

## **IRP6 SPEAKS OUT ABOUT DENIAL OF WRIT OF MANDAMUS**

### **Gary Walker:**

The fact that the disappearance of the most controversial portion of the trial transcript and the entire unedited transcript can occur without prompt remedial action being taken by the courts is an indictment on this country's criminal justice system. While our country's leaders profess that this system is the best in the world, it is in fact, rife with attitudes of win at all costs and the constitution be damned.

### **David Banks:**

I don't believe there is a just judge in the District of Colorado or the 10th Circuit Court of Appeals. Once again we have seen a complete lack of fairness from federal judges in Colorado. Anyone in the public, looking at this case can see that the denial of the verbatim transcript is nothing more than a cover-up. First, how could Judge Arguello make an unbiased decision with regard to releasing the transcript to us when the request for the transcript was predicated on allegations of judicial misconduct that could implicate her? The Supreme Court found that "No man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." See *In re: Murchison* 349 U.S.133, 948, 99 L. Ed. 942, 75, S. Ct. 623 (1955). Judge Arguello had an interest in the outcome of releasing the verbatim transcript and therefore should not have presided over related hearings. This is a denial of our due process. What makes this situation more egregious is that after knowing that she violated our 5th Amendment right by compelling our testimony, she then sentenced us to prison time and indicated she would like to sentence us longer. The 5th Amendment states that 'No person...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law. I consider this despicable, deplorable and just plain evil. If a layman like myself, can research case law and see that something is wrong with this, certainly the legally sophisticated and experienced jurists that serve as judges in the 10th Circuit couldn't possibly miss it. Unless they just refuse to see it and do something about it. We seek relief from the 10th Circuit, only to be repeatedly rebuffed.

The 10th Circuit in denying the Writ states that the mandamus petition is frivolous because we are seeking relief we have already sought or could have sought in our appeals. Isn't that what a mandamus petition is for? We repeatedly sought relief during trial and after trial from the district court to provide us with the transcript. No relief was granted. We sought relief from the 10th Circuit Court of Appeals through post-conviction motions and no relief was granted. We sought relief through our appellate briefs and the 10th circuit, ignoring their own precedent, no relief was granted. Now, when we seek relief again from the 10th Circuit through a Writ of Mandamus, the request for relief, no relief is granted.

The 10th Circuit in their opinion, makes a specious assertion that we may not have presented all of the arguments in our briefs on appeal that we now assert on in the mandamus petition. That is outrageously disingenuous on their part. The arguments in the mandamus petition are the same that are in the briefs. The transcript, both edited and verbatim, are missing, unavailable or destroyed. They have done absolutely nothing to grant relief, nor have they stated whether the verbatim transcript is unavailable as corroborated by Judge Arguello and court reporter, Darlene Martinez. Is the 10th Circuit trying to hide the content of the verbatim record to protect Judge Arguello? Is that what Judge Arguello, AUSA's Matthew Kirsch and Suneeta Hazra, Darlene Martinez, and now the 10th Circuit are so secretive about?

Renown, 18th Century Jurist, Jeremy Bentham is famous for saying, "Secrecy is an instrument of

conspiracy.” Whether the verbatim transcript is available or unavailable, the 10th Circuit has shirked their responsibility under the law. Someone might say, you are not a lawyer, how can you say the court has been unfair for us in their handling for the transcript? This is hardly rocket science and anyone with a residue of common sense can read the plainness of the law regarding the verbatim transcript and draw that conclusion.

The 10th Circuit precedent for a missing or unavailable transcript, states that REVERSIBLE error occurs, "when the UNAVAILABILITY of the transcript makes it impossible for the appellate court to determine whether or not a prejudicial error was committed" with regard to a challenged action. U.S. v Haber 251 F.3d 889 (10th Cir. 2001). How can the 10th Circuit make a determination, whether Judge Arguello coerced us under threat to testify without the verbatim transcript? THEY CAN'T! IT IS THELAW!!! This is not complicated.

If the verbatim transcript is AVAILABLE, why have Judge Arguello and the 10th Circuit violated our due process under the law to challenge Judge Arguello's statements by releasing the transcript to us? Further, why is the 10th Circuit denying our constitutional right of access to court records by not letting us inspect the record which is the law under the Court Reporter's Act, 28 U.S.C. 753(b)? IT IS THELAW!!! This is not complicated.

