Overview

A Just Cause is asking members of Congress to join with them in requesting that the Department of Justice file a Rule 48(a) motion to set aside the verdict and dismiss a 2009 indictment in a District of Colorado case no. 09-cr-00266-CMA (hereafter, "IRP6 case") where five men (David A. Banks, Kendrick Barnes, Clinton Stewart, David Zirpolo and Demetrius Harper) continue languishing unjustly in prison since July 2012 on harsh sentences of 7 to 11 years. The request for dismissal is based not only on a pattern of outrageous government misconduct that rendered criminal proceedings fundamentally unfair but also because the criminal prosecution was based on a failure to pay corporate debt, not an actual federal crime.

According to a team of House Judiciary Committee attorneys, a former federal appeals judge and other experts, the case was a civil matter, not criminal, and the allegations in the indictment didn't support a federal crime. Without sufficient evidence to warrant charges based on the IRP6's business activities, the FBI, Colorado U.S. Attorneys and IRS used the corporate debt of IRP Solutions to improperly empanel a grand jury for the purpose of secretly investigating Pastor Rose M. Banks, the mother of IRP Solutions COO David Banks and mother-in-law of IRP President, Gary L. Walker. After failing to gain a money laundering indictment against Pastor Banks, the outrageous government conduct continued when the prosecutor manufactured a new theory based on the IRP's debt and maliciously prosecuted, convicted and wrongly-imprisoned the IRP executives. The trial and appeal was infected with prosecutorial and judicial misconduct which resulted in the filing of three judicial complaints, one of which was from an attorney.

Outrageous government misconduct includes (1) The prosecutor, knowing the defendants were innocent, intentionally made a criminal case out of a civil business matter and pursued malicious prosecution against them, (2) the prosecutor made false statements to grand juries to get indictment, (3) the prosecutor and judge unlawfully prevented testimony from key defense expert witnesses that could have proven the IRP6 were not guilty, (4) the trial judge violated the six pro se defendants 5th Amendment rights against self-incrimination by coercing them to testify against their will and then violated their 5th Amendment due process rights by concealing or destroying the transcript, thereby denying the defendant proper consideration of their coercion claims on appeal, (5) the prosecutor unlawfully used the grand jury process as a subterfuge to secretly investigate and prosecute the IRP6 defendants Pastor, and (6) the 10th Circuit Court of Appeals disregarded the law, the government and trial judge misconduct to affirm the conviction.

The DOJ has a history of Rule 48(a) dismissal of indictments in cases of egregious official misconduct or nefarious tactics used by the government to win convictions or gain indictments. See case of U.S. Senator Theodore Stevens (Dist. of Columbia case 09-cr-231-EGS, Doc. 324, where the Attorney General filed a 48(a) motion to dismiss indictment with prejudice approved by court after prosecutors intentionally concealed exculpatory evidence and obstructed favorable testimony that could have exonerated Senator Stevens). See also United States v. Samango, 607 F.2d 877 (9th Cir. 1979) (indictment dismissed because prosecutor's tactics in securing indictment were a threat to the integrity of the judicial process); United States v. Fields 475 F.Supp. 903 (DC Cir. 1979) (Second indictment dismissed based on the government's bad faith use of a first grand jury as a subterfuge to gather evidence against a non-cooperating defendant that was not the primary target).

In 2009 the Attorney General approved the filing of a Rule 48(a) Motion to Set Aside the Verdict and Dismiss the Indictment with Prejudice in the wrongful conviction of U.S. Senator Theodore ("Ted") Stevens due to a pattern of government misconduct to withhold relevant information from the defense and the jury that could have proven Senator Stevens was not guilty (See U.S.D.C., District of Columbia, case no. 09-cr-231(EGS), Doc. 324). The government acknowledged that they provided "inaccurate" details in court filings about exculpatory information (Doc. 269, Govt. Opposition to Motion for New Trial). The Stevens motion said that "given the facts," a new trial would be in the interests of justice, but that "based on the totality of circumstances and the interest of justice," the government would not seek a new trial. The outrageous government misconduct that led to the wrongful conviction in the IRP6 case was far worse than Senator Stevens and deserves a Rule 48(a) dismissal, albeit, before a different judge, because the trial judge was implicated in misconduct. We start with the facts, evidence and conclusions by numerous experts who reviewed the IRP6 case, including a prominent former federal appeals judge, that the IRP6 case was a civil matter, not criminal.

The IRP6 Case Was a Civil Matter Turned Criminal by the Prosecutor

First and foremost, the IRP6 should not have been prosecuted because the case was not criminal, it was a civil matter concerning business debt. IRP Solutions executives, in anticipation of gaining business with the Department of Homeland Security and the New York City Police Department, hired temporary software developers and support staff, including former law enforcement professionals, through staffing companies and as independent contractors to make modifications to their Case Investigative Life Cycle (CILC, pronounced "silk") software at the request of these agencies. Although both DHS and NYPD, like many other law enforcement agencies, praised CILC's capabilities, they wanted to incorporate some of their data and investigative processes for a "test drive" before they commit to a purchase. To gain DHS & NYPD's business, the IRP executives agreed and decided to bring on additional software developers and support staff through staffing companies to assist with the modifications.

While the IRP executives where in the middle of making these modifications, the FBI was undermining IRP's sales efforts with a criminal investigation and raid on their business that interfered with their ability to gain a contract.

A former federal appeals judge, a former House & Senate Judiciary Committee attorney, a current team of House Judiciary Committee lawyers and other experts who have reviewed the IRP6 case, all conclude that the case was a civil matter

1) The head of the FBI in Denver said the staffing matter with IRP6 would "best be handled civilly." See Exhibit 1 - (http://bit.ly/2ibF7Qp)

2) The lead FBI agent, John Smith, confirmed twice in court (Nov. 19, 2010 & Oct. 13, 2011) that if IRP6 had paid their debts there would not have been a criminal case.

3) Former federal appeals judge H. Lee Sarokin, who exhaustively reviewed the case and trial transcripts, concluded that the IRP6 were imprisoned from "failing to pay corporate debts." See Exhibit 2 - Washington Post Article (www.wapo.st/29jXqSC)

4) Former federal prosecutor and retired House and Senate Judiciary Committee attorney Ron LeGrand said on A Just Cause's Blog Talk radio program that he was "hurt" and "disappointed" on how the IRP6

case was handled and "IF!" "Big IF! If there was case at all it was a civil case and should have been handled as such."

5) Dr. Alan Bean, Executive Director of the Friends of Justice, who conducted a six-month investigation into the case and interview dozens of witnesses, said "The IRP6 case departs from the typical failed-scam scenario for the simplest of reasons: the government's case can't stand up to scrutiny. The fraud alleged in the indictment is a mirage." See Exhibit 17 - (http://bit.ly/2gGWGue)

6) A grand juror pointed out in the 2007 IRP6 grand jury in Denver (no. 06-01): "But if I don't pay somebody for the work they've done, that's not a federal crime."

NEFARIOUS GOVERNMENT TACTICS TO OBTAIN INDICTMENT IN IRP6 CASE

Assistant United States Attorney Matthew T. Kirsch had insufficient evidence to indict the IRP6 but misused the grand jury as a subterfuge to secretly investigate Pastor Rose M. Banks of the Colorado Springs Fellowship Church (CSFC) and her family. The IRP Solutions Corporation in Colorado Springs, Colorado was raided on February 9, 2005. On February 12, 2005, the Colorado Springs Gazette Telegraph Newspaper, after speaking with the government, reported that the IRP executives were "suspected of stealing" from staffing companies by telling them "temporary labor was needed to develop software that WOULD BE SOLD to the Federal Bureau of Prisons, Department of Homeland Security, the New York Police Department and other agencies." Please pay special attention the Gazette's reporting that the software "WOULD BE SOLD." Moreover, the search warrant affidavit said IRP was a "purported software development company" and authorized the seizure of financial and other business documents associated with IRP's dealings with staffing companies. Clearly, from the Gazette article and the search warrant affidavit, the government was proceeding on a manufactured theory there was no software and that IRP was a front-organization that existed solely for the purpose of stealing money from staffing companies. The evidence from court documents shows, however, that the government knew from the beginning none of this was true, yet they forged ahead with a malicious prosecution based on an ulterior motive.

