

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 9)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 9:14 a.m. on the 6th 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 X

WITNESSES :

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E X H I B I T S

NO.

ADMITTED

.....

No.

REFUSED

.....

1 Mr. Walker?

2 MR. WALKER: I will be crossing.

3 THE COURT: All right, Mr. Walker.

4 **DANA CHAMBERLIN**

5 having been previously duly sworn, testified as follows:

6 **CROSS-EXAMINATION**

7 **BY MR. WALKER:**

8 Q. Good morning, Ms. Chamberlin.

9 A. Good morning.

10 Q. Earlier, you were explaining Exhibit 903.00.

11 MR. WALKER: Your Honor, may we republish that?

12 THE COURT: You may.

13 Q. (BY MR. WALKER) And on this exhibit, it lists moneys
14 owed to staffing companies and moneys paid to staffing
15 companies; is that correct?

16 A. Yes.

17 Q. And could you give us a brief overview of how we
18 determine the total payments that were made to each
19 staffing company?

20 A. I reviewed not only the bank records for Leading
21 Team, IRP or DKH, but I also reviewed whatever documents
22 the staffing company had provided regarding payments that
23 they had received.

24 Q. And how would you associate withdrawals to payments
25 to staffing companies?

1 A. Withdrawals from the four bank accounts?

2 Q. Yes.

3 A. Unless there was some additional information on the
4 withdrawal slip or information from the staffing company,
5 I would not have identified any withdrawals as being
6 payments to those staffing companies.

7 Q. Okay. So I just want to verify that in the case that
8 a withdrawal was made for cash to buy, for example, a
9 money order or a bank check, that would not have been
10 accounted for in your spreadsheet?

11 A. Unless the staffing company had provided some type of
12 information that they had received a money order or a
13 check -- a cashier's check of some sort.

14 Q. Okay. And, again, re-addressing that situation, if
15 they had not provided you that information, but payment
16 had been made in that form and subsequent to a withdrawal,
17 you would not have a record of that?

18 A. I would not have a record, no.

19 MR. WALKER: Thank you, Your Honor, no further
20 questions.

21 THE COURT: All right. Mr. Banks?

22 MR. BANKS: Just one moment, Your Honor, please.

23 THE COURT: Sure.

24 **CROSS-EXAMINATION**

25 **BY MR. BANKS:**

1 Q. Ms. Chamberlin, I would like to take you to two of
2 the staffing companies that you mentioned, both
3 AdvectA/Pro Staff and Analysts International.

4 A. Yes.

5 Q. Now, could you describe the difference in -- as far
6 as how the staffing company paid in those two situations,
7 vice the rest of the staffing situations?

8 A. For Pro Staff and Analysts, that was the other one?

9 Q. Yes, ma'am.

10 A. Those, instead of the staffing companies paying the
11 employees who submitted time directly, they would pay DKH,
12 IRP or Leading Team. In the case of Pro Staff, I believe
13 the checks were made payable to Leading Team. And in the
14 case of Analysts International, the checks were paid to
15 DKH.

16 Q. So would you say in that arrangement, that the
17 staffing companies -- I will use the term "covering"
18 payroll for DKH contractors. Would that be correct?

19 A. I don't know if covering would be the term I would
20 use. Those checks were to be paid the employees that
21 worked for Analysts or Pro Staff.

22 Q. I agree. But the relationship was between
23 AdvectA/Pro Staff and Leading Team as a corp-to-corp
24 relationship. And in the case of -- was that correct?
25 Was that correct as it relates to Ad Staff (sic) and

1 Leading Team?

2 A. Without looking at the agreement of Pro Staff and
3 Leading Team, I don't know what the relationship was, off
4 the top of my head. I know the checks were payable -- the
5 Pro Staff checks were payable to Leading Team. And the
6 Analysts International checks were payable to DKH.

7 Q. And in that relationship, those companies paid -- Ad
8 Staff (sic) -- Advecta, I am sorry, paid Leading Team
9 directly; correct?

10 A. Yes.

11 Q. And Analysts International paid DKH directly?

12 A. Correct.

13 Q. Now, would you agree that DKH was responsible for
14 paying contract employees out of the moneys that
15 transferred from Analysts International?

16 MR. KIRSCH: Objection, lack of foundation.

17 THE COURT: If she knows. I'll overrule.

18 THE WITNESS: My understanding is that DKH was
19 responsible to pay the employees that worked and submitted
20 hours for the Analysts job.

21 Q. (BY MR. BANKS) Okay. Now, would you agree -- now,
22 before I get to that, with regards to the Advecta/Leading
23 Team relationship, would you agree that Leading Team was
24 responsible for paying the employees those wages?

25 A. My understanding is Leading Team was responsible to

1 pay the employees who submitted hours for the work done on
2 the Pro Staff contract.

3 Q. Okay. Now, were you aware of any agreements that
4 existed between the contract employee and Leading Team?

5 A. No.

6 Q. Were you aware of any agreement between the contract
7 employee and DKH Enterprises as it relates to Analysts
8 International?

9 A. No.

10 Q. Now, would you agree that an independent
11 contractor -- that these individuals were independent
12 contractors? Is that what your analysis showed?

13 A. I don't believe I analyzed what position the
14 employees held, other than they submitted time cards to
15 what staffing company.

16 Q. Okay. Would you agree that these contract employees,
17 in the case of the Advecta/Leading Team relationship, were
18 contract employees of DKH -- of Leading Team?

19 MR. KIRSCH: Objection, lack of foundation.

20 THE COURT: Sustained.

21 Q. (BY MR. BANKS) Now, you said a moment ago that you
22 had no idea of the agreement between the contract employee
23 and Leading Team in that relationship?

24 A. Correct.

25 Q. And you had no -- you also had no indication or

1 information concerning whether Mr. Walker or Mr. Banks
2 were engaged in other consulting engagements with DKH?

3 A. I don't know what other relationships they had with
4 DKH.

5 Q. So you would agree that in your analysis, you said
6 that moneys were paid out of the account, in the case of
7 the DKH and Analysts International relationship, to Gary
8 Walker and David Banks?

9 A. Analysts International money was paid to Mr. Walker
10 and Mr. Banks.

11 Q. And you don't have any information on what services
12 they were paid for -- that DKH paid them for at that
13 particular time?

14 A. I don't know what relationship they had with DKH.
15 What I do know is the Analysts' money was paid to them.

16 Q. Analysts' money, when it transfers, would you agree,
17 becomes DKH money; correct?

18 A. It got deposited into the DKH account, yes.

19 Q. So that is DKH's -- from a business-to-business
20 relationship, Analysts fulfilled their obligation to pay
21 DKH; correct?

22 A. They did pay them for the time worked that was
23 submitted, yes.

24 Q. And Analysts -- and in the case of Advecta, Advecta
25 paid Leading Team based upon the business relationship

1 that those two entities had set up between each other;
2 correct?

3 A. Based upon the hours that were submitted, yes.

4 Q. The hours that were submitted, correct. Do you have
5 any evidence to provide that says the people that worked
6 for Analysts International -- that worked for DKH did not
7 perform the work that was accounted for in time sheets?

8 A. Can you repeat the question?

9 Q. Do you have any evidence -- have you seen any
10 evidence, or do you have any evidence that the DKH
11 contract employees did not perform the work that they
12 submitted time sheets for?

13 A. No.

14 Q. And in the case of the Leading Team/AdvectA
15 relationship, do you have any evidence that those
16 employees did not perform the work that they submitted
17 time sheets for?

18 A. No.

19 Q. So if an employee, for instance, had an agreement
20 with DKH to be paid in stock, you wouldn't have any
21 indication of that in your records, would you?

22 A. I don't know what you mean, "paid in stock." Paid in
23 shares of stock of DKH?

24 Q. Yes. Or Leading Team, for that matter.

25 A. I did not see -- I am not aware of any evidence of

1 that.

2 Q. And you wouldn't be aware unless -- because it is not
3 a part of the banking records you analyzed, correct?

4 A. Correct.

5 MR. BANKS: Your Honor, permission to publish
6 902.00.

7 THE COURT: You may.

8 Q. (BY MR. BANKS) Now, this is the summary of minimum
9 payments made to defendants; correct?

10 A. Correct.

11 Q. And this is the sum of the averages over that, on
12 average, 3-year period, that you were able to analyze, as
13 far as how much the defendants benefited or worked over
14 that 2- to 3-year period?

15 A. These are the sum of the payments made to the
16 defendants between October '02 and December -- pardon me,
17 October 2002 and February of 2005, that I could attribute
18 to funds provided by the staffing companies, either
19 directly paid to you by the staffing companies or paid
20 indirectly through Leading Team or DKH.

21 Q. Okay. Now, what was the total amount of loss that
22 you found between -- as far as all of the staffing
23 companies were concerned?

24 A. The amount owed to all of the staffing companies?

25 Q. Yes.

1 A. A little over \$5 million.

2 Q. Now, would you say if over a roughly 3-year period --
3 that if you divide this out over a 3-year period, that out
4 of \$5 million, Mr. Banks made an average of probably
5 \$60,000 per year over that time period?

6 A. The \$5 million is not what was paid or to be paid to
7 the employees who worked. That was what was owed to the
8 staffing companies. The amounts that were paid to the
9 employees would have been less.

10 Q. Okay.

11 A. So I can't compare apples and oranges.

12 Q. I understand. But would you say, over a 3-year
13 period -- 2- to 3-year period, on average, that Mr. Banks
14 was compensated \$60,000 a year for his work during that
15 period? I know you are probably trying to crunch some
16 numbers.

17 A. No, no, I'm -- this amount shows the minimum amount
18 that each had received based upon the records that I
19 reviewed. It could have been more if there were -- like,
20 I know, for instance, Mr. Harper submitted time sheets for
21 Spherion, one of the staffing companies. I did not find
22 any documents showing the paychecks that Mr. Harper had
23 received from them. So that amount isn't considered in
24 this total.

25 So, based upon the numbers that I have here, over

1 the roughly 2-and-a-half year time period, you take just
2 divided by 2, Mr. Banks, roughly \$80,000 per year.

3 Q. You said 2-and-a-half years?

4 A. 2-and-a-half. So 172 divided by 2-and-a-half is --

5 Q. It is a significant difference?

6 A. Roughly 80,000. I have my calculator.

7 Q. I will take your average right now. And would you
8 say that same type of model, based for Demetrius Harper,
9 Mr. Walker, Clint Stewart -- I will go ahead and give it
10 anywhere from 60- to \$90,000 a year, on average, with the
11 exception of Mr. Barnes?

12 A. Well, based upon my figures here, Mr. Stewart and
13 Mr. Zirpolo, if you divide it by 2, would be making
14 roughly 30,000. But, again, this is the minimum amount I
15 can identify.

16 Q. That is all we can deal with is what you can identify
17 in your analysis?

18 A. Correct.

19 Q. And with regards to Mr. Barnes, over a 2-year
20 period -- and I will go ahead and give over a 2-year
21 period, 120,000, roughly?

22 A. Roughly.

23 Q. Have you, in your analysis, or do you have any
24 knowledge of what IT professionals make?

25 A. I do not.

1 MR. BANKS: Okay. I have no further questions,
2 Your Honor.

3 THE COURT: All right. Anybody else? Mr. Barnes?

4 **CROSS-EXAMINATION**

5 **BY MR. BARNES:**

6 Q. Quick question. So you received banking records for
7 Mr. Barnes, myself?

8 A. Yes.

9 Q. Okay. Did you show any indication that any
10 records -- that any check was not deposited into my bank
11 account?

12 A. I don't recall --

13 Q. Okay.

14 A. -- I don't recall.

15 Q. So did you see any evidence that any money went
16 anywhere else, do you know?

17 A. I don't recall.

18 MR. BARNES: Okay.

19 THE COURT: Anybody else? Mr. Zirpolo?

20 **CROSS-EXAMINATION**

21 **BY MR. ZIRPOLO:**

22 Q. Regarding banking records, do you have any evidence
23 of how those banking records were obtained?

24 MR. KIRSCH: Objection, relevance.

25 THE COURT: Sustained. I have already ruled on

1 this.

2 MR. ZIRPOLO: No further questions.

3 THE COURT: Any redirect?

4 I am sorry, any other defendants?

5 Any redirect?

6 MR. KIRSCH: Yes, please, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. KIRSCH:**

9 Q. Ms. Chamberlin, I am going to ask you first about
10 your exhibit concerning the payments to the defendants.

11 A. Yes.

12 Q. Now, am I correct that you said the only thing that
13 you included in that was money that you could tie -- that
14 you could say originated with the staffing company and
15 finished in the defendant's bank accounts; is that
16 correct?

17 A. Correct.

18 Q. So were there payments to the defendants from those
19 corporate accounts that you did not include in that total?

20 A. Yes.

21 Q. And why was that? Why wouldn't those have been
22 included?

23 A. Because I could not tie them to funds from the
24 staffing company.

25 Q. Okay. You also said, I believe, that you wouldn't

1 have included in payments to staffing companies any cash
2 withdrawals, because you didn't know whether or not those
3 cash withdrawals might have been used, for instance, to
4 purchase a money order or to pay a staffing company; is
5 that right?

6 A. I did not include cash withdrawals from the corporate
7 accounts, no.

8 Q. Okay. And am I right that, just as you didn't
9 include cash withdrawals in the payment calculation to the
10 staffing companies, you didn't include any cash
11 withdrawals when you were adding up the payments made to
12 the defendants in this case?

13 A. Say that again?

14 Q. Let me just see if I can make it simpler. Were there
15 cash withdrawals from the accounts of Leading Team, DKH
16 and IRP?

17 A. Yes.

18 Q. Did you attribute any of those cash withdrawals to
19 any of the defendants for the purposes of Exhibit 902.00?

20 A. I did for Mr. Harper.

21 Q. Okay. And why was that?

22 A. He was the sole signor on the account of DKH.

23 Q. Okay.

24 A. Between the time period December of '02 to about
25 middle of March of '03, there were over \$442,000 of

1 deposits into the DKH account. All but 8,000 of that came
2 from either Adecco or Kforce. So when there were
3 withdrawals in that time period, I said that those funds
4 for the withdrawals came from the funds from Adecco or
5 Kforce. So those withdrawals were included under
6 Mr. Harper's total.

7 Q. And you had determined, I believe you said, the
8 person who had signatory authority over that account?

9 A. From the records, that I could tell, that was one of
10 the accounts that the bank did not provide the signature
11 card. But based upon who signed the checks on that
12 account, I assumed it was Mr. Harper who was the signor on
13 the account.

14 Q. Did anybody sign checks on that account other than
15 Mr. Harper?

16 A. No.

17 Q. Were there cash withdrawals from the Leading Team
18 accounts, do you recall?

19 A. I don't recall, but I don't believe I included them
20 in Mr. Walker's total.

21 Q. Why is that?

22 A. I think -- my recollection is the staffing companies
23 whose funds were deposited in the Leading Team account, I
24 could account for checks being written out of that
25 account, and there were no cash withdrawals that I deemed

1 to associate with Mr. Walker.

2 Q. Let me ask you about that, too. You were asked
3 whether or not you had any evidence that the employees --
4 in the case of Pro Staff and Analysts International, you
5 were asked whether you had any evidence that the employees
6 didn't perform the work that was reported in the time
7 cards.

8 A. Correct.

9 Q. Taking you back to the Pro Staff/AdvectA case, do you
10 recall the names of the employees who reported work?

11 A. Enrico Howard and Shaun Haughton.

12 Q. And do you recall whether or not the records indicate
13 that Mr. Howard or Mr. Haughton, received any of that
14 money?

15 A. I did not see evidence that they received money from
16 Pro Staff, indirectly or directly.

17 Q. In other instances that you reviewed where employees
18 submitted time cards, did you see evidence that those
19 employees were paid?

20 A. Yes.

21 Q. And with respect to Analysts International, you were
22 asked that same question. Did you have any evidence that
23 the people in -- who reported time didn't do the work.

24 A. Correct.

25 Q. So let me take you back to Analysts International.

1 You looked at time reporting cards --

2 A. Yes.

3 Q. -- is that right? And I believe you identified a
4 number of employees that reported time.

5 A. Yes.

6 Q. And then I believe that -- did you say that you also
7 saw evidence that some of those employees were paid from
8 the DKH account?

9 A. Yes.

10 Q. But did you say that you also saw evidence that some
11 of those employees for whom time was reported were not
12 paid from that account?

13 A. Yes.

14 Q. Would you consider that evidence that those employees
15 didn't do that work?

16 MR. WALKER: Objection, Your Honor, it calls for
17 speculation.

18 THE COURT: Sustained.

19 Q. (BY MR. KIRSCH) When you were calculating the loss,
20 you indicated that you had, for Government Exhibit 903.00,
21 I believe you indicated that you had reviewed records from
22 staffing companies to determine whether payments had been
23 made.

24 A. Yes.

25 Q. And on your chart, I believe there are three

1 companies that are identified as having received payments.

