



Famed Federal Appeals Judge Challenges Constitutional Violations Committed by Denver Federal Judge, Says Advocacy Group A Just Cause.

Possible Uncontroverted Evidence Exists in Transcripts that Defendants 5th Amendment Rights Were Violated, Says Former Federal Appeals Judge H. Lee Sarokin.

DENVER, (December 23, 2016) "If the Government becomes a lawbreaker, it breeds contempt for law." U.S. Supreme Court, *Miranda v. Arizona* (1966).

"With all 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 the trial court," contends the Honorable Judge H. Lee Sarokin about the "IRP6" case (http://www.huffingtonpost.com/judge-h-lee-sarokin/the-case-of-the-missing-t_1_b_5340397.html). The IRP6 are six Colorado Springs information technology executives, David A. Banks, Kendrick Barnes, Clinton A. Stewart, Demetrius K. Harper, Gary L. Walker and David A. Zirpolo, who were wrongly-convicted in 2011 at the Denver federal courthouse and continue languishing in prison for over 4 years, arguably, as a result of allegedly the most egregious misconduct and constitutional violations in the history of the United States - violations that appear to have come at the hands of federal prosecutor Matthew T. Kirsch and judge Christine M. Arguello. The 10th Circuit, who surprisingly affirmed the conviction, is now the subject of a judicial complaint (<http://bit.ly/2ba9827>) for allegedly willfully and intentionally disregarding the law and the Constitution. "It is unprecedented and speaks to the gravity of the IRP6 injustice when a brilliant jurist of Judge Sarokin's pedigree becomes so deeply-involved in advocating on behalf of the wrongly-convicted," says Lamont Banks, Executive Director of A Just Cause.

Sarokin, a Harvard law graduate, was first appointed to the federal bench in New Jersey by President Jimmy Carter and subsequently to the 3rd U.S. Circuit Court of Appeals by President Bill Clinton, gained notoriety by overturning the 1985 triple-murder conviction of famous middleweight boxer Rubin "Hurricane" Carter, who was played by Denzel Washington in the movie, "The Hurricane". Sarokin was portrayed in the movie by actor Rod Steiger. For the past three years Judge Sarokin has been a tireless advocate for the IRP6, speaking about the government and court's mishandling of the case to the Washington Post (<http://www.wapo.st/29jXqSC>) and in a five-part series on the Huffington Post called "The Case of the Missing Transcript" where he characterizes the IRP6 case as "strange" and discusses the bizarre disappearance of Judge Arguello's statements from the transcript where the pro se IRP6 defendants alleged she violated their 5th Amendment right, forcing them to testify under the threat of terminating the presentation of their defense. Sarokin, now a playwright, even wrote a play about the IRP6 to bring attention to the injustice. A reading of the play, "The Race Card Face Up" where professional actors portrayed the men, can be seen on YouTube video (www.youtube.com/watch?v=Y94O5mMJqHU). The San Diego Union Tribune also published an article about the play (<http://bit.ly/2gXXU86Z>). Other Sarokin articles related to the IRP6 include "The Company Small Enough to Prosecute" (<http://huff.to/29Qvi6F>)." and "The Guilty Have a Better Chance for Parole or Pardon Than the Innocent" (<http://huff.to/1NTnspa>)."

In November 2015, for the first time in his stellar 60+ year law career, Judge Sarokin sent a letter to a U.S. President (Obama) asking him to grant the IRP6's clemency petitions which has been pending since February 2015. Colorado's U.S. Senator Michael Bennet and Rep. Danny Davis (D-IL) have joined Sarokin and also sent letters to Obama. The constitutional violations are just part of the IRP6's tragic injustice, substantial evidence shows the IRP6 are innocent. Sarokin says that the men were indicted and convicted for "failing to pay corporate debts." "When you review the law, and apply it to the trial record, Judge Sarokin's indignation and railings against the IRP6's 5th Amendment violations are certainly justified," says Banks.

According to 10th Circuit case law, a conviction must be reversed when the "unavailability of a transcript makes it impossible for the appellate court to determine whether prejudicial error was committed." Per the 1971 U.S. Supreme Court case of *Mayer v. Chicago*, claims of prejudicial misconduct by court officials cannot be "fairly judged" without a "verbatim transcript."

