

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)

vs.)

BILLY WADE COUCH, JIM
COUCH, and O.W. MORRIS,)

Criminal No. 77-CR-79

FILED

JUL 27 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal

Procedure and by leave of court endorsed hereon the United States

Attorney for the Northern District of Oklahoma

hereby dismisses the Information against
(indictment, information, complaint)

Jim Couch defendant.

14/Kenneth P. Grobe
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

[Signature]
United States District Judge

Date: July 27, 1977

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

United States of America
vs.
BILLY WADE COUCH, JIM
COUCH, and O. W. MORRIS,

Criminal No. 77-CR-79

FILED

JUL 27 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal

Procedure and by leave of court endorsed hereon the United States

Attorney for the Northern District of Oklahoma

hereby dismisses the Information against
(indictment, information, complaint)

Billy Wade Couch defendant.

[Signature]
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

[Signature]
United States District Judge

Date: *July 27, 1977*

✓

United States District Court

FILED

FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUL 22 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT
77 JUL 22 1977

United States of America

v

G. W. MORRIS

JUDGMENT
AND
COMMITMENT

Magistrate's Docket No. _____

Case No. _____

On this 22nd day of July, 1977, the attorney for the government and the defendant appeared in person and by retained counsel, James D. Goodpaster

IT IS ADJUDGED that the defendant has been convicted upon his plea of² guilty of the offense Count I: knowingly and unlawfully aided and abetted the movement of one adult cow interstate from ~~of the offense~~ Coffeyville, Kansas to Tulsa, Okla. which was a brucellosis reactor animal, was not accompanied by a permit as required; and Count II: aided and abetted the movement of two adult cows interstate from Coffeyville, Kansas to Tulsa, Okla., which were brucellosis exposed animals, were not accompanied by a permit as required, and were not identified by a letter "S" branded on left jaw, before they left the premises, all in violation of 21 USC 121 ~~and 18 USC 2~~ as charged

and the magistrate having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is ~~hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~

is ordered to pay a fine to the United States in the sum of \$150.00 in count I and in the sum of \$150.00 in Count II. The defendant is ordered to stand committed until the fine is paid or he is otherwise discharged by due course of law

~~IT IS ADJUDGED THAT~~

IT IS ORDERED that a certified copy of this judgment and commitment be delivered to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

APPROVED AS TO FORM:

[Signature]
Asst. U. S. Attorney

[Signature]
Robert S. Rizley
United States Magistrate.

A True Copy. Certified this _____ day of _____

(Signed) _____
U. S. Magistrate.

¹Insert "by counsel" or "without counsel; the magistrate advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed, and the defendant thereupon stated that he waived the right to the assistance of counsel." ²Insert (1) "guilty," (2) "not guilty, and a finding of guilty," or (3) "nolo contendere," as the case may be. ³Insert "in count(s) number _____" if required. ⁴Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. ⁵Enter any order with respect to suspension and probation.

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STEVE LAVADA NICHOLSON,)
)
Defendant.)

No. 77-CR-51-C

FILED

JUL 22 1977

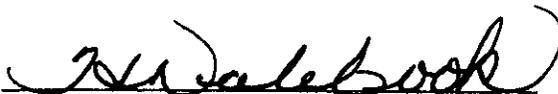
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the motion of the defendant, Steve Lavada Nicholson, for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure, in which he asks the Court to reduce the sentence imposed by it upon him on June 10, 1977.

In considering defendant's motion for reduction of sentence, the Court has carefully reviewed the entire record and finds that the sentence imposed was appropriate, just and reasonable under the circumstances of this case. Therefore, the motion for reduction of sentence is hereby overruled.

It is so Ordered this 21st day of July, 1977.


H. DALE COOK
United States District Judge

DEFENDANT

MARILYNN A. JONES

DOCKET NO. 77-CR-68

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
7	21	77

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

James W. Fransain, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

FILED NOT GUILTY

JUL 21 1977

Jack C. Silver, Clerk U. S. DISTRICT COURT

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Sections 1708 and 495, as charged in Counts 1 and 2 of the Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

The imposition of sentence is hereby suspended, and the defendant is placed on probation in Counts One and Two for a period of two and one-half (2 1/2) years from this date, as to each Count; said probation imposed in Count Two to run concurrently with the probation imposed in Count One.

SPECIAL CONDITIONS OF PROBATION

In addition to the usual conditions of probation, the defendant is ordered to make restitution in the amount of \$69.75 within a period of three months, is to be diligent in finding gainful employment and is to continue to be gainfully employed.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

[Signature]

Date 7-21-77

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

FILED
IN OPEN COURT

JUL 21 1977 *JS*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America)

vs.)

ALFRED RAY JENNINGS)

Criminal No. 77-CR-42 ✓

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses ~~the~~ Count 1 of the Indictment against (indictment, information, complaint) Alfred Ray Jennings defendant.

Kenneth P. Siro
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

W. Walbrook
United States District Judge

Date:

DEFENDANT

ALFRED RAY JENNINGS

DOCKET NO. 77-CR-42

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR 7 21 77

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel. WITH COUNSEL James W. Fransein, Court Appointed (Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY D

FINDING & JUDGMENT

There being a finding of guilty of NOT GUILTY. Defendant is discharged GUILTY.

JUL 21 1977

Defendant has been convicted as charged of the offense(s) of having violated Title 21, U.S.C., Section 843(b), as charged in Count 7 of the Indictment.

Jack C. Silver, Clerk U.S. DISTRICT COURT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced: Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 7 - One and one-half (1 1/2) Years

IT IS FURTHER ORDERED that the defendant may become eligible for parole at such time as the U. S. Parole Commission may determine as provided in T. 18, U.S.C.A., Section 4205(b) (2).

IT IS FURTHER ORDERED that upon motion of the U. S. Government, Count 1 is hereby dismissed.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge U.S. Magistrate

[Signature]

CERTIFIED AS A TRUE COPY ON

THIS DATE

By () CLERK () DEPUTY

Date 7-21-77

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)

vs.)

ARLIE E. POTTS)

Criminal No. 77-CR-77 ✓

FILED
IN OPEN COURT

JUL 18 1977

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal

Procedure and by leave of court endorsed hereon the United States

Attorney for the Northern District of Oklahoma

hereby dismisses ~~the~~ 1, 3, 5 counts ~~3, 4, and 5~~ of indictment against
(indictment, information, complaint)

Arlie E. Potts defendant.

Hubert A. Marlow
Acting U.S. Attorney

Ben F. Baker

Assistant United States Attorney
Ben F. Baker

Leave of court is granted for the filing of the foregoing dismissal.

[Signature]
United States District Judge

Date: July 18, 1977

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)

vs.)

LYNDA SUE MALONE)

Criminal No. 77-CR-71 ✓

FILED
IN OPEN COURT.

JUL 18 1977 *hm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal

Procedure and by leave of court endorsed hereon the United States

Attorney for the Northern District of Oklahoma

hereby dismisses ~~the~~ Counts 1&2 of indictment against
(indictment, information, complaint)

Lynda Sue Malone defendant.

Hubert A. Marlow
Acting U.S. Attorney

Ben F. Baker

United States Attorney
Ben F. Baker

Leave of court is granted for the filing of the foregoing dismissal.

W. Dale Cook
United States District Judge

Date: **7-18-77**

F I L E D

JUL 11 1977

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America)
)
vs)
)
JOHN STEVEN SHIPLEY)

75-CR-170

EXTENSION OF PROBATION

On the 20th day of January, 1976, came the attorney for the government and the defendant appeared in person and by counsel, Charles Whitman.

IT WAS ADJUDGED that the defendant, upon his plea of guilty, had been convicted of having violated Title 18, U.S.C., Section 922(a)(6), as charged in Count 1 of the Indictment.

IT WAS ADJUDGED that the defendant was guilty as charged and convicted.

IT WAS ADJUDGED that the imposition of sentence is hereby suspended and the defendant is placed on probation for a period of three (3) years, pursuant to the Federal Youth Corrections Act, Title 18, U.S.C., Section 5010(a), and the special conditions of probations are that the defendant attend out-patient clinic for psychiatric treatment until release, stay employed, and not associate with drug users or criminals.

Now, on this 11th day of July, 1977, came the attorney for the government and the defendant appeared with counsel, Art Fleak. It being shown to the Court that the defendant has violated the terms and conditions of said probation,

IT IS ADJUDGED that the order of probation entered on January 20, 1976, be revoked and the period of probation is extended for One (1) year, making a total of Four (4) years probation, pursuant to the Federal Youth Corrections Act, Title 18, U.S.C., Section 5010(a), and the special conditions of probation are the same as those given on January 20, 1976.

IT IS ORDERED that the Clerk deliver a certified copy of this Extension of Probation to the United States Probation office.



CHIEF JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

JUL - 7 1977

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

Jack C. Silver
Clerk, U. S. District Court

United States of America
vs.
Jack Don Turner, Jr.,
et al.

Criminal No. 77-CR-62

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses ~~xxx~~ Count II of the Indictment against Jack Don Turner, Jr. defendant.
(indictment, information, complaint)

HUBERT A. MARLOW, Acting
United States Attorney

Ben F. Baker
Asst. United States Attorney
BEN F. BAKER

Leave of court is granted for the filing of the foregoing dismissal.

Allen E. Korman
United States District Judge

Date: July 7, 1977

DEFENDANT

GARY ALAN WALKER

DOCKET NO. ➔

77-CR-61-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government
the defendant appeared in person on this date ➔

MONTH	DAY	YEAR
7	7	77

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

A. A. Borringer, Appt.

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

JUL 7 1977

There being a finding ~~of~~ of

NOT GUILTY. Defendant is discharged

GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 922(h), as charged in the indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Thirty-six (36) months, and on the condition that the defendant be confined in a jail type institution for a period of Six (6) months, to run concurrently with state sentence defendant is now serving; the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for thirty (30) months.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

Allen E. Borringer

Date 7-7-77

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK
() DEPUTY

FILED

JUL 5 - 1977 *JS*

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

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
PHILLIPS PETROLEUM COMPANY,)
)
STANLEY LEARNED,)
)
WILLIAM F. MARTIN,)
)
WILLIAM W. KEELER,)
)
Defendants)

NO. 76-CR-117-B ✓

ORDER

In accordance with the Findings of Fact and Conclusions of Law filed this date with respect to the Defendants' Motion to Dismiss the Indictment for Abuse of the Grand Jury, the Motion to Dismiss the Indictment should be, and hereby is, sustained, and the Indictment in 76-CR-117-B is hereby dismissed.

ENTERED this 5th day of July, 1977.

Allen E. Barron
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

FILED

JUL 5 - 1977 *B*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
PHILLIPS PETROLEUM COMPANY,)
STANLEY LEARNED,)
WILLIAM F. MARTIN,)
WILLIAM W. KEELER,)
)
Defendants)

CR. NO. 76-CR-117-B ✓

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT
TO DEFENDANTS' MOTION TO DISMISS THE INDICTMENT FOR
ABUSE OF THE GRAND JURY

The Court having heard the arguments of counsel and received evidence on the Motion to Dismiss the Indictment for Abuse of the Grand Jury, and the parties having submitted their briefs, the Court, having carefully perused the entire file, including segments of the Grand Jury transcript, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On September 2, 1976, an indictment was filed in this Court, Case No. 76-CR-117, and naming as defendants Phillips Petroleum Company, Stanley Learned, William F. Martin and William W. Keeler.

2. A summary of Count I of the indictment is found in Finding No. 2 of the Findings of Fact and Conclusions of Law with respect to the Motion to Dismiss Count I for Breach of the Plea Agreement.

3. Counts II, III and IV of the indictment charge violations of 26 U.S.C. § 7206(2) in that William F. Martin did willfully and knowingly aid and assist in, and counsel, procure, and advise the preparation and presentation to the Internal Revenue Service of a corporate income tax return filed in the name of Phillips Petroleum Company which was false and fraudulent in that commission income paid by Triton Shipping Company to and for the use and benefit of Phillips Petroleum Company was omitted from and unreported in said returns, when the said Defendant well knew and believed Phillips

had commission income from Triton. Such acts are charged: in Count II, on or about September 16, 1970, in regard to commission income in the amount of \$146,977.10, for the calendar year 1969; in Count III, on or about September 1, 1971, in regard to commission income in the amount of \$98,285.00, for the calendar year 1970; in Count IV, on or about September 15, 1972, in regard to commission income in the amount of \$104,077.95, for the calendar year 1971.

4. Counts V, VI and VII of the indictment charge Phillips Petroleum Company with violations of 26 U.S.C. § 7206(1) in that the Company made and subscribed United States Income Tax Returns for Phillips which were verified by a written declaration that they were made under penalties of perjury, and filed with the IRS which the Corporation did not believe to be true and correct as to the material matters in that the return failed to report commission income and technical service fee income, which the Defendant well knew and believed had been received. Such acts are charged: in Count V, on or about September 16, 1970, for the calendar year 1969, in regard to unreported commission income in the amount of \$146,977.10, paid by Triton Shipping Company and technical service fee income in the amount of \$440,000.00, from Cochin Refineries, Ltd.; in Count VI, on or about September 1, 1971, for the calendar year 1970, in regard to unreported commission income in the amount of \$98,285.00, paid by Triton Shipping Company and technical service fee income in the amount of \$440,000.00, from Cochin Refineries, Ltd.; in Count VII, on or about September 15, 1972, for calendar year 1971, in regard to unreported commission income in the amount of \$104,077.95, paid by Triton Shipping Company, and technical service fee income in the amount of \$440,000.00 from Cochin Refineries, Ltd.

