

No. 12-30005

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EDGAR J. STEELE.

Defendant-Appellant.

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Appeal From The Idaho District Court  
No. CR 10-00148 BLW

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**EXCERPTS OF RECORD - VOLUME I OF III**

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**FILED**

UNITED STATES COURT OF APPEALS

JUL 09 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDGAR J. STEELE,

Defendant - Appellant.

No. 12-30005

D.C. No. 2:10-cr-00148-BLW-1  
District of Idaho,  
Pocatello

ORDER

Before: KOZINSKI, Chief Judge, THOMAS and IKUTA, Circuit Judges.

Appellant's opposed motion for summary reversal of this appeal is denied because the issues raised are sufficiently substantial to warrant further consideration by a merits panel. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

The opening brief is due August 22, 2012; the answering brief is due September 21, 2012; and the optional reply brief is due within 14 days after service of the answering brief.

RJ/MOATT

**000001**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDGAR J. STEELE,

Defendant.

Case No. 2:10-cr-000148-BLW

**MEMORANDUM DECISION AND  
ORDER**

**INTRODUCTION**

The Court has before it Defendant Edgar J. Steele's Motion for a New Trial (Dkt. 234) and Supplemental Motion for a New Trial (Dkt. 291). For the reasons sets forth below, the Steele's request for a new trial is denied.

## ANALYSIS

On May 5, 2011, a jury convicted Defendant Edgar J. Steele on four counts: (1) use of interstate commerce facilities in commission of murder for hire, in violation of 18 U.S.C. § 1958; (2) aiding and abetting use of explosive material to commit a federal felony, in violation of 18 U.S.C. § 844(h); (3) aiding and abetting possession of a destructive device in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(B)(ii); and (4) tampering with a victim, in violation of 18 U.S.C. § 1512(b)(3).

Steele now moves for a new trial. He argues that he should be granted a new trial or the case should be dismissed because: (1) the evidence did not establish jurisdiction under 18 U.S.C. § 1958 for Counts I and II of the Indictment; (2) the Court incorrectly charged the jury; (3) the Government engaged in prosecutorial misconduct; (4) the FBI agents engaged in misconduct; (5) his counsel was ineffective; (6) the Court was biased against him and in favor of the Government; and (7) he was denied a public trial.

Federal Rule of Criminal Procedure 33 allows a district court to grant a new trial if the interests of justice so require or based on newly discovered evidence. Fed.R.Crim.P. 33. It must be shown that the newly discovered evidence would probably have resulted in the defendant's acquittal." *Gordon v. Duran*, 895 F.2d 610, 614-15 (9th Cir.1990)

### **1. Lack of Jurisdiction**

Steele first contends that the government failed to prove beyond a reasonable doubt that jurisdiction existed under 18 U.S.C. § 1958 for Counts I and II of the

Indictment. Steele's argument raises an evidentiary question: whether the government presented sufficient evidence at trial to prove that Steele caused Larry Fairfax to travel across state lines in connection with Steele's plot to kill his wife. 18 U.S.C. § 1958.

Interstate travel triggers federal jurisdiction for both Counts I and II, since both require the same nexus to interstate commerce. *U.S. v. Driggers*, 559 F.3d 1021, 1024 (9th Cir. 2009).

Steele argues that the required nexus to interstate commerce did not exist because Fairfax and James Maher travel to Oregon on June 11, 2010 at the behest of the government – not Steele. Therefore, argues Steele, he “has standing to raise intrusion upon the sovereignty of the State of Idaho under the Tenth Amendment as expressed in *Bond*,<sup>1</sup> such that Defendant's intra-state Idaho crimes, if any, must be prosecuted locally.” *Def.'s Reply* at 2, Dkt. 308. Steele cites *U.S. v. Coates*, 949 F.2d 104, 106 (4th Cir. 1991) to support his argument. While *Coates* did involve a similar claim that the government manufactured jurisdiction, it is clearly distinguishable from the facts of this case.

In *Coates*, the defendant unwittingly contacted a government informer to carry out the murder of his step-brother. 949 F.2d at 106. The informer worked with the government to collect evidence of a federal crime, but after a month of surveillance the

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<sup>1</sup> Steele cites *Bond* as *Bond v. U.S.*, 09-1227 (U.S. June 16, 2011).

government still lacked any evidence of the defendant's use of interstate mail or wire facilities in connection with the murder-for-hire plot. *Id.* To create the needed jurisdictional hook, a government agent involved in the case drove from Maryland to Virginia for the sole purpose of making a telephone call to the defendant across state lines. *Id.* The defendant never traveled across state lines, and he never directed the government agent to travel across state lines. *Id.* The Fourth Circuit therefore concluded that the government could not prosecute the defendant for arranging a murder-for-hire through the use of interstate commerce facilities because the government had contrived jurisdiction based solely on the actions of its own agents. *Id.*

This case, however, is distinguishable from *Coates*. In this case, the jury was entitled to infer from the evidence the following facts: Steele commissioned Larry Fairfax to murder his wife, Cyndi Steele, by placing a pipe bomb under her car; Steele knew his wife would be travelling to see her mother in Oregon, and Steele intended that the pipe bomb would detonate during the course of Mrs. Steele's trip between Idaho and Oregon; when it did not, Steele insisted that Fairfax drive to Oregon to remove the bomb placed under the car because Steele feared it would be discovered during a planned mechanical service on the car; on May 28, 2010, Fairfax drove to Oregon at Steele's behest to facilitate Steele's scheme to kill Mrs. Steele. Jim Maher, Fairfax's cousin, corroborated the date and purpose of Fairfax's trip from Idaho to Oregon.

The pipe-bomb plan failing, Steele devised a new plan. Steele insisted that Fairfax make another trip to Oregon while Steele's wife was visiting her mother and kill Mrs.

Steele in an apparent car accident or, if necessary, with a gun. Steele gave Fairfax \$400 to defray the cost of the travel on June 11, 2010. By this time, Fairfax was working with the government, and this conversation between Fairfax and Steele was recorded. The government took the \$400 Steele gave to Fairfax as evidence but allowed Fairfax to travel to Oregon to make it appear that Fairfax intended to carry out Steele's plot.

Based on each of these trips, a jury could have found beyond a reasonable doubt that Steele, with a murderous intent, caused Fairfax to travel across state lines. There is no evidence that the government "manufactured" jurisdiction as it did in *Coates*. To the contrary, the evidence showed that on more than one occasion, Steele directed Fairfax to cross state lines to facilitate Steele's plot to murder his wife, and Fairfax did travel across state lines.

Simply because Fairfax was working as a government agent when he travel to Oregon the second time does not bar Steele's conviction. *See, e.g., U.S. v. Smith*, 749 F.2d 1568, 1569 (11th Cir. 1985). Rather, analogous cases suggest that "a government agent or informer must unilaterally supply the interstate element of the offense at the government's behest – e.g., when the agent goes out of state merely for the purpose of making the interstate call and creating the federal jurisdiction – before federal jurisdiction will be deemed to have been improperly manufactured." *Id. See also United States v. Bagnariol*, 665 F.2d 877, 899 (9th Cir. 1981)(sustaining defendant's conviction by causing the use of an interstate facility based on a call from an FBI agent in Oregon to the defendant in Washington).

Steele also argues that the jurisdictional element did not exist because “the evidence was crystal clear that Mr. Fairfax did not have the intent that a ‘murder be committed’” when he travel across state lines. *Def’s Reply* at 2, Dkt. 308. But Fairfax’s intent makes no difference because he was not charged under § 1958. It only matters that Steele – not Fairfax – had a murderous intent when he caused Fairfax to travel across state lines. *U.S. v. Driggers*, 559 F.3d at 1024 (“But the defendant must have intended that a murder be committed, and have caused the travel with this murderous intent.”). The jury found beyond a reasonable doubt that Steele had a murderous intent, and he caused Fairfax to travel across state lines to facilitate his scheme to kill his wife. Therefore, the jurisdictional elements for Counts I and II are satisfied, and Steele has no argument that Section 1958 as applied to him violates state sovereignty.

## 2. Erroneous Instruction

Steele next argues that the Court had no discretion to issue a supplemental instruction to the jury defining the term “cause” as used in 18 U.S.C. § 1958. By issuing the instruction, according to Steele, the Court watered down the standard of proof from “beyond a reasonable doubt” to proof by a preponderance of the evidence.

Steele’s first argument that the Court had no discretion to issue a supplemental instruction in response to a jury question does not accurately represent the law. “[A] trial judge, as “governor of the trial,”... enjoys “wide discretion in the matter of charging the jury.” *Arizona v. Johnson*, 351 F.3d 988, 994 (9th Cir. 2003)(quoting *Quercia v. United States*, 289 U.S. 466, 469 (1933) and *Charlton v. Kelly*, 156 F. 433, 438 (9th Cir. 1907)).

“This ‘wide discretion’ carries over to a trial judge’s response to a question from the jury.” *Id.* Indeed, “[w]hen a jury makes explicit its difficulties a trial judge should clear them away with concrete accuracy.” *Bollenbach v. U.S.*, 326 U.S. 607, 612-613 (1946). Here, the Court found that issuing a supplemental instruction, rather than simply referring the jury back to the original instructions, would better clear away the jury’s confusion. Based on this conclusion, this Court acted within its “wide discretion” in issuing the supplemental instruction.

Steele also fails to convince the Court that the supplemental instruction “watered down” the standard of proof from “beyond a reasonable doubt” because it created “a virtual presumption of interstate commerce that [could not] be overcome (almost a strict liability standard).” *Def.’s Supp.Mot.* at 4, Dkt. 291. The Court’s supplemental instruction clarified the definition of cause as used in Section 1958: “As to Count 1, the defendant ‘caused another to travel in interstate commerce’ if the other individual traveled in interstate commerce and would not have done so but for the defendant’s conduct.” *Answer to Jury Question No. 2*, Dkt. 231. The Court’s answer correctly defined cause and in no way lowered the government’s burden of proof.

The conduct made criminal by Section 1958, is “caus[ing] another...to travel in interstate or foreign commerce...with intent that a murder be committed...” 18 U.S.C. § 1958. “[A] defendant can violate section 1958 without intending to cause anyone to travel across state lines.” *Driggers*, 559 F.3d at 1024. In other words, there is no intent requirement with respect to use of interstate commerce and this element of the crime is

purely jurisdictional. *Id.* In fact, the government need not even establish that the defendant knew interstate commerce was used. *United States v. Edelman*, 873 F.2d 791, 794-95 (5th Cir. 1989). Instead, it is enough that the proof showed Fairfax would not have traveled across state lines either the first or second time ‘but for’ Steele’s request that Fairfax kill Mrs. Steele. *Id.* The Court therefore correctly defined “cause” in this context when it instructed the jury to apply a ‘but for’ standard.

Steele, however, suggests that the Court’s definition of “cause” distracted from the real issues in this case: (1) whether the specific purpose of Fairfax’s trip on May 31, 2010 was to kill Mrs. Steele; and (2) whether Fairfax traveled to Oregon on June 11, 2010 at Steele’s direction because Fairfax was acting as a government decoy at that time.

Steele’s argument is flawed.

First, for Steele to be found guilty under Section 1958, Fairfax did not have to travel to Oregon on May 31, 2010 for the specific purpose of killing Steele’s wife as long as Steele had already formed a murderous intent when he directed Fairfax to make the trip. *Driggers*, 559 F.3d at 1024. It only matters that Fairfax traveled to Oregon to facilitate the murder-for-hire plot. *U.S. v. Perrin*, 580 F.2d 730, 736 (5th Cir. 1978) (“There is no requirement that the use of interstate facilities be essential to the scheme: it is enough that the interstate travel or the use of interstate facilities makes easier or facilitates the unlawful activity.”) And the evidence showed that Steele asked Fairfax to travel to Oregon on May 31, 2011 to keep the plan alive.

Second, as already discussed above, it also makes no difference that Fairfax was acting as a government agent when he traveled on June 11, 2010. The evidence showed that Steele asked Fairfax to travel to Oregon on June 11, 2010 to kill Mrs. Steele – either by an apparent car accident or with a gun. This evidence establishes that Steele caused Fairfax to travel to June 11, 2010. *See, e.g., Bagnariol*, 665 F.2d at 899.

Because the Court accurately defined “cause” as used in Section 1958, the Court’s supplemental instruction did not degrade the standard of proof from “beyond a reasonable doubt” to “proof by a preponderance of the evidence.” This conclusion is further bolstered by the fact that the original instructions stated nine separate times that the government must prove each crime charged beyond a reasonable doubt and five separate times that the government had the burden of proving each element of the crime charged. Therefore, any potential vagueness was mitigated by the final instructions read as a whole, which reiterated multiple times that the government had to prove each element beyond a reasonable doubt. *United States v. Harrison*, 34 F.3d 886, 889 (9th Cir. 1994).

### **3. Prosecutorial Misconduct**

Steele argues that the government engaged in prosecutorial misconduct by (1) monitoring Steele’s phone calls with a non-retained attorney; (2) monitoring Steele’s outgoing “legal mail” sent to non-retained attorneys; (3) monitoring Steele’s in-jail attorney booth conferences; (4) failing to disclose a report from co-defendant Fairfax’s expert, Jeff Buck; and (5) failing to disclose a draft of a fictional book written by Fairfax.

When prosecutorial misconduct deprives a criminal defendant of a fair trial, the defendant's due process rights are violated, and a new trial may be warranted.

**A. Phone Calls**

This Court already considered the issue of whether the government improperly invaded Steele's attorney-client privilege by listening to Steele's telephone calls with non-retained counsel and found that Steele waived any privilege that may have existed. *Memorandum Decision and Order Dated February 2, 2011, Dkt. 90*. An inmate's telephone conversation with counsel is not protected by the attorney-client privilege where the inmate is notified at the outset that the calls are recorded and subject to monitoring. *See, e.g., United States v. Lentz*, 419 F.Supp.2d 820, 828-29 (E.D.Va. 2005); *c.f., United States v. Van Poyck*, 77 F.3d 285, 291 (9th Cir. 1996) (finding prisoner had no reasonable expectation of privacy in outbound phone calls made from a jail). Therefore, the prosecutor did not engage in prosecutorial misconduct by listening to non-privileged calls with non-retained counsel.

**B. Legal Mail**

The prosecutor did not violate Steele's due process rights by reading letters that Steele labeled "Legal Mail" and sent to a Mr. David Basker. These letters were opened by the jail and provided to the government. The government, in turn, provided those letters to Steele in discovery. The Court understands that the jail's internal procedures call for them to review all outgoing mail unless it is sent to "an attorney of record," and it is undisputed that Mr. Basker never acted as Steele's attorney of record. Indeed, it does

not appear that Steele ever retained Mr. Basker in any capacity. Critical to any assertion of the privilege is, of course, the existence of an attorney-client relationship. *C.f.*, *United States v. Bauer*, 132 F.3d 504, 507 (9th Cir. 1997). Here, however, Steele failed to show, or even allege, that such a relationship existed and therefore it does not appear that the letters were privileged.

Moreover, there is no evidence that the prosecutors used any information contained in the letter at trial. In his correspondence, Steele just thanked Mr. Basker for his previous letter, and asked Mr. Basker if he wanted to help him in any way by “checking out” Roger Peven or finding qualified experts to testify at trial. Therefore, Steele cannot show that he was prejudiced by the Government’s reviewing the letter to Mr. Basker.

**C. *In-Jail Attorney Booth Conferences***

Steele claims that the Government listened to his attorney-client meeting that occurred between Steele and his attorney in the attorney-client booth. As an example of this, Steele refers to a special hearing that occurred on May 3, 2011. In this hearing, the Court reported that it had received information from the US Marshall that Steele had told his attorney, “he may develop a health problem that would cause a continuance of the trial, so that Dr. Papcun would be able to return to America and testify.” *Def’s Reply* at 10, Dkt. 308. The prosecutor was not present at this hearing and had no involvement in reporting the statement Steele made to his attorney. Steele cites no other examples of the prosecutor listening to attorney-booth conversations. Therefore, there is no evidence that

the prosecutor ever listened to Steele's conversations with his attorney while in the attorney-client booth.

**D. *Fairfax Book***

The prosecutor did not violate *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose the fictional book written by Fairfax while he was imprisoned because the prosecutor never had possession of the book until ordered to obtain it by the Court. *Brady* requires prosecutors to disclose to the defense any evidence favorable to the accused and material to guilt or punishment. This included any information contained within the files or in the possession of these law enforcement officers because knowledge of such evidence is imputed to the prosecutor. *United States v. Sanchez*, 50 F.3d 1448, 1453 (9th Cir. 1995). But information in the possession of third parties is not imputed to the prosecutor. *See United States v. Joselyn*, 206 F.3d 144, 153-54 (1st Cir. 2000).

The prosecutor only learned about the "book" Fairfax was writing during trial when the defense counsel cross-examined Fairfax. Fairfax testified that the book was at his home in north Idaho, and he had never told the prosecution about the book. At the request of the defense, the Court ordered Fairfax's attorney to retrieve the book; Fairfax's attorney turned the book over to the prosecution. The Court later acknowledged that it made a mistake in ordering the prosecution to obtain the book and determined that it was not *Brady* material. The prosecution provided the book to the Court because it believed it could qualify as Jencks Act Material pursuant to 18 U.S.C. 3500. The Court reviewed the book, made redactions, and provided it to the defense after issuing a protective order.

Under these facts, there was no *Brady* violation. The prosecutor never “possessed” the book. Moreover, the Court provided the defense counsel a copy of the book, and defense counsel used it to further cross-examine Fairfax. Therefore, this alleged withholding of the Fairfax book cannot be a basis to order a new trial.

**E. *Jeff Buck Report***

The *Brady* analysis above applies equally to the Jeff Buck report. Steele alleges that the government failed to disclose a report from co-defendant Fairfax’s expert, Jeff Buck. But the government never possessed this report. Therefore, there was no *Brady* violation.

Steele also fails to establish that the Jeff Buck report constitutes “newly discovered evidence” warranting a new trial. Steele maintains that the report showed that the pipe-bomb Fairfax constructed would not explode. But this allegation is not new evidence. Fairfax testified on direct that he designed the pipe-bomb so it would not explode from the heat generated from the exhaust pipe of Mrs. Steele’s car. And Steele’s counsel then questioned Fairfax about the ignition source and the amount of powder in the pipe. Steele then argued during closing that there was no evidence to contradict Fairfax’s testimony that the pipe bomb would not have exploded. The questions by Steele’s attorneys demonstrate that Steele was aware of potential evidence that the bomb would not explode; thus, Buck’s report is not new evidence warranting a new trial. *United States v. Hinkson*, 585 F.3d 1247 (9th Cir. 2009), *cert. denied*, 131 S. Ct. 2096 (2011).

#### 4. **Governmental Misconduct**

##### A. *Recordings*

Steele contends that he is entitled to a new trial because FBI Special Agent Sotka failed to listen to recordings made on June 9, 10, 11, 2010 on the initial device and therefore could not attest to its authenticity. Steele maintains that the “evidence that the tic tac sound which the Government explained at trial, which was not on any of the copies of the recordings of June 9th and 10th, 2010 shows that there is a very serious question whether the government fabricated these recordings.” *Def’s Reply* at 12, Dkt. 308. Steele further argues that Special Agent Sotka destroyed the “original” recordings in bad faith. These arguments are flawed for several reasons.

First, the recording device has no speaker. Thus, Special Agent Sotka had no means to listen to the recording on the original device. David Snyder, a Forensic Audio Examiner with the FBI, testified during a Daubert hearing on April 21, 2011 that audio recorded on the recorder cannot be monitored or reviewed until it is downloaded from the recorder to a computer. The audio on the recording device is then erased. This is to prevent tampering. *Daubert Hearing Tr.* at 249-300, April 21, 2011. Because Special Agent Sotka could not listen to the recording on the original device, he downloaded the recording on to a disc, which he duplicated and put into a WAV file. *Id.* at 354. He listened to the recording as it was copying to a WAV file. *Id.* at 354. Special Agent Sotka followed procedure by downloading the recordings to discs in a proprietary format.

These recordings were provided to the defense in the proprietary format with a version of the proprietary player. *Snyder Aff.* ¶ 1, Dkt. 305-3.

In addition, Fairfax testified to the authenticity of the recording. Steele may call him a liar, but it was the jury's job to decide whether Fairfax lied about his recorded conversations with Steele. The jury had the opportunity to weigh Fairfax's testimony against the testimony of Mrs. Steele and her daughter, who both stated that they noticed anomalies with the recordings.

Finally, even if it could be said that Special Agent Sotka "destroyed" evidence by erasing the audio from the recording device after he downloaded it to a proprietary disc, Steele cannot show bad faith. Under *Arizona v. Youngblood*, 488 U.S. 51 (1988), the government's failure to preserve evidence "of which no more can be said than it could have been subjected to tests, the results of which might have exonerated the defendant" does not deny a criminal defendant due process unless the defendant can show law enforcement acted in bad faith. *U.S. v. Heffington*, 952 F.2d 275, 280 (9th Cir. 1991). Here, Steele presents no evidence demonstrating Special Agent Sotka acted in bad faith by erasing the audio from the recording device. To the contrary, the evidence showed that Special Agent Sotka acted in accordance with standard procedures and, in fact, erasing the audio from the recording device actually prevents tampering. *Snyder Aff.* ¶ 5, Dkt. 305-3.

For these reasons, the Court declines to hold an evidentiary hearing on the authenticity of the recording. Steele was given ample opportunity during the Daubert

hearing and trial to test the authenticity of the recordings. And Steele does not prevent any additional evidence to persuade the Court that another hearing on this issue is warranted.

**B. *Witness Tampering***

Steele accuses the government of witness tampering. He says that the FBI tried to persuade Mr. Daryl Hollingsworth not to testify. In *U.S. v. Vavages*, the Ninth Circuit noted: "[i]t is well established that 'substantial government interference with a defense witness's free and unhampered choice to testify amounts to a violation of due process.'" 151 F.3d 1185, 1188 (9th Cir. 1998)(internal citations omitted). However, "a defendant alleging such interference is required to demonstrate misconduct by a preponderance of the evidence." *Id.* Yet, Steele cites no evidence even suggesting that the prosecutor interfered with Hollingsworth's decision to testify. Moreover, he did testify, which completely undermines Steele's argument.

**C. *Failure to Report Car Bomb***

Steele also argues that Special Agent Sotka engaged in misconduct by failing to report the car bomb that was attached to Mrs. Steele's car. Special Agent Sotka, however, testified that Fairfax did not tell him that Fairfax had placed a bomb underneath Mrs. Steele's car. Also, Fairfax testified that he did not tell Special Agent Sotka that he had placed a bomb under Mrs. Steele's car. With no evidence that Special Agent Sotka knew that the pipe bomb remained under Mrs. Steele's car, there is no evidence of government misconduct in this respect.

## 5. Judicial Bias

Steele argues that a “new trial is required because of arbitrary judicial action favoring the Government.” *Def’s Supp. Motion* at 18, Dkt. 291. He maintains that the “record is replete with examples of the trial court’s favoritism toward the Government (e.g. arbitrary exclusion of Defendant’s expert over a timing problem create by the Court, exclusion of the Government’s admissions against interest statements offered by Mrs. Steele, erroneous restrictions on witness examination, and rushing the defendant through trial, to name a few.)” *Id.* Due process requires that trials be conducted free of actual bias as well as the appearance of bias. *Bracy v. Gramley*, 520 U.S. 899, 904–05 (1997)). There is a strong presumption that a judge is not biased or prejudiced. *Id.*

The judicial bias about which Steele complains relates to adverse evidentiary rulings. Judicial rulings alone almost never constitute valid evidence of bias. *Liteky v. U.S.*, 510 U.S. 540, 544 (1994). Almost invariably, they are proper grounds for appeal, not for showing bias. *Id.* In this case, nothing about the Court’s rulings displayed such a degree of favoritism or antagonism to show actual bias. And Steele will have an opportunity to challenge any adverse rulings on appeal. Thus, the Court finds that a new trial is not warranted based on an allegation of judicial bias.

## 6. Ineffective Assistance of Counsel

Finally, Steele argues that his counsel was ineffective. The proper procedure for challenging the effectiveness of counsel is by a collateral attack on the conviction under 28 U.S.C. § 2255, after a full record can be developed. *See U.S. v. Ross*, 2011 WL

2678832 (9th Cir. 2011)(unpublished)(affirming denial of motion for new trial based on ineffective assistance). Therefore, the Court will not consider this argument.

**ORDER**

**IT IS ORDERED** that Defendant Edgar J. Steele's Motion for a New Trial (Dkt. 234) and Supplemental Motion for a New Trial (Dkt. 291) are **DENIED**.



DATED: November 8, 2011

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill  
Chief Judge  
United States District Court

**PROOF OF SERVICE BY MAIL -- 1013(a), 2015.5 C.C.P.**

**Re: *United States v. Steele* No. 12-30005**

I am a citizen of the United States; my business address is 523 Octavia Street, San Francisco, California 94102. I am employed in the City and County of San Francisco, where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the within:

**EXCERPTS OF RECORD VOLUMES I OF III**

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

D. Marc Haws  
Traci J. Whelan  
Assistant U. S. Attorneys  
District of Idaho  
800 Park Boulevard, Suite 600  
Boise, ID 83712-9903

**BY MAIL:** By depositing said envelope, with postage thereon fully prepaid, in the United States mail in San Francisco, California, addressed to said party(ies);

**BY PERSONAL SERVICE:** By causing said envelope to be personally served on said party(ies), as follows:  **FEDEX**  **HAND DELIVERY**

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on October 1, 2012 at San Francisco, California.

  
\_\_\_\_\_  
Jocilene Yue

No. 12-30005

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EDGAR J. STEELE.

Defendant-Appellant.

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Appeal From The Idaho District Court  
No. CR 10-00148 BLW

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**EXCERPTS OF RECORD - VOLUME II OF III**

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**U.S. District Court  
District of Colorado (Denver)  
CRIMINAL DOCKET FOR CASE #: 1:11-cr-00283-PAB All Defendants**

Case title: USA v. McAllister et al

Date Filed: 07/25/2011

Date Filed	#	Docket Text
07/25/2011	<u>1</u>	INDICTMENT as to Robert T McAllister (1) count(s) 1, 2-4, 5-7, 8-19, Richard C. Neiswonger (2) count(s) 1, 2-4, 5-7, Shannon Neiswonger (3) count(s) 1, 2-4, 5-7, Elizabeth Whitney (4) count(s) 1, 8-19. (Attachments: # <u>1</u> Criminal Information Sheet, # <u>2</u> Criminal Information Sheet, # <u>3</u> Criminal Information Sheet, # <u>4</u> Criminal Information Sheet) (mjgsl, ) (Entered: 07/26/2011)
07/25/2011	<u>2</u>	Arrest Warrant Issued in case as to Robert T McAllister. (mjgsl, ) (Entered: 07/26/2011)
07/25/2011	<u>3</u>	Arrest Warrant Issued in case as to Richard C. Neiswonger. (mjgsl, ) (Entered: 07/26/2011)
07/25/2011	<u>4</u>	Arrest Warrant Issued in case as to Shannon Neiswonger. (mjgsl, ) (Main Document 4 replaced on 7/26/2011) (kltsl, ). (Entered: 07/26/2011)
07/25/2011	<u>5</u>	Arrest Warrant Issued in case as to Elizabeth Whitney. (mjgsl, ) (Entered: 07/26/2011)
07/25/2011	<u>6</u>	MOTION to Seal Case by USA as to Robert T McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney. (mjgsl, ) (Entered: 07/26/2011)
07/25/2011	<u>7</u>	ORDER by Magistrate Judge Craig B. Shaffer on 7/25/11 granting <u>6</u> Motion to Seal Case as to Robert T McAllister (1), Richard C. Neiswonger (2), Shannon Neiswonger (3), Elizabeth Whitney (4) (mjgsl, ) (Entered: 07/26/2011)
07/25/2011	<u>9</u>	Certificate of Service as to Robert T McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney re <u>2</u> Warrant Issued, <u>1</u> Indictment. (mjgsl, ) Modified on 7/27/2011 to correct typo (mjgsl, ). (Entered: 07/26/2011)
07/26/2011	<u>8</u>	Docket Annotation re: <u>4</u> Warrant Issued. Document replaced. TEXT ONLY ENTRY - NO DOCUMENT ATTACHED (mjgsl, ) (Entered: 07/26/2011)
11/14/2011	<u>10</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Kathleen M. Tafoya: Initial Appearance as to Robert T McAllister held on 11/14/2011. AUSA Richard Hathaway. Defendant present in custody without counsel. Pretrial Christine Zorn. Defendant advised. Federal Public Defender appointed. Unsecured Bond set as to Robert T McAllister (1) 20,000. Arraignment and Discovery Hearing set for 12/14/2011 10:00 AM in Courtroom A 502 before Magistrate Judge Michael J. Watanabe. Defendant to be processed and released. Total Time: 20 minutes. Hearing time: 2:15-2:35. Text Only Entry (FTR: Courtroom C-201) (kmtcd) (Entered: 11/14/2011)
11/14/2011	<u>12</u>	CJA 23 Financial Affidavit by Robert T McAllister. (kmtcd) Modified on 11/15/2011 to correct filing date (romsl, ). (Entered: 11/15/2011)
11/14/2011	<u>13</u>	Unsecured Bond Entered as to Robert T McAllister in amount of \$ 20,000. (kmtcd) (Entered: 11/15/2011)
11/14/2011	<u>14</u>	ORDER Setting Conditions of Release as to Robert T McAllister (1) \$20,000 Unsecured by Magistrate Judge Kathleen M. Tafoya on 11/14/2011. (kmtcd) (Entered: 11/15/2011)
11/15/2011	<u>11</u>	Unopposed MOTION to Withdraw as Attorney and Request for Appointment of Conflict Free Counsel by Warren R. Williamson by Robert T McAllister. (Williamson, Warren) (Entered: 11/15/2011)
11/15/2011	<u>15</u>	MINUTE ORDER by Judge Philip A. Brimmer on 11/15/11 granting <u>11</u> Motion to Withdraw. Warren Richard Williamson withdrawn from case as to Robert T. McAllister (1). An attorney from the Criminal Justice Act panel shall be appointed to represent Mr. McAllister. Text Only Entry (pabsec) (Entered: 11/15/2011)

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11/15/2011	<u>16</u>	Receipt for Surrender of Passport as to Robert T McAllister Passport Number 477089415 issued by United States (mjgs), (Entered: 11/15/2011)
11/15/2011	<u>17</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Kathleen M. Tafoya: Initial Appearance as to Elizabeth Whitney held on 11/15/2011. AUSA Richard Hathaway. Defendant present in custody with Patrick Burke as advisor. Pretrial Matt Farwell. Advisement of rights. CJA appointed counsel. Unsecured Bond set as to Elizabeth Whitney (4) \$10,000. Arraignment and Discovery Hearing set for 12/14/2011 10:00 AM in Courtroom A 502 before Magistrate Judge Michael J. Watanabe. Defendant remanded for processing and release. Total Time: 21 minutes. Hearing Time: 2:07-2:28. Text Only Entry. (FTR: Courtroom C-201) (kmtcd) (Entered: 11/15/2011)
11/15/2011	<u>18</u>	CJA 20/30 Appointment of Patrick J. Burke for Elizabeth Whitney by Magistrate Judge Kathleen M. Tafoya on 11/15/2011. (smatl, ) (Entered: 11/16/2011)
11/15/2011	<u>19</u>	Arrest Warrant Returned Executed on 11/14/2011 in case as to Robert T. McAllister. (romsl, ) (Entered: 11/16/2011)
11/15/2011	<u>20</u>	CJA 23 Financial Affidavit by Elizabeth Whitney. (romsl, ) (Entered: 11/16/2011)
11/15/2011	<u>21</u>	Unsecured Bond Entered as to Elizabeth Whitney in amount of \$10,000 (romsl, ) (Entered: 11/16/2011)
11/15/2011	<u>22</u>	ORDER Setting Conditions of Release as to Elizabeth Whitney (4) \$10,000 unsecured by Magistrate Judge Kathleen M. Tafoya on 11/15/2011. (romsl, ) (Entered: 11/16/2011)
11/16/2011	<u>23</u>	FIRST SUPERSEDING INDICTMENT as to Robert T. McAllister (1) count(s) 1s, 2s-4s, 5s-7s, 8s-19s, 20s, 21s-26s, 27s, 28s, 29s, Richard C. Neiswonger (2) count(s) 1s, 2s-4s, 5s-7s, Shannon Neiswonger (3) count(s) 1s, 2s-4s, 5s-7s, Elizabeth Whitney (4) count(s) 1s, 8s-19s, 20s, 21s-26s, 27s, 28s, 29s. (Attachments: # <u>1</u> Criminal Information Sheet, # <u>2</u> Criminal Information Sheet, # <u>3</u> Criminal Information Sheet, # <u>4</u> Criminal Information Sheet) (jjpsl, ) Modified on 11/17/2011 to correct text (jjpsl, ). (Entered: 11/17/2011)
11/16/2011	<u>24</u>	Arrest Warrant Issued in case as to Robert T. McAllister. (jjpsl, ) (Entered: 11/17/2011)
11/16/2011	<u>25</u>	Arrest Warrant Issued in case as to Richard C. Neiswonger. (jjpsl, ) (Entered: 11/17/2011)
11/16/2011	<u>26</u>	Arrest Warrant Issued in case as to Shannon Neiswonger. (jjpsl, ) (Entered: 11/17/2011)
11/16/2011	<u>27</u>	Arrest Warrant Issued in case as to Elizabeth Whitney. (jjpsl, ) (Entered: 11/17/2011)
11/16/2011	<u>28</u>	CJA 20/30 Appointment of Forrest W. Lewis for Robert T. McAllister by Judge Philip A. Brimmer on 11/16/2011. (smatl, ) (Entered: 11/17/2011)
11/17/2011	<u>29</u>	Receipt for Surrender of Passport as to Elizabeth Whitney Passport Number 444493917 issued by Ohio, USA (skssl, ) (Entered: 11/17/2011)
11/18/2011	<u>30</u>	MOTION to Continue <i>Arraignments and Discovery Conference</i> by USA as to Robert T. McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney. (Hathaway, Richard) (Entered: 11/18/2011)
11/18/2011	<u>31</u>	Utility Resetting Hearings as to Robert T. McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney: Text Only Entry Arraignment set for 1/25/2012 10:00 AM in Courtroom A 402 before Magistrate Judge Craig B. Shaffer. (jjpsl, ) (Entered: 11/21/2011)
11/18/2011	<u>34</u>	Utility Setting/Resetting Deadlines/Hearings as to Robert T. McAllister, Elizabeth Whitney: Text Only Entry Discovery Hearing set for 1/25/2012 10:00 AM in Courtroom A 402 before Magistrate Judge Craig B. Shaffer. (jjpsl, ) (Entered: 12/12/2011)
11/21/2011	<u>32</u>	CJA 21/31 Request for Service as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment, # <u>2</u> CJA Attachment)(Burke, Patrick) (Entered: 11/21/2011)
11/23/2011	<u>33</u>	CJA 21/31 Authorization for Service as to Elizabeth Whitney by Judge Philip A. Brimmer on 11/23/2011. (smatl, ) (Entered: 12/09/2011)
12/13/2011	<u>36</u>	Arrest Warrant Returned Unexecuted as to Robert T. McAllister. (romsl, ) (Entered: 12/15/2011)
12/13/2011	<u>37</u>	Arrest Warrant Returned Unexecuted as to Elizabeth Whitney. (romsl, ) (Entered: 12/15/2011)

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12/15/2011	<u>35</u>	CJA 21/31 Request for Service as to Robert T. McAllister. (Attachments: # <u>1</u> CJA Attachment, # <u>2</u> CJA Attachment)(Lewis, Forrest) (Entered: 12/15/2011)
12/16/2011	<u>39</u>	CONSENT Modifying Conditions of Release as to Robert T. McAllister: Conditions modified as set forth in the attached Consent. All other conditions remain in effect. By Magistrate Judge Kathleen M. Tafoya on 12/16/11. (mnfsl, ) (Entered: 12/22/2011)
12/20/2011	<u>47</u>	CJA 21/31 Authorization for Service as to Robert T. McAllister by Judge Philip A. Brimmer on 12/20/2011. (pponi, ) (Entered: 01/04/2012)
12/22/2011	<u>38</u>	MOTION to Withdraw as Attorney by Patrick J Burke by Elizabeth Whitney. (Burke, Patrick) (Entered: 12/22/2011)
12/23/2011	<u>40</u>	MINUTE ORDER by Judge Philip A. Brimmer on 12/23/11 as to Elizabeth Whitney (4). A hearing is set for January 5, 2012 at 1:00 p.m. in Courtroom A 701 before Judge Philip A. Brimmer on <u>38</u> Motion to Withdraw. Text Only Entry (pabsec) (Entered: 12/23/2011)
12/27/2011	<u>41</u>	MOTION for Order <i>Allowing Appearance at Hearing by Phone</i> by USA as to Elizabeth Whitney. (Hathaway, Richard) (Entered: 12/27/2011)
12/27/2011	<u>42</u>	MINUTE ORDER by Judge Philip A. Brimmer on 12/27/11 as to Elizabeth Whitney (4) granting <u>41</u> United States' Motion for Leave to Appear at Hearing by Phone. Counsel for the government shall contact Chambers (303-335-2794) at the scheduled time to participate in the hearing on defendant's motion to withdraw. Text Only Entry (pabsec) (Entered: 12/27/2011)
12/29/2011	<u>43</u>	CJA 21/31 Payment Request as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment)(Burke, Patrick) (Entered: 12/29/2011)
12/29/2011	<u>44</u>	Unopposed MOTION to Travel by Robert T. McAllister. (Lewis, Forrest) (Entered: 12/29/2011)
12/29/2011	<u>45</u>	MEMORANDUM regarding <u>44</u> Unopposed MOTION to Travel filed by Robert T. McAllister. Motion referred to Magistrate Judge Kristen L. Mix. By Judge Philip A. Brimmer on 12/29/11. Text Only Entry (mnfsl, ) (Entered: 12/29/2011)
12/30/2011	<u>46</u>	MINUTE ORDER granting <u>44</u> Motion to Travel as to Robert T. McAllister (1). By Magistrate Judge Kristen L. Mix on 12/30/11. Text Only Entry (mnfsl, ) (Entered: 12/30/2011)
01/05/2012	<u>48</u>	CJA 20/30 Payment Request as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment)(Burke, Patrick) (Entered: 01/05/2012)
01/05/2012	<u>49</u>	MINUTE ENTRY for proceedings held before Judge Philip A. Brimmer. Motion Hearing as to Elizabeth Whitney held on 1/5/2012. Order granting <u>38</u> Motion to Withdraw as Attorney. Patrick J. Burke withdrawn from case as to Elizabeth Whitney. Bond is continued. (Court Reporter: Janet Coppock) (pabcd) (Entered: 01/06/2012)
01/06/2012	<u>50</u>	CJA 20/30 Appointment of Kathryn J. Stimson for Elizabeth Whitney by Judge Philip A. Brimmer on 1/6/2012. (smatl, ) (Entered: 01/10/2012)
01/06/2012	<u>76</u>	CJA 21/31 Payment Authorization as to Elizabeth Whitney by Judge Philip A. Brimmer on 01/06/2012. (pponi, ) (Entered: 02/28/2012)
01/09/2012	<u>66</u>	CJA 20/30 Payment Authorization as to Elizabeth Whitney by Judge Philip A. Brimmer on 01/09/2012. (pponi, ) (Entered: 02/02/2012)
01/20/2012	<u>51</u>	NOTICE OF ATTORNEY APPEARANCE: Jeffrey S. Pagliuca <i>and David S. Kaplan</i> appearing for Shannon Neiswonger (Pagliuca, Jeffrey) (Entered: 01/20/2012)
01/24/2012	<u>52</u>	NOTICE OF ATTORNEY APPEARANCE: Solomon Louis Wisenberg appearing for Richard C. Neiswonger (Wisenberg, Solomon) (Entered: 01/24/2012)
01/25/2012	<u>53</u>	MINUTE ENTRY for proceedings held before Magistrate Judge Craig B. Shaffer: Arraignment and Discovery Hearing as to Robert T. McAllister and Elizabeth Whitney held on 1/25/2012. AUSA Richard Hathaway and Christine Kenney; Defendant Robert T. McAllister present on bond with Forrest Lewis; Defendant Elizabeth Whitney present on bond with Kathryn Stimson. Discovery memorandums executed. Plea NOT GUILTY entered by Robert T. McAllister and Elizabeth Whitney on all counts.

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		Defendants continued on bond. Total time: 8 minutes. Hearing time: 10:08-10:16. Text Only Entry. (FTR: Robin Mason) (cbscd, ) (Entered: 01/25/2012)
01/25/2012	54	MINUTE ENTRY for proceedings held before Magistrate Judge Craig B. Shaffer: Initial Appearance, Arraignment, Discovery and Detention Hearing as to Richard C. Neiswonger and Shannon Neiswonger held on 1/25/2012. AUSA Richard Hathaway and Christine Kenney; Defendant Richard C. Neiswonger present in custody with Solomon Wisenberg; Defendant Shannon Neiswonger present in custody with Jeffrey Pagliuca; Pretrial Katrina Devine. Defendants advised. Plea NOT GUILTY entered by Richard C. Neiswonger and Shannon Neiswonger as to all counts. Discovery memorandums executed. Unsecured Bond set as to Richard C. Neiswonger (2) \$25,000. Unsecured Bond set as to Shannon Neiswonger (3) \$25,000. Defendant remanded for processing and release. Total time: 35 minutes. Hearing time: 1:54-2:29. Text Only Entry. (FTR: Robin Mason) (cbscd, ) (Entered: 01/25/2012)
01/25/2012	55	Unsecured Bond Entered as to Richard C. Neiswonger in amount of \$ 25,000. (cbscd, ) (Entered: 01/26/2012)
01/25/2012	56	Unsecured Bond Entered as to Shannon Neiswonger in amount of \$ 25,000. (cbscd, ) (Entered: 01/26/2012)
01/25/2012	57	ORDER Setting Conditions of Release as to Richard C. Neiswonger (2) \$25,000 by Magistrate Judge Craig B. Shaffer on 1/25/2012. (cbscd, ) (Entered: 01/26/2012)
01/25/2012	58	ORDER Setting Conditions of Release as to Shannon Neiswonger (3) \$25,000 unsecured by Magistrate Judge Craig B. Shaffer on 1/25/2012. (cbscd, ) (Entered: 01/26/2012)
01/25/2012	59	Receipt for Surrender of Passport as to Shannon Neiswonger Passport Number 473264018 issued by Utah, USA (mnfsl, ) (Entered: 01/26/2012)
01/25/2012	60	Discovery Conference Memorandum and ORDER: Estimated Trial Time - 15 days as to Robert T. McAllister by Magistrate Judge Craig B. Shaffer on 1/25/2012. (cbscd, ) (Entered: 01/27/2012)
01/25/2012	61	Discovery Conference Memorandum and ORDER: Estimated Trial Time - 15 days as to Richard C. Neiswonger by Magistrate Judge Craig B. Shaffer on 1/25/2012. (cbscd, ) (Entered: 01/27/2012)
01/25/2012	62	Discovery Conference Memorandum and ORDER: Estimated Trial Time - 15 days as to Shannon Neiswonger by Magistrate Judge Craig B. Shaffer on 1/25/2012. (cbscd, ) (Entered: 01/27/2012)
01/25/2012	63	Discovery Conference Memorandum and ORDER: Estimated Trial Time - 15 days as to Elizabeth Whitney by Magistrate Judge Craig B. Shaffer on 1/25/2012. (cbscd, ) (Entered: 01/27/2012)
01/27/2012	64	AMENDED Order Setting Conditions of Release <u>57</u> as to Richard C. Neiswonger (2) \$25,000 by Magistrate Judge Craig B. Shaffer on 1/27/2012. The only page amended is the one that outlines the conditions of the defendants bond. The page was amended to remove conditions J, Q and R from the original form. (cbscd, ) (Entered: 01/30/2012)
01/27/2012	65	ORDER SETTING TRIAL DATES AND DEADLINES as to Robert T. McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney. Pretrial Motions due by 2/15/2012. Responses due by 2/22/2012. Fifteen-day Jury Trial set for 3/19/2012 at 08:00 AM in Courtroom A 701 before Judge Philip A. Brimmer. Trial Preparation Conference set for 3/16/2012 at 09:00 AM in Courtroom A 701 before Judge Philip A. Brimmer. By Judge Philip A. Brimmer on 1/27/12. (mnfsl, ) (Entered: 01/30/2012)
02/09/2012	67	Unopposed MOTION to Continue by Robert T. McAllister. (Lewis, Forrest) (Entered: 02/09/2012)
02/14/2012	68	MINUTE ORDER by Judge Philip A. Brimmer on 2/14/12. The February 15, 2012 deadline for filing pretrial motions is VACATED. Text Only Entry (pabsec) (Entered: 02/14/2012)
02/16/2012	69	CJA 21/31 Payment Request as to Robert T. McAllister. (Lewis, Forrest) (Entered: 02/16/2012)
02/24/2012	70	CJA 21/31 Payment Request as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment)(Stimson, Kathryn) (Entered: 02/24/2012)
02/24/2012	71	First MOTION in Limine by Robert T. McAllister. (Lewis, Forrest) (Entered: 02/24/2012)

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02/24/2012	<u>72</u>	MOTION for Disclosure of 404(b) Evidence by Robert T. McAllister. (Lewis, Forrest) (Entered: 02/24/2012)
02/24/2012	<u>73</u>	MOTION for Release of Brady Materials <i>and Giglio Materials</i> by Robert T. McAllister. (Lewis, Forrest) (Entered: 02/24/2012)
02/27/2012	<u>74</u>	ORDER granting <u>67</u> Motion for an Ends of Justice Continuance as to Robert T. McAllister (1). Ends of justice continuance of 120 days from 2/27/2012 ordered. Thirteen-day Jury Trial set for 6/25/2012 at 08:00 AM in Courtroom A 701 before Judge Philip A. Brimmer. Trial Preparation Conference set for 6/15/2012 at 09:00 AM in Courtroom A 701 before Judge Philip A. Brimmer. By Judge Philip A. Brimmer on 2/27/12. (mnfsl, ) (Entered: 02/27/2012)
02/27/2012	<u>77</u>	Utility Setting/Resetting Deadlines/Hearings as to Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney: Thirteen-day Jury Trial set for 6/25/2012 at 08:00 AM in Courtroom A 701 before Judge Philip A. Brimmer. Trial Preparation Conference set for 6/15/2012 at 09:00 AM in Courtroom A 701 before Judge Philip A. Brimmer. Pursuant to order entered 2/27/12. Text Only Entry (mnfsl, ) (Entered: 02/29/2012)
02/28/2012	<u>75</u>	STATEMENT <i>Proposed Schedule for Motions and Responses</i> by Plaintiff USA (Kenney, Christine) (Entered: 02/28/2012)
03/01/2012	<u>78</u>	MINUTE ORDER as to Robert T. McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney. Pretrial Motions due by 4/23/2012. Responses due by 5/7/2012. Expert witness disclosures pursuant to Fed. R. Crim. P. 16 shall be made no later than seven days before the deadline for filing pretrial motions and any challenges to such experts shall be made by the pretrial motion filing deadline. Disclosures regarding rebuttal expert witnesses shall be made one week after the deadline for filing pretrial motions and any challenges to such experts shall be made no later than two weeks after the pretrial motions deadline. By Judge Philip A. Brimmer on 3/1/12. (mnfsl, ) (Entered: 03/01/2012)
03/16/2012	<u>84</u>	CJA 21/31 Payment Authorization as to Robert T. McAllister by Judge Philip A. Brimmer on 03/16/2012. (pponi, ) (Entered: 04/16/2012)
03/20/2012	<u>81</u>	CJA 21/31 Payment Authorization as to Elizabeth Whitney by Judge Philip A. Brimmer on 03/20/2012. (pponi, ) (Entered: 04/05/2012)
03/22/2012	<u>79</u>	CJA 21/31 Request for Service as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment)(Stimson, Kathryn) (Entered: 03/22/2012)
03/26/2012	<u>98</u>	CJA 21/31 Authorization for Service as to Elizabeth Whitney by Judge Philip A. Brimmer on 03/26/2012. (pponi, ) (Entered: 05/04/2012)
04/04/2012	<u>80</u>	CJA 21/31 Payment Request as to Robert T. McAllister. (Lewis, Forrest) (Entered: 04/04/2012)
04/13/2012	<u>82</u>	NOTICE of Disposition by Elizabeth Whitney (Stimson, Kathryn) (Entered: 04/13/2012)
04/16/2012	<u>83</u>	MINUTE ORDER by Judge Philip A. Brimmer on 4/16/12 as to Elizabeth Whitney (4) re <u>82</u> Notice of Disposition. Counsel shall jointly contact Chambers via conference call (303-335-2794) no later than April 19, 2012 to schedule a change of plea hearing. Text Only Entry (pabsec) (Entered: 04/16/2012)
04/17/2012	<u>85</u>	MINUTE ORDER by Judge Philip A. Brimmer on 4/17/12 as to Elizabeth Whitney (4) re <u>82</u> Notice of Disposition. A change of plea hearing is set for May 22, 2012 at 1:00 p.m. in Courtroom A 701 before Judge Philip A. Brimmer. (pabsec) (Entered: 04/17/2012)
04/19/2012	<u>86</u>	CJA Request for Interim Payment as to Elizabeth Whitney. (Stimson, Kathryn) (Entered: 04/19/2012)
04/20/2012	<u>100</u>	CJA 21/31 Payment Authorization as to Robert T. McAllister by Judge Philip A. Brimmer on 04/20/2012. (pponi, ) (Entered: 05/08/2012)
04/23/2012	<u>87</u>	MOTION to Disclose Grand Jury Material to Defendant by Robert T. McAllister. (Lewis, Forrest) (Entered: 04/23/2012)
04/23/2012	<u>88</u>	MOTION for Sanctions <i>for Unreasonable Delay in Execution of Arrest Warrant</i> by Robert T. McAllister. (Lewis, Forrest) (Entered: 04/23/2012)
04/23/2012	<u>89</u>	MOTION to Dismiss <i>Indictment</i> by Robert T. McAllister. (Lewis, Forrest) (Entered: 04/23/2012)

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04/23/2012	<u>90</u>	MOTION for Leave to File <i>Additional Motions</i> by Robert T. McAllister. (Lewis, Forrest) (Entered: 04/23/2012)
04/24/2012	<u>91</u>	MINUTE ORDER Setting Hearing by Judge Philip A. Brimmer on 4/24/12 as to Robert T. McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney. A hearing on all pending motions is set for May 24, 2012 at 2:00 p.m. in Courtroom A 701 before Judge Philip A. Brimmer. Text Only Entry (pabsec) (Entered: 04/24/2012)
04/26/2012	<u>92</u>	Unopposed MOTION to Withdraw Document / <i>Previously Filed Motions</i> by Robert T. McAllister. (Lewis, Forrest) (Entered: 04/26/2012)
05/01/2012	<u>93</u>	NOTICE of Disposition by Robert T. McAllister (Lewis, Forrest) (Entered: 05/01/2012)
05/01/2012	<u>94</u>	NOTICE of Disposition by Shannon Neiswonger (Pagliuca, Jeffrey) (Entered: 05/01/2012)
05/02/2012	<u>95</u>	MINUTE ORDER by Judge Philip A. Brimmer on 5/2/12 as to Shannon Neiswonger re <u>94</u> Notice of Disposition. Change of Plea Hearing set for 5/24/2012 02:00 PM in Courtroom A 701 before Judge Philip A. Brimmer. (pabcd) (Entered: 05/02/2012)
05/02/2012	<u>96</u>	MINUTE ORDER by Judge Philip A. Brimmer on 5/2/12 as to Robert T. McAllister re <u>93</u> Notice of Disposition. Change of Plea Hearing set for 5/24/2012 03:00 PM in Courtroom A 701 before Judge Philip A. Brimmer. (pabcd) (Entered: 05/02/2012)
05/03/2012	<u>97</u>	MINUTE ORDER by Judge Philip A. Brimmer on 5/3/12 as to Shannon Neiswonger (3). The change of plea hearing set for May 24, 2012 at 2:00 p.m. is VACATED. On or before May 8, 2012, counsel shall file a status report indicating when they anticipate defendant will enter her guilty plea in the District of Nevada. Text Only Entry (pabsec) (Entered: 05/03/2012)
05/07/2012	<u>99</u>	NOTICE of Disposition by Richard C. Neiswonger (Wisenberg, Solomon) (Entered: 05/07/2012)
05/08/2012	<u>101</u>	STATUS REPORT by Shannon Neiswonger (Pagliuca, Jeffrey) (Entered: 05/08/2012)
05/17/2012	<u>102</u>	MINUTE ORDER by Judge Philip A. Brimmer on 5/17/12 as to Robert T. McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney. The motion hearing set for May 24, 2012 at 2:00 p.m. is VACATED. Text Only Entry (pabsec) (Entered: 05/17/2012)
05/18/2012	<u>103</u>	CJA 21/31 Payment Request as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment)(Stimson, Kathryn) (Entered: 05/18/2012)
05/22/2012	<u>104</u>	MINUTE ENTRY for proceedings held before Judge Philip A. Brimmer. Change of Plea Hearing as to Elizabeth Whitney held on 5/22/2012. GUILTY Plea entered by Elizabeth Whitney (4) to Count 1s. Court defers acceptance of the plea agreement pending preparation of the presentence investigation report. Sentencing set for 9/14/2012 09:00 AM in Courtroom A 701 before Judge Philip A. Brimmer. Bond is continued. (Court Reporter: Janet Coppock) (pabcd) (Entered: 05/24/2012)
05/22/2012	<u>105</u>	PLEA AGREEMENT as to Elizabeth Whitney (pabcd) (Entered: 05/24/2012)
05/22/2012	<u>106</u>	STATEMENT IN ADVANCE OF PLEA OF GUILTY by Defendant Elizabeth Whitney (pabcd) (Entered: 05/24/2012)
05/24/2012	<u>107</u>	MINUTE ENTRY for proceedings held before Judge Philip A. Brimmer. Change of Plea Hearing as to Robert T. McAllister held on 5/24/2012. GUILTY Plea entered by Robert T. McAllister (1) to Counts 1s,20s,28s. Court defers acceptance of the plea agreement pending preparation of the presentence investigation report. Sentencing set for 9/14/2012 10:30 AM in Courtroom A 701 before Judge Philip A. Brimmer. Bond is continued. (Court Reporter: Janet Coppock) (pabcd) (Entered: 05/25/2012)
05/24/2012	<u>108</u>	PLEA AGREEMENT as to Robert T. McAllister (pabcd) (Entered: 05/25/2012)
05/24/2012	<u>109</u>	STATEMENT IN ADVANCE OF PLEA OF GUILTY by Defendant Robert T. McAllister (pabcd) (Entered: 05/25/2012)
05/31/2012	<u>110</u>	MINUTE ORDER by Judge Philip A. Brimmer on 5/31/12 as to Robert T. McAllister, Richard C. Neiswonger, Shannon Neiswonger, Elizabeth Whitney. In light of the notices of disposition filed by defendants Richard C. Neiswonger and Shannon Neiswonger, the trial preparation conference set for June 15, 2012 and the jury trial set for June 25, 2012 are VACATED. Text Only Entry (pabsec) (Entered: 05/31/2012)

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		05/31/2012)
06/06/2012	<u>112</u>	CJA 21/31 Payment Authorization as to Elizabeth Whitney by Judge Philip A. Brimmer on 06/06/2012. (pponi, ) (Entered: 06/26/2012)
06/26/2012	111	MINUTE ORDER by Judge Philip A. Brimmer on 6/26/12 as to Richard C. Neiswonger (2) and Shannon Neiswonger (3). Counsel shall file status reports on or before July 2, 2012. Text Only Entry (pabsec) (Entered: 06/26/2012)
07/02/2012	<u>113</u>	STATUS REPORT <i>Joint</i> by Richard C. Neiswonger, Shannon Neiswonger (Wisenberg, Solomon) (Entered: 07/02/2012)
07/02/2012	114	MINUTE ORDER by Judge Philip A. Brimmer on 7/2/12 as to Richard C. Neiswonger (2), Shannon Neiswonger (3). Counsel shall file status reports on or before July 31, 2012. Text Only Entry (pabsec) (Entered: 07/02/2012)
07/20/2012	<u>115</u>	CJA 21/31 Payment Request as to Robert T. McAllister. (Lewis, Forrest) (Entered: 07/20/2012)
07/23/2012	<u>116</u>	CJA 20/30 Payment Request as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment, # <u>2</u> CJA Attachment, # <u>3</u> CJA Attachment, # <u>4</u> CJA Attachment, # <u>5</u> CJA Attachment, # <u>6</u> CJA Attachment, # <u>7</u> CJA Attachment)(Stimson, Kathryn) (Entered: 07/23/2012)
07/24/2012	<u>117</u>	CJA 21/31 Request for Service as to Robert T. McAllister. (Lewis, Forrest) (Entered: 07/24/2012)
07/31/2012	<u>118</u>	STATUS REPORT 7-31-12 by Richard C. Neiswonger, Shannon Neiswonger (Wisenberg, Solomon) (Entered: 07/31/2012)
08/14/2012	<u>119</u>	RESTRICTED PRESENTENCE REPORT first disclosure for attorney review as to Elizabeth Whitney (dgall, ) (Entered: 08/14/2012)
08/14/2012	<u>120</u>	RESTRICTED PRESENTENCE REPORT first disclosure for attorney review as to Robert T. McAllister (aarag, ) (Entered: 08/14/2012)
08/20/2012	<u>121</u>	OBJECTION/RESPONSE to Presentence Report <u>120</u> by USA as to Robert T. McAllister (Kenney, Christine) Modified on 8/21/2012 to add linkage (mnfsl, ). (Entered: 08/20/2012)
08/24/2012	<u>122</u>	MOTION For Downward Departure Pursuant to 5K1.1 by USA as to Elizabeth Whitney. (Kenney, Christine) (Entered: 08/24/2012)
08/27/2012	<u>123</u>	OBJECTION/RESPONSE to Presentence Report <u>120</u> by Robert T. McAllister (Lewis, Forrest) (Entered: 08/27/2012)
08/27/2012	<u>124</u>	MOTION for Stay and Extended Voluntary Surrender Date by Robert T. McAllister. (Lewis, Forrest) (Entered: 08/27/2012)
08/27/2012	<u>125</u>	OBJECTION/RESPONSE to Presentence Report <u>119</u> by Elizabeth Whitney (Attachments: # <u>1</u> Exhibit Exhibits A-E)(Stimson, Kathryn) Modified on 8/28/2012 to add linkage (mnfsl, ). (Entered: 08/27/2012)
08/28/2012	<u>138</u>	CJA 20/30 Payment Authorization as to Elizabeth Whitney by Judge Philip A. Brimmer on 8/28/2012. (mjwcd) (Entered: 09/07/2012)
08/30/2012	<u>126</u>	RESPONSE in Opposition by USA as to Robert T. McAllister re <u>124</u> MOTION for Stay and Extended Voluntary Surrender Date (Kenney, Christine) (Entered: 08/30/2012)
08/30/2012	<u>127</u>	RESPONSE by USA as to Robert T. McAllister re: <u>123</u> Objection/Response to Presentence Report filed by Robert T. McAllister (Hathaway, Richard) (Entered: 08/30/2012)
08/30/2012	<u>128</u>	SENTENCING STATEMENT and Request for Below Advisory Guidelines Sentence by Robert T. McAllister (Attachments: # <u>1</u> Appendix 1, # <u>2</u> Appendix 2, # <u>3</u> Appendix 3, # <u>4</u> Appendix 4, # <u>5</u> Appendix 5, # <u>6</u> Appendix 6, # <u>7</u> Appendix 7, # <u>8</u> Appendix 8, # <u>9</u> Appendix 9, # <u>10</u> Appendix 10, # <u>11</u> Appendix 11)(Lewis, Forrest) (Entered: 08/30/2012)
08/30/2012	<u>139</u>	CJA 21/31 Payment Authorization as to Robert T. McAllister by Judge Philip A. Brimmer on 8/30/2012. (mjwcd) (Entered: 09/07/2012)

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08/31/2012	<u>129</u>	RESPONSE by USA as to Elizabeth Whitney re: <u>125</u> Objection/Response to Presentence Report filed by Elizabeth Whitney (Hathaway, Richard) (Entered: 08/31/2012)
08/31/2012	<u>130</u>	MINUTE ORDER by Judge Philip A. Brimmer on 8/31/12 as to Robert T. McAllister (1) granting in part and denying in part <u>124</u> Motion for Stay and Extended Voluntary Surrender Date. (pabsec) (Entered: 08/31/2012)
09/04/2012	<u>131</u>	MOTION for Non-Guideline Sentence by Elizabeth Whitney. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U, # <u>22</u> Exhibit V, # <u>23</u> Exhibit W, # <u>24</u> Exhibit X, # <u>25</u> Exhibit Y)(Stimson, Kathryn) (Entered: 09/04/2012)
09/04/2012	<u>132</u>	CJA 21/31 Request for Service as to Elizabeth Whitney. (Attachments: # <u>1</u> CJA Attachment)(Stimson, Kathryn) (Entered: 09/04/2012)
09/04/2012	<u>133</u>	RESPONSE by USA as to Robert T. McAllister re: <u>128</u> Sentencing Statement, filed by Robert T. McAllister (Attachments: # <u>1</u> Exhibit)(Hathaway, Richard) (Entered: 09/04/2012)
09/06/2012	<u>134</u>	RESTRICTED PRESENTENCE REPORT as to Elizabeth Whitney (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(dgall, ) (Entered: 09/06/2012)
09/06/2012	<u>135</u>	RESTRICTED ADDENDUM to Presentence Report <u>134</u> as to Elizabeth Whitney (dgall, ) (Entered: 09/06/2012)
09/06/2012	<u>136</u>	RESTRICTED REVISED PRESENTENCE REPORT as to Robert T. McAllister (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(aarag, ) (Entered: 09/06/2012)
09/06/2012	<u>137</u>	RESTRICTED ADDENDUM to Presentence Report <u>136</u> as to Robert T. McAllister (aarag, ) (Entered: 09/06/2012)
09/07/2012	<u>161</u>	CJA 21/31 Authorization for Service as to Elizabeth Whitney by Judge Philip A. Brimmer on 9/7/2012. (mjwcd) (Entered: 09/25/2012)
09/10/2012	<u>140</u>	Supplement to <u>128</u> Sentencing Statement, by Robert T. McAllister. (Attachments: # <u>1</u> Appendix 12)(Lewis, Forrest) Modified on 9/10/2012 to correct text (mnfsl, ). (Entered: 09/10/2012)
09/11/2012	<u>141</u>	REPLY by Robert T. McAllister to <u>133</u> Response in Opposition to Defendant's Request for a Variance and Sentence Below the Guideline Range [Doc. No. 128] (Lewis, Forrest) (Entered: 09/11/2012)
09/11/2012	<u>142</u>	REPLY by Robert T. McAllister to <u>127</u> Response in Opposition to Defendant's Objections to Pre-Sentence Investigation Report (Attachments: # <u>1</u> Appendix Statement of Robert T. McAllister, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K)(Lewis, Forrest) (Entered: 09/11/2012)
09/14/2012	<u>143</u>	SUPPLEMENT to <u>128</u> Sentencing Statement, by Robert T. McAllister (Attachments: # <u>1</u> Appendix 13)(Lewis, Forrest) (Entered: 09/14/2012)
09/14/2012	<u>144</u>	MINUTE ENTRY for proceedings held before Judge Philip A. Brimmer. Sentencing hearing continued. Counsel directed to chambers to schedule an evidentiary hearing and continued sentencing as to defendant Elizabeth Whitney. Court reporter: Janet Coppock. Bond is continued. (pabcd) (Entered: 09/14/2012)
09/14/2012	<u>145</u>	MINUTE ENTRY for proceedings held before Judge Philip A. Brimmer. Sentencing held on 9/14/2012 as to defendant Robert T. McAllister. Defendant sentenced as reflected on the record. Bond is continued. Court Reporter: Janet Coppock. (pabcd) (Entered: 09/14/2012)
09/14/2012	<u>146</u>	MINUTE ORDER by Judge Philip A. Brimmer on 9/14/12 as to Elizabeth Whitney (4). The sentencing hearing is continued to October 9, 2012 at 8:30 a.m. in Courtroom A 701 before Judge Philip A. Brimmer. Text Only Entry (pabsec) (Entered: 09/14/2012)
09/14/2012	<u>147</u>	MINUTE ORDER by Judge Philip A. Brimmer on 9/14/12 as to Robert T. McAllister (1). A hearing on restitution is set for October 2, 2012 at 1:30 p.m. in Courtroom A 701 before Judge Philip A. Brimmer. Text Only Entry (pabsec) (Entered: 09/14/2012)

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09/17/2012	<u>148</u>	MOTION to Dismiss Counts by USA as to Robert T. McAllister. (Hathaway, Richard) (Entered: 09/17/2012)
09/17/2012	<u>149</u>	ORDER granting <u>148</u> Motion to Dismiss Counts as to Robert T. McAllister (1). Counts One through Nineteen of the Indictment and Counts Two through Nineteen, Twenty-One through Twenty-Seven, and Twenty-Nine of the First Superseding Indictment are dismissed as to defendant Robert T. McAllister only. By Judge Philip A. Brimmer on 9/17/12. (mnfsl, ) (Entered: 09/17/2012)
09/17/2012	<u>150</u>	MOTION to Withdraw as Attorney <i>and for Appointment of New CJA Counsel for Post-Conviction/Appeal Proceedings</i> by Forrest W. Lewis by Robert T. McAllister. (Lewis, Forrest) (Entered: 09/17/2012)
09/17/2012	<u>151</u>	CJA 24 Transcript Request as to Robert T. McAllister. (Lewis, Forrest) (Entered: 09/17/2012)
09/17/2012	<u>152</u>	CJA 21/31 Request for Service as to Robert T. McAllister. (Attachments: # <u>1</u> CJA Attachment)(Lewis, Forrest) (Entered: 09/17/2012)
09/17/2012	<u>153</u>	CJA 24 Transcript Request as to Elizabeth Whitney. (Stimson, Kathryn) (Entered: 09/17/2012)
09/18/2012	<u>154</u>	MOTION to Continue / <i>Suspend and Reset Hearing for McAllister</i> by USA as to Robert T. McAllister. (Hathaway, Richard) (Entered: 09/18/2012)
09/18/2012	<u>155</u>	ORDER re <u>150</u> MOTION to Withdraw as Attorney and for Appointment of New CJA Counsel for Post-Conviction/Appeal Proceedings as to Robert T. McAllister. On or before 9/25/2012, counsel for defendant Robert T. McAllister and/or defendant Robert T. McAllister shall indicate whether a substitution of counsel is requested in connection with restitution issues and any other issues pending in this Court. By Judge Philip A. Brimmer on 9/18/12. (mnfsl, ) (Entered: 09/18/2012)
09/18/2012	<u>156</u>	JUDGMENT as to defendant Robert T. McAllister (1). Counts 1, 2-4, 21s-26s, 27s, 29s, 2s-4s, 5-7, 5s-7s, 8-19, 8s-19s: Dismissed; Counts 1s, 20s, 28s: Defendant sentenced to 78 months imprisonment as to Counts 1 and 20, and 60 months imprisonment as to Count 28, all Counts to be served concurrently. Supervised Release: 3 years as to each Count, to run concurrently. Assessment: \$300.00. By Judge Philip A. Brimmer on 9/18/12. (mnfsl, ) (Entered: 09/18/2012)
09/18/2012	<u>165</u>	CJA 21/31 Authorization for Service as to Robert T. McAllister by Judge Philip A. Brimmer on 9/18/2012. (mjwcd) (Entered: 09/26/2012)
09/21/2012	<u>157</u>	MINUTE ORDER by Judge Philip A. Brimmer on 9/21/12 as to Elizabeth Whitney (4). For purposes of the sentencing hearing on October 9, 2012 at 8:30 a.m., the parties shall consider the applicability of USSG Sec. 1B1.2(d). Text Only Entry (pabsec) (Entered: 09/21/2012)
09/21/2012	<u>158</u>	SUPPLEMENT to <u>150</u> MOTION to Withdraw as Attorney <i>and for Appointment of New CJA Counsel for Post-Conviction/Appeal Proceedings</i> by Forrest W. Lewis by Robert T. McAllister (Lewis, Forrest) (Entered: 09/21/2012)
09/21/2012	<u>159</u>	ORDER by Judge Philip A. Brimmer on 9/21/12 as to Robert T. McAllister (1) granting <u>150</u> Motion for Leave to Withdraw and for Appointment of New CJA Counsel for Post-Conviction/Appeal Proceedings. Forrest W. Lewis's representation of defendant Robert T. McAllister is hereby terminated. An attorney from the Criminal Justice Act panel shall be appointed to represent Mr. McAllister. (pabsec) (Entered: 09/21/2012)
09/21/2012	<u>160</u>	MINUTE ORDER by Judge Philip A. Brimmer on 9/21/12 as to Robert T. McAllister (1) granting <u>154</u> United States' Motion to Suspend and Reset Hearing. The hearing set for October 2, 2012 at 1:30 p.m. is VACATED and RESET for November 14, 2012 at 8:30 a.m. in Courtroom A 701 before Judge Philip A. Brimmer. Text Only Entry (pabsec) (Entered: 09/21/2012)
09/25/2012	<u>162</u>	BRIEF by USA as to Elizabeth Whitney (Hathaway, Richard) (Entered: 09/25/2012)
09/25/2012	<u>163</u>	TRANSCRIPT of Sentencing (Vol. 1) as to Elizabeth Whitney held on September 14, 2012 before Judge Philip A. Brimmer. Pages: 1-26. <P> NOTICE - REDACTION OF TRANSCRIPTS: Within seven calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal identifiers from the electronic transcript of the court proceeding. If a Notice of Intent to Redact is not filed within the allotted time, this transcript will be made electronically available after 90 days. Please see the Notice of Electronic Availability of

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		Transcripts document at <a href="http://www.cod.uscourts.gov">www.cod.uscourts.gov</a> .</P> Transcript may only be viewed at the court public terminal or purchased through the Court Reporter/Transcriber prior to the 90 day deadline for electronic posting on PACER. Release of Transcript Restriction set for 12/27/2012. (Coppock, Janet) (Entered: 09/25/2012)
09/25/2012	<u>164</u>	TRANSCRIPT of Sentencing as to Robert T. McAllister held on September 14, 2012 before Judge Philip A. Brimmer. Pages: 1-50. <P> <b>NOTICE - REDACTION OF TRANSCRIPTS:</b> Within seven calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal identifiers from the electronic transcript of the court proceeding. If a Notice of Intent to Redact is not filed within the allotted time, this transcript will be made electronically available after 90 days. Please see the Notice of Electronic Availability of Transcripts document at <a href="http://www.cod.uscourts.gov">www.cod.uscourts.gov</a> .</P> Transcript may only be viewed at the court public terminal or purchased through the Court Reporter/Transcriber prior to the 90 day deadline for electronic posting on PACER. Release of Transcript Restriction set for 12/27/2012. (Coppock, Janet) (Entered: 09/25/2012)
09/26/2012	<u>166</u>	ORDER TO SURRENDER IN LIEU OF TRANSPORTATION BY THE UNITED STATES MARSHAL as to Robert T. McAllister. Defendant to surrender himself by reporting to the Warden, Federal Detention Center Florence ADMAX SCP, Florence, Colorado, on 10/10/2012, by 12:00 noon, and will travel at his own expense. By Judge Philip A. Brimmer on 9/26/12. (mnfsl, ) (Entered: 09/26/2012)

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AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 1

UNITED STATES DISTRICT COURT

District of COLORADO

UNITED STATES OF AMERICA  
V.

JUDGMENT IN A CRIMINAL CASE

ROBERT T. MCALLISTER

Case Number: 11-cr-00283-PAB-01

USM Number: 38058-013

Forrest W. Lewis, Appointed

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to Counts 1, 20 and 28 of the Superseding Indictment
- pleaded nolo contendere to Count(s) \_\_\_\_\_  
which was accepted by the Court.
- was found guilty on Count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 371, 1349 and 2	Conspiracy to Interfere and Obstruct Government Functions, Commit Interstate Transportation of Money Obtained Unlawfully, Commit Wire Fraud and Commit Money Laundering and Aiding and Abetting	2011	1

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on Count(s) \_\_\_\_\_
- Counts 1-19 of the Indictment, and Counts 2-19, 21-27 & 29 of the First Superseding Indictment are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 14, 2012  
Date of Imposition of Judgment

s/Philip A. Brimmer  
Signature of Judge

Philip A. Brimmer, U.S. District Judge  
Name and Title of Judge

September 18, 2012  
Date

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AO 245B (Rev. 06/05) Criminal Judgment  
Sheet 1A

Judgment—Page 2 of 11

DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

**ADDITIONAL COUNTS OF CONVICTION**

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 371, 1349 and 2	Conspiracy to Interfere and Obstruct Government Functions, Commit Interstate Transportation of Money Obtained Unlawfully, Commit Wire Fraud, Commit Money Laundering, Commit Bankruptcy Fraud, and Aiding and Abetting	2011	20
18 U.S.C. §§ 157 and 2	Bankruptcy Fraud and Aiding and Abetting	03/11/11	28

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AO 245B (Rev. 09/08) Judgment in Criminal Case  
Sheet 2 — Imprisonment

Judgment — Page 3 of 11

DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: seventy-eight (78) months imprisonment as to Counts 1 and 20, and sixty (60) months imprisonment as to Count 28, all Counts to be served concurrently.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 12 p.m. on 15 days from date of designation

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

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DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years** as to each Count, to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 14) the defendant shall provide access to any requested financial information.

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AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 3C — Supervised Release

Judgment—Page 5 of 11

DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

### SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the periodic payment obligations imposed pursuant to the Court's judgment and sentence.
2. As directed by the probation officer, the defendant shall apply any monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court ordered financial obligation in this case.
3. The defendant shall participate in and successfully complete a program of testing and/or treatment for substance abuse, as approved by the probation officer, until such time as the defendant is released from the program by the probation officer. The defendant shall abstain from the use of alcohol or other intoxicants during the course of treatment and shall pay the cost of treatment as directed by the probation officer.
4. The defendant shall participate in and successfully complete a program of mental health treatment, as approved by the probation officer, until such time as the defendant is released from the program by the probation officer. The defendant shall pay the cost of treatment as directed by the probation officer. The Court authorizes the probation officer to release to the treatment agency all psychological reports and/or the presentence report for continuity of treatment.
5. All employment must be approved in advance by the probation officer and the defendant shall not engage in any business activity unless approved by the probation officer. All approved business activity must operate under a formal, registered entity, and the defendant shall provide the probation officer with the business entities and their registered agents. The defendant shall maintain business records for any approved business activity and provide all documentation and records as requested by the probation officer.
6. The defendant shall not cause or induce anyone to conduct any financial transaction on his behalf or maintain funds on his behalf.
7. The defendant shall document all income, compensation and financial support generated or received from any source and provide such information to the probation officer as requested.

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AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 5 — Criminal Monetary Penalties

Judgment — Page 6 of 11

DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00	\$ 0.00	\$ 0.00

The determination of restitution is deferred until until October 2, 2012, at 1:30 p.m. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The Court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following Court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and Court costs.

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AO 245B (Rev. 09/08) Criminal Judgment  
Attachment (Page 1) — Statement of Reasons

Judgment—Page 8 of 11

DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

**STATEMENT OF REASONS**

**I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT**

A  The Court adopts the presentence investigation report without change.

B  The Court adopts the presentence investigation report with the following changes.

(Check all that apply and specify Court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)  
(Use page 4 if necessary.)

1  Chapter Two of the U.S.S.G. Manual determinations by Court (including changes to base offense level, or specific offense characteristics):

The Court determines based upon 1B1.2(d) and commentary under 1B1.2, the Base Offense level is 7.

2  Chapter Three of the U.S.S.G. Manual determinations by Court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple Counts, or acceptance of responsibility):

3  Chapter Four of the U.S.S.G. Manual determinations by Court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

4  Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):

C  The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

**II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)**

A  No Count of conviction carries a mandatory minimum sentence.

B  Mandatory minimum sentence imposed.

C  One or more Counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the Court has determined that the mandatory minimum does not apply based on

findings of fact in this case

substantial assistance (18 U.S.C. § 3553(e))

the statutory safety valve (18 U.S.C. § 3553(f))

**III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):**

Total Offense Level: 28

Criminal History Category: I

Imprisonment Range: 78 to 97 months

Supervised Release Range: 1 to 3 years

Fine Range: \$ 12,500 to \$ 125,000

Fine waived or below the guideline range because of inability to pay.

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DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

**STATEMENT OF REASONS**

**IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)**

- A  The sentence is within an advisory guideline range that is not greater than 24 months, and the Court finds no reason to depart.
- B  The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use page 4 if necessary.)
- C  The Court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)
- D  The Court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

**V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)**

- A **The sentence imposed departs (Check only one.):**  
 below the advisory guideline range  
 above the advisory guideline range

**B Departure based on (Check all that apply.):**

- 1 **Plea Agreement (Check all that apply and check reason(s) below.):**  
 5K1.1 plea agreement based on the defendant's substantial assistance  
 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program  
 binding plea agreement for departure accepted by the Court  
 plea agreement for departure, which the Court finds to be reasonable  
 plea agreement that states that the government will not oppose a defense departure motion.
- 2 **Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):**  
 5K1.1 government motion based on the defendant's substantial assistance  
 5K3.1 government motion based on Early Disposition or "Fast-track" program  
 government motion for departure  
 defense motion for departure to which the government did not object  
 defense motion for departure to which the government objected
- 3 **Other**  
 Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

**C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)**

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy                      | <input type="checkbox"/> 5K2.1 Death                             | <input type="checkbox"/> 5K2.11 Lesser Harm                             |
| <input type="checkbox"/> 5H1.1 Age  | <input type="checkbox"/> 5K2.2 Physical Injury                   | <input type="checkbox"/> 5K2.12 Coercion and Duress                     |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills                  | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury      | <input type="checkbox"/> 5K2.13 Diminished Capacity                     |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition                   | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint   | <input type="checkbox"/> 5K2.14 Public Welfare                          |
| <input type="checkbox"/> 5H1.4 Physical Condition                               | <input type="checkbox"/> 5K2.5 Property Damage or Loss           | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense         |
| <input type="checkbox"/> 5H1.5 Employment Record                                | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon        | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon     |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities                 | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang                     |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service, Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct                   | <input type="checkbox"/> 5K2.20 Aberrant Behavior                       |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating Circumstances          | <input type="checkbox"/> 5K2.9 Criminal Purpose                  | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct         |
|   | <input type="checkbox"/> 5K2.10 Victim's Conduct                 | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders          |
|   |  | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment        |
|   |  | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

**D Explain the facts justifying the departure. (Use page 4 if necessary.)**

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AO 245B (Rev. 09/08) Criminal Judgment  
Attachment (Page 3) — Statement of Reasons

Judgment—Page 10 of 11

DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

**STATEMENT OF REASONS**

**VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM**  
(Check all that apply.)

**A The sentence imposed is** (Check only one.):

- below the advisory guideline range
- above the advisory guideline range

**B Sentence imposed pursuant to** (Check all that apply.):

**1 Plea Agreement** (Check all that apply and check reason(s) below.):

- binding plea agreement for a sentence outside the advisory guideline system accepted by the Court
- plea agreement for a sentence outside the advisory guideline system, which the Court finds to be reasonable
- plea agreement that states that the government will not oppose a defense motion to the Court to sentence outside the advisory guideline system

**2 Motion Not Addressed in a Plea Agreement** (Check all that apply and check reason(s) below.):

- government motion for a sentence outside of the advisory guideline system
- defense motion for a sentence outside of the advisory guideline system to which the government did not object
- defense motion for a sentence outside of the advisory guideline system to which the government objected

**3 Other**

- Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (

**C Reason(s) for Sentence Outside the Advisory Guideline System** (Check all that apply.)

- the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
- to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
- to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
- to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
- to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
- to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))
- to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

**D Explain the facts justifying a sentence outside the advisory guideline system.** (Use page 4 if necessary.)

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AO 245B (Rev. 09/08) Criminal Judgment  
Attachment (Page 4) — Statement of Reasons

Judgment—Page 11 of 11

DEFENDANT: ROBERT T. MCALLISTER  
CASE NUMBER: 11-cr-00283-PAB-01

### STATEMENT OF REASONS

#### VII COURT DETERMINATIONS OF RESTITUTION

A  Restitution Not Applicable.

B Total Amount of Restitution: deferred until October 2, 2012, at 1:30 p.m.

C Restitution not ordered (Check only one.):

- 1  For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
- 2  For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
- 3  For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
- 4  Restitution is not ordered for other reasons. (Explain.)

D  Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

#### VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

JUDGE PHILIP A. BRIMMER

COURTROOM MINUTES

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Courtroom Deputy: Kathy Preuitt-Parks  
Court Reporter: Janet Coppock  
Probation Officer: Justin Kozak

Date: September 14, 2012  
Time: one hour and 38 minutes  
Interpreter: n/a

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**CASE NO. 11-CR-00283-PAB-01**

Parties

Counsel

**UNITED STATES OF AMERICA,**

Richard Hathaway  
Christine Kenney

Plaintiff,

vs.

**1. ROBERT MCALLISTER,**

Forrest Lewis

Defendant.

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**SENTENCING**

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**10:34 a.m. COURT IN SESSION**

APPEARANCES OF COUNSEL. Defendant is present and on bond.

**ORDERED:** The statement of facts in the Plea Agreement and the Presentence Report are not disputed by the parties and are adopted in the Court's factual findings in this case. The report is incorporated by reference as part of the Court's findings and conclusions.

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Page Two  
11-CR-00283-PAB-01  
September 14, 2012

Court will address the Government's objection to the presentence investigation report.

Comments by Mr. Lewis.

Comments by Mr. Hathaway.

**ORDERED:** Government's objection to the presentence investigation report is **SUSTAINED**.

Court will address the defendant's objections to the presentence investigation report.

Comments by Mr. Lewis.

**ORDERED:** Defendant's objections to the presentence investigation report are **OVERRULED**.

**ORDERED:** Counsel directed to chambers to schedule a hearing on the restitution issues, pursuant to 18 U.S.C. § 3664(d)(5).

Argument by Mr. Lewis in support of defendant's Motion for Below Guideline Sentence and Variant Sentence and comments addressing sentencing.

Argument by Mr. Hathaway and comments addressing sentencing.

Mr. McAllister addresses the Court.

Court states its findings and conclusions.

**ORDERED:** Defendant's Motion for Below Guideline Sentence and Variant Sentence (Doc #128) is **DENIED**.

Statement by the Court regarding defendant's offense level, criminal history level and sentencing guidelines range.

Defendant entered his plea on **May 24, 2012** to counts **1, 20 and 28 of the First Superseding Indictment**.

**ORDERED:** Court **ACCEPTS** the Plea Agreement.

Court considers statutory factors of 18 USC § 3553(a) in arriving at sentence.

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Page Three  
11-CR-00283-PAB-01  
September 14, 2012

**ORDERED:** Defendant shall be **imprisoned** for **78** months as to counts 1 and 20 and **60** months as to count 28, to be served concurrently.

**ORDERED:** Upon release from imprisonment, defendant shall be placed on **supervised release** for a period of **3** years as to counts 1, 20 and 28, to be served concurrently.

**ORDERED: Conditions** of Supervised Release that:

- (X) Within 72 hours of release from the custody of the Bureau of Prisons, defendant shall report in person to the probation office in the district to which the defendant is released.
- (X) While on supervised release, the defendant shall not commit another federal, state, or local crime, shall not possess a firearm as defined in 18 U.S.C. § 921, and shall comply with the standard conditions that have been adopted by this Court.
- (X) Defendant shall not unlawfully possess a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter for use of a controlled substance.
- (X) Defendant shall cooperate in the collection of a DNA sample from the defendant as directed by the probation officer.
- (X) Mandatory drug testing provisions of 18 U.S.C. § 3583(d) are **WAIVED** because the presentence investigation report indicates a low risk of future substance abuse by the defendant.

**ORDERED: Special Condition** of Supervised Release that:

- (X) Defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the installment payment schedule.
- (X) As directed by the probation officer, the defendant shall apply any monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains to the outstanding court ordered financial obligation in this case.
- (X) Defendant shall participate in and successfully complete a program of testing and/or treatment for substance abuse as directed by the probation officer until such time as defendant is released from the program by the probation officer. Defendant shall abstain from the use of alcohol or other intoxicants during the course of treatment. (Defendant will be required to pay the cost of treatment as directed by the probation officer.

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Page Four  
11-CR-00283-PAB-01  
September 14, 2012

- (X) Defendant shall participate in and successfully complete a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer. The defendant will be required to pay the cost of treatment as directed by the probation officer. The Court authorizes the probation officer to release psychological reports and/or the presentence report to the treatment agency for continuity of treatment.
- (X) All employment must be approved in advance by the probation officer and the defendant shall not engage in any business activity unless approved by the probation officer. All approved business activity must operate under a formal, registered entity, and the defendant shall provide the probation officer with the business entities and their registered agent. The defendant shall maintain business records for any approved business activity and provide all documentation and records as requested by the probation officer.
- (X) The defendant shall not cause or induce anyone to conduct any financial transaction on his behalf or maintain funds on his behalf.
- (X) The defendant shall document all income or compensation generated or received from any source and provide such information to the probation officer as requested.
- (X) The **special assessment** obligation is due immediately. Any unpaid balances upon release from incarceration shall be paid in monthly installment payments during the term of supervised release. The monthly installment payment will be calculated as at least 10 percent of the defendant's gross monthly wages.

**ORDERED:** Defendant shall pay **\$300.00** to **Crime Victim Fund** (Special Assessment), to be paid immediately.

**ORDERED:** Defendant shall pay a **fine** of \$ ( as follows: ( The defendant shall notify the United States Attorney of this district within 30 days of any change of mailing or residence address that occurs while any portion of the fine remains unpaid.

**ORDERED:** **No fine** is imposed because defendant has no ability to pay a fine.

**ORDERED:** Defendant may surrender voluntarily as follows: (Report to the designated institution on or before **12:00 noon, 15 days after designation by the Bureau of Prisons.**

**ORDERED:** Government's Motion to Dismiss Counts in the Indictment will be **GRANTED**, upon the filing of the appropriate motion and order.

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Page Five  
11-CR-00283-PAB-01  
September 14, 2012

**ORDERED:** Defendant advised of right to appeal. Any notice of appeal must be filed within 14 days.

**ORDERED:** Bond is continued.

**ORDERED:** A copy of the presentence report shall be forwarded to the U.S. Bureau of Prisons and the U.S. Sentencing Commission.

**ORDERED:** Defendant is REMANDED to the custody of the U.S. Marshal.

**12:12 p.m. COURT IN RECESS**

**Total in court time: 98 minutes**

**Hearing concluded**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 11-cr-00283-PAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. ROBERT T. McALLISTER,

Defendant.

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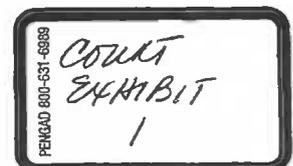
PLEA AGREEMENT

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The United States of America (the government), by and through Richard L. Hathaway and Christine E. Kenney, Special Counsel for the District of Colorado, and the defendant, Robert T. McAllister, personally and by counsel, Forrest W. Lewis, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

I. AGREEMENT

The defendant agrees to plead guilty to Counts 1, 20, charging a violation of Title 18 U.S.C. § 371 & 1349 of the Superseding Indictment charging a violation of, Conspiracy to Interfere and Obstruct Government Functions, Interstate Transportation of Money Obtained Unlawfully, Wire Fraud, Money Laundering and Bankruptcy fraud and concealment; and Count 28 of the Superseding Indictment charging a violation of Title 18 United States Code, Sections 157 & 2 Bankruptcy Fraud. On the date of sentencing the government will move to dismiss the remaining counts of the Superseding Indictment and the original Indictment, and will not bring



any additional charges against the Defendant based on acts currently known to the government.

The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Understanding this and in exchange for the concessions made by the government in this agreement, the defendant knowingly and voluntarily waives the right to appeal any matter in connection with this prosecution, conviction, or sentence unless it meets one of the following two criteria: (1) the sentence imposed is above the maximum penalty provided in the statute of conviction; or (2) the Court, after determining the otherwise applicable sentencing guideline range, either departs or varies upwardly. Except as noted above, the defendant also knowingly and voluntarily waives the right to appeal the manner in which the sentence is determined on grounds set forth in 18 U.S.C. § 3742. The defendant also knowingly and voluntarily waives his right to challenge this prosecution, conviction, or sentence and/or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255. This waiver provision, however, will not prevent the defendant from seeking relief otherwise available if: (1) there is an explicitly retroactive change in the applicable guidelines or sentencing statute, (2) there is a claim that the defendant was denied effective assistance of counsel, or (3) there is a claim of prosecutorial misconduct. Additionally, if the government appeals the sentence imposed by the Court, the defendant is released from this waiver provision.

The parties agree that the defendant will be ordered to pay restitution to the victims of this offense. The parties further agree that some apportionment of the defendant's restitution liability may be appropriate pursuant to Title 18 U.S.C. § 3664(h), and that the defendant will be requesting such apportionment.

This plea agreement is made pursuant to Rule 11(c)(1)(A) and (c)(1)(B) of the Federal Rules of Criminal Procedure.

**II. ELEMENTS OF THE OFFENSE(S)**

The parties agree that the elements of the offense[s] to which this plea is being tendered are as follows:

*With regard to Counts 1 and 20, the conspiracy counts:*

- A. The defendant agreed with at least one other person to violate the law;
- B. One of the conspirators engaged in at least one overt act furthering the conspiracy's objective;
- C. The defendant knew the essential objective of the conspiracy;
- D. The defendant knowingly and voluntarily participated; and
- E. There was interdependence among the members of the conspiracy; that is, the members, in some way or manner, intended to act together for their shared mutual benefit within the scope of the conspiracy charged.

*With Regard to Count 28, Bankruptcy Fraud:*

- A. The defendant had devised a scheme to defraud;
- B. A bankruptcy petition was filed on or about March 11, 2011, in which defendant was the debtor, and for the purpose of executing the scheme; and,
- C. The defendant made a false and fraudulent representation in the petition, *for the purpose of executing or attempting to execute the scheme.*

*Handwritten initials and signature:*  


**III. STATUTORY PENALTIES**

The maximum statutory penalty for the offenses in Counts 1 & 20 is: not more than 20 years of imprisonment, a fine of not more than the greater of \$250,000 or twice the loss caused by the offense, or both; not more than ~~5~~ years of supervised release; a \$100 special assessment fee, and; restitution and forfeiture. The maximum statutory penalty for the offense in Count 28 is: not more than 5 years of imprisonment, a fine of not more than the greater of \$250,000 or twice the loss caused by the offense, or both; not more than 3 years of supervised release; a \$100 special assessment fee; and restitution and forfeiture. A violation of the conditions of probation or supervision may result in a separate prison sentence.

*[Handwritten signature]*  
*RWJ*  
*RTM*

**IV. COLLATERAL CONSEQUENCES**

The conviction may also cause the loss of certain civil rights, such as the right to possess firearms, to vote, to hold elective office, and to sit on a jury.

**V. STIPULATION OF FACTS**

The parties agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

The stipulation of facts below does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and

which are relevant to the Court's guideline computations, to other 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision; except that all facts regarding relevant conduct as contemplated by the guidelines and Section 3553 are included herein.

The parties agree that the date on which relevant conduct began is approximately July 2006. The parties agree as follows:

In the first conspiracy, Count 1, beginning in 2006, and continuing into 2011, Robert T. McAllister, along with R.M., R.N. S.N., conspired to obtain wire transfers of more than \$1 million, in a scheme to obtain money for use as down payment in a real estate transaction on Kelsie Court in Clark, Colorado. As part of the conspiracy, McAllister embezzled funds from a client that he had agreed to hold in trust in an interest bearing account. McAllister and E.W. also conducted monetary transactions by, through, and to a financial institution, affecting interstate and foreign commerce, involving criminally derived property of a value greater than \$10,000, in that they conducted such transactions involving proceeds of wire fraud generated by the activity described above. These transactions involved transfers of money from bank accounts controlled by R.N. and S.N. located in Nevada, to bank accounts controlled by McAllister and E.W. in Colorado.

In furtherance of the first conspiracy in Count 1, McAllister and E.W., and others, committed a variety of overt acts, including the following:

- A. On July 27, 2006, R.N. and S.N. caused the interstate wire transmission of \$200,000 from federally insured bank accounts in Nevada under their control, to federally insured bank accounts under the control of McAllister and E.W. at Citywide Bank in Colorado; and,

- B. On or about August 1, 2006, R.N. and S.N. caused the interstate wire transmission of \$714,137.65 from federally insured bank accounts in Nevada under their control, to federally insured bank accounts under the control of McAllister and E.W. at Citywide Bank in Colorado; and,
- C. Between August 1, 2006 and September 8, 2006, McAllister and E.W. engaged in a series of monetary transactions in criminally derived property of a value greater than \$10,000, between accounts in Citywide Bank, Denver, Colorado, resulting in the deposit of \$572,522.38 into the account of McAllister and E.W. ending in 7136; and,
- D. On September 8, 2006, McAllister and E.W. wire transferred \$572,502.38 from account 7136 to Title America, a title company where McAllister was closing on the sale of a residence to E.W.
- E. On September 8, 2006, this \$572,502.38 wire transfer was applied to the down payment on a residence E.W. was purchasing as a straw buyer from McAllister on Kelsie Court in Clark County, Colorado. E.W. had earlier made application for a loan to purchase this property, making material false representations including that her monthly income was over \$39,000.

