

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FILED

2013 JUL 12 PM 3:02

JOHN EDWARD FODDRILL SR

Plaintiff

v.

MICHAEL D. BERNARD, individually and
In his official capacity as San Antonio City
Attorney, WILLIAM P. McMANUS,
individually and in his official capacity as
San Antonio Police Chief and the
CITY OF SAN ANTONIO

Defendants

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: 
DEPUTY CLERK

NO. 5:13-CV-00051

**PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S RESPONSE
CONCERNING OBJECTIONS TO THE EVIDENCE OFFERED BY THE DEFENDANTS**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW the Plaintiff, John Edward Foddrill Sr., and makes this Reply in response to Defendants reply to Plaintiff's response filed on July 2, 2013.

1. The Plaintiff requests that the Court leave this Cause intact, and since the Plaintiff is appearing pro se, he asks that his complaint be liberally construed and "held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007), and as a consequence, he be allowed to amend his Complaint to correct any deficiencies in these Causes as filed.

2. The Plaintiff asks that the Court deny Defendant's demands that documents filed one day late due to excusable neglect be denied and that Plaintiff's documents be treated as timely filed. The Plaintiff filed a motion on this date- July 12, 2013 begging the Court's pardon and asking for the documents filed one day late by mistake not be stricken.

3. The Plaintiff again asks that the Court hold him to the same standards concerning the submission of evidence. The Defendants submitted a copy of an on-line comment posted on the Internet. The Plaintiff merely asks that he be held to no more stringent standards than the Defendants.

4. The Defendants argue that this lawsuit is not about a criminal conspiracy. (See Defendant's July 2, 2013 submission p 2 para. 4) Defendants and their attorneys state that the whistleblower case in 2009 "has little relevance to this case in general and no relevance at all to the motion before the court". (July 2, 2013 Document, p. 4, paragraph 7) The Plaintiff replies that the lawsuit concerns the illegal, unconstitutional acts of the Defendants in their attempts to conceal the ONGOING criminal conspiracy that plays a central role in the illegal cover-up being orchestrated and financed with public funds by the Defendants. The Criminal Trespass Warning was issued within days of the Plaintiff hand-delivering proof of the criminal conspiracy to elected officials at City Hall. In an effort to conceal the criminal conspiracy the Defendants issued the CTW, confiscated the evidence, issued instructions for everyone to ignore all reports of the corruption from all citizens , closed out police reports and took other actions. They later dispatched armed police officers to the Plaintiff's home on the night of July 4, 2011, roused the Plaintiff and his wife from their beds and performed a mental health evaluation in spite of the fact that the Plaintiff had violated no laws, caused no disturbance, threatened no one, was home in bed at the time of the dispatch, etc. The Plaintiff's ignored a fraudulent report published by SAPD officer Romana Lopez falsely stating that she did not have the Plaintiff's phone number at the time of the dispatch.

5. The Defendants state: "So even if there was any basis in fact for the criminal conspiracy Foddrill thinks exists (which does not) his argument fails to render his exhibits any more admissible than they would have been without that argument". (July 2, 2013 Document, p 2 , paragraph. 4) Characterizing this statement by the Defendants and their attorneys – Fitzpatrick and Kosanovich – as "less than candid" would be an understatement. The statement is false. As in the case of the February 2009 "Fraud upon the

Court” that the Defendants and their attorneys (Fitzpatrick and Kosanovich) have attempted to hide, they are again providing the Court with false statements.

6. District Attorney Susan Reed’s Office has conspired with the Defendants in their efforts to conceal three decades of public/police corruption including the theft and misuse of tens of millions of City, State and Federal dollars. In published documents representatives of Reed’s Office have falsely stated that they could do nothing unless called upon by another law enforcement agency. (see attachments 1-3) The Attorney General’s Office and the Texas Dept. of Public Safety have submitted written statements declaring that Bexar County District Attorney Susan Reed has jurisdiction. (see attachments 4-5) An audio recording of a meeting with State Senator Leticia Van De Putte is available for review where after she and her staff review the evidence of public/police corruption she declares that DA Reed had jurisdiction and that she was the one required to investigate the reports and call upon other law enforcement agencies for assistance. (see attachment 12) In a published statement Bexar County First Assistant District Attorney Cliff Herberg admitted that they never made a request of the Texas Rangers to investigate the reports of criminal activity because they didn’t think there was a criminal case to prosecute (see attachment 7) Herberg’s statement directly contradicts written statements made by Bexar County Chief of the White Collar Crime Division – Adriana Biggs- and at least two other attorneys on Reed’s staff indicating that they had no jurisdiction and had to wait for the Texas Rangers to call them.

7. A news report of July 11, 2013 published by the San Antonio Express News details how DA Reed “favored” others not unlike her ongoing efforts to “favor” the Defendants and their attorneys (Fitzpatrick & Kosanovich). (see attachment 6) In the published media article Former Bexar County ADA Mike Cohen indicated that “a sense of injustice in motivating him to blow the whistle against Reed” when stating “ It’s just not fair to play favorites. We should all be on a level playing field...rich, poor, it shouldn’t matter”. The media article reports efforts by DA Reed’s Office to help hide criminal activity

that occurred during the same time frame that her office was assisting the Defendants cover up three decades of criminal activity inside the City and County.

8. Bexar County District Attorney Susan Reed's Office conspired with Texas Ranger Capt. Hank Whitman to conceal criminal activity inside the City and County. A published media report memorializes statements made by Texas Ranger Whitman and Bexar County First Assistant DA Cliff Herberg that there was no investigation because they found no evidence of wrongdoing. (see attachment 7) The media report memorializes Texas Ranger Whitman statement under oath in Court – “ (Whitman) and other officials with the Rangers and Bexar County District Attorney's Office found no evidence of fraud or official misconduct, Whitman testified, “ wrote the reporter. “ We could not substantiate any of the allegations at that time”, Whitman said.
9. In a letter of Dec. 1, 2009 in response to an Open Records request the DA's Office stated that they had no records pertaining to the investigation into the reports of public/police corruption. (see attachment 8)
10. The fact is that there WAS an investigation and there was a search warrant issued to Bexar County ADA Barry Elliott allowing him to examine the bank records of City IT Manager Jose Medina. In a letter to Texas Attorney General Abbott of November 23, 2009 the DA's Office states that “the requested information relates to a preliminary investigation by the Bexar County District Attorney into allegations of possible bribery and/or financial misconduct. As a result of the investigation, no improper activity was uncovered, the individual was never arrested or charged with a crime and the case was never filed”. (see attachment 9) The DA's Office continues to make the argument that “information that deals with the detection, investigation or prosecution that did not result in conviction or deferred adjudication” is exempt from disclosure. The written statement directly contradicts statements made by Texas Ranger Capt. Whitman and Bexar County First Assistant District Attorney Cliff Herberg that there was no

investigation as no evidence of wrongdoing was found to call for an investigation. They lied. Texas Ranger Capt. Hank Whitman with the illegal coaching of City Attorney Deborah Klein, attorney Mark Kosanovich (Fitzpatrick & Kosanovich) and City IT Director Hugh Miller lied under oath and defrauded the court in February 2009 in an effort to help the Defendants conceal decades of criminal activity.

11. Attorney Malinda Gaul in an email of March 16, 2009 she memorialized a conversation with Texas Ranger Capt. Hank Whitman of December 8, 2008 indicating “ He said he did not confirm to you any violations of law and that, unknown to him, after your meeting the DA had looked at Medina’s bank account, but found nothing unusual. (see attachment 10) This email shows that Texas Ranger Hank Whitman and attorney Malinda Gaul knew that District Attorney Reed’s Office had obtained a search warrant and had investigated the bank account of City IT Manager Jose Medina. This email directly contradicts the statements of Whitman (under oath and to the press) and Bexar County First Assistant DA Cliff Herberg.

12. An email published by Texas Ranger Capt. Hank Whitman on October 15, 2008 details how on October 14th Asst. DA Barry Elliott, DA investigator Julian Martinez, Whitman and the Plaintiff “ talked about extensively regarding the issue of altering government documents, this offense is described under section 37.10 of the Texas Penal Code”. (see attachment 11)

13. An audio recording of October 28, 2008 of a voicemail message left by Bexar County Asst. DA Barry Elliott memorializes the fact that after the meeting of October 14th he took steps to follow up after reviewing evidence of the criminal activity. ADA Elliott states: “get a more formal statement”, “may expect someone to contact You and go from there”, “I did talk to some people” when indicating that a follow-up meeting would occur where the Plaintiff would be required to make more formal statements

concerning his reports of the criminal activity. (see attachment 12) After reviewing evidence provided by the Plaintiff on October 14, 2008 - especially emails and invoices detailing the theft of upwards of \$200,000 by Medina and Gonzaba - ADA Elliott obtained a search warrant, inspected the bank accounts of IT Manager Medina and left a voice mail message indicating that more formal statements would be obtained at a follow-up meeting. ADA Elliott's actions and statement directly contradict the statements of Bexar County First DA Cliff Herberg and Texas Ranger Capt. Hank Whitman (under oath and to the press).

14. Defendants and their attorneys state "The argument Foddrill is trying to articulate is that he thinks he lost his whistleblower case in 2009 because of intrinsic fraud". (see July 2, 2013 submission, p. 4, para. 7) This is yet another untrue statement. The Plaintiff has presented proof of a "fraud upon the court" and extrinsic fraud. The Plaintiff has presented proof that the Defendants and their attorneys (Fitzpatrick & Kosanovich) conspired to present false and at times totally fabricated testimony to the Court in an effort to conceal RICO-like criminal activity inside the City and County. Fraud upon the court in obtaining a complaint, information, or indictment invalidates all orders of the court and causes the case to be null and void *ab initio*. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." The Court has declared that - "We note because fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice. Hazel-Atlas Glass Co. v. Hartford-Empire Co., *supra*; Dixon v. Comm'n of Internal Revenue, 2003 WL 1216290 (9th Cir. 2003) (" . . . the perpetrator of the fraud [upon the court] should not be allowed to dispute the effectiveness of the fraud after the fact.")"

