

IRP6 Speak Out About Missing Transcript - Vital Key to Appeal

A Just Cause continues to investigate a federal case in Colorado that involved six Colorado business executives who were convicted of mail and wire fraud charges in 2011. The six executives, who represented themselves pro se, have maintained their innocence throughout.

The six executives (Kendrick Barnes, Gary L. Walker, Demetrius K. Harper, David A. Zirpolo, Clinton A. Stewart and David A. Banks) were with IRP Solutions Corporation, a software development company engaged in the development of criminal investigations software for federal, state and local law enforcement.

Court records show that the defendants' appeal argues a violation of their Fifth Amendment right. Defendants argue that a critical portion of the transcript is missing which would substantiate the Fifth Amendment violation claim. Court records show that the defendants requested the transcript from court proceedings of October 11, 2011, but discovered that the sidebar discussion where the Fifth Amendment violation incident occurred was missing.

Following are comments from the executives of IRP Solutions regarding the incident and the current state of affairs in their case as it pertains to the missing transcript.

Comment from IRP6 - Gary L. Walker, CEO, IRP Solutions Corporation

The unavailability of the trial's unedited transcript, and perhaps even more troubling, missing pivotal statements made by Judge Arguello from the edited transcript, are critical to our appeal and the basis of our Fifth Amendment violation allegation, and it requires a congressional investigation into the conduct of this trial.

When transcripts are missing, the integrity of the justice system and the people charged with conducting fair and just trials comes into question. This situation is a clear violation of the Court Reporters Act and raises the questions of obstruction of justice and corruption within the Department of Justice.

If we allow our government - one that we now know conducts surveillance programs on citizens not suspected of any wrongdoing - to also deny them fair trials it less functions like the democracy its founders intended but more like an oligarchy.

Comment from IRP6 - David A. Banks, COO, IRP Solutions Corporation

I am deeply disturbed and troubled by the indifference and nonchalant attitude I have seen regarding the missing transcript. It seems no one in the justice system will exercise the power given to them to right this wrong. I am thankful for Congressman Lamborn (R-Colorado) and Senator Mark Udall (D-Colorado) for using their power of inquiry to request information concerning this blatant violation of the Court Reporters Act. From the latest information I have received, the clerk's office is stalling to answer members of Congress, prompting them to contact Attorney General Eric Holder for assistance. We have a right to the unedited transcript, given our challenge to Judge Arguello violating our Fifth Amendment right by forcing our testimony at trial under threat of resting our case at trial. Furthermore, the Court Reporters Act mandates that

the court reporters file the original/unedited transcript and notes from trial with the clerk's office within 2 weeks after trial has ended and to remain available for public inspection for 10 years. To date, the original record and shorthand notes from our case is not on file in the clerk's office. This is a clear, obvious, and intentional violation of the law. What Judge Arguello did at the sidebar was a clear violation of our constitutional rights.

During the sidebar Judge Arguello was visibly angry and frustrated because the trial was not proceeding as scheduled. That frustration caused a visceral reaction, prompting Judge Arguello to tell us that if we didn't have a witness then "...one of you would have to testify". Government attorneys and court reporter Darlene Martinez were party to the sidebar but all remain silent on what they witnessed.

Now the transcript of the sidebar and the unedited transcript of the entire trial is mysteriously unavailable. It doesn't take a genius to figure out that this is a cover-up to protect the reputation of Judge Arguello. The government attorneys (Matthew Kirsch and Suneeta Hazra), who were at the sidebar witnessed the Judge's statement and failed to provide an affidavit on what they heard. I believe the government did not want to implicate Judge Arguello or risk losing their case. The government provided a terse response that the sidebar "was recorded".

When we requested unedited transcripts during and after trial we were offered a panoply of excuses from the court reporter and clerk's office. We made numerous requests to the court for a hearing to resolve the transcript issue with the court reporter only to be repeatedly denied. Finally, Judge Arguello issued an order actually SPECULATING that the court reporter may not have had her headphones on or maybe we were too far from the microphone.

