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**THE COURT:** Thank you. Please be seated. Is the government ready to proceed?

**MR. RUSHING:** We are, Your Honor.

**THE COURT:** Are the defendants ready to proceed?

**MR. WATTS:** Yes, sir. Thank you.

**THE COURT:** Mr. Rushing, what is your announcement?

**MR. RUSHING:** Your Honor we did have some additional exhibits to introduce. It should be G1, G2, G8, G11, G13, G83, G165, G176, G167, G191, G192, G196, and G198, Your Honor.

**THE COURT:** All right. Were these just left out through inadvertence?

**MR. RUSHING:** Sir?

**THE COURT:** Were these just left out due to inadvertence?

**MR. RUSHING:** Yes, sir.

**THE COURT:** Any objections.

**MR. WATTS:** Your Honor, I guess for the record, I'd like to formally join Mr. Orozco's objection to them reentering evidence, but I understand the Court's ruling is that is overruled?

**THE COURT:** Not yet.

**MR. WATTS:** Okay. Subject to that objection, I have no objection to these additional exhibit if they're allowed to reopen.

1           **THE COURT:** Does the government request the court to  
2 allow them to reopen their case?

3           **MR. RUSHING:** We do, Your Honor, to allow these  
4 exhibits to go in.

5           **THE COURT:** All right. Over the objections of  
6 defendants, Mr. Watts and Mr. Orozco, that motion is granted.  
7 Are there any objections, then, to these -- and anyone else  
8 that wants one of those bones, they can have it, too. Mr.  
9 McCrum?

10           **MR. MCCRUM:** We urge the same objection, Judge.

11           **THE COURT:** Mr. Hightower?

12           **MR. HIGHTOWER:** Same objection.

13           **MR. LEWIS:** Same, Your Honor.

14           **MR. WILSON:** Same, Your Honor.

15           **THE COURT:** Of course. All right. Your record is  
16 made. And the motion is granted. Any objection to the  
17 exhibits?

18           **MR. WATTS:** No, sir.

19           **MR. LEWIS:** No, sir.

20           **MR. HIGHTOWER:** Your Honor, I have none except adds  
21 to 83. I'd like to see that. For some reason, I don't have it  
22 on my list.

23           **THE COURT:** Certainly. Be sure that counsel has a  
24 copy of 83. While you're showing that to Mr. Hightower, Mr.  
25 Rushing, can you generally tell me what these exhibits are?

1           **MR. RUSHING:** Yes, Your Honor.

2           **THE COURT:** And how it is they were left out by  
3 inadvertence.

4           **MR. RUSHING:** Yes, sir.

5           **THE COURT:** And who would have introduced -- through  
6 which witness you would have introduced them.

7           **MR. RUSHING:** Your Honor, by stipulation, we've put  
8 in G1, G2, G8, G11, and G13, Your Honor. Those were pursuant  
9 to a stipulation between the government and the defense prior  
10 to the actual trial, Your Honor.

11           **THE COURT:** All right. And what were those documents  
12 or are those documents?

13           **MR. RUSHING:** Those exhibits --

14           **THE COURT:** Generally.

15           **MR. RUSHING:** Yes, sir. Generally exhibits one  
16 through 11, Your Honor, were the actual documents from the  
17 MDL's filing of the actual multi-district litigation in MDL  
18 2179.

19           **THE COURT:** All right.

20           **MR. RUSHING:** And 13 would be the hard drive from  
21 EPIC containing the client files of WGC. Mr. Hightower, do you  
22 have it now?

23           **MR. HIGHTOWER:** I have had a chance to look at 83 and  
24 I have no objection.

25           **THE COURT:** All right. Without objection, then,

1 these exhibits governments one, two, eight, 11, 13, 83, 165,  
2 176, 167, 191, 192, 196, and 198 will be marked and admitted  
3 into evidence. you may give them to the clerk.

4 (EXHIBIT MARKED.)

5 **THE COURT:** Mr. Rushing, with those exhibits having  
6 been admitted, what is your announcement?

7 **MR. RUSHING:** We would rest at that point, Your  
8 Honor.

9 **THE COURT:** All right. Of course, I don't intend to  
10 waste the remainder of the morning to let you, Mr. Rushing,  
11 formally and finally rest in the presence of the jury. Instead  
12 I'd like to proceed with motions, even as though you had  
13 actually rested prior to that. Is that acceptable to the  
14 government?

15 **MR. RUSHING:** Yes, Your Honor.

16 **THE COURT:** Is that acceptable to the defendants?

17 **MR. WATTS:** Yes, sir.

18 **THE COURT:** All right. I'm caught sort of in an in  
19 between. I mentioned to you yesterday, Mr. Rushing, that there  
20 may be some counts within the indictment that the government  
21 may wish to take action on.

22 **MR. RUSHING:** There are, Your Honor. I have prepared  
23 a motion to dismiss. I supplied defense counsel with it this  
24 morning. And I have the order of dismissal for the Court  
25 today.

1           **THE COURT:** Let me have the motion and the order.

2           All right. Mr. Watts, Mikal Watts, any objections to  
3 these -- you've seen this motion, I presume?

4           **MR. WATTS:** Yes, sir I have.

5           **THE COURT:** Any objections to the dismissal?

6           **MR. WATTS:** No, sir, not as to those counts.

7           **THE COURT:** On behalf of Mr. David Watts, Mr. McCrum,  
8 any objections?

9           **MR. MCCRUM:** No, sir.

10          **THE COURT:** Mr. Hightower?

11          **MR. HIGHTOWER:** No, Your Honor.

12          **MR. LEWIS:** No, Your Honor.

13          **MR. WILSON:** No, Your Honor.

14          **MR. WEBER:** No, Your Honor.

15          **MR. OROZCO:** No, Your Honor.

16          **THE COURT:** Very well. Pursuant to the government's  
17 motion under rule 48 of the Federal Rules of Criminal  
18 Procedure, the following counts are here by dismissed: Count  
19 16, 26, 29, 36, and 90.

20          All right. Gentlemen and ladies, the government has  
21 rested. Do you have any motions?

22          **MR. WATTS:** Yes, sir. Your Honor, this morning we  
23 filed --

24          **THE COURT:** Let me jump in here real quick.  
25 Sometimes judges will tell you that they read something and

1 maybe they have and maybe they haven't. I have. I have read  
2 your motion which is a mirror image of David Watts's motion.  
3 It is very comprehensive.

4 **MR. WATTS:** Yes, sir.

5 **THE COURT:** And I have some questions about the  
6 motion, obviously, but I don't need to -- I need -- I don't  
7 need a whole lot of argument, so with that, I apologize for  
8 interrupting. Go ahead and proceed.

9 **MR. WATTS:** That's fine.

10 As the Court just observed, we had sent a courtesy copy to  
11 the Court before Mr. Rushing formally rested. The second he  
12 rested, we put on pacer that very motion, which is now docket  
13 number 342, for the Court's consideration. As the Court  
14 mentioned, it is comprehensive. It's 36 pages long. And my  
15 suggestion is, is that in order to save time, because Mikal  
16 Watts and David Watts filed virtually the identical motion to  
17 acquit, what I'd like to do is rest on the papers and have Mr.  
18 McCrum make the argument for both of us as long as the record  
19 is clear that I'm adopting in full the argument that he is  
20 making for the Court's consideration. That way you don't have  
21 to hear it twice.

22 **THE COURT:** Without objection.

23 **MR. WATTS:** Thank you, Your Honor.

24 **THE COURT:** Mr. McCrum?

25 **MR. MCCRUM:** Good morning Your Honor. Judge, do you

1 want to address the questions first? Mine is slightly  
2 different but more just in the factual portion on pages three  
3 and four. The rest -- the legal arguments are the same.

4 **THE COURT:** Well, let's see what we can agree on. A  
5 motion for judgment of acquittal at the close of the  
6 government's evidence puts me in this position: I must view  
7 the evidence provided by the government in the light most  
8 favorable to the prosecution. Can we agree on that?

9 **MR. MCCRUM:** We do.

10 **THE COURT:** And I must give it -- give credence to  
11 all, any reasonable inferences that may be drawn from the  
12 evidence that the government has provided.

13 **MR. MCCRUM:** I agree.

14 **THE COURT:** Do we also agree that I do not waive  
15 credibility, and I do not choose which witnesses to believe and  
16 which witnesses not to believe?

17 **MR. MCCRUM:** I agree.

18 **THE COURT:** Okay. Very good. Then you may proceed.

19 **MR. MCCRUM:** Judge, as you know, rule 29 in most  
20 cases, and I say this with respect to the system, but in most  
21 cases, it's largely a perfunctory exercise in order to preserve  
22 a certain standard of review on appeal, because most cases,  
23 there is clearly sufficient evidence to go to the jury. But in  
24 isolated cases, Your Honor, you know as well that there is  
25 evidence that may be deficient on one or more elements of

1 charged crimes. And this indeed, Judge, with all zealousness  
2 and vigor that I can muster, Judge, this indeed is one of those  
3 cases. This district court, as all district courts, play a  
4 critically important role as gatekeeper in prohibiting certain  
5 matters to reach a jury's consideration. Otherwise, rule 29  
6 stands for nothing.

7 This is particularly important in areas where mens rea is  
8 such a critical component of the government's case, and in  
9 contrast to that, the defense put on by the defendants. That  
10 is the situation here. Clearly the issue in all of these, in  
11 most of our arguments, although there are some differing legal  
12 arguments that we have as to duplicative nature and some other  
13 things, but most of the argument that we have rests on the lack  
14 of evidence presented by the government to prove specific  
15 intent to defraud and knowledge on the part of Mikal and David  
16 Watts. And I presume the other defendants will make the same  
17 argument.

18 There is certain situations, and I was reminded in  
19 thinking about this case, Your Honor, that in -- back in the  
20 mid '90s, and I noticed that when I noticed Judge Bunton's  
21 photograph, I was in the Western District of Texas and there  
22 was a case of a high profile nature that dealt with the  
23 knowledge and intent issue where bankers were on trial for  
24 allegedly laundering drug traffickers' cash proceeds, where the  
25 evidence showed that drug traffickers would come in with sacks



1 of cash with their body guards, saying they're from Mexico,  
2 saying that they don't want the bankers to disclose the nature  
3 of their deposits and transactions because they could get hurt,  
4 that this -- a lot of inferences that this indeed was drug  
5 proceeds. But Judge Bunton in that case correctly so although  
6 I was in the United States attorney's office and I can tell you  
7 it sent shock waves across the district. I was chief of the  
8 drug section. Our prosecutor argued it vigorously that the  
9 evidence was such to prove or at least go to the jury that the  
10 bankers had the requisite knowledge and intent to launder drug  
11 proceeds, that these were indeed proceeds of drug trafficking.  
12 In that case, Judge Bunton, to the surprise of our district at  
13 the U.S. Attorney's office, said No, this isn't something that  
14 should even go to the jury's consideration. While it may have  
15 been negligence or some other standard of mens rea, it does not  
16 reach the level of specific intent and knowledge. This falls  
17 Foursquare on that same concept, Judge. It goes to the  
18 objective versus subjective intent of the parties.

19 Now what I'm intrigued by and disappointed by is the  
20 government's insistence through the case this past three weeks  
21 to introduce concepts of negligence before the jury. You will  
22 recall, and I'll just cite a couple of examples, they'll say,  
23 Well, couldn't these folks have just gone and knocked on the  
24 doors of these Vietnamese people to see if they really signed  
25 up or if this is really their social security number? Couldn't

1 they have done that? Or what if they had just spent some more  
2 money, and then there was some time spent on the budget that  
3 had been prepared by Mr. Cracken for the Phase II programs, and  
4 they said, you know, if they would have just spent this money,  
5 but they didn't, did they, if they would have just spent this  
6 money, maybe they would have found out. Those are all leading  
7 directly down a path of negligence, of the mens rea of  
8 negligence. My concern to a significant degree, Judge, is that  
9 although you will give the jury instructions as to intent, we  
10 all realize that, but treatises have been written on the  
11 different standards of mens rea, and I submit that when that is  
12 the evidence before this court, that it lends itself more to a  
13 finding of negligent conduct as opposed to specific intent to  
14 defraud or knowledge that ID were being used without lawful  
15 authority, then we've gone down a dangerous path in confusing  
16 the jury during the course of this trial as to the appropriate  
17 mens rea and leading to perhaps maybe even compromise on  
18 certain counts.

19 And so that's where rule 29 is for cases like this, where  
20 you as a district judge, as a district court, can review and  
21 said, no, this does not reach the high level of standard of  
22 mens rea. And because of that, Judge, that is the overriding  
23 theme of our motion for judgment of acquittal as to all of the  
24 counts.

25 There are other things. You said you've read it. I was

1 going to walk through it because I didn't know if you would  
2 spend time on these as to the different standards that we  
3 could. I can still do that, Judge. I've got it all listed  
4 here on what page and what our argument is as to each of these.  
5 But that is the overriding umbrella as to the government's lack  
6 of evidence, sufficient enough to go to the jury of specific  
7 intent to defraud.

8 Also key to our motion for judgment of acquittal,  
9 particularly on the mail fraud and wire fraud counts is that  
10 the use of the mailings and the use of the wires that were  
11 alleged, there's been a failure of evidence that these were for  
12 the purpose of executing the scheme, the alleged scheme to take  
13 people's identities and to falsely present to BP that they had  
14 this type of client base. These letters, there's no evidence  
15 that they were even attempted to be disclosed to BP or GCCF,  
16 and so if -- if the alleged purpose is to mail these client  
17 letters out to convince GCCF that we have a client base, that  
18 wholly fails, because there's no evidence that there was even  
19 any connection or notice to GCCF of that.

20 If it's to further the alleged fraud with respect to the  
21 client base and the taking of their identities, that doesn't  
22 make sense because the mere mailing of letters actually  
23 provides the opposite effect. It provided notice to these  
24 people that we're using your name to file claims, and so it's  
25 wholly inconsistent with furthering the alleged fraud of either

1 identity theft or the alleged fraud concerning the PSC monies.  
2 And so I would -- again, I'm not going to go specifically  
3 because you said you read it, but I'm prepared to, Judge, as to  
4 each of the counts. It doesn't serve that purpose. There's no  
5 evidence to support that it was in furtherance of that  
6 particular fraud that these mailings or these wirings happened.

7       Indeed, Judge, one of the wire fraud counts is an e-mail  
8 that has no text to it. It's just an e-mail of packet groups  
9 that has proposed forms to be filled out by the clients in the  
10 Phase II project. That was the subject of some -- of a wire  
11 fraud. Where is the furtherance of the scheme of one  
12 transmittal e-mail with some packet groups? How is that in  
13 furtherance of any fraud? It just escapes any reasonable juror  
14 from being able to find beyond a reasonable doubt that that --  
15 that that furthers the fraud.

16       So there's the lack of evidence of specific intent to  
17 defraud, there's a lack of evidence of it being in furtherance  
18 of the fraud, and that goes as well to the identity theft.  
19 They had that same type of where the mail fraud and wire fraud,  
20 those mailings and wirings have to be in furtherance of the  
21 fraud. Here in identity theft, it's that during and in  
22 relation to the mail fraud and wire fraud. So all of these  
23 concepts are mixed into all of these counts and there's been a  
24 complete failure on the government to prove up those elements.

25       There's some legal arguments that we have with respect to

1 double jeopardy and duplicative counts. Those speak for  
2 themselves in the motion, so I won't waste the Court's time  
3 with that.

4 Any -- did you want to go through the counts, Judge? I've  
5 got them here in the motion.

6 **THE COURT:** I have some questions primarily for the  
7 government.

8 **MR. MCCRUM:** Okay, Judge.

9 **THE COURT:** Do you wish to respond, gentlemen?

10 **MR. RUSHING:** Yes, Your Honor.

11 Your Honor, I think the government has offered quite a bit  
12 of evidence to show the mens rea involving these defendants in  
13 this particular case. The mens rea of course would be first of  
14 all information provided by different individuals that there  
15 were not 40,000 fishermen in the Gulf of Mexico. That puts us  
16 on notice of that particular issue itself. But beyond that,  
17 Your Honor, is the actual obtaining of people who have passed  
18 away, dead people, information concerning those particular  
19 individuals that they knew were dead, there were e-mails  
20 concerning their deaths, but even beyond that, they still sent  
21 those packets to BP and also still sent the presentment letters  
22 to BP. That shows they had knowledge of those particular  
23 individuals Your Honor and had specific knowledge that they  
24 cannot be victims of the case because they died prior to the  
25 time of the oil spill itself. If you take into consideration

1 also Your Honor the numerous e-mails back and forth between the  
2 individuals lower down, Kristy Le, also up to Eloy Guerra,  
3 David Watts also, Mikal Watts, concerning the social security  
4 numbers not matching and no valid information on any of these  
5 defendants whatsoever and no communication whatsoever, that  
6 they knew they did not exist, Your Honor, but they held them  
7 anyway and submit those packets to BP and exemplars to BP based  
8 on the information that they knew was wrong.

9       As far as the actual wire counts and all in itself, I  
10 think the mail fraud itself, the mailings to their actual  
11 clients themselves, I would argue to the Court is in fact the  
12 actual presentation of another fraudulent document, because  
13 they're sending mail to the actual victims of the case and  
14 stating that you are in fact in this particular class, you are  
15 victims of the BP oil spill case, when the victims came before  
16 the Court and told the Court, we're not victims, we don't have  
17 a claim against BP itself and we never had a claim against BP.  
18 And Mr. Watts, his law firm doesn't represent us. I think that  
19 furthers that actual conspiracy, Your Honor.

20       In addition to that Your Honor I want to talk about the  
21 actual knowledge of two other individuals, that's going to be  
22 Nga Nguyen and also Hai Cao. If you recall Your Honor those  
23 particular victims themselves, they -- the defendants found out  
24 about information that Mr -- or Ms. Cao, rather and also  
25 Ms. Nguyen advised people that they were not actual clients of

1 Mr. Watts and in fact a paper article was written about them  
2 also. At that point in time Mr. Watts and the other members of  
3 the group began trying to find these individuals to get  
4 affidavits and they in fact obtained false affidavits. The  
5 false affidavits said to the effect that we understand we don't  
6 have a claim, we don't need Mr. Watts to represent us, and  
7 we're going to withdraw our claims. But even beyond that, Your  
8 Honor, even when they received those affidavits, they still  
9 submitted those names to BP as presentment letters. That  
10 clearly shows a specific intent on these defendants to show  
11 their intent to defraud, Your Honor.

12 **THE COURT:** All right. Now, I want to see if there's  
13 something that we might or might not be able to agree on, Mr.  
14 Rushing. What is that count number, Jennifer? The count  
15 number where the testimony about the identity theft? Thirty  
16 and 78.

17 These relate to counts number 30 and 78. I sort of want  
18 to refer to them as low hanging fruit, and I want to get your  
19 arguments on those two particular counts, and let me tell you  
20 why.

21 **MR. RUSHING:** Okay.

22 **THE COURT:** When I listen into testimony, I can't say  
23 that I get it all, and there may have been something that I  
24 missed, but my recollection with regard to this particular  
25 victim when this victim testified, testified that he did

1 actually provide the information, and how can that be an  
2 identity theft when the victim actually provides the -- there's  
3 nothing stolen here, there's nothing taken here. In other  
4 words, this victim voluntarily provided the information which  
5 was ultimately used for the claim?

6 **MR. RUSHING:** Your Honor, I'll agree that he  
7 voluntarily supplied the information that it can't be identity  
8 theft.

9 **THE COURT:** We'll call it low hanging fruit but don't  
10 be too quick. You need an opportunity to look through your  
11 notes and talk to your co-counsel. My recollection is that  
12 this particular victim testified that that information was  
13 actually provided voluntarily, so that would -- that would  
14 leave out an essential element of those particular offenses  
15 which are --

16 **MR. RUSHING:** Let me check just a second, Your Honor.

17 **THE COURT:** -- of counts 30 and counts 78.

18 Mr. Rushing?

19 **MR. RUSHING:** Yes, Your Honor. I have talked to my  
20 agent, Your Honor, and I would have to agree with the Court on  
21 that because initially he did not present the information.  
22 Once he received the actual letter, I guess, from Mr. Watts or  
23 whatever, then he did in fact provide his information at that  
24 point in time.

25 **THE COURT:** All right. So insofar as the identity



1 theft claims, would you concede that those would not be  
2 something we can submit to the jury?

3 **MR. RUSHING:** No, Your Honor.

4 **THE COURT:** You don't concede that?

5 **MR. RUSHING:** I'll concede that, Your Honor.

6 **THE COURT:** Okay. And that's counts number 30 and  
7 78. All right.

8 Now, I don't have any other questions right now.

9 **MR. RUSHING:** Thank you, Your Honor.

10 **THE COURT:** All right. As I consider those motions,  
11 Mr. Hightower, I move, then, to you. Do you likewise have a  
12 motion?

13 **MR. HIGHTOWER:** I do.

14 **THE COURT:** And by the way, Mr. Watts and Mr. McCrum,  
15 I have construed your motions for judgment of acquittal as  
16 including counts 30 and 78. Would that be accurate?

17 **MR. WATTS:** Yes, sir.

18 **MR. MCCRUM:** Yes, sir.

19 **THE COURT:** All right. Let's proceed.

20 **MR. HIGHTOWER:** Thank you, Your Honor. In an effort  
21 to be efficient, I would adopt all of the previous arguments by  
22 both Mr. Watts and Mr. McCrum, and then also the comments by  
23 the Court. I am also in agreement as to what the standard is,  
24 what you're required to find, and that this is not about  
25 weighing the credibility of any evidence, but at the end of the

1 day test the sufficiency of the evidence, and I think all the  
2 government really is required to show probably is a prima facie  
3 showing. I know that has even been debated. But with respect  
4 to Wynter Lee, Judge, I can go through each one of the  
5 witnesses and will make a comment about each one, but I think  
6 there's a complete absence of proof in the record that Wynter  
7 Lee possessed the requisite mental intent to commit any offense  
8 charged against her in the indictment.

9 At the end of the day, I know it was not lost on the Court  
10 that we were pretty quiet throughout the trial. And I think  
11 for good reason. I think what the government's proof has  
12 indicated, if anything, is that Wynter Lee's role at Watts  
13 Guerra, particularly with respect to these offenses, was  
14 ministerial. I think she was -- they can show that she worked  
15 there, they can show that she sent out what I like to call  
16 around my office a please find enclosed letter that we used to  
17 send to the Court all the time. We don't do that anymore with  
18 ECF filings. But she did that. But not one witness testified  
19 that Wynter Lee had any bad intent at all. The closest that I  
20 think they got was Kayleigh Stone, who said that in her  
21 conclusory way that she had testified -- or she had written a  
22 letter that Wynter Lee had broken federal law by asking her to  
23 file blank claims. Well, I think by the end of the  
24 cross-examination, Ms. Stone basically had watered down her  
25 position to she had a personal aversion to filing blank claims.

1           **THE COURT:** Isn't that exactly the type of factual  
2 dispute that I am not empowered to resolve?

3           **MR. HIGHTOWER:** I think at first glance, it would  
4 appear to be, except to the extent that I think this court can  
5 make a finding that if the only evidence she said was breaking  
6 federal law was filing blank claims, I think this court is  
7 capable of finding as a matter of law that that does not  
8 constitute a violation of federal law, and so there really is  
9 no factual issue to be resolved.

10           With respect to the proof in this case, I don't think -- I  
11 think you can address them by class and by individual. With  
12 respect to any victims, I don't know of one victim that ever  
13 mentioned miss Lee's name. With respect to Mr. Feinberg, I  
14 don't think he mentioned her name. I can go down the list,  
15 Your Honor, and will if you would like me to, but at the end of  
16 the day, I think all anybody will ever be able to show is that  
17 Wynter Lee was following the directions of others in good  
18 faith, as testified to by government witnesses. And for that  
19 reason alone, I think that the motion for judgment of acquittal  
20 under rule 29 is due to be granted with respect to Ms. Wynter  
21 Lee.

22           You know, Judge, with respect to the specific counts in  
23 the indictment, I can address each one of them, you know, as it  
24 relates to fraud, but they all have a knowing requirement and a  
25 -- they all rise and fall on specific intent. I don't think

1 you accidentally commit fraud. I don't think you negligently  
2 commit fraud. And I don't think you commit fraud or be a part  
3 of a conspiracy without knowing and understanding and intending  
4 to do any of that. Nobody, nobody, testified in any way, with  
5 the exception of what I said earlier, and again, I have -- I  
6 think the Court can make that finding -- that she intended to  
7 break any law, that she intended to do anything other than go  
8 to work and do her job. For that reason, Your Honor, I think  
9 be that all counts in the indictment against Wynter Lee should  
10 be dismissed and that she should be acquitted completely.

11 **THE COURT:** Mr. Rushing, do you wish to respond?

12 **MR. RUSHING:** Yes, Your Honor. Your Honor, I believe  
13 there was evidence that she was in fact involved in the fraud  
14 itself. There's some testimony by some individuals, Norma Jean  
15 Bullard and Joe Navarro that when the actual questionnaires  
16 came in they were not completed that she would instruct people  
17 to actually put in there information on those questionnaires as  
18 a deckhand or fisherman or whatever, also. I think that's  
19 corroborated by the testimony of the handwriting expert  
20 yesterday when he testified that he found some actual  
21 questionnaires that were written by Abbie Nguyen, part of the  
22 actual questionnaires. There were other parts of the  
23 questionnaires that someone else had written in, and some of  
24 those positions he talked about was the part about the deckhand  
25 and also the occupation of the person, also.

1           In addition to that, Your Honor, Ms. Nguyen did in fact  
2 there was an e-mail that we introduced into evidence in this  
3 matter where Ms. Nguyen actually comes up with a loss amount  
4 for the fishermen or the actual shrimpers and places that on a  
5 Presentment Form. And every Presentment Form that I saw within  
6 there, the Court can -- of course they're all in evidence  
7 anyway, but as far as the actual deckhand listing for a  
8 Presentment Form presented to BP, they were all exactly the  
9 same amount. Although there's no documentation in the files  
10 whatsoever to indicate how much that person would have made.  
11 And I would advise the Court that that is a false statement  
12 that Ms. Wynter Lee made on those Presentment Forms themselves,  
13 also, and that would include her entering into the actual  
14 fraud, Your Honor.

15           **THE COURT:** All right. Now, let me ask you a couple  
16 of -- so I take it, then, Mr. Rushing, that you do not rely  
17 entirely insofar as your case is concerned -- concerns Ms. Lee,  
18 Wynter Lee, on the Pinkerton doctrine, would that be correct?

19           **MR. RUSHING:** It could be Your Honor, but it goes  
20 beyond the Pinkerton also. I've got the actual falsification  
21 of documents including the actual Presentment Forms themselves,  
22 Your Honor.

23           **THE COURT:** Do you concede, however, Mr. Rushing,  
24 that I will need to instruct the jury that mere presence at the  
25 scene of an event, even with knowledge that a crime is being

1 committed, or the mere fact that certain persons may have  
2 associated with each other and may have assembled together and  
3 discussed common aims and interests does not necessarily  
4 establish proof of the existence of a conspiracy?

5 **MR. RUSHING:** Yes, Your Honor, as to Ms. Wynter Lee.

6 **THE COURT:** Also a person who has no knowledge of the  
7 conspiracy but who happens to act in a way which advances some  
8 purpose of the conspiracy does not there by become a  
9 conspirator, and I will need to instruct the jury on that  
10 aspect of the law, as well.

11 **MR. RUSHING:** Yes, sir.

12 **THE COURT:** All right. Thank you, Mr. Rushing.

13 **MR. RUSHING:** Thank you, Your Honor.

14 **THE COURT:** All right. On behalf of Mr. Guerra, Mr.  
15 Lewis, do you have a similar motion?

16 **MR. LEWIS:** Very briefly, Your Honor. We've filed a  
17 succinct motion for judgment of acquittal --

18 **THE COURT:** I apologize. That is not one that I  
19 actually got to see and read.

20 **MR. LEWIS:** It's document number 343, Your Honor, but  
21 it is late. I was not sure, Your Honor, whether the Court  
22 would formally want us to wait until the government rested or  
23 -- so my apologies. It's very short, and given this court's  
24 aptitude, I'm sure you can read it very quickly.

25 I want to touch on just a couple of points that his honor

1 has already brought up and that I think need to be stated for  
2 Mr. Guerra. The only thing Eloy Guerra is guilty of, Your  
3 Honor, is being too trusting. That's exactly why he is here.  
4 It belies all logical thought to think that a man who has lived  
5 his entire life devoid of any criminal conduct would all of a  
6 sudden resort to fraud. As is evidenced before this court, he  
7 has generated over 200,000 cases in mass torts with never even  
8 a hint or a suspicion of fraud. Most tellingly, the mass tort  
9 in which he served the same function as he has in BP with  
10 Mr. Watts, as he does again currently in the corn case with  
11 55,000 clients, the FEMA case. Very telling, Your Honor.  
12 99.1 percent matching. On the heels of FEMA, the government  
13 wants this jury to believe that Mr. Guerra now resorted to  
14 fraud. It belies logic.

15       Against that backdrop is the law of the standard, and the  
16 Court has accurately stated the standard. I've got a little  
17 snippet that I would like to put forth from the Fifth Circuit.  
18 While considering the evidence in the light most favorable to  
19 the government, the Court must grant a judgment of acquittal if  
20 the evidence provides, and the Fifth Circuit says, nearly equal  
21 circumstantial support to a theory of guilt and a theory of  
22 innocence of the crimes charged. There can not be a conviction  
23 based on innuendo or suspicion.

24       It seems to fit very, very appropriately here that  
25 language from the Fifth Circuit in affirming a court's judgment

1 of acquittal, and it's cited on page two of our brief, Your  
2 Honor. I'm now blessed with the privilege of witnessing how  
3 this court conducted its business over the last month, and both  
4 the keen level of comprehension and the unwavering commitment  
5 to fairness, I appeal to this court as I know this court gets  
6 it. Despite the government's best efforts, and this is no  
7 comment on the government's efforts, the evidence is simply not  
8 up to muster. It does not pass the judgment of acquittal  
9 standard as set out in rule 29. I've seen, prosecuted,  
10 defended many criminal conspiracies and untold criminal  
11 conduct. At this case at its worst, at its base worst is  
12 illustrative of poor execution, bad business practices, bad  
13 investments, shoddy supervision, I think as Mr. McCrum termed  
14 it, negligence. That does not make a crime.

15 Nowhere in this record that stands before this court right  
16 now on which his honor must make this decision is there any  
17 evidence of Eloy Guerra's specific criminal intent to commit  
18 fraud. Therefore, the Court should grant judgment of acquittal  
19 as to all remaining counts relative to Eloy Guerra. Thank you  
20 very much, Your Honor.

21 **THE COURT:** Do you wish to respond?

22 **MR. RUSHING:** Just briefly, Your Honor. I just want  
23 to remind the Court as far as Mr. Guerra's actual involvement,  
24 of course, he actually was the contact between Mr. Watts and  
25 Anders Ferrington, set that situation up involving them. In



1 addition to that, also, Your Honor, I just want to make sure  
2 the Court is aware of the actual affidavits of Hien Cao and Nga  
3 Nguyen also with Mr. Guerra being involved in those  
4 acquisitions of those affidavits, also. He's involved in the  
5 actual e-mails back and forth between David Watts and himself  
6 and also Greg Warren and also Kristy Le, Your Honor. I want to  
7 bring that to the Court's attention, also.

8 **THE COURT:** All right. Thank you.

9 Mr. Wilson, do you have a motion?

10 **MR. WILSON:** Yes, Your Honor. And, Judge, for  
11 judicial economy purposes with your permission I'd like to  
12 incorporate the arguments of Mr. McCrum that went before.

13 **THE COURT:** Of course.

14 **MR. WILSON:** Just to add a couple of more points,  
15 though, in Mr. Rushing's rebuttal to Mr. McCrum's argument,  
16 which would be in fact rebuttal to my argument, he mentioned a  
17 few things regarding the mens rea, and he said, well, you know,  
18 they knew that there weren't 40,000 fishermen in existence,  
19 they knew that there were deceased clients and submitted them  
20 anyway, and he mentioned the false affidavits that then were  
21 still submitted, the claims were still submitted by the Watts  
22 firm. Judge, when you look back at the evidence and you look  
23 back at all the e-mails and everything that came through,  
24 there's no evidence at all that any of that information, any of  
25 the 40,000 fishermen, the claims being submitted, or the

1 deceased being submitted ever filtered back down the lower  
2 chain to Greg Warren. Therefore, those rebuttals don't make  
3 any sense as far as Mr. Warren's mens rea, Your Honor.

4 **THE COURT:** That's a good argument, perhaps, for the  
5 defendants at the higher end of the chain, but how do you  
6 respond to the testimony that Mr. Warren made the statement or  
7 had made the comment that he knew that the field workers were  
8 submitting names and information that were taken from a phone  
9 book?

10 **MR. WILSON:** Your Honor, I think when you put that in  
11 context, as Ms. Stone said on the stand, the alleged bringing  
12 in of false claims happened in 2010, summer 2010, all 40,000  
13 were brought in within about 80 days. At that point that phase  
14 is over. Again, as miss Stone explained, there were repeated  
15 steps to go through it and try to make contact with those  
16 people again. Right? There was the November 2010 and there  
17 was the mailings and the auto dialers, and then at the very end  
18 of that, there was the settlement claims packet. As she  
19 stated, that would have been two years after the fact of  
20 the 2010 bringing in of the alleged claims, but she also stated  
21 that everybody was just searching for a reason to figure out  
22 why they couldn't make or couldn't make contact again with the  
23 clients on the back end, Your Honor. And that's what Ms. Stone  
24 said. Everybody was searching for that answer.

25 **THE COURT:** So what you're telling me is that even if

1 the jury were to believe that Mr. Warren made that comment, he  
2 made it later on in the chronology.

