

Charlisa Stewart

From: BANKS DAVID A (36319013)
Sent Date: Thursday, January 5, 2017 11:07 AM
To: charlisa_stewart@live.com
Subject: My Letter to President Obama

Dear President Obama:

It is inconceivable to me that I am writing this letter to your from a Bureau of Prisons email system. My name is David Banks, but I am now known as Inmate no. 36319-013, an unfortunate distinction I ultimately received from the BOP, when on July 27, 2012, I became a victim of injustice after being sentenced to 11 years in prison for a crime I didn't commit. I realized the sadness and sympathy for the victims of tragic events I saw on television can't remotely be compared to the desperate pain and suffering victims and their families actually feel. Whether it is for the family of a police officer who was singled out and killed for a retribution killing, the victims of 9/11, innocent African-American men and boys being killed by a police officer's abuse of power, or the 3 girls kidnapped and held for 10 years by a sick man in Ohio. The pain and suffering of victims of a wrongful-imprisonment are no less devastating. However, the vast majority of Americans, including justice officials and legislators, lacks sympathy for the wrongly convicted, feeling their cries for justice are an illegitimate attempt to cheat the system and avoid deserved punishment. And feeling that the wrongly-convicted are getting what they deserved and that if they were truly innocent, didn't receive a fair trial or had their constitutional rights violated, the courts would certainly have corrected the injustice. My thoughts may have leaned that way before I became a victim of abuse in our justice system while those responsible for looking after my rights turned their backs on me.

President Obama, I hope you are different and will free my family and I from this prison, pain and overt injustice that we have suffered and return me to my God given right to life, liberty and pursuit of happiness with my family, church, friends and other occupations of life.

Many will say that I still have my life, but in reality, life is liberty. Life is pursuing happiness with family, friends and church, helping others in my community, and setting goals and achieving them. Life for me was living as an entrepreneur who was part of a company (IRP Solutions Corporation) that developed a modern transformative case management software solution that would enable federal, state and local law enforcement to share information and collaborate at levels never imagined and help eliminate the IT impediments that contributed to 9/11. My life has never been and never will be one of criminal activity and I would never do anything to jeopardize my freedom or selfishly scheme to hurt others for some type of vain gain. It is inconceivable to me that my life has been taken from me because officials in our justice system were indifferent and just didn't care about proof of my innocence, didn't care about me not receiving a fair trial and didn't care about my constitutional rights. I understand that these assertions may be shocking and inconceivable to you as they are to me, but I assure you they are 100% supported by the facts and evidence and confirmed by former federal appeals judge H. Lee Sarokin. For the first time in his 60+ year law career, Judge Sarokin sent a letter to POTUS on behalf of defendants asking that clemency be granted. Hopefully his November 2015 letter urging you to grant clemency petitions for me and my 5 codefendants (Kendrick Barnes - Inmate no. 36324-013, Demetrius K. Harper - Inmate no. 36320-013, Gary L. Walker - Inmate no. 36321-013, Clinton A. Stewart - Inmate no. 36322-013, and David A. Zirpola - Inmate no. 36323-013) speaks volumes and gives credibility to my plea. In that unprecedented light, I ask you to consider my plea and act through the wisdom of the U.S. Supreme Court, who said "it is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. But history is replete with examples of wrongly convicted persons who have been pardoned in the wake...of evidence establishing their innocence" as "executive clemency as provided the 'fail safe' in our criminal justice system."

The government's theory and charges in the criminal case against me and my codefendants is wholly inconsistent with the facts and evidence found in discovery, which was presented to the government in the form of a proffer before trial. Judge Sarokin said in his letter to you, he "fear[ed] a grave injustice has been done to us" and that there are "a series of events that cries out for clemency" in our case. I'm not some disgruntled criminal trying to avoid taking responsibility for some crime I committed. I am innocent and have proclaimed that innocence from the start and maintain it to this day, as have my codefendants. Apparently, the overzealous prosecutor concerned only about winning, cherry-picked through discovery documents and manipulated the facts

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to fit a theory which Judge Sarokin characterized as "absurd." Sarokin concluded that the government indicted and prosecuted us for "failing to pay corporate debts" which was confirmed by the head of the FBI in Denver in a letter from discovery (<http://bit.ly/2ibF7Qp>) where he says the matter would "best be handled civilly." There are many other facts in our case that rise to the level of absurdity Judge Sarokin speaks about. Here are just a few:

The government's core charge was that we were engaged in a criminal scheme for two and a half years between 2002 and 2005 by making false statements to staffing companies that induced them to do business with us. That is wholly inconsistent with the fact that around the end of December 2003, at the urging of the Department of Homeland Security officials and coordinating with Colorado U.S. Senator Ben "Nighthorse" Campbell, we hired three recently retired Denver-based federal law enforcement agents to come work for IRP for \$65 per hour. President Obama, I ask you to ponder the absurdity of me hiring and working closely with federal law enforcement agents if we were engaged in a criminal scheme that involved targeting agencies like the FBI and Department of Homeland Security as part of the artifice. Does that make sense to you? At no time, were we engaged in the criminal scheme the government alleges. Furthermore, all three agents signed independent contractor agreements (<http://bit.ly/2j5Vj5y>) to be paid upon the sale of the software or when we could get them placed with a staffing company. Why wouldn't I have made the same alleged false statements about having a current or impending contract to the three agents to get them to work for IRP -- a claim never made by them or the government?

