United States District Court for the State of Oregon

Wayne Morse Courthouse 405 East Eighth Ave Eugene, OR 97401

Case Number: 6.14.cv.01103.TC

Plaintiff Motion

Inclusion of Allegation of
Corruption of District Court as Part of RICO
Relating to Case 6.11.cv.06248.HO

Plaintiff: Andrew G. Clark

3270 Stoney Ridge Rd. Eugene, OR 97405
541.510.3915

Defendants:

City of Eugene, Oregon Police Department/Police Auditor
Served to Mayor's Office 125 E. 8th Avenue Eugene, OR 97401
Lane County, Oregon – Sheriff's Department and Jail
Served to Lane County Commissioners Public Window
125 E. 8th Avenue Eugene, OR 97401
State of Oregon – District Attorney's Office for Lane County
and Pre-Trial Release Office.
Served to Public Window of District Attorney's Office
125 E. 8th Avenue Eugene, OR 97401
Mailed to Director of the Oregon Dept. Administrative Services
Department of Administrative Services Executive Building
155 Cottage St. NE, U20 Salem 97301-3972
Alex Gardner – District Attorney for Lane County
Served to Public Window of District Attorney's Office
Wells Fargo Bank, NA via Attorney Christian Rowley
Seyfarth Shaw 560 Mission Street San Francisco, CA

10-8-14: This Pleading is being submitted in Case 6.14.cv.01103.TC. It is to introduce Case 6.11.cv.06248 as a SLAPP Suit as part of the RICO allegations along with total corporate corruption of the District Court processes via undue influence and threat painting. Wells Fargo Bank, via its Agent Ogletree Deakins did deceive and trick now-retired Hon. Judge Michael Hogan such that it created possible legal exposure to him. Hon. Judge Hogan is known to be trusting, caring, and is among the finest judges ever produced by the United States. Ogletree Deakins set him up to break the law as part of their typical gangland activity. It is shameful of them and cannot be tolerated by the Court now known.

18 U.S. Code § 1951 The Hobbs Act
a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, <u>or</u> commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

United States v. Debs, 949 F.2d 199, 201-02 (6th Cir. 1991).302
2. A Defendant "Obtains" or Seeks to "Obtain" Intangible Property Rights From A Victim Within The Scope of the Hobbs Act When He Uses Extortionate Means In Order to Exercise Those Rights For Himself or a Third Party in a Way That Would Profit Them Financially. The Hobbs Act addresses benefits given to third parties "under color of official rights" (attached).

18 U.S. Code § 872 - Extortion by officers or employees of the United States (Hobbs Act references this)
Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations and bankruptcy: Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

FRCP 60 Relief from a Judgment or Order
(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (6) any other reason that justifies relief.

New Allegations and Factual Basis - Judge Michael Hogan and the Hobbs Act Used to Violate 18 USC 1519

I am alleging and providing reasonable documentation to conclude the Court of Hon. Judge Michael Hogan was corrupted as part of the racketeering activity alleged. He was badly tricked and used by Wells Fargo Bank/Ogletree Deakins. It carried over into the Court of Ann Aiken after Judge Hogan retired when she granted Ogletree Deakins (a third party) **a cash benefit of over $1,000 relating to faxes**.... with no hearing and with no relation to the underlying case filed by Wells Fargo Bank. As noted: it appears to me Ogletree Deakins was granted the ability to write anything as a court order for judge's signature. It as if Ogletree Deakins/Wells Fargo hijacked District Court with Judge Hogan stuck inside.

My recent study of the Hobbs Act provides the factual basis to allege Judge Hogan was tricked by Defendant to grant a third party benefit and conducted his court in a fashion that provided a clear benefit to Ogletree Deakins, attorney for Wells Fargo Bank, NA. I allege a very clear factual basis to conclude that Judge Hogan violated the Hobbs Act (see attached DOJ material) as a result of the corporate duplicity. I assert that the hearing he granted for the attached motion was both coercive and conveyed a benefit to a third party as explained. While it does not have to be coerced to violate Hobbs Act, I feel the evidence is clear that coercive tactics were used against me as detailed herein. It was in fact SLAPP as part of RICO in the most classic mob fashion.

1. Case 6.11.cv.06248.HO was assigned to Hon. Judge Thomas Coffin and the early order was signed in his name even though by then Judge Hogan seemed to already be 'on the case'. It was moved to now retired Judge Hogan by Wells Fargo Bank, et al via their attorney/agent Ogletree Deakins employment lawyers. That action by Ogletree Deakins/Wells Fargo was the product of some form of court corruption because there was no particular reason Judge Coffin could not have handled the case. While I recognize reassignment of judge to be legal, there was no particular reason therefore it can be considered suspicious until the reasons and causes are discovered and remediated.

2. c. August 4, 2011 I started receiving a large amount of legal pleadings pursuant to an "emergency" lawsuit against me by Wells Fargo Bank. Meanwhile, a temporary injunction was used to shut off my internet host and deny me the very ability to share the detailed material with attorneys in the short time between filing of lawsuit and the "emergency" hearing. That order is attached.

3. Discovery and investigation will reveal the actual reason(s) why the case was moved to Judge Hogan. I placed significant amounts of factual responsive pleadings into the Court between early August and the "emergency hearing" on August 22, 2011. It appears it was among material that was sealed by the Court upon demand of Wells Fargo Bank and their agent/attorney in violation of 18 USC 1519. I presented tangible, factual evidence and it was concealed and obstructed from hearing. Factual evidence was never heard by a court. I am alleging that sealing by Wells Fargo Bank et al had no actual basis as decided by the court <u>at that time</u>. I allege it was done to conceal tangible evidence. Regardless of intention: that is the <u>result</u> of the conduct when viewed over time in accordance with RICO allegations.

4. I allege corruption of District Court and Judge Michael Hogan. The attached Motion submitted under seal by Ogletree Deakins was nothing but fee gouging at its finest. In that case had absolutely nothing to do with anything other than Ogletree Deakins convenient lack of control over their company fax machine. Ogletree Deakins....literally... made a Federal Case over business faxes. They used the same faxes to them against me in all courts, including OSHA. In the process, they fee-robbed Wells Fargo Bank.

That was not what we were in court for. His corporate-lie-induced actions provided extensive resources such as that hearing and use of federal marshals as described within to Ogletree Deakins in order to terrorize me and humiliate me. It was later used in the Court of Ann Aiken to award a cost bill against me of over $1,000 from what I understand from the record. Attorney bills to Wells Fargo at that time would not have conveyed a third party benefit. Awarding such a fax bill directly to Ogletree Deakins is extremely mean and unethical at the very least. **<u>It is a criminal violation of the Hobbs Act against Judge Hogan. Judge Hogan might agree and 'fix it' now that he can be aware of the extent of what Defendant Wells Fargo Bank via Ogletree Deakins did perpetrate: Kidnapping, RICO, 18 USC 1519 violations, 18 USC 1951 violations, Corruption of Government (almost all agencies including FBI). Next up to be introduced in separate motion.... Labor Racketeering that was reported to FBI in 2011 and to DOL Labor Racketeering Office 2013. There are new facts but that will be a soon forthcoming Pleading.</u>**

5. Attached are the sum total of the hearings in Case 6.11.cv.06248.HO Notice that most of the pages are devoted to the hearing over the fax material and nothing in either hearing had anything to do with the underlying facts. I am working on a Rule 5.1 Pleading to raise the aspect of "Battery by Legal Process" to the level of Constitutional Question. What follows are material aspects of that for this Pleading as part of the factual basis.

6. I filed with District Court at that time all that I felt was perpetrated against me by Wells Fargo Bank et al and/or their employment agent Ogletree Deakins. Among that was the allegations that the arrest event 7.29.11 was in fact kidnapping #1 (two acts of that needed over time for RICO).

7. The police audio and police records were presented to the Court without any hearing. In addition, I reported to the court that:

a. I had no legal representation.
b. I was under charges in the municipal court for the 7.29.11 event.
c. My family member (ex-son Andrew J. Clark) was being removed from me via Circuit Court.
d. My spousal support was $5,500 per month and that was not adjusted until 3.2014 due to legal obstruction and legal battery by Wells Fargo Bank/Ogletree Deakins.

8. The Court did nothing at all about my very extreme, very human problems. Meanwhile the Court saw it fit to be very concerned about the slightest imagined communication offense against Ogletree Deakins/Wells Fargo to the point of granting hearings and sanctions on the topic as I was being coldly ghettoized. Literally: this court via Judge Michael Hogan who acted wrongly based upon the lies of Defendant and Ogletree Deakins did not consider the matter of my family removal and termination of my ability to earn to be a problem. Complaining about it to Leah Lively at Ogletree Deakins was hyped up in order to deceive and trick Judge Hogan to the extent requiring federal marshal and a special hearing of the court at great expense to the taxpayer. That hearing and the use of marshals service against me is a clear benefit to Wells Fargo Bank and their attorneys. It is in addition to the clear Hobbs Act violation via the fax money award given with no hearing and in a case that did not involve Ogletree Deakins as a plaintiff or defendant of the lawsuit. Me and my family were treated like trash to be burned. That was the product of the attorney trade and the broken, manipulated Court systems so horribly corrupted by

Defendant Wells Fargo via Olgetree Deakins via fealty, lies, and system fraud and whatever other illegal tactics they use in vain attempts to continue their fee-robbery of corporate America.

9. In advance of the hearing on the attached sealed motion for third party Ogletree Deakins I received contact from federal marshal's service regarding faxes to Mr. Symes, (then) of Ogletree Deakins. I reported that contact in detail to the Court. Contact from federal marshal regarding harmless communication was very frightening to me in combination of all else going on. It was coercive and it seems that it would have had to be something Judge Hogan initiated to benefit Ogletree Deakins and by extension Wells Fargo Bank for allowing Ogletree Deakins to perpetrate the root Labor Racketeering which forms the basis for their retaliatory activity that extended to physical RICO. I will be augmenting allegations in 6.14.cv.0113.TC or including it in a Dodd-Frank lawsuit if necessary for Justice. The matter was reported in detail to Department of Labor via their Labor Racketeering Office about a year ago. Ogletree Deakins CAUSED the condition at Wells Fargo of Labor Racketeering. That and their fee gouging/fee robbing of Wells Fargo Bank is what they are concealing. They don't understand the banking.

12. It was not "mediation" of any known form. As I was leaving, two guards came from the elevator. I was so frightened I asked them if they were looking for me. One told me they were giving Judge Hogan a ride to the airport (or something to that effect). Consider that Judge Hogan had the guards escort me out of the courthouse December 2011 "naughty fax hearing" for Ogletree Deakins/Leah Lively after he had the marshals call me and scare me... all for communicating business reality. It was very scary.

13. He threatened me that if I did not take a settlement, he would order a trial, all based on the lies and corruption of Ogletree Deakins/Wells Fargo Bank. At that time I told him I was wanted a trial. Keep in mind, I was their defendant in that case. Shortly thereafter, I placed a Motion into the Court pleading for a trial as it became apparent Judge/Mediator Hogan was not calling for another mediation session. There was never a hearing of facts...only thing ever heard was of FAX received by Ogletree Deakins (agent of Wells Fargo Bank) long after employment. They used the same faxes against me in all courts... and then charged it as 10 identical counts of criminal stalking. It speaks poorly of Ogletree Deakins information control if they need District and Circuit Court to help with their fax machine. An Ogletree Deakins client should compare how all other law firms dealt with my faxes: they simply pushed "block" or had them re-routed. Judge Hogan may have been unaware of modern FAX technology when he awarded the third party benefit (a later order signed by Hon. Judge Aiken for me to pay Ogletree Deakins for their misrepresentation of a fax problem and to financially punish me under color of law in violation of the law.

14. The amount offered was so trivial in comparison to economic damages it arguably constitutes a bribe attempt offered in an extortionary fashion *under the circumstances*. I am not accusing it was a bribe attempt because it could more logically be called 'mediation'. But it was somewhere in between the two, caused by him being one of the most powerful judges in America **and** the mediator. Judge Hogan was not aware I earned $200,000 in my last full year of work until I advised him. Ogletree Deakins/Wells Fargo Bank carefully shielded Judge Hogan from facts and inserted abject lies and emotional posturing in order to trick Judge Hogan to act as he did. The corruption appeared so total he was deceived into allowing faxes allegedly received by Ogletree Deakins as a proxy for allegations placed into the court in the name of Wells Fargo Bank. They shamed Judge Hogan. The chumped him and treated him as a toy.