2 A. Correct.

3 Q. Did you, in fact, have records from those companies
4 that indicated that they had received those payments, do
5 you remember?

6 A. Yes. I did have records from the staffing company,
7 as well from the bank records.

8 Q. In each instance where you determined that a staffing
9 company had been paid, the staffing company had provided
10 you -- had provided that information?

11 A. I believe so, yes.

12 MR. KIRSCH: Thank you, Ms. Chamberlin.

13 THE COURT: Anything further for this witness?

14 MR. BANKS: Nothing further, Your Honor.

15 THE COURT: May this witness be excused, then?

16 You are excused.

17 THE WITNESS: Thank you.

18 THE COURT: The Government may call its next
19 witness.

20 MR. KIRSCH: Your Honor, at this time the
21 Government rests.

22 THE COURT: All right. How long do you all think
23 the proceedings we need to handle will take?

24 MR. KIRSCH: Your Honor, I would anticipate that
25 the Government's portion of those proceedings would be 10

1 minutes or less.

2 THE COURT: All right. Defendants? Would an hour
3 be enough? If I excuse the jury for an hour, would that
4 encompass --

5 MR. BANKS: I think each defendant will probably
6 need 10 minutes or so.

7 THE COURT: All right. Then why don't I do this.
8 We have some legal proceedings that we need to take care
9 of at this time that need to be between just me and the
10 parties. So I am going to excuse the jury. I am going to
11 excuse the jury until 11 o'clock, that way we make sure.
12 So if you want to leave the building, or if you just want
13 to wait, that is fine. But I don't want to keep you
14 waiting in the jury room.

15 So if you can be back by 11 o'clock, and we will
16 either resume or we won't. So the jury is -- we will be
17 in recess with the jury. I need counsel and the parties
18 to remain.

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

21 THE COURT: All right. You may be seated.

22 All right. Do I have, I guess, motions from the
23 defendants? We can start with Mr. Walker.

24 I think the way I would like to take it is
25 Defendant, Government, unless the Government wants to do

1 them all at once.

2 MR. KIRSCH: Your Honor, we will do it at the
3 Court's pleasure.

4 THE COURT: Which do you think would be less?

5 MR. KIRSCH: I suspect we might be able to respond
6 a little more efficiently if we combine them, Your Honor,
7 but I'm happy -- if there is a particular question that
8 the Court wants addressed, let me know, and I will be
9 happy to do that.

10 THE COURT: So I will hear from all of the
11 defendants, then from the Government.

12 You may proceed Mr. Walker.

13 MR. WALKER: Your Honor, at this time defendant
14 Gary Walker would like to make a motion for judgment of
15 acquittal. Pursuant to Rule 29(a) of the Federal Rules of
16 Criminal Procedure, I move the Court to enter a judgment
17 of acquittal on Count 1 on the grounds that the Government
18 has not presented sufficient evidence for a reasonable
19 jury to find me guilty beyond a reasonable doubt.

20 Examination of the evidence provided in Government
21 testimony to date leads to the only reasonable conclusion
22 that there is insufficient evidence to support the charge
23 of conspiracy against me. No evidence has been presented
24 to show that I ever entered into an agreement, to devise
25 any scheme to defraud or to obtain money or property by

1 means of false or fraudulent pretenses or representations
2 or promises, as set forth in Title 18, United States Code,
3 Section 1341 or Section 1343.

4 Instead, the Government's evidence shows that LTI
5 and IRP were legitimate software companies engaged in the
6 business of developing, marketing and selling software to
7 the law enforcement sector. And they also obtained
8 staffing services through staffing companies, both
9 directly from those companies and through its staffing
10 provider, DKH.

11 In particular, there is no evidence that I made any
12 false or misleading statements to cause staffing companies
13 to provide services. There is no evidence that I made
14 statements regarding contracts with government agencies or
15 that I filled out or reviewed any LTI or IRP credit
16 applications, or that I made statements to staffing
17 companies regarding slow government payment cycles, or at
18 any time made false statements regarding LTI's and IRP's
19 ability to pay, or at any time knowingly approved a false
20 time sheet.

21 Further, there is no evidence that hours submitted
22 on my time sheets submitted between July 28th and August
23 2, 2003, were inflated hours. And, further, Your Honor,
24 the defense has information -- if I may have a minute,
25 Your Honor.

1 Defense has information regarding the federal
2 subject matter expert that we retained, having knowledge
3 and affirming to the government that sales -- that they
4 believed sales were imminent for --

5 THE COURT: That can't be considered. All I can
6 consider is what is on the record at this point.

7 MR. WALKER: Okay. Your Honor.

8 And, so in conclusion, for the reasons I just
9 stated and set forth above, the Court should enter a
10 judgment of acquittal as to defendant Gary Walker.

11 THE COURT: Thank you, Mr. Walker.

12 MR. WALKER: Thank you.

13 THE COURT: Mr. Zirpolo?

14 MR. ZIRPOLO: Yes. Thank you, Your Honor. If it
15 please the Court, I would like to enter a motion for
16 judgment of acquittal pursuant to Article 29(a). Pursuant
17 to Article 29(a) of the Rules of Criminal Procedure,
18 defendant David A. Zirpolo hereby moves this Court for
19 judgment of acquittal on all counts, on the grounds that
20 the Government has not submitted sufficient evidence for a
21 reasonable jury to find Mr. Zirpolo guilty beyond a
22 reasonable doubt.

23 The Court and the jury has now heard seven days of
24 Government testimony from witnesses, as well as hundreds
25 of Government and defense exhibits. The only reasonable

1 conclusion that may be drawn from the Government's
2 evidence is that there is a total absence of evidence to
3 support the charge of conspiracy and mail or wire fraud
4 against Mr. Zirpolo.

5 No evidence has been presented of an agreement to
6 violate the law; the bedrock of the charge of conspiracy.
7 There has also been insufficient evidence presented to
8 support the charges of mail and wire fraud.

9 Regarding the conspiracy, there are a number of
10 overt acts attributed to Mr. Zirpolo. Item J, Lloyds
11 Staffing, the submission of a time card for week ending
12 3/14/04. There was no evidence presented that that time
13 card was inaccurate or fraudulent.

14 Item K, Snelling. The Indictment states that on or
15 about 4/12/04, Mr. Zirpolo met with representatives of
16 Snelling. There was no testimony to Mr. Zirpolo meeting
17 with any representative from Snelling.

18 Item L, Computer Merchant Group, the submission of
19 a time card for week ending 9/26/04. There was no
20 evidence the time worked was inaccurate.

21 Item N, Blackstone. The e-mail called "Staffing
22 Information," dated January 14, 2005. The witness stated
23 he felt there was a contract in place, but the e-mail
24 referenced did not state there was a contract, but that
25 they were working on a project.

1 Regarding the fraud counts, Count 3, the invoice --
2 Count 3, mail fraud, 18 U.S.C. Section 341, the invoice
3 from Kelly Services for hours purportedly worked --- I am
4 sorry. The count is that Mr. Zirpolo caused an invoice
5 from Kelly Services to be sent through the U.S. Mail for
6 hours purportedly worked by Mr. Zirpolo and others. There
7 is no evidence presented that Mr. Zirpolo's hours were
8 inaccurate.

9 Regarding the means and manner, because it says in
10 the Indictment that paragraphs 5 through 9 -- and 9 is
11 just a list of staffing companies -- were the means and
12 manners for this fraud. No. 5, there was no evidence
13 presented that Mr. Zirpolo disguised or misrepresented
14 connections among the companies served as a commercial
15 reference.

16 No. 6, no evidence was presented that Mr. Zirpolo
17 induced the staffing company to enter into an arrangement
18 made by false representations that IRP, LTI or DKH had
19 large current or impending contracts with one or more
20 large government agencies.

21 7, no evidence was presented that Mr. Zirpolo
22 approved or submitted time cards containing false
23 statements about the number of hours worked, time of day,
24 and/or nature of the work. The Government will assert
25 that these were false time sheets, but they did not prove

1 that Mr. Zirpolo knew that these time sheets were false.

2 No. 8, no evidence was presented that Mr. Zirpolo
3 used a variety of tactics to prevent staffing companies
4 from discovering they did not have the ability to pay.
5 Tactics including representations about slow government
6 pay cycles, all prevented staffing companies from learning
7 employees previously worked for the company and refusing
8 to meet with staffing companies.

9 Count 5, mail fraud, again. Caused an invoice to
10 be sent through the U.S. Mail from ESG for work
11 purportedly performed by Mr. Barnes week ending 8/22/04.

12 Paragraph 5; no evidence was presented that
13 Mr. Zirpolo disguised or misrepresented the connections
14 among the companies or served as a commercial reference.

15 6; no evidence was presented that Mr. Zirpolo
16 induced the staffing companies to enter into an agreement
17 by making false representations that IRP, LTI or DKH had
18 large current or impending contracts with one or more
19 large Government agencies.

20 7; no evidence was presented that Mr. Zirpolo
21 approved the submitted time cards containing false
22 statements about the number of hours worked, time of day,
23 and/or nature of the work. Again, the Government is going
24 to assert that these are false time cards. They did not
25 prove that Mr. Zirpolo knew that these time cards were

1 false.

2 Count 7 -- sorry, I did not do paragraph 8. So on
3 Count 5, paragraph 8; no evidence was presented that
4 Mr. Zirpolo used a variety of tactics to prevent staffing
5 companies from discovering they did not have the ability
6 to pay. Tactics including representations about slow
7 government pay cycles, preventing staffing companies from
8 learning employees previously worked for the company, or
9 refusing to meet with staffing companies.

10 On Count 7; caused an invoice to be sent through
11 the U.S. Mail from Technisource for work purportedly
12 performed by Mr. Barnes for week ending 8/21/04.

13 Paragraph 5; no evidence was presented that
14 Mr. Zirpolo disguised or misrepresented the connections
15 among the companies or served as a commercial reference.

16 Paragraph 6; no evidence was presented that
17 Mr. Zirpolo induced the staffing company to enter into an
18 arrangement by making false representations that IRP, LTI
19 or DKH had large current or impending contracts with one
20 or more large government agencies.

21 Paragraph 7; no evidence was presented that
22 Mr. Zirpolo approved or submitted time cards containing
23 false statements about the number of hours worked, time of
24 day and/or nature of the work. Again, the Government is
25 going to assert that these were false time cards. They

1 did not prove that Mr. Zirpolo knew that the time being
2 submitted was false.

3 Paragraph 8; no evidence was presented that
4 Mr. Zirpolo used a variety of tactics to prevent staffing
5 companies from discovering they did not have the ability
6 to pay. Tactics include representations about slow
7 government pay cycles, preventing staffing companies from
8 learning employees previously worked for the company, or
9 refusing to meet with the staffing company.

10 Count 11, mail fraud again. Caused an invoice to
11 be sent through the U.S. Mail from Kelly Services of work
12 purportedly performed by Mr. Zirpolo for week ending
13 9/19/04.

14 Paragraph 5; no evidence was presented that
15 Mr. Zirpolo disguised or misrepresented connections among
16 the companies or served as a commercial reference.

17 Paragraph 6; no evidence was presented that
18 Mr. Zirpolo induced the staffing company to enter into any
19 arrangements by making false representations that IRP, LTI
20 or DKH had large current or impending contracts with one
21 or more large government agencies.

22 Paragraph 7; no evidence was presented that
23 Mr. Zirpolo approved or submitted time cards containing
24 false statements about the number of hours worked, time of
25 day, or the nature of the work.

1 Paragraph 8; no evidence was presented that
2 Mr. Zirpolo used a variety of tactics to prevent staffing
3 companies from discovering they did not have the ability
4 to pay. Tactics including representations about slow
5 government pay cycles, preventing staffing companies from
6 learning employees previously worked for the company, or
7 refusing to meet with the staffing companies.

8 Count 12, mail fraud again. Caused an invoice to
9 be sent through the U.S. Mail from Computer Merchant Group
10 for work purportedly performed by Mr. Zirpolo for week
11 ending 9/26/04.

12 No evidence -- paragraph 5; no evidence was
13 presented that Mr. Zirpolo disguised, misrepresented
14 connections among the companies or served as commercial
15 references.

16 Paragraph 6; no evidence was presented that
17 Mr. Zirpolo included -- induced the staffing companies to
18 enter into the arrangement by making false representations
19 that IRP, LTI or DKH had large current or impending
20 contracts with one or more large government agencies.

21 Paragraph 7; no evidence was presented that
22 Mr. Zirpolo approved or submitted time cards containing
23 false statements about the number of hours worked, the
24 time of day, and/or the nature of the work. Again, the
25 Government will assert that these are false time cards.

1 They did not prove that Mr. Zirpolo knew that the time was
2 false.

3 Count 13, mail fraud. Caused an invoice to be sent
4 through the U.S. Mail from Boecore for work purportedly
5 performed by ST between 10/16/04 and 10/29/04. During
6 testimony, ST, which I believe stands for Sam Thurman --
7 Samuel K Thurman, am I correct?

8 Mr. Kirsch, it says ST.

9 MR. KIRSCH: That is Samuel K. Thurman, Your Honor.

10 MR. ZIRPOLO: During testimony, Samuel Thurman
11 stated that his hours were accurate. And, furthermore,
12 Scott Boe could not testify as to whether the invoices
13 were sent through e-mail or the U.S. Mail to IRP. And the
14 Indictment states that it was through the U.S. Mail.

15 Again, paragraph 5, there was no evidence presented
16 that Mr. Zirpolo disguised or misrepresented connections
17 among the companies or served as commercial references.
18 There was no evidence presented that Mr. Zirpolo induced
19 the staffing company to enter into the arrangement by
20 making false representations that IRP, LTI or DKH had
21 large current or impending contracts with one or more
22 large government agencies. There was no evidence
23 presented -- as a matter of fact, evidence showed that the
24 hours submitted and approved were accurate.

25 Paragraph 8; there was no evidence presented that

1 Mr. Zirpolo used a variety of tactics to prevent staffing
2 companies from discovering they did not have the ability
3 to pay. Tactics including representations about slow
4 government pay cycles, preventing staffing companies from
5 learning employees previously worked for the company, or
6 refusing to meet with the staffing company. In that
7 instance, Scott Boe said he met with me.

8 Item 17, wire fraud. Caused invoice to be sent
9 through wire communication from Headway for work
10 purportedly performed by various employees for week ending
11 12/19/04.

12 Paragraph 5; no evidence was presented that
13 Mr. Zirpolo disguised or misrepresented connections among
14 the companies or served as a commercial reference.

15 Paragraph 6; no evidence was presented that
16 Mr. Zirpolo induced the staffing company to enter into the
17 arrangement by making false representations regarding IRP,
18 LTI or DKH; that DKH had a large current or impending
19 contract with one or more large government agencies.

20 Paragraph 7; no evidence was presented that
21 Mr. Zirpolo approved or submitted time cards containing
22 false statements about the number of hours worked, time of
23 day or the nature of the work. Again, the Government will
24 assert that the hours are false, but they do not prove
25 that Mr. Zirpolo knew the hours were false.

1 Paragraph 8, no evidence was presented that
2 Mr. Zirpolo used a variety of tactics to prevent staffing
3 companies from discovering they did not have the ability
4 to pay. Tactics including representations about slow
5 government pay cycles, preventing staffing companies from
6 learning employees previously worked for the company, or
7 refusing to meet with the staffing company.

8 Count 18, wire fraud. Caused an invoice to be sent
9 through wire communications from Headway for work
10 purportedly performed by various employees for week ending
11 12/31/04.

12 Paragraph 5; no evidence was presented that
13 Mr. Zirpolo disguised or misrepresented connections among
14 the companies or served as a commercial reference. No
15 evidence was presented that Mr. Zirpolo induced the
16 staffing companies to enter into an agreement by making
17 false representations that IRP, LTI or DKH had large
18 current or impending contracts with one or more government
19 agencies.

20 Paragraph 7; no evidence was presented that
21 Mr. Zirpolo approved or submitted time cards containing
22 false statements about the number of hours worked, the
23 time of day or the nature of the work. Again, the
24 Government will say that these time cards were false.
25 They did not prove that Mr. Zirpolo knew that the time was

1 false.

2 Paragraph 8; no evidence was presented that
3 Mr. Zirpolo used a variety of tactics to prevent staffing
4 companies from discovering they did not have the ability
5 to pay. Tactics including representing about slow
6 government pay cycles, preventing staffing companies from
7 learning employees previously worked for the company, or
8 refusing to meet with the staffing company.

9 Count 19, mail fraud. Caused an invoice to be sent
10 through the U.S. Mail from Boecore for work purportedly
11 performed by Sam Thurman between 9/27/04 and 1/9/05.

12 Testimony showed that Sam Thurman testified that his hours
13 were accurate. And, also, Scot Boe could not testify as
14 to whether the invoices were sent to IRP through e-mail or
15 the U.S. Mail. The Indictment states through U.S. Mail.