15. Defendants and their attorneys state “Foddrill seems to argue that the deposition testimony was false”, “it would be absurd to conclude Foddrill was harmed by truthful information being presented at trial” and “the Varn transcripts- are not relevant to the issue presented to the court”. (See July 2, 2013 submission, p 5 para. 8) The statement is false. Foddrill NEVER argued that the deposition was false but provided proof that City Chief Information Officer Richard Varn admitted in his 2007 deposition that he didn’t even recognize the term “the variable” and knew little of City budget practices and then presented a totally fabricated testimony with the illegal coaching of City attorney Klein, attorney Kosanovich and City IT Director Hugh Miller to conceal the criminal activity.
16. The Defendants and their attorneys (Fitzpatrick & Kosanovich) state – “There was no perjury”. (See July 2, 2013 submission, page 5). This is another false statement made to the Court. Prior submissions to the Court detail how upwards of \$200,000 was stolen by City IT Manager Medina and vendor Gonzaba but that numerous City witnesses testified under oath with the expert but illegal coaching of city attorney Klein and attorney Mark Kosanovich that no wrongdoing ever occurred. CIO Varn’s 2007 deposition (that has been kept hidden from the Court) and his 2009 courtroom testimony prove that he was coached by Klein and Kosanovich to present a totally fabricated, false testimony under oath in an effort to defraud the court and hide the criminal activity.
17. In her Courtroom testimony Municipal Integrity Manager Virginia Quinn testified under oath that there was no wrongdoing discovered and that money was not misappropriated by stating – “It wasn’t misappropriated”. (see attachment 13, p. 33, line 6) and “well, it was unfounded as to fraud with the variable”. (see attachment 13, p 33, line 15) Quinn’s entire testimony is an effort to make it appear as if Foddrill’s reports to the Office of Municipal Integrity had nothing to do with the investigation of the “variable” and that funding could be spent on anything to do with a City purpose.

18. An OMI Investigators Report directly contradicts the courtroom testimony of Quinn. The report details a statement by City IT Telecom Supervisor Diana Lopez concerning how upwards of \$ 30-40 thousand went missing. (see attachment 14, p 4) IT Network Manager Mike Mitchell provided a statement how he was directed by Medina to INAPPROPRIATELY charge hundreds of thousands of dollars to the telephone variable (see attachment 14, p 5) IT Telecom Supervisor Garcia provided a statement that training , the trophy case and office remodeling was charged to the variable (see attachment 14, p. 6) IT Billing Clerk Anguiano provided a statement that upwards of \$300,000 was charged to the telephone “variable” when she was “ pretty sure it’s not voice communications products”. (see attachment 14, p 7) Office of management and Budget Analyst Hammond provide a statement that the telephone “variable” was about \$5.2 million in size. (see attachment 14, p. 7) Former IT employee Joyce Garcia provided a statement that she “had long-term conflicts with Jose Medina over ITSD billing practices and repeatedly questioned her immediate supervisor”. She was instructed to process the invoices and bill them to the variable as Mr. Medina directed. (see attachment 14, p. 8) Budget Director Peter Zanoni provided a statement that “during the recent budget process ITSD kept changing their revenue projections to such an extent that he didn’t have much confidence in their numbers. (see attachment 14, p 9) IT Manager Medina admitted to charging non-telephone related costs to the telephone “variable” (see attachment 14, p 11) OMI Investigator Steve Harrison states in his report that “The motivation to assure careful internal contract billing processes is compromised by the ability to tap a “BOTTOMLESS PIT OF MONEY” via the “variable(s) and at the end of the day pass the costs along to City departments” but then went on to say that he found no wrongdoing. (see attachment 14, p 13)

19. During the same time frame that the Defendants and their attorneys – Fitzpatrick & Kosanovich – were defrauding the court in an effort to hide the theft and misuse of tens of millions of dollars City Grants Manager Jeanetta Tinsley was using approximately \$ 16,000 to fund a retirement party for her supervisor. Tinsley was terminated and indicted for misusing less than twenty thousand dollars. Unlike City IT Manager Jose Medina and vendor Isabel Gonzaba, Tinsley did not pocket the funds or

personally gain from her acts BUT she was charged with a crime- Misapplication of Fiduciary Property. While the Defendants and their attorneys continue to inform the Court that no crimes were committed the record shows that misapplying funds is indeed a crime.....but just for some persons who are not being illegally protected by DA Susan Reed and others.

Conclusion and Prayer

For the reasons stated herein, Plaintiff begs the Court to deny the Defendant's request for relief requested in Document 12, to allow Plaintiff's evidence to be entered into the record and to allow the Plaintiff his day in Court.

Respectfully submitted,

John Edward Foddrill Sr. (Pro Se)

9650 Limestone Pond

San Antonio TX 78254

210-824-3502

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing response were hand delivered to the U.S. District Clerk's Office at 655 E. Cesar E. Chavez Blvd., Room G65 San Antonio, Texas 78206 and a single copy was mailed by certified U S Mail # 7010 3090 0002 7075 1497 on July 12, 2013 to:

Shawn Fitzpatrick
Fitzpatrick & Kosanovich
P O Box 831121
San Antonio TX 78283-1121

John E Foddrill Sr.

ATTACHMENTS

1. Letter of August 30, 2007 from ADA Brian Chandler
2. Letter of Dec. 5, 2007 from White Collar Crime Division ADA Jason Wolff (now the "Honorable" JUDGE JASON WOLFF Bexar County Court #2)
3. Letter of January 8, 2008 from White Collar Crime Division Chief Adriana Biggs (fired/resigned in June 2013)
4. Email of October 2007 from AG-CID-Special Investigations Unit Sgt. Bloodworth
5. Letter of Sept 15, 2008 from Texas Ranger Capt. Hank Whitman
6. San Antonio Express News – "Ex-prosecutor says DA favored Sen. Uresti's son" – 7/11/2013
7. "Shadow of a doubt" – SA Current – February 2009
8. Letter from DA Susan Reed's Office of Dec 1, 2009
9. Letter from DA Susan Reed's Office of November 23, 2009
10. Email from Attorney Malinda Gaul dated March 16, 2009
11. Email from Texas Ranger Hank Whitman dated October 15, 2008
12. Summary of audio recordings available for review
13. Courtroom Testimony of Office of Municipal Integrity Manager Virginia Quinn – 2/4-5/2009
14. Office of Municipal Integrity Investigators Report – October 10, 2005
15. Bill of Indictment – Jeanetta Tinsley

Attachment 1



Susan D. Reed
Criminal District Attorney
Bexar County, Texas

copy

August 30, 2007

Mr. Francis B. Wells
340 Treeline Park Apt 1715
San Antonio, Texas 78209

Dear Mr. Wells,

I am in receipt of your letter dated August 17, 2007 in which you allege the City's ITSD department misapplied funds and the City's Municipal Integrity Unit engaged in a scheme to conceal such misapplication. This office takes such allegations very seriously.

It is our general policy to receive such complaints in the form of a report detailing an investigation performed by an investigative law enforcement agency. From the enclosures of your letter, it appears you have contacted the Federal Bureau of Investigation, the Texas Rangers, and the Texas Attorney General's Office. Should one of these agencies or another law enforcement agency file a case with this office for prosecution stemming from these allegations, we will explore the possibility of bringing a criminal action as the evidence and justice requires.

If you have any questions, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Brian Chandler".

Brian Chandler
Assistant District Attorney
(210) 335-2404

Attachment 2



Susan D. Reed
Criminal District Attorney
Bexar County, Texas

December 5, 2007

Mr. John E. Foddrill Sr.
9650 Limestone Pond
San Antonio, TX 78254

Dear Mr. Foddrill Sr.:

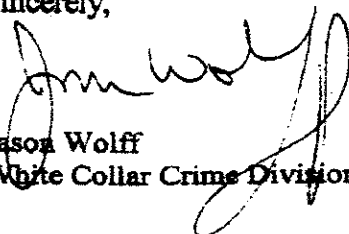
Thank you for your most recent letter dated November 27, 2007 where you provide information to the District Attorney's Office in reference to "instances of abuse and misconduct within the City's Information Technology Systems Department (ITSD)." I am a prosecutor assigned to the White Collar Crime Division of the District Attorney's Office and your communication has been referred to me for review and response.

It appears from your letter that you are seeking the filing of criminal charges. Criminal prosecution, however, requires that certain procedures be followed. First, there is no direct filing of cases with our office. Instead, criminal cases must be filed with the law enforcement agency having jurisdiction over the offense(s) being alleged. Such agencies have the resources and manpower necessary to gather the appropriate evidence and documents, conduct witness interviews, and prepare cases for review by the appropriate prosecuting authority.

Regarding your specific complaint, it appears from your letters that the San Antonio Police Department has reviewed your complaint and determined there were no viable criminal charges, as a result, the D.A.'s Office will not be in receipt of any criminal filings on this matter.

Should you have any questions or further concerns, please do not hesitate to contact me at (210) 335-2404.

Sincerely,



Jason Wolff
White Collar Crime Division

Cadena-Reeves Justice Center - 300 Dolorosa, Fifth Floor - San Antonio, Texas 78205-3030
(210) 335-2311

For Victim Assistance call (210) 335-2105

Attachment 3



Susan D. Reed
Criminal District Attorney
Bexar County, Texas

January 8, 2008

Mr. Foddrill Sr.
9650 Limestone Pond
San Antonio, TX 78254

Dear Mr. Foddrill:

Thank you for your letter dated Oct 9, 2007 where you provide information to the District Attorney's Office in reference to *ITSD*. I am a prosecutor assigned to the White Collar Crime Division of the District Attorney's Office and your communication has been referred to me for review and response.

It appears from your letter that you may be seeking the filing of criminal charges against *ITSD*. Criminal prosecution, however, requires that certain procedures be followed. First, there is no direct filing of cases with our office. Instead, criminal cases must be filed with the law enforcement agency having jurisdiction over the offense(s) being alleged. Such agencies have the resources and manpower necessary to gather the appropriate evidence and documents, conduct witness interviews, and prepare cases for review by the appropriate prosecuting authority.

Regarding your specific complaint, it appears the conduct you are complaining of occurred in San Antonio, therefore the Texas Rangers is the correct agency to contact.

Should you have any questions or further concerns, please do not hesitate to contact me at (210) 335-2404.

Sincerely,


Adriana H. Biggs, Chief
White Collar Crime Division

AHB: mm

Attachment 4

YAHOO! MAIL

Print - Close Window

Date: Fri, 19 Oct 2007 14:14:42 -0500
From: "Jennifer Bloodworth" <Jennifer.Bloodworth@oag.state.tx.us>
To: foddrill@swbell.net
Subject: Municipal Integrity complaint

COPY

Mr. Foddrill,

The Criminal Investigations Division (CID) of the OAG has reviewed your complaint regarding allegations of open records violations, fraud, etc... by the City of San Antonio. It appears this matter falls within the jurisdiction of the Bexar County District Attorney. The District Attorney may request assistance from the OAG for both investigation and prosecution assistance, but absent that request, CID can take no further action at this time.