I can only draw one conclusion from the events surrounding the missing or unavailable transcript. I believe an evil cabal consisting of Judge Arguello, court reporter Darlene Martinez and the clerk's office was formed to cover up statements made by the Judge at the sidebar. The government stood by with full knowledge of what was said at the sidebar and allowed injustice to endure. The 10th Circuit is keenly aware of the facts surrounding the transcript and many other transgressions in this case.

The Tenth Circuit has repeatedly relied on U.S. v. Haber to guide them on dealing with unavailable transcripts. Haber says: "reversible error occurs when the unavailability of a transcript makes it impossible for the appellate court to determine whether or not prejudicial error was committed with regard to a challenged action." Court records substantiate that Judge Arguello, the court reporter, and the clerk's office has said that the unedited transcript of the sidebar is unavailable. Why are we still sitting in prison when there is clear and obvious evidence that our case should be reversed? The answer is simple. Many judges don't care about doing justice. I believe they care more about protecting a fellow colleague's reputation, saving face for the U.S. Attorney's Office, or self-aggrandizement. Judge Arguello and Matthew Kirsch committed sacrilege to U.S. jurisprudence and we became victims of their debased, predatory judicial process. Given the lack of a response from the 10th Circuit, I am inclined to believe that

their objective is to join the cabal to protect Judge Arguello instead of protect our rights and serve justice.

I thought it was the prosecutor's duty to seek justice. I thought it was the court's and prosecutor's duty to ensure that everyone's constitutional rights were protected. I obviously thought wrong!

Justice officials want you to respect their positions of authority but many don't walk worthy of respect. Just because a person wears the title of Judge, United States Attorney or Special Agent doesn't make them worthy of respect. Martin Luther King Jr. said that a man should be judged by the content of his character. People don't respect titles; they respect the values of honesty, integrity and fairness. Unfortunately, we did not see these values from Judge Arguello, AUSA Kirsch or U.S. Attorney John Walsh. We witnessed justice officials engage in a win at any cost game. The cost was justice and our liberty.

The U.S. justice system appears to be nothing more than a secret society of people who protect their own rather than protect and preserve justice. They appear to serve themselves and have no loyalty to the constitution or the rule of law.

Comment from IRP6 – Kendrick Barnes, CIO, IRP Solutions Corporation

Why the missing transcript issue is even an issue boggles my mind. Either the transcript exists which will show that Justice Arguello compelled myself and my fellow co-defendants to testify or she would close our case. Or the transcript is missing which is a clear attempt from the court and or the clerk's office to cover up the fact stated previously. Either way it is a clear violation of the Fifth and/or Sixth Amendment to the Constitution. How can anyone say this is fair and that justice was served? Now we are being stone walled in our attempts to get someone to answer as to where the unedited transcripts are and why our legal counsel is being refused access to them. This to me does not seem to be a very sticky or confusing issue of law but a clear text book example of a miscarriage of justice.

Comment from IRP6 – Clinton A. Stewart, VP – Business Development, IRP Solutions Corporation

I see this issue as a stark violation of seven (7) Federal laws under Title 18 Crimes and USC Title 28 Code of Conduct for United States Judges. During court proceedings the judge ordered the court reporter to provide a copy of UNEDITED transcripts. The court reporter has not complied with the order of the court. It's unconscionable to me to believe that a court reporter would act alone to countervene a judge's direct instructions. Therefore, I believe Judge Arguello is making a mock effort of ordering the transcript to be provided to defendants, but behind closed doors she has no intention of providing the unedited transcript, because it provides evidence of her statements to the defendants that are in blatant violation of defendants' 5th Amendment rights, and Judicial Code of Conduct (COC).