See Exhibit 12 - Gazette article (http://bit.ly/2iSRZhg)

The search warrant affidavit highlights an interview where FBI special agent Melissa McRae for the FBI's Office of the Chief Information Officer says she attended an October 28, 2004 demonstration of IRP's Case Investigative Life Cycle (CILC, pronounced "silk") and felt it was "suitable" for use in an FBI field office. Weeks prior to raiding IRP Solutions, Gary Hillbarry, the former head of the Denver division of the Immigration and Customs Enforcement, sent a letter (affidavit) to lead FBI agent John Smith stating that he and two other former supervisory special agents of the FBI who had been working as independent contractors with IRP Solutions, "decided that IRP Solutions had a viable law enforcement product and appeared to be moving forward to acquire state and federal law enforcement contracts." As you will find out later in this dossier, AUSA Kirsch was aware of IRP business activities with law enforcement agencies.

Fully aware of the legitimacy of IRP Solutions and their business activities, the viability of the CILC software and by their own admission to the Gazette that CILC "WOULD BE SOLD" to large law enforcement agencies, the FBI still raided IRP Solutions with a warrant that stated IRP was a "purported software development company." The fruits of the search would confirm what Kirsch already knew, IRP

had incurred debt from staffing companies in anticipation of gaining a government contract with DHS, NYPD or some other law enforcement agency and had signed a contract for staffing services provided by each staffing company with terms agreed upon in writing by the staffing company. But as the 2007 grand jury transcripts would show, IRP Solutions was not the real target of Kirsch's investigation. Kirsch was using the IRP6 case as a ruse to empanel a grand jury for the purpose of secretly investigating Pastor Banks and the Colorado Springs Fellowship Church. A fact confirmed by grand jury foreman Cynthia Haid where she said in response to Kirsch's question about who the target of the investigation was. Haid responded "Rose Banks, David Banks, of course Lawanna Clark (Pastor Banks' daughter)." See Exhibit 18 – Excerpt from transcript (http://bit.ly/2wdMIJm)

The facts and evidence show that approximately 42 people from staffing companies worked at IRP Solutions, 20 of whom were from the church and were given opportunities to work at IRP by its executives. The other 22 were provided by staffing companies and were not known to the IRP executives or affiliated with the church, Kirsch didn't subpoena any of them to testify before the grand jury because his target was Pastor Banks, her family and the church.

Grand jury transcripts show that Kirsch was determined to build an indictment against Pastor Banks by using the IRP6 case as subterfuge to do so. Kirsch's wild theory was that the IRP6, all of whom faithfully attended CSFC for decades, were getting kickbacks from church members working at the business and laundering the money through the church for Pastor Banks. There was actually a diagram presented to the grand jury showing money flowing from staffing employees through the executives into the church. Kirsch's kickback theory was absurd because if the IRP6 devised a scheme to receive kickbacks from church members working at IRP, what would be their motivation to incur a substantial amount of excess business debt from hiring 22 other staffing company employees they couldn't financially benefit from? IRP executives didn't have access to payroll money because staffing companies cut paychecks directly to their employees. As Kirsch pointed out in his opening statement to the jury, the IRP6 were not motivated by money because none of them got "fabulously wealthy" from what the government claims was $5 million in staffing debt (generally 25%-50% margin billed to IRP by staffing company on top of payroll). Again, because there was insufficient evidence to indict the IRP6 for their legitimate business activities, Kirsch targeted Pastor Banks and the church, which was exposed in the 2007 grand jury.

Grand jury transcripts show parishioners, Pastor Banks' daughter, Lawanna Banks Clark and Clark's husband, Amos, were among the parishioners repeatedly questioned about Pastor Banks and the church. Parishioners faced questions about whether the church was a cult and if parishioners deposited or sign over their paychecks to the church. The government took issue with Pastor Banks, who is the mother of COO David Banks and mother-in-law of President/CEO Gary Walker, joining the IRP6 for Saturday meetings to share the progress of what can only be characterized as a family-based technology company. The only white IRP executive, David Zirpolo (IRP6), who has attended the church for over 20 years, was told he was not a target of the IRP investigation and was subpoenaed by Kirsch to testify before the grand jury where he was asked about Pastor Banks attending Saturday business meetings.

When asked by the prosecutor if business was discussed in the Saturday meeting, Zirpolo responded, "Probably, but for the most part when you meet with a spiritual advisor, she helps advise you on what you should do and how you should do it in your life. I met with my pastor before those meetings. She had just helped me through the death of my mother." Zirpolo recalls that he was asked by a grand juror if Pastor Banks was not involved in this church or the company, would he be willing to go into debt to

keep the company afloat. Zirpolo responded, "Absolutely. This (speaking about IRP Solutions) has nothing to do with my pastor or my church. I would have done this if I were not in Colorado."

Zirpolo was asked, based on his 20 years of working in the software industry, why he and the other IRP executives continued incurring debt in anticipation of a sale. Zirpolo recalls telling the grand jury that "in corporate America, when senior executives of a potential client are praising your product and telling you they have to have your software and are repeatedly asking for modifications to test-drive the software, you are virtually guaranteed to gain their business." Zirpolo further explained to the grand jury that one sale of CILC that they were anticipating any day would have paid all the staffing debt and put money in the bank. Zirpolo, deeply-concerned that the government would withhold the truth from the grand jury, took out a binder with numerous documents showing that the company and its executives were not engaged in any criminal activity. As he was being aggressively ushered out of the room, Zirpolo asked the grand jurors if they wanted to see proof of their innocence. Grand jurors raised their hands and the government certainly provided it to them for their review. Zirpolo, who Kirsch had told was not a target, now became a target and would be vindictively indicted later. Kirsch wouldn't gain an indictment from the 2007 grand jury because as one grand juror wisely pointed out: "But if I don't pay somebody for the work they've done, that's not a federal crime."

One of the most disturbing and unlawful tactics used by AUSA Kirsch and proved he was using the grand jury to target Pastor Banks and the church, was illegally acquiring access to church and parishioner banking records without a subpoena. Out of the 18000 pages of discovery, 9000 were church and parishioner banking records. The 2007 grand jury, who obviously had not issued a subpoena for church records, asked lead FBI agent John Smith where he got the banking records. Smith, obviously lying, told the grand jury he obtained them by "subpoena." Court documents, however, proved Smith was lying as fax header records show parishioner and/or church banking records were obtained as early as 2003, four years prior to the 2007 grand jury.

Kirsch was using the IRS as part of its investigation and illegally accessed church banking records, and in doing so, violated IRC Section 7611 of the federal tax code. IRC 7611 requires the IRS to notify the church about interest in their records and give the church and opportunity to respond. A civil suit was filed by members of the church in 2010 in the District of Colorado for violation of their financial right to privacy but financial difficulties. See Exhibit 26 - Banks, et. al v. DOJ, case no. 10-cv-01582-MSK-MJW. (http://bit.ly/2xtHgBv) For some strange reason, many judges in the District of Colorado recused themselves and the case was reassigned numerous times. When IRP6 attorneys filed a motion requesting to view the actual, physical subpoena used access church and parishioner records, AUSA Kirsch vigorously opposed and, with hubris, excused his unlawful conduct by saying "even if the records were improperly obtained, how would it be relevant in this case. See Exhibit 19 - Dist. Colo case no. 09-cr-00266-CMA, Doc. 272, pp. 41-42 (http://bit.ly/2flpma2)

Although all this evidence showed that the U.S. Attorney John Walsh and AUSA Kirsch were targeting Pastor Banks and the church, on June 6, 2010, the Colorado U.S. Attorney's office through their spokesman Jeff Dorschner, told Colorado Springs ABC affiliate (KRDO-TV) that the church was not the target of the investigation. U.S. Senator Orrin Hatch (R-UT) sent a letter of inquiry to the Inspector General of the Treasury Department to investigate the matter but there has been no public release of the results of the investigation. See Exhibit 25 – Letter from Senator Hatch (http://bit.ly/2xOi89D)

Even with Kirsch's pervasive misconduct, the 2007 grand jury found no probable cause to indict Pastor Banks or the IRP executives. Kirsch immediately turned his attention to Pastor Banks' daughter, Lawanna Clark, and got the grand jury to indict her on three counts of lying to the grand jury.

The Malicious Prosecution and Imprisonment of Pastor Banks' Innocent Daughter, Lawanna Clark

District of Colorado case 09-CR-00151-CMA

Lawanna Clark was subpoenaed before the grand jury where she answered 285 questions, which makes it highly improbable that she would lie on 3 occasions and answer truthfully 282 times. Clark went to trial and the jury found her guilty on a single count for allegedly lying about making two withdrawals from the IRP bank account which she was an authorized signer on. It wouldn't make sense for Clark to lie about withdrawing money from a bank account that she was an authorized signer on but Kirsch obviously wanted to prosecute her. Clark told the grand jury that the withdrawals were made by her sister, Yolanda Walker, the wife of IRP CEO Gary Walker, who she authorized to sign the bank withdrawal slips on her behalf to handle company business. Kirsch, without having a handwriting expert verify the signatures on the bank withdrawal slips, simply told the jury it was Clark's signature on the slips and had the jurors do a visual comparison against the bank signature card. After trial, to prove Clark's innocence, both Clark and her sister Yolanda provided handwriting samples to handwriting expert Judith Housley of New Mexico and Ms. Housley concluded that Clark was telling the truth and Yolanda had signed the bank withdrawal slips. Housley credentials were stellar and she had been used by the U.S. Attorney on other cases.