Regarding your open records complaint, the attached AG opinion from Feb 2006, which shows you as a recipient, appears to address your concerns as to the city's withholding of certain documents. You may fax any additional complaints regarding open records violations to the Open Records Division at 512-463-2092.

Sincerely,

Sgt. Jennifer Bloodworth
Special Investigations Unit
Criminal Investigations Division
Office of the Attorney General of Texas
512.936.7867
512.478.4963 (fax)
jennifer.bloodworth@oag.state.tx.us

Attachments

Files.

AG_opinion.pdf (159k)

Attachment 5

TEXAS DEPARTMENT OF PUBLIC SAFETY

TEXAS RANGERS

COMPANY "D"

6502 S. NEW BRAUNSFELS RD., San Antonio, Texas 78223
(210) 531-4340 FAX (210) 531-4358

STANLEY CLARK
DIRECTOR

LAMAR BECKWORTH
ASST. DIRECTOR

COMMISSION
ALLAN B. POLUNSKY
CHAIRMAN

C. TOM CLOWE, JR.
CARIN MARCY BARTH
ELIZABETH ANDERSON
COMMISSIONERS


September 15, 2008

John E. Foddrill, Sr.
9650 Limestone Pond
San Antonio, Texas 78254

Mr. Foddrill,

On August 22, 2008, we received a package from the "Office of the Governor - Criminal Justice Division" regarding a correspondence and CD you forwarded to their office. The correspondence alleges the City of San Antonio committed fraud against federal and state grant funded programs. As per our Department policy and protocol, the district attorney must make a formal request to our division to investigate any allegations of public corruption. For this reason, any further correspondence received from you will be immediately forwarded to the Bexar County District Attorney's office.

Respectfully,



H.L. Whitman, Jr., Captain
Texas Rangers Company "D"
San Antonio, Texas

Attachment 6

San Antonio Express-News

MYSACOM | Thursday, July 11, 2013 | THE VOICE OF SOUTH TEXAS SINCE 1865

COMMENTARY *By Brian Chasnoff*

Ex-prosecutor says DA favored Sen. Uresti's son

Carlos Uresti Jr. was fortunate in 2004 to have a father in state government.

Even more so, the son of state Sen. Carlos Uresti, who then was serving in the Texas House, was fortunate that Bexar County District Attorney

Susan Reed cared about his father's position, according to a former felony prosecutor in Reed's office.

That year, in the first in a series of run-ins with police involving suspicious of drunken driving, Uresti Jr. was charged

with filing a false report to a peace officer.

Following instructions by Reed, the former prosecutor, Mike Cohen, made certain the charge never was filed in court, he said.

"I remember being called up

to Susan's office," said Cohen, who resigned as a Bexar County prosecutor in 2007. She "explained that (Uresti) is a friend of the office, that his son had picked up a misdemeanor offense and we want to approach *Ex-prosecutor continues on A2*



Susan Reed left a message in which she didn't acknowledge the allegation. She didn't respond to a second message.

Ex-prosecutor cites favoritism by DA

From page A1

the senator and see if we can help his son out with the case." "He was trying to push legislation through that she wanted," he continued, "and she wanted to keep him friendly because he's a Democrat and she's a Republican."

I called Reed on Wednesday to ask about the allegation. She called back while I was speaking with the state senator and left a phone message in which she did not acknowledge the allegation. She did not respond to a second message seeking comment. Cohen's allegation comes after Reed recently has taken pains to stress that her office does not favor well-connected suspects.

In May, I wrote that a special prosecutor last year successfully sought the dismissal, in the "interest of justice," of a DWI charge against Truman Biggs, the 18-year-old son of Adriana Biggs, who was the chief of the district attorney's white-collar crimes division.

Appointed by a judge, Charles Bunk, the special prosecutor, never filed the charge in court, although Truman Biggs had registered a blood-alcohol content of 0.17, well above the legal limit of 0.08.

Reed had properly recused herself from the case, but she nonetheless forced Adriana Biggs to resign and filed a motion to reopen the case after I exposed it.

In Bexar County, drunken driving is a deadly epidemic, and Reed has assumed a hard-as-nails stance against the crime, mandating blood draws for anyone who refuses a



BRIAN CHASNOFF

Commentary

called UTSA police and reported his Lexus stolen, according to a police report.

Earlier that morning, someone had crashed the Lexus on a street near campus and fled the scene.

An officer who responded to Uresti Jr. "smelled an odor of an alcoholic beverage emanating from (his) breath," the report stated. Uresti Jr. denied he'd been drinking and claimed he'd left his keys in the ignition when he parked his car.

Suspecting Uresti Jr. had actually wrecked his car, the officer explained to him the consequences of filing a false report to police. Uresti Jr. however, said the car had been stolen.

Uresti Jr., in fact, was lying. And later that day, according to the report, he lied again. Summoned to the UTSA Police Department, he insisted he'd left his keys in the Lexus and discovered the car missing.

Three days later, Uresti Jr. came clean.

Alongside his father and mother, Uresti Jr. told police "how the accident happened, and why, he knowingly, with intent to deceive, filed a false report to (police) regarding the theft of his vehicle," the report

1604

The officer lost sight of the pickup as it entered a subdivision, but he found it parked in a driveway. The hood was warm, and a Bud Light beer can lay in front of the pickup, according to the report.

Eventually, someone emerged from the house and told the officer that Uresti Jr. had been driving but fled because "he was scared about what his dad was going to do to him," the report stated.

UTSA police later filed a charge of evading arrest or detention, a state jail felony.

'Weak case'

Once again, the charge against Uresti Jr. didn't stick: Reed's office rejected it.

I called Reed on Wednesday to ask why her office dropped both the false report to a peace officer charge and the evading arrest charge.

In a return phone message, Reed said, "What I recall about (Uresti Jr.) is he had an evading arrest. It was a weak case. We left it pending when he went into the military."

Again, this decision did not improve the behavior of Uresti Jr.

In January 2008, a San Antonio police officer pulled him over for speeding. Noticing bloodshot eyes, the officer requested that he submit to a field sobriety test, but Uresti Jr. refused.

Uresti Jr. "kept requesting I give him a warning and let him go," the officer wrote in a report. Instead, Uresti Jr. was arrested and charged with driving while intoxicated — technically, his first.

Jr.

'Level playing field'

Before Cohen resigned, he and Reed had a falling out.

"As a felony prosecutor, I had a reputation for being pretty fair," Cohen told me. "And so lawyers would come to me with defendants charged with either small amounts of felony possession of drugs or DWIs. "They were just poor people from the barrio or people that weren't privileged, just people who had a chance — they had a scholarship waiting for college or they had a great job opportunity, and this (charge) was just going to destroy their life."

In some cases, Cohen gave these young defendants a break.

"I would agree to meet with the lawyer, his client, and I'd always try to bring in the parents to make them earn a dismissal. They would have to do community service, they would have to take weekly urinalysis. ... (About) eight times I did this. And (Reed) caught wind of this."

Cohen said Reed called him to her office, where he protested that if the "privileged or their benefactors can get special treatment," then "people who are just the opposite, whose lives shouldn't be ruined" should not be excluded.

"And she said, 'Well, we're not going to have that,'" Cohen said.

Reed began auditing Cohen's dismissals and later moved him to another section with no authority to dismiss cases, he said.

"I felt real betrayed, very betrayed," he said.

Demanded the fundamental Cohen

In May, I wrote that a special prosecutor last year successfully sought the dismissal, in the "interest of justice," of a DWI charge against Truman Biggs, the 18-year-old son of Adriana Biggs, who was the chief of the district attorney's white-collar-crimes division.

Appointed by a judge, Charles Bank, the special prosecutor, never filed the charge in court, although Truman Biggs had registered a blood-alcohol content of 0.17, well above the legal limit of 0.08.

Reed had properly recused herself from the case, but she nonetheless forced Adriana Biggs to resign and filed a motion to reopen the case after I exposed it.

In Bexar County, drunken driving is a deadly epidemic, and Reed has assumed a hard-as-nails stance against the crime, mandating blood draws for anyone who refuses a Breathalyzer test.

Cohen, now a defense attorney, joined the Bexar County district attorney's office in 1991. He resigned in 2007 after picking up a charge of possession of marijuana in Nueces County, he said.

"I just tendered a letter of resignation," he told me. "It was an embarrassment to me and the office."

Before his resignation, however, Cohen served as a strong right arm for Reed.

"Susan would tap me to take care of special projects," he said. "We were friends. I was part of that inner circle."

One "special project," he said, involved Uresti Jr.

False report

In 2004, Uresti's son was an 18-year-old student at the University of Texas at San Antonio. At about 5 a.m. on Sept. 24, he

an alcoholic beverage emanating from (his) breath," the report stated. Uresti Jr. denied he'd been drinking and claimed he'd left his keys in the ignition when he parked his car.

Suspecting Uresti Jr. had actually wrecked his car, the officer explained to him the consequences of filing a false report to police. Uresti Jr., however, said the car had been stolen.

Uresti Jr., in fact, was lying. And later that day, according to the report, he lied again. Summoned to the UTSA Police Department, he insisted he'd left his keys in the Lexus and discovered the car missing.

Three days later, Uresti Jr. came clean.

Alongside his father and mother, Uresti Jr. told police "how the accident happened, and why, he knowingly, with intent to deceive, filed a false report to (police) regarding the theft of his vehicle," the report stated.

UTSA police filed the charge with the district attorney, but the misdemeanor never made it to court.

Reed "had instructed me to take care of the case," Cohen told me. "I remember relaying that to the senator, and his reaction was, 'Well, I don't expect any special treatment. My son needs to pay for what he did.'"

But as we got to talking about the case, his concern was that his son wanted to be a Marine because the senator had been a Marine, and they were concerned that (the case) may affect that.

Uresti Jr. "did admit he was drinking" when he crashed the car, Cohen said.

Andrew del Cueto, an attorney who represented Uresti Jr. at the time, confirmed that

"nothing happened to that charge. I don't think it ever got

other police report. Asking Uresti Jr. for his driver's license, the officer "detected a strong odor of an alcoholic beverage emanating from (his) breath and observed that his eyes were very glossy and red," the report stated.