In furtherance of the second conspiracy in Count 20, and the Bankruptcy Fraud in Count 28 McAllister, E.W., R.N. and S.N. committed a variety of overt acts, including the following:

- F. To cover up the fact that McAllister had embezzled clients' funds that he had promised to hold in trust in an interest bearing account, he prepared a series of phony bank statements using a cut and paste method which falsely represented

that between July 31, 2007 and June 30, 2010, there was between \$900,135.66 to \$1,006,102 in an account under the control of McAllister, and earning interest, when in truth and in fact the account had been closed and there was no money in it; and,

- G. McAllister's clients made requests of him to send money from the trust account that he had supposedly set up on their behalf. Because there was in fact no money in the trust account McAllister began transferring money from other sources on if which involved his representation of a Terry Vickery in Jefferson County, Colorado. In this lawsuit District Court Judge Stephen M. Munsinger had entered an order that all assets and interests of Vickery were to be surrendered and held in trust for the plaintiff in the action. In October, 2010, in violation of this order, Vickery transferred \$100,000 to McAllister's COLTAF account at Citywide Bank, Denver. McAllister, who was fully aware of this freeze order, transferred \$80,300 of these funds to S.N.
- H. McAllister eventually admitted to two clients that he had embezzled more than \$1 million from them which he had promised to keep in trust in an interest bearing account. McAllister indicated to the clients that he would use various means to repay them, including assigning contingent fee awards to them; and,
- I. In January of 2011, McAllister assigned \$300,000 of a \$342,000 attorney fee award to R.N. and S.N., as repayment of moneys he had embezzled from them.
- J. In March of 2011, McAllister filed Chapter 11 bankruptcy petitions personally and for his professional corporation. On his schedules he listed a "Shannon

Shaffer” of Orlando , Florida, falsely representing her to be his largest secured creditor claiming he had assigned his contingent fee award in MNT v. Penn Star as collateral, knowing full well that he used this name to conceal the fact he was attempting to get the bankruptcy court to transfer money to S.N. which he had previously embezzled from R.N. and S.N.

- K. In furtherance of this scheme and conspiracy this Chapter 11 Petition was filed as a contrivance to manipulate the power and authority of the bankruptcy court to order a contingent fee in the amount of \$341,250 to be paid to S.N. who was not a bona fide secured creditor of McAllister.

The parties agree that the loss to the government readily provable by the government at the time of the entry of McAllister’s plea is more than \$1,000,000 but less then \$2,500,000.

#### **VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT**

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. §3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines.

- A. The base guideline is § 2B1.1(a)(1) with a base offense level of 7.
- B. A 16-level enhancement applies because the offense involved loss of more than \$1,000,000 but less than \$2,500,000, § 2B1.1(b)(1)(I); a 2-level increase because the offense

involved a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding, and/or a violation of a prior, specific judicial or administrative order, § 2B1.1(b)(8)(B) or C); a 2-level increase because the defendant relocated, or participated in relocating, a fraudulent scheme to another location to evade law enforcement or regulatory officials; and/or offense involved sophisticated means, § 2B1.1(b)(9)(A) and/or (C);

C. A 2-level increase applies because the defendant was an organizer, leader of, manager or supervisor in any criminal activity other than described in (a) or (b). § 3B1.1(c).

D. A 2-level increase applies because the defendant abused a position of trust or special skill. § 3B1.3.

E. A 3-level decrease applies because the defendant accepted responsibility. § 3E1.1(a) & (b).

F. The defendant should receive a 3-level reduction for acceptance of responsibility. § 3E1.1(a)&(b). The resulting offense level therefore would be 28.

G. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be I.

H. The career offender/criminal livelihood/armed career criminal adjustments do not apply.

I. The advisory guideline range resulting from these calculations is 78-97 months. The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.

J. Pursuant to guideline § 5E1.2 and Title 18 United States Code Section 3571, assuming the estimated offense level above, the fine range for this offense would be a fine or no more than the greater of \$250,000 or twice the loss caused by the offense, ~~plus applicable interest~~ and penalties. *RLH*

K. Pursuant to guideline § 5D1.2(a)(1), if the Court imposes a term of supervised release, that term is at least 3 years, but not more than 5 years.

L. The Court shall order restitution to the victims of the offense charged in Counts 1, 20 and 28.

The parties understand that although the Court will consider the parties' estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of any party.

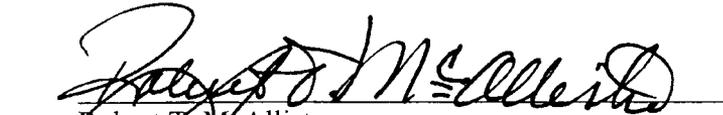
No estimate by the parties regarding the guideline range precludes either party from asking the Court, within the overall context of the guidelines, to depart from that range at sentencing if that party believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate by the parties regarding the guideline range precludes either party from asking the Court to vary entirely from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. §3553 factors.

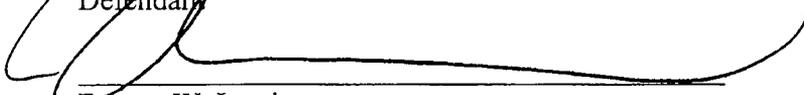
The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. §3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the

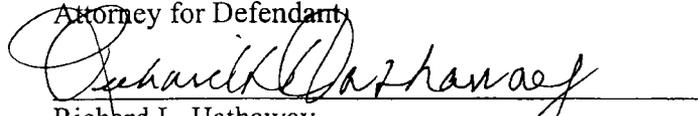
range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. §3553 factor.

**VII. ENTIRE AGREEMENT**

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: 4/30/12   
Robert T. McAllister  
Defendant

Date: 4/30/12   
Forrest W. Lewis  
Attorney for Defendant

Date: 5.24.12   
Richard L. Hathaway  
Special Counsel

Date: 5-24-2012   
Christine E. Kenney  
Special Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Case No. 11-cr-00283-PAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. ROBERT T. McALLISTER
2. RICHARD C. NEISWONGER,
3. SHANNON NEISWONGER,
4. ELIZABETH WHITNEY,

Defendants.

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**DEFENDANT ROBERT T. McALLISTER'S  
UNOPPOSED MOTION FOR CONTINUANCE**

---

Defendant Robert T. McAllister, by and through counsel, moves for a continuance of the trial in this matter pursuant to 18 U.S.C. § 3161(b)(7)(A) and (B)(ii), (iv). In support of his request, Mr. McAllister states the following:

1. Mr. McAllister and three co-Defendants were charged with various offenses relating to financial transactions in the summer of 2006. A sealed Indictment was returned in July 2011. (Docket No. 1, 7/25/11).

2. The discovery indicates that the investigation of Mr. McAllister continued after the return of the sealed Indictment. The post-indictment investigation included, *inter alia*, an extensive government interview of Mr. McAllister on October 20, 2011, and a government interview of co-Defendants Richard and Shannon Neiswonger on October 25, 2011. The

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government advised Mr. McAllister of his *Miranda* rights but Mr. McAllister must evaluate whether *Massiah* issues are implicated.

3. On November 14, 2011, Mr. McAllister was arrested on the warrant issued in this case on July 26, 2011. It is unclear to Defendant McAllister why execution of the warrant was delayed for nearly four months. This delay, unusually long, implicates the due process issue of whether the delay was unreasonable, and whether it was intended to gain a tactical advantage not otherwise attainable. *United States v. Drake*, 655 F.2d 1025, 1027 (10<sup>th</sup> Cir. 1981).

4. On November 16, 2011, the government filed a first Superceding Indictment, charging Mr. McAllister with 29 counts. He was advised and arraigned on the Superceding Indictment on January 25, 2012. The Superceding Indictment added allegations of bankruptcy fraud and concealment of assets in bankruptcy. These allegations relate to a contingent fee earned by Mr. McAllister in an unrelated state case which was claimed to be subject to a superior lien by another unrelated party based on a separate, unrelated judgment against Mr. McAllister.

5. The Superceding Indictment also added allegations regarding funds taken by Mr. McAllister from yet another, separate and unrelated state court case from Jefferson County from a client not related to this case (Terry Vickery, Count 27 of the Superceding Indictment, Docket No. 23). The government alleges that a transfer of funds from the Vickery account to Defendant Shannon Neiswonger was interstate transportation of stolen money. The government also alleges (Count 29, *id.*) that the transfer of the Vickery funds was concealment of assets in bankruptcy.

6. The money laundering counts include allegations of a purchase by Defendants McAllister and Whitney of real property in Clark, Colorado, using \$572,502 of funds allegedly

taken from Defendants Richard and Shannon Neiswonger. These counts include allegations that Defendant Whitney, “with the knowledge and approval of McAllister, materially falsified a Uniform Residential loan application. . . .” This transaction includes Ms. Whitney’s ex-husband as a potential witness as he was a co-borrower on the transaction. He was never charged but there may be Fifth Amendment issues for him as well as marital privilege issues. This transaction also involved a mortgage broker, uncharged, who should have Fifth Amendment issues. The discovery and foundational evidence on this transaction is extensive.

7. The Superseding Indictment alleges one conspiracy between all Defendants and a “second conspiracy” between Defendants McAllister and Whitney to allegedly “conceal the fact that they had embezzled” the money McAllister and the Neiswongers allegedly took and concealed from the Federal Trade Commission and in violation of a federal court order.

8. The complexity of this case is self-evident in the four corners of the Superseding Indictment. On further analysis, however, the complexity deepens. The doorway to all of the underlying transactions is a court order in a 1996 civil action commenced by the Federal Trade Commission against Defendant Richard Neiswonger, his business partner (not a defendant here) and a corporation. This case was filed in the U.S. District Court for the District of Missouri. Mr. McAllister was counsel for Mr. Neiswonger during part of that litigation. Defendant Shannon Neiswonger was not a party to that case or any orders entered therein. Defendant Whitney had nothing to do with that case. There are issues of fact and law regarding the source of the funds placed in McAllister’s COLTAF account and whether the funds were within the scope of a TRO issued by the Missouri court prohibiting Richard Neiswonger, his partner William S. Reed, and

Asset Protection Group, Inc., from “transferring . . . concealing, dissipating . . . [any assets]” owned or controlled directly or indirectly by [them]. . . .”

9. Since Mr. McAllister was providing legal representation to the Neiswongers, there are issues of fact and law regarding the amount of money earned by Mr. McAllister from the Shannon Neiswonger funds and any amount not earned which was allegedly taken wrongfully. Privilege and confidentiality issues may be implicated in the lengthy and complex relationship between Mr. McAllister and the Neiswongers. Accounting issues are in play *ipso facto*.

10. The discovery in this case is voluminous and complex. It necessarily includes documents and records from the Vickery Jefferson County case; real estate transactions in Routt County, Colorado, including construction loans and mechanics liens; materials from the Federal Trade Commission investigation and case regarding Mr. Neiswonger; foreclosures; 26 FBI 302's; tax returns and extensive back-up documents for the Kelsie Court loan; and at least 23 surreptitiously recorded conversations of Mr. McAllister, only one of which has been transcribed to date. Some of these recordings are lengthy. Transcription is necessary and will take time to accomplish. All in all, the documentary discovery produced to date is well over 10,000 pages. It includes 49 separate cds in addition to the master discovery cd.

11. The government advised counsel on January 14, 2012, that additional discovery is available on PACER in Case No. 09-cv-00217-CMA, U.S. District Court for the District of Colorado. The government has indicated that this case involves transactions which are “at the very least 404(b) evidence” and “probably extrinsic to the crime.” The government indicated it would not produce documentary evidence of these transactions because the material is available

on PACER. Our initial review on PACER shows 5 defendants, 3 attorneys, and 88 docket entries. There is undoubtedly a significant amount of discovery behind the filed documents which is not available on PACER.

12. It is likely that Mr. McAllister will file motions for additional discovery which, if granted, will result in additional material to be reviewed, evaluated and acted upon.

13. Mr. McAllister believes it is constitutionally imperative to obtain transcriptions of the government recordings of his conversations. The primary government informant who deceived Mr. McAllister to obtain information in the recorded conversations is Gerald Small, a convicted felon and former client of Mr. McAllister. The scope of his relationship with the government is unclear but his work as an informant implicates complex legal and factual issues. His business relationship with Mr. McAllister during the relevant time period may have allowed him to access confidential attorney-client material regarding clients not related to this case. He should have been on supervised release and under a court order prohibiting his participation in a government investigation. Perhaps most importantly, some of the recorded conversations contain exculpatory evidence. During one conversation, for example, Mr. Small attempted to persuade Mr. McAllister to engage in an illegal marijuana transaction to make money to pay back the Neiswonger trust funds. Mr. McAllister refused, saying, "We won't make that kind of sale. We want to be in conformance with the law . . . in my opinion it violates Colorado law - that's why we don't do it. . . ." (4/5/2011).

#### DISCUSSION OF LEGAL ISSUES

The trial and other proceedings in this case are currently scheduled within the time limits set by the Speedy Trial Act. A *four week* trial is scheduled to begin on March 19, 2012.

Defendant's motions are due on or before February 15, 2012. This schedule does not provide sufficient time for analysis and presentation of pretrial legal issues and effective trial preparation.

The Court may grant an ends of justice continuance under 18 U.S.C. § 3161(h)(7)(A) upon finding that a continuance outweighs the best interest of the public and the Defendant in a speedy trial. This is such a case.

Mr. McAllister, based on the facts and circumstances outlined herein, asks the Court to find:

- That the case is so unusual or so complex due to the number of defendants, the nature of the prosecution and the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits set by the Speedy Trial Act. [Subsection (B)(ii)].
- The failure to grant a continuance would deny counsel for the Defendant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. [Subsection (B)(iv)].

All of the Defendants in this case are on bond. The facts and circumstances of this case render a March 19, 2012, trial unrealistic. In *United States v. Spring*, 80 F.3d 1450, 1457 (10<sup>th</sup> Cir. 1996), the court observed that "adequate preparation time and continuity of counsel are clearly permissible reasons for granting a continuance and tolling the Speedy Trial Act." See also *United States v. Martino*, 564 F. Supp.2d 1268, 1274 (D. Kan. 2008) (continuance justified by need for additional time to "adequately prepare").

Mr. McAllister requests a continuance of at least 120 days. All parties have authorized counsel to state that they do not object to the relief requested herein. (In doing so, they do not necessarily adopt Mr. McAllister's statement of facts but they do not object to an ends of justice continuance).

WHEREFORE, Defendant Robert T. McAllister requests an order vacating the current trial date and rescheduling the trial during July 2012, or as the Court's calendar permits thereafter.

Respectfully submitted,

s/ Forrest W. Lewis

*Forrest W. Lewis*

FORREST W. LEWIS, P.C.

1600 Broadway, Suite 1525

Denver, Colorado 80202

Telephone: (303) 830-2190

Facsimile: (303) 830-1466

Email: [flewispc@aol.com](mailto:flewispc@aol.com)

Attorney for Robert T. McAllister

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **DEFENDANT ROBERT T. McALLISTER'S UNOPPOSED MOTION FOR CONTINUANCE** was electronically filed with the Clerk of the Court using the CM/ECF system on this 9<sup>th</sup> day of February, 2012, which will send notification of such filing to the following address:

Richard L. Hathaway  
U.S. Attorney's Office, District of Kansas  
Special Prosecutor  
[Rich.hathaway@usdoj.gov](mailto:Rich.hathaway@usdoj.gov)

Christine E. Kenney  
U.S. Attorney's Office, District of Kansas  
Special Prosecutor  
[Christine.kenney@usdoj.gov](mailto:Christine.kenney@usdoj.gov)

Kathryn J. Stimson  
Attorney for Defendant Elizabeth Whitney  
[Kathryn@stimsondefense.com](mailto:Kathryn@stimsondefense.com)

Jeffrey S. Pagliuca  
Attorney for Defendant Shannon Neiswonger  
[jpagliuca@hmflaw.com](mailto:jpagliuca@hmflaw.com)

Solomon L. Wisenberg  
Attorney for Defendant Richard Neiswonger  
[swisenberg@btlaw.com](mailto:swisenberg@btlaw.com)

s/ Polly Ashley  
*Polly Ashley*

Wesley W. Hoyt, ISB #4590  
Attorney at Law  
165 Deer Field Dr.  
Clearwater, ID 83552  
Telephone: (208) 983-0212  
Facsimile: (208) 926-7554

Attorneys for Defendant

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	)	CR No. 10-148-N-BLW
	)	
Plaintiff,	)	
	)	
vs.	)	<b>NOTICE OF APPEAL</b>
	)	
Edgar J. Steele,	)	
	)	
Defendants.	)	
_____	)	

DEFENDANT, Edgar J. Steele, by his attorney, Wesley W. Hoyt, pursuant to the advisement he received pursuant to Rule 32 (j), Fed. R. Crim. Pro. and pursuant to Rule 3(a) and (c) and Rule 4(b) F.R.A.P. herewith gives notice of appeal of both the conviction and the sentence imposed upon him as follows:

- (A) The defendant herewith specifies that he, Edgar J. Steele, is the party who is taking the appeal;
- (B) The judgment and order appealed from is the judgment of conviction entered by the above captioned trial court as well as the order of sentencing entered by said court; and
- (C) The defendant herewith appeals to the Ninth Circuit Court of Appeals.

Respectfully submitted this 16<sup>th</sup> day of November, 2011.

LAW OFFICES OF WESLEY W. HOYT

By:



/s/ Wesley W. Hoyt

Attorney for Defendant, Edgar J. Steele

**CERTIFICATE OF SERVICE**

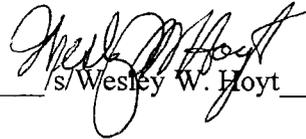
I hereby certify that a true and correct copy of the foregoing document was served on the following on this 16<sup>th</sup> day of November, 2011 by the following method:

Wendy J. Olson, US Attorney for Idaho  
Traci J. Whelan, AUSA  
D. Marc Haws, AUSA  
Washington Group Plaza IV, Suite 600  
800 East Park Blvd.  
Boise, Idaho 83712

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile: 208-334-1414
- ECF Electronically Served

David Hammerquist  
David Claiborne  
Attorneys for Cyndi Steele, Victim  
Ringert Law Chartered  
P.O. Box 2773  
Boise, Idaho 83701

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile: 208-342-4657
- ECF Electronically Served



/s/ Wesley W. Hoyt



THE UNITED STATES ATTORNEYS OFFICE  
DISTRICT *of* KANSAS

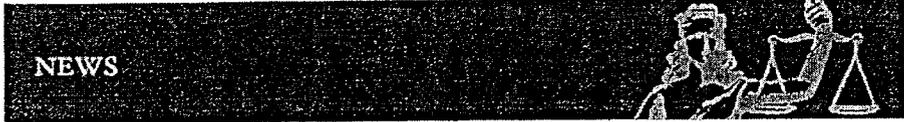
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## Colorado Attorney, Business Associates Indicted On Financial Fraud Charges

Nov. 16, 2011

FOR IMMEDIATE RELEASE

DENVER, COLO. – A Colorado attorney and his business associates have been indicted on financial fraud charges, U.S. Attorney Barry Grissom said today. Prosecutors from Grissom's office have been appointed special counsel on the case.

**Robert T. McAllister**, 61, Denver, is charged in a superseding indictment with two counts of conspiracy, nine counts of wire fraud, four counts of interstate transportation of stolen money, 12 counts of money laundering, one count of bankruptcy fraud and one count of concealing assets in a bankruptcy.

Also charged are:

**Richard C. Neiswonger**, 60, a resident of Las Vegas who marketed and sold business training courses and affiliations: One count of conspiracy, three counts of wire fraud and three counts of interstate transportation of stolen money.

**Shannon Neiswonger**, 38, wife of Richard Neiswonger, who controlled certain financial accounts including the Rishne Limited Partnership account and the Admark, Inc., account.

**Elizabeth Whitney**, 58, Denver, a business associate of Robert McAllister in McAllister Properties, LLC, who assisted McAllister in acquiring and flipping real estate and holding and transferring money as McAllister directed: Two counts of conspiracy, 12 counts of money laundering, six counts of wire fraud, one count of interstate transportation of stolen money, one count of bankruptcy fraud and one count of concealing assets in a bankruptcy.

The indictment alleges McAllister represented Richard Neiswonger when in 1996 the Federal Trade Commission brought an action against Neiswonger to obtain preliminary and permanent injunctive and other relief from Neiswonger's deceptive business acts. In 2006, the FTC filed a civil contempt action against Neiswonger alleging he violated the injunction by marketing training and business opportunities through misrepresentations. A federal judge in the Eastern District of Missouri ordered Neiswonger's assets frozen.

Shortly after the assets were frozen, McAllister and the Neiswongers began to circumvent the restraining order by transferring money to McAllister from accounts over which Shannon Neiswonger had control for the purpose of concealing from the FTC and the court that the restraining order was being violated.

The indictment also alleges McAllister and Elizabeth Whitney entered into a second conspiracy to embezzle more than \$1 million that McAllister received from the Neiswongers and to conceal the theft.

Upon conviction, the maximum term of imprisonment is 20 years and a fine of up to \$250,000.

The FBI, IRS-Criminal Investigations and the Securities Exchange Commission investigated. Assistant U.S. Attorney Richard Hathaway and Assistant U.S. Attorney Christine Kenney are serving as Special Attorneys to prosecute the case.

*In all cases, defendants are presumed innocent until and unless proven guilty. The indictments merely contain allegations of criminal conduct.*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Case 1:11-cr-00283-PAB

UNITED STATES OF AMERICA,

Plaintiff,

vs.

1. ROBERT T. McALLISTER,
2. RICHARD C. NEISWONGER,
3. SHANNON NEISWONGER, and
4. ELIZABETH WHITNEY

Defendants.

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**FIRST SUPERSEDING INDICTMENT**

Cts. 1 & 20: Conspiracy, 18 U.S.C. §§ 371 & 1349

Cts. 2-4 & 21-26: 18 U.S.C. §§ 2 & 1343

Cts. 5-7 & 27: 18 U.S.C. §§ 2 & 2314

Cts. 8-19: 18 U.S.C. §§ 2 & 1957

Ct. 28: 18 U.S.C. §§ 2 & 157

Ct. 29: 18 U.S.C. §§ 2 & 152(1)

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THE GRAND JURY CHARGES:

At all times material to this indictment:

**Introduction**

- 1) Defendant ROBERT T. McALLISTER was an attorney licensed

to practice law by the State of Colorado.

2) Defendant RICHARD C. NEISWONGER was a resident of Las Vegas, Nevada who marketed and sold business training courses and affiliations to consumers throughout the United States, including Missouri.

3) Defendant SHANNON NEISWONGER was the wife of RICHARD C. NEISWONGER and was signatory over and controlled certain financial accounts including, the Rishne Limited Partnership account, and Admark, Inc., account. Prior to her marriage to RICHARD C. NEISWONGER, she went by the name Shannon Schaffer.

4) Defendant ELIZABETH WHITNEY was a business associate of ROBERT T. McALLISTER, in McCallister Properties, LLC, and assisted him in acquiring and flipping real estate and holding and transferring money as directed by McALLISTER.

5) The Federal Trade Commission ("FTC") is an agency of the United States created in 1914, initially to prevent unfair methods of competition in commerce. Over the years, Congress has extended the jurisdiction of the FTC to police anti-competitive and unfair and deceptive acts or practices, to protect consumers.

6) In 1996 the FTC brought an action against RICHARD C.

NEISWONGER in the United States District Court for the Eastern District of Missouri, Eastern Division, St. Louis, to obtain preliminary and permanent injunctive and other relief for the injury resulting from NEISWONGER's deceptive business acts and practices. NEISWONGER entered into a Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief in the FTC Action.

7) On July 17, 2006, the FTC filed a civil contempt action against NEISWONGER alleging, among other things, that NEISWONGER had violated the Permanent Injunction by marketing training and business opportunities through misrepresentations. The same day, Judge Limbaugh, United States District Court Judge for the Eastern District of Missouri, entered a Temporary Restraining Order ("TRO"). The TRO included an "ASSET FREEZE" provision which prohibited RICHARD C. NEISWONGER "from directly or indirectly" transferring, concealing or "otherwise disposing" of any assets.

8) On July 25, 2006, Defendant ROBERT T. McALLISTER entered into a Stipulation with the FTC on behalf of RICHARD C. NEISWONGER, that the TRO of July 17, 2006, would remain in full force and effect. Thereafter McALLISTER represented both RICHARD and

SHANNON NEISWONGER.

***THE SCHEME & CONSPIRACY***

9) Within ten days of the entry of the TRO freezing the assets of RICHARD C. NEISWONGER, the defendants ROBERT T. McALLISTER, RICHARD C. NEISWONGER and SHANNON NEISWONGER began to circumvent the TRO by surreptitiously transferring money to defendant ROBERT T. McALLISTER, from accounts over which SHANNON NEISWONGER had control, to conceal from the FTC and the court of the Eastern District of Missouri that the TRO was intentionally being violated.

10) In furtherance and execution of this conspiracy, the defendants and others at their direction, committed overt acts to affect the object of said conspiracy including, but not limited to, SHANNON NEISWONGER wire transferring moneys using accounts under her control, including the Rishne Limited Partnership account, and Admark, Inc., account. These transfers were made to ROBERT T. McALLISTER's COLTAF account, (Colorado Lawyer Trust Account Foundation).

**COUNT 1**  
**A VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS**  
**371& 1349**  
**THE CONSPIRACY:**

- 11) Paragraphs 1 through 10 are incorporated herein by reference.
- 12) Beginning in at least 2006, the precise date being unknown to the grand jury, and continuing into 2011, the defendants herein,

**ROBERT T. McALLISTER  
RICHARD C. NEISWONGER  
SHANNON NEISWONGER, and  
ELIZABETH WHITNEY**

combined, conspired, confederated and agreed to commit offenses against the United States of America, and to defraud the United States, and any agency thereof, in any manner and for any purpose, in the District of Colorado and elsewhere, that is:

A) to interfere with and obstruct one of the lawful government functions of the FTC to enforce orders and judgments and protect the public and preserve assets through TRO's, which the defendants accomplished by dishonesty, deceit, craft and trickery;

B) to commit wire fraud, in violation of Title 18, United States Code, Sections 2 & 1343.

C) to transport in interstate commerce money that had been stolen converted and taken by fraud, in violation of Title 18, United States Code, Sections 2 & 2314.

D) to engage in monetary transactions in property derived from

specific unlawful activity, in violation of Title 18, United States Code, Sections 2 & 1957.

13) In furtherance and execution of the objects of said conspiracy and scheme to defraud, the defendants and conspirators committed overt acts, including, but not limited to, those specified in paragraph 10 above and the substantive offenses listed hereinafter.

**COUNTS 2-4**  
**WIRE FRAUD, IN VIOLATION OF TITLE 18, UNITED STATES CODE,**  
**SECTIONS 2 & 1343**

14) Paragraphs 1 through 13 are incorporated herein by reference.

15) Having devised the aforesaid scheme and artifice to defraud, in the District of Colorado and elsewhere, the defendants,

**ROBERT T. McALLISTER**  
**RICHARD C. NEISWONGER**  
**and**  
**SHANNON NEISWONGER**

for the purpose of executing the aforesaid scheme and artifice, and attempting so to do, knowingly caused to be transmitted by means of wire, radio and television communication in interstate commerce into Colorado, certain signs, signals, pictures and sounds, to wit: wire bank transmissions

as follows:

Count	Date	Amount
2	July 27, 2006	\$200,000
3	August 1, 2006	\$714,137.65
4	September 18, 2006	\$173,698.34

**COUNTS 5 - 7**  
**INTERSTATE TRANSPORTATION OF MONEY STOLEN CONVERTED**  
**AND TAKEN BY FRAUD**  
**A VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS**  
**2 & 2314**

16) Paragraphs 1 through 15 are incorporated herein by reference.

17) On or about the dates set forth below, in the District of Colorado and elsewhere, the defendants,

**ROBERT T. McALLISTER**  
**RICHARD C. NEISWONGER**  
**and**  
**SHANNON NEISWONGER**

did unlawfully transport, transmit and transfer in interstate commerce, into the State of Colorado, money of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud:



\$1,087,835.99, which WHITNEY used as down payment for a residence purchased from defendant ROBERT T. McALLISTER on Kelsie Court in Clark, Colorado. Additionally, ELIZABETH WHITNEY, with the knowledge and approval of McALLISTER, materially falsified a Uniform Residential Loan Application stating that she was employed by McAllister Properties, LLC, with a monthly income of \$39,728. Moreover, WHITNEY falsified the purpose for the acquisition of the real estate indicating that it was the "Primary Residence" of the borrower.

**Counts 8-19**  
**ENGAGING IN MONETARY TRANSACTIONS**  
**IN PROPERTY DERIVED FROM SPECIFIED UNLAWFUL ACTIVITY**  
**IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 &**  
**1957**

21) Paragraphs 1 through 20 are incorporated herein by reference.

22) On or about the dates set forth below, in the District of Colorado and elsewhere, the defendants,

**ROBERT T. McALLISTER and**  
**ELIZABETH WHITNEY**

knowingly and wilfully engaged and attempted to engage in monetary transactions affecting interstate or foreign commerce, that is, transfers by,

through and to a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, of criminally derived property of a value greater than \$10,000, such property having been derived from the specified unlawful activity of wire fraud, as set forth in Counts 2 - 4, in violation of Title 18, United States Code, Sections 2 & 1343; and, interstate transportation of money that had been stolen converted and taken by fraud, as set forth in Counts 5 - 7, in violation of Title 18, United States Code, Sections 2 & 2314, as follows:

Count	Date	Transaction
8	July 27, 2006	Transfer of \$200,000 from COLTAF account 0410, to McAllister's PC account 7353
9	August 4, 2006	Transfer of \$714,137.65 from COLTAF account 0410, to McAllister's PC account 7353
10	August 17, 2006	Transfer of \$100,000 from McAllister's PC account 7353, to McAllister Properties account 0399
11	August 30, 2006	Transfer of \$204,221 from McAllister's PC account 7353, to RJ McDady account 0226
12	August 30, 2006	Transfer of \$204,221 from RJ McDady account 0226, to McAllister Properties account 0399
13	August 30, 2006	Transfer of \$198,112 from McAllister's PC account 7353, to Whitney- McAllister account 7136
14	August 30, 2006	Transfer of \$198,112 from Whitney McAllister

		account 7136 to McAllister Properties account 0399
15	August 30, 2006	Transfer of \$210,000.42 from McAllister's PC account 7353, to McAllister Properties account 0399
16	September 8, 2006	Transfer of \$572,522.38 from McAllister Properties 0399, to Whitney McAllister account 7136
17	September 8, 2006	Transfer of \$572,502.38 from Whitney McAllister account 7136, to account of Title America
18	September 8, 2006	Transfer of \$171,500 from Title America to McAllister Properties 0399
19	September 8, 2006	Transfer of \$644,752.02 from Title America to McAllister Properties 0399

### THE SECOND CONSPIRACY

23) Commencing sometime in 2007, the precise date being unknown to the grand jury, ROBERT T. McALLISTER and ELIZABETH WHITNEY collaborated to conceal the fact that they had embezzled the more than \$1 million that had been unlawfully transferred to McALLISTER, in violation of the order of Judge Limbaugh prohibiting RICHARD C. NEISWONGER from directly or indirectly transferring, concealing or otherwise disposing of any assets. See Paragraph 8, above. This concealment included submitting a false and fraudulent Trust Account

Summary and bank statements to the NEISWONGERS via wire transfers.

24) Specifically up until October of 2006 McALLISTER had maintained an account, Robert T. McAllister PC Account II, Account number ending in 7353 at Citywide Banks, Denver, Colorado. This account contained no funds after October of 2006. The defendants ROBERT T. McALLISTER and ELIZABETH WHITNEY created bank statements through a cut and paste process which falsely represented that between July 31, 2007 and June 30, 2010, there was between \$900,135.66 to \$1,006,102, in the account and earning interest. These false representations were made to deceive the NEISWONGERS into believing that money transferred by them to McALLISTER was in a trust as McALLISTER had promised.

25) Sometime in 2007, the precise date being unknown to the grand jury, the NEISWONGERS requested the return of moneys they had transferred to McALLISTER. Because McALLISTER had embezzled these moneys to invest in projects and properties that he and ELIZABETH WHITNEY were involved with, McALLISTER had to resort to various contrivances to make payments back to the NEISWONGERS. These contrivances included embezzlement of moneys from one of

McALLISTER's law clients and concocting a scheme to commit bankruptcy fraud through the filing of false and fraudulent bankruptcy petitions in an attempt to manipulate the bankruptcy court into ordering a contingent fee due McALLISTER, to be paid to SHANNON NEISWONGER under false and fraudulent pretenses.

**COUNT 20**  
**A VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS**  
**371 & 1349**  
**THE CONSPIRACY:**

26) Paragraphs 1 through 25 are incorporated herein by reference.

27) Beginning in at least 2006, the precise date being unknown to the grand jury, and continuing into 2011, the defendants herein,

**ROBERT T. McALLISTER, and**  
**ELIZABETH WHITNEY**

combined, conspired, confederated and agreed to commit offenses against the United States of America, and to defraud the United States, and any agency thereof, in any manner and for any purpose, in the District of Colorado and elsewhere, that is:

A) to commit wire fraud, in violation of Title 18, United States Code, Sections 2 & 1343.

B) to transport in interstate commerce money that had been stolen converted and taken by fraud, in violation of Title 18, United States Code, Sections 2 & 2314.

C) to engage in bankruptcy concealment and bankruptcy fraud in violation of Title 18, United States Code, Sections 2, 152(1) & 157.

C) to engage in monetary transactions in property derived from specific unlawful activity, in violation of Title 18, United States Code, Sections 2 & 1957.

28) In furtherance and execution of this scheme and conspiracy, the defendants and others at their direction, committed overt acts to affect the object of said conspiracy including, but not limited to, the following substantive offenses, and Counts 8 through 19.

**COUNTS 21-26**  
**WIRE FRAUD, IN VIOLATION OF TITLE 18, UNITED STATES CODE,**  
**SECTIONS 2 & 1343**

29) Paragraphs 1 through 28 are incorporated herein by reference.

30) Having devised the aforesaid scheme and artifice to defraud, in the District of Colorado and elsewhere, the defendants,

**ROBERT T. McALLISTER, and**  
**ELIZABETH WHITNEY**

for the purpose of executing the aforesaid scheme and artifice, and

attempting so to do, knowingly caused to be transmitted by means of wire, radio and television communication in interstate commerce from Colorado, certain signs, signals, pictures and sounds, to wit: facsimiles of Trust Account Summary and bank statements, on or about the following dates:

Count	Date	Type of Transmission
21	March 20, 2007	Legal Service Billing from Robert T. McAllister to Richard Neiswonger, 9509 Verland Ct., Las Vegas, NV 89145, with "Trust Account Summary" which falsely represents a "Balance of Client Funds" in the amount of \$1,047,835.99.
22	August 13, 2007	Bank Statement on Account 7353, falsely representing that there was an ending balance of \$1,006,102.54
23	March 31, 2008	Bank Statement on Account 7353, falsely representing that there was an ending balance of \$1,018,114.01
24	October 31, 2008	Bank Statement on Account 7353, falsely representing that there was an ending balance of \$ 995,483.63
25	August 28, 2009	Bank Statement on Account 7353, falsely representing that there was an ending balance of \$ 917,399.32
26	July 14, 2010	Bank Statement on Account 7353, falsely representing that there was an ending balance of \$ 900,135.66

**McAllister's Client Terry K. Vickery**

31) Defendant ROBERT T. McALLISTER represented Terry K. Vickery, a respondent in a lawsuit filed in Jefferson County, Colorado. On September 22, 2010, District Court Judge Stephen M. Munsinger ordered that all assets and interest of Vickery were to be surrendered and held in trust for the plaintiff in the action. In October, 2010, in violation of this order, Mr. Vickery transferred approximately \$100,000 to ROBERT T. McALLISTER'S COLTAF account. McALLISTER was fully aware of the freeze order. Nonetheless, within a matter of days McALLISTER was involved in another illegal transfer when he wrote a check for \$80,307, to fund a cashier's check payable to Shannon Schaffer (defendant SHANNON NEISWONGER) who had been demanding the return of money transferred earlier to McALLISTER, which he represented would be held in trust.

**COUNT 27**  
**INTERSTATE TRANSPORTATION OF MONEY STOLEN CONVERTED**  
**AND TAKEN BY FRAUD**  
**A VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 &**  
**2314**

- 32) Paragraphs 1 through 31 are incorporated herein by reference.
- 31) On or about the dates set forth below, in the District of

Colorado, and elsewhere, the defendants,

**ROBERT T. McALLISTER, and  
ELIZABETH WHITNEY**

did unlawfully transport, transmit and transfer in interstate commerce, from the State of Colorado, money of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud:

Count	Date	Amount
27	October 4, 2010	Cashier's Checks for \$80,300 payable to Shannon Schaffer (defendant SHANNON NEISWONGER).

**COUNT 28**  
**BANKRUPTCY FRAUD**  
**A VIOLATION OF 18, UNITED STATES CODE, SECTIONS 157 & 2**

34) Paragraphs 1 through 33 are incorporated herein by reference.

35) On or about March 11, 2011, in the District of Colorado, the defendants,

**ROBERT T. McALLISTER, and  
ELIZABETH WHITNEY**

having devised and intending to devise a scheme and artifice to defraud, and for the purpose of executing and concealing such scheme and artifice and attempting so to do, filed and caused to be filed a Chapter 11 Bankruptcy Petitions in the United States Bankruptcy Court for the District

of Colorado, in the name of the debtor Robert T. McAllister, P.C., Case Number 11-15008-SBB and Robert T. McAllister, Case number 11-15009-SBB.

36) It was part of this scheme and artifice to defraud that the defendants filed with his cases a Statement of Financial Affairs and in paragraph "6. Assignments and receiverships" identified a \$341,250 contingency fee as being in the custody of the Clerk of the District Court for the City and County of Denver, State of Colorado.

37) It was part of this scheme and artifice to defraud that the defendants falsely identified Shannon Shaffer, 8738 Cypress Reserve Circle, Orlando, Florida, as the largest secured creditor of Robert T. McAllister, P.C., and having as a claim the amount of \$682,030.

38) It was part of this scheme and artifice to defraud that in Schedule D to the Chapter 11 Petition of Robert T. McAllister, P.C., the defendants identified Shannon Shaffer as having an assignment of a security interest in the contingency fee in the amount of \$341,250.

39) It was part of this scheme and artifice to defraud that this Chapter 11 Petition was filed as a contrivance to manipulate the power and authority of the bankruptcy court to order a contingency fee in the

amount of \$341,250 be paid to a "Shannon Shaffer", when in truth and in fact as the defendants full well knew, the "Shannon Shaffer" identified in the petition and schedules was an intentionally deviated spelling of Shannon Schaffer, a name used by SHANNON NEISWONGER prior to her marriage to RICHARD NEISWONGER, and was not in fact a bona fide secured creditor of McALLISTER.

**COUNT 29**  
**CONCEALMENT OF ASSETS IN BANKRUPTCY**  
**A VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 152(1)**  
**& 2**

40) Paragraphs 1 through 39 are incorporated herein as though fully set forth.

41) When a bankruptcy petition under Chapter 11 is filed, the debtor is expected to make complete disclosure of his financial affairs in the Statement of Financial Affairs, and specifically in paragraph 10 to disclose all transfers taking place within two years immediately preceding the commencement of the case.

42) On or about March 11, 2011, in the District of Colorado, the defendants,

**ROBERT T. McALLISTER, and  
ELIZABETH WHITNEY**

knowingly and fraudulently concealed from a trustee, marshal and other officer of the court charged with the control or custody of property, and in connection with a case under Title 11, from creditors and the United States Trustee, a transfer of approximately \$100,000 in October 2010, from Mr. Vickery – a client of ROBERT T. McALLISTER – into his client trust account; and, a subsequent transfer of \$80,307 into McALLISTER's operating account; which funded a cashier's check for \$80,300 that was transferred to SHANNON NEISWONGER, who formerly used the name Shannon Schaffer, to whom the cashier's check was made payable.

**FORFEITURE NOTICE AND ALLEGATION**

43) Upon conviction of the offenses in violation of Title 18, United States Code, Sections 152(1), 1343, 1957 and 2314, and conspiracy to commit said offenses, the defendants

**ROBERT T. McALLISTER  
RICHARD C. NEISWONGER  
SHANNON NEISWONGER and  
ELIZABETH WHITNEY**

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) & Title 28 United States Code, Section

2461, any property, real or personal, which constitutes or is derived from proceeds obtained directly or indirectly as a result of such violations; and pursuant to Title 18, United States Code, Section 982(a)(1), and proceeds and property involved in the offense, including, but not limited to:

A. Money Judgment. A sum of money in excess of \$1,000,000, and equal to the amount of proceeds obtained as a result of the violations alleged herein, for which the defendants are jointly and severally liable.

B. In the event any of the foregoing property: i) cannot be located upon the exercise of due diligence; ii) is transferred, sold to, or deposited with, a third party; iii) is placed beyond the jurisdiction of the Court; iv) is substantially diminished in value; or, v) is commingled with other property which cannot be divided without difficulty, as a result of any act or omission of any defendant, the Court shall order the forfeiture of any other property of the defendants, up to the value of the property and proceeds derived.

A TRUE BILL

Ink signature on file in the Clerk's Office  
FOREPERSON

ERIC H. HOLDER, JR.  
ATTORNEY GENERAL OF THE UNITED STATES

&

BARRY R. GRISSOM, # 10866  
UNITED STATES ATTORNEY  
DISTRICT OF KANSAS  
[barry.grissom@usdoj.gov](mailto:barry.grissom@usdoj.gov)

by:

s/Richard L. Hathaway  
[rich.hathaway@usdoj.gov](mailto:rich.hathaway@usdoj.gov)

&

s/Christine E. Kenney  
[christine.kenney@usdoj.gov](mailto:christine.kenney@usdoj.gov)  
Special Attorneys  
444 SE QUINCY, SUITE 290  
TOPEKA, KS 66683  
Phone: (785) 295-2850  
Fax: (785) 295-2853

INFORMATION SHEET

DEFENDANT: 1. Robert T. McAllister.

YEAR OF BIRTH: 1949

ADDRESS: Denver, Colorado.

COMPLAINT FILED?  YES  NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT?  YES  NO

OFFENSE: Cts. 1 & 20: Conspiracy, 18 U.S.C. §§371 & 1349  
Cts. 2-4 & 21-27: 18 U.S.C. 1343 - Wire Fraud  
Cts. 5-7 & 27: 18 U.S.C. 2314 - Interstate Transportation of Converted Money  
Cts. 8-19: 18 U.S.C. 1957 - Money Laundering  
Ct. 28: 18 U.S.C. 157 - Bankruptcy Concealment  
Ct. 29: 18 U.S.C. 152(1) - Bankruptcy Fraud

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Counts 1 & 20: For a violation of any offense under Chapter 63 of Title 18 United States Code: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture; Otherwise: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 2-4 & 21-26: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 5-7 & 27: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 8-19: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the criminally derived property; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

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Count 28: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Count 29: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney  
Special Attorneys - District of Kansas

ESTIMATED TIME OF TRIAL: X over five days

THE GOVERNMENT will not seek detention in this case.

OCDEF case: NO

000091

INFORMATION SHEET

DEFENDANT: 2. Richard C. Neiswonger.

YEAR OF BIRTH: 1951.

ADDRESS: Orlando, Florida.

COMPLAINT FILED? \_\_\_\_\_ YES \_\_\_X\_\_\_ NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES \_\_\_X\_\_\_ NO

OFFENSE: Ct. 1: Conspiracy, 18 U.S.C. §§371 & 1349  
Cts. 2-4: 18 U.S.C. 1343 - Wire Fraud  
Cts. 5-7: 18 U.S.C. 2314 - Interstate Transportation of Converted Money

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Counts 1-4: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Count 5-7: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney  
Special Attorneys - District of Kansas

ESTIMATED TIME OF TRIAL:

\_\_\_X\_\_\_ over five days

THE GOVERNMENT will not seek detention in this case.

OCDETF case: NO

000092

INFORMATION SHEET

DEFENDANT: 3. Shannon Neiswonger.

YEAR OF BIRTH: 1973.

ADDRESS: Orlando, FL 32836.

COMPLAINT FILED? \_\_\_\_\_ YES  NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES  NO

OFFENSE: Ct. 1: Conspiracy, 18 U.S.C. §§371 & 1349  
Cts. 2-4: 18 U.S.C. 1343 - Wire Fraud  
Cts. 5-7: 18 U.S.C. 2314 - Interstate Transportation of Converted Money

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Counts 1-4: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Count 5-7: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney  
Special Attorneys - District of Kansas

ESTIMATED TIME OF TRIAL:  over five days

THE GOVERNMENT will not seek detention in this case.

OCDETF case: NO

000093

INFORMATION SHEET

DEFENDANT: 4. Elizabeth Whitney.

YEAR OF BIRTH: 1953.

ADDRESS: Denver, Colorado.

COMPLAINT FILED? \_\_\_\_\_ YES  X  NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES  X  NO

OFFENSE: Cts. 1 & 20: Conspiracy, 18 U.S.C. §371 & 1349  
Cts. 8-19: 18 U.S.C. 1957 - Money Laundering  
Cts. 21-26: 18 U.S.C. 1343 - Wire Fraud  
Ct. 27: 18 U.S.C. §§ 2314, 2 - Interstate Transportation of money  
obtained illegally  
Ct. 28: 18 U.S.C. §§ 175, 2 - Bankruptcy Concealment  
Ct. 29: 18 USC §§ 152(1) and 2 - Bankruptcy Fraud

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Counts 1 & 20: For a violation of any offense under Chapter 63 of Title 18 United States Code: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture; Otherwise: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 8-19: NMT 10 years imprisonment; a fine of NMT the greater of \$250,000 or twice the criminally derived property; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 21-26: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Count 27: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

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Count 28: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Count 29: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney  
Special Attorneys - District of Kansas

ESTIMATED TIME OF TRIAL: X over five days

THE GOVERNMENT will not seek detention in this case.

OCDETF case: NO

000095

AO 245B (IDD - Rev. 08/11) Judgment in a Criminal Case  
Sheet 1

# UNITED STATES DISTRICT COURT

District of Idaho

AMENDED

UNITED STATES OF AMERICA  
v.  
EDGAR J. STEELE

**JUDGMENT IN A CRIMINAL CASE**  
\*to correct Joint & Several Pg. 8

Case Number: 2:10CR-00148-N-BLW-1

USM Number: 14226-023

WESLEY W. HOYT  
Defendant's Attorney

**THE DEFENDANT:**

- pleaded guilty to count(s) \_\_\_\_\_
- pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- was found guilty on count(s) Counts 1-4 of the Superseding Indictment  
after a plea of not guilty.

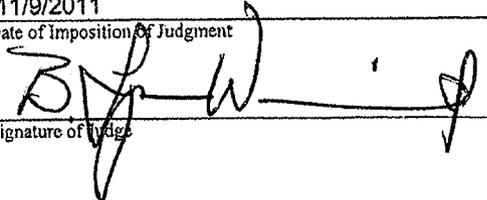
The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
see attached page 2			

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/9/2011  
Date of Imposition of Judgment  
  
Signature of Judge

B. Lynn Winmill Chief U.S. District Judge  
Name of Judge Title of Judge

10-16-11  
Date

000096

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 1A

Judgment—Page 2 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

**ADDITIONAL COUNTS OF CONVICTION**

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §1958	USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION FOR MURDER FOR HIRE	06/11/2011	1
18 USC §844 (h)	USE OF EXPLOSIVE MATERIAL TO COMMIT FEDERAL FELONY	05/31/2011	2
18 USC §924(c)(1)(B)(ii)	POSSESSION OF A DESTRUCTIVE DEVICE IN RELATION TO A CRIME OF VIOLENCE	05/31/2011	3
18 USC §1512(b)(3)	TAMPERING WITH A VICTIM	06/16/2011	4

000097

AO 245B (Rev. 09/08) Judgment in Criminal Case  
Sheet 2 — Imprisonment

Judgment — Page 3 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

600 months as follows: 120 months on Count 1; 120 months on Count 2 to run consecutive to Count 1; 360 months on Count 3 to run consecutive to Counts 1 and 2; 60 months on Count 4 to run concurrent with Count 1.

The court makes the following recommendations to the Bureau of Prisons:

The defendant be credited with all time served in federal custody, and that the defendant be placed in the facility at Sheridan, Oregon, or a place in the Northwest to meet with his custody classification.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

000098

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 3 — Supervised Release

Judgment—Page 4 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
3 years on counts 1, 2, 3 and 4 to run concurrent with each other

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a matter and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

000099

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 3C — Supervised Release

Judgment—Page 5 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

### SPECIAL CONDITIONS OF SUPERVISION

- 1) Within 72 hours of release from custody of the Bureau of Prisons, the Defendant shall report in person to the Probation Office in the district to which the Defendant is released.
- 2) Defendant poses a low risk of future substance abuse such that mandatory drug testing is waived pursuant to statute.
- 3) Defendant shall not possess firearms or other dangerous weapons.
- 4) Defendant shall not commit another federal, state or local crime.
- 5) Defendant shall not unlawfully possess a controlled substance.
- 6) Defendant shall submit to a search of his person, place of residence, or automobile at the direction of the U.S. Probation Officer and submit to seizure of any contraband found therein.
- 7) Defendant shall also comply with all general and specific terms of Supervised Release, and all Standard Conditions of Supervision, as outlined in the Judgment in a Criminal Case, to be filed by this Court.

Special conditions of supervised release shall supersede any standard condition that is inconsistent with the special conditions.

000100

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
 Sheet 5 — Criminal Monetary Penalties

Judgment — Page 6 of 8

DEFENDANT: EDGAR J. STEELE  
 CASE NUMBER: 2:10CR-00148-N-BLW-1

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 400.00	\$ 0.00	\$ 2,836.91

The determination of restitution is deferred until \_\_\_\_\_ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(f), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
State of Idaho Military Division	\$1,076.46	\$1,076.46	
Quick Lube	\$860.45	\$860.45	
Cyndi Steele	\$900.00	\$900.00	
see next page for addresses of payees			

<b>TOTALS</b>	\$ <u>2,836.91</u>	\$ <u>2,836.91</u>
---------------	--------------------	--------------------

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 5A — Criminal Monetary Penalties

Judgment—Page 7 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

**ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES**

State of Idaho Military Division  
State Accounting Department  
4040 Guard Street, Bldg. 600  
Boise, ID 83705-5004

Quick Lube  
c/o Mark Wolden  
484 Bosanko Avenue  
Coeur d'Alene, ID 83815

Cyndi Steele

000102

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 6 — Schedule of Payments

Judgment — Page 8 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:  
 Special assessment is due immediately. Payments to be made to Clerk of the Court, District of Idaho, 550 W. Fort Street, Boise, ID 83724. Defendant shall submit nominal payments of not less than \$25 per quarter while incarcerated through the Inmate Financial Responsibility Program. Clerk shall disburse restitution payments to the victim(s).

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several \* Adding Joint and Several Restitution

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Larry Fairfax; 2:10-cr-00183-BLW-001; Total Amount \$2836.91; Joint and Several Amount, \$2836.91.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

000103

AO 442 (Rev. 01/09) Arrest Warrant

# UNITED STATES DISTRICT COURT

for the  
District of Colorado

United States of America  
v.  
ROBERT T. McALLISTER

Case No. 11-cr-00283-PAB

Defendant

## ARREST WARRANT

To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay  
(name of person to be arrested) ROBERT T. McALLISTER  
who is accused of an offense or violation based on the following document filed with the court:

- Indictment     Superseding Indictment     Information     Superseding Information     Complaint
- Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

- Ct. 1: Conspiracy, 18 U.S.C. §§371 & 1349
- Cts. 2-4: 18 U.S.C. 1343 - Wire Fraud
- Cts. 5-7: 18 U.S.C. 2314 - Interstate Transportation of Converted Money
- Cts. 8-19: 18 U.S.C. 1957 - Money Laundering

U.S. DISTRICT COURT  
 DISTRICT OF COLORADO  
 2011 NOV 15 PM 1:12  
 GREGORY C. LANGHAM  
 CLERK

Date: 07/25/2011

s/ M.J. Garcia

Issuing officer's signature

City and state: DENVER, COLORADO

Gregory C. Langham, Clerk, U.S. District Court

Printed name and title

### Return

This warrant was received on (date) 11-14-11, and the person was arrested on (date) 11-14-11  
at (city and state) Denver, CO

Date: 11-14-11

Buens-Madison, Dec  
Arresting officer's signature

Buens-Madison, Dec  
Printed name and title

AO 245B (IDD - Rev. 08/11) Judgment in a Criminal Case  
Sheet 1

# UNITED STATES DISTRICT COURT

District of Idaho

UNITED STATES OF AMERICA  
v.  
EDGAR J. STEELE

## JUDGMENT IN A CRIMINAL CASE

Case Number: 2:10CR-00148-N-BLW-1

USM Number: 14226-023

WESLEY W. HOYT

Defendant's Attorney

### THE DEFENDANT:

- pleaded guilty to count(s) \_\_\_\_\_
- pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- was found guilty on count(s) Counts 1-4 of the Superseding Indictment  
after a plea of not guilty.

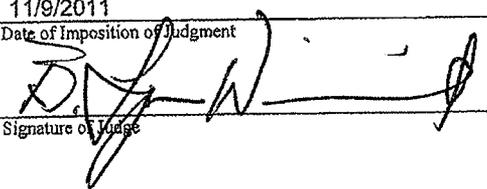
The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
	see attached page 2		

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/9/2011  
Date of Imposition of Judgment  
  
Signature of Judge

B. Lynn Winmill  
Name of Judge  
Chief U.S. District Judge  
Title of Judge

11-14-11  
Date

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 1A

Judgment—Page 2 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

**ADDITIONAL COUNTS OF CONVICTION**

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §1958	USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION FOR MURDER FOR HIRE	06/11/2011	1
18 USC §844 (h)	USE OF EXPLOSIVE MATERIAL TO COMMIT FEDERAL FELONY	05/31/2011	2
18 USC §924(c)(1)(B)(ii)	POSSESSION OF A DESTRUCTIVE DEVICE IN RELATION TO A CRIME OF VIOLENCE	05/31/2011	3
18 USC §1512(b)(3)	TAMPERING WITH A VICTIM	06/16/2011	4

000106

AO 245B (Rev. 09/08) Judgment in Criminal Case  
Sheet 2 — Imprisonment

Judgment — Page 3 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

600 months as follows: 120 months on Count 1; 120 months on Count 2 to run consecutive to Count 1; 360 months on Count 3 to run consecutive to Counts 1 and 2; 60 months on Count 4 to run concurrent with Count 1.

The court makes the following recommendations to the Bureau of Prisons:

The defendant be credited with all time served in federal custody, and that the defendant be placed in the facility at Sheridan, Oregon, or a place in the Northwest to meet with his custody classification.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

000107

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 3 — Supervised Release

Judgment—Page 4 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:  
3 years on counts 1, 2, 3 and 4 to run concurrent with each other

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a matter and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

000108

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 3C — Supervised Release

Judgment—Page 5 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

### SPECIAL CONDITIONS OF SUPERVISION

- 1) Within 72 hours of release from custody of the Bureau of Prisons, the Defendant shall report in person to the Probation Office in the district to which the Defendant is released.
- 2) Defendant poses a low risk of future substance abuse such that mandatory drug testing is waived pursuant to statute.
- 3) Defendant shall not possess firearms or other dangerous weapons.
- 4) Defendant shall not commit another federal, state or local crime.
- 5) Defendant shall not unlawfully possess a controlled substance.
- 6) Defendant shall submit to a search of his person, place of residence, or automobile at the direction of the U.S. Probation Officer and submit to seizure of any contraband found therein.
- 7) Defendant shall also comply with all general and specific terms of Supervised Release, and all Standard Conditions of Supervision, as outlined in the Judgment in a Criminal Case, to be filed by this Court.

Special conditions of supervised release shall supersede any standard condition that is inconsistent with the special conditions.

000109

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 5 — Criminal Monetary Penalties

Judgment — Page 6 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$ 0.00	\$ 2,836.91

The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
State of Idaho Military Division	\$1,076.46	\$1,076.46	
Quick Lube	\$860.45	\$860.45	
Cyndi Steele	\$900.00	\$900.00	
see next page for addresses of payees			

TOTALS	\$	2,836.91	\$	2,836.91
--------	----	----------	----	----------

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

000110

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 5A — Criminal Monetary Penalties

Judgment—Page 7 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

**ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES**

State of Idaho Military Division  
State Accounting Department  
4040 Guard Street, Bldg. 600  
Boise, ID 83705-5004

Quick Lube  
c/o Mark Wolden  
484 Bosanko Avenue  
Coeur d'Alene, ID 83815

Cyndi Steele

000111

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
Sheet 6 — Schedule of Payments

Judgment — Page 8 of 8

DEFENDANT: EDGAR J. STEELE  
CASE NUMBER: 2:10CR-00148-N-BLW-1

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Special assessment is due immediately. Payments to be made to Clerk of the Court, District of Idaho, 550 W. Fort Street, Boise, ID 83724. Defendant shall submit nominal payments of not less than \$25 per quarter while incarcerated through the Inmate Financial Responsibility Program. Clerk shall disburse restitution payments to the victim(s).

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

Criminal Case No. 10-CR-148-BLW

EDGAR STEELE,  
Defendant.

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**DEFENDANT’S SUPPLEMENTAL MOTION FOR NEW TRIAL**

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DEFENDANT, by and through his attorney, Wesley W. Hoyt, herewith submits his SUPPLEMENTAL MOTION FOR NEW TRIAL under Rule 33, F.R.C.P. Incorporated by reference are arguments and authorities in Defendant’s Motion for New Trial (Dkt #s 234 & 236; see also Dkt #259). The affidavits and exhibits filed herewith are incorporated by reference and with the trial record provide the factual basis for Defendant’s contentions.

**I. DEFENDANT’S STATEMENT OF CONTENTIONS**

1.1 *Defendant’s Contentions.* Defendant, convicted of all counts in the *Superseding Indictment*, contends that he was denied due process and a fair trial and should be granted a new trial or the case should be dismissed because of: 1) Lack of jurisdiction as to certain counts, dismissal required; 2) Erroneous supplemental jury instruction new trial, required; 3) Prosecutorial misconduct, new trial required, re: a) Violating Defendant’s attorney/client privileged communications; b) Improper agreements with informant; c) Brady violations, new trial required

obstruction of justice and applies to both parties. Attempts by the FBI to intimidate these defense witnesses was evidence of government bad faith and violated Defendant's right to due process. See *U.S. v. Vavages*, 151 F.3d 1185, 1188 (9<sup>th</sup> Cir 1998). In *Vavages*, it was held: "[i]t is well established that 'substantial government interference with a defense witness's free and unhamp-ered choice to testify amounts to a violation of due process.' *United States v. Little*, 753 F.2d 1420, 1438 (9th Cir. 1984). A defendant alleging such interference is required to demonstrate misconduct by a preponderance of the evidence. See *United States v. Lord*, 711 F.2d 887, 891 n. 3 (9th Cir. 1983). Whether substantial government interference occurred is a factual determination to be made by the district court. See *United States v. Baker*, 10 F.3d 1374, 1415 (9th Cir. 1993); *Little*, 753 F.2d at 1439. Thus, rather than denying Defendant the opportunity to enquire into government misconduct as the record indicates, the trial judge should have had a hearing to make a factual determination whether government interference occurred. (For examples of the trial court's rulings outright denying Defendant the opportunity to present evidence of government misconduct see: TR at: 411, 755, 1404, 1434, 1435, 1436, 1441.) It was reversible error for the Court not to have held a hearing on the subject and a new trial should result.

Additional bad faith from governmental misconduct derives from Agent Sotka failure to report a "car bomb" was involved on Mrs. Steele's vehicle, even though he was aware of it prior to June 15, 2010 (listening three times to the recording of June 9<sup>th</sup> gave him the knowledge, TR 358:3-11). It was Agent Sotka who did not follow FBI procedures in reporting a major terrorism risk to other law enforcement agencies, which put the public at risk without notice to stay away from all cars matching Mrs. Steele's car on which there might have a "car bomb." According to Mr. Fairfax, the Bomb had been at large and in the public domain on May 27, 2010. Bad faith over a fundamental public safety issue indicates that bad faith permeates the entire case.

5) **INEFFECTIVE ASSISTANCE OF COUNSEL.** Lack of performance in the form

of inadequate investigation, preparation and presentation at trial by Defense counsel is the basis of a claim of ineffective assistance of counsel. The U.S. Supreme Court held: "...the right to counsel is the right to the effective assistance of counsel." *Strickland v. U.S.*, 466 US 688, 686 (1984).

Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the "ample opportunity to meet the case of the prosecution" to which they are entitled. *Id.* at 685. (Emphasis Supplied.)

Neither Roger Peven nor Robert McAllister, the primary attorneys responsible for Mr. Steele's defense, rendered adequate legal assistance. Their representation was marked by poor performance that caused prejudice to Mr. Steele (see Affidavits of Edgar Steele, Robert McAllister and Gary Amendola). "Counsel, however, can also deprive a defendant of the right to effective assistance, simply by failing to render 'adequate legal assistance.'" *Strickland*, at 685, citing *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980).

[A] person who happens to be a lawyer is present at trial alongside the accused ... is not enough to satisfy the constitutional command [for a fair trial].' *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. at 2063.

The law requires reversal when overall performance of the attorney is substantially deficient as opposed to a single egregious act. *Harrington v. Richter*, U.S. Supreme Court, No. 09-587, decided January 19, 2011 (9<sup>th</sup> Cir. Calif.). See *Reynoso v Giurbino*, 462 F3d 1099, 1110-1116 (9<sup>th</sup> Cir 2006).

An attorney's failure to represent his client's interests, is the basis for a new trial if the attorney failed to investigate and adequately conduct pretrial preparation as happened here. *Turner v. Duncan*, 158 F.3rd 449 (9<sup>th</sup> Cir 1998). Neither Mr. Peven nor Mr. McAllister investigated or adequately conducted pretrial preparation because each had personal problems associated with poor professional performance in other areas of their lives. Both were seriously distracted by legal proceedings that had nothing to do with Defendant in this case. Mr. Peven had spent a month

in alcohol rehabilitation ending December 2007, having been relieved of his job after an “intervention” by his staff for related poor job performance, was engaged in a continual battle over administrative control of his office since that time. He had become embroiled in a 2011 lawsuit for civil damages that implicated his poor management of Federal Defender cases. He was sued by former associates alleging ineffective management in 2009. Board action to remove him from his position was pending according to the lawsuit, which is ongoing and provided a severe distraction from his case related duties, including Mr. Steele’s case pending in 2010. (Aff Edgar Steele).

Whereas, Mr. McAllister’s personal problems were of a financial nature, he having declared bankruptcy in the spring of 2011 just before trial and was disbarred shortly after trial. He admitted to having been under the scrutiny of the Colorado Bar for embezzlement of client funds before and during the trial and, shortly after trial announced his disbarment on June 6, 2011 (Aff Edgar Steele). Peven and McAllister stand as proverbial “bookends” of ineffectiveness

Ordinarily a claim of ineffective assistance of counsel that depends on evidence outside the trial record can be made only by motion under 28 U.S.C. § 2255 to vacate the conviction and sentence. *U.S. v. Myers*, 892 F.2d 642, 649 (7<sup>th</sup> Cir. 1990). The Myers court held:

This case is unusual because the trial record itself compels a strong although not conclusive inference of ineffective representation -- so strong that Myers' conviction should not be allowed to become final until the issue is resolved.” – *U.S. v. Myers*, at 649.

Further light and knowledge on the subject comes from the Ninth Circuit, which held:

Where ineffectiveness of counsel is alleged, the defendant must point to errors or omissions in the record on appeal which establish that he did not receive adequate representation. He has the further burden of demonstrating from the record that there is a reasonable likelihood that counsel's errors or omissions prejudiced his right to a fair trial.... *U.S. v. Birges*, 723 F.2d 666, 669, 670 (9<sup>th</sup> Cir, Nevada, 1984) [internal citations omitted].

The list of actions not taken by both of these attorneys is too long to mention here, however, the Affidavits of Messers McAllister, Amendola and Steele chronicle many of them, the sum total of which is shocking to think that an attorney with that level of skill and experience was

unable to provide even a minimal performance. Confirmatory of this statement is the Affidavit

Mr. McAllister himself who simply states:

My ineffectiveness stemmed from the level of my personal remorse, mental anguish, substantial worry and cognitive disruption of my thinking processes occasioned by the pending disbarment proceeding which carried with it the likelihood that I might lose my license to practice law, which license had been in good standing for over 37 years. (Aff McAllister, ¶ 2B.)

At the time I was representing Mr. Steele I did not recognize the extent to which my mental state had deteriorated as a result of such remorse had impacted my ability to be effective in representing my client because I assumed I could perform as well as I had performed previously, not understanding the full extent that the prospect of a disbarment would have on me. (Aff McAllister, ¶ 3.)

Under the doctrine of ineffective assistance of counsel, the Court must make a factual finding regarding the sufficiency of evidence of either lack of performance or prejudice from the conduct complained of. Attached hereto are the affidavits of many individuals, including Mr. Amendola, who addresses performance and prejudice from the lack of effectiveness of McAllister.

Mr. Peven was responsible for pre-trial preparation and protection of Mr. Steele's rights during the period before trial. Mr. McAllister was responsible for final pre-trial preparation and trial. As shown in greater detail below, neither attorney's performance met the minimum standard for competence of a trial attorney in a Federal criminal case and the actions of both attorneys caused sever prejudice to Defendant.

Messers McAllister and Amendola failed to offer a jury instruction on defendant's theory of the case, which is further evidence of ineffectiveness. A defendant is entitled to have a theory of the case jury instruction in all events. The federal courts have always held that a defendant is entitled to jury instructions as to the theory of the defense and that failure to provide such instructions are often grounds to overturn a conviction. But, as here, before there can be cogent jury instructions (or error when they aren't provided), there must actually be a defense theory presented to the jury. See for example: *United States v. Vole*, 435 F.2d 774 (7th Cir., 1970). Also see *United States v. Ruiz*, 59

F.3d 1151 (11<sup>th</sup> Cir.), cert. denied, 516 U.S. 1133 (1996) (Defendant has the right to have the jury instructed on his theory of defense); *United States v. Smith*, 217 F.3d 746 (9<sup>th</sup> Cir. 2000) (Court failed to instruct upon defendant's theory of the case); *United States v. Kayser*, 488 F.3d 1070 (9<sup>th</sup> Cir. 2007) (Defendant is due a charge on his theory of defense despite its strength or weakness).

Ineffective assistance of counsel is shown if (1) Mr. McAllister's performance fell below an objective standard of reasonableness or (2) prejudice resulted (see *Strickland*, at 689) to avoid the argument that, "...under the circumstances, the challenged action 'might be considered sound trial strategy'" (id., quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). Accordingly, Mr. Steele must show that "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" (*Strickland*, at 690).

As for the second element, the prejudice flowing from Mr. McAllister's substandard performance, Mr. Steele must demonstrate that there was a 'reasonable probability that, but for McAllister's errors, the outcome of the trial would have been different' (id. at 694). For that purpose a reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome" (id.). And in that respect the analysis is not limited to outcome determination- but must also contemplate "whether the result of the proceeding was fundamentally unfair or unreliable" (*Scarpa v. DuBois*, 38 F.3d 1, 16 (1st Cir. 1994), quoting *Lockhart v. Fretwell*, 506 U.S. 364, 369 (1993)). That consideration reflects the fact that at its root the right to effective counsel exists "in order to protect the fundamental right to a fair trial" (*Strickland*, 466 U.S. at 684). Depriving a criminal defendant of a defense certainly renders the resultant trial "fundamentally unfair or unreliable." *Strickland*, supra, sets the 'gold standard' with regards to ineffective assistance of counsel where the *Strickland* court held that:

The benchmark for judging a claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland*, at 686.

In summary, and as the pinnacle of ineffectiveness, Mr. McAllister's lack of action denied Mr. Steele the opportunity to present the testimony of Dr. George Papcun whose opinions were stated at the April 20, 2011 Daubert Hearing. Those opinions raised a strong inference of FBI fabrication of the two Government Recordings which itself constitutes government misconduct. Because such opinions raised the specter of tampering with or editing those recordings that were presented as if they were true and accurate copies of a continuous and uninterrupted recording of conversations between the informant and Mr. Steele, just one edit raises a reasonable doubt whether the recording is authentic. If there is reasonable doubt as to whether the recording is authentic, then the conviction could not be considered to be "beyond a reasonable doubt" and should be overturned. In addition, McAllister failed to adequately question Mr. Dennis Walsh so that he could be qualified as a forensic expert in the field of audio recordings at the Daubert Hearing. Mr. Walsh is the expert who testified at the Daubert Hearing that he came to the conclusion that the government's recordings were fabricated, whereas, Dr. Papcun's opinions only created an inference of such. Obviously, the stronger defense was developed by Mr. Walsh, whom defendant would have preferred to present as the audio recording expert, but for his exclusion.

Once tampering has been implicated, the burden of going forward was on the Government. Here, the Government, which is required by law to do so, yet it did not make a sufficient showing to eliminate the possibility of alteration of its recordings; in fact, the Government's evidence left open the possibility that the recording could easily have been altered because the recording made in the device was destroyed by Agent Sotka without listening to it. What has been left was the wav form copies provided by the Government to the defense for analysis and used by the Government. Once the original is lost, the recording easily could have been re-recorded with editing and then recorded again into the proprietary format. (See Report of Dennis Walsh of March 10, 2010 as provided to the Govern-ment in discovery.) In order to authenticate the recordings, the

Government presented the testimony of an admitted liar, Mr. Larry Fairfax, who during trial stated that on June 9, 2010 he lied to the FBI when he did not tell them about the existence of a bomb on Mrs. Steele's car. This was a material omission when he promised to disclose all of his criminal activities. Fairfax was represented by retired Idaho State Judge James Michaud who assured his good intentions in 'coming forward' and stood behind the promise to tell all about his criminal activities. That afternoon, Fairfax was sent with the device to meet with Mr. Steele, but was in a barn when the recording was allegedly made and not under surveillance contrary to FBI policy. Also, failing to have a second agent assist Sotka was a violation of FBI policy. Then, Sotka "downloaded" to his computer with proprietary software, the sound information collected by the device, but did not listen to the recording from the device to establish validity. He conducted these actions without another FBI agent being present which was yet another violation of policy. While he was alone on the night of June 9<sup>th</sup>, he twice listened to said recording of June 9<sup>th</sup> then destroyed the original. Sotka then listened again to the June 9<sup>th</sup> recording in the presence of his FBI supervisor and Assistant US Attorney, Tracy Whelan on the morning of June 10<sup>th</sup> to determine how they should proceed. As these three listened to said recording, they must have heard, just as the jury heard, the words "car bomb" plain and distinguishable near the beginning of the dialogue of said recording (Tr. at p. 360, ls 1-10). No one doubts that if any rational FBI agent, inclined to do his job had heard the words "car bomb" that they, in discharging their public safety duties would have immediately contacted Mrs. Steele and warned her of the possibility that a 'car bomb' might just be the instrument by which she was to be murdered and that she should look under her car for a foreign object or call the local police. An experienced prosecutor such as AUSA Whelan also would have had a similar duty to notify the victim of potential harm from the "car bomb." Failing such a call, can anyone doubt that these three public servants would have at least notified their fellow law enforcement agents in Oregon where Mrs. Steele was visiting her

mother. Can there be any doubt that the Idaho FBI agents who had called for support from the Oregon FBI agents had a duty to advise them that they could possibly be in danger from a 'car bomb' that might be attached to the vehicle of Mrs. Steele? Especially since the Idaho FBI agency was asking the Oregon FBI agency to look in on a case for them at the home of Mrs. Kunzman very early in the morning of Friday, June 11, 2010? What should the Idaho FBI have told the Oregon FBI about what they knew of the recording of June 9<sup>th</sup>? Should they have said that the Oregon FBI would need to investigate the possibility of a 'car bomb' on Mrs. Steele's vehicle? None of this was done and Mr. McAllister did not ask Agent Sotka whether it was done as a means of impeaching his credibility for it is ridiculous to assume that highly trained enforcers of the law would miss such an obvious statement "car bomb" that jumps out at even the casual observer. Yet, the Government may suggest that its three top law enforcement officials in Coeur d'Alene were so incompetent as to miss what clearly was as obvious as the sun at noon day. Part of his ineffective assistance of counsel is that Mr. McAllister failed to challenge the foundation of said recordings which reeked of fabrication, by making a motion to exclude or to suppress the recordings as evidence in the case. Not doing so, he missed the most significant opportunity to defeat the case against his client. Once challenged, it was the Government that had the burden of showing the recording was not altered, not the other way around. Regarding authenticity of tape recordings (from: *U.S. v. Haldeman*, 559 F.2d 31 (C.A.D.C., 1976)) consider the following:

Appellants challenge the foundation for the introduction of the tape recordings. In determining whether there was a sufficient showing of accuracy to warrant admissibility, we must keep in mind the governing standard: "the possibilities of misidentification and adulteration (must) be eliminated, not absolutely, but as a matter of reasonable probability \* \* \* ." *Gass v. United States*, 135 U.S.App.D.C. 11, 14, 416 F.2d 767, 770 (1969); accord, e. g., *United States v. Robinson*, 145 U.S.App.D.C. 46, 51, 447 F.2d 1215, 1220 (1971) (en banc ), on rehearing, 153 U.S.App.D.C. 114, 471 F.2d 1082 (1972) (en banc ), rev'd on other grounds, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973); *United States v. S. B. Penick & Co.*, 136 F.2d 413, 415 (2d Cir. 1943).

Although the evidence bearing on admissibility should be carefully scrutinized to see if it measures up to the standard, it may be circumstantial or direct, real or testimonial, and need not conform to any particular model. E. g., *United States v. Sutton*, 138 U.S.App.D.C. 208, 213, 426 F.2d 1202, 1207 (1969).

Defendant was entitled to have counsel cross examine the law enforcement agent involved (specifically FBI Agent Sotka) and make an effective and coherent argument based on the indicia of Government fabrication of evidence (*Tejeda v. Dubois*, 142 F3d 18, 25 (1st Cir 1998)). Defendant was prevented from such cross exam and prevented from the presentation of his expert's opinion by the IAC of Mr. McAllister.

Ultimately, the Government had no case without said recordings, and Mr. Steele had no defense without Dr. Papcun's opinions. Thus, the prejudice to Mr. Steele's case because of Mr. McAllister's inaction meant that the jury was not given any alternative to a "guilty" finding. That Mr. McAllister failed to present any of the defense points of information in an effective manner and failed to make any proffers of such information as evidence when it was excluded by Court ruling is obvious from the witnesses who were standing by, ready, willing and able to testify to such. The Affidavits of Edgar Steele, Cyndi Steele, Dr. Allen Banks, Dr. George Papcun, Dr. Robert Stoll and Billie Cochran all show that evidence was available to be presented which would have: 1) rebutted prosecution testimony; 2) identified Government misconduct; and 3) established an entirely different picture of the Defendant and his circumstances than as portrayed by the Government. For instance, the Government portrayed Mr. Steele as the equivalent of a love sick teenager. Instead, he had established correspondence with over 90 women at the Romantic Tours website, obtaining from each patterned email responses of the same ilk, asking for money in exchange for their "love" over the internet. Extending an expression of love to each of the 90 was a part of his investigation to bring out the predatory nature of the Russian Bride operation. It was

this predatory program that Mr. Steele had planned to write about in his book in order to expose the fraud of the Russian Bride scam that had plagued one of his clients. In doing so, his plan was to find a party in the United States to sue to help his client recover some of his losses.

Dr. Papcun's opinions as stated in the Daubert hearing and in his reports raise the issue of FBI fabrication of evidence. With Dr. Papcun's testimony, the jury easily could have acquitted Mr. Steele, believing that the Government Recordings had been falsified. Thus, the Papcun opinion reasonably may have been the difference between conviction and acquittal.

Mr. McAllister undoubtedly developed a sense of hopelessness, just as other mental conditions can indeed be a cause of IAC by defense counsel. *Strickland*, at 699. Not only was Mr. McAllister ineffective, he flatly refused to follow the instructions of his client to make objections, move for mistrial and especially to subpoena Dr. Papcun for trial in order to ensure that his opinions would be expressed to the jury (see Affidavits of Edgar Steele and the hand written note from Steele to McAllister dated April 21, 2011). On April 21, 2011, the second day of the Daubert Hearing, Mr. Steele stated verbally and in writing to Mr. McAllister that: "[w]e must bring Papcun back for the trial, whatever the cost!" (See Second Affidavit of McAllister and Affidavit of Edgar Steele with Exhibit A attached, the handwritten note from Steele to Mr. McAllister dated 4/21, wherein Mr. Steele wrote: "We must lay a subpoena on Papcun and, perhaps move to continue (the subpoena is mandatory for our appeal).") It appears that the client understood the significance of Dr. Papcun's testimony even if Mr. McAllister didn't. Similarly, not being able to meet client objectives by failing to subpoena Dr. Papcun undoubtedly further contributed to Mr. McAllister's pervading sense of hopelessness.

With regard to the non-appearance at trial of Dr. George Papcun, Mr. Amendola writes: "it was my understanding that Mr. McAllister was in charge and would handle it." As further explained by Mr. Amendola:

Before the Daubert hearing I asked Mr. McAllister about what we would do about securing Dr. Papcun's attendance at trial if Mr. Walsh was not allowed to testify and he simply responded that we would get him (Mr. Papcun) there, i.e., to trial. (Id., at ¶ 8.)

At more than one meeting with Edgar Steele at the Ada County Jail, Edgar Steele raised the issue of ensuring that Dr. Papcun was available for trial, and raised the subpoena issue more than once. Mr. McAllister assured Edgar Steele that we would get Dr. Papcun there for trial. (Id., at ¶ 10.)

With regard to the issue of Mr. McAllister's trial preparation, Mr. Amendola opined as follows:

Between the Daubert hearing and the trial, I sensed that Mr. McAllister was distracted and not properly doing the final preparations necessary for the trial. (Id., at ¶ 11.)

According to Mr. Amendola, Mr. McAllister was singularly ineffective in representing Mr. Steele:

During the trial, it was clear to me that Mr. McAllister was not well prepared. His cross examination of witnesses called by the United States was disjointed and random and often did not get to the issue that needed to be addressed. His examination of witnesses called by the defense was equally weak, disjointed and random. He also paid little attention to directives from Edgar Steele. (Id., at ¶ 12.)

Regarding the closing argument, Mr. Amendola states that: "[i]t was terrible" and goes on to explain:

The closing argument did not address key legal issues, including legal issues identified in the jury instructions. I had earlier raised those issues with Mr. McAllister. My recollection is that the closing argument did not address Count IV at all. The closing argument also did not address the validity of the recordings between Larry Fairfax and Edgar Steele in any meaningful way that could possibly persuade the jury to disregard those recordings. In my opinion, the closing argument was rambling and ineffective. (Id., at ¶ 13.)  
In conclusion, Mr. Amendola critiques the performance of what he calls "trial counsel"

including himself in that category, as follows:

In my opinion, trial counsel for Edgar Steele were ineffective and did not provide him with adequate, competent or effective representation. (Id., at ¶ 14.)

The law is clear that whenever a court is reviewing a case for IAC, it is a "mixed question of law and fact." *Strickland*, at 698; citing *Cuyler v. Sullivan*, 446 U.S. 335, 342 (1980). The significance is that the standard applied to an allegation of IAC is a review for "performance" or "prejudice," either one of which will trigger a reversal or the grant of a new trial; all it takes is a "...showing that the decision reached would reasonably have been different absent the errors." (*Strickland*, at 696.)

IAC comes from many possible sources and in this case, from Mr. McAllister's (1) failure to have any defense theory whatsoever; (2) his failure to conduct any meaningful adversarial challenge, as shown by his failure to effectively cross-examine any of the prosecution's witnesses; (3) his failure to object to virtually any evidence; (4) his failure to prepare for and allow defense witnesses to tell their story and to introduce documentary evidence in support of Mr. Steele's defense; (5) his failure to move for a mistrial when it was announced that Agent Sotka had destroyed the original recordings from June 9<sup>th</sup> and 10<sup>th</sup>; (6) failure to make a meaningful closing argument; and, (7) failure to subpoena Dr. Papcun so that he could express his opinions to the jury

The standard is whether there is a "...reasonable probability that . . . the result . . . would have been different." *Strickland*, at 694. The jury asked questions and deliberated over two days. The massive evidence not presented and errors cited herein can lead only to an affirmative conclusion. As a result, a new trial should be granted based on ineffective assistance of counsel.

6) **ARBITRARY JUDICIAL ACTION IN FAVOR OF THE GOVERNMENT.** A new trial is required because of arbitrary judicial action favoring the Government. The record is replete with examples of the trial court's favoritism toward the Government (e.g. arbitrary exclusion of Defendant's expert over a timing problem create by the Court, exclusion of the Government's admissions against interest statements offered by Mrs. Steele, erroneous restrictions on witness examination, and rushing the defendant through trial, to name a few.) What the Court consistently ruled was witnesses could say nothing bad about the Government and nothing good about the Defendant. The following are a few of the many examples:

a) **Arbitrary Exclusion of Defendant's Expert.** No example is more compelling that the Court's flip-flop-flip over the question of the scheduling of Dr. George Papcun, forensic audio-media expert, for testimony. As stated in his Affidavit, Dr. Papcun was "ready, willing and able" to testify, once he received clearance from the Court that his testimony had been scheduled.

been allowed a separate trial because of the disparity of defenses to be applied in the solicitation case. Certainly, a defendant may assert inconsistent defenses, “[i]t is well established that a defendant in a criminal prosecution may assert inconsistent defenses. The rule in favor of inconsistent defenses reflects the belief of modern criminal jurisprudence that a criminal defendant should be accorded every reasonable protection in defending himself against governmental prosecution, *United States v. Demma*, 523 F.2d 981, 985 (9th Cir. 1975) (citing *United States v. Harrell*, 436 F.2d 606, 611-12 (5th Cir. 1970) (denial of conspiracy and claim of entrapment); *Johnson v. United States*, 426 F.2d 651, 656 (D.C. Cir. 1969) (denial of sexual intercourse and claim of consent); *Hansford v. United States*, 303 F.2d 219, 221 (3<sup>rd</sup> Cir. 1962) (denial of drug transaction and claim of entrapment); *Whittaker v. United States*, 281 F.2d 631, 632 (D.C. Cir. 1960) (denial of underlying acts and claim of insanity); *See also United States v. Harbin* 377 F.2d 78, 80 (4th Cir. 1967); *People v. Perez*, 401 P.2d 934 (Cal. App. 1965). “Under the law of this circuit . . . an accused may present inconsistent defenses.” *United States v. Lopez*, 142 F.3d 446 (9<sup>th</sup> Cir. 1998)). “Alternative defenses, of course, are proper, even if inconsistent.” *United States v. King*, 587 F.2d 956, 965 (9<sup>th</sup> Cir. 1978); “[t]he essence or core of the defenses must be in conflict such that the jury, in order to believe the core of one defense, must necessarily disbelieve the core of the other.” *United States v. Sherlock*, 962 F.2d 1349, 1363 (9<sup>th</sup> Cir. 1989) (quoting *United States v. Romanello*, 726 F.2d 173, 177 (5<sup>th</sup> Cir. 1984)). But, as here, when parties present antagonistic defenses severance pursuant to FRCP Rule 14 is appropriate. *United States v. Ogelby* 764 F.2d 1203 (7th Cir. 1985).

2.13 *Specific acts/omissions showing ineffectiveness of counsel: Robert McAllister.*

the team of Robert McAllister and Gary Amendola was not effective in assisting Defendant as trial counsel in his case see Affidavits of McAllister and Amendola, attached.

(1) *McAllister failure to investigate or prepare for trial.* Even though he entered his appearance late in the proceedings, Mr. McAllister still had an obligation to conduct a thorough investigation and the same facts and arguments apply to him as well as to Mr. Peven.

(2) *McAllister failure to hire knowledgeable experts.* The same facts and arguments apply to Mr. McAllister as well as to Mr. Peven, with the following differences:

- (a) **Mental State Expert Needed.** Same facts and arguments apply.
- (b) **Explosives Expert Needed.** Same facts and arguments apply.
- (c) **Audio Recording Expert Needed.** Same facts and arguments apply, with the following caveat. Mr. McAllister did hire a renown expert in this field, Dr. George Papcun. What Mr. McAllister did not do was to secure Dr. Papcun's testimony with a subpoena. Also, Mr. McAllister, having been told by his client, orally and in writing, to subpoena Dr. Papcun but also to ask his supporters to pay a reimbursement for Dr. Papcun's Polynesian vacation that had been pre-paid and was non-refundable and was due to commence two days after trial started, on April 28, 2011 (see Aff Dr. Papcun.) Mr. McAllister's excuse for not sending a subpoena to Dr. Papcun was that he was afraid he would have a hostile witness if he did. However, is it better to have no witness, when a man's life is at stake than to have a hostile witness? Additionally, Dr. Papcun only wanted to be compensated for his loss of a pre-paid vacation and was not hostile. Since Mr. Steele had expressed his desire to have Dr. Papcun testify and "buy out" his vacation, therefore, when Mr. McAllister was dead wrong when he said that Mr. Steele did not want Dr. Papcun to be subpoenaed and when he said that Mr. Steele did not want to have anyone pay to "buy out" Dr. Papcun's vacation. Thus, this was at the very least a colossal misunderstanding or worse, a deliberate attempt to prevent Mr. Steele from defending the charges against him. While it may never be known which was the case, Mr. McAllister's Affidavit has shed significant light on the subject and explained that he was severely distracted with his personal problems. Thus, in all

events, Mr. McAllister was totally ineffective in assisting Mr. Steele present a defense at trial.

(3) *McAllister failure to make trial objections, motions, proffers, jury instructions.*

(a) **Failure to Properly Handle Witnesses.** The record is replete with examples of Mr. McAllister silently allowing the prosecution, without objection: 1) effectively examine witnesses, by at least asking the questions on the sheets in front of him, in fact, in one case, he read, as if it was a question, the answer to one of the many questions which had been prepared, but which he failed to ask; 2) to allow the prosecution, without objection, to lead her own witnesses as to matters of substance as she would substitute her words for theirs, basically testifying; 3) to allow the prosecution, without objection, to ask compound questions that assumed matters not in evidence; 4) to allow the Government, without objection, to submit evidence that did not have a proper foundation, such as the recordings of June 9<sup>th</sup> and 10<sup>th</sup>, which it was not shown what generation of recording these were and what was the chain of custody (see Declaration of Herbert Joe, attached as Ex. I.) Other examples are listed in the attached affidavits and in the Transcript of the Trial Record which is incorporated herein by reference. This list is not by any means comprehensive, but illustrative of the mistakes made by Mr. McAllister, demonstrative of his ineffective assistance of counsel.

(b) **Failure to Make Trial Motions.** The record is replete with examples of Mr. McAllister silently allowing the prosecution, without objection: 1) to put on faulty evidence and when he did make an objection, he did not follow up with Motion to Strike; 2) to fail to move for a mistrial when the Government made such outrageous declarations, such as when Agent Sotka stated that he had deleted the original recordings on the device allegedly carried by Fairfax to the meetings with Mr. Steele of June 9<sup>th</sup> and 10<sup>th</sup>; 3) to fail to move to exclude the recordings when Agent Sotka stated that he had not listened to the recordings as they were on the recording device; 4) to move to dismiss when Agent Sotka testified that the microphone of the recorder that

supposedly was recording Mr. Steele's arrest on June 11, 2010, when it was revealed that there was a about an hour of the two hour recording missing and that hour had exculpatory evidence in it that would have shown that Mr. Steele did not "try to cry" nor did he "defecate himself" as alleged by the Government; 5) failed to file pretrial suppression motions as to known prosecution evidence that was faulty, such as the recordings of June 9<sup>th</sup> and 10<sup>th</sup>; 6) failed to file a motion to dismiss for lack of jurisdiction, as set forth at the beginning of this pleading; and 7) failed to move for a jury instruction on the defendant's theory of defense, apparently because he had none.

(c) **Failure to Make Offers of Proof and Argument.** The record is replete with examples of Mr. McAllister silently allowing the Court to exclude evidence that was relevant, material and exculpatory (see Affs Cyndi Steele, Edgar Steele, Dr. Allen Banks, Dr. Robert Stoll, Billie Cochran), without making an offer of proof, preserving what each witness would have presented in testimony. It was almost as if Mr. McAllister was in a daze and could not function well enough to realize that his client's case was disappearing before his very eyes and he was doing nothing to stop it. After the Court indicated that it would not allow the Defendant to present any negative information about the Government, the following items should have proffered, which are included in the affidavits just mentioned, and a few examples are: 1) with reference to the testimony of Cyndi Steele's and in her Affidavit at ¶ 7(c) she reveals that she was prepared to testify regarding the pattern of lying by FBI Agent Sotka, who also unlawfully advised her, as a crime victim, not to hire a lawyer. The purpose for Mrs. Steele's testimony would have been to impeach Agent Sotka with statements that constitute admissions against interest of the Government. Although she was prepared to testify, she was not asked the questions by Attorney McAllister who apparently was unable to read from a list of questions. If those questions had been asked and an objection made and sustained, Mr. McAllister should have made an offer of proof as to each question and answer in order to preserve the record on appeal. However, the trial record

indicates he made not one proffer. Nor did he make even one motion for mistrial. Rather he capitulated to every whim of the Government and the Court. Incorporated herein is the information from paragraph 7(c) of the Affidavit of Cyndi Steele which shows Agent Sotka to be a repeated liar and would have shed serious doubt on his credibility as to the other aspects of the case and would have helped establish Mr. Steele's defense of FBI Bad Faith and governmental misconduct.

In fact, in a spoliation case, it is necessary to show that the agent destroyed the evidence in bad faith. *Arizona v. Youngblood*, 488 U.S. 51, 55 (1988).

Bad faith is shown where the police conduct indicates that the evidence could form a basis for exonerating the defendant. *United States v. Heffington*, 952 F.2d 275, 277 (9<sup>th</sup> Cir. '91)

When criminal evidence is lost or destroyed, the court's principal concern is whether the defendant can have a fair trial even though he is not able to examine all the relevant evidence. *United States v. Loud Hawk*, 628 F.2d 1139, 1151 (9<sup>th</sup> Cir. 1979).

A balancing approach is used to make that determination. While the investigation of Maria Lopez's murder was in progress in *Loud Hawk*, the Government destroyed some relevant evidence in the case: the latch and rivets on the FPO guard booth and certain semen stains on the victim's panties and slip. The Court held: "[t]o determine whether we are required to set aside the conviction on this ground, we must weigh the extent of the Government's culpability and the degree of prejudice to the appellant. (*Id.*, at 1151-54 (en banc), cert. denied, 445 U.S. 917, 100 S.Ct. 1279, 63 L.Ed.2d 602 (1980)).

Defendant submits that all of the following items of material evidence, if preserved, would have been exculpatory and should have been preserved and provided to him under *Brady v. Maryland*, 373 U.S. 86 (1963): 1) The sound recorded on the device June 9<sup>th</sup> and 10<sup>th</sup> were deleted and thus destroyed by Agent Sotka (TR Pg. 360, ln 1-10); 2) the fingerprints on the pipe taken from under Mrs. Steele's vehicle on June 15, 2010; 3) Mr. Steele's file marked "Gold" the jacket of which file jacket appeared in the Government's discovery and taken in the raid on his home, but

the contents of which were missing and not produced in discovery by the Government and the contents showed the records of the silver that was sold by Mr. Steele and would have rebutted the prosecution's assertion that the stolen \$45,000 in silver was a part of the \$50,000 in silver that was cashed; 4) The transcript of the recording from the day of Mr. Steele's arrest shows that one hour is missing and unaccounted for (Affidavit of Dr. Allen Banks).

Spoliation of evidence is the basis for reversal of a conviction if the missing evidence is both material and exculpatory. It is necessary for the defendant to show it was prejudiced by plaintiff's destruction of evidence in order for the spoliation doctrine to apply. *Eli Lilly and Co. v. Air Exp. Intern. USA, Inc.*, 615 F.3d 1305, 1318 (11th Cir. Aug. 23, 2010) (No. 09-12725). Clearly, the loss of such evidence was prejudicial to Mr. Steele's defense in this case because the Government has maintained that the recording played for the jury was unedited and claimed the defense audio expert's analysis was ineffectual because they had not analyzed the recording in its "native format" when the Government was responsible for the destruction of the native format. Since the Government by Agent Sotka destroyed the ultimate version of the native format, the sound recording on the device, then it is using its own bad faith destruction as the basis for attacking the defense opinions. Here, the Defendant never had the opportunity to evaluate the actual original because the Government eliminated it before anyone, except FBI Agent Sotka, who was operating alone and against FBI regulation, when he obtained, copied and destroyed said original. One limitation on the spoliation doctrine is that evidence that is destroyed be relevant to the litigation. *See, e.g., United States ex rel. Aflatooni v. Kitsap Physicians Service*, 314 F3d 995, 1001 (9<sup>th</sup> Cir. 2002) (in the absence of awareness that the destroyed evidence was relevant to the litigation, a finding of spoliation is not justified). Here, Agent Sotka well knew of the relevance of the recordings he destroyed.