Irrespective of Housley's findings, Kirsch didn't want to hear anything about Clark's innocence and argued to federal judge Christine Arguello that because Clark didn't present the handwriting evidence during trial she should be imprisoned for 18 months. Judge Arguello didn't care about Clark's innocence or the fact she had no criminal record and sent her to prison for 6 months. Kirsch, with Arguello's help, had convicted Pastor Banks' innocent daughter and sent her to prison. Kirsch now would manufacture a new theory to go after Pastor Banks' son, David Banks, COO of IRP Solutions, and other executives of IRP Solutions, including David Zirpolo, who was told he was not a target in the 2007 grand jury (06-01).

Unable to gain a money laundering conviction against Pastor Banks, Colorado U.S. Attorney John Walsh and Assistant United States Attorney Matthew Kirsch quickly changed tactics and personnel to pursue a consolation indictment against David Banks, Zirpolo and four other IRP executives. FBI agent John Smith was removed as the lead agent and replaced with a more senior FBI agent named Robert Moen. Kirsch was now focusing on using the catch-all mail and wire fraud statutes and crafted a theory that the IRP6 had induced staffing companies into extending credit by lying about having a large government contract. Knowing that indictments are quick and easy for prosecutors who control the entire process, in 2009, Kirsch took his mail and wire fraud case to a grand jury with a single witness, FBI Agent Robert Moen, who certainly wasn't going to provide any favorable evidence as Zirpolo had done in the first grand jury.

Acting in bad faith and knowing the IRP6 currently had "impending" contracts with the City of Philadelphia , Kirsch and Moen spun the facts about IRP6's business to fit Kirsch's new theory that the staffing companies only extended credit to IRP because they were so enamored by alleged lying statements made by the IRP executives about a having a large government contract, they simply lost all business sense and blindly extended credit and agreed to provide staffing and pay rolling services to IRP.

False Statements by Prosecutor to Gain Indictment with Grand Jury in 2009 Warrants Rule 48(a) Dismissal of Indictment

As mentioned in the Stevens case above, the government admitted to providing "inaccurate" information about a key government witness' statement that could have exonerated Senator Stevens. In the IRP6 case, with no legitimate path to criminally prosecute the IRP6 and after failing to convince a 2007 grand jury of false claims that the IRP6 were laundering money to Pastor Banks through their church, federal prosecutor Matthew T. Kirsch, acting in bad faith, presented inaccurate, or what could be considered patently false information to a 2009 grand jury (no. 09-01) that IRP's Case Investigative Life Cycle (CILC, pronounced "silk') software was nothing more than a sham used by the IRP6 to dupe staffing companies into doing business with them.

What makes Kirsch and the FBI's request for an indictment before a May 2009 grand jury so sinister is that they actually knew that in February 2009, IRP Solutions had "impending" contracts with two Philadelphia law enforcement agencies (Philadelphia Police Department and Inspector General's Office) and took affirmative steps to ruin IRP's business with Philadelphia because it would eviscerate Kirsch's central allegation -- that the IRP6 had lied about their business prospects (with law enforcement agencies like Philadelphia) to get staffing companies to help work on their CILC software and that CILC was scam. Kirsch engaged in gross misconduct when he intentionally ruined IRP's business with Philly by contacting Philly Inspector General Amy Kurland and telling her that an indictment was coming four months before ever asking a grand jury for a true bill. Evidence of IRP's impending business with Philly can be seen in emails between IRP COO David Banks and various high-level Philly officials, including the Deputy Mayor of Justice and Public Safety and Director of Information Technology for Philly PD. See Exhibit 3 – (http://bit.ly/2fOxbEJ) Former federal appeals Judge H. Lee Sarokin discussed the government's deceit in the Washington Post. See Exhibit 2 - (www.wapo.st/29jXqSC)

"What amazed me about the case," Sarokin said, "was the theory of the government that this (software) program they were developing was a scam. All the proof in the case goes the opposite way," asserted Sarokin. Judge Sarokin also discussed the government's incomprehensible theory in his letter to President Obama seeking clemency for the IRP6.

"The prosecution argued to the jury what I consider to be two wholly inconsistent theories," Sarokin wrote to Obama. "First, that the petitioners lied about their prospects for business to get staffing companies to work on their software program, and second, that the program was a scam," added Sarokin. Any reasonable analysis of those two theories lying side-by-side would and should have led to the inevitable conclusion that there was no evidence of criminal intent on part of the petitioners," said Sarokin. Sarokin then presented President Obama with a series of questions that renders the inconsistent charges of the government "absurd."

The maliciousness of the government's deception leading up to the indictment, wrongful prosecution and conviction of the IRP6 cannot be understated and is supported by numerous facts, including an FBI agent making false statements to federal magistrate judge Craig Schaffer and disregarding an affidavit from a retired federal agent working as an independent contractor with IRP Solutions to obtain a search warrant under false pretenses to raid IRP's corporate office.

A few weeks prior to submitting a search warrant affidavit to Judge Schaffer under false pretenses, Gary Hillbarry, the former head of the Denver Division of Immigration and Customs Enforcement sent an

affidavit to the FBI stating that he and two other recently retired supervisory special agents (John Epke & Dwayne Fuselier) who had been working for a year as independent contractors with IRP Solutions "decided that IRP Solutions had a viable law enforcement product and appeared to be moving forward to acquire state and federal law enforcement contracts." With full knowledge of Hillbarry's affidavit and knowledge that three retired federal agents had been providing subject matter expertise to IRP on CILC for a year, the FBI still submitted a search warrant affidavit to Judge Schaffer stating that IRP Solutions was a "purported software development company."

See Exhibit 4 - Hillbarry's affidavit (http://bit.ly/2hS2JNX)

See Exhibit 5 - Independent contractor agreement for former federal agents (http://bit.ly/2j5Vj5y)

See Exhibit 6 - Search Warrant Affidavit (http://bit.ly/2xTmbxf)

Prior to the February 9, 2005 raid, Kirsch and the FBI were aware that for approximately 18 months, IRP executives were involved in numerous meetings and software demonstrations in Washington, DC with DHS' Consolidated Enforcement Environment (CEE) who was responsible for DHS information technology modernization for investigative case management systems. IRP's first software demonstration was in August 2003 and they were involved in numerous follow-up meetings and demonstrations up until December 2004, which culminated into a $100 million-dollar quote for two CILC software modules being provided at the request of DHS officials for inclusion into their 2005 budget.

On October 28, 2004, three to four months prior to receiving Hillbarry's affidavit and raiding IRP Solutions, Kirsch and the FBI were aware that IRP had been summoned to Washington, DC by DHS officials to demonstrate CILC to the joint DHS/DOJ working group for the Federal Investigative Case Management System (FICMS) initiative where four FBI officials from the Office of the FBI's Chief Information Officer were in attendance with officials from Secret Service, U.S. Marshals, Immigration and Customs Enforcement and Border Patrol. This meeting was documented in the search warrant affidavit where FBI Special Agent Melissa McRae confirms in an FBI interview, that she was present to see CILC and thought the software was suitable for use in FBI field offices.

On December 7, 2004, DHS requested and received two pricing quotes: (1) CILC Central Case Management module $93.5 million, (2) Confidential Informant Module - $7.4 million.

1) In an email to IRP, former Chief of Detectives for Denver Police Department (DPD), Dan O'hayre said DPD had a "great deal of interest" in CILC and that the Detective Division "unite in praise to the IRP staff and their software product."

2) According to the search warrant affidavit, after attending the joint DHS/DOJ demonstration of CILC for the FICMS initiative, Special Agent Melissa McRae of the FBIs' Office of the Chief Information Officer, stated that CILC was "suitable" for use in FBI field offices.

3) Paul Trans of the Department of Homeland Security, whose primary goal was to find software to modernize DHS case management for 22 agencies, testified at the trial of the IRP6 that DHS was "interested" in CILC because "the software had a lot of features that law enforcement and case agents can really use."

