**FRAUD UPON THE COURT**

**A REPORT CONCERNING THE AGGREVATED PERJURY/SUBORNATION OF PERJURY BY CITY OF SAN ANTONIO’S CHIEF INFORMATION OFFICER RICHARD J. H. VARN, CITY ATTORNEY DEBORAH KLEIN AND OTHERS**

**ADDITIONAL** **REPORTS**: BOGUS TIME REPORT SCHEME / THEFT OF $200,000 –city IT Manager and vendor

**ENTITY:** THE CITY OF SAN ANTONIO

ITSD - (INFORMATION TECHNOLOGY SERVICES DEPARTMENT)

Chief Information Officer Richard J. H. Varn IT Director Hugh Miller

**LOCATION:** CITY OF SAN ANTONIO, TEXAS

**FACT:** CIO RICHARD VARN, CITY ATTORNEY DEBORAH KLEIN AND OTHERS CONSPIRED TO PRESENT A FRAUD UPON THE COURT WHEN THEY OFFERED FALSE/ FABRICATED TESTIMONY UNDER OATH IN AN EFFORT TO HIDE CRIMINAL ACTIVITY BY CITY EMPLOYEES INCLUDING THEFT, FRAUD, GRANT FRAUD, RETALIATION AND FALSIFICATION OF OFFICIAL DOCUMENTS.

**IMPACT:** THE ILLEGAL SCHEME TO PRESENT A TOTAL FABRICATION TO THE COURT CAUSED THE COURT TO BE DEFRAUDED. THE FALSE TESTIMONY HID FROM THE COURT AND FROM OUR CITIZENS THE FACT THAT PUBLIC AND GRANT FUNDS HAD BEEN STOLEN, MISUSED AND MISAPPROPRIATED FOR DECADES. THE FALSE TESTIMONY LAID THE FOUNDATION FOR OTHER CITY WITNESSES TO PRESENT THEIR FRAUDULANT TESTIMONY IN SUPPORT OF THE FABRICATED WORK OF FICTION OFFERED TO THE COURT BY CITY ATTORNEY KLEIN AND CHIEF INFORMATION OFFICER VARN TO HIDE THE CRIMINAL ACTIVITY.

This is one of many reports that will be published detailing the numerous illegal schemes devised by corrupt city employees/officials to embezzle public/grant funds and to hide the criminal activity. The City Attorney’s Office has conspired with corrupt city officials/employees and law enforcement officers to cover up decades of theft, fraud, falsification of government records, retaliation, etc. This report proving aggravated perjury, subornation of perjury and obstruction is but a single example of the many instances of criminal behavior undertaken to hide the crimes against our government and our citizens.

Citizens Against Public Corruption, Waste, Fraud and Abuse

9650 Limestone Pond San Antonio, TX 78254

OVERVIEW

City of San Antonio, Texas’ Chief Information Officer Richard J. H. Varn testified under oath in a court of law that in 2005 he understood the internal billing account commonly referred to as the telephone “variable”, investigated the use of the account, found that the “variable” was created to help balance the budget / make requests for additional funds/pay for pop-up expenses/make adjustments to the budget, contacted Washington and found that there was no grant fraud and found nothing illegal concerning the use of the “variable”.

Page 23 line # 10 Varn states “They had to have some way of balancing their budget and serving their needs. They had something called…some kind of variable in the telephone system.

Page 25 lines 22-25 Varn states “Well, I want to be very specific, and there’s nothing illegal about it. It does not violate any city policies, rules, or ordinance. It doesn’t violate Texas law.”

Page # 41 line # 17 Varn replies “I understood the telecom variable cause that’s the one that seemed to be the largest one that was used to adjust the budgets”.

Page #45 line # 14 Varn again broke in replying- “I have actually visited with a number of federal officials in Washington asking them about…”

With his fabricated testimony and false statements CIO Richard J. H. Varn of Des Moines, Iowa ( yes, he resides in Iowa) set the stage to facilitate the presentation of a fraud upon the court inside the Bexar County Courthouse in the case of Foddrill v City of San Antonio -2006 CI 06702- in February 2009. Varn told the critical lies used to hide decades of criminal activity including but not limited to theft of public funds, State and Federal grant fraud, falsification of government documents, threats to keep quiet, retaliation and aggravated perjury inside the City’s IT Department and with the assistance of City Attorney Deborah Klein and other city witnesses presented a work of fiction- a total fabrication- to the court- and to our citizens.

SUMMARY

I. INTRODUCTION - Chief Information Officer Richard Varn’s fabricated testimony was created in an effort to conceal decades of fraud, theft of public funds, grant fraud, falsification of documents, fraudulent audits, fake reports, “doctored” financial books, threats to keep quiet and many other crimes. The criminal activity centered on the illegal manipulation of an internal telephone billing account – “the variable”- created on January 4, 1982 with the publication of Administrative Directive 6.12 signed by Purchasing Director Brooks and City Manager Huebner. Corrupt City officials, Municipal Integrity officials/investigators, City attorneys including Deborah Klein, IT officials including CIO Varn/IT Director Miller/Fiscal Manager Segovia, the SAPD and others would have us believe that AD 6.12 and other publications regulating the use of public and grant funds do not exist and no illegal acts were ever committed by city employees and others. Their lies are exposed in this report.