5. All defendants have moved that the indictment in this case be dismissed on the basis of abuse of the Grand Jury.

6. One such alleged abuse is that the prosecutors withheld from the Grand Jury exculpatory evidence which was obtained from the Grand Jury witness, James R. Akright. The evidence withheld consists of the evening recorded testimony of Akright given to U.S. Justice Department Special Prosecutors Messrs. Charles Muller (formerly with the Department of Justice) and Thomas Atkinson and IRS Special Agent, John Gillette, without the presence of the Grand Jury. Defendants contend that this testimony which was withheld from the Grand Jury

was exculpatory and explanatory of a remark which Akright had made earlier the same day within the presence of the Grand Jurors.

The Court became aware of the evening testimony of Akright during the hearing of the Defendants' Motion to Dismiss the Indictment for Abuse of the Grand Jury of February 15, 1977. The record shows that the Court - and defense counsel - became aware of the alleged abuse almost inadvertently:

"MR. WILLIAMS: . . . We have pursuant to Your Honor's order been given the Grand Jury testimony of the witnesses save the Internal Revenue agent who testified at the end. One of those witnesses was a lawyer for the Phillips Company, named Akright. Akright testified. First of all he testified before Your Honor had conferred immunity on him, and he refused and then he was given immunity and he testified all one afternoon, specifically on the afternoon of February 12, just almost a year ago, and three days more than a year ago, and then, Your Honor, he gave evidence at night. The Grand Jury was allowed to go home and I am not sure of these facts so I have to recite to you, I believe them to be true, but I believe that Mr. Akright's lawyer wanted to get back to his home base and he asked the prosecutors to go forward at night and they acceded, but when they did the following happened. They said to the witness this: 'All right, Mr. Akright' -- and this is on the evening of February 12th, '76 -- 'for the record, for the record, this is Mr. Muller speaking, this is a continuation of Mr. Akright's Grand Jury testimony by agreement between his counsel, Mr. Martin and myself, Mr. Muller. This will be considered part of the Grand Jury records and will be under the same conditions of use immunity we have previously extended through order of the Court.'

So, we go on and we read that this continuation of the Grand Jury testimony went on with an agent of the IRS conducting a substantial part of the interrogation of the witness and with the witness' lawyer present. Two unauthorized persons. Certainly the secrecy of the Grand Jury completely and totally invaded.

THE COURT: Let me make for sure you are saying that this testimony is before the Grand Jury at night?

MR. WILLIAMS: No. What they did, Your Honor, as I understand it, is they said, 'This is a continuation, Mr. Witness, of your Grand Jury testimony.' All right. And all the same rules obtain, he was under oath and he had testified all afternoon. But then in the continuation of his Grand Jury testimony there were present Mr. Martin, the witness' lawyer, Mr. Muller, [Government attorney], Mr. Gillette of the IRS and the court reporter. And Mr. Gillette participates in a substantial portion of the interrogation of the witness as shown in the record here.

Now, I say this to Your Honor because I think you have here the tip of the iceberg. The tip of the iceberg being indicative of the fact that throughout these proceedings by virtue of the nature of the proceedings that were being conducted, namely the subversion of a Grand Jury to the use an [sic] agency of the Executive Branch of Government, that the evidence before the Grand Jury was on a regular basis made available to [IRS] Agents Talley and Gillette in contravention of Your Honor's order of August 28, 1975, and in contravention, Your Honor, of the rules of secrecy that historically safeguard Grand Jury proceedings under Rule 6(e) of the

Federal Rules of Criminal Procedure and under the case law that has surrounded the Constitution of the United States from its inception insofar as Grand Jury proceedings are concerned.

THE COURT: Let me say this is the first time that has ever been called to my attention, that this occurred, first of all on the immunity, granted Mr. Akright was before the Grand Jury.

MR. WILLIAMS: It is the first time, Your Honor. I would have called it to your attention the moment it came to my attention but it didn't come to my attention until I got this Akright testimony, I would say 96 hours ago, because this testimony was not turned over to us until we requested it. All of the other testimony was turned over to us, of all of the witnesses, I believe, except the IRS agent who testified; and it was quite clear from the Akright testimony that there had been a continuation of it and when it was turned over to us it became apparent to us that it had taken place at night, it had taken place as part of the Grand Jury proceedings but without the Grand Jury and that the interrogation had been run by an IRS agent, named Gillette, in substantial part and that it had been run in the presence of two unauthorized persons, Mr. John Martin and Mr. John Gillette."

[Proceedings of February 15, 1977, Tr. 42-45].

7. The Court finds that the facts surrounding this alleged abuse of the Grand Jury are as follows:

8. The technical service fees referred to in Counts I, V, VI and VII of the indictment were paid by Cochin Refineries, Ltd. (CRL), a refinery in southern India which is partially owned by Phillips. They were paid pursuant to the Technical Services Agreement dated September 28, 1963, between Cochin Refineries and Phillips Petroleum Company (Phillips). The terms of the Technical Services Agreement were that CRL was to pay Phillips substantial fees in United States dollars over a period of fifteen years in the following amounts [Section 3.3 of the Technical Services Agreement]:

"3.3 Technical Service Fee for Services and Research Outside India. For technical service, including technical achievements and experience and for further technical developments and research during the term of this agreement, conducted outside India, all relating to refinery operations, the Company [Cochin] shall pay to Phillips a technical service fee as follows:

- (a) 110,000 U.S. Dollars per quarter for the first five years from the date of commissioning of the refinery;
- (b) 100,000 U.S. Dollars per quarter for a further period of five years subsequent to the first five years period; and
- (c) 90,000 U.S. Dollars per quarter for the next five years subsequent to the period specified in (b) above."

[Technical Services Agreement, Section 3.3, Government's Brief in Proceedings Relative to Defendants' Motion for Reconsideration of this Court's Order of April 13, 1977, Exh. A -- hereinafter referred to as Technical Services Agreement.].

9. Section 3.3 of the Technical Services Agreement makes the fees payable to Phillips. The Grand Jury heard substantial testimony relating to the Technical Services Agreement and Section 3.3 thereof.

10. Section 8 of the Technical Services Agreement specifically provided that Phillips could assign the agreement or the rights and obligations thereunder to Phillips Petroleum International Corporation, Panama (PPIC), a Panamanian subsidiary of Phillips. Pursuant to the instructions of Phillips, CRL paid the fees to PPIC.

11. The Government took the position through its questioning and in marshalling the evidence for the Grand Jury that the technical service fees should have been paid to Phillips Petroleum Company in the United States rather than to PPIC in Panama. [Proceedings of September 12, 1976, Tr. 39-42]. The Government contends that Phillips never properly assigned the Technical Services Agreement to PPIC, and that since the agreement was between Phillips and CRL, the fees should have been paid to Phillips, recorded on the Phillips books in the United States and reported on the Phillips tax return.

12. The defendants take the position that Phillips instructed CRL to pay the fees to PPIC and that since PPIC had no United States source income, the fees were not subject to United States income tax. For tax purposes, the income of PPIC was not required to be consolidated with that of its parent, Phillips. Thus the technical service fees paid to PPIC were not included on the United States corporate income tax returns of Phillips.

13. The witnesses who testified before the Grand Jury on the issue of technical service fees indicated that James R. Akright, the Assistant Comptroller of Phillips since 1969, was the person chiefly responsible for the tax aspects of the technical service fees. Evidence had been presented to the effect that Akright was responsible for determining that the technical service fees should be paid to PPIC, that he was responsible for determining the tax consequences flowing from the payment of the fees, and that he was responsible for preparing an assignment if the fees were to be paid to PPIC. There was also testimony that two people had raised a question with Akright as to whether the fees had been assigned to PPIC and Akright assured them that he would make sure that the proper documentation was made.

14. James R. Akright, subpoenaed to testify before the Grand Jury, appeared on February 12, 1976, but refused to testify, claiming the fifth amendment protection against self-incrimination. Subsequently, Akright was granted use immunity that same day by this Court, pursuant to 18 U.S.C. § 6002, and was ordered to testify or provide other information to the Grand Jury. [Order filed February 12, 1976].

15. The witness Akright testified before the Grand Jury on Thursday, February 12, 1976, pursuant to the grant of use immunity ordered by the Court.

16. Akright testified that the person who prepared the Phillips tax return was under his supervision and that the preparation of tax returns was his specialty. Akright was asked a number of questions concerning the existence of an assignment of the fees from Phillips to PPIC. [Grand Jury proceedings of February 12, 1976, Tr. 95-96; 104]. Akright testified that he discussed with one person, Simmons, whether or not there was an assignment, that he looked for an assignment, and that he was unable to find one. [Id., Tr. 96; 103-04]. Akright further testified that he reported back to Simmons that he was unable to find an assignment. When asked specifically what he told Simmons, Akright said that he rendered legal advice to him pertaining to taxes. However, when asked the substance of that advice, he asserted the attorney-client privilege.

17. At the end of the afternoon Grand Jury testimony of Akright, the following exchange occurred:

"QUESTION: Would you give me your opinion presently, right now, as to whether or not the outside tech service fees were taxable to Phillips Petroleum Company when received by Phillips Petroleum International Corporation?"

A. It would be my opinion that if there was an assignment of the tech service fees outside of India, the contract, it would be taxable to PPIC. Now, if there was no assignment, it would be taxable to Phillips Petroleum Company."

[Grand Jury proceedings of February 12, 1976, Tr. 123-24].

18. At the conclusion of Akright's testimony that afternoon, Mr. Muller, (a former) Department of Justice attorney assigned to this case during the Grand Jury proceedings, requested that Mr. Akright "return for just a short period in the morning." Instead of leaving to return the next day, Mr. Akright stayed late for questioning to be continued as stated herein. [Id., Tr. 124].

19. Mr. Akright, accompanied by his attorney, Mr. John Martin, gave recorded testimony to the Department of Justice attorneys, Messrs. Muller and Atkinson, and an Internal Revenue agent, John Gillette, at the Federal Building on the night of February 12, 1976 from 7:15 to 8:30 p.m. [Def. Exh. 6].

20. Participating in the examination of Akright was Mr. Gillette, the Special Agent of the Internal Revenue Service. [Def. Exh. 6].

At the beginning of the evening testimony, Mr. Muller told Mr. Akright:

"All right, for the record, this is a continuation of Mr. Akright's grand jury testimony by agreement between his counsel, Mr. MARTIN, and myself, Mr. MULLER. This will be considered part of the grand jury records and will be under the same conditions of use immunity we have previously extended through order of the Court."

[Def. Exh. 6 at 11].

21. At this very point, the entire Grand Jury proceedings became fatally defective. This portion of the Grand Jury proceedings took place in the evening after the Grand Jury had been excused for the day, there were two unauthorized persons present during the continuation of Akright's Grand Jury testimony -- Messrs. Martin and Gillette -- and Gillette actively participated in the interrogation of Akright. [Def. Exh. 6 at 1; 4; 9-11; 16-19].

22. The Court finds that the circumstances surrounding the taking of the evening testimony of Akright are in themselves an abuse of the Grand Jury, albeit an inadvertent error on the part of Messrs. Muller and Atkinson. Any error that was committed was certainly unintentional on their part because the Court regards these two men to be of the highest moral and professional character. Yet the Court cannot close its eyes to the fact that this evening session was irregular, to say the least, and a fatal defect in the Grand Jury proceedings.

23. In addition to causing the above irregularities [see Finding No. 21], the evening testimony of Akright is most important for another reason. During the course of this examination, Mr. Muller reviewed with Mr. Akright his testimony that the fees were taxable to Phillips if there was no assignment, that he knew that there was no assignment, and that he knew that the fees were not reported on Phillips' federal income tax returns [Def. Exh. 6 at 15]. Muller

then asked the crucial question which he had not asked when Akright was before the Grand Jurors. He asked Akright why the fees were not reported on Phillips' income tax returns. [Def. Exh. 6 at 15].

Akright said:

"You will recall that you have told me that I knew at the time that the payments were being made to PPIC -- the money was being paid into Panama. And here is a foreign corporation of substantial government participation making payments to a particular corporation under a contract presumably calling for services. Why was that done? To me, there is the possibility under these circumstances of there being an assignment -- informal though it be -- because its appointees acted as if there had been an assignment. Now, in the face of inability to find a formal assignment, I think you will appreciate I was in somewhat of a quandry. To the best of my knowledge, I took no action, and it would have taken action by me to change the financial records. Now, in retrospect, obviously, I should have been more careful. The only thing I can see -- and this is no excuse, mind you -- the item you're talking about was relatively insignificant to me at that time. We had a problem in India involving several million dollars in taxes -- the withholding problem. Not only substantial taxes directly on -- on the withholding -- potential penalties of 100 percent plus 9 percent interest -- neither of which, once assessed, could be withheld. So I'll have to say that within the context of the time and the events, the item that you are focusing on was not all that important to me. Now, I'll have to admit to you, it should have been, in retrospect, when you take it out of context and focus on it. But frankly, it was not."

