

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 PARTIAL TRANSCRIPT
(Jury Trial Day 2 - Opening Statements)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 10:34 a.m. on the 27th day of September 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
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FOR THE DEFENDANTS:

Pro Se.

1 SEPTEMBER 27, 2011

2 (Requested proceedings.)

OPENING STATEMENT

4 BY MR. KIRSCH:

5 May it please the Court. Good morning, members of
6 the jury. The defendants in this case, like many other
7 Americans, wanted to run their own business. You are
8 going to hear during the course of the trial about the
9 companies that they were attempting -- that they were
10 attempting to run.

11 Ms. Barnes, could I ask you to activate the jury's
12 monitors, please.

13 You are going to hear about three different
14 companies that the defendants were using: Leading Team,
15 Inc. sometimes referred to by the acronym LT. DKH, LLC,
16 which is sometimes referred to as DKH Enterprises. And,
17 finally, IRP Solutions Corporation.

18 The reason you all are here today and over the
19 course of this trial, is you're here because of a choice
20 that these defendants made when they were operating their
21 businesses. The choice that they made was that they
22 agreed to engage in a scheme to defraud the various
23 staffing companies that you heard in the Judge's
24 instruction; about 42 different staffing companies.

25 And what they agreed to do is they agreed to tell

1 those staffing companies a variety of false statements,
2 both in writing and orally, in order to get free labor
3 from those staffing companies. And over the course of the
4 trial, you are going to learn that they got about \$5
5 million worth of free labor from those staffing companies
6 as a result of the lies that they told.

7 The Judge has just given you an outline of the
8 charges that are at issue in this case. And I want to
9 talk to you just a little bit more about those. She said
10 that one of the charges is conspiracy. That is an
11 agreement. And, in this case, the agreement was to commit
12 the crimes of mail fraud and wire fraud.

13 The defendants, with the exception of Mr. Walker,
14 are also charged with substantive crimes of mail fraud and
15 wire fraud. And the essence of those charges is that the
16 defendants had a scheme to defraud the staffing companies,
17 and that that scheme was carried out either through the
18 use of the United States Mails or through the use of
19 interstate wire transmissions.

20 Over the course of the trial, you are going to hear
21 all kinds of evidence, testimony, and you are going to see
22 documents. That evidence is all going to demonstrate to
23 you that these defendants had the intent to defraud the
24 staffing companies.

25 I am going to talk about that evidence in just a

1 few minutes, but before I do that, I want to give you a
2 little bit of background about how staffing companies do
3 business. I think you need to know how staffing companies
4 are supposed to do business, and then we are going to talk
5 about how it is that the defendants gamed that system in
6 order to defraud those same staffing companies.

7 The picture that is on this scene now describes the
8 arrangement that occurs, sort of a typical arrangement
9 with a temporary, a standard temporary agency or a
10 standard staffing company. The staffing company provides
11 employees to its client company. Those employees work at
12 the client company. The client company approves time
13 cards for those employees and sends them back to the
14 staffing company. The staffing company then pays wages to
15 its employees, and it invoices the client company for
16 those wages, plus the profit that the staffing company is
17 going to make.

18 Now, in this case, what you are going to hear is
19 that most of what happened is something called payrolling.
20 You may also hear witness refer to that as staff
21 augmentation or, perhaps, as a pass-through arrangement.
22 All of those witnesses are talking about the same kind of
23 thing. That is the arrangement that I want to talk with
24 you about now.

25 In a payrolling situation, the main -- one of the

1 main differences is that the client company actually makes
2 suggestions to the staffing company about who the client
3 company wants to hire. The staffing company then hires
4 those employees and places them at the client company.
5 That is what is depicted here in the next slide.

6 The employees go to work at the client company.
7 The client company, just like in a standard situation,
8 then submits approved time cards back to the staffing
9 company. Based on those time cards, the staffing company
10 does two things; one, it pays wages to the employees.
11 And, number two, it invoices the client company for those
12 wages, plus its mark up.

13 And you will hear that payrolling is not a
14 particularly lucrative business for most staffing
15 companies. They have a smaller mark up often for
16 payrolling than they do for other kinds of staffing
17 arrangements. But you will hear that staffing companies
18 will often do payrolling because it is sometimes an intro
19 to a more profitable business, where they can supply the
20 employees. And you will hear that the defendants in this
21 case knew that, and they exploited that. They suggested
22 to the staffing companies that more profitable business
23 would follow after the payrolling. However, it never did.

24 Now, let's talk about how the defendants used
25 payrolling in order to further their scheme. In this

1 case, the companies, the client companies at issue were
2 the ones that I described to you already. They were the
3 ones that were operated by the defendants; Leading Team,
4 DKH and IRP. And the employees that were suggested to the
5 staffing companies included all six of the defendants
6 here, plus other people, both people that they knew
7 previously, and other people that they didn't.

8 The defendants worked at their own companies;
9 Leading Team, IRP or DKH. This slide shows where a
10 significant part of the fraud begins. The time cards that
11 were approved by those companies and submitted to the
12 staffing companies in this case contained false
13 statements. I am going to talk more about those false
14 statements in a minute, but for right now I am just going
15 to tell you, they contained false statements about the
16 hours worked, and they contained false statements about
17 the identities of the employees who had actually done the
18 work.

19 Based on those time cards with the false
20 statements, the victim staffing companies invoiced the
21 defendants' companies and they paid wages to the
22 defendants and the other people who were represented in
23 the time cards.

24 Here is the next twist in the defendants' scheme.
25 The defendants weren't paying the invoices. Instead, what

1 the defendants would do is they would make false
2 statements to the staffing companies about why they
3 weren't paying the invoices. They would do that so that
4 the staffing companies would continue to pay the wages.
5 But the defendants didn't ever pay the invoices, with very
6 brief exceptions that we'll talk about.

7 Here is the final twist in the defendants' scheme.
8 Once a staffing company finally figured out what was going
9 on and cut off the defendants or the other employees who
10 were working there, the defendants would go out, they
11 would find a new staffing company, and they would repeat
12 the cycle all over again.

13 You are going to see e-mails between David Banks,
14 Demetrius Harper, David Zirpolo and Kendrick Barnes that
15 contain lists and lists of potential staffing companies
16 they could approach, discussions about whether or not they
17 could approach particular companies and why. And in
18 particular, you are going to see discussions among those
19 people about the fact that there were some companies that
20 they couldn't approach again because they had already
21 ripped them off once.

22 I want to talk again briefly about the different
23 companies and how the different defendants were associated
24 with the defendants' companies when they were doing --
25 when they were doing these transactions with the staffing

1 companies.

2 Leading Team, you are not going to hear as much
3 about. Leading Team stopped being used after the
4 beginning of this scheme. But when you hear about Leading
5 Team and when you see documents, you are going to see that
6 the main people acting as representatives of Leading Team
7 in making the arrangements with staffing company were
8 David Banks and Gary Walker. You will see the
9 supervisors, meaning the people who signed or approved the
10 time cards for Leading Team were David Banks, Gary Walker
11 and David Zirpolo.

12 And you are going to see that among the defendants,
13 David Banks, Demetrius Harper, Gary Walker and Clinton
14 Stewart all worked as employees for Leading Team. Now, as
15 I told you before, there are a number of other people that
16 also worked as employees, or at least for whom time was
17 reported as employees to these different companies. I am
18 not talking about them for this purpose.

19 The other thing you should know about Leading Team
20 is that Leading Team always worked in association with
21 DKH. And when it was working in association with DKH, it
22 was Demetrius Harper who was representing DKH.

23 DKH, LLC is the second company. You will hear more
24 about this company. The people who acted as
25 representatives of DKH, who negotiated with the staffing

1 companies for DKH, were Demetrius Harper and Clinton
2 Stewart. The people who served as supervisors were David
3 Banks, Demetrius Harper, Gary Walker and Clinton Stewart.
4 And the people who were submitted as employees for DKH
5 were David Banks, Gary Walker, Clinton Stewart, David
6 Zirpolo and Kendrick Barnes.