II. CHRONOLOGY OF THE SCHEME TO HIDE THE CRIMINAL ACTIVITY - In the summer and fall of 2005 City officials, City employees, the Office of Municipal Integrity, the San Antonio Police Department, the IT Department, the City Attorney’s Office, etc. began efforts to cover up the criminal activity almost immediately after the crimes were exposed. These efforts continue to the present day. Corrupt city officials, attorneys, witnesses and employees violate the law in their efforts to hide decades of criminal activity inside the City’s IT Department. Law enforcement officials, State/Federal auditors/investigators and many elected officials turn a blind eye to the decades of criminal activity and the ongoing illegal cover-up.

III. THE “VARIABLE” - METHODOLOGY EMPLOYED TO GAIN ILLEGAL ACCESS TO PUBLIC/GRANT FUNDS - For decades corrupt City employees manipulated an internal billing account – the telephone variable – to illegally and secretly gain access to over $ 3 million a year in funds set aside by law in the form of grant rules, OMB regulations, budgets, local government code, ordinances, bonds, etc. for telecommunications support and used the money for other than its intended purpose and in many instances to support illegal schemes in an effort to funnel the ill-gotten funds to accomplices and co-conspirators.

IV. FRAUD UPON THE COURT - As early as 2005 the City Attorney’s Office and others embarked upon a scheme to conceal documents, falsify audits/reports, suborn false testimony. etc. in an effort to defraud citizens, grantors and the courts. CIO Richard Varn lied under oath in a court of law fulfilling his part in the deliberate scheme to defraud the judicial process while all the attorneys present in the courtroom (Klein, Gaul and most probably Kosanovich.) had intimate knowledge of Varn’s 2007 sworn deposition, documents including AD 6.12 and other publications that directly contradicted his entire testimony and proved beyond a doubt that he was lying under oath in a court of law. The fraud perpetrated upon our courts by Varn’s coached, false testimony coupled with the criminal acts of the attorneys presenting the case rose the level of fraud upon the court.

V. CITY PERSONNEL CONSPIRED TO COVER UP THE CRIMINAL ACTIVITY AND THE COMMISSION OF AGGREVATED PERJURY, SUBORNATION OF PERJURY AND OBSTRUCTION OF JUSTICE – Every effort has been made to cover up the decades of criminal activity. The Office of Municipal Integrity, the City Attorney’s Office, District Attorney Reed’s Office, SAPD, the Bexar County Sheriff’s Office, Mayor Castro, City Manager Sculley, City Council members and others have either taken steps to hide the crimes or deliberately look away allowing the criminal cover-up to continue. DPS Texas Ranger Captain Hank Whitman lied under oath in support of Varn’s fabricated testimony and FBI Special Agent Brown of the local San Antonio field office of the Federal Bureau of Investigation published a fraudulent document stating that three separate meetings had taken place and the violations of law had been investigated. Everyone involved in the illegal cover-up makes a mockery of Freedom of Information laws via the constant denial of access to public documents that prove their involvement in the illegal cover-up of numerous violations of law.

VI. CITY, STATE, FEDERAL AND LAW ENFORCEMENT OFFICIALS WERE ALERTED TO THE FRAUD AND ASSULT UPON THE INTEGRITY OF OUR JUSTICE SYSTEM – City officials, the San Antonio Police department, the Bexar County Sheriff’s Department, the Bexar County District Attorney, the Texas Rangers, the FBI, State Auditor Keel, Attorney General Abbott, Governor Perry, numerous elected officials, HUD OIG officials/agents especially Agent Victoria ( I don’t care, I don’t care, I don’t care) Marquez and others were made aware of the criminal activity including the theft of public/grant funds and of the fraud upon the court. HUD OIG case # 10-0465 was opened and closed while HUD OIG officials REFUSED to interview the Telecommunications Manager who along with another citizen convinced Congressman Lamar Smith to open the investigation into the fraud and the theft of our money.

VII. STATUTES APPLICABLE TO THE COMMISSION OF THE CRIMES- Penal Code- Title 8- Offenses against Public Administration – Chapter 37 – Perjury and other Falsifications

Federal statutes may apply as Varn, several attorneys and others conspired to hide violations of federal law

VIII. STATUTE OF LIMITATIONS – Code of Criminal Procedure- Chapter 12 – Limitation. Aggravated Perjury/Subornation of Perjury - three years from the date of the commission of the offense. Chief Information Officer Varn is also an accomplice/co-conspirator in the commission of other crimes as he has conspired to assist offenders avoid apprehension and prosecution. Some of these crimes can be prosecuted up to ten years after the fact.

IX. CONCLUSION - The testimony that Chief Information Officer Richard Varn presented in the Bexar County Courthouse on February 10, 2009 was a fabrication concocted by City Attorney Deborah Klein and others. Klein coached Varn during his presentation of known false testimony while the opposing attorney Malinda Gaul sat idly by. Gaul knew the testimony was entirely false but raised no objections and refused to enter Varn’s 2007 deposition, Administrative Directives 6.12, 1.6, 2.1, 2.2 and other documents into evidence. Attorneys Klein and Gaul were present at Varn’s 2007 deposition when he stated “ I don’t know what that is” when asked about the “variable” and they also had knowledge of City documents proving Varn and others to be lying under oath about the legal use of the “variable” (especially AD 6.12) but allowed the fraud to continue. The court was never allowed to know of Varn’s 2007 deposition or the City, State and Federal documents that directly contradicted his fraudulent/fabricated courtroom testimony. The attorneys, Varn and others presented a fraud upon the court. After presenting a fraud upon the court to win the Whistleblower lawsuit city attorney Deborah Klein stated to the press- “I think the city is interested in fixing things when things aren’t right and I think we showed that”. The City is indeed interested in “fixing” things. They are interested in “fixing” trials, police reports, Municipal Integrity investigations, etc. to hide the decades of criminal activity inside the City. If “fixing things” means violating the law, committing aggravated perjury/ official oppression, etc. - so be it.

