraordinary loss and cumulative effect of changes in accounting principles	\$ 1,435.2	\$ 1,301.7	10.3%
Extraordinary loss ²	\$ (153.2)	—	—
Cumulative effect of changes in accounting principles ³	\$ (2,127.2)	—	—
Net income	\$ (845.2)	\$ 1,301.7	(164.9)%
Total assets	\$ 24,307.5	\$ 23,810.0	2.1%
Long-term debt	\$ 5,459.4	\$ 5,716.1	(4.5)%
Total shareowners' equity	\$ 7,608.6	\$ 9,304.3	(18.2)%

Analytical Information	1993	1992	Change
Return on weighted average total capital ⁵	12.67%	10.81%	186 [†]
Return on weighted average shareowners' equity ⁵	19.20%	14.27%	493 [†]
Debt ratio ⁴	47.36%	42.92%	444 [†]
Dividend yield	3.6%	3.9%	(30) [†]
Price/earnings ratio	17.4	17.1	1.8%
Ratio of earnings to fixed charges	4.51	3.96	55 [†]

Other (dollars and share amounts in millions)	1993	1992 ¹	Change
Weighted average common shares outstanding	599.8	600.2	(0.1)%
Net cash provided by operating activities	\$ 3,440.8	\$ 3,614.7	(4.8)%
Construction and capital expenditures	\$ 2,221.1	\$ 2,144.3	3.6%
Number of employees	58,400	59,500	(1.8)%
Number of shareowners	963,355	973,569	(1.0)%

¹ Per share amounts restated to reflect two-for-one stock split effective May 25, 1993.

² Extraordinary loss on early extinguishment of debt, net of tax.

³ Represents impact of adoption of new accounting standards for postemployment benefits and income taxes, net of tax.

⁴ Shareowners' equity used in debt ratio and book value per common share calculations includes extraordinary loss and cumulative effect of changes in accounting principles.

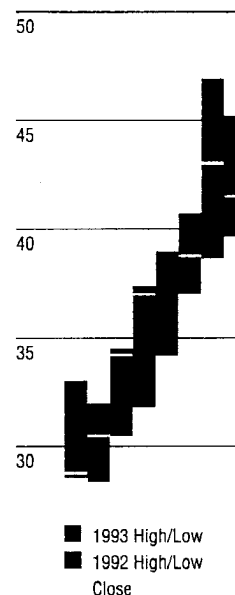
⁵ 1993 calculated using income before extraordinary loss and cumulative effect of changes in accounting principles. These impacts are included in shareowners' equity.

[†] Change reflected in basis points.

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Stock Performance
(by quarter, adjusted for splits)



Officers and Executives of Southwestern Bell Corporation and its Subsidiaries

Southwestern Bell Corporation



Edward E. Whitacre Jr., 52, chairman of the board and chief executive officer since 1990. Served as president and chief operating officer 1988 to 1989; vice chairman and chief financial officer 1986 to 1988; held various operating positions 1963 to 1986. B.S., industrial engineering, Texas Tech University, 1964.



James R. Adams, 54, group president (international subsidiaries and cable television businesses) since 1992. Served as SWBT president and chief executive officer 1988 to 1992; held various Southwestern Bell and AT&T operating positions 1965 to 1988. M.B.A., statistics and business finance, University of Texas, 1965; B.A., mathematics and physics, Texas A&M University, 1961.



Robert A. Dickemper, 50, senior vice president-staff/administration since 1993. Served as senior vice president-administration 1992 to 1993; held various strategic planning and regulatory positions 1969 to 1992. B.S., business administration, Southeast Missouri State University, 1965.



William E. Dreyer, 56, senior executive vice president-external affairs since 1993. Served as president, SWBT of Texas, 1992 to 1993; held various AT&T and Southwestern Bell operating positions 1959 to 1992; B.A., history, William Jewell College, 1960.



James D. Ellis, 50, senior executive vice president and general counsel since 1989. Served as senior vice president and general counsel 1988 to 1989; held various legal positions at Southwestern Bell, AT&T and Bellcore 1972 to 1988. J.D., University of Missouri, 1968; B.B.A., University of Iowa, 1965.