7 The last company we have talked about is IRP
8 Solutions Corporation. The people that you will hear
9 acted as representatives for IRP included David Banks,
10 Demetrius Harper -- although when he was acting on behalf
11 of IRP he used his middle name, Ken, not his first name,
12 Demetrius -- and David Zirpolo. You will see that the
13 supervisors, people who signed time cards were David
14 Banks, Ken Harper, Gary Walker, Clinton Stewart and David
15 Zirpolo.

16 The employees of IRP Solutions were Demetrius
17 Harper, David Zirpolo and Kendrick Barnes. Now, I told
18 you I was going to come back to the false statements that
19 were made in the course of this scheme, and that is what I
20 want to talk about now. First I want to talk about the
21 false statements that were made about the work that these
22 companies said they were doing. These are the false
23 statements that these companies made -- that these
24 defendants made on behalf of their companies in order to
25 get the business with the staffing companies in the first

1 place.

2 One of the major ones is that you will hear
3 staffing company after staffing company say that the
4 defendants told them that they either had current
5 contracts or they had impending contracts with a variety
6 of major law enforcement agencies, including the New York
7 Police Department, the Department of Homeland Security,
8 Department of Justice, and the United States Bureau of
9 Prisons. That is what the defendants said.

10 You're going to hear testimony from witnesses, from
11 those agencies, witnesses who met with those defendants,
12 and those witnesses are going to tell you that the
13 defendants didn't have a contract with us. We never told
14 them they had a contract with us. And we never said
15 anything that would have lead the defendants to believe
16 that we were about to have a contract with them.

17 These statements caused the staffing companies to
18 be deceived about the income that the defendants'
19 companies were going to have. You will hear testimony
20 from staffing company representatives, and they will tell
21 you that one of the reasons they did business with the
22 defendants was because they believed what the defendants
23 had said about these big government contracts, and they
24 thought that those big government contracts would allow
25 the defendants to be able to pay the invoices.

1 Finally, you will see evidence that the income that
2 the defendants and their companies actually had from law
3 enforcement agencies was minimal. It was so minimal that
4 for many of the staffing companies, the total income that
5 they received from law enforcement agencies wasn't enough
6 to cover the wages of a single employee.

7 I mentioned that there were false statements in
8 time cards. Those false statements included two major
9 categories. One, the number of hours that were worked
10 and, two, the identity of the employees working. You'll
11 see time cards that will indicate to you that the
12 defendants were regularly reporting to two staffing
13 companies that they were working the same or very similar
14 hours on the same day.

15 You will see time cards that will show that in at
16 least -- on more than one instance, for more than one day,
17 the defendant, Kendrick Barnes, reported to three
18 different staffing companies that he had worked for those
19 staffing companies on the same day. And he, in fact,
20 reported, when you add it all up, that he had worked more
21 than 24 hours in each of those days.

22 I said that there were also false statements made
23 about the identity of the employees who were working. You
24 will see e-mails and other documents that came from a
25 search of the defendants' offices. And those e-mails

1 contain discussions between the defendants about the
2 aliases or the different names under which they were going
3 to be reporting time.

4 You can see e-mails that will talk about one
5 particular employee. There is a discussion about how he
6 needs to report to a new staffing company hours that he
7 had worked before the defendants' companies even had an
8 arrangement with that staffing company. And just in case
9 -- and the final thing that you will see is you will see a
10 spreadsheet that came, an internal spreadsheet that was
11 found during a search of the defendants' offices. It is a
12 spreadsheet that was documenting employees that were
13 working at various places, hours, rates, that kind of
14 thing. And one of the entries that you will see, or one
15 of the columns that you will see on that spreadsheet is a
16 column entitled "alias."

17 You will hear that the staffing companies relied on
18 the statements that were made in these time cards. They
19 relied on them to issue payroll to the defendants or the
20 other employees whose time was reported in them. And they
21 relied on them to do their billing, to send the invoices
22 to the defendants' companies.

23 You will see that there were interstate wirings
24 that were occurring with respect to these time cards,
25 because they were often being faxed from the defendants '

1 offices to staffing companies that had headquarters or
2 processing facilities that were out of state. You will
3 see that there were mailings that were regularly occurring
4 in order to keep this scheme going, including mailings of
5 the invoices from those the staffing companies to the
6 defendants' companies, and mailings of paychecks.

7 Finally, you will hear about actions that the
8 defendants took to cover up the fraud that they were
9 engaged in, actions that they took to keep the staffing
10 companies giving them free labor. These included more
11 false assurances that contracts with these big government
12 agencies were just around the corner; we're just about to
13 sign a contract.

14 You are going to repeatedly see false statements
15 that were made about the slow government payment cycle,
16 false statements that, of course, wouldn't mean anything
17 if there wasn't already a contract with the government in
18 place, or at least that the defendants weren't claiming
19 that there was one.

20 And you are going to see that the defendants signed
21 personal guarantees as a way to try to make the staffing
22 companies think that these defendants really did intend to
23 pay them. You are going to see that when the staffing
24 companies really started asking questions, that the
25 defendants would refuse to meet with them. They would

1 refuse to return their telephone calls. They even turned
2 the staffing companies away if the staffing companies
3 actually showed up and tried to collect on the thousands
4 or tens of thousands, or in some cases, hundreds of
5 thousands of dollars that they were owed by these
6 defendants.

7 The evidence in this case isn't -- the evidence in
8 this case is going to take a long time; it is going to
9 take several weeks in order to present this evidence. You
10 are going to see a lot of documents. You are going to
11 hear from a lot of witnesses. That doesn't mean that this
12 case is complicated or that your job is going to be hard.
13 In fact, it is going to be the opposite.

14 The evidence isn't going to show you in this case
15 that the defendants got fabulously wealthy from this
16 scheme, but the evidence is clearly going to show you that
17 over the course of a little more than two years, that
18 these defendants agreed, and then they carried out their
19 agreement that they, by making the variety of false
20 statements to the staffing companies that I have been
21 describing to you, that they were going to get about \$5
22 million worth of free labor from these staffing companies
23 on the basis of the various false statements that they
24 were making to them.

25 At the end of the trial, after you have heard all

1 of this evidence that I have been describing to you, we
2 are going to come back to you again, and we are going to
3 make closing arguments. And at that time, based on all of
4 that evidence I have been describing to you, that you will
5 then have seen, we are going to ask you to find these six
6 defendants guilty on all counts. Thank you.

7 THE COURT: Thank you. Which of the defendants
8 would like to go first?

9 MR. WALKER: I will, Your Honor.

10 THE COURT: Thank you. You may come forward.

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

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.

6 THE COURT: All right. Before we go on, I think
7 what I would like to do -- we have been sitting for
8 awhile. So if you don't mind, we will break early for
9 lunch, so you don't hit the lunch crowd. We will break at
10 this point. And if you can be back at 12:30 ready to go,
11 we will continue with the defendants' opening statements.

12 Thank you very much. I want to remind you not to
13 discuss this case with each other or with anyone else, and
14 not to do independent research. Go out, have a nice
15 lunch, come back at 12:30.

16 Court will be in recess.

17 (A break is taken from 11:19 a.m. to 12:30 p.m.) .

18 THE COURT: You may be seated.

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

21 THE COURT: Is there anything that needs to be
22 brought to the Court's attention before we bring the jury
23 in?

24 MS. HAZRA: Not from the Government, Your Honor.

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

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

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

5 THE COURT: You may be seated.

6 **OPENING STATEMENT**

7 **BY MR. HARPER:**

8 Please the Court. Good morning, ladies and
9 gentlemen of the jury. My name is Demetrius K. Harper. I
10 am representing myself pro se today and throughout the
11 duration of this trial. The Government alleges that
12 myself and my five defendants wanted to scheme or defraud
13 staffing companies. These allegations are not founded.
14 They are not true.

15 In the opening statement of Government said that
16 the staffing companies would do business with us off of
17 those false statements. In fact, the evidence will show
18 that the staffing companies were told that we were looking
19 to wrap up a project. It is not a contract. We were
20 looking to wrap up a project with the NYPD or DHS. At no
21 time did we tell them we had a contract.