Thus, to meet his burden to establish spoliation of the sound recordings on the device

carried by Informant Larry Fairfax on June 9<sup>th</sup> and 10<sup>th</sup>, it was necessary for Mrs. Steele to chronicle the details of Agent Sotka's lies in this case, which necessarily shows by implication his bad faith. The argument is that if he has no regard for the truth in dealing with the victim, then, why should he have any regard for integrity when it came to destroying the only item of true original evidence that could possibly prove Defendant innocent.

(d) **Failure to Offer Defendant's Theory of Defense in Jury Instruction.**

Mr. McAllister had an obligation to offer a jury instruction containing the defendant's theory of defense. That instruction was never offered because Mr. McAllister apparently did not understand that it was by government misconduct that Mr. Steele was investigated, charged and prosecuted.

(4) *McAllister's closing was pathetic.* Mr. McAllister's closing argument was utterly deficient and pathetic, as Mr. Amendola said in his Affidavit at ¶ 13, McAllister's closing was "terrible;" and it was terrible because McAllister had been so ineffective in assisting Mr. Steele that he had not introduced any evidence in the trial on which to base a theory of defense, which would then allow him to make a cogent argument; and 3) In looking at the record it appears that Mr. McAllister systematically ignored the opportunity to present evidence that favored Defendant, missing opportunity after opportunity to "prove Defendant's innocence;"

2.15 *Informant contributed to cabal.* In an attempt to absolve himself of responsibility, the Informant eventually told the FBI about the "car bomb," but only after it had been found on June 15th. In fact, the jury was told that the Informant and his cousin, James Maher, had traveled to Oregon 15 days before the "car bomb" was found (that is on May 31, 2010) to examine Mrs. Steele's vehicle to see if the pipe bomb was still attached to her car. The cousin, James Maher, an uncharged accomplice, stated that he had looked under Mrs. Steele's car and did not see a bomb, casting doubt on whether a bomb had ever been transported in interstate commerce in the first place and raising the question as to when and how the bomb got there that eventually was found



2. I was unable to effectively represent my client during analysis phase before trial preparations began for the reasons set forth below:

A. Because of prosecutorial misconduct by intrusion into what was attorney/client privileged communications that should have been protected as confidential but which were recorded by the Spokane County Jail and listened to by the prosecutor, AUSA Traci Whelan, as follows:

a. Before entering my appearance for Mr. Steele in the above case, I was informed by attorney Roger Peven of the Federal Public Defender's Office (the attorney assigned to Mr. Steele's case, and thus the "attorney of record" for Mr. Steele until February 7, 2011) that AUSA Whelan advised him of the following:

- i) that she had been listening to jail house recordings of communications between Mr. Steele and me and between Mr. Steele and other private lawyers;
- ii) that, from my discussions with Mr. Steele, she became aware that I was planning to enter a "late" appearance and ask for a continuance of the March 7, 2011 trial date; and
- iii) that, she knew I had talked with Mr. Steele about using some type of diminished capacity or insanity defense.
- iv) All of these items were attorney/client privileged matters.

b. The prosecution filed a motion to determine if Mr. Steele had "waived" his attorney/client privilege (Dkt. #71). Based on the above information from Mr. Peven, a Response was filed seeking to disqualify AUSA Whelan (Dkt. #73) from this case for intruding into the attorney/client privilege communications with Mr. Steele. The ruling of February 11, 2011 (see Dkt. # 90) on the disqualification issue determined only that: "his attorney" (that is, only Mr. Steele's "attorney of record," who was Mr. Peven at the time) would have had the protection of privileged communications with Mr. Steele. This ruling does not include, and thus excludes privileged communications, between the defendant and lawyers who had not entered an appearance for the defendant, such as me and other private attorneys who were being interviewed for representation purposes; however, this ruling was consistent with the directive from the US Marshal's Office of North

Idaho, that provided only communications between the defendant and his "attorney of record" were attorney/client privilege protected. Such a directive from the US Marshal's Office was unconstitutional and inconsistent with the law applicable to the attorney/client privilege.

c. When the trial court ruled (Dkt. 90) that Mr. Steele had "waived" the attorney client privilege because he elected to proceed with a phone call in the face of a recorded warning stating that if he did so, the call would be "monitored and recorded" the Court undermined my effectiveness as Mr. Steele's attorney for the reason that, Mr. Steele had no other means to contact private counsel than to call on the jail phone lines that were subject to being monitored and recorded. Thus, an attorney who had not yet entered an appearance on the inmate's behalf could not, because of this ruling have an attorney/client privileged communication with a private attorney who was not his "attorney of record." This means that this ruling modified the effect of Rule 5(d)(1)(B), Fed. R. Crim. Pro., as it denied Mr. Steele the right to "retain counsel" and modified Rule 5(d)(2) as it denied Mr. Steele the right to "consult with counsel" when, as written, both rules guaranteed a defendant the right to confidential communications with counsel protected by what the U.S. Supreme Court calls "...the oldest of the privileges for confidential communications known to the common law." *Upjohn Co. v. United States*, 449 U. S. 383, 389 (1981) (citing 8 J. Wigmore, Evidence § 2290 (J. McNaughton rev. 1961)).

d. Said ruling determining that Mr. Steele had "waived" his attorney client privilege (Dkt. #90) by the trial court was made in spite of the fact that such waiver was made under duress and not voluntary. Because the custody of Mr. Steele was entrusted to the US Marshal's Office as a pre-trial detainee, and because the US Marshal's Office had set the policy under which its detainees would be held in the Spokane County Jail; thus, it was the US Government that denied him his right to confidential meetings with private counsel. Such policy dictated that no other phone lines would be available to him as an "in custody" detainee of the Government. Thus, all possible means to have privileged communication with prospective lawyers in the private practice of law being prohibited, his so-called "waiver" could not have been voluntary. The force applied to Mr. Steele as a prisoner prevented him from having other means of communicating with private counsel on either a privilege-protected phone line or in a jail conference meeting place, to consult with private counsel without monitoring.

e. Although I attempted to provide assistance to Mr. Steele, because he was denied his right to be protected by the attorney/client privileged, our communications were restrained and stifled rather than being robust, full, frank and open as permitted by US Supreme Court interpretation, making me ineffective as his attorney.

B. I was also ineffective as the attorney for Mr. Steele because, at the time I was in the process of undertaking his representation and throughout trial, I was under investigation by the Colorado Supreme Court for attorney misconduct in the form of mismanagement of client funds in a pending disbarment proceeding. My ineffectiveness stemmed from the level of my personal remorse, mental anguish, substantial worry and cognitive disruption of my thinking processes occasioned by the pending disbarment proceeding which carried with it the likelihood that I might lose my license to practice law, which license had been in good standing for over 37 years. That Colorado disbarment proceeding was absolutely confidential and until after the Steele trial when the official public word of my disbarment was announced (to take place effective July 6, 2011), I had no right to disclose the fact of the investigation or disclose information about the case against me to anyone not a party to that proceeding. The effect that this disbarment proceeding had upon me was so great that it rendered me ineffective in providing assistance of counsel as I attempted to defend Mr. Steele. I also had put my professional corporation through bankruptcy during the time that I was handling this case which put additional pressure on me.

3. At the time I was representing Mr. Steele I did not recognize the extent to which my mental state had deteriorated as a result of such remorse had impacted my ability to be effective in representing my client because I assumed I could perform as well as I had performed previously, not understanding the full extent that the prospect of a disbarment would have on me.

A. I, as an attorney, owed a duty to Mr. Steele to perform to the best of my ability. I breached my obligation to defend Mr. Steele that came about as a result of my mental, cognitive and perceptual disability all of which was brought on by my mental anguish, cognitive disruption, substantial worry, remorse and personal devastation over the pending disbarment.

B. My actions were wrong in failing to disclose the pending disbarment proceedings, or in the alternative, withdrawing from the case, because my background, knowledge, experience, and demonstrated abilities in other cases

created for my client as well as my co-counsel, a reliance on me to performance at the highest levels when I was incapable of doing so.

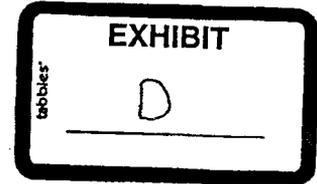
Further affiant sayeth naught.

I declare under penalty of perjury that the foregoing is correct on this 28 day of June, 2011.

  
Robert T. McAllister

Wesley W. Hoyt, ISB #4950  
Attorney at Law  
165 Deer Field Dr.  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO



UNITED STATES OF AMERICA,  
Plaintiff,

v.

Criminal Case No. 10-CR-148-BLW

EDGAR STEELE,  
Defendant.

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AFFIDAVIT OF GARY I. AMENDOLA

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State of Idaho            )  
                                  ss.  
County of Kootenai    )

I, Gary I. Amendola, the Affiant, a resident of the State of Idaho, being over the age of 18 years and competent to testify according to my own personal knowledge, upon oath, state, allege and aver under penalty of perjury pursuant to 28 USC §1746 as follows:

1. In this case, I was Idaho local counsel for pro hac vice counsel Robert T. McAllister.
2. My arrangement with Mr. McAllister was that I would participate in the defense of Edgar Steele, but Mr. McAllister was lead counsel and would handle the vast majority of the motion practice, hearings, and the trial.
3. It was my observation at the beginning of this representation that Mr. McAllister had a different advocacy style than mine and he sometimes took positions that

seemed to me to be unproductive, but I simply thought at that point that it was a difference of style and not necessarily substance.

4. At some point before the Daubert hearing of April 20, 2011, I heard a rumor that Mr. McAllister was going through a bankruptcy. I did nothing to confirm it and I never discussed it with him. I figured that if it was an issue that would affect his representation of Edgar Steele, he would raise it with me and/or the Court.

5. It was not until well after the trial that I knew anything at all about his trouble with the Colorado Bar or that Mr. McAllister was being disbarred.

6. My first real concern about the effectiveness of his representation arose a day or two before the Daubert hearing. I arrived in Boise the day before the hearing and spent the day with George Papcun and Dennis Walsh preparing for the hearing. If necessary I was prepared to handle that hearing. My concern was that Mr. McAllister indicated that he would fly from Denver the morning of the hearing, spend a little time with Mr. Papcun and Mr. Walsh and attend the hearing. He seemed to think that it was a done deal that both Mr. Papcun and Mr. Walsh would be approved by the Court to testify at the trial. After much persuading by Wesley Hoyt, Mr. McAllister agreed to fly in the night before and did spend some time with Mr. Papcun and Mr. Walsh before the hearing.

7. My next concern about the effectiveness of his representation arose on the day of the Daubert hearing. In my opinion, Mr. McAllister did a lousy job of laying the foundation for the expertise of either Dr. Papcun or Mr. Walsh. Of course, given the credentials of Dr. Papcun, laying that foundation was easy. However, in the case of Mr. Walsh, significantly more foundation was necessary and was available than what Mr. McAllister inquired about. He also questioned Mr. Walsh in a disjointed and random fashion that did not at all lend itself to showing just how much expertise Mr. Walsh actually had and how that expertise was relevant to the defense of Edgar Steele. I am not saying that had I done the inquiry of Mr. Walsh that the outcome would have been different, but I certainly believe that it may well have been different. I was not present at the second day of the Daubert hearing so I can't comment on Mr. McAllister's performance on that day. However, after the first day I thought the proverbial handwriting was on the wall for a denial of one or both defense experts.

8. Before the Daubert hearing I asked Mr. McAllister about what we would do about securing Dr. Papcun's attendance at trial if Mr. Walsh was not allowed to testify and he simply responded that we would get him (Dr. Papcun) there, i.e., to trial.

9. Between the Daubert hearing and the trial, I spoke with Mr. McAllister on a regular basis. On a number of occasions on the telephone and in person, I questioned him about the availability of Dr. Papcun now that Mr. Walsh was denied the opportunity to testify. I questioned him about that because I knew that Dr. Papcun had an out of country vacation scheduled during the time of the trial. Mr. McAllister assured me that we would get him to trial if we needed him. I was concerned, but accepted his statement. I asked about a subpoena to ensure his appearance and he basically said that if we subpoena Dr. Papcun, we will have a very unfriendly witness.

10. At more than one meeting with Edgar Steele at the Ada County Jail, Edgar Steele raised the issue of ensuring that Dr. Papcun was available for trial, and raised the subpoena issue more than once. Mr. McAllister assured Edgar Steele that we would get Dr. Papcun there for trial.

11. Between the Daubert hearing and the trial, I sensed that Mr. McAllister was distracted and not properly doing the final preparations necessary for the trial. I did not, however, talk to him about my concern. For that, I am very disappointed in myself and feel like I did not properly represent Edgar Steele because it turned out my concerns were justified.

12. During the trial, it was clear to me that Mr. McAllister was not well prepared. His cross examination of witnesses called by the United States was disjointed and random and often did not get to the issue that needed to be addressed. His examination of witnesses called by the defense was equally weak, disjointed and random. He also paid little attention to directives from Edgar Steele. I did not confront Mr. McAllister about these things even though I should have done so. For that, I am very disappointed in myself because it turns out that my concerns continued to be justified. Unfortunately and in my opinion, it made my representation of Edgar Steele deficient as well.

13. Finally, I must address the closing argument presented by Mr. McAllister on behalf of Edgar Steele. It was terrible. The closing argument did not address key legal issues, including legal issues identified in the jury instructions. I had earlier raised those issues with Mr. McAllister. My recollection is that the closing argument did not address Count IV at all. The closing argument also did not address the validity of the recordings between Larry Fairfax and Edgar Steele in any meaningful way that could possibly persuade the jury to disregard those recordings. In my opinion, the closing argument was rambling and ineffective.

14. In my opinion, trial counsel for Edgar Steele were ineffective and did not provide him with adequate, competent or effective representation.

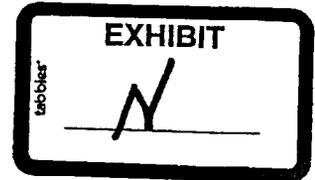
Further affiant sayeth naught.

I declare under penalty of perjury that the foregoing is correct on this 28 day of JUNE, 2011.

  
\_\_\_\_\_  
Gary I. Amendola

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO



UNITED STATES OF AMERICA,  
Plaintiff,

v.

Criminal Case No. 10-CR-148-BLW

EDGAR STEELE,  
Defendant.

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**AFFIDAVIT OF ROBERT T. McALLISTER**  
**(Second Affidavit Re: Ineffective Assistance of Counsel)**

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State of Colorado            )  
  ss.  
County of Jefferson        )

I, Robert T. McAllister, the Affiant, a resident of the State of Colorado, being over the age of 18 years and competent to testify according to my own personal knowledge, information and belief, upon oath, state, allege and aver under penalty of perjury pursuant to 28 USC §1746 as follows:

1. I am an attorney engaged in the private practice of law who represented that I was capable of serving as lead counsel for Edgar J. Steele in the trial of the above mentioned criminal proceeding which ended May 5, 2011 with a jury verdict of conviction on all four felony counts of the indictment.

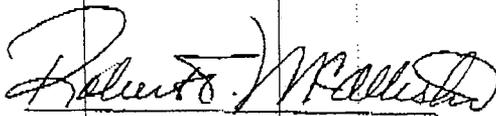
2. I add the following to the Affidavit of Robert T. McAllister (Ineffective Assistance of Counsel) dated June 28, 2010:

Affidavit of Robert T. McAllister  
(Second Affidavit Re: Ineffective Assistance of Counsel)

- a. I did not serve a subpoena Dr. George Papcun, the defense expert witness designated to testify in the field of audio recording analysis and to appear at Mr. Steele's trial because I was informed that he would be a hostile witness unless he was paid for the loss of his Polynesian vacation.
- b. When the Court reversed its ruling on Monday, May 2, 2011, I was led to believe that Dr. Papcun could testify by audio/video conferencing.
- c. From Dr. Papcun's report and the testimony he offered at the Daubert Hearing of April 20, 2011, it is clear that it could be expected that his testimony at trial would indicate that one of the causes of the electronic signatures, gaps or discontinuities on said recordings was from editing or deliberate manipulation of the audio portion thereof, creating an inference that there was a scientific basis to believe that said recordings were not authentic nor were they a continuous, uninterrupted recording of the purported conversations between Mr. Steele and Larry Fairfax on June 9<sup>th</sup> and 10<sup>th</sup>, 2010 as represented by the Government.
- d. I received a one page, hand written letter (attached as Exhibit "A") from Mr. Steele dated April 21, 2011 which I received after the conclusion of the Daubert Hearing. In that letter he confirmed in writing that he, under all circumstances, wanted me to subpoena Dr. Papcun for trial and that it was his desire that his supporters should pay Dr. Papcun to "buy-out" his Polynesian vacation that would be lost if he attended the trial due to commence April 26, 2011.
- e. Due to a misunderstanding about my client's instructions, I did not subpoena Dr. Papcun because I did not think it would be beneficial to his case.

Further affiant sayeth naught.

I declare under penalty of perjury that the foregoing is correct on this 5<sup>th</sup> day of July, 2011.

  
Robert T. McAllister

4/2

MAR -

Papen did ok, though shaky at times.

Wash is guilty of a language-degree (exaggeration) only, though. Problem.

Whalen has embalmed Wash, whose qualification as an expert for trial now is in serious trouble. How to rehabilitate?

Wash has yet to testify that some of the tapes are not in ES' voice. This is a blockbuster that needs to be said.

Papen & Wash both say there are an unusually (extraordinarily) large number of transient electronic signals on both tapes but only Wash opines that it is due to editing. Important!

We need Papen's qualifications to support Wash's testimony. ~~We~~ We must bring Papen back for the trial, whatever the cost!

We must lay a subpoena on Papen and, perhaps, move to compel (the subpoena is mandatory for our appeal).



B -

I NEED TO SEE: (1) ALL EMAILS (ESP. THE ONES WHALEN WANTS IN EVIDENCE), (2) PROSECUTION'S IME REPORT, (3) THEIR SOUND EXPERT REPORTS AND, IF POSSIBLE, MY WARTER'S HARD DRIVE.

Wesley W. Hoyt, ISB #4950  
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Fax: 208-926-7553  
email: hoytlaw@hotmail.com

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

Criminal Case No. 10-CR-148-BLW

EDGAR STEELE,  
Defendant.

---

AFFIDAVIT OF Dr. GEORGE PAPCUN

---

State of New Mexico        )  
  ss. )  
County of Santa Fe        )

I, George Papcun, PhD, the Affiant, a resident of the State of New Mexico, being over the age of 18 years and competent to testify, according to my own personal knowledge, information and belief, and upon my oath, state, allege and aver under penalty of perjury pursuant to 28 USC §1746 as follows:

A. I was designated as an expert witness by the defendant to testify at the jury trial of Edgar J. Steele, in Boise, Idaho in the above criminal proceeding which I was informed was to commence on April 26, 2011; concluding May 5, 2011.

B. I appeared at a Daubert Hearing in the above case on April 20, 2011, in Boise, Idaho and was qualified by the Court to render opinions in the field of audio recording analysis.

C. I was advised that the Court ruled on April 21, 2011 that I could not testify at trial unless one of the parties to the conversations of June 9<sup>th</sup> and 10<sup>th</sup>, ostensibly between Edgar Steele and Larry Fairfax, challenged the authenticity of said recordings.

D. The trial was due to commence April 26, 2011 at a time that my wife and I had scheduled the vacation of a lifetime, prepaid, with departure to commence April 28, 2011. Some time earlier, I had promised my wife that if she lived through a potentially fatal illness, we would take a lengthy dream vacation in Polynesia at our first opportunity. That opportunity arose the last week of April 2011 and extended into the middle of May, directly conflicting with the trial of the above case.

E. I had agreed with counsel for defendant that I would forgo this vacation at that time, and remain in the United States to testify, if the defendant would reimburse my wife and I for the non-refundable portion of the trip which was approximately \$48,000.00. I was advised that there was no assurance that I would be able to testify and give my expert opinion at trial unless either Mr. Fairfax or Mr. Steele first testified that they believed the recordings were not authentic. I was informed that under this condition imposed in Judge Winmill's order of April 21, 2011, the determination of whether I could testify could only be made after the April 26<sup>th</sup> trial began. Defendant's counsel advised that his client would not pay to "buy-out" my vacation.

F. I did not receive a subpoena to testify at the April 26<sup>th</sup> trial; however, I agreed to return to the United States if my expenses were paid and to appear at the trial, when it was known if the pre-condition for my testimony, as required by Judge Winmill, was met and thus, according to Court Order I would be permitted to testify.

G. After my wife and I left our home in New Mexico on April 28, 2011, the following events occurred with reference to my appearance as an expert witness in the trial of the above case:

1. I received a phone call on what was late Monday afternoon, May 2, 2011 in Boise, Idaho, while my wife and I were at a resort in Bora Bora, near Tahiti. I was informed that Judge Winmill had just changed his ruling and now I was permitted to testify because Mr. Steele's wife and daughter had challenged the authenticity of the recordings in their trial testimony (this did not meet the pre-condition set by the Judge, but the change in ruling allowed me to testify and render my expert opinions).
2. Even though I was on vacation, because I had agreed to testify at the Edgar Steele trial, I was ready, willing and able to give that testimony because I

had brought my case file with me, so I would be prepared, if and when that opportunity arose.

3. I was informed that, according to Judge Winnill's latest ruling, I would be allowed to give my testimony by video conference the next day in recognition of the fact that I was half-way around the world.
4. I confirmed that the resort where I was staying had video conferencing equipment and scheduled myself to use it in order to give my trial testimony the next day.
5. The next morning, I was notified that the video conference equipment at the resort was not a good match for the video conference equipment at the Court and that there was a search currently underway for a location near me that had video conferencing equipment with capabilities that matched the Court's equipment. The objective was to find a location, such as an American Embassy in that region of Polynesia, with matching equipment, so that it would not be quite so far for me to travel. The goal was for me to testify on video conference equipment that would provide unbroken images and uninterrupted sound.
6. Later that day, I was next informed that Judge Winnill had changed his ruling again so that I would not be allowed to appear by video conference, rather, if I was to testify at all, he ordered that I must appear in person, in the court, in Boise, Idaho at 8:30 a.m. on the next day, Wednesday, May 4, 2011.
7. After research, I was informed that given all the options available, the closest and quickest travel connection I could make in order to get to Boise was to fly from Bora Bora to Tahiti (a relatively short flight) and then catch the once-a-day flight departing at 11:45 p.m. from Tahiti to the mainland of the United States that would allow me to arrive at 11:00 a.m. in Los Angeles, CA on the morning of Wednesday, May 4, 2011. Unfortunately, by the time I cleared customs and caught the next flight out of L.A. to Boise, the soonest I could arrive in Boise was at 4:20 in the afternoon.
8. I was informed that space was available for me to travel on these flights and I was assured that payment for such travel was guaranteed. Using this air travel schedule and after making the short trip from the airport in Boise, in rush hour traffic, the earliest I could have arrived in the court in Boise was at approximately 5:00 p.m., May 4, 2011.

9. I was told that all other potential avenues of travel had been examined and exhausted, including the possibility of charter jet service, which was limited by the fact that there were no private charter aircraft based in Tahiti which were available for my travel.
10. I was advised that the closest available private charter jet capable of making the trip was based in Hawaii. Given the FAA crew-hour limitations (8 hours flying, 8 hours off-and a fresh crew was prohibited from traveling in the same aircraft), even combining private air travel with commercial flights, I could not be in the Court in Boise, Idaho by private jet any sooner than 5:00 p.m. on May 4<sup>th</sup>.
11. I was ready, willing and able to return to the mainland of the United States in order to testify in the above case; however, by the time that the Judge changed his ruling twice as of Tuesday, May 3, 2011, the Court's ruling had created an impossibility, as there was not enough time for me to fly back to America by the deadline imposed by the Court; thus, it was physically impossible for me to travel to Boise so that I could arrive in court by 8:30 a.m. on Wednesday, May 4, 2011.
12. If the first time that Judge Winmill changed his ruling on the afternoon of Monday, May 2, 2011 he had, at that time, provided that I must be in court no later than Wednesday, May 4, 2011 at 8:30 a.m., then using the same travel schedule outlined above, only beginning my travel a day earlier, I could have caught the flight out of Tahiti Monday night and been in Boise before 5:00 p.m. on Tuesday, May 3, 2011, which would have positioned me to be in the courtroom ready to testify by 8:30 a.m., Wednesday, May 4<sup>th</sup>.
13. At all times relevant and material to the above trial and subject to my vacation and travel schedules and assuming reasonable advance notification of a date and time for my testimony, I could have testified at the trial of Edgar Steele on Wednesday, May 4, 2011, commencing at 8:30 a.m. in the field of audio recording analysis, as an expert, consistent with my written reports and my prior testimony at the Daubert Hearing in the above case.

Further affiant sayeth naught.

I declare under penalty of perjury that the foregoing is correct on this 2 day of

July, 2011.

  
George Papcun, PhD.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

Criminal Case No. 10-CR-148-BLW

EDGAR STEELE,  
Defendant.

---

**AFFIDAVIT OF CYNDI G. STEELE**

---

State of Idaho        )  
                                  ss.  
County of Bonner    )

I, Cyndi G. Steele, the Affiant, a resident of the State of Idaho, being over the age of 18 years and competent to testify, according to my own personal knowledge, information and belief and upon oath, state, allege and aver under penalty of perjury pursuant to 28 USC §1746 as follows:

1. I am the wife of Defendant Edgar J. Steele and was designated as one of the victims of a murder-for-hire plot supposedly developed by my husband in 2010. I was called to testify as a witness for both the prosecution and the defendant at my husband's jury trial in Boise, Idaho. The trial ended with a verdict on May 5, 2011 in what I consider a wrongful conviction of my husband on all four felony counts of the indictment, three of which were related to solicitation of murder for hire and the fourth was attempted witness intimidation with me as the designated witness.

- b. I was not given the opportunity to complete my testimony as to all the things that I saw that were wrong with the recordings. I was only permitted to commence testifying about the background noises. I didn't get to testify to the voice of a mimic that represented my husband's voice and that I could tell why it was not my husband in part as stated in ¶ 7(b) above. Nor was I allowed to testify as to statements that were out of context or didn't make sense, even though I had spent days listening to these recordings and studied them intently for anomalies.
- c. I did not get to testify that the recording I listened to was altered after June 21, 2010. What I heard was only the word "bomb" on the recording of June 9, 2010 when I listened to that recording on June 21, 2010. The word "car", which preceded the word "bomb" on the recording played for the jury, was not on the recording that I listened to with Agent Sotka on June 21, 2010. If I had been allowed to testify to this observation, the jury would have heard direct evidence that the recording was edited. It was only when I heard the June 9<sup>th</sup> recording on March 8, 9 and 10, 2011 that I heard the words, "car bomb," in contrast to only hearing the word "bomb" on the version of the June 9, 2010 recording played for me on June 21, 2010 by Agent Sotka.

13. I did not learn until after my husband's trial that Mr. McAllister lied to me about subpoenaing for trial Dr. George Papcun, the audio expert. After the trial, I learned that my husband had verbally stated to Mr. McAllister and then confirmed it with a hand written note dated April 21, 2011 which directed him to subpoena Dr. Papcun for the trial. Since the trial was scheduled to start April 26, 2011, in spite of Dr. Papcun's planned vacation to Polynesia, which was due to start April 28, 2011, I learned that my husband had instructed Mr. McAllister to tell his supporters to "buy-out" the non-refundable portion of the pre-paid vacation of Dr. Papcun. Because he was so distracted by his own pending disbarment, Mr. McAllister told me that my husband instructed him not to subpoena Dr. Papcun as that would make him a hostile witness. Mr. McAllister also said that my husband told him not to buy-out his vacation. If Dr. Papcun would have testified, his testimony that the recordings of June 9<sup>th</sup> and 10<sup>th</sup> had evidence of editing would have given the jury a scientific basis to question the authenticity of those Government's Recordings, and that was the most significant part of my husband's defense and the theory of his case. If notified that my husband wanted to have Dr. Papcun's vacation bought out, I would have seen to it that it was done. I believe the jury would not have convicted him if they had heard the opinions of Dr.

Papcun, especially if the jury had heard my testimony and the testimony of the other witnesses who were prepared to testify for the defense.

14. During a meeting in the U.S. Attorney's Office in Coeur d'Alene, Idaho of September 20, 2010, AUSA Whelan laughed at me when she (Whelan) heard the playback of a recording of a voice mail from an anonymous caller stating that Larry Fairfax and James Maher (both perpetrators who became informants) had "something on" the FBI because they had, previous to June 15, 2010, informed the FBI about the "bomb" on my vehicle. From the message, it was apparent that one of the informants had bragged to the anonymous caller about having something to hold over the FBI. I took great offense at the September 20, 2010 meeting when AUSA Whelan laughed at me. By said laughter, I believed that AUSA Whelan did not take seriously the fact that my life was in danger and that she thought it was funny that someone could get "something on" the FBI. The hubris expressed by AUSA Whelan in this life and death situation was shocking to me. This incident was reported to the U.S. Attorney for Idaho and to the Victim Rights Ombudsman, but as is typical of this administration, no action was taken to remove AUSA Whelan from this case. Mr. McAllister's failure to ask me about this incident or to make a record through an offer of proof at trial which shows how severe his mental state was and that he was ineffective in assisting my husband as his counsel.

15. If I had been given the opportunity, I would have provided the jury with information contradicting Larry Fairfax' claim on the recording that he had obtained a key to my car. Larry Fairfax could not have had a key to my car, for I had the only two keys to my Mitsubishi in my possession and control at all times, but because of his mental state, Mr. McAllister did not ask me questions about this subject area so I could not provide the exculpatory evidence which only I knew.

16. If I had been given the opportunity, I would have provided the jury with information contradicting the prosecution's claim that I suffered from *Stockholm Syndrome*, which is absolutely not true. I would have debunked AUSA Whelan's inference that I was influenced by all "these people out there", which inference was made during a meeting on September 20 at the office of the United States Attorney in Coeur d'Alene. I would have emphatically stated that my therapist knew no one was influencing me, but because of his mental state, Mr. McAllister did not ask me questions about this subject area so I could not provide the exculpatory evidence which only I knew. In fact, if Mr. McAllister would have been in a better state of mind, he would have called my therapist as a witness to clarify this, and other issues.

Wesley W. Hoyt, ISB #4590  
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Fax: 208-926-7554  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

Criminal Case No. 10-CR-148-BLW

EDGAR STEELE,  
Defendant.

---

**AFFIDAVIT OF EDGAR J. STEELE**

---

State of Idaho            )  
                                  ss.  
County of Latah         )

I, Edgar J. Steele, the Affiant and Defendant in the above action, a resident of the State of Idaho, being over the age of 18 years and competent to testify, make this affidavit solely in support of my *Motion for New Trial* without waiving my attorney/client privilege, nor do I give up my right to confidentiality of communication with my attorneys under the Sixth Amendment of the Constitution of the United States of America or other applicable laws, statutes and rules, and state that the items herein contained are according to my own personal knowledge, information and belief and upon oath, I state, allege and aver under penalty of perjury pursuant to 28 USC §1746 as follows:

**I. HISTORY OF ATTORNEY REPRESENTATION**

1. From the time of my arrest on June 11, 2010 through the trial of this action that ended May 5, 2011, I was represented by three attorneys: Roger J. Peven of the Federal Defender's Office for the Eastern District of Washington and Northern Idaho represented me for motion practice and part of the trial preparation phase of my case until February 7, 2011; Robert T. McAllister, of Englewood, Colorado and Gary Amendola of Coeur

because the prosecution made numerous fallacious objections which were sustained by the Court in order to keep Mr. McAllister from getting to the truth of the matter. Once intimidated by an adverse ruling, Mr. McAllister failed to make an offer of proof.

- n. Death Threats. My testimony would have highlighted prior death threats received by me and my family from various groups, including the ADL, Jewish Defense League (“JDL”) and Southern Poverty Law Center (SPLC), all of which are NGOs that have close ties to the FBI and whose representatives serve together on a Homeland Security committee. Because members of these organizations have access to one another through the committee work, they have the opportunity to share information. Since it was the ADL representative who said that the FBI wanted my wife dead because of my political speech in a threatening phone call to us where it was said that “The FBI would love to see you dead” (see Affidavit of Cyndi Steele) it is not too far-fetched to conclude that the ADL had worked with the FBI to have me falsely prosecuted in order to silence me. Certainly, because of their familiarity with one another and their cooperation with the FBI, the ADL and other NGOs who didn’t like my ‘political speech’ had the opportunity to confer and conspire against me.
- o. FBI Motive to Bring False Charges. When the FBI’s investigation confirmed the origin of such calls was these NGOs and refused to take any action because of what appears to be the strategic relationship between them, a strong inference is created that there is a “conspiracy of silence” or mutual “stonewalling”; i.e., an “I’ll scratch your back if you scratch mine”; a crony system that prevents the FBI from investigating crimes committed by members of these NGOs as a trade off for benefits the FBI receives from the NGOs.
- p. Government Misconduct Defense. I would have testified that government misconduct is my defense to the charges against me. The bad faith of the FBI and the misconduct of the US Attorney’s Office has been what I have declared as my defense since the time of my telephone calls to my son and wife on June 13, 2010 shortly after my arrest. The investigation started in AUSA Whelan’s office by her making a telephone call to Agent Sotka at the FBI (TR \_\_\_\_), not the other way around.

#### 41. McAllister Misstated My Intention Regarding Expert Witness Papcun

- a. **Subpoena for Papcun was Requested**. At the Daubert hearing of April 20, 2011 I insisted that attorney McAllister subpoena Dr. George Papcun for trial to appear as my audio expert. I followed that verbal request with a handwritten note that reiterated my directive that Dr. Papcun be subpoenaed (See Ex \_\_ attached.) It was my instruction to attorney McAllister that Dr. Papcun not only be subpoenaed, but that his planned vacation to Polynesia, which was due to start April 28, 2011 (with trial starting April 26<sup>th</sup>) should be purchased or ‘bought out’.
- b. **McAllister’s Mental Disability Prevented Subpoena for Papcun**. I learned only too late, after the time when Dr. Papcun was to testify that arrangements for his

appearance could not be made. Because Mr. McAllister was so distracted by his own pending disbarment, he was unable to cognate on the task of subpoenaing him.

- c. **Papcun Was Willing to Cooperate and Testify.** Mr. McAllister was so focused on Dr. Papcun becoming a hostile witness that he missed the point, which was that as long as he did not lose the value of his vacation, Dr. Papcun would have been willing to cooperate (See Papcun Affidavit ¶\_\_). I specifically told Mr. McAllister that I wanted the Papcun vacation “bought out” and it was up to my supporters to get it paid. However, I am told that Mr. McAllister told my wife that I had said I did not want Dr. Papcun paid. Since I was not speaking to my wife about the case at the time because of a *No Contact Order*, I had no way to communicate any such message to her. Nevertheless, I felt strongly that Papcun’s testimony was critical and I put it in writing to McAllister that his vacation should be paid for. I felt his testimony was at the foundation of my defense, especially after I learned that the original recordings were destroyed without being listened to, and the copies fabricated through government misconduct and bad faith. Dr. Papcun’s testimony would have been a direct attack of the authenticity of the recordings.
- d. **A Reasonable Jury Would Have Acquitted Based on Papcun Testimony.** From Dr. Papcun’s he noted transients on the recordings that appeared to be edits, the jury would have been able to draw a reasonable inference that the recordings of June 9<sup>th</sup> and 10<sup>th</sup> had been edited by the government or a cooperating NGO with the resources to have an audio lab. Dr. Papcun’s testimony would have given the jury a scientific basis upon which to question the authenticity of those Government’s recordings; and thus would likely have acquitted me.

#### 42. McAllister did not Present My Theory Of Defense

- a. **Government Misconduct.** Mr. McAllister failed to present my theory of defense, which was that the Government was a willing participant in a plan, the goal of which was to silence and punish me by false imprisonment for my “politically incorrect” speech. Attorney McAllister simply did not address essential elements of my defense, and by doing nothing, his representation of me was completely ineffective.
- b. **NGOs Improper Driving Force behind Plan to Falsely Prosecute.** The driving force behind such plan was the improper influence on the Government by the ADL, JDL and the SPLC, all NGOs that that have a political agenda, all engaged in silencing those whom they assume are anti-Semitic extremists or worse, all of whom had donors and contributors to whom they make promises of performance by silencing certain individuals whose political speech they do not approve. All of these groups have access to the upper echelons of the FBI through their joint work on a committee of the Department of Homeland Security (see SPLC official policy statements against me attached as Ex. L), and all have interlocking relationships.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDGAR J. STEELE,

Defendant.

Case No. 2:10-CR-148-BLW

**ORDER**

The Court has before it Defendant's Motion for Enlargement of Time to File New Trial Motion (Dkt. 293). Defendant asks for a one day extension, and the motion is unopposed. Good cause appearing, the Court will grant the motion.

**ORDER**

**IT IS ORDERED:**

1. Defendant's Motion for Enlargement of Time to File New Trial Motion (Dkt. 293) is **GRANTED**. The supplemental motion and related exhibits and affidavits filed on August 9, 2011 are deemed to be timely filed.

DATED: August 9, 2011



*B. Lynn Winmill*

B. LYNN WINMILL  
Chief U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

U.S. DISTRICT COURT  
DISTRICT OF COLORADO  
2011 JUL 25 PM 2:33  
GREGORY G. LINDHART  
CLERK

Criminal Case No. 11-cr-00283 PAB

UNITED STATES OF AMERICA,

BY \_\_\_\_\_ DEP. CLK

Plaintiff,

v.

1. ROBERT T. McALLISTER
2. RICHARD C. NEISWONGER
3. SHANNON NEISWONGER, AND
4. ELIZABETH WHITNEY

Defendants.

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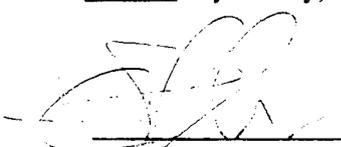
ORDER TO SEAL

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The Court has for consideration the government's Motion to Seal wherein the government asks this Court to seal its Indictment, Warrant for Arrest, in this case, as well as the government's Motion to Seal, and any order issued with regard to the defendant's motion. Upon consideration,

IT IS ORDERED that the government's Motion to Seal, this Order, and the Indictment, Warrant for Arrest, as well as any order issued by this Court in disposition of defendant's Indictment are hereby sealed until the defendant has been arrested and brought before the Court.

IT IS SO ORDERED on this 25<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

000156

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

FILED  
U.S. DISTRICT COURT  
DISTRICT OF COLORADO  
2011 JUL 25 PM 2:33  
GREGG J. L. LUSHAM  
CLERK

Criminal Case No. *11-cr-00283 PAB*

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. ROBERT T. McALLISTER
2. RICHARD C. NEISWONGER
3. SHANNON NEISWONGER, and
4. ELIZABETH WHITNEY

Defendants.

BY \_\_\_\_\_ DEP. CLK

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**MOTION TO SEAL**

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The United States of America, by Barry R. Grissom, United States Attorney for the District of Kansas, through Special Attorneys Richard L. Hathaway and Christine E. Kenney, move the Court to enter an Order sealing the Indictment, Warrant for Arrest, the government's Motion to Seal, the Order to Seal, and any Order resulting from the Indictment, and as grounds therefor states:

1. The Indictment, Warrants for Arrest and this motion have been filed as a part of a continuing investigation.
2. The release of the information in the Indictment and Warrant for Arrest would substantially jeopardize the security and the method of the investigation.

WHEREFORE the government moves this Honorable Court to enter any Order sealing the Indictment, Warrant for Arrest, this Motion to Seal, and any order issued by

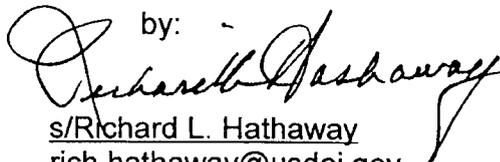
this Court with regarding to the Indictment, against everyone except attorneys and employees of the Office of the U.S. Attorney, the Federal Bureau of Investigation and the Internal Revenue/Criminal Investigation Division, until the defendants have been arrested and brought before the Court.

Respectfully submitted,

ERIC H. HOLDER, JR.  
ATTORNEY GENERAL OF THE UNITED STATES  
&

BARRY R. GRISSOM, # 10866  
UNITED STATES ATTORNEY  
DISTRICT OF KANSAS  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Case No.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

1. ROBERT T. McALLISTER,
2. RICHARD C. NEISWONGER,
3. SHANNON NEISWONGER, and
4. ELIZABETH WHITNEY

Defendants.

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**INDICTMENT**

Ct. 1: Conspiracy, 18 U.S.C. §§ 371

Cts. 2-4: 18 U.S.C. 1343

Cts. 5-7: 18 U.S.C. 2314

Cts. 8-19: 18 U.S.C. 1957

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THE GRAND JURY CHARGES:

At all times material to this indictment:

**Introduction**

1) Defendant ROBERT T. McALLISTER was an attorney licensed to practice law by the State of Colorado.

2) Defendant RICHARD C. NEISWONGER was a resident of Las Vegas, Nevada who marketed and sold business training courses and affiliations to consumers throughout the United States, including Missouri.

3) Defendant SHANNON NEISWONGER was the wife of RICHARD C. NEISWONGER and was signatory over and controlled certain bank accounts including, the Rishne Limited Partnership account, and Admark, Inc., account.

4) Defendant ELIZABETH WHITNEY was a business associate of ROBERT T. McALLISTER, and assisted him in acquiring real estate and holding and transferring money as directed by McALLISTER.

5) The Federal Trade Commission ("FTC") is an agency of the United States created in 1914, initially to prevent unfair methods of competition in commerce. Over the years, Congress has extended the jurisdiction of the FTC to police anti-competitive and unfair and deceptive acts or practices, to protect consumers.

6) In 1996 the FTC brought an action against RICHARD C. NEISWONGER in the United States District Court for the Eastern District of Missouri, Eastern Division, St. Louis, to obtain preliminary and permanent injunctive and other relief for the injury resulting from NEISWONGER's

deceptive business acts and practices. NEISWONGER entered into a Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief in the FTC Action.

7) On July 17, 2006, the FTC filed a civil contempt action against NEISWONGER alleging, among other things, that NEISWONGER had violated the Permanent Injunction by marketing training and business opportunities through misrepresentations. The same day, Judge Limbaugh, United States District Court Judge for the Eastern District of Missouri, entered a Temporary Restraining Order ("TRO"). The TRO included an "ASSET FREEZE" provision which prohibited RICHARD C. NEISWONGER "from directly or indirectly" transferring, concealing or "otherwise disposing" of any assets.

8) On July 25, 2006, Defendant ROBERT T. McALLISTER entered into a Stipulation with the FTC on behalf of RICHARD C. NEISWONGER, that the TRO of July 17, 2006, would remain in full force and effect. Thereafter McALLISTER represented both RICHARD and SHANNON NEISWONGER.

### ***THE SCHEME & CONSPIRACY***

9) Within ten days of the entry of the TRO freezing the assets of

RICHARD C. NEISWONGER, the defendants ROBERT T. McALLISTER, RICHARD C. NEISWONGER and SHANNON NEISWONGER began to circumvent the TRO by surreptitiously transferring money to defendant ROBERT T. McALLISTER, from accounts over which SHANNON NEISWONGER had control, to conceal from the FTC and the court of the Eastern District of Missouri that the TRO was intentionally being violated.

10) In furtherance and execution of this conspiracy, the defendants and others at their direction, committed overt acts to affect the object of said conspiracy including, but not limited to, SHANNON NEISWONGER wire transferring moneys using accounts under her control, including the Rishne Limited Partnership account, and Admark, Inc., account. These transfers were made to accounts under the control of defendant ROBERT T. McALLISTER.

**COUNT 1**  
**A VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS**  
**371**  
**THE CONSPIRACY:**

- 11) Paragraphs 1 through 10 are incorporated herein by reference.
- 12) Beginning in at least 2006, the precise date being unknown to the grand jury, and continuing into 2011, the defendants herein,

**ROBERT T. McALLISTER  
RICHARD C. NEISWONGER  
SHANNON NEISWONGER, and  
ELIZABETH WHITNEY**

combined, conspired, confederated and agreed to commit offenses against the United States of America, and to defraud the United States, and any agency thereof, in any manner and for any purpose, in the District of Colorado and elsewhere, that is:

A) to interfere with and obstruct one of the lawful government functions of the FTC to enforce orders and judgments and protect the public and preserve assets through TRO's, which the defendants accomplished by dishonesty, deceit, craft and trickery;

B) to commit wire fraud, in violation of Title 18 United States Code, Sections 2 and 1343.

C) to transport in interstate commerce money that had been stolen converted and taken by fraud, in violation of Title 18 United States Code, Sections 2 & 2314.

D) to engage in monetary transactions in property derived from specific unlawful activity, in violation of Title 18 United States Code, Sections 2 & 1957

13) In furtherance and execution of the objects of said conspiracy and scheme to defraud, the defendants and conspirators committed overt acts, including, but not limited to, those specified in paragraph 10 above and the substantive offenses listed hereinafter.

**COUNTS 2-4**  
**WIRE FRAUD, IN VIOLATION OF TITLE 18, UNITED STATES CODE,**  
**SECTIONS 2 & 1343**

14) Paragraphs 1 through 13 are incorporated herein by reference.

15) Having devised the aforesaid scheme and artifice to defraud, in the District of Colorado and elsewhere, the defendants,

**ROBERT T. McALLISTER**  
**RICHARD C. NEISWONGER**  
and  
**SHANNON NEISWONGER**

for the purpose of executing the aforesaid scheme and artifice, and attempting so to do, knowingly caused to be transmitted by means of wire, radio and television communication in interstate commerce into Colorado, certain signs, signals, pictures and sounds, to wit: wire bank transmissions as follows:

Count	Date	Amount
2	July 27, 2006	\$200,000
3	August 1, 2006	\$714,137.65
4	September 18, 2006	\$173,698.34

**COUNTS 5 - 7**  
**INTERSTATE TRANSPORTATION OF MONEY STOLEN CONVERTED**  
**AND TAKEN BY FRAUD**  
**A VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS**  
**2 & 2314**

16) Paragraphs 1 through 14 are incorporated herein by reference.

17) On or about the dates set forth below, in the District of Colorado and elsewhere, the defendants,

**ROBERT T. McALLISTER**  
**RICHARD C. NEISWONGER**  
and  
**SHANNON NEISWONGER**

did unlawfully transport, transmit and transfer in interstate commerce, into the State of Colorado, money of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud:

Count	Date	Amount
5	July 27, 2006	\$200,000
6	August 1, 2006	\$714,137.65
7	September 18, 2006	\$173,698.34

**Money Laundering Transactions In Proceeds**

18) Defendant ROBERT T. McALLISTER maintained a number of bank accounts at Citywide, Denver Colorado, the accounts of which are

insured by the Federal Deposit Insurance Corporation, including a client trust account COLTAF, ending in 0410; a Robert T. McAllister P.C. account ending in 7353; a Steamboat Skyglass account ending in 1237; an Elizabeth Whitney - Robert T. McAllister account ending in 7136; an RJ McDady account ending in 0226; and a McAllister Properties account ending in 0399.

19) By September of 2006, Defendants RICHARD C. and SHANNON NEISWONGER had transmitted \$1,087,835.99 to Defendant ROBERT T. McALLISTER'S trust account in Colorado.

20) Through a series of monetary transactions as more specifically set forth below in Paragraph 22, defendant ROBERT T. McALLISTER provided defendant ELIZABETH WHITNEY with \$572,502.38 from the \$1,087,835.99, which WHITNEY used as down payment for a residence purchased from defendant ROBERT T. McALLISTER on Kelsie Court in Clark, Colorado.

**Counts 8-19**  
**ENGAGING IN MONETARY TRANSACTIONS**  
**IN PROPERTY DERIVED FROM SPECIFIED UNLAWFUL ACTIVITY**  
**IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 2 &**  
**1957**

21) Paragraphs 1 through 20 are incorporated herein by reference.

22) On or about the dates set forth below, in the District of Colorado and elsewhere, the defendants,

**ROBERT T. McALLISTER and  
ELIZABETH WHITNEY**

knowingly and wilfully engaged and attempted to engage in monetary transactions affecting interstate or foreign commerce, that is, transfers by, through and to a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, of criminally derived property of a value greater than \$10,000, such property having been derived from the specified unlawful activity of wire fraud, as set forth in Counts 2 - 4, in violation of Title 18, United States Code, Sections 2 & 1343; and, interstate transportation of money that had been stolen converted and taken by fraud, as set forth in Counts 5 - 7, in violation of Title 18, United States Code, Sections 2 & 2314, as follows:

Count	Date	Transaction
8	July 27, 2006	Transfer of \$200,000 from COLTAF account 0410, to McAllister's PC account 7353
9	August 4, 2006	Transfer of \$714,137.65 from COLTAF account 0410, to McAllister's PC account 7353

10	August 17, 2006	Transfer of \$100,000 from McAllister's PC account 7353, to McAllister Properties account 0399
11	August 30, 2006	Transfer of \$204,221 from McAllister's PC account 7353, to RJ McDady account 0226
12	August 30, 2006	Transfer of \$204,221 from RJ McDady account 0226, to McAllister Properties account 0399
13	August 30, 2006	Transfer of \$198,112 from McAllister's PC account 7353, to Whitney- McAllister account 7136
14	August 30, 2006	Transfer of \$198,112 from Whitney McAllister account 7136 to McAllister Properties account 0399
15	August 30, 2006	Transfer of \$210,000.42 from McAllister's PC account 7353, to McAllister Properties account 0399
16	September 8, 2006	Transfer of \$572,522.38 from McAllister Properties 0399, to Whitney McAllister account 7136
17	September 8, 2006	Transfer of \$572,502.38 from Whitney McAllister account 7136, to account of Title America
18	September 8, 2006	Transfer of \$171,500 from Title America to McAllister Properties 0399
19	September 8, 2006	Transfer of \$644,752.02 from Title America to McAllister Properties 0399

**FORFEITURE NOTICE AND ALLEGATION**

23) Upon conviction of the offenses in violation of Title 18, United States Code, Sections 1343, 1957 and 2314, and conspiracy to commit

said offenses, the defendants

**ROBERT T. McALLISTER  
RICHARD C. NEISWONGER  
SHANNON NEISWONGER and  
ELIZABETH WHITNEY**

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) & Title 28 United States Code, Section 2461, any property, real or personal, which constitutes or is derived from proceeds obtained directly or indirectly as a result of such violations; and pursuant to Title 18, United States Code, Section 982(a)(1), and proceeds and property involved in the offense, including, but not limited to:

A. Money Judgment. A sum of money in excess of \$1,000,000, and equal to the amount of proceeds obtained as a result of the violations alleged herein, for which the defendants are jointly and severally liable.

B. In the event any of the foregoing property: i) cannot be located upon the exercise of due diligence; ii) is transferred, sold to, or deposited with, a third party; iii) is placed beyond the jurisdiction of the Court; iv) is substantially diminished in value; or, v) is commingled with other property which cannot be divided without difficulty, as a result of any act or omission of any defendant, the Court shall order the forfeiture of any

other property of the defendants, up to the value of the property and  
proceeds derived.

A TRUE BILL

Ink signature on file in the Clerk's Office  
FOREPERSON

ERIC H. HOLDER, JR.  
ATTORNEY GENERAL OF THE UNITED STATES  
&  
BARRY R. GRISSOM, # 10866  
UNITED STATES ATTORNEY  
DISTRICT OF KANSAS  
barry.grissom@usdoj.gov

by:

s/Richard L. Hathaway  
rich.hathaway@usdoj.gov

&

s/Christine E. Kenney  
christine.kenney@usdoj.gov  
Special Attorneys  
444 SE QUINCY, SUITE 290  
TOPEKA, KS 66683  
Phone: (785) 295-2850  
Fax: (785) 295-2853

INFORMATION SHEET

DEFENDANT: 1. Robert T. McAllister.

YEAR OF BIRTH: 1949.

ADDRESS: Denver, Colorado.

COMPLAINT FILED?  YES  NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT?  YES  NO

OFFENSE: Ct. 1: Conspiracy, 18 U.S.C. §§371 & 1349  
Cts. 2-4: 18 U.S.C. 1343 - Wire Fraud  
Cts. 5-7: 18 U.S.C. 2314 - Interstate Transportation of Converted Money  
Cts. 8-19: 18 U.S.C. 1957 - Money Laundering

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Count 1: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 2-4: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 5-7: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 8-19: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the criminally derived property; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney

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INFORMATION SHEET

DEFENDANT: 2. Richard C. Neiswonger.

YEAR OF BIRTH: 1951.

ADDRESS: Orlando, Florida.

COMPLAINT FILED? \_\_\_\_\_ YES  NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES  NO

OFFENSE: Ct. 1: Conspiracy, 18 U.S.C. §§371 & 1349  
Cts. 2-4: 18 U.S.C. 1343 - Wire Fraud  
Cts. 5-7: 18 U.S.C. 2314 - Interstate Transportation of Converted Money

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Counts 1-4: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Count 5-7: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney  
Special Attorneys - District of Kansas

ESTIMATED TIME OF TRIAL:

over five days

THE GOVERNMENT will not seek detention in this case.

OCDETF case: NO

000179

INFORMATION SHEET

DEFENDANT: 3. Shannon Neiswonger.

YEAR OF BIRTH: 1973.

ADDRESS: Orlando, FL 32836.

COMPLAINT FILED? \_\_\_\_\_ YES  NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES  NO

OFFENSE: Ct. 1: Conspiracy, 18 U.S.C. §§371 & 1349  
Cts. 2-4: 18 U.S.C. 1343 - Wire Fraud  
Cts. 5-7: 18 U.S.C. 2314 - Interstate Transportation of Converted Money

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Counts 1-4: NMT 20 years imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 5 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Count 5-7: NMT 10 years' imprisonment; a fine of NMT the greater of \$250,000 or twice the loss from the offense, or both; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney  
Special Attorneys - District of Kansas

ESTIMATED TIME OF TRIAL:  over five days

THE GOVERNMENT will not seek detention in this case.

OCDETF case: NO

000175

INFORMATION SHEET

DEFENDANT: 4. Elizabeth Whitney.

YEAR OF BIRTH: 1953.

ADDRESS: Denver, Colorado.

COMPLAINT FILED? \_\_\_\_\_ YES X NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES X NO

OFFENSE: Ct. 1: Conspiracy, 18 U.S.C. §371  
Cts. 8-19: 18 U.S.C. 1957 - Money Laundering

LOCATION OF OFFENSE: Denver County, Colorado

PENALTY: Count 1: NMT 5 years imprisonment; a fine of NMT \$250,000 or twice the loss from the offense, or both; NMT 3 years supervised release; \$100 special assessment fee; restitution and forfeiture.

Counts 8-19: NMT 10 years imprisonment; a fine of NMT the greater of \$250,000 or twice the criminally derived property; NMT 3 years' supervised release; \$100 special assessment fee; restitution and forfeiture.

AGENT: Special Agents: Scott Doner and Rob Spivey - FBI; and Tim Chase IRS/CID.

AUTHORIZED BY: Richard L. Hathaway & Christine E. Kenney  
Special Attorneys - District of Kansas

ESTIMATED TIME OF TRIAL: X over five days

THE GOVERNMENT will not seek detention in this case.

OCDETF case: NO

000176

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO  
DISTRICT COURT

CRIMINAL MOTIONS:

DISTRICT JUDGE: B. Lynn Winmill                      DATE:                      July 6, 2011  
DEPUTY CLERK: Lynette Parson                      LOCATION:                      Coeur d'Alene, ID  
REPORTER: Tammy Hohenleitner                      Time:                      9:45 a.m. - 10:30 a.m.

UNITED STATES OF AMERICA v. EDGAR J. STEELE  
CASE No. 10-CR-148-BLW

Counsel for the United States:                      Marc Haws  
Counsel for Defendant:                      Gary Amendola  
Counsel for Cyndi Steele:                      David Hammerquist  
Also present:                      Wesley Hoyt

Hearing on: Substitution of Counsel issue (Doc. 245, Doc. 258)

Judge Winmill addressed Mrs. Steele asking whether she fully understands her rights in allowing Mr. Hoyt to substitute as counsel for the defendant. Judge Winmill also addressed Cyndi Steele's attorney, David Hammerquist.

Defendant and Gary Amendola addressed the Court.

Marc Haws addressed the Court on behalf of the Government.

Ruling: Wesley Hoyt is substituted as counsel of record.

New matters:

Wesley Hoyt motioned the court for a extension of time in which to file the Motion for New Trial to a new date of July 15, 2011. No objection by the Government. Motion is GRANTED. The Motion for New Trial shall be filed with the court by July 15, 2011.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1560 Broadway, Suite 675 Denver, Colorado 80202</p>	<p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;">JUN 06 2011</p> <p style="text-align: center;">PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p>	<p>Case Number:</p> <p style="text-align: center; font-size: 24pt;"><b>11 PDJ 048</b></p>
<p>Respondent: ROBERT T. MCALLISTER</p> <hr/> <p>Katrin Miller Rothgery, #35717 Assistant Regulation Counsel Attorney for Complainant 1560 Broadway, Suite 1800 Denver, Colorado 80202 Telephone: (303) 866-6577 Fax No.: (303) 893-5302</p> <hr/> <p>Robert T. McAllister, #10350 Respondent 5845 W. Mansfield Ave. Unit 259 Denver, CO 80235 Telephone: (303) 478-3287</p>	<p style="text-align: center;"><b>STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT</b></p>

On this 6<sup>th</sup> day of June, 2011, Katrin Miller Rothgery, Assistant Regulation Counsel and attorney for Complainant, and Robert T. McAllister, Respondent, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

**RECOMMENDATION: Disbarment.**

1. Respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on May 30, 1980, and is registered as an attorney upon the official records of this Court, registration no. 10350. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has not become public under the operation of C.R.C.P. 251.31(c) as amended. However, Respondent specifically acknowledges that, if the Presiding Disciplinary Judge should decide to accept this Stipulation, and impose the agreed-to discipline contained herein, then this Stipulation and the discipline imposed will be matters of public record.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent and Complainant stipulate to the following facts and conclusions:

The MNT Matter

a. Respondent represented MNT Enterprises, LLC ("MNT"), in litigation against MNT's insurer.

b. During the course of the litigation, the insurer issued a check to MNT Enterprises, which was characterized by the insurer as a "premium refund." The check was payable to "MNT Enterprises" in the amount of \$5,255.43.

c. The principals of MNT were hesitant to cash the premium refund check, fearing that acceptance of the payment could be viewed as a waiver of their claims against the insurance company. Respondent disagreed that acceptance of the refund could operate as a waiver of any claims. Respondent told MNT he wanted to cash the check to use part of the funds for payment of costs related to the litigation and indicated part of the funds would

also be provided to MNT.

d. After conferring with Respondent, MNT decided not to cash the premium refund check.

e. Thereafter, without discussing the matter further with MNT, Respondent contacted the insurer and asked the insurer to re-issue the check. The second check was payable to "Robert T. McAllister, P.C. and MNT Enterprises" in the amount of \$5,255.43.

f. Respondent endorsed the check "For Deposit Only Robert McAllister" and deposited it into his operating account.

g. Respondent then used the \$5,255.43 for miscellaneous operating expenses.

The Vickery Matter

h. Respondent represented Terry Vickery in various litigation matters between approximately 2000 and 2011, including litigation pending in Jefferson County District Court ("the Jeff Co litigation").

i. In October 2010, Mr. Vickery transferred \$100,000 to Respondent's COLTAF account. These funds were subject to an Order freezing all assets of the Vickerys that was issued by the Jefferson County District Court in September 2010. Respondent represented Mr. Vickery in the Jeff Co litigation and was aware of the September 2010 order.

j. Within a matter of days, Respondent transferred approximately \$80,000 of Mr. Vickery's funds to his operating account and then used the funds to pay a personal creditor.

k. At the same time, Respondent transferred approximately \$20,000 of Mr. Vickery's funds to an account owned by Steamboat Skyglass Lodge, LLC, an entity controlled by Respondent.

l. Respondent did not have authorization from Mr. Vickery to take possession of the \$100,000 and use it for personal expenses.

m. Respondent did not obtain relief from the September 2010 order freezing the Vickerys' assets prior to taking possession of and using the \$100,000.

7. Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 3.4(c)

and 8.4(c).

8. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of \$104.34 (a copy of the statement of costs is attached hereto as **Exhibit A**) incurred in conjunction with this matter within thirty (30) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from the date that the Presiding Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within (30) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

9. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of disbarment may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

10. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witnesses in the matters of the proposed disposition.

#### **PRIOR DISCIPLINE**

11. On November 29, 2004, Respondent received an order of public censure, pursuant to stipulation. A copy of the order and stipulation are attached hereto as **Exhibit B**.

#### **ANALYSIS OF DISCIPLINE**

12. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA Standards"), §3.0, the Court should consider the following factors generally:

a. The duty violated: Respondent violated his duty of honesty to his clients and his duty to preserve his clients' property when he converted his

clients' funds. Respondent also violated his duty to obey the obligations and rules of a tribunal.

b. The lawyer's mental state: knowing.

c. The actual or potential injury caused by the lawyer's misconduct: Respondent's clients were actually injured in that they were deprived of funds that rightfully belonged to them.

d. The existence of aggravating or mitigating factors: Factors in aggravation which are present include: prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; and substantial experience in the practice of law, ABA *Standards* §9.22(a), (b), (c), (d), and (i). Factors in mitigation include: full and free disclosure to the disciplinary board/cooperative attitude toward proceedings and remorse, ABA *Standards* §9.32(e) and (l).

13. Pursuant to ABA *Standard* §4.1, disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. Consistent with the ABA *Standard*, the Colorado Supreme Court has held that in the absence of significant mitigating factors, disbarment is the appropriate sanction for knowing conversion of client funds in violation of Colo. RPC 8.4(c). *In re Haines*, 177 P.3d 1239, 1250 (Colo. 2008). *See also People v. Varallo*, 913 P.2d 1, 10-11 (Colo.1996) (the presumed sanction for knowing conversion of client funds is disbarment, regardless of whether the lawyer intended to permanently deprive the client of those funds); *People v. Lefly*, 902 P.2d 361, 364 (Colo. 1995) (characterizing the imposition of disbarment as "virtually automatic" where an attorney has knowingly converted client funds).

14. Considering all of the factors described above, as applied to this case, disbarment is the appropriate sanction for Respondent's misconduct.

#### **RECOMMENDATION FOR AND CONSENT TO DISCIPLINE**

Based on the foregoing, the parties hereto recommend that Respondent be disbarred. Respondent consents to the imposition of disbarment. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be 31 days after the date of entry of the order.

Robert T. McAllister, Respondent; and Katrin Miller Rothgery, attorney for Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.



Statement of Costs

Robert T. McAllister

11-00128/11-00147

11-00137/11-00951

4/15/2011	Contempt Hearing Mileage/DS	13.34
6/1/2011	Adminstrative Fee	<u>91.00</u>
	<b>Total Due</b>	<b>\$ 104.34</b>



000184

Colorado Supreme Court Attorney Regulation TRAVEL REIMBURSEMENT REQUEST FORM

Payee: [Redacted]

Please Print

Attach receipts for expenditures over \$25

Date MM/DD/YY	Case No.	Purpose (E.g. deposition, training, meeting)	Mileage			Transp. (E.g. payments for airfare, car rental, cab, bus)	Lodging/ parking/ tolls	Meals				Grand Totals
			#	Rate	Total			Breakfast	Lunch	Dinner	Total	
04/15/11	11-00128	Attend contempt hearing <i>MP (Attorney)</i>	29	0.46	\$ 13.34						\$ -	\$ 13.34
			-	0.46	\$ -						\$ -	\$ -
				0.46	\$ -						\$ -	\$ -
				0.46	\$ -						\$ -	\$ -
				0.46	\$ -						\$ -	\$ -
<b>Totals</b>			<b>29</b>	<b>0.46</b>	<b>\$ 13.34</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 13.34</b>

Purpose of Trip(s):	Other Expenditures:	Amount
Attend Respondent's contempt hearing		
<b>Total Reimbursement</b>		<b>\$ 13.34</b>

I certify that the statements in the above schedule are true and just in all respects; that payment of the amounts claimed herein has not and will not be reimbursed to me from any other sources; that travel performed for which reimbursement is claimed was performed by me on State business and that no claims are included for expenses of a personal or political nature or for any other expenses not authorized by fiscal rules; and that I actually incurred or paid the operating expenses of the motor vehicle for which reimbursement is claimed on a mileage basis.

Payee Signature: [Redacted] 4/26/11 Date

Approval Signature: \_\_\_\_\_ Date

Attorney Regulation Counsel

For Accounting Use:						
	52510 General	52511 Trans.	52512 Meals	52513 Mileage	Other	Total
7/16	\$ -	\$ -	\$ -	\$ 13.34	\$ -	\$ 13.34

00-9001

000135

Case: 12-30005 | 04/05/2012 | ID: 8128911 | DktEntry: 44-2 | Page: 9 of 19

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17 <sup>TH</sup> STREET, SUITE 510-S DENVER, CO 80202	<b>RECEIVED</b>  NOV 29 2004  ATTORNEY REGULATION
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO,	Case Number: <b>04PDJ103</b>
<b>Respondent:</b> ROBERT T. McALLISTER.	
<b>ORDER APPROVING CONDITIONAL ADMISSION          AND IMPOSING SANCTIONS</b>	

On November 15, 2004, James S. Sudler, counsel for the People, Joseph M. Elio, Respondent's counsel and Robert T. McAllister, Respondent, have submitted a Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct ("Conditional Admission") for consideration by the Presiding Disciplinary Judge ("PDJ") under C.R.C.P. 251.22. In this Conditional Admission, the Parties waive their right to a hearing under C.R.C.P. 251.22(c).

The PDJ, having reviewed the case file and the Conditional Admission and being fully advised of the issues presented, enters the following Order:

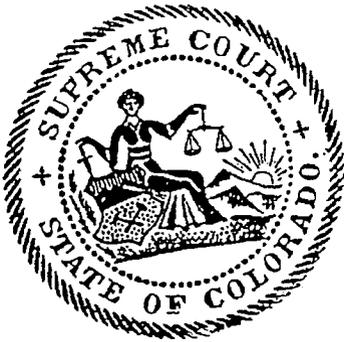
1. The Conditional Admission is accepted and approved.
2. **Robert T. McAllister, Attorney Registration No 10350 is publicly censured** with the following condition:
  - A. The Respondent shall attend and successfully pass the one-day Ethics School sponsored by the Office of Attorney Regulation Counsel within one year of the date of this Order and pay all costs associated therewith. The Respondent shall register and pay the costs of Ethics School within thirty (30) days of the date of this Order.
3. Pursuant to C.R.C.P. 251.32, the Respondent shall pay costs in the amount of \$91.00 incurred in conjunction with this matter within thirty (30) days of the date of this Order, made payable to Colorado Supreme Court Attorney Regulation Offices. Statutory interest shall accrue from the date of this Order. Should Respondent fail to make payment of the



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aforementioned costs and interest within thirty (30) days, Respondent shall be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by the Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge.

**THIS ORDER IS ENTERED THE 29<sup>TH</sup> DAY OF NOVEMBER, 2004.**



  
\_\_\_\_\_  
WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

**Respondent's Counsel**

Joseph M. Elio  
675 Kalamath Street  
Denver, CO 80204

Via First Class Mail

**IRS, Office of Professional Responsibility**

Attn: Rita C. Barnett  
SE: OPR, 1111, Constitutional Ave., N.W.  
Washington, DC 20224

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**United States District Court,  
District of Colorado**

Alfred A. Arraj U.S. Courthouse  
Sabrina Qureshi  
901 19<sup>th</sup> Street, Room A-105  
Denver, CO 80294-3589

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000183

NOV 10 2004

SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE  
BEFORE THE PRESIDING DISCIPLINARY JUDGE  
600 17<sup>th</sup> Street, Suite 510-South  
Denver, Colorado 80202

**FILED**

NOV 15 2004

PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF COLORADO

Complainant:  
THE PEOPLE OF THE STATE OF COLORADO

▲ COURT USE ONLY ▲

Respondent:  
ROBERT T. McALLISTER.

Case Number:

JAMES S. SUDLER, #08019  
Assistant Regulation Counsel  
Attorney for Complainant  
600 17<sup>th</sup> Street, Suite 200-South  
Denver, Colorado 80202  
Telephone: (303) 866-6466  
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04PDJ 103

Joseph M. Elio, #14066  
Attorney for Respondent  
675 Kalamath Street  
Denver, Colorado 80204  
Telephone: (303) 893-8931

**STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE  
RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT**

On this 15<sup>th</sup> day of Nov., 2004, James S. Sudler, Assistant Regulation Counsel and attorney for the complainant, Joseph M. Elio, attorney for respondent, and Robert T. McAllister, the respondent enter into the following stipulation, agreement, and affidavit containing the respondent's conditional admission of misconduct ("stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

**RECOMMENDATION: Public Censure with agreement to attend Ethics School.**

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on May 10, 1980, and is registered as an attorney upon the official records of this court, registration number 10350. The

000189

respondent is subject to the jurisdiction of this court and the Presiding Disciplinary Judge in these proceedings.

2. The respondent enters into this stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is the respondent's personal decision, and the respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has not become public under the operation of C.R.C.P. 251.31 as amended; however, respondent acknowledges that, if the Presiding Disciplinary Judge should decide to impose public discipline upon respondent, this stipulation would thereby become public.

4. The respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. The respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, the respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by the complainant. At any such formal hearing, the complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, the respondent waives that right.

5. The respondent and the complainant stipulate to the following facts and conclusions:

a. Linda Baker sued respondent McAllister in U.S. District Court in Denver.

b. Ms. Baker alleged that in 1996 respondent McAllister hired her as a consultant in a case he was going to file against three companies. Those companies had allegedly polluted the ground water in Casper, Wyoming.

c. In March 1996 respondent McAllister sent a letter to Ms. Baker about hiring her as a consultant. Respondent McAllister stated in his letter that he would compensate Ms. Baker for her past work as well as future work.

d. Ms. Baker had educated herself about ground water pollution in the Casper area. She and respondent McAllister had met during

an earlier case. She was well known in the area. She is not professionally trained.

e. In 1996, respondent McAllister on behalf of clients sued three companies. Eventually after much work and litigation, the case settled and respondent McAllister received his attorney fees.

f. After some correspondence, respondent McAllister received a bill from Ms. Baker for her services on April 15, 1997. Her total bill was about \$158,000 that included primarily time and work she had done before respondent McAllister hired her. According to respondent McAllister, she was asked to document her work, but she never did so. During the time she was working on the case in 1996, she communicated more with a partner of respondent, Brad Holmes rather than with respondent McAllister. During 1996, Ms. Baker sent letters to the firm on about a monthly basis stating what her total hours had been and what her costs were. The firm did reimburse her monthly for her costs.

g. Respondent McAllister thought that Ms. Baker's bill was a joke because of the size of the bill and the lack of documentation. He did not think that Ms. Baker had added anything to the case. He discussed with co-counsel whether they should pay Ms. Baker. Respondent McAllister decided not to pay her.

h. Ms. Baker sued respondent McAllister and his firm McAllister and Murphy, P.C. The jury answered specific interrogatories. The jury found that Ms. Baker had performed work under the March 6, 1996, contract; that the firm had failed to compensate her; that by clear and convincing evidence respondent McAllister had knowingly made a false representation of material fact to Ms. Baker to induce her to take action; and that Ms. Baker had believed the misrepresentation. The jury awarded damages against the firm of \$158,720. The jury awarded \$100,000 against respondent McAllister but the judge later reduced that to about \$32,000.

i. The respondent stated that he objected to paying Ms. Baker because she never provided detail as to what she did for the case.

JSS  
TME  
- 5  
j. There are two judgments in this case, one against the respondent personally for about \$35,000 and the other against his firm for about ~~\$158,000~~<sup>\$139,000</sup>. Respondent McAllister has paid the judgment against him. Respondent McAllister's firm, of which there are two shareholders, has paid ~~\$130,000~~ to settle the judgment against the firm.

k. Through the respondent's conduct described above, the respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. The respondent has also violated Colo. RPC 8.4(c).

7. Pursuant to C.R.C.P. 251.32, the respondent agrees to pay costs in the amount of \$91 incurred in conjunction with this matter within thirty (30) days after acceptance of the stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. The respondent agrees that statutory interest shall accrue from the date that the Presiding Disciplinary Judge accepts this stipulation. Should the respondent fail to make payment of the aforementioned costs and interest within (30) days, the respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by the complainant in collecting the above stated amount. The complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the stipulation and the respondent's default on the payment.

8. This stipulation is premised and conditioned that it will be accepted by the Presiding Disciplinary Judge. If for any reason the stipulation is not accepted without changes or modification, then the admissions, confessions, and stipulations made by the respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, stipulation, or other statement made by the respondent in conjunction with this offer to accept discipline of a public censure may be subsequently used. If the stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

#### **PRIOR DISCIPLINE**

None.

#### **ANALYSIS OF DISCIPLINE**

Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA Standards"), §3.0, the Court should consider the following factors generally:

- a. The duty violated: Colo. RPC 8.4(c).
- b. The lawyer's mental state: knowing.

c. The actual or potential injury caused by the lawyer's misconduct: Ms. Baker had to sue respondent in court to be made whole.

d. The existence of aggravating or mitigating factors: Factors in aggravation which are present include: substantial experience in the practice of law, ABA Standards §9.22(i). Factors in mitigation include: absence of prior discipline; cooperative attitude; reputation; imposition of other penalties; and remorse. ABA Standards §9.32(a), (e), (g), (k) and (l).

Pursuant to ABA Standard §7.2, suspension could be considered to be appropriate in this case. That standard states: suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client the public or the legal system. In this case however, the respondent has never been disciplined and has rectified the consequences of his misconduct. Therefore, the complainant believes that public censure rather than a stayed suspension is appropriate. Additionally, in contrast to some other cases, there is no need for monitoring of the respondent requiring a period of probation.

Considering all of the factors described above, as applied to this case, public censure is appropriate.

### **CONDITIONS**

a. The respondent shall attend and successfully pass the one-day Ethics School sponsored by the Office of Attorney Regulation Counsel within one year of the date this stipulation is approved and pay all costs associated therewith. The respondent shall register and pay the costs of Ethics School within thirty (30) days of the date this stipulation is approved. Attendance at ethics school will count as 8 general CLE credits, including 7 ethics credits. The respondent may register for the class on-line at [www.coloradosupremecourt.com](http://www.coloradosupremecourt.com), "Diversion Ethics School." Instructions for registering are on the registration form, or are available by e-mail to [p.panfil@arc.state.co.us](mailto:p.panfil@arc.state.co.us).

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO  <b>Respondent:</b> ROBERT T. MCALLISTER	Case Number: <b>11PDJ048</b>
<b>ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT          AND IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.22</b>	

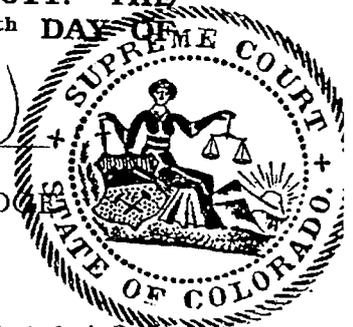
This matter is before the Presiding Disciplinary Judge ("the Court") on a "Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct" filed by Katrin Miller Rothgery, Office of Attorney Regulation Counsel ("the People"), and Robert T. McAllister ("Respondent") on June 6, 2011. In this stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).

The Court, having reviewed the stipulation and being fully advised of the issues presented, **ORDERS** the following:

1. The stipulation is accepted and approved.
2. **ROBERT T. MCALLISTER, Attorney Registration No. 10350, is DISBARRED from the practice of law.**
3. Pursuant to C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of \$104.34 within thirty days of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Offices. Statutory interest shall accrue from the date of this order. Should Respondent fail to pay the aforementioned costs and interest within thirty days, Respondent shall be responsible for all additional costs and expenses, including reasonable attorney's fees, incurred by the People in collecting the above-stated amount. The People may amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

**THIS ORDER IS ENTERED THE 7<sup>th</sup> DAY OF JUNE, 2011. THE EFFECTIVE DATE OF THE DISBARMENT IS THE 8<sup>th</sup> DAY OF JULY, 2011.**

*William R. Lucero*  
 WILLIAM R. LUCERO  
 PRESIDING DISCIPLINARY JUDGE



000194

**Respondent**

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5845 W. Mansfield Ave., Unit 259  
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District of Colorado**

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Executive Office of Immigration Review**

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**IRS, Office of Professional Responsibility**

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Washington, DC 20224

Via First Class Mail

000195

**PROOF OF SERVICE BY MAIL -- 1013(a), 2015.5 C.C.P.**

**Re: *United States v. Steele* No. 12-30005**

I am a citizen of the United States; my business address is 523 Octavia Street, San Francisco, California 94102. I am employed in the City and County of San Francisco, where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the within:

**EXCERPTS OF RECORD VOLUMES II OF III**

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

D. Marc Haws  
Traci J. Whelan  
Assistant U. S. Attorneys  
District of Idaho  
800 Park Boulevard, Suite 600  
Boise, ID 83712-9903

**BY MAIL:** By depositing said envelope, with postage thereon fully prepaid, in the United States mail in San Francisco, California, addressed to said party(ies);  
 **BY PERSONAL SERVICE:** By causing said envelope to be personally served on said party(ies), as follows:  **FEDEX**  **HAND DELIVERY**

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on October 1, 2012 at San Francisco, California.

  
\_\_\_\_\_  
Jocilene Yue

**No. 12-30005**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EDGAR J. STEELE.

Defendant-Appellant.

---

Appeal From The Idaho District Court  
No. CR 10-00148 BLW

---

**EXCERPTS OF RECORD - III OF III**

---

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Donald M. Horgan (SBN 121547)  
Riordan & Horgan  
523 Octavia Street  
San Francisco, CA 94102  
Telephone: (415) 431-3472

Attorneys for Defendant-Appellant  
EDGAR J. STEELE

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1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

2

3

UNITED STATES OF AMERICA,

4

Plaintiff,

5

vs.

6

EDGAR J. STEELE,

7

Defendant.

8

9

10

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13

REPORTER'S TRANSCRIPT OF PROCEEDINGS

14

before B. Lynn Winmill, Chief District Judge

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Volume 8

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May 5, 2011

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**Tamara I. Hohenleitner**

23

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Federal Certified Realtime Reporter

United States Courts, District of Idaho

550 West Fort Street, Boise, Idaho 83724 (208) 334-1500

PROCEEDINGS

Thursday, May 5, 2011

(Jury resumes deliberations.)

(Jury absent.)

JURY QUESTION

THE COURT: I'll repeat what I just said.

Upon receiving the jury's note, which says, "Can we please have the word," quote, "caused," closed quote, "defined further as written and used in Count 1 of the charges," quote, "'beginning on or about," ellipsis, "caused another to travel in interstate commerce," ellipsis, closed quote, signed by a juror, presumably the foreperson; I propose to respond as follows:

"As to Count 1, the defendant," quote, "'caused another to travel in interstate commerce,'" closed quote, "if the other individual traveled in interstate commerce and would not have done so but for the defendant's conduct."

I have opted to instruct in this way because the word "cause," as we have researched this further, is not a word of common parlance. It's a word of -- it's a legal term, and the cases are quite uniform in suggesting that what is meant

by the statute is but-for causation, not legal or proximate causation.

The notion is that if you set -- if you set in motion a chain of events with the intent that a murder be committed and those chain of events result in the interstate commerce facility being used, that that satisfies the jurisdictional requirement of the statute. And we have got cases, I think, from a number of circuits so holding, and some district courts, as well.

I'm not absolutely sure that's what the jury is hung up on. I guess we may get another note if that's not their concern. But it strikes me that there was a shortcoming in our instructions not to define causation, since that is a -- not a term of general parlance or common parlance but, rather, a legal term.

And so, for that reason, I have opted to instruct in this fashion. So I'll hear any objections you have for the record.

MS. WHELAN: No. Thank you, Your Honor.

THE COURT: Excuse me?

MR. HAWS: No objection.

MS. WHELAN: No objection.

THE COURT: From the defense?

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MR. McALLISTER: Yes, Your Honor. The defense objects to that instruction. The very problem is highlighted by the fact that since 9:20 or since the question was presented, both the government has its interpretation, the defense has its interpretation, and the court, I think, has very diligently researched it, as well.

But what we have found under Ninth Circuit law is that the court should state to them, "Under our law, you must consider the instructions provided as a whole, and I am unable to provide you with any further instructions or definitions."

And we base that upon the decision in United States versus Alvarez-Valenzuela, 231 F.3d. 1198 at 1202, Ninth Circuit 2000; United States versus Ramirez, 537 F.3d. 1075 at 1080 and 1081, Ninth Circuit 2008; United States versus Perez, P-E-R-E-Z, 11 -- excuse me -- 116 F.3d. 840 at pages 844 and 845, Ninth Circuit 1997.

We believe that the law of the circuit is that the court should tell the jury to rely on the previous instructions. And the reason that is is because, as the court knows, both sides are entitled to submit instructions. The burden is on

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the government to prove their case, and they did not submit several instructions regarding interstate commerce, about the word "cause," and about other topics.

And the defense, you know, I think objected to one instruction -- one or two instructions that the court decided to give. And otherwise, as the case law says, the parties accepted the instructions, and it seems -- it seems that the Ninth Circuit has held, once they do that, the court shouldn't give them any further instructions.

THE COURT: All right. I'll note that. I'm going to actually review those cases. Unless I'm persuaded that the court cannot provide definitional instructions after the jury begins its deliberations, I'm going to go ahead and send this in.

I'll notify you if I change my mind. But unless I notify you otherwise, I do intend to go ahead and send this in to the jury. But I want to review the cases you have cited. I have not -- often that is exactly what we do if we think they're just not looking at the instructions hard enough. But if it appears there is some

1 definitional problem that needed to be clarified  
 2 for the jury, then I think it is proper for the  
 3 court to rectify that problem.  
 4 But I'll look at the authority you've  
 5 cited to make sure that we're not precluded from  
 6 doing so. If we're precluded, then, of course, if  
 7 the case law is clear to that effect, then I'll  
 8 probably do exactly what Mr. McAllister suggested  
 9 here.  
 10 All right. Thank you, Counsel.  
 11 MR. AMENDOLA: Judge, may I bring up one  
 12 other quick issue?  
 13 THE COURT: Yes.  
 14 MR. AMENDOLA: Would the court have any  
 15 problem if -- depending on what happens, I might  
 16 want to leave.  
 17 THE COURT: Sure. As long as one attorney  
 18 is here, I don't --  
 19 MR. AMENDOLA: But I'm typically supposed to  
 20 be here, as well.  
 21 THE COURT: As pro hac vice, yeah.  
 22 MR. AMENDOLA: If that's okay, if I need to  
 23 leave, he can take --  
 24 THE COURT: No problem.  
 25 MR. AMENDOLA: Thank you.

1 THE CLERK: "United States of America versus  
 2 Edgar J. Steele. We, the jury, find unanimously  
 3 as follows:  
 4 "As to Count 1 of the indictment  
 5 charging the defendant, Edgar J. Steele, with use  
 6 of interstate commerce facilities in commission of  
 7 murder for hire, in violation of 18 U.S. Code  
 8 Section 1958, between on or about December 2009  
 9 and June 11th, 2010, defendant is guilty.  
 10 "As to Count 2 of the indictment  
 11 charging the defendant, Edgar J. Steele, with  
 12 aiding and abetting use of explosive material to  
 13 commit a federal felony in violation of 18 U.S.  
 14 Code section 844(h), between on or about May 27th,  
 15 2010, and May 31st, 2010, the defendant is guilty.  
 16 "As to Count 3 of the indictment  
 17 charging the defendant, Edgar J. Steele, with  
 18 aiding and abetting possession of a destructive  
 19 device in relation to a crime of violence in  
 20 violation of 18 U.S. Code section 924(c)(1)(B)(ii)  
 21 between on or about May 27th, 2010, and May 31st,  
 22 2010, the defendant is guilty.  
 23 "As to Count 4 of the indictment  
 24 charging the defendant, Edgar J. Steele, with  
 25 tampering with a victim in violation of 18 U.S.

1 (Recess.)  
 2 (Jury present.)  
 3 THE CLERK: The court will now hear day  
 4 eight of jury trial in Criminal Case 10-148-N-BLW,  
 5 United States of America versus Edgar Steele.  
 6 THE COURT: I would note for the record that  
 7 the jury has advised the court they have reached a  
 8 verdict in this matter.  
 9 Ms. Schroeder, you're the foreperson.  
 10 Is that correct?  
 11 JUROR: Yes.  
 12 THE COURT: Has the jury reached a unanimous  
 13 verdict?  
 14 JUROR: We have.  
 15 THE COURT: Would you hand that to  
 16 Mr. Severson so I can examine it?  
 17 All right. Ladies and gentleman, I'm  
 18 going to have the verdict published by having it  
 19 read by Ms. Gearhart. I would ask you to listen  
 20 very carefully as the verdict is read to ensure  
 21 that it conforms with your individual verdict in  
 22 all respects.  
 23 Ms. Gearhart.  
 24 I'll ask the defendant to please stand.  
 25 JURY VERDICT

1 Code section 1512(b)(3) between on or about June  
 2 11th, 2010, and June 16th, 2010, the defendant is  
 3 guilty.  
 4 "Signed by the foreperson, dated May  
 5 5th, 2011."  
 6 THE COURT: Ladies and gentleman of the  
 7 jury, is this your verdict, so say you one, so say  
 8 you all?  
 9 (Jury affirms.)  
 10 THE COURT: Counsel, do you wish to have the  
 11 jury polled?  
 12 MR. McALLISTER: No, Your Honor.  
 13 THE COURT: The government?  
 14 MR. HAWS: No.  
 15 THE COURT: All right. You can go ahead and  
 16 be seated, Mr. Steele.  
 17 Ladies and gentleman, I'm going to  
 18 direct the clerk to file and record the verdict.  
 19 I'm going to read to you my final instruction.  
 20 CLOSING JURY INSTRUCTION  
 21 THE COURT: You have now completed your  
 22 duties as jurors in this case and are discharged  
 23 with the sincere thanks of this court. The  
 24 question may arise as to whether you may discuss  
 25 the case with the attorneys or with anyone else.

1 For your guidance, the court instructs you that  
2 whether you talk to the attorneys or to anyone  
3 else is entirely your own decision. It is proper  
4 for you to discuss this case if you want to, but  
5 you are not required to do so, and you may choose  
6 not to discuss the case with anyone at all.

7 If you choose to talk to someone about  
8 this case, you may tell them as much or as little  
9 as you like about your deliberations or the facts  
10 that influenced your decisions.

11 If anyone persists in discussing the  
12 case over your objection or becomes critical of  
13 your service, either before or after any  
14 discussion has begun, you may report it to me. Of  
15 course, I would take appropriate action.

16 Let me indicate that I will schedule  
17 sentencing in this matter for August 22nd, 2011,  
18 in Coeur d'Alene at 9:00 a.m. I'll order a  
19 presentence report, which will be due on July  
20 18th, 2011.

21 Counsel will have 14 days under Rule 16  
22 of the Federal Rules of Criminal Procedure to file  
23 their objections. Those must be filed by August  
24 1st, 2011. And then the final report will be due  
25 to court and counsel by August 15th, 2011.

1 I assume that the government seeks to  
2 detain the defendant pending sentencing?

3 MS. WHELAN: Yes, Your Honor.

4 THE COURT: All right. I will order the  
5 defendant's continued detention pending sentencing  
6 in this matter.

7 Counsel, is there anything else to come  
8 before the court?

9 MR. HAWS: Nothing from the United States,  
10 Your Honor.

11 THE COURT: Mr. McAllister?

12 MR. McALLISTER: No, Your Honor.

13 THE COURT: If there is nothing else to come  
14 before the court, we will be adjourned.

15 (Proceedings concluded at 12:40 p.m.)  
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R E P O R T E R ' S C E R T I F I C A T E

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I, T a m a r a I. H o h e n l e i t n e r, O f f i c i a l  
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c e r t i f y :

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T h a t t h e f o r e g o i n g t r a n s c r i p t c o n t a i n s a  
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T a m a r a I. H o h e n l e i t n e r  
O f f i c i a l C o u r t R e p o r t e r  
C S R N o. 6 1 9

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

2 ----- x

3 UNITED STATES OF AMERICA, : Case No. 10-00148-N-BLW

4 Plaintiff, : JURY TRIAL

5 vs. :

6 EDGAR J. STEELE, :

7 Defendant. :

8 ----- x

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 before B. Lynn Winmill, Chief District Judge

15

16 Volume 7

17

18 May 4, 2011

19

20 Pages 1382 to 1562

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23 **Tamara I. Hohenleitner**

24 Idaho Certified Shorthand Reporter No. 619

25 Registered Professional Reporter

Certified Realtime Reporter

Federal Certified Realtime Reporter

United States Courts, District of Idaho  
550 West Fort Street, Boise, Idaho 83724 (208) 334-1500

1 A. Nothing that I drew for Larry is on  
 2 that.  
 3 Q. This is just something you made for  
 4 defense counsel?  
 5 A. Yes.  
 6 Q. Because they asked you to?  
 7 A. Yeah, to give an idea of what I drew.  
 8 Q. And nowhere on this picture do you show  
 9 a Graybar Motel or anything like that, do you?  
 10 A. Not in that one.  
 11 MS. WHELAN: Nothing else, Your Honor.  
 12 THE COURT: Recross?  
 13 MR. AMENDOLA: No, Your Honor.  
 14 THE COURT: I mean, redirect.  
 15 All right. You may step down.  
 16 Call your next witness.  
 17 MR. McALLISTER: Your Honor, this would be a  
 18 good break. I know it's a little early.  
 19 THE COURT: Ladies and gentleman, as we're  
 20 getting closer to the end of the case -- of  
 21 course, I'd better not say anything for sure, but  
 22 I think there is at least some chance we'll have  
 23 the evidence all submitted today. It becomes  
 24 necessary to take various breaks for reasons that  
 25 we need to discuss things with counsel and to give

1 MS. WHELAN: Yes.  
 2 THE COURT: All right. Ladies and  
 3 gentleman, the evidence now has been presented to  
 4 you. I need to confer with counsel and see how  
 5 quickly we can put together instructions. And we  
 6 may still try to argue and instruct today. I  
 7 think we probably will, but I'm going to confer  
 8 with counsel.  
 9 So probably within a half an hour,  
 10 maybe 15 minutes, we'll be in to visit with you  
 11 and advise you as to our schedule. If there are a  
 12 lot of issues we still have to address, it's  
 13 possible we'll have you come back tomorrow  
 14 morning.  
 15 But I think, more likely, it might  
 16 be -- well, maybe I won't say at this point until  
 17 I have a chance to confer with counsel.  
 18 You are still subject to the same  
 19 admonition of the court not to discuss the case  
 20 among yourselves or with anyone else and not to  
 21 form or express any opinions about the case until  
 22 it is submitted to you.  
 23 And, again, even though you've heard  
 24 all the evidence, you have not had the benefit of  
 25 my instructions as to the law, nor have you heard

1 counsel a chance to confer among themselves. So  
 2 today will be kind of broken up in bits and  
 3 pieces, so don't take anything from that.  
 4 I do want to again admonish you,  
 5 however, not to discuss the case among yourselves  
 6 or with anyone else and not to form or express any  
 7 opinion about the case until it is submitted to  
 8 you. And, as always, continue to follow the  
 9 court's extended admonition concerning juror  
 10 contact -- excuse me -- juror conduct.  
 11 We'll be in recess until -- well, for  
 12 about 15 minutes.  
 13 (Recess.)  
 14 (Jury present.)  
 15 THE COURT: For the record, I'll note that  
 16 the jurors are present.  
 17 Mr. McAllister?  
 18 MR. McALLISTER: The defense rests,  
 19 Your Honor.  
 20 DEFENSE RESTS  
 21 THE COURT: Ms. Whelan, are you ready with  
 22 any rebuttal?  
 23 MS. WHELAN: Your Honor, we have no other --  
 24 we have no --  
 25 THE COURT: No rebuttal evidence?

1 the closing arguments of counsel.  
 2 Until the case is fully submitted to  
 3 you and you're advised that you can begin your  
 4 deliberations, you must continue to follow the  
 5 court's admonition about not discussing the case  
 6 among yourselves or with anyone else and not  
 7 forming or expressing any opinions about the case  
 8 until it has fully been submitted to you.  
 9 So we'll be in recess until further  
 10 call.  
 11 (Jury absent.)  
 12 JURY INSTRUCTION CONFERENCE  
 13 THE COURT: For the record, this is the time  
 14 for the instruction conference -- formal  
 15 instruction conference.  
 16 I will note that the court provided  
 17 counsel with a set of proposed instructions  
 18 yesterday for their review and comment. We met  
 19 informally here roughly an hour ago, maybe hour  
 20 and a half ago, to go over instructions. I heard  
 21 objections, made some changes at the request of  
 22 counsel, those that I agreed with.  
 23 And this is -- Counsel, I would note  
 24 this is your opportunity to state your objections  
 25 for the record. Any objections that were stated

1 during our informal session will not be preserved  
2 unless you restate them here during our formal  
3 instruction conference.

