

1 Friday afternoon after you adjourned.

2 Q. All right. And you are appearing here because you
3 were subpoenaed; is that correct?

4 A. It's a violation of the canons of ethics for me to
5 appear voluntarily to testify to somebody's character.

6 Q. And you are appearing, therefore, with a subpoena?

7 A. Yes, sir.

8 Q. And other than meeting very briefly with me in
9 the hallway today before coming on the witness stand over
10 this break, have you had any other times that Mr.
11 Leatherbury or I have ever even talked with you?

12 A. We talked last night on the telephone for about a
13 minute to find out what time I would be needed this
14 morning.

15 Q. An that's it?

16 A. That's all I recall.

17 MR. McELHANEY: We pass the witness.

18 - - - - -

19 CROSS-EXAMINATION

20 BY MR. RICHARDSON:

21 Q. Good morning, Judge.

22 A. Good morning, sir.

23 Q. So you said you went to see Helen Eversberg. And
24 when was that?

25 A. If you can tell me when the indictment was

1 returned, I would estimate it about six months before then,
2 but I am not sure.

3 Q. Now counsel asked you about your appearing here
4 today and you know that they put you on their witness list
5 back in January, do you not?

6 A. No, I did not know that.

7 Q. You didn't know that?

8 A. No, sir.

9 Q. You told the folks on this jury, Judge, that you
10 were the one that directed David Hodges to talk to the FBI?

11 A. That's my memory, yes.

12 Q. And your memory is that that was in 1984?

13 A. The latter part of September would be my best
14 estimate.

15 A. 1984?

16 A. Yes, sir.

17 Q. And how is it that you recall that it was '84,
18 Judge?

19 A. Well because it was when I was still in the office
20 on the second floor of the federal courthouse in the
21 magistrate's office which would of been before I became the
22 district judge in October. I just remember where we had
23 the conversation and that the FBI office was two doors
24 down.

25 Q. Judge, have you talked to David Hodges this past

1 week-end?

2 A. Yes, sir.

3 Q. About this matter, have you not?

4 A. In general terms, the fact that the trial was going
5 on. Not anything specific, not about that instance.

6 Q. You're telling us you didn't discuss any specifics
7 with Judge David Hodges this week-end about what you were
8 going to testify about here today, Judge Smith?

9 A. I told him that the attorneys had mentioned three
10 areas that they intended to question me about.

11 Q. And what were those three areas, Judge?

12 A. The reputation of Mr. Feazell at the time of this
13 reportings; his reputation for truth and veracity now, and
14 any information I had about when federal authorities were
15 aware of the situation.

16 Q. And that's a very important issue, isn't it, Judge
17 Smith?

18 A. I don't know, sir.

19 Q. Well, did David Hodges tell you this week-end,
20 Judge Smith, that the first time he met with the FBI that
21 he met with Bob Zane and Ron Boyter together?

22 A. No, sir.

23 Q. You don't know that then; do you?

24 A. You asked me if he told me that. He did not tell
25 me that.

1 Q. Do you know that?

2 A. No. I have no idea who he met with or even if he
3 met with anybody.

4 A. Well, if that's true, Judge Smith, that that's the
5 first time he ever met Ron Boyter, and the first time he met
6 with the FBI, Ron Boyter was there, and they were working on
7 the Vic Feazell investigation. That would have to be in
8 1985; wouldn't it, Judge Smith?

9 A. No, sir.

10 Q. Are you telling us that you have reason to believe
11 other than what you're saying you think was '84, that you've
12 seen any documents or you've seen any information that would
13 cause you to conclude that it was 1984 instead of 1985?

14 A. I haven't seen any documents, but I know it was
15 1984. I know when it happened.

16 Q. Well, Judge, you know also that when the FBI does
17 an investigation they open a file, don't they?

18 A. I do not know that.

19 Q. It's your opinion then that they do investigations
20 without opening a file?

21 A. No. I'm sure at some point they open a file. When
22 that may be, if it is the first time somebody suggests to
23 them that something is awry; I don't know that.

24 Q. Well, Judge, if Ron Boyter testified here in this
25 courtroom that he had his first meeting with the FBI in

1 April of 1985, April the 26th to be exact, 1985. And that
2 it was after that date that the FBI even got involved in Vic
3 Feazell's matter, his investigation. That would make it
4 kind of tough to put Boyter and Zane together in '84 doing
5 an investigation on Vic Feazell, wouldn't it?

6 A. I don't know anything about Boyter and Zane doing
7 anything any time.

8 Q. Do you know then why through all these documents
9 that we got from the FBI through discovery that there is not
10 a documents in there that says anything about 1984. Would
11 that make any sense to you?

12 A. Sure, I would imagine all that would predate the
13 time they did open a file or start an official investigation
14 or whatever they do.

15 Q. Do you know then why, Judge, that five police
16 officers have testified in this case, numerous other people
17 have testified, and there isn't one that heard the rumors
18 that you claim that you heard in 1984?

19 MR. McELHANEY: Your Honor, we
20 object. It's improper to ask the witness to testify about
21 witnesses that he hasn't heard the testimony about or to
22 comment on the testimony of other witnesses.

23 MR. RICHARDSON: I'll rephrase it,
24 Judge.

25 THE COURT: All right, sir. The

1 objection is sustained.

2 BY MR. RICHARDSON:

3 Q. Did you have any special inroads into the
4 community, Judge Smith, that would allow you to hear rumors
5 that police officers didn't hear, that would allow you to
6 hear rumors that assistant district attorneys didn't hear,
7 that would allow you to hear rumors that secretaries at the
8 district attorney who go to the beauty shops, who go to
9 churches around this town, who go the gas station, didn't
10 hear in 1984? Do you have some special inroads that would
11 allow you to hear all these rumors you told the folks on
12 this jury that you heard back in '84 that these other people
13 didn't hear?

14 A. Yes, sir. At that time there was no federal
15 district judge. The U.S. magistrate was, in effect, the
16 only federal judicial officer and so these people came to me
17 to express their concerns. That's the only answer I can
18 give you.

