

10 THE COURT: Mr. Zirpolo, do you wish to make a  
11 statement to me on your own behalf I impose sentence?

12 THE DEFENDANT: I do.

13 THE COURT: You may.

14 THE DEFENDANT: During this time I have had a  
15 chance to really look at the justice system, not only for  
16 myself, but for other people that have been accused of  
17 things, whether they're guilty or not. One of the things  
18 I have really noticed -- as you can see, I'm a middle  
19 class, middle age, white male.

20 I have noticed that there is not equal justice in  
21 many cases out there in the justice system. There is  
22 equal justice for white people. There is equal justice  
23 for black people. There is equal justice for the rich.  
24 There is equal justice for the poor, all separate  
25 variables of justice, but not justice across the board.

*DARLENE M. MARTINEZ, RMR, CRR*  
*United States District Court*  
*For the District of Colorado*

1           When you look at the statute of justice, she is  
2           supposed to be blindfolded; you are not seeing that much  
3           any more. You are seeing that blacks are put in prison  
4           more often, a lot more often than whites. You are seeing  
5           that whites are given shorter sentences than blacks are.  
6           You are seeing that the rich are getting off because they  
7           get this great lawyer that the Court can't afford. And  
8           CJA and public defenders, they really don't care about  
9           their charges.

10           I looked at my lawyer, and after a year he still  
11           hadn't looked at the discovery. I would ask him a  
12           question, or he would ask me a question, and it would be a  
13           situation where it is right there in discovery. Oh, I  
14           haven't seen that yet. A year? That's ridiculous. That  
15           is why we got rid of those attorneys, because they didn't  
16           do any work. And I bet they charged the Government for  
17           that, and you don't see them getting charged for fraud.

18           When you look at how our company was looked at,  
19           everybody that we have shown this case to, they say, you  
20           know, if that wasn't a black company, you wouldn't be here  
21           right now.

22           And I look at different companies that are out  
23           there; large companies run by white men, like Oracle, that  
24           admitted to hundreds of millions of dollars of fraud  
25           against the U.S. Government, and nobody in that company

1 was charged. Nobody was even named. The company caused  
2 the fraud. The company paid a fine back to the Federal  
3 Government and never even lost a contract.

4 I was shocked reading that. I would have expected  
5 at least one person, because a person had to commit that  
6 fraud against the Government, and they admitted, yes, we  
7 did that fraud and we cost the Government hundreds of  
8 millions of dollars. Yeah, we will pay a few millions  
9 dollar fine, and we are free to go, and the Government  
10 said, no problem, let's do it.

11 When you look at the history of this case, in 2004,  
12 the FBI were contacting agencies that we had been talking  
13 to. They knew we had a viable product. The agencies we  
14 were talking to, every single one of them said, this is  
15 the best software we have ever seen.

16 It was a viable product. It wasn't just an idea.  
17 It wasn't just a dream. It was a product that was ready  
18 to go. And the only things that had to be done were minor  
19 changes that the agencies were requesting. They looked at  
20 that software, they said, this is a great piece of  
21 software. This is awesome.

22 In the end of 2004, going into 2005, there was a  
23 meeting between multiple agencies of the Federal  
24 Government, including the FBI, to look at the software.  
25 And the response still was, this is an awesome piece of

1 software.

2 In 2005, there was an affidavit by a former FBI  
3 agent that worked at IRP that said that it was a viable  
4 software; a product that could easily be marketable and  
5 sold. And he didn't see anything going wrong at the  
6 business.

7 Then, in 2005, Mr. Smith here puts in a software --  
8 not a software, a search warrant application saying that  
9 IRP is a "purported" software company. He knew at that  
10 time that it was a real software company, but he had to  
11 put "purported" on there because he probably wouldn't have  
12 been able to get the search warrant otherwise. They had  
13 to make the judge think this wasn't a real software  
14 company.

15 Then, when the raid came along on February -- in  
16 February of 2005, the one thing that blew my mind was the  
17 way the black people were treated versus how I was  
18 treated. I was a white person on staff that day. And you  
19 looked at how I was treated versus them, it was  
20 ridiculous.

21 An FBI agent came up to me and said, excuse me,  
22 sir, are you with IRP? I said, yes, I am. He said, could  
23 you please go to the lunch room. I walked to the lunch  
24 room unescorted. While FBI agent all over the place were  
25 escorting black employees into the lunch room. They

1 weren't treating them well.