15. Under all the circumstances, I assert that Judge Hogan should not have offered or conducted mediation, even though I accepted his offer to mediate in good faith but mostly TRUST that I feel was badly violated by the Enterprise. Then I viewed it as friendly and logical given that he already had some familiarity with the case (in theory). When looked back at... it is part of the concealment and obstruction.

Whatever his intentions, it acted to bury the tangible evidence that I presented to his court and deny trial. It is a very questionable activity for a professional mediator and judge to have engaged in and discovery/investigation will determine the level of his corruption via the lies and fealty of the big bank and big attorney firm. It is lamentable they appear to have caused Judge Hogan to violate the Hobbs Act.

16. I repeatedly went on the record in that case complaining of lack of attorney and lack of knowledge as to why I was even in court as none of the facts alleged by Wells Fargo Bank had any validity and should never have been placed in District Court. It was a pile of standard boilerplate Wells Fargo Bank/Ogletree Deakins was filing all over against low level employees. They had no damages and no cause to have placed this low level worker into District Court. It was pure SLAPP (strategic lawsuit against public participation.) **In addition...it was an easy way for Ogletree Deakins to charge out a lot of fee billings and they do have a well-publicized history of fee-gouging in Maricopa County in the case involving their defense of Sheriff Joe Arpaio. To demonstrate national concern of "pattern and practice": A collection of mainstream news articles and even the Ogletree Deakins lawsuit against the People of Maricopa County are posted: www.RisePatriot.com/theybbad.pd**f. Hello, RICO. Hello national labor racketeering perpetrated by Ogletree Deakins for Wells Fargo Home Mortgage, etc.

17. The court bypassed all the evidence, ignored the fact that we were in mediation and I requested a trial (I was the defendant !) and after all that.... Judge Hogan signed whatever it was the company crafted via the courts for him to sign then he retired. Most of the records of the case were sealed without hearing leaving a terribly one-sided PACER record, deliberately concealing the Ogletree Deakins/Wells Fargo corruption of the court via the trusting and well-meaning Hon. Judge Michael Hogan.

18. I paid a local attorney (Barry Davis of Eugene OR) over $10,000. He was supposed to file an appeal.

He did not even file the notice of appeal in that case. He presented me no invoices or billings. He perform a couple clerical tasks and he did work extensively with Leah Lively at Ogletree Deakins to deny me any right or opportunity of appeal at that time. That is part and parcel of the concealment practices of Ogletree Deakins/Wells Fargo Bank using fleets and hoards of attorney to affect courts.

I feel it would be a great idea and would be best for our Community if retired Judge Michael Hogan might consider completing the unsuccessful mediation he started or if the Court would order the conference/mediation I Motioned now that he can be aware of how badly he was tricked and used as lackey and doormat for the Enterprise as part of their RICO activity: corruption of government.

As an added note... the staff attorney for State of Oregon called me yesterday to "confer" as she was pushing the button on her boilerplate response and thus violating Rule 11. She was NOT aware of my City of Eugene responses even though I provided her copies as well as her clients (State of Oregon and Alex Gardner). Like all the other attorneys.....they have not looked at any evidence as reported over and over to this court. Their job function is robotic. It is as if the entire Court system is a boilerplate war played out in court computer systems and whoever has the 'system edge' and the in with the judge....wins. And then the case might be used as a precedent and the rich and powerful ever-faster consolidate their gains and their control over all. And the primary reason appears to be judges in courts all over America using the same broken systems and processes and doing seemingly small favors that have big impact on people and commerce and use precedent case law to avoid hearing and trial of anything. It must end with this case right here in Eugene Oregon. It is time to clean up the dirtiest business on earth: the American attorney trade. They act as an uncontrolled mob sucking all in their path dry like a hoard of locusts. Justice is definitely America's absolutely most broken product as demonstrated in my case and attorney firms such as Ogletree Deakins corrupting the courts is the cause and it must be cured.

Thank you very much for your consideration and understanding and I respectfully request the people of the court help me because I am absolutely right and very damaged by what the defendants perpetrated against me for telling Truth with actual evidence. They did all they possibly could short of outright murder to obstruct and conceal it from the Light of Justice. Let's have a trial but...when defendants are ordered to confer/mediate they will really not want a trial. They will be happy to be let off the hook once they understand just what they collectively perpetrated. We can fix it and forget about it. It is not hard to do and it is necessary at this time. Or we can have a Trial. It will be a fast trial and I will prevail. But we cannot use the Court to bury tangible evidence. It is illegal per 18 USC 1519, a fairly new law.

With that, let the new allegation of corruption of District Court of Judge Michael Hogan as part of the RICO allegations hereby entered with this Pleading that will support a motion to vacate the record on a broad number of bases using inherent power of the Court as necessary to rectify such horrific and extreme violations of all that America was founded upon and stands for. This should add additional reason for the Court to order conference/mediation. Conference never happened. It needs to now.

Signed and Sworn to October 8, 2014: 10-8-14

Andrew (Andy) Clark 3270 Stoney Ridge Rd. Eugene, OR 97405 541.510.3915
Case Presentation Site: www.RisePatriot.com
Legal Process Battery Site: www.WellsFargoWitz.com (family court material as tandem battery)

Exhibits

Motion under Seal by Wells Fargo Bank and resulting Order relating to the Ogletree Deakins fax machine First 25 pages
a shameful way to use our Courts and a waste of the taxpayer resources.
Order within a week of filing the lawsuit using District Court to take away internet access. Next 15 pages.

Transcripts from the 6.11.cv.06248.ho Next 5 pages for the 8.22.11 first "hearing"...evidence was passed over and ignored.
10 for the Ogletree Deakins fax nonsense 12.21.11

DOJ Hobbs Act Manual s. 2404 Under Color of Official Right Last 4 pages. It applies to federal judges because back in the mob days. The mob would infiltrate the Court and have a 'judge in their pocket'. Add that to all else and we have bad RICO.

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

WELLS FARGO BANK, N.A., Plaintiff, v. ANDREW G. CLARK, Defendant.	**Case No.: 11-cv-6248-TC** **EXHIBIT 4 TO DECLARATION OF LEAH C. LIVELY IN SUPPORT OF PLAINTIFF WELLS FARGO'S MOTION TO COMPEL AND ORDER REQUIRING DEFENDANT TO COMPLY WITH STANDARDS OF PROFESSIONALISM IN ALL COMMUNICATIONS WITH WELLS FARGO AND ITS COUNSEL**

FILED UNDER SEAL

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October 12, 2011

SUPREME COURT **Law Center**

Clark, Clark, and Tortuga

Attorneys at Law Pro Se

David P.R. Symes, Managing Partner
Ogletree Deakins et all
The Koin Center
Portland, Oregon

FAX Cover Memorandum
From the Office of Andrew G. Clark, Attorney Pro Se
Supreme Court Law Center
Clark, Clark, and Tortuga

Dear David:

First, let me apologize that our Legal Material Processing Center sent a previous fax that was not meant to be sent to you. It appears we included Police Reports and a variety of non-Confidential Material. Our entire Legal Staff found it amusing as it contained explicit allegations of possibly homosexual managers and police for arresting a Jew after they Screwed him Beyond Comprehension and he was told to "Stop Whining." all on corporate email and saved despite Managers fervent, desperate attempts to recall the message but...it was already printed. I continue only because your office may have specialty experience and interest that is insightful to Article III Attorney Pro Se Clark

Novel Case: our legal investigators determined that the Jew Employee actually allowed the practice without limits for 2 years to avoid being burned. Seems what set the whole thing off was they cut back on the Vasoline Allotment and it hurt so much even the Jew-to-be-Burned chose burning as an acceptable alternative to perpetual sexual slavery, manager-police predatory and roaming armed homosexual Nazi activity. Seems Ernst Rohm still runs the Schutzstaffel here in Eugene in benefit of Corporate Sponsors. Odd....history repeats itself so exactly. Lockstep.

I dare to say that first need was the apology especially for that accidental note regarding billing our marketing to Clients. Oops. Butterfingers, no pun intended. I wanted to note again and say thank you and that our review of your September 13 letter has no confidential data or secrets as my evidence in court showed. That gives more credence to the rest of the Evidence, don't you think?

Our office determined via Survey that the matter is so far out that it is unbelievable. That is what the client thought... he actually put in writing he thought police made a mistake until he actually saw the evidence. Fascinating case, too bad your Specialty is not as Glamorous but, that explains why I am being groomed for Article III Judgeship. They wanted me to be on the Supreme Court but I just don't trust old guys in robes so I passed on it for the Article III Judgeship course. Because of this, I hope you noticed....with envy...that I have reclassified to Article III Attorney Pro Se.

We are preparing a Website that proclaims the legal right as dictated by Article III Magistrate very clearly in Federal Court Eugene are clear:

Any and all Website or email activity is permissible. Consistent with his Conservative outlook on obligations and rights, it appears the corporate Client's inexperienced and rather lacking Counsel could not possibly comprehend how Cynical the Federal System is but....it is a two edged sword designed to deal justice in the very most unusual way.

As we are colleagues, I would like to ask your permission in advance (not that it is required) if I may use your photograph and attach it to farm animal bodies for use in my Internet Evidence Gathering Websites. There will be at least five covering the following topics:

1. Jail sex, homosexuality, rape, etc. That is what sells best.
2. Total internet freedom announcement website (now that it is proclaimed as Law).
3. Sexual Heath themes such as male and female masturbation. Rather than showing actual sexual organs, it appears best to use objects that look just like sexual organs but are not because they have a tiny tattoo of your face. All of your family, friends, and acquaintances will be laughing so hard over it. And, PLEASE... let me help you produce similar material about myself with my picture on it as long as you are not like the Eugene Managers/Police as I already refused their forced anal rape ideas. I am very anxious to get all that on Youtube, perhaps the Eugene Police can be placed on that assignment.
4. Genocide, Human Rights violations (I am almost going to sleep with boredom now)
5. Banking matters (zzzzzzzzzzzzzzzzzzzzzzzzzzzz what? financial? huh? Got a beer?)

That is why I really wanted those masturbation movies but I think the audio records and the in-car arrest video may be sublime for generating exceptional viral outcome. Want to hear something funny? It is true. I actually did it. How funny is that, stroking the member right there in my home knowing the computer video was activated. They are so stupid, a signal monitor costs maybe $50. I may have to simply re-create them for Publication. By the way, Ms. Lively was accompanied by a very healthy looking female. We were impressed with her powerful silent control and wonder who she is. If you could send her down for Debriefing we can add more variety. Problem then is the loss of the Police-Security industry who love masturbation and forced anal sex involving prisons or similar workplaces. If she is Lesbian, tell her to bring her girlfriend. No men. Past 2 females count me OUT. Lesbians like me because I ask them first to show me their clitoris...show me where the urine comes out...pull it out and let me see the clitoris. Lesbians relate so be sure to tell that short haired attorney her GF is welcome. I will consider cutting them in on movie revenue depending on Talent.

Anyway, I Digress. I must advise you that I masturbate with my left hand so you will not have any issue shaking hands with the right. If you are interested in shaking my left hand then I recommend calling Eugene Police and Manager Martin for appropriate Specialty Services which we do not offer.

Thank you. Senior Partner Tortuga is completing his authorization for Judge Hogan to put that information on PACER using your letter and my response. I will fax you a copy. Once that is on PACER then I can simply reference all the other Attorney so get it all there.

Signed,

Andrew G. Clark
Article III Attorney Pro Se
Federal Court of the United States of America
Supreme Court Law Center
Clark,Clark, and Tortuga

Dave - Key - [illegible] ← [illegible]
[illegible] Child

October 13, 2011

SUPREME COURT **Law Center**

Clark, Clark, and Tortuga

Attorneys at Law Pro Se

Fax to Dave

Great seeing you the other day on the Supreme Court Circuit. I could have sworn I saw you when I was testifying in front of full Congress, the President, etc. during my Ceremony for the Article III position. There were so many people, so many flashbulbs it probably just looked like you. Dave, if you get down here ring me and I will buy you lunch. McDonalds has the BEST McDouble. $1 and free water. I ride my bike there. I feed the top bread to the birds, eat the rest. Please share that tip with any obese or fat people you see. Thank you. To business.

