

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 09-cr-00266-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DAVID A. BANKS;
2. DEMETRIUS K. HARPER, a/k/a KEN HARPER;
3. GARY L. WALKER;
4. CLINTON A. STEWART, a/k/a C. ALFRED STEWART;
5. DAVID A. ZIRPOLO; and
6. KENDRICK BARNES,

Defendants.

REPORTER'S TRANSCRIPT
(Jury Trial Day 14)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 8:31 a.m. on the 17th day of October 2011, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFF:

MATTHEW T. KIRSCH and SUNEETA HAZRA, U.S. Attorney's Office - Denver, 1225 17th St., Suite 700, Denver, CO 80202

FOR THE DEFENDANTS:

Pro Se

I N D E XWITNESSES:PAGE**VINCE ROSALES**

DIRECT EXAMINATION BY MR. BANKS	1973
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STEVEN COOPER

DIRECT EXAMINATION BY MR. WALKER	1981
DIRECT EXAMINATION BY MR. BANKS	2002
CROSS-EXAMINATION BY MR. KIRSCH	2013
REDIRECT EXAMINATION BY MR. BANKS	2018

WILLIAM WITHERSPOON

DIRECT EXAMINATION BY MR. BANKS	2021
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E X H I B I T SNO.ADMITTED

406.00	2042
409.00	2032

No.REFUSED

D402	2040
D405	2041
D407	2042
D408	2043

1 **OCTOBER 17, 2011**

2 (Proceedings commence at 8:31 a.m.)

3 (The following is had in open court, outside the
4 hearing and presence of the jury.)

5 THE COURT: You may be seated.

6 All right. We had a series of e-mail messages
7 coming over the weekend. Mr. Banks, Mr. Walker, do you
8 wish to address me?

9 MR. WALKER: Yes, Your Honor. The first matter is
10 on the attempt to serve FBI Agent Robert Moen. We have
11 been attempting to serve him for several days. The person
12 first attempting to serve him actually went to his office
13 as late as Friday and was told that he was in staff
14 meetings. After leaving the building for 30 minutes to an
15 hour, she returned and was told he had left for the day.

16 Upon being told he was gone for the day and had
17 gone home, she went to his home to attempt to serve him,
18 but was not able to find him at his home. We made
19 subsequent attempts the rest of that day, and weren't able
20 to reach him at home. And so we had another server go to
21 his home on Saturday and Sunday.

22 We did understand from Mr. Kirsch that his plans
23 were to go on vacation and go hunting, but we did not want
24 to rely on that information, given that bad weather is
25 coming in in the mountains where he is going hunting. So

1 on the off chance he changed his plans or was still at
2 home, we wanted to continue to try to serve him.

3 When the server last went to Mr. Moen's home, he
4 was approached by an FBI agent as he was parked up the
5 street, who told him that he was not to try to serve Agent
6 Moen. And as far as our understanding is, the FBI had no
7 reason to be involved in that matter with us serving our
8 own witnesses. And so we reached out to U.S. Marshals to
9 attempt to serve him, in case he had changed his plans and
10 may have been in town.

11 The U.S. marshal informed us if he is, indeed in
12 town, they would attempt to serve him. And they also
13 suggested we might talk to the Court, if he is in town, to
14 help to assist in serving Agent Moen.

15 THE COURT: Last Wednesday or Thursday, when we
16 were discussing witnesses, it was my recollection that you
17 all had indicated, as the Government has indicated, that
18 you were not going to be calling Agent Moen.

19 MR. WALKER: Yes, Your Honor. That was our initial
20 thought. But after reviewing testimony of Agent Smith and
21 others, we determined it would be beneficial for us to
22 call Agent Moen.

23 MR. BANKS: Also, Your Honor, we did clean up the
24 list some more based on the testimony of Agent Smith. So
25 we did release some other witnesses based on that, and did

1 a little re-work of final witnesses, and that was pretty
2 much what we concluded. So you will find that a number of
3 witnesses have been eliminated. And we expect to be
4 wrapped up here, with the only outstanding issue to be
5 Special Agent Moen.

6 THE COURT: So at this time you do not intend to
7 call any of your listed witnesses at all? Mr. Vilfer?

8 MR. WALKER: I can give you a run down on each
9 witness. We will not be calling Mikel Nelson. I believe
10 we indicated that his testimony would be cumulative. And
11 in speaking with Agent Powers, from the FBI, his knowledge
12 was very minimal, and we were able to get the testimony
13 required from Agent Smith.

14 Paul Beebe --

15 THE COURT: I am trying to find Agent Nelson. What
16 page of your list is he on?

17 MR. BANKS: Mikel Nelson, M-I-K-E-L.

18 MR. KIRSCH: First page of the defendants' list, I
19 believe, Your Honor, is Mr. Nelson.

20 THE COURT: All right. Who was the second one,
21 though?

22 MR. WALKER: The next one was Mr. Powers.

23 THE COURT: Yes. Where is Mr. Powers? I see him
24 he is on page 4. All right. You are not calling
25 Mr. Powers?

1 MR. WALKER: We are not calling Mr. Powers.

2 THE COURT: Because?

3 MR. WALKER: Because we were able to elicit the
4 required testimony from Agent Smith.

5 THE COURT: All right.

6 MR. WALKER: And, as well, we will not be calling
7 Mr. Beebe.

8 THE COURT: Mr. Vilfer?

9 MR. WALKER: We will also not be calling
10 Mr. Vilfer, Your Honor.

11 THE COURT: Mr. Ming Cong Lee?

12 MR. WALKER: Ming Cong Lee, we will not be calling,
13 Your Honor. And I believe we also have Lam Ha on our
14 list. We will not be calling Mr. Lam Ha.

15 THE COURT: Willie Pee?

16 MR. WALKER: Your Honor, we will not be calling
17 Mr. Willie Pee.

18 THE COURT: You already told me Shaun Haughton you
19 aren't going to call. Craig Simmons, you were not going
20 to call. Mr. Cooper?

21 MR. WALKER: Mr. Cooper, we will be calling, Your
22 Honor, and he will be present this morning.

23 THE COURT: So Mr. Cooper will be here this
24 morning?

25 MR. WALKER: Yes, Your Honor.

1 THE COURT: Mr. Witherspoon?

2 MR. WALKER: Mr. Witherspoon, we will be calling,
3 and he will be here this morning.

4 THE COURT: Okay. And you said you are not going
5 to call any of the three witnesses from Bearing Point?

6 MR. WALKER: That's correct, Your Honor.

7 THE COURT: Mr. Pisciotta?

8 MR. WALKER: Pisciotta, we will not be calling him
9 either, Your Honor.

10 THE COURT: Ms. McLaughlin?

11 MR. WALKER: No, Your Honor, we will not be calling
12 her.

13 THE COURT: Ms. Zellenbaba?

14 MR. WALKER: Your Honor, our intentions were to
15 call her, but we weren't able to locate her in time since
16 she was out of the country.

17 THE COURT: Mr. Rosales?

18 MR. WALKER: Mr. Rosales we will be calling. And
19 he is scheduled to be here this morning.

20 THE COURT: Mr. Castleberry, you said you were not.

21 MR. WALKER: We are not calling him.

22 THE COURT: Mr. SanAgustin?

23 MR. WALKER: No, Your Honor, we will not be calling
24 him.

25 THE COURT: Ms. Bowden?

1 MR. WALKER: No, we will not be calling her.

2 THE COURT: You already said Mr. Ponzi you are not.

3 Mr. Beltran?

4 MR. WALKER: No, Your Honor, we will not be calling
5 him.

6 THE COURT: Mr. Belrose, you said you are were not
7 going to be calling?

8 MR. WALKER: That's correct, Your Honor.

9 THE COURT: Mr. Gianelli?

10 MR. WALKER: That's correct, Your Honor.

11 THE COURT: You are not calling him?

12 MR. WALKER: We are not calling Mr. Gianelli.

13 THE COURT: Mr. Fuselier?

14 MR. WALKER: Mr. Fuselier, we are not calling him.

15 THE COURT: Ms. Broerman?

16 MR. WALKER: We will not be calling Ms. Broerman,
17 Your Honor.

18 THE COURT: Mr. Perry?

19 MR. WALKER: We will not be calling Mr. Perry.

20 THE COURT: And you said Mr. Hale, Mr. Holland and
21 Mr. Crockett you were not going to call. You told me that
22 last week.

23 MR. WALKER: That's correct.

24 THE COURT: And none of the Philadelphia people
25 were you going to call?

1 MR. WALKER: We will not call any of the
2 Philadelphia people, Your Honor.

3 THE COURT: And Lorne Cramer?

4 MR. WALKER: We will not be calling Mr. Cramer.

5 THE COURT: You already told me Theo Gregory, Rick
6 Gonzales, you were not going to be calling. Mr. Brown?

7 MR. WALKER: Michael Brown, we will not be calling
8 Mr. Brown.

9 THE COURT: Mr. Smith, you already did. Mr. Moen
10 is the one that is at issue. Mr. Black, you are not going
11 to call?

12 MR. WALKER: That's correct, Your Honor.

13 THE COURT: And Mr. Anderson you are not going to
14 call?

15 MR. WALKER: That's correct.

16 THE COURT: All right. Now, with respect to
17 Mr. Moen, when did you first start attempting to serve
18 him?

19 MR. BANKS: Earlier they tried to locate him, I
20 think in Denver. They could not locate him in Denver.
21 Then, finally -- that was about a week and a half ago.
22 They anticipated that he was in the Denver office. They
23 did not locate him. Finally, sometime last week, they
24 determined that he was in Colorado Springs, and that is
25 when service proceeded with Mr. Moen.

1 THE COURT: All right. Who attempted to contact
2 whom last week to find out where he was located?

3 MR. WALKER: Your Honor, I am not all together
4 certain about which of our support staff attempted to
5 contact Mr. Moen and what resources they used to get that
6 information. I know Ms. Stewart and Ms. Goggans were
7 involved. I am not sure exactly to what extent she was
8 involved in attempting to serve Mr. Moen.

9 THE COURT: And when you say they attempted to
10 contact him in Denver, what did they do, place a phone
11 call?

12 MR. WALKER: Your Honor, I believe they tried to
13 use internet resources, and also tried to make telephone
14 calls to the FBI office in Denver. I'm not all together
15 certain exactly who they talked with. And Mr. Williams,
16 who is in the back of the courtroom, attempted to serve
17 him at his residence.

18 THE COURT: This weekend?

19 MR. WALKER: Yes, Your Honor.

20 THE COURT: After you indicated you weren't going
21 to call him?

22 MR. WALKER: That's correct, Your Honor.

23 THE COURT: What is the basis of the testimony you
24 need to elicit from him that has not been -- you all
25 indicated on Thursday you weren't going to call him. It

1 was only after you put Agent Smith on the stand, and even
2 then, not until the weekend that you informed anyone that
3 you were intending to call him. What is the basis of the
4 need for his testimony?

5 MR. BANKS: Well, Mr. Moen -- there is a disturbing
6 pattern with regard to Mr. Moen's -- not necessarily
7 interrogation technique, but there is a disturbing pattern
8 in change of witness statements between Mr. Smith and
9 Mr. Moen. And it is a rather clear pattern that when
10 Mr. Moen got involved, it appeared the witnesses started
11 to change their statements. And they're definitely
12 inconsistent between Mr. Williams and Mr. Moen.

13 And there is a pattern of what appears to be
14 alignment with the Government's Indictment; that the
15 individuals did not originally provide that information to
16 Mr. Smith. So there is a clear distinction between
17 Mr. Moen and Mr. Smith. Not only years later did Mr. Moen
18 actually do the interviews, which makes it even more
19 unlikely that witnesses recalled information in a clearer
20 fashion than they did with Mr. Smith.

21 We also would like to address a couple of --

22 THE COURT: I need more specifics. So, in terms
23 of -- you cross-examined all of the witnesses that were
24 brought in to testify that were fact witnesses from the
25 staffing companies. You used those statements with the

1 FBI to impeach them; correct?

2 MR. BANKS: Correct, we did.

3 THE COURT: So what is Mr. Moen's testimony going
4 to add to anything? Agent Smith interviewed them early
5 on. When did Agent Moen interview them?

6 MR. BANKS: A couple years later.

7 THE COURT: So several years later Mr. Moen
8 interviewed them. How is Mr. Moen's testimony going to
9 make any impact on your defense? You have actually
10 cross-examined each of the witnesses using both of those
11 statements.

12 MR. BANKS: Correct, Your Honor, in some cases.
13 But, also, as early on as we said, the motivations of the
14 Government in this case have not been, at least from our
15 perspective, very pristine in their actions. And
16 Mr. Moen, obviously, is a part of providing information
17 and gathering information in a very, what I call
18 collective fashion, to kind of fit what the Government's
19 case was. And we feel like there is a clear pattern of
20 behavior in Agent Moen in doing that. We also --

21 THE COURT: Now, that pattern, if it existed,
22 wasn't changed by Agent Smith's testimony on Thursday.
23 And on -- I don't remember if it was Wednesday or Thursday
24 when I went through the witnesses, you all had decided
25 that Agent Moen's testimony wasn't important enough for

1 you to continue to attempt to serve him, and you indicated
2 in court that you were not going to call him. So what
3 changed?

4 MR. BANKS: Well, one thing that changed was the
5 testimony of Agent -- obviously, of Agent Smith,
6 highlighted some things in our head from what we had seen
7 in discovery, that Mr. Moen would need to come provide
8 particular testimony regarding his activities during the
9 investigation.

10 THE COURT: And why didn't you raise that as an
11 issue while we were still all in court and Agent Moen was
12 still in town?

13 MR. BANKS: Well, what we were trying to do, Your
14 Honor, was trying to clean up the witness list so we can
15 get, at least, witnesses who are not going to be
16 cumulative, and just trying to re-evaluate who is going to
17 be our final set of witnesses. As you have seen from
18 Mr. Walker, we have eliminated a lot of witnesses. Some
19 for various reasons, some by virtue of we just couldn't
20 locate. And at this point, we don't think they were going
21 to add too much to our defense.

22 But we do feel like Agent Moen is relevant with
23 regard to questions we have to ask him. We also would
24 like to put some of the Government exhibits in front of
25 him and actually ask him some questions regarding that, as

1 well, and his knowledge of certain exhibits and things
2 along those lines.

3 THE COURT: And what relevance is his knowledge of
4 certain exhibits? Are these exhibits that were taken
5 during the seizure; the raid?

6 MR. BANKS: No. Exhibits that were provided by --
7 that are in the Government's exhibit list.

8 THE COURT: And was he part of the original search?

9 MR. BANKS: No, he was not a part of the original
10 search. But he has knowledge of all of the staffing
11 companies that are party to this case. And we definitely
12 want to question him about his knowledge about certain
13 staffing companies, specifically as it relates to some of
14 the Government's exhibits that they have actually brought
15 forth.

16 THE COURT: I've told you this before. I assume --
17 well, I assume you are going to be asking for a
18 continuance if we can't -- if you can't serve him. I
19 don't know when he is going to be able to be served. But
20 the one thing you have to show me, if you are going to
21 sustain a continuance, is that there is a real need for
22 his testimony, and that you will suffer harm in your
23 defense if he does not appear.

24 I am trying to understand what is the relevance and
25 materiality of his testimony to your defense when, number

1 one, you told us on Wednesday or Thursday that you didn't
2 need him. Nothing really has changed. Agent Smith did
3 take the stand on your -- in your case, but you had the
4 opportunity to question Agent Smith when the Government
5 first put him on. So you could have been well aware of
6 that if you had decided to question him at the time that
7 he had originally taken the stand.

8 Third, you didn't -- after Agent Smith testified,
9 you made no efforts to inform anyone that you would still
10 want Agent Moen, until this weekend, when we got the
11 e-mails that came out saying you were attempting to serve
12 him. So I need to understand more, if you are going to
13 ask for a continuance, as to why I should delay this jury,
14 who, in all actuality, this case could have been over last
15 week.

16 If your witnesses -- if you had properly subpoenaed
17 your witnesses and gotten them here, we could have been
18 done last week. I have had to send them home every day
19 early, and gave them Friday off, because you all had not
20 been prepared to move forward with your case.

21 I have to balance your needs with the needs of the
22 jury and the needs of the Court in all of that. And what
23 I am trying to do is understand exactly how Agent Moen's
24 testimony is material to your defense.

25 MR. BANKS: Your Honor, the Government is the

1 accuser in this particular case. And all accusers, all
2 FBI agents -- obviously, we can't call Mr. Kirsch, but all
3 Government accusers that are subject to this
4 investigation, and conducted interviews and interfaced
5 with staffing companies, their testimony is relevant.

6 THE COURT: But you are telling me that Agent Moen
7 wasn't involved in any of this until after the search was
8 executed. And he didn't even interview witnesses until
9 several years after that occurred. So I'm trying to
10 understand how is his testimony more material than some of
11 the other FBI agents who were part of that search that you
12 decided you didn't need to call?

13 MR. BANKS: Your Honor, there are two -- primarily
14 two FBI agents that did the bulk of the interviews. It
15 was Special Agent John Smith and Special Agent Robert
16 Moen.

17 THE COURT: But, again, the timing is, Agent Smith
18 did interviewing before and after; correct?

19 MR. BANKS: Before and after what, Your Honor?

20 THE COURT: The search warrant. The execution of
21 the search warrant.

22 MR. BANKS: That's correct.

23 THE COURT: He was investigating?

24 MR. BANKS: Yes.

25 THE COURT: And Agent Moen didn't come into the

1 picture, as I understand, until several years after the
2 search warrant was executed. And I am not sure if he came
3 in before the Indictment or after the Indictment. But I'm
4 trying to understand what his relevance is.

5 MR. BANKS: Well, he came in -- remember, Your
6 Honor, Special Agent Smith left in 2007, and was not the
7 central agent in this case. It appears that Agent Moen
8 became the central agent in this case and had
9 responsibilities, and this is pre-Indictment, and near
10 2007, where he started conducting numerous interviews with
11 staffing companies, not only regarding IRP's activities,
12 but regarding statements that were made by the staffing
13 companies, which are clearly inconsistent. Agent Smith
14 cannot testify --

15 THE COURT: Inconsistent with what?

16 MR. BANKS: With previous statements made to Agent
17 Smith.

18 THE COURT: Okay. So his report differs from Agent
19 Smith's report?

20 MR. BANKS: Drastically.

21 THE COURT: In terms of what was said?

22 MR. BANKS: Yes, that's correct, Your Honor.

23 THE COURT: And you knew that before you came into
24 court. You have known that since the documents were
25 turned over. And, yet, last Wednesday or Thursday, you

1 told me you didn't need Agent Moen.

2 MR. BANKS: Absolutely, Your Honor. We were -- at
3 that time, as you said, we were evaluating what witnesses
4 were going to be good and what witnesses are not going to
5 be good. When we eliminated some witnesses, we made a
6 determination at that particular point, based on some
7 testimony that Robert Moen had given -- I am sorry, that
8 Agent Smith had given, that Agent Moen is actually very,
9 very relevant.

10 THE COURT: But relevant because his report of
11 witness statements differ from what Agent Smith had put in
12 his report 2 or 3 years earlier?

13 MR. BANKS: Yes. That is relevant, we feel.

14 THE COURT: How is that relevant? How is that
15 difference relevant?

16 MR. BANKS: The motivations of the Government are
17 at issue in this case, Your Honor, as far as the defense
18 is concerned.

19 THE COURT: All right. But you had the
20 opportunity, and you did exercise that opportunity, to
21 actually impeach, or attempt to impeach the witnesses
22 whose statements were reported by both Agent Smith and
23 Agent Moen, using those statements with that witness;
24 correct? You had that opportunity, and you exercised it.

25 MR. BANKS: That's right, Your Honor. And we

1 exercised that, and we were effective in impeaching some
2 witnesses. But, at the same time, the motivations of the
3 Government and their pattern of behavior in this
4 particular case against these defendants is not only
5 material in our mind, but very, very relevant for the jury
6 to view if the Government's motivations were vindictive,
7 if the Government's motivations were not necessarily right
8 in this particular case.

9 And we've held that position since we have been
10 involved in this particular case. Whether we proffered to
11 the Government -- we don't feel like the Government's
12 motivations were true and honest with regards to the way
13 they conducted this investigation against us. And we feel
14 like that information is relevant and material. If there
15 is a pattern of behavior, that that is relevant and
16 material for the jury to consider if the Government's
17 behavior was not clean, if you will, with regards to this
18 case.

19 THE COURT: All right. Mr. Kirsch, what is the
20 Government's position, and where is Mr. Moen?

21 MR. KIRSCH: Your Honor, Mr. Moen is elk hunting
22 somewhere in the mountains outside of -- more than an hour
23 away from Montrose, somewhere on the Uncompahgre Plateau.
24 He is not available by cell phone. He is not expected
25 back until the middle of the week.

1 It is our understanding that the first attempt that
2 the defendants made to contact Mr. Moen at his office was
3 on Friday, when the entire Denver RA was at an all-staff
4 meeting.

5 THE COURT: What is the RA?

6 MR. KIRSCH: I am sorry, that is the entire Denver
7 field division. So it included the Denver office, the
8 Colorado Springs office. We don't have any information
9 one way or another about whether anyone on behalf of the
10 defendants had attempted to call the Denver FBI. We do
11 know that it is the practice of the Denver FBI, that if a
12 person calls the Denver FBI office and is asking for an
13 agent who is based in Colorado Springs, that they will
14 connect the caller with the Colorado Springs office.

15 So we think that given that practice, it is
16 unlikely that anyone on behalf of the defendants attempted
17 to call the Denver FBI office prior to Friday, but we
18 don't have information one way or another about that.

19 But we would object to the Court granting any
20 continuance for Special Agent Moen's testimony, based on
21 the record that's been developed here. As the Court has
22 indicated, Special Agent Moen didn't participate in any of
23 the search activity. Special Agent Moen did participate
24 in interviewing some witnesses. As, again, as the Court
25 has already noted, the defendants had all of those

1 statements. They had a full and fair opportunity to
2 cross-examine the proponents of those statements about any
3 differences in any of their prior statements, and they, in
4 fact, exercised that opportunity to do so.

5 THE COURT: When did Agent Moen come into the
6 picture?

7 MR. KIRSCH: Your Honor, I can't remember if it was
8 2008 or 2009.

9 THE COURT: So it was several years after the
10 search warrant was executed?

11 MR. KIRSCH: It was. And he is not immediate
12 successor to Agent Smith as the case agent. There were
13 several other interim case agents before Special Agent
14 Moen took over responsibility for the case. He was the
15 case agent at the time the Indictment was presented. But
16 is no longer the case agent today.

17 But what the defendants have essentially indicated
18 they want to do in their proffer, is they say that Agent
19 Moen's testimony would be relevant as to bias or as to
20 motive. The problem is, Special Agent Moen isn't the
21 witness. He hasn't testified. His bias or motive is not
22 relevant in this case.

23 They had the opportunity to challenge Special Agent
24 Smith's bias and motive, and they attempted to do so, and
25 that was proper, because he testified about relevant facts

1 in this case. Special Agent Moen doesn't have any
2 relevant testimony to give in this case.

3 What the defendants want to do is either call him
4 just to impeach him, which is improper under the Rules of
5 Evidence. Or they want to call him to elicit hearsay from
6 him about prior statements made by other witnesses, which
7 is also improper under the Rules of Evidence. Or they
8 want to call him to offer extrinsic evidence of prior
9 statements by other witnesses, also improper under the
10 Rules of Evidence.

11 So the defendants haven't established any proper
12 basis for the Court to conclude that Special Agent Moen
13 would have any relevant admissible testimony to give.
14 That, combined with what the Government believes is their
15 clear lack of due diligence in attempting to secure his
16 testimony, means that a continuance shouldn't be granted.

17 All the defendants had to do, if they wanted to
18 know where Special Agent Moen was, where he was based, was
19 ask the Government. They never asked. They can't now
20 come back, after having harassed his wife at home over the
21 course of the weekend, pounding on her door late at night,
22 attempting to serve Special Agent Moen with a subpoena,
23 after they had already been informed, both by me and by
24 Mrs. Moen that Special Agent Moen was out of town for the
25 weekend, they can't come in here and get a continuance on

1 that basis now.

2 THE COURT: All right. Well, I haven't yet had a
3 motion for continuance. Are the defendants asking for a
4 continuance at this time?

5 MR. BANKS: May I have a second, Your Honor?

6 THE COURT: You don't have to decide. You all can
7 take time to discuss this. I can rule on it after we get
8 through the rest of the witnesses, if you do make such a
9 motion. But, at this point, because I don't have anything
10 before me, I am not going to make a ruling. I will let
11 you all, when we have the break, you all can discuss that.

12 But, as I told you, you have to show me that there
13 is some real materiality here.

14 MR. WALKER: Yes, Your Honor.

15 THE COURT: All right. So how long do you think
16 the witnesses that you are calling today are going to
17 take?

18 MR. WALKER: Your Honor, we are estimating around
19 the noon time frame.

20 THE COURT: That is what I had thought. I do have
21 a final version of the jury instructions and the verdict
22 form ready to go. Those will be distributed. If my
23 judicial assistant has finished those, I will get those to
24 you, and you can take a look at them over the noon hour.
25 And we will probably do the charging conference either --

1 if we don't get done until noon, we will do it at 1
2 o'clock. If we -- I have a 1 o'clock, don't I?

3 Well, we will have to see. What I would like to do
4 is the charging conference and get those done, because if
5 we don't grant a continuance, we are going to go -- and
6 you rest your case, we are going to the jury today. So we
7 need to get the jury instructions finalized. If I do
8 grant a continuance you will have them, and we will have
9 more time to review them.

10 They didn't change much. I did add a couple of
11 paragraphs to take into account the fact that they have
12 preliminary instructions, and I told them in there that
13 those now need to be set aside, and it is these final
14 instructions that will govern their deliberations. And I
15 have added the Indictment as a jury instructions. I have
16 added the two final jury instructions regarding jury
17 deliberations.

18 But, other than that, there aren't any substantive
19 changes other than the ones submitted by the Government,
20 and we will go through those in the charging conference.

21 All right. Is there anything further?

22 MR. KIRSCH: Not from the Government, Your Honor.

23 MR. BANKS: Not from us, Your Honor.

24 THE COURT: All right. So, Ms. Barnes, I will let
25 you see if the jury is here. We will be in recess until

1 you call me back.

2 (A break is taken from 8:59 a.m. to 9:04 a.m.)

3 THE COURT: You may be seated.

4 Ms. Barnes, in finalizing the verdict form, I noted
5 that Count 15 in the text charges the defendant, Demetrius
6 Harper, with mail fraud. But in the code section, its
7 charged him with wire fraud under 1343.

8 MR. KIRSCH: Your Honor, that's correct. That's
9 what the Indictment says. I think, however, that given
10 the text of the charge --

11 THE COURT: It's mail fraud.

12 MR. KIRSCH: It is clear it was intended to be mail
13 fraud. That is a typographical error on the Indictment.

14 THE COURT: All right. I am going to go ahead and
15 put it in the verdict form as mail fraud.

16 MR. KIRSCH: That would be our request.

17 THE COURT: We will amend under 1341.

18 MR. KIRSCH: Thank you, Your Honor.

19 We asked Special Agent Smith to step outside and
20 make a phone call to try to make arrangements, given the
21 new schedule. With the Court's permission, he will just
22 come in as soon as he is finished with that.

23 THE COURT: That's fine.

24 MR. KIRSCH: Thank you, Your Honor.

25 THE COURT: Do the defendants have any objection to

1 my doing that?

2 MR. WALKER: No, Your Honor.

3 THE COURT: I should clarify what I'm doing, that
4 we are going to change. In the verdict form, Count 15 is
5 charged as mail fraud in the text. It just cited the
6 wrong statute. So I am going to switch that to Title 18,
7 United States Code, Section 1341.

8 MR. WALKER: Yes, Your Honor, that is understood.
9 We have no objection to that.

10 THE COURT: That will be changed, that way we are
11 in sync.

12 All right. Anything further before we bring in the
13 jury?

14 MR. KIRSCH: No, Your Honor.

15 THE COURT: All right. Ms. Barnes, would you
16 please bring in the jury.

17 (The following is had in open court, in the hearing
18 and presence of the jury.)

19 THE COURT: You may be seated.

20 Good morning, ladies and gentlemen. Welcome back.
21 Hope you had a relaxing weekend.

22 Defendants may call their next witness.

23 MR. BANKS: The defense calls Vince Rosales.

24 COURTROOM DEPUTY: Your attention, please.

25 **VINCE ROSALES**

1 having been first duly sworn, testified as follows:

2 COURTROOM DEPUTY: Please be seated.

3 Please state your name, and spell your first and
4 last names for the record.

5 THE WITNESS: My name is Vince Anthony Rosales.

6 It's V-I-N-C-E R-O-S-A-L-E-S.

7 THE COURT: You may proceed.

8 **DIRECT EXAMINATION**

9 **BY MR. BANKS:**

10 Q. Good morning, Mr. Rosales.

11 A. Good morning.

12 Q. Can you tell us a little bit about what you currently
13 do at your current job?

14 A. Sure. Currently, I am the director of the geographic
15 information systems practice for CyberTech Systems, Inc.

16 Q. Okay. And what exactly does that role entail?

17 A. Basically, it entails managing all of the business
18 aspects of that division.

19 Q. And prior to that, where did you work?

20 A. Prior to that, I had my own company for about a year.

21 Q. Okay. Prior to that?

22 A. Prior to that, Idea Integration.

23 Q. How long were you with Idea Integration?

24 A. With Idea Integration as a company, I would say '97
25 through 2010. Prior to that, there was an acquisition.

1 So all totaled, about 18 years.

2 Q. Now, what was your role at Idea Integration?

3 A. Through the course of 18 years, I had many roles. So
4 there is a whole resume of items.

5 Q. Were you at such time the regional vice president at
6 Idea Integration?

7 A. That is one of the positions I held is senior vice
8 president, responsible for the Denver office.

9 Q. Okay. What type of company is Idea Integration?

10 A. Idea Integration, itself, was an Information
11 technology solutions company.

12 Q. And what -- did they provide any other type of
13 services?

14 A. Idea, as a unit, was focused on information
15 technology solutions.

16 Q. Okay. Now, during your time at Idea Integration, did
17 you have an opportunity to come in contact with a company
18 called IRP Solutions?

19 A. I do remember the name IRP Solutions.

20 Q. Now, do you know who a Mel Castleberry is?

21 A. Yes, I know Mel Castleberry.

22 Q. Who is Mel Castleberry?

23 A. Mel Castleberry and I are acquainted through the
24 series of companies that culminated in Idea Integration.

25 Q. Okay. At what time did you come in contact with IRP

1 Solutions?

2 A. Quite literally I couldn't tell you. I know it was
3 during the tenure. We are talking about 18 years and a
4 lot of cycles.

5 Q. A lot of cycles. Do you recall being interviewed by
6 the FBI in 2005 regarding IRP Solutions?

7 A. I recall an interview. I could not give you any of
8 the detail about that interview. It's not something I
9 have chose to or had any reason to stay fixed in my mind.

10 Q. Okay. What was Idea Integration's policies to engage
11 with a new client? If you can describe that a little bit.
12 You were with them 18 years. What was their general
13 policy, and how did they go about doing business with a
14 new client?

15 MR. KIRSCH: Objection, relevance.

16 THE COURT: Sustained.

17 Q. (BY MR. BANKS) Do you know of a gentleman by the
18 name of Rich Rosedale?

19 A. Yes, I do.

20 Q. What was his role at Idea Integration?

21 A. Rich, I believe, was a business development manager
22 for sales.

23 Q. Now, do you recall with IRP Solutions, being
24 contacted by a gentleman by the name of David Banks?

25 A. I remember the name David Banks. I remember him

1 being involved in IRP. So I would say yes.

2 Q. Do you remember Mr. Banks forwarding you a staffing
3 prospectus?

4 MR. KIRSCH: Objection, leading.

5 THE COURT: Sustained. Mr. Banks, just ask him
6 what he recalls of any of those contacts.

7 MR. BANKS: I am getting ready to, Your Honor.

8 Q. (BY MR. BANKS) What do you recall about your
9 interactions with Mr. Banks or with IRP?

10 A. What I recall is that Idea engaged with IRP to
11 provide services. The services were provided, and the
12 invoices were not paid.

