

12:34 1 **THE COURT:** Is the government ready to proceed?

09:04 2 **MR. RUSHING:** We are, Your Honor.

09:04 3 **THE COURT:** Defendants ready to proceed.

09:04 4 **MR. MIKAL WATTS:** Yes, sir.

09:04 5 **MR. MCCRUM:** Yes, sir.

09:04 6 **MR. HIGHTOWER:** Yes, sir.

09:04 7 **THE COURT:** Very well. Bring in the jury, please.

09:05 8 **(JURY IN AT)**

09:05 9 **THE COURT:** Thank you. Please be seated. Good
10 morning, ladies and gentlemen. The parties have indicated to
11 the Court that they are ready to proceed. I was working late
12 and have prepared the instructions on the law. Now, these are
13 the instructions on the law that you must follow in returning
14 your verdict in this case. I will shortly read those
15 instructions to you prior to closing arguments. I have,
16 however, taken the liberty of making copies for each of you
17 ladies and gentlemen of the jury so that you may follow along
18 with me as I read the instructions, and I will allow you to
19 take those back to the jury room with you during your
20 deliberations. Stanley, will you provide each members of the
21 jury with a copy of the instructions.

09:07 22 Members of the jury, in any jury trial, there are, in
23 effect, two judges. I am one of the judges, and the other is
24 the jury. It is my duty to preside over the trial and to
25 decide what evidence is proper for your consideration. It is

1 also my duty at the end of the trial to explain to you the
2 rules of law that you must follow and apply in arriving at your
3 verdict.

09:07 4 First, I will give you some general instructions which
5 apply in every case, for example, instructions about the burden
6 of proof and how to judge the believability of witnesses. Then
7 I will give you some specific rules of law about this
8 particular case. And finally, I will explain to you the
9 procedures you should follow in your deliberations.

09:07 10 You, as jurors, are the judges of the facts. But in
11 determining what actually happened, that is, in reaching your
12 decision as to the facts, it is your sworn duty to follow all
13 of the rules of law as I explain them to you.

09:08 14 You have no right to disregard or give specific attention
15 to any one instruction or to question the wisdom or correctness
16 of any rule I may state to you. You must not substitute or
17 follow your own notion or opinion as to what the law is or
18 ought to be. It is your duty to apply the law as I explain it
19 to you, regardless of the consequences. It is also your duty
20 to base your verdict solely upon the evidence, without
21 prejudice or sympathy. That was the promise you made and the
22 oath you took before accepted by the parties as jurors, and
23 they have the right to expect nothing less.

09:09 24 During your deliberations, you must not communicate with
25 or provide any information to anyone by any means about this

1 case. You may not use any electronic device or media, such as
2 the telephone, a cell phone, a smart phone, iPhone, Blackberry
3 or computer, the Internet, any Internet service, any text or
4 instant messaging service, any Internet chat room, blog or web
5 site such as Facebook, My Space, LinkedIn, YouTube or Twitter
6 to communicate to anyone any information about this case or to
7 conduct any research about this case until I accept your
8 verdict. In other words, you cannot talk to anyone on the
9 phone, correspond with anyone, or electronically communicate
10 with anyone about this case. You can only discuss the case in
11 the jury room with your fellow jurors during deliberations. I
12 expect you will inform me promptly if you become aware of
13 another juror's violation of these instructions.

09:10 14 You may not use these electronic means to investigate or
15 to communicate about the case because it is important that you
16 decide this case based solely on the evidence presented in this
17 courtroom. Information on the Internet or available through
18 social media might be wrong, incomplete or inaccurate. You are
19 only permitted to discuss the case with your fellow jurors
20 during your deliberations because they have seen and heard the
21 same evidence you have. In our judicial system, it is
22 important that you are not influenced by anything or anyone
23 outside of this courtroom. Otherwise, your decision may be
24 based on information known only by you you and not your fellow
25 jurors or the parties in the case. This would unfairly and

1 adversely impact the judicial process. The indictment or the
2 formal charge against the defendant is not evidence of guilt.
3 Indeed, a defendant is presumed by the law to be innocent.
4 Each defendant begins with a clean slate. The law does not
5 require a defendant to prove his or her innocence or to produce
6 any evidence at all, and no inference whatever may be drawn
7 from the election of a defendant not to testify.

09:11 8 The government has the burden of proving a defendant
9 guilty beyond a reasonable doubt, and if it fails to do so, you
10 must acquit the defendant. While the government's burden of
11 proof is a strict or heavy burden, it is not necessary that a
12 defendant's guilt be proved beyond all possible doubt. It is
13 only required that the government's proof exclude any
14 reasonable doubt concerning the guilt of a defendant.

09:12 15 A reasonable doubt is a doubt based upon reason and common
16 sense, after careful and impartial consideration of all the
17 evidence in the case. Proof beyond a reasonable doubt,
18 therefore, is proof of such a convincing character that you
19 would be willing to rely and act upon it without hesitation in
20 making the most important decisions of your own affairs.

09:12 21 As I told you earlier, it is your duty to determine the
22 facts. To do so, you must consider only the evidence presented
23 during the trial. Evidence is the sworn testimony of the
24 witnesses, including stipulations, if any, and the exhibits.
25 The questions, statements, objections, and arguments made by

1 the lawyers are not evidence.

09:12 2 The function of the lawyers is to point out those things
3 that are most significant or most helpful to their side of the
4 case, and in so doing, to call your attention to certain facts
5 or inferences that might otherwise escape your notice. In the
6 final analysis, however, it is your own recollection and
7 interpretation of the evidence that controls in the case. What
8 the lawyers say is not binding upon you.

09:13 9 During the trial I may have sustained objections to
10 certain questions and/or exhibits. If so, you must disregard
11 those questions and/or exhibits entirely. Do not speculate as
12 to what the witness would have said if permitted to answer the
13 question or as to the contents of any exhibit. Your verdict
14 must be based solely on the legally admissible evidence and
15 testimony.

09:13 16 Also, do not assume from anything that I may have done or
17 said during the trial that I have an opinion concerning any of
18 the issues in this case. Except for the instructions to you on
19 the law, you should disregard anything I may have said during
20 the trial in arriving at your own verdict.

09:14 21 In considering the evidence, you are permitted to draw
22 such reasonable inferences from the testimony and exhibits as
23 you feel are justified in the light of common experience. In
24 other words, you may make deductions and reach conclusions that
25 reason and common sense lead you to draw from the facts which

1 have been established by the evidence.

09:14

2 Do not be concerned about whether evidence is direct
3 evidence or circumstantial evidence. You should consider and
4 weigh all of the evidence that was presented to you.

09:14

5 Direct evidence is the testimony of one who asserts actual
6 knowledge of a fact, such as an eyewitness. Circumstantial
7 evidence is proof of a chain of events and circumstances
8 indicating that something is or is not a fact.

09:14

9 The law makes no distinction between the weight you may
10 give to either direct or circumstantial evidence. But the law
11 requires that after weighing all of the evidence, whether
12 direct or circumstantial, you be convinced of the guilt of a
13 defendant beyond a reasonable doubt before you can find him or
14 her guilty.

09:15

15 I remind you that it is your job to decide whether the
16 government has proved the guilt of a defendant beyond a
17 reasonable doubt. In doing so, you must consider all of the
18 evidence. This does not mean, however, that you must accept
19 all of the evidence as true or accurate.

09:15

20 You are the sole judges of the credibility or
21 believability of each witness and the weight to be given to the
22 witness' testimony. An important part of your job will be
23 making judgments about the testimony of the witnesses who
24 testified in this case. You should decide whether you believe
25 all, some part or none of what each person had to say and how

1 important that testimony was. In making that decision, I
2 suggest that you ask yourself a few questions: Did the witness
3 impress you as honest? Did the witness have any particular
4 reason not to tell the truth? Did the witness have a personal
5 interest in the outcome of the case? Did the witness have any
6 relationship with either the government or the defense? Did
7 the witness seem to have a good memory? Did the witness
8 clearly see or hear the things about which he or she testified?
9 Did the witness have the opportunity and ability to understand
10 the questions clearly and answer them directly? Did the
11 witness' testimony differ from the testimony of other
12 witnesses?

09:16 13 These are a few of the considerations that will help you
14 determine the accuracy of what each witness said.

09:16 15 In addition, no matter what language people speak, they
16 have the right to have their testimony heard and understood.
17 There have been witnesses in this trial who have testified with
18 the help of a Vietnamese interpreter. The interpreter is
19 required to remain neutral and to translate between English and
20 Vietnamese accurately and impartially to the best of the
21 interpreter's skill and judgment. You must evaluate
22 interpreted testimony as you would any other testimony. That
23 is, you must not give interpreted testimony any greater or
24 lesser weight than you you would if the witness had spoken
25 English. Keep in mind that a person might speak some English

1 without speaking it fluently. That person has the right to the
2 services of an interpreter. Therefore, you should not give
3 greater or lesser weight to a person's translated testimony
4 based on your conclusions, if any, regarding the extent to
5 which that person speaks English.

09:18 6 Your job is to think about the testimony of each witness
7 you have heard and decide how much you believe of what each
8 witness had to say. In making up your mind and reaching a
9 verdict, do not make any decisions simply because there were
10 more witnesses on one side than on the other. Do not reach a
11 conclusion on a particular point just because there were more
12 witnesses testifying for one side on that point. You will
13 always bear in mind that the law never imposes upon a defendant
14 in a criminal case the burden or duty of calling any witnesses
15 or producing any evidence.

09:18 16 Where a defendant has offered evidence of good general
17 reputation for truth and veracity, honesty and integrity, or
18 character as a law abiding citizen, you should consider such
19 evidence along with all the other evidence in the case.

09:18 20 Evidence of a defendant's character, inconsistent with
21 those traits of good character ordinarily involved in the
22 commission of the crime charged, may give rise to a reasonable
23 doubt, since you may think it improbable that a person of good
24 character with respect to those traits would commit such a
25 crime.

09:19 1 If scientific, technical or other specialized knowledge
2 might assist the jury in understanding the evidence or in
3 determining a fact in issue, a witness qualified by knowledge,
4 skill, experience, training or education may testify and state
5 an opinion concerning such matters. Merely because such a
6 witness has expressed an opinion does not mean, however, that
7 you must accept this opinion. You should judge such testimony
8 like any other testimony. You you may accept it or reject it
9 and give it as much weight as you think it deserves,
10 considering the witness' education and experience, the
11 soundness of the reasons given for the opinion, and all other
12 evidence in the case.

09:20 13 You will note that the indictment charges that the
14 offenses were committed on or about a specific date. The
15 government does not have to prove that the crime was committed
16 on that exact date, so long as the government proves beyond a
17 reasonable doubt that the defendant or defendants committed the
18 crime on a date reasonably near the dates stated in the
19 indictment.

09:20 20 Are you here to decide whether the government has proved
21 beyond a reasonable doubt that the defendants are guilty of the
22 crimes charged. The defendants are not on trial for any other
23 act, conduct or offense not alleged in the indictment. Neither
24 are you called upon to return a verdict as to the guilt of any
25 other person or persons not on trial as a defendant in this

1 case, except as you are otherwise instructed.

09:20 2 If a defendant is found guilty, it will be my duty to
3 decide what his or her punishment will be. You you should not
4 be concerned with punishment in any way. It should not enter
5 your consideration or discussion.

09:21 6 Certain charts and/or summaries have been received into
7 evidence. You should give them only such weight as you think
8 they deserve. On the other hand, certain charts, summaries
9 and/or other demonstrative aids, such as power points, have
10 been shown to you solely as an aid to help explain the facts
11 disclosed by the evidence, that is, testimony and other
12 documents in the case. These demonstrative aids are not
13 admitted evidence or proof of any facts. You should determine
14 the facts from the evidence that is admitted.

09:21 15 A separate crime is charged against one or more of the
16 defendants in each count of the indictment. Each count, and
17 the evidence pertaining to it, should be considered separately.
18 The case of each defendant should be considered separately and
19 individually. The fact that you may find one or more of the
20 accused guilty or not guilty of any of the crimes charged
21 should not control your verdict as to any other crime or any
22 other defendant. You must give separate consideration to the
23 evidence as to each defendant.

09:22 24 I will now instruct you you on the specific elements of
25 the offenses charged in the indictment.

09:22 1 In count one of the indictment, the defendants are charged
2 with a violation of Title 18, United States Code, section 371.
3 Section 371 makes it a crime for anyone to conspire with
4 someone else to commit an offense against the laws of the
5 United States.

09:22 6 A conspiracy is an agreement between two or more persons
7 to join together to accomplish some unlawful purpose. It is a
8 kind of partnership in crime in which each member becomes the
9 agent of every other member.

09:23 10 The defendants are charged with conspiring to commit the
11 crimes of mail fraud, wire fraud, identity theft, and
12 aggravated identity theft. I will explain the elements of
13 those crimes later on in these instructions. In order for you
14 to convict a defendant of the crime of conspiracy, the
15 government must prove each of the following beyond a reasonable
16 doubt:

09:23 17 First, that the defendant and at least one other person
18 made an agreement to commit the crime of mail fraud, wire
19 fraud, identity theft, or aggravated identity theft as charged
20 in the indictment; second, that the defendant knew the unlawful
21 purpose of the agreement and joined in it willfully, that is,
22 with the intent to further the unlawful purpose; and third,
23 that one of the conspirators during the existence of the
24 conspiracy knowingly committed at least one of the overt acts
25 described in the indictment in order to accomplish some object

1 or purpose of the conspiracy.

09:24 2 You must determine whether the conspiracy charged in count
3 one of the indictment existed, and if it did, whether the
4 defendant was a member of it. If you find that the conspiracy
5 charged did not exist, then you must return a verdict of not
6 guilty on the conspiracy claim, even though you find that some
7 other conspiracy existed. If you find that a defendant was not
8 a member of the conspiracy charged in the indictment, then you
9 must find the defendant not guilty on the conspiracy claim,
10 even though that defendant may have been a member of some other
11 conspiracy.

09:25 12 One may become a member of a conspiracy without knowing
13 all of the details of the unlawful scheme or the identities of
14 all of the other alleged conspirators. If a defendant
15 understands the unlawful nature of a plan and scheme and
16 knowingly and intentionally joins in that plan or scheme on one
17 occasion, that is sufficient to convict him or her for
18 conspiracy, even though the defendant had not participated
19 before and even though the defendant played only a minor part.

09:25 20 The government need not prove that the alleged
21 conspirators entered into any formal agreement, nor that they
22 directly stated between themselves all of the details of the
23 scheme. Similarly, the government need not prove that all of
24 the details of the scheme alleged in the indictment were
25 actually agreed upon or carried out. Nor must it prove that

1 all of the persons alleged to have been members of the
2 conspiracy were such or that the alleged conspirators actually
3 succeeded in accomplishing their objectives.

09:26 4 Mere presence at the scene of an event, even with
5 knowledge that a crime is being committed, or the mere fact
6 that certain persons may have associated with each other and
7 may have assembled together and discussed common aims and
8 interests does not necessarily establish proof of the existence
9 of a conspiracy. Also, a person who has no knowledge of a
10 conspiracy but who happens to act in a way which advances some
11 purpose of a conspiracy does not thereby become a conspirator.

09:26 12 Your verdict as to count one for each defendant, whether
13 it is guilty or not guilty, must be unanimous. Count one
14 accuses each defendant of committing the crime of conspiracy in
15 four different ways.

09:27 16 The first is that each defendant conspired to commit the
17 crime of mail fraud. The second is that each defendant
18 conspired to commit the crime of wire fraud. The third is that
19 each defendant conspired to commit the crime of identity theft.
20 The fourth is that each defendant conspired to commit the crime
21 of aggravated identity theft.

09:27 22 The government does not have to prove all of these for you
23 to return a guilty verdict on this charge. Proof beyond a
24 reasonable doubt on one is enough. But in order to return a
25 guilty verdict, all of you must agree that the same one has

1 been proved. All of you must agree that the government has
2 proved beyond a reasonable doubt that the defendant conspired
3 to commit the crime of mail fraud, or all of you must agree
4 that the government has proved beyond a reasonable doubt that
5 the defendant conspired to commit the crime of wire fraud, or
6 all of you must agree that the government proved beyond a
7 reasonable doubt that the defendant conspired to commit the
8 crime of identity theft or all of you must agree that the
9 government proved beyond a reasonable doubt that the conspired
10 to commit the crime of aggravated identity theft.

09:28 11 Further, a conspirator is responsible for offenses
12 committed by another conspirator if the conspirator was a
13 member of the conspiracy when the offense was committed and if
14 the offense was committed in furtherance of or as a foreseeable
15 consequence of the conspiracy.

09:28 16 Therefore, if you find a defendant guilty of the
17 conspiracy charged in this count, count one, and if you find
18 beyond a reasonable doubt that during the time that the
19 defendant was a member of that conspiracy, another conspirator
20 committed the offenses in the other counts, I will discuss in
21 these instructions in furtherance of and as a foreseeable
22 consequence of the conspiracy, then you may find the defendant
23 guilty of the other counts, even though the defendant may not
24 have participated in any of the acts which constitute the
25 offenses described in the other counts.

09:29 1 The defendants are also charged with multiple counts of
2 mail fraud in violation of Title 18, of the United States Code,
3 section 1341. In order for you to convict a defendant of this
4 crime, the government must prove each of the following beyond a
5 reasonable doubt:

09:29 6 First, that the defendant knowingly devised or intended to
7 devise a scheme to defraud, that is to unlawfully obtain money
8 and/or property; second, that the scheme to defraud employed
9 false material representations or false material pretenses or
10 false material promises; third, that the defendant mailed
11 something or caused something to be sent or delivered through
12 the United States Postal Service for the purpose of executing
13 such scheme or attempting so to do; and fourth, that the
14 defendant acted with a specific intent to defraud.

09:30 15 Now, a scheme to defraud means any plan, pattern, or
16 course of action intended to deprive another of money or
17 property by means of false material representations or false
18 material pretenses or false material promises.

09:30 19 A specific intent to defraud means a conscious, knowing
20 intent to deceive or cheat someone.

09:31 21 A representation, pretense or promise is false if it is
22 known to be untrue or is made with reckless indifference as to
23 its truth or falsity. A representation, pretense or promise
24 would also be false if it constitutes a half of truth or
25 effectively omits or conceals a material fact, provided it is

1 made with the intent to defraud.

09:31 2 A representation, pretense or promise is material if it
3 has a natural tendency to influence or is capable of
4 influencing the decision of the person or entity to which it is
5 addressed.

09:31 6 It is not necessary that the government prove all of the
7 details alleged in the indictment concerning the precise nature
8 and purpose of the scheme. What must be proved beyond a
9 reasonable doubt is that the defendant knowingly devised or
10 intended to devise a scheme to defraud by means of false or
11 fraudulent representations, pretenses or promises that was
12 substantially the same as the one alleged in the indictment.

09:32 13 It is also not necessary that the government prove that
14 the mailed material was itself false or fraudulent or that the
15 use of the mail was intended as the specific or exclusive means
16 of accomplishing the alleged fraud. What must be proved beyond
17 a reasonable doubt is that the use of the mail was closely
18 related to the scheme because the defendant either mailed
19 something or caused it to be mailed in an attempt to execute or
20 carry out the scheme.

09:32 21 The alleged scheme need not actually have succeeded in
22 defrauding anyone. To cause the mail to be used is to do an
23 act with knowledge that the use of the mail will follow in the
24 ordinary course of business or where such use can reasonably be
25 foreseen even though the defendant did not intend or request

1 the mail to be used.

09:33 2 Each separate use of the mail in furtherance of a scheme
3 to defraud by means of false or fraudulent representations,
4 pretenses or promises constitutes a separate offense.

09:33 5 The defendants are also charged with multiple counts of
6 wire fraud in violation of Title 18 of the United States Code,
7 section 1343. In order for you to convict a defendant of this
8 crime, the government must prove each of the following beyond a
9 reasonable doubt:

09:33 10 First, that the defendant knowingly devised or intended to
11 devise a scheme to defraud, that is to unlawfully obtain money
12 and/or property; second, that the scheme to defraud employed
13 false material representations or false material pretenses or
14 false material promises; third, that the defendant transmitted
15 or caused to be transmitted by way of wire communications in
16 interstate commerce any writing tort purpose of executing such
17 scheme; and fourth, that the defendant acted with a specific
18 intent to defraud.

09:34 19 A scheme to defraud means any plan, pattern, or course of
20 action intended to deprive another of money or property by
21 means of false material representations or false material
22 pretenses or false material promises.

09:34 23 A specific intent to defraud means a conscious, knowing
24 intent to deceive or cheat someone.

09:34 25 A representation, pretense or promise is false if it is

1 known to be untrue or is made with reckless indifference as to
2 its truth or falsity. A representation, pretense or promise
3 would also be false if it constitutes a half of truth or
4 effectively omits or conceals a material fact, provided it is
5 made with the intent to defraud.

09:35 6 A representation, pretense or promise is material if it
7 has a natural tendency to influence or is capable of
8 influencing the decision of a person or entity to which it is
9 addressed.

09:35 10 It is not necessary that the government prove all of the
11 details alleged in the indictment concerning the precise nature
12 and purpose of the scheme. What must be proved beyond a
13 reasonable doubt is that the defendant knowingly devised or
14 intended to devise a scheme to defraud by means of false or
15 fraudulent representations, pretenses or promises that was
16 substantially the same as the one alleged in the indictment.

09:35 17 It is also not necessary that the government prove that
18 the material transmitted by wire communications was itself
19 false or fraudulent or that the use of the interstate wire
20 communications facilities was intended as the specific or
21 exclusive means of accomplishing the alleged fraud. What must
22 be proved beyond a reasonable doubt is that the use of the
23 interstate wire communications facilities was closely related
24 to the scheme because the defendant either wired something or
25 caused it to be wired in interstate commerce in an attempt to

1 execute or carry out the scheme.

09:36 2 The alleged scheme need not actually succeed in defrauding
3 anyone.

09:36 4 To cause interstate wire communications facilities to be
5 used is to do an act with knowledge that the use of the wire
6 communications facilities will follow in the ordinary course of
7 business or where such use can reasonably be foreseen.

09:36 8 Each separate use of the interstate wire communications
9 facilities in furtherance of a scheme to defraud by means of
10 false or fraudulent pretenses, representations or promises
11 constitutes a separate offense.

09:37 12 The defendants are also charged with multiple counts of
13 identity theft in violation of Title 18 of the United States
14 Code, Section 1028(a)(7). In order for you to convict a
15 defendant of this crime, the government must prove each of the
16 following beyond a reasonable doubt:

09:37 17 First, that the defendant knowingly transferred, possessed
18 or used a means of identification of another person; second,
19 that the defendant did so knowing it was without lawful
20 authority; third, that the defendant knew that the means of
21 identification belonged to a real person and not a fictitious
22 person; fourth, that the defendant had the intent to commit or
23 to aid or abet or in connection with any unlawful activity that
24 constitutes a violation of federal law or that constitutes a
25 felony under any applicable state or local law; and fifth, that

1 the unlawful transfer, possession or use of the means of
2 identification was in or affected interstate commerce,
3 including the transfer of a document by electronic means or the
4 means of identification was transported in the mail in the
5 course of the unlawful transfer, possession or use.

09:38 6 Defendants are also charged with aiding and abetting the
7 commission of the offense of identity theft. Title 18 of the
8 United States Code, section two provides that proffer commits
9 an offense against the United States or aids or abets the
10 commission of an offense is punishable as a principal.

09:39 11 Therefore, the guilt of a defendant in a criminal case may
12 be established without proof that the defendant personally did
13 every act constituting the offense alleged. The law recognizes
14 that ordinarily anything a person can do for himself or herself
15 may also be accomplished by him or her through the direction of
16 another person as his or her agent or by acting in concert with
17 or under the direct of another person or persons in a joint
18 effort or enterprise.

09:39 19 If another person is acting under the direct of the
20 defendant or if the defendant joins another person and performs
21 acts with the intent to commit a crime, then the law holds the
22 defendant responsible for the acts and conduct of such other
23 persons just as though the defendant had committed the acts or
24 engaged in such conduct.

09:40 25 Before any defendant may be held criminally responsible

1 for the acts of others, it is necessary that the accused
2 deliberately associate himself or herself in some way with the
3 crime and participate in it with the intent to bring about the
4 crime.

09:40 5 Of course, mere presence at the scene of a crime and
6 knowledge that the crime is being committed are not sufficient
7 to establish that a defendant either directed or aided and
8 abetted the crime unless you find beyond a reasonable doubt
9 that the defendant was a participant and not merely a knowing
10 spectator. In other words, you may not find any defendant
11 guilty unless you find beyond a reasonable doubt that every
12 element of the offense as defined in these instructions was
13 committed by some person or persons and that the defendant
14 voluntarily participated in its commission with the intent to
15 violate the law.

09:41 16 Even if you do not find that a defendant himself or
17 herself committed identity theft, you may still find him or her
18 guilty of identity theft if you find that he or she aided and
19 abetted the commission of identity theft. For you to find a
20 defendant guilty of this crime, you must be convinced that the
21 government has proved each of the following beyond a reasonable
22 doubt:

09:41 23 First, that the offense of identity theft was committed by
24 some person; second, that the defendant associated with the
25 criminal venture; third, that the defendant purposefully

1 participated in the criminal venture; and fourth, that the
2 defendant sought by action to make the venture successful.

09:41 3 To associate with a criminal venture means that the
4 defendant shared the criminal intent of the principal. This
5 element cannot be established if the defendant had no knowledge
6 of the principal's criminal venture.

09:42 7 To participate in a criminal venture means the defendant
8 engaged in some affirmative conduct designed to aid the venture
9 or assist the principal of the crime.

09:42 10 Finally, the defendants are charged with multiple counts
11 of aggravated identity theft in violation of Title 18 of the
12 United States Code, section 1028A. In order for you to convict
13 a defendant of this crime, the government must prove each of
14 the following beyond a reasonable doubt:

09:42 15 First, that the defendant knowingly transferred,
16 possessed, or used without lawful authority, a means of
17 identification of another person; second, that the defendant
18 did so knowing it was without lawful authority; third, that the
19 defendant knew that the means of identification belonged to a
20 real person and not a fictitious person; and fourth, that the
21 transfer, possession or use was during and in relation to
22 committing the crime of mail fraud or wire fraud.

09:43 23 You may also find a defendant guilty of aggravated
24 identity theft if you find that he or she aided and abetted the
25 crime of aggravated identity theft, as we have already

1 discussed with respect to the government's allegations of
2 identity theft. Your verdict as to each of these aggravated
3 identity theft counts, whether it is guilty or not guilty, must
4 be unanimous. These counts accuse each defendant of committing
5 the crime of aggravated identity theft in two different ways.
6 The first is that each defendant committed the crime of
7 aggravated identity theft during and in relation to committing
8 the crime of mail fraud. The second is that each defendant
9 committed the crime of aggravated identity theft during and in
10 relation to committing the crime of wire fraud.

09:44 11 The government does not have to prove each of these for
12 you to return a guilty verdict on these charges. Proof beyond
13 a reasonable doubt on one is enough. But in order to return a
14 guilty verdict, all of you must agree that the same one has
15 been proved. All of you must agree that the government has
16 proved beyond a reasonable doubt that the defendant committed
17 the crime of aggravated identity theft during and in relation
18 to committing the crime of mail fraud, or all of you must agree
19 that the government has proved beyond a reasonable doubt that
20 the defendant committed the crime of aggravated identity theft
21 during and in relation to committing the crime of wire fraud.