19 Q. Have you seen the -- any of the documents in this
20 case from the standpoint of newspaper articles?

21 A. I subscribe to a Waco paper. I'm sure I've read
22 articles. I mean, I know I read articles, sure.

23 Q. Let me hand you what I represent to you,
24 Plaintiff's Exhibit No. 137, which I represent to you came
25 from the FBI records. Take a moment and look at that

1 newspaper article, if you would, please, sir.

2 (The following instrument was

3 (marked for identification:

4 (P-137, FBI records, was marked for

5 (identification.

6 A. You want me to read the article?

7 Q. Just take a moment and look at it.

8 A. I've looked at it. Do you want me to read it?

9 Q. Oh, if you'd like. Now if you'll look through the
10 packet and see if you see that that is a file from the FBI
11 packet, if it has that appearance, and see if it deals with
12 anything other than the Lucas matter back in that time
13 period? See if you see anything in there that deals, Judge
14 Smith, with any rumors about Vic Feazell, of any nature,
15 anything other than the Lucas matter, in those documents?

16 A. An awful lot of this is blocked out.

17 Q. They try not to tell you anymore than they have to;
18 don't they, Judge?

19 A. Is that a question, sir?

20 Q. Yes, sir.

21 A. I don't know what they do. I've never seen one of
22 these. Apparently these are articles that deal with Henry
23 Lee Lucas, if that's your question.

24 Q. Exactly. Nothing in there about any investigation
25 of Vic Feazell in '84, or any conversation with Judge Hodges

1 in 1984, any rumors in 1984; is there, Judge Smith?

2 A. Apparently that only deals with Henry Lee Lucas.

3 Q. No memorandums. Nothing. Right?

4 A. Apparently that is a sheaf of documents that are
5 copies primarily of newspaper articles dealing with Henry
6 Lee Lucas. Whatever else that is, I don't know, counselor.

7 Q. Well, it also has some memos from the FBI; does it
8 not?

9 A. It does.

10 Q. Judge, let me ask you this, you've sat and presided
11 over numerous jury trials; is that correct?

12 A. Yes, sir.

13 Q. Who do you think is in the best position to decide
14 the issues of the case, the truthfulness of a case, observe
15 the witnesses, and decide the truthfulness of the witnesses?
16 You think a jury of 12 people that have heard all the
17 evidence and seen documents are in a better position or do
18 you think it's somebody out here with a news -- with a
19 camera and a microphone that's saying what went on in that
20 courthouse, or who do you think is the best person, the best
21 people to decide what truth really is?

22 A. The judge and the jury who sit through a trial and
23 watch -- observe the witnesses.

24 Q. And wouldn't you agree that whatever, for example,
25 these folks up here on this jury have heard here in a

1 six-week trial would give them a lot more information about
2 what this case is all about or about Vic Feazell than
3 yourself, for example?

4 MR. LEATHERBURY: Excuse me, Your
5 Honor. We object because it inferentially assumes that the
6 issue in this case is the guilt or innocence in Austin,
7 whereas the issue in this case is reputation of Mr. Feazell.

8 THE COURT: The objection is
9 overruled, the witness may answer the question.

10 BY MR. RICHARDSON:

11 A. Could you repeat it?

12 Q. Sure. Would you say that the folks who have sat here
13 in this courtroom for five weeks listening to tape
14 recordings, looking at documents, evaluating witnesses,
15 would be in a better position hearing taped conversations of
16 people that have known Vic for a long time, having witnesses
17 come in here that have known him for a long time, a lot of
18 witnesses. Do you think they would be in a better position
19 to determine what type of man this guy is right here, Vic
20 Feazell, or someone that hasn't heard all that evidence?

21 A. It depends entirely on what they've heard, Mr.
22 Richardson, and I have no idea what that is.

23 Q. Okay. You said that you talked about a jury
24 finding someone not guilty and then saying something to the
25 effect that, well, I really thought he was guilty but I

1 found him not guilty?

2 A. Yes, sir.

3 Q. Have you ever had a jury return a not guilty
4 verdict, Judge, and then tell the media that in their
5 opinion the defendant had been framed?

6 A. No, I haven't.

7 Q. That doesn't happen very often, does it?

8 A. No.

9 Q. As a matter of fact, myself as a former U.S.
10 attorney and yourself as a federal judge, have you ever
11 heard of that happening before?

12 A. Oh, yes, I've heard of it. It doesn't happen real
13 often.

14 Q. It's a real rarity, would you agree?

15 A. Doesn't happen often.

16 Q. Do you know that that's what the folks down in
17 Austin told the media, five of them, that in their opinion,
18 who saw the evidence, who heard the evidence, who evaluated
19 the witnesses, concluded that there was an effort made to
20 frame Vic Feazell?

21 A. No, sir, I don't know that.

22 Q. You never read that article right here in the Waco
23 Tribune-Herald?

24 A. I may have read it in the Waco paper. That doesn't
25 mean I know it.

1 Q. Well, you know that they told the reporter that,
2 don't you?

3 A. No, sir, I don't know that.

4 Q. Well, you know that he said they told him that,
5 don't you?

6 A. No, sir, I don't know that.

7 Q. Well, at least you know that the reporter wrote it
8 and said they told him that, don't you?

9 A. No, sir, I don't know that either.

10 Q. What do you know?

11 A. About that?

12 Q. Yes, sir.

13 A Not a thing in the world, Counselor.

14 Q. Were you the federal judge that signed orders for a
15 wire tap on Vic Feazell's home?

16 A. No, sir.

17 Q. Do you know if they even got a federal judge to
18 sign a wire tap?

19 A. I know of nothing about any wire tap of Vic
20 Feazell's home, ever.

21 Q. Well, you know that there are documents, even FBI
22 documents that talk about it, don't you?

23 A. No, sir, I do not.

24 Q. Judge, would you say that you get along real well
25 with the big boys, but you don't fair too well with the

1 voting people?