13 Q. Okay. And do you recall any meetings at the IRP
14 office?

15 A. I remember that we did meet. I don't remember the
16 content of those meetings. That was quite some time ago.

17 Q. So given the fact that you engaged IRP's services, do
18 you know if -- what type of resources that Idea
19 Integration provided IRP, as far as technology
20 consultants?

21 A. I'm not sure I understand the question.

22 Q. Did Idea Integration provide any sort of technology
23 contractors to IRP?

24 A. That is what I believe that the contract was for,
25 contract IT solutions.

1 Q. Did you receive e-mails from Mr. Banks?

2 A. I'm sure I did. It was a standard course of
3 communication for business, but I couldn't tell you
4 anything about them.

5 Q. Okay. So you said that IRP -- that Idea Integration
6 engaged with IRP in providing services. What is the
7 process that Idea Integration goes through before they
8 provide services?

9 MR. KIRSCH: Objection to the relevance, unless it
10 relates to IRP, Your Honor.

11 THE COURT: If you can narrow it down, Mr. Banks,
12 to IRP.

13 Q. (BY MR. BANKS) If you were engaging with IRP and you
14 provided them services, what is the process you go through
15 at Idea Integration prior to providing services to IRP?

16 A. Okay. It is a tough question to answer, because at
17 that time, the processes, in general, were in a constant
18 flow of maturing. And so I would be guessing at what
19 policy applied to IRP at that time based on memory. And I
20 couldn't really tell you which of those policies applied
21 to IRP.

22 Q. Do you recall receiving a staffing prospectus from
23 IRP?

24 MR. KIRSCH: Objection, leading.

25 THE COURT: Sustained.

1 Q. (BY MR. BANKS) What -- do you recall receiving an
2 e-mail, anything from IRP?

3 A. Once again, specifically, I couldn't tell you
4 specifically what I recall receiving. It was a long, long
5 time ago.

6 Q. Would it help if I provided a document that could
7 refresh your recollection?

8 A. It might. I don't know. I've received -- the amount
9 of documents I have received throughout, not only 18
10 years, but the many years since then, in whatever format,
11 is pretty large.

12 Q. I would agree with that.

13 MR. BANKS: Your Honor, permission to provide
14 Mr. Rosales with an exhibit -- defense exhibit to refresh
15 his recollection.

16 THE COURT: And this has not been introduced into
17 evidence yet?

18 MR. BANKS: No, Your Honor.

19 THE COURT: Okay. Have Ms. Barnes mark it. I
20 believe we are on 408, Ms. Barnes.

21 COURTROOM DEPUTY: Defendants' Exhibit 408.

22 Q. (BY MR. BANKS) Just read over the first page there
23 to start, just to yourself. Does that refresh your
24 recollection?

25 A. Recollection?

1 Q. Regarding an e-mail that you received from IRP, and
2 the staffing prospectus?

3 A. What it really hits is -- the second paragraph, it
4 sounds like that was something Rich wrote.

5 Q. What do you mean by "Rich wrote"?

6 A. Rich Rosedale. I believe he may have been the only
7 BDM at the office. That is the only thing that is really
8 kicking in my memory. He may have been the only BDM in
9 the office at the time.

10 Q. You said a minute ago you remember meeting with IRP;
11 correct?

12 A. Sure. It wasn't out of the ordinary for there to be
13 multiple people meeting with our clients. We had a team
14 sales model.

15 Q. Would it have been out of the ordinary for
16 Mr. Castleberry to meet on just a staffing engagement?

17 A. No.

18 Q. So is your testimony that each and every client that
19 Idea Integration engaged with, the president of the region
20 would meet with each and every one of those companies? Is
21 that your testimony?

22 A. No. My testimony is that it is not out of the
23 ordinary for multiple leaders in the office to meet with
24 the clients in a team sales model.

25 Q. Okay. So you don't recall receiving an e-mail of

1 that staffing prospectus?

2 A. Okay. I don't necessarily recall a specific e-mail
3 that had this content. What I will tell you is that the
4 content looks familiar. But I couldn't tell you why. I
5 read this first couple of paragraphs. It kicked my memory
6 a little bit on what we were doing with IRP. And I do
7 remember that there was incoming matter, okay. But I
8 couldn't tell whether it was incoming in e-mail, Postal
9 Service, Fed-Ex. I just don't remember.

10 MR. BANKS: Could I have a moment, Your Honor?

11 THE COURT: You may.

12 Q. (BY MR. BANKS) Mr. Rosales, do you recall any
13 meetings that you had with Mr. Castleberry regarding a
14 proposal made by IRP?

15 A. I am -- okay, a specific meeting, I don't recall.
16 But it would not -- I would not -- I met with Mel on every
17 proposal that was handed out as part of the process.

18 Q. Okay. And --

19 MR. BANKS: One more moment, Your Honor. Thank
20 you, Mr. Rosales no further questions.

21 THE COURT: Anyone else?

22 MR. WALKER: No, Your Honor.

23 THE COURT: Cross?

24 MR. KIRSCH: Thank you, Your Honor, but the
25 Government has no questions for Mr. Rosales.

1 THE COURT: May Mr. Rosales be dismissed?

2 MR. BANKS: Yes, Your Honor.

3 THE COURT: You are excused. Thank you very much.

4 Defendants may call their next witness.

5 MR. WALKER: Your Honor, defense calls Steven

6 Cooper.

7 THE COURT: Mr. Rosales, that is not one of the
8 exhibits, is it?

9 THE WITNESS: That is the subpoena.

10 THE COURT: All right. Thank you. Sorry.

11 THE WITNESS: No problem.

12 COURTROOM DEPUTY: Your attention, please.

13 **STEVEN COOPER**

14 having been first duly sworn, testified as follows:

15 COURTROOM DEPUTY: Please be seated.

16 Please state your name, and spell your first and
17 last names for the record.

18 THE WITNESS: Steven Wayne Cooper. S-T-E-V-E-N
19 C-O-O-P-E-R.

20 THE COURT: You may proceed.

21 MR. WALKER: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 **BY MR. WALKER:**

24 Q. Mr. Cooper, who are you currently employed with?

25 A. The Department of Homeland Security, Immigration and

1 Customs Enforcement.

2 Q. And how long have you been with DHS?

3 A. Since its inception back in 2003.

4 Q. And how long have you been with Immigration and
5 Customs Enforcement?

6 A. It would be the same time period.

7 Q. And so you would have been in that same role in the
8 2003 -- October 2003 through January of 2005 time frame;
9 is that right?

10 A. Correct.

11 Q. And during that time frame, do you recall having
12 interactions with a company called IRP Solutions?

13 A. Yes.

14 Q. And how did you come into contact initially with IRP
15 Solutions?

16 A. This is going back to 2003. It would have been under
17 the Office of Management and Budget task force for a
18 Federal Investigative Case Management System solution. We
19 were looking at a request for information; what is known
20 as an RFI.

21 Q. And would IRP Solutions have been one of the
22 companies that you sent an RFI to?

23 A. We would not have sent out the RFI. I believe the
24 RFI was generated by the task force.

25 Q. And if you could, how would you have been privy to

1 the response of IRP in that RFI?

2 A. I don't recall the details of the RFI. But the
3 request for information would have had instructions on how
4 a particular company could make contact.

5 Q. And would your office have been one of the contacts
6 listed to companies on that RFI?

7 A. At the time, I was the program manager for what was
8 known as the Consolidated Enforcement Environment, which
9 was the DHS Case Management Initiative. Yes, we would
10 have been one of the contacts.

11 Q. And did you work with a gentleman by the name of Bill
12 Witherspoon?

13 A. Mr. Witherspoon worked for me. He was one of my
14 staff.

15 Q. And during the time frame of October 2003, and
16 through January of 2005, did he work for you that entire
17 time frame?

18 A. It would have been that general time frame, yes.

19 Q. And what was his role in working with you?

20 A. Bill was one of my technology leads.

21 Q. And if you can recall, what time frame did you have
22 your first, either face-to-face meeting, or phone
23 conversation with anyone at IRP Solutions?

24 A. I wouldn't remember that. I know that we did the RFI
25 in the latter part of 2003. There was -- IRP provided a

1 demonstration of their proposed solution in Washington,
2 D.C. I don't remember the exact date.

3 Q. Mr. Cooper, do you recall if prior to the demo that
4 you just mentioned in D.C., if you had any other meeting
5 or demo with IRP Solutions?

6 A. There may have been a joint session, as it related to
7 the request for information, where all of the interested
8 vendors or companies would have been given an opportunity
9 to see an overview of the FICMS; the Federal Investigative
10 Case Management Systems effort. And there may have been
11 an initial contact at that time.

12 Q. Was there a process in place to determine if you
13 would bring in a company to actually view its product?

14 A. We were receptive to any companies that responded to
15 the RFI.

16 Q. And did you have a policy in place, Mr. Cooper, for
17 subsequent rounds of evaluation for demo after you had
18 initially viewed a company's product?

19 A. I wouldn't call it a policy. We had a survey. We
20 were doing research for information on possible
21 solutions as it related to a case management solution.

22 Q. And in the course of doing that research, would you
23 have provided companies opportunities to do additional
24 demonstrations if the product didn't seem to meet your
25 needs?

1 A. Yes, there were opportunities where a company could
2 come back for further discussions under the market
3 research.

4 Q. And in the course of doing or having those further
5 discussions, would you at any point make recommendations
6 to companies about their product?

7 A. I wouldn't say recommendations, I would say
8 suggestions as related to -- under the RFI, what the
9 federal government was looking for.

10 Q. And, Mr. Cooper, do you recall at any time making any
11 suggestions to IRP Solutions regarding their product?

12 A. I participated -- I recall one demonstration in D.C.
13 where IRP provided a demonstration of their product. I
14 participated. And I do recall that we had discussions as
15 to, again, what we were looking for as it related to the
16 Consolidated Enforcement Environment.

17 Q. And in those meetings with, I believe you mentioned
18 the task force, what organizations or units were
19 represented in that task force?

20 A. Well, I did not participate in the task force. The
21 task force or working group was a separate entity under
22 the auspices of the Office of Management and Budget.

23 Q. And are you aware of the units that were a part of
24 that task force?

25 A. I wouldn't know all of them. I know that DHS was a

1 participant to it. My program was a supporter of the
2 program.

3 Q. And as a supporter of that program, would DHS have
4 been in a role to recommend companies for further review?

5 A. Not to the lines of business; FICMS, no.

6 Q. And can you tell us what DHS's role was in regard to
7 FICMS?

8 A. The federal government, the Office of Management and
9 Budget, was looking at efficiencies, and hoping that the
10 federal government, as a whole, could come up with a
11 series of solutions to address its administrative,
12 investigative and litigation case management needs. They
13 were not looking for one sole solution but, possibly, you
14 know, reducing the number of possible solutions that the
15 federal government could pursue to meet their business
16 requirements.

17 Q. And in meeting those requirements, would the
18 government have -- were you considering using components
19 from different systems?

20 MR. KIRSCH: Objection, lack of foundation.

21 THE COURT: Sustained.

22 Q. (BY MR. WALKER) Mr. Cooper, in evaluating the
23 products of the different companies -- you just mentioned
24 that there were several requirements from the federal
25 government; is that right?

1 A. I can only speak for my program. And at the time
2 that the RFI was put out, we had not defined our actual
3 business requirements. Ours was still in a concept phase.

4 Q. And given that your notional product was still in the
5 concept phase, how did you convey requirements to
6 candidate companies?

7 A. It would have been through the RFI.

8 Q. And subsequent to receiving a response on an RFI, did
9 you provide companies that were deemed potentially
10 suitable with additional information?

11 A. Yes. There were opportunities for additional
12 information that may have been provided.

13 Q. And do you recall what other additional information
14 IRP may have been provided?

15 A. Not going back to 2003.

16 Q. Do you have recollection of any scenarios that may
17 have been conveyed?

18 A. As I stated, we did not have requirements defined at
19 that time, but we had what we call scenarios or story
20 boards as it related to our lines of business, our
21 business activities; buckets of activities, we would call
22 them. And, yes, we would have shared those in order to
23 help particular entities better understand what we were
24 looking for in a possible solution.

25 Q. And you also mentioned earlier that you would make

1 suggestions to companies. And for what reason would you
2 make those suggestions to a company like IRP, who
3 presented a product to you?

4 A. Particular companies may not have a clear
5 understanding of the business flow processes of federal
6 law enforcement. And we would assist in explaining to
7 them, for clarity purposes, what our business, you know,
8 processes were, and what, again, we would possibly be
9 looking for in a solution.

10 Q. And in explaining those further details, would that
11 have benefited your organization, as far as obtaining a
12 correcting product?

13 A. Well, at that time we weren't looking for an end
14 product. It was an informative phase. And we were just
15 looking for what was out there, what was available on the
16 market.

17 Q. And while you were determining what was available in
18 the market, did you have a goal of helping to -- helping
19 companies to develop something that would have been
20 favorable for your organization?

21 A. Well, we would hope that by the interaction, there
22 would be greater opportunities for a possible solution to
23 be available on the market.

24 Q. And, Mr. Cooper, were the plans of your organization
25 at that time to only consider COTS products that were

1 complete or finished at that time?

2 A. No. We were looking at -- what you just referred to
3 is what we would refer to as an out-of-box solution; COTS,
4 out-of-box solution. We were also looking for, what we
5 would call integrated COTS solutions, where we would have
6 multiple bolt-on capability.

7 Q. And would you, just for the benefit of the jury,
8 explain what COTS means; commercial off-the-shelf. And
9 also explain what you mean by the term out-of-box.

10 A. The product, as advertised, would meet all of our
11 business requirements, our operational requirements. We
12 could literally integrate it into our architecture, our
13 enterprise, with very little tweaking or enhancement of
14 the package.

15 Q. And at the time of your interactions with IRP
16 Solutions, would you -- did you consider the IRP
17 Solutions' product an integrated COTS solution?

18 A. If you mean, by using the word "integrated," that it
19 did not meet all of our needs, yes. We would have needed
20 other additional services provided.

21 Q. Mr. Cooper, do you recall at any point making a
22 suggestion to IRP Solutions to provide a "federal" looking
23 feel to the solution that they demonstrated?

24 MR. KIRSCH: Objection, leading.

25 THE COURT: I am going to allow it. Overruled.

1 THE WITNESS: There could have been discussions as
2 it related to what we were looking for in the Consolidated
3 Enforcement Environment for a federal enterprise solution.

4 Q. (BY MR. WALKER) And, Mr. Cooper, do you recall the
5 name of the product that IRP Solutions demonstrated to
6 you?

7 A. I think the acronym was CILC. And it would have been
8 Case Investigative Life Cycle -- Case or Criminal
9 Investigative Life Cycle. I can't recall.

10 Q. And so in recalling the name and the acronym of the
11 product, do you recall specific meetings where that
12 product was demonstrated?

13 A. I do recall specifically one meeting where IRP came
14 to D.C. and provided a demonstration.

15 Q. And, Mr. Cooper, to the best of your recollection,
16 was that product that was demonstrated a web-enabled
17 application?

18 A. I can't recall what all was discussed during that
19 demonstration. Over the years I have seen many of those.

20 Q. Understood. Mr. Cooper, what was your interaction
21 with Mr. Paul Tran relating to evaluating products?

22 A. Paul Tran was another employee, Immigration and
23 Customs Enforcement. He was also a technologist.

24 Q. And was Mr. Tran performing tasks on behalf of your
25 office?

1 A. Actually, if I recall, Paul was with the Executive
2 Information Unit, which was another unit within, at the
3 time, the Office of Investigations. I was the program
4 manager of the Consolidated Enforcement Environment.

5 Q. And were there responsibilities encumbered upon
6 Mr. Trans' office, as prerequisites to companies
7 demonstrating to your office?

8 A. The Executive Information Unit was the program -- the
9 program lead for the IT portfolio for the Office of
10 Investigations. So they would have been involved in a
11 multitude of information technology initiatives, projects,
12 programs.

13 Q. Were these initiatives and programs independent of
14 your own initiatives and programs?

15 A. Yes. I was strictly focused on the Consolidated
16 Enforcement Environment.

17 Q. And in your concentration in the Consolidated
18 Enforcement Environment, did you utilize the services of
19 Mr. Witherspoon to inform you of companies that had
20 products?

21 A. It wouldn't have been Bill's responsibility to notify
22 me of companies with products as my technologist on my
23 program. I mean, he would have been responsible for
24 providing me guidance as related to a possible solution
25 from a technology perspective.

1 Q. And as part of his responsibilities to provide
2 technology guidance, would he -- was he tasked to also do
3 independent viewings of products?

4 A. No. No. Bill would have only done reviews as
5 required or under the auspices of the Consolidated
6 Enforcement Environment. He worked for me.

7 Q. And in saying that, is it correct to infer that he
8 would then have been involved in every demonstration that
9 you were involved in for potential products?

10 A. No.

11 Q. And going back to the scenarios we spoke about
12 briefly earlier, were those scenarios provided under any
13 constraints to the potential companies?

14 A. They were for -- they were cleared for release. I
15 mean, we weren't sharing anything that had a restriction,
16 as it related to sharing with the vendor community.

17 Q. And did you give the vendors any specific
18 instructions on how to handle those scenarios?

19 A. Well, we would ask that they, you know, not publicize
20 them, other than for their own internal, you know,
21 utilization, for better understanding of what we were
22 looking for in an ultimate solution.

23 Q. Would that have qualified as being "for their eyes
24 only"?

25 A. We would have preferred, yes, they not share them

1 outside of their own entity.

2 Q. And, Mr. Cooper, subsequent to your viewing of the
3 IRP Solutions' CILC product that you mentioned, did you
4 continue to have interest in that product?

5 A. We had an interest in the product as it related to
6 completing our information gathering, our research, our
7 market survey. There were a number of products that we
8 looked at in concert to completing our market research.

9 Q. And, as a program, did you have a deadline for
10 completing that market research?

11 A. I think our activities spanned from November 2003,
12 all of the way up to May 2004.

13 Q. And did you have any reason to deny a meeting that
14 occurred past that deadline with IRP in your office?

15 A. I don't recall. Again, that is going back to 2003,
16 2004.

17 Q. Mr. Cooper, do you recall at a point having a
18 demonstration with IRP Solutions of their CILC product
19 that incorporated any suggestions that you made to the
20 company?

21 A. I don't recall, but there could have been. I
22 distinctly remember the first demonstration.

23 MR. WALKER: Can I have one moment, Your Honor?

24 THE COURT: You may.

25 Q. (BY MR. WALKER) Mr. Cooper, in the course of doing

1 your evaluations of vendor products, would you have the
2 opportunity to request quotations from those companies?

3 A. There are times when we may ask for what I would call
4 a range of magnitude, an ROM. Very high level, just to
5 have an idea of what their, you know, their enterprise
6 solution would look like, as far as a cost.

7 Q. And do you recall requesting one of those ROMs from
8 IRP Solutions?

9 A. I don't recall. But, again, it would not be unusual
10 for us to ask for those type of high estimates.

11 Q. And would it have been a matter of course -- regular
12 course for you to ask for multiple quotations from a
13 company?

14 A. If we needed clarification. Again, it would have
15 been a follow-up with a question of, had the company
16 deployed a similar capability to another agency of our
17 size? You know, what was the effort that was required to
18 do that?

19 Q. Mr. Cooper, do you recall a certain aspect or
20 functionality provided by IRP Solutions' CILC product
21 called the confidential informant's capability?

22 A. No.

23 Q. Do you recall your -- or directing anyone from your
24 office to request a quotation for the confidential
25 informant modules from IRP Solutions?

1 A. I don't recall. But if I did, it would have been in
2 concert with Bill, along with any of the other vendors we
3 were talking to.

4 Q. Do you recall if confidential informant management
5 capability was of particular interest to your
6 organization?

7 A. I don't recall.

8 Q. Mr. Cooper, do you recall at any point receiving a
9 quotation from IRP Solutions for their entire case
10 management application?

11 A. I don't recall. But, again, we could have.

12 MR. WALKER: Your Honor, I would like to refresh
13 Mr. Cooper's recollection with an exhibit.

14 THE COURT: You may. Which exhibit is it?

15 MR. WALKER: Your Honor, that is Exhibit 502.03.

16 COURTROOM DEPUTY: Is that in your exhibit book?

17 THE COURT: It has been admitted.

18 MR. WALKER: Yes, Your Honor, it has.

19 THE COURT: It is a Government's exhibit?

20 MR. BANKS: Government Exhibit 502.

21 THE WITNESS: Your references is to 502.03?

22 Q. (BY MR. WALKER) Yes, that's correct, 502.03. If you
23 can just take a moment to look at that.

24 A. Okay. I have reviewed.

25 Q. Okay. And does that ring any bells with you? Do you

1 recall seeing that quotation?

2 A. Well, this is an e-mail correspondence to Bill
3 Witherspoon, not to me. The pricing estimates, again,
4 they could have been provided. I mean, it would be for
5 Bill Witherspoon to recall that.

6 Q. And when Mr. Witherspoon requested quotations and
7 subsequently received them, was it a matter of course for
8 him to refer those on to you?

9 A. We would have discussed them. But, again, there was
10 a number of vendors that we were looking at that were
11 providing this type of information.

12 Q. And if you will look at the line in the left-hand
13 column that says "CILC confidential informant trusted
14 features." And do you recall discussing with IRP
15 Solutions the features mentioned on the right as those
16 required by DHS for a confidential informant?

17 A. Which page of the exhibit?

18 Q. I am sorry, the page that is labeled 50203 -- 003,
19 bottom right-hand corner?

20 A. It is marked -- I see the "confidential informant
21 trusted."

22 Q. If you look to the right, you will see features
23 listed there.

24 A. Okay.

25 Q. Do you recall at any point discussing those features

1 as being necessary for DHS issues and confidential
2 informant handling?

3 A. What I recall from the Consolidated Enforcement
4 Environment effort was one of the buckets of activity or
5 lines of business for our investigative activities is the
6 management of confidential informants. That would have
7 been a capability that we would have been interested in in
8 any case management solution that we would be looking at.

9 Q. And in looking at those capabilities, did you have
10 pointed questions to vendors regarding their capabilities
11 in that regard?

12 A. The capability to manage sources of information would
13 have been something we would have been interested in, yes.

14 MR. WALKER: Could I have one moment, Your Honor?

15 THE COURT: You may.

16 Q. (BY MR. WALKER) And, Mr. Cooper, if you would look
17 further down in that exhibit, there is another pricing
18 estimate that is provided there.

19 MR. WALKER: If you would scroll down two pages.

20 Q. (BY MR. WALKER) Do you see the beginning quotation
21 that is called -- labeled letter A, "CILC federal
22 trusted." If you can take a minute to look over that.

23 A. Okay. I have it.

24 Q. And do you see there that that is, as well, addressed
25 to Mr. Bill Witherspoon?

1 A. Yes.

2 Q. Do you recall at any point seeing this quotation from
3 IRP Solutions?

4 A. I don't recall this particular document. I do recall
5 I would have had conversations with Bill as it relates to
6 any cost estimates that were provided by vendors,
7 including IRP.

8 Q. And in those discussions with Mr. Witherspoon, would
9 you discuss favorable characteristics or features of the
10 product that you were discussing?

11 A. Only as it related to meeting the survey, the market
12 research. Once we had accomplished that, we would have
13 been moving on.

14 Q. After doing that market research of these products,
15 was it your policy to meet with companies you had already
16 met with, if they indicated improvement of their product's
17 capability?

18 A. Again, I would not use the word "policy." As a
19 procedure of our market research, there would have been --
20 could have been opportunities for follow-up discussions
21 with a particular vendor.

22 Q. And after receiving a quotation like this, was it
23 part of your process to include the quotations in part of
24 you budget exercises?

25 A. At this point we would not have been entertaining a

1 budget exercise. Again, this was a request for
2 information at this point. It was informative. We were
3 just seeing what the industry had out there.

4 Q. And given that, at what point would you have begun
5 your budget exercises?

6 A. Those types of cost estimations would have occurred
7 once we went into phase 2, the acquisition effort.

8 Q. And did CEE get to the point where it was in phase 2
9 for acquisition, or the acquisition?

10 A. No.

11 Q. Can you describe what happened with that program?

12 A. The program was retired for -- to prioritize the
13 department. Other priorities took precedence.

14 Q. What time frame was CEE retired?

15 A. I don't have an actual date, but I believe the final
16 close out with the Office of Management and Budget would
17 have been at the end of 2005 or 2006. There is an
18 administrative process there to bring closure to the
19 business case.

20 Q. Okay. And do you recall at any point using the term
21 "budget exercises" with IRP Solutions?

22 A. I don't know if I would have used the term "budget
23 exercises," but we would have -- certainly been looking at
24 cost models. If I did use the words "budgetary exercise,"
25 I would have meant to talk about cost estimates.

1 Q. And if you could explain in a little bit more detail
2 why you would have asked IRP Solutions for a quotation in
3 regard to cost models and estimates?

4 A. It could enable us to have a better understanding of
5 the scalability of the platform as it related to -- if it
6 wasn't actually meeting our current enterprise scope,
7 based on those cost estimates, it would allow us to
8 determine or have a better understanding of what it, in
9 fact, would possibly cost for them to meet our federal
10 enterprise capability needs.

11 Q. And so in determining if that product could possibly
12 meet the needs for the federal -- for your specific case
13 management requirements, would you have made further
14 recommendations to the company if you felt changes were
15 needed at that point?

16 A. Again, I would not have used the word
17 "recommendations." There would have been suggestions, but
18 not from a cost perspective. It would have strictly been
19 from a capabilities perspective.

20 Q. And in reviewing these products and in doing the
21 market survey, did you regularly evaluate products from
22 small companies, as well as large companies?

23 A. Yes. We always make it part of our process to give
24 as broad an opportunity for delivering solutions as we
25 can. And that is inclusive of small companies.

1 Q. And in reviewing the products of these small
2 companies and determining size of these companies, did you
3 have a minimum size or revenue in which a company had to
4 meet to be considered?

5 A. No. That would not have been part of an RFI.

6 Q. And at this phase of your evaluation of your survey,
7 would you have given preference to large companies over
8 small companies?

9 A. No. And, again, it was a survey. So there is no
10 decision points at that juncture.

11 Q. And while meeting with these companies, was it part
12 of your process to inform small companies of the
13 challenges of delivering a product to your office
14 concerning these capabilities?

15 A. We would have asked questions as it related to the
16 company's ability to meet our capability set.

17 Q. And if the company had certain challenges in that
18 regard to meeting the capabilities, your capability set,
19 would you, again, make suggestion to the company?

20 A. Only as it related to what the capabilities were that
21 we were looking at.

22 MR. WALKER: May I have one moment, Your Honor?

23 THE COURT: You may.

24 MR. WALKER: Your Honor, I have no further
25 questions.

1 THE COURT: All right. Mr. Banks?

2 DIRECT EXAMINATION

3 BY MR. BANKS:

4 Q. Mr. Cooper, you discussed briefly your request for
5 information. I need to get -- if you could tell us the
6 difference between the Consolidated Enforcement
7 Environment and the Federal Investigative Case Management
8 System Initiative?

9 A. The Office of Management and Budget oversees the
10 overall budgetary activities; execution of the executive
11 branch. And in doing so, it certainly looks for
12 efficiencies as it relates to how money is to be spent on
13 a number of things, one of them being information
14 technology. And we stood up a task force, a working
15 group, to look at efficiencies that could be obtained by
16 the Federal Government for case management solutions as it
17 related to administrative case management, investigative
18 case management and litigation case management.

19 Of those three pillars, the investigative case
20 management, the working group, initially referred to that
21 endeavor effort as the Federal Investigative Case
22 Management System. It was a notional, generic name,
23 placed on the initial effort, to see if the federal
24 government could come up with a grouping of solutions that
25 could be leveraged across the federal spectrum for

1 investigative case management.

2 The Consolidated Enforcement Environment was the
3 specific program management office within the Department
4 of Homeland Security, for developing an investigative case
5 management system.

6 Q. Now, if the public records show that the Federal
7 Investigative Case Management System was released in
8 2004 -- later 2004 vice 2003, would you say that was
9 correct?

10 A. You asked me my recollection. I just -- I recall the
11 activity that we were involved in in 2003 and 2004.

12 Q. Now, do you recall being contacted by a congressional
13 -- a congressman regarding -- congress office regarding
14 IRP and their solution?

15 MR. KIRSCH: Objection, relevance.

16 THE COURT: What is the relevance, Mr. Banks?

17 MR. BANKS: Well, Your Honor, just when he was
18 actually contacted by -- and this is related to IRP.

19 THE COURT: But what is the relevance to the issues
20 in this case?

21 MR. BANKS: It is just laying -- was he contacted
22 or was he not contacted by a congressional representative.

23 THE COURT: I am going to sustain the objection.

24 Q. (BY MR. BANKS) Now, you said you stopped working
25 with this initiative, as far as IRP was related, in May

1 2004. Is that your recollection?

2 A. I believe that our market research, itself, came to
3 closure during that time period. So from November 2003 to
4 May 2004, was when we did the majority of our research,
5 and then consolidated.

6 Q. For what initiative was that that ended May of 2004?

7 A. For the Consolidated Enforcement Environment.

8 Q. Okay. Was there an RFI for CEE?

9 A. No. We never did an RFI for CEE.

10 Q. So the request for information you are talking about
11 is related to FICMS, or the Federal Investigative Case
12 Management System; correct?

13 A. Correct.

14 Q. And that would have come after the CEE initiative;
15 correct?

16 A. My recollection was that it was in that 2003 time
17 period.

18 Q. I will refer you back to the exhibit there, 502, the
19 exhibit that is in front of you. What is the date of the
20 e-mail, if you could, to Mr. Witherspoon?

21 A. 12/9/2004.

22 Q. So it is safe to say that Mr. Witherspoon worked for
23 you, correct?

24 A. Yes, he did.

25 Q. And at the end of 2004, he was still engaged with IRP

1 Solutions gathering quotes for their solution; correct?

2 A. By the date of this e-mail, yes.

3 Q. So DHS was still actively -- obviously actively
4 engaged with IRP all of the way to the end of 2004?

5 A. By this e-mail, yes.

6 Q. Do you remember Paul Tran testing IRP Solutions'
7 software?

8 A. I don't recall that.

9 Q. Would you have known if he actually tested the
10 software?

11 A. I should have known if he was working on the
12 software. But, again, he didn't work for me. He was part
13 of the Executive Information Unit.

14 Q. But he was involved in numerous communications
15 regarding -- e-mail communications involving CEE; correct?

16 A. No, not -- he was not part of the CEE program. Bill
17 Witherspoon was a member of the CEE program.

18 Q. So it is your testimony that Paul Tran, in 2003 to
19 early 2004, was not involved in CEE whatsoever, evaluating
20 technology?

21 A. I didn't say that.

22 Q. Okay.

23 A. I said he was not a member of the CEE program. There
24 were touch points with the Executive Information Unit,
25 being that that had our IT portfolio and maintained the

1 Legacy platform systems and applications. So there would
2 have been ongoing dialog and coordination off and on.

3 Q. Do you recall the \$12 million pilot project that
4 was -- that IRP was engaged with with Mr. Tran?

5 MR. KIRSCH: Objection, leading.

6 THE COURT: Sustained.

7 Q. (BY MR. BANKS) Do you recall any activities Mr. Tran
8 would have had with IRP related to CEE or FICMS?

9 A. The only involvement Paul would have had that I would
10 have had knowledge of, was -- have been related to the RFI
11 activity, which was market research only.

12 Q. Do you know Melissa McRae?

13 A. I don't recall the name.

14 Q. Okay. Do you recall a meeting that you coordinated
15 on behalf of IRP for FICMS, the Federal Investigative Case
16 Management System?

17 A. I only recall distinctly the session where IRP came
18 to D.C. to provide their demonstration.

19 Q. And it is your testimony today that you only had one
20 -- you only attended one demonstration for IRP?

21 A. No. My response was I did not recall if there was
22 additional demonstrations.

23 Q. Do you know who Gilbert Trill is?

24 A. I know who Gilbert Trill is.

25 Q. Was he part of the CEE initiative?

1 A. Yes. Gilbert Trill was part of the Consolidated
2 Enforcement Program Office.

3 Q. Do you recall a meeting with IRP in November of 2003?

4 A. That would have been the time period of the
5 demonstration.

6 Q. Do you recall who attended that presentation?

7 A. In addition to the IRP group, it would have been
8 members from my staff, and possibly representatives from
9 the other federal agencies, again, under the FICMS effort.

