

11

OPENING STATEMENT

12 **BY MR. WALKER:**

13 If it please the Court, ladies and gentlemen on the
14 jury. My name is Gary Walker. I was the president of
15 Leading Team, Inc. and IRP Solutions. Many of the facts
16 that Mr. Kirsch just related to you are just facts. They
17 are just that. They are facts. Many of the things he
18 said are true. But many of the things he said are not
19 true.

20 Many of the things he said are tainted because they
21 have been seen through a filter of the Government. The
22 Government is looking at these facts through a filter of
23 criminality. They are looking at these details and
24 evidence based on their belief that myself and these five
25 gentleman entered into a scheme to take money from

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

1 staffing companies. That is not a true filter.

2 The true filter, the true lens to view this
3 landscape of evidence, is one where six men entered into
4 business to provide software to law enforcement. We
5 entered into business, and did very hard work to be able
6 to provide something to law enforcement that was greatly
7 needed.

8 The three companies that were mentioned are
9 companies that we formed. You need to know a little bit
10 about the history of those companies. I formed LTI
11 myself, Leading Team, Inc. That company was formed as a
12 general IT, or information technologies company, to
13 provide services and software capability to companies in
14 the Denver area. And I did just that for many years.

15 Through Leading Team, I consulted to some of the
16 largest companies in Denver. I am a 25-year veteran of
17 the IT industry. I programed for companies small and
18 multi-billion dollar companies. I sat next to the Prime
19 Minister of England, Margaret Thatcher, and provided her a
20 demo, because I was the best at what I did for Lockheed
21 Martin.

22 I am not coming into this as a scam. I am
23 providing these companies and helping these companies so
24 that we can provide software to law enforcement. So as I
25 just said, LTI was the first company. General consulting.

1 I was approached by a gentleman named John SanAgustin, who
2 at the time worked for the El Paso County Sheriff's
3 Department in Colorado Springs. He came to me and said,
4 Gary, we work long hours. We do lots of overtime. We
5 spend hours and hours doing paperwork, where we should be
6 out on the street doing investigations. Can you help us
7 by writing a program that will help us to do this on a
8 computer?

9 Now, today that doesn't seem earth shattering. It
10 doesn't seem like anything new. But back in the late
11 '90s, law enforcement was not doing it. Law enforcement
12 was completely paper driven. And just as John told me,
13 they spent many an hour going through that paper, hunting
14 down paper, chasing down people, trying to find out what
15 happened on a particular case, what happened with the
16 investigation.

17 So since John knew me as a good software developer,
18 he came to me and asked me to do something. He provided
19 me a notebook full of law enforcement forms saying here is
20 how we do investigations. Here is what we do when we go
21 to a crime scene of this type. Can you use these forms to
22 provide us a program? He was working with the Sheriff in
23 El Paso County, John Anderson, in the business.

24 That notebook was copyrighted by the Sheriff, John
25 Anderson. In order for me to do my work based on that,

1 they gave me a release of copyright liability. They said,
2 Gary, you can use this notebook, these forms, to develop
3 this project so that we can get it out to law enforcement.
4 I did that under Leading Team.

5 Unfortunately, John made promises to me that he
6 would pay me once they sold the product. But,
7 unfortunately, they never sold the product. I had worked
8 many long hours; nights, weekends, every free minute I
9 had. I worked a full-time job. I did their program after
10 hours. And I came to a point, after about a year and a
11 half of saying, John, we have an agreement. I built the
12 software. You were going to sell it. You made no sales.
13 I have got no money back from this, I need to do
14 something. I can't continue to work this.

15 I gave John a copy of the software, and I kept the
16 software. I said, good luck. I'm not going to contest
17 you trying to sell it, but I am going to do something with
18 it so I can make some profit for my years of work. That
19 was back at LTI.

20 Remember, I am still working a full-time job. I am
21 doing this nights and weekends. There were many nights,
22 many weekends where I wanted to take my son fishing.
23 There were many nights and weekends I wanted to go to a
24 football game, but I sat there and coded this software.
25 So, of course, I wanted to recoup something from those

1 efforts. So once I gave John his copy of the software, I
2 went out to do something with it.