4) Sergeant John Shannon, NYPD's former Commanding Officer of the Investigative Liaison Unit and responsible for reviewing and recommending criminal investigations technology to NYPD's Detective

Bureau who worked for IRP Solutions, testified at the IRP6 trial that CILC was "cutting edge", "did a fantastic job of rationalizing the investigative process", "encompassed all of the contributors along the entire lifecycle of the investigation" and that "it was the best software [he'd] ever seen."

5) Sergeant Bob Davis of the San Diego Police Department received a demonstration of CILC and wrote an article in the February 2004 edition of Police Magazine, stating that CILC is "powerful enough to become your agency's primary computerized investigative case management tool."

See Exhibit 27 - (http://bit.ly/2hcNdsx)

6) In 2004, Law Enforcement Technology Magazine published a lengthy article on CILC.

See Exhibit 16 – (http://bit.ly/2xsp19D)

7) Lorne Cramer, former chief of the Colorado Springs Police Department and former LAPD Commander stated that he was "impressed" with CILC and that IRP Solutions has "developed an innovative and timely solution" for law enforcement agencies.

8) Former Canon City, Colorado police chief Daniel Schull stated in an email that he was "impressed with the easiness of using" the CILC software and that he would "highly recommend it."

9) In the 2007 college textbook, "Criminal Investigation (8th Edition), authors Wayne Bennett and Karen Hess said that CILC "meets the standards described in the [DOJ's] National Institute of Justice Tract, "Crime Scene Investigation: A Guide to Law Enforcement."

See Exhibit 14 – (http://bit.ly/2xsJ3aS)

10) According to a 2009 FBI interview report, Philadelphia Police Department's (PPD) Director of Information Technology, Gerry Cardenas stated that CILC "looked exactly like what...PPD was looking to purchase" and that "PPD was very close to having the product installed prior to...discovery of the (FBI) investigation."

11) Emails in 2009 show that after agreeing to terms with IRP to deliver CILC, Philadelphia's Office of the Inspector General (OIG), Philly Inspector General Amy Kurland, a former federal prosecutor, and Lorelei Larson, chief investigator of OIG were very excited about CILC. "I will make arrangements with the Mayor's (Michael Nutter) officer for a thank you to [IRP Solutions]," wrote Kurland. "Can we please get this moving as soon as possible," Kurland added. "All of the OIG is very excited about this venture," said Larson.

12) Philadelphia's Deputy Mayor of Justice and Public Safety, Everett Gillison, sent an email to IRP Solutions COO David Banks (IRP6) stating: I look forward to getting an update on how [CILC] might integrate well with our plans for the police."

As Judge Sarokin pointed out in the Huffington Post, "the government's contention that their business was nothing but a scam defies reality" and explained the absurdity of the government's charges.

"If a scam," Sarokin said, "would you single out law enforcement agencies as your sole customers?" "Would you work for years developing the program? Would you leave other gainful employment to join the venture?" questioned Sarokin. "Would you hire former law enforcement personnel to work on the project? Would you spend your own time and money for years improving [the software? Would you

personally guarantee the corporate debts and risk your own financial security?" Sarokin continued. "If a scam, wouldn't the perpetrators make some money out of it? The only possible way that the defendants could profit was if the company was a success," Sarokin explained.

With full knowledge of IRP Solutions legitimate business activities, the hard work of the IRP executives to develop, market and sell CILC to DHS, NYPD and many other law enforcement agencies, an impending contract with the City of Philadelphia, high praise about CILC from many senior law enforcement officials, articles from Police Magazine See Exhibit 15 - (http://bit.ly/2wn8chQ) and Law Enforcement Technology Magazine (Exhibit 16 - http://bit.ly/2xspl9D), the Colorado U.S. Attorney's Office presented false information to the judges, grand juries and the trial jury to obtain a search warrant and indictment under false pretenses and maliciously prosecuted and wrongly-imprisoned six innocent men, ruined their small software company and brought desperate pain and suffering to their families.

In United States v. Russell, 411 U.S. 423 (1973), the U.S. Supreme Court acknowledged that when government officials engage in such outrageous conduct as in the IRP6 case, "that due process principles would absolute bar the government from invoking judicial processes to obtain a conviction." SCOTUS also said that a proceeding is fundamentally unfair under the due process clause if "it is shocking to the universal sense of justice." id at 432.

The actions of the FBI and Colorado U.S. Attorney's Office can only be characterized as a witch-hunt that rendered criminal proceedings against the IRP6 fundamentally unfair and violated their due process. There is no doubt this the type of intolerable government misconduct that gives rise to a 5th Amendment violation of due process requires dismissal of an indictment. But there is still more outrageous misconduct that occurred at trial where there is indisputable evidence that AUSA Kirsch intentionally took advantage of pro se defendants by misrepresenting that they had violated a discovery statute that warranted exclusion of two critical expert witnesses. Instead of trial Judge Christine M. Arguello correcting Kirsch's violation of the law, she colluded with him to violate the law and illegally excluded the expert witnesses.

Two defense expert witnesses from the staffing industry (Andrew Albarelle & Kelli Baucom) were on the IRP6 witness list and prepared to testify for the IRP6 and completely refute government claims that staffing companies were induced or even could be induced into entering into business based on optimistic statements about having a large government contract. The experts were going to also refute claims by the government that working multiple information technology projects simultaneously and billing 8 hours on each project equates to a scheme of double-billing. AUSA Kirsch was clearly aware of the damage the defense experts could do to his case because they sent letters to the Colorado U.S. Attorney's Office discussing that the IRP6 dealings with staffing companies were consistent with normal business practices of the industry. Kirsch chose to violate the law to get rid of the defense experts.

Albarelle told Walsh in his letter that he was a 15-year veteran of the staffing industry, 12 of which was in the role of Principal Executive Officer of the Remy Corporation. Albarelle explained to Walsh that he was the President of the Staffing Industry User Group for years, twice named Ernst & Young's Entrepreneur of the Year, honorably discharged from the U.S. military, a member of the FBI's Infraguard for 9 years, and most importantly, had assisted the FBI in investigations of staffing-related fraud. (See Exhibit 7 - Albarelle's letter (http://bit.ly/23TkubT & Baucom's letter at (http://bit.ly/2f7mFZ3) Exhibit 8. AUSA Kirsch was clearly threatened by Albarelle and Baucom and being aware of the destruction they

could do to his case, Kirsch chose to violate a federal statute and deny the IRP6 their Sixth Amendment right to present witnesses in their favor.

To prevent the defense experts from testifying, both Kirsch and trial Judge Christine Arguello colluded together to illegally exclude the experts from testifying by blatantly violating a federal statute related to discovery obligations. Kirsch and Arguello took advantage of the IRP6 defendants, who were representing themselves, by claiming that the IRP6 defendants failed to provide written summaries of each expert's proposed testimony in accordance with Rule 16(b)(1)(C) of the Federal Rules of Criminal Procedure, when the statute did not require them to do so.

According to Rule 16(b)(1)(C), a defendant is not required to provide the government with a written summary of their expert's proposed testimony unless they first request the same of the government AND THE GOVERNMENT COMPLIES. There was never a Rule 16 request by the defendants so the government couldn't have complied and therefore had no right to written summaries from IRP6 expert witnesses, nor a legal basis under Rule 16(b)(1)(c) to exclude them from testifying or withholding their exculpatory testimony from the jury. A judicial complaint was filed by the IRP6 against Judge Arguello and the three 10th Circuit appellate judges (Baldock, Hartz and Holmes) who also misrepresented Rule 16 in affirming the wrongful conviction. Also, a letter was sent to U.S. Supreme Court Chief Justice John Roberts pleading that the judicial complaint be transferred to another circuit due to obvious bias from the 10th Circuit to rule against the IRP6 in their opinion when there was a clear violation of the law by Kirsch and Arguello.

See Exhibit 9 to view judicial complaint appeal (http://bit.ly/2s863pr)

See Exhibit 10 to view letter to U.S. Supreme Court Chief Justice John Roberts (http://bit.ly/sfjTpr)

Here are some excerpts from IRP defense expert Andrew Albarelle's letter that not only threatened to derail Kirsch's prosecution but could have exonerated the IRP6:

"I feel most people are confused as to how Staffing and Recruiting firms actually operate and wanted to take the time to perhaps explain our business and show you that what transpired in this case is 'normal operations' in the staffing industry," Albarelle wrote to Colorado U.S. Attorney John Walsh. "Staffing firms are called upon to staff contractors on projects. We are asked or we solicit companies and then find people to match the job requirements," added Albarelle. "We pay our contractors on a 'pay rate' and charge our clients (like IRP Solutions) a 'bill rate'...We are called upon daily to decide with whom to do business with. There is no gun put to our heads and we are free to choose who we engage with anyone associated with those clients," Albarelle explained.