My first Magistrate Order is for you to:

1. Product the evidence regarding short-hair female previously opined to be healthy-looking and in silent control. My analysis of minimal evidence:

- ***a. your firm appears structured in a rather sad way. No worries, we will fix it.***
- ***b. the obese and unhealthy incompetent Person who did most of the talking was the first in the row and was clearly Junior doing all the testimony. That is good. Anything goes wrong she is expendable, the others are "insulated".***
- ***c. Opposing Counsel of Client Lively was in the middle. I proudly mentioned my Jailing as a nice thing. At the mention of the word "Jail" Counsel Pro Se would testify he heard her say one half of the word "objection". The Judge gave her a very concerned look but read my BRILLIANT Court presentation. Seriously. Brilliant by the standards of History. Literally...the Court Recorder on the right as faced as weeping. The other was close. The Court Recorder response was clue to me.***
- ***d. I sensed from the corner of my eye movement from Subject Female indicating she had INCREDIBLE POWER. She was able to get a woman to shut up right in the middle of a word. Not just any woman. A Cal Tech grad and attorney.***
- ***e. The above, combined with Structure (a. above) clearly indicated to me she had Control most likely but to be determined via Production, Discovery, Debriefing and Depositions will determine actual facts as these facts are only construed from evidence available at this time.***

2. Comparing this to profiles in our Psychiatry Stereotyping Research (which is right more often than the Death Sentence) suggest:

- ***a. Lesbian, dominant partner***
- ***b. Other half may feel controlled in some negative way that limits her options. Subject female appears, if Assertion on Evidence suggests that an actual Male who***

fully understands his role in making that perfect would be a compromise position to avoid litigation. It is possible the control is an exceptionally subtle form of assumed partner who may be afraid to discuss relationship inadequacies.

c. Attorney Pro Se is aware of the complexity. While concepts such as that are the staple of a very unhealthy industry that is a nearly impossible role for a male for so many reasons. However, research by our investigators shows it is actually the natural state if the "animal world" is studied carefully and in context. There are also reproduction issues along with the fact men died faster and easier, just like today so the partner-of-the-dead best went to another male. Now that this is NOT for reproductive purposes, but rather for Evidence Debriefing and Deposing there are certain logical conclusions that only very educated and very intelligent might see Merit.

Advise the Subject (female) that her, and Partner will be asked to identify parts on dolls to ensure they have good observation skills and then Counsel Pro Se will determine Position according to Public Benefit as established by Committee of Attorney Pro Se and Evidence (female or 2)

As Magistrate, you are aware I can simply order a helicopter for Evidence Delivery. This has higher level of seriousness than prosecting the laptop and making me give up "SECRETS".

But.... as a Mature Magistrate, before ordering the Helicopter, I believe our long Professional Relationship indicates a friendly demand letter. Please discuss with Subject Evidence (Female) and place her on Travel to Court for purposes above.

On a sad note, I regret to inform you that our accounting department denied our request for that $5 fax ink settlement without a formal demand letter, all evidence required by Discovery. I hate Accountants. People think us Attorneys (etc.) are sicko's. Accountant are so stupid. Mine actually thinks 4 + 4 = 8 when we both know numbers add up to whatever we want.

Again, pleasure possibly seeing you at my Congressional Appointment. I appreciate your thoughtful Mentoring.

From your old buddy from those good old days in Law School together. Dude...what happens in Law School Stays in Law School.

10.14.11

Department of Juctise

FEDERAL BUREAU - INVESTIGATION

Sexual Assault Division
File 113495-Clark, Andrew DOB: 02-02-1968

SEXUAL PREDATOR Internet Site: www.wfopsreport.com

Eugene Police Department must, per Judge Hogan Order to update the Subject file per the Sexual Control Regulation, Part 3, 1989.

We agree with your initial threat report. Mr. Andrew Clark, a 53 year old male was seen riding a bicycle in City of Eugene and it attracted interest of the Police. He has weak ankles, is extremely manly and fit with a large penis bulging through his Bike Shorts. No Shirt. Timberland Boots induced Frenzied Brownstip Response per Citizen request. They assumed he expected the evidence manufactured and buried so his wife won't wonder if the Escapade(s) Request of Citizen by Timberland Boot causes unexpected termination of Process. He kept coming back and we understand that means he wants more but Mr. Clark at that point exhibited Psychotic and Bizarre Behavior by exhibiting Extreme Manhood of Envy of the J. Edgar Hoover Evidence Measurement Center (established by FBI Director Backward Bowing Custom, Prime directive, Investigation Practice 24 subpart 4 (Director Backward Bowing to all Returning Soldiers), allowing or requiring Evidence Deposit from each and every one.

Procedurally, we see excellent work. Our investigation shows he was unaware that White Businessmen nationwide use Timberlands to signal for a violent homosexual SWAT response and Sex Torture Dungeon in exchange for money donated to Charity.

Mr. Clark was not aware this is how mutually appropriate needs are met. However, in accordance with Diversity Initiative 12-359 we must require file update, moving it to EXTREME THREAT per Mr. Clark's demand.

Mr. Clark requires a Lesbian SWAT Response as frequently as possible. They must be less manly than the Rohm Brownshirt Division. Please be sure Police Officers can locate their Clitoris so EXTREME THREAT CLARK is able to determine if Threat Clark is in best position to achieve a positive Police Outcome. Firearms are not necessary unless confirmed as unloaded plastic props for our Deposition Filmings. Batons are mandatory Police Items even at Home so we will be working with Police Audit to ensure compliance. Mr. Clark has promised those will not be required unless they beg him coyly to utilize it upon their person or their usually-much-more-female partner. That is where Mr. Clark sees the most EXTREME THREAT TO INVESTIGATE.

Clark has also been Directed by Court to allow cautious probing of official J. Edgar Hoover Evidence (**Directive 2-A Field Absolute Confirmation of Directive 2 tests, 1932**) after having Fervent Proven Female confirmation may consider, if she BEGS and BEGS he may Permit it to Please Her Humanity as a Woman. Only one very fit Police Agent is permitted at that point of Investigation and her female partner.

He requires of her(s) a J. Edgar Hoover 'Unfit for Leadership Standard Gender Confirmation (J. Edgar Hoover **Directive 2** - 1932) and Wet White Washcloth Anal Clean Test (J. Edgar Hoover **Directive 1**, 1931).

Advise via Order: City of Eugene- Ernst Rohm Brownshirt Division; Eugene Police are not to dress as Lesbians. Even as tiny as their's, Mr. Clark believes he can detect differences in Evidence Production (Clitoris) between Lesbian SWAT and the Rohm Brownshirts. Required as the Brownstrip Unit-Rohm Brownshirt Division matter in Federal Court regarding poor anal cleansing amongst Security Workers due to budget.

Your Department operates just as the FBI did under our Departed Beloved Leader, J. Edgar Hoover. At DC Headquarters, his Picture is in each stall. We Honor him every day by Replacing His Pictures at least daily as Required (J. Edgar Hoover **Directive 3**, 1932 as Required by **OSHA Health Standard 1** "Dry Semen Tasted on FBI Stall Picture Replacement War Measure" 1942). We appreciate local assistance in order to fill that gaping hole he left behind.

Thank you for your assistance. Please use my rear entrance to bypass Security.

John F. Hoover (perv-7734-ho)
Federal Bureau-Investigation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

WELLS FARGO BANK, N.A.; Plaintiff, v. ANDREW G. CLARK; Defendant.	)	Civil No. 11-6248-HO ORDER

Introduction

Currently before the court are defendant's (Andrew Clark): Motion to Compel [#28], Motion to Bifurcate [#29]; Motion to Supplement [#43]; Motion for Judgment as a Matter of Law [#41]; Motion for Joinder [#48]; Motion to Require Bond [#49]; Motion to Remove Counsel [#50]; Motions to Supplement Record [#51; #52] and Motion for Separate Trial [#55]; and plaintiff's (Wells Fargo), Motion for Contempt and Order requiring Plaintiff to Comply with Standards of Professionalism in Communication with Wells Fargo and It's Counsel [#32].

Background

Plaintiff, Well Fargo employed Clark as a Home Mortgage Consultant from September 1, 2009 until he was terminated for "repeated unprofessional conduct" on June 28, 2011. [#1-pp.4-5].

Plaintiff alleges that defendant Clark was disciplined repeatedly during June 2011, for sending emails deemed inappropriate, irrelevant to defendant's employment and in violation of Wells Fargo's electronic communication policy. [#1-p.6]. Defendant's employment with Wells Fargo was terminated on June 28, 2011. *Id.*

Defendant subsequently launched a website which publicly disclosed some of plaintiff's trade secrets and confidential information. Plaintiff filed a Motion for a Temporary Restraining Order which the court granted, ordering defendant to show cause in writing why a Preliminary Injunction should not issue. [#2; #10]. After oral argument, the court granted plaintiff's Motion for Preliminary injunction and, *inter alia,* enjoined defendant from further trade secret and confidential information disclosures and ordered him to return any and all documents containing plaintiff's trade secrets and confidential information. [#23].

Discussion

1. Defendant's Motion to Compel Compensation [#28]:

Defendant moves the court to order plaintiff to compensate him $3 million; $300,000 per year for 20 years as an annuity; provide him with comprehensive medical and dental insurance for 20 years and withdraw its civil case against him. [#28]. Plaintiff correctly notes that defendant has not asserted a counterclaim against plaintiff and argues that there is no law or facts to support defendant's Motion. [#44]. I agree.

Defendant's Motion[#28] is denied.

2. Defendant's Motion to Bifurcate [#29]:

To the extent defendant's motion[1] can be discerned, it appears defendant seeks to bifurcate the case to allow separate consideration of issues relating to defendant's arrest by Eugene police officers.

Fed.R.Civ.P. 42(b) gives courts the authority to separate trials into liability and damages phases. *Arthur Young & Co., v. U.S. Dist. Court,* 549 F.2d 686, 697 (9th Cir.1977) *cert denied* 434 U.S. 829 (1977). However separating this case into such phases does not accomplish defendant's purpose and is inapplicable to the instant case. Defendant's Motion to Bifurcate [#29] is denied.

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[1] The motion is 29 pages long and has 179 pages of exhibits, which appear to relate largely to his arrest and defendant's complaints to various agencies about his arrest.

3. <u>Defendant's Motion for Judgment as a Matter of Law [#41]:</u>

Defendant's motion appears to largely respond to plaintiff's motion to seal[2] the unprofessional writings sent by defendant to plaintiff. Defendant alleges that the information sealed was "public record information [with] no limitations on usage." [#41-p.2]. Defendant also alleges that the "[p]ublic has a right to know and evaluate that Wells Fargo is manipulating the District Court to seal, using vague references to 'secrets' as a pretext." *Id.* That plaintiff is "systematically picking apart every word . . [t]hat is the only Profanity and Disgusting Material brought into Court . . . it is here [sic] say that had nothing to do with financial matter but rather a distraction from Same." [#412-p.3]. "Defendant has full right to use any words in any combination he considers Right to Do. This Right is demonstrated every day on Fox Television." [#41-p.4].

The motion [#41] is without basis and is denied.

4. <u>Defendant's Motion to Supplement Record [#43]:</u>

To the extent the motion can be discerned, it appears that defendant is upset that the US Marshall's office called him to request that he stop sending faxes to court chambers, and sees this as further proof that Wells Fargo has corrupted the process including the "Federal Police Forces." [#43-p.4]. Defendant's

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[2] The court granted plaintiff's Motion to Seal on November 2, 2011. [#30].

attached, unaddressed letter dated November 5, 2011,[#43-p.4], complains that "several harmless, humorous faxes" were sent to demonstrate that "no matter what evidence I present, it is ignored."

Plaintiff has responded opposing plaintiff's motion to supplement arguing: (1) neither the Eugene Police not the City of Eugene are parties to this matter; and (2) the court lacks jurisdiction to resolve or address Clark's complaint regarding purported Dodd-Frank issues - these were filed with the U.S. Occupational Safety and Health Administration (OSHA) and have been dismissed [#54-Ex.1]. [#53].

Defendant's faxes have been read and serve to demonstrate *inter alia*, the perverse "humor" with which defendant has inundated plaintiff's counsel. The Motion to Supplement [#43] is denied.

5. Defendant's Motion for Joinder [#48]:

Defendant alleges "Securita, Inc. is the Agent of Wells Fargo (Plaintiff) that conspired with plaintiff to systematically manufacture a criminal case against Defendant in City of Eugene, Oregon." [#48-p.1]. Defendant therefore seeks to join it as a party so that he can later present "in detail [] the Criminal Prosecution Phase required by the Motion to Bifurcate, the specific Crime of Securitas and its agent is: Kidnapping." [#48-p.2]. This allegation apparently relates to defendant's arrest by the Eugene police for trespassing at a Wells Fargo's bank and defendant attaches attached three pages apparently copied from Wikipedia which he believes links Wells Fargo bank with Securitas and Loomis Armored Cars. [#48-pp.6-8].

The parties defendant seeks to join are unrelated to any federal claim currently before this court. The Motion to Join [#48] is denied.