22 We will also present testimony from expert
23 witnesses in the staffing industry that will help explain
24 motivation by a recruiter or account manager; that they
25 would be told one thing, we were working on a project and

1 they would go to their superiors, whether that be the
2 decision maker on the staffing to say they have a
3 contract. So we will have experts to speak to that, why
4 that motivation is. These staffing people make money off
5 of the contractors which they hire. The more contractors,
6 the more consultants, the more money the staffing company
7 gets.

8 I would like to tell you a little story, a little
9 story about a company, men at that company, a dream, a
10 vision. That dream is about helping law enforcement do
11 their jobs even better; to get the data out in the field,
12 collect the data, and report back on that data. One of
13 the things that we learned through 9/11 was that the data
14 was out there, right. The data was in databases, but was
15 not being able to get back. Meaning there was data over
16 here, data over there in different buckets, if you will.

17 So my good friend, Gary Walker, came to me. I'm an
18 Oracle database administrator or DBA. So I understand the
19 value of data and what that means. I have worked with
20 several companies; IBM, Qwest, Comcast. And I was
21 entrusted to secure that data, that data being worth
22 millions and millions of dollars.

23 So when he came to me with this idea, this vision
24 about collecting data, helping law enforcement become even
25 better than they are, to get that data and to report that

1 data, I was very, very interested.

2 And I started my company, DKH, LLC or DKH
3 Enterprises. I started college in 1993, and I left in
4 1998, because in the true entrepreneurial spirit, I said,
5 I want to work for myself. So in 2000, July of 2000, I
6 started my company DKH Enterprises.

7 Now, during this time, I worked, as I mentioned,
8 with several Fortune 500 companies. Some of the larger
9 companies. And the skills that I had acquired in being a
10 database administrator, I was able to ensure that their
11 company's data was being managed, being reported, backed
12 up, things of that nature.

13 As I mentioned, the five defendants and myself,
14 there was no scheme to defraud. I took a vision, I took
15 the dream, because I believed in what we were doing to
16 help law enforcement. I cannot stress that enough. What
17 we were doing is we were building a solution that would
18 help our men and women on the front lines against
19 terrorism, against cyber crimes, to help them do their
20 jobs better. So there was no scheme.

21 I would like to also educate on the terms
22 "staffing" and "payroll." Now, if you or I went to get a
23 loan for a car or something like that, you wouldn't walk
24 in the front door and say, hey, I need a loan. I've got a
25 great job, they give you a loan. It is not how business

1 is done. If we use that example, the same thing in the
2 staffing industry.

3 So, for instance, the Government alleges false
4 statements were made and the staffing company went off of
5 that statement to enter into agreement. The reason why I
6 bring that up, when we go to get credit or get a car or
7 something, they fill out a credit profile or credit report
8 on you; TransUnion, Equifax, Experian. Same thing happens
9 in the business world. They look at my company, DKH
10 Enterprises, and see if I am worth enough to be extended
11 credit. They run a term called D & B, or Dun &
12 Bradstreet.

13 So just like the situation when you go get a car or
14 get a loan for your house, same thing in the business
15 world. So regardless of what statement was said, they run
16 your credit. And we will show in evidence and testimony
17 that this is how a staffing company engages and does
18 business, not off of a statement.

19 Evidence will also show, as owner of DKH
20 Enterprises, I sign these contracts and I agree to the
21 terms of the agreement. In those agreements, at no point,
22 the evidence will show, that the contract was signed with
23 the departments that we mentioned; the New York Police
24 Department or DHS.

25 I admit, I owe money. Who doesn't owe money? The

1 debt was incurred. It is 5 million. I'll never run away
2 from that debt. I so believed in the vision set forth by
3 Gary and the others that I signed my name as a personal
4 guarantee. Two things my father taught me; the measure of
5 a man. He was a sharecropper from Georgia. He taught me,
6 "Demetrius, work hard." I have done that. Last 13 years,
7 I have been a database administrator and I provided for my
8 family, my wife and my two children.

9 Second thing, is the value of your name. I take
10 that very, very seriously. So when I put my name down to
11 say I guarantee that I will pay this money back, I was
12 contracted by IRP Solutions to provide a service, meaning
13 they sell their software, the staffing that DKH
14 Enterprises incurs will be paid back. That is how much I
15 believed in the vision. That is how much I believed that
16 what we were doing to create software for our law
17 enforcement community, would better them.

18 So I signed my name. And the contracts, as Gary
19 mentioned, they didn't go. We didn't get those contracts.
20 We did the projects. We did the work. We made the
21 modifications for those agencies. It just didn't happen.
22 Just like in most businesses. The true entrepreneur
23 believes that at any moment, any moment, you can get a
24 sale. Any moment you can sign a deal with our prospective
25 agencies, and the \$5 million of debt is wiped away clean.

1 I was not a part of meetings, but I believed, and
2 my belief is to this day, that we were very, very close.
3 As an entrepreneur, you always have that mindset; that
4 mindset that in one moment, your fortune can change. And
5 this is what happened in our situation. We did the work.
6 We put in the time, long hours to get this solution where
7 it needed to be.

8 So now, back in 2005, IRP Solutions was raided by
9 the FBI. Now, the only way that we, IRP, the relationship
10 with DKH, providing staffing for IRP, could pay our debts,
11 was to sell the software. So if the software doesn't get
12 sold, we can't pay our debts. FBI comes in, raids the
13 business and, in essence, shut us down. So the only way
14 that we can pay the outstanding debt is to sell the
15 software. But, yet, the agency standing in the way is the
16 Federal Bureau of Investigation.

17 Having knowing that fact that we can't pay our debt
18 with an investigation centered. So the very agency that
19 we are marketing ourselves, trying to get our software
20 sold to, hey, we don't want to do business with you, you
21 are under investigation. The FBI knows that. But no one
22 would do business with us with that investigation.

23 So having that fact that we can't pay our debts,
24 and then saying we didn't intend to pay the debt, is a
25 self-fulfilling prophecy. They are going to say, you

1 didn't intend to pay the debt. You are sitting there
2 right in the way of us making our dream, our vision come
3 true for law enforcement.

4 I don't sit before you -- I don't stand before you
5 today as a rich man. I am bankrupt now. All those
6 personal guarantees that I signed, I couldn't meet the
7 obligation, because the only way to fulfill that, as I
8 said, was getting the software sold. My car was
9 repossessed. I was foreclosed on my house. Basically,
10 lost it all.

11 But today I stand before you with no criminal
12 record. I stand before you as a man that believes in the
13 vision that IRP Solutions has. And the only way we can
14 get our debts paid is to get past this period, sell our
15 software, and get our debts in order. That is very
16 important to me.

17 I didn't sign my name as a technique, as the
18 Government alleges. I signed my name because I believed.
19 I believe in what we are doing. I believe that we can
20 make a difference if we are allowed to sell our software
21 and move forward. Keep one thing in mind, this is a civil
22 matter, not a criminal matter.

23 MR. KIRSCH: Objection, Your Honor, this is
24 argument.

25 THE COURT: This is a criminal case. And that is

1 argument. Sustained.

2 MR. HARPER: The case is about debt that I
3 acknowledge, and I intend to pay. You must keep in mind
4 that the statements that the Government alleges were
5 false, are not true. No false statement, there is no
6 case. The statement was never made, there is no case. I
7 leave that with you. Thank you.

8 THE COURT: Thank you.

9 MR. KIRSCH: Your Honor, I am sorry, could we
10 approach very briefly?

11 THE COURT: You may.

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

14 MR. KIRSCH: Your Honor, two of the defendants have
15 stated they have no criminal record in their opening
16 statements. That is improper. I would ask the Court to
17 instruct them that they cannot make those references in
18 the remaining opening statements or in the rest of the
19 trial for that matter.

20 THE COURT: The rule is essentially, unless your
21 character has been challenged, you cannot rehabilitate,
22 because there is nothing to rehabilitate. You can't bring
23 in good character evidence unless they have already
24 entered evidence that challenges.

25 So I will instruct you that it is improper for you

1 to state the fact that you have no convictions or you have
2 good character. Remember, I need you to keep in mind this
3 is opening statements. It is what the facts are going to
4 say. What the witnesses are going to say. There is a lot
5 of argument going on.

6 And Mr. Kirsch has been very lenient with you on
7 that, because I would have sustained it. You need to keep
8 it to what the facts will show.

