

16 THE COURT: Mr. Banks, do you wish to make a  
17 statement to me on your own behalf before I impose  
18 sentence?

19 THE DEFENDANT: Absolutely, Your Honor. I want to  
20 start by saying something. This is somewhat of a tragic  
21 situation. And I just don't know what to really -- what  
22 to believe, because a jury came back with a verdict of  
23 guilty. I have heard all of this stuff read. I have  
24 heard almost a vitriolic type of attitude from Mr. Kirsch.  
25 You hear all of this, and you just -- I am

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

1 listening to everything that is being said about what I  
2 did and what we did. And then I hear the remorse  
3 argument. I cannot stress enough, and I don't think  
4 anybody in this courtroom, if they had a child, if they  
5 had anything, they knew their child didn't go out to  
6 commit a crime, they would tell them to admit that you  
7 committed a crime.

8 Irrespective of what the whole world would say, I  
9 know what was in my heart. I know what was in my heart,  
10 and there was no scheme anywhere.

11 When I was younger, my friends used to want to go  
12 out and do a lot of dirt. I had a common saying, "I'm not  
13 going to jail for anybody." I always brought myself with  
14 my own car, and I would leave in case somebody wants to go  
15 start committing a crime. David Banks does not commit  
16 crimes. David Banks does not go into anything thinking  
17 about a crime.

18 I wrote a few things down here I would like to just  
19 read. I won't be with you too long, Your Honor, but I  
20 think it is important for me to say a few things.

21 It is absolutely inconceivable that me, my  
22 brothers -- my five other defendants, with no criminal  
23 history, woke up one day and will say, this is a great way  
24 to continue to get money. See, I know that didn't happen.  
25 They know that didn't happen. And we know in our heart,

1 God knows that did not happen. It just simply did not  
2 happen.

3 Now, in 1999 or 2000, that time frame, I worked for  
4 a company called LSI Logic, a semiconductor company. My  
5 salary was somewhere around 110,000. That was back then,  
6 plus, like, a 10 percent bonus.

7 It is inconceivable that, okay, oh, by the way,  
8 guys, let's get together, let's continue to engage in some  
9 criminal conspiracy. Oh, by the way, you are going to  
10 take a chance on going to jail. And I'm going to sit back  
11 and take that risk and then say I am going to get  
12 compensated. I would have much rather just worked a  
13 normal job.

14 This was not about a scheme. This was about a 100  
15 percent internal and strong belief in what we had  
16 developed. Everybody around here is saying, well, it is  
17 -- no, we have law enforcement professionals. They would  
18 not be forthcoming. That was unfortunately what we were  
19 told about this software.

20 We originally set up meetings. We met in  
21 Washington, D.C. with Ben Nighthorse Campbell to tell him  
22 about our software. He is the one that referred us to the  
23 FBI. That is how the agents came about. We went through  
24 all these sorts of evolutions. Next we say, okay, let's  
25 hire on some FBI agents, consult them and bring them in as

1 part of the scheme? Who does that? Who does that?

2 I worked closely with these gentlemen. And people  
3 say I don't have respect for the law. I have respect for  
4 the law. I have friends -- he pulled me over because I am  
5 a black guy. No, he pulled you over because I was  
6 speeding. I have respect for the law.

7 While Mr. Kirsch brings up my traffic record. I  
8 take responsibility for my traffic record. And not  
9 everything -- the last case got thrown out because I had a  
10 valid driver's license. There are issues that Mr. Kirsch  
11 doesn't even know about.

12 So it is just, to me, it is more hatred being  
13 pushed my way to get me a longer sentence. That is all I  
14 see it as. FBI agents in the building working with us.  
15 I'm going over their processes and procedures. I worked  
16 hours -- 8 hours a day working with FBI agents, Customs  
17 agents, understanding their procedures, understanding  
18 their profiles, understanding 302.

19 We went through all of this stuff at the request of  
20 Steven Cooper from the Department of Homeland Security,  
21 who made this recommendation that we bring on some guys,  
22 because the original product we had was suited for state  
23 and local government.

24 Repeated trips; four or five trips to D.C. The  
25 last trip the FBI was there. I remember a lady named

1 Melissa McRae. There were other people there; Customs,  
2 Border Patrol. We did not just believe. I don't know if  
3 anybody understands what it is like to be an entrepreneur  
4 or small business owner. We saw something. Nobody is  
5 going to tell me what those people said to us. They got  
6 us to do certain things; go do this and go do this.