3 **MR. WILSON:** That put in context, it's not an  
4 inculpatory statement, Your Honor.

5 **THE COURT:** Well, isn't that exactly the type of  
6 evidence that the jury would have to weigh on their own? For  
7 example, you say it's out of context and it's out of the  
8 chronology, but could the jury not infer that if Mr. Warren  
9 knew about it later in the conspiracy, that he may well have  
10 been participating in it at the earlier stages of the  
11 conspiracy? Could they not infer that based on the evidence?

12 **MR. WILSON:** Judge I believe the inferences that can  
13 be made have to be reasonable inferences, and stretching things  
14 to the degree that somehow making a statement two years later  
15 in the context of how the statement was made, to impart some  
16 type of mens rea on Mr. Warren two years beforehand, when  
17 44,000 or some odd claims were coming in, is too much of a  
18 stretch to allow it to be a reasonable inference, Your Honor.

19 May I go onto the next point?

20 **THE COURT:** Of course.

21 **MR. WILSON:** Thank you, Judge.

22 Judge, regarding -- well, let me back up. The undisputed  
23 facts of this case is that at the end of the day, the Watts law  
24 firm hired Greg Warren, Eloy Guerra, Kristy Le summer of 2010  
25 and then again late fall, early winter 2010. And then they

1 were out of the picture completely until summer 2012.  
2 Summer 2012, they were brought in, July 2012, to do the claims  
3 packet, settlement packet, go out and find the clients stuff.  
4 They were done in September of 2012. That's the undisputed  
5 facts of the case Your Honor. Once September 2012 hit, Greg,  
6 Eloy, and Kristy were completely out of the ball game again,  
7 Your Honor. Many of these counts all deal with actions taken  
8 by the law firm after September of 2012. Count six, mail  
9 fraud, October 10, 2012. Seven through 15, mail fraud in the  
10 December time frame of 2012. Forty-nine, 53, 55, identity  
11 theft in January of 2013. Seventy-four through 95 --

12 **THE COURT:** You're telling me that these substantive  
13 counts all took place after your client --

14 **MR. WILSON:** After they had completely shut down Greg  
15 Warren, Eloy Guerra, and Kristy Le, Your Honor.

16 **THE COURT:** Well, let me take it from the  
17 government's point of view for just a second, which I'm  
18 required to do.

19 **MR. WILSON:** Certainly.

20 **THE COURT:** Would your client not be liable for each  
21 and every substantive count if the jury were to conclude that  
22 he was in fact a member of the conspiracy?

23 **MR. WILSON:** Judge, my understanding of the law is  
24 that once somebody -- even if you believe there was a  
25 conspiracy in the first place, for argument's sake, once a

1 person exits a conspiracy, they're no longer liable for the  
2 conspiracy.

3           **THE COURT:** Well, that requires a finding that  
4 there's a conspiracy in the first place, and I doubt if you're  
5 going to argue that to the jury that your client was involved  
6 in a conspiracy and later withdrew, and there must be some  
7 specific evidence of a withdrawal from a conspiracy, which I  
8 don't think there's any evidence of that. It's just the  
9 chronology puts Ms. Le, Ms. Nguyen, and Mr. Warren outside of  
10 certain aspects of the case that may have taken place after  
11 they were no longer viable participants. But under the  
12 Pinkerton doctrine, they would be liable for or responsible for  
13 the acts of their confederates if they could be reasonably  
14 foreseen whether they were active participants or not, so  
15 that's my understanding of the law. So your argument with  
16 regard to the chronology, it will depend in large part on  
17 whether or not the jury believes, which will be up to them,  
18 there was a conspiracy in the first place. And lacking that  
19 finding, then your argument would have merit.

20           **MR. WILSON:** Understood, Judge.

21           **THE COURT:** Does that make sense?

22           **MR. WILSON:** It does.

23           **THE COURT:** You have to remember, I'm looking at --  
24 I'm required to look at this from the point of view of the  
25 prosecution.

1           **MR. WILSON:** I understand, Judge.

2           Regarding the mail fraud, Your Honor, I would echo Mr.  
3 McCrum's statement that the alleged scheme, and I'll just  
4 simplify the alleged scheme of the indictment kind of two-fold,  
5 one to artificially inflate numbers to get Mikal Watts onto the  
6 Plaintiff's Steering Committee, one to artificially inflate  
7 numbers to leverage a settlement out of BP. When you put it in  
8 perspective that that's what the indictment is alleged -- or  
9 the alleged scheme in this case, if you look at the letters  
10 that were sent out that are part of the mail fraud, Your Honor,  
11 those letters don't further that scheme whatsoever.

12           In rebuttal, Mr. Rushing said, well, the letters  
13 themselves were fraudulent. Well, that's not the case, Judge.  
14 If you go back and you read those letters, those letters  
15 basically just say, Hey, there's been a settlement in BP, and  
16 if you want to get a settlement, we need certain documents.  
17 And that's all they said. There's nothing fraudulent about  
18 that, Your Honor. It doesn't make any sense that two or three  
19 years after the fact, these letters were going out but somehow  
20 were still related to the scheme to artificially inflate  
21 numbers for BP after settlement has been reached or to put him  
22 on the Plaintiff's Steering Committee, Your Honor.

23           Your Honor, I believe that's all I have.

24           **THE COURT:** All right. Thank you. Do you wish to  
25 respond, Mr. Rushing?

1           **MR. RUSHING:** Your Honor, I just want to make sure  
2 the Court is also aware involving Mr. Warren also, he was also  
3 involved in obtaining the affidavits of Hai Cao and Nga Nguyen,  
4 also. Those were also had later presentment letters presented  
5 to BP on those people.

6           **MR. HIGHTOWER:** Your Honor, just a point of  
7 clarification. Within addressing Mr. Wilson a moment ago, the  
8 Court made reference to Ms. Le. I'm assuming the Court meant  
9 Ms. Kristy Le.

10          **THE COURT:** You assumed correctly.

11          **MR. HIGHTOWER:** Thank you, Your Honor.

12          **THE COURT:** There are unquestionably several tiers or  
13 a hierarchy, if you will, looking at it from the government's  
14 point of view insofar as this case is concerned, and I'm aware  
15 that Ms. Kristy Le operates within a different tier than does  
16 Ms. Wynter Lee.

17          **MR. HIGHTOWER:** Thank you, Your Honor.

18          **THE COURT:** Mr. Weber?

19          **MR. WEBER:** Your Honor, on behalf of Kristy Le, we  
20 loss move pursuant to rule 29 for a judgment of acquittal,  
21 incorporating the arguments of some of the co-defendants. I  
22 want to just comment on what Mr. Rushing said, that they --  
23 that they knew that the clients did not exist. This is  
24 contradicted by the evidence of the effort to find these  
25 clients and to communicate with them. And then the Court made

1 a comment about, Well, what is it -- to Mr. Wilson, Isn't it  
2 reasonably foreseeable that some of the co-defendants would go  
3 ahead and file or submit these claims to either the GCCF or to  
4 BP, and I don't think that the evidence supports that it was  
5 reasonably foreseeable that these claims would be filed  
6 incomplete, given the evidence and the testimony of the efforts  
7 to communicate with these clients. In fact, the Court has  
8 already -- or the government has conceded a directed verdict on  
9 counts 30 and 78, and that is the government's witness that  
10 testified that he in fact communicated and had contact with  
11 Kristy Le, who helped him to file though particular claim.

12 **THE COURT:** Do you wish to respond, Mr. Rushing?

13 **MR. RUSHING:** Your Honor, as to Kristy Le, Your  
14 Honor, of course she was the one down there actually, her group  
15 was collecting the actual questionnaires and basic information,  
16 and whenever they actually went to Watts Guerra Craft, that's  
17 when they had issues with the social security numbers. Of  
18 course, her part also was she obtained a private investigator  
19 to obtain a data dump of social security numbers. I think the  
20 Court was also aware whenever they compared the questionnaires  
21 themselves to the presentment letters later that were submitted  
22 by WGC to K & E, that the social security numbers changed from  
23 the questionnaires to the actual plaintiffs fact sheets on  
24 there, also. And she obtained all those at one particular  
25 occasion or two particular occasions, rather, by hiring a



1 private investigator to do a data dump of that information.  
2 Witnesses came to testify that they in fact did not authorize  
3 anybody to use their information on those actual questionnaires  
4 or the Presentment Forms, and we called those witnesses before  
5 the Court, also. In addition to that --

6 **THE COURT:** My recollection is that as the materials  
7 were recovered from Denspri, it also included some notification  
8 or some notations that some of these individuals had been  
9 deceased.

10 **MR. RUSHING:** Yes, Your Honor.

11 **THE COURT:** And that material had been forwarded to  
12 Ms. Le, as well, and there's some question that the jury will  
13 have to resolve as to whether or not that ultimately worked its  
14 way up the line.

15 **MR. RUSHING:** Yes, Your Honor. My understanding was  
16 from the testimony that she actually received that information.  
17 There was also some accusations brought in the trial that she  
18 may have withdrawn the deceased portion off of those documents  
19 before they were submitted to WGC, but that's an issue for the  
20 jury to decide on that. In addition to that also she was also  
21 involved in obtaining the actual affidavits of Hien Cao and  
22 also Nga Nguyen. We had Exhibit 171 where she was asking to  
23 find out where they were located so she could actually get the  
24 affidavits to them on that, Your Honor. I think based on the  
25 information supplied by the witnesses and the testimony, that

1 Kristy Le in fact, which we've shown that she has a mens rea  
2 and she also was involved in the actual obtaining of the  
3 fraudulent social security numbers, Your Honor.

4 **THE COURT:** Thank you, Mr. Rushing. Mr. Orozco, do  
5 you have a motion?

6 **MR. OROZCO:** I do, Your Honor. Good morning, Your  
7 Honor.

8 **THE COURT:** Good morning.

9 **MR. OROZCO:** Your Honor, we filed a motion to dismiss  
10 at 841 this morning. It's document 341.

11 **THE COURT:** That's another one that I got and I was  
12 able to read and I'm familiar with it.

13 **MR. OROZCO:** Thank you, Your Honor. Your Honor, in  
14 reading my motion, you probably noticed that we incorporated  
15 and mirrored a lot of the arguments of Mr. McCrum's motions.  
16 That was a motion, Your Honor, that he provided me with a rough  
17 draft and I incorporated, so --

18 **THE COURT:** It -- it did not escape my attention.

19 **MR. OROZCO:** Yes, Your Honor. So again, as the other  
20 defendants, Your Honor, we would incorporate the arguments of  
21 Mr. McCrum as to Abbie Nguyen, Your Honor.

22 Your Honor the only evidence that should be before this  
23 court with respect to Abbie is whether it was Abbie's writing  
24 on the questionnaire is enough to go to the jury. Your Honor,  
25 we stipulated to the handwriting analysis. We stipulated that

1 that was her writing. And, Your Honor, it was -- but, Your  
2 Honor, it was very clear that the information that was  
3 presented on those questionnaires, which was not a legal  
4 document, Your Honor, there was no signature, there was no  
5 date, it was not a contract. A questionnaire within the four  
6 corners of that document was an intake form, Your Honor. And  
7 it is very clear that that information was put into the  
8 computer -- was provided by field workers, or the evidence  
9 showed or at least inferred that there were independent field  
10 workers that gathered that information, brought it to K&G,  
11 where at that point it was put into a database, and that  
12 database, Your Honor, was carried outside of K&G by an agent of  
13 Mr. Guerra, Mr. Chris Deleon, who was not an employee of K&G,  
14 to a condo, where that information was then electronically  
15 transferred, Your Honor, and submitted. So we believe with  
16 respect to the interstate transfer of electronic information,  
17 Your Honor, there's no evidence before this court that Abbie  
18 was aware that this was taking place or that that information  
19 was forwarded by electronic means by her, Your Honor.

20 Most importantly, Your Honor, again, that information was  
21 gathered by independent field workers, and at the time of the  
22 creation of those documents by Abbie, Your Honor, there was no  
23 -- there was no nexus of time, Your Honor, between those  
24 documents and those being presented to the MDL or the LADB.  
25 Your Honor, at the time of those documents are being said to

1 have been create, there wasn't even a GCCF. That information  
2 was created and the inferences were that it was created, Your  
3 Honor, as an intake sheet to be sent to the Watts Guerra Craft  
4 law firm to be used in a lawsuit, Your Honor, a lawsuit where  
5 the attorney's responsibility is to vet that information and  
6 present those documents to a court, Your Honor, not to an  
7 agency created by the justice department and BP to settle these  
8 claims, Your Honor. Not to these Presentment Forms where there  
9 was testimony, Your Honor, that when the creation of that Exxon  
10 Valdez oil spill act was created, this was the first time that  
11 this process was ever used or implemented. Abbie is a  
12 cosmetologist, Your Honor, not a lawyer. She would have no --  
13 there's no reasonable belief that there would be any inference  
14 that she would have knowledge that that information was going  
15 to be packaged in the way that it was packaged and presented to  
16 the agencies that it was.

17 **THE COURT:** I'm -- and I may be missing something  
18 here, so let me ask you. It's conceded that Ms. Nguyen's --  
19 it's conceded that Ms. Nguyen filled out a lot of these client  
20 information forms. Are you telling me that there's evidence in  
21 the record that she took information from another source and  
22 then filled out these forms?

23 **MR. OROZCO:** Your Honor, the evidence that's before  
24 the Court was that this information was gathered by independent  
25 field workers. We have not put on our case in chief. And

1 again, Your Honor, I -- in the beginning of my argument I said  
2 the only issue with respect to Abbie that I believe is before  
3 the Court is whether the creation of those handwriting  
4 documents is enough to send to the jury.

5 **THE COURT:** Well, there is some testimony that  
6 independent field workers did provide information. But there's  
7 not evidence that they provided all of the information. And  
8 the difficulty that I have with an argument that Ms. Nguyen is  
9 knowledge free primarily revolves around the fact that she  
10 filled out numerous client information sheets from individuals  
11 that were dead. Obviously she did not speak to those  
12 individuals, and whether or not she knew at the time that those  
13 individuals didn't even -- were not among us and therefore did  
14 not exist, is a classic question for the jury. And if they  
15 believe that she filled out forms for dead clients, could they  
16 not reasonably infer that she was integrally involved in a  
17 scheme to present numerous false or fraudulent claims?

18 **MR. OROZCO:** I would agree with that, Your Honor, but  
19 what my argument is from that, Your Honor, there's been no  
20 evidence that my client created these documents without --  
21 outside the presence of someone or being directed to. She was  
22 not a field worker. There's no evidence that she was a field  
23 worker. There was actually testimony by the accounting agent  
24 that she worked for K&G and was not a field worker. She was a  
25 signatory.

1           **THE COURT:** I suppose the evidence would be that she  
2 filled them out.

3           **MR. OROZCO:** Yes, Your Honor.

4           **THE COURT:** And the jury could well believe that she  
5 filled them out on her own.

6           **MR. OROZCO:** And Your Honor, again, I concede that  
7 that's the issue before the Court, but there -- in the counts,  
8 Your Honor, there are issues of mail fraud, wire fraud, and  
9 those issues with respect to the mens rea -- Your Honor, I'm  
10 not going to concede that that conspiracy issue should go to  
11 the jury. I'll let you make that decision. But with respect  
12 to the mail fraud, the aggravated identity theft, which I'll  
13 get into, and the wire fraud, Your Honor, there's been no  
14 evidence of any mens rea or intent or knowledge on my client's  
15 part.

16           If I could continue?

17           **THE COURT:** Sure.

18           **MR. OROZCO:** Again, Your Honor, there was no evidence  
19 that she was present at any of the meetings. There was no  
20 e-mails with my client's -- that my client received or  
21 participated or whose e-mail address was used in the -- during  
22 the transmission of these e-mails. And she had -- there was no  
23 evidence of the knowledge of the intent of what the law firm  
24 was going to do with these -- with the information that was  
25 gathered. Abbie's role, Your Honor, the testimony was that she

1 was a person who went to the office to make sure people were on  
2 time and not loafing around. That came from Chris Deleon and  
3 Mr. Joe -- his last name escapes me, Your Honor, but it was the  
4 other person who was -- who came down to do a training.

5 Your Honor, the testimony of the Secret Service agent was  
6 that she was a signatory on the K&G business account and wrote  
7 checks, Your Honor, and those checks went to real people. She  
8 was, again, no -- she had no part or was mentioned in any  
9 e-mail, so all those conversations, those thousands of e-mails  
10 that have been put before the Court, on not one is her name as  
11 a recipient or as a creator and submitter of any of those  
12 e-mails, so all that knowledge, all those conversations that  
13 took place electronically, Your Honor, there is no evidence and  
14 there is no -- it's an unreasonable and extraordinary inference  
15 to believe that she had knowledge of those because she was not  
16 a participant.

17 Your Honor, again, the creation of the Presentment Forms  
18 and any documents submitted by Watts Guerra Craft was months if  
19 not years after the information was presented to Mr. Guerra's  
20 agent, Chris Deleon, and has no direct nexus or tie to my  
21 client.

22 **THE COURT:** Well, that -- but those Presentment Forms  
23 and those short forms that were presented to MDL would have  
24 been a product of what occurred at the bottom tier of the  
25 information-gathering tier of this alleged conspiracy.

1     Wouldn't that be accurate?

2                   **MR. OROZCO:**   Yes, Your Honor, but again, the  
3     handwriting analyst expert testified that the questionnaire  
4     that was created, there was alterations in which my opinion was  
5     that it was whited out and he stated he couldn't testify that  
6     it was white out because of all the technology, but he did  
7     agree with me that if it was a digital overlay, that it was a  
8     very poor, and it was in -- and specifically, Your Honor, what  
9     is very important about this is the social security number and  
10    the date of birth which are elements of the aggravated identity  
11    theft were agreed -- that the expert agreed with me that that  
12    was not in her handwriting, Your Honor.

13                  Now, the third element, Your Honor, is name.  And yes, the  
14    name was -- on many of the documents was in the writing of her  
15    original writing, Your Honor, and we stipulated to that fact,  
16    so I'm not going to waste the Court's time with argument on  
17    that.

18                  **THE COURT:**   All right.

19                  **MR. OROZCO:**   On the questionnaire, Your Honor, again  
20    it was clear that the social security numbers and birth dates  
21    were altered after she had written on the questionnaires, and  
22    therefore, more -- therefore, any count alleging with respect  
23    to aggravated identity theft, we believe, should be dismissed  
24    with regard to Abbie Nguyen.  Again, we incorporate the  
25    arguments of Mr. McCrum.  We incorporate the case law of all



1 the defendants, Your Honor, as well as the motion that I  
2 submitted technically early and prematurely before the  
3 government rested, but I wanted to give the Court time to  
4 review.

5 **THE COURT:** Fair enough. Thank you, Mr. Orozco. Do  
6 you wish to respond, Mr. Rushing?

7 **MR. RUSHING:** Very briefly, Your Honor. Your Honor  
8 as to Abbie Nguyen, the Court is correct that she in fact  
9 filled out a questionnaire of individuals that were dead, that  
10 was Mr. Thuan Nguyen, victim number 17. In addition to that  
11 also, Your Honor, she also filled out questionnaires of victims  
12 number 32, 16, 36, 15, 14, 21, and 19. And the government's  
13 position is once she filled those questionnaires out for Watts  
14 Guerra Craft law firm to submit to Watts Guerra for them to use  
15 to obtain clients, it's foreseeable that the information they  
16 received from her would be supplied to other individuals,  
17 including court personnel or either the actual defendants, to  
18 actually try to obtain money for those claims, provided by the  
19 questionnaire she supplied. So it was very foreseeable that  
20 her acts would have extended beyond the actual filling outs of  
21 the questionnaires, but also to presentment letters and also  
22 actually filing suit in the MDL, Your Honor. So I think she's  
23 actually -- we have shown a mens rea as to Abbie Nguyen, also.

24 **THE COURT:** Thank you, Mr. Rushing. All right.

25 **MR. MCCRUM:** May I respond to a couple of the things

1 that he raised with respect to my client and my argument?

2 **THE COURT:** If you will be brief.

3 **MR. MCCRUM:** I will. Your Honor, may it please the  
4 Court, with Mr. Rushing's response to our motion and my  
5 argument, he raised about four different factual examples where  
6 specific intent to defraud have been proved. He brought up the  
7 deaths and the fact that there had been some indication of at  
8 least five deaths of persons. But yet there was no evidence  
9 presented by the government, and I keep getting back to  
10 evidence of knowledge and intent on behalf of my client and  
11 anybody in the Watts firm. There was no specific evidence my  
12 client or anybody in the Watts firm knew any of these people  
13 were deceased. In fact, the evidence is to the contrary. And  
14 the government is required to at least provide some proof of  
15 knowledge and intent with respect to that.

16 He cited the victims testimony saying I did not allow my  
17 ID to be used. Again, that does not offer any presentation of  
18 evidence by the government to show the mens rea of anyone in  
19 the Watts firm that they knew that this person would have said  
20 that. And so that is just -- it sounds good, argument sounds  
21 okay by the government, but when you really get to the root of  
22 does it offer evidence of knowledge and specific intent to  
23 defraud, it's completely absent. He keeps bringing up this  
24 affidavit situation of Mr. Cao and Ms. Nguyen, but again,  
25 there's a complete absence of evidence of anybody in the Watts

1 firm that knew anything about the circumstances of how those  
2 affidavits were obtained or from whom. And so we heard a nice  
3 story, but there's nothing to show that anybody in the Watts  
4 firm knew anything about that story. And so it's just -- it  
5 shouldn't be just added in for argument that that's sufficient  
6 evidence that a reasonable juror could find mens rea on behalf  
7 of my client and anybody in the Watts firm.

8 The same thing with not sufficient fishermen. He brought  
9 that up. There's no evidence that our clients ever knew about  
10 the number of fishermen or were advised or noticed of that.  
11 There is a complete absence of that.

12 Finally, Judge, the suggestion was brought up with Mr.  
13 Rushing in response to our argument that there may be a mere  
14 presence instruction by the Court to address the issues,  
15 particularly relevant I think it was in response to  
16 Mr. Hightower's argument. I completely agree, Judge, that that  
17 may be appropriate if we get to that point. But again, that  
18 assumes that there's sufficient evidence of knowledge to even  
19 get to that point of in the first instance, and that's what I  
20 respectfully urge the Court to go back. That's at least my  
21 thought, is that the mere presence, possibility of that  
22 instruction at the end is an apple and orange concept with  
23 respect to whether there is specific intent of knowledge and  
24 intent to even get to the jury at that stage. So I offer that  
25 for the Court's consideration.

1           **THE COURT:** Thank you, Mr. McCrum. Anything else?

2           **MR. RUSHING:** No, Your Honor.

3           **THE COURT:** All right. Very good. Then on the  
4 motions of each of the defendants for judgment of acquittal,  
5 that motion is granted at this time and in part on counts 30  
6 and 78. And each of the defendants will be granted a judgment  
7 of acquittal on those counts.

8           On the remaining motions, I intend to take a short recess  
9 to gather my thoughts and notes. When I return, I'll give you  
10 my ruling. We'll be in recess.

11           **(Recess taken 10:15 a.m.)**

12           **THE COURT:** Thank you. Please be seated. I want to  
13 thank and commend all of the lawyers for your motions and  
14 arguments in assisting the Court in making decisions on what  
15 are very important and significantly course altering motions.  
16 Let me point out to those individuals who did not make written  
17 motions, a written motion will not be necessary. Instead, the  
18 Court will docket an ore tenus motion and will rule on it  
19 accordingly. Is that all right with the government.

20           **MR. RUSHING:** Yes, sir it is.

21           **THE COURT:** Is that all right with the defendants  
22 that did not file a written motion in Mr. Hightower?

23           **MR. HIGHTOWER:** Yes, Your Honor.

24           **THE COURT:** Mr. Wilson?

25           **MR. WILSON:** Yes, Your Honor.

1           **THE COURT:** And Mr. Weber?

2           **MR. WEBER:** Yes, Your Honor.

3           **THE COURT:** All right. Now, we've already gone over  
4 the constraints that are apparent to the Court under rule 29  
5 when a motion for judgment of acquittal is made, and I'm sure  
6 that all of the parties are well aware that when a motion for  
7 judgment of acquittal is made at the conclusion of the  
8 government's case, that that does not preclude the defendants  
9 from making similar motions at the close of all of the  
10 evidence, and it does not preclude the Court's reserving  
11 judgment or even hearing a similar motion for judgment of  
12 acquittal, even after the jury returns a verdict. Let me say  
13 that this is not an easy case. It is a complex case with  
14 complex concepts, complex ins and outs regarding the handling  
15 of and prosecution of mass tort litigation. But let me start  
16 off with the concept that in viewing of the evidence in the  
17 light most favorable to the prosecution, in some respects, I  
18 must view the conduct of some of the defendants through the  
19 prism of a level of sophistication which is not common among  
20 lawyers and law firms. Mr. Watts, Mikal Watts, Mr. David  
21 Watts, Ms. Wynter Lee, and in many respects Mr. Guerra are  
22 highly sophisticated individuals who are engaged in a very  
23 complex system of mass tort litigation, one which is not very  
24 apparent to even many practicing lawyers who ultimately seek  
25 out and the evidence tends to primarily provided by Mr. Cracken

1 tends to point out that Mr. Watts is sought out by many lawyers  
2 nationwide in the administration and prosecution of these types  
3 of cases. So in the first instance, I must view of the  
4 evidence through that prism insofar as these defendants are  
5 concerned.

6 Now, with regards to the question of intent, the concept  
7 of mens rea, which has been argued with great fervor by all of  
8 the defendants, let me point out that evidence of intent is  
9 rarely direct evidence. Evidence of intent or mens rea is  
10 almost always circumstantial in nature. And it is gauged or it  
11 is measured through the collective or totality of the  
12 circumstances of the entire case, and no one fact or  
13 circumstance is taken in isolation. Motive or motivation is a  
14 similar concept. It is very rarely pointed out through direct  
15 evidence, but instead through circumstances. The government  
16 alleges that there is a conspiracy to steal identities and  
17 based upon the theft of those identities to create a scheme  
18 whereby false claims have been made for the obtaining of large  
19 sums of money, and that the evidence within the record would  
20 support such a theory.

21 Defendants on the other hand have offered through their  
22 cross-examination of witnesses as well as documents that they  
23 have presented that it is quite the opposite, that each and  
24 every one of these defendants has been tricked or bamboozled  
25 into accepting individual claimants that they had no idea or no

1 knowledge were submitted under false circumstances or that they  
2 did not exist.

3         This is, in the judgment of the Court, a classic case in  
4 which the jury must resolve these conflicts in theory based  
5 upon the totality of the circumstances and the totality of the  
6 evidence in the case. This is particularly true in a case  
7 which involves conspiracy, where in all the conspirators need  
8 not know all of the elements or all of the purposes or all of  
9 the individual acts of their confederates. I'm faced with the  
10 concept here that by the sheer number of claims and some  
11 evidence that has been provided by the government that those  
12 individuals within that system of mass tort litigation had  
13 advanced knowledge that many of those claimants either did not  
14 exist or were fraudulently obtained by some of the lower tier  
15 individuals. Again that is a matter that the jury will have to  
16 resolve, and I will not do so on a motion for judgment of  
17 acquittal.

18         I've already pointed out that of course defendants at the  
19 conclusion of the case may renew their motions. I do not know  
20 what the remainder of the case will show, and I also point out,  
21 and this should be apparent to all, that when a motion for  
22 judgment of acquittal is granted, that is a blow from which the  
23 government cannot recover. There is no recourse on their  
24 behalf. While on the other hand, at the conclusion of the  
25 trial, were court to grant judgment of acquittal after the jury

1 has returned a verdict, then under those circumstances, any  
2 error that the court has made can be corrected.

3 The judgment of acquittal is granted in part as to each of  
4 these defendants on counts 30 and 78 and is denied in all other  
5 aspects.

6 Anything else on behalf of the government?

7 **MR. RUSHING:** No, Your Honor.

8 **THE COURT:** Anything else on behalf of the defendants  
9 on their motions for judgment of acquittal?

10 **MR. WATTS:** No, sir.

11 **THE COURT:** All right. Mr. Watts, I would like to  
12 give you some time to collect your thoughts and to prepare your  
13 opening statement. How much time do you need?

14 **MR. WATTS:** I think I can do it in about five  
15 minutes. I've conferred with counsel for the government. I've  
16 got a courtesy copy of the PowerPoint. There are three changes  
17 to the PowerPoint that the jury will see. The photographs on  
18 slides one and 110 have been removed. With respect to slide  
19 five, it has been removed and we'll make that comment in  
20 closing argument. And with respect to slide ten, the heading  
21 Mr. Kennedy found it be objectionable so I will remove the  
22 heading, as well. In all aspects what the jury sees has been  
23 shown to the government and they approve with it. The second  
24 thing is I've got --

25 **MR. KENNEDY:** Let me be clear, when I say approval,



1 we didn't get a chance to go through each and every slide, so  
2 to the extent it might be cumulative or otherwise  
3 objectionable, the government will reserve its rights. I just  
4 want to be clear about that.

5 **THE COURT:** Will government has been instructed  
6 already that this is not evidence, that opening statements are  
7 intended only to assist them in understanding what the evidence  
8 will show. All right. Again, I want to give you some time.  
9 Take the time that you need, and it may be that the other  
10 defendants and the government, as well, may want to retool.  
11 Here's my thinking. I told you you could take 45 minutes for  
12 your opening statement. If you relinquish some of that time,  
13 there's certainly no penalty for that. And after you've  
14 completed your opening statements, I intend to let the jury go  
15 off to lunch, and we'll be ready to come back with your first  
16 witness.

17 Now, I've got your -- I wanted you to tell me what this  
18 is. This says case in chief. Is this your revised witness  
19 list?

20 **MR. WATTS:** I don't want to go that far from the  
21 standpoint of telling you that I might not call anybody else,  
22 but my presentation intentions are reflected in the document I  
23 gave your clerk so she would have it for spelling. I also want  
24 to be honest, I'm not promising to call all those witnesses.  
25 We're continuing to pare, but these are witnesses I can tell

1 you that I've affirmatively called and scheduled, subject to  
2 further revision of the schedule.

3 **THE COURT:** All right. Let's touch on a couple of I  
4 hesitate to refer to them as idiosyncrasies, let's call them  
5 syncrasies, of the Court with regards to character witnesses,  
6 which are perfectly -- there's no difficulty, in my mind, with  
7 character witnesses, but I do tend to have some ideas that they  
8 should be limited. Maybe you should tell me, how many do you  
9 intend to call?

10 **MR. WATTS:** I have less than two, and my brother has  
11 less than four. And we are -- that may be some of the ones we  
12 pare down. We don't want to overstay our welcome.

13 **THE COURT:** Ordinarily no more than three as pure  
14 character witnesses.

15 And unfortunately I'm not familiar with any of these names  
16 of these witnesses. But did you intend to call individuals  
17 that were on the Plaintiff's Steering Committee?

18 **MR. WATTS:** Not at this time. I will be calling  
19 people related to the Plaintiff's Steering Committee, the  
20 office manager of the PSC depository, for example, but I  
21 understand the Court's prior ruling, and we're trying to work  
22 around that.

23 **THE COURT:** If you intend to call actual people that  
24 -- how many were on the Plaintiff's Steering Committee?

25 **MR. WATTS:** Seventeen.

1           **THE COURT:** All right. Obviously I would frown on  
2 calling 17 members of the Plaintiff's Steering Committee, but  
3 if you called less than two or three or less than three, I  
4 don't have a problem with that.

5           **MR. WATTS:** Okay. I appreciate that, because they  
6 were all on my witness list, and then after the court's ruling  
7 on the previous matter, they got pared out, but we may consider  
8 that, as well.

9           **THE COURT:** All right. Something else?

10          **MR. WATTS:** With your advance permission, I have  
11 eight blow-ups and 60 sells, my plan was it put three of them  
12 on that side and three over here and talk from over here.  
13 Would that be acceptable?

14          **THE COURT:** That will be fine.

15          **MR. WATTS:** One last issue I want to reaffirm, I have  
16 told witnesses who are about to go on in my case in chief that  
17 they are not excluded under the rule during the opening  
18 statements and that they are allowed in here but I want to  
19 reaffirm that with the court.

20          **THE COURT:** I'll ask the government, should these  
21 witnesses be excluded during et opening statement?

22          **MR. RUSHING:** No, Your Honor, but I thought the --  
23 they were excluded during the other -- my case in chief, is  
24 that correct?

25          **MR. WATTS:** Yes.

1           **MR. RUSHING:** Okay.

2           **THE COURT:** So they may remain.

3           **MR. WATTS:** Thank you. That's all I have, Judge.

4           **THE COURT:** We'll take about ten minutes and I'll let  
5 you organize yourself, Mr. Watts. We'll be in recess.

6           **(Recess taken 10:46 a.m.)**

7           **THE COURT:** Thank you. Be seated, please.

8           Is the government ready to proceed?

9           **MR. RUSHING:** Yes, Your Honor.

10          **THE COURT:** Are the defendants ready to proceed?

11          **MR. WATTS:** Yes, sir. Thank you.

12          **THE COURT:** Please bring in the jury.

13          **(Jury in at 11:03 a.m.)**

14          **THE COURT:** Thank you. Please be seated. Good  
15 morning, ladies and gentlemen. I trust that you are fully  
16 rested and ready to proceed. As you may recall, the government  
17 has rested. That means that they have provided all of the  
18 evidence that they intend to at this time which you may  
19 properly consider. As I've told you before, however, this case  
20 is certainly not over because you have not heard all of the  
21 evidence the defendant, Mr. Mikal Watts, will be making his  
22 opening statement. As you may recall, he was granted leave to  
23 reserve his opening statement during his case in chief, which  
24 is his right to do.