This time, Uresti Jr. was charged with driving while intoxicated, and the district attorney's office filed the charge in court. The charge, however, later was dismissed and expunged from Uresti Jr.'s record.

Del Cueto, who again represented Uresti Jr., said a judge at a hearing "ruled that the police officers did not have probable cause to arrest Uresti Jr. because 'they arrested him out-side of his vehicle.'"

No records of the case exist at the courthouse because the charge was expunged.

Uresti Jr. again was in the clear. But his good fortune did not stop dangerous behavior.

At 3:25 a.m. on Dec. 21, 2005, UTSA police received a call that a maroon pickup was stopped in a lane on UTSA Boulevard and its passengers were "yelling at passing vehicles."

An officer saw the pickup "turn in circles . . . jumping over curb lines." (The officer also noted two blue stickers in the rear windows that read "Uresti.")

Following the pickup, the officer noticed it swerving and "suspected the driver was driving while intoxicated."

The officer activated his emergency lights and sirens. But Uresti Jr., who was driving, did not stop.

Instead, the report states that he led the officer on a harrowing chase, at times exceeding 90 mph and running a stop sign and two red lights. At one point, Uresti Jr. switched off his headlights and sped onto Loop

I caused Reed on Wednesday to ask why her office dropped both the false report to a peace officer charge and the evading arrest charge.

In a return phone message, Reed said, "What I recall about (Uresti Jr.) is he had an evading arrest. It was a weak case. We left it pending when he went into the military."

Again, this decision did not improve the behavior of Uresti Jr.

In January 2008, a San Antonio police officer pulled him over for speeding. Noticing bloodshot eyes, the officer requested that he submit to a field sobriety test, but Uresti Jr. refused.

Uresti Jr. "kept requesting I give him a warning and let him go," the officer wrote in a report. Instead, Uresti Jr. was arrested and charged with driving while intoxicated — technically, his first.

This time, the district attorney's office prosecuted.

Uresti Jr. pleaded no contest and received "a two-year probation sentence and a \$600 fine with ignition interlock," Reed said in her phone message, "which was probably a bit more onerous than what was generally done at the time by the courts."

"And I recall that Sen. Uresti was not happy with me, and I think he eventually supported my opponent," Reed added. "So there you have my recollection."

Uresti Jr. now is a paralegal at his father's law firm and did not return a phone call asking for his comments.

Reed did not respond to a second phone message, in which I asked again about Cohen's allegation that Reed asked him to dismiss the 2004 case that was pending against Uresti

I would agree to meet with the lawyer, his client, and I'd always try to bring in the parents to make them earn a dismissal. They would have to do community service, they would have to take weekly urinalysis. . . . (About) eight times I did this. And (Reed) caught wind of this."

Cohen said Reed called him to her office, where he protested that if the "privileged or their benefactors can get special treatment," then "people who are just the opposite, whose lives shouldn't be ruined" should not be excluded.

"And she said, 'Well, we're not going to have that,'" Cohen said.

Reed began auditing Cohen's dismissals and later moved him to another section with no authority to dismiss cases, he said.

"I fell real betrayed, very betrayed," he said.

Beyond the betrayal, Cohen said a sense of injustice is motivating him to blow a whistle against Reed.

"It's just not fair to play favorites," he said. "We should all be on a level playing field — rich, poor, it shouldn't matter."

Del Cueto, Uresti Jr.'s attorney whose law practice partner, Nico LaHood, unsuccessfully campaigned against Reed in 2010, said he wasn't surprised by Cohen's attack.

"Mike Cohen was the scapegoat for the DA's office," he said. "He was the one that Susan used to get her hands dirty because Susan wouldn't do stuff directly. So she used Mike Cohen."

"The problem with Susan is that loyalty only flows up, it never flows down," he continued. "And then you have people she's extremely disloyal to, and they get upset."

Attachment 7

Shadow of a doubt

On February 11, the jury came down against would-be city whistleblower **John Foddrill**, news that didn't surprise the QueQue team member who sat through some of the trial. The plaintiffs were **outgunned** by a super-prepared City Attorney staff, and many of the jurors often looked **bored** or **confused** by the complicated paper trail between the Information Technology Services Department, Municipal Integrity, and the Contract Services Department. The QueQue wonders what will happen to the **current COSA employees** who testified that Foddrill was a good manager, that **mismanagement** was rife in his old department, and that others weren't even given a slap on the wrist for the same **infractions** used to justify Foddrill's 2006 termination. Two off-the-record inside sources told the *Current* this winter that although the **telephone-variable slush fund** has been replaced with more concrete **accounting methods**, the department's problems are far from resolved.

Another detail needles us in the rare quiet moment. An *Express-News* story reporting on a trial day that the QueQue could not attend seemed to place great weight on a statement by **Texas Rangers Captain Hank Whitman**, who met with Foddrill for a few hours last fall. "... [Whitman] and other officials with the Rangers and Bexar County District Attorney's Office found **no evidence of fraud** or official misconduct, Whitman testified," wrote the reporter. "We could not **substantiate** any of the **allegations** at that time," Whitman said."

But Whitman told the *Current* in a conversation late last year that his department **did not investigate** Foddrill's claims, and wouldn't unless asked to do so by the DA; **First Assistant DA Cliff Herberg** confirmed Tuesday that they never made that request because they didn't think there was a **criminal case** to prosecute.

Foddrill's claims against his old employer didn't look like criminal action to him, either, Whitman said, but "I agree that they had some **accounting problems** there." The issue was one of jurisdiction in a way: "We're not **administrative violations** investigators," he said. If the DA declined to investigate, he added, Foddrill's remaining avenue was the civil suit.

The bottom line, said Whitman: "We're not doing an investigation; at this point we don't have an active investigation. That was a **meeting only** with Mr. Foddrill."

Is it surprising that an investigation that was never conducted didn't substantiate anything?

<http://www2.sacurrent.com/news/story.asp?id=69870>

Attachment 8



Susan D. Reed
Criminal District Attorney
Bexar County, Texas

December 1, 2009

Mr. Francis (Frank) B. Wells
7123 Thrushview #34
San Antonio, Texas 78209


(via CMRRR#7005 2570 0001 4320 0819)

Dear Mr. Wells:

This Office is in receipt of your request for information regarding documents related to an investigation of alleged criminal activity by persons named in your request-dated November 13, 2009, and received by this Office on November 23, 2009. We have no documents responsive to your request.

Sincerely,

SUSAN D. REED
Criminal District Attorney
Bexar County, Texas

By: 
Assistant Criminal District Attorney
Civil Section
300 Dolorosa, 4th Floor
San Antonio, Texas 78205
Phone: 210.335.2139
Fax: 210.335.2151

Attachment 9



Susan D. Reed
Criminal District Attorney
Bexar County, Texas

November 23, 2009

Honorable Greg Abbott
Attorney General of Texas
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

(via CMRRR#7005 3110 0000 0677 1769)

Dear Attorney General Abbott:

Pursuant to § 552.301 of the Texas Government Code we are writing to request an open records decision regarding the status of certain information. We believe that the information requested is exempt from disclosure under § 552.108 of the Texas Government Code.

Background/Date Request Received.

The Bexar County Criminal District Attorney's Office received a letter from Guadalupe Carreon Jr. on November 6, 2009 requesting any search warrants, notes, emails, letters, requests, official inquiries and phone logs related to the investigation of the bank accounts of Jose Medina. The request for information is attached as Exhibit A.

Reasons to Support Withholding Requested Information:

TEXAS GOVERNMENT CODE § 552.108 (a)(2)

The requested information relates to a preliminary investigation by the Bexar County District Attorney into allegations of possible bribery and/or financial misconduct. As a result of the investigation, no improper activity was uncovered, the individual was never arrested or charged with a crime, and a case was never filed. Thus, there was never a conviction or deferred adjudication. TEXAS GOVERNMENT CODE § 552.108 (a)(2) explicitly excepts from the requirements of § 552.021 information that deals with the

November 23, 2009

detection, investigation, or prosecution that did not result in conviction or deferred adjudication

TEXAS GOVERNMENT CODE § 552.108 (a)(4)(A) and (B)

The requested information was collected and prepared by the District Attorney's Office solely for the purpose of pursuing criminal litigation. TEXAS GOVERNMENT CODE § 552.108 (a)(4)(A) explicitly excepts such information from the requirements of § 552.021. In addition, a portion of the requested information reflects the mental impressions and legal reasoning of the attorneys responsible for preparing and investigating the case which is excepted from the requirements of § 552.021 pursuant to TEXAS GOVERNMENT CODE § 552.108 (a)(4)(B).

TEXAS GOVERNMENT CODE § 552.108 (b)(2)

The requested information constitutes an internal record of the District Attorney's Office and relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication. TEXAS GOVERNMENT CODE § 552.108 (b)(2) explicitly excepts such information from the requirements of § 552.021.

TEXAS GOVERNMENT CODE § 552.108 (b)(3)(A) and (B)

The requested information constitutes an internal record of the District Attorney's Office and was prepared solely for the purpose of pursuing criminal litigation. TEXAS GOVERNMENT CODE § 552.108 (b)(3)(A) explicitly excepts such information from the requirements of § 552.021. In addition, a portion of the requested information reflects the mental impressions and legal reasoning of the attorneys responsible for preparing and investigating the case which is excepted from the requirements of § 552.021 pursuant to TEXAS GOVERNMENT CODE § 552.108 (b)(3)(B).

For your review, we have enclosed a representative sample of the documents included in the file. We would assert that the above exceptions apply to all of the documents requested.

Honorable Greg Abbott
Page 3


November 23, 2009

The Bexar County Criminal District Attorney's Office respectfully seeks a ruling declaring that the documents requested are excepted from disclosure based on § 552.108.