10 Q. Do you recall a meeting in March of 2004 for CEE?

11 A. No.

12 Q. Do you recall a meeting on August 17th related to the
13 CILC Federal solution?

14 A. What year?

15 Q. 2004. August 12th, 2004?

16 A. I don't recall.

17 Q. Did you ever tell Bill Witherspoon to forward the RFI
18 to IRP Solutions for the Federal Investigative Case
19 Management System?

20 A. The RFI would have been a public document. I mean,
21 it wouldn't have been an issue of forwarding it to anyone.
22 It was readily available.

23 Q. Was there a bidders' conference related to the
24 Federal Investigative Case Management System initiative?

25 A. Again, I recall there was a conference, you know, to

1 announce the RFI.

2 Q. Did you ever tell IRP that they would -- in order to
3 sell their software, they would need to work with a large
4 defense contractor or systems' integrator?

5 A. No.

6 Q. Was there a CEE -- was there a pilot project related
7 to CEE?

8 A. No. CEE was only in a concept phase at that time.
9 There was no prototypes, pilots. We hadn't even reached
10 the acquisition phase yet. There was no moneys in place
11 to do that kind of activities.

12 Q. So if you said that you pretty much concluded the CEE
13 initiative in May of 2004, let me ask you this. Did the
14 Office of Management and Budget discontinue funds for the
15 CEE program in favor of another initiative?

16 A. The OMB did not provide funds for the CEE program.

17 Q. Do you recall a meeting on October 28, '04 between
18 IRP, the Department of Homeland Security and the
19 Department of Justice?

20 A. If there had been a joint, meeting that would have
21 been the demonstration. That would have been when IRP
22 came in and provided the demonstration.

23 Q. Related to what initiative?

24 A. That would have been under the RFI, FICMS.

25 Q. Okay. Do you recall meeting with IRP representatives

1 at JW Marriott to discuss details prior to the meeting?

2 A. I don't recall that, but it could have happened.

3 Q. What was your day-to-day interaction with Paul Tran
4 as it related to work he had to do on behalf of CEE?

5 A. I didn't meet with Paul Tran on a day-to-day basis.
6 If Paul was engaged in something as related to the CEE
7 program, it would have been technology related. He
8 probably would have -- he would have had engagement with
9 Bill Witherspoon. My engagement would have been more
10 likely with Bill Witherspoon on a day-to-day basis. Paul
11 reported to a different chain of command.

12 Q. Did DHS initiate any other initiatives at the CEE for
13 case management?

14 MR. KIRSCH: Objection to the relevance, Your
15 Honor.

16 THE COURT: Sustained.

17 Q. (BY MR. BANKS) Did Paul Tran ever tell you -- let me
18 rephrase that. Was there a final list of companies for
19 CEE?

20 A. Define what you mean by "a final list."

21 Q. After you evaluated a number of solutions, was there
22 a final list of -- a short list for solutions that were
23 viable for CEE?

24 A. There was no short list. There were a number of
25 companies that were noted under the survey. IRP was one

1 of those companies.

2 Q. Now, I ask will as a question about the survey. When
3 you say "survey," what do you mean by survey; an RFI?

4 A. Under the RFI, we conducted market research and
5 looked at a number of possible solutions. IRP was one of
6 those that was captured in the subsequent market research.

7 Q. Did IRP make the short list; the final list of
8 vendors for narrowing down the final list of vendors?

9 A. There was no short list. There was no narrowing down
10 under the market survey. We were just -- it was an
11 informative effort of randomly selected entities or
12 entities that had followed up on the RFI and contacted us.
13 There was no short list.

14 Q. So Paul Tran -- if Paul Tran sent an e-mail saying
15 IRP saying -- he recommended they be on the final list,
16 would you have any reason to say that didn't occur?

17 A. That instruction would not have come from me. Paul
18 Tran would not have been in a position to make that kind
19 of recommendation.

20 Q. Did you have meetings about various companies and
21 vendors and the capabilities of their software?

22 A. For the market research, yes.

23 Q. And certainly certain companies' solutions had to be
24 recognized as viable and other solutions unviable;
25 correct?

1 A. Correct.

2 Q. Was IRP Solutions considered a viable product?

3 A. It lacked the capabilities that we were looking for
4 for a federal enterprise solution.

5 Q. Is there some reason Mr. Witherspoon would ask for a
6 quote for the entire Federal Investigative Case Management
7 solution based on that?

8 A. You would have to ask Mr. Witherspoon.

9 Q. He worked under your direction; correct?

10 A. Yes, he did.

11 Q. And you said a moment ago you discussed any sort of
12 quotes with Mr. Witherspoon; correct?

13 A. It would not have been unusual for Bill to ask for
14 high level cost estimates from any of the vendors we were
15 talking to.

16 Q. Okay. Now, you said that IRP Solutions lacked
17 certain capabilities; correct?

18 A. Yes.

19 Q. Would Mr. Witherspoon, under your direction, ask for
20 a full quote of a solution that lacked sufficient
21 capabilities for DHS?

22 A. As I stated earlier, we weren't just looking for an
23 out-of-box solution. We were certainly looking for
24 opportunities that would require an integrated solution.
25 That would not rule out a particular entity if they were

1 lacking in some capability.

2 Q. You talked about the word COTS?

3 A. Yes.

4 Q. You don't expect a COTS solution to fully encompass
5 the entire scope of requirements of DHS out of the box, do
6 you?

7 A. You don't know. That is why you do the market
8 research.

9 Q. Would it be unusual for any product -- any product to
10 be already completely customized for DHS?

11 A. It would be highly unlikely that any solution could
12 hit a hundred percent. But there could be a solution that
13 could hit 70, 75, 80 percent.

14 Q. Okay. What actions were taken with companies noted,
15 resulting in the survey?

16 A. I don't recall. It would have been part of the RFI.
17 All of the instructions were in the RFI.

18 MR. BANKS: Just one moment, Your Honor.

19 THE COURT: You may.

20 Q. (BY MR. BANKS) Did the CILC software have viable
21 capabilities for DHS?

22 A. Again, this is going back to the 2003, 2004 time
23 period. My recollection was, as a state and local law
24 enforcement platform, it was very commendable. We had
25 concerns as it related to its scalability to the federal

1 level, which would have led, again, as I stated earlier,
2 to the discussions we had as to what we were looking for.

3 Q. Did you tell IRP that they should -- recommend to IRP
4 that they should bring on some federal law enforcement
5 agents to assist with their solution being ready for the
6 federal government?

7 A. I wouldn't have made a recommendation. I would --
8 during the discussions, if the question was asked by IRP
9 as to how they might better understand our environment,
10 would not have been unusual to sit there and say, well,
11 you need to find some prior, you know, agents; you know,
12 special agents that have worked at the federal level and
13 have experience in that environment.

14 Q. And, finally, you don't recall -- you recall meeting
15 only with IRP Solutions on one occasion; is that correct?

16 MR. KIRSCH: Objection, asked and answered.

17 THE COURT: Sustained.

18 MR. BANKS: I have no further questions, Your
19 Honor.

20 THE COURT: Anyone else?

21 Cross?

22 MR. KIRSCH: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 **BY MR. KIRSCH:**

25 Q. Good morning, Mr. Cooper.

1 A. Good morning.

2 MR. KIRSCH: Your Honor, can I start, please, by
3 publishing Government's Exhibit 502.01?

4 THE COURT: You may.

5 Q. (BY MR. KIRSCH) Mr. Cooper, I will ask you to take a
6 look at the monitor to your right.

7 MR. KIRSCH: Special Agent Smith, can you enlarge
8 that top e-mail.

9 Q. (BY MR. KIRSCH) Are you able to read that now,
10 Mr. Cooper?

11 A. Yes, I can read it.

12 Q. This was -- your name doesn't appear at the top of
13 this e-mail. Do you recall ever receiving this e-mail?

14 A. No. I would not have received -- I would not have
15 received this e-mail. It is Paul Tran.

16 Q. Do you see in the second sentence there is a
17 reference where Mr. Tran says, "I did get IRP to be
18 included on the list for the next round"?

19 A. Yes, I do see it.

20 Q. This is in May of 2004. Do you know what he meant
21 when he said that?

22 A. Well, no, I don't. First of all, again, Paul Tran
23 was not a member of my program management office. He
24 worked -- what you see down there as the EIB; that is
25 Enterprise Information Bureau, was a sub unit of the

1 Executive Information Unit, which was under a gentleman by
2 the name of James Geddes.

3 Q. There is a reference there to CEE?

4 A. Yes, it is.

5 Q. But am I right that you don't know what exactly
6 Mr. Tran was referring to?

7 A. No. He would have been speaking out of line,
8 because, again, during this time period, we were just
9 doing market research. There was no short list as it
10 relates to possible solutions.

11 MR. KIRSCH: All right. Thank you, Special Agent
12 Smith.

13 Q. (BY MR. KIRSCH) So you also, I think, said that
14 Mr. Witherspoon was one of the people that was working as
15 a part of your staff?

16 A. Mr. Witherspoon was a member of my staff.

17 Q. That was as -- did you say as a technology lead?

18 A. Yes. In our program management office, we have both
19 technology people, and we have operational people. For
20 example, I am a special agent by training. I come from
21 the operational side of the house. Mr. Witherspoon is an
22 IT specialist.

23 Q. All right. He wasn't functioning as a procurement
24 officer in any part of the work that he was doing for you,
25 was he?

1 A. No, he was not.

2 Q. And am I -- did I understand your testimony correctly
3 that both of the processes that you described, as they
4 related both to CEE and the Federal Investigative Case
5 Management Systems, that both of those processes were
6 information gathering processes?

7 A. That is correct.

8 Q. And you said, I think, that they were still in the
9 concept phase?

10 A. Yes. First of all, FICMS was a notional concept
11 coming out of that federal working group; OMB lines of
12 business. And then the respective departments -- and I
13 can only speak for mine, DHS, had its own case management
14 initiative that OMB was expecting us to align with that
15 overall LOB, FICMS.

16 Q. And LOB, that is lines of business?

17 A. Lines of business.

18 Q. And so you have training, as a part of your job, I
19 assume, with the requirements that relate to federal
20 procurement?

21 A. Yes, sir.

22 Q. And am I correct that one of the things that you
23 learn as a part of that training is that once a
24 procurement process begins, that you don't meet with
25 particular vendors?

1 A. That is correct.

2 Q. And so in the course of the process you've described,
3 you were meeting with a number of different vendors; is
4 that right?

5 A. That is correct.

6 Q. And that was because the procurement process hadn't
7 even begun; is that right?

8 A. That is correct.

9 Q. When you would have meetings with those vendors, such
10 as IRP, would you explain to them where in the process the
11 Department of Homeland Security was?

12 A. That is correct.

13 Q. Would you have said -- the various scenarios or the
14 story boards that you provided, would you have provided
15 those to any vendors who asked for one or more?

16 A. Yes. To be fair to all of the vendors that would
17 have met with us, we would have shared those.

18 Q. With any vendor who asked?

19 A. That we met with. We would not just send them out.

20 Q. You weren't posting them on the internet?

21 A. We weren't posting them on the internet.

22 Q. All right. But in these meetings that you would have
23 with the various vendors, would you have made any
24 statements that would have suggested that the Department
25 of Homeland Security was going to buy their software?

1 A. No.

2 Q. Did you have the authority to commit the Department
3 of Homeland Security to such a purchase?

4 A. No.

5 Q. Would you have made that clear during any meetings
6 that you had?

7 A. Yes.

8 MR. KIRSCH: Can I have just a moment, please, Your
9 Honor.

10 THE COURT: You may.

11 MR. KIRSCH: Your Honor, actually I think that is
12 all I have.

13 Thank you Mr. Cooper.

14 THE COURT: Any redirect?

15 MR. BANKS: Yes.

16 **REDIRECT EXAMINATION**

17 **BY MR. BANKS:**

18 Q. You mentioned that you were knowledgeable, at least
19 had some knowledge of the federal procurement process;
20 correct?

21 A. Correct.

22 Q. Would you say that is a pretty involved and complex
23 process?

24 A. Yes, it is.

25 Q. Would a small business, first time, in your opinion

1 doing business with the government, have a lot of
2 knowledge about how to do that whole process?

3 MR. KIRSCH: Objection, lack of foundation.

4 THE COURT: I will overrule. I will allow. You
5 can answer.

6 THE WITNESS: I couldn't speak to that. That would
7 rely on the expertise, the wherewithal of a particular
8 vendor or company as it relates to making the effort to
9 familiarize themselves with the federal regulatory
10 procedures.

11 Q. Well, the initiative, as far as a procurement is
12 concerned, as large as CEE, that would typically be
13 handled by large vendors?

14 A. Large vendors typically have staff that are focused
15 on that, yes.

16 MR. BANKS: No further questions, Your Honor.

17 THE COURT: All right. May this witness be
18 excused?

19 MR. WALKER: Yes, Your Honor.

20 THE COURT: All right. Thank you very much
21 Mr. Cooper, you are excused.

22 And we have been going for about an hour and a
23 half, so we are going to take a 15-minute recess. We will
24 reconvene at 10:50. Court will be in recess.

25 (A break is taken from 10:33 a.m. to 10:51 a.m.)

1 (The following is had in open court, outside the
2 hearing and presence of the jury.)

3 THE COURT: You may be seated. All right. Any
4 matters to be brought to the Court's attention before we
5 bring in the jury?

6 MR. WALKER: Yes, Your Honor. We discussed the
7 matter about Mr. Moen, and we will not be requesting a
8 continuance.

9 THE COURT: All right. We ready to proceed?

10 MR. WALKER: Yes, Your Honor.

11 THE COURT: All right. Ms. Barnes -- I did have
12 distributed to you at the beginning of this break the
13 proposed final jury instructions and the verdict form. We
14 will take those up after lunch, because I expect that we
15 are going to get into closing arguments, then, this
16 afternoon. So you will have the lunch period to look them
17 through, we will have a charging conference immediately
18 following lunch, and then we'll move right on.

19 All right. Ms. Barnes, would you please bring in
20 the jury.

21 I should have asked the Government if they have any
22 rebuttal.

23 MR. KIRSCH: Your Honor, we are not anticipating
24 any rebuttal evidence.

25 THE COURT: All right. Sorry.

1 Ms. Barnes, now you may bring them in.

2 (The following is had in open court, in the hearing
3 and presence of the jury.)

4 THE COURT: You may be seated.

5 The defendants may call their next witness.

6 MR. BANKS: Defense calls Bill Witherspoon.

7 COURTROOM DEPUTY: Your attention, please.

8 **WILLIAM WITHERSPOON**

9 having been first duly sworn, testified as follows:

10 COURTROOM DEPUTY: Please be seated.

11 Please state your name, and spell your first and
12 last names for the record.

13 THE WITNESS: William Witherspoon. W-I-L-L-I-A-M
14 W-I-T-H-E-R-S-P-O-O-N.

15 **DIRECT EXAMINATION**

16 **BY MR. BANKS:**

17 Q. Hello, Mr. Witherspoon. Do you recall a meeting that
18 occurred with IRP on or about July 8, 2004, related to
19 CEE?

20 A. Not -- I remember a meeting with you all. I can't
21 remember the exact dates. I remember a meeting with IRP
22 twice. And I think the last time I was here it was
23 around -- about somewhere between November and December.
24 Twice, the first time when you came out to do a
25 presentation, and then a second time when you came back to

1 present what you had come up with based on the scenario
2 that we provided you for law enforcement.

3 MR. BANKS: Your Honor, I would like to provide
4 Mr. Witherspoon with an e-mail. And we obviously will
5 seek to introduce this or admit this.

6 THE COURT: Well, it has not been introduced yet?

7 MR. BANKS: No.

8 THE COURT: Have it marked, then lay the
9 foundation.

10 MR. KIRSCH: Your Honor, could I go look at that?

11 THE COURT: Yes.

12 MR. BANKS: I have one for you.

13 COURTROOM DEPUTY: Defendants' Exhibit 409.

14 MR. KIRSCH: Your Honor, I am going to object to
15 the use of this document during the trial.

16 THE COURT: All right, approach.

17 (A bench conference is had, and the following is
18 had outside the hearing of the jury.)

19 THE COURT: What is the objection?

20 MR. KIRSCH: As far as I can tell, Your Honor, this
21 document was not produced in discovery. This is the first
22 time I have ever seen it. It is yet another instance of
23 the defendants now, late in the trial, offering an exhibit
24 for the first time without giving any previous notice to
25 the Government.

1 MR. BANKS: The Government has this, to our
2 knowledge.

3 THE COURT: Did you produce it?

4 MR. BANKS: Yes, we produced it.

5 THE COURT: When did you produce it?

6 MR. BANKS: I can't recall. I know all of these
7 e-mails were produced at one time or another and provided
8 to the Government.

9 THE COURT: You didn't Bates stamp any of the
10 documents you produced to the Government?

11 MR. BANKS: We don't Bates stamp, the Government
12 Bates stamps.

13 THE COURT: You have an obligation to know what you
14 turned over to the Government, as well. That is why they
15 Bates stamp. So, can you tell me -- Mr. Kirsch is saying
16 he didn't receive this document as part of your discovery.

17 MR. BANKS: They were produced at one time or
18 another.

19 THE COURT: Was it proffered? This wasn't in the
20 proffer you gave.

21 MR. BANKS: I would have to --

22 THE COURT: Is this identified as an exhibit you
23 were going to use at trial?

24 MR. BANKS: We will -- we would have to review,
25 Your Honor.

1 THE COURT: When did you first realize you were
2 going to introduce this document?

3 MR. BANKS: We have had this document for quite
4 some time.

5 THE COURT: When did you realize you were going to
6 introduce it at trial? I want to know. If it's not
7 marked as one of your exhibits -- can anybody here tell me
8 if it is in your exhibit book?

9 MR. WALKER: I don't recognize it.

10 THE COURT: When did you determine you were going
11 to use it at trial?

12 MR. WALKER: We have been determining its use at
13 trial -- if you look at the date.

14 THE COURT: I know it is relevant in that course,
15 but if it is not part of your exhibits --

16 MR. BANKS: It is part of discovery.

17 THE COURT: What I need to know -- the question is
18 very simple. You have exhibits you marked, and whether
19 you turned it over to the Government before or not. You
20 had a list of exhibits or notebooks. This is not in that
21 exhibit notebook; correct?

22 MR. WALKER: Not that I am aware of, Your Honor.

23 THE COURT: All right. So that means, as of the
24 time you started this trial, you were not anticipating
25 using this exhibit; correct, or it would have been in the

1 exhibit book?

2 MR. WALKER: As I said, I don't recognize this as
3 being one of our exhibits.

4 THE COURT: So when did you decide you were going
5 to use this in the trial?

6 MR. BANKS: We had a number of documents we were
7 going to use in the trial, Your Honor.

8 THE COURT: Why weren't they, then, included in the
9 exhibit book?

10 MR. BANKS: I thought they were. Like I said,
11 Mr. Walker did most of the exhibits.

12 THE COURT: You didn't talk to him about making
13 sure he included this in the exhibits?

14 MR. BANKS: Everybody sent a list of things they
15 wanted included in the exhibits. It may be in the
16 exhibits. The exhibits are pretty exhaustive.

17 THE COURT: Mr. Walker says it is not in the
18 exhibits.

19 MR. WALKER: Your Honor, may I have a minute to
20 take a look?

21 THE COURT: You may take a minute to come back.

22 MR. BANKS: Should we come back?

23 THE COURT: No. We can remain here while
24 Mr. Walker checks.

25 MR. BANKS: It is not in that file. I am certain

1 it is not in the proffer.

2 THE COURT: You know it is not in the exhibit book
3 you submitted as all of the exhibits you were going to
4 introduce?

5 MR. BANKS: Correct. It will be referenced in the
6 corporate activity reports to some extent, as far as
7 meetings were concerned. But the actual document --

8 THE COURT: What that tells me -- I should wait for
9 Mr. Walker.

10 MR. BANKS: He doesn't see it in there, Your Honor.

11 MR. WALKER: Your Honor, that was not annotated in
12 our list or index.

13 THE COURT: When was it you decided you were going
14 to use this exhibit in this trial?

15 MR. BANKS: It was not -- there was no
16 deliberate --

17 THE COURT: That is not the question. The question
18 is, when did you decide you were going to use this exhibit
19 in this trial? As of the time that the exhibit notebook
20 was produced, it is not included in there, which leads me
21 to believe you weren't anticipating using it at that time,
22 otherwise Mr. Walker would have included it.

23 MR. BANKS: Obviously, we anticipated using it. It
24 could have been an oversight on our part. All of the
25 e-mail communications were put in a separate book for us.

1 THE COURT: Now, the problem we have had is that
2 throughout this trial, you all have been coming up with
3 new exhibits that you either didn't produce to the
4 Government or you didn't indicate you were going to
5 include as exhibits. That is part of your responsibility.

6 MR. BANKS: Correct.

7 THE COURT: That being said, Mr. Kirsch, I don't
8 see anything overly prejudicial here, and I would just
9 admonish the defendants, they are not to continue in this
10 route. I am inclined to let it in because I don't believe
11 it prejudices the Government.

12 MR. KIRSCH: Your Honor, after thinking about it a
13 little bit more, I don't object to this document being
14 used to refresh Mr. Witherspoon's recollection. I,
15 however, have questions about its authenticity. And I
16 will be objecting if the defendants attempt to offer this
17 document into evidence.

18 THE COURT: All right.

19 MR. KIRSCH: And, as I said, it doesn't have a
20 Bates number on it. I don't recognize it. And those two
21 things combined do make me believe we did not produce this
22 document in discovery.

23 MR. BANKS: It is an e-mail. I am sure it is based
24 on the e-mail traffic. The printout at the top is dated
25 after the date of the search warrant, Your Honor. This is

1 the date of the actual --

2 MR. KIRSCH: I understand that, Your Honor, but it
3 doesn't allow me to conclude from which computer it was
4 printed, where it was printed. There is not enough
5 information for the Government to be able to determine
6 whether that is an authentic document.

7 THE COURT: You want to use this to refresh his
8 recollection?

9 MR. BANKS: I want to admit it. Everybody said
10 they haven't had meetings.

11 THE COURT: He can testify based on this if it
12 refreshes his recollection, if he recalls it. The problem
13 is, we have an issue as to whether this is an authentic
14 document. It wasn't produced in the regular course as
15 required to be done, and you never submitted it as an
16 exhibit until today.

17 MR. BANKS: I understand, Your Honor.

18 THE COURT: I would assume you knew this was not in
19 the exhibit book. You didn't even give the Government
20 notice.

21 MR. BANKS: There are a lot of exhibits.

22 THE COURT: I have to believe you know the exhibits
23 you intend to use. I have to believe you are aware. If
24 it had been in your exhibits, you would have told me it
25 was already marked as an exhibit.

1 MR. BANKS: This is not any ambush, believe me.

2 THE COURT: So far, the actions with the various
3 documents that at the last minute come up, lead me to
4 question whether or not you are trying to do trial by
5 ambush.

6 But, that being said -- now, Mr. Harper, you wish
7 to make a statement?

8 MR. HARPER: I was trying to assist Mr. Walker.

9 THE COURT: So I will allow you to use it to
10 refresh recollection.

11 MR. BANKS: We won't be allowed to admit it?

12 THE COURT: If he recognizes -- if he can
13 acknowledge he received it, I will consider your offer of
14 that, subject to Mr. Kirsch's objection.

15 MR. BANKS: Okay, Your Honor.

16 THE COURT: I am not ruling on it now. You have to
17 lay adequate foundation.

18 MR. BANKS: Thank you.

19 (The following is had in the hearing of the jury.)

20 THE COURT: Mr. Banks, you may proceed.

21 MR. BANKS: Thank you, Your Honor.

22 Q. (BY MR. BANKS) Mr. Witherspoon, do you recall that
23 e-mail?

24 A. I see it now, so, yeah. Like I said before, I only
25 remember -- I only remember meeting with you all on two

1 occasions.

2 Q. Is it possible you may not recall any other meetings
3 that may have taken place?

4 A. Other than this one here, which other times would you
5 be --

6 Q. I would -- I will let you know that in the course of
7 questioning, Mr. Witherspoon.

8 A. Well, based on this e-mail, I sent you all --

9 THE COURT: There is not a question before you at
10 this point, so wait until he asks you a question.

11 And you have a really low voice. It is hard to
12 hear you, so speak right into the microphone.

13 THE WITNESS: All right.

14 Q. (BY MR. BANKS) Is there such a thing as a Chester
15 Arthur Building?

16 A. There was. There is no longer.

17 Q. When did that -- would you agree this e-mail
18 addresses the Chester Arthur Building?

19 MR. KIRSCH: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. BANKS) Did you conduct meetings regularly
22 with IRP and other companies in the Chester Arthur
23 Building?

24 A. We have done meetings there, as well as at other
25 vendor's and government agencies' office locations, as

1 well. There was no one specific location we meet at every
2 time.

3 Q. Who else is copied on this e-mail?

4 MR. KIRSCH: Objection.

5 THE COURT: Mr. Banks, you can't elicit anything
6 substantive about that unless he can lay the foundation
7 that he recalls even receiving it. So you can ask him
8 that.

9 Q. (BY MR. BANKS) Do you recall authoring this e-mail?

10 A. Yes. Looks like my authoring.

11 Q. Now, based on that, who else is included on this
12 e-mail?

13 MR. KIRSCH: Same objection, Your Honor.

14 THE COURT: Mr. Banks, you have to ask him -- he
15 says it looks like his authoring. Does he actually recall
16 sending this e-mail.

17 Q. (BY MR. BANKS) Do you actually recall sending this
18 e-mail?

19 A. I don't remember it. But, obviously, since it looks
20 like my authoring, I did send it on the 8th of July.

21 THE COURT: Now, do you recall to whom you sent it?

22 Q. (BY MR. BANKS) Do you recall to whom you sent it to?

23 A. Samuel Thurman.

24 Q. Anyone else?

25 A. I sent it to other ICE personnel, and David Banks.

1 Q. Specifically what ICE personnel did you send it to?

2 MR. KIRSCH: Your Honor, in the interest of time, I
3 withdraw my objection, so Mr. Banks can publish the
4 e-mail.

5 THE COURT: All right. So, Mr. Banks, you may
6 offer the exhibit.

7 MR. BANKS: Did we mark this as Defense Exhibit
8 409?

9 THE COURT: 409.

10 MR. BANKS: 409.

11 THE COURT: 409 will be admitted, and it may be
12 published.

13 (Exhibit No. 409.00 is admitted.)

14 MR. BANKS: Thank you, Your Honor.

15 Q. (BY MR. BANKS) Mr. Witherspoon, is both Paul Tran
16 and Mr. Cooper part of this e-mail transmission?

17 A. Yes.

18 Q. Now, Mr. Witherspoon, do you recall receiving an
19 overview or agenda item from IRP Solutions regarding an
20 October 28th meeting with DHS and the Department of
21 Justice?

22 A. No.

23 Q. Do you recall receiving a confidential informant
24 price estimate from Sam Thurman?

25 MR. KIRSCH: Objection, Your Honor. This has been

1 asked and answered in Mr. Witherspoon's direct testimony
2 during the Government's case in chief.

3 THE COURT: I will give him a little bit of leeway.
4 But I don't want to rehash his prior testimony.

5 MR. BANKS: Okay.

6 THE COURT: So you may answer.

7 THE WITNESS: I may answer the question? Yes, I
8 received an estimate for the confidential informant.

9 Q. (BY MR. BANKS) Do you recall the contents of the
10 e-mail that Mr. Thurman sent to you?

11 A. No. I remember the estimate, itself. Could you be
12 more specific? You are talking about the wording or cost
13 estimate?

14 Q. The wording.

15 A. No, I don't. This is years ago. I remember the cost
16 estimate being sent, because we requested a cost estimate.

17 MR. BANKS: Just one moment, Your Honor. Your
18 Honor, I have no further questions at this time.

19 THE COURT: All right. Anybody else?

20 MR. BANKS: One moment.

21 MR. WALKER: No further questions, Your Honor.

22 THE COURT: Cross-examination?

23 MR. KIRSCH: No, thank you, Your Honor.

24 THE COURT: All right. Thank you very much

25 Mr. Witherspoon. You are excused.

1 All right. Defendants may call their next witness.

2 MR. WALKER: Your Honor, we have no further
3 witnesses at this time.

4 THE COURT: So do defendants' rest?

5 MR. BANKS: Your Honor, prior to resting, we need
6 to move to admit a number of exhibits that were brought
7 forward with previous witnesses. I don't know if you want
8 to do that outside of the presence of the jury, but --

9 THE COURT: We will do that outside of the presence
10 of the jury. But if they were marked for identification
11 and they weren't offered at the time, that is something
12 you needed to do. But I will allow you to do that. You
13 can rest, and I will allow you that leeway to make the
14 proffer to get them admitted. We will hear that. I don't
15 want to delay it any further, other than that.

16 The defendants rest?

17 MR. BANKS: The defense rest.

18 THE COURT: Does the Government have any rebuttal?

19 MR. KIRSCH: We do not, Your Honor. Thank you.

20 THE COURT: All right. Ladies and gentlemen. Then
21 I'm going to excuse you early for an early lunch. With
22 this being said, we have a number of legal matters I need
23 to take up with the parties, so I am going to give you an
24 extra long lunch today. Just to make sure I don't keep
25 you waiting, I will excuse you until 1:30 this afternoon,

1 then we will come back to hear the jury instructions and
2 to hear closing arguments, then hopefully you will be able
3 to start your deliberations.

4 So you are excused until 1:30. You are not to
5 discuss this case with anyone or with one another. But
6 you are free to go and return at 1:30.

7 Parties and Government, if you can stay.

8 (The following is had in open court, outside the
9 hearing and presence of the jury.)

10 THE COURT: You may be seated.

11 All right. Mr. Banks, which exhibits do you wish
12 to tender?

13 MR. BANKS: Defense Exhibits 321, 320.

14 THE COURT: Hold on. Let's take them one at time.
15 I don't have a 321.

16 MR. BANKS: Your Honor, I recall D320 and D321. We
17 withdrew those. Those were, I believe, the actual letters
18 from Mr. Albarelle, if my recollection is right. We are
19 cross referencing our notes.

20 THE COURT: Ms. Barnes, do you have s D320 and
21 D321?

22 COURTROOM DEPUTY: D321 is an e-mail.

23 MR. BANKS: And, Your Honor, we withdraw that.
24 That was the Government's Exhibit 1000 series.

25 THE COURT: So you are not moving to admit D321?

1 MR. BANKS: Yes, D320 and D321, we do need to
2 admit.

3 THE COURT: I need to figure out what they are.

4 MR. KIRSCH: Your Honor, our records indicate that
5 320 was the letter sent to John Walsh that the defendants
6 claimed referenced Mr. Albarelle. 321 was an e-mail sent
7 to John Walsh from the defendants. The Government's
8 position is that both of those are completely irrelevant
9 to the issues for the jury to decide in this matter. They
10 also haven't been properly identified or authenticated,
11 and the Government would object to the admission of those.

12 MR. BANKS: We concur, Your Honor.

13 THE COURT: I am sorry?

14 MR. BANKS: We concur with the Government's
15 position.

16 THE COURT: All right. So you are withdrawing your
17 offer of those two?

18 MR. BANKS: Yes.

19 THE COURT: Which other ones?

20 MR. BANKS: Defense Exhibit 400.

21 THE COURT: All right. Defense Exhibit 400 is the
22 first 5 pages of Exhibit F in the defendants' notebook,
23 which is the independent contractor agreement between IRP,
24 I believe -- yes, IRP and John Epke?

25 MR. BANKS: Correct.

1 THE COURT: Any objection to that?

2 MR. KIRSCH: Your Honor, that is already in
3 evidence. We don't object.

4 THE COURT: Because this is the Government's
5 exhibit, is it not?

6 MR. KIRSCH: It is not, Your Honor. This is the
7 binder with all of the various tabs. Those 5 pages have
8 already been admitted.