4 I did want to make just one note. And  
5 that is, with regard to Instruction No. 2, the  
6 court had originally proposed giving the newer  
7 model Ninth Circuit instruction; but at the  
8 request of the defendant, we -- I gave, instead,  
9 the older version, which reads, quote, "A  
10 defendant in a criminal case has a constitutional  
11 right not to testify. No presumption of guilt may  
12 be raised and no inference of any kind may be  
13 drawn from the fact that the defendant did not  
14 testify."

15 The newer version is not remarkably  
16 different, except the word "guilt" does not appear  
17 in that instruction. So I just wanted to note it  
18 for the record that that change was made at the  
19 request of the defense.

20 So at this time, Counsel, I'll hear  
21 your formal objections. Ms. Whelan?

22 MS. WHELAN: Your Honor, the court made all  
23 of the concerns -- or all of the changes the  
24 United States was concerned with with the  
25 exception of Instruction 8. We had requested that

1 No. 2, we -- I'm sorry -- No. 3, we object to the  
2 language that is basically the model Ninth Circuit  
3 instruction.

4 We believe that after the first  
5 sentence, which reads, "Proof beyond a reasonable  
6 doubt is proof that leaves you firmly convinced  
7 the defendant is guilty," it seems to us that that  
8 is more of a clear and convincing standard and a  
9 watered down standard of reasonable doubt than has  
10 been given in years past, and we object to it.

11 I believe to help -- I believe that the  
12 following language should be added after the first  
13 sentence of that instruction, and that language is  
14 as follows:

15 "For a juror to be firmly convinced,  
16 that juror must be convinced to a degree that  
17 would justify taking action in what are the  
18 person's most important affairs of his or her  
19 life."

20 THE COURT: All right. Any other  
21 objections?

22 MR. AMENDOLA: Not to the instructions,  
23 Your Honor, but to the special verdict form.  
24 There are four questions which follow the four  
25 counts of the indictment. And at the end, the

1 "favored treatment" be changed to "consideration."

2 That is our only objection. Thank you,  
3 Your Honor.

4 THE COURT: All right. I'm going to stand  
5 by -- that is the standard language from the Ninth  
6 Circuit model instruction. We had discussed the  
7 possibility of including what the possible favored  
8 treatment was, including charging decisions,  
9 recommendations at sentencing, and then the travel  
10 money that was provided by the FBI, but concluded  
11 that that simply complicated the instruction  
12 unnecessarily and that we'd just stay with the  
13 standard language and simply say "consideration."

14 I think the model instruction provides  
15 for compensation in those situations in which a  
16 witness is actually paid by the government, which  
17 does occur primarily in drug trafficking cases  
18 where confidential informants are sometimes  
19 actually compensated. But that -- obviously,  
20 there was none of that -- nothing like that  
21 occurred here except the testimony about the  
22 payment of expenses.

23 So I'll overrule that objection.

24 Mr. Amendola, your objections?

25 MR. AMENDOLA: Your Honor, Instruction

1 jury is asked to either vote guilty or not guilty.

2 The "guilty" is on the left-hand side  
3 and is basically the first choice. I believe that  
4 they should be reversed and "not guilty" should be  
5 the first choice; "guilty," the second.

6 THE COURT: All right. I'll overrule those  
7 objections. The reasonable doubt instruction that  
8 I am going to give is the model Ninth Circuit  
9 instruction. It has been approved by the Ninth  
10 Circuit, both by way of -- well, by way of  
11 committee and, I think, by way of the Judicial  
12 Council of the Ninth Circuit.

13 I am a true believer that reasonable  
14 doubt should be instructed once, plainly, simply,  
15 and clearly; and that the more we add, the more  
16 potential we create for confusion with the jury.  
17 And I think, under these circumstances, simply  
18 giving the model Ninth Circuit instruction is the  
19 right approach.

20 With regard to the verdict form, I  
21 don't think it creates any kind of presumption.  
22 They're simply going to have to fill out one left  
23 or right, guilty or not guilty, and I don't think  
24 it creates any presumption or direction to the  
25 jury. It's almost more in alphabetical order, as

1 much as anything else. And so I'm going to leave  
 2 that verdict form as is.  
 3 So, Counsel, with that, then, I think  
 4 we will go ahead and instruct in that fashion.  
 5 Mr. Haws, I understood there was a  
 6 concern you were waiting for something. Has that  
 7 arrived?  
 8 MR. HAWS: Yes, Your Honor. Because we just  
 9 finished with the jury instructions about -- I  
 10 don't know -- 11:30 or quarter to 12:00, we used  
 11 those jury instructions -- portions of those jury  
 12 instructions that had a change in them and had to  
 13 make an enlargement for use during the closing.  
 14 Ms. Rocca, we believe, has made that  
 15 and is on her way back, we hope, but we would like  
 16 to have those enlargements made for closing  
 17 argument.  
 18 THE COURT: All right. Have you been able  
 19 to contact her by phone? I'm willing to wait ten  
 20 minutes; but if it's much longer than that, we're  
 21 going to have to go to plan B.  
 22 MR. McALLISTER: I understand, Your Honor.  
 23 I appreciate the consideration.  
 24 THE COURT: I'm sorry. It looks like maybe  
 25 she is out in the hallway.

1 Let's take a very short recess, and  
 2 then please let Mr. Severson know the moment  
 3 you're ready to proceed, because the jury is ready  
 4 to go. And on the assumption that you're going to  
 5 take, roughly, an hour to 45 minutes each in your  
 6 closing, I didn't want the jury to be waiting too  
 7 long. So let's try to get started as soon as we  
 8 can.  
 9 We'll be in recess.  
 10 (Recess.)  
 11 (Jury present.)  
 12 THE COURT: For the record, I'll note that  
 13 all jurors are present. I'll further note that  
 14 the court has conducted an instruction conference  
 15 with counsel and determined how to charge the  
 16 jury.  
 17 You have been provided -- I think on  
 18 your seats were a set of the court's proposed --  
 19 not proposed -- the court's instructions. You may  
 20 follow along with me as I read my instructions to  
 21 you.  
 22 INSTRUCTIONS TO THE JURY  
 23 THE COURT: Members of the jury, now that  
 24 you have heard all the evidence, it is my duty to  
 25 instruct you on the law that applies to this case.

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 1 It is your duty to weigh and to evaluate all of  
 2 the evidence received in the case and, in that  
 3 process, to decide the facts.  
 4 It is also your duty to apply the law  
 5 as I give it to you to the facts as you find them  
 6 whether you agree with the law or not. You must  
 7 decide the case solely on the evidence and the law  
 8 and must not be influenced by any personal likes  
 9 or dislikes, opinions, prejudices, or sympathy.  
 10 You will recall that you took an oath  
 11 promising to do so at the beginning of the case.  
 12 You must follow all of these  
 13 instructions and not single out some and ignore  
 14 others; they are all equally important. Please do  
 15 not read into these instructions or into anything  
 16 I may have said or done any suggestion as to what  
 17 verdict you should return. That is a matter  
 18 entirely up to you.  
 19 A defendant in a criminal case has a  
 20 constitutional right not to testify. No  
 21 presumption of guilt may be raised and no  
 22 inference of any kind may be drawn from the fact  
 23 that the defendant did not testify.  
 24 Proof beyond a reasonable doubt is  
 25 proof that leaves you firmly convinced the

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 1 defendant is guilty. It is not required that the  
 2 government prove guilt beyond all possible doubt.  
 3 A reasonable doubt is a doubt based  
 4 upon reason and common sense and is not based  
 5 purely on speculation. It may arise from a  
 6 careful and impartial consideration of all the  
 7 evidence or from lack of evidence.  
 8 If, after a careful and impartial  
 9 consideration of all the evidence, you are not  
 10 convinced beyond a reasonable doubt that the  
 11 defendant is guilty, it is your duty to find the  
 12 defendant not guilty.  
 13 On the other hand, if, after a careful  
 14 and impartial consideration of all of the  
 15 evidence, you are convinced beyond a reasonable  
 16 doubt that the defendant is guilty, it is your  
 17 duty to find the defendant guilty.  
 18 The evidence you are to consider in  
 19 deciding what the facts are consists of: first,  
 20 the sworn testimony of any witness; second, the  
 21 exhibits received in evidence; and, third, any  
 22 facts to which the parties have agreed.  
 23 In reaching your verdict, you may  
 24 consider only the testimony and exhibits received  
 25 in evidence. The following things are not

1 evidence, and you may not consider them in  
 2 deciding what the facts are:  
 3 First: Questions, statements,  
 4 objections, and arguments by the lawyers are not  
 5 evidence. The lawyers are not witnesses.  
 6 Although you must consider a lawyer's questions to  
 7 understand the answers of a witness, the lawyers'  
 8 questions are not evidence.  
 9 Similarly, what the lawyers have said  
 10 in their opening statements, will say in their  
 11 closing arguments, and at other times is intended  
 12 to help you interpret the evidence, but it is not  
 13 evidence. If the facts as you remember them  
 14 differ from the way the lawyers state them, your  
 15 memory of them controls.  
 16 Second: Any testimony that I have  
 17 excluded, stricken, or instructed you to disregard  
 18 is not evidence. In addition, some evidence was  
 19 received only for a limited purpose. When I have  
 20 instructed you to consider certain evidence in a  
 21 limited way, you must do so.  
 22 Third: Anything that you may have seen  
 23 or heard when the court was not in session is not  
 24 evidence. You are to decide the case solely on  
 25 the evidence received at the trial.

1 witness, you may take into account: First, the  
 2 witness's opportunity and ability to see or hear  
 3 or know the things testified to; second, the  
 4 witness's memory; third, the witness's manner  
 5 while testifying; fourth, the witness's interest  
 6 in the outcome of the case, if any; fifth, the  
 7 witness's bias or prejudice, if any; sixth,  
 8 whether other evidence contradicted the witness's  
 9 testimony; seventh, the reasonableness of the  
 10 witness's testimony in light of all the evidence;  
 11 and, eighth, any other factors that bear on  
 12 believability.  
 13 The weight of the evidence as to a fact  
 14 does not necessarily depend on the number of  
 15 witnesses who testify. What is important is how  
 16 believable the witnesses were and how much weight  
 17 you think their testimony deserves.  
 18 You have heard testimony from Larry  
 19 Fairfax, a witness who admitted being an  
 20 accomplice to the crimes charged. An accomplice  
 21 is one who voluntarily and intentionally joins  
 22 with another person in committing a crime.  
 23 Larry Fairfax also pleaded guilty to a  
 24 crime arising out of the same events for which the  
 25 defendant is on trial. This guilty plea is not

1 Evidence may be direct or  
 2 circumstantial. Direct evidence is direct proof  
 3 of a fact, such as testimony by a witness about  
 4 what that witness personally saw or heard or did.  
 5 Circumstantial evidence is indirect evidence; that  
 6 is, it is proof of one or more facts from which  
 7 you could find another fact.  
 8 You may recall that on the first day of  
 9 trial, I gave you an example of the difference  
 10 between direct and circumstantial evidence using,  
 11 hypothetically, a rainfall and how that might be  
 12 viewed as both direct evidence or circumstantial  
 13 evidence.  
 14 You are to consider both direct and  
 15 circumstantial evidence. Either can be used to  
 16 prove any fact. The law makes no distinction  
 17 between the weight to be given to either direct or  
 18 circumstantial evidence. It is for you to decide  
 19 how much weight to give to any evidence.  
 20 In deciding the facts in this case, you  
 21 may have to decide which testimony to believe and  
 22 which testimony not to believe. You may believe  
 23 everything a witness says or part of it or none of  
 24 it.  
 25 In considering the testimony of any

1 evidence against the defendant, and you may  
 2 consider it only in determining this witness's  
 3 believability.  
 4 Larry Fairfax also received favored  
 5 treatment from the government in connection with  
 6 this case.  
 7 For these reasons, in evaluating the  
 8 testimony of Larry Fairfax, you should consider  
 9 the extent to which or whether his testimony may  
 10 have been influenced by any of these factors. In  
 11 addition, you should examine the testimony of  
 12 Larry Fairfax with greater caution than that of  
 13 other witnesses.  
 14 You have heard testimony from persons  
 15 who, because of education or experience, were  
 16 permitted to state opinions and reasons for their  
 17 opinions. Such testimony should be judged just  
 18 like any other testimony. You may accept it or  
 19 reject it and give it as much weight as you think  
 20 it deserves, considering the witness's education  
 21 and experience, the reasons given for the opinion,  
 22 and all the other evidence in the case.  
 23 The defendant is charged in Count 1 of  
 24 the indictment with use of interstate commerce  
 25 facilities in the commission of murder for hire in

1 violation of 18 U.S. Code, Section 1958.  
2 In order for the defendant to be found  
3 guilty of that charge, the government must prove  
4 each of the following elements beyond a reasonable  
5 doubt:

6 First, beginning on or about December  
7 2009 and continuing to on or about June 11th,  
8 2010, the defendant, with intent that a murder be  
9 committed, caused another to travel in interstate  
10 commerce; and, second, the defendant intended that  
11 the murder be committed as consideration for  
12 receipt of or promise to pay anything of pecuniary  
13 value.

14 The crime is complete if the above  
15 elements are met, regardless of whether actual  
16 murder occurred.

17 Anything of pecuniary value means  
18 anything of value if the form of money, a  
19 negotiable instrument, a commercial interest, or  
20 anything else the primary significance of which is  
21 economic advantage.

22 In Idaho, murder is defined as the  
23 unlawful killing of a human being with malice  
24 aforethought. In Oregon, murder is defined as  
25 intentionally causing the death of another human

1 being.

2 The defendant is charged in Count 2 of  
3 the indictment with aiding and abetting the use of  
4 an explosive to commit a federal felony, in  
5 violation of 18 U.S. Code Section 844(h).

6 In order for the defendant to be found  
7 guilty of that charge, the government must prove  
8 each of the following elements beyond a reasonable  
9 doubt:

10 First, the defendant committed the  
11 crime of use of interstate commerce facilities in  
12 the commission of murder for hire as described in  
13 Count 1; and, second, the defendant knowingly and  
14 intentionally counseled, commanded, induced or  
15 procured Larry Fairfax to knowingly use an  
16 explosive between on or about May 27th, 2010, and  
17 May 31st, 2010, to commit that felony.

18 I instruct you, as a matter of law,  
19 that the crime of use of interstate commerce  
20 facilities in the commission of a murder for hire  
21 is a federal felony.

22 It is not enough that the defendant  
23 merely associated with Larry Fairfax or  
24 unknowingly or unintentionally did things that  
25 were helpful to Larry Fairfax. The evidence must

1 show beyond a reasonable doubt that the defendant  
2 acted with the knowledge and intention of helping  
3 Larry Fairfax use an explosive to commit the crime  
4 of use of interstate commerce facilities in the  
5 commission of murder for hire.

6 The term "explosive" means gunpowders,  
7 powders used for blasting, all forms of high  
8 explosives, blasting materials, fuses other than  
9 electric circuit breakers, detonators, and other  
10 detonating agents, smokeless powders, other  
11 explosives or incendiary devices and any chemical  
12 compounds, mechanical mixture, or device that  
13 contains any oxidizing and combustible units or  
14 other ingredients in such proportions, quantities,  
15 or packing that ignition by fire, by friction, by  
16 concussion, by percussion, or by detonation of the  
17 compound, mixture, or device or any part thereof  
18 may cause an explosion.

19 The defendant is charged in Count 3 of  
20 the indictment with aiding and abetting possession  
21 of a destructive device in relation to a crime of  
22 violence in violation of 18 U.S. Code Section  
23 924(c)(1)(B)(ii).

24 In order for the defendant to be found  
25 guilty of that charge, the government must prove

1 each of the following elements beyond a reasonable  
2 doubt:

3 First, the defendant committed the  
4 crime of use of interstate commerce facilities in  
5 the commission of murder for hire as described in  
6 Count 1; and, second, the defendant knowingly and  
7 intentionally counseled, commanded, induced, or  
8 procured Larry Fairfax to possess a destructive  
9 device between on or about May 27th, 2010, and May  
10 31st, 2010, in relation to the crime of use of  
11 interstate commerce facilities in the commission  
12 of murder for hire.

13 I -- that's actually a typo. It should  
14 be: I instruct you, as a matter of law, that the  
15 crime of use of interstate commerce facilities in  
16 the commission of murder for hire is a crime of  
17 violence.

18 It is not enough that the defendant  
19 merely associated with Larry Fairfax or  
20 unknowingly or unintentionally did things that  
21 were helpful to Larry Fairfax. The evidence must  
22 show beyond a reasonable doubt that the defendant  
23 acted with the knowledge and intention of helping  
24 Larry Fairfax possess a destructive device in  
25 relation to the crime of use of interstate

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1 commerce facilities in the commission of murder  
2 for hire.

3 The term "destructive device" means the  
4 following: First, any explosive, incendiary, or  
5 poison gas, including a bomb, grenade, rocket,  
6 having a propellant charge of more than four  
7 ounces, missile having an explosive or incendiary  
8 charge of more than one quarter ounce, mine, or a  
9 device similar to any of these devices; or,  
10 second, any type of weapon other than a shotgun or  
11 a shotgun shell which the attorney general finds  
12 is generally recognized as particularly suitable  
13 for sporting purposes, by whatever name  
14 known -- by whatever name known which will or  
15 which may be readily converted to expel a  
16 projectile by the action of an explosive or other  
17 propellant which has any barrel with a bore of  
18 more than one-half inch in diameter; or, third,  
19 any combination of parts either designed or  
20 intended for use in converting any device into any  
21 destructive device described in paragraph 1 or 2  
22 above and from which a destructive device may be  
23 readily assembled.

24 The term "destructive device" does not  
25 include the following: First, any device which is

1 neither designed nor redesigned for use as a  
2 weapon; second, any device although originally  
3 designed for use as a weapon which is redesigned  
4 for use as a signaling, pyrotechnic, line  
5 throwing, safety, or similar device; third,  
6 surplus ordnance sold, loaned, or given by the  
7 Secretary of the Army pursuant to the provisions  
8 of Section 4684(2), 4685, or 4686 of Title 10; or,  
9 fourth, any other device which the attorney  
10 general finds is not likely to be used as a  
11 weapon, is an antique, or is a rifle which the  
12 owner intends to use solely for sporting,  
13 recreational, or cultural purposes.

14 A person possesses something if the  
15 person knows of its presence and has physical  
16 control of it or knows of its presence and has the  
17 power and intention to control it.

18 The defendant is charged in Count 4 of  
19 the indictment with tampering with a victim in  
20 violation of 18 U.S. Code Section 1512(b)(3).

21 In order for the defendant to be found  
22 guilty of that charge, the government must prove  
23 each of the following elements beyond a reasonable  
24 doubt:

25 First, the defendant knowingly

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1 attempted to intimidate or corruptly persuade  
2 Cyndi Steele to engage in misleading conduct  
3 regarding the identity of a voice on a recording;  
4 and, second, the defendant acted with intent to  
5 hinder, delay, or prevent Cyndi Steele from  
6 communicating to law enforcement authorities  
7 information relating to the commission or possible  
8 commission of a federal offense.

9 An act is done knowingly if the  
10 defendant is aware of the act and does not act  
11 through ignorance, mistake, or accident. The  
12 government is not required to prove that the  
13 defendant knew that his acts or omissions were  
14 unlawful.

15 You may consider evidence of the  
16 defendant's words, acts, or omissions along with  
17 all the other evidence in deciding whether the  
18 defendant acted knowingly.

19 The term "corruptly" means to reflect  
20 some consciousness of wrongdoing.

21 You will note that the indictment  
22 charges that the offense or offenses were  
23 committed on or about specified dates. The  
24 government does not have to prove that the crimes  
25 were committed on an exact date so long as the

1 government proves beyond a reasonable doubt that  
2 the defendant committed the crimes on a date  
3 reasonably near the date stated.

4 A separate crime is charged against the  
5 defendant in each count. You must decide each  
6 count separately. Your verdict on one count  
7 should not control your verdict on any other  
8 count.

9 A verdict form has been prepared for  
10 your convenience. The instruction says that the  
11 bailiff will hand that out to you. It's actually  
12 on the next page.

13 LAW CLERK: They have that.

14 THE COURT: Yeah. So just turn to the next  
15 page, and I'm going to read the verdict form and  
16 go through it very briefly.

17 The verdict form reads as follows:

18 "In the United States District Court  
19 for the District of Idaho, United States America,  
20 plaintiff, versus Edgar J. Steele, defendant,  
21 Special Verdict Form. We, the jury, find  
22 unanimously as follows:

23 "Question 1: As to Count 1 of the  
24 indictment charging the defendant, Edgar J.  
25 Steele, with use of interstate commerce facilities

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1 in commission of murder for hire in violation of  
2 18 U.S. Code Section 1958, between on or about  
3 December 2009 and June 11th, 2010, the defendant  
4 is" -- and the jury's choices are either guilty or  
5 not guilty.

6 "Question 2: As to Count 2 of the  
7 indictment charging the defendant, Edgar J.  
8 Steele, with aiding and abetting use of explosive  
9 material to commit a federal felony, in violation  
10 of 18 U.S. Code Section 844(h), between on or  
11 about May 27th, 2010, and May 31st, 2010, the  
12 defendant is guilty or not guilty?

13 "Question 3: As to Count 3 of the  
14 indictment charging the defendant, Edgar J.  
15 Steele, with aiding and abetting possession of a  
16 destructive device in relation to a crime of  
17 violence, in violation of 18 U.S. Code Section  
18 924(c)(1)(B)(ii), between on or about May 27th,  
19 2010, and May 31st, 2010, the defendant is guilty  
20 or not guilty?

21 "Question 4: As to Count 4 of the  
22 indictment charging the defendant, Edgar J.  
23 Steele, with tampering with a victim, in violation  
24 of 18 U.S. Code Section 1512(b)(3), between on or  
25 about June 11th, 2010, and June 16th, 2010, the

1 defendant is guilty or not guilty?"  
2 And then there is a date line and a  
3 signature line for the foreperson.  
4 You will take this verdict form with  
5 you to the jury room. And when you have reached a  
6 unanimous agreement as to your verdict, you will  
7 have your foreperson fill in, date, and sign the  
8 verdict form which sets forth the verdict upon  
9 which you agreed. You will then return with your  
10 verdict to the courtroom.

11 We will now hear the closing arguments  
12 of counsel, after which I will give you a few  
13 brief closing instructions.

14 Mr. Haws, are you ready to make your  
15 closing argument to the jury?

16 MR. HAWS: Thank you, Your Honor.

17 THE COURT: I would indicate, ladies and  
18 gentleman, that I permit counsel to get into the  
19 well area in front of you as long as they don't  
20 invade your space.

21 But I think, Mr. Haws, you're wired up  
22 with a lavalier mic.

23 CLOSING ARGUMENT BY THE GOVERNMENT

24 MR. HAWS: Thank you, Your Honor.

25 Members of the jury, at the opening of

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1 this trial, I told you this is a very simple case.  
2 This is the case of a man who wanted to murder his  
3 wife. He hired somebody else to do it.  
4 Fortunately, it failed.

5 Now that you've heard all of the  
6 evidence, you know the facts. Edgar Steele, the  
7 defendant, hired Larry Fairfax to build a bomb to  
8 kill his wife, Cyndi. Fortunately, it didn't  
9 succeed. When it didn't succeed the first time,  
10 then there was a backup plan.

11 But Larry Fairfax -- before the backup  
12 plan could be put into effect, Larry Fairfax had  
13 second thoughts. Because Larry Fairfax had second  
14 thoughts, he went to law enforcement, and he  
15 reported that the -- Edgar Steele was insisting  
16 that he go to Oregon to carry out this act.

17 Unfortunately, in one last effort to  
18 give Mr. Steele a chance to change his mind, in a  
19 conversation recorded on June the 10th, Thursday  
20 night, before the murder was to be committed on  
21 Friday, the 11th -- in a conversation that was  
22 recorded, Mr. Steele had an opportunity to change  
23 his mind.

24 And if you go to that tape, you will  
25 see his words. "There ain't no second thoughts,

1 pal."  
2 "There ain't no second thoughts."  
3 That's where this case stood just prior to his  
4 arrest. "There ain't no second thoughts, pal."  
5 Well, now that you have all the  
6 evidence and you've heard many, many witnesses,  
7 you're probably saying to yourself: "There is so  
8 much. We've heard so much. We've seen so much.  
9 Where do we begin?"

10 It's a natural question. If I could  
11 make, respectfully, one suggestion to you, it  
12 would be that you go to the judge's instructions.  
13 That's your guidance.

14 And, in particular, I would recommend  
15 that you go to Instruction No. 10, because that  
16 tells you specifically what you must find with  
17 regard to the first charge.

18 I recommend that you go to Instruction  
19 No. 11, which are the elements that must be proven  
20 for the second charge.

21 I recommend that you go to Instruction  
22 No. 13, because those are the elements for the  
23 Count 3.

24 And I recommend that you go to  
25 Instruction No. 16, because that's where the judge

1 sets out the elements that you must find with  
2 regard to the fourth count.  
3 So start with those. Let me help you  
4 out.  
5 The first count against Edgar Steele is  
6 contained in Instruction No. 10. "Use of  
7 interstate commerce facilities," what does that  
8 mean? It means use of the highways. Somebody got  
9 on the highway and traveled across state lines  
10 from Idaho to Oregon.

11 "Use of interstate commerce facilities  
12 in the commission of murder for hire." And then  
13 there are two parts to it. There are two parts to  
14 it. And it charges a date. There is some  
15 evidence going back even into the latter part of  
16 2009 that there was talk between Mr. Fairfax and  
17 Mr. Steele about this crime. But, certainly, by  
18 June the 11th; that's when this crime was intended  
19 to be committed by the defendant.

20 And the second element that you must  
21 find is that murder for hire was in exchange for a  
22 promise to pay.

23 Now let's talk about the facts about  
24 this element. Do you remember when I made my  
25 opening statement, I said to you, "There are two

1 important dates here to circle"? One was May 27  
2 and 28. Why? Because that's when the first  
3 attempt was to kill Cyndi Steele. And I said the  
4 second date was June the 11th, because that was  
5 the target date for the follow-up plan.

6 So let's go back to those -- those  
7 dates and those events, and let's talk about the  
8 evidence.

9 You know, it's interesting in this  
10 case, we have talked about people who are  
11 characters in this case. It almost feels like as  
12 though Cyndi Steele's little black 2004 Mitsubishi  
13 Endeavor that you have heard so much, it's almost  
14 like it has its own personality and is a character  
15 in this case.

16 Because on May the 27th -- on May the  
17 27th, the defendant, Edgar Steele, pursuant to a  
18 plan with Larry Fairfax, took Cyndi with him and  
19 went away from Sagle to run some errands. Why?  
20 Larry Fairfax told you. So that Larry Fairfax  
21 would have access to their garage and their cars  
22 to put pipe bombs on the cars.

23 And so Mr. Fairfax placed a pipe bomb  
24 on Cyndi Steele's Mitsubishi on May the 27th.

25 Now, Mr. Steele knew exactly what was

1 going to happen on the 28th. Cyndi Steele was  
2 going to get up. Her plans were to drive to  
3 Oregon to be with her mother in Oregon City; and  
4 when she did, she would be carrying that pipe bomb  
5 along with her on the bottom of that Mitsubishi  
6 Endeavor.

7 The evidence is corroborated. The  
8 evidence is corroborated. Mr. Fairfax has  
9 testified about that. Nobody else has  
10 contradicted him. And so we rely upon the  
11 evidence of Mr. Fairfax, but his testimony is  
12 corroborated.

13 His Honor has rightfully instructed you  
14 that you should look at Mr. Fairfax's testimony  
15 with some skepticism. He was an accomplice to  
16 Mr. Steele. And, as an accomplice, you should  
17 look at his testimony with some skepticism and see  
18 whether it sounds real, whether it is real,  
19 whether it corresponds with the facts, whether  
20 there is corroboration for it.

21 Mr. Fairfax took the stand. He told  
22 you exactly how that happened. Mr. Steele gave  
23 him authorization to get into the house -- into  
24 garage and place that pipe bomb underneath Cyndi  
25 Steele's car.

1 Do you remember the testimony of the  
2 bomb experts? As they testified about Exhibit No.  
3 80, the device that was placed under Cyndi  
4 Steele's car, they told you that this was a large  
5 pipe bomb. They have seen a lot of pipe bombs.  
6 This was a large one.

7 Do you remember Mike Kittilstved, who  
8 was in charge of the bomb squad? Do you remember  
9 what he said? He said this was the largest pipe  
10 bomb he had seen.

11 The intent with this pipe bomb was to  
12 commit murder. It was to -- a very destructive  
13 act. This wasn't an Idaho firecracker. This  
14 wasn't a joke. This was intended to do great  
15 damage to Cyndi Steele's car and kill her in the  
16 process.

17 Do you remember the other evidence?  
18 This end cap was blown off during the process of  
19 rendering it safe, but this was a fully loaded  
20 device. The testimony was that perhaps it was  
21 three-quarters full. Nobody knew exactly. You  
22 would have to have taken it apart. There is a lot  
23 of danger in that.

24 The testimony from Mr. Fairfax was that  
25 it was about three-quarters full. And the

1 testimony from the bomb squad as they -- as they  
2 used the robot to blow the end off and scattered  
3 powder -- some of that explosive powder around was  
4 that it was quite full and left a lot of powder in  
5 a pile on the ground. That explosive powder says  
6 "intent to kill."

7 Do you remember what the testimony was  
8 with regard to removing the pipe bomb from the  
9 car? Do you remember what it took? The lube  
10 technician had tied the two pieces of fuse to the  
11 emergency brake cable.

12 And the robot -- after Mark Fox risked  
13 his life to get under it and undo the wire and set  
14 it on the ground, the robot got into a tug of war  
15 with the car and the pipe bomb. This pipe bomb  
16 lifted off the ground trying to break the fuse.  
17 And the fuse broke.

18 Here are the two little pieces of fuse  
19 that were attached in the end cap, and the end cap  
20 had been wrapped with tape to hold the fuse in  
21 place.

22 I submit to you that every wrap of that  
23 tape was an intentional act that said "intent to  
24 kill."

25 Do you remember what the bomb expert

1 the first time Larry Fairfax went to law  
2 enforcement, he omitted that. He doesn't get a  
3 pass. He omitted that.

4 But I'll submit to you that when it was  
5 clear that he was responsible for that pipe bomb,  
6 do you remember what he did? He volunteered that  
7 he had built another one. He had built this one  
8 right here. He had volunteered it, and he went to  
9 his house, and he got the pieces.

10 And what's the corroboration that he is  
11 telling the truth? On that, you have black powder  
12 found in both of these devices, identical black  
13 powder. Not "black powder"; that's a misnomer.  
14 It's explosive powder. It's double-base powder.  
15 It's black in color, and sometimes we get in the  
16 habit of saying "black powder." But you remember  
17 the testimony? It was explosive powder, the same  
18 powder used in both.

19 Now, Mr. Fairfax has testified about  
20 these devices and about the intent. It doesn't  
21 really matter what Mr. Fairfax thought about those  
22 bombs and whether they were going to explode or  
23 not. They were intended to kill.

24 Today Mr. Fairfax kind of says, "Well,  
25 I didn't think it would go off."

1 said? This device had redundancy. Redundancy  
2 means it had a backup plan. They intended it to  
3 go off because they had a fuse attached to the  
4 tailpipe, right behind the muffler. They had  
5 another fuse attached in front.

6 Two fuses. Why? To make sure it  
7 works. What does "make sure it works" mean? What  
8 does "redundancy" mean? It means intent to kill.

9 Do you remember Officer -- Corporal Fox  
10 climbed under the car? Leaning under the car, he  
11 undid the wires that held the pipe bomb on. Look  
12 at those wires. Some of the wires were helping to  
13 hold the pipe bomb in place along with that large  
14 magnet. Redundancy again, to make sure it doesn't  
15 fall off. And some of these wires were used to  
16 hold the fuses in place where they would get hot.

17 I submit to you that every twist of  
18 this wire was a knowing act. The person who put  
19 it on there and intended it to be put on there  
20 knew what they were doing. And that was an  
21 intentional act to say, "We intend to kill."

22 But think of the corroboration for  
23 Larry Fairfax. Larry Fairfax told you what  
24 happened here. Now, the pipe bomb wasn't  
25 discovered until it went to the Jiffy Lube. And

1 Well, the bomb experts, you remember,  
2 have examined the fuses that were attached. Do  
3 you remember the discoloration on the fuses? The  
4 discoloration on the two fuses that extended from  
5 the pipe bomb on Cyndi's car to the tailpipe, they  
6 simply didn't get quite hot enough to actually  
7 ignite, but there is the discoloration. They were  
8 on the way.

9 All of this corroborates the fact that  
10 Edgar Steele had an intent to kill. Mr. Fairfax  
11 has testified about that.

12 Now, you may ask yourself -- because  
13 I'm sure you're going to hear in a moment  
14 Mr. Steele's fingerprints are not on these pipe  
15 bombs. His physical fingerprints are not on  
16 there, but his legal fingerprints are, because his  
17 own words talk about pipe bombs.

18 I'm going to ask Ms. Rocca to play clip  
19 No. 1. This is a part of Mr. Fairfax's and  
20 Mr. Steele's conversation on the 9th. So,  
21 Wednesday, the 9th. Listen carefully for the word  
22 "pipe bomb" out of this man's mouth.

23 (Audio clip published.)

24 MR. HAWS: Now do you understand why I say  
25 that Mr. Steele's legal fingerprints are all over

1 this? He was the instigator behind it.  
 2 Why would he even bring up the word  
 3 "car bomb" in his conversation with Larry Fairfax  
 4 on the 9th of June? They had already concluded  
 5 the pipe bomb was gone; it had fallen off.  
 6 Because it was the first failed attempt.  
 7 You will see other references when you  
 8 listen to those tapes, those recordings, where  
 9 Mr. Steele makes reference to the prior failures  
 10 to kill Cyndi Steele, and the prior failures are  
 11 the pipe bombs.  
 12 Where is the other -- where is the  
 13 other corroboration? Corroboration; in other  
 14 words, independent facts that corroborate Larry  
 15 Fairfax. Let me show you some corroboration.  
 16 When FBI Agent Sotka sent Mr. Fairfax  
 17 with a microphone to record a conversation with  
 18 Edgar Steele on the 9th of June, remember what he  
 19 said? He is the only one who could program in  
 20 those -- the digits that would turn on that  
 21 microphone, and he was the only one who could turn  
 22 them off.  
 23 That microphone was running from the  
 24 minute Larry Fairfax left Mr. Sotka until he went  
 25 to meet with Mr. Steele and came back.

1 lines? The vehicle crossed state lines.  
 2 Mr. Fairfax, he was told, "Go down and  
 3 check on that pipe bomb." And Mr. Steele was  
 4 insistent. On May the 31st: "Get down there.  
 5 What happened? Why didn't it go off? Besides  
 6 that, Cyndi is talking about having her car heater  
 7 looked at. If she takes it into the shop, they  
 8 discover that, our plot -- we are -- we're going  
 9 to be suspects."  
 10 Mr. Fairfax made the trip down there.  
 11 Where is the corroboration? May 31st, Thrifty Car  
 12 Rental receipt, when he went down there and  
 13 checked on the pipe bomb.  
 14 Now, you know, there has been some  
 15 question about whether or not this pipe bomb was  
 16 really on the car because -- because Jim Maher  
 17 looked under there and couldn't see it.  
 18 Well, he looked under there from 25 or  
 19 30 feet away, and he looked under there without a  
 20 good look. He couldn't see what he was looking  
 21 for, and he said there was nothing hanging down.  
 22 Well, there wouldn't be anything  
 23 hanging down, because this is the photo which was  
 24 shot at the Jiffy Lube on June 15th. You wouldn't  
 25 see that pipe bomb hanging down underneath the

1 Do you remember what else they did?  
 2 They searched him. Why? They want to know --  
 3 standard procedure -- what this person is taking  
 4 into the interview.  
 5 He had no money on him. A half-hour  
 6 later, when he returns from his talk with  
 7 Mr. Steele and this conversation is recorded, four  
 8 brand new \$100 bills are found on Mr. Fairfax.  
 9 This is corroboration. This says Mr. Fairfax was  
 10 telling you the truth.  
 11 The pipe bomb failed. Let's go to the  
 12 next one, the second event. Once it failed and  
 13 they concluded erroneously it had fallen off, they  
 14 concluded that it would be necessary for  
 15 Mr. Fairfax to go down -- not "they" -- Mr. Steele  
 16 concluded that it would be necessary for  
 17 Mr. Fairfax to go down to Oregon and do the job  
 18 himself.  
 19 Let's go back and talk about places.  
 20 These conversations were taking place where? In  
 21 Sagle, Idaho. Where did the black Mitsubishi go?  
 22 Oregon City, Oregon, down by Portland.  
 23 Eventually, it would come back into the  
 24 state of Idaho with a pipe bomb on it, and it  
 25 would go to the Jiffy Lube. Did it cross state

1 car. It's attached to the frame of the vehicle.  
 2 And from a distance, from 30 feet looking under  
 3 it, you wouldn't see it.  
 4 There is the corroboration. There is  
 5 corroboration for Larry Fairfax, his trip down  
 6 there. The conclusion that was drawn was that the  
 7 pipe bomb had fallen off, and so that required the  
 8 second plan.  
 9 The second plan is a little bit  
 10 amorphous. Mr. Steele is leaving it up to Larry  
 11 Fairfax how to do it, but the options are -- you  
 12 see it in the recordings -- guns ablazing, or else  
 13 make it look like a car wreck that's an accident.  
 14 Why? To be able to recover uninsured motorist  
 15 coverage.  
 16 Let's have Mrs. Rocca play clip No. 3  
 17 for us.  
 18 (Audio clip published.)  
 19 MR. HAWS: "No, no second thoughts, pal."  
 20 You notice the last comment on there, "Otherwise,  
 21 you only get our basic agreement." That  
 22 corroborates. Mr. Steele's recording corroborates  
 23 what Larry Fairfax told you. The original  
 24 agreement was \$10,000 to kill Cyndi Steele,  
 25 \$10,000 to kill Mrs. Kunzman, and \$5,000 to drive

1 down to Oregon to do it in Oregon, far away from  
2 Sagle, Idaho. "You only get your basic agreement.  
3 But if you can make it look like an uninsured  
4 motorist, there may be \$100,000 in play there."

5 Who is the driving force behind this  
6 crime? Is it the man who sat up here with -- in  
7 the orange jumpsuit? Is it Larry Fairfax? No.  
8 The driving force behind this crime is Edgar  
9 Steele. It was his idea, and it was his direction  
10 and his authorization.

11 If you go to those recordings -- let me  
12 just -- let me just give you a couple of samples  
13 of his insistence. These are the words from Edgar  
14 Steele on June 9th: "Get this job done, Larry."  
15 Another one: "I want to give you a powerful  
16 incentive."

17 Who is driving this train? It's  
18 Mr. Steele. His legal fingerprints are on this  
19 case.

20 Another one: "Larry, can I count on  
21 you?" Another one: "Make sure it happens."  
22 Another one: "How can you be sure it's going to  
23 do the job?" In other words, it didn't do it last  
24 time. How can you sure that your plan is going to  
25 work this time?

1 "Okay. I'm counting on it." "I mean,  
2 Larry, I'm up against it. It has to happen right  
3 now." You just heard those words.

4 And on June the 10th, what words do we  
5 have from this man's mouth showing that he is the  
6 one who is instigating this and he is driving it?  
7 He says, "I am counting on you." "You've got me a  
8 little worried about this one."

9 Why worried about this one? Because  
10 the pipe bomb didn't go off, the first one didn't  
11 go off. "You've got me worried about this one."

12 Another one: "I want to be able to  
13 assume that you're delivering the freight this  
14 time." Why "this time"? Because the last time,  
15 it didn't deliver the freight; the bomb didn't go  
16 off.

17 And then he says, "I would like to see  
18 it happen."

19 Ladies and gentleman, look, we have  
20 just talked about the evidence there. This  
21 element has been proven beyond a reasonable doubt.  
22 He caused another person to travel to Oregon,  
23 across state lines, to check on that pipe bomb.  
24 And then -- that was on May 31st. And on June the  
25 11th, it was his intention to send Mr. Fairfax

1 back to Portland to actually do the job, get it  
2 done. That's been shown.

3 What about "defendant intended the  
4 murder be committed as part of a murder for hire"?  
5 We have already talked about the \$100,000  
6 insurance policy. We have shown you the silver.  
7 Here is the money to go take the trip. This,  
8 ladies and gentleman, was a murder for hire.

9 Let's go to element No. -- Count No. 2,  
10 which is found in Instruction No. 11. And this  
11 one has to do with aiding and abetting Larry  
12 Fairfax in the use of an explosive to commit a  
13 federal felony.

14 The evidence that pertains to this --  
15 let me write it up here -- is the pipe bomb on  
16 Edgar Steele's Cadillac.

17 This is a lesser count than Count 3.  
18 And why has it been charged that way? Because we  
19 don't know much about this bomb. We got it after  
20 it was disassembled. We never saw the end cap.  
21 We never saw the fuses.

22 We have the corroboration that there is  
23 explosive in here. We have Mr. Fairfax's  
24 testimony that he took that explosive, dumped it  
25 out on the ground and burned it, and that he put

1 it on Edgar Steele's car. But, unfortunately, we  
2 don't have a lot of other information about this  
3 one, and so it's been charged as a lesser crime of  
4 use. He procured Larry Fairfax to knowingly use  
5 an explosive.

6 This was an explosive device. It had  
7 the powder in it, the very same powder. It's an  
8 explosive device, and it was used on Mr. Steele's  
9 car.

10 Well, you might ask yourself, "Well,  
11 doesn't that point to Larry Fairfax, then, as the  
12 person who is behind all this?" No, it doesn't.  
13 What it points to is that Mr. Steele has thought  
14 this all out.

15 This pipe bomb right here that was  
16 placed on his car with his permission and  
17 encouragement and direction, this was just a  
18 decoy.

19 A decoy from what? Well, when Cyndi  
20 got killed and the pipe bomb explosion under her  
21 car, they would come and start asking questions.  
22 And if that pipe bomb was found under his car --  
23 and he is not going to drive it -- found under his  
24 car, then law enforcement would say, "Ah, looks  
25 like some enemies of yours have targeted you."

1 It was a decoy. But was it used? Yes,  
2 this pipe bomb was used in order to work the plan.  
3 So if Count 1 of the indictment that we  
4 have just talked about a moment ago that we just  
5 checked off, if that has been satisfied beyond a  
6 reasonable doubt, you just have to ask yourself  
7 the question whether the defendant knowingly and  
8 intentionally counseled, commanded, induced, or  
9 procured. He did all of those. He was the  
10 driving force behind this.

11 Ask yourself this question: What  
12 motive would Larry Fairfax have to kill  
13 Mrs. Steele? When he was cross-examined, not a  
14 single motive came up. Did you make note of that?  
15 No motive was shown as to why he would want to  
16 kill her. In fact, he said what? "She is a very  
17 nice lady."

18 Why did he do it? Well, I'm not going  
19 to defend Larry Fairfax. He was hurting for  
20 money. Is it despicable to exchange money -- to  
21 accept money to go kill somebody? Absolutely.

22 Is it more despicable to be the brains  
23 behind it, the one paying the money and directing  
24 that somebody go kill your wife? Yes, that's more  
25 despicable. That's the count Mr. Steele is

1 charged with. So the knowing use of this device  
2 for what purpose? To advance the plot of  
3 murdering Cyndi Steele.

4 So is this count -- this count is also  
5 satisfied. You find guilty on the first one that  
6 we talked about a moment ago, that's automatically  
7 taken care of.

8 And if the evidence satisfies you  
9 beyond a reasonable doubt that the defendant  
10 knowingly and intentionally counseled and procured  
11 it, directed it, you check that one, too. That's  
12 the pipe bomb on Edgar Steele's car.

13 Let's go to Count No. 3, the other bomb  
14 count found in Instruction No. 13 as given to you  
15 by His Honor. This is slightly different. It's a  
16 more serious charge. And the -- and this  
17 evidence, the evidence that pertains to Count 3,  
18 is the pipe bomb on Cyndi Steele's car, the little  
19 black Mitsubishi, the one that we have already  
20 been talking about.

21 So if you find that the crime of murder  
22 for hire using interstate transportation has been  
23 met, you check that one. And then you ask  
24 yourself the question: Well, what other knowledge  
25 do we have about the pipe bomb on Cyndi's car?

1 We already talked about this pipe bomb.  
2 This is the pipe bomb it charges. This is the one  
3 that was on Cyndi's car. This is the one that had  
4 the redundancy that says "intent to kill."

5 When Larry Fairfax possessed this bomb  
6 in furtherance of the plan to murder, of Edgar  
7 Steele's plan to murder, and Edgar Steele made the  
8 garage available for Mr. Fairfax to get underneath  
9 it and attach this pipe bomb, Mr. Fairfax had  
10 possession of this in furtherance of a felony  
11 crime, murder for hire.

12 When he possessed this with his  
13 knowledge and encouragement because he is the one  
14 who was directing this plot, when that was  
15 attached underneath Cyndi's car by Larry Fairfax,  
16 that crime was committed.

17 When it drove across state lines and  
18 then when Mr. Fairfax went across state lines to  
19 find out what happened to it, that crime is --  
20 that crime is proven beyond a reasonable doubt as  
21 charged. Check that one off.

22 The fourth count in this indictment has  
23 to do with the intimidation of his wife. Right  
24 after Mr. Steele was arrested, it was very urgent  
25 for him to get in touch with his wife. He

1 couldn't get in touch with her, so he called his  
2 son.

3 And he said to his son -- I'm not going  
4 to play that recording for you, but the operative  
5 words he says to his son, Rex, he says, "Rex,  
6 listen. This may be the most -- the single most  
7 important call I've made in my life. I need you  
8 to call your mother. I need you to talk to her.  
9 She is going to be played the tape that supposedly  
10 I'm recorded on hiring the guy or something. She  
11 has to say the following, no matter what she  
12 hears -- she has to say the following when it's  
13 done, no matter what she thinks, no matter what  
14 she feels, no matter what she hears, she has to  
15 say, 'That is not my husband's voice.' Say it  
16 back to me so I know you heard me."

17 Mr. Steele didn't even know anything  
18 about these recordings from law enforcement. He  
19 knew about them because he was a participant in  
20 them. There is your corroboration. He knew all  
21 along what was happening. And that's why he knew  
22 it was urgent that he get in touch with his wife  
23 to keep her from cooperating with law enforcement  
24 during the investigation.

25 Those are pretty strong words. "No

1 matter what she thinks, no matter what she feels,  
 2 no matter what she hears, she has to say --"  
 3 that's a directive. Somebody is ordering somebody  
 4 to do something. When you order somebody to give  
 5 a testimony a certain way that affects you, you  
 6 are trying to corruptly and wrongfully persuade  
 7 that person. That's against the law. When he  
 8 told his son that, Mr. Steele completed the crime  
 9 of intimidation of a witness because Mr. --  
 10 because Rex went and told his mom.

11 But there is something better. Let's  
 12 go to clip No. 3. Would you -- or clip No. 2,  
 13 please. Would you play that for us, Ms. Rocca.  
 14 The one from Cyndi Steele. Listen to this  
 15 jailhouse recording.

16 (Audio clip published.)

17 MR. HAWS: You just heard a crime committed.  
 18 You just heard a crime committed right there.  
 19 "You have to say -- no matter what you think, no  
 20 matter what you hear, no matter what you feel, you  
 21 must say --"

22 What is a rhinoceros in the road? What  
 23 does that image conjure to you? What does that  
 24 image conjure up in your mind when somebody says,  
 25 "You must stand like a rhinoceros in the road and

1 say nothing more"? It means be obstinate and get  
 2 in the way and say nothing more.

3 He is telling her what to say. That  
 4 crime -- that crime was committed in that one  
 5 phone call.

6 You know what his intent was. It's  
 7 clear there in his words. You know what he said.  
 8 You know the -- you know who he was talking to.  
 9 There is no dispute about that. You know who his  
 10 voice is. That crime has been committed right  
 11 there.

12 Ladies and gentleman of the jury, I  
 13 want to comment on two other things before I  
 14 close. Those are the elements. Go through the  
 15 evidence, check them off.

16 But I want to comment on one other  
 17 thing. In the recording of June the 9th between  
 18 Mr. Fairfax and Mr. Steele -- that law enforcement  
 19 recording that Mr. Fairfax couldn't turn on or  
 20 couldn't turn off that arrived back and was  
 21 downloaded immediately by Mr. Sotka -- that  
 22 recording and the one on the 10th are the keys to  
 23 this case. Those recordings are the keys to this  
 24 case. Because everything necessary to convict  
 25 this man of the crimes he has been charged with

1 are contained in that recording -- those  
 2 recordings.

3 Mr. Sotka has testified about how that  
 4 device worked. There is no evidence in this case  
 5 that those recordings were in any way manipulated,  
 6 changed, altered, affected in any way. There is  
 7 no evidence to that effect.

8 Mr. Steele would like to have you think  
 9 that that's happened; that somehow some "Mission  
 10 Impossible" plot has been worked by the federal  
 11 government to change things around and add words  
 12 and so on.

13 So I ask you to listen carefully to the  
 14 recordings themselves. The recordings themselves  
 15 tell you that they are accurate and they have not  
 16 been tampered with.

17 Why do I say that? Listen to the  
 18 natural flow of the conversations. One answers  
 19 the other. Listen to the context. They talk and  
 20 reply in context.

21 Notice how you have background noises,  
 22 like the train going by, the evening train.  
 23 Notice how it carries through his statements and  
 24 Mr. Fairfax's statements. These things have not  
 25 been cobbled together from some kind of extraneous

1 conversation. The background noises themselves  
 2 tell you this.

3 This is not a studio recording. You  
 4 know, people are pretty careful in studio  
 5 recordings to make sure that this person speaks  
 6 and then this person speaks.

7 Listen to the overlap. That's how your  
 8 conversations take place -- mine, too; everybody's  
 9 conversations. I talk. You stall a little bit,  
 10 just like I just did, and you jump in and finish  
 11 my sentence because you think you know what I'm  
 12 talking about.

13 It's that interruption back and forth,  
 14 give and take that takes place in conversations;  
 15 that's what you see in those recordings.

16 Do you find it interesting that those  
 17 background noises are real? They are right there.  
 18 They go along with the chores they're talking  
 19 about.

20 So they're talking about the horses.  
 21 You can hear the gates opening. You can hear the  
 22 horses moving. They talk about the water, and you  
 23 can hear the water running.

24 These are not fabricated tapes. These  
 25 are law enforcement tapes that have not been in

1 any way altered. There is no evidence to that.  
2 And that is all because a law  
3 enforcement officer from the FBI assured that a  
4 secure device that he, himself, couldn't alter has  
5 been programmed to turn on and programmed to turn  
6 off beginning when Mr. Sotka places the device on  
7 Mr. Fairfax and sends him on his way and when he  
8 returns.

9 Mr. Fairfax is never -- never out of  
10 sight of the investigators except the time that he  
11 is with Mr. Steele.

12 Imagine to yourself this man who came  
13 up here as a witness having the sophistication and  
14 the tools to be able to put together some kind of  
15 a recording like this and then bring it back all  
16 within a half an hour. That can't happen. That  
17 can't happen.

18 These recordings are true. You can  
19 rely upon them, and this case hinges upon those  
20 recordings because Mr. Steele's guilt is on those  
21 recordings.

22 In the recording of June 9th -- listen  
23 very carefully to it -- Mr. Steele says that if  
24 the trail comes back to him because Larry Fairfax  
25 messes up and gets caught -- if the trail comes

1 back to him, he says, quote, "I will lie myself  
2 out of it."

3 "I will lie myself out of it." That is  
4 what's happening in this case. I submit to you  
5 that the evidence in this case shows that that's  
6 exactly what Edgar Steele has been doing from  
7 clear back the end of May.

8 Let's talk about that. Why do I make  
9 that statement? His actions are lies.

10 First of all, notice he gets somebody  
11 else to do the job; right? So the trail doesn't  
12 come back to him. Notice that from the very  
13 beginning, in these tapes, at least -- that's the  
14 first time we have his audio beginnings of this --  
15 he starts to make an alibi.

16 Why do you make an alibi? Why do you  
17 make an alibi? Because you want to be able to  
18 prove you're not involved.

19 And this is a false alibi. Notice what  
20 he says. He says that -- he tells you what his  
21 alibi is going to be. On this Friday morning,  
22 when this murder is supposed to be committed in  
23 Portland -- in Oregon City, Oregon, he is going to  
24 take his truck and trailer, which he tells Larry  
25 Fairfax to leave hitched up -- do you remember?

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1 Which also corroborates the recordings -- tells  
2 him leave the truck and trailer hitched up on  
3 Friday night when he comes back because on  
4 Saturday -- pardon me -- on Thursday night, when  
5 he comes back. Because on Friday morning, when  
6 the murder is supposed to take place, he is going  
7 to take that truck and trailer, and he is going to  
8 go to Spokane to a lumberyard.

9 He tells you what his alibi is going to  
10 be. And, to make it even more believable, he is  
11 going to take a friend with him who can say,  
12 "Yeah, I was riding along with Mr. Steele at the  
13 time his wife was being murdered down in Oregon  
14 City."

15 It was Al Banks who came in here and  
16 testified, one of his friends. He was setting him  
17 up as a witness for his falsehood, his alibi.

18 And then he says he is going to go  
19 someplace, like to the post office or to the bank,  
20 to get a stamped receipt that shows time and  
21 place. What's that for? "To establish my alibi:  
22 I wasn't in Oregon City."

23 And then he says he is going to have  
24 lunch, and he is going to make himself memorable.  
25 Remember all of that? That's an alibi. That's

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1 lying your way out of this. That's what it is.  
2 He was already lying his way out of this, or  
3 trying to.

4 Did you notice the evidence about the  
5 time of his arrest? The officers gave him a  
6 chance to show whether or not he was going to  
7 stand by his alibi.

8 That morning, he got up, and he went to  
9 pick up Al Banks. Al Banks said that. They  
10 had -- they were going to get together to go to  
11 the lumberyard. He got up, he got in his truck  
12 with his trailer, and he drove out to meet Al  
13 Banks. He didn't get very far before they asked  
14 him to come back. And they discussed his wife's  
15 death, pretended that his wife had died, been  
16 killed.

17 Did you notice what the officer said,  
18 the ISP officer, Idaho State Police officer, who  
19 gave him the death notification? He said he had a  
20 flat affect. It was not a natural reaction. He  
21 has handed out death notices. It was not a  
22 natural reaction. It was a falsehood. It was a  
23 lie.

24 He was more concerned about the time  
25 when he was arrested -- that's when he got

1 upset -- than he was about hearing about his wife  
2 dying. It's not natural, simply not natural.

3 If you listen to those recordings, in  
4 there he tells Larry Fairfax, "When the black and  
5 white comes into my yard and tells me," he's  
6 gone -- he says, "I'm going to say, 'You've got to  
7 be shitting me.'"

8 Excuse me for using that language.  
9 Did you hear what the officers  
10 testified about what he said when they came and  
11 gave him the death notice? "You've got to be  
12 shitting me."

13 This is all a lie. This whole alibi is  
14 a lie. I would submit that his body reacted and  
15 told more truth than his mouth did.

16 This was a false alibi, ladies and  
17 gentleman. And let me tell you a little bit more  
18 about why it's false, why he was telling a lie:  
19 He was going to lie his way out of this.

20 It's possible that he was motivated by  
21 goodwill when he paid to bring his mother-in-law's  
22 home out of arrears, \$2,800, something like that.  
23 Do you remember that testimony?

24 What a great cover. What a great  
25 cover. Just like it was used in court here today

1 or during this week: "Why would I do that? I  
2 just paid off her -- I just brought her arrears  
3 up. I mean, I'm a nice guy. I love my  
4 mother-in-law." Maybe he does, but maybe he is  
5 taking advantage of a great cover.

6 What about the Russian girlfriends?  
7 Can we talk about that for a second? That's  
8 another cover. Notice how he covers that up from  
9 his family. He says, "I'm working on a case."

10 Did we ever hear anything about a case?  
11 Did anybody give you a case name or a case number  
12 or where it was filed or anything else? A case?  
13 No, there was no case.

14 Then it's, "Well, I'm researching for a  
15 book." Did we ever hear anything about a book or  
16 a draft? Everybody said that because that's what  
17 he led them to believe, and it was all a lie.

18 The young Russian gal, Tatyana  
19 Loginova, she was the one that he was writing to.  
20 And here is the letter that he had taken out of  
21 the jail under the return address of the Federal  
22 Defender's Office as legal mail to send to her.

23 See the coverup? See the lies? Legal  
24 mail to send the love letters to Tatyana Loginova.

25 And what did he tell Tatyana Loginova,

1 this little Russian girl? "I'm divorced." "I'm  
2 divorced." That was a lie. He was covering up  
3 all the time.

4 He uses other people. He manipulates  
5 other people to do what he doesn't want done  
6 himself or to get them to do what he does want  
7 done. That's more evidence of it.

8 "Make sure the trail doesn't lead back  
9 to me," that's what he is saying.

10 Ladies and gentleman of the jury, the  
11 evidence here is overwhelming. It's way beyond a  
12 reasonable doubt as to what this man intended.  
13 It's way beyond a reasonable doubt as to his  
14 actions.

15 No, his fingerprints aren't on the  
16 bombs. His fingerprints aren't a lot of places  
17 because he uses other people to cover it up. But  
18 his legal fingerprints are. And those tapes from  
19 June 9th and June 10th are conclusive evidence of  
20 his involvement.

21 And his tape recording where he tells  
22 his wife she must lie for him -- because that's  
23 his voice on there. We all know it's his voice on  
24 there. And he says, "You must say it's not."  
25 When he tells his wife, "You must lie for me,"

1 that's a completed crime.

2 The evidence here has been shown beyond  
3 a reasonable doubt, and we will ask you to return  
4 a verdict of guilty as to all four charges.

5 Thank you very much.

6 THE COURT: Thank you, Mr. Haws.

7 Ladies and gentleman, as I advised you  
8 earlier, we're going to take a short break now,  
9 just to break up the afternoon, before you hear  
10 the closing arguments from the defense.

11 I'll again admonish you -- and it's,  
12 perhaps, even more important now -- that you keep  
13 an open mind and not form any opinions about the  
14 case. Because you have just heard the closing  
15 arguments of the U.S. attorneys and have not  
16 had -- have not heard the closing arguments of the  
17 defense. So it's critical that you keep an open  
18 mind and not form or express any opinions about  
19 the case until it is fully submitted to you. And  
20 do not discuss the case among yourselves.

21 We'll be in recess for 15 minutes.

22 (Recess.)

23 (Jury present.)

24 THE COURT: I'll note for the record that  
25 the jury is present.

1 Mr. McAllister, you may make your  
 2 closing argument to the jury.  
 3 CLOSING ARGUMENT BY DEFENSE  
 4 MR. McALLISTER: May it please the court,  
 5 counsel for the prosecution, ladies and gentleman  
 6 of the jury.  
 7 Mr. Haws is an eloquent speaker and a  
 8 fine lawyer. And he says to you: This is a very  
 9 simple case about a man named Edgar Steele who is  
 10 alleged to have hired a hit man named Larry  
 11 Fairfax to kill his wife, his wife of 25 years.  
 12 He says it's simple. Is it?  
 13 The question is: Why would he do it?  
 14 Why would he use somebody like Larry Fairfax, who  
 15 has been sort of the worker at his home, a  
 16 handyman to fix it up? Why? That's the  
 17 interesting question in this case.  
 18 There is no doubt in this case that the  
 19 government has evidence. This is evidence. These  
 20 are disgusting. For whatever purpose Mr. Fairfax  
 21 used them for, he put people -- not just Cyndi  
 22 Steele, but people in harm's way.  
 23 But, you know, when Mr. Haws stands  
 24 here and says every twist of the wire was an  
 25 intentional act by Edgar Steele, there is no proof

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1 guilt for all possible doubt. A reasonable doubt  
 2 is doubt based on reason and common sense. It's  
 3 not based purely on speculation. It may arise  
 4 from careful and impartial consideration of all of  
 5 the evidence and from the lack of evidence."  
 6 There is nothing to show in this case  
 7 that Edgar Steele possessed any explosive device,  
 8 used any explosive device, made any explosive  
 9 device. The only connection comes from one man:  
 10 Larry Fairfax.  
 11 Now, Mr. Haws says in his summation to  
 12 you, "No one has contradicted Larry Fairfax." Is  
 13 that accurate? Didn't he contradict himself  
 14 before you? Didn't he misstate what he was really  
 15 doing?  
 16 You know what the biggest lie of Larry  
 17 Fairfax was? It was going into the FBI on June  
 18 9th and saying, "Oh, Edgar Steele hired me to kill  
 19 his wife, and I want to be a confidential  
 20 informant. I want immunity from prosecution, and  
 21 I want you to use me to get Edgar Steele." And he  
 22 gives them information.  
 23 But can you believe it? He doesn't  
 24 tell them that on May 27th or 28th, he put a bomb  
 25 on Cyndi Steele's car. Doesn't tell them. Why?

1 of that.  
 2 The most amazing thing about this case  
 3 is what's not here. What hasn't been proved is  
 4 greater than what has.  
 5 Larry Fairfax is/was a criminal. And  
 6 in this case, those devices are his "Act of  
 7 Defiance," the title of his book, supposedly  
 8 fiction but written all about himself.  
 9 And it's taking this physical evidence  
 10 from this table and putting it over here. He  
 11 says -- Mr. Haws said that Edgar Steele has legal  
 12 fingerprints because there are no fingerprints of  
 13 Edgar Steele on the explosive device. And there  
 14 is no proof that Edgar Steele designed it, built  
 15 it, touched it, put it on anyone's car. Every  
 16 piece of evidence in this case comes back to Larry  
 17 Fairfax and the recordings.  
 18 This is not so much about a case where  
 19 the government has allegedly produced overwhelming  
 20 evidence. It's about what has not been proved.  
 21 Instruction No. 3 that the court  
 22 provided a copy to each juror, I believe, says,  
 23 "Proof beyond a reasonable doubt is proof that  
 24 leaves you firmly convinced the defendant is  
 25 guilty. It is not required the government prove

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1 I guess, through his own answers, he wanted to be  
 2 the hero. He wanted to go take it off the car.  
 3 He wanted to save Cyndi Steele.  
 4 But do you know what would have  
 5 happened if he told the truth and the whole truth  
 6 on June 9th? Clearly, any law enforcement person  
 7 would go to Cyndi Steele and say, "Let's check  
 8 your car. Let's see if it's really there. Let's  
 9 see if he is making this up. But, please, let's  
 10 check the car, give her fair warning."  
 11 But they can't do it. The FBI doesn't  
 12 know about it. It's the missing link. It's what  
 13 this case is all about. It would never, ever be  
 14 this serious or this difficult if there was no  
 15 explosive device, if it was all talk, like around  
 16 those recordings.  
 17 And, again, Mr. Haws played the  
 18 recordings and the jury has them in evidence, and  
 19 you have testimony specifically about them from  
 20 Cyndi Steele, from Kelsie Steele, people who have  
 21 known him for collectively, I guess, about 46  
 22 years.  
 23 And they asked from the very  
 24 beginning -- Cyndi Steele -- "I want to listen to  
 25 the recordings." And she did.

1 And her testimony is there are problems  
2 with the recordings. "It doesn't sound like the  
3 way my husband talks." There are breaks in the  
4 discussion. There are problems with what we call  
5 the "syntax." What is the meaning of this?

6 And, you know, there is one conclusion  
7 about those recordings: That they are nothing but  
8 talk. Nothing but talk. Because Edgar Steele and  
9 the FBI, no one knows that, in fact, this man,  
10 Larry Fairfax, has made an explosive device and  
11 attached it to Cyndi Steele's car.

12 No one knows that until June 15th, when  
13 it's found by Cyndi Steele taking her car in for  
14 an oil change. No one knows that except Larry  
15 Fairfax.

16 And why does he keep this secret? Why  
17 does he go back? Why does he go over to Oregon  
18 City? Well, according to him, Edgar told him to  
19 do everything. "Edgar told me to go and  
20 allegedly" -- and the ridiculousness of this  
21 stands out -- "He told me to go run her off the  
22 road, or I suggested I would run her off the road.  
23 I would hide in the back seat, and I would do  
24 something to her."

25 Ladies and gentleman, to say that

1 And you say: Well, what difference  
2 does it make? A bomb is a bomb. And most people  
3 would say: Right.

4 But it doesn't say that Mr. Fairfax had  
5 actually done anything. It's fantasy talk. It's  
6 fiction. It's Larry Fairfax talking and trying to  
7 set up Edgar Steele.

8 But unfortunately, in real life, this  
9 is more than just trying to write a book. It's  
10 putting people's lives in danger. And not just  
11 Cyndi Steele. If you believe Edgar Steele --  
12 excuse me. If you believe Larry Fairfax and his  
13 testimony in this case, "Well, the device fell  
14 off. Somehow, it didn't go off. And somehow, it  
15 fell off. So there is no problem."

16 Well, what if it did go off? And what  
17 if it did fall off and did go off and harmed other  
18 people? He had no concern whatsoever about that.

19 And, you know, there is a conflict in  
20 the evidence. Larry Fairfax says, "It won't go  
21 off. It didn't have an ignition. It wasn't  
22 designed to go off." And the government's  
23 witnesses say, "Oh, no. It was a real bomb, and  
24 it would have gone off. It's just the way he did  
25 it, the fuse didn't ignite. It didn't get hot

1 Mr. Fairfax's testimony is far-fetched is perhaps  
2 charitable. Those discussions, even if you  
3 believe that they are accurate and even if you  
4 believe it's Edgar Steele's voice, where is the  
5 proof of that? Where is the proof of that?

6 But even making the assumption, it's  
7 like fantasy. It is like reading a novel or  
8 listening to a novel being played to you. That's  
9 what's on those recordings.

10 Evidence in a criminal case can be  
11 direct or circumstantial. And is there any direct  
12 evidence whatsoever that Edgar Steele knew,  
13 approved, condoned, ordered Larry Fairfax to put a  
14 device on his wife's car? And the answer is no.  
15 No, there is not.

16 Because, as far as we know, Larry  
17 Fairfax didn't tell anybody what he was doing.  
18 There is no discussion, as Mr. Haws says, in those  
19 recordings or anyplace else about redundancy,  
20 double wrapping the tape, designing it to go off  
21 or to not go off. There is nothing there.

22 Mr. Haws told you that there is a  
23 reference to a "pipe bomb." That's not right,  
24 either. If you listen to the recording, there is  
25 a reference to a "car bomb."

1 enough. It just got discolored."

2 We don't even know, based upon the  
3 evidence presented by the government, whether, in  
4 fact, he put the device on the car May 27th or  
5 whether he never did it then and he waited until  
6 after Edgar Steele was arrested on June 11th and  
7 put it on the vehicle then.

8 MR. HAWS: Objection. Assumes facts not in  
9 evidence.

10 THE COURT: Ladies and gentleman, counsel  
11 must restrict their arguments just to the evidence  
12 and inferences that can be drawn from the  
13 evidence. I'm assuming that counsel is simply  
14 suggesting an inference that can be drawn from the  
15 evidence, which is fair closing argument, but it  
16 has to be based upon evidence actually presented.

17 With that, I'll allow you to go ahead  
18 and proceed.

19 MR. McALLISTER: And I'm talking about  
20 evidence that was not presented here, evidence  
21 that doesn't exist. We -- the jury does not know  
22 when the device was placed on the car, whether it  
23 ever went to Oregon or not, whether it crossed  
24 state lines, whether it was used in interstate  
25 commerce, as the law requires in order to prove

1 guilt.

2 Now, this is a case where the defendant  
3 is presumed innocent, where the defendant does not  
4 have to present any evidence, where the defendant  
5 doesn't have to answer. The burden is on the  
6 government.

7 And, yet, throughout Mr. Haws'  
8 argument, he kept saying: "Where is this?"  
9 "Where is that?"

10 Why? Why would Edgar Steele do this?  
11 Because he was in love with a picture of a Russian  
12 girl that he saw in the Internet? Hard to believe  
13 that a man would hire somebody like Larry Fairfax,  
14 first of all; and, second of all, want his wife  
15 murdered when he could simply, if he really, truly  
16 was in love with some woman in Russia, walk away,  
17 go there.

18 You can read the evidence. You can  
19 read the letter that is in evidence. And you can  
20 decide whether this is the writings of a murderer  
21 or a man who would hire somebody to murder  
22 somebody; or whether, as it's been said here  
23 repeatedly, the whole Russian bride scam was, you  
24 know, a case or something to work on and something  
25 that his family laughed about because it was so

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1 as to eliminate any problems." Well, his 257  
2 pages is a real problem for him. Because he  
3 admits that, in all of this, he wanted to set up  
4 Edgar Steele. He wanted to be the hero. He  
5 wanted to be somebody he wasn't.

6 The trip, the first trip to Portland  
7 with his cousin, Jim Maher, who testified here,  
8 Larry Fairfax says, "Yeah, I brought my cousin  
9 along. We went over there, and we were going to  
10 take -- I was going to take the device off or we  
11 were going to take the device off."

12 Does Larry Fairfax go to Cyndi Steele's  
13 car? No. The testimony is he tells Jim Maher to  
14 go take it off or go see if it's even on. And, in  
15 fact, Mr. Maher testified he never got out of the  
16 car. He never really looked. But do we -- do you  
17 know -- based upon this evidence, do you know  
18 whether or not it was even on the vehicle?

19 The second trip to Portland on the  
20 night and into early morning hours of June 11th,  
21 he again goes with Mr. Maher back to the Portland  
22 area. And the evidence is, as we lawyers like to  
23 say, undisputed. Nobody can test this.

24 Jim Maher says, "Well, this time we  
25 went back, and for sure I was going to take the

1 fake.

2 You know, they played -- they played  
3 the deposition testimony or the testimony of  
4 Tatyana from Russia. She didn't speak a word of  
5 English, not a word. And, of course, there is no  
6 proof and he does not speak Russian, Edgar Steele.

7 This is like, you know, computer  
8 cyberspace fantasy, writing letters that are  
9 interpret -- that go to an interpreter, who  
10 supposedly interprets them to the Russian woman,  
11 and then she sends something back.

12 It's fantasy on both sides. It's not a  
13 motive to commit murder. It's not a reason to  
14 commit murder.

15 Larry Fairfax, "An Act of Defiance,"  
16 the title of his book. I suppose it's not a bad  
17 title, but it tells you a lot about Larry Fairfax.  
18 What was he doing here? What was he really doing  
19 besides building a bomb, which is undisputed? He  
20 wanted to be the hero, but now he claims he is the  
21 victim. He is surprised by the fact that he was  
22 arrested and put in jail when the device was  
23 found. Of course, he never told anybody about the  
24 device.

25 "I decided to call this book fiction so

1514

1 device off of Cyndi Steele's car when she was in a  
2 public -- when the car was in a public place and I  
3 could get to it without really being noticed."

4 That's undisputed testimony. That was  
5 the purpose in making the second trip. And what  
6 happens? They get there in the early morning,  
7 stop for breakfast. Larry Fairfax is sleeping in  
8 the truck, and Maher is in having breakfast. And  
9 as he said, someone from the feds -- didn't know  
10 if it was an FBI agent, a U.S. marshal -- tells  
11 him to go back home.

12 You know, if there was a device on the  
13 car, as Larry Fairfax said, at that point, Edgar  
14 Steele is under arrest. Why didn't they go check?  
15 Why didn't he let Mr. Maher remove the device?  
16 Because he didn't want to get caught. He didn't  
17 want anybody to know. That's why.

18 Everything that the government has in  
19 this case revolves around Larry Fairfax.

20 What do you really know about Edgar  
21 Steele in this case? We know that he was arrested  
22 on June 11th. And, in fact, at that time, there  
23 was a ruse prepared to tell him that, not only was  
24 his wife dead, that his mother-in-law had been  
25 shot, and to get him to confess that he was using

1 Larry Fairfax as a hit man to kill his  
2 mother -- kill his wife and mother-in-law.  
3 And what happens on June 11th? Edgar  
4 Steele does not confess. Edgar Steele, when  
5 confronted, tells the truth. And he's  
6 nevertheless arrested.

7 What happens on June 15th when the  
8 device is found? Larry Fairfax confesses. And he  
9 said, "Yeah, I did it all. I made it. I put it  
10 on there. But I didn't think it would harm  
11 anybody. I didn't think it would work. I didn't  
12 think it would go off. I didn't think, based upon  
13 my first trip to Portland, it was even there, but  
14 I didn't do anything to warn anyone else."

15 He confesses. He admits his conduct in  
16 this case.

17 The evidence in this case about Edgar  
18 Steele's arrest shows his state of mind. He is in  
19 shock on getting this news, and then he is placed  
20 under arrest.

21 There are statements on the recordings  
22 that seem, at first blush, to be convincing. And  
23 there is an old phrase attributed to a lot of  
24 lawyers: "Talk is cheap, but where does the  
25 rubber meet the road?"

1 you're supposedly going to kill? It doesn't make  
2 any sense.

3 We also know a lot about Edgar Steele  
4 from his cell phone records. You know, in this  
5 day and age, cell phones can tell you a lot. And  
6 you will have this in evidence, and you can  
7 examine it yourself. This copy is difficult to  
8 read, I admit it. But when you see it, you can  
9 look at what calls were made to Edgar Steele and  
10 what calls did he make on June the 10th. And it  
11 stands out above everything else that on the night  
12 before he was supposedly going to kill his wife or  
13 have a hit man kill his wife, he spends 43 minutes  
14 talking to Cyndi Steele.

15 And she was here, and she testified.  
16 And she said, "Yeah. We talked about my mom and  
17 her health problems and her money problems."  
18 Forty-three minutes? That tells you a lot about  
19 Edgar Steele's state of mind on the night before  
20 he is supposedly or allegedly was going to have  
21 Larry Fairfax harm her in some way.

22 Phone records don't lie. The telephone  
23 company doesn't make them up other than for the  
24 purpose to bill you. It's not an alibi. It's not  
25 something created. It's the fact that he did talk

1 And in this particular case, we have  
2 some indications about Edgar Steele. What do we  
3 know about Edgar Steele?

4 We know, on June 10th, that he was  
5 visited by the old country veterinarian, Dr. Bob  
6 Stoll. We know from their conversation, which is  
7 undisputed, that they were talking about life and  
8 God and his recent surgery. Was this the talk of  
9 a man who was at that moment planning to murder  
10 his wife?

11 Now, I know the government will say,  
12 "Well, it's all a front." But, you know, you look  
13 at Exhibit No. 202, which is the May 20th, 2010,  
14 letter to Wachovia Mortgage. And it is -- the  
15 original was signed by Edgar Steele. It's on his  
16 stationary. And he said, "Also enclosed is a  
17 Wells Fargo cashier's check in the amount of  
18 \$2,779.37.

19 Now, Mr. Haws says, "Oh, this was part  
20 of the plan. This was part of the alibi."

21 Why, on May 19th, would he spend his  
22 own money and his wife's money to help his  
23 mother-in-law? Why would somebody do that? If  
24 there is really a plot or a plan, do you go take  
25 that kind of money and give it to someone else who

1 to her. Why? Because the evidence in this case  
2 is that he loved Cyndi Steele, that he spent 25  
3 years -- now 26 -- married to her with three  
4 children.

5 And the government, when Cyndi Steele  
6 testifies, wants to examine her about a divorce  
7 petition she filed some ten years previously, a  
8 complaint or a petition that was dismissed. There  
9 was no divorce. Yes, there was a separation.  
10 Yes, they were having problems ten years ago.

11 But what's the evidence before you?  
12 The evidence is, in the next ten years, they  
13 raised their family. They lived in north Idaho.  
14 They cared for each other.

15 You know, you can't just make up  
16 witnesses like Jeff Miller and Al Banks who came  
17 in here and said, "Well, I've known him for 40  
18 years. I've known Cyndi for 26 years. I've known  
19 the children." Al Banks for a different period of  
20 time. And they said never, never did Edgar Steele  
21 ever show anything except love for his family;  
22 never, ever did he attempt to harm anyone.

23 That is the evidence in this record.  
24 That is the evidence that was presented at trial.  
25 And you just can't -- you can't just find somebody

1 out on the street. These are people that have  
2 known him for many, many years.

3 Cyndi Steele testified in this case,  
4 and she was asked about why she wanted to file a  
5 divorce petition, why she wanted money from Edgar  
6 Steele, why she wanted custody of the children.  
7 And none of that mattered because there was no  
8 divorce. But it was done in an attempt to  
9 convince, I guess, a jury that ten years ago he  
10 wanted to, quote, "get rid of his wife."

11 But, on the other hand, ten years went  
12 by. The testimony was that this type of act, of  
13 hiring somebody like Larry Fairfax to commit  
14 murder, was so out of character to be  
15 unbelievable.

16 And ladies and gentleman, in this case,  
17 you always get to bring your life's experiences  
18 and your common sense with you into deliberations.

19 Fairfax's story not only makes no  
20 sense, it defies common sense. And without Larry  
21 Fairfax, this case makes no sense because it's  
22 built around him. He is the person who made the  
23 bomb, who designed it, who attached it, who failed  
24 to retrieve it, who put not only Cyndi Steele but  
25 everyone else in harm's way.

1 The charges in this case have been  
2 presented by Mr. Haws. And you do have, I  
3 believe, copies of the actual instructions. And,  
4 as you will see, the law requires you to examine  
5 what we call the elements of the crime and see if  
6 they have been proven.

7 Mr. Haws says, you know, "Just check  
8 the box." Where, ladies and gentleman -- in the  
9 evidence before you, where is the evidence that  
10 Edgar Steele intended that the murder be committed  
11 for money? Where is that evidence? Larry Fairfax  
12 is the only one to present any of that evidence.

13 Where is the evidence that Edgar Steele  
14 caused another person to travel in interstate  
15 commerce for the purpose of murdering his wife?  
16 The evidence before you is that Mr. Fairfax and  
17 Mr. Maher went twice to the Portland area to do  
18 what? To remove the device that they couldn't  
19 find, because Larry Fairfax never really looked  
20 for it.

21 In this case, again, there must be  
22 proof beyond a reasonable doubt that the defendant  
23 knowingly and intentionally counseled, commanded,  
24 induced, or procured Larry Fairfax to possess a  
25 destructive device. And, you know, those are

1 legal words, and those are the elements. But is  
2 there evidence here that he intentionally  
3 commanded?

4 It goes back to the recordings. And  
5 when you look at those recordings, when you listen  
6 to them, you may just reach the conclusion none of  
7 this makes sense. This is talk, like somebody is  
8 writing a novel, like somebody is -- somebody is  
9 making it up for some other purpose.

10 Count 4 is what's called tampering with  
11 a victim. And there is no doubt in this case that  
12 Cyndi Steele is the victim.

13 And what is that evidence? It is one  
14 phone call on June 13th, 2010, that Mr. Haws said  
15 he never knew he was being recorded. And then  
16 they played the recording, and the voice that  
17 comes on says, "This call is being monitored and  
18 recorded," to Cyndi Steele and Edgar Steele. He  
19 knows it's being recorded. He talks about the  
20 fact that it's being recorded.

21 What does he ask his wife to do? He  
22 says -- and you can listen to it for yourself --  
23 he says, "Stand like a rhinoceros in the road.  
24 Tell them it's not my voice on the tapes," which  
25 we all know are the recordings.

1 And he has never listened to the tapes.  
2 He doesn't know whether it's his voice or someone  
3 else's voice. But he believes, as he says in that  
4 conversation, "Larry Fairfax has set me up." But  
5 he doesn't even know -- they don't talk about what  
6 tapes or recordings.

7 And what does Cyndi Steele say that is  
8 important, that is so important? She says,  
9 "They" -- meaning the FBI or other government  
10 folks -- "They don't want me to listen to the  
11 tapes. I want to listen to the tapes." That's  
12 her response.

13 And Mr. Haws says that's a crime to ask  
14 for your wife's help about something he has never  
15 listened to. He says it's a crime.

16 Well, was Cyndi Steele induced in any  
17 way? Was she tampered with in any way? No. She  
18 goes and spends a month living with her friend  
19 Billie Cochran.

20 Why? Because she doesn't know the  
21 facts. Because she is in fear for her life and  
22 her safety. Yes, she doesn't believe her husband  
23 is trying to harm her, but she doesn't know about  
24 what Mr. Fairfax or what Mr. Maher or what other  
25 unknown person might want to do. All she knows is

1 a bomb is found under her car.  
 2 And she spends that month, afraid to  
 3 live in her own home, investigating the facts of  
 4 the case. She goes and listens to the recordings,  
 5 and she makes her own determination about the  
 6 facts of this case.  
 7 She says, "The recordings are difficult  
 8 to understand. They don't sound like the way my  
 9 husband talks. It may be his voice. It may be  
 10 somebody's done something to them." She just  
 11 doesn't know, but she doesn't believe it.  
 12 And then she investigates what  
 13 Mr. Fairfax has been doing and saying. She does  
 14 her own investigation. She looks at the records.  
 15 She looks -- she finds the telephone records. She  
 16 finds pieces of evidence. She is given everything  
 17 that she's asked for, and she reaches the  
 18 conclusion, which she tells you here, that her  
 19 husband is not guilty.  
 20 Now, I'm sure the government will say,  
 21 "She's in denial. She's wrong." But the fact is  
 22 this is the victim of the offense coming before a  
 23 jury and saying, "I don't believe it."  
 24 But, under our system of justice, it's  
 25 not whether she believes it or doesn't believe it

1 Sotka comes on and says, "This is being made at  
 2 6:02 on June 9th," and sends in Larry Fairfax.  
 3 The agent can't see him anymore. No  
 4 one can see him. Nobody knows. They're not  
 5 listening to it at the time he is at the Steele  
 6 residence.  
 7 And on June 10th, Agent Sotka comes on  
 8 again on the recordings, and he says, "This  
 9 recording is being made at 6:02 on June 10th."  
 10 Now, maybe it's a coincidence, maybe  
 11 it's not. But it's in evidence. And, amazingly,  
 12 on June 9th, you hear the train whistle nine  
 13 times. And on June 10th, you don't hear it at  
 14 all.  
 15 That's the proof that's been presented  
 16 here. That's what's being used. And maybe it's a  
 17 small point, but then there is the birds singing,  
 18 and that happens seven times. And the testimony  
 19 is they're in a barn where, yes, Kelsie Steele  
 20 said, "I grew up in, and there were birds  
 21 occasionally in the barn." But you can't hear the  
 22 train whistle in the barn, and you can't hear the  
 23 birds singing at 6:02.  
 24 There are what can be described as  
 25 anomalies, inconsistencies, issues with those

1 or whether FBI Agent Sotka believes it or not;  
 2 it's what can be proven beyond a reasonable doubt  
 3 in a court of law. And in this case, what's been  
 4 proven is all tied to Larry Fairfax, an admitted  
 5 liar who writes a book. And maybe it's not a  
 6 book. Maybe it's just his diary or his musings.  
 7 Maybe it's his thoughts.  
 8 But there is 253 pages handwritten,  
 9 both sides, with tremendous detail about himself  
 10 and his life. Not about Edgar Steele, but about  
 11 him. Where he says, "This was all designed -- I  
 12 cooperated and set up Edgar Steele so I could be  
 13 the hero."  
 14 That is what the evidence in this case  
 15 consists of -- that and the recordings. And the  
 16 recordings are subject to what we call "human  
 17 interpretation." What did they really mean? What  
 18 context was it said in?  
 19 And you've heard the evidence from  
 20 people who know him well. He doesn't talk like  
 21 that. He doesn't act like that.  
 22 You know, when you listen to the  
 23 recordings, when you listen to June 9th, there are  
 24 nine places where you can hear the whistle sound.  
 25 And, interestingly enough, both recordings, Agent

1 recordings. And that is, in part, why the  
 2 government is required to produce for you more  
 3 than just talk. Talk is cheap. Talk is what  
 4 people do. In this case, the real proof all comes  
 5 from Larry Fairfax, made by Larry Fairfax, through  
 6 Larry Fairfax.  
 7 Ladies and gentleman, I have to  
 8 represent my client to the best of my ability.  
 9 I'm also, though, a part in a system of justice  
 10 where it's my job to, in essence, challenge what  
 11 the government is presenting.  
 12 And it's my job -- so that everyone  
 13 understands, the burden of proof is on the  
 14 government to prove it beyond a reasonable doubt.  
 15 And you may, at this point -- you may be sick of  
 16 hearing that, but that's what the law is, and  
 17 that's what the law requires.  
 18 And why does it? Because in our  
 19 history, there wasn't always a jury system. There  
 20 has been in America since the Declaration of  
 21 Independence and the writing of the Constitution,  
 22 but before that, there was no such thing as a jury  
 23 system.  
 24 There was a man in England in the 14th  
 25 century named Sir Thomas More. He was the

1 archbishop of England, and he was basically the  
2 head of the Catholic church. As I'm told, he  
3 worked right there at Westminster Abbey -- which  
4 we all saw with the royal wedding; at some point  
5 or another, most people have seen it -- in that  
6 same building way back, hundreds of years ago.

7 And what happened to him was that the  
8 king of England, who he was loyal to, came to him  
9 and said, "Sir Thomas, I am married right now, but  
10 my wife is unable to provide me, to bear for me a  
11 son, a male heir to the throne. So I want a  
12 divorce. I want to marry a woman named Anne  
13 Boleyn."

14 And Sir Thomas More said to the king,  
15 to King Henry, "That is difficult for me because  
16 of the fact that, under my personal beliefs and my  
17 religious beliefs, we don't agree that you should  
18 divorce."

19 And King Henry thought, "Well, I'll get  
20 around this by putting out a proclamation and  
21 making everyone who was a subject in England, a  
22 citizen of England, pledge an allegiance to the  
23 king."

24 And it was written up and taken out to  
25 the people. And most people signed. Who cares?

1 this case and each element of the case has not  
2 been proven beyond a reasonable doubt, it's very  
3 important for you to stand up for that, to stand  
4 up for that principle.

5 As you will see in the instructions, in  
6 order for a person in America to be found guilty  
7 of a criminal offense, it must be a majority. It  
8 must be every one of you.

9 If this case has not been proven beyond  
10 a reasonable doubt, don't go along for fellowship,  
11 don't go along with other people. Stand up, not  
12 for the defendant, not for me, but for our system  
13 of justice.

14 As I said at the outset, this is more a  
15 case about what has not been proven as opposed to  
16 what has been proven about Larry Fairfax.

17 Why would Edgar Steele do this? Where  
18 is the proof that he intended to do this? It's  
19 not in the recordings. The recordings are like  
20 fantasy, like fiction, like somebody writing a  
21 book, like Mr. Fairfax.

22 Ladies and gentleman, I ask you to  
23 return not guilty verdicts as to all four counts  
24 in this case because the evidence does not  
25 substantiate or prove the crime based upon what

1 The king is the king. I don't care what he does.  
2 But it came around to Thomas More. And they said,  
3 "Will you sign this and declare your loyalty to  
4 the king?" And he said, "No. I cannot do that."

5 And he was put in the dungeon. He was  
6 put under arrest. He was held there for quite a  
7 while. His friend, the Duke of Burberry, came to  
8 him one day with the scroll. And he said,  
9 "Thomas, look at all the people. Look at all the  
10 people who have signed this, including me. Look  
11 at all the people. Please sign it. It's the key  
12 to your freedom. Come along with the rest of us  
13 for fellowship. It doesn't really matter."

14 And Sir Thomas More said, "If I go  
15 along with you, will you come with me to hell if  
16 I'm damned for all eternity because I didn't  
17 follow my conscience?" And the duke realized this  
18 was a matter of principle. And Sir Thomas More  
19 was put to death for standing up for his beliefs.

20 Based upon that experience, we don't  
21 have kings decide anything in America. We have  
22 juries. We have people. We have our jury of our  
23 peers.

24 And in this particular case, it is  
25 important that -- if any one of you believes that

1 the court has given to you as the elements in the  
2 written instructions. And because it hasn't been  
3 proven, I ask that you return those verdicts.

4 Thank you.

5 THE COURT: Thank you, Mr. McAllister.

6 Mr. Haws, your rebuttal argument?

7 REBUTTAL BY THE GOVERNMENT

8 MR. HAWS: Members of the jury, counsel just  
9 suggested that you might be getting tired of  
10 hearing the words "proof beyond a reasonable  
11 doubt." I hope you're not getting tired of  
12 hearing that.

13 Proof beyond a reasonable doubt is the  
14 cornerstone of our justice system. It's a heavy  
15 burden to come into court and prove all of the  
16 elements beyond a reasonable doubt. But I want to  
17 assure you that that is a burden which my  
18 co-counsel and I and the case agent here willingly  
19 accept.

20 We expect you to hold us to that  
21 burden. But I expect you not to hold us to the  
22 impossible burden of proof beyond all doubt. That  
23 is not required by law.

24 In order to find a doubt in this  
25 evidence, it must be a reasonable doubt. It must

1 be a doubt in the evidence, not because of some  
2 suspicions or because of some imaginations. There  
3 must be suspicion -- there must be lack in the  
4 evidence. There must be a reason for it. And if  
5 there is no reason for it and you are convinced  
6 beyond a reasonable doubt, we accept that high  
7 burden and ask you to return guilty verdicts.

8 Let me make a couple of other comments.  
9 Counsel has asked the question: Where is the  
10 involvement of my client? We hear a lot -- he  
11 talks a lot about Larry Fairfax. But where is the  
12 involvement of my client? His fingerprints aren't  
13 on the bombs. There is no direct evidence of him  
14 traveling himself over to Oregon.

15 The key concept there, ladies and  
16 gentleman, is a legal concept called "aiding and  
17 abetting." And if he's the one who originated the  
18 idea, counseled, abetted, commanded, paid for, he  
19 is responsible for the actions of Larry Fairfax in  
20 furtherance of that crime. If Larry Fairfax's  
21 fingerprints are on those bombs because he  
22 commanded it, he paid for it, he asked for it, he  
23 aided and abetted. He is responsible for that.  
24 He can't hide behind that.

25 This case reminds me a little bit of

1 He didn't say anything about the bomb. He told  
2 you. He admitted that.

3 But look at all the corroboration for  
4 him since, since that time and since he accepted  
5 the responsibility. The corroboration is there.

6 Let me give you one illustration of  
7 that corroboration. Exhibit No. 2000. That's  
8 Defense Exhibit No. 2000. Go to the last page of  
9 Defense Exhibit No. 2000, to the phone call that  
10 counsel was just referring to; that at 9:23 p.m.  
11 on June 10th, the night before these murders were  
12 supposed to happen, Mr. Steele had a 43-minute  
13 conversation with his wife.

14 Well, that goes along with the  
15 evidence, doesn't it? Because he was going to  
16 call her that evening and see whether any plans  
17 had changed. What did they talk about? They  
18 talked about the doctor's appointments, her  
19 health. Okay. That corroborates exactly what's  
20 said in the tapes, in the recordings, as well as  
21 Larry Fairfax.

22 But notice the call just before that.  
23 When you go to Exhibit No. 2000, if you look at  
24 the call just before that at -- on 6/10, June  
25 10th, it's a call at 6:00 received on Edgar

1 those cardboard cutout figures. Have you ever  
2 gone to Washington, D.C., or someplace and there  
3 is a picture of Ronald Reagan or there is a  
4 picture of President Obama or somebody, and it's  
5 life-size, and it looks just like them? And you  
6 walk up, and you have your picture taken there.  
7 It looks like you're standing right there next to  
8 President Obama.

9 The argument you just heard is a  
10 cardboard cutout of Larry Fairfax propped up in  
11 front of Edgar Steele. That's what that entire  
12 argument was. It's: "Don't look at Edgar Steele;  
13 look at Larry Fairfax."

14 No. Larry Fairfax has pled guilty and  
15 accepted responsibility. Now it's time for you to  
16 examine the evidence and to hold Edgar Steele  
17 accountable for his actions.

18 Larry Fairfax -- let's talk about Larry  
19 Fairfax just a moment longer. He is an  
20 interesting, interesting character. His testimony  
21 on this stand was straightforward. He came in  
22 here in an orange jumpsuit, overweight, and calmly  
23 told you what he knew. He accepted responsibility  
24 for the fact that he was not completely honest  
25 with law enforcement the first time he reported.

1 Steele's phone. 6:00 -- 6:00, that's when --  
2 that's when Larry Fairfax was driving over to meet  
3 with Edgar Steele. Do you remember? It's on the  
4 tape itself.

5 Here is a call, 6:00. Who is it from?  
6 Larry Fairfax. This record right here establishes  
7 the date, the time that he calls him on 6/10 on  
8 the recordings. Check it out. This corroborates  
9 Larry Fairfax.

10 If you think Larry Fairfax had the  
11 sophistication to drive through the gate at 1569  
12 Talache Road out of sight of law enforcement  
13 officers and, within less than a half an hour,  
14 fabricate a tape of this kind with the background  
15 noises, the natural conversations, all of those  
16 things, it is -- it is speculation, and it is not  
17 a reasonable doubt. That is not a reasonable  
18 doubt.

19 That could not have happened and come  
20 back out a half-hour later, less than a half-hour  
21 later, and have that completed tape with the  
22 voices in place and have made it up. It's just  
23 not possible. It defies -- that is not a  
24 reasonable -- that's a perfect example of what is  
25 not a reasonable doubt.

1 These tape recordings themselves are  
2 the evidence. These recordings are the evidence  
3 in this case.

4 Let me point to a couple of other  
5 things. I found it interesting -- while we're  
6 still talking about Larry Fairfax and the  
7 cardboard cutout Larry Fairfax that he has got  
8 propped right there in front of Edgar Steele so  
9 you can't see Edgar Steele -- let's talk about  
10 that Larry Fairfax just a little bit more.