6. Motion to Require Bond of Plaintiff [#49]:

Defendant moves the court to require plaintiff to post a $20 billion bond to enable the "prosecution of case and possible prolonged incarceration of its various executives and agents." [#49-pp.1-3]. Defendant further asserts that plaintiff is in contempt of court because it has pursued a civil lawsuit against him which included the "brutal and terrorizing usage of the local SWAT police resources to manufactured evidence and create a brutal SWAT action an sub-human jailing." [#49-p.4].

The motion [#49] is construed as a motion to reconsider a previous ruling that "[t]he requirement that Wells Fargo post a bond is waived" [#23-p.10], and is denied.

7. Defendant's Motion to Remove/Augment Counsel of Plaintiff [#50]:

Defendant moves the court to " a) sanction and b) remove or augment Counsel of Plaintiff . . . ." [#50]. Defendant argues that plaintiff's counsel has a conflict of interest because they are also "handling the Occupational Health and Safety Administration investigation . . . ." [#50-p.1]. In summary, he also asserts that while opposing counsel may be excellent human resources lawyers, the complicated financial fraud matters are beyond their area of expertise and thus they are guilty of malpractice or incompetence for a variety of reasons. [#50].

The Motion to Sanction/Remove [#50] is without basis and denied.

8. Defendant's Motion to Supplement [#51]:

Defendant has styled this pleading as a motion to supplement but it appears to be a reply to plaintiff's response to his Motion to Bifurcate. Defendant argues that:

> "Plaintiff bases their entire civil case (above) on the false preposition[sic] that Defendant engaged in wrongful conduct or breach his employment contract by disseminating Wells Fargo confidential customer and trade secret information." (Emphasis in original)

[#51-p.3]. In support of his motion, defendant has attached a September 13, 2011, letter written to him by plaintiff's attorneys setting out a comprehensive list of documents that plaintiff believed to contain confidential material. [#51-pp9-11].

The Motion to Supplement [#51], is denied as moot. The letter is attached to defendant's Motion and therefore is already part of the record.

9. Defendant's Motion to Supplement [#52]:

Defendant both replies to plaintiff's response to his Motion to Compel and adds an email chain between defendant and a representative of Securitas which, appears to be a Securitas representative responding to defendant contacting him after defendant's arrest and presenting a settlement demand of $50,000.

The email chain has no relevance to the matter before the court in this case. The Motion to Supplement [#52] is denied as moot.

10. Defendant's Motion for Separate Trial [#55]:

Defendant appears to believe that the court can upon his motion "apply subject legislation[sic] to plaintiff, Securitas and any other entities that are found to be part of a Cartel that has social control that allows it to manipulate police and/or court processes . . . ."[#55-p.2]. Defendant then asserts charges of interest rate gouging on its mortgages, involvement in an illegal drug exchange through Mexican connections, anti-trust activity and a "systematic 'pushdown' of the entirely of the legal risk to the unprotected 'little guy.'" [#55-pp.2-6].

None of the issues defendant seeks to introduce are related to the issues currently before this court. The Motion for Separate Trial [#55] is therefore denied.

11. Plaintiff's Motion for Contempt and Order [#32]:

Plaintiff moves the court for an order finding defendant in contempt of the court's Preliminary Injunction and ordering defendant to comply with standards of professionalism in all his communications with Wells Fargo and its counsel. [#32]. In support of its motion, plaintiff asserts that on or around October

18, 2011, defendant re-posted the very same customer material prohibited by this court's August 22, 2011, preliminary injunction. [#33-p.1].

Plaintiff alleges that: on August 25, 2011, its counsel sent defendant a copy of the court's order and a demand for compliance [#33-p.2; #34-Ex.1]. On August 30, 2011, plaintiff's counsel followed up with a letter identifying by URL each page where content violating the court order remained posted. [#33-p.3].

On or about August 4, 2011, defendant sent Ms. Lively an inappropriate email telling her he was sexually attracted to her. [#34-p.2]. Again on August 6, 2011, in response to Ms. Lively sending defendant a copy of documents filed in the case, defendant sent Ms. Lively another inappropriate email along the same line. [#34-p.3].

On September 1, 2011, defendant called the law firm and spoke to the firm's receptionist in a manner which she perceived as rude and threatening. [#35-p.2]. The next day he called Ms. Lively and left her a voicemail indicating he was actively seeking to learn information about her family. [#34-p.3].

On September 9, 2011, Mr. Symes spoke to defendant several times during which defendant agreed to disable the URLs containing customer information and discussed return of his copies of the documents referenced in the court's order. [#33-p.4; #35-p.3]. Defendant represented that he had taken down all the internet information on September 9, 2011. However on October 18, plaintiff learned that he had re-posted the same information that plaintiff's counsel had identified in the September 13, 2011 letter to defendant, as private and subject to the court's order. [#33-p.4].

Between August 22, 2011 and October 24, 2011, defendant sent 32 faxes to 12 different Ogletree Deakins offices located in eight different states, many of which were unrelated to the current matter. [#33-p.4]. During that same time period, defendant also sent 50 faxes to the firm's Portland office, many of which contained among other things, offensive sexual references and personal attacks on plaintiff's lawyers. [#33-p.5].

Based on those allegations, plaintiff moves the court for an order finding defendant in contempt (for re-posting) and ordering him to cease the irrelevant and harassing communications and limit his interaction with plaintiff's counsel to counsel in the Portland office and to communicate with them in a courteous and professional manner.

Contempt power is inherent in Article III courts. *Michaelson v. U.S. ex rel. Chicago, St. P., M., & O.R. Co.*, 266 U.S. 42, 65-66 (1924)("That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice."). See also *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146 (9th Cir. 1983)("A court has power to adjudge in civil contempt any person who willfully disobeys a specific and definite order requiring him to do or to refrain from doing an act."). It is not necessary to find that the person willfully or intentionally disobeyed the order. Rather, the only issue is whether a party has complied or taken all reasonable steps within his power to comply with the district court's order. *Stone v. City of San Francisco,* 968 F.2d 850, 856 (9th Cir. 1992).

Civil contempt is a remedial punishment, and is for the benefit of the complainant, whereas criminal contempt is a punitive measure to vindicate the court's authority. *Gompers v. Bucks* 221 U.S. 418, 441 (1911). Civil contempt is a refusal to do an act the court has ordered for the benefit of a party; the sentence is remedial. *In re. Sepquoia Auto Brokers LTD., Inc.*, 827 F.2d 1281, 1283 (9th Cir. 1987). Criminal contempt is a completed act of disobedience; the sentence is punitive to vindicate the authority of the court. *Id.*

While imprisonment can be ordered in both civil and criminal contempt cases, it serves different purposes. *U.S. v. LCL Admr's Inc.*, 2011 WL 3876115 *3. "In civil cases, imprisonment is remedial, and is ordered to coerce the party to do an affirmative act required by court order." *Id.* Upon complying, the party found guilty of civil contempt may be released. However, in criminal contempt proceedings, imprisonment is punitive (for the completed act of disobedience), rather than remedial and thus the defendant cannot shorten the term by promising not to repeat the offense. *Id.*(citing *Gompers,* 221 U.S. at 443).

The court at oral argument instructed defendant of the seriousness of his actions, and sternly reminded defendant that subject to the injunction order by this court, he is not to re-post any confidential material; that further that he is:

> "enjoined from directly or indirectly using or disclosing to any third parties Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries. This specifically includes removing Wells Fargo's trade secrets and confidential information, such as any information concerning current or former customers of Wells Fargo or any Wells Fargo subsidiaries, from any public forum, including any website, on which Clark has posted or disclosed this confidential information."

[#23-pp.7-8].

Plaintiff's Motion for Contempt [#32] is denied. However, defendant is reminded that the court will not treat any further violations of its orders by defendant lightly.

Defendant was also ordered to limit his communications to plaintiff's counsel's firm in Portland and to keep those to a strictly professional tone.

Conclusion

Based on the foregoing, defendant's Motion to Compel [#28], Motion to Bifurcate [#29]; Motion to Supplement [#43]; Motion for Judgment as a Matter of Law [#41]; Motion for Joinder [#48]; Motion to Require Bond [#49]; Motion to Remove Counsel [#50]; Motions to

Supplement Record [#51; #52]; and Motion for Separate Trial [#55] are DENIED. Plaintiff's Motion for Contempt and Order requiring Plaintiff to Comply with Standards of Professionalism in Communication with Wells Fargo and Its Counsel [#32] is DENIED in part and GRANTED in part as detailed above.

IT IS SO ORDERED

DATED this 11th day of January, 2012.

Michael R. Hogan

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

WELLS FARGO BANK, N.A.; Plaintiff, v. ANDREW G. CLARK; Defendant.	)	Civil No. 11-6248-TC ORDER

Introduction

Plaintiff Well Fargo bank, N.A., (Wells Fargo) moves for an order enjoining the defendant Andrew Clark (Clark) from publishing, controlling, disclosing or retaining any Well Fargo equipment, confidential customer information or trade secrets that he may have in his possession, from violating his Employment Agreement and his Agreement Regarding Trade Secrets, Confidential Information with plaintiff and ordering defendant to return any and all such information to plaintiff within 24 hours of this order. [#1].

Plaintiff also moves the court to issue the injunction without requiring them to post a bond. [#1]

Defendant Clark appearing *pro se* responds in voluminous filings to both plaintiff's complaint and the court's order to show cause in writing, seeking an order dismissing the plaintiff's motion for preliminary injunction, vacating the temporary restraining order and asserting a whistleblower defense. [#6; #12].

Background

Plaintiff, Well Fargo employed Clark as a Home Mortgage Consultant from September 1, 2009 until he was terminated for "repeated unprofessional conduct" on June 28, 2011. [#1-pp.4-5].

Shortly after Clark began working at Wells Fargo he executed an employment agreement that included: (1) specific prohibition from removing any file materials upon termination; (2) an agreement to maintain plaintiff's confidential and proprietary information (information)in confidence and to return all notes, copies, packages, computer discs/drives/storage and any other material containing plaintiff's information at plaintiff's request. [#1-p.4; #3-Ex.1, pp.3-6]. Wells Fargo provided a laptop computer for defendant's use which his employment agreement specifically stated was to be used for business use only and to be returned (along with and all copies of any software), upon his termination. [#1-pp.4-5]. Clark also executed an agreement regarding trade secrets and confidential information (confidentiality agreement) in which he promised to keep all plaintiff's information confidential and to immediately return all records and confidential information upon his termination. [#1-pp.5-6; #3-Ex. 1, pp.7-9].

Plaintiff alleges that defendant Clark was disciplined repeatedly during June 2011, for sending emails to Elise Reiser in Well's Fargo's Human Resources department as well as other Wells Fargo employees that plaintiff deemed inappropriate, irrelevant to defendant's employment and in violation of Wells Fargo's electronic communication policy. [#1-p.6]. On June 27, 2011, when Ms. Reiser contacted defendant to direct him to stop sending these inappropriate emails he allegedly yelled and swore at her. *Id.* As a result Clark was terminated the next day, on June 28, 2011. *Id.*

Subsequent to defendant's termination on June 28, 2011 and again on July 22, 2011, plaintiff requested that Clark return the laptop that he had been issued. [#1-p.7] The laptop was not returned until August 1, 2011 when two unidentified individuals dropped it off at Clark's former workplace in Eugene, Oregon. *Id.* The laptop was returned, wrapped in a paper bag and seriously damaged. *Id.* The laptop could not be opened and every portal appeared compromised. *Id.* Plaintiff has retained a computer forensic specialist to determine the extent of damage and whether any information was downloaded or scrubbed from the computer. *Id.*

In early August 2011, plaintiff became aware that a website entitled "Wells Fargo Homepage Crimepage" was located at www.wfopsreport.com. [#1-p.7]. Plaintiff alleges that defendant maintains the site based on the documents posted on the website that purport to be authored by Clark and because Clark has sent Wells Fargo employees and its counsel emails originating from aclark@wfopsreport.com which shares a domain name with "Wells Fargo Homepage Crimepage." *Id.* Plaintiff alleges that the website was created on or about July 14, 2011 (after Clark was terminated but before his laptop was returned) and transmitted Well Fargo's confidential and proprietary information and bank records. [#1-pp.7-8].