09:45 22 Now, the word willfully, as that term has been used from
23 time to time in these instructions, means that the act was
24 committed voluntarily and purposely, with the specific intent
25 to do something the law forbids; that is to say, with bad

1 purpose, either to disobey or disregard the law.

09:45 2 The word knowingly, as that term has been used from time
3 to time in these instructions, means that the act was done
4 voluntarily and intentionally, not because of mistake or
5 accident. You may find that a defendant had knowledge of a
6 fact if you find that the defendant deliberately closed his or
7 her eyes to what would otherwise have been obvious to him or
8 her. While knowledge on the part of a defendant cannot be
9 established merely by demonstrating that the defendant was
10 negligent, careless or foolish, knowledge can be inferred if
11 the defendant deliberately blinded himself or herself to the
12 existence of a fact. However, this instruction does not lessen
13 the government's burden to show, beyond a reasonable doubt,
14 that the knowledge elements of the crimes have been satisfied.

09:46 15 Commerce includes travel, trade, transportation and
16 communication. Interstate commerce means commerce or travel
17 between one state, territory or possession of the United States
18 and another state, territory or possession of the United
19 States, including the district of Columbia.

09:46 20 The terms means of identification means any name or number
21 that may be used, alone or in conjunction with any other
22 information to identify a specific individual, including any
23 name, social security number, or date of birth.

09:47 24 Now, to reach a verdict, whether it is guilty or not
25 guilty, all of you must agree. Your verdict must be unanimous

1 on each count of the indictment. Your deliberations will be
2 secret. You will never have to explain your verdict to anyone.

09:47 3 Copies of the exhibits that have been admitted into
4 evidence will be provided to you. However, as I stated at the
5 beginning of the trial, you will not have typewritten
6 transcripts of the record available to you.

09:47 7 It is your duty to consult with one another and to
8 deliberate in an effort to reach agreement if you can do so.
9 Each of you must decide the case for yourself, but only after
10 an impartial consideration of the evidence with your fellow
11 jurors. During your deliberations, do not hesitate to
12 reexamine your own opinions and change your mind if convinced
13 that you were wrong. But do not give up your honest beliefs as
14 to the weight or effect of the evidence solely because of the
15 opinion of your fellow jurors or for the mere purpose of
16 returning a verdict.

09:48 17 Remember at all times, you are judges, judges of the
18 facts. Your duty is to decide whether the government has
19 proved each defendant guilty beyond a reasonable doubt.

09:48 20 When you go to the jury room, the first thing that you
21 should do is select one of your number as your foreperson who
22 will help to guide your deliberations and will speak for you
23 here in the courtroom.

09:48 24 Verdict forms for each defendant have been prepared for
25 your convenience. Ladies and gentlemen, what that refers to in

1 the instructions is a series of verdict forms that have been
2 prepared in advance for your use during deliberations.

09:48 3 The foreperson will write the unanimous answer of the jury
4 in the space provided for each count of the indictment, either
5 guilty or not guilty, and will answer any other question on
6 each verdict form as necessary. At the conclusion of your
7 deliberations, the foreperson should date and sign the verdict.

09:49 8 If you need to communicate with me during your
9 deliberations, the foreperson should write a message and give
10 it to the Court Security Officer. I will either reply in
11 writing or bring you back into the courtroom to answer your
12 message.

09:49 13 Bear in mind that you are never to reveal to any person,
14 not even to the Court, how the jury stands numerically or
15 otherwise on any count of the indictment until after you have
16 reached a unanimous verdict. Now, ladies and gentlemen, the
17 parties will now be permitted to make their closing arguments.
18 I will remind you that arguments of counsel are not evidence.
19 They are intended solely to point out those portions of the
20 evidence that they think are important. The government bears
21 the burden of proof in this case. Therefore, they are
22 permitted to go first and permitted to go last with the
23 defendants being given an opportunity to make their closing
24 arguments in between.

09:50 25 Mr. Rushing, you may begin your closing arguments on

1 behalf of the government.

09:50 2 **MR. RUSHING:** Thank you, Your Honor. Your Honor, may
3 I have the screen on also, please, sir. If it please the
4 Court.

09:52 5 You have heard all the evidence that you will be
6 considering this week. The judge has given you now the
7 instructions that you will use to decide this case also. It is
8 our job as attorneys to give you a summary at the closing of
9 what we think we have proven in this case. Of course, you know
10 who the actual defendants are in this case, and we know that
11 Mr. Watts, Mikal Watts, was the head of a large attorney mass
12 tort law firm there in Texas. His brother, David also worked
13 there as a mass tort coordinator, and Wynter Lee also worked
14 with him. We know those parties and their particular
15 involvement in this particular case. We know that shortly
16 after the oil spill that Mikal Watts decided to actually
17 participate in that. He contacted Eloy Guerra, and Eloy Guerra
18 talked to him and they decided to try to locate fishermen
19 involved in the case, and the thought was to locate as many as
20 they could in the short period of time as they had to. They
21 also decided to get someone else involved in the case, which
22 was Greg Warren with IP Development, but they also needed to
23 have a local counsel in Mississippi because Mr. Watts was in
24 Texas. So at that point in time, they found Anders Ferrington.
25 You saw him in court here the first week. Mr. Ferrington was

1 an attorney from Jackson, Mississippi, a very young attorney,
2 out of law school not that long before he became involved with
3 Mr. Watts. And I submit to you his only job at that point in
4 time, when he became involved with Mr. Watts' endeavor, was to
5 actually participate in funneling money from Mr. Watts' law
6 firm to Eloy Guerra and Greg Warren and Kristy Le.

09:53 7 We know that Mr. Ferrington told you that was his job. In
8 fact, he told you that whenever the money would come into his
9 accounts, that he was ordered or directed, rather, to take out
10 a thousand dollars for himself and send the other money to IP
11 Development. You will also remember that shortly thereafter
12 the oil spill occurred, that Mr. Watts began sending money to
13 Anders Ferrington. It was a very short period of time after
14 the oil spill itself. That money, of course, went into
15 Mr. Ferrington's account and went directly back into
16 Mr. Warren's account of IP Development.

09:54 17 What is important in this case to remember also is in a
18 time period in 2010, the total money involved was a little over
19 \$10 million. I think what is important to think about is where
20 that \$10 million went to that Mr. Watts submitted to Greg
21 Warren, Eloy Guerra and Kristy Le and Abbie Nguyen. If you see
22 on the screen there, approximately 5.7 of that ten million went
23 to Greg Warren. 3.6 million went to Eloy Guerra, and Kristy Le
24 and Abbie Nguyen's account had 1.4 million. We know that
25 Kristy Le and Abbie Nguyen are the ones that actually obtained

1 most of the names involved in this particular case, the client
2 base itself, but those are the people that received most of the
3 money involved in this case.

09:55 4 And we know from the actual testimony that each one had a
5 special job to do. Eloy Guerra was basically getting the
6 people together. That was his job. Greg Warren had IP
7 Development. He enlisted Kristy Le to help out with that,
8 rented some office space for them and set up an account there
9 and also began recruiting people. Kristy Le was over the
10 office, and Abbie Nguyen was also involved there recruiting
11 people, and she also was involved in writing checks.

09:55 12 We also know shortly thereafter that the way the Watts law
13 firm worked was they had to do a questionnaire. So in April of
14 2010, Ms. Wynter Lee sent a questionnaire form to Eloy Guerra
15 and also David Watts. The questionnaire you have seen quite a
16 few times here this week, and it has certain things to fill out
17 as far as a person's name, identity, address, date of birth and
18 things like that.

09:56 19 Now, in May of 2010, also, to help get those
20 questionnaires fixed up and sent back, once they were received
21 here in Mississippi, back to Texas to process, they hired a
22 person by the name of Chris DeLeon. Mr. DeLeon set up a
23 database, as you recall, and his job was to actually take all
24 of the information from those questionnaires and then send that
25 in spreadsheet back to Texas. So there's your connection from

1 Mississippi to Texas, sending spreadsheets with information of
2 these people.

09:56 3 It is important to remember also on those questionnaires,
4 some of those were submitted to the Secret Service, along with
5 the actual handwriting of Abbie Nguyen. And the testimony was
6 that some of the writing on those documents, not all of it, but
7 some of the writing on those documents belonged to Abbie
8 Nguyen. That included, of course, the persons who were
9 deceased during the time of the oil spill, as well as some
10 other people whose claims were actually submitted to Mr. Watts
11 and also subsequently to also the Court, the ^ CSSP and also to
12 the BP. Of course, we know the money did actually flow through
13 Mississippi to actually finance the scheme.

09:57 14 What is an important thing to remember also is the speed
15 of trying to get these people. We know in a very short period
16 of time that there were 40,000 clients picked up by Mr. Watts
17 in Mississippi, according to the documentation. That occurred
18 from about -- from April, after the oil spill occurred until
19 August, at least August 25th. And you see by the e-mails that
20 we had to show in evidence here that Mr. Watts is trying to get
21 as many people as he could as quickly as he could, and he
22 wanted to get as many as he could, we submit to you, because he
23 wanted to get on the Plaintiff's Steering Committee, which we
24 heard quite a bit about in the last few weeks of this trial.

09:57 25 While these spreadsheets were being sent from Mississippi

1 to Texas, Chris DeLeon was seeing certain things happen, he
2 sees certain problems with that. He sees duplicate files. He
3 sees also duplicate social security numbers, appears the
4 handwriting on those documents are the same. That is something
5 he saw down here initially. That information, of course, was
6 submitted to Texas also, and also in Texas, they became aware
7 of some problems also, because, of course, the oil spill
8 happened in April. About as early as June 20th, you recall
9 Mr. Watts' law firm had sent out some actual letters to what he
10 called potential clients. Some of those was the Luces out of
11 Morgan City, Louisiana. If you will recall back in July --
12 rather in June of 2010, Mr. Luc was actually upset with that,
13 so he actually called the law firm and let them know he was not
14 a victim of the crime. In fact, they filed three different
15 claims in his particular name, as you recall. He notified the
16 law firm at that point in time, there is a problem with you.
17 But even with that, even though he sent that letter to them,
18 two years later Mr. Watts actually supplied presentment letters
19 to BP on the Luces, as you recall. And on each one of those,
20 of course, some of the deckhands, if you recall the total
21 amount from the actual loss, it's the same for each person.

09:59 22 Now, we know Mr. Watts is still trying to get all of these
23 people lined up, but to show you some additional information he
24 has become aware of that affects his database, he had an e-mail
25 from -- it is G-196 in the evidence -- from an employee of his

1 office there, Emily Jeffcott, where she had talked to other
2 people involved in the oil spill, and they are requesting
3 Mr. Watts' ability to get that many clients because there
4 weren't that many fishermen. So again, it puts notice on
5 Mr. Watts about the actual client base he has got.

09:59 6 In addition to that, Mr. Watts is still trying to get as
7 many as he can, and of course this e-mail, which is G-197, it's
8 an e-mail that they found out that Eloy Guerra had gotten 3,000
9 fishermen for another attorney. So Mr. Watts e-mails Mr.
10 Guerra and tells him, you know, there's this problem, he is
11 looking for 40,000 clients, which is what he got eventually,
12 and it slows his process down. His whole thing is to get as
13 many clients as he can and as quick as he can. I submit to you
14 that is to get on the PSC.

10:00 15 Even as early as August of 2010, they still become aware
16 of problems with that database, and the problem is, it doesn't
17 pass the smell test because they are trying to get social
18 security numbers off of that. And you see on this e-mail,
19 G-176, that out of 2,510 records of updated social security
20 numbers, 2477 were changing dates of birth. That just does not
21 pass the smell test, according to David Watts, on that. So
22 they have notice that this database is corrupt, no good, there
23 are not any clients there.

10:00 24 Additionally, there is another e-mail the next day that
25 causes a problem with how are we supposed to rectify all of

1 this information if all of the information is changing on a
2 regular basis?

10:00 3 If you will look at all the e-mails back and forth, you
4 will see that most of the e-mails between these individuals are
5 between Mr. Watts, Eloy Guerra, Greg Warren and Kristy Le,
6 individuals like that. The only time you will see an Anders
7 Ferrington on there, I will submit to you, is when monies are
8 being transferred back and forth.

10:01 9 What is important also to remember is August 25, 2010,
10 Mikal Watts submitted his application to the PSC, and on that
11 application, of course, in the very first paragraph, he is
12 advising at that time he has got 40,000 clients. That is the
13 main thing he is saying to the PSC to try to get on there is
14 the fact he has all of these clients, so he has the ability to
15 get on the PSC, which is a very lucrative position.

10:01 16 To show Mr. Watts still knows something about the problem
17 he has with this actual base, he receives another e-mail back
18 in 2010 from an individual by the name of Dung Pham, and
19 Mr. Pham is sending him an e-mail because he is questioning
20 also why he has become a client of Mr. Watts. Mr. Watts passes
21 it along to other individuals in the law firm, but eventually,
22 even though he has had notice of that since back in 2010,
23 Mr. Watts still submits his presentment letter on that
24 individual back in January of 2013, although he has had
25 information before that that he does not represent him.

10:02 1 Again, we have other e-mails back and forth that you will
2 be looking at back in the back that shows the knowledge of
3 Mr. Watts of the problems he had with his database.

10:02 4 I want to next talk about the actual falsification of the
5 client packets of the Watts law firm. Before we get to that,
6 if you recall also, we called a number of witnesses, including
7 Crystal Cox and also Kayleigh Stone and other people there.
8 The thing is, people at the law firm there that were receiving
9 these packets in Texas, they saw problems also. They saw
10 social security numbers were used on more than one actual
11 claimant. They saw a lot of the times the same name was used
12 on different people with just a small variation in the address
13 or whatever, and they also saw problems with the actual
14 mailings. The problem was, they sent all of these letters to
15 the clients on there, and all of this mail would come back.
16 And the testimony was, by the actual people working there, that
17 that was extraordinary. It was a large amount of returned
18 mail, more than any other case they had had before. That
19 raised a red flag to them that something was wrong. They said
20 they relayed that to people inside the actual firm itself.

10:03 21 Also, Norma Jean Bullard told you she worked there during
22 that time period, and she was told by Wynter Lee to also look
23 at the contracts, and also Joe Navarro told you also, that if
24 information was missing on those client forms, to actually
25 change that information. I submit to you this is verified also

1 by the Secret Service agent testified who did the handwriting
2 samples, because he said that on those letters that -- the
3 questionnaires that Ms. Abbie Nguyen had written, some of the
4 handwriting is hers, but other information is not hers, like a
5 deckhand and things like that also. So that corroborates what
6 these people said about the actual falsification of those
7 records at the law firm.

10:04 8 It is also important to know also that there was a letter
9 that Ms. Wynter Lee wrote, an e-mail, rather, back in January
10 of 2013. This was the time the presentment letters were being
11 sent out, and at that time period, almost two years have passed
12 there, and they have no contact with their clients. They have
13 no information from their clients. There is no documentation
14 in the files to show what these people did, how much money they
15 made, tax records or anything like that. So they decided on
16 the presentment letters to falsify and make up amounts of money
17 these people made during the period of time there. By this
18 e-mail there, you they have got on there they were going to put
19 83,500 for the actual boat captains, and 45,930 for fishermen.

10:04 20 If you look at all of those presentment letters, which are
21 Exhibits 146A through D, you will see the same consistent
22 numbers on each one of those presentment letters, and they made
23 those amounts up because they can't show these people actually
24 made that money. That was a falsification.

10:05 25 The other thing to think about also, the number of

1 witnesses we have called here this past three or four weeks or
2 whatever, and what they told you about the identity theft
3 themselves. They told you they were not victims of the actual
4 theft, the BP oil spill case. They in fact did not authorize
5 anybody to use their social security numbers or personal
6 information to actually apply for any kind of benefit because
7 of the BP oil spill. And also they were not deckhands. The
8 information on the actually questionnaires themselves was false
9 also.

10:05 10 Later on, of course, there was a project started to get
11 the information necessary to complete the plaintiff fact
12 sheets, and other information also. Before that, I want you to
13 think about the actual problem they had back in 2010 with
14 social security numbers, and Ryan Willis. That's a very
15 important part of the case because when they actually got the
16 records at the Watts law firm, they had the issue with all the
17 social security numbers. So then Kristy Le goes and hires
18 someone to actually find social security numbers for her. She
19 hires Ryan Willis, and as you recall, he goes to Denspri. As
20 he goes to Denspri, Denspri was able to actually give him
21 social security numbers by the person's name or whatever. And
22 Kristy Le takes those social security numbers and sends those
23 back out to Watts law firm in Texas.

10:06 24 It is important to remember the total number of actual
25 social security numbers they were looking for. You recall the

1 testimony in Exhibit G-210 of the payments from Kristy Le to
2 Ryan Willis for those social security numbers, and if you add
3 all of that up, it is close to \$300,000.

10:06 4 Now, of course, we had Julie Bales testify about Denspri.
5 She told you what her job was there. She actually obtained the
6 information for Mr. Willis and sent it back to him. He sent it
7 back to Texas on that, but it is also important to remember the
8 testimony of one of the defendant's expert witnesses because
9 what they are saying is that the information that was submitted
10 back to them in Texas from Kristy Le had deceased taken off of
11 there, and so she was trying to hide that fact from Watts law
12 firm, is what they are alleging in the case. What you need to
13 think about also is an e-mail, G166, and that e-mail is an
14 e-mail where there is a list of dead people, people who are
15 deceased, from David Watts back to Chris DeLeon, Eloy Guerra
16 and Kristy Le. And in that particular e-mail there it lists
17 five people who are deceased.

10:07 18 Now, we know at this point in time this is supposed to be
19 corrected data from Denspri showing these people are deceased,
20 but even that, we have a list of those five individuals who
21 were deceased at the time of the oil spill. If you go back to
22 G82, 83, 84 and 85, and you will see the dates of birth of
23 those people. 82. Every one of those people there died prior
24 to the oil spill and therefore they were not victims of the oil
25 spill and had no reason to file any claims on that. However,

1 back in January of 2013, claims were filed in the name of the
2 Watts law firm. Of those four individuals, and each one of
3 those particular cases Mr. Watts is claiming they are entitled
4 to \$45,930 as a loss because of the BP oil spill. Those will
5 be set forth in G146A through D also that you can see.

10:08 6 We know there is a problem later on that happened with the
7 Phase II where they are trying to go out and locate additional
8 people involved in the oil spill, and on this particular e-mail
9 here, G167, Mr. Watts is talking about the due diligence on
10 this, and John Cracken talked to some individuals, including
11 Eloy Guerra and Greg Warren about how much it will cost to get
12 that information, and they said \$8 million. And of course
13 Mikal is upset with that, which is in G-167, because he said
14 they have already agreed to \$1.5 million to do that.

10:09 15 Also about the case, as far as notice of Mr. Watts
16 involved in the case, are the total amount of people involved
17 in the Gulf Coast oil spill being Vietnamese fishermen. He
18 told you when he took the stand that there weren't 40,000
19 Vietnamese fishermen on the Gulf Coast. He relayed that to
20 Mr. Watts back whenever Mr. Watts began filing claims with the
21 GCCF. Then additionally, he told Mr. Watts at that time that
22 you have problems with your docket because I've been getting
23 calls from people saying that you don't represent them in this
24 matter, and I have also gotten calls from the hot line, the DOJ
25 hot line about that also.

10:10 1 Now, of course this case is involving wire fraud and mail
2 fraud too. I want you to think about exhibit G120 when you
3 talk about this case because that is going to be one of the
4 first times that an actual mailing was made from Texas to
5 Illinois, that's to Kirkland & Ellis, of 22,533 purported
6 clients of Mr. Watts' law firm. These were people that were
7 supposed to have been submitted to the Court, as far as the
8 actual MDL itself, the actual litigation itself. There is the
9 e-mail dated November 18, 2010 which sends the information to
10 them. And it contains plaintiff fact sheets of those
11 particular people by David Watts and also by Wynter Lee. What
12 is important with that is, whenever that e-mail was sent out
13 with different people on there, it contained four of the dead
14 people. That is Exhibit G82, 83, 84 and 85. When they
15 submitted those particular names back to Kirkland & Ellis to be
16 filed with the Court, those people there had been deceased
17 prior to the time of the oil spill.

10:11 18 In addition to those 22,533 names, you heard the testimony
19 of witnesses who testified at this trial that they were not
20 victims of the actual BP oil spill case. However, their
21 information, their personal information was also submitted by
22 Wynter Lee involving the actual presentation to Kirkland &
23 Ellis and also to the Court.

10:11 24 Where we talked about information that Mr. Watts was aware
25 that they were not in fact clients of his, and again, that is

1 what is set forth in G-221, and you go back and look at that
2 also, and that's an e-mail from John Cracken to Robert Hilliard
3 talking about the actual clients involved, also to David Watts,
4 Mikal Watts, Eloy Guerra and Greg Warren, where he tells them
5 we don't have 41,000 clients. We have a list of 41,000 names
6 we hope to make it into a client later on. They are aware at
7 that time they have a huge problem with their client base.

10:12 8 In addition to that, David Watts sends an e-mail to them
9 in January 2011, this is early on in 2011, where he didn't
10 trust any of the social security numbers, or the dates of birth
11 or the information because there are a lot of duplicates in the
12 case. And of course that e-mail goes out to Mikal Watts, Greg
13 Warren, Eloy Guerra, Kristy Le all. So he is very well aware
14 they have a problem with the client base involving that.

10:12 15 There is another mailing by Wynter Lee back on January 6,
16 2011 of 17,469 names in the client packet. On that particular
17 client packet, you heard the testimony of these witnesses here
18 listed on the screen before you. They came and told you they
19 were not victims of the oil spill, didn't authorize Mr. Watts
20 or anybody else to actually supply their name to the court, and
21 they were not victims of the actual oil spill itself. However,
22 their names were submitted. When you go back and look at these
23 cases, each one of these victims that testified, we had a
24 client file for them. If you look at the client file itself,
25 you will see the plaintiff fact sheet, and you see the date on

1 there, it corresponds with the November 18, 2011 -- 2011, I
2 believe it was -- 2010, also January 6, 2011, that corresponds
3 with those being mailed out by Wynter Lee to K and D to
4 actually be processed with the oil spill case itself. You will
5 see those particular files in there with those particular dates
6 on that plaintiff fact sheet also, with the personal
7 information on that that they didn't authorize anybody to send
8 out.

10:13 9 Now, there's a problem also, which is G227. We ask you to
10 go look at also. This is a problem concerning the actual
11 database also where they can't actually find the clients on
12 this. And on this particular case, there's an e-mail from
13 Robert Hilliard back to Mikal Watts where he is concerned for
14 the fact that there is an issue with the actual client base
15 itself, and he knows they aren't going to get paid on this. In
16 fact, he actually tries to -- if you look at G227, he actually
17 tries to tell Mr. Watts to actually try to pitch this, the
18 40,000 clients, to BP, and to get a quick settlement on those
19 outside the MDL, and Mr. Watts says, no, he's not going to do
20 that, he wants to keep them in the MDL. I submit to you the
21 reason he wanted to keep those names in the actual
22 multi-district litigation is because he wanted to try to get a
23 higher settlement with BP to get more money because he had
24 40,000 clients in that base. If he took those client bases out
25 of there, the actual money paid by BP, I submit to you, by the

1 testimony of the witnesses in this case, it would have probably
2 not been as high as it was then.

10:15 3 Mr. Watts also was made aware of the actual problem with
4 the case by exhibit G224. On that particular e-mail from
5 Mr. John Cracken, he talked to Mr. Mikal Watts, and he told
6 them at that time there was a percentage of the names taken
7 from phone books. We know after the witnesses testified that
8 there were in fact at least two names we proved taken from
9 phone books. One of them was Mary Luc, which later found out
10 was Mary Lockett, and her phone number, her address and all was
11 in the phone book, and she was just a victim also. Well, she
12 told you she was not a victim in the oil spill case. The other
13 would be Lucy Lu, who was the dog of an individual that came
14 and testified to you about that also.

10:15 15 Another information on G200 is the actual notification of
16 Mr. Watts from other people claiming he didn't represent them
17 also. Can you look at those also. In addition to that on this
18 particular e-mail, G201. Now, this e-mail is important because
19 this particular e-mail here, it talks about it is from a Khan
20 Tran to Steve Herman and James Roy. You know that Steve Herman
21 and James Roy were on the PSC, the plaintiff's steering
22 committee of the actual litigation. In this e-mail, this
23 person is advising those persons that Mr. Watts has a problem
24 with his actual docket base, and he submits Mr. Watts is
25 committing perjury to the court and is advising these

1 individuals of that. What these individuals do that are on the
2 plaintiff's steering committee, they turn around and sent that
3 letter to Mikal Watts and wanted to meet up with him and
4 discuss that about his particular issues. So Mr. Watts is well
5 aware of the problem he has got with his database at this point
6 also.

10:16 7 Now, one of the biggest things involved in this case as
8 far as the actual notification of trying to cover up the actual
9 fraud itself was the information concerning the *New York Times*
10 article back in April of 2011. If you recall, that's whenever
11 Felix Cao and Nga Nguyen were in that newspaper article where
12 they claimed they were not victims of the actual BP oil spill
13 but in fact their identities had been taken and given to Mikal
14 Watts and Mr. Watts had used that information. After that
15 investigation or that article came out, the Louisiana attorney
16 disciplinary board began an investigation. They called
17 Mr. Watts and said we need to check this out, I need to be
18 involved in trying to find out what is going on here. What
19 they did was, they actually began an investigation on
20 Mr. Watts' law firm. They actually contacted Mr. Watts to try
21 to find out from him information concerning his particular
22 clients, especially Nga Nguyen and Felix Cao. And what they do
23 is, they contact Mr. Watts and they ask him to start supplying
24 information to them. If you recall what Mr. Cracken talked
25 about, that Mr. Mikal Watts told Mr. Cracken to take care of

1 that, he was too busy doing other things, so Mr. Cracken tries
2 to get the information on those particular clients to send to
3 the Louisiana disciplinary board to stop the investigation.
4 When he does that, he gets a copy of the applications and the
5 questionnaires involving Mr. Felix Cao and also Nga Nguyen, and
6 what he sees on that is there are some actual changes made. He
7 sees, Mr. Cracken does, rather, on the actual employment
8 contract, there's not a name on there in the actual top of it
9 and not a date on there, and the signature you can hardly read
10 because sit too squiggly. He advised David, we need to get
11 this corrected. So they change the actual employment contract
12 on Hien Cao and also on Nga Nguyen. I submit to you that is an
13 effort by them to submit a false document with this information
14 on there to the LADB to stop their investigation. In addition
15 to that, what you recall the investigator with the LADB said,
16 they were trying to set up an actual interview with these
17 people, with Hien Cao and also Nga Nguyen. They were unable to
18 do that for over a year or so.

10:19

19 During that investigation also, they told you they decided
20 they would just take an affidavit for him. So what they did
21 was, Mikal Watts and Mr. Cracken and David decided to try to
22 get an affidavit by Hien Cao and also by Nga Nguyen, and what
23 they did was, they went and got an investigator to locate
24 Mr. Hien Cao and also Nga Nguyen, about you you the problem was
25 that they got the wrong person, as far as Hien Cao. During

1 this whole process, you know the people involved in this trying
2 to stop this early LADB investigation is David Watts, Mikal
3 Watts, Eloy Guerra and Kristy Le and Greg Warren. You see that
4 on the e-mails on the screen also.