25           I remind you, as instructed before, that opening

1 statements are not evidence. They're only comments by the  
2 lawyers which are intended to assist you in understanding the  
3 evidence that will be presented. With that instructions ladies  
4 and gentlemen, Mr. Watts, you may make an opening statement.

5 **MR. WATTS:** Thank you, Your Honor.

6 Good morning, ladies and gentlemen. I want to start off  
7 my remarks with a thank you and with a confession of sorts.  
8 The thank you is for your jury service. We see the notes you  
9 have been taking and the time you have been putting in and on  
10 behalf of myself and my brother and Wynter Lee and everybody in  
11 the courtroom we thank you for your service. The confession I  
12 want to give you is what I'm doing here is explaining to you  
13 the evidence that I intend to put on over the course of the  
14 next week or so, but I've got to confess there's a good number  
15 of people on my legal team that say I shouldn't even be doing  
16 this, that the government hasn't made its case, that we have no  
17 burden. Why even do it? And what I'll tell you is, is I want  
18 to spend the next week not arguing to you that they haven't met  
19 their burden which I most assuredly contend they have not. I  
20 want to show you the evidence that shows I'm not guilty, and  
21 I'm innocent of all of these charges. Let me visit with you  
22 about what we're going to put on.

23 I stand before you, as the judge said early on, an  
24 innocent man. The only way that changes is if the government  
25 as of right now has proven to you of my guilt on each and every

1 one of these charges beyond a reasonable doubt.

2 Now, in the law, there are all sorts of burdens of proof.  
3 There's no evidence, there's a scintilla of evidence, there's  
4 reasonable suspicion, there's probable cause, there's a  
5 preponderance of the evidence, which is the one that I'm used  
6 to in civil cases. In civil cases, when you're asking for  
7 punitive damages, you need to prove things by clear and  
8 convincing evidence. I believe the law in this particular  
9 proceeding is none of that's good enough. If that's all the  
10 government has done, and frankly I think they're far down the  
11 staircase, you must acquit. They must prove to you beyond a  
12 reasonable doubt the charges that they have brought, and that's  
13 all they are is just charges.

14 Beyond a reasonable doubt, my expectation is you might be  
15 instructed that that's proof of such a convincing character  
16 that you would be willing to rely and act upon it without  
17 hesitation in the most important affairs of your life.

18 Folks, with respect to myself, my brother, and Wynter Lee,  
19 I would submit to you respectfully the government has fallen  
20 far short, but I'm an innocent man. And we're going to spend  
21 the next week proving that to you, even though we do not have  
22 that burden. So I apologize to you in advance that the trial  
23 is going to be a week longer than it needs to, but we're going  
24 to call a lot of witnesses. We expect that those witnesses  
25 will come on in great number. I had a witness list of 160

1 people wanting to come testify, and we're paring it down.  
2 We're down to less than 50. We may not call all of these  
3 people, but right now, each of them, lawyers, staff members,  
4 third party folks, folks that were involved in the BP  
5 litigation all will come testify to you that they saw no fraud  
6 on my part.

7 Now, why am I doing that? It probably does not stretch  
8 the imagination that for a lawyer who's been doing this for 25  
9 years, it is not good. It is not good to have your name drug  
10 through the mud. I want my reputation back. And the evidence  
11 that I'm going to give you will help me do that. I do that on  
12 behalf of my partners, Frank Guerra, who is here. I do that on  
13 behalf of other folks, as well. My financing partners, who  
14 lost millions of dollars through no fault of their own. I do  
15 that on behalf of my wife, my daughters, my son, all of whom  
16 are here. And frankly, it's real easy in this kind of case to  
17 forget what started all this.

18 I invested two years in my life to find justice for those  
19 11 fine men and all the people that lost their business as a  
20 result of the oil spill caused by BP and others.

21 What am I going to show you over the next week? Well,  
22 there's ten different reasons that I'll show you as I continue  
23 to prove that I am innocent. And I'll take you through each of  
24 these ten reasons, and each of them prove why I'm innocent.  
25 Let's start with the first one. My mass tort experience, the

1 practices of my law firm. The bottom line is that we've been  
2 doing this for a while. It has been my great honor to stand  
3 before juries, just like you, in courtrooms across the United  
4 States and to protect people against the perils of defective  
5 products. When I was a so-called baby lawyer a long time ago,  
6 a lot of hair ago, we worked on --

7 **MR. KENNEDY:** Objection, Your Honor. This is  
8 beginning to get a little bit more testimonial in nature as  
9 opposed to the proper opening statement.

10 **MR. WATTS:** Let me move it along.

11 We've worked on MDL after MDL, multi-district litigation,  
12 Ford pintos, GM pickups, dodge pickups, a lot of you might  
13 remember the Ford firestone debacle. A partner of mine and I  
14 tried the first lawsuit in the country leading to 17 million  
15 tires being recalled. Then we got into a lot of defective drug  
16 litigations. Why is that relevant here? The reason it's  
17 relevant is in every one of those cases, in every one of those  
18 cases, there was a multi-district litigation process which  
19 required proof of identity, proof of damage for anybody to get  
20 paid. And I knew that before BP started. The prosecution's  
21 theory that in my mind in 2010, I thought we could conjure up  
22 42,000 fake people to get on a Plaintiff's Steering Committee  
23 makes no sense for a variety of reasons, and our evidence will  
24 show that.

25 They posited to you, My goodness, how can one law firm



1 represent 40,000 people at once? You've already heard some  
2 evidence in this regard, but our evidence will be that we do it  
3 all the time because of these computer systems that my brother  
4 has very professionally and expensively put together. This  
5 concept of scale, no one American can take on these  
6 multi-national corporations, it's only the aggregation of them  
7 that allows the scale that creates the pressure that provides  
8 them justice. And that kind of scale is presently being used  
9 in the corn litigation where we have 50,000 clients, real  
10 people, in the Trans Union litigation where we achieved  
11 recovery for 70,000 people at once. But again, in all of these  
12 cases, it was necessary to provide proof of identity and proof  
13 of damages, and we were going to have to do that here in BP, as  
14 well.

15       The witnesses. The first witness is an old friend of  
16 mine. He was my boss at my first job 25 years ago. He left me  
17 for divinity school, moved off to Kentucky. But he became my  
18 local counsel. And even my good friend got 3 percent for local  
19 counsel, not like what Anders Ferrington tried to sell you,  
20 that he was 30 percent, as if I would have chosen Anders  
21 Ferrington instead of the most experience the member of the  
22 Mississippi Bar. Three percent is what we typically pay.

23       In opening statements, you were told that I have a long  
24 history of challenging high common benefit fees. We're going  
25 to take you through with various witnesses a number of these

1 multi-district litigation where I together with good lawyers  
2 tried the first case in the country in Ford firestone, in  
3 Stand-N-Seal, Vioxx we tried two of the cases, GMO rice. In  
4 all of these different cases, we'll bring you specific evidence  
5 of my effort to represent the people and to challenge people  
6 that were seeking high or exorbitant common benefit fees.

7 On Friday, you'll meet Tab Turner. Tab and I tried the  
8 first Ford Firestone case in the country. You'll remember when  
9 the Ford Explorers were rolling over and the Firestone tires  
10 from coming apart. We did that. Hundreds of cases were  
11 litigated. Didn't ask for a buck in common benefit fee.

12 You will meet Chris Pinedo who used to work for me. Back  
13 in 2002 I tried the first Rezulin case in the country, a case  
14 that involved liver damage for diabetes patients. Again,  
15 hundreds of cases settled. We sought not one dime of common  
16 benefit fee.

17 My old adversary, Darryl Barger, probably tried more cases  
18 against him than anybody in the nation, one of the finest  
19 lawyers in the state of Texas. He will be here next Monday. I  
20 was in between a lot of losses to Mr. Barger. I was successful  
21 in a case involving faulty hip implants that Sulzer Orthopedics  
22 put together. It led to a one billion dollar settlement. We  
23 sought not one dime of common benefit fees.

24 Rick Holstein, a special master who adjudicates how the  
25 different plaintiffs are allocated funds after one of these

1 settlements take place. He's done that on several occasions.  
2 He'll testify that I've spent over a million dollars, together  
3 with a partner, fighting excessive common benefit fees.

4 And my accountant since 1997, Ron Park, will be here next  
5 Monday and he will testify to you that of all the money that  
6 I've made since I start my firm in 1997, at the time that BP  
7 began. Not one dime of it was from common benefit fees.

8 And so the government's entire theory, we believe, will  
9 fall short. One of their overt acts in support of their  
10 allegation that somehow myself and my brother and Wynter Lee  
11 were part of a conspiracy is that we shred documents. You've  
12 heard that several times. We shred documents. Now, folks,  
13 what you're going to hear on this is that our office had an  
14 enormous problem back in 2003. We were exploding in size. I  
15 had seven different law firm offices, hundreds and hundreds of  
16 cases, thousands and thousands and thousands of boxes of  
17 documents. We bought a warehouse, 66,000 feet, the evidence  
18 will be. Filled it up. We had a paper problem. Now,  
19 everybody is paperless now, but think back 12 years ago. My  
20 brother was in a software company. The evidence will be that  
21 he joined us and he said, Why are we keeping all this paper?  
22 We can scan it, get rid of it, and keep the digital copy. So  
23 Terri-Lynne Schofield, my third longest tenured employee, since  
24 1999, will talk about all the Sunday afternoons that she and I  
25 spent in that warehouse, spray painting boxes of documents for

1 destruction, for shredding, because we didn't have space. But  
2 we made digital copies of those, and we preserved those. She  
3 will testify that even though we were digital, we preserved the  
4 original BP documents until after the case settled. She'll  
5 take you through a long paperless office chronology, and we  
6 won't go through all these documents, but you'll see that the  
7 government's theory that we shred documents as part of some BP  
8 conspiracy is frankly just off the mark, that we've been doing  
9 that for years as part of a transition to a paperless office.  
10 Mr. Barger will come and he will give you some information  
11 about how industry has done that, the legal industry has done  
12 that, the business community has done that, the news community  
13 has done that. Like it or not, we are now in a digital world,  
14 and that's why we shred documents. And we did it long before  
15 BP.

16 Tom Berman, the nation's number one risk assessment  
17 consultant. Lloyds of London, who was my malpractice carrier  
18 in 2008, hired him to come down and do a process audit on my  
19 firm. Mr. Berman will be here tomorrow, and he'll tell you  
20 that what he saw made him literally gush over the systems. He  
21 had not seen anything like it. And that law firm after law  
22 firm after law firm had in fact replicated what David Watts  
23 came up with long before others thought of it, long before the  
24 BP case.

25 The next witness will be Andy Weinstock. Mr. Weinstock,

1 again, is not one of my clubby buddies on the plaintiff's side  
2 of the bar. He was my adversary, the lead defense lawyer in  
3 the FEMA formaldehyde litigation, MDL, in New Orleans. He was  
4 the number one dog in charge on behalf of the defendants  
5 against whom I litigated. And he will tell you that with  
6 respect to the FEMA docket, 30,000 folks filling out plaintiff  
7 fact sheets, that he had a team of people looking for fraud,  
8 and they did not find it with respect to the Watts and Hilliard  
9 files, which is why 99.1 percent of our clients checked out.  
10 So we had every reason to trust these gentlemen in BP. His  
11 paralegal, Carmen Motes, I'm not sure whether we're going to  
12 bring her because it might replicate what her boss says, but  
13 she's dying to come help because she was there and she knows I  
14 wasn't involved in any fraud in FEMA and she knows I wouldn't  
15 do it in BP.

16 The third concept is victim outreach. Let me explain to  
17 you that in this industry, you can see all sorts of legal  
18 advertising, things like that, that's a kind of victim  
19 outreach. Part of the government's conspiracy theory is, Hey,  
20 Watts knew there weren't 40,000 fishermen in the Gulf. Now,  
21 folks, with all due respect to Ken Feinberg, for whom I share  
22 great admiration and respect, you can see that, he's just  
23 wrong. There are 40,000 fishermen in the Gulf, and I'll bring  
24 to you David Swanson, who is a demographer, a professor of  
25 population statistics. And he'll tell you that as of 1990,

1 there were 230,000 in the United States commercial fishermen,  
2 and that in the Gulf in 1990 there were over 75,000 of them.  
3 And there are books that were published that I had access to.  
4 There were plenty of commercial fishermen in the Gulf.

5 But more importantly, he'll talk to you about the  
6 businesses that we could have gone and signed up, the offshore  
7 workers that were victimized by the six month secretary of  
8 interior moratorium, cleanup workers who had health problems.  
9 Commercial fishermen over in Mexico made claims. All of those  
10 claims were pitched to me as different ideas. They total up  
11 about 9.7 million people. So if it truly was my goal to  
12 assemble 42,000 names so I can get on a committee, I never even  
13 had to go into the docks. It would have been a lot easier just  
14 to hit the 16 million businesses or people, the 400,000  
15 businesses along the Gulf Coast. The government's theory makes  
16 no sense.

17 More importantly, you're going to see from Matt Archer  
18 that my law firm, other than BP, has represented about a  
19 quarter of a million people over the years. You know they're  
20 all in that database. We can run queries. If my goal was to  
21 assemble a large number of people so that I could get on this  
22 Plaintiff's Steering Committee, all I had to do was hit a  
23 query, and I could have run out people I had already  
24 represented. But instead, the government's theory is that I  
25 chose to set \$11 million on fire in order to purchase phone

1 books. Makes no sense.

2 In terms of our client base, non-BP client base, in these  
3 five coastal states, tens of thousands available. 90,000 just  
4 in those five coastal states. We didn't have to stop at  
5 42,000. Just in the coastal counties that immediately abut the  
6 Gulf of Mexico and Matt Archer, the head of information  
7 technology in my mass tort office, will be here to discuss  
8 this. Just in those counties, tens of thousands of names that  
9 I already represent that were available to me. I could have  
10 gotten to 49,000 just with the counties immediately abutting  
11 the water. Why I would take \$11 million of my money, my friend  
12 Bob Hilliard's money, my partner John Cracken's money, and set  
13 it on fire in a conspiracy to go talk these guys into giving me  
14 names out of a phone book? It makes no sense.

15 You're going to hear from an Emily Jeffcott. I think you  
16 won't hear from her until Mr. Hightower's case in chief because  
17 he's already subpoenaed her, but he beat me to it. I'd love to  
18 call her. But early on in this process, she did some research  
19 and she told me, and I think quite correctly at the time, that  
20 there was a case from the 1930s called Robins Drydock that says  
21 when there's an oil spill, you can't just make a business  
22 claim, the only people that can do it, according to the Fifth  
23 Circuit, are people that commercially fish on the water. So  
24 that's why we thought they were the only people that could  
25 recover outside of this Oil Pollution Act. At the time, the

1 Oil Pollution Act had a \$75 million cap, so you're going to  
2 have several hundred thousand people going after the same  
3 75 million unless you go after the commercial fishermen, which  
4 is why we did that. But Emily will testify to that.

5 Shalimar Wallis, one of my law partners, will be here on  
6 Friday. She will testify that she got Emily's research, that  
7 she was specifically instructed not to take in BP cases other  
8 than fishermen or those whose property had been touched by oil.  
9 It was directly as a result of the case law that Emily had  
10 found for us.

11 Brian Berryman, one of my partners, will be here later in  
12 the week. He'll testify that as a matter of firm policy, he  
13 was instructed, Look, just go get the commercial fishermen. We  
14 don't think the others can recover. And by the way, get their  
15 income tax release forms. Now, think about this for a second.  
16 We're out there collecting, instructing, you've already seen a  
17 number of these memos, over and over again that we need income  
18 tax release information so we can go to the Internal Revenue  
19 Service and get the 2009 versus 2010 tax returns. Right? When  
20 Ms. Jeffcott comes, she's going to tell you she actually called  
21 the IRS to figure out how we could do this most efficiently.  
22 And the evidence will be restart the off with a Form 4506,  
23 which is a paper way to get it for which you pay about \$35 a  
24 piece but then she learned there was a digital way to do it  
25 through what's known as a 4506-T. The evidence will be we



1 immediately switch out and we're getting 4506-Ts signed because  
2 we know we have to get the tax returns.

3 Folks, if you put yourself in my head, do you really think  
4 that I thought we could send 45,000 tax release forms to BP or  
5 Ken Feinberg or anybody else and not have them immediately  
6 figure out these people were not real? It makes no sense.

7 So we'll go on. Another reason of my continuing innocence  
8 is the preposterous suggestion that somebody would set  
9 \$11 million on fire to buy a phone book. It makes no sense.  
10 What you're going to see is that BP is just the latest case  
11 that we have worked on from the standpoint of if we're going to  
12 help these people, tens of thousands at a time, it requires  
13 enormous capital. We spent over \$7 million in Fen-Phen, 6.7.  
14 In welding rods, welders were having manganese poisoning, 5.6.  
15 In Vioxx, a pain medicine that caused heart attacks,  
16 7.9 million. Patent cases, four and a half or four and a  
17 quarter. FEMA case, Mr. Hilliard and I spent over 5.6 million  
18 just on acquisition before we started spending millions more  
19 for which he reimbursed me that \$3.1 million in FEMA. But it's  
20 an expensive proposition. BP was no different. Those are just  
21 the funds that I spent. When you put it together with my  
22 partners, the yellow portion of this, sometimes we're spending  
23 ten, \$20 million collectively, and it's no wonder to you why we  
24 go get partners to mitigate this risk. Okay?

25 So what happened in BP is no different than any other case

1 from the standpoint of our process. But what was different?  
2 Something different happened. The first words that I gave you  
3 in voir dire, I got robbed. And we'll demonstrate that to you  
4 with the evidence.

5 Gary Ploetz, there's five witnesses I really want you to  
6 think about writing down. The first one is Andy Weinstock, the  
7 FEMA opponent of mine in FEMA. Gary Ploetz is a former IRS  
8 criminal investigation division agent. He's going to go  
9 through the bank records up like Mr. Wigley, who did not do it,  
10 to figure out where that money went. And Mr. Ploetz is going  
11 to tell you that only 23 percent of the \$10 million was  
12 actually spent on work in the BP case. \$7.7 million was spent  
13 with respect to personal expenditures. And you can see some  
14 examples right here with respect to how some of that was spent.

15 Even worse, in the fall, because the documentation did not  
16 come back as it should, we arrive at a \$1.5 million budget to  
17 go get documents and you all have already heard a lot about  
18 Phase II and we send 500,000 in the middle of November, 250,000  
19 more on December 2nd of 2010, and it's set on fire. It's not  
20 used for the project. If you're wondering why they only came  
21 back with ten or 15 packets, they pocketed 605,000 of the  
22 \$750,000, and no telling what else the money was spent on that  
23 led to just 15 packets. But that's why Phase II was a failure,  
24 because the money that we sent over to do the work was not  
25 spent on doing the work.

1           And you see Mr. Warren spending clothing, gentlemen's  
2 clubs, cigars, wine, fancy hotels, Ms. Le spending. It wasn't  
3 spent on the project, folks. But ask yourself again, why would  
4 somebody spend \$10 million.

5           And I do think Ms. Lockett may have been the most  
6 important witness in the case. I just loved her with that  
7 purple hair, and she was so emotional, and they clearly whoever  
8 did it took Ms. Luc's name out of the phone book. There's no  
9 denying that. I asked her, why would somebody spend  
10 \$10 million on a phone book they can get for free? But you  
11 have to believe that to buy the government's theory which makes  
12 no sense. More importantly, why would I do that knowing --  
13 Mr. Kevin Roddy is with us here today. He is a mass tort  
14 expert. He's done some of the largest class actions in the  
15 history of this country both in New York and California. And  
16 he's going to tell you that he's gone through every one of the  
17 Court orders in the past MDLs that I have been involved in, and  
18 almost uniformly the Court requires plaintiff fact sheets that  
19 are filled out, signed, and verified. The settlements once  
20 they occur require great detail just like the yellow form that  
21 we have here, two forms of identification. So why would  
22 somebody with the experience that I have had in MDL think BP is  
23 going to be any different? Why go burn up \$11 million for  
24 names that you know don't exist when you know you can't get  
25 them through the Plaintiff Fact Sheet and settlement process?

1           One of the more important witnesses we have already heard  
2 was that nice young lady from Brown Greer. Brown Greer is at  
3 the end of every one of these cases, ready to audit, ready to  
4 make certain the evidence will show that you have proof of  
5 identity, proof of loss. And I knew that. Mr. Roddy will  
6 testify to that. And he will show you all the orders if we  
7 have to, but we'll try to summarize it. He'll be on tomorrow.

8           The next reason that I am innocent is the concept that if  
9 a lawyer meets his duty and properly communicates with his  
10 clients by virtue of client update letters, that now that is  
11 mail fraud. That doesn't make any sense. We tried to  
12 communicate with our client base, as we do in every case. We  
13 tried to meet all the deadlines, as we do in every case. And  
14 frankly, we were successful on both.

15           Mr. Barger will be here Monday and he will tell you about  
16 this malpractice environment, this legal malpractice  
17 environment in which we're practicing, lawsuits all over the  
18 place for people that mess up and don't communicate, for people  
19 that mess up and don't meet deadlines, because I owe the  
20 clients the duty of zealous representation, loyalty,  
21 communication. And he'll analyzed all those letters you have  
22 already seen and he will say that's appropriate. He's analyze  
23 the fact that we've met all the deadlines. That's appropriate.

24           Even more so I will bring you Tom Kelly who runs a third  
25 party mail house who will tell you about the Herculean efforts

1 that it took to get out 488,000 pieces of client mail -- excuse  
2 me, 422,000 pieces of mail. He doesn't know about the live  
3 calls and audio calls, but he will tell you about the expense  
4 involved in firing off letters over and over and over again.  
5 And ask yourself, if somebody is involved in a conspiracy  
6 trying to secret their criminal activity, have you ever even  
7 heard of somebody that sends out 422,000 notifications? That's  
8 the fastest way to get caught. I've got to be the world's  
9 dumbest criminal. It makes no sense.

10 Matthew Bickers. They say, hey, there's returned mail.  
11 We get returned mail in every case. Mr. Bickers is a post  
12 masters with the United States post office. He's going to  
13 explain to you why that happened. Frankly it's on all of us.  
14 A lot of us when we move, we don't do forwarding addresses.  
15 Statistically people move six or seven times in their lifetime,  
16 and so you get a lot of returned mail for reasons of quantity  
17 costs. And here we go, 6.9 billion pieces of returned mail  
18 in 2010. 75 million a month. 19 pieces of returned mail per  
19 day, Mr. Bickers will testify. This is a \$65 billion annual  
20 cost on the United States economy. It's not just Mikal Watts  
21 that has this problem. There's estimates that it costs the  
22 economy 2.2 million jobs because of the inefficiency of  
23 returned mail. So what did my firm do? Did we set them on  
24 fire and pretend it never happened? No, I paid for labor to  
25 enter into the database every single time so we could track it,

1 so we could initiate efforts to correct it. But Mr. Bickers  
2 will be here --

3 **MR. KENNEDY:** Object again Your Honor. After waiting  
4 a significant period of time, we're again getting into the area  
5 where it's becoming testimonial as opposed to his perception of  
6 what the evidence will prove and what he expects the evidence  
7 to show and therefore the government objects.

8 **THE COURT:** All right. Again, the jury has been  
9 instructed that comments and statements made by counsel during  
10 opening statements are not evidence. Objection is overruled.  
11 You may proceed.

12 **MR. WATTS:** Thank you, Your Honor.

13 The next witness will be George Fleming. I believe he  
14 will be here Thursday morning. George is another mass tort  
15 lawyer. He is from Houston. We've never had a case together,  
16 but he is one of the preeminent mass tort lawyers in America.  
17 There was a tort back in the 1990s involving people's  
18 polybutylene pipes that would come apart and ruin their houses.  
19 George represented I think it was 65,000 people at once.  
20 During the Fen-Phen diet drug litigation, tens of thousands of  
21 people at once. And he's analyzed our rates of return mail and  
22 he's compared them with other cases that we have had. And he's  
23 compared them also with class actions that can only be settled  
24 by written mail notice to everybody in the case, and you get  
25 rates of returned mail in those class actions. And all those

1 blue, all those blue lines are other reported legal decisions  
2 where the rate of returned mail is shown, and that little one  
3 in green is what we had in BP about 16 percent, which is not  
4 out of the norm. So he'll take you through all of that.

5       You're going to notice that Mr. McCrum and I as we're  
6 doing with questioning, we're going to put witnesses on out of  
7 order, trying to get them all in. Our goal, and I'm sure it  
8 cared you with 50 people, we're not going to be here three no  
9 are weeks with respect to our case in chief. We'll be done in  
10 one week and I promise by the time we take the next day off on  
11 the 18th. Okay. This will run quickly. Mustafa Tameez is an  
12 expert with in communications to minority communities. He's  
13 done a lot of work in trying to communicate with the Vietnamese  
14 communities. He will tell you about their immigration from  
15 Vietnam to the United States. He will tell you that they  
16 settled wherever the United States government put them, but  
17 that a large number of them migrated down here to the Gulf  
18 Coast because there was fishing in Vietnam they became  
19 fishermen here. He will tell you about the way they live, it's  
20 called Vietnamese enclaves, very insular communities that have  
21 not assimilated into the American society, and the idea that  
22 I'm supposed to send Hispanic and Anglo members of my staff  
23 into Vietnamese enclaves, without knowledge of how to speak  
24 Vietnamese, to try to knock on doors and communicate with them  
25 makes no sense whatsoever. And the evidence will be that the

1 experts say if you want to communicate with Vietnamese  
2 Americans, you better use Vietnamese Americans, and that's why  
3 these gentlemen chose to use Kristy Le.

4 The next reason that we're innocent is the incredible  
5 work, the due diligence that the fine members of my staff did.  
6 Even the ones that came here after having talked to the  
7 government, turned around affidavits, whatever, we can get into  
8 that later. Even they were diligent. You've already seen the  
9 processes, and there is no room for maneuvering in that mass  
10 tort office, and the reason is, you have to have rules, you  
11 have to stick with them, you have to follow process, or errors  
12 are made and people lose their cases. And so we'll testify  
13 about that.

14 Jacquelyn Wendland, she's a young lady who is presently  
15 the project manager in the firm's Syngenta corn litigation,  
16 managing 50,000 peopling at once. She will talk about the  
17 daily reports, the calendering of every BP record that was  
18 received, client communications, mail out projects for which  
19 you have already heard some, and she won't be on long. But you  
20 will get an idea with Jackie Wendland the kind of quality  
21 individuals that worked in that firm in the mass tort  
22 department like Dr. Kendra Saxvik. And I'm proud she went back  
23 to school. I was sorry to lose her. But we've got a lot of  
24 good people that worked their hearts out on the BP case.

25 We'll go even lungs down, I'm going to bring you Patricia



1 Galloway who runs the call department who had overtime granted  
2 left, right, up, down the middle, trying to communicate with  
3 every client that we could because we wanted to find the people  
4 that didn't know about the deadlines, who were our clients, who  
5 deserved to make the choice whether to opt-out, stay in, file a  
6 settlement claim, or not. Because as you've already heard  
7 several times, if they don't do it and you miss the deadline  
8 the cases sift out of the system, as they were in the process  
9 of doing when these gentlemen chose to raid my office right  
10 when the trial started.

11 Daniel Henson, a client relations associate. Again, not  
12 in management. Line worker. Good man. Worked hard. No  
13 fraud.

14 I'm going to bring you Sonny Hildreth. Now, I've met  
15 Sonny before but he never worked in my law firm. Mr. McCrum  
16 hired him. He is a good man. You're not going to buy that he  
17 forced anybody to sign anything. You've got the statement of  
18 Kayleigh Stone that during all of this immense pressure that  
19 she felt, she had the time to handwrite and initial changes.  
20 The problem is not with Sonny Hildreth. Sonny's going to  
21 testify he didn't make her post anything on LinkedIn about what  
22 a good job she did while she was there and it was a success.

23 We're going to bring to you Nicole Porter, because I want  
24 you to have every one of those BP project managers. So you can  
25 evaluate what you heard from some of those two ladies with the

1 other people that worked there, and it does not fit one iota.  
2 She doesn't work for me anymore but is willing to come. I'm  
3 going to bring you summer clerks that worked under Kayleigh  
4 Stone. Mackenzie white is a young lady that started working  
5 for me the day after high school. She went to trial with me at  
6 a big oil and gas case and then went to work on the BP case  
7 under Kayleigh Stone in the summer of 2012. She loved her job,  
8 loved what she saw. She asked to come back in 2013, even after  
9 my law firm was in every paper in America after these gentlemen  
10 raided offices. Right now she is on a trip to Alaska on her  
11 bike for cancer research. She's cutting it short to fly down  
12 here on the 14th so she can talk to you on the 15th about  
13 what she saw. That will be the evidence.

14 Kari Matocha, the assistant operations manager for the  
15 mass tort office. She will talk about the BP settlement  
16 diligence, her settlement diligence, and authenticate out of  
17 our database some documents like the four or five letters that  
18 Norma Jean Bullard even though it had her e-mail address on it  
19 wouldn't authenticate. Matt Archer, the head of the IT  
20 department. He will tell you about the effort he did with  
21 respect to the database on the BP case. He will also come  
22 forward and say look I had a script error, that first and last  
23 name thing on presentment, he showed me the code last name, he  
24 miss coded it. It wasn't part of some conspiracy. We'll show  
25 you that.

1           We will talk to you about the process, when somebody says  
2 they want out that we follow before we dismiss. Now you've  
3 already heard from a number of witnesses that were led into  
4 testimony, oh, yeah, Watts never dismissed any cases. Well,  
5 that's just not the case. That's just not the case. Before  
6 the first deposition, there were over a hundred. We had a  
7 process in place when somebody called us and said they wanted  
8 out their case got dismissed. It happened 513 times. We  
9 disclosed, we disclosed, we disclosed.

10           You've already heard from Mr. Cracken, you already heard  
11 from Mr. Feinberg about disclosures to the GCCF. You already  
12 heard about all the zeros for social security numbers that we  
13 put in to the plaintiff profile forms that we gave to BP. We  
14 did it again with the court, with the short form submissions.  
15 We told settlement counsel through Mr. Cracken's conversations  
16 with Joe Rice about the infirmities of this docket. Now you're  
17 going to hear about the fact that we also disclosed to the  
18 settlement administrator. But as to BP and the court, you'll  
19 get those plaintiff profile forms and we'll talk to you about  
20 the number of times. I think it's 6672 where there were 000,  
21 telling BP, we don't have the social security numbers for these  
22 people, we can't vouch for it, telling the Court, thousands of  
23 times, we don't have social security for these people, we can't  
24 vouch for it. We did our duty but we disclosed.

25           Another reason that we are not only not guilty, we are

1 innocent of these charges, we're going to take you through the  
2 extensive work that was done, one of the hard parts about this  
3 trial is they're trying to prove up this theft of one fifteenth  
4 of \$600 million -- it doesn't work that way -- as if we didn't  
5 work our tails off. We'll talk to you about that. My  
6 administrative assistant, Pam Flores, will bring to you my  
7 calendars, and there is a two and a half year divot of me doing  
8 nothing, nothing but the BP case. Our firm worked its heart  
9 and soul on behalf of the people of the Gulf Coast to get them  
10 justice from BP, who was not offering it. It had to be done.

11 We'll bring you -- you don't have to believe my people.  
12 We will bring you the office manager of the Plaintiff's  
13 Steering Committee's depository who set up the office. There  
14 were hundreds of people in there on computer screens. He will  
15 talk to you about the efforts that I joined him in, in doing  
16 discovery and computerized search terms, pulling my own  
17 documents for each of these depositions we took. I'm not  
18 talking low level depositions. I'm talking chief operating  
19 officer of BP exploration and production, chief financial  
20 officers of BP exploration and production, world wide head of  
21 engineering for BP in London. These were critical depositions  
22 that we worked hard to get done.

23 Emily Jeffcott worked at the start, called the internal  
24 revenue service. That \$45,930 came from her research into the  
25 labor statistics, the department of labor statistics. David

1 Bright succeeded her. She was going to go off to business  
2 school, so she left for a while and came back. He is the one  
3 that initiated the PSC whistleblower project to find people  
4 like Kevin Lacey who testified that BP allowed this explosion  
5 to occur because it was trying to save money. Even after my  
6 offices were raided and I couldn't try the case anymore, it was  
7 the very first deposition played during the trial that led to a  
8 punitive damages finding against BP.

9 Tony Pletcher succeeded Mr. Bright after we moved  
10 everything to San Antonio. Mr. Pletcher will talk to you about  
11 the efforts in terms of experts. There were 58 of them. They  
12 all had to be summarized, researched, had to be prepared for  
13 depositions, trial preparation outlines. Mr. Pinedo helped  
14 with that. A gargantuan amount of work. Other members of my  
15 staff did that.

16 David McLendon. He was a contract lawyer that did not  
17 work for me that worked on FEMA. He did such a good job he  
18 asked to come work for me on BP, and he stood at my side during  
19 all this work and frankly did a lot more of it than me. Do you  
20 know what happened after my offices got raided? He said, I  
21 want to join your law firm. I believe in what we did so much.  
22 Now he's a member of my law firm. He lives in New Orleans. He  
23 has no reason to be in my law firm or that we work together,  
24 and he believes in what we did and he will tell you there was  
25 no fraud.

1 David Pritchard, a man I had never met. He was assigned  
2 to me. One of the preeminent drilling practices experts in the  
3 world. I was assigned the task of developing his testimony.  
4 He wrote a 500-page expert report that was so big, they called  
5 it the big kahuna. It had to be edited over and over and over  
6 again. We prepared him for deposition. And he's going to come  
7 testify to you because he was there with me and he knows there  
8 was no fraud going on. We were working for the people, and we  
9 were working hard.

10 Ed Allred, one of my partners who is in the back is going  
11 to testify about trial preparation, working to synthesize  
12 depositions, subpoenas, evidence admissibility briefs.

