

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 09-cr-00266-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DAVID A. BANKS;
2. DEMETRIUS K. HARPER, a/k/a KEN HARPER;
3. GARY L. WALKER;
4. CLINTON A. STEWART, a/k/a C. ALFRED STEWART;
5. DAVID A. ZIRPOLO; and
6. KENDRICK BARNES,

Defendants.

REPORTER'S TRANSCRIPT
(Jury Trial Day 4)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 8:57 a.m. on the 29th day of September 2011, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

Pro Se

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E X H I B I T S

<u>NO.</u>		<u>ADMITTED</u>
1.00	561
1D	589
50.01	530
51.00	533
56.02	542
140.02	613
141.00	618
146.01	.....	623
- page		
2		
146.03	.....	625
241.00	.....	651
251.00	.....	661
252.00	.....	659
290.03	.....	678
291.00	.....	680
321.00	.....	700
326.01	.....	705
451.00	.....	592
456.07	.....	601
502.02	.....	471
502.03	.....	473
505.01	.....	504
700.05	.....	679

<u>No.</u>		<u>ADMISSIBLE</u>
52.00	.....	537
142.00	.....	620
242.00	.....	655
243.00	.....	653
292.00	.....	684
452.00	.....	595
453.01	.....	593
453.02	.....	593
453.03	.....	594

1 **SEPTEMBER 29, 2011**

2 (Proceedings commence at 8:57 a.m.)

3 (The following is had in open court, outside the
4 hearing and presence of the jury.)

5 THE COURT: You may be seated.

6 All right. I thought about this overnight, and I
7 think we ought to at least address with the jury why one
8 of their members is not there, otherwise they are going to
9 be wondering what happened. So I would propose when they
10 come in, I would just tell them that Ms. De Jung was
11 excused because she realized that she knew one of the
12 people whose name was mentioned in the testimony, and we
13 felt it was better. So that is all we will say, otherwise
14 they will be wondering what happened.

15 Do you all agree?

16 MR. KIRSCH: No objection to that, Your Honor.

17 MR. BANKS: No objection.

18 THE COURT: Any other matters to be brought to the
19 Court's attention before we bring the jury in?

20 MR. BANKS: Yes, Judge, we did want to present
21 Defendants' Exhibit 340. I know Ms. Barnes told us this
22 morning you would rather have us, for the record, to enter
23 these -- any impeaching documents as exhibits.

24 THE COURT: Well, they won't be admitted as
25 exhibits. I need to have them marked for identification.

1 So for appellate purposes, we need to know what was used.

2 MR. BANKS: So we can still mark it with an exhibit
3 tag. It is not necessarily an exhibit.

4 THE COURT: Not admitted into evidence, just marked
5 for identification.

6 MR. BANKS: Very well. I provided Ms. Barnes with
7 a copy. And I provided Mr. Kirsch with a copy, as well.

8 THE COURT: I think any time we use documents that
9 are not admitted, we ought to reference them. You all
10 will be responsible at the end -- you will get the
11 exhibits back, whether admitted or not, and you are
12 responsible to maintain those for appeal.

13 But for purposes of appellate record this morning,
14 I was talking to Ms. Barnes. I told her that I think we
15 need to have those marked for identification. Not
16 admitted, but part of the trial record. So we know
17 Exhibit 340 was the one you used to impeach, and that is
18 how you should refer to it.

19 MR. BANKS: Very well.

20 THE COURT: Okay. Anything further?

21 Nothing? All right. Ms. Barnes, would you please
22 bring in the jury:

23 (The following is had in open court, in the hearing
24 and presence of the jury.)

25 THE COURT: All right. You may be seated.

1 Good morning, welcome back. As you may have
2 noticed, one of your members is missing. Ms. De Jung
3 informed us yesterday that she was acquainted with one of
4 the people whose name was mentioned in testimony
5 yesterday. And I decided that it would be best that she
6 not continue to serve on the jury. And that is one of the
7 reasons we have four alternates, is because over the
8 course of the next 6 weeks, things may happen, and we may
9 have to excuse a juror.

10 So she was excused because I felt that would be
11 best for this trial. So I didn't want you worrying about
12 what happened to her. It was nothing bad. It was just
13 one of those things that happens in a trial.

14 All right. Is the Government ready to call its
15 next witness?

16 MR. KIRSCH: We are, Your Honor. The Government
17 would call William Witherspoon.

18 COURTROOM DEPUTY: Your attention, please.

19 **WILLIAM WITHERSPOON**

20 having been first duly sworn, testified as follows:

21 COURTROOM DEPUTY: Please be seated.

22 Please state your name, and spell your first and
23 last names for the record.

24 THE WITNESS: My name is William Witherspoon. Last
25 name is W-I-T-H-E-R-S-P-O-O-N.

1 THE COURT: You may proceed.

2 DIRECT EXAMINATION

3 BY MR. KIRSCH:

4 Q. Mr. Witherspoon, where do you work, sir?

5 A. I work for the Department of Homeland Security and
6 Immigration and Customs Enforcement.

7 Q. What city?

8 A. Washington, D.C.

9 Q. And what is your position there?

10 A. I am a technical project manager.

11 Q. How long have you been working in that capacity for
12 the Department of Homeland Security?

13 A. For 14 years.

14 Q. Are you familiar with something called the Office of
15 the Chief Information Officer?

16 A. Yes. I started out there. And then I went to the
17 Office of Investigations. And now I am back at the Office
18 of Chief Information Officer.

19 Q. And what is it -- what is your role within that part
20 of Homeland Security?

21 A. What I do is take business processes that we have
22 from various components of our agency, and I apply a
23 technical automated solution to those business processes.

24 Q. How long have you been working in the IT industry or
25 field generally?

1 A. For a little over 23 years.

2 Q. I think you said that you worked in the Office of
3 Investigations for a period of time.

4 A. Yes.

5 Q. Did that include 2003 and 2004?

6 A. Yes, it did.

7 Q. Who was your -- to whom did you report at that time?

8 A. I reported to a Steven Cooper.

9 Q. Okay. And what was -- did you have the same role
10 within the Office of Investigations that you have now?

11 A. Yes, I did.

12 Q. So back when you worked -- so you were the IT project
13 manager?

14 A. Yes.

15 Q. And what sort of projects, then, were you working on
16 in '03 and '04?

17 A. Our main one was a case management system for our law
18 enforcement officers.

19 Q. Okay. And what were you doing with respect to the
20 case management system?

21 A. Well, as you know, after 911, originally I worked for
22 Immigration and Naturalization. And after they stood up
23 Homeland Security, they merged all of us together;
24 Customs, Secret Service, et cetera. And at the time when
25 I was working at INS, we started out working on a case

1 management system. And then when we combined with other
2 agencies, they had a need for a case management system, as
3 well.

4 So we took all of our resources together, and we
5 started looking at a one stop case management system that
6 we were going to -- would fit the entire agency.

7 Q. All right. As a part of that work, was it a part of
8 your job to meet with vendors who had software that might
9 fit that bill?

10 A. Yes.

11 Q. How frequently would you have meetings with software
12 vendors like that?

13 A. Daily. Sometimes weekly. It depended. There were a
14 lot of people interested in doing work with the Federal
15 Government. And also we had -- and we had a team, and we
16 went out and we evaluated commercial products, as well as
17 in-house products, because we had a lot of cases that came
18 together that had different case management systems. So
19 we looked in-house, as well as commercial products that
20 would have solved our needs.

21 MR. KIRSCH: Your Honor, could I ask to publish
22 what I believe has been admitted. It is Government
23 Exhibit 502.04.

24 THE COURT: Let me check my records. Yes, 502.04
25 has been admitted. You may publish.

1 MR. KIRSCH: Thank you, Your Honor.

2 Can you expand the lower message there Special
3 Agent Smith.

4 Q. (BY MR. KIRSCH) Mr. Witherspoon, can you see that
5 e-mail message on your screen now?

6 A. Yes. Uh-huh.

7 Q. It appears to refer to a meeting with IRP that had
8 occurred in November of 2003.

9 A. Uh-huh.

10 Q. First of all, did you ever participate in a meeting
11 with IRP?

12 A. Yes. There was a team of us, yes.

13 Q. Do you recall whether you participated in this
14 meeting back in November of 2003?

15 A. Yes.

16 Q. You did?

17 A. Uh-huh.

18 Q. Okay. Now, the rest of this exhibit contains --
19 there is a reference to the sample operations order?

20 A. Uh-huh.

21 Q. If we can go to the next page of that exhibit. Can
22 you see -- is that large enough on the screen for you to
23 see what it is?

24 A. Yes.

25 Q. What would a vendor have to do in order to get a copy

1 of something like that after a presentation meeting?

2 A. Oh, we provided that to everyone. Basically, what
3 that is is a sample scenario. And we provided that to
4 each vendor that we had come in, to see how their product
5 would fulfill that need. And we took that information and
6 we evaluated it to see how close it came to something that
7 we would be able to use towards coming up with a case
8 management system.

9 MR. KIRSCH: Thank you, Special Agent Smith.

10 Q. (BY MR. KIRSCH) How long was this process that you
11 were engaged in of evaluating different kinds of case
12 management software? How long was that process taking?

13 A. Probably over a year or so.

14 Q. And you indicated a minute ago, I think, that you
15 participated in that meeting with IRP in November of 2003.

16 A. Uh-huh.

17 Q. Do you remember who was there on behalf of IRP?

18 A. It was Samuel Thurman. Gary -- I forgot his last
19 name. And I can't remember any other names. One or two
20 others, but I remember Gary.

21 Q. Okay. I want to direct your attention now to another
22 exhibit that you should have there on the table. It is
23 marked as Government's Exhibit 502.02.

24 MR. KIRSCH: Your Honor, I would offer this
25 exhibit, as well. And it is also my understanding that

1 this is a stipulated exhibit.

2 THE COURT: All right. It does show as stipulated.
3 Mr. Banks, any objection?

4 MR. WALKER: No, Your Honor.

5 THE COURT: I am sorry, Mr. Walker?

6 MR. WALKER: No objection.

7 THE COURT: 502.02 is admitted.

8 (Exhibit No. 502.02 is admitted.)

9 MR. KIRSCH: Thank you. May we publish that?

10 THE COURT: You may.

11 MR. KIRSCH: If we can expand that e-mail on the
12 lower part of the page, please.

13 Q. (BY MR. KIRSCH) All right. Can you see that on your
14 screen, Mr. Witherspoon?

15 A. Yeah. Uh-huh.

16 Q. The e-mail address at the top,
17 bill.witherspoon@dhs.gov, is that you?

18 A. Yes.

19 Q. So you got this e-mail?

20 A. Yes.

21 Q. And it says that you had requested -- there is a
22 Steven mentioned here, too. Who is that?

23 A. That is my boss at the time, Steven Cooper.

24 Q. Okay. Then the reference to you requesting that an
25 overview get sent in for a meeting. Do you remember

1 making that request?

2 A. Yeah. I run everything through Mr. Cooper, because
3 he is the law enforcement person. I am just a technical
4 guy. I call him the gun toter. So they have to be there
5 to evaluate those systems, because they are the ones that
6 will ultimately be using it.

7 Q. Can we scroll to the top of that page now, please, or
8 just expand that top part.

9 And this part of the memo suggests that there was
10 -- that the actual presentation was going to be on the
11 28th. Is that a meeting that you attended? Is that the
12 meeting where that presentation was made?

13 A. Yeah.

14 MR. KIRSCH: Okay. And if we can go -- just scroll
15 down just a little bit, please.

16 Q. (BY MR. KIRSCH) It looks like that message was sent
17 the 28th. Are we talking about October 28th?

18 A. Yes.

19 Q. And that's 2004; is that right?

20 A. Sounds right.

21 Q. Tell me what you remember about that presentation?

22 A. I remember -- well, there was a group of us there;
23 federal people, law enforcement people, as well as
24 contractors we had working on the business case, because
25 this was supposed to be a program, and a very large

1 multi-million dollar almost a billion dollar program.

2 So we had everyone there to evaluate their product
3 solution based on the scenario that we provided to them.
4 And then they -- after the presentation, we would evaluate
5 how well it fit with the needs of the agency, and also
6 have Mr. Cooper validate whether or not that was something
7 a law enforcement agency would be able to use.

8 Q. Now, do you recall whether you had more than one
9 meeting towards the end of 2004 with IRP?

10 A. We had at least two that I can remember. There was
11 the first time they came in. And then we gave them a
12 scenario, and they came back, as far as I can remember,
13 yes.

14 Q. Okay. Let me --

15 MR. KIRSCH: At this time I am going to ask to
16 admit, again, what I think is a stipulated Exhibit 502.03.

17 THE COURT: Mr. Walker?

18 MR. WALKER: No objections, Your Honor.

19 THE COURT: 502.03 will be admitted.

20 (Exhibit No. 502.03 is admitted.)

21 MR. KIRSCH: May we publish that, please, Your
22 Honor.

23 THE COURT: You may.

24 MR. KIRSCH: Can we go down to the lower message
25 there on the bottom?

1 Q. (BY MR. KIRSCH) Mr. Witherspoon, I am just trying to
2 work out the timing about those meetings that you
3 remember. This e-mail comes -- is dated December 7, 2004.

4 A. Okay.

5 Q. Does that -- does that help you at all in terms of --
6 does this e-mail help you at all in terms of remembering
7 sort of when the meetings that you had with IRP were?

8 A. Yeah. After original meetings and evaluations of
9 their product demo, we got together -- and law
10 enforcement, as well as myself and a few other
11 contractors, who do the cost analysis on such things.
12 Mr. Cooper said, hey, I am not sure if we can use the CILC
13 total solution because it doesn't cover everything we
14 needed, but I did like the confidential informant module.

15 Q. I will interrupt you for a moment. I will come back
16 and talk about that for a minute, but before we do that, I
17 want to try to get the chronology straight. I believe you
18 testified a minute ago that you had a meeting in October
19 of 2004 --

20 A. Uh-huh.

21 Q. -- is that right?

22 A. Yes.

23 Q. And then this e-mail is from December of 2004?

24 A. Yes.

25 Q. Do you know how this e-mail relates in time to a

1 second meeting you had?

2 A. Yes. The first one that they gave the first time
3 they came out was just a basic overall demonstration of
4 what CILC does.

5 Q. That is October of 2004?

6 A. Yes.

7 Q. Then --

8 A. Then we gave them a scenario situation, and they took
9 it back, and they came back and gave us a second demo
10 based on the scenario we provided to them.

11 Q. All right. And that second demonstration, when did
12 it occur in relation to this e-mail? Do you remember?

13 A. It would have been between -- it would have been
14 between October of the first meeting and before this,
15 because we had time to look at that product and evaluate
16 it, and then I asked for information on costs.

17 Q. All right. Okay. Now, so then that's, I think, what
18 you were beginning to talk about a moment ago; is that
19 right?

20 A. Yes, correct.

21 Q. Okay. And that's the question -- or that sort of a
22 question prompted this e-mail; is that correct?

23 A. Yes.

24 Q. Did you ask for this information that is in this
25 e-mail?

1 A. Yeah. I asked all vendors.

2 Q. You ask that question to all vendors?

3 A. Yes.

4 Q. Does this constitute a request for proposal?

5 A. No. This is a request for information. That is what
6 we call this. Just gathering prices on the cost of
7 products that are out there.

8 Q. Did you making the request for those prices have
9 anything to do with you trying to begin the procurement
10 process to buy this software?

11 A. No, it did not. And, also, when you meet with
12 vendors, when they first come in, even before we even
13 start to demo their product, we always mentioned -- and we
14 are required to by the Federal Acquisition Requisition,
15 that this is an information gathering process only. We do
16 not gear toward procurement or the obligation of procuring
17 anything. So we did that to every vendor that comes in
18 and provides a demo. We are required to.

19 Q. Did you give that information to the folks from IRP?

20 A. Yes.

21 Q. At any of the meetings when you -- at any of the
22 meetings in which you participated at IRP, did you hear
23 anyone say anything -- anyone from the Department of
24 Homeland Security say anything that suggested that the
25 Department of Homeland Security was about to buy the CILC

1 software?

2 A. No.

3 Q. Did you hear anyone at any of those meetings say that
4 the Department of Homeland Security would buy the CILC
5 software?

6 A. No.

7 Q. Did you ever have any discussion with the people from
8 IRP about the process of going about obtaining a
9 government contract?

10 A. Yes.

11 Q. What did you tell the people from IRP about that?

12 A. I asked them if there was yet a schedule, which all
13 vendors who procure or do any type of business with them,
14 would have to have. I also asked them if their product
15 was FIP compliant, which is the Federal Information
16 Processing standards. Because we can't have a system
17 touching any other government or law enforcement agency
18 system that could potentially open up our network to a
19 threat.

20 So it would have to be FIP compliant. It goes
21 through the National Approved Standards and Technology,
22 and those products have to be evaluated. Also, what I
23 always do is ask if the company is solid financially.
24 Because we are not in the business of keeping the company
25 open, just on -- not just us, the government. When I say

1 this, they have to have the financial means to sustain a
2 product when they do business with the government.

3 MR. KIRSCH: Can I have a moment, please, Your
4 Honor?

5 THE COURT: You may.

6 MR. KIRSCH: Thank you, Mr. Witherspoon.

7 No other questions, Your Honor.

8 THE COURT: Mr. Walker?

9 **CROSS-EXAMINATION**

10 **BY MR. WALKER:**

11 Q. Good morning, Mr. Witherspoon.

12 A. Good morning.

13 Q. Did -- Mr. Witherspoon, were you briefed on the
14 accusations against IRP?

15 A. On the accusation?

16 Q. Accusations?

17 A. No, I was not.

18 Q. Are you aware that IRP is being accused of saying
19 they had a contract with DHS?

20 MR. KIRSCH: Objection, relevance.

21 THE COURT: What is the relevance of his knowledge?

22 MR. WALKER: Your Honor, I am leading down the
23 trail of our statements relative to representations.

24 THE COURT: What is his knowledge of that relevant
25 to?

1 MR. WALKER: I am sorry, Your Honor.

2 THE COURT: What is his knowledge relevant to your
3 issue?

4 MR. WALKER: Well, his knowledge would be that we
5 did not discuss that with him.

6 THE COURT: Well, ask him that. I will sustain the
7 objection.

8 Q. (BY MR. WALKER) Mr. Witherspoon, did you ever have
9 conversation with IRP Solutions regarding you, DHS,
10 offering a contract to IRP Solutions?

11 A. No.

12 Q. Did IRP Solutions ever ask you to represent that DHS
13 had or was going to offer a contract to IRP Solutions?

14 A. No.

15 Q. Mr. Witherspoon, in the evaluation for procuring the
16 software for DHS, how many vendors' case management
17 systems were evaluated?

18 A. Oh, numerous. We did commercial, as well as what we
19 call COTS, commercial off-the-shelf. And also we did
20 GOTS, which is government off-the-shelf. Basically, we
21 looked at other agency -- law enforcement agencies; the
22 Air Force has a system, Criminal Investigations has one,
23 Drug Enforcement Agency as well as FBI. We evaluated our
24 own in-house system, which we have 98 as a result of our
25 agency merging with other agencies.

1 So there were numerous, probably hundreds of law
2 enforcement applications that we looked at and evaluated.

3 Q. And how many confidential informant products or
4 modules did you evaluate?

5 A. I can't remember off hand, but at least four or five.

6 Q. And in your process of evaluating different products
7 -- well, let me rephrase. Can you explain the process of
8 evaluation for products for qualification?

9 A. Yeah. It would be solely based on the law
10 enforcement prospect of that. As I had mentioned before,
11 I am an IT person. That is why law enforcement persons
12 are there. They look at the products and they evaluate it
13 based on which products best fit their needs.