Canon 2 of the COC requires a judge to respect and comply with the law, promote public confidence in the integrity and impartiality of the judiciary. Canon 3(a)(5) of the COC requires a judge to dispose promptly of the business of the court. Paragraph B(2) of the same COC canon requires court officials, staff and others to be subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge. Because of violations in these standards of conduct, I conclude that the judge, court reporter, and clerk's personnel are at fault.

Title 18, section 371 makes it unlawful if two or more persons conspire to commit any offense against USC for any purpose. Title 18, section 1018 makes it unlawful for a public officer or authorized person to make or give a certificate or writing that she knows to be false -- transcript provided to defendants is not a true record of what was pronounced during court proceedings.

Title 18, section 1506 makes it unlawful to alter any record of the court. Title 18, section 1509 makes it unlawful to willingly prevent, obstruct, or impede the due exercise of rights or performance of duties pursuant to any order or decree of the courts. Title 18, section 2071 makes it unlawful to conceal any record filed or deposited with the clerk of the court. Title 18, section 2075 makes it unlawful for every officer who neglects or refuses to make any return or report which she is required to make at stated times pursuant to any Act of Congress. Title 18, section 2076 makes it unlawful for whoever being a clerk if a district court willingly refuses or neglects to make or forward any report or official record.

Again, the missing transcript issue comprises a total of ten violations among Title 18 Crimes and Title 28 Judiciary Code of Conduct. I am personally outraged at the state of affairs regarding this blatant violation of Federal laws. We have found a show put on for the public, but when the show is over there is no functional oversight of legal processes for the Federal courts.

Moreover, DOJ claims in response to a complaint letter from A Just Cause, that it has no jurisdiction over Federal courts. But, when Federal officials working at Federal courts violate the very laws they have sworn to uphold, how is this not within the jurisdiction of Federal prosecutors to investigate these crimes? The United States Code as a body of laws is used to protect the people of America, irrespective of whom takes it upon themselves to violate these laws. Obstruction of justice, falsifying court records, conspiracy, concealing a public record, failing to make an official record, etc., all of the acts are covered by the seven laws indicated previously as clear and blatant violations of Federal statute.

When I consider the scope of these acts, and the myopic perspective of Federal officials, I am reminded of the phenomena experienced by all whistle-blowers. No one tends to believe them. Their warnings seem to fall on deaf ears. The frustration I feel as a victim of these crimes is but a small part of the overall fiasco of violations perpetrated against us. I feel persecuted, deeply persecuted.

Comment from IRP6 - David A. Zirpolo, VP Professional Services, IRP Solutions Corporation

I am saddened and outraged by the inactivity and lack of outrage by the courts, the justice department, some members of congress and the press. An issue where a judge tells a defendant they must take the stand or “I will rest your case for you”, should be felt as a horrific injustice and a travesty to our justice system. Then on top of that, the court transcript that should reveal this travesty is inexplicably edited removing the interaction between the judge, AUSA and the defendants. And then, the unedited version of the transcript is mysteriously unavailable. Everyone says this cannot happen, but it has and all who can (and should) do something about it are silent.

We have seen a lot of discussion lately about freedom and privacy. One side of the debate says we should trust the government. I say trust is earned. My experience with the issue of the missing portion of the transcript makes it hard for me to trust our government.

Someone in the government, or the press, should be championing this issue. Not just for us but for justice in America. If a judge can stomp on the fundamental rights of a US citizen and no one cares, how can we trust anyone in the government to care about our rights? It becomes a slippery slope if we ignore these crimes thus allowing the door to be opened to greater infringement of our rights.

The appeals court knows this is wrong.

The judge knows this is wrong.

The US Attorney knows this is wrong.

Even the court reporter knows this is wrong.

We must all speak out and demand what is right.

We must know who is covering up this transcript issue and why.