3 And in doing that, I talked to many people in law
4 enforcement. So, keep in mind, before this, I had no law
5 enforcement background. I had never dealt with law
6 enforcement. So I began to talk with people in law
7 enforcement. Here is what I have got. Do you like it?
8 If you don't, what can I do to improve it? What do I do
9 with this?

10 And they told me what to do. They said, Gary, this
11 is a good product. But, basically, the smaller agencies
12 you are trying to sell it to don't use it. You need to
13 really market it to larger agencies. I thought that was
14 very good advice, so I enlisted some of my friends who
15 were also IT professionals to help me do that. I couldn't
16 alone build the next level of this software just by
17 myself. It required databases. It required clients,
18 servers. It was much more sophisticated than what I had
19 built myself nights and weekends.

20 So I enlisted some of these five gentleman to help
21 me do this. We have this piece of work that can't be used
22 by a law enforcement. We have to take it to the next
23 level. And so these guys helped me to mature that first
24 product into something that could be used by medium and
25 large law enforcement agencies.

1 In the course of doing that, of course, we talked
2 to many law enforcement agencies about our products. We
3 told them what it did. We showed them what it did. That
4 software, which if you are familiar with IT technology, is
5 called a client server version of the software; meaning
6 that unlike the first version, where a single person would
7 work on it at his desk and would write the details and
8 enter into the program into a file, much like Notepad, the
9 next version would write to a database. And many people
10 working on a case could access the information over the
11 network in the database. That is a client server.

12 And so in talking with agencies about these client
13 server versions, we began to get great interest
14 immediately. Immediately. One of the first agencies we
15 talked to and got positive responses from was the Colorado
16 Bureau of Investigation. We showed them a demo of our
17 product. They happened to be looking for a product just
18 like ours. They indicated high interest in procuring our
19 product.

20 We worked with leadership at CBI to put together an
21 agreement. They did not have the funds to pay for the
22 product. We thought, since this was the early discussions
23 of sales, we thought our product was worth something on
24 the order of \$250,000 at that time. So we put together
25 documentation, whereby since they did not have the money

1 to buy it, that they would obtain a grant, use the funds
2 from that grant to buy our product for \$250,000.

3 Now, remember, we are six people, with full-time
4 jobs. We are doing this early on as a part-time venture.
5 \$250,000 was a great initial sale. We worked with CBI to
6 do that. We had high belief -- and you will hear this
7 throughout our testimony from the defense witnesses, that
8 we had high confidence that we were going to sell this,
9 based on the statements from not only CBI, but many other
10 agencies that we talked to.

11 This is a recurring theme: "We want it." "We like
12 it." "We want it." "We will find a way to purchase it."
13 Keep in mind, we are a small company. At this point we
14 are IRP Solutions, and why it is important for you to know
15 why we became IRP Solutions. As I said before, Leading
16 Team, Inc. was a general purpose IT consulting company.
17 If I go to law enforcement and say we are Leading Team, it
18 really doesn't mean anything.

19 Well, by this time, I had decided this is a great
20 opportunity. Law enforcement really says they like it.
21 They need it. Let's commit ourselves to delivering this
22 product to law enforcement. And so at that point, we
23 created a company called Investigative Resource Plan.
24 That is what the initials IRP stand for. And we created
25 that company because we were all in at that point of

1 making it our goal to provide this great product to law
2 enforcement.

3 That's how IRP came into being. It did not come
4 into being as part of a scam, a way to avoid debt, or any
5 other evil intentions, as you will hear from the
6 Government. We simply wanted a company with a name and
7 mission solely focused on law enforcement. IRP Solutions.
8 Investigative Resource Plan.

9 So we're talking to many agencies, getting positive
10 feedback. We are doing a lot of the work ourselves, but
11 we brought in others to help us do the work. And you must
12 understand, that when we first talked to CBI, we were
13 making a plan, along with their management, to deliver the
14 software and be able to realize revenues of about
15 \$250,000. We would be able to cover our initial staffing
16 debt with that. But that fell through. We did not get
17 that money.