[Def. Exh. 6 at 15-16, emphasis supplied].

24. The Government admits that, except for a portion of Akright's evening testimony which was repetitive of testimony previously given in the presence of the Grand Jurors, nothing said during the evening session was put before the Grand Jury. [Proceedings of February 15, 1977, Tr. 73; 77; 81]. The one instance in which there was a reference to Mr. Akright's testimony occurred during the testimony of IRS Special Agent Gillette on September 2, 1976. Gillette had received documents and transcribed Grand Jury testimony to analyze, as an assistant to Messrs. Muller and Atkinson, Special Attorneys for the Department of Justice. He was testifying as to having marshalled the evidence for the Grand Jury's consideration [Grand Jury Proceedings of September 2, 1976, Tr. 18-19]. The Grand Jury's attention was directed to, and the Grand Jury was asked to recall, Akright's earlier testimony before it as follows:

"Q. [by Mr. Muller]. . . [H]e [Mr. Simmons] had asked Mr. Akright, remember, and Mr. Akright said, testified subsequently, Mr. Gillette, the testimony was taken, Mr. Akright acknowledged that he had in fact done a search for an assignment, did he not?

A. [Gillette] Yes, sir, that's correct.

Q. And what was the result of his search?

A. He had not found an assignment, sir.

[Grand Jury Proceedings of September 2, 1976, Tr. 39-40].

This exact testimony had been given by Mr. Akright on February 12, 1976 [Grand Jury Proceedings of February 12, 1976, Tr. 104]:

Q. [Muller] -- alright. And did you remember also to render to him [Mr. Simmons] and tell him the results of your search?

A. [Akright] Yes.

Q. What did you tell him with regard to the results of your search?

A. That I had not found a formal assignment.

25. However, Akright's testimony during the evening of February 12, 1976 [Def. Exh. 6] contains the explanatory statement of his failure to act upon his knowledge that there was no formal assignment [see Finding No. 23]. Having reviewed the Grand Jury transcript, the Court finds that this explanatory statement was not placed before the Grand Jurors for their consideration.

26. At no time did the attorneys for the Government or Gillette of the IRS disclose to the Grand Jurors the critical testimony of Akright given on the evening of February 12, 1976, where he attributed the failure to report the fees or to assign them to PPIC to his carelessness. Nor did the attorneys have Mr. Akright return to so testify before the Grand Jury nor did they explain his absence to the Grand Jurors. Instead of providing the Grand Jury with Akright's explanation as to why the fees were paid to PPIC despite the lack of an assignment, the apparent impression was left in the minds of the Grand Jurors of a deliberate and intentional refusal to assign the fees to PPIC. This is particularly significant since the Grand Jurors had manifested, through their substantial questioning of witnesses, a deep interest in the technical service fees. [See Grand Jury Proceedings Transcripts of September 10, November 5, and November 6, 1975]. There is no way for this Court to look into the minds of the Grand Jurors to attempt to ascertain what they would have done had they had this explanatory statement before them, nor will it ever be known. This is an instance where not even hindsight is the best sight.

27. Therefore, the Court finds, having reviewed at length the Grand Jury transcript, and excerpts submitted by counsel for both the defense and the government with regard to the technical service fees issue, that the remark by Akright during the evening session explaining why he did nothing when he found no evidence of an assignment to PPIC, was in fact exculpatory as being inconsistent with an intentional, wrongful failure on the part of Phillips to report the fees as income, and, as such, should have been placed before the Grand Jurors.

28. The Court finds that the failure to place this exculpatory remark before the Grand Jurors for their consideration was an abuse of the Grand Jury, even though the Court does not feel that this was an intentional error on the part of the attorneys for the Department of Justice, or the IRS agent, Gillette.

29. Since the Court finds that there was an abuse of the Grand Jury, both in the irregularities of the evening session and the failure to place the exculpatory remark of Akright before the Grand Jurors, such abuse taints the entire indictment and the entire indictment must be dismissed.

30. The Court finds that it is unnecessary at this time to rule on the question of whether or not the Grand Jury investigation in this matter was conducted as an "open-ended" Grand Jury (although there is evidence to support such allegation) since the Findings of Fact in relation to the Akright testimony and the abuses surrounding it make the procedure fatal and require dismissal of the entire indictment.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. The slightest intrusion of an unauthorized person into a Grand Jury proceeding voids the indictment, even absent a showing of prejudice. Latham v. United States, 226 Fed. 420, 424 (5th Cir. 1915); United States v. Bowdach, 324 F. Supp. 123, 124 (S.D. Fla. 1971); United States v. Borys, 169 F. Supp. 366, 367 (D. Alaska 1959); United States v. Carper, 116 F. Supp. 817, 820 (D.D.C. 1953); United States v. Amazon Industrial Chemical Corp., 55 F.2d 254, 261-62 (D. Md. 1931); United States v. Rosenthal, 121 Fed. 862, 873 (S.D.N.Y. 1903); United States v. Edgerton, 80 Fed. 374 (D. Mont. 1897).

2. While it is true that the testimony of James R. Akright was taken outside the actual presence of the Grand Jurors, nonetheless, the Government is bound by Mr. Muller's characterization and representation that the evening session was "a continuation of Mr. AKRIGHT's grand jury testimony" and that it "will be considered part of the grand jury records." No matter how well motivated the Government attorneys may have been, the evening session was an irregularity which made the Grand Jury proceedings defective. Additionally, the fact that two unauthorized persons were present in the room, one of whom conducted a portion of the questioning of the witness, is sufficient in itself to void the indictment.

3. It is important to the proper functioning of the Grand Jury that it be apprised of the essential information which will allow it to make an informed and independent judgment as to whether it is appropriate to return an indictment in a given case. United States v. Braniff Airways, Inc., 428 F. Supp. 579 (W.D. Tex. 1977); United States v. DeMarco, 401 F. Supp. 505 (C.D. Cal. 1975), aff'd, 550 F.2d 1224 (9th Cir. 1977); Wood v. Georgia, 370 U.S. 375, 390 (1962); Johnson v. Superior Court, 38 Cal. App. 3d 977, 113 Cal. Rptr. 740 (1974), aff'd, 15 Cal. 3d 248, 124 Cal. Rptr. 32, 539 P.2d 792 (1975). As the Supreme Court said in United States v. Dionisio, 410 U.S. 1, 16-17 (1973), the mission of the Grand Jury "is to clear the innocent, no less than to bring to trial those who may be guilty." (emphasis supplied and footnote omitted). A requirement that the prosecutor disclose evidence which he knows will tend to negate guilt is consistent not only with United States v. Braniff Airways, Inc., supra, United States v. DeMarco, supra, and Johnson v. Superior Court, supra, but also with ethical standards espoused by the American Bar Association. The American Bar Association Standards, Section 3.6(b) of "The Prosecution Function", provide that:

"The prosecutor should disclose to the grand jury any evidence which he knows will tend to negate guilt."

The commentary to that section provides in part:

"A prosecutor should present to the grand jury evidence which would reasonably tend to negate the guilt of the accused. . . .The obligation to present evidence which tends to negate the guilt of the accused flows from the basic duty of the prosecutor to seek a just result." ABA Standards, "The Prosecution Function" at 89.

4. In the case of United States v. DeMarco, 401 F. Supp. 505 (C.D. Cal. 1975), aff'd, 550 F.2d 1224 (9th Cir. 1977), the defendant was first indicted in the District of Columbia for three offenses. When he sought a change of venue to California, his lawyer was told by the prosecutor that if DeMarco successfully transferred the case to California, the Government would re-indict on different charges. When DeMarco obtained a change of venue, a subsequent indictment was returned in California. The Grand Jury that returned the second indictment was not told of the first indictment nor was it told that the Government was seeking the second indictment because DeMarco had obtained a change of venue on the District of Columbia indictment.

DeMarco moved to dismiss the second indictment on two grounds: (1) that it was sought by the Government in retaliation for the exercise of a right to a change of venue on the first indictment and (2) that the Grand Jury was not told of the reasons for seeking the second indictment. The District Court agreed that the indictment must be dismissed on both grounds. As to the second ground it said:

"the prosecutor did not disclose to the grand jury that the charge could be attacked as an unjustifiable exercise of the charging power. The grand jury was entitled to be apprised of that information so that it could make an independent judgment as to whether it was appropriate to return an indictment under the circumstances." 401 F. Supp. at 513 (Emphasis supplied).

The rule enunciated in DeMarco is equally applicable in this case, that is, the Grand Jury was entitled to be apprised of the exculpatory information so that it could make an independent judgment as to whether it was appropriate to return an indictment under the circumstances.

5. Important to the District Court's decision in DeMarco was the Supreme Court's opinion in Wood v. Georgia, 370 U.S. 375, 390 (1962), which spoke of the necessity to have an "independent and informed grand jury." Guided by that principle, the District Court in DeMarco concluded that the second indictment should be dismissed because "the government did not present information vital to the grand jury's informed and independent judgment." 401 F. Supp. at 514.

This Court concludes that the District Court's decision in DeMarco is consistent with the American Bar Association's Standards [see Conclusion No. 3], and consistent with the Court's ruling in this case. This case presents an extreme example of the Government withholding from the Grand Jurors testimony which, by the prosecutor's own words, was a part of the Grand Jury testimony of the witness Akright, and a "part of the grand jury records. . . ." The Akright testimony bore directly upon a key question raised before the Grand Jury -- whether the technical service fee income was intentionally and wrongfully excluded from the Phillips' tax returns. Moreover the excluded testimony was necessary to place in context Akright's earlier testimony on this point which, as it was left with the Grand Jurors, appeared quite damaging to the defendants. Because the Grand Jurors were deprived of Akright's explanation, in which he attributed the failure of the Company to take any required remedial action to his own oversight and carelessness, they did not have essential evidence to determine whether the failure to report the technical service income was sufficiently intentional or wrongful to support a criminal charge.* The Court concludes that this is an independent abuse of the Grand Jury which must result in the dismissal of the entire indictment.**

*Akright's answer clearly tended to negate the elements of "bad purpose" or "evil intention" which are necessary to an indictment and conviction under 26 U.S.C. § 7206. In order to establish a criminal violation the Government must prove bad faith or evil intention. United States v. Bishop, 412 U.S. 346, 360 (1973). As the Court of Appeals for the Ninth Circuit recently observed, a jury may not convict for a criminal tax violation on the basis of "negligence, bona fide mistake, carelessness or misunderstanding." United States v. Colacurcio, 514 F.2d 1, 8 (9th Cir. 1975) (emphasis supplied). Clearly, if the grand jurors had heard and accepted Akright's evening testimony in which he attributed his failure to act to carelessness, they might well have found the requisite degree of intent to sustain a criminal conviction missing.

**Several courts have held that there is no requirement that a prosecutor submit all exculpatory evidence to a Grand Jury. Lorraine v. United States, 396 F.2d 335 (9th Cir.), cert. denied, 393 U.S. 933 (1968) (prosecutor not required to tell grand jury that certain witnesses that appeared before it had criminal records and were under indictment); United States v. Mandel, 415 F. Supp. 1033 (D. Md. 1976) (no error for prosecutor to fail to call witnesses that may have exculpatory evidence where defendants had refused invitation to give government a list of witnesses who had exculpatory information). In neither of those cases, however, did the prosecutor keep from the grand jurors favorable, exculpatory testimony from a witness who had already testified -- particularly not where the exculpatory testimony was, in the prosecutor's words, "part of the grand jury's records."

Once the prosecutors obtained the exculpatory testimony from Akright, they were not free to ignore it. They were clearly under a legal and ethical obligation to present it to the Grand Jury regardless of whether it tended to exculpate individuals or a corporation. As this Court observed in its Order of April 13, 1977, if the testimony is exculpatory, it is mandatory that it should have been placed before the Grand Jurors. In so holding this Court relied upon United States v. Braniff Airways, Inc., 428 F. Supp. 579 (W.D. Tex. 1977) and the cases cited in that decision. See also Wood v. Georgia, 370 U.S. 375, 390 (1962); United States v. DeMarco, 401 F. Supp. 505 (C.D. Cal. 1975), aff'd, 550 F.2d 1224 (9th Cir. 1977); Johnson v. Superior Court, 38 Cal. App. 3d 977, 113 Cal. Rptr. 740 (1974), aff'd, 15 Cal. 3d 248, 124 Cal. Rptr. 32, 539 P.2d 792 (1975).

The failure to provide the Akright evening testimony to the Grand Jury was a serious abuse of the Grand Jury. Had the Grand Jurors heard Akright attribute the failure either to report the fees or to assign them to PPIC to his carelessness, it is quite likely that the indictment now before the Court would never have been returned. The failure to submit the Akright testimony to the Grand Jury requires the dismissal of not only those counts which specifically mention the technical service fees, Counts I and V-VII, but also of the entire indictment since withholding of that exculpatory testimony constitutes a serious abuse of the Grand Jury.