2 A. No, sir, I wouldn't say that.

3 Q. Well, let's see. You were appointed to the bench
4 in 1980. Who appointed you?

5 A. Bill Clemmons.

6 Q. And then you ran for re-election in '82?

7 A. Yes, sir.

8 Q. And the-voters didn't elect you, did they?

9 A. They did not.

10 Q. And Vic Feazell campaigned vigorously for Judge
11 Allen, didn't he?

12 A. I don't know that.

13 Q. You don't know that Vic Feazell put his
14 organization behind Judge Allen?

15 A. No, sir, I didn't know that; that's news to me.

16 Q. Did you talk to Charles Duncan when he was down
17 here doing his deal?

18 A. Never met him, never talked to him?

19 Q. And then, Judge, you were appointed then -- how
20 many elections did you -- how many times did you run for
21 office?

22 A. Twice.

23 Q. How many times did you win?

24 A. I haven't won yet.

25 Q. Both of them here in this community?

1 A. McLennan County, yes, sir.

2 Q. So then you didn't win the second time either, and
3 shortly after that you got another appointment, didn't you?

4 A. No, sir, the first time was in 1970.

5 Q. Okay. When did you get your appointment to the
6 federal bench?

7 A. October 6, 1984.

8 Q. And who-appointed you to the bench that time?

9 A. President Reagan.

10 Q. And do you agree that U.S. attorneys who were
11 appointed by President Reagan go through the same background
12 check and evaluations that federal judges go through?

13 A. I don't know that. That sounds reasonable but I'm
14 really not sure.

15 Q. Okay.

16 A. For instance, I'm not sure if they go through an
17 American Bar Association check, Mr. Richardson, I don't
18 know.

19 Q. Do you know, Judge, how Charles Duncan, or who he
20 got permission from to store his records in the safe over at
21 the federal building?

22 A. I know absolutely nothing about what you are
23 talking are about.

24 Q. Okay. Judge, you've had what we could classify as
25 a fairly hostile attitude toward Vic Feazell for sometime,

1 haven't you?

2 A. I don't know if that's the word I would use. I
3 haven't had any respect for Mr. Feazell for sometime.

4 Q. So you wouldn't call it a hostile attitude?

5 Q. I haven't had any occasion to be hostile. I don't
6 personally know the man. We haven't had any personal
7 contact.

8 Q. Well, Judge, do you remember back in 1985 when your
9 then wife, Jill Allen, received an anonymous letter that was
10 telling her about your sexual escapades. Do you remember
11 that letter?

12 MR. LEATHERBURY: Your Honor, this is
13 the matter that he had been instructed to come to the bench
14 about.

15 THE COURT: Come up.

16 (Discussion off record at the bench.)

17 BY MR. RICHARSON:

18 Q. Judge Smith, do you remember back in 1985 receiving
19 a letter that initially went to the home of your neighbor,
20 Richard Franks, and that then was brought to you, to your
21 wife, an anonymous letter addressing matters pertaining to
22 your personal life?

23 A. I don't remember the part about it originally
24 going to my neighbor, but certaining I remember that
25 letter.

1 Q. Do you remember taking the position that it was
2 your opinion that Vic Feazell was behind the letter coming
3 to your wife?

4 A. No, sir. I don't think I ever took that position.

5 Q. You never took that position with Mr. Richard
6 Franks?

7 A. No, sir, I don't think so.

8 Q. You don't think so?

9 A. Not that I recall. If you want me to explain that,
10 I will.

11 Q. What about -- did you take the position that Vic
12 Feazell or his wife, or someone that had something to do
13 with them, was behind that letter?

14 A. I was told that Bernie Feazell probably was
15 responsible for that letter, yes, sir.

16 Q. Who told you that?

17 A. The FBI.

18 Q. Well, Judge, they took that letter -- isn't that
19 the letter that they took and took fingerprints of and Mr.
20 Frank's fingerprints were on that letter?

21 A. I don't know.

22 Q. And they also brought Mrs. Feazell over there after
23 Vic was arrested, and took her fingerprints, didn't they?

24 A. I don't know.

25 Q. And you know they took Mr. Feazell's fingerprints,

1 don't you?

2 A. That's standard when anybody's arrested.

3 Q. Right. So I take it then, you had the FBI to
4 fingerprint -- take fingerprints off this correspondence?

5 A. I did not have the FBI do anything, Counselor.

6 Q. Okay. So no fingerprints were taken off of it?

7 A. I don't know that.

8 Q. Okay. -

9 A. I gave them the letter as I am requested to do
10 whenever I get any kind of letter like that.

11 Q. Now Richard Franks is your neighbor, is he not?

12 A. Yes, sir.

13 Q. He has known you since 1980, hasn't he?

14 A. Before that, yes, sir.

15 Q. Ya'll have lived next door to each other or lived
16 in the same complex since 1980?

17 A. He lives behind me, yes, sir.

18 Q. You all swim in same community swimming pool?

19 A. Maybe twice in 12 years, yes, sir.

20 Q. Okay. Do you remember, Judge, when Mr. Frank's son
21 was one of the three killed out here that became known as
22 the Lake Waco murder matter?

23 A. Vividly.

24 Q. Do you remember advising Mr. Franks that he should
25 not let Vic Feazell prosecute the case because Vic Feazell

1 was incompetent?

2 A. No, sir, I don't remember that.

3 Q. Are you saying you didn't tell him that?

4 A. I can't imagine that I did.

5 Q. Do you remember encouraging him instead to go hire
6 a special prosecutor, to-wit, one of your former law
7 associates?

8 A. No, sir.

9 Q. Do you remember using obscenities to Richard Franks
10 in describing your opinion of Vic Feazell?

11 A. No, sir.

12 Q. Do you deny it?

13 ✕ A. I don't have any memory about what you're talking
14 about, Mr. Richardson?

15 Q. My question is, do you deny it? Do you deny using
16 obscenities back in 1983, do you deny using -- or '84, that
17 time period, do you deny using obscenities?

18 A. Can't deny or admit it. I have no memory at all.

19 Q. Let me finish. Do you deny using obscenities when
20 talking to Richard Franks about your attitude toward Vic
21 Feazell? In 1983 or '84, in that time period?