Sincerely,

SUSAN D. REED
Bexar County Criminal District Attorney

By:


Assistant Criminal District Attorney
Civil Section
300 Dolorosa, 4th Floor
San Antonio, Texas 78205
Phone: 210.335.2139
Fax: 210.335.2151

Enclosures

✓ cc: Guadalupe Carreon Jr. (letter only)

Attachment 10



Re: Foddrill confidential client email

Monday, March 16, 2009 5:05 PM

From:

"Malinda Gaul" <malindag@swbell.net>

To:

foddrill@swbell.net

In response to your email below, I have reviewed my file. I only had two conversations with Whitman. On October 13, 2008, you sent me an email stating that Whitman needed a courtesy call from me stating he could meet with you. I called him on October 13, 2008 and told him it was alright for him to meet with you. I have no notes from that call other than an entry into my billing records that I called Whitman. On December 5, 2008, Whitman left a message for me to call him. I spoke with him on December 8, 2008. The only note I have regarding that call is on the telephone message: "Re: Foddrill Letter sent re meeting by client with untruths." What I remember is that during that call Whitman said you had sent a letter to his superior claiming: (1) Whitman had confirmed violations of law during your meeting(s) and (2) Whitman was not investigating your claims. Whitman was calling to let me know that the statements in your letter to his superior were untrue. He said he did not confirm to you any violations of law and that, unknown to him, after your meeting the DA had looked at Medina's bank account, but found nothing unusual. Whitman said he had provided a response regarding your letter to his superior.

There is no method for me to obtain any of the information about the actions of the DA, DPS, Whitman, or Elliott. You can try sending an open records request.

NEW ADDRESS

Malinda A. Gaul
Gaul and Dumont
924 Camaron
San Antonio, Texas 78212
210-225-0685
210-320-3445 – fax

----- Original Message -----

From: John E. Foddrill Sr.
To: malinda Gaul
Cc: malinda Gaul
Sent: Monday, March 16, 2009 4:19 PM
Subject: Foddrill confidential client email

Malinda;

Could you please collect any of the information you kept when you spoke with Whitman or anyone else about the violations of law ?

You told me that Whitman said that the DA was looking into Medina's bank records. Do you have any notes about this conversation ?

If Whitman testified that he never told me that the allegations I reported were violations of law then why would the DA be investigating Medina's bank records ?

Can we get any information from the DA or the DPS through an open records request or any legal means concerning my meeting with Whitman and the 3 others ? Can we get any info on any followup to our meeting as is mentioned in Asst. DA Elliott's voice mail or Whitman's conversations with you ?

I want to report the perjury and want a fair trial ASAP.

Thank you.

John

Attachment 11



RE: Foddrill Thank you

Wednesday, October 15, 2008 9:02 AM

From: "Whitman, Hank" <Hank.Whitman@txdps.state.tx.us>
 To: foddrill@swbell.net

The personnel you met with yesterday were Asst. District Attorney Barry Elliott and DA Investigator Julian Martinez. As we talked about extensively regarding the issue of altering government documents, this offense is described under section 37.10 of the Texas Penal Code.

From: John E. Foddrill Sr. [mailto:foddrill@swbell.net]
Sent: Wednesday, October 15, 2008 8:12 AM
To: Whitman, Hank
Subject: Foddrill Thank you

Capetian Whitman,

I wanted to take the time to say thank you for taking the time to meet with me yesterday. Please pass along my thanks to Sgt. Coleman also.

I took a few notes yesterday but wondered if you kept any record. What I forgot to write down was the names of the two DA men there. Do you have their names?

Also I want to do research on my own about the sections of law you were looking up. Where would I look to get any background on the law pertaining to the falsification of a public document or one that intended to harm someone that we discussed? There is so much information on the Internet and maybe you can limit my search down a little. Is there a certain document and section that covers this?

Again, thank you for your time.

John E. Foddrill Sr.

Attachment 12

Audio Recordings available for review

**File # 112- 10/28/2008 Voice Mail from Bexar County Assistant DA Barry Elliott
in reference to our October 14, 2008 meeting.**

ADA Elliott states: “get a more formal statement”, “may expect someone to contact You and go from there”, “I did talk to some people” What kind of statement would one be expected to make to a criminal District Attorney official if not a statement concerning violations of law? Elliott obtained a search warrant (DA Reed denied FOIA request and won’t produce a copy) and examined the bank records of City IT Manager Jose Medina after reviewing documentation showing that City IT Director Jose Medina and vendor Isabel Gonzaba (IG Communications-Globalscope) conspired to submit and approve “padded” invoices via the Avaya telephone contract and the internal billing account- the “variable”. ADA Elliott reviewed the city email where Gonzaba detailed her plan to add extra hours to the invoice submissions for three contract employees and Medina approved. He reviewed the actual invoices, billing statements and auditor’s notes revealing the criminal activity. Texas Ranger Capt. Whitman lied under oath in court when he said that no violations of law were identified during an Oct. 2008 meeting and Elliott’s action proves him to be a liar. A report of the theft of our tax/grant dollars via “padded” invoices/illegal contracts/ fake time reports should have been investigated, the thieves should have been placed in jail and our money should have been recouped. Whitman lied, Elliott hides and the cover-up continues.

File # 129 – 01/05/2010 Initial informal meeting with HUD OIG Agent Victoria Marquez and Senior Auditor Michael Hall.

Marquez states “I don’t care” too many times to count. Proof of grant fraud, theft of public/grant funds, falsification of government documents, aggravated perjury, obstruction, etc. was reviewed. They were provided with volumes of documents and CDs containing years of files proving the illegal use of the internal billing account – the “variable”, the theft/misuse of tens of millions of dollars, the grant fraud and ongoing cover-up. Agent Marquez REFUSED to interview relevant witnesses and IGNORED reams of evidence proving the criminal activity when she allowed City persons to submit known false statements with no mention of the “variable”.

File # 131 – January 2010 Meeting with Senator Jeff Wentworth.

Wentworth reviewed proof of fraud/theft and the criminal trespass warning issued by city attorney Bernard/SAPD Chief McAnus. At 33 minutes Wentworth can be heard saying “I’ve never seen anything quite like this” in reference to the warning. At 38 minutes he can be heard speaking via phone with State Auditor John Keel CPA using the words “credible”, “corrupt politicians” and “cover-up”. CPA Keel continues to ignore proof of the crimes and now Judge Wentworth ignores the criminal conspiracy.

File # 140 - July 21, 2010 Meeting with Senator Leticia Van De Putte and via conference call staff member Brent Turner.

They reviewed a report detailing the theft of funds by Medina and Gonzaba’s bogus time report scheme and a report detailing the fraud upon the court by Varn and Klein. The Senator comments that DA Reed had jurisdiction when her office was publishing letters stating that they could do nothing unless called into investigate by the FBI or Rangers. Van De Putte continues to look away.

ATTACHMENT 13
PRINTED SEPERATELY

Attachment 14

CITY OF SAN ANTONIO
OFFICE OF MUNICIPAL INTEGRITY

INVESTIGATOR'S
REPORT



COSA 01115

CITY OF SAN ANTONIO
Office of Municipal Integrity

TO: Virginia M. Quinn, Manager, Office of Municipal Integrity
FROM: Steve Harrison, Investigator, Office of Municipal Integrity
SUBJECT: Investigation of Possible Misconduct
DATE: October 10, 2005

ALLEGATION:

On August 25, 2005, ITSD Telecommunications Manager John Foddrill contacted the Office of Municipal Integrity (OMI) and reported the following allegations:

- In June 2005 he was threatened by his immediate supervisor Jose Medina after reporting to Mr. Medina that: "...our billing was all messed up, invoices are messed up, overcharges were occurring...I told him that I couldn't do this anymore and that I was going to talk to Mr. Varn." At that point Mr. Medina got, "right up in my face" and said, "You'll be sorry for saying that. I'm going to make you sorry for saying that."
- Jose Medina instructed him to curtail his answers to an internal audit being conducted by Contract Services, advising him how to answer auditor inquiries so as not to be fully forthcoming about certain issues.
- ITSD Acting Director Hugh Miller shows obvious favoritism toward a company called Cisco Systems, even though two other companies (Avaya and Nortel) currently have City contracts for telephone and network services. Mr. Miller formerly worked at SAWS where Cisco was the telephone and network provider. Mr. Miller told him and Mike Mitchell (Network Manager) not to make any other purchases from Avaya or Nortel, despite their status as contract providers. Mr. Foddrill said that Mr. Mitchell requested approval to purchase equipment from Nortel, which was rejected by Mr. Miller in favor of purchasing equipment from Cisco. Mr. Foddrill said they been told by Mr. Miller that if they want to make any purchases they are to make them through Cisco.

OMI Investigator Steve Harrison was assigned to this case.

DETAILS OF INVESTIGATION:

Interview of John Foddrill

I interviewed John Foddrill on August 29, 2005. He confirmed that on or about June 2005, while working late at ITSD, Jose Medina threatened him in the hallway outside Mr. Medina's office after Mr. Foddrill told him he was going over his head about billing irregularities he had

uncovered after auditing telecom invoices. Mr. Foddrill said he told Mr. Medina he couldn't continue to do business that way and that he intended to take his concerns to Interim Chief Information Officer (CIO) Richard Varn. Mr. Foddrill said it was at that point that Mr. Medina threatened him verbally by saying, "You'll be sorry for saying that. I'm going to make you sorry for saying that." Mr. Foddrill said that Mr. Medina reiterated the threat in a follow-up phone call to his home later that night or shortly thereafter. Mr. Foddrill informed Mr. Varn about the incident. Mr. Varn, whose brief tenure as interim CIO was coming to a close, apparently issued instructions to Acting ITSD Director Hugh Miller to fire Mr. Medina so that Mr. Foddrill could report directly to Mr. Miller. According to Mr. Foddrill Mr. Miller did nothing about the threat issue for several weeks until Mr. Foddrill made outcry to newly appointed Assistant City Manager and CIO Michael Armstrong.

Mr. Foddrill reiterated his allegation that Mr. Medina advised him to respond to Contract Services auditor inquiries so as not to be fully forthcoming with information relevant to their audit.

Mr. Foddrill told me he believes that Hugh Miller has a preference for a telecom company called Cisco Systems. He said that Mr. Miller is relatively new to his position, having come from SAWS, where he believes Cisco was their telecom provider. Mr. Foddrill told me that Mr. Miller's preference for Cisco evidenced itself as soon as he became acting director in May or June of 2005. According to Mr. Foddrill Mr. Miller scuttled the previous strategic telecom plan shortly after assuming control of ITSD. The previous strategic telecom plan called for strengthening the existing infrastructure using the current contract providers Avaya and Nortel. Mr. Foddrill told me that shortly after he became director Mr. Miller invited Cisco representatives to a make a sales pitch to ITSD senior staff. That meeting was held in Jose Medina's office. Present at the meeting were Mr. Miller, Mr. Foddrill, Mr. Medina, Mike Mitchell, and 3-4 Cisco representatives. Mr. Foddrill said he took exception to some of the material Cisco was presenting, and said so. He said his objections to Cisco were countered by Mr. Miller, and not the Cisco representatives. Mr. Foddrill has a low opinion of Cisco. He said that Cisco and Avaya's systems are incompatible, that they used deceptive business practices when he dealt with them while working for SWB and Valero, and that Cisco had big problems in Houston, Dallas, and California, and that these problems are noted in reputable news sources.