Charles E. Foster, 57, group president (national subsidiaries) since 1990. Served as SWBT executive vice president 1990; held various operating positions 1961 to 1990. B.S., mechanical engineering, University of Oklahoma, 1961.



Richard A. Harris, 53, senior executive vice president-human resources since 1990. Served as group president 1986 to 1990; held various regulatory positions 1962 to 1986. B.A., economics, William Jewell College, 1962.



James S. Kahan, 46, senior vice president-strategic planning and corporate development since 1993. Served as senior vice president-corporate development 1992 to 1993; held various AT&T and Bell System positions 1967 to 1992. M.B.A., University of North Carolina, 1972; B.S.E.E., Purdue University, 1969.



Donald E. Kiernan, 53, senior vice president, treasurer and chief financial officer since 1993. Served as senior vice president-finance and treasurer 1990 to 1993; was managing partner and held various operating positions in Ernst & Young 1970 to 1990. M.B.A., Florida State University, 1970; B.S., accounting, Boston College, 1962.



Robert G. Pope, 58, SWBT president and chief executive officer since 1993 and SBC vice chairman since 1986. Served as chief financial officer 1988 to 1993; vice chairman for corporate development 1986 to 1989; held various operating and management positions 1958 to 1986. B.S., mechanical engineering, Southern Methodist University, 1958.



Larry J. Alexander, 52, senior vice president-external affairs since 1993. Served as senior vice president-corporate communications 1990 to 1993; held various advertising and public relations positions 1967 to 1990. B.J., radio/TV, University of Missouri at Columbia, 1965.



Liam S. Coonan, 59, senior vice president and assistant general counsel since 1988. Served as vice president-general attorney for SBC Washington, Inc., 1984 to 1988; held attorney positions with Southwestern Bell 1976 to 1984 and with the U.S. Department of Justice 1968 to 1976. L.L.B./J.D., Seton Hall University Law School, 1968; B.S., Rutgers University, 1964; Pre-medical degree, Trinity College, Dublin, 1956.



William J. Free, 50, senior vice president and assistant general counsel since 1991. Served as SWBT vice president and associate general counsel 1991; held various legal and regulatory positions with Southwestern Bell and AT&T 1969 to 1991. J.D., University of Oklahoma, 1969; B.A., University of Michigan, 1966.



Ronald M. Jennings, 52, vice president-corporate development. Served as vice president, Southwestern Bell Yellow Pages (Telmex Operations) 1991 to 1994; held various AT&T and Southwestern Bell staff and operating positions 1981 to 1990.



Judith M. Sahn, 48, secretary of the Corporation since 1992. Served as managing director-administrative services 1990 to 1992; held various administrative positions 1963 to 1992.

Southwestern Bell Telephone Company Officers



Royce S. Caldwell, 55, president-customer services since 1993. Served as president-services 1992 to 1993; held various staff and operating positions 1963 to 1992. B.B.A., Abilene Christian University, 1961.



J. Cliff Eason, 46, president-network services since 1993. Served as president (Midwest) 1991 to 1992; held various operating positions 1970 to 1991. B.S., electrical engineering, University of Arkansas, 1970.



Edward A. Mueller, 46, senior vice president since 1993. Served as SBC senior vice president-strategic planning 1992 to 1993; held various operating positions 1969 to 1992. M.B.A., Washington University, 1988; B.S., civil engineering, University of Missouri at Rolla, 1969.



Cassandra C. Carr, 49, president-Texas since 1993. Served as vice president-external affairs (Texas) 1991 to 1993; held various finance and operating positions 1967 to 1991. M.A., University of Texas at Austin, 1973; B.A., Vanderbilt University, 1966.



Susan B. Fox, 46, president-Kansas since 1993. Served as SBC managing director-investor relations and share-owner services 1991 to 1993; held various finance and regulatory positions 1979 to 1991. Ph.D., St. Louis University, 1980; M.A., University of Missouri at St. Louis, 1972; B.A., St. Louis University, 1970.



Michael T. Flynn, 45, president-Arkansas since 1991. Served as vice president-network (Texas) 1988 to 1991; held various AT&T and Southwestern Bell operating positions 1970 to 1988. B.S., industrial engineering, Texas A&M University, 1970.