9 THE COURT: Ms. Barnes, do you have that notation?

10 COURTROOM DEPUTY: Yes, Your Honor.

11 THE COURT: So 400 is already admitted.

12 MR. KIRSCH: No, Your Honor, I am sorry, but it is
13 my understanding that D400 in its entirety --

14 THE COURT: No, the first 5 pages. The first 5
15 pages. Mr. Epke's contract. Nothing else.

16 COURTROOM DEPUTY: Of Exhibit F.

17 THE COURT: Of Exhibit F in the binder.

18 MR. BANKS: We move to admit the whole binder, Your
19 Honor.

20 THE COURT: I am sorry, you didn't lay any
21 foundation for the other documents. You can go exhibit by
22 exhibit. But unless you can show me how you have laid
23 foundation for a lot of these --

24 MR. BANKS: I will get back to some of those, Your
25 Honor.

1 Defense Exhibit 401 we move to have admitted.

2 THE COURT: It is admitted according to my records.

3 Ms. Barnes?

4 COURTROOM DEPUTY: I do not have that admitted.

5 THE COURT: My notes indicate that it is an e-mail
6 from Mr. Ackerman to Mr. Banks dated 2004, and I have it
7 on my records as admitted.

8 MR. KIRSCH: Your Honor, we will have to look at
9 ours. I believe that was the e-mail that was shown to the
10 Westaff representative, Ms. Ackerman. And my memory is
11 that she was not able to identify or recall that e-mail.

12 MR. BANKS: That is not our recollection, Your
13 Honor.

14 THE COURT: Did Ms. Seeman not make notes on that,
15 Ms. Barnes.

16 COURTROOM DEPUTY: She did not show it as being
17 admitted.

18 THE COURT: Okay. Let me take a look at 401. I
19 don't recall. My notes indicate it was admitted. I rely
20 more on the CRD because she keeps better notes than I do.

21 Mr. Kirsch, what is your objection to 401?

22 MR. KIRSCH: Your Honor, I'm trying to find my
23 notes about that testimony, but at the moment, my
24 objection is what I stated before; that it is our memory
25 the witness was not able to recognize that exhibit. It

1 was marked for the purposes to refresh her recollection,
2 and that she didn't have a recollection of that exhibit,
3 and that, therefore, it was not admitted.

4 THE COURT: All right. We are going to have to
5 search the transcript to see what we find on that.

6 Mr. Banks. The next exhibit?

7 MR. BANKS: Defense Exhibit 352. It has been
8 admitted to my understanding.

9 THE COURT: Ms. Barnes, do you see 352 as admitted?

10 COURTROOM DEPUTY: Yes, Your Honor.

11 MR. KIRSCH: We agree.

12 THE COURT: It is admitted.

13 MR. BANKS: Defense Exhibit 356?

14 THE COURT: I show that was not admitted because
15 there was no foundation.

16 MR. KIRSCH: Your Honor, the Government's memory is
17 that's the e-mail that Mr. Shannon specifically did not
18 recognize parts of and wasn't sure he had written it.

19 THE COURT: And that's essentially what my notes
20 indicate.

21 MR. BANKS: Our notes are that he did recognize
22 parts of it, Your Honor. So how do we handle that?

23 THE COURT: It should have been done at the time he
24 was here. But, essentially, I would have to look through
25 the record to see what he did admit. You could possibly

1 redact portions. But my notes specifically say not
2 admitted because no foundation was laid.

3 MR. BANKS: Okay. Defense 402, the FBI interview
4 of John Shannon.

5 THE COURT: Mr. Kirsch?

6 MR. KIRSCH: Your Honor, it is not admissible. It
7 is a hearsay statement. We object.

8 THE COURT: It is. It will not be admitted.

9 (Exhibit No. D402 is refused.)

10 MR. BANKS: Defense Exhibit 403 has been admitted?

11 THE COURT: My notes indicate it has been admitted.
12 Does the Government agree?

13 MR. KIRSCH: We agree that that e-mail was
14 admitted, Your Honor.

15 THE COURT: All right.

16 MR. KIRSCH: Again, it came from D400. But one
17 e-mail was remarked as D403, and we agree that that
18 remarked e-mail was admitted.

19 THE COURT: Right.

20 MR. BANKS: Defense Exhibit 404, Your Honor, an
21 e-mail.

22 THE COURT: Same thing, from Colin Reese to -- I am
23 not sure whom, but my notes indicate it was admitted. Do
24 your notes indicate, Ms. Barnes?

25 COURTROOM DEPUTY: 404, it has been admitted.

1 MR. KIRSCH: We agree, Your Honor.

2 THE COURT: All right.

3 MR. BANKS: Defense Exhibit 405.

4 THE COURT: Hillberry Affidavit?

5 MR. BANKS: Yes.

6 THE COURT: Mr. Kirsch?

7 MR. KIRSCH: Your Honor, it is another hearsay
8 document that wasn't offered for admission. It would be
9 improper to admit it and we object.

10 THE COURT: Sustained.

11 MR. BANKS: Your Honor, Mr. Hillberry verified he
12 recognized his Affidavit and testified to his Affidavit.

13 THE COURT: And even though it is an Affidavit, it
14 is still an out-of-court statement. That is why you were
15 allowed to question him about the contents of the
16 Affidavit. The Affidavit itself does not come in.

17 (Exhibit No. D405 is refused.)

18 MR. BANKS: Okay. 406, Your Honor.

19 MR. KIRSCH: Your Honor, we object to 406. Your
20 Honor, that is the document that they showed to
21 Mr. Rosales, which he didn't remember, and thought that it
22 had perhaps been authored by one of his co-workers at Idea
23 Integration.

24 THE COURT: 406 is the fax from the FBI to Greg
25 Goldberg.

1 MR. KIRSCH: I am sorry, Your Honor, with the
2 newspaper article?

3 THE COURT: Yes.

4 MR. KIRSCH: We have no objection to the admission
5 of that.

6 THE COURT: D406 will be admitted.

7 (Exhibit No. 406.00 is admitted.)

8 MR. BANKS: Defense Exhibit 407.

9 THE COURT: That is the transcript of -- I cannot
10 read my writing. A transcript.

11 MR. BANKS: From the James hearing.

12 THE COURT: Yes. A transcript of the James
13 hearing.

14 MR. KIRSCH: We object to the admission of that,
15 Your Honor, it is hearsay.

16 THE COURT: All right. The court agrees. You
17 impeached using it, that is sufficient.

18 (Exhibit No. D407 is refused.)

19 MR. BANKS: 408, Your Honor.

20 THE COURT: 408 is the Rosales e-mail.

21 MR. KIRSCH: Your Honor, I will restate my
22 objection, which I erroneously made before.

23 THE COURT: Please restate it, actually.

24 MR. KIRSCH: Your Honor, it is that Mr. Rosales
25 didn't recognize the e-mail. He thought that it had

1 perhaps been drafted by one of his co-workers --

2 THE COURT: That's right.

3 MR. KIRSCH: -- Mr. Rosedale. Even if Mr. Rosales
4 had written it, it would have been hearsay.

5 THE COURT: That's right. All right. Lack of
6 foundation. It will not be admitted.

7 (Exhibit No. D408 is refused.)

8 MR. BANKS: 409 was admitted?

9 THE COURT: 409 was admitted.

10 Anything further?

11 MR. BANKS: One moment, Your Honor.

12 THE COURT: You may.

13 MR. BANKS: Your Honor, we would only like to admit
14 one more exhibit, and it would be one corporate activity
15 report, testified -- where Mr. Shannon had testified about
16 our meeting with Mr. Beltran. Obviously, this document
17 will be redacted.

18 THE COURT: Which document is it?

19 MR. BANKS: Your Honor, this is the only one that
20 has the -- it is a corporate activity report dated
21 10/9/04.

22 THE COURT: For whom? Corporate activity report
23 for which company?

24 MR. BANKS: IRP Solutions.

25 THE COURT: And do you have a verified copy of that

1 corporate activity? Is that from the Secretary of State's
2 Office?

3 MR. BANKS: No. It is an internal IRP corporate
4 activity report.

5 THE COURT: And who laid the foundation for its
6 admission?

7 MR. BANKS: Nobody laid the necessary --
8 Mr. Shannon testified to events within this corporate
9 activity report.

10 THE COURT: But nobody has laid the foundation for
11 the introduction of that as a business record of the
12 corporation?

13 MR. BANKS: That's correct, Your Honor.

14 THE COURT: I will exclude it.

15 MR. BANKS: The corporate activity reports are in
16 discovery. Do you remember those, Mr. Kirsch?

17 THE COURT: Well, but the problem is, Mr. Banks, it
18 may be in discovery, it may have been produced. But for
19 you to get it admitted, you have to lay a foundation for
20 it. Written documents have hearsay in them, and unless
21 you can get it -- unless you have laid the foundation
22 using someone to show that it was more reliable than not
23 as a business record of IRP, I can't let it in.

24 MR. BANKS: Very well, Your Honor.

25 THE COURT: So that will be excluded.

1 MR. KIRSCH: Your Honor, for the record, we would
2 object to the admission of that record as hearsay, as
3 well.

4 THE COURT: All right. Anything further?

5 MR. BANKS: Nothing further, Your Honor.

6 THE COURT: All right. So what's going to happen
7 is you all shall have an hour for lunch. I have given you
8 the proposed jury instructions and verdict form in this
9 case. You will return at 1:30 -- I am sorry, 12:30, so
10 that we can have our charging conference.

11 If you have any objections to the jury instructions
12 I will tell you right now, that I did include the
13 Government's language regarding the credibility of
14 witnesses to Jury Instruction No. 8. I also did not
15 include the good faith jury instructions, because the
16 Tenth Circuit, in the case of United States versus Bowling
17 619 F.3d 1175, Tenth Circuit, 2010 case, essentially
18 indicated that such an instruction on good faith is not to
19 be included, because that finding of intent -- and I am
20 instructing the jury on the element of intent in this
21 case, necessarily implies that there was no good faith.

22 So the Tenth Circuit has ruled that a good faith
23 defense instruction is superfluous and unnecessary. So I
24 am not including that. Those are really the only changes
25 I have made, other than in Instruction No. 1, I added

1 language talking about the fact that the preliminary
2 instructions are now to be set aside. These are the final
3 instructions, and these are the instructions that they
4 shall conduct their deliberations on.

5 MR. BANKS: Your Honor, you did mention that you
6 were going to include the Government's recommended
7 instruction, I believe it was on 8, regarding Mr. Barnes'
8 credibility. We object --

9 THE COURT: Well, and I know you do, but I want to
10 give you time to look it through, and we will make that
11 record after lunch. That is why I want you back here at
12 12:30, because you haven't had time to look at those. I
13 have given you the entire instructions. I have given you
14 the verdict forms. You all are to, over your lunch hour,
15 look those over, and when you come back, you can make your
16 record.

17 MR. BANKS: Very well.

18 THE COURT: I just wanted to highlight these, so
19 you would be able to look at those -- look at those
20 instructions in particular.

21 All right. And then immediately after that, if
22 there are any other matters that need to be taken up, we
23 will take those up. In the meantime, my staff will be
24 copying the jury instructions after the charging
25 conference so that we can start with the jury. I will

1 read the instructions to the jury when they return, and
2 then we will go immediately with closing arguments.

3 MR. KIRSCH: Your Honor, can I ask, procedurally,
4 is the Court intending to impose any time limits with
5 respect to closing arguments?

6 THE COURT: I certainly don't want to go on and on.
7 But I'm not going to impose strict time limits.

8 MR. KIRSCH: Thank you, Your Honor.

9 THE COURT: I just would caution the parties that
10 you need to realize that it has been a long time for the
11 jurors. You need to be succinct. But I will not
12 arbitrarily cut anybody off.

13 MR. KIRSCH: Thank you, Your Honor. I was just
14 going to also inform the Court that it is Government's
15 plan to have Ms. Hazra do the opening close, and then for
16 me to do the rebuttal close.

17 THE COURT: All right. If there is nothing
18 further, then, we are in recess. You all should be back
19 at 12:30 for the charging conference, and we'll proceed
20 from there. Court is in recess.

21 (Lunch break is taken from 11:33 a.m. to 12:33
22 p.m.)

23 THE COURT: You may be seated.

24 All right. Immediately prior to lunch, I had
25 provided the parties with the proposed final jury

1 instructions and the verdict form. This is the charging
2 conference. So are there any objections to the proposed
3 final jury instructions?

4 MR. BANKS: Nothing. Only one is the one we
5 mentioned in our previous objection. Just for the record,
6 we didn't think Mr. Barnes needed to be, I guess, singled
7 out as a witness based on his testimony within the jury
8 instructions. We thought it could have been covered -- if
9 he was a witness, it could have been covered in the
10 standard fashion that he was just another witness in the
11 trial, and needed no special instruction concerning him.

12 THE COURT: Mr. Kirsch, Ms. Hazra?

13 MR. KIRSCH: Your Honor, the Government's position,
14 and the reason that it proposed, what Mr. Banks is calling
15 the special instruction, is because there is something
16 special about Mr. Barnes. He is the only person who took
17 the stand and then invoked his Fifth Amendment privilege
18 halfway through.

19 So it's standard practice for the Court to instruct
20 the jury about how to handle testimony from a defendant.
21 That is the only thing that is happening here. Mr. Barnes
22 is only singled out, to use their words, because he is the
23 only defendant who chose to testify.

24 But there is, otherwise, nothing else that calls
25 attention -- calls special or undue attention to

1 Mr. Barnes' testimony. And, obviously, we would rely on
2 the authorities that we provided in support of that
3 instruction, including the Supreme Court case of Caminetti
4 to support the appropriateness of that instruction.

5 MR. BANKS: If I could, Your Honor?

6 THE COURT: You may.

7 MR. BANKS: One final note to that is relying on
8 any indication that Mr. Barnes' invoking of his Fifth
9 Amendment -- of his Fifth Amendment right indicates
10 anything other than what is his right underneath the
11 Constitution, does not indicate any sort of untruthfulness
12 to his testimony, or his refusal to answer questions based
13 on that Fifth Amendment right does not provide -- the
14 Constitution does not provide a remedy that says because
15 he chose to plead for his Fifth Amendment right, that the
16 jury can proceed or take anything from his testimony
17 regarding that right and that privilege of the
18 Constitution.

19 THE COURT: That is why the language is as general
20 as it is; that it doesn't tell them what they should do.
21 It merely says they can consider his refusal to answer
22 certain questions in assessing his credibility. That is
23 now Instruction No. 7. That language that was proposed by
24 the Government is generally included in a jury instruction
25 when a defendant has testified.

1 The Court finds that the proposed language should
2 be included. The Tenth Circuit has stated that "When an
3 accused testifies in his own case in chief, he waives his
4 privilege against self-incrimination; a waiver that
5 subjects him to cross-examination on all relevant facts."
6 That is United States v. Crockett, 435 F.3d 1305, page
7 1313, Tenth Circuit, 2006, citing to Johnson v. United
8 States, 318 U.S.189, page 195, a 1943, United States
9 Supreme Court case.

10 In this case, the defendant, Mr. Barnes, testified
11 on direct examination, and then invoked his right to the
12 Fifth Amendment on cross-examination. Because defendant
13 Barnes voluntarily waived his Fifth Amendment privilege
14 against self-incrimination by testifying on direct, his
15 testimony should be weighed by the jury like that of any
16 other witness. Thus, the fact he refused to answer
17 questions on cross-examination may be considered by the
18 jury in assessing his credibility.

19 That is pursuant to the United States Supreme Court
20 case, Caminetti, C-A-M-I-N-E-T-T-I, v. United States, 242
21 U.S. 470, pages 493 through -95, a 1917 case, holding that
22 the jury may be properly instructed that it can draw
23 adverse inferences from a defendant's failure to answer
24 questions after taking the stand.

25 In addition, in this particular case, I did so

1 advise Mr. Barnes that if he did not accept the curative
2 measure that was offered of having his testimony stricken,
3 that I was going to allow the Government to argue any
4 adverse inferences from his taking of the Fifth Amendment.

5 All right. Are there any other objections to the
6 proposed instructions?

7 MR. KIRSCH: Your Honor, with respect to
8 Instructions Nos. 13 and 14, the mail and wire fraud
9 instructions, in the preliminary instructions we had
10 proposed adding into the first element the paragraphs from
11 the Indictment that described the scheme, which the Court
12 did.

13 THE COURT: And we didn't do it here?

14 MR. KIRSCH: They are still there, and it is our
15 position now that those are -- that it is unnecessary to
16 repeat those again. The jury could simply be referred
17 back to -- I believe it is Instruction No. 12.

18 THE COURT: Yes.

19 MR. KIRSCH: Rather than setting those forth again.

20 THE COURT: Because I excluded the jury instruction
21 on the Indictment because I thought that was overly
22 favorable to the Government to have it in there. We
23 needed to give some context, and I had included in the
24 preliminary instruction that reference.

25 MR. KIRSCH: Exactly.

1 THE COURT: I believe the Government is correct
2 that because we now have the full Indictment, that is
3 relevant -- the portions that are relevant to the charge
4 in this case, that we no longer needed to have that, which
5 is why I excluded those.

6 Do the defendants have any objection to that?

7 MR. BANKS: No objection, Your Honor.

8 THE COURT: All right. Anything further?

9 MR. KIRSCH: No, Your Honor. That was the only
10 thing.

11 THE COURT: From the defendants?

12 MR. BANKS: No, Your Honor.

13 THE COURT: All right. So, Ms. Barnes, could you
14 tell Ms. Ross that she can proceed to make copies of the
15 final jury instructions for the jury. I am not going to
16 make any additional copies for counsel or the defendants,
17 because they are going to be exactly as I have given them
18 to you before.

19 MR. KIRSCH: Your Honor, I am sorry. I don't know
20 if I misunderstood the Court or if I wasn't clear. The
21 current version --

22 THE COURT: Do we have it in there?

23 MR. KIRSCH: It is in there.

24 THE COURT: I am sorry. I thought I had taken it
25 out. I apologize.

1 MR. KIRSCH: So we would just suggest that instead
2 of saying, "As set forth below," it says, "In Instruction
3 No. 12."

4 THE COURT: Okay. So in the first element it
5 should read, "The defendants devised or intended to devise
6 a scheme to defraud as described in the Indictment in
7 Instruction No. 12."

8 MR. KIRSCH: That's is what we would propose, Your
9 Honor, both for Instruction Nos. 13 and 14.

10 THE COURT: And then strike all of those
11 paragraphs?

12 MR. KIRSCH: Yes, Your Honor.

13 THE COURT: I apologize. I thought I had stricken
14 all of that. But that will make it much shorter. So I am
15 just going to read the first, second, third and fourth,
16 without all of the intervening language.

17 MR. KIRSCH: Yes, Your Honor.

18 THE COURT: Is that all right with the defendants?

19 MR. BANKS: That's all right.

20 THE COURT: Same thing with Instruction No. 14?

21 MR. KIRSCH: Yes, Your Honor.

22 THE COURT: All right. And so I will wait until I
23 get off the bench to make sure, before we make 14 copies,
24 we have this correct. So, Ms. Barnes, Ms. Ross can wait
25 until I come off the bench.

1 Anything further?

2 MR. KIRSCH: No, thank you, Your Honor.

3 MR. BANKS: No.

4 THE COURT: What about the verdict form? Are there
5 any changes to the final verdict form?

6 MR. BANKS: Not from the defense, Your Honor.

7 THE COURT: All right.

8 MR. KIRSCH: No, Your Honor.

9 THE COURT: As you noticed, I changed the language
10 a little bit, just because it was unruly to have the "not
11 guilty" in the middle of the sentence. I just thought it
12 was very confusing. And this is normally how I have my
13 verdict forms read anyway. I think it's just more easily
14 understood that way.

15 MR. WALKER: Your Honor, on further review, on
16 Instructions 12 and 14, I believe at one point you had
17 agreed to include the verbiage about the Indictment is
18 merely an allegation.

19 THE COURT: And I have that on No. 12.

20 MR. WALKER: On No. 12.

21 THE COURT: I believe. Let me go back, because
22 that is standard language. If you look at the top of No.
23 12, it says, "The jury is advised that the Indictment
24 reproduced below is not evidence."

25 MR. WALKER: Okay, Your Honor. And also on

1 instruction 14, Your Honor?

2 THE COURT: Well, Instruction 14, we are taking all
3 that language out. So I don't believe it needs to be in
4 14. But let me -- so 13 and 14?

5 MR. WALKER: Okay, Your Honor. That's fine, Your
6 Honor.

7 THE COURT: All right. Anything further?

8 MR. BANKS: No, Your Honor.

9 THE COURT: All right. Is there anything further
10 that needs to be brought to my attention before we recess
11 to get the copies made?

12 I would like to get an idea of how long we are
13 going to be going. How long do you expect, Ms. Hazra,
14 your closing to take?

15 MR. KIRSCH: Your Honor, I expect to be 45 minutes
16 to an hour.

17 THE COURT: All right. The defendants, do you have
18 any idea how long your closing will take?

19 MR. WALKER: Your Honor, we are expecting about an
20 hour to hour and 30 minutes.

21 THE COURT: All total?

22 MR. WALKER: All total.

23 THE COURT: That will be fine.

24 And then rebuttal?

25 MR. KIRSCH: I expect about half an hour, Your

1 Honor.

2 THE COURT: So we should be able to get it to the
3 jury this afternoon, if all they do is pick their
4 foreperson. But I would like to wrap up -- make sure we
5 wrap up that, so that it is to the jury, and they can come
6 in tomorrow morning to begin if they don't have enough
7 time, which I don't anticipate they will, to actually
8 start their deliberations in all seriousness.

9 MR. KIRSCH: The one thing we would ask, Your
10 Honor, if it is possible, we are going to try to switch
11 machines -- switch computers between our two closings. I
12 assume we will have an afternoon break in there.

13 THE COURT: I think we will have to have a break
14 with that. As usual, I will not make them sit for more
15 than an hour and a half. What I will probably do,
16 depending on how long Ms. Hazra goes. If she goes 45
17 minutes, I will probably take at least one or two of the
18 defendants before we break, and then we will do the rest
19 of the defendants. But I expect we will have at least one
20 break in the afternoon.

21 MR. KIRSCH: There is one other thing, Your Honor,
22 and Ms. Hazra just reminded me. With respect to the white
23 board, our proposal is that the white board remain in the
24 courtroom as opposed to going back to the jury room,
25 because obviously it is subject to being erased. Our

1 thought would be that the jury would have access to it
2 whenever they wanted, but that they can do that in the
3 presence of the court security officer, simply to make
4 sure that there weren't any changes made to the white
5 board. We are not asking to be notified if they want to
6 look at it or anything like that, but we do think it
7 should remain here, as opposed to in the jury room with
8 them.

9 THE COURT: And I agree with that. Do the
10 defendants have any objection to that?

11 MR. BANKS: No objection, Your Honor.

12 THE COURT: All right. Then we will be in recess
13 so we can make the copies that we need to make, and we
14 will reconvene at 1:30.

15 (A break is taken from 12:45 p.m. to 12:54 p.m.)

16 THE COURT: You may be seated.

17 I apologize. As I was getting ready to have my
18 staff copy those, I realized, Mr. Banks, we had not
19 addressed the good faith jury instruction that you all had
20 requested, and that you have not been able to make your
21 record with respect to that. So if you want to proceed.

22 MR. BANKS: If I may have just one moment, Your
23 Honor.

24 THE COURT: You may.

25 MR. BANKS: Your Honor, originally we argued

1 that -- and it is a matter of Tenth Circuit law and
2 Supreme Court law, that conspiracy, as well as mail fraud
3 and wire fraud, are specific intent crimes. And with
4 regards to, as far as the authorities that were mentioned
5 regarding the good faith jury instruction, in a criminal
6 -- in 1.09 of the Criminal Pattern Jury Instructions,
7 Tenth Circuit, 2011.

8 Before I get there, it is also included in a note
9 within that instruction that a specific intent on a jury
10 instruction is not outside of the discretion of the Court
11 to actually issue that good faith instruction where
12 specific intent is an element that has to be proven within
13 a particular crime.

14 Also, we also cited as authority United States v.
15 Chavis, 461 F.3d 1201 -- page 1201-1209, Tenth Circuit,
16 2006, holding that the defense may be entitled to a good
17 faith instruction. Also, Steiger v. United States, 373
18 F.2d 133, where there was reversal for failure to give an
19 instruction which fairly and clearly -- would fairly,
20 clearly and fully submit the defense of good faith, even
21 though the general instructions on willfulness, unlawful
22 intent, specific intent, untruth of a representation,
23 fraudulent statement, et cetera, were given.

24 It additionally held that instructions were
25 inadequate to cover the theory of good faith and carry out

1 a particular business venture. And I think, Your Honor,
2 in a particular business venture, as related to the
3 staffing industry -- as we have argued continuously
4 throughout this trial, that we entered into contracts with
5 staffing agencies in good faith, based on our particular
6 business venture and, if I will, business plan. And
7 obviously we argue that not everything goes according to
8 the plan when you are actually in business.

9 So we make the argument for the good faith
10 instruction based on our particular business plan and how
11 we conducted business based on anticipated revenue.

12 Now, the Court did provide that fraudulent
13 statements would be no -- that the use of fraudulent
14 statements would not excuse any sort of good faith -- any
15 sort of good faith on behalf of the defendants. But,
16 obviously, we've argued that these representations were
17 not false, and they were founded and based in good faith;
18 that we were going to be able to acquire business and gain
19 a contract.

20 And, obviously, we provided testimony during the
21 trial from Mr. Shannon, as well, that he was brought on to
22 help us gain a contract at the NYPD. Which leads us back
23 to some of our good faith efforts with staffing companies
24 and signed contracts with staffing companies in good
25 faith, whether it be with CBI, as well as our expectations

1 at different points in time with the Department of
2 Homeland Security, whether it be the \$12 million pilot
3 project or quotes that we were expecting to come to
4 fruition, as well.

5 So the defense would argue that a good faith
6 instruction is warranted based on the way we conducted our
7 business. And, obviously, we will be arguing intent to
8 the jury based on some of those following factors that
9 were heard in evidence. Thanks, Your Honor.

10 THE COURT: Mr. Kirsch?

11 MR. KIRSCH: Your Honor, first of all, as the Court
12 has, I believe, already noted, the Chavis case and other
13 previous Tenth Circuit authority that required a good
14 faith instruction have since been overruled by the Tenth
15 Circuit in United States v. Bowling, at 619 F.3d 1175. On
16 1183 of that Opinion, the Tenth Circuit specifically said
17 "We joined in the majority of the courts that hold a
18 separate good faith instruction is no longer necessary
19 where a district court properly instructs the jury on the
20 element of intent, because a finding of the intent to
21 defraud necessarily implies that there was no good faith."

22 It's clear that the Court is planning to properly
23 instruct the elements -- instruct the jury on the element
24 of intent, which renders, under findings and circuit
25 authority, the good faith instruction requested by the

1 defendants unnecessary.

2 The argument that Mr. Banks just made sounded at
3 times like he was arguing for a theory of the defense
4 instruction as opposed to a good faith instruction. I
5 would point out that the defendants have never proposed
6 such an instruction. And the good faith -- the good faith
7 instruction that was proposed by the defendants at the
8 beginning of the case, which I presume is the one that
9 they are still asking the Court to give, since they
10 haven't tendered another, doesn't have any of the kind of
11 specific information or the specific theory that Mr. Banks
12 was just recounting in his argument.

13 In fact, its only specific reference to the facts
14 of the case was that in the first sentence it began
15 "Because the Government has the burden of proving that the
16 defendants specifically intended to defraud staffing
17 companies by their activities set forth in the
18 Indictment."

19 That element of intent, again, is clearly covered
20 in the Court's instruction. And there is nothing before
21 the Court that provides any acceptable, either good faith
22 instruction or theory of the defense instruction.
23 Therefore, the Government's position is that the Court is
24 making the right decision in refusing the tendered
25 instruction from the defense.

1 THE COURT: All right. And the Court is still of
2 the opinion that it is properly instructing the jury on
3 the element of intent. And, thus, pursuant to United
4 States v. Bowling, the Tenth Circuit has indicated that a
5 separate good faith instruction is no longer necessary.
6 And, in this case, the Court finds that it is not
7 necessary in this case.

8 So the good faith defense instruction that was
9 tendered by the defendants is considered by this Court to
10 be superfluous and unnecessary, so I will not include
11 that.

12 All right. We'll be in recess. We'll make those
13 copies and be back.

14 (A break is taken from 1:03 p.m. to 1:29 p.m.)

15 THE COURT: You may be seated.

16 All right. Have we gotten the exhibits all taken
17 care of?

18 COURTROOM DEPUTY: Yes, Your Honor.

19 MR. KIRSCH: We have, Your Honor.

20 THE COURT: Any matters to be brought to the
21 Court's attention before we bring in the jury?

22 MR. STEWART: We are wondering about the status of
23 our last transcript request?

24 THE COURT: Oh, yes. The transcript request for
25 that day's hearing. First of all, the unedited version

1 cannot be used for any purpose, and it costs \$3 and some
2 cents to generate it per page. My understanding is it
3 is -- Ms. Martinez, how many pages is it?

4 COURT REPORTER: Over 200 pages.

5 THE COURT: Over 200 pages, which is about \$600,
6 for no purpose that I can see that would be served by
7 having that at this time.

8 So I'm going to allow it to proceed in the normal
9 course. I am not going to have an expedited, and unedited
10 version delivered to the defendants.

11 MR. STEWART: Thank you, Your Honor.

12 THE COURT: All right. Anything further?

13 MR. BANKS: No, Your Honor.

14 THE COURT: All right. Ms. Barnes, would you
15 please bring in the jury.

16 (The following is had in open court, in the hearing
17 and presence of the jury.)

18 THE COURT: You may be seated.

19 Ladies and gentlemen you have in front of you the
20 final jury instructions. And if you wish to follow along
21 with me as I read them to you, this is the law that you
22 apply in your deliberations. You may either just listen
23 or you may read along as I read.

24 (Jury instructions read in open court, but not
25 reported, per agreement of parties.)

1 THE COURT: All right. We have been sitting for
2 more than an hour, so before we start closing arguments, I
3 think we will go ahead and take a 10-minute recess. We
4 will reconvene at 2:50 for closing arguments.

5 Court will be in recess.

6 (A break is taken from 2:39 p.m. to 2:50 p.m.)

7 (The following is had in open court, outside the
8 hearing and presence of the jury.)

9 THE COURT: You may be seated.

10 All right. Any matters that need to be brought to
11 my attention before we bring in the jury?

12 MR. KIRSCH: Not from the Government, Your Honor.

13 MR. WALKER: Nothing from the defendants, Your
14 Honor.

15 THE COURT: All right. Ms. Barnes, would you
16 please bring in the jury.

17 (The following is had in open court, in the hearing
18 and presence of the jury.)

19 THE COURT: You may be seat.

20 The Government may proceed with its closing
21 argument.

22 MS. HAZRA: Thank you, Your Honor.

23 **CLOSING ARGUMENT**

24 **BY MS. HAZRA:**

25 May it please the Court. Ladies and gentlemen of

1 the jury. As we told you in the beginning of this case,
2 this is a case about defendants who had a business, who
3 committed crimes to get the free labor and money to run
4 that business.

5 And Mr. Barnes told you in his opening statement
6 that the Government would not produce a shred of evidence
7 to support these claims. I submit to you it is quite the
8 opposite. The Government has presented overwhelming
9 evidence that proves beyond a reasonable doubt the
10 defendants committed the crimes charged in the Indictment.

11 Specifically, the defendants intentionally devised
12 a scheme to defraud, and conspired to do so. In the
13 course of that scheme, they took over \$5,000,000 from 42
14 different staffing companies.

15 Now, all six defendants are charged in Count 1 of
16 the Indictment, the conspiracy count, and five of the six,
17 everyone but Mr. Walker, are charged with Counts 2 through
18 24 which are the mail and wire fraud counts. But both
19 kinds of crimes -- all of the charges rest on the same
20 scheme to defraud. And as she noted when she instructed
21 you, a scheme to defraud is simply conduct designed or
22 calculated to design to deceive persons of ordinary
23 prudence of comprehension.

24 In this case, this slide illustrates the essence of
25 defendants scheme to defraud. In short, the defendants,

1 either acting through Leading Team, IRP Solutions or DKH,
2 made a number of false statements to the staffing
3 companies in order to get business with them. Those false
4 statements are about the nature of their business, the
5 progress of their sales or contracts with law enforcement
6 concerning their software.

