MONDAY, MARCH 5, 2001

The Times

SHREVEPORT ■ BOSSIER CITY ■ ARK-LA-TEX

Brown vacations rather than report to prison

■ State insurance commissioner free on bond pending appeal.

By John Hill
The Times Baton Rouge Bureau

BATON ROUGE — Suspended Louisiana Insurance Commissioner Jim Brown was vacationing in Florida this weekend instead of sitting in a federal prison cell.


Brown

This past week, a three-judge panel of 5th U.S. Circuit Court of Appeals — conservative Republicans who have been historically thought of as pro-government — granted Brown's motion to remain free on bond pending his appeal. He was due to report to prison March 1, the day he left for vacation.

Brown was convicted on seven counts of lying to an FBI agent in the Cascade Insurance Co. fraud case, but the judge declared him innocent on two counts.

It's only the third time the 5th Circuit has granted such a motion in the past 25 years or so, according to various Republicans, including former U.S. Attorneys John Volz and Harry Rosenberg.

The second was when former Gov. Edwin W. Edwards and his co-defendants won their motions in January to remain free pending their appeal on gambling corruption charges. The other was about 25 years ago, said defense attorney Bennie Bagert of New Orleans.

To conclude that the defendants should remain free on bond, the judges had to reach the very high legal standard that the defendants have raised issues on appeal that are substantial enough to likely result in either a reversal of their convictions or at least an order for a new trial.

"I am obviously very encouraged by the fact that they reached the conclusion that my appeal is likely to result in a reversal or new trial order," Brown said. "That's a very high standard, and that's why they rarely do it."

U.S. Judge Edith Brown Clement sentenced Brown to six months in prison, two years on probation, a $50,000 fine and 200 hours of community service. She denied his motion to remain free on bond, which the appellate court reversed.

Brown, Edwards and Shreveport attorney Ron Weems were acquitted of all substantive charges that they conspired to fix the liquidation of the Cascade Insurance on terms favorable to its owner, former Shreveporter David Disiere.

But Brown was convicted on seven of 13 counts of lying to an FBI agent. The counts later were reduced to five. He was not under oath. And his version and the FBI's version of what was said differed at the trial.

Volz and Rosenberg said it is very significant that both Edwards and Brown have been granted freedom by four appellate judges, one for Edwards and three for Brown.

"The fact that both motions were granted by what most people consider very conservative judges who are historically known as pro-government judges is very significant," Rosenberg said.

Rosenberg noted that both Brown's and Edwards' motions to remain free included the improper use of an anonymous jury. Brown also argued the unfairness of attorneys being able to use the FBI agents' notes to cross-examine him. While Edwards raised the issue of whether Juror 68, Vic Durand, improperly was removed during deliberations after he expressed that he had doubts about the prosecution's case.

"It doesn't take a rocket scientist to realize the anonymous jury issue was a key part in both cases," Rosenberg said.

Anonymous juries generally are used only in extreme cases, such as in trials of Mafia bosses like John Gotti or the internationally publicized trial of O.J. Simpson, where jurors' safety could be endangered.

Volz, who was U.S. attorney in New Orleans for more than 10 years, said, "If Edwin's got a shot on appeal, Brown has an even better shot."

The reason is that Brown was not under oath when the FBI questioned him, Volz said. And, he said, lying to an FBI agent is something "people do every day."

Also, the agents' notes were not taken at the time of the interview: The FBI, by policy, does not tape-record interviews or take notes in front of a witness because they feel it intimidates the witness, according to trial testimony.

Therefore, the FBI writes handwritten notes from memory sometime after the interview.

Because Brown was not under oath, Volz said he never would take a case like that to trial. "I don't think they would retry him. I thought their case was very weak."

This means that the U.S. attorney's office in New Orleans has lost the surprise advantage if these two high-profile defendants get a new trial. If that happens, the defendants will all know what the key government witnesses — who cut deals to testify — will say. That gives the defendants an advantage in devising a new trial strategy.

"It's a whole new ballgame when the defense knows what the government witnesses will say," Rosenberg said.

Judges' profile

Here's a look at the three judges who agreed unanimously to Jim Brown's motion for bond.

Judge Jerry E. Smith, 54, of Houston received his undergraduate and legal education at Yale University. President Ronald Reagan appointed him to the appellate court on Dec. 21, 1987.

Judge Harold R. DeMoss Jr., 70, of Houston received his undergraduate education at Rice University and his legal education at the University of Texas School of Law. Former President George Bush appointed him to the 5th U.S. Circuit Court of Appeals on Dec. 2, 1991.

Judge E. Grady Jolly, 63, of Jackson, Miss., received his undergraduate and legal education at the University of Mississippi. Reagan appointed him to the appellate court on July 30, 1982.

Attorney does not foresee a retrial