10:20 5 In addition to that, what they did was actually contacted
6 an investigator to actually go out and try to locate these
7 individuals to get an affidavit from them. What they did was,
8 they found the wrong person. What they found was, Mr. Cao, who
9 if you remember his testimony was, they approached him and
10 talked to him about it, wanted him to sign an affidavit, the
11 affidavit was prepared when he got there, but he said he did
12 not sign it because he didn't opt in, why should he opt out.

10:20 13 The same thing happened to Nga Nguyen. Ms. Nguyen
14 testified that what she did was, they contacted her numerous
15 times, and she finally agreed to sign the affidavit also. What
16 is important to know, though, is that that affidavit, if you
17 recall what it said, it provided on the affidavit that they
18 were not victims of the BP oil spill and they wanted to
19 withdraw their claim from the BP oil spill and they had not
20 been involved in that. So what they did was, with the
21 affidavit provided for that, they submitted that -- I say they
22 did -- the Watts law firm submitted it to the actual Louisiana
23 disciplinary board to stop the investigation, but the problem
24 with that was, later on, they actually submitted presentment
25 letters to BP on those same individuals. After they had signed

1 an affidavit saying they weren't victims, Mr. Watts of law firm
2 then sends presentment letters to BP saying he was in fact
3 representing them and they were in fact clients on that. I
4 submit to you as far as Nga Nguyen is concerned, that is the
5 actual identity theft as to actually Ms. Nga Nguyen when they
6 submitted her false application to BP.

10:21 7 And if you remember on both of those also, the amount of
8 the money, the loss is \$45,930 for each one of those
9 individuals.

10:21 10 One of the most important, I guess letters you may
11 consider in this case is G228, and that is the actually
12 settlement date or settlement letter concerning the BP oil
13 spill, the night of the BP oil spill, and Mr. Watts sends an
14 e-mail to John Cracken, Max Duncan, Robert Hilliard and David
15 Watts, and in the actual e-mail, remember, it says we settled
16 for \$2.3 billion, whether the proof supports it or not. It is
17 clear Mr. Watts knew at that time when he was negotiating, or
18 other people for him were negotiating the settlement, that he
19 knew he didn't have the proof to actually verify that.

10:22 20 Remember at this time also there are 40,000 claimants
21 Mr. Watts has in this MDL that he is saying are a part of the
22 actual oil spill itself. Also this letter, he talks about the
23 actual -- at the very bottom, the bottom line is, despite our
24 shitty cases, we may actually have some leverage if we play our
25 cards right. So he knows these are bad. The last part of

1 that, he says hope this makes everyone feel better about our
2 eggshell plaintiff docket. He is aware he doesn't have 40,000
3 claimants at all. He has 40,000 names only.

10:23 4 We submitted to you earlier on this particular slide from
5 Wynter Lee submitting a letter where he is setting forth the
6 loss amounts of each of the particular individuals, and if you
7 submit these letters to BP -- what he did on this case, he had
8 the 40,000 people in the actual MDL, and they settled with this
9 40,000 people in the MDL, but instead of submitting those
10 members to the MDL, what did he do? The testimony was he only
11 submitted -- under the Court supervised settlement program, he
12 only submitted 704 names. The lady came and told you there
13 with the actual CSSP that with those 704 names -- out of
14 40,000, he submitted 704 names, and out of those 704 names,
15 only four have been paid, and four others are still waiting to
16 be paid. That shows that there was not in fact 40,000 clients
17 of Mr. Watts. But what he did anyway, he took those 40,000
18 claimants that he had, or some of them, out of the actual MDL,
19 and he sent presentment letters to BP. That was back in
20 January of 2013, and when he sent those presentment letters, if
21 you recall, if you add up all the numbers of the actual letters
22 he submitted to BP, the total amount of loss is \$2.3 billion.
23 That is almost as much as the actual settlement was with BP
24 under the MDL.

10:24 25 I want to go real quick about the actual, while I have a

1 little time left, about the actual charges in this case, as
2 well as the actual elements of the offense.

10:24 3 The judge has told you what the elements are with his jury
4 instructions, and we have got a number of counts in this case.
5 Count one, of course, the conspiracy count, and the judge has
6 advised you on what the law is with conspiracy, but I submit to
7 you, if you even just look at the actual part of the actual
8 agreement with the LADB getting those affidavits signed by
9 there, when I say those people, Mikal Watts, David Watts, Eloy
10 Guerra and Greg Warren getting together, and Kristy Le, getting
11 together to try to stop the investigation, I submit to you they
12 have an agreement at that point in time to actually stop the
13 investigation because they want to actually quail the
14 investigation of the other possible claimants they have
15 actually involved in the investigation. I submit to you also
16 that if you go back and look at the facts of the case from the
17 time it began, I will submit to you that probably Mr. Watts
18 didn't know at the very beginning there was a problem. But the
19 issue was, once he became aware of that problem, he did nothing
20 to fix it. He knew he didn't have any clients back in 2010
21 when all the information came in about they couldn't find them
22 and the mailings coming back and all the problems that he had
23 with finding social security numbers and things like that also,
24 but he didn't stop there. He still worked forward to present
25 those particular clients to BP and also to the Court for

1 payment.

10:26 2 Now, count two, of course, through 15, are actually wire
3 fraud counts. Well, mail fraud counts, rather, and on those
4 particular cases, the first one starts back in July of 2012,
5 and it goes up until I think December of 2012. And on those
6 particular charges themselves with the mail fraud, those
7 involve Stacy Lee and Tuyen Le, if you recall their names, they
8 came and testified to you. We have packets for those
9 particular ones, and I think you have the packet numbers on
10 those. Those are mail frauds that occurred back in 2012. I
11 submit to you the reason that those letters were sent to those
12 individuals was to actually legitimate his client base. The
13 reason is, before this, before 2012, you know, he had the issue
14 with the Louisiana disciplinary board because he had actually
15 claimed there that he had some clients when in fact he did not.
16 So to actually legitimize his client base because he knows in
17 2010 he can't get ahold of anybody, no contact in 2011 also,
18 and in 2012, no contact, but he is still sending the letters to
19 these people. I submit to you the letters being given to these
20 individuals and mailed to these individuals are to legitimize
21 his actual base, to try to legitimize his client base and
22 legitimize these people who don't exist as clients of his.
23 When I say legitimize, that was his defense here these last two
24 weeks if you recall because whenever we called a victim up here
25 to testify about what they were actually -- they were not

1 victims, they had not been a deckhand, and they authorized no
2 one to use their personal identifiers or anything like that,
3 Mr. Watts ^ come up there and say, well, wait, I have called
4 you. Here's a copy of my logs where I've called you these
5 periods of times, and here is a copy of where I sent you all of
6 these letters also. You do live here, right? It is an attempt
7 by him to legitimize that client base and those clients that
8 don't exist for him. I submit to you that would be a mail
9 fraud for those particular counts as to that indictment also.

10:28 10 The next part of the counts are 17 through 21. Those are
11 wire fraud counts. One of those counts is dated on November 4,
12 2010, which is count 17, and that is a wire of an e-mail packet
13 from Texas to Gulfport, Mississippi. Now, that is exhibit
14 G127(a). If you look at that, you will see the e-mail itself
15 where it says BP client packet. We know that that client
16 packet was sent from Mr. David Watts back to -- back to Chris
17 DeLeon back in Mississippi. Remember what the situation is,
18 Chris DeLeon is mailing information from Texas -- from
19 Mississippi to Texas and then Texas is sending stuff back to
20 Mississippi to get corrected on that or trying to get
21 additional information on these particular clients. That
22 particular mail itself in there is a CD also which is an
23 attachment to the e-mails. I submit to you there is
24 information on that CD that is client information that they are
25 sending back and forth from Texas to Mississippi to get

1 corrected. So that would actually be another count of the
2 actual wire fraud, the verification for that particular count
3 there. That does in fact show the Mississippi and of course
4 Texas connection also.

10:29 5 Now, the other counts involving the actual money being
6 transferred, that is money that is being sent from Texas to
7 Mississippi and from Mississippi to the other individuals in
8 this case back in 2010 also to get the database up and running
9 also, as far as the client is concerns. I think based on those
10 particular wires there, those would actually be the wire fraud
11 counts for those particular counts.

10:30 12 Counts 22 through 55, of course, are actually identity
13 theft cases. And when you get your actual form you fill out
14 with the verdict form on there, the judge will have different
15 names out by those people, and each one of the names you will
16 see, which is count number 22, I think is very important
17 because that is going to be count 22, and the packet number for
18 that or the actual exhibit number is G-16. That is a file
19 packet of Nga Nguyen. What that is, that is Nga Nguyen that
20 had the affidavit signed that she was not a client of Mr. Watts
21 but in fact they submitted that particular name to the -- that
22 particular name also to -- as a presentment letter back on
23 November 18, 2010. If you go through each one of those counts
24 there, the 16, 22, through actually 55, you will see that they
25 actually used either the name and social security number or the

1 names of the individuals, and all of those people on there came
2 and testified before you that they were not victims of the
3 crime, and they were not actually employed by Mr. Watts, didn't
4 employ Mr. Watts to represent him on the case at all, and they
5 in fact were victims of the actual identity theft also.

10:31 6 The latter counts of the indictment talk about the actual
7 aggravated identity theft, and the judge has told you what that
8 charge is. And that involves all the presentment letters back
9 on January 16, 2013, that were sent to BP, and on those
10 particular counts there, those are going to be the individuals
11 who also told you and came and testified that they were not
12 victims of the BP oil spill case. They were not represented by
13 Mr. Watts, and they were in fact actually -- their identity had
14 been stolen also.

10:32 15 Now, as far as the wire fraud, it concerns that one also.
16 If you will recall, that is presentment letters. What those
17 are, those are letters from Mr. Watts' law firm to BP claiming
18 that these people are actually victims -- actually clients of
19 Mr. Watts and victims of the oil spill case, when in fact they
20 are not. The presentment letters themselves are fraudulent.
21 Whenever they were mailed to the actual BP by the Watts law
22 firm, that is mail fraud by mailing these particular documents
23 to actually BP. When you go back, you will look at those
24 particular victims on that one, and there's a number of them, I
25 know that, but if you look at the actual packets on those set

1 forth in also Exhibit 146(B), 146A through I believe D, you
2 will see those presentment forms in there also. It is clear
3 those people four no connections with Mr. Watts other than
4 their information had been stolen from them, and submitted to
5 BP. Once you go back and talk about this case, think about the
6 actual witnesses who testified before you, that they had their
7 information stolen from Mr. Watts. They didn't give permission
8 to use it, but they took that information, as well as the other
9 defendants in this case, and they sent it to BP and other
10 places also in an attempt to defraud someone. Who were they
11 attempting to defraud? I submit they were attempting to
12 defraud BP at one time, at one point. They also were trying to
13 defraud the Court. We had the same thing occurred by supplying
14 the court, the CSSP, with this actual information about these
15 particular clients, when in fact they were not clients of Mr.
16 Watts, in an attempt to get paid for that.

10:34 17 When you go back and talk about this case, think about all
18 of the witnesses that testified before you about their
19 participation in this but not being victims of the crime, and
20 they never authorized Mr. Watts or Kristy Le or Eloy Guerra or
21 Greg Warren to use their information, but once you go back
22 there and talk about the case, I think there is a decision you
23 can make on each one of the counts, and that is to find each
24 one of the defendants guilty of each one of the counts of the
25 indictment. Thank you, Your Honor.

1 On behalf of David Watts, his wife Terri, his children, his two
2 children, his extended family who are here and his friends, I
3 thank you, we thank you very, very much, but there is a lot to
4 do and I only have a limited amount of time so let's get to
5 work.

10:50 6 I feel that we must start with a proper perspective. We
7 must begin and approach this thing with what are we going to be
8 thinking about as we walk through this, as you will walk
9 through it in the jury room. The kind of things that, the
10 perspective that you will have. Mr. Rushing said so many times
11 this morning, well, you you heard people come in and say they
12 weren't clients, and yet they sent out letters saying they were
13 clients, and that is putting the perspective of the benefit of
14 hindsight. And I think it is so important that we start from a
15 perspective of what did they know then, because that's what we
16 are here to decide, isn't it? What did David Watts know in
17 2010 and 11 and 12. It all stems from that. He didn't have
18 the benefit of hindsight. Did he have the criminal intent that
19 is required, that they have to prove, back in those years? Not
20 negligence, not carelessness or foolishness, not even whether
21 or not he has done enough to trust some of these folks. Did he
22 have the criminal, knowing, willful intent. He didn't have the
23 benefit of knowing the bank records and how they were spending
24 this money. They were independent contractors. He didn't have
25 the benefit of the Denspri records to show how they were

1 getting these records and omitting stuff and putting it on
2 different names and everything. He didn't have the benefit of
3 the Social Security Administration reviewing all of these
4 things and deciding which were good social security numbers or
5 not. He didn't see any of that stuff until after he was
6 indicted in 2015. That's all the benefit of hindsight.

10:51 7 And so I think with that perspective, and we are analyzing
8 the decisions that were made back then, not on what we know now
9 but what they knew then is what I would like to started. There
10 are two things I think are really critical to remember, and I'm
11 going to focus on two big umbrellas of perspective. One is,
12 the government always has the burden of proof. You know that,
13 but I think if we approach it that way, I think that is the
14 proper prism to look at this through. They always, they have
15 to prove every single element with every charged felony before
16 you can find them guilty beyond a reasonable doubt.

10:52 17 Secondly, the government must prove the required level of
18 thinking. Did David Watts intend, intend, back then, to commit
19 a felony? Now, I think we saw this chart at the beginning of
20 the trial, and these are the different levels of proof that are
21 appropriate in different situations. For example, probable
22 cause, that is a level of proof -- if the government wants to
23 come listen to your telephone calls or search your house or
24 rummage through your car or anything else, they have to have a
25 level of proof of probable cause. If in civil cases, if you

1 want to sue somebody or if there are great damages, we have
2 heard in civil cases, it's a preponderance of the evidence. If
3 the state wants to come in and take children away from their
4 parents, it is clear and convincing evidence. If after you
5 have heard all of this and you have a doubt, and it's a
6 reasonable doubt, from a reasonable person, they still have not
7 met that burden. They have to exceed that beyond a reasonable
8 doubt in order for anyone in our country to be convicted. So
9 you have seen those, and those are standards. So this is the
10 government's a proof.

10:53 11 You have on the instructions that His Honor the judge
12 gives you, and it is there on page three. It is these
13 instructions. But there are some very, very important things
14 about it that I want to point out. The defendant is presumed
15 by law to be innocent. We know that. We know that since grade
16 school. Don't we? But it is so, so important when we are
17 actually deciding the lives of someone. The defendant begins
18 with a clean slate the judge tells you in instructions. The
19 law does not require a defendant to prove his innocence or
20 produce any evidence at all. We did, we did present witnesses
21 and documents and cross-examination. The law didn't require us
22 to and still doesn't. We only did that to show really what the
23 whole story was. But in getting a perspective, we must
24 remember that it's the government's burden, no inference
25 whatever may be drawn from the election of a defendant not to

1 testify.

10:54 2 And so with that perspective, we then say, okay, what is
3 the government's burden? The government has the burden of
4 proving the defendant guilty beyond a reasonable doubt. If it
5 fails to do so, we find them not guilty. But what is proof
6 beyond a reasonable doubt? Because this is the linchpin,
7 folks. Right here, when you get back on every single element,
8 this is the question that will be asked: Did the government
9 prove beyond a reasonable doubt as to this element? We are
10 going to go over the elements in a minute, and this element,
11 and that element. Proof beyond a reasonable doubt is proof of
12 such a convincing character that you would be willing to rely
13 and act upon it in the most important decision of your life
14 without hesitation. That is the linchpin. Please remember
15 that standard. It is on page three of His Honor's
16 instructions. Because this is the lens on which we decide
17 everything. Our law prevents a finding of guilt unless the
18 evidence eliminates, eliminates, all reasonable doubt, all
19 doubts that a reasonable person can have. You as reasonable
20 people, if you have listened to this and you have a doubt as to
21 what somebody was thinking back then or why they did that, if
22 it is just a doubt and it's based on the evidence after you
23 have listened to weeks of this, that is a doubt that you as a
24 reasonable person may have. Our law requires that all of those
25 doubts, those reasonable doubts be eliminated before we can

1 find one of our citizens guilty. It is a standard of certainty
2 that we have created in our country to protect ourselves.

10:56 3 The government may stress, and Mr. Kennedy I think is
4 going to get up after all of us talk, and I've heard sometimes
5 prosecutors say, and it's in the instructions, and that doesn't
6 move you have to prove it beyond a reasonable doubt, and that's
7 true, obviously the judge puts it in his instructions because
8 in human affairs, there's always a measure of some unreasonable
9 or imaginary doubts. And you don't have to eliminate
10 unreasonable or imaginary doubts. But if it's a doubt based on
11 reasonableness, after you have heard witnesses or after you
12 have not heard evidence you want to hear, and the government
13 hasn't eliminated that doubt, that is enough for you to
14 hesitate and vote not guilty. That is the perspective.

10:57 15 Now, sometimes people will -- I've heard -- these are all
16 the different things I've heard jurors say. Well, perhaps he
17 is guilty, or you know what, he's possibly guilty. You know,
18 guilt is likely or highly likely. None of those are
19 sufficient. And I spend time on this, folks, because you guys
20 don't -- y'all hear about that phrase but you don't deal with
21 it on a regular basis. Right? So it is important that you
22 grasp it and own it as a concept that we go. It has to be none
23 of those things in the blue. It has to be guilt beyond a
24 reasonable doubt.

10:57 25 Well, another thing that I have heard prosecutors say, and

1 they are very, very right, is you can use common sense and
2 reasonable inferences. That also is in the law. And it's
3 true. So let's think about that. If we are going to talk
4 about common sense and reasonable inferences, does it make
5 sense that David Watts, in 2011 and 2012, he was still trying
6 to find good addresses? If he is a fraudster, if he is
7 supposed to have known that all of this is just trash, and I'm
8 going to commit a fraud, does it make sense that he is still
9 trying to find good addresses for these folks. If we are going
10 to use common sense. Tuesday it make sense that David Watts
11 was still trying to use public databases to find addresses?
12 Would a fraudster do that if he had the intent all along to
13 committed these crimes? Does it make sense that David Watts
14 would invite Kayleigh Stone to secretly listen to a phone
15 conference he is having with Warren and Guerra. These are guys
16 he is supposed to be secretly in a conspiracy with. Right?
17 That is what they have said, that they are involved in some
18 kind of secret conspiracy. Why on earth would you take a
19 chance repeatedly to invite somebody that is not part of the
20 conspiracy and let you listen to the conversations and not tell
21 these guys, hey, man, be careful what you say. I've got
22 somebody here sitting with me. Remember that? That is so, so
23 important to showing what is in his mind. He could care less
24 what they say in front of her because he has an innocent state
25 of mind. It doesn't make sense he would do that if he is a

1 fraudster. Does it make sense that when agents went into their
2 shop in 2013, that he would tell them everywhere to go to find
3 all the documents you want, and it's stored in Arkansas. They
4 didn't know that. The agents didn't know that. They walk in
5 and they ask David Watts. Does it make sense that a fraudster
6 would do that? Wouldn't he want to hide all the docket and
7 shred everything before the agents can get to them? That's
8 what a fraudster would do but that's not what David Watts did.
9 Does it make sense that David Watts and John Cracken and
10 everybody would disclose all of these problems to GCCF, Ken
11 Feinberg, the Plaintiff's Steering Committee, the Court? Would
12 it make sense that from the get-go they are telling them we
13 have all of these problems with the database, with these
14 clients? As a fraudster, you aren't going to do that. You
15 will keep it real secret. You are going to keep it real quiet.
16 So it doesn't make sense that they would do that. A fraudster
17 wouldn't do that. A fraudster wouldn't pay \$10 million for
18 signing up clients. Watts Guerra had a full database of
19 clients along the coast. If they wanted to just put names in
20 order to drum up this client base, why not just use what is in
21 their database? And Matt Archer said you could do it in a
22 couple of minutes. What difference does it make? Why pick
23 real people when they can go -- would a fraudster pay
24 \$10 million to go do this? Absolutely not. Does it make sense
25 that Watts Guerra would send back checks to GCCF with almost of

1 half a million dollars? Isn't that the whole point of their
2 alleged fraud is to make money? When they got all of these
3 checks, why not endorse them and put them in the bank and let's
4 go, we got a half a million back. It doesn't make sense. It
5 doesn't make sense they would do all of that. \$10 million
6 spent when Mikal Watts knows he won't get paid from the
7 Plaintiff's Steering Committee if the docket comes up bad. He
8 knows that from his experience. Why would he do this? Why
9 would he invest that much money? It doesn't make sense. Does
10 it make sense that Watts Guerra would send all of these letters
11 and make all of these phone calls to these alleged victims of
12 identity theft? I mean, I'm a fraudster, and I'm going to
13 steal all of y'all's identities, and by the way, I'm going to
14 send you letters and make phone calls to you to tell you that
15 I'm doing that. It doesn't make sense. I would not do that if
16 I'm going to steal all of your identities. I wouldn't send you
17 one letter, much less six, seven, eight letters to all of these
18 folks. It doesn't make sense. If you are going to use common
19 sense, then these create reasonable doubt. Does it make sense
20 that Watts Guerra would invite the GCCF and Ken Feinberg and
21 the chairman of the Plaintiff's Steering Committee to send all
22 of these claims to the Internal Revenue Service? We introduced
23 e-mails here on July 10th of 2010, an e-mail from Emily
24 Jeffcott to Michael Rozen. He's with the Feinberg firm, he is
25 with Ken Feinberg, his partner. He says, Mike, the first

1 sentence, by next Friday, Watts Guerra Craft is going to file
2 25,000 of the commercial fishermen. Look at the first
3 paragraph. Accordingly, we contacted the IRS to determine the
4 process for requesting this information in bulk. Wait a
5 minute, Emily, why didn't Mikal Watts call up Emily: Emily,
6 Emily, Emily, what are we doing? We are stealing this stuff.
7 You can't go calling the IRS. They are going to catch us.
8 What is she doing?

11:03 9 If that's not enough. Here was another e-mail, on
10 July 14th, send it to Michael Rozen again. Dear Mike, as an
11 update to my previous e-mail, we have since spoken to the IRS's
12 project lead on the Gulf Coast Assistance Project.

11:03 13 She is calling them, talking to them, inviting the IRS to
14 come in and review. Would a fraudster do that? No way. How
15 about this one: Emily copying Mikal, Steve and Roy -- these
16 are chairmen of the Plaintiff's Steering committee, Steve
17 Herman and Jim Roy: Mikal and I would like to participate on
18 an ad hoc committee dealing with the following issues. What is
19 number one? Contacting the IRS to develop an efficient means
20 to gather proof of income. Wait a minute, Emily. That means
21 that we are going to have to send all of our database to the
22 IRS with the social security numbers and the names. If I'm a
23 fraudster, that's the last thing I would want. The Internal
24 Revenue Service is the keeper of all the social security
25 numbers. It's ridiculous. It doesn't make sense. These are

1 not acts of a fraudster.

11:04

2 And so we send letters, we invite the IRS to come look.
3 How about this one. We tell Ken Feinberg as early as
4 November 2010, Mr. Feinberg, you are head of the GCCF. Let's
5 put all of these claims on hold. Why? Because we expect
6 material attrition. We are already telling you Mr. Feinberg
7 that our database, we are already expecting a bunch to fall off
8 because we are having some issues with it. We are telling
9 them. If you are a fraudster, you don't give notice to your
10 victim that you are doing that, that there's problems. We
11 still need to get information on our clients. That doesn't
12 make sense. A fraudster wouldn't do that.

11:05

13 So how about this one? This is another -- I don't know
14 any fraudster that would do this. Bringing in outside,
15 independent experts and consultants to dig deeper and determine
16 what happened here. Oh, that's -- wow, how about that. I'm a
17 fraudster. I'm going to keep all of my fraud secret, but you
18 know what, I'm going to go hire all of these Vietnamese
19 cultural experts to go out into this community to these people
20 I have allegedly defrauded and find out how can I get ahold of
21 them. Not only that. I'm going to hire me an attorney ethics
22 expert to review all of my homework and show me what I'm doing
23 wrong. I will even do better than that. I will go hire mass
24 tort experts, or community outreach experts. The W and W,
25 remember those two guys that had W and W? They are all outside

1 lawyers that have nothing to do with Mr. Watts. These guys go
2 hire -- Mr. Cracken goes and hires them and says, come and look
3 at everything we have done. Look at the problems we are
4 having, look at the issues we are having, and where we --
5 because we want to see if you want to be hired to go out and
6 conduct this Phase II. If I'm a fraudster, I'm not going to
7 bring in outside people like this to review my homework, to
8 grade my paper. I'm not going to do it. That doesn't make
9 sense. The moment any member of the government says, use your
10 common sense, these things, if you use your common sense are
11 not indicators of a fraudster. They are just not. That's
12 because Mikal Watts and David Watts and Wynter Lee of this firm
13 were doing all of this stuff because they didn't have the
14 criminal intent all along this way.

11:07

15 So where do we go from here? The government's burden of
16 proof is what to consider. I'm going to go through five
17 projects here that I'll touch upon briefly. The first thing
18 I'm going to want to you consider is did the government prove
19 each element of the crime charged beyond a reasonable doubt.
20 I'm going to touch upon the elements in the Court's
21 instructions here that you will use as a guideline. The next
22 one I want to talk about, I'm going to ask you to consider that
23 the government failed to prove each of its theories. I'm going
24 to touch upon these theories and show you how we had to come
25 forward with evidence to raise doubt about all of those

1 theories. Then I'm going to ask you to consider that the
2 government changed its theory four times during the last four
3 and a half weeks as to Mikal Watts' motive to get on the PSC.
4 If that's not an indicator of the shakiness of their case, I
5 don't know what is.

11:07 6 The next one, I'm going to ask you to consider, the
7 government's distorted reliance on an isolated e-mail and other
8 isolated e-mails, when there are four million e-mails that have
9 been seized. Finally, I'm going to ask you to consider the
10 government's flawed and incomplete investigation.

11:08 11 I'm going to hit each one of these, so let's go with the
12 first one. Did the government prove each element of the crime
13 beyond a reasonable doubt? Well, these are the crimes that are
14 charged, and Mr. Rushing talked about them, conspiracy, mail
15 fraud, wire fraud, identity theft and aggravated identity
16 theft.

11:08 17 On each of these crimes, folks, and this is probably the
18 most important thing that I can tell you, on each of these
19 crimes, you are going to find in the language, and I'm going to
20 point it out to you, and you are going to have these instructs
21 with you, you are going to find on each of these that they
22 require a proof of the defendant's thinking. They have to have
23 proved that these guys were thinking in a criminal way. That's
24 what the burden is.

11:09 25 You will see words like willfully, intentionally,

1 knowingly, specific intent to defraud, and conscious, knowing
2 intent to deceive or cheat someone. These are all requirements
3 as to the different statutes, and we are going to go over
4 these. These are real key words. I mean, if I had a highlight
5 R and I had the power to do it, I would send these instructions
6 back to you with those highlighted because that is the case
7 right there.