7 The staffing companies then relied on the
8 statements and agreed to payroll employees at the
9 defendants' businesses. And those employees were either
10 the defendants, themselves, or other people they worked
11 with.

12 The payrolled employees, including the defendants,
13 then filled out time cards; time cards that often
14 contained false statements about the hours worked and the
15 identity of the people who worked those hours. And the
16 defendants approved those time cards, which were then sent
17 back to the staffing companies. And as the staffing
18 companies told you, they relied on those time cards, which
19 had been approved by the clients, which were the
20 defendants, to then generate wages to the payrolled
21 employees, and then invoiced IRP, Leading Team or DKH.

22 And then, as you all heard over and over again from
23 all of the witnesses, the defendants didn't pay on these
24 invoices. Instead, they continued their false statements
25 to the staffing companies about the reasons for

1 non-payment; such as the slow government business cycle,
2 and they were about to be paid. And the staffing
3 companies relied on those statements and continued to
4 payroll those employees, until finally they stopped and
5 cut the defendants off.

6 The defendants then moved on to the next staffing
7 company and repeated that cycle over again. And that is
8 their scheme to defraud. In Count 1, as I said, all six
9 defendants are charged, and those are the elements that
10 Judge Arguello just instructed you on.

11 And first is that two or more persons agreed to
12 violate the federal fraud laws, which in this case are the
13 mail and wire fraud laws. Now, what is important to
14 remember here is this doesn't need to be a written
15 agreement. There is no normal agreement to commit a
16 crime, and it be implied by their behavior. That is all
17 of them working together in their businesses to commit
18 this crime.

19 The second and third elements I am not going to
20 spend a lot of time on now, because the evidence proving
21 those elements is consistent with the evidence that proves
22 that the defendants committed mail and wire fraud. But
23 what I will say is that the Indictment contains a series
24 of what is called overt acts in Count 1. And the
25 Government does not need to prove that any of those overt

1 acts occurred.

2 However, there will be exhibits for your review;
3 Government's Exhibit 1A through N. Those are examples of
4 how each of these defendants, all six, knew the essential
5 objectives of the conspiracy, and how they all knowingly
6 and voluntarily involved themselves in the conspiracy;
7 that is, by taking actions to ensure that the staffing
8 companies would continue to either payroll employees or
9 they would continue to keep payrolling them or entering
10 into new contracts.

11 And the fourth element is that there was
12 interdependence among the members of the conspiracy. And
13 that is simply that the defendants acted to benefit one
14 another. There are numerous examples of this, such as
15 Demetrius Harper or Ken Harper trying to get a staffing
16 company to come in and to payroll Mr. Barnes.

17 The most common example is probably the time cards,
18 which are worked by one employee, say, Gary Walker, and
19 approved by another defendant, Ken Harper or Clint
20 Stewart, for example.

21 Counts 2 through 24 charge mail and wire fraud.
22 Again, the first element of those crimes -- and I combined
23 them, because as you can see, both mail and wire fraud
24 share three common elements; namely the first, second and
25 fourth. And they only differ in the third element, which

1 is either that the defendants mailed or caused something
2 to be mailed, or that they used the wires or caused
3 another person to use the wires.

4 The first element is that the defendants devised or
5 intended to devise a scheme to defraud, as described in
6 the Indictment. And that is simply the payrolling scheme
7 that you've heard about and that I've just showed you on
8 the previous slide.

9 Second is that the defendants acted with the
10 specific intent to defraud. And as you have seen, as the
11 evidence has shown, these defendants all acted with the
12 intent to defraud, which means the intent to deceive and
13 cheat staffing companies, and to get money or free labor,
14 and get them to pay for their labor out of that. You can
15 look at the e-mails between the defendants and the
16 staffing companies. E-mails between the defendants, as
17 well as their other actions all prove their intent.

18 You then have the mailing or the wirings. And I
19 will later go through each individual Count 2 through 24
20 and talk about how either the defendants caused a mailing
21 or a wiring in furtherance of their scheme.

22 The last element is that the scheme employed false
23 or fraudulent pretenses, representations or promises that
24 were material. That means that the defendants made false
25 statements that then staffing companies relied on or

1 played a factor in their decision of whether or not to go
2 forward. These false statements are also further evidence
3 of the defendants' intent to defraud.

4 Now what were the nature of the false statements?
5 Initially, in the initial approach to the staffing
6 companies, there were false statements about the work,
7 which were either the defendants, usually Mr. Harper,
8 Mr. Banks, Mr. Zirpolo, Mr. Walker and Mr. Stewart would
9 make those; that said that either IRP, DKH or Leading Team
10 had current or impending contracts or current or impending
11 sales of their software, with usually the New York Police
12 Department, the Department of Homeland security, the
13 Department of Justice or other federal or state government
14 agencies.

15 As you heard, they would time and time again imply
16 that they were on the verge of either closing a deal or
17 had a deal. And the staffing companies told you that they
18 rely on these statements as part of their decision about
19 whether or not to contract with the defendants. Because,
20 as Jeff Kelly, himself, told you, from Kelly Services,
21 staffing companies wanted to get paid. And the
22 defendants' statements that they had these contracts or
23 were about to have these contracts or about to have these
24 sales, gave the staffing companies reassurance that the
25 defendants would be able to pay on their invoices.

1 The defendants' statements deceived the staffing
2 companies about their income. And as you have seen, they
3 actually had minimal income from law enforcement.
4 Ms. Chamberlin testified that the bank indicated that they
5 made a couple of thousands of dollars in sales to law
6 enforcement agencies. Not nearly the volume of the sales
7 they are indicating. And there are absolutely no sales
8 from the New York Police Department, the Department of
9 Homeland Security, or any of the other big federal or
10 state government agencies the defendants mentioned.

11 Now, there are numerous examples of the defendants'
12 false statements when it comes to getting business. Here
13 is Government's Exhibit 90.01. This is sort of the
14 representative example, if you will, an e-mail from
15 Mr. Harper using his AKA, Ken Harper, from IRP Solutions
16 to Tracy Sharples at Boecore. And the highlighted
17 language is typical of what you can see in the numerous
18 Government exhibits of Mr. Harper's representations that
19 IRP is about to deploy their software at the NYPD over the
20 next 60 days.

21 Moreover, this e-mail also contains another typical
22 example of the defendants' false statements, which is
23 quote, unquote, the sweetener language. Several staffing
24 company witnesses testified payrolling is not the most
25 profitable arrangement for them. And often they would do

1 it because it would be an entree to more business.
2 Courtney Mullen told you she thought it was an opener to
3 get in with defendants' company. And that is the language
4 that the defendants would use in order to get the staffing
5 companies more interested in the business. They would say
6 that any follow-up business could then become more
7 profitable business for the staffing company.

8 And this is Mr. Harper making this in 2004. And
9 here is David Zirpolo making very similar representations
10 to Jesse O'Gorman, of Blackstone. Again, he's
11 representing that IRP has a great project that they are
12 looking to wrap up with the New York Police Department and
13 start at DHS. Again, he says that any follow-up business
14 could be a sweetener. Again, another attempt to induce or
15 attract Blackstone to get into business with the
16 defendants.

17 Now, again, as I said, there are numerous other
18 examples in the exhibits you will see, as well as in
19 oral -- the oral misrepresentations that witness after
20 witness testified about that one of those defendants, with
21 the exception of Mr. Barnes, routinely made. Sometimes it
22 was one, followed up by another. For instance, Dean Hale
23 told you initially he spoke with Mr. Harper, and then with
24 Mr. Stewart, as well.

25 And, as you've seen from all of the evidence, these

1 statements about their impending sales are simply not
2 true. Here is the timeline, Government's Exhibit 900, of
3 the defendants' scheme to defraud. You can see from the
4 end of 2002, beginning of 2003, they're telling
5 representatives of Analysts International and Adecco that
6 they have current or impending business with the New York
7 Police Department and other federal agencies.

8 It isn't until February of 2004, as Mr. Bello from
9 New York Police Department told you, that these defendants
10 even became eligible to bid on business with the New York
11 Police Department. And, even then, as Mr. Bello told you,
12 they didn't make any bids. They never bid on a contract.

13 DKH and Leading Team never became eligible to bid.
14 And as both Mr. Shannon and Mr. Bello told you, at no
15 point in time did the New York Police Department agree to
16 buy defendants' software. At no point in time did they
17 promise to buy the software.

18 You heard just this morning from Mr. Cooper and
19 Mr. Witherspoon, and you heard about them previously in
20 the Government's case. They, again, reiterated that the
21 defendants made a presentation of their software to the
22 Department of Homeland Security in the fall of 2004. That
23 was the federal initiative -- long acronym that we heard
24 so much about again this morning. That was in response to
25 a request for information.

1 And, as Mr. Cooper confirmed again this morning,
2 there was not even a procurement process in place yet.
3 All they were doing was gathering information, and the
4 defendants' demonstrations were just one step in that
5 process.

6 And at no point in time did the Department of
7 Homeland Security agree to buy the software or enter into
8 a contract or an agreement to buy that software. Indeed,
9 they weren't even in the formal process of buying the
10 software yet. They were simply information gathering and
11 doing market research. And, again, that didn't even occur
12 until the end of 2004, yet defendants were making all
13 their false statements and misrepresentations as early as
14 October 2002.

15 Now, those are just the initial first false
16 statements, but, as you know, as the evidence has shown
17 you, there are numerous false statements once the
18 defendants started being payrolled with the staffing
19 company. And, keep in mind, these aren't just the
20 defendants, there are also other people that worked with
21 them.

22 Now, the time cards contained false statements
23 about the number of hours worked. Mr. Barnes, for
24 example, worked multiple 24-hour plus days. And you heard
25 his explanation. He billed hours when he was sleeping.

1 He billed a 5-minute phone call as worth an hour's worth
2 of his time. But he never told the staffing companies
3 this. And staffing company after staffing company told
4 you, it would have mattered to them. It would have
5 affected their decision had they known that the employees
6 were billing these kinds of time and that they were
7 billing multiple staffing companies for the same period of
8 time.

9 Time cards also contained a number of false
10 statements about the identity of the employees working.
11 We have shown you a number of alias exhibits, and you've
12 heard testimony about the aliases. In fact, the
13 defendants or others were often working under names that
14 were not their own.

15 And you heard that the staffing companies relied on
16 these time cards; those were the basis for them to do
17 their payrolling, to pay the employees, and the time cards
18 constituted the basis for the invoices or the bills sent
19 back to the defendants. All those came off the time
20 cards. And it is the time cards and the invoices and the
21 paychecks that constitute the mailings and the wirings
22 that are charged in this case.

23 This is Government's Exhibit 901, and this is the
24 overall chart of the multiple work hours, the multiple
25 hours worked for numerous staffing companies during the

1 course of this scheme to defraud. Here you can see the
2 employees on the left, and you can see that several of
3 them include these defendants or other people you heard
4 from during the course of this trial, and that they worked
5 for sometimes as many as three different staffing
6 companies.

7 You can also see who the time cards are approved
8 by. And, again, as you can see, these are all the
9 defendants in this case who approved employees working
10 multiple hours for multiple staffing companies. And,
11 again, they never told the staffing companies that they
12 would do this. And, as you heard from several people,
13 such as employees from Technisource, that their contracts
14 didn't even allow their employees to work for another
15 staffing company. They were forbidden.

16 You can also see here another alias, which we
17 didn't -- which is evidence of Mr. Harper's and
18 Mr. Stewart's specific intent here. Mr. Harper uses
19 Demetrius Harper in the beginning, as you can see the
20 chronology when he is with DKH. Then when he switches
21 over to IRP, he starts using the name Ken Harper.

22 Similarly, Mr. Stewart uses Clint Stewart for some
23 of his time card approvals, and also uses C. Alfred
24 Stewart. Also, you can see here that Gary Walker approves
25 the time card, as does David Banks and David Zirpolo

1 approve several.

2 And the underlying series in this show each
3 individual employee's breakout for the multiple work
4 hours, and you will have those to look at in your
5 deliberations.

6 There are numerous examples of the alias exhibits.
7 There are e-mails. And there is, of course, the white
8 board that has different initials of people that are
9 working for staffing companies with other people's
10 initials in parentheses. This is just one example of a
11 document recovered during the search warrant, which has a
12 list of the employees on the left hand side, the
13 positions, then a column entitled "Aliases." And, again,
14 ladies and gentlemen, there is no other reason to use an
15 alias, unless you want to report your time in someone
16 else's name.

17 In addition to the false statements, both to get
18 the staffing companies to enter into contracts, the false
19 statements in the time cards, the defendants took a number
20 of actions to cover up their fraud. First was the false
21 statements or the misrepresentation they made when
22 staffing companies sought to collect. They would make a
23 number of statements about the impending payments that
24 were coming in, or the fact that they were about to finish
25 closing the contract.

1 False statements about the slow government pay
2 cycle. Sometimes they signed personal guarantees.
3 Several staffing companies told you that they relied on
4 these representations and believed that the defendants
5 would then pay, and continued to pay the payrolled
6 employees, only to then be disappointed when the
7 defendants did not pay.

8 When these false statements to try to lull the
9 staffing companies to continue stopped working, the
10 defendants then simply became unavailable. Witness after
11 witness testified that they tried to reach Mr. Harper.
12 Tried to reach Mr. Banks. They called them. They
13 e-mailed. And they never returned their calls. Rarely
14 returned their e-mails.

15 Some staffing companies, who were closer, went down
16 to the offices of IRP and tried to collect payment. You
17 heard Dottie Peterson tell you that she was turned away by
18 the very security guards her company was payrolling for
19 IRP.

20 Similarly, Greg Krueger told you that he couldn't
21 get in. Same with Katherine Holmes, from AppleOne.
22 Jennifer Stephens, from Spherion. She was the one that
23 went and looked for the car. Karen Chavez, from Today's
24 Office Staffing. And Courtney Mullen told you that some
25 representatives from The Computer Merchants similarly were

1 not allowed in. And then these witnesses described how
2 they were escorted out with security, even though they
3 explained that they were there to collect payment on the
4 outstanding invoice debt.

5 As I just mentioned, the common sort of
6 misstatements that first came up when the staffing
7 companies tried to collect was that the defendants would
8 make statements about the impending procurement process.
9 And this is an e-mail from Demetrius Harper, it is an
10 exhibit that you can look at in your deliberations, to
11 David Banks. And it is in response to a query from Dean
12 Hale about the outstanding invoices and lack of payment at
13 SES Staffing, Systems Engineering.

14 And, here, Demetrius Harper is asking David Banks
15 if he "should give Dean Hale the same run down as before?
16 You can go down the avenue of the procurement process, as
17 well as several police departments that are close to
18 signing an agreement."

19 The defendants even had, I guess, a phrase for
20 their misstatements; "the same run down." And that is
21 what they did over and over again. This is another page
22 in that same document, that same exhibit. It is David
23 Banks crafting their response for Demetrius Harper to send
24 to Dan Rodenas from Systems Engineering. And you see this
25 language repeated over and over again in letters sent to

1 staffing company after staffing company.

2 "The slowness of the government business cycle has
3 caused a temporary cash flow crunch." Again, what is
4 significant is these e-mails are not, hey, we made some
5 presentations to law enforcement and we are getting some
6 positive reviews. No. These are e-mails that we are
7 about to have money in coming. That it is just that the
8 government is slow to cut our checks, but we are about to
9 get them, and then we can make good on our payments. And
10 the staffing companies often believed them.

11 Here is another example from Demetrius Harper to
12 Donald Crockett, with the same sort of language; the same
13 sort of misstatements about the temporary cash flow crunch
14 for DKH Enterprises, and that they look forward to the
15 flow being restored, and then they will plan to start
16 paying back their debts. Even includes a repayment plan,
17 which is what happens. Again, staffing company after
18 staffing company often receives similar-type letters with
19 false statements concerning how money was in coming, when
20 you know, and the evidence has shown, there was not any in
21 coming money from the federal government or the
22 department -- or the New York Police Department or,
23 frankly, any other big federal or state government agency.

24 The defendants weren't selling their software, and
25 they were telling staffing company after staffing company

1 that they were about to have money coming in.

2 Now, all these things show that the defendants had
3 an intent to deceive the staffing companies, but there is
4 additional evidence of intent. There is how the
5 defendants treated their friends and families versus
6 actual employees. You heard that there was a lot of
7 familial ties among these defendants, as well as they have
8 all known each other for a long time.

9 Many of the witnesses that came in were also people
10 who had known the defendants for a very long time. Those
11 are the same witnesses that were working multiple hours
12 for multiple staffing companies. And it was the other
13 employers, the ones that didn't have any prior
14 relationship, that only worked the "regular business day,"
15 often only for one staffing company.

16 Through all of the internal e-mails -- those are
17 all of the exhibits in the 600 series that we showed you,
18 e-mails about turning your name plate around and acting
19 accordingly. All of these were instructions among the
20 defendants and people they worked with to hide the fact
21 that they knew each other and had prior relationships, and
22 they need to hide that from the staffing companies.

23 There will also be e-mails when the defendants are
24 looking for additional victims. There is a series of
25 e-mails between Mr. Barnes and Mr. Harper and Mr. Walker

1 where they are evaluating staffing companies and figuring
2 out who is the most likely next person that will fund and
3 payroll employees and themselves.

4 There is the visitor log, which is also another
5 exhibit you can look at. And that visitor log is quite
6 telling, because it will have a staffing company
7 representative signing in, and then on that same day you
8 will have one of the defendants, for example, signing in,
9 or another person they worked with, who previously worked
10 there, but all of a sudden had to sign in, to make it look
11 like to the staffing companies that they didn't work
12 there, that they didn't have a prior relationship.

13 There is the credit references. You heard several
14 people testify about that. Susan Slakey, from ESG, told
15 you that when she asked Mr. Banks for credit references,
16 he provided DKH Enterprises as a credit reference, and
17 didn't tell her that DKH was his other company,
18 essentially with Demetrius Harper.

19 You've also seen the credit applications for
20 Express Personnel and others that contain SWV as a credit
21 reference. And as you have seen from the Articles of
22 Incorporation, that is a company largely, that the main
23 heads of that are Mr. Banks' sisters.

24 And, again, there was not any disclosure to the
25 companies that SWV had a post office box address and was

1 connected with the defendants. We already discussed about
2 the evasion and attitude over non-payment, and the lack of
3 any actual sales of the software.

4 Then there is the false hours that were reported
5 and use of aliases. And then there is the deception that
6 was perpetuated; how the defendants hid the connection
7 between IRP, DKH and Leading Team. How they didn't
8 explain to the staffing companies that DKH and Leading
9 Team and IRP were all related companies but, instead, hid
10 that fact.

11 And then there is the deception the defendants
12 perpetuated about whether or not the employees that they
13 wanted payrolled had previously worked with them. Most
14 tellingly, I think it is Mr. Landau and Mr. Krueger who
15 said that they didn't know Ken Barnes had already worked
16 for IRP when they sought to payroll him. Mr. Landau
17 thought he had been out of work for 18 months. And
18 Mr. Barnes knew if he told them, he explained the existing
19 relationship, they wouldn't necessarily agree to payroll
20 him.

21 This is an example of one of those internal e-mails
22 I was describing from Charlisa Stewart to "in-house,"
23 which is to everyone at IRP, telling them that anyone who
24 is attempting to be staffed will need to be aware that you
25 cannot fax any paperwork from IRP's fax. Just as you are

1 unable to -- get it. Again, this is to hide -- to
2 continue to hide the relationship between and among the
3 defendants and their employees and the fact that they
4 already had connections to IRP. Mr. Harper is careful to
5 also let people know they have to follow the same
6 instructions for DKH Enterprises. So all that is sort of
7 the general false statements and the defendants' general
8 intention to defraud.

9 Next I will go through the individual counts. As I
10 previously told you, Counts 2 through 24 are the
11 individual counts of mail and wire fraud that Judge
12 Arguello just read to you in the Indictment. These are --
13 and the documents that constitute these, are all marked
14 with the corresponding exhibit number. Hence, Exhibit 2
15 is the document at issue in Count 2.

16 And this is an invoice that was mailed from
17 California and from AppleOne to the defendants. And Kathy
18 Miller came in and told you that she mailed the invoices,
19 and that David Banks was her point of contact there; her
20 point of contact for AppleOne. And that when she went and
21 tried to collect from him, he got very angry and said,
22 "How dare you call and ask me for money," and hung up.

23 Count 3 charges the mailing of an invoice. Again,
24 this is from Kelly Services. And in this count, this is
25 for work performed by David Zirpolo, who was the employee.

1 And Demetrius Harper set up his relationship. This is the
2 one I previously told you that Demetrius Harper told Jeff
3 Kelly that DKH is working on a big project with the New
4 York Police Department. And Mr. Kelly told you it was a
5 big factor in his decision to enter into a contract,
6 because he knew that that meant Kelly Services would be
7 paid, and that was the most important thing.

8 Then, once DKH failed to pay on those invoices,
9 Mr. Kelly repeatedly tried to contact Mr. Harper and was
10 unable to reach him. This is Count 4, which is, again, a
11 mailing from Staffmark. It is both an invoice and the
12 underlying time cards. The invoices are mailed to the
13 attention of Ken Harper at IRP Solutions. Again,
14 Mr. Harper's AKA. And, in this case, C. Alfred Stewart
15 approves the underlying time cards that are the basis for
16 the invoice. And Ken Barnes performs the work for this
17 invoice.

18 Staffmark, if you remember Kathy Olson, told you
19 that she thought IRP had contracts with multiple
20 government agencies, and that David Banks personally
21 guaranteed the debt when the invoices weren't being paid.
22 Despite that, the invoices still were not paid.

23 Ms. Olson also told you in the course of her
24 testimony that it was very important to her that the
25 actual person that was payrolled to do the work did the

1 work, because Staffmark could be liable, for instance, if
2 someone else was performing that work.

3 Count 5 is an invoice and time card from ESG
4 Consulting. Ms. Slakey came in and told you these
5 documents, again, would have been mailed from California
6 to IRP's attention. Ms. Slakey told you that she made an
7 exception to ESG's "don't work with start-up" policies
8 based on the representations that IRP had contracts with
9 the Department of Homeland Security, the FBI and others,
10 and she thought -- she went on the website and checked,
11 and she thought that this company really had viable
12 contracts or viable sales, and they were profitable, and
13 it was worth making an exception in actually doing
14 business with them.

15 Again, David Banks set up this relationship with
16 ESG and made those initial series of false statements.
17 David Zirpolo signed the time cards that underlie this
18 invoice. And Ken Barnes worked the hours. This is the
19 same company that John Landau worked for, and Ken Barnes
20 hid the fact that he had previously been working for IRP.

21 Count 6 is another mailing from AppleOne, which was
22 previously discussed in Count 2. Again, Kathy Miller said
23 that this was mailed from California to IRP's attention,
24 and that David Banks was the point of contact for her.

25 I realize this is not that easy for you to see, but

1 Count 7 is an invoice -- a mailing of an invoice from
2 Technisource. And Kimberly Carter told you that she would
3 have mailed it from Technisource's office headquarters in
4 Baltimore. Again, David Banks set up this relationship
5 with Technisource.

6 This is the company where you heard Mr. Banks met
7 with Technisource representatives at a hotel in Washington
8 and, again, made false statements saying that they would
9 pay the invoices, it was just the slow government pay
10 cycle, and Technisource believed them and continued to
11 payroll the employees, thus incurring more of a loss to
12 them, based on Mr. Banks' false assurances that he would
13 pay.

14 The time cards that underlie the invoice --
15 underlie these invoices, the hours all worked by Ken
16 Barnes, and David Zirpolo approved the time cards. And,
17 again, this is the same company that also Mr. Barnes
18 signed a contract saying he wouldn't work for any other
19 company -- staffing company, even though he did.

20 Count 8 is a mailing, again, from Staffmark, which
21 we discussed Staffmark already in Count 4. Again, these
22 are invoices directed to the attention of Ken Harper or
23 Demetrius Harper. Again, David Banks personally
24 guaranteed the debt. Ken Barnes worked the hours, and C.
25 Alfred Stewart approved the time cards.

1 Count 9 is an e-mail from Demetrius Harper to
2 Courtney Mullen at Computer Merchant. Ms. Mullen told you
3 that she received the e-mail when she was in Massachusetts
4 at her office, and that the servers were located there, as
5 well.

6 Again, this is where Mr. Harper tries to get the
7 Computer Merchant's business by talking about the contract
8 that they had with the New York Police Department and the
9 other contract soon to be signed. Again, he uses the
10 "sweetener" language with Ms. Mullen, again, as another
11 attempt to induce the staffing company and to induce
12 Computer Merchant to do business with them.

13 It is at Computer Merchant that David Zirpolo's
14 work is overlapping -- this is one of the companies that
15 David Zirpolo worked for while he is also working for
16 another company.

17 Count 10 is another e-mail to Susan Slakey from ESG
18 from David Banks, and this is concerning her attempts to
19 collect on the outstanding payment and the outstanding
20 debt. And as Ms. Slakey told you, she was in California
21 in her offices when she received this e-mail from David
22 Banks.

23 Again, Count 11 is another mailing from Kelly
24 Services of an invoice. Jeff Kelly told you these were
25 mailed, and similar to the invoice you just looked at from

1 Kelly Services in Count 3.

2 Count 12 is an invoice from the Computer Merchant.
3 Again, Courtney Mullen told you that this was mailed from
4 their offices in Norwell, Massachusetts, to IRP Solutions.
5 And, again, this concerns work, this time performed by
6 David Zirpolo. And the time card that underlies it, in
7 which Mr. Zirpolo purports to record the hours he worked,
8 was approved by C. Alfred Stewart or Clint Stewart.

9 Again, you can look at the time cards which are in
10 evidence as Government's Exhibit 431 if you want to see
11 the underlying time card.

12 Count 13 is the invoice, both for -- again, mailed
13 to IRP Solutions. Scott Boe, from Boecore, told you this
14 was mailed. Boecore was the company which David Banks
15 signed a contract to enter into business with. Demetrius
16 Harper initiated the initial contact with Boecore. And
17 you saw that in an e-mail to Tracy Sharples, which I used
18 as an example of one of the common misstatements
19 perpetuated by the defendants, which is an impending, or a
20 project is about to be deployed at the New York Police
21 Department. David Zirpolo approves the underlying time
22 cards that are the basis for this invoice.

23 Count 14 is an e-mail from David Banks to Kim
24 Pillas, Technisource again. This is the woman who is now
25 Kimberly Carter. We previously discussed Technisource in

1 Count 7, so I will just add here that Ms. Pillas said when
2 she received this e-mail she was in her office in
3 Baltimore, Maryland.

4 Count 15 is the check that is mailed from The Judge
5 Group for Cliff Stewart for hours that Cliff Stewart
6 purported he worked. As you will see from the underlying
7 time cards to support this, Demetrius Harper approves
8 those time cards that are sent from The Judge Group.
9 Frank Santoro testified that these checks would have been
10 mailed personally from Pennsylvania to Mr. Stewart.

11 Mr. Santoro also told you that The Judge Group,
12 like any staffing company, requires employees to do an I-9
13 to verify their identity or eligibility to work. And that
14 it is very important as an employee that who they verify
15 is eligible to work, is the one actually performing the
16 work.

17 Of course, The Judge Group also had three employees
18 who worked there who also had numerous evidence of
19 aliases. Specifically, Clifford Stewart, Kendra Haughton
20 and Enrico Howard. There are a number of exhibits that
21 you have in evidence that show that the people who often
22 used aliases are under a column of aliases in the various
23 exhibits.

24 Count 16, again, is another e-mail from Ken Harper
25 to Jennifer Bassett at Computer Merchant. Again,

1 Ms. Bassett received this e-mail when she was in
2 Massachusetts. This is David Banks representing himself
3 as the chief -- as the COO, and Ken Harper is the one
4 doing the e-mail.

5 Count 17 is an invoice that is sent from Headway.
6 Eileen Bergman said that all of the paperwork in
7 connection with IRP was either faxed or e-mailed. She was
8 the Headway representative. In this case, Headway --
9 Ms. Bergman told you that David Banks is the one who
10 signed the agreement with Headway, but that Demetrius
11 Harper actually set up the relationship.

12 And that the false statements there were that IRP
13 was about to have a contract with the New York Police
14 Department. And Ms. Bergman was very excited because they
15 are a New York based firm, and that would be more and more
16 business for them. David Zirpolo is the one who approved
17 the time cards that form the basis for this invoice.

18 Count 18 is another invoice sent from Headway,
19 similarly, either mailed or faxed. Again, in this case,
20 Clint Stewart, as well as David Zirpolo, approved the time
21 cards that formed the underlying basis for that invoicing.

22 Headway is also one of the companies that appears
23 on the white board, Government's Exhibit 609.01. And you
24 can have a chance to look at that, where it has Headway at
25 the top, and it lists the three employees, and then in

1 parentheses -- well, it lists the initials of three
2 employees who purportedly worked for Headway, and in
3 parentheses it has another set of initials, presumably for
4 the aliases that worked there.

5 Count 19 is, again, another invoice that Scott Boe
6 reported was mailed from Boecore to IRP Solutions. And,
7 again, similarly, David Zirpolo approved the time cards.
8 And both Demetrius Harper and David Banks were in on the
9 beginning of that work.

10 Count 20 is an invoice sent from MSX International.
11 Mike Seeley from MSX told you that this was mailed to
12 David Banks, who signed the agreement, as well. This
13 invoice concerns work purportedly performed by Ken Barnes,
14 and the time cards that purport to record the hours
15 Mr. Barnes worked, all approved by either Clint Stewart or
16 David Zirpolo.

17 Again, it is Mr. Seeley's understanding, based on
18 Mr. Banks' statements that IRP was fully engaged in
19 deploying software with the Department of Homeland
20 Security and the New York Police Department, and that that
21 played a large role in Mr. Seeley's decision to do
22 business with IRP. Because it was very important to him
23 that IRP have a revenue stream that they could pay.

24 Count 21 is another document from Computer
25 Merchant; an invoice mailed from Massachusetts, again.

1 And we discussed this previously in Counts 9 and 12 and
2 16, where Demetrius Harper sets up the relationship, C.
3 Alfred Stewart, Clint Stewart, approves the time that
4 David Zirpolo actually worked.

5 Count 22 involves an invoice from Blackstone
6 Technology. This is -- we previously saw the example
7 e-mail that David Zirpolo sent Jesse O'Gorman trying to
8 set up the relationship, falsely representing that IRP had
9 business when it did not. And Mr. O'Gorman told you that
10 the default way of sending invoices was to mail them.

11 Again, Count 23 is another invoice mailed from MSX
12 International, and it is a similar set of circumstances
13 that Mike Seeley talked about, which is that the invoice
14 was mailed, that David Banks is the one to whom the
15 invoice is sent, and it is, again, time for Mr. Barnes,
16 and David Zirpolo approved the underlying time card.

17 And, last, Count 24 is another check from The Judge
18 Group. Again, Mr. Santoro told you that this would have
19 been mailed, and the time cards that underlie the hours
20 here were all approved by Demetrius Harper.

21 Counts 2 through 24, simply show -- that we just
22 ran through -- are how the defendants used either the
23 mails or the wires for their scheme. They either knew
24 that documents would be sent to them via mail; their
25 invoices or checks. Or they used e-mails; wires,

1 essentially, to help their fraud, to either get the
2 staffing companies to agree to do business with them, to
3 keep the staffing companies in business, or to try to
4 stave off attempts to collect.

5 Now, Mr. Walker is not charged in these counts, in
6 the mail and wire fraud, but he is charged in the
7 conspiracy count. And there is overwhelming evidence that
8 Mr. Walker participated. He is the president of IRP
9 Solutions. He is both on there -- the evidence is that he
10 both approved time cards and he worked time cards.

11 Ladies and gentlemen of the jury, I would ask you
12 to look at -- you will have for your consideration the
13 folder seized for Mr. Walker during the search warrant,
14 which contains the time cards for Willie Pee; the hours
15 Willie Pee supposedly worked at Analysts International.
16 You should compare those time cards with the other time
17 cards signed by Willie Pee, and see if you think it is the
18 same signature throughout.

19 Also, Mr. Chamberlin told you that although Willie
20 Pee submitted time cards for Analysts International, he
21 didn't receive any money for that, only Gary Walker
22 received money from Analysts International.