The agents participated in numerous meetings where we demonstrated and discussed our software, where they provided subject matter expertise on both FBI and DHS investigative processes and produced sample investigations for terrorism, fraud, drug and other investigations to be tested in the software. With firsthand knowledge about the software, and two weeks prior to the FBI raiding our business in February 2005, one of the agents working for us, Gary Hillbarry, who was the former head of the Denver Division of the Immigration and Customs Enforcement, sent an affidavit (<http://bit.ly/2hS2JNX>) to the FBI stating: "We (speaking for him and the two other FBI supervisory special agents) decided that IRP Solutions had a viable law enforcement product and appeared to be moving forward to acquire state and federal law enforcement contracts for their product." However, the FBI still raided our business with a search warrant, stating we were a "purported" software company. At trial, the prosecutor presented the case to the jury that our business and software was nothing but a scam in an obvious effort to paint IRP as a bogus business/front organization whose executives were nothing more than peddlers of vaporware. Judge Sarokin wrote about this in the Huffington Post. "The government's contention that their business was nothing but a scam defies reality," said Sarokin. Another admission by the prosecutor at trial proved we had no motive to commit a crime. The prosecutor told the jury: "The evidence isn't going to show you that the defendants got fabulously wealthy from this scheme." If not for money, why would I and my 5 codefendants with no criminal records, risk our freedom when we could have easily made much more money just working a normal job or software consulting engagement? It just doesn't make sense. Furthermore, I and others underwrote the debt by signing personal guarantees, putting our own financial lives at risk if the company failed to pay the debt. We believed enough in our product to put our personal financial livelihoods at risk.

The trial itself was infected with two major constitutional violations that are now subject of a judicial complaint (<http://bit.ly/2ba9827>). Judge Sarokin discussed in his letter to you, the 5th Amendment violation related to the bizarre and mysterious disappearance of a portion of the court transcript where the trial judge told us during a sidebar that if our next subpoenaed witness failed to appear as required by law, then one of us, pro se defendants, would have to testify or she (the judge) would immediately rest our defense. Although we contemporaneously requested the transcript and were denied, the judge's statements were missing for our appeal. To coin a campaign phrase by you -- "C'mon man", the only portion of a court transcript from a 17-day trial where the defendants alleged the judge compelled them to testify in violation of their 5th Amendment rights just doesn't disappear. Judge Sarokin said in the Huffington Post that without the judge's missing statements from the transcript, it is clear from the record that our 5th Amendment rights were indeed, violated by the trial judge and that the law required the Court of Appeals to reverse the conviction (<http://huff.to/2iQNbGS>).

The other constitutional violation was a 6th Amendment violation of our right to present witnesses in our favor. Two expert witnesses, in violation of the law, were excluded when the judge issued an unlawful discovery sanction. The two experts from the staffing industry were the most important part of our defense against the government's case. Prior to trial, both experts sent letters (<http://bit.ly/23TkubT>) (<http://bit.ly/1Tiuqc2>) to the U.S. Attorney debunking the government's claims that staffing companies were induced into doing business with IRP and described to the prosecutor how staffing companies make determinations to engage in business. But as I mentioned above, they were improperly disallowed from testifying. Both constitutional issues were forcefully argued on appeal but for some strange reason the court of appeals was unwilling to reverse the conviction.

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Irrespective of our innocence, Judge Sarokin said he believes the harsh sentences imposed on me and my codefendants were likely motivated by race which has become all too common in our justice system. I was actually asked by an FBI agent during the raid that if a qualified white woman applied to work for IRP, would I hire her.

Nothing makes sense President Obama! How can this happen in America? How can a prosecutor just ignore innocence, disregard exculpatory evidence, exclude expert witnesses in violation of the law and a portion of the trial transcript related to judicial misconduct mysteriously disappear? Are our justice system officials so concerned with their image and winning a conviction that they will callously allow citizens to be wrongly-imprisoned to protect that image? What about the pain and suffering of my wife and daughter? My wife says she sporadically starts crying at any time! My daughter breaks down crying in church on Father's Day! What about my mother, sisters and siblings pain? Why don't enough people seem to care? What about us? Where is the sympathy for our plight?

Justice Kennedy, dissenting in the 2004 Supreme Court case of Dretke v. Haley said that "clemency power can correct injustices that the ordinary criminal process seems unable or unwilling to consider" and "hold out the promise that mercy is not foreign to our criminal justice system."

President Obama, I and my codefendants have wrongly lost four and a half years of our life and counting. Our families have and continue to suffer immeasurable pain. We hold out hope that compassion and mercy for our injustice is not foreign to you and you will grant us clemency before you leave office.

Thank you for your consideration.

Sincerely,

David Banks (BOP Reg. no. 36319-013)
Federal Prison Camp
Florence, Colorado