Mr. Foddrill said that after the initial Cisco presentation ITSD started having weekly on-site meetings with them that were strategic in nature. One of issues discussed in these meetings was having Cisco do a test rollout at a City location to demonstrate their capabilities. Subsequently ITSD and Cisco personnel toured City facilities for that purpose. Concurrent with the courting of Cisco was Mr. Medina's instruction (presumably initiated by Mr. Miller) that there were to be no more equipment purchases against the Avaya and Nortel contracts. Mr. Foddrill said that Mr. Medina told him, "We're going to buy out the Nortel contract and cancel most aspects of Avaya." At that time Mr. Medina directed Mr. Foddrill to send two of Mr. Foddrill's employees (Jim Garcia and Raul Ortega) to attend Cisco training in California and fund the training out of the Avaya contract. As it turned out ITSD did not move quickly enough to meet the registration deadline for this training so the identified individuals never attended it, but Mr. Foddrill was able to provide this office with documentation that proved the intent to send them.

COSA 01117

Mr. Foddrill told me he had no first-hand knowledge of how the telephone variable works, but that he's heard rumors about how the variable is used to pay for things unrelated to City phones.

Subsequent to my interview with Mr. Foddrill he provided me with a large amount of written material on Cisco and some internal e-mail traffic which he believed supported his allegations. The e-mail documentation showed that weekly meetings had been scheduled with Cisco through the end of the year, but were canceled after this investigation began. The material on Cisco outlined problems that the City of Dallas and Houston had with Cisco. I was able to substantiate that information with my own internet search on that subject. The City of Dallas and Houston both had significant problems with Cisco. In Dallas city personnel were fired over some improprieties with Cisco. Mr. Foddrill also provided information about problems the city of San Jose, California, had with Cisco. Those problems resulted in indictments. The problems with Cisco in Dallas, Houston, and San Jose all stemmed from an unusual and inappropriate level of intrusion by Cisco into the processes by which those Cities selected their telecom provider. Mr. Foddrill believed that same scenario, where Cisco has unprecedented and exclusive access to a municipal IT department, was replicating itself in San Antonio.

Meeting with Assistant City Manager/CIO. Michael Armstrong

Shortly after filing his complaint with this office Mr. Foddrill sent Assistant City Manager/CIO Michael Armstrong an e-mail informing him of his complaint and this investigation. Upon receipt of the e-mail Mr. Armstrong called OMI Manager Virginia Quinn requesting a meeting. Mr. Armstrong came to OMI on the afternoon of August 30, 2005, and met with Ms. Quinn and me in our conference room. Mr. Armstrong began by saying that he didn't want to interfere with our investigation. He told us that he has had one meeting with Mr. Foddrill and ITSD Senior Human Resources Analyst Toshua Larkins to address the conflict between Mr. Foddrill and Mr. Medina.

On the issue of Cisco Mr. Armstrong made affirmative comments that led Ms. Quinn and I to conclude that he liked Cisco. He admitted to using Cisco when he was the director of IT in Des Moines, Iowa, and spoke with pride about how he was able to significantly lower telecom costs there by using Cisco. He said the Mr. Miller also had positive experience with Cisco. We asked him if he was aware of meetings being held at ITSD with Cisco representatives, and he said he was aware of one. We mentioned how courting and meeting with a single vendor who is a competitor to the companies currently holding the City telecom contracts might give the wrong appearance. He disagreed and reserved the right to meet with any vendor. We asked him if ITSD had met with other un-contracted telecom vendors, and he said no. Ms. Quinn brought up the problems that Dallas, Houston, and San Jose had with Cisco. Mr. Armstrong quickly dismissed those issues, and then went on to explain that his telecom strategy for the City was to have a single vendor on a single platform. Several times during our conversation Mr. Armstrong said that the decision on what vendor to go with was his and his alone. He added, parenthetically, that he would follow City policy on contracting.

COSA 01118

Interview with Diana F. Lopez

On September 6, 2005, I interviewed ITSD Telecommunications Supervisor Diana F. Lopez. She told me she has not had any personal contact with Cisco representatives, but that she had heard through John Foddrill that Hugh Miller had cancelled the telecom strategic plan that she had worked on last year in favor of moving toward Cisco. She confirmed that they were not allowed to make any major equipment purchases on the existing Avaya contract.

Ms. Lopez told me that over a year ago she went to Jose Medina because they didn't have enough money budgeted to fund the "Caswin" project. Caswin was a program that, among other things, itemized individual 911 billing charges. Ms. Lopez told Mr. Medina that they were thirty to forty thousand dollars short of what was needed to complete the project. According to Ms. Lopez, Mr. Medina called Deborah Almendarez in her presence (on the speaker phone) and asked her if SAPD could come up with the money to complete the project. Ms. Almendarez said she would get back to Mr. Medina on this. Some time later Ms. Lopez was conducting other business with Ms. Almendarez, who asked what we did the money she sent for the Caswin project. Mr. Lopez said she asked Mr. Medina about it and he told her not to worry about it, that he'd take care of it.

Interview with Toshua Larkins

On September 7, 2005, I interviewed Senior Human Resources Analyst Toshua Larkins. Ms. Larkins provides Human Resources consultation and expertise for ITSD and Municipal Courts. Ms. Larkins told me that on August 8, 2005, she attended a meeting with Hugh Miller, John Foddrill, and Michael Armstrong in which they discussed the alleged threat of Mr. Foddrill by Jose Medina. At that meeting Mr. Foddrill stated again that Mr. Medina had threatened him twice, once in June at ITSD and once on the phone shortly thereafter. Mr. Foddrill admitted there were no witnesses either time.

Ms. Larkins said that on August 16, 2005, she met again with Mr. Medina, Mr. Miller and Mr. Armstrong regarding the threat issue. At that meeting Mr. Medina denied threatening Mr. Foddrill. He admitted to calling Mr. Foddrill at home regarding some work business, but not issuing any threats. Ms. Larkins said that management decided that the best way to deal with the issue was to move Mr. Foddrill from Mr. Medina's supervisor and place him under Customer Service Manager Diana Gonzalez.

Interview with Michael Mitchell

On September 8, 2005, I interviewed ITSD Assistant Information Services Manager Michael Mitchell. Mr. Mitchell told me that 6-8 weeks ago Mr. Foddrill told him that he'd had a run-in with Mr. Medina which Mr. Foddrill characterized as threatening.

Mr. Mitchell told me his relationship with Mr. Medina was fairly good, but said that Mr. Medina has trouble saying no, and aims to please at any cost. This has caused problems in the past where Mr. Medina has committed Mr. Mitchell and his assigned staff to projects that were difficult to complete in a timely manner.

When asked about Cisco Systems Mr. Mitchell provided the following quote taken from his sworn statement:

Three years ago we looked at Cisco as a possible vendor but eventually decided to go with Nortel. Cisco wasn't a good match at that time, because there was no technical advantage to going with them. Prior to the spring of this year our strategic plan was to strengthen the existing telecommunications (telecom) infrastructure using existing equipment and current contract vendors. In March/April 2005 Hugh Miller took charge of ITSD and he directed me to look at Cisco products for upgrading our telecom systems. I was also directed by Mr. Miller to stop making contract equipment purchases to replenish our rapidly depleted bench stock. Mr. Miller told me I could only make contract vendor purchases for "point specific projects." Mr. Miller told me to, "Start working our way off Nortel."

After Mr. Miller took control of ITSD I was invited to a meeting in Jose Medina's office. Present with me at that meeting were John Foddrill, Hugh Miller, and 3-4 Cisco representatives. At that meeting the Cisco people essentially made a sales pitch about how their company could improve the City's telecom systems. During their presentation the Cisco representatives made comments that were inaccurate. Mr. Foddrill and I both took them to task on some of those comments. In some cases our objections were actually answered by Mr. Miller himself. I was taken aback by this and found it odd that a City representative would be speaking on behalf of a vendor. Since that meeting I have personally contact with Cisco representatives at ITSD at least 20-25 times. In August of this year a standing weekly meeting was established with Cisco at ITSD. The meetings were scheduled through the end of the year, but were canceled by Mr. Miller after three weeks.

Mr. Mitchell told me he recently submitted an internal request for approval to buy 3 routers from their contract vendor Netopia, at a cost of approximately \$116.00 per router. Mr. Miller disapproved that request and verbally instructed him to buy the routers from Cisco, which he subsequently determined cost \$2,078.00 per router.

Mr. Mitchell said he was present in August when ITSD and Cisco personnel visited City fire stations, call-centers, and library facilities looking for a site where Cisco could do a demo rollout of their system.

Mr. Mitchell told me that Jose Medina has directed him more than fifty times to charge data communications equipment and cable to the telephone variable. He estimated that over the past few fiscal years hundreds of thousands of dollars worth of data equipment has been inappropriately charged to the telephone variable.

Interview with Jim Garcia

On September 8, 2005, I interviewed ITSD Telecommunications Systems Supervisor Jim Garcia. Mr. Garcia told me that Jose Medina told him a few weeks ago that, "...we might be going with Cisco."

COSA 01120

In response to questions about items charged to the telephone variable Mr. Garcia provided the following quote:

In 2003 I attended training in Orlando, Florida for a week. Before my departure I was in a room with Allan Barragan and Jose came in. He asked Allan if we had received the bill for my training. Allan said no. Jose said, "Good, go ahead and charge it to the Variable." I've also heard rumors that the trophy case at ITSD was paid for by the Variable, and that some of the remodeling in our office area was also charged to the Variable.

Interview of Mark Terrace

On September 9, 2005, I interviewed former ITSD System Procurement Coordinator Mark Terrace. Mr. Terrace had little or no knowledge about the allegations in this case. He spoke highly of Mr. Medina, but noted that Mr. Medina had difficulty saying no to customers and often committed his people to projects that were difficult to deliver on. Mr. Terrace did not have kind words for Mr. Foddrill, whom he described as a chronic complainer.

