

Did Judicial Officials in the IRP6 Case violate criminal law?

Written by, David Banks, January 9, 2014

Many officials in the American justice system sell the impression to the average citizen that the law is overly-complicated and can only be fully understood by lawyers or those who are legally educated and trained. While some areas of the law are technically complex, much of the law can be easily understood just from reading the law, applying the facts and circumstances to determine whether a law was violated.

The IRP6 (Gary Walker, David Banks, Clinton Stewart, Demetrius Harper, David Zirpolo and Ken Barnes) is requesting Attorney General Eric Holder to conduct a criminal investigation of government officials in the IRP6 case for conduct related to the missing transcript in the IRP6 case. Title 28 of the United States Code, section 535 gives explicit statutory authority to the Attorney General and the FBI to investigate violations of Title 18 involving government employees. The IRP6 argue that the actions and conduct of Court Reporter Darlene Martinez, Judge Christine M. Arguello, Clerk of Court employees Ed Butler and Charlotte Hoard, and Assistant United States Attorney's Matthew Kirsch and Suneeta Hazra violated criminal law when they conspired together to deprive the IRP6 of court transcripts which resulted in a wrongful conviction and illegal detention. The IRP6 allege that six criminal statutes of Title 18 of the the United States Code (USC) were violated by judicial officials, which include 18 USC 2075, 18 USC 1018, 18 USC 1506, 18 USC 2071, 18 USC 371 and 18 USC 2076.

Criminal statute 18 USC 2075, Officer failing to make returns or reports, states that "Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any Act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such Act or regulation, shall be fined under this title." The Act violated by Darlene Martinez is the Court Reporter's Act (CRA), 28 U.S.C. 753(b). The CRA requires that "the [court] reporter or other individual designated to produce the record [transcript] shall attach his official certificate to the original shorthand notes or other original records to take and PROMPTLY file them with the clerk who shall preserve them in the public records of the court for not less than ten years."

Court records in the IRP6 case show that Darlene Martinez neglected and refused to file her original record at the clerk of court as required by the CRA, which is a clear violation of 18 USC 2075. Attorneys for the IRP6 and representatives of A Just Cause went to the clerk of court to the District of Colorado to inspect the court records of the IRP6 trial but were denied the court record. Not allowing inspection of the original transcript also violates the CRA. The IRP6 trial ended October 2011 and there is still no sign of the transcript in the clerk's office. Ms. Martinez's actions in this instance are criminal and she should be indicted. Martinez's second criminal violation occurred when she violated 18 USC 1018.

Criminal statute 18 USC 1018, makes it a crime for "...a public officer...authorized by any law of the United States to make or give a certificate or other writing" to "knowingly" make and deliver such a certificate or writing "containing any statement which he knows to be false...shall be fined...or imprisoned not more than a year, or both". Court records show that Darlene Martinez affirmed in court to Judge Arguello that the unedited/original transcript of the bench conference consisted of 200 pages. The CRA requires that ALL proceedings in criminal cases had in open court to be recorded verbatim by

the court reporter. It is Martinez's responsibility to deliver a full and COMPLETE certified transcript to both the IRP6 and A Just Cause. Martinez certified the transcript as complete and accurate, which she knows to be false. Martinez violated 18 USC 1018 and should be criminally indicted for her conduct. Another suspected criminal violation by Martinez is obstruction of justice.

Criminal statute 18 USC 1506, Obstruction of Justice (Theft or alteration of record or process), makes it a crime to feloniously steal, take away, alter, falsify or otherwise avoid any record, writ, process, or other proceeding in any court of the United States, whereby any judgment is reversed, made void or does not take effect. The IRP6 suspect that Judge Arguello and Darlene Martinez conspired together to obstruct justice through altering of court records. The IRP6's request is not unprecedented. In *Bast v. Department of Justice* 665 F.2d 1251 (DC Cir. 1981), Mr. Bast, a private investigator and consultant for the Serbian Eastern Orthodox Diocese, had an exchange in open court with federal judge John H. Pratt where Bast alleged that Pratt made improper remarks that indicated judicial bias. When the Diocese requested a transcript of the hearing from the court reporter, they were told that the Bast's exchange with Judge Pratt was not recorded. The FBI conducted an investigation into allegations that Judge Pratt and his secretary improperly induced the court reporter, Ms. Bossard, to delete the discussion from the transcript. The IRP6 suspect that Judge Arguello induced court reporter Darlene Martinez to lie and conceal the transcript related to the bench conference. "Prior to a recess at lunch time, I was instructed to return to during lunch to pick-up an "unedited" portion of the transcript for the bench conference which was never provided. When I returned to get the transcript, I found it strange that Ms. Martinez was meeting with Judge Arguello", says Clinton Stewart (IRP6). "Given what has transpired with the transcript, I suspect that Judge Arguello and Ms. Martinez were planning how they could conceal or eliminate the statements made by Judge Arguello, where she violated the IRP6's 5th Amendment rights, by coercing them under threat to testify, at their own trial.