11 Why would -- why would Larry Fairfax do  
12 this? That question has never been answered.  
13 And there is absolutely no evidence in this record  
14 to say why Larry Fairfax would do it. Larry  
15 Fairfax was doing it for somebody else, and the  
16 evidence is clear as to where the motive is.

17 Now, ladies and gentleman, we don't  
18 have to prove motive. It is not part of the  
19 elements. We have to prove what, why, when,  
20 where -- or pardon me -- how, when, where, but not  
21 why. We don't have to say why Edgar Steele would  
22 do these things. It's not required under the law.

23 But this case doesn't make sense unless  
24 you do ask the question "Why?" What were his  
25 motives?

1 marriage in June of 2010.

2 There are lots of motives for why this  
3 man did what he did. Not a single shred of  
4 evidence has suggested why Larry Fairfax would do  
5 what he did except for one reason. It's the  
6 reason I told you in my opening statement. He  
7 needed money, and he was willing to pay money.  
8 That's, purely and simply, Larry Fairfax's motive.  
9 That's all that's shown from the evidence.

10 Let's talk about going across lines --  
11 state lines for just a second. This fantasy or  
12 unreasonable doubt has been presented here as  
13 though somebody later on put a pipe bomb  
14 underneath Cyndi's car after it had arrived in  
15 Oregon.

16 That's not the evidence. Larry Fairfax  
17 told you himself he wired it to the bottom of the  
18 car, Cyndi's car, on May 27th. And it was seen --  
19 her car was seen in Oregon by the FBI agent, Frank  
20 Heckendorn, when he went to the house on June  
21 11th. Her car was there. It had moved from  
22 Idaho -- from Sagle, Idaho, to Oregon City,  
23 Oregon, after Larry Fairfax put the bomb on it.

24 Was there travel? Yes, there was.  
25 Larry Fairfax traveled with Jim Maher over to

1 Counsel refers to love of family,  
2 long-term marriage. Conceded. I am not going to  
3 quibble with Mrs. Steele's characterization that  
4 the marriage had been good for a long, long time.

5 That's not the evidence, though, in the  
6 last six months before June, when Mrs. Steele was  
7 going over to visit her mother regularly, and he  
8 resented it. When the family was gone and he felt  
9 alone, things had started to change in the family.  
10 Things had started to change dramatically.

11 There was -- the evidence would suggest  
12 there was a lot of self-pity going on, a lot of  
13 fantasy about searching for that one love, some  
14 young woman that would be his second half, that he  
15 would raise children with. That's a lot of  
16 fantasy. That's the teenage -- lovesick-teenager  
17 syndrome that was discussed in the evidence.  
18 That's what's going on here.

19 What else? What other motives? There  
20 is an insurance payout if we can -- if this can be  
21 made to look like an automobile accident.

22 He learned in 2000 you don't go through  
23 a divorce. A divorce is not an economically good  
24 proposition. He learned that, and that's why he  
25 didn't just go seek a divorce and get out of this

1 Oregon City, Oregon, to what? Either check on the  
2 bomb or remove the bomb.

3 Now, you can't say, "Well, they were  
4 going to remove the bomb; therefore, there is no  
5 crime." Oh, no. Their going to Oregon to either  
6 check on it or remove it is part of the crime  
7 because removing it -- removing it is still part  
8 of the transaction of attempt -- of intent to  
9 commit murder. It's part of the game. It's, if  
10 you will, get this bomb off so that we cover up  
11 what we have done.

12 It's still part of the intent, the  
13 overall intent of this act. When that trip was  
14 made over to Oregon, that fulfilled the terms of  
15 interstate commerce.

16 The tampering case baffled me as to --  
17 counsel said that I made the representation he  
18 didn't know he was being recorded in that  
19 jailhouse conversation. Oh, he knew he was being  
20 recorded. He misunderstood me.

21 In my argument, I told you that he also  
22 knew exactly why he was calling his wife. Because  
23 there were recordings that had his voice on it,  
24 and those recordings with his voice on it were  
25 incriminating.

1 He didn't know it from having listened  
2 to the tapes, because he hadn't listened to them.  
3 He knew it because he was a participant in those  
4 tapes. That's why he knew that he had to get to  
5 his wife and try to deter her from talking to the  
6 FBI. He knew exactly that he was being recorded,  
7 and he went ahead and spoke to his wife about  
8 those tapes anyway.

9 I want to play one last brief clip to  
10 you, and then I'll close with one thought after  
11 that.

12 Would you play clip 2, please?  
13 (Audio clip published.)

14 MR. HAWS: Right there, you have his own  
15 words, talking about his false alibi. "And if  
16 that black thing leaves, she's in it." "Go get  
17 the job done." Edgar Steele's words.

18 Ladies and gentleman, let me share with  
19 you a quote from President Theodore Roosevelt:  
20 "No man is above the law, and no man is below the  
21 law. And we ask no man's permission when we  
22 require him to obey the law."

23 The time has come to hold Mr. Edgar  
24 Steele accountable for not obeying the law and for  
25 these crimes which the evidence has shown that he

1 has committed.

2 Thank you very much.

3 THE COURT: Thank you, Mr. Haws.

4 INSTRUCTIONS TO THE JURY

5 THE COURT: Ladies and gentleman, I have  
6 just a few follow-up instructions. These are  
7 fairly short, but it's intended to get you  
8 started, I think, in your deliberations.

9 I'll remind you that the arguments and  
10 statements by lawyers are not evidence. What  
11 they -- the lawyers are not witnesses. What they  
12 have said in their opening statements, closing  
13 arguments and throughout the trial was intended to  
14 help you interpret the evidence, but their  
15 statements are not evidence.

16 If the facts as you remember them  
17 differ from the way the lawyers have stated them,  
18 your memory must control.

19 When you begin your deliberations,  
20 elect one member of the jury as your foreperson  
21 who will preside over the deliberations and speak  
22 for you here in court. You will then discuss the  
23 case with your fellow jurors to reach agreement if  
24 you can do so.

25 Your verdict, whether guilty or not

1 guilty, must be unanimous. Each of you must  
2 decide the case for yourself, but you should do so  
3 only after you have considered all the evidence,  
4 discussed it fully with the other jurors, and  
5 listened to the views of your fellow jurors.

6 Do not be afraid to change your opinion  
7 if the discussion persuades you that you should,  
8 but do not come to a decision simply because the  
9 other jurors think it is right.

10 It is important that you attempt to  
11 reach a unanimous verdict. But, of course, only  
12 if each of you can do so after having made your  
13 own conscientious decision. Do not change an  
14 honest belief about the weight and effect of the  
15 evidence simply to reach a verdict.

16 Because you must base your verdict only  
17 on the evidence received in the case and on these  
18 instructions, I remind you that you must not be  
19 exposed to any other information about the case or  
20 to the issues it involves.

21 Except for discussing the case with  
22 your fellow jurors during your deliberations, you  
23 should continue to follow in general the court's  
24 admonition, which includes do not communicate with  
25 anyone in any way and do not let anyone else

1 communicate with you in any way about the merits  
2 of the case or anything to do with it.

3 This, again, includes discussing the  
4 case in person, in writing, by phone, or by  
5 electronic means, which can include email, text  
6 messaging, visiting any Internet chatroom, blog,  
7 website, or other feature.

8 This applies to communicating with your  
9 family members, your employer, the media or press,  
10 and the people involved in the trial.

11 If you are asked or approached in any  
12 way about your jury service or anything about this  
13 case, you must respond that you have been ordered  
14 not to discuss the matter and to report this  
15 contact to the court.

16 Likewise, do not read, watch, or listen  
17 to any news or media accounts or commentary about  
18 the case or anything to do with it. Do not do any  
19 research, such as consulting dictionaries,  
20 searching the Internet or using any other  
21 reference materials, and do not make any  
22 investigation or in any other way try to learn  
23 about the case on your own.

24 The law requires these instructions to  
25 be followed to ensure that the parties receive a

1 fair trial based upon the same evidence that each  
2 party has had an opportunity to address. A juror  
3 who violates these restrictions jeopardizes the  
4 fairness of these proceedings, and a mistrial  
5 could result that would require that the entire  
6 trial process start over.

7 If any juror is exposed to any outside  
8 information, please notify the court immediately.

9 The punishment provided by law for this  
10 crime is for the court to decide. You may not  
11 consider punishment in deciding whether the  
12 government has proved its case against the  
13 defendant beyond a reasonable doubt.

14 After you have reached unanimous  
15 agreement on a verdict, your foreperson should  
16 complete the verdict form according to your  
17 deliberations, sign and date it, and advise the  
18 bailiff that you're ready to return to the  
19 courtroom.

20 If it becomes necessary during your  
21 deliberations to communicate with me, you may send  
22 a note through the bailiff signed by any one or  
23 more of you. No member of the jury should ever  
24 attempt to communicate with me except by a signed  
25 writing, and I will respond to the jury concerning

1 the case only in writing or here in open court.

2 If you send out a question, I will  
3 consult with the lawyers before answering it,  
4 which may take some time. You may continue your  
5 deliberations while waiting for an answer to any  
6 question.

7 Remember that you are not to tell  
8 anyone, including me, how the jury stands,  
9 numerically or otherwise, on the guilt -- or on  
10 the question of the guilt of the defendant until  
11 after you have reached a unanimous verdict or have  
12 been discharged.

13 You will now retire to the jury room,  
14 and your first duty will be to select your  
15 foreperson. You may then start your  
16 deliberations. The bailiff will shortly bring in  
17 the original exhibits admitted into evidence.

18 Let me inquire: Are there any jurors  
19 who feel that you could not proceed with  
20 deliberations for any reason? Health concerns or  
21 for any reason feel you could not proceed with  
22 deliberations?

23 All right. I see no response.

24 Unfortunately, I will have to excuse  
25 two of you as alternates. The alternates, which

1 were determined on the first day of trial based  
2 upon where you were seated during jury selection,  
3 would include -- Ms. Overgard, you're an  
4 alternate. And, also, Ms. Johnson, you're also an  
5 alternate.

6 So you will need to gather your  
7 belongings out of the jury room. And after you've  
8 left, then the other jurors will be allowed to  
9 begin their deliberation.

10 I would ask Ms. Overgard and  
11 Ms. Johnson to continue to follow the court's  
12 admonition concerning juror conduct. Do not -- it  
13 is possible that if one of the jurors becomes ill  
14 and cannot continue with deliberations, you may be  
15 summoned back and asked to replace the excused  
16 juror. If that does occur and you've had any  
17 contact with the attorneys, the witnesses, the  
18 parties, in the parking lot or otherwise, or  
19 you've otherwise not been able to follow the  
20 court's admonition, you will not be allowed then  
21 to replace the excused juror.

22 If you want to know the jury's  
23 verdicts -- and at that point, you will be free to  
24 discuss the case, after the jury has reached a  
25 verdict -- you can leave your telephone number,

1 and one of my staff will call you and let you know  
2 when the jury has reached a verdict so you will  
3 know that you are free then to discuss the case  
4 with others if you wish to.

5 Likewise, I'm again going to admonish  
6 anyone in the courtroom to avoid any contact with  
7 these two jurors as they leave the courthouse for  
8 the reasons that I've described.

9 At this time, I'm going to swear the  
10 court bailiff. I think we'll have both  
11 Ms. Tetrick and Mr. Severson sworn to serve as  
12 bailiffs.

13 (Bailiffs sworn.)

14 THE COURT: All right. At this time, ladies  
15 and gentleman, you will be allowed to retire to  
16 the jury room and begin your deliberations after  
17 the two alternates have exited the jury room. The  
18 exhibits will be brought in momentarily. We need  
19 to go through those and make sure they're in  
20 proper form. You can begin your deliberations,  
21 but we'll have those to you just momentarily.

22 At this time, ladies and gentleman, you  
23 may retire to the jury room and begin your  
24 deliberations.

25 (Jury commences deliberations.)

1 (Jury absent.)  
 2 THE COURT: Counsel, a couple of  
 3 housekeeping matters.  
 4 First, with regard to the trial  
 5 exhibits, it is your responsibility to go through  
 6 the exhibits to make sure they're in proper form  
 7 and where redactions have been ordered by the  
 8 court -- I don't recall that there were any --  
 9 but, if there were, that those redactions have, in  
 10 fact, been made.  
 11 Also, with regard to the recordings,  
 12 there is Ninth Circuit authority to the effect  
 13 that it is improper to send -- allow the jury to  
 14 play the recordings in the jury room while they're  
 15 deliberating because of the defendant's right --  
 16 it's regarded as a critical stage of the  
 17 proceedings, and the defendant has the right to be  
 18 present while those are being played.  
 19 I'm not sure I agree with that  
 20 authority, but it is the only case -- I think it's  
 21 still the extant law of the circuit; and,  
 22 therefore, I intend to follow it.  
 23 That right, I suppose, can be waived by  
 24 the defendant if the defendant is willing to waive  
 25 presence during the playing of the recordings. If

1 than bring them here into open court.  
 2 I'm not absolutely sure that there is  
 3 any requirement that they -- that those responses  
 4 be otherwise in open court, but I always run this  
 5 by counsel to see if you have any objection to  
 6 that method of responding to jury questions.  
 7 From the government, is there any  
 8 objection?  
 9 MR. HAWS: No objection, Your Honor.  
 10 THE COURT: Mr. McAllister, any objection?  
 11 MR. McALLISTER: No, Your Honor.  
 12 THE COURT: Excuse me?  
 13 MR. McALLISTER: No, Your Honor.  
 14 THE COURT: All right. That's the first  
 15 time I haven't heard you all through the trial.  
 16 Your voice resonates, shall we say.  
 17 With that, is there anything else,  
 18 counsel, before --  
 19 MR. McALLISTER: Yes, Your Honor.  
 20 THE COURT: Yes?  
 21 MR. McALLISTER: Your Honor, at this time, I  
 22 would like to, I guess, give back or tender back  
 23 the pages I received from the court staff that I  
 24 have described as "the Fairfax book" or his  
 25 writings, et cetera, which I think Your Honor

1 that is waived, then we can send a recorder, I  
 2 assume. I don't know what the format is of the  
 3 recording, but if it's in a simple format where it  
 4 can be played with a simple CD player, that might  
 5 be the other alternative.  
 6 So we'll send the -- unless, again,  
 7 there is a waiver by the defendant, we'll send the  
 8 recordings into the jury room. But if they  
 9 request a recorder, we'll advise them that they  
 10 need to return to the -- we'll return them to the  
 11 courtroom and have them play the recordings here  
 12 in open court.  
 13 Also, please remain within 15-minute  
 14 driving distance of the courthouse. If the jury  
 15 reaches a verdict, I do -- I do not want to delay  
 16 the taking of that verdict.  
 17 Finally, as to jury notes, my practice  
 18 is not to respond to jury notes in open court, but  
 19 simply to respond in writing. And the process I  
 20 normally follow would be to take the note, prepare  
 21 a proposed response, circulate it to counsel, then  
 22 go on the record to allow you to state your  
 23 objections to my proposed response to the jury.  
 24 I'll then consider those objections and then  
 25 respond to the jury question in writing rather

1 entered a protective order. So I'd like to do  
 2 that.  
 3 I did use one of the original exhibits,  
 4 and I'll talk with the staff about the exhibits.  
 5 One final matter, Your Honor. I have  
 6 been asked --  
 7 THE COURT: Let me note just very quickly  
 8 that, with regard to that, a sealed copy of the  
 9 original with the redactions which the court made  
 10 based upon privilege, primarily, has been made  
 11 part of the record, and it has -- the pagination  
 12 is there so that anything that was mentioned or  
 13 cross-referenced in the cross-examination of  
 14 Mr. Fairfax earlier today has been preserved for  
 15 the record.  
 16 So we will just destroy the copy that  
 17 you're returning to the court pursuant to the  
 18 protective order. And, likewise, the copy given  
 19 to the government will need to be returned and  
 20 destroyed, as well.  
 21 Now, Mr. Fairfax [sic].  
 22 MR. McALLISTER: Mr. McAllister, Your Honor.  
 23 THE COURT: Sorry.  
 24 MR. McALLISTER: It's all right. We have  
 25 had a long day.

1 THE COURT: That's the first mistake I think  
 2 I've made in the entire trial, except for two that  
 3 I was able to remedy.  
 4 MR. McALLISTER: No problem, Judge.  
 5 Cyndi Steele's counsel has asked me --  
 6 and he can speak to this, Judge. But Cyndi Steele  
 7 would like to visit her husband. I don't believe  
 8 that the no-contact order should remain in effect.  
 9 I think the purpose of that order has been  
 10 fulfilled, and at this time, there is no reason  
 11 why she shouldn't be allowed to visit with him  
 12 whenever the authorities at the jail permit it.  
 13 THE COURT: I will allow the government to  
 14 be heard, but --  
 15 MS. WHELAN: We have no objection to that,  
 16 Your Honor.  
 17 THE COURT: I would allow the -- I have  
 18 already allowed, I guess, a noncontact visit  
 19 earlier today, and I see no reason at all to  
 20 maintain the no-contact order in place.  
 21 When, where, and under what  
 22 circumstances that contact will take place I leave  
 23 to the marshal's service, though, and the jail.  
 24 But, beyond that, I'll leave that up to them.  
 25 MR. McALLISTER: Thank you, Your Honor.

1 that was read -- given to them when it was played  
 2 during the trial.  
 3 But since it is under the rule and that  
 4 rule is waivable, my view is that if the defendant  
 5 would prefer to simply have a means of listening  
 6 to the recording in the jury room and is willing  
 7 to waive his right to be present during the  
 8 playing of those recordings, then the other  
 9 alternative is to simply give them a means by  
 10 which they can listen to the CD without coming  
 11 into the courtroom and, obviously, without the  
 12 transcript, as well. Because I don't think -- I  
 13 would be very uncomfortable giving them a  
 14 transcript in the jury room even if the defendant  
 15 waives his right to be present.  
 16 The problem may be one of technology.  
 17 I don't know what the format is, but if it can  
 18 only be played on a laptop, then that is a little  
 19 bit problematic. I mean, we might have to  
 20 sanitize the laptop. I don't know what's on the  
 21 laptop, but I'm not sure I trust sending just any  
 22 laptop into the jury room, not knowing what they  
 23 might do. We can turn off the WiFi capability.  
 24 There are just a lot of issues we have to think  
 25 about.

1 THE COURT: Anything else from the  
 2 government?  
 3 MR. HAWS: Nothing further, Your Honor.  
 4 THE COURT: All right. We'll be in recess.  
 5 (Recess.)  
 6 (Jury absent.)  
 7 JURY QUESTION  
 8 THE COURT: The court has received a note  
 9 from the jury requesting that the recordings be  
 10 played. I'm not sure what the note says. You  
 11 have read it. I just know that it says, "We would  
 12 like to listen to" -- we need to tell the jury to  
 13 send their notes out on something other than  
 14 Post-It notes. "We would like to listen to all  
 15 the audio recordings. Can we please have a laptop  
 16 or another device for the -- for this purpose."  
 17 I need to get my reading glasses, too.  
 18 As I noted before we took a break,  
 19 Ninth Circuit authority says that the playing of  
 20 recordings by the jury is a critical phase of the  
 21 trial, and Rules 41 and 43 require that the  
 22 defendant be present. And based upon that, the  
 23 process would be to bring them into the courtroom.  
 24 It is possible for them to see the transcripts  
 25 that have been prepared with the same instruction

1 The other alternative is to have one of  
 2 the jury bailiffs who have been sworn to go in,  
 3 play it, and either stay there or just turn it on  
 4 and then leave. I would prefer not to have even  
 5 the bailiffs go into the jury room because they  
 6 may be discussing or want to discuss it.  
 7 If there is a way technologically that  
 8 we can just send it in and the defendant is  
 9 willing to waive his presence, then they can just  
 10 play it themselves. I think that is, far and  
 11 away, the better way to go. But it requires  
 12 Mr. Steele's concurrence and his willingness to  
 13 waive his right to be present during the jury's  
 14 listening to the recordings, and technologically,  
 15 that we have the ability to allow them to listen  
 16 to it. I just don't know if we can arrange that.  
 17 So, with that, let me hear first, I  
 18 guess, from the defense.  
 19 MR. McALLISTER: Judge, we have discussed it  
 20 with Mr. Steele. And we'll waive -- he will waive  
 21 or we will waive his presence to be in the  
 22 courtroom for any playing of the audio.  
 23 And as to how it's done, we don't have  
 24 any objection if one of the court staff is there  
 25 or at least maybe walks into the room, turns it

1 on, walks back in. That would be fine. Or if we  
 2 can find a -- I guess what we would call a blank  
 3 device or laptop, that would be fine, too.  
 4 THE COURT: Mr. Steele, you concur? You  
 5 understand you have the right to be present while  
 6 the jury listens to the recording?  
 7 THE DEFENDANT: I understand. I concur.  
 8 THE COURT: You're willing to waive that  
 9 right?  
 10 THE DEFENDANT: Yes, I am.  
 11 THE COURT: Then I think the next question  
 12 is just one of whether it's technically possible.  
 13 Does the government disagree?  
 14 LAW CLERK TETRICK: Just in terms of what's  
 15 technically possible, I sent a message to Doug,  
 16 and he says they might have one that is brand new  
 17 that we could use or --  
 18 THE COURT: A brand new laptop?  
 19 LAW CLERK TETRICK: Yeah. Or they could  
 20 build one. So we could get them a clean --  
 21 THE COURT: I don't think physically --  
 22 format it, not start from a pile of plastic.  
 23 Counsel, I would almost prefer to do it  
 24 that way and isolate my staff from the jury. And  
 25 with counsel's concurrence, then, we will figure

1 out a way to either give them a laptop which has  
 2 nothing else on it and simply go in long enough  
 3 just to instruct them on how to play it; and then  
 4 once that's done, we'll leave, and then they can  
 5 listen to it as many times as they want to.  
 6 Is that agreeable, Mr. McAllister?  
 7 MR. McALLISTER: Yes, it is.  
 8 MR. HAWS: Yes.  
 9 THE COURT: All right. Then I think that  
 10 solves the problem. Thank you.  
 11 I'm sorry, Mr. Steele, we had to drag  
 12 you back up.  
 13 MR. AMENDOLA: Your Honor, could we address  
 14 one other thing?  
 15 THE COURT: Yes.  
 16 MR. AMENDOLA: It may be more housekeeping.  
 17 But I understand that the jury expressed some  
 18 interest in staying until 7:00 or 8:00 tonight,  
 19 which, you know, I guess they have that choice.  
 20 But if all of a sudden, the jury said, "We would  
 21 like to stay until midnight," I think -- we would  
 22 like to express our concern about that.  
 23 THE COURT: I generally tell the jury  
 24 anytime we get past 8:00, we're at a point of  
 25 diminishing return. And I never let a jury stay

1 past 10:00. I think that clearly is past any  
 2 point of their being able to do anything  
 3 meaningful. So that's generally my guidelines.  
 4 But if they want to stay until 8:00 or so, I think  
 5 sometimes it's usually because they think they're  
 6 making progress, or they just want a free meal  
 7 from the government, or both. Okay?  
 8 MR. AMENDOLA: Yes, sir.  
 9 MR. HAWS: You want these back, Your Honor?  
 10 THE COURT: Yes.  
 11 (Recess.)  
 12 (Jury present.)  
 13 THE COURT: Okay. You don't even need to  
 14 get into your seats. This is going to be very  
 15 short.  
 16 We're going to send you home for the  
 17 evening. There are just some things I want to  
 18 cover with you.  
 19 When you leave the courthouse, you're  
 20 under the same admonition you were throughout the  
 21 trial about not discussing the case with anyone  
 22 and not discussing the case among yourselves. So  
 23 no contact with other jurors during the evening  
 24 hours.  
 25 When you come back tomorrow morning,

1 don't start discussing the case until everyone is  
 2 present. Deliberation requires all 12 jurors to  
 3 be present. Really, until Mr. Severson or  
 4 Ms. Tetrick bring in the trial exhibits, don't  
 5 start deliberating.  
 6 Once all the jurors are here, then  
 7 we'll bring in the exhibits, and then you can  
 8 resume your deliberation. And then, obviously,  
 9 everything else I've told you throughout the trial  
 10 still applies about not going on the Internet,  
 11 visiting any websites, engaging in any chatroom  
 12 discussions, blogging, anything of that sort.  
 13 The other issue is we're still trying  
 14 to be very careful that you not have any contact  
 15 with anyone leaving the courthouse or returning  
 16 tomorrow morning. I think we may even kind of  
 17 escort you out, kind of at least walk out to the  
 18 parking lot with you as a group as best we can.  
 19 Although the elevator is not that big, so we may  
 20 have to do it in shifts. Or maybe I can even go  
 21 with a group, if need be.  
 22 And then tomorrow -- some of you have  
 23 been arriving early, and I think that's  
 24 commendable. I'm an early -- usually I'm here  
 25 pretty early, working out or doing something. But

1 I would ask during deliberations, is it possible  
2 that we could all agree to arrive here between,  
3 say, 8:15 and 8:30, rather than earlier?

4 Now, if you have a need to be here  
5 earlier, say, you're riding with a spouse or  
6 significant other and they need to drop you off  
7 and it has to be done earlier, tell us, and we can  
8 make arrangements for it. But, otherwise, we  
9 would like, if possible, for you to be here no  
10 sooner than about 8:15 and no later than 8:30 so  
11 we can have court security officers lined up and  
12 can kind of bring you in and make sure that,  
13 again, you don't have any contact with anyone  
14 else.

15 Is there anyone for whom that's a  
16 problem?

17 JUROR: I'm just coming from the west side  
18 of the valley. It's just kind of hard to gauge  
19 what traffic is going to be like on the connector.

20 THE COURT: Yeah. That is a problem if  
21 you're out in the Meridian, Nampa area at all.

22 LAW CLERK SEVERSON: I mean, I think we  
23 could open that window to 8:00 to 8:30.

24 THE COURT: All right. Let's say 8:00 to  
25 8:30. But try -- you know, now we'd almost rather

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1 could gather up those exhibits tonight or if that  
2 would cause a problem.

3 THE COURT: Yeah. Let me just ask that.

4 Your notes are there. We won't touch  
5 your notes. We'll just leave your notes there.  
6 But the trial exhibits we need to retrieve. Are  
7 they in a position where we could just --

8 JUROR: I think we have been putting them  
9 all back, so that makes it easier.

10 The laptop has some information.

11 LAW CLERK SEVERSON: Yeah. We'll take the  
12 laptop, too. That's not a problem.

13 THE COURT: All right. Any other questions?  
14 If not --

15 JUROR: Do you want us to come to the front  
16 door tomorrow?

17 THE COURT: Yes.

18 JUROR: Do you want us to keep coming in the  
19 front door?

20 THE COURT: Yes, I think so.

21 JUROR: (Inaudible.)

22 THE COURT: I'm sorry?

23 JUROR: Where do we go once we get here,  
24 then?

25 THE COURT: I'm sorry?

1 have you be just a little bit late than too early.  
2 Because let's just say 8:00 to 8:30. Can we do  
3 that?

4 But I don't want you coming and just  
5 sitting in the parking lot. You know, find  
6 somewhere else to loiter for a little while but  
7 not in the parking lot. Okay? The Boise Rescue  
8 Mission or -- no. Whatever.

9 LAW CLERK SEVERSON: One other thing. And  
10 maybe you can inquire of the jury. But I'm not  
11 sure if their exhibits are spread out in a certain  
12 way, but we were thinking we could just lock the  
13 jury room.

14 THE COURT: Yeah. We're just going to lock  
15 the door. That's part of the reason we want you  
16 coming back -- well, except we can't put them in  
17 there with the exhibits until --

18 LAW CLERK SEVERSON: That was my question.

19 THE COURT: Just come between 8:00 and 8:30.  
20 We may need to gather -- we want to just lock the  
21 door and not have to worry about it.

22 What time is the jury -- when they are  
23 using the jury assembly room?

24 LAW CLERK SEVERSON: I don't know that. But  
25 maybe the question you could pose is whether we

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1 JUROR: We're going to go straight --

2 THE COURT: Oh, come up here, yeah. And  
3 then just --

4 LAW CLERK SEVERSON: We'll have someone  
5 there.

6 THE COURT: We should have someone there to  
7 let you in. That's the other reason. We have to  
8 have court security officers lined up, and we  
9 can't have them here any earlier than about 8:00  
10 without it being kind of a major production.

11 So we'll see you, then, tomorrow  
12 morning.

13 (Court recessed at 7:20 p.m.)  
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R E P O R T E R ' S C E R T I F I C A T E

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c e r t i f y :

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T a m a r a I. H o h e n l e i t n e r  
O f f i c i a l C o u r t R e p o r t e r  
C S R N o. 6 1 9

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

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UNITED STATES OF AMERICA,	: Case No. 10-00148-N-BLW
	:
Plaintiff,	: JURY TRIAL
	:
vs.	:
	:
EDGAR J. STEELE,	:
	:
Defendant.	:
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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 before B. Lynn Winmill, Chief District Judge

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Volume 6  
May 3, 2011  
  
Pages 1322 to 1381

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**Tamara I. Hohenleitner**  
Idaho Certified Shorthand Reporter No. 619  
Registered Professional Reporter  
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United States Courts, District of Idaho  
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1 then I think I need to listen to that. But that  
 2 would have been my decision, regardless.  
 3 Even apart from the Jencks Act, I'm not  
 4 convinced that it's a Jencks Act issue. But just  
 5 in my preliminary review of the Jencks Act, it's  
 6 very consistent with what I'm suggesting here  
 7 anyway, including court review and a determination  
 8 as to what is relevant and what is privileged.  
 9 Mr. Miller?  
 10 MR. MILLER: Your Honor, I have gone through  
 11 the entire material. However, I have not made the  
 12 notes that the court is suggesting. I think  
 13 that's a good idea.  
 14 It will take me probably two to three  
 15 hours of time to go back into what I have, make  
 16 those side notes, if you will, make an additional  
 17 copy. I'm going to have to go out to a copying  
 18 office somewhere.  
 19 THE COURT: Well, I think perhaps the court  
 20 can help you with that.  
 21 First of all, we need to get the copy  
 22 from Ms. Whelan. There is no reason for the  
 23 government to maintain that. That now will become  
 24 in the court's possession.  
 25 MS. WHELAN: Mr. Lucoff is going to get

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1 MR. MILLER: It's not sufficient in light of  
 2 what you've indicated. However, those yellow  
 3 markings won't copy -- I don't think they copy  
 4 unless you've got a color copier.  
 5 MS. WHELAN: We have a color copier  
 6 downstairs.  
 7 MR. MILLER: So we can do it that way. And  
 8 then you see my review and also my comments.  
 9 THE COURT: All right. And then the court  
 10 will make a determination and have turned over to  
 11 the defense anything that appears to be relevant  
 12 or -- and "relevant" will be defined broadly as  
 13 meaning any discussion concerning Mr. Steele, any  
 14 discussion concerning the events in question, and  
 15 anything that could reasonably be used for  
 16 impeachment purposes.  
 17 So -- but that, obviously, is the  
 18 court's determination. Then I, of course, will  
 19 not order released anything that would fall within  
 20 the attorney-client privilege.  
 21 MR. MILLER: One further request I would  
 22 make of the court: Once I've done that, turned it  
 23 over to the court, the court makes a determination  
 24 about what is going to be turned over to the  
 25 defense. In the event that happened, I would like

1 that, Your Honor.  
 2 THE COURT: All right. We will then assist  
 3 you, Mr. Miller, in getting a copy made. Either  
 4 the copy you have, we can reproduce another copy,  
 5 or as soon as we have that from Mr. Lucoff, we'll  
 6 produce a copy that you can then -- and everything  
 7 will be filed under seal but still filed and made  
 8 part of the record.  
 9 MR. MILLER: Would you like my notes in  
 10 handwritten form on the margins? Would you  
 11 like --  
 12 THE COURT: That's what I had in mind, was  
 13 either using a highlighter as to those portions  
 14 you think are privileged or should not be produced  
 15 and then just a brief indication as to why.  
 16 MR. MILLER: Now, I do have in my briefcase  
 17 a highlighted version of these notes and memoranda  
 18 of what I thought would be his thoughts within the  
 19 context of this case and his testimony, et cetera.  
 20 However, I do not have the comments where I would  
 21 think things should be privileged.  
 22 THE COURT: I'll leave it up to you, as long  
 23 as it's clear what you're asserting. And if what  
 24 you have already done is sufficient, then you can  
 25 just produce that.

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1 to be made aware of what is being turned over so  
 2 that I can review that with my client prior to his  
 3 continued cross-examination.  
 4 THE COURT: I will provide you with a copy,  
 5 as well, of those portions that will be turned  
 6 over to the defense.  
 7 MR. MILLER: Thank you, Your Honor.  
 8 THE COURT: All right. Counsel --  
 9 Ms. Whelan?  
 10 MS. WHELAN: Your Honor, there is another  
 11 matter I wish to bring up before the court.  
 12 Judge, after leaving here yesterday and  
 13 after briefing the United States Attorney, she has  
 14 directed me to respectfully move this court to  
 15 reconsider its ruling last night that Dr. Papcun  
 16 be allowed to testify remotely from Bora Bora.  
 17 Yesterday, Judge, and with all due  
 18 respect, the court summed up its decision by  
 19 saying, "What's good for the goose is good for the  
 20 gander." But, in reality, these situations are as  
 21 different from night to day.  
 22 Ms. Loginova's testimony was taken  
 23 pursuant to rule and case law that supported that.  
 24 She is not a U.S. citizen. She was never on U.S.  
 25 soil where we could serve her. There was no way

1 for the U.S. to compel her to come to court.  
2 And that is not the case with  
3 Dr. Papcun. Dr. Papcun was here in this courtroom  
4 just a few weeks ago. The court issued its ruling  
5 and left the door open for his testimony.

6 There are three lawyers working on this  
7 case, and any of them could have subpoenaed him  
8 pursuant to Rule 17. For whatever reason, they  
9 didn't. They made a tactical decision not to.  
10 They haven't shown an exceptional circumstance as  
11 to why they didn't. And it's not for the court or  
12 the U.S. to speculate why they didn't, but the  
13 reality is, they didn't.

14 Your Honor, the defense indicated that  
15 it's because he is on a prepaid vacation. And  
16 I'll represent to the court that there are many  
17 witnesses who have appeared in this case who would  
18 prefer to be elsewhere but came because the  
19 United States subpoenaed them. This is not the  
20 same situation at all as a Ukrainian citizen  
21 residing in the Ukraine, far from the subpoena  
22 power of the United States.

23 Additionally, the deposition taken in  
24 this case pursuant to Rule 16 -- which is a  
25 recognized exception -- was taken in advance of

1 court. There were no technical issues; and if  
2 there were, we either would have had to have  
3 redone it, or we wouldn't have been allowed to  
4 present it.

5 That is not the case today. You're  
6 being asked to be in an awkward position. What  
7 happens if the -- if something breaks, if the  
8 transition breaks and you can't hear? Is the  
9 court going to declare a mistrial because the  
10 defense failed to subpoena somebody and we're not  
11 able to finish our cross or they can't finish  
12 their direct?

13 Your Honor, the United States is being  
14 placed at a disadvantage. Rule 26 says that in  
15 every case, the trial testimony of a witness must  
16 be taken in open court unless provided otherwise  
17 by statute or rule. And the defense has cited to  
18 no such rule or statute because it doesn't exist.

19 The United States has the burden of  
20 proof and is entitled to cross-examine the witness  
21 in open court with him here. We're entitled to  
22 have him in the courtroom to go over exhibits, to  
23 use the document display or camera or other  
24 presentation software as we choose to do it.

25 Judge, this court knows that even kids

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1 who are victims of abuse have to appear in court.  
2 They're subpoenaed. And it should be no different  
3 for an expert that they intend to call and that  
4 they could have subpoenaed.

5 This is the second time in this trial  
6 that the defense has failed to use its subpoena  
7 power, for whatever reason. And it's the second  
8 time that they're not being held to the same  
9 standard and that the United States is being  
10 placed in an unfair position: We have Jencks  
11 material which we wouldn't have had; we can't  
12 cross-examine the witness in person because a  
13 subpoena wasn't issued.

14 There is no authority, there is no  
15 statute, there is no exception. And respectfully,  
16 Judge, we're asking the court to reconsider. It  
17 is not at all the same situation.

18 THE COURT: Mr. McAllister?

19 MR. McALLISTER: Ms. Whelan is correct about  
20 the defense not issuing or compelling this witness  
21 by use of a subpoena. However, we did not know  
22 what the court's ruling would be until yesterday.

23 THE COURT: Well, Counsel, you knew, did you  
24 not, that I clearly left the door open with the  
25 understanding that, with the proper predicate,

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1 that, in fact, he would be allowed to testify if  
2 his testimony was made relevant by some suggestion  
3 that there was something on the tape suggesting  
4 that it had been modified in some fashion.

5 MR. McALLISTER: You're correct, Your Honor.  
6 I did hope and believe that the court would permit  
7 him to testify.

8 But the reality of the situation is he  
9 is unable to be here, but he is able to be -- to  
10 testify using modern technology. And, you know,  
11 Ms. Whelan's suggestion that there is going to be  
12 a breakdown and that there is going to be a  
13 mistrial somehow, I think, is far-fetched at this  
14 point.

15 THE COURT: What about counsel's suggestion,  
16 though, that there won't be any ability to  
17 effectively cross-examine using documents because  
18 he will be in a remote location?

19 MR. McALLISTER: Well, they have  
20 cross-examined him, as the court knows, in an  
21 earlier hearing in this case. And I don't believe  
22 that the documents mattered at all in their  
23 cross-examination. I don't think they were even  
24 used.

25 I think that is, you know, something at

1 the moment that if there was a document, we could  
 2 fax it to him. And he could have an opportunity  
 3 to look at it and respond to questions about it,  
 4 if that was needed. I don't see that as a real  
 5 obstacle in this case.

6 THE COURT: Well, Mr. McAllister, the other  
 7 point that Ms. Whelan points out -- and, again,  
 8 I -- I won't say honestly that I rarely make  
 9 mistakes that I -- of this sort during a trial.  
 10 Now this may be, too. But I'm getting a little  
 11 red-faced because I try to be very careful in my  
 12 rulings and my approach. But Ms. Whelan points  
 13 out that, from her view, there is no rule or  
 14 statute authorizing the presentation of testimony  
 15 in this fashion.

16 Now, just to give you background, we do  
 17 it routinely in civil cases. But there is a  
 18 rule -- I want to say Rule 37, but I could be  
 19 wrong on the rule number -- which specifically  
 20 allows the court in a civil proceeding, upon a  
 21 finding of extraordinary circumstances, to allow  
 22 testimony be presented from a remote location.

23 Now, we have used that in the criminal  
 24 process or in criminal trials at the request of a  
 25 defendant but where the government did not object.

1 Either it was not a critical witness, there was no  
 2 serious issue about cross-examination, and it was  
 3 essentially just done by consent of the parties to  
 4 avoid delay, because the result might have been --  
 5 I think it was an authentication witness who was  
 6 literally on the video or on the stand for less  
 7 than ten minutes.

8 But to have a key defense witness,  
 9 expert witness, testify from a remote location in  
 10 a criminal proceeding, what is the authority?

11 I was somewhat hoping that the  
 12 government might consent, but I can understand why  
 13 they would not, given the issues and concerns  
 14 expressed by Ms. Whelan.

15 So what's my authority?

16 MR. McALLISTER: The authority is the  
 17 discretion of the court to ensure a fair trial.

18 The court has heard this witness's  
 19 testimony in the past. The court has heard all  
 20 the testimony in the trial. And the court made a  
 21 decision that it would be fair to allow Dr. Papcun  
 22 to testify. And that is -- fundamental fairness  
 23 and due process is the basis upon which the  
 24 request was made, Judge, in this case.

25 THE COURT: Okay. Well, of course, I --

1 there is a wall sign with something to the effect  
 2 that "Your procrastination does not create my  
 3 emergency."  
 4 You made a choice not to subpoena or  
 5 ensure Dr. Papcun's presence here, and now the  
 6 court is expected to exercise discretion and  
 7 ignore the rules to allow the witness to testify.  
 8 That's troublesome.

9 Now, I might point out that -- and I  
 10 had made the determination this morning, when I  
 11 was advised by our staff that they have serious  
 12 reservations about the ability to make the  
 13 connection in a way that will not have a  
 14 tremendous number of freeze frames. They indicate  
 15 that it's an IP connection from Valley, and I  
 16 assume that's "Internet protocol," like voice over  
 17 Internet protocol. But if there are any number of  
 18 freeze frames, then I think the government's  
 19 concern is well taken, and that we simply cannot  
 20 allow a witness to testify under those  
 21 circumstances where the jury does not have the  
 22 ability to see at least comparable to what we saw  
 23 in terms of the videotape.

24 Now, I'm going to have them report --  
 25 that the report from our staff -- and I think

1 perhaps Mr. Hoyt may be with them; I'm not sure.  
 2 But I think that if, in fact, that is true, that  
 3 the -- that we're not going to have a smooth,  
 4 almost videotape-like presentation, then it's not  
 5 going to happen. I'm not going to allow it.

6 Then your option would be to get him  
 7 here by tomorrow or whatever else you need to do.  
 8 But I just think that puts -- what Ms. Whelan has  
 9 said becomes paramount because then we do have the  
 10 technical problems, and how the jury is to assess  
 11 a witness' testimony when it's done by a bunch of  
 12 herky-jerky freeze frames and a voice that is not  
 13 connected to what is being seen by the jury, I  
 14 think, becomes paramount.

15 I'm going to await that report before I  
 16 make a ruling. But, as I've indicated, it is the  
 17 problem of the defense's own making. I think it  
 18 was very clear from my decision that the door was  
 19 open to Dr. Papcun's testimony. And I think it  
 20 was, therefore, the defense's responsibility to  
 21 make sure that Dr. Papcun was available to walk  
 22 through that door.

23 I'm willing to use technology.  
 24 Typically, it's been only with the consent of both  
 25 parties in a criminal proceeding as a way of -- on

1 minor witnesses. But on an expert witness, I may  
2 have to reconsider. And certainly, if the  
3 technology is not going to permit something very  
4 comparable to live testimony here in the  
5 courtroom, I'm just simply not going to permit it.

6 So let's leave it at that. I don't  
7 think any further argument is really necessary.  
8 Let's see what the technical people report. I  
9 think they're actually testing the equipment as we  
10 speak, and there may be some report on that  
11 momentarily.

12 MR. McALLISTER: Judge, in light of your  
13 decision in regards to checking the technical  
14 capability, I agree. I hope that it will work.

15 But if, in fact, the court decides it's  
16 not proper, I'm going to ask for a two-day  
17 continuance to see if I can get Dr. Papcun here.

18 It is -- you know, when you say "it's  
19 of the defense's own making," Judge, this is a  
20 trip, quote, "of his wife's lifetime," and she is  
21 there with him. But I understand that if he can't  
22 do this, he will leave her, despite the fact that  
23 this was really her trip, and try to make it back  
24 to the United States in time to testify.

25 THE COURT: Well, I'll consider that

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1 THE COURT: Well, the first thing that I  
2 need to do is probably review Mr. Fairfax's notes  
3 and make a very quick decision about that so that  
4 the defense can make an equally quick decision  
5 about whether they're going to recall Mr. Fairfax.  
6 There may be other reasons you're going to recall  
7 him; but if that's one of the reasons, then I need  
8 to get that in your possession.

9 So let's take a recess. I may advise  
10 the jury that we may be delayed this morning, and  
11 they may just have to remain in the jury room  
12 until we have a sense of where we're going from  
13 here.

14 All right. We'll be in recess.  
15 (Recess.)  
16 (Jury absent.)

17 THE COURT: Counsel, I've had a chance to  
18 review this further, and here is where we are:

19 I'm going to deny the request for -- to  
20 have Dr. Papcun appear by video connection. My  
21 reasons are, I suppose, first and foremost, as  
22 Ms. Whelan pointed out, there is simply no  
23 authority to do so in a criminal matter.

24 And at least nothing has been pointed  
25 to the court that the presumption in Rule 26 --

1 request. You will need to couple that with a  
2 representation by Dr. Papcun. And I'm not saying  
3 how I'll rule, whether I'll permit the continuance  
4 or not. But at least we'd need to know when he  
5 can be here and what's going to happen in the  
6 meantime. Does the defense have other witnesses?

7 You know, the additional problem I've  
8 got is that I'm scheduled to be out of the  
9 district starting next week, and if the trial  
10 cannot be completed this week, that's a very  
11 serious problem. I have got obligations, based  
12 upon assurances of counsel that this case would be  
13 concluded by the middle of this week or certainly  
14 no later than the end of this week. That creates  
15 some additional problems.

16 So -- all right. Let's -- well, let me  
17 just inquire. Mr. McAllister, where are we, then?  
18 Are you ready to call another witness, or how are  
19 we going to proceed?

20 MR. McALLISTER: Judge, I have asked that  
21 Mr. Hollingsworth and Mr. Fairfax remain here in  
22 the courthouse subject to recall, but I don't  
23 believe, besides Dr. Papcun, that there will be  
24 any additional witnesses. But I do need to confer  
25 with my client before that decision is made.

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1 that all that testimony is to be presented live in  
2 court unless there is some rule or statute  
3 providing otherwise -- nothing has been pointed  
4 out to the court, by way of rule or statute, that  
5 would otherwise provide. And I think, therefore,  
6 my authority to do so is on very thin ice.

7 In addition, we were endeavoring to  
8 test the equipment this morning. Mr. Hoyt was  
9 advised last night we needed an IP address so we  
10 could make the connection. It was not provided.  
11 It is now something like 4:00 in the morning, and  
12 so no one is available to provide it. So it was  
13 going to be 10:30 or 11:00 before we could even be  
14 in a position to test it.

15 And then, in addition, we're advised by  
16 our staff that these type connections using an IP  
17 connection, even within the United States, results  
18 in unacceptable freeze frames and makes it so  
19 jerky as to be very, very difficult.

20 And I think that, then, truly  
21 jeopardizes the government's ability to  
22 cross-examine a witness and even the jury's  
23 ability to comprehend what is going on in the  
24 cross-examination.

25 So, for all of those reasons, I'm going

1 to deny the request.

2 Second, I'm not going to grant any  
3 continuance other than if Dr. Papcun can be here  
4 tomorrow morning. If that can be arranged, then  
5 we'll proceed, and he can testify. I know, since  
6 my daughter lived in Singapore, there are flights  
7 that might possibly get him here by then. So I'll  
8 just leave that up to the defense.

9 But, as I've indicated, this is a  
10 problem of the defense's making, not the court's.  
11 And I think that if they made a tactical or  
12 otherwise made a decision to not keep Dr. Papcun  
13 available, then that's the choice they made.

14 The additional issue, then, is: Where  
15 do we go from here? We are in the process of  
16 reviewing Mr. Fairfax's notes, but they are very  
17 voluminous. It is going to take us some time to  
18 get through them. My hope would be by noon to  
19 have that process completed, but I don't know if I  
20 can do that.

21 We're not going to wait for Mr. Miller.  
22 We're going to -- as soon as he has them, we'll  
23 look at that in conjunction with what we're  
24 looking at, but I certainly will not wait until I  
25 have his copy which has his specific objections

1 before I start reviewing it. It's just simply too  
2 voluminous.

3 Now, assuming, then, that it may be  
4 noon before we can provide that to the defense,  
5 then that will give them time to look at that, and  
6 I'm assuming that they will not be in a position  
7 to utilize that material in examination of  
8 Mr. Fairfax until tomorrow morning.

9 I think that's where we are. I just  
10 think it's unavoidable.

11 Now, the question is: Does the defense  
12 have other evidence not tied to the Fairfax notes  
13 that they could put on at this time? If you have  
14 other testimony, then I think we need to present  
15 it to the jury. If you do not, then we'll  
16 probably send the jury home and have them come  
17 back tomorrow morning at 8:30. I just don't know  
18 how we can avoid that, but I'm willing to hear  
19 from counsel.

20 First, I guess, Mr. McAllister, do we  
21 have other witnesses or other evidence that we  
22 could use the jury's time with?

23 MR. McALLISTER: No, Your Honor.

24 THE COURT: All right. So it's -- all  
25 right. I assume, then, all we would have tomorrow

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1 morning would be matters tied to the Mr. Fairfax  
2 notes, which would include perhaps Mr. Fairfax  
3 being recalled, and Dr. Papcun, if Dr. Papcun can  
4 be -- if his attendance can be procured in that  
5 short period of time.

6 Ms. Whelan, do you disagree with the  
7 court's suggestion that we just recess until 8:30  
8 tomorrow morning?

9 MS. WHELAN: No, we don't, Judge.

10 THE COURT: All right. I think what I'm  
11 going to do is bring the jury in, explain to them  
12 that, because of matters beyond our control, we're  
13 going to have to recess until 8:30 tomorrow  
14 morning, allow them to go home or to their hotel  
15 room, and then reconvene tomorrow morning.

16 Ms. Whelan?

17 MS. WHELAN: Judge, just one thing I would  
18 ask is -- I know your staff has a lot to do, you  
19 have a lot to do on this; but, if possible, if  
20 there is a set of jury instructions that I could  
21 be working on today, that would give me something  
22 to prepare today.

23 THE COURT: All right. I may -- there is a  
24 set that I'm just starting to review myself, but  
25 my problem is I have to review almost 300 pages of

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1 handwritten, single-spaced, very-hard-to-read  
2 notes.

3 We'll do the best we can. And I agree,  
4 I don't want to delay this. I'm hopeful that we  
5 can still maybe submit the case to the jury  
6 tomorrow and certainly no later than Thursday  
7 morning, but that requires that we have those  
8 instructions for you.

9 And the additional problem is these are  
10 not your typical Ninth Circuit model instruction  
11 case where you simply can refer to that. These  
12 have to be crafted rather uniquely for the case,  
13 and so we have spent a lot more time working  
14 through instructions than we normally would.

15 MS. WHELAN: Understood.

16 THE COURT: Anything else? Mr. McAllister?

17 MR. McALLISTER: Judge, I don't want to  
18 mislead the government or the court. It's always  
19 been my practice, and what I wanted to do in this  
20 case is, after all of the evidence is presented,  
21 give my client the option to decide whether or not  
22 he wants to testify. That decision has not been  
23 made at this point.

24 THE COURT: All right.

25 MR. McALLISTER: So I understand how the

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

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I, Tamara I. Hohenleitner, Official Court Reporter, State of Idaho, does hereby certify:

That I am the reporter who transcribed the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing transcript contains a full, true, and accurate record of the proceedings had in the above and foregoing cause.

IN WITNESS WHEREOF, I have hereunto set my hand June 24, 2011.

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Tamara I. Hohenleitner  
Official Court Reporter  
CSR No. 619

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

2 ----- x

3 UNITED STATES OF AMERICA, : Case No. 10-00148-N-BLW

4 Plaintiff, : JURY TRIAL

5 vs. :

6 EDGAR J. STEELE, :

7 Defendant. :

8 ----- x

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 before B. Lynn Winmill, Chief District Judge

15

16 Volume 5

17

18 May 2, 2011

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20 Pages 1035 to 1321

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1 MR. McALLISTER: I believe so.  
 2 THE COURT: All right. Well, I think that  
 3 solves the problem.  
 4 MS. WHELAN: We just wanted to make sure.  
 5 THE COURT: All right. Anything else?  
 6 MS. WHELAN: No. Thank you, Your Honor. If  
 7 we could take our morning break.  
 8 THE COURT: All right. Counsel -- well,  
 9 maybe I'll just wait. I have given some thought  
 10 -- I want to mull it over just a little more, but  
 11 this whole deal with regard to Mr. Fairfax's  
 12 handwritten letters or whatever -- notes or diary  
 13 or whatever it is he has kept, I'm -- I'm going to  
 14 think it over just a bit more, but I have got some  
 15 tentative thoughts.  
 16 I, frankly, must concede -- I think I  
 17 probably put my foot in it when I shouldn't have.  
 18 I don't think I have seen in, you know, quite a  
 19 few years on the bench, ever seen that happen  
 20 where a document showed up on cross-examination  
 21 that apparently either no one knew about or no one  
 22 had bothered to subpoena. And I acted in an  
 23 effort to try to protect the defendant's rights,  
 24 but perhaps I would have been better served to  
 25 simply sit back and say -- instruct the defense to

1 do what they needed to do, which might include  
 2 trying to subpoena that document. And then we  
 3 would have confronted the issue in that context  
 4 rather than involve the government in the way that  
 5 I did.  
 6 But, in any event, I'm going to give it  
 7 some more thought and then decide how we need to  
 8 proceed. I think it's clear that the defense  
 9 wants a copy. They have made that very clear  
 10 today. And perhaps the way to deal with it now is  
 11 to essentially treat it as though they had  
 12 subpoenaed that and the -- Mr. Fairfax, through  
 13 his attorney, had objected -- which they have --  
 14 and then deal with it in that context in  
 15 essentially a motion to quash the subpoena or a  
 16 motion for protective order.  
 17 I'm mulling that over now as I -- over  
 18 the next few minutes, and we may get Mr. Miller  
 19 involved in that discussion and keep the  
 20 government out of it from this point forward.  
 21 So, in any event, that's what I'm  
 22 thinking. I had to act what seemed like the right  
 23 thing to do at the time but, upon reflection,  
 24 perhaps wasn't the best course of conduct.  
 25 MS. WHELAN: Judge, I would just tell you

1 that, knowing the flights from Coeur d'Alene, if  
 2 the court wants Mr. Miller here in person --  
 3 because he would want to be here if Mr. Fairfax is  
 4 called back -- I think there is a 6:00 a.m. and I  
 5 think there's a 4:00 p.m. flight.  
 6 THE COURT: Well, we obviously won't make  
 7 the 6:00 a.m. Perhaps a 4:00 p.m. flight may  
 8 still be doable.  
 9 We'll be in recess -- Mr. McAllister?  
 10 MR. McALLISTER: I intend to make a Rule 29  
 11 motion. Do you want to take that up before the  
 12 jury comes back?  
 13 THE COURT: Yes, we will. But the problem  
 14 is -- how long do you intend to take?  
 15 MR. McALLISTER: Not that long.  
 16 THE COURT: All right. Well, I'll give you  
 17 five minutes. And if you can't finish it up,  
 18 we'll take the break and come back.  
 19 Mr. McAllister.  
 20 RULE 29 MOTIONS BY DEFENSE  
 21 MR. McALLISTER: Thank you, Your Honor.  
 22 At this time the defense moves,  
 23 pursuant to Rule 29 of the Federal Rules of  
 24 Criminal Procedure, for judgment of acquittal on  
 25 all counts.

1 And, Judge, I have the superseding  
 2 indictment before me. I know the court has it.  
 3 And the language in Count 1 states, in part, "that  
 4 the defendant, Edgar Steele, attempted and caused  
 5 another to travel in interstate commerce from  
 6 Idaho to Oregon with intent that the murders of  
 7 his wife, CKS, and mother-in-law be committed in  
 8 violation of the laws of the State of Idaho and  
 9 Oregon."  
 10 That is the charge. And in this  
 11 particular case, taking the evidence in the light  
 12 most favorable to the government does not support  
 13 the charge.  
 14 The only evidence that we have comes  
 15 from the witness Larry Fairfax. He indicated that  
 16 he made a trip on May 31st and that the purpose of  
 17 the trip was to remove, if he could find it, a  
 18 device, an explosive device that he had  
 19 manufactured, designed, and built, never shown to  
 20 the defendant, and that he was going to remove it  
 21 or determine whether it still existed. Because,  
 22 according to his testimony, nothing had happened  
 23 with it. It had not -- well, I think his words  
 24 were nothing had happened and that he had designed  
 25 it not to go off.

1 And he went into some detail about how  
2 he designed it on cross-examination, by breaking  
3 the fuse, by double wrapping it in tape, and by  
4 putting it near the tailpipe, a place apparently,  
5 according to the government's evidence, that was  
6 not sufficient to ignite it.

7 Now, as I understand it, he took a  
8 second trip -- and both of these were with James  
9 Maher, his cousin, but he took a second trip on  
10 the night of June 10th and got there -- got to the  
11 Portland area, I think, early-morning hours of  
12 June 11th.

13 And at that point in time, his  
14 testimony is he was, quote, "working for the FBI,"  
15 and that he had no intention of driving  
16 Mrs. Steele and her mother off the road. He had  
17 no intention of harming them. And he did  
18 not intend in the second trip to murder  
19 Mrs. Steele or her mother-in-law.

20 In addition, Your Honor, there is an  
21 absence of evidence in this case to show that the  
22 device itself ever went across state lines and  
23 traveled in interstate commerce.

24 As a matter of fact, the evidence,  
25 again, from Mr. Fairfax is that he asked his

1 cousin, Mr. Maher, to look for the device on Cyndi  
2 Steele's car. And his testimony was, "I thought  
3 it had fallen off." He didn't see anything  
4 hanging down.

5 And, therefore, I don't think the  
6 government at this point has proven in any way  
7 that, in fact, the device traveled in interstate  
8 commerce.

9 Counts 2 and 3 relate to use of an  
10 explosive material to commit a federal felony and  
11 possession of a destructive device in relation to  
12 a crime of violence. And on both of these counts,  
13 I submit, taking the evidence in a light most  
14 favorable for the government, there is  
15 insufficient evidence to allow the jury to decide  
16 the case.

17 Count 2 says "between or about the 27th  
18 and 31st of May," and the same time period is  
19 listed in Count 3.

20 Now, that eliminates, I presume, the  
21 second trip and the discussion about -- the  
22 purported discussion or the alleged discussion  
23 about somehow climbing in the back seat of Cyndi  
24 Steele's car or driving Cyndi Steele and/or her  
25 mother-in-law off the road. That's not charged,

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1 according to Counts 2 and 3. So all we have is  
2 the trip that was taken on May 31st.

3 The testimony is from Mr. Fairfax that  
4 he built the device, he planned the device, he  
5 attached the device to Mrs. Steele's car, and he  
6 doesn't know what happened to it after that except  
7 for the fact that it was discovered to be the same  
8 device on June the 13th, I believe is the date  
9 when it was discovered.

10 So I don't believe there is any  
11 sufficient proof to establish that he somehow  
12 aided and abetted in the knowing use of an  
13 explosive device. As a matter of fact, the  
14 testimony is he has never seen it. And he  
15 certainly -- there is no evidence to show that he  
16 built it, used it, designed it in any way in an  
17 attempt to use -- to commit use of interstate  
18 commerce facilities for murder for hire.

19 And, again, as I stated previously,  
20 there is insufficient evidence here to show any  
21 interstate commerce or any connection with  
22 interstate commerce based on the testimony in the  
23 record.

24 Count 4 is tampering with the victim.  
25 And the evidence on that is the conversation

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1 between Cyndi Steele and Mr. Steele. And it's  
2 clear from the evidence and Mrs. Steele's  
3 testimony -- she was called by the government, of  
4 course -- that she was not influenced, and in no  
5 way was she tampered with.

6 As a matter of fact, she specifically  
7 says on the recording that, "It's not they who  
8 want to listen to the tapes, it is me. I want to  
9 make my own decision."

10 Based upon those reasons, Your Honor,  
11 we request that the court grant a motion for  
12 judgment of acquittal pursuant to Rule 29.

13 THE COURT: Ms. Whelan or Mr. Haws?

14 Mr. Haws, I'm going to give you -- I'm  
15 going to take a break in five minutes. It depends  
16 on how much time you need. You may get  
17 interrupted in your argument unless you can do it  
18 in about the same amount of time that  
19 Mr. McAllister did.

20 RESPONSE BY THE GOVERNMENT

21 MR. HAWS: No, I don't plan to take much  
22 longer than that, either, Your Honor.

23 Mr. McAllister has correctly stated the  
24 standard that the court must find, which is  
25 viewing the evidence in the light most favorable

1 to the government. And the issue is whether a  
2 rational trier of fact could have found evidence  
3 sufficient to conclude that these crimes were  
4 committed.

5 Count 1 charges the use of the  
6 interstate facilities -- the highways, traveling  
7 across state lines -- to accomplish murder. It's  
8 not just the specific pipe bomb; it's the ongoing  
9 plan, starting with the talk back in the early  
10 spring, in March and April, and then developing  
11 the plan, putting the pipe bombs on. But it  
12 carries through even to the intent to commit  
13 murder, which is reflected in the June 9 and June  
14 10 conversations.

15 THE COURT: Now, specifically, though, the  
16 interstate commerce is Mr. Fairfax's travel to  
17 Oregon with the -- at least Mr. Steele's intent  
18 that he commit a murder there through the use,  
19 presumably, of vehicles rather than pipe bombs.

20 MR. HAWS: We would contend, Your Honor,  
21 that the interstate travel occurs in several  
22 different ways. Under the statute, it says that  
23 even the victim -- if he causes the victim to  
24 travel interstate, that that could be part of the  
25 evidence here.

1 What we have here is --

2 THE COURT: But she traveled to help her  
3 mother in the Portland area, not at the behest of  
4 the defendant. Am I incorrect about that?

5 MR. HAWS: You're correct that that was her  
6 intent, but that wasn't his intent. His intent  
7 was he knew that she was traveling for that  
8 purpose, and he was using the fact that she was  
9 traveling to be with her mother.

10 THE COURT: But the statute requires that  
11 the defendant cause another to travel.

12 MR. HAWS: Well, he knew that she was  
13 traveling, and he placed the pipe bomb on there so  
14 that it would go off as she traveled. We would  
15 argue that that is one way in which to interpret  
16 it.

17 In addition to that, because the pipe  
18 bomb was placed on her car and she did travel  
19 across state lines, and Mr. Fairfax's testimony is  
20 that he built that device in Idaho and her car --  
21 and he did that on the 27th of May. On the 28th  
22 of May, she traveled. On the 31st of May,  
23 Mr. Fairfax himself was sent down to check on that  
24 bomb.

25 That's part of the travel as part of

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1 the scheme to commit this murder in interstate  
2 travel.

3 And, besides that, when the FBI  
4 officers went to check on Mrs. Steele on the  
5 morning of the 11th, they found her and her car  
6 there. Her car was then in Idaho on the 28th, the  
7 27th and 28th of May. It's found in Oregon on  
8 the -- on the 11th of June.

9 And then it's back in Idaho to complete  
10 the saga. It's back in Idaho when she has  
11 her -- when she comes back on the 13th and she  
12 goes to have her oil changed on the 15th.

13 So the car with the pipe bomb has  
14 traveled across interstate commerce to Oregon and  
15 then back. And Mr. Fairfax himself, his testimony  
16 was -- and it's corroborated by the receipts from  
17 the Thrifty Car Rental -- that he traveled to  
18 Oregon to check on that as part of the murder  
19 plan.

20 I don't think there is any question  
21 that that is -- that that charge has been  
22 accomplished.

23 I believe that the other day,  
24 Your Honor requested some briefing with regard to  
25 Counts 2 and Count 3. That hasn't been raised

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1 here, and so I won't speak to that issue.

2 But the -- Count 2 and Count 3  
3 specifically apply to simply the 27th through the  
4 31st of May. That is the bomb part.

5 The murder part, as I said, in Count 1  
6 continues until -- into June, but the pipe bomb  
7 part applying to just the manufacture of the  
8 bombs, that was done -- the use and possession of  
9 the bombs was done in the 27th through the 31st of  
10 May.

11 So that's why -- that's why those  
12 charges are charged with those particular dates.

13 But it is not any kind of a violation  
14 of double jeopardy or anything like that to have  
15 both counts 18 U.S.C. 844(h) and 18 U.S.C. 924(c).  
16 There is no double jeopardy by having both of  
17 those counts charged with regard to the bombs,  
18 Your Honor.

19 So we would submit that those have been  
20 established.

21 With regard to Count 4, which is the  
22 tampering with a witness, the -- the evidence is  
23 very clear. The recording itself of the  
24 conversation between Mr. Fairfax and his wife  
25 clearly shows what his intent is. His intent is

1 to direct her as to how to react at the time that  
2 he anticipates that she is going to be shown and  
3 listen to the tape recordings of himself and  
4 Mr. Fairfax.

5 And he says, "No matter what you think,  
6 no matter what you feel, this is what you must  
7 say. Otherwise" -- and then he tells her what the  
8 result is going to be -- "you're going to spend  
9 the rest of your life explaining to your kids why  
10 you put me in jail."

11 That is -- that is clearly attempting  
12 on his part to hinder and to prevent her from  
13 giving truthful testimony. That is corrupt  
14 persuasion under the terms and language of the  
15 statute, Your Honor.

16 So that recording, by itself,  
17 establishes that charge beyond a reasonable doubt.  
18 It's -- it's material whether or not his objective  
19 was accomplished. Regardless of where Cyndi  
20 Steele came out on that and whether she -- it was  
21 her decision to listen to the tapes and not the  
22 FBI's, and how she came out on that is immaterial.

23 The fact is that tape shows that he  
24 attempted to hinder, prevent, and corruptly  
25 persuade. And that charge -- that recording, by

1 itself, establishes the elements of that crime  
2 beyond a reasonable doubt.

3 THE COURT: Okay. All right. Counsel, I'm  
4 going to take the matter under advisement over the  
5 recess and then announce a decision after we  
6 reconvene. We'll be in recess for 15 or 20  
7 minutes. Court will be in recess.

8 (Recess.)

9 (Jury absent.)

10 COURT'S RULING ON RULE 29 MOTIONS

11 THE COURT: Let me just note two items.  
12 First, I am going to deny the Rule 29 motions. I  
13 think the -- the problem here is we have to focus  
14 on the right intent.

15 And in making my comments here, I'm not  
16 suggesting that I have concluded what Mr. Steele's  
17 intent was or was not. I'm only evaluating this  
18 in terms of what a reasonable jury might conclude  
19 from the evidence and whether there is sufficient  
20 evidence to support a finding beyond a reasonable  
21 doubt as to his intent.

22 Viewed in that way, it seems to me  
23 that, quite clearly, that the intent of Mr. Steele  
24 for a period of time through the spring and into  
25 June of 2010 was to cause Mr. Fairfax to travel in

1 interstate commerce with the intent that a murder  
2 be committed. And I think that would apply  
3 both -- to both trips to Oregon.

4 The first was to -- presumably, to  
5 check on the pipe bomb. And the -- and, of  
6 course, even if it's to remove it so as to avoid  
7 detection, I think that, in and of itself, as part  
8 of an ongoing effort to commit murder as the  
9 government alleges here, would be sufficient to  
10 constitute causing another to travel in interstate  
11 commerce with the intent that a murder be  
12 committed.

13 More pointedly and more clearly, I  
14 think the trip in June is just almost  
15 paradigmatically an example of traveling in  
16 interstate commerce with intent that a murder be  
17 committed or causing another to do so.

18 And so I think, for that reason, there  
19 is clearly and without a doubt sufficient evidence  
20 for that matter to go to the jury.

21 Counts 2 and 3 I have expressed some  
22 concerns about --

23 (Phone ringing.)

24 I would hope that's a warning for  
25 everybody in the courtroom to check their cell

1 phones and turn them off, since there is about ten  
2 signs between here and the elevator reminding  
3 people to do so.

4 But I think, still, the idea of aiding  
5 and abetting -- and, again, the focus is on  
6 Mr. Steele's intent at the time to use an  
7 explosive device to commit the crime of use of  
8 interstate commerce facilities in the commission  
9 of a murder for hire -- I think, again, the  
10 evidence is sufficient to submit that issue to the  
11 jury.

12 Even if Mr. Fairfax believed that he  
13 had constructed the device in such a way that it  
14 would not actually go off, I think it was still  
15 clearly an explosive device, and it was  
16 Mr. Steele's intent to aid and abet Mr. Fairfax in  
17 using that explosive device to commit the crime of  
18 interstate -- using interstate commerce facilities  
19 in the commission of a murder for hire.

20 As to Count 4, again, it's a question  
21 of Mr. Steele's intent. Even if Mrs. Steele did  
22 not feel intimidated, did not feel that she was in  
23 any way being influenced, the question is: What  
24 was Mr. Steele's intent?

25 And I think, from listening to the

1 recording itself, the words used, I think a  
2 reasonable jury could conclude that that was  
3 Mr. Steele's intent.

4 So, for those reasons, I'm going to  
5 deny the Rule 29 motions.

6 Of course, we'll wrestle with this to a  
7 certain extent in formulating jury instructions,  
8 as well.

9 With regard to the issue of what I'll  
10 call "the Fairfax notes," as I alluded to earlier,  
11 I think I, frankly, did not handle this well.

12 What I should have done is simply  
13 inquire of the government whether they have  
14 possession of those notes or have ever had  
15 possession of those notes; and if the answer was  
16 "no" -- which is, I think, what Ms. Whelan has  
17 said -- then I should have ended my involvement at  
18 that point.

19 The probable or possible next step  
20 would have been for Mr. McAllister or Mr. Amendola  
21 to file -- obtain a subpoena for those documents.  
22 And then, of course, it would be free for  
23 Mr. Miller, as Mr. Fairfax's attorney, to object  
24 and perhaps request either an in camera review or  
25 to otherwise challenge having those documents

1 turned over.

2 The challenge now, of course, is that  
3 the documents are not in Mr. Fairfax or  
4 Mr. Miller's possession. They're in the  
5 possession of the United States Attorney's Office  
6 at my direction. It seems to me, then, it's  
7 essentially up to the defense, if you want the  
8 documents, feel you're entitled to them, you will  
9 have to file a subpoena.

10 I'm going to direct the U.S. Attorney's  
11 Office to go ahead and return them to whoever sent  
12 them but to perhaps hold them until the end of the  
13 day.

14 And if the defense feels that they want  
15 to or are entitled -- and are entitled to review  
16 them, they can so indicate. If that is their  
17 intention to file a subpoena, perhaps we can even  
18 avoid having to go through that process, have the  
19 documents turned over to the court to be held  
20 without review until Mr. Miller has had a chance  
21 to file his objections.

22 I think it's clear that he will, since  
23 he did file an objection on Friday to their being  
24 turned over to the government.

25 So I think that's where we're at. I,

1 frankly, did not handle it well. It's the first  
2 time I -- I don't think I have ever seen that  
3 happen before, where a document of that nature  
4 showed up in the middle of a trial.

5 If I had to do it over again, I would  
6 have followed the procedure I indicated, which is  
7 to put the ball back in the defense court and got  
8 the government out of the middle of this, since I  
9 have no reason to question Ms. Whelan's statement  
10 that the government has not seen and had no --  
11 until they were ordered to review it by me, had no  
12 knowledge of the documents.

13 So that's where we're at.

14 MR. McALLISTER: Judge, just because of the  
15 timing on this, Mr. Amendola knows Mr. Miller, and  
16 they have been in contact. That's how we knew  
17 that the U.S. Attorney was going to get a  
18 sealed -- get the documents under seal. We  
19 thought they weren't going to open them until it  
20 was raised with the court, or review them. But  
21 that's been done.

22 So what I would ask now is that we  
23 contact Mr. Miller, tell him what the court has  
24 said. If he requires a subpoena, we'll fax it to  
25 him, get it to him. I don't think he will,

1 necessarily. But I'd like to get the issue or  
2 whatever motion he wants to file before the court  
3 by the end of today and take it up tomorrow  
4 morning.

5 THE COURT: That's what my intention was. I  
6 assumed you did want to see it. I wasn't certain  
7 because no subpoena was forthcoming, although I  
8 was -- it was suggested that you were aware of the  
9 notes somehow from the jailhouse informant that,  
10 apparently, may yet testify.

11 Regardless, I think that's where we're  
12 at. So I'll leave it up to you, then, to  
13 communicate with Mr. Miller. And he can either  
14 file -- probably file a new motion today, and then  
15 we'll probably tee it up for tomorrow morning, and  
16 hopefully he can be here. If not, I will allow  
17 him to appear by phone, and we'll argue this  
18 matter tomorrow morning.

19 MS. WHELAN: Judge, just because we are  
20 still involved in the prosecution of Mr. Fairfax,  
21 Mr. McAllister, a couple times, has said that the  
22 government opened it. Could we just have the  
23 record reflect that the reason we opened it is we  
24 were contacted by the court and told to open it?

25 THE COURT: I was -- that's accurate, and

1 foundation, relevance.  
 2 THE COURT: Sustained.  
 3 BY MR. McALLISTER:  
 4 Q. Well, did you observe her conducting  
 5 her own investigation into the facts of this case?  
 6 A. I did. I was able to hear a couple of  
 7 phone calls she made and then times she was  
 8 spending on the Internet.  
 9 Q. All right. And this went on for some  
 10 period of time; correct?  
 11 A. Correct.  
 12 Q. Has Cyndi ever, at any time, confided  
 13 in you that she has been abused in any way by  
 14 Edgar Steele?  
 15 A. Absolutely not.  
 16 Q. Has she ever said she has even been  
 17 verbally assaulted or attacked by Edgar Steele?  
 18 A. Absolutely not.  
 19 MS. WHELAN: Objection. Hearsay. Move to  
 20 strike. I think the witness --  
 21 THE COURT: Sustained. Instruct the jury to  
 22 disregard the last response.  
 23 BY MR. McALLISTER:  
 24 Q. Have you observed them together --  
 25 A. I have.

1 counsel whether she is retained on subpoena or  
 2 not.  
 3 Call your next witness.  
 4 MR. McALLISTER: Kelsie Steele.  
 5 THE COURT: Ms. Steele, would you please  
 6 step before the clerk and be sworn.  
 7 KELSIE STEELE,  
 8 having been first duly sworn to tell the whole  
 9 truth, testified as follows:  
 10 THE CLERK: Please state your complete name  
 11 and spell your last name for the record.  
 12 THE WITNESS: Kelsie Marguerite Steele,  
 13 S-T-E-E-L-E.  
 14 THE COURT: You may inquire, Mr. McAllister.  
 15 MR. McALLISTER: Thank you, Your Honor.  
 16 DIRECT EXAMINATION  
 17 BY MR. McALLISTER:  
 18 Q. Ms. Steele, it's not generally my  
 19 practice to ask a lady her age, but would you tell  
 20 us how old you are?  
 21 A. I'm 20 years old.  
 22 Q. All right. You are the daughter of  
 23 Edgar and Cyndi Steele; correct?  
 24 A. That is correct.  
 25 Q. Did you grow up as a family in their

1 Q. -- through the last ten years?  
 2 A. Yes.  
 3 Q. Have you ever seen them act out to each  
 4 other?  
 5 A. No.  
 6 MR. McALLISTER: All right. Thank you,  
 7 ma'am.  
 8 THE COURT: Cross, Ms. Whelan?  
 9 CROSS-EXAMINATION  
 10 BY MS. WHELAN:  
 11 Q. Ma'am, you were not at the Steele place  
 12 on June 9th, 10th, or 11th, were you?  
 13 A. No, I was not.  
 14 Q. You were not a party to conversations  
 15 between the defendant and Larry Fairfax, were you?  
 16 A. No, I was not.  
 17 MS. WHELAN: Nothing else, Your Honor.  
 18 Thank you.  
 19 THE COURT: Anything else, Mr. McAllister?  
 20 MR. McALLISTER: No, Your Honor.  
 21 THE COURT: All right. You may step down,  
 22 Ms. Cochran. Thank you for being here.  
 23 Is there any need to keep this witness?  
 24 MS. WHELAN: No objection.  
 25 THE COURT: All right. I'll leave it up to

1 home?  
 2 A. Yes, with my brother and sister, my mom  
 3 and dad. We grew up as a happy family.  
 4 Q. All right. And can you tell us today a  
 5 little bit about yourself: what you're doing,  
 6 where you reside, et cetera.  
 7 A. I currently, actually, just recently  
 8 moved to Oregon City, Oregon. I moved in with my  
 9 grandma. She is currently going through chemo  
 10 with cancer. I moved in her to help her out  
 11 through the chemo.  
 12 Q. If you could go just a little slower,  
 13 it would be very helpful for our record.  
 14 A. All right. I got -- I've been -- I  
 15 work full time in retail. I've been with a  
 16 company for a year-and-a-half as an assistant  
 17 manager. And I currently got myself back into  
 18 school, enrolled at Clackamas Community College.  
 19 Q. All right. And have you been working  
 20 with your mother since June 11, 2010?  
 21 A. You mean with the case?  
 22 Q. Yes.  
 23 A. I wouldn't say "working with."  
 24 Definitely -- I can definitely testify she wanted  
 25 to come with her own conclusion, her -- stand on

1 her own, come up with what she believed, what she  
2 knew as to be the truth. And same with my brother  
3 and sister and myself.

4 MS. WHELAN: I would object. It's vouching.

5 THE COURT: It's what?

6 MS. WHELAN: I believe it's vouching.

7 THE COURT: I don't know if it's vouching  
8 yet, but it -- well, I'm going to allow the  
9 witness's response to stand. Probably the concern  
10 may be over the subsequent questions, and you will  
11 reinterpose the objection at that time.

12 Mr. McAllister.

13 BY MR. McALLISTER:

14 Q. In the course of -- well, let me ask it  
15 this way, if I can: Have you listened to the  
16 recordings in this case?

17 A. Yes, I have.

18 Q. On how many occasions?

19 A. Several.

20 Q. And these are the recordings that you  
21 heard in the courtroom of June 9th and June 10th?

22 A. Yes.

23 Q. And you've heard them several times  
24 before, outside the courtroom, have you not?

25 A. Yes, I have.

1 that.

2 MS. WHELAN: And I have one other request.  
3 The gallery behind me is getting very verbal about  
4 objections and everything else.

5 THE COURT: I will instruct that if there is  
6 any further comments or outbursts, I will instruct  
7 the court security officer to remove anybody from  
8 the courtroom.

9 MS. WHELAN: Thank you.

10 MR. McALLISTER: Judge, I don't know that  
11 there has been any outbursts.

12 THE COURT: There hasn't been outbursts.  
13 But if they are making comments that are loud  
14 enough for counsel to hear, they may be loud  
15 enough to be heard by the jury.

16 (Sidebar concluded.)

17 THE COURT: I'm going to overrule the  
18 objection.

19 I would caution those in the gallery  
20 that it's extremely important that there not be  
21 any expressions -- in fact, there really shouldn't  
22 even be any discussion, even quiet whispering  
23 among yourselves. If you need to visit or want to  
24 make a comment, please step into the hallway to do  
25 so.

1 Q. Based upon living with your father for  
2 the last 20 years, do you believe that it's his  
3 voice on the recordings?

4 MS. WHELAN: Objection. Foundation.

5 THE COURT: Well, approach.

6 (Sidebar commences as follows:)

7 THE COURT: Counsel, I think that it's  
8 actually Rule 901(5) indicates that -- it's  
9 901(b)(5) -- "the identification of a voice,  
10 whether heard firsthand or through mechanic or  
11 electronic transmission or recording, by opinion  
12 based upon hearing the voice at any time under  
13 circumstances connecting it with the alleged  
14 speaker."

15 I think that's classic what counsel is  
16 doing. I think the witness can testify, "It  
17 doesn't sound like my father's voice," period.  
18 That's about all she can say.

19 MS. WHELAN: And, Judge, my concern is that  
20 we are trying to somehow get into the Papcun  
21 evidence through Ms. Steele and --

22 THE COURT: I understand your concern. But  
23 if this witness is going to testify it doesn't  
24 sound like her father's voice, then, that's what  
25 she can testify to. I don't know how to preclude

1 And if you cannot do so, then I will  
2 direct the court security officer to remove anyone  
3 who feels unwilling or unable to comply with the  
4 court's order in that regard.

5 Mr. McAllister, proceed.

6 BY MR. McALLISTER:

7 Q. Directing your attention back again to  
8 the recordings that you have listened to that have  
9 been identified as being made on June 9th and June  
10 10th, do you recognize your father's voice on  
11 those recordings?

12 A. There is -- there are sounds of  
13 similarity, but the consistency of sentence  
14 structures and grammar and vocabulary is  
15 completely off.

16 MS. WHELAN: Judge, I would object as to  
17 foundation. This witness hasn't indicated any  
18 expertise in those areas.

19 THE COURT: Just a moment. I'm going to  
20 sustain the objection. I think the witness can  
21 testify as to the sounds. But unless there is  
22 some further foundation of background of -- I  
23 think we're getting into something more than what  
24 we discussed at sidebar.

25 So the witness can testify as to the

1 sounds and whether she recognizes the voice; but  
 2 anything beyond that, I'll sustain the objection.  
 3 BY MR. McALLISTER:  
 4 Q. Same question, Ms. Steele: Do you  
 5 recognize the sounds as your father's voice?  
 6 A. So I can properly answer the question,  
 7 can you rephrase it for me?  
 8 Q. Sure. Does the voice on the recording  
 9 sound like your father?  
 10 A. Honestly, most parts.  
 11 Q. Okay. But there are parts where it  
 12 does not; correct?  
 13 A. No.  
 14 Q. Have you been in the barn on your  
 15 family's property?  
 16 A. I grew up in that barn.  
 17 Q. All right. Can you hear birds chirping  
 18 or singing in the barn?  
 19 A. Yeah. We had, actually, there up in  
 20 the railing, ceiling of the barn, we had actually  
 21 some birds' nests. And, you know, on occasion,  
 22 maybe in the mornings, we would hear birds; maybe  
 23 some throughout the day.  
 24 Q. You listened to the recordings of June  
 25 9th and June 10th, and there are some bird noises;

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1 somebody one day is -- I base off of their  
 2 relationship.  
 3 Q. You've heard testimony here that your  
 4 mother and father -- I'll restate that.  
 5 You heard testimony here that your  
 6 mother actually filed for a divorce when you were  
 7 about ten years old.  
 8 A. Yes. That's correct.  
 9 Q. Do you recall anything about that?  
 10 A. Yes, I do.  
 11 Q. What is that?  
 12 A. I do recall, yes, they had brought it  
 13 up to myself, my brother, and my sister. Yes, I  
 14 remember that day.  
 15 It was -- honestly, it was a brief  
 16 period that -- you know, every relationship has  
 17 its problems. And they fixed their problems, and  
 18 they were stronger than ever.  
 19 And since that day, I have seen many  
 20 acts of love from both of them: never forgetting  
 21 anniversaries, birthdays, always telling each  
 22 other they love each other, always talking on the  
 23 phone when the other is gone.  
 24 MR. McALLISTER: Thank you, Ms. Steele.  
 25 THE COURT: Before -- Counsel, I did want to

1 correct?  
 2 A. Yes.  
 3 Q. Do you think they're real?  
 4 MS. WHELAN: Objection. Foundation.  
 5 THE COURT: Sustained.  
 6 BY MR. McALLISTER:  
 7 Q. In listening to the recordings, there  
 8 is also sounds of a train whistle; correct?  
 9 A. Yes, there is.  
 10 Q. In your experience, can you hear any  
 11 train whistle on your family's property?  
 12 A. I have never heard a train while I was  
 13 within that barn.  
 14 Q. Okay. While you were growing up, did  
 15 your father ever, in any way, threaten you?  
 16 A. Oh, goodness, no.  
 17 Q. Did he ever, in any way, physically  
 18 harm you?  
 19 A. No.  
 20 Q. Did you observe him with your mother?  
 21 A. Yes.  
 22 Q. What did you observe about their  
 23 relationship?  
 24 A. They love each other. Definitely what  
 25 I look for -- what I want in a relationship with

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1 clarify my prior ruling. And I'll refer you to  
 2 the rule, and perhaps I'll allow Mr. McAllister to  
 3 reopen.  
 4 But Rule 901(b)(4), I don't think the  
 5 foundation was laid for that through this witness,  
 6 although that may have been where counsel was  
 7 going. If counsel were -- I'll leave it to that.  
 8 If you want to review the rule and if  
 9 you want to talk about specific characteristics as  
 10 opposed to just simply a general observation, I  
 11 may well allow that line of inquiry into what, I  
 12 think, speech patterns that Ms. Steele referred  
 13 to.  
 14 MR. McALLISTER: Judge, I'll try to ask a  
 15 few more questions and see if I'm in accordance  
 16 with the rule.  
 17 THE COURT: All right.  
 18 BY MR. McALLISTER:  
 19 Q. When you were listening to these  
 20 recordings, did you attempt to listen to them with  
 21 a typed transcript?  
 22 A. Honestly, I listened to them with the  
 23 transcript and without the transcript. That way,  
 24 I could analyze not only what was written on the  
 25 transcript, also just being able to listen,

1 listening to how things were said.  
 2 Q. All right. And I think you said in  
 3 some parts, you thought it was your father's  
 4 voice; and in other parts, you did not think it  
 5 was your father's voice; correct?  
 6 A. True.  
 7 Q. All right. Were you listening for  
 8 typical phrases that he uses?  
 9 A. I wasn't necessarily listening for  
 10 typical phrases that he used. I mean, there were  
 11 some things that came out that, yes, he says that;  
 12 so do several other people say that -- that were  
 13 said that I did notice. The main thing that I  
 14 noticed throughout it is it's just not the way  
 15 that he talks.  
 16 MR. McALLISTER: Thank you.  
 17 THE COURT: Ms. Whelan.  
 18 CROSS-EXAMINATION  
 19 BY MS. WHELAN:  
 20 Q. Ms. Steele, you were not living in  
 21 Idaho on June 9th, 10th, or 11th, were you?  
 22 A. No, I was not.  
 23 Q. You were living in Texas?  
 24 A. That's correct.  
 25 Q. How long had you been living there?

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 1 it, Judge?  
 2 THE COURT: No, it is not.  
 3 BY MS. WHELAN:  
 4 Q. Looking at that document, that comports  
 5 with what your investigation found, too, doesn't  
 6 it?  
 7 A. Yes.  
 8 MS. WHELAN: Your Honor, we would move to  
 9 admit Exhibit 25.  
 10 MR. McALLISTER: I object on hearsay grounds  
 11 and lack of authentication. It also talks  
 12 about --  
 13 THE COURT: It would appear to be hearsay,  
 14 Counsel. I don't know if you want to offer an  
 15 exception to the hearsay rule or --  
 16 MS. WHELAN: Well, I think I'll just ask a  
 17 couple more questions, Judge.  
 18 BY MS. WHELAN:  
 19 Q. Trains pass by Sagle, Idaho, on --  
 20 excuse me. Your investigation confirmed that  
 21 trains passed through Sagle, Idaho; and that on  
 22 June 9th, it passed between 6:00 and 6:45? That  
 23 was what your investigation showed; correct?  
 24 A. It was what was brought to my  
 25 attention, yes.

1 A. I was living in Texas for, I believe, a  
 2 year-and-a-half.  
 3 Q. Are you aware that, according to the  
 4 BNSF Railroad, there is a train that goes in Sagle  
 5 from 6:00 to 6:45 p.m. on June 10th?  
 6 A. One train --  
 7 Q. Okay. And it happens --  
 8 A. -- yes. Three miles -- approximately  
 9 three miles away.  
 10 Q. And it happens at nighttime?  
 11 THE COURT: We need to go one at a time.  
 12 Wait until Ms. Whelan has completed the question  
 13 before you start to respond.  
 14 And, Ms. Whelan, wait for the response  
 15 to be completed before you ask your next question.  
 16 Proceed.  
 17 BY MS. WHELAN:  
 18 Q. The train comes at night, doesn't it?  
 19 A. Within that time period of the  
 20 recording, there is one train that goes by.  
 21 Q. Okay. And you know that because you  
 22 checked, as well?  
 23 A. Yes, that's correct.  
 24 Q. And so I'd like you to look --  
 25 MS. WHELAN: The jury camera isn't on, is

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 1 Q. Okay. And on June 10th, it passed from  
 2 6:00 p.m. to 6:40 p.m.? That's consistent with  
 3 your investigation, isn't it?  
 4 A. I'm going to be one hundred percent  
 5 completely honest. It's what was directly brought  
 6 to my attention. I'm not sure if those -- that  
 7 exact time range. I think I actually had a  
 8 broader time range.  
 9 Q. And when you listened to these  
 10 recordings -- in fact, you had a conversation with  
 11 your father and told him you didn't know if you  
 12 were supposed to be listening to them, didn't you?  
 13 A. To the recordings?  
 14 Q. Mm-hmm.  
 15 A. Back then, at one point, you know, I  
 16 kind of hesitated. I wasn't -- I wasn't sure.  
 17 And then it was brought to my attention that I  
 18 was. And then I kind of had a "Oh, wait," like --  
 19 but, you know, it was brought to my attention that  
 20 it was okay.  
 21 Q. And you listened to those recordings at  
 22 your mother's lawyer's office?  
 23 A. I was -- I listened to them with the  
 24 lawyers, yes.  
 25 Q. Right. Now, you don't want to believe

1 that your dad would want your mother killed, do  
 2 you?  
 3 A. I don't believe it.  
 4 Q. You wouldn't want to believe it,  
 5 either, would you?  
 6 A. I don't believe it.  
 7 Q. I understand. My question is, Miss:  
 8 You don't want to believe it?  
 9 A. Of course, I don't want to. And I  
 10 don't. And it's not because I don't want to.  
 11 MS. WHELAN: Your Honor, I would move to  
 12 strike the last part, please.  
 13 THE COURT: I'll strike the last comment.  
 14 The question was pretty direct. So if  
 15 you would just answer counsel's question.  
 16 Mr. McAllister will have a chance to allow you to  
 17 explain your answer a little more fully, if you  
 18 wish.  
 19 Ms. Whelan.  
 20 BY MS. WHELAN:  
 21 Q. You -- and your father asked you to do  
 22 numerous things from jail, didn't he?  
 23 A. Well, yes, like send him books.  
 24 Q. You sent him books and magazines?  
 25 A. Yes, that's correct.

1 A. Yes. And I did my best to get him the  
 2 books that he wanted. Not all of them were  
 3 available, though, in the paperback restrictive  
 4 that the jail wanted.  
 5 Q. And if you sent your father the wrong  
 6 book, he made sure and corrected you, didn't he?  
 7 A. He would let me know if I messed up.  
 8 Q. Did you ever hear your dad use the term  
 9 "Mission Impossible"?  
 10 A. To be completely honest, I don't  
 11 recall.  
 12 Q. And you -- what's your education  
 13 background?  
 14 A. My education background is I -- I did a  
 15 mixture of home school and public schooling. I  
 16 attended Sandpoint High School specifically for  
 17 music classes. Of course, I wanted to go to more  
 18 music classes than I could with the academics at  
 19 the high school. So, in my choice, I took up  
 20 Internet courses so I could study more music at  
 21 the local high school. And then, I mean, from  
 22 there, I did go and obtain my GED.  
 23 Q. Okay. Any college degree?  
 24 A. No college degree. I had started at  
 25 Spokane Falls Community College; though, due to

1 Q. Books on Russian?  
 2 A. Yes, that's correct.  
 3 Q. Where did the money come to send those?  
 4 A. Some of the money my mom did supply for  
 5 me. I did pay for quite a bit of it at the  
 6 beginning. And then, from there, yes, we did  
 7 actually, at one point, started receiving  
 8 donations from people who believed in my dad.  
 9 Q. And you used that money, didn't you?  
 10 A. To pay for books and magazines.  
 11 Q. And sometimes you sent the wrong  
 12 magazines, didn't you?  
 13 A. What do you mean, sent the wrong ones?  
 14 Q. You sent magazines that your dad hadn't  
 15 asked for, or he didn't want those, did he?  
 16 A. Well, I sent some that I thought he  
 17 might be interested in, as well, to keep him  
 18 occupied. He didn't have anything else to do.  
 19 Q. And even from jail, he called you and  
 20 told you that those were the wrong ones and to  
 21 take care of it, didn't he?  
 22 A. From there, I would try getting him the  
 23 right books.  
 24 Q. Your father was very particular as to  
 25 what he wanted, wasn't he?

1 nobody would hire me because I was going to  
 2 school -- I didn't have the free schedule -- and I  
 3 needed to pay rent on the place I was living at  
 4 somehow, I ended up having to get a job. And,  
 5 unfortunately, I had to drop out.  
 6 And thankfully, finally, I have been  
 7 able to financially be able to get myself back  
 8 into school to be able to obtain a college degree.  
 9 Q. But you don't currently have a college  
 10 degree; correct?  
 11 A. No. I don't think most 20-year-olds  
 12 do.  
 13 MS. WHELAN: Your Honor, I'd move to strike.  
 14 I'm just trying to establish a foundation.  
 15 THE WITNESS: I do not.  
 16 BY MS. WHELAN:  
 17 Q. You don't have a background in audio  
 18 engineering?  
 19 A. No, I do not.  
 20 Q. You don't have a background in  
 21 phonetics?  
 22 A. No.  
 23 Q. You aren't a speech therapist?  
 24 A. No.  
 25 Q. You have no specialty in speech

1 patterns or speech identification of anything, do  
2 you?

3 A. No, I do not.

4 MS. WHELAN: May I have just a moment,  
5 Your Honor?

6 THE COURT: Yes.

7 MS. WHELAN: Thank you. Nothing else,  
8 Your Honor.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. McALLISTER:

12 Q. Ms. Whelan asked you questions about  
13 Russian books. Do you recall that?

14 A. Yes.

15 Q. You were aware of the fact that your  
16 father was working a case involving a Russian  
17 bride scam; correct?

18 A. Yes, I was.

19 Q. Was your mother aware of it?

20 A. Yes, she was.

21 Q. What was your perception of it?

22 A. Again, to be completely honest with  
23 you, it was something that I didn't know a whole  
24 lot about. It was kind of -- honestly, my dad and  
25 I would talk some about his legal courses and so

1 wanted to express?

2 MS. WHELAN: Your Honor, I object to the  
3 form of the question.

4 THE COURT: Counsel, I'm going to sustain  
5 the objection.

6 The witness can testify as to specific  
7 factors regarding -- you know, that may lead her  
8 to her belief, but her belief is not relevant.