Interview of Barbara A. Moore

On September 13, 2005, I interviewed ITSD Accountant I Barbara A. Moore. Ms. Moore is one of two ITSD employees responsible for telephone billing. Ms. Moore provided the following testimony on the telephone variable in a sworn statement:

SBC charges ITSD for what are called OSPA lines. These are basically 207 City phones requested by departments for which it would be too costly to run phone lines for. SBC assumes the networking for these phones and charges them to billing number: 2079000. These costs should be billed directly to the requesting department, but I know we have as many as 200 of these lines that are billed to the variable. We know they are there, but we don't have the time or manpower to root them out. I try and work at it by identifying a few each month, but we just haven't been able to focus our time and energy on it. OSPA lines can be charged at anywhere between \$68.00 and \$200.00 per line, so the costs could be significant. I know there are circuits other than OSPA lines that SBC also charges the City for, and those are also charged to the variable.

I am aware that at the end of FY 04, or the beginning of FY 05 we were directed to bill four miscellaneous charges of approximately \$70,000.00 each to the variable for something I suspect wasn't voice phone related.

Ms. Moore identified Jose Medina as the person responsible for deciding what gets charged to the telephone variable.

COSA 01121

Interview of Aida A. Anguiano

On September 13, 2005, I interviewed ITSD Senior Administrative Assistant Aida A. Anguiano. Ms. Anguiano is the other person assigned to process telephone billing at ITSD. Ms. Anguiano provided the following information on the telephone variable in her sworn statement:

I believe that a couple of Cingular Wireless (cell phone provider for COSA) invoices have been charged to the variable. In the past it wasn't unusual for Jose Medina to forward us 5-10 invoices a month for Integretel products/services. I'm not sure what Integretel provides, but I'm pretty sure it's not voice communication products.

Last summer I was instructed by Jose Medina to bill a large invoice to the variable for goods/services that I was later told was related to the City network. I was instructed to spread the purchase out over the last four months of the fiscal year, in increments of \$70,000.00 to \$77,000.00. I know the total was over \$300,000.00.

She identified Jose Medina as the person who decides what gets billed to the telephone variable.

Interview of Victor Perez

On September 14, 2005, I interviewed ITSD Assistant Information Services Manager Victor Perez. Mr. Perez is in charge of the radio shop at ITSD and told me that Mr. Foddrill came to him months ago saying that Mr. Medina had threatened him. Mr. Perez said that he listened to Mr. Foddrill, but that he didn't see Jose as the kind of person given to issuing threats. Mr. Perez said that Mr. Foddrill frequently comes to his office and vents. He told me that if Mr. Foddrill spent as much time working as he did complaining he'd get more done. He said that Mr. Foddrill keeps going over and over the same stories.

Interview of Michael W. Canion

On September 16, 2005, I interviewed ITSD Equipment and Facilities Manager Michael W. Canion. He told me that the relationship between Mr. Foddrill and Mr. Medina is strained. He said that Mr. Foddrill told him a few months ago that Mr. Medina had threatened him.

Interview of Robert Hammond

On September 16, 2005, I conducted a telephone interview with Office of Management & budget Analyst Robert Hammond. Mr. Hammond was the analyst assigned to assist ITSD in the preparation of their FY 06 budget. He said he worked closely with ITSD all summer, but even after all the contact and repeated inquiries he still did not have a clear understanding of how the variable(s) worked. He confirmed that ITSD is principally funded via an Internal Service Fund which is the vehicle for charging back to departments for IT services. As part of their Internal Service Fund there are actually 4 variables:

- Telecom (the largest at a FY06 projected total of 5.2 million)
- Pagers (less than a million in FY06)
- Cellular (less than a million in FY06)
- Wireless (less than a million)

He no idea how the variable(s) started, if there were policies & procedures governing them, and who had ultimate authority to set them.

Interview of Carlos Villalobos

On September 19, 2005, I interviewed ITSD Senior Management Analyst Carols Villalobos. Mr. Villalobos' primary duties involve processing data invoices for payment, but he also supports Ms. Anguiano and Ms. Moore on telephone billing issues. The only relevant information shared by Mr. Villalobos was his description of Mr. Foddrill and Mr. Medina's relationship as, "very stained." He also told me that Mr. Foddrill told him a couple of months ago that Mr. Medina had threatened him.

Telephone Interview of Joyce Garcia

On September 19, 2005, I conducted a telephone interview of former ITSD employee Joyce Garcia. Ms. Garcia retired from City service on February 26, 2002, after over twenty years of service, much of which was spent working in ITSD telephone billing. She told me she had long-term conflicts with Jose Medina over ITSD billing practices, and repeatedly questioned her immediate supervisor Jerry Galindo about those practices. She said that Mr. Galindo would tell her to process the invoices and bill them to the telephone variable as Mr. Medina directed.

Ms. Garcia told me she believed the variable started within the Finance department, and advised me to speak with City employee Tom Schmidt.

Interview of Jerry Galindo

On September 21, 2005, I met with former ITSD Telecommunications Manager Jerry Galindo at his place of business, River City Christian School. Mr. Galindo left the City in the summer of 2003. He held the position currently occupied by Mr. Foddrill. He told me that he had a good relationship with Mr. Medina. He said that Mr. Medina was extremely customer oriented, and sometimes made work commitments that challenged his team to accomplish.

Mr. Galindo admitted there was a gray area where things might have been charged to the telephone variable that should have been charged to individual departments. He said there was a time when the telephone variable got very high and the City departments were complaining. He was personally involved in cutting the variable in half at that time. He stated that they made the cuts by charging individual departments for services previously charged the variable.

Interview of Thomas Schmidt

On September 21, 2005, I interviewed ITSD Senior ERM Project Specialist Thomas Schmidt. Mr. Schmidt has worked for the City for thirty years and identified himself as one of the people directly involved in the creation of the telephone variable. The following quote is from his sworn statement:

Yes, I was personally involved in designing the database that started the telephone charge-back that included the Variable approximately twenty-five years ago. At that time Southwestern Bell (SWB, now SBC) was billing individual departments for phones. This created problems because some departments weren't paying their bills in a timely manner. I

was general ledger supervisor working City Finance department at that time. The decision was made within the Finance department to have the City IT department receive and reconcile all the departmental phone bills. They would pay the phone company directly and then generate a billing summary for the individual departments, who would be charged-back for their specific phone costs. As part of that process a Variable charge was added to each phone line as a way to pay the overhead operational costs that could not be assigned to each phone. That overhead included personnel costs, and the cost of equipment (lines, switches, etc.) that were used by all departments and hence couldn't be fairly charged to a single department.

Mr. Schmidt told me that the decision to handle phone billing by an internal service fund (including the variable) was arrived at within the Finance department. He also said that there were never any policies/procedures or any written documentation of any kind that pertained to the administration of the variable.

Interview of Michael Garcia

On September 22, 2005, I interviewed ITSD Fiscal Planning Manager Michael Garcia. Mr. Garcia told me he had no contact with Cisco representatives, and denied hearing rumors about Cisco.

He told me that he was "uncomfortable" with aspects of the variable(s), but was more concerned about the enormity of the telephone billing task, and the lack of personnel resources to cope with it.

Interview of Peter Zanoni

On September 26, 2005, Virginia Quinn and I interviewed Management & Budget Director Peter Zanoni in his office. He expressed concern about the variable(s), especially the ADP variable, which use to fund reports out of Famous and now seems to be underwriting SAP.

Mr. Zanoni told us that of all the departments his office works with ITSD was the most difficult. This was a sentiment that he repeated several times. He acknowledged that there is no strict accountability of the ITSD internal service fund. He also said that during the recent budget process ITSD kept changing their revenue projections; to such an extent that he didn't have much confidence in their numbers.

Mr. Zanoni told us that a few years ago the City contracted with a consultant company called Maximus to analyze ITSD's telecom billing practices, etc. Maximus made a number of useful recommendations to tighten up the unregulated billing practices. It appears that none of them were followed.

COSA 01124

Interview of Jose Medina

On September 27, 2005, I interviewed ITSD Information Services Manager Jose Medina. Mr. Medina believed he has a good business relationship with John Foddrill. He recalled Mr. Foddrill

coming to him on occasion concerned about billing issues, but he didn't recall him saying he intended to go over his head with them. He provided the following comments about his run-in with Mr. Foddrill in his sworn statement:

As I recall John's primary issue was not billing, but rather problems he was having with the customer service side of ITSD. John had come to me complaining of lack of support from customer service and I arranged for both parties to sit down and come to an understanding so they could work together. I was not taking sides in the matter and recognized that both parties could do more to work with each other. John wasn't happy with that. In May 2005 John and I were working late and we met in the hallway outside my office. He was upset with me because he felt I was not supporting him in his issues with customer service. He accused me of having double standards. His comments upset me. He was standing in the doorway of my office and as I went to leave I said excuse me, and he didn't move. I said excuse me again, and he moved, and I walked out. Later (maybe the same day or the next day) I called John at home about that issue. I was still upset about his comments. I don't remember saying, "You'll be sorry you said that." It's not very likely that I would have said that. As time went on after that exchange, even as early as a week after that incident, it seemed like our relationship went back to normal. We were cordial to each other and even had light hearted humorous exchanges. I assumed our relationship was back on track.

Mr. Medina denied advising Mr. Foddrill or anyone else withhold information from Contract Services auditors.

On the subject of Cisco Mr. Medina related the following in his sworn statement:

About a year ago Hugh Miller came on board as infrastructure manager and began to talk about Cisco as a way to solve some of the City's telecommunications problems. Mr. Miller showed us informational articles about Cisco. When he became the acting department head we began to meet with Cisco representatives to learn more about how they could help us.

After Mr. Miller took over I was directed to come up with a strategic telecommunications plan that incorporated Cisco.

I was the one who set up weekly meetings at ITSD to meet with Cisco and map out a strategic plan.

Mr. Miller has expressed interest in Cisco's ability to provide Voice Over Internet Protocol (VOiP) technology for the City. VOiP technology would shift phones to data lines in a way that could expand services and reduce costs considerably.

We visited several different City sites showing the Cisco representatives our current telephone infrastructure. We were also scouting sites where Cisco could roll out a demo of their system.

When asked if he directed his division managers to stop making large telecom and data purchases on the existing contracts. He replied:

COSA 01125

Yes, Mr. Miller directed this. I know for a fact that requested network purchases from Nortel have been put on hold; presumably because we are heading in a different strategic direction.