6. Further, in this case, the failure to provide the Akright evening testimony to the Grand Jurors was also a serious breach of the defendants' right to due process of law. The picture which emerged from Akright's afternoon testimony was one of deliberate and wrongful failure to report the technical service fee income on the Company's tax returns. Akright first refused to testify on this subject on the ground that his testimony might be incriminating. After being forced to testify through a grant of immunity, he established himself as an expert on federal income tax and the officer primarily responsible for the Company's tax returns. He then told the Grand Jurors that absent an assignment of the technical service fees to PPIC, those fees should have been reported on the Phillips Tax returns. He said he looked for such an assignment but was unable to find one. He then gave tax advice to an assistant

comptroller; however, when asked what that advice was, he asserted the attorney-client privilege. The Grand Jurors must have inferred that the advice he gave was the same which he had given before the Grand Jurors -- if there was no assignment, the fees should be reported. Although Akright was asked in the presence of the Grand Jury to return the next day, he did not do so. The Grand Jurors never learned why, and never had a chance to ask him questions of their own concerning the technical service fees.

In the evening testimony Akright was asked why Phillips did not cause the fees to be reported. He explained that it was his responsibility to report the fees or to prepare an assignment and the failure to do so was due, not to an intent to evade taxes, but rather to oversight and carelessness. Had the Grand Jurors heard that testimony, the effect of Akright's afternoon testimony as well as that of other witnesses might well have been dissipated. Clearly the explanation offered in the evening was necessary for the Grand Jurors to have a full understanding of the failure to report those fees or to assign them to PPIC.

The Court cannot accept the Government's position as stated in the argument on this matter that the prosecutor "is under no obligation whatsoever to give exculpatory testimony to the Grand Jury. . . ." * The Court need not consider whether in every case in which a prosecutor obtains exculpatory evidence he is obligated to present it to the Grand Jury. The Court does conclude, however, that where, in the circumstances of this case, a witness appeared before the Grand Jury and gave testimony which, in the absence of explanation, must have been considered incriminating, and subsequently, in recorded testimony before the prosecutor, gave an exculpatory explanation, it is a violation of due process and an abuse of the Grand Jury to withhold that testimony from the Grand Jury. Without such a requirement, the Grand Jury cannot "clear the innocent" and "serve its historic role as a protective bulwark standing solidly between the ordinary citizen and an overzealous prosecutor. . . ." United States v. Dionisio, supra, at 16-17. In a case very similar to this one, in which exculpatory testimony was withheld from a Grand Jury, the California Court of Appeals stated:

*Proceedings of February 16, 1977, Tr. 171.

"In the actual trial of guilt, a district attorney need not produce evidence favorable to the accused, for the adversary system expects the defense to do so. [citation omitted] The prosecutor is under a duty, nevertheless, not to conceal or suppress evidence negating guilt; his intentional suppression of material evidence denies a fair trial; under many circumstances he must disclose exculpatory evidence even without a request. [citation omitted] When these factors are transported into the nonadversary realm of the grand jury, the prosecutor's disclosure obligation takes on a new dimension. Any prospect of exculpation from another source virtually disappears; if the prosecutor does not produce the evidence, no one will. The grand jury can perform its central function as the independent adjudicator of probable cause only if the prosecutor's duty extends beyond avoidance of suppression and includes an affirmative obligation to produce evidence in his possession or control which tends to negate guilt. [citation omitted].

"These considerations require the postulation of a rule which may be articulated as follows: The grand jury's ability to safeguard accused persons against felony charges which it believes unfounded is an attribute of due process of law inherent in the grand jury proceeding; this attribute exists for the protection of persons accused of crime before the grand jury, which is to say that it is a 'constitutional right;' any prosecutorial manipulation which substantially impairs the grand jury's ability to reject charges which it may believe unfounded is an invasion of the defendant's constitutional right. Although self-restraint and unfairness the exception, the inner core of due process must be effectively recognized when the exception occurs. When the prosecutor manipulates the array of evidence to the point of depriving the grand jury of independence and impartiality, the courts should not hesitate to vindicate the demands of due process. (Cf. United States v. Wells, 163 F. 313, 325; Dong Haw v. Superior Court, 81 Cal. App. 2d 153, 160, 183 P.2d 724.)" Johnson v. Sup. Ct. of California, 38 Cal. App. 3d 977, 113 Cal. Rptr. 740, 749-50 (1974), aff'd on statutory grounds, 15 Cal.3d 248, 124 Cal. Rptr. 32, 539 P.2d 792 (1975).

Thus, because of the constitutional violation, as well as in the exercise of this Court's supervisory power over the Grand Jury, the Court concludes that, under the circumstances present in this case, the failure to provide the exculpatory evidence to the Grand Jury by the Special Prosecutor constitutes an abuse of the Grand Jury proceedings requiring dismissal of the indictment.

7. The totality of the circumstances in this case reflects a serious lack of appreciation of the historic functions and procedures of the Grand Jury and requires dismissal. In United States v. Braniff Airways, Inc., 428 F. Supp. 579 (W.D. Tex. 1977), the Court said, in dismissing the indictment, that it based its order "not only on particular grounds for dismissal set forth by the defendants, but also on the totality of the circumstances surrounding this prosecution."

428 F. Supp. at 580. See also United States v. Fields, No. 76-CR-1022-CSH (S.D.N.Y. June 2, 1977); United States v. Litton Systems, Inc., No. 77-70-A (E.D. Va. May 25, 1977).

Therefore, this Court is of the opinion and concludes that, under the totality of the circumstances surrounding and attendant upon these grand jury abuses and this prosecution, the indictment must be dismissed. United States v. Braniff Airways, Inc., *supra*.

8. In the Conclusions of Law set forth immediately above, this Court has decided that the failure to provide the Akright exculpatory evidence constitutes an abuse of the Grand Jury requiring dismissal of the indictment. The defendants have made serious allegations that, as a separate and independent ground for dismissal of the indictment, an additional abuse of the Grand Jury was through the use of the Grand Jury as an "open-ended grand jury." The Court finds that there is evidence supporting the allegation of this abuse, [see Finding of Fact No. 30], but in view of the disposition by the Court of the dismissal of the indictment because of the manner in which the evening testimony of Akright was taken and not presented to the Grand Jury, the Court concludes that it is unnecessary to pass on the alleged abuse of the Grand Jury because of its alleged use as an "open-ended grand jury."

ENTERED this 5th day of July, 1977.



CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 5 - 1977 *B*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 PHILLIPS PETROLEUM COMPANY,)
 STANLEY LEARNED,)
 WILLIAM F. MARTIN,)
 WILLIAM W. KEELER,)
)
 Defendants)

CR. NO. 76-CR-117-B ✓

O R D E R

In accordance with the Findings of Fact and Conclusions of Law filed this date with respect to the Defendants' Motion to Dismiss Count One for Breach of the Agreement, the Motion to Dismiss Count One should be, and hereby is, sustained, and Count I of the Indictment in 76-CR-117-B is hereby dismissed.

ENTERED this 5th day of July, 1977.

Allen E. Barrow
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

FILED

JUL 5 - 1977

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
PHILLIPS PETROLEUM COMPANY,)
STANLEY LEARNED,)
WILLIAM F. MARTIN,)
WILLIAM W. KEELER,)
)
Defendants)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CR. NO. 76-CR-117-B ✓

FINDINGS OF FACT AND CONCLUSIONS OF LAW
WITH RESPECT TO DEFENDANTS' MOTION TO DISMISS COUNT ONE

The Court having heard the arguments of counsel on the Motion to Dismiss Count I for Breach of the Plea Agreement, and the parties having submitted their briefs, the Court, having carefully perused the entire file, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On September 2, 1976, an indictment was filed in this Court, Case No. 76-CR-117, and naming as defendants Phillips Petroleum Company, Stanley Learned, William F. Martin, and William W. Keeler.
2. Count I charges the four defendants with a conspiracy in violation of 18 U.S.C. § 371 alleged to have existed from on or about January 1, 1962 and continuously thereafter to October 5, 1973, in that the defendants together with Phillips International Corporation, an unindicted co-conspirator and other persons, did unlawfully, knowingly, and willfully conspire, combine, confederate and agree together to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Internal Revenue Service in the ascertainment, computation, assessment and collection of the corporate income taxes of Phillips Petroleum Company. It is alleged in Count I that Phillips would and did enter into agreements whereby over \$2,600,000 would be generated in a concealed and confidential manner and would not be properly recorded on Phillips' books of financial account, nor recorded as income on its income tax returns; that the funds were concealed in Swiss bank accounts; and disbursements of moneys of Phillips would be made to certain foreign

associates of Phillips and not be properly recorded on the books of financial account; that funds from Swiss accounts would be withdrawn in cash from time to time and returned to Phillips' headquarters in Bartlesville, Oklahoma, where said funds would be held in a confidential cash fund used to make concealed payments which would not be properly recorded on Phillips' books of financial account; that Phillips would cause certain fees of Phillips to be transmitted to Phillips Petroleum International Corporation, where it would be available for confidential disbursements to certain foreign entities and other uses and would not properly be recorded on Phillips' books of financial account; and that Phillips would do various acts to conceal from the Internal Revenue Service the true nature of Phillips' income and expenses and prevent the IRS from making a complete and accurate audit of Phillips' books and records for income tax purposes.

3. On November 11, 1976, defendants Phillips and Martin moved to dismiss Count I of the indictment on the grounds that the charge in Count I "constitutes an impermissible breach of an agreement entered into between the government, Phillips Petroleum Company, on behalf of itself, its present and former officers, agents and employees and W. W. Keeler, whereby all potential liability for the conspiratorial agreement charged in Count I was fully discharged." [Phillips and Martin Motion to Dismiss Count I, filed November 11, 1976]

4. In support of this motion, defendants Phillips and Martin contend that "in mid-1973 Phillips and Keeler responded to a public invitation from Archibald Cox, the then Watergate Special Prosecutor, and voluntarily disclosed a \$100,000 corporate contribution to the presidential campaign of former President Nixon. Additionally, Phillips and Keeler disclosed a practice of making corporate contributions over many years as well as the manner in which the funds used to make the contributions were generated. The disclosures to the Special Prosecutor culminated in a plea bargain pursuant to which Phillips and Keeler each pled guilty to one misdemeanor violation of 18 U.S.C. § 610 and the Special Prosecutor agreed that there would be no further prosecutions for any Title 18 violations arising from the contributions and the information voluntarily disclosed. The government now proceeds on Count I in direct contra-

vention of that agreement." [Phillips and Mart Memorandum of Points and Authorities in Support of Motion to Dismiss, filed November 11, 1976, at 1-2]

5. All other defendants have joined in the Motion to Dismiss Count I.

6. At the pre-trial conference had on January 5, 1977, counsel for the defendants summarized their position in the following manner:

MR. WILLIAMS: Our position, and there is no secret about it, Your Honor, is that stripped down to its essence it was when this disposition was made by the Company, and by Mr. Keeler, that there would be nothing that could ever be brought against the Company or its officers thereafter, except a Title 26 violation, that Title 18 was out. That is the bottom line of our position and that was violated when they brought a conspiracy count which throws into the case all of the things which were disposed of with the Watergate prosecutor; and in reliance on that agreement, Your Honor, the Company and its officers made a full and total disclosure, which they never would have done if they believed they were going to walk into a Title 18 violation.

[Proceedings of January 5, 1977, Tr. 49]

7. In response to the above statement, counsel for the Government stated:

MR. ATKINSON: . . .when you have a basic disagreement over the facts of what transpired in the Watergate Special Prosecutor's Office, I think this Court is entitled to hear from the ex-members of that staff who are now out and scattered all over.

. . .I think the lawyers' interpretation of what was said at those meetings is going to differ more than anything else. . .

[Proceedings of January 5, 1977, Tr. 50-51]

8. Further comment was made by defendant Keeler at this same conference:

THE COURT: What did they say to you and who was it?

MR. KEELER: They, as I recall, and I am not sure of the man's name.

MR. McDERMOTT: McBride.

MR. KEELER: McBride. Mr. McBride explained that you understand this now, that if you go ahead and sign the information that this is this, this, this and this, and you come before the Court and present yourself, that we are going to, if you do this, then this will close the case once and for all. Now, as far as I am concerned this is--I don't mean to get Indian history in here, but this is, you are bringing up something that is the United States not keeping their treaty.*

[Proceedings of January 5, 1977, Tr. 55]

*Parenthetically, it should be noted that Mr. Keeler, in addition to being CEO of Phillips, served as Principal Chief of the Cherokee Nation, one of the five Civilized Tribes, from 1949 to 1975.

9. To determine exactly what the "agreement" was between Phillips and Keeler and the Watergate Special Prosecutor, this Court held an evidentiary hearing on February 17-18, 1977. Testimony was given by Thomas Dunn Finney, Jr., Esquire, retained counsel for Phillips and its officers, with the Washington, D. C. firm of Clifford, Warnke, Glass, McIlwain and Finney; Thomas F. McBride, Associate Watergate Prosecutor from May 1973 to September 1975 [Proceedings of February 18, 1977, Tr. 406]; and Roger M. Witten and James Quarles, associates of Mr. McBride at the Watergate Special Prosecutor's office [Proceedings of February 18, 1977, Tr. 359 and 368-70].

10. At the hearings of February 17-18, 1977, the Court received into evidence, among other exhibits, Defendants' Exhibit 9, which is the same as the Appendices filed by the Government to its Response to Replies of All Defendants in Support of Their Pre-trial Motions, filed January 24, 1977. [Proceedings of February 17, 1977, Tr. 323-28]. For the sake of brevity, all references to these exhibits will be to "Deft. Exh. 9".