9 And I think that's where we're going, directly or  
10 indirectly, regardless.

11 So I'm going to sustain the objection.

12 BY MR. McALLISTER:

13 Q. Based upon your own investigation in  
14 listening to the tapes, you've reached your own  
15 personal conclusion, have you not?

16 A. Yes.

17 Q. And you're still supporting your  
18 father; correct?

19 A. Yes, 100 percent.

20 MR. McALLISTER: Thank you.

21 THE COURT: Anything else?

22 MS. WHELAN: No, Your Honor. Thank you.

23 THE COURT: You may step down. Thank you.

24 Call your next witness.

25 MR. McALLISTER: The government [sic] would

1 forth. You know, it would kind of come up with,  
2 "Oh, what's new with you?" especially when I would  
3 come home to visit.

4 You know, he told me about it one day.

5 And it tends to be -- honestly, with a lot of the  
6 legal courses, he would -- we would kind of  
7 wrestle around the conversation, and I would kind  
8 of back out just because it was -- it wasn't a  
9 huge interest for me. I was interested in what he  
10 was doing, which is why we got to the topic. But  
11 getting into more details, it was kind of not a  
12 huge common interest at the time.

13 Q. Was it also kind of a joke around your  
14 house?

15 A. Yes.

16 Q. All right. Ms. Whelan asked you --  
17 well, I'll ask the question this way: Why don't  
18 you believe that your father would hire someone to  
19 kill your mother?

20 MS. WHELAN: Objection. Relevance, and I  
21 believe it's ultimate issue, 609.

22 THE COURT: Sustained.

23 BY MR. McALLISTER:

24 Q. When Ms. Whelan wouldn't let you answer  
25 the question, was there some reason that you

1 recall Cyndi Steele.

2 THE COURT: Ms. Steele, would you please  
3 retake the witness stand. I don't think we  
4 released you; and, therefore, you're still under  
5 oath.

6 CYNDI STEELE,

7 having been previously sworn to tell the whole  
8 truth, testified as follows:

9 THE COURT: I'd just remind the witness, you  
10 are still under oath.

11 You may inquire of the witness.

12 DIRECT EXAMINATION

13 BY MR. McALLISTER:

14 Q. Ms. Steele, just for the record, you're  
15 the same Cyndi Steele that testified earlier in  
16 this trial; correct?

17 A. Yes.

18 Q. I've placed on the monitor Exhibit  
19 2001. If you could review that, please.

20 A. I have.

21 Q. Are you familiar with this document?

22 A. Yes, I am.

23 Q. Did you assist in having your mother  
24 sign the document?

25 A. Yes, I did.

1 Q. Did you see her sign the document?  
 2 A. Yes.  
 3 Q. Was the document written as a letter of  
 4 authorization to allow your mother's son-in-law,  
 5 Edgar Steele, to serve as a power of attorney?  
 6 A. Yes, it was.  
 7 Q. And was it used in accordance with  
 8 attempting to modify the loan on your mother's  
 9 house?  
 10 A. It was -- well, modify -- it was -- we  
 11 were -- it was an attempt to possibly get what  
 12 they call a reverse mortgage, so that maybe she  
 13 could stay in the home, which didn't work. So  
 14 then it went into a modification. And then,  
 15 eventually, it went into helping her because none  
 16 of those were working, and her house was going to  
 17 be foreclosed on. So all issues around her --  
 18 helping her with her house.  
 19 Q. All right. In other words, your mother  
 20 gave your husband a power of attorney?  
 21 A. Yes, she did.  
 22 MR. McALLISTER: I would offer Exhibit 2001,  
 23 Your Honor.  
 24 THE COURT: Any objection?  
 25 MR. HAWS: Relevance, Your Honor.

1 power of attorney if they intended in any way to  
 2 harm her or kill her?  
 3 I think it goes to the heart of the  
 4 charges. It's conduct inconsistent with the  
 5 government's charges.  
 6 THE COURT: Conduct by who?  
 7 MR. McALLISTER: By Edgar Steele, by  
 8 agreeing to do it. By -- and the next exhibit is  
 9 the check he wrote.  
 10 THE COURT: So if you have a power of  
 11 attorney for someone, that precludes you from  
 12 developing the intent to kill them if you're --  
 13 have some interest in -- I'm just not seeing the  
 14 connection.  
 15 MR. McALLISTER: Certainly does not preclude  
 16 you from killing them, but it certainly is strong  
 17 evidence of inconsistency of the fact that you had  
 18 no intent to kill them.  
 19 If the government wants to say it was  
 20 somehow a ruse, that's fine, but I'm just showing  
 21 his conduct that's inconsistent with a man who is  
 22 going to murder his mother-in-law.  
 23 THE COURT: Mr. Haws, do you want to weigh  
 24 in?  
 25 MR. HAWS: Well, what these charges are

1 THE COURT: I'm not sure I see the relevance  
 2 myself. Perhaps -- could you, through some  
 3 further questions, perhaps tie it in? I'm --  
 4 MR. McALLISTER: Well --  
 5 THE COURT: Or, if not, we can discuss it at  
 6 sidebar, but I prefer not to if we can just --  
 7 MR. McALLISTER: Judge, I think I best make  
 8 the argument to you at sidebar.  
 9 THE COURT: All right. Approach.  
 10 (Sidebar commences as follows:)  
 11 THE COURT: Mr. McAllister, I may be getting  
 12 dense. As I understand, it's a power of attorney  
 13 issued by Mrs. Steele's mother granting Mr. Steele  
 14 a power of attorney to represent her in doing some  
 15 business with regard to a loan.  
 16 MR. McALLISTER: That's correct.  
 17 THE COURT: Now, why is that relevant?  
 18 MR. McALLISTER: Because they have charged  
 19 him with attempting to kill her. And this is  
 20 inconsistent with the charges. It's right on  
 21 point, Judge. Why would --  
 22 THE COURT: Why is it inconsistent with the  
 23 charges?  
 24 MR. McALLISTER: Because why would somebody  
 25 spend their own money, why would somebody act as a

1 about, Your Honor --  
 2 THE COURT: Step to the mic.  
 3 MR. HAWS: What these charges are about is  
 4 the defendant's intention to kill his  
 5 mother-in-law and his -- and his wife. It has  
 6 nothing to do with whether he was willing to do  
 7 legal work for them back six months earlier. And  
 8 it's just not relevant to what we're doing here.  
 9 Besides, this witness is really not in  
 10 a position to testify as to the legal arrangement  
 11 or speak for her mother or speak for the  
 12 defendant, either one.  
 13 So I think we've got the wrong witness  
 14 if we want to cover this in any event. It's not  
 15 relevant, and there is certainly not sufficient  
 16 foundation for it.  
 17 THE COURT: Well, Mr. McAllister, I just  
 18 don't see the connection. I mean, if all it did  
 19 is indicate that Mr. Steele was given a power of  
 20 attorney by Ms. Kunzman -- now, I'm not suggesting  
 21 that the motive here was financial or that  
 22 Mr. Steele was in some way trying to obtain some  
 23 financial benefit through, you know, murdering his  
 24 mother-in-law, assuming the government's -- you  
 25 know, accepting the government's allegations here.

1 But, even so, I just don't see the  
2 connection between the two. Now, maybe -- that's  
3 why I suggested maybe there is a next step that  
4 might tie this in and make it relevant. But at  
5 this point, I just don't see its relevance.

6 MR. McALLISTER: Well, the next exhibit,  
7 Judge, is the check that was used to pay the  
8 mother-in-law's mortgage. And I'm going to offer  
9 that, as well.

10 These were all -- the foundation has  
11 been laid for these through Cyndi Steele. She  
12 said it was his [sic] mother's signature. She  
13 said she was involved in working with her mother  
14 and her husband in getting this done.

15 MR. HAWS: If I may respond, Your Honor.

16 THE COURT: Yes.

17 MR. HAWS: Under the rule of relevance, it's  
18 whether or not this makes an issue in the case  
19 more or less likely. And these documents don't do  
20 that.

21 THE COURT: Well, the issue that  
22 Mr. McAllister is arguing is that he had -- it's  
23 inconsistent with an intent to murder the person  
24 from whom he had a power of attorney, but I -- I'm  
25 sorry. I just don't see the connection. I'll

1 sustain the objection.

2 MR. McALLISTER: And I take it --

3 THE COURT: You have a continuing objection.  
4 Let's just deal with that as to 2001.

5 MR. McALLISTER: I'm going to offer this --  
6 the next two, as well, Judge, if you want to deal  
7 with those, as well.

8 THE COURT: Well, if you can do it now or  
9 just offer them, however you want. But I -- you  
10 know, if you want --

11 MR. McALLISTER: Well, it's -- individually,  
12 on the power of attorney, Judge, it -- it's my  
13 position that the issue that the government has to  
14 prove is that he intended to kill his  
15 mother-in-law and that these activities -- the  
16 power of attorney, the check, and the letter to  
17 Wachovia Mortgage -- all show a pattern of  
18 conduct, actual actions that he took that are  
19 relevant to the point of whether or not he formed  
20 an intent to kill her. That's why they're  
21 relevant.

22 THE COURT: And these were all in December  
23 of 2009?

24 MR. McALLISTER: No. It's May 20th, 2010.  
25 And it's --

1 THE COURT: Well, what's --

2 MR. HAWS: The power of attorney -- I'm  
3 sorry.

4 THE COURT: The power of attorney is in  
5 December of --

6 MR. McALLISTER: The power of attorney is in  
7 December, and the check and the letter are in May.

8 MR. HAWS: These letters don't say anything  
9 with regard to an intent, Your Honor. These  
10 letters don't say anything with regard to intent,  
11 the defendant's intent, which is relevant here.

12 MR. McALLISTER: It's the defendant's  
13 actions, what he did, that -- obviously, they  
14 don't talk about his intent, but they show his  
15 intent by his actions.

16 Why would he give her \$2,779.37? Why  
17 would he take the trouble to write a letter to  
18 Wachovia Mortgage if he was going to kill her?  
19 That's the argument.

20 MR. HAWS: Well, the other side of the  
21 argument is that: Why wouldn't he do that? And  
22 that has nothing to do with his intent to commit  
23 murder. It's not necessarily inconsistent.

24 MR. McALLISTER: He would do it because he  
25 had no intention to kill his mother-in-law, and he

1 was trying to help her. That's why he did it.  
2 And the proof is in the funds that he spent.

3 THE COURT: Well, so it's funds he actually  
4 spent on her behalf?

5 MR. McALLISTER: That is it.

6 THE COURT: Or funds that he received  
7 through her power of attorney and then forwarded  
8 to her?

9 MR. McALLISTER: No, no. I don't think he  
10 received these funds through the power of  
11 attorney. I think that --

12 THE COURT: So the check comes from the  
13 bank?

14 MR. McALLISTER: Yes.

15 THE COURT: Okay. I'm still sustaining the  
16 objection. That's as to 2001.

17 What are the other exhibits, so that  
18 we don't -- unless you want to offer them in front  
19 of the jury. It's 2001 and -2 and -3?

20 MR. McALLISTER: Yes.

21 THE COURT: All right. That will be the  
22 court's ruling.

23 MR. McALLISTER: As to all three?

24 THE COURT: Except these are not marked  
25 properly. I think -- did I --

1 MR. HAWS: Those ones were brought up here,  
2 Your Honor.

3 THE COURT: Okay. Yeah. 2001, -2, and -3,  
4 I have an extra copy here. All right.

5 (Sidebar concluded.)

6 THE COURT: The objection is sustained.

7 BY MR. McALLISTER:

8 Q. Mrs. Steele, in May of 20 -- in May of  
9 2000 -- May 19th, 2010, did you and your husband  
10 provide the funds necessary to basically save your  
11 mother's house from foreclosure?

12 MR. HAWS: Objection. Relevance.

13 THE COURT: Counsel, with that further  
14 explanation, which I don't think was provided at  
15 sidebar, I'll allow the witness to answer. And  
16 then I may reconsider on my prior ruling.

17 Go ahead. You may answer.

18 THE WITNESS: Please ask it again.

19 BY MR. McALLISTER:

20 Q. On May the 19th, 2010, did you and your  
21 husband provide a check in the amount of \$2,779.37  
22 to Wachovia Mortgage to save your mother's house  
23 from foreclosure?

24 A. I thought it was the 20th, but it could  
25 have been the 19th. I think the check was written

1 2002, and 2003.

2 (Defendant's Exhibits 2001, 2002, and  
3 2003 admitted.)

4 THE COURT: I don't -- do you want to show  
5 them to the jury?

6 MR. McALLISTER: Yes, Your Honor, briefly.

7 BY MR. McALLISTER:

8 Q. Mrs. Steele, do you recognize what's  
9 been marked as Exhibit 2003?

10 A. Yes, I do.

11 Q. And it's dated May 19th, 2010; correct?

12 A. Yes, it is.

13 Q. And it's a check in the amount of  
14 \$2779.37, payable to Wachovia Mortgage; correct?

15 A. Yes.

16 Q. And underneath it, it says -- it says,  
17 "Re: J. Kunzman loan," and the number; correct?

18 A. Yes, it does.

19 Q. And that is your mother, is it not?

20 A. Yes, Jacquanette Kunzman.

21 Q. Where did these funds come from?

22 A. It came from -- well, it came out of  
23 our banking account, which was off of the silver  
24 that was -- that was being sold.

25 Q. All right. And did your husband

1 on the 19th, and it was mailed on the 20th. But,  
2 yes, we did, in that amount.

3 Q. All right. And did your mother get to  
4 keep her house?

5 A. No. But it was a decision -- because  
6 of her health and that, she decided to put it on  
7 short sale. She did get it sold -- oh, I can't --  
8 things have been so mixed up, but a few months ago  
9 and has since moved. Because of her health  
10 continually decreasing, she just -- it became an  
11 issue of not -- her not being able to handle the  
12 place.

13 Q. All right. And it was put up for sale  
14 ultimately?

15 A. Yes, it was.

16 Q. All right.

17 MR. McALLISTER: Your Honor, I would offer  
18 2001, 2002, and 2003.

19 THE COURT: Would you put them on the screen  
20 so I can look at them again?

21 MR. McALLISTER: That is 2001.

22 THE COURT: All right. Now 2002. And the  
23 2003.

24 All right. I'm going to allow the  
25 exhibits. I'm going to reconsider and admit 2001,

1 approve of this?

2 A. Actually, it was his offer to do that  
3 for my mom. And because she is my mom, I mean, I  
4 certainly agreed, but he made the offer to do that  
5 instead of allowing her to leave -- to lose her  
6 home, so that she could have a place to live  
7 longer until we could get the house -- or my mom  
8 could get the house sold.

9 Q. And if you could look at Exhibit 2002.

10 That's a letter written on your husband's  
11 stationery addressed to the mortgage company  
12 telling them that the check is enclosed; correct?

13 A. Correct.

14 Q. All right. As I understand it, the  
15 first time you heard that your husband was accused  
16 of attempting to murder you was from FBI Agent  
17 Sotka or the other FBI agents when you were at  
18 your mother's house on June 11th; correct?

19 A. It was -- well, the first was the two  
20 agents; the one that testified the other day, and  
21 the other was a gal who I don't remember her name.  
22 That was the first time I had heard that.

23 And then -- and then Agent Sotka  
24 confirmed it by a phone conversation when the  
25 agents got him on the phone.

1 Q. All right. Did you ask to hear the  
 2 recordings that were described to you in part by  
 3 Agent Sotka originally on June 11th?  
 4 A. You know, I believe I asked for the  
 5 tapes. I'm not sure I asked Sergeant Sotka at  
 6 that time, because I was in such disbelief that --  
 7 but I do know that the next day, I was asking  
 8 for them.  
 9 MR. HAWS: Object to the -- object to the  
 10 rambling answer, which is nonresponsive. I also  
 11 object to the fact that this has already been  
 12 covered in prior examination of this witness.  
 13 THE COURT: Well, I'm not sure I would  
 14 describe it as "rambling." If you want to say  
 15 it's a narrative response, that's a little more  
 16 polite way to put it, Mr. Haws. But I think  
 17 that's the point you're making, and it is probably  
 18 objectionable for that reason.  
 19 I'm also concerned, though, that we not  
 20 replot the same ground that may have been covered  
 21 on the cross-examination of Ms. Steele when she  
 22 was called as a witness for the government.  
 23 So let's step back and ask a question  
 24 of the witness and try to stay away from areas  
 25 that have already been covered.

1 telling me I was going to be killed. I had  
 2 to -- I wouldn't -- I wouldn't have been human --  
 3 Q. What did you --  
 4 A. -- if I hadn't questioned.  
 5 Q. Did anything help you resolve those  
 6 doubts?  
 7 A. Mostly, once I listened to the tapes  
 8 with an open mind -- because that was -- I had to  
 9 decide, because my life was at stake, to make a  
 10 true -- I don't want to say "analysis," but to  
 11 listen to those tapes and know what the truth was,  
 12 whether I liked it or not. Plus, putting things  
 13 together that I was investigating that were either  
 14 matching or a lot of times not matching what I  
 15 knew was true.  
 16 Q. All right. Now, you used the word  
 17 "tapes." And I used the word "recordings." So  
 18 whenever you say "tapes," you really mean the  
 19 recordings; correct?  
 20 A. Well, yes. I've heard both terms and  
 21 know that there is a difference. And now I'm so  
 22 confused which is the right technical word. So,  
 23 yes.  
 24 Q. All right. In other words, you have  
 25 never seen a tape-recording. You have seen disks

1 Proceed.  
 2 BY MR. McALLISTER:  
 3 Q. When were you first able to hear the  
 4 recordings?  
 5 A. June 21st.  
 6 Q. And in the recordings -- or let me  
 7 rephrase that question.  
 8 In a telephone conversation with your  
 9 husband from the jail to you, you talked to him  
 10 about some doubts you had; correct?  
 11 MR. HAWS: Objection. Foundation. And I  
 12 believe that it's also been covered already.  
 13 THE COURT: I don't recall. I'm going to  
 14 give the witness -- or counsel some leeway here  
 15 because I frankly just don't recall.  
 16 Proceed.  
 17 BY MR. McALLISTER:  
 18 Q. In your phone call with your husband on  
 19 June 13th, 2010, from the jail, did you make the  
 20 statement: "Yes, I wouldn't be human if I didn't  
 21 have doubts when the FBI is telling me that my  
 22 husband wanted to kill me." Correct?  
 23 A. I don't know I said that, but I had --  
 24 I told him I had doubts. And I -- you know, I had  
 25 doubts. I was examining everything. The FBI was

1 that contain a recording; correct?  
 2 A. Disks.  
 3 Q. All right. Now, on June 21st, when you  
 4 were allowed to listen to the recordings, did that  
 5 help resolve any doubts?  
 6 A. Absolutely.  
 7 Q. Why?  
 8 A. Well, actually, for many reasons.  
 9 Q. Let's take them one at a time, if we  
 10 can.  
 11 A. Noise. Back -- you know, the  
 12 background didn't match what I knew from the barn.  
 13 Birds chirped in the morning. Trains I couldn't  
 14 hear out at the barn. The tapes -- the recordings  
 15 were both on --  
 16 MR. HAWS: Objection, Your Honor --  
 17 THE WITNESS: -- June 9th and 10th.  
 18 THE COURT: Excuse me. Just a moment. When  
 19 there is an objection, please stop your answer so  
 20 I can rule.  
 21 Now, what's the objection?  
 22 MR. HAWS: The objection is foundation for  
 23 this person to be able to offer the opinions that  
 24 she is offering.  
 25 THE COURT: Well, as I noted previously up

1 to this point, the witness can identify things on  
2 the recording compared to her own experience. But  
3 in terms of offering an opinion, that will be  
4 objectionable, and I will sustain the objection.

5 Mr. McAllister, let's put questions  
6 before the witness. I would even direct you to  
7 lead the witness somewhat to avoid kind of  
8 narrative responses that cannot be properly  
9 addressed by Mr. Haws.

10 So if you would, at least in terms of  
11 foundation and getting the witness focused, I  
12 would ask you to ask leading questions.

13 Proceed.

14 MR. McALLISTER: Thank you, Your Honor.  
15 BY MR. McALLISTER:

16 Q. Mrs. Steele, in 26 years of marriage to  
17 Edgar Steele, you're pretty familiar with his  
18 voice; correct?

19 A. Yes, I am.

20 Q. And when you listened to these  
21 recordings, did you -- based upon your 26 years of  
22 listening to him, did you see some problems, hear  
23 some problems?

24 A. Throughout the tapes, I saw many  
25 inconsistencies and problems.

1 was or was not his voice, she can testify about  
2 specific characteristics that were not consistent,  
3 but I think the actual conclusion would  
4 necessarily call for expertise, if that's clear.  
5 I hope that's clear enough that we can proceed.

6 Go ahead.

7 BY MR. McALLISTER:

8 Q. What characteristics did you listen to  
9 that convinced you one way or another?

10 A. His intonation, his syntax, the way he  
11 takes breaks. He is very -- his intonation is  
12 very up and -- I mean, very up and down. He --

13 MR. HAWS: Objection, Your Honor. This  
14 calls -- the witness is expressing opinions that  
15 are in the province of an expert. She has not  
16 laid -- the foundation is not there.

17 MR. McALLISTER: Judge, I think she's --

18 THE COURT: Just a minute. I'm going to  
19 overrule the objection. I think what the witness  
20 is now describing is comparison between her  
21 experience and what she listened to on the tape,  
22 and it's limited just to that, because she is not  
23 qualified as an expert. But she is permitted to  
24 testify based upon her own experience in talking  
25 to Mr. Steele.

1 Q. Was there problems in how the words  
2 were spoken in terms of a flat affect or emphasis?

3 A. It was monotone.

4 MR. HAWS: Objection again, Your Honor, as  
5 to foundation of this witness to be able to  
6 testify as to the recordings.

7 THE COURT: Sustained. The witness can  
8 testify as to variations between what she heard  
9 and her experience in hearing Mr. Steele's voice,  
10 but I think we have to be careful of the  
11 terminology that's used, because the witness is  
12 not an expert.

13 BY MR. McALLISTER:

14 Q. Based upon your 26 years of speaking  
15 with your husband, did you think it was actually  
16 his voice?

17 A. Did I think it was actually his voice?

18 Q. Yes.

19 A. Not actually his voice, no.

20 Q. All right. Are you saying that about  
21 the entire recording or parts of it?

22 MR. HAWS: Objection. Same basis.

23 THE COURT: Just a minute.

24 Counsel, I think, for the witness to  
25 testify as to what she -- whether she thinks it

1 So the objection is overruled.

2 BY MR. McALLISTER:

3 Q. Based upon your 26 years of speaking  
4 and listening to your husband, you believed that  
5 the grammar was inconsistent with the way he spoke  
6 to you in those 26 years; correct?

7 A. Yes.

8 Q. And based upon your experience, you  
9 thought that the speech pattern was inconsistent;  
10 correct?

11 A. Yes.

12 Q. And based upon the intonation, you  
13 believed that there were inconsistencies; correct?

14 A. Yes, I did.

15 Q. Specifically, on the recordings, there  
16 is a discussion about someone remaining a  
17 paraplegic. Have you ever discussed that with  
18 your husband?

19 A. My husband and I -- well, my husband  
20 discussed that in years past. But primarily after  
21 his aortic aneurysm, he discussed that a lot  
22 and -- because they had told me he could have been  
23 a vegetable. And he would always talk about not  
24 wanting to be left like that.

25 And, you know, because of his state of

1 it being so important to his life, I can't be  
 2 assured he didn't tell other people that. Because  
 3 he told me he would not --  
 4 MR. HAWS: Objection, Your Honor.  
 5 THE WITNESS: -- want to be left as a --  
 6 THE COURT: Just a moment. There is an  
 7 objection.  
 8 MR. HAWS: Objection. Narration, exceeding  
 9 the scope of the question.  
 10 THE COURT: Sustained. The question was:  
 11 Have you ever discussed that with your husband?  
 12 And that could have been answered yes or no.  
 13 Mr. McAllister, could you put  
 14 another --  
 15 Again, Ms. Steele, it's difficult.  
 16 Mr. Haws has the right to object when a response  
 17 he feels is not in keeping with the rules of  
 18 evidence, but he can't interpose an objection if  
 19 what you're testifying to is in a narrative form.  
 20 If you'll listen carefully to  
 21 Mr. McAllister's questions, just answer them  
 22 directly, I think that will facilitate our moving  
 23 forward a little more efficiently.  
 24 Mr. McAllister.  
 25 BY MR. McALLISTER:

1 Q. In the recordings, Mrs. Steele, there  
 2 is a discussion about life insurance; correct?  
 3 A. Please repeat that.  
 4 Q. In the recordings, there was a  
 5 discussion about insurance; correct?  
 6 A. Yes.  
 7 Q. And isn't it true that you do not have  
 8 a life insurance policy?  
 9 A. No. We canceled it.  
 10 MR. HAWS: Objection. Relevance.  
 11 THE COURT: Overruled.  
 12 BY MR. McALLISTER:  
 13 Q. Go ahead, Mrs. Steele.  
 14 A. We had canceled it a few years ago.  
 15 Our children were grown, and we couldn't really  
 16 afford it.  
 17 Q. All right. On the recordings, there is  
 18 a discussion about you having a boyfriend. Do you  
 19 recall that?  
 20 A. Yes.  
 21 Q. Did you ever have a boyfriend?  
 22 A. No.  
 23 Q. Did Agent Sotka question you about  
 24 that?  
 25 A. Actually, told me that I had -- that

1 they had an investigator --  
 2 MR. HAWS: Objection.  
 3 THE WITNESS: -- and pictures.  
 4 THE COURT: Just a moment.  
 5 MR. HAWS: Objection, Your Honor. Hearsay.  
 6 MR. McALLISTER: I think it's --  
 7 THE COURT: Just a minute. Overruled.  
 8 Well, I'm going to overrule the objection. It was  
 9 a statement -- actually, there was a question  
 10 about whether a question was asked by the FBI  
 11 agent, who, I think, would -- under 801(d)(2)(D),  
 12 would not be hearsay.  
 13 Rephrase the question, though, if you  
 14 would.  
 15 BY MR. McALLISTER:  
 16 Q. Did Agent Sotka actually accuse you of  
 17 having a boyfriend?  
 18 A. Yes.  
 19 MR. HAWS: Objection. Form of the question.  
 20 THE COURT: Sustained.  
 21 BY MR. McALLISTER:  
 22 Q. I'll ask the question this way: Agent  
 23 Sotka raised the issue to you about whether or not  
 24 you had a boyfriend; correct?  
 25 A. Yes.

1 Q. And you denied that to him, did you  
 2 not?  
 3 A. Yes.  
 4 Q. And that was the truth?  
 5 A. Yes.  
 6 Q. In your investigation, did you  
 7 frequently talk with Agent Sotka? And when I say  
 8 "frequently," how many times did you talk to Agent  
 9 Sotka?  
 10 A. I have never really counted, but  
 11 between -- between June 11th until, oh,  
 12 somewhere -- I don't know -- it might have been  
 13 August, end of July. I mean, you know, several  
 14 times.  
 15 Q. Did he ever tell you that Larry Fairfax  
 16 had admitted to putting a bomb on your car before  
 17 June the 15th, when it was discovered?  
 18 A. No.  
 19 Q. Okay. Did you find issues or problems  
 20 with the information you received from FBI Agent  
 21 Sotka?  
 22 A. Yes.  
 23 MR. HAWS: Objection. Relevance.  
 24 Objection. Foundation.  
 25 THE COURT: Sustained.

1 minutes early. If you're here early and we're  
2 done with the matter we need to take up, we'll  
3 start a little sooner than 8:45, but at least be  
4 here by 8:45 and be ready to go.

5 (Recess.)

6 (Jury absent.)

7 THE COURT: You're indicating that you  
8 intend to call Dr. Papcun?

9 MR. McALLISTER: Well, in light of the  
10 court's ruling, I thought I would raise the issue  
11 at this time and determine whether or not the  
12 court is going to permit the calling of Dr. Papcun  
13 in light of the testimony from Kelsie Steele and  
14 Cyndi Steele regarding the --

15 THE COURT: Well, I was pretty clear in  
16 indicating it was -- that there would need to be  
17 testimony from whatever source -- and I didn't  
18 indicate what the source would be -- that the jury  
19 could conclude or at least raise an issue with the  
20 jury that the voices on the recording were not  
21 those of Mr. Steele or that there was some  
22 evidence that there had been some modification.

23 Mr. Haws, I don't want to rule without  
24 hearing your side of it. If you want to take that  
25 up tomorrow morning -- I don't know how that

1 affects the defense in terms of getting Mr. Papcun  
2 here if I permit it. But it might be better just  
3 to include that on the list of things we'll cover  
4 tomorrow morning. Perhaps start at 8:00 instead  
5 of 8:15.

6 MS. WHELAN: Judge, I would just ask that  
7 you look at the transcript that was created from  
8 your ruling. Because what you said wasn't if the  
9 voices were different; it was "if somebody  
10 testifies that something was said that doesn't  
11 appear on the tape or that something wasn't said  
12 that does appear on the tape."

13 THE COURT: I understand that is what I  
14 said. I guess I had envisioned there would be  
15 some testimony from someone to that effect, but I  
16 tried to be careful not to limit how that might  
17 occur.

18 MS. WHELAN: I'm just asking that you look  
19 at the transcript.

20 THE COURT: I will. I will. Is that going  
21 to be a problem if we just address it tomorrow  
22 morning at 8:00?

23 MR. McALLISTER: Yes, Your Honor, it will  
24 be, in terms of -- in terms of getting him  
25 available and having him -- if the court rules

1 that he is permitted to testify, it will be  
2 difficult.

3 THE COURT: The only thing I can say is be  
4 here at either 4:30 or 5:00. I've got a hearing  
5 at 3:30 that will take at least an hour. And I've  
6 got a conference call right now that I'm late for  
7 and I have to take.

8 MR. McALLISTER: 4:30 or 5:00, or 4:30?

9 THE COURT: Well, 4:30. You may have to  
10 wait until I'm done with the hearing. I've got a  
11 summary judgment motion in a civil matter at 3:30.  
12 All right.

13 (Court recessed at 2:31 p.m.)

14 (Court resumed; jury absent.)

15 THE COURT: What I was trying to do, and, of  
16 course, I was ruling from the bench, I did not  
17 have a chance to write out the decision, simply my  
18 attempt to articulate my concerns.

19 I obviously found that Mr. Walsh was  
20 not qualified by experience, training or education  
21 to offer the opinions that he was offering. I  
22 concluded that Dr. Papcun was so qualified, but  
23 that his opinions would not be relevant to this  
24 proceeding at that point because an issue had not  
25 been raised, and his expertise would assist the

1 jury.

2 Primarily there was no evidence that,  
3 particularly given Dr. Papcun's limited testimony,  
4 which was only that there were, I don't recall the  
5 exact term, I will refer to them as artifacts. I  
6 think there was electronic signatures and several  
7 other terms used that those were unusual and  
8 perhaps in greater number than he would have  
9 anticipated, but he was not -- he was very careful  
10 to say, "I'm not going to indicate what caused  
11 those."

12 Given that limited opinion that would  
13 only become relevant if, in fact, there was some  
14 indication that perhaps what was on the tape was  
15 not an accurate rendition of what occurred during  
16 the time the conversations were being, allegedly  
17 were being, recorded.

18 I will indicate that my intent was more  
19 to provide an example of how I thought this was  
20 going to likely come before the Court, which would  
21 be some testimony that, in fact, there were  
22 statements made at that time not recorded or that  
23 there were items on the recording that were not,  
24 in fact, said at the time.

25 Obviously we have not had that

1 predicate provided up to this point. I  
2 anticipated it might come either through cross-  
3 examination of Mr. Fairfax, perhaps by Mr. Steele  
4 taking the witness stand. So far neither has  
5 occurred.

6 What has occurred was testimony from  
7 two individuals familiar with Mr. Steele's voice,  
8 his cadence, his syntax, although I am not sure  
9 that we should have allowed that without someone's  
10 qualification to know what syntax is. But my  
11 inclination now is that was probably adequate  
12 under what my general intent was in ruling on  
13 Dr. Papcun's testimony.

14 But I am willing to hear very brief  
15 argument on the point, starting with the  
16 Government since my inclination is to permit  
17 Dr. Papcun to testify.

18 Again, don't push me with my own petard use  
19 of the language because I know what I said, but  
20 understand I was trying to think of the context in  
21 which I thought that would be presented. I did  
22 not anticipate that it might come in the way that  
23 it did here and, therefore, my rulings kind of  
24 focused more on what the underlying thought  
25 process was, not the specific way in which it is

1 Communication and Technology found there was no  
2 scientific process that enables one to uniquely  
3 characterize a person's voice or to ID with  
4 absolute certainty an individual from his or her  
5 own voice.

6 THE COURT: I am assuming they are talking  
7 about voice patterns captured electronically in  
8 some fashion.

9 MS. WHELAN: And they may have been.

10 THE COURT: I don't know how you can say  
11 scientifically a person can or cannot recognize a  
12 person's voice. Go ahead. Maybe we are talking  
13 about two different things. Go ahead.

14 MS. WHELAN: I don't think it is you can't  
15 recognize, it is that you can't say specifically,  
16 That is not the voice. And here is, Judge, what I  
17 think is important.

18 What we have is the testimony of  
19 Mrs. Steele and Ms. Steele saying part of the  
20 tapes sounded like Mr. Steele's voice, but it  
21 didn't convince them to change their mind. They  
22 were not part of the conversation and, in fact,  
23 they weren't even in the state when those  
24 conversations occurred. It is just a lay person  
25 who has spoken to somebody saying that didn't

1 presented.

2 Ms. Whelan.

3 MS. WHELAN: There is no petard in my  
4 argument, Judge.

5 THE COURT: We'll see.

6 MS. WHELAN: Here is the problem: During  
7 the *Daubert* hearing on the 20th and 21st, Defense  
8 counsel specifically said it was not seeking to  
9 introduce evidence of voice identification. There  
10 is a difference. And because that was solely the  
11 opinion of Mr. Walsh, it had nothing to do with  
12 Dr. Papcun. And when they said they were not  
13 going into it, the United States did not go into  
14 the numerous independent experts and voice  
15 comparisons who have shown there is no scientific  
16 validity for the voice comparison. And we had a  
17 stack of those starting from '79 to 2009.

18 THE COURT: I'm not sure I am tracking with  
19 you. No scientific validity of voice comparison  
20 where an individual can listen to a recording and  
21 say, That sounds like someone I know or isn't  
22 someone I know? Are you talking about electronic  
23 comparisons of voice?

24 MS. WHELAN: Judge, what I can tell you is  
25 in 2003 the European Conference on Speech

1 sound like his voice.

2 Now, what does the jury have? The jury  
3 has the June 9 recording, the jury has the June 10  
4 recording, the jury has the June 13 recording  
5 between the Defendant and Rex Steele, and the jury  
6 has the June 13 recording from Mr. Steele and  
7 Mrs. Steele. They can listen to that and say  
8 whether they believe it's the voice. They can  
9 hear what is there.

10 But to bring in what Dr. Papcun is  
11 going to testify about, the transients and  
12 electronic signatures, and again those issues, I  
13 think the Court called them artifacts, the United  
14 States believes that it will result in confusion.  
15 The jury can make the determination. The question  
16 goes to voice identification.

17 Nobody has brought up, at least in  
18 testimony, the issues with the recording. And  
19 while counsel may say that it was part of the  
20 letter that was written to Ms. Loginova,  
21 Mr. Steele had not heard those tapes. It was his  
22 speculation at that point on the dates that he  
23 sent that as to what he thought could have  
24 happened.

25 Judge, under *U.S. v. Castaneda*, which

1 is a Ninth Circuit case, 94 F.3d 592, the Ninth  
2 Circuit held that Rule of Evidence 403 limitations  
3 apply to expert testimony. That they can be  
4 excluded if the probative value is substantially  
5 outweighed by the danger of unfair prejudice,  
6 confusion of issues, and is misleading to the  
7 jury.

8 As the Supreme Court observed in  
9 *Daubert*, "Expert evidence can be both powerful and  
10 quite misleading because of the difficulty in  
11 evaluating it. Because of this risk, the judge in  
12 weighing the possible prejudice against probative  
13 force under 403 exercises more control." Defense  
14 said they were not going into voice  
15 identification. What has been brought up is voice  
16 identification. It is confusing to the jury and  
17 it should not be brought up.

18 And I didn't bring up anything about  
19 your ruling.

20 THE COURT: You were kind. Thank you.  
21 Mr. McAllister.

22 MR. MCALLISTER: Thank you, Judge. I do not  
23 intend to wax eloquently for very long at all.

24 In fairness to the Court, and I suppose  
25 in fairness to the Government, it would be our

1 intention to call Dr. George Papcun as the next  
2 witness. However, there is another issue that has  
3 arisen that I think I better explain before I make  
4 my argument on his testimony.

5 He is not in the country at the moment;  
6 he is on a trip outside the United States with his  
7 wife. This trip had been planned for I don't know  
8 how long. She had recovered from a very serious  
9 medical problem. It was planned, it was paid for,  
10 and the Defense did not put him under subpoena  
11 before he left.

12 He has been in contact with his e-mail  
13 daily and he is available to testify by video  
14 conference, if we could set it up by Skype just  
15 like we have heard about in this trial. He is  
16 prepared to do that. But I don't think he can  
17 voluntarily -- I don't think he will come back  
18 voluntarily to be here in person. I don't think  
19 he can physically get here.

20 THE COURT: Where is he at?

21 MR. McALLISTER: Bora Bora in the south  
22 seas. I want to tell the Court that. I am  
23 assuming the Government is going to object to it,  
24 although I think if the Court permitted a video  
25 conference they could cross-examine him as they

1 have before. I want everybody to know that at the  
2 outset.

3 Judge, in addition to Cindy Steele and  
4 Kelsie Steele's testimony, there is in this record  
5 Government's Exhibit 1-A and 2, which is the  
6 telephone call and the letter to Tatyana. In the  
7 letter that the Government has presented it says  
8 that, "A man who worked for me stole silver  
9 bullion that I had hidden on my property, about  
10 45,000. Then he went to the ADL, an  
11 American-Jewish organization that has hated me for  
12 many years I have tried as a lawyer, and because  
13 of my writings and speeches the ADL manufactured  
14 audiotapes using recordings this man secretly made  
15 of me talking, and also using some of the many  
16 thousands of hours of audio, mine available over  
17 the Internet. The phoney tapes make it sound like  
18 I tried to hire the man to kill my ex-wife."

19 Now, the Government put this exhibit in  
20 evidence. Told the jury that, in fact, it was  
21 written by Edgar Steele and that is the state of  
22 the record, and he was a participant to the  
23 conversation. And he is stating in writing that,  
24 in fact, that someone has made phoney tapes to  
25 make it sound like I tried to hire the man to kill

1 my wife.

2 In addition, in the recording that was  
3 played to the jury between Mr. Steele and  
4 Mrs. Steele on June 13, 2010, there is a statement  
5 by Mr. Steele, "This is going to be a mission  
6 impossible, a world-class level production. It  
7 probably is going to be multiple recordings put  
8 together from me into something highly improbable,  
9 and you are going to be convinced it is me  
10 talking, saying these. I guarantee it isn't,  
11 sweetheart. I love you dearly. I would never  
12 hire, I would never be so stupid as to hire  
13 somebody, least of all to kill you."

14 That is in evidence. Those are  
15 statements by the Defendant that I think fall  
16 under the Court's previous ruling as to  
17 Mr. Papcun.

18 I want to say one more thing, Judge,  
19 and that is there is no issue here that the  
20 Government can't rebut this. Obviously you heard  
21 their witness, and what we are asking is just that  
22 the jury be able to hear both of them or any  
23 additional witnesses the Government wants to call  
24 in addition to who they presented at the hearing  
25 on this issue previously.

1 They have two other experts endorsed,  
2 too, that they didn't call at the hearing. We  
3 could do it all by video conferencing so we  
4 wouldn't have to bring their witness back from  
5 Washington and we could accomplish that. Both  
6 sides would have an opportunity to cross-examine.

7 THE COURT: Let me ask you, has Dr. Papcun  
8 done any further studies or evaluations such that  
9 his opinions will vary from what is set forth in  
10 his report or what he testified to last week?

11 MR. McALLISTER: No, he hasn't done anything  
12 further.

13 THE COURT: You do not anticipate he will  
14 testify any differently?

15 MR. McALLISTER: I do not. Thank you.

16 THE COURT: Response, Ms. Whelan.

17 MS. WHELAN: Judge, again, this is not  
18 evidence like DNA, it is not evidence like  
19 fingerprints. It is evidence of listening to and  
20 deciding if it is somebody's voice. The jury has  
21 two unconverted known samples -- unconverted is  
22 not the right word -- uncontested known samples of  
23 the June 13 calls between Mr. Steele and his son,  
24 Mr. Steele and Mrs. Steele.

25 The Defense can make their arguments.

1 They can argue based upon what they have, and the  
2 jury can compare those and listen to those. But  
3 this is not DNA evidence. It is not something  
4 with scientific need.

5 As far as having him testify from Bora  
6 Bora, Judge, I tried to be accommodating, but  
7 given this witness's unique testifying style, and  
8 how he addressed himself and conducted himself in  
9 court as far as answering or not answering  
10 witnesses, I would want him physically present.

11 So we would object to him appearing  
12 over Skype or the Internet or anything. Plus, my  
13 understanding is the Court does not accept Skype.  
14 What we had to do with Ms. Loginova an it was not  
15 Skype, it was --

16 THE COURT: I'm not sure. Let me say we do  
17 not do Skype. The only time I have allowed  
18 witnesses to testify from a remote location was  
19 when an arrangement could be made to make that  
20 connection using typically court-to-court, where  
21 someone would appear in a court somewhere else  
22 here in the United States.

23 I have no idea whether he can appear  
24 from Bora Bora, and it is now after 5:00, our  
25 technical folks are gone. You would have to visit

1 with them in the morning whether it can be done or  
2 not. Our system may not be at all compatible. I  
3 just don't know. If it can be arranged, that is  
4 one thing. If not, that is another, and it may be  
5 that he won't be the next witness to testify  
6 regardless because of that. I understand your  
7 point, though.

8 MS. WHELAN: In short, Judge, again, we  
9 object, one, because of the type of evidence it is  
10 and the jury can't test it. We object, two,  
11 because we don't believe the foundation has been  
12 laid. We object three, because it is confusing.  
13 And fourth, because he is not available.

14 Thank you.

15 MR. McALLISTER: Judge, we know where he is.  
16 I believe he is at a business center -- he will be  
17 at a Four Seasons hotel. And Your Honor is right,  
18 we don't know at this point whether we can make  
19 the technical arrangements, but we believe we  
20 could.

21 THE COURT: Here is my view: First of all,  
22 I understand, Ms. Whelan, what you are saying  
23 about the challenge of relying upon a witness's  
24 testimony concerning whether or not it is a  
25 particular individual speaking on a tape.

1 But as I noted, I think at one of our  
2 sidebars, Rule 901(a) -- excuse me, (b)(5),  
3 specifically anticipates that identifying a voice  
4 is precisely the kind of thing that lay witnesses  
5 would do. It sets forth the minimalist foundation  
6 that would need to be laid to authenticate that  
7 recording.

8 And it seems to me the opposite is  
9 true, that if we can rely upon witnesses to  
10 identify that this is, in fact, the voice of an  
11 individual, then again, the opposite is true: You  
12 can also have witnesses say that is not the voice  
13 of my father or that is not the voice of my  
14 husband. And that, moreover, in terms of the  
15 cadence, intonation, grammar, that is not  
16 consistent with the way our husband or father  
17 talks. I think that raises an issue. Now,  
18 whether the jury is persuaded, that is another  
19 matter altogether.

20 But I think given those circumstances,  
21 consistent with my pretrial ruling, and I tried to  
22 make clear that I was not suggesting -- the  
23 newspapers picked it up in an odd way. They  
24 picked up that I was excluding Dr. Papcun, and  
25 there was some reference that he might be allowed

1 to testify, but I fully anticipated that we would  
2 address the issue again in some posture and then I  
3 would have to rule at that point.

4 But I think at this point I would allow  
5 him to testify, if arrangements can be made, and,  
6 of course, Dr. Papcun will have to be placed under  
7 oath. It is what is good for the goose is good  
8 for the gander argument. We certainly allowed  
9 that with Ms. Loginova and I think we are roughly  
10 in the same position here.

11 I do think, however, that Dr. Papcun  
12 will need to be kept on a very tight leash, and I  
13 do not anticipate allowing him to testify to  
14 anything different from A, in his report and B, in  
15 his examination last week.

16 I think counsel has transcripts, I am  
17 assuming, and we will be able to approach that  
18 appropriately. If Dr. Papcun starts wandering,  
19 then I will intervene, although it is difficult to  
20 do so in a live remote broadcast.

21 That will be the ruling of the Court.  
22 What this does to our schedule, I don't know. We  
23 will perhaps discuss that tomorrow morning. We  
24 will meet at 8:15 and take up the issue of the  
25 Fairfax writing, a budding Nobel author, Nobel

1 Prize for literature. We will see how that shakes  
2 out tomorrow morning.

3 We will be in recess until 8:15  
4 tomorrow morning.

5 (Proceedings concluded at 5:05 p.m.)  
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T a m a r a I. H o h e n l e i t n e r  
O f f i c i a l C o u r t R e p o r t e r  
C S R N o. 6 1 9

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

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UNITED STATES OF AMERICA,

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Plaintiff,

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vs.

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EDGAR J. STEELE,

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Defendant.

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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before B. Lynn Winmill, Chief District Judge

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**Tamara I. Hohenleitner**

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United States Courts, District of Idaho

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1 MR. HAWS: And I'm almost through with mine,  
2 Your Honor. I'll be through within three minutes  
3 now.

4 THE COURT: All right.

5 BY MR. HAWS:

6 Q. Do you have Exhibit No. 85 in front of  
7 you?

8 A. I do.

9 Q. What is Exhibit 85?

10 A. It's a -- it's another pipe of a little  
11 bit larger size.

12 Q. 85 has been admitted into evidence, I  
13 believe.

14 Would you go head and take it out and  
15 just show it to the jury. And comment on any  
16 similarities or dissimilarities between it and the  
17 other pipe bomb, No. 80.

18 A. Yeah. Absolutely. The -- this pipe  
19 has a coupler as opposed to just an internally  
20 threaded end cap.

21 So in this device, you have -- you  
22 know, we call these internally threaded end caps.  
23 There's an end cap, and the threads are on the  
24 inside of the cap. This has a coupler and then an  
25 externally threaded cap on the end of that.

1 Now, when I examined this, it was  
2 exactly the -- as you see it here. There was not  
3 a cap on the other end. And I was told that that  
4 had been filled with powder at one point. The cap  
5 had been removed and the powder dumped out.  
6 Although, at the time, I did observe some flecks  
7 of disk morphology smokeless powder when I  
8 examined it back in July.

9 Q. Let me make sure I just understood you.  
10 So when you examined it, there were still some  
11 remnants of smokeless black powder inside of  
12 Exhibit No. 85?

13 A. Disk smokeless powder, yes.

14 MR. HAWS: Okay. I believe those are all  
15 the questions I have for Mr. Phillips.

16 THE COURT: Mr. McAllister.

17 MR. McALLISTER: I do have questions,  
18 Your Honor, but I don't want to take it past 2:30  
19 today.

20 THE COURT: All right. I guess we'll see  
21 you Monday morning.

22 Ladies and gentlemen, we're going to  
23 take the weekend recess. As we take the recess,  
24 I'll admonish you to recall the court's extended  
25 admonition concerning juror conduct.

1 It is critical that you avoid reading  
2 any news accounts, listening to any radio or  
3 television accounts concerning the trial. As I  
4 have instructed you, it would be wise simply to  
5 avoid reading local newspapers, I think, for the  
6 duration of the trial and to avoid local news.

7 Likewise, do not consult any outside  
8 reference materials. That would include not only  
9 written materials but also any electronic  
10 information, such as websites, surfing the  
11 Internet, blogs, chat rooms.

12 You simply cannot and must not seek or  
13 obtain any information concerning the case or any  
14 of the topics which you've heard testimony about  
15 during the course of this trial. Do not visit any  
16 site that may have been mentioned during the  
17 testimony. Simply put the matter out of your  
18 mind. Do not form any opinions. Do not discuss  
19 the case with anyone, and do not allow anyone to  
20 discuss the case with you.

21 Again, I'll direct everyone in the  
22 courtroom to give the jurors the first opportunity  
23 to leave the courthouse. They will proceed  
24 directly to their vehicle.

25 And then when we reconvene Monday

1 morning at 8:30, please proceed directly to the  
2 fifth floor jury assembly room.

3 Mr. Severson, there was an issue  
4 considering another jury being --

5 LAW CLERK: We have actually asked them to  
6 come straight to the sixth floor.

7 THE COURT: All right. There is another  
8 jury being, I think, oriented for another trial  
9 Monday morning, so the jury assembly room will be  
10 tied up.

11 All right. Perhaps I'll have  
12 Mr. Severson escort the jury out; then I'm going  
13 to take up one matter with counsel very briefly.

14 Ladies and gentlemen, we'll see you,  
15 then, Monday morning at 8:30.

16 (Jury absent.)

17 MR. HAWS: May the witness step down,  
18 Your Honor?

19 THE COURT: Yes. Certainly.

20 Counsel, in anticipation of the Rule 29  
21 motion -- which I'm assuming we'll hear Monday,  
22 perhaps early in the day -- I would like counsel  
23 to be prepared. The elements offense that we --  
24 or the elements instruction that we read to the  
25 jury on the first day of trial as part of what I

1 call the preproof instructions, I'm not sure I'm  
2 uncomfortable with them, but I do need some  
3 guidance from counsel, perhaps from the government  
4 as to -- and it's an issue that I need to resolve  
5 in terms of the Rule 29.

6 And that is: What is the predicate  
7 offense, the underlying felony offense for Counts  
8 2 and 3? Is it -- the offense charged in Count 1  
9 deals with a time period -- I'm looking at the  
10 indictment, in fact, as we speak -- extending from  
11 December 2009 through June 11th, 2010.

12 And I'm going to want counsel to  
13 explain whether your position is that there is an  
14 ongoing criminal act that included -- incorporates  
15 both what Mr. Fairfax testified to as the  
16 attaching of the pipe bomb and then the travel to  
17 Oregon to determine whether it had fallen off,  
18 whether it then also incorporates the second trip  
19 to Oregon to presumably involve Ms. Steele in a  
20 fatal car accident.

21 My concern is that the -- there has to  
22 be a predicate federal felony. And if we view  
23 these as discrete acts, the preparation of the  
24 pipe bomb relates to an act that I understand  
25 occurred in Idaho. The acts related to the second

1 trip to Oregon, which would clearly involve  
2 interstate commerce -- but I think there is just a  
3 concern. I need counsel to explain to me -- and  
4 I'm sure Mr. McAllister is going to make argument  
5 about this -- about how that all hangs together,  
6 whether or not it is all one overall criminal act,  
7 whether there are discrete criminal acts; one  
8 related to the pipe bomb, the second to the second  
9 trip to Oregon that's been testified to.

10 And, again, I'm not making any comment  
11 whether it, in fact, occurred or did not occur. I  
12 think that's for the jury to determine. I'm only  
13 concerned what the evidence is for the jury to  
14 deal with and then whether -- and if they are  
15 treated as discrete acts, which of those discrete  
16 acts is the predicate federal felony offense to  
17 support Counts 2 and 3?

18 I don't know if that's clear, but  
19 I'm -- what my concern is. I'm reluctant to give  
20 any more guidance other than to say that I'm  
21 scratching my head a little bit now, as we speak.  
22 And I think counsel is going to need to be ready  
23 to discuss that Monday when we take up the Rule 29  
24 motion.

25 And I'm assuming, based on what I've

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1 been told and what counsel has told Mr. Severson,  
2 that perhaps the government will intend hopefully  
3 to rest Monday morning.

4 MS. WHELAN: Yes, Your Honor.

5 THE COURT: Is that correct?

6 MR. HAWS: Yes.

7 THE COURT: Mr. McAllister, you'll  
8 coordinate and perhaps, over the weekend, make  
9 sure you're ready to go.

10 What I intend to do -- and I'm already  
11 looking at the Rule 29 motion, so I'll be -- but I  
12 generally like to keep those arguments fairly  
13 short and sweet. So, you know, I'm thinking 15  
14 minutes or so to argue it, since I'm already  
15 looking at it, just told you where my concerns  
16 are.

17 And, of course, you're all well aware  
18 of the standard which would apply, a very --  
19 somewhat of a low bar for the government to clear,  
20 which is whether or not there is sufficient  
21 evidence from which a reasonable jury could find  
22 beyond a reasonable doubt that each element of the  
23 charged offense has been proven. I don't make  
24 credibility determinations; that's for the jury.  
25 I just ask, if the jury believed everything that

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1 has been presented and then construes it in a  
2 light most favorable to the government, could a  
3 reasonable jury find the defendant guilty beyond a  
4 reasonable doubt.

5 So I'm -- I'll just leave it at that.

6 All right. We'll be in recess, then, until 8:30  
7 Monday morning.

8 (Court recessed at 2:38 p.m.)  
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T a m a r a I. H o h e n l e i t n e r  
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1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

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4	UNITED STATES OF AMERICA,	: Case No. 10-CR-00148-BLW-1
5	Plaintiff,	:
6	vs.	: EXAMINATION OF
7	EDGAR J. STEELE,	: DENNIS WALSH
8	Defendant.	: DAVID J. SNYDER, III
9	----- x	:

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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before B. Lynn Winmill, Chief District Judge.

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April 21, 2011

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Day 2, Pages 175 to 325

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**Tamara I. Hohenleitner**

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United States Courts, District of Idaho

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1 Does the court have any questions for  
 2 me?  
 3 THE COURT: No, I don't.  
 4 MS. WHELAN: Thank you, Your Honor.  
 5 THE COURT: Response?  
 6 REBUTTAL ARGUMENT BY THE DEFENSE  
 7 MR. McALLISTER: Judge, almost everything  
 8 Ms. Whelan said in her presentation just now goes  
 9 to the weight of the evidence. And all we're  
 10 really asking here is for the court to allow us to  
 11 challenge those tapes. And we have presented,  
 12 clearly, scientific evidence, and we have  
 13 presented two experts who have years and years of  
 14 experience.  
 15 On the other hand, she has presented an  
 16 FBI agent who disagrees with their opinions, and  
 17 that's why juries get to decide the facts. And in  
 18 this case, all we're really asking the court to do  
 19 is allow us to, in front of the jury, question  
 20 whether or not they should rely upon these tapes  
 21 and let them decide for themselves.  
 22 Ms. Whelan can say all she wants that  
 23 Dr. Papcun pontificated or that Mr. Walsh isn't --  
 24 doesn't have the -- that she finds problems with  
 25 his resume. Those are cross-examination questions

1 that go to the issue of weight.  
 2 And in this case, what we're asking the  
 3 court to do is allow the jury to hear the  
 4 testimony of experts on both sides and make their  
 5 own decision in the case.  
 6 THE COURT: All right. Well, Counsel, I've  
 7 had -- well, I think I'll take just a brief  
 8 recess, and then I'm going to announce my  
 9 decision. I want to review the brief that's been  
 10 submitted.  
 11 But I think, rather than issue a  
 12 written decision, if I can take perhaps just a  
 13 15-minute recess, reconvene, then I'll announce my  
 14 decision, so we don't have to wait a day or so for  
 15 me to put something in writing.  
 16 I think my thinking is sufficiently  
 17 developed at this point that I can just rule from  
 18 the bench, but I just want to make sure that I  
 19 have reviewed everything that's been submitted by  
 20 counsel.  
 21 So we'll be in recess for just 15  
 22 minutes. Court will be in recess.  
 23 (Recess.)  
 24 RULING BY THE COURT  
 25 THE COURT: Counsel, I'm going to indicate

1 my ruling. I did get a chance to review the  
 2 briefs and very briefly scan over the attached  
 3 decisions submitted both by the government and the  
 4 defense.  
 5 During the course of the hearing, I was  
 6 making notes and outlining my thoughts, and so  
 7 you're going to have to bear with me as I go  
 8 through this.  
 9 But, as a first order of business,  
 10 Ms. Whelan, you indicated you wanted to review  
 11 Exhibits 1 through 10 to make sure you had them  
 12 and that you had no objection. Is there any  
 13 objection to Exhibits 1 through 10?  
 14 MS. WHELAN: I have not yet seen the court's  
 15 exhibits, Your Honor. I'm sorry.  
 16 THE COURT: Okay. I thought you had --  
 17 those had been shared. I have here 2 through 10,  
 18 I think. No. I have 1, as well.  
 19 I thought it was more a matter of your  
 20 getting a copy from Mr. McAllister.  
 21 MR. McALLISTER: Judge, she has a copy. I  
 22 think it's that she wants to see the marked  
 23 exhibits.  
 24 THE COURT: All right.  
 25 MS. WHELAN: Judge, I don't believe that --

1 Exhibits 3, 4, and 5 I don't recall having seen  
 2 before in the materials that I received. I  
 3 certainly have received Exhibit 1 and Exhibit 2.  
 4 THE COURT: Is 3, 4, and 5 some of the  
 5 graphs?  
 6 MS. WHELAN: They're graphs with specific  
 7 language on it.  
 8 THE COURT: Well, likewise, I think what's,  
 9 you know --  
 10 MS. WHELAN: For purposes of this hearing,  
 11 I'm telling just him, for the court, that I don't  
 12 think I've had them, but no objection.  
 13 THE COURT: That's what I was going to say,  
 14 is what is good for the goose is good for the  
 15 gander. And I admitted for purposes of this  
 16 hearing items that were not attached to the  
 17 government's expert's report and, likewise, will  
 18 admit Exhibits 1 through 10; although, apparently,  
 19 there is no objection.  
 20 (Defendant's Exhibits 1 through 10  
 21 admitted.)  
 22 THE COURT: Counsel, let me go through --  
 23 and, again, my notes are somewhat cryptic, but I  
 24 think I can hopefully make sense of all this.  
 25 You know, again, we refer to this as a

1 Daubert analysis, and it's really a Rule 702  
2 analysis. You know, when Daubert was, in essence,  
3 incorporated into the Federal Rules of Evidence,  
4 you know, there were some minor changes, but I  
5 think pretty much everything applicable under  
6 Daubert is, likewise, applicable to Rule 702.

7 The critical thing to understand, I  
8 think, about Daubert is that there are really two  
9 prongs to any analysis under Daubert.

10 The first is a question of reliability.  
11 And that really goes to the question of whether it  
12 is adequately based upon scientific, technical, or  
13 other specialized knowledge which does not include  
14 unsubstantiated speculation and subjective  
15 beliefs.

16 The second is a question of relevance.  
17 It's sometimes referred to as "fit." In other  
18 words, does it really address a question that is  
19 properly before the jury?

20 And I think both issues, both prongs of  
21 Daubert and Rule 702 are clearly implicated in --  
22 with regard to both Dr. Papcun and Mr. Walsh and  
23 really guide the court's decision.

24 First, let me deal, I think, with  
25 Mr. Walsh. I think the problem here with

1 Mr. Walsh's testimony is one of reliability.  
2 And, again, I will note the Daubert  
3 standard, which points the court toward a  
4 nonexclusive list of factors which the court might  
5 consider, including whether the theory or the  
6 technique or the device has been subjected to --  
7 or can be and has been tested, whether it can be  
8 subjected to peer review and publication, whether  
9 there is a known or potential rate of error, and  
10 maintenance of standards controlling the  
11 technique's operation, and whether the technique  
12 is generally accepted. That's the Daubert  
13 language.

14 I think the 702 language is comparable.  
15 They state whether the testimony is based upon  
16 sufficient facts or data, the testimony is the  
17 product of reliable principles and methods, and  
18 whether the witness has applied the principles and  
19 methods reliably to the facts of the case.

20 So let me address Mr. Walsh's  
21 testimony. Mr. Walsh -- as Ms. Whelan, I think,  
22 is fond of referring to -- takes substantial part  
23 of Dr. Papcun's expert report and has incorporated  
24 it, perhaps, wholesale into his own report, but  
25 then goes further. And whereas Dr. Papcun was

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1 unwilling to ascribe a particular cause to the  
2 artifact, the, again, electronic signature, the  
3 electronic -- I can't recall the other terms  
4 that -- potential gaps -- Mr. Walsh is willing to  
5 offer that opinion.

6 So there is a difference, and I have to  
7 analyze these two separately.

8 Looking at Mr. Walsh's background and  
9 experience, I just have to conclude he doesn't  
10 have the background or experience and has not  
11 reliably used the techniques necessary to offer  
12 the opinion that he wishes to offer.

13 First, looking at his background. And,  
14 as I noted earlier, a person can become an expert  
15 even in the absence of an educational or training  
16 background that would justify his offering that  
17 opinion. He can obtain that through actual  
18 experience. But I think there is a lacking in  
19 both.

20 First, in looking at his CV, he refers  
21 to two training programs, which were basically  
22 provided by vendors regarding the use of their  
23 equipment. He has referred to an audio engineer  
24 certification from the SAE Institute. But that  
25 appears to be -- and from his own description, it

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1 really appears to be a program designed to assist  
2 sound engineers in working in studios, sound  
3 studios, in the creative media and does not appear  
4 to have anything, that I could tell, from a  
5 forensic acoustical analysis or any kind of  
6 qualification along those lines.

7 And so, with that background, it is  
8 just wholly lacking in a training background that  
9 would allow him to offer the opinions that he  
10 wants to offer.

11 If one looks at his experience as  
12 possibly providing a basis, he points to the fact  
13 that he has worked in the NYPD, but there is  
14 virtually no description of what he was doing  
15 other than perhaps running wires, monitoring  
16 recordings, and whatnot, in that experience.

17 He has been involved in this business  
18 for 10 or 11 years but doesn't really explain how  
19 that experience or the level of experience that he  
20 has obtained really qualifies him to offer those  
21 opinions.

22 Notably, he has never been certified as  
23 a forensic examiner in this field. I did ask him  
24 the question about his notation that he has been  
25 qualified as an expert in a variety of courts in

1 New York.  
 2 And, again -- and I won't fault  
 3 Mr. Walsh for having too much trouble with years.  
 4 Notably, on several occasions he was confused  
 5 about years. One of the times he was so confused  
 6 is indicating that he had testified in 1989, but  
 7 he corrected himself, said it was 1999. That was  
 8 very shortly, it sounds like perhaps months, after  
 9 he left the police force but before he had  
 10 attended any of the seminars and training that he  
 11 now he points to as justifying his being qualified  
 12 as an expert.

13 I don't know what standard was applied  
 14 in the Southern District of New York, but -- I  
 15 don't know what the circumstances are, but that  
 16 certainly is questionable in my mind.

17 Notably, his testimony appears to be  
 18 based almost exclusively on the use of programs or  
 19 devices, including the EdiTrack or EdiTracker  
 20 device, and perhaps -- I think it's DC-7, and then  
 21 offering opinions based upon the results of  
 22 running that device.

23 It reminds me -- and this harkens back  
 24 to my days many, many years ago as a prosecutor in  
 25 even handling DUIs in which intoximeters were

1 offered into evidence. And if the defense raised  
 2 an issue about the authenticity of the process  
 3 used in intoximeters, the prosecutor had the  
 4 obligation of coming forward and, in fact, showing  
 5 how it works, why it's reliable.

6 I haven't heard any of that with regard  
 7 to either of these devices. You can't simply say,  
 8 "We put data in, and we got good results out,"  
 9 without explaining how that process works. And I  
 10 think that's wholly lacking here.

11 Moreover, the use of the device has  
 12 been criticized. And I noted on our short break  
 13 that a court in Pennsylvania has refused to accept  
 14 that device, finding that it has some serious  
 15 problems. And there has been no rebuttal from the  
 16 defense with regard to that criticism, saying  
 17 that, in fact, the EdiTrack device is, in fact,  
 18 reliable.

19 And then I also note that he has  
 20 reached a conclusion that a qualified expert or at  
 21 least someone more qualified is unwilling to  
 22 offer; that is, suggesting that, in fact, there  
 23 was conscious editing that went on in this  
 24 instance.

25 So, for that reason, I am going to find

1 that Mr. Walsh is not qualified to offer an  
 2 opinion based upon the reliability prong of  
 3 Daubert.

4 Let me turn to Dr. Papcun's testimony.  
 5 That is not a question in my mind, necessarily, of  
 6 reliability. I understand that there are  
 7 differences and that the expert proffered by the  
 8 government takes issue with Dr. Papcun's  
 9 conclusions, but it appears to me that those are  
 10 more a matter of weight to be given to the  
 11 testimony and would be subject-appropriate for  
 12 cross-examination by the government.

13 The problem, though, with Dr. Papcun's  
 14 testimony in my mind is the second prong or the  
 15 other prong of Daubert and Rule 702, which is the  
 16 issue of relevance or fit.

17 "Relevance" means that the evidence  
 18 will assist the trier of fact to understand or  
 19 determine a fact properly at issue in the case.  
 20 The evidence must logically advance a material  
 21 aspect of the party's case. And encompassed in  
 22 that determination of relevance is whether it is  
 23 helpful to the jury, which really is the court's  
 24 central concern.

25 At this point, my conclusion is that --

1 at least at the outset, that his testimony is not  
 2 relevant to an issue in the case; but it may  
 3 become so, as I'll explain in a moment.

4 He has indicated only that there is an  
 5 unusually large number of gaps, electronic  
 6 signatures, and electronic transients in the  
 7 recording.

8 Significantly, those gaps, electronic  
 9 signatures, and electronic transients can be  
 10 caused by equipment anomalies, equipment  
 11 malfunctions, inadvertent starts and stops of the  
 12 recording, ambient noise, or purposeful editing.

13 And he is quite clear that he cannot  
 14 and is not prepared to offer an opinion as to  
 15 which of those sources might actually have caused  
 16 the particular gaps, signatures, and transients  
 17 that have been identified.

18 Standing alone, I think that is not  
 19 relevant to the case at hand; and to the extent  
 20 that it is relevant, it would be confusing to the  
 21 jury and lead to confusion of the issues and  
 22 mislead the jury under Rule 403.

23 However, that may well change if there  
 24 is evidence during the trial that something was  
 25 said at the time of the recordings which was not

1 picked up on the recording or something on the  
2 recording was not said during the conversation.  
3 Then, I think Dr. Papcun's testimony would become  
4 relevant as corroboration of other evidence.

5 But without that, it's of very limited  
6 probative value. Just suggesting that there is a  
7 lot of artifact, if you will, in the recording is  
8 substantially outweighed by the likelihood of  
9 confusion of the issues and the potential for  
10 misleading the jury.

11 And, for that reason, I think, either  
12 under Rule 403, Rule 401, its relevance either has  
13 not been established or it is substantially  
14 outweighed by the potential for confusion of the  
15 issues and misleading the jury.

16 So, at this point, my ruling is that  
17 Mr. Walsh will not be allowed to testify because  
18 of the -- he does not meet the reliability prong  
19 under Daubert and Rule 702.

20 Dr. Papcun may be allowed to testify  
21 but only if that predicate is established at some  
22 point and in some fashion during the trial -- and  
23 I'm not going to say how it might be done --  
24 suggesting that something was said during the  
25 conversation that was not recorded or something

1 appears on the recording that, in fact, was not  
2 said. Then, at that point, that would then create  
3 an issue before the jury, and then Dr. Papcun's  
4 testimony would be properly corroborative of that  
5 issue, and we would proceed.

6 Counsel, we're not going to issue a  
7 written decision. I may have -- you know,  
8 Ms. Tetrick and Mr. Severson may be begging to  
9 clean up what I've said here for the record, but I  
10 think we're going to just let that be enough for  
11 now. And where it leads us, we'll see.

12 All right. Counsel, is there anything  
13 else at this time?

14 MR. HAWS: Nothing further, at this time,  
15 Your Honor.

16 MR. McALLISTER: No, Your Honor.

17 THE COURT: If there is nothing else, we'll  
18 be in recess.

19 (Proceedings concluded at 11:32 a.m.)  
20  
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22  
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24  
25

1 REPORTER'S CERTIFICATE  
2  
3  
4

5 I, Tamara I. Hohenleitner, Official  
6 Court Reporter, State of Idaho, does hereby  
7 certify:

8 That I am the reporter who transcribed  
9 the proceedings had in the above-entitled action  
10 in machine shorthand and thereafter the same was  
11 reduced into typewriting under my direct  
12 supervision; and

13 That the foregoing transcript, pages 175  
14 to 325, contains a full, true, and accurate record  
15 of the proceedings had in the above and foregoing  
16 cause.

17 IN WITNESS WHEREOF, I have hereunto set  
18 my hand June 14, 2011.  
19  
20  
21

22 -s-  
23

24 Tamara I. Hohenleitner  
25 Official Court Reporter  
CSR No. 619

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

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4	UNITED STATES OF AMERICA,	:
		: Case No. 10-CR-00148-BLW-1
5	Plaintiff,	:
		: EXAMINATION OF
6	vs.	:
		: GEORGE PAPCUN, Ph.D.
7	EDGAR J. STEELE,	:
		: DENNIS WALSH
8	Defendant.	:
9	-----	x

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

12

13 before B. Lynn Winmill, Chief District Judge.

14

15

16 April 20, 2011

17

18 Day 1, Pages 1 to 174

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**Tamara I. Hohenleitner**

23

Idaho Certified Shorthand Reporter No. 619

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Registered Professional Reporter

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\* \* \* \* \*

1 MR. McALLISTER: Judge, I want to just  
 2 briefly give the court a summary of what you can  
 3 expect.  
 4 There are two experts in this  
 5 particular case, for, I think, good reasons.  
 6 Dr. Papcun, obviously, has a Ph.D. in linguistics.  
 7 He is well acquainted in both the academic  
 8 community and the industry with basically the  
 9 science, if you will, of examining sounds.  
 10 And, obviously, I will allow him or I  
 11 will ask him to explain to the court his  
 12 background and history, and I think -- I think the  
 13 court will see that he is well qualified to  
 14 express opinions about whether or not the  
 15 audiotapes in question on June 9th and June 10th  
 16 are authentic.  
 17 By that, Judge, what we mean is that  
 18 there is scientific ways to examine and measure  
 19 the recordings to determine whether or not there  
 20 are, for instance, gaps. And there is a  
 21 scientific way to do that.  
 22 There is also a scientific way to  
 23 determine whether or not there are electronic  
 24 signatures. And both experts can explain their  
 25 work in that capacity.

24

1 simply examining thousands of tape recordings by  
 2 itself is not enough.  
 3 So I assume you're going to get past  
 4 that hurdle, and there will be at least some  
 5 experience slash science-based background to  
 6 Mr. Walsh's testimony.  
 7 MR. McALLISTER: There will be, Your Honor.  
 8 With that, Judge, we're prepared to  
 9 call Dr. Papcun.  
 10 THE COURT: All right. Very well.  
 11 Dr. Papcun, if you will step before the  
 12 clerk and be sworn.  
 13 Counsel, I might note Ms. Julie Tetrick  
 14 is actually -- she is a law clerk assigned to the  
 15 court. She is going to be here through the trial,  
 16 as well, because we were concerned there may be  
 17 enough issues coming up that having two law clerks  
 18 working -- she is positioned where she is because  
 19 we couldn't find a better place. So just so  
 20 you're familiar with why Ms. Tetrick is here, as  
 21 well.  
 22 Dr. Papcun, if you'll step before  
 23 Ms. Gearhart, be sworn as a witness, and then  
 24 follow her directions from there.  
 25 ///

1 In this particular case, we also have  
 2 Mr. Dennis Walsh, who served for ten years as a  
 3 homicide detective in the city of New York. In  
 4 the course of that, he became interested in  
 5 basically recording and the science of recording.  
 6 And I believe the court will find that he has  
 7 substantial, over 20 years' worth of work in this  
 8 field, in this area of either verifying that a  
 9 recording is authentic and accurate or providing  
 10 evidence that it is not. He also can explain the  
 11 various tests, et cetera.  
 12 What I've tried to present to the court  
 13 or what I'm trying to present in this case is both  
 14 Dr. Papcun as a scientist and Mr. Walsh as also  
 15 a -- he, obviously, does not have a Ph.D., and he  
 16 does not have the type of education that  
 17 Dr. Papcun has, but he does have the practical  
 18 experience. He has literally examined hundreds,  
 19 if not thousands, of recordings in his career.  
 20 THE COURT: Now, of course, there will  
 21 be -- I mean, I understand, particularly under  
 22 Kumho Tire, that expertise does not have to be  
 23 based upon Ph.D.s, advanced degrees. It can be  
 24 experience-based, but there still has to be  
 25 something akin to a scientific methodology. And

25

1 GEORGE PAPCUN,  
 2 having been first duly sworn to tell the whole  
 3 truth, testified as follows:  
 4 THE CLERK: Please state your complete name  
 5 and spell your last name for the record.  
 6 THE WITNESS: It's George, and the last name  
 7 is P-A-P-C-U-N.  
 8 THE COURT: You may inquire of the witness,  
 9 Mr. McAllister.  
 10 MR. McALLISTER: Thank you, Your Honor.  
 11 DIRECT EXAMINATION  
 12 BY MR. McALLISTER:  
 13 Q. Dr. Papcun, could you state again your  
 14 full name, please.  
 15 A. George, the initial J., which I don't  
 16 normally use, P-A-P-C-U-N. George Papcun.  
 17 Q. Dr. Papcun, you have earned, in the  
 18 past, a Ph.D.; correct, sir?  
 19 A. Yes, I have.  
 20 Q. In what area?  
 21 A. Acoustic phonetics in the Linguistics  
 22 Department of UCLA.  
 23 MR. McALLISTER: Your Honor, I'd like to  
 24 offer, for purposes of this hearing, Dr. Papcun's  
 25 resume. And I have copies for the court, and I

1 have given a copy to counsel.  
 2 MS. WHELAN: No objection.  
 3 THE COURT: All right. Why don't we --  
 4 let's have it marked as Exhibit 1 for the -- I  
 5 assume the government may have exhibits, as well?  
 6 MS. WHELAN: We do, Your Honor. I have got  
 7 my stickers.  
 8 THE COURT: And you are using numbers or  
 9 letters?  
 10 MS. WHELAN: I was using numbers,  
 11 Your Honor.  
 12 THE COURT: Then we will use letters for the  
 13 defense, unless they've --  
 14 MR. McALLISTER: Judge, I've premarked them  
 15 with numbers, unfortunately.  
 16 THE COURT: That's why we -- for trial  
 17 purposes, let's get on the same page now, and so  
 18 you will coordinate your numbering of exhibits.  
 19 My protocol typically is the party with the burden  
 20 starts with 1000, because we have trials sometimes  
 21 with thousands of exhibits. Joint exhibits are  
 22 zero through 999. And the defense will be 2000,  
 23 et. seq. So if that's agreeable going forward,  
 24 that's what we'll do.  
 25 Is that a problem? I'm seeing a little

1 Go ahead and proceed.  
 2 (Defendant's Exhibit 1 admitted.)  
 3 BY MR. McALLISTER:  
 4 Q. Dr. Papcun, I would like to briefly go  
 5 over your resume, understanding that everyone in  
 6 the courtroom has the complete resume.  
 7 Where did you go to undergraduate  
 8 school?  
 9 A. University of Arizona.  
 10 Q. And what did you study?  
 11 A. Mathematics and, actually, English, as  
 12 well.  
 13 Q. All right. And did you receive a  
 14 master's degree?  
 15 A. Yes, from the University of California.  
 16 Q. And where did you receive your Ph.D.?  
 17 A. Again, University of California.  
 18 Q. All right. Since receiving your Ph.D.,  
 19 Dr. Papcun, have you done work for the Los Alamos  
 20 National Laboratory?  
 21 A. Yes. I've been employed by Los Alamos  
 22 National Laboratory in the computer research  
 23 division.  
 24 Q. All right. And can you tell us in  
 25 layman's terms what it is you've done during the

1 panic.  
 2 MR. McALLISTER: We have exchanged exhibits,  
 3 and the government, I believe, started at 1.  
 4 MS. WHELAN: We did. We exchanged exhibits,  
 5 and we started at 1. Ms. Rocca is here, although  
 6 she is trying to whisper to me, and I'm not good  
 7 at trying to understand lips.  
 8 THE COURT: I quit using letters when we, in  
 9 almost every trial, got past 26 and got into  
 10 triple A and AAB and whatnot, and just said, "We  
 11 need to stay with numbers."  
 12 But, Mr. McAllister, if you're -- I  
 13 don't know how many exhibits you intend to offer  
 14 at trial, but if you want to work it out so that  
 15 there is no confusion and we're not using the same  
 16 numbers -- but for purposes of the hearing today,  
 17 since the defense is going first, I'm going to let  
 18 them go with 1 through whatever, and the  
 19 government is going to have to grab a pen and  
 20 convert "1" to "A" and "2" to "B" and so forth.  
 21 MS. WHELAN: I can do that, Your Honor.  
 22 Thank you.  
 23 MR. McALLISTER: That's fine, Judge.  
 24 THE COURT: Mr. McAllister -- Mr. Severson,  
 25 if you will handle the exhibits for us.

1 last, I guess it would be 23 years --  
 2 A. Well, I --  
 3 Q. -- at Los Alamos National Laboratory?  
 4 A. I applied my expertise from the Ph.D.  
 5 in a wide variety of projects, many of them fairly  
 6 directly involving speaker identification,  
 7 detecting the validity or lack of validity of  
 8 recordings.  
 9 Also applied essentially the same  
 10 expertise to things -- to sounds that were not  
 11 necessarily speech. Atomic devices, when they  
 12 explode, they make sound, and that's transmitted  
 13 around the world and through the earth, for that  
 14 matter.  
 15 So if there were an array of  
 16 microphones spaced around the earth capable of  
 17 receiving the right frequencies -- and it's no  
 18 secret that there is such an array; the details of  
 19 the array, of course, are secret -- but then we  
 20 would be able to use this kind of expertise in  
 21 understanding whether or not the blasts were  
 22 nuclear blasts or other kinds of blasts. We've  
 23 tried to locate where they were and determine a  
 24 great deal of information about the blasts this  
 25 way.

1 But what I'm getting at is essentially  
2 the same expertise is applied whether or not it's  
3 human speech or other sounds that are the source.

4 Q. All right. In your resume, there are  
5 three pages of selected publications. Are those  
6 professional or educational publications that you  
7 authored?

8 A. Yes, they are.

9 Q. Are any of them peer reviewed?

10 A. Well, quite a few. Let's see. This  
11 Nix, Papcun, Hochberg, and Zlokarnik is from The  
12 Acoustical Society. That's a peer-reviewed  
13 article. The Papcun-Hochberg article is peer  
14 reviewed.

15 Q. I'll move on.

16 Have you ever been qualified as an  
17 expert witness?

18 A. Yes, I have.

19 Q. And how many times, approximately?

20 A. Oh, I don't know. At least 20 times.

21 Q. All right. And in what area were you  
22 qualified as an expert?

23 A. Well, this area, essentially acoustic  
24 phonetics.

25 Q. Okay. Have you received any awards?

32

1 implications of this research really turned out to  
2 be devoted to speech recognition by computer.  
3 Once you figure it out, what somebody is doing  
4 with their vocal tract in order to speak, you have  
5 helped a lot to have a computer be able to figure  
6 out what the person said.

7 One of my better post-doctoral fellows,  
8 Igor Zlokarnik, went and founded a company based  
9 on this principle, and he just sold it for \$300  
10 million. So I'm proud of that result, obviously,  
11 even though it's not the result we initially  
12 intended.

13 Q. Have you ever worked with post-doctoral  
14 fellows?

15 A. Well, yes. Igor Zlokarnik that I just  
16 mentioned was a post-doctoral fellow. One of the  
17 best was a woman named Judy Hochberg. She was  
18 from Harvard. And, well, Harvard certainly does,  
19 I must say, produce excellent students. She was  
20 certainly brilliant and very able.

21 And I've worked with others, as well,  
22 but I would say that Zlokarnik and Hochberg were  
23 the best. They were the cream of the crop.

24 Q. All right. In terms of your education  
25 at the University of California, Los Angeles, is

1 A. Well, yes, certainly. Two kinds of  
2 awards. First of all, academic awards: Ford  
3 Foundation Fellowship; National Defense Education  
4 Fellowship. That was for graduate study. I'm  
5 particularly fond, I might say, of the Johns  
6 Hopkins University Award for Computing to Aid  
7 Persons with Disabilities. May I explain that  
8 just a little bit?

9 Q. Yes.

10 A. I mean, that's -- I think it's  
11 interesting.

12 It was a way of taking the sounds of  
13 speech and then inferring from those sounds what  
14 the vocal tract must have been doing in order to  
15 make those sounds. This is a way of helping to  
16 teach deaf people how to speak, how to use their  
17 vocal apparatus correctly.

18 And that's essentially the same award  
19 that's called, on the next page, the "R&D 100  
20 Award." I led the Los Alamos team in developing  
21 this project.

22 Now, there is a certain irony there I  
23 have to mention. That is to say, although our  
24 research was devoted towards helping people with  
25 disabilities, the reality is that the financial

33

1 it, in your opinion or others' opinion, the  
2 premier school for acoustic phonetics?

3 A. Well, no. It was rated, when I went  
4 there, as second to MIT. So I guess that's not  
5 premier. But, on the other hand, being second to  
6 MIT isn't too bad, I suppose.

7 Q. All right, sir. Have you ever worked  
8 for the United States government?

9 A. Yes, I have.

10 Q. In what capacity?

11 A. Well, for the most part, through Los  
12 Alamos National Laboratory, I was, if you will,  
13 rented out to other government organizations.  
14 That included the CIA, the NSA. I did a brief  
15 assignment for the Secret Service, but it was  
16 really the CIA and the NSA that I worked for.

17 Q. Are you currently working on a project  
18 with clients from India?

19 A. Yes, I am.

20 Q. And what is the nature of your  
21 assignment in that matter?

22 A. Well, that was actually spot on to this  
23 case, where a recording has been produced, and  
24 it's questionable as to whether or not it is fully  
25 accurate, whether it's been edited; and I'm trying

1 to make those determinations.  
2 Q. In this particular case, did you  
3 receive some recordings directly from the FBI or  
4 Department of Justice?

5 A. Yes, I did.

6 Q. All right. Can you tell us what you  
7 did or what happened?

8 A. Well, the first step was simply to copy  
9 the data in those recordings into my computer.

10 Q. Okay.

11 A. And then in that case, what I did was I  
12 also made copies of the recordings, and then I  
13 returned them -- then I sent them on to the  
14 attorneys.

15 Q. All right. In this particular case,  
16 the court ordered that you receive a recording in  
17 a native format. Are you familiar with a native  
18 format?

19 A. Yeah, certainly. Well, all I know was  
20 that I received recordings. Whether they were in  
21 the native format, I really would have no way of  
22 knowing, as far as I knew. I assumed that they  
23 were. They were speech data, and I proceeded on  
24 that basis.

25 Q. What did you do -- after entering the

1 waveform. Sound can be represented electrically  
2 as a graph, so I made graphs of the sounds that  
3 were in these recordings.

4 Q. All right. When you say you looked at  
5 it in a "waveform," what does that mean?

6 A. Well, you've got a graph. Time, the  
7 way this one is set up, runs along the horizontal  
8 axis. And the vertical axis then, in this case,  
9 at this point, represents the electrical energy.  
10 Or another way of representing the electrical  
11 energy is in terms of numbers, where, when the  
12 graph goes up, it represents numbers in the  
13 positive direction; and when the graph goes down,  
14 it's in the negative direction.

15 I am very experienced, I think I can  
16 fairly say, in looking at this kind of graph and  
17 understanding certain aspects of what it tells me.

18 Q. I take it you've done this procedure or  
19 this exercise many times in the past?

20 A. Yeah, many times.

21 Q. All right. What did you observe?

22 A. Well, I observed that there were  
23 numbers of interesting events, interesting in the  
24 sense that they tell something about the recording  
25 and something about the environment.

1 data or information into your computer, what did  
2 you do?

3 A. Well, I analyzed them in a number of  
4 ways. I used a program named Sound Forge. It's a  
5 very common program in the -- any kind of  
6 acoustics community. It's produced by Sony. And  
7 the reason I really use it, it's user-friendly.  
8 It's very rock-solid dependable. It's a very  
9 widely used program.

10 THE COURT: Is it Sound Forge, F-O-R-G-E?

11 THE WITNESS: F-O-R-G-E.

12 THE COURT: Did I hear you correctly?

13 THE WITNESS: Forge.

14 THE COURT: Sound, S-O-U-N-D, F-O-R-G-E?

15 THE WITNESS: Yes.

16 THE COURT: One word? That's all right. It  
17 doesn't matter.

18 THE WITNESS: I don't know if it's one word.

19 THE COURT: It's just for my notes, but  
20 that's fine.

21 Go ahead.

22 BY MR. McALLISTER:

23 Q. What did you do with the Sound Forge  
24 program?

25 A. Well, I, first of all, looked at the

1 So there were sounds of, if you will,  
2 in lay language, glitches or clicks or that sort  
3 of thing. And some of them were obviously sounds  
4 like doors closing, something being dropped, and  
5 some of them were not. The more interesting ones  
6 to me, under this circumstance, were those in  
7 which it sounded pretty much like the other, but  
8 it wasn't. It was an electronic transient, an  
9 electronic signature.

10 THE COURT: I'm sorry. An electronic what?

11 THE WITNESS: Transient.

12 BY MR. McALLISTER:

13 Q. Can you explain to us, what is an  
14 electronic transient?

15 A. Well, a transient is just any very  
16 rapidly changing signal.

17 But electronic transients are different  
18 from doors closing. They occur more rapidly.  
19 They are generally more pure signals. And by  
20 "pure," in this case, what I mean is that they  
21 only have a single kind of frequency associated  
22 with them; whereas other sounds, like drumbeats or  
23 doors closing, have many different-signaled  
24 frequencies, I should say, at the same time  
25 associated with them.

1 Also, electronic transients are much  
2 more rapid than real-world transients. They can  
3 occur in as little as, oh, possibly  
4 ten-thousandths of a second; whereas events in the  
5 real world, although they can be fast, they're not  
6 that fast.

7 And also, electronic transients,  
8 signatures, have a certain pattern of decay  
9 usually associated with them. It's called an  
10 "exponential decay," but that is not usually the  
11 case -- or I would even say ever the case, as far  
12 as I've seen -- with real-world sounds, real-world  
13 clicks and glitches.

14 So you can't necessarily hear the  
15 difference, but when you look at a fine-grain  
16 display electronically, you can see that kind of a  
17 difference.

18 Q. Okay. And today in the exhibits that  
19 are before you, can you find an example that  
20 you've prepared of a graph of an electronic  
21 transient?

22 A. Yeah. I have several, of course.

23 Q. Can you first tell us what the exhibit  
24 number is that you're looking at?

25 A. Yeah. Frankly, I'm not sure I can

40

1 THE COURT: It's not a very good picture,  
2 and I don't know why. I don't know if those  
3 arms -- perhaps -- can you -- is that good enough  
4 for you to -- perhaps you could zoom in.

5 THE WITNESS: I don't have my reading  
6 glasses. But, that aside, yes.

7 THE COURT: Could you zoom in and -- there.  
8 And perhaps slide it over so that it's centered a  
9 bit more. There.

10 MS. WHELAN: Your Honor, I'm sorry. Is this  
11 Exhibit 8? Because --

12 THE COURT: That's what we're going to do  
13 now, is identify what exhibit we're referring to.

14 BY MR. McALLISTER:

15 Q. Exhibit 8 is from the June 10th, 2010,  
16 recording; correct?

17 A. That's correct, yes.

18 Q. And it ties into the transcript at page  
19 4, line 6; correct?

20 A. That's correct.

21 Q. And there is a label, "signature and  
22 ambient sounds"; correct?

23 A. That's correct.

24 Q. Now, could you tell us what it is this  
25 chart or this exhibit shows to you?

1 read -- oh, the writing here. I think this  
2 says --

3 Q. At the bottom right-hand --

4 A. Oh, it's Exhibit -- yeah, EX8. Yes,  
5 I'm looking at EX8 here.

6 Q. And what does -- what -- you prepared  
7 this exhibit; correct?

8 A. Yes, I did.

9 Q. All right. What does it depict?

10 A. Well, there are various, if you will,  
11 wiggles in the waveform. Right? "Oscillations,"  
12 to use fancy speech about it. But the oscillation  
13 that's in the middle is clearly an electronic  
14 transient. The ones to the left probably are not.

15 THE COURT: Just a moment. It's really  
16 helpful, I think, if this could be shown on the  
17 evidence presenter while we're talking about it  
18 rather than have to go back over that again.

19 Do you have a copy, Mr. McAllister,  
20 that you could put on? The witness will be able  
21 to see that, as well, and he might even be able to  
22 use the annotation feature to point out what it is  
23 he's referring to.

24 That's --

25 THE WITNESS: Yeah, that's fine.

41

1 A. Well, as I've said previously, time  
2 runs along the horizontal axis. I can't read  
3 these numbers, but on the original, it is possible  
4 to read these numbers as to the times.

5 Q. All right.

6 THE COURT: I'm actually concerned, because  
7 it seems like we're not getting a very bright  
8 projection. Perhaps it just needs to warm up a  
9 bit. But go ahead. I'm thinking ahead to the  
10 jury trial next week. But go ahead, Dr. Papcun.

11 THE WITNESS: Sure. Well, the oscillations  
12 that are on the left well may be what I've called  
13 "ambient sounds," and they're probably not --

14 THE COURT: Just so we're -- let's -- when  
15 you say "ambient sounds," I'm thinking of the kind  
16 of background noise that you've referred to, doors  
17 shutting, things of that sort. So, when you use  
18 that term, is that what you're referring to?

19 THE WITNESS: Yes, that's what I mean.

20 THE COURT: All right. Not the -- what is  
21 the word -- let me go back to my notes. Not the  
22 electronic transient that you referred to?

23 THE WITNESS: Precisely. And that's the  
24 distinction I want to draw here.

25 THE COURT: All right.

1 BY MR. McALLISTER:

2 Q. Go ahead.

3 A. All right. Whereas the more pronounced  
4 -- sharper, if you will -- oscillation towards the  
5 middle, that's an electronic signature. It  
6 represents higher frequencies. It's shorter in  
7 time.

8 And although I can't read the numbers  
9 off this somewhat fuzzy depiction of the graph  
10 here, I think you will find it's within -- well, I  
11 know because I've looked at it in the original.  
12 It's in -- within a few thousandths of a second.  
13 And this high-frequency, sharp pulse, I can tell  
14 you on the basis of having looked at many and on  
15 the basis of my experience and also understanding  
16 of how these things are produced, that this is an  
17 electronic signature kind of transient that I'm  
18 distinguishing from other ambient sounds.

19 THE COURT: Okay. You have indicated that  
20 the distinguishing characteristics are that the  
21 electronic transient is both more pure and more  
22 rapid than signals that are resulting from ambient  
23 sound. What is it about looking here or the data  
24 that you've obtained that shows us that it is more  
25 pure in the sense that the -- well, I'll let you

1 tell me what you mean when you say "pure" and/or  
2 in terms of being more rapid. Looking at the  
3 chart and looking at the other sounds to the left,  
4 they appear to be more closely bunched but still  
5 relatively comparable in terms of -- if time is  
6 the horizontal axis here, they at least seem  
7 within a range and not considerably different.

8 And I need to know what it is -- I  
9 mean, it's not enough just to say that, based upon  
10 experience, you know what this is. You've got to  
11 tell me why you know it is and what is it about  
12 that that tells you, as an expert, that, in fact,  
13 it is an electronic transient, not the result of  
14 ambient background noise.

15 THE WITNESS: Well --

16 THE COURT: Yes. And if you would bring the  
17 microphone around. And unless you are going to  
18 use -- you can use your finger as a illustrator on  
19 the screen there if you want to, but you probably  
20 don't need to get too close to that unless you're  
21 going to illustrate something. But go ahead,  
22 Dr. Papcun.

23 THE WITNESS: Certainly. Well, on the one  
24 that I'm describing as an electronic signature,  
25 you will see that, given the amplitude -- that is

1 to say, the range of the oscillation -- this is  
2 greater than those other ones. It dies off more  
3 quickly, at least given the initial amplitude.

4 And the bends, if you will, are  
5 sharper. And what that means, the sharper bends  
6 mean that this has higher frequencies as a  
7 component, and those high --

8 THE COURT: Is that what you meant by "pure  
9 sound"? Is it higher frequencies or less mixing  
10 of frequencies?

11 THE WITNESS: No. In this case, higher  
12 frequencies is different from a pure sound.

13 THE COURT: All right. So is that another  
14 telltale characteristic of electronic transient,  
15 is greater variation in frequency?

16 THE WITNESS: No. Higher frequency.

17 THE COURT: Well, not -- right. Higher  
18 frequency rather than variation in frequency.

19 THE WITNESS: Yeah. Yeah. Exactly.

20 THE COURT: Okay.

21 THE WITNESS: And these sharp bends indicate  
22 higher frequencies.

23 BY MR. McALLISTER:

24 Q. Now, in terms of a transient or an  
25 electronic signature, in reviewing both the tapes

1 of June 9th and June 10th, how many did you find,  
2 approximately?

3 A. In both cases, there were -- I didn't  
4 count them, but I can give you a very reasonable  
5 ballpark -- there were dozens of these electronic  
6 signatures apparent.