X. APPENDIX – detailed list follows

REPORT IN FULL

I. INTRODUCTION

Chief Information Officer Richard Varn’s fabricated testimony was created in an effort to conceal decades of fraud, theft of public funds, grant fraud, falsification of documents, fraudulent audits, fake reports, “doctored” financial books, threats to keep quiet and many other crimes. The criminal activity centered on the illegal manipulation of an internal telephone billing account – “the variable”.

When deposed in 2007 Chief Information Officer Richard Varn admitted that he didn’t even recognize the term “variable”, had no knowledge of any such account, didn’t know how departments obtained funding when their money ran out and handed over all responsibility as CIO by July 11, 2005 to incoming CIO Armstrong. The City has stated that there are no documents in existence concerning Varn’s review/investigation of the “variable” in 2005. There is no mention of Varn’s ever looking into the “variable” by any witness testifying in the 2005 Municipal Integrity investigation. Incoming CIO Mickey Armstrong states in an email of November 29, 2005 that the existence of variable accounts came as a surprise to him.

In court under oath in 2009 Chief Information Officer Varn presents a fabricated fairytale concocted by corrupt city attorneys and IT employees to hide decades of criminal activity. In 2009 under oath in court Varn now falsely states that in 2005 he understood the “variable”, investigated the billing account, contacted Washington, discovered that the account was created to help balance the budget and pay for pop up costs, found that nothing illegal had transpired, etc. He lied and all the attorneys were aware that he was lying as they were present at his 2007 deposition and were aware of numerous binders of documents proving the existence of City, State and Federal regulations, rules and laws governing the use of the telecommunications funds. The court never saw the 2007 deposition or the binders. With the assistance of city attorney Deborah Klein and with attorney Malinda Gaul looking away CIO Richard Varn presented a fraud upon the court.

II. CHRONOLOGY OF THE SCHEME TO HIDE THE CRIMINAL ACTIVITY

In the summer of 2005 City officials, attorneys and employees began efforts to cover up the criminal activity almost immediately after the crimes were exposed. By October 2005 Municipal Integrity investigator Steve Harrison and Manager Virginia Quinn prematurely halted an internal investigation, published a fraudulent investigation report declaring that no wrongdoing was found, no rules or laws were broken and that there were no rules or laws regulating the “variable”-a lie. This lie implying that AD 6.12, AD 2.1, AD 2.2, Local Government Codes, OMB regulations, budgets, etc. do not exist formed the central theme of every effort by corrupt city officials/employees to hide the criminal activity for the past five years and is the basis for Varn’s fabricated, fraudulent testimony. In November 2005 the City Attorney’s Office illegally denied FOIA access to the MI report and an internal contract audit performed by the now defunct Contract Services Department so as to hide the crimes. The Telecommunications Manager who refused to go along with the criminal cover-up of the criminal activity was illegally terminated in February 2006. His Whistleblower trial took place in February 2009 in the Bexar County Courthouse. The City Attorney’s Office continued to violate the law in an effort to hide decades of criminal activity. City Attorney Deborah Klein with the assistance of hired help Mark Kosanovich suborned perjury from numerous city witnesses including CIO Richard Varn who told the “critical” lies central to the fraud upon the court. Each witness was provided with a false, fabricated testimony that they were to present to the court. The jury found for the City answering “NO” to the first question – Did the Telecom Manager make a good faith report basing their decision on fabricated, false testimony concocted by the City attorney and presented to the court and our citizens by CIO Richard Varn and other corrupt city employees with the assistance of city attorney Deborah Klein and others.

III. THE “VARIABLE” - METHODOLOGY EMPLOYED TO GAIN ILLEGAL ACCESS TO PUBLIC/GRANT FUNDS

For decades corrupt City employees manipulated an internal billing account – the telephone variable – to gain

access to over $ 3 million a year of funds set aside by law for telecommunications support and used the money for other than its intended purpose and in many instances to support illegal schemes to funnel the funds to accomplices and co-conspirators.