14 Q. Did you attend meetings with vendors as a requirement
15 of your job? Were you required to attend all of the
16 meetings?

17 A. Yes.

18 Q. And in attending those meetings, would you review or
19 make suggestions to the vendors regarding their
20 applications?

21 MR. KIRSCH: Objection, except as it relates to
22 IRP.

23 THE COURT: Sustained.

24 Q. (BY MR. WALKER) Mr. Witherspoon, in the course of
25 evaluating IRP's CILC product and demonstration, did you

1 make recommendations to IRP concerning their application?

2 A. No, I did not.

3 Q. And when a demonstration had completed, would there
4 be an opportunity, if DHS thought it was a potential
5 product to be used, to bring them on to do additional
6 demonstrations and meetings?

7 A. No. Your first evaluation was a cold one off of the
8 street. The second one, where we provided you with the
9 scenario, that's where we started looking at evaluating
10 software to see what kind of needs would be of benefit to
11 the government.

12 Q. Thank you. In that first meeting, which you
13 characterize as a meeting off of the street, what was your
14 determination of the CILC product?

15 A. What was my determination of it?

16 Q. Yes. As far as fitness for use by your agency?

17 A. Well, that's not my decision to make. That would be
18 for the law enforcement person to make.

19 Q. Did the law enforcement team advise you of their
20 review of their evaluation of the product?

21 A. Yes.

22 Q. And what was that review of the CILC product?

23 A. That product was similar to several other ones we
24 looked at. And based on that, we went no further than
25 asking to break off a portion of the confidential

1 informant, because that was pretty much the point of the
2 product that could have been a benefit to the agency.

3 Q. In breaking off that confidential informant module,
4 what were the exact capabilities differentiating it from
5 other products that you were evaluating?

6 MR. KIRSCH: Objection, relevance.

7 THE COURT: I don't know that I really understand
8 the question.

9 MR. WALKER: I will rephrase, Your Honor.

10 THE WITNESS: Neither do I.

11 Q. (BY MR. WALKER) In evaluation of the confidential
12 informant module, did you find it more suitable than other
13 vendors' confidential informant module?

14 A. Once again, that was law enforcement's decision not
15 me as an IT project manager. The relevance of the need
16 for that product would rely on what they evaluate and
17 thought about it, not me.

18 Q. Okay. Did they inform you of their evaluation of the
19 confidential informant module for CILC?

20 A. No. The only thing they asked me was to find out if
21 that module -- that part of your product could be broken
22 off, and if so, how much it would cost.

23 Q. And what was the response to that question, if it
24 could be broken off?

25 A. That is when I called you all and asked you, and you

1 said it could be. And you provided me with an estimate.

2 Q. Do you recall the amount of that estimate?

3 A. No, I don't, not off the top of my head.

4 MR. WALKER: Your Honor, we ask to provide
5 Mr. Witherspoon with a document that would be refreshing
6 his memory.

7 THE COURT: Is that the e-mail that is admitted?

8 MR. KIRSCH: An attachment to that e-mail, if it is
9 the document I think it is.

10 THE COURT: Which is that?

11 MR. BANKS: Exhibit 502.03.

12 THE COURT: Do you have 502.03?

13 MR. WALKER: Your Honor, we ask to display that to
14 Mr. Witherspoon.

15 THE COURT: You may. Do you have it?

16 MR. BANKS: Yes, we do, Your Honor.

17 THE WITNESS: I think I have it here.

18 Q. (BY MR. WALKER) Take a moment to look at that,
19 Mr. Witherspoon. Let me know when you have had a chance
20 to do that?

21 A. Okay.

22 MR. KIRSCH: Can you scroll down more to the sum
23 total?

24 Your Honor, I believe it is page 3 of that exhibit.

25 THE COURT: I believe it is. That is the one with

1 the confidential informant module.

2 Q. (BY MR. WALKER) Mr. Witherspoon, do you see that
3 line item for the CILC confidential informant?

4 A. Is it like item C, 93.5 million.

5 Q. No, sir, at the very top of the screen at this point,
6 the CILC confidential informant.

7 A. Oh, yes.

8 Q. Okay.

9 A. Subtotal is 7 million -- 7.4 million.

10 Q. And so can you confirm that that was the module that
11 business owner asked you to inquire about from IRP
12 Solutions?

13 A. Yes.

14 Q. And in doing that, asking for that quote, would that
15 be considered part of budgeting exercises?

16 A. It would be part of information gathering. And we
17 would probably look at that -- yeah, we would put that
18 under -- we'd run it through our budget software.

19 Q. And can you explain some of the details about the
20 budgeting exercise, including the budget software's role
21 in that?

22 A. Well, I can tell you this. I had a team of
23 contractors that are specifically hired to do cost
24 benefit/cost analysis. And we use a product called
25 Rational Rose. They put all of those in there, and they

1 look at different scenarios and different costs of
2 different products to give us a cost of how much it could
3 potentially cost to build a case management system. As
4 far as the details, I don't know.

5 THE COURT: Your voice is very low.

6 THE WITNESS: I said, we have a group of
7 contractors in there, and that is their sole
8 responsibility is to come up with business case cost
9 estimates. And that is their job. I don't do that. I am
10 a technical project manager.

11 Q. (BY MR. WALKER) And going back to the November 2003
12 meeting between IRP Solutions and DHS, do you recall the
13 groups that attended that meeting?

14 A. Groups?

15 Q. Groups.

16 A. From ICE?

17 Q. Yes, from ICE.

18 A. As always, it would have been me. It would have been
19 law enforcement personnel. And it would have been our
20 business contractors.

21 Q. Those groups, did they consist of the entire user
22 base for the proposed system?

23 A. We had what we called a "subject matter expert
24 group." And those were based on law enforcement agency
25 people that would detail from different portions of the

1 country, and they are there because they represent the
2 entire body of law enforcement presence. They are the
3 ones that would be using the system, and they speak for
4 the entire agency as relates to law enforcement
5 applications.

6 Q. And during the conduct of the meeting and the
7 demonstrations, was it a regular part of the process to
8 provide recommendations to the vendors concerning the
9 product?

10 A. I'm not understanding what you are saying.

11 Q. Okay, I will try to clarify for you. During the
12 meeting and the vendor's demonstration of their product,
13 would the attendees be free to make recommendations about
14 changes to the product?

15 A. I don't know. I can't remember if they did or not.
16 I don't see why -- you mean, like it would be nice if this
17 did that or something like that?

18 Q. That's correct, yes.

19 A. They could have. I don't know. I don't restrict the
20 people in the meeting. They may have. I have no
21 knowledge of it.

22 Q. And in those meetings, was it the policy of DHS to
23 outline the next steps for the vendor depending on the
24 result of a view of the product?

25 A. You are going to have to explain that to me. I am

1 not sure what you mean.

2 Q. Let's just say, for example purposes, that the
3 product was evaluated, and you thought it was good. Would
4 you then say, here is your next step? Or, if you evaluate
5 the product and you thought it was bad, would they say,
6 here is our view, and here is your next step?

7 A. No.

8 Q. So please explain how the vendor would be
9 communicated with about the results of your review of the
10 product or the team's review of the product?

11 A. Well, as I mentioned before, since this was a request
12 for information, we are not required to -- if someone
13 calls, a vendor calls, we probably would say, yeah, well
14 we -- it is not going to fit our purposes. But since, as
15 I mentioned before, this is a request for information, it
16 was not a solicitation. We are not required to --

17 THE COURT: Can you speak closer to the microphone.

18 THE WITNESS: We are not required to, when we are
19 doing a request for information, to contact the vendor and
20 let him know what was decided with their product.

21 Q. (BY MR. WALKER) Are you restricted from
22 communicating results to a vendor in the request for
23 information scenario?

24 A. No. If you call and ask what the overall thought of
25 the product was, then, yeah, I have no problem with giving

1 you an answer.

2 Q. And would you necessarily be involved in all meetings
3 with the business owner with vendors?

4 A. Yes.

5 Q. And what would your role be in those?

6 A. Project manager.

7 MR. WALKER: Can I have one moment, Your Honor?

8 THE COURT: You may.

9 MR. WALKER: That is all of the questions I have,
10 Your Honor.

11 Mr. Banks has a few follow-up questions.

12 THE COURT: All right. Mr. Banks?

13 **CROSS-EXAMINATION**

14 **BY MR. BANKS:**

15 Q. Hello, Mr. Witherspoon.

16 A. Hello.

17 Q. I would like to start off with your interview. Did
18 you interview with the FBI, or did the FBI conduct an
19 interview on or about 8/14 or August 14, 2008?

20 A. Interview with regard to what?

21 Q. To this case.

22 A. Yes.

23 Q. Okay. Now, did the FBI ask you a question about --
24 if it was imminent that DHS was going to purchase IRP
25 software?

1 A. I can't remember off the top of my head. But I would
2 say no.

3 Q. Okay. I will get back to that in just a second. I
4 just wanted to --

5 Now, the meeting in October of 2004, what program
6 was that meeting concerning; what federal program?

7 A. That was a CEE, which is Consolidated Enforcement
8 Environment.

9 Q. It was not the Federal Investigative Case Management
10 System at issue?

11 A. No. It was CEE, which is the Consolidated
12 Enforcement Environment, which is the case management
13 system we were looking to develop for ICE.

14 Q. Okay. Now, was the FBI there at that particular
15 meeting?

16 A. Not that I can remember off the top of my head, no.

17 Q. I know it is tough to remember.

18 A. I have gone through so many case system evaluations
19 since then.

20 THE COURT: Can you speak closer to the microphone.
21 I am sorry.

22 THE WITNESS: I'm still trying to remember back who
23 was in the room 3 years ago.

24 Q. (BY MR. WALKER) I know it is tough. Hopefully I can
25 refresh your recollection shortly.

1 Was there an initiative called FICMS; Federal
2 Investigative Case Management System at issue?

3 A. Not to my knowledge. As I mentioned before, we were
4 tasked to come up with a case management enforcement
5 system for our agency. Probably there could have been one
6 for the government. I know the FBI was looking to develop
7 an application, as well.

8 Q. Now, did you attend a meeting with not only
9 Immigration and Customs, Secret Service, FBI, U.S.
10 Marshals, and Border Patrol and maybe some others? You
11 don't recall attending that meeting?

12 A. What date and time?

13 Q. It would have been around October.

14 A. Where would it have taken place?

15 Q. It took place in Washington, D.C.

16 A. Where, exactly?

17 Q. Hold on a second.

18 MR. BANKS: Bear with me. Can I have a moment,
19 Your Honor?

20 THE COURT: You may.

21 Q. (BY MR. BANKS) I know it was just outside of D.C.
22 So I can't provide any more information on the exact
23 location outside of Washington, D.C. But just to the best
24 of your recollection, you don't recall a meeting of the
25 Federal Investigative Case Management System?

1 A. No.

2 Q. Do you remember the acronym FICMS?

3 A. Yes, I do. But I did not attend any meeting outside
4 of the -- outside of Washington, D.C., that I am aware of.
5 But I had met with other law enforcement agents; U.S.
6 Marshals, yes, absolutely, because we evaluated their case
7 management system products.

8 Q. Okay. Now, do you recall anything with regards to
9 IRP's software being referred to DHS from a congressional
10 representative?

11 A. Yes. Your product and several others.

12 Q. Okay. Do you remember what representative referred
13 the product?

14 A. No.

15 MR. KIRSCH: Objection, relevance.

16 THE WITNESS: No.

17 THE COURT: Sustained.

18 Q. (BY MR. BANKS) Okay. A minute ago, Mr. Witherspoon,
19 I asked you if the FBI, if it was your recollection that
20 the FBI told you that -- or they asked you if it was true
21 if IRP told you that the purchase of our software -- of
22 the IRP software was imminent with DHS; is that correct?

23 A. Yes, you mentioned that.

24 MR. BANKS: Now, I would like to provide
25 Mr. Witherspoon, Your Honor, with the FBI interview to

1 refresh his recollection.

2 THE COURT: All right. Have it marked by
3 Ms. Barnes for identification.

4 MR. BANKS: Ms. Barnes, we would like to mark that
5 as 342.

6 MR. KIRSCH: Your Honor, can I just ask Mr. Banks
7 to confirm the date so I know what document it is.

8 MR. BANKS: August 14, 2008.

9 COURTROOM DEPUTY: Exhibit 342.

10 THE COURT: Mr. Banks, do you want him to read the
11 whole thing or a particular place in there.

12 MR. BANKS: We can go down to the fifth paragraph.

13 THE WITNESS: Okay.

14 Q. (BY MR. BANKS) Okay. So based on your dealings with
15 Sam Thurman and the rest of the IRP staff, do you think it
16 reasonable that based on what you know about these
17 individuals, they would -- they would misrepresent
18 something that you said?

19 MR. KIRSCH: Objection.

20 THE COURT: Sustained. Sir, his asking you whether
21 it is reasonable is not relevant to this case, what you
22 think, so I sustained the objection.

23 Q. (BY MR. BANKS) Mr. Witherspoon, you did not
24 volunteer -- let me ask you this. Did you volunteer
25 information that IRP represented that they had a contract

1 or they were -- a contract was imminent with DHS?

2 A. Did I volunteer it? No.

3 Q. Did you ever say -- let me ask just a general
4 question. Did you ever say IRP was going to gain some
5 sort of contract with Homeland Security?

6 MR. KIRSCH: Your Honor, again, I object to the
7 relevance.

8 THE COURT: I think it is overbroad. Did you ever
9 make a statement? So I think you have to narrow it down.
10 Sustained. To whom? When?

11 MR. BANKS: Okay.

12 Q. (BY MR. BANKS) Mr. Witherspoon, during your August
13 14th interview, 2008 interview with Robert -- with Special
14 Agent John Smith and Robert Moen, did you represent or did
15 they represent --

16 THE COURT: No, just ask him if he ever made a
17 statement to them.

18 Q. (BY MR. BANKS) Did you ever make a statement to them
19 regarding IRP was going to have a contract with DHS?

20 A. They asked me a question, and I told them it's not
21 true.

22 Q. Did that upset you?

23 MR. KIRSCH: Objection, relevance.

24 THE COURT: Sustained.

25 MR. BANKS: Your Honor --

1 THE COURT: I am not sure what relevance his
2 emotions are to this case.

3 MR. BANKS: Well, Your Honor --

4 Q. (BY MR. BANKS) The FBI -- I will ask you this
5 question, and I will ask it for yes or no purposes.
6 Did the FBI bring up the subject regarding -- during your
7 interview, regarding IRP's representations about whether
8 or not a contract was imminent?

9 MR. KIRSCH: I object, again, Your Honor. Whatever
10 the FBI might have brought up can't possibly have anything
11 to do with attempts to impeach this witness.

12 THE COURT: Sustained.

13 MR. BANKS: All right. Let me move on, Your Honor.
14 Q. (BY MR. BANKS) Did you request another quote from
15 IRP?

16 A. For what, exactly?

17 Q. For the case management system.

18 A. The first quote was for the case management system.
19 The second one was for the confidential informant module.

20 Q. Do you remember the amount that the quote was for the
21 case management system?

22 A. Probably right around a hundred million. I can't
23 remember off the top of my head. I have gone through so
24 many cost evaluations, and this was years ago, so --

25 Q. What was your opinion of the IRP software?

1 A. Once again, I'm a technical project manager. I have
2 no opinion of the product. It would be solely what the
3 law enforcement agents --

4 THE COURT: Can you speak further into the
5 microphone? The jury is having difficulty hearing you.

6 THE WITNESS: It would depend on what the law
7 enforcement agency -- law enforcement agents thought of
8 the product.

9 Q. (BY MR. BANKS) Are you a contracting officer, too?

10 A. No, I am not a contracting officer. At the time I
11 would have been a contracting officer; a technical
12 representative, which is totally different from being a
13 contracting officer. I don't, nor have I ever, dealt with
14 one, which I would have to -- a contracting officer.

15 Q. And for the contracting office, as their technical
16 representative, do you recommend anything back to the
17 contracting office, or are you just outsourced, if you
18 will?

19 A. I don't understand what you mean by "outsourced." I
20 don't do recommendations to the contracting officer. If a
21 product or any kind of services are to be contracted for
22 the agency, then it would be the business owner that works
23 with the contracting officer, not me.

24 MR. BANKS: Can I have one moment, Your Honor?

25 THE COURT: You may.

1 MR. BANKS: No further questions.

2 THE COURT: All right. Anything further from the
3 defendants?

4 MR. BARNES: No, Your Honor.

5 THE COURT: Any redirect?

6 MR. KIRSCH: Yes, please, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. KIRSCH:**

9 Q. Mr. Witherspoon, a couple other things I want to ask
10 you. First of all, this term the "business owner" --

11 A. Yes.

12 Q. -- in the context of the meetings that you were
13 having with the folks from IRP, who is the business owner?

14 A. It would be Steven Cooper, who was the law
15 enforcement entity that would be over the whole entire
16 case management program.

17 Q. All right. And so when you said that you were
18 involved in all of the meetings with the business owner,
19 that means you were involved in all of the meetings with
20 Steven Cooper?

21 A. Yes.

22 Q. During any of those meetings, was there -- were there
23 any formal requests made to IRP to make specific changes
24 to their software product?

25 A. No.

1 MR. KIRSCH: Can I please publish again, Your
2 Honor, Government Exhibit 502.03, page 3 of that exhibit?

3 THE COURT: You may.

4 MR. KIRSCH: Can you expand the top half of that,
5 please?

6 Q. (BY MR. KIRSCH) Can you see that on the screen
7 Mr. Witherspoon?

8 A. Yes. Uh-huh.

9 Q. Now, again, this is the -- this is the -- what you
10 got in response to your request for information; is that
11 correct?

12 A. Correct.

13 Q. Now, up here it says, "contract number," then there
14 are a bunch of N's -- the letter N. Was there a contract
15 out there?

16 A. No.

17 Q. Then the date on this is -- is that an accurate date,
18 as far as you remember? Is that when you would have
19 gotten this?

20 A. Approximately, yes.

21 Q. December of 2004?

22 A. Yes.

23 Q. Did Mr. Cooper, the business owner, did he ask you to
24 do any additional testing with respect to the confidential
25 informant module?

1 A. No. Only thing he wanted to know is how much the
2 cost of the module would be.

3 Q. How about the overall one? Were you ever asked to do
4 any more testing of the entire product?

5 A. The CILC product, no.

6 Q. As far as you know, did DHS ever take any additional
7 steps to move towards purchasing either the larger product
8 or the confidential informant module?

9 A. No. No.

10 MR. KIRSCH: Thank you, Mr. Witherspoon.

11 MR. BANKS: Couple questions, Your Honor.

12 THE COURT: Okay. I usually don't allow recross,
13 but go ahead.

14 **RECROSS-EXAMINATION**

15 **BY MR. BANKS:**

16 Q. Mr. Witherspoon, are you responsible for testing any
17 software?

18 A. No.

19 Q. Who would be responsible for doing that sort of
20 testing?

21 A. If we had a product out there, and it was to be
22 tested, it would be by the law enforcement people. We
23 call that field testing. They would be the ones that
24 would use the product, and they would evaluate it.

25 Q. To the best of your recollection, was any of IRP's

1 software ever tested?

2 A. No.

3 MR. BANKS: That is all I have, Your Honor. Thank
4 you.

5 THE COURT: All right. May this witness be
6 excused?

7 MR. KIRSCH: Yes, Your Honor.

8 THE COURT: All right. Thank you very much,
9 Mr. Witherspoon, you are excused.

10 Government may call its next witness.

11 MS. HAZRA: Thank you, Your Honor. Government
12 calls Frank Bello.

13 COURTROOM DEPUTY: Your attention, please.

14 **FRANK BELLO**

15 having been first duly sworn, testified as follows:

16 COURTROOM DEPUTY: Please be seated.

17 Please state your name, and spell your first and
18 last names for the record.

19 THE WITNESS: Frank, F-R-A-N-K, Bello, B-E-L-L-O.

20 THE COURT: Mr. Bello if I could ask you to speak
21 directly into the microphone so everybody can hear you I
22 would appreciate it.