Under Criminal statute 18 USC 2071 (Concealment, removal, or mutilation generally), it is a crime to ill fully and unlawfully conceal, remove, mutilate, obliterate or destroy, or attempt to do so, with intent to carry away any record...or document filed or deposited with any clerk of court in the United States, or any public office, or with an judicial or public officer of the United States. Violation of this statute is punishable by fine or imprisonment not more than three years, or both. It is obvious from Martinez's actions and conduct she willfully and unlawfully tried to conceal, remove or destroy the original record and keep it from the IRP6 and the public when she neglected to file her original shorthand notes with the clerk's office.

Neither Martinez nor Judge Arguello ever attempted to resolve what was actually said at the bench conference. Instead they both chose to intentionally conceal the record of the proceeding [bench conference] from the IRP6. Clerk of court employees Ed Butler and Charlotte Hoard also chose the route of concealment of the record. Both of them are required by the CRA to allow any person to inspect the court record. They denied inspection to IRP6 attorneys and representatives of A Just Cause. Their actions and conduct are criminal and they should be indicted. With these facts and circumstances, a grand jury indictment is likely a foregone conclusion.

Under 18 USC 371, Conspiracy to commit offense, it is a crime for two or more persons to conspire to commit any offense against the United States, or to defraud the United States...in any manner or for any purpose, and one or more of such persons do any to effect the object of the conspiracy. Each person in a section 371 conspiracy shall be fined or imprisoned not more than five years, or both. The facts in the IRP6 case overwhelmingly indicate that Judge Arguello, Darlene Martinez, AUSA's Matthew Kirsch and Suneeta Hazra and clerk of court employees Charlotte Hoard and Ed Butler conspired together to obstruct justice through concealing court records and interfering with the administration of justice in a United States court. This conspiracy has resulted in the wrongful conviction and imprisonment David Banks, Gary Walker, Clinton Stewart, Demetrius Harper, David Zirpolo and Ken Barnes for the last two years. It would be an abuse of prosecutorial discretion for Eric Holder and the Department of Justice not to conduct a full criminal investigation in the IRP6 case given the following circumstances and facts supported by court documents:

- 1) Judge Arguello refused to order the court reporter to turn over the transcript to resolve the dispute.
- 2) Judge Arguello speculated that maybe the court reporter did not have her headphones on.
- 3) Judge Arguello stated that she was uncertain exactly what she said at the bench conference.
- 4) Judge Arguello refused to grant a hearing with the parties at the bench conference to determine what happened.
- 5) Judge Arguello later admitted in an opinion that the transcript was "unavailable".
- 6) AUSA's Kirsch and Hazra refused to provide detailed account of what they heard at the bench conference.
- 7) AUSA Kirsch opposed every motion for Martinez to turn over the transcript. Why? For what reason? To protect who/what?
- 8) Martinez advises Attorney Solomon that the unedited transcript was AVAILABLE but she would not turn it over.
- 9) Martinez later advises Solomon that the unedited version no longer existed. How can it not exist when the Court Reporter's Act requires it to be filed in the clerk of court's office?
- 10) Solomon contacts Charlotte Hoard, supervisor of court reporters. Hoard tells Solomon that after the edited version is created the unedited transcript still exists but it was up to Martinez's discretion. What about the CRA requirement that the original unedited version be filed in the clerk's office to be held in the public record for inspection by any person?
- 11) Hoard later states that the unedited transcript no longer existed. Does that mean it was destroyed?
- 12) Solomon petitions Judge Arguello about Martinez and Hoard's assertions that the transcript no longer exists and Judge Arguello instructs Solomon to contact clerk of court employee and legal officer Ed Butler.
- 13) Solomon contacts Butler, only to be told that is was up to the discretion of Martinez. Certainly the legal officer must be aware of the CRA's requirement for the original shorthand notes and original record to be filed in the clerk's office. Why doesn't Butler or Hoard allow Solomon to inspect the record?
- 14) Butler after being asked by Solomon if the unedited transcript had been destroyed, says no it was not destroyed, but then tells Solomon to make her request to Judge Arguello for the transcript. So Arguello says contact Butler and Butler returns Solomon to Arguello.

Under 18 USC 2076, it is a crime for the clerk of a district court to willfully refuse or neglect to make or forward any report, certificate, statement, or document as required by law which is punishable by fine or imprisonment not more than one year, or both. Both Charlotte Hoard and Ed Butler of clerk of court's office conspired together and refused to forward the original court record/transcript to IRP6's attorneys and A Just Cause Representatives for inspection in accordance with the court reporter's act. The Act states that the original record and other original shorthand notes shall be kept on file at the clerk's office for 10 years for public inspection by any person. This is not ambiguous. Hoard and Butler have no discretion whatsoever under the law to refuse inspection of the unedited transcript.

The Court Reporter's Act is simple and unambiguous.

There is nothing complex or technical about the Act. One can conclude from the actions and conduct of these officials they neglected to perform their duties and responsibilities under the law and engaged in deception and misdirection in an effort to obstruct justice through concealing and altering court records. Their actions and conduct warrant a criminal investigation by Eric Holder and the evidence should be presented to a grand jury for an indictment determination.

Does Eric Holder have the force of will and integrity to launch a criminal investigation against government employees to include officials in the U.S. Attorney's Office and a federal judge or are they above suspicion and above the law? Not likely. Many citizens have contacted Eric Holder's office about the IRP6 case. Holder's staff has acknowledged that he is aware of the case but thus is reticent and has taken no action whatsoever.