13 David Frazee, now, you may hear -- and we may cut down  
14 witnesses -- I go to a church called Oak Hills Church in San  
15 Antonio. It has two pastors. One is a guy by the name of Max  
16 Lucado, who you may have heard of, and the other one is Randy  
17 Frazee. Randy asked me to give his son a clerkship back  
18 in 2010. This young man stood by my side as all of this  
19 alleged fraud was going on. He asked to come down from Indiana  
20 to testify before you about what he saw. His father may  
21 testify. And the importance of his father is that even this  
22 summer, after we got indicted, he's still sending me summer  
23 clerks because he knows through his son that our work was  
24 honorable and not a fraud.

25 Most importantly, another reason that we are innocent of

1 each of these charges, is that it defies logic to think that  
2 anybody who's ever done an MDL would want to set \$11 million on  
3 fire knowing the process after the settlement is done. In  
4 every one of these cases, you've got to show up with two forms  
5 of picture ID. How do you do that if you don't represent the  
6 client in the first place? You don't. In every one of these  
7 cases, there's a settlement administrator like Brown Greer. In  
8 the BP case, it was a gentleman by the name of John Perry.  
9 I've -- he is going to come talk to you on Friday. He's going  
10 to tell you that we disclosed. He's going to tell you that  
11 he's been in the FEMA case, the rice case, the Pradaxa case,  
12 he's dealt with me on numerous occasions and never seen any  
13 fraud. He's going to tell you that in the BP case, we  
14 disclosed problems and drew not one dime out of that BP  
15 settlement fund because we knew there were enough problems.  
16 John Perry has got two stars next to him. You will find him to  
17 be one of the more important credible witnesses in this case.  
18 The other reason he's credible is the government would have you  
19 believe, and they put on two or three witnesses that suggested,  
20 that this is some bonanza of \$600 million to be split between  
21 15 people. Folks it does not work that way. He is going to  
22 talk to you about a PTO 9, pretrial order nine, from Judge  
23 Barbier. It says you've got to keep contemporaneous records of  
24 your time. At the end of every month, you have to submit it.  
25 It's audited contemporaneously by a CPA that is appointed by

1 the Court. After years of work, the evidence will show that  
2 once the case is done, all the clients get paid, there's a  
3 several year lag before any of the common benefit fees are  
4 allocated. And you have to go through an audit process, give  
5 testimony, go before a fee allocation committee that makes a  
6 recommendation, and then the Court won't take that  
7 recommendation immediately. He'll send it off to a special  
8 masters he appoints. Want to know who the special master is?  
9 John Perry. He is going to explain to you that there is not 15  
10 law firms that are going to share \$600 million. There's 308  
11 lawyers that worked hard on the BP case from 94 different law  
12 firms. So the entire premise of this case that I'm going to  
13 set \$11 million on fire to get 40 is nonsense. The evidence  
14 will be 94 law firms, 308 lawyers, all contributed to the  
15 common benefit effort.

16 I'll bring you a settlement administrator from prior mass  
17 torts that I have handled. He will tell you that in every one  
18 of them, you need proof of identity. He'll tell you that in  
19 every one of them, you need proof of loss. I will bring you a  
20 special master from previous cases that I have handled. In  
21 every one of them, the settlement agreements require proof of  
22 identity, proof of loss. I will bring you one of the most  
23 renowned trial lawyers from the state of Texas, Mike Gallagher,  
24 from Houston, with whom I worked on the Pradaxa litigation  
25 where people -- primarily people over the age of 70 from



1 injured by a bad drug, causing bleeding, and a lot of them bled  
2 out and died. He will tell you that I tried to organize that  
3 Plaintiff's Steering Committee with no common benefit fee at  
4 all. And that while I wasn't successful, it was a very modest  
5 common benefit fee.

6 I will bring you next Monday one of the lawyers for  
7 TransOcean, a defendant in the BP case, who watched my work,  
8 who will tell you it's nonsense the idea that somebody could  
9 bring forth names out of a phone book and collect a big bonanza  
10 of settlements without proof of identity and proof of loss.

11 I have tried to attack this thing from every different  
12 angle. People in my firm, people that used to be in my firm,  
13 people outside my firm, the settlement administrator, the  
14 defendants, other fine lawyers, experts, every which way you  
15 can circle this issue, everybody will tell you that the theory  
16 of the government that somehow, through a conspiracy or not,  
17 somebody can make millions and millions of dollars through  
18 clients that don't exist is just foolishness. That's what they  
19 are going to tell you.

20 Now, folks, lastly, one of the reasons that I did not  
21 accept the advice of a lot of the folks on my team to say, just  
22 say we're done. They haven't proven the case. I want you to  
23 know how this happened. Since this indictment, our side, not  
24 the government, has done the hard work that it takes to tell  
25 you how this happened. And let me explain why. The first

1 witness that you are going to hear from is Johnette hassle from  
2 Louisiana. In New Orleans she does electronic evidence  
3 retrieval. She is going to testify that when you look at the  
4 files that were received by David Watts, it's virtually a  
5 mirror of what we sent to BP. So there was no sculduggery on  
6 our end. We're going to subpoena, maybe -- we might not have  
7 to anymore because the IRBSearch records are in there -- but  
8 there's more than 60,000 search lines from IRB. You will hear  
9 about this, this afternoon.

10 This witness, Gerald McGwin has two stars and here is why.  
11 He took -- remember we didn't get this data until 2016 after we  
12 had been indicted. He took that gentleman Barnett's work.  
13 Remember the EVS one, the EVS five? There's 60,000 lines, not  
14 33. So we knew, hey, they're saying this one is a bad social  
15 security number because it never existed, the ones I call made  
16 up. And we knew this one is an EVS five, the ones I call  
17 stolen. Why don't we go back and subpoena the Denspri records  
18 and the IRBSearch records and then we can bring them together  
19 and figure out who did this. The government never did that.  
20 This gentleman issued a report on May 31. The Secret Service  
21 never even bothered to go get the Denspri records until after  
22 we spoonfed it to them. They didn't do the hard work. He did  
23 the hard work. He analyzed the Denspri records. He analyzed  
24 the IRBSearch records. And he found tremendous error rates,  
25 tremendous. So I said, whoa, doctor McGwin, can you go back

1 and search every other case I have ever had to make sure I  
2 don't have some systems problem? He did. He searched every  
3 other case. We got an error rate of well under 1 percent. He  
4 searched, in fairness, the other cases with whom I had worked  
5 with Mr. Warren and Mr. Guerra. Again, an error rate under  
6 1 percent. So BP was the outlier. Why did it happen?

7 Well, there's two main reasons it happened. Number one,  
8 it should be fairly evident that somebody in Kristy Le's  
9 operation decided to go raid phone books. We didn't know that  
10 at the time. But I don't know how you get Mary Lockett to  
11 become Mary Luc or Lucy Lu to become a human being without  
12 hitting phone books. But what did we do? We went and  
13 subpoenaed the Denspri records and what you are going to see is  
14 that gentleman Ryan Willis got spreadsheets back with thousands  
15 of entries that said did not process, not found, truncated, no  
16 hit. They didn't match. So what did he do? He sent that on  
17 to Kristy Le. By the time that data was sent up to Chris  
18 Deleon, all those notations were gone, taken out. And we'll  
19 bring to you the e-mail chains that have got the documents.  
20 This man did the forensic work the government did not do. He  
21 is going to show you that with respect to the Watts law firm  
22 mass tort database, there was no prior issue with bad social  
23 security numbers in any other torts, none with respect to the  
24 ones we had done previously with Warren and Guerra. He's then  
25 going to tell you, Hey, I have now got this social security

1 administration match. This gentleman that came, Barnett, very  
2 nice man. We don't have access to that. We only got it via  
3 subpoena in a criminal case. The upshot is what he showed you,  
4 that I wrote the summary, in government's Exhibit 180 through  
5 180C, and that is, 2,500 of these numbers are made up, maybe as  
6 many as 7,000 now; right? 15,000 of them are stolen. And  
7 doctor McGwin is going to use that word. They're stolen,  
8 folks. There's no other way -- they're stolen. The question  
9 you have to decide is who stole it. And we're going to show  
10 you that.

11           So we went to Denspri. Thank God for Alicia O'Neill, Eloy  
12 Guerra's young lawyer, who found the Denspri deal and sent the  
13 first subpoena. When she told me she was doing it, I was,  
14 like, yes, now we can figure out who did this. So we got the  
15 records she subpoenaed, we sent them to doctor McGwin and his  
16 analysis began. It cracked the code of what happened here.

17           And here's the bottom line: IRBSearch, 65,000 searches.  
18 They entered so little information you couldn't get a correct  
19 match if you wanted to. Dr. McGwin is going to tell you that  
20 less than 3 percent of them were a sufficient deal because they  
21 weren't looking for a correct match. They were hunting for  
22 social security numbers for identifiers to put on the  
23 questionnaires that had come out of the phone books.

24           The evidence is going to be and we are going to have him  
25 testify as to what he found about the victims that you heard of

1 in this trial. He researched each victim during the course of  
2 this trial. He cross-correlated it with the Denspri IRB files.  
3 He pulled the Willis and Kristy Le e-mails and those from  
4 Kristy Le to Chris Deleon. You heard about deceased victims.  
5 There's a reason. Phuon Nguyen. Remember Diane Nguyen's mom?  
6 She shows up on a Denspri file as deceased, her name right next  
7 to her social security number, right next to "deceased." Comes  
8 down from Willis to Kristy Le. The notation is taken off, sent  
9 by Kristy Le or Lan Nguyen to Chris Deleon, clean as a whistle.  
10 No wonder it ended up in our files. We had no way of knowing  
11 she was deceased.

12 You are going to hear of stolen social security numbers,  
13 you heard from William McClelland, James Hutto, Harold  
14 McClelland, Wendy Como, Kim Nguyen, five examples, all came up  
15 as EVS five on that social security administration crosscheck  
16 that Mr. Barnett did. That's why they were victims.

17 Made up social security numbers. Tracy Tran, her social  
18 security number that they provided to us never existed. Now,  
19 folks you, you have to remember, we're finding this out in 2016  
20 with data nobody had in 2010. There was no way to know it  
21 in 2010 but the government should have done this work. And  
22 they didn't.

23 Mr. Ploetz in addition to talking to you about how all  
24 this money got set on fire in restaurants, clothing shops,  
25 cigar shops, gentlemen's clubs, he is going to testify that he

1 went through these different spreadsheets and showed how they  
2 manipulated the social security data. I will give you three  
3 examples. You are going to see with respect to Hien Ho for  
4 example. You get a Denspri IRBSearch result in the second  
5 column. There's a revised questionnaire, somebody different  
6 handwriting, writing in a new social security number. But you  
7 know what, let's go ahead and switch that one and take it down  
8 to Christine Kim. So if they already had a social security  
9 number, they would just drop it down to the next guy. No  
10 wonder there were thousands of errors. And it was sent on to  
11 us, cross-pollinated from Hien Ho. Second example, Hien Long.  
12 That social security number that came back from Denspri and IRB  
13 shows up in the questionnaire. By the time DeLeon sends it to  
14 Watts Guerra Craft, and I'm not blaming DeLeon, he got it from  
15 Kristy Le and Lan Nguyen this way, it's got a social security  
16 number under a completely different person. Third example, Ann  
17 Nguyen. Again, over and over and over again. They just grab  
18 social security numbers, send it on down, send it forward like  
19 it was the real one.

20 And of course we're living in a world in 2010, I never  
21 heard of IRB. I had never heard of Denspri. One thing the  
22 government did not provide you was a single e-mail that even  
23 had those names in it in 2010. We didn't know who Ryan Willis  
24 was back in 2010. All we had was that document I put into  
25 evidence yesterday, August 16, 2010, from Eloy Guerra that says

1 we are verifying social security numbers, the first 5,000 all  
2 came out correct, except for two that were typos. That's all  
3 we knew. We were given that assurance. He was given that  
4 assurance.

5 We will do this 25, 30 times if necessary, but you will  
6 see why it is that this happened.

7 Back to Gerald McGwin for a second. The field of  
8 statistics, it may sound boring, but it's really numbers don't  
9 tell the lie. They get to the truth. And the numbers will be  
10 that there's no way, no way statistically you can have 2500 or  
11 7,000, whatever the number was, EVS one made up social security  
12 numbers by human error. It is statistically not true. He is  
13 going to tell you you are more likely to get struck by  
14 lightning than this to happen by chance. Even worse, when he  
15 goes through it, 15,000 stolen social security numbers. He's  
16 going to tell you that that is just infinitesimally impossible  
17 to have occurred by chance. The odds of winning that billion  
18 dollar power ball we had last year, one in 292 million. You  
19 were more likely to win that power ball than for these results  
20 to happen by chance. It had to have been purposeful and the  
21 evidence will be it had to have been systematic. Your job is  
22 to figure out who did it. So that's what the data shows.

23 Now we may bring character witnesses to show you nobody in  
24 the Watts law firm has been engaging in any kind of this fraud.

25 My other pastor is Max Lucado. He is my friend. He's a

1 Christian book author. He's coming Friday. This isn't the  
2 kind of stuff I get engaged in. We got robbed.

3 My brother. Sandy Roberts, an ophthalmological surgeon,  
4 served the Air Force for his entire adult career, retired. He  
5 will come tell you about David Watts' character. Greg Gowan  
6 was a law partner of mine. He will tell you about his dealings  
7 with David Watts if he comes. Greg Holder was David's business  
8 partner in a software company before he joined my firm. He  
9 will come vouch for him if he comes. Mark McClelland, you  
10 know, Mark Twain once said that the definition of a man's  
11 character is what he does in the dark when nobody is looking.  
12 I think the most important evidence you have heard in this  
13 case, and you will hear it from Mark McClelland, is that 80  
14 Secret Service agents come into our offices on February 8  
15 of 2013 with boxes ready to take out paper. There is no paper,  
16 so they go to David Watts, who is supposed to have just been  
17 caught red handed in the midst of a conspiracy. What does he  
18 do? He says, We run a paperless office. Here's who you need  
19 to call to get all the digital records. And the only reason  
20 the Secret Service has our files is because David Watts had the  
21 character to tell them where to go get it voluntarily. And do  
22 you know why? Because he knew, as you've seen and you'll  
23 continue to see, that our documents, our contemporaneous  
24 records, are our best friend. My brother is the most honest  
25 man I've ever met. It is beyond the realm of possibility that



1 he was involved in a fraud. And the evidence will show that  
2 with respect to me, with respect to David Watts, and with  
3 respect to Wynter Lee.

4 I appreciate your time, and I will make you this promise,  
5 we will not waste your time. We put on a lot of witnesses.  
6 Hopefully we'll be done by next Tuesday or Wednesday, but I  
7 make you the promise, even if we don't have all the witnesses  
8 on before you take that Friday break, my brother and I will  
9 have rested our case because we want to be efficient with your  
10 time. So we look forward to you listening to our evidence and  
11 we look forward to your true and just verdict. Thank you.

12 **THE COURT:** Thank you, Mr. Watts.

13 Ladies and gentlemen, this is an opportune moment within  
14 which to take our noon recess. I will ask you to return at  
15 130. That will give you time to go get a good lunch before we  
16 begin with the next witness on behalf of the defendants.

17 As always please remember the instructions the Court has  
18 given you regarding your conduct outside of the courtroom. No  
19 talking with anyone about the case. Do not permit anyone to  
20 talk to you about it. In the event case is reported in the  
21 media, please don't read about it in the newspaper or listen to  
22 any television or newscasts about it. By all means, refrain  
23 from and do not make any independent investigation regarding  
24 any of the facts, the locations, or the individuals involved in  
25 this case on your own. That includes books, it includes the

1 internet, it includes any other type of electronic media.

2 Please be very safe and careful. I'll see you at  
3 1:30 p.m. Thank you.

4 **(Jury out at 12:04 p.m.)**

5 **THE COURT:** Please be seated. All right. Mr. Watts,  
6 when we return at 130, who will be your first witness?

7 **MR. WATTS:** Because of scheduling issues, I think Mr.  
8 McCrum is going to put on Johnette Hassell, who is an expert on  
9 electronic data retrieval. When we will have Gerald McGwin,  
10 who is the statistician. Then if time is left, we will have  
11 Matt Archer or Kari Matocha.

12 **THE COURT:** So the first witness will be Ms. Hassell?

13 **MR. WATTS:** Yes, sir.

14 **THE COURT:** All right. Very good. When we return  
15 after the noon recess -- I will give you all an opportunity to,  
16 particularly counsel for the defendants, to talk about this  
17 over the noon recess. What I'm going to ask you when we come  
18 back, I'll be looking at it myself, is the breadth of the Sixth  
19 Amendment right of confrontation, and the process whereby  
20 counsel for the defendants propose to exercise that right.  
21 Have I -- any questions?

22 **MR. WATTS:** I think I understand.

23 **THE COURT:** You understand what I'm talking about?  
24 Okay. Good. All right. Anything else on behalf of the  
25 government before we recess for the noon hour?

1           **MR. RUSHING:** No, Your Honor.

2           **THE COURT:** Anything else on behalf of the  
3 defendants?

4           **MR. HIGHTOWER:** No, Your Honor.

5           **THE COURT:** If there's nothing else we'll be in  
6 recess until 1:30.

7           **(Recess taken 12:06 p.m.)**

8           **THE COURT:** Thank you. Please be seated. Is the  
9 government ready to proceed?

10          **MR. RUSHING:** We are, Your Honor.

11          **MR. WATTS:** Yes, sir.

12          **MR. SPINA:** Can I ask for one point of clarification,  
13 your comments before we broke about the right of confrontation.

14          **THE COURT:** I'll go over that with you here shortly.

15          **MR. SPINA:** We presume what you were saying is that  
16 in our cross of Mr. Watts's witnesses, there should be a  
17 limited amount of cross. Is that what I understood? If it's  
18 not applicable, then we shouldn't, and if it is, then we can.

19          **THE COURT:** There may be more to it than that because  
20 I want to be sure we all understand the procedure that we'll  
21 undertake, and if there's any objection to it, speak now. But  
22 let me take up another housekeeping matter and trim some low  
23 hanging fruit. Mr. Weber your client did not feel well and  
24 elected to voluntarily absent herself this afternoon?

25          **MR. WEBER:** Yes, Your Honor.

1           **THE COURT:** Does she understand that under those  
2 circumstances, she's waived her right to be present during the  
3 trial?

4           **MR. WEBER:** Yes, Your Honor.

5           **THE COURT:** Very good. Thank you.

6           How shall I put this? I'll choose my words well. In any  
7 -- in any trial in which a conspiracy is alleged, it would not  
8 be uncommon or unheard of for witnesses or defendants on behalf  
9 of witnesses -- or witnesses on behalf of defendants to shift  
10 responsibility, perhaps even reach a point of finger pointing.  
11 Under those circumstances, in my opinion, each individual  
12 defendant would have the right to cross-examine a witness  
13 against them. In other words, the right of confrontation is  
14 not limited to witnesses offered by the government but is  
15 extended to any witness, that may be quote, unquote, quoting  
16 from the text of the Constitution, against them. Witnesses  
17 against them. Now, I will need to rely on the good faith of  
18 counsel for the defendants to make a determination whether a  
19 witness has offered evidence which in their view may be against  
20 them. And under those circumstances, I think they should have  
21 the right of cross-examination on those issues.

22           Now, the procedure that I will use in that regard will be  
23 obviously counsel for a defendant will call a witness. I will  
24 then defer to counsel for the remaining defendants as to  
25 whether or not in their judgment they need to ask

1 cross-examination questions. When they have finished, then I  
2 will go to the government and allow the government an  
3 opportunity to cross-examine, and then I will come back to  
4 counsel for the defendant, who has offered the witness for  
5 redirect examination. And that will end it there. And again,  
6 the decision whether to cross-examine or not I will leave  
7 primarily to the good judgment and good faith of those lawyers  
8 who believe that testimony or evidence has been offered by that  
9 witness which is quote, unquote, against their particular  
10 client. Is that clear? All right. Is there any objection by  
11 the government to employing that particular procedure?

12 **MR. RUSHING:** No, Your Honor.

13 **THE COURT:** Is there any objection by any of the  
14 defendants as to the procedure that the court will employ  
15 during the presentation of the defendants' cases in chief?  
16 Mr. Watts?

17 **MR. WATTS:** No, sir. Thank you.

18 **THE COURT:** Mr. McCrum?

19 **MR. MCCRUM:** No, sir.

20 **THE COURT:** Mr. Hightower?

21 **MR. HIGHTOWER:** No, Your Honor.

22 **THE COURT:** Ms. O'Neill, Mr. Spina?

23 **MS. O'NEILL:** No, Your Honor.

24 **THE COURT:** Mr. Wilson?

25 **MR. WILSON:** No, Your Honor Mr. Weber? Is.

1           **MR. WEBER:** No, Your Honor.

2           **THE COURT:** Mr. Orozco?

3           **MR. OROZCO:** Your Honor, would the court consider,  
4 being that the government is the primary person on  
5 cross-examination, to have them go directly after the witness?

6           **THE COURT:** I have considered that and I reject that  
7 approach because I have no way to anticipate if any of the  
8 defendants will ask cross-examination questions and if so, what  
9 those are. And under those circumstances, if the government  
10 went first, it would not give them a full and fair opportunity  
11 to cross-examine the witnesses on all issues that have been  
12 raised by the defendants.

13           **MR. OROZCO:** Thank you, Your Honor.

14           **THE COURT:** All right. Do you have any objection,  
15 however, Mr. Orozco, to the --

16           **MR. OROZCO:** Your Honor, based on that explanation,  
17 no.

18           **THE COURT:** Very well. All right. Mr. Watts, are  
19 you ready to call your first witness?

20           **MR. WATTS:** I am. The first witness is going to be  
21 done by Mr. McCrum.

22           **THE COURT:** That will be perfectly all right. Please  
23 bring in the jury.

24           **MR. WATTS:** Thank you, Judge.

25           **THE COURT:** All right. The rule of sequestration is

1 of course if full force and effect. I will ask that the  
2 lawyers assist me in enforcing that rule since I do not know  
3 the identities of any proposed witnesses.

4 **MR. WATTS:** Yes, sir. I think the only witness that  
5 we have in the courtroom is an expert, who's excepted from the  
6 rule.

7 **THE COURT:** And that is the first witness?

8 **MR. WATTS:** No, he'll be the second witness.

9 **THE COURT:** Any objections?


10 **MR. RUSHING:** No, Your Honor.

11 **THE COURT:** Very well.

12 **(Jury in at 1:38 p.m.)**

13 **THE COURT:** Thank you. Please be seated. The  
14 parties have indicated they are ready to proceed, ladies and  
15 gentlemen. You may call your witness.

16 **MR. MCCRUM:** We call Jonette Hassell.

17 ,  
18 was thereupon called as a witness and, having been duly sworn,  
19 testified as follows:

20 DIRECT EXAMINATION

21 - - -

22 **BY MR. MCCRUM:**

23 Q. Judge, during the break, to save time, I conferred with  
24 government counsel and we approached the Court's clerk to offer  
25 for admission some documents that the government has no

1 objection to. So at this time, may I read these into the  
2 record, Judge?

3 **THE COURT:** Please.

4 **MR. MCCRUM:** D2-72701. D2-72706. D2-72707.  
5 D2-72703. We would offer those into evidence.

6 **THE COURT:** What is the general nature of these  
7 documents?

8 **MR. MCCRUM:** Pardon me?

9 **THE COURT:** The general nature of these documents?

10 **MR. MCCRUM:** One is a summary of data we anticipate  
11 Ms. Hassell's testimony will involve comparison, comparative  
12 analysis of computer data. One is a one-sheath paper 72703 is  
13 a summary of the data findings that she did. 7207 is a thumb  
14 drive of all of the documents that she relied on in her  
15 analysis. 72701 is a graphic in pie chart form to demonstrate  
16 her findings. And finally, Judge, 72706 is a summary of the  
17 massive data that's in the thumb drive, so one can see the  
18 summary and see what's in the thumb drive.

19 **THE COURT:** All right. Any objection?

20 **MR. KENNEDY:** No objection.

21 **THE COURT:** Without objection the documents will be  
22 marked and admitted.

23 (EXHIBIT MARKED.)

24 **MR. MCCRUM:** And I have up here, while we're doing  
25 this, Judge, I've tendered to the government a stack of



1 documents for a witness that we anticipate calling two or three  
2 witnesses from now, but because it's such a lengthy list, I'd  
3 like to tender to the Court at this time so we can save time in  
4 the future.

5 **THE COURT:** Have you shown them to counsel for the  
6 government?

7 **MR. MCCRUM:** I've provided it to counsel in the order  
8 that we'll be introducing them. This is a numerical summary to  
9 make it simpler on the Court's clerk, but they have actually  
10 been given it in the order that it will be presented, and these  
11 are all documents, e-mails and other documents, that were  
12 exchanged in discovery.

13 **THE COURT:** Will they be individually marked?

14 **MR. MCCRUM:** They will be all individually marked,  
15 yes, sir. I just offer it so we can get the process going now,  
16 but I can wait.

17 **THE COURT:** Well, the clerk will be focusing her  
18 attention on what goes on in the courtroom, and I don't want  
19 her distracted. So let's wait on that for the time being.

20 **MR. MCCRUM:** No problem, Judge.

21 **THE COURT:** You may proceed.

22 **BY MR. MCCRUM:**

23 Q. Ms. Hassell, could you please introduce yourself to the  
24 ladies and gentlemen of the jury?

25 A. Yes, my name is Jonette Hassell. I am a retired college

1 professor and I live in New Orleans and like many of you all,  
2 survived Hurricane Katrina.

3 Q. And we're going to focus on, I want to focus my questions  
4 on is an analysis that you did in comparing data in the Watts  
5 law firm with other documents. Did you indeed conduct that  
6 type of analysis?

7 A. Yes, I did.

8 Q. And in very, very general scope, what types of documents  
9 did you compare, ma'am?

10 A. Well, documents fell into two categories. The first one  
11 was what I just called the database, which is the database that  
12 Watts maintained that had all of the cases in it, and each case  
13 has an ID number, has a case name, and a client name. And I  
14 naively believed in the beginning that the case name and client  
15 name would be the same, but there are occasions where they're  
16 not. For example, where the case name is the name of a ship or  
17 a boat but the client name is an individual person. So I had  
18 that database.

19 I also had a collection of spreadsheets that had been, my  
20 understanding, e-mailed to Watts with information about  
21 clients.

22 And then thirdly, there were copies of paper documents  
23 that were also sent to Watts, and these are primarily  
24 handwritten data collection forms. In general, from ones that  
25 I looked at, there were also other paper documents. There was

1 usually an ID of some sort. There was usually a tax form, a  
2 tax release, and sometimes there were some other documents for  
3 each client, but I looked at all of -- all of those documents,  
4 the spreadsheets and the database.

5 Q. Okay. So would it be fair that at least one of your  
6 purposes was to verify whether everyone in the Watts firm  
7 database actually came from a document that had been sent to  
8 the firm from out in the field?

9 A. Yes, that was the sole charge.

10 Q. And did you also through the course of that have an  
11 opportunity to analyze the integrity of the database to the  
12 extent that corrections are made or documents are saved or that  
13 type of thing?

14 A. Yes, I did.

15 Q. Okay. Before we get to the exact analysis, can you --  
16 let's go over a little bit of your experience so the jury can  
17 hear the type of experience you've had in this area, ma'am.  
18 How many years experience do you have in the computer and  
19 software industries?

20 A. I hate to say, it's 50 some odd.

21 Q. And do you hold any degrees, ma'am?

22 A. I have Bachelor's and masters in mathematics from Texas  
23 tech in Lubbock, Texas. And I have a Ph.D in mathematics from  
24 Tulane in New Orleans. Like many of us who have been in  
25 computing for a while, we all started off with something else.

1 We started off as sociologists or physicist or chemists and got  
2 interested in using computers to solve our problems and then  
3 became interested in the computers themselves. So my students  
4 say that I went over to the dark side in the mid '70s and  
5 became a full time computer scientist and software engineer.

6 Q. You indicated that you were a professor. How many years  
7 experience do you have teaching at the university level and in  
8 what areas?

9 A. Forty-six years of college teaching. The first part was  
10 in mathematics because I was working on my degrees. But the  
11 bulk of it is in computer science and computer engineering. I  
12 started the computer science program at Xavier of Louisiana,  
13 which is a well known HBCU, and then Tulane university decided  
14 to get a real computer science program. They kind of had stuff  
15 patched together before that. And they brought me in to help  
16 found their computer science and computer engineering program.  
17 So I founded that. I helped develop the curriculum. I chaired  
18 the department for a number of years. For a while, we were the  
19 largest producers of female and African-American Ph.Ds in  
20 computer science in the country.

21 Q. Was that out of Tulane?

22 A. That was at Tulane, yes.

23 Q. Okay. Have you written any articles or books or any of  
24 that type of material in this area of computer science or  
25 computer forensics?

1 A. I've written a number of articles. I've written a couple  
2 of books. They are manuals that went with textbooks that a  
3 colleague of mine wrote, and they were intended for under  
4 graduates to get their feet wet in computers and to dispel some  
5 of their fears. So one of the things I pioneered were  
6 techniques where we induce a student to deliberately make a  
7 mistake and they did in the lab environment so if the computer  
8 started smoking, which it never did but that was always their  
9 fear, but we induced them to make common mistakes so they could  
10 see what would happen when you did it wrong and get error  
11 messages, but they had a teaching assistant around to show them  
12 how to fix what was wrong. I've written several articles in  
13 computer forensics. Probably the best known one sincerely far  
14 the for the Louisiana bar association called demystifying  
15 computer forensics that complains the computer forensic  
16 process.

17 Q. Have you also worked actually through funding by several  
18 government entities in addition to the U.S. Army Corps of  
19 engineering?

20 A. Like a lot of faculty, I almost always had some consulting  
21 projects of different sorts that I worked on when I was on the  
22 faculty. Several of them were like real world in the sense  
23 that I actually developed code or de bugged other people's code  
24 when it didn't quite work. I helped people set up systems say  
25 for testing software and such.

1 Q. And finally, Ms. Hassell, have you testified or qualified  
2 as an expert in courts in different locations?

3 A. I have. I've been qualified as an expert in computer  
4 science, computer forensics, E discovery, technical  
5 communications such in several states. Do you need me to name  
6 them all?

7 Q. Is that state or federal court or both?

8 A. It's a mixture.

9 Q. Okay.

10 A. It's a mixture of plaintiff and defendant, as well.

11 Q. Have you also been qualified as an expert in courts in the  
12 area of data recovery as well as software engineering?

13 A. Yes.

14 Q. Okay.

15 **MR. MCCRUM:** Your Honor, I would tender Ms. Hassell  
16 as an expert in the areas of computer science, computer  
17 forensics, and data recovery, as well as software engineering.

18 **THE COURT:** You may proceed.

19 **MR. KENNEDY:** The government would first like to ask  
20 a few questions of voir dire before this witness is accepted as  
21 an expert, given her testimony on what she was asked to do in  
22 the scope of her work.

23 **THE COURT:** You can ask her questions during voir  
24 dire that touch upon her qualifications. I'll allow you to ask  
25 her questions during cross-examination as to what she did. And

1 at some point, if you're making an objection under rule 702,  
2 I'll need to hear what that objection is.

3 **MR. KENNEDY:** All right. Thank you, Your Honor.

4 **THE COURT:** But you can -- if you wish, you may voir  
5 dire the witness based upon her qualifications only. Do you  
6 want to proceed?

7 **MR. KENNEDY:** Yes, Your Honor.

8 **THE COURT:** All right.

9 **voir dire examination.**

10 **BY MR. KENNEDY:**

11 Q. I'm trying to get a better appreciation for what you were  
12 asked to do as far as the scope of your work. Did you say that  
13 you were asked as a key task to confirm the database, that it  
14 was made up of data or info sent in from an outside source?

15 A. Basically, yes, I was asked to verify whether or not the  
16 cases listed in the database could be attributed to either an  
17 entry in the spreadsheet or a data collection form and its  
18 ancillary forms.

19 Q. And that goes along with the fact that I believe you said  
20 you reviewed not only the database maintained by Watts, but you  
21 also reviewed a collection of spreadsheets that were apparently  
22 e-mailed to Watts, is that correct?

23 A. Yes.

24 Q. And then also certain paper documents that were also  
25 forwarded to Watts which may have included client

1 questionnaires? Does that ring a bell?

2 A. It more than rings a bell. Yes, there is a collection of  
3 paper documents, and of all the cases I looked at, there was a  
4 collection form, and there generally, generally, were other  
5 forms, as well.

6 Q. And what is the methodology that you use when you're doing  
7 this kind of analysis? What do you do?

8 A. You have to do it in stages because when get started on  
9 one of these, you never know what you're going to run into.  
10 The first stage would be to just write a computer program or a  
11 database program that will go through and compare the names  
12 from the database to the documents and see if they match.

13 Q. Is that something that could also be done if you open the  
14 database belonging to the Watts firm and sit down with a  
15 spreadsheet that you can just look across from one to the other  
16 and compare the entries to see if they exist on the database?

17 A. Oh, yes, but there's 42,419, or 91. I forgot --

18 Q. Sure.

19 A. -- of them. So you want to automate the process as much  
20 as possible both for veracity and for speed and for time.

21 Q. Could you do the same with the external documents that  
22 were submitted to cross-reference them on the spreadsheet  
23 without having to create software to do that?

24 A. No, you can't, because -- well, if you had some really  
25 fancy handwriting recognition software you might could do it.



1 But they're not electronic. They're just faxes of forms. So  
2 somebody has to sit and read the thing and look at the name and  
3 see if it's the same as the name in the database.

4 Q. All right.

5 **MR. KENNEDY:** Your Honor, that's why the government  
6 objects to any testimony as an expert opinion. It doesn't  
7 require or doesn't appear to be that an expert is required to  
8 testify comparing the data at least from an expert's testimony.

