While any form of misconduct by an attorney is highly problematic, misconduct by federal prosecutors is particularly egregious. As explained by the United States Supreme Court in 1935:

“The United States Attorney is the representative not of an ordinary party to a controversy but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, in a peculiar and very definite sense, he is the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he cannot strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as to use every legitimate means to bring about a just one.”

**Prosecutorial Misconduct in the I2G Case**

"In the case of United States vs. Maike and I2G participants, the government abused its powers, disregarded the law, and employed fraudulent methods to obtain wrongful convictions, which the Supreme Court prohibits.

The prosecutors committed fraud on the court by manipulating exculpatory data to create the illusion of a $40 million pyramid scheme, claiming a 96% loss and alleging that investors were defrauded of over $38 million. However, the government had exculpatory data proving that $38 million was paid in commissions to the very alleged victim investors. This storyline was a lie. In a fraud case where losses are central to the charges, the prosecutors knowingly inflated the alleged victims' losses by over $30 million. This is not merely a matter of speculation but is verified by its data.  A post-trial data pull from Jerry Reynolds of “All Commissions” earned supports the same.

The data provider and government witness Jerry Reynolds submitted a post-trial affidavit stating that $28 million in commission gains—used for purchasing products or transferring to others—was excluded from the 101i spreadsheet.

The 101i spreadsheet was critical, as it was alleged to represent all I2G gains and losses. It was used to question 16 witnesses about I2G gains and losses, even though the data did not accurately reflect any gains or losses associated with emperor purchasers.

False statements were obtained from two FBI agents, McClelland and Sauber, and experts Dr. Keep and Reynolds concerning the inaccurate representations of “Total I2G gains and losses.” McClelland misrepresented the Total I2G Emperor Gains and Losses in his Summary Chart 232. Additionally, the 101i spreadsheet prompted false statements from 12 distributor witnesses, exaggerating their reported losses by more than $15,000 during the trial.

The government possessed exculpatory data (7240) five years before the trial, indicating that over $38 million in commissions was paid to the alleged victims, which financed most emperor purchases.

One week before the trial, the government “filtered” the original data to remove the commissions used by distributors to purchase their emperor packages or transfer to others to do the same.  Gross purchase amounts were misrepresented as gross losses. This manipulation concealed that the $28 million removed from the data was the “source” of the package payments. As a result, the reported loss figures— which also failed to account for millions of dollars in refunds, gifted packages, and non-existent recurring auto-ships—were inflated by as much as $32 million.

The government repeatedly misled the Court regarding statements made by data provider Jerry Reynolds to undermine the exculpatory data. (Doc 688 #9056, Doc 718 11343, 44) The $28 million in "paid commissions" contradicted the government’s assertion that i2G operated as a pyramid scheme with a 96% loss rate. These false statements attributed to Reynolds were made during the trial, restitution, and sentencing hearings. Assistant District Attorney Madison Sewell informed the Court and the defense that the original data was "problematic" and "inaccurate," according to Reynolds. (Doc 718 11343, 44) Later, Reynolds provided an affidavit affirming the validity of the exculpatory data.

An evidentiary hearing is necessary so that Reynolds can provide sworn testimony to determine the willfulness, malice, and deliberation behind the prosecution's actions, which occurred two weeks before the trial.

The government ordered seven new spreadsheets in July 2022 (1011, 101F, 101D, 101G, 101G1, 101B, and 101A) to reflect i2G operations two weeks before the trial. 101i and 101F were invalid because they excluded $28 million in paid commissions. All the spreadsheets were invalid because they included two years of data from **after** i2G had ceased operations. This data belonged to a different company, Xtg1, which was well-known to the prosecution. The indictment period for i2G ended on December 31, 2014; however, all seven critical spreadsheets were extended until March 2017.  These spreadsheets formed the basis of Keep's analysis and were used extensively throughout the trial.

The government had obtained accurate data from Jerry Reynolds (7240) that included all I2G transactions in 2017. This data revealed a total product revenue of $40,398,505.71 and total commissions paid to I2G distributors amounting to $38,116,346.38. These figures contrasted sharply with those presented to the jury in 101i and 101F, which reported total earned commissions of $9,512,603.52 and gains of $7.5 million. The accurate data from Reynolds indicated $28 million in "greater gains" and "lower losses” than the government represented to the jury. Moreover, the commissions paid to I2G distributors were higher than typical in most multi-level marketing companies.  Their escalated “loss rate” was a lie.

The government knew that the original data did not support its narrative of "loss." Instead of revealing that the "anticipated losses" were nonexistent, the government attempted to discredit the favorable data (7240) and ordered new data to exclude key commission figures. Two weeks before the trial in 2022, the government met with Jerry Reynolds and subpoenaed seven new spreadsheets that filtered out 80% of the commission payments made to the alleged "victim investors."