9 MR. BANKS: Absolutely, Your Honor.

10 MR. KIRSCH: Thank you, Your Honor.

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

12 THE COURT: All right. Who wishes to give the next
13 opening?

14 MR. BARNES: Me.

15 **OPENING STATEMENTS**

16 **BY MR. BARNES:**

17 May it please the Court. Ladies and gentlemen of
18 the jury. My name is Kendrick Barnes, and I will be
19 representing myself throughout the duration of this trial.
20 And why I am doing that, because that's the way that the
21 truth can be sent out, and that when you make your
22 deliberation you can make a well-informed decision.

23 I'm being accused of participating in an alleged
24 scheme to commit mail and wire fraud. Before that charge
25 was put to me, I didn't know what it was. It is I

1 knowingly and willfully set out to make false
2 representations; basically lie. That is what they are
3 asserting.

4 But this case, as it comes down to, is about the
5 evidence. Like many other cases --

6 JURY: I can barely hear you.

7 MR. BARNES: You can't hear me? Okay. I'm sorry.
8 I will speak up for you.

9 Again, this case is about, like any other case, it
10 is about the evidence. And that evidence is who has that
11 evidence and who does not. And the evidence that they
12 show you, what does it mean? Because you can take a lot
13 of things out of context, and a lot of things, if you
14 don't understand, can look a certain way.

15 But our job is to put that into the context of the
16 truth of what really happened, and what do certain
17 statements that the Government may show for you really
18 mean. Now, they may show you e-mails. They may show you
19 communications back and forth. But without any context,
20 it can look very damaging. And the question you have to
21 ask is what did that mean when you put it in context of
22 the evidence we provided for you.

23 Now, me and six other defendants, we'll provide you
24 with that evidence. You will get that evidence. Not only
25 e-mail evidence, you will get it in the testimony, and you

1 will get it in contracts that clearly state the agreement
2 made by IRP Solutions, DKH Enterprises and Leading Team
3 beforehand, before any business can be conducted.

4 A little history about me. I have been in the IT
5 field for 15-plus years. The bulk of that time I have
6 been an IT contractor. It is pretty much all I know. I
7 have three years of college. Dropped out early because I
8 really wanted to get started. It was kind of going slow
9 for me. I wanted to get finished and get started. So I
10 worked during that time with a lot of major companies,
11 maybe companies you are familiar with; Comcast, Oracle,
12 Western Union. And in that time I have done many types of
13 IT jobs; software programs, I've done systems
14 administration. I have done database administration.
15 Really, I don't turn down any type of work. I like to
16 learn. I do my job.

17 Again, I have actually worked in a lot of places,
18 as I said before, but I never was excited any more than
19 when I was asked to work with these men at Leading Team,
20 first around the 2000, 2001 time frame. I had my own job.
21 When I found out Gary Walker was starting the company, I
22 was very excited. I don't know if you remember, but
23 around the 2000, 2001 time frame, that was when the big
24 internet bubble was about to hit. Every company was out
25 there trying to start a software business.

1 It was exciting. So to find out that a friends of
2 yours was doing something like that, and you could be a
3 part of that, I wanted to do that. Whether it be working
4 for free -- I had my other job -- or helping donate, you
5 know, money toward that cause, it didn't matter to me. I
6 wanted to be a part of what he was doing.

7 Some of these men I have known. We have attended
8 church together. Some I have literally grown up with. I
9 have known them, I mean, for years. And never have any of
10 us ever, that I can remember, been in any major trouble.

11 MR. KIRSCH: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. BARNES: Now, when IRP Solutions was formed,
14 the focus on law enforcement. And if you are familiar
15 with the IT field at the time, it was a new, like,
16 technology going out there. There was not a lot of
17 software companies doing this. And it was the opportunity
18 to get on the ground floor, just like if you were trying
19 to get Google. If you get on the ground floor, that thing
20 takes off, you know, where can you be at? And that is the
21 excitement that came from IRP in my mind.

22 But when the Government -- one of the things they
23 have to prove for you, though, in their evidence as they
24 complete the case, is how can a person such as myself go
25 to work one day, do his job, four years later find out the

1 work you did was under question, and that you are part of
2 an alleged scheme to commit mail and wire fraud? That all
3 of the hard work and all of the long hours that you put
4 into it is fraudulent in their eyes.

5 And then not only that, but that now you are
6 subject to basically prove all of the work you have done,
7 everything you have done has been questioned at that
8 point. We will have evidence -- we will show you evidence
9 of work being done; that this was not just me sitting
10 around not doing my job.

11 Now, the Government did allege that at one point I
12 was working three contracts at one time. That is true.
13 But we will have testimony from various sources, not only
14 other IT contractors, but owners of staffing agencies who
15 owned companies who will tell you that it is a common
16 practice and very possible for a contractor to do multiple
17 jobs at the same time, at the exact same time.

18 Now, that may sound, how can we do that, especially
19 if you are not used to the IT field or understand the
20 types of work that you can do in the IT field, how that is
21 possible, and that is what we are going to spell out to
22 you so that you can understand how can that be done? When
23 you hear the testimony and you see the evidence you are
24 going to understand.

25 Now, we live in a virtual world. I can basically

1 virtually be anywhere by the power of the internet. And
2 many companies allow to you work from home. Maybe some of
3 you do that, I don't know. But that technology allows you
4 to basically be sitting in one spot, doing work that
5 basically is affected in another area.

6 And with that, if you're like myself, you are a go
7 getter. You may decide, well, with this free time that I
8 have, maybe I can be doing more work. And in that free
9 time, if you still have more, maybe you can do more over
10 here. But the Government will allege that that is
11 impossible. They are going to give you a math problem.
12 They will say, look at how many hours are in a day, and
13 you just can't do that. When do you sleep? How do you do
14 that?

15 And, again, that testimony -- and you will see,
16 they will not just be testifying about this, but they will
17 show evidence of time slips, of maybe possibly W2 slips
18 that will show that they're working hours, multiple hours
19 at the same time. And many of these contractors that
20 worked at IRP Solutions did maintain other jobs while they
21 were at IRP Solutions. I wasn't the only one that was
22 working on multiple contracts.

23 But the Government has picked me to show to you
24 that I was part of a conspiracy. And they are going to
25 show e-mails to you that may look like something afoul

1 happened, but they will show those e-mails to you with no
2 context to it.

3 Now, in 2005, around February, getting ready for
4 work, getting ready for our morning meeting, the
5 Government executed a search warrant on the IRP Solutions'
6 facilities. And what they were looking for was evidence.
7 And they took a lot of artifacts. They took papers. They
8 took things out of offices, desks. They even took a
9 digital copy of every computer in the building in order to
10 get evidence to build a case against IRP Solutions.

11 They didn't stop there. They got a lot of
12 evidence. They will show you a lot of things. They
13 didn't stop there. They got my bank records. They will
14 probably show you some record of what happened to my
15 financial account. They may show you records of what
16 happened to the other five defendants here and their
17 accounts, to get you to get evidence to support their
18 claim that this was an alleged fraud.

19 But they will show you more evidence, possibly.
20 They went as far as any other employee who worked at --
21 any contractor that worked at IRP Solutions that was
22 associated with me or any of the five defendants in
23 however manner, that those associates, they went and got
24 their banking records. And they looked and said they want
25 to investigate to see what their crime is. Where could

1 they prove something? It didn't stop there. As I
2 mentioned earlier, we do attend church together, and they
3 felt that maybe there was a window --

4 MR. KIRSCH: Objection, Your Honor, this is
5 improper.

6 THE COURT: Sustained.

7 MR. BARNES: Again, they are going to show you a
8 lot of evidence. I will make a bold statement here. Not
9 one shred of evidence that they will show you is going to
10 support their claim of a conspiracy to commit mail and
11 wire fraud or to support their claim that any fraudulent
12 time was ever reported and caused any staffing agency to
13 do anything that was improper, or basically, not knowing
14 the true knowledge behind what work was being done at IRP
15 Solutions.

16 For us to have committed that fraud, there couldn't
17 have been any product produced. We couldn't have been
18 working and there was nothing. But we will show you
19 evidence that there was something, and it was a good
20 something. It was a product not just -- you can take my
21 word for it, but there will be testimony to attest of what
22 they saw, what was accomplished, what was worked on, and
23 what all hard working and hours went into making something
24 of that nature.