9 **THE COURT:** Ms. Hassell, let me ask you a couple of  
10 quick questions. In your judgment, would your testimony help  
11 explain or help the jury understand the methodology that you  
12 use and the conclusions that you drew?

13 **THE WITNESS:** Oh, yes, sir, I think so.

14 **THE COURT:** And this methodology that you explained  
15 to Mr. Kennedy, is it the methodology that is routinely used by  
16 persons in your field, that is computer science and forensic  
17 computer analysis?

18 **THE WITNESS:** It would be, but what you have to  
19 understand is there's not one approach that works for  
20 everything. You start, and then you discover that there are  
21 some idiosyncrasies in this data that you didn't expect, but  
22 you can deal with them. So you deal with them. And then you  
23 discover there's another little idiosyncrasy, so you deal with  
24 that one, and you cannot in advance know what those are going  
25 to be.

1           As an example, there was sometimes a period after an  
2 initial in a name in the spreadsheet but not in the database.  
3 So John J. Smith would have a period in the spreadsheet but not  
4 the database. And the computer program does it exact, literal.

5           **THE COURT:** I may not have been clear. I'm not  
6 questioning the results that you received in your analysis, but  
7 what I'm asking you about is the methodology that you use, is  
8 this a methodology that others would use in analyzing this  
9 particular data that you looked at?

10           **THE WITNESS:** Yes, sir.

11           **THE COURT:** All right. And did you find or do you  
12 find that in the event that another expert in your were to  
13 undertake this same task, that they would employ similar  
14 methodology?

15           **THE WITNESS:** Definitely, yes.

16           **THE COURT:** All right. The objection is overruled.  
17 You may proceed.

18           **direct examination resumed.**

19 **BY MR. MCCRUM:**

20           Q. So Ms. Hassell, let's start, then, with a basic summary of  
21 the findings that you made in comparing the database at the  
22 Watts law firm with the different items that you described  
23 earlier in your testimony, both the spreadsheets as well as the  
24 questionnaires. First of all, what steps did you take to start  
25 your process of analysis?

1 A. The first step was as I indicated earlier was to write a  
2 database or computer program that would go through and compare  
3 the names. The name in the database to the name on the  
4 spreadsheet to see if they matched. And computers are pretty  
5 literal, so this had to be an exact match. If there was any  
6 difference, for example a period after an initial, or two  
7 spaces, say, between the first and the last name, then my  
8 program would kick those out and say they don't match. But if  
9 they were exact matches, it said yes, you have a match. And we  
10 got 30 -- almost 37,000 of the 42 were exact matches.

11 Q. Before we get into the specific findings, I'm just asking  
12 at this point what are the first steps you took in grouping  
13 whatever you were going to review? I guess you had the  
14 database of the law firm, right?

15 A. Uh-huh.

16 Q. You were provided some spreadsheets that had been sent to  
17 the law firm?

18 A. Yes.

19 Q. I assume that you created some type of computer protocols  
20 in order to do the comparative analysis that you made and  
21 conducted?

22 A. Yes.

23 Q. Okay. And then ultimately did you compare actual paper  
24 files of clients to the database to do the comparative analysis  
25 that you have been talking about?

1 A. Yes.

2 Q. At the end of that, did you provide me with a thumb drive  
3 that's now been introduced into evidence that would contain all  
4 of the documents that you reviewed as part of your analysis?

5 A. Yes, I did.

6 Q. Okay. And as far as -- let me show you an exhibit,  
7 D272706. This is a rather lengthy document. Does this contain  
8 a summary of the documents that were downloaded onto the thumb  
9 drive that we've introduced into evidence?

10 A. Yes.

11 Q. All right. Here at the top it says the WGC database, and  
12 that's the thing that you were comparing against, right?

13 A. Yes.

14 Q. And then here it has a bunch of computer languages under  
15 the term spreadsheets. Tell us what that is basically  
16 generally?

17 A. These are the spreadsheets that were mailed to Watts and  
18 which were identified as having new cases in them.

19 Q. Okay. And each of those are rather sizable with thousands  
20 of names, is that fair to say?

21 A. Yeah, they vary in size, but in general.

22 Q. Okay. And then the balance of this first page has a full  
23 listing of what appears to be client numbers?

24 A. Case numbers.

25 Q. Case numbers. And then what is listed generally speaking

1 below each of these case numbers?

2 A. Those are the paper documents that I was provided with for  
3 that particular case.

4 Q. Okay. And we have pages upon pages --

5 A. 432.

6 Q. 432 client files?

7 A. Pages.

8 Q. Pages.

9 And did you review all of those as part of your analysis?

10 A. Yes, I did.

11 Q. Okay. Now, after your analysis, did you create different  
12 categories that you put your findings in?

13 A. Yes.

14 Q. Let's go through each of these categories. And I'm going  
15 to show you, first of all, D272703, and is this a chart that  
16 you created?

17 A. Yes.

18 Q. All right. It has total number of cases. Is that the  
19 total number that you reviewed?

20 A. Yes.

21 Q. All right. It says SS cases, 39914, what does that  
22 denote?

23 A. Those are cases that are associated with the spreadsheets.

24 Q. And that's what SS means, spreadsheet cases?

25 A. Right, spreadsheet cases.

1 Q. All right. The paper cases is all the ones that we just  
2 reviewed?

3 A. Right.

4 Q. And 2577, what is that number about?

5 A. That's how many distinct cases were submitted in paper  
6 only.

7 Q. Okay. So of course that number matches the beginning  
8 number you had as the overall number of files, right?

9 A. Yes.

10 Q. Okay. Among the spreadsheet names, this number 39914, I  
11 see different categories. Can you tell the jury the different  
12 categories that are listed here and what they mean?

13 A. The first one, SS exact name match means that there was a  
14 literal character by character match between the name in the  
15 database and the client name.

16 Q. Okay. The second type? Manual review, typos, and simple  
17 errors?

18 A. Right. You can see that we only got about 93 percent of  
19 the matches the easy way, which is letting the computer do it.  
20 I started looking at why names didn't match. There's a whole  
21 collection that are simple typing kinds of errors. I've  
22 already mentioned a period after an initial. In some cases,  
23 there was a doctor, a medical doctor, and in the spreadsheet,  
24 there would be a period after the DR. In the database, the DR  
25 and the name were just run together with no space at all. And

1 the computer would say those are different because they're  
2 different sets of letters but they clearly mean the same name.  
3 So I had a similar problem with commas. If there was a junior,  
4 the spreadsheet sometimes had a comma in it, but the database  
5 didn't. We had problems with spaces. In the spreadsheets,  
6 there were a number of places where there were two spaces  
7 between the first and the last name. And in the database,  
8 there's only one, so the good old literal computer said they're  
9 different. And finally, there were among those some simple one  
10 character or one letter typos that a typist could make or could  
11 misread the form. I looked at many of the forms. So the most  
12 common one was probably a U versus an N. So if you write sort  
13 of a -- have a squiggle at the end, it could look like a U or  
14 it could look like an N. And those were sometimes mistyped, so  
15 they looked one way in the database and they looked another way  
16 on the spreadsheet.

17 Q. All of these scenarios hit under the second category of  
18 typos and simple errors, correct?

19 A. Right.

20 Q. The third category, manual review, other?

21 A. Now, this is a set that I couldn't look at the names and  
22 justify that -- or believe that the names were the same. So I  
23 asked for additional documentation, and for most of these, I  
24 actually got the questionnaire and the same documents that I  
25 got for the ones that didn't go into the spreadsheet. So I had

1 in general a collection form, some form of ID, and a tax form.  
2 And if you look back at the list, those 432 pages, you can see  
3 that I often had other documents, as well. And these, I could  
4 go through and look at the forms, look at the names in the  
5 database to see if those cases could possibly go together. And  
6 in general, what I did was look at documents that were signed  
7 by a client. And I felt that was important because there's  
8 often a form in this collection called Presentment Form, and no  
9 client signs those. Those are signed only by the attorney. So  
10 if that was the only documentation that there was, I excluded  
11 that as a match. So I classified them as matching names only  
12 if there were signed documents in the collection that I got  
13 that justified that particular case.

14 Q. How about this last category that is in each of these  
15 sections, no or inadequate signed documents provided or  
16 confused, mixture of multiple cases? Describe that category.

17 A. Well, those are cases that couldn't be justified by either  
18 the documents I was given or an entry in the spreadsheet.

19 Q. So you used these same general categories both with the  
20 spreadsheet analysis that you did, as well as the paper cases,  
21 is that right?

22 A. Yes. The difference is because of the paper cases, there  
23 were -- there was not a computer program that did the matching.  
24 We looked at every single one of the forms.

25 Q. And did you develop different protocols that you felt



1 needed to be satisfied before you would classify a case within  
2 any one category?

3 A. No. They're basically the same.

4 Q. Okay. And that is what you were talking earlier to the  
5 Court in response to its questions in every case is different,  
6 may have variables, so you establish protocols to address the  
7 variables?

8 A. Right.

9 Q. Okay. Now, let's get into the ultimate percentages and  
10 findings when grouping these together.

11 **MR. MCCRUM:** At this point, if I may have  
12 Mr. Cartwright's.

13 We'll go to defendants two exhibit 72701.

14 **BY MR. MCCRUM:**

15 Q. Did you create some charts that would combine all these  
16 statistics and put it in a graphic form?

17 A. Yes.

18 Q. Okay. We're seeing the first slide here of just the  
19 database. That is to denote the database at the Watts firm?

20 A. Yes, that is their client database.

21 Q. Then we have next? What is this denoting on the left side  
22 of this slide?

23 A. These are the paper forms that were collected in the  
24 field.

25 Q. Okay.

1 A. So there's generally this client questionnaire and there  
2 are generally these other documents, as well.

3 Q. All right. And next slide?

4 A. Spreadsheets. So they were -- the paper documents in the  
5 field were entered into spreadsheets.

6 Q. Okay.

7 A. And then those were sent to the Watts law firm.

8 Q. Okay.

9 A. And entered into the database.

10 Q. And then on the next step?

11 A. At a different -- at a later point, there was this  
12 collection of about 2500 that came straight from the field as  
13 only the paper documents, and they never went through this  
14 going into a spreadsheet phase. They just went directly into  
15 the database at Watts.

16 Q. Okay. And so in conducting this analysis, let's go to the  
17 next slide. Tell us, I guess this represents the complete  
18 database of 42,491 cases?

19 A. Right. This is all of them.

20 Q. Next slide, please. Tell us what this orange slice means.

21 A. Okay. These are the ones that were literal matches. For  
22 the spreadsheet ones, and I told you I wrote a little database  
23 program that went through and did the comparisons. For the  
24 paper ones, we actually looked at the paper document and  
25 compared it to the name in the database. So these are exact

1 character by character matches.

2 Q. Okay. And that comprised 93 percent of the names in the  
3 main database?

4 A. In the total. In the total database.

5 Q. In total?

6 A. It's confusing because the 93 percent appears two  
7 different places.

8 Q. But because of the disparity in the numbers --

9 A. And the sizes, right. So it's 93 percent of the total  
10 fell into this category of literal matches. It's also true  
11 that 93 percent of the spreadsheet cases fell into the literal  
12 matches, and there's so many more spreadsheet cases than there  
13 are paper cases that dominated the statistics.

14 Q. So I believe the previous chart showed 96 percent literal  
15 match among the paper cases? We can go back?

16 A. No, I think that's 93 percent.

17 Q. Ninety-three. Okay. What's the next slide?

18 A. This is this next category, things that we could identify  
19 as typos or just differences in syntax or single character  
20 errors.

21 Q. Okay. The next slide?

22 A. And this was the last set that we could identify that  
23 matched. These are the ones where we actually went to the  
24 paper documents and/or some of the changed documents and we  
25 could find that there was adequate documentation to support

1 that -- those cases.

2 Q. Okay. And then finally, the last -- the last slide?

3 A. Okay. These are the 14 that I found that couldn't be  
4 documented as having come from the field documents or from the  
5 database.

6 Q. So out of 42,491, does that mean that that number, 42,491  
7 less 14 you were able to verify as having come from the field  
8 either through the spreadsheets or through the paper cases?

9 A. Yes.

10 Q. Okay. So that would be an accuracy rate of 99.07? Is  
11 that right? I don't know?

12 A. Yes, something like that.

13 Q. Okay. All right. Now, my final questions, then, Ms.  
14 Hassell, is what did you find with respect to cases being  
15 deleted from the database or not deleted?

16 A. In general, there are a couple of things that Watts does  
17 with the database. First is that they very rarely change the  
18 case names. So they may have to change some of the supporting  
19 data, but the case name stays the same, which is important  
20 because it gives consistency. You don't have a case that's  
21 called one thing today and another thing tomorrow.

22 And the other thing they do is they don't delete cases.  
23 They leave it in the database. And that's important from an  
24 integrity point of view. If you delete it, then you have to --  
25 you look at the case numbers, they should be consecutive.

1 There's a hole in there. You say, okay, what happened to that  
2 case number. And by leaving it in, it shows a history of how  
3 that case came to be and how -- and it's important to show that  
4 completeness and consistency.

5 Q. So when you say history, in terms of having an original  
6 spreadsheet and then getting more information and revising that  
7 spreadsheet and then maybe getting additional information to  
8 correct it and you correct it again, in terms of the history,  
9 are you saying that each of those versions are kept on the  
10 database by the Watts firm?

11 A. They don't actually change the data. They keep the  
12 corrections. So in -- you can set up a database so that  
13 anybody who has access to it can go in and make changes. You  
14 may have seen somebody do that at your doctor's office. But  
15 that's fairly dangerous because you have -- you can lose  
16 control of who's made the changes, and you have to have some  
17 sort of log about who made what changes and so on and so forth.  
18 What the Watts database does --

19 Q. Let me stop you right there. So that process that's  
20 dangerous, was that process in the Watts law firm database?

21 A. No. They do the opposite.

22 Q. Okay. What was the opposite?

23 A. They keep the original and all the changes. So for small  
24 handful of these, I had to go back and actually go through the  
25 changes and track them down to show -- to see that there was

1 adequate documentation for them. And again, that's good  
2 monitoring, good control, good database practice.

3 Q. In terms of the design of this particular database, what  
4 is your opinion as to whether or not that this is a good design  
5 or an inadequate design? What would you say about that?

6 A. It's well designed. It's well designed.

7 Q. Now, the issues you saw with respect to the typographical  
8 errors or manual issues that comprised 1400 plus, and 1400 plus  
9 as an example, did you find those type of issues in the  
10 database typical or atypical of these type of projects?

11 A. Oh, they're very typical.

12 Q. Why is that?

13 A. People make mistakes. And if you're handling more than  
14 42,000 entries, people just make mistakes. And in this case,  
15 many of the names are Vietnamese, and if you're not familiar  
16 with the names, when you're looking at something handwritten  
17 and trying to enter it, it's easy to make mistakes. If they  
18 were all English names and it was John Jones Smith and you  
19 couldn't tell whether the N was a U or an N and you are a  
20 native speaker of English and don't speak Vietnamese, you would  
21 know that the N's are N's and not U's, because you know that  
22 the name John -- you know the name John. But if it's a  
23 Vietnamese name and you're not familiar with it, then it's --  
24 it increases the number of errors that you make in typing in  
25 people's names.

1 Q. And finally, in your review, at any time that you asked  
2 for additional documentation, were you able to get it?

3 A. Yes, and I got not only the questionnaire but I got the  
4 supporting documents, the ID and the tax form and whatever else  
5 they had.

6 Q. Okay. And so just to put a cap on this, then, how would  
7 -- what would your opinion be as to whether or not all of the  
8 information or at least 99.7 percent of the information in the  
9 database, did it come from documents that actually had been  
10 provided from the field?

11 A. Yes.

12 **MR. MCCRUM:** Pass the witness. Thank you.

13 **THE COURT:** Any cross-examination questions from any  
14 counsel for the defendants?

15 Mr. Kennedy, you may cross-examine on behalf of the  
16 government.

17 **cross-examination.**

18 **BY MR. KENNEDY:**

19 Q. Ma'am, just so I'm clear on this again, your analysis was  
20 cross-referencing names or did it involve anything else in this  
21 database?

22 A. Client names and case names.

23 Q. Okay?

24 A. And vessel names.

25 Q. All right. But nothing to do with social security

1 numbers, anything like that?

2 A. No, sir.

3 Q. All right. Also in your analysis, and the pie charts that  
4 you had here -- well let me back up one. You know that the  
5 signatures were important and that's why you specifically  
6 looked at the POAs or the contracts with the attorneys, is that  
7 correct?

8 A. I'm not sure what a POA is.

9 Q. Okay.

10 A. But I did look at documents signed by clients.

11 Q. Right. And do you have any information, as you sit there  
12 today, to know which of those signatures are actually valid?

13 A. Oh, no, sir.

14 Q. Okay. Also within your time period, when were you given  
15 the database to make your analysis?

16 A. It was back in the fall, late fall. I'm sorry. I don't  
17 know the exact date.

18 Q. But this past fall, 2015?

19 A. Yes.

20 Q. Okay. And that would have been -- well you may not know,  
21 did they tell you it was part of the analysis when the Secret  
22 Service had executed a search warrant on their businesses in  
23 February of 2013?

24 A. Until I heard Mr. Watts' opening, I didn't know the Secret  
25 Service had raided them.



1 Q. Okay. Sure. But your analysis of this database occurred,  
2 oh, at least well close to two years after the Secret Service  
3 had already served a search warrant on the business, is that  
4 correct?

5 A. Tell me again when the search warrant was served.

6 Q. February of 2013?

7 A. Yes, it was after that.

8 Q. And last thing. In the pie chart that you were doing as  
9 far as analyzing all of these cases, you also were not made  
10 aware of or did you have any knowledge about files that  
11 belonged to persons who were deceased?

12 A. No, sir.

13 Q. Any knowledge about files that belonged to an animal, such  
14 as a dog, represented to be a client?

15 A. No, sir.

16 Q. Were you made aware as you were doing this database  
17 research that there were numerous e-mails or traffic between  
18 individuals concerning problems they were having matching up  
19 social security numbers?

20 A. No, I didn't see those.

21 Q. And again, that was not part of your analysis as you're  
22 here today, correct?

23 A. You're correct.

24 Q. All right.

25 **MR. KENNEDY:** One moment, please. That's all the

1 questions we have.

2 **THE COURT:** Any redirect examination, Mr. McCrum?

3 **MR. MCCRUM:** Briefly, Judge.

4 **redirect**

5 **BY MR. MCCRUM:**

6 Q. Ms. Hassell, Mr. Kennedy actually brings up a good point.  
7 He asked you about the signatures that you would see on the  
8 documents. Is there -- in all your review of all these  
9 spreadsheets and all these paper files and the database and  
10 everything else did you ever see anything, anything that would  
11 indicate that these signatures are invalid?

12 A. No.

13 Q. He also asked you about the facts that you conducted your  
14 analysis after a search warrant raid of 2013. But because of  
15 the way the database is constructed and nothing is ever  
16 deleted, were you able to go back and look at snapshots of what  
17 the database looked like in 2010, 2011?

18 A. You can infer that, yes.

19 Q. Pass the witness. That's all I have, Judge?

20 **THE COURT:** Thank you, Mr. McCrum.

21 Thank you, Dr. Hassell. You may be excused, ma'am. Who  
22 is your next witness?

23 **MR. WATTS:** Dr. Gerald McGwin.

24 ,

25 was thereupon called as a witness and, having been duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION

3 - - -

4 **BY MR. WATTS:**

5 Q. Good afternoon?

6 A. Good afternoon.

7 Q. Could you tell the ladies and gentlemen of the jury your  
8 name?

9 A. Gerald McGwin.

10 Q. Are you a Ph.D?

11 A. Yes, sir.

12 Q. Dr. McGwin, tell the ladies and gentlemen of the jury what  
13 area of study you have a Ph.D in?

14 A. Epidemiology and statistics.

15 Q. And epidemiology and statistics -- you strike me as the  
16 kind of guy with that bow tie that's been locked in a server a  
17 little too long -- tell us what those are. What does  
18 epidemiology mean?

19 A. Yes, sir. Epidemiology is a study of the distribution and  
20 determinants of diseases in populations.

21 Q. Okay. And statistics, what does that mean?

22 A. Statistics is a branch of mathematics typically associated  
23 with probabilities.

24 Q. Did you and I prepare a PowerPoint presentation to Troy to  
25 turn phrases like epidemiology and statistics into English?

1 A. Yes, sir we did.

2 Q. Would the use of this PowerPoint examination assist you in  
3 communicating the work that you have done in this case to this  
4 jury?

5 A. I believe it would, yes, sir.

6 Q. Okay.

7 **MR. WATTS:** Your Honor we would ask for permission to  
8 use that. I have conferred with government counsel. They have  
9 no objection.

10 **THE COURT:** Any objection?

11 **MR. FRANSEN:** No, Your Honor.

12 **THE COURT:** You may proceed.

13 **BY MR. WATTS:**

14 Q. Now, Dr. McGwin, if you could, I'd like to you take the  
15 jury through your background, your education, and your  
16 expertise?

17 A. I have a Bachelor's degree in the University of Vermont in  
18 human development and family studies. I have a master's degree  
19 in health and social behavior with a focus on quantitative  
20 methods from Harvard university, and I have a Ph.D in  
21 epidemiology with a focus on statistics from university of  
22 Alabama at Birmingham.

23 Q. Are you a presently a professor at the university of  
24 Alabama at Birmingham?

25 A. Yes, sir.

1 Q. What is your title?

2 A. My current title is professor, and the slide is a little  
3 bit outdated. I'm actually the chair of the department now.  
4 It says vice chair.

5 Q. Okay. This is incorrect in that you are the chair of  
6 epidemiology of the department of epidemiology, the school of  
7 public health at UAB?

8 A. That's correct. I am also the director of analytics for  
9 the university of Alabama health systems.

10 Q. As director of analytics for the University of Alabama  
11 Health Systems, what do you do?

12 A. I'm responsible for providing answers to clinical  
13 questions, administrative questions, oversight questions  
14 regarding the data that flows through the university of Alabama  
15 health system.

16 Q. Okay. I want to talk about a little bit, you've already  
17 answered this but I want to try to get it in some concept that  
18 we might be able to communicate. Epidemiology and statistics,  
19 first of all, tell the jury what it is that I asked you to do  
20 in this case, because it seemed to have changed since we dug  
21 through it.

22 A. It did. When we initially spoke, your question was quite  
23 simple. It was is it possible to estimate the probability of  
24 making up a social security number.

25 Q. Okay?

1 A. I believe it what you asked about.

2 Q. Did I provide you with some data in the form of a Secret  
3 Service affidavit that suggested 15,000 social security numbers  
4 were incorrect in a data file that they had been provided?

5 A. I don't remember the exact number but our initial  
6 conversations were that a large number of social security  
7 numbers had been identified as incorrect.

8 Q. Did I tell you I wanted to find out what happened and how?

9 A. Yes, sir you did.

10 Q. And did you undertake work over the last six months to dig  
11 through every data file that I could give you so that you could  
12 tell this jury what happened and how?

13 A. Yes, sir.

14 Q. Do you feel like that you have a sufficient amount of data  
15 to inform this jury what happened, who did it, and how?

16 A. If there's anymore data out there that you can provide me,  
17 I dare you to.

18 Q. Okay. Let's go in stages. In terms of the data files  
19 that you analyzed, originally did you have all of this data,  
20 the mass tort database, the social security administration, the  
21 Denspri and the IRB? Did I give all that to you at once?

22 A. No, sir you did not.

23 Q. When we started, did you just have the thing that's there  
24 in part A? My database?

25 A. Yes, sir.

1 Q. And when I get an affidavit from a Secret Service agent  
2 saying there's 15,000 bad social security numbers, did I ask  
3 you to figure out whether I've got some systematic problem with  
4 this database that my brother has built for me?

5 A. Yes you did.

6 Q. Did you design a program to help test that?

7 A. Yes, I did.

8 Q. Explain for the jury what you did in terms of designing  
9 that program in analyzing the integrity of the Watts Guerra  
10 Craft mass tort database over all.

11 A. Yes, sir. I guess I should first state that it wasn't  
12 actually one database that you sent me. It was I believe we  
13 termed them 4A through 4G, and they were various iterations of  
14 the database reflecting the natural history of the data in this  
15 particular project. The focus of my focus of the data in those  
16 files was in fact a social security number. We had a, what  
17 probably turned into a lecture for you, discussion about the  
18 structure of social security numbers and that they are not  
19 random numbers. They have a particular sequence to them, and  
20 so if you actually know what the sequence is, you can, if you  
21 know how, write a program to identify which ones are real  
22 social security numbers that is validly formatted, and which  
23 ones are not. So my initial tasks was to write a program using  
24 data from publicly provided from the social security  
25 administration to determine which of those social security

1 numbers in your databases were properly formatted or not.

2 Q. Was it your impression in communicating that to me that I  
3 didn't have a clue that you were talking about when we started  
4 this?

5 A. It was very clear that you received quite an education.

6 Q. All right. Does it turn out as one of the other  
7 witnesses, and we're not going to go into it because the jury  
8 has already heard it, that there's a three digit code at the  
9 start that used to be by area?

10 A. That's correct. The three digit code, the first three  
11 digits reflect the state in which the social security number  
12 was issued. Then there were a couple of other nuances, dating  
13 back to social security numbers issued to railroad workers, et  
14 cetera.

15 Q. Okay. Then the middle two numbers are group numbers?

16 A. Middle two numbers are group numbers. The common -- if  
17 many people know that the first three digits are related to  
18 your state, so for example I grew up in Maine, so my first  
19 three digits are 007 reflecting the state of Maine. What  
20 people don't necessarily know is the second two digits actually  
21 have meaning. They are not random numbers. They were issued  
22 in sequence, and they are not issued numerical sequence. It  
23 varies by the state. So if you are trying to determine if a  
24 social security number that you have been presented is made up,  
25 you have to know for each state the sequence that each state



1 follows.

2 Q. Now, I get the impression that that the way it used to be,  
3 the social security administration would have that group number  
4 change from time to time so it wasn't easy to know that they  
5 matched or didn't match?

6 A. That's correct.

7 Q. How often would the social security administration change  
8 the group number for a particular state?

9 A. It depends on how many social security numbers they're  
10 issuing within each state. It's a function of the last four  
11 digits, obviously of which there is a finite number.

12 Q. Would it be fair that the relationship between the first  
13 three numbers and the second two numbers is a phenomenon that  
14 guys that wear long ties don't understand?

15 A. Yes, sir, that would be accurate.

16 Q. Okay. Your average man on the street, to be serious about  
17 it, just doesn't have a clue what this is but you know about it  
18 and you can write a program to see whether the two, first three  
19 digits and second two, are properly matched?

20 A. That's right. If you know the logic, you can write a  
21 program to do it.

22 Q. Okay. So did I send you our database for every other case  
23 that we had other than cases with Greg Warren and Eloy Guerra  
24 and BP?

25 A. Yes, sir you did.

1 Q. Did you write a program to analyze the validity of the  
2 social security numbers in our firm's database for everything  
3 not relating to BP, Eloy Guerra, and Greg Warren?

4 A. I wrote one program that I applied to all the databases.

5 Q. Okay. And in terms of the error rate for all of the  
6 non-greg Warren, non-eloy Guerra, non-BP stuff, was it greater  
7 than or less than 1 percent?

8 A. It was less than 1 percent.

9 Q. Is there published data from the office of inspector  
10 general of the social security administration that says what  
11 their error rates is?

12 A. There was a report I believe it was published March 24,  
13 give or take a couple of days, 2016, reporting the error rate  
14 -- an error rate in death certificate data. And I believe the  
15 reported rate would be estimated to be about 1.4 percent.

16 Q. Were we more or less than the social security  
17 administration office of the inspector database base error  
18 rate?

19 A. Again using that report to estimate an error rate, you  
20 were far less than that report. In fact significantly less  
21 than that report.

22 Q. Okay. That's good to hear.

23 Did you then go in and look at all the torts that I had  
24 done with Eloy Guerra other than FEMA and BP?

25 A. Yes, sir I did.

1 Q. Did you analyze the error rate with respect to social  
2 security numbers on all the other torts that I had done with  
3 Eloy Guerra that did not involve FEMA or BP?

4 A. Yes, sir.

5 Q. Was the error rate greater or less than 1.4 percent?

6 A. It was less than 1.4 percent.

7 Q. Okay. Did I ask you to go in and analyze the FEMA data to  
8 see what the error rate was there?

9 A. Yes, sir.

10 Q. Was it greater or less than 1.4 percent?

11 A. Less than.

12 Q. Okay. Now, did you then go in and analyze the BP data?

13 A. Yes, sir.

14 Q. And comparatively was it a disaster?

15 A. Yes, sir.

16 Q. All right. Let's go through that. In terms of what we  
17 have on the screen, we've got a bunch of U.S. maps. This one  
18 says SSN errors by state of issuance in the upper right-hand  
19 corner. It's all dark green. Explain to the jury what this  
20 represents.

21 A. After I related to you the error rate in your various  
22 databases, your question was, can you look for patterns in the  
23 data, can you expand your analysis beyond just the social  
24 security field, can you find a reason for it. And the first  
25 thing you asked about was did it vary by state. The state of

1 issuance or the state --

2 **MR. FRANSEN:** Your Honor, I'm going to object to  
3 testimony relating to material other than the BP case. I mean,  
4 we're not questioning the process by which the firm gathers  
5 data. It's the data in it that is the subject of this trial.  
6 And I don't see what the relevance is of the FEMA litigation,  
7 all the other cases that the Watts firm has worked on. It's  
8 the BP case that's the subject of this case.

9 **MR. WATTS:** The relevance is I got a notice from  
10 Jerry rush you go that it was 404B evidence was FEMA. So we're  
11 addressing that.

12 **THE COURT:** Well, the government has rested their  
13 case. There's not been any additional evidence regarding the  
14 FEMA cases. How otherwise is it relevant to this witness's  
15 testimony?

16 **MR. WATTS:** It goes statistically to my right to  
17 trust these two gentlemen that I used in the BP case.

18 **THE COURT:** Overruled. You can take him on cross  
19 examination.

20 **BY MR. WATTS:**

21 Q. Real briefly, when you looked at it was there any, you  
22 know, signature problem that you saw in the FEMA data?

23 A. No. The errors were uniformly distributed by state.

24 Q. Okay. So let's go with the BP. We've got all sorts of  
25 colors. As they get darker away from the green, does that show

1 we have a greater and greater problem?

2 A. That's correct. We chose a color scheme such that the  
3 more red it is, the higher the error rate.

4 Q. All right. In addition, in addition to that, did we also  
5 analyze the state by residence to see whether there was  
6 something that was picked up?

7 A. Yes, sir.

8 Q. Okay. And with respect to the other cases in the mass  
9 tort database, the other Greg and Eloy cases, did you notice  
10 any signature problems?

11 A. No, sir.

12 Q. Okay. And is the graph that's up on the screen, does it  
13 compare and contrast the error rate for all of the other firm  
14 cases, all the other Greg and Eloy cases and the FEMA case with  
15 the published rate of error that's published by the social  
16 security administration office of inspector general?

17 A. Yes, sir it does.

18 Q. Okay. So prior to BP, did you see any systematic problem  
19 in the data, whether it involved Mr. Warren and Mr. Guerra, or  
20 other cases the firm had?

21 A. No, sir. The error rate is, again, lower than the OIG  
22 reported rate and it's lower than what we see in clinical  
23 research.

24 Q. Okay. Let's move forward. By the way did you test the  
25 statistical significance of that?

1 A. I did.

2 Q. Okay. Tell the jury what statistical significance means?

3 A. What we're trying to determine is what's been observed  
4 more or less than be you would expect due to chance. And so in  
5 this particular case here, we've ruled out chance as an  
6 explanation for the difference between these bars here.

7 Q. And are there statistical tests that can be run to see  
8 whether something is by chance?

9 A. Yes, sir.

10 Q. What are the names of those tests that you run?

11 A. Oh, I'm not going to -- I'm not going to make anybody go  
12 through the painful process of describing all the statistical  
13 tests. The results of those tests is what important. It's  
14 called P values, often referred to as probabilities, and that's  
15 what you see here on this figure.

16 Q. When someone is talking about whether something is  
17 statistically by chance, the concept of doing a P value test  
18 that is something that shows up in the literature that's been  
19 peer reviewed for decades, right?

20 A. Oh, more than decades.

21 Q. It is a way of determining whether something is  
22 statistically by chance or not by chance that is generally  
23 accepted in the field of statistics, right?

24 A. Yes, sir.

25 Q. Okay. Let's go on. When we look at the contrast between

1 the other cases in the first four bars with BP, did you  
2 stratify the BP data into files that we named 4A, 4B, 4C, 4D,  
3 4E, 4F, and 4G?

4 A. I -- you asked if I stratified them. I actually received  
5 them broken down that way and we gave them those monikers.

6 Q. Was 4A meant to represent the original data received by  
7 David Watts in the field?

8 A. Yes, sir.

9 Q. Was 4B the data he received, so-called corrected files  
10 after a quote social security verification project, closed  
11 quote?

12 A. Yes, sir.

13 Q. Was 4C what we sent to the GCCF?

14 A. That's correct.

15 Q. Was 4D what we sent to BP with the plaintiff profile  
16 forms?

17 A. Yes, sir.

18 Q. Was 4E what we sent to the Court with the short form  
19 submissions?

20 A. Yes, sir.

21 Q. And was 4F what we sent to the Court with respect to  
22 presentments?

23 A. That's correct.

24 Q. Did we stratify 4F and 4G to show a contrast between the  
25 cases involving Anders Ferrington as opposed to BP cases

1 involving others?

2 A. That's correct. 4G I believe is others.

3 Q. Okay. I want to talk to you about the social security  
4 administration. Had you and I already began our work when it  
5 was made known to us that the social security administration  
6 had done a cross check with some of the files?

