



## **President Trump Sought for Pardon of Wrongly Convicted African-American Technology Executives Denied Clemency by Obama**

*Trump May Be the Only One Courageous Enough Stand Against Justice System Misconduct Resulting in Wrongful Conviction*

April 30, 2018 - A Just Cause believes President Donald Trump may be the only U.S. president courageous enough to pardon five innocent Colorado software executives (4 black, one white) who were unconstitutionally convicted and imprisoned as a result of prosecutorial and judicial misconduct. President Obama denied clemency to these businessmen after receiving a letter from a former federal appeals judge asking him to grant clemency based on evidence that the businessmen were indicted and imprisoned for "failing to pay corporate debts" and had their constitutional rights violated by the trial judge and prosecutor. In November 2017, four concerned members of Congress sent a joint letter to the Justice Department seeking answers about the civil case being criminalized and "serious" allegations of misconduct and violations of the law by the prosecutor and trial judge. The DOJ has yet to respond, presumably because it's taboo to challenge misconduct by federal judges and prosecutors. According to prominent federal appeals judge Alex Kozinski, it takes a brave and courageous person in the Justice Department or courts to report misconduct or take action to hold them accountable. Another federal appeals judge says federal judges are stubborn and refuse to acknowledge their wrongdoing.

In his 2015 article titled "Criminal Law 2.0", Judge Kozinski described the FBI agent who reported prosecutorial misconduct in the wrongful conviction of U.S. Senator Stevens as "brave" and said the federal judge who had those DOJ prosecutors investigated and forced them to admit wrongdoing as "courageous." In 2014, 9th Circuit federal appeals judge Andrew Hurwitz said the following in criticism of the federal judiciary: "To err is human" but "to make a mistake and stubbornly refuse acknowledge it -- that's judicial." Kozinski also chided that even after the Stevens prosecutors got caught, they "argued strenuously that their ill-gotten conviction should stand because boys will be boys."

"These five innocent Colorado software executives were denied a fair trial and have languished in prison for nearly six years because establishment federal judges and prosecutors are too stubborn to admit wrongdoing and take responsibility for their actions," says Lamont Banks, Executive Director of A Just Cause. "It's shameful that reporting misconduct, protecting the constitutional rights of defendants and holding prosecutors and judges accountable for misconduct are so rare that a federal judge characterizes those who do as brave and courageous," adds Banks. "These IRP executives are patriots, had no criminal records and were developing software to help protect our nation from another 9/11 terrorist attack," says Banks. "A Just Cause hopes that President Trump as a businessman will not only see the horrible injustice of imprisoning business executives for failing to pay contractors, but has the courage to do what the Obama administration refused to do; confront prosecutorial and judicial misconduct head-on by granting clemency to five innocent men who were trying to help our country," adds Banks.

A Just Cause is asking President Trump to review the following in consideration of granting clemency:

The five software executives of the Colorado Springs-based IRP Solutions Corporation (David A. Banks, Demetrius K. Harper, Kendrick Barnes, David A. Zirpolo and Clinton A. Stewart) developed innovative

criminal investigations software after 9/11 to help improve our nation's law enforcement information sharing and collaboration capabilities. IRP's CILC software (pronounced "silk"), which is an acronym for Case Investigative Life Cycle, was highly-touted by law enforcement at all levels.

CILC is "powerful enough to become your agency's primary computerized investigative case management tool," said Police Magazine in 2004. CILC "was the best software I'd ever seen," said a senior official responsible for evaluating and recommending case management software for the NYPD Detective Division. We "unite in praise to the IRP staff and their software product," said the Chief of Detectives for the Denver Police Department. IRP Solutions "developed an innovative and timely solution for law enforcement agencies," said the former Chief of Police for the Colorado Springs Police Department, who was previously an LAPD commander. CILC "looked exactly like what...PPD was looking to purchase," the Director of Information Technology for the Philadelphia Police Department told the FBI. CILC "had a lot of features that law enforcement and case agents can really use," said a senior Department of Homeland Security technology official. "We decided IRP Solutions had a viable product and appeared to be moving forward to acquire state and federal law enforcement contracts," said retired Immigration and Customs official Gary Hillberry in an affidavit to the FBI. Hillberry and two other FBI supervisory special agents worked as independent contractors at IRP providing subject matter expertise for CILC.