7           They requested modification after modification. I  
8 hear the term "42 staffing companies." You are sitting  
9 there -- what happens in the corporate world when you make  
10 a commitment, a good-faith commitment? And in many cases,  
11 vice presidents in the corporate world actually have a  
12 budget and say, I have \$2 million toward this project,  
13 show us what you can do. We are a small company. We have  
14 to show -- I don't have IBM's name. I don't have Northrop  
15 Grumman's name. Lockheed Martin, they go in, they have  
16 all of the political connections, they just go in and it  
17 is, yeah, you are Lockheed Martin. You are this.

18           We have to prove something. It wasn't proven by  
19 fraud. Any modifications, every single time, they kept  
20 coming back. And I'm talking, like, are these people ever  
21 going to commit to anything? It's a catch 22; we are  
22 already in. So do we finish? Do we finish making the  
23 modifications for these people? Do we keep extending the  
24 company?

25           I look at it, okay, if we had to make 42 decisions

1 on whether or not do we continue staffing, that's what  
2 this was about. It was not about a criminal fraud in a  
3 criminal scheme.

4 Obviously, you can take certain things that look a  
5 certain way, an e-mail, and you can look at it any way you  
6 want, but it is true this is not a scheme. We would not  
7 waste all this time. And then I just think the inclusion  
8 of law enforcement into a company that is engaging in a  
9 criminal scheme is absolutely ludicrous. And for me to be  
10 that stupid of a criminal, I just can't -- it is just hard  
11 for me to accept.

12 We provided a lot of this information to the  
13 Government. There is clear statements. You made a ruling  
14 in Gary and Ken's talking about initial statements. We  
15 stand by our initial statements. We brought initial  
16 statements before here. And two of my initial statements,  
17 are Banks stated IRP was building software, Case  
18 Investigative Life Cycle, and working on securing  
19 contracts. Another one with Spherion, IRP is trying to  
20 secure a large contract with the New York City Police  
21 Department.

22 All of this stuff, as far as initial  
23 communications, was true. I had no idea, okay -- you sign  
24 a contract, we're obligated for that contract. I told  
25 Mr. Shannon, I was like, when are you going to get this?

1 I said, we have debts to pay.

2 This was not a scheme. That was in early 2004. In  
3 late 2003, DHS was talking to us about a pilot project.  
4 That pilot project required us to make some modifications.  
5 In 2003, if we make the modifications, obligate ourselves,  
6 we went back continuously to Homeland Security. Is this  
7 going to be good? Yeah, yeah, yeah. This is great.  
8 Okay, can we get a commitment? So this is not a scheme.  
9 So that is just for what that is worth.

10 Even the paper, Your Honor, because that telegraph,  
11 the article we complained about, that was released by the  
12 government. And I quote, "The agencies were told that  
13 temporary labor was needed to develop software that would  
14 be sold." Whoever gave the government -- whoever in the  
15 government who leaked that thing in the first place, words  
16 betrayed them, and they actually told the press, "software  
17 that would be sold" to the Federal Bureau of Prisons, DHS  
18 and other type of agencies "would be sold."

19 That is what we told each and every staffing  
20 companies. I challenge you, Judge Arguello, to look at  
21 the things that were not there. And I'm just saying this  
22 because I think it is important for me to say, we didn't  
23 say it at trial, but it is important for me to say, when  
24 we told the staffing company, we feel like we are close to  
25 closing business, there was not one reply, not one, well,

1 you said you had a contract.

2 But then they come waltzing in here talking about  
3 we don't have any e-mail that says they didn't have a  
4 contract. They didn't testify they responded to us, you  
5 told me you had a contract. They never had that. It  
6 simply did not happen. We never communicated we had a  
7 contract.

8 I believed we were going to get one wholeheartedly.  
9 John Shannon told us we are going to be able to sell this.  
10 He said it is the best software he had ever seen. Is it  
11 not that they can close business with NYPD? That was the  
12 testimony at trial.