16 Paragraph 5; no evidence was presented that
17 Mr. Zirpolo disguised or misrepresented the connections
18 among the companies or served as a commercial reference.

19 Paragraph 6; no evidence was presented that
20 Mr. Zirpolo induced the staffing company to enter into the
21 arrangement by making false representations that IRP, LTI
22 or DKH had large current or impending contracts with one
23 or more large government agencies.

24 Paragraph 7; no evidence was presented that
25 Mr. Zirpolo approved or submitted time cards containing

1 false statements about the number of hours worked, time of
2 day or nature of the work. As a matter of fact, testimony
3 showed that the witness said the hours were accurate.

4 Paragraph 8; no evidence was presented that
5 Mr. Zirpolo used a variety of tactics to prevent staffing
6 companies from discovering they did not have the ability
7 to pay. Tactics including representations about slow
8 government payroll cycles, preventing staffing companies
9 from learning employees previously worked for the company,
10 or refusing to meet with the staffing company. Scott Boe
11 testified that he did meet with me, and I did respond to
12 his e-mails.

13 Count 20, mail fraud. Caused an invoice to be sent
14 through the U.S. Mail from MSX for work purported
15 performed by Mr. Barnes from 1/1/05 to 1/15/05.

16 Paragraph 5; no evidence was presented that
17 Mr. Zirpolo disguised or misrepresented connections among
18 the companies or served as a commercial reference.

19 Paragraph 6; no evidence was presented that
20 Mr. Zirpolo induced the staffing company to enter into
21 arrangements by making false representations that IRP, LTI
22 or DKH had large current or impending contracts with one
23 or more large government agencies.

24 Paragraph 7; no evidence was presented that
25 Mr. Zirpolo approved or submitted time cards containing

1 false statements about the number of hours worked, time of
2 day or the nature of the work. Again, the Government will
3 show that these are false time cards, but they did not
4 show that Mr. Zirpolo knew that they were false.

5 No evidence was presented that Mr. Zirpolo used --
6 paragraph 8, I am sorry. No evidence was presented that
7 Mr. Zirpolo used a variety of tactics to prevent staffing
8 companies from discovering they did not have the ability
9 to pay. Tactics including representation about slow
10 government pay cycles, preventing staffing companies from
11 learning employees previously worked for the company, or
12 refusing to meet with the staffing company.

13 Count 21, mail fraud --

14 THE COURT: Mr. Zirpolo, can you slow down just a
15 bit so the court reporter can get it all down.

16 MR. ZIRPOLO: I am sorry.

17 THE COURT: It is difficult when you start reading.

18 MR. ZIRPOLO: Yes. I understand. I just want to
19 make sure I don't forget anything.

20 THE COURT: All right.

21 MR. ZIRPOLO: Count 21, mail fraud again. Caused
22 an invoice to be sent through the U.S. Mail from Computer
23 Merchant Group for work purportedly performed by
24 Mr. Zirpolo for 1/9/05 through 1/16/05.

25 Paragraph 5; no evidence was presented that

1 Mr. Zirpolo disguised or misrepresenting connections among
2 the companies or served as a commercial reference.

3 Paragraph 6; no evidence was presented that
4 Mr. Zirpolo induced the staffing company to enter into the
5 arrangement by making false representations that IRP, LTI
6 or DKH had large current or impending contracts with one
7 or more large government agencies.

8 Paragraph 7; no evidence was presented that
9 Mr. Zirpolo approved or submitted time cards containing
10 false statements about the number of hours worked, time of
11 day or nature of work. Again, the Government is going to
12 say that these hours were false. There is no evidence
13 showing that those hours were false.

14 Paragraph 8; no evidence was presented that
15 Mr. Zirpolo used a variety of tactics to prevent staffing
16 companies from discovering that they did not have the
17 ability to pay. Tactics include representations about
18 slow government pay cycles, preventing staffing companies
19 from learning employees previously worked for the company,
20 or refusing to meet with the staffing company.

21 Count 22, mail fraud. Caused an invoice to be sent
22 through the U.S. Mail from Blackstone Technology Group for
23 work purportedly performed by various employees from
24 1/9/05 through 1/16/05.

25 Paragraph 5; no evidence was presented that

1 Mr. Zirpolo disguised or misrepresented connections among
2 the companies or served as a commercial reference. No
3 evidence was presented that Mr. Zirpolo induced the
4 staffing company to enter into the arrangement by making
5 false representations that IRP, LTI or DKH had large or
6 impending contracts with one or more large government
7 agencies.

8 Paragraph 7; no evidence was presented that
9 Mr. Zirpolo approved or submitted time cards containing
10 false statements about the hours worked, time of day
11 and/or nature of the work. Again, the Government will
12 show that -- will try to show that these were false time
13 cards, but he did not prove that Mr. Zirpolo knew that the
14 time cards were false.

15 Paragraph 8; no evidence was presented that
16 Mr. Zirpolo used a variety of tactics to prevent staffing
17 companies from discovering they did not have the ability
18 to pay. Tactics include representations about slow
19 government pay cycles, preventing staffing companies from
20 learning employees previously worked for the company, or
21 refusing to meet with the staffing companies.

22 Count 23, mail fraud. Caused an invoice to be sent
23 through the U.S. Mail from MSX for work purportedly
24 performed by Mr. Barnes for 1/16/05 through 1/31/05 --

25 THE COURT: Mr. Zirpolo, slow down.

1 MR. ZIRPOLO: I am sorry. I was speeding up again?

2 THE COURT: Your voice dropped, the speed
3 continued.

4 MR. ZIRPOLO: Okay. Paragraph 5; no evidence was
5 presented that Mr. Zirpolo disguised or misrepresented
6 connections among the companies or served as a commercial
7 reference. No evidence was presented that Mr. Zirpolo
8 induced the staffing company to enter into the arrangement
9 by making false representations that IRP, LTI or DKH had
10 large current or impending contracts with one or more
11 large government agencies.

12 Paragraph 7; no evidence was presented that
13 Mr. Zirpolo approved or submitted time cards containing
14 false statements about the number of hours worked, time of
15 day, and/or the nature of the work. Again, the Government
16 will try to prove that these were false time cards, but
17 they do not prove that Mr. Zirpolo knew the time cards
18 were false.

19 Paragraph 8; no evidence was presented that
20 Mr. Zirpolo used a variety of tactics to prevent staffing
21 companies from discovering they did not have the ability
22 to pay. Tactics include representations about slow
23 government pay cycles, preventing staffing companies from
24 learning employees previously worked for the company, or
25 refusing to meet with staffing companies.

1 Now, under each one of these counts, the paragraphs
2 that I mentioned reflect the evidence that was shown for
3 each of those counts. In conclusion, I ask that the Court
4 grant this motion for judgment of acquittal pursuant to
5 Article 29(a) for Mr. Zirpolo. Thank you.

6 THE COURT: Thank you.

7 Mr. Barnes?

8 MR. BARNES: Thank you, Your Honor.

9 After 44 witnesses and support information, the
10 evidence is insufficient beyond a reasonable doubt that I,
11 Kendrick Barnes, conspired to commit mail and wire fraud
12 against the 40-plus staffing agencies alleged in Count 1,
13 or committed mail fraud by submitting alleged false time
14 in Counts 5, 7, 8, 20 and 23 of the Indictment.

15 I respectfully ask, after careful review of the
16 evidence in support of the conspiracy charge and mail
17 fraud charges, lead to the conclusion there is an absence
18 of proof, and judgment of acquittal must be entered in my
19 favor.

20 There has been no evidence of contact with any
21 staffing agencies or any statements being made to the
22 staffing agencies, false or otherwise, on behalf of IRP,
23 Leading Team or DKH by myself. There has been no evidence
24 shown that any witness testified also to the fact that I
25 contacted any staffing agency on behalf of any of those

1 three companies; IRP, Leading Team or DKH.

2 No evidence was also shown that I knew anything
3 about any sales efforts or client representations made to
4 IRP, Leading Team or DKH, such clients being any law
5 enforcement agency that they may have been dealing with at
6 the time.

7 And there was no witness to support I was in
8 contact or could have known about negotiations or sales
9 initiatives between Leading Team, IRP or DKH and any law
10 enforcement agencies. The Government's own witness, Sam
11 Thurman, testified of me having knowledge of me being in
12 the IT department working at IRP.

13 There was no evidence presented of communication
14 from anyone at DKH, Leading Team or IRP and myself about
15 sales initiatives inside of IRP, DKH or Leading Team.
16 There has also been no evidence of communication with
17 myself or financial knowledge, such as debts or payments
18 inside of DKH, Leading Team or IRP.

19 And there has been shown no evidence of false
20 statements on the type of work being performed by myself.
21 Plus, the Government never showed what type of work was
22 being done outside of work being IT related. They never
23 went into a sense of what work I could have done or not
24 could have done, and they didn't show that I was not able
25 to perform that work.

1 The Government never showed evidence of myself
2 representing DKH, Leading Team or IRP to any staffing
3 agency or showed any evidence that I knew of any
4 statements, false or otherwise, to any staffing agency.
5 The Government's own witness, Greg Krueger, testified,
6 asking if I knew anything, and -- if I knew anything when
7 the contract was over, and was told by me I didn't know
8 what was going on, in reference to the contract.

9 The Government has not even showed or explained
10 what work was being done by me to even show that the work
11 could not have been done by me, and no evidence shown of
12 approvals of any of the defendants' time sheets or anyone
13 by myself.

14 The Government has also not proved statements and
15 time sheets completed by me were false. Government
16 witnesses did acknowledge that contractors do and can work
17 multiple jobs. Those witnesses were Dean Hale, Greg
18 Krueger, John Landau and Mike Seeley. They all testified
19 to the fact that they do know IT contractors do work
20 multiple contracts simultaneously. And the Government did
21 not show evidence that it could not be done, nor had any
22 testimony or evidence to refute those claims that it could
23 not be accomplished.

24 The Government also did not show evidence to prove
25 that if you are working multiple contracts at one time,

1 that it is fraud. The Government's witness, Kimberly
2 Carter, said, at first, that it would be fraudulent, but
3 agreed, after explanation of how it could be possible,
4 that it could be done. And then after that, they did not
5 prove or show any evidence as to why she felt or proved
6 that it could be fraudulent.

7 And the Government also shows that high hours --
8 the Government only showed that high hours or beyond 24
9 hours as unusual for the Government, but showed no proof
10 that high billable hours meant fraudulent hours.

11 The Government also did not prove that it did not
12 perform the work or show that I was not capable of doing
13 the work simultaneously, that I was according time to. In
14 addition, the Government provided my banking records as
15 evidence, and showed no evidence that any moneys that were
16 received from any checks did not go to me or showing
17 evidence that they went to anywhere else; showing that,
18 basically, I worked the hours, and was paid for the hours.

19 The Government did not also prove that any other
20 contractor who they showed evidence of having multiple
21 contracts were committing fraud, either, or not doing
22 their work, nor decided to indict all those contractors as
23 part of the conspiracy.

24 Also, the Government's own witness, Mike Seeley,
25 recalled me asking if I had worked at IRP before, and knew

1 David Banks, in which I replied to him, yes. And the
2 Government has not shown any evidence that I tried to hide
3 my association with IRP, DKH or Leading Team, or any
4 knowledge of any of the six defendants or anyone at IRP.

5 Also, the Government has not shown any evidence
6 that at any time I represented myself as anyone other than
7 Kendrick Barnes or that anyone represented themselves as
8 me, also. And I would ask that with the lack of evidence,
9 that the Government would grant my motion of acquittal on
10 the lack of evidence being shown.

11 THE COURT: Thank you, Mr. Barnes.

12 Mr. Stewart?

13 MR. STEWART: Yes. Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. STEWART: Thank you. Your Honor, I, Clinton
16 Stewart, pro se defendant in this case, would motion this
17 Court -- to move this Court for a judgment of acquittal
18 pursuant to Article 29(a) of the Federal Rules of Criminal
19 Procedure.

20 The Government's evidence is insufficient to prove
21 that there was an agreement to defraud. And, again, no
22 evidence has been presented of an agreement to violate the
23 law, which is the bedrock of the charge of conspiracy.
24 Even using the legal standard of preponderance, the number
25 of impeachments and the inconsistent statements by the

1 Government's witnesses, further weakens the position of
2 their case in chief, and the burden of proof, therefore,
3 precipitating the brief case in chief that they put on.

4 Shall the Court compel the defendants to prove
5 their innocence rather than require the Government to
6 prove their Indictment charges? The Government has
7 calculated disbursements to Mr. Stewart as \$67,000 over a
8 3-year period. This equates to an average salary of
9 \$26,804 a year, or an average hourly pay rate of \$12.88 an
10 hour. It is not a very compelling motive for conspiracy.

11 Myself, Clinton A. Stewart, pro se defendant, moves
12 this Court for acquittal judgment in this matter.

13 Count 1, paragraph 5; the manner and means alleged
14 in the Government's Indictment in violation of Title 18 of
15 the United States Code, 1349, says that the manner and
16 means for a perpetuated scheme to defraud between Leading
17 Team, IRP and DKH, using them as a tool.

18 The Government's witnesses, the executives of
19 staffing companies and others, in their testimony, they
20 said that payment plans or personal guarantees suggest
21 that there is no scheme to defraud but, rather, a plan to
22 pay their debts.

23 With regard to disguising connections, also
24 identified in that paragraph of Count 1, one of the
25 Government's witnesses, the Systems Engineering, SESC and

1 others, contracted with IRP and subcontracted with DKH at
2 the same time. So they knew the connection with the
3 companies.

4 Also in that paragraph, the Government asserts in
5 the Indictment that there is misrepresentations of
6 connections between the companies. And DKH was reported,
7 by the testimony of the Government's witnesses, as
8 understanding that DKH supported IRP projects, and that
9 was their role and their relationship.

10 The defendant, Clinton Stewart, made no commercial
11 references, and the evidence of legitimate references was
12 shown. But, in any regard, I made no references for
13 credit in the relationships with the company.

14 Paragraph 6 of Count 1, again, of Title 18, United
15 States Code, 1349, says that current or impending
16 contracts were asserted as false statements with large
17 government agencies. And the Government put on their
18 witnesses. The multiple impeachments and inconsistencies
19 in statements showed this not to be true.

20 Again, with DHS, NYPD, Bureau of Prisons,
21 Department of Justice, current or impending contracts,
22 statements to that effect were again and again impeached
23 or made inconsistent by the Government's witnesses.

24 With respect to paragraph 7 of Count 1 of the
25 United States Code, Title 18, Section 1349 says, the

1 manner and means of time cards was used -- false
2 statements in hours worked by others. The Government has
3 shown no proof of this. Again, with respect to time cards
4 in that same paragraph in Count 1, the Government asserts
5 that time cards -- that this defendant made false
6 statements with the concurrency of time worked in time
7 cards. They have shown no proof of that.

8 Again, the nature of the work in those time cards,
9 the Government asserts that they are false statements.
10 They've shown no proof of that. In paragraph 8 of Count
11 1, the manner and means to carry out the conspiracy as
12 alleged in the Indictment, a violation of Title 18, United
13 States Code, 1349, the Government mentions cause not to
14 pay for services. They have not proven that.

15 Tactics preventing discovery and the ability to
16 pay. They have not proven that. Quite the contrary, time
17 and time again, their witnesses have shown that they ran a
18 Dun & Bradstreet report to show the credit standing of the
19 companies involved before they were doing business with
20 them. So they weren't tactics preventing discovery of the
21 ability to pay.

22 Fraudulent statements about slow government
23 payments. This defendant has made no fraudulent statement
24 about slow government payment cycles.

25 Again, in Count 1, paragraph 10, the Government

1 alleges 14 overt acts with regard to Title 18 -- in
2 violation of Title 18, United States Code, Section 1349.
3 The time cards have not been proven to be falsely
4 reported. Again and again, the Government's witnesses
5 said that they have no reason to believe that the time
6 reported was not accurate.

7 With regard to the e-mails and the overt acts, CTG,
8 in particular, the Government's witness, Donald Crockett,
9 completely went against his statements that he made in the
10 Form 302 interview, and it was a very positive witness for
11 the defense, because Mr. Crockett said that I met with
12 him.

13 In terms of meetings with SESC, on July 28, 2003,
14 that same overt act that the Government alleges, the
15 witness was impeached with inconsistent statements. The
16 allegations by invoices for this defendant, Clinton A.
17 Stewart, counts 4, 8, 12, 18, 20 and 21 of the Indictment;
18 manner and means alleged in violation of Title 18, United
19 States Code, Section 1349.

20 And Count 4, paragraph 16, mentions Kelly Services,
21 August 22, 2004. Kelly Services' witness said that they
22 have no reason to believe that the time was falsely
23 reported. There was no false statements made about the
24 hours. And it is unproven.