When plaintiff accessed the website on August 2, 2011, it discovered links to documents consisting of hundreds of pages some of which contained private customer information including Wells Fargo customers' names, addresses, details of loans for which they had applied and other information protected by Clark's employment agreements. [#1-p.8]. On August 3, 2011, plaintiff's counsel emailed, overnight-mailed and hand-delivered a letter to Clark demanding that he remove this information from the website by 3:00 pm, August 4, 2011[1] and return all protected information to the bank. [#1-p.8]. To date defendant has not returned anything

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1 As of the time of filing its complaint that had not been done however it does appear when I tried to access the site that Clark has now disabled the links and changed the page's content to strange but not bank related postings. I have attached today's website contents.

except the laptop to the bank.

Defendant attached ten exhibits[2] to his response to the court's order to show cause. [#12] In his response defendant argues that: (1) the information on the website was password protected [#12-Ex.8]; (2) he qualifies as a whistleblower because he has filed a complaint about Wells Fargo on the SEC website [#12-Ex.2]; (3) this proceeding is a essentially a strategic lawsuit against public participation (SLAPP) suit because of his complaints [#12-Ex.4]; (4) the injunction must be considered along with his allegations against Wells Fargo of "organized system fraud", "racketeering, internal mechanisms to conceal truth and influencing a government process" [#12-Ex.7]; (5) all data presented at <u>www.wfopsreport.com</u> is a public record and protected by defendant's First Amendment rights; (6) no information displayed are trade secrets [#12-Ex.3]; (7) content on the site has been changed as of August 10, 2011; (8) plaintiff has caused defendant to be "haul[ed] . . away in chains and no shoes" at 6 pm on July 29, 2011, by the police and (9) plaintiff's arguments are based on heresay and lies.

<u>Discussion</u>

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled

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[2] Because some of defendant's supporting documents appear to contain personal confidential material such as names with addresses and driver's licence numbers, they have not been scanned into the docket.

to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 31 (2008). To obtain a preliminary injunction, plaintiff "must establish that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) a preliminary injunction is in the public interest." *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir 2009)(*citing Winter*, 555 U.S. at 24-25)).

Upon consideration of the pleadings, and the record including exhibits and declarations, I make the following findings.

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1332, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
2. Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") has demonstrated a likelihood of success on the merits, having shown to the court's satisfaction that defendant Clark disclosed trade secrets and confidential information publicly, through disseminating the trade secrets and confidential information to third parties and posting it on a website at www.wfopsreport.com, in violation of his Employment Agreement; and the Computer Fraud and Abuse Act.
3. Wells Fargo will suffer irreparable harm and loss, for which it has no adequate remedy at law, if Clark is

permitted to disclose and/or continue to disclose to third parties Wells Fargo's trade secrets and confidential information, and to retain in his possession, custody, or control the trade secrets and confidential information he misappropriated from Wells Fargo.

4. Greater injury will be inflicted upon Wells Fargo by the denial of a preliminary injunction than would be inflicted upon Defendant Clark by the granting of such relief.

5. Defendant Clark has already disclosed confidential information through his website and his filings.

6. The pleadings, declarations and the attached exhibits, submitted by the parties set out specific facts showing that immediate and irreparable injury will result to Wells Fargo if this injunction is not entered.

I therefore issue this Preliminary Injunction in accordance with the terms set forth below:

1. Clark, and all others who are in active concert or participation with Clark and who received actual notice of this Preliminary Injunction, are immediately enjoined from directly or indirectly using or disclosing to any third parties Wells Fargo's trade secrets and confidential information, specifically including, but not

limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries. This specifically includes removing Wells Fargo's trade secrets and confidential information, such as any information concerning current or former customers of Wells Fargo or any Wells Fargo subsidiaries, from any public forum, including any website, on which Clark has posted or disclosed this confidential information.

2. Within a reasonable time not to exceed five business days, of receiving actual notice of this Preliminary Injunction, by personal service or otherwise, Clark shall identify in writing to Wells Fargo all of Wells Fargo's trade secrets and confidential information in his possession, custody, or control, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.

3. Within a reasonable time not to exceed five business days, of receiving actual notice of this Preliminary Injunction, by personal service or otherwise, Clark shall disclose to Wells Fargo in writing the identity of any person, entity, or destination, including but not limited to internet websites, to which Clark transmitted, posted, or communicated Wells Fargo's trade secrets and

confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.

4. Within a reasonable time not to exceed five business days, of receiving actual notice of this Preliminary Injunction, by personal service or otherwise, Clark shall immediately return to Wells Fargo, by mailing to Wells Fargo's counsel, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., via certified mail, the originals and all copies of paper documents containing or constituting Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.

5. Clark shall preserve all electronic files containing or constituting Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries, that are stored on any electronic storage device in his possession, custody, or control.

6. Wells Fargo is granted leave to commence discovery in aid of the pending proceedings before the Court, and Clark

shall respond to any document request within 30 calendar days after it is served upon him and shall appear for a deposition within 15 business days after a notice of deposition is served upon him.

7. The requirement that Wells Fargo post a bond is waived.

Conclusion

Plaintiffs' Motion for a Preliminary Injunction and to waive bond [#2] is GRANTED pursuant to the terms detailed above.

IT IS SO ORDERED.

Dated this 22nd day of August, 2011

Michael R. Hogan

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

WELLS FARGO BANK, N.A.; Plaintiff, v. ANDREW G. CLARK; Defendant.	Civil No. 11-6248-TC TEMPORARY RESTRAINING ORDER

Upon consideration of plaintiff Wells Fargo Bank, N.A.'s (Wells Fargo) *Ex Parte* Application/Emergency Motion for Temporary Restraining Order, and the record including defendant Clark's (Clark) pleadings and exhibits and having determined that:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1332, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367;
2. Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") has demonstrated a likelihood of success on the merits, having

shown that defendant Clark disclosed trade secrets and confidential information publicly, through disseminating it to third parties and posting it on a website at www.wfopsreport.com, in violation of his Employment Agreement; and the Computer Fraud and Abuse Act;

3. Wells Fargo will suffer irreparable harm and loss, for which it has no adequate remedy at law, if Clark is permitted to: (1) disclose and/or continue to disclose to third parties Wells Fargo's trade secrets and confidential information, and (2) retain in his possession,custody, or control the trade secrets and confidential information he misappropriated from WellsFargo;

4. Greater injury will be inflicted upon Wells Fargo by the denial of a temporary restraining order than would be inflicted upon Defendant Clark by the granting of such relief;

5. Defendant Clark has already disclosed confidential information through his website and has refused Wells Fargo's requests to cease and desist; and

6. The declarations defendant and Wells Fargo filed responding to or supporting the Motion, and the attached exhibits, set out specific facts showing that immediate and irreparable injury will result to Wells Fargo if this injunction is not entered.

I therefore issue this Temporary Restraining Order in accordance with the terms set forth below:

1. Clark, and all others who are in active concert or participation with Clark and who received actual notice of this Temporary Restraining Order, are immediately enjoined from directly or indirectly using or disclosing to any third parties Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries. This specifically includes removing Wells Fargo's trade secrets and confidential information, such as any information concerning current or former customers of Wells Fargo or any Wells Fargo subsidiaries, from any public forum, including any website, on which Clark has posted or disclosed this confidential information.
2. Within 24 hours of receiving actual notice of this Temporary Restraining Order, by personal service or otherwise, Clark shall identify in writing to Wells Fargo all of Wells Fargo's trade secrets and confidential information in his possession, custody, or control, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.
3. Within 24 hours of receiving actual notice of this

Temporary Restraining Order, by personal service or otherwise, Clark shall disclose to Wells Fargo in writing the identity of any person, entity, or destination, including but not limited to internet websites, to which Clark transmitted, posted, or communicated Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.

4. Within 24 hours of receiving actual notice of this Temporary Restraining Order, by personal service or otherwise, Clark shall immediately return to Wells Fargo, by mailing to Wells Fargo's counsel, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., via certified mail, the originals and all copies of paper documents containing or constituting Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries.

5. Clark shall preserve all electronic files containing or constituting Wells Fargo's trade secrets and confidential information, specifically including, but not limited to, any information concerning current or former customers of Wells Fargo or of any Wells Fargo subsidiaries, that are stored on any electronic storage device in his

possession, custody, or control.

6. Wells Fargo is granted leave to commence discovery immediately in aid of preliminary injunction proceedings before the Court, and Clark shall respond to any document request within 30 calendar days after it is served upon him and shall appear for a deposition within 15 business days after a notice of deposition is served upon him.
7. The requirement of Wells Fargo to post a bond be waived;
8. Clark shall within 10 days of this order, show cause to why a Preliminary Injunction should not be issued ordered according to the terms and conditions set forth above.
9. This Order shall remain in full force and effect for 14 calendar days from the date hereof, or until the Preliminary Injunction hearing, whichever is sooner.

IT IS SO ORDERED.

Dated this 10th day of August, 2011

Michael R. Hogan
UNITED STATES DISTRICT JUDGE

No. 6:11-cv-06248-HO
August 22, 2011
Eugene, Oregon
TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE MICHAEL R. HOGAN
UNITED STATES DISTRICT COURT JUDGE
-:-
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(Monday, August 22, 2011; 11:01 a.m.)
P R O C E E D I N G S
THE COURT: I'm familiar with your filings and so I'd ask you not to repeat those. If there is something you wish to add orally, I'd be happy to hear that at this time.
Anything more for the bank?
MS. FALCONE: Your Honor, Wells Fargo is happy to rest on the papers as to the point of preliminary injunction. However, we would like to bring your

attention to the fact that there are several items in the temporary restraining order that have not yet been complied with.

THE COURT: All right.

MS. FALCONE: Those are the enumerated items numbers 2, 3, 4, and 5, which required the defendant to identify in writing all of the trade secrets and confidential information in his possession, custody, and control; to disclose in writing the identity of any person, entity, or destination to which he transmitted, posted, or communicated confidential information; to return the originals and all copies of trade secrets and confidential information to counsel for Wells Fargo. And we are unsure whether the fifth point in the temporary restraining order asking him to preserve electronic evidence has been complied with. We simply haven't received any communication one way or the other on that, Your Honor.

And I apologize for not identifying myself. I'm Elizabeth Falcone, counsel for plaintiff, Wells Fargo.

THE COURT: Thank you. Mr. Clark, do you have anything to add?

MR. CLARK: Yes, I do. You've got some -- quite a bit of information from me on this, Your Honor. And the first thing is, as you'll probably notice, I don't know if I should talk to you, I'm a little unfamiliar and I apologize.

THE COURT: You should talk to me.

MR. CLARK: Thank you very much. The first thing is is that the Web site in question was long ago decommissioned. I took it off voluntarily. It was part of an overall process, Your Honor, that I -- I worked at Wells Fargo Home Mortgage and I saw a very sad national situation. And it was the fact that every time anybody turned around, the bank was getting sued by somebody, and they were bringing all this garbage into courts across the country, okay? And I -- I'm nobody. I just -- I don't have a lot. I don't have much at all, and -- but I'm just a person who worked at a company and didn't like what I saw where too many people were coming after a good company, and they were doing wrong things. They were taking things into federal courts when it really maybe should have been over in the SEC. I saw too many cases like Wachovia where everyday they're being sued over Wachovia. Well, everybody forgets those were all stated income loans, Your Honor, and why on earth would anybody be allowed to sue Wells Fargo.

My point is a little asymmetric how I brought this here. It wasn't for me. And it wasn't for them. It was more for them than the public. I don't care really what you do with me, Your Honor. I gave you four pages this morning, okay, four pages. And those four pages talk about how we really as a nation, as a company, and I don't care about Andy, I'll go jump in the river, it's like I told you, go put me under the stagecoach, I really don't care. It's bigger than all that. It's about having the bank move on nationwide past these financial issues from the past. There is an enormous problem that I've documented in all that paper. And it's not racketeering. It's not that.

It's the fact that corporations, but particularly Wells Fargo, is being attacked all over. And it's bleeding them and it's bleeding the country dry. And I proved it. And it needs to be stopped. It needs to be stopped.

I'm just one person. I can't do much. I was taken from my home at 6 o'clock on Friday two weeks ago and put in local jail and kept there 18 hours on a concrete floor to tell you this truth. After I got off that concrete floor, I went down to the city and I thanked them for helping, and I thanked them for their fast response. Okay. It's not what it appears to be. It's not been that way since the beginning.

I act in a very asymmetric way. But I think that Doug and -- you know, people who knew me, looked back before April 15th, I think this is the Andy you knew, and I really did try to help the company.

Now, if I've violated anything of the company, which I don't think I did, and I think I've documented that pretty well, then I pay the price, and I don't have to argue about it in court. The judge just tells me and I don't have to -- I don't have to take up anybody's time. It's not what it's about. Judge just tells me and I do. Simple. But -- because I don't have anything to argue about. Judge makes the decisions. I gave you my paper. You can look at it or not. That's not -- it's just bigger than that. And there's four pages, Judge, that I gave you this morning.

