

SAN ANTONIO TX ASST. CITY ATTORNEY KLEIN LIED TO THE COURT / JUDGE ANTONIA ARETAGA TO COVER UP "FRAUD UPON THE COURT" AND PUBLIC / POLICE CORRUPTION

On May 11, 2009 during a hearing of a motion requesting a new trial , Asst. City Attorney Deborah Klein AGAIN lied to the Court and to 57th District Judge Antonia Arteaga in an effort to conceal the "fraud upon the court" , DECADES of public / police corruption, theft of public funds, "cooked" books, etc.

Klein falsely states that little evidence was excluded...a LIE. An entire box of documentation including Administrative Directive 6.12 detailing the use of the "variable" billing account, a city email where IT Manager Jose Medina and vendor Isabel Gonzaba (IG Communications) set up a criminal scheme to steal upwards of \$200,000 via the variable and the Avaya Telephone Contract and other material evidence that would prove the City's case a total fabrication was ruled out at the start of the trial.

Klein falsely states that no depositions of supervisory personnel were taken...a LIE. Klein, Kosanovich and Gaul concealed CIO Richard Varn's 2007 deposition during the trial so that Varn could present his fabricated, coached testimony that he had known of the "variable" billing account in 2005, had investigated the account, had found no problems and had found that the "variable" was created to help balance the budget and pay for "pop-up" expenses....all LIES. In his 2007 deposition that the Court and Jury never saw Varn stated that he did NOT even recognize the term "variable", knew nothing of any such account and knew little of city budget procedures.....contrary to his false/fabricated/rehearsed/coached testimony under oath.

Klein falsely states that there was no "fraud upon the court" ...a LIE. Klein concealed Varn's 2007 deposition , AD 6.12 and other material evidence with the help of Gaul and Kosanovich. She coached Varn and other witnesses including Texas Ranger Hank Whitman to lie under oath on the stand.

NOTE: Judge Antonia Arteaga has been provided with PROOF of the "fraud upon the court", the ongoing criminal cover-up , 45 months of illegal meetings where whistle-blowers were banned to silence them, the confiscation of evidence by SAPD Chief McManus and city attorney Bernard, the closed our police reports, a sworn affidavit detailing the aggravated perjury, CIO Richard Varn's 2007 deposition, AD 6.12, a search warrant for the bank records of city IT Manager Jose Medina, the city email where Medina and Gonzaba set up their criminal scheme to steal \$200,000 via the city's Avaya telephone contract and the "variable" and other material evidence kept secret during the trial and for the last eight years...Arteaga ignores everything.

A FULL TRANSCRIPT OF THE "MOTION FOR A NEW TRIAL" HEARING IS AVAILABLE

These few excerpts prove that Asst. City Attorney Deborah Klein lied to the Court.....**AGAIN**

Asst. City Attorney Deborah Klein states on page 12: I never saw a box of documents related to grants that was offered into evidence in this case. In fact, the trial notebook prepared by Mrs. Gaul was entered into evidence in its entirety with the exception of, I believe, one tab that was pieces of documents related to grants that had never been produced in discovery and which had not been properly proven up. I believe every other piece of evidence offered by Mrs. Gaul was, in fact, admitted during the trial of this case. So to stand here today and say there was evidence they attempted to admit that was not admitted is just not true.

Asst. City Attorney Deborah Klein states on page 10 and 11 : It was fully within the plaintiff's power and control to take the deposition of any city witnesses they wanted to. I apologize. They did take depositions of, I believe, six city witnesses, most of whom were subordinates of Mr. Foddrill. They failed to take any significant depositions of the people involved in Mr. Foddrill's supervision. That is not a fault of the defense in this case.

Asst. City Attorney Deborah Klein states on page 11: We spent a good seven or eight days trying this case; lots of testimony put on in this case. We don't believe there was -- despite Mr. Foddrill's contentions that there was fraud on this court, there's absolutely no evidence of that. The fact of the matter is that the jury believed the credibility of the city witnesses and found in our favor.

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2006-CI-06702

3 JOHN FODDRILL

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IN THE JUDICIAL DISTRICT

4 V.

*

57TH DISTRICT COURT

5 CITY OF SAN ANTONIO

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BEXAR COUNTY, TEXAS

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REPORTER'S RECORD

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HONORABLE ANTONIA ARTEAGA

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MAY 11, 2009

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On the 11th day of May, 2009, the

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above-entitled cause came on to be heard before the

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Honorable Antonia Arteaga in the 57th District Court of

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Bexar County, Texas, whereupon the following proceedings

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were taken by machine shorthand.

25

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: 2006-CI-06702, John E.

3 Foddrill, Senior, versus City of San Antonio, motion for

4 new trial. May I have the attorneys identify themselves
Page 2

5 and whom they represent for the record, please.

6 MR. WILLBORN: Morning, Your Honor, Dave
7 willborn, attorney for defendant John Foddrill. I've
8 just put in notice of appearance this morning on this
9 cause. Attorney for plaintiff, John Foddrill.

10 THE COURT: Okay.

11 MS. KLEIN: Good morning, Your Honor,
12 Debbie Klein and Mark Kosanovich on behalf of the City
13 of San Antonio. And also, just for the record, we did
14 file a motion to strike last week, as well, we set for
15 this morning concerning the motion for new trial, and I
16 have an extra copy if the court needs it.

17 THE COURT: I do. Oh, no, I don't. Here
18 it is. Okay. And, Mr. Willborn, you have a copy of the
19 motion to strike; is that correct?

20 MR. WILLBORN: Your Honor, my client did
21 give me one, and I --

22 THE COURT: Ms. Klein, who's going to
23 proceed? Mr. Kosanovich or you?

24 MS. KLEIN: I will be, Your Honor.

25 THE COURT: Go ahead. On the motion to

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1 strike?

2 MS. KLEIN: Yes, Your Honor.

3 THE COURT: We're going to hear that
4 first.

5 MS. KLEIN: Your Honor, we filed a motion
6 to strike the evidence which was attached to the
7 plaintiff's motion for new trial. Many of the arguments

8 that I'll be making now also relate actually to our
9 response to the motion for new trial as well. In our
10 motion to strike, we've actually broken it down by the
11 tabs as Mr. Foddrill set forth in his notebook.

12 However --

13 THE COURT: I'm sorry, Mr. Foddrill,
14 where is your tie today?

15 MR. FODDRILL: I'm sorry, ma'am, I got a
16 real bad cold, and I took it off in the car 'cause I
17 couldn't breathe. I apologize.

18 THE COURT: Go ahead.

19 MS. KLEIN: Essentially our argument as
20 to all the evidence is the same, Your Honor. None of
21 his evidence is new evidence as would be required for
22 motion for new trial. All of the documents that have
23 been attached either were produced in discovery, and, in
24 fact, many of them even carry the Bates numbers that
25 were used during the discovery period in this case.

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1 Many of the documents that don't have the Bates numbers
2 were, in fact, copies of similar documents that have
3 been produced in discovery. All of the evidence are
4 things that Mr. Foddrill and his trial lawyer could have
5 obtained had they gone through the discovery process on
6 those matters. The only thing that potentially could be
7 considered to be -- have acquired after the trial are
8 some open records requests and responses that
9 Mr. Foddrill did after the jury verdict came in in this
10 case.

11 Again, those open records requests could

12 have easily been made before the trial. There's
13 absolutely no reason why they had to be made after the
14 trial. So if the court would like, I can go through
15 documents individually, but essentially that's our
16 argument as to all of the evidence that's been attached.
17 None of this can be identified as anything new. And
18 also, none of it can be identified as anything that is
19 not being offered solely for impeachment purposes, so
20 therefore we move the documents be stricken.

21 THE COURT: Mr. Willborn?

22 MR. WILLBORN: Your Honor, I don't
23 believe the fact these documents are being used for your
24 review and for appellate review as to whether -- I don't
25 believe whether or not they are new evidence or are

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1 going to be used for impeachment purposes are reasons to
2 strike the documents. That may be reasons for you to
3 not consider them when deciding your motion for new
4 trial, but those documents are here for your review at
5 this point, not for -- for the purposes of being
6 admitted or not admitted. That's not why the -- excuse
7 me. Let me start over, Your Honor.

8 This evidence is for the purposes of your
9 review and for the purposes of appellate review. One of
10 the reasons why we have a motion for new trial is for
11 you and the appellate courts to review any new --
12 potentially newly discovered evidence, as well as any
13 potential other evidence that could have been admitted
14 at the time of trial but was not.

15 RT051109-0845 FODDRILL
THE COURT: Was not made available to
16 them at the time of trial.

17 MR. WILLBORN: Exactly. That's not a
18 reason to strike it, Your Honor, and it's not a reason
19 for you not to be able to review it. It's only a reason
20 for you to decide whether or not to consider the
21 evidence.

22 THE COURT: Let's move forward to the
23 motion for new trial. Ms. Klein is correct that if
24 there is new information, newly discovered information,
25 he might be entitled to a new trial. What information

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1 -- what new information do you have now that the jury
2 was not privy to before or that his defense attorney was
3 not privy to before?

4 MR. WILLBORN: The plaintiff's attorney,
5 Your Honor, in this case was privy to this information,
6 as was Mr. Foddrill. If I can give you a slight
7 background. Obviously, you sat through the trial in
8 this case. I did not. I've since come in as clean-up
9 Monday morning quarterback, and for me to say what
10 should or shouldn't have happened at the time doesn't
11 make any sense. But in this case there were several
12 things that took place during the trial that I believe
13 do offer -- in the interest of justice do make it
14 reasonable for you to allow a new trial in this cause.

15 Your Honor, the two reasons for that are
16 the fact that my client was not allowed to put forward
17 evidence of the grant fraud that he had -- apparently
18 there were boxes of evidence that he tried to put

19 forward about how the actions of the city and the
20 department was actually grant fraud, and considering the
21 jury in this case decided no on question 1 as to whether
22 or not he made a good-faith effort to put forth -- or
23 put forward evidence to the -- or, rather,
24 whistle-blower evidence in this case, considering that
25 the jury did not think that he made a good-faith effort

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1 to put forward whistle-blower evidence, I believe the
2 fact that he wasn't allowed to put forward the evidence
3 of the grant fraud -- those two things, when mixed
4 together, make it such that my client was not afforded
5 the proper opportunity to show the jury all the evidence
6 that he had. That evidence not being shown, Your Honor,
7 doesn't serve the interest of justice. Therefore, we
8 feel my client was not afforded a fair trial the first
9 time around.

10 Secondly, Your Honor, none of the witness
11 testimony that was given by the City of San Antonio, the
12 defendant in this cause, was -- was put forward in
13 discovery. Obviously the state -- or the city had a
14 duty to put forward the witnesses, the names of the
15 witnesses and the testimony they were going to give, and
16 in this case they did not give any of that evidence to
17 plaintiff's counsel. Instead, the plaintiff was
18 surprised, was prejudiced, because all of the evidence
19 that was given forward at that time was evidence that
20 they had no idea was going to take place. There were no
21 affidavits prior, there were no summaries of potential

22 testimony, nothing took place during discovery to how my
23 client to know the things that were going to have taken
24 place during the trial.

25 THE COURT: Specifically.

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1 MR. WILLBORN: Specifically, any of the
2 evidence of my client being a poor employee. Prior to
3 the trial the only evidence that was given to defense
4 counsel -- or rather for plaintiff's counsel from
5 defense was that my client had caused a delay --
6 significant delay in an audit, and that there were a
7 couple other -- what were they?

8 MR. FODDRILL: Talking about what they
9 put in there?

10 MR. WILLBORN: Your Honor --

11 MR. FODDRILL: walking the halls.

12 MR. WILLBORN: The evidence that came in
13 later on, the evidence -- nothing was given to my client
14 was that he was a bad employee, that he was walking the
15 halls, that he was unreachable, that he was -- you were
16 here at the trial, Your Honor. Almost all the defense
17 witnesses give the exact same story as to the things my
18 client had done wrong as an employee. Prior to that the
19 only -- there was no evidence that was ever given to my
20 client those were the reasons for his termination. When
21 they had the hearing in front of the Texas Work Force
22 Commission, those were not the reasons that were given.
23 My client was under the impression those were the
24 reasons for his termination prior -- excuse me, that he
25 was under the impression that additional and other

1 reasons were the reasons for his termination. The fact
2 that he spent \$64 extra and that he caused an audit to
3 take too long. Both of those reasons are unfounded at
4 the time of the Texas work Force Commission hearing.
5 Therefore, the City of San Antonio, in the trial for the
6 first time, stated there were additional and other
7 reasons for my client's termination, but none of that
8 stuff was given during discovery.

9 THE COURT: Thank you, Mr. Willborn.
10 Your response, Ms. Klein?

11 MS. KLEIN: Yes, Your Honor. I have to
12 disagree with almost everything that was just said.
13 Starting with the question of the new information, the
14 new evidence, Mr. Willborn said that both the plaintiff
15 and his attorney were -- did have that information
16 before the trial. Therefore, it's not newly discovered
17 evidence. The fact they failed to offer it at trial is
18 certainly not any fault of the defendant. That's a
19 question of the plaintiff's trial strategy, and
20 plaintiff was represented by one of the best employment
21 lawyers in this city, so I don't think there's any
22 question there.

23 I thought it was interesting Mr. Willborn
24 said there was a box of grant documents that had been
25 denied admission in this case. I know I was in this

1 trial. I never saw a box of documents related to grants
2 that was offered into evidence in this case. In fact,
3 the trial notebook prepared by Mrs. Gaul was entered
4 into evidence in its entirety with the exception of, I
5 believe, one tab that was pieces of documents related to
6 grants that had never been produced in discovery and
7 which had not been properly proven up. I believe every
8 other piece of evidence offered by Mrs. Gaul was, in
9 fact, admitted during the trial of this case. So to
10 stand here today and say there was evidence they
11 attempted to admit that was not admitted is just not
12 true.

13 With respect to the second thing, that
14 none of the evidence by the city was put forward by the
15 city prior to trial, that's a falsity as well. This
16 case was filed in April of 2006. We exchanged
17 disclosures, which included witness lists. Mr.
18 Foddrill's witness list was extensive. It went on for
19 pages and pages with names of people buried in it. Ours
20 was limited as to people we would call to trial.
21 Ms. Gaul was aware of that list from -- I can't recall
22 the exact date we first responded to discovery, but I
23 know at least from April of 2007 that list was out
24 there. It was fully within the plaintiff's power and
25 control to take the deposition of any city witnesses

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1 they wanted to. I apologize.

2 They did take depositions of, I believe,
3 six city witnesses, most of whom were subordinates of
4 Mr. Foddrill. They failed to take any significant

5 depositions of the people involved in Mr. Foddrill's
6 supervision. That is not a fault of the defense in this
7 case.

8 I thought it was interesting Mr. Willborn
9 said that no affidavits had been offered in this case.
10 That's also an untrue statement. The city filed a
11 motion for summary judgment about a year before this
12 case was tried, and in that was included an affidavit by
13 Hugh Miller setting forth reasons why Mr. Foddrill had
14 been terminated. That document was actually included in
15 plaintiff's notebook of exhibits that was offered at
16 trial and was admitted into evidence in this case.

17 The issue about the Texas Work Force
18 Commission, the jury had testimony on that, that that
19 was a document Mr. Miller was not involved in creating.
20 That was created by the HR specialists. That was within
21 the realm of the jury to determine the credibility of
22 Mr. Miller and Mr. Gray concerning those issues, and
23 obviously that's what they did. They judged the
24 credibility of the witnesses. That's what this whole
25 trial was about. We spent a good seven or eight days

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1 trying this case; lots of testimony put on in this case.
2 We don't believe there was -- despite Mr. Foddrill's
3 contentions that there was fraud on this court, there's
4 absolutely no evidence of that.

5 The fact of the matter is that the jury
6 believed the credibility of the city witnesses and found
7 in our favor. For those reasons, we'd ask the motion

8 for new trial be denied ,and also, again, reurge the
9 motion to strike.

10 THE COURT: Thank you. Any response,
11 Mr. Willborn?

12 MR. WILLBORN: Your Honor, not at this
13 time.

14 THE COURT: Thank you. I'm going to deny
15 your motion to strike at this time.

16 On the motion for new trial, in
17 consideration of the arguments made today -- and let me
18 applaud your efforts, Mr. Willborn, especially coming in
19 so late. We were here for a little over a week, and it
20 was voluminous at that, so your ability to articulate
21 your argument as well as you did in this and as strongly
22 as you did, having just jumped into this case, is noted
23 by the court and very well articulated.

24 However, the case you have before you
25 doesn't meet, in my view, the standard necessary in

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1 order for me to grant the new trial. Unfortunately,
2 Mr. Foddrill, your motion for new trial is denied.
3 Pleasure having you again. We're off the record.

4 (Proceedings adjourned.)

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1 STATE OF TEXAS

2 COUNTY OF BEXAR

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4 I, Kayleen Rivera, Certified Court Reporter in
5 and for Bexar County, State of Texas, do hereby
6 certify that the above and foregoing contains a true
7 and correct transcription of the proceedings
8 requested by counsel in the above-styled and numbered
9 cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 I further certify that this Reporter's Record
12 truly and correctly reflects the exhibits, if any,
13 offered by the respective parties.

14 I further certify that the total cost for the

15 preparation of this Reporter's Record is \$_____ RT051109-0845 FODDRILL

16 and was paid by_____.

17 To which I certify on this the _____ day

18 of _____, 2009.

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