25 In paragraph 24 of Count 8, the Staffmark invoice,

1 September 2004, again, the hours have not been proven to
2 be falsely reported.

3 And the Indictment, in Count 12, paragraph 32, in
4 alleged violation of Title 18, United States Code, Section
5 1341 and -42, The Computer Merchants' invoice from October
6 1, 2004. The witnesses said they have no reason to
7 believe that the hours reported were false. So the
8 Government hasn't proven those items in the Indictment.

9 On January 7, 2004, Indictment Count 18, paragraph
10 44, alleged violations of United States Code, Title 18,
11 Section 1341 and -42. The Government alleges that the
12 Headway invoice was somehow false. A false statement was
13 made about those hours. And the witness on the stand did
14 not support that. So that's unproven.

15 In the Indictment, Count 20, paragraph 48, again,
16 of the Title 18, Section 1341 and -42, MSX International,
17 on January 15, 2005, there is no -- the Government did not
18 prove that those hours are falsely reported.

19 In the Indictment, Count 21, paragraph 50, again,
20 of the Section 1341 and - 42 of Title 18, again, with
21 January 21, 2005, those hours have not been proven to be
22 false.

23 With all of the foregoing, the defendant, Clinton
24 A. Stewart, would move this Court for an acquittal
25 judgment in this matter. Thank you.

1 THE COURT: Thank you, Mr. Stewart.

2 Mr. Harper?

3 MR. HARPER: Your Honor, at this time I would like
4 to make a motion for judgment of acquittal pursuant to
5 Rule 29(a). If I may be briefly heard on that, Your
6 Honor.

7 THE COURT: You may.

8 MR. HARPER: Again, pursuant to Rule 29(a) of the
9 Federal Rules of Criminal Procedure, defendant Demetrius
10 K. Harper hereby moves the Court to enter judgment of
11 acquittal on Count 1; conspiracy to commit mail and wire
12 fraud, mail fraud Counts 3, 4, 11, 12, 13, 19 and 21. And
13 the Counts of wire fraud, Counts 9, 15 through 18 and 24.

14 The Government has not presented sufficient
15 evidence for a reasonable jury to find Mr. Harper guilty
16 beyond a reasonable doubt. The defendant advises the
17 Court that the Government's case was founded on a
18 distorted rendition of the facts alleged in the
19 Indictment.

20 Now, the Court and jury have heard eight days of
21 Government testimony, or 44 witnesses, and hundreds of
22 Government exhibits and defense exhibits. The only
23 reasonable conclusion that may be drawn from the
24 Government's evidence is that there is a total absence of
25 evidence to support the charge of conspiracy and mail and

1 wire fraud against Mr. Harper.

2 No evidence was shown or presented of an agreement
3 to violate the law, to defraud, or devise a scheme to
4 commit conspiracy.

5 Here, the Government has attempted to stretch the
6 conspiracy statute far beyond its appropriate bounds. But
7 this time has come to recognize that the evidence simply
8 does not prove a crime. The evidence was insufficient
9 that the members of the alleged conspiracy came to a
10 mutual understanding to try to accomplish a common and
11 unlawful plan.

12 I respectfully submit that careful scrutiny of the
13 evidence in support of the conspiracy charge and mail and
14 wire fraud leads to one conclusion; there is an absence of
15 proof. And a judgment of acquittal must be entered in
16 favor of Mr. Harper. No reasonable juror could conclude
17 otherwise.

18 With regards to the overt acts in the furtherance
19 of the conspiracy Count 1, in testimony in court, the time
20 card is the only way that a consultant can prove hours
21 worked. At no time did any of the defense witnesses agree
22 that a false time sheet was committed. In fact, they
23 agreed that they he had no knowledge or evidence to prove
24 otherwise.

25 So, having stated that, they did agree that the

1 time reported was approved and submitted per their
2 agreement.

3 C; SESC. We did meet with Dean Hale at SESC, and
4 we did disclose DKH's relationship to IRP. DKH was to
5 provide staffing to IRP, and I would be invoiced in
6 return. So there was disclosure to let that individual,
7 Mr. Hale, know that DKH has been working with IRP on
8 government projects.

9 D; time sheet for Gary Walker. It was alleged the
10 time sheet was false or fraudulent. Again, at no time did
11 the Government prove that the hours purportedly worked
12 were false or fraudulent, neither the time of day nor the
13 nature of the work. We had several Government witnesses
14 attest that a billable consultant can work multiple
15 projects at one time.

16 E; time sheet -- caused submission of a time sheet.
17 This also was not proven that a time sheet and the hours
18 reported were false or fraudulent.

19 Section H of that, the overt acts using various
20 staffing companies. As owner and president of DKH
21 Enterprises, I have the ability to find different vendors
22 to provide to my client. So it is my job to find certain
23 vendors to provide staff. So that is the reason why
24 staffing companies were engaged.

25 Section J; time sheet calls of submission. Again,

1 the Government has not proven false or fraudulent time was
2 reported. And, again, the Government's witnesses
3 concurred that no evidence would allow them to conclude
4 that the time sheet was false or fraudulent.

5 Again, Your Honor, I'm being charged with multiple
6 counts of mail and wire fraud per -- I am sorry, if I can
7 direct your attention to Instruction 8; credibility of a
8 witness, and Instruction 9; impeachment by a prior
9 inconsistency.

10 THE COURT: You don't need to refer me to that. I
11 am totally aware of it.

12 MR. HARPER: Time and time again, the Government
13 witnesses were on record and were impeached to say that we
14 had a great project that we are looking to wrap up. At no
15 time did I convey that a contract was in place. You had
16 several Government witnesses that believed, assumed,
17 interpreted that there was a contract in place.

18 When further questioning these witnesses, and asked
19 their policy and procedures on going into business with a
20 client, they told us they run a D & B; a Dun & Bradstreet,
21 and a credit check. So no false statement was made. The
22 statement was made that we are working on a project, which
23 is a true statement.

24 It also alleges that a current large government
25 project -- contracts or impending contracts. Again, the

1 thought, belief, assumption or interpretation that a
2 contract was in place was outlined when we had the witness
3 on the stand. Again, working on a great project to wrap
4 up with NYPD is not material, because that statement is
5 true. The statement is not the determining factor to do
6 business. Hence, the staffing company did run their due
7 diligence in regards to a Dun & Bradstreet and credit
8 check.

9 In regards to Count 3 of the Indictment; mail
10 fraud. It alleges that Demetrius Harper, having devised
11 and intended to devise a scheme described in paragraphs 5
12 and 9, to induce Kelly Services to produce an invoice.
13 And we had Government witness Jeff Kelly on the stand, and
14 he clearly stated we are looking to wrap up a project with
15 NYPD. At no time was the statement made to Mr. Kelly that
16 a contract was in place. Rather, he assumed that there
17 was.

18 Jeff Kelly was also not the decision maker, and
19 needed to be approved by someone else. So Jeff Kelly went
20 back to his regional VP, and they pushed -- ran credit,
21 and pushed the deal through. That was Count 3; mail
22 fraud.

23 Count 4, Kathy Olson with Staffmark. She did not,
24 again, do her due diligence; did not run a credit check,
25 and had no knowledge of a credit check. She interpreted,

1 as her testimony, that DKH or IRP had a contract. And it
2 was also her opinion on the information received from me,
3 that a contract was in place. That was her belief, but at
4 no time was that statement made that a contract was in
5 place.

6 Further, on cross-examination, she said -- one of
7 her statements that she said was that since she believed a
8 contract was in place, this was helping her determine if
9 the invoices would be paid. My question back to her was,
10 if that was the case, would you care if the contract was
11 worth \$100 or 10 million? That definitely refutes her
12 previous testimony in regards to the importance of the
13 size of that contract.

14 No false statements were made in regards to that.
15 The hours worked were submitted and approved. The
16 Government did not prove that the hours related to
17 Staffmark were false or fraudulent.

18 Count 9; wire fraud. The Computer Merchant Group
19 alleged that -- in the Government exhibit, of an immediate
20 need and a possible alliance. We specifically stated that
21 we were looking to wrap up a great project with the NYPD.
22 This was Government Exhibit 430.07, as well as Government
23 Exhibit 9. At no time was a false statement made to the
24 representative at Computer Merchant that there was a
25 pending or current contract.

1 Count 11; mail fraud. Again, Jeff Kelly, with
2 Kelly Services. It is alleged in Count 11 that the U.S.
3 Postal Service, private or commercial, was used to submit
4 a check or deposit a check. Again, no false statements,
5 no fraud.

6 Count 12; mail fraud. Again, the Computer Merchant
7 Group -- I will restate that we informed the client there
8 at Computer Merchant that we were looking to wrap up a
9 great project with the NYPD. No false statement was made
10 in regards to having a current or active or impending
11 contract. And, Your Honor, that was Courtney Mullen.

12 Count 13; this was Boecore with Scott Boe. Calls
13 for an invoice to be sent through the U.S. Mail from
14 Boecore on work purportedly performed by Samuel Keenan
15 Thurman. Again, as we have already stated, Samuel Keenan
16 Thurman did testify that the hours were worked, they were
17 approved, and submitted by him. And that is Count 13.

18 Scott Boe could not testify to whether the invoices
19 sent to IRP were used by e-mail or U.S. Mail. And that,
20 in the indictment, states it was through the U.S. Mail.

21 Count 15, wire fraud. Again, intended to devise a
22 scheme described in paragraphs 5 and 9 for purposes of
23 executing the scheme and cause to be deposited via U.S.
24 Mail or private or commercial interstate for that check in
25 question for Judge Technical. Again, no false

1 representations were made to Judge Technical about a
2 current or pending contract.

3 Count 16; wire fraud. It alleges that for purposes
4 of executing the scheme described in paragraphs 5 and 9,
5 that an e-mail was sent about account status. Every time
6 that we reached out to a customer when they wanted status
7 of an account, we would, via the Government's testimony
8 get back with them. It might not have been on the same
9 day, but we would get back on them.

10 Your Honor, I would also like to remind you that
11 many staffing companies were out of state, so we could not
12 meet face to face. Most of it was done either over the
13 phone or through e-mail.

14 Count 17; wire fraud. Again, alleged Headway
15 Corporate Staffing with 256.5 hours of work purportedly
16 performed by various employees. Again, the Government has
17 not proven that the time sheets were false or fraudulent.
18 In fact, those time sheets were signed and approved for
19 the hours worked, the nature of the work, and the time of
20 day. Again, a contractor can work multiple positions.

21 Count 18, same thing. Headway Corporate Staffing
22 with hours purportedly worked. Again, the Government has
23 not proved that those hours were false or fraudulent or
24 proved that Mr. Harper knew that the time sheet was false
25 or fraudulent.

1 Count 19; mail fraud. Again, Scott Boe testified
2 as the Government witness that he does not recall whether
3 the invoice was sent through e-mail or U.S. Mail. As
4 well, Samuel Keenan Thurman attests that all hours were
5 worked, submitted and approved.

6 Count 21; mail fraud. This was also Computer
7 Merchant Group, that the 88 hours worked, purportedly
8 performed by Mr. Zirpolo, week ending January 9, 2005, and
9 January 16, 2005. No evidence has been shown to prove
10 that the time sheet was false or fraudulent, nor has the
11 Government proven that Mr. Harper knew the time sheet was
12 false or fraudulent.

13 Count 24; wire fraud. Again, causing a check to be
14 deposited or delivered by U.S -- United States Mail or
15 private or commercial interstate, Check No. 190803 in the
16 amount of \$1,008.75. And, the Government has not proven
17 that the statements made were false to induce this check
18 to be deposited.

19 In conclusion, Your Honor, for the reasons set
20 forth and mentioned above, I move the Court for judgment
21 of acquittal on all charges. Thank you.

22 THE COURT: Thank you, Mr. Harper.

23 Mr. Banks?

24 MR. BANKS: Thank you, Your Honor. I would like to
25 start by -- I want to give an explanation. I want to go

1 through this kind of maybe as quick as possible, but I
2 want the Court, in its consideration, to consider the
3 overall plight of small business and how business is done.

4 I would like to refer the Court to --

5 THE COURT: Now, we are only here to discuss
6 whether the evidence put on by the Government, viewed in
7 the light most favorable to the Government, provides
8 substantial evidence from which a jury might properly find
9 beyond a reasonable doubt that you all committed the
10 crimes charged. So I don't want to get into the history
11 of small business. It is just does the evidence --

12 MR. BANKS: Oh, no, I will directly do that.

13 THE COURT: I told the jury until 11:00, and we are
14 already at 10:45.

15 MR. BANKS: Okay. Your Honor, under Rule 29(a), I
16 would request the Court issue a motion -- I would like to
17 submit a motion for judgment of acquittal based on the
18 following:

19 Your Honor, I would like to start by discussing the
20 Government's evidence as it relates to Jury Instruction 14
21 regarding mail fraud; a scheme to defraud is defined as
22 conduct intended or reasonably calculated to deceive
23 persons of ordinary prudence and comprehension.

24 I will submit to you that the Government
25 witnesses -- the witnesses that have been provided by the

1 Government, Your Honor, are sophisticated in this
2 industry. And that if -- that the statements that were
3 made, I would like to put on the record by myself, were
4 not fraudulent in any way. I would also submit to the
5 Court that if it was fraudulent, that it would not have
6 been material in that fashion.

7 And I would like to note that during the course of
8 many -- the underpinnings of the Government's case is
9 based on false representations as it relates to current
10 and impending contracts. That is what the Government, in
11 almost totality, Your Honor, tried to prove during his
12 direct witness testimony.

13 In the majority of those cases, the credibility of
14 the Government witnesses consistently had inconsistent
15 testimony as it related specifically to current and
16 impending contracts. So based on Jury Instruction No. 8
17 and Jury Instruction No. 9, those witnesses were
18 consistently impeached on the basis of current and
19 impending contracts.

20 It was also evident from the Government's case,
21 Your Honor, that in many cases, I was not even speaking to
22 the person who had the ability to engage the company from
23 a credit perspective. You heard numerous testimony from
24 witnesses that they -- that if the credit department
25 approved, then it moved forward. Then business is

1 engaged.

2 So any sort of inducement that the Government has
3 alleged took place from false -- alleged false
4 representations, simply is not -- has not been proven by
5 the Government.

6 And with regards to a person of ordinary prudence
7 and comprehension, Your Honor, I looked up the definition
8 of "prudence." "The ability to govern or to discipline
9 ones self by use of reason." The Government witnesses
10 have been in this industry, many of them testified 20-plus
11 years, 15 years, and they understand what it takes to do
12 business and the basis for doing business. And it is
13 inconceivable that those particular witnesses, given their
14 level of sophistication in the staffing industry, would
15 simply say that, well, they told me that they might be
16 getting a contract or --

17 THE COURT: Now, Mr. Banks, you are essentially
18 making a closing argument to the jury. My role is
19 different. I have to view this evidence that was
20 submitted in the light most favorable to the Government.

21 MR. BANKS: Right.

22 THE COURT: I don't weigh it, other than to say, is
23 there enough. If I look at it in the light most favorable
24 to the Government, regardless of whether it was impeached,
25 unless it was just totally impeached. I don't really look

1 at that unless it really falls one way or another. So you
2 are making a closing statement, which is not applicable to
3 me.

4 Just the evidence in the light most favorable to
5 the Government. So it doesn't matter if you think they
6 were impeached. If they made a particular statement, and
7 it was not totally withdrawn, I have to consider that in
8 the light most favorable to the Government.

9 MR. BANKS: Absolutely.

10 THE COURT: All right.

11 MR. BANKS: Your Honor, I would say to that, that
12 numerous witnesses testified and completely withdrew from
13 their particular statements. They also said -- witnesses
14 also testified that the Dun & Bradstreet was solely
15 determinative on whether or not they did business, not
16 from representations. So the Government failed to prove
17 that not only were these false statements -- not only
18 proved -- their witnesses did not -- their witnesses could
19 not sufficiently say that they were deceived or that it
20 was actually material.

21 With regards to -- as far as the evidence that the
22 Government presented as far as the actual statements, Paul
23 Tran and Bill Witherspoon both attested to the fact, and
24 testified to the fact that IRP was engaged with the
25 department of Homeland Security in an effort to deliver

1 their software. With that in mind, no reckless or
2 baseless statements were made or could be deemed, as the
3 Government has set forth, that the defense put forth, were
4 not baseless and were not reckless.

5 Your Honor, I would go and discuss a little bit
6 with regards to my role and some of the charges that the
7 Government has set forth against me, as far as did I
8 disguise -- first, I will deal with refusal to meet
9 staffing company representatives. The Government
10 witnesses routinely testified that they could reach me.

11 Technisource, even in Virginia, I agreed to meet
12 with Technisource. There was no refusal. The Government
13 has not provided any evidence -- sufficient evidence that
14 I refused to meet with these staffing companies as alleged
15 in the Indictment.

16 The Government, with regards to my -- what is
17 alleged, as far as my fraudulent representations -- one
18 representation, I felt we were the solution of choice for
19 Homeland Security and for the NYPD. That is our belief,
20 Your Honor. And the Government did not prove in any way
21 that that was not our intent.