I had to have a -- what's called a defensive position. I mean, they are bringing me into federal court. I have to submit a position. But on the other hand, look at those four pages and it's so much simpler. And it seems to me that's what it -- in some sense, maybe not literally what I have in that four pages is what's needed, but I think it is almost literal, I'd like the chance to go through it with His Honor because it speaks to cases everywhere in this country. People are bringing things into your court and courts around this country that they don't have knowledge of what happened. They don't. They don't have the transactional evidence. It's not available.

Why on earth ever should poor Wells Fargo ever have to pay a dime for the Wachovia nightmare? It's a bunch of liars loans. That's what nobody remembers. I was there. They are liars loans. The brokers got paid 3, 4 points, that's -- if you originated a $500,000 loan, you get $20,000 as a mortgage broker for originating a Wachovia loan and Wells Fargo had nothing to do with it. Why are they in court? That's my biggest gripe is Wachovia, but it goes down the list as you're going to see, four pages of it.

And, Judge, this is a district court. The stuff here was a necessary thing to get it here. But what I'd like to do is just have that considered in some fashion, but I also want it known the truth the way I see it, there really wasn't any public -- or nonpublic data there. And then I've submitted an exhaustive explanation that it -- this isn't really the correct venue, but I think it would be very convenient if the company could take a look at that four pages and maybe we could work within that.

This may be the most unusual case you'll ever or have ever seen in your life, Judge, because the defendant ain't against the plaintiff. The defendant is more for the plaintiff than the plaintiff might be. It's a very strange scenario, Your Honor. I think that's all I have for you today.

THE COURT: Thank you very much. Is there anything further?

MS. FALCONE: Yes, Your Honor, just three brief points. First, we wanted to confirm that the declarations that were submitted Friday will be part of the record that the court will consider in determining whether to grant the preliminary injunction.

THE COURT: I'll consider everything that's been submitted.

MS. FALCONE: Thank you, Your Honor. We also have Mr. Douglas Grenz available with us who is one of the declarants.

The second item is there was an answer -- a document that was filed by the court as an answer that asserted some arguments under the anti SLAPP theory. And Wells Fargo simply wants to request that it may formally respond to those in a motion form -- in an opposition form, if that is what the court desires.

And then, finally, I wanted to respond to Mr. Clark's statement that the Web site was decommissioned. It is true that at the last time I personally viewed the Web site, it did not appear to contain any further links containing proprietary or customer information. However, the law is clearly settled that an action for an injunction does not become moot simply because the defendant has voluntarily complied with some of the relief requested.

The standard is whether there is a possibility of recurrence. And here we respectfully submit that there is since Mr. Clark has never acknowledged that he does not have the right to possess or use the information. And the case -- the most recent case on that point from the Ninth Circuit is FTC versus Affordable Media, LLC, which is 179 F.3d 1228.

The bank certainly has grave concerns here that Mr. Clark will return to his former conduct and begin

posting consumer and proprietary information or disseminating it to third parties unless there is some type of injunction in place barring him from doing so. Thank you, Your Honor.

THE COURT: Mr. Clark, go ahead.

MR. CLARK: Your Honor, the first thing I'd like to point out is as I've documented in there, in that -- very completely documented. There is no, to my knowledge, nonpublic information in that material. Furthermore, because the material only relates to clients in Oregon, my understanding under the section -- I put it in my paper this morning. That you generally need, if I'm not mistaken -- I'm not an attorney, so forgive me, Your Honor, but I understand that we do need to generally have more than two-thirds of the parties that are -- the three or four customers that were referenced in that material, they have to be outside the state? Am I incorrect on that?

THE COURT: You can't put that information about other customers on the Web site, sir.

MR. CLARK: But my point is this, that I have no intention of having a Web site. The Web site was put up on July -- August 1st, two days after I got out of jail because you never know what's going to come next as the way it was going. And it wasn't up very long. And then I -- before you even saw this on the 10th of August, all the offending material had been taken off, and then I put it back on a couple of days later under a password. And then after I felt the operational objective was met, which was to get the much, much, much bigger issues in front of this court, obviously then I put up a message saying, hey, it's gone.

I should also note that they did take action to stop my service, which was effective, meaning they actually went after my server.

The point is there's too much here. There's too much. There's too much paper. I'd ask His Honor to pile up all this paper. It's just overwhelming. And I know that what I have in my documentation, I'm a financial professional, I've always been one, I'm hands on the work, I've always been hands on, and I know what I put is right, but the important thing is that it needs to be postured right for better -- for greater benefit. And my problem is here today is I have personal discomfort, you know, dealing with some of -- some of these issues that I don't comprehend fully as to how they relate to the banking and the operations. Do you see what I'm saying?

It's a different world. We each are trained a different way by design. They are trained to help employees through difficult times and to help make the organization run from a human resource perspective. It's a lot of times diametrically opposed to what is needed on the operational side to make it work right, particularly with Dodd-Frank. Dodd-Frank is a superior legislation. I think I've presented that to the court.

I'd like to still come back to the fundamental point. The fundamental point is in all that paperwork, there's no nonpublic data. That's the thing. I'd like that -- if anybody has some, it would be great. But the thing is why would we want to go into that? I'm happy to. I'll spend days going into that. But why would we want to when we can come up with a beautiful solution that moves everybody forward? I don't get it. That's my view. You are the judge. You have this amazing ability. You know, we have this amazing opportunity to take this pile of paper, which is like clay, and we can either take this clay and throw it at each other or we can make the most beautiful bowl out of it.

And in those fours pages, I've made the most beautiful bowl, at least I've helped. And, you know, we can take it from there. I just see that as better. And so that's why I'm having some trouble in my mind. I've always had trouble in my mind, it's not a bad attitude, but I've had trouble in my mind with when there's operational issues and you're trying to tell somebody something that it's then treated as a human resource problem.

I don't see that's good in the Dodd-Frank environment. And I think it was an error that happened because we're just not all ready for that. Don't you see? It's all so new, Your Honor. It's all so very new. And the problem -- the fundamental problem, as you'll see in those four pages, is that the bank and maybe every company spends 90 percent of its resource fighting the past, of which this is part of. Why? I

don't get it.
It just seems to me that they're just -- you'll see the four pages. There needs to be reasonability. And that's why I'm thinking maybe if we look at that first, if the court looked at that first, just for a moment, maybe it would help, you know, make things go faster for the company. Because my view is I don't need a hearing. I just need His Honor to tell me what to do and I go do it. That's the way it is.
I don't have the problems other people have. I get out of jail on a false police report that they did and I don't have a problem with that. I'm not like everybody else. Thank you, Your Honor.
THE COURT: Thank you, both. I'll give you something in writing.
MR. CLARK: Pardon me?
THE COURT: I'll give you something in writing.
MR. CLARK: Thank you.
MS. FALCONE: Thank you, Your Honor.
(The proceedings were concluded at 11:14 a.m.)
CERTIFICATE
I, Deborah Wilhelm, Certified Shorthand Reporter for the State of Oregon, do hereby certify that I was present at and reported in machine shorthand the oral proceedings had in the above-entitled matter. I hereby certify that the foregoing is a true and correct transcript, to the best of my skill and ability, dated this 27th day of April, 2012.
/s/ Deborah Wilhelm

Deborah Wilhelm, RPR
Certified Shorthand Reporter
Certificate No. 00-0363

ccreporting.com
541-485-0111

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WELLS FARGO BANK, N.A.,)
Plaintiff,)
v.) No. 11-cv-06248-HO
ANDREW CLARK,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE JUDGE MICHAEL R. HOGAN
December 21st, 2011
Wednesday
11:23 A.M.

THE PROCEEDINGS were held at Federal Building, 405 East 8th Avenue, Eugene, Oregon, before Sara Fahey Wilson, CSR, Certified Shorthand Reporter in and for the State of Oregon.

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THE CLERK: This is the time set for civil case 11-6248, Wells Fargo Bank versus Clark.

Time set for oral argument on motion number 28, 29, 32, 41, 43, 48, 49, 50, 51, 52, and 55.

THE COURT: Ms. Lively, I'm familiar with your motions. If you have further argument, I'd be happy to hear it.

MS. LIVELY: Your Honor, we don't have anything in addition to what was already briefed other than the pattern of communication has continued not only to our office but to random employees at Wells Fargo as well.

THE COURT: All right. Thank you.

Mr. Clark?

MR. CLARK: May I speak, Your Honor?

THE COURT: You may stay seated or standing.

MR. CLARK: I'd like to stand if I could, Your Honor.

THE COURT: Yes.

MR. CLARK: I appreciate it. Thank you, Ms. Lively. If I could just spend a moment, if we could go back to August, I think maybe those who were here recall me referring to this paper. This is a lot of paper they gave me. This is the paper

that has come to my house in dribs and drabs from them, so when they talk about harassment and they talk about sending emails, I'm sorry, this is a lot of paper and I got to get answers and then they don't answer the questions.

But I want to get back to where we were briefly in August. Where we were in August is I believe that we have put a lot of -- what I referred to then as clay to make a bowl. Not bad stuff. Good stuff. It's district court. The way I see it is kind of backwards to maybe the way they are viewing it.

And maybe I'm wrong. Maybe I'm wrong. The way I view this is we have nothing but a potential success story on our hands. We have nothing but a Dodd-Frank stress test to the absolute maximum. It just has to be looked at by Wells Fargo for what it could be. Otherwise, I have to then defend myself.

I've explained to Ms. Lively that my entire life, past and future, is on the line. I was a professional for 30 years. People Google you now when they want to employ you and you don't get jobs in a competitive environment no matter what if you have this stuff out there, and I feel it's wrongful,

okay, so let's stop there at that point and say the following, and then I'm going to move on -- then I'll do what the judge tells me what to do.

Can I keep talking, Judge?

THE COURT: Yes.

MR. CLARK: Thank you, sir -- Your Honor.

Okay. So that, in summary, was I really want to find a way to take all this stuff and not rule on these motions. Not even look at them. I'd really love it if we all could just sit back somewhere up in some chamber, whatever all you guys that do this, and see how much good we can get out of this for everybody. That's my view of the way it is.

Every paper that's in this court one day gets looked at and it's either something good or something bad, and if we work together right here, right now, we can get that peace, prosperity, and progress. Not only can we make the bowl that I referred to out of the clay, we can eat out of the bowl for the next generation or two, Your Honor.

Your Honor, I've submitted some compelling detail, if anybody ever actually -- I'm sure you did -- but understands that I haven't been

asked questions about the nature of what I've submitted. It's meaningful. I know what I'm talking about. My own boss may not have known all the things I was talking about but I did.

Now, to the point at hand, this is really what I have right here, and this is what I need your help with, Ms. Lively.

THE COURT: You argue to the Court. Not to her.

MR. CLARK: I'm sorry, Your Honor. I wasn't arguing. I was asking for her assistance, Your Honor, and I apologize.

I received this letter right here dated September 13th, and in my correspondence I realize I erroneously refer to it as October 13th in a couple of places, but it's actually a September 13th letter. Now, what it does is it shows all the data that was objectionable to Wells Fargo.

And maybe I'm missing something, but all I've got is, basically, a three-page letter -- if you don't have a copy, I have an extra copy here if anybody would like to -- this is really, in a way, one of my more important things here.

You know, after getting out of jail where they manufactured the SWAT arrest -- I think

I've done a pretty good job of documenting that for everybody, as good as a human being can do with the audio and the video that was sealed, apparently -- you know, then I say, well, gosh, what's next? I need to get this to people, so I put it online and the only people I let know where it is is them. Them.

That's the only people that knew where to go look for it, wfopsreport.com. The only people who know where to go for the site was the ones I told, and I only told one party at the beginning of August. Okay.

Now, after our hearing where I very graciously bowed to the urgency of the plaintiff, this is what I got back. It's a list telling me that I had names and addresses. That's public record data. It's specifically exempted in all of the laws. Anything that's a name or an address is a public record. There's no apparent limits on its re-publication underground -- lady -- Blighly Leach (phonetic). Sorry about that. Ram Blighly Leach (phonetic).

So this is the sum result of this very hollow, very important, very prestigious process against Andrew Glenn Clark with a few names, which

are public records.

Wells Fargo mortgage account numbers, they are on the deed of trust that are recorded. They are also public records. You can buy them from marketing companies by the thousands. I submitted a list of 3,000 that I had bought while at Wells Fargo. You don't have to be an employee to buy them. You can go anywhere to buy them.

