

Attorney General John Swallow and the Sounds of Silence

*Swallow's silence on George
Bybee and Winterfox is deafening.*

By Lynn Packer
August 1, 2013 *Part II*,



**"All I want to do is answer questions and
restore public trust." June 19, 2013**
"I have nothing to hide." June 12, 2013

It's to the point where reporters may need to Mirandize Utah Attorney General John Swallow before asking him about George Evan Bybee and Winterfox. He does have the right to remain silent.

And when it comes to Bybee and Winterfox Swallow is exercising that right despite having told the press last month he has "nothing to hide" and "all I want to do is answer questions and restore the public trust." But he also said "the public does not "want their attorney general tried in the media."

Swallow declines telling PACKERCHRONICLE why he was a lobbyist for George Evan Bybee and Winterfox, LLC between 2007 and 2010, spilling over into the time he was Deputy Attorney General. He will not say what if anything he was paid and what he did for them. And he will not comment on the a new allegation he used the power of the Attorney General's Office to seek revenge for Bybee in connection with a \$1.35 million Winterfox hard-money loan that went into default.

A new allegation against Utah's top law enforcement officer erupted yesterday when *PC* reported that a Canadian fugitive from Utah justice is accusing Swallow of influence peddling on behalf of George Bybee. Brian Arthur Kitts, now ensconced across the border in Calgary, was engaged in a fierce legal fight with Bybee in bankruptcy court when, Kitts claims, Swallow entered the picture.

The facts, at least from Kitts' perspective are pretty straightforward: In late 2004 Kitts sought a short-term "hard money" loan from Bybee via Winterfox LLC to save his Park City home from foreclosure. But Kitts, who was given no loan disclosure documents, soon discovered he owed a whopping 70 percent annual interest rate, defaulted on the loan, and filed for bankruptcy protection in an attempt to keep his house. That touched off a court battle that continued into 2013. At the heart of the fight was a lawsuit brought by Kitts within the bankruptcy process accusing Bybee and Winterfox of failing to provide legally required loan disclosure documents and thereafter providing fake documents and lying about them to the court.

Meanwhile, in the summer of 2007 the Utah Attorney General's Office brought felony securities fraud charges against Kitts. While he believes those charges were politically motivated at that point he says he did not even know who Swallow was.

After months of plea negotiations with Assistant Attorney General Neal Gunnerson Kitts was willing to plead guilty on reduced charges with no fine or jail time but with the requirement he make full restitution to his investors. Sentencing, however, was postponed for several months and as the bankruptcy court fight between Kitts and Bybee continued to escalate—hundreds of thousands of dollars in legal fees were then racking up—Gunnerson retired.

Kitts and his attorney claim that Assistant Attorney General Charlene Barlow—since appointed a third District Court judge—took over, three out the wrist-clap plea bargain and substituted one that involved pleading guilty to felonies. (Judge Barlow declined an interview and through her court clerk denied having anything to do with any Kitts plea bargain.)

At this point Kitts figured he needed to go over Barlow’s head and use some sort of political clout to restore his softer plea deal. “It was strange,” said a source familiar with Kitts’ actions. “He had heard through another guy, through the grapevine that (Tim) Lawson sort of, had access and influence, I guess you could say with Attorney General Mark Shurtleff.” “The guy that came out of the woodwork as a guy, for lack of a better term, kind of a facilitator for Shurtleff and Swallow.”

“Tim Lawson said, “Yes I will take on the case,”” Kitts said via a phone interview from Canada. But he said Lawson told him “But you have some guys up there that really don’t like you.” “One of them is a pretty powerful guy. He is a lawyer and has something to do with your mortgage case.”

“Who?” Kitts asked.

“John Swallow,” Lawson purportedly replied. “I spoke to him on the phone about you and he says what the hell are you doing business with that guy Kitts? He’s a bad person. He hurt my friend and he is going to pay.”

“Who is the friend?” Kitts asked.

“George Bybee,” Lawson replied.

If Swallow were talking he might add Kitt’s name to Jeremy Johnson’s and Marc Jenson’s whose allegations, Swallow says, are “from questionable sources.” He might also accuse Kitts of jumping on the Jenson and Johnson bandwagon by fabricating his Swallow allegations after the fact.

But there’s a witness. A source close to Kitts says he was told about the Lawson conversation, when Swallow’s and Bybee’s names were mentioned, either the day it happened or the day after, in September 2009. “Lawson told Kitts that he had spoken with Swallow who had said he has really caused a good friend a lot of trouble and ‘we’re going to get him’,” the source recalls hearing from Kitts near the time of the conversation.