25 So what I challenge you is when at the end of this

1 case and you deliberate, I challenge you to look at the
2 evidence. Look at it closely in its context. Study it.
3 Do what you need to do. But when you see the evidence
4 that does not -- in the proper context of what it really
5 is, you will see that there is no wrongdoing here. And
6 when you get to that conclusion, I would ask that you
7 return a verdict of not guilty, not just for myself, but
8 the other five defendants representing this case. Thank
9 you for your time.

10 THE COURT: Thank you.

11 **OPENING STATEMENT**

12 **BY MR. STEWART:**

13 Please the Court. Ladies and gentlemen of the
14 jury, good afternoon. My name is Clinton Alfred Stewart,
15 and I am one of the pro se defendants in this case. I
16 will be representing myself. And I would like to start by
17 offering an apology to the Court for some of the
18 misstatements that Mr. Kirsch has had to direct during the
19 course of our opening statements.

20 We are not professional attorneys. None of us have
21 law degrees. We are all amateurs. We are just
22 businessmen her representing ourselves. We feel very
23 unfairly accused by the Government in this matter. Again,
24 I was one of the executives at IRP. I am an Honorably
25 Discharged Veteran of the United States Air Force. I was

1 an honor graduate --

2 MR. KIRSCH: Objection, Your Honor.

3 THE COURT: Mr. Stewart, we talked about that up
4 here.

5 MR. STEWART: I am just going to background, how I
6 got to IRP.

7 THE COURT: Get to the substantive part. We talked
8 about conduct and character.

9 MR. STEWART: Thank you, Your Honor.

10 So please imagine for me, if you will -- oh, I want
11 to let you know, I am a single parent. I have a teenage
12 daughter. I wanted to tell you a little bit about myself.

13 MR. KIRSCH: Same objection, Your Honor.

14 THE COURT: I will give him some leeway with
15 respect to who he is. I will give you some leeway, but
16 remember what my statements were.

17 MR. STEWART: Yes, Your Honor. Yes, Your Honor.

18 I am single parent. I have a teenage daughter, and
19 I'm trying to raise her.

20 So please imagine, if you will for me, an executive
21 in the computer software field. You helped to develop the
22 market for new capabilities in solving a really difficult
23 problem in the field of law enforcement.

24 During the company's market research, IRP
25 executives discovered that the criminal investigative

1 process; meaning the series of activities involved in
2 solving crimes of efficiency and workflow, we discovered
3 that this process had not changed since the discovery of
4 fingerprinting. And that looked to be a challenge for us;
5 that we could help that to be changed. Also, the lack of
6 adequate training in the process is another frequent
7 complaint of new investigators.

8 All of a sudden, we realized that we can provide a
9 tremendous benefit to our country by helping law
10 enforcement investigators perform their job in a more
11 efficient manner using the computer programs developed by
12 our company. At about the same time, the World Trade
13 Center in New York was struck with terrorist attacks on
14 9/11.

15 Now, you heard Mr. Walker's opening statement
16 talking about how software came about and so forth. I
17 wanted to tell you a little bit more about my background,
18 but I don't want to go against the Judge's instruction
19 here.

20 THE COURT: You are not precluded from saying what
21 your background is with respect to computer work.

22 MR. STEWART: Yes, ma'am. Thank you, Your Honor.

23 So just a little bit about that. I was educated as
24 a cryptosystems engineer in the Air Force, and that is how
25 I got my initial training in security and

1 telecommunications. I served in NORAD Cheyenne Mountains
2 as a trusted agent to the President of the United States
3 as an operator of the emergency broadcast system, okay.
4 This is a system used any time America is attacked. It is
5 the President's number one priority to address the
6 American people in the event of a national emergency. So
7 I have carried national security secrets on my person as a
8 United States courier, okay, entrusted by Generals --

9 MR. KIRSCH: Objection, Your Honor.

10 MR. STEWART: Is that too much, Your Honor?

11 MR. KIRSCH: This is not about his computer
12 background.

13 MR. STEWART: This is my computer background.

14 THE COURT: Talk about how this is related to the
15 computer work that you do.

16 MR. STEWART: Yes, Your Honor.

17 So I was asked to assist in the understanding of
18 the criminal investigative process and also the software
19 because of my background in security and emergency type of
20 situations that would need to be met.

21 So we had done our homework after 9/11. So let's
22 move on. We knew that if we could get a computer program
23 that we developed in the hands of law enforcement
24 investigators, there would be more process -- there would
25 be no more process inefficiencies, like the ones that law

1 enforcement officials did not connect the dots from one
2 piece of intelligence information to another, which was
3 the route that caused 9/11, okay. So our software
4 actually fixed that problem.

5 So we found ourselves squarely in the middle of
6 capturing best practices and wisdom and experience from
7 seasoned law enforcement officers retained by the company
8 as subject matter experts using this process that we were
9 able to create new capabilities for law enforcement
10 investigators, okay.

11 So we also focused deeply on the training complaint
12 that law enforcement investigators complained about
13 frequently. At the police academy, on investigative
14 techniques and best practices for capturing case
15 information, analyzing the relationships of this
16 information, sharing the information with other associate
17 parties within the investigation, and presenting that
18 information for effective case resolution. That is what
19 our software did.

20 And our computer software gained very favorable
21 reviews, as you heard talked about by Mr. Walker, by many
22 law enforcement agencies all over the country, from the
23 police academy level to the rural county sheriff's
24 department, to the largest metropolitan police department
25 in the country, New York Police Department, and the

1 Federal Government's law enforcement investigators.

2 So we became members of international associations
3 of chiefs of police and the International Homicide
4 Investigators' Association because of this capability, as
5 well as the industry working groups to define standards
6 for criminal investigative process and associated database
7 architecture providing these capabilities. Our missions,
8 as we saw it --

9 THE COURT: Mr. Stewart, could you slow it down
10 just a bit so Ms. Martinez can keep up with you.

11 MR. STEWART: Yes, ma'am.

12 THE COURT: When you read, it just makes it very
13 difficult for her, so just kind of slow it down.

14 MR. STEWART: I was getting a little bit excited.
15 Please pardon me.

16 Okay. So our mission, as we saw it, was to make
17 this capability available to all law enforcement agencies.
18 We recognize that many, many innocent people are in prison
19 today, not so much because of the lack on the part of many
20 conscientious and dedicated law enforcement professionals,
21 but because of the inadequacies of some of the government
22 computer systems, similar to the shortcomings that missed
23 vital clues leading up to 9/11. We had a solution, a
24 computer solution that would solve that problem.

25 For example, in one very high profile case of

1 inadequate government computer systems, the Inspector
2 General of the FBI was ordered to testify before Congress
3 to explain how they had spent several years --

4 MR. KIRSCH: Your Honor, I am going to object to
5 this.

6 THE COURT: That is not really relevant to this
7 case.

8 MR. STEWART: Okay. Too much detail?

9 THE COURT: Yes.

10 MR. STEWART: All right. I will move on.

11 Okay. So in that software capability, we filed 17
12 patents. Not the thing that's a fraud. Okay. We
13 registered three trademarks. Not the things that a
14 fraudulent company would do. And maintained intellectual
15 property assets, okay, of trade secrets, cataloging many,
16 many trade secrets related to the unique capabilities of
17 our software products. The capability of our software
18 where written about in police magazines, okay, and law
19 enforcement technology magazines. Investigators were
20 writing up the capabilities of our software, which had
21 never been seen before. This was new.

22 So this is actually a true story. A tremendous
23 story that came about at a time when America had suffered
24 tremendous loss due to the government's reliance on
25 computer systems that provided isolated, disconnected

1 views of intelligence information that could be used to
2 help the investigative process, and our company sought to
3 change that.

4 Now, the Government says we devised a scheme, but
5 there was no scheme, only a dream to help law enforcement
6 avoid another 9/11. They say we created fraudulent time
7 sheets. As Mr. Barnes has pointed out to you, we can
8 understand why they think those time sheets were
9 fraudulent. If you don't know that a person can work that
10 many things and the capabilities of what a man can do,
11 maybe, yeah, you would think that would be a fraudulent
12 time sheet. But we will show that, through evidence and
13 witness testimony, that it is commonly done in the
14 industry.