Comment from IRP6 – Demetrius K. Harper, DKH Enterprises

Representing ourselves, the IRP6, is an experience that will NEVER be forgotten. We fought for our innocence vs. The United States of America. We looked into the face of the “so-called” Justice system and I can truthfully say that when judges/prosecutors are allowed to act in a tyrannical manner with no repercussion, but full immunity, the common citizen of this country

doesn't stand a chance of a Fair Trial. That is vapor, a figment of imagination; a faint impression in someone's mind.

To say I remember the day of October 11th, 2011, is an understatement to say the least.... My brothers (Gary Walker, David Banks, Clint Stewart, Dave Zirpolo and Kendrick Barnes) and I were summoned to the bench by the Federal Judge, Christine Arguello and Asst. US Attorney Matthew T. Kirsch. We were going off the timeline from AUSA Kirsch that stated in open court that he needed 2 1/2 weeks (maybe 3 weeks to present his case; but ended his case in one (1) week and 4 days.... So basically we had our witnesses scheduled based on the timeline Kirsch mentioned....

We had to re-evaluate scheduling/flights and hotels etc. So low and behold on Tuesday October 11, 2011 before lunch, we were ordered to come before the judge at the sidebar.... The words still ring as I sit here in prison today, from Judge Arguello, "If you don't have a witness available, one of you WILL have to testify. If one of you do not testify, I will close your case!" In my mind, I was saying to myself, "Is that even possible?" Can a judge just close a case, because he or she wants to close it? Where is the justice in that, if we cannot effectively present our side of the story or have witnesses available? We asked for a moment away from the sidebar to discuss amongst ourselves and then asked for more time as we all arrived back at the defense table. This is in spite of the fact that David Banks told the judge earlier in the trial we had no intentions of testifying....

We go through this horrific and blatant lack of application of our constitutional rights like we were slaves in the 1800's. Kirsch knows what was said, so does AUSA Hazra. Why isn't anyone who cares about the law and justice ask them what was said. Did not all attorneys take an oath to preserve justice, or is that just another figment of someone's imagination as well. So we decided to put Kendrick Barnes on the stand..... After a series of questioning, Gary Walker asked for a mistrial based off of Judge Arguello telling us that one of us must testify or she would close our case.

Now looking back on that day, you now tell me that those infamous words "One of you will testify or I will close your case!" is nowhere to be found in the court records? We have heard everything from, "It doesn't exist", to "it wasn't said", to "it wasn't captured", to "maybe the Court Reporter (Darlene Martinez) took her headsets off", or "the transcript was destroyed/unavailable/missing". I am at a loss of words to fully explain my feelings of someone deliberately obstructing justice and no one in this "just society" caring much of this severe heinous act. The missing transcript, along with the other outstanding issues involved with this case, are most disturbing to say the least....

These acts of violence against the law that we witnessed brings much disappointment as my brothers and I sit in prison, innocent and fully awakened to the fact that our rights were not upheld in the court of law. We still seek justice and thanks be to God that we have friends and family

who know of our innocence and belief that the IRP6 will be vindicated. The fight continues until justice is served in this matter.

I read a book written by the mother of AUSA Matt Kirsch. In her book, Janet Sue wrote about her son Matt, "He is a good man who does what is right. When speaking about his dad at Bill's retirement, he said that what he and his brother remember most about their dad is that Bill always taught them to do the right thing. Matt learned his lesson well". After personally living through this hell, and these accusations, the grand jury, the indictment, and the court proceedings, I wonder if Matt Kirsch's mother comments would still ring true to her if she could have seen these proceedings? I can honestly and unequivocally say "No", definitely not on my behalf and that of my brothers.

The case of IRP Solutions (IRP6) is currently under appeal (US District Court for the District of Colorado, Honorable Christine M. Arguello, D. Ct. No. 1:09-CR-00266-CMA; Case Nos: NO. 11-1487, Case Nos. 11-1488, 11-1489, 11-1490, 11-1491 and 11-1492). For more information about the story of the IRP6 or for copies of the legal filings go to <http://www.freetheirp6.org>

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