23 In addition, Mr. Walker was part of one of the
24 initial meetings with Analysts. He is the one who went
25 and set that up. And he's the head of the whole thing and

1 knew what was going on the whole time.

2 The defendants' fraud, in conspiracy to commit
3 fraud, resulted in losses to all of the staffing companies
4 identified here, and the loss totals over \$5,000,000. And
5 these staffing companies all told you that they entered
6 into these contracts in part, based on the defendants'
7 statements about the nature of their business and the kind
8 of business they had.

9 They then paid the employees and then generated
10 invoices based on the time cards that contained false
11 statements about the hours worked and the people who did
12 the work, as well as the nature of the work that was done.

13 And then the staffing companies told you that they
14 often continued to payroll employees because the
15 defendants kept telling them that payment was in coming;
16 payment was about to come due.

17 The defendants intentionally deceived the staffing
18 companies. They intentionally agreed and conspired to do
19 this. And you have the -- you can look at both the
20 internal e-mails, the external e-mails, and all of the
21 documents and evidence that show you that the defendants
22 schemed and how they went about doing this.

23 Ladies and gentlemen of the jury, this has been a
24 long trial, I know. But soon it will be your turn. It
25 will be your turn to hold these defendants, these six

1 defendants accountable. Your turn to hold them
2 accountable for the false statements, for their deception,
3 for their fraud, for their stealing through their scheme
4 over \$5,000,000 from these staffing companies.

5 Ladies and gentlemen of the jury, I ask that you do
6 no more and no less than what justice requires, and find
7 these six defendants guilty of the crimes charged in the
8 Indictment. Thank you.

9 THE COURT: Thank you, Ms. Hazra.

10 Which of the defendants would like to go first?

11 MR. WALKER: I will, Your Honor.

12 THE COURT: All right. Mr. Walker, you may
13 proceed.

14 **CLOSING ARGUMENT**

15 **BY MR. WALKER:**

16 If it please the Court. Ladies and gentlemen of
17 the jury. By now you know that I am Gary Walker. I am
18 the person that Ms. Hazra just spoke about as the head of
19 all of this. And you saw evidence throughout the case
20 that I am the president of IRP Solutions and the president
21 of Leading Team, Inc.

22 You were also told that these companies are alleged
23 to have participated in a conspiracy. You were shown
24 bullet points about three things, and more, that we were
25 alleged to have done. We were alleged to have entered

1 into an agreement with each other. That is absolutely
2 true. We entered into an agreement to build software;
3 software that you saw evidence of throughout the trial.

4 We entered into an agreement to try to sell that
5 software to law enforcement agencies. You saw evidence of
6 that, as well. We entered into an agreement to work long,
7 hard hours. Time sheets illustrate proof of that
8 agreement.

9 We were also accused of knowingly and voluntarily
10 being involved in a plan. That's absolutely true. We all
11 knew when we got into this, we would be working long, hard
12 hours, as evidenced by those time sheets.

13 We also voluntarily and knowingly entered into a
14 plan to compete against large companies. You heard
15 testimony from Mr. Paul Tran of DHS. You heard testimony
16 from Mr. Price Roe, at the Department of Justice, telling
17 you that they often worked with very large companies. And
18 so it's true, we entered into a plan to compete with these
19 large companies.

20 But what is not true is that we entered into a plan
21 to commit a crime. Throughout the last few days and
22 weeks, and as illustrated just a few minutes ago by
23 Ms. Hazra, you saw many elements of a small company
24 operating over time. You saw, throughout the course of
25 the trial, people who were fulfilling multiple job tasks

1 and roles. You saw instances where I sent e-mails, where
2 I say I was the president. Absolutely true. President of
3 IRP Solutions.

4 You saw e-mails where my signature line said Chief
5 Technology Officer. Absolutely true. You saw evidence of
6 many people working in many roles. Again, evidence of a
7 small business in operation.

8 You saw evidence, and Ms. Hazra pointed it out,
9 that the co-defendants were friends of each other.
10 Mr. Dave Zirpolo, DZ. Mr. Ken Barnes, KB to me. And so
11 that's absolutely true. Demetrius Harper, Meat. I have
12 known these men for many years. It is absolutely true.
13 We were friends working together, coming together to work
14 long and hard to achieve a goal.

15 That goal was not one of criminal intent. That
16 goal was one of fulfilling our common dream of getting
17 this software out there. You also saw evidence of other
18 family members being involved. None of these things do we
19 deny. A small company working hard to try to make
20 something happen, with limited resources.

21 My sister-in-law, Lisa Stewart, my executive
22 administrative assistant, and Clint Stewart's
23 sister-in-law. My wife, Yolanda Walker. You saw on the
24 Government's own witness list, her name associated with
25 many different financial transactions. My wife helped to

1 pay the bills.

2 You also saw that myself and the co-defendants
3 worked as executives of the company. You saw the titles
4 associated with each of the companies. We were vice
5 presidents. We were Chief Operating Officers, CEOs. Vice
6 presidents of professional services. And you also saw
7 these same names of each of the co-defendants involved in
8 project work. You saw them involved in helping to deliver
9 products that they had helped to build, and helping to
10 manage the products and the projects associated with these
11 companies.

12 You just heard accusations of false assurances.
13 Again, let's talk about a small business. What the
14 Government asserts as false assurances, we assert as
15 belief in your company. Belief in your product, which was
16 affirmed by statements from many people outside of our
17 companies. If you recall the testimony of Mr. John
18 Shannon, a former NYPD detective, his quote is, at that
19 time, this was the best software he had seen.

20 You heard testimony from Mr. Paul Tran and saw
21 evidence in the form of an e-mail where he approved IRP
22 Solutions to go to the next round of vetting for the
23 Department of Homeland Security. You may consider that
24 delivering false assurances, when in reality it's taking
25 input from the people you are attempting to sell to, and

1 providing that as information to the people who you have
2 obligations to.

3 Other elements that you saw of small business
4 operations; we had skin in the game. Of all those time
5 sheets you saw, many hours reported and worked, many hours
6 were not reported. You saw evidence of skin in the game
7 by myself and my co-defendants in the form of personal
8 guarantees and promissory notes. That's what small
9 businesses do when they believe in their product. When
10 they believe in what people they are trying to sell to
11 tell them about the quality of their product. That's what
12 small businesses do.

13 Another element of a small business in operation is
14 a business having both a physical address and a mailing
15 address. You heard through the testimony of Agent Smith
16 that the FBI had difficulties in finding DKH or LTI.
17 That's because they were trying to find them at the
18 mailing address. And we saw evidence in the form of
19 invoices where companies would mistakenly use the mailing
20 address, which was provided to them, as the physical
21 address.

22 If you show up at a Mail Boxes Etc., you are not
23 going to find anybody at LTI there. You are not going to
24 find anybody from DKH or IRP at the Mail Boxes, Etc. But
25 when you send mail to that addresses, it will reach the

1 companies.

2 Another element of a small business in action, and
3 any business, is persistence. You saw where the companies
4 were engaged in selling product -- attempting to sell
5 product to small, medium and large agencies. You heard
6 testimony from Sam Thurman, the vice president of
7 marketing and sales for IRP Solutions, where he said that
8 he utilized people in the company who had other roles as
9 their primary role to reach out to agencies. We were
10 resourceful. We had to be. We worked hard. We were
11 persistent. Those are elements of a small business.

12 Now, a large part of the Government's charges
13 against us and the allegations are false statements
14 concerning the status of IRP with various agencies. You
15 heard for yourselves that in many cases, these staffing
16 agency representatives said at one point, that they told
17 us they had a contract with the NYPD. Or they told us
18 they had a contract with DHS. But if you recall the
19 e-mails sent by IRP, DKH, LTI, zero occurrences of anyone
20 at these companies saying we had a contract with either of
21 these large agencies.

22 But you will hear them say, in our initial meetings
23 with them, when we talked about what we were doing, when
24 we talked about our product, that they said we were very
25 confident. To quote one, we "put on a good show." If you

1 are a small business person with a product that you've
2 worked long and hard to build, you are going to be proud
3 of it. That came across in the staffing company
4 representations. Their big show is pride and hard work.
5 It is pride in what we built.

6 And although we said in our e-mails that we were
7 working to close business with these agencies, recall what
8 you heard from the staffing companies. In many cases they
9 would say, I assumed they had a contract when I read that
10 e-mail. I thought that e-mail meant that they had a
11 contract.

12 And you will also note, if you think back, that
13 after the staffing companies were re-approached by the
14 Government to do interviews, that's when we saw more
15 statements about them saying, I thought they had a
16 contract. Where in the earlier representations, you can
17 look and see the e-mails said, we were working on a
18 product to try to sell to the NYPD. We were working on a
19 project that would be sold to DHS.

20 We were optimistic. We believed in the positive
21 statements we heard from law enforcement agencies. You
22 will not see a single instance in that evidence chain
23 where we lied to anybody, anybody, about having a contract
24 with those agencies.

25 Now, a lot of the focus has been on the NYPD and

1 DHS, because that is where we expected to make money from.
2 But, in his testimony, Mr. Sam Thurman, the VP of Sales
3 and Marketing, told you that we reached out to agencies of
4 all sizes; small agencies, medium agencies and large
5 agencies.

6 You saw from his testimony that we weren't only
7 relying on the large agencies of the NYPD and DHS.
8 Mr. Thurman also named cities where we were talking to
9 large agencies. In his testimony he mentioned Detroit, El
10 Paso, Philadelphia, Dallas, our own home state here,
11 Denver, the Orange County Sheriff's in Florida.

12 That is representative of a company that had many
13 products, able to fit the needs of small to large
14 agencies. You heard the testimony of software developers
15 that we brought in. They talked about the work that they
16 did. They talked about the evolving nature of the
17 products. They talked about how we would go to meetings
18 and come back and have a requirement for them to build.
19 They talked about that work. They talked about the need
20 to customize the products for these different agencies.

21 You also heard the testimony of Agent Colin Reese
22 from the Colorado Bureau of Investigations, CBI. And in
23 his testimony, Agent Reese related the fact that CBI began
24 engaging with, initially, LTI in about the late 2002, 2003
25 time frame. That also is about the time that the

1 companies started to utilize staffing resources. And
2 those staffing resources were utilized, as you heard
3 developers say, we were building a larger product from the
4 initial smaller product, and we had the potential to sell
5 it.

6 And so in order to satisfy the needs, and not lose
7 the CBI opportunity, we made a decision to bring in
8 additional people. We staffed them, the same time we were
9 talking with CBI. You also heard from Agent Reese that
10 there was serious interest in the CILC product within the
11 CBI.

12 You saw the e-mail from Agent Reese, who was a
13 technical representative at the Colorado Bureau of
14 Investigations, where he recommended to his superiors that
15 they bring the CILC software in-house for a 6-month review
16 period. He also stated to his superiors that the price of
17 \$375,000 was more than they had budgeted for. Agent Reese
18 also relayed to you in his testimony that they were
19 willing to go out and request a grant for those funds in
20 order to hopefully procure the CILC software.

21 Mr. Reese also noted to you that they weren't
22 successful in obtaining that grant, therefore, they did
23 not purchase the solution.

24 Now, the Government's allegations include that time
25 cards had hours that were claimed as worked but not

1 worked. And they state the reason for their assertions
2 that those hours couldn't have been worked because there
3 were simultaneous hours for the same person across more
4 than one job, as represented by more than one staffing
5 company.

6 We all heard several IT professionals, under oath,
7 testify to you that they have worked multiple engagements
8 simultaneously. We heard testimony from these IT
9 professionals that they used technology, itself, to enable
10 them to do that job, to empower them to do that
11 simultaneous work.

12 There is not one piece of evidence that refutes
13 those individuals doing multiple roles successfully. We
14 heard testimony from Mr. Mike McKinley. Mr. McKinley was
15 the supervisor of an IRP contract employee by the name of
16 Shaun Haughton. You heard, in Mr. McKinley's testimony,
17 that he supervised Mr. Haughton for a period of several
18 years; I believe it was 3 years, at two companies, as the
19 company made changes from being Benesight to Fiserv. And
20 you heard him say that he didn't care if Mr. Haughton had
21 another job, as long as he got his work done.

22 You also heard Mr. McKinley say Mr. Haughton was an
23 excellent employee, and he didn't have any problems with
24 him. And in regards to that situation and that scenario,
25 you heard no complaints from the staffing company about

1 Mr. Haughton's "activity."

2 You also heard testimony, in the form of an expert,
3 an expert brought in by the defendants, Mr. Joe Thurman, a
4 director at a large staffing company. And in his
5 testimony, Mr. Thurman provided statements that
6 corroborated what you heard from previously mentioned IT
7 professionals; that oftentimes staffing companies will
8 encourage some of their various performers to take on
9 other roles. Oftentimes, these large contracting
10 companies, staffing companies, don't care if a consultant
11 is doing other work on the side, as long as it does not
12 impact their client, which is the bottom line, he said.

13 The bottom line is providing service to the client
14 and bringing in revenues for the staffing company. You
15 also saw evidence provided by the Government's own witness
16 of payments made to staffing companies. That witness, a
17 financial analyst, acknowledged and showed you specific
18 line items where there were payments, but she also
19 acknowledged that there may have been other payments
20 related to certain withdrawals that were not recognized as
21 payments, due to the inability to further pursue
22 investigating of those. No way to track down that
23 information in detail.

24 And so you saw the intent of the company to pay.
25 You saw the intent of the company to pay, because the

1 company -- neither company -- none of the three companies,
2 filed bankruptcy. And you also saw that, as witnessed by
3 the staffing companies, themselves, the companies did not
4 deny the fact that they incurred debt with the staffing
5 companies.

6 Now, in reference to the time frame, the span of
7 time, I mentioned that CBI was the first early suitor of
8 the company's product. The company did not stop there,
9 and it did not end with the NYPD, DHS, or the other
10 agencies that I named. And, so, over time, the company
11 worked to be able to sell and market product across a law
12 enforcement spectrum. And in doing that, again, the
13 company heard many positive comments on the software,
14 which we took as confirmation that we were doing -- we
15 were on the right track with software.

16 And, so, as Ms. Sue Holland said in her testimony,
17 that Mr. Harper told her in their initial conversation,
18 "we will be closing business any day." She said in her
19 own words, he was very convincing. He was optimistic. He
20 believed what the agencies were telling him. He believed
21 that the companies would sell to large agencies and be
22 able to pay on the debts any day now.

23 And, if you recall statements from other staffing
24 representatives, they would tell you, they told us
25 that they said, we expected to close business any day. We

1 expected to be able to pay debts any day. And that's
2 reflected, as well, in -- as well, in the proposed
3 repayment plans.

4 And in talking to those large agencies, and getting
5 the positive feedback, the entrepreneur says this large
6 agency has told me they really like it. And, as
7 Mr. Thurman said, positive feedback, and they would work
8 on ways to get the money.

9 That, again, contributes to the entrepreneur
10 believing he's going to make that big sale any day. That
11 gives him the power to say to a creditor, I am going to be
12 able to pay you. And so when you hear that term "they
13 were very convincing," as Ms. Holland said, or "they put
14 on a good show," as another staffing company
15 representative said, those are not misrepresentations,
16 those are reliance and reconveyance of confidence in the
17 product.

18 Now, the same Ms. Holland I just spoke about, who
19 said that Demetrius Harper told her that we would be
20 closing any day -- be closing business any day, also said
21 later on that "They told me they had a contract with the
22 NYPD." And if you recall, upon her cross-examination,
23 Ms. Holland was not able to confirm any conversation nor
24 any e-mail where the company stated that "we had a
25 contract with NYPD."

1 Ms. Holland also said during her testimony that
2 when she received the proposed repayment plan from
3 Mr. Harper, she saw it as an indication that he was still
4 confident in being able to close business to pay the debt.

5 If you recall the testimony of Mr. Price Roe, who
6 worked in the Department of Justice as the assistant of
7 the head technology executive in the Department of
8 Justice, the Chief Information Officer, the highest
9 technology position at the DOJ. Mr. Roe related that he
10 told us, as he told many other small companies, "be
11 persistent." The company was persistent.

12 You heard the testimony of Mr. Tran, of DHS, of
13 Mr. Bill Witherspoon of DHS, that they were present for
14 many demonstrations from IRP Solutions of their product.
15 You heard from Mr. Steven Cooper just this morning from
16 DHS; that he would make suggestions to companies about how
17 to improve their product to meet the need of his agency.
18 You heard, from Mr. Cooper's testimony, that companies
19 would return to show results of implementing those
20 suggestions.

21 You heard testimony from Mr. Tran, in which he saw
22 multiple versions of the CILC software in subsequent
23 meetings after making changes to the software. And you
24 saw the persistence on the part of the company. You saw
25 that the company, and the people working there, believed

1 in their products. Not only just an innate belief in
2 their product, but because of what they were told by law
3 enforcement. In one case, that this was the best I had
4 seen at that point, from the NYPD.

5 Now, when you look at these actions and you see
6 what was done by the company, when you see payments,
7 although they may have been small, relative to some of the
8 debt, you see an intent to repay. When you see promissory
9 notes and personal guarantees, you see the intent to make
10 good on the debt. When you see the proposed payment
11 schedules, you see the intent to make good on the debt.

12 You received instructions from the Court that it's
13 the Government's job to prove that we actually entered
14 into an agreement to commit fraud, conspired to commit
15 criminal acts. She also said that that must be done by
16 the Government in a manner that is beyond a reasonable
17 doubt.

18 If, at the end of all of the trial, all of the
19 testimony, all of the evidence, you still have reasonable
20 doubt about IRP Solutions', Leading Team, Inc.'s, DKH
21 Enterprises' intent as businesses, rather than intent to
22 intentionally defraud or steal, then it is incumbent on
23 you to return verdicts of not guilty. Thank you.

24 THE COURT: Thank you, Mr. Walker.

25 Who would like to go next?

1 MR. HARPER: If it please the Court.

2 THE COURT: Mr. Harper.

3 CLOSING ARGUMENT

4 BY MR. HARPER:

5 Good afternoon, ladies and gentlemen of the jury.

6 As you know, my name is Demetrius K. Harper. I was the
7 president/owner of DKH Enterprises, one of the companies
8 that the Government has alleged that intended to scheme
9 and came up with a scheme to defraud staffing companies of
10 free labor.

11 Now, we have been here over the last four weeks.
12 You have heard testimony. You have seen evidence. And
13 during that time, you saw and heard the testimony of
14 staffing companies that had inconsistencies, as Mr. Walker
15 pointed out. When you use the term "We are working on a
16 great project." "We are looking to wrap up a great
17 project with the NYPD or the Department of Homeland
18 Security." At no time did that say a contract. You had
19 several staffing company representatives, upon reading
20 that or being told that, that they interpreted; that their
21 opinion was a contract was in place. The statement was
22 never made that a contract was with the NYPD or DHS.

23 The Government also alleges that when they did
24 enter into an agreement, and DKH was unable to fulfill
25 those invoices, they used -- Ms. Hazra used the term a

1 "lulling technique" to say that the government cycle was
2 slow. As Mr. Walker has already alluded to, the
3 information we got back from the law enforcement agencies,
4 we had the belief that at any moment the software; -- the
5 CILC solution would be installed. Upon being installed,
6 getting revenue from that installation to pay those debts.

7 As the owner of DKH Enterprises, I never denied the
8 debt. In fact, as in evidence that you saw, I kept --
9 personally kept track of every penny, dime and dollar that
10 was owed to these staffing companies. You might ask
11 yourself, why? Why would you do that? Because, as we saw
12 in evidence and by testimony by the staffing company
13 representatives, that the intention or the intent to pay
14 was real, and they believed.

15 My belief was that any moment, upon these
16 co-defendants getting the software installed in the
17 Department of Homeland Security and the NYPD, that that
18 money generated from that would be able to pay those
19 outstanding debts. It wasn't a lulling technique. I
20 didn't sign my name to any personal guarantee or
21 promissory note to continue. I signed it because I
22 believed.

23 And as you heard from the Government witnesses in
24 the staffing industry, they also believed. Now, in small
25 business, again, that belief carries individuals to have

1 confidence in the product that they have, and to convey
2 that confidence to others.

3 The Government also alleges that there were false
4 representations on time sheets. As you saw, the
5 Government witnesses, every one that we asked, were there
6 any false statements on the time sheet, was a resounding
7 no. The Government witness, Samuel K. Thurman, when
8 asked, was his time false, or was he asked to work for
9 someone else, his answer was no.

10 The Government did not bring one witness to attest
11 that the hours worked were not worked, and that those
12 hours worked were not worked by that individual. The
13 defense also brought developers that actually worked on
14 the CILC solution, and gave you their piece of the puzzle
15 to build. And those hours that were reflected in the time
16 sheets were the hours that they worked, as well.

17 You also heard witness testimony from the staffing
18 industry that said that it is not uncommon for consultants
19 or a contractor to moonlight. And in that term
20 "moonlighting," had another position, or had a second or a
21 third position. That it is not uncommon. This was also
22 verified by Mr. Joe Thurman, that not only is it not
23 uncommon, but it is actually encouraged; meaning the
24 staffing company encourages those consultants to handle
25 multiple engagements. Why? To gain more revenue. Keep

1 in mind that the staffing industry is about revenue
2 generation, as Mr. Thurman testified to.

3 Again, the Government alleges that the statements
4 made to staffing companies influenced their decision.
5 They mentioned Jeff Kelly. And on cross-examination, he
6 stated to this Court that he was not the decision maker.
7 That, in most cases, to vet DKH Enterprises or to vet IRP
8 Solutions, that they did a few things to see if they would
9 enter into an agreement.

10 What were those things? They ran credit through
11 D & B; Dun & Bradstreet. Now, upon them running that,
12 that was the final decision. Not for a statement that
13 they believed or interpreted or assumed was made. And,
14 further, the agreement that was actually signed by myself,
15 as a representative of DKH Enterprises, or a
16 representative of IRP, as Ken Harper, the agreements state
17 that no representation made prior to this is binding.

18 If truly the staffing companies' representatives
19 believed there was a contract, not one of the Government
20 staffing representatives changed the language to reflect
21 what they thought, what they interpreted, what they
22 assumed, or their opinion to put that language in the
23 agreement that was ultimately signed by DKH or IRP.

24 Time and time again, through cross-examination, the
25 inconsistencies of the staffing companies became apparent.

1 They didn't remember. They assumed. They thought. They
2 interpreted. They had heard something that was not true.
3 So those false statements were never made.

4 You also heard from Government witness Frank Bello,
5 from the NYPD, that stated that it is difficult for a
6 small business to work with the NYPD or to gain business.

7 Price Roe, of the Department of Justice, also had
8 similar sentiments; that it was difficult for a small
9 company to gain business with a federal agency, but it was
10 encouraged. What was the term? I believe it was
11 persistence. And that is exactly what the co-defendants
12 at IRP -- they became persistent to gain that business.
13 Because they knew, as well as myself, the only way to pay
14 the \$5 million was to get the software installed, deployed
15 at these large agencies. As you saw, the Government
16 exhibit, the two quotes in late 2004, December time frame,
17 one for 7-and-a-half million, the other, I believe,
18 upwards of a hundred million, in that ballpark.

19 As you well know, one of those installations wipes
20 out the \$5 million debt. So you might ask yourself, why
21 continue? Forty-two staffing companies. That's correct,
22 42 staffing companies. Because the belief, the goal was
23 to sell the solution, help the men and women that are
24 working in law enforcement that can't get that data, and
25 provide a solution that would help those individuals.

1 The Government also alleges that IRP, DKH, Leading
2 Team tried to hide or deceive the relationship. Again,
3 not true. You heard from several Government witnesses
4 that attest and stated, I represented DKH. The client was
5 Leading Team or IRP. That's during the first initial
6 meeting. So that is full disclosure. I am a
7 representative of DKH. The contractors or consultants
8 would work for either Leading Team or IRP. That statement
9 was made.

10 The Government also alleges that we used each other
11 for credit references. That is true. When you put down a
12 credit reference, you don't put someone down that you
13 don't know or that you have not done business with. In
14 fact, the lease at 7350 Campus Drive, where the raid was
15 conducted, was in DKH Enterprise's name. I was able to
16 get that lease. And, in fact, IRP had to pay DKH to
17 continue leasing that facility.

18 So the Government alleges that they used each
19 other. That is true. Because they, in part, paid me for
20 the lease at 7350 Campus Drive.

21 Another company that was mentioned was SWV as a
22 credit reference. Again, another company that is known to
23 me, and have done business with and paid. So, naturally,
24 when you are putting down a credit reference, you put the
25 people down that you've done business with. The

1 Government exhibit also shows Alcatel, as well as Rod
2 Ermel. So I put credit references that were known to me.
3 And this is the normal course of business.

4 You heard from the expert witness, Joseph Thurman,
5 that testified that in a payrolling agreement, the
6 resource is known to you. Ms. Hazra stated earlier that
7 that representation wasn't told to the staffing agencies.
8 Well, in payrolling, the resource is already know. That
9 is an established fact. We learned that from the expert
10 witness.

11 Again, the Government also alleges that the
12 promissory note and personal guarantee was a technique.
13 It is not a technique. It was affirmation. It was me
14 acknowledging the debt, and my intention to pay every
15 dollar. When I sign my name for DKH Enterprises, my
16 client, Leading Team, they have to pay me. So that is why
17 I put my name down. I believed in the vision. I believed
18 in the dream. That's why. I believed it so much, I put
19 my name down to say I guarantee that I will pay this back.

20 In closing, I want you to look at the evidence, the
21 facts that are before you. And I want you to do
22 something. I want you to open your heart to the truth.
23 Not the smoke, not the mirrors that the Government has
24 alleged during this case, but let the veil, let the smoke
25 dissipate. Let the mirrors be rolled away, and look at

1 the truth.

2 There was no intent to defraud. No intent to
3 scheme staffing companies. We had a dream. We shared
4 that dream with the staffing companies and said, look, we
5 are working with a great project to wrap up with the
6 Department of Homeland Security, with the NYPD. Upon
7 getting that business or installing that software, there
8 is going to be room for you to put your staff -- for you
9 to make money.

10 That was the vision of an entrepreneurial belief.
11 Once it is installed, there is always going to be more
12 business for those staffing companies. So open your heart
13 to the truth. There is no scheme to defraud. No
14 intention to defraud. The vision is still alive. And the
15 dream is still there. Remember those two quotes went out
16 December 2004. Several weeks later, IRP was raided.
17 Those same companies, agencies that we were persistent and
18 diligent in trying to get the software sold to, would not
19 do business during a federal investigation.

20 So, again, the dream is still there. We still have
21 the software to provide to law enforcement. And I leave
22 you with this. If no false statement was made, no time
23 sheet that was false, there is no scheme, there is no
24 fraud. If there is no fraud, there is no case. If there
25 is no case, you must come back with a verdict of not

1 guilty. Thank you.

2 THE COURT: Who is going next? Mr. Barnes?

3 MR. BARNES: Yes.

4 CLOSING ARGUMENT

5 BY MR. BARNES:

6 May it please the Court. Ladies and gentlemen of
7 the jury. Again, as I mentioned in my opening statement,
8 this is out of context. And who's telling the story? And
9 if I look at who is telling the story, again, there is not
10 a shred of evidence that proves the Government's case.

11 Now, the thing is what did the Government prove?
12 Where did they actually absolutely prove to you beyond a
13 reasonable doubt that there was a crime committed, and
14 that there was a scheme, an alleged scheme to have, you
15 know, beat out these staffing companies? The Government
16 would like you to be filling in the blanks for them, for
17 the evidence that they didn't provide for you, and that is
18 what they want you to do.

19 But this is about evidence. This is about you,
20 with the evidence you have in hand, the testimony that you
21 heard, to determine what is the truth. Now, the
22 Government sent you on a few wild goose chases during
23 their course of presenting the case. For instance, they
24 want you to believe there were people working for other
25 people, but they didn't show you the evidence that that

1 happened.

2 You have in evidence -- they showed you -- they
3 would have showed you banking records or whatnot that you
4 could possibly look at. And you would see that people got
5 paid for the work that they did. No money went elsewhere.
6 The person worked, they got their own paycheck. They did
7 whatever they wanted to do with it; pay bills. Whatever
8 you may do, or anyone in America would do.

9 They also want you to focus in on the visitor log,
10 to say, look at the visitor log, they signed in. So if a
11 company had a company policy that asserted to sign the
12 visitors' log, that was part of a scheme.

13 Now look at that visitor log closely, and you look
14 at the times when everyone came in. If it was a scheme,
15 they would have came in right behind each other, making a
16 show for that staffing agency. The times aren't even on
17 there. They come in at different times. And that visitor
18 log sits there at that company office. It is not
19 something they give a copy to take home to the staff and
20 they say, hey, take this visitor log, and you can prepare
21 your notes. That is for IRP. It is what they did as a
22 company, and they made a choice to do. Another goose
23 chase they sent you on.

24 But the issue is, did they prove fraud? Now, the
25 Government really alleges, and especially in my case, the

1 fact that I have a lot of hours and I worked multiple
2 contracts, and that is for you to believe, that those
3 hours are fraudulent. But they didn't show you a direct
4 correlation that, hey, if you work multiple hours, that
5 necessarily means that the hours are fraudulent.

6 Now, you have the Government's own witnesses sit on
7 the stand and testify. Some of those witnesses were Dean
8 Hale; Greg Krueger, PCN; John Landau; Mike Seeley. They
9 all testified that in their experience, they knew of
10 contractors having multiple contracts and didn't have
11 policies against it. This was not a new thing to them,
12 okay.

13 You did have one witness that did say that they
14 felt it would be fraudulent if a person had multiple
15 contracts, and that was Kimberly Carter. But, when given
16 the explanation of how it could be done, how an IT
17 contractor could work and do the multiple jobs, she
18 conceded. She agreed that is totally possible.

19 And what the Government didn't show you, they
20 didn't bring in a technical expert to sit in and testify
21 for the Government to say, you know what, you can't do
22 this. It's impossible, I tried it. That didn't happen.
23 But you had more people that will tell you, that came in,
24 witnesses for the defense, witnesses for the Government,
25 that it is possible, and witnesses for the industry, how

1 it is done, why it is done, and that it is not an uncommon
2 practice; it happens in the IT industry.

3 So, is it the IT industry on trial here, or is it
4 the fact that the time sheets are fraudulent? And then
5 you prove that the time sheets are fraudulent because
6 there are multiple contracts. I contend to you no, they
7 didn't. That is what your job is to do, is to look at
8 that evidence and determine, did that prove to you by the
9 evidence that that meant fraud?

10 Now, also, the Government enjoyed showing you a lot
11 of things that they picked up and artifacts as evidence,
12 and the famous white board over there. They brought out
13 spreadsheets to have you look at, and have you to
14 basically imagine what these mean. Because the Government
15 sent their theory to you as this is what happened. This
16 is what they were doing. They were working for other
17 people.

18 And they had one spreadsheet that had the word
19 "alias" on it, and they want you to focus in on the word
20 alias, because that is something going on behind the
21 scene. Traditionally an alias isn't a person that
22 actually exists. As you see, Gary Walker sits there and
23 Ken Barnes sits here. Never did they show evidence to
24 where Gary Walker was working for me, had to work for me
25 or vice versa was happening.

1 So it's another theory they gave to you in hopes
2 that when you go back there that this is just in your head
3 and you ignore the evidence and focus in on these theories
4 and focus in on these wild ideas that you may think, you
5 know what, something was going on, because the evidence
6 that they showed says the opposite.

7 Plenty of evidence showed that when their witnesses
8 would get on the stand, when confronted with their own
9 e-mails, with their own interviews that they gave FBI
10 agents, differ from what they initially would say on the
11 stand. And that is something you have to take into
12 consideration. If the evidence is so strong, why doesn't
13 what you say back up to what I got in my hand? It just
14 doesn't do that.

15 And that's why you are the judge of the facts. You
16 are going to get all those facts, and you are going to be
17 able to look at those facts, and you will hear -- you will
18 know what you were told. You are going to know what
19 statements changed. And you are also going to be able to
20 get what I actually have in my hand, recorded, of what was
21 sent to staffing agencies, what they were told, what they
22 knew, and what they believed.

23 Now, it was said earlier that Mr. Krueger and
24 Mr. Landau said they were not aware that I was working for
25 -- had previously worked at IRP Solutions. Now, to put

1 that more correct, the question was, if you had known.
2 And you heard that statement quite a bit. What if you had
3 known? Because they wanted them to theorize and speculate
4 the things that they didn't ask or didn't care about at
5 the time.