13 I want to address a couple more things that I feel,  
14 at least, happened to us. I looked up the term "rights."  
15 It says "something that is due a person by law." "Due"  
16 means "something that is owed or deserved." I also looked  
17 up one final thing, it is "privilege." I'm just an  
18 African-American black man, trying to start a business.  
19 And, honestly, you are going to hand down a prison  
20 sentence. It is not the prison, it is the process that  
21 severely disturbs me.

22 "Due" as I said, is something that I am owed and  
23 deserved, whether that be a fair trial, whether that be a  
24 speedy trial, whether that be to present witnesses or  
25 present a defense.



1           We went to hell and back to find a staffing company  
2 representative -- and I will go ahead and say, a white  
3 staffing company representative that will come in this  
4 court and tell that jury that this was not unusual. This  
5 was a man who worked with the FBI on a bait and switch  
6 staffing scam. He understands the staffing industry.  
7 \$300 million company. We didn't get into those type of  
8 things, but he understands, and I feel cheated. I feel  
9 stripped.

10           And I just don't feel that we were given a chance.  
11 Really, I didn't expect fairness. I saw that with my  
12 sister. It is like we are not going to get a fair trial.  
13 And then I saw the remanding of Gary and Ken. I was like,  
14 every attorney that talked to us says that just doesn't  
15 happen. So you start to feel like you are getting a raw  
16 deal.

17           I'm here today, after Gary and Ken got sentenced,  
18 with full knowledge I was coming in here to get sentenced  
19 today. With some legal standard being tossed up and  
20 argued about whether I would flee. Cowards flee. Men  
21 fight. I don't flee. I believe in what we did. Do I  
22 believe we got in over our head? Some say you shouldn't  
23 have went elephant hunting. They say maybe we should have  
24 stuck to some smaller agencies. These guys at this level  
25 are ruthless, and maybe we should have been going after a

1 deer or something. But we believed in what we had.

2 So, with that being said, Judge, I don't think it's  
3 a lack of remorse to maintain your innocence. If the  
4 Government didn't agree with the verdict, what are they  
5 going to do? They are going to maintain, no, we are going  
6 to file something with the appellate court. We are going  
7 to do whatever. That is not disrespect for the law. We  
8 have an adversarial system.

9 I know what is in my heart. I know what we did. I  
10 know what I did. I know what I was thinking. Whether  
11 anybody else in this court, in that jury, knows what I was  
12 thinking, I know what I was thinking. And I would never  
13 intentionally engage in any sort of criminal activity  
14 whatsoever. Ever. I wouldn't do it.

15 The funny thing is, staffing companies -- we  
16 thought the government was setting it up -- contacted us  
17 between 2000 -- after the raid, 2006, some of the same  
18 staffing companies calling back to see if we would engage.  
19 We didn't get -- right now we are not developing a  
20 product. So why would I engage with you at a staffing  
21 company? I don't get into schemes.

22 We had a purpose, and the purpose was to develop  
23 software based on modifications that was coming to us.  
24 There was no other reason to continue to maintain people.  
25 We already have people we have to pay if we don't satisfy

1 the government or these requests. They are not going to  
2 give us any business. We are not going to pay anybody.  
3 That was some of the mindset.

4 So, for what it is worth, Judge, I had one more  
5 point, but it's slipping by me. And I guess I will  
6 finally say, I don't know if you have owned a small  
7 business or been an entrepreneur. I am -- certainly  
8 Mr. Kirsch -- I did research your guys' history, I don't  
9 see any business-related experience. And to understand  
10 what a small business goes through, you talk about, well,  
11 we'll figure out a way.

12 We are African-American. We went to bank after  
13 bank; Guaranty Bank, National Bank in Denver. We went to  
14 Pueblo Bank and Trust. At that time, Mr. Harper had good  
15 credit. We went everywhere trying to get credit. We  
16 talked to investors. Some investors were interested, some  
17 wanted to take too much of the company.

18 The big companies, we went there, wouldn't sign  
19 NDAs. They wanted to steal the software. Some said, "Is  
20 that all you are going to show us?" We went through the  
21 game.

22 So anybody who is going to sit here -- I know I am  
23 not a criminal in my heart. And nobody is ever going to  
24 convince me that I, David Banks, engaged in criminal  
25 activity. I don't care what Mr. Kirsch says. I don't

1 care what the FBI says. I know what is in my heart. And  
2 David Banks does not engage in criminal activity of any  
3 sort. Thank you, Your Honor. 