11:09 8 All right. Let's think about this just a little bit. The
9 definition of willfully that the judge will give you, has given
10 you, is back on page the -- it's on the last page -- I think it
11 is 16. -- 18. Page 18, this definition of willfully. The act
12 was committed voluntarily, purposely. It was committed with
13 the specific intent to do something that the law forbids. And
14 that it was committed with bad purpose, either to disobey or to
15 disregard the law. That's a definition of willfully. It is in
16 your instructions. The definition of specific intent to
17 defraud, that's in the instructions. A plan, pattern or course
18 of action intended to deprive another of money or property by
19 means of false material representations, false material
20 pretenses or false material promises. But here's the most
21 important part. A specific intent to defraud is a conscious
22 knowing intent to deceive or cheat someone. That's what they
23 are going to have to prove with several of these crimes.

11:10 24 So let's go in the required elements of conspiracy. There
25 are several elements on conspiracy that you are going to be

1 asked to look at and consider. These are in your instructions.
2 Defendant Watts and at least one other person made an agreement
3 to commit the crime of mail fraud, wire fraud, identity theft,
4 or aggravated identity theft.

11:11 5 Number two, and each of these the government will have to
6 have proved each one of these beyond a reasonable doubt. So
7 when you see these elements, each one has to be proved beyond a
8 reasonable doubt. The defendant Watts knew the unlawful
9 purpose of the agreement, joined in it, there it is, willfully,
10 that is, with the intent to further the unlawful purpose.

11 Number three, one of the alleged conspirators during the
12 existence of the conspiracy knowingly committed at least one
13 overt act described in the indictment in order to accomplish
14 the purpose of the conspiracy, which is commit a crime. I
15 submit to you that as we've gone through there, that the
16 government has not proven that there's an agreement to
17 commit -- at not at least on these folks, not on David Watts,
18 Mikal Watts or Wynter Lee. They have not proven that those
19 folks knowingly entered an agreement to commit any of these
20 crimes. As to whether the proof that they knew the unlawful
21 purpose and they joined in it willfully with a purpose to
22 disobey the law or disregard the law with the intent to further
23 these unlawful purposes of mail fraud, wire fraud, et cetera,
24 they did not prove that.

11:12 25 And as to this last one, that they somehow conspired with

1 someone else knowingly in order to accomplish the purpose of
2 this illegal conspiracy, they did not prove that. When you go
3 back to your jury room, folks, you look at these three elements
4 of conspiracy, and I submit, any one of those, if you find a
5 reasonable doubt, will be enough to find not guilty, any one of
6 them because in order to find somebody guilty, they have to
7 have proved beyond a reasonable doubt each one of those. Any
8 one of those, not guilty.

11:12 9 All right. The next one, the mail fraud elements. And
10 these are all there, but I want to point out in red these
11 knowledge elements that are there. Defendant Watts knowingly
12 devised or intended to devise a scheme to defraud. There's
13 that word scheme to defraud, that conscious knowing, intent to
14 deceive someone. The scheme to defraud employed false material
15 representations, et cetera. Defendant Watts caused something
16 to be sent for the purpose of executing this illegal scheme.
17 And defendant Watts acted with a specific intent to defraud.
18 Remember the definition that the Court has given you? With a
19 conscious knowing intent to deceive or cheat someone. They
20 have to prove, in order to find them guilty of any one of these
21 mail fraud counts, that it's beyond a reasonable doubt each one
22 of those elements. I submit to you, folks, as to the first
23 one, they did not prove that they knowingly and intended to
24 devise a scheme to defraud. They were not involved in any
25 scheme that involved false material, that they didn't do

1 anything for the purpose of executing a fraud, and they surely
2 didn't have -- the government didn't show that they had a
3 conscious knowing intent to deceive or cheat someone. Any one
4 of these would be sufficient, but I submit they haven't proved
5 beyond a reasonable doubt all four of those elements. Let's go
6 to wire fraud, and really, it's basically the same thing,
7 folks. It's knowingly devised, the same element, the same
8 element, this is the only difference here, it is by way of wire
9 communications instead of a postal mailing, and it's that one.
10 So it's basically the same four as the mail frauds. And again,
11 they didn't present sufficient evidence to prove beyond a
12 reasonable doubt.

11:14

13 Let's go to identity theft. These are the elements, that
14 defendant Watts knowingly transferred, possessed or used
15 another person's means of identification. Actually, they did
16 prove that. When they submitted claims for people and their
17 names and social security numbers, they actually knowingly
18 transferred, possessed and used another person's means of
19 identification. Got no problem with that. The problem is that
20 you also have to prove they did so knowing it was without
21 lawful authority. The government had to have shown beyond a
22 reasonable doubt that when the Watts mailed this stuff or
23 e-mailed stuff, they did it knowing that they did not have
24 lawful authority by those people, that they knew it.

11:15

25 They had to have known that these means of ID belonged to

1 a real person. They had to have had the intent to commit any
2 unlawful activity that constitutes a violation of law, state or
3 federal. I submit to you, folks, and this is just an
4 interstate commerce, and clearly when you e-mail something, it
5 satisfies that. I have no problem with that. The problem I
6 have is that they didn't prove that these folks had the
7 intent -- knowing it was without lawful authority. Nor did
8 they prove they intended to commit any unlawful activity. So
9 those are the elements. You are going to go through. You are
10 going to go through each one of those and look for those mental
11 states o to see if they did. So here we go.

11:16 12 Aggravated identity theft, same, pretty much the same
13 elements. Knowing it was without lawful authority. This is a
14 little bit different, this last one. They have to have proved
15 that they did this during and in relation to committing the
16 crime of mail fraud or wire fraud. Remember that these mail
17 fraud and wire fraud require a specific intent to defraud, a
18 conscious knowing intent to deceive or cheat someone. So when
19 you think about these aggravated identity theft counts, there's
20 not sufficient evidence to prove that they knew sending this
21 stuff was without lawful authority or that it was during and in
22 relation to to committing mail fraud or wire fraud. Those are
23 the elements, folks. Did the government overcome its burden to
24 prove each element of these crimes beyond a reasonable doubt?
25 Absolutely not.

11:16 1 The second topic I wanted to ask you to consider, the
2 government failed to prove each of its theories. Now, here's
3 some of the theories they have put forth. Watts did not have a
4 reasonable basis to believe there were 40,000 people involved
5 in the fishing industry in the gulf. Mr. Rushing referred to
6 that in his opening argument this morning, that Mr. Feinberg
7 says, there's not 40,000 out there, provides no statistical
8 basis for it, nothing that he relied on, just a statement out
9 of clear blue air. The point is, did these folks have a
10 reasonable basis to think there were that many fishermen out
11 there. What we did is we brought you evidence from several
12 sources. Remember Mr. Allred said he did statistics on Alaska
13 and he extrapolated it to Louisiana and looked at the
14 population. He did that. You remember Ms. Wallis came in and
15 testified she spoke with other lawyers of the amount of
16 fishermen in Louisiana and other states. Remember that
17 Mr. Tameez, the expert came in, that 2/3rds of the shrimpers in
18 the Gulf of Mexico are of the Vietnamese culture. Statistical
19 basis to prove that at least from their perspective, they had a
20 reasonable basis to believe it. But Mr. Rushing just wants to
21 rely on Mr. Feinberg's unsupported theory that there's not
22 40,000, and that proves it beyond a reasonable doubt. Way
23 insufficient proof for that flawed theory.

11:18 24 Another theory they put out was that Watts needed 40,000
25 clients to get on the PSC. We brought you testimony from

1 Mr. Roddy, remember, that said that Mr. Watts would have gotten
2 on that PSC with one client given his experience. We brought
3 you evidence from Mr. David Bright, if you will remember that,
4 that it wasn't because of 40,000 clients that Mr. Watts got on
5 this PSC. Jim Roy reached out to Mikal Watts through David
6 Bright saying we want you on this, Mikal Watts, you are that
7 experience, we need somebody, this is the most massive tort in
8 American history. We want someone with your caliber on it.
9 The government puts that out that Watts needed 40,000 clients
10 to get on the PSC when there is no evidentiary support of it.
11 It is just a theory. We brought you evidence to raise doubt as
12 to this flawed theory. The government also has a theory that
13 Watts knowingly filed claims on dead people. Now, this is an
14 interesting one. Before we get to that, knowingly filed claims
15 on dead people. I'm going to get to the five people that Mr.
16 Rushing brought up that we actually did a lot of research on.
17 The other dead people is -- remember, that was deleted from
18 Watts Guerra. So that's not supported by Mr. Rushing's deal.
19 Were claims filed on people that could have been deceased?
20 Possibly, but you are still looking at the state of mind on
21 Mr. David Watts, Mikal Watts and others as to whether they knew
22 that, intended to do it to cheat someone, deceive someone.
23 They failed in their proof. Watts knowingly used false
24 affidavits. Mr. Rushing spent a lot of time on that this
25 morning, about that affidavit of Mr. Boveland, remember of

1 Mr. Hien Cao and Ms. Nga Nguyen. This is the thing. If you
2 sit there and look at all of that evidence, there is not one
3 shred of evidence that David Watts or Mikal Watts or Wynter Lee
4 or anybody on this end knew anything about how those affidavits
5 were procured. Nothing, nothing. As a matter of fact, to the
6 contrary. The e-mails that we introduced into that regarding
7 that subject is that they were not involved in it. David Watts
8 was not involved in it, and when the e-mails were introduced as
9 far as that signature business, when it was suggested to him,
10 saying you can't have blanks on that, Mr. Cracken writes an
11 e-mail saying, let's fill those in. David Watts submitted an
12 e-mail and tells Mr. Cracken, no way, we are not going to do
13 that. We are sending you you the contract as is. But they
14 don't bring that e-mail out. They just bring out this stuff
15 that there was names put on an e-mail without any proof that
16 David Watts or Mikal Watts or anybody over here knew about
17 that. Nothing. It is pure conjecture on the part of the
18 government, all kinds of doubt on that. That topic in itself
19 is just something to think about.

11:21 20 The government also said, Mr. Frandsen keeps asking
21 witnesses, why didn't you just knock on their doors? We have
22 to bring Mr. Tameez to say that's not going to work with these
23 folks. You can't just knock on the doors of this community.
24 They aren't going to talk to you. There's a whole history of
25 the Vietnamese culture here. But they just throw that out as

1 if it's so simplistic, not understanding how mass torts work
2 and not understanding the Vietnamese culture here. The
3 government said you should have just dismissed the entire
4 client base. Mr. Rushing brings out a couple of e-mails by a
5 couple of folks, and then he throws out a global statement, and
6 he keeps doing it, they knew there were problem with this
7 client base. They bring an e-mail about Ms. Luc, they knew
8 there was a problem with this client base. Or five of these
9 people -- there are 40,000 people in the client base. You
10 don't just throw out the whole thing with the dishwasher just
11 because you have some issues with them. You follow up on those
12 issues. That is a flawed theory. Watts sent mail to people
13 saying, you are an oil spill victim, but then the people came
14 in to say they weren't oil spill victims. That is the benefit
15 of hindsight. When they are sending them letters, they don't
16 know that they are. The government failed on each of these
17 theories that we have gone through.

11:22

18 Consider that the government changed its theory four times
19 during the trial regarding the motive to get on the PSC. At
20 the beginning of the case, they were saying that Watts needed
21 40,000 clients to get on the PSC so he could make 1/15th of
22 \$600 million. Remember they just put it out there. They put
23 it out there in opening statement, the government did, and then
24 some employee that they brought up says that is what they
25 heard. We had to bring qualified evidence to you in the form

1 of witnesses as well as the petition that is actually filed
2 with the Plaintiff's Steering Committee and the Court before
3 Judge Barbier that there are 300 plus lawyers putting in for
4 this money over 94 law firms that are putting in for this
5 money, and yet they continue with this theory that he wanted
6 1/15th of \$600 million. It is preposterous. The evidence
7 doesn't support it. There's all kinds of doubt there. On
8 August 9th, they changed their theory, three weeks later,
9 saying Watts needed 44,000 clients to get on the PSC in order
10 to enhance his reputation. That's malarkey. His reputation
11 was already stellar. Three weeks later they changed it again
12 saying he needed 44,000 clients to get on the PSC so he could
13 get a bonus for having so many clients. We had to bring on
14 Mr. Perry. There are no bonuses. But yet it came out of the
15 mouth of prosecutors. Later that day on August 12th, they said
16 Watts needed 4,000 clients in order to convince BP to pay on a
17 no-doc, no proof claim. We had to proof that it never has
18 happened, although Mr. Watts offered some proposal for a
19 personal interview as opposed to tax returns or other proof.
20 That's never been accepted and wasn't even accepted then.
21 That's a flawed theory.

11:24

22 Next topic, I want to you consider, please, that the
23 government's distorted reliance on isolated e-mail. Mr.
24 Rushing brought it up this one. He brings up the -- it's in
25 the indictment. Paragraph 42, you will see this e-mail. So

1 far you have sent me 2,510 records of updated social security
2 numbers. Of this, 2477 DOBs are changing. This does not pass
3 the smell test. They throw that out because it's alarming.
4 Well, you knew you had problems with your database. Throw out
5 the 40,000. But they don't tell you the rest of the chain.
6 Numerous follow-up e-mails that we have introduced that same
7 day acknowledging several times that he was mistaken. Here's
8 the one right there that they keep citing to. But then right
9 after that, two minutes later, he says, not 2477 but 516. He
10 had made a mistake. But they don't give you that one in the
11 indictment. They only give you this one because it looks so
12 alarming. But he corrects himself. He said, you know what, I
13 miscounted. But he doesn't stop there. He finds another error
14 on his part. Sorry, Mr. Watts, but you kept making mistakes
15 that day. Please confirm I'm loading the corrected files from
16 all of these. He's not even sure of this e-mail he did. That
17 was later that night, at 9:44 that night. Then he follows that
18 up with this e-mail. Here's a list of the files used. It's
19 all the corrected files. This and series of other e-mails that
20 follow that give context to this alleged smell test e-mail that
21 they keep relying on, and it's incomplete. It's misleading to
22 not refer to these.

11:26

23 All right. So the last one is the government's flawed or
24 incomplete investigation. 4 million e-mails are seized. The
25 government picks one or a few, but there's no e-mail referring

1 to an alleged illegal agreement. There's is no evidence of the
2 e-mails of any of these folks that are critical to the analysis
3 of what happened here, no evidence of that. The Denspri/IRB
4 records. There's no effort by the government to retrieve those
5 records until 2016, this year, five years later. What did they
6 show? They show -- we had to get them through Ms. Alicia
7 O'Neill's subpoena, and we get them and once we analyzed them
8 this year, we find out that the field team was reassigning
9 numbers. Why didn't the government go and investigate this
10 properly? That alone you can consider the investigative
11 inadequacy of the government. I'm not blaming the prosecutors.
12 They can only do what the agents bring them. I've been a
13 prosecutor. These folks just got assigned to the case two
14 months ago. I don't blame Mr. Rushing and Mr. Kennedy. They
15 are nice guys. But they can only do what the agents bring
16 them. We don't see any witnesses from any of these 15 members
17 of the PSC or the two PSC chairmen. If Mr. Watts did all of
18 this nefarious stuff to get on there, where is the evidence?
19 The BP litigation, we don't see any review of this 300 lawyers.
20 The government pays no attention to the fact that the Court
21 doesn't care how many clients you had. The Court had its own
22 criteria. And the government didn't use any of these things,
23 no recording, no undercover agent, nothing to see really what
24 is going on. No detailed analysis. Mr. Wigley, poor
25 Mr. Wigley, no detailed analysis of where the 10 million went,

1 where the 750 went. He made wrong assumptions of these
2 deposits. He said the 3.1 and the 250 were related to
3 pretenses and promises. They had nothing to do with BP. We
4 had to bring in the records to show that. He led you to
5 believe that Watts lost no money in the BP investment. Of
6 course he lost money. He lost over \$3 million. They didn't
7 ask Hilliard or Cracken too see how much they invested. Does
8 that mean that Agent Wigley committed fraud right in front of
9 you? No, I'm not saying that. It was human error on his part.
10 That's the problem. There is human error here. But there is
11 human error on some of these things, and they are trying to
12 address it back in 2010, '11 and '12, and they call it fraud.
13 But when Mr. Wigley comes and tells you \$3.1 million related to
14 BP, I guess I could say fraud. He is trying to convince you of
15 something that is not true, if he would have just done his
16 homework. But it's not fraud. It's human error on his part.
17 Mr. Wigley is saying he made assumption regarding that e-mail.
18 Y'all remember the deal how it didn't match up. Mr. Wigley was
19 saying the names in the e-mail were different from the names in
20 the death certificates. He said it was because of the social
21 security numbers, but he didn't know which one was wrong, the
22 social security number of the date of birth. He acknowledged
23 he had doubt as to whether or not these are the same people as
24 the death certificate. Does this mean he committed fraud?
25 Absolutely not.

11:29 1 They say we didn't do anything about this e-mail. Let me
2 show you. On each of these folks, here is Mr. Hai. Look at
3 all of this. All of these due diligence of how these employees
4 on these times and dates are following up on this e-mail, to
5 find out is this person really dead, and if so, can we get a
6 death certificate. On all of these calls, and this is true on
7 all of these. For the one that is called Lucky Hai, all of
8 these. You will see all the due diligence that the WGC
9 employees did for each one of these five folks. Watts is not
10 sitting down saying we know we have deceased people. We are
11 going to go forward and file claims. They are doing due
12 diligence. They can't dismiss a claim until they know that the
13 person is not their clients. So Watts Guerra Craft did do the
14 follow-up. The required scienter. All of these are critically
15 important.

11:30 16 I have about three and a half minutes left. These are
17 things I want to also consider, please. Consider that the
18 evidence, lack of knowledge of some things. The attorney bar
19 rules, and they are obligations to the clients. The other
20 factors that impacted their thinking. Please consider on the
21 lack of knowledge, Watts did not have access to the social
22 security database. He never did. He had to rely on the field
23 people. Watts did not know -- when I say Watts, David Watts,
24 Mikal Watts. Did not know the field people were deleting
25 deceased notations off of a database. There's no evidence they

1 knew that. Watts did not know the field people were using
2 false data to create fakes questionnaires and client contracts.
3 That is all after the fact. Watts did not know the field
4 people were not investing money into hiring qualified people to
5 do their job. They were spending it on their personal stuff.
6 We didn't know that. Watts did not know what percentage of the
7 database was good versus what percentage had problems. Please
8 consider that an attorney cannot dismiss a claim until he knows
9 for sure. He has to preserve the claims. He has to meet the
10 deadlines. He knows that this BP claim systems builds in a
11 sifting out procedure. He tells GCCF I have a lot of problems
12 with my client base. A fraudster wouldn't do that. He makes
13 full disclosure to every one involved but he still maintains
14 his ethical obligation to preserve the rights of people on his
15 client base. This is the Vietnamese thing. The challenges it
16 posed, the distrust they have, the seasonal shifts, the lack of
17 documented proof, the fact that Feinberg admitted he
18 encountered the same issues. The fact that they had also
19 previously had success with Guerra and Warren. After
20 considering all of these factors, what can you conclude? Did
21 the government really eliminate all doubts about these mental
22 states? Did they? Did they? I wish I had two hours to sit
23 down just at a table to show you all of this stuff. There is
24 so much reasonable doubt as to each of the crimes charged.
25 They have not met their burden. At the end of the day, I have

1 David Watts here. That's who I represent. I represent David
2 and his wife Terri and his kids over there on the second row.
3 At the end of the day, you know, in what area of life, in what
4 area of life do you have to win a battle, and if you win a
5 battle of your life, it is solely based because your opponent
6 hasn't done enough? Usually we have to score more points. In
7 this system, though, we have a principle of law that we clutch
8 on and hold dearly that in order to win this battle, we have to
9 show they didn't do -- as good of guys as they are, they just
10 didn't prove that these people knew intentionally that they
11 were doing this. So what did David Watts do in this case?
12 What did they prove that David Watts do? That he kept trying
13 and kept trying and kept trying. Did they prove he had
14 criminal intent, that conscious knowing intent to deceive or
15 cheat someone. There is a last instruction that I want you to
16 think about. And it's in the Court's instructions, where a
17 defendant has offered evidence of a general reputation for
18 truth and veracity, honesty, integrity, character, evidence of
19 a defendant's character, in consistent with those traits of
20 character, that can give you a reasonable doubt. Vote not
21 guilty, folks as to every count for Mr. David Watts.

11:34 22 **THE COURT:** Thank you for your closing arguments.
23 Mr. Watts, you may make your closing arguments sir.

11:34 24 **MR. MIKAL WATTS:** May I proceed, Your Honor.

11:34 25 **THE COURT:** You may.

11:34 1 **MR. MIKAL WATTS:** Ladies and gentlemen, first I want
2 to thank you. We have been at this for a month and you have
3 been a at the risk jury. A lot of 4:00 a.m. to midnight days
4 over the last month, as you might imagine. As I've sought
5 comfort, because I can't even look back at my family, because
6 it is so emotional. I have found some solace in King David's
7 words in Psalm 109: Turn to prayer to be delivered from your
8 accusers. Yet in my prayers, what keeps coming back to me is
9 you, the jury of my peers. If this had happened a thousand
10 years ago, we didn't have this right. In England, where we
11 came from, there was no right to a trial by jury. 801 years
12 ago we had a Magna Carta that established a judiciary that was
13 independent but still no absolute right to a trial by jury.
14 240 years ago, we fought a war, and yet at the Constitutional
15 Convention in Philadelphia in the summer of 1787, and some
16 states didn't want to guarantee this right. And three guys you
17 may have heard of, a guy named Jefferson, a guy named
18 Washington, and a guy named Madison refused to go along with
19 the ratification of our Constitution until it was put in as an
20 amendment to the Constitution, what we now call the Sixth
21 Amendment and the Bill of Rights. So not only are you the
22 answer to my prayers, you are the only check that our system
23 has against throwing people's liberty away based on false
24 evidence.

11:36 25 You are everything to the people charged here. The Court

1 told you early on, these defendants are innocent. They are
2 presumed to be innocent under our Constitution unless they are
3 proven guilty to the unanimous satisfaction of a jury beyond a
4 reasonable doubt. He told you, look, this indictment, that you
5 are going to have back there full of the errors that it has, is
6 not evidence of guilt. He told you before an indictment
7 doesn't prove anything. It's nothing more than an accusation.
8 It's not proof of guilt or innocence of any of these
9 defendants. And I would tell you this indictment reads like
10 throwing spaghetti on a wall and hoping something sticks
11 because that's all you have had here.

11:37 12 What I would like to do with my 45 minutes is to take you
13 through the 66 counts of this indictment, these charges, that
14 still survive and explain to you why on each and every one of
15 them I am not guilty. And I don't even like that word. I am
16 innocent on each and every one of these charges. And I want to
17 show you why. Although it looks like spaghetti on the wall --
18 66, my gosh, it is a huge indictment -- it is really five
19 complaints. It really is.

11:37 20 The conspiracy claim on the left is saying, hey, you
21 signed up 40,000 clients on purpose to get on the PSC. Second,
22 the wire fraud, you wired money to pay for a Phase II project.
23 Third, identity theft you sent plaintiff profile forms to BP.
24 Fourth, you sent mail to people. And fifth, you presented
25 their claims. This is why we need juries. This is not a

1 crime. This is lawyering. It is done every day. Our response
2 is that signing up 40,000 people that we thought were real was
3 to help the victims in the same area where I had already worked
4 on 30,000 people. What the people in the Gulf Coast had been
5 through in the last ten years nobody deserves. We were trying
6 to help people against the company that we knew had all the
7 resources in the world. We were trying to verify the data.
8 That's not wire fraud. We were trying to meet their deadlines
9 as ordered by the Court, as any lawyer should. We were trying
10 to keep them informed as we were required to do. And we were
11 trying to preserve their claims because we knew if we didn't
12 present them, they would be dismissed. That's all we did.

11:39 13 There's 66 counts of garbage. It's not truth. And I'm
14 going to show you that's it's not true. We've got them color
15 coded to kind of keep them together. Was there a conspiracy?

11:39 16 Now, you will notice on each of these, I have five basic
17 responses in the upper right-hand corner. Let me kind of take
18 you through the evidence you have heard on that. There is no
19 agreement that I made, that David Watts made, that Wynter Lee
20 made to participate in some scheme to defraud. As Mr. McCrum
21 told you, I had in my database, 7,872 people from Texas; 20,659
22 from Louisiana, just finished up the FEMA thing; 14,810 in
23 Mississippi; 3610 in Alabama, over 2,000 in Florida. Just
24 hitting the computer, Matt Archer could have summoned up 40,000
25 names if that was indeed my goal. Why would I burn up

1 \$10 million to get names out of a phone book? ^ I knew that
2 with respect to the GCCF, I was going to have to get those
3 claims through Ken Feinberg.

11:40 4 And so what did we do as part of this scheme to defraud?
5 Mr. Cracken and I funded -- and he did the outreach, to his
6 credit -- some of the preeminent experts in the world in terms
7 of making claims through a third-party facility like the GCCF.
8 Each of them got our information, each of them was told about
9 the problems, each of them was invited to grade our papers.
10 You can see the level of animosity that existed between what we
11 were trying to fully disclose to Mr. Feinberg, to figure out a
12 way we could meet his rightful concerns. There wasn't any
13 conspiracy to make money with fake clients.

11:41 14 Mr. Cracken was asked point-blank, Can you make a dollar
15 off of 40,000 names in a phone book? He says, They are worth
16 nothing. And he is right. Real people, real damages, real
17 proof before you get a dollar. I knew that. That's why we
18 took you through all of these prior mass torts, information
19 required on court-appointed plaintiff fact sheets in 16 out of
20 16 previous MDLs, averaged 22 pages long. How are you going to
21 fill those out with respect to phantoms? We took you through
22 several of the previous settlement agreements, all of which
23 were consistent in one respect. You are not allowed, it
24 indicates, without two different forms of photographic ID, to
25 make sure that the people are real. You are not allowed to

1 recover a dollar without forms, documentary proof of your
2 damages, either medical records in that scenario, or in this
3 scenario, tax returns, and I knew that.

11:42 4 Mr. Roddy, any lawyer with significant MDL experience
5 would know that you can't pull one over in the MDL process. He
6 says, if, for example, I was in an MDL and the lawyer suggested
7 to me, let's just not use a claims administrator, we would
8 laugh him or her out of the room because it's absurd. It
9 wouldn't work, and more importantly, the Court would never
10 approve it. I knew that. So when you are trying to get into
11 my brain, it doesn't make any sense at all. The idea is that
12 the proof has to be submitted before people are eligible to be
13 compensated, and that's not unusual at all. I knew that. I
14 knew it was going to require two different forms of ID.

11:42 15 There is no evidence whatsoever that Mikal Watts or
16 anybody in his law firm believed, because it is not true, that
17 somehow you are going to get paid based off a bunch of
18 phantoms. This government theory about \$600 million divided up
19 evenly, here is Teri's transcript of the opening statement.
20 The ceiling of \$600 million is going to be spread among the 15
21 attorneys. His witness, Kayleigh Stone, I have read the
22 settlement agreement, she says, for these attorneys, roughly
23 \$600 million, to be split equally between them. You know,
24 Proverbs 19:9 says that false witnesses will not go unpunished.
25 I don't know for the life of me what possessed this woman and

1 Norma Jean Bullard to come up and sell you the pack of lies
2 they tried to sell you, but what I can tell you is that the
3 contemporaneous records that existed at the time that they
4 wrote showed a completely different story. What I can tell you
5 is despite all the alleged pressure from this investigator that
6 Mr. McCrum hired to make her sign something that she edited and
7 initialed in four different places, there is certainly no
8 evidence whatsoever that he compelled her to put what she put
9 up on LinkedIn. It doesn't make any sense.