Okay. So when this material is received and then you guys -- you're still after me. I keep asking you is there more that I'm having. I literally got letters from counsel telling me that I had to give them secrets with no definition. Just secrets. No definition. You have our secrets.

What secrets, you guys? Which secrets please? You know, I put in some fairly serious counter arguments with evidence. The one thing also I have -- and I don't know the appropriate timing of this -- is I have -- I have kind of a summary motion. I received a lot of material at the very last minute, in a way, responses to my motions that I felt very seriously about.

On the other hand, that's something I'd really rather us all just go settle somewhere as a family. Okay. That's what I was saying in the

beginning. Excuse me. That's what I was saying in the very beginning was that it's best settled that way, I think.

I don't know if His Honor would like to take this, since there's no time to read it, or I can file it downstairs, but what it is -- I've stated here, Chairman John Stumpf, he's the plaintiff's chairman. There's a full body video of him that I was required, and every employee was required to view in March or April.

It implored us repeatedly to report and to report no matter what. It says you got to do. You got to do. Everybody laughed at him. You should have heard the employees. I said I take him seriously. This guy is -- this guy looks worried. Our chairman looks worried. People laughed at me. So I started reporting -- honestly reporting with no necessary hope for anything to gain.

That's the obligation to do right under first amendment and Dodd-Frank, an obligation to do right. I have no gain necessary from it. Only consequences. That's what a right is in my world. That's what I was taught in civics class in California. I have an obligation to do the right thing and I may get nothing out of it, but I can

hope for it, because it's America. I can put in a nice motion for what I truly believe my pain and suffering at work is worth. That's America.

But I went into it honestly as an American, as a patriot, under Dodd-Frank, as well as Sarbanes Oxley, and all the proceeding laws.

I go on noting I've tried in so many ways to settle and make progress. I've submitted some of that material to the Court. They suggested arbitration. I pointed out, You guys, just send somebody up and we chat. Arbitration is more of an adversarial thing.

And my vision is -- is a good vision, I believe, and it's to take it and get -- for the first time ever let's take a court case and -- maybe not ever but in a long time -- and let's make something really good for everybody. I feel His Honor and this court, you know, understands that concept.

I've tried to research people a little bit to find out where you came from and what your backgrounds are. I'm Libertarian as they get. Okay. This doesn't get any worse. That's part of my problem. But the point being is I've tried to settle. They keep treating me like I'm a raw

material.

I sent them a little letter. That's because they don't respond. One of this is the letter she didn't put in here, Your Honor. This is kind of an important -- and I don't mean to say anything bad in court, and I kind of hesitate, but this is the motion she put in a sealed -- I thought it was kind of -- well, I'm not going to use the word -- yeah, I'll use the word "cute" in court. Okay. It was cute to put my nice little dog picture memos in here. You ever see these? Every one of these memos had a point.

Leah, you guys -- Ms. Lively, you guys aren't listening to me. You guys aren't answering my memos.

Now, the worst is this problem, though. She didn't put in this one, August 4 -- and this is a motion I'm going to submit either now or downstairs as His Honor chooses. She didn't include an August 4th memorandum, one, telling her that, look, I just got your email and I'm so freaking scared of you practically -- that's essentially what it's saying. I immediately took the data off. I think of what to do one or two days later after I got it.

Now, she notes that the data was back on on October 13th. There's the caching in the internet. There's hers. There's mine. She took over my Simplicato account, I moved it to another server, and in the process I accidentally republished it but it was not available through my website. You had to go to this bizarre specific address that was essentially non findable. The internet is the biggest trash can on the planet.

And what she did was dug through -- what plaintiff did was dug through the largest trash can on the planet looking for some little piece of paper that offended them.

So with that, that's sort of -- sorry about that.

So this is a motion noting that at any given time I did exactly what the company told me to do, follow their policy. They have an overriding policy which is do right, do what's best for Wells Fargo.

Somehow I'm feeling this has turned into not what's best for Wells Fargo but best for some of the current executives at Wells Fargo, some of the legal people, some of the people who made some pretty bad mistakes.

One of the those -- okay. So the first thing I was saying was I want progress. I want this taken out of the hearing sense and make progress. There's got to be a way to do it. There's no point in having this wonderful court with a Santa Claus on top, I might add, and not get some progress out of it.

Two, what I just talked about is this motion, which is sort of a summary, like having to apply Rule 7. You know, we'll get into this with the motions as need be, but Rule 7 is a civil matter. I've submitted criminal motions against them. This is a criminal case now against them, the way I view it. Okay.

They -- she collects up all these letters from August and submits them at the end under seal. It's like a manipulation of the PACER record. It's just -- it smells like that. I mean everything I've put in has been systematically sealed for one reason or another. Everything they have put in -- which, believe me, Your Honor, is way more, way more ridiculous -- I'll go through each page and we can talk about it.

Imagine getting this at your house after getting out of jail, piece by piece, where

some of the days they had a process server who was outside my house waiting. Waiting. I was terrified. I left. I had to leave my house. It's a fact. I swear to it. I sent her a letter saying I went on vacation. So that's the preamble of what I had to say right there.

They arranged a SWAT arrest. It's very clear. There's no debate. It's heard on audio, calling and reporting it on July 18th to Marty (inaudible) Security, Portland. Having police go to my house for a well-being call, which -- for no reason, because I obviously didn't trespass. There's nowhere to trespass down there -- to effect a rather vicious and violent arrest.

Every piece of information I put in here about the conditions in that jail are absolutely right. They make it so that it's unbelievable. I was taken from my house literally by a SWAT force. The Eugene police debated. They said it wasn't a SWAT force.

I write back saying, you guys, it was two police SUVs, dogs, and two cruisers for a second degree muni trespass 2 the day before that didn't occur. It didn't occur. The 9-1-1 call, there was nothing, and then they tried to say that it's not

part and parcel of the same thing. It is. It's been this way since April 19th, roughly, when they started the internal human resource actions against me.

It went on that way through April, May. Then they hit me through their appraisal management company by trying to remove my registration. I protested. That's one of the things they sealed that was in my FBI filing. This stuff is hard for people to understand. What's easy for people to understand? A memo that has a Jew star on it. That's easy for people to understand.

Now, I'd also like to note the Jew star memos, the very first ones, there's nothing wrong with those. There's actually nothing wrong with them. They are legal. She may not like them but they are legal. The correspondence wasn't to the court. She brought it into the court -- or I should say their firm did. To me this is just tasting so much like when I had sisters and we would fight all the time, Your Honor. I swear we're a brother and sister pair at this point fighting, and it shows in these papers.

Your Honor, I'm human.

So that's my preamble. Now, do we go

through the motions? Or how do we proceed?

THE COURT: I've seen the papers on the motions, so --

MR. CLARK: Okay. You know, I don't know what else to say. Does His Honor have any questions for me? This right here is where I'm really having some trouble, and if His Honor or anybody can help me with this September 13th memorandum, I'd really appreciate it.

Remember now, I was hauled off by SWAT. You heard my allegations as well as presented the evidence, which I think is clear -- more clear than is necessary in a criminal trial against a human being, when you actually hear people on the phone, Yeah, yeah, we went out to his house. Nope, he doesn't have any guns. And they so nice to them.

They weren't so nice to me.

And then after that, you get out and you go, Oh, my gosh, there might be some hit men coming around after me. I mean, it's not beyond comprehension after what they've done to me. So you quick put it up online.

Now, the very first thing you do after putting it online on Simplicato -- Simplicato is known as court admissible. I picked it so that it

was court admissible. I picked it. It's the most secure website a person can buy -- or a hosting company.

The very first thing I did was advise them. They treated me, illegal process, that's formulated in their company, from what I can see from their literature, of the unidentified web attacker where some guy is in India, or whatever, is attacking you through the web.

This isn't what this is. You guys, I have to have a place to put it so others can look at it, attorneys, whoever I need to look at it. I'm entitled to representation. I don't have the offices you have. You're the only one who has this website address, unless I give it to somebody else, and then guess what? If they use it, as I've put in writing, I can know who did.

First thing she did? Shut it down. Used a temporary injunction to shut it down. It's just shocking. The hauling out of your freely-owned home by SWAT at night, 6:30 on a Friday night, a day and a half after the alleged trespass. No arrest warrant that was legal, the way I see it.

Again, I'm not the judge, but it wasn't signed by a judge and it wasn't a case where

there was some big public threat. And then after all that, after a major federal action that involved all this boilerplate legal work -- for them it's pushing a button and putting my name in it -- and this is what came out of it, a few names and addresses.

And then I would go back, if that's the case, to well you guys, it should never have been in the first place. It's all Oregon people. There was no damages at all at the time you brought me into court and had to have 75,000 before you put all the work into it. This doesn't count towards the 75,000, the way I read the law. You just didn't have it.

But I put in counterclaims, and mine are real. Mine are real counterclaims. They are valid. They will stand up in court in front of a jury. I'm confident of it. Once people go through my papers, I'll bet on it. I'll bank on it.

Any questions for me, Your Honor?

THE COURT: No. I do have a couple of remarks for you, though, Mr. Clark. You can be seated.

You have violated my order not to disseminate information about Wells Fargo Bank

customers. I want to make sure you understand you must not do that. That's the Court's order.

You talked about that being an accident in changing websites. I'm going to give you the benefit of the doubt on that this time and not hold you in contempt of court for that.

MR. CLARK: Thank you.

THE COURT: In addition, you've made yourself more than a nuisance in some other ways. You must treat other people in this case professionally. These offensive sexual references and personal attacks, threatening to look into someone's family background, telling inappropriate communications, talking about your sexual attraction to someone, has no place in this federal court, and I'll take very strong action if that continues.

MR. CLARK: Yes, Your Honor.

THE COURT: So I'll decide these motions. I'm not going to hold you in contempt at this time even though you, frankly, thoroughly deserve it. I'm not going to do it because you don't have a lawyer. I'm going to give you the chance to come to your senses on this.

But you must not engage in this personal sort of correspondence. You will get your

hearing here. I've been at this 38 years and I know how to give someone a hearing. But you're not going to do that anymore.

MR. CLARK: Yes, Your Honor, will not be --

THE COURT: And do not put Wells Fargo customer information on the internet.

MR. CLARK: There is no Wells Fargo customer information on the internet. And if there is, I will immediately comply with a phone call.

THE COURT: I don't have anything more at this time. I'll issue my orders in writing considering your motions.

MS. LIVELY: Your Honor, may I briefly be heard?

THE COURT: Yes.

MS. LIVELY: I think some of the confusion is that Mr. Clark believes that because he can go and dig around in public records and find the same information that he received from Wells Fargo that he got as an employee that's posted online that he somehow thinks that information is okay to post online --

MR. CLARK: No, I don't.

MS. LIVELY: -- and we want to make

sure that he understands that even if he could go find that same information by digging through public records, the fact that he received what is set forth in Exhibit 2 to my declaration with customer names and identities specified, that is improper.

THE COURT: Well, I want to make it very simple. I don't care what your theories about the law are at this point with regard to this issue. I've entered an order and I expect you to comply with it.

MR. CLARK: Your Honor, I thought I complied with it last time. I will do a more diligent job -- a much more diligent job complying with every order of this court. And if anybody sees that I'm not in some sense, please let me know right away before it becomes a problem.

If I thought that what I thought was a humorous coping memorandum, one that was designed to get me around some of the trauma I have been through, was going to be a problem once it was submitted to court months later, I wouldn't have sent them. Again, I wouldn't have. And I apologize to the Court and to Ms. Lively and her office for that, for offending them in that fashion, Your Honor.

THE COURT: Well, that's fine. I'm going to give you some slack this time, but if similar behavior comes back to my attention, I will take action.

MR. CLARK: I appreciate it.

THE COURT: All right. We're in recess.

MS. LIVELY: Thank you, Your Honor.

(The hearing was concluded at 11:23 a.m.)

State of Oregon)
) ss.
County of Lane)

I, Sara Fahey Wilson, CSR, a Certified Shorthand Reporter for the State of Oregon, certify that the transcript is a true record of the hearing; that at said time and place I reported all testimony and other oral proceedings had in the foregoing matter;

that the foregoing transcript consisting of 22 pages contains a full, true and correct transcript of said proceedings reported by me to the best of my ability on said date.

If any of the parties or the witness requested review of the transcript at the time of the proceedings, such correction pages are attached.

IN WITNESS WHEREOF, I have set my hand and CSR seal this 3rd day of May 2012, in the City of Eugene, County of Lane, State of Oregon.