18 And so, of course, we were still talking with other
19 agencies about our software. And we knew that they had
20 high interest. And so we knew that we would be able to
21 close this business with one of these large agencies and
22 be able to pay off the staffing companies. We talked to
23 agencies across the country. We would do web demos. We
24 didn't have a lot of money, so we would do web demos with
25 them.

1 Their feedback to us was, in many cases, this is
2 very good. In some cases, they would say, this is the
3 best we have seen. And so our goal and our constant talk
4 was, we are going to sell this. We will be able to pay
5 off this debt to these staffing companies involved.

6 Now, in talking with some of these companies and
7 agencies, they would tell us that this is what we want.
8 We like it, but you are too small of a company. This was
9 a learning experience for us. Remember, we are six IT
10 professionals. We had worked in companies providing
11 software and IT services. We had no business experience,
12 but we had great intentions.

13 And so we said, well, we are too small of a
14 company. We will move on to the next agency and close a
15 contract with them, get a deal so that we can pay off our
16 debts. And eventually, one day we got a call from the
17 Department of Homeland Security. That first call was out
18 of the blue. We had no thoughts of being able to sell
19 this software to DHS. And, of course, a small company in
20 Colorado Springs, we were elated.

21 We thought this is what we have been looking for.
22 This could launch us with this one opportunity into a
23 position where we could be a market leader. And we hadn't
24 had any major sales. Now, that first version I had wrote,
25 we had sold some of those, and we will introduce evidence

1 to show the sale of that product. We didn't have any
2 great success, but we did make sales. The product was
3 well liked.

4 But, as IT people, we did not know, and not having
5 any experience with law enforcement, we did not know that
6 many of these small agencies we were talking to didn't do
7 those types of investigations. We found out later that
8 those agencies would go to the Colorado Bureau of
9 Investigations when they needed investigation and say,
10 handle this for us. We found that out. Of course, we
11 were somewhat disappointed by that. That was our entire
12 initial sales strategy.

13 But we continued to talk to larger agencies. As
14 they suggested, we built the client server version. That
15 was the version that initially got high interest from the
16 larger agencies. The client server version is what DHS
17 first saw. When DHS first contacted us, they said, we are
18 contacting companies. We have a need for software. And
19 they gave us some documentation about describing what kind
20 of software they were looking for.

21 And I remember very well, we were working on a
22 Saturday, going over that document. And we looked through
23 that document, and our comments were, "Oh, my God. This
24 sounds like our product," which is called CILC. CILC. It
25 is an acronym for Case Investigation Life Cycle. We saw

1 their description of what they wanted, and we said, "Oh,
2 my God this is CILC." We joked among ourselves, "Did they
3 break into our servers? Did they see our documents? How
4 is it so closely aligned with what we brought?"

5 It is because we brought in law enforcement. We
6 talked to law enforcement about how they did their work,
7 and we built software based on that. Very simple concept.
8 Everything we are talking about here is simple. It is a
9 matter of a lens at which you are looking at the details
10 of the evidence.

11 As a programmer, I remember early on, one of the
12 programmers I admired had a saying. He said, "When you
13 are looking at bugs, and you see the evidence of that bug,
14 those are footprints. It will lead to you a certain
15 place. When you see those footprints, first believe that
16 the footprints are from a horse --" the horse being it's
17 your code. Because when programmers are looking for a
18 bug, they want to see where it is. They may go and say,
19 it may be not code, but it may be these other things. And
20 that is natural tendency of anyone, for somebody who has
21 written a program will say, it is not my stuff, it is
22 something else.

23 So the horse and the footprints, the footprints --
24 the horse would be my code. If I am looking at these
25 footprints and saying, it can't be my code, it is

1 something else, those footprints could be something else
2 called a unicorn. He told me, "When you look at those
3 footprints, those footprints are probably from a horse,"
4 your code. It is not likely that it is a Microsoft
5 operating system product. It is not likely that it is an
6 Oracle database code. It is probably your code.

7 So when you are looking at the evidence of this
8 case, the evidence on footprints, and I will tell you that
9 when you look at these footprints, and the Government says
10 all these footprints indicate a scam, and these people
11 were waiting to just defraud these companies, then you
12 would have to believe those footprints are from a unicorn.