7 A. We were pretty far down the rabbit hole at that point.

8 Q. The first rabbit hole of digging through the mass tort  
9 database was before the Secret Service or the government gave  
10 us the social security administration cross-check, right?

11 A. That's correct.

12 Q. Okay. When you got that new data, what did we do with it?

13 A. We picked up where we left off, and here, we had much more  
14 richer information. We were previously simply dealing with  
15 improperly formatted social security numbers. Now we could  
16 actually look at social security numbers which might have been  
17 properly formatted, but been stolen. So this provided us much  
18 more ability to answer your question about the how and why.

19 Q. All right. Now, we've got on the screen a bunch of  
20 numbers, and on the top it says linking the government's SSA  
21 data sets with the WGC data sets. How did you do that?

22 A. Very carefully.

23 Q. Okay. But were you able to tie in the stuff that was in  
24 my brother's database now with the data that said which of the  
25 numbers were either made up or stolen, EVS one versus EVS five?



1 A. Yes. The task of working with your brother's databases  
2 was very pleasant because it was organized and it had case  
3 numbers, the case numbers were sequential, and the case numbers  
4 were unique. As soon as we started working with the social  
5 security administration data, which did not include your case  
6 numbers, we had to change our joining or merging process over  
7 to joining these files on social security numbers. So the  
8 first thing we did was took all of your files and joined them  
9 to the data from the social security administration using those  
10 unique social security numbers.

11 Q. Okay. Now, in terms of what we found, and we have already  
12 gone through this with Mr. Barnett, there is a designation of  
13 EVS code blank. Is that a validly issued social security  
14 number to the person that was intended to be issued to?

15 A. Yes, according to the social security administration  
16 documentation.

17 Q. Okay. EVS one, is that a made up number?

18 A. Yes. It's what we've been referring to as an improperly  
19 formatted number. Essentially it's made up.

20 Q. And then EVS five is stolen numbers, is that right?

21 A. That's correct.

22 Q. Okay. Now as we look at, and I've got the red around the  
23 wrong thing here but that's okay. As we look at the blue box,  
24 were there approximately 2500 made up social security numbers  
25 that had never been issued by the social security

1 administration?

2 A. Yes. It varied by those specific files that we just  
3 walked through, but 2500 is approximately correct.

4 Q. And as we look at EVS five, where the red box should be,  
5 just to the left of the red box, are there approximately 14 or  
6 15,000 that are social security numbers that are validly issued  
7 but to persons other than the person in our database to whom it  
8 had been assigned?

9 A. Yes, sir.

10 Q. Okay. All right. So you linked them up. Did you  
11 cross-check that data with this program that you had written to  
12 make sure that your program was good?

13 A. Yes, sir. Again, in science and in database management,  
14 statistics, having the ability of a validity check is important  
15 so having the social security administration data actually  
16 after the fact, after I wrote my program, was a good way to  
17 actually have a blinded way of checking to see whether my  
18 program worked, and the data that you have identified there in  
19 green supports that.

20 Q. And when you went and ran down these five that weren't  
21 detected by your program did it turn out that those were either  
22 errors in the social security administration data or valid  
23 reasons why they were in there?

24 A. Yes, sir.

25 Q. So it verified your program?

1 A. Yes, sir it did.

2 Q. Okay. Now, did you run a statistical test to see whether  
3 or not the approximate 2,500 EVS code one, or made up social  
4 security numbers, could have been by chance?

5 A. Yes, sir, that was your question.

6 Q. Did you get a certain odds of that happening by chance?

7 A. Yes, I calculated we refer to earlier as a P value  
8 essentially an odds of something happening.

9 Q. Did you go to the national -- I don't know weather service  
10 for lack of a better word, and figure out what the statistical  
11 odds of being struck by lightning in your lifetime if you live  
12 80 years?

13 A. I did.

14 Q. And what did this tell you about whether or not the  
15 presence of 2500 made up social security numbers could have  
16 happened by chance?

17 A. You were more likely to be struck by lightning.

18 Q. Putting that in English, this was not something that  
19 happened by chance?

20 A. No. Again, in statistics and epidemiology, we mentioned  
21 it earlier, this would be something, a systematic error.

22 Q. Or systematic fraud?

23 A. Yes, sir.

24 Q. Okay. What about the presence of 11,386 stolen social  
25 security numbers in a data set of 33,000? Could that have

1 happened by error? Did you run that statistical test?

2 A. Yes, we ran the same stat test on this number, as well.

3 Q. As I recall you have a home in the northeast that you go  
4 to during the summers?

5 A. If you lived in Birmingham, Alabama, you would, too.

6 Q. Okay. So you teach in the fall and spring and you escape  
7 the heat in the summer, right?

8 A. Yes, sir.

9 Q. But the computer that you had didn't go out far enough to  
10 allow you to run the statistical test right?

11 A. That's correct.

12 Q. I had to wait for you to get back to the university main  
13 frame to be able to tell me what the odds were, right?

14 A. Correct.

15 Q. When you compare those odds with the odds of winning the  
16 largest power ball in the history of the United States, is it  
17 more likely you will win the power ball or is it more likely  
18 this occurred by chance?

19 A. It is more likely that you would win the power ball.

20 Q. Putting it in plain English, this did not happen by  
21 accident?

22 A. No, sir.

23 Q. It was the result of a systematic effort to steal social  
24 security numbers, wasn't it?

25 A. Yes, sir.

1 Q. Now, after we ran those odds and you realized this could  
2 not be by chance, thanks to Alicia O'Neill over here and a  
3 subpoena that she laid down on Denspri, did we get data files  
4 from a company called Denspri, a lady named Julie Bales?

5 A. Yes, sir.

6 Q. All right. And in response to that subpoena, were there  
7 hundreds and hundreds of data files that you had to put  
8 together?

9 A. Yes, sir, there were.

10 Q. And then did you link that with the Watts Guerra data set,  
11 the social security administration data set so you had all  
12 three of them talking to each other?

13 A. I did, yes, sir.

14 Q. Did you teach me a new word called concatenate?

15 A. I did.

16 Q. And when I looked that up that means bring together,  
17 right?

18 A. Yes, sir.

19 Q. So you brought together the WGC database, the social  
20 security administration cross-check with the Denspri files so  
21 you could figure out what happened?

22 A. Yes, sir.

23 Q. Okay. First of all, in terms of the data that existed in  
24 the Watts Guerra Craft database for the BP case with a nine  
25 digit social security numbers, what percentage of those files

1 went through the Denspri process?

2 A. Only about 40 percent of them.

3 Q. Now, the jury has seen an e-mail dated August 16 of 2010  
4 where I am told that this is a social security verification  
5 project going on. You've seen that e-mail, right?

6 A. I don't believe I've seen the actual e-mail but I've heard  
7 it referenced many times.

8 Q. The first 5,000 all came back perfect, except for two with  
9 typos. Do you remember that?

10 A. I do remember that.

11 Q. In fact, 60.9 percent of the nine digit social security  
12 numbers in my firm's database never went through Denspri, did  
13 they?

14 A. There was never any record in any of the files that we  
15 received from Denspri that we could join them to.

16 Q. Now, at the time you're trying to join my files with the  
17 social security administration's files with Denspri's files, we  
18 don't have the IRBSearch stuff at this time, right?

19 A. I don't believe I had even heard that word at the time.

20 Q. Eventually we find out that word and we lay a subpoena  
21 down on IRBSearch, right?

22 A. Yes, sir.

23 Q. All right. But back to Denspri, it's only 39.1 percent of  
24 the nine digit social security numbers ever went --

25 **MR. FRANSEN:** Your Honor, Mr. Watts is testifying a

1 little too much and leading the witness a little too much.

2           **THE COURT:** Some leading is permitted but I think Mr.  
3 Frandsen is accurate.

4           **MR. WATTS:** I agree.

5           **THE COURT:** Objection is sustained.

6 **BY MR. WATTS:**

7       Q. All right. Now, even though only 39.1 percent went  
8 through the Denspri process, did you analyze the error rate for  
9 files that went through Denspri versus ones that did not?

10       A. Yes, sir, I did.

11       Q. Okay. In addition to doing that, did you find some files  
12 that designated persons as deceased?

13       A. We did. And if I could just --

14       Q. Please.

15       A. One of the things that we stumbled across receiving these  
16 files is A, they were numerous, and B, they were what we refer  
17 to in the field as very messy. The fields were combinations of  
18 what we found to be social security numbers, and then we would  
19 find these strings of text. The ones that stuck out the most  
20 were deceased in parenthesis. That's when it came to our  
21 attention.

22       Q. Did there come a time when we gave you the files we  
23 obtained from Ryan Willis's laptop?

24       A. Yes, sir you did.

25       Q. Did we give you files that had been forensically pulled

1 off his hard drive?

2 A. Yes, sir you did.

3 Q. Did we give you files with respect to the e-mails that had  
4 been sent to Kristy Le?

5 A. Yes, sir you did.

6 Q. Eventually did you get the files where e-mails were sent  
7 from Kristy Le or Lan Nguyen to Chris Deleon?

8 A. Yes, sir.

9 Q. And the files where Chris Deleon subsequently sent this  
10 data up to David Watts?

11 A. Yes, sir.

12 Q. And when all these files were put together in your massive  
13 computers, how many files did you have to concatenate or put  
14 together?

15 A. They wouldn't let me bring my computer in the building,  
16 but I want to say it was on the order of maybe 5,000, 6,000  
17 individual files.

18 Q. Okay. And you took five or 6,000 individual files and did  
19 the hard work to put them together so that they could be  
20 analyzed?

21 A. Yes, sir.

22 Q. Okay. Now, when you noticed in this file number and for  
23 the record it was MDREV00464600.XLXS. How many persons were  
24 designated by Denspri as deceased in that file?

25 A. In that particular file, there were 67.



1 Q. Did you then chase down how many deceased designations  
2 were in files shipped from Kristy Le and Lan Nguyen to Chris  
3 DeLeon in order to forward to Watts Guerra Craft?

4 A. That was the end result. We actually had to backtrack at  
5 that point because we realized we had to temporal Lee,  
6 chronologically pull the files in order if we wanted to  
7 determine at what point did these text designations deceased  
8 disappear.

9 Q. You're being very polite with the word "we." You did that  
10 work?

11 A. Yes, sir, I did.

12 Q. You in effect took five, 6,000 files, figured out which  
13 ones had designations of deceased, at what point in time, and  
14 then who took it out before the information got sent to us?

15 A. Correct. We had a discussion about the metadata  
16 associated with each file and that metadata provided us with  
17 the opportunity to identify who saved the file, whose computer  
18 it was on and what date it was last saved.

19 Q. Okay. Did any of the 67 persons on 464600 to whom there  
20 was a deceased designation end up as deceased when those files  
21 were sent to Watts Guerra Craft?

22 A. No, sir. At a certain point in time they all disappear.

23 Q. Before they were sent to Watts Guerra Craft?

24 A. Yes, sir, sorry. Before they were sent.

25 Q. And to be fair to Mr. DeLeon, before they were sent to

1 him?

2 A. In most cases, correct.

3 Q. Did you also find files where Denspri had put a notation  
4 of not found?

5 A. Yes, sir.

6 Q. Not processed?

7 A. Yes.

8 Q. Did not process?

9 A. Yes.

10 Q. Truncated?

11 A. Yes, sir.

12 Q. Duplicate?

13 A. Yes.

14 Q. No hit?

15 A. Yes.

16 Q. NH?

17 A. Yes.

18 Q. How many files appeared in the Ryan Willis to Kristy Le  
19 e-mails with those notations?

20 A. None of them.

21 Q. How many of them existed as originally put together?

22 A. I don't understand the question.

23 Q. Maybe I lost you. It says here there's 2,950 persons with  
24 that notation, is that right?

25 A. Yes, sir.

1 Q. Okay. Of those persons, once they're sent on from Kristy  
2 Le or Lan Nguyen to Chris Deleon, how many of them had those  
3 designations still attached?

4 A. None of them did.

5 Q. So we've got 67 dead people's whose designations  
6 disappeared and 2950 people who are not found, no hit  
7 designation else disappeared, correct?

8 A. Yes, sir.

9 Q. Over 3,000 people that either didn't match or were already  
10 dead, wiped clean before it was sent to my firm?

11 A. That's correct.

12 Q. Now, after it was wiped clean and sent to my firm did 1896  
13 of those persons' names appear in Watts Guerra Craft  
14 submissions to the Gulf Coast claims facility?

15 A. Yes, sir.

16 Q. Did you calculate of those people whose status was wiped  
17 clean before Kristy Le sent it forward to Chris Deleon what the  
18 rate of stolen social security number was for those particular  
19 1896 people?

20 A. Yes, sir, 59 percent of them had an EVS code of five which  
21 would indicate it belonged to somebody else or was stolen.

22 Q. That seem like something that could happen by chance?

23 A. Statistically, no, sir.

24 Q. IRBSearch, after we did the work on Denspri, did you go  
25 through files we then received via subpoena from IRBSearch?

1 A. Yes, sir, I did.

2 Q. Let's talk about that work. Did you analyze not only the  
3 quality of the work but the accuracy and reach conclusions with  
4 respect to both?

5 A. Yes, sir.

6 Q. Let's talk about the quality of the searches that were  
7 done. Explain for the jury what your conclusions are with  
8 respect to the people who were doing the IRB searches, the  
9 quality of the searches that they were doing.

10 A. If I can go backwards a little bit. We started off with  
11 your firm's file, which we had case numbers and social security  
12 numbers, and those were very easy to work with as we folded in  
13 the Denspri data and the data from the social security  
14 administration, we had now two layers of identifiers, social  
15 security numbers, case numbers that we needed to join. The  
16 data from Denspri were text strings of searches as if you were  
17 going to go to Google and type in the name of a location, you  
18 may not type in the whole location. You know the restaurant's  
19 partial name and you know it's in Gulfport, so you're not going  
20 to type in Mississippi or MS. So the IRB searches looked very  
21 much like that. It was either a full name with maybe a city.  
22 It was a name with a state. Or perhaps it was just a name and  
23 perhaps just a last name. So the hopes of joining this data to  
24 all the other data that we had put together was very dismal.

25 Q. Now, in analyzing the quality of the searches, did you

1 start with 64,905 searches that were done on IRBSearch?

2 A. Yes, sir, I did.

3 Q. Did you eliminate duplicates within user searches?

4 A. That's right. There were searches in there where the  
5 exact same thing was searched, Jerry McGwin, Birmingham,  
6 Alabama. And we eliminated the duplicate record.

7 Q. How many different people had been given access to  
8 IRBSearch that were conducting these searches?

9 A. You're going to test my memory here. I believe it was  
10 there were 11 user names.

11 Q. Okay. Did you find that across the different user names  
12 that some of them were searching for the same people?

13 A. That's correct. One of the things that we did when we  
14 were working with this data set is we were looking at searches  
15 conducted by certain users to see if they were doing the same  
16 searches as somebody else was. And that's how we were reducing  
17 to data set to get to unique searches.

18 Q. So on 6997 occasions or something like that, you had  
19 different users in the same project searching the same names,  
20 right?

21 A. Yes, sir.

22 Q. How does that happen?

23 A. Having worked with this data quite extensively, there are  
24 people that have the same name so it could certainly happen  
25 that way. Also having worked very extensively with

1 particularly the data off of Ryan Willis's hard drive, it's  
2 extremely poor in quality, and so I suspect what we're seeing  
3 here is the same people given the same lists of names to  
4 search, and obviously you're going to result in very poor  
5 quality returns from those searches.

6 Q. Okay. After eliminating empty searches, single term  
7 searches, searches not containing complete first and last  
8 names, did that leave you only 28,894 that were possible to  
9 search?

10 A. That's correct.

11 Q. Did you then join them with the Watts Guerra Craft files  
12 to see whether or not they were even the people that we were  
13 looking for?

14 A. That's correct. As we've been talking all along, we've  
15 been joining on things that are very unique, and again  
16 fortunately your databases had name and address, these files  
17 that we were able to reduce to a unique name and address and so  
18 now we could do the joins using that information.

19 Q. Ultimately was the quality of the IRB searches so poor  
20 that out of the searches conducted, only 1,091 had specific  
21 information needed to find a correct match?

22 A. Again, given the fact that multiple people can have the  
23 same name, the searches in order to be adequate to find the  
24 exact person, you would have to have at minimum the first name,  
25 last name, and the address in there. And there were only a

1 thousand 91 records.

2 Q. So when my kids bring home an A plus and they got a 97,  
3 that's like 97 percent right, right?

4 A. Yes, sir.

5 Q. But when you look at the IRB quality, it's about 3 percent  
6 right.

7 A. Yes, sir.

8 Q. Is that good quality searching?

9 A. No, sir.

10 Q. Is that a graph that you prepared to show from the total  
11 number of searches how many of them were actually having any  
12 chance to get a true hit?

13 A. That's correct. I believe this is a graphical  
14 representation of the table that's on the prior slide.

15 Q. Now, in addition to analyzing the quality, did you reach  
16 conclusions with respect to the accuracy of the IRB searches?

17 A. Yes, sir. After we had gotten down to the numbers we  
18 could actually join together, you asked can we now bring back  
19 in some of the other data sources to determine what number of  
20 them are made up, what number of them are stolen, what number  
21 of them are good social security numbers.

22 Q. Okay. And so it says here only 52.3 were accurate?

23 A. Yes, sir.

24 Q. We may as well just have been flipping a coin, right?

25 A. Yes, sir.

1 Q. All right. Did you then calculate the rate of stolen  
2 social security numbers with the people that were searched on  
3 IRB by these 11 users?

4 A. Yes, sir, I did.

5 Q. What was the approximate rate for the people that were  
6 searched on IRB that came back as stolen social security  
7 numbers?

8 A. About a third of them.

9 Q. Did that happen by chance?

10 A. No, sir. It's extremely unlikely.

11 **THE COURT:** Mr. Watts, before you get into your next  
12 area of direct examination, may I allow the jury to go back  
13 into the jury room?

14 **MR. WATTS:** Yes, sir.

15 **THE COURT:** Ladies and gentlemen, you may go back to  
16 the jury room and refresh yourselves.

17 **(Jury out at 2:58 p.m.)**

18 **THE COURT:** Be seated just a moment, please.

19 All right. Ladies and gentlemen, and I address myself to  
20 all of the ladies and gentlemen in the courtroom, you may  
21 observe that those that are seated in the front of the bar,  
22 those who are participants in the trial who are officers of the  
23 Court maintain a certain level of decorum, which signifies  
24 their understanding of the dignity and necessity that these  
25 proceedings remain as dignified as they should. These are



1 serious matters. I'm aware that from time to time something  
2 may come up that may be humorous and may appear to be even  
3 funny, but one of my responsibilities is to maintain decorum  
4 and to ensure that the dignity of these proceedings remains as  
5 such. So I ask of all our participants, those of you who are  
6 certainly welcome to be here and are my guests here, that you  
7 refrain from any displays or expressions of emotion, whether it  
8 be positive or negative during the trial. In other words, try  
9 to contain it as best you can and help the Court as much as you  
10 possibly can to maintain that level of decorum and dignity that  
11 is -- that should be required and certainly should be provided  
12 to all of the participants in this trial.

13 Okay. Thank you. Help me as much as you can. All right.  
14 Let's take a short recess, about ten minutes. When we return  
15 Mr. Watts you may continue your direct examination. We'll be  
16 in recess.

17 **(Recess taken 3:01 p.m.)**

18 **THE COURT:** Thank you. Be seated, please. Mr. Watts  
19 are you ready to continue, sir?

20 **MR. WATTS:** I am, sir.

21 **THE COURT:** Is the government ready to proceed?

22 **MR. RUSHING:** We are, Your Honor.

23 **THE COURT:** Please bring in the jury.

24 **(Jury in at 3:19 p.m.)**

25 **THE COURT:** Thank you. Be seated, please. You may

1 continue, Mr. Watts.

2 **MR. WATTS:** Thank you, Your Honor. By agreement with  
3 the government, we would offer D1-72708, D1-72709, D1-72711,  
4 and D1-72713.

5 **THE COURT:** What is the general nature of those  
6 documents?

7 **MR. WATTS:** These are graphs that the jury has  
8 already seen in the PowerPoint.

9 **THE COURT:** Very good. Any objection?

10 **MR. FRANSEN:** No objection, Your Honor.

11 **THE COURT:** Without objection that will be marked and  
12 admitted.

13 (EXHIBIT MARKED.)

14 **MR. WATTS:** Mr. Cartwright, can you bring up that  
15 last page?

16 **BY MR. WATTS:**

17 Q. Now, to recap, does slide 34 of this PowerPoint set forth  
18 your basic bottom line findings as we went through the WGC  
19 database, the social security administration database, the  
20 Denspri materials, and the IRB materials?

21 A. Yes, sir.

22 Q. One last issue I want to visit with you about. Remember  
23 when we stratified the BP data into 4A, 4B, 4C, for D, 4E, 4D,  
24 4G?

25 A. Yes, sir.

1 Q. 4A was the data as originally supplied to David Watts, is  
2 that right?

3 A. Yes, sir.

4 Q. Can you share with the ladies and gentlemen of the jury,  
5 of the original files that were sent to David Watts, how many  
6 of those files had a nine digit social security number?

7 A. A complete nine digit social security number, it was  
8 probably only about a quarter of them.

9 Q. So in terms of numbers, how many of them had a nine digit  
10 social security number?

11 A. 10,000.

12 Q. 10,000? And the e-mail that I referenced that said they  
13 were hiring a private investigator to do a social security  
14 verification project, how many of those 10,000 original files  
15 that were sent to David Watts with a nine digit social security  
16 number went through the Denspri process in?

17 A. 0 percent.

18 Q. How do you use Denspri to verify social security numbers  
19 if zero of the 10,000 nine digit social security numbers  
20 originally provided, if 0 percent of them went through Denspri?

21 A. In the documentation that I've read, what I've read about  
22 IRB search in the material that they return when you do a  
23 search, you enter a name and an address, perhaps, and it  
24 returns to you a date of birth and a partial social security  
25 number. I believe it returns the first three digits and the

1 second two digits. This is something that has perplexed me  
2 from day one with your data. We saw these things of numbers in  
3 the Ryan Willis files and we didn't know where they came from.  
4 What I've come to conclude is that this was not a social  
5 security number verification process. In fact, those social  
6 security numbers that you had in your original data set they  
7 were complete and properly formatted were not verified at all.  
8 The only thing that was passed onto Denspri were the incomplete  
9 social security numbers.

10 Q. Well, we've already discussed with the jury the error rate  
11 with the IRB searches and the rate of stolen and made up social  
12 security numbers with the stuff that did go through Denspri.  
13 Of those 10,000 that were originally provided from the field  
14 team with a nine digit social security number, not one of them  
15 went through the social security verification project at  
16 Denspri, right?

17 A. That's correct.

18 Q. Did you compare those 10,000 that were not part of a  
19 social security verification project with the social security  
20 administration findings of EVS one made up, or EVS five stolen  
21 social security numbers?

22 A. I did. As we discussed just earlier today, this didn't  
23 strike me until the wee hours of the morning.

24 Q. What percentage of those first 10,000 were stolen?

25 A. 67 percent, 68 percent if we round up.

1 Q. 68 percent of the first 10,000 numbers we were given with  
2 nine digits were stolen?

3 A. Yes, sir.

4 Q. What percentage of those 10,000 were made up?

5 A. 23 percent.

6 Q. So 23 percent had an EVS one code, and 67 percent had an  
7 EVS five code?

8 A. Yes, sir.

9 Q. And 67 plus 23, by my count, is about 90 percent?

10 A. Correct.

11 Q. Is it statistically possible for 90 percent of the first  
12 nine digit social security numbers that were provided to my law  
13 firm to have been made up or stolen by chance?

14 A. No, sir.

15 Q. Those are all my questions. Thank you, Your Honor.

16 **THE COURT:** Thank you, Mr. Watts.

17 Do any of counsel for the defendants wish to cross-examine  
18 this witness?

19 **MR. OROZCO:** Yes, Your Honor.

20 **MR. WEBER:** Yes, sir.

21 **THE COURT:** All right. Mr. Weber, you may go first.

22 **cross-examination**

23 **BY MR. WEBER:**

24 Q. On direct examination, you mentioned the word metadata?

25 A. Yes, sir.

1 Q. Can you explain to the jury what metadata is?

2 A. This is going to seem like the geek I am. It's the data  
3 about the data. So when we create a file, in this case an  
4 Excel file, it will record the machine that the file was  
5 created on. So it would say Gerald McGwin, if that was the  
6 name of the computer. It would also record the information  
7 about the time and date that the file was created, and then if  
8 I sent the file on to you to change to modify to add some  
9 graphs to, it would reflect the fact that the file was  
10 originally created today but then it had been saved most  
11 recently, perhaps tomorrow, when you made those changes. So  
12 most computer files, all computer files are like this. There's  
13 the information that's in them and then there's the information  
14 about them.

15 Q. All right. And so you -- you reviewed Excel spreadsheets?

16 A. They were mostly Excel spreadsheets. I would say 90 to  
17 95 percent of the data I received from Mr. Watts was in the  
18 form of Excel spreadsheets.

19 Q. All right. And what was your understanding of where these  
20 Excel spreadsheets originated from?

21 A. They -- as we talked earlier, they originated from a  
22 variety of sources. I received Excel files from Mr. Watts that  
23 came from his firm. I received Excel files that came from  
24 Denspri. I presume they sat on somebody's computer there. I  
25 don't know who. I received files that were on Ryan Willis's

1 hard drive. I received files that were in Ryan Willis's  
2 e-mail. And I received a single file that contained the IRB  
3 searches.

4 Q. Did you receive any Excel spreadsheets that came from  
5 Chris Deleon's computer?

6 A. Yes, I did.

7 Q. All right. And did you look at the metadata as it  
8 pertained to the Excel spreadsheets you found on Mr. DeLeon's  
9 computer?

10 A. The only met data I was focused on would be who last  
11 modified the file and the owner of the file.

12 Q. Can you tell the jury who was listed as the owner of those  
13 files that you reviewed?

14 A. All the files that I reviewed?

15 Q. Yes.

16 A. It varied. It was -- it was Ryan Willis in many cases.  
17 It was Eloy Guerra. It was I think the data that I received  
18 from Denspri had Julie Bales name on it. The files from Ryan  
19 Willis's hard drive had some names of some females that I don't  
20 recall at the moment. There were probably dozens of names  
21 across all of those files. Some of them were just computer  
22 names indicated as user.

23 Q. And these were indicated as users and/or individuals that  
24 had modified these files, correct?

25 A. The -- I believe the name that Excel shows is the person

1 who modified it last would be the name that was retained. And  
2 it wasn't users. It would just be user. And I'm assuming that  
3 whoever formatted that particular machine simply entered user  
4 as the name of the machine.

5 Q. And when you use the term modified, what do you mean by  
6 that?

7 A. Changed.

8 **MR. WEBER:** No further questions.

9 **THE COURT:** Mr. Orozco, do you have any  
10 cross-examination questions?

11 **MR. OROZCO:** Very brief, Your Honor.

12 **cross-examination**

13 **BY MR. OROZCO:**

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. My name is Ramiro Orozco and I represent Abbie Nguyen.  
17 During your testimony, you stated that you received or you  
18 analyzed information that was received from Lan Nguyen,  
19 correct?

20 A. I believe that's correct. I believe that's a name that I  
21 saw on the e-mails and on the files.

22 Q. I just want to be very clear for the jury, Lan Nguyen is  
23 not Thi Nguyen, or Thi Annie Nguyen, correct, as far as you  
24 know?

25 A. As far as I know.



1 Q. You also stated there were user names in the IRB data,  
2 correct?

3 A. Yes, sir.

4 Q. If I told you there was testimony that -- from Ryan Willis  
5 that he set up generic user names such as user one, two, three,  
6 all the way to nine, is that consistent with what you analyzed?

7 A. Yes, sir.

8 Q. And there was no names attached to user one through nine  
9 or ten or 11, as you stated?

10 A. That's correct.

11 Q. So Abbie's name did not appear on any of those user names?

12 A. No, sir.

13 Q. I'm gong to apologize and this may sound like a joke, but  
14 90 percent of the stuff you presented, I had no clue what was  
15 going on, so my questions may seem very elementary to you, but  
16 I just want to make sure I'm doing my job. You stated that the  
17 initial submission of questionnaires, which I believe would be  
18 4A that Mr. Watts referred to.

19 A. That's correct. That's a moniker we used.

20 Q. You said that those -- and there was testimony that they  
21 were provided by field workers which I'm going to refer to as  
22 independent field workers. Would you agree with that? Or is  
23 that what was expressed to you when you received this data?

24 A. Yes.

25 Q. And those, the initial submission was you stated that

1 there was only -- that they were submitted by the independent  
2 field workers, that approximately 10,000 were properly  
3 formatted, nine digit social security numbers, right?

4 A. Yes, sir.

5 Q. So -- and of those 10,000, you said 68 percent were stolen  
6 or you believe to be stolen, correct?

7 A. They had an EVS code of five.

8 Q. Okay. And then there was 23,000 or 23 percent, using your  
9 10,000 number estimate, were made up, correct?

10 A. They had an EVS code of one.

11 Q. So 9,100 of the 10,000 were either stolen or made up?

12 A. Yes. And I have the exact numbers if you would like them.

13 Q. I'm done with numbers today, sir. Thank you.

14 A. Okay. I just -- I have the exact numbers if you would  
15 like them.

16 Q. But of the original submission, which was based on the  
17 paper questionnaires initially submitted to Watts Guerra Craft,  
18 there was did you say a 28 percent error rate? Or what -- I  
19 don't want to put words -- what was the error rate in the -- of  
20 the original 10,000 that were submitted? And you can refer to  
21 whatever note you --

22 A. The original 10,000?

23 Q. Sir, I'm sorry. Like I said, I got lost with the numbers.  
24 Of the 4A submission, which were the original questionnaires,  
25 what was the error rate? I think that was the number you had

1 under 4A?

2 A. So the original 4A file with no cleaning up of it had 40  
3 some odd thousand records in it. Of those, we calculated an  
4 error rate based on whether it was properly formatted or not.  
5 And then we had the social security administration data which  
6 allowed us to say if it was made up or stolen.

7 Q. Yes, sir.

8 A. Of those 40,000 or so records, only 10,000 of them were  
9 properly formatted. There weren't 000. They weren't actual --  
10 of those 10,000 properly formatted social security numbers in  
11 the 4A original file, 90 percent of them were either stolen or  
12 made up.

13 Q. And those were information that were on the original  
14 questionnaire that was brought in by independent field workers,  
15 correct?

16 A. That's my understanding.

17 **MR. OROZCO:** That's all I have Your Honor.

18 **THE COURT:** Cross-examination, Mr. Frandsen?

19 **cross-examination.**

20 **BY MR. FRANSEN:**

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Before we get into the substance I would like to ask a  
24 couple of questions about your resume' which had been provided  
25 earlier. We saw your advanced degrees. You said your resume'

1 you had over 500 peer reviewed articles.

2 A. Yes, sir.

3 Q. And I think -- and did you prepare a report in connection  
4 with your work with Mr. Watts?

5 A. Yes, sir, I did.

6 Q. Okay. I think on page three you mentioned that, too. You  
7 don't have to refer to it. It's all right.

8 A. Okay.

9 Q. What do you mean by a peer reviewed article?

10 A. When we do our work in my field of epidemiology or in  
11 clinical research, medical research, we collect data, we  
12 analyze the data, and we come up with an interpretation of that  
13 data, and we submit it to a journal. The jury is probably  
14 familiar with the stories on the news, the recent study in the  
15 New England Journal or the Journal of the American Medical  
16 Association. Before those studies appear published in those  
17 journals, it gets sent to our peers. I would write an article,  
18 I would submit it to the journal, and my colleagues, two,  
19 three, maybe more of them, would review it and they would  
20 critique it. They would critique whether it's a justifiable  
21 scientific question. They would critique the methodology.  
22 They would critique the statistical analysis. They would  
23 critique everything about it.

24 Q. Okay. Some of the words -- why do you do this?

25 A. You do this so your work is determined to be valid,

1 reliable.

2 Q. And why do you want to do that?

3 A. Pardon me. And clinically important. In the case of --  
4 science is about replication. You want to make sure that you  
5 provide the right answer to the, you know, clinically relevant  
6 scientific question. You want to be sure that your methodology  
7 could be pursued by another investigator so that that specific  
8 question is advanced in the field.

9 Q. In other words, the second observation should reveal the  
10 same results? Excuse me. I'll withdraw the question.

11 Peer review applies to other fields other than just yours  
12 though, correct?

13 A. Absolutely, yes, sir.

14 Q. In fact, it's perhaps an academic way of saying you should  
15 check something before you publish it?

16 A. Yes, sir.

17 Q. Okay. So that could apply it to other fields, such as  
18 law, even?

19 A. I've actually published in a few law journals, and I  
20 believe those were peer reviewed.

21 Q. In fact, before you came here today and testified to this  
22 court, did you check any of your facts or double check them or  
23 even triple check them?

24 A. Yes, sir. I've been over this data more times than I care  
25 to think about.

1 Q. And why were you so careful about your representations to  
2 this Court?

3 A. I would -- I would maybe venture a guess that getting it  
4 right in this courtroom is perhaps equally if not more  
5 important than getting it right in the medical journals.

6 Q. Okay. I may refer to your report occasionally to help you  
7 answer the questions, but on page four and five of your report,  
8 you describe a flow of information, names, addresses, social  
9 security numbers from the very bottom field workers all the way  
10 up to the top, the Watts firm. I hope we have the same  
11 paginated reports. Do you see that on four and five? Or maybe  
12 it's --

13 A. I can't say I see it on four and five sir.

14 Q. Do you have a section four, my work in this case?

15 A. Yes, I do, yes, sir.

16 Q. Okay. So can you just briefly describe that flow of  
17 information that you utilized to make your analysis?

18 A. Okay. That I utilized?

19 Q. Yeah.

20 A. The first files that I received were files from Mr. Watts'  
21 firm.

22 Q. No, I understand that. But you talk about the flow of the  
23 information from field workers to various parties up to the  
24 Watts firm in your report.