22 ✕ A. I can't admit or deny that because I don't have any
23 memory of it.

24 Q. Okay. Judge, talking about your quote getting
25 along with the power structure, I guess, is a good way to

1 put it, you remember the case of police officer Mike
2 Nicoletti vs. City of Waco?

3 A. Yes, sir.

4 Q. There was a one point four million dollar (1.4
5 million dollar) verdict in that case, wasn't there?

6 MR. McELHANEY: Your Honor, this is
7 entirely extraneous; in fact, was excluded from evidence
8 before. We move to strike as being immaterial and
9 irrelevant.

10 THE COURT: Come up.

11 (Discussion off record between the

12 (Court and counsel.

13 BY MR. RICHARDSON:

14 Q. Judge, let me ask you --

15 MR. McELHANEY: Your Honor, could the
16 ruling be on the record that we move to --

17 THE COURT: Well, the objection was
18 not on the record, but the objection made at the bench was
19 sustained. We can make a record of it at a recess.

20 BY MR. RICHARDSON:

21 Q. Let me ask you, Judge, if you've been known to
22 occasionally, when a large verdict is against, let's say,
23 the power structure, to reverse that verdict?

24 MR. McELHANEY:: Your Honor, we
25 object on the grounds that this is immaterial, and it

1 doesn't involve Mr. Feazell at all.

2 THE COURT: And I sustained the
3 objection.

4 MR. McELHANEY: Thank you.

5 BY MR. RICHARDSON:

6 Q. When you were appointed a federal judge, what was
7 your experience in federal court at that time?

8 A. Mr. Richardson, I had to fill out a form that was
9 probably 25 to 30 pages long. I don't remember, I didn't
10 have a large number of trials in federal court if that's
11 what you're asking.

12 Q. Well, what I'm trying to find out is, had you tried
13 any cases in federal court before you became federal judge?

14 A. Yes, sir.

15 Q. Several or --

16 A. Two as I recall at the moment.

17 Q. Two?

18 A. Yes, sir.

19 Q. What kind of cases were those?

20 A. A products liability case against Ford Motor
21 Company, and an anti-trust case involving Snelling and
22 Snelling Employment Agency are the two I recall.

23 Q. And both of those were civil cases; is that
24 correct?

25 A. Yes, sir.

1 Q. And that was the entirety then of your federal
2 court experience before you were appointed to the bench as
3 federal judge?

4 A. No, sir.

5 Q. As far as --

6 A. Those were the two trials I recall. There were
7 other matters that didn't result in trial. I defended a
8 bank robber one time, but it was a guilty plea.

9 Q. Let me hand you, Judge, what has been mark as
10 Plaintiffs Exhibit 138 and ask you to take a moment, please,
11 and look at that.

12 A. Yes, sir.

13 Q. Tell me if you are familiar with it.

14 A. Yes, sir. I recognize it is as motion filed in the
15 Waco Division of the Federal District Court.

16 Q. Judge, Vic Feazell, after he was district attorney
17 and resigned and became employed in the community with a
18 company here, ASK, filed a motion in your courtroom asking
19 permission -- well, he filed a pro hac vice motion; did he
20 not?

21 A. He has done that more than once.

22 Q. Well, I'm talking about in this particular
23 instance. We'll deal with all of them, but he's filed a pro
24 hac vice motion in your court; has he not?

25 A. Yes, sir.

1 Q. Basically what that is is saying, Judge, could I
2 come into your courtroom and handle a lawsuit; isn't that
3 basically -- handle this particular lawsuit, and not just
4 come in, but, could I come into your courtroom and handle
5 this particular lawsuit?

6 A. When a lawyer is not licensed to practice in the
7 court, yes, sir.

8 Q. And being licensed to practice, for example, in the
9 federal court is tantamount to filling out a form and paying
10 a fee, is it not?

11 A. No, sir.

12 Q. Well, different jurisdictions have different
13 requirements. What are the requirements in the Western
14 District?

15 Q. You have to either complete an approved six-eight
16 hour seminar or pass the written examination.

17 Q. Okay. And it's all --it is common, is it not,
18 for lawyers who have not yet been licensed, for example, in
19 a particular federal district to file a motion called pro
20 hac vice?

21 A. It is.

22 Q. And it's extremely common for judges to just
23 arbitrarily approve those, is it not?

24 A. I'm not sure about arbitrarily, but they are
25 commonly approved, yes, sir.

1 Q. How many such lawyers would you say, Judge, since
2 you have been on the federal bench that you have denied the
3 right to come into your courtroom on a particular case when
4 they've filed a motion pro hac vice?

5 A. Probably a dozen.

6 Q. Twelve?

7 A. Yes, sir. That would be a guess.

8 Q. And Vic-Feazell is one of those lawyers, isn't he?

9 A. Yes, sir.

10 Q. And what are some of the reasons why you, for
11 example, deny pro hac vice?

12 A. In his case or just in general?

13 Q. Just in general.

14 A. The others that I remember are situations where a
15 lawyer is admitted to practice in a case and a condition of
16 that admittance is that they go ahead and get themselves
17 admitted generally within a certain period of time and then
18 they don't do that. They just keep coming back and seeking
19 pro hac vice status and they don't agree to that.

20 Q. Then let me rephrase it. Had Vic Feazell, prior to
21 the case that you have before you there, James Randel vs
22 American Solar King and Brian B. Pardo, had Vic Feazell ever
23 before that submitted a pro hac vice request in your
24 courtroom?

25 A. I don't recall. I don't think so.

1 Q. And you denied it on this particular case, didn't
2 you?

3 A. I believe so, yes, sir.

4 Q. Tell me how many other lawyers, Judge, that you
5 have denied a request for a pro hac vice when they asked for
6 it on the first occasion?

7 A. Maybe two.

8 Q. Do you remember the circumstances of those?

9 A. They were very young lawyers who worked for a
10 government agency and there were like already two or three
11 lawyers who were representing that government agency and we
12 just decided that agency didn't need five lawyers
13 representing it in one case, so we just said, no.