“It seemed strange to me so much zeal and so much venom from the AG’s office on a seemingly minor case,” the source said. But he said it did make some sense “if Shurtleff and Swallow were pulling the strings and they were after Kitts because he had a legitimate claim in federal court against Bybee. So they were going to punish him.”

He said any involvement on Shurtleff’s and Swallow’s part to retaliate against Kitts on Bybee’s behalf would be “absolute fraud and an abuse of the government’s power.”

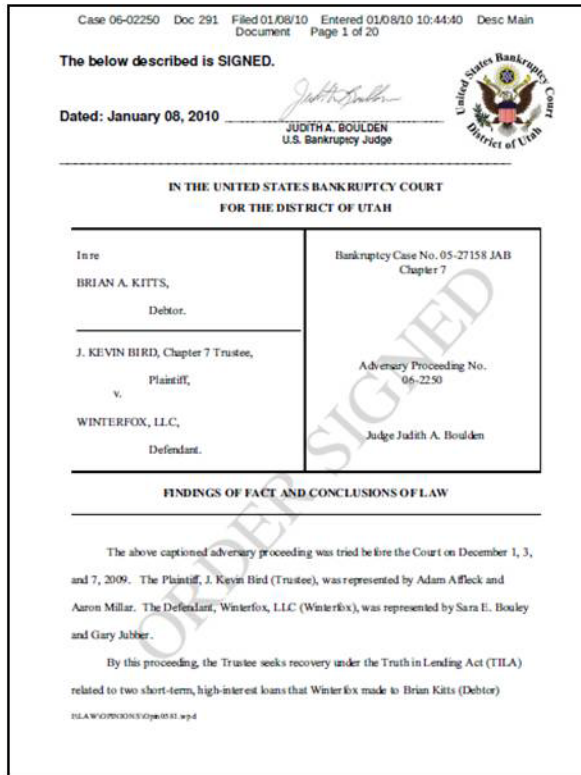
But Kitts did not stick around to see if he could make that case to the federal bankruptcy court. On October 22, 2010, the day he was supposed to appear in Utah stte court for sentencing on the tougher felony charges he sent an email from Canada to Judge Deno Himonas.

Kitt’s email to the judge court laid out a story of how Kitts at Tim Lawson’s urging, hired Utah attorney Dana Facemyer to renegotiate his plea deal. That Lawson insisted all communications with Facemyer be through him. And how Lawson kept some of the legal fees

Kitts paid Facemyer through Lawson. After six more pages of explanation he wrote, “I will not be in court today. I had no choice but to go to Vancouver myself to resolve the issues...” He asked the judge that “rather than issue a warrant for my arrest, that you allow me the time to...return to Utah and retain the services of new counsel...”

Judge Himonas was not accommodating. He slapped Kitts with a bench warrant for his arrest. a warrant that remains outstanding today.

But that did not keep Kitt’s bankruptcy from proceeding. It went on with Kitts in abstentia. By then, 2010, the bitterness between Kitts and Bybee reached a crescendo. Counsel for the bankruptcy trustee proved that Bybee’s Winterfox failed to provide required truth-in lending documents in connection with the \$1.35 million loan to Kitts but then tried to deceive the court by providing fake documents and false testimony about the documents. A federal appeals judge made the finding that the forms sued to crate the fake disclosures was not even on the market at the time the disclosures were dated.



The Court’s finding of fact: The Winterfox disclosure documents were falsified.

The bankruptcy court approved a settlement of the Kitts/Bybee mortgage loan dispute earlier this year. Under the agreement Winterfox has to pay the trustee \$500,000 for legal fees. That’s on top of the estimated more than \$1 million Bybee paid his own counsel to fight Kitts. And Winterfox had to forfeit any interest it would have made on the Kitts loan. But the court allowed Bybee to keep Kitts Park City residence that had served as collateral. It’s now up for sale.

The bankruptcy trustee would have referred the Bybee/Winterfox false documents and perjury to the US Attorneys’ Office to review for prosecution, as rules require. But it’s

rare that the US Attorney in Utah brings perjury charges.

Swallow remains silent as to any role he played or any knowledge he had of his two lobbyist clients--Winterfox and Bybee--faking documents and lying to the court. Bybee also declined comment for this report.