11:44 10 Mr. Roddy, is there any validity to the idea that 15
11 people are going to split up \$600 million? No, sir. That's
12 just not the way MDL litigation works. We took them through
13 all of these prior court orders that were available to the
14 prosecutors before they tried to sell this soap to you. They
15 either didn't see it or they didn't care because it was
16 inconsistent with their theory of guilt. Would it be valid in
17 any way, shape form or fashion, or even fair to suggest that 15
18 people are going to split up \$600 million? No, that would be
19 false and misleading. You bet it would be. False and
20 misleading. What is true is that this 1.2 percent of the
21 recoveries achieved through hard work of BP, this \$600 million
22 is going to be split up between 340 different hard-working
23 lawyers, all of whom were on the team, working hard to bring
24 what was at that time the seventh largest corporation in the
25 world to its knees.

11:45 1 Mr. Cracken assessed that that PSC fee is worth less than
2 \$10 million, and it makes no sense to set 11 million on fire to
3 get less than ten. The first words I told you is that we got
4 ripped off. The first question I asked Mr. Cracken, If the
5 statement was made to the jury by me, I got ripped off, would
6 you agree with that? The answer is yes. And we took you
7 through, and it just -- it turns my stomach how that money that
8 was meant to be used to help the good people of the Gulf was
9 stolen. There's no nice way to put it, folks. They took the
10 financial oxygen that Bob Hilliard, John Cracken and I supplied
11 them and they set it on fire and they starved this project of
12 the resources that it needed to be successful. Gentlemen
13 clubs, hotels, wine, cigars. It makes me so angry, I want to
14 throw up. I got ripped off. The evidence is clear. We
15 brought to you Mr. Ploetz, and he summarized, of the
16 9.9 million in total expenditures, how much were for personal
17 expenses? 4,421,650.48. Oh, by the way, I can't account for
18 another million four. No telling where that went. But the
19 interesting things was, yesterday turned out to be a very
20 interesting day in this trial. Remember when he summarized
21 previously, Hey, I gave them 2.3 million. Anything dealing
22 with payroll I gave to them. But yesterday we found out with
23 respect to Ms. Le that payroll includes \$61,000 for a relative
24 whose main skill appears to be playing basketball out back with
25 Chris DeLeon. Abbie got paid \$95,677. I thought her boss was

1 very nice. I suspect she's not making that kind of cash over
2 at the beauty salon. David got paid \$38,656, and this is David
3 Le, for three and a half months of work. Will, \$20,186 for
4 five days of work. These so-called business expenses total up
5 to \$294,000. They are robbing the bank, folks. This isn't
6 helping the project. This is absconding with dollars meant to
7 help the project.

11:47 8 Was there a conspiracy that I was a part of? We disclosed
9 these problems to the GCCF, to BP, to the Court, to the PSC, to
10 John Perry, who I had to subpoena but was kind enough to come,
11 to tell you that we told him about these problems because of
12 these theories that kept changing as we went along. The
13 evidence is clear that all of these six different ways we
14 disclosed, we disclosed, we disclosed, that is not the actor of
15 somebody in a conspiracy to defraud. There was no conspiracy
16 that I was a part of. There was no conspiracy that David Watts
17 was a part of. There was no conspiracy that Wynter Lee was a
18 part of. And to the extent that there was a conspiracy to
19 abscond with our money, we certainly weren't told about it. We
20 didn't learn about it until all of us got indicted and with
21 respect to all of these bank records in 2016. And yet when
22 Mr. Wigley comes up here, it's like that was irrelevant.

11:48 23 You saw in opening statement they mentioned my name 600
24 times, mentioned Greg Warren's name once, Kristy Le's name
25 once. Are you kidding me? It's like we are in a different

1 trial.

11:49 2 Wire fraud. David Watts and Wynter Lee killed themselves
3 to put together 44,000 packets, and yet your government indicts
4 them, count 17, for sending an e-mail that says, Here's a copy
5 of the maps of these five states, and here's how we can
6 geographically stratify it for Phase II. Count 17 is a joke.

11:49 7 Count 18, you have no evidence before you other than that
8 that \$500,000 was sent in good faith to fund what was supposed
9 to be an army of people to go out and meet with these clients
10 and get the information they should have gotten with the
11 10 million the first time. Feinberg, I even asked him about
12 the 500,000-dollar wire. He says, It wouldn't surprise you.
13 It was going out in the field to pay hundreds of thousands of
14 people. No, that wouldn't surprise me.

11:49 15 In terms of how they spent it, I had no role in that, this
16 \$498,000. Didn't know about it until we got the bank records
17 this year. But disgustingly, disgustingly, after \$10 million
18 evaporates in gentlemen's clubs and casinos and cigar bars,
19 it's not enough. \$750,000 was sent to try to fix the mess, and
20 they take that too. Outrageous. So we send another \$250,000.
21 Mr. Cracken: Yeah, the purpose of it is to reach out to the
22 client base to collect the documents we needed.

11:50 23 Phase II, you can see from the records where it did and
24 did not go. There's no wire fraud, none whatsoever.

11:51 25 Identity theft, a bunch of counts. You know, I've got

1 three kids sitting behind me that I can't look at right now
2 because I don't want to lose it. If any one of them had a math
3 test, for example, and they came back and they got 65 out of 66
4 right, I would say congratulations, that's an A plus. But that
5 doesn't work today, folks. Any one guilty out of some
6 misguided compromise ruins lives forever. There is no
7 evidentiary foundation for one of them.

11:51 8 Let me take you through this alleged identity theft. And
9 I have been very up front. These people had their identities
10 stolen, but not by us, and we proved that over and over again.
11 First of all, with respect to each of these 23 identity counts,
12 we have a signed POA, and a 4506-T. Every one of them. And
13 you've got the packet numbers right there. And yet they want
14 me, 150 miles away, to be converted into some amateur
15 handwriting expert for stuff that I never saw to identify these
16 problems that Norma Jean Bullard tells you she saw, even though
17 she wasn't employed there at the time. It doesn't make sense.

11:52 18 The only evidence you have with respect to these
19 signatures is the cross-examination of their handwriting
20 expert, a fine gentleman, talked about all of these signatures,
21 yes, they are signed -- each of them are signed by the same
22 person between the two documents, but they are slightly
23 different. There is no PDF pen transposition of them. There
24 is a Court order to send what we sent. It was due on
25 November 22, 2010, and eventually 45 days after subsequent

1 cases came in, which is why you've got some on January 6th of
2 2011. And there's the order. It is D1-72726. All of the data
3 in the plaintiff profile forms for these 23 people is the same
4 as the data that was provided to Watts Guerra Craft. You
5 remember we called as the first witness, Johnette Hassell, an
6 accuracy rate 99.07 percent, which is less than the error rate
7 of the Social Security Administration. Remember Dr. McGwin,
8 1.4 percent? So our folks did a pretty good job. I'm sure
9 there's fact wrong here or there, but no criminal intent
10 whatsoever.

11:53 11 She testified as to how that material got from the field
12 into the database. And that David Watts, Wynter Lee, nobody at
13 my firm, played any role in manipulating data. It was all done
14 before we got it. And all you need on that is Ryan Willis,
15 Chris DeLeon and Gerald McGwin. It's abundantly clear what
16 happened, but the government didn't care enough to go find out.
17 We had to find out for you.

11:54 18 When we filed the plaintiff profile forms, we had no
19 notice from any of the 23 that there was a problem. Let me
20 just take you through those real briefly. Count 22, Nga
21 Nguyen, you just heard this lawyer say, aha, she signed an
22 affidavit, but he is indicting us right now for something he is
23 alleging happened in November of 2010, and she signed an
24 affidavit 18 months later. Count 22 has got to fall. All of
25 these letters that were sent, just throw them away. We never

1 got any notice back, no calls back. Count 23, Tan Pham, no
2 communications back to the firm. How would we know? Count 24,
3 cue Dong. Do you recall reaching out to the law firm about the
4 letters? No, sir. Did you reach out to any other entity about
5 the letters? No, sir. I'm not blaming these people, but the
6 bottom line is we had no way of knowing they were anything but
7 a legitimate client of the firm. Count 25, Leng Tang. No
8 effort by anybody in your family to reach out to the BP or
9 GCCF. No. And this gentleman was a stud. I loved the guy. A
10 lot of the people they brought in, fine Americans, great
11 stories, compelling narratives. And yes, they had their
12 identities stolen, but that doesn't justify the government
13 claiming what is not true, and that somehow we were involved in
14 it when they know it's not true. Count 27, Hue Nguyen, never
15 met me before. You probably thought I was just asking these
16 questions to be nice. We have never spoken on the phone, never
17 communicated in writing. The point is, there was never any
18 notice to me or my law firm that there was anything wrong with
19 respect to these people, but yet the theory of the prosecution
20 is, well, we brought them in here and they said they weren't
21 clients. But they did that in August of 2016. In order to
22 convict on this government's case, and you know I like movies
23 from the e-mails you have already seen, it's almost like you
24 have got to be Doc Brown and Marty McFly in Back to the Future.
25 We need a time machine. We have to get from 2010, they have to

1 fly the time machine, the DeLorean over here, to listen to
2 Judge Guirola's court in 2016, fly me back to 2010 in order to
3 impart the knowledge we didn't have in 2010. It makes no
4 sense. Your task is what was in our mind back in 2010. Was
5 there a criminal intent? Not after we have exchanged four and
6 a half terabytes of discovery in a criminal prosecution in
7 2016.

11:56 8 Count 28, Tan Nguyen, we have never met before, never
9 talked on the phone, never written me back. He never called us
10 on any occasion. Count 31, Nghia Hoang, never met, never
11 spoken on the phone, never written any letters. Count 32, the
12 first time you heard about it was when the Secret Service came
13 and talked to you about it.

11:57 14 That is another issue. Mr. McCrum was very polite about
15 one of the things you could consider is errors in the
16 investigation. How about the investigation that just was
17 happening a couple of months ago? Some of these witnesses
18 hadn't ever talked to them, just got a subpoena in the mail.
19 That's not good investigation. That's last minute cramming for
20 the exam that you know is coming on July 18th. They tried to
21 insinuate, hey, we have two people with birth dates 18 months
22 apart, so we had to go through the fact that brothers and
23 sisters in the same house, work on the same boat all the time.
24 Yes, yes, yes.

11:58 25 Count 32, Peter Ho. He didn't even live in the house.

1 His ex-wife was there. Yes, she told me about the letters but
2 she never gave me any copies. There's no evidence that Peter
3 Ho ever contacted our firm. She didn't keep the letters, she
4 didn't give it to you, you don't have any knowledge about it.

11:58 5 Count 34, Be Huynh. We've never met, never talked, no
6 letters. Count 45, ^ Chinh Nguyen, never met, never talked, no
7 letters. Count 37, we never met, we never talked. It's like a
8 broken records, but the record is broken by the sheer attempt
9 to throw so many counts on the wall that a little bit of the
10 spaghetti will stick. So we've got to respond to them. Cindy
11 Tran threw all the letters away. She didn't call us.

11:58 12 Vu Hoang threw away nine or ten letters. Mary Lockett, I
13 thought this lady was wonderful. She got ten letters. She
14 threw them in the trash. She got answers -- voice mails on her
15 answering machine. She deleted them. No problem with that.
16 But the point is, we never got any notice back that there was
17 an issue. Hung Nguyen, never met, never talked. Count 40.
18 Count 41, Mary Quave, same thing. Count 42, Maria Vu, same
19 thing, threw the letters away, didn't do anything with it.
20 Count 43, Kim Nguyen, same thing, never wrote letters, never
21 called on the phone. Count 44, we never met, doesn't know who
22 did this to her.

11:59 23 This was an interesting point in the trial. It says, Hey,
24 can I point out something? Where it says, Do you speak
25 English, it says no. And I said, You speak good English. She

1 says, my primary language isn't Vietnamese. And I said, of
2 course, you and I have never met before, so I wouldn't have no
3 way of knowing that. And she agreed. It's kind of a fatal
4 flaw with Mr. Rushing's theory. I didn't have a time machine
5 to go to 2016 and know that the language was wrong and come
6 back to 2010. There is no knowledge. Count 45, never met,
7 never talked, never communicated. 46, never called our law
8 firm about this matter. 47, we have the belated government
9 investigation. They came to my house for the first time two or
10 three months ago. First time I ever talked to them. If they
11 can't figure out until two or three months ago, how am I
12 supposed to figure it out six years ago? Anna Do, count 48,
13 didn't know whether she got letters, didn't know whether she
14 got the post card, doesn't recall ever receiving the post card.
15 Never responded. We had no way of knowing. So we had no
16 notice on any of the 23. There was no intent to defraud here,
17 folks. It was to meet a court deadline that lawyers are called
18 upon to do.

12:00 19 Crystal Cox testified about Judge Barbier's plaintiff
20 profile form deadline and that we were doing our dead level
21 best to meet the deadline. Mr. Cracken, he became aware of the
22 Court-ordered deadline for the plaintiff profile form. So we
23 are lawyers. We meet deadlines. It's what you as a client
24 would want us to do if we were your lawyer. There is no
25 evidence of identity theft whatsoever.

12:01 1 Mail fraud, and this is out of sequence in terms of the
2 counts, but I tried to put them in sequential order, and now
3 they are saying in 2012 -- and this one just really sticks in
4 my craw -- the idea that a lawyer, meeting his obligation to
5 his clients to communicate deadlines, which we will get sued
6 for not doing, somehow becomes a violation of the federal mail
7 fraud statute is just preposterous. At the very least, one of
8 the reasons we brought all of these lawyers to talk to you is
9 that you have to put yourself in my mind and say why is this
10 guy sending all of these letters? I am sending all the letters
11 because I owe a duty to the clients to communicate the
12 deadlines for them, because in all of these mass tort cases,
13 inevitably there is a small percentage, usually, that don't
14 meet the deadlines, and we have to have the proof that we
15 notified them about these deadlines.

12:02 16 Now, this mail fraud is kind of fishy for another reason.
17 Of the 14 counts of mail fraud between 2 and 15, nine of the 14
18 are at Stacy Le's address. I found this very strange.
19 Remember Stacy Le was the person who worked for K & G, did the
20 work with Kristy Le, her cousin was Kristy's best friend,
21 remember, Linda Nguyen was the cousin's name, Linda and can
22 Kristy are friends, best friends. I don't understand for the
23 life of me how if I was involved in this, how did I ever get
24 the name of this young lady's brother who has been in prison
25 for 14 years. If he has been in prison for 14 years, he hasn't

1 been in any phone books, so we didn't get him that way, and yet
2 everything that has a heartbeat in that house ends up filling
3 out a questionnaire that is sent to me as a claimant in the BP
4 litigation. I thought yesterday Mr. Rushing had some very
5 interesting questions with respect to the one gentleman who
6 came on that was related and said, were there that many on the
7 boat? No. Have you ever heard of X, Y, Z, A, B, C? And yet
8 there are claim forms for all of them. Something is going on
9 here, folks. When the judge says use your common sense, just
10 look at this address. Look at the brother who has been in
11 prison for 14 years. Look at the gentleman yesterday that got
12 paid \$61,000 to shoot hoops with Chris DeLeon.

12:04

13 With respect to the people at that house, there was no
14 notice to our law firm, no notice from Anthony Nguyen, no
15 notice from Thuyen Tran, so it can't be mail fraud. All we did
16 was send letters to meet our legal duty to disclose.

12:04

17 I brought to you one of my -- it's like one of my mentors,
18 been doing this a generation longer than me. George Fleming is
19 the only person I can think of that does it with more clients
20 than me, 60,000 at a time, 40,000 at a time, and of course he
21 says you've got to send mail to the clients. They have got to
22 understand what is going on and what the deadlines are. His
23 opinion was, with respect to the 422,000 pieces of mail, the
24 58,000 live phone calls, the hundreds of thousands auto dials,
25 that in combination, we utilize those communication methods in

1 an optimal manner. There is no mail fraud here, folks.

12:05 2 This aggravated identity theft, this is a little confusing
3 because they have three counts that they call identity theft,
4 and this is counts 49, 53 and 55, and then they have a whole
5 bunch that they call aggravated identity counts. It all deals
6 with the January presentment. There is no dispute in this case
7 that there was a three-year statute of limitations under the
8 OPA, the Oil Pollution Act. There is no dispute that under the
9 OPA you must present in writing 90 days before or your case is
10 going to get dismissed. So our deadline is January 19, 2013.
11 You are sitting there, you know you have a problem with your
12 client base because nobody is calling you back -- I mean, a
13 bunch of them are. We got live people on the phone all the
14 time, but we don't know why we are not getting everybody back,
15 and according to the prosecution's theory, I should just not do
16 anything and submit myself to tens of thousands of malpractice
17 lawsuits for missing a presentment deadline. It makes no sense
18 whatsoever.

12:06 19 I don't believe that anybody has given you any valid
20 information that I really thought that any of these people were
21 going to be paid based on that presentment. It was a place
22 holder to keep their claims preserved until they went through
23 the settlement filter, and I knew that if they didn't show up
24 with the proof of identification, if they didn't show up with
25 the proof of damage, that they weren't ever going to get into

1 the shoot, and they were going to be filtered out of the case
2 and dismissed, which is precisely what happened. It is the
3 height of paradox to me that these gentlemen can on the one
4 hand say, aha, he only filed 700 of them, and only four of them
5 got paid, that shows X. Don't you just know that if I had
6 filed 35,000 of them for people that didn't exist, we would be
7 strung up with 35,000 different counts. So what we did is, we
8 filed with respect to the people who gave us two forms of
9 identification, we filed with the people who gave us specific
10 instructions to file, and everybody else got filtered out of
11 the system, and their claims are gone, as it should work.

12:07 12 Paul Leftwich, BP's own representative in this case, nice
13 guy, received the presentment a day before the deadline. This
14 information came from the Bureau of Labor Statistics. Feinberg
15 knew it, BP knew it, the Court knew it, and here's the e-mail
16 from Feinberg. It's D1-535. I told him on September 22, 2010,
17 we are going to send you the contracts, 4506-T tax return
18 forms, and we are going to send you the income information from
19 the Bureau of Labor Statistics, and Feinberg testified to that.
20 Everybody knew what we were doing. We weren't saying that
21 plaintiff A was different than plaintiff B or was the same.
22 It's a place holder. So we used Bureau of Labor Statistics
23 average wages. Leftwich says, I'm familiar with that. It is
24 done all the time in this kind of litigation.

12:08 25 We had no notice with respect to the three identity theft

1 persons. Nga Nguyen, he says, aha, he presented for her. The
2 issue was, and you've got this in the record, there is
3 something called PTO 34 where the judge set up rules where he
4 didn't want to be burdened by this on a daily basis, but this
5 case was dismissed. It was dismissed. Remember the 513 there
6 that they want to pretend? Remember the first week of trial?
7 You would think from all of the interviews that Watts didn't
8 dismiss any of these cases. Any time we got notification of a
9 problem, we put it through a process to get written
10 confirmation, and then we dismissed. That cannot be used as
11 evidence to attribute that you knew all the rest were
12 problematic. So we did what was right over here, we did what
13 was right over here in terms of continuing to pursue our
14 clients' rights and at least put the place holder before the
15 Court so that when they didn't show up with the proof that they
16 needed to achieve under the settlement, they would be filtered
17 out of the system.

12:09 18 Count 53, Mary Quave, met with the Secret Service back in
19 2013, yet to this day, they can't tell her who did this to her,
20 and yet they want to superimpose onto me the duty to know who
21 did this to her. They have had this investigation going for
22 years longer before they invited me to the party to start
23 looking at the evidence. Count 55, got a couple of letters,
24 but I threw it away, just threw the letters in the trash.

12:09 25 Same thing on the 20 aggravated IDs. Count 74. This is

1 the one where you remember I returned the \$475,000 in checks?
2 That is something fraudsters do all the time, right? I sent
3 them back because we couldn't match it to individual names.
4 There is a lady named Cindy Tran coming up. There are 12 Cindy
5 Trans in that database. You have to be able to match it or
6 you're going to send it to the wrong one, and so we talk about
7 that. Count 75, no phone calls, never met me. Still doesn't
8 know who did this to him, and yet I'm supposed to have
9 committed aggravated identity theft on this gentleman. Count
10 76, first time he learned anything was on is when the Secret
11 Service came and told him. Count 77, threw the letters in the
12 trash, never even opened them. Count 77 even more so, we left
13 him all sorts of messages. He would simply delete the
14 messages. Count 79, Secret Service was the first one that told
15 him anything was up, so it is pretty obvious that they never
16 called me. Count 83, remember the ex-wife told me about the
17 letters but didn't give me a copy of them? 87, yes, I got some
18 letters. No, I don't -- I don't really remember. Why does it
19 feel like we have already done this again? Because we have
20 over in the identity theft. It is part of the spaghetti on the
21 wall. Let's make it look like it is 66 crimes. Really, what
22 we're going to do is we're going to take 23 people and repeat
23 it twice to make it look like a whole bunch of stuff. In fact,
24 it is you signed up 44,000 claimants, you sent money wires to
25 try to prove up their damages, you met deadlines, identity

1 theft, you mailed your people, and you preserved their claim.
2 Five. But we are going through this over and over again.

12:11 3 Count 88, didn't get any mail, no phone calls. Count 89,
4 we've never met, no mail, no calls. Count 91, just threw the
5 letters away in the trash can. Nothing wrong with that, but it
6 is hard for me as a lawyer in Texas to know this client doesn't
7 think that I represent her.

12:12 8 Now, one gentleman is different, Vu Hoang. Remember, he
9 is the gentleman that called one time, but the case notes
10 indicate he wouldn't verify his information, he said bye and
11 hung up before we could reply. But what did we do? And this
12 is the important part of Vu Hoang. We gave him information, we
13 sent a second mail call, we did a person search to make sure it
14 was the right person, we sent a certified letter that he
15 refused to accept, so it came back unclaimed. What are we to
16 do? We get it back unclaimed. How do we know that one
17 individual's call, who we can't match because he won't give us
18 the matching information, he won't respond in writing like we
19 need to, what are we to do?

12:12 20 Well, every lawyer you've talk to, including some of their
21 witnesses said that, look, if you start dismissing people's
22 claims in error, you are toast come malpractice time. We had
23 to get confirmation. This gentleman, and again, I don't blame
24 him, refused to give it, and that is why he is still in the
25 case.

12:13 1 Mary Lockett, it is really obvious to me -- and I don't
2 know which one it is. I was kind of hoping the Secret Service
3 would shed some light on this, but they didn't care enough to
4 find out. Somebody took this out of the Jackson phone book, no
5 doubt. I've never been to Jackson. I've never seen that phone
6 book. I'm not guilty of aggravated identity theft. She
7 doesn't know to this day who did it. But I thought one of the
8 pivotal moments of the trial, other Mr. Cracken's statement,
9 "It would be like subjecting one's self to Ebola," was this
10 woman, on a Friday afternoon, "Have you ever heard of somebody
11 paying \$10 million for a phone book?" Because before you write
12 guilt on a conspiracy theory, that is what you have to believe,
13 is that I chose to pay \$10 million as opposed to just getting
14 some phone books myself. It doesn't make any sense. Neither
15 would make any sense because you couldn't collect a dollar.
16 All you are going to do is blow up your legal career and
17 subject it to Ebola.

12:14 18 Count 95, the last of the 66, we made seven phone calls.
19 She thought it was junk mail and just deleted it. There is no
20 notice of any of these folks.

12:14 21 So where are we? It doesn't stop there. You saw the
22 instruction that Mr. McCrum said about evidence of good
23 character. Ken Feinberg -- there is a rule in the law, don't
24 ever ask a question on cross-examination that you don't know
25 the answer to. I said, well, it's never good to ask a question

1 like this but might as well. Was I a fraudster? Wouldn't have
2 been good for me if he had answered it the other way. Right?
3 I knew what his answer was going to be. Ken Feinberg is an
4 honorable man, does a lot of good for a lot of people. He
5 knows the same is true with respect to me.

12:14 6 Kayleigh Stone, she can't blame the fact that on her
7 social media site she is extolling her time at Watts Guerra,
8 her successful management for the case of the Gulf oil spill.
9 It is one of her accomplishments.

12:15 10 I thought this was one of the key witnesses in the case,
11 met him one time, dealt with him as a professional on the other
12 side of major litigation, and he came over here voluntarily
13 without a subpoena to tell you what he thought about me. David
14 Pritchard, again, an expert witness, the lead guy against BP,
15 came over here voluntarily without a subpoena to tell you what
16 he thought about me. John Perry, it is embarrassing to have to
17 call a guy like John Perry and tell him, you know what the
18 theory they are trying to sell is? 600 million divided 15 ways
19 evenly. Of course, we know his appointment as special master
20 belies that fact. But the reason you disclose is this
21 gentleman is going to show up again, and he has. My
22 credibility, in his eyes, is important to me because I'm going
23 to see him again, and he says, I would hope that that would be
24 the case. He has no complaints with respect to my failure to
25 disclose issues with respect to the BP client base.

12:16 1 Charles Kaffie: What has been your experience with Mikal
2 Watts? Absolutely beyond reproach. According to the Court's
3 own instruction, those five slides itself is enough to create
4 reasonable doubt. You could put away the entire avalanche of
5 all the other evidence. But again, I'm not really just
6 interested in reasonable doubt. I wish the judge could put in
7 a blank that didn't say not guilty. I wish it would say
8 innocent, so you could check it. \$11 million was stolen from
9 me, but so was my reputation. The people that were closest to
10 me, they know. They know. I go to bed at night very secure in
11 doing the right thing.

12:17 12 I thought that young man, David Frazee, was a rock star
13 when he worked for me. He worked hard. I tried to expose him
14 to everything you are going to see in the law, and the one
15 thing he did not see was Mikal Watts trying to commit a fraud,
16 which is why his parents are here today, it's why Max Lucado
17 showed up. They believe. President Lincoln said once,
18 "Character is like a tree, and reputation is like its shadow.
19 The shadow is what we think of it, and the tree is the real
20 thing." I try every day to conduct my affairs solid as an oak,
21 but I need your help. Your verdict is a form of communication
22 that the rest of the world is going to see.

12:18 23 President Lincoln, about 151, 153 years ago gave the most
24 famous speech in the history of our country. It's at the
25 battlefield of Gettysburg. Part of what he said is, "Let us

1 the living be here resolved that these men shall not have died
2 in vain."

12:18 3 So what can we make of this? What good can come of this
4 entire situation? Let me tell you, one of the reasons that
5 speech is so famous is that he said it in 272 words. It took
6 him less than three minutes to finish. I would submit to you
7 that given you what have heard, you don't have to give a whole
8 bunch of days to deliberating this. It is so clear. You can
9 go in, because of an absence of proof, and just go to the right
10 side of that verdict form and start firing off not guiltyies one
11 after the other. What I would really like is exclamation
12 points on each of them, because people are going to watch what
13 you do. 66 in a row, not guilty, with exclamation points. You
14 can do it in about 90 minutes. It would be great if you could
15 do it in 66 minutes to send a message.