14 Q. Would you agree, Judge, that you more or less
15 singled out Vic Feazell by refusing him a pro hac vice in
16 this case?

17 A. No, sir. He's the only lawyer who ever applied
18 during a period when his license was on probation.

19 Q. Well, Judge, are you -- you realize that Mr.
20 Feazell had been accepted, the time that he made his request
21 to your courtroom, he had been accepted in the Federal U.S.
22 Bankruptcy Court; did you not?

23 A. Did I realize that?

24 Q. Yes, sir.

25 A. If that's -- probably yes. I don't recall now.

1 Q. You also knew, Judge, did you not, that he had
2 been accepted while he was on probation to the Northern
3 Federal District up in Dallas at the time that you refused
4 to let him come to your courtroom and handle a civil
5 lawsuit; did you not?

6 A. That may be. I don't recall.

7 Q. Would you say, Judge, that has the appearance of
8 singling out a lawyer and retaliating against him?

9 A. No, sir.

10 Q. Judge, one of the things you cited in your refusal
11 to allow Vic Feazell to come into your courtroom was that
12 he didn't have enough experience in the federal court
13 system; is that not correct?

14 A. I don't know, sir. Is that order part of this
15 exhibit, Mr. Richardson?

16 Q. No, your order is not a part of it. But look at
17 page 5 of that motion, top motion.

18 A. Yes, sir.

19 Q. Item number 10. On the same date, October 20,
20 1988, this Court -- this said Court denied defendant's
21 general counsel motion to appear pro hac vice noting that
22 applicant, quote, has no experience in federal court. That
23 was one of the reasons you stated; was it not?

24 A. That's what this says, if that's what you're
25 asking me.

1 Q. Do you know of any reason to believe that this
2 isn't correct?

3 A. No, sir.

4 Q. Filed in your courtroom, right? Because it's a
5 motion to recuse you; is it not?

6 A. Yes, sir.

7 Q. What is a motion to recusal, or for recusal?

8 A. A motion requesting the particular judge before
9 which a case is pending to step down and allow another judge
10 to hear the matter.

11 Q. That was a motion that then was filed by Mr.
12 Feazell; was it not? Asking you to step down as a federal
13 judge and let some other judge deal with his pro hac vice
14 and handle the case?

15 A. This was signed by Brian Pardo, pro se.

16 Q. Well it's Mr. Pardo attempting to recuse you based
17 on allegations that you have a great deal of prejudice
18 toward Vic Feazell; does it not?

19 A. I don't recall really what his reasons were.

20 Q. You would agree, would you not, that Mr. Feazell
21 couldn't even file his motion in your court since you
22 wouldn't allow him pro hac vice status?

23 A. Yes, sir.

24 Q Judge, during the time that you were -- that Vic
25 Feazell was on trial down in Austin, would you agree that

1 you were in Austin and even in Judge Nowlin's chambers on a
2 reasonably regular basis during Vic's trial in Austin?

3 A. I go to Austin the third full week of every month.
4 I'm sure I was there during that week unless for some reason
5 it was changed to another week, yes, sir.

6 Q. Are you aware that Judge Nowlin said that he had
7 never seen a judge get so involved in another judge's case?

8 A. No, sir; I'm sure not. I doubt that he said that,
9 Mr. Richardson.

10 Q. You doubt that he said that?

11 A. Yes, sir, I do.

12 Q. Well, let me ask you this in that regard. You were
13 out in the hall rather frequently talking to witnesses
14 that, for example, Don Hall's wife, you took her in to visit
15 Judge Nowlin, didn't you?

16 A. Not that I recall.

17 Q. Or at least into Judge Nowlin chamber's, past the
18 locked door?

19 A. Don Hall's wife?

20 Q. Yes, sir.

21 A. I don't recall -- I wouldn't know Don Hall's wife
22 if she walked in the door.

23 Q. You know Don Hall?

24 A. Sir?

25 Q. You know Don Hall?

1 A. Yes, sir, I know Don Hall. I visited with Don
2 Hall, but I don't recall visiting with his wife at all.

3 Q. You remember the lady that was with him when he was
4 down there to testify?

5 A. When I chatted with Don Hall he was by himself in a
6 little anteroom of some kind there on the second floor of
7 the federal courthouse in Austin.

8 Q. Was that before he took the stand, Judge.

9 A. I think it was after he testified.

10 Q. Well, you'd agree he left pretty fast after he
11 testified, wouldn't you? He didn't hang around long, did
12 he?

13 A. I don't know.

14 Q. Judge, in the retrieval of FBI files that we were
15 able to get in this case, there were some -- quite a few --
16 there were some matters that -- we asked just for FBI files
17 pertaining to Vic Feazell under the fortieth request, do you
18 know how it ended up in Vic Feazell's file, the matter
19 pertaining to someone shooting at you while you were jogging
20 one day?

21 A. I have no idea how that would be in Vic Feazell's
22 file.

23 Q. Would it mean that maybe they were investigating
24 Vic Feazell to see if he shot at you?

25 A. He doubt it. I have no idea.

1 Q. Do you know, Judge, how in May of '85 there was --
2 why there was a memo developed pertaining to the
3 investigation of Vic Feazell involving phone threats that
4 you claimed that you'd received?

5 A. I have no idea what you're talking about, Mr.
6 Richardson.

7 Q. Well, did you report that you had received some
8 phone threats back in May of '85?

9 A. I could well have. Unfortunately that happens
10 from time to time. I don't recall any particular dates.

11 Q. Do you have any idea how an FBI file would show up
12 -- note memos -- would show up in Vic Feazell's file that
13 had to do with phone threats that you claimed that you
14 received in May of '85?

15 A. I have no idea.

16 (The following instrument was
17 (marked for identification:
18 (P-139, Department of Public
19 (Safety records, were marked
20 (for identification.

21 Q. Let help me hand you Plaintiffs's 139, Judge,
22 documents that came out of the Department of Public Safety
23 records that we got under the document request records, and
24 ask you, if you would, please, to look at that and see if
25 that's the document on May the 10th, 1985, that deals with

1 the allegations that someone shot at you on May 8th?