Numerous schemes to defraud the government centered on the corrupt employees’ abilities to gain access to millions of dollars a year behind the backs of City Council, auditors, grantors, citizens, etc. The “Telephone

Variable Billing Account” created by City Administrative Directive 6.12 was clandestinely and illegally used to pilfer tens of millions of dollars from telecommunications budgets of every city department and every grant awarded the City of San Antonio, Texas since 1982. The annual cost of City Centrex services is less than $ 2 million. Official transfer requests for the Finance Dept. to move funds from department and grant telephone budgets to ITSD were clandestinely and illegally inflated by $ 3 million a year or more and consequently the telephone “variable” account swelled to an annual cost to grantors and citizens of over $5.2 MILLION – more than twice the real cost of Centrex services described in AD 6.12. If a grant or department had a telecommunications budget it was drained of funding via fraudulent monthly bills totaling well over $ 3 MILLION a year for decades. The illegal manipulation of this monthly telephone billing account commonly referred to as “the Variable” provided corrupt city employees with the funds to use as they wished as if they were given a blank check to run the IT department or any other scheme they could envision. Internal City documents describe this “slush fund” they created as a “bottomless pit of money”. The billing account that over the years grew to $ 5.2 million was fraudulently described in audits, billing statements, etc. as Telephone Centrex costs when in fact the funding was used for whatever the IT Managers and their cronies wished to use the money for. The funding never ran out and had no limits set via city ordinance. Corrupt IT Managers ran the Information Technology - Communications Department like a private fiefdom or family-owned business rather than as a publicly funded municipal division of the City of San Antonio. They and their “friends” operated “under the radar” for decades with no accountability or overview by City Council, auditors, regulators, grantors, etc. They operated outside of the law as if there were no annual budgets, Administrative Directives, City Charter provisions, City ordinances, State Local Government Codes, State Uniform Grant management Regulations, Federal OMB regulations, State/Federal penal Codes, etc. They ignored City Administrative Directives (especially AD 6.12), Local Government Codes, City ordinances, City budgets, OMG regulations, etc. IT managers including Jose Medina, Mike Mitchell and Victor Perez and their accomplices altered invoices, caused to be created false and fraudulent statements in the books and records of the City, concealed the true and accurate disposition of department and grant resources and used funding set aside by city ordinance and state/federal grants as they wished and not for their intended purposes. They misused, misappropriated, embezzled, etc. funding set aside by law for telecommunications support. They violated open-bidding regulations as they never followed the law and requested the funding via city council approval/ordinances but simply purchased goods and services and dumped the bill into the telecommunications “variable” account to be paid with telephone funds from city and grant phone budgets. They stole money from every city department/program including Fire, SAPD, Library, Aviation, Health, WIC, Public Works, Community Initiatives, Housing and Community Development, Parks, etc. and every grant awarded each of these departments that contained provisions for telephone support. Their illegal “slush fund” created as is described by an internal city document a “means for ITSD (City’s Information Technology Services Department) to balance its own books internally”. The “slush fund” was used to “tap a bottomless pit of money” totaling in the “millions of dollars”. The “internal contract billing process is compromised” to the extent that departments were “billed for an untold amount of goods and services from which their department received no benefit”. State/Federal grants administered by every city department were billed for goods and services from which they received no benefit as well due to the fact that this illegal scheme plundered city department telephone budgets and grant telephone budgets alike.

IV. FRAUD UPON THE COURT

Chief Information Officer Richard J H Varn presented the critical lies to the court and with the assistance of

City Attorney Deborah Klein constructed the fraudulent foundation upon which the other city liars could place their blocks of false testimony in an effort to build a house of fraud, falsehoods, fabricated testimony and outright lies. Varn’s courtroom testimony centers on his tenure as the City’s Interim CIO in the summer of 2005.

1. Varn’s testimony focused on his investigation of the “variable” and budget issues in 2005. His statements under oath conveyed the message that in 2005 Varn investigated the “variable” billing account and other billing problems, contacted Washington DC concerning the issue of grant fraud, found everything legal and turned over the billing problems to the incoming CIO – Mickey Armstrong.

On February 10, 2009 under oath in a court of law the City’s current Chief Information Officer Richard Varn declared that there was nothing illegal about the telephone variable. In the trial transcripts on page 25 lines 22-25 he states “Well, I want to be very specific, and there’s nothing illegal about it. It does not violate any city policies, rules, or ordinance. It doesn’t violate Texas law.”

On pages 22 – 24 Varn describes how cost/budget overruns are addressed and presented the court with his knowledge of how the city budget process operated in 2005. He falsely testifies that the “variable” was created

to help balance the budget and pay for pop up costs.

On page 23 line # 10 Varn states “They had to have some way of balancing their budget and serving their needs. They had something called…some kind of variable in the telephone system. They were using the …the allegation was that was being illegally used, which I’m very sensitive to. If anybody’s illegally using money or inappropriately using money, we’re going to stop now and we’re going to figure out a way to fix it. So I went in and looked at that. What I found was it was an accounting mess.” Varn went on to state on page 25 line # 7 “ We needed to be direct and honest with the departments about how we were billing them and exactly what the money was being used for.”   
  
Varn goes on to explain how he investigated the variable, called people in Washington, etc.

Page # 41 line # 4 – Question- “in talking to Mr. Foddrill, you learned about this variable account; is that correct?”

Page # 41 line # 7 Varn replies- “That’s correct”.

Page # 41 line # 11 Varn states “I just knew they had some things they used to adjust charges”.

Page # 41 line # 17 Varn replies- “I understood the telecom variable cause that’s the one that seemed to be the largest one that was used to adjust the budgets”.

Page # 41 line # 22 – Question- “Now, you said that you looked into the issues that Mr. Foddrill brought to you; is that correct?”

Page # 41 line # 24 – Varn replies- “I did the best to my ability, Ma’am, yes.”

Page # 43 line # 6-12 Varn explains- “As long as you have a fair way doing it, it’s done uniformly, you can charge everybody the same way, then it’s okay to do that method.”