With full knowledge of IRP's substantial sales activities and law enforcement's serious interest in CILC, FBI agent John Smith, on February 7, 2005, fraudulently obtained a search warrant by swearing in an affidavit that IRP Solutions was a "purported" software development company and raided IRP Solutions on February 9th. As a matter of fact, the FBI was aware of the following IRP business activities that occurred six months prior to the raid:

- 1) On October 28, 2004 four senior FBI technology officials attended a joint DOJ/DHS presentation of CILC along with a dozen or more representatives from ICE, Secret Service, Border Patrol, U.S. Marshals and more.
- 2) On December 1, 2004, DHS requested and received a \$100 million quote for two CILC modules to use for their 2005 budget exercise.
- 3) On January 18, 2005, Hillberry sent the affidavit to the lead FBI agent stating IRP had a "viable" product.

The local paper reported that IRP was suspected of stealing money from staffing companies. There was no theft. IRP signed staffing company contracts for temporary workers to support modifications being made to CILC on behalf of the Department of Homeland Security and NYPD. Staffing company credit departments conducted credit checks, approved credit limits for IRP, paid their employees for work done at IRP, billed IRP and didn't receive payment. IRP execs were optimistic about generating revenue with DHS or NYPD to pay its debts but many months of hard work to sell CILC was destroyed by Denver FBI agents poisoning DHS, NYPD and other law enforcement agencies from purchasing software from a company under criminal investigation.

"FBI agents and DOJ prosecutors never saw this as a civil matter, a case of well-intentioned businessmen incurring business debt," said Dr. Alan Bean, Executive Director of the Friends of Justice. "Instead, scores of federal officials concluded, in the face of overwhelming evidence to the contrary, that a Colorado software development company had no prospects of success, no interest in success, and existed for the sole purpose of defrauding business partners," exclaimed Bean. "Until you realize that...the men at the heart of this story, the public face of the company, are African American, nothing else makes sense," said Bean.

A 2007 grand jury also saw IRP's business activities as a civil matter and refused to return an indictment based on a wild theory manufactured by the government that the IRP execs were laundering money

through the church through kickbacks they were receiving from some church friends who worked at IRP through staffing companies. "But if I don't pay somebody for the work they've done, that's not a federal crime," one grand juror pointed out.

"No one questioned the staffing company's obligation to seek civil remedies, but so long as IRP executives were making good faith effort to secure a contract, where was the fraud?" asked Dr. Bean. In 2009 the federal prosecutor pursued a dishonest prosecution by going to a second grand jury with a new "contract theory, alleging that staffing company representatives who personally interacted with IRP execs were duped into providing services to IRP based on false statements made by them about a having a "large current or impending contract" with the DHS or NYPD. But those same representatives, when testifying for the government at trial, said they were not duped because they didn't make the decision to do business with IRP, it was their credit departments who did so based on Dun & Bradstreet credit reports and other credit checks. Unlike the 2007 grand jury that included testimony from numerous witnesses who worked at the company including IRP Vice President David Zirpolo, only a single FBI agent was called to testify before the 2009 grand jury, thereby depriving the grand jury of other witnesses to guarantee an indictment.

According to Dr. Bean, AUSA Matt Kirsch dishonestly presented the IRP defendants as "slick opportunists who had learned to game the American dream", not as "real entrepreneurs developing a viable product in response to consumer demand." Kirsch told the jury that the IRP execs had a better chance winning the lottery than selling their software to DHS or NYPD. "The IRP6 case departs from the typical failed-scam scenario for the simplest of reasons: the government's case can't stand up to scrutiny," said Bean. "The fraud alleged in the indictment is a mirage," concluded Bean. A former federal appeal judge who is reviewed the case agrees.

Former federal appeals judge H. Lee Sarokin (Retired, 3rd U.S. Circuit Court of Appeals) immersed himself into the facts of the case after learning from A Just Cause about the suspicious disappearance or destruction of a critical portion of the trial transcript related to alleged judicial misconduct by the trial judge. After reviewing facts of the case and trial transcripts, Sarokin was not only convinced the IRP executives were innocent and were prosecuted for failing to pay corporate debt, but found the case was mishandled by both the government and the courts, which included violations of the defendants 5th Amendment rights and a violation of a federal discovery statute. Sarokin spoke to the Washington Post about this case in July 2016 ([www.wapo.st/29jXqSC](http://www.wapo.st/29jXqSC)).