12:19 16 Do not compromise. I'm not interested in 65 not guiltyies
17 and one guilty. The evidence didn't do that. Help me get my
18 reputation back. Follow the law, follow the facts, come back
19 with a true verdict, whatever speed you choose to be
20 appropriate, but I can tell you your verdict is a form of
21 communication. There are 66 charges. There are three
22 defendants. Don't come back with my verdict without David and
23 Wynter's as well. I'm not leaving a man in the field.

12:19 24 **THE COURT:** Thank you, Mr. Watts. Your time has
25 expired. All right. Ladies and gentlemen of the jury, I'm

1 going to let you go on to lunch and take a recess at this time.
2 And before you go, I want to caution you again and instruct you
3 once again, this case is not over. You have not yet heard
4 closing arguments of the remaining defendants or the closing
5 argument of the government. Please do not talk with anyone
6 about the case. Do not allow anyone to talk with you about it.
7 You should not even be talking with each other until such time
8 as the Court let's you go back to the jury room for purposes of
9 deliberation. Make no independent investigations on your own.
10 Once again, you have heard all of the evidence that you can
11 properly consider. In the event that the case is before you in
12 the media, I caution you and instruct you once again do not
13 read about it in the newspaper, do not listen to any radio or
14 television newscast concerning it. Please reconvene, and I
15 will see you at 1:30. You may be excused.

12:21 16 (JURY OUT AT)

12:21 17 THE COURT: Is there anything else with we need to
18 take up on behalf of the government before we recess for lunch.

12:21 19 MR. RUSHING: No, Your Honor.

12:21 20 MR. LEWIS: I can do it before or after we come back.

12:21 21 THE COURT: I'm sorry. I didn't hear you.

12:21 22 MR. LEWIS: I can do it very quickly or wait until we
23 come back to start. It is very brief but I don't want to
24 impose on anyone's lunch.

12:22 25 THE COURT: I will then. What is it?

1 in the jury.

13:31 2 (JURY IN AT)

13:33 3 THE COURT: Thank you. Please be seated. Good
4 afternoon, ladies and gentlemen. Again, the parties have
5 indicated to the Court that they are ready to proceed. Mr.
6 Hightower, you may make your closing argument on behalf of
7 defendant Wynter Lee.

13:33 8 MR. HIGHTOWER: Good afternoon, ladies and gentlemen.
9 I'm K. C. Hightower, and I represent Wynter Lee. I told y'all
10 four or five weeks ago that we may be here for several weeks,
11 but it wasn't going to be on account of me, and I've kept that
12 promise. And I tell you now that we are not going to be here
13 all afternoon on account of me. But what I do want to do is
14 hit a few points that I think came out in this trial that
15 directly relate to my client, Wynter.

13:33 16 I told you in opening that Wynter's job was one of form
17 and not of substance. That is certainly not to suggest that I
18 think that what my client does is unimportant. Everybody is
19 important. The people in my office are important. But there
20 are some that develop the words that go on things and there are
21 some that place it on paper. Wynter is in the second group.

13:34 22 Watts law firm would not be able to function without
23 people like Wynter Lee. But at the end of the day, what goes
24 on that paper is and are the decisions of lawyers. It is
25 lawyers who answer to their bars of the state, it is lawyers

1 who pay malpractice premiums, and it is lawyers who are
2 ultimately answerable to their clients.

13:34 3 Wynter Lee, though a valued employee, simply worked at
4 Watts Guerra Craft. That's all she did.

13:35 5 I heard Wynter Lee's name more this morning in Mr.
6 Rushing's first argument than I have for four and a half to
7 five weeks. But that's his job. He has to do something. Even
8 if that something is trying to make a silk purse out of a sow's
9 ear, he's got to talk about her, she is in the indictment. But
10 as he sped through that PowerPoint, I want to go back and think
11 about what he showed you. Everything that he showed y'all was
12 form things. They've never understood what Wynter's job was.
13 He said, she came up with the dollar amounts. She most
14 certainly did not. Those dollar amounts were decided upon by
15 lawyers in that law firm based on the Bureau of Labor and
16 Statistics.

13:36 17 If you look at that e-mail that he showed you, it says, we
18 will merge this paragraph. Well, I have to ask people that I
19 work with sometimes what things mean. And when something
20 merges into a document, that means you are incorporating that
21 language. That's what she does. That's what she knows how to
22 do, over and over again.

13:36 23 You also heard testimony in this case that this is not the
24 only case she was involved in. In fact, she was by no means
25 the most involved. Kayleigh Stone was the BP project manager.

1 Kayleigh Stone testified that she went to Lafayette and met
2 with Greg Warren, that she went to New Orleans and met with the
3 principals involved in this case, that she reviewed the 2100
4 page settlement agreement, and that she reported back to the
5 group what the Plaintiff's Steering Committee expected in
6 forms.

13:37 7 There has been umpteen jillion documents entered in this
8 case, umpteen jillion. I'm from Stone county. That is a lot.
9 I've put one in. It is the e-mail that is two to two and a
10 half weeks before the law offices of Watts Guerra got raided,
11 where Kayleigh Stone, the government's witness, was directing
12 the actions that everyone should take with respect to the
13 claims, and that e-mail, it is D3-315, it's so important
14 because it tells you so much. It gives you, number one, and
15 importantly, a flavor for Ms. Stone. She likes being
16 important.

13:37 17 Number two, it tells you that not only can did she not
18 believe that anybody was breaking any federal law by filing
19 forms that weren't complete, but she recognized that the
20 Deepwater Horizon program contemplated that very action. You
21 file it, you hope that you got all the information on it, but
22 if you don't, they send you a letter that says you need to send
23 in such and such or we are going to kick this one. You try to
24 scramble together and get it in. They will send you another
25 letter. You need to get this in now or we are going to kick

1 it. If you don't fix it that time, they will send you another
2 letter, but this time it's going to cost you another hundred
3 dollars. And what that e-mail says is Kayleigh Stone decided,
4 we are going to really have to look at this. In other words,
5 how much are we going to chase these folks? Are we going to
6 front the hundred dollars or are we going to give up? Kayleigh
7 Stone wasn't asked to break any federal law, and she basically
8 admitted that when she got to the end of her testimony. The
9 best she could muster was I had a personal aversion to it.
10 This case is not about personal aversions. This is about
11 accusing a citizen of this country of committing 66 felonies.
12 They indicted the form lady in this office. They indicted
13 somebody who goes to work and goes home to be with her husband
14 and her little girl. She doesn't fly to Las Vegas. She didn't
15 spend money on bars and cars and gentlemen's clothes and
16 clothes and leather goods and who knows what else. Not one
17 spreadsheet entered into evidence, not one ounce of testimony
18 ever reflected any money going to that lady right there.
19 Nothing. And quite frankly, not one e-mail was placed into
20 evidence that ever showed that she had any participation in the
21 discussion of the project itself. She didn't go to Biloxi.
22 She didn't go to Gulfport, she didn't go to New Orleans. She
23 stayed in Texas, building packets, hoping somebody would fill
24 them outright and make her life easier. Everyone of the counts
25 in that indictment requires you to believe that that lady right

1 there woke up and decided to defraud somebody, to commit mail
2 fraud, to commit wire fraud, to conspire, to cheat somebody.
3 We've been here for four and a half week, and there ain't been
4 an ounce of proof to support anything like that. Nothing. And
5 she has endured it, and she has listened to it.

13:40 6 She is supposed to be, if you look at the government's
7 chart, and you look at Mr. Rushing's PowerPoint, what an
8 unflattering picture. It looks like they take your shot --
9 I've had very few flattering pictures of me but it looks
10 like they took the worst one and stuck it on a board and said
11 see, she done something wrong. What did John Cracken tell you?
12 She is supposed to be one of the main conspirators? Y'all
13 remember Mr. Cracken? A very polite gentleman, very direct,
14 very sharp. He looked at her and he goes, I'm sorry, I
15 apologize. I don't believe we have met. This is the
16 government's king pin. Never heard of her.

13:41 17 What about Norma Jean Bullard. Y'all remember good old
18 Norma Jean. Ain't seen the ball since kickoff. What did she
19 say? Wynter Lee was a great boss. Wynter Lee was a great
20 friend and a great mentor. I submit to you that great friends
21 and great mentors don't ask you to commit fraud. And
22 Mr. Frandsen, what did he do? He tried to get poor ole Joe
23 Navarro to testify that Wynter Lee had asked somebody to change
24 something on a form. What did Joe Navarro say? No. After he
25 looked at it, no, she marked fisherman in a database where

1 there are only two choices, fisherman or not fisherman. And
2 what was her understanding? That all of the clients they were
3 getting from the coast were fishermen. And what was my point?
4 What if there is a box that says male and female and it says
5 John David Robert Lewis, and you are going to pick male?
6 That's not fraud. That's using your brain.

13:43 7 Mr. Rushing, in his opening awhile ago said -- he
8 suggested to y'all, talking about the handwriting analysis.
9 Mental intent is very important in this case. It is paramount.
10 It is the ultimate consideration. Wynter Lee worked there.
11 She sent stuff out in the mail all the time. I don't contest
12 that. It's what was her mental intent. Mr. Rushing says
13 earlier, you know, our handwriting expert said that one of
14 those hand writers was Abbie Nguyen, but there was some other
15 handwriting on that form. You know what that suggestion was,
16 that it was hers. Number one, there's umpteen jillion people
17 working there, and number two, Richard Dusak is a talented
18 handwriting analyst, and they have had five years to send
19 somebody out to that law firm and check every handwriting in
20 that office, and don't you know if they could have gotten one,
21 that would be the first thing you would see. Look here. They
22 didn't do it.

13:44 23 You know why they didn't do it? Because they never
24 believed she did it. Talk about mental intent. Talk about
25 deliberate indifference.

13:44 1 Judge Guirola related a story to y'all when this trial
2 began about Benjamin Franklin. This is not the first time I've
3 stood in this spot and God willing, it won't be the last. He
4 said that Dr. Franklin said to the lady, when she asked him, do
5 we have a republic or a monarchy, he said we have a republic if
6 you can keep it. What you are doing today is what Dr. Franklin
7 was talking about. Yours is an awesome power. It is the power
8 on one hand to convict and to condemn. And on the other hand,
9 it is the power to free the innocent. It is that second power
10 that I call upon you to exercise today. There are 462 separate
11 decisions that you have got to make back there in that jury
12 room. The first 66 will be the easiest that you will make in
13 this entire trial, and they are to acquit Wynter Lee of every
14 single count that pins against her in that indictment. I thank
15 you.

13:45 16 **THE COURT:** Thank you, Mr. Hightower.

13:45 17 **MR. HIGHTOWER:** Thank you, Your Honor. Mr. Lewis,
18 you may make your closing argument on behalf of your client,
19 Mr. Eloy Guerra.

13:46 20 **MR. LEWIS:** Thank you, Your Honor. Let me get all
21 strapped up here.

13:46 22 Your Honor, before I begin, may we turn on the PowerPoint?
23 Thank you, ma'am.

13:46 24 May it please the Court. We come to this point bearing an
25 extreme responsibility. Before you is a man who is a devoted

1 father, a loving husband, and a citizen who has lived an
2 impeccable life, and he stands before you facing the rest of
3 his life in prison over a crime he did not commit.

13:47 4 I tried to think last night when I felt the same sense of
5 responsibility, and the closest I could come was back when I
6 was a prosecutor, and I prosecuted murderers and rapists. I
7 had this same overwhelming feeling of responsibility to get it
8 right for those victims and especially the parents of those
9 victims and murderers.

13:47 10 When you represent a defendant most of the time, your job
11 is to do the best you can with what you've got. But on the
12 occasion where you represent a man who has lived a life free of
13 crime, an impeccable life and he is facing this type of prison,
14 it is that greatest of responsibility. And it is my sincere
15 hope that we all get it right because Eloy Guerra is clearly
16 not guilty.

13:48 17 Eloy's true crime and his only crime is trusting people
18 too much. He obviously trusted people to do their job as they
19 had done before, as they told him they were doing, and it ended
20 up being a complete fraud, as I promised y'all in opening
21 statement. But he had reason to rely on those people, as we
22 have talked about hindsight, yes, it is 20/20 now, but back
23 then, you remember they had just come off of FEMA, and Gregory
24 Warren and Kristy Le who had worked under him in that case had
25 produced amazing results of accuracy, 91 percent. We remember

1 that quote. So he had no reason to distrust these people or
2 think there was going to be fraud committed. Kristy Le
3 convinced Eloy Guerra, the Watts law firm and everybody up the
4 chain, including Mr. Cracken, that she was the right person to
5 be the field general on BP. She spoke the language that no one
6 else spoke, she had family in the shrimping community, the
7 Vietnamese community was her community, she had done a great
8 job in FEMA. She was the natural person to be, in fact, the
9 general of the field. And as you can see, it's not just my
10 belief. Mr. Cracken makes it very, very clear, so did
11 Mr. DeLeon. There's no doubt Kristy Le's people were the ones
12 acquiring the clients, they are the ones putting every single
13 piece of information about them into computer. That is
14 correct. She was the general of the field.

13:49

15 Now, you will also recall she continually, through e-mails
16 we put into evidence, and there's a lot of them, as Mr.
17 Hightower said, a bunch. I encourage you to look at them.
18 I've only picked out two because the time I have to illustrate
19 to you what she continued to do when Eloy Guerra asked how is
20 this going, do you need any help, what's the deal. And the
21 first one is Mr. Cracken's detail of the meeting he had with
22 her. Y'all have seen this many times. I will tell you this is
23 D5-1921. Look at it. See all the things she offers, all the
24 reasons for the inaccuracy, excuses, excuses, excuses. She was
25 driving all over, knocking on doors, state to state, holding

1 town halls, bringing clients in in droves. That's what Eloy
2 Guerra relied upon. You also see, D5-1915, we are traveling
3 from state to state, picking up packets. It's all coming
4 together, going to be accurate. Now we all know with the
5 benefit of hindsight, Eloy Guerra relied on the wrong people.
6 If you recall during my voir dire during jury selection, I told
7 you the story of my grandfather's home building business and
8 how one time while he was out doing his thing, while his
9 general contractor took a vacation that he hadn't taken in 25
10 years, his sub's subcontractor who poured concrete decided he
11 would put his profit, his money, over his integrity, and
12 instead of putting the rebar in that he would have to buy and
13 would be part of what he got paid for, he poured the slab
14 without any concrete. You all told me, when someone does that,
15 when they hide it, you can't expect the general contractor or
16 the home builder to be responsible for such fraud, such a
17 misdeed that was intentionally covered up. That's the very
18 scenario we have seen played out in this courtroom, almost
19 identical.

13:52 20 Eloy Guerra and others were cheated. They were cheated by
21 the people that they trusted to do the job that they had done
22 exceptionally well before. Kristy Le and her field workers
23 chose the money over doing their job, the hard job of knocking
24 on these doors, of finding these people, of tracking them down
25 and getting the information into these packets that had to be

1 here. Most importantly, you will remember the e-mails, and I
2 will show you the first one, D5-1888, the language is strong.
3 Mr. Guerra makes a very, very clear point. We cannot have
4 anything other than real info, real clients. Nothing else will
5 work. Yet she still, after his very, very forceful admonition,
6 resorted to fraud. You see again, at 1913, he tells her, if
7 you don't get this right, if you can't do it the way you are
8 suppose towed do, if we don't get the update, give the money
9 back. That is not the man who has a requisite criminal intent
10 that Judge Guirola has instructed you you you must find to find
11 Eloy Guerra guilty of anything. That is not the criminal
12 intent. That's a man who was relying on the people who had
13 done the job before in an exceptional way, and there is no
14 crime in that ladies and gentlemen.

13:53

15 I also mentioned something in opening to you. I promised
16 y'all a couple of things. I promised y'all that we, we would
17 prove you the fraud, not the government. And you have seen it.
18 Boy, have you seen it. I watched your reactions when you saw
19 those social security numbers changed, when you saw all the
20 shenanigans going on with the spreadsheets and the like. The
21 clearest indication to me were the spreadsheets. You remember
22 Ryan Willis. He would get the information, he would run the
23 searches and he would get spreadsheets back. He would forward
24 those spreadsheets to Kristy Le. What would happen then? They
25 would be altered. They would be cleansed. Columns, notations

1 would be deleted. Any sign of red flags wiped clean. And then
2 they are e-mailed to Chris DeLeon, another person Eloy Guerra
3 trusted. At least he got it right there. And then Chris
4 DeLeon would forward the same thing either to Mr. Guerra, to
5 David Watts or straight to David Watts, after it had been
6 cleansed by Kristy Le's team of any red flags of fraud.

13:54 7 Kristy Le went a little bit further. She didn't just hide
8 her misdeeds. She made sure she covered her tracks and hid
9 what was going on from Eloy. Remember, Eloy has been extremely
10 successful in this business. You you generate over 200,000
11 cases with never a hint of fraud, misdeed or anything like
12 this. He currently is doing the same job with Mr. Watts, and
13 he has generated over 50,000 clean cases in corn. He knows
14 what he is doing. For the lack of a better word, he is a super
15 star Erin Brockovich. May not be as pretty, but he is very,
16 very good at what he does. He knows he won't succeed with fake
17 clients. He knows no one will recover. He knows phone books,
18 database entries creating social security numbers, that dog
19 will never hunt. He has been there. He knows it. So how does
20 Kristy Le deceive all of these smart people?

13:55 21 And I go back to Mr. Cracken. Look at that. He admits to
22 you, he is a very smart sophisticated man who tells you, she
23 fooled me too. Well, she fooled a lot of people, and I
24 promised you that surprise during opening statement and you saw
25 it. What was she hiding? What was the thing that was lurking

1 here? What was the connection. Well, Chris DeLeon told you.
2 Her and Greg Warren were having a secret affair. They didn't
3 let anybody know that. Certainly didn't let Eloy Guerra know
4 that.

13:56 5 Most tellingly, Kristy Le even fooled the government.
6 Before this trial started, the government admittedly had no
7 idea where this fraud came from, how this happened. And we
8 come back to that buzz phrase that makes my partner very, very
9 happy, thank got for Alicia O'Neill because through the most
10 arduous work and digging and thinking, she figured all of this
11 out. She went and got the records that the government didn't
12 bother to get, and they traced everything until she figured it
13 out. Kristy Le and her field workers were taking the short
14 cut, the easy way out of creating and generating social
15 security numbers. They weren't verifying social security
16 numbers. Verification is what you are supposed to do.
17 Generation is fraud.

13:57 18 Now, the government's investigation has been harped on and
19 criticized, and I want to take a second. Mr. Rushing, Mr.
20 Kennedy, Mr. Frandsen, they get what they are delivered. And,
21 quite frankly, when you are given sour lemons, you try to make
22 sweet lemonade, and they have done their dead level best. But,
23 and I will use their words, garbage in equals garbage out.
24 That's a term they chose during trial. It's ironic, but it
25 tells the story of this investigation and why you ladies and

1 gentlemen don't have any evidence that Eloy Guerra go had
2 criminal intent to commit a crime, because there is no
3 evidence.

13:58 4 Now, the government did try, I believe their level best,
5 to resurrect a case against Eloy Guerra. I, like Mr. Wynter,
6 was shocked about how many times Eloy Guerra was mentioned
7 during Mr. Rushing's closing in comparison to how much he was
8 mentioned during the case. I get it. I'm an advocate.
9 Desperate times call for desperate measures. But maybe the
10 best example of that desperation is seen in this affidavit
11 business. The judge has been wise enough to give you that
12 indictment. While it is not evidence and while those overt
13 acts aren't crimes, it is very telling. Look at paragraph 122.
14 They make this big deal about Gary being a part of the
15 conspiracy in this affidavit. It is a bit disingenuous. He is
16 not even mentioned when they allege it in the indictment, not
17 even mentioned.

13:59 18 You will see e-mails that we put into evidence. That's
19 G169. That's what they wanted you to see. Well, when you peel
20 that back and you show the real picture, you will see D5-1992
21 and D5-1994. Eloy Guerra did nothing more than what he does as
22 the liaison between the lawyer and the field. He got a request
23 from Mikal Watts, he delegated it to the people he thought he
24 could trust, he got the product back, and he forwarded back to
25 the law firm. It's a bit disingenuous to accuse the man who

1 did nothing with the affidavit -- you heard it was Errol Reed
2 at Greg Warren's direction. Nobody ever mentioned Eloy Guerra.
3 This is it. He got a request from Mikal. He did it. That's
4 it.

14:00 5 Another fine example of the desperate times call for
6 desperate measures: The government in their closing has really
7 attempted to lump Eloy Guerra back in with Greg Warren and
8 Kristy Le. And I've picked out a few things to illustrate how
9 inappropriate that is. You will remember my cross of Kayleigh
10 Stone. She started off, they, they, they, Greg Warren and
11 Eloy. She was referring, they, they, they. By the time my
12 cross was over, she very politely admitted she had met Eloy
13 Guerra one time, that all of these damning conversations, all
14 these comments about phone books, all these other meetings were
15 with Greg Warren and Greg Warren alone. There is no they in
16 your verdict form. It is Eloy Guerra.

14:01 17 Mr. Cracken, he started off with a few theys, theys,
18 theys. He ultimately told me, I only had one meeting with Mr.
19 Guerra, and I didn't see anything untoward about that.

14:01 20 The government also, this morning, suggested that Eloy
21 Guerra was responsible for Anders Ferrington funneling money.
22 Well, you you recall my last question of Mr. Ferrington, where
23 he said, that's correct, I've never met Eloy Guerra.
24 Ferrington was introduced by Greg Warren, who was introduced by
25 his long time friend Lane Murray. That's the truth. It has

1 nothing to do with Eloy Guerra. And last but not least, the
2 money. You will recall, and I will jump forward to slides --
3 Mr. Ploetz, the former agent who testified, and he had all the
4 analysis of the bank records, and he traced all the money and
5 he watched all the expenditures, and when he was asked the
6 question, he told you, no, Eloy Guerra's money didn't get spent
7 like the others. There's another telling point about this
8 money. Go to the indictment again. Go to page 15 where the
9 government makes the allegation that Warren and Kristy Le
10 received over \$10 million to commit this fraud. Again, the
11 government doesn't mention Eloy Guerra, not at all.

14:02

12 This is an all or nothing case. You either believe Eloy
13 Guerra go did not have the criminal intent that will take a
14 conviction for all 66 crimes or you don't. It's one verdict.
15 It's one verdict only.

14:02

16 Now, you've noticed throughout the trial that when I come
17 up here or when I do my work, I use a pencil. There's very
18 good reason for that. I make mistakes. I am a human. I am
19 fallible. As a juror in this case, you don't have the luxury
20 of a pencil. There is no eraser. You have to get it right or
21 it will never change. I've left this board up for y'all
22 purposely the whole time I've been talking because it is the
23 instruction that Judge Guirola put in this case that
24 illustrates Eloy's position. It is in your charge and you
25 don't have to read it now, but you will see it on page nine for

1 the first time, and it makes abundantly clear, that despite the
2 government's attempts to make Eloy Guerra guilty by
3 association, that is not the law, that is not what we convict
4 people of, that is not what we take people's liberty for. You
5 have to have the criminal intent to conspire with these people
6 to commit fraud. That's it. This isn't really that
7 complicated of a case. It's a fraud case, and the evidence was
8 wholly lacking as it is to Eloy Guerra to prove he had the
9 criminal intent to commit fraud.

14:04 10 I will leave y'all with one thing. You've sat here for
11 over five weeks and been admirably attentive and patient. I
12 want you to think right now or when you go back in the jury
13 room, can you even imagine going to federal prison for doing
14 your job? Can you believe that a man who has never been even
15 so much as accused of lying, cheating or stealing faces the
16 federal penitentiary on this evidence? Can you comprehend that
17 the same injustice could happen to any of you hard working
18 people? Only you have the power to ensure there is no
19 injustice where Eloy Guerra is concerned, and you do that by
20 finding him not guilty on all counts because the evidence in
21 conjunction with the law makes it very, very clear. The
22 government has not proved beyond a reasonable doubt that Eloy
23 Guerra had the criminal intent to commit fraud. And thank you.

14:05 24 **THE COURT:** Thank you, Mr. Lewis.

14:05 25 **THE COURT:** Mr. Wilson, you may make your closing

1 argument on behalf of your client, Mr. Greg Warren.

14:06 2 **MR. WILSON:** Thank you, Your Honor. We got paid
3 \$10 million for this. Don't bring Mikal Watts any junk. We
4 got \$10 million for this, don't Mikal Watts any junk because if
5 you bring Mikal Watts junk, it's going to come back on you.
6 Those were the words that Greg Warren yelled at Kristy Le in
7 the summer of 2010 during the client acquisition phase, the
8 very acquisition phase they said they knew the entire time was
9 fraudulent. Those were the words that Chris DeLeon heard
10 behind closed doors when Greg Warren and nobody else knew that
11 Chris was listening. And those are quite possibly the most
12 important words that came out in the last five weeks for Greg
13 Warren.

14:07 14 Now, before we get into how important those words are,
15 let's talk very briefly about the government's case. Now, I'm
16 not going the harp on it because they've talked about it, but
17 just keep in mind that mental state that Mr. McCrum spoke
18 about. Every single one of these offenses carries a specific
19 type of mental state, willfulness, knowingly, with the specific
20 intent. And keep in mind the government's burden to prove
21 their case beyond a reasonable doubt.

14:07 22 And what does that mean, as the judge has instructed you,
23 that means the government's proof must exclude every single
24 reasonable doubt that's out there. So then the question
25 becomes, well, has the government done so? Well, let's talk

1 about some of these reasonable doubts for Mr. Warren. Number
2 one, what we just spoke about. Summer of 2010, Greg Warren, or
3 Chris DeLeon is down there with the spreadsheets and he is
4 having problems, and he can't get Kristy Le to be responsive.
5 He turns to Greg Warren, Greg Warren without anybody knowing,
6 well, him knowing, takes Kristy Le into a closed door room and
7 starts yelling at her, don't bring any junk. If you bring
8 junk, it is going to blow back. Does that sound like a man who
9 knew during this time frame that the clients were bad? Why
10 would a person sit there and admonish another person to bring
11 in only good stuff if he knew it was all bad stuff in the first
12 place?

14:08

13 Reasonable doubt number two: Y'all remember Mr. John
14 Cracken. Do you remember Mr. Cracken talking about the back
15 end deal that Gregory Warren and Eloy Guerra had? Mr. Cracken
16 said that Gregory Warren and Eloy Guerra had a back end stake
17 of Anders Ferrington's percentage of the clients that would be
18 paid from the multi-district litigation. Now, keep that in
19 mind. It's the multi-district litigation. It's not the
20 Plaintiff's Steering Committee, not the PSC. That's not
21 guaranteed money with the MDL. The only way, as many witnesses
22 came out and told you, that they could get any money for that
23 is if the clients were properly vetted, the drivers licenses
24 were gone through and they found everything. So why would
25 Mr. Warren come through and throw away money and negotiate to

1 get a back end stake of people he knew was fake in the first
2 place? It does not make sense.

14:09 3 And keep in mind what Mr. Cracken also said about that.
4 He said 30 percent of nothing is nothing. And a truer
5 statement has not been said in this Court. If he really
6 thought that he was going to get nothing out of it, why would
7 he pursue a back end stake? It would have been ghosts in the
8 wind. Would have made no sense.