15 They say that we made fraudulent statements to
16 induce the staffing companies to sell us their payrolling
17 services. Think about that for a minute. You are making
18 a statement to get somebody to sell you something. Been
19 to a car dealership lately? You walk in, you have to make
20 any fraudulent statements? They come to you right away.
21 They want to sell you their services. They want to sell
22 you their product. This is very similar in the staffing
23 industry.

24 They say that we caused invoices to be sent to the
25 company obligating it for millions of dollars. We accept

1 the debt that we signed the contracts to do services for
2 the companies to provide services for us. We accept that
3 debt, and we will continue to pay it. The Government says
4 that they will show you facts to support their Indictment.
5 Okay. I submit to you today they don't have any facts.
6 The time sheets are legitimate. The invoices are accepted
7 as an obligation to pay for services rendered.

8 And they certainly do not have any basis in fact
9 for indicting us with making fraudulent statements. We
10 didn't make any fraudulent statements. There were no
11 fraudulent statements made to induce staffing companies to
12 sell their services to our company. Absolutely none.
13 They have a profit motive to do that, and they go out and
14 beat the bushes every day to find out if they can get
15 customers. That is how it works. You will see that in
16 testimony.

17 As a result of having no basis in fact, the
18 Government will show you a series of innuendo, gossip and
19 hearsay; their opinions to put into your minds the way
20 that they think. But you are free thinking jurors. You
21 are the ones who have been entrusted and chosen to choose
22 your own opinions of how you see the facts and call it as
23 you see it.

24 So the Judge, I really appreciate, having read -- I
25 have never been through one of these cases before. I

1 really appreciated the Judge this morning reading all of
2 the instructions of how the case is to be conducted. And
3 that was very, very clear. The Judge's instruction on
4 what evidence is. It is not the Government's opening
5 statements. It is not their opinions. It is not
6 statements. It is not questions. It is not objections.
7 Those aren't evidence. You call the evidence the way that
8 you see it. You tell what is evidence. That is your job.

9 Also, the Judge pointed out about considering
10 witnesses that the Government will put on the stand. Is
11 that witness credible? Does that person have a personal
12 interest?

13 MR. KIRSCH: Your Honor, I am sorry, this is
14 argument again.

15 THE COURT: Mr. Stewart, you are making argument.
16 Please stick to what your facts and your evidence are
17 going to show.

18 MR. STEWART: Yes, ma'am. Again, I apologize. I
19 am not a professional. All right.

20 So, contrary to what Mr. Kirsch says, referencing
21 that this case is causing not to pay, have you ever had a
22 bill that you couldn't pay? That is where we are at. The
23 bill collector called and you said, well, I know I owe you
24 \$5,000, but I only got \$350 today. I will send you that,
25 and I will send the rest when I get it. Because you

1 didn't pay, is that a conspiracy? Because you didn't pay
2 the bill collector, is that mail and wire fraud? You get
3 to determine that.

4 You get to make that call in this case. And
5 whatever you decide will go forward as the law, and future
6 cases will be judged on this case. You have that power.
7 So our company entered into legitimate creditor agreements
8 governed by the Uniform Commercial Code in the State of
9 Colorado. That is a fact. We entered into these
10 agreements with staffing companies, extending credit to
11 our company to pay individuals working for the company.
12 That is what actually happened.

13 According to the Colorado Revised Statute --

14 THE COURT: Mr. Stewart --

15 MR. KIRSCH: Objection, Your Honor.

16 THE COURT: -- you are getting into argument at
17 this point.

18 MR. STEWART: Okay. Okay. I will skip that.

19 THE COURT: And I will be the one to instruct them
20 on any law that is applicable.

21 MR. STEWART: Okay. Okay. Good.

22 So -- well, ladies and gentlemen of the jury, I
23 want to personally thank you for being here, for listening
24 to our case, for listening to me with all my mistakes that
25 I have made in this opening statement. Again, I am not

1 professional attorney. We just have a passion about where
2 we stand and being falsely accused. And we appreciate you
3 hearing this case to make a determination of what the
4 facts are in this case. We appreciate you serving as a
5 juror. Thank you.

6 THE COURT: Thank you.

7 **OPENING STATEMENT**

8 **BY MR. ZIRPOLO:**

9 Ladies and gentlemen of the jury, my name is David
10 Zirpolo. I come before you today as a defendant in this
11 case with these gentlemen here, my friends. It is very
12 difficult for me to stand here and talk to you about this.
13 This is something that I'm very passionate about; the
14 company that I worked for, the software that we built and
15 what we did.

16 Mr. Kirsch is here telling you what we did was
17 fraud, was a conspiracy, was illegal; that pretty much he
18 is saying we are criminals, and that is not true. One of
19 the things that you are here to decide is our guilt or
20 innocence.

21 The Judge told you when she was discussing the jury
22 instructions, or discussing the jury yesterday, she said
23 that there is innocent and not guilty. And your decision
24 is not guilty, and they are not the same thing. And that
25 is something that resonates with me, because in everything

1 that we have done, we are going to show you that there
2 were no false statements made.

3 There were no time sheets that were put forth that
4 had false time on them. There were no -- what was the
5 word he used? The identities of the employees were not
6 true. So you have people working, that were putting
7 through time sheets that didn't do any work, but we had
8 other people doing the work. That's ridiculous. That is
9 not something that happened.

10 He says that we ripped off the staffing companies.
11 I mean, he uses a lot of inflammatory terms. Your job is
12 to look at the evidence we present. And we are going to
13 be presenting a lot of evidence. We are going to be
14 showing you that the time sheets that went through were
15 valid. We are going to be showing you that the time
16 sheets were for people that actually did the work.

17 That -- when I heard that, when we were going
18 through all of the discovery, that was one of the things
19 that really surprised me. And we are going to show you
20 the evidence that proves that that is not true.

21 Mr. Kirsch is going to come back and say that this
22 case is not about a debt, because my friends, my
23 colleagues, we talked about the \$5 million. Mr. Kirsch
24 brought that up. We, again, acknowledge that we had
25 invoices that did not get paid. We had expectations that,

1 because of the excitement -- you have heard the passion
2 that my friends have and I have for the software.

3 We heard the same passion, the same excitement from
4 the people that we presented the software to. "This is
5 the best thing we have ever seen." "We have never seen
6 anything like this before." "This is exactly what we
7 need." We heard that over and over again, and you are
8 going to hear testimony about that.

9 Well, when you hear something like that, you start
10 to think, we have got this. This is in the bag. We are
11 excited. We are going to tell people. We have a contract
12 coming. It has to be coming. Look at everything people
13 are saying to us. It is happening. And we honestly
14 believed that.

15 Even today, I believe that if this was not hanging
16 over our heads, we could go out and we could start
17 marketing this software and have it sold fairly quickly.
18 It is just something that is not there today. You have
19 advances that have happened since we originally built the
20 software in the industry, but they still don't have
21 everything that we have.

22 MR. KIRSCH: Your Honor, objection.

23 THE COURT: Sustained.

24 Remember, stick to what your evidence and facts
25 will show.

1 MR. ZIRPOLO: And that is what I am doing. We are
2 going to show evidence that people were very excited
3 about --

4 THE COURT: That is fine. But we are talking about
5 today, and we talked about that.

6 MR. ZIRPOLO: I apologize. I am sorry. And I do
7 not mean to disrespect the jury by that. And I am very
8 sorry.

9 We have a situation here where Mr. Kirsch, again,
10 is saying that we made false statements, that we committed
11 fraud, mail and wire fraud. I am accused of conspiracy,
12 mail and wire fraud. And none of it happened.

13 I come before you today as someone that has an IT
14 background. I have been working in computers since 1984.
15 I have been working in businesses across the country doing
16 many different things; computer programming, computer
17 support, project management. So helping people that are
18 developing software manage that project so it gets
19 completed to fruition and gets completed efficiently and
20 effectively.

21 I have that type of a background. I don't have, as
22 Mr. Stewart said, a law degree. And I am going to strive
23 to not have to have the Judge admonish me for saying
24 something incorrect. And I apologize to you for already
25 having done that.