2 I looked at that, and I was shocked. There was an  
3 FBI agent that actually asked one of the employees if a  
4 white woman came in here for a job, would she have been  
5 able to get a job here? There were all kinds of white  
6 people that worked there. They weren't there that day.  
7 There were white contractors.

8 Even you said that there are other people that were  
9 not charged in this case. Are those the white contractors  
10 or the black church people? When the raid was going on,  
11 the black people were required to stay in the lunch room.  
12 I got up, I walked out, unescorted, went to my office,  
13 picked up my jacket, picked up my bag, picked up my  
14 computer. The FBI agent that was in there said -- gave me  
15 his card, said, if you need to talk, give me a call.

16 I walked out the front door, and two FBI agents  
17 were right there, searching the wallet of one of the black  
18 people at IRP. Two FBI agents searching a wallet. They  
19 never even said anything to me, never stopped me. Never  
20 questioned me. I walked out the door.

21 I watched the surveillance footage of another  
22 employee trying to -- another employee trying to leave the  
23 company, walk out the door. FBI agents chased him down,  
24 brought him back in, then searched through his bag, and  
25 then let him go. There were women that were walking out.

1 They searched through all of their purses. I was treated  
2 completely different.

3 The search warrant was for financial records. They  
4 never took the financial records. They already had the  
5 financial records. We saw in discovery, the financial  
6 records were obtained without subpoenas in 2004.

7 Then they also, during that time that they were  
8 getting financial records without subpoenas, they got  
9 financial records on the church, on the pastor; people  
10 that weren't even involved in the business.

11 How does this happen? This is ridiculous. Then,  
12 after the raid, church members were harassed on their job.  
13 You never saw any of the white contractors questioned on  
14 their job or tried to get fired, where the FBI would go in  
15 and harass the black church members on their job and try  
16 to get them fired from their positions.

17 When we tried to go back to those agencies that we  
18 had been talking to, they told us, we were told not to  
19 talk to you any more. How are we supposed to sell the  
20 software? First of all, in 2004 they have already started  
21 talking to those agencies, so obviously they are going to  
22 be reticent about signing a contract with us.

23 Then, in 2005, they were told not to talk to us any  
24 more. That is ridiculous.

25 Again, the FBI in Denver actually received a call

1 or a letter from a staffing company complaining about this  
2 case, asking them -- you know, telling them what went on.  
3 And they were responding back to, this is a civil matter.  
4 This is not a criminal case.

5 The grand jury -- I was called in to the grand  
6 jury. Many questions about the church. Do you know Rose  
7 Banks, who is the pastor of the church. Do you go to the  
8 Colorado Springs Fellowship Church? Do you give money to  
9 the church? What does the church have to do with the  
10 business?

11 It happens that the people that worked at the  
12 business went to the church, but if everybody went to the  
13 Catholic church, would they have been contacting the  
14 Catholic church and getting their bank records? I doubt  
15 it.

16 Even on Lawanna Clark's trial, the grand jury  
17 foreman was asked, who was the focus of this grand jury?  
18 Her response was Rose Banks. Not IRP Solutions. Not any  
19 of the executives of IRP solution; Rose Banks, the pastor  
20 of the Colorado Springs Fellowship Church.

21 So you look at that. And you look at when I went  
22 into the grand jury in 2007, I brought a book of evidence  
23 showing e-mails that were sent to the staffing companies;  
24 showing what we sent to them. We never said we had  
25 contracts. The e-mails show that there was not one

1 e-mail, either from a staffing company or to a staffing  
2 company, that said we had a contract with any of those  
3 agencies.

4 I brought a book in. You never saw an Indictment  
5 come down in 2007. But in 2009, when one FBI agent  
6 testified in front of the grand jury, an Indictment comes  
7 down.

8 When asked where they got the information, I just  
9 know it. That is not a valid response. There should be  
10 evidence that shows where that information came from.  
11 Were there subpoenas to get information? Was the  
12 information obtained legally?

13 You look at the Lawanna Clark trial. She was  
14 charged with perjury in front of the grand jury and then  
15 found guilty. Where is the justice there? There was  
16 evidence showing that she did not perjure herself. She  
17 still went to prison for 6 months.

18 Leading up to our trial, we had many hearings in  
19 front of this Court. Mr. Smith actually perjured himself  
20 on the stand in one of those hearings. When I mentioned  
21 it to the CJA attorney, he said, we don't want to mess  
22 with that. What?