Albarelle then discussed the government's central, yet absurd allegation that staffing companies were "induced" into doing business with IRP based on the term “contract” and explained to Walsh that staffing companies, like any other business, extend credit based on creditworthiness, not on statements about contracts. Albarelle also discussed that it's a common practice of contract employees of staffing companies to bill full-time hours from multiple projects, which debunked the government's allegations that billing for 24 hours in a day was a fraudulent "DOUBLE-BILLING" scheme.

"In our due-diligence of companies, we have found that the term 'contract' has little to no bearing on whether we engage with that company or not," Albarelle told Walsh. "We base our decision to engage with a company on its creditworthiness, cash flow or product they are developing. Also, it is a common

practice from contractors to simultaneously work multiple contracts and charge the contracting (staffing) company, full-time hours weekly. This often occurs with full-knowledge or even encouragement by the staffing company," said Albarelle.

"I hope this letter helps explain that it is normal business practice to write-off 'bad debt' and I have shed some light that if this case moves forward there are at least 12 other corporations in the Colorado area that are guilty of the exact same business practice," said Albarelle.

The other expert, Kelli Baucom told Walsh in her letter that staffing companies need to take responsibility for their decisions to do business with IRP: "It is important to understand that there is risk involved in the staffing/recruiting business," said Baucom. "The agencies were in no way forced to conduct business with these men-they CHOSE to" and "should stop trying to place blame on these men and they should take time to re-evaluate their decision to assume the risk!" added Baucom.

Just like the DOJ prosecutors in Senator Stevens' case, AUSA Kirsch engaged in misconduct by unlawfully obstructing the presentation of exculpatory testimony from the jury which could have proved the IRP6 were not guilty. Court transcripts clearly show that AUSA Kirsch and Judge Arguello lied about the requirements of Rule 16(b)(1)(C) to six defendants who were representing themselves and unlawfully excluded their critical expert witnesses from testifying. Under the 6th Amendment Compulsory Clause and the 5th Amendment Due Process, the IRP6 had a constitutional right to present a defense and offer witnesses in their favor, which was denied to them. The U.S. Supreme Court discussed the matter in the 1988 case of Taylor v. Illinois, 484 U.S. 400 (1988):

"The right to offer witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutions to the jury so it may decide where the truth lies."

"The framers of the Constitution did not intend to commit the futile act of giving to a defendant the right to secure the attendance of witnesses whose testimony he had no right to use."

"The substantive limitation on excluding criminal defense evidence secured by the plain terms of the Compulsory Process Clause is also grounded in the general constitutional guarantee of due process...The Compulsory and Due Process Clauses thus require courts to conduct a search substantive inquiry whenever the government seeks to exclude criminal defense evidence. After all, 'few rights are more fundamental than that of an accused to present witnesses in his own defense.' The exclusion of criminal defense evidence undermines the central truth-seeking aim of our criminal justice system, because it deliberately distorts the record at the risk of misleading the jury into convicting an innocent person. Surely the paramount value our criminal justice system place on acquitting the innocent demands close scrutiny of any law preventing the jury from hearing evidence favorable to the defendant."

Tenth Circuit case law says the exclusion of an expert is not overturned "unless it is arbitrary, capricious, whimsical or manifestly unreasonable or when we are convinced that the district court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." See United States v. Nacchio, 519 F.3d 1140 (10th Cir. 2008). Judge Arguello and AUSA Kirsch blatantly violated the law but shockingly, the 10th Circuit appellate panel disregarded their own precedent, misrepresented Rule 16 in their opinion and affirmed the wrongful conviction and imprisonment of the IRP6.

Judge Arguello, Kirsch and the 10th Circuit acted in bad faith to eliminate or support the unlawful elimination of critical testimony that was material to the IRP6 defense and abdicated their responsibility to uphold the law and the Constitution.

In the case of United States v. Barajas-Chavez, 358 F.3d 1263 (10th Cir. 2004), the 10th Circuit held that the dismissal of a defendant's indictment is warranted when 1) the government acted in bad faith to eliminate a defense witness with "potentially exculpatory information," and 2) witness eliminated by the government prejudiced the defendant by depriving him of testimonial evidence that would be both material and favorable to his defense.

The 5th Amendment requires dismissal of an indictment for governmental misconduct "where the government's misconduct is so grossly shocking and so outrageous as to violate the universal sense of justice." United States v. Citro, 842 F.2d 1149, 1152 (9th Cir. 1988).

Attorney General Eric Holder filed a Rule 48(a) motion to set aside the verdict and dismiss the indictment for Senator Stevens because of outrageous government conduct by federal prosecutors who acted in bad faith to withhold exculpatory evidence from a key witness that could have resulted in the exoneration of Senator Stevens. Certainly, the IRP6 is even more deserving of the dismissal of their indictment because both the government and courts not only acted in bad faith but also overtly violated a federal statute to eliminate or allow the exclusion of two critical expert witnesses' testimony that could have exonerated the six men. "It is well-established that 'substantial governmental interference with a defense witness' [testimony] amounts to a violation of due process." United States v. Vavages, 151 F.3d 1185, 1188 (9th Cir. 1988).

Judicial Coercion and Mysterious Disappearance, Destruction and/or Concealment of Court Transcript Warrants Rule 48 Dismissal of Indictment

Former federal appeals Judge H. Lee Sarokin spoke with clear, concise wisdom concerning judicial coercion and the missing transcript in his original blog on the Huffington Post which any self-respecting, honest prosecutor in the DOJ simply cannot refute. Here's what Sarokin said in his first post:

"Defendants (IRP6) in a Colorado case, United States of America v. Banks, et al., claim, in addition to asserting their innocence, that the Fifth Amendment rights were violated when the trial judge compelled them to testify. Following a jury trial, all six defendants (five black and one white), known as the 'IRP6', were convicted of mail and wire fraud or conspiracy, were sentenced to terms of imprisonment ranging from 87 to 135 months beginning in July 2012...They represented themselves during the trial, and although they were aware of their right against self-incrimination (and named themselves on a potential witness list), they contend that the judge compelled waiver of that right. Apparently, the judge was frustrated by their failure to produce witnesses in a timely fashion, and they claim the judge said something that led them to believe that [they] had to testify in order to keep their defense open...Usually out of deference to the court handling the matter, I would not comment. However, there is one aspect of the case that intrigues me, and since this matter has been pending for a considerable period while the defendants languish in prison, I thought some general airing might be appropriate.

Resolving the issue should be a no-brainer, right? Look or listen to the transcript, read or hear what the judge said and decide whether or not defendants reasonably concluded that at least one of them had to testify. But here's the rub. There apparently is no record or transcript of the conversation available to either the defendants or the appellate court. The advocates for the defendants (a-justcause.com), who have asked me to review and comment on this matter, claim that efforts to obtain the record of the conversation between the judge and the defendants on this issue have been met variously with claims that there is no record (the reporter missed the conversation), that exists but is missing, that it existed but has been destroyed, or that "we have it but won't turn it over." They also claim that all informal and formal attempts to obtain that critical exchange between the court and the defendants have been denied either by the court reporter or the court. They advise that the relief was even denied in a separate civil suit brought against the court reporter for the turnover of the transcript.

Because there is always a danger in these matters of hearing one side, I insisted that I be furnished with the government's version of what transpired in this disputed exchange. The government's brief (U.S. Answering Brief) summarily dismisses the claim by stating, "Because nothing in the record other than the defendants own self-serving assertions supports their claims of compulsion, the exact language used by the district court during the sidebar conference is immaterial" (emphasis mine). Roughly translated, the (government's) statement should read, "There is nothing to support the defendant's position on the record, because there is no record." It is an obvious concession by the government that the record before the court of appeal does not contain evidence of what [Judge Arguello] said to the defendants, which they claim caused them to believe that they had to testify or be foreclosed from proceeding with their case...To suggest that [Judge Arguello's] exact language is immaterial is ludicrous, particularly since the court and the defendants disagree on what was said.

Certainly no judge would direct a criminal defendant to testify against his or her own will, but...the answer lies in the record, which apparently does not exist, for reasons that seem to be elusive. The case raises numerous other serious questions about the prosecution, conviction and incarceration...but my comfort level limits me to this one strange mystery: the missing transcript. The case does raise the question of why six respected businessmen would engage staffing companies to hire and pay workers for a project that (as the government contends) defendants had no intention of completing and selling. Were they just interested in increasing the level of employment in their community? Or were they merely a company whose goals were delayed in fruition, did some puffing in the process and owed money as a result?"