11. On April 13, 1977, this Court entered an Order deferring its ruling on this Motion until trial of the general issue.

12. On May 11, 1977, the Court granted Defendants' Motion for Reconsideration, and heard further argument on the Motion to Dismiss Count I for Breach of a Plea Agreement.

13. Based upon the testimony of the witnesses taken on February 17-18, 1977, and the Exhibits received into evidence on those same dates, this Court finds the following to be the sequence of events leading up to and surrounding the Plea Agreement between Phillips and Keeler and the Watergate Special Prosecutor.

14. The Court takes judicial notice of the fact that a Watergate Special Prosecution Force (WSPF) was established in 1973 within the Department of Justice; and of the fact that the WSPF had jurisdiction to investigate and prosecute offenses arising out of the 1972 presidential election.

15. The Campaign Contributions Task Force of the WSPF was headed by Associate Special Prosecutor Thomas McBride, and among his assistants were Roger Witten and James Quarles. [Proceedings of February 18, 1977, Tr. 406-07; 359; 368-70].

16. On July 6, 1973, Special Prosecutor Archibald Cox issued a statement for immediate release, announcing that American Airlines had voluntarily acknowledged illegal corporate contributions to the Committee to Re-Elect the President (CREEP) in 1971-72, and that American Airlines had agreed to cooperate fully with the WSPF office. What Mr. Cox stated in that release is worthy of note:

"Mr. Cox noted that the Federal Election Laws, specifically Section 610 of the Federal Criminal Code, forbid corporate contributions to political campaigns and that campaign committees, campaign officials, corporations, and also individual corporate officers violate 18 U.S.C. § 610 when such a contribution is made. He added, 'We are not adopting any blanket policy towards either corporations or individual officers; but it is fair to say that when corporate officers come forward voluntarily and early to disclose illegal political contributions to candidates of either party, their voluntary acknowledgment will be considered as a mitigating circumstance in deciding what charges to bring.'

. . . Mr. Cox commended the forthright action of American Airlines executives and expressed the hope that other responsible corporate executives would also realize the damage created by illegal campaign financing and come forward like American Airlines in an effort to put an end to such practices. . ." (Deft. Exh. 10).

17. On July 9, 1973, William W. Keeler "consulted Phillips' general counsel [Lloyd Minter] and revealed that Keeler had used corporate money" to make contributions in the amount of \$100,000 to the Finance Committee to Re-Elect the President (FCREEP). [Deft. Exh. 9, B-2 at 5].

18. Mr. Minter, acting at the direction of William F. Martin, the Chief Executive Office of Phillips as of January, 1973, contacted Finney in the latter part of July, 1973, and asked Mr. Finney "to review certain information that had come to the attention of the general counsel and the chief executive officer, with respect to a contribution that had been made to the Finance Committee to Re-Elect the President by Mr. Keeler, to investigate the circumstances of that contribution, make recommendations to the Board of Directors of Phillips with respect to what the company should do regarding it." [Proceedings of February 17, 1977, Tr. 249; 293].

19. Between this initial contact and August 13, 1973, Mr. Finney conducted "a preliminary investigation" into the matter of the contribution which Mr. Keeler had made to FCREEP, and interviewed

Mr. John Houchin, Mr. William Keeler, and Mr. William Martin. [Proceedings of February 17, 1977, Tr. 269-70].

20. On August 13, 1973, there was a meeting of the Board of Directors of Phillips at which Mr. Thomas Finney, Jr. was present. The minutes of that meeting reflect that Mr. Finney was directed by the Board to investigate and reveal the contribution, and the Board unanimously determined that Phillips would voluntarily come forward and disclose the contribution to the Government. [Govt. Exh. D-3]. This policy decision was pursuant to the announcement of Archibald Cox on July 6, 1973. [Proceedings of February 17, 1977, Tr. 293-94].

21. As a result of this Board meeting, the policy adopted by the Board of Phillips, in the words of Mr. Finney, was essentially:

" . . .that the fact of the contribution to the Nixon Campaign of Corporate funds would be disclosed to the Special Prosecutor immediately, that an investigation had been only briefly undertaken, would be continued to try to get a complete knowledge of the facts and circumstances surrounding both the contribution and the fund, that disclosure would be made specifically at an early date to the Internal Revenue Service as soon as we had sufficient facts to do so, and that we would cooperate with other Government agencies as the occasion arose."

[Proceedings of February 17, 1977, Tr. 293].

22. In making his report of the results of his preliminary investigation to the Board of Directors on August 13, 1977, Mr. Finney informed the Board of the existence of a cash fund in the Phillips offices in Bartlesville, Oklahoma--approximately \$703,000--in the safe of Mr. Houchin. [Proceedings of February 17, 1977, Tr. 271].

23. On or about August 14 or 15, 1977, this money, and a separate cash fund in the amount of approximately \$60,000 which had been in the safe in Mr. Martin's office, was delivered to the treasurer and comptroller of Phillips, entered on the books and "deposited appropriately". [Proceedings of February 17, 1977, Tr. 271-72].

24. On August 15, 1973, Finney met with Associate Special Prosecutor McBride and disclosed to Mr. McBride the specific contribution involved. [Proceedings of February 17-18, 1977, Tr. 250; 409]. Special Prosecutor McBride gave Mr. Finney a list of questions that should be investigated as to the source of the funds. [Proceedings

of February 17-18, 1977, Tr. 298; 301; 410]. Finney testified regarding this August 15, 1977, meeting as follows:

"When I first talked to Mr. McBride, I advised him that in addition to the instruction that I had to report the contribution to the Special Prosecutor, that I had been instructed by the Board to continue the investigation of the circumstances surrounding that contribution and I proposed to him that if the Special Prosecutor's office would, in effect, defer any independent inquiry or would permit me to do it in this way, that I would try to get the facts and would report them to him. I did that, I tried to develop in the investigation and provide Mr. McBride with information that was responsive to the questions that he had asked me; . . ."

[Proceedings of February 17, 1977, Tr. 251]

25. Between August 15, 1973, and December 4, 1973, Mr. Finney had a series of meetings with Mr. McBride (approximately nine), and had a number of telephone conversations with Mr. McBride and members of his staff. [Proceedings of February 17-18, 1977, Tr. 250; 407].

26. Between August 16, 1973, and October 17, 1973, the Campaign Contributions Task Force of the WSPF was developing its policy for handling the 18 U.S.C. § 610 violations which the Force was investigating. WSPF memoranda of August 16, September 6 and September 11, 1973, show that Phillips voluntarily disclosed its large cash contributions, and set forth the recommendations of the Force for dealing with violators. [Deft. Exh. 9, C-1; C-2; C-3].

27. The Task Force recommendations on prosecutive policy were adopted on October 8, 1973, at a meeting of Watergate Special Prosecutor Archibald Cox, Deputy Prosecutor Henry Ruth, and members of the Campaign Contributions Task Force [Deft. Exh. 9, C-4].

28. On October 10, 1973, Mr. Finney met with Mr. McBride and his associate Roger M. Witten, at which time "Finney described the facts surrounding Phillips' \$100,000 corporate contribution to FCREEP." [Deft. Exh. 9, B-2]. The Court hereby incorporates by reference the six pages of the memorandum of this meeting prepared by Mr. Witten, which describes in detail the facts surrounding the solicitation of this contribution by Maurice Stans, the head of FCREEP, the two contributions made by Mr. Keeler to FCREEP, and the source, generation and mechanics of the cash funds. [Deft. Exh. 9, B-2].

29. Mr. Finney testified that, as to the disclosures made regarding the source of the funds, either at or subsequent to this October 10, 1973, meeting, Mr. McBride was aware of the following facts:

". . .I can tell you approximately or I can tell you the things that I told Mr. McBride about the origin of the funds. I know that he was aware that the funds had been generated in foreign commercial transactions of Phillips initially. I know he was aware, I know that I told him that funds were diverted into Swiss accounts which were the accounts of Swiss corporations. I know that he was aware that from those accounts money was taken from time to time and returned to the United States in cash. I know that he was aware that that cash was kept in Mr. Houchin's possession in Bartlesville. [See Finding No. 40]. I know he was aware that it was used for the making of political contributions, and I know that he was aware that it was not entered on the books of the Company, and that therefore we had tax problems with respect to it.

[Proceedings of February 17, 1977, Tr. 275-76, (emphasis supplied)].

30. At the October 10, 1973, meeting, Mr. McBride "advised Finney that we wanted more information about the source and mechanics of the cash fund to determine if Phillips committed related IRS offenses." [Deft. Exh. 9, B-2 at 6].

31. During the course of the discussions between Finney and McBride from August through December, 1973, Finney told McBride that the funds had not been entered on the books of Phillips. During the testimony of Mr. Finney on February 17, 1977, the following colloquy took place:

"Q. (by Mr. Cotton, Government attorney) But it's your impression that when you told him the money had not been entered on the books of the Corporation that it had reference to the two million dollars in the Swiss bank account in 1964 or to the political contribution?

A. (by Mr. Finney) The specific context of the comment was that the cash that had been maintained in Bartlesville had not been entered on the books of the Company.

Q. All right. Thank you very much.

THE COURT: Excuse me a moment. When did you say the specific statement was made there, Tom?

THE WITNESS: I can't be exact about the date on which it occurred. I think that--my recollection is that the first sort of substantive conversation of any length that I had with Tom McBride was on the 10th of October because there was a period of, a considerable period between my first session with him and the time that I came back and made a rather full report of the circumstances surrounding the contribution, so that it is likely that this occurred either on the 10th of October or at one of the conferences after that. I met with him nine times and I can't be positive at which meeting the discussions which I recall took place. I would think it is likely that that took place on the 10th, but I can't be positive.

THE COURT: That is understandable, but all of this information though that you testified to on direct was available to him through you or other sources prior to the plea?

THE WITNESS: Oh, yes, sir, yes, sir.

THE COURT: Very well.

THE WITNESS: All prior to the 10th. And as a matter of fact the--I am certain that the discussion of this kind of thing, the source of the funds, how it was generated, who was involved, those discussions were likely to have taken place in October and early November. Now they were treated again in the interviews. There were questions asked in the interviews that in some instances bore on this, but that was all prior to the plea."

[Proceedings of February 17, 1977, Tr. 277-79].

32. At the conclusion of the October 10, 1973 meeting, Mr. Finney was advised by the Special Prosecutor as to the disposition that his office would make as to the Phillips disclosure. [Proceedings of February 17, 1977, Tr. 252]. Mr. Finney's recollection of the agreement as to disposition, which was made between McBride, Finney on behalf of Phillips and Keeler, and Keeler was as follows:

". . .by mid-October, the Prosecutor's policy had been developed and we agreed at that time that in view of the fact that there was no suggestion that there was any particular quid pro quo attached to the Phillips' contribution but had simply been a contribution in a response to fairly vigorous solicitation by the Finance Committee to Re-Elect the President; that the Company would be charged with a misdemeanor violation, a single violation of Section 610; that Mr. Keeler, as the responsible officer, chief executive officer at the time the contribution was made, would be charged with a single misdemeanor violation of Section 610; that the Court would be advised that Phillips and Mr. Keeler had come forward voluntarily prior to the time that any inquiry had been instituted by the Special Prosecutor, that advice being given at the time of sentencing; that this would be in discharge or in satisfaction of all criminal charges rising out of this pattern of conduct that we were dealing.

Now, that understanding was subject to an exception and to a condition. The exception was that the proposed plea of guilty by Mr. Keeler and the Company would not bar either civil or criminal prosecution or proceedings for violations of the Tax Code and it was subject to the condition or our continued cooperation with the Special Prosecutor until the time of sentencing."

[Proceedings of February 17, 1977, Tr. 253-54, (emphasis supplied)].

33. In addition, two aspects of the condition to the agreement were specified on October 10, 1973: that Phillips would disclose to the Special Prosecutor, to the extent possible, all contributions in Federal elections that were not barred by the Statute of Limitations, and that it would make available to the staff of the Special Prosecutor such of the officers, employees, directors of Phillips as they desired to interview. [Proceedings of February 17, 1977, Tr. 254].

34. On October 17, 1973, Special Prosecutor Archibald Cox issued a statement "announcing a general policy toward violators of 18 U.S.C. § 610, the law prohibiting corporate contributions in connection with Federal elections." [Deft. Exh. 11 at 1]. That policy was, even in cases where the Company voluntarily came forward, to charge the primarily responsible corporate officer with the misdemeanor violation of 18 U.S.C. § 610, as well as charging the Corporation. [Deft. Exh. 11 at 2].

35. On October 18, 1973, Finney sent a letter to McBride stating, in essence, two things: that Finney would check with McBride upon Finney's return from California regarding two questions which McBride was going to discuss with Mr. Cox, and that Finney had "set some inquiries in motion" and would "provide some further information" shortly upon his return. [Deft. Exh. 9, B-3].

36. McBride's handwritten notations on the bottom of that October 18 letter indicate that McBride talked to Finney on November 5, 1973, and the following matters were discussed:

"1) told him no rec. re jail/fine - 2) must have disclosure of all 610's w/in statute 3) get Keeler in here 4) other info. fr. Keeler? -"

[Deft. Exh. 9, B-3].