1 But we are going to show you, through evidence and
2 testimony, that what Mr. Kirsch is accusing us of is not
3 true. You are going to look at that evidence, and you are
4 going to look at it through some sort of a lens. You are
5 either going to look at it through Mr. Kirsch's lens, or
6 you are going to look at it through the defendants' lens.
7 But you should look through it through your own lens,
8 through all of the information that you receive from both
9 the prosecution and the defense, because you are going to
10 look through that, and you are going to see that we did
11 not do what Mr. Kirsch said.

12 You are going to come back -- and I believe that
13 when we come back and we give our summary of closing
14 arguments, you are going to come back and say not guilty.
15 I mean, I wish that the word was innocent, because I truly
16 believe that is what we are.

17 MR. KIRSCH: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. ZIRPOLO: Sorry. I don't mean to interrupt,
20 but what -- I don't understand what is wrong with that.

21 THE COURT: Because you are not going to have
22 testimony that is saying -- you may have that, but you
23 need to stick to just what the facts are going to show.

24 MR. ZIRPOLO: Thank you. I apologize again.

25 So when we come back and give our closing

1 arguments, we are going to show you, you will have seen
2 enough evidence that you can come back with a not guilty.
3 Thank you.

4 THE COURT: Thank you.

5 Mr. Banks?

6 **OPENING STATEMENT**

7 **BY MR. BANKS:**

8 Please the Court, ladies and gentlemen of the jury.
9 I want to start off -- and I am going to try to clean up.
10 You have seen some Power Point presentations from the
11 Government talking about how this cycle of activity
12 actually took place. I am going to simplify this for you
13 in very, very common sense, where we can all understand
14 exactly what this was about.

15 First and foremost, this is about people who worked
16 and got paid. That is number one. People worked and they
17 got paid. What the evidence will show, each and every
18 person, not only the people mentioned here, each and every
19 person that we put on the witness stand that worked for
20 this company will attest to the fact that they were hired
21 for a particular purpose, and that was to help develop
22 software.

23 Now, let's talk about -- just like each and every
24 member of a jury, goes to a job, they put in so many
25 hours, they fill out a time sheet or they punch a clock,

1 they get paid for the hours worked. So, fundamentally,
2 that is where I want to start. People worked and got
3 paid. Everybody understands that.

4 Now, the question of the staffing companies, this
5 is very, very critical. Each and every person that worked
6 at IRP Solutions was an employee of the staffing company.
7 That is one thing that we have to articulate effectively.
8 They were not IRP's employees. They were not Leading
9 Team's employees, nor DKH's employees. They were
10 employees of the staffing company.

11 Now, we all know that if you are employed by
12 company ABC, and you work for that company, you are going
13 to submit a time sheet to that company, because that's who
14 pays you. Now, so we want to put some sort of degree of
15 separation between working for your company, and then the
16 relationship between the two businesses.

17 Now, this is, at its most fundamental level, common
18 sense, every day business. Two companies talk to each
19 other. They agree that one will provide a service for the
20 other company. After agreeing, they enter into a
21 contract, just like every person in this world enters into
22 a contract -- have entered into a contract for something;
23 whether it be a car, one thing or another. That is two
24 businesses getting together, they negotiate, and they
25 enter into a contract.

1 The terms of those contracts are dictated and
2 discussed between the two parties. Now, the contract is
3 initiated, service is provided, and there are remedies
4 underneath a contract if something is not paid. Basic
5 fundamental common sense.

6 I want to get to a term called -- and the evidence
7 will show, a term called a "billable consultant." Now,
8 the Government has asserted that we all were executives,
9 yet we were billing on projects at our company. One of
10 the things the evidence will show, and the witnesses will
11 testify to, is something called a "billable consultant."

12 Now, a billable consultant is a very common
13 practice in the information technology industry. A
14 software development company has executives or directors,
15 managers, whatever. They get paid by their company to do
16 the work in that particular capacity. But when there are
17 projects to be done for a particular customer or a client,
18 they become a billable consultant. They not only do their
19 job, they do the job on the project. That's something
20 that the evidence will show, and we will provide witness
21 testimony that will show what a billable consultant is.

22 So all of this fanfare that has been brought
23 forward so far regarding these guys are working for the
24 same company and they are billing on all these different
25 things, you are going to find out through testimony that

1 that is common sense business practice.

2 And what we will provide to the jury -- and some
3 people may understand information technology, other people
4 may not understand information technology. But we will
5 provide a clear and convincing path to what the
6 information technology world is and what is it all about.

7 Everybody may not understand the staffing industry.
8 We will bring in staffing experts that will testify to the
9 fact of how the staffing industry works, and that there
10 was nothing uncommon about our business practices with
11 regards to the staffing industry and business as a whole.

12 Now -- and when you hear that testimony about
13 payrolling and staffing -- before I get to that point, I
14 want to articulate something. The Government has -- the
15 Government will provide testimony of a number that shows a
16 number of people, including ourselves, that were billing
17 on projects. There is a fundamental issue -- and this is
18 what the evidence will show.

19 The evidence will show that the only people that
20 the Government selected for this particular criminal
21 Indictment were people that were affiliated with the same
22 church. That is what the evidence will show.

23 Now, in this company, there were some individuals
24 that we knew that came to work for the company or worked
25 as contractors for the company. But the evidence will

1 show that the Government's investigation did not look at
2 the rest of those people.

3 MR. KIRSCH: Objection, Your Honor, this is
4 improper.

5 THE COURT: Sustained.

6 MR. BANKS: Okay. The evidence will show -- we
7 will provide 10, 15, maybe even 20 witnesses that worked
8 for the company, and they will come and tell you this; I
9 am so and so. I developed software, or I did this
10 particular job. I filled out a time sheet, and I got paid
11 for the hours worked.

12 It is not isolated to these particular individuals.
13 It is not isolated at all. And some of the other
14 questions -- you know the old Radio Shack commercial, "We
15 got questions; you have answers." We will have the
16 answers. The Government will have theories.

17 Now, everybody knows that -- have probably heard of
18 a business plan. Businesses plan activities. They
19 actually put up a nice document, they said say this is how
20 we are going to conduct business, we are going to go. We
21 are going to put on an expert with regards to
22 entrepreneurial studies; a Ph.D. in entrepreneurial
23 studies. He will tell you more details how the business
24 works. He will deal with the cognitive things of
25 entrepreneurs, et cetera, and how they think.

1 Entrepreneurs are kind of different.

2 You know, the average person gets up every day,
3 goes to a job. He will show you that that is not what --
4 who the entrepreneur is. The entrepreneur has a little
5 different mindset. In any case, he will also tell you
6 entrepreneurs believe more than what they are doing than
7 just the average person who gets up and goes to work. So
8 that expert will provide that sort of testimony.

9 Now, the Judge, during the reading of jury
10 instructions, talked about inferences of circumstantial
11 evidence that either you can take directly from that or a
12 lack of something existing. Now, what I am going to do
13 next, I am going to put a couple of -- I am going to say a
14 question, and then I am going to show you what the
15 evidence will show from that question. And this --

16 THE COURT: Mr Banks, we are not into argument at
17 this point. What is your evidence going to show? You are
18 setting it forth as an argument. Just get to what your
19 evidence will show.

20 MR. BANKS: Okay. The evidence will show that it
21 is not common for individuals engaging in a criminal
22 scheme to hire law enforcement professionals to work in
23 the building. That is what the evidence will show. The
24 evidence will show that these individuals met with
25 congressmen, senators, who referred FBI agents to come

1 participate in what we were doing with our company. And
2 when we say, as far as our software, when we say who they
3 referred, we are talking FBI. We are talking Immigrations
4 and Customs. That is what the evidence will show. These
5 were the type of people involved in this company.

6 It will also show -- you will hear testimony from a
7 20-plus year veteran of the New York City Police
8 Department. That veteran, who worked with us, will attest
9 to the fact -- and the evidence will show in the records,
10 in the report, FBI reports, et cetera, the evidence will
11 show that he, from his mouth, that he said he was hired or
12 worked with IRP to gain them a contract at the NYPD.
13 That's what the evidence will show.