In the IRP6 case, a portion of the bench conference transcript where the IRP6 defendants said Judge Arguello violated their 5th Amendment rights by telling them that if their next subpoenaed witness was unavailable to testify, then the one of the defendants would have to testify, or Judge Arguello would immediately end the trial without letting them present the rest of their defense. Arguello, Kirsch and the 10th Circuit, without the transcript, could not determine "if prejudicial error was committed" but concluded in stark contradiction to the transcript that the defendants VOLUNTARILY TESTIFIED. Sarokin said even though Judge Arguello's coercive statements are missing from the record, the transcript still shows the defendants 5th Amendment rights were violated. Although the record is void of any IRP6 defendant volunteering to testify Judge Arguello unsuccessfully attempts to convince them they did even claiming the defendants were trying to orchestrate a mistrial. DURING KIRSCH's CROSS-EXAMINATION, the codefendants objected and plead the 5th on behalf of Barnes in FRONT OF THE JURY. Here are a couple of exchanges between Arguello and the pro se defendants after the jury departed.

ARGUELLO: You volunteered to take the stand.

BARNES: I wasn't volunteering...You said one of us had to take the stand.

ARGUELLO: I didn't tell you that. Why did you take the stand, Mr. Barnes?

BARNES: I was compelled to take the stand from our discussion up at the bench

BANKS: And we are not here to try to get a mistrial. After the [bench] conference up front, we came back and we huddled and said somebody has to testify. That was based on the information provided at the sidebar. We didn't feel like we had any alternative. We started discussing which one of us is going to have to testify. Somebody is going to HAVE to testify. So, that is the process we went through.

ARGUELLO: Why didn't you not object at the time? At least state for the record...why did you not do that until after you had gotten testimony you wanted him to give on the stand?

BANKS: To be honest, Your Honor, the Court is angry...you asked me what I felt at the time. The Court was angry at the defense...We didn't want to direct Mr. Barnes. We felt forced and compelled...Honestly, because we didn't feel it would do any good (to object), given what -- the sidebar that had taken place...We were not going to come back and argue again with the Judge...I felt it was like a tongue lashing...It is not as easy to go up against a Judge in her courtroom.

Judge Arguello and Kirsch violated the law by proceeding with cross-examination because, as trial transcripts show, when Kirsch asked about whether the defendants intended to testify before beginning his cross-examination. Both Arguello and Kirsch said they ASSUMED they intended to but ignored Defendant Banks when he told him they felt compelled.

KIRSCH: I was just wondering if the Court could clarify that [Defendant Barnes] did intend [to testify] although the defense otherwise ran out of witnesses?

ARGUELLO: Well, I assumed that because they put him on the stand, that that was his intent to testify.

KIRSCH: So did we, Your Honor.

BANKS: Your Honor, it was something we felt we had to do, to be honest with you.

The Supreme Court said the *Miranda v. Arizona* case mentioned above discusses what constitutes a defendant's waiver of his 5th Amendment right:

"The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in ANY manner and at any stage of the process that he wishes [not to speak] there can be no questioning...Moreover, ANY evidence that the accused was threatened, tricked or cajoled in a waiver will, of course, show that the defendant did not voluntarily waive his privilege."

As the transcript shows above, Kirsch and Arguello were initially made aware by Defendant Banks that the defendants felt compelled to testify but still chose to violate their 5th Amendment by proceeding with the cross-examination. Sarokin discussed Kirsch and Arguello's doubling down on violating the IRP6's 5th Amendment rights a second time when Kirsch and Arguello chose to continue the cross-examination after the defendants interrupted again, complaining about "being forced to testify". "Mr. Barnes pled the 5th to every remaining question - all in presence of the jury," said Sarokin. "It is difficult to imagine anything more prejudicial," asserted Sarokin.

"We thank God for Judge Sarokin's fidelity to justice and having the courage to speak out when many other officials just don't seem to care about this egregious government misconduct and the damage done to these men and their families," says Lisa Stewart, A Just Cause. "We also thank Senator Michael Bennet and Congressman Danny Davis for their support," adds Stewart. "A Just Cause will continue fighting and will expose more details about this case until the IRP6 receives justice," concludes Stewart.

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