37. Pursuant to McBride's request for "disclosure of all 610's w/in statute", on November 9, 1973, Finney disclosed to McBride

"that in 1970 approximately \$23,000 in contributions had been made to 29 candidates for House or Senate. . .that in 1972 approximately \$27,800 had been contributed to 36 candidates for House and Senate seats. . .that contributions totalling about \$10,000 were made to. . .an unsuccessful candidate for the Senate from Oklahoma, in either 1970 or 1972. . .[that] these contributions were all made in cash and usually delivered by Carstens Slack and usually the candidates were told that the contribution came 'from your friends at Phillips'. [Deft. Exh. 9, B-13].

McBride told Finney that he would have to have "either the original records or a reconstructed list of persons to whom these contributions were made." [Deft. Exh. 9, B-13]. That list was later furnished to McBride. [Deft. Exh. 9, B-13; Proceedings of February 18, 1977, Tr. 410].

38. On November 12, 1973, pursuant to the request of McBride, McBride and his assistant James Quarles interviewed Keeler. The notes and memoranda of Quarles concerning the Keeler interview indicate that Keeler described the 1968 and 1972 contributions and the facts and circumstances surrounding them, but that Keeler stated "that he did not know at that time and does not to this day know precisely, how the funds. . . were generated." [Deft. Exh. 9, B-5 at 1-2]. The memorandum of November 20, 1973, prepared by James Quarles regarding this November 12 meeting, indicates that "Mr. Keeler was then excused and a discussion took place between Mr. McBride and Mr. Finney. Mr. Finney stated that he had undertaken an investigation as to the source of the funds used in the contributions. It was decided that this office had no independent interest in learning the source of those funds since complete disclosure had been made to the Internal Revenue Services' Oklahoma Headquarters." [Deft. Exh. 9, B-6 at 6].

39. On November 28, 1973, McBride and Quarles interviewed Carstens Slack, the Washington representative of Phillips, who was also Vice-President of Phillips. Slack recounted to McBride and Quarles the facts surrounding the Phillips contributions and that ". . . the money for the congressional contributions was picked up in Bartlesville from Houchin, although occasionally Houchin would bring the cash to D. C. . . .

Slack disclaimed any attempt to influence any governmental action by the \$100,000 contribution." [Deft. Exh. 9, B-8 at 3].

40. On December 3, 1973, McBride and Quarles interviewed John Houchin, who became the Chairman of the Executive Committee of Phillips in 1968, became President of Phillips in late 1968 and so remained until 1971, at which time he became Deputy Chairman of Phillips, and in 1973, he became Chairman of Phillips. Houchin stated, regarding the source of the funds, that the "money came from a foreign (Swiss) account in which a major deposit had been

made in 1964. The account was in the name of a subsidiary of Phillips Petroleum." [Deft. Exh. 9, B-10 at 2].

41. It was the office policy of the Watergate Special Prosecution Force, in cases that they were investigating, to prepare prosecutive memoranda prior to the acceptance of a plea or the return of an indictment. [Proceedings of February 18, 1977, Tr. 373].

Mr. Quarles stated that these memoranda were:

"designed to formally acquaint the individual who would have the ultimate decision-making power of both the facts, as we understood them, to indicate the law, as we understood it, and in a case in which it was likely to be a disputed matter, that is a case in which no plea was expected but an indictment was expected, to summarize the proof which the Government expected to be able to elicit in competent form in the courtroom. And the major purpose of it was to insure that the person who had the ultimate responsibility of deciding, had some formal basis upon which to make his decision."

[Proceedings of February 18, 1977, Tr. 373].

42. On December 3, 1973, James Quarles prepared, pursuant to the instructions of Mr. McBride, the draft of the Phillips prosecutive memorandum, after having reviewed the file which the WSPF kept on Phillips. Quarles testified that the draft prepared by him incorporated his understanding of an agreement previously reached by McBride and Finney. [Proceedings of February 18, 1977, Tr. 374-75; Deft. Exh. 9, B-11].

43. Quarles also testified that the initial draft of this memorandum was prepared before the interview of John Houchin on December 3, 1973. After this interview, Quarles rewrote a portion of the draft of the memorandum to read:

"B. Source of Corporate Cash. The mechanics of raising the cash for the contributions has been disclosed to the IRS. Briefly stated, John Houchen [sic] maintained \$100,000 plus in a safe in his office for the use in making political contributions. The source of the funds was an account maintained by Phillips in a bank in Switzerland, the funds of which were generated by a large cash deposit of Phillips' funds in 1964."

[Deft. Exh. 9, B-11 at 8, Proceedings of February 18, 1977, Tr. 380-81]

44. The final version of the prosecutive memorandum was prepared by Thomas McBride, and approved by Henry S. Ruth and Leon Jaworski, of the WSPF, on December 3, 1973. [Deft. Exh. 9, B-12 cover sheet]. In the final version, the rewritten version of "Source of Corporate Cash" was included [Deft. Exh. 9, B-12 at 3;

see Finding No. 43], and under the section captioned "Law", the memorandum states the following with regard to possible charges which could be brought, and the charges which should be brought:

"As a matter of law, and with the testimony we now possess as a matter of proof, it is possible to charge Keeler, Houchin and Slack each with two count felony violations of 18 U.S.C. 610 and/or a conspiracy to violate 18 U.S.C. §371. However, consistent with the announced policy of the Special Prosecutor toward 'early and voluntary' disclosures and the law enforcement policies subsumed therein, we should charge, in addition to the corporation, only the primarily responsible corporate officer, Keeler, with a one count non-willful violation of Sec. 610."

[Deft. Exh. 9, B-12 at 5-6]

45. In accordance with this prosecutive policy and with the previously negotiated plea bargain between McBride, Finney and Keeler, on December 4, 1973, Phillips and Keeler were charged with and pled guilty to one count each of misdemeanor violations of 18 U.S.C. §610, in the United States District Court for the District of Columbia (their Criminal No. 998-73) [Deft. Exh. 9, A-1]. The transcript of the proceedings of that date reveals the following statement by McBride with regard to the plea agreement:

"MR. McBRIDE: Phillips Petroleum Company and Mr. Keeler came to the Special Prosecutor's Office some months ago, in August, and disclosed voluntarily to us the making of the corporate contribution, that is, the \$100,000.00 contribution to the Finance Committee for the Re-Election of the President, to the Office of the Special Prosecutor.

At that time, there was no understanding as to any charge or disposition that the Special Prosecutor might decide upon. However, the Special Prosecutor had stated that in instances where corporations come forward voluntarily and confess to violations of Section 610 that that voluntary disclosure and their cooperation in the course of the ensuing investigation would be brought to the attention of the Court.

I, at this time, would like to point out to the Court that both Phillips Petroleum Company and Mr. Keeler did come forward voluntarily, that is, we had not begun to investigate at the time they came to us, and they did cooperate fully in the investigation that followed.

I should further note that this charge, that is, of the \$100,000.00 contribution, represents the largest of the illegal

corporate contributions made by Phillips Petroleum Company within the period of the statute of limitations. However, Phillips disclosed to us--and it is embraced with the disposition of this matter--contributions to a substantial number of congressional and senatorial candidates in 1970 and 1972, totalling about fifty to sixty thousand dollars. Again, those contributions were voluntarily disclosed by Phillips Petroleum Company and they cooperated in the investigation in connection with those.

THE COURT: Has the statute run on those?

MR. McBRIDE: The statute has not run, Your Honor, but it is our policy at the outset to charge the largest of the illegal corporate contributions, and we follow that policy in this case.

THE COURT: That means you are not going to press the other charges?

MR. McBRIDE: Not against Phillips or Mr. Keeler. We, of course, always hold open the option of pressing our investigation as to the recipients of illegal corporation contributions.

I have nothing further, Your Honor."

[Deft. Exh. 9, A-1 at 2-4].

46. The Court accepted the guilty pleas and fined Phillips \$5,000 and Keeler \$1,000. [Deft. Exh. 9, A-1 at 5].

47. The parties are in accord that there was an agreement between the United States and Phillips and Keeler, negotiated by McBride and Finney, as to the disposition of the matters before the WSPF. [Proceedings of February 17-18, 1977, Tr. 252-54; 407-08].

48. Defendants contend that excepted from the agreement was prosecution for violations of the Tax Code, and Mr. Finney testified that by such violations were meant Title 26 violations. [Proceedings of February 17, 1977, Tr. 253-55; 265; 302; 310].

49. The Government contends that the exception was that the agreement would not dispose of any civil or criminal liability of Phillips or its officers within the jurisdiction of the I.R.S. [Proceedings of February 18, 1977, Tr. 408; 416]; that one phrase McBride used was "As far as I.R.S., you are on your own" [Proceedings of February 18, 1977, Tr. 409]; and that the plea agreement did not extend any immunity to Phillips and its officers from criminal tax exposure [Proceedings of February 18, 1977, Tr. 413].

It is the Government's position that such exception left open prosecution for tax offenses, which would include a Title 18 conspiracy to defraud the United States such as is charged in Count I of the indictment in this case.

50. The Court finds that the evidence supports the contention of the defendants that the exception to the plea agreement was limited to Title 26 offenses. A reading of the testimony of Finney and McBride, together with Defendants' Exhibit 9, C-8, entitled "Memorandum of Understanding Re Handling of Internal Revenue Matters Arising in Connection with Investigation and Prosecution of 18 U.S.C. 610 (Illegal Corporate Contributions) Matters", leads the Court to the conclusion that only Title 26 offenses were excepted from the plea agreement.

51. The Court finds that the following testimony adduced during the evidentiary hearing of February 17-18, 1977, substantiates the decision rendered herein:

(Mr. Finney) "Mr. Williams, I don't recall any specific discussion of a conspiracy charge with Mr. McBride, but the understanding was that they were disposing of all criminal charges, subject to the exception that they specified, and I certainly contemplated that the most serious charge that we potentially faced at that time was the conspiracy charge and regarded it as being disposed of. I think Mr. McBride probably also regarded it as being disposed of, but that's -- we specifically contemplated all charges other than tax charges. [Tr. 255].

* * *

THE COURT: "Mr. Finney, let me ask you a question. Had you had any doubt at all about this being dispositive of all criminal matters, would you have allowed your client, Mr. Keeler, to plead guilty?

THE WITNESS: No, sir." [Tr. 257].

* * *

THE COURT: "Mr. Finney, let me ask you one other question. You said the Board of Directors directed you to make this disclosure and you started working with the Special Prosecutor and then went on with your investigation and all. When you made your agreement, plea agreement--we will say it that way--with the Special Prosecutor, as you said, you wouldn't allow Mr. Keeler to plead unless that took care of the criminal matters, any further criminal matters?

THE WITNESS: Yes, sir.

THE COURT: And you represented Phillips. Did you conclude that to mean not only Phillips and Mr. Keeler but all executives of Phillips, having been directed by the Board and hired by the Board?

THE WITNESS: Yes, sir, Your Honor, for the reason, and I can't -- it's hard for me not to mix fact and opinion in some of these comments but as far as our investigation disclosed, there was a single course of action in which these men participated and that had been disclosed to the Special Prosecutor. We had talked of the participation and involvement of others, in addition to the three Officers that they elected to interview. Their explanation to me was that they chose to interview Mr. Keeler because he had made the contribution to the Finance Committee to Re-Elect the President and knew firsthand the circumstances surrounding that contribution. They asked to interview Mr. Slack specifically on the subject of Congressional contributions. Their interest in interviewing Mr. Houchin, which as I said, didn't really materialize until sort of the day before the matter was to be disposed of, stemmed from the fact that Mr. Houchin had custody of the funds that had been used for the political contributions; but each of these three men were asked questions on areas that extended beyond that primary area of concern and the participation of others was disclosed to the Prosecutor in the course of our discussions of the problem.

So that, particularly on the conspiracy charge, we had been from the very beginning, had felt that the most dangerous charge that could be brought on the basis of the facts that we knew was a conspiracy charge, because it would involve the largest number, potentially involve the largest number of people in the Company and, of course, extend over a considerable period of time because the indication that we had was that it went back to 1964; so that when the Special Prosecutor said, in effect, that they would charge a single officer with a single count of a 610 violation and do so by misdemeanor, we were really talking about one person stepping forward, in terms of the, in effect, misconduct that had been disclosed to the Special Prosecutor.

THE COURT: All executives from '64 to that time, you are talking about?

THE WITNESS: Yes, sir, and I had specifically indicated on the basis of the investigation that I made, I had mentioned to them the fact that Mr. Learned had some role in this matter prior to the time that Mr. Keeler became chairman and chief executive officer. I had referred to others, not by name but by description, simply of the role that they had played.

I don't want to mislead the Court, I don't want to overstate the nature of the discussions that we had because these were not the matters on which the Special Prosecutor was primarily concerned but when we first started our discussions, prior to the time that there was this exclusion or exception made with respect to Title 26 offenses, when we first started the discussion that was not

the scope of the Special Prosecutor's interest. He initially wanted sufficient detail as to the source of the funds, the way they were generated, the way they were treated for tax purposes, so that he could assess, prior to a plea, whether or not there were criminal tax violations that should be taken into account, and he even said specifically that it would be his practice or his intention to go and talk to the I.R.S. about it. He then subsequently concluded not to proceed in that way and rather to exclude these tax offenses.

But the reason that I mention this is that much of this discussion that we had had involved the roles of other people prior to the time that we reached that conclusion. So, I felt like we were discharging everybody.