14:10 9 Reasonable doubt number three, again with the back end
10 stake. You also heard Mr. Cracken testify on the stand, well,
11 Mr. Cracken, you tried to buy that back end stake from
12 Mr. Warren, didn't you? Yes, I did. Why wasn't it done then?
13 If Gregory Warren knew that he is sitting there holding a pot
14 of phantoms, that it was absolutely worthless to him on the
15 back end, why wouldn't he seize that opportunity to sell that
16 to John Cracken? Easy money. Because it was all fake and he
17 wouldn't have gotten anything from it. Why didn't he do it?
18 Because he believed he was going to get a back end stake,
19 because he believed the clients were real in that pot.

14:11 20 Reasonable doubt number four: You've heard Mikal Watts
21 say on cross-examination a number of times, does it make any
22 sense for a man to go out and pay \$10 million to get a bunch of
23 phone books? And the obvious answer from every single witness
24 was no. And that logic applies just as forcefully with Greg
25 Warren. You heard that \$1.6 million went from Greg Warren to

1 Kristy Le. Why would he spend \$1.6 million to send to Kristy
2 Le for phone book names? That doesn't make sense.

14:11 3 When you are contemplating these, when you are
4 contemplating the yelling at Kristy behind closed doors, when
5 you you are contemplating the back end stake that he had in the
6 deal, when you are contemplating the refusal to sell that back
7 end stake to John Cracken, when you are contemplating all the
8 money that flowed out from Greg Warren, ask yourself did the
9 government present the proof necessary to exclude every single
10 one of those reasonable doubts, did they present the competent
11 proof? Well, what did the government present? The Army of
12 special agents, the computer forensics examiners, the forensic
13 accountants a, the ability to go into a man's home, the ability
14 to go into a man's office, take his computers, take his cell
15 phones, the ability to break into all of them and find a
16 digital trays of ever everything he has done as long as that
17 computer or phone existed, and what did they are present you at
18 the end of the day? One witness. Kayleigh Stone. The
19 government's case entirely, entirely rests upon Kayleigh
20 Stone's shoulders, and it boils down to a single statement. He
21 told me he knew they came out of phone books. And that's how
22 the government presented it to you, they stripped that
23 statement of all the context and they tried to feed it to you
24 in an effort and a hope that you would attach so much
25 significance to that one single statement in 2012 that you

1 would overlook everything else, you would overlook the fact
2 there are no e-mails, you would overlook there are no
3 spreadsheets, you would overlook his back end deal, you would
4 overlook his yelling at Kristy Le, you would overlook all of it
5 for that one context stripped statement. Let's layer the
6 context back in. The government forgot to tell you the second
7 half of that statement. We hired bad people. She admitted it
8 on the stand. We hired bad people, he said. Okay. Does that
9 sound like a person that was knowing he committed fraud. We
10 hired bad people that brought some names out of a phone book.
11 It only makes sense.

14:14

12 Context layer number two. Think about Kayleigh Stone and
13 Greg Warren's relationship. She was not a fan of Greg Warren
14 from the instant she met him, and they had met twice before
15 this day where he had made this statement. Does it make sense
16 in anybody's mind that after 15 minutes of interaction with a
17 lady that doesn't like you, that he is going to come up and
18 make what the government presents as this damning confession?
19 That's just logically unsound. It makes zero sense. Context
20 layer number three, and this is perhaps the most important.
21 Keep in mind when the statement was made. We are talking late
22 summer of 2012. Okay? Take a step back and get into Greg
23 Warren's perspective. Think about what it was, think about why
24 he is saying this. Remember, Greg Warren had already been
25 hired on to do the client acquisition. They hired him back on

1 to do the additional packets in November of 2010. When they do
2 that, it is a dismal failure. They can't find people. Okay.
3 The law firm shuts down that phase and they go on to mailers,
4 and the mailers are a dismal failure. So they go on to auto
5 dialers, and the auto dialers are a miserable failure. They go
6 on to the west batch search, and it's a failure, and they go to
7 the national change of address forms, and it's a failure. So
8 they put the field back -- or the team back in the field and
9 they say okay, let's go out and find these people. Now we have
10 got money for them. We are at the settlement packet stage. We
11 have to go out and find them. We need their drivers licenses,
12 and they go out and, no surprise, it is a failure. From Greg
13 Warren's perspective, seeing all of that and making this
14 statement to Kayleigh Stone at the very tail end of all of
15 that, it's an observation. It's not a confession. He is
16 looking at all of this stuff and he is adding up the math for
17 two years, and he is looking at it and saying, what's going on.
18 And you heard Kayleigh stone explain that. She was frustrated,
19 the firm was frustrated. She even said Greg Warren was
20 frustrated when he was saying this. She said everybody was
21 looking for, why is this going on, what is going on, why is
22 this happening? Greg Warren did nothing more that day than to
23 look at the facts in front of him and come to an observation
24 and a conclusion just like we are coming to an observation and
25 a conclusion today.

14:16 1 It was two years after the fact. Observations do not
2 equal confessions.

14:17 3 Now, there's only two ways that you can really view this
4 statement to Kayleigh Stone. There's the government's way, and
5 that's, well, this statement must show that he knew the entire
6 time that this was a phantom client base, that they weren't
7 real. It has to show it. Or there's the actual way, which is
8 this is a statement of observation from a man who can put two
9 and two together.

14:17 10 So how do you, members of the jury, decide which version
11 is the correct version? Well, bump it against every other
12 fact, undisputed fact in this case, because the true version at
13 the end of the day is going to make sense no matter what fact
14 you throw at it.

14:17 15 Now, in grade school they teach kids when you you are
16 doing addition, two plus five equals seven. You can check
17 yourself by going backwards. Two plus five equals 7, seven
18 minus five has got to equal two. If it doesn't add up, start
19 again. Let's do a backwards analysis with this statement.
20 Government's perspective. The government's says that this
21 seven in this case is that Greg Warren must having known
22 because in 2012 he made the statement to Kayleigh Stone so he
23 must have known the entire time. Let's do the backward
24 analysis. That means in the summer of 2012, when he was hired
25 to go back out into the field, he went and paid Kristy Le to go

1 to the field, knowing that she would never find anybody. That
2 means in November, 2010, when he was paid to go out to the
3 field or to find people to go out to the field, he paid Kristy
4 Le to go out and find these folks, knowing the entire time that
5 she would never be able to find them, but he spent the money
6 any way. That means when he pulled Kristy Le behind closed
7 doors and said you better not be bringing any junk to Mikal
8 Watts, he knew it was all junk any way. According to the
9 government, he agreed to make it all junk. That was the whole
10 conspiracy, go out and find fake people. That means you take
11 another step back, that when John Cracken offered to buy his
12 stake in the phantoms that didn't exist, he didn't sell it,
13 that he knew they didn't exist in the first place.

14:19

14 That's bad math. The numbers just do not add up. And for
15 the government to spend all the resources and the Army of
16 agents to go out and investigate this case and to come up with
17 that single statement that was taken out of context is not
18 beyond a reasonable doubt. It's not proof beyond a reasonable
19 doubt. It's not enough to take a man's liberty away from him.
20 So when you go back and you deliberate on this, members of the
21 jury, and you are stacking up all of this evidence, again, keep
22 in mind that if the government hasn't presented you competent
23 evidence to disprove John Cracken, the back end deal, the
24 refusal to sell, the statement to Kristy Le about don't bring
25 me junk, if they haven't given you the evidence to disprove all

1 of that, you must acquit. The fact of the matter is, they
2 haven't presented you any evidence regarding that. They have
3 thrown it up, and they are asking you to find him guilty based
4 on that, and it's not enough.

14:20 5 **THE COURT:** Thank you, Mr. Wilson. Mr. Weber, you
6 may make your closing argument on behalf of your client,
7 Ms. Kristy Le.

14:21 8 **MR. WEBER:** May I have access to the videos, please?
9 May I retrieve some exhibits.

14:21 10 **THE COURT:** Certainly.

14:21 11 **MR. WEBER:** Ladies and gentlemen, I'm proud to say
12 I'm a lawyer, and I'm proud to be here before you representing
13 Kristy Le and holding the government to their burden of proof.

14:22 14 And it's been a humbling experience watching you work and
15 paying attention over the last four or five weeks. It honestly
16 has. It's exciting that I've had the privilege of sharing this
17 trial with you in our amazing system of justice.

14:22 18 I want to point out to you some facts and some information
19 which I want you to look at and consider when looking at the
20 evidence against Kristy Le. You've got three things to do:
21 Determine the facts, follow the law as instructed and make a
22 conclusion about the facts as they relate to the law.

14:22 23 And this is what you need to be thinking about. Did the
24 prosecutors prove to me beyond a reasonable doubt each and
25 every element of the offenses charged against Kristy Le.

1 That's the burden, they've accepted that burden. I ask you to
2 hold them to that burden.

14:22 3 This timeline in front of you is important. The oil spill
4 occurred on April 20th of 2010. We see some disbursement of
5 money in May, early May up until May 25th of 2010. Why is that
6 timeline important? Why is that month or so important? As we
7 can see, May 25th of 2010 is important because that's when the
8 first deposit or wire into Kristy Le's account occurs. That's
9 government exhibit 217. What we know is, before May 25th of
10 2005, that there's already been an effort to get information,
11 to get clients, to get Mikal Watts names and information, to
12 fill out client questionnaires. Example, Saturday, May 15th,
13 10 days -- I'm sorry. Ten days prior to Eloy Guerra. Here is
14 the first batch of clients entered. We are receiving another
15 1500 to 2,000 files on Monday. All right. Before Kristy Le
16 was hired. Peter Ho, G45, here is that questionnaire that has
17 been brought to your attention over and over again, an
18 incomplete questionnaire. When is it dated? 5/18/2010, before
19 Kristy Le was hired. Again, May 18th, before Kristy Le was
20 hired. Wednesday, May 19th, hi, Chris, Chris DeLeon, Eloy
21 Guerra's good friend, problems with social security numbers.
22 Problems with partial social security numbers. That's my
23 exhibit, D6-1. Who is Maria? Where is this information coming
24 from? Who filled out Peter Ho's questionnaire?

14:25 25 Again, Chris DeLeon, May 19th, problems with the forms

1 that don't have social security numbers. Prior to Kristy Le
2 being hired, prior to Kristy Le being wired money to start work
3 on May the 25th. Eloy Guerra, again, on May 22nd, defense
4 exhibit D5-110, discussions with Mikal Watts, we are going to
5 get you 5,000 to 7,000 clients. We are going to need to make
6 payroll for this. Before Kristy Le was hired.

14:25 7 Again, May 22nd, we are going to need \$900,000. We can
8 talk if you want to go above 10,000. Please advise. D5-111.
9 May 22, D5-113, I will get you 20,000 claims if you want them.
10 Who is on that e-mail? Not Kristy Le. Joe Navarro. He
11 testified. What did he say about Chris DeLeon and his
12 database, he has got me working on a project for David because
13 he said the initial database of socials he sent was corrupt.
14 Ladies and gentlemen, these are all reasonable explanations, a
15 reason for Kristy Le to hire Ryan Willis to search his
16 database. Why? Because she was hired on May 25th, and there
17 were already thousands of names, thousands of names in the
18 database. And we see from Joe Navarro that Chris DeLeon's
19 database was messed up. That is reasonable for Kristy Le, who,
20 oh, by the way, her background is not Erin Brockovich, like
21 Eloy Guerra, she's not a mass torts lawyer, doesn't work in a
22 law firm. She sells videos, or rents videos, and she is
23 responsible for this fraud? Or is her failures due to her
24 inexperience in this type of business?

14:27 25 Her reaching out to that investigator, Ryan Willis, and

1 access to those databases is reasonable for someone who is
2 trying to get personal identifiers to try to find these
3 individuals who, based on the questionnaires, presented to her,
4 based on the information in the databases she was provided so
5 she could make contact so that she could have good valid
6 contact information to make contact with those individuals to
7 get the proper documentation so that they could make a claim
8 against the BP fund.

14:28 9 There's been allegations that Kristy Le, the field team is
10 scrubbing this information as it comes back from Ryan Willis.
11 That is false. That is absolutely not true. And here's why.
12 We have D2-001675. We have information, Watts update. Kristy
13 Le, Lan Nguyen, Eloy Guerra, somebody named valley bio diesel,
14 and Kristy Le again. Four people accessing or having touched
15 this database that is supposedly scrubbed and the words
16 deceased erased and social security numbers plugged in at
17 different spots. And what did Dr. McGwin, the bald-headed guy
18 with the bow tie, and I asked him about something called
19 metadata, and a number of you were taking notes, and you may
20 have something about this in your notes. And his testimony was
21 important. I said, he looked at the metadata and he explained
22 to us this is information we could look at to determine who had
23 touched that file. What did he say? He said Ryan Willis
24 touched the file, Julie Bales, Eloy Guerra, other females that
25 I don't remember, and he said -- I said, look, are these the

1 individuals that may have modified the file? And he said, yes,
2 that would be the people that modified it would be the last
3 name retained. And when it gets down to it, I said what does
4 modify it mean. It means changed. Who changed the file. What
5 was the only defendant on that list that changed -- suggested
6 modifying or changing the file, and that is Eloy Guerra. Who
7 is the guy promising Mikal Watts 20,000 names if he wants them?
8 Eloy Guerra. And it's not Kristy Le that is modifying or
9 changing any of this information. And she has no incentive of
10 doing that. But the person that has the incentive is Eloy
11 Guerra because he promised his good friend Mikal Watts 20,000
12 names if he wanted them.

14:30

13 I think G35, this document in front of you, is the most
14 important of them all. Mr. Phuoc Nguyen comes into court,
15 government witness, and testifies, and he points out Kristy Le,
16 she is the one that helped me, she is the one that helped get
17 all of my documents. Out of all of the defendants in this
18 courtroom, who is the only defendant that has been identified
19 as interacting with a client and getting the information
20 necessary? And that is Kristy Le, because that's what she was
21 doing, because that's what her intent was. Her job was to
22 identify these people and go out and find them, and that's
23 exactly what she did on G35.

14:31

24 I think Mr. Cracken discussed -- had some investment in
25 this project, millions of dollars, and he met with Kristy Le,

1 and his team met with Kristy Le. And before this meeting, he
2 meets with Eloy Guerra and Greg Warren, and what do they tell
3 Mr. Cracken and his team and Hank Pardo? Things are going
4 great, we need more money, and then he meets with Kristy Le and
5 she said, things are terrible, things are terrible. And that
6 was an honest and truthful response. That's why based on this
7 e-mail that Mr. Cracken recommends to retain Kristy Le and to
8 give her more money and to invest in Kristy Le, because she's
9 the only one that he realizes is working hard and is truthful
10 and is trying to do the job that she was given with the limited
11 experience that she had. She's not sitting there lying to
12 Mr. Hank Pardo and telling Hank Pardo, Mr. Cracken's
13 accountant, and Mr. Cracken's team, we need another \$8 million.
14 Or what \$10 million? Why do people keep throwing around
15 \$10 million? We never got \$10 million? You you recall that
16 testimony. And who is sitting right next to Greg Warren not
17 saying a thing? His partner, Eloy Guerra. That's fraud.
18 That's theft. And who's on the ground trying to find these
19 people, working a team, spending money on employees and private
20 investigators? Kristy Le. You want to look at where the money
21 went? You want to know who Mikal Watts paid for names out of a
22 phone book? Eloy Guerra and Greg Warren. 5 million has been
23 thrown around, 4 million, 3 million. For doing what? Nothing.
24 And who did they put in charge? Or why did they put Kristy Le
25 in charge? Because they needed a scapegoat. And they wanted

1 the little girl that sold videos or rented videos so they could
2 blame her. That's exactly what they did today, didn't they?

14:34 3 With Kristy Le's little experience, she did the best that
4 she could. She did what she thought was the right thing to do.
5 She spent money trying to make this work. She spent money
6 trying to find these people. She's the only one that found the
7 people. Ladies and gentlemen, when you get the case, this
8 burden goes to you. This challenge goes to you, to hold the
9 government to their burden. And that's justice. That's what
10 justice is, holding the government to their burden of proof,
11 each and every element of the offense, and justice in this case
12 is finding Kristy Le not guilty of all charges. Thank you.

14:35 13 **THE COURT:** Thank you, Mr. Weber. Mr. Orozco, you
14 may make your closing argument on behalf of your client,
15 Ms. Abbie Nguyen.

14:35 16 **MR. OROZCO:** Your Honor, may I approach for some
17 exhibits?

14:35 18 **THE COURT:** Certainly.

14:36 19 **MR. OROZCO:** May it please the Court. Good
20 afternoon. I only have 15 minutes, so I will be brief.

14:36 21 Again, I don't have any fancy power points or posters in
22 my presentation. And my mind has gone from scrambled eggs to
23 fried eggs so I will be using my computer again. This is my
24 final opportunity for me to stand before you and to say that
25 Abbie is innocent.

14:36 1 I want to thank Mr. McCrum, the attorney for David Watts,
2 because he has been the tip of the spear for us in this case.
3 And we have all stood behind him in confronting the assault of
4 the combined resources of the United States of America. The
5 United States Government has brought this massive machine
6 against us and they have failed to make their case. The
7 government has not proven any count against Abbie, and I want
8 you to come back with a verdict of not guilty.

14:36 9 Every time I come up here, I talk about the truth, so I'm
10 going to continue to talk about the truth. The truth is, Abbie
11 worked part-time for K & G, two to three days a week. She has
12 been and still is a cosmetologist. She was a 23 year old, 23
13 years old in 2010. There's letters and e-mails in those eight
14 boxes in front of you that you are going to have to take back
15 into the jury room and look through. You will not find Abbie's
16 name on any of those e-mails. You will not find Abbie's name
17 on any of those letters. So with respect to Abbie, you won't
18 have to go through those boxes to find the truth. What you
19 will find is, as the testimony and the handwriting analysis, or
20 the report wasn't submitted so you won't even find that, but
21 will find the government expert witness said that Abbie's
22 handwriting was on the original questionnaires he examined, and
23 that's the truth. Abbie's handwriting was on those
24 questionnaires and I shared that with you, and there was a
25 second report, and I told you guys in my opening statement that

1 I shared that with you as well.

14:38 2 The truth is that the government expert testified that the
3 questionnaires were only partially filled out by Abbie, and
4 that the social security numbers and date of birth had been
5 altered after Abbie had copied them. If you look at those
6 questionnaires you will see what I said was white out. The
7 experts said it was manipulated or altered. But when you look
8 at the forms, you will be able to tell it was the truth. Her
9 writing was never found on any of the tax forms. Her writing
10 was never found on any of the Watts Guerra Craft contracts.
11 Because that's the truth. The truth is that the government's
12 witnesses, Joe Navarro and Chris DeLeon, got on the stand and
13 said that they trained the K & G staff to make sure the
14 questionnaires were in blue and black ink.

14:39 15 You heard from my witness, Joe Le, that he saw Abbie
16 copying many of the damaged questionnaires. The truth is that
17 her husband, David Le, instructed her to copy the
18 questionnaires because the originals were damaged and had been
19 collected by IP Development at the D'Iberville office before
20 Kristy Le and K & G staff started working there. There were
21 boxes of questionnaires before Abbie started working there.
22 You heard from Alisha Lam, her cousin, that Abbie was present
23 at a town hall meeting in Florida, and you saw the video, and
24 thanks to Mr. Watts that he played the rest of the video so you
25 could see Abbie wave. I cut it off earlier because I didn't

1 want to waste your time, but Mr. Watts played it out, and you
2 saw Abbie there. You heard from Wil Phuong Tran, Mr. Weber's
3 witness, that when he came to the Biloxi office, he was an
4 employee of IP Development, that he sent field reps out to
5 verify the information and that they had trouble getting that
6 information. When Will Phuong Tran came on board, that was
7 after Phase I and after Phase II. That was after the Watts
8 Guerra Craft law firm returned all the questionnaires in a
9 Penske truck from their San Antonio office. You heard from
10 Ryan Willis and the former IRS investigator that a company
11 called Denspri was used to gather information to verify the
12 questionnaire. Again, this was after those questionnaires had
13 been sent from San Antonio and months after Abbie had copied
14 them over, and they were sent the first time.

14:40 15 Taking all of these facts into consideration, the
16 government has failed to prove that Abbie was guilty beyond a
17 reasonable doubt with respect to any conspiracy. Every time
18 I've gotten up here and sometimes I know people were smiling or
19 giggling behind me, but every time I got up here, I brought up
20 independent field workers. Who were the independent field
21 workers? When the Secret Service agents took the stand, I
22 asked them if they investigated any of the independent field
23 workers. None of them had an answer. Mr. Frandsen said, why
24 didn't people just go knock on doors? I asked the same
25 question. Why didn't the Secret Service go knock on these

1 people's doors? Agent Wigley got up here with his red laser
2 and created these posters with Abbie's face next to K & G, and
3 I asked him if he investigated any of the people that were
4 written checks by K & G or the 58 people that I believe were
5 independent field workers? Why didn't agent Wigley go knock on
6 people's doors? Why didn't the Department of Justice, who
7 Mr. Frandsen worked for, send investigators to knock on
8 people's doors? Why didn't the U. S. Attorney's Office or Mr.
9 Rushing send investigators to knock on people's doors?

14:42 10 Mr. McCrum has been the tip of our spear in this case. He
11 is an experienced prior federal prosecutor and probably one of
12 the best defense attorneys that I've ever met. He had the
13 resources and experience to hire a former IRS agent to come in
14 and explain how agent Wigley's investigation was only a half
15 truth. The IRS investigator explained how he was able to
16 complete a much more thorough investigation with three people
17 in three months. The United States Government has had over
18 five years, and they only told you half the truth.

14:43 19 You heard from the government's own witness, Chris DeLeon,
20 that the questionnaires were gathered by independent field
21 workers and then entered into a computer, a database at K & G
22 that was then transferred by Chris DeLeon to Watts Guerra
23 Craft. You heard from the government's own witness, Joe
24 Navarro, that the questionnaires again were gathered by
25 independent field workers before they were turned in to K & G.

1 You heard from Joe Le, my witness, that he was responsible for
2 counting and collecting the questionnaires from independent
3 field workers and then gave Abbie a name and account so she
4 could pay them when she came in. Not one witness on either
5 side denied the existence of independent field workers. Not
6 one witness from either side denied that checks were written to
7 independent field workers. Not one witness denied that many of
8 these field workers demanded cash and that Abbie or her
9 husband, David Le, would go to the bank and cash checks to pay
10 them in cash. Why didn't we hear from independent field
11 workers? Why didn't the government parade these witnesses in
12 front of you the way agent Wigley paraded those poster boards?
13 I know I looked for these witnesses, but I couldn't convince
14 any of them to take the stand. I know the government knew
15 about these people because they had copies of the cancelled
16 checks. There were independent field workers that provided
17 false and stolen information to K & G and Abbie had no
18 knowledge of this, and therefore the government has failed to
19 prove Abbie's guilt beyond a reasonable doubt.

14:44 20 But again, Mr. Frandsen said, why didn't people knock on
21 people's doors?

14:44 22 Now, with respect to the checks, Abbie wrote checks for K
23 & G. That's a truth. Wil Phuong Tran said that Abbie also
24 wrote payroll checks. Joe Le stated that Abbie wrote checks
25 for payroll to independent field workers and for Kristy on her

1 personal accounts and K & G accounts when she told her to.
2 Abbie didn't get paid \$95,000. She wrote checks for \$95,000.
3 And how do I know that? Because the checks are there. And why
4 would Abbie pay herself \$95,000 more than Kristy Le made? So
5 when Mr. Watts got up here and said that Abbie had checks in
6 the amount of \$95,000, he wasn't wrong. She did write those
7 checks to herself, but \$70,000 of those checks she was directed
8 to go to the bank to pay either independent field workers or
9 when Kristy instructed her to withdraw money. You see, again,
10 that is only half the truth. Now, with respect to the
11 \$10 million that Mr. Watts talks about, what kind of man
12 invests \$10 million without a contract with IP Development or K
13 & G? See, people, that's not the truth. When you go back into
14 the jury room, I want you to look at the contract between
15 Anders Ferrington and Watts Guerra Craft. The reason I want
16 you to do this is because the truth was that Anders Ferrington
17 would get 30 percent of the cases originating out of
18 Mississippi after costs. You see, ladies and gentlemen, those
19 \$10 million, they would have got paid before Mr. Ferrington got
20 any money because those were costs. As soon as that money
21 touched Mr. Ferrington's account and he disbursed it, it went
22 as a cost. And Mr. Ferrington, being a new attorney, he
23 probably didn't know that.

14:46

24 Once -- and this was a real claim. Everyone knows it was
25 a real explosion and real people got hurt and real people

1 couldn't get jobs. And once the claims would have been
2 settled, Watts Guerra Craft was guaranteed those \$10 million
3 before Mr. Ferrington got his cut. It was a guaranteed bet.
4 The only problem was that there was fake information that was
5 gathered by the independent field workers. So the truth is, or
6 it's not true, that Mr. Watts was ripped off. He made a bad
7 bet. And when he was trying to raise more money, it was
8 because he was chasing a bad bet. Now, these phone books, I
9 have a phone book here, and you will have them in the back.
10 There is one for the greater Jackson area. There is one for
11 the pine belt area, that is Hattiesburg and Laurel. And there
12 is one for the Mississippi Gulf Coast. These have all been
13 introduced into evidence by the government. Again, they have
14 one from Jackson, Mississippi, but the government never told
15 you who has ties to Jackson, Mississippi. They showed you one
16 from the Gulf Coast, but the government never told you where
17 they found it. And the last one is from Hattiesburg. And
18 again, the government never told you who it belonged to. How
19 are they evidence? They raided the Watts Guerra Craft law
20 firm. They raided IP Development. But they weren't found
21 there. Has there been any testimony as to where these three
22 books, not books like this, but these three books were found?
23 Abbie was born and raised in Alabama. If she was going to use
24 a phone book, where is the Alabama phone book? We have the
25 Gulf Coast, Hattiesburg and Jackson. Abbie lives in Alabama.

1 So again, another half truth.

14:49 2 I have shared with you all along that I'm afraid. I'm
3 afraid that Abbie's innocence will be lost among those eight
4 boxes of paper in front of you. I'm afraid that Abbie's
5 innocence will be lost and you will believe Mr. Rushing when he
6 just stated in his closing argument that Abbie, quote,
7 recruited people. There was no evidence of Abbie recruiting
8 any people. She didn't recruit people. She copied forms, she
9 paid payroll, she paid independent contractors and she worked
10 as a cosmetologist. I'm afraid that you are going to give Mr.
11 Rushing and the attorneys for the government more credit
12 because they represent the United States Government. I'm
13 afraid that you were misled with half truths that Abbie was the
14 owner of K & G, just because agent Wigley used his laser and
15 paraded his posters and had her picture on there with the
16 significant withdrawals. But again, Mr. McCrum, he came to my
17 rescue. He brought that former IRS investigator to show us
18 that agent Wigley's presentation was only half truth. The
19 truth is that Abbie is innocent, and I have faith that you will
20 have the courage and the patience to stand with my client and
21 find her not guilty. I made a promise to you at the beginning
22 of the case to tell the truth, and I have kept my promise to
23 you. Now I ask that you stand with me and that you will not
24 compromise your integrity and have the courage to standby what
25 you have seen and go back to that jury room and find Abbie not

1 guilty of each one of these charges. I ask that you stand
2 strong and you not give in because it is a late hour or because
3 you have been going through eight boxes of material or because
4 everyone else thinks that she might be guilty. Make everyone
5 prove to you that she is guilty beyond a reasonable doubt, and
6 if they don't, have the courage to come back into this room in
7 this courtroom and say that you don't think she is guilty.