On the issue of the telephone variable Mr. Medina told me that the telephone variable is the means to charge out common fees that are not chargeable to individual departments. Switches, T1 lines, voice-mail, com-links and a data link to SBC are all charged to the telephone variable. He identified himself as the person who decides what gets charged to the telephone variable. When asked if he had ever charged things to the telephone variable that didn't have anything to do with telephones he said yes and provided the following examples:

- ITSD construction and remodeling.
- The department trophy case.
- Budgeted training for ITSD personnel.
- Network data hardware. He admitted that in 2004 he charged approximately \$300,000.00 in data hardware for ERM to the telephone variable, although he was pretty sure ERM paid a portion of that (approximately \$57,000.00).
- The 311 Call Center upgrade to CTI (Computer Telephony Interface) was charged to the telephone variable because they did not have the money in their budget to pay for that.
- The cost of relocating a Department of Community Initiatives switch box was also charged to the telephone variable.

He admitted to calling Deborah Almendarez at SAPD and asking her for funds to cover the purchase of Caswin equipment/ software, but said that Caswin directly benefited SAPD in helping them account for their 911 calls. He said SAPD authorized ITSD to expense it to their account, although he couldn't recall if they ever made the actual upgrade. He denied ever trading favors with departments by expensing departmental purchases against the telephone variable in return for favors later.

Consultation with Contract Services Manager Deborah Segovia

On September 28, 2005, I called Contracting Services and spoke with Contract Manager Deborah Segovia. Deborah confirmed to me that the ITSD contract with Avaya and Nortel were executed under the State's Department of Information Resources (DIR) contract, which means that an RFP did not need to be issued in order to execute a contract with them. The same is true for Cisco. Although Cisco is not listed on the State DIR there is a company listed (Avnet) who is a Cisco reseller. ITSD would not be required to issue an RFP for VOiP or any other service they wanted to contract for under the DIR. In effect, the State has already done the RFP. All that ITSD would be required to do is coordinate with Purchasing and present an ordinance and contract to Council for review and approval.

COSA 01126

Interview with Hugh Miller

On October 6, 2005, OMI Manager Virginia Quinn and I interviewed ITSD Acting Director Hugh Miller. Mr. Miller was well versed in the recent history between John Foddrill and Jose Medina.

He said he inherited the situation from Richard Varn, whom Mr. Miller said had it in for Jose Medina. Just before his departure Mr. Varn left Mr. Miller voice-mail instructions to fire Mr. Medina and make Mr. Foddrill report directly to him. Mr. Miller said he knew that Mr. Varn didn't care for Mr. Medina, so he took Varn's voice-mail comments in that context. In any case Mr. Miller could not fire a civil-service employee without sufficient documented cause, and such cause did not exist. Mr. Miller said he met with the principle players in this incident and ultimately decided it was best to remove Mr. Foddrill from Mr. Medina's chain of command. Such action was accomplished in September of this year.

Mr. Miller acknowledged the contact with Cisco established in this investigation. He is interested in meeting with any vendors that may be able to help the City. He said there are no immediate plans to change to Cisco Systems. He said there is nothing in the FY 06 budget for such a project, and said that the costs associated with such a move would be difficult to convince Council to fund at this point in time. He admitted he directed his program managers to curtail spending on their current contracts, but not with the intent to move to Cisco. Rather he was concerned about shortfalls at the end of the fiscal year. He acknowledged that his staff may have drawn wrong conclusions from Cisco's presence and his direction to curtail contract spending at the end of the fiscal year. He indicated that he needed to do a better job of communicating within his department. He acknowledged that the City's telephony infrastructure needs significant shoring up, and that Cisco might be a company that can provide goods and services to that end, but that there is no move afoot to make that happen anytime soon.

Ms. Quinn carefully reviewed how the ITSD internal services fund and associated variable charges evolved and currently operate. Mr. Miller admitted he was not well informed on how this worked. We informed him that very few people in the City actually know how it works, including the City Office of Management & Budget. We outlined the abuses with the telephone variable and he acknowledged that the process constituted bad business practice. We pointed out to him that there was no evidence of employee misconduct in the administration of the variables; in part because there are no rules governing its administration, but also because there was no evidence that anyone personally profited from its administration. He expressed a desire to fund ITSD directly out of the general fund. He recognized that the current process has created a billing nightmare that he is not staffed for and the City is not well served by.

CONCLUSION:

COSA 01127

The allegation that Jose Medina threatened John Foddrill is not founded due to lack of evidence. Both parties acknowledge that an incident took place in May or June of this year. Both parties gave different accounts of exactly what happened, and agreed that there were no witnesses to the incident. The fact that Mr. Foddrill made outcry to numerous individuals shortly after the event lends some credibility to his account; however, by virtually everyone's account (including Mr. Foddrill's) Mr. Medina is not a threatening person by nature. In fact, those who know him best describe Mr. Medina as a people-pleaser who scrupulously avoids confrontation.

The allegation that Mr. Medina instructed John Foddrill to curtail his answers to Contract Services auditors is not founded. There is no evidence to support this allegation. Mr. Medina

categorically denied the allegation, and none of the other people interviewed in this case testified that they were so advised by Mr. Medina.

The allegation that ITSD Acting Director Hugh Miller showed favoritism toward Cisco Systems is not founded. The evidence shows that after Mr. Miller assumed control of ITSD Cisco was given considerable access to ITSD leadership and functional experts, to include weekly on-site meetings and scouting City locations for a Cisco test roll-out. Mr. Miller denied any pending move to Cisco, stating that such a move would cost millions of dollars that are not included in the FY 06 ITSD budget. He didn't rule out such a move in the future, but admitted that the process would be financially daunting. Mr. Miller said his direction to his managers to curtail buying equipment on the existing telecom contracts was not for the purpose of moving to Cisco, but rather because of uncertainty about funding at the end of the fiscal year. It should be noted that under the State law governmental entities can contract directly with approved vendors without issuing an RFP. Cisco is not an approved company, but a company called Avnet is approved as a Cisco re-seller. There is no evidence that any rules or laws were broken in the meetings with Cisco; however, the appearance of favoritism did appear to exist in the minds of many key ITSD employees. Mr. Miller may need to reevaluate internal departmental communication protocols to ensure his team is better informed about their strategic plans.

Area of Concern:

Pursuant to this investigation I uncovered information about how ITSD pays for shared telephone costs across the City, and how that money was sometimes used by ITSD to pay for things completely unrelated to City phones. The telephone variable charge was established twenty-five years ago to pay for telephone equipment and services that were shared by departments and hence couldn't be fairly billed to any single department. The intent was clear; department specific telephone costs were to be born by the department. In the absence of policy or oversight the telephone variable became a means for ITSD to balance its own books internally. Over the years goods and services were billed to the telephone variable (and hence paid for by City departments) that had nothing to do with shared phone costs. Those things included: The ITSD trophy case, training for ITSD personnel, remodeling at ITSD, numerous department specific purchases, and data equipment for the City network. The unsupervised and unregulated billing of departments under the guise of the telephone variable for the last twenty-five years has likely resulted in them being billed for millions of dollars of goods and services that should have been budgeted and paid for by ITSD. No laws or written rules were violated in the administration of the telephone variable because there never were any; however, it is clear that the business practices associated with the telephone variable are not sound and have contributed to a laissez-faire fiscal environment at ITSD. Contract Services recent audit of ITSD showed significant billing problems. The motivation to assure careful internal contract billing processes is compromised by the ability to tap a bottomless pit of money via the variable(s) and at the end of the day pass the costs along to City departments.

Management should give careful thought to continuing the business practices tied to the variable(s). One solution would be to scuttle the whole concept of departmental charge-backs and put all of ITSD's operating costs into the General Fund. This would require ITSD to budget

for programmed expenses. It would also require more stringent internal accounting practices, and it would give City Council specific budgetary approval authority that it currently lacks.

If management elects to keep the ITSD internal service funds and their associated variable charges, written guidance should be developed that would enforce a level of accountability currently missing from that business process.



Steve Harrison
Investigator
Office of Municipal Integrity

COSA 01129

Attachment 15

STATE'S COPY

Name: JEANETTA TINSLEY

Address: 1043 F ST, SAN ANTONIO, TX

Complainant: City of San Antonio

CoDefendants:

Offense Code/Charge: 260215 - MISAPP FIDUC/FIN INSTIT \$1500 TO \$20,000

GJ: 503248

PH Court:

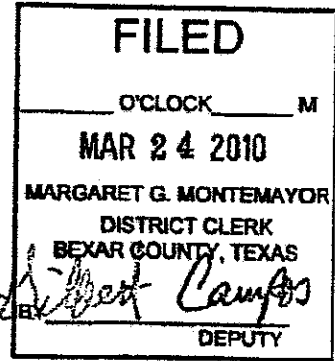
Court #: 399th

JN #: 1406531-1

SID #:564268

Cause #: 2010 - CR - 3098

Witness: State's Attorney



TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS, the Grand Jury of Bexar County, State of Texas, duly organized, empanelled and sworn as such at the March term, A.D., 2010, of the 227th Judicial District Court of said County, in said Court, at said term, do present in and to said Court that in the County and State aforesaid, and anterior to the presentment of this indictment:

on or about the 26th day of January 2009, through on or about the 5th day of March 2009, JEANETTA TINSLEY, hereinafter referred to as defendant, did intentionally, knowingly, or recklessly misapply property namely: lawful currency of the United States of America, having an aggregate value of One Thousand, Five Hundred Dollars (\$1,500.00) or more but less than Twenty Thousand Dollars (\$20,000.00); all of the amounts alleged were misapplied pursuant to one scheme or continuing course of conduct, and the property was held by the defendant as a fiduciary or as a person acting in a fiduciary capacity, contrary to an agreement under which the defendant held the property, and in a manner that involved substantial risk of loss of the property to the City of San Antonio, the owner of said property, and the person for whose benefit the property was held, by using grant funds for entertainment expenses, to wit:

Vendor	Date of Event	Invoice #	Check #	Check Date	Amount
Absolutely Everything Catering	1/27/2009	E00362	1315772	1/27/2009	\$1,500.00
Plaza Club	1/29/2009	10008	1318128	2/10/2009	\$722.96
Suchy's Flowers and Gifts	1/30/2009	199664	1317825	2/9/2009	\$110.00
Patrick Carey	1/31/2009	unknown	1316062	1/28/2009	\$900.00
Westin Riverwalk	1/31/2009	17165	1322158	3/5/2009	\$13,102.99

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Foreman of the Grand Jury