THE COURT: Discharging everybody connected with the Company and the Company on this plea?

THE WITNESS: That is correct.

THE COURT: In other words, the generation of the money had been disclosed, the manner in which and the contributions and the donees, I think you said?

THE WITNESS: Yes, sir." [Tr. 263-66].

* * *

Q. (Mr. McDermott): "Mr. Finney, in the efforts that you exerted to investigate the matter before the Special Prosecutor, other than the production of the witnesses that you have named, did you investigate the source of the funds which gave rise to the contributions?

A. Yes, sir, I did.

Q. And did you report it to the Government?

A. Yes, sir. Let me say this, Mr. McDermott. The matters to which we gave our primary attention in the course of this investigation were, in effect, dictated by those matters that the Special Prosecutor or members of his staff were asking us to find out, determine and report to them; and so that for the period from August through December, that served to focus the nature of the investigation because we were trying to be specifically responsive to their requests.

Q. And did they --

A. However, from the very beginning -- excuse me -- from the very beginning, we were also developing in the course of the investigation information as to the source of the funds, how they were originally generated, how the funds had been handled; and these matters had been discussed with representatives of the Government during that period, in effect not only with the Special Prosecutor, there was some discussion along this line with members of the staff of the Watergate Committee; there was, as you know, a formal communication to the I.R.S. in the early part of October, so those matters were discussed with them." [Tr. 258-59].

* * *

(Mr. Finney) "The Special Prosecutor, after the decision that we would be in effect, as one expressed it at one time, 'on our own with the IRS', he showed no particular curiosity about the kind of detail of the origin of the funds that would be relevant primarily to an assessment of taxes. He was interested in what the scheme was and he was told what the scheme was and how it worked. After the decision was made that we would exclude from, we would except from the disposition of the matter violations of the -- criminal violations of the Tax Code, he was then not interested in pursuing the kind of detail that would be primarily relevant to an assessment of the taxes." [Tr. 302].

* * *

(Mr. Finney) "Well, we came to a joint conclusion with the Special Prosecutor that the way we would proceed was that we would except from the plea bargain violations of the Internal Revenue Code. We advised the Special Prosecutor that we would deal with the IRS directly. He said in effect you are on your own as far as any criminal tax charges are concerned. This was the arrangement that was reached with the Special Prosecutor. This reflected in part his own preferences and conveniences. If you have read the file of the documents produced by the Government you will know that about this time the IRS and the Special Prosecutor had for reasons known to them, not to me, arrived at an arrangement that this was to be the standard procedure followed in these cases." [Tr. 310].

* * *

(Mr. Witten) "Well, the best indication of what Mr. Finney said, I think, is in my memorandum of the meeting [of October 10, 1973]. My independent recollection of that meeting is considerably less vivid than my recollection of the meeting as refreshed by that memorandum. But I think he set forth in general terms a course of events in which we were given to understand that the money had been taken abroad and brought back in some way or was somehow brought in from abroad, and had been stored in a cash form in the control of Phillips and used at the discretion of certain persons at Phillips." [Tr. 362-63].

* * *

Q. (By Mr. Williams) "In that memorandum of understanding between I.R.S. and the Department of Justice, it's recited, isn't it, Mr. Quarles, that in the Phillips agreement with the Watergate office, the right that was reserved by the Watergate Prosecutor's office was to prosecute for possible violations of Title 26, isn't that so, isn't that what it says?"

A. Yes, it says a specific right to proceed was reserved.

Q. For Title 26 violations? (emphasis supplied)

A. That is correct, right. (emphasis supplied)

Q. And Title 26 violations are Internal Revenue Service criminal violations, isn't that right?

A. They are.

Q. And those are the violations that are set out in Counts 2 through 7 of the case that is before His Honor right now, is that not so? Those would be Title 26 violations, wouldn't they?

A. I believe they would." [Tr. 399].

* * *

Q. [By Mr. Williams] "And over here, Mr. Quarles, may I just turn your attention now to one final document, the memorandum of understanding signed by your boss, Mr. Ruff -- he was your boss, wasn't he?

A. He sure was.

Q. That was signed on June 11, '75, says that the agreement in the case of Phillips --

A. I don't believe I was employed there then but I will help.

Q. I think weren't you still there then?

A. I may very well have been.

Q. I remember you there in 1975.

A. Oh, I was there in 1975.

Q. Because you and I were in Court there in 1975 for about three or four weeks.

A. Now that you mention it, I remember that.

Q. Do you remember that --

A. But I do believe I left in June of 1975.

Q. Okay. It was agreed in the case of Phillips that there would be a reservation of rights to proceed under Title 26, isn't that so?

A. That is.

Q. That was the reservation, right, to go under Title 26, that is what it says, that is what Mr. Ruff signed, isn't it?

A. That is exactly what it says.

Q. And the part of this case that is brought under Title 26 is Count 2, Count 3, Count 4, Count 5, Count 6, Count 7, right?

A. That is right.

Q. Not Count 1, right?

A. Count 1 charges 371, right." [Tr. 399-401].

* * *

THE COURT: ". . . So, he [Mr. Finney] stated that whatever arrangement he made with you, he had no notes necessarily on them; whatever you said, he felt he was safe in saying. Now, during those conversations, he stated that he revealed the source, the generation and the donations and the list to whom they were donated. You gave him a list of questions?

THE WITNESS [Mr. McBride]: Yes.

THE COURT: Part of them to name the donees, I believe?

THE WITNESS: Yes.

THE COURT: Was that done?

THE WITNESS: Yes. Insofar as the source of funds, he told me that this money had been accumulated when, I think it was 1964, the early 60's, when a fellow named Boots Adams was chairman of Phillips, that had been generated overseas in some fashion, I don't know if he told me the details, and my recollection was that it was about \$600,000 and it had been brought back here back in the 60's, put in a safe and that they were still drawing right up to '72 on those earlier accumulated funds, for making political contributions.

I also insisted that he disclose to us all of the contributions made to Federal candidates from 1968 up until that time, and that was a bone of some contention and eventually he bowed to my insistence and gave me a list of what he represented were all of the contributions to Federal candidates during that time." [Tr. 409-10].

* * *

THE COURT: ". . .Mr. McBride, what was the first meeting you recall having with Mr. Finney?

THE WITNESS: August 15th, 1973.

THE COURT: August 15th, 1973.

THE WITNESS: Right.

THE COURT: And did that go through, I think, as he testified, through either you or one of your assistants, to the day before, I believe December 3rd, before the plea?

THE WITNESS: Right, there were a number of meetings during that time frame.

THE COURT: During that period of time, as he stated yesterday, in fact, he said he didn't even take notes on a lot of it because anything you said, he knew he didn't have to take notes.

THE WITNESS: I feel the same way about Mr. Finney." [Tr. 409].

* * *

Q. (By Mr. Williams) "And you do recall, do you not, Mr. McBride, that during one of the sessions that you had with Tom Finney, that he told you that the monies in question had not been recorded on the company books?

A. I don't know if he specifically said that. His description of how they were generated certainly led me to believe they wouldn't be reflected on the company books.

Q. As a sophisticated veteran prosecutor of State and Federal experience and national reknown, you knew that that was a reasonable inference to be drawn from what he told you?

A. Certainly. It would defeat the object of secrecy.

Q. It would defeat the concealment, would it not?

A. Yes." [Tr. 423-24].

Based upon the foregoing excerpts, the Court finds that the exception to the plea agreement was limited to Title 26 offenses, and that Finney, on behalf of Phillips and its officers, disclosed to the WSPF before the plea was entered, the source, generation and handling of the funds, and the political contributions made with those funds.

52. The Court's finding that the exception to the plea agreement was limited to Title 26 offenses is further supported by Defendants' Exhibit 9, C-8, the "Memorandum of Understanding" executed on December 14, 1973, by Henry S. Ruth, Jr., Deputy Special Prosecutor, and John F. Hanlon, Assistant Commissioner (Compliance) Internal Revenue Service, Washington, D. C. This document contains the understanding between WSPF and the Internal Revenue Service as to the procedure for consulting the IRS on the tax aspects of any § 610 violations discovered by the Special Prosecutor on possible tax violations committed in connection with corporate contributions. The Memorandum specifically refers to Phillips and states as follows:

"The specific right to proceed criminally for possible violations of Title 26 with regard to political contributions disclosed to the Special Prosecutor has been reserved in the case of Phillips Petroleum." [Deft. Exh. 9, C-8 at 1].

53. A subsequent "Memorandum of Understanding" dated June 11, 1975, and signed by Cono R. Namorato, Chief, Criminal Section of the Tax Division of the Department of Justice; Charles Ruff, Assistant Special Prosecutor for WSPF; David Gaston, Director of the Criminal Tax Division of the Office of the Chief Counsel of the IRS; and Robert Potter, Assistant Director, Intelligence Division of the IRS, contains the following agreement with regard to Phillips Petroleum Company:

"that recommendations to prosecute these corporations and/or the corporate officer(s) for possible criminal violations under Title 26 will not be jeopardized by reason of nominal fines or sentences received by these taxpayers for non-tax violations, the dual prosecution policy of the Department of Justice and/or IRS notwithstanding." [Deft. Exh. 9, C-9].

54. The Court finds that, because the plea agreement excepted only tax charges under Title 26 of the United States Code, and because the conduct alleged in Count I of this indictment was disclosed to the Special Prosecutor before the plea was entered, the prosecution for the conduct alleged in Count I of this indictment and charged under Title 18 of the United States Code, is barred by the terms of the plea agreement. [See Findings Nos. 50 and 51].

55. During the proceedings of February 17, 1977, Mr. McDermott, counsel for William W. Keeler, advised the Court that based upon Finney's testimony, Keeler was bound by the agreement negotiated by Finney, and that there was no separate or different agreement negotiated for Keeler:

(Mr. McDermott) "If the Court please, in view of the testimony of Mr. Finney and the documents that confirm his testimony to my judgment to an unassailable point, I have reached the conclusion that Mr. Keeler's testimony so far as the issues are concerned would be cumulative, that he could add nothing to it except the detail in which he may have understood the arrangement more broadly than has been proved here, but on the other hand I am convinced that the bargain was negotiated by Mr. Finney and that we are bound by it in any circumstance whether we knew it in the precise detail or not, and certainly we don't take the position that Mr. Keeler drove a new bargain on the day of his plea; . . ."

[Proceedings of February 17, 1977, Tr. 322-23].

56. Additionally, the Court finds that the prosecution of Count I of this indictment is barred on another ground -- that the conduct alleged in Count I is part of a single conspiracy which was covered by the plea agreement, as is shown more fully below.

57. Finney testified at the hearing of February 17, 1977, that ". . .the most serious charge that we potentially faced at that time was the conspiracy charge and regarded it as being disposed of." [Proceedings of February 17, 1977, Tr. 255). He also Stated:

"So that, particularly on the conspiracy charge, we had been, from the very beginning, had felt that the most dangerous charge that could be brought on the basis of the facts that we knew was a conspiracy charge, because it would involve the largest number, potentially involve the largest number of people in the company and, of course, extend over a considerable period of time because the indication that we had was that it went back to 1964; so that when the Special Prosecutor said, in effect, that they would charge a single officer with a single count of a 610 violation and do so by misdemeanor, we were really talking about one

person s...ping forward, in terms of ne, in effect, misconduct that had been disclosed to the Special Prosecutor."

[Proceedings of February 17, 1977, Tr. 264-65; see also Finding No. 51, p. 16].

58. The Court finds that the "misconduct that had been disclosed to the Special Prosecutor" included generation of the funds, the use of Swiss bank accounts, the transfer of cash to the United States, the concealment of the funds in office safes in Bartlesville, and the making of political contributions from the fund. [See Finding Nos. 43 and 51].

59. Finney testified that all of the misconduct disclosed to the Special Prosecutor was part of one conspiracy:

Q. [By Mr. Cotton] "Now, you have other -- you stated, I believe, Mr. Finney, that you were afraid of the conspiracy charge.

A. Yes, sir.

Q. And what conspiracy was that?

A. Well, there was only one, Mr. Cotton, to my knowledge.

Q. And that was a conspiracy to make illegal political contributions, is that right, Mr. Finney?

A. And to make arrangement to provide the funds, arrange the system for doing so."

[Proceedings of February 17, 1977, Tr. 297].

60. McBride testified, and his prosecutive memorandum reflects, that, prior to the entry of the plea on December 4, 1973, to the §610 misdemeanor charge, he had sufficient information to charge a conspiracy under 18 U.S.C. §371. The record reflects the following colloquy:

Q. [By Mr. Williams] "Now, when you dealt with Tom Finney, in your prosecutive memorandum, that you prepared for Mr. Jaworski, you pointed out, did you not, Mr. McBride, "that as a matter of law and with testimony we now possess, as a matter of proof, it is possible to charge Keeler, Houchin and Slack each with two-count felony violations of 18 U.S.C. 610 and/or a conspiracy to violate 18 U.S.C. 371," right?

