
LAW WEEK COLORADO

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Cortez Controversy

by Ali McNally, Law Week Colorado

JUDICIAL NEWS

Cortez Controversy

Judge's Order Aired Anew With Video

By **Ali McNally and Don Knox**
LAW WEEK COLORADO

DENVER — A convicted second-degree murderer in Cortez was overwhelmed by six helmeted sheriff's deputies, Tased twice, forcibly restrained, cable-tied then shackled, hooded and placed in a belted chair before being whisked to a February sentencing he didn't want to attend, a video obtained by *Law Week Colorado* shows.

The method used to subdue Ignacio "Michael" Rael by the Montezuma County's Sheriff's Office appeared to be by the book. Also by the book was the office's videotaping of Rael's extraction from the

cell. *Law Week* obtained the video from the sheriff's office through a request made under the provisions of the Colorado Open Records Act.

Montezuma County Sheriff Gerald Wallace said that deputies tried to talk Rael, whom the sheriff considered violent, out of his holding cell before using force. Rael likely was Tased because he didn't immediately show his hands, Wallace added.

But questions remain as to whether Montezuma County Judge Douglas Walker, who issued the controversial order for sheriff's deputies to use "all reasonable and necessary force to transport the defendant

for court for sentencing," unnecessarily put both the defendant and sheriff's deputies at risk through that order. Two Colorado law professors told *Law Week* that Rael's forced appearance at the sentencing was unusual.

The Colorado Judicial Branch has not publicly addressed the wisdom of Walker's order. In February, spokesman Rob McCallum said only that the branch placed "a high value on its relationship with law enforcement and places its trust in those officials to decide what course of action is necessary in any given situation."

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I'm not resisting. I never did resist. I never did resist. I'm not trying to resist."

— Ignacio "Michael" Rael

Walker, who is running for voter retention in November, has repeatedly declined comment since the sentencing, but 22nd Judicial District administrator Eric Hogue released a copy of Walker's order to *Law Week*.

Wallace, the sheriff, told *Law Week* that his personal opinion was that Rael should have been sentenced in absentia because he was tried in absentia. But he nevertheless followed Walker's order.

Brutal killing

Colorado doesn't require defendants to appear at sentencing hearings, even convicted murderers like Rael who are accused of especially brutal behavior.

Rael used weighted leather gloves to beat ex-girlfriend Diane Cordova to death, prosecutors said at his trial. Rael didn't make an appearance at his trial — he has contended he wanted to appear but was not allowed to do so — but he was represented by state public defenders. A jury considered both first- and second-degree murder charges against Rael before settling on second-degree murder, which is murder without premeditation. Walker sentenced Rael to the maximum 48 years in prison.

Rael's appearance at his sentencing gave the victim's family the opportunity to confront the killer before he entered the prison system, possibly for the remainder of his life.

"I can understand why a judge would want a defendant there, and I can understand why the victim's family would want him there," said Patrick Furman, a University of Colorado law

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What the video shows

The video clip online shows the following action taking place.

0:06: Six helmeted deputies, at least one carrying a shield, enter through exterior door at detention center.

0:13: Wristwatch is photographed to note time.

0:24: Deputies enter interior hallway.

0:31: Rael's cell door is in view; a black cloth covers the door's window.

0:34: The door is unlocked and deputies storm the room, forcing Rael down on his prison cot.

0:37: The sound of a Taser charge is heard. Rael yells in pain.

0:48: Rael continues to yell; a deputy orders him to raise his arm and his head.

1:26: Rael yells, "I'm not resisting. I never did resist. I never did resist. I'm not trying to resist."

1:43: A deputy advises Rael not to resist.

1:45: Rael again says, "I'm not resisting."

1:47: A second Taser shock is heard, followed by Rael yelling.

1:58: A deputy shouts, "Give me your fingers. Give me your fingers."

2:00: Rael yells again.

2:29: The first full view of Rael is videotaped.