2 A. No, sir; I don't read it that way.

3 Q. This deals with a different matter. This is the
4 phone threat that I asked you about, I'm sorry. This deals
5 with the phone threat.

6 A. I thought you had asked me about a phone threat
7 made to me. This is a telephone conversation somebody had
8 with the Department of Public Safety that I wasn't party to,
9 if I understand this.

10 Q. I understand. About someone buying a gun, does it
11 not?

12 A. Yes, sir.

13 Q. Okay.

14 MR. RICHARDSON: Your Honor, we would
15 offer in evidence Plaintiff's Exhibit 139.

16 MR. McELHANEY: Could we see one?

17 MR. RICHARDSON: Sure. (Hands
18 instrument to counsel)

19 MR. McELHANEY: Your Honor, we object
20 on the grounds of relevance. This doesn't appear on its
21 face to have anything at all to do with Vic Feazell, and we
22 object on relevance grounds.

23 THE COURT: Come up. (Discussion off
24 record.)

25 BY MR. RICHARDSON:

1 Q. Judge, have you had a chance to read the document?

2 A. Yes, sir. I remember more about this now.

3 Q. Okay. Do you have any idea how this matter would
4 end up in Vic Feazell's investigative file with the
5 Department of Public Safety?

6 A. I do not.

7 Q. Did you give them any reason to believe that Vic
8 Feazell had anything to do with this matter?

9 A. I did not.

10 Q. You mentioned -- you were shot at while you were
11 jogging one day, didn't you?

12 A. Yes, sir.

13 Q. And the FBI started investigation on that, didn't
14 they?

15 A. Started it? Yes, sir.

16 Q. Yes, sir. And didn't they quickly shut it down?
17 Do you remember what they learned?

18 A. They didn't quickly shut it down. It lasted for
19 some period of time.

20 Q. Okay. Did they learn whether or not it had
21 something to do with your personal life, Judge?

22 A. As far as I know, it did not.

23 Q. My question is, did they learn that it had
24 something to do with your personal life?

25 Q. No, sir, they did not learn that. It had something

1 to do with a gentleman I had sentenced as a state judge.

2 Q. Who was that?

3 A. Wilford Padilla.

4 Q. Wilford who?

5 A. Padilla.

6 THE COURT: P a d i l l a?

7 THE WITNESS: Yes, sir.

8 BY MR. RICHARDSON:

9 Q. Did they ever bring charges against him for
10 shooting at you?

11 A. No, sir.

12 Q. That would be rather strange, wouldn't it, if
13 they thought they had evidence on somebody for shooting
14 at a federal judge and they didn't charge them with it?

15 MR. McELHANEY: Your Honor, we
16 object. This is getting far afield and irrelevant.

17 THE COURT: I sustain that objection.

18 BY MR. RICHARDSON:

19 Q. Let me ask you this way: Wouldn't that be the
20 normal thing to do if the FBI thought they had information
21 linking to this Padilla fellow --

22 MR. McELHANEY: Same objection, Your
23 Honor.

24 THE COURT: I sustain the
25 objection.

1 BY MR. RICHARDSON:

2 (The following instrument was
3 (marked for identification:
4 (P-140, Letter from District 86
5 (Grievance Committee.

6 Q. Judge, let me hand you Plaintiff Exhibit Number 140
7 and ask you to take a moment and and look at that, please.

8 A. All right, sir.

9 Q. By the way before I ask you about that, I want to
10 ask you a couple of other questions about your denying Vic
11 Feazell's motion for pro hac vice to appear in your court.
12 You denied that the same day he filed the motion, didn't
13 you? Just bam, just like that, didn't you?

14 A. Could have been. I don't know.

15 Q. And isn't there some kind of ruling or case in the
16 Fifth Circuit that basically says that a lawyer should be
17 granted a hearing before his motion for pro hac vice is
18 denied?

19 A. Not that I'm aware of, sir.

20 Q. No case to that affect that you're aware of?

21 A. Not that I'm aware of?

22 Q. Okay. Judge, Plaintiff's Exhibit Number 140, tell
23 us what that is, please.

24 A. First page is a letter to Mr. Feazell from Ben
25 Selman, Chairman of the District 86 Grievance Committee. The

1 second page is a letter from me to Mr. Selman?

2 Q. What's the date of that letter from you to Mr.
3 Selman?

4 A. August 24, 1988.

5 MR. RICHARDSON: Your Honor, we would
6 offer into evidence Plaintiff Exhibit Number 140.

7 MR. LEATHERBURY: No objection, Your
8 Honor.

9 THE COURT: I think 140 actually is
10 already in, is it not?

11 MR. RICHARDSON: No, sir.

12 THE COURT: It's admitted. I'm
13 sorry, I thought it already was. Plaintiff's 140 received.

14 (The following exhibit was received
15 (into evidence:
16 (P-140, Letter from Grievance
17 (Committee, was received into
18 (evidence and a copy of same appears
19 (in this record in the Exhibit
20 (Volume.

21 BY MR. RICHARDSON:

22 Q. Now, Judge Smith, this has to do with something
23 that occurred -- there is testimony about it with this
24 letter -- this has to do with a matter that occurred up in
25 Sherman, Texas; does it not?

1 A. Yes, sir. I believe that's right. Yes, sir.

2 Q. And it didn't any in any way, form or fashion deal
3 with you directly?

4 A. No, sir.

5 Q. Would you tell the folks on the jury -- just read
6 your letter, if you would, please, who it's to and what you
7 said?

8 A. "Mr. Ben Selman, Attorney at Law, Post Office Box
9 23309, Waco, Texas 76702-3309, reference: Vic Feazell -- "

10 THE COURT: Judge Smith, let me ask
11 you to read a little more slowly, please, sir, in
12 consideration for the reporter.