"I thought it was rare for corporate executives to be indicted and imprisoned for not paying their corporate bills," Sarokin told the Washington Post. "What amazed me about the case was theory of the government that this program they were developing was a scam," added Sarokin. "All the proof in the case goes the opposite way," said Sarokin. He also blogged about the 5th Amendment violation and the disappearance of the transcript on the Huffington Post ([www.huffingtonpost.com/judge-h-lee-sarokin/the-case-of-the-missing-t\\_1\\_b\\_5340397.html](http://www.huffingtonpost.com/judge-h-lee-sarokin/the-case-of-the-missing-t_1_b_5340397.html)).

In his letter to Obama, Judge Sarokin exposed the inconsistent theories of the prosecutor that rendered the prosecution of the IRP executives absurd. Here is an excerpt from Sarokin's letter:

"The prosecution argued to the jury what I consider two wholly inconsistent theories. First, that the petitioners lied about their prospects for business in order to get staffing companies to work on the program, and second, that the program was a scam. Any reasonable analysis of the two theories sided-by-side would and should have led to the evitable conclusion that there was no evidence of criminal intent on the part of the petitioners. All one must do is ask a series of questions that renders the inconsistent charges absurd.

Assuming the petitioners exaggerated or even lied about their business prospects (which they denied doing):

1. How would they make money, if the staffing companies hired and paid the workers directly?

2. Why would the petitioners continue to engage staffing companies to work on a program if it were a phony scam?
3. If it were a scam:
  - a. Why spend years working on it?
  - b. Why invest money with friends and family?
  - c. Why hire former FBI agents and law enforcement officers to work on the project?
  - d. Why focus as your only target--law enforcement, FBI, Homeland Security, Congress, etc.
  - e. Why hire two law firms to guide and assist you?
  - f. Why lease expensive space and invite local law enforcement to the opening?
  - g. Why personally guarantee the obligations to the staffing companies?
  - h. Why fly around the country and incur the expenses of demonstrating it?

There can be only one logical conclusion from all of this. The petitioners continued to engage staffing companies because they believed in their program; expected it to be successful and be able to pay their debts. Totally lacking--contrary to any credible evidence, is proof of criminal intent. Petitioners never denied owing the money, but insisted they always intended to pay. There is no evidence that they incurred the obligations not intending to pay or knowing that they could not. The bottom line is that they were indicted, convicted and received long sentences for not paying their corporate bills." IRP COO David Banks also sent a letter (<http://bit.ly/2wUlqTQ>) to President Trump around February 2017 [prior to four members of Congress sending the letter to the DOJ], where he stated in part:

"The lead FBI agent in the case publicly admitted on two occasions during court proceedings that if we had PAID OUR DEBTS there would not have been a criminal case. So why are we in a debtor's prison? Why did officials ignore our innocence, ignore gross violations of our constitutional rights and ignore official misconduct? The answer is simple--to protect the image of the establishment at the expense of our freedom, our constitutional rights and pain to our families."

It is inarguable that the five IRP executives who are currently imprisoned at the federal prison camp in Florence, Colorado are innocent and were prosecuted by an over-zealous prosecutor for failing to pay corporate debt and it is undeniable that federal justice officials were unwilling and did not properly exercise their power or perform their duty under the law to vindicate the wrongly convicted men because they weren't brave or courageous enough to hold fellow judges and prosecutors accountable for their malfeasance.

Supreme Court Justice Anthony Kennedy's said "clemency power can correct injustices that the ordinary criminal process seems unable or unwilling to consider" and based on that, we ask President Trump to do what the Obama administration was unwilling to do, grant a pardon to David A. Banks (Reg. no. 36319-013), Kendrick Barnes (Reg. no. 36324-013), David A. Zirpolo (Reg. no. 36323-013), Clinton A. Stewart (Reg. no. 36322-013) and Demetrius K. Harper (Reg. no. 36320-013).

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