

THE RECORDER

132ND YEAR NO. 46

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\$2.00

FRIDAY, MARCH 7, 2008

ALM

Hung jury in chip price-fixing case

Voting 10-2 to acquit, jurors didn't believe feds' star witness

By Dan Levine
RECORDER STAFF WRITER

After 11 trial days, the first thing jurors talked about when they could finally discuss the price-fixing case before them was the government's star witness, foreperson Phyllis McCaughey said Thursday.

And she was blunt about their assessment of Micron executive Michael Sadler, who testified in the high-stakes DRAM antitrust prosecution against his counterpart at Hynix, defendant Gary Swanson: "Mr. Sadler, we all felt, was a lying sack of shit."

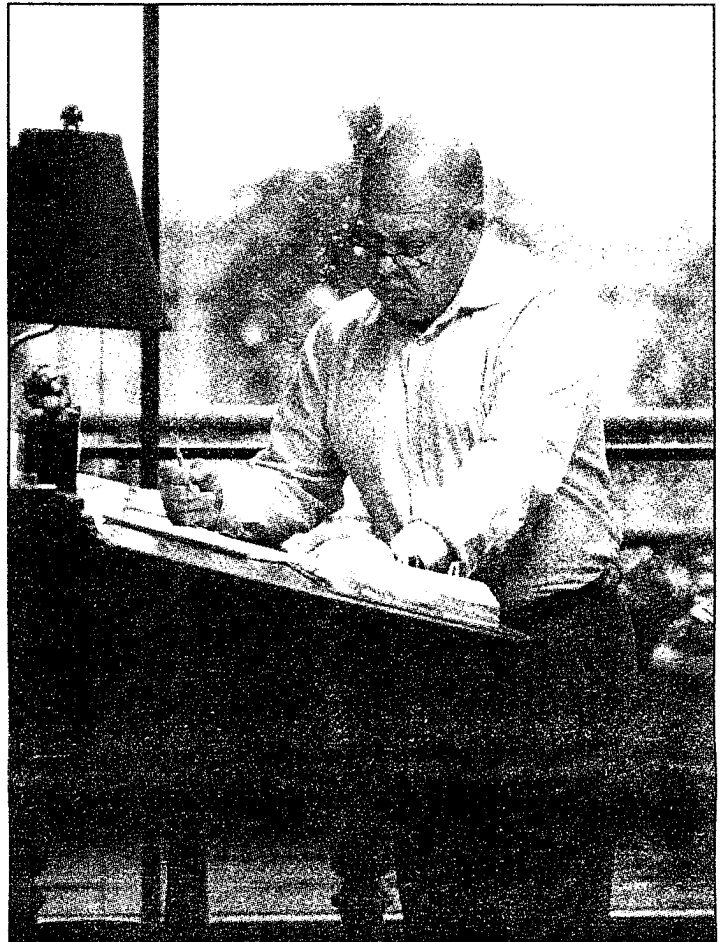
Yet because one special education teacher at Willard Middle School in Berkeley held out for the prosecution, the government's case against Swanson ended Thursday in a mistrial.

Speaking in the courtroom after Judge Phyllis Hamilton released them, jurors indicated they were evenly split when they first began deliberations. But they quickly tilted 11-1 for acquittal and stayed that way for several days. Just before they entered the courtroom for the final time, McCaughey said one of her colleagues in favor of acquittal wavered, so the final count was 10-2.

The foreperson said she believed Sadler was a "ringleader"

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OPTIMISTIC: John Bartko, who represented Hynix executive Gary Swanson, said he was hopeful the government wouldn't retry his client.



JOHN BLAUSTEIN

DRAM

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in the price-fixing conspiracy and didn't deserve a pass from the government. Since Micron was the first computer memory company to report the price-fixing scheme, all of its executives — and the company — received amnesty.

Even Joe Supple, the teacher who became the government's lone defender in the jury room, acknowledged misgivings about Sadler.

"He didn't sit well with many of us," Supple said. "It seemed to be like the bad guy getting away with it."

Swanson was the only executive caught up in the government's DRAM investigation to go to trial, and the case was closely followed by dozens of lawyers.

A government probe launched in 2002 led to \$731 million in fines and more than a dozen guilty pleas from executives at companies like Samsung, Infineon Technologies, Hynix and Elpida Memory. The government has since embarked on several other investigations of price-fixing in the computer memory industry.

Swanson's attorney, John Bartko of Bartko Zankel Tarrant & Miller, said he was hopeful the government wouldn't choose to try Swanson again. "I don't think the case will get any better."

The Department of Justice did not respond to requests for comment by press time.

Supple said he believed Swanson was evasive on the stand and said he "didn't help himself." But McCaughey thought Swanson very credible; she called him a "moral person."

Jurors Martha Shaw and Lani Watkins both said they initially wanted to convict

Swanson, but in discussing the matter with their colleagues they said reasonable doubt quickly appeared.

For Watkins, part of the problem involved the FBI's phone logs. When the government presented e-mails from Swanson's superiors — which referenced contact between Swanson and Sadler, purportedly to discuss price-fixing — the government's own phone logs did not show calls corresponding to the dates on the e-mails.

"They were like a week later or two weeks before," Watkins said. Swanson took the stand to dispute that the e-mails had anything to do with price-fixing.

"Nothing shows he did anything directly. Anyone can paint a picture," said juror Andres Avila.

Supple said it was "uncomfortable" for him to be the only holdout for several days, being peppered with questions from the other jurors. He said he tried hard to demonstrate that he was just as serious about the evidence as the rest.

"Most of them didn't see the puzzle pieces come together like I did," Supple said.

In the course of being debriefed by government lawyers, juror Stephen Thompson said it made sense that Swanson could be involved in a price-fixing conspiracy, but the government just didn't prove it.

"If you had recordings, that would be good," he said.

"It was a weak case, I think. We tried awfully hard to assuage our doubts," Watkins said.

"And stay awake," added Shaw.

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