25 A. Okay.

1 Q. Could you describe that flow of information?

2 A. As I understand it?

3 Q. Yes.

4 **MR. OROZCO:** Your Honor I object. My objection is  
5 hearsay. He is going to testify that he was told to evaluate  
6 with respect to the flow of information. He testified that all  
7 this information was provided to him by a third party.

8 **THE COURT:** That objection is overruled. You may  
9 proceed.

10 **BY MR. FRANSEN:**

11 Q. Just briefly describe that flow?

12 A. Sure. My understanding is that the field workers obtain  
13 information on paper questionnaires. Those paper  
14 questionnaires were entered into a database or a series of  
15 databases that were uploaded on a recurring regular basis.  
16 That information then flowed into a main database at Mr. Watts'  
17 firm. I believe at that point there was a Phase II process  
18 where in the information in the database was supplemented to  
19 fill in blanks, specifically with respect to social security  
20 numbers and dates of birth.

21 Q. Okay. Do you know how many field workers there were?

22 A. No, sir, I can't say that I do.

23 Q. Well, in your work in the spread of diseases -- is that a  
24 normal way of saying it -- have you ever studied the number of  
25 people it takes to gather data in the field?

1 A. I deal with this every day, sir.

2 Q. Okay. If we have 44,000 clients around the country but  
3 perhaps centered around the Gulf, how many field workers might  
4 we need to contact those people?

5 A. So if we were doing this as part of a clinical research  
6 protocol, that answer would depend on the length of the  
7 questionnaire or if we were going to do physical exams, which I  
8 know wasn't the case here. It would also determine -- be  
9 determined by geography, how far you could send people in a  
10 given day and have them collect that information.

11 Q. Do you think in your experience that, say, 60 field  
12 workers could contact 44,000 clients or people in a few months  
13 time?

14 A. It would seem extremely unlikely.

15 Q. Okay. Going to page five of your report, you said in  
16 there that David Watts dinged this data that's flowing up the  
17 line as you discussed earlier as incomplete. How do you know  
18 that?

19 A. The social security numbers were all zeros.

20 Q. So that means incomplete. So this is obvious from looking  
21 at the data facially?

22 A. Within the first 30 seconds of opening the file.

23 Q. Okay. So was there anything else that was incomplete that  
24 you're aware of?

25 A. I believe in that 4A file, there were dates of birth that



1 were missing. In fact aside from perhaps the case number and a  
2 couple of other fields related to the intake date and things  
3 automatically generated by the database, there were holes, I  
4 would say, with probably every record.

5 Q. You mean all 44 lines or rows in these -- if it was  
6 reduced to a spreadsheet?

7 A. Had some sort of missing information, I believe, that's  
8 probably the case. My focus was on the case number and the  
9 date of birth and the social security number. My familiarity  
10 with the other fields is less extensive.

11 Q. Sure but you could see where a blank was?

12 A. Oh, absolutely. Like I said you could see within the  
13 first 30 seconds of opening the file.

14 Q. So you estimated it was at least, if there's 40,000 rows  
15 of data, there's at least 40,000 blanks in this database?

16 A. Yeah, I mean in doing this work we would typically  
17 multiply the number of record by the number of fields, take the  
18 number of fields and then calculate a missing or error rate  
19 based on the number of cells, if you will, if we are talking  
20 about a spreadsheet.

21 Q. So just taking one line with ten fields in it, if five of  
22 them are blank, that's five over ten, 50 percent are blank?

23 A. Yes, sir, that's how we would do the math.

24 Q. Are you able to make any estimate as to the percentage  
25 blank of the database data that you looked at?

1 A. Well, it varied by the source. The information in the  
2 Watts files increasingly improved as we went from 4A to 4B, et  
3 cetera. The quality of the Denspri records reflected what they  
4 received from Ryan Willis, the quality of the Ryan Willis data  
5 was exceedingly poor. The data from the IRB search was  
6 complete. It was just, you know, search text. And the data  
7 from the social security administration, the only blanks in it  
8 were meaningful blanks, if the person didn't die, there was no  
9 date in the date of death.

10 Q. Okay. And then again on page five of your report you said  
11 that Eloy Guerra, Greg Warren, and Kristy Le were to do a call  
12 project.

13 A. Yes, sir.

14 Q. And what is that about?

15 A. Very much in our field, if you're trying to recruit  
16 patients, in this case if you're trying to recruit clients or  
17 fill-in missing information, which happens in our work, you  
18 come to our clinic, you participate in the protocol. If we for  
19 got to ask you how tall you are, we would bring you back and  
20 say could you please tell us how tall you are. My  
21 understanding here is one of the attempts to obtain that  
22 missing information was done via a telephone process.

23 Q. So in the hypothetical case you were just describing, how  
24 would you contact the person to get that missing information?

25 A. We would have collected your name, address, telephone

1 number, and then we would have established a protocol where in  
2 you would be contacted on a recurring basis until we were able  
3 to obtain the information.

4 Q. So when you have a client or customer or subject, you get  
5 complete information up front?

6 A. That's the goal, yes, sir.

7 Q. Complete contact information. Excuse me.

8 A. Yes, sir.

9 Q. Okay. Now, going back to this call project, do you know  
10 if it was ever done? You mentioned it in your report?

11 A. My understanding is it was done.

12 Q. Do you know what the results of that call project was?

13 A. I've seen it referred to as very poor returns.

14 Q. Do you know why the returns were poor?

15 A. Again, my understanding is it was -- there was language  
16 barriers, there were issues with phone numbers not being either  
17 collected in the first place or being disconnected when tried.  
18 I believe there were a number of barriers.

19 Q. Again, also on page five of your report, you specifically  
20 mention the hiring of a Ryan Willis to help find missing data,  
21 particularly social security numbers. Why did you mention that  
22 in your report?

23 A. It was important because I had received a very large  
24 volume of files both from his inbox and from his hard drive.  
25 And so, again, in trying to understand both the flow of the

1 information and the change in it over time, understanding who  
2 he was and what role he played was exceedingly important.

3 Q. Okay. On page six of your report, you talk about  
4 corrected data files were sent to WGC in October of 2010.

5 A. Yes, sir.

6 Q. You have the word corrected in quotes. Do you see that?

7 A. Yes, sir.

8 Q. Why did you have quotes on the word corrected?

9 A. Having reviewed the data that was in those files, the fact  
10 that it was correct or calling it correct without quotes seemed  
11 appropriate. It was clear that what we were seeing here was,  
12 again, information that wasn't accurate, information that was  
13 made up.

14 Q. Okay. And this is in October of 2010, am I correct about  
15 that? According to your report?

16 A. According to my report. Again, subsequently when I wrote  
17 this, I didn't have all the data that I actually have sitting  
18 here today, so the dates have shifted a little bit but  
19 October 2010 is when some of the last files that I have that I  
20 received were dated. It seems like the process actually began  
21 sometime in August.

22 Q. Okay. Then again on page six of your report you say,  
23 Watts Guerra Craft delivered files to a Wendy Bloom at Kirkland  
24 and Ellis in Chicago. Maybe it's on the next page?

25 A. Oh, I see it here, yeah.

1 Q. Why did you put that there?

2 A. Again, it was simply trying to represent the flow of  
3 information in documents, the difference between these 4A, 4B,  
4 4C files. It was important, as I said, to not only understand  
5 these files as they stood alone but also how they existed  
6 longitudinally. One of the interests that I had in determining  
7 what went on here was not just what existed in one file. It's  
8 how the files changed over time and what they represented.

9 Q. You say in your report about 40,000 PPFs were delivered.  
10 Do you see that?

11 A. Yes.

12 Q. What is a PPF?

13 A. Plaintiff profile form. That's my understanding.

14 Q. Okay. On page six, another reference you say there's some  
15 44,000 Presentment Forms were delivered in January of 2013?

16 A. Yes, sir.

17 Q. Why is that there?

18 A. Same answer as before, just to establish the longitudinal  
19 nature of the files, the relationship from one data set to the  
20 other.

21 Q. I'm going to have to stop and ask you, what do you mean by  
22 longitudinal difference?

23 A. The files changed over time. As we said, the 4A was the  
24 original. That data was supplemented or corrected, if you  
25 will, and so there was a different version of it, the 4B file,

1 the 4C file. So when I say "longitudinal," I just mean over  
2 time.

3 Q. Okay. Now let's go to jump ahead to page 15 of your  
4 report which talks about some of the findings that you talked  
5 about on direct. And I'll just kind of describe the area. You  
6 say you can have a situation where you have a valid social  
7 security number but no name match. What does that mean?

8 A. My understanding from how the social security  
9 administration did their validation of the data from Watts is  
10 that the social security number is validly formatted, that is  
11 the state code is an appropriate state code, the second two  
12 digits are appropriate for that particular state, and the last  
13 four digits are sequentially appropriate. So if you were just  
14 to determine whether it was validly formatted, you would say,  
15 it passes muster. However, that doesn't mean it belongs to me.

16 Q. It just means there's a name and number match?

17 A. That's correct.

18 Q. You have no idea whether this person is -- whether it's a  
19 real person or not?

20 A. No that's not what I'm saying. What I'm saying is that  
21 the social security number is validly formatted, but it doesn't  
22 belong to that person.

23 Q. Okay. Maybe I misunderstood something. Can you have a  
24 valid social security number -- oh, I'm sorry. I did ask that,  
25 and the name does not match. I'm sorry. I confused myself

1 here.

2 So in some cases you can have a valid social security  
3 number with a name match, is that correct?

4 A. Yes, sir.

5 Q. And that's what the social security system will verify?

6 A. Yes, sir.

7 Q. Okay. But you don't know what that represents beyond that  
8 information?

9 A. No. My understanding is based on the material that came  
10 with the data from the social security administration, their  
11 searches are name, social security number, date of birth, and  
12 it was unclear to me whether gender was part of the search  
13 process. We had some records that came back that the gender  
14 didn't match, but it was infinitesimally small number of them.

15 Q. Okay. You had some material on page 18 and 19 of your  
16 report about searches. And if I could ask the defense to call  
17 up slide 28 of Mr. McGwin's PowerPoint. Can you see that on  
18 your screen?

19 A. Yes, sir.

20 Q. On directed you talked about the total number of searches  
21 being almost 65,000. Does that mean one item of information  
22 was being looked for at one time?

23 A. I guess I would liken it more to 64,904 submits.

24 Q. Okay?

25 A. As opposed to -- those were not unique pieces of

1 information. Jerry, McGwin, Birmingham, Alabama. That's one  
2 search as opposed to four searches.

3 Q. Okay. So any one search may be looking for multiple  
4 items?

5 A. Well, again, as I receive the data, you receive the user  
6 name, you receive the date and time that the search was  
7 executed, and then you received what was entered into the  
8 search box. So it -- sometimes it contained just a name.  
9 Sometimes it contained a name and an address. Sometimes it  
10 contained nothing.

11 Q. Now, looking at all your data, and we're not going to go  
12 through it line by line, how efficient were these searches.

13 A. That's a very interesting question. Because there was no  
14 case number, no social security number, we use something here  
15 called natural language processing to evaluate these searches.  
16 And what you generally saw, because we had the date and  
17 timestamp, is that they would typically start off with Jerry  
18 McGwin. The next sequential search for the same years, there  
19 would be Jerry McGwin, Birmingham, Jerry McGwin, Birmingham,  
20 Alabama. So you would see the searches increase in complexity  
21 only up to a point, and you would actually see them go back the  
22 other direction for a given user. They were exceedingly  
23 inefficient. I mean, as somebody who does this on a regular  
24 basis, this is not the way you would do this.

25 Q. So it sounds like they were fishing?



1 A. I would classify it as fishing.

2 Q. In other words, they're just hoping to find something?

3 A. Well, the thing that's important to remember here is the  
4 only thing that they were going to find here was a date of  
5 birth and a partial social security number. What's become  
6 clear here is that the only things that were searched through  
7 Denspri were incomplete social security numbers. The complete  
8 social security numbers, they were wrong from the beginning and  
9 stayed wrong. They didn't get verified. Nobody checked them.  
10 They didn't have a hope of getting verified. Everything else  
11 this is the beginning of the fishing expedition. This returned  
12 to you the missing date of birth, and this returned to you five  
13 digits of the social security number. That was then passed  
14 onto Denspri to provide you with the complete social security  
15 number. So this was throwing the hook in the water.

16 Q. So -- and I think you characterized this data as being a  
17 very poor quality?

18 A. I can characterize the searches as being of very poor  
19 quality.

20 Q. Yeah, the quality of the searches. Okay.

21 What does this indicate about the level of knowledge about  
22 the people they're searching of?

23 A. The people who are doing the search?

24 Q. No, for whom they're searching.

25 A. Again, we know up front that they have very poor

1 information on these individuals. That's the whole purpose of  
2 doing the search.

3 Q. And that was obvious from the start?

4 A. It was obvious from the start for me because my start was  
5 the 4A original file.

6 Q. Okay. And on page 20 of your report, you talk a little  
7 bit about returned mail. I'm assuming that's returned mail at  
8 Watts Guerra Craft?

9 A. Yes. In fact, I neglected to mention that data set, as  
10 well. There were so many of them, I've lost track over time.

11 Q. Did you ever see the returned mail stacked up at the  
12 offices of Watts Guerra Craft?

13 A. I've read the testimony every day and I've heard it  
14 referred to and I have a picture in my head but I've never seen  
15 it.

16 Q. Okay. Then on page 22 of your report, you talk about the  
17 Denspri verification process, which I think you sort of  
18 indicated here was of little value?

19 A. Again, I viewed the IRB search as throwing the hook in the  
20 water and I viewed the Denspri process as landing the fish.

21 Q. Okay. And none of this really proves that these people  
22 have any interaction with the Watts Guerra Craft firm. All  
23 they are are names, numbers, and addresses, correct?

24 A. Yes, sir.

25 Q. Okay. Then you issued a supplemental report. I just want

1 to ask you a couple of things about that. You said on page  
2 three of your report, it appeared that people were searching  
3 using Vietnamese names.

4 A. Yes, sir.

5 Q. How do you know they were Vietnamese?

6 A. I guess my passing familiarity with Vietnamese names.

7 Q. Okay. So would you think the name Lucy Lu is a Vietnamese  
8 name?

9 A. I guess my first instinct would be it would be an Asian  
10 name. I don't necessarily have enough information to say it  
11 was Vietnamese.

12 Q. What about a name like Gwendolyn Luc, L-U-C, does that  
13 sound Vietnamese to you?

14 A. Sounds Asian to me.

15 Q. Okay. Then on page three, you talk about some searches  
16 that yielded 62,000 rows of data. But I couldn't understand  
17 what that data was or what those searches were.

18 A. These are the IRB searches.

19 Q. Oh, okay. This is what was represented partially on that  
20 slide we just had on the --

21 A. Yes, sir.

22 Q. Okay. And that was the -- okay. All right.

23 Now, what is the time period being covered by all this  
24 searching using these IRB search, Ryan Willis, Denspri,  
25 according to your report, what is the rough time period that

1 these searches are being done?

2 A. My understanding, and again, having access to his e-mail  
3 in box, most of these files are moving back and forth. Summer  
4 of 2008 if my, again, understanding and my review of these  
5 files is correct.

6 Q. Did that period extend over to the fall of 2010? I think  
7 you may have said '8.

8 A. I did. It did. In fact, on his hard drive, there were  
9 data sets that I want to say go as far as maybe October 3rd of  
10 that particular year.

11 Q. So in other words this whole period of time they're trying  
12 to figure out who these 40,000 names belong to?

13 A. Yes, sir.

14 Q. So how can anybody tell if they're clients of the law  
15 firm?

16 A. I don't know the answer to that.

17 Q. Okay. Now, we did speak a little bit about some deceased  
18 people. When you were doing your research, looking at  
19 databases and other things, were you ever shown an e-mail dated  
20 October 11, 2010, to Chris Deleon, Eloy Guerra, and Kristy Le  
21 from David Watts concerning deceased people? If I showed it to  
22 you might that refresh --

23 A. It would certainly help.

24 Q. And it's government's Exhibit Number G166. Take a moment  
25 to look at that as soon as you can read it. Did you ever see

1 that e-mail before in your research?

2 A. I've heard it referred to but I never saw the actual  
3 e-mail.

4 Q. Okay. Could you just read us the date of that e-mail?

5 A. October 11, 2010.

6 Q. Okay. One moment, Your Honor.

7 **MR. FRANSEN:** No further questions. Thank you.

8 **THE COURT:** Mr. Watts, do you have any redirect  
9 examination for the witness?

10 **MR. WATTS:** Very brief.

11 **redirect examination.**

12 **BY MR. WATTS:**

13 Q. Dr. McGwin, I just want to clarify a couple of things.  
14 The issue of how many files you looked through, and we said  
15 5,000 files, do you remember that?

16 A. I think I said approximately.

17 Q. Okay. I just want to make clear, we're not talking about  
18 data for 5,000 people. We're talking about 5,000 Excel  
19 spreadsheets with combinations of hundreds of thousands of  
20 lines, right?

21 A. Yeah. I mean, you and I did the math one day, and it's  
22 files with rows in them, and that adds up to hundreds of  
23 thousands, probably millions of lines of data.

24 Q. Sure. Mr. Frandsen asked you about how long it would take  
25 60 field workers to go knock on doors and talk to 40,000

1 people. But yesterday he put in a videotape of a town hall  
2 meeting with 2,000 people in it. How many town hall meetings  
3 would it take to get to 40,000 if you had 2,000 people in a  
4 town hall?

5 A. It would take a lot more than one.

6 Q. It would take about 20 wouldn't it?

7 A. Yes.

8 Q. Okay. Mr. Frandsen asked you questions about what would  
9 be obvious to the firm. If the firm got spreadsheets with 67  
10 people's social security numbers that said deceased, would that  
11 be more obvious than if that information had been wiped clean?

12 A. Yes, sir.

13 Q. If the firm got information that said 2510 people did not  
14 match, did not process, would that be more obvious to the firm  
15 than having that information wiped clean from 2,500 people  
16 before the data was sent to the firm?

17 A. Yes, sir it would.

18 Q. Mr. Frandsen asked you about this concept of returned  
19 mail. In your July 1st report, did you run a calculation for  
20 me as to whether the rate of returned mail for the firm was  
21 higher with legitimate clients than it was with EVS five and  
22 EVS one clients?

23 A. Yes, sir, I did.

24 Q. And paradoxically, was the result that when you had  
25 legitimate clients, EVS blank, you got more returned mail than

1 when you had stolen clients or made up clients?

2 A. Yes, sir.

3 Q. And that's in the report that Mr. Frandsen was questioning  
4 you about on July 1st, right?

5 A. Yes, sir it is.

6 Q. So from the data, the rate of returned mail has nothing to  
7 do with whether people are real or whether they're made up or  
8 stolen, right?

9 A. That's correct, sir.

10 Q. Mr. Frandsen asked you how could anyone tell if these were  
11 actually Watts Guerra Craft clients. Do you have any  
12 information that's been provided to you that Watts Guerra Craft  
13 even knew about IRB when this data collection program was going  
14 on?

15 A. No, it came as a surprise to all of us at the 11th hour as  
16 a result of going through this data.

17 Q. In fact, you and I had been working on this project for  
18 three or four months before we ever heard of IRB?

19 A. Every Stone you turned over, there was more data a  
20 underneath it.

21 Q. Was the government given it to us? Do you know how we  
22 found out about IRB?

23 A. I believe you told me and I have to say it's escaped my  
24 memory.

25 Q. Do you know how long ago the government talked to Ryan

1 Willis?

2 A. No, sir, I don't know that I do.

3 Q. Do you know after your May 31 report, it was the  
4 government that went to Denspri for the first time to get a  
5 mirror of what they gave to Alicia O'Neill?

6 A. Yes, that I know because the data came to me soon  
7 thereafter.

8 Q. Now, when you got the social security administration data  
9 and then we got the Denspri information from Alicia O'Neill,  
10 you did the work at that time and produced that work in a  
11 May 31 report, right?

12 A. Yes, sir.

13 Q. It was only after you delivered that report on May 31 that  
14 the Secret Service got around for the first time to going to  
15 get the Denspri files?

16 A. That's correct.

17 Q. One more question. And if I could put this on the screen  
18 for demonstrative. This Denspri process, Excel spreadsheets  
19 were sent from Denspri to Willis, right?

20 A. Yes, sir.

21 Q. Willis then sent those Excel spreadsheets to Kristy Le?

22 A. Yes, sir.

23 Q. Kristy Le eventually sent spreadsheets to DeLeon? Right?

24 A. Yes, sir.

25 Q. And DeLeon would send spreadsheets to Watts Guerra Craft,



1 right?

2 A. Yes, sir.

3 Q. In terms of what you saw about deceased designations, did  
4 that deceased designation make its way to Willis?

5 A. It generally did, yes, sir.

6 Q. And did Willis send files that still had the deceased  
7 designation to Kristy Le?

8 A. Generally so, yes.

9 Q. And when those files were forwarded to DeLeon, did the  
10 designation of deceased get included in those materials?

11 A. No, sir, it did not.

12 Q. Therefore, when DeLeon sent those files to Watts Guerra  
13 Craft, did the designation of deceased on those 67 people make  
14 its way to Watts Guerra Craft?

15 A. I think only in five cases was that the case.

16 Q. Okay. Same question with respect to the 2510 did not  
17 process, with various words used. Was that information  
18 communicated to Ryan Willis?

19 A. Yes, sir.

20 Q. And in the files that Ryan Willis sent to Kristy Le, was  
21 the designation of did not process included?

22 A. Yes, sir.

23 Q. When those files were forwarded to Chris DeLeon, did they  
24 say did not process?

25 A. No.

1 Q. That had been wiped clean, hadn't it?

2 A. Yes, sir.

3 Q. And accordingly when DeLeon passed those files to Watts  
4 Guerra Craft, did it have the designation did not process?

5 A. No, sir.

6 Q. I told the jury earlier in this case that I got ripped  
7 off. From a data standpoint, when did the data references to  
8 deceased and did not process get wiped clean?

9 A. Typically when they passed from Ryan Willis to -- pardon  
10 me. When they passed between Kristy Le and Mr. DeLeon.

11 Q. At this point. Indicating?

12 A. Yes, sir.

13 Q. Dr. McGwin, I thank you. Those are all my questions.

14 **THE COURT:** Thank you, Dr. McGwin. You may be  
15 excused.

16 Who is your next witness?

17 **MR. MCCRUM:** We call Matt Archer. This was a  
18 situation Your Honor that involved that lengthy list of  
19 exhibits.

20 **THE COURT:** All right. Gentlemen, you all have  
21 copies of those exhibits?

22 **MR. FRANSEN:** Yes, we have copies of the exhibits,  
23 Your Honor, and we have no objection to their admission.

24 **THE COURT:** All right. Give me those numbers, if you  
25 would.

1           **MR. MCCRUM:** I have them listed here in chronological  
2 order judge but for the record I'll read them off.

3           **THE COURT:** How many are there?

4           **MR. MCCRUM:** Approximately 60.

5           **THE COURT:** Do you have them in a list form?

6           **MR. MCCRUM:** I do, Judge. I'm ready to give that to  
7 the Court.

8           **THE COURT:** Could you provide that simply to the  
9 clerk, and Mr. Frandsen, have you seen the list?

10          **MR. FRANDSEN:** Not the list. I have the exhibits  
11 themselves.

12          **THE COURT:** So can you look at the list? What I'm  
13 trying to do, I'm trying to save a little time and a little  
14 headache for the clerk of court and for the court reporter.

15          **MR. FRANDSEN:** I have seen the list, Your Honor.

16          **THE COURT:** Do you find that it is generally  
17 accurate?

18          **MR. FRANDSEN:** I have not had a chance to compare all  
19 those six digit numbers, but I have no doubt that they are.

20          **THE COURT:** All right. Without objection, we'll  
21 provide the list, as well, Mr. McCrum, but the list of exhibits  
22 to which there is no objection, they will be marked and  
23 admitted into evidence. The clerk of the Court will mark them.  
24 Are you going to use them now?

25          **MR. MCCRUM:** I'm going to present them, Judge.

1 There's only a few that I'm actually going to be asking  
2 questions of this witness. The same procedure that Mr. Rushing  
3 used earlier.

4 **THE COURT:** All right.

5 **MR. MCCRUM:** I will be presenting them to the witness  
6 for his referral in case he needs it to refresh his  
7 recollection, but -- and I will be referring substantively to  
8 several.

9 **THE COURT:** But not all of them.

10 **MR. MCCRUM:** Not all of them.

11 **THE COURT:** So you go ahead and maintain them for  
12 now, and when you have's completed your direct examination and  
13 whatever cross-examination, then provide them to the clerk of  
14 court. She will mark them as admitted into evidence and will  
15 provide a copy of the list to the court reporter so they can  
16 place it in the record, as well. Is that acceptable?

17 **MR. MCCRUM:** It is to me, Judge. I have copies that  
18 she can get started on these, but it's --

19 **THE COURT:** Well, again, the clerk of the Court has  
20 many duties.

21 **MR. MCCRUM:** I know. I don't mean to impose.

22 **THE COURT:** And she needs to focus on what's going on  
23 in the courtroom. Whenever the machines go on and off and the  
24 lights come on, that's what the clerk of the Court is doing.  
25 And we'll need to have her focused on that additional duty.

1           **MR. MCCRUM:** Yes, sir.

2           **THE COURT:** She can during her spare time, which is  
3 hard to come by, she'll mark all of those exhibits.

4                           (EXHIBIT MARKED.) UPON RECEIPT.

5           **(Exhibit list provided to clerk beginning with D2-4477 and**  
6 **ending with D2-72705)**

7           **MR. MCCRUM:** There is one additional exhibit that's  
8 not on the list.

9           **THE COURT:** Oh, but of course.

10          **MR. MCCRUM:** I'll provide that to the clerk on the  
11 time. This one is 72720. It's a summary sheet.

12          **THE COURT:** And that goes along with this group?

13          **MR. MCCRUM:** Yes, sir. It will be the last one in  
14 addition to the list.

15          **THE COURT:** Mr. Frandsen, do you have any objection  
16 to that document?

17          **MR. FRANDSEN:** I have no objection to this exhibit,  
18 although it's -- it's recently -- well, no objection, Your  
19 Honor.

20          **THE COURT:** All right. Without objection, that will  
21 be marked and admitted, as well.

22                           (EXHIBIT MARKED.)

23          **THE COURT:** Again, you may use those, Mr. McCrum,  
24 during this direct examination, and you'll provide them to the  
25 clerk afterward.



1 everything. I originally got hired to do video editing for  
2 settlement videos and then when they found out I was computer  
3 savvy, I started learning more database work. Eventually  
4 became IT for the Houston office. And eventually took on  
5 full-time database administrator duties, which is my current  
6 position.

7 Q. What does a database administrator do?

8 A. Different things. One of the main things is just making  
9 sure all systems are go for our, you know, up to a hundred  
10 users at a time, all accessing live databases making sure that  
11 everything is fully functional. We also do all kind of  
12 different data entry projects, so I'll set up those screens for  
13 our users to use, whatever the project may be, custom tailored,  
14 a lot of programming and setting up relationships behind the  
15 scenes for functionality between different tables, for all  
16 different aspects of legal work. And we also do court filings  
17 and mail-outs of client letters generated from the databases.

18 Q. Do you work on the mass torts that the firm does for  
19 clients?

20 A. I do.

21 Q. And these same kind of duties with respect to those mass  
22 torts, or are there other additional duties that you take on?

23 A. There used to be more. Now it's for the most part mass  
24 tort.

25 Q. Now, obviously David Watts works there in the database or

1 administrative section of the firm. What is your position with  
2 respect to David Watts?

3 A. I'm working directly under David, we do a lot of database  
4 work together. We brain storm and figure out ways to, you  
5 know, tackle new projects, and he'll do -- taught me a lot of  
6 stuff that I know about relational databases, and I do a lot  
7 more of the day-to-day stuff, and he will do -- maybe focus a  
8 little bit more on the settlement and financial side of the  
9 database work. But we work daily together on different  
10 database projects.

11 Q. So although you are in Houston, are you talking and  
12 communicating with him on a daily basis?

13 A. Yes, sir.

14 Q. And has that been the case for the last how many years?

15 A. If I remember correctly, David came on the firm over ten  
16 years ago and we've been working hand in hand ever since then.

17 Q. Okay. The type of system that is used in the mass tort  
18 area, without describing it in computer language, can you just  
19 generally describe how it works?

20 A. Can you be more specific?

21 Q. Yeah. Do -- well, for example, the database that's used  
22 in mass torts, can everybody in the firm access it? Is it from  
23 anywhere, home, office, can they revise things, save things?  
24 Can they remove certain things, adjust it? Just generally  
25 speaking.



1 A. Well, there are administrators to the database, and those  
2 have the highest level of security permissions, and that would  
3 be myself and David and Wynter. We set up specific privileges  
4 for different levels of employees, depending on what their  
5 needs are in the database, be it just very limited data entry  
6 or somebody who is dealing with, you know, changing say a case  
7 status or something a little bit higher priority. So we custom  
8 tailor the security to where nobody can delete anything that  
9 they're not supposed to or see anything that they're not  
10 supposed to and just work on the projects they're intended to  
11 work on.

12 Q. Okay. So on any mass tort project, there's a lot of  
13 things going on with respect to a database. Would you agree?

14 A. Yes, a lot of things coincide at the same time, even.

15 Q. Okay. There's letters that are being written clients and  
16 received from clients?

17 A. Yes, that's correct.

18 Q. Phone calls going back and forth that notes are being  
19 taken of?

20 A. Yeah. We even set up screens to where we can put a team  
21 of our data entry and operators to be able to call our clients  
22 and get specific information that we need, and I would design,  
23 you know, a call project screen for that project to where when  
24 they're talking to the client and they enter all the  
25 information that they need and everything gets noted where it's

1 needed or, you know, every week I'm setting up different  
2 letters we need to send out to our clients in the database so  
3 that all the client's information that's stored throughout can  
4 merge into that letter and be generated in mass amounts so that  
5 they can be mailed out or even court documents so they can be  
6 submitted to the Court.

7 Q. Okay. So with respect to all of this information coming  
8 in, I guess including spreadsheet information, right, when  
9 people are out in the field, contract labor is out in the field  
10 and sending you information about clients who have signed up,  
11 oftentimes that will arrive in the form of Excel spreadsheets  
12 or the like, is that right?

13 A. Yes. Different formats, Excel or CSP files, large data  
14 dumps, importing into our database, exporting out of our  
15 database for whatever the specific project is -- calls for.

16 Q. Okay. So and do you get involved in that as well when  
17 large amounts of data come in --

18 A. As a database administrator, that's one of the main things  
19 I deal with every day as far as reporting, acquiring large  
20 amounts of data, making sure it goes where it needs to in the  
21 database or providing information for different projects in  
22 spreadsheet form, yes.

23 Q. So you said a minute ago that there are certain protocols  
24 that you put up as who can delete things and who can not, and I  
25 think you mentioned the three people that have the authority,

1 if they were to delete anything, to delete something. Now,  
2 when information comes in, for example information like a  
3 spreadsheet or corrections to a certain database, tell the jury  
4 whether or not information that's inputted is ever deleted from  
5 the database.

6 A. Anything that we ever add to the database, we try to keep  
7 in the database as an active archive. That way we do not have  
8 to rely on hunting things down in different locations. It's --  
9 it's a live archive, if you will, and only the administrators  
10 have the ability to delete and get rid of, you know, very  
11 important information. For the most part in most of the spots  
12 in the database, only administrators can delete any records at  
13 all.

14 Q. With respect to the BP case, did you ever see any  
15 deletions of any data going on?

16 A. Not to my knowledge, no.

17 Q. You being a database administrator, you would get notice  
18 of that type of activity, right?

19 A. Yes, sir.

20 Q. So if someone in your firm is trying to hide something,  
21 the last thing they would want to do is put some data in there  
22 because it's not going to get deleted, right?

23 A. That's true.

24 Q. And anybody later who wanted to come and check the  
25 homework of your firm to grade your paper, they would be able

1 to see the history from a data standpoint just by looking at  
2 the archives and searching?

3 A. Yes, that's true. They -- we have different tracking  
4 devices that are implemented throughout the database that will  
5 show who created a record, who modified a record, and like I  
6 said, only the administrators can delete the records and a  
7 majority of the tables where we store all the data.

8 Q. Focusing on the BP case, you said that you worked on it.  
9 What type of work did you do on the BP case?

10 A. A lot of what I mentioned earlier of my daily duties and  
11 daily tasks, importing large amounts of data, exporting large  
12 amounts of data for reporting, building the client letters in  
13 the database so that we can generate them, building the  
14 different court documents and forms so that we can mass  
15 generate those to PDF or spreadsheets, whatever different  
16 projects called for.

17 Q. Now, this was going on I guess it started in 2010, right?

18 A. Correct.

19 Q. Went on for -- through '11, and '12, '13, and maybe even  
20 after that, correct?

21 A. Correct.

22 Q. Still going on, right?

23 A. Yes.

24 Q. At the initiation of this case and in the several years  
25 following, was this the only mass tort that the law firm was

1 working on at the time?

2 A. No. At any given time, we'll work on ten, maybe even 20  
3 different types of torts at the same time. Some smaller than  
4 others, but some on a scale with even BP.

5 Q. And was that the case during BP, is that these large scale  
6 torts on other situations were being worked at the same time?

7 A. Yes.

8 Q. And did you work on those simultaneously along with David  
9 Watts and others?

10 A. I did.

11 Q. Okay. When it started in late April, May of 2010, what  
12 was the first steps of procedure that you and others went  
13 through insofar as creating case files?