13 THE WITNESS: I'm sorry, sir.

14 "Dear Mr. Selman: The purpose of this letter is
15 "to make inquiry, state a complaint, or express my
16 "serious concern, whichever is most
17 "appropriate. I do not have the knowledge
18 "of the workings of the Grievance Committee
19 "that I probably should since I am
20 "writing you in your capacity as chairman.
21 "As you know, several months ago Mr. Feazell was,
22 "by consent decree, placed on a year's
23 "probation, the primary condition of which
24 "I assume was that he not again violate a cannon
25 "of ethics. While he has since been quoted as

1 "having made some unfortunate statements the
2 "quotes from last Friday's Tribune Herald exceeds
3 "any possible acceptable bounds. Feazell has
4 "stated that watching a criminal trial in
5 "Federal Court in Sherman, Texas, quote, reminded
6 "me of those World War II movies, paren, of Nazi
7 "Germany, close paren. Quote, the only thing
8 "missing were the arm bands, close quote. Feazell
9 "is also quoted as saying, a criminal defendant's
10 "constitutional rights were violated, quote,
11 "because the federal judge presiding over his
12 "trial has banned spectators and the press from
13 "the courtroom, close quote. It would seem to me
14 "that those two statements clearly violate
15 "DR1-10285 of the canons of ethics. The
16 "statement about the press and spectators being
17 "banned from the courtroom involved a
18 "thirty-minute hearing outside the presence of
19 "the jury when an informant's life would have
20 "been in danger had his or her identity become
21 "known. Please consider this a formal request
22 "that the Grievance Committee take whatever
23 "action it deems appropriate to insure that Mr.
24 "Feazell never again violate the canons of
25 "ethics. Best regards, yours verly truly."

Stanley A. Sanders, CSR, RPR
817-757-5081, Waco, Texas

1 BY MR. RICHARDSON:

2 Q. And, Judge, had they agreed with you, Mr. Feazell
3 would have lost his license to practice law mostly likely,
4 wouldn't he?

5 A. If his probation had been revoked, yes, sir.

6 Q. Yes, sir. And that's what you were hoping to see
7 happen, wasn't it?

8 A. No, sir. I was just calling this to their
9 attention because I thought it was way beyond the bounds of
10 propriety for a lawyer to make that kind of statement to the
11 press.

12 Q. Well, they didn't agree with you, did they?

13 A. No, sir, that's not a correct statement that they
14 didn't agree with me.

15 Q. Well, did they in any way sanction Mr. Feazell?

16 A. Not that I'm aware of.

17 Q. Okay. If they had agreed with you they probably
18 would have taken some action?

19 A. I'm not going to accept your statement that they
20 didn't agree with me because that's not what happened, Mr.
21 Richardson.

22 Q. Well, what did happen?

23 A. They came and visited with me and, in effect, said,
24 look, there are enough problems with Mr. Feazell. Is it all
25 right with you if we don't pursue this one, and I said,

1 sure.

2 Q. Who came and visited with you?

3 A. Ben Selman, I believe. It might have been a lawyer
4 from Marlin who was on the committee at that time. I don't
5 recall.

6 Q. Well normally those kind of conversations are held
7 in a hearing, aren't they? Where they bring the parties in
8 and have the hearing?

9 A. I'm not familiar with the workings of a Grievance
10 Committee. I've never served on a Grievance Committee. I
11 don't know what is normal.

12 Q. Are you -- were you aware of the facts of what went
13 on up in Sherman that Mr. Feazell was talking about in the
14 paper?

15 A. No, sir.

16 Q. Were you aware enough of the facts to conclude that
17 they exceed any possible acceptable bounds as you put in
18 your letter?

19 A. Yes, sir.

20 Q. And what was it that you were aware of that caused
21 you to conclude that those statements, quote, exceeded any
22 possible acceptable bounds?

23 A. I believe that any time a lawyer is quoted as
24 saying that a Court reminds him of Nazi Germany, that that's
25 beyond the bounds of appropriate behavior for a lawyer.

1 Q. Did you see, Judge Smith, that in this case --
2 Have you ever seen an instance where a judge removed the
3 press and the gallery from the room and took testimony
4 before a jury?

5 A. Before a jury?

6 Q. Yes, sir.

7 A. Have I ever seen it?

8 Q. Yes, sir.

9 A. No, sir, I've never seen that happen.

10 Q. Did you know that's what happened right here in
11 this case?

12 A. No, sir. I don't know that.

13 Q. The judge in this case, and the article would have
14 told you that, and I can represent to you it's a fact, the
15 judge removed the gallery and the rest --

16 MR. McELHANEY: Excuse me. We
17 object to Mr. Richardson attempting to testify by saying he
18 represents or he does things. We ask that the lawyer not be
19 involved in those activities.

20 THE COURT: I sustain that objection.

21 BY MR. RICHARDSON:

22 Q. Judge Smith, did you see all the articles that the
23 media wrote about attacking the constitutional right of the
24 press to be in the courtroom when a jury is hearing
25 evidence, and how they took great issue; even formed a group

1 as to what Judge Cobb had done up there in Sherman in this
2 particular case?

3 A. No, sir.

4 Q. Do you think, Judge, that had you known all the
5 facts of what went on up there in Sherman in this regard
6 that you might have agreed with Mr. Feazell in his
7 assessment?

8 A. Agreeing with his assessment would not be agreeing
9 with the propriety of stating publicly that a courtroom
10 reminds one of Nazi Germany.

11 Q. What canon of ethics does that violate?

12 A. I don't recall. DR1-10285.

13 Q. What does say -- because you said here it seemed to
14 me that those two statements clearly violate DR1-10285.
15 What canon of ethics is that?

16 A. I would have to look it up to be certain, Mr.
17 Richardson. It's been some time. I think it has something
18 to do with the public perception of the justice system, but
19 I'm not sure.

20 Q. You're not supposed to be critical of it as a
21 lawyer?

22 A. No, sir, I don't think that's correct.

23 Q. Would you agree, Judge, that if a judge did remove
24 the press and the gallery from a courtroom and only let the
25 jury listen to a trial, that that strongly flies in the face

1 of First Amendment rights this country for a defendant-- the
2 rights a defendant has in this country?