Page #43 line # 20 – Question- “Okay. So did you look into that to make sure this variable was not violating those federal---“

Page # 43 line # 22 – Varn cuts in and replies- “ Yeah, I did, and I didn’t think it was…you know, it did get done the same way for everybody, so it was a commonly confusing way of doing it, you know. “

Page #44 line # 1 Varn explains “everyone had equal access to come in and make a plea to the department director to say, I have a problem this year, or I have an issue with this financing, or the department director would say this ended up being more expensive than we thought. We would have to figure out how to cover the costs. Allocating it by any common way probably would fall…would get accepted by federal auditors”. “They’re really looking for somebody who’s dumping bunches of costs onto Medicaid and other contracts to try to solve their budget problems. That’s not what the City was doing. The City was trying to allocate costs that it

really did have”.

Page # 45 line # 7 - Varn states that it is acceptable and legal to use grant funds to purchase the IT trophy case – “ If it’s legal to spend the money—even if it’s a dumb thing to spend money on, if it’s legal to spend money on, it’s not to my knowledge violating the federal audit rules”.

Page #45 line # 11 – Question- “Did you ask the feds about whether they thought it was okay to buy trophy cases and remodel the ITSD…”

Page #45 line # 14 - Varn again broke in replying- “I have actually visited with a number of federal officials in Washington asking them about…”

Page #45 line # 25 and page 46 line # 1 – Question- “Did you stop the process of the variable when you found out about it in 05?”

Page # 46 line # 2 – Varn replies- “No. There was no alternative. I did ask them to start developing an alternative billing process, and I left it on my list, you know. It was like handing off the bible over to Michael Armstrong saying, here’s a big list of things. I’m sorry. You have to fix your billing system.”

Varn’s testimony provides a systematic, clear outline of his actions in 2005 after he was informed during a meeting of June 16, 2005 by the Telecommunications Manger of billing issues and threats to keep quiet or provide auditors with bogus information. His testimony provides a detailed accounting of how as the City’s senior Information Technology Guru he responded to serious allegations of violence in the workplace and fraud. This “ internationally recognized expert and leader in information technology, privacy, identity security, public policy, and digital government”, former State of Iowa Representative, former State of Iowa Senator, Senior Fellow with the Center for Digital Government, Technology Policy Advisor to the National Retail Federation, Director of the Coalition for Sensible Public Records Access, Board of Trustees member for the Educational Testing Service, holder of a juris doctorate law degree and self- proclaimed author of Whistleblower law testified under oath in a court of law that in 2005 he immediately addressed the serious allegations, investigated the “variable” and budget irregularities, contacted Washington DC concerning the issue of grant fraud, found no wrongdoing or violations of law and turned over the whole “accounting mess” to his successor- incoming CIO Mickey Armstrong ( current CIO for Corpus Christi, Texas).

Chief Information Officer Richard J H Varn’s courtroom testimony presents a very powerful narrative, a white-paper like review of exactly what type of actions are to be taken to address serious allegations of fraud, workplace violence and the theft of public and grant funds by corrupt public employees. One could easily be just as impressed as the jury and judge were in 2009 when they listened to IT Guru Varn’s words of wisdom and City Attorney Klein’s descriptive, informative and supportive statements to the court.

Anyone, just as in the case of the judge and jury, could easily be impressed not knowing that Varn’s sworn testimony was a cleverly crafted lie, a fable, a fairy tale, a fabrication, a work of fiction, a typical South-Texas “novella”-a soap opera, a totally untrue account that was intentionally represented as true by Varn, Klein and the other conspirators in the fraud upon our court. Anyone would be impressed until they heard the truth- the truth that the judge and jury were prohibited from hearing by the attorneys in the courtroom and others behind the scenes at the City Attorney’s Office and City Hall.

1. In direct contradiction to Varn’s fabricated testimony under oath in court his sworn deposition of August 15, 2007 (that was intentionally concealed from the court), official city documents, sworn statements and other evidence prove that Varn, Klein and others conspired to present a fraud upon the court in an effort to hide violations of law committed by city employees and others. The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud and directly contributed to a  "grave miscarriage of justice” inside the Bexar County Courtroom of Judge Antonia Arteaga.

Excerpts from Varn’s August 15, 2007 deposition follow:

When questioned about how city departments obtained more money if they ran out of funds Varn responded that he didn’t know how that worked as follows.

Page # 12 line # 9 - Question – “ During the 2005 time period that you were employed by the City, if a department was allocated money under the budget and ran out of money, what was the process for obtaining more money during the budget year ?”

Page # 12 line # 13 – Varn replies – “Gosh, I’m not really sure how that worked…. I don’t really know how a department requested something to be changed about their allocation for money in their budget”.

When questioned about the telephone “variable” billing account he admitted that he didn’t even recognize the term and knew nothing of any such account as follows.

Page # 38 line # 17 – Question – “have you ever heard of an account in that telecommunications department that was called the variable account?”

Page # 38 line # 20 – Varn asks – “Variable”

Page # 38 line # 21 – Attorney Gaul reiterates- “Variable”

Page # 38 line # 22 – Varn replies- “No. Were there any other names for it?”

Page # 23 Line # 23 – Gaul states- “No. That’s the only one we’ve had it called so far”.

Page # 38 line # 25 – Varn states – I DON’T KNOW WHAT THAT IS”.

