

Who's Responsible for Investigating Missing Court Transcripts in Colorado Federal Criminal Court Case, Asks Advocacy Group A Just Cause

Advocacy group, A Just Cause, and supporters of six Colorado executives known as the IRP 6 are urging citizens to write letters to Tenth Circuit Chief Judge Mary Beck Briscoe and the Director of the Administrative Office of the U.S. Courts, the Honorable Judge John D. Bates, requesting an investigation into the alleged mishandling of court transcripts crucial to the defendants' appeal.

Denver, Colorado ([PRWEB](#)) June 18, 2013 -- 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 a sidebar discussion was missing. "We are arguing that the missing text from the sidebar is crucial in our case. And we believe Judge Arguello's statements compelling us to testify in a criminal case, violates our Fifth Amendment rights," says David Banks, COO, IRP Solutions Corporation. "We had absolutely no intention of testifying. We were forced to either testify or kiss our defense goodbye," Banks adds.

A Just Cause reviewed a sworn affidavit by Attorney Gwendolyn Solomon and found several inconsistencies in responses provided by federal court employees as to why the transcript was allegedly missing. According to the affidavit, Solomon spoke with Ms. Martinez (Court Reporter) on November 14, 2011 regarding the allegedly missing transcript. Martinez advised Solomon that there was no policy, requirement, or rule that governs release of the unedited transcript but it was at her discretion to release the transcript (Case 1:09-cr-0026-CMA, Document 635-2, 12/20/11, USDC Colorado). On the same day Court Reporter supervisor Charlotte Hoard confirmed to Solomon that the unedited transcript was still available (for \$3.05 per page) but that it was at the discretion of the court reporter to release it. Court documents show that Mr. Ed Butler (legal officer for the U.S. District Court of Colorado) was contacted by Solomon on December 12, 2011. He advised Solomon that he was informed by Martinez and Hoard that the unedited version of the transcript no longer existed. According to Solomon's affidavit, Mr. Butler further advised, "...nothing had been destroyed and suggested I (Solomon) file a motion to request a copy of the unedited version." (Case 1:09-cr-0026-CMA, Document 635-2, 12/20/11, USDC Colorado).

"The Court Reporters Act, 28 U.S.C.A 753(b) makes it mandatory by Congress, that a court reporter shall record all proceedings verbatim in criminal cases held in open court which includes sidebars," says Attorney Gwendolyn Solomon (attorney for five of the six defendants). According to Solomon the statute reads, "...all original notes are required to be preserved and available in the clerk's office. The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other

original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years."

"There is a case that was recently overturned in Mississippi that I feel closely aligns with what we are facing in our appeal," says Banks. *Freeman v. State, Miss (en banc), 2012-KM-00192-SCT (5/30/13)* is a case where videotape of a traffic stop was in discover but then destroyed. The defendant asked the court to preserve the evidence for appeal purposes so that he could provide it as evidence as part of the appeal. The court instructed the State to preserve all evidence including the videotape. When the defendant tried to get the videotape from the State, he was told it had been destroyed. The Mississippi Supreme Court reversed the conviction by applying the three part test to determine if due process had been violated. Under the test: 1) The evidence in question must possess exculpatory value that was apparent before the evidence was destroyed 2) The evidence must be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means 3) The prosecutions destruction of the evidence must have been in bad faith. "We feel that in our case the transcript possesses exculpatory value, and it is critical that it be made available," concludes Banks.

In the case of Banks and the other IRP executives, court records show repeated motions and requests by the defendants to Judge Christine M. Arguello for the unedited version of the sidebar transcripts, but all requests were denied by the court. Subsequently, multiple post-trial motions were filed by attorneys requesting a hearing to resolve the transcript issue with the court reporter, but those requests were also denied by Judge Arguello. "I made several attempts to obtain the transcripts from the clerk's office, but have been continually told by the court reporter and the clerk's office that the sidebar portion is unavailable," says Ethel Lopez of A Just Cause. "We have filed a formal complaint with the Chief Judge of the 10th District against Judge Arguello charging that there was a deliberate attempt not to provide the transcript," adds Lopez.

"In an effort to get assistance on this matter, I have personally contacted various offices in the Department of Justice (DOJ) to include the office of Attorney General Eric Holder (Annie Bradley, Holder's assistant), the Investigative Division of the Office of the Inspector General, and DOJ's Office of Professional Responsibility," says Lopez. "I've also contacted the Regional Director of Courts, the office of U.S. Attorney John Walsh in Denver, the email for First Lady Obama, the email for President Obama, the Judiciary committee, Senator Mark Udall (Colorado), Senator Michael Bennet (Colorado), Congressman Doug Lamborn (Colorado), and Senator Al Franken (Minnesota), just to name a few," adds Lopez.

"Basically everyone has said that it is not the responsibility of their office to investigate", says Lopez. "Senator Bennet's office refused to do anything. Here you have constituents from your state who have been wronged, and you won't even lift a finger to at least ask for an inquiry. Senator Bennet has taken a political position on this matter", exclaims Lopez.

"This is very bizarre", says Sam Thurman of A Just Cause. "There seems to be no accountability in this situation. This is a clear situation of federal employees who we believe committed an act that has impacted the lives of six men. A Just Cause isn't asking these various offices to vouch for the innocence of these men. We are just saying that if there is even a hint of impropriety, justice demands that one of these federal agencies look into it," adds Thurman.

"A Just Cause is pleased with the assistance we have received from the offices of Congressman Lamborn (R-Colorado) and Senator Udall (Colorado). They understand that this is about accountability and not about politics," says Thurman. "On the other hand, I'm really disappointed at the lack of willingness on the part of

Senator Bennet (D-Colorado), and DOJ on the whole. We know for a fact that hundreds of letters were sent to Senator Bennet's office and he disregarded them. We have yet to get an official reply from his office. Additionally, A Just Cause has received official letters on official letterhead from many of these offices, but they are just forms letters. When you get a form letter from the DOJ with no signature and no point of contact, that's sends a clear message that the folks in those offices do not want to be held accountable for their inactivity," concludes Thurman.

A Just Cause affirms that it will continue to pursue an investigation into the actions that occurred in the courtroom of Judge Christine Arguello and the role that was played by Court Reporter Darlene Martinez regarding the allegedly missing transcript.

"A Just Cause is making a national plea to anyone who can offer assistance in getting the missing transcripts in this case. Please contact A Just Cause immediately," asks Thurman. "We have come to realize that this type of injustice can happen to anyone, so A Just Cause wants to push for reforms to hold federal employees of the courts accountable for their actions when they do wrong," concludes Thurman.

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>.

Related story: Racial Bias Is the Foundation for a Federal Criminal Case Against African American Businessmen in Colorado Says Friends of Justice and A Just Cause
<http://www.prweb.com/releases/2013/5/prweb10693207.htm>

For more information about the story of the IRP6 or for copies of the legal filings go to <http://www.freetheirp6.org>. For more information on the ongoing appeal or A Just Cause, contact Sam Thurman at (877) 573-5554 or visit <http://www.a-justcause.com>



Contact Information

Sam Thurman

sthurman@a-justcause.com

877-573-5554

Online Web 2.0 Version

You can read the online version of this press release [here](#).