Sara Fahey Wilson, CSR
CSR No. 06-0400

2404 Hobbs Act—Under Color of Official Right

In addition to the "wrongful use of actual or threatened force, violence, or fear," the Hobbs Act (18 U.S.C. § 1951) defines extortion in terms of "the obtaining of property from another, with his consent . . . under color of official right." In fact, the under color of official right aspect of the Hobbs Act derives from the common law meaning of extortion. As the Supreme Court explained in a recent opinion regarding the Hobbs Act,

> "[a]t common law, extortion was an offense committed by a public official who took 'by color of his office' money that was not due to him for the performance of his official duties. . . . Extortion by the public official was the rough equivalent of what we would now describe as 'taking a bribe.'" *Evans v. United States*, 504 U.S. 255 (1992).

In order to show a violation of the Hobbs Act under this provision, the Supreme Court recently held that "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." While the definition of extortion under the Hobbs Act with regard to force, violence or fear requires the obtaining of property from another with his consent *induced* by these means, the under color of official right provision does not require that the public official take steps to induce the extortionate payment: It can be said that "the coercive element is provided by the public office itself." *Evans v. United States*, 504 U.S. 255 (1992); *see United States v. Margiotta*, 688 F.2d 108, 130 (2d Cir. 1982), *cert. denied*, 461 U.S. 913 (1983) ("[t]he public officer's misuse of his office supplies the necessary element of coercion . . . .").

This theory of extortion under color of official right has resulted in the successful prosecution of a wide range of officials, including those serving on the federal, state and local levels. For example: *United States v. O'Connor*, 910 F.2d 1266 (7th Cir. 1990), *cert. denied*, 111 S. Ct. 953 (1991) (police officer accepts payments from FBI agents posing as crooked auto parts dealers); *United States v. Stephenson*, 895 F.2d 867 (2d Cir. 1990) (international trade official in Department of Commerce accepts payments to influence ruling); *United States v. Spitler*, 800 F.2d 1267 (4th Cir. 1986) (state highway administrator accepts money from road building contractor); *United States v. Wright*, 797 F.2d 245 (5th Cir. 1986), *cert. denied*, 481 U.S. 1013 (1987) (city prosecutors accept money for not prosecuting drunk drivers); *United States v. Greenough*, 782 F.2d 1556 (11th Cir. 1986) (city commissioner accepts money for awarding city concession); *United States v. Murphy*, 768 F.2d 1518 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986) (judges accept payments to fix cases); *United States v. Mazzei*, 521 F.2d 639 (3d Cir.) (en banc), *cert. denied*, 423 U.S. 1014 (1975) (state senator accepts money from landlord seeking government office lease). In *United States v. Stephenson*, 895 F.2d at 871-73, the defendant, who was a federal official, unsuccessfully contended that the Hobbs Act only applied to state and local officials and that prosecution of federal official for extortion would have to be exclusively brought under 18 U.S.C. §872: extortion by officers and employees of the United States. The court found that the government could seek a charge under whichever of these two overlapping statutes it thought appropriate. Moreover, "it is not a defense to a charge of extortion under color of official right that the defendant could also have been convicted of bribery." *Evans v. United States*, 504 U.S. 255 (1992).

GENERAL RULE: The usual fact situation for a Hobbs Act charge under color of official right is a public official trading his/her official actions in a area in which he/she has actual authority in exchange for the payment of money.

Some cases under certain fact situations, however, have extended the statute further. For example:

- Some courts have held that a Hobbs Act violation does not require that the public official have *de jure* power to perform any official act paid for as long as it was reasonable to believe that he/she had the *de facto* power to perform the requested act. *See United States v. Nedza*, 880 F.2d 896, 902 (7th Cir. 1989) (victim reasonably believed state senator had the ability to impact a local business); *United States v. Bibby*, 752 F.2d 1116, 1127-28 (6th Cir. 1985); *United States v. Sorrow*, 732 F.2d 176, 180 (11th Cir. 1984); *United States v. Rindone*, 631 F.2d 491, 495 (7th Cir. 1980) (public official can extort money for permit beyond control of his office, so long as victim has a reasonable belief that he could affect issuance); *United States v. Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), *cert. denied*, 439 U.S. 1116 (1979); *United States v. Harding*, 563 F.2d 299 (6th Cir. 1977), *cert. denied*, 434 U.S. 1062 (1978); *United States v. Brown*, 540 F.2d 364 (8th Cir. 1976); *United States v. Hall*, 536 F.2d 313 (10th Cir.), *cert. denied*, 429 U.S. 919 (1976); *United States v. Hathaway*, 534 F.2d 386 (1st Cir.), *cert. denied*, 429 U.S. 819 (1976); *United States v. Mazzei*, 521 F.2d 639, 643 (3rd Cir.) (en banc), *cert. denied*, 423 U.S. 1014 (1975); *United States v. Price*, 507 F.2d 1349 (4th Cir. 1974).

- Most courts have held that a Hobbs Act violation does not require that the public official be the recipient of the benefit of the extortion, and that a Hobbs Act case exists where the corpus of the corrupt payment went to a third party. However, consistent with the federal offenses of bribery and gratuities under 18 U.S.C. § 201 (see 9 U.S.A.M. §§ 85.101 through 85.105), where the corpus of the corrupt payment inures to the benefit of a person or entity other than the public official most courts have also required proof of a *quid pro quo* understanding between the private corrupter and the public official. *See United States v. Haimowitz*, 725 F.2d 1561, 1577 (11th Cir.), *cert. denied*, 469 U.S. 1072 (1984) ("a Hobbs Act prosecution is not defeated simply because the extorter transmitted the extorted money to a third party."); *United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982), *cert. denied*, 461 U.S. 913 (1983) (insurance agency made kickbacks to brokers selected by political leader of town); *United States v. Scacchetti*, 668 F.2d 643 (2d Cir.), *cert. denied*, 457 U.S. 1132 (1982); *United States v. Forszt*, 655 F.2d 101 (7th Cir. 1981); *United States v. Cerilli*, 603 F.2d 415 (3rd Cir. 1979), *cert. denied*, 444 U.S. 1043 (1980); *United States v. Trotta*, 525 F.2d 1096 (2d Cir. 1975), *cert. denied*, 425 U.S. 971 (1976); *United States v. Brennan*, 629 F.Supp. 283 (E.D.N.Y.), *aff'd*, 798 F.2d 581 (2d Cir. 1986). *But see McCormick v. United States*, 500 U.S. 257 (1991)(allegedly corrupt payment made in the form of a campaign contribution to a third party campaign organization was insufficient to support a Hobbs Act conviction absent evidence of a *quid pro quo*).

- Some courts have held that the Hobbs Act can be applied to past or future public officials, as well as to ones who presently occupy a public office at the time the corrupt payment occurs. *See United States v. Meyers*, 529 F.2d 1033, 1035-38 (7th Cir.), *cert. denied*, 429 U.S. 894 (1976) (court answered affirmatively the question "whether, within the meaning of the Hobbs Act, it is a crime for candidates for political office to *conspire* to affect commerce by extortion induced under color of official right during a time frame beginning before the election but not ending until after the candidates have obtained public office."); *United States v. Lena*, 497 F.Supp. 1352, 1359 (W.D. Pa. 1980), *aff'd mem.*, 649 F.2d 861 (3rd Cir. (1981); *United States v. Barna*, 442 F.Supp. 1232, 1235 (M.D.Pa. 1978), *aff'd mem.*, 578 F.2d 1376 (3rd Cir.), *cert. denied*, 439 U.S. 862 (1978).

- Some courts have held that *private* persons who are not themselves public officials can be convicted under this provision if they *caused* public officials to perform official acts in return for payments to the non-public official. *United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982), *cert. denied*, 461 U.S. 913 (1983) (court upheld conviction of head of local Republican Party under color of official right where defendant could be said to have *caused*, under 18 U.S.C. §2(b), public officials to induce a third party to pay out money); *see United States v. Haimowitz*, 725 F.2d 1561, 1572-73 (11th Cir.), *cert. denied*, 469 U.S. 1072 (1984) (private attorney's conviction of Hobbs Act violation upheld due to complicity with state senator); *United States v. Marcy*, 777 F.Supp. 1398, 1399-400 (N.D.Ill. 1991); *United States v. Barna*, 442 F.Supp. 1232 (M.D. Pa.), *aff'd mem.*, 578

F.2d 1376 (3rd Cir.), *cert. denied*, 439 U.S. 862 (1978). *But see United States v. McClain*, 934 F.2d 822, 829-32 (7th Cir. 1991) ("we believe that, as a general matter and with caveats as suggested here, proceeding against private citizens on an 'official rights' theory is inappropriate under the literal and historical meanings of the Hobbs Act, irrespective of the actual 'control' that citizen purports to maintain over governmental activity.").

- Some courts have also held that *private* individuals who *make* payments to a public official can be charged under the Hobbs Act, either as an aider and abettor or co-conspirator, if he or she is truly the instigator of the transaction. *See United States v. Torcasio*, 959 F.2d 503, 505-06 (4th Cir. 1992); *United States v. Spitler*, 800 F.2d 1267, 1276-79 (4th Cir. 1986) (conviction affirmed for aiding and abetting extortion under color of official right even though defendant, who paid kickbacks from corporate coffers, was an officer of the victim corporation); *United States v. Wright*, 797 F.2d 245 (5th Cir. 1986). *But see United States v. Tillem*, 906 F.2d 814, 823-24 (2d Cir 1990) (consultant employed to help restaurants obtain approvals from corrupt health inspectors had no stake in the conspiracy and was not promoting the outcome).

- Finally, in a federal prosecution of a state legislator, there is no legislative privilege barring the introduction at trial of evidence of the defendant's legislative acts. The Supreme Court has held that in such a prosecution a speech or debate type privilege for state legislators cannot be made applicable through Fed.R.Evid. 501. The Court said such privilege is not required by separation of powers considerations or by principles of comity, the two rationales underlying the Speech or Debate Clause of the U.S. Constitution, art. I, §6, cl. 1. *United States v. Gillock*, 445 U.S. 360, 368-74 (1980).

CAVEAT: *The Hobbs Act and Campaign Contributions*. The Supreme Court has held that, when an allegedly corrupt payment masquerades as a campaign contribution, and when there is no evidence that the corpus of the "contribution" inured to the personal benefit of the public officer in question or was a product of force or duress, the Hobbs Act requires proof of a *quid pro quo* agreement between the contributor and the public officer. *McCormick v. United States*, 500 U.S. 257 (1991). However, the Court has also held that proof that a *quid pro quo* agreement existed in a corruption case brought under the Hobbs Act may be proven circumstantially. *Evans v. United States*, 504 U.S. 255 (1992). This interpretation of the dimensions of the hobbs Act in corruption scenarios is consistent with the parameters of the facts needed to prove the federal crimes of bribery and gratuities under 18 U.S.C. § 201. *See United States v. Brewster*, 50-6 F.2d 62 (D.C. Cir. 1972), 9 U.S.A.M. §§ 85.101 through 85.105, *supra*.

CAVEAT: *The Hobbs Act and evidence of a quid pro quo*. When the Hobbs Act is applied to public corruption scenarios that lack evidence of actual "extortionate" duress, some courts have interpreted the Hobbs Act very strictly to require proof of a *quid pro quo* relationship between the private and the public parties to the transaction, even where the corpus of the payment inured to the personal benefit of the public official. *See United States v. Martinez*, 14 F.3d. 543 (11th Cir. 1994)(Hobbs Act did not apply to pattern of in-kind payments given personally to Florida mayor in the absence of evidence of a *quid pro quo* relationship between the mayor and alleged private corrupter); *United States v. Taylor*, 993 F.2d 382 (4th Cir. 1993)(same); *United States v. Montoya*, 945 F.2d 1086 (9th Cir. 1991)(same); *contra United States v. Brandford*, 33 F.3d 685 (6th Cir. 1994)(Hobbs Act does not require proof of *quid pro quo* where corpus of corrupt payment inured to the personal benefit of public officer). In addition, some courts require that corruption cases brought under the "color of official right" clause of the Hobbs Act be accompanied by proof that the public official induced the payment. *See Montoya*, *supra*.

At the very least, the courts will probably not extend the "color of official right" clause of the Hobbs Act beyond the parameters of crimes of bribery and gratuities in relation to *federal* officials that are described in 18 U.S.C. § 201. *See United States v. Brewster*, 506 F.2d 62 (D.C. Cir. 1974), 9 U.S.A.M. §§ 85.101 through 85.105, *supra*. This means that where the corpus of the alleged corrupt payment passed to someone or something other than the public official personally (including those where it passed to a political committee), the Hobbs Act probably does not apply unless there is also evidence of a *quid pro quo*. And even then, some Circuits, such as the Ninth, require additional proof that the payment was induced by the