14 Now, another key component -- and we roll back
15 through the common sense perspective. And that is the
16 notion of benefits. Mr. Kirsch articulated that none of
17 us got rich off of this alleged scheme. That is an
18 understatement. The evidence -- the evidence will show --
19 again, and I am going to repeat this, a number of \$5
20 million has been thrown out there to the jury as far as
21 the amount of fraud.

22 But if people -- I am getting ready to argue again,
23 forgive me. People who worked hours will testify, if they
24 worked hours -- fraud -- I worked the hours. That is what
25 they are going to say. I worked the hours. How is that

1 fraud if numerous individuals who testify, I worked on
2 software and I worked the hours, the evidence will show we
3 never received a benefit from that. The evidence will
4 show they received a benefit. The evidence will show they
5 used that money for their families, as everybody else
6 does, and to live their lives from the work that they put
7 in.

8 And which is only fair that they receive money from
9 the work that they put in. Now, the Government has
10 asserted that there was never an intention to pay. Not
11 true. What we will show during various portions, not only
12 through witness testimony, I am talking about law
13 enforcement, who expected us to gain business at a certain
14 point, but gain revenue at a certain point. Law
15 enforcement will provide that testimony to you; that they
16 expected what we expected.

17 Through the years of 2002 and 2003 and 2005 -- we
18 will go down to 2002 to 2005, you will see various
19 points -- the evidence will show various points where we
20 had the term "reasonable expectation of revenue." Now,
21 all of us, based on reasonable expectation of revenue,
22 will commit themselves to -- maybe I will buy a new car.
23 And the same fashion that as a business, when you are
24 expecting revenue, the evidence will show, commit yourself
25 to some more debt. Commit yourself.

1 So while you look at all these big numbers that are
2 thrown out, the evidence will show we provided a quote to
3 the Department of Homeland Security for over a hundred
4 million dollars at their request. The evidence will show
5 that this was not work just done -- let's just run out
6 here and do this and hope this happens. We had requests
7 to see certain functionality in the software from law
8 enforcement, not only from Homeland Security, but from the
9 New York City Police Department.

10 So the evidence will show, we, in good faith, made
11 and extended ourselves, debt wise, to accommodate those
12 requests. Now, obviously not being -- working for a large
13 company, never dealing with the 800 pound gorilla that is
14 the Department of Homeland Security, that is the NYPD.
15 40,000 police officers at the NYPD. That is a lot of
16 people. Not being accustomed of dealing with the slowness
17 of how these agencies moved is something that kind of
18 caught us off guard.

19 So what we will continue to show, through the
20 reasonable expectation of revenue, oh, the money, oh, it
21 is going to come in right now. You know how we are going
22 to show that? Corporate activity reports. This is a rare
23 occasion where someone gets to, who actually documents
24 what they did every single week.

25 So a good portion -- which is going to be great for

1 a jury, is for to you sit down and say, okay, this report
2 was done on this week, and this is what David Banks is
3 saying, this is what Gary Walker -- this is what is going
4 on in the company. You get to see what is going on in the
5 company, first hand, frozen in a point in time, you get to
6 see that.

7 So, when the Government throws all this stuff
8 around, and all this stuff is floating in the air about a
9 scheme and this was going on and this was going on, it is
10 simply not true. And the evidence will show it is not
11 true. One of the major prongs or things that the jury is
12 going to have to consider is intent. And as you look
13 through the jury instructions, it will talk about specific
14 intent.

15 And as I mentioned earlier, the lack of something
16 not being there, if something doesn't make sense, it is
17 like something just doesn't make sense about what the
18 Government is putting forward, and that is because it is
19 based on theory. Our evidence will show what is based in
20 reality.

21 So at the end of hearing our evidence, and
22 comparing it to the Government's evidence, I believe you
23 will see a clear and convincing picture of what actually
24 went on. The corporate activity reports -- staffing is
25 mentioned on the corporate activity reports. Those

1 corporate active reports will not show you that there was
2 something underhanded. It was a normal part of standard
3 business operations.

4 In those corporate active reports, again, you will
5 see statements and expectations that are articulated on
6 paper about, oh, we are right here getting ready to close
7 this business. Another thing that you will hear from a
8 witness will be a statement that came from me. And that
9 statement was -- this is the guy from the NYPD. Me
10 telling him, "I have outstanding debts. We need to finish
11 this at the NYPD for the purpose of these debts."

12 So while the Government throws all this stuff, they
13 never intended to pay, we didn't have -- evidence will
14 show we had a business. We had a lease. The evidence
15 will show that we were not just operating out of someone's
16 garage, which many people might put or affiliate with some
17 sort of scheme. The evidence will show that the people
18 working for the company, in totality, save a couple, were
19 all experienced IT professionals. And, granted, did we
20 give a couple people a chance to work and try to better
21 themselves? Of course we did.

22 But, 97 percent of the people you will see on that
23 witness stand, they are going to tell you, I have been
24 doing this for 15 years. I have been doing this for 20
25 years. I have been doing this for 25 years. No

1 conspiracy. You want a conspiracy, just get a bunch of
2 janitors who --

3 MR. KIRSCH: Objection, Your Honor, this is
4 argument.

5 THE COURT: Sustained.

6 MR. BANKS: We will put nothing but IT
7 professionals on that stand who were qualified to do the
8 work they were doing. No scheme. And with all that in
9 mind, we ask, when you review the evidence, and we believe
10 this will happen in our favor, that you compare, we have
11 answers. The Government had theories. The Government was
12 not there.

13 And one final thing I would like to bring forward
14 is I am going to take you back a little bit off of what
15 Mr. Harper had mentioned. And I want to underscore it
16 with great seriousness, for the understanding of how
17 business is done. And everybody here, I am sure, has done
18 business, whether it is personal business, financial
19 business, everybody pays bills, everybody has been
20 extended credit.

21 The evidence will show that the alleged fraudulent
22 statements that the Government has asserted, were not made
23 to induce anybody. That's what the evidence will show. I
24 want to underscore again the Dun & Bradstreet report. You
25 will see the Dun & Bradstreet reports, which is virtually

1 run by every staffing company.

2 The expert witness from -- witness or witnesses
3 from the staffing industry will tell you that a
4 determination to engage in business is done via credit
5 report; specifically, the Dun & Bradstreet report. That
6 is the key component in determining whether or not a
7 company moves forward and does business; not some
8 off-the-wall statement, as the Government may attest to;
9 this was said, this was said.

10 No. We are in business here. Businesses know
11 about business. We don't just make decisions in business
12 based on some little small minute thing. We are in
13 business. And some of the people you are going to see,
14 they are sophisticated business people. So you are going
15 to see these sophisticated business people. The evidence
16 will show from the time that they had multiple interviews
17 with the FBI, you are going to see some inconsistencies in
18 there, and we are going to point out those inconsistencies
19 to you.

20 Stories changing over time. That is what you will
21 see. The evidence will show civil complaints filed by
22 these companies. That is what the evidence will show.
23 The evidence will show the FBI issuing and releasing an
24 article to the newspaper about the raid on our company.
25 That's what the evidence will show. The evidence will

1 further show the FBI taking that same article --

2 MR. KIRSCH: Objection, Your Honor, it is improper.

3 MR. BANKS: The article is --

4 THE COURT: If you are going to have testimony to
5 that effect.

6 MR. BANKS: Yes, we will have testimony.

7 THE COURT: Overruled.

8 MR. BANKS: We will have testimony to the effect --
9 let me put it this way. We will have evidence to the
10 effect and testimony that will show that the FBI, in
11 contacting these companies -- let me take this little
12 thing out of my pocket, let me pass this to you. Let me
13 show you this article, that you may be the victim of a
14 scheme.

15 You can judge for yourself. So when all the smoke
16 clears, and all of the paper quits flying, you will be
17 left with a theory, and we will be left with the truth.
18 And only we know the truth. And at that time, we ask that
19 you come back with a verdict of not guilty. Thank you for
20 your time.

21 (Further proceedings had but not transcribed per
22 request of ordering party.)

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

3

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

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13 Dated this 10th day of October, 2011.

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18 s/Darlene M. Martinez

19 RMR, CRR

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