23 So we have somebody that has gone to jail for  
24 perjury, but on the Government's side, oh, no, we don't  
25 want to touch them. So obviously there are a different



1 set of standards for the Government, for the prosecution,  
2 versus the defendants.

3 When you look -- even during that time, there were  
4 still members of the church being harassed, but not the  
5 contractors that worked at IRP. You never saw their bank  
6 records being pulled. One of the people that I did notice  
7 their bank records were pulled was actually a black  
8 contractor.

9 Okay. Again, we have a lot of black people here,  
10 and a lot of white people. You don't see the white people  
11 getting called in or getting their information pulled.

12 And, then, like I said earlier, the CJA lawyers  
13 never even reviewed discovery. When you tried to talk to  
14 them about it, they didn't know what you were talking  
15 about because they never even looked at it. A year went  
16 on, and they never looked at it.

17 They were asking questions for the information that  
18 was in discovery. I would bring up things in discovery, I  
19 would say, what about this? Do we need to look into that?  
20 No, there is nothing there. No, I saw it in discovery. I  
21 read the discovery. Have you? No response.

22 During the trial, we saw what I believe was  
23 tampering with witnesses. When we had some of our  
24 witnesses, when we subpoenaed them -- DHS, perfect  
25 example, called Mr. Kirsch's office. What did he say to

1     them when they called his office? We don't know. They  
2     came in, they seemed afraid to even talk to us when they  
3     came in on the stand.

4             There was no help from the Court when subpoenaed  
5     witnesses failed to appear. Like Collin Reese, he was  
6     supposed to come in one day. He is a law enforcement  
7     official. He didn't show up. But we were in trouble  
8     because we didn't have our witnesses here.

9             The white expert witness -- there were two expert  
10    witnesses that were white that had all kinds of experience  
11    that were denied in this Court. The one expert witness  
12    that did not have as much experience was black and related  
13    to an employee at IRP. He was allowed, because it didn't  
14    hurt the Government's case.

15            The white expert witness that ran a \$300 million  
16    staffing company, he actually worked with the FBI to  
17    discover staffing fraud. He would have been a perfect  
18    example to show we weren't doing anything wrong.

19            Then, when we had witnesses that weren't here after  
20    the expert witnesses were denied, we weren't prepared to  
21    have other witnesses here, they should have taken the rest  
22    of the day, we were told that either one of the other  
23    defendants is going to have to take the stand, we are  
24    going have to get witnesses here or you are going to rest  
25    our case. What did we do? We were forced to put somebody

1 on the stand that we didn't want to do.

2 Then when we went to bring that information back,  
3 we found out all of a sudden that side bar where that was  
4 said, the transcript was missing. And we actually heard  
5 from one employee of this courthouse that said that  
6 transcript was destroyed.

7 So the scales of justice, when you look at it, they  
8 weren't equal. We did a fantastic job. I believe we did  
9 a fantastic job defending ourselves.

10 You say there is no remorse. To this day I still  
11 believe we are going to pay every one of those staffing  
12 companies; every one of them. Not through a judgment  
13 here. We are going to pay them through our selling of our  
14 software.

15 We have a fantastic software package. I know that  
16 we are going to be vindicated; we are going to sell the  
17 software product.

18 The witnesses during trial, many of them were  
19 impeached. And, Your Honor, you even said that many of  
20 them were impeached. I believe many of them actually lied  
21 to the FBI, because when we really pushed them to say,  
22 were you told there was a contract in place, well, I  
23 thought there was. I assumed there was. But they weren't  
24 told.

25 I have got to wonder, when we look at the

1 interviews, what the FBI agent was actually asking them.  
2 Did the FBI agent turn around and say, you were told they  
3 had contracts, weren't you? Oh, yes, we were. And in  
4 some cases I look at those interviews, and I know that  
5 questions like that were asked, because when you have an  
6 interview that says, oh, this was absolutely a scam, out  
7 of nowhere in the interview, you know the question to the  
8 witness was, this was a scam, wasn't it? Oh, yes,  
9 absolutely it was a scam.

10 So, again, I go back to there were no e-mails, no  
11 physical evidence that showed we said there was contracts.  
12 Every piece of evidence showed that we had never stated  
13 there was contracts. The only thing that was there were  
14 people saying there were contracts.

15 Then, after the trial, you had the jury get up.  
16 Got to wonder why didn't the Court want the jury talking  
17 to us? Gag order. Could it be there was something you  
18 didn't want said back to the press or anybody else?