13 But if you look at that evidence as footprints in
14 the form that we were doing business, trying to sell this
15 product, doing the best we could, making true statements
16 from our beliefs to staffing companies, based on the
17 statements from law enforcement, if you look at it in that
18 view and that lens, then you will see that the footprints
19 are from the horse, not from the unicorn.

20 Now, we are six gentlemen with no criminal
21 histories. Six IT professionals trying to deliver
22 software that we heard many times is very good. We went
23 to DHS. Our first meeting, the gentlemen asked us, how
24 did you get here? I only see billion dollar companies.
25 In fact, after you, Oracle is coming. Oracle is a billion

1 dollar company. We were competing against Oracle, IBM,
2 major contracts. Billion dollar companies. But we had
3 great stuff they did not have.

4 And so based on that, we, in our heart of hearts,
5 six men of faith, six men who have known each other, in
6 many cases, all their lives, six men who go to the same
7 church --

8 MR. KIRSCH: Objection, relevance, Your Honor.
9 This is argument.

10 THE COURT: Sustained.

11 MR. WALKER: The evidence will show that the six of
12 us have no criminal background, no criminal history. The
13 evidence will show that we had companies that we were
14 selling software or attempting to sell software to law
15 enforcement agencies. The evidence will show, as
16 Mr. Kirsch says, time sheets and invoices. Many of those
17 time sheets had many hours. That is a fact. Witnesses
18 will testify that people worked long hours. People will
19 testify that we talked to agencies about our product and
20 they told us that they wanted it.

21 And so when the Government asserts that we were
22 making false statements about any pending contracts, that
23 is not true. We were making true statements based on the
24 feedback from large law enforcement agencies about our
25 software. Those agencies included DHS, NYPD.

1 You will see e-mails between our companies and
2 NYPD. E-mails between our small company and the
3 Department of Homeland Security. What you won't see is
4 what happened in the demos and meetings we had with those
5 people. You won't see any representations by those
6 government officials that we're going to buy your
7 software. And, in fact, they did not say verbally to us
8 that they would buy our software from DHS, but they gave a
9 strong indication that this was the best they had seen.

10 But we had to find a way to sell it to them. You
11 will see evidence and e-mails with us talking to large
12 companies about partnering. You will see evidence between
13 us and companies like Deloitte, and other billion dollar
14 companies about our software. Why? Because there was a
15 contract waiting out there by the government for over half
16 a billion dollars. I did say half a billion. Not
17 million, half a billion dollars.

18 You will see in evidence that the government let
19 contracts of that amount of money for the type of software
20 we were dealing with. And given the statements from many
21 DHS people that this is the best they have seen, but we
22 can't contract with you. We talked to those companies
23 about a relationship, whereby they would be the
24 subcontractor, we would be the prime -- they would be
25 prime contractor, we would be the subcontractor.

1 It is true we had that. It is true that that rose
2 to the level of \$5 million. But it is also true that one
3 sale wiped out all of that debt to a lot of agencies. It
4 is true that ten sales to medium size agencies wipes out
5 that debt. That is what we were working on every day. We
6 not only worked on software, we worked on ways to make
7 sales to pay debt.

8 Now, one reason that we had that much debt, being a
9 small company, we had to prove to DHS, NYPD that we could
10 deliver. So we would have meetings with these law
11 enforcement agencies. You will see evidence of our
12 meetings. And they will tell us exactly what they wanted.
13 That was our benefit to them. We could provide them
14 exactly what they wanted, and we could show we could. We
15 had to show we could do it.

16 So when you see the e-mails between us and the
17 NYPD, between IRP Solutions and DHS, it is for the reasons
18 that we had to show them we could deliver. And before
19 that we would get their feedback. They would say this is
20 very good. So I would have you to look at the evidence in
21 this case being hoofprints. You have to be the judges of
22 whether those hoofprints are from the horse; being that we
23 were working to sell our software to pay debt, or you have
24 to believe that the footprints are from the unicorn. And
25 to believe that, you will have to believe we entered into

1 a scheme to get money from these staffing companies free
2 labor. That is what you have to believe.

3 When we go to our closing statements, we are going
4 to recap, and we will show you that the hoofprints are
5 from the horse, not the unicorn. Thank you.