7 Q. All right.

8 A. In some cases, it wasn't clear whether  
9 it was an electronic signature or an ambient  
10 sound, but there were dozens of clear ones.

11 Q. How does -- in your opinion, what can  
12 you tell us from a scientific point of view that  
13 the presence of an electronic signature or an  
14 electronic transient -- what does that mean to a  
15 lay person?

16 A. Well, you've got to consider the  
17 possible sources. It can be editing. It can be  
18 equipment malfunction. It can be turning  
19 something on or off.

20 However, whatever the particular source  
21 is, it tells you that there is some defect in the  
22 recording there, assuming that you don't  
23 intentionally want to record equipment defects or  
24 editing or turning something on or off.

25 If your purpose is just to get a true

1 and accurate recording of whatever happened under  
2 these circumstances, they shouldn't be there; or  
3 they, at very least, demand explanation. You have  
4 to know why each one is there.

5 Q. All right. And you can't tell us at  
6 this point in time why they're there; you just  
7 simply know they're there; correct?

8 A. Well, that's right. I can tell you the  
9 possible sources. Yeah. Frankly, I didn't have  
10 control of this equipment, and so I can't tell you  
11 the source of each of these.

12 Q. All right. Do you have another example  
13 there, Dr. Papcun? Exhibit --

14 A. This is called "Exhibit 10."

15 Q. All right. Could you tell us what --  
16 first of all, tell us how Exhibit 10 was created.  
17 Or how is it made?

18 A. Well, this was done with my software,  
19 the Sound Forge software. Listened to the  
20 recording. I found suspicious, if you will,  
21 clicks or transient events, and then I zoomed in  
22 on them. This is zoomed in extremely close. So  
23 we have eight-thousandths of a second shown here.

24 And it exhibits basically the same  
25 characteristics as the one I showed you

1 previously. It's a pretty clear example. It's  
2 brief. It has high frequencies. It exhibits  
3 exponential decay in a way that you would expect  
4 from an electronic signature.

5 Many parts are relatively pure; that is  
6 to say -- not all of it, but many parts show that  
7 it contains essentially a single frequency. You  
8 see that by the smooth parts as it tapers off.

9 So, on the basis of what I see here,  
10 this is a good example of an electronic signature  
11 and not some sound like a -- if you will,  
12 something being dropped or a door closing or  
13 something like that.

14 Q. In your experience and training and  
15 education, are -- is it important to determine  
16 whether there is an echo event?

17 A. Yes, it is.

18 Q. All right. Can you, first of all,  
19 explain what an echo is or what an echo event is?

20 A. Well, an echo is what you hear when you  
21 walk up to a cliff, I suppose, and say "hello";  
22 and a while later, it says "hello" back to you, or  
23 you hear the word "hello."

24 Echos happen all the time every day.  
25 In this courtroom right here, there is an echo.

1 And when you sing in the shower, your voice sounds  
2 resonant because of echos. Usually, you don't  
3 take note of them. You don't hear them as  
4 distinct from the original sound, but sounds in  
5 the real world produce echos all the time  
6 everywhere.

7 Q. But an electronic signature or  
8 transient does not produce an echo; correct?

9 A. That's right. Yeah. It was never a  
10 sound in the real world.

11 Q. Okay. Why is a -- why is the echo  
12 important to you, or an echo event?

13 A. Well, it's one very useful way of  
14 determining whether something was just a sound  
15 being recorded in the real world, whereas a lack  
16 of an echo indicates that you have an electronic  
17 signature rather than -- and probable, you know,  
18 either an edit or a machine defect or a switch  
19 being thrown on or off or something like that, as  
20 opposed to some ambient sound.

21 Q. In this case, in examining the June 9th  
22 and June 10th recordings, what did you look for in  
23 terms of echos or echo events?

24 A. Well, after the clicks that I heard and  
25 then made graphs of, I looked for the echos to see

1 whether or not it would -- to help me determine  
2 whether or not it was an electronic signature or  
3 just some ambient background happenstance sound.

4 Q. What did you find?

5 A. There was a group that I have  
6 indicated, roughly 50 events, that were not door  
7 closings or ambient sounds. They were not events  
8 where somebody dropped something or something like  
9 that.

10 Q. Does that mean, in your opinion, that  
11 there was some type of electronic change in the  
12 recording?

13 A. Exactly so, yes.

14 Q. All right. And, as you said, that  
15 could be somebody editing the recording; correct?

16 A. Absolutely, yes.

17 Q. It could be a malfunction in the  
18 machinery or the device being used?

19 A. Well might.

20 Q. All right. Anything else it could be?

21 A. Anything else what?

22 Q. Anything else it could be? Lack of  
23 power?

24 A. Okay, yes. That would be, presumably,  
25 a defect in the equipment, a lack of power, yes.

1 A disconnection of the microphone, for example,  
2 would normally make this kind of a signature.

3 Q. Okay. Did you examine the June 9th and  
4 June 10th recordings for what we laymen call  
5 "gaps"?

6 A. Yes, I did.

7 Q. How did you do that?

8 A. A very similar graph is most useful  
9 here, and another kind of a graph is also useful.  
10 I don't have an exhibit that would show the other  
11 kind of graph, but I made the other kind, as well.

12 The other kind is called a spectrum  
13 delay -- "display," I meant. Sorry. A spectrum,  
14 similarly, has time going along the horizontal  
15 axis.

16 The vertical axis is different, though.  
17 It shows frequencies, lower pitch on the bottom,  
18 higher pitch towards the top. And typically you  
19 will get, from a spectral display, a place where  
20 the background sounds just go away.

21 And same thing here with this waveform  
22 graph. The waveform, as it were, goes away. It  
23 flat-lines, if you will.

24 I think that there is a valid,  
25 actually, analogy between this kind of a display

1 and a flat line in a heart monitor. You know, in  
2 a heart monitor, you see this -- very similar kind  
3 of a waveform flow by on the screen, and you can  
4 see sometimes, under unfortunate circumstances, a  
5 flat line.

6 Well, on this display, when there is a  
7 real gap in the recording, you see a flat line.

8 Q. Did you -- were you able to tell how  
9 many gaps were in the tapes?

10 A. I don't know the overall answer, but  
11 it's much fewer than the other signals, but I know  
12 that there were at least three --

13 Q. All right.

14 A. -- in the June 9th recording. In  
15 fact -- no, let me correct that. At least four.  
16 And I know that there were some, but I don't know  
17 how many there were, in the June 10th recording.

18 Q. And do you -- or can you say how long  
19 the gap was, whether it was a microsecond or 15  
20 minutes?

21 A. Well, that's the interesting thing  
22 about a gap in a recording. Even if -- even if  
23 the gap in the recording was, let's say, one  
24 second or less than a second, you cannot tell and  
25 you have no way of knowing actually what the time

1 covered in reality really was. I mean, it may  
2 have just been that one second, or it may not.  
3 You just can't tell.

4 Q. What would cause a gap in a recording?

5 A. Well, again, an equipment malfunction  
6 well might do it. Or, as in the Nixon tapes, it  
7 might have been done purposely by your secretary  
8 or by anybody. An attempt to copy the tapes at  
9 some point. If you're putting more than one  
10 together, a gap would be very common in that  
11 situation. So --

12 THE COURT: When you say "put one together,"  
13 do you mean consolidate two tapes into one?

14 THE WITNESS: Yes. Thank you. That's what  
15 I wish I had said.

16 BY MR. McALLISTER:

17 Q. What is voice morphing?

18 A. It's a technology that involves  
19 changing of voice so it sounds like a different  
20 voice. For the simplest variety of voice  
21 morphing, you can buy programs or gadgets that  
22 will change a man's voice into a woman's voice and  
23 vice versa.

24 But in order to try to make one  
25 person's voice sound like that of another, you

1 need somewhat more sophisticated techniques; but  
2 within limits, it can be done.

3 Q. How easy is it for a person who does  
4 not have your education and experience to edit a  
5 tape -- excuse me -- a recording that -- like June  
6 9th and June 10th?

7 A. To do simple editing is absolutely  
8 trivial, and people can do it with free software  
9 available over the Internet. Actually, a good  
10 deal of the software available for free over the  
11 Internet is really quite sophisticated and is  
12 capable of doing an excellent job.

13 But directly, the answer is, for simple  
14 editing tasks, it's just easy.

15 Q. All right. Is it easy to insert words?

16 A. Absolutely.

17 Q. Is it easy to take out words?

18 A. Even easier, for the most part.

19 Q. Okay. Directing your attention to a  
20 MITRE -- M-I-T-R-E -- Technical Report prepared by  
21 Patrick M. Howard.

22 Did you get an opportunity to look at  
23 this briefly this morning or early this afternoon?

24 A. Yes, I have.

25 Q. All right. Are you familiar with the

1 Edi -- E-D-I -- Tracker for the detection of  
2 tampering in digital audio recordings?  
3 **A. Yes, I am. Not in great detail, but in**  
4 **the essentials, yes, I am.**

5 MS. WHELAN: Your Honor, I apologize.  
6 Objection as to the foundation. Also, this  
7 witness hasn't disclosed that he did any  
8 EdiTracking.

9 THE COURT: Well, that's what I think we're  
10 going to find out here. At this point, if he  
11 didn't use EdiTracking, it obviously is not  
12 relevant.

13 But I certainly will give  
14 Mr. McAllister some leeway and see where we're  
15 going here. But I guess I have already indicated  
16 what I think of its relevance. If the doctor  
17 didn't use it or perhaps Mr. Walsh or someone else  
18 used it, I guess we'll find out.

19 BY MR. McALLISTER:

20 **Q.** Okay. Dr. Papcun, it's true that  
21 Mr. Walsh used the EdiTracker analysis; correct?

22 **A.** To my knowledge, yes, but I don't know  
23 that for a fact. But that's my understanding.

24 **Q.** All right. Well, you reviewed his  
25 work, did you not?

1 **A.** Yes, I did.

2 **Q.** All right. And you're familiar with  
3 the EdiTracker; correct?

4 **A.** Yes, I am.

5 **Q.** And can you tell us what digital  
6 processing is?

7 **A.** Well, with any recording of this sort,  
8 it either originated as or is turned into, really,  
9 a set of numbers. Then you perform mathematical  
10 operations on those numbers in order to reveal  
11 certain characteristics of the signal.

12 You can make graphs with them. You can  
13 determine the frequencies that are in them and  
14 many other characteristics.

15 **Q.** In essence, is that what you were  
16 performing?

17 **A.** Yes. Well, first of all, I did the  
18 graphs; that's pretty straightforward. But then I  
19 did the spectral analysis. That turns the  
20 information into an estimation of the different  
21 frequencies that are present.

22 **Q.** Okay. What is harmonic consistency  
23 analysis?

24 **A.** Well, first of all, I have to tell you  
25 what harmonics are.

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1 **Q.** Okay.

2 **A.** Sorry. It's just necessary.

3 When any note is played, let's say, on  
4 a piano, all right, the string vibrates at a  
5 certain frequency, and that gives it its pitch.  
6 But at that same time, that string is vibrating at  
7 other frequencies, as well.

8 So if you hit middle A on a piano,  
9 typically that's 440 times a second vibrating back  
10 and forth. But it's not that simple with  
11 real-world objects, as I alluded to previously.

12 It's also going to do a more complex  
13 motion and vibrate at 880 times a second. That's  
14 a harmonic. So the multiples of the fundamental  
15 frequency -- in this case, 440, then our 880 and  
16 double that and so forth and triple it and so on.  
17 Because things in the real world just move in  
18 complicated ways.

19 Harmonic analysis, then, is an analysis  
20 of the frequencies of all of these harmonics.

21 THE COURT: Is the same object moving at  
22 different frequencies, or is there a sympathetic  
23 response by similar objects? I'm not quite sure  
24 I'm tracking with you.

25 When you say it's more complicated than

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1 simply a -- was it middle A vibrating at 440 times  
2 a second, that then you also will have these  
3 harmonics which will be vibrating at different  
4 frequencies, 880 and so on. Is it the same object  
5 giving off different frequencies at the same time  
6 or --

7 THE WITNESS: I think I appreciate the  
8 question, Your Honor. And if I may wave around  
9 with my hands, which I'm afraid might be difficult  
10 to capture here, the string goes back and forth,  
11 okay, 440 times a second.

12 But it's not that simple, in that it  
13 also is going to move in a sideways direction,  
14 like this (indicating). And that's going to  
15 happen at a faster frequency.

16 Because, effectively, what's happening  
17 to make this sideways movement occur is that the  
18 string is divided in half. So this half will be  
19 vibrating, but it's going to go faster because  
20 it's shorter than the original piano string.

21 So the very same object can, and does,  
22 in fact, move in this more complex way. And  
23 that's related to the richness of the sound that a  
24 piano string gives you. You don't just get one  
25 note, even though you hit only one note.

1 THE COURT: I think I understand that. So  
2 the middle A is actually made up of a number of  
3 different frequencies that create, I guess, this  
4 richer sound?

5 THE WITNESS: Exactly.

6 THE COURT: All right. Go ahead.

7 THE WITNESS: That's what you want out of a  
8 piano.

9 Flutes actually, for the most part,  
10 don't have that sound. They don't sound as rich  
11 as a piano. They have a more pure sound to them.  
12 BY MR. McALLISTER:

13 Q. Dr. Papcun, I'd like to ask you a  
14 question based upon the information provided by  
15 the government in the scholarly article written  
16 about EdiTracker. And I'd like to know whether  
17 you agree with this statement: That "the  
18 EdiTracker operates automatically, and it combines  
19 three powerful methods of tracking for  
20 auto-tampering traces."

21 Do you agree with that?

22 A. I disagree with one aspect of it, if I  
23 might say.

24 THE COURT: Well, just a moment. But you  
25 have, in fact, used EdiTracker, and you are

1 familiar with its use? Because I think that's the  
2 foundation we need to know before we have an  
3 answer to that question.

4 Because you didn't use it here;  
5 correct?

6 THE WITNESS: No. I -- in fact, I observed  
7 Mr. Walsh using it.

8 THE COURT: All right.

9 THE WITNESS: So I looked over his shoulder,  
10 as it were. Actually, I -- to some trivial  
11 extent, I drove it myself. But for the most part,  
12 I used it by looking over his shoulder while he  
13 was using it.

14 BY MR. McALLISTER:

15 Q. So the question was: In terms of  
16 trying to determine whether an audio or recording  
17 has had traces of tampering, EdiTracker is a good  
18 analysis or good system to use?

19 A. Yes. If I may address your first  
20 question now. Let me explain my cavil, if you  
21 will, with it.

22 To call it "automatic," that's wrong.  
23 None of these programs -- I mean, they may  
24 function automatically, but any decision made is  
25 not and should not be automatic. It requires

1 judgment on the person -- on the part of the  
2 person who is using the machine.

3 Q. Okay. In other words, someone who is  
4 using EdiTracker has to have education,  
5 experience, and an understanding of what they're  
6 seeing.

7 A. Exactly. And that's the sense in which  
8 I argue with the word "automatic."

9 Q. All right. EdiTracker is a system  
10 designed to find whether or not an audio recording  
11 has traces of tampering; correct?

12 A. Absolutely.

13 Q. And it relies upon tracking of digital  
14 processing, harmonic consistency analysis, and  
15 background noise analysis; correct?

16 A. Yes. Exactly.

17 Q. And that is what you were doing in your  
18 examination of these tapes on June 9th and June  
19 10th; correct?

20 A. No. I didn't use EdiTracker, but I did  
21 use those processes.

22 Q. All right. Dr. Papcun, have you formed  
23 any opinions about the authenticity of the June  
24 9th and June 10th recordings?

25 A. Yes, I have.

1 Q. And what is your opinion?

2 A. I have determined that there are  
3 serious questions with respect to the authenticity  
4 of the recordings; that it appears to me that  
5 there are defects in the recording that would  
6 render them inauthentic; and it's quite clear that  
7 whatever is on these recordings is not entirely  
8 whatever occurred in the real environment being  
9 recorded.

10 Q. All right. Can you say to any  
11 certainty that, in fact, the tapes were edited?

12 A. Well, if by "editing," you mean spliced  
13 and conjoined --

14 Q. Yes.

15 A. -- no. No, I don't have that opinion.

16 Q. All right. Can you say that the gaps  
17 that you noted were, in fact, intentionally done  
18 by anyone?

19 A. Oh, no way that I address intention. I  
20 can only tell you the scientific facts that I see  
21 on the recordings.

22 Q. All right. What would you tell to a  
23 lay -- a jury, a group of folks without training  
24 in this area, about this recording in layman's  
25 terms?

1 A. Well, is the word "inauthentic" a  
2 layman's term? If so, I would use that. But I  
3 would say, "Look, whatever happened in the course  
4 of these recordings, this recording does not  
5 represent that and only that."

6 Q. Why?

7 A. Well, I see the electronic signatures.  
8 I see the gaps. I know of the harmonic  
9 inconsistencies that, again, show -- I'm not sure  
10 what -- they show defects in the recording; that's  
11 for sure. Whether or not they show that the  
12 equipment is not working right or something else,  
13 that I don't know for sure.

14 But I know, just as I said, this  
15 recording does not contain what was being picked  
16 up and only that. So, in that respect, they're  
17 defective.

18 Q. In your field, Doctor, what does an  
19 anomaly in a recording mean?

20 A. Well, in this context, it would be an  
21 electronic signature. Again, it's something that  
22 doesn't represent that reality that's supposed to  
23 have been recorded.

24 Q. Did you find anomalies in listening and  
25 examining the June 9th and June 10th recordings?

1 A. Yeah. There were two main kinds of  
2 anomalies. They were the gaps and these  
3 electronic signatures.

4 MR. McALLISTER: Thank you, Dr. Papcun.

5 That's all I have, Your Honor.

6 THE COURT: Ms. Whelan, before we start, let  
7 me just ask a question.

8 EXAMINATION  
9 BY THE COURT:

10 Q. When you say that these -- there are  
11 serious questions about the authenticity of the  
12 recordings, what I take from that -- and one of  
13 the concerns I have is "authenticity" is a legal  
14 term. It's a part of foundation that -- but in  
15 the legal world, all it means is that it is what  
16 its proponent says that it is, which in this case,  
17 I suspect Ms. Whelan or Mr. Haws is going to say  
18 it is a recording of communications. That's all  
19 it means.

20 And, frankly, the standard for its  
21 admission is fairly low. It simply has to be  
22 enough evidence from which a finder of fact could  
23 conclude that it is, in fact, a reasonably  
24 accurate tape recording.

25 What I take you to mean, though, by the

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1 term "authenticity," is that it is not exactly  
2 reflective of what really happened and what words  
3 were spoken in whatever communication may have  
4 taken place, if any. And that breakdown, if you  
5 will, between, I guess, the real environment and  
6 what is picked up in the recording just means that  
7 there are some artifact -- what's the word we've  
8 used? -- electronic signatures, gaps, things that  
9 just indicate that something is less than pure,  
10 less than one hundred percent accurate in terms of  
11 what actually was said if we had actually been  
12 sitting there listening.

13 Is that a fair representation?

14 A. That is absolutely a fair  
15 representation. I might want to go a little  
16 further in certain respects.

17 Q. Okay.

18 A. Okay. First of all, thank you for  
19 correcting me about the legal interpretation  
20 of --

21 Q. I knew you were talking -- although I  
22 suspect you have been around the courtroom long  
23 enough, someone has probably talked to you or  
24 mentioned that before about authenticity. But --

25 A. No. Actually, they have not.

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1 Q. Well, I assumed we were talking about  
2 different things, somewhat different things.

3 A. But, yeah, I did intend the other sense  
4 of it.

5 Q. Okay.

6 A. And the only addition that I would make  
7 to what you said is that, particularly with  
8 respect to the gaps, where we don't know how long  
9 that reality might possibly have been -- it might  
10 have been only as long as the gap on the tape, but  
11 we don't know that, and we can't know it -- and  
12 with respect to these other things, well, they may  
13 be adventitious events or not. They could  
14 indicate splice. I'm not saying they do, but I'm  
15 saying we don't know.

16 Q. We don't know what it is or why it is  
17 that they vary from the actual environment in  
18 which the statements were made or not made. All  
19 we know is that they're there, and they make the  
20 recording less than pure.

21 A. Yes, Your Honor.

22 THE COURT: All right.

23 CONTINUED DIRECT EXAMINATION  
24 BY MR. McALLISTER:

25 Q. Dr. Papcun, do you think it would

1 assist the jury or the triers of fact if you  
2 provided an opinion that these recordings were  
3 suspicious?

4 MS. WHELAN: Your Honor, I object. That's a  
5 decision for the court to make.

6 THE COURT: Well, I'll allow the witness to  
7 answer and explain why, because it's the answer to  
8 that further question, "why," which may inform the  
9 court's decision as to whether it will, in fact,  
10 help or assist the finder of fact.

11 But you're correct, Ms. Whelan, that  
12 that is for the court to decide. But you're going  
13 to be -- there is going to be a further follow-up  
14 question as to not only whether it will assist the  
15 finder of fact, but why do you think it will.

16 THE WITNESS: Well, frankly, I would not be  
17 comfortable using the word "suspicious" because  
18 that seems to have kind of a moral judgment  
19 attached to it, and I just want to report on the  
20 scientific facts. And I can't use "authentic," or  
21 perhaps I ought to use that word.

22 THE COURT: Well, actually, the jury -- the  
23 jury will not -- the question of authenticity is  
24 for the court. So you can use whatever term is a  
25 term that would be used by someone in your field.

1 And I don't want you to limit your vocabulary in  
2 any fashion, because the question of authenticity  
3 is something we'll discuss with the attorneys, not  
4 with the jury.

5 THE WITNESS: All right. In that case, I  
6 would say that these recordings don't accurately  
7 and completely reflect whatever happened when it  
8 was being recorded and nothing other than that.

9 So as to whether or not that is a  
10 suspicious circumstance according to the jury's  
11 judgment, I would leave the word "suspicion" to  
12 the jury. But I could certainly tell them about  
13 these problems with the recording; and then, using  
14 context and whatever other information that they  
15 might bring do it, I think that the combination  
16 would, as I would understand, enable the jury to  
17 make the best possible judgment as to what's going  
18 on here in this situation.

19 MR. McALLISTER: Thank you, Dr. Papcun.

20 THE COURT: Ms. Whelan, we could take a  
21 short break. Do you want to go now? All right.

22 MS. WHELAN: Judge, I'm concerned of us  
23 getting done today, and we have got people from  
24 all over.

25 THE COURT: I am, as well. Fortunately for

1 me, I'm free tomorrow morning. Perhaps not so  
2 fortunate for you all if we can't get it all done  
3 today. But go ahead.

4 MS. WHELAN: Thank you.

5 THE COURT: But we are going to take a  
6 break. I can't go for four hours without some  
7 kind of a break or even three and a half. So,  
8 within the next 15, 20 minutes, we'll probably  
9 take a break.

10 MS. WHELAN: Okay.

11 THE COURT: So maybe you'll be done in 15 or  
12 20 minutes, but we'll see. Go ahead.

13 MS. WHELAN: Thank you.

14 CROSS-EXAMINATION

15 BY MS. WHELAN:

16 Q. Good afternoon, Dr. Papcun.

17 A. Good afternoon.

18 Q. My name is Traci Whelan. I'm an  
19 assistant United States attorney in the  
20 Coeur d'Alene office of the United States  
21 Attorney's Office, and I do have some questions  
22 for you, I'm sure you can imagine.

23 You completed your report on February  
24 28th that you authored and sent to Mr. McAllister;  
25 is that correct?

1 **A. I don't have the date before me, but  
2 I'm comfortable to take your word for it.**

3 **Q.** If you look at what's been marked --  
4 and it does have a tag on it -- as United States  
5 Exhibit A, looking at the top there. Can you see  
6 that?

7 **A.** Yes.

8 **Q.** And is that you? George Papcun?

9 **A.** Yes.

10 **Q.** And looking at the date -- and it's  
11 addressed to Mr. McAllister -- and, I guess -- I  
12 hate to move these things because I know it makes  
13 people nauseous, but I'm going to try to make it  
14 closer; then if I have to move it, I will.  
15 Apologizing to people ahead of time.

16 Is that the report that you authored to  
17 Mr. McAllister?

18 **A.** Yes, it is.

19 **Q.** Okay. And that is February 28th;  
20 correct?

21 **A.** That's correct.

22 **Q.** When did you receive the CDs that you  
23 evaluated?

24 **A.** I don't remember.

25 **Q.** Do you have any idea?

1 **A. Pardon?**  
 2 **Q.** Do you have any idea, sir?  
 3 **A.** I would think a week prior, but I don't  
 4 know that for a fact.  
 5 **Q.** Would you agree, sir, that it was  
 6 important for us, as we evaluate what principles  
 7 and tests you did, to determine how long you had  
 8 to work with these CDs?  
 9 **A.** Not really in this case. I had enough  
 10 time to do what I needed to do. And I could go  
 11 back in my records, I presume, and figure out how  
 12 many hours I put in. I can give you some vague  
 13 estimate of that.  
 14 **Q.** Sir, would you agree that it's  
 15 important for this court to know if you spent more  
 16 than a day on it?  
 17 **A.** Within reasonable limits, yes, I guess.  
 18 **Q.** When we're talking --  
 19 **A.** On the other hand, no. This level of  
 20 analysis really doesn't require much more than a  
 21 day.  
 22 **Q.** And let's -- well, so, sir, are you  
 23 saying that you maybe didn't spend more than a day  
 24 on your analysis?  
 25 **A.** That's entirely possible, yes.

1 **Q.** Did you spend more than half a day on  
 2 your analysis?  
 3 **A.** I would think so. Probably.  
 4 **Q.** But you don't know?  
 5 **A.** No. In terms of the time I spent, I'll  
 6 tell you that I -- when it's necessary, I work  
 7 deep into the night. So -- and I did whatever was  
 8 necessary to make these determinations.  
 9 **Q.** Understanding that that's your  
 10 conclusion, sir, I'm asking for empirical evidence  
 11 as to how much time you spent working with this  
 12 media and doing your testing. Can you, today,  
 13 tell us that?  
 14 **A.** No, I can't. But it's not a conclusion  
 15 to tell you that I spent the time -- I suppose it  
 16 is also a conclusion, but it addresses your  
 17 question directly to tell you that I worked long  
 18 enough to accomplish these analyses. And if I had  
 19 to work deep into the night, I did.  
 20 MS. WHELAN: Your Honor, I'd move to strike.  
 21 The answer is nonresponsive. I asked him whether  
 22 he could do something. It was a yes-or-no  
 23 question.  
 24 THE COURT: Well, the answer is what it is.  
 25 You know, if we had a jury here, I might be more

1 inclined to strike it, but let's go ahead and move  
 2 on.  
 3 BY MS. WHELAN:  
 4 **Q.** Dr. Papcun, you have your Ph.D. in  
 5 linguistics with a specialization in acoustic  
 6 phonetics; correct?  
 7 **A.** That's correct.  
 8 **Q.** Now, acoustic phonetics is how we speak  
 9 and how we form words; is that correct?  
 10 **A.** No --  
 11 **Q.** What is it?  
 12 **A.** -- that's not correct.  
 13 It entails how we --  
 14 **Q.** I'm sorry. Let's break it down. Let's  
 15 define acoustic.  
 16 **A.** Sound.  
 17 **Q.** And phonetics?  
 18 **A.** Speech.  
 19 **Q.** So acoustic phonetics does not deal  
 20 with how we speak or how we form words?  
 21 **A.** It's not merely that. It necessarily  
 22 entails how we record them, how we store them once  
 23 they're recorded, how we -- most crucially,  
 24 really, how we analyze them and then transmit  
 25 them.

1 I'll tell you that one thing I have  
 2 taught commercially is called "Voice I/O for  
 3 computers." And it's on the basis of this  
 4 expertise. It entails crucially how you analyze  
 5 speech.  
 6 And I previously mentioned this company  
 7 that one of my post-doctoral fellows founded that  
 8 he later sold for \$300 million was based on the  
 9 analysis of speech.  
 10 **Q.** Sir, who asked you to do the examining  
 11 of the recordings in this case?  
 12 **A.** I was originally contacted by Wesley  
 13 Hoyt.  
 14 **Q.** Is he the attorney of record for Edgar  
 15 Steele?  
 16 **A.** Not to my knowledge.  
 17 **Q.** What were you asked to do?  
 18 **A.** As I state here in this memo that you  
 19 have, I have been asked to evaluate these  
 20 recordings for authenticity as to the audio  
 21 recordings contained thereon.  
 22 **Q.** Now, sir, you understood, when you  
 23 authored this report, that it would be used by  
 24 the -- submitted by the defense to the  
 25 United States in discovery; is that correct?

1 A. No, I didn't particularly know what  
2 they would do with it.

3 Q. Was that a possibility?

4 A. Presumably, but I really didn't know  
5 that, and I didn't have any opinion about what  
6 they're going to do or such issues.

7 Q. Did you know that you might be called  
8 as an expert witness, sir?

9 A. I usually make that assumption, but I  
10 didn't know -- I didn't really think about that  
11 one way or the other.

12 Q. How many times have you testified, sir,  
13 as an expert witness in acoustic phonetics?

14 A. Approximately 20 times.

15 Q. And during those 20 times that you've  
16 testified, were your reports part of the stuff  
17 that you were questioned over?

18 A. Normally, yes.

19 Q. And did both sides have those reports?

20 A. I don't really know. I presume, as a  
21 layman, that both sides get provided reports, but  
22 I don't really have any opinion on that.

23 MS. WHELAN: Your Honor, do you know if  
24 there is a way -- is there a light underneath here  
25 that makes it lighter?

1 THE COURT: You know, I'm trying to get  
2 the --

3 MS. WHELAN: I don't want to play with your  
4 equipment, but --

5 THE COURT: It's not -- yeah, I just sent,  
6 actually, an instant message to Ms. Gearhart that  
7 the equipment is not working very well. We're  
8 going to try to get that cleaned up.

9 The image I actually have on the screen  
10 is not bad. It's not very good up there, which is  
11 what I'm worried about for the trial. We'll want  
12 to have that --

13 MS. WHELAN: As long as everyone can see it  
14 on the screen, I can continue.

15 THE COURT: Yeah, I can see it quite well.  
16 One thing you can do, of course, is zoom in a bit  
17 more and then center it. And then --

18 MS. WHELAN: I just hate to -- the one in  
19 Coeur d'Alene, you can show the whole document.

20 THE COURT: There.

21 BY MS. WHELAN:

22 Q. Dr. Papcun, when you did this report,  
23 did you do the same type of diligence and work  
24 that you would have done in, say, your Ph.D. work?

25 A. Yeah, certainly.

1 Q. If you could go through the report with  
2 me, sir, and I appreciate it. Now, you indicated  
3 that transmitted to you were the two compact  
4 discs, and you labeled them; correct?

5 A. Mm-hmm, that's right.

6 Q. Now, those were discs that you received  
7 in the WAV format from defense counsel, not the  
8 native format from the FBI; correct?

9 A. Well, I don't know the difference in  
10 this case between the WAV format and the -- and  
11 any other format, what you're calling the "native  
12 format."

13 But there is an important thing I want  
14 to point out about these formats, if I may. Or if  
15 this is not appropriate, I'll do it later.

16 Q. Did you -- you authored this on  
17 February 28th. Would you agree that the FBI  
18 didn't send out the native formats until February  
19 6th?

20 A. No. I simply don't know. I will tell  
21 you that I worked on what I had. I assumed that  
22 that was an accurate transmission of what I was  
23 supposed to analyze. But rather, more  
24 importantly, I think that there is a fundamental  
25 misunderstanding about what "native format" and

1 "WAV format" mean.

2 MS. WHELAN: Your Honor, I understand we  
3 don't have a jury here, but I still would like to  
4 conduct this at least in the question and answer  
5 instead of the witness just deciding to say what  
6 he wants.

7 MR. McALLISTER: Judge, I object if that is  
8 an objection as opposed to a speech here. He is  
9 trying to answer the question.

10 THE COURT: Well, as I look back at the  
11 question, the question really was: Do you agree  
12 that the FBI didn't send out the native formats  
13 until February 6th?

14 If you'll answer the questions directly  
15 Ms. Whelan asks -- I mean, that can be answered, I  
16 think, simply "yes" or "no." And then anything  
17 else Mr. McAllister will give you an opportunity  
18 to explain on redirect.

19 Ms. Whelan.

20 MS. WHELAN: Thank you, Your Honor.

21 THE COURT: I will strike the last response.

22 Let's wait for a question.

23 BY MS. WHELAN:

24 Q. Sir, you made an opinion in your  
25 report; correct?

1 **A. Yes, I did.**  
 2 **Q.** The opinion is stated in this report  
 3 here in the second paragraph; is that correct?  
 4 **A. I can't really see which -- the**  
 5 **numbers -- which paragraph is which from this --**  
 6 **"From my observations," is that the paragraph?**  
 7 **Q.** Yes.  
 8 **A. Well, let me read it, please.**  
 9 **Q.** Okay.  
 10 **A. Yes, that's what I concluded.**  
 11 **Q.** Now, you concluded that by a reasonable  
 12 degree of scientific probability; correct?  
 13 **A. That's correct.**  
 14 **Q.** Isn't the standard in the scientific  
 15 community concluding something by a reasonable  
 16 scientific certainty, not "probability"?  
 17 **A. No. That's a vast misunderstanding of**  
 18 **science.**  
 19 **Q.** You would disagree with that?  
 20 **A. Oh, I would.**  
 21 THE COURT: Ms. Whelan, let me jump in on  
 22 that issue.  
 23 THE WITNESS: I would say that --  
 24 THE COURT: Here in the state of Idaho, I  
 25 think that idea of scientific certainty has kind

1 of worked its way into the legal community,  
 2 because that's the standard that the Idaho  
 3 legislature has imposed for medical malpractice  
 4 claims. And because so much litigation occurred  
 5 in that context, that, in turn, I think, became a  
 6 standard used quite often.  
 7 But my sense is that that does not --  
 8 I'm not sure that that's set forth in any  
 9 particular statute or rule, whether it's the  
 10 scientific probability or not. Certainly, since  
 11 that's kind of the foundational standard that we  
 12 would apply for any evidence under -- I think it's  
 13 Rule 901 -- that seems to make sense.  
 14 Now, if you want to brief that and can  
 15 inform me otherwise, we can do that, but that is  
 16 an issue I've actually wrestled with, both in  
 17 state court and certainly here in federal court,  
 18 the idea that the standard -- which, again, I  
 19 think is a creature of the Idaho legislature in  
 20 trying to set a higher bar in medical malpractice  
 21 cases.  
 22 And so -- but I'm just -- I want to  
 23 forewarn you that that may -- you're going to  
 24 inform me and persuade me that it's not  
 25 "reasonable probability," as well.

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1 MS. WHELAN: Right. I understand that. I  
 2 think when we have other people testify about  
 3 results, that may become --  
 4 THE COURT: That would be helpful, because  
 5 I've wrestled with that issue myself over the  
 6 years.  
 7 BY MS. WHELAN:  
 8 **Q.** And, sir, again, reading this, your  
 9 conclusion was that the recordings do not  
 10 represent a true and valid representation of  
 11 reality and that they are unreliable. That's the  
 12 conclusion that you, as an expert witness, wrote  
 13 in this report; is that correct?  
 14 **A. That's correct, yeah.**  
 15 **Q.** So you were not -- you were opining on  
 16 reality. You didn't write "authenticity." You  
 17 wrote "reality"; correct?  
 18 **A. I --**  
 19 **Q.** Is that correct?  
 20 **A. I hope I'm not being -- no.**  
 21 **Q.** Where did you write "authenticity" on  
 22 here? It says "reality"; is that correct? Right  
 23 here?  
 24 **A. It uses that word, clearly. But I hope**  
 25 **I'm not being offensive when I -- when I claim**

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1 **that in this case, that really is a word game.**  
 2 **Because what I'm talking about -- let me try to**  
 3 **explain, please. Look, what I'm talking about**  
 4 **is -- what I meant by "reality" is not the whole**  
 5 **world of reality or anything like that, but I'm**  
 6 **talking about the reality that actually occurred**  
 7 **that was supposed to be being recorded.**  
 8 **And I think that's a reasonable**  
 9 **interpretation of what I say here, and that's what**  
 10 **I stand by.**  
 11 **Q.** Would you agree with me, sir, that in  
 12 the forensic audio community, that "authenticity"  
 13 is the correct word, not "reality"?  
 14 **A. No.**  
 15 **Q.** Certified forensic examiners use  
 16 "authenticity", not "reality"; correct?  
 17 **A. I don't know what they all say. I was**  
 18 **using these words in what I believe was a**  
 19 **common-sense and accurate way.**  
 20 **Q.** There are standards for authenticity  
 21 that are put out by different organizations,  
 22 including standards put out by the American  
 23 Academy of Science; is that correct?  
 24 **A. I don't know.**  
 25 **Q.** There are not -- there are no standards

1 as to "reality"; correct?  
2 **A. I don't -- I honestly don't think that**  
3 **that's a valid interpretation of what I really**  
4 **said here. The reality that I was talking about,**  
5 **that I'm still talking about, is the reality of**  
6 **whatever happened under that circumstance.**

7 **Q. Where were you on June 9th, 2010?**

8 **A. I have no idea.**

9 MR. McALLISTER: I'm going to object to  
10 relevance as to where he was.

11 THE COURT: I think I know where counsel is  
12 going. Overruled.

13 You may answer the question.

14 BY MR. McALLISTER:

15 **Q. Were you in Sagle, Idaho, engaged in a**  
16 **conversation with Mr. Steele?**

17 **A. No, I was not.**

18 **Q. And on June 10th, you weren't there,**  
19 **either, were you?**

20 **A. I was not.**

21 **Q. You do not know what occurred there?**

22 **A. That's true. Yes.**

23 **Q. Yet, you opine that what the recordings**  
24 **are are not based upon reality?**

25 **A. Not exactly. I'm claiming -- no,**

1 **that's not my claim. I'm saying that, based on**  
2 **the problems that I see in the recordings, I don't**  
3 **know that they do represent reality.**

4 **And if it's being represented by anyone**  
5 **who is introducing these records that they do,**  
6 **then I would think that it has to be up to them to**  
7 **demonstrate that they do, even with respect to**  
8 **these, I think, quite clear defects in the**  
9 **recordings.**

10 **Q. Sir, when you authored your expert**  
11 **report and, in fact, were asked to provide what**  
12 **analysis was done, the basis for your scientific**  
13 **opinion and the basis for your expert report, can**  
14 **you tell me where in your report it says that you**  
15 **did harmonic consistency analysis?**

16 **A. I did not do that analysis, and I**  
17 **didn't say so because I didn't do it.**

18 **Q. I believed earlier -- and this is a**  
19 **question I want to ask you. Correct me if I'm**  
20 **wrong, but I thought you said that, although you**  
21 **didn't do the EdiTracker, you did do those things**  
22 **listed in the EdiTracker, part of which is**  
23 **harmonic consistency analysis.**

24 **A. I don't recall if I actually said that,**  
25 **and I would be glad to listen to any read-back of**

1 my testimony.

2 **But what I do say -- can you go back**  
3 **where I say the analyses that I did do here in**  
4 **this report?**

5 **I said I did three things, which I did:**  
6 **Waveform analysis, that's what I've been**  
7 **demonstrating because it's easiest to see and to**  
8 **explain; time-varying spectral analysis, that's**  
9 **the analysis that I told you about earlier, where**  
10 **the frequencies are displayed on the vertical axis**  
11 **of the graph; and fundamental frequency analysis,**  
12 **it's one that I haven't described except**  
13 **peripherally. I've told you about the vibration**  
14 **of the piano string. Well, in this case, it's not**  
15 **a piano string that we're looking at, but it's the**  
16 **human vocal folds.**

17 **So I did those kind of analyses.**

18 **Q. Did you perform any critical listening**  
19 **during your analysis?**

20 **A. Well, I listened to them, and I think I**  
21 **listened critically.**

22 **Q. There are four steps to critical**  
23 **analysis; correct?**

24 **A. No --**

25 **Q. Sir, are you familiar with --**

1 **A. -- not correct. One can't limit any --**  
2 **listen, you listen as carefully as you can --**

3 THE COURT: Just a moment. Listen -- let's  
4 not volunteer comments.

5 Go ahead, Ms. Whelan.

6 BY MS. WHELAN:

7 **Q. Are you familiar with Bruce Koenig?**

8 **A. I have met him. I'm not very familiar**  
9 **with him.**

10 **Q. You know who he is?**

11 **A. Sure.**

12 **Q. And I'd like to refer your**  
13 **attention -- there is a "Journal of Audio**  
14 **Engineering Society" article, September of 2009,**  
15 **entitled "Forensic Authentication of Digital Audio**  
16 **Recordings."**

17 **Are you familiar with this?**

18 **A. No, I'm not.**

19 **Q. What is the last journal article you**  
20 **read on forensic authentication of digital audio**  
21 **recordings?**

22 **A. Well, it probably wasn't a journal**  
23 **article. It would have been in a book, probably,**  
24 **that addressed it by Professor Ladefoged called "A**  
25 **Course in Phonetics."**

1 Q. Okay. And I'm specifically talking  
 2 about forensic authentication of digital audio  
 3 recordings.  
 4 A. It certainly included that topic, yes.  
 5 Q. Do you recall when you read that?  
 6 A. Well, I've read it and reread it. Most  
 7 recently, I would think I read it a few months  
 8 ago, but I'm not exactly sure when.  
 9 Q. And could you tell me again who the  
 10 author is?  
 11 A. Peter Ladefoged, L-A-D-E-F-O-G-E-D.  
 12 Q. Thank you, sir. Now, something that  
 13 you said during your direct exam is that you  
 14 looked over Mr. Walsh's shoulder as he did the  
 15 EdiTracker.  
 16 A. That's correct.  
 17 Q. Did you do your exams together?  
 18 A. No.  
 19 Q. Okay.  
 20 A. I looked over his shoulder as he did  
 21 it.  
 22 Q. Were you physically there?  
 23 A. Yes.  
 24 Q. So you were present as he did his exam?  
 25 A. Not all of it. Part of it.

1 Q. Which part?  
 2 A. Well, he reviewed for me this morning  
 3 -- it was just today --  
 4 Q. Okay. So --  
 5 A. -- and yesterday.  
 6 Q. But he did his report on March 16th of  
 7 2011. So were you there when he ran the  
 8 EdiTracker?  
 9 A. Not that time, but another time I was.  
 10 Q. I apologize, sir. I'm not trying to be  
 11 argumentative. I am genuinely confused.  
 12 You said that you looked over his  
 13 shoulder as he did this. You just testified that  
 14 this morning he went over the results with you.  
 15 Which is it? Were you present when he ran the  
 16 test?  
 17 A. Not the tests as he ran them the first  
 18 time. However, when he repeated them, some of  
 19 them, today.  
 20 Q. He repeated some of them today? You  
 21 have to answer audibly, sir.  
 22 A. I wasn't answering. I didn't think  
 23 that was a question. Perhaps that was too  
 24 difficult.  
 25 Yes, that's what I did. I saw him run

1 EdiTracker --  
 2 Q. Today?  
 3 A. -- not the first time and not through  
 4 all of the analyses he did, but I saw how  
 5 EdiTracker works, and I saw how he used it.  
 6 Q. So you were not present when he used  
 7 EdiTracker in this case during his exam, his  
 8 initial exam?  
 9 A. That's correct.  
 10 Q. Did you send him a Word Perfect or Word  
 11 or Rich Text or any electronic version of your  
 12 report?  
 13 A. I think I did. I may have -- however,  
 14 I may have sent it to the attorneys that then sent  
 15 it on to him. I'm not sure which way that went.  
 16 Q. Going back to the "Journal of Audio  
 17 Engineering Society" article of September of 2009,  
 18 I'm going to read you a paragraph, and I'd like to  
 19 know if you agree with it as the standards of the  
 20 industry.  
 21 "Critical listening analysis has four  
 22 separate but overlapping areas of interests:  
 23 Preliminary overview, possible record and edit  
 24 events, background sounds, and foreground  
 25 information."

1 Would you agree with that?  
 2 A. Yeah, I'll agree with that.  
 3 Q. You indicated during your direct exam  
 4 that there were gaps, although you didn't know how  
 5 many or weren't able to say exactly where they  
 6 were, but you said that they -- you couldn't tell  
 7 how long they lasted in reality.  
 8 A. That's correct.  
 9 Q. Did you go back after you found these  
 10 gaps electronically and critically listen to them  
 11 to determine whether the conversation still  
 12 flowed?  
 13 A. Well, I would say, actually, it  
 14 happened the other way. First of all, I just flat  
 15 out listened and I heard the gaps. And then I  
 16 looked electronically.  
 17 Q. Okay. And the gaps you heard are, I  
 18 think you said, eight-thousandths of a second?  
 19 A. No, I didn't say that.  
 20 Q. The gaps -- as you talked about the  
 21 gaps --  
 22 A. Can I possibly help you out and say  
 23 that I found that some of the electronic  
 24 signatures lasted eight-thousandths of a second?  
 25 It would be incompatible --

1 Q. That's not --  
 2 THE COURT: I think the witness indicated  
 3 that there is no way anyone could know how long a  
 4 gap is --  
 5 THE WITNESS: In reality --  
 6 THE COURT: -- almost by definition, because  
 7 a gap is an absence of something which is  
 8 undefined.  
 9 BY MS. WHELAN:  
 10 Q. Do you have Exhibit 10 up there with  
 11 you, sir?  
 12 A. Yes, I do.  
 13 Q. And does Exhibit 10 deal with gaps or  
 14 with electronic transients or signatures?  
 15 A. Primarily with electronic signatures.  
 16 Q. Okay. Now, that's something else I  
 17 want to talk to you about.  
 18 THE COURT: Counsel, we're going to need to  
 19 take a break fairly soon. We have been at it an  
 20 hour and 45 minutes, and that's about as long as  
 21 we can go. We have got a court reporter that  
 22 needs a break.  
 23 Is this a good breaking point? We can  
 24 go for a few minutes if you want to --  
 25 MS. WHELAN: No, I'm not going to finish up.

1 I've got quite a bit more.  
 2 THE COURT: All right. Let's take -- we'll  
 3 try to hold it to a 10- or 15-minute break. But,  
 4 again, I have to give the staff enough time so  
 5 that they can have an appropriate break. We'll be  
 6 in recess.  
 7 (Recess.)  
 8 THE COURT: Dr. Papcun, if you'll retake the  
 9 witness stand.  
 10 Ms. Whelan, you may --  
 11 MS. WHELAN: Thank you, Judge.  
 12 THE COURT: Go ahead and be seated. I'll  
 13 remind you, you are still under oath.  
 14 And, Ms. Whelan, you may resume your  
 15 cross-examination.  
 16 MS. WHELAN: Thank you, Your Honor.  
 17 BY MS. WHELAN:  
 18 Q. Dr. Papcun, have you done forensic  
 19 examinations in authenticity of recordings before?  
 20 A. Yes, I have.  
 21 Q. As a forensic examiner?  
 22 A. I don't know what that means. I mean,  
 23 I've done them.  
 24 Q. Can you tell us what cases, some cases  
 25 you might have done?

1 A. Yeah. Can I -- I would actually like  
 2 to get my CV so I can have reference to particular  
 3 ones. I don't have that before me.  
 4 Q. You know what? I've got it right here,  
 5 if that helps at all.  
 6 A. It will, sure.  
 7 Q. Okay. Which ones on that did you  
 8 evaluate forensic recordings, not -- actual  
 9 forensic recordings and working as an examiner on?  
 10 A. Yeah. Well, I would point to one  
 11 that's spot on, Daniel versus Kelly Oil. That was  
 12 a forensic recording in which the issue was  
 13 essentially just what's relevant here.  
 14 Q. What type of recording was that, sir?  
 15 A. That was originally a -- it was an  
 16 analog recording originally, but then it was  
 17 transferred to digital.  
 18 Q. And where was it made?  
 19 A. In Texas. Let's see. It was in  
 20 Houston, Texas.  
 21 Q. And I'm sorry, sir. That was probably  
 22 a bad question. That's my fault.  
 23 But what I mean by that is: Was it a  
 24 case similar, where somebody is wearing either a  
 25 body wire or a recorder for law enforcement?

1 A. It was a civil trial, and, therefore,  
 2 they weren't wearing it for law enforcement. They  
 3 were wearing it -- it was a body recorder that  
 4 they were wearing.  
 5 Q. It was a body recorder?  
 6 A. Yes.  
 7 Q. Okay. Thank you.  
 8 And the next ones?  
 9 A. Another one spot on would be Gonzales  
 10 versus Trinity Marine.  
 11 Q. Okay. Was that a digital or analog  
 12 recording?  
 13 A. Frankly, I don't remember for sure. I  
 14 suspect it was analog, but I'm not sure.  
 15 MR. McALLISTER: Judge, I'm going to object  
 16 at this point. I don't know how this assists the  
 17 court in making the decision whether he is  
 18 qualified or not, going through all the old cases.  
 19 It might be good for a jury. But at this point,  
 20 you know -- I skipped over all of this  
 21 intentionally so that I didn't, you know, spend  
 22 everybody's time --  
 23 THE COURT: Well, let me --  
 24 MR. McALLISTER: -- going through it.  
 25 THE COURT: Well, Ms. Whelan has raised the

1 issue -- I mean, right out of the chute, one of  
2 the questions was whether or not there was a  
3 native or WAV recording, what the format was. And  
4 I assume that's -- either that issue or something  
5 akin to that is what you're getting at.

6 MS. WHELAN: It is. In fact, Judge, that's  
7 my next question.

8 THE COURT: Counsel, let me just make an  
9 observation. In fact, I'm going to ask Dr. Papcun  
10 a question which might underscore the observation.

11 Dr. Papcun, this is kind of a follow-on  
12 to the question that I put to you kind of at the  
13 end of your direct examination. And when we  
14 talked about what you mean by using the word  
15 "authentic" and the fact that it's just a  
16 disparity between what actually occurred and what  
17 we can listen to now or what we can take from the  
18 tape -- or the recording. I'm still last century,  
19 still referring to them as "tape recordings"  
20 instead of "recordings."

21 Is it fair to say that using average or  
22 even well-above-average-quality recording  
23 equipment, you will find these electronic  
24 transients and gaps simply because -- again,  
25 totally apart from what causes them, that simply

1 anything short of perhaps studio-quality recording  
2 will not be perfect and, in fact, will have these  
3 type of transients? Or, in fact, is this a pretty  
4 rare event?

5 THE WITNESS: I appreciate the question,  
6 Your Honor. I think it's fair to say that an  
7 ordinary good recording will not show these kinds  
8 of gaps or transients.

9 THE COURT: Okay. So the type of equipment  
10 typically used by government investigative  
11 agencies will not have these type of events that  
12 you've described, primarily gaps and transients?

13 THE WITNESS: Yes, Your Honor. That is  
14 right.

15 THE COURT: Okay. Then I think that does  
16 set the stage a little different than what I  
17 thought the issue was. I was going to raise a  
18 question about perhaps the real focus here is one  
19 of relevance, not reliability, under the two  
20 prongs of Daubert; that is, does this really go to  
21 an issue in the case.

22 MS. WHELAN: And, Judge, I have a follow-up  
23 question to that.

24 THE COURT: Go ahead.  
25 BY MS. WHELAN:

1 Q. And it was, in part, about the cases  
2 that you have testified in. And my question is:  
3 How many forensic recordings that are used, such  
4 as body wires such as are used by law enforcement,  
5 have you analyzed?

6 A. **More than cases I've actually ended  
7 up testifying in. So let me think. It would  
8 ultimately be a dozen.**

9 Q. Okay. So --

10 A. **In this list of selected cases, I can  
11 also point out the Queen versus Kashani-Malaki.  
12 That was a case very much comparable to this in  
13 which there were recordings that were made by the  
14 Queen's -- what do they call them in Australia? --  
15 the Queen's forces.**

16 Q. But, again, sir, were those digital or  
17 analog recordings?

18 A. **Those were digital.**

19 Q. And do you recall when that case was?

20 A. **Oh, two years ago.**

21 Q. And, sir, perhaps the judge has set the  
22 stage well for me to explain. It's not that I  
23 dispute that you have a Ph.D. in sound and have  
24 done all this wonderful work. It's the relevance  
25 as to this hearing and the report that we have

1 that shows the analysis that you did.

2 And that's what I want to move into  
3 right now, if that's okay with you, sir, is one of  
4 the things you discussed before were that you  
5 found these gaps. And I think you identified  
6 somewhere between six and a dozen, maybe, between  
7 both recordings?

8 A. **That's correct, yes.**

9 Q. Okay. Now, when you found these, did  
10 you increase your gain on the display or turn the  
11 volume up?

12 A. **Yes, I did.**

13 Q. To determine what you're referring to  
14 as either a gap was either the noise floor of the  
15 recording, or whether it was the waveform actually  
16 went to zero?

17 A. **It would be the noise floor.**

18 Q. Okay. So it's the noise floor. It's  
19 not that there was no sound, and it cut out?

20 A. **That's correct.**

21 Q. Okay.

22 A. **May I correct something that I  
23 misstated?**

24 I agreed when you said "somewhere  
25 between six and a dozen," and I ought not to have

1 agreed to that. Rather, I think six is the more  
2 accurate number. There were not more than six, to  
3 my knowledge.

4 Q. Six --

5 A. There may have been, but I would not  
6 claim more than six.

7 Q. And I appreciate that, sir. That's for  
8 both recordings, June 9th and 10th?

9 A. Correct. For both recordings.

10 Q. And, again, the gap is just -- it's  
11 just going to the noise floor of the recorder;  
12 it's not that the recorder turned off?

13 A. Well --

14 Q. Let me restate that. It's not that the  
15 wave went to zero.

16 A. That's correct.

17 Q. Okay. The next question --

18 THE COURT: Wait a minute, Counsel. The  
19 wave?

20 MS. WHELAN: The wave.

21 THE COURT: All right. I'm not sure I  
22 understand that, but --

23 MS. WHELAN: Okay.

24 BY MS. WHELAN:

25 Q. Sir, when a sound is recorded -- you

1 had some wave charts, I think, up earlier. If I  
2 speak, my voice would be reflected in a wave; is  
3 that correct?

4 A. That's correct.

5 Q. And depending on how loud I was or how  
6 quiet I was, the wave will shift; correct?

7 A. That's correct.

8 Q. Okay. And any recorder has what's  
9 called a -- and I don't want to mess up the

10 terms -- but a "noise floor"?

11 A. That's a correct term.

12 Q. Okay. And that's just the sound of the  
13 recorder running but nothing being recorded?

14 A. That's correct.

15 Q. And if -- and the difference, then,  
16 would be that if it goes to zero, there is  
17 absolutely nothing being recorded; there is  
18 nothing at all?

19 A. Well, look, in this situation, it's  
20 just a little more complicated -- well, maybe  
21 actually a lot more complicated than what you  
22 described -- because there is a microphone. There  
23 is what's really then attached to that. It may be  
24 a recorder directly; there is a recorder that may  
25 be remote. So there may be a number of stages

1 that have to be taken account of.

2 Q. There could be, but there aren't  
3 necessarily?

4 A. That's right.

5 Q. But the fact that that doesn't go to  
6 zero on the wave printout is significant; correct?

7 A. It can be.

8 Q. Okay. Sir, something that -- as I read  
9 your report and then I listened to your testimony  
10 today, it brought up a question for me. In your  
11 report -- and I want to bring it to make sure I  
12 don't misstate it at all here.

13 Okay. "Both recordings" -- and here,  
14 I'll point to where I'm talking. "Both recordings  
15 contain numerous instances of electronic  
16 signatures."

17 And we have agreed that's your report;  
18 correct?

19 A. Yes.

20 Q. Okay. When you've been talking, what  
21 I've heard -- and I'm not a Ph.D. in sound; I  
22 barely passed high school science, so -- but I've  
23 heard you use "transients" and "signatures," kind  
24 of both, intermingled.

25 A. No. I didn't mean that they were

1 intermingled.

2 Transient -- should I explain or not?

3 Q. If you would, sir, could you -- let me  
4 just ask a couple questions so the record stays  
5 clearer, then.

6 Could you define what your  
7 understanding or teach me what an electronic  
8 signature is.

9 A. Yes. An electronic signature is an  
10 indication of some electronic event like those  
11 I -- like turning equipment on or off or changing  
12 components or having some component disconnected  
13 or connected. A microphone malfunction, any kind  
14 of equipment malfunction can produce a signature,  
15 or starting or stopping the equipment can produce  
16 a signature. And attempts at splicing or  
17 otherwise editing a recording can produce a  
18 signature.

19 Q. Are there any other causes of  
20 signatures?

21 A. Other than what? I'm sorry. I don't  
22 understand.

23 Q. Other than the ones you have just  
24 listed.

25 A. Other -- you mean are there any other

1 events that could produce a signature?

2 Q. Yes.

3 A. The answer to that is yes.

4 Q. Now, can you tell me, since we have  
5 determined that electronic signature and  
6 transients aren't the same thing, and you're not  
7 using them interchangeably; correct?

8 A. That's correct; I'm not.

9 Q. Okay. Can you define for me what a  
10 transient is?

11 A. Yes. It has essentially the same  
12 meaning it ordinarily does: any rapidly changing  
13 event. And, of course, when we're talking about  
14 recordings, it can be a rapid change produced by  
15 some environmental sound.

16 Q. And there are different types of  
17 transients; correct?

18 A. That's right. Well, transients made by  
19 different causes.

20 Q. There is acoustical --

21 A. Yes.

22 Q. -- transients?

23 There is electronic transients?

24 A. Yes.

25 Q. What other kind of transients are

1 there, if you know?

2 A. Transient -- I'm not sure how to  
3 explain this. A flash of light, if it's recorded,  
4 can be a transient. Electromagnetic pulses; since  
5 I happened to work at a national laboratory that  
6 dealt with nuclear weapons, frankly, we recorded  
7 transients of nuclear energy. Stars produce  
8 bursts that are transients. There are -- a  
9 transient just has its ordinary meaning.

10 Q. Okay. Okay. But they are distinct and  
11 different from electronic signatures?

12 A. No. Look, an electronic signature is a  
13 particular kind of a transient. So it is a  
14 transient, but a particular kind, that I observed  
15 here.

16 Q. And if you will just bear with me.  
17 There's no tricks. I'm just a visual person.

18 So we have transients. And I have  
19 horrible handwriting, apparently. Transients;  
20 correct? And then there is different kinds.  
21 There is acoustical, electronic.

22 And then there are electronic  
23 signatures, which are all types of transients; is  
24 that correct? Because I thought that's what you  
25 just said.

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1 A. No. That's -- this chart that you have  
2 drawn doesn't accurately represent what I'm trying  
3 to explain.

4 Q. Okay.

5 A. The first level does, but what you go  
6 on to say does not.

7 Q. Is an electronic signature a form of  
8 transient?

9 A. Yes.

10 Q. Okay. Do all electronic signatures  
11 look the same?

12 A. No. They have certain things in  
13 common, but no two things are exactly the same.

14 Q. Okay.

15 THE COURT: Just a moment. If I understood  
16 you, a transient is simply an event that is  
17 extremely -- it occurs very rapidly?

18 THE WITNESS: That's right.

19 THE COURT: An electronic -- you said that  
20 an electronic signature is a type of transient,  
21 but isn't an electronic signature more than just a  
22 rapidly occurring event?

23 I mean, I had thought, when we were  
24 talking earlier, that you were suggesting that an  
25 electronic signature are these various -- you

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1 referred to electronic transients and being  
2 reflected by a variety of hallmarks; one was being  
3 very rapidly occurring.

4 THE WITNESS: That's right.

5 THE COURT: The other is very pure in the  
6 sense that you don't pick up.

7 Then we're getting away from rapidity,  
8 and we're talking about some other  
9 characteristics, which sounds to me more like what  
10 I think Ms. Whelan is referring to as an  
11 electronic signature, some indication of an  
12 identifiable characteristic that sets it apart  
13 from other events in the recording.

14 So, if that's true, then I'm not sure I  
15 understand why we would say that an electronic  
16 signature is a type of transient. It would seem  
17 to be almost the other way around; that an  
18 electronic signature may manifest itself as a  
19 transient but may manifest itself by other  
20 characteristics, as well.

21 Now, obviously, I'm muddled up. Do you  
22 want to clarify?

23 THE WITNESS: I think not, Your Honor. What  
24 you said is accurate.

25 Perhaps, for the moment, if I may

1 forego the word "transient," because that seems to  
2 have caused some concern here. Let's just talk  
3 about a click, okay, or a glitch, if you will.  
4 You hear a recording -- you listen to a  
5 recording. You hear something that's -- let's  
6 call it a "click" in the recording. That's what  
7 it sounds like to you. But then you wonder  
8 whether or not this click is produced by hitting  
9 something (demonstrating) or, to the contrary,  
10 whether it's produced from some electronic source.  
11 And that is, I think, what really concerns us  
12 here.

13 THE COURT: Okay. Well, Ms. Whelan, go  
14 ahead.

15 BY MS. WHELAN:

16 Q. Now, sir, you indicated that the tapes,  
17 the recordings, are of poor quality; is that  
18 correct?

19 A. Yes, that's true.

20 Q. Now, of the forensic tapes that you  
21 have listened to -- well, let me strike that.

22 Most of your work has been in research  
23 and work within a lab; correct?

24 A. Yeah, that's true.

25 Q. And we can agree that this recording

1 was not made in a lab, and it certainly is not  
2 studio quality; correct?

3 A. That's quite true.

4 Q. If it was, there could be some big  
5 concerns; correct?

6 A. Okay. Yes, that's true.

7 Q. Okay. Within the, I guess, dozen or so  
8 forensic recordings that you have analyzed, do you  
9 still hold that this recording is poor?

10 THE COURT: Counsel, before we use the word  
11 "poor," are we referring to it in the terms of the  
12 question that I asked when I inter -- about  
13 comparing this in terms of the number of  
14 transients -- electronic transients, which perhaps  
15 is not a term we should be using -- and  
16 gaps compared to -- is that what you mean by  
17 "poor"?

18 MS. WHELAN: No. I just -- his conclusion  
19 is that the recordings are of poor quality, and  
20 I'm asking him as to his conclusion.

21 THE COURT: Good. Thank you.

22 THE WITNESS: Yeah. I would say that that's  
23 an accurate -- I wouldn't call it a conclusion,  
24 really. It's an observation about the recording.

25 BY MS. WHELAN:

1 Q. And you were able to listen to this  
2 recording without any form of enhancement;  
3 correct?

4 A. Yeah. That's right.

5 Q. Now, on this right here, on the  
6 recording, you're talking about six-nine. You say  
7 there are discrepancies in the relative volumes of  
8 the speakers.

9 Now, when you're indicating "speakers,"  
10 do you mean people talking or something coming out  
11 of the recording?

12 A. I meant people talking in this case.

13 Q. Okay. Were you given any of the facts  
14 or the circumstances about where this recording  
15 occurred?

16 A. No.

17 Q. Okay. Were you provided any  
18 information about what the participants were  
19 reported to be doing while this conversation was  
20 occurring?

21 A. Not beyond what you can hear from the  
22 recording itself.

23 Q. Okay. And in the recording itself, you  
24 can hear people walking; you can hear the  
25 crunching of the gravel.

1 A. Whatever it is. There is a noise  
2 that -- that I would ascribe to walking around.

3 Q. And there was a request at one point  
4 for money, and somebody left to go get some. Do  
5 you recall that?

6 A. Yes.

7 Q. So, as the parties were closer and  
8 farther away from each other, it is completely  
9 consistent that the volumes would change; correct?

10 A. No. That's not what I meant here. If  
11 I may explain.

12 Q. Please.

13 A. Well, there is an interesting aspect of  
14 this recording. That is to say that the voice of  
15 the CS is consistently less loud -- not  
16 consistently, not all the time, but is often less  
17 loud than the other participant.

18 That's quite a curious fact if it's a  
19 body recorder that he is recording, even  
20 given -- there are microphones that pick up best  
21 going outward. But even that fact, if you're  
22 wearing a microphone, will ordinarily make your  
23 voice louder than that of somebody who is not  
24 directly attached to that microphone.

25 Q. And so --

1 **A.** So that's -- that's a discrepancy. And  
 2 that's what I was referring to here.  
 3 **Q.** I thought what you just said, though,  
 4 sir, is that the CS's voice was louder than the  
 5 other party's.  
 6 **A.** No. I meant it the other way around.  
 7 I'm sorry if I said it wrong.  
 8 **Q.** Okay. So you're saying that the other  
 9 party had a louder voice?  
 10 **A.** Well, was recorded louder.  
 11 **Q.** Have you ever talked to -- have you  
 12 ever taken any voice samples from Mr. Steele?  
 13 **A.** No, I haven't.  
 14 **Q.** And have you ever talked to the other  
 15 individual?  
 16 **A.** No, I haven't.  
 17 **Q.** Might just be his voice? He might just  
 18 be a soft talker?  
 19 **A.** Well might be, but I still think the  
 20 discrepancy -- the relative volume discrepancy  
 21 here is still remarkable, even if that's true.  
 22 **Q.** Sir, during your testimony, you  
 23 indicated approximately 50 events of electronic  
 24 signature and about six gaps; is that correct?  
 25 **A.** Yes, that's correct.

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1 **A.** Well, with respect to whether it was  
 2 electronic or some ambient sound, yes. But then  
 3 within electronic transients, as I've indicated,  
 4 you really can't tell, you know.  
 5 **Q.** And --  
 6 **A.** But especially without access to the  
 7 original equipment and without being there at the  
 8 recording, you really can't tell what detail is  
 9 the cause.  
 10 **Q.** Okay. And, again, sir, what you're  
 11 talking about here as you listed it, you listed  
 12 "electronic transients"; correct?  
 13 **A.** Mm-hmm.  
 14 **Q.** Or "silence." Is the "silence" the  
 15 same thing as a "gap" to you?  
 16 **A.** In this case, yes.  
 17 **Q.** Okay. And, again, electronic  
 18 transients and silence?  
 19 **A.** That's correct.  
 20 **Q.** Finally, this is, I think, from the  
 21 10th, we have got transients -- and they're just  
 22 called "transients," not "electronic transients"  
 23 -- are listed here; correct?  
 24 **A.** That's correct.  
 25 **Q.** Okay. Nowhere on here does it say

1 **Q.** Did you ever identify specifically  
 2 where they are in your report?  
 3 **A.** Yes, I did.  
 4 **Q.** Okay. I'm going to pull your report  
 5 up, the first page. Let's see. Does it work this  
 6 way?  
 7 THE COURT: Do you have a copy, Dr. Papcun,  
 8 of the report? It might be easier -- well, go  
 9 ahead. But you're going to have to zoom out. If  
 10 you need, I can help.  
 11 BY MS. WHELAN:  
 12 **Q.** Let me just ask: Where in your report  
 13 is that?  
 14 **A.** That's not in this report, but I  
 15 separately supplied those reports to counsel.  
 16 **Q.** Okay. What did they look like?  
 17 **A.** Well, there are two ways I did it. One  
 18 is I just supplied a list; and then in another, I  
 19 made little marginal annotations to the dialogues.  
 20 **Q.** Is that it, sir?  
 21 **A.** That's one of the lists.  
 22 **Q.** Okay. Now, did you go back to each  
 23 individual event and investigate to see if you  
 24 could classify the type of event that caused the  
 25 signature or transient?

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1 "electronic signature," does it?  
 2 **A.** That's correct. No, I didn't use that  
 3 term. But the key word there is "electronic" as  
 4 opposed to "environmental" or "ambient."  
 5 **Q.** Well, and, sir, would you agree that  
 6 people who -- certified forensic examiners who do  
 7 this for a living use very specific words when  
 8 talking about an analysis they have done? The  
 9 word "transient" means one thing; correct?  
 10 **A.** No, I don't know if that's true. I  
 11 don't know that it should be true. I think it's  
 12 not generally. I think it should not be true if  
 13 it is.  
 14 **Q.** Okay. Did you go back and replay each  
 15 segment of tape where the event occurred?  
 16 **A.** Yes, I did.  
 17 **Q.** Okay. Did you ever issue an expert  
 18 opinion as to each individual event?  
 19 **A.** No.  
 20 **Q.** Instead, you relied on just the general  
 21 opinion: Because they exist, there is a problem?  
 22 **A.** That, I think, is true, yes.  
 23 **Q.** Now, we have talked about the fact that  
 24 you can listen to these tapes without enhancement.  
 25 You were able to do that?

1 **A.** Yes, I was.  
 2 **Q.** The jury would be able to do that?  
 3 **A.** Well, I don't know. I did use  
 4 equipment that would not normally be available. I  
 5 used rather specialized, extraordinarily  
 6 high-quality equipment.  
 7 **A.** And even -- I did listen to them, to be  
 8 sure. But I certainly realized that there were  
 9 sections that I could not understand, sections in  
 10 which the original transcriber clearly made  
 11 errors.  
 12 **Q.** And are you aware, sir, that the  
 13 transcript you used was one that the Federal  
 14 Defenders' Office had had somebody do, and that  
 15 transcript did contain numerous errors?  
 16 **A.** I don't -- I'm not aware of the  
 17 providence of the transcript.  
 18 **Q.** Okay. But as you were comparing the  
 19 transcript, did you note the problems with the  
 20 transcript?  
 21 **A.** In some places but not all.  
 22 **Q.** Did you correct the transcript at all?  
 23 **A.** In some places but not all.  
 24 **Q.** And, sir, again, you understood that  
 25 your report, where you're alleging that there are

1 problems -- I understand you don't want to use  
 2 words like "suspicious" or "tampering" -- but that  
 3 there are problems and that "this doesn't show  
 4 reality" or "isn't authentic" would be reviewed by  
 5 perhaps somebody else?  
 6 **A.** I presumed it might be.  
 7 **Q.** A logical inference; correct?  
 8 **A.** I'm sorry. What?  
 9 **Q.** That's a logical inference?  
 10 **A.** Yes, it is.  
 11 **Q.** So you knew how important it was to  
 12 make a full and complete report?  
 13 **A.** It -- no, it was not full, honestly;  
 14 and it wasn't complete. It was sufficiently  
 15 complete to justify -- and my analysis could have  
 16 gone on indefinitely further, but my analysis was  
 17 sufficient to establish my opinion.  
 18 **Q.** Your analysis was sufficient to  
 19 establish your opinion, in your opinion?  
 20 **A.** Yes, certainly.  
 21 **Q.** Okay.  
 22 MS. WHELAN: Your Honor, may I just have one  
 23 moment, please?  
 24 THE COURT: Yes.  
 25 MS. WHELAN: I forgot one question, and then

1 I'll go ask my co-counsel here.  
 2 BY MS. WHELAN:  
 3 **Q.** And just to be clear, sir, you did  
 4 not -- even though you were given the native  
 5 format with the propriety discs and the propriety  
 6 software, you did not review them in that format;  
 7 correct?  
 8 **A.** To my knowledge, I was given -- I don't  
 9 know whether or not what I was given was in the  
 10 native format.  
 11 **Q.** Did you --  
 12 **A.** I assumed it was. Well, two points  
 13 here: First of all, I assumed it was in whatever  
 14 format the government wanted me to have. And  
 15 then, secondly -- a more technical point, if I  
 16 may -- as long as the sampling rate and the  
 17 quantization rate are specified, that's ground  
 18 truth.  
 19 **A.** And I thought it was then, and I still  
 20 think it is now, but --  
 21 **Q.** Sir --  
 22 **A.** -- that's the reality on the recording.  
 23 **Q.** Okay. But your analysis was done  
 24 February 27th or the 28th?  
 25 **A.** That's correct. Yeah.

1 **Q.** The discs you got were sent to you by  
 2 Mr. Hoyt?  
 3 **A.** That's correct. Yes.  
 4 **Q.** Okay. They were not sent to you by the  
 5 FBI, those initial discs?  
 6 **A.** As far as I know, yes.  
 7 **Q.** Later, on February -- excuse me. I'm  
 8 sorry. Not February -- March 6th or 7th, by  
 9 FedEx, you got discs sent to you directly by the  
 10 FBI laboratory?  
 11 **A.** That's correct.  
 12 **Q.** You did no further testing on those  
 13 discs, did you?  
 14 **A.** Well, I did this much: I certainly  
 15 looked at it. And what I found -- which is no  
 16 surprise to me, because what I just told you about  
 17 the WAV format, I expected, and it turned out to  
 18 be true -- that they had the same information.  
 19 That's what has to be the case.  
 20 **Q.** You looked at them?  
 21 **A.** I looked at them.  
 22 **Q.** Did you show in your report where you  
 23 did --  
 24 THE COURT: Just a moment, Counsel.  
 25 When you say you looked at them, you

1 physically looked at them, or did you listen to  
 2 them?  
 3 THE WITNESS: Thank you for the  
 4 clarification.  
 5 THE COURT: And when you say it contained  
 6 the same information, are you saying that it  
 7 contained the same signatures, transients, gaps,  
 8 what have you, that we have talked about?  
 9 THE WITNESS: That's exactly what I'm  
 10 saying.  
 11 BY MS. WHELAN:  
 12 Q. Did you do another analysis on those  
 13 discs?  
 14 A. No, I didn't.  
 15 Q. Did you perform any more spectrograph  
 16 testing?  
 17 A. No, I didn't.  
 18 Q. You listened to --  
 19 THE COURT: Counsel, I can't resist.  
 20 So when you listened to them, you  
 21 observed the same -- I mean, you actually compared  
 22 and could find precisely the same transients,  
 23 signatures, gaps that we have already talked  
 24 about?  
 25 Or did you just note that there were

1 transients, signatures, and gaps on the recording  
 2 provided from the FBI in early March, and that  
 3 perhaps there were other transients, signatures,  
 4 and gaps in the -- that provided by Mr. Hoyt in  
 5 late February?  
 6 THE WITNESS: I looked in detail at a  
 7 relatively small number of them, perhaps a dozen,  
 8 and I found that those were exactly, precisely  
 9 identical. They were the same. I didn't look at  
 10 them all.  
 11 So I looked at the waveform of the more  
 12 recently received material, and I looked at some  
 13 spots. And those that I looked at were just  
 14 exactly the same.  
 15 THE COURT: All right.  
 16 BY MS. WHELAN:  
 17 Q. Sir, and I apologize, but this is to be  
 18 precise -- but this is a precise hearing that  
 19 we're having.  
 20 What you just said is that you looked  
 21 at them in the WAV format.  
 22 A. That's correct.  
 23 Q. They were sent to you in the native  
 24 format with the player embedded in the disc.  
 25 A. That's correct.

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1 Q. Did you review them in the native  
 2 format?  
 3 A. Yes, I did.  
 4 Q. Okay. Did you do a subsequent analysis  
 5 in the native format?  
 6 A. In the native format, I used those  
 7 programs to look at a relatively small number of  
 8 the events of interest, events that I thought were  
 9 of interest. And what I saw was that they were  
 10 absolutely, in every respect, identical to the  
 11 analysis that I had done previously.  
 12 Q. Did you do that after you had converted  
 13 the native format to a WAV format?  
 14 A. Well, as I recall, I used the programs  
 15 that were on those CDs to convert it, however that  
 16 converted it.  
 17 Q. So is it fair to say that in this  
 18 report that we have in front of us which is dated  
 19 February 28th, that full analysis was only done on  
 20 the discs you got from Mr. Hoyt, not the native  
 21 format from the FBI?  
 22 A. Yes, that's correct.  
 23 MS. WHELAN: Now, Judge, may I have a moment  
 24 with my co-counsel?  
 25 THE COURT: Yes.

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1 BY MS. WHELAN:  
 2 Q. Finally, Dr. Papcun, the report that  
 3 you provided to counsel, the February 28th, the  
 4 very brief -- I think, March 4th, it said,  
 5 "Hey" -- I don't mean to be flippant, but "I  
 6 didn't have any problem in doing my analysis from  
 7 the original discs you gave us."  
 8 And then I think there was a subsequent  
 9 March 16th that included what we just looked at  
 10 where it said "transients."  
 11 And those are the only reports you have  
 12 done in this case?  
 13 A. That's correct.  
 14 MS. WHELAN: Okay. Thank you very much,  
 15 sir. I appreciate it.  
 16 THE COURT: Mr. McAllister, redirect?  
 17 MR. McALLISTER: Your Honor, we would call  
 18 Dennis Walsh.  
 19 THE COURT: You have no redirect?  
 20 MR. McALLISTER: No.  
 21 THE COURT: I do have to ask one more  
 22 question. I hope I don't muddy the water here.  
 23 EXAMINATION  
 24 BY THE COURT:  
 25 Q. In response to my earlier question

1 about how this recording compared to other  
2 recordings in terms of the number of signatures,  
3 transients, gaps, whether this was somehow  
4 extraordinary, you suggested it was; it contained  
5 more of those than you would have expected.

6 Is the review of these type of  
7 recordings of body wires and other types of  
8 devices which are clearly less than perfect, is  
9 that a common thing that you do in your  
10 professional work?

11 What I'm trying to find out is what is  
12 the basis for your comment that this was  
13 unusually -- that this recording had an unusually  
14 large number of transients, signatures, gaps, or  
15 whatever we want to call them now.

16 **A.** May I express it this way,  
17 Your Honor: This is certainly not the worst  
18 recording I have ever tried to deal with, by a  
19 long ways. I concede that absolutely.

20 **Q.** And I'm not -- again, we talked about  
21 whether it's a poor recording or a good recording.  
22 I'm now talking specifically about the number of  
23 transients, signatures, and gaps that you found.  
24 So when we talk about "poor," I want you to  
25 express it in those terms, not just poor in terms

1 of whether you can hear it or not.

2 **A.** And that's precisely relevant  
3 because, regardless of quality, this one does have  
4 an extraordinary number of these transients.

5 **Q.** As compared to what, in your  
6 experience? That's what I'm really getting at, is  
7 what is the basis for comparison from your  
8 experience.

9 There is no doubt you have a tremendous  
10 background in this field generally, but perhaps  
11 we're talking now about a very small subset of  
12 cases in which people are called upon in your  
13 field to offer an opinion.

14 I'm just trying to make sure that, in  
15 fact, this is something you've done with enough  
16 frequency and regularity that you can offer an  
17 opinion as to how this compares to other  
18 recordings where we found transients, signatures,  
19 and gaps.

20 **A.** I have dealt with very comparable  
21 recordings and probably very comparable kinds of  
22 recordings, and I think it's reasonable -- I can  
23 try to count them up, but I can say it's 20  
24 recordings that are very much comparable in terms  
25 of the kinds of recordings that we have dealt

1 with.

2 **Q.** Okay.

3 **A.** But I agree, it's not hundreds, by no  
4 means.

5 THE COURT: Okay. That's fine. I just  
6 wanted to get that point out.

7 Counsel, do you have any follow-up in  
8 light of that question? Ms. Whelan? Very  
9 briefly, because we do need --

10 MS. WHELAN: No. I know, Judge. It's not  
11 in light of that question. It's just that we  
12 identified Exhibit A. The court wanted a copy of  
13 the report. I would move for the admission of  
14 Exhibit A.

15 THE COURT: I assume there is no objection?

16 MR. McALLISTER: None.

17 THE COURT: Exhibit A will be admitted.  
18 (Government's Exhibit A admitted.)

19 THE COURT: Any follow-up to my questions,  
20 Mr. McAllister?

21 REDIRECT EXAMINATION

22 BY MR. McALLISTER:

23 **Q.** Just based upon those 20, what you  
24 found here was extraordinary?

25 **A.** Unusual, exceptional, and I suppose one

1 could even say "extraordinary." It was just far  
2 worse in this respect than most recordings of this  
3 kind.

4 THE COURT: Okay. Thank you. You may step  
5 down.

6 Mr. Walsh, would you please step before  
7 the clerk and be sworn and then follow  
8 Ms. Gearhart's direction from there.

9 Counsel, I'm assuming we're going over  
10 until tomorrow morning. I don't know how we  
11 can -- well, I guess it depends upon how quickly  
12 we get through this testimony and whether the  
13 government has any rebuttal.

14 DENNIS WALSH,  
15 having been first duly sworn to tell the whole  
16 truth, testified as follows:

17 MR. McALLISTER: Your Honor, may Dr. Papcun  
18 be excused?

19 THE COURT: Any objection?

20 MS. WHELAN: No, Your Honor. Thank you.

21 THE COURT: Dr. Papcun, you are excused.  
22 Thank you.

23 THE CLERK: Please state your complete name  
24 and spell your last name for the record.

25 THE WITNESS: My name is Dennis Walsh,

REPORTER'S CERTIFICATE

1 MR. McALLISTER: I'll -- go ahead. Sorry.  
2 THE COURT: Whatever you need. If you need  
3 me to intercede and advise the appropriate agency  
4 that you're here and I have required your  
5 attendance, I certainly will do that.

6 MR. McALLISTER: Thank you, Your Honor.

7 THE COURT: All right. Counsel, let's  
8 reconvene, then, at 8:00 tomorrow morning. We'll  
9 be in recess.

10 (Court recessed at 5:07 p.m.)  
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5 I, Tamara I. Hohenleitner, Official  
6 Court Reporter, State of Idaho, does hereby  
7 certify:

8 That I am the reporter who transcribed  
9 the proceedings had in the above-entitled action  
10 in machine shorthand and thereafter the same was  
11 reduced into typewriting under my direct  
12 supervision; and

13 That the foregoing transcript, pages 1  
14 to 174, contains a full, true, and accurate record  
15 of the proceedings had in the above and foregoing  
16 cause.

17 IN WITNESS WHEREOF, I have hereunto set  
18 my hand June 14, 2011.  
19  
20  
21  
22

23 \_\_\_\_\_  
24 -s-  
25 Tamara I. Hohenleitner  
Official Court Reporter  
CSR No. 619

**George Papcun, Ph.D.**  
**17 Goodnight Trall**  
**Santa Fe, New Mexico 87506**  
Phone: 505-986-9636

February 28, 2011

Mr. Robert T. McAllister  
Robert T. McAllister, P.C.  
2950 S. Umatilla Street  
Englewood, Colorado 80110

**Re: US vs. Edgar Steele – Analysis Of Two CDs With Recorded Conversations**

Dear Mr. McAllister:

Transmitted to me via FEDEX were two Compact Discs labeled as follows:

1. 166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1  
Copy CD-Wave Date: 6/9/10 SA Michael Sotka; and
2. 166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2  
Copy CD-Wave Date: 6/10/10 SA Michael Sotka.

I have been asked to evaluate these recordings for authenticity as to the audio recordings contained thereon.

I have listened to these recordings and analyzed them with waveform analysis, time-varying spectral analysis and fundamental frequency analysis.

On the basis of my analyses, I have made the following observations:

Both recordings contain numerous instances of electronic signatures (See graph attached.) such as would be caused by dubbing between recordings and/or editing of recordings.

Both recordings contain gaps that indicate discontinuities. (See graphs attached.) There is no way to know the length of the reality that occurred during the time of the gap.

Both recordings are of poor quality. They have DC bias (See graph attached.), which limits and distorts the amplitude variation in the recorded sounds. The voices are recorded at an extremely low level, with the recording volume at a very low level, which would conceal irregularities and defects in the recordings.

On the recording labeled "166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka," there are discrepancies in the relative volumes of the speakers.

Mr. Robert T. McAllister  
Two Compact Discs-Recordings of June 9<sup>th</sup> and 10<sup>th</sup>, 2010  
Page 2 of 2

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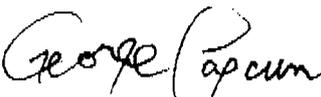
On the recording labeled "166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA Michael Sotka," there appears an extraneous voice.

From my observations, I conclude, within a reasonable degree of scientific probability that the recordings on "166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka," and "166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA Michael Sotka" do not represent a true and valid representation of reality and they are unreliable. They do not accurately reflect the sounds and conversations that actually occurred.

In addition, on the basis of my expertise and experience, I represent that there are methods of editing recordings and voice morphing that would make it possible to modify recordings to change the content of conversations. With commonly available methods, it is possible to remove material, insert material, and alter the meaning of conversations. Software for such analysis and manipulation is commonly available. For example:

Wikipedia in [www.wikipedia.org/wiki/List\\_of\\_free\\_software\\_for\\_audio](http://www.wikipedia.org/wiki/List_of_free_software_for_audio) lists over 30 such programs with a great variety of pertinent capabilities.

Sincerely,



George Papcun, Ph.D.



**George Papcun, Ph.D.**

**17 Goodnight Trail**

**Santa Fe, New Mexico 87506**

505 986 9636

**WEB SITE:** [www.SoundEvidence.com](http://www.SoundEvidence.com)

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**Ph.D.** University of California Los Angeles, Linguistics, Specialization in Acoustic Phonetics

**M.A.** University of California Los Angeles, Formal Linguistics

**B.A.** University of Arizona, Mathematics

**FORENSICS:** Because of his research background, Dr. Papcun has served as an expert witness and consultant in many legal cases, particularly involving speech and language. He has served as a consultant to law enforcement agencies at the local, state and national level.

**Notable forensic analyses include:**

Rodney King v. City of Los Angeles (appearance for Mr. King)

Alaska v. Exxon [Valdez] (for Exxon)

California v. O. J. Simpson (for Associated Press)

Daniel v. Kelly Oil (for Kelly Oil)

Homicide of Jon Benet Ramsey (for Boulder, CO)

Paula Abdul recording (for Ms. Abdul)

Queen v. Kashani-Malaki (Australia, for Kashani)

California v. Wm. and Emily Harris (Patty Hearst kidnapping, for Harris)

Putative "Elvis" recording (appearance on Good Morning America)

Gonzales v. Trinity Marine (for Trinity Marine)

CBS 48 Hours Mystery "The Murder and the Mortgage"

**AWARDS:**

Ford Foundation Fellowship (Graduate)

National Defense Education Fellowship (Graduate)

Johns Hopkins University Award for Computing to Aid Persons with Disabilities

R&D-100 Award for Technological Innovation

National Merit Scholarship (Undergraduate)

000307

**REVIEWER:** National Science Foundation, National Institutes of Health, Strategic Defense Initiative Organization, Journal of the Acoustical Society of America.

**AUTHOR and INSTRUCTOR: "Voice Input/Output for Computers"** As an author and senior instructor for the technical course "Voice Input/Output for Computers" (for the Learning Tree company) Dr. Papcun has taught scientists, and engineers for companies and governmental agencies in the United States and abroad including IBM, Bell Laboratories, The United States Department of State, The United States National Bureau of Standards, Phillips, Siemens and others.

**SPECIAL ASSIGNMENTS:** Dr. Papcun has completed assignments for United States intelligence agencies including the Central Intelligence Agency, the National Security Agency and the Secret Service.

**R&D 100 AWARD:** Dr. Papcun led the Los Alamos National Laboratory research team that developed the "Animated Display of Inferred Tongue, Lip and Jaw Movement," which was selected as an R&D-100 winner, which is accorded to the 100 most significant technical developments in a year, and was also selected as a National Merit Award winner by the Johns Hopkins National Search for Computing to Aid Persons with Disabilities. This technology uses acoustic analysis to infer a person's articulatory positions when she or he talks into a microphone attached to a specially equipped personal computer. It has applications in speech therapy, in teaching the deaf to speak, and in improving the accuracy of computerized speech recognition.



## PROJECT EXPERIENCE

### **Voice Lock Analysis**

Investigating factors that lead to weaknesses in voice lock systems, including factors that can be exploited in penetrating voice locks. Sponsor: National Security Agency. Role: Principal Investigator.

### **Detecting terrorist deception and intent:**

Beyond polygraphy, taking situation into account, developing advanced technology for detecting terrorist deception and intent. Sponsor: Department of Homeland Security. Role: Developing overall strategy for research.

### **Link Analysis:**

"Who Do" Discovering extended connections among people and institutions, Sponsor: CIA, Role: Principal Investigator.

### **Voice Stress Analysis for Secret Service Employment Testing**

Determining factors that differential stress in various parts of an employment interview for the United States Secret Service. Role: Voice analysis and statistical analysis.

### **Text analysis and information extraction:**

Extracting protein/protein interactions from research articles in biological literature. Sponsor: Procter and Gamble. Role: Researcher for information extraction.

Extracting kinase interactions from research articles in biological literature. Sponsor: Laboratory Research and Development project, Role: Researcher for information extraction.

Extracting information about terrorist activities from HUMINT reports and open source literature. Sponsor: [Not to be released] and Division and Laboratory Directed Research and Development, Role: Researcher for information extraction.

### **Lexical management for interoperable systems:**

Making diverse systems and terminology commensurable. Sponsor: Department of Homeland Security, Role: Researcher for lexical management.

### **Critical infrastructure decision support:**

Providing a model of U.S. critical infrastructures in such a way as to support decisions regarding resource allocation and crisis intervention. Sponsor: Department of Homeland Security. Role: Researcher for model creation.

## EMPLOYMENT

1971-Present: Forensic Consultant

1982- 2005: Los Alamos National Laboratory, Member of the Technical Staff in the Computer Research Division, Team Leader

1986-1988: Member of the Executive Committee, Center for Nonlinear Mathematical Studies, Los Alamos National Laboratory

1980-1983: Integrated Computer Systems "The Learning Tree" Author and Senior Instructor

1970-1973: Phonetics Laboratory, University of California, Los Angeles, Research Associate

1973-1976: Aerospace Corporation, El Segundo, CA, Member of the Technical Staff

## SELECTED PUBLICATIONS

Papcun, G., K. Sentz, A. Fulmer, J. Xu, O. Lubeck, M. Wolinsky "(2003) "A Construction Grammar Approach to Extracting Regulatory Relationships from Biological Literature," *Pacific Symposium on Biology*, Kauai, HI, Jan. 3-7.

Nix, D., G. Papcun, J. Hogden and I. Zlokarnik (1996) "Two Cross-Linguistic Factors Underlying Tongue Shapes for Vowels," *Journal of the Acoustic Society of America* **99**, 3707-3717.

Papcun, G., J. Hochberg, F. Laroche, T. Thomas, J. Zacks and S. Levy (1991) "Inferring Articulation from Acoustics and Recognizing Gestures with a Neural Network Trained on X-ray Microbeam Data," *Journal of the Acoustical Society of America* **92**, 688-700.

Hochberg, J., S. M. Mniszewski, T. Calleja, and G. J. Papcun (1991 ) "A Default Hierarchy for Pronouncing English," *IEEE Transactions on Pattern Analysis and Machine Intelligence* **13**, 957-964,.

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Report on the Rodney King Trial Analysis (1999) in "**Letters of the Century**" Grunwald and Adler (Eds.) Dial Press.

Rice, L. and G. Papcun, (1980) *Voice I/O for Computers, Integrated Computer Systems*, Learning Tree Press, Santa Monica, CA.

Hochberg, J., F. Laroche, S. Levy, G. Papcun, & T. R. Thomas (1992) "An Animated Display of Tongue, Lip and Jaw Movements During Speech: A Proper Basis for Speech Aids to the Handicapped and Other Speech Technologies," *IEEE New Directions Proceedings*.

Papcun, G. (1992) "A New Approach to Computerized Speech Analysis," *Los Alamos National Laboratory Research and Development Reports*, July 1992.

Kreiman, J. and G. Papcun (1991) "Comparing Discrimination and Recognition of Unfamiliar Voices," *Speech Communication* **10**, 265-275.

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Marusak, N. L., K. P. Berkbigler and G. Papcun (1989) "An Expert System for Assisting in Geologic Site Characterization," *Proceedings of the 5<sup>th</sup> Symposium on Containment of Underground Nuclear Detonations*, September 18-22, 1989, Santa Barbara, CA.

Berkbigler, K. P. G. Papcun, N. Marusak and J. Hutson (1989) "Applying Expertise to Data in the Geologist's Assistant," *Proceedings of the American Nuclear Society Third Topical Meeting on Robotics and Remote Systems*, March 13-16, 1989, Charleston, SC.

Davis, A. R. and G. Papcun (1987) "The Structure Underlying a Semantic Domain" in **The Mathematics of Language**, Manaster-Ramer (Ed.) Benjamins, The Netherlands.

Papcun, G. and A. R. Davis (1987) "What it Means to Convince," Presented at *The Congress of Mathematical Linguistics*, University of Michigan, November, 1987.

Papcun, G. and J. Kreiman (1988) "Voice Features in Long-Term Memory," (Abstract) *Journal of the Acoustical Society of America*.

Thomas, T. R. G. Papcun, S. Willey and K. Ganethan (1988) "Enhanced Speaker Identification through the Use of Cepstral Coefficients and Redundant Time-Frame Elimination," *Journal of the Acoustical Society of America* **83**, S53.

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**B. and F. Chatelin (Eds.)** North-Holland, Elsevier: New York. Originally presented at IFIP TC 2/Working Conference on Problem-Solving, June 17-25, Sophia-Antipolis, France.

Papcun, G., A. R. Davis and W. Ford (1984) "The Use of Dynamically Varying Thresholds as a Means of Improving the Performance of Voice Input Systems," *Voice I/O Systems Applications Conference 84 Proceedings*, Arlington, VA, September, 1984.

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Papcun, G., W. Ford and A. R. Davis (1983) "Signal Detection and Classification Analyses of Voice Input Systems," *Proceedings of the Annual Meeting of the American Voice I/O Society*.

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Papcun, G. (1973) **Voiceprint Application Manual**, Aerospace Corporation, El Segundo, CA.

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Ladefoged, P., L. R. Silverstein and G. Papcun (1973) "The Interruptibility of Speech," *The Journal of the Acoustical Society of America* **54**, 1105.

Ladefoged, P. L., J. DeClerk, M. Lindau and G. Papcun (1972) "An Auditory-Motor Theory of Speech Production," *Working Papers in Phonetics* **22**, UCLA.

