

DA Feazell Alleging Prosecutorial Misconduct

Judge Nowlin Asked to Void Indictment

BY WALTER BORGES

McLennan County District Attorney Victor Feazell has asked a judge to void his federal indictment for racketeering and mail fraud, charging that prosecutorial misconduct influenced the grand jury.

In a motion filed Jan. 15 in Austin, Feazell's defense counsel, Gary L. Richardson and Jeffrey Kearney, asked U.S. District Judge James R. Nowlin to dismiss the indictment because prosecutors manipulated and distorted the grand jury process, illegally used the Internal Revenue Service to investigate Feazell and may have given the grand jury evidence obtained through an illegal wiretap.

Richardson, a former U.S. attorney now practicing in Tulsa, Okla., and Kearney, name partner in Fort Worth's Zachry, Kearney, Hill, Shaw, Beatty & Butcher, also asked Nowlin to grant — at the very least — extraordinary discovery into grand jury proceedings, which usually are exempt.

"This is not 'Vic Strikes Back,'" Kearney said. "We have outlined enough prosecutorial misconduct to show the judge that we should have the opportunity to know more about the grand jury. We think the entire process was tainted."

"And we think we alleged enough to get the court's attention."

Jan Patterson, the assistant U.S. attorney who is handling the prosecution, said the motion "simply has no merit" and referred all other questions to U.S. Attorney Helen Milburn Eversberg. Eversberg did not return phone calls.

Patterson said Feazell's trial, originally set for Feb. 2, has been postponed. Nowlin will hear arguments on pre-trial motions on Feb. 12 and will reset the trial, "probably for the end of February," Patterson said.

Feazell, 35, was arrested Sept. 16 in Waco and was charged with receiving bribes from attorneys and their clients in exchange for dismissing their cases. The indictment cited 14 bribery incidents that occurred in 1984 and 1985

and allegedly netted Feazell more than \$19,000.

Feazell has denounced the federal investigation, charging that it was retaliation for his handling of a grand jury that refused to indict convicted murderer Henry Lee Lucas for three McLennan County murders. Lucas confessed to about 600 murders across the nation, but repudiated his confessions in all but one case after news stories reported that he could not have committed some of the slayings because he was elsewhere.

Feazell contended that Lucas' fraudulent confessions were aided by investigators assigned to a Texas Department of Public Safety task force led by Texas Rangers. He contended that the Rangers and other law enforcement authorities fed Lucas evidence of the unsolved murders in order to clear the cases.

In their motion, defense attorneys Kearney and Richardson cited 15 grounds for their contention that prosecutors manipulated the grand jury to produce the indictment of Feazell. Those grounds included:

- Prosecutors' use of incomplete and inaccurate summaries of testimony to convince a second federal grand jury to indict Feazell when the first panel — which heard live testimony — had not.

- Grand jury questioning intended to discredit exculpatory witnesses and withholding of additional exculpatory evidence.

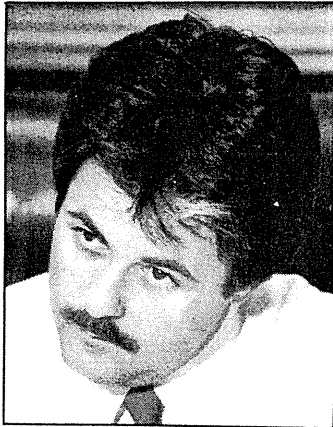
- Threats to use investigatory powers of state and federal agencies, including the IRS, against unfriendly grand jury witnesses.

- Improper use of immunity offers in an attempt to coerce witnesses into testimony favorable to the state.

Kearney and Richardson admitted that no single act by the prosecutors was enough to warrant dismissal, but argued: "The accumulation and pattern of acts of bad faith demonstrate the need for a dismissal."

In two documents filed with the motion, identified by letterhead as DPS interoffice memos, DPS investigator Ronald E. Boyter recounts how some of Feazell's staff members tried to recruit him by telling him of Feazell's plans to reveal that Texas Rangers and Williamson County Sheriff Jim Boutwell had covered up problems with the Lucas investigation.

