

Advocate for the Wrongfully Convicted, A Just Cause, Publishes Defendants' Accounts of Missing Transcript Fiasco and Suspected Foul Play in Colorado Federal Criminal Case

A Just Cause Questions if Court Reporter Violated Court Reporters Act; IRP6 Speak Out About Missing Transcript - Vital Key to Appeal

Denver, Colorado ([PRWEB](#)) June 25, 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 the sidebar discussion where the Fifth Amendment violation incident occurred was missing. (Appellate Case: 11-1492 Document: 01018987811 and Document: 01018987485 Date Filed: 01/22/2013) <http://freetheirp6.wix.com/freetheirp6#!additional-documents>)

The following are findings of A Just Cause and recounts from the executives of IRP Solutions regarding the incident and the current state of affairs regarding the missing transcript in the IRP6 case. For complete statements by the IRP6 regarding the missing transcript see "IRP6 Speak Out About Missing Transcript" <http://freetheirp6.wix.com/freetheirp6#!court-transcripts>

A Just Cause found that The Guide to Judiciary Policy, Vol 6 and 28 U.S.C. § 753(b)(3) detail the responsibility of a court reporter in the execution of duties. A Just Cause believes there were violations of court reporter duties in the case of IRP6 regarding alleged missing transcripts. http://www.uscourts.gov/uscourts/FederalCourts/Publications/Guide_Vol06.pdf and <http://www.law.cornell.edu/uscode/text/28/753>

"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", says David Banks, COO, IRP Solutions. "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'. Now the transcript of the sidebar and the unedited transcript of the entire trial is mysteriously unavailable. 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'", added Banks.

According to appellant motions in the case, the defendants argue that they (Gary Walker, David Banks, Clint Stewart, Dave Zirpolo, Kendrick Barnes, Demetrius Harper and Asst. US Attorney Matthew T. Kirsch) were

summoned to the bench by Federal Judge Christine Arguello. The prosecution originally told the court they needed 2 ½ to 3 weeks to present their side, but rested after 1 week and 4 days. “We scheduled our witnesses to appear based on the prosecution's timeline. Consequently many of our witnesses, some/most from outside of Colorado were not flexible enough to show-up in court earlier than planned”, Harper added. “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 (rest) your case!' In my mind, I was saying to myself, 'Is that even possible?'”, pondered Harper.

David Zirpolo, the sole non-minority in this case, recalls statements made by Judge Arguello. “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”, says Zirpolo. “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”, added Banks.

“Looking back on October 11th, you now tell me that the infamous words 'One of you will testify or I will close (rest) 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 (headphones) off, or 'the transcript was destroyed/unavailable/missing'”, adds Harper.

According to the motion to reconsider release of the unedited transcript, attorneys argue “‘Original’ shorthand notes are not consistent with edit notes, edited notes are not the original notes. If original notes are now meant to mean edited transcript notes, the term 'original' becomes meaningless and confusing. *Lamb et. al. v. Thompson*, 265 F.3d 1038, 1051, 1052 (10 Cir. 2001). It is a cardinal canon of statutory construction that a statute ought to be construed that no clause, sentence or word shall be superfluous, void or insignificant. *Mattieson v. Banc One Mortgage Corp.*, 173 F.3d 151,154 (10 Cir. 1997) (Courts are to give effect to every word, reversing district court’s interpretation of the statute). If the statute meant to state that only the edited notes were required to be certified, it would be so stated, rather than stating “original” shorthand notes. When the wording of the statute is unambiguous it should be given its normal construction. *Whitman v. American Trucking Association*, 531 U.S. 457, 468 (2001). The need to preserve original notes is illustrated by the fact that neither the Court’s recollection or Defendant’s recollection is found in the transcription provided by the court reporter”. (Case 1:09-cr-00266-CMA Document 635 Filed 12/20/11 USDC Colorado)

“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”, says Gary Walker, CEO, IRP Solutions.

“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”, says Clinton Stewart. “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 counter a judge's direct instructions”, adds Stewart.

According to U.S. Code, 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. (http://uscode.house.gov/download/title_18.shtml)

Gary Walker agrees, “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.”

“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. I feel persecuted, deeply persecuted”, concludes Stewart.

“I believe an evil cabal consisting of Judge Arguello, court reporter Darlene Martinez and the clerks office was formed to cover up statements made by the Judge”, charges Banks. “Given the lack of response from the 10th Circuit, I think anyone would understand how I am inclined to believe that their goal is to join the cabal to protect Judge Arguello instead of protect our rights and serve justice,” adds Banks.

“Why the missing transcript issue is even an issue boggles my mind,” says Kendrick Barnes. “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”, adds Barnes. Court records include accounts/requests of the defendants, as well as Attorney Solomon, contacting the court clerk's office in an attempt to obtain the transcripts. Motions detailing the basis for the requests for the unedited transcript, and the judges order denying the requests are on file with the court clerk's office. (Case 1:09-cr-00266-CMA Documents 635, 635-2, 636, 636-4, 636-6 Filed 12/20/11 USDC Colorado and Document 652 Filed 01/20/12 USDC Colorado)

“DOJ claims in a response to a complaint letter from A Just Cause, that it has no jurisdiction over Federal courts”, says Stewart. “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 alleged 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”, exclaims Stewart.

“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”, says Zirpolo. “Everyone says this cannot happen, but it has, and all who can (and should) do something about it are silent... Someone in the government, or the press, should be championing this issue. Not just for us but for justice in America”, concludes Zirpolo.

“I sit in prison, innocent and fully awoken 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 believe that the IRP6 will be vindicated. The fight continues until justice is served in this matter”, concludes Harper.

“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,” says Banks. “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”, Banks maintains.



For full comments from the IRP6 about the missing transcript see “IRP6 Speak Out About Missing Transcript” <http://freetheirp6.wix.com/freetheirp6#!court-transcripts>

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>



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