3 A. Yes, sir. Under ordinary circumstances, it sure
4 would.

5 Q. Wouldn't that make it seem like it was -- remember
6 what that statement was -- wouldn't that remind you of
7 those World War II movies. The only thing missing, such as
8 Nazi Germany, the only thing missing were the arm bands?

9 A. No, sir, it would not.

10 Q. Do you even know who was testifying when Judge Cobb
11 removed the press and the gallery from the jury room?

12 A. I know nothing about that except what was in that
13 particular article quoting Mr. Feazell.

14 Q. Well, in your letter you told the folks on the
15 committee that it was a -- an informant's life would have
16 been in danger if his or her identity become known.
17 Somewhat like a confidential informant; is that correct?

18 A. Obviously that was the information I had, yes,
19 sir.

20 Q. Well, would you consider a sheriff of another
21 county a confidential informant whose life might be in
22 danger if he testified before the press and the media?

23 A. Not ordinarily. I guess it's conceivable.

24 Q. Would you agree, Judge, you didn't have all your
25 facts together when you wrote this letter to the committee?

1 A. No, sir.

2 Q. Let me hand you, Judge, what has been marked as
3 Plaintiff's Exhibit 141 and ask you to look at that, please.
4 Tell us what a 302 is?

5 A. I don't know, sir.

6 Q. A 302, Judge, is the document you have there which
7 is an FBI report, is it not? Can you see that up on the
8 left top corner? -

9 A. Yes, sir.

10 Q. Judge, this document is dated August 19th, the
11 date of the transaction is August 19th, 1985, is it not?

12 A. Yes, sir.

13 Q. And this deals with you, does it not?

14 A. It's a record of my turning over to an FBI agent
15 some envelope.

16 Q. Yes, sir.

17 A. Or letter.

18 Q. Yes, sir.

19 MR. RICHARDSON: Your Honor, we
20 would offer into evidence Plaintiff Exhibit No. 141.

21 MR. McELHANEY: No objection.

22 THE COURT: It's admitted.

23 (Plaintiff's Exhibit No. 141, FBI

24 (Report, was received into evidence,

25 (and a copy of same appears in this

1 (record in the Exhibit Volume.

2 BY MR. RICHARDSON:

3 Q. It says, " Approximately 8:30 a.m. on the morning
4 "of Tuesday, July 30, 1985, United States District
5 "Judge, USDS, Walter Smith --" I guess that should
6 be USDA -- "Walter Smith approached SA, Robert
7 "H. Zane." When did you first meet Mr. Zane?

8 A. I don't recall.

9 Q. Would it have been before this occasion?

10 A. I don't know.

11 Q. Okay. "And Assistant United States Attorney, AUSA,
12 "Jan Patterson, in AUSA Patterson's office in the
13 "federal courthouse in Waco, Texas. AUSA
14 "Patterson, and SA, Zane, were meeting in
15 "Patterson's office at that time with
16 "Investigator Ronald Boyter, Texas Department of
17 "Public Safety. At this time Walter Smith
18 "presented to AUSA Patterson and SA, Robert H.
19 "Zane an envelope containing two one-page letters,
20 "this envelope was addressed to Walter Smith with
21 "a return address of Carol Maynard, 3320 North
22 "32nd, Waco, "Texas, 76708, 752-6456. This
23 "envelope was postmarked July 28, 1985 at Waco,
24 "Texas. This letter was found to contain a
25 "one-page letter beginning, "Dear Council

1 "Member." It was also found to contain a
2 "second one-page letter which began, quote, "Do
3 "not be duped," end quotes. USDA Smith -- or
4 "USDJ Smith, turned these documents over to AUSA
5 "Patterson and SA Zane at that time, SA Zane
6 "initialed the items for identification, and
7 "evidenciary purposes and thereafter maintained
8 "the documents as evidence."

9 Judge, do you have any idea how this document was
10 made a part of Vic Feazell's investigated file with the
11 FBI?

12 A. None. I have no memory of this instance at all.

13 Q. Do you know why all the typewriters were taken from
14 Vic Feazell's-- this was a typewritten letter, wasn't it?

15 A. I have no idea.

16 Q. Do you know why after this the typewriters were
17 all taken from Vic Feazell's home and the typewriter balls,
18 those deals on the typewriters, were taken from the
19 district attorney's office sometime right after this?

20 A. I have no idea.

21 Q. Do you know, Judge, why, also in Vic Feazell's
22 investigative file from the Federal Bureau of Investigation,
23 why there's a document in there pertaining to an
24 investigation of a drug ring involving a Clyde Kelley? Do
25 you know how that document would end up in Mr. Feazell's

1 file?

2 MR. McELHANEY: Your Honor, unless
3 these documents are in evidence. The witness has already
4 said he's unfamiliar with the FBI file, so we object.

5 THE COURT: I sustain the objection.
6 Come up just a moment.

7 (Discussion off record at the bench.

8 MR. RICHARDSON: I pass the witness,
9 Your Honor.

10 MR. McELHANEY: No further questions,
11 Your Honor.

12 THE COURT: Ladies and Gentlemen, at
13 this time we will recess for your noon recess. Please be
14 back outside the courtroom at 1:30. You're excused until
15 1:30.

16 (Witness excused)

17 * * * * *

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1 THE STATE OF TEXAS)
2 COUNTY OF McLENNAN)
3

4 I, Stanley A. Sanders, Official Court Reporter in and
5 for the 19th District Court of McLennan County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all the
8 proceedings directed by counsel to be included in the
9 partial statement of facts in the above styled and
10 numbered cause, all of which occurred in open court or
11 in chambers and were reported by me.

12 I further certify that this transcription of the
13 record of the proceedings truly and correctly reflects
14 the exhibits, if any, offered by the respective parties.

15 I further certify that the cost of this statement
16 of facts is _____ and has been paid by Defendants.

17 WITNESS my hand this the 31st day of May, 1991.

18
19 _____
20 Stanley A. Sanders, CSR, RPR
21 Official Court Reporter
22
23
24
25