Judge Sarokin a Harvard law graduate and highly-respected federal appeals judge from 3rd U.S. Circuit Court of Appeals, temporarily put his appellate robe back on and dug deeper into the judicial coercion and missing transcript by reviewing entire trial record of the IRP6 case and the civil suit for the transcript. Judge Sarokin then wrote another blog in the Huffington Post that exposed the nefarious details of government misconduct. Here is what Sarokin said:

"In prior posts on this matter, I have assumed that absent a transcript of precisely what was allegedly said by [Judge Arguello] to lead these defendants to believe that they were compelled to testify, that no resolution could be made of that issue. However, after having read more of the record, the Court of Appeals (10th Circuit) has ample opportunity to accept the defendants' factual versions as true and be guided accordingly in its ruling. Here are the uncontested facts upon which the court could reach a determination that the (5th Amendment) right against self-incrimination was actually violated by [Judge Arguello] even without the critical transcript:

1. [Judge Arguello] was frustrated at the slow pace of witnesses and said 'something' to the defendants about the future of the trial (during a sidebar).

2. Immediately following the sidebar, the defendants caucused, and one of the defendants, Mr. Barnes then took the stand.

3. No inquiry was made by [Judge Arguello] regarding defendant's waiver of his right not to testify.

4. Shortly into the testimony, [Assistant U.S. Attorney Matthew T. Kirsch] wanted clarification that the defendants were going to testify in any event despite the problem producing witnesses. Clearly, he, too, was concerned about [Judge Arguello]'s comments at the sidebar and that they might have been misinterpreted as being coercive.

5. Once the issue was raised by the government, upon inquiry by [Judge Arguello] to the defendants, they were unanimous in their impression of the judge's remarks that the judge made it clear to them that if they didn't have a witness, one of them would have to testify in order to keep their defense alive. Each contemporaneous statement on the record confirms this.

6. Although [Judge Arguello] denied making such statements, she did not recall her exact language. "I don't know what my exact phrasing was."

7. The failure to have a record of that conversation must be laid at the feet of the court or the government. The absence of this critical conversation, the transcript of which was called for and

ordered that very day certainly creates justifiable suspicions. Strangely, in a separate civil suit against the court reporter, the U.S. Attorney stepped in claiming the reporter was an employee of and on government business. But even accepting Judge Jackson's find in the civil case of no skullduggery by the court, the defendants have good reason to cry "foul."

8. Mr. Banks asked to see a copy of the transcript of the bench conference before proceeding further, and [Judge Arguello] advised that 'the transcript would be provided at the end of the day." The court reporter has never (to my knowledge) through affidavit or testimony explained the absence of this entry.

9. On cross-examination of Mr. Barnes by the government, Mr. Walker objected, pleaded the 5th Amendment on "being forced to testify". When government cross-examination resumed, Mr. Barnes pled the 5th in response to every remaining question, all in presence of the jury. It is difficult to imagine anything more prejudicial.

10. Nor (to my knowledge) has the court reporter or the U.S. Attorney provided and affidavit or testimony of what they recall being said by [Judge Arguello] nor denying what the defendants claim was said by [Judge Arguello]. This omission by [AUSA Kirsch] speaks volumes.

"With all of this uncontroverted evidence, the (10th Circuit) Court of Appeals certainly has enough evidence to conclude that the right against self-incrimination indeed was, violated by [Judge Arguello]; that defendants reasonably believed that at least one of them was required to testify in order to have the defense remain open; and that they succumbed to that threat, and immediately voiced their objections. Lacking any competent evidence to rebut those claims of constitutional violations, the claim of the defendants must be recognized as valid, even without the missing entry in the transcript."

In their opinion, the 10th Circuit panel agreed with Sarokin's conclusion that they did not have the transcript or competent evidence to rebut the IRP6 defendant's coercion claims, therefore they would have to ASSUME for sake of argument that Judge Arguello actually made the coercive statement unanimously alleged by the defendants. But then the 10th Circuit panel engaged in what is probably the most outrageous judicial misconduct to protect Judge Arguello and conclude that the IRP6 defendants voluntarily testified. How? Based solely on their powers of mind-reading, clairvoyance and a fantastic creative imagination. A clairvoyant is defined as "a person who claims to have supernatural ability to perceive events beyond normal sensory context.

Agreeing with Judge Sarokin's conclusion that the appellate court had no evidence to rebut the claims of the IRP6 defendants, the 10th Circuit said in their opinion that they will ASSUME for the sake of argument that Judge Arguello made the coercive statement alleged by the codefendants. But shockingly, without the transcript of what was said to the IRP6 defendants, the 10th Circuit panel absurdly concluded that when Judge Arguello made the coercive statement she denied making, she was not actually coercing the defendants to testify but was directing the defendants to do something else, which they disregarded and voluntarily testified.

How can the 10th Circuit judges, without the transcript of what was actually said, attribute a statement to Judge Arguello she denies making because the defendants said she made it, and then say not only what Judge Arguello meant by the statement, but how the defendants perceived and reacted to the statement?

The panel showed their supernatural faculties when they perceived that during a trial (1) Judge Arguello made a coercive statement that she vehemently denies making but was alleged by the IRP6 defendants, (2) when Judge Arguello made this coercive, threatening statement she denies making, her thoughts and intentions were not to force the defendants to testify but for them to call the FBI agent sitting at prosecution's table or some other "non-defendant" witness, and (3) that when the IRP6 defendants heard Judge Arguello's coercive statement she denied making, the IRP6 defendants actually understood or should have understood what Judge Arguello was thinking and should have called the FBI agent to testify and when they didn't, the defendants obviously volunteered to testify.

You may ask how did the 10th Circuit judges come up with the wild theory that the IRP6 defendants should have called the FBI agent instead of testifying. They certainly didn't come up with it on their own. The court record reflects that AUSA Kirsch, AFTER the IRP6 had succumbed to Judge Arguello's threats, took the stand against their will and complained about being coerced, suggested and promoted the theory to Judge Arguello that the IRP6 defendants could have called the FBI agent instead of testifying. With no other possibility, the 10th Circuit panel incorporated Kirsch's suggestion with their psychic-based conclusion. Let's now summarize and paraphrase the 10th Circuit's findings:

"We, the omniscient judges of the 10th Circuit, without a transcript or a shred of competent evidence, see everything and are able to read the minds and discern the thoughts and intentions of all men. Based on our supernatural abilities, we assumed that Judge Arguello made a coercive statement alleged by the IRP6 defendants that she denied making. Then, reading from a cold-printed trial transcript void of Judge Arguello's actual statement, we perceived what Judge Arguello was thinking and meant when she made the coercive statement we attributed to her based on what was alleged by the defendants. Next, we mentally travelled back in time to the trial where we were not present, read the IRP6 defendants minds and perceived that when they heard the coercive statement we attributed to Judge Arguello, they consciously disregarded it, refused to call the FBI agent to the stand and voluntarily took the stand. Therefore, it is the findings of this omniscient panel, that Judge Arguello did not violate the IRP6 defendants 5th Amendment right against self-incrimination."

Which is more rational? Judge Sarokin's discussion of events and his conclusions or the 10th Circuit panel's psychic/clairvoyant conclusions? The judicial coercion and missing transcript was also included in the IRP6 defendant's initial judicial complaint, which is mentioned below.

This gross judicial misconduct was subject of a judicial complaint which was not taken seriously by the Chief Judge of the 10th Circuit or the Judicial Council, who dismissed the complaint stating, in essence, that without a transcript, judges using rank conjecture and clairvoyance to resolve if Judge Arguello violated the IRP6 defendants 5th Amendment rights by coercing them to testify did not support even an "inference of misconduct." The judicial complaint shows that the appellate panel disregarded the law of the 10th Circuit as well as the law of the Supreme Court where it states that claims of government/judicial misconduct cannot be fairly judged without a "verbatim transcript." It is apparent that the 10th Circuit was going to affirm the wrongful conviction and imprison the IRP6 at any cost, irrespective of the horrible misconduct by AUSA Kirsch and Judge Arguello to withhold exculpatory evidence and testimony from the jury as was done in Senator Stevens' case. See Exhibit 9 for the full judicial complaint (http://bit.ly/2s863pr)

Five of the six men of the IRP6 (David A. Banks, Clinton A. Stewart, Demetrius K. Harper, David A. Zirpolo and Kendrick Barnes) continue languishing in prison 5 years and counting after clearly being denied a fair

trial and fair appeal. The other, Gary L. Walker, after spending 5 years in prison and 9 years of proclaiming his innocence, was released from prison by Judge Arguello and AUSA Kirsch with no arguable legal basis after Walker suddenly feigned guilt in a 2255 habeas proceeding where he absurdly claimed he was now guilty because he had been under the spell/religious influence of Pastor Rose M. Banks, his mother-in-law, who Walker says not only coerced him into committing the alleged crime 12-15 years earlier but also into firing his attorney.