3:12: Rael is placed in belted chair.

6:30: At least one Taser probe is missing and may still be on Rael, one of the deputies reveals.

6:25: The camera pans through Rael's cell to food on floor, bed, toilet and filth on walls.

7:10: A hooded Rael is wheeled back into his cell and the sound of a locking door can be heard.

[An unknown amount of time elapses; video camera restarted.]

7:25: As Rael yells, deputies return to cell, unlock the door and enter.

8:11: A deputy requests shackles for Rael.

9:00: Tape is applied to Rael.

11:14: Some deputies leave cell; tape ends.



A video obtained by *Law Week* through an open-records request shows sheriff's deputies Tase a convicted murderer, Ignacio Rael, and strap him into a restraint chair.

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TASER

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professor. "But I am unaware of a requirement" that defendants appear at their sentencing hearings.

Jessica West, a visiting professor at the University of Denver Sturm College of Law, said, "It's extremely unusual for a criminal defendant to be forcibly brought to their sentencing hearing."

However, West added that while a criminal defendant has a constitutional right to be present at their sentencing, "he or she does not have a constitutional right to not be present at their sentencing hearing. A judge can allow a criminal defendant to waive that right [to appear], and defendants do waive that right in a number of circumstances. But constitutionally, a judge is not required to allow someone to not appear at the sentencing hearing."

Rael objected to his treatment at his sentencing. *The Cortez Journal* quoted him as saying, "I was beat, handcuffed and tied to this chair. What's wrong with this

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The conduct by the judge and the sheriff was outrageous. No, this does not happen and should never happen anywhere in this country.”

— Douglas Wilson

picture? I'm not an innocent (expletive deleted), but come on, man!"

In the days after Rael's sentencing, Colorado Public Defender Douglas Wilson told *Law Week*, "I have not been able to talk with my attorneys yet, but the conduct by the judge and the sheriff was outrageous. No, this does not happen and should never happen anywhere in this country. The court has the right, as a last resort, to ban a disruptive client from the courtroom, but not to order that anyone ever be tortured, bound and gagged in a restraint chair."

Relatively new judge

Walker is a relatively new district court judge in the 22nd district. Colorado

Gov. Bill Ritter appointed him July 11, 2007. Last month, Walker filed papers indicating he will run for voter retention this November.

Before being appointed to the court, Walker served as a district court magistrate for both the 22nd and 6th judicial districts since 1997. Before that, he was a sole practitioner (1981 to 1997) and worked for two years at the Alternative Horizons Domestic Relations Legal Project (1996 to 1997). Walker was also a tribal prosecutor for the Southern Ute Indian Tribe (1982 to 1995), and worked in the Law Office of Frank Anesi in Durango (1979 to 1981).

Walker's judgeship was a new position created pursuant to House Bill 07-1054. The initial term of office is a provisional

term of approximately two years, and if retained by the voters, a term of six years.

The district's only other judge, Sharon Hansen, recently announced her retirement, meaning that Walker will be the district's most senior judge if voters send him back to the bench.

Under Colorado's judicial-performance program, Walker's pre-retention performance evaluation is to be released Aug. 3. It's not known whether the Rael order will be mentioned. A summarized version of the evaluation will be included in state-printed "blue books" distributed to every Colorado voter prior to the Nov. 2 election.

The 22nd Judicial District performance commission is made up of lawyers Kelly McCabe, Peter Ortego, Jim Shaner and Kent Williamson and non-attorneys Leslie A. Taylor (chair), Diana Buza (vice chair), Joe Keck, Travis C. Morgan, Kelly Wilson and James R. Wynes.

Law Week Colorado staff Matt Masich and James Chaney contributed to this report. •

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LOWDOWN

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questions, two 90-minute comprehensive or "performance" questions and eight essays, is tackled by up to three graders — two for the multiple choice and essay questions, and three for the performance questions. A score of 276 (out of 400 total) is passing, and a score as low as 268 and as high as 280 are considered "automatic re-grades."