14:51 8 **THE COURT:** Thank you, Mr. Orozco. I appreciate your
9 comments.

14:51 10 **MR. OROZCO:** Yes, Your Honor.

14:51 11 **THE COURT:** Ladies and gentlemen of the jury, I will
12 let you go back to the jury room for a short recess before we
13 conclude.

14:51 14 **MR. OROZCO:** Your Honor, may I take these back up.

14:51 15 **(JURY OUT AT)**

14:52 16 **THE COURT:** Very well. We will be in recess for
17 precisely ten minutes.

15:02 18 **(RECESS TAKEN AT UNTIL)**.

15:02 19 **THE COURT:** Is the government ready to proceed?

15:02 20 **MR. KENNEDY:** The government is ready, Your Honor.

15:02 21 **THE COURT:** Are the defendants ready to proceed?

15:02 22 **MR. MIKAL WATTS:** Yes, sir.

15:02 23 **THE COURT:** Bring in the jury, please.

15:02 24 **(JURY IN AT)**

15:04 25 **THE COURT:** Mr. Kennedy, you may finally close on

1 behalf of the prosecution.

15:05 2 **MR. KENNEDY:** We are almost done. I'm not going to
3 waste your time today. I'm going to be very brief. This is
4 the portion of the government's case where the government gets
5 the opportunity to basically rebut and refresh, recock, reaim
6 exactly where this is going.

15:05 7 First of all, one of the things we need to clarify before
8 we go much further into the evidence is when you are talking
9 about proof insert areas, the judge has given you an
10 instruction on circumstantial evidence. This is one of those
11 cases, given that it is fraud, that very rarely will you see
12 evidence of an out and out admission. It's upon you to take a
13 look at each and every piece of the evidence, the testimony you
14 have heard on the stand while weighing the credibility of those
15 witnesses, to determine intent. That's the only way you you
16 are going to find intent in this case. It's not an easy job,
17 but it is one that you are capable of doing with the evidence
18 the government has provided.

15:06 19 In doing that, I would like to also invite you to take a
20 look at what the Court is instructing you about witnesses.
21 Whether it's the government's witness or a defense witness,
22 what is the relationship between the parties? Is someone a
23 friend? Are they financially obligated to each other? Are
24 they still an employee? Do they have incentives to tell you
25 the truth or shade it one way or the other? Based upon your

1 own observations, I believe you could clearly see how difficult
2 it was at times to even get an answer to a simple,
3 straightforward question. Those are the things that you need
4 to think about when you look at those witnesses' testimony and
5 whether there may be bias, and that's what the Court has
6 instructed you on.

15:06 7 Another thing that we need to clarify is, you heard about
8 identity theft and whether the government has proven that the
9 defendants stole an ID. Let me just get that right off the
10 plate. That is not the element of the crime charged. You will
11 read that in the instructions. The Court has already
12 instructed you. Maybe you remember it. But there is no proof
13 to show the defendants stole an ID. It's merely that they used
14 the ID. And there are other instructions that go through that,
15 and we will give you the definitions, but I want to make sure
16 everybody is on the same sheet of music. Also, another
17 important piece of this, the government has in fact proved all
18 of the elements required to sustain a conviction as to each of
19 these defendants. What you have to remember is, the tricky
20 piece is that the fraud itself does not have to be successful.
21 That's what the instructions are. That's what the law is.
22 It's the attempt to try to do it. Not oftentimes do you want
23 criminal activity to be successful.

15:07 24 One last thing. You heard talk about the government's
25 theories and how the government has failed to prove its

1 theories. The government is not in the position to prove
2 theories. We prove criminal cases. A theory is a way to help
3 the jury and others understand the landscape in which we are
4 operating and how things are moving, and anybody knows that
5 theories are always subject to change based upon the facts,
6 based upon conclusions, they continually more of based upon the
7 additional ^^ information that is brought in. The reason I
8 point that out, a lot has been made of this 40,000 claimant
9 target number, but I submit to you, that's not the government's
10 number. You saw the e-mail three and four different times as
11 this was just getting kicked off within a couple of months of
12 the BP oil spill, that I need 40,000, and remember that? It
13 was from Mikal Watts to Eloy Guerra. You must be sleeping
14 around on me, brother. You are getting 3,000 for somebody
15 else. Where is mine? I also want to set the stage for you
16 too, and let's clear this up immediately. What we are looking
17 at is a multiple conspiracy situation with a common link. What
18 you have on one end of the spectrum is what we will call the
19 downstream defendants. That would comprise of Kristy Le,
20 Abbie, Greg Warren and Eloy Guerra. Those are the downstream.
21 The reason, if it helps think about that in terms of the money
22 that was coming from Texas into Mississippi, was going to the
23 coast. You saw the evidence. Where did it go? IP
24 Development. Who is IP Development? Greg Warren. You will
25 remember that. It's in the records. K & G development was an

1 entity created between Kristy Le and who? Greg Warren. So
2 then the money went from IP to K & G. Certainly money was
3 spent out into the field, and of course, you've already seen
4 evidence from some of the other defendants on what they spent
5 it on. They obviously didn't spend it on trying to get correct
6 data.

15:10 7 And one thing I want us to be clear about too, the
8 government does not contend that Mikal Watts started out day
9 one, after this BP oil spill, to go out and solicit bogus
10 clients. That strains every bit of credibility in this world
11 to think about somebody who is in that kind of business would
12 do that. But as we get a little bit further, you are going to
13 find out why what he did eventually crossed the line into
14 criminal conduct because as we all know, you can have the best
15 morale character of the world, but good people speed, there are
16 good people that get arrested for DUI. Good people do things
17 that they otherwise wouldn't do in tough circumstances, and
18 that's where we are going to go with this.

15:11 19 One of the first things I want you to consider is, after
20 this BP oil spill, there's a mad rush to get clients. Mad
21 rush. Even the defendant's own witnesses they brought into you
22 said that they were competing for a finite pool of gulf
23 fishermen. They knew these Vietnamese were down here, so they
24 had to find someone who could speak Vietnamese or who knew the
25 culture. That makes perfect sense, doesn't it? That's where

1 Kristy Le comes in.

15:11 2 Now, Eloy Guerra has worked with Mr. Watts, Mikal Watts on
3 the FEMA litigation. You heard them testify about that in
4 their own cases. During that FEMA litigation, I also want you
5 to remember something, their testimony was that they didn't
6 really recover any money. If they didn't lose money, they
7 barely broke even, if you'll remember that. The witnesses got
8 on the stand. So the most recent case was FEMA. That is going
9 to be important to you in a minute. They barely made money.
10 But they used Eloy Guerra to go out and get claimants. They
11 still had difficulty with those claimants from time to time,
12 but they eventually worked it out. That is all fine and well,
13 but it gives you some background where Mikal Watts stands at
14 this point going into the new litigation.

15:12 15 So as Mikal Watts, and you have heard the testimony,
16 ultimately, and the timing of it is not critical, but they
17 spent \$10 million plus coming from Texas, through Anders
18 Ferrington, down to the Gulf Coast. And again, don't forget,
19 you heard argument from some of the other counsel, Anders
20 Ferrington has been out of law school, what, three years? You
21 saw him on the stand. Nervous as anything for a lawyer to be
22 on the stand, but he has got an agreement with Mikal Watts
23 where he expects to get, for lack of a better term, a finders
24 fee, if you will. He was going to get credit for the clients
25 he is signing up. But don't forget his testimony. He never

1 got any. Nobody ever kept him in the loop. In fact, the only
2 time he got involved was when he got word of someone who was
3 complaining about not being represented by Watts, and he
4 contacted Watts about it. He is totally out of the loop, and
5 the money is going to the coast. The money is being spent on
6 almost everything but client development. But that doesn't
7 absolve the upstream defendants from their own criminal
8 liability because while you have Kristy and Greg down here, and
9 the evidence will show -- and you as reasonable people can
10 think about this. Don't take my word for it. Think about it.
11 They are getting all of these millions of dollars, and at the
12 same time they see it doesn't take a whole lot of effort.
13 Whether they are really sending field representatives out or
14 whether they are not, whether they are pulling them out of a
15 phone book -- which, by the way, physical phone book location,
16 who cares? You can get on the internet, and you can get the
17 same phone book if you Google it. Everybody knows that. The
18 same kind of information you get out from the Internet you get
19 out of the phone book. But while they are collecting millions
20 of dollars, they aren't doing anything. They do hire Ryan
21 Willis, who was supposedly going to check social security
22 number. Maybe he did a good job, maybe he did a bad job, but I
23 want you to remember, at the end of the day, the social
24 security numbers still didn't match up, and the files contained
25 deceased persons, and that is the key.

15:14 1 When they talked to you earlier, there was a big issue
2 made about when Mikal Watts and others knew about problems with
3 this docket. Okay? Because they were talking about the
4 letters they sent out to their clients. I'm going to show you
5 what's already been marked as government's exhibit G239. Of
6 course, if you look right here, just two months after the BP
7 spill, Mikal Watts -- excuse me, David Watts was notified of an
8 angry victim regarding the identity theft. Everybody probably
9 remembers seeing this. If you will look, that occurred on
10 June 22, 2010. So have we got the framework? We are within
11 two months of the well blowout and a representative of the WGC
12 firm, specifically David Watts, has already been contacted by
13 an angry person saying you don't represent us. It was the Luc
14 family. Remember the Luc family from Louisiana? And they came
15 in and testified and told you that they had not authorized
16 anybody to use their data. And yet, even after they told them,
17 without lawful authority, remember that part of your
18 instructions, used my personal information without lawful
19 authority, knowingly used without lawful authority, when the
20 Luces complained, they put you on notice you didn't have lawful
21 authority to use it. Would you go back there and look at
22 exhibit 146(B), you will find presentment letters on the Luc
23 family, and on one of the Luc members multiple claims, with
24 slight variations. So after having knowledge of it, knew they
25 weren't supposed to use it, they did it anyway. So keep that

1 in mind.

15:16 2 Let's don't forget about the deceased people either. This
3 is a critical piece. Look at the timing here. October 11,
4 2010, here is an e-mail from David Watts to Chris DeLeon, who
5 also works for Eloy Guerra. Eloy is on this chain as well.
6 Kristy Le, who is also in the loop. Kristy Le knows at a
7 minimum there are deceased people on this list. And that's in
8 October 11, 2010, government G166. I point that out to you
9 merely to say, people weren't learning of these problems with
10 the docket in 2012 or 2013. This is the same summer after the
11 BP oil spill. They know it's a rotten document. And to borrow
12 a phrase that was used, lemons, if you got bad lemons, or you
13 got bad lemons, make lemonade. You remember that earlier.
14 Stay with me for a second and you will get the rest of that.
15 These are the presentment letters that were presented based on
16 those deceased defendants that you just saw in government's
17 exhibit 166. So knowing that they were deceased back in
18 October 11th, 2010, here are the presentment letters for four
19 of them in 2013.

15:18 20 Now, how much more do you need to know? How can you have
21 knowing lawful authority to use a deceased person's personal
22 identifying information. Think about for a moment how the
23 Lucs' life can be changed or jeopardized by someone putting all
24 of their personal identifying information out there.

15:18 25 Now, here's another one. June 20th, 2012. The reason why

1 I bring this one up, there's a lot of conversation being had
2 about the affidavits. Everybody remembers Hien Cao and Nga
3 Nguyen. These were the two people that were mentioned in the
4 *New York Times* article, the same one that Mikal Watts sent out
5 an e-mail article, hey, this is going to be a hit piece. We
6 need to do something about it. In listening to closing
7 arguments today, Mikal Watts stated he didn't know this was
8 going on. He didn't have anything to do with those affidavits.
9 Does everybody remember that? He said that in closing argument
10 today, didn't know anything about these affidavits. I want to
11 show you right here, here is an e-mail from John Cracken, one
12 of their favorite witnesses, to Mikal Watts dated June 20,
13 2012. In that e-mail you can see where Cracken, who is
14 involved in this, is telling Mikal, hey, Willis has met with
15 both of them. That's Ryan Willis, the same one trying to get
16 social security numbers, the same one who came in and gave live
17 testimony that he in fact did track these two people down. He
18 goes, but as I understand it, neither plaintiff claims to
19 recall engaging WGC. Neither claims to have worked in the
20 seafood industry. We need thoughtful, authentic affidavits.
21 What is an authentic affidavit? Isn't an affidavit, by its
22 very nature, supposed to be sworn and attested to? What do you
23 mean? If words have meaning, what are you trying to say an
24 authentic affidavit? But we need to mitigate the risk of a
25 grass fire. Danger, danger.

15:20 1 Now, you want to say you had no knowledge about
2 affidavits, that you didn't have any part in it, that you
3 didn't know that was going on? But in case that was a mistake,
4 here's another e-mail dated June 22, 2012, two days later. And
5 as you can see from Mikal Watts to Eloy Guerra -- remember I
6 was talking about two conspiracies -- there's a common link
7 there. Eloy is going to be it. Eloy is on notice right here
8 right now. If he's not involved in this, why would this e-mail
9 make any sense to send to him. Mikal Watts is communicating to
10 Eloy Guerra, Eloy, we need to discuss this on Monday and get
11 affidavits from these two.

15:21 12 You ask yourself, why would they go out there and get
13 these affidavits? Again, remember, we are right in the middle
14 of BP litigation, they are getting their clients, trying to get
15 on the docket. Now all of a sudden the Louisiana disciplinary
16 board decides to launch an investigation. They hear about
17 these two people that are mentioned in the *New York Times*.
18 They want to get information from them. That's why they asked
19 for these affidavits. And in order to make that go away, the
20 people that touched this, David Watts writes to Eloy Guerra,
21 again, Eloy Guerra and Greg Warren, remember Eloy and Greg have
22 connections and did so back in FEMA, and here they are again,
23 and you see as the attachments, Hien Cao, Nga Nguyen. Here are
24 the two affidavits. The particulars will need to be filled out
25 and printed for them. They will need to be notarized. I'm not

1 attributing any ill conduct on the part of David Watts by
2 saying that. I'm just saying that he sent the e-mail with the
3 affidavits to those two, Eloy and Greg. They know that they
4 have got to get these affidavits if they are going to get the
5 LADB off their back. If they don't get the LADB off their
6 back, the whole house of cards is going to crumble before they
7 even get going good.

15:22 8 Remember when I told you -- and I'm just about done, I
9 know you're happy about that -- making lemon out of lemonade.
10 When Kristy Le and the rest of them, they were realizing they
11 were milking Mikal Watts for money left and right. Millions of
12 dollars going to them. You saw what they were spending it on.
13 There was no real good accounting. In fact, I think she paid
14 her brother, what was it, upwards of \$60,000 for I think he
15 testified counting files and playing basketball with DeLeon,
16 something silly like that, clearly blowing through the money
17 and not using it for what it was supposed to be. They were
18 committing fraud by telling Mikal they were going to fix these
19 documents, they were going to get Ryan Willis and fix these
20 documents, if you will send us money. That in itself caused a
21 wire transfer. That money went from Texas to Mississippi and
22 then to their accounts because they requested the money in
23 order to do a job. Knowing that they weren't going to do the
24 job, there's fraud, there's the wire.

15:23 25 Now, when you've got Eloy Guerra there, remember the

1 testimony of some of the witnesses that Eloy was at those
2 meetings in New Orleans with everybody else, when they were
3 discussing the problem specifically about these files, and what
4 else did you learn about that? DeLeon told you on that stand,
5 he is really good friends with Greg Warren -- excuse me, Eloy
6 Guerra. And you could tell by looking at him that he had
7 trouble talking about his friend and what he knew was going on
8 and what was wrong, but he did say he gave him a warning, and
9 if you remember carefully, what DeLeon told him was, in his own
10 words, he said Eloy, this is fraud. That was his friend
11 telling him this is fraud. It bothered him so much, he also
12 told thaw he wanted to recommend that they not use Kristy and
13 them any more because he had his doubts about it. By Mikal is
14 in the position to decide who is going to do this and whether
15 he wants to spend money on it, and he goes with Kristy. Well,
16 once burned, you are still going to start using them. What I
17 want you to remember on the timeline is that at some point,
18 according to their own witnesses, after they have trouble, they
19 continued to send money, doesn't get better. There is a
20 discussion about a Phase II. Does everybody remember at Phase
21 II, they are going to send scanners, cameras, computer, they
22 are going to get out in the field and take pictures of the
23 drivers license. They did it a couple of days and then stopped
24 it abruptly.

15:25

25 Mr. Rushing, he showed you some e-mails today, and it

1 might have flown by the screen, but there was one specifically
2 in there where he was talking about an estimate of almost
3 \$8 million to correct it. Does anybody recall seeing that? It
4 was a government exhibit, and it was proposal that was tossed
5 around by Cracken and others, I believe, that talked about it
6 would take \$8 million to try and fix this, and Mikal's response
7 was, no way, we are not going to throw good money after bad.
8 Now, that makes perfect sense. The problem comes in with this.
9 When I told you the lemons making lemonade, they make a big
10 deal about all the deadlines approaching, and there is no doubt
11 there were deadlines approaching, but it just defies common
12 sense when they know they have deceased people on the docket,
13 they have got wrong social security numbers, they have got no
14 contact with these people. I mean, you've got letters coming
15 back, yes. What about the letters that don't come back? What
16 are you doing to follow up with those guys? Nothing. But they
17 are just continuing to mail it out. The government would
18 submit that by continuing to mail these letters out is one
19 other way that helps conceal the fraud. If anybody is looking
20 in, he is doing what he is supposed to be doing. I'm trying to
21 correct this mess. It keeps people off my back. You may think
22 that might be a far stretch, but I will submit to you at the
23 end of the day, all you have to do is go back and look at the
24 evidence and the timing of it. Although he says he did dismiss
25 some of his claimants, look at the timing on when these

1 dismissals took place. You will find that a number of the
2 dismissals came after the Secret Service served the search
3 warrants on their premise. There were a few before then but a
4 larger number afterwards. The biggest thing you need to ask
5 yourself is at the end of the day, you heard testimony that of
6 the 40,000 that were submitted to BP, they were put in the
7 mail, and they were put in the mail, and either at the
8 direction of, but you have the e-mails with Wynter Lee and
9 David and Mikal, somebody made the decision to send those
10 records forward for payment. Now, you don't have to take my
11 word for it. When they tell you those claims meant nothing,
12 very quickly, when you talk about the PSC, they talk about the
13 government's theory changing as there is a 600 million-dollar
14 pot that is undisputed, \$600 million set up for the PSC to
15 divvy up funds for attorneys working on it, if 40,000 claimants
16 wasn't important, why did Mikal put that in the first paragraph
17 of his application? You will find that at government's exhibit
18 three. I mean, after all, if they are hunting him down, they
19 got to have him, why do you put 40,000 in there. Why not put
20 one, why put any. But 40,000 is what he put in there. The key
21 about being on this PSC, you heard from the witnesses, the PSC
22 determines who those attorneys are who get to do the work.
23 When you hear 94 firms, you hear 300 something different
24 attorneys, guess who is picking those people and can assign the
25 work. From what he had told you through witnesses, I think

1 witnesses testified to this or it might have been the opening,
2 but comments were made and some of his witnesses testified that
3 he in fact took the lead depositions in that BP explosion.
4 Remember that? He took the well guy, the one that blew up. He
5 was taking the key depositions, key depositions mean money.
6 You are going to have to spend more time in it, you are going
7 to have to work harder in it, so the PSC controls it. You
8 recover those fees, and as long as you keep up with the
9 receipts and submit them, true enough they have to be audited
10 and the judge approve it, but barring something strange, you
11 are going to get your money back. That's the no lose
12 proposition right there. Regardless of whether it is 1/15th or
13 one whatever, you are getting that money back. That's your
14 safety net in the MDL litigation. In fact, Cracken in his own
15 testimony, he estimated that share to be, what, upwards of
16 \$10 million? If you spent \$10 million to come in and he stands
17 to make 10 million off the PSC, at a minimum, he could slick
18 out. The beauty of it is, those clients you file for in that
19 suit don't have to recover a penny. The PSC is totally
20 separate from what the claimants recover. Granted you are
21 running a risk to your reputation if it is found out, but
22 that's why those claimants were pulled out. They weren't left
23 in there. They pulled them out of that. And what did they do?
24 They presented him to BP. Here is where we wrap this up and
25 bring her home. I want to show you an e-mail, and this one is

1 from Mikal to his buddy John Cracken, David is copied on it,
2 but this one is dated March 2, 2012, Hey, fellas, we settled
3 with BP tonight. We are close with Halliburton and are not
4 even started with TransOcean. Bottom line, through some 11th
5 hour triage, we have converted the deal from one dictated by BP
6 to one that is more akin to a QSF limit fund administered
7 solely through the PSC by a special master or administrator who
8 will be -- and the name is redacted.

15:31 9 Looking down into the amount. Bottom line, bottom feeders
10 like us have until April 22, 2014 to file our claims.
11 Moreover, as you see further in the paragraph, and trust me,
12 you can take this back there in the jury room and read it all
13 day long. Down here you see there are no caps. Then he tells
14 Cracken, when the draft comes out, I really need you to
15 flyspeck the deal and pitch the group as to the best use of our
16 acquisition dollars. I don't pretend to share your acumen for
17 details, but my simplistic gut says, there's a lot of gold in
18 them there hills. Does that sound to you like a docket worth
19 zero? And that is March 2, 2012. Then he mentions that
20 Feinberg is resigning on Monday (smiles) this is the same guy
21 he has great respect for but is glad to see him resigning.
22 Lastly down here, paragraph five, most importantly for us, the
23 so-called seafood claims. And he bolds that. Why does anybody
24 in their own writing bold it? For emphasis, right? There is a
25 special limited fund of 2.3 billion -- that's with B -- to

1 cover all the claims. Importantly, BP pays the 2.3 whether the
2 proof supports it or not. What is the next sentence? It does
3 not. Then there's a breakout of the various categories of what
4 they can all get. This is government's exhibit G228. Then
5 this last paragraph, or the next to the last paragraph down
6 here concerning Feinberg hating their claims, but as they go
7 through talking about the money, that's where we can kill it
8 provided our politics inside the PSC are covered. The PSC
9 politics. Their politics in the PSC, the same group who
10 decides who is going to do the work, how the work is going to
11 be valued. And remember, Cracken himself told you it's not the
12 hour amount. It's the value, the value of my work might not be
13 as high as someone else's. So somebody has to set that value.
14 Talking about these claimants. If this occurs, we are in the
15 driver's seat. As we control 50 percent of all of the people
16 under this fund. This gives us internal negotiating power
17 regarding the terms of the entitlement to the 2.3 billion soon
18 to be 3 billion-dollar fund. Bottom line, despite shitty
19 cases, we may actually have some leverage here if we play our
20 cards right. And lastly, hope this makes everyone feel better
21 about our eggshell plaintiff docket, the same docket they said
22 they couldn't make money on that had no value. When you go
23 back to that jury room, take a look at all the evidence. You
24 will see there are two separate conspiracies here. Eloy Guerra
25 is the anchor man between both as he put them both together,

1 but there's no doubt, Kristy Le didn't get them good claimants,
2 neither did Gregory Warren. They got it to Mikal, and I hate
3 it. Nobody is saying he is a bad man. I am not. I think he
4 got in a bad situation, and he looked to lose even more money.
5 He had already come out short on FEMA, and he was going to come
6 out short here if he didn't put something together. And
7 there's nothing wrong with negotiating, but unfortunately, the
8 problem came when he mailed those to BP, knowing he didn't have
9 authority to do that. That is a violation of federal law.
10 Thank you.

15:35 11 **THE COURT:** Thank you, Mr. Kennedy. Ladies and
12 gentlemen of the jury, shortly I will excuse you to go back to
13 the jury room to deliberate upon your verdict. When you go
14 back to the jury room, the clerk of the court will have
15 available to you all of the exhibits that have been marked and
16 admitted into evidence. I also, as I promised before will
17 provide each of you or will provide the group with the verdict
18 forms which have been prepared in advance for your use during
19 deliberations. I will also have available for you to use
20 during your deliberations and the clerk will provide you with
21 this as well, a copy of the indictment which you may use to
22 assist you and aid you during your deliberations. Please bear
23 this mind as you take the indictment and use it during your
24 deliberations that an indictment is not proof of anything. It
25 is the charging dock letter only and is not proof, it is not

1 evidence and it is not to be construed by you as evidence of
2 anything. You have been very patient over a long period of
3 time, and now it is time for us to be patient. When you are
4 excused to go back to the jury room to deliberate, your
5 deliberations are secret and your deliberations and the manner
6 in which you deliberate are up to you. We are at your beck and
7 call rather than the other way around, and you simply need to
8 let us know whenever you may need something. If you intend to
9 recess during any time during your deliberations, of course,
10 remember the instructions I have given you about your conduct
11 outside of the courthouse. I'm going to ask that juror Marie
12 Nelson, Terrence Jones, Jennifer Kelly and Barbara Robertson,
13 if you all will please remain behind. The remainder of the
14 jurors may be excused to deliberate upon your verdict.

15:37 15 **(JURY OUT AT)**

15:37 16 **THE COURT:** Be seated, please. All right. As you
17 all are aware, you are the alternate jurors in this case. What
18 has occurred here is indeed rare. After almost five weeks of
19 trial, not a single juror became ill or through some emergency
20 or family circumstance needed to be excused and replaced by an
21 alternate.

15:38 22 Now, what I intend to do, and under rule 24 of the Federal
23 Rules of Criminal Procedure, I am permitted to retain alternate
24 jurors in the event -- of course, I could not have anticipated
25 that we wouldn't need any alternates during the deliberation

1 process, but what I can't anticipate from this point forward is
2 whether all 12 of those jurors are going to be okay during
3 deliberations and how long deliberations may take and whether
4 some circumstance may require the 12 jurors who are deliberate
5 evening, maybe one of them may need to be excused. Again, I
6 can't anticipate that. What I'm going to do is I'm going to
7 retain the four of you alternates. I'm going to ask that you
8 meet briefly with me in the comfort of my office, and I will
9 extend the courtesy of our chambers and office to you in the
10 event that you want to stay in the area while the jury
11 deliberates. I will ask that you, again, remember my
12 instructions. Do not speak with anyone about this case while I
13 retain you as alternate jurors. Make no independent
14 investigations. Don't read about it in the paper. Don't
15 listen to any radio or television newscasts concerning this
16 case. And if you leave the building and intend to go home for
17 some period of time, please let us know where you will be in
18 the event we need to contact you. Do each of you understand my
19 instruction? I will ask that you excuse yourselves. Stanley,
20 would you take them back into my private office.

15:39 21 (alternate jurors exit courtroom).

15:39 22 **THE COURT:** Is there anything else we need to take up
23 at this time on behalf of the government before we recess.

15:40 24 **MR. RUSHING:** No, Your Honor.

15:40 25 **THE COURT:** Anything else on behalf of any of the

1 defendants.

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MR. MIKAL WATTS: No, sir. Thank you.

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THE COURT: We will be in recess awaiting the verdict
of the jury.

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