22 There was absolutely no statements by myself that
23 the Government has proven with regards to what he called
24 in the Indictment "slow government payment cycles." There
25 is not one shred of evidence that any statement along

1 those lines were made by myself.

2 The Government has put on evidence regarding --
3 inferential evidence regarding times -- hours worked by
4 myself which may have exceed the 24-hour mark. The
5 Government did not prove that those hours were not worked,
6 and the Government did not prove how those hours could or
7 -- could be worked or could not be worked.

8 The Government has not alleged that there was
9 anything criminal, and not proven anything criminal,
10 because I was a contract employee, as far as my trade is
11 concerned. The Government did not prove any evidence that
12 there was something -- that was a crime or something
13 illegal along those lines. He didn't provide any evidence
14 to the jury about that.

15 What the Government did prove is that time sheets
16 were sent during the course of business, and that the
17 company accumulated debt. The Government also did not
18 have any steps -- did not provide any sufficient evidence
19 that I took steps to prevent staffing companies from
20 learning that employees, through DKH or other staffing
21 companies, they were employees that were there to work.
22 And what the evidence showed in the Government's case;
23 people were hired, people worked, and people were paid.
24 Nothing more.

25 The Government did not prove in its case that the

1 commercial reference was not a legitimate business, as far
2 as SWV was concerned. The Government did not prove that
3 SWV could or could not be used as a personal reference or
4 that it was some sort of illegal corporation. The
5 Government did not prove that.

6 And, Your Honor, based on the following, I ask the
7 Court for a motion ---I ask the Court for a motion for
8 judgment of acquittal with regard to myself in this case.
9 Thank you.

10 THE COURT: Thank you.

11 Mr. Kirsch?

12 MR. KIRSCH: Thank you, Your Honor. Your Honor, I
13 will try to be brief. What I want to do is make a couple
14 of overall points, then just try to address specifically a
15 few of the arguments raised by the defendants.

16 The Government's position, as you would expect, is
17 that there is sufficient evidence, particularly when
18 viewed in the light most favorable to the Government, to
19 support all of the charges contained in this Indictment.

20 With respect to the conspiracy, there is ample
21 evidence that all of these defendants were participating
22 -- had an agreement. Certainly there wasn't a written
23 agreement, but clearly there was an unwritten agreement
24 demonstrated by the evidence among these defendants to
25 commit a conspiracy that was executed as outlined in the

1 Indictment.

2 All of these defendants knew the objectives of the
3 conspiracy. They were all knowingly, willingly and
4 voluntarily involved in the conspiracy, and there was
5 clearly interdependence among the members of this
6 conspiracy, as demonstrated by the various -- them playing
7 the various roles; approving time cards for each others,
8 that caused the various defendants to get checks and that
9 sort of thing.

10 With respect to the overt acts, of course, the
11 Government doesn't have to prove any overt acts with
12 respect to this conspiracy. So I'm not really going to
13 focus on those for the purpose of this argument, except to
14 point out that even if the Government did have to prove
15 overt acts, it doesn't have to prove anything in the overt
16 act, itself, is false or fraudulent.

17 With respect to the overall -- the overall fraud
18 charges, many of the defendants' arguments, again,
19 misconstrue what the Government has to prove. The
20 Government has to prove that the execution -- does not
21 have to prove that the individual executions, either the
22 mailings or the wirings, themselves were false or
23 fraudulent or involved false or fraudulent statements. It
24 merely has to prove that they somehow furthered the
25 scheme.

1 The Government's evidence proves that. The
2 Government has offered specific evidence, numbered as
3 Exhibits 2 through 24, that supports each one of those
4 counts.

5 With respect to the question about the mailing, my
6 memory is simply different than that of the defendants.
7 My memory is that Mr. Boe clearly testified that the
8 invoices were mailed. Mr. O'Gorman wasn't certain whether
9 the Blackstone invoice had been mailed or whether it had
10 been sent through e-mail. However, he testified that the
11 default was for it to go through mail, and that is enough
12 for that count to proceed to the jury.

13 Now, I will go just very briefly, Your Honor, with
14 respect to specific evidence that relates to each of the
15 defendants. With respect to Mr. Walker, who's charged
16 only in the conspiracy, there are multiple pieces of
17 evidence, including e-mails, that show Mr. Walker was
18 actively engaged in the process of locating and recruiting
19 staffing companies that could be used to further this
20 scheme.

21 Mr. Walker, himself, worked for six different
22 staffing companies. He reported overlapping time to at
23 least one of those staffing companies. There is also the
24 evidence in Government Exhibit 609.05, the folder with his
25 name on it, when combined with the financial records that

1 demonstrates that he, himself, was working under aliases,
2 including Willie Pee and Michael Benjamin. Mr. Walker
3 also, himself, approved double time that was submitted on
4 behalf of Mr. Barnes.

5 With respect to Mr. Zirpolo, there is evidence that
6 Mr. Zirpolo was involved in making false statements about
7 the nature of the company's work, both to the Blackstone
8 representatives and to the Boecore representative.
9 Mr. Zirpolo was involved in approving a number of the
10 double billing that was approved. He approved overlapping
11 time cards that were submitted to at least five different
12 companies. He did, in fact, make the slow payment
13 statements to Mr. Boe, and referred Mr. Boe to Mr. Banks.
14 When he inquired, Mr. Banks then made those same
15 statements again.

16 Mr. Zirpolo also is one of the people who signed in
17 as a new hire in Government Exhibit 608.76, on page 5,
18 with respect to Spherion, one of the companies for which
19 he was reporting time. So Mr. Zirpolo, himself, was
20 clearly involved in making false statements to the
21 staffing companies.

22 Mr. Barnes also made a number of false statements
23 to the staffing companies. He specifically made false
24 statements to Mr. Hayes, at Technisource, and Mr. Landau,
25 as ESG, about the nature and extent of his previous

1 employment and/or his current employment at IRP. He was
2 actively also -- also actively involved in the process of
3 gathering and identifying potential staffing companies, as
4 demonstrated by his receipt or sending of a number of
5 different e-mails.

6 He also reported more than 24 hours a day during
7 multiple different periods to three different staffing
8 companies. He worked for a total of 10 different staffing
9 companies over the course of this time, and not a single
10 one of those representatives testified that they were
11 aware that he was billing time to another staffing company
12 for the same client while that was happening. And every
13 single witness who was asked said that had they known
14 that, that would have been a problem.

15 Mr. Stewart participated in setting up the
16 relationship with multiple companies, including Computer
17 Task Group and SESC. He participated in the process of
18 locating other potential victim staffing companies. He
19 approved multiple time cards using two different names;
20 six using the name Clinton Stewart, and for six companies
21 using the name C. Alfred Stewart. He also worked under
22 the alias, Enrico Howard, as demonstrated by the financial
23 records and Government Exhibit 608.22.

24 And he participated in disguising the connections
25 between the companies. He was, we assume, at least one of

1 the recipients of the in-house, as were all of the
2 defendants, of Government 608.26. That was the e-mail in
3 which people were cautioned not to use the IRP fax or the
4 DKH fax or the IRP e-mail when they were contacting new
5 staffing companies, because that, of course, would have
6 revealed that they were already working for those
7 companies as opposed to being new employees.

8 Mr. Harper was involved in setting up numerous
9 relationships with staffing companies. He sent numerous
10 slow payment cycle letters and e-mails. He, himself,
11 worked for two different companies. He approved multiple
12 hours for eight different companies as Demetrius Harper,
13 and for six different employees for The Judge Group, as
14 Ken Harper, rather than Demetrius Harper.

15 Mr. Harper claims to have never said that there was
16 a contract in place. Every single person who talked to
17 Mr. Harper thought that there was either a contract in
18 place or that there was one about to be signed, and their
19 source of information for that was Mr. Harper.

20 Mr. Banks, again, was involved in making a number
21 of false statements, just like Mr. Harper, about the
22 status of IRP's business; that every witness who heard
23 them testify, that that was a factor in their deciding to
24 do business, usually because it was a factor in that
25 company deciding whether or not they thought IRP would be

1 able to pay.

2 Mr. Banks submitted time for himself to three
3 different staffing companies for the same period of time.
4 He approved double billing time cards for Kendrick Barnes.
5 Government 609.04 shows that he was also receiving money
6 for time reported for other employees from both Analysts
7 International and Kforce.

8 He did, in fact, make the slow payment statements
9 to numerous companies, including to the Technisource
10 representative, to whom he made it both in person, at
11 their meeting at the hotel in D.C., and via e-mail, as
12 reflected in Government Exhibit 14.

13 And, I agree with Mr. Banks about one thing, his
14 statements weren't reckless, they were plain false. The
15 Government's evidence has established that there was no
16 contract and no prospect of an imminent contract with any
17 of the agencies about which Mr. Banks claimed there were.

18 The last point on Mr. Banks is he says that there
19 is no evidence of him refusing to meet with staffing
20 companies. Dottie Peterson testified that he refused --
21 that she was refused entry when she went there. Katherine
22 Holmes, from AppeOne testified that she was refused entry.

23 Ms. Mullen, from the Computer Merchant, testified
24 that representatives from her company were refused entry.
25 And Mr. Krueger testified that he was refused entry.

1 Mr. Banks did come out to see him, but Mr. Banks told him
2 that there was going to be trouble if he didn't leave
3 soon.

4 Taken together, all of that evidence establishes
5 that there is sufficient evidence for this case to go to a
6 jury with respect to all of the counts. That is all I
7 have, unless the Court has any specific questions.

8 THE COURT: I don't.

9 MR. KIRSCH: Thank you, Your Honor.

10 THE COURT: Under Rule 29, judgment of acquittal
11 may be entered when the evidence is insufficient to
12 support a conviction when I view the evidence in the light
13 in the most favorable to the Government. United States v.
14 Appawoo, A-P-P-A-W-O-O, 553 F.2d 1242, Tenth Circuit,
15 1977.

16 In other words, the District Court, me, must view
17 the evidence in the light most favorable to the Government
18 and then determine whether there is substantial evidence
19 from which the jury might properly find the accused guilty
20 beyond a reasonable doubt. United States v. Miles, 772
21 F.2d 613, Tenth Circuit, 1985.

22 With respect to the conspiracy charge, all six
23 defendants are charged with one count; conspiracy to
24 commit fraud. The Court, after listening to the
25 defendants' motions, the grounds in support of those

1 motions, and the Government's objections, and reviewing
2 the evidence in the light most favorable to the
3 Government, finds that the evidence presented by the
4 Government, for the reasons stated by Mr. Kirsch, is
5 sufficient to sustain a conviction for conspiracy to
6 commit -- for conspiracy to commit fraud. That is, there
7 is substantial evidence from which a jury might properly
8 find beyond a reasonable doubt that the defendants;
9 Mr. Banks, Mr. Harper, Mr. Stewart, Mr. Zirpolo,
10 Mr. Barnes and Mr. Walker; one, agreed to violate the
11 federal fraud laws; two, knew the essential objectives of
12 that conspiracy; three, knowingly and voluntarily involved
13 himself in the conspiracy; and, four, there was
14 interdependence among the members of the conspiracy.

15 For that reason, the court denies the Defendants'
16 motions with respect to the counts of conspiracy.

17 With respect to the wire fraud counts, defendant,
18 Mr. Banks, is charged with five counts of wire fraud.
19 Defendant, Mr. Harper, is charged with six counts of wire
20 fraud. Defendant Stewart is charged with one count of
21 wire fraud. Defendant Zirpolo is charged with two counts
22 of wire fraud. The Court, after listening to the
23 defendants' motions and the grounds in support thereof,
24 and the Government's objections, and reviewing the
25 evidence in the light most favorable to the Government,

1 finds that the evidence presented by the Government is
2 sufficient, for the reasons stated by Mr. Kirsch, to
3 sustain a conviction for wire fraud by each of the
4 defendants so charged.

5 There is substantial evidence from which the jury
6 might properly find beyond a reasonable doubt that these
7 defendants devised and intended to devise a scheme to
8 defraud, acted with specific intent to defraud, used or
9 caused another person to use interstate wire communication
10 facilities for the purpose of carrying out the scheme, and
11 the scheme employed false or fraudulent pretenses,
12 representations or promises that were material.

13 The Court does find that the issue is not whether
14 the time cards that may have been sent at any time had
15 false statements, it is whether the overall -- whether
16 that time card was used in furtherance to perpetuate the
17 false or fraudulent scheme.

18 Therefore, the Court denies the defendants motions
19 with respect to the wire fraud claims charges.

20 With respect to mail fraud, the defendant Banks is
21 charged with 10 counts of mail fraud. Defendant,
22 Mr. Harper, is charged with eight counts of mail fraud.
23 Defendant Stewart is charged with five counts of mail
24 fraud. Defendant Zirpolo is charged with 11 counts of
25 mail fraud. And defendant Barnes is charged with six

1 counts of mail fraud.

2 The Court, after listening to the defendants'
3 motions and grounds in support thereof, and the
4 Government's objections, and reviewing the evidence in the
5 light most favorable to the Government, hereby finds the
6 evidence presented by the Government is sufficient to
7 sustain these convictions for mail fraud by each of the
8 defendants so charged.

9 That is, there is substantial evidence from which a
10 jury might properly find beyond a reasonable doubt that
11 each of these defendants; one, devised or intended to
12 devise a fraud to defraud; acted with specific intent to
13 defraud; used or caused another person to mail something
14 through the United States Postal Service for the purpose
15 of carrying out the scheme; and the scheme employed false
16 or fraudulent pretenses, representations or promises that
17 were material.

18 For this reason, the Court denies the defendants'
19 motions with respect to the mail fraud charges.

20 Is there anything further?

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

22 MR. BANKS: No, Your Honor.

23 THE COURT: All right. We are going to take a
24 15-minute break. We will reconvene at 11:25.

25 (A break is taken from 11:08 a.m. to 11:13 a.m.)

1

2 THE COURT: You may be seated.

3 After I got off the bench, I realized we would
4 probably be better off just letting everybody go to lunch,
5 come back early, and starting at 12:30. So that is what I
6 propose we do. Go ahead, let the jury go for lunch, you
7 all go for lunch, we break now, and we just start half an
8 hour earlier. So we'll start at 12:30 instead of 1:00.

9 All right. So, Ms. Barnes, would you let the jury
10 know they need to be back at 1:00. Court will be in
11 recess.

12 THE COURT: Sorry, 12:30. Court is now in recess.

13 (Lunch is taken from 11:14 a.m. to 12:30 p.m.)

14 THE COURT: You may be seated.

15 All right. Are the parties ready to proceed?

16 MR. KIRSCH: Your Honor, we have one matter we
17 wanted to bring up before the jury came in. We understand
18 that potential witnesses for the defense today may include
19 a person named Andrew Albarelle and a person named Kelly
20 Baucom and a person named Joseph Thurman. Those are three
21 people that the Government believes the defendants would
22 intend to call in an attempt to offer expert testimony
23 and/or opinion about how the staffing industry works.

24 However, we have not received any Rule 16 notices
25 about those witnesses. We have not received any Rule 702

1 disclosures about those witnesses. And, if, in fact,
2 those witnesses are to be called for that purpose, the
3 Government intends to object to their testimony in its
4 entirety.

5 THE COURT: All right. We'll cross that bridge
6 when we get to it.

7 Anything further?

8 MR. WALKER: No, Your Honor.

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

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

13 THE COURT: All right. You may be seated.

14 Are the defendants prepared to proceed? You may
15 call your first witness.

16 MR. WALKER: Your Honor, defendants call Andrew
17 Albarelle.

18 COURTROOM DEPUTY: Your attention, please.

19 **ANDREW ALBARELLE**

20 having been first duly sworn, testified as follows:

21 COURTROOM DEPUTY: Please be seated.

22 Please state your name, and spell your first and
23 last names for the record.

24 THE WITNESS: Andrew Albarelle. A-N-D-R-E-W. Last
25 name, Albarelle, A-L-B-A-R-E-L-L-E.

DIRECT EXAMINATION

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BY MR. WALKER:

Q. Mr. Albarelle, where do you currently work?

A. I work at the Remy Corporation, R-E-M-Y Corporation.

Q. How long have you been there?

A. For 12 years.

Q. And what is your position at Remy Corp?

A. I am Remy's principal executive officer.

Q. Is that akin to a president position?

A. President or CEO. We just use the term principal.

Q. And how long have you been working in the staffing industry?

A. Eighteen years.

Q. And prior to becoming the principal at Remy, what did you do at Remy prior to that position?

A. I was its founder. I founded the company.

Q. And what did you do prior to founding Remy?

A. I was the -- I have to go back awhile. I was the managing director of a consulting firm that did ERP.

Prior to that, I was the managing director of a staffing firm that was here in Denver.