Four key government witnesses falsely represented the “manipulated data” as total I2G gains and losses.  They also misrepresented the data as belonging to  “I2G” and not XTG1, as was the case.  The government’s failure to correct extensive false testimony by key witnesses, who knew it to be false, violated its obligation under Napue.

The data in 101i and 101f were used extensively with sixteen witnesses to create the illusion that many "victims" were losing money. In reality, every emperor package purchaser made significantly higher gains and lower losses than presented in 101i data. No representation of gains or losses associated with any Emperor distributor on 101i was accurate.

The false losses in 101i and 101F extended to false testimony on summary charts 230 and 232, as presented by Agent McClelland.  The government acknowledged in its appeal brief that the summary charts were improper and withheld the underlying data. However, it failed to acknowledge that the "underlying data" included  28 million dollars in commissions paid to "alleged victims” used as the “source” of the “emperor package payments” and not reported to the jury.

The misconduct extends to the appellate attorney, Tyler Lee, who failed to correct the same falsehoods derived from 101i as evidence in her brief despite irrefutable proof that 101i falsely represented i2G Gains and Losses.

The introduction of false data violated Rule 702, which requires the use of reliable evidence. To prove fraud, there must be reliable evidence of actual losses connected to a misrepresentation. In the i2G case, the data provider confirmed that the commission Gains/Loss data presented in 101i was false. Furthermore, the government failed to correct the false testimony of four key witnesses regarding the manipulated data, which goes against the Napue principle.

In its appeal brief, the government acknowledged that key commission data had been "filtered" out of 101i but argued that it never claimed to show “all the data.”  In other words, it argued that  the government never claimed to represent  “truthful” losses. Instead, the government contended that the defense should have discovered its data manipulations sooner.

The prosecution furthered its fraud upon the Court by misrepresenting fully accountable commissions paid to alleged victims as "missing funds" in offshore bank accounts. This influenced the i2G Court to believe "missing funds" actually existed. These data manipulations were deliberate efforts to inflate losses while concealing known gains.

 The government knowingly presented **non-I2G data** as if it were I2G data. This included two years' worth of critical data that belonged to XtG1, a separate company that launched after I2G had ceased operations. The data comprised over $4 million in sales and 4,000 distributor enrollments from XtG1. Evidence from the government's exhibits, discovery documents, and witness testimonies prove they were aware of XtG1. The government knew the dates on its spreadsheets extended two years beyond when I2G ceased all operations.

The government pushed a “data-driven” case to prove a pyramid scheme.  It knew accurate and dependable data was critical.  Government witnesses prove the government’s prior knowledge.  For example, FBI Agent McClelland testified that Reynolds' records indicated $40 million in paid commissions. (Doc 688 #9052, 9053) The government shared the same knowledge as McClelland, with paid commissions totaling $38,116,346.38 and total product purchases amounting to $40,398,505.71.  This data (7240) was subpoenaed and known seven years before the trial.

FBI Agent Sauber acknowledged many data inconsistencies during Maike’s sentencing trial, including non-deducted gifted positions, unpaid transactions, unaccounted refunds, customer spots, waived auto-ships, and Xtg1 transactions outside the indictment timeline. (Doc 663 6571-6593) These errors contributed to a staggering inflation of the loss figures presented in 101i at the trial. Sauber’s awareness of these issues reflects the government’s awareness of inflated losses by millions of dollars.

Reynolds’s affidavit affirms the information in 101i was false. He complied with the government's request to “filter” key commission data that substantiated the inaccuracies. Reynolds denied the "problems" in the original data (as stated by Madison Sewell) and confirmed the data’s (7240) validity.

An evidentiary hearing is necessary to flesh out the extent of the government's lies and inform the Court of the significance of the filtered twenty-eight million dollars in paid commissions.

The government convicted defendants of federal crimes while knowingly misrepresenting its data through 16 witnesses and failing to correct the resulting false statements.

The “accurate” or non-manipulated I2G data aligns with the post-trial claims of less than 1.5 million. This number occurred only after significant prompting over seven years.  If a 96% loss rate had been valid, the resulting claims would have totaled thirty-eight million eight hundred thousand.

Additionally, the government engaged in extensive pre-trial witness tampering over seven years. Over 60 "fraud notifications" were sent to the I2G distributor base, indicating they were fraud "victims." As a result of ongoing solicitations, witnesses at the trial, such as Margaret Alderdice, came forward.  (Doc 699 #10263) Before the indictment, The FBI sent two biased surveys titled “i2Gfraud@fbi.ic.com.”

The government and its expert, Keep, emphasized that his thorough access to broad I2G data was vital to his analysis of the pyramid scheme. (doc 487 #3926) He testified that he "never had access to data like this." (Doc 487 3808, 497#3995,96, 98)The government deemed its data “golden” to its case. However, the government knew Keep’s pyramid scheme analysis and false testimony, concluding a 96% loss rate was based on unreliable data from xtg1 data and “filtered” commission data from 101i.

 The government admits in its appeal response that the data was "incomplete," contained "inconsistencies," and did not include commissions and transactions.  This argument was the basis of its arguments that Dr. Keep did not make false statements because he was unaware of the “inaccuracy” of the data nor “opined” on it.  However, the government knew Dr. Keep's statements were false and had a duty to correct them under the Napue standard.

 Additionally, the government committed numerous Brady, Giglio, and Jenks violations and witness tampering over seven years.

The prosecution misrepresented the law, distorted facts, presented personal opinions as if they were facts, and testified about matters not supported by the record. For example, the government alleged that Hosseinipour’s crime was simply “staying with I2g,” similar to **all** of its alleged victims. It also claimed she “never told people” certain information but provided no evidence to support this assertion. Furthermore, it stated she never discussed “customers,” even though its exhibits contradicted this claim.

 An evidentiary hearing is necessary to establish the record’s substantial prosecutorial misconduct, ensure the judicial system's integrity, and deter future fraudulent actions by overzealous prosecutors.

The prosecutorial misconduct and ethical violations include:

1. **Direct Lies to the Court to Hide Exonerating Data**

The prosecution falsely attributed statements to its key witness, Reynolds, to undermine data contradicting their case. They repeatedly claimed that Reynolds had deemed the exculpatory I2G data (7240) as “problematic” and inaccurate (doc 718 11354, 55). However, Reynolds confirmed the accuracy of the data (7240), which shows 28 million dollars in greater commission payments to alleged victims than represented at trial, and disproved the existence of a pyramid scheme with a 96% loss rate. In its appeal response, the government conceded that commissions were “filtered” out of 101i (doc 99, pg 74-75).

 2.) **Direct Lies to the Court about Xtg1 Data and Violations of Brady/Giglio/Jenks**

The prosecution misled the court by claiming that **Xtg1** **data** represented **I2G data** during the two years **I2G was closed**. Testimonies from Reynold and Anzalone regarding I2G’s closure and the timeline of the government’s indictment demonstrated their awareness of I2G’s closure in 2015.  Yet their data included XtG1 operations until March of 2017.

The government concealed the dates in its data or was aware that they were "hidden" and failed to inform the defense that the data provided one week before the trial extended back to March 2017. (Doc 498#4112, 4116, 4226, 4232, 4232) Reynolds testified that he did not verify the dates in the data. (doc 497 #4077) The prosecution described the dates as "indecipherable," indicating that technical measures were needed to make them readable. (id) As a result, the defense could not discover that the "i2G data" included 27 months of Xtg1 data **after** I2G had closed. This issue affected all spreadsheets: 101i, 101g, 101g1, 101b, 101a, 101d, and 101f.

 The government presented emails and data at trial that were outside the timeline of the indictment and pertained to XTg1 rather than I2G, including the entry "Dreamlyght Enterprises" (Doc 498 #4097, 4098). Although the XtG1 distributor's join date was September 29, 2015, Madison Sewell inaccurately described “Dreamlyght” as an I2G “later joiner” with a suspiciously high ranking. The Court overruled the objection.  The high ranking was due to being an early joiner in XTg1, an entirely separate company!  Similarly, the xtg1 products were misrepresented as I2G products even though there was no record of those products being a part of  i2G.  (Doc 498 #4233, #4234) This was influential as the xtg1 sales numbers were attributed to I2G.

  Reynolds testified that I2G was closed by January 2015. (Doc 498 #4249, 4250). Despite his testimony, the government presented seven spreadsheets with data twenty-seven months AFTER I2G was closed. No data was used that was not compromised.

Key witness, Anzalone testified that I2G was closed in 2015 and that Maike moved on to other plans (Doc 504 #4494, 4495), proving that non-I2G data represented until 2017 was deliberately used in a data-reliant case.  Many known false statements by key witnesses regarding the data were never corrected.

The government knew of Xtg1.  Nine meetings were held with Anzalone, who was associated with Xtg1. The Anzalone family gave prosecutors copies of their hard drives just before the trial with emails confirming their involvement with Xtg1 and its launch in 2015.

The government deliberately omitted references to Xtg1 in two exhibits (Exhibit 692) at trial. This suggests an “awareness” and deliberate intent to conceal the co-mingling of Xtg1, which would invalidate the data. The government was responsible for informing the Court about these errors and correcting the resulting false testimony provided by four key witnesses, as outlined in U.S. v. Napue.

Hosseinipour's demand letter from November 2015 mentions Maike's launch of Xtg1 (Exhibit 692), and Logan's email from October 2015 also refers to the Xtg1 launch in 2015. Agent Sauber acknowledged Xtg1 during Maike’s sentencing hearing. (Doc 663 #6562)

The government knew that two years' worth of Xtg1 data was included in all seven spreadsheets that served as crucial evidence against the defendants. They had ample opportunities to disclose data errors and correct the false statements by four key witnesses who misrepresented the data.

**Brady, Jenks, Giglio Violations**

Impeachment materials on Anzalone’s computer were not given to the defense- violating Brady, Jencks, and Giglio.  These included emails affirming Anzalone’s post-I2G involvement with the 750 million charged Ponzi Bitclub Network, collection of 300k from Bitclub Network investors' investors,  direct work with Joseph Abel, who pled guilty in the BitClub Network ponzi, work with Jason Syn in an alleged Malaysian Ponzi scheme called Vitaxel, Vitaxel complaints reported to the SEC by Elija JanciK accusing Anzalone of scamming his group of $300,000, and Anzalone’s subsequent corporate position with a bitcoin trading bot ponzi backed by Joseph Abel.  Emails related to Anzalone's post-i2G activities were impeachment materials held by the government on Anzalone’s computer that were never turned over to the defense.  These known associations potentially influenced his plea cooperation deal and could have been used by the defense to impeach his credibility.  The government’s withholding of Anzalone’s emails violated the principles of Brady and Giglio.

In addition, the government withheld exculpatory materials on Anzalone’s computer related to the launch of xtg1 and his involvement with it (but not Hosseinipours). This disproved the government data’s timeline and theory of an ongoing conspiracy that Hosseinipour could not be a part of.  The government also possessed exculpatory direct messages with Hosseinipour, where she discouraged his continuing involvement with I2G sales. She directly appealed to his integrity, good character, and responsibility to others, proving her lack of criminal intent. These direct messages were exculpatory and should have been turned over to i2G defendants Maike and Barnes.

We ask the Court to order the Anzalone computer hard drive copies to be preserved for use in a prosecutorial misconduct evidentiary hearing.

    3.)  **Subornation of Perjury Through Multiple Witnesses**

The government invited false testimony through multiple witnesses, including Keep, Reynolds, McClelland, and Sauber, who falsely described “total I2G gains and losses through 101i and Summary chart 230, which was central to the case. The government failed to correct each witness's false statements.

a.)  Keep falsely testified that document 101i represented “**the value of** **all** **payments** **made,”** payments made back to the individual in a spot, the value of their position, and whether or not that account had a net gain or loss (Doc 487 #3876).  Reynolds' post-trial affidavit affirms that significant exculpatory payments to i2g distributors—amounting to **$28 million—were “filtered out” of** 101i. The actual commissions earned were 80% greater than the “value of payments made” represented in 101i.  Statements by Keep and the government that I2G had a 96% loss rate were false.  (doc 487 #3876-78) The government admitted that commission “payments” were filtered out of 101i.  Therefore, it knew the statements from four witnesses describing the data were false.  Keep similarly misrepresented 101F as All I2G Gains and Losses.

Moreover, The government knew that Keep and Reynolds' statements that 101i included “all payments to I2G distributors was false.  (Doc 487 #3876) Likewise, FBI agent McClelland's testimony on the Total I2G Gains and Loss summary chart was false.  McClelland acknowledged that Reynolds's records indicated $40 million in commissions. The government's knowledge was the same as McClelland's.  It knew the $8 million figure as total gains reported in 101i was false and manipulated.

b.) **Keep and Reynolds provided false testimony, claiming that all of the government’s data (up until March 2017) belonged to I2G** (Doc 498 #4164). This contradicts Reynold’s testimony stating that I2G had ceased operations by the time of the FBI raid in January 2015 (Doc 498 #4249, 50). Additionally, Reynolds falsely asserted that he had already stopped working with Maike. (id) The government knew these statements were untrue, as evidenced by seven spreadsheets from Reynolds' database, which demonstrated his continued collaboration with Maike until March 2017. Furthermore, emails exchanged between the parties confirm their ongoing partnership, including the facilitation of the XTG1 launch in September 2015. Reynolds managed the XTG1 data until March 2017. (See Attached)

 c.)  **Reynolds made false statements claiming that 101i included all commissions earned by I2G distributors** (Doc 487 #3876). However, he later admitted that 101i did NOT include all commissions. In his affidavit, he stated that key (exculpatory) commissions and transactions were “filtered” out of 101i. The government acknowledged the existence of these “filtered” commissions in 101i in its appeal response (Doc 99, pg 77, 78). Despite this, Tyler Lee continued to rely on the false statement in the government's appeal to support the significantly inflated representations of the I2G losses.

d.)**Agent McClelland provided false testimony regarding i2G sales, I2G Distributor Gains and Loss Commission totals on summary charts 230 and 232. (Doc 688 #8979-81**

McClelland stated:  A. So what I wanted to know was of the people who put money in and bought Emperor positions, how many people made money

who came away with more than $5,000. And I looked at the spreadsheet that showed the commissions that were paid because this is how people were getting money back and then I had to -- so you had to make at least more commission than you paid in.

This representation was false because McClelland failed to account for 28 million dollars in paid commissions that were not withdrawn from gpg but were instead used as the “source” of the emperor's purchases.  In other words, many distributors did not pay the $5019.95 out of pocket. Instead, they turned commissions earned into gift certificates to pay for their purchases or those of downline members.  Thus. McClelland misrepresented the commissions that distributors were paid and grossly misrepresented their gains or losses.

McClelland knew of $40 million in commission payments to i2G distributors seven years before the trial (document 688, #9052). Reynolds's affidavit supports the $40 million in total commissions (Exhibit 7240). Despite this data, the government falsely represented $8 million in total commission payments in 101i.

   e.) **Reynolds provided false testimony by stating that "gifted positions" would be marked as "unpaid" in his system.** (Doc 498 #4170) This was a false statement, and the government knew it was.  "Gifted" packages were marked as "fully paid" in 101i, leading to millions of dollars in inflated “loss” figures. The government's knowledge is evident from its detailed inquiries about "gifted position" and "gift certificate" purchases.  They knew Jason Syn had 275 “gifted positions,” as represented on their own summary chart 234.  Despite this, $1,380,486.25 from Syn’s gifted packages were represented as “ fully paid or as “losses” in 101i.  Gifted emperor packages inflated loss representations in 101i by millions of dollars.  The government knew Reynold’s statement was false by virtue of their own “gifting” summary chart claims in 234.

f.) **The Government knew that Xtg1 contaminated the crucial I2G data until March 2017**

The government possessed numerous emails exchanged between the Maikes and Reynolds after the closure of I2G. These emails fell outside the timeframe Reynolds claimed he no longer worked with the Maikes. They clearly show that Reynolds was aware of Xtg1, supported its launch in September 2015, and housed the Xtg1 data until March 2017. Consequently, the government was also aware of Xtg1.

Reynolds provided false testimony, stating that he had ceased working with the Maikes by January 2015. The government knew this was false testimony and was responsible for correcting it. Instead, the government knowingly invited Reynolds to present the Xtg1 data from 2015 to 2017 as if it belonged to I2G.

g.)  **McClelland misrepresented Gain/Loss data in his summary charts (230, 232).**

The government acknowledged in their brief that the summary charts (230, 232) were improper, and no underlying data supported the summations (Docs 99, 102, 103). Specifically, Gain/Loss representations in 232 omitted $28 million in paid commissions.  McClelland testified that Reynold’s records reflected $40 million in commission payments. (Doc 699, #9052). The government admitted that commissions unfavorable to their profit and loss calculations were "filtered" out of 101i  one week before the trial.  The same commission data was filtered out of summary charts 230 and 232.

The extensive testimony based on known false data indicates the government's subornation of perjury.  It supported McClelland’s false summations (Exhibits 230, 232), fully aware that significant commissions had been excluded and the summaries and testimony were false.

**4.)   Manipulation of Exonerating Data**

The government manipulated data to hide $28 million in commission payments to alleged victims to support a false 97% loss in 101i. Despite its acknowledgment that the commission data was “filtered out” of 101i and 101F (Doc 99, pp. 77, 78), multiple prosecutors have conspired to maintain the false 97% loss rate narrative.

**5.)** **Brady Violations**

Anzalone's computers turned over to the government, contained exculpatory emails demonstrating the establishment of a separate company, XTG1, in which Hosseinipour and Barnes were not involved. The trial evidence included over two years of data from XTG1 when I2G was closed, making it clear that Hosseinipour and Barnes could not have been part of any ongoing conspiracy as alleged by the data.  The failure to disclose Anzalone's XTG1 emails constituted a Brady violation. Furthermore, significant impeachment evidence concerning Anzalone's involvement in three alleged Ponzi schemes just before he entered a plea deal could have influenced his change of heart. The emails served as impeachment evidence that the government was obligated to disclose under the principles of Brady, Giglio, and Jencks.

6.) **Witness Tampering For Seven Years**

The government conducted a seven-year campaign of pre-trial witness tampering, which involved sending over 60 fraud notifications to distributors. Additionally, two highly biased FBI surveys labeled I2G as fraudulent (Doc 701#1, 53, 54, 56). Despite this negative influence, only $1.5 million in direct claims (Docs #2, #3) were collected after the trial. This amount is significantly less than the $5 million in losses claimed through 101i (Doc 718#3). If the reported 97% loss rate were accurate, the total claims received should have exceeded $38 million. The government knew that the data in 101i was false, as it filtered $28 million paid to “alleged victims.” They intentionally used inflated loss figures in 101i to exaggerate the restitution amount.

The prosecution's fraudulent actions are not a matter of speculation. This was a data-driven case, so all of its misrepresentations are proven through the data. Additionally, Reynolds' sworn statement supports their data manipulations and perjury subornations. Despite ample opportunity to do so, the prosecution never corrected the false data or false statements related to the data. The convictions could not have existed without the false statistical representations that dominated the trial.

**False Evidence Fraud on the Court**

Long ago, the Supreme Court clarified that deliberate deception of a court and jurors by presenting known false evidence is incompatible with "rudimentary demands of justice." [Mooney v. Holohan, 294 U.S. 103](http://scholar.google.com/scholar_case?case=10553267621994442310&hl=en&as_sdt=2&as_vis=1&oi=scholarr), 112 (1935). In [Napue v. Illinois, 360 U.S. 264 (1959)](http://scholar.google.com/scholar_case?case=177919023861571522&hl=en&as_sdt=2&as_vis=1&oi=scholarr), the Supreme Court reiterated that a conviction obtained through the use of false testimony, known to be such by representatives of the State, is a denial of due process. The Court further ruled that there is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . . ." Napue, 360 U.S. at 271.

**Response to Government Appeal Brief**

**The Government conceded false evidence in its appeal answer.**

The government affirmed false data and “inconsistencies” in 101i and other data  Keep relied upon for his analysis (appeal Doc 99, pp. 75, 77). Agent Sauber acknowledged Xtg1 as a company Maike started after I2G closed (Doc 663 #6572). He acknowledged 4,000 unique entries and over $4 million in sales processed after I2G was closed (Doc 663 6562).

The government acknowledged that commissions were filtered from 101i gain/loss calculations (Doc 99, pp. 75-77). The exclusion of 28 million dollars in distributor gains dramatically inflated losses. Reynold produced data after the trial confirming that nearly 40 million dollars in commissions were paid to I2G distributors, corresponding with paid commission data from (ex7240), which the government pulled in 2015, and with McClelland’s statements.

The government failed to disprove Reynolds's or Keep's false statements. Instead, its appeal answer admits to false evidence to deflect from its subornation of perjury. The government argued that Keep did not offer "false testimony" because he relied on "false evidence." The government admits the data provided to Keep was “inaccurate” and “incomplete” (doc 99 pg 75). It acknowledged 101 inconsistencies but argued that it never claimed that 101 included all the “relevant data." It admitted that exculpatory commissions were excluded (Doc 99 pg 74, 75) to prove that Keep and Reynolds' statements were not false. This does not disprove the false statements; it only demonstrates the government’s knowledge of 101i’s unreliability and why the Court's decision to allow 101i and all the tainted spreadsheets was an error (Ref: R.681:#8311; R.498:#4164).

The government admits its duplicity by arguing that Keep "only analyzed the data they gave him and **did not opine on the accuracy or** **completeness of the underlying data.”** (id)  However, Keep did “opine” on the accuracy of the data or when he claimed that certain I2G determinations would depend on **“which data”** you looked at. (Doc 487 #3956, #3958)  and that 109F data was “wrong.”(Doc 487 #3956, #3958)  Keep’s acknowledgment of “false data” refutes the government's argument that he did not opine on it.

Despite admitting to false I2G data, Dr. Keep emphasized the necessity of accessing a company’s data to conclude a pyramid scheme (Doc 487 #3926). He stated that he never had access to data like this before (Doc 487 3808, 497#3995,96, 98). Reliance on the "data" was referenced over 100 times (Doc 487 3747, 52, 3805, 3826, 27, Doc 487 #3844, 45, 47, 70, 73, 84, 85, 3808, 3925, 26). Since the government admitted the data given to Keep was false, and Keep acknowledged I2G data was false, his pyramid scheme analysis and entire testimony were unreliable and invalid.

The government acknowledged that Reynolds provided false testimony regarding "all commission types" included in 101i. This acknowledgment came when they admitted that "commissions” and “transactions," necessary for accurate gains/loss representations, were excluded from 101i (document 99, pages 74-75). They conceded that 101i is false.  "This exchange made clear that Reynolds’s system did not track all transactions, and thus it was possible that Exhibit 101i did not account for all gains and losses by I2G participants" (id).

 The government argues that the data's falsehoods or “incompleteness” was always disclosed and that they never claimed to make complete disclosures in 101i.  The illogical arguments to disprove the subornation of perjury only argue the unreliability of 101i. (id) The point is moot.  Reynolds admits that his statement at trial was false in his affidavit, proving that the government suborned perjury.

In his affidavit, Reynolds confirmed two types of commissions were excluded from 101i.  1.) commissions used via "gift certificates" to purchase products  2.) commissions transferred to other distributors (for initial product purchase or other)

 These commission types included an additional $28 million paid to the alleged victims, which was 80% greater than represented at trial. The deliberate discrediting of this data allowed the government to freely portray non-witness promoters as victims while concealing their actual substantial commission payments. For example, nonwitness Pepito allegedly lost over $100,000 (Document 718, #1) when she received and withdrew $90,000 (Document 718, #3 ex 7240). This crucial information was withheld from the jury, with no opportunity to cross-examine non-witnesses (based on McClelland hearsay) about their commission payments.  The court and the jury were falsely influenced, as evidenced by the court's description of Pepito as a "big deal" and "a poor lady who got suckered out of a lot of money" (Document 718, #2, p. 48). The data in 7240 or the 1099 statements contradict the reported losses of every alleged victim investor.

The government admits that commissions were "filtered" but claims that does not prove that they **asked Reynold** to "filter" it. However, Reynold testified that **he pulled data as requested "until the day you** **asked for it"** (Doc 497 #4062, Doc 497#4067). Even the Court recognized the self-serving purpose of the “replacement data” (101F) because it was "much, much more helpful to you because it showed what you wanted" (Doc 718 #11345).

The government attributed false statements to Reynolds that exculpatory 7240 data “had problems”  and was not good. (doc 718 11354, 55)  Reynolds's affidavit affirms he never said that.

The government failed to refute Reynolds' false testimony that a "gifted position" would result in a 0 in the "ValueAll Purchases" in 101i (Doc 497 #4062) or would reflect that no purchase occurred. This was false.  Hundreds of “gifted” emperor packages that could have “no loss” appeared as a“fully paid” loss of $5019.95.  This dramatically inflated losses in 101i.  This contradicted his previous statement that his system **would** **not** track gifted positions (Doc 497 #4034).

The government argues that Hosseinipour should have cross-examined Keep and Reynold about the spreadsheet falsehoods despite its claims that the data was so complicated that only “Jerry Reynolds” could interpret them correctly, but laypersons like the defendants could not understand it (Doc 718 #11354 11343)

The Government 101i was produced as US-126786 on 6/28/22, days before trial with others with “hidden dates” (Doc 498#4112, 4116, 4226, 4232, 4232). Maike’s defense objected that they had no time to verify the over 23,000 entries for accuracy.  (doc 497 #4079)  Reynold testified that he did not have time to validate the exhibits for dates. (Doc 497#4079, 4082)   However, the government was aware of the dates of its data requests, which exceeded the indictment timeline by over two years when I2G was closed.

 The Government argued that Hosseinipour should have discovered the false evidence sooner. However, the government should not be rewarded for its duplicity.  Hosseinipour alerted the court to false evidence in her motion to stay pending appeal (doc 635) and her restitution filing. Barnes alerted the court in his sentencing memorandum and restitution filing.

 The government validated Reynold’s 7240 data (Doc 718 11343, 44) as an exhibit it planned to introduce.  It stated that Jerry Reynold’s data was not the issue, but the defense could not interpret it without Reynolds. (Doc 718 #11345) The government’s references to“uncorroborated credits” and “unsubstantiated” in its appeal response are dishonest and self-serving in light of Reynold’s corroborating affidavit, which substantiates it.  The court even recognized the duplicity in replacing 7240 with a spreadsheet 101F, as it was  “much much more helpful to you because it showed what you wanted.”  (Doc 718 #11345)

 MR. SEWELL: -- is that it's not that this data is incorrect. It is that Mr. Meyer's interpretation of the data is incorrect. If there's anything we learned from the trial is that Jerry Reynolds' spreadsheets are not for, you know, the layperson to come in and say, "Well, I think it means this." So this data can come from someone like Jerry Reynolds explaining what all these code numbers mean   (Doc 718 #11354)

 THE COURT: Well, if this data has been aggregated in a form that is usable -- or understandable by me, I'll consider it, but so far I don't -- I haven't -- I understand the concept. (doc 718 11354, 55)

 MR. SEWELL: He's not here, but, I mean, if we need to get an affidavit from him and get him through. But the important point is that that document was, at trial, turned into 101-F, because in the meetings with Jerry Reynolds -- we had meetings with Jerry Reynolds and were preparing for trial. That 7240 was going to be an exhibit, and Jerry Reynolds noted again and again that his staff had prepared the document without his involvement. That was an early subpoena that was issued. And he said, "This document needs to be corrected. This document has problems." And so we didn't get into all the details. He produced the corrected version that was much, much more helpful, and that was 101-F that was used at trial.

THE COURT: It was much, much more helpful because it showed what you wanted. Listen, I'll consider what their arguments are from the document. If you can produce an affidavit from Mr. Reynolds that says this -- that 7240 is inaccurate and instead 101-F is more reliable or is accurate, then that's fine, but -- MR. SEWELL: And I think -- THE COURT: Look, I'm going to ask then, somebody for the defense, explain to me -- show me what 7240 is and explain what your argument is about what this document shows.  Doc 718 #11345)

**Witness Tampering For Seven Years**

 The government claims that it calculated losses using sources other than 101i. However, the loss calculations and witness statements were compromised due to a seven-year campaign of witness tampering. Biased FBI surveys were sent to the distributors, labeling I2G as a fraud. An email campaign was also conducted to persuade distributors that they were defrauded, including 60 "Victim" Notifications sent to I2G distributors before the trial (Doc 701#1, 53, 54, 56). Despite this, only $1.5 million in direct claims (Doc #2, #3) were received, far less than the $5 million in losses indicated claimed through 101i (Doc 718#3). If the 97% loss rate were accurate, the claims received should have been over $38 million, not a mere 1.5 million prompted by ongoing influence.

**The Government Knew its Data Exceeded the Indictment Timeline**

The government admits to false evidence but argues that it cannot be proven that it knew the data was false.  However, Agent Sauber acknowledged many "inconsistencies" that the government knew would compromise the reliability of the data (Doc 663 6571-6593).

 The Court repeatedly questioned the relevance of exhibits that breached the indictment timeline. (doc 498 4097,98, Doc 663 6593)  For example, An XTG1 enrollment from Sept 29th, 2015, was represented as an i2G member who received “favorable placement” despite being a “late-joiner.” (Doc 498 #4097,98)  The Court admitted that the timeline breached exhibits long after I2G was closed because the government claimed it belonged to I2G.  Objections for speculation, relevance, and falling outside the timeline were denied.  Similarly, XTG1 entries, packages, and sales activity after I2G was closed were represented as belonging to i2G.

The government clearly understood "gifted positions" (Doc 497#4034 Doc 663 6570-71), “gift certificate commissions,” and “fund transfer commissions” (Doc 498 #4220, 21 4216 Doc 663 6572). Reynolds described “gift certificates” as"commissions" that were "advantageous" and could be used to "pay for orders or use for other things" (Doc 498 #4216). The government admitted to excluding these commissions from 101i, which they knew would inflate losses and hide gains.

The government’s deception is proven through its exhibits. Exhibit 234 claims that Syn had **275** **"gifted" packages.**  However, in 101i, all 275 of Syn’s “gifted” packages were represented as losses of $5019.95 each, totaling $1,380.486.25 in false losses in 101i.

The Government understood the “inconsistencies” that would inflate losses in 101i, including  a.) excluded refunds (Doc 663 #6568, Doc 497 4061, 62), b.) waived auto-ships that appeared as paid (Doc663 #6573, 74, Doc 505#4550), c.) customer positions, d.) unpaid corporate positions (Doc 498 #4104), e.) customer frauds (Doc 663 #6577), and e.)  XTG1 company launched in 2015 (Doc 663 6572). Agent Sauber affirmed each inconsistency.

**The Government Knowledge of XTG1/ Brady Violations**

The government's exhibits prove its knowledge of XTG1. An email from Hosseinipour to Maike in November 2015 expressed anger over the launch of Xtg1. An email from Logan to Susan Anzalone voiced anger over the launch of XtG1. Emails from Anzalone's computers documented Xtg1’s launch, which was never turned over to the defense.

The launch of XtG1 in September 2015 took place **after I2G had been** **closed. This** **indicates** **that the** two years of data presented during the trial were specific to XtG1 and un**related to I2G.** This situation constitutes a Brady violation, as Hosseinipour was not involved with XtG1, and the Anzalone emails was never disclosed. One of the emails concerning the XtG1 launch, discovered by Hosseinipour, was included in her restitution brief.

Xtg1 data compromised every statistical i2G representation on all seven government spreadsheets (from 101d, 101b, 101f, and 101g), including total distributors (Doc 487 # 3849, #4139), total sales (Doc 487 #4057), distributor levels (Doc 487 3848,#4138), and product packages (Doc 487 #4056, pg 47).

The trial was undermined by the widespread use of false data, invalidating Keep's pyramid scheme analysis and government representations and tainted every witness's testimony.

The conviction should be overturned based on Napue and in the interest of justice. If the government had not presented false testimony and evidence, or concealed exonerating information, all of its claims would have been disproven, resulting in a different outcome at trial.

The FTC is the only sanctioned body intended to determine whether an MLM company is a pyramid scheme through the administrative process required under the FTC Act. Pyramid schemes are categorized under the FTC Act as deceptive business practices, which require notice to MLM companies and allow them to respond and make necessary changes. Congress did not intend for the DOJ to manipulate statutes to create new criminal laws and bypass the FTC regulatory process. The government further invented a conspiracy crime based on mlm distributor “staying with an MLM company” despita all distributors staying with the company.  This dangerous legal invention could entrap any of millions of innocent MLM distributors.