Page # 39 line # 8 – Varn goes on to say “IF THERE’S AN ACOUNT THAT GOES TO COVER THAT, I’M NOT…I DON’T KNOW THAT THERE’S A SEPARATE ACCOUNT. I DON’T HAVE KNOWLEDGE OF THAT.”

Page # 39 line # 20 – Varn again states “IF THERE’S AN ACCOUNT FOR THAT, I JUST DON’T KNOW”.

When deposed in August 2007 Chief Information Officer Richard Varn admitted that he knew nothing of the telephone “variable” account, didn’t recognize the term “variable” and did not know how city departments received funding if their money ran out. City responses to FOIA requests, the 2005 Municipal Integrity investigation, sworn statements and city documents support this fact. Varn knew nothing of the “variable”.

IT Director Hugh Miller testifies during his 2009 courtroom appearance that in 2005 he and Varn never had time to even discuss the reason why Varn directed that IT Manager Median be terminated. Miller states:

Page # 81 line # 21 – “No, I mean, he was there for a short period of time after that” (after June 24, 2005).

Miller states during his courtroom testimony that Varn and he didn’t have a few minutes to discuss why Medina was to be terminated but Varn/Klein want us to believe that IT Guru Varn had time to investigate the decades old variable accounting “mess”, contact Washington and find everything legal. Documents show that Varn had just ten (10) working days between June 24, 2005 when the Telecommunications Manager went to him reporting that he had been threatened by Medina and July 11, 2005 when he replied to an email after he left the City to investigate the “variable”, contact Washington and find that nothing illegal had occurred since 1982 concerning the billing account. IT Guru Varn wants us to believe that in a ten day time frame that included the July 4 national holiday and his travel to Iowa he investigated the “variable” billing account, determined its origin, audited decades of financial statements ( 42,000 pages alone for Aug 2004-5), contacted Washington DC, etc. Varn wants us to believe that he accomplished in just a few short days a feat that city officials including Budget Director Peter Zanoni, Project Specialist Schmidt, Budget Analyst Hammond and others had failed to achieve over the past decades. Varn lied.

FOIA requests for information concerning ANYTHING that Varn used to investigate the “variable” reveal that the City has not one piece of paper to show that Varn looked into the telephone billing account. Varn lied.

Not one person interviewed during the 2005 Municipal Integrity investigation mentions Varn’s supposed investigation of the variable account. Billing clerks Moore and Anguiano make no mention of Varn accessing any records or requesting any information. Incoming CIO Armstrong never mentions Varn telling him about the variable and in fact states in a November 2005 email that he was surprised to learn of the account. IT Director Miller never mentions that Varn investigated the variable or that he contacted Washington D.C. finding the variable legal. Varn never states in his emails of 2005 to Telecom manager Foddrill that he looked into the variable and found no problems. There is no evidence to support CIO Varn’s courtroom testimony because his entire testimony concerning the variable was a fabrication concocted by city attorney Deborah Klein and others who presented the known fraudulent testimony to the court in an effort to hide decades of criminal activity. Varn lied. Varn lied and the attorneys present in the courtroom knew he was lying but didn’t stop him. To this date they refuse to have his fraudulent testimony exposed and corrected.

V. CITY PERSONNEL CONSPIRED TO COVER UP THE CRIMINAL ACTIVITY AND THE COMMISSION OF AGGREVATED PERJURY, SUBORNATION OF PERJURY AND OBSTRUCTION OF JUSTICE

Every effort has been made to cover up the decades of criminal activity. The Office of Municipal Integrity published a fraudulent report stating that no wrongdoing was discovered and that there were no rules or laws violated because none existed. The City Attorney has used his office to illegally deny FOIA requests and to present a fraud upon the court to hide the crimes. District Attorney Susie swair Reed sent several letters falsely indicating that she could take no action unless the Texas Rangers or FBI called her in. When proof of the crimes and the fraud upon the court was delivered to City Hall and City Council in June of 2009 City Attorney Bernard and Police Chief McAnus confiscated the documents, issued a criminal trespass warning barring entry into City sites and provided instruction to elected officials not to investigate the reports or speak with anyone of the crimes. Police reports SAPD 9.0471467 and BCSD 2009-081395 were closed out with no action and officials refuse to respond to letters or phone calls when asked about the cases. In January 2010 Bernard forwarded an email to City Councilman John Clamp again instructing him to ignore reports of criminal activity that was delivered to Clamp’s office. DPS Texas Ranger Captain Hank Whitman lied under oath in support of Varn’s fabricated testimony when he falsely stated that no violations of law were identified during an October 2008 meeting. The fact is that Whitman did indeed identify numerous violations of law and Assistant District Attorney Barry Elliott acted upon this information when he obtained a search warrant for the bank records of city IT manager Jose Medina. FBI Special Agent Brown of the local San Antonio office of the Federal Bureau of Investigation published a fraudulent document stating that three separate meetings with three separate FBI agents took place before Sept. 3, 2009 while the FBI stalls FOIA requests for the past year asking for the specific dates of the alleged meetings, names of the alleged participants and specifics of the alleged meetings.