IT IS ALSO THE LAW, under the Court Reporter's Act, for court reporter, Darlene Martinez to file the original record and original shorthand notes in the clerk's office. This is not discretionary! So why has the district court and the 10th Circuit failed to order the court reporter to file the original record with the clerk's office? According to the "Court Reporter's Act, 28 U.S.C 753(b) it is mandatory for the court reporter to record all proceedings verbatim, which includes sidebars and it is also mandatory for the court reporter to file her original record and other original shorthand notes at the court clerk's office to be kept on file for 10 years for public inspection by any person. The original record is not on file in the clerk's office. WHY WON'T THESE JUDGES ENFORCE THE LAW? This is not complicated. It wasn't complicated for judges in the DC Circuit.

In U.S. v. Workcuff, 422 F.2d 700 (DC Cir. 1970), when DC appellate judges could not determine whether prejudicial error occurred from lack of reliable transcript of record they stated "It is difficult enough in normal circumstances to appraise the propriety of the trial court's various actions on the basis of a cold printed record; when that record is replaced by incomplete hearsay recollections...our review is turned into an exercise in creative imagination." It took three months for those judges to make that determination and reverse the conviction.

I have to wonder, why I am still in prison under these circumstances. It is not my intention to show any disrespect to the court, but I have been wrongly convicted and sit in prison while my constitutional rights suffer continual violence. The U.S. Justice system has a responsibility to uphold my rights as a citizen of this country. When will someone in the 10th Circuit start defending my rights? When will the merits panel act? Do the judges in the 10th Circuit care about justice? Do they care that six innocent men have been wrongly deprived of their liberty for almost 25 months (15 months at federal prison camp, 56 days in county jail, and 8 months of home confinement). Do they care about their oath? Do they have an ethical or moral compass? DO THEY HAVE ANY RESPECT WHATSOEVER FOR THELAW? It doesn't appear so. It appears that the archetype of a federal judge or prosecutor has become someone who possesses a severe narcissistic personality disorder and is so paranoid that they excuse blatant violations of the law by judicial officials to protect the appearance of propriety in the justice system --- even at the cost of depriving citizens of their liberty and constitutional rights. Obviously, I can't use a broad brush to paint all judges and prosecutors with this label, but the conduct I have

witnessed in our case could be the poster child for judicial impropriety.

I am absolutely baffled that this is taking place in the United States of America. The Constitution is being treated like some scratch piece of paper with a few notes jotted down on it. Our rights are being continually trampled on. How long will this continual violence and sacrilege to the law continue in our case?

Judge Arguello and the 10th Circuit have shown, and continues to show, extreme bias against us and it is completely unfair. The Supreme Court has stated that "any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid the appearance of bias"

Commonwealth Coatings Corp. v. Continental Cas. Co., 393 U.S. 145, 150, 21 L. Ed. 2d 301, 89 S. Ct. 337 (1968). Additionally, "To perform its high function in the best way 'justice must satisfy the appearance of justice.'" In re: Murchison, 349 U.S. 133, 136, 99 L. Ed. 942, 75 S. Ct. 623 (1955).

All we ask for is fairness, justice and the upholding of our constitutional rights, which we are entitled to as citizens of this country.

**Clinton Stewart:**

Mr. Jay Arrington's article in reference to the "Curious Case of IRP6" is a masterful telling of the government corruption and prosecutorial misconduct in the guise of a "grand conspiracy to dupe staffing companies out of millions of dollars" -- as the government would tell it. Notably, Mr. Arrington picks up on the FBI letter responding to one of the staffing companies complaining that they were owed monies and therefore must be the victims of a scheme. The date of the letter is one of those nuanced facts that could easily be overlooked.

The FBI raided the business offices of IRP in February 2005 and sent the plaintiff's response in August 2005, giving them five months to review and analyze the evidence collected at the IRP premises. As a consequence, the FBI's response letter has gravity and significance that flies in the face of the government's case for so-called "fraudulent business practices". So, how do we read this fact and set of consequences? If the FBI Special Agent-in-Charge says [in writing] that there is no crime here, how does the prosecutor take up a back door agenda with a rookie FBI agent to pursue the case?