6 Now, in hindsight, when you are sitting on the
7 stand, maybe they would have known, but back then they
8 didn't. Now, Mike Seeley, he decided to ask. He asked --
9 in his testimony he said he asked me, did I work for IRP
10 Solutions before, or did I know David Banks? And his
11 answer -- his testimony was that, yes, I did work at IRP
12 before, and I did know David Banks.

13 So it was not like I hid anything from them. Some
14 of these staffing agencies, it was part of their business;
15 they would care, some of them would not. And when they
16 were asked, they were told the truth. So there is no
17 evidence that I hid any relationships, or even when
18 confronted with it, would not tell them the truth of that
19 relationship. That is not in evidence.

20 And that is why I concede, there is no evidence
21 that supports the Government's case. There is a lot of
22 evidence, but if you go through the evidence and you put
23 it in a proper context, you see, you know what, there is
24 not a crime here. They would like you to believe there is
25 a crime here but, again, it is about the facts.

1 You review the facts, and you determine, is the
2 Indictment true? Or is it just, you know a
3 misrepresentation or misunderstanding? Because there is a
4 lack of understanding of what maybe other industries do.
5 Maybe a lack of understanding of how certain entrepreneurs
6 think. There may be a lack of understanding of how
7 government agencies work.

8 But the truth comes down to, was there a false
9 statement? Did they say we have a contract? Did they say
10 we were close to a contract? And it is odd to me how that
11 statement may be present in your Indictment, but it is not
12 present in any e-mail communications. It is not present
13 in any contract. And no witness could 100 percent
14 remember and hold to that memory that there was -- I was
15 told contract.

16 And that was -- at the beginning, that was the
17 word, "contract." They told me they had contracts. They
18 were close to contract. There were imminent contracts.
19 But as the case went on, that word kind of faded into the
20 background; wasn't as prevalent as before. And that is
21 the thing, when you look at the evidence, ask yourselves,
22 why?

23 Why was it so important up front to where when we
24 get this Indictment, it has to say the word "contract" on
25 there. No other terms, but it kind of fades away towards

1 the end. Those are things that as you deliberate, you
2 look at the facts and put them in context, that you look
3 at the evidence closely.

4 Now, again, another theory is the fact that the
5 Government said, basically, their magic number was 24
6 hours. If you worked over 24 hours, it just is impossible
7 that you reported those hours. It isn't possible for that
8 work to be done.

9 They didn't provide one witness that said that
10 because it is over 24 hours that it was false. So what
11 about 20? If you worked 20 hours -- I mean, what is the
12 magic number, 23? You know, the issue is, learning more
13 about the staffing industry, learning more about IT
14 contractors, learning more about the possibilities of
15 technology, it's possible. And there is no evidence to
16 say it is impossible.

17 The Government never said it was impossible. They
18 just would like you to believe, because in their minds, it
19 may be a spike in hours; and that because that spike is
20 there, that must mean it is fraudulent. But did they
21 prove to you that it was fraudulent? Did they prove that
22 the work was not being done? Did they prove that IRP
23 Solutions, Leading Team set out to not build software, but
24 that their livelihood was just to get their friends paid
25 and give them a job. And the question is, what kind of

1 sense does that make?

2 Again, as I'm closing here, I would really like to
3 make sure that you understand the importance of the
4 evidence and focus on that evidence. Don't focus on
5 outside theories. Don't focus on what is not there.
6 Don't focus on what can't be proved. Focus on what the
7 Government said they proved to you, and hold them
8 accountable to that.

9 Hold them to the fact that if you say that someone
10 else did that work for you, where is the proof? If you
11 say, we told them we had a contract, where is that proof?
12 Because you deserve to have that proof. Because it is
13 your responsibility now to make a decision, basically
14 holding my life and these men's life in your hands. And
15 that is why I ask you, when you go back there and
16 deliberate, when you see that lack of evidence, when you
17 know that there is doubt there, that you bring back a
18 verdict of not guilty. Thank you.

19 THE COURT: All right. I guess I want to ask the
20 jury if there is anyone who would have a problem to remain
21 past 5:00, because I would like to get all of the closing
22 arguments done. Is there anyone who that would pose a
23 real problem?

24 All right. Then I would like to go ahead and take
25 a 10-minute recess at this time. We will reconvene at

1 4:45, and then we will just continue until we finish all
2 of the closings.

3 We'll be in recess for 10 minutes.

4 (A break is taken from 4:34 p.m. to 4:44 p.m.)

5 (The following is had in open court, outside the
6 hearing and presence of the jury.)

7 THE COURT: You may be seated.

8 Ms. Barnes, please bring in the jury.

9 MR. BANKS: Do you intend for the balance of
10 Mr. Kirsch and all of us defendants today?

11 THE COURT: Yes.

12 MR. BANKS: Okay. Thank you.

13 THE COURT: Yes.

14 (The following is had in open court, in the hearing
15 and presence of the jury.)

16 All right. You may be seated.

17 Who would like to go next? Mr. Stewart?

18 **CLOSING ARGUMENT**

19 **BY MR. STEWART:**

20 Please the Court. Ladies and gentlemen of the
21 jury. You recall, my name is Clinton Alfred Stewart. I
22 am one of the co-defendants in this case. And you have
23 heard our closing arguments from other co-defendants, and
24 many of the issues and items in the Government's case have
25 been talked about, so I won't belabor that here, but I

1 just want you to keep in mind just a few points.

2 The false statements that they allege against us to
3 induce relationships. No such false statements were made.
4 You saw again and again and again how Government witnesses
5 took the stand and were either impeached, made an
6 inconsistent statement, and it wasn't clear that they were
7 clear about that the defendants said they had contracts or
8 impending contracts with those large agencies.

9 The other thing I would like for you to remember is
10 the Government claims that we hid our ability to pay or
11 repay the debt to those staffing companies. And that was
12 also wrong, because before the relationship started, they
13 ran the credit reports; you remember the Dun & Bradstreet
14 credit reports for business. So they were very well aware
15 of our ability to pay or repay the debt. And, also, we
16 continued to do sales efforts with the software to give us
17 an increased ability to pay, besides what they knew about
18 the company with the Dun & Bradstreet reports.

19 And I would just encourage you, don't fill in any
20 blanks for the Government. Don't fill in the blanks for
21 the things that they haven't proved, that they haven't
22 shown you. That is their job. And there are a lot of
23 blanks to fill in. So bear that in mind as you do your
24 deliberation.

25 The Government repeatedly uses this refrain in

1 their allegations and what they say is going on in this
2 case; that it's clear. That it's clear. That it's clear.
3 It is not clear. It is still very confusing; what they
4 put on, the assumptions that they've made, the context is
5 not there, that they want you to fill in the blanks for.
6 It is not very clear at all. It is still very muddy, very
7 confusing, very cloudy as to, you know, what you are to
8 get out of these things that they've presented, especially
9 when they haven't proved it.

10 I mean, what are you supposed to do? Use your own
11 imagination and come up with what they haven't proved. It
12 is cloudy. It is unclear. So don't fill in the blanks
13 for them. And I would ask you, if you feel that it is
14 unclear; that it is cloudy, that it is confusing, send
15 them a clear message.

16 Don't criminalize debt, not in America. We don't
17 criminalize debt. If you don't find that they have proven
18 their case, especially in the conspiracy, because upon it
19 is the cornerstone of the whole case, then return a
20 verdict of not guilty on all charges. Thank you very
21 much.

22 THE COURT: Mr. Zirpolo?

23 **CLOSING ARGUMENT**

24 **BY MR. ZIRPOLO:**

25 May it please the Court. Ladies and gentlemen of

1 the jury. Today you have been hearing a lot of statements
2 from both the Government and from the defendants. I'm not
3 going to try to repeat everything that they have said or
4 everything that the Government has said. I'm going to go
5 to some basic points of information that you've heard
6 today and information that the Government has to prove.

7 The Government has to prove specific intent. Did
8 they prove intent by any of the defendants or myself, that
9 we were out to defraud staffing companies? That's a
10 question you have to ask yourselves. When you go through
11 and look at the information of the conspiracy, did we
12 intend to get together to defraud staffing companies? Was
13 part of our -- was there an agreement that we intended to
14 defraud staffing companies?

15 The Government didn't prove that. They showed a
16 lot of evidence that would let you infer that, but did
17 they actually prove it? Is there any doubt there? And,
18 yes, there is. Some of the other information that the
19 Government went through is they said there were false
20 statements. They said that there were false statements
21 made that we had contracts or we had impending contracts.

22 When you look at the information that the
23 Government is providing you in evidence for those
24 statements, you will see that in many cases it was
25 projects. One of the companies that they say that I made

1 that statement to was Mr. O'Gorman at Blackstone. They
2 said that I told him we had contracts. But, in the e-mail
3 that was a follow-up to our conversation, it said we had
4 projects that we were getting ready to close with the NYPD
5 and getting ready to start with DHS.

6 Now, if you look at the evidence and the testimony,
7 those projects were going on. You heard from John
8 Shannon, from Sam Thurman, that one of the projects that
9 was going on at that time was the automation of the DD5
10 form for the NYPD. We were working on projects.

11 They say that the testimony has been that I met
12 with two of the staffing companies. I met with Scott Boe,
13 and I talked to Mr. O'Gorman. I just told you about my
14 conversation with Mr. O'Gorman. Scott Boe, they say --
15 the Government says that I told him we had contracts.
16 Scott Boe was already -- was bringing checks to IRP at the
17 time that he met with me. We discussed what was going on
18 at IRP.

19 I did not talk about contracts. He could not even
20 come back and say for sure that I had said anything about
21 contracts. As a matter of fact, when the Government asked
22 Mr. Boe to identify me, he couldn't even identify me. And
23 if you look, it looks like I stand out a little bit.

24 When you look at the time sheets, nobody turned
25 around and said that any of the time sheets were false.

1 There were hours worked. The hours worked were signed off
2 on. Was the work done? Yes. If the work wasn't done, I
3 wasn't signing off on a time sheet. You did not see any
4 time sheets that I didn't sign off on because those
5 weren't in evidence. But there were time sheets that I
6 signed off on because the work was done. That's the way
7 you do things. If work is done, you sign off on the
8 person's hours.

9 There was another good example with Blackstone, is
10 on Count 22. It says that it was -- that the invoice
11 was -- the default for the invoice was to be sent through
12 the e-mail. But if you remember the testimony of
13 Blackstone was that he couldn't remember and didn't know
14 how the invoice was sent. So he said it could have come
15 through e-mail or it could have come through the mail.
16 There is no evidence that shows which way it came through.
17 So on Count 22, they didn't even meet the burden of
18 whether it was mail fraud or wire fraud.

19 Now, on the conspiracy, we agreed to violate
20 federal law is what the Government is saying. They didn't
21 show any agreement that did that. Now, they say it
22 doesn't have to be a specific agreement, our actions show
23 that. But did our actions truly show that we agreed to
24 violate federal law?

25 You have to really look at that, because when you

1 look at the business that was being done, all of the work
2 that was being done, all of the customers that were being
3 contacted -- and those customers, you heard testimony that
4 a customer can be potential customers or a customer that
5 has signed a contract. So I used that as potential
6 customers. You heard Sam Thurman testify to we were
7 contacting law enforcement agencies across the United
8 States.

9 We actually sold our small product to some
10 agencies. So you see that there was a lot of work being
11 done. Did the defendants know the objective of the
12 conspiracy? That's another point that has to be looked at
13 under the charge of conspiracy. Did we know that we were
14 -- what the objective of the conspiracy was?

15 Well, if there wasn't a conspiracy, how would we
16 know what the objective was? You look at that -- I look
17 at all of this, and, again, I am not a lawyer, so I look
18 at some of this and some of the -- when I look at the
19 Indictment, some of it confuses me, which I am sure some
20 of it confuses you. You have the opportunity when you are
21 confused by something in the Indictment to come back and
22 ask the Court, what does this mean?

23 So you go through and you look at all of this
24 evidence that the Government has; the evidence of time
25 sheets, the evidence of invoices, the evidence that we did

1 not pay. Absolutely. We owe that money to those staffing
2 companies. You did not hear one staffing company say that
3 we said we didn't owe them that money.

4 You heard the defendants testify -- the defendants
5 state, and you saw evidence that personal guarantees were
6 signed. Those personal guarantees go against the people
7 that signed them. If they were looking to defraud a
8 staffing company, why would you sign a personal guarantee
9 after the fact?

10 Now, the Government would like you to think that
11 those personal guarantees were signed to continue on the
12 staffing. I don't remember seeing any evidence that those
13 personal guarantees were signed to continue on staffing.
14 You have the evidence before you to look at that and see
15 if that did happen.

16 When you look at all of the information, and all of
17 the evidence that the Government has brought forth, you
18 saw most of the evidence that we presented was going back
19 onto the Government's exhibits. We have a few items that
20 we submitted, but most of our evidence was testimony from
21 people that actually worked with us.

22 And even one of the Government's own witnesses said
23 that he was doing a lot of work, his time sheets were
24 accurate, and he was never asked to do work for somebody
25 else that they put on their time sheet. Again, there is a

1 lot of conjecture. You have the white board with initials
2 on there. Letters. Parentheses. But where does it
3 actually say that somebody else did the work? Did the
4 Government bring somebody in that said, oh, no, I did this
5 work and somebody else put it on their time sheet? Or
6 somebody else did the work for me? You didn't see that.
7 You saw conjecture.

8 You saw people looking at invoices or looking at
9 e-mails and spreadsheets that made them think, well, this
10 must be what happened. But there was no real proof of
11 that. When you look at that, you can take any e-mail -- I
12 can take an e-mail from one of you and then present it as
13 being fraud, because there is nothing surrounding it, no
14 context saying this is what this meant.

15 When you look at that, you have to look and see,
16 how am I looking at this evidence? Am I looking at this
17 evidence through the Government? Am I looking at the
18 evidence through the defendants? You have to look at the
19 evidence through yourselves.

20 If you look at it through the Government, you can
21 probably turn around and look and say, well, if I take
22 everything that the Government says as true, then it must
23 be fraud. If you look at the defendants -- if I look at
24 it straight through there, everything must all be true.

25 Well, you have to decide. It is not the

1 Government, what they are saying. It is not what the
2 defendants are saying. It is what you see in the
3 evidence. It is what you see in the testimony. It is
4 what you see in the impeachment of the witnesses that came
5 up and said in one statement they said one thing and in
6 another statement they said another.

7 Many of the witnesses came up and said they
8 believed there was a contract in place. But, again, there
9 was no evidence that showed that we stated there was an
10 actual contract. There was definitely people coming up
11 saying, well, they said there was a contract. Many people
12 said that we were looking to close business with the NYPD,
13 with DHS. Those were the two big organizations we were
14 looking to close business with. So, yes, we told them
15 about those companies, or those law enforcement agencies.

16 But, was there any place in there that said, we
17 closed business? There was no evidence to that. So they
18 say that there were false statements because we said we
19 had projects. When you look at the e-mails, that is what
20 it says. We had projects.

21 Again, I go back to if you look at the evidence, if
22 you look at the developers that came in and talked about
23 what they were working on, we were working on projects.

24 Now, if you go through the points of -- the four
25 prongs of mail and wire fraud; specific intent, devise or

1 intended to devise a scheme to defraud, caused or used the
2 mail or the wire for information to be sent back and
3 forth. In the normal course of business, if you are
4 working with any organization, if you have invoices
5 coming, they are going to come through the mail or they
6 are going to come through e-mail. So, on that point,
7 there were definitely things going back and forth.

8 On the fourth prong, false or fraudulent pretenses.
9 Now, you have to look at points one, two and four and say,
10 do you have any doubt that the defendants hit those the
11 way the Government is saying that they would. Did they
12 have specific intent to defraud the staffing companies.
13 Or did they believe they were going to be able to pay the
14 staffing companies?

15 All of the evidence shows that they believed -- we
16 believed that the staffing companies were going to be able
17 to get paid. As you heard from Mr. Thurman's testimony,
18 we weren't just targeting the NYPD or DHS for a sale.
19 There were many other agencies that we were looking to get
20 sales through. And if we had gotten the sale, the
21 staffing companies would have been paid, and we wouldn't
22 be here today. Mr. Smith even said that.

23 When you look at the false or fraudulent pretenses,
24 again, is there any evidence that a true false statement
25 was made? Or do you see -- do you see that there was

1 information that doesn't show that that statement was
2 actually made? All of the physical evidence shows that
3 that statement was never made of contracts -- pending
4 contracts. Did they say that they thought they were going
5 to be able to repay these staffing companies? Yes. Was
6 that a false statement, or was that something that the
7 defendants actually believed?

8 When you look at the conspiracy, again, agreed to
9 violate federal law. Was there any evidence that there
10 was an agreement to violate federal law? Knowing -- we
11 already talked about knew the objectives of a conspiracy.

12 Knowing and voluntarily involved. Again, there was
13 no conspiracy, no intent to defraud, no understanding that
14 was -- that the defendants were trying to defraud the
15 staffing companies, then how are they knowingly and
16 voluntarily involved, and the interdependency.

17 You have to look at all of these things and make
18 your decision based off of what you saw here in the
19 courtroom through these past four weeks, a long four
20 weeks, I am sure, for all of you, and what the witnesses
21 said, what the testimony was, what the evidence showed.

22 Any piece of evidence can be turned in any
23 direction. You saw that. You saw -- again, a good
24 example is the white board. I worked at IRP, and I looked
25 at that white board and didn't know what some of the

1 things were. Wasn't something that I built. Wasn't
2 something that Mr. Kirsch built, or anybody on the
3 Government put together. So they are looking at it and
4 saying, this is what I think it means. When they look at
5 some of the e-mails, this is what they think it means, and
6 they are telling you what their thoughts are.

7 But what you have to look at is the individual
8 documents, and then as a whole, throughout the case, make
9 decisions as to what the evidence that you have seen
10 means. And as you go through that evidence, you are going
11 to begin to understand that there was no crime here; that
12 there was no scheme to defraud; that there was no
13 conspiracy. You are going to see that, if nothing else,
14 there was reasonable doubt -- that you have reasonable
15 doubt. If not, that you look at it and go, yeah, I don't
16 see where there was any crime committed.

17 Again, you have to look at it from your view. Not
18 the Government's. Not the defendants'. It is up to you.
19 It is your decision to make. And you have to look at
20 everything. You have to look at all of the testimony.
21 You have to look at all of the evidence. And I believe
22 once you do that, you are going to come back with a
23 verdict of not guilty on all counts. Thank you.

24 THE COURT: Thank you. Mr. Banks?

25 **CLOSING ARGUMENT**

1 **BY MR. BANKS:**

2 If it please the Court. Ladies and gentlemen of
3 the jury. As you know now, I am David Banks. I am a
4 defendant in this case.

5 I want to start by talking about what this case is
6 really about. And this case is about what is accepted or
7 not accepted in the staffing industry, and what is a
8 common practice in the staffing industry. This case is
9 about what is accepted as information technology
10 consultants, and what is not accepted as an information
11 technology consultant.

12 Now, obviously, the Government has chosen to bring
13 a case that questions business operations within the
14 staffing industry and as IT consultants. The Government
15 did not put on any evidence in the form of an expert
16 witness to tell you how the staffing industry worked or
17 how information technology professionals actually do their
18 business.

19 We chose to do that to try to bring some sort of
20 understanding to information technology, in the form of
21 Mr. Thurman and as it relates to the staffing industry.
22 And we also brought forward information technology
23 professionals who actually work in the industry and have
24 done multiple contracts at once.

25 This is not Wal-Mart. We didn't put any -- this is

1 not Target. This is not your local automotive store.
2 This is information technology. And, therefore, to give
3 you a good understanding of what information technology is
4 like, and what information and what the staffing industry
5 is like, we felt it incumbent upon us in our defense to
6 try to make that as clear as possible for you to evaluate
7 the facts of this case.

8 I told you in my opening statement that the
9 fundamental basis of this case was that people worked and
10 people got paid. Plain and simple as that. The
11 Government has not provided one shred of evidence that
12 people did not work. And that people -- that people
13 actually falsified hours. I take you to the Government's
14 609 exhibit, the white board, that you've had a chance to
15 review as a part of this demonstration.

16 Now, while the Government presented that, they
17 talked about initials and they talked about this, and they
18 talked about that. There is not one person -- you heard
19 from Sharon Parks, who the Government has alleged her
20 initials were on that board, SR, Sharon Ruff. She was
21 asked specifically, did she work for somebody else? No.
22 She worked for herself. She wanted the money for herself.
23 They asked Kendra Haughton, did she work for anybody else.
24 She resoundingly said no, she never worked on behalf of
25 somebody else.

1 So, in the light of witness testimony versus
2 Government theory, you are tasked to evaluate exactly
3 what -- who is actually telling the truth in that
4 particular case.

5 We are going to be talking -- in Jury Instruction
6 No. 3, it talks about a reasonable doubt is based on
7 reason and common sense. I want to try to bring some
8 common sense. Also, the lack of evidence. I want you to
9 consider this lack of evidence in a scheme to defraud.
10 The Government brought absolutely zero evidence that
11 Mr. Stewart's wife was staffed, that Mr. Harper's wife was
12 staffed, that Mr. Walker's wife was staffed. I just want
13 you to kind of consider that in the grand scheme of
14 considering what the intent of a company engaging or
15 participating in a scheme like this.

16 Wouldn't they want their wives to get paid? I just
17 want you to kind of consider those types of things and
18 what is actually missing in this type of case. I would
19 like you to take a look at Government's Exhibit 608.01.

20 MR. BANKS: We seem to be having trouble with the
21 display, Your Honor: We'll try to get back to that, Your
22 Honor.

23 I want to focus -- I would like you to take a look
24 at this particular exhibit. You saw this exhibit
25 repeatedly presented by the Government with a company

1 called Above the Rest Staffing. Also, I want you to look
2 at the difference in these e-mails that were presented at
3 trial. And there was a company on there called Above the
4 Rest Staffing.

5 I take you to the Indictment that's in your jury
6 instructions. Above the Rest Staffing is not listed in
7 the Indictment. I ask you to consider why would people be
8 showing up to work for a company that is not on the
9 Indictment? And then to consider the difference between
10 the e-mails that were shown -- the different type of
11 e-mails and the style of e-mails, and then just ask you to
12 consider the Government putting on this evidence and how
13 credible is this particular document, given that this
14 company -- the Government has alleged that in this case
15 that people came and they worked for Above the Rest
16 Staffing. But absolutely no time sheets from Above the
17 Rest Staffing. Absolutely no invoice from Above the Rest
18 Staffing.

19 So where is Above the Rest Staffing as it relates
20 to this Indictment, and how is it relevant to this case?
21 I just ask you to consider that. Thank you.

22 Another thing I ask you to consider, the Government
23 showed -- brought witness after witness after witness, and
24 Ms. Hazra mentioned during her closing that they relied
25 upon these statements. And I want you to consider, we

1 don't live in the 1950s, where people do business on a
2 handshake. I want you to consider that companies and
3 businesses of the sophistication, and individuals that
4 were presented that the Government presented at trial, do
5 business based on creditworthiness.

6 They do -- no more can IRP get approved for credit
7 based on a common statement, no more than you can go to
8 the bank and get a credit card based on a common
9 statement. It does not exist in the 20th century,
10 particularly past year 2000. Companies do not do business
11 on that type of basis. So I want you to please consider
12 that during your deliberations.

13 You heard testimony from Government witnesses,
14 themselves, who repeatedly -- I will name some here in
15 just a second, who repeatedly said, well, the credit
16 department determined and makes the decision on whether or
17 not we move forward and extend credit to a company.
18 That's the way the staffing industry works. That is the
19 way the credit industry works. That's the way business
20 works.

21 So when the Government tells you that the witnesses
22 relied upon these statements, who I will tell you were not
23 false in the first place, but they relied on these alleged
24 false statements to engage in business, it's simply not
25 reasonable. You heard from certain witnesses that said,

1 well, if credit had disapproved this, we wouldn't have
2 done business.

3 The fact of the matter was this in the evidence.
4 They were not the party responsible, these staffing agency
5 companies for determining whether to engage in business or
6 not. That was the reason they repeatedly testified that
7 we run a Dun & Bradstreet. Credit history is not
8 determined -- payment history is not determined by how
9 much money you have. It is determined by your credit
10 history and whether or not you paid your bills on time.
11 That's the reason the companies ran a Dun & Bradstreet.

12 What is IRP's, what is DKH's, what is Leading
13 Team's payment history, so we can rely on them to pay our
14 bills? That is the reason, and that is how business is
15 actually done.

16 I go to Eileen Bergman of Headway. Eileen said
17 that she assumed a contract was in place. I go to
18 Courtney Mullen, who in Government Exhibit 9.00, saw that
19 that e-mail said "wrap up projects." You can go with the
20 physical evidence of what was actually said and frozen in
21 time in writing, or you can go with the Government
22 witnesses, who were impeached on a routine basis giving
23 the accounts of those events.

24 I go to Dottie Peterson, of Snelling Corporation,
25 who said she was under the impression that the business

1 was active. I go to Mike Seeley, of MSX, who said he does
2 not remember what was said regarding the software. He
3 said he knew it was being developed, as far as information
4 that was provided to him. Mike Seeley also said a credit
5 app was sent to accounting for approval. He was not the
6 approval. Therefore, he cannot rely on statements that
7 the Government alleges were provided to them with false
8 and fraudulent representations.

9 I also want to talk about, the Government -- you
10 listened to witness after witness say, and in the
11 Government's Indictment they said we refused to meet.
12 That was not proven. At least the Government's theory
13 that we refused to meet was not proven at all in this
14 case. It is all Government theory.

15 Each and every witness -- almost each and every
16 witness got up said, yeah, I reached Mr. Banks. How else
17 would they have gotten the payment plans if they had never
18 reached us? How is it that Kimberly Carter, of
19 Technisource -- I went out of my way in Virginia to meet
20 with them at their hotel, but I'm refusing to meet with
21 them? It simply was not the case, and the Government did
22 not provide any evidence that actually showed that.

23 Kimberly Carter was another one that said the
24 credit app -- she said -- Kimberly Carter, of
25 Technisource, says that the credit -- they did a credit

1 check. And she was asked, what did Technisource rely on?
2 She was asked that question specifically. She said, the
3 credit check and Dun & Bradstreet. That is contrary to
4 what the Government has said they relied on.

5 Randy Hayes, of Technisource, said part of his
6 reason for moving forward was that NYPD veteran -- retired
7 veteran, John Shannon, was working for the company. Have
8 anything to do with the representation as the Government
9 alleges?

10 Jennifer Stevens, of Spherion. She testified
11 directly that she relied on the Dun & Bradstreet to do
12 business. You are starting to see a pattern here. In
13 business, we don't rely on casual statements. We rely on
14 vetting of individuals and checking of credit history.

15 Now, the Government did present evidence that
16 people did not get paid. And I would say in most cases
17 the Government in that case is absolutely right. People
18 and staffing companies did not receive payment. Were they
19 upset that they did not receive payment? I would venture
20 to say yes.

21 I would also venture to say when they get on that
22 stand and they're angry about not getting paid, the
23 question, what is your motivation and bias, especially
24 given the fact that you saw them impeached on a routine
25 basis. I would be mad if I didn't get paid. But, in

1 business, it's not perfect. We were not perfect in our
2 execution. We were not perfect in the understanding of
3 what it takes to close business with a large federal
4 agency. We are not perfect in that.

5 Jennifer Stevens, also of Spherion, was also -- her
6 memory was refreshed to her -- the information she
7 provided to the FBI. And what we reported in there was
8 that IRP was trying to -- trying to secure a contract.
9 That was the testimony; trying to secure a contract.

10 Scott Boe, of Boecore, testified that his wife
11 owned the company. I just ask you to consider, as the
12 Government puts forth allegations that we signed time
13 sheets, who signed time sheets for him? Was it his wife?
14 I ask you to consider that.

15 The Government has repeatedly tried to criminalize,
16 through its allegations, as I said earlier, staffing
17 industry practices and the practices of technology
18 professionals. He has also tried to criminalize that
19 family members who were trusted, worked in a family
20 business. Is that so hard to believe that a family
21 business would include family members? Is that so hard to
22 believe that family members would be the most trusted
23 individuals in a family business?

24 It is not criminal, it is just a family business.
25 I ask you in all sincerity, when you are reviewing these

1 statements, to look at what the witnesses said, and look
2 what is in writing when you are evaluating the actual
3 evidence.

4 Given the fact that memory -- and we proved on a
5 number of occasions through impeaching their witnesses,
6 that their memory was not good, or they were just
7 providing inconsistent statements, maybe for the benefit
8 of the Government. I don't know. But, the fact of the
9 matter is, the evidence showed that their statements that
10 they provided earlier were inconsistent with the
11 statements they provided later. We ask you to look
12 closely at that in your deliberations.

13 The Government has alleged that the defendants in
14 this case engaged in a conspiracy to defraud. I ask you
15 to consider a conspiracy to defraud with law enforcement
16 in the building? Conspiracy?

17 Also ask you -- also told you, rather, that the
18 defendants in this case felt like there was a reasonable
19 expectation of revenue. I want you to look at a pattern
20 that the evidence shows, starting with Colin Reese. Look
21 at that particular e-mail regarding Colin Reese, about the
22 beta implementation and IRP. And look at IRP helping with
23 a particular grant to actually sell their software.

24 I ask you to look at the evidence as it relates to
25 how much was currently owed at the time that IRP was

1 expecting to close that business. I ask you to take a
2 look at that. I ask you to take a look at the business
3 plans of IRP later in the time frame, as they expected
4 revenue that they would anticipate from the Department of
5 Homeland Security as it related to a pilot project.

6 We're a small business. DHS, NYPD, these are
7 world-class agencies, some of the largest in the world.
8 For a small business to close business with these agencies
9 is like winning the lottery. That's what it is like. So
10 when you hear John Shannon say it is the best thing he
11 ever saw, and to communicate that to entrepreneurs of a
12 small business, it registers like you wouldn't believe.

13 To hear Paul Tran talk about a \$12 million pilot
14 project, is that reason enough for a company to continue
15 to in-debt themselves based on that?

16 You heard about the modifications that were made to
17 the software, not only from John Shannon, who said that we
18 turned around those modifications quicker than anybody he
19 has ever seen. That's because I go back to the term we
20 used earlier, we were persistent. We were aggressive. We
21 had to get the business.

22 To that end, I go -- I ask you to look at the
23 Independent Contractor Agreement, and the testimony you
24 heard from both -- that is in evidence from both John Epke
25 and Gary Hillberry. These were individuals that I sought

1 out to assist us in developing this software so it could
2 be the best for the government. I would ask you to look
3 at the Section 6 of that Employment Agreement, and ask us,
4 why didn't we tell them there was a contract in place?
5 And compare it to everything else.

6 The language in that particular clause says that
7 they would be paid upon the sale of the software. That
8 was our push. That was our plan. Whether it be whether
9 we were interfacing with CBI, whether we were interfacing
10 with the NYPD or DHS. I think the evidence will show that
11 that was a clear plan of ours.

12 You heard from Cliff Stewart and William Williams.
13 These were the technology professionals I mentioned that
14 worked multiple engagements at a time. William Williams
15 testified. He filled out time sheets. Between 8:00 and
16 5:00 for three different companies at the same time
17 between 8:00 and 5:00. I go back again, this is IT. The
18 average person can work two jobs in a day. Is it
19 unreasonable for an IT person, who can be in one place and
20 work multiple jobs, to work three? This is IT. And the
21 industry supports that type of work.

22 You heard from the Government witnesses that said,
23 it's not uncommon. People work -- contractors work
24 multiple engagements. It is not uncommon. You heard from
25 Joe Thurman say, as a matter of fact, it is encouraged.

1 Why did Joe Thurman say -- he said it was encouraged.
2 Why? Because it brings more revenue to the staffing
3 company. So the more hours the staffing company can have
4 billing, is the more hours that they actually receive from
5 those hours that are actually being worked.

6 So that is another thing you can consider with
7 regards to the staffing companies' statements that they
8 relied upon this. No, the staffing companies were
9 excited, as Mr. Walker talked about, about the
10 possibilities of gaining further business, and of the
11 business we were doing with these large agencies.

