

Why Go Pro Se

The IRP6 Perspective

By David Banks

We feel that firing our attorneys was the best and most important decision we made in fighting our case. We have no regrets whatsoever in that decision and would make the same choice again. The attorneys we were working with prior to trial were absolutely horrible. Any implication that we would have been better off staying the course with our attorneys to increase our chances of not irritating or angering Judge Arguello is simple-minded. However, it does expose a disturbing thought process by attorneys that by offending the personal sensibilities of the judge, your case could be severely prejudiced. We went to trial to present our case and defend our innocence, not to score points by pacifying a judge's ego.

A trial has become nothing more than a courtship by attorneys competing for the affection of the judge. Attorneys seem more engaged in massaging the fragile ego of judges by putting on a song and dance act in hopes of currying favorable rulings. This pirouetting protocol does nothing but dilute the force of an effective defense, especially when you have a prosecutorial leaning jurist like Judge Arguello. When brown-nosing the judge is a predicate of a legal defense, the Constitution is diminished and the life and liberty of the citizen becomes subject to the rule of the monarchy where the judge is king or queen. We repeatedly heard comments by defense attorneys that they had to be very careful not to "offend" or "piss off" the judge. An attorney should be more concerned with putting on an aggressive defense and less concerned with judicial idolatry. We have every right to expect and demand a judge to function as an impartial referee and rise above favoritism towards a specific party. Mistakes are routinely made by attorneys and some will certainly be made by pro se defendants. Judges have an obligation and duty under their oath to the Constitution to keep their discretion free from personal feelings.

Unfortunately, we did witness the impact of Queen Arguello's personal feelings permeating the entire atmosphere of our trial. Additionally, she became angry and unglued because the trial did not proceed according to her royal plan when we could not get all of our out-of-state witnesses promptly rescheduled due the government ending its case approximately two weeks early. She became so reticent when one of our witnesses, who was a senior law enforcement officer, did not abide by a court-ordered subpoena by showing up to court that she laid the blame squarely on us --- stating during a bench conference that if we didn't have a replacement witness then one of us would have to take the stand or she would rest our case. Prior to that she was upset that we fired all of our attorneys, which created additional hearings before the Magistrate to handle those matters.

Many attorneys and judges have this warped perception that a defendant should blindly put their faith and trust into an attorney they just met. That is patently

unreasonable, irrational and against human nature and common sense. In no other walk of life would any person be expected to trust and believe in a person they just met.

I fired my first attorney because he told me my only responsibility was to offer a plea and decide whether I wanted trial before jury or judge. He would handle all the rest irrespective of how I felt about it. He was clearly mistaken. I believe a client must approve of any strategy an attorney is going to implement at trial. If the strategy does not work out then I have to live with the consequences, NOT THE ATTORNEY. My second attorney was fired for primarily the same reason. All of the defendants wanted to meet with U.S. Attorney John Walsh to discuss our proffer and the overwhelming evidence of our innocence. Our defense attorneys originally agreed to coordinate the meeting with the Walsh, but later decided to unify together against our wishes. All six of us met at one of the attorney's office and all of the attorneys were gathered together on one side of the room and we were on the other side. They presented their unified position that no meeting with Walsh was going to happen. We then fired all of them on the spot and decided to go it alone.

One and a half years had already passed and our defense attorneys still did not have command of the facts of the case even though they had ample time to review discovery materials. They had not scheduled a single interview with a witness. We also had numerous discussions and meetings with them over the pertinent facts, both individually and as a group. We kept very detailed records of our business activities over approximately two years. We chronicled our weekly business activities in what we called "corporate activity reports". These reports, which was part of discovery, outlined sales and marketing activities, product demonstrations with law enforcement agencies around the country including DHS, DOJ, and NYPD, IRP's activities associated with seeking investment capital, interactions with law enforcement personnel at various agencies, interactions with staffing companies, meetings with members of Congress and much more. These reports and associated emails substantiated our claims of innocence and were included as part of the proffer we provided to U.S. Attorney John Walsh and Assistant U.S. Attorney Matthew Kirsch. The government completely ignored all of this evidence and maliciously pursued prosecution against us. Our attorneys could and should have used this information to prepare for our meeting with the U.S. Attorney. It appears that they felt we would still negotiate a plea deal even though we had told them under no circumstances whatsoever would we plea to any crime that we did not commit. It would not have mattered if the government was offering probation with no prison time. We were innocent!

I would suggest to anyone not to blindly trust in your attorney. Make them accountable to explain what they have to prove, how they are going to prove it and why they are using a particular strategy. Make sure they have command of all of the issues and facts. It is your life, not theirs, that is threatened.