Papcun, G., S. Krashen and D. Terbeek (1972) "The Left Hemisphere is Specialized for Speech, Language and Something Else," *Working Papers in Phonetics*, **21**, UCLA.

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Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF IDAHO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR STEELE,

Defendant.

CASE NO. 10-CV-148-N-BLW

APPLICATION OF ROBERT T.  
McALLISTER TO APPEAR  
PRO HAC VICE PURSUANT TO  
ULE 44.1

Now comes Robert T. McAllister and states under oath as follows:

APPLICATION OF ROBERT T. McALLISTER TO APPEAR  
PRO HAC VICE PURSUANT TO RULE 44.1 -1-



CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of February, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Traci J. Whelan [ ] U.S. Mail  
Assistant U.S. Attorney [ ] Hand Delivered  
6450 N Mineral Drive, Suite 210 [ ] Facsimile  
Coeur d'Alene, Id 83815 [X] Via Electronic Mail  
Traci.Whelan@usdoj.gov  
Attorneys for Plaintiff USA

D Marc Haws [ ] U.S. Mail  
Assistant U.S. Attorney [ ] Hand Delivered  
MK Plaza, Plaza IV [ ] Facsimile  
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morankel@mac.com  
kim\_deater@fd.org

Attorneys for Defendant

/s/ Gary I. Amendola  
Gary I. Amendola

APPLICATION OF ROBERT T. McALLISTER TO APPEAR  
PRO HAC VICE PURSUANT TO RULE 44.1 -4-

SDC  
Form Pro Hac Vice

IN THE UNITED STATES DISTRICT BANKRUPTCY COURTS  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA

Case No. 10 CR-148-N-BLW

v.  
EDGAR J. STEELE

APPLICATION FOR ADMISSION  
PRO HAC VICE

Fee: \$200.00

Pursuant to Local Rule 83.4(a) of the United States District Court for the District of Idaho,  
ROBERT T. MCALLISTER, hereby applies for admission pro hac vice to appear and participate  
in this case on behalf of EDGAR J. STEELE

The applicant hereby attests as follows:

1. Applicant resides in DENVER, COLORADO and practices at the following  
address and phone number: 2950 S. UMATILLA, UNCLEWOOD, COLORADO, 80110 (303) 478-3287

2. Applicant has been admitted to practice before the following courts on the following dates:

COURT	DATE
US SUPREME COURT	05/22/1978
STATE OF COLORADO	09/23/1980

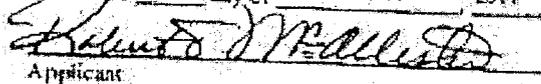
3. Applicant is in good standing and eligible to practice in said courts.

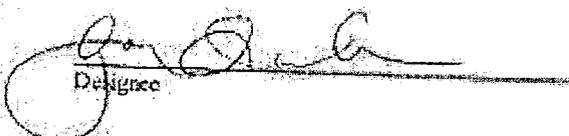
4. Applicant is not currently suspended or disbarred in any other courts.

5. GARY I. AMENDOLA, a member in good standing of the bar of this court, of the firm of  
AMENDOLA & DOTY, PLLC, practices at the following office address and phone number:  
702 N 4TH STREET, COEUR D'ALENE, ID: 83814 (208) 694-8225

and is hereby designated as co-counsel with authority to act as attorney of record for all purposes. Said designee hereby consents  
to this designation by signing this application.

Dated this 11 day of FEBRUARY 2011

  
Applicant

  
Designee

Signed under penalty of perjury.

ORIGINAL

WENDY J. OLSON, IDAHO BAR #7634  
UNITED STATES ATTORNEY  
TRACI J. WHELAN, IDAHO BAR #4416  
ASSISTANT UNITED STATES ATTORNEY  
DISTRICT OF IDAHO  
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR J. STEELE,

Defendant.

Case No. 10-148-N-BLW

**SUPERSEDING INDICTMENT**

18 U.S.C. § 1958  
18 U.S.C. § 844(h)  
18 U.S.C. § 924 (c)(1)(B)(ii)  
18 U.S.C. § 1512(b)(3)

The Grand Jury charges that:

**COUNT ONE**

**Use of Interstate Commerce Facilities in the Commission of Murder for Hire  
18 U.S.C. § 1958**

Beginning in approximately December 2009 and continuing to June 11, 2010, in the District of Idaho and elsewhere, the defendant, Edgar J. Steele, attempted and caused another to travel in interstate commerce from Idaho to Oregon, with the intent that the murders of his wife C.K.S. and mother-in-law J.K. be committed in violation of the laws of the States of Idaho and Oregon, as consideration for the receipt of money, and a promise and agreement to pay something of pecuniary value; all in violation of Title 18, United States Code, Section 1958.

**COUNT TWO**

**Use of Explosive Material to Commit Federal Felony  
18 U.S.C. § 844(h)**

Between on or about the 27th and the 31st of May, 2010, in the District of Idaho, the defendant, Edgar J. Steele, aided and abetted in the knowing use of an explosive devise, to wit: a pipe bomb, in an attempt to commit Use of Interstate Commerce Facilities for Murder-for-Hire, a felony prosecutable in a court of the United States under Title 18, United States Code, Section 1958; all in violation of Title 18, United States Code, Sections 2 and 844(h).

SUPERSEDING INDICTMENT - 1

000319

**COUNT THREE**

**Possession of a Destructive Device in Relation to a Crime of Violence  
18 U.S.C. § 924(c)(1)(B)(ii)**

Between on or about the 27th and the 31st of May, 2010 District of Idaho, the defendant, Edgar J. Steele, did aid and abet in the knowing possession of a destructive devise in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is, Use of Interstate Commerce Facilities for Murder-for-Hire, in violation of Title 18, United States Code, Section 1958; all in violation of Title 18, United States Code, Sections 2 and 924(c)(1)(B)(ii).

**COUNT FOUR**

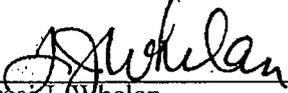
**Tampering with a Victim  
18 U.S.C. § 1512(b)(3)**

Between on or about the 11th and the 16th day of June, 2010 in the District of Idaho, the defendant, Edgar J. Steele, did knowingly attempt to intimidate and corruptly persuade C.K.S. to engage in misleading conduct regarding the identity of a voice on a tape recording with the intent to hinder and prevent that information from being provided to a law enforcement officer relating to the possible commission of a federal offense, to wit: Use of Interstate Commerce Facilities for Murder-for-Hire, in violation of Title 18, United States Code, Section 1958; all in violation of Title 18, United States Code, Section 1512(b)(3).

DATED this 20th day of July 2010.

A TRUE BILL  
/s/ (Signed on Back)  
\_\_\_\_\_  
Foreperson

WENDY J. OLSON  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
Traer J. Whelan  
Assistant United States Attorney

SUPERSEDING INDICTMENT - 2

000320

APPEAL,LC3,PROTO,TERMED

**U.S. District Court**  
**District of Idaho (LIVE Database) Version 5.1.1 (CDA - Northern)**  
**CRIMINAL DOCKET FOR CASE #: 2:10-cr-00148-BLW All Defendants**

Case title: USA v. Steele  
Other court case number: 11-73346 Ninth Circuit Court of Appeals  
Magistrate judge case number: 2:10-mj-06860-LMB

Date Filed: 06/15/2010  
Date Terminated: 11/14/2011

Assigned to: Judge B. Lynn Winmill  
Appeals court case number: 12-30005 Ninth  
Circuit Court of Appeals

**Defendant (1)**

**Edgar J Steele**  
*TERMINATED: 11/14/2011*

represented by **Gary I Amendola**  
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000321

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ATTORNEY TO BE NOTICED  
Designation: Retained

**Pending Counts**

USE OF INTERSTATE COMMERCE  
FACILITIES IN THE COMMISSION FOR  
MURDER FOR HIRE

(1)

USE OF INTERSTATE COMMERCE  
FACILITIES IN THE COMMISSION FOR  
MURDER FOR HIRE

(1s)

USE OF EXPLOSIVE MATERIAL TO COMMIT  
FEDERAL FELONY

(2s)

POSSESSION OF A DESTRUCTIVE DEVICE  
IN RELATION TO A CRIME OF VIOLENCE

(3s)

TAMPERING WITH A VICTIM

(4s)

**Highest Offense Level (Opening)**

Felony

**Disposition**

120 months

120 months to run consecutive to Count 1

360 months to run consecutive to Counts 1 and 2

60 months to run concurrent with Count 1

000322

**Terminated Counts**

None

**Disposition**

**Highest Offense Level (Terminated)**

None

**Complaints**

USE OF INTERSTATE COMMERCE  
 FACILITIES IN THE COMMISSION FOR  
 MURDER FOR HIRE

**Disposition**

**Plaintiff**

USA

represented by **D Marc Haws**  
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*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
06/11/2010	<u>1</u>	COMPLAINT (Notice sent to USP & USM) as to Edgar J Steele (1). (Attachments: # <u>1</u> Affidavit Sealed for personal identifiers) (cjm) [2:10-mj-06860-LMB]
06/11/2010	<u>35</u>	Bench Warrant Returned Executed in complaint case 10-6860. Warrant Returned was filed with the Clerks Office on 8/6/10 in case as to Edgar J Steele. (jm) (Entered: 08/09/2010)
06/14/2010	<u>3</u>	DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele (Notice sent to USP & USM) Initial Appearance set for 6/14/2010 03:30 PM in Coeur d Alene, ID before Judge Candy W Dale. (ah) [2:10-mj-06860-LMB]
06/14/2010	<u>4</u>	MOTION for Detention (Notice sent to USP) by USA as to Edgar J Steele. (Motion references incorrect case number.) (cjm) [2:10-mj-06860-LMB]
06/15/2010	<u>5</u>	AMENDED DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele (Notice sent to USP & USM) Initial Appearance previously set for 6/14/2010 03:30 PM is hereby RE-SET for 6/15/2010 04:30 PM in Coeur d Alene, ID before Judge Candy W Dale. (ah) [2:10-mj-06860-LMB]
06/15/2010	<u>6</u>	INDICTMENT (Notice sent to USP & USM) as to Edgar J Steele (1) count(s) 1. (Attachments: # <u>1</u> Cover Sheet, # <u>2</u> Service Information Sheet, # <u>3</u> Sealed Foreperson Signature) (cjm)
06/15/2010	<u>8</u>	Docket Text Minute Entry for proceedings held before Judge Candy W Dale: Initial Appearance/Arraignment as to Edgar J Steele (1) Count 1 held on 6/15/2010. Plea entered Not Guilty.

		Rights advised. (Jury Trial set for 8/16/2010 01:30 PM in Coeur d Alene, ID before Judge B. Lynn Winnmill, Telephonic Pretrial Conference set for 8/5/2010 04:00 PM before Judge B. Lynn Winnmill.) (Notice sent to USP & USM) Detention Hearing requested. (Video Detention Hearing set for 6/22/2010 09:30 AM in Boise-CDA before Judge Candy W Dale.) Order of Temporary Detention entered. (ESR L. Parson.) (ah) (Entered: 06/17/2010)
06/15/2010	<u>9</u>	DOCKET TEXT PROCEDURAL ORDER AND NOTICE SETTING TRIAL: as to Edgar J Steele. The Defendant and Government hereby select the standard reciprocal discovery elections. Search Warrant(s) were executed in this matter. At this time, Government objects to release and production of related materials pending further proceedings in this matter. Government requests notice of alibi. Parties shall adhere to all provisions of the Criminal Procedural Order, as listed in General Order #242. It is so ordered. (Jury Trial set for 8/16/2010 01:30 PM in Coeur d Alene, ID before Judge B. Lynn Winnmill, Telephonic Pretrial Conference set for 8/5/2010 04:00 PM before Judge B. Lynn Winnmill. The government is directed to initiate the conference call with opposing counsel on the line to (208) 334-9145.) Signed by Judge Candy W. Dale. (ah) (Entered: 06/17/2010)
06/15/2010	<u>10</u>	CJA 23 Financial Affidavit by Edgar J Steele (jm) Modified on 6/18/2010 to correct the file date to 6/15/10 (jm). (Entered: 06/18/2010)
06/15/2010	<u>11</u>	ORDER OF TEMPORARY DETENTION (Notice sent to USP & USM). Signed by Judge Candy W Dale.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm) (Entered: 06/18/2010)
06/17/2010	<u>7</u>	REDACTION by USA as to Edgar J Steele to <u>1</u> Affidavit to Complaint, (Notice sent to USM) (Whelan, Traci)
06/18/2010	<u>12</u>	AMENDED DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele (Notice sent to USP & USM) Detention Hearing set for 6/22/2010 09:30 AM in Coeur d Alene, ID before Judge Candy W Dale. (Notice amended to reflect hearing will take place in-person, rather than by video conference as originally scheduled) (ah)
06/18/2010	<u>13</u>	AMENDED DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele. Due to the Court's calendar, the Jury Trial is reset for 8/9/2010 at 1:30 PM in Coeur d Alene, ID before Judge B. Lynn Winnmill and the Telephonic Trial Readiness Conference is reset for 7/29/2010 at 4:00 PM before Judge B. Lynn Winnmill. (Notice sent to USP & USM)(jlg)
06/21/2010	<u>14</u>	NOTICE OF ATTORNEY APPEARANCE: Roger Peven appearing for Edgar J Steele (Notice sent to USM) (Peven, Roger)
06/21/2010	<u>15</u>	NOTICE OF ATTORNEY APPEARANCE: Kailey E. Moran appearing for Edgar J Steele (Notice sent to USM) (Moran, Kailey)
06/22/2010	<u>17</u>	Minute Entry for proceedings held before Judge Candy W Dale: Detention Hearing as to Edgar J Steele held on 6/22/2010. (Notice sent to USP & USM) Following oral argument by both parties in this matter, the Court orders the Defendant detained and remanded to USMS custody. Oral ruling as stated on the record. Detention Order entered. No contact order previously imposed between Defendant and named victims in the Indictment shall be continued. (ESR R. Buck.) (ah) (Entered: 06/29/2010)
06/22/2010	<u>18</u>	DETENTION ORDER as to Edgar J Steele (Notice sent to USP & USM). Signed by Judge Candy W Dale.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm) (Entered: 06/29/2010)
06/28/2010	<u>16</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
07/08/2010	<u>19</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
07/12/2010	<u>20</u>	EMERGENCY MOTION for Temporary Injunction to Search of Computers Seized from Defendant's Home by Edgar J Steele. (Moran, Kailey) Modified on 7/14/2010 to edit text (jm).
07/12/2010	<u>21</u>	MEMORANDUM in Support by Edgar J Steele re <u>20</u> MOTION Temporary Injunction (Moran, Kailey)

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07/14/2010	<u>22</u>	DOCKET ENTRY ORDER as to Edgar J. Steele (Notice sent to USM). IT IS HEREBY ORDERED THAT a telephonic hearing will be conducted on the Emergency Motion for Temporary Injunction <u>20</u> on Wednesday, July 21, 2010 at 4:00 p.m. Mountain time, which is 3:00 p.m. Pacific time. Defense counsel will place the call to the Courtroom at (208) 334-9697, with opposing counsel on the line. Additionally, the briefing schedule is as follows: (1) the deadline for the Response brief to be filed is July 19, 2010 at 5:00 p.m.; and (2) the deadline for the Reply brief, if any, is July 20, 2010 at 5:00 p.m. Signed by Judge B. Lynn Winmill. (sbh)
07/14/2010		Set/Reset Deadlines re Motion in case as to Edgar J Steele <u>20</u> MOTION Temporary Injunction. Telephonic Motion Hearing set for 7/21/2010 04:00 PM Mountain Time, (3:00 PM Pacific Time) in Boise-CDA before Judge B. Lynn Winmill. (jm)
07/17/2010	<u>23</u>	MOTION to Continue by Edgar J Steele. (Peven, Roger)
07/19/2010	<u>24</u>	RESPONSE in Opposition by USA as to Edgar J Steele re <u>20</u> MOTION Temporary Injunction (Mitchell, Michael)
07/20/2010	<u>25</u>	SUPERSEDING INDICTMENT (Notice sent to USP & USM) as to Edgar J Steele (1) count(s) 1s, 2s, 3s, 4s. (Attachments: # <u>1</u> Cover Sheet, # <u>2</u> Service Information Sheet) (jm) (Additional attachment(s) added on 7/23/2010: # <u>3</u> sealed foreperson's signature) (jm). (Entered: 07/21/2010)
07/21/2010	<u>26</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
07/21/2010	<u>27</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill: Motion Hearing as to Edgar J Steele held on 7/21/2010 re <u>20</u> MOTION Temporary Injunction filed by Edgar J Steele (Court Reporter/ESR THohenleitner.) (td)
07/22/2010	<u>28</u>	NOTICE OF HEARING as to Edgar J Steele (Notice sent to USP & USM) Arraignment on Superseding Indictment via videoconference set for 7/28/2010 02:30 PM MDT (1:30 PM PDT) in Boise-CDA before Judge Candy W Dale. (jm)
07/23/2010	<u>29</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
07/28/2010	30	Docket Text Minute Entry for proceedings held before Judge Candy W Dale: Appearance by Michael Mitchell, Traci Whelan and Extern Laura Keyes for the Government; Federal Defender Roger Peven previously appointed for the Defendant. Court inquired re: Defendant's financial status. Previous appointment of the Federal Defender to be continued. Video Arraignment as to Edgar J Steele (1) Count 1s, 2s, 3s, 4s held on 7/28/2010. Plea entered Not Guilty. Rights advised. (Notice sent to USP & USM) Jury Trial presently set for 8/16/2010 01:30 PM in Coeur d Alene, ID before Judge B. Lynn Winmill. Defendant's Motion to Continue Trial Date still pending. Detention Order previously entered shall be continued. (ESR V. Jones.) (ah) (Entered: 07/29/2010)
07/30/2010	<u>31</u>	MOTION to Continue <i>Supplement to Original Motion</i> by Edgar J Steele. (Peven, Roger)
07/30/2010	<u>32</u>	ORDER Granting <u>23</u> Motion to Continue (Notice sent to USM) as to Edgar J Steele (1), Granting <u>31</u> Supplemental Motion to Continue (Notice sent to USM) as to Edgar J Steele (1). Jury Trial RESET for 11/1/2010 01:30 PM in Coeur d Alene, ID before Judge B. Lynn Winmill. Telephonic Trial Readiness Conference RESET for 10/21/2010 04:00 PM in Boise Chambers before Judge B. Lynn Winmill. Speedy trial excludable time 8/9/10 to 11/1/10. All pretrial motions due by 10/4/10. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm)
08/03/2010	<u>33</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
08/05/2010	<u>34</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
08/09/2010	<u>36</u>	MOTION One-Time Visit by Edgar J Steele. (Peven, Roger)
08/11/2010	<u>37</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)

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08/11/2010	<u>38</u>	ORDER Granting <u>36</u> Motion to Permit a One Time Visit as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm) (Entered: 08/12/2010)
08/17/2010	<u>39</u>	NOTICE to Court of Possible Violation of Court Order by USA as to Edgar J Steele (Whelan, Traci)
08/23/2010	<u>40</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Responmse and Demand for Reciprocal Discovery</i> (Whelan, Traci)
09/13/2010	<u>41</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
09/23/2010	<u>42</u>	NOTICE OF ATTORNEY APPEARANCE D Marc Haws appearing for USA. (Notice sent to USM) (Haws, D)
09/24/2010	<u>43</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
09/26/2010	<u>44</u>	NOTICE of Appearance by Cyndi Steele as to Edgar J Steele (Hoyt, Wesley)
09/27/2010	<u>45</u>	MOTION to Vacate <i>No Contct Order</i> by Cyndi Steele as to Edgar J Steele. (Hoyt, Wesley)
09/28/2010	<u>46</u>	DOCKET ENTRY NOTICE OF HEARING ON MOTION in case as to Edgar J Steele re <u>45</u> Motion to Vacate No Contact Order: A Motion Hearing is set for October 7, 2010 at 9:30 AM in Coeur d Alene, ID before Judge B. Lynn Winmill. The deadline for parties to file a response to the Motion to Vacate the No Contact Order is Friday, October 1, 2010. (Notice sent to USP & USM)(jlg)
09/28/2010	<u>47</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
09/28/2010	<u>48</u>	DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele - An In Person Status Conference is set for 10/7/2010 at 10:00 AM in Coeur d Alene, ID before Judge B. Lynn Winmill. (Notice sent to USP & USM)(jlg)
09/28/2010	<u>49</u>	MOTION to Continue <i>Response to Motion to Vacate No Contact Order</i> by USA as to Edgar J Steele. (Whelan, Traci)
09/28/2010	<u>50</u>	DOCKET ENTRY ORDER. The Government's <u>49</u> Motion to Continue Time To Respond to Motion to Vacate No Contact Order is GRANTED. The Government shall have until Monday, October 4, 2010 to file a response to the motion to vacate no contact order. Defendant may also have until Monday, October 4, 2010 to file a response brief. (Notice sent to USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (js)
09/28/2010	<u>51</u>	DOCKET ENTRY ORDER. Based on the parties' stipulation as discussed at the July 21, 2010 hearing, and as reflected in the Court minutes, the Government shall not access the contents of Defendant's computer hardware/peripheral until and unless a further serach warrant is obtained pursuant to current applicable case law. Accordingly, the <u>20</u> Motion for Temporary Injunction is Denied Without Prejudice. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of electronic Filing (NEF) by (js)
09/28/2010		Set/Reset Deadlines re Motion or Report and Recommendation in case as to Edgar J Steele <u>45</u> MOTION to Vacate <i>No Contct Order</i> . Responses due by 10/4/2010 as per Order dkt #50 (jm) (Entered: 09/30/2010)
10/01/2010		Set Hearings as to Edgar J Steele: In Person Status Conference set for 10/7/2010 at 10:00 AM in Coeur d Alene, ID before Judge B. Lynn Winmill. (jlg)
10/04/2010	<u>52</u>	RESPONSE in Opposition by USA as to Edgar J Steele re <u>45</u> MOTION to Vacate <i>No Contct Order Opposition to Motion to Vacate No Contact Order</i> (Attachments: # <u>1</u> Exhibit Transcript)(Whelan, Traci)
10/05/2010	<u>53</u>	MOTION to Continue by Edgar J Steele. (Attachments: # <u>1</u> proposed order)(Peven, Roger)
10/05/2010	<u>54</u>	MOTION for Disclosure by Edgar J Steele. (Peven, Roger)
10/05/2010	<u>55</u>	MEMORANDUM in Support by Edgar J Steele re <u>54</u> MOTION for Disclosure (Peven, Roger)

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10/05/2010		CORRECTIVE ENTRY - The entry document number <u>53</u> MOTION to Continue filed by Edgar J Steele was filed incorrectly in this case. Pursuant to the ECF Procedures, section 12B, all proposed orders are to be submitted by email to the appropriate Judges proposed order email box. The filing party shall re-submit their proposed order. (cjm)
10/06/2010	<u>56</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
10/07/2010	<u>57</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill: Motion Hearing as to Edgar J Steele held on 10/7/2010 re <u>53</u> Motion to Continue filed by Edgar J Steele, and <u>45</u> Motion to Vacate No Contact Order filed by Cyndi Steele. Motions taken under advisement. (Court Reporter Tammy Hohenleitner.) (jlg)
10/10/2010	<u>58</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
10/15/2010	<u>60</u>	RESPONSE to Motion by USA as to Edgar J Steele re <u>54</u> MOTION for Disclosure <i>Government's Memorandum in Response to Defendant's Motion for Disclosure of Informant Material</i> (Attachments: # <u>1</u> Attachment A, # <u>2</u> Attachment B)(Haws, D)
10/18/2010	<u>61</u>	MEMORANDUM DECISION AND ORDER granting in part and denying in part <u>45</u> Motion to Vacate (Notice sent to USM) as to Edgar J Steele (1); granting <u>53</u> Motion to Continue (Notice sent to USM) as to Edgar J Steele (1)(Jury Trial reset for 3/7/2011 01:30 PM in Coeur d Alene, ID before Judge B. Lynn Winmill., Telephonic Trial Readiness Conference reset for 2/24/2011 04:00 PM in Boise Chambers before Judge B. Lynn Winmill.) Excludable delay ordered from 11/1/2010 to 3/7/2011. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm) (Entered: 10/19/2010)
11/03/2010	<u>62</u>	Transcript of Proceedings as to Edgar J Steele held on 10/7/2010 (Motion Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/29/2010. Redacted Transcript Deadline set for 12/9/2010. Release of Transcript Restriction set for 2/4/2011. (cjm) (Entered: 11/05/2010)
11/05/2010	<u>63</u>	Notice of Filing of Official Transcript (cjm)
11/18/2010	<u>64</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
12/21/2010	<u>65</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
01/24/2011	<u>66</u>	DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele - A Telephonic Status Conference is set for 1/26/2011 at 2:00 p.m. Mountain Time, (which is 1:00 p.m. Pacific Time) before Judge B. Lynn Winmill. The Court will initiate the conference call. Counsel shall email contact information to Jamie Gearhart at Jamie_Gearhart@id.uscourts.gov prior to the conference call. The Court may find it necessary to speak with Defense Counsel ex parte prior to contacting the Government for the Status Conference. (Notice sent to USP & USM)(jlg)
01/26/2011	<u>67</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill: Telephonic Status Conference as to Edgar J Steele held on 1/26/2011. An In Person Status Conference is set for 2/7/2011 at 1:30 PM in Coeur d Alene - District Courtroom before Judge B. Lynn Winmill. (Notice sent to USM) (Court Reporter Tammy Hohenleitner.) (jlg) (Entered: 01/27/2011)
02/01/2011	<u>68</u>	AMENDED DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele - The In Person Status Conference set for 2/7/2011 at 1:30 p.m. has been RESCHEDULED to begin at 9:00 a.m. in Coeur d Alene - District Courtroom before Judge B. Lynn Winmill. Please note, this is a time change only. (Notice sent to USP & USM)(jlg)
02/02/2011	<u>69</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)

02/03/2011	<u>70</u>	STIPULATION by USA (Haws, D)
02/04/2011	<u>71</u>	SEALED MOTION by USA as to Edgar J Steele. (Attachments: # <u>1</u> Attachment)(Whelan, Traci)
02/04/2011	<u>72</u>	Expert Witness Disclosure by USA as to Edgar J Steele (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B-Part 1, # <u>3</u> Exhibit B-Part 2, # <u>4</u> Exhibit B-Part 3, # <u>5</u> Exhibit B-Part 4, # <u>6</u> Exhibit B-Part 5, # <u>7</u> Exhibit C)(Haws, D)
02/06/2011	<u>73</u>	SEALED RESPONSE to Motion by Edgar J Steele re <u>71</u> SEALED MOTION (Attachments: # <u>1</u> Sealed Spokane County Jail Policy)(Peven, Roger)
02/07/2011	<u>74</u>	MOTION to Substitute Attorney by Edgar J Steele. (Amendola, Gary)
02/07/2011	<u>75</u>	MOTION FOR PRO HAC VICE APPEARANCE by Gary I Amendola for Robert T. McAllister ( Filing fee \$ 200 receipt number 0976-708736.) by on behalf of Edgar J Steele as to Edgar J Steele. (Amendola, Gary) (Additional attachment(s) added on 2/11/2011: # <u>1</u> Correct PHV Form) (cjm).
02/07/2011	<u>76</u>	Subpoena Returned Executed served Sheriff Ozzie Knezovich and/or Spokane County Jail on 2/4/2011. (Notice sent to USM) (cjm)
02/07/2011	<u>77</u>	DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele - A Telephonic Status Conference is set for 2/9/2011 at 1:45 p.m. Mountain Time (12:45 Pacific Time) before Judge B. Lynn Winmill. The Court will provide counsel with call in information in a separate email. (Notice sent to USP & USM)(jlg)
02/07/2011	<u>78</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
02/07/2011	<u>80</u>	SEALED Minute Entry for proceedings held before Judge B. Lynn Winmill:Motion Hearing as to Edgar J Steele held on 2/7/2011 re <u>74</u> MOTION to Substitute Attorney filed by Edgar J Steele. (Court Reporter/ESR Tammy Hohenleitner.) (lp) (Entered: 02/08/2011)
02/08/2011	<u>79</u>	ORDER as to Edgar J Steele re: monitored visits between Defendant and Mrs Steele (Notice sent to USM). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
02/08/2011	<u>81</u>	Sealed Document Re: <u>71</u> SEALED MOTION (Attachments: # <u>1</u> Affidavit, # <u>2</u> Affidavit)(Whelan, Traci)
02/09/2011	<u>82</u>	MOTION for Bond <i>Secured Property Bond</i> (Notice sent to USP) by Edgar J Steele. (Amendola, Gary)
02/09/2011	<u>83</u>	SUPPLEMENT by Plaintiff USA re <u>72</u> Expert Witness Disclosure filed by USA <i>Supplemental Notice of Expert Witness: John Jermain</i> (Attachments: # <u>1</u> Exhibit C-1 CV, # <u>2</u> Exhibit C-2 Part1, # <u>3</u> Exhibit C-2 Part2, # <u>4</u> Exhibit C-2 Part3, # <u>5</u> Exhibit C-2 Part4, # <u>6</u> Exhibit C-2 Part5)(Haws, D)
02/09/2011	<u>84</u>	Sealed Minute Entry for proceedings held before Judge B. Lynn Winmill:Telephonic Motion Hearing/Status Conference as to Edgar J Steele held on 2/9/2011 re <u>71</u> Sealed Motion filed by USA. (Court Reporter Tammy Hohenleitner.) (jlg) Emailed minutes to Aaron Lucoff, George Breitsameter, Traci Whelan, Gary Amendola, and Robert McAllister on 2/9/2011 (jlg).
02/09/2011	<u>85</u>	WITNESS LIST/NOTICE of <i>Defense and List of Witnesses</i> by Edgar J Steele (Amendola, Gary) Modified on 2/14/2011 to correct event text and seal per corrective entry (cjm).
02/10/2011	<u>86</u>	NOTICE OF HEARING ON MOTION in case as to Edgar J Steele: <u>82</u> MOTION for Bond - <i>Secured Property Bond</i> (Notice sent to USP & USM) Motion Hearing set for 2/16/2011 10:00 AM in Coeur d Alene - Magistrate/Bankruptcy Courtroom before Judge Candy W Dale. (ah)
02/10/2011	<u>87</u>	Sealed Document Re: <u>71</u> SEALED MOTION (Attachments: # <u>1</u> Affidavit)(Whelan, Traci)
02/10/2011	<u>88</u>	Sealed Document <i>Edgar Steele's Response to Government's Motion for Judicial Determination Regarding Waiver of Privilege</i> (Attachments: # <u>1</u> Affidavit)(Amendola, Gary)
02/11/2011	<u>89</u>	DOCKET ENTRY ORDER approving <u>75</u> Motion for Pro Hac Vice Appearance for Robert T McAllister as to Edgar J Steele (1). Per General Order 206, out-of-state counsel shall immediately register for ECF. (Notice sent to CM/ECF Registration Clerk) (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm) Modified on 2/11/2011 to correct attorney name (cjm).

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02/14/2011	<u>91</u>	Sealed Document Re: <u>79</u> Order, Order <i>Notice of Filing Under Seal Recording of Visitation with Defendant</i> (Amendola, Gary) Modified on 2/24/2011 to reflect placed on the shelf in Clerk's office (cjm).
02/14/2011	<u>92</u>	SUPPLEMENT by Defendant Edgar J Steele re <u>82</u> MOTION for Bond <i>Secured Property Bond</i> (Notice sent to USP) filed by Edgar J Steele <i>Exhibits A and B to the Motion for Bond</i> (Attachments: # <u>1</u> Exhibit Exhibit B to ECF # 82)(Amendola, Gary) Modified on 2/14/2011 to reflect sealed by Clerk's office due to content being similar to sentencing letters (cjm).
02/14/2011		CORRECTIVE ENTRY - The entry docket number <u>85</u> Notice (Other) filed by Edgar J Steele was filed incorrectly in this case as the wrong event was used. This should have been filed using sealed event of "Witness List" located under Trial Documents. No action is required at this time by the filing party as the Clerks office will correct event text and seal document. (cjm)
02/15/2011	<u>93</u>	RESPONSE to Motion by USA as to Edgar J Steele re <u>82</u> MOTION for Bond <i>Secured Property Bond</i> (Notice sent to USP) <i>Detention Brief</i> (Attachments: # <u>1</u> Exhibit)(Whelan, Traci)
02/16/2011	<u>94</u>	MOTION for Separate Trial on Counts Edgar J Steele (1) Count 4s by Edgar J Steele. (Amendola, Gary)
02/16/2011	<u>99</u>	Docket Text Minute Entry for proceedings held before Judge Candy W Dale: Motion Hearing held on 2/16/2011 re <u>82</u> MOTION for <i>Secured Property Bond</i> filed by Edgar J Steele. Court considered Motion for Secured Property Bond filed by the Defendant as a Motion to Reopen Detention Hearing. Oral argument heard. Motion DENIED. Oral ruling as stated on the record. Written Order forthcoming. (Notice sent to USP) (ESR L. Parson.) (ah) (Entered: 02/18/2011)
02/17/2011	<u>95</u>	SEALED MOTION <i>Government Motion for an Order to Take and Preserve for Use at Trial the Depositions of Prospective Government Witness</i> by USA as to Edgar J Steele. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Exhibit Exhibit 2)(Whelan, Traci)
02/17/2011	<u>96</u>	Sealed Document Re: <u>95</u> SEALED MOTION <i>Government Motion for an Order to Take and Preserve for Use at Trial the Depositions of Prospective Government Witness Supplement to Exhibit 2</i> (Whelan, Traci)
02/18/2011	<u>97</u>	DOCKET ENTRY ORDER. On or before Tuesday, February 22, 2011, the Government shall file a response to Defendant's Motion to Sever, and the Defendant shall file a response to the Government's sealed motion. (Notice sent to USM). Signed by Judge B. Lynn Winmill. (js)
02/18/2011	<u>98</u>	DOCKET ENTRY ORDER. The Government has asked the Court Reporter for a transcript of the hearing conducted on February 7, 2011. The Court Reporter may provide the Government and defense counsel with a copy of the transcript at their request. However, the Court Reporter may not provide the Government with the portion of the transcript covering the ex parte hearing with Defendant and his attorneys. Additionally, because the hearing was sealed, the attorneys and Defendant shall not disclose the transcript to anyone except the Defendant and the attorneys working for either the Government or Defendant in this case. (Notice sent to USM). Signed by Judge B. Lynn Winmill. (js)
02/18/2011	<u>100</u>	DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele - A Telephonic Hearing is set for Wednesday, February 23, 2011 at 9:00 a.m. Mountain Time (8:00 a.m. Pacific Time) before Judge B. Lynn Winmill. The Court will provide counsel with call in information in a separate email. The Court intends to hear oral argument on the pending motions. With respect to the Governments sealed motion, the Court expects the parties to be ready to discuss whether the Government has met its burden as discussed in the line of Ninth Circuit cases addressing this issue, including <i>US v. Medjuck</i> , 156 F.3d 916 (9th Cir. 1998). If the Court determines that the Government has met its burden, the parties will be expected to discuss: (1) whether the deposition can be conducted entirely by video conference with the deponent, the attorneys and the defendant participating by videoconference, (2) whether such a procedure would violate any rights of the defendant or the government, and (3) what logistical problems may be encountered in proceeding in this way. (Notice sent to USM). Signed by Judge B. Lynn Winmill. (js)
02/18/2011	<u>101</u>	Expert Witness Disclosure by USA as to Edgar J Steele (Haws, D)
02/18/2011	<u>102</u>	MOTION to Exclude by USA as to Edgar J Steele. (Attachments: # <u>1</u> Exhibit Part 1, # <u>2</u> Exhibit Part 2, # <u>3</u> Exhibit Part 3, # <u>4</u> Exhibit Part 4)(Haws, D) Modified on 2/22/2011 to reflect that all Exhibits were sealed due to personal identifiers (cjm).
02/18/2011	<u>103</u>	NOTICE by USA as to Edgar J Steele (Haws, D)

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02/18/2011	<u>104</u>	ORDER denying <u>82</u> Motion for a Secured Property Bond (Notice sent to USP & USM) as to Edgar J Steele (1). Signed by Judge Candy W Dale. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm)
02/18/2011		Set Deadlines re Motion or Report and Recommendation in case as to Edgar J Steele <u>94</u> MOTION for Separate Trial on Counts Edgar J Steele (1) Count 4s, <u>95</u> SEALED MOTION <i>Government Motion for an Order to Take and Preserve for Use at Trial the Depositions of Prospective Government Witness</i> . Telephonic Motion Hearing set for 2/23/2011 09:00 AM (Mountain Time - 8:00 Am Pacific Time) in Boise Chambers before Judge B. Lynn Winmill. Per Order dkt #100.(cjm) (Entered: 02/22/2011)
02/22/2011		CORRECTIVE ENTRY - The entry docket number <u>93</u> Response to Motion filed by USA, <u>95</u> SEALED MOTION <i>Government Motion for an Order to Take and Preserve for Use at Trial the Depositions of Prospective Government Witness</i> filed by USA, <u>94</u> MOTION for Separate Trial on Counts Edgar J Steele (1) Count 4s filed by Edgar J Steele were filed incorrectly in this case. Docket #93, Response is not signed nor is the Certificate of Service dated. Docket #94, Certificate of Service is not signed. Docket #95, Certificate of Service is not dated. The filing party shall re-submit their correct (signed or dated) filings using event of "Errata" located under Other Documents and link to the appropriate docket entry. (cjm)
02/22/2011	<u>105</u>	ERRATA by USA as to Edgar J Steele re <u>93</u> Response to Motion (Whelan, Traci)
02/22/2011	<u>106</u>	Sealed Document Errata Re: <u>95</u> SEALED MOTION <i>Government Motion for an Order to Take and Preserve for Use at Trial the Depositions of Prospective Government Witness</i> Refiled (Whelan, Traci) Modified on 2/22/2011 to include errata in text (cjm).
02/22/2011	<u>107</u>	ORDER as to Edgar J Steele (Notice sent to USM). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm)
02/22/2011	<u>108</u>	ERRATA by Edgar J Steele re <u>94</u> MOTION for Separate Trial on Counts Edgar J Steele (1) Count 4s (Amendola, Gary)
02/22/2011	<u>109</u>	RESPONSE to Motion by USA as to Edgar J Steele re <u>94</u> MOTION for Separate Trial on Counts Edgar J Steele (1) Count 4s (Attachments: # <u>1</u> Exhibit A)(Haws, D)
02/22/2011	<u>110</u>	MOTION in Limine by Edgar J Steele. (Amendola, Gary)
02/22/2011	<u>111</u>	MOTION to Change Venue by Edgar J Steele. (Amendola, Gary)
02/22/2011	<u>112</u>	SEALED RESPONSE to Motion by Edgar J Steele re <u>95</u> SEALED MOTION <i>Government Motion for an Order to Take and Preserve for Use at Trial the Depositions of Prospective Government Witness</i> (Amendola, Gary)
02/22/2011	<u>113</u>	Sealed Document Re: <u>104</u> Order on Motion for Bond, Order on Motion for Bond <i>Appeal to District Court From Magistrate Dale's Affirmation of Detention Order Dated February 18, 2011</i> (Attachments: # <u>1</u> Attachment Part 2, # <u>2</u> Attachment Part 3, # <u>3</u> Attachment Part 4, # <u>4</u> Attachment Part 5, # <u>5</u> Attachment Part 6)(Amendola, Gary)
02/23/2011	<u>114</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Motion Hearing as to Edgar J Steele held on 2/23/2011 re <u>95</u> Sealed Motion for an Order to Take and Preserve for Use at Trial the Depositions of Prospective Government Witness filed by USA, and <u>94</u> Motion to Sever filed by Edgar J Steele. After oral argument, the Court Granted <u>95</u> Sealed Motion and Denied <u>94</u> Motion to Sever. A written decision is forthcoming. Telephonic Pretrial Conference is set for 2/24/2011 at 4:00 pm Mountain Time before Judge B. Lynn Winmill. (Court Reporter Tammy Hohenleitner.) (jlg)
02/23/2011	<u>115</u>	Sealed Document <i>Sealed Affidavit</i> (Whelan, Traci)
02/23/2011	<u>116</u>	Sealed Document Re: <u>101</u> Expert Witness Disclosure (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Haws, D)
02/23/2011	<u>117</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
02/24/2011	<u>118</u>	Sealed Document <i>Affidavit of Traci J. Whelan</i> (Whelan, Traci)

02/24/2011	<u>120</u>	Sealed Document Re: <u>107</u> Order <i>Notice of Visitation</i> (Amendola, Gary) Modified on 3/9/2011 to reflect placed on shelf in Clerk's office (cjm).
02/24/2011	<u>121</u>	RESPONSE to Motion by USA as to Edgar J Steele re <u>111</u> MOTION to Change Venue (Haws, D)
02/24/2011	<u>125</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill: Pretrial Conference as to Edgar J Steele held on 2/24/2011 (Court Reporter/ESR Tammy Hohenleitner.) (so) (Entered: 02/25/2011)
02/25/2011	<u>122</u>	MEMORANDUM DECISION AND ORDER denying <u>111</u> Motion for Change of Venue (Notice sent to USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
02/25/2011	<u>123</u>	MEMORANDUM DECISION AND ORDER denying <u>94</u> Motion to Sever Count Four and For Separate Trial. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
02/25/2011	<u>124</u>	RESPONSE to Motion by USA as to Edgar J Steele re <u>110</u> MOTION in <i>Limine Government's Response to Defendant's Motion in Limine Regarding Timeliness of Expert Witness Disclosure</i> (Haws, D)
02/25/2011	<u>126</u>	MEMORANDUM DECISION AND ORDER denying <u>113</u> Defendant's Appeal to District Court From Magistrate Judge Dale's Affirmation of Detention Order Dated 2/18/2011 as to Edgar J Steele. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
02/25/2011	<u>127</u>	ORDER as to Edgar J Steel (Notice sent to USM), (Jury Trial reset for 3/7/2011 09:30 AM in Coeur d Alene - District Courtroom before Judge B. Lynn Winmill.). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
02/25/2011	<u>128</u>	MOTION to Continue <i>Trial</i> by Edgar J Steele. (Amendola, Gary) Modified on 2/28/2011 due to witnesses listed (cjm).
02/28/2011		CORRECTIVE ENTRY - The entry docket number <u>128</u> MOTION to Continue <i>Trial</i> filed by Edgar J Steele was filed incorrectly in this case. The Clerk's office has sealed the Motion due to witnesses listed in the pleading. The filing party shall re-submit their redacted version using event of "Redacted Document" located under Other Documents and link to this motion docket #128. (cjm)
02/28/2011	<u>129</u>	Sealed Document <i>United States's Sealed Notice Regarding Docket No. 119</i> (Whelan, Traci)
02/28/2011	<u>130</u>	MEMORANDUM DECISION AND ORDER granting in part and denying in part <u>102</u> Motion to Strike and/or Exclude as to Edgar J Steele (1); denying <u>110</u> Motion in <i>Limine</i> as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
02/28/2011	<u>131</u>	Sealed Document Re: Corrective Entry, Corrective Entry, <u>128</u> MOTION to Continue <i>Trial Motion to Continue Trial</i> (Amendola, Gary)
03/01/2011	<u>132</u>	AMENDED MEMORANDUM DECISION AND ORDER granting in part and denying in part <u>102</u> Motion to Strike and/or Exclude; denying <u>110</u> Motion in <i>Limine</i> as to Edgar J Steele. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
03/01/2011	<u>133</u>	SEALED ORDER as to Edgar J Steele re <u>129</u> Sealed Document (Notice sent to USM). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
03/01/2011	<u>134</u>	RESPONSE in Opposition by USA as to Edgar J Steele re <u>128</u> MOTION to Continue <i>Trial Government's Opposition to Defendant's Motion to Continue</i> (Haws, D)
03/01/2011	<u>135</u>	MEMORANDUM DECISION AND ORDER denying <u>128</u> Motion to Continue (Notice sent to USM) as to Edgar J Steele (1). The Government shall file a statement acknowledging or denying that it has not provided Defendant with a tape containing exculpatory evidence on or before Wednesday, 3/2/2011 at 5:00 pm. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm) (Entered: 03/02/2011)

03/02/2011	<u>136</u>	Proposed Voir Dire by USA as to Edgar J Steele (Whelan, Traci)
03/02/2011	<u>137</u>	Sealed Document <i>Government's Trial Brief</i> (Haws, D)
03/02/2011	<u>138</u>	RESPONSE by USA as to dft Edgar J Steele re <u>135</u> Order on Motion to Continue, Order on Motion to Continue <i>Response to Defendant's Allegation of Failure to Disclose Exculpatory Evidence</i> (Haws, D)
03/02/2011	<u>139</u>	MOTION to Exclude <i>Government's Motion to Exclude Testimony from Any Defense Expert on the Subject of Audio Tapes</i> by USA as to Edgar J Steele. (Haws, D)
03/02/2011	<u>140</u>	Proposed Jury Instructions by USA as to Edgar J Steele (Whelan, Traci)
03/02/2011	<u>141</u>	MOTION for Writ of Habeas Corpus ad testificandum by USA as to Edgar J Steele. (cjm)
03/02/2011	<u>142</u>	ORDER granting <u>141</u> Motion for Writ of Habeas Corpus ad testificandum (Notice sent to USM) as to Edgar J Steele (1). Appearance necessary for Larry Fairfax on 3/8/2011 at 8:00 am in Coeur d'Alene, ID before Judge B. Lynn Winmill. Signed by Judge Candy W Dale. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
03/02/2011	<u>143</u>	WITNESS LIST (sealed) by USA as to Edgar J Steele (Haws, D)
03/02/2011	<u>144</u>	Sealed Document <i>Exhibit List</i> (Haws, D)
03/02/2011	<u>145</u>	Sealed Document Re: <u>79</u> Order, Order, <u>107</u> Order <i>Notice of Visitation</i> (Amendola, Gary) Modified on 3/9/2011 to reflect placed on shelf in Clerk's office (cjm).
03/03/2011	<u>146</u>	SUPPLEMENT by Plaintiff USA re <u>138</u> Response (generic) filed by USA <i>Supplemental Response to Defendant's Allegation of Failure to Disclose Exculpatory Evidence</i> (Haws, D)
03/03/2011	<u>147</u>	SEALED MOTION <i>In Limine to Exclude Government Audio Recordings Dated June 9 and 10, 2010</i> by Edgar J Steele. (Amendola, Gary)
03/03/2011	<u>148</u>	MOTION for Reconsideration re <u>135</u> Order on Motion to Continue, Order on Motion to Continue, <u>132</u> Memorandum Opinion, Memorandum Opinion (Notice sent to USP) by Edgar J Steele. (Attachments: # <u>1</u> Affidavit of Robert McAllister)(Amendola, Gary)
03/04/2011	<u>149</u>	Sealed Document <i>Amended Exhibit List</i> (Haws, D)
03/04/2011	<u>150</u>	MEMORANDUM DECISION AND ORDER denying <u>148</u> Motion for Reconsideration (Notice sent to USP) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
03/04/2011	<u>151</u>	RESPONSE in Opposition by USA as to Edgar J Steele re <u>147</u> SEALED MOTION <i>In Limine to Exclude Government Audio Recordings Dated June 9 and 10, 2010</i> <i>Government's Opposition to Defendant's Motion in Limine to Exclude Government Audio Recordings Dated June 9 and 10, 2010; and Motion to Exclude Dr. Papcun</i> (Attachments: # <u>1</u> Attachment 1 - Attila W. Mathe, # <u>2</u> Attachment 2 - SSA Katrina Gossman)(Whelan, Traci)
03/06/2011	<u>152</u>	SEALED RESPONSE to Motion by Edgar J Steele re <u>139</u> MOTION to Exclude <i>Government's Motion to Exclude Testimony from Any Defense Expert on the Subject of Audio Tapes</i> (Amendola, Gary)
03/07/2011	<u>153</u>	Sealed Document <i>Defendant's List of Witnesses</i> (Amendola, Gary)
03/07/2011	<u>154</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill: Motion Hearing/Pretrial Matters as to Edgar J Steele held on 3/7/2011 re <u>147</u> SEALED MOTION <i>In Limine to Exclude Government Audio Recordings Dated June 9 and 10, 2010</i> ; motion denied. Jury Trial continued to April 26, 2011. (Court Reporter Tammy Hohenleitner.) (jlg)
03/08/2011	<u>155</u>	ORDER as to Edgar J Steele (Notice sent to USM), (Daubert Hearing set for 4/20/2011 01:30 PM in Boise - Courtroom 3 before Judge B. Lynn Winmill., Jury Trial reset for 4/26/2011 09:30 AM in Boise - Courtroom 3 before Judge B. Lynn Winmill.) Excludable Delay Ordered from 3/7/11 to 4/26/11. Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by dks)
03/09/2011	<u>156</u>	Sealed Document Re: <u>79</u> Order, Order, <u>107</u> Order <i>Notice of Visitation</i> (Amendola, Gary) Modified on 4/15/2011 to reflect sealed tape lodged and placed on shelf in Clerk's office (cjm).

03/11/2011	<u>157</u>	APPLICATION for Writ of Habeas Corpus ad testificandum (Larry Fairfax)by USA as to Edgar J Steele. (jm)
03/11/2011	<u>158</u>	ORDER Granting <u>157</u> Application for Writ of Habeas Corpus ad testificandum (Larry Fairfax) (Notice sent to USM) as to Edgar J Steele (1). Signed by Judge Candy W Dale. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm)
03/16/2011	<u>159</u>	SEALED Transcript of Proceedings as to Edgar J Steele held on 2/7/2011 (Sealed Pretrial Conference) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. (cjm) (Entered: 03/17/2011)
03/17/2011	<u>160</u>	Notice of Filing of Official Transcript (cjm)
03/17/2011	<u>161</u>	NOTICE of Disclosure of Expert Reports-Dennis Walsh by Edgar J Steele (Amendola, Gary)
03/17/2011	<u>162</u>	NOTICE of Supplemental Disclosure of Expert Reports - George Papcun, Ph.D. by Edgar J Steele re <u>147</u> SEALED MOTION In Limine to Exclude Government Audio Recordings Dated June 9 and 10, 2010 (Amendola, Gary)
03/17/2011	<u>163</u>	NOTICE of Supplemental Disclosure of Expert Reports-Shelley Chambers Fox by Edgar J Steele (Amendola, Gary)
03/18/2011	<u>164</u>	Sealed Document Re: <u>79</u> Order, Order, <u>107</u> Order Notice of Filing Under Seal Recording of Visitation with Defendant (Amendola, Gary) Modified on 4/15/2011 to reflect sealed tape lodged and placed on shelf in Clerk's office (cjm).
03/22/2011	<u>165</u>	Sealed Document filed by Clerk's Office. (cjm)
03/23/2011	<u>166</u>	MOTION for Psychiatric Exam Government's Motion for a Rule 12.2(c) Order that Defendant be Examined (Notice sent to USM) by USA as to Edgar J Steele. (Haws, D)
03/23/2011	<u>167</u>	RESPONSE to Motion by Edgar J Steele re <u>166</u> MOTION for Psychiatric Exam Government's Motion for a Rule 12.2(c) Order that Defendant be Examined (Notice sent to USM) Defendant's Response to Government's Motion for Medical Examination of Defendant (Amendola, Gary)
03/24/2011	<u>168</u>	Sealed Document Re: <u>79</u> Order, Order, <u>107</u> Order Notice of Visitation (Amendola, Gary) Modified on 4/15/2011 to reflect sealed tape lodged and placed on shelf in Clerk's office (cjm).
03/25/2011	<u>169</u>	MOTION to Strike or in the Alternative Motion to Compel by USA as to Edgar J Steele. (Whelan, Traci)
03/28/2011	<u>170</u>	ORDER granting <u>166</u> Motion for Psychiatric Exam (Notice sent to USP & USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
03/29/2011	<u>171</u>	Sealed Document Re: <u>79</u> Order, Order, <u>107</u> Order Sealed Notice of Visitation (Amendola, Gary) Modified on 4/15/2011 to reflect sealed tape lodged and placed on shelf in Clerk's office (cjm).
03/31/2011	<u>172</u>	MOTION for Writ of Habeas Corpus ad testificandum by Edgar J Steele. (Amendola, Gary)
04/04/2011	<u>173</u>	DOCKET ENTRY NOTICE OF HEARING ON MOTION in case as to Edgar J Steele regarding <u>169</u> Motion to Strike or in the Alternative Motion to Compel: A Telephonic Motion Hearing is set for 4/5/2011 at 2:00 PM Mountain Time (1:00 PM Pacific Time) before Judge B. Lynn Winmill. The Clerk will provide counsel with call in information in a separate email. (Notice sent to USP & USM)(jlg)
04/04/2011	<u>174</u>	SEALED RESPONSE to Motion by Edgar J Steele re <u>169</u> MOTION to Strike or in the Alternative Motion to Compel Response to Motion to Strike or Compel (Attachments: # <u>1</u> Exhibit 1-8)(Amendola, Gary)
04/05/2011	<u>175</u>	SEALED MOTION for Reclassification at Ada County Jail by Edgar J Steele. (Amendola, Gary)
04/05/2011	<u>176</u>	STIPULATION Stipulations Regarding the Admission of Exhibits at Trial by USA (Whelan, Traci)
04/05/2011	<u>177</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Motion Hearing as to Edgar J Steele held on 4/5/2011 re <u>169</u> Motion to Strike or in the Alternative Motion to Compel filed by USA. Motion

		deemed moot based on the hearing. (Court Reporter Tammy Hohenleitner.) (jlg) (Entered: 04/06/2011)
04/06/2011	<u>178</u>	ORDER granting <u>172</u> Motion for Writ of Habeas Corpus ad testificandum (Notice sent to USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by jm) (paper copy to USMS by jm)
04/06/2011	<u>180</u>	Sealed MOTION <i>Government's Motion to Admit Deposition of T. L.</i> (Attachments: # <u>1</u> Attachment A, # <u>2</u> Attachment B)(Whelan, Traci) Modified on 4/13/2011 to amend to a motion (cjm).
04/07/2011	<u>181</u>	AMENDED ORDER as to Edgar J Steele granting <u>172</u> MOTION for Writ of Habeas Corpus ad testificandum filed by Edgar J Steele (Notice sent to USM). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)(paper copy to USM by cjm)
04/07/2011	<u>182</u>	ORDER as to Edgar J Steele re <u>79</u> Order, <u>61</u> Memorandum Decision and Order (Notice sent to USM) allowing visits between Defendant and Mrs Steele to occur at Ada county Jail. Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
04/12/2011	<u>183</u>	Expert Witness Disclosure by USA as to Edgar J Steele (Haws, D)
04/12/2011	<u>184</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
04/13/2011	<u>185</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
04/13/2011	<u>186</u>	Expert Witness Disclosure by USA as to Edgar J Steele (Haws, D)
04/13/2011	<u>187</u>	Sealed Document <i>Notice of Filing Expert Reports: Garland Lewis</i> (Attachments: # <u>1</u> Exhibit Lewis 1, # <u>2</u> Exhibit Lewis 2, # <u>3</u> Exhibit Lewis 3)(Haws, D)
04/13/2011	<u>188</u>	Sealed Document <i>Notice of Filing Expert Reports: Dr. Engle</i> (Attachments: # <u>1</u> Exhibit Engle CV, # <u>2</u> Exhibit Engle Report)(Haws, D)
04/13/2011	<u>189</u>	RESPONSE by USA as to dft Edgar J Steele <i>AMENDED United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
04/14/2011	<u>190</u>	DOCKET ENTRY ORDER as to Edgar J Steele re <u>180</u> SEALED MOTION (Notice sent to USM). Defendant shall file his response to the Government's Motion to Admit Deposition of T.L. on or before Monday, April 18, 2011. Signed by Judge B. Lynn Winmill. (js)
04/15/2011	<u>191</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
04/15/2011	<u>192</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
04/18/2011	<u>193</u>	WITNESS LIST (sealed) by Edgar J Steele (Amendola, Gary)
04/18/2011	<u>194</u>	SEALED RESPONSE to Motion by Edgar J Steele re <u>180</u> SEALED MOTION <i>Defendant's Response to USA Motion to Admit Dep Testimony</i> (Amendola, Gary)
04/18/2011	<u>195</u>	Sealed Document <i>AMENDED Exhibit List</i> (Whelan, Traci)
04/18/2011	<u>196</u>	WITNESS LIST (sealed) by USA as to Edgar J Steele (Haws, D)
04/18/2011	<u>197</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Supplemental Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)
04/18/2011	<u>198</u>	Sealed Document <i>Government's Amended Trial Brief</i> (Haws, D)
04/18/2011	<u>199</u>	MEMORANDUM in Support by USA as to Edgar J Steele <i>Government's Memorandum in Support of Daubert Hearing</i> (Whelan, Traci)
04/20/2011	<u>201</u>	RESPONSE by USA as to dft Edgar J Steele <i>United States' Discovery Response and Demand for Reciprocal Discovery</i> (Whelan, Traci)

04/20/2011	<u>202</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Daubert Hearing as to Edgar J Steele held on 4/20/2011. Daubert Hearing to resume on 4/21/2011 at 8:00 AM in Boise - Courtroom 3 before Judge B. Lynn Winnmill. (Court Reporter Tammy Hohenleitner.) (jlg)
04/21/2011	<u>203</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Daubert Hearing - Day 2 as to Edgar J Steele held on 4/21/2011. (Court Reporter Tammy Hohenleitner.) (jlg)
04/21/2011	<u>204</u>	WITNESS LIST (sealed) by USA as to Edgar J Steele (Haws, D)
04/21/2011	<u>205</u>	Sealed Document <i>Amended Exhibit List</i> (Haws, D)
04/25/2011	<u>206</u>	Sealed Document Re: <u>182</u> Order, Order <i>Notice of Visitation</i> (Amendola, Gary) Modified on 5/10/2011 to reflect tape lodged and placed on shelf in Clerk's office (cjm).
04/26/2011	<u>207</u>	Sealed Document <i>Amended Exhibit List</i> (Haws, D)
04/26/2011	<u>208</u>	STIPULATION by USA (Haws, D)
04/26/2011	<u>209</u>	Transcript of Proceedings as to Edgar J Steele held on 4/21/2011 (Daubert Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/20/2011. Redacted Transcript Deadline set for 5/31/2011. Release of Transcript Restriction set for 7/28/2011. (cjm)
04/26/2011	<u>210</u>	Notice of Filing of Official Transcript (cjm)
04/26/2011	<u>211</u>	SEALED Minute Entry for proceedings held before Judge B. Lynn Winmill:SEALED Jury Selection as to Edgar J Steele held on 4/26/2011. Jury Trial to resume on 4/27/2011 at 8:30 AM in Boise - Courtroom 3 before Judge B. Lynn Winnmill. (Court Reporter Tammy Hohenleitner.) (jlg)
04/26/2011	<u>212</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 1 (Jury Selection) as to Edgar J Steele held on 4/26/2011. Jury Trial to resume on 4/27/2011 at 8:30 AM in Boise - Courtroom 3 before Judge B. Lynn Winnmill. (Court Reporter Tammy Hohenleitner.) (jlg)
04/27/2011	<u>213</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 2 as to Edgar J Steele held on 4/27/2011. Jury Trial to resume on 4/28/2011 at 8:30 a.m. in Boise - Courtroom 3 before Judge B. Lynn Winnmill. (Court Reporter Tammy Hohenleitner.) (jlg)
04/28/2011	<u>214</u>	Sealed Document <i>Amended Exhibit List</i> (Haws, D)
04/28/2011	<u>215</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 3 as to Edgar J Steele held on 4/28/2011. Jury Trial to resume on 4/29/2011 at 8:30 a.m. in Boise - Courtroom 3 before Judge B. Lynn Winnmill. Counsel to be present at 8:15 a.m. (Court Reporter Tammy Hohenleitner.) (jlg)
04/29/2011	<u>216</u>	Sealed Document <i>Amended Exhibit List</i> (Haws, D)
04/29/2011	<u>217</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 4 as to Edgar J Steele held on 4/29/2011. Jury Trial to resume on 5/2/2011 at 8:30 AM in Boise - Courtroom 3 before Judge B. Lynn Winnmill. (Court Reporter Tammy Hohenleitner.) (jlg)
04/29/2011	<u>218</u>	Sealed Document (Miller, John)
05/02/2011	<u>219</u>	Sealed Document <i>Amended Exhibit List</i> (Haws, D)
05/02/2011	<u>220</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 5 as to Edgar J Steele held on 5/2/2011. Jury Trial to resume on 5/3/2011 at 8:45 a.m. in Boise - Courtroom 3 before Judge B. Lynn Winnmill. Counsel shall be present at 8:15 a.m. (Court Reporter Tammy Hohenleitner.) (jlg)
05/03/2011	<u>221</u>	Sealed Document <i>Memorandum of Law Regarding The Jencks Act Requiring Production of Witness Notes</i> (Attachments: # <u>1</u> Affidavit of Robert Stoll)(Amendola, Gary)
05/03/2011	<u>222</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 6 as to Edgar J Steele held on 5/3/2011. Jury Trial to resume on 5/4/2011 at 8:30 a.m. in Boise - Courtroom 3 before Judge B. Lynn Winnmill. (Court Reporter Tammy Hohenleitner.) (jlg) (Additional attachment(s) added on 5/3/2011: # <u>1</u> Sealed Version) (jlg).

05/03/2011	<u>223</u>	PROTECTIVE ORDER as to Edgar J Steele (Notice sent to USM). Signed by Judge B. Lynn Winmill. (Copy of order also sent to Mr. Fairfax's Defense Counsel, John Miller via email by dks)(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by dks) (Entered: 05/04/2011)
05/04/2011	<u>224</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 7 as to Edgar J Steele held on 5/4/2011. Jury to resume their deliberations on 5/5/2011 at 8:30 a.m. in Boise - Courtroom 3 before Judge B. Lynn Winmill. (Court Reporter Tammy Hohenleitner.) (jlg)
05/05/2011	<u>225</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Jury Trial - Day 8 as to Edgar J Steele held on 5/5/2011. Defendant found Guilty on Counts 1-4 of the Superseding Indictment. Sentencing set for 8/22/2011 at 9:00 a.m. in Coeur d Alene - District Courtroom before Judge B. Lynn Winmill. (Court Reporter Tammy Hohenleitner.) (jlg)
05/05/2011	<u>226</u>	ORDER as to Edgar J Steele re <u>182</u> Order (Notice sent to USM) vacating prior no contact orders. Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
05/05/2011	<u>227</u>	Amended EXHIBIT LIST by USA as to Edgar J Steele (cjm)
05/05/2011	<u>228</u>	Amended EXHIBIT LIST by Edgar J Steele (cjm)
05/05/2011	<u>229</u>	Jury Instructions as to Edgar J Steele (cjm)
05/05/2011	<u>230</u>	JURY VERDICT (Notice sent to USP) (Attachments: # <u>1</u> Sealed un-redacted form)(cjm)
05/05/2011	<u>231</u>	Jury Notes/Questions as to Edgar J Steele (Sealed Document) (cjm)
05/06/2011	<u>232</u>	ORDER as to Edgar J Steele (Notice sent to USM) regarding certain notes by Larry Fairfax. All attachments are SEALED per Order. Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)(Attachments will be permanently retained on shelf in Clerk's office in 3 expandos.) (Additional attachment(s) added on 5/6/2011: # <u>1</u> Attachment #1, # <u>2</u> Attachment #1 continued, # <u>3</u> #1 continued, # <u>4</u> #1 continued, # <u>5</u> #1 continued, # <u>6</u> #1 continued, # <u>7</u> #1 continued, # <u>8</u> #1 continued, # <u>9</u> #1 continued, # <u>10</u> #1 completed) (cjm). (Additional attachment(s) added on 5/6/2011: # <u>11</u> Attachment #2, # <u>12</u> Attachment #2 continued, # <u>13</u> #2 continued, # <u>14</u> #2 continued, # <u>15</u> #2 continued, # <u>16</u> #2 continued, # <u>17</u> #2 continued, # <u>18</u> #2 continued, # <u>19</u> #2 continued, # <u>20</u> #2 completed) (cjm). (Additional attachment(s) added on 5/6/2011: # <u>21</u> Fairfax attorney note for Attachment #3, # <u>22</u> Attachment #3, # <u>23</u> Attachment #3 continued, # <u>24</u> #3 continued, # <u>25</u> #3 continued, # <u>26</u> #3 continued, # <u>27</u> #3 continued, # <u>28</u> #3 continued, # <u>29</u> #3 continued, # <u>30</u> #3 continued, # <u>31</u> #3 completed) (cjm).
05/09/2011	<u>233</u>	Writ of Habeas Corpus ad Testificandum Returned Executed for Daryl James Hollingsworth on 5/4/2011 in case as to Edgar J Steele. (cjm)
05/12/2011	<u>234</u>	SEALED MOTION <i>For a New Trial Pursuant to Rule 33 F.R.C.P.</i> by Edgar J Steele. (Amendola, Gary)
05/12/2011	<u>235</u>	MOTION for Extension of Time to File <i>Post-Trial Motions</i> by Edgar J Steele. (Amendola, Gary)
05/16/2011	<u>236</u>	Sealed Document Re: <u>234</u> SEALED MOTION <i>For a New Trial Pursuant to Rule 33 F.R.C.P. Defendant's Submission of Additional Authorities in Support of Rule 33 Motion for New Trial</i> (Amendola, Gary)
05/17/2011	<u>237</u>	RESPONSE in Opposition by USA as to Edgar J Steele re <u>235</u> MOTION for Extension of Time to File <i>Post-Trial Motions Government's Opposition to Defendant's Motion for Extension of Time to File Post-Trial Motions</i> (Haws, D)
05/19/2011	<u>238</u>	ORDER granting <u>235</u> Motion for Extension of Time to File Post-Trial Motions as to Edgar J Steele (1) Defendant shall have until June 30, 2011 to file a motion for new trial or supplement his pending motion for new trial. The Government shall file its response to the pending motion for new trial and any supplemental motion on or before June 15, 2011. Defendant may file a reply brief on or before July 22, 2011. Defendant shall make arrangements with the Court Reporter to obtain a copy of the trial transcript as soon as possible so as not to cause further delay in addressing post-trial motions.. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by dks)

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05/19/2011		Set/Reset Deadlines re Motion or Report and Recommendation in case as to Edgar J Steele <u>234</u> SEALED MOTION <i>For a New Trial Pursuant to Rule 33 F.R.C.P.</i> Responses due by 6/15/2011 Replies due by 7/22/2011. (dks)
05/19/2011	<u>239</u>	AMENDED ORDER as to Edgar J Steele that Defendants Motion for Extension of Time to File Post-Trial Motions (Dkt. 235) is GRANTED. Defendant shall have until June 30, 2011 to file a motion for new trial or supplement his pending motion for new trial. The Government shall file its response to the pending motion for new trial and any supplemental motion on or before July 15, 2011. Defendant may file a reply brief on or before July 22, 2011. Defendant shall make arrangements with the Court Reporter to obtain a copy of the trial transcript as soon as possible so as not to cause further delay in addressing post-trial motions (Notice sent to USM). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by dks)
05/19/2011		Set/Reset Deadlines re Motion or Report and Recommendation in case as to Edgar J Steele <u>234</u> SEALED MOTION <i>For a New Trial Pursuant to Rule 33 F.R.C.P.</i> Responses due by 7/15/2011 Replies due by 7/22/2011. (dks)
05/19/2011	<u>240</u>	Writ of Habeas Corpus ad Testificandum Returned Executed for Larry Fairfax on 5/6/11. in case as to Edgar J Steele (dks)
06/02/2011	<u>241</u>	MOTION to Unseal Document by USA as to Edgar J Steele. (Haws, D)
06/10/2011	<u>242</u>	Sealed Document <i>Notice to the Court</i> (Amendola, Gary)
06/13/2011	<u>243</u>	NOTICE of Substitution of Attorney - Attorney David Hamerquist, David P Claiborne for Cyndi Steele added. Attorney Wesley W Hoyt terminated. (Notice sent to USM) (Hoyt, Wesley)
06/13/2011	<u>244</u>	NOTICE of Substitution of Attorney - Attorney Wesley W Hoyt for Edgar J Steele added. Attorney Robert T McAllister terminated. (Notice sent to USM) (Hoyt, Wesley)
06/13/2011	<u>245</u>	NOTICE of Substitution of Attorney - Attorney Gary I Amendola terminated. (Notice sent to USM) (Hoyt, Wesley)
06/14/2011	<u>246</u>	Transcript of Proceedings as to Edgar J Steele (Daubert Hearing) held on 4/20/11 before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/8/2011. Redacted Transcript Deadline set for 7/18/2011. Release of Transcript Restriction set for 9/15/2011. (dks) (Entered: 06/17/2011)
06/14/2011	<u>247</u>	Transcript of Proceedings as to Edgar J Steele (Daubert Hearing) held on 4/21/11 before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/8/2011. Redacted Transcript Deadline set for 7/18/2011. Release of Transcript Restriction set for 9/15/2011. (dks) (Entered: 06/17/2011)
06/17/2011	<u>248</u>	Notice of Filing of Official Transcript (dks)
06/24/2011	<u>249</u>	Transcript of Proceedings as to Edgar J Steele (Jury Trial-Day One) held on 4/26/11 before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for 7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) Modified on 7/22/2011 to correct hearing date in docket text (cjm).
06/24/2011	<u>250</u>	Transcript of Proceedings as to Edgar J Steele held on 4/27/11 (Jury Trial-Day 2) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for

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		7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) (Entered: 06/27/2011)
06/24/2011	<u>251</u>	Transcript of Proceedings as to Edgar J Steele held on 4/28/11 (Jury Trial-Day 3) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for 7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) (Entered: 06/27/2011)
06/24/2011	<u>252</u>	Transcript of Proceedings as to Edgar J Steele held on 4/29/11 (Jury Trial-Day 4) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for 7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) (Entered: 06/27/2011)
06/24/2011	<u>253</u>	Transcript of Proceedings as to Edgar J Steele held on 5/2/11 (Jury Trial-Day 5) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for 7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) (Entered: 06/27/2011)
06/24/2011	<u>254</u>	Transcript of Proceedings as to Edgar J Steele held on 5/3/11 (Jury Trial-Day 6-Final) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for 7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) (Entered: 06/27/2011)
06/24/2011	<u>255</u>	Transcript of Proceedings as to Edgar J Steele held on 5/4/11 (Jury Trial-Day 7 -Final) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for 7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) (Entered: 06/27/2011)
06/24/2011	<u>256</u>	Transcript of Proceedings as to Edgar J Steele held on 5/5/11 (Jury Trial-Day 8-Final) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tamara I. Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/18/2011. Redacted Transcript Deadline set for 7/28/2011. Release of Transcript Restriction set for 9/26/2011. (dks) (Entered: 06/27/2011)
06/27/2011	<u>257</u>	Notice of Filing of Official Transcript (dks)
06/28/2011	<u>258</u>	RESPONSE by USA as to dft Edgar J Steele re <u>245</u> Notice of Substitution of Attorney, <u>244</u> Notice of Substitution of Attorney (Haws, D)
06/29/2011	<u>259</u>	MOTION for Extension of Time to File <i>New Trial Motion</i> by Edgar J Steele. (Hoyt, Wesley)
06/29/2011	<u>260</u>	DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele (Notice sent to USP & USM) Notice is hereby given that the Court will conduct a hearing on the substitution of counsel issue on 7/6/2011 09:30 AM in Coeur d Alene - District Courtroom before Judge B. Lynn Winmill. The Court may address some matters ex parte during the hearing. The following attorneys and individuals shall attend the hearing: (1) Gary Amendola; (2) Wesley Hoyt; (3) either Marc Haws or Traci Whelan; (4) either David Claiborne or David Hammerquist; (5) Cyndi Steele; and (6) defendant Edgar Steele. The Court orders the US Marshall to transport defendant Edgar Steele to the courthouse for hearing. This notice caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) as well as attorney Gary Amendola at 702 N 4th Street Coeur d'Alene, ID 83814 on this date 6/29/11 by so) (so).

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06/30/2011	261	DOCKET ENTRY ORDER granting <u>259</u> Motion for Extension of Time to File Motion for New Trial. Defendant shall have until July 7, 2011 to file a second motion for new trial or supplement his initial motion. The Government shall have until July 22 to file its response to the motions. Defendant shall have until July 29 to file a reply. (1). Signed by Judge B. Lynn Winnill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by js)
07/05/2011	<u>262</u>	AFFIDAVIT of Cyndi G. Steele by Cyndi Steele as to Edgar J Steele re 260 Notice of Hearing, Notice of Hearing, Notice of Hearing, Notice of Hearing, <u>244</u> Notice of Substitution of Attorney (Notice sent to USP) (Hammerquist, David)
07/06/2011	<u>263</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill:Docket Call as to Edgar J Steele held on 7/6/2011. Wesley Hoyt has been allowed to substitute as counsel for the defendant.(Court Reporter/ESR Tammy Hohenleitner.) (lp) Modified on 7/6/2011 (lp).
07/14/2011	<u>264</u>	MOTION for Leave to File Excess Pages in Defendant's Motion for New Trial and Further Motion for Enlargement of Time to File Motion for New Trial by Edgar J Steele. (Attachments: # <u>1</u> Affidavit Affidavit of Robert T. McAllister, # <u>2</u> Affidavit Affidavit of Gary I. Amendola)(Hoyt, Wesley)
07/15/2011	<u>265</u>	Transcript of Proceedings as to Edgar J Steele held on 7/6/2011 (Motion Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/8/2011. Redacted Transcript Deadline set for 8/18/2011. Release of Transcript Restriction set for 10/17/2011. (cjm)
07/15/2011	<u>266</u>	Notice of Filing of Official Transcript (cjm)
07/15/2011	<u>267</u>	STIPULATION to Increase Page Limitation for New Trial Motion, Response to New Trial Motion and Reply and to Re-set Dates (Hoyt, Wesley)
07/18/2011	268	DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele (Notice sent to USP & USM)Please be advised that the Sentencing set for 8/22/2011 at 9:00 a.m. is VACATED and RESET for Sentencing on 11/14/2011 01:30 PM in Coeur d Alene - District Courtroom before Judge B. Lynn Winmill. (so)
07/18/2011	<u>269</u>	ORDER granting <u>264</u> Motion for Leave to File Excess Pages as to Edgar J Steele (1); granting <u>267</u> Stipulation to Increase Page Limitation for New Trial Motion, Response to New Trial Motion and Reply and to Re-set Dates. Defendnat may file a 50-page brief on his motion by 8/8/2011. The Government may file a 50-page response by 9/12/2011. Defendant may file a 20-page reply brief by 9/26/2011. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
07/18/2011	<u>270</u>	SEALED LETTER as to Edgar J Steele (cjm) (Entered: 07/22/2011)
07/22/2011	<u>271</u>	EX PARTE ORDER as to Edgar J Steele re <u>270</u> Sealed Letter (Notice sent to USM). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
07/28/2011	<u>272</u>	SEALED Transcript of Proceedings as to Edgar J Steele held on 5/3/2011 (Ex Parte Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2011. Redacted Transcript Deadline set for 9/1/2011. (cjm)
07/28/2011	<u>273</u>	Notice of Filing of Official Transcript (cjm)
07/28/2011	<u>274</u>	SEALED Transcript of Proceedings as to Edgar J Steele held on 2/9/2011 (Sealed Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2011. Redacted Transcript Deadline set for 9/1/2011. (cjm)

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07/28/2011	<u>275</u>	Notice of Filing of Official Transcript (cjm)
07/28/2011	<u>276</u>	Transcript of Proceedings as to Edgar J Steele held on 2/24/2011 (Pretrial Conference) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2011. Redacted Transcript Deadline set for 9/1/2011. Release of Transcript Restriction set for 10/31/2011. (cjm)
07/28/2011	<u>277</u>	Notice of Filing of Official Transcript (cjm)
07/29/2011	<u>278</u>	Transcript of Proceedings as to Edgar J Steele held on 4/5/2011 (Motion Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2011. Redacted Transcript Deadline set for 9/1/2011. Release of Transcript Restriction set for 10/31/2011. (cjm)
07/29/2011	<u>279</u>	Notice of Filing of Official Transcript (cjm)
07/29/2011	<u>280</u>	SEALED Transcript of Proceedings as to Edgar J Steele held on 2/23/2011 (Status Conference) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2011. Redacted Transcript Deadline set for 9/1/2011. (cjm)
07/29/2011	<u>281</u>	Notice of Filing of Official Transcript (cjm)
07/29/2011	<u>282</u>	Transcript of Proceedings as to Edgar J Steele held on 3/7/2011 (Motion Hearing and Reset Jury Trial) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2011. Redacted Transcript Deadline set for 9/1/2011. Release of Transcript Restriction set for 10/31/2011. (cjm)
07/29/2011	<u>283</u>	Notice of Filing of Official Transcript (cjm)
08/03/2011	<u>284</u>	Transcript of Proceedings as to Edgar J Steele held on 7/21/2010 (Motion Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/29/2011. Redacted Transcript Deadline set for 9/9/2011. Release of Transcript Restriction set for 11/4/2011. (cjm)
08/03/2011	<u>285</u>	Transcript of Proceedings as to Edgar J Steele held on 1/26/2011 (Pretrial Conference) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/29/2011. Redacted Transcript Deadline set for 9/9/2011. Release of Transcript Restriction set for 11/4/2011. (cjm)
08/03/2011	<u>286</u>	SEALED Transcript of Proceedings as to Edgar J Steele held on 1/26/2011 (Sealed Hearing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/29/2011. Redacted Transcript Deadline set for 9/9/2011. (cjm)
08/03/2011	<u>287</u>	Notice of Filing of Official Transcript (cjm)
08/05/2011	<u>288</u>	MOTION for Extension of Time to File <i>Objections to Presentence Report</i> by Edgar J Steele. (Hoyt, Wesley)

08/08/2011	<u>289</u>	ORDER granting <u>288</u> Motion for Extension of Time to File as to Edgar J Steele (1). Defendant shall have until 9/14/2011 to file objections to the presentence report. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
08/09/2011	<u>290</u>	Supplemental MOTION for New Trial by Edgar J Steele. (Hoyt, Wesley)
08/09/2011	<u>291</u>	Supplemental MOTION for New Trial by Edgar J Steele. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C, # <u>4</u> Exhibit Exhibit D, # <u>5</u> Exhibit Exhibit E, # <u>6</u> Exhibit Exhibit F, # <u>7</u> Exhibit Exhibit G, # <u>8</u> Exhibit Exhibit H, # <u>9</u> Exhibit Exhibit I, # <u>10</u> Exhibit Exhibit J, # <u>11</u> Exhibit Exhibit K, # <u>12</u> Exhibit Exhibit L, # <u>13</u> Exhibit Exhibit M, # <u>14</u> Exhibit Exhibit N, # <u>15</u> Affidavit Affidavit of Edgar J. Steele, # <u>16</u> Affidavit Affidavit of Cyndi Steele, # <u>17</u> Affidavit Affidavit of Dr. Allen Banks, # <u>18</u> Affidavit Affidavit of Robert Stoll, # <u>19</u> Affidavit Affidavit of Billie Cochran)(Hoyt, Wesley) Modified on 8/9/2011 to correct event text and remove extra motion types (cjm).
08/09/2011	<u>292</u>	AFFIDAVIT of George Papcun by Edgar J Steele (Notice sent to USP) (Hoyt, Wesley)
08/09/2011		CORRECTIVE ENTRY - The entry docket number <u>290</u> Supplemental MOTION for New Trial filed by Edgar J Steele was filed incorrectly in this case as it is missing the exhibits. Please see the correct filing at docket #291. The Clerk's office shall term the pending motion status for this docket #290. (cjm)
08/09/2011	<u>293</u>	MOTION for Extension of Time to File <i>New Trial Motion</i> by Edgar J Steele. (Hoyt, Wesley)
08/09/2011	<u>294</u>	ORDER granting <u>293</u> Motion for Extension of Time to File as to Edgar J Steele (1). The supplemental motion and related exhibits and affidavits filed on 8/9/2011 are deemed to be timely filed. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
08/11/2011	<u>295</u>	MOTION to Unseal Document <i>Motion To For Order Making a Limited Unsealing Of Documents</i> by USA as to Edgar J Steele. (Attachments: # <u>1</u> Affidavit)(Haws, D)
08/22/2011	<u>296</u>	Amicus Curiae MOTION to Vacate Sentence by Movant Donald E Pauly as to Edgar J Steele. (Attachments: # <u>1</u> Envelope with filer's address)(cjm)
08/23/2011	<u>297</u>	DOCKET ENTRY ORDER denying <u>296</u> Motion as to Edgar J Steele(1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by js)(Mailed to Movant Pauly on 8/24/2011 by cjm).
08/30/2011	<u>298</u>	RESPONSE to Motion by Edgar J Steele re <u>295</u> MOTION to Unseal Document <i>Motion To For Order Making a Limited Unsealing Of Documents</i> (Hoyt, Wesley)
08/30/2011	<u>299</u>	DOCKET ENTRY ORDER deeming moot <u>54</u> Motion for Disclosure as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by js)
08/31/2011	<u>300</u>	DOCKET ENTRY ORDER granting unopposed <u>295</u> Motion to Unseal Document. The Clerk of the Court shall unseal the documents referenced in Docket 295. Counsel may contact Carrie McMahan at 334-9397 if they need assistance obtaining copies of the documents. (Notice sent to USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by js)
08/31/2011	<u>301</u>	RESPONSE to Motion by Edgar J Steele re <u>241</u> MOTION to Unseal Document (Hoyt, Wesley)
08/31/2011	<u>302</u>	DOCKET ENTRY ORDER granting <u>241</u> Motion to Unseal Document. The Clerk of the Court shall unseal the documents referenced in Docket 241. Counsel may contact Carrie McMahan at 334-9397 if they need assistance obtaining copies of the documents. (Notice sent to USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by js)
09/09/2011	<u>303</u>	MOTION for Extension of Time to File Response/Reply as to <u>269</u> Order on Motion for Leave to File Excess Pages, Order on Motion for Leave to File Excess Pages, Order on Motion for Leave to File Excess Pages, <u>264</u> MOTION for Leave to File Excess Pages in <i>Defendant's Motion for New Trial and Further Motion for Enlargement of Time to File Motion for New Trial</i> , <u>234</u> SEALED MOTION For a <i>New Trial Pursuant to Rule 33 F.R.C.P.</i> , <u>291</u> MOTION for New Trial MOTION for New Trial, <u>236</u>

		Sealed Document, <u>259</u> MOTION for Extension of Time to File <i>New Trial Motion</i> by USA as to Edgar J Steele. (Haws, D)
09/12/2011	<u>304</u>	DOCKET ENTRY ORDER granting <u>303</u> Motion for Extension of Time to File Response/Reply as to Edgar J Steele (1). The Government may file its response brief on or before September 26, 2011. Defendant may file his reply brief on or before October 11, 2011. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by js).
09/23/2011	<u>305</u>	RESPONSE to Motion by USA as to Edgar J Steele re <u>234</u> SEALED MOTION <i>For a New Trial Pursuant to Rule 33 F.R.C.P.</i> , <u>291</u> MOTION for New Trial MOTION for New Trial, <u>290</u> Supplemental MOTION for New Trial, <u>259</u> MOTION for Extension of Time to File <i>New Trial Motion</i> , <u>264</u> MOTION for Leave to File Excess Pages in <i>Defendant's Motion for New Trial and Further Motion for Enlargement of Time to File Motion for New Trial Governemnts Response Opposing Defendant Steele's Motion for New Trial</i> (Attachments: # <u>1</u> Exhibit 1 Miller, # <u>2</u> Exhibit 2 Robinson, # <u>3</u> Exhibit 3 Snyder, # <u>4</u> ECF 95, # <u>5</u> ECF 95 - 2, # <u>6</u> ECF 118, # <u>7</u> ECF 119, # <u>8</u> ECF 180)(Haws, D) Modified on 9/26/2011 to Seal Attachments #4 through #8 as they are sealed documents filed previously on the docket (cjm).
10/05/2011	<u>306</u>	AMENDED DOCKET ENTRY NOTICE OF HEARING as to Edgar J Steele - Due to the Court's calendar, the Sentencing set for 11/14/2011 is RESCHEDULED for 11/9/2011 at 9:00 AM in Coeur d Alene - District Courtroom before Judge B. Lynn Winmill. Objections to the Presentence Report shall be filed by 10/7/2011. (Notice sent to USP & USM)(jlg)
10/11/2011	<u>307</u>	DOCKET ENTRY ORDER as to Edgar J Steele. Defendant shall file his Reply brief in support of Motion for New Trial on or before October 14, 2011. (Notice sent to USM). Signed by Judge B. Lynn Winmill. (js)
10/15/2011	<u>308</u>	REPLY TO RESPONSE to Motion by Edgar J Steele re <u>291</u> MOTION for New Trial MOTION for New Trial (Hoyt, Wesley)
10/24/2011	<u>309</u>	SENTENCING MEMORANDUM by USA as to Edgar J Steele (Notice sent to USP) (Haws, D)
11/01/2011	<u>310</u>	MOTION to Stay <i>SENTENCING TO PRESERVE STANDING AND FOR EXPIDITED HEARING</i> (Notice sent to USP) by Edgar J Steele. (Hoyt, Wesley)
11/02/2011	<u>311</u>	ORDER denying <u>310</u> Motion to Stay sentencing to preserve standing and for expedited hearing (Notice sent to USP & USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by dks)
11/07/2011	<u>313</u>	ORDER BY USCA as to Edgar J Steele, Case No. 11-73346. Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. Accordingly, the emergency petition is denied. (cjm) (Entered: 11/10/2011)
11/08/2011	<u>312</u>	MEMORANDUM DECISION AND ORDER denying <u>234</u> Sealed Motion for a New Trial as to Edgar J Steele (1); denying <u>291</u> Motion for New Trial (Notice sent to USM) as to Edgar J Steele (1). Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm)
11/09/2011	<u>314</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill: Sentencing held on 11/9/2011 for Edgar J Steele Count(s) 1s, 120 months; Count(s) 2s, 120 months to run consecutive to Count 1; Count(s) 3s, 360 months to run consecutive to Counts 1 and 2; Count(s) 4s, 60 months to run concurrent with Count 1. Fine waived. \$400 special assessment. \$2,836.91 Restitution. 3 years supervised release. (Notice sent to USP & USM) (Court Reporter/ESR Tammy Hohenleitner.) (lp) (Entered: 11/10/2011)
11/14/2011	<u>315</u>	Minute Entry for proceedings held before Judge B. Lynn Winmill: AMENDING MINUTES: to clarify supervised release sentence. <u>314</u> (Notice sent to USP) (Court Reporter/ESR Tammy Hohenleitner.) (lp)
11/14/2011	<u>316</u>	JUDGMENT as to Edgar J Steele (1), Count(s) 1s, 120 months; Count(s) 2s, 120 months to run consecutive to Count 1; Count(s) 3s, 360 months to run consecutive to Counts 1 and 2; Count(s) 4s, 60 months to run concurrent with Count 1; 3 years on counts 1,2,3 and 4 to run concurrent with each other; \$400 special assessment (\$100 for each count) and \$2,836.91 restitution (Notice sent to USP and USM). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by cjm) (Entered: 11/15/2011)

11/16/2011	<u>317</u>	NOTICE of Appeal by Edgar J Steele (Hoyt, Wesley)
11/16/2011	<u>318</u>	AMENDED JUDGMENT (to correct Joint & Several on Page 8) as to Edgar J Steele (1 (Notice sent to USP & USM). Signed by Judge B. Lynn Winmill.(caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by dks) (Entered: 11/17/2011)
11/16/2011	<u>319</u>	Transcript of Proceedings as to Edgar J Steele held on 11/9/2011 (Sentencing) before Judge B. Lynn Winmill. Court Reporter/Transcriber Tammy Hohenleitner, Telephone number 208-334-1500. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/12/2011. Redacted Transcript Deadline set for 12/22/2011. Release of Transcript Restriction set for 2/17/2012. (cjm) (Entered: 11/21/2011)
11/17/2011		CORRECTIVE ENTRY - The entry docket number <u>317</u> Notice (Other) filed by Edgar J Steele was filed incorrectly in this case. The correct event to use is under "Appeal Documents" and then select "Notice of Appeal". This automatically will then go to the Ninth Circuit Court of Appeals. The filing party shall re-submit their correct filing. (dks)
11/21/2011	<u>320</u>	Notice of Filing of Official Transcript (cjm)
01/04/2012	<u>321</u>	NOTICE OF APPEAL Filing fee \$ 455, receipt number 0976-832731.(Notice sent to USP, USM, Court Reporter & 9th Cir) (Hoyt, Wesley)(12-30005)
01/04/2012	<u>322</u>	USCA Case Number as to Edgar J Steele 12-30005 for <u>321</u> Notice of Appeal - Final Judgment filed by Edgar J Steele. (cjm) (Entered: 01/05/2012)
01/04/2012	<u>323</u>	BRIEFING SCHEDULE as to Edgar J Steele re <u>321</u> Notice of Appeal - Final Judgment (Notice sent to USM)(Notice sent by e-mail to Court Reporter) (cjm) (Entered: 01/05/2012)
02/01/2012	<u>324</u>	Transcript filed as to Edgar J Steele for dates of 6/15/2010 (IA/Arraignment) before Judge Candy W. Dale, re <u>321</u> Notice of Appeal - Final Judgment Court Reporter/Transcriber Canyon Transcription, Telephone number 208-454-1010. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/27/2012. Redacted Transcript Deadline set for 3/8/2012. Release of Transcript Restriction set for 5/4/2012. (cjm) (Entered: 02/02/2012)
02/01/2012	<u>325</u>	Transcript filed as to Edgar J Steele for dates of 6/22/2010 (Detention Hearing) before Judge Candy W. Dale, re <u>321</u> Notice of Appeal - Final Judgment Court Reporter/Transcriber Canyon Transcription, Telephone number 208-454-1010. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/27/2012. Redacted Transcript Deadline set for 3/8/2012. Release of Transcript Restriction set for 5/4/2012. (cjm) (Entered: 02/02/2012)
02/01/2012	<u>326</u>	Transcript filed as to Edgar J Steele for dates of 7/28/2010 (Arraignment) before Judge Candy W. Dale, re <u>321</u> Notice of Appeal - Final Judgment Court Reporter/Transcriber Canyon Transcription, Telephone number 208-454-1010. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/27/2012. Redacted Transcript Deadline set for 3/8/2012. Release of Transcript Restriction set for 5/4/2012. (cjm) (Entered: 02/02/2012)
02/01/2012	<u>327</u>	Transcript filed as to Edgar J Steele for dates of 2/16/2011 (Motion Hearing) before Judge Candy W. Dale, re <u>321</u> Notice of Appeal - Final Judgment Court Reporter/Transcriber Canyon Transcription, Telephone number 208-454-1010. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/27/2012. Redacted Transcript Deadline set for 3/8/2012. Release of Transcript Restriction set for 5/4/2012. (cjm) (Entered: 02/02/2012)
02/02/2012	<u>328</u>	Notice of Filing of Official Transcript (cjm)
04/03/2012	<u>329</u>	TRANSCRIPT REQUEST by Edgar J Steele for proceedings held on 6/10 to 11/11 before Judge Winmill, (Notice sent by e-mail to Court Reporter) (Attachments: # <u>1</u> Supplement Transcript Designation and Ordering Form - (Attachment))(Hoyt, Wesley)

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04/04/2012		CORRECTIVE ENTRY - The entry docket number <u>329</u> Transcript Request - Appeal filed by Edgar J Steele was filed incorrectly in this case as the form is incomplete. The dates of hearings for transcripts being requested need to be filled in on the form. This is necessary for the Court Reporter. The filing party shall re-submit their correct filing. (cjm)
04/05/2012		Disregard filing as to Edgar J Steele at docket #329. Attorney filed in error as the transcripts have already been ordered. (cjm)
07/09/2012	<u>330</u>	ORDER of USCA (certified copy) as to Edgar J Steele re <u>321</u> Notice of Appeal - Final Judgment. Appellants opposed motion for summary reversal of this appeal is denied. Briefing set. (cjm)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
09/28/2012 14:13:29			
<b>PACER Login:</b>	dr0151	<b>Client Code:</b>	Steele
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:10-cr-00148-BLW
<b>Billable Pages:</b>	24	<b>Cost:</b>	2.40

000344

**PROOF OF SERVICE BY MAIL -- 1013(a), 2015.5 C.C.P.**

**Re: *United States v. Steele* No. 12-30005**

I am a citizen of the United States; my business address is 523 Octavia Street, San Francisco, California 94102. I am employed in the City and County of San Francisco, where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the within:

**EXCERPTS OF RECORD VOLUMES III OF III**

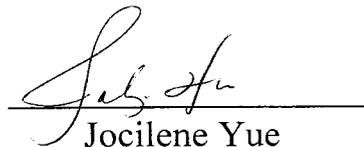
on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

D. Marc Haws  
Traci J. Whelan  
Assistant U. S. Attorneys  
District of Idaho  
800 Park Boulevard, Suite 600  
Boise, ID 83712-9903

**BY MAIL:** By depositing said envelope, with postage thereon fully prepaid, in the United States mail in San Francisco, California, addressed to said party(ies);

**BY PERSONAL SERVICE:** By causing said envelope to be personally served on said party(ies), as follows:  **FEDEX**  **HAND DELIVERY**

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on October 1, 2012 at San Francisco, California.

  
Jocilene Yue