14 A. As far as what I worked on, a lot of the data was already  
15 in the database in a very specific table. It was a BP IP data  
16 table that David had created to store the data that was brought  
17 in for intake purposes. And then when he felt like that was  
18 ready to be moved over to the main part of the database where I  
19 could do my work and our -- all of our employees can do their  
20 daily stuff or project based stuff, we wanted to move it to the  
21 main part of the database, and that would be the part that I  
22 handled.

23 Q. And with respect to that, were there different e-mails  
24 passed between you and David Watts and other employees of the  
25 firm in terms of creating these different client files?

1 A. Yes.

2 Q. All right. Judge, I'll offer to the witness exhibits --  
3 and these are all D2, Judge -- 9618, 10062, 5467, 6549, and  
4 7097. I'll put them up there, Judge, in the event that Mr.  
5 Frandsen wants to ask him about those.

6 So once the client files were created under those numbers,  
7 Mr. Archer, what was done with the client numbers and files in  
8 terms of the field team?

9 A. They would be -- I don't know exactly what the field team  
10 did specifically with the case numbers, but we do all of our  
11 tracking for all of our cases based on an assigned unique case  
12 number to each case.

13 Q. So that's where the tracking started as far as your  
14 database is concerned?

15 A. Yes. It was, okay, we have a certain number of clients,  
16 we need to get case numbers for each of these, sometimes in  
17 large batches, and we would mass assign case numbers to all the  
18 intake clients.

19 Q. At the initial stages, were welcome packets put together  
20 and databased?

21 A. Yes.

22 Q. What was in a welcome packet? Do you recall? And if you  
23 need to refresh your recollection I'll tender to the witness  
24 exhibits 12929, 11559, and 6583.

25 **THE COURT:** Do you need to refresh your recollection,

1 sir?

2           **THE WITNESS:** I guess it would depend on if you're  
3 referring to a field worker packet or just a welcome packet  
4 that we would potentially mass mail out from the database.

5 **BY MR. MCCRUM:**

6 Q. Why don't you refer to the folder of 12929. Let me ask  
7 you a question about that. Part of the welcome packet included  
8 a welcome letter, a POA, a 4506, 4506-T, and/or questionnaire,  
9 is that right?

10 A. Yes. This would be a welcome packet we would generate out  
11 of the database. This would not be for field worker packets.

12 Q. Okay. And where would that packet go, that packet that's  
13 being put together?

14 A. Typically this is a packet that we would build all the  
15 different components in the database and then mass generate  
16 those to PDFs or hard copies and send those out to clients in  
17 the mail.

18 Q. And the 4506 and 4506-T, are those the tax forms you're  
19 anticipating the clients would have to sign?

20 A. Yes.

21 Q. Those are generated by the client numbers that you created  
22 in the database?

23 A. Yes.

24 Q. Now, once -- at the initial stages in the summer of 2010,  
25 did you participate at all in lawsuits being filed in the BP

1 project?

2 A. One aspect of my job is to potentially mass generate court  
3 documents, so there could have been a time where I mass  
4 generated petitions or some kind of, you know, documents in a  
5 -- to aid in the mass filing of cases.

6 Q. Okay. I'm going to tender to the ones 11304, Judge, and  
7 ask him a question. The exhibit I tendered to you refers to  
8 layout of the BP petition case, to the specific case menu tab,  
9 and instruction from Mr. Watts to you with respect to that.  
10 What is that referring to?

11 A. Case specific menu is one of the main screens in our  
12 database where you can go and access different cases by their  
13 case type. BP has its own menu, so he was requesting that I  
14 create a screen so that we can view all of the petitions that  
15 have been filed for all the different BP cases and just to set  
16 up a button on that screen so that people can access it and go  
17 view the information regarding petition filings.

18 Q. Okay. Now, and this is way before any forms are filed  
19 with GCCF or BP or anything like that, is that right?

20 A. I believe so. If it was July 2010, it seems like it would  
21 be.

22 Q. Okay. And you didn't get involved in the decision of  
23 first filing lawsuits and where to file forms in your role as  
24 database administrator, did you?

25 A. No, sir.



1 Q. Okay. In -- as the course of the litigation or -- went  
2 through and there are deadlines that came up, did you get  
3 involved in the process that was required to meet the certain  
4 deadlines that came up?

5 A. Absolutely. I mean, most of my job is deadline intensive,  
6 but I remember specifically there were different deadlines for  
7 BP where we had to -- where I personally had to mass generate a  
8 lot of different forms, sometimes thousands at a time, so that  
9 we could send those to the necessary parties and file them.

10 Q. Okay. I'm going to ask you about one particular exhibit,  
11 7228. I'm ask you to refer to that. There is something  
12 referred to in that e-mail that -- about a CTO number,  
13 conditional transfer order. Do you see that?

14 A. Yes, sir.

15 Q. What is that?

16 A. On the petition screen in the database, as far as what I  
17 deal with, we have different cause numbers, transfer order  
18 numbers, and they were just in this specific instance asking me  
19 to add a CTO number to the main BP screen where we did a lot of  
20 data entry, so that that could be something that they could  
21 start using on that layout.

22 Q. Now, I noticed that that particular e-mail is from Kendra  
23 Saxvik, is that right.

24 A. Yes.

25 Q. Now, the different project managers for the different

1 torts or project coordinators, would you be in communication  
2 with them on an ongoing basis as to their particular needs in  
3 terms of different layouts of forms or data entry?

4 A. Yes.

5 Q. And do you recall who the project managers or project  
6 coordinators were for the BP project?

7 A. I feel like early on it might have been Kendra, and then  
8 at one point it changed over to Kayleigh Stone.

9 Q. Okay. Did you run the certain statistics as for the total  
10 clients non-BP related in the five Gulf states as well as the  
11 total clients that are non-BP in the Gulf Coastal counties?

12 A. Yes, I did.

13 Q. I'm showing you an exhibit 72720. Is that a summary that  
14 you had prepared?

15 A. Yes, it is.

16 Q. May I see it on the overhead, Judge?

17 This first page, total clients excluding BP, so that's in  
18 all the mass torts or other torts that the firm was handling in  
19 the five Gulf states?

20 A. Yes.

21 Q. Is that a breakdown by the numbers in each particular  
22 state of the total clients of the Watts law firm that were not  
23 BP?

24 A. Yes, it is.

25 Q. Okay. And this bottom number here, almost 249,000, is

1 that the total number of all states across the United States?

2 A. Yes, it is.

3 Q. Okay. Then if we looked at the second page, did you run a  
4 search of the different counties in each state that lined the  
5 Gulf of Mexico?

6 A. Yes, I did.

7 Q. And are these figures of the numbers of clients of the  
8 Watts law firm along -- that resided in those different  
9 counties along the Gulf Coast?

10 A. Yes, for the non-BP clients.

11 Q. And these non-BP clients in the Gulf Coast counties  
12 numbered, total, 49,267?

13 A. That's correct.

14 Q. Okay. Let's -- in getting back to the BP project, with  
15 respect to the latter part of 2010, October, November time  
16 frame, do you recall submitting to the GCCF the actual client  
17 contracts or the POAs as they're referred to in your firm?

18 A. Yes, I do.

19 Q. Did you take part in any procedure to stamp each of those  
20 particular contracts with a number?

21 A. I took part in transferring of the data, but as far as  
22 programming the stamping of those for submission, that was  
23 handled by someone else in our IT department.

24 Q. And what number or what was stamped on those particular  
25 POAs or those client contracts?

1 A. I believe it was a social security number.

2 Q. And so early in the process in 2010 when you're accepting  
3 contracts to GCCF, you're actually putting the social security  
4 number that you had or didn't have at that point and giving  
5 notice to GCCF?

6 A. We were digitally stamping them.

7 Q. Did they all have nine digit numbers at that point?

8 A. I don't know --

9 Q. Do you recall?

10 A. I don't recall if they had -- are you referring to whether  
11 we had them or what we submitted on the -- stamped on those  
12 forms.

13 Q. Did you just submit what you had to the GCCF?

14 A. No, we modified them in a way to let them know if we were  
15 missing social security numbers, we were substituting codes for  
16 the social security numbers so that they could know who had one  
17 and who did not.

18 Q. Well, how did you do that? When you didn't have a social  
19 security number, what would you stamp or modify in order to  
20 give them notice that you didn't have a social security number?

21 A. We would use leading zeros or leading X's so that those  
22 would stand out from our clients who had social security  
23 numbers.

24 Q. When you say leading X's, do you mean in places of  
25 numbers, you would put multiple X's?

1 A. Yes.

2 Q. Or multiple zeros?

3 A. Correct.

4 Q. To your knowledge, was it even required to put social  
5 security numbers on the face of the client contract, or is that  
6 just something extra that your firm did?

7 A. I don't know if it was required but I know it was  
8 something we wanted to do. I personally don't like submitting  
9 anything where data is missing, so I -- I feel like that was  
10 something we wanted to do to make sure nothing was left blank.

11 Q. Did you get any indication that anybody was hesitant to  
12 give or let the GCCF know that you might not have all the  
13 social security numbers of these clients? Did you get any  
14 feeling like that around your work place?

15 A. No, not at all.

16 Q. Now, tell me about this latter part of 2010 in terms of  
17 training the field team. Did you get involved in that aspect  
18 at all?

19 A. No, I did not.

20 Q. Did you know that it was going on?

21 A. Yes. I had to do a certain work in the database to prep  
22 for security reasons so that when our IT, other IT department  
23 set up for the field workers to have access to the database,  
24 everything was strictly what they needed to see and what they  
25 needed to use.

1 Q. And were there e-mails going all over the place in terms  
2 of the people that were involved in setting up that training so  
3 that it could run smoothly?

4 A. Yes.

5 Q. And at some point, was access even given to the field team  
6 workers on a limited basis into the database.

7 A. Yes, it was.

8 Q. And why was that?

9 A. We -- all the work that we do within the firm or outside  
10 of the firm, we like to store it into the database, everything  
11 centrally located. We knew that the work that they were doing  
12 would ultimately end up in the database, and we felt like it  
13 was most convenient for them to be able to access the database  
14 so that they can look for any existing clients or add client  
15 information when needed.

16 Q. Field packets that went out as part of that effort in late  
17 October, November time frame, December of 2010, were you aware  
18 that field packets were put together and sent out to the field?

19 A. I was.

20 Q. And tell us what your level of experience was in that and  
21 why it was done.

22 A. I don't remember having a hand in the field packets. I  
23 remember, you know, e-mail correspondence saying field workers  
24 were going to get field packets, but I think those were built  
25 in, predetermined by someone other than myself.

1 Q. Do you recall what the contents of the field packets were?

2 A. Not specifically, but I remember it was five or six  
3 different items.

4 Q. Do you recall it containing a GCCF claim form that  
5 Mr. Feinberg had instructed was required?

6 A. I do remember a claim form being part of the packet.

7 Q. Was that part of your database construction, that  
8 particular claim form that Mr. Feinberg required?

9 A. Yes.

10 Q. Do you recall the field packets being split up into  
11 geographical zones?

12 A. Sounds familiar, yes.

13 Q. Were you involved in the splitting up of the geographical  
14 zones?

15 A. I don't remember being a part of that.

16 Q. Do you recall the reasons of why it was split up into the  
17 geographical zones?

18 A. I think I remember with field workers, I think it was  
19 going to be more convenient to split them up into zones. It  
20 was more efficient.

21 Q. Did you work at all with Chris Deleon?

22 A. I know I had e-mail correspondence with him regarding  
23 database screens that field workers were accessing, but very  
24 limited.

25 Q. Now, would he ask for your assistance at times with

1 respect to database issues?

2 A. Yes, if we were -- if they were having an issue connecting  
3 or if they were having an issue modifying any specific fields  
4 or viewing documents within the database, he would e-mail me, I  
5 would e-mail him back with tips or you know whatever  
6 explanation was needed.

7 Q. Focusing then again on the latter part of 2010, do you  
8 recall the creation of a document called the plaintiff profile  
9 form, PPF?

10 A. Yes.

11 Q. Tell us what that was about?

12 A. That was another, you know, court document, like we do for  
13 a lot of torts where we can build the document or form within  
14 the database and the different fields of information where we  
15 store name, address, whatever we have on a client can be viewed  
16 within the document and then generated in mass for filings or  
17 mailing out.

18 Q. All right. And those plaintiff profile forms were going  
19 to be filed at that time to BP and the GCCF, is that right?

20 A. That's correct.

21 Q. Okay. Do you recall how many were initially filed?

22 A. Not a specific number, but I -- tens of thousands.

23 Q. And among those tens of thousands, did you run an analysis  
24 to see the extent to which you and your law firm provided  
25 notice to GCCF and to BP that you didn't have full social



1 security numbers?

2 A. Yes, I did.

3 Q. Please tell the jury as to these plaintiff profile forms  
4 that were filed the number of those forms that had the notation  
5 000 or multiple zeros?

6 A. If I could refer to notes, I can give you specific  
7 numbers.

8 Q. Sure.

9 A. For the PPF or plaintiff profile form, the three leading  
10 zeros, we had 6991.

11 Q. Sixty-nine -- how many?

12 A. 6991.

13 Q. Of different case numbers that you put just 000 to show  
14 that you didn't have the social security number?

15 A. Yes. Sometimes it was leading zeros. I think in this  
16 case, I feel like it was three leading zeros for the social  
17 security number.

18 Q. How many -- did you notify GCCF, if at all, of multiple  
19 X's?

20 A. We did. I feel like on this form we only had one with  
21 triple X's.

22 Q. And how about did you ever notate in words that you're  
23 going to supplement?

24 A. Yes. We would use the language "will supplement."

25 Q. Will supplement?

1 A. And in this form, we had 276.

2 Q. Okay. So total of over 7,000 different PPFs, plaintiff  
3 profile forms, were filed giving notice to GCCF that you didn't  
4 have full social security numbers?

5 A. That's correct.

6 Q. Okay. Did -- after that, was another form later filed  
7 called the plaintiff short form?

8 A. Yes.

9 Q. And what form is that, Mr. Archer?

10 A. That's another form, claim form that was required that had  
11 -- that we built in the database, and it had different data  
12 points on it which included a social security number.

13 Q. Okay. And was disclosures also made in those forms to  
14 GCCF that you didn't have full social security numbers for all  
15 these clients?

16 A. Yes. On that form, we were only required to provide the  
17 last four digits of the social security number, and we would  
18 provide four zeros or three zeros and a one to make it known  
19 that we were missing a social security number for that client.

20 Q. And of the plaintiff short forms, is that the verbiage?  
21 Yes, plaintiff short forms?

22 A. Yes, sir.

23 Q. How many did you give notice to GCCF and BP that you  
24 didn't have the social security number?

25 A. It was 3,739.

1 Q. Okay. And later on in the case, there's something called  
2 a Presentment Form. Right?

3 A. That's correct.

4 Q. And that was filed in early 2013, January, I believe?

5 A. Yes.

6 Q. Okay. Did you follow the same procedure in terms of  
7 giving notice to whoever you're filing those with that you  
8 don't have all the social security numbers?

9 A. That's correct.

10 Q. And how many of all of those thousands did you give notice  
11 in January -- as late as January of 2013 that you didn't have  
12 social security numbers?

13 A. For the four zeros, we had 3,054.

14 Q. Okay?

15 A. For the 0001, we had 371 clients. And for the XXX, we had  
16 91.

17 Q. Okay. And did you ever get any notice back from GCCF or  
18 the -- anybody related to BP or the settlement process of  
19 asking for follow-up on any of these numbers?

20 A. I can't recall personally if I did. Typically that's not  
21 something that would be directed at me coming directly from the  
22 GCCF.

23 Q. Okay. Let me go to a different topic. The procedure of  
24 dismissals. Are you familiar with the procedure that your firm  
25 follows in terms of dismissing cases and what is required

1 before you dismiss a case?

2 A. Yes. We would do different -- mark different locations in  
3 the database, and then we would sometimes set up dismissal  
4 forms in the database so that we can generate them in mass.

5 Q. With respect to BP, and we've got e-mails here if you ever  
6 need to refresh your recollection on any of these things, just  
7 ask me. With respect to BP, do you recall something called a  
8 no interest letter?

9 A. I do.

10 Q. Okay. And did you take part in the creation of that no  
11 interest letter?

12 A. Maybe not the language, but setting it up in the database  
13 so that we can generate them in bulk from the database.

14 Q. And as far as you know, was the procedure that a case  
15 could not be dismissed or should not be dismissed until a  
16 client affirmatively tells you in a no interest letter?

17 A. That's the standard procedure, if I recall.

18 Q. Did you follow that in other torts, as well?

19 A. Yes.

20 Q. Okay. The -- do you remember that there indeed happened  
21 dismissals in the BP case?

22 A. Did dismissals happen?

23 Q. Yes.

24 A. Yes.

25 Q. Do you remember the numbers that there were dismissals?

1 A. Not specifically, no.

2 Q. Okay. Was it just a few or were there hundreds?

3 A. I think there was quite a few.

4 Q. Okay. And once a case is about to be dismissed, is there  
5 also procedure where letters go out or calls go out to the  
6 client trying to confirm the situation that of a case possibly  
7 getting dismissed?

8 A. Yes. In some instances, multiple calls and multiple  
9 letters to a client before taking that step to dismiss.

10 Q. And all of this, of course, is tracked in the database, is  
11 that right?

12 A. Yes, it is.

13 Q. Okay. Getting to a different topic, there were calls made  
14 by the firm to clients in the BP case, both in English as well  
15 as the Vietnamese language, is that right?

16 A. That's correct.

17 Q. And how did you get involved in the procedures of how that  
18 happened?

19 A. We do auto dialers is what we call them for different  
20 torts, not just BP. And what I would do is generate from the  
21 database using case numbers and phone numbers, I would build  
22 the files to give to our IT department who could program the  
23 calls to go out in bulk.

24 Q. And who would decide on the language of the particular  
25 calls being made?

1 A. I think in most cases it would be the attorneys.

2 Q. Okay. Do you recall dealing with Kayleigh Stone with  
3 respect to these auto dials in 2012?

4 A. Yes.

5 Q. Let me ask you about Kayleigh Stone. How often would you  
6 communicate with her with respect to the BP case?

7 A. Sometimes once a week, sometimes daily.

8 Q. Okay. And did you ever -- did you ever get any indication  
9 that she was concerned with the integrity of the client base or  
10 that something fraudulent was going on?

11 A. No, sir.

12 Q. Ever indicate to you at all that she was concerned about  
13 things she may have heard or seen?

14 A. No.

15 Q. Once it got to this stage of the latter part of 2012  
16 and 2013, there was some e-mails exchanged with respect to the  
17 type of proof that would be needed to settle the case, isn't  
18 that right? Do you recall that?

19 A. That's correct.

20 Q. Okay. Here's a couple of exhibits. 5746 and 8154. I  
21 want to refer your attention to exhibit 8154. If we could put  
22 that up on the screen, please, Mr. Cartwright. 8154, D2-8154.  
23 Do you have that? Good.

24 Do you recall this particular database set up?

25 A. Yes.

1 Q. And tell us what -- how this came to be.

2 A. Well, there are different aspects of the database that are  
3 all linked typically on a case level. This instruction at the  
4 top, number one, we have a specific screen where we track  
5 damages that a client incurs, and these would be different  
6 damage categories that we would program in to the database so  
7 that our users can assign those values for our cases.

8 Q. Who would decide as to what type of proof was going to be  
9 needed that's listed on that particular document?

10 A. In most cases it would be the attorneys.

11 Q. Okay. And what was the purpose of actually setting up  
12 this screen? Is it a check off list, or how was it used?

13 A. It would vary in different ways. Sometimes they're  
14 selected with a checkbox or a dropdown list and we assign those  
15 different values to all of our clients so that we can track  
16 everything in detail case-by-case.

17 Q. Okay. Let me switch to a different topic now, Mr. Archer,  
18 and ask you about addresses and client contact through the  
19 listed addresses. Was there any effort that you participated  
20 in to discover or to try to get accurate addresses for these  
21 clients?

22 A. Yes. I was trained on west batch, through Westlaw, to  
23 generate groups of spreadsheets of addresses, social security  
24 numbers, dates of birth, and run them in batches through  
25 software called west batch and get positive or negative values

1 from those matches.

2 Q. And how successful was the west batch project?

3 A. It was kind of limited. It wasn't very efficient because  
4 the software would only allow you to deal with small numbers at  
5 a time, and we needed to try and evaluate and verify tens of  
6 thousands at any given time.

7 Q. Okay.

8 A. So we felt like the other avenues would probably be more  
9 practical and efficient.

10 Q. Well, let me talk to you about those other avenues. I  
11 want to show you 12839. Could you bring that up,  
12 Mr. Cartwright?

13 All right. This is an e-mail at the top from David Watts  
14 to Mikal Watts, and you're copied on it, is that correct?

15 A. That's correct.

16 Q. Okay. This is -- 12839. I don't have that. I have the  
17 wrong number. May I see that, please?

18 **MR. KENNEDY:** What was that Exhibit Number again?

19 **MR. MCCRUM:** This would you know is 12839 it appears,  
20 but that's not the number --

21 **BY MR. MCCRUM:**

22 Q. Let me just ask you this: Did you eventually get away  
23 from the west batch searches and go into a search involving the  
24 NCOA?

25 A. That's correct.



1 Q. And what is that all about sir?

2 A. That's the national change of address system. I would  
3 have provided a spreadsheet of addresses. I believe in this  
4 instance, we would use -- and a lot of instances, we use the  
5 Tom Kelly, provide him with the statistical data, and he would  
6 provide us with return data letting us know whether addresses  
7 were valid or if clients had changed addresses and give us  
8 updated addresses, and we could take those returns --

9 Q. Do you recall that process starting or your cooperation  
10 with the NCOA, the National Postage Service, as late as  
11 February of 2012?

12 A. That sounds right.

13 Q. Now, how long did that verification process go on in 2001?

14 A. I can't say specifically. I know it was a significant  
15 amount of time.

16 Q. So who gave the instructions to, as late as 2012, to keep  
17 looking and employing new services to try to find good  
18 addresses for these clients?

19 A. Most of the e-mails to me to keep trying to do that would  
20 have been David Watts.

21 Q. And did that continue through the course of 2012?

22 A. It may have. We're always trying to find up-to-date  
23 information for our clients.

24 Q. And speaking of that, in dealing with David Watts, through  
25 the course of these years, 2011, '12, '13, did you ever get any

1 indication from David Watts that he doubted whether these  
2 clients even existed?

3 A. No, I did not.

4 Q. Indeed, is this an example as far as giving you  
5 instructions to go and hire these folks with the postal service  
6 or the national change of address to get good addresses, is  
7 that one of several acts that he asked you to do which would  
8 indicate that he was still trying to find these people?

9 A. Yes.

10 Q. I'm going to ask you about several e-mails that occurred  
11 in the latter half of 2012. First of all, 10657, may I see  
12 that, Mr. Cartwright?

13 Now, this is an e-mail from Kayleigh Stone to you,  
14 correct?

15 A. That's correct.

16 Q. And it has different fields and whatnot. What's going on  
17 right here with ID1, date received, blank field, et cetera?  
18 What is going on in this e-mail?

19 A. Well, the screen that she's referencing is the BP case  
20 info screen. That's the main layout in the database where our  
21 users would go and work on data entry, different data points  
22 for our BP clients. So what she is requesting is that we add  
23 different fields for the claimant form and registration form,  
24 and whenever it says drop down, that's when you click in a  
25 field and those are the different options that you would

1 select, the user would select to choose between.

2 Q. So would this relate to the number of ID, identifications  
3 that would be required before any of your clients could get  
4 paid as part of the registration and settlement?

5 A. Yes, that's correct.

6 Q. Did you talk to her about this topic or did you get this  
7 e-mail and that's it, or do you recall?

8 A. I don't remember specifically whether we had to talk over  
9 the phone or anything about it. It seemed to me like this  
10 would have been the request and I would set it up and we would  
11 move on to the next aspect of the project.

12 Q. Let me show you a different exhibit. This is 10795. Now,  
13 this particular e-mail is also from Kayleigh Stone, and this is  
14 as late as October 3rd of 2012, right?

15 A. That's correct.

16 Q. Okay. And what is this going on with respect to BP claim  
17 form warning? What is that?

18 A. This would be one of our letters that we would add to the  
19 database so that we could mail them out to clients who were  
20 missing data from, what we would call a warning letter.

21 Q. Okay. Let me show you now 101 -- I'm sorry, 1061. 10161.  
22 I'm sorry. 10161. This one is a little bit later in October,  
23 right? October 26. This says also an e-mail from Kayleigh  
24 Stone to you and others?

25 A. That's correct.

1 Q. It refers to an opt-out DL letter. What is that referring  
2 to?

3 A. That would be DL stands for deadline. That would be there  
4 would be a specific date in the letter letting the client know  
5 they have up until that deadline to opt-out of a claim.

6 Q. Let me show you 5635. I only have about five more  
7 minutes, judge, for time purposes.

8 This appears to be an e-mail from you to Kayleigh Stone,  
9 right?

10 A. This would have been from me to --

11 Q. Oh, from you --

12 A. To Bryan Vines.

13 Q. Okay. And it subsumes within it -- I'm sorry. On the  
14 other, below, the e-mail from Kayleigh Stone to Bryan. That's  
15 what it is.

16 A. That's correct.

17 Q. And what is going on with this with respect to the BPO  
18 auto dialer?

19 A. I had referenced it earlier. For the auto dial calls, I  
20 would provide certain data, typically the numbers from the  
21 database, for the set of clients that we wanted to call. And  
22 it looks like Kayleigh e-mailed our help desk system which gets  
23 forwarded to Bryan Vines saying that she attached the auto  
24 file, so the recording for the call, and then I followed up  
25 within the same work order or the same e-mail thread and

1 attached the comma-separated spreadsheet with all the phone  
2 numbers so he could use both pieces, the phone numbers and the  
3 recording to do the auto dial call to the set of clients.

4 Q. Okay. Let me now refer you to 8462. This has a couple.  
5 Let's start more at the bottom, on the earlier e-mail. The  
6 very bottom. Right down here where it says on December 2  
7 of 2012, Kayleigh Stone wrote and then it has here, here is the  
8 transcript of the auto dialer. Now, who creates this  
9 transcript? Would that be the project manager, Kayleigh Stone?

10 A. I can't say specifically. A lot of times, a project  
11 manager or department head may suggest language, but it's  
12 typically approved by an attorney.

13 Q. Okay. In any event, she's asking to do a repeat of the  
14 auto dialer completed this last weekend. So do these auto  
15 dialers, I guess they go out at the direction of either the  
16 project manager or somebody else?

17 A. That's correct.

18 Q. And then if we look further up, this appears to be another  
19 e-mail from Kayleigh Stone where it says good afternoon,  
20 exclamation point. Wants a repeat. And then it says here,  
21 same exact message, same found set of clients. What does that  
22 mean, same found set of clients, or do you know?

23 A. The found set of clients is language we use for our  
24 database. When you do a find to isolate a specific set of  
25 clients that you want to target for a project or whatever, we

1 refer to that as a found set. So we had a found set of clients  
2 that we had done the auto dialer call for in English, and we  
3 wanted to do the same exact set of phone numbers for the  
4 Vietnamese language call.

5 Q. Okay. Right here where it indicates something with  
6 respect to Vietnamese, the secondary auto dialer will be in  
7 Vietnamese, I need to get the found set to Matt and the auto  
8 recorded. I guess she's referring to you?

9 A. Yes, that's correct. So that I could provide the phone  
10 number list for that, that set.

11 Q. Okay. And how would the Vietnamese message be recorded?  
12 Did y'all have -- y'all had hired Vietnamese workers?

13 A. That's correct.

14 Q. Okay. And then I think the last e-mail that I want to  
15 show you is 6422. This is an e-mail from Wynter Lee to you,  
16 copying David and Kayleigh Stone. And it indicates the  
17 different statistics with employer names, many are will  
18 supplement but not blank, and then some instructions to  
19 Kayleigh.

20 Now, during all the course of these e-mails back and forth  
21 with Kayleigh Stone, again, I'm -- now that you've seen these  
22 and you've refresh your recollection of what's going on there,  
23 did you get any hint at all that Kayleigh Stone was upset or  
24 frustrated in any way with this project?

25 A. No, I did not.

1 Q. Is all of the conduct that you have seen through the  
2 course of these months that we've seen in e-mails from August  
3 to October to December of 2012, is -- and then into 2013 with  
4 the one that you're holding, is that consistent or inconsistent  
5 with other project managers that you worked with on other torts  
6 at the same time?

7 A. It seemed very consistent.

8 Q. Okay. Well, now, on the Presentment Forms, there had been  
9 a mistake happen where the first and last names were inverted,  
10 is that correct?

11 A. That's correct. It was --

12 Q. How did that happen?

13 A. It was an inadvertent error I made when I set up that  
14 form. What we do for clients who sometimes have a  
15 representative, the first and last name needs to be for the  
16 representative on the form for, you know, first and last name.  
17 And we have to stack fields on top of each other for the  
18 representative first and last name or the client first and last  
19 name. In this instance, the representative first and last name  
20 were in the correct spots and underneath where I couldn't see  
21 the first and last name fields for the client were flipped.  
22 And those forms got generated in bulk and somehow it slipped  
23 past me, but that's how they ended up getting submitted, but it  
24 was a database programming error.

25 Q. Okay. And when you have that type of inadvertent errors

1 or other issues that came up through the course of this BP, was  
2 that atypical of these mass torts where you're dealing with  
3 these thousands of clients?

4 A. I mean, you have a small percentage of error, but I'd like  
5 to think that I typically don't make that type of error when  
6 setting up a form, but it does happen.

7 Q. When you have these large client bases, do you run into  
8 issues of having to follow-up and get more information? Have  
9 you seen that in other cases?

10 A. Always. I mean, it's a pretty standard -- standard issue  
11 for different tort types. Those warning letters and deadline  
12 to opt-out letters is something standard for not just BP.

13 Q. Through the course of 2011, '12, into '13, up into  
14 February when the Secret Service visited your offices, did you  
15 think that BP was running particularly unusual or usual as  
16 compared to your experience in working all these mass torts?

17 A. It seemed normal to me. Nothing stood out to me as  
18 alarming or suggested that anything like that would happen.

19 Q. Now, you were interviewed by the Secret Service, is that  
20 right?

21 A. That's correct.

22 Q. And that interview took place couple months after the  
23 search warrants were executed in June of 2013, right?

24 A. That's correct.

25 Q. And how long did that interview take?



1 A. It was an hour or two.

2 Q. Okay. And were they taking notes while you were --

3 A. They were. And then we reviewed those notes at the end of  
4 the interview.

5 Q. Now, we have not been provided any notes of your  
6 interviews. Have you ever been shown any notes after that day  
7 or reports or anything of that interview?

8 A. I have not.

9 Q. And what kind of questions did they ask you during that  
10 hour and a half or whatever it was?

11 A. They asked me what I did at the firm, how long I had been  
12 there, what things I did as far as BP goes, asked me specific  
13 questions about David and different, you know, employees and my  
14 employers, just trying to get a feel for what happened and if  
15 anything seemed out of the ordinary or suspicious to me.

16 Q. And what was your answer to the questions of did anything  
17 seem out of ordinary or suspicious?

18 A. Pretty much exactly how I've answered your questions  
19 today, nothing stood out to me. We always did our due  
20 diligence and nothing really seemed, you know, funny to me.

21 Q. So after June 11 of 2013, did you ever get another call  
22 from any government representative about possibly testifying in  
23 this case?

24 A. Well, I did get subpoenaed, but I was -- up until -- that  
25 was the first time I had been contacted by the government sips

1 being interviewed by the Secret Service in 2013.

2 Q. Did they call you about that subpoena or did you just get  
3 served with one?

4 A. I just got served at my place of residence.

5 Q. And did anyone come and follow-up with that as far as  
6 asking you to testify?

7 A. No, they did not.

8 Q. I believe that's all I have, Judge.

9 **THE COURT:** Any other counsel for the defendants have  
10 cross-examination questions for this witness? Does the  
11 government have any cross-examination questions for this  
12 witness? Is.

13 **MR. FRANSEN:** Yes, I do, Your Honor.

14 **THE COURT:** All right. Let's preserve those until  
15 tomorrow morning.

16 **MR. FRANSEN:** Yes, sir.

17 **THE COURT:** All right. Ladies and gentlemen of the  
18 jury, it's sometime after five. It seems like a good time to  
19 conclude for the evening. I'm going to ask as always that you  
20 please remember the Court's instructions regarding your conduct  
21 outside of the courtroom. Please don't talk with anyone about  
22 the case or permit anyone to talk with you about it. You  
23 should not even be talking about this case even among  
24 yourselves. Inadvertently you may start to develop opinions  
25 about the case. And as I've told you before, you have not

1 heard all of the evidence, and you certainly have not heard the  
2 Court's instructions on the law. In the event the case is  
3 reported in the media, please don't read about it, please don't  
4 listen to any radio or television newscasts concerning it. And  
5 of course as always, please don't make any independent  
6 investigations on your own. You are to be guided and to make  
7 your decisions based solely on what you see and hear in the  
8 courtroom. We'll see you tomorrow morning at 9:00 o'clock.

9 **(Jury out at 5:09 p.m.)**

10 **THE COURT:** All right. Mr. McCrum, if you will  
11 assist the clerk in gathering up the exhibits and lists so that  
12 we can keep up with them.

13 **MR. MCCRUM:** That's all of them, Judge.

14 **THE COURT:** Before we recess for the evening, is  
15 there anything else we need to take up on behalf of the  
16 government?

17 **MR. RUSHING:** No, Your Honor.

18 **THE COURT:** Anything on behalf of any of the  
19 defendants?

20 **MR. WATTS:** No, sir.

21 **THE COURT:** Very well. Then we'll be in recess until  
22 tomorrow morning at 9:00 a.m.

23 **(Recess taken 5:10 p.m.)**