The 10th Circuit Court of Appeals in [Denver] has determined the recent Petition for Writ Mandamus in the case of the IRP6 to be a "frivolous" petition. For those that have been following this case in the press, on the radio, and through the court docket may be aware of the purpose for the recent petition to acquire unedited transcripts of the case, where more than 200 pages are missing from the transcript provided to defense team, by the court reporter. When I complained to the judge about this incomplete transcript from the court reporter the judge upheld her blatant violation of the Court Reporter's Act, during court proceedings.

When the public sees such a fundamental miscarriage of justice, as to be denied access to the full transcript of the case, the integrity of the criminal justice system is severely undermined. But, the 10th Circuit Court of Appeals is blind to the obviousness of this fundamental tenant of public trust and integrity of the justice system. If during the proceedings of a criminal trial, the verbatim record of the trial is called into question for lack of availability, how can any member of the public expect to get a fair trial? Indeed, there are no less than 10 federal laws protecting this fundamental tenant of integrity in Titles 13 [Crimes] and 28 [Judicial Practices] that are violated by these actions. But, like the proverbial ostrich that hides its head in the sand, the 10th Circuit Court of Appeals identifies this issue as frivolous. Go figure...

**David Zirpolo:**

When I found out the writ was denied, I was not surprised. Throughout the case, I have not seen the courts treat this case in any ways fairly. I expected the courts to deny the writ, as they do not want us to have the unedited transcript. They would not have given it to us, even if it was sitting on someone's desk at the court. The courts are about protecting their own, so if we had the unedited transcript, it would show how corrupt and biased the judge was in this case.

We are going on 11 months since our appeal was submitted and we still do not have a ruling. This is a cut and dry appeal, but the courts are delaying the ruling trying to find a way to protect the judge, in my opinion. This case is a black eye on the 10th Circuit and everyone is trying to find a way out of the situation the judge has put them in. Our freedom has been taken away unjustly and we can't see the courts at every juncture trying to cover-up their mess. I know in the end we will be vindicated and freed; and through that the truth will come out.

**Demetrius Harper:**

Here recently, as I sit in a Federal Prison Camp in Florence, CO. I have had a lot of time to reflect back on many things concerning the IRP6 wrongful and malicious convictions. As I and my co-defendants, my brothers ponder on a daily basis how the supposedly best American Justice System, failed six law-abiding citizens. The IRP6, recently got the news that our Writ of Mandamus was denied, the only question that still haunts us to this very day, "Why are we still here?"

If over 200 pages of transcripts are missing is anyone in America feeling the same as we are (the IRP6)? Do the American people know that the Justice System that was supposedly birthed for truth/blind justice and seeking equality for all people is failing drastically? Wake up America, the system has been broke for a long time. 200 pages missing! Why? Cover-up? Retaliation? The case law is pretty straight forward, if the transcript is missing, case is overturned! Why Are We Still Here? Again, on October 11, 2011 during a sidebar conversation, IRP6 was told by the Judge, Christine Arguello, "That if you don't have a witness to testify, one of you will have to testify!" Our response, "We didn't plan on testifying judge!" "If one of you do not testify, I will close your case!"

Really, is that even possible? That was my initial thought. Now on October 28, 2013, I ask again! Why Are We Still Here? That conversation that has been burned into my very mind/psyche and soul, is now according to Darlene Martinez (Court Reporter) it never happened? She either did not capture that statement or that statement was deleted/destroyed or edited. We repeatedly asked for the 'unedited' transcript.

I sit here in prison, my brothers and I, with page after page, after page, after page missing that can definitely shed light on what happened on October 11, 2011. But again, the American's Justice System on display, per the denial of the Writ of Mandamus, says basically let the Appeal process handle your assertion. I thought, Lady Justice was about doing the 'right thing'. Apparently not, (U.S. vs. Haber) "Failure to comply with the Court Reporter's Act is error, but not reversible error unless "the availability of the transcript makes it impossible for the appellate court to determine whether or not prejudicial was committed" with regard the challenged action". So again, if the transcript is missing, the case is overturned! Where is the transcript? Did Edward Snowden ever get this information? Does WikiLeaks have the answer for the IRP6? Can Anonymous find out for us? When will justice be served for us? Why Are We Still Here?

