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## business

# Jurors duped, Nacchio says

## Experts call the filing by the former Qwest CEO "an attempt to put the prosecution on trial."

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Former Qwest chief executive Joe Nacchio accused prosecutors Monday of misleading grand jurors when the government sought an indictment against him last year.

In a court filing seeking dismissal of 42 counts of criminal insider trading, Nacchio's lawyers accused U.S. Attorney Bill Leone and his team of "prosecutorial misconduct in the grand jury."

Leone's spokesman, Jeff Dorschner, called the allegations "unfounded."

The filing was an effort to "put the prosecution on trial," said Tony Leffert, a former federal prosecutor now with Denver-based Robinson, Waters & O'Dorisio.

The allegation is serious but not unusual for a high-profile, high-stakes case, he said. Leffert and another former prosecutor said the filing did not appear to support the allegation of misconduct.

The grand jury indicted Nacchio on Dec. 19 on charges that he sold more than \$100 million in Qwest shares from January to May 2001 while hiding from the public the company's dire financial condition.

Nacchio, free on \$2 million bond, denies the charges.

After he left the company in 2002, Qwest restated its earnings by \$2.5 billion.

In their new filing, Nacchio's attorneys allege that during grand-jury proceedings late last year, prosecutors were rushing to beat a five-year statute of limitations for charges on his early-2001 trades.

Scrambling to secure an indictment, prosecutors "deliberately blurred the line" between federal law on insider trading and Qwest's internal policy, they said.

Qwest's policy prohibited employees from selling stock while in possession of material, nonpublic information, according to the filing. Criminal and civil statutes "instead require proof that the employees actually 'use' such information in effecting trades," it said.

The filing contains excerpts of grand-jury deliberations in which Leone appears to refer to the law and the policy interchangeably.

Nacchio's lawyers said Leone "failed to advise the grand jury that the Qwest internal policy was not a surrogate for the standards established by federal criminal or securities law.

"This effort to substitute a lesser standard succeeded," they said, pointing to questions from grand jurors confused over whether an executive could ever sell stock legally.

Nacchio's defense team, which has received portions of the testimony, is seeking additional transcripts to support the misconduct charge.

But Holland & Hart attorney Greg Goldberg, a former federal prosecutor, said Nacchio will probably have a hard time convincing the judge.

Nacchio's "argument really boils down to a claim that the government ... misinstructed the grand jury," he said. "Courts generally ignore errors that are harmless ... and require much, much more before dismissing an indictment."

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