

# DIGITAL JOURNAL

## Was Fear a Factor When Jury Decided IRP6 Case, Ponders Advocacy Group, A Just Cause

March 05, 2014

The IRP6 case concerns an African-American company (IRP Solutions Corporation) in Colorado that developed the Case Investigative Life Cycle (CILC) criminal investigations software for federal, state, and local law enforcement. The IRP6 (Kendrick Barnes, Gary L Walker, Demetrius K. Harper, Clinton A Stewart, David A Zirpolo and David A Banks) were convicted in 2011 after being accused of mail and wire fraud. (D. Ct. No. 1:09-CR-00266-CMA). The IRP6 have been incarcerated for over 18 months in federal prison in Florence, Colorado while their case is under appeal.

A Just Cause is an advocacy group that continues to investigate the case of the IRP6. “The more A Just Cause digs into the case of the IRP6, the more it seems there is to investigate”, states Sam Thurman, A Just Cause. “A Just Cause is reviewing every aspect of this case, and our most recent findings point to questions regarding the jury instructions regarding a mistrial”, Thurman adds.

Court records show that jurors in the IRP6 case were cautioned of the consequences of a mistrial. “While the judge was giving instructions about the use of electronic devices and social media, it seems that she suggested that the case could not end in a mistrial”, asserts Thurman. “The instructions seem to go outside the scope of discussion of electronics, social media and blogs, and levies an undue burden on the jurors that a mistrial is not an option”, argues Thurman.

Court records show that Federal Judge Christine Arguello argued against a mistrial. “Violation of this (jury) instruction could cause a mistrial in this case, meaning that all of the efforts that we have gone through up to this point here and what the lawyers and the defendants have done in this case would be for naught”, stated Judge Christine Arguello. “It would have been wasted, and we would have to start all over again with a new trial before a new jury. And if you are the cause of a mistrial by violating my order, you could be subject to paying all of the costs of these proceedings, and you could be punished with contempt of court. So this is very serious”, states Arguello. (D. Ct. No. 1:09-CR-00266-CMA, 26 September 2011).

“When a judge lays the foundation that seems to give the jury the impression that they must return a verdict or suffer the consequences of contempt or having to pay court costs, one wonders if that doesn’t create a sense of fear, resulting in a problem with how the process of justice should proceed”, states Thurman. “There is a growing movement in this country to make jurors aware that they can vote their conscience, and that act in and of itself might result in a mistrial; that’s the jurors right”, Thurman adds. “If a juror feels that something doesn’t add up, he/she

does not have to return a guilty verdict, but more importantly, that juror has a constitutional right to nullify an unjust law”, Thurman concludes.

“Every juror has the power to say “not guilty” if they disagree with the law. Every juror has the power to judge the facts of the case, the law itself, and whether or not the law is being misapplied. This is the power of jury nullification, a centuries-old tradition that goes back to the Magna Carta. A single juror with a conscience can send a peaceful man home to his family instead of to a cage”, James Babb (Jury Rights Project, November 2013, <http://juryrightsproject.com/>).

A Cato Institute analysis found, “The first principles that undergird the jury trial proceeding in criminal cases are so long-standing that many people have lost sight of their original function and significance. For example, a judge cannot stop a criminal trial and direct a verdict for the state even where there is overwhelming evidence of guilt. In America, such a move would be seen as high-handed and improper.” (Tim Lynch, Cato Institute: When Judges Overreach, <http://www.cato.org/publications/commentary/when-judges-overreach>).

“Just as the Cato Institute writing suggests that ‘a judge cannot stop a criminal trial and direct a verdict’, a judge should not be allowed to suggest to a jury that contempt charges and fines are possible if he/she is the cause of a mistrial”, argues Thurman. “Such suggestions to a jury by a judge would make one question if the jury is left with any options to go against the grain”, Thurman states. “In reading the transcript of the IRP6 case, one questions if the subject of a mistrial wasn’t taken out of context which led to disregarding mistrial as an option all together; you have to look at how the message was conveyed”, ponders Thurman.

“The ability to ignore a judge’s instructions is one of the most important parts of jury duty. It derives directly from English common law and the landmark case of Peter Zenger in 1734. If a jury is bound to follow the judge’s instructions, they become, in effect, nothing more than government employees rather than free people with a duty to hold the government as well as citizens accountable” (Dean Weingarten, November 2013, <http://www.thetruthaboutguns.com/2013/11/dean-weingarten/jury-nullification-a-tool-for-advancing-gun-rights/>)

“A Just Cause firmly believes that rule of law is vitally important in the judicial process, but the system should not allow for manipulation within the court of law”, suggests Thurman. “We must fight for reforms that result in consistent and equitable application of the law within the courts where we argue, and hold all parties accountable for fair proceedings”, Thurman concludes.

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). Appellate Court panel includes the Honorable Senior Judge Bobby R. Baldock, Honorable Judge Harris L. Hartz, and Honorable Judge Jerome A. Holmes.