"It's a pending court case, so we cannot comment on the details," DPS spokesman David Wells said. "[DPS



ALAN FOGUE

McLennan DA Victor Feazell: Contends prosecutors manipulated the grand jury that indicted him.

Director] Col. [James] Adams has said repeatedly that the Texas Rangers handled their duties in a professional manner."

The defense counsel also filed an affidavit from former IRS investigator and special agent Eric V. De Laughter, who testified that IRS guidelines for involvement in the investigations of other

federal agencies apparently were violated and that there was no apparent justification for IRS involvement.

Kearney and Richardson argued that the IRS role was "illegal, improper, unwarranted and contrived for the purpose of obtaining otherwise unavailable information relating to the witnesses and subjects of the investigation."

Kearney said he suspects that such information may have been presented to the grand jury, but said he will not know for sure unless discovery of grand jury transcripts is granted.

The defense attorneys said they also suspect that the grand jury may have received information gathered through an illegal wiretap.

Feazell alleged in his motion that the telephone lines to his house had been tapped during the federal grand jury investigation, which lasted from January 1985 through September 1986.

In the motion, Feazell cited a letter sent him by J. Thomas Ezell, assistant counsel, Office of Professional Responsibility in the U.S. Department of Justice. Ezell's letter confirmed that Feazell's phone lines had been tampered with, but disclaimed federal involvement in any wiretap. Kearney said.

"What they [DOJ officials] are saying is that there was evidence that the phone was tapped," Kearney said. "But they're saying that their investigation doesn't show that they tampered with them and that information from the wiretap wasn't given to the grand jury."

Kearney said he suspects the wiretap may have been made by the DPS or Texas Rangers.

"They are the only agencies working with the prosecutors," Kearney said.

Administration Members Join Law Firms

CONTINUED FROM PAGE 2

ton, D.C., where other partners have served in government. Charles A. Moore recently returned to the firm after serving two years as general counsel to the Federal Energy Regulatory Commission. Former partner David Q. Bates now is an assistant to the vice president and is deputy to the chief of staff.

Meanwhile, two other attorneys from White's administration also are returning to private practice.

Former Secretary of State Myra A. McDaniel has joined Bickerstaff, Heath & Smiley, a six-year-old Austin firm specializing in public and administrative law. There are 10 partners and 12 associates at the firm.

McDaniel, who was with the firm briefly before White tapped her for the state job, said she expected to be doing a lot of litigation. McDaniel said she had "quite a few" offers before signing with Bickerstaff, Heath. She started Jan. 19 as a partner.

Leslie Benitez, White's former legal counsel, will be entering private practice in Austin. ■

8 Locke, Purnell Attorneys Move Up Departing Date

BY LOREN BERGER

Eight Dallas attorneys who are resigning from Locke, Purnell, Boren, Laney & Neely to start a corporate securities practice will leave the firm a month earlier than planned.

The group, which will depart Feb. 1, originally said it would work at Locke, Purnell through March 1, the end of the firm's fiscal year. The eight lawyers forming Barbour, Goolsby & Spellman have leased 12,000 square feet in Bryan Tower.

David Barbour, who joined Locke, Purnell's management committee, said the firm will specialize in securities — the packaging and sale of receivables for a variety of companies and financial institutions.

Locke, Purnell partner Bryan

Goolsby and associate Paul Spellman join Barbour as name partners in the new venture. Associate Thomas Popplewell and partner Beverly Goulet also will be partners.

Locke, Purnell associates Lisa Townsend, David Allen and Patrick Sargent will join the five partners.

Barbour, Goolsby & Spellman will handle a portion of work for Lomas & Nettleton and Phoenix Mutual, Barbour said. The clients will continue an affiliation with Locke, Purnell.

Companies the eight attorneys handled exclusively while at Locke, Purnell include Rauscher Pierce Refsnes and MBank. Barbour said the new firm will get those clients.

The departures represent the first split-off of attorneys in Locke, Purnell's 10-year history. ■

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