19 THE COURT: Could be that is the rule in the  
20 Federal District of Colorado.

21 THE DEFENDANT: Then the media, this is another  
22 thing I have looked at, is we have gone through, and we  
23 have talked to the media. We had a different reporter  
24 that actually wrote this story. Then she was told she  
25 couldn't publish it. Then the editor said, okay, we will

1 let you publish it, but here are the edits. The edits  
2 made it look like an FBI report.

3 Colorado Springs' -- here is a great example --  
4 number three story on the news while this is going on, is  
5 an escaped otter from the zoo. Not once did they ever  
6 report on our case. To have six pro se defendants against  
7 the Federal Government, anyone in the country, I would  
8 have thought, that would have been news for me. I would  
9 have thought that would have been very interesting.

10 You look at even the civil suit that the church has  
11 brought against the Government. Mr. Kirsch tried to block  
12 that a number of times, and actually said to one of the  
13 CJA attorneys, it would be bad for him if the church  
14 information got out.

15 More and more you see that the focus was on the  
16 church, and that there was a racial component to it. It  
17 saddens me. I grew up in a household where you were  
18 taught that everybody should be equal. It wasn't true,  
19 but that is what we were told. But I believed it.

20 I mean, when I look at Ms. Solomon or my friends, I  
21 don't see black men and women, I see my friends. When I  
22 was growing up, it was the same thing. I went back, and I  
23 was looking at some old photos, and my best friend in  
24 elementary school was Filipino; dark skinned. It never  
25 even occurred to me that he was different than me. And I

1 grew up in a school that was all white. I grew up in a  
2 town that was all white. It was Italian-American area.  
3 Everybody was Italian-American. I knew the one Jewish kid  
4 one street over and the Filipino kid.

5 So, I mean, when I look at how this world has not  
6 changed, and I believed it had, it just opened my eyes to  
7 the injustices of the world.

8 You talk about how, again our software was not  
9 viable. DHS, we had a quote to them that they requested  
10 for \$100 million, single phase. Easily could have been a  
11 billion dollar project. But I guess the big companies  
12 they were working with got together saying, no way these  
13 black boys are going to get a million dollars.

14 I bet they didn't use the words "black boys." I  
15 bet over at the U.S. Attorney's Office they were saying  
16 one way or another, we are going to win this case because  
17 we can't allow these "black boys" to win a case against  
18 us.

19 Regarding the transcript, we requested a number of  
20 times that the transcript be delivered, and we never  
21 received it. And when I go through, again, and really  
22 look at all of this, it saddens me. And I'm very  
23 saddened.

24 I am not saying -- Mr. Kirsch is going to stand up  
25 when it's time to have me remanded, and I do believe I am

1 going to be remanded. From the time I came in this  
2 courthouse a week ago today, I knew what my sentence was  
3 going to be. Kind of funny, because I actually thought it  
4 was going to be more.

5 Mr. Kirsch is going to stand up and say I don't  
6 have any respect for justice. I absolutely do. I  
7 absolutely have respect for the law. I have respect for  
8 people in the legal field. I have -- many of my relatives  
9 were actually in law enforcement in the '70s, and I would  
10 imagine that even now there are probably some that are  
11 still in law enforcement.

12 I look at all of that, and you can see I came in  
13 here today knowing what was going to happen. I didn't  
14 run. I didn't even plan on running. I plan on working  
15 this appeal, and we're going to be vindicated. I know we  
16 are, because I know in my heart we did not misrepresent  
17 ourselves.

18 You say that we didn't tell the staffing companies  
19 that we knew these people. Every one of the staffing  
20 companies knew we knew the people at IRP. And if they  
21 asked, we told them we worked there before. Absolutely.  
22 There was no question. That happens all of the time in  
23 the industry.

24 I have been doing consulting for 10 years. I was  
25 really surprised how consulting was handled when I started

1 doing it. But I have seen companies will let you go, and  
2 immediately you start back up with a new company.  
3 Happened to me a couple of times. Nothing unusual.  
4 Nothing unusual about working multiple jobs at the same  
5 time. Nothing unusual.

6 So, I just want to wrap up with saying that, again,  
7 I know exactly what is going to happen here. I know what  
8 you are going to come back with. I know I am going to be  
9 remanded into custody. And if that happens, that happens,  
10 because God controls my life.

11 I have a strong faith in God, and I know that He  
12 will never abandon me. And I know that I did not lie to  
13 anybody regarding IRP. Thank you.

---