Graders never grade the same exam twice and, once the re-grade score is submitted, the two exam scores are averaged and rounded up to come up with the final score.

31 judicial flavors

Colorado's Supreme Court Nominating Commission received 31 applications for the seat being vacated Nov. 30 by Chief Justice Mary Mullarkey, who is retiring, the Colorado Judicial Branch said last week.

That's low, according to Denver District Judge Christina Habas, who spoke Friday at a media conference at the Denver Press Club. But comparison data weren't available.

The 15-member nominating commission meets later this month to decide to interview selected applicants and to pick three finalists for Gov. Bill Ritter to choose from.

The names of the finalists will be publicly released on Aug. 24 or shortly thereafter, but the full list of 31 applicants will remain confidential. This leaves the door open for us to engage in one of our favorite pastimes: rampant speculation.

Law Week Colorado consulted members of the state's legal cognoscenti to come up with our own shortlist of contenders for the high-court bench. Four Colorado Court of Appeals judges — Russell Carparelli, John Dailey, Rich Gabriel and Bob Russel — were mentioned as likely candidates. (Carparelli and Dailey were finalists for the last vacancy.)

The names of six state district judges have also been floated: Christina Habas, Morris Hoffman and Cathy Lemon of Denver; Lael Montgomery of Boulder; Brooke Jackson of Jefferson County; and Carlos Samour of the 18th Judicial District (Arapahoe, Douglas, Elbert and Lincoln counties).

Rounding out the speculative list are two DAs, Don Quick of Adams and Broomfield counties and Bill Thiebaut of Pueblo, Deputy Attorney General Monica Marquez and DU Law Professor Roberto Corrada.

We didn't make a list for this one, but a vacancy on the Colorado Court of Appeals generated 25 applications. Sean Connelly is leaving the bench to open a new Washington, D.C., office for his former law firm, Reilly Pozner.

'Do not vote for my dad'

Our state's merit-selection process for judges is pretty great and all, but it's also kind of boring. Coloradans who like a healthy dose of hyperbolic mudslinging in their judicial elections have to look elsewhere. Oklahoma, for example.

Durango residents Jan and Andrew Schill recently launched the website www.donotvoteformydad.com to encourage voters in Oklahoma's District 21 not to vote for Jan's father, John Mantooth, in the three-way judicial race.

"District 21 judicial candidate John Mantooth is not a good father, not a good grandfather and in my opinion a review of his 37-year record as an attorney in Cleveland, Garvin and McClain Counties reveals that he would not be a good judge," she wrote.

Andrew Schill, an attorney with Abadie & Schill in Durango, once practiced with Mantooth and later practiced with his rival in the election. Jan Schill used to work as a victim witness counselor in an Oklahoma DA's office.

Besides criticizing Mantooth's legal acumen, the Schills allege that he gave them worm-infested chocolates for Christmas one year.

Bench-clearing litigation continues

Judicial-ouster campaign Clear The Bench Colorado is asking the Secretary of State's office to conduct emergency rule-making it hopes will put an end to litigation over a campaign finance complaint brought against it by Colorado Ethics Watch.

Clear The Bench, which is opposing all justices now up for retention, won a legal

victory last month when Administrative Law Judge Robert Spencer dismissed the complaint and awarded it attorney fees. But Ethics Watch on Monday filed an amended complaint that it says overcomes the objections raised by the judge. Clear The Bench is represented by Mario Nicolais and Scott Gessler of Hackstaff Gessler. Ethics Watch is represented by its director, Luis Toro, and Aaron Goldhamer of Sherman & Howard.

Burrito discrimination

Chipotle Mexican Grill Inc. violated a U.S. disability law by making the walls between customers and food-preparation counters in its restaurants too high, a federal appeals court ruled last week.

A panel of the Ninth U.S. Circuit Court of Appeals said the 45-inch walls violated

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