12 The evidence is not in dispute that we were working
13 continuously with these large agencies and engaged with
14 them in numerous capacities to deliver capabilities of the
15 software. And you have heard repeated testimony from
16 developers that are not associated with IRP that they came
17 in, they did work, and they worked on that software.
18 Those facts are not in dispute. People worked, and people
19 got paid.

20 The Government, in their closing, has said that
21 we -- basically, the purpose of the scheme was free labor.
22 I ask you to say free labor for what purpose? You have
23 heard testimony from John Shannon, from Steven Cooper and
24 from Paul Tran regarding suggestions and/or
25 recommendations they would make to make the software

1 better. That's not free labor, that's labor used to
2 develop the software and fulfill requirements that were
3 being provided by these agencies.

4 I am going to start going back down the list of
5 companies, as far as Jesse O'Gorman said that the Dun &
6 Bradstreet reports were done at the corporate office. He
7 couldn't have relied on any statements provided by IRP.

8 Idea Integration said credit was extended based on
9 their credit department out of Florida. Nobody at Idea
10 Integration that had interfaced with IRP relied on those
11 particular statements. And the reason I asked you to
12 consider that is based on Instruction No. 13; the mail
13 fraud instruction. And the fourth element that the
14 Government would have to prove is that the scheme employed
15 false or fraudulent pretenses, representations or promises
16 that were material. It is a very important element.

17 And, obviously, the Government has to prove each
18 and every element of that crime beyond a reasonable doubt.
19 Now, a false statement, as the Judge read, is material if
20 it has a natural tendency to influence or is capable of
21 influencing the decision of a person or entity to which it
22 is addressed.

23 I talked about the sophistication of the staffing
24 companies. They have been in this business for a long
25 time. Joe Thurman talked about how staffing companies

1 managed their business. He testified they managed their
2 business like a portfolio. So they look at how much high
3 risk business are we going to do? How much mid level risk
4 business are we going to do. Then how much stable
5 business, or low risk business that we're going to do.
6 That's how staffing companies work.

7 So when they make a determination on whether or not
8 they are going to engage, what does their profitability
9 look like for that quarter or for that second quarter,
10 that third quarter, for the year? If they've already met
11 their numbers, okay, maybe we can engage in some high risk
12 business. That is the testimony that Joe Thurman gave.
13 And that is not based on any sort of representation, that
14 is based on what every business does with regards to
15 projecting what they were going to do.

16 So I ask you to please look at common sense, and
17 provide your own common sense and your understanding of
18 what has been presented. The Government has said that
19 connections were misrepresented. I go to the testimony of
20 Dana Chamberlin, the Government's witness who works for
21 the U.S. Attorney's Office and who put together the
22 summary charts. Both Adecco and Pro Staff and Advecta
23 knew of the relationships between DKH, LTI and that
24 particular business relationship.

25 There was no misrepresentations about these

1 companies. You heard -- you talked about commercial
2 references. The Government says commercial references
3 were used. Well, if my family member owns a business, and
4 they extend credit, it's still a commercial reference.
5 The Government would like you to think that based on
6 somebody using a family business for a commercial
7 reference, as something that is a part of a scheme.

8 How many people give bad references on a job
9 application? They give references that are known to them.

10 False statements, again, about the number of hours
11 worked. I talked about that already. You've heard from
12 representatives. The Government says tactics -- another
13 thing they put in the manner and means of the conspiracy
14 is tactics to prevent companies -- that they did not have
15 the ability to pay.

16 The ability to pay is determined by what Joe
17 Thurman called the vetting process. We are going to check
18 your credit to see, do you have a history of good payment.
19 That is where the ability to pay is determined.

20 They talked about -- the Government has routinely
21 talked about, as one of the manner and means of the
22 conspiracy, is that one of the other tactics was taking
23 steps to prevent companies from learning that contract
24 employees had previously worked for the company.

25 You heard from staffing representative after

1 staffing representative that in payrolling, the company
2 pre-selects the person. It is reasonable to assume if a
3 company pre-selects, they already know who that person is.
4 So to imply that the staffing companies -- for them to
5 imply that the staffing companies would want to know that,
6 I would want to know if the stock market crashed.
7 Wouldn't you all want to know everything?

8 The fact is, in business, we don't have a crystal
9 ball. There is a term used repeatedly in the Indictment.
10 The term is called "purportedly." And each and every
11 count, the Government sets forth what was purportedly
12 done, specifically as it relates to the hours worked. The
13 Government has not provided, again, any evidence that
14 hours were not worked.

15 They have assumed that, whether it be Mr. Barnes or
16 myself, that these hours were purportedly worked. But
17 they have no proof that they were not worked. And given
18 the evidence that was presented by -- not only by the
19 Government witnesses, that people worked multiple
20 contracts, but by Mr. Stewart -- Cliff Stewart and William
21 Williams, people do.

22 Also take you back to the word "purportedly," and
23 for you to look at the Indictment as it relates to Special
24 Agent Smith's testimony. He testified that he wasn't sure
25 if IRP was a software company. So he decided he was going

1 to pursue a search warrant based on the term, again,
2 "purportedly." These are purported software companies.

3 Were they purported -- were they a software
4 company? Well, Mr. Smith told you himself, during his
5 testimony, that he spoke to a lady by the name of Melissa
6 McRae, who worked for the Chief Information Office of the
7 Department of Justice, that attended a software
8 demonstration. He also testified that he spoke to Steven
9 Cooper prior to the raid. And Mr. Cooper told him IRP --
10 he was involved with IRP and software demonstrations.

11 So was IRP purportedly a software company, or were
12 they a software company? I'll let you judge that. I also
13 want you to consider -- on that Indictment you'll see the
14 date of that Indictment and the date that it was brought
15 up. The Government has alleged that the fraud occurred --
16 the alleged fraud, let me be clear, occurred between 2002
17 and 2005. The Indictment was issued four years later,
18 which means a company developing software for law
19 enforcement.

20 You heard an article that was put on the internet.
21 You've heard testimony from -- or IRP's story that we were
22 anticipating revenue from the sale of the software. Who
23 sells software to law enforcement, again, under criminal
24 investigations? So you have to think about from 2005 to
25 2009, with the best effort of continuing those quotes --

1 that was in December of 2004 and the close of that
2 business, was made impossible. I mean, impossible between
3 2005 and 2009 by virtue of an article.

4 I want you to ask yourselves, why? Why the
5 article? Why the article? He testified that if the
6 staffing companies had been paid, we wouldn't be here.
7 Well, he made sure the article made that impossible. And
8 in that article, which is an exhibit you will be
9 reviewing, you will see the Government making statements
10 to the press. And that article is Exhibit -- I believe it
11 is 409. Double check that for me.

12 Also, the article, Mr. Smith testified that he
13 forwarded the article to various staffing companies. That
14 is what his testimony was. I forwarded the article to
15 staffing companies. He said he forwarded the article to a
16 guy that is just an attorney. Was this a smear campaign?
17 I don't know. But I do know staffing companies received
18 articles -- an article that could easily frame their
19 responses to the Government.

20 And why? All I do is ask you to ask yourselves,
21 why the article? For a company who says they were
22 trying -- anticipating business, why the article?

23 The Government has showed you the term "aliases."
24 I ask you -- we asked Eric Black a question about the term
25 "aliases" as it relates to computers. It is a different

1 meaning all the way around. We are a software company.

2 We ask you to consider that.

3 Gary Hillberry, which was the FBI consultant or
4 contractor, testified. And you heard him read through or
5 talk about an Affidavit that he provided to the
6 Government; that he had a meeting with John Epke and
7 Dwayne Fuselier regarding whether or not they should
8 continue doing business or contracting with IRP.

9 In that Affidavit, or in his testimony, he said he
10 felt that IRP had an excellent chance to secure federal
11 and state contracts. John Shannon felt we could get a
12 contract. If a 31-year veteran of Customs Enforcement
13 felt we had a good chance to get a contract, if John
14 Shannon thought it was the best thing he had ever seen, if
15 DHS was considering a \$12 million pilot program, don't we
16 have a reason to be optimistic? All that is in evidence.

17 You also saw the Government ask questions of
18 certain witnesses, specifically Sharon Parks, on whether
19 or not she cared whether the bills with -- IRP was behind
20 on the bills. What employee is worried about the
21 company's bills? The Government has put that out there as
22 another something to throw into the atmosphere as far
23 as -- to see if it is going to resonates with the jury.

24 I don't know if anybody cares, as long as they are
25 getting their paycheck for the work they've actually

1 performed, what the company is actually doing or what
2 might be the struggles of that particular company.

3 What constitutes a false representation? That is
4 what you have to determine. If somebody believes
5 something is going to happen, does that make it false if
6 they believe it is going to happen? That goes to the
7 heart of an intent. And you will have to look through my
8 representations. I want you to look through my
9 representations. And look for whether or not I said IRP
10 or any company had a contract in place. Look through
11 them. Was I optimistic we were close to closing a
12 contract? Oh, absolutely. I'm optimistic until today.

13 So I ask you to look closely at those, what the
14 Government has alleged are false representations. Compare
15 them to what those people said -- those witnesses said, to
16 what's in writing. I ask you to please compare those.

17 And as you go through this evidence, Mr. Walker
18 mentioned whether -- in his opening, whether the
19 footprints were made by the horse or made by the unicorn.
20 The Government has a theory on how this came about, but it
21 is only that, it is a theory.

22 Finally, I want to address just a couple more
23 issues, then I'll be completed. The Government has put
24 forth certain exhibits, and I'll say again, that don't
25 have any context. I ask you to consider the two roles

1 that are played by executives in an IT, information
2 technology, company. One is their trade of a contractor
3 or information technology professional. The other one is
4 the executive.

5 And when you look at motivations, because you have
6 to believe whether or not the -- what were the
7 motivations. I think it is important, as you evaluate
8 whether or not -- what are the facts in this case and what
9 do they show. Government Exhibit 902 showed the minimum
10 payments made to the defendants. You heard Ms. Chamberlin
11 average that out in the neighborhood of \$70,000, \$80,000
12 for the majority of. 20-some-thousand dollars over almost
13 a 3-year period. That is not motivation.

14 So what would you consider the motivation as it
15 applies -- of the defendants as it applies to the facts?
16 The Government said in its opening statement it certainly
17 wasn't money, because no defendant got rich off of this
18 scheme. So what is the motivation of the defendants in
19 this case?

20 What is their motivation to bring law enforcement
21 into their building, as testified by Mr. Hillberry that he
22 was there on probably 10 occasions? What is the
23 defendants' motivation to bring law enforcement into the
24 middle of a criminal enterprise? Please think about that
25 when you consider the facts of this case.

1 And as you consider the facts of this case, I
2 believe you will find that the Government has put forth a
3 theory that it believes what happened. The Government
4 doesn't understand information technology contracting.
5 The Government doesn't necessarily understand the staffing
6 industry and the industry practices that goes along with
7 this. So it may be reasonable that the Government would
8 bring a case that says, well, we don't understand this.
9 People think the worst about things that they don't
10 understand.

11 But look at the motivations of these defendants as
12 you go through. Again, the Government put up exhibits
13 about intent; that because certain activities were going
14 on, it -- there is no context to what is still a
15 Government's theory.

16 An attempt to defraud means an intent to deceive or
17 cheat someone. What purpose? I ask you to look again at
18 what motivation? Law enforcement. I ask you to look --
19 law enforcement didn't need to be involved with this if
20 this was a quick scheme. Put people to work, get the
21 money and move on. Didn't happen in this case. A whole
22 lot of work was done by a whole lot of people that were
23 unknown to the defendants in this particular case.

24 So, based on the evidence that's been presented, I
25 ask you to look at each and every step along the line.

1 Each and every place where we anticipated revenue. And I
2 ask you to return a verdict of not guilty at that time.
3 Thank you.

4 THE COURT: Mr. Kirsch, rebuttal?

5 MR. KIRSCH: Thank you, Your Honor.

6 Your Honor, am I permitted to be up here again?

7 THE COURT: You may.

8 **REBUTTAL CLOSING ARGUMENT**

9 **BY MR. KIRSCH:**

10 May it please the Court. I want to start by
11 talking about optimism. You all heard a lot about
12 optimism during the closing statements from the
13 defendants. You know, optimism is a term that you use
14 when you have a glass like this that is half full, and the
15 water comes up to here. And if you are an optimist, you
16 see that glass as half full. If you dump all of the water
17 out and then continue to maintain that it is full, that is
18 not optimism, that's a lie.

19 That's what the defendants did throughout the
20 course of this case. They lied about the status of their
21 business so that they could get staffing companies to pay
22 themselves and their friends, and occasionally some
23 legitimate employees, who were doing work.

24 Let's start by reviewing the evidence in this case.
25 The defendants were correct when they suggested that it is

1 the evidence that ought to be guiding your deliberations.
2 So let's start with what may be the most important kind of
3 evidence that you've heard during the course of this case;
4 that's the evidence from the law enforcement agencies.
5 Let's start with CBI.

6 Colin Reese told you that his analysis or his
7 summary of his dealings with the defendants and their
8 software was nice software, way too expensive, let's move
9 on.

10 The next company that the defendants started
11 dealing with was the Department of Homeland Security and
12 Steven Cooper and Bill Witherspoon and Paul Tran. Every
13 single witness that you heard from from the Department of
14 Homeland Security told you what the status of their
15 dealings with the defendants was; informational meetings.
16 Getting information about the defendants' software, at the
17 same time they were getting information about the software
18 of numerous other vendors.

19 There was never a contracting process that had even
20 begun. Not a single person told the defendants that there
21 was a contracting process that had even begun. In fact,
22 they told you that they couldn't even have met with the
23 defendants if there was a contracting process that had
24 begun.

25 These defendants -- that's, by the way, what

1 distinguishes these defendants from Mr. Hillberry and
2 Mr. Shannon and the various other people who thought maybe
3 there was a chance they were going to sell the software.
4 They hadn't talked to the actual law enforcement agencies,
5 but the defendants did. And the defendants knew.
6 Homeland Security wasn't going to buy it. CBI wasn't
7 going to buy it. How about New York Police Department?
8 They weren't going to buy it.

9 Mr. Shannon, who worked there, knew they weren't
10 going to buy it. They didn't even sign up to get onto the
11 approved vendor list until they had been telling companies
12 for over a year that they had a contract with or were
13 about to sign a contract with or were already working with
14 the New York Police Department. They never even bid after
15 they sign up, and went in on a last ditch effort to try to
16 get the NYPD to get their software, they send it to the
17 NYPD for free. The NYPD is enraged, refused to use it,
18 and mail it back.

19 They didn't think they were going to sell their
20 software to the New York Police Department, at least not
21 in the time frame that they were telling staffing
22 companies they were going to.

23 Let's look at the evidence that you actually have
24 to show you what the defendants' belief was about the
25 legitimacy of what they were doing. We have looked at

1 this e-mail before, but I want to show it to you again.
2 It is Government's Exhibit 158.01. This is one of the
3 e-mails that it's been suggested to you -- I am sorry, is
4 that 158? Let's just go to 608.05.

5 This is one of the e-mails that you've seen several
6 times, and it has been suggested to you that you don't
7 have any context for this e-mail. You can't interpret
8 what this e-mail means because you don't know what was
9 going on. You all have heard the evidence in this case.
10 You know exactly what was going on.

11 Barrett Business Services was coming, and
12 Mr. Walker and Mr. Stewart and Ms. Ruff were all going to
13 try to be payrolled through Barrett Business Services.
14 And if they told Barrett Business Services that they had
15 already been payrolled for other staffing companies, or
16 that they were being payrolled at the same time, Barrett
17 Business Services wasn't going to hire them. That is why
18 they had to act accordingly. That is why they had to take
19 down their name plates and correspondence.

20 That is not the action of an innocent person who is
21 acting in good faith. Those are the actions of people who
22 are trying to defraud the staffing companies. Now, did
23 Barrett Business Services do business with them? Well,
24 fortunately for Barrett, it looks like they didn't. But
25 that doesn't mean that this wasn't part of the very same

1 scheme, or that they weren't doing the very same thing.

2 You have seen another e-mail -- I won't show it to
3 you now -- where they gave this same direction for Express
4 Personnel Services. That is one of the companies that was
5 unfortunate enough to take the defendants at their word
6 and to do business with them. And they ended up being out
7 about \$30,000.

8 You have seen the visitor log. I am not going to
9 show you the visitor log again. You have seen these
10 e-mails -- and let's start with 608.22. This is another
11 one of the e-mails. This is another one of what we call
12 the "alias e-mails."

13 Can we go to the first page of that, please.

14 This is the e-mail from Mr. Harper to Gary Walker,
15 David Banks, Clint Stewart and Ken Barnes. And this is
16 the one where they were talking about who was going to be
17 placed with AdvectA. Now, remember AdvectA is the same
18 company as Pro Staff. And the people for whom time was
19 reported to Pro Staff were Enrico Howard and Shaun
20 Haughton. The names in parentheses here are Clint Stewart
21 and Demetrius Harper. And several of the defendants
22 suggested to you that there was no evidence that there was
23 time reported by people who didn't do the work or that the
24 work wasn't done.

25 Well, I would invite you to go back again and look

1 at the bank records. Look at Government Exhibit 905; that
2 was the summary that Ms. Chamberlin testified about, into
3 which the money from Pro Staff went. Enrico Howard didn't
4 get a dime of the Pro Staff money, and neither did Shaun
5 Haughton. Clint Stewart, however, and Demetrius Harper
6 both got about \$19,000 of the Pro Staff money.

7 Now, maybe that's not rich in Mr. Banks' eyes, but
8 that's certainly motivation. By the way, that money from
9 Pro Staff that went into the Leading Team account, who had
10 signatory authority over that account and control over the
11 rest of the money, the 10,000 or so that wasn't paid out
12 to Clint Stewart and Demetrius Harper? That was Gary
13 Walker. That is what the evidence shows in this case.

14 You have got other examples. Mr. Banks suggested
15 to you that there wasn't any evidence that they were --
16 that any of the defendants were paying their wives or
17 their family members. Well, again, I am not going to show
18 it to you again, because we showed it to you a number of
19 times already in this trial, but Government Exhibit
20 500.01, page 8, that is the list of the people that were
21 working for Analysts International. That included Esther
22 Bailey -- Ester Bailey-Banks, Mr. Banks' wife. And
23 Lawanna Clark, Mr. Banks' sister.

24 They were the ones who were billed out as the
25 software architects, the database architects and the

1 software tester. And you may recall that those are the
2 same people who couldn't log on -- couldn't turn the
3 computer on and couldn't log onto the internet. That
4 sounds like motivation.

5 The defendants also want you -- they have suggested
6 to you that there is no evidence that anything they said
7 had any influence on the staffing companies. They're
8 essentially asking you to disbelieve the testimony of
9 every single person from the staffing company who came in
10 here, took an oath, sat on that stand and told you that it
11 made a difference to them. That what the defendants said
12 made a difference to them.

13 The defendants have tried to excuse that by saying
14 that, well, this is business. Or this is IT consulting,
15 and nobody understands business or IT consulting except
16 the people at this table, and they're expert, Mr. Thurman,
17 who seems like a very nice guy. He's known the witnesses
18 for about the same amount of time that most of the
19 Government witnesses have actually been in the staffing
20 industry. He has been in the staffing industry himself
21 about 5 years.

22 Mr. Thurman attempted, I guess, to contradict what
23 all those staffing company people told you, which is they
24 care what the defendants told them. You don't get to say
25 it's staffing, or this is a business-to-business

1 transaction. That doesn't give you authority to make
2 false statements about what your business is.

3 Just because we're in the 20th century, or just
4 because we are past 2000, doesn't mean that people now
5 have the authority to say whatever they want, whether it's
6 true or false, in order to get someone to do business with
7 them. We're still operating on the presumption that is
8 reflected in the fraud statutes, that when someone tells
9 you something, you can rely on it.

10 The defendants essentially want you to blame the
11 victims in this case for not being good enough to figure
12 out that they weren't telling them the truth and getting
13 burned.

14 Mr. Hillberry, who had been an agent for 31 years
15 and interviewed thousands of people, wasn't good enough to
16 figure out that the defendants weren't telling the truth
17 to them, at least not at first. He caught on later on, as
18 did most of the staffing companies.

19 That does not show you that these defendants
20 weren't trying to steal money from the staffing companies.
21 You've heard a lot, as well, about this idea about the
22 multiple billing; that the multiple billing doesn't prove
23 anything. You didn't hear testimony from a single
24 witness, not Mr. Thurman, not Mr. Williams, not
25 Mr. Stewart, not a single witness, that it was okay to

1 bill more than 24 hours in a day.

2 And, members of the jury, I am going to suggest to
3 you, you don't need testimony from an expert in order to
4 know that you can't bill more than 24 hours in a day. You
5 can't work more than 24 hours in a day. And even if you
6 take the testimony of the defense witnesses that they can
7 have two, or even three computer screens all up at once,
8 and they can type on one, and then they can turn over and
9 type on the other, they are not doing it at the same time.

10 They are stealing from one company when they are
11 billing that other company. Well, the defendants tell
12 you, well, the staffing companies never complained. So
13 that is how you know there was nothing wrong. Of course
14 the staffing companies didn't complain. They all told you
15 they didn't know. When the staffing companies'
16 representatives who were in here saw the evidence that
17 multiple time cards had been submitted, every single one
18 of them -- you saw the look on their faces. Every single
19 one of them said whoa, I would have wanted to know that.
20 I would have had questions about that. Somebody wasn't
21 getting their money's worth here.

22 And what else did they tell you? They said the
23 person who would have complained would have been the
24 client. Well, who was the client in this case? The
25 client were these gentlemen right over here. And why

1 weren't they complaining? Because they didn't care. They
2 were getting paid. Their friends were getting paid.

3 They didn't care whether the people who were
4 billing for 8 hours really weren't doing a full 8-hours
5 worth of work for each of those companies, because they
6 were getting paid just as if they were. And it didn't
7 matter if they weren't going to pay them back; whether
8 they weren't getting their full value for that, because
9 they knew they weren't going to pay them back. They had
10 known that since the beginning.

11 Because, as you saw from the evidence, they didn't
12 pay from the beginning. They paid \$3,000 to Adecco, then
13 they went for almost a year, and then paid about \$17,000,
14 I think it was, to Kforce. Then they went for about
15 another year, paid a couple more thousand dollars to one
16 other company, that's it. That's the sum total of the
17 payments that they made.

18 And the defendants want you to conclude that that
19 means they had the intent to pay the staffing companies.
20 Well, I would suggest that you look at some other evidence
21 to try to figure that out. Why don't you look, again, at
22 the bank records that showed how much rent they were
23 paying; \$20,000 a month for that big office space, that
24 you heard a lot of the staffing company representatives
25 who went to and said, boy, there is a lot of empty space

1 here.

2 If they really wanted to pay the staffing
3 companies, don't you think maybe they could have downsized
4 a little bit, maybe paid just \$10,000 a month, and put
5 some of that toward the payment plans that they kept
6 pushing out to the staffing companies. If they had intent
7 to pay the staffing companies, that is what they would
8 have done.

9 If they had intent to pay the staffing companies,
10 they wouldn't have made the false guarantees. This idea
11 that because they are guaranteeing the payment, that that
12 means they had evidence that they had intent that they
13 were going to pay the staffing companies. That is not
14 what happened. It's not what the evidence in this case
15 showed you.

16 Susan Holland told you, Remington Green told you,
17 the guarantees were signed as an inducement either to get
18 the companies to payroll people in the first place, or to
19 keep people there after they hadn't been paid. Every time
20 one of those guarantees were signed, the defendants knew
21 they hadn't paid the other staffing companies, and they
22 knew they weren't going to be paying the ones that they
23 were signing the guarantees for.

24 One other point about the simultaneous hours.
25 Every single witness that talked about how that could be

1 appropriate said that it was appropriate for multiple
2 clients, not one client, especially not the same client.
3 Even Mr. Thurman said he had seen that on very rare
4 occasions, when there was a transition between one project
5 and another.

6 Go back and look at the Government's exhibit, I
7 think it is 902, that shows you when these defendants were
8 billing out to multiple different staffing companies. Go
9 back and look at the different points on that chart, where
10 you can draw a vertical line and see that they had five
11 different staffing companies working, eight different
12 staffing companies working on multiple occasions.

13 Go back and look at Government's Exhibit 901, or
14 the various summary charts; 901.5, 901.6, all of those
15 various summary charts. Go back and look at those, and
16 you'll see that it is the same client every time. It is
17 not a transition. This was the defendants' regular
18 practice, because that was how they could maximize the
19 money that they were getting from the staffing companies
20 for themselves, for their friends, for their family.

21 And, by the way, you know, while you are at it,
22 please look at the newspaper article, defendant Exhibit
23 406. The Government made statements to the paper. That
24 is what Mr. Banks told you. Here is the statement that
25 came from the U.S. Attorney's Office. "This is an ongoing

1 investigation, and I have to decline comment." Here is
2 the other comment that came from the FBI. "The
3 investigation on this matter is continuing, and that's our
4 general statement in regard to the ongoing efforts here."
5 That, according to the defendants, is a smear campaign.

6 You know, what the evidence has shown over the
7 course of this trial is that this is not complicated. You
8 all don't need the testimony of multiple experts. You
9 don't need to understand how business-to-business
10 transactions work or corp-to-corp transactions work. You
11 don't need to understand what the sophisticated job --
12 various different jobs that an IT professional or an IT
13 consultant might hold.

14 The evidence in this case established really, in
15 many ways, what you already know from applying your own
16 common sense. Honest business, non-fraudulent business
17 works exactly how the witnesses from the staffing
18 companies here described that it works.

19 People exchange information. They rely on that
20 information, and they do business based on the assumption
21 that the people on the other side are acting in good
22 faith, just like they are.

23 One of the defendants said that getting a contract
24 with one of these government agencies was like winning the
25 lottery. Based on the evidence that you heard in this

1 case, what you can conclude is that when these defendants
2 were telling the staffing companies that they either had
3 or were just about to have a contract with the staffing
4 companies -- by the way, the word "contract," there is no
5 magic to the word "contract." What the staffing companies
6 told you is that they believed these defendants had active
7 business that was going to allow them to get paid.

8 The only people who seem to care about the word
9 "contract" are the defendants. The staffing companies
10 didn't care about that. They cared about what the
11 defendants told them about the nature of their business.
12 The defendants told them they were doing business that was
13 going to allow them to pay their bills, and they believed
14 them.

15 But the defendants didn't have contracts. They
16 didn't have any chance of getting those contracts. They
17 didn't think they had a good chance of getting those
18 contracts. In fact, based on what they were told by CBI,
19 by DHS, by the NYPD, they should have thought that they
20 had about the same chance of getting those contracts as
21 they had of winning the lottery.

22 They knew they weren't going to get those
23 contracts. They were persistent, all right. But what
24 they were persistent in is making false statements to the
25 staffing companies to get their business, false statements

1 to the staffing companies in the time cards to get them
2 paid, and in false statements to the staffing companies to
3 keep that pay rolling in, even after the staffing
4 companies started asking questions.

5 Based on all of that evidence, the Government is
6 asking you to find the defendants -- each the defendants
7 guilty of the conspiracy count in Count 1, and to find
8 each of the other defendants charged in the remaining
9 counts guilty as charged. Thank you.

10 THE COURT: All right. Ladies and gentlemen, you
11 have heard the evidence. You have been instructed as to
12 the applicable law, and you have heard the parties'
13 arguments. Now, I remind you again that these arguments
14 are not evidence in the case, and they should not be
15 considered as such.

16 In a moment I am going to submit this case to you.
17 As you know, however, at the beginning of the trial I told
18 you that we would be selecting a jury of 12 jurors and
19 four alternates. The alternates were selected in the
20 event that one of you became ill or could not participate
21 throughout the entire trial. And as we saw during the
22 course of this trial, this happened to two of our jurors.

23 So we will need for alternates one and two to
24 remain. However, the remaining alternates cannot
25 deliberate as part of the jury. Therefore, at this time I

1 am going to release Mr. Seymour and Ms. Sachter, who were
2 alternates three and four, and you are released from your
3 duty. So I thank you very much for your service.

4 When I excuse the jurors to go back to the jury
5 room, I need you to collect your belongings, turn your
6 badge or key cards in to the Court Security Officer who
7 will escort you back there, and then you may leave and go
8 home. However, you should not discuss or talk about this
9 case with the jurors or with anyone else until Ms. Barnes
10 gives you a call that deliberations are done, because
11 there is a slight chance, a slight possibility -- and I
12 have had this before -- that we may need to call you back
13 if one of your fellow jurors is unable to complete the
14 deliberations.

15 The rest of you will now be escorted back to jury
16 deliberation room to begin your deliberations. You now
17 are able to discuss this case among yourselves, but you
18 may not discuss it unless all of you are present. And you
19 may not discuss this case with anyone other than your
20 co-jurors until you return a verdict.

21 Now, I really very much appreciate your patience
22 with us today and willingness to stay late so that we
23 could conclude this and get you to the deliberations. It
24 has been a long day. It is now 6:21. You are free to
25 recess for the day when you get back to the jury

1 deliberation room.

2 What I would ask is that you return to the
3 courthouse at 9:00 a.m. tomorrow morning so that you can
4 begin your deliberations and follow the instructions with
5 respect to the election of your jury foreperson.

6 The Court day generally ends, as you know, at 5:00
7 p.m. And so if you are still deliberating tomorrow at
8 5:00 p.m., you should go ahead and, if you wish, conclude
9 your deliberations and leave at 5:00 p.m. And then return
10 again the next day at 9:00 a.m. to continue those
11 deliberations.

12 I will not meet with you when you leave. You just
13 go ahead and advise the Court Security Officer that you
14 are done for the day, and they will pass that information
15 on to Ms. Barnes.

16 So, would the Court Security Officer please come
17 forward.

18 Ms. Barnes, would you please administer the oath to
19 the Court Security Officer.

20 (The Court Security Officer is sworn.)

21 THE COURT: Sir, if you would please give these
22 Original Jury Instructions and the Original Verdict Form
23 to the jurors when you take them back there. And if you
24 could also make sure that anyone who replaces you takes
25 the same oath and agrees to the same matters you have

1 agreed to, I would appreciate that.

2 All right. At this time, then, would the jurors
3 please follow the Court Security Officer.

4 (Jury deliberations commence at 6:23 p.m.)

5 (The following is had in open court, outside the
6 hearing and presence of the jury.)

7 THE COURT: All right, you may be seated. I need
8 to make sure the Government and the defendants give
9 Ms. Barnes a phone number or phone numbers where you can
10 be reached in the event the jury has a question or returns
11 a verdict. You must remain within 20 minutes of the
12 courthouse during the trial day. So beginning at 9:00
13 a.m. tomorrow, I need to make sure you all are within 20
14 minutes of the courthouse, so if we call you, you need to
15 come back in and we need to move forward.

16 As you heard, I told the jurors that they are free
17 to recess for the day. And they are free to recess at
18 5:00 p.m. each day. I do not bring them back in, so you
19 do not have to come back in at the end of the day, because
20 I don't meet with them to excuse them.

21 Are there any matters that need to be brought to
22 the Court's attention?

23 MR. KIRSCH: No, Your Honor.

24 MR. BANKS: No, Your Honor.

25 THE COURT: All right. Court will be in recess,

1 then.

2 MR. ZIRPOLO: I wanted to make sure we are clear.
3 So at 5 o'clock, let's say we are outside of the
4 courthouse, we can leave -- we are not going to get a
5 phone call saying the jury stuck around?

6 THE COURT: Well, actually you may want to check
7 with Ms. Barnes before you leave, just in case they
8 decide -- if they decide to stay later because they want
9 to finish up something, you should probably check with
10 Ms. Barnes to make sure.

11 MR. ZIRPOLO: Very well. I just didn't want to --

12 THE COURT: I appreciate that. That is a good
13 clarification.

14 Court will be in recess.

15 (Court is in recess at 6:24 p.m.)

16 **R E P O R T E R ' S C E R T I F I C A T E**

17 I, Darlene M. Martinez, Official Certified
18 shorthand Reporter for the United States District Court,
19 District of Colorado, do hereby certify that the foregoing
20 is a true and accurate transcript of the proceedings had
21 as taken stenographically by me at the time and place
22 aforementioned.

23 Dated this 5th day of December, 2011.

24

25 _____
s/Darlene M. Martinez, RMR, CRR