The lie that there were no rules regulating the “variable” account began in 2005 when Municipal Integrity published a fraudulent report that began the cover-up. Administrative Directives, State Local Government Code, State and Federal Grant Regulations and other legal documents regulate the procurement of services and the purchase of products. CIO Armstrong was made aware of the “variable” problem in an email of November 2005 and addresses the “variable credibility” in his January 2006 ITSD planning conference. The “variable” is regulated via AD 6.12 and AD 2.1 spells out the legal/approved procedure for obtaining funding that directly contradicts Varn’s fabricated testimony. AD 2.1 declares that form FB-19 is executed in quadruplicate and must be approved by the Budget Department, the Finance Department and must be signed by the City Manager and nowhere does it mention that one should just wander over to the IT department to get some money. AD 2.2 goes on to describe the steps that should be taken to obtain non-budgeted capital funds and again there is no mention of a walk over to the IT building with a bag in hand to hold the cash. A close inspection of these documents will prove that CIO Varn lied under oath in a court of law. Attorneys Klein and Gaul were aware of these documents, allowed them to be excluded, knew Varn was lying and allowed the fraud to take place.

City Administrative Directive 6.12 was created in 1982 and outlines the use of the “variable” to consolidate telephone bills, pay the bills and charge each department for a fair share of the monthly phone bill- nothing more. The “variable” was not created to help balance the budget, pay for pop up costs, etc. Varn lied.

City Administrative Directive 1.6 outlines how any purchase over $25,000 must be obtained via formal bidding as is outlined in Texas Local Government Code 252.021. Section VII of this AD lists the Federal, State and Local laws regulating purchases. Secretly dumping an invoice into the telephone variable account for payment with no open bidding or approval by Council violated this AD, the Local Government Code and other laws.

City Administrative Directive 2.1 outlines standard procedures and guidelines to cover the initiation, evaluation and processing of requests for adjustment to budget appropriations. The AD dictates that written requests on form FB-19 flow through various stages and requires the approval of the City Manager. Secretly dumping invoices into the variable billing account for payment with funds set aside by law via grants or city ordinances for telecommunications support violates this AD, city ordinances, budgets, local government code, OMB regulations, etc. Varn lied.

City Administrative Directive 2.5 outlines documentation in support of wages charged to Federal or State grant awards. Submitting and approving bogus invoices for hours not worked is not mentioned.

City Administrative Directives 8.9 and 8.10 outline regulations concerning capital projects and grants. The covert use of the telephone variable as a means to obtain funding is not mentioned. Varn lied.

The Finance section of the Local Government Code states – “the governing body may only spend municipal funds only in strict compliance with the budget”. Laws were violated every month when costs associated with purchases of goods and services not approved by City Council and not allocated via a city ordinance were illegally and secretly processed via the telephone variable billing account under the guise of “Centrex charges”.

CIO Richard Varn with the assistance of city attorney Deborah Klein lied under oath in a court of law to hide these violations of law and theft of our money. Varn lied.

OMB Circular A-87 and other State and Federal regulations declare that grant funds can be spent only to support the grant funded project, must be well documented, must adhere to arms length bargaining rules and must include an indirect cost rate proposal for charges such as the “variable”. Non-telephone and non-grant related costs secretly dumped into the “variable” billing account paid with funding derived from telecom budgets of grants awarded the City since 1982 violate this law. Costs secretly recorded as Centrex expenses when they were in fact not related to any telephone purchase violate this law. Costs of purchases made with no open bidding or city council approval violate this law. Due to the fact that no indirect cost rate proposal or approval can be produced by the City or any State/Federal agency prove that costs charged to grants on a monthly basis via the telephone “variable” are not allowed and are illegal. Varn lied.

VI. CITY, STATE, FEDERAL AND LAW ENFORCEMENT OFFICIALS WERE ALERTED TO THE FRAUD AND ASSULT UPON THE INTEGRITY OF OUR JUSTICE SYSTEM

City officials, the San Antonio Police department, the Bexar County Sheriff’s Department, the Bexar County District Attorney, the Texas Rangers, the FBI, the State Auditor, the Attorney General and others were made aware of the criminal activity and of the fraud upon the court.

VII. STATUTES AND RULINGS APPLICABLE TO THE COMMISSION OF THE CRIMES

FRAUD UPON THE COURT:

The doctrine of the United States Supreme Court in *Hazel-Atlas*, echoed in *Chewning v. Ford Motor Co.*, 354 S.C. 72, 83-84, (2003), “Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs.” “We note because fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice. Hazel-Atlas Glass Co. v. Hartford-Empire Co., supra; Dixon v. Comm’n of Internal Revenue, 2003 WL 1216290 (9th Cir. 2003) (“ . . . the perpetrator of the fraud [upon the court] should not be allowed to dispute the effectiveness of the fraud after the fact.”).”

In Chewning, we held “the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud.”  *Id*. at 82, 579 S.E.2d at 610.  However, our holding in Chewning does not limit the finding of extrinsic fraud to misconduct of an attorney or an officer of the court.  As we noted in Evans, fraud upon the court has been defined as “that species of fraud which does, or attempts to, subvert the integrity of the Court itself, **or** is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.”  Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988

  We hold an act of perjury or concealment of a document coupled with an intentional scheme to defraud the court justifies the setting aside of a judgment pursuant to Rule 60(b) due to extrinsic fraud.  See, *e.g*., Rozier, 573 F.2d at 1338 (“In order to set aside a judgment or order because of fraud upon the court under Rule 60(b) . . . it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision.”)