Q. And how long were you the managing director of that staffing firm?

A. Probably 2-and-a-half years. And then 3 years there at the consulting firm.

1 Q. And have you ever testified in a trial case --

2 MS. HAZRA: Objection, Your Honor.

3 THE COURT: Relevance?

4 MS. HAZRA: To my objection?

5 THE COURT: Yes.

6 MS. HAZRA: Sorry, I misunderstood the question.

7 THE COURT: What is the relevance of that
8 testimony?

9 MR. WALKER: Your Honor, I just want to establish
10 the fact that he has testified.

11 THE COURT: What is the relevance of that in this
12 case?

13 MR. WALKER: Your Honor, I am going to establish
14 Mr. Albarelle as an expert.

15 THE COURT: All right, with that please come
16 forward. Parties approach.

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

19 THE COURT: Okay. So you are offering him as an
20 expert?

21 MR. WALKER: Yes.

22 THE COURT: Did you make a Rule 16 disclosure? Did
23 you do your 702 opinion?

24 MR. WALKER: Your Honor, we were informed we could
25 qualify him on the stand.

1 THE COURT: You were informed?

2 MR. WALKER: Yes.

3 THE COURT: Even if you could qualify him on the
4 stand, there are certain obligations. You have to give
5 the Government information so that they can prepare for
6 that sort of testimony.

7 MR. WALKER: He was on our witness list.

8 THE COURT: The witness list isn't the same as a
9 Rule 16 disclosure.

10 Ms. Hazra?

11 MS. HAZRA: Your Honor, we would object and ask
12 that this witness be stricken. We have not received
13 notice. We have not received any 702 or Rule 16.
14 Moreover, I don't think this witness is qualified as an
15 expert.

16 MR. WALKER: Your Honor, he has over a decade
17 experience in the staffing industry; 18 years.

18 THE COURT: I don't want to get into whether he is
19 qualified. The fact of the matter is, if you didn't give
20 the notices and he hasn't rendered an opinion that the
21 Government could review beforehand, you can't just have
22 him come up and start testifying.

23 MR. BANKS: Mr. Albarelle did send a letter, as
24 well, to the U.S. Attorney's Office rendering an opinion
25 about this case. Would that be considered?

1 THE COURT: Where is that letter?

2 MR. BANKS: We can get it for the record.

3 MR. KIRSCH: We did get a copy of that letter, but
4 it wasn't denoted as an expert opinion to be offered at
5 trial. There is no CV, no listing of Mr. Albarelle's
6 qualifications. It is a two-page letter.

7 THE COURT: Let me see the letter.

8 MR. KIRSCH: We have a copy of it we can provide.

9 MS. HAZRA: Moreover, Your Honor, I would like to
10 say, we raised this issue earlier at the bench about their
11 failing to provide any formal notice to do so, and we
12 still did not receive any 702 or Rule 16.

13 MR. KIRSCH: This letter was intended to act as a
14 substitute for such disclosure?

15 THE COURT: I don't consider this to be a
16 disclosure as required by Rule 16 or even an opinion as
17 required by Rule 702. This appears to have been written
18 on behalf of the defendants.

19 MR. WALKER: Your Honor, related to the same type
20 of testimony.

21 THE COURT: There are certainly rules. That is why
22 you needed an attorney, to know what your obligations are.
23 You all decided to give up your attorney and proceed pro
24 se. You are still obligated to comply with the Rules of
25 Criminal Procedure.

1 MR. WALKER: Your Honor, would we be able to have
2 him testify as a lay witness?

3 THE COURT: Not with respect to what you want him
4 to testify to. That is expert testimony. That is why you
5 are laying the foundation for experience in the staffing
6 industry.

7 MR. WALKER: Your Honor, we have two additional
8 witnesses who are in the same category.

9 THE COURT: Did you give any disclosures for those
10 witnesses? I mean, here you have the letter, but this is
11 not sufficient. Have this marked for identification.

12 MR. BANKS: We need to provide disclosure.

13 THE COURT: It is too late. Your disclosures have
14 to come out before trial started.

15 MR. WALKER: Your Honor, we were advised we would
16 be able to do this through their appearance on the witness
17 stand.

18 THE COURT: I don't know who is advising you, but
19 that is not right.

20 MR. WALKER: Given that, we do not have any
21 witnesses, no evidence to call for today.

22 THE COURT: All right. So we marked this as
23 Exhibit 1008.00. It will not be admitted, but it will be
24 marked for identification for purposes of appeal.

25 Ms. Barnes, I will let you hang on to that.

1 I mean, you had an obligation. You failed to meet
2 that obligation. I don't think this witness' testimony
3 comes in. It is expert testimony. You haven't complied
4 with the rules. So I guess we release them for the day.
5 Who do you have tomorrow?

6 MR. BANKS: We have several others who we are not
7 going to call as experts.

8 THE COURT: So we do have other witnesses coming in
9 tomorrow?

10 MR. WALKER: Yes, Your Honor.

11 THE COURT: Do you wish to make any other statement
12 for the record?

13 MR. WALKER: We object to not being able to provide
14 those persons testify as witnesses -- or to testify as lay
15 witnesses as regards to staffing.

16 THE COURT: If they were testifying as lay
17 witnesses, what would they testify to about staffing?

18 MR. WALKER: Talk about the staffing industry. We
19 would not state they are experts. They do work in the
20 staffing industry, and they -- how companies engage
21 staffing companies, how staffing companies interact with
22 contractors and employees, as well as 1099 contractors for
23 staffing companies.

24 THE COURT: Your assertion is that is lay testimony
25 as opposed to expert testimony?

1 MR. WALKER: Yes, Your Honor.

2 THE COURT: I find that expert testimony trying to
3 establish that.

4 MR. KIRSCH: Your Honor, can I ask for the
5 witnesses -- on the record, that the defendants identify
6 the other two witnesses, so we are clear about who those
7 are, and that we, indeed, have the same objection to those
8 witnesses.

9 THE COURT: What we need to do is establish a
10 record. You have no other witnesses today. I am going to
11 let the jury go home, then we will do it in open court,
12 without the mic. And you all can make your foundation for
13 why you think those witnesses should come in. The
14 Government will make its record. If your other
15 witnesses -- I want to make sure you understand, your
16 other witnesses are in the same boat as this witness.

17 MR. WALKER: Kelly Baucom, Joe Thurman and Clifford
18 Stewart.

19 THE COURT: They are all for staffing industry
20 practices?

21 MR. WALKER: Clifford Stewart will be talking about
22 how contractors can work multiple engagements at one time.

23 MR. BANKS: He was a contract employee at IRP.

24 THE COURT: Are you offering that because of his
25 expertise in the industry as opposed to him working these

1 kinds --

2 MR. WALKER: His experience in the staffing
3 industry.

4 THE COURT: And you are offering it as that is how
5 staffing industries work; that is expert testimony.

6 MR. BANKS: His personal experience.

7 THE COURT: He can say multiple times that is fine,
8 but when he says that is the standard in the industry,
9 that is expert testimony.

10 MR. BANKS: So we can provide that sort of
11 testimony.

12 THE COURT: Okay. So Mr. Stewart is here to
13 testify?

14 MR. WALKER: Yes, Your Honor.

15 MR. KIRSCH: Your Honor, I don't know if you want
16 to do this now, but I want to make the Court aware, we had
17 a similar -- have an extremely similar letter from
18 Ms. Baucom as to the one from Mr. Albarelle. We have a
19 slightly different form of a two- or three-page letter or
20 memo from Mr. Thurman. I can provide that to the Court,
21 as well.

22 I don't know what the order is going to be, if they
23 are going to call Mr. Stewart then address that. I wanted
24 the Court to know Mr. Thurman may be in a slightly
25 different position than Ms. Baucom and Mr. Albarelle.

1 MR. BANKS: We have some sort of affidavit to the
2 Government regarding the testimony.

3 THE COURT: That is still not what is necessary to
4 get in expert testimony. At this point I think we should
5 probably excuse this witness. After we do, do you have
6 any other witnesses to testify today?

7 MR. WALKER: No, Your Honor. Those three experts
8 and Mr. Stewart.

9 THE COURT: So we proceed with Mr. Stewart, and
10 after that I will let you make your record.

11 MR. WALKER: Just so we understand, what is the
12 allowable scope of Mr. Stewart's testimony?

13 THE COURT: He is -- his own actions. What he has
14 done, not what is standard. He can't give opinions as to
15 what he believes is standard in the industry, because that
16 becomes expert testimony, and you have not followed proper
17 procedure for that.

18 MR. BANKS: Understand.

19 MR. WALKER: His personal experience. And
20 Ms. Baucom?

21 THE COURT: Her's -- that is irrelevant.
22 Mr. Stewart is relevant because he was involved in this
23 case.

24 MR. KIRSCH: Thank you, Your Honor.

25 (A bench conference is had, and the following is

1 had outside the hearing of the jury.)

2 THE COURT: Mr. Walker, do you have anything
3 further for this witness?

4 MR. WALKER: No, Your Honor, we do not.

5 THE COURT: Thank you very much, you are excused,
6 sir.

7 The defendants may call their next witness.

8 MR. WALKER: Your Honor, the defense calls Clifford
9 Stewart.

10 COURTROOM DEPUTY: Your attention, please.

11 **CLIFFORD STEWART**

12 having been first duly sworn, testified as follows:

13 COURTROOM DEPUTY: Please be seated.

14 Please state your name, and spell your first and
15 last name for the record.

16 THE WITNESS: My name is Clifford Stewart,
17 C-L-I-F-F-O-R-D. Last name is Stewart, S-T-E-W-A-R-T.

18 **DIRECT EXAMINATION**

19 **BY MR. WALKER:**

20 Q. Mr. Stewart, what is your profession?

21 A. I am a software engineer. I typically work as a
22 consultant.

23 Q. And just by way of disclosure, do you have any
24 relation to any of the defendants in this case?

25 A. Yes.

1 Q. What would that be?

2 A. David Banks is my brother-in-law. Gary Walker is my
3 brother-in-law. Clint Stewart is my brother.

4 Q. And in your profession; software engineering, would
5 you explain what type of tasks you do as a software
6 engineer?

7 A. Typically, I'm doing software development, where I
8 write computer programs. Those tasks could be anywhere
9 from doing application development to database
10 development. Also, I will do some system administration,
11 server administration. If we have a web application, I
12 may administer those servers, as well.

13 Q. Do you have experience as a consultant?

14 A. Yes, I do.

15 Q. Tell us how you're typically engaged as a consultant?

16 MR. KIRSCH: Objection, relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Typically, as a consultant, I would
19 be contracted out by, typically, a staffing agency or
20 consulting agency. They would pay me a particular rate,
21 and they would charge a client company where I would
22 typically work, they would charge them some overhead. And
23 I would go to the client company. Typically, there are
24 times that I would work remotely, and I would do whatever
25 task they would deem necessary there.

1 And those tasks, again, could be anywhere from
2 doing computer applications, working on databases, all of
3 the way down sometimes to doing things like desktop
4 support, where I would help users if they had a problem
5 with their PC. It could be a number of different things
6 that I would be tasked to do during a given day.

7 Q. (BY MR. WALKER) And you mentioned in some cases you
8 work remotely. Describe to us how that is achieved;
9 working remotely to an office site?

10 MR. KIRSCH: Your Honor, I object to the relevance
11 unless it pertains to work Mr. Stewart --

12 THE COURT: Sustained. As pertains to this case.

13 MR. WALKER: Yes, Your Honor.

14 Q. (BY MR. WALKER) In your experience as a consultant,
15 have you ever worked with more than one client company at
16 a time?

17 MR. KIRSCH: Objection, again, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Yes. I have worked more than one
20 client company at a time. Actually, right now I am
21 working at two client companies. I work one on site and
22 the other remotely. And the way that that is accomplished
23 is by doing virtual networking, where I can have one PC
24 up, and I can be working at that PC at that client's site,
25 and I can actually log onto another client's site from

1 that same PC or, say, if I have another laptop in front of
2 me. So I will basically have two computer screens like
3 this (indicating), and be working two jobs simultaneously.

4 Q. (BY MR. WALKER) And so you are currently working two
5 jobs. Are either one of those IRP, DKH or LTI?

6 A. No, they are not.

7 Q. Have you ever worked for more than two clients at a
8 time?

9 A. Yes, I worked -- one time, I actually worked four
10 clients at once. You know, it gets a little tedious. It
11 is hard work, you know. Sometimes there is traveling
12 involved. But it can be done. Just depends on how the
13 consultant wants to, basically, bill themselves out and
14 how much they are willing to deal with, as far as the
15 stress of having multiple jobs. But, yes, I have been on
16 four assignments at one time, working simultaneously.

17 Q. And in the example where you stated you worked for
18 four clients at once, were you able to get all of their
19 work done in a day?

20 A. Oh, yeah, absolutely. That is typically what they --

21 MR. KIRSCH: Objection, Your Honor.

22 THE COURT: Sustained. You need to bring it to
23 this case, Mr. Walker.

24 MR. WALKER: Yes, Your Honor.

25 Q. (BY MR. WALKER) In the course of your work with

1 multiple clients, you mentioned you used virtual
2 networking software.

3 A. Correct.

4 Q. And do you -- is virtual networking software required
5 in every instance that you do remote work?

6 MR. KIRSCH: Same objection.

7 THE COURT: Mr. Walker, bring it to this case.

8 MR. WALKER: Yes, Your Honor.

9 May I have one second, Your Honor?

10 Your Honor, I have no further questions at this
11 time. I would like to reserve the right to recall
12 Mr. Stewart.

13 THE COURT: You may not. You ask him your
14 questions now or -- you don't get another shot at it.

15 MR. WALKER: May I have a minute?

16 THE COURT: Yes.

17 MR. WALKER: Your Honor, I will continue with
18 questions.

19 Q. (BY MR. WALKER) Mr. Stewart, in your experience, did
20 you work with multiple clients before you worked with IRP
21 Solutions?

22 MR. KIRSCH: Objection, relevance.

23 THE COURT: Mr. Walker, I have been very lenient
24 with you on this. You asked whether he has done that in
25 the past. I need you to move on to his relevance to this

1 case.

2 MR. WALKER: Yes, Your Honor. I have no further
3 questions.

4 THE COURT: Mr. Barnes?

5 **DIRECT EXAMINATION**

6 **BY MR. BARNES:**

7 Q. Mr. Stewart, in your experience, have you ever worked
8 with Mr. Barnes, me, on any IT contracts?

9 A. Yes, I have.

10 Q. Could you explain what job that was, or where that
11 was at?

12 A. I worked with you at -- we did a project at Metro
13 State. It was remote work.

14 MR. KIRSCH: Your Honor, I object to the relevance
15 of that.

16 THE COURT: Was it with respect to IRP?

17 MR. BARNES: Not with respect to IRP, but it does
18 with respect to his knowledge of working multiple jobs
19 with IRP, and he can testify to that.

20 THE COURT: He can testify as to whether he worked
21 with you with respect to matters related to this case.

22 MR. BARNES: By establishing the case that he may
23 have known that I've worked jobs prior to IRP solutions,
24 that is not relevant?

25 THE COURT: That is not relevant. It is in this

1 particular case.

2 MR. BARNES: No further questions.

3 THE COURT: Anybody else?

4 MR. BANKS: No, Your Honor.

5 THE COURT: Mr. Kirsch, any cross-examination?

6 MR. KIRSCH: Your Honor, I do have a few, please.

7 **CROSS-EXAMINATION**

8 **BY MR. KIRSCH:**

9 Q. Mr. Stewart, you did work multiple jobs at the same
10 time while you were employed by IRP or DKH, didn't you?

11 A. That is correct.

12 Q. In fact, you made over \$286,000 from different
13 staffing companies while you were working for IRP or DKH,
14 didn't you?

15 A. I can't recall what I made while I was working there.

16 Q. What do you think you made?

17 A. I can't recall. It was quite awhile ago.

18 Q. If the payroll records add up to over \$286,000, would
19 you have any reason to question that?

20 A. Probably not.

21 Q. And you worked for multiple companies. You reported
22 the same hours to multiple companies multiple different
23 times while you were working for IRP, didn't you?

24 A. That's correct.

25 Q. And you didn't think there was anything wrong with

1 that?

2 A. I thought that -- no, I have done it before. So it
3 is a typical consulting assignment that I worked in the
4 same type situation before and after I was at IRP.

5 MR. KIRSCH: Your Honor, could we please publish
6 901.97?

7 Q. (BY MR. KIRSCH) Can you see that chart on the
8 screen, Mr. Stewart?

9 A. Yes, I do see that.

10 Q. That shows a period of time when you were reporting
11 that you were working both for Today's Staffing and
12 Systems Engineering Company?

13 A. That is what I see, yes.

14 Q. How did you manage that week start of October 4th,
15 when you had four hours or less to sleep every day?

16 A. I don't see where October 4th -- I don't see that on
17 there.

18 Q. August 4th. I am sorry, I misspoke.

19 A. So August 4th, when you say -- say that again. How
20 did I manage what?

21 Q. How did you manage for that week when you had four
22 hours or less to sleep each day?

23 A. Those hours were worked simultaneously.

24 Q. Oh, you worked them at the same time?

25 A. Right. Kind of like if you are baby-sitting and you

1 are watching more than one kid at the same time. You can
2 do that.