23 **DIRECT EXAMINATION**

24 **BY MS. HAZRA:**

25 Q. Morning, Mr. Bello. Where are you employed?

1 A. Employed by the New York City Police Department.

2 Q. What is your position with the New York City Police
3 Department?

4 A. I am the Assistant Commissioner of the Contract
5 Administration.

6 Q. How long have you been in that position?

7 A. I have been in this position for quite awhile. It is
8 now about almost 13 years.

9 Q. And can you repeat the name of the division you are
10 in charge of?

11 A. I am in charge of the Contract Administration Unit.

12 Q. You have been the Chief of that for 13 years?

13 A. Yes.

14 Q. What are the responsibilities of that unit?

15 A. I'm responsible for the management of all
16 procurements for the New York City Police Department.

17 Q. And what is a procurement?

18 A. A procurement is the purchase of goods, services.
19 You know, IT, construction that is required by the NYPD.

20 Q. And I know you have already said this, but you were
21 the head of that unit from October 2002 and through
22 February of 2005, as well?

23 A. Yes.

24 Q. Based on your experience in that unit, what does the
25 New York City Police Department consider to be a

1 significant procurement?

2 A. A significant procurement is anything over a hundred
3 thousand dollars. And it usually involves IT
4 acquisitions, involving IT systems. Could be construction
5 projects. Could be other things, as well.

6 Q. During this time period of 2002 through 2005, or even
7 continuing on, does the New York City Police Department
8 have a policy in place for procurements?

9 A. Yes, it does.

10 Q. Is that policy made available to the public?

11 A. Yes. It is available on-line. The City has the
12 procurement policy board rules.

13 Q. So they are written down, I assume, if they are
14 on-line?

15 A. Excuse me?.

16 Q. The policies are written down if they are on-line?

17 A. Yes.

18 Q. Can you briefly explain how -- what the steps are you
19 need to go through for procurement with the New York City
20 Police Department?

21 A. Several steps. Very long process. Usually for
22 IT-type contracts, we, you know, do what is called an RFP.
23 It starts with --

24 Q. Let me interrupt you there. What is an RFP?

25 A. Request for proposals. It starts with the -- first

1 of all, it starts with funding. Then we do -- once the
2 funds are available, we do a competitive solicitation. We
3 solicit proposals from vendors that are registered on a
4 city-wide bidders' list. And those vendors are then asked
5 to propose. The proposals are evaluated. You know, we
6 may conduct all presentations, let them come in to show
7 their systems to us.

8 A committee is formed that selects the vendor or
9 recommends a selection. And then my unit vets; basically
10 does a background check and other things to get to the
11 point of executing an agreement and getting the contract
12 registered with the City's Controller's Office.

13 Q. So the initial step in this process you just
14 described is to be on the approved vendor list?

15 A. For a vendor, yes.

16 Q. Is that also known as the bidders' list?

17 A. Yes, it is.

18 Q. It is only after that, that you are on that list, do
19 you get to make a presentation, or does the New York City
20 Police Department accept presentations from other vendors?

21 A. Not in the procurement world. I mean, you know,
22 there are vendors that sometimes come and, you know, ask
23 to show products. But a product cannot be purchased or
24 procured in the City unless it goes through our
25 procurement process that I believe we just described.

1 Q. Does the New York City Police Department keep a
2 record of the suppliers of goods and services to it?

3 A. Yes.

4 Q. And is that kept in a central database?

5 A. Yes, it is.

6 Q. And why does the Police Department keep a record of
7 everyone it entered into a contract with for services or
8 goods?

9 A. Well, for a number of reasons. First of all, a
10 contract is not recognized by the City of New York unless
11 it is registered with the Controller's Office. And the
12 Controller's Office, basically, once that's registered,
13 that is when the contract is awarded. And it's our
14 financial management system, the contract is recorded in
15 that system. And once that system is in, we are able to
16 make payments, and it becomes an official contract in
17 which a vendor can provide a service.

18 Q. So I take it that contract information is put into
19 this system by someone with knowledge of the contract?

20 A. Yes, my unit does that.

21 Q. And is the contract entered into the system at or
22 near the time the contract is executed between the New
23 York City Police Department and the supplier?

24 A. Yes, right around that time, yes.

25 Q. And it's not only -- it is part of the regular

1 business of the New York City Police Department to make
2 these records? In fact, it is required by law; correct?

3 A. Absolutely, yes.

4 Q. And this database is maintained in the regular course
5 of business of the New York City Police Department; is
6 that right?

7 A. Yes, it is.

8 MS. HAZRA: Your Honor, at this time I would move
9 to admit Government's Exhibit 505.01, which I believe is
10 stipulated.

11 THE COURT: Do we need Ms. Barnes to get that, as
12 well?

13 MS. HAZRA: No, Your Honor. I ask it be published
14 once the Court rules.

15 THE COURT: Any objection from the defendants?

16 MR. WALKER: No objection, Your Honor.

17 THE COURT: 505.01 will be admitted on stipulation,
18 and it may be published.

19 (Exhibit No. 505.01 is admitted.)

20 Q. (BY MS. HAZRA) Mr. Bello, you can see that this is a
21 letter to Raymond W. Kelly? Who is Mr. Kelly?

22 A. Mr. Kelly is the Police Commissioner for the City of
23 New York.

24 Q. Is he the ultimate supervisor or Chief of Police?

25 A. Yes.

1 Q. And as you can see, the letter is from a David A.

2 Banks; is that right?

3 A. That's correct.

4 Q. What does this letter concern?

5 A. It concerns the correspondence from Mr. Banks, who is
6 the Chief Operating Officer for IRP. And it basically --
7 what it says is that they are offering 25 licenses of CILC
8 software to the NYPD Detective Bureau at no cost.

9 Q. "No cost" means what to you? Free, essentially?

10 A. Free. A gift to the City.

11 Q. The date of that letter, can you please identify that
12 for the record.

13 A. Yes, January 12, 2005.

14 MS. HAZRA: Thank you, Special Agent.

15 Q. (BY MS. HAZRA) Mr. Bello, based on your review of
16 the records, do you know what happened to this free
17 software?

18 A. It is my understanding it was returned to the vendor.

19 Q. To IRP?

20 A. Yes.

21 Q. And you previously testified about this procurement
22 database. Have you had an opportunity to check this
23 database for the time period 2002 through 2005 for any
24 entities that are related to this letter we just saw?

25 A. Yes, I did.

1 Q. Based on your review of this database, did the New
2 York City Police Department make a purchase or enter into
3 a contract with IRP during this time period?

4 A. No.

5 Q. Did it make a purchase or enter into a contract with
6 DKH Enterprises?

7 A. No.

8 Q. And for the same time period, did the New York City
9 Police Department make a purchase or enter into a contract
10 with Leading Team?

11 A. No.

12 Q. Did you also -- were you also requested to search
13 that same database for individuals who are related to
14 those three companies?

15 A. That's correct, yes.

16 Q. And based on your search, did the New York City
17 Police Department make a purchase or contract with David
18 Banks?

19 A. No.

20 Q. Demetrius Harper?

21 A. No.

22 Q. David Zirpolo?

23 A. No.

24 Q. Gary Walker?

25 A. No.

1 Q. Kendrick Barnes?

2 A. No.

3 Q. And Cliff Stewart?

4 A. No.

5 Q. Did you search this database for any information on
6 whether or not any of the entities or individuals you have
7 just mentioned were on this approved vendors list?

8 A. Yes, I did, I searched it.

9 Q. And what did the search reveal?

10 A. It did reveal that IRP Solutions did apply for the
11 bidders' list. It was in February of 2004.

12 Q. Were you able to determine from your search whether
13 or not IRP ever used its status to be on the bidders'
14 list?

15 A. I did. It showed that they were inactive at the time
16 that I looked up their record.

17 Q. And had that bidders' list -- was it still valid?

18 A. No, it is not valid any more.

19 MS. HAZRA: If I could have one moment, Your Honor.

20 THE COURT: You may.

21 Q. (BY MS. HAZRA) I apologize, Mr. Bello, I misspoke.

22 When you did that search of the database for the
23 individuals, did you determine whether or not the New York
24 City Police Department made a purchase or contract with
25 Clinton Stewart?

1 A. Yes, that was one of the names, yes. And he did not.

2 MS. HAZRA: Thank you.

3 Nothing further, Your Honor. Thank you.

4 THE COURT: Mr. Banks?

5 **CROSS-EXAMINATION**

6 **BY MR. BANKS:**

7 Q. Hello, Mr. Bello. Does the name Robert Gianelli mean
8 anything to you?

9 A. Yes. He was -- I don't remember his exact title, but
10 I believe he was the chief with the department.

11 Q. During the -- well, what would you consider a super
12 chief at the NYPD?

13 A. Chief of the Department. Chief of Detectives. Chief
14 of the Department is the top uniformed person.

15 Q. Okay. Now, do those super chiefs have their own
16 respective budgets?

17 A. Yes, they do.

18 Q. And based on those particular budgets they have -- do
19 they have purview to make certain types of purchases?

20 A. No, they don't. They can request purchases, but they
21 don't have the authority to make purchases.

22 Q. You said a minute ago that a hundred thousand dollars
23 was not a major purchase. So in following up with that,
24 if the department needed to buy or purchase something that
25 was already underneath another contract, a contract that

1 is already in place with the City, the contracting office
2 is -- is the contracting office -- is the department able
3 to purchase certain things underneath the contractors
4 already in place for that type of product?

5 A. If a contract is already in place, yes, we can buy
6 the services, as long as it's within the scope of work of
7 that contract.

8 Q. Right. Now, are you involved in the day-to-day
9 presentations of software?

10 A. Yes, I am.

11 Q. And what department?

12 A. And if I may explain. I'm involved in the day-to-day
13 presentations of software as they relate within the
14 procurement process.

15 Q. Right. Now, leading up -- is there a process by
16 which a super chief may recommend a particular solution to
17 the NYPD for purchase?

18 A. They may, but it's -- that is all it is, is a
19 recommendation. The chief cannot initiate a contract with
20 the department.

21 Q. Right.

22 A. That would have to go through our procurement
23 process.

24 Q. But in selecting of solutions, who was the ultimate
25 -- let me say, you said a minute ago that an RFP is

1 floated for the purchase of products for the NYPD; is that
2 correct?

3 A. That's correct.

4 Q. Who makes the determination on whether or not an RFP
5 is going to be floated?

6 A. I do.

7 Q. So if Commissioner Kelly said, I want to purchase a
8 particular piece of software, how would he go about to
9 purchase that software?

10 A. Well, what he would do is he would present it to my
11 boss, actually the Department Commissioner for Management
12 and Budget. And my boss would then, you know, call me in,
13 and we would have to issue some kind of competitive
14 proposal, because that's what is required in our rules.
15 Even if the Police Commissioner recommended a particular
16 vendor, he would know that we would have to go through our
17 procurement process before a selection can be made.

18 Q. Would you say the procurement process is somewhat
19 just sort of a mandatory --

20 A. It is a legally required process.

21 Q. Absolutely.

22 A. Okay. Sorry.

23 Q. But it is a mandatory process, administrative process
24 before products and services can be acquired?

25 A. That's correct.

1 Q. Correct. Now, is there occasion prior to an RFP
2 where presentations -- or do you know whether
3 presentations go on routinely within various departments
4 within the New York City Police Department?

5 A. Yes. Sometimes vendors are allowed to present their
6 products, but it's only for departments, you know, to see
7 applications. You know, to see what's out there, that
8 kind of thing. But no contract can be promised. No
9 contract can be implied. It's basically just research, in
10 a sense.

11 Q. Absolutely. Okay. Thank you. You said the RFP
12 process is a very long process?

13 A. That's correct.

14 Q. Now, does IBM --

15 MR. BANKS: I will withdraw that question, Your
16 Honor.

17 Q. (BY MR. BANKS) I want to go back to a vendor who
18 has a contract in place to provide case management
19 software, for instance.

20 A. Okay.

21 Q. If that vendor purchases a software product from
22 another vendor, then they, too, can provide that software
23 to the NYPD; is that correct?

24 A. It depends if the contract stipulates that.

25 Q. And under what conditions -- is there any conditions

1 on when a contract would stipulate that?

2 A. Well, if it's something that wasn't in the original
3 contract, it would then have to be added as an amendment
4 to that contract, and it would have to be, you know,
5 vetted through a process. You know, whatever entity that
6 contract is registered with.

7 Q. Now, does the contract administration office dictate
8 to the department what they can and cannot view?

9 A. No, we do not. Our role is not to determine what's
10 purchased, but to determine how it's purchased.

11 Q. Okay. Thank you. How does the department handle
12 sole-source type of contracts?

13 A. Sole-source contracts have to be -- are permissible.
14 However, they have to be justified to show that they are
15 the only source available, you know, for whatever reason.
16 And, you know, it is a very stringent requirement. It's
17 looked at by oversight agencies; the Mayor's Office,
18 Office of Management and Budget, the Controller's Office.
19 So we have to get approval to issue a sole-source before
20 it can actually be awarded to that vendor.

21 Q. And who can award -- I mean, who can recommend a
22 sole-source product?

23 A. That also comes from my office. What I do is I get
24 the justification from the command for the purpose of the
25 sole-source. Then it is my responsibility to get the

1 oversight approval and to get the contract registered and
2 award it.

3 Q. Okay. Do you know -- let's throw a couple names out
4 here. Do you know James Onalfo?

5 A. Yes, I do.

6 Q. Do you know what his role is at the New York Police
7 Department?

8 A. Chief Information Officer.

9 THE COURT: Could you spell the name.

10 MR. BANKS: O-N-A-L-F-O.

11 THE COURT: Thank you.

12 Q. (BY MR. BANKS) Can you explain a little bit about
13 what Mr. Onalfo does.

14 A. He is responsible for the management of the
15 department's information technology; the systems that we
16 have that are critical operational applications for the
17 department. So he is responsible for the management of
18 those systems.

19 Q. Okay. Now, what is his role between contract
20 administration and -- how do those two parties interact?

21 A. He is in charge of the command that oversees IT
22 operations. So when he needs something, he comes to my
23 boss; that would be the commissioner, requesting that
24 something be purchased. And then that is what is sent out
25 to me.

1 It is a hierarchy chain. So it goes from the
2 deputy commissioner -- deputy commissioner down to my
3 level, and then I begin, once funding is available, I
4 would begin to determine the process.

5 Q. Now, do you know if there is intense interest in a
6 particular product unless it is communicated to you?

7 A. How could I know if it is not communicated to me?

8 Q. Okay. I just want to get clarification.

9 So a department could have an intense interest for
10 a particular product, or a super chief could have intense
11 interest in a product prior to notifying your office that
12 they are interested in this particular product?

13 A. Yes, it's possible. But they also know what the
14 process is to acquire.

15 Q. Okay. Thank you.

16 MR. BANKS: Can I have a moment, Your Honor?

17 THE COURT: You may.

18 Q. (BY MR. BANKS) Do you recall the date of inactivity
19 for IRP Solutions on the bidders' list?

20 A. The date of inactivity?

21 Q. Yes.

22 A. The actual date?

23 Q. Yes.

24 A. I don't remember the exact date, no. But I know that
25 it was entered into the system -- I believe it was

1 February 4, 2005.

2 Q. And how long --

3 A. 2004, excuse me.

4 Q. And how long does it typically have to be before a
5 vendor ages out? Is it a yearly renewal type process?

6 A. What happens is if a vendor does not respond to a
7 procurement three times in a row, they are eliminated from
8 the list.

9 Q. So it not based on some sort of, at least in this
10 instance -- did you, in IRP's case -- is there any sort of
11 sanctioning type of activity that could get a vendor
12 removed from the list if they did something wrong?

13 A. No. The list is strictly so that we have basic
14 information about the vendor. And it is also to develop
15 tax information regarding the vendor; that we get their
16 tax ID number, their address, the principals involved.

17 So it is not meant to -- it is not a qualification.
18 We don't qualify the vendor based on the bidders' list.
19 It is there just so we know who the City is doing business
20 with, or potentially doing business with, I should say.

21 Q. Okay. Are you familiar with a Real Time Crime Center
22 initiative?

23 A. Yes, I am.

24 Q. Can you tell us a little bit about that process and
25 how that -- let me ask you this. Whose initiative was the

1 Real Time Crime Center?

2 A. Police Chief initiative.

3 Q. And how was the selection process for presentations
4 done during -- handled for that particular initiative?

5 A. Well, there was several contracts that we had to do.
6 And they all followed the same procedures that I just
7 talked about, where we did competitive solicitations. In
8 some cases, sole-source contracts were procured. But
9 everything that we purchased for the Real Time Crime
10 Center was done in accordance with our rules.

11 Q. In your opinion, how difficult is it for a small
12 business to do business with the NYPD?

13 A. Well, our procurement rules are based on general
14 municipal laws. And our general municipal laws require
15 that we award contracts to the most competitive vendors.
16 So that's the part that's difficult for small businesses
17 being competitive. So that's, I think, the greatest
18 hurdle for small businesses; minorities, women-based
19 businesses to obtain contracts, contracts not only with
20 the NYPD, but any agency of New York.

21 Q. Do you remember how many vendors did presentations
22 for the Real Time Crime Center?

23 A. There were several. I can't say that I remember how
24 many. I mean, there would have to be at least, I would
25 say at least five or six.

1 Q. Do you remember IRP Solutions being one of those
2 vendors?

3 A. No, I don't.

4 Q. Did Ruben -- at the time, Inspector Ruben Beltran.
5 Now I think he is an assistant chief. Did he oversee the
6 presentation for the Real Time Crime Center?

7 A. Yes, he did.

8 Q. Now, did the department have a case management system
9 initiative?

10 A. Yes, they did. Yes they, do.

11 Q. And on or about -- when was the time that that case
12 management initiative was in place?

13 A. For the crime center?

14 Q. No, for the case management.

15 A. For case management, there are many different case
16 management systems that we have for various applications.
17 So they have been ongoing for years.

18 Q. Are you talking about different case management
19 systems between the Organized Crime Division versus the
20 Detective Bureau?

21 A. Yeah. There are different case management systems we
22 have. We have for IRB. We have our Application
23 Processing Division. We have for the Detectives' Bureau,
24 we have for the Chief of the Department. There are all
25 kinds of case management systems that we have.

1 Q. Was there any case management system initiative being
2 sought after -- between, say 2003 and 2005?

3 A. I would say yes. I can't say factually which ones
4 they were. But knowing the business of the department,
5 they were most likely, yes.

6 Q. Let's go to the detective bureau. Was there any case
7 management system initiatives that you know of during that
8 particular time?

9 A. Yes. Between what periods? Say it again.

10 Q. I would say between 2003 and 2005.

11 A. There was. But I know that it wasn't awarded to IRP.

12 Q. Understood. But there was an initiative in place?

13 A. Yes.

14 Q. Okay. Are you aware of the vendors that did
15 presentations during -- let me change that question.

16 How many -- how are vendors selected to do a
17 presentation for a particular initiative?

18 A. Again, I can speak only regarding the procurement
19 process. Vendors are asked to do presentations after a
20 proposal -- written technical proposals are received, so
21 that a committee can look at the various proposals
22 received and ask questions of the vendors. You know,
23 receive clarifications on the proposals so that they can
24 have better understanding of what is written versus, you
25 know, what is demonstrated.

1 Q. Okay. So if a company is in there developing
2 business or doing presentations for, say, the detective
3 bureau, your department wouldn't necessarily be involved
4 in that particular phase; is that correct?