VIII. STATUTE OF LIMITATIONS

Code of Criminal Procedure- Chapter 12 – Limitation. Aggravated Perjury/Subornation of Perjury - three years from the date of the commission of the offense.

Chief Information Officer Varn is also an accomplice/co-conspirator in the commission of other crimes as he has conspired to assist the offenders avoid apprehension and prosecution. Some of these crimes can be prosecuted many years after the fact:

Ten years from the date -Theft by a public servant of government property over which he exercises control in

his official capacity.

Seven years from the date - misapplication of fiduciary property or property of a financial institution or securing execution of document by deception. five years from the date – theft

Conspiracy and Organized Criminal Activity- The limitation period for criminal attempt is the same as that of

the offense attempted. The limitation period for criminal conspiracy or organized criminal activity is the same as that of the most serious offense that is the object of the conspiracy or the organized criminal activity.

IX. CONCLUSION

The testimony that Chief Information Officer Richard Varn presented in the Bexar County Courthouse on February 10, 2009 was a fabrication concocted by City Attorney Deborah Klein and others. Klein coached Varn during his presentation of known false testimony while the opposing attorney Malinda Gaul sat idly by. Gaul knew the testimony was entirely false but raised no objections and refused to enter Varn’s 2007 deposition or other documents into evidence. Both attorneys present had knowledge of Varn’s 2007 deposition and of City, State and Federal documents proving Varn to be lying under oath but allowed the fraud to continue. The court was never allowed to know of Varn’s 2007 deposition or the other documents that directly contradicted his fraudulent courtroom testimony. The attorneys helped Varn and others present a fraud upon the court.

In 2005 Varn never understood or investigated the “variable” billing account. Varn never contacted Washington D.C. and determined that no grant fraud had occurred. Contrary to his statements under oath in court it is not legal to buy a trophy case, remodel IT offices, approve known bogus time report invoices, make purchases over $25,000 with no Council approval or open bidding, steer contracts to “friends”, etc. and charge the costs off as telephone expenses. Varn lied under oath when he characterized the “variable” as an approved method of balancing city budgets or requesting funding and his entire testimony of how the variable was created so that things that popped up could be purchased was a fabrication- a fairytale. His elaborate story about how everyone had equal access to come in and make a plea to the IT department director for extra money was concocted by the city attorney in an effort to explain away the clandestine misuse and theft of millions of dollars by corrupt IT managers and their “friends”. Varn’s testimony was a total fabrication and Klein assisted him in presenting the fairytale to our courts and to our citizens. They conspired to defraud our court system and our taxpayers.

Chief Information Officer Varn with the assistance of City attorney Deborah Klein and others presented a fraud upon the court in an effort to hide numerous violations of law including the theft of our public and grant funds.

X. APPENDIX

Chief Information Officer Richard Varn’s 2007 deposition pages 12, 38, 39, 40 and 41

Lawsuit Exhibits # 2, 3 and 4

CIO Richard Varn’s 2009 courtroom testimony pages 23, 25, 26, 27, 41, 43, 44, 45, and 46

IT Director Hugh Miller’s 2009 courtroom testimony page 81

Diagram representing the legal and intended use of the telephone “variable” billing account per AD 6.12

Diagram representing the illegal manipulation of the telephone “variable” billing account

City of San Antonio Administrative Directive # 6.12 effective January 4, 1982- excerpts

ITSD price list FY 2005-6 detailing the $35 City Centrex (variable) monthly base charge

April 2005 overview of telecommunications costs – local phone charges of $180,000 per month

Avaya invoice- April 2005- cost of fiber optic materials and bogus time reports billed to variable account

City of San Antonio Administrative Directive # 1.6 effective January 4, 1982 –excerpts

City of San Antonio Administrative Directive # 2.1 effective January 4, 1982

City of San Antonio Administrative Directive # 2.2 effective January 4, 1982

Local Government Code- Finances- Municipal Budget

Local Government Code- General Provisions- Competitive Bidding

OMB Circular A-87 excerpts

City email of November 2005 – “billed for an untold amount of goods and services” “received no benefit”

ITSD Planning Conference-page 5 – 01/20/06 – CIO Mickey Armstrong - “Variable Credibility”

COSA 01122-MI report page 7- Telecom variable “FY06 projected total of $ 5.2 million”

COSA 01123- MI report page 8 – “long term conflicts with Jose Medina over ITSD billing practices”

COSA 01124-MI report page 9- “no strict accountability” “didn’t have much confidence in their numbers”

COSA 01126 –MI report page 11- partial list of non-telephone related costs charged to the variable

COSA 01128 – MI report page 13- “twenty-five years” “millions of dollars” “significant billing problems”

Compilation of statements concerning the illegal manipulation of the “variable” – MI intake statements 2005

FOIA response to COSA 09-0486 – “no records” exist concerning Varn’s review of the “variable”

BCSO case # 2009-081395 and SAPD case # 9-0471467 closed with no action – inquiries ignored

Letter of 12-30-2009 to law enforcement and City officials detailing the fraud, violations of law, etc.

Sworn complaint affidavit of June 23, 2009 presented to SAPD, BCSO, DPS, FBI, elected officials, etc.

Criminal trespass warning issued July 1, 2009 by City Attorney Bernard and Police Chief McAnus

Letter of November 17, 2009 from President Obama “Thank you for sending me materials to review”