3 Q. And you told Today's Staffing and Systems Engineering
4 Services that that is what you were doing?

5 A. Did I tell them?

6 Q. Yeah. You told them that, didn't you?

7 A. I don't know if I told them that. Typically, my
8 consulting company would basically put me on an
9 assignment. And if I am completing the client's task,
10 then typically that is what is expected of me.

11 Q. So you wouldn't have told them that?

12 A. If they were to ask, I would.

13 Q. But you wouldn't volunteer it?

14 A. I probably wouldn't call them up and said, hey, you
15 know, that I'm working two different -- two different
16 positions.

17 Q. Why not, if there is nothing wrong with it?

18 A. It would be like you calling up and saying -- I don't
19 know, I'm heading to lunch; telling somebody that. Or
20 telling somebody, I'm going over to the next courtroom,
21 and if they had no relevance or relation to your case.

22 Q. Well, you did tell these companies when you went to
23 lunch, right, because you recorded lunch periods on your
24 time cards?

25 A. No, I didn't.

1 Q. You didn't do that?

2 A. No. Typically --

3 Q. Never?

4 A. Typically, my lunch is time that I deemed to take at
5 my leisure. I can take lunch first thing in the morning,
6 middle of the day, or in evening if I choose to.

7 MR. KIRSCH: Your Honor, can I please publish
8 Government Exhibit 141.00, page 4?

9 THE COURT: You may.

10 Q. (BY MR. KIRSCH) Do you see that, Mr. Stewart on the
11 screen?

12 A. Yes, I do see that.

13 Q. That is your signature on that time card, isn't it?

14 A. That does look like my signature.

15 Q. Am I misreading that, or did you report going to
16 lunch on Monday on that time card?

17 A. Well, on Monday. But as you see, the other days of
18 the week, it doesn't show a lunch. So it could have been
19 something where I would leave for lunch, say, or leave at
20 6 o'clock and eat then, or basically not take a lunch that
21 day.

22 Q. All right. That is just an outlier? That report is
23 just an outlier?

24 A. Okay.

25 Q. Is that right?

1 A. I don't know. Can you rephrase that?

2 Q. Yeah. That is an unusual event for you to have
3 reported lunch there?

4 A. Well, as you see, it is on one day a week.

5 Q. My question is, was it unusual for you to report
6 lunch?

7 A. Yeah. It shows there that I reported lunch one day
8 during the week.

9 Q. Is that a yes?

10 A. That is a yes, based on this time sheet.

11 Q. Okay. Thank you. And you said that as far as you
12 knew, the staffing companies wouldn't care if you were
13 working at more than one staffing company at the same
14 time?

15 A. As far as I knew, none of the staffing agencies I
16 ever worked for -- and I have been doing contracting for
17 about 15 years now -- have ever had a problem with me
18 working more than one job at one time. And sometimes they
19 even encourage it if I am billing for them, to go out and
20 work more than one client at the same time.

21 Q. That is if you are working for more than one client
22 at a time.

23 A. Well, if I'm billing.

24 Q. Right. But, in this case, when you worked at IRP,
25 you were always working for the same client at the same

1 time?

2 A. Well, that's basically the same thing as working for
3 more than one client. If you are working for more than
4 one company, then that client is particular to that
5 company. So, in that case, you would say, I'm working for
6 staffing company A at one client. I'm working for
7 staffing company B at one client.

8 Q. Okay. And the one client for staffing company A is
9 IRP; right?

10 A. Right.

11 Q. And the one client for staffing company B, that is
12 also IRP?

13 A. That would be correct.

14 Q. But those are different clients, according to your
15 testimony?

16 A. Those are different clients, according to the
17 staffing agencies. You know, you wouldn't say staffing
18 agency A would say I have IRP.

19 Q. I am just asking about you. You are treating those
20 as different clients.

21 A. No. I am saying the staffing company would assign
22 me -- one staffing company would assign me to a client.
23 Another staffing company would assign me to a client. If
24 they happened to be the same client in name, the staffing
25 companies would not say, okay, our client is your client.

1 They would look at it differently.

2 Q. Okay.

3 A. Just like if you have a kid, you say, okay, my kid
4 has this teacher, and somebody else's kid has the same
5 teacher.

6 Q. And when you were working for multiple staffing
7 companies at IRP, all of the time that was reported in
8 your name, you worked all of that time; right?

9 A. That's correct.

10 Q. Okay. And you never knew anything about anybody
11 reporting time getting worked under the wrong name; right?
12 You never knew that time was reported under one name but
13 actually worked by somebody else?

14 A. Are you asking me if I reported time under my name?

15 Q. No. You already answered that question, I think.

16 A. Right.

17 Q. I think you said every hour that was reported under
18 your name you worked?

19 A. That's correct.

20 Q. Whether it was 20 hours a day, 21 hours a day, 19
21 hours, whatever, you worked every one of those hours?

22 A. Right.

23 Q. I am asking you now whether you ever knew that
24 anybody -- whether anybody at IRP was reporting hours
25 under a different name; a name other than his or her own?

1 A. That wouldn't be relevant to me. I would be
2 speculating if I tried to answer that question.

3 MR. KIRSCH: Your Honor, can, I please publish
4 Government Exhibit 608.22?

5 THE COURT: You may.

6 MR. KIRSCH: Can you expand the top half of that
7 for us, please, Special Agent Smith.

8 Q. (BY MR. KIRSCH) This is your name -- you got this
9 e-mail, didn't you, Mr. Stewart?

10 A. That looks like I probably received that e-mail, yes.

11 Q. Cliff Ja Stewart is you; right?

12 A. Yes, that is me.

13 Q. Why is it that your brother's name was in parentheses
14 behind Rico Howard's name under Advecta there?

15 A. Why is my brother's name in parentheses?

16 Q. Yeah.

17 A. It is not laid out here. I wouldn't know that. I
18 would be making something up if I tried to answer that
19 question.

20 Q. Okay. I don't want you to do that, that's for sure.

21 When you would work for the multiple staffing
22 companies at IRP, would you tell them that you had
23 previously worked for different staffing companies at IRP?

24 A. I wouldn't typically do that as a consultant. I work
25 at several -- like, I will take an example where I work

1 now. I have been there under three different consulting
2 agencies now at the same position.

3 Q. You wouldn't give them that information?

4 A. I wouldn't tell them that, no. At that point, it's
5 basically, they have let me go as a contractor. They
6 don't have any ties to me, and I don't have any
7 responsibility to them at that point.

8 Q. In fact, you would take steps to hide from new
9 staffing companies while you were at IRP that you had
10 previously worked at IRP, wouldn't you?

11 A. I wouldn't -- again, I wouldn't go out and tell them,
12 hey, you guys have let me go here, and now I'm here in a
13 different capacity.

14 Q. That is not my question. My question is, you would,
15 in fact, take affirmative steps to hide your previous
16 associations with IRP from new staffing companies,
17 wouldn't you?

18 A. I, as a contractor, would, in whatever capacity I was
19 working as a contractor -- if I were going into a same
20 client company, under a different capacity -- say I am
21 working -- say I was working there and I was a software
22 engineer, and I would go back in and I was a database
23 developer, then, yes, I would go all of the way from, okay
24 here is a resume that I presented as a software engineer,
25 here is another resume that I presented as a database

1 developer, based off of that skill set that I have.

2 And I do that to this day. It all depends on what
3 I go in as.

4 Q. Let me try my question one more time, Mr. Stewart.

5 A. Okay.

6 Q. You, in fact, would take affirmative steps, when you
7 were going to be hired by a new company through IRP or
8 DKH, you would take affirmative steps to prevent that new
9 company from learning that you had already worked at IRP
10 for another staffing company, wouldn't you?

11 A. I would not tell one new staffing company that I'm
12 with that I worked here before under a different capacity.

13 Q. That is not my question, Mr. Stewart. My question
14 is, wouldn't you take affirmative steps to conceal the
15 previous --

16 A. Can you explain what you would be describing as an
17 affirmative step? I made the example that I would deliver
18 a different resume.

19 Q. I will give you an example. You would turn around
20 the name plate outside your door.

21 A. Right. If I was working under one capacity as --
22 like, say, because there were times at IRP that I did
23 volunteer work. There was time that I worked as a
24 contractor. And so I would say, okay, under this
25 capacity, under a contractor, I'm not working under the

1 volunteer capacity. And, so, yes, I would remove my
2 title, because it doesn't apply in that situation.

3 Q. You got a title when you were there as a volunteer?

4 A. That is correct.

5 Q. And not only would you turn around your name plate,
6 you would even go so far as to sign into the guest book
7 without -- even though you had an access badge; right?

8 A. If I was coming in as a contractor, my access badge
9 would be disabled. And at that point I am a visitor.

10 Q. So you needed to sign in when you did that?

11 A. As a visitor, yes, I would have to sign in.

12 MR. KIRSCH: Thank you, Mr. Stewart. Those are all
13 of my questions.

14 THE COURT: Any redirect?

15 MR. BANKS: Yes, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. BANKS:**

18 Q. Mr. Stewart, in defining the definition of client, is
19 it your experience that client and projects are sometimes
20 interchangeable?

21 A. That is correct.

22 Q. So if a company was working on separate projects,
23 say, for company -- we'll speak in the terms of IRP. Say
24 the Department of Homeland Security was the project
25 engagement, as well as the NYPD. Would you consider those

1 separate projects and separate initiatives?

2 A. That is correct.

3 Q. And in your work at IRP, did you have separate
4 responsibilities on those various projects?

5 A. Yes. And I would bring that to parallel in the
6 project I am on now. I work at a company called --

7 MR. KIRSCH: Objection to the relevance.

8 THE COURT: Sustained. Beyond the scope of the
9 question.

10 THE WITNESS: Okay. So the answer would be, yes,
11 for different projects I would work in different
12 capacities.

13 Q. (BY MR. BANKS) And you used the term "capacity."

14 A. Uh-huh.

15 Q. I want to reiterate, you mentioned a minute ago that
16 you were in a volunteer capacity at IRP at times; correct?

17 A. Yes, that's correct.

18 Q. You were in another official capacity at times when
19 you were actually a contractor; correct?

20 A. That's correct.

21 Q. And to reiterate, it was the policy of IRP, when you
22 were not in an official capacity and issued a badge, for
23 your access to be terminated; correct?

24 A. That is correct.

25 MR. BANKS: Thank you, Mr. Stewart.

1 THE COURT: Anything else?

2 May this witness be excused?

3 MR. BANKS: Yes, he may, Your Honor.

4 THE WITNESS: Your Honor, may I stay in the
5 courtroom?

6 THE COURT: Yes. You are not anticipated to
7 testify any further.

8 THE WITNESS: Thank you.

9 THE COURT: All right. The defense may call its
10 next witness.

11 MR. WALKER: Your Honor, we have no further
12 witnesses for today.

13 THE COURT: All right. Ladies and gentlemen, we
14 finished a little bit early day. You will be able to
15 enjoy your afternoon. So you are going to be excused.
16 Please be back -- I have an 8:15, right?

17 COURTROOM DEPUTY: Yes, Your Honor.

18 THE COURT: Please be back, and we will be ready to
19 go at 9 o'clock tomorrow morning. Remember, do not
20 discuss this case with one another or with anyone else.
21 Do not do any independent research on this case, just go
22 home and enjoy your afternoon.

23 The jury is excused, the parties will remain.

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

1 THE COURT: All right. You may be seated. At this
2 time I will let whichever of the defendants wants to make
3 the record on -- for purposes of the witnesses that I
4 excluded from testifying, which, as I understand, those
5 that were going to be proffered was Mr. Andrew Albarelle,
6 who was on the stand, Ms. Kelly Baucom; is that correct?

7 MR. BANKS: Yes, Your Honor.

8 THE COURT: And who was the third?

9 MR. BANKS: Joe Thurman.

10 THE COURT: And Joe Thurman. So, Mr. Banks, you
11 may take the podium and lay your record for purposes of
12 appeal.

13 MR. BANKS: Your Honor, with regard to Rule 16, the
14 rule states that the Government -- that the defendants
15 must provide Rule 16 disclosure at the Government's
16 request. The Government in this case, Your Honor, had
17 made no formal request. They did complain about not
18 getting a request, but they did not issue a formal request
19 for the summary of any particular expert witnesses'
20 testimony.

21 THE COURT: I believe there was a Discovery Order
22 in this case, was there not?

23 MS. HAZRA: Yes, Your Honor.

24 THE COURT: What did the Discovery Order provide?

25 MS. HAZRA: Your Honor, the Government requests

1 expert notice under Rule 16 and Rule 702.

2 THE COURT: So that was taken care of in the
3 Discovery Order, Mr. Banks.

4 MR. BANKS: Okay, Your Honor. Could I have one
5 moment, Your Honor?

6 THE COURT: You may.

7 MR. BANKS: Nothing further, Your Honor.

8 THE COURT: Well, I'm not supposed to advise you,
9 because you are supposed to know these rules yourselves,
10 but what I'm trying to do is give you an opportunity --
11 you need to tell on the record for purposes of appeal what
12 your witnesses would have said, what they would have
13 testified to, so that the appellate court can decide
14 whether or not my ruling to exclude them would have been
15 prejudicial to you. And, if I made an error, that it was
16 not -- that it was reversible error.

17 So you need to put on the record what they would
18 have testified to how that is relevant to your case.

19 MR. BANKS: Your Honor, Mr. Andrew Albarelle would
20 have discussed IT consulting and IT contracting from his
21 years of experience regarding -- as far as his company is
22 concerned. And over his experience, it has been a
23 standard practice for contractors to bill with multiple
24 clients and on multiple projects.

25 Furthermore, Mr. Albarelle was going to testify to

1 the fact of what I told the actual jury concerning a
2 billable consultant. Mr. Albarelle is an owner of
3 multiple businesses, including a staffing company. And as
4 a billable consultant in various projects -- and his
5 company is rather large -- he bills out on multiple
6 projects, and he would have -- he would have showed that
7 it is a common practice, not only in consulting
8 organizations, but also in staffing organizations, where a
9 company like an Oracle Corporation will be billing one
10 consultant. And, obviously, we have been a part of that
11 sort of engagement for three, four, five, six different
12 clients, and they billed them out at \$250 an hour each
13 client.

14 Obviously, Oracle will be paying that company. He
15 would testify that that company would be paying a certain
16 salary or certain hourly rates, but at each of those
17 clients, they would have agreed upon terms to whereby --
18 they would be 40 hours with this client. To support that
19 client, they would have agreed upon terms, 40 hours with
20 this client, et cetera. And that money would come into
21 Oracle, and that is how the process would work.

22 THE COURT: Okay. Ms. Baucom, what would she have
23 testified to?

24 MR. BANKS: Ms. Baucom is a recruiter, and does
25 account management, which is consistent with many of the

1 Government witnesses that would have testified -- that
2 have testified in this trial thus far. Ms. Baucom was
3 going to testify to how the staffing industry worked as it
4 relates to lines of credit; that it is typical for
5 staffing companies.

6 She was going to testify, as well as Mr. Albarelle,
7 with regards to the risk associated with staffing
8 companies, and that they, on a routine basis, review --
9 look at companies like IRP, and make a determination based
10 on their forecast whether or not they're actually going to
11 engage with a company at IRP, in similar fashion that
12 somebody manages a portfolio of investments or a portfolio
13 of business, that's how they would describe how the
14 staffing industry is managed, as well.

15 So they have their big customers; the Lockheed
16 Martins, and they would testify they also have their small
17 customers. And that when they take the risk, that they --
18 he would have testified that he's written off 14 companies
19 in one year, based on the risk that he took, and she would
20 be able to testify to some of the same types of things.

21 Just to the standard consulting and practices of
22 the staffing industry that is routine, and very routine,
23 that other staffing agencies would not have been able to
24 really contradict at all.

25 THE COURT: All right. So she was going to testify

1 as to the standards and practices and customs in the
2 industry with respect -- in the staffing industry with
3 respect to lines of credit?

4 MR. BANKS: Lines of credit. Just how the process
5 works with consultants. She would also testify to the
6 fact that -- she worked for multiple staffing companies,
7 even some of the ones that testified here today. She has
8 been with some of these big shops, and she knows how they
9 do business and how they conducted business. She would
10 have been able to provide relevant testimony as to how
11 those companies did business while she was actually there,
12 as well as the credit rating and things that companies
13 relied on to conduct themselves in staffing operations.

14 THE COURT: All right. Again, was there any Rule
15 16 disclosure made of Ms. Baucom to testify in this
16 capacity?

17 MR. BANKS: Only disclosure that the Government
18 received, Your Honor, as we stated, were the letters that
19 they sent with regards to adequacy about how the staffing
20 industry works. That was the only disclosure that was
21 provided to the Government with regards to them coming to
22 testify.