5 A. If it's not within the procurement process, that's
6 correct.

7 Q. So if a vendor is making changes and modifications
8 and doing presentations for -- never mind, that was asked
9 and already answered.

10 MR. BANKS: No further questions.

11 Thank you, Your Honor.

12 THE COURT: Any further from the defendants?

13 MR. WALKER: No, Your Honor.

14 THE COURT: All right. Any redirect?

15 MS. HAZRA: Yes, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MS. HAZRA:**

18 Q. Mr. Bello, do you know whether or not IRP ever
19 submitted a bid to the New York City Police Department for
20 its case management system?

21 A. I don't believe I have ever seen a bid from IRP. No,
22 I have not.

23 Q. And were you ever asked to approve IRP as a sole
24 source contractor?

25 A. No, I have not.

1 MS. HAZRA: I have no further questions, Your
2 Honor.

3 THE COURT: All right. May this witness be
4 excused?

5 MS. HAZRA: Yes, Your Honor.

6 THE COURT: Thank you very much, Mr. Bello, you are
7 excused.

8 All right. At this time we are going to go ahead
9 and take a 15-minute break. We will reconvene at 10:40.
10 Court will be in recess.

11 (A break is taken from 10:25 a.m. to 10:40 a.m.)

12 (The following is had in open court, outside the
13 hearing and presence of the jury.)

14 THE COURT: You may be seated.

15 All right. Any matters to be brought to the
16 Court's attention before we bring in the jury?

17 MR. KIRSCH: No, Your Honor.

18 MR. WALKER: No, Your Honor.

19 MR. BANKS: One moment, Your Honor. Nothing right
20 now, Your Honor, thank you.

21 THE COURT: Ms. Barnes, would you please bring in
22 the jurors.

23 (The following is had in open court, in the hearing
24 and presence of the jury.)

25 THE COURT: All right. You may be seated.

1 Government may call its next witness.

2 MR. KIRSCH: Thank you, Your Honor. The Government
3 calls Valerie Cherry.

4 COURTROOM DEPUTY: Please remain standing.
5 Your attention, please.

6 **VALERIE CHERRY**

7 having been first duly sworn, testified as follows:

8 COURTROOM DEPUTY: Please be seated.

9 Please state your name, and spell your first and
10 last names for the record.

11 THE WITNESS: Valerie K. Cherry. V-A-L-E-R-I-E
12 C-H-E-R-R-Y.

13 **DIRECT EXAMINATION**

14 **BY MR. KIRSCH:**

15 Q. Ms. Cherry, where do you work?

16 A. At ACS, the Xerox Company.

17 Q. Here in the Denver metro area?

18 A. Based out of Fairfax, Virginia. But I work here
19 locally, yes.

20 Q. What is your position there?

21 A. VP of sales for the region.

22 Q. What sort of business does ACS provide?

23 A. We do IT management services, card service, business
24 process, outsources. All solution-type services for the
25 government sector and for commercial.

1 Q. Prior to joining -- well, let me rephrase rather than
2 asking it that way.

3 Where did you work in 2002?

4 A. Analysts International.

5 Q. How long were you with Analysts International?

6 A. For 10 years.

7 Q. Can you give us that range, roughly?

8 A. I started in March of 2001, and I left in January of
9 this year, 2011.

10 Q. Did you work -- what sort of company was Analysts
11 International?

12 A. We were an IT services and solutions provider. So we
13 did IT staffing services and IT solution services.

14 Q. Can you just briefly distinguish those, staffing
15 versus solution?

16 A. Sure. Staffing is when we supply resources to a
17 client under their management and supervision to do a job.
18 Solutions is we come in and we actually supply a complete
19 service, either in-sources or out-sources to a client,
20 where we manage those services.

21 Q. All right. And prior to working with Analysts
22 International, did you have other experience in the
23 staffing industry?

24 A. I did. I worked for a company called EDP Contract
25 Services. Edward David Paul. EDP. And I worked for them

1 for 2-and-a-half years doing staffing solutions only.

2 Q. All right. Did Analysts International provide a
3 service called payrolling?

4 A. We did.

5 Q. Can you explain how payrolling worked for Analysts
6 International?

7 A. Sure. So when we would payroll somebody, a client
8 would need resources, and a subcontracting company would
9 come to us and have those resources. So for some reason,
10 they would not be able to supply them to the client
11 directly. Maybe they didn't have a contract, or whatever
12 the reason may be; multiple reasons. So we would be the
13 in-between service.

14 We would take those individuals from the
15 subcontractor, put a markup on them, then supply them by a
16 contract to the end client under their management to do
17 that work. It is a staffing resource.

18 Q. All right. And then the people that are doing the
19 work, who pays those people in that kind of arrangement?

20 A. The subcontractor.

21 Q. Okay. So does Analysts International pay someone in
22 that agreement?

23 A. We pay the subcontractor.

24 Q. A lump sum?

25 A. Based off of the invoices. Whatever the hours are

1 worked and the agreed upon rate, we then pay that rate to
2 the subcontractor for actual hours worked of those
3 individuals.

4 Q. And then does Analysts International bill or invoice
5 someone?

6 A. Yes. Then we bill the client for those exact same
7 hours, but with our markup on it. So we bill them an
8 amount. We then pay the subcontractor the amount that
9 they are owed for the services that they -- their
10 consultants have done for us to the client.

11 Q. All right. While you were with Analysts
12 International, did you have anything to do with business
13 between Analysts International and companies called DKH
14 and Leading Team?

15 A. Yes, I did.

16 Q. Do you remember approximately when that business
17 began?

18 A. We actually started the consultants at the end of
19 March in 2003.

20 Q. Okay.

21 A. But we started meeting with them the prior fall,
22 about the November time frame of the year prior.

23 Q. November of 2002 --

24 A. Correct.

25 Q. -- is when you first started meeting with them?

1 A. Correct.

2 Q. When you say "them," who is it you were first meeting
3 with?

4 A. Demetrius Harper from DKH.

5 Q. Okay.

6 A. And David Banks from Leading Team.

7 Q. I am sorry, I didn't mean to cut you off. Can you
8 say that one more time?

9 A. And David Banks from Leading Team.

10 Q. Okay. And do you recall how it is that you first got
11 into contact with either of those companies?

12 A. They contacted me. I was called by Demetrius Harper,
13 and wanted to know if we wanted to --

14 MR. BANKS: Objection, Your Honor, she said they
15 contacted them. Can we get --

16 THE WITNESS: I was contacted by Demetrius Harper.

17 THE COURT: That is what she was saying.

18 THE WITNESS: And he called me by phone. We had a
19 discussion about what he was looking for, and agreed to
20 meet.

21 Q. (BY MR. KIRSCH) Do you remember what he said during
22 that call about what he was looking for?

23 A. Just that he had resources he needed to supply to a
24 client, and needed someone to work as the in-between.

25 Q. Okay. You then set up a meeting?

- 1 A. I did.
- 2 Q. And who attended that meeting?
- 3 A. First meeting I believe was just Demetrius.
- 4 Q. Okay. Do you remember where that was?
- 5 A. I do not.
- 6 Q. Okay. You had another meeting, I take it?
- 7 A. I did.
- 8 Q. And who was at that meeting?
- 9 A. That meeting was Demetrius Harper and David Banks.
- 10 Q. Do you remember where that one was?
- 11 A. We first met at their -- what was then their
- 12 facility, which was a church in Colorado Springs. And I
- 13 brought Dan Dwyer, who is my VP, my supervisor. We went
- 14 to lunch, then toured their new facility they were going
- 15 to be setting up on the north end of the Springs.
- 16 Q. Colorado Springs we are talking about?
- 17 A. Right.
- 18 Q. And during that meeting, did Mr. Harper explain his
- 19 relationship to either of those companies; to DKH or
- 20 Leading Team?
- 21 A. Just a supplier.
- 22 Q. Okay. Did he explain what his role was at one of
- 23 those companies?
- 24 A. Not that I remember.
- 25 Q. Okay. Did you understand whether he was -- that he

1 was affiliated with one of those companies, as opposed to
2 the others?

3 A. He knew the people at Leading Team.

4 Q. Okay. And then was his company DKH?

5 A. Yes. I am sorry.

6 Q. I am not asking a very good question. Then Leading
7 Team. Was Mr. Banks associated with one of those
8 particular companies?

9 A. Leading Team.

10 Q. All right. Did you ever hear the name Gary Walker
11 during that time?

12 A. Yes.

13 Q. Did you understand him to be associated with one of
14 those companies?

15 A. Leading Team.

16 Q. During this meeting, when you were touring the office
17 space, did you have a discussion with Mr. Harper and
18 Mr. Banks about what their company's business was?

19 A. Yes.

20 Q. What did they tell you about that?

21 A. It was something to do law enforcement. And they
22 were going to be selling that to the NYPD. So we did a
23 lot of work in criminal justice. It was interesting. I
24 don't remember the exact program at the time, other than
25 it was a law enforcement solution.

1 Q. And did you say that they mentioned the New York
2 Police Department?

3 A. They did.

4 Q. Did they give you any understanding about when their
5 product was going to be sold to the New York Police
6 Department?

7 A. Very soon. And that was why they needed these
8 resources, was to complete the product and to implement
9 the product. So it was either they were about to sign or
10 had just signed. It was right in that time frame, was our
11 understanding at the time.

12 Q. And this meeting -- you said you began speaking with
13 them in November of 2002, and the employees began in March
14 of 2003; is that right?

15 A. Correct.

16 Q. Can you help us place this meeting within that time
17 frame?

18 A. It would have been -- first meeting was November. It
19 would have been in the January time frame, February time
20 frame. Late January, early February.

21 Q. Of 2003?

22 A. Of 2003.

23 Q. All right. The statements that were made about the
24 business relationship they had with the New York Police
25 Department, were those statements that you were

1 considering in deciding whether or not Analysts
2 International should do business with these companies?

3 A. Yes.

4 Q. Why is that?

5 A. Because if they didn't have a customer, you would
6 wonder if they would be able to support the product and
7 pay their bills. So knowing that they had a customer
8 already lined up made us believe that that would be a good
9 opportunity.

10 Q. All right. You, I think, indicated that you
11 ultimately set up a payrolling arrangement?

12 A. Yes.

13 Q. Do you recall approximately how many employees were
14 involved in that?

15 A. Ten to 12.

16 Q. Okay. And were there agreements that were executed
17 -- first of all, was there an agreement that was executed
18 between Analysts International and DKH?

19 A. Yes.

20 Q. Was there also an agreement executed between Analysts
21 International and Leading Team?

22 A. Yes.

23 Q. Let me ask you, please, to look at what is marked for
24 identification as 50.01. I want you to look through that
25 entire document, because I want to know if you recognize

1 -- I want to know if you recognize the entire exhibit.

2 A. Yes.

3 Q. And can you tell us what that is, please?

4 A. The first document is our agreement -- our
5 Subcontracting Agreement with DKH.

6 Q. Is that pages 1 through 7 of the exhibit? There are
7 handwritten page numbers in the bottom right corner.

8 A. Yes.

9 Q. And then the remainder of the exhibit is what?

10 A. That is our staffing agreement with the client, then,
11 which would have been Leading Team.

12 MR. KIRSCH: Your Honor, I would move to admit, and
13 be able to publish Government Exhibit 50.01.

14 THE COURT: Any objection?

15 MR. ZIRPOLO: No objection.

16 THE COURT: All right. Document No -- or Exhibit
17 No. 50.01 will be admitted, and may be published.

18 (Exhibit No. 50.01 is admitted.)

19 MR. KIRSCH: Thank you, Your Honor.

20 Can we start with page 1 of that exhibit, please,
21 and just expand down to vendor representatives, please. A
22 little bit farther.

23 Q. (BY MR. KIRSCH) All right. We have that on the
24 screen now, Ms. Cherry. Can you see that part of that
25 page 1?

1 A. Yes.

2 Q. Now, which of the two exhibits that -- which of the
3 two agreements that you've described is this on the screen
4 now?

5 A. That is the Subcontract Agreement with DKH.

6 Q. Okay. And that is you there as the technical
7 representative and the contract coordinator?

8 A. Correct.

9 Q. And the vendor representative for this agreement was
10 who?

11 A. Demetrius Harper.

12 MR. KIRSCH: All right. Can we now publish page 8
13 of that exhibit, please. And then expand down to the
14 list -- bottom of the list, please.

15 Q. (BY MR. KIRSCH) Can you see that one on your screen
16 now?

17 A. Yes.

18 Q. Can you tell us which agreement this is?

19 A. So this is a Staffing Agreement; the agreement for
20 personnel with Leading Team.

21 Q. Okay. And the assigned personnel list, what is that?

22 A. Those are the individuals that would have been
23 working as contractors for Leading Team through us.

24 Q. Okay. And those names, or those people came -- what
25 was the source of those names or people?

1 A. They came from Demetrius Harper and DKH. They were
2 supplied to us. We did not recruit those people.

3 MR. KIRSCH: All right. Thanks, Special Agent
4 Smith.

5 Q. (BY MR. KIRSCH) Did Analysts International have a
6 system for keeping track of the time that -- those people
7 that we just looked at, the time that they were working on
8 this contract?

9 A. Yes. They had to fill out time cards every week.

10 Q. Okay. And how did those time cards -- do you know
11 how those made it to Analysts International?

12 A. They would have been supplied by each individual to
13 us directly.

14 Q. Okay.

15 A. Each consultant.

16 Q. Okay. Can I ask you to look at what is marked for
17 identification as Government Exhibit 51.00. Do you have
18 that?

19 A. Uh-huh.

20 Q. I know that is a large exhibit. Did you have an
21 opportunity to review it before your testimony today?

22 A. Yes.

23 Q. Do you recognize that exhibit?

24 A. Yes, I do.

25 Q. What is it?

1 A. These are copies of the time cards of each
2 contractor, and the hours they worked each week.

3 Q. And did they cover the time period during which
4 Analysts International had this relationship in place with
5 DKH and Leading Team?

6 A. Yes, they do.

7 MR. KIRSCH: I would move to admit Government
8 Exhibit 51.00, and ask to publish.

9 THE COURT: Any objection?

10 MR. WALKER: No objection, Your Honor.

11 THE COURT: Exhibit 51.00 will be admitted, and it
12 may be published.

13 (Exhibit No. 51.00 is admitted.)

14 MR. KIRSCH: Thank you, Your Honor.

15 I want to go ahead and look at page 2 of that
16 exhibit, if we could. And can you just expand down to the
17 bottom of the text there?

18 Q. (BY MR. KIRSCH) Can you see page 2 on your screen?

19 A. Yes.

20 Q. Ms. Cherry, can you just walk us through the
21 information that is contained here in this time card.

22 A. It shows that the individual -- the number of hours
23 they worked each day during that time frame; that it was
24 approved by Leading Team. They would have had to review
25 those hours, then approve those, and then that consultant

1 would have submitted them to us.

2 Q. From Analysts International's perspective, what is
3 the meaning of the consultant signature on that document?

4 A. That they worked those hours.

5 Q. And then how about the signature of Gary Walker?

6 A. That they confirmed they worked those hours.

7 Q. Okay. And the term "consultant" in this document,
8 what is that -- who is the consultant?

9 A. The individual who is actually doing the work.

10 Q. Okay. And at this point, are those people employees
11 of Analysts International, or are they employees of DKH?

12 A. They are employees of DKH.

13 Q. Okay. Would -- was Analysts International ever
14 informed that anyone other than the people who were listed
15 in these time reports was performing any of the work that
16 was listed in those reports?

17 A. No.

18 Q. If you had gotten that information, is that something
19 you would have cared about?

20 A. Yes.

21 Q. Why is that?

22 A. Because you want to know that the individuals are
23 doing the work that they have been hired for, and that
24 they are completing that work.

25 MR. BANKS: Objection, Your Honor, speculation.

1 The witness just said that the employees were DKH's
2 employees, not her employees. How can she speculate on
3 what somebody else's employees would be doing.

4 THE COURT: Well, that wasn't the question, though.
5 I will overrule.

6 MR. KIRSCH: Thank you, Your Honor.

7 Q. (BY MR. KIRSCH) Would you have wanted to know,
8 Ms. Cherry, if either David Banks or Gary Walker were
9 doing some of the work that was being reported in those
10 time cards?

11 MR. ZIRPOLO: Objection, facts not in evidence.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 Q. (BY MR. KIRSCH) Why is that?

15 A. Because if they're doing the work and the individuals
16 are not, that they hired, why are the individuals there?
17 It would make me wonder what they are doing.

18 Q. Did you ever receive any information that any of the
19 people who were working at Leading Team as a part of this
20 relationship were working for other staffing companies at
21 the same time?

22 A. No.

23 Q. Is that information that you would have wanted to
24 know?

25 A. Yes.

1 Q. Why is that?

2 A. Because one, if they are working for more than one
3 company at a time, that would be a problem for the
4 employer that is employing them, for the client they are
5 working for. We would need to know that to address that
6 with the client. Two, if I had known that, I would wonder
7 who that is, and how can they do two jobs. If I knew it
8 was at the same place, that would make me be very
9 suspicious about why would I need to supply them again.
10 For a lot of reasons.

11 Q. All right. And then just to be clear about this, the
12 checks that Analysts International cut, the payments that
13 Analysts International made as a part of this
14 relationship, those, you said, I think were made to DKH?

15 A. Correct.

16 Q. So as far as you know, who paid individual employees?

17 A. I couldn't tell you.

18 Q. You don't know about that?

19 A. No.

20 Q. Okay. How is it that Analysts International charged
21 Leading Team for the services that it was providing as a
22 part of this relationship?

23 A. We would have invoiced them for the hours worked from
24 the time cards.

25 Q. All right. Can I ask you now to look, please, at

1 what is marked for identification as Government Exhibit
2 52.00.

3 A. Okay.

4 Q. Have you had a chance to do that? Do you recognize
5 the documents in that exhibit?

6 A. These are our invoices.

7 Q. And these are the invoices issued to whom?

8 A. Leading Team.

9 Q. And do they appear to cover the time frame of the
10 engagement that Analysts International had with Leading
11 Team?

12 A. Yes, they do.

13 MR. KIRSCH: Your Honor, I would move for a ruling
14 that Government Exhibit 52 is admissible.

15 THE COURT: Any objection?

16 MR. WALKER: No objection, Your Honor.

17 THE COURT: Exhibit 52.00 will be ruled admissible.
18 (Exhibit No. 52.00 is found admissible.)

19 MR. KIRSCH: Thank you, Your Honor.

20 Q. (BY MR. KIRSCH) Ms. Cherry, was Analysts
21 International -- do you know where the processing of
22 checks and invoices and those sorts of things was handled
23 for Analysts International during this time period?

24 A. It would have been either out of Minneapolis or
25 Chicago, which was one of our financial offices. So one

1 or the other.

2 Q. It was not done in Denver, then, or in Colorado?

3 A. We used to do invoices in Denver at one time, and
4 then they moved it to corporate. And I don't remember the
5 time frame that we actually moved that.

6 Q. All right. Do you recall, or do you know during this
7 time period how it was that invoices were delivered to the
8 client -- yeah, to your clients?

9 A. Normally they would have probably been mailed. But I
10 didn't handle the invoices, so I can't say for sure.

11 Q. All right. At some point did you -- was there an
12 orientation meeting conducted for the DKH employees?

13 A. Yes.

14 Q. Did you participate in that meeting?

15 A. Yes.

16 Q. Okay. And were there representatives from Leading
17 Team at that meeting, as well?

18 A. Yes.

19 Q. Were there any indications given during that meeting
20 about whether or not the DKH people had any previous
21 association with the Leading Team people?

22 A. Do you mean knew them, or worked there previously? I
23 am not sure I understand the question.

24 Q. Well, let me ask you this --

25 MR. HARPER: Objection, leading the witness.

1 THE COURT: All right. He has withdrawn his
2 question, so we don't have anything at this point --

3 MR. HARPER: All right.

4 THE COURT: -- for leading.

5 MR. KIRSCH: Yes, Your Honor.

6 Q. (BY MR. KIRSCH) Were there any statements made
7 during that meeting by anyone on behalf of DKH or Leading
8 Team about any previous associations between those people?

9 A. I knew Demetrius knew the individuals. They were his
10 employees. I did not know those employees knew Leading
11 Team.

12 Q. Once this relationship got under way, did Analysts
13 International receive the initial payments that it was
14 supposed to?

15 A. No.

16 Q. Did you take any action upon learning that those
17 payments weren't being made?

18 A. Yes.

19 Q. What did you do?

20 A. We contacted Leading Team that the invoices were not
21 being paid, and that we needed to have them paid.

22 Q. Did you get any response? First of all, who did you
23 speak to at Leading Team?

24 A. David Banks.

25 Q. And was this telephone --

1 A. Yes.

2 Q. -- contact? Do you recall any of the responses that
3 you got from Mr. Banks about why Analysts International
4 wasn't getting paid?

5 A. There was a delay in their contract with NYPD.

6 Q. And upon receiving that information, did you -- what
7 did you do?

8 A. I notified my manager, my VP that there was a
9 problem, and discussed it with him.

10 Q. Did you continue to do business with Leading Team
11 after you were first told that there had been a delay in
12 that contract?

13 A. Yes.

14 Q. Was Mr. Banks' statement about the delay, did that
15 affect your decision about whether to keep doing business
16 with them?

17 A. Yes.

18 Q. In what way?

19 A. Because, you know, if they were to sign that contract
20 and have that revenue coming in, then they would be able
21 to pay us, and we believed to be the case.

22 Q. All right. Did you ever talk to Mr. Harper about the
23 non-payment, or were those conversations all with
24 Mr. Banks?

25 A. I don't remember.

1 Q. Okay. Did you at some point, did you cut off this
2 relationship?

3 A. Yes.

4 Q. Did you -- did you notify anyone about that?

5 A. Yes.

6 Q. Who did you notify?

7 A. First we notified Demetrius Harper, because we were
8 going to pull the resources and no longer have them supply
9 any resources to Leading Team, to stop the hours. So I
10 know I talked to him first. Then we notified Leading
11 Team.

12 Q. And when you notified Mr. Harper, did you actually
13 speak to him?

14 A. Spoke to him and e-mail.

15 Q. Okay. Was this telephone conversation or personal
16 conversation?

17 A. Telephone.

18 Q. What was the tone of that conversation like?

19 A. He was upset.

20 Q. Did you -- do you remember anything he said?

21 A. I remember he was upset. And I don't want to say
22 angry. He was upset on the phone. But I did get an
23 e-mail that I do remember.

24 Q. What do you remember about that e-mail?

25 A. The language in the e-mail, it was very strong. And

1 there was explicit language. You know --

2 MR. ZIRPOLO: Objection, facts not in evidence.

3 THE COURT: Overruled.

4 THE WITNESS: -- swearing in the e-mail. How could
5 you do this to me? You have embarrassed me? Blah, blah,
6 blah type e-mail.

7 Q. (BY MR. KIRSCH) All right. I believe that you
8 indicated that you had also notified Leading Team?

9 A. Correct.

10 Q. Can I ask you to look, please, at what is marked for
11 identification as Government Exhibit 56.02.

12 A. Okay.

13 Q. Do you recognize that?

14 A. Yes.

15 Q. What is it?

16 A. It is the notification that we are stopping service.

17 Q. Did you get a copy of this at the time that it was
18 sent?

19 A. Yes.

20 MR. KIRSCH: I would move to admit Government
21 Exhibit 56.00.

22 THE COURT: Any objection?

23 MR. BANKS: Without objection, Your Honor.

24 THE COURT: Exhibit 56.02 will be admitted.

25 (Exhibit No. 56.02 is admitted.)

1 MR. KIRSCH: Thank you, Your Honor. May we publish
2 it?

3 THE COURT: You may.

4 Q. (BY MR. KIRSCH) Have we made that big enough for you
5 to read on the screen Ms. Cherry?

6 A. Yes.

7 Q. There is an amount referenced in this letter of
8 \$352,100. How does that compare to your memory of the
9 outstanding invoice total to Leading Team?

10 A. I remember that is the number.

11 Q. Did Analysts International, as far as you know, ever
12 get any payments on that amount?

13 A. Not that I am aware of.

14 Q. Did that have any effect -- did that have any
15 financial effect on you?

16 A. Yes, it did.

17 Q. In what way?

18 A. I had to repay the commissions on all of that
19 revenue.

20 MR. KIRSCH: Can I have just a moment, please, Your
21 Honor.

22 THE COURT: You may.

23 MR. KIRSCH: Thank you, Ms. Cherry.

24 **CROSS-EXAMINATION**

25 **BY MR. BANKS:**

1 Q. Ms. Cherry, can you describe your process that you go
2 through when you entertain a new client that calls your
3 company?

4 A. Sure. We would meet with the client first, usually
5 take a look at their facility, get introduced to them and
6 their team. We then do a process of evaluating those
7 clients to determine if we should do business with them.
8 So we run a Dun & Bradstreet on them. And then, based off
9 of that, assign a certain dollar amount as to what we
10 would agree to service with them; a dollar amount that we
11 would agree to go up to for services with them until they
12 show proof of payment.

13 Q. So you just said that you go and you want to
14 understand something about your client. So you meet with
15 them, understand the type of business they do, et cetera;
16 correct?

17 A. Correct.

18 Q. And in your testimony, you mentioned that it would be
19 important to you to understand if individuals that you
20 were employing actually knew individuals that were in the
21 company that they were going to be contracting to; is that
22 correct?

23 A. Yes.

24 Q. Why is that important to you?

25 A. Do you mean that they would know the people at

1 Leading Team?

2 Q. Yes.

3 A. Okay. Because you want to know what the relationship
4 is. You want to know why are they engaged with them? Do
5 they have the skills to do that job? Do they believe they
6 have the skills to do that job? Are they going to
7 perform? And if they know them, have they worked with
8 them before, and where would that have been?

9 Q. Isn't the nature of payrolling that the client
10 already knows the parties, and they enter into a business
11 relationship for Analysts International to handle that
12 payrolling transaction?

13 A. The subcontractor would already know the employees,
14 not necessarily the client.

15 Q. So the subcontractor's business, in this case, DKH,
16 with Leading Team, how is that of a concern to Analysts
17 International?

18 A. Why would they need those services? Why would they
19 need the payrolling services. You know, to understand
20 that. To understand why they would need a middleman to
21 buffer that transaction.

22 Q. Isn't that between Analysts International and DKH?

23 A. To pay them it is. But for us to get payment, it is
24 between us and Leading Team.

25 Q. Correct. And that's a business-to-business

1 transaction; correct?

2 A. Correct.

3 Q. Did you do a -- run a D & B report on Leading Team?

4 A. We did.

5 Q. What did it come back as?

6 A. In order for us to do business, it would have had to
7 come back with some kind of credit history. I don't know
8 what that credit history is.

9 Q. Is there a credit threshold? Does Analysts
10 International, before they engage in business with a
11 company, have to have a satisfactory report in order to
12 engage?

13 A. Yes.

14 Q. Now, you mentioned earlier about -- that you would
15 have a problem with people working for another staffing
16 company if they were working for Analysts International?

17 A. Yes.

18 Q. Are you in the habit of telling people who and who
19 they cannot work for?

20 A. It depends upon the client contracts. And it also
21 depends on Analysts International's contract. We were
22 hiring people to work for a particular company. We did
23 not want people working for other companies.

24 Q. In this contract, was it prohibited for individuals
25 that they could not work for other companies?

1 A. I would have to go back and review the contract to
2 see the specifics.

3 Q. I will give you the opportunity to do that in one
4 moment.

5 You also said a minute ago that these were
6 employees of DKH; is that correct?

7 A. Correct.

8 Q. How does Analysts International have any interest of
9 employees of another company?

10 A. Because we're paying that subcontractor for those
11 employees to do a job that we have been hired to do by the
12 client.

13 Q. Based on a business-to-business relationship;
14 correct?

15 A. Our responsibility is to the client. And we have to
16 know that our resources are going to be able to perform
17 that work.

18 Q. Did you get any complaints from the client?

19 A. No.

20 Q. So you said a minute ago that it's customary in your
21 process to go visit a company and find out what that
22 company does and what they're engaged in at the time.

23 A. Absolutely. Because most of the time we are out
24 looking for businesses to bring that business to us. Very
25 seldom do we get calls for somebody contacting us to do

1 the payrolling.

2 Q. Okay. And I want to clarify one more thing before I
3 move on here. What did you rely on to engage in business
4 with DKH and Leading Team?

5 A. That they had a facility that was set up -- a brand
6 new facility that they were moving in to. That they had a
7 product that they were going to be delivering. And that
8 they had a customer already lined up to sell that product
9 to. It was in an area of expertise that we did business,
10 which was criminal justice work. And the Dun & Bradstreet
11 and the meeting of the personnel, and bringing my manager
12 to meet those personnel.

13 Q. So all of those things you took into consideration
14 when doing business in this particular business
15 transaction; is that your testimony?

16 A. Yes.

17 Q. So if you go to another company and they tell you a
18 little bit about their business, maybe they make
19 notebooks, why is that of interest to you in doing
20 business with them?

21 A. If we don't feel it is a viable product or something
22 that could be sold or they are going to make money at and
23 they can't pay us, we wouldn't do business with them.

24 Q. Do you remember your interview with the FBI?

25 A. I do.

1 Q. Approximately 5/19/2008?

2 A. Yes.

3 Q. And do you recall a statement -- at least as it is
4 reported, a statement by yourself that you relied upon the
5 D & B report when deciding to do business with DKH and
6 Leading Team?

7 A. That was one factor.

8 Q. Now, if that factor was removed, would you -- let me
9 ask you this. Who makes the determination on whether or
10 not their credit is good enough? Is that you, or is it
11 the credit department?

12 A. It is our credit department.

13 Q. So you don't make any determination with regard to
14 that; is that correct?

15 A. They tell us what they are approved for or if they
16 are approved or not. It is then discussed between the
17 area VP and salesperson involved in the sale, and a
18 decision is made.

19 Q. So DKH and Leading Team was approved by your
20 corporate office to move forward and do business; is that
21 correct?

22 A. I believe -- I don't know that a D & B was run on
23 both companies.

24 Q. A minute ago you said a D & B was run on both
25 companies.

1 A. I said a D & B was run on Leading Team for payment
2 history. It is irrelevant to us whether DKH -- because we
3 are paying them, they are not paying us. We are being
4 paid by Leading Team, and that is where the D & B was run.

5 Q. So Leading Team obviously came back clean, then?

6 A. I wouldn't say clean. They showed a payment history.

7 Q. They showed enough creditworthiness for Analysts
8 International to engage in business?

9 A. Yes.

10 Q. Now, a minute ago you mentioned the term "contract."

11 A. Uh-huh.

12 Q. Do you remember in your -- I am going to take you
13 back to your FBI interview of 5/19 -- I am sorry, May 19,
14 2008. Do you remember what you said in that report with
15 regards to the business of Leading Team?

16 A. That it was centered -- just that it was centered
17 around a law enforcement solution.

18 Q. Did you mention "contract" in there?

19 A. I don't understand your question.

20 Q. You said a minute ago that you talked about the term
21 "contract."

22 A. Do you mean did I understand it was a contract to
23 Leading Team?

24 Q. Did you understand -- was it your understanding at
25 the time, or did you tell the FBI during that interview,

1 that the reason you engaged in business was because you
2 had a contract?

3 A. I said to them that you either had a contract or were
4 about to sign a contract. It was one or the other.

5 MR. BANKS: Your Honor, I would like to admit, or
6 at least provide Ms. Cherry with a copy of her FBI
7 interview.

8 THE COURT: All right. Have Ms. Barnes mark it.

9 MR. BANKS: We will mark it as Exhibit 343.

10 COURTROOM DEPUTY: Exhibit 343.

11 Q. (BY MR. BANKS) Can you read on the first page,
12 please, the third and fourth paragraphs.

13 THE COURT: Just to yourself.

14 THE WITNESS: Thank you. Okay.

15 Q. (BY MR. BANKS) Did the FBI, in their interview with
16 you, bring up the term "contract."

17 A. I don't remember. I don't understand your question.

18 Q. In your dealings with the FBI -- we'll say in
19 preparation of your testimony in coming to trial, did the
20 FBI talk to you about contracts?

21 MR. KIRSCH: Objection to the relevance of the
22 FBI's questions.

23 THE WITNESS: I don't understand.

24 THE COURT: You're talking too generally. You need
25 to tell her what type of contracts. I am going to

1 overrule the objection. But you need to ask her what she
2 said, not what the FBI may have said, unless it is in the
3 context of how she would have responded.

4 MR. BANKS: Very well, Your Honor.

5 Q. (BY MR. BANKS) Did you at any time mention
6 "contracts" to the FBI?

7 THE COURT: In what sense, contracts?

8 THE WITNESS: My contract with you?

9 MR. BANKS: I am sorry, I understand, Your Honor.

10 Q. (BY MR. BANKS) Did you at any time mention a
11 contract that LT had with the New York City Police
12 Department in your dealings with the FBI?

13 A. Yes.

14 Q. And when did this happen?

15 A. When did the -- when did what happen?

16 Q. When did you articulate to the FBI the information
17 about a contract?

18 A. During the interview that I had with them in 2008.

19 Q. During this interview?

20 A. It is stated in here in paragraph 4.

21 Q. I don't see the contract in paragraph -- I don't see
22 the term "contract" in paragraph 4, do you?

23 A. "That the income would be imminent from the sale of
24 the software product to the New York Police Department."

25 And I think what I stated before is you already were

1 either in a contract or about to sign one, and this agrees
2 with that statement.

3 Q. It does not agree with that statement.

4 THE COURT: We don't argue.

5 MR. BANKS: All right. Sorry, Your Honor.

6 THE COURT: You read the statement, then you move
7 on. You can make your argument in closing.

8 Q. (BY MR. BANKS) The statement says "additional income
9 will be imminent."

10 MR. KIRSCH: Objection to Mr. Banks reading from
11 the report, Your Honor.

12 THE COURT: Ask her if she made that statement.

13 Q. (BY MR. BANKS) Did you make this statement?

14 A. Yes.

15 Q. What was the statement that was made? What was that
16 statement that was made?

17 A. That we believed that they were in the process of
18 either selling --

19 THE COURT: No, read the statement.

20 THE WITNESS: Read the statement? "Cherry was led
21 to believe that LT, Leading Team, had a flow of income,
22 and that additional income would be imminent from the sale
23 of the software product to the New York Police Department,
24 NYPD. Cherry believed the imminency to mean that software
25 would be sold to the NYPD within the invoice terms, which

1 were net 10 or net 15. Cherry advised that AI would have
2 used net 10 or net 15. In return, DKH and Leading Team,
3 being a new company --"

4 THE COURT: Okay. Is that the statement you want?

5 MR. BANKS: That is the statement, Your Honor.

6 Thank you, Ms. Cherry.

7 May I have a moment, Your Honor?

8 THE COURT: You may.

9 Q. (BY MR. BANKS) One final question. It is your
10 testimony that you attended the orientation with the
11 members that would be working at Leading Team?

12 A. Yes.

13 MR. BANKS: No further questions, Your Honor.

14 THE COURT: Any other defendants who wish to
15 cross-examine?

16 MR. WALKER: No, Your Honor.

17 THE COURT: Any redirect?

18 MR. KIRSCH: No, thank you, Your Honor.

19 THE COURT: All right. May this witness be
20 excused?

21 MR. KIRSCH: Yes, please.

22 THE COURT: Thank you very much, Ms. Cherry, you
23 are excused.

24 How long will the next witness take?

25 MR. KIRSCH: Your Honor, I think we -- my direct I

1 predict will be done by 11:45 or sooner.

2 THE COURT: All right. Then let's proceed.

3 MR. KIRSCH: Your Honor, the Government would call
4 Corinna Montoya.

5 COURTROOM DEPUTY: Your attention, please.

6 **CORINNA MONTOYA**

7 having been first duly sworn, testified as follows:

8 COURTROOM DEPUTY: Please be seated.

9 Please state your name, and spell your first and
10 last names for the record.

11 THE WITNESS: Corinna Montoya. C-O-R-I-N-N-A
12 M-O-N-T-O-Y-A.

13 THE COURT: You may proceed.

14 MR. KIRSCH: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 **BY MR. KIRSCH:**

17 Q. Ms. Montoya, where do you work?

18 A. I currently work for Wells Fargo.

19 Q. And what sort of position do you have there?

20 A. I am a strategy consultant in recruiting.

21 Q. Back in 2002 and 2003, where were you working?

22 A. Analysts International.

23 Q. What was your position there?

24 A. I was a staffing manager.

25 Q. Did you work with a person named Valerie Cherry

1 during that time?

2 A. I did.

3 Q. Did your work -- what was your role with respect to
4 Ms. Cherry at Analysts International?

5 A. My role was to help support consultants on assignment
6 for Analysts International, and help them be successful in
7 their assignments.

8 Q. All right. Did you -- were you involved in a
9 business that was arranged between Analysts International
10 and companies called DKH and Leading Team?

11 A. I was.

12 Q. What was your role there?

13 A. My role was to help educate consultants and navigate
14 the staffing world with relation to Analysts
15 International, and outline expectations. Again, help them
16 be successful in their assignment.

17 Q. All right. As a part of that job, did you at any
18 point have a meeting with the people who were coming from
19 DKH as part of that relationship?

20 A. Yes.

21 Q. When did that occur in the course of the
22 relationship?

23 A. Towards the beginning of the relationship.

24 Q. And where did that occur, if you remember?

25 A. In Colorado Springs.

1 Q. Do you remember where in Colorado Springs?

2 A. Yes, in a strip mall at a church.

3 Q. Okay. What was the purpose of that meeting?

4 A. To help on-board the individuals that would be paid
5 by Analysts International. Help them understand our time
6 sheet system and entering their time. Understanding the
7 benefits' option. So an on-boarding, if you will.

8 Q. Okay. And were there -- did you observe the computer
9 system that was being used by the employees there for that
10 purpose?

11 A. Yes.

12 Q. What do you remember about that?

13 A. I remember that there was one computer for all of
14 them. And that it was interesting to me that they didn't
15 have more technology.

16 Q. Okay. Was there any requirement for people to
17 actually use the internet or the worldwide web during this
18 meeting?

19 A. Yes.

20 Q. And can you describe how that process went?

21 A. Yes. So part of what I was there to do was to teach
22 them how to access our time system and enter their time so
23 that we could pay and bill. And I was a little surprised
24 at the lack of savvy on navigating the internet, accessing
25 our time sheet database and entering the time. I was kind

1 of surprised, because these were supposed to be technical
2 people.

3 We typically get a lot of questions from technical
4 people about the system and how it works and, you know,
5 what it means, et cetera. I didn't get any of that. As a
6 matter of fact, I had to be very specific in my
7 instructions on how to step by step accomplish the task.

8 MR. KIRSCH: Your Honor, I would ask for leave to
9 publish what has been admitted as Government Exhibit
10 50.01, specifically page 8.

11 THE COURT: 50.01 may be published.

12 MR. KIRSCH: Expand down to the bottom of that
13 list, please.

14 Q. (BY MR. KIRSCH) Can you see that list on your
15 screen, Ms. Montoya?

16 A. I can.

17 Q. What is the relationship, if any, between the people
18 who are on this list and the people that you were
19 conducting the on-boarding or the orientation session you
20 have been describing?

21 A. Most of the individuals on this list were in that
22 room when I was doing the orientation or on-boarding.

23 Q. Were there people on this list who you recall having
24 particular difficulty navigating the internet system for
25 the time entry?

1 A. Yes. One individual in particular was Lawanna Clark.

2 Q. Okay. And she was signed up to be, it says a tester?

3 A. Correct.

4 Q. What does that mean in this context?

5 A. Testing software to ensure that it's acceptable, and
6 fixing any bugs. Just testing from a QA standpoint.

7 Q. Did you receive any understanding from this meeting
8 about whether or not the people on this list had ever
9 worked with Leading Team before?

10 A. No, I was not aware of that.

11 Q. You were not aware that anyone on this list had ever
12 worked with Leading Team before?

13 A. Correct.

14 MR. KIRSCH: Thank you, Special Agent Smith.

15 Q. (BY MR. KIRSCH) Did you have anything to do with the
16 time cards that were collected? What was your role with
17 those?

18 A. Part of my responsibility as a staff manager was to
19 ensure that we had timely receipt of time entry, because
20 that also impacted our ability to bill. So not only did
21 it affect payroll, but it affected our ability to bill a
22 client. So my role was to facilitate entry of the time,
23 and if it hadn't already been entered, try to resolve any
24 problems or do any education that was required. And then
25 also collect signed time sheets from the consultants

1 that's basically approved from the client that they worked
2 the hours that they stated.

3 Q. Can I ask you to take a look, please, at what is
4 marked for identification as Exhibit 1A. It is going it
5 to be in one of the folders there. 1.00A.

6 A. Okay.

7 Q. After you have looked at that, I want to know if you
8 recognize that document.

9 A. The 1A is not for Analysts International.

10 Q. I am sorry.

11 MR. KIRSCH: Can I have a moment?

12 THE COURT: I think I meant to give her 1I, not 1A.

13 Sorry, Your Honor.

14 Q. (BY MR. KIRSCH) Okay. I will try to again. You
15 now have 1.00I in front of you; is that correct?

16 A. Correct.

17 Q. Do you recognize that one?

18 A. I do.

19 Q. Okay. Can you tell us what that is, please?

20 A. Yes. This is a statement of hours worked by the
21 individuals listed. And, basically, an electronic
22 approval by Gary Walker that they, indeed, worked these
23 hours.

24 Q. And did you receive this while you were helping
25 administer that relationship?

1 A. Yes, I did.

2 MR. KIRSCH: I would move to admit and publish
3 Government's Exhibit 1.00I.

4 THE COURT: Any objection?

5 MR. BANKS: Without objection, Your Honor.

6 THE COURT: Exhibit 1.00 I will be admitted.

7 (Exhibit No. 1.00 is admitted.)

8 THE COURT: And it may be published.

9 MR. KIRSCH: Thank you, Your Honor.

10 Can you expand that text, please?

11 Q. (BY MR. KIRSCH) All right. Tell us what is on the
12 screen now, Ms. Montoya.

13 A. An e-mail to me from Gary Walker with -- it is
14 mentioning an attachment that is in the form of a
15 spreadsheet outlining the hours that were approved for the
16 AIC consultants that we were payrolling for the week
17 ending 3/29/03.

18 Q. You said it is to you. There is a different last
19 name in the "to" line there?

20 A. There is.

21 Q. You changed your name since then, I take it?

22 A. I did.

23 MR. KIRSCH: Can we publish page 2 of that exhibit
24 now, please. If we can rotate that and expand the text.

25 Q. (BY MR. KIRSCH) Can you explain what this page of

1 the exhibit is?

2 A. Yes. This page lists five consultants by day and the
3 amount of hours that they worked at the client site.

4 MR. KIRSCH: Those are all my questions, Your
5 Honor.

6 Thank you, Ms. Montoya.

7 THE COURT: Mr. Banks?

8 MR. BANKS: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 **BY MR. BANKS:**

11 Q. Ms. Montoya, who was with you during the orientation
12 from Analysts International?

13 A. Valerie Cherry.

14 Q. She was with you the whole time?

15 A. She was with me on this visit, yes.

16 Q. On this visit. Okay. Are you a technology
17 professional?

18 A. I've worked with technology professionals in the
19 recruiting area for 12 years.

20 Q. I said, are you a technology professional?

21 A. I am not a technology professional.

22 Q. Have you ever, in your experience dealing with any
23 sort of computing or application software and learning
24 somebody else's application software, had trouble
25 navigating based on user friendliness or something along

1 those lines?

2 A. Me, personally, yes.

3 MR. KIRSCH: Objection relevance.

4 THE COURT: Overruled.

5 Q. (BY MR. BANKS) Now, you mentioned -- you mentioned
6 that -- describe to me a little bit about where you met,
7 as far as the exterior -- what type of area was it;
8 residential, business, strip mall, whatever. Can you
9 describe the type of area that was?

10 A. Yeah. From my observation, it looked like a strip
11 mall. So we were in sort of a mall -- strip mall parking
12 lot when we arrived.

13 Q. Okay.

14 A. And so that is what I would describe it as.

15 Q. Do you recall any of the businesses that were in that
16 strip mall?

17 A. No, I don't. I will say that it wasn't very active.
18 There wasn't a lot of activity.

19 Q. What was in the strip mall?

20 A. Not a lot of businesses, that I recall.

21 Q. Was there anything else in the strip mall?

22 A. Not that I recall. I remember going into what looked
23 like a church.

24 Q. What looked like a church?

25 A. Uh-huh.

1 Q. What was -- what did the interior of the church look
2 like?

3 A. Well, it looked like a typical office, but not
4 structured. Disorganized. For example, the conference
5 room, there was a conference table, but not offices or
6 desks or that type of thing. It looked very unorganized.

7 Q. No sanctuary?

8 A. No sanctuary that I was able to see, because I did
9 not go into that part if it was there.

10 Q. How are you able to ascertain it was a church?

11 A. I believe there was a sign.

12 Q. And what did that sign say?

13 A. I can't remember the name of the church.

14 Q. Okay.

15 MR. BANKS: That is all I have, Your Honor. Thank
16 you.

17 THE COURT: All right. Any redirect?

18 MR. WALKER: Your Honor, I would like to cross.

19 THE COURT: Mr. Walker, I apologize.

20 **CROSS-EXAMINATION**

21 **BY MR. WALKER:**

22 Q. Hello, Ms. Montoya.

23 A. Hello.

24 Q. You stated that in the building there was only one
25 computer?

1 A. There was only one computer in the room that I was in
2 with the individuals who were learning how to enter their
3 time.

4 Q. Okay. So that is a clarification. You did not --
5 you did not mean that there was only one computer in the
6 entire building.

7 A. I did not see the entire building.

8 Q. So you wouldn't know if there were other computers --
9 if there were many people in other parts of the building,
10 you did not see?

11 A. Correct.

12 Q. And you also mentioned that you were -- you weren't
13 aware that any of them had worked with LT before.

14 A. Correct.

15 Q. Is that a question you asked? Did you ask if anyone
16 had worked with Leading Team before?

17 A. No.

18 Q. And just to continue on the theme of the meeting in
19 the church, did you notice other businesses in the strip
20 mall?

21 A. No, not that I recall.

22 Q. So, just to clarify, your belief was the meeting was
23 held at a church?

24 A. Correct. And it looked like the church was located
25 in a strip mall. That is how I would describe it.

1 Q. Did you notice that there were other businesses in
2 that area, other churches in that area?

3 A. Can you define area.

4 Q. In the strip mall.

5 A. In the strip mall, no. I couldn't tell you what else
6 was in there.

7 Q. So given your brief noticing of the layout of the
8 strip mall, would you say that you're certain that the
9 meeting took place in a church?

10 A. I believe I was in some room in a church or related
11 to a church.

12 Q. You believe so?

13 A. I believe so.

14 Q. Is it possible that there was a business next door to
15 a church that is closely associated with the church, as
16 far as proximity? It may not have been the church?

17 A. Certainly, yes.

18 MR. WALKER: No further questions, Your Honor.

19 THE COURT: Redirect? I am sorry, I apologize.

20 Mr. Barnes.

21 **CROSS-EXAMINATION**

22 **BY MR. BARNES:**

23 Q. Hello, Ms. Montoya. I have a few questions for you.

24 When you came into the facility, can you describe what you
25 saw when you came in? Like, what was the first thing you

1 saw?

2 A. The first thing I saw -- well, the first thing I
3 noticed was that it was an office environment, but it
4 wasn't a typical office environment that I was used to
5 dealing with with clients.

6 Q. Was there a reception desk? Any desk in front?

7 A. No.

8 Q. Did you meet anybody when you came in?

9 A. I met a group of people, yeah.

10 Q. So did you know who the group of people were when you
11 came in? For instance, did you meet a secretary?

12 A. I did not meet a secretary.

13 Q. You just walked in and saw the people?

14 A. We were greeted by -- I think it was Mr. Banks that
15 met us.

16 Q. Okay. So did you interview any of the employees
17 personally, yourself?

18 A. Interview, as in --

19 Q. As in, did you do a technical interview of them?

20 A. I did not technical interview them.

21 Q. So what you are saying is you can't really speak to
22 their technical background?

23 A. I can only tell you what I observed in dealing with
24 them based on my experience.

25 Q. Okay. So can you explain more about what you meant

1 by show of difficulty in the time sheet application? Can
2 you explain what that meant?

3 A. I am sorry, can you say that again?

4 Q. Can you explain in a little more detail about what
5 you saw was the difficulty of navigating the time sheet
6 application?

7 A. It wasn't only navigating the time sheet application,
8 it was actually opening the internet. It was getting on
9 the computer. It was a level of uncomfort around the
10 technology. It was having to take a couple of folks, at
11 least, through step by step of opening the internet,
12 getting on the web page, getting into the system, yeah.

13 Q. So does that raise any red flags for you?

14 A. I certainly noticed it, yes.

15 Q. So you reported to someone that you don't think these
16 people are well qualified?

17 A. Yes.

18 Q. So, in your experience, you have dealt with software
19 technology. You understand, being a recruiter, you
20 understand the types of IT jobs that people do, you know,
21 like programmers, testers, as you say; is that correct?

22 A. Correct.

23 Q. So does a tester necessarily know how to program?

24 A. No.

25 Q. So you stated earlier that a tester, they test

1 software. They fix bugs.

2 A. They identify bugs that need to be fixed.

3 Q. Identify bugs. So, really, they don't need to know

4 how to program; correct?

5 A. They don't know how to program?

6 Q. They don't need to know how to program; correct?

7 A. Correct.

8 Q. What they are really designed to do, is someone

9 creates an application, and they just make sure to see if

10 it works, correct?

11 A. Correct.

12 Q. They are testing?

13 A. Within certain parameters correct.

14 Q. So, really, a person who fixes bugs is a computer

15 programmer, correct?

16 A. Correct.

17 Q. So they would basically test the software, pass it

18 onto a programmer, and then they would fix bugs?

19 A. Correct. Correct.

20 Q. Another question. Did every employee in there

21 basically go into the time sheet program?

22 A. No.

23 Q. No, they didn't. So do you remember which ones that

24 you had go into the time sheet program?

25 A. Well, I know I worked with Lawanna. I know I worked

1 with Esther. They particularly seemed to have difficulty.

2 My orientation was more focused to the group. So

3 everybody gathered around and watched me while I went in.

4 Q. So you can't speak to the difficulty of using a

5 software to the whole group? You just picked out, like,

6 two, correct?

7 A. I noticed in particular two individuals that had

8 extreme difficulty beyond my observation of what a

9 technical person should know in getting into an internet

10 site.

11 Q. So in your understanding, does a tester necessarily

12 need to be a technical person?

13 A. Somewhat, yes.

14 Q. Okay. "Somewhat"? What do you mean?

15 A. In other words, they have to have a level of

16 understanding of the technology they are testing.

17 Q. Okay. So would it be fair to say that certain

18 software products may be designed for people who may --

19 for instance, your development software, your target

20 market may not be computer savvy. To create the software

21 to determine if it's simple enough so that maybe a person

22 who is not really computer savvy could understand that

23 technology? Have you seen that in your, you know,

24 technical background or experience?

25 A. That software --

1 Q. For instance -- let me rephrase.

2 A. Okay.

3 Q. Certain software is designed to be user friendly,
4 basically, simple, so that a person doesn't necessarily
5 need to be a programmer or understand too much about
6 computers to use a software product; is that correct?

7 Would you say that was a true statement?

8 A. Yes.

9 Q. So if you are testing said software, wouldn't you
10 need to test it on a similar-type individual who, if you
11 are testing it to be simple, you would maybe test it for a
12 person to maybe have a broad understanding or a complete
13 understanding of technology to make sure the software is
14 designed the way that you would like it to turn out.

15 Would you say that is a true statement?

16 A. No. If I were hiring a tester in the technology
17 industry, they would have certain qualifications that they
18 must meet in order to qualify for the position, which
19 includes a level of understanding of testing technology;
20 so tools to use.

21 Q. But you are answering towards if you were hiring the
22 tester; correct?

23 A. Correct.

24 Q. But could you speak for any other technology company
25 that was making software that they felt needed to be easy

1 to use; user friendly? Can you speak for that other
2 company?

3 A. No, I cannot comment for that other company.

4 MR. BARNES: Can I have a moment, Your Honor?

5 THE COURT: You may.

6 Q. (BY MR. BARNES) Are you familiar with the term
7 "dummy at terminal" testing?

8 A. I am familiar with "dummy terminal."

9 Q. No, "dummy at terminal" testing, or the acronym DAT
10 testing?

11 A. I am not familiar with that particular term.

12 Q. Basically, meaning --

13 MR. KIRSCH: Objection, Your Honor.

14 THE COURT: Sustained.

15 Q. (BY MR. BARNES) You are not familiar with that term?

16 A. No.

17 Q. Just to clarify, you could only speak for a couple of
18 people who you felt may not have been savvy enough to do
19 the time sheet program; correct?

20 A. Correct.

21 Q. Okay. So when you said they had difficulty bringing
22 up the internet or whatnot, could you explain that term?

23 A. Bringing up the internet?

24 Q. Correct.

25 A. So clicking on the icon so the internet shows up on

1 their screen. Entering web page addresses from the
2 documentation that was provided them.

3 Q. So you are saying they didn't -- so did they have
4 difficulty -- did they know what the mouse was?

5 A. They did not look very comfortable with the whole
6 situation.

7 Q. Okay. That is basically, though, your opinion?

8 A. That is my observation.

9 Q. Okay.

10 MR. BARNES: No further questions.

11 THE COURT: Anybody else?

12 Any redirect?

13 MR. KIRSCH: Please, Your Honor.

14 Your Honor, could I ask to publish Government
15 Exhibit 15.01, page 8, again, please?

16 THE COURT: You may.

17 MR. KIRSCH: If we can highlight that list of
18 personnel, please.

19 **REDIRECT EXAMINATION**

20 **BY MR. KIRSCH:**

21 Q. Ms. Montoya, on this list, who are the people that
22 you have been describing that you observed had difficulty
23 doing things like logging onto the internet?

24 A. Two in particular I mentioned, one earlier, Lawanna
25 Clark. Then Esther Bailey was the other one.

1 Q. The position listed for Ms. Clark is tester?

2 A. Correct.

3 Q. You explained that was a software tester?

4 A. Uh-huh.

5 Q. The position listed for Ms. Bailey is architect. Can
6 you explain what that position is?

7 A. An architect is a systems architect, where they
8 interface the application. They would typically design
9 the security parameters and architect the entire system.
10 It is a high level technical position.

11 Q. Based on your experience with dealing with those
12 sorts of employees, would you expect an architect to be
13 able to click on an icon to launch the internet?

14 A. Yes, I would.

15 Q. Based on your experience with people who are doing
16 software testing, would you expect a software tester to be
17 able to launch the application he or she was supposed to
18 test?

19 A. Yes, I would.

20 Q. If a person didn't have those capabilities, would you
21 expect to pay them \$70 an hour?

22 A. No, I would not.

23 Q. Thank you Ms. Montoya.

24 **RECROSS-EXAMINATION**

25 **BY MR. BANKS:**

1 Q. Ms. Montoya, have you been an architect?

2 A. Again, no. I am not technical. I hire technical
3 people.

4 Q. Very well. Are you in the business of telling a
5 company what to pay their employees?

6 A. Part of my responsibility is to understand the
7 market. And, yes, pay is part of that.

8 Q. That is not the question. Do you go tell other
9 companies what to pay their employees?

10 A. Not in my current position, no.

11 Q. Do you ever tell any company -- do you tell the U.S.
12 Government what to pay their employees?

13 MR. KIRSCH: Objection, relevance.

14 THE COURT: Sustained. Argumentative.

15 Q. (BY MR. BANKS) Who is responsible for determining
16 what employees are paid in a business-to-business
17 relationship? Who is responsible ultimately for paying
18 that debt --

19 A. Okay.

20 Q. -- between the staffing company and their client?

21 A. To me, that is two different questions. Who is
22 responsible for paying the debt?

23 Q. Let me rephrase that question. Who is responsible
24 for accepting the bill rate and the rate they are going to
25 pay the client -- pay the contract employee?

1 A. So the bill rate is typically determined by the
2 salesperson based on the skills of the position that they
3 are looking to fill. And then the recruiter goes to find
4 that skill set. And based on the level of experience and
5 skills of the individual that they hire, the pay rate is
6 determined for that individual.

7 Q. So let me ask you this. In your years of experience
8 in the staffing industry, have you ever, and do you find
9 it customary, that a company calls you and says we want to
10 pay this person \$60 an hour, and you go out and recruit
11 based on \$60 an hour and your margin?

12 A. And the skill set required.

13 Q. And the skill set. But the price that the client
14 wants to pay is determined by the client. You determine
15 what margin that you would like to put on that; is that
16 correct?

17 A. Not necessarily every time, no. There are several
18 different ways it can work from an arrangement
19 perspective. A client can tell you what they are looking
20 for, and then you can tell them how much that costs and
21 what the bill rate for that skill set would be. It is not
22 always that the client would dictate to the company. It
23 is more of a negotiation and a consulting relationship.

24 Q. Who is the final determining party on whether or not
25 they want to pay a particular bill rate?

1 A. The client.

2 MR. BANKS: Thank you.

3 THE COURT: Anything further?

4 MR. KIRSCH: No, Your Honor. Thank you.

5 THE COURT: May this witness be excused?

6 MR. KIRSCH: Yes, please.

7 THE COURT: All right. Thank you very much. You
8 are excused.

9 We are going to break for lunch. I have a meeting
10 I have to go to, so I am going to give you an extra long
11 lunch today. If you could return -- be ready to go at
12 1:30. So we will be in recess until 1:30.

13 I would like the lawyers to remain and the parties
14 to remain. The jury is excused.

15 (The following is had in open court, outside the
16 hearing and presence of the jury.)

17 THE COURT: You may be seated.

18 I knew this was going to happen. The jurors are
19 confused what the difference means between an exhibit
20 being admitted and an exhibit being made admissible. And
21 they have essentially let Ms. Barnes know that they are
22 confused.

23 So I would like, over the lunch break -- and,
24 Mr. Kirsch, if you would draft up -- that is why I said I
25 think we are going to need a jury instruction on that. If

1 you could draw up some language essentially referring to
2 the jury instruction that I gave on the exhibits; that
3 they can only make their decision based on the evidence,
4 which would be the exhibits admitted. And I can refer to
5 that, but if you could just draw up some language that you
6 can give to the defendants so I can read them something
7 immediately after lunch.

8 I am just thinking something to the effect that
9 they don't need to be concerned, I will give them all of
10 the exhibits that they can consider; those would be the
11 admitted exhibits. But, in this case, because of the
12 volume of exhibits, in order to not inundate them, some of
13 the exhibits will be summarized, but the underlying
14 information has to be made admissible. Something simple
15 that would explain that to them.

16 But if you can get that to the defendants before we
17 reconvene at 1:30, so that I can have some approved
18 language.

19 MR. KIRSCH: I will. If I'm back at 1:15 with that
20 language, Your Honor?

21 THE COURT: That will be fine. As I said, I have a
22 meeting. I will probably be back sometime between 1:15,
23 1:30.

24 MR. KIRSCH: I doubt that I will be able to get it
25 in a format that I can distribute it to the defendants

1 before 1:15, but I will have multiple copies at that time.

2 THE COURT: I think two or three sentences just to
3 explain to them. Because they are sitting there going --
4 and they want to know "stipulated." I will just tell them
5 I have referred to stipulated in the instruction, itself.
6 So really it is just what admissible means.

7 MR. KIRSCH: Understood, Your Honor.

8 MR. BANKS: We don't expect any objection,
9 obviously.

10 THE COURT: No. It is just something, because they
11 are sitting there, and I don't want them thinking about
12 that versus listening to what the evidence is.

13 So we will be in recess. I will see you shortly
14 before 1:30.

15 (Lunch break is taken from 11:57 a.m. to 1:26 p.m.)

16 (The following is had in open court, outside the
17 hearing and presence of the jury.)

18 THE COURT: You may be seated.

19 Okay. I have what I believe is a stipulated
20 supplemental instruction regarding admissible evidence,
21 which I believe all of you have. The third line, as I
22 understand, or the second sentence, let's say, will read
23 "In this case, based on the voluminous nature of some of
24 the evidence offered by both parties, the parties may seek
25 to admit exhibits summarizing such evidence." Other than

1 that, the instruction as drafted remains the same; is that
2 correct?

3 MR. KIRSCH: Yes, Your Honor.

4 MR. WALKER: Yes, Your Honor.

5 THE COURT: All right. Anything else that needs to
6 be brought to the Court's attention?

7 MR. WALKER: At some point -- it may be more proper
8 at the end of the day to discuss Mr. Kirsch's anticipated
9 closing date so we can better plan for our witnesses.

10 THE COURT: All right. I'll let you guys talk to
11 each other about that. I don't need to be in the middle
12 of that. Okay.

13 MR. ZIRPOLO: Your Honor, one other thing. As we
14 have been coming into the building, the security guards
15 said that we could ask you about bringing our phones in,
16 rather than having to check them in.

17 THE COURT: Yes. Actually, do all of you have
18 phones that you need to bring in?

19 MR. BANKS: Yes.

20 THE COURT: So, Ms. Barnes, if you could have
21 Ms. Ross prepare a letter for me to sign for you to give
22 to the guards downstairs so they know I have given you
23 permission to bring your phones in.

24 MR. ZIRPOLO: All right. Thank you.

25 THE COURT: Anything else? All right. I want to

1 thank you very much. This makes it so much easier,
2 streamlines, for the work you have put in over the noon
3 hour to get this stipulation accomplished.

4 Ms. Barnes, please bring in the jury.

5 (The following is had in open court, in the hearing
6 and presence of the jury.)

7 THE COURT: You may be seated. Welcome back,
8 ladies and gentlemen. Hope you had a nice lunch.

9 I know there has been some questions arising about
10 some of the terminology we have used. So I would like to
11 give you a supplemental instruction regarding admissible
12 evidence and what that means.

13 Now, as I explained to you at the beginning of the
14 trial, exhibits that constitute evidence in this case will
15 include only those exhibits which are admitted into
16 evidence. In this case, based on the voluminous nature of
17 some of the evidence offered by both parties, the parties
18 may seek to admit exhibits summarizing such evidence.

19 If I rule that a particular exhibit is admissible,
20 that ruling relates to whether that exhibit may be used as
21 a basis for a summary exhibit, and should not otherwise
22 concern you. So it is kind of lawyer talk. You will be
23 provided with a copy of all admitted exhibits, including
24 summaries, for your use during deliberations. All right.

25 Okay. Mr. Kirsch, you may call your next witness.

1 MS. HAZRA: Your Honor, the Government calls
2 Ms. Karen Chavez.

3 COURTROOM DEPUTY: Your attention, please.

4 **KAREN CHAVEZ**

5 having been first duly sworn, testified as follows:

6 COURTROOM DEPUTY: Please be seated.

7 Please state your name, and spell your first and
8 last names for the record.

9 THE WITNESS: Karen Chavez, K-A-R-E-N C-H-A-V-E-Z.

10 **DIRECT EXAMINATION**

11 **BY MS. HAZRA:**

12 Q. Good afternoon, Ms. Chavez. What city and state do
13 you live?

14 A. I live in Castle Rock, Colorado.

15 Q. Where do you currently work?

16 A. I work for Centura Medical Centers in Colorado
17 Springs.

18 Q. How long have you worked there?

19 A. For 2 years.

20 Q. At some point in time, did you work for Today's
21 Office staffing?

22 A. I did.

23 Q. When did you work there?

24 A. I worked with Today's from 1989 until about 2003.

25 Q. What was your position with Today's Office Staffing?

1 A. I started out in an administrative role, went to
2 credit manager, then transferred to Denver as a branch
3 manager of one of the staffing units in the Tech Center.

4 Q. When did you become the branch manager of that unit?

5 A. 2001.

6 Q. What kind of business does Today's Office Staffing
7 do?

8 A. They did administrative and financial temporary and
9 temp to hire staffing.

10 Q. And what is temp to hire staffing?

11 A. We would put someone out on an assignment, and the
12 client and the applicant would have 90 days to determine
13 if that was a good fit and if there might be an
14 opportunity for a permanent placement.

15 Q. I would like to direct your attention to the spring
16 of 2003. Did you come into contact with a company known
17 as DKH Enterprises?

18 A. Yes.

19 Q. And how did you first come into contact with them?

20 A. They contacted me.

21 Q. Who, specifically, if you can remember?

22 A. Demetrius Harper.

23 Q. What did Mr. Harper say in this first phone call?

24 A. He said that he had a company. They were looking to
25 payroll some software developers, and would we be

1 interested in talking to him about his project.

2 Q. At this time did he identify the company? Did
3 Mr. Harper identify the company he was associated with?

4 A. I believe he did, yes.

5 Q. What company was that?

6 A. DKH Enterprises, I believe, it was called.

7 Q. I believe you used the term "payroll some software
8 developers." Can you please explain what that means?
9 What is payrolling?

10 A. Payrolling is either when the client presents
11 temporaries -- temporary personnel to us, or we find them.
12 So we would payroll the temporary. So we would pay them
13 based on the information given to us. A temp temporary,
14 we would run the temp. We would find them. In payrolling
15 cases, the client would bring certain people to us and
16 say, they're qualified, we would like to hire them.

17 Q. So in that situation, in a payrolling situation,
18 Today's Office pays those employees?

19 A. Yes.

20 Q. And how does Today's Office Staffing make money in
21 that arrangement?

22 A. We bill the client.

23 Q. So Mr. Harper told you on the phone he was interested
24 in this sort of arrangement?

25 A. Uh-huh.

1 Q. At that point in time in his phone call, did he tell
2 you what kind of work DKH did?

3 A. I think we got a general overview. But we did make
4 an appointment to meet in person a few days later, where I
5 had received more information.

6 Q. And do you recall where that next meeting --
7 in-person meeting occurred?

8 A. I went down to DKH. Clinton Stewart, I believe is
9 his name, and Demetrius Harper and I had a meeting and
10 went out to lunch to discuss it.

11 Q. Did you meet them at their place where you went to
12 eat or meet them at DKH, itself?

13 A. We met at DKH. And we drove in their car to a
14 restaurant.

15 Q. Do you recall where the DKH offices were for that
16 meeting?

17 A. Some place in Colorado Springs. North side. Sorry,
18 I don't remember the exact address.

19 Q. That's fine. At this meeting, did Mr. Harper and
20 Mr. Stewart give you further information about what kind
21 of work DKH did?

22 A. Yes.

23 Q. And what did they say?

24 A. Demetrius was the president of the company. He was
25 ex-Military. He started his company about 3 years ago --

1 3 years prior, sorry. And that his clients were state and
2 government agencies. His vision was to get into law
3 enforcement security and computerize their systems, which
4 at the time he said were mostly manual. And that he would
5 get into this niche market so he could computerize the
6 systems, and then prevent hacking and identity theft of
7 those companies.

8 Q. Did he identify any government or state government
9 agencies with whom he was working?

10 A. I don't recall that he specifically named, yes -- no.

11 Q. Did Mr. Harper or Mr. Stewart at this meeting give
12 you any information about what the employees they were
13 asking you to payroll would be doing?

14 A. I recall that they were just to be software
15 developers and engineers to help them get this software
16 going.

17 Q. Based on your understanding from Mr. Harper, what
18 Mr. Harper was saying, did you believe these contracts
19 were already in place?

20 A. With their clients?

21 Q. Yes.

22 A. Yes, I did.

23 Q. Did you ultimately decide to enter into a contract
24 with DKH enterprises to payroll these employees?

25 A. I didn't personally. I certainly had to run this up

1 the ladder. But, yes, we felt it was a decent risk,
2 uh-huh.

3 Q. And why did you feel it was a decent risk?

4 A. Well, I think with the information they had given us,
5 I think we were running some background information, just
6 general information, and the fact they had already been in
7 business for 3 years, and that they were working with
8 government agencies.

9 Q. And what was the significance about the fact that
10 they were working with Government agencies in your
11 decision?

12 A. I guess it just seemed it would be typically when you
13 work with agencies like that, you have to go through
14 security background checks. Didn't seem to be much of a
15 risk.

16 Q. And then Today's Office Staffing did end up
17 payrolling employees for DKH?

18 A. Yes, they did.

19 Q. Do you recall how many employees were payrolled?

20 A. I believe there were three of them.

21 Q. And how did those employees tell Today's Office
22 Staffing the hours they had worked?

23 A. All employees had to fill out time sheets. So they
24 would submit a time sheet on a weekly basis. And the
25 hours would be then generated into the system. A check

1 would be cut for the employee, and an invoice generated
2 for the company.

3 Q. Did Today's Office require any additional approval of
4 those time sheets before they would generate the checks
5 and the invoices?

6 A. They typically had to be signed by a supervisor. If
7 a signature wasn't on the time sheet, someone probably
8 from the payroll department would call and make sure that
9 those hours were valid.

10 Q. I would like you to turn to the manila folders in
11 front of you and look at what has been marked for
12 identification purposes as Government's Exhibit 1D.

13 A. Uh-huh.

14 Q. Do you recognize Government's Exhibit 1D?

15 A. These would be time sheets generated by Today's
16 Staffing.

17 Q. And do the three individuals listed on that time
18 sheet, do they have any connection with the payrolled
19 employees you have been discussing?

20 A. I think they are the payrolled employees.

21 Q. Thank you.

22 MS. HAZRA: Your Honor, I would ask that
23 Government's Exhibit 1D be admitted and published.

24 THE COURT: Any objection?

25 MR. WALKER: No objection, Your Honor.

1 THE COURT: All right. Exhibit 1D will be
2 admitted, and it may be published.

3 (Exhibit No. 1D is admitted.)

4 Q. (BY MS. HAZRA) Ms. Chavez, if you could see, are
5 there three different time cards on Government's Exhibit
6 1D?

7 A. Uh-huh.

8 Q. Can you identify the three individuals for whom these
9 time cards?

10 A. Looks like David Banks, Cliff Stewart and Gary
11 Walker, I think.

12 Q. And are all these three time cards for the same time
13 period -- the same weekly pay period?

14 A. All week ending August 3. So that was typically on a
15 Sunday. So that would have been the five days prior, yes.

16 MS. HAZRA: If we could focus in, Special Agent, on
17 the top time card.

18 Q. (BY MS. HAZRA) Again, that is a time card that
19 relates to Mr. David Banks; is that correct?

20 A. Correct.

21 Q. What are the hours reflected there that Mr. Banks
22 worked that week?

23 A. The 59 hours in the lower left-hand corner.

24 Q. Right. Is it also in the total hours for the week,
25 that box, the 59 hours?

1 A. Yes.

2 Q. At the time that this time card -- and it was
3 approved, is it not?

4 A. Yes.

5 Q. Is there a signature --

6 A. Yes.

7 Q. -- by Mr. Banks, himself? And can you identify the
8 supervisor's signature? Is that the client's signature
9 you were discussing?

10 A. Yes. But I can't see.

11 Q. On the right-hand side, underneath the DKH
12 Enterprises is, that the approval sheet you were
13 discussing?

14 A. Yes, it is.

15 Q. Signature, excuse me.

16 A. Yes.

17 Q. At the time that this time sheet was sent in to
18 Today's Office Staffing, did you have any knowledge that
19 the same week, August 3, 2003, Mr. Banks worked 55 hours
20 for Computer Horizons?

21 MR. ZIRPOLO: Objection, not in evidence.

22 THE COURT: Overruled.

23 THE WITNESS: No, I did not.

24 Q. (BY MS. HAZRA) And at the time that this time sheet
25 was submitted to Today's Office Staffing, did you have any

1 knowledge that during that same week ending August 3,
2 2003, Mr. Banks worked 47 hours for System Engineering
3 Services?

4 A. No. I wouldn't know that, no.

5 Q. If you had known that Mr. Banks reported time for two
6 different staffing companies at the same time he was
7 working for Today's, would that have caused you any
8 concern?

9 A. Yes, because I would have wondered how he paid full
10 attention and done the job for the client that we had for
11 him.

12 MS. HAZRA: Thank you, Special Agent.

13 Q. (BY MS. HAZRA) Can you please look at what has been
14 marked for identification purposes at Government's Exhibit
15 451. Do you recognize Government's Exhibit 451?

16 A. More time sheets.

17 Q. Are these time sheets for the same three individuals
18 we have been discussing that Today's payrolled for DKH
19 Enterprises?

20 A. Looks like it is for the same three people, yes.

21 MS. HAZRA: Your Honor, I would ask that
22 Government's Exhibit 451 be admitted.

23 THE COURT: Any objection?

24 MR. BANKS: No objection.

25 THE COURT: Exhibit 451.00 will be admitted.

1 (Exhibit No. 451.00 is admitted.)

2 Q. (BY MS. HAZRA) I believe you just mentioned -- were
3 you finished looking at that exhibit?

4 A. Yes.

5 Q. You just testified that -- I believe that after the
6 time sheets came to Today's Office Staffing, they
7 generated a check; is that right?

8 A. Yes.

9 Q. Where did that check go?

10 A. The check would go to the temporary employee.
11 Sometimes it would be left in our office for them to pick
12 it up, or it would be mailed to them.

13 Q. And I'll have you look at what has been marked for
14 identification purposes as Government's Exhibit 453.01.
15 Do you recognize Government's Exhibit 453.01?

16 A. Uh-huh.

17 Q. Are these checks relating to a certain payrolled
18 individual from Today's Staffing?

19 A. Checks made out to Cliff Stewart.

20 Q. And are the checks from Today's Office Staffing?

21 A. Yes, they are.

22 MS. HAZRA: Your Honor, I would ask that
23 Government's Exhibit 453.01 be found admissible.

24 THE COURT: Any objection?

25 MR. ZIRPOLO: No objection.

1 THE COURT: Exhibit 453.01 will be found
2 admissible.

3 (Exhibit No. 453.01 is found admissible.)

4 Q. (BY MS. HAZRA) Ms. Chavez, if you can next turn to
5 Government's Exhibit 453.02.

6 A. Okay.

7 Q. Do you recognize this exhibit?

8 A. Checks for Gary Walker, yes.

9 Q. And, again, what entity is issuing the checks?

10 A. Today's Staffing.

11 MS. HAZRA: Your Honor, I would ask that
12 Government's Exhibit 453.02 be found admissible.

13 THE COURT: Any objection?

14 MR. BANKS: No objection, Your Honor.

15 THE COURT: Exhibit 453.02 will be found
16 admissible.

17 (Exhibit No. 453.02 is found admissible.)

18 Q. (BY MS. HAZRA) Next, Ms. Chavez if you can turn to
19 453.03.

20 A. Okay.

21 Q. Do you recognize this exhibit?

22 A. Yes.

23 Q. What is Government's Exhibit 453.03?

24 A. A fax cover sheet from Today's Staffing to Yolanda in
25 accounts payable.

1 Q. I am sorry, I misspoke. I'd ask to you turn to
2 453.03.

3 A. I picked up 456, sorry. 453.03?

4 Q. Yes.

5 A. More time sheets -- more checks. These were made out
6 to David Banks.

7 Q. Again, who is the entity that is issuing these?

8 A. Today's Staffing.

9 MS. HAZRA: I would ask that Government's Exhibit
10 453.03 be found admissible.

11 MR. BANKS: No objection.

12 THE COURT: 453.03 will be found admissible.

13 (Exhibit No. 453.03 is found admissible.)

14 Q. (BY MS. HAZRA) Do you have any knowledge of how the
15 time sheets that we looked at and the checks, how they
16 were transmitted back and forth from the employee and the
17 company? Let's start with the time sheets first.

18 A. The time sheets have to be generated by a certain
19 time by the branch. And those hours are called in or
20 faxed into the payroll department in Dallas. And the time
21 sheets are sent in, and then an invoice is generated from
22 those time sheets by the payroll department, and then an
23 invoice sent to the company. And the checks are also cut
24 and either mailed or we would get a pack Fed Ex'd to us.
25 And the checks could either be picked up at the branch by

1 the temporary, or the checks were mailed to them. It was
2 at their discretion.

3 Q. And in this case, how did the time sheets get from
4 the employee to Today's Office Staffing?

5 A. From the employee?

6 Q. From the temporary. How did Today's Office receive
7 the time sheets from the payrolled employees?

8 A. The branch would send them into the corporate office.

9 Q. So DKH would send them to you?

10 A. Uh-huh.

11 Q. And I believe you just mentioned invoices. So I will
12 have you look and what has been marked for identification
13 purposes as Government's Exhibit 452. Do you recognize
14 Government's Exhibit 452?

15 A. Uh-huh. These are just copies of invoices.

16 Q. And who is the entity being billed in these?

17 A. DKH Enterprises.

18 MS. HAZRA: I would ask that Government's Exhibit
19 452 be found admissible.

20 THE COURT: Any objection?

21 MR. WALKER: No, Your Honor.

22 THE COURT: Exhibit 452.00 will be found
23 admissible.

24 (Exhibit No. 452.00 is found admissible.)

25 Q. (BY MS. HAZRA) Was DKH invoiced for the work the

1 three payrolled employees performed? Did they send the
2 invoices to DKH?

3 A. Yes, absolutely.

4 Q. Did DKH pay on these invoices initially?

5 A. Not while I was there.

6 Q. At some point in time did you become aware that DKH
7 was not paying their bills?

8 A. Yes.

9 Q. What steps, if any, did you take to collect?

10 A. Typically, when an invoice was outstanding at 30 or
11 31 days, a collection call was initiated.

12 Q. Did you make such a call?

13 A. I did. Then I turned it over to our credit
14 department to begin the process of collection, yes.

15 Q. Were you able to talk to anyone when you telephoned
16 to try to get payment?

17 A. I believe I was able to speak with Demetrius. I
18 think my first call was about 30 or 31 days afterwards
19 when we hadn't received any payment. Of course, he
20 called. And he told me that Yolanda would be -- she was
21 in AP, in accounts payable, and she would be handling the
22 invoices, and that I should contact Yolanda, which I did.