Kirsch had already secretly used IRP6 grand jury 06-01 as a subterfuge to investigate and prosecute Pastor Banks, but now, in 2017, Kirsch and Arguello misused Walker's new, absurd 2255 habeas petition to investigate, persecute and slander Pastor Banks. Apparently, in exchange for Walker's cooperation against Pastor Banks, he was immediately released from prison after Judge Arguello impermissibly dropped Walker's leadership enhancement as the CEO of IRP Solutions and implicitly made Pastor Banks the leader of the alleged IRP6 conspiracy. In violation of sentencing laws, Walker, the CEO, now had a shorter sentence than all other IRP6 subordinates in the small, family-based IRP Solutions Corporation while Judge Arguello permits the others to unfairly remain in prison. Judge Arguello then viciously slandered Pastor Banks from the bench. A judicial complaint – Exhibit 13 (http://bit.ly/2vmk73J) was filed against Judge Arguello by A Just Cause which is discussed below.

AUSA Kirsch and Judge Arguello Continued Using IRP6 Judicial Proceedings in 2017 as a Subterfuge to Secretly Pursue Pastor Banks

As was pointed out earlier, without a shred of evidence to support his suspicion, AUSA Kirsch abused the grand jury process under the guise of investigating IRP Solutions to secretly investigate and prosecute Pastor Banks. Let's revisit a few facts mentioned earlier and discuss the law of the Supreme Court related to prosecutorial misconduct before the grand jury.

Remember, out of 18000 pages of discovery in the IRP6 case, 9000 pages were church and parishioner banking records. When the 06-01 grand jury, who had obviously not issued a subpoena, asked lead FBI agent John Smith where he obtained the church and parishioner records, Smith said by subpoena. However, when church members inquired of their banks about their records, they were told they were not issued a subpoena for their records. Although Kirsch had illegally obtained the banking records and found zero evidence of money laundering in the church, his sinister plan was exposed when he still presented to the grand jury a diagram of money being laundered from church members through the IRP executives into the church. His obvious goal was to indict and prosecute Pastor Banks and implicate the church in criminal activity. It is highly likely that Kirsch conspired with the IRS to abuse its subpoena power to illegally gain access to church and parishioner banking records.

Four members of the U.S. Supreme Court discussed prosecutor's duty to refrain from improper methods calculated to produce a wrongful indictment and referenced the 3rd Circuit case of U.S. v. Serubo, 604 F.2d 807, 817 (1979) where DOJ prosecutors, motivated by a nefarious purpose, illegally colluded with the IRS to gather information for grand jury proceedings to obtain a wrongful indictment. See U.S. v. Williams, 504 U.S. 36, 62 (1992) (Stevens dissenting, joined by Blackmun, O'Connor and Thomas). Bad faith abuse of the grand jury process by a prosecutor to illegally use the IRS to gain access to records are grounds for dismissal of an indictment even where no actual prejudice was shown. If AUSA Kirsch wasn't operating under a sinister motive to use the IRP grand jury to target Pastor Banks, her family and the church, he would have honestly presented his case to the grand jury and legitimately used the grand jury subpoena process in 2007 to lawfully obtain church related records. Kirsch didn't have any evidence to present to the grand jury so he broke the law.

When IRP6 attorneys asked Judge Arguello to order the government to produce a copy of the actual subpoena used to get the banking records, she denied access amid vigorous arguments by Kirsch that showing the subpoena was a "slippery slope" and would expose the tactics (obviously unlawful tactics) that the government used to get the banking records. Kirsch was obviously taking steps to conceal his unlawful conduct in obtaining the records and explains his statement that "even if the records were improperly obtained, how is it that that would be relevant in this case. See Exhibit 28 - Doc 272, IRP6 case no. 09-cr-00266-CMA pp 42-47 (http://bit.ly/2fgKTUu). Discovery documents show that Kirsch was so hell bent on prosecuting Pastor Banks that he also illegally obtained banking records from another church in Colorado Springs with a similar name, specifically "The Springs Fellowship." AUSA Kirsch's laser focus on the church was irrefutable proof that he did not have a legitimate criminal case against the business dealings of IRP executives with staffing companies. So, when Walker brought his absurd

duress claims as part of his 2255 petition, Kirsch took the opportunity to justify his illegal actions. Kirsch trying to put lipstick on his gorilla of misconduct doesn't change the ugliness of his unlawful actions and the overwhelming evidence that proves the IRP6 are innocent. Now let's discuss more details related to the judicial complaint.

On July 20, 2017, a new judicial complaint was filed against Judge Arguello for abusing judicial processes for slandering Pastor Banks and her religious beliefs. The complaint explains how Judge Arguello conducted a religious inquisition of Pastor Banks based on a sudden post-conviction claim of IRP Solutions CEO Gary Walker after spending a few years in prison. Walker claims that he was under the spell or duress of Pastor Banks and she coerced him into not only committing a crime that occurred 12-15 years earlier but also in firing his attorney 6 years earlier. Any respectable and ethical prosecutor or judge who respects the rule of law would have dismissed Walker's absurd claims, but Judge Arguello and Kirsch did not. This was another opportunity to put Pastor Banks on trial and they did so under a veil of secrecy when Judge Arguello spuriously sealed proceedings under the false pretense of protecting Walker and his parents from harassment from family and church members. How could Walker and his family need protecting when, according to Judge Arguello's own words, the minds of Walker's wife and son, the minds of his codefendants and the minds of church members were being controlled by Pastor Banks and she was not permitting them to talk to Walker. It is clear Judge Arguello and Kirsch sealed proceedings for the nefarious purpose of concealing the habeas proceedings because they were using it as a subterfuge to put Pastor Banks and her religious beliefs on trial. See Judge Arguello's slanderous statements about Pastor Banks controlling the minds of everyone at Exhibit 29 – (http://bit.ly/2h4ASGP)

Judge Arguello and AUSA Kirsch permitted Walker and former disgruntled church members to use a court of law as a slander chamber against Pastor Banks with Judge Arguello joining the slanderous fray, characterizing Pastor Banks as a "vindictive" and "mean-spirited" cult leader who controlled the minds of Walker, his wife and son, his five codefendants and all church members. At the end of habeas proceedings, Judge Arguello abused U.S. Sentencing Guidelines (U.S.S.G) and the law of the 10th Circuit by dropping Walker's 4-point enhancement as a leader/organizer of the alleged conspiracy, immediately releasing him from prison and as the hearing transcript shows, implicitly made Pastor Banks the leader of the alleged IRP6 conspiracy. There was no arguable legal basis under 10th Circuit law for Judge Arguello to give Walker a disproportionate downward departure from that of his codefendants or similarly situated defendants nationwide. Judge Arguello clearly violated U.S. Sentencing Guidelines.

"The sentencing guidelines incorporate the principles of equality and proportionality." United States v. Sardin, 921 F.2d 1064 (10th Cir. 1990).

The Sardin court held that the significant disparity of an upward departure of a defendant from that of his codefendants and the lack of distinguishing factors offered by the trial judge did not comport with U.S. Sentencing Guidelines. In the IRP6 case, Judge Arguello gave IRP Solutions CEO Gary Walker a decrease in sentence from 11 years to 5 years 10 months based on Walker's bald post-conviction claims that he committed the crime alleged by the government and fired his attorney because he was under duress of his mother-in-law, who is also the Pastor of the Colorado Springs Fellowship Church (CSFC) where he has attended for nearly 30 years with his wife (daughter of the Pastor) and his son.

Not only are post-conviction claims of duress an impermissible factor for a downward departure of Walker's sentence under USSG 3553(a)(6) and 10th Circuit law, but it discriminated against the five other codefendants who held subordinate positions to CEO Walker in IRP Solutions -- five codefendants

Judge Arguello claimed engaged in similar conduct during sentencing after the verdict. In violating the sentencing guidelines, Judge Arguello released CEO Walker while unfairly allowing the other defendants to remain imprisoned on sentences of 7 to 11 years.