A. [By Mr. McBride] That is correct.

Q. But in your agreement with Finney, you agreed not to bring an 18 U.S.C. 371 to violate 610, did you not?

A. I don't think we discussed it specifically.

Q. But it was certainly understood between --

A. I certainly thought it would be a breach of the understanding if we brought a conspiracy to violate 610."

61. The Court finds that the conduct alleged in Count I was part of a single conspiracy which had as one of its objects the violation of 18 U.S.C. § 610, and which was covered by the plea agreement between WSPF, Phillips and Keeler. The Court finds that the generation and concealment of the funds, and failure to record the funds on the company books, was all part of the same course of conduct as the making of political contributions. The indictment in this case evidences the relationship between the generation and concealment of the funds and the making of political contributions. The "Means and Methods" portion of Count I not only alleges facts relating to the generation and concealment of the funds, but also alleges as follows:

"6. Funds from Swiss accounts would be withdrawn from the accounts in cash from time to time and returned to the Company headquarters in Bartlesville, Oklahoma, where said funds would be held in a confidential cash fund and used to make concealed payments which would not be properly recorded on the Company's books of financial account."

62. In further support of the Court's finding that the conduct in Count I was part of a single conspiracy covered by the plea agreement, and is therefore barred from prosecution, the Court received into evidence during the hearing of February 17-18, 1977, Defendants' Exhibits 12-16, which are copies of Indictments and Informations filed by the Special Prosecutor in five cases, charging conspiracies to violate § 610. In each of these cases, a single conspiracy was averred in Count I of the Indictment or Information -- a conspiracy to violate § 610 -- which conspiracy included both the way in which the funds were generated, the way in which the funds were concealed and disguised, and the way in which the funds were paid out to candidates. [Deft. Exh. 12-16; Proceedings of February 18, 1977, Tr. 421]. McBride testified that he had enough proof to charge Phillips and its officers with a conspiracy under 18 U.S.C. § 371. [Proceedings of February 18, 1977, Tr. 421]. McBride further testified that if the Special Prosecutor's office had charged Phillips and its officers with a conspiracy to violate § 610, it could have, as in the five Indictments and Informations referred to supra, alleged the manner in which the funds were generated and concealed as

part of the conspiracy. [Proceedings of February 18, 1977, Tr. 421]. Consistent with this Court's finding that the conduct in Count I of this indictment was part of a single conspiracy covered by the plea agreement is a memorandum filed by the Government during the grand jury investigation of the case before this Court. In seeking to defeat a claim of attorney-client privilege for certain documents, the Government set forth the relationship between the generation of funds alleged in Count I and their use for corporate political contributions. In its memorandum, Defendant's Exhibit 17, the Government stated in part:

"The Government has received evidence and can establish, to the satisfaction of the Court, that in 1963, Stanley Learned enlisted the aid of Paul Parker, Vice-President in charge of the International Department, to establish Swiss bank accounts for the purpose of receiving and holding concealed funds for Phillips to use in making political contributions around the World. The device by which Learned generated the funds was a contract with Procon Construction Company involving the payment of a fixed fee of three and one-half million dollars. Procon, by a subsequent agreement, remitted two million dollars to entities designated by Phillips Petroleum International Corporation. The two-million dollars was thereafter transferred through Procon to the Swiss bank accounts styled Pemond and Grandelle. The monies were used to make a \$900,000 payment to Intrade Associates, and the excess was held in the Swiss Accounts for use by Phillips in maintaining its political slush fund in Bartlesville, Oklahoma. Periodically, Phillips personnel, including Paul J. Parker, John Houchin and W. F. Martin, made trips to Switzerland to withdraw and return funds to this country. The monies brought into this country were not recorded on Phillips' books and records and were not reported in its tax returns. . . . Phillips has also entered a plea of guilty to a violation of the Federal Corrupt Practices Act.

* * *

The Government can also establish that Stanley Learned and Paul Parker gave birth to two additional devices designed to continue the funding of the political contributions slush fund. Mr. Houchin has testified that when he received his assignment from Stanley Learned to be the U.S. custodian of monies brought back into the country, he was assured by Mr. Learned that the monies were Phillips funds, and that the taxes had been paid. Houchin has also testified that he was informed by Learned or Parker that there would be a continuing source of funds. The devices by which Phillips continued to generate funds for the Swiss bank accounts are a consulting agreement with Procofrance and a shipping commission from the Triton Shipping Company." [Deft. Exh. 17; Government's Memorandum Regarding the Phillips Assertion of Privilege Respecting 38 Documents Subpoenaed by the Grand Jury, at 5-6 (Jan. 1976) (emphasis supplied)].

63. The Securities and Exchange Commission, following an investigation into the generation of funds and the making of corporate contributions, alleged that the activity constituted a single course of conduct. Paragraphs 13 and 14 of the Complaint in Securities and Exchange Commission v. Phillips Petroleum, William F. Martin, William W. Keeler, John M. Houchin and Carstens Slack, United States District Court for the District of Columbia, No. 75-308 (Deft. Exh. 18) state as follows:

"13. During the period from 1963 to date hereof, defendants PHILLIPS, KEELER MARTIN, HOUCHIN, SLACK and others engaged in a course of conduct whereby they maintained a secret fund of corporate monies, which were used for unlawful political contributions and other purposes.

14. During the period from 1963 until date hereof defendants PHILLIPS, KEELER, MARTIN, HOUCHIN, SLACK and others, aiding and abetting one another, caused to be disbursed in excess of \$2.8 million in PHILLIPS corporate funds to two Swiss bearer stock repository corporations by means of false entries on the books and records of PHILLIPS. Said disbursements were converted into cash and in excess of \$1.3 million of this fund of cash was returned to the United States. Of this latter sum approximately \$600,000 was expended for political contributions and related expenses, a substantial portion of which was unlawful. The balance of the funds channeled into these Swiss corporations was distributed overseas in cash."

64. The Court finds that the course of conduct alleged in Count I was disclosed to the Special Prosecutor and was part of a single conspiracy which had as one of its objects the violation of § 610.

65. The Court finds that the plea agreement bars prosecution for the single conspiracy and any part thereof, including the conduct alleged in Count I of this indictment.

66. The Court finds that Phillips and Keeler, on behalf of themselves and the present and former officers of Phillips, were induced by and relied upon the plea agreement with WSPF when they entered their pleas of guilty on December 4, 1973, in Washington, D.C. [Proceedings of February 17-18, 1977, Tr. 257; 313; 384; 414].

67. The Court finds that the prosecution of Count I of this indictment is a breach of the plea agreement.

68. The Court finds that Count I of this indictment must be, and therefore is, dismissed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

1. When the United States Government gives its word to or makes an agreement with one of its citizens, the Government must be held to that agreement and keep its promises. The United States Supreme Court held in Santobello v. New York, 404 U.S. 257 (1971), that where a plea of guilty by a defendant rests in any significant degree upon the promise or agreement of the Government, such promise must be fulfilled. The most meticulous standards of both promise and performance must be met by prosecutors engaged in negotiating such agreements. Correale v. United States, 479 F.2d 944 (1st Cir. 1973).
2. The Government must be held to its agreement through the remedy of specific enforcement. Santobello v. New York, 404 U.S. at 263; United States v. Carter, 454 F.2d 426 (4th Cir. 1972) (en banc); Correale v. United States, 479 F.2d 944, 949-50 (1st Cir. 1973); United States v. Paiva, 294 F. Supp. 742 (D. D.C. 1969).
3. The Court found as a fact that the plea agreement with the Special Prosecutor precludes criminal prosecution, except for Title 26 offenses, for activity disclosed to the Special Prosecutor. The Court further found that the essential elements of Count I were disclosed. Thus, the prosecution of Count I is barred and it must be dismissed.
4. As a separate ground, since Finney and McBride agreed that a conspiracy which had as an object the violation of § 610 was barred by the plea agreement and since the Court has found that the conduct alleged in Count I is part of a single conspiracy which had as one of its objects the violation of § 610, prosecution of that conspiracy, and any part thereof, is barred by the plea agreement and Count I must be dismissed.
5. In reaching the conclusion set forth in paragraph 4 above, the Court is guided by the Supreme Court's decision in Braverman v. United States, 317 U.S. 49 (1942). In that case the Court held that even though a conspiratorial agreement may have several criminal objects, nevertheless, since the agreement, not its particular illegal

objectives, is the avamen of the offense und 18 U.S. C. §371, there is but a single violaticn of that statute. Thus, here, even though the single conspiratorial agreement may have had two objects (1) the generation of unrecorded and unreported funds in a concealed manner for the alleged purpose of defrauding the United States as set forth in Count I and (2) the making of corporate political contributions, there was but one illegal agreement and but one violation of 18 U.S.C. §371.

The Government may not break down a single conspiracy into component sub-agreements for the purpose of multiple punishments or multiple prosecutions. U.S. v. Tanner, 471 F.2d 128, 141 (7th Cir.), cert. denied, 409 U.S. 949 (1972); See also, e.g., United States v. Young, 503 F.2d 1072, 1075 (3rd Cir. 1974); United States v. Palermo, 410 F.2d 468, 470 (7th Cir. 1969); United States v. Cohen, 197 F.2d 26, 29 (3rd Cir. 1952). This Court has found that the generation and concealment of unrecorded and unreported funds and the making of political contributions were objects of the single conspiratorial agreement disclosed to the WSPF. Keeler and Phillips, on behalf of itself and its officers, were promised that there would be no criminal prosecution for the conspiratorial agreement disclosed to the WSPF. Count I was brought in breach of that promise. To hold otherwise would be to permit the Government to bifurcate a single conspiratorial agreement. Since even the Government in its prior pleading has stated that the motivation for the generation of the funds was for use in making political contributions, there is no basis for concluding that this course of conduct constituted two conspiracies. There is no evidence that there were two independent agreements; indeed, all the evidence points to the fact that there was a single conspiracy. Thus, Count I must be dismissed.

6. The Government appeared to argue at the hearing on this motion that the Special Prosecutor did not receive sufficient information from Phillips on which to base a charge of conspiracy to defraud the United States and therefore that such a charge could not be foreclosed by the plea agreement. For the reasons set forth above that argument is factually incorrect. It is legally incorrect as well. In United States v. Tanner, 471 F.2d 128 (7th Cir.), cert. denied, 409 U.S. 949 (1972), the Government argued that the Braverman principle was not applicable to bar a second conspiracy prosecution because, at

the time of the first prosecution, the Government lacked information as to the full scope of the conspiracy. In rejecting the argument, the Court of Appeals said:

"The Government claims an exception to this [the Braverman] rule where it was unaware of all the defendant's crimes at the time of the initial proceedings. See Ashe v. Swenson, 397 U.S. 436, 453 n. 7, 90 S. Ct. 1189, 25 L.Ed. 469 (1969) (concurring opinion); United States v. Buonomo, 441 F.2d 922 (7th Cir. 1971). But that exception raises very difficult problems of analysis particularly where the Government's investigation evolves slowly over a period of months. It is often not a question of the Government knowing the exact parameters of the second offense even while prosecuting the first, or alternatively, having no inkling of any further offenses. There may be intermediate stages ranging anywhere from vague intimations to strong suspicions. We are of the view that suspicions of a larger continuing conspiracy, but does not have sufficient evidence to proceed to indictment, it cannot be permitted, consistent with Braverman, to fragment prosecution so as to insure that some offenders will come to trial and thereby avoid the risks of a single conspiracy prosecution." 471 F.2d at 141-42 (emphasis supplied.)

Thus, the Court of Appeals held that even though the Government lacked knowledge of the full scope of the conspiracy at the time it initiated the first proceeding, since the Government was not "completely ignorant" of a larger conspiracy, the Court would not allow multiple prosecutions. 471 F.2d at 142. In the instant case, the Government can hardly contend that at the time of the plea agreement it was "completely ignorant" of the generation of concealed funds alleged in Count I.

7. The conclusion reached in this case finds support in the recent decision of the Eighth Circuit in United States v. Minnesota Mining and Manufacturing Co., No. 76-1730 (8th Cir. March 3, 1977). That case is remarkably similar to this one. Like Phillips, Minnesota Mining and Manufacturing (herein referred to as "3M") responded to the July 6, 1973 invitation of the Special Prosecutor and acknowledged a corporate contribution to the Nixon Campaign. After discussions between counsel for 3M and the Special Prosecutor's Office, an agreement was reached under which 3M and an officer pled guilty to §610 violations in exchange for an agreement that the pleas would be fully dispositive of all criminal charges arising from the campaign contributions. 3M and two officers were subsequently indicted for conspiracy to defraud the United States by interfering with the functions of the IRS and on two substantive charges. The defendants

moved to dismiss the indictment on the basis of the plea agreement. There was a dispute as to whether the plea agreement foreclosed prosecution for tax offenses. The District Court resolved that issue in favor of the defendants, finding that the plea agreement was dispositive of all federal criminal liability arising out of the campaign contributions. The District Court concluded that the Government breached the plea agreement by prosecuting the defendants and the Court ordered dismissal of the indictment. After a careful review of the facts, the Court of Appeals affirmed the dismissal of the indictment.

The case at bar differs only slightly from Minnesota Mining and Manufacturing. Here the parties agreed to exclude Title 26 offenses from their plea bargain. Accordingly, the defendants have not moved for dismissal of the Title 26 counts, Counts II-VII, on the basis of the plea agreement. However, as to the prosecution of Count I, the case is virtually identical and, like the Court in 3M, this Court concludes that the plea agreement has been breached and the proper remedy is dismissal of Count I.

ENTERED this 5th day of July, 1977.


CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA