



Courtroom (mis)behavior

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Richard Nixon wasn't the only public official to forget, or ignore, the power of a tape recording to undo a career. Cambridge District Court Judge Michele B. Hogan is about to learn the lesson.

Judge Hogan, who was recently appointed by Governor Paul Cellucci, held a criminal-defense lawyer in contempt of court January 26 for, she claimed, "stomping his feet while yelling" in her courtroom. The lawyer, Daniel Beck, is a member of the Middlesex County Bar Advocate program and regularly represents defendants who cannot afford full-fee legal counsel. He had been asked by Hogan to represent the defendant, who was locked up on a drunk-driving arrest at the time. Beck said he would do so, but only if a bail hearing were held the same day.

Middlesex County assistant district attorney John Mitchell claimed that he could not go forward with the "dangerousness detention hearing" because the arresting police officer was not in the courthouse, and he asked Hogan to hold the defendant in jail until trial rather than grant him bail. Beck complained that this was not an adequate reason to hold the defendant in jail for two additional days, and that the hearing on whether the defendant should be detained as dangerous or released on bail should be held immediately.

As Beck argued the legal point that the defendant was entitled to an immediate hearing, Hogan called him up to the bench for a hushed conference. When Beck would not back down from his insistence that he be given an opportunity to present legal arguments for an immediate hearing, and when he stated his refusal to accept appointment as defense counsel, the judge told him that she was holding him in contempt. She ordered a court officer to handcuff the lawyer and escort him to a holding cell in the courthouse.

Hogan fined Beck \$500 later that day and issued a written list of "findings of the facts upon which the contempt is based." She formally reiterated her claim that Beck, in refusing to take the appointment, acted "in a loud and belligerent manner, threw down a document, and began to stomp back to his seat in the courtroom."

Beck's attorney, James Sultan of Boston, filed a motion asking Hogan to reconsider. He filed a transcript of the in-court proceedings, along with an affidavit from Beck and three other lawyers who were present when Beck's supposed tantrum took place. All denied that Beck

engaged in any yelling, stomping, or similar behavior. Presumably Hogan was inclined to stick with her own fact-findings rather than concede that the lawyers' affidavits accurately portrayed the scene -- because a written transcript, of course, provides no way of confirming Beck's tone of voice or other auditory details, such as whether or not he stomped his feet.

Which is where the tape comes in. Hogan had obviously forgotten that all proceedings in her court are recorded. The *Phoenix* listened to the tape recording of Beck's arguments, and it is obvious that Beck did not shout and stomp. He simply tried to argue his legal point, and the judge would not listen to him. When Hogan could not persuade Beck to take the appointment on her terms, she got angry, held him in contempt, and then blamed his supposed histrionics in court rather than her pique at his principled -- and entirely proper -- refusal to take the case.

The incident has received considerable attention within the legal community, in part because Beck was in fact disruptive in one sense. He dared to refuse to go along with the judge's design for a well-oiled machine that, in recent years, has been increasingly willing to incarcerate defendants who otherwise qualify for release on bail while awaiting hearings and trial. Ever since the passage of legislation that allows "dangerous" defendants to be held in jail pending trial, prosecutors and some judges, especially in Middlesex County, have been overusing the procedure. And, to make matters worse, they've been taking their sweet time before holding dangerousness hearings. In arguing against delay and insisting on an immediate hearing, Beck threatened to upset the program. The judge retaliated, and then rationalized her action by making bogus fact-findings.

The legal community is organizing a contingent to show up in court this Tuesday morning, April 11, the date set for Hogan to hear Sultan argue that the court should reconsider. Presumably he is prepared to play the tape. The betting is that Hogan will not be so foolish as to stick to her original "findings of the facts." After all, the tape can also be played to a higher appellate court, not to mention to the state's Judicial Conduct Commission.