Judge Arguello also spuriously claimed that Walker received ineffective assistance of counsel during the sentencing phase by an attorney that didn't file a motion or make any arguments related to sentencing. That attorney, Gwendolyn Lawson, just happened to be a member of CSFC and close friend of the Walker's family. Lawson was subpoenaed during Walker's hearing where Judge Arguello and AUSA Kirsch permitted a religious inquiry into Pastor Banks' life and the church by questioning Solomon for an hour on CSFC and Pastor Banks. Solomon was not asked a single question related to ineffective assistance of counsel. Lawson recently filed a judicial complaint

To see the full judicial complaint filed by A Just Cause against Judge Arguello related to the slanderous habeas proceedings against Pastor Banks and the disproportionate resentencing of Gary Walker, see Exhibit 13 - go to (http://bit.ly/2vmk73J).

CONCLUSION

The Denver Division of the FBI and Colorado U.S. Attorney's Office turned IRP Solutions corporate debt into a crime for nefarious purposes, manufactured some theories and dishonestly obtained search warrants, indictments and convictions and imprisoned six innocent men, five of whom are still in prison. The prosecutor's dishonesty was exposed when 16 of the government's 20 witnesses from the staffing industry testified that they were induced into doing business with or extending credit to IRP Solutions based on statements about a large government contract. The witnesses proved the IRP6 were INNOCENT by admitting during cross-examination that their staffing company's decision to do business with IRP Solutions was, as is customary in any business, based on creditworthiness determined by their credit departments after reviewing credit reports and bank references. During cross-examination, virtually every government staffing company witness conceded that statements about "current or impending" contracts were never made by the IRP6 or they assumed there was a contract (See Exhibit 11 for excerpts from their trial testimony (http://bit.ly/2mkcn4k).

There is substantial amounts of evidence in discovery pointing to the innocence of the IRP6 which the defendants provided to U.S. Attorney John Walsh and AUSA Kirsch in a proffer months before trial, but it was disregarded, or as in the case of letters and testimony from the two defense expert witnesses (Albarelle and Baucom), Kirsch and Judge Arguello unlawfully excluded the experts from testifying and withheld exculpatory evidence from the jury. Take for example, Bates no. 6187 where, on 9/16/2002, IRP COO David Banks tells staffing company representative Tiffany Zelenbaba of the billion-dollar staffing firm, Robert Half International, that he wanted to proceed in a business relationship for staffing services based on "value and viability of [the software] vice divulging financials."

It is clear that Banks is negotiating with a Zelenbaba to work with them or take the risk providing staffing and payroll services based on their software product's potential to generate revenue and not on traditional financial analysis. If you look at Albarelle's letter discussed earlier, he said staffing companies engage with companies based on "the product they are developing." This is how business is done in the staffing industry, and quite frankly, in many other businesses. Another discovery document shows Zelenbaba discussed her desire to do business with her Vice President.

In an internal email, Zelenbaba tells her Vice President that she is "pushing to try to get this business" and that she "could really use it and there is potential for a long-term relationship with many more job orders." Zelenbaba goes on to tell her VP that she understood the risk of doing business with a small company. "I do understand that we have to make a good business decision and that we do not want any write-offs."

It is clear both Zelenbaba and her VP understood that doing business with a small startup is always riskier which confirms what both IRP defense experts discussed in their letters to U.S. Attorney John Walsh. "There is no gun put to our heads and we are free to choose who we engage with," said Albarelle (See Exhibit 7 – (http://bit.ly/23TkubT). "It is important to understand that there is risk involved in the staffing/recruiting business," said Baucom. "The agencies were in no way forced to conduct business with these men-they CHOSE to" and "should stop trying to place blame on these men and they should take time to re-evaluate their decision to assume the risk!" exclaimed Baucom. See Exhibit 8 - Baucom's letter (http://bit.ly/2f7mFZ3).

Another example worth mentioning from discovery is Bates no. 005785 where Banks states to staffing company's representative Ron Brennan that IRP is a software development company that builds criminal investigations software and that IRP was currently working on securing contracts. In addition, Banks said IRP is "negotiating" with the New York City Police Department and Department of Homeland Security.

There are many other examples in discovery where staffing company representative Susan Holland of ETI professionals is reported in an FBI interview that Demetrius Harper told her the company "was planning on marketing their software product to NYPD and DHS" or Bates no. 000643, when defendant David Zirpolo (IRP6) said "We have a great project that we will be looking to wrap up for the New York Police Department and start DHS." In response, the staffing manager (Casey Courneen) told the FBI that "not enough due diligence was done (bates no. 000678).

AUSA Kirsch simply failed to lawfully prove his case during trial because it was illegitimate from the start. A Rule 29(c) motion was filed at the end of the government's case requesting to dismiss the case, but Judge Arguello, who was complicit in the wrongful conviction and imprisonment of the IRP6, denied the motions. Kirsch and Arguello continued engaging in outrageous conduct for the remainder of trial proceedings, including violating a federal discovery statute (Rule 16) and denying the defendants their 6th Amendment Compulsory Process to present a defense and witnesses in their favor, which is also a violation of the 5th Amendment's Due Process Clause. Moreover, Judge Arguello violated the pro se IRP6 defendants 5th Amendment rights against self-incrimination by coercing them to testify and again violated the 5th Amendment's Due Process Clause by apparently colluding to obstruct justice by concealing/destroying/modifying/denying the defendants the verbatim transcript of Judge Arguello's coercive statements.

With full knowledge of the gross misconduct of Judge Arguello and Kirsch that resulted in a desperately unfair trial of the IRP6, the 10th Circuit circled the wagons to protect them by completely disregarding 10th Circuit and Supreme Court law, even using clairvoyance as a method of determining what the thoughts, intentions and actions of Judge Arguello and the defendants were in absence of the missing transcript related to judicial coercion. Finally, after handing down what Judge Sarokin characterized as "unduly harsh" sentences, Judge Arguello and Kirsch permit the 54-year-old IRP Solutions CEO Gary Walker to return to court with a cockamamie 2255 proceeding where he says he had an epiphany while in prison that he was now guilty because Pastor Banks not only coerced him into committing a crime but also into firing his attorney.

"The United States Attorney is the representative of not an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor-indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States, 295 U.S. at 88, 79 L Ed 1314, 55 S. Ct. 629.

AUSA Kirsch repeatedly struck foul blows and engaged in improper methods to gain a wrongful conviction of the IRP6 by deceiving and misleading both the grand jury and trial jury and, unfortunately,

the courts did nothing to reign in Kirsch's misconduct or correct the wrongful conviction and imprisonment of the IRP6. In fact, they were complicit and engaged in misconduct. Five innocent men continue languishing in prison because federal prosecutors and judges in Colorado and the 10th Circuit abdicated their responsibility to uphold the law and the Constitution.

In his letter to President Obama, Judge Sarokin said he "feared a great injustice had been done" and that there were a "series of events that cried out for clemency" in the IRP6 case. Sarokin wrote the Justice Department on more than one occasion about the case. Judge Sarokin also wrote and produced a short play with professional actors playing the IRP6 defendants (www.youtube.com/watch?v=Y9405mMJqHU). A discussion about the play was reported by the San Diego Union Tribune (Exhibit 27 http://bit.ly/2hcNdsx) and Sarokin wrote other articles on the Huffington Post such as "The Guilty Have a Better Chance for Pardon or Parole Than the Innocent" Exhibit 30 (http://huff.to/1NTnspa) and "The Company Small Enough to Prosecute" Exhibit 31 (http://huff.to/29Qvi6F).

All of Sarokin's writings about the IRP6 case can be viewed in a single location. See Exhibit 20 (http://bit.ly/2ykEsVh)

Letters were also sent to President Obama from some of the IRP6 including two by David Banks – Exhibit 21 (http://bit.ly/2xMzWSw and Exhibit 22 (http://bit.ly/2iDKZSA), Exhibit 23 - Demetrius Harper (http://bit.ly/2jBEioc) and Exhibit 24 - David Zirpolo who testified before 2007 grand jury (http://bit.ly/2jsZc4M)

While one of the aforementioned issues of misconduct certainly warrants the dismissal of the IRP6 indictment, the cumulative misconduct certainly rivals the gross misconduct in Senator Stevens' that resulted in a Rule 48(a) dismissal and may very well be one of the most egregious cases of government misconduct to win a wrongful-conviction in American history.

We ask that the indictment in the IRP6 case (Dist. Colo. no. 09-cr-00266-CMA) be dismissed under Rule 48(a) with prejudice and that these innocent men are immediately released from prison in the interest of justice. It was the right thing to do in the Senator Stevens case and it is the right thing to do for the IRP6 and for the integrity of the U.S. justice system.