

1 on the bottom of page 2, using the 1962-A pattern
2 jury instruction and the evidence I have designated,
3 can you give me a specific reason as to why I cannot
4 convince a jury to find affirmatively as to
5 participating as a principal?

6 MR. FLEMING: Objection.

7 MR. WESTFALL: Objection to the
8 form.

9 MR. FLEMING: Form.

10 Q (By Mr. Birnbaum) Using pattern jury
11 instructions, can you give me any reason as to why I
12 cannot convince a jury to find affirmatively as to
13 mail fraud by an affirmative finding?

14 MR. WESTFALL: Same objection.
15 Objection as to form.

16 Q (By Mr. Birnbaum) Do you see any flaws in
17 the 1962-A jury instructions?

18 A I haven't had an opportunity to view them.

19 Q I refer you to section 3. This is the May
20 5, 1999 contract between us.

21 Did you promise that you would bill me
22 monthly?

23 A I don't believe so.

24 Q Why don't you believe so, Mr. Westfall?

25 A Because I don't know that I've ever

Exhibit
2

1 promised anyone that I would bill them monthly.

2 Q Never promised anybody you would bill them
3 monthly?

4 A Not that I recall.

5 Q Would you look on page 2, first paragraph?

6 A Okay.

7 Q Let me ask you the question again,
8 Mr. Westfall.

9 A Okay.

10 Q Did you promise that you would bill me
11 monthly?

12 A It is contained in the agreement that you
13 will be billed monthly for the time expended and
14 expenses incurred.

15 MR. BIRNBAUM: Nonresponsive.

16 Q (By Mr. Birnbaum) Did you bill me monthly,
17 as you contracted?

18 A I don't believe so.

19 Q Did you bill me at all?

20 A Yes, sir.

21 Q When did you bill me? When did you start
22 billing?

23 A Can you give me the tab that's immediately
24 in front of --

25 Q Mr. Westfall, where would we have to look

1 to find out when you started billing?

2 A I guess we'd have to look at the contract.
3 Possibly May the 5th.

4 Q Mr. Westfall, what documents at a law
5 office would I have to look at to find out when you
6 started billing me monthly?

7 A You would look at the agreement would be
8 one thing, I would say.

9 Q Well, look at it. You got it in front of
10 you.

11 A May the 5th is the date of it. And that's
12 the day that it was prepared and the date that you
13 signed it.

14 Q Is that the date you should have started
15 billing or the day you did start billing?

16 A I guess -- the day I did or the day I
17 should? I guess it's the date that I should start
18 billing.

19 Q Monthly?

20 A I guess I'm not understanding that
21 question. Were you expecting a monthly bill on the
22 5th of May?

23 Q Mr. Westfall, look at line number --
24 paragraph 2, says, You will be billed monthly.

25 Did you promise to bill me monthly?

2

1 A The contract contains that language. I
2 don't know that I promised to bill you monthly.

3 Q Mr. Westfall, did you sign this contract?

4 A Yes.

5 Q Did you intend to bill me monthly?

6 A I guess that depends on the amount of time
7 that we expended. I mentioned to you at the
8 beginning of this that this was going to be time
9 consuming, particularly initially, and that's why --
10 that there would be a \$20,000 retainer.

11 Q Mr. Westfall, would you explain to me your
12 understanding of monthly?

13 A Monthly is pretty plain.

14 Q It is to me. I took that to mean that you
15 were going to bill me monthly. All right.

16 A Did you ever complain to me for not -- for
17 doing it any differently than was done?

18 MR. BIRNBAUM: Nonresponsive.

19 Q (By Mr. Birnbaum) What all sort of
20 information did you put in such bills?

21 A I beg your pardon?

22 Q Did you ever bill?

23 A Yes, sir. I billed you on December the
24 31st of 1999. I sent you a remainder on February the
25 1st of 2000. I sent you another on April the 3rd of

1 2000. I sent you another on June the 1st of 2000.

2 And I sent you another on 7/31/2000.

3 Q Who-all do you designate as having actually
4 prepared those bills as you claim you sent?

5 A I beg your pardon?

6 Q Who-all do you designate as having prepared
7 such bills as you sent?

8 A My secretary, Beverly Hearn.

9 Q What evidence do you have of actually
10 mailing such bills? Mr. Westfall, do you have any
11 evidence of having mailed me any bill before you
12 mailed this piece of paper? Do you have any
13 evidence?

14 A I can tell you that I know that the billing
15 went out to you at the end of 1999.

16 MR. BIRNBAUM: Nonresponsive.

17 Q (By Mr. Birnbaum) Mr. Westfall, do you
18 have any evidence of having billed me, ever having
19 mailed me anything?

20 A Yes.

21 Q What?

22 A My statement that we did it, Beverly Hearn's
23 statement that we did it. I think we even have a
24 green card finally that you signed.

25 Q According to your own documents, you had

1 already eaten up the entire \$20,000 retainer
2 agreement by July of 1999, in just two months; is
3 that correct?

4 A I haven't bothered to view it in that
5 fashion. I can certainly go through it if you'd like
6 me to do that.

7 Q Do you have any reason to doubt that that's
8 what you did?

9 A I do not doubt that we spent \$20,000 worth
10 of time on your case within two months. I have no --

11 Q Okay. So the answer is yes, according to
12 your own documents you had already eaten up or may
13 have already eaten up the \$20,000 agreement by July
14 1999; is that correct?

15 A I said that I do not have any reason to
16 doubt, based upon the amount of time that we were
17 spending on your matter, that we would have spent
18 \$20,000 worth of time within the first couple of
19 months.

20 Q So you're running in the red ever after,
21 after the first two months; is that correct?

22 A Running in the red, in other words, you now
23 owe me more money?

24 Q No. Your accounting system had a negative
25 balance. I'm not saying who owed who. Your

1 accounting system showed a negative balance when the
2 \$20,000 was eaten up; is that correct?

3 A I don't know that our accounting system is
4 as you've stated. We just simply keep time records.

5 Q What sort of flag does running into the red
6 raise in your bookkeeping system?

7 A We don't -- well, I don't understand that
8 question.

9 MR. BIRNBAUM: Okay.

10 Nonresponsive.

11 Q (By Mr. Birnbaum) You contracted in this
12 contract -- look toward the end of the page 3 of
13 that. You contracted to explain in detail the
14 ramifications -- look at the last sentence of that
15 paragraph. You contracted to explain in detail the
16 ramifications and effect of Section 1983 civil RICO.

17 Why would you need to explain to me Section
18 1983 civil RICO? You were signing on to what you
19 knew were two existing parallel civil RICO causes,
20 were you not?

21 A Yes.

22 Q And we had been talking civil RICO, had we
23 not?

24 A Yes.

25 Q Why would you want to explain -- let me