23 THE COURT: All right. And your third witness,
24 Mr. Thurman?

25 MR. BANKS: Mr. Thurman is another account manager

1 in the staffing industry; has probably 10-plus years of
2 experience in this industry. He currently manages
3 multi-million dollar accounts with Century Link, National
4 Renewable Energy Laboratories here in Denver, and various
5 other large clients in the State of Colorado, which he has
6 multi-million dollar responsibility managing those
7 accounts, and tons of consultants that actually work.

8 And he would also would have brought to bear actual
9 real world examples of staffing companies -- of
10 individuals that they have -- that they have used, and
11 requested that they work multiple contracts so they can
12 see if it balances out, as well as the motivations of the
13 staffing industry and how multiple contracts and multiple
14 billing benefits them, from a profit margin perspective,
15 as long as the consultant can handle and balance that
16 work.

17 And he would have also testified that with regard
18 to the fact that when it comes to payrolling employees, a
19 routine practice in that payrolling process, is they don't
20 care who the consultant is. They don't care if he is
21 working multiple contracts. But he would have testified
22 to the fact that as long as my work is done for my client,
23 I don't care what is going on with that consultant.

24 That is the type of testimony, and that is the type
25 of routine practice that he would have testified to that

1 goes on in the staffing industry on a very, very routine
2 basis.

3 THE COURT: All right. And, again, what disclosure
4 was made to the Government with respect to this witness?

5 MR. BANKS: Mr. Thurman provided some sort of
6 Affidavit regarding the staffing industry and how it
7 works, and provided that to the Government. We don't have
8 a copy of that here. As the Government said, they did
9 have a copy of it, but that's the gist of the matter, Your
10 Honor.

11 THE COURT: All right.

12 MR. WALKER: Your Honor, I have additional areas of
13 testimony for these.

14 THE COURT: Okay. I want to ask a few more
15 questions. Now I can't remember.

16 Go ahead, Mr. Walker, and I will recall what it was
17 that I wanted to say.

18 MR. WALKER: Thank you, Your Honor.

19 MR. BANKS: Mr. Walker will probably answer it
20 anyway, Your Honor.

21 MR. WALKER: Your Honor, Ms. Baucom is also going
22 to testify regarding best practices for due diligence in
23 the staffing industry for risk mitigation, loss
24 mitigation. Also, she would talk about having one client
25 with multiple staffing companies at that client. And that

1 was it.

2 THE COURT: All right. I still haven't remembered.
3 So, Mr. Kirsch, the Government may go ahead and proceed --
4 Ms. Hazra.

5 MR. KIRSCH: Ms. Hazra is going to do that.

6 THE COURT: Ms. Hazra?

7 MS. HAZRA: Thank you, Your Honor.

8 First, the Government did request -- the Court
9 correctly notes, the Government did request notice under
10 Rule 16 and 702, pursuant to the standard -- the Court's
11 Discovery Conference Memorandum, which, without the docket
12 sheet, I believe we would have entered into in the summer
13 of 2009, Your Honor, in this case.

14 Moreover, the defendants did provide an expert
15 notice with regards to one of their witnesses, so they did
16 comply in terms of one, but they have not complied with
17 any of these others.

18 Specifically, the three we are discussing today,
19 Your Honor, the Government specifically objects because it
20 did not receive notice of what the opinions that these
21 experts would be tendering, except for, I guess, what
22 Mr. Banks and Mr. Walker said today. Nor did we receive
23 the reasons -- the bases for these opinions; whether or
24 not the facts and data were relied upon to form the
25 opinions, the methods and principles that were used to

1 arrive at the opinions, or how the witnesses applied those
2 principles and methods to the fact. We didn't receive
3 that for any of them.

4 In terms of what we did receive, the Court has the
5 letter from one of the witnesses. We received another
6 letter, addressed to the United States Attorney John
7 Walsh, from Kelly Baucom, dated July 20, 2010. I don't
8 know when the letter made its way down to us, but it did
9 come to -- it says 2010, but if I may have a moment, Your
10 Honor, I think it was 2011 that it came to us. Even
11 though it says 2010, it only came a couple months ago.
12 And it, again, does not lay out Ms. Baucom's opinion in
13 any manner or any of the reasons or bases for her opinions
14 or how she arrived there. And I am happy to mark --

15 THE COURT: I would like to have that marked for
16 identification so it clears the matter for the record.

17 So, Ms. Barnes, if you could mark that.

18 If you could present it, Ms. Hazra.

19 MS. HAZRA: Certainly. Thank you, Your Honor.

20 THE COURT: So even though -- as I understand, that
21 letter is dated 2010?

22 MS. HAZRA: But we received it July 2011. So I
23 believe the year is wrong on the letter.

24 We also received from Mr. Thurman, it is entitled
25 an expert report on staffing industry standards and best

1 practices. However, it, once again, does not contain
2 Mr. Thurman's opinion in the form that is required under
3 the rules, nor does it contain the principles and methods
4 of how he arrived at it, the facts and data upon which he
5 is basing his opinion.

6 And from none of these three experts did we receive
7 a curriculum vitae or anything else that would denote what
8 their qualifications were to be an expert.

9 THE COURT: Now, you said there was one expert that
10 you did receive notice of; you got the proper notice for
11 an opinion.

12 MS. HAZRA: We did, Your Honor, and we filed a
13 motion to exclude that witness. It is their software
14 expert, whose name I am currently -- Donald Vilfer, Your
15 Honor. And we did file a motion to exclude.

16 THE COURT: There was a motion. I recall that.

17 MS. HAZRA: And Mr. Thurman --

18 THE COURT: So you all did know that for experts
19 you had a particular process that you had to go through;
20 is that correct?

21 MR. WALKER: Your Honor, that was done when we
22 previously had retained counsel. We weren't involved in
23 that process.

24 THE COURT: All right. But you knew that they had
25 done that on your behalf?

1 MR. WALKER: Well, Your Honor, we had limited
2 knowledge what went on. We know they had obtained an
3 expert for evaluating computer systems. And we didn't
4 know any of the processes or procedures that were
5 undertaken to get him to that point.

6 THE COURT: That is the question I was going to
7 ask. In our conference up at the bench, you all indicated
8 that you had been advised that this was the procedure you
9 should use. Who advised you?

10 MR. WALKER: Your Honor, we talked to several
11 different lawyers about what we need to do in certain
12 circumstances. And several of them have given us advice
13 on different things. We have gone on the web. We have
14 called different hotlines that provide that type of
15 advice. So different people. Some of them, I don't even
16 remember their names, provided us different types of
17 advice.

18 THE COURT: And they are all lawyers?

19 MR. WALKER: Yes, Your Honor.

20 MR. BANKS: And, Your Honor, I think what ended up
21 happening, some of them wasn't necessarily experienced in
22 the federal courts. And, occasionally, we would get false
23 information or bad information, until we researched it
24 ourselves, with regards to -- well, that deals in civil
25 matters, or that may deal in state court. So, I guess the

1 lack of federal expertise, probably cost us a little bit
2 with regard to that.

3 THE COURT: Well, in that regard, as I recall, I
4 offered you the appointment of advisory counsel, and you
5 rejected that, because you didn't want anybody paid for by
6 the Government.

7 MR. BANKS: Well, there was issues with the
8 Government -- with our current counsel not being informed
9 about all of the facts in this case. So we had a lot of
10 issues, which, obviously, if -- they were just not being
11 effective for us, as far as counsel was concerned.
12 Because one day they would tell us certain facts. We then
13 would say, ask us certain facts --

14 THE COURT: But that aside, I did allow them -- you
15 to essentially allow them to withdraw. But I remember in
16 particular at a hearing, I asked you, and I told you, I
17 could appoint advisory counsel for you. And you
18 specifically told me you did not want me to appoint
19 advisory counsel.

20 MR. BANKS: And the reason was, based on our
21 experience with counsel, we had had so many negative
22 experiences with counsel, we decided to move in a
23 different direction. And you did, as you stated, in your
24 hearing, provide that option to us.

25 And that is where we are at this particular point,

1 Your Honor.

2 THE COURT: All right. I am sorry, Ms. Hazra, I
3 didn't mean to interrupt your argument. But I remembered
4 the question I wanted to ask.

5 MS. HAZRA: Well, I am glad, Your Honor.

6 I just am not sure, again, without the docket sheet
7 in front of me. But I believe the defendants filed a
8 response to our motion to strike their expert while they
9 were pro se. So even though the notice may originally
10 have been filed while they were represented, I believe
11 they have since been on notice that we objected, and were
12 able to respond while pro se.

13 I would also like to say, Your Honor, that at
14 pretrial conference which was held on September 21st, the
15 Government raised this issue that we believed that they
16 had witnesses on their witness list that constituted
17 experts and we did not receive any disclosure.

18 And then on the first day of openings -- on the
19 openings of the first witness, Your Honor, we were at the
20 bench. It might have been the second day, I don't exactly
21 remember, but we raised it again. They had alluded to
22 experts in their opening statements, and we've received no
23 disclosure under Rule 16 or Rule 702. And so the
24 Government has raised this issue several times, Your
25 Honor, and this is not the first time.

1 When it comes to Mr. Thurman, I am not sure when we
2 got this report, but defense provided us several proffers,
3 that are multiple pages. But it is my understanding that
4 this was included in one of those that we got
5 approximately a month ago, or a little bit less. And it
6 wasn't specifically pulled out or noted, I don't think.
7 It was just part of a big lump package we received from
8 the defendants.

9 On that note, Your Honor, in that sort of -- I
10 believe this is defense Exhibit 400, is this next thing I
11 am going to refer to, it is a big amount of paper that the
12 Government received, I want to say approximately a month
13 ago, as well, but Mr. Kirsch can correct me. It contains
14 in it affidavits of a Michele Harris and a Willie
15 Williams; potentially two witnesses that the defense may
16 try to call as experts, and we would object to those, as
17 well. It is tab R, Your Honor.

18 And we didn't receive anything other than tab R in
19 this proffer. So I would move to exclude those witnesses
20 or, frankly, any other witnesses that the defendants
21 intend to call as experts whom they have not provided us
22 notice of.

23 MR. BANKS: Your Honor, I can speak to that.

24 THE COURT: All right. Mr. Banks, you may. Let me
25 just ask you, are there any other experts' testimony that

1 you intend to introduce, other than for the one expert for
2 which we did have reports, and which I have already ruled.

3 MR. BANKS: No, Your Honor. With regards to
4 Michele Harris and Willie Williams, both of them served as
5 contractors at IRP and/or Leading Team. I can't recall
6 without refreshing my recollection.

7 THE COURT: With respect to the staffing companies
8 that are involved in this case?

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

10 THE COURT: So did they submit time sheets?

11 MR. BANKS: Yes, Your Honor.

12 THE COURT: I don't recall those names, but if
13 that's the case --

14 MS. HAZRA: Your Honor, it is my understanding that
15 is not what the affidavits that are contained in tab R of
16 defense Exhibit 400 --

17 THE COURT: I don't need to get into that. If they
18 were actually workers and paid by these companies, and
19 have testimony that is relevant to the issues in this
20 case -- the charges in this case, they would be factual
21 witnesses. But they're not going to give testimony in the
22 guise of factual witnesses, which is actually expert
23 testimony, which is customs and standards in the industry.

24 MR. BANKS: No, it wouldn't be standards. This is
25 their actual work that they performed, not only at IRP,

1 but outside of IRP.

2 THE COURT: Well, but that is what I am talking
3 about. What is relevant to this case is what they did for
4 IRP and billed to the staffing companies.

5 MR. WALKER: Your Honor, their testimony would be
6 similar to Mr. Stewart's.

7 THE COURT: All right. To the extent -- I will
8 tell you, I gave you a lot of leeway with Mr. Stewart, all
9 right. I gave you more leeway than I should have, because
10 his testimony should have been limited to what he did in
11 this case, not what he has done in other cases.

12 So I'm not going to give you as much leeway with
13 other witnesses. They are either factual or they are
14 experts. If they are not experts, then they are talking
15 about the facts that are relevant to this particular case.
16 Okay.

17 MR. BANKS: Your Honor, I would like to make
18 another statement.

19 THE COURT: Well, let Hazra finish her argument.

20 MS. HAZRA: Your Honor, I just wanted to mark, for
21 the record, what we got from Mr. Thurman. And then I
22 don't think I have anything further, unless the Court has
23 a specific question.

24 THE COURT: No, I don't. And my ruling will still
25 stand.

1 MS. HAZRA: Thank you.

2 THE COURT: So if you can give that to Ms. Barnes,
3 she will mark that for identification.

4 All right. Now, Mr. Banks.

5 MR. BANKS: Your Honor, I just would like, for the
6 record, to say that the process overall in this case has
7 not been perfect, I would say on our side as well as the
8 Government's side. The Government -- one issue we had
9 with the Government was they provided us with an exhibit
10 list that stated that they had certificates of
11 authenticity. When we got to the actual exhibit --

12 THE COURT: We have already dealt with all of that.
13 The certificates of authenticity, we dealt with that at
14 the time of the final trial prep conference. They never
15 even really had to rely on those, because they had the
16 actual witnesses here.

17 MR. BANKS: They did exclude some witnesses after
18 that ruling, though, Your Honor. My only point would be
19 that the Government hasn't been perfect in providing what
20 they were supposed to provide in this case, and scurried
21 up around at the last minute to provide that, and they
22 were allowed to do that.

23 THE COURT: But there is a big difference between a
24 certificate of authenticity with respect to documents that
25 were produced to you a year and a half ago, and your

1 putting a witness on the stand without having given any
2 notice to the Government that it is going to be expert
3 testimony that you are eliciting. There is a real big
4 difference between that type of non-compliance and what
5 you are talking about with respect to the Government.

6 MR. BANKS: Okay.

7 THE COURT: You were given the documents. If they
8 hadn't given you the documents and they tried to come in
9 here a month before trial with a stack of documents like
10 this saying these are all originals, you would have a
11 point. But that is not what they did. They gave you the
12 documents. This was merely to lay the foundation and to
13 get them into evidence.

14 MR. BANKS: Okay. That's the point I wanted to
15 make for the record, Your Honor.

16 THE COURT: All right. Anything further?

17 MR. WALKER: Nothing further, Your Honor.

18 THE COURT: I hope you all understand, your
19 testimony from your witnesses is going to be limited to
20 what is relevant to the charges in this case. All right?

21 MR. WALKER: Understand.

22 THE COURT: So make sure that that is what you are
23 planning with the witnesses.

24 MR. WALKER: Yes, Your Honor.

25 THE COURT: All right. If there is nothing

1 further, then Court will be in recess until -- I am sorry,
2 Mr. Banks?

3 MR. BANKS: Your Honor, did you rule on -- did you
4 get a chance to review Mr. Thurman's information that he
5 provided to the Government, and to evaluate whether or not
6 it would be sufficient for him to testify.

7 THE COURT: I will take a look at it this afternoon
8 after we recess. I will take a look at all three of
9 those, actually, this afternoon, to make sure that my
10 ruling is appropriate.

11 MR. BANKS: Thank you, Your Honor.

12 MR. KIRSCH: Your Honor, again, I just want to put
13 the Court on notice, another issue that may come up.
14 Before the trial, we filed a motion in limine with respect
15 to testimony about the quality of the defendants'
16 software. And I just wanted the Court to know that is the
17 Government's position that we have not opened the door
18 with respect to the quality of the software, even during
19 this time period.

20 The only testimony that the Government has elicited
21 about that has been the testimony from Mr. Tran that the
22 software didn't pass the compatibility test with other
23 software from the Department of Homeland Security. So we
24 do intend to object on relevance grounds to other
25 testimony about that, as well. I am not asking the Court

1 to rule, I just wanted the Court to be aware that that is
2 going to be the Government's position.

3 MR. BANKS: Okay. Your Honor, we disagree with the
4 Government, of course. They did open the door.

5 THE COURT: Well, then you need to be prepared to
6 argue to me tomorrow, or whenever you offer this, as to
7 how they opened the door.

8 MR. BANKS: Thank you, Your Honor.

9 THE COURT: I am not going to make any rulings
10 until you offer it. I won't have a context in which to
11 rule. They are giving you fair notice so that you are
12 prepared to respond.

13 Anything further?

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

15 MR. BANKS: Nothing else.

16 THE COURT: So I will expect everybody back, ready
17 to go promptly at 9 o'clock tomorrow morning.

18 Court will be in recess.

19 (Court is in recess at 1:37 p.m.)

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R E P O R T E R ' S C E R T I F I C A T E

I, Darlene M. Martinez, Official Certified
shorthand Reporter for the United States District Court,
District of Colorado, do hereby certify that the foregoing
is a true and accurate transcript of the proceedings had
as taken stenographically by me at the time and place
aforementioned.

Dated this 5th day of December, 2011.

s/Darlene M. Martinez

RMR, CRR