23 Q. And as a result of this further contact, did DKH pay
24 on the invoices?

25 A. No.

1 Q. What did do you next?

2 A. After I had had several communications or attempts to
3 communicate with Yolanda and Demetrius and Clinton, I told
4 them that I needed to come down to pick up a check for
5 \$48,000, which was what was outstanding at the time, and I
6 would be down to Colorado Springs to pick up a check, or
7 we would have to pull the temporaries, and we could no
8 longer service until the account was brought current.

9 Q. And before you made that final call, were you able to
10 talk to Mr. Harper or Mr. Stewart or Yolanda about the
11 outstanding bills?

12 A. I believe I was able to talk to -- Yolanda told me
13 the invoices, that she was backed up. She had been sick.
14 And they usually paid on 45-day turn around, which was
15 pretty typical, and we were fine with that. We just
16 wanted to make sure there was a payment agreement; a
17 process that they were going through.

18 But that wasn't happening. Demetrius was out of
19 town. Clinton told me Demetrius was really the person I
20 needed to talk to, or Yolanda.

21 Q. And then I believe you said -- you said you were fine
22 with that. Did that mean -- did you continue to payroll
23 the three employees during this initial stage?

24 A. At the 31 day point, yes, we continued to payroll.

25 Q. And at some point in time you said you made this

1 call; is that right, where you said you had to come down
2 to collect the check?

3 A. Yeah. I think we started -- I don't know exactly,
4 but I believe around June 6, 7, 8, something like that, we
5 started the payrolling of the temporaries. By July 29, we
6 were starting to call on these past due invoices. And I
7 made a trip to Colorado Springs, I believe it was August
8 the 8th, to pick up a check, because we weren't getting
9 any communication.

10 Q. And how was that trip to the Springs? What is that
11 timing in relation to this call you talked about where you
12 left a message saying you had to come collect \$41,000?

13 A. Could have been a week's time, a few days, something
14 like that.

15 Q. So tell me about how the trip to Colorado Springs
16 came about. Did you contact anyone at DKH prior to making
17 the trip?

18 A. Yes. I had not only called Yolanda and Demetrius,
19 but I had sent e-mails telling them that we needed to have
20 a check. We needed to pick up a check. We needed to talk
21 about this, or I would have to pull the temporaries. And
22 that I would be down on Friday to talk to them, to pick up
23 a payment.

24 Q. And did you go down that Friday?

25 A. I did.

1 Q. Where did you go?

2 A. I went to DKH Enterprises.

3 Q. In Colorado Springs?

4 A. Yes.

5 Q. What happened when you got there?

6 A. Well, there was no one in the lobby. There was a
7 phone that said dial such and such a number. And so a
8 female voice came on the line. I told her who I was, and
9 that I had an appointment to meet with Yolanda. She told
10 me Yolanda wasn't there, and did I have an appointment.
11 And I said, yes. And she said, well, she wasn't
12 available.

13 I said, may I then speak with Demetrius. He, too,
14 was not available. She questioned whether I had an
15 appointment. I said, yes. She said he wasn't available.
16 I asked for Clinton, and was told the same thing; did I
17 have an appointment? He wasn't available. I said I can't
18 leave until I speak to somebody.

19 Q. Did you take additional steps at that time to see if
20 Mr. Harper or Mr. Stewart were there?

21 A. Well, after she hung up, I waited a little bit. I
22 went outside the building, because I did remember the car
23 we had driven in to go to the restaurant when we had our
24 initial meeting. I didn't see that car in the parking
25 lot. So I went back in and I waited some more. In the

1 meantime I had my cell phone and called Demetrius and
2 Yolanda and left messages on their lines, telling them
3 that I was in the lobby, and that I really needed to speak
4 with them.

5 Q. Did you make contact with anyone else?

6 A. No. No. I waited probably another hour. Another
7 attempt. I left more messages. No one came out. No one
8 said anything. I think then I picked up the phone again,
9 spoke to the same female, and she said if I didn't leave
10 she was going to call the police. And I said, well, then
11 let me make another appointment for Monday. If they are
12 not available, I will come back. She said, if you do not
13 leave, I will call the police.

14 So I put the phone down, and before I hung up, I
15 told her I would be leaving all of the invoices, my
16 contact information, and that we expected to have them
17 paid, and to please call me, and I left.

18 Q. And after this visit, did you receive payment from
19 DKH?

20 A. No.

21 Q. Could you please --

22 MS. HAZRA: Your Honor, I move to admit
23 Government's Exhibit 456.07, which I believe is
24 stipulated.

25 THE COURT: It does show as being stipulated. Any

1 objection?

2 MR. BANKS: No objection, Your Honor.

3 THE COURT: 456.07 is admitted.

4 (Exhibit No. 456.07 is admitted.)

5 Q. (BY MS. HAZRA) Can you please look at 456.07, which
6 should be in front of you. Do you see --

7 MS. HAZRA: Special Agent Smith, could you please
8 publish? I don't know if I asked permission.

9 THE COURT: Yes, you may.

10 MS. HAZRA: I apologize.

11 Q. (BY MS. HAZRA) Who is this a letter from?

12 A. It is from Demetrius Harper.

13 Q. Who is Bill Peterson?

14 A. I don't know.

15 Q. Does this concern the outstanding debt owed to
16 Today's Office Staffing?

17 A. Yes. It looks like they are trying to -- about
18 122,000, it says.

19 Q. These numbers listed in Government's Exhibit 156.07,
20 do they roughly accord with the amount you believe is owed
21 to Today's Office Staffing?

22 A. Yes.

23 MS. HAZRA: If I could have one moment, Your Honor?

24 THE COURT: You may.

25 MS. HAZRA: I have no further questions, Your

1 Honor.

2 THE COURT: Mr. Banks?

3 CROSS-EXAMINATION

4 BY MR. BANKS:

5 Q. Ms. Chavez, can you explain Today's Staffing process
6 when considering our engagement or deciding to do business
7 with a new client?

8 A. Typically, there would be initial information
9 gathered, a credit check or some kind of background check
10 run at least, a D & B rating looked at.

11 Q. And anything happen after that? What happens
12 typically after that?

13 A. Once we decide if we are going to do business with a
14 client, we get the information, we'll meet with them, talk
15 to them what their needs are regarding staffing, whether
16 administrative or financial. We roll out how we work and
17 what the payment plans are, what our expectations are of
18 payment -- methods of payment.

19 Q. Okay. Did Today's Staffing run a credit check in
20 this case?

21 A. I don't believe they did. I am not sure, but I don't
22 think so.

23 Q. Is there a reason that you can explain why that would
24 or would not happen?

25 A. It could be that the initial credit check was

1 started. Someone may have felt very comfortable in
2 pursuing. I really don't know. The credit checks are
3 done by the credit department.

4 Q. So Today's Staffing does have a credit department?

5 A. Yes.

6 Q. Where is that credit department located?

7 A. At the time it was in Dallas, Texas.

8 Q. Now, is it a requirement of your company -- of
9 Today's Staffing, to engage in business prior to receiving
10 approved credit back from the credit department?

11 A. Yes, sometimes. If they had a high credit rating
12 from a Dun & Bradstreet credit rating, a background check
13 might not be required.

14 Q. Okay. Assuming they did -- assuming that Today's
15 Staffing's credit department in Dallas, Texas, did the
16 credit check, how do they notify you that it's okay to
17 move forward?

18 A. They would just say it is okay to do business or it's
19 not.

20 Q. All right. Did they -- you testified a moment ago
21 that you don't believe a credit check was done in this
22 particular instance. How did you make a determination to
23 go ahead and proceed?

24 A. I believe I spoke with my manager, Jason, and told
25 him what was going on. And we weren't too worried about

1 what was happening at the time. And so he didn't give me
2 any indication not to move ahead and do business. So
3 maybe they thought within a certain amount of time the
4 credit check would come in and there wasn't going to be
5 much risk in a few weeks before we got a credit check in.
6 I don't know.

7 Q. So there was really no follow-up, to your knowledge,
8 with regard to the credit information?

9 A. Yes. I don't have any knowledge of that.

10 Q. Do you think it is practical to do business without
11 verifying a company's credit?

12 A. No. I think best case is always to know who you are
13 dealing with.

14 Q. Now, you didn't -- in your previous question,
15 Ms. Hazra provided you with some contract language. Did
16 Mr. Harper assert to you that a contract was in place with
17 a particular agency?

18 A. Just by signing the time sheet authorizing a time
19 sheet is a contract. On the back of that time sheet, it
20 stipulates exactly what is expected.

21 Q. Okay. I guess I'm not clear. Let me re-ask the
22 question. Did he mention any contracts he had in place
23 with any law enforcement agencies?

24 A. He just said he had been in business for three years,
25 and his clients were city and state governments.

1 Q. Okay.

2 A. I don't remember that he said specific names.

3 Q. Have you been a technology contractor or a technology
4 professional?

5 A. No.

6 Q. Have you ever worked more than one job?

7 A. Yes.

8 Q. Do you understand that -- let me say, in your
9 experience in the staffing industry, have you known on
10 occasion of contract -- technology contracting
11 professionals who work multiple engagements?

12 A. I wouldn't say I have knowledge of that. I wouldn't
13 be aware of it, no.

14 Q. You wouldn't be aware of it. Now, you can work
15 multiple jobs, obviously, you just articulated that, that
16 you have worked --

17 A. I thought you meant have I ever had more than one
18 job.

19 Q. At one time.

20 A. No, I have not.

21 Q. Have you known people that have more than one job at
22 a time?

23 A. Sure.

24 Q. You articulated in your testimony that if you had
25 known that one of these technology contractors were

1 working more than one job, that it would have made a
2 difference to you whether or not you would have engaged
3 Today's Staffing; is that correct?

4 A. It would have raised a red flag as to if someone is
5 going to be working 50-some hours a week for us, how they
6 would be able to manage an additional 47 hours for someone
7 else.

8 Q. Now, would you consider that subjective on your part?

9 A. No.

10 Q. So --

11 A. I would consider it being conscientious and concerned
12 on the part of my company as to the ability of this
13 particular individual to focus his or her attention on the
14 assignment that we had him on for Today's Staffing.

15 Q. Would you agree that some individuals are more
16 talented than other individuals?

17 A. Certainly.

18 Q. Would you agree that, say, the workload that you can
19 handle may not be the workload that somebody else can
20 handle?

21 MS. HAZRA: Objection, Your Honor, relevance.

22 THE COURT: Sustained.

23 MR. BANKS: Okay, Your Honor.

24 Q. (BY MR. BANKS) Do you have any information from the
25 client that -- from the client or from the contractor that

1 the work was not performed underneath the engagement with
2 Today's Staffing?

3 A. You mean, do I know that the work was not performed?

4 Q. Do you have any evidence that the work was not
5 performed by these individuals?

6 A. No.

7 Q. Okay. I want to get to an issue. How -- were you
8 contacted by the FBI, or did you contact the FBI regarding
9 this particular case?

10 A. Personally, I was contacted by the FBI.

11 Q. Okay. And in their contact with you -- let me ask
12 you this first. Do you know when they first -- when the
13 FBI first contacted Today's Staffing?

14 MS. HAZRA: Objection, Your Honor, relevance.

15 THE COURT: Sustained.

16 Q. (BY MR. BANKS) Do you have any idea when the FBI
17 first contacted Today's Staffing regarding DKH
18 Enterprises?

19 MS. HAZRA: Objection, Your Honor, relevance.

20 THE COURT: Sustained. It doesn't really matter
21 when they contacted her. How is it relevant to the
22 charges?

23 MR. BANKS: The FBI, Your Honor, sent certain
24 information.

25 THE COURT: That's different. What relevance is it

1 what day they contacted her?

2 MR. BANKS: I will get back to that.

3 THE COURT: Sustained.

4 MR. BANKS: Thank you, Your Honor.

5 Q. (BY MR. BANKS) I will get back to that.

6 Did Today's Staffing have a contract with DKH
7 Enterprises?

8 A. I don't believe there is a formal contract that we
9 sit down and write out with our clients. The signature on
10 the time sheet is the contract.

11 Q. So a business-to-business relationship?

12 A. Yes.

13 Q. It is your testimony that Today's Staffing does not
14 follow traditional -- and standard business practices with
15 setting up a contract between your company and another
16 company?

17 A. That was Today's standard practices.

18 Q. Okay.

19 A. The agreement is on the back of the time sheet.

20 Q. Okay. Now, where is the agreement between Today's
21 Staffing and the corporation? The time sheet is the
22 contract employee certifying that they worked the number
23 of hours; correct?

24 A. Yes.

25 Q. And these are, by legal definition, these are Today's

1 Staffing's employees; correct?

2 A. Yes.

3 MR. BANKS: One minute, Your Honor. May I?

4 THE COURT: You may.

5 Q. (BY MR. BANKS) Does Today's Staffing have any formal
6 or corporate policy against its employees working another
7 job or another project?

8 A. Not that I'm aware of, no.

9 Q. Okay.

10 MR. BANKS: No further questions, Your Honor.

11 THE COURT: Anybody else from the defense?

12 All right. Any redirect?

13 MS. HAZRA: No, Your Honor, thank you.

14 THE COURT: May this witness be excused?

15 MS. HAZRA: Yes, Your Honor. Thank you.

16 THE COURT: Thank you very much, Ms. Chavez, you
17 are excused.

18 Government may call its next witness.

19 MR. KIRSCH: Your Honor, the Government calls Susan
20 Holland.

21 Ms. Barnes if Ms. Holland could have Exhibits
22 140.01 through 147, please.

23 COURTROOM DEPUTY: Your attention, please.

24 **SUSAN HOLLAND**

25 having been first duly sworn, testified as follows:

1 COURTROOM DEPUTY: Please be seated.

2 Please state your name, and spell your first and
3 last names for the record.

4 THE WITNESS: Susan K. Holland. S-U-S-A-N K.
5 H-O-L-L-A-N-D.

6 **DIRECT EXAMINATION**

7 **BY MR. KIRSCH:**

8 Q. Ms. Holland, I am going to ask you to make sure that
9 you are directing yourself into the microphone there so
10 everybody can hear you.

11 A. Okay.

12 Q. Can you tell the jury where you work, please?

13 A. Currently I work for ETI Professionals, a Cherokee
14 Nation business.

15 Q. What sort of a company is ETI Professionals?

16 A. We are a technical support services firm, primarily
17 to government agencies. We find jobs for people in the
18 high technical area; scientists, engineers, IT
19 professionals.

20 Q. How long have you been with that company?

21 A. Well, it was currently my company for 18 years. In
22 February of this year it was bought by the Cherokee
23 Nation. So 18 years, plus about 7 months.

24 Q. What is your current position?

25 A. I am president of ETI Professionals.

1 Q. Did you, as part of your work with ETI, also provide
2 a service that you called referrals?

3 A. Yes.

4 Q. And can you explain what that is?

5 A. What we normally do under a referral situation is if
6 a client or an agency has somebody that they would like to
7 use on projects and they can't hire them themselves, they
8 refer that individual to us, and they apply as if they are
9 going to be an employee of ETI. And then we make
10 arrangements with the client for that through a contract
11 of employment. The employee is ours. And then we put
12 them to work back to that client.

13 Q. And in that kind of arrangement, who pays the salary
14 of those employees?

15 A. ETI does.

16 Q. And then how does ETI make money from that
17 arrangement?

18 A. We put what we call a multiplier on that. And a
19 multiplier generally is anywhere from 1.5 to a 1.75
20 multiplier. And that takes care of the taxes -- the
21 employment taxes, benefits, insurance, and also our profit
22 and our G&A.

23 Q. I want to direct your attention now to the fall of
24 2003. Around that time you were working with ETI; is that
25 correct?

1 A. Yes.

2 Q. Around that time, did you come in contact with a
3 company called DKH?

4 A. Yes.

5 Q. How is it that ETI first had contact with DKH, do you
6 remember?

7 A. My understanding, and what I remember from the
8 conversation, is they found our website and contacted us.

9 Q. And did you, then, have -- make arrangements to place
10 employees at DKH?

11 A. Yes. It was very specific. DKH wanted two people
12 that they had previously worked with to come on board as
13 our employees and be contracted to DKH.

14 Q. And did you enter into some sort of a letter
15 agreement to memorialize that situation?

16 A. Yes.

17 Q. Can I ask you to look at what is marked for
18 identification as Government Exhibit 140.02.

19 A. Yes.

20 Q. Now, does that exhibit actually contain two
21 documents?

22 A. Yes, it does.

23 Q. What are those documents?

24 A. They are our letter contract agreements to put two
25 people to work at DKH. One is a systems architect tester.

1 The other is a developer.

2 MR. KIRSCH: Your Honor, I move to admit Government
3 Exhibit 140.02.

4 THE COURT: Any objection?

5 MR. BANKS: Without objection, Your Honor.

6 THE COURT: Exhibit 140.02 will be admitted.

7 (Exhibit No. 140.02 is admitted.)

8 MR. KIRSCH: Thank you, Your Honor. May we publish
9 that?

10 THE COURT: You may.

11 MR. KIRSCH: Can we just highlight the body of that
12 letter, please?

13 Q. (BY MR. KIRSCH) You mentioned, Ms. Holland -- can
14 you see that on the screen now?

15 A. Yes, I can.

16 Q. You mentioned the positions that these people were
17 going to fill. Is the position and one of the employee's
18 name on the screen now?

19 A. Yes.

20 Q. Can you tell us where that is, please?

21 A. It is in No. 2, and it covers -- it says it is a
22 developer, at a rate of \$79.25 an hour for a temporary
23 assignment.

24 Q. And then is the employee's name later in that
25 paragraph?

1 A. Yes. At the bottom sentence, it says, "ETI employee
2 assigned to this project is Cliff Stewart."

3 Q. And then is the start date there, as well?

4 A. Yes. It is Monday, November 24, 2003.

5 Q. I will not put it on the screen, but can you look at
6 the other part of the exhibit and just identify the other
7 employee.

8 A. Yes. The other employee was Enrico Howard.

9 Q. Now, at the time that you agreed to place -- to hire
10 these two employees and then place them at DKH, did you
11 have any information that either of those people had ever
12 worked at DKH for other staffing companies?

13 A. I had no knowledge of that.

14 Q. Would that have affected your decision about whether
15 you would have placed them there?

16 A. As long as they were separated from those other
17 staffing agencies, that would have been okay with me.

18 Q. Okay. If they had been working for another staffing
19 company at the same time and placed at DKH, would that
20 have been a problem?

21 A. Very much so.

22 Q. Why is that?

23 A. Well, it's competition. And we believe that when
24 somebody gets a job with us, and it is a full-time job, 40
25 hours a week, that they spend that 40 hours a week with

1 our client on our payroll, and that they do not moonlight.

2 Q. Did you know at the time that you set this up in
3 November of 2003, did ETI do any sort of a credit check on
4 DKH?

5 A. Yes, we did.

6 Q. Did you find any cause for concern when you did that?

7 A. None whatsoever.

8 Q. Did you ever have a meeting in person with
9 Mr. Harper?

10 A. Yes.

11 Q. When did that occur?

12 A. That was December 9th of 2003.

13 Q. How is it that got arranged?

14 A. Typically, what we do when we have a new client, we
15 make a site visit. We find out more about the client;
16 what they do, how they operate, where they are located.
17 It is a check and balance that we do on all of our new
18 clients.

19 Q. Do you recall where that office was?

20 A. Yes. It was in Colorado Springs, right off of I-25.
21 You could see their banner on the building.

22 Q. Okay. And who did you meet with when you went to the
23 DKH office?

24 A. I met with Demetrius Harper.

25 Q. Did Mr. Harper say what his relationship to DKH was?

1 A. That they worked together.

2 Q. Okay. And did he say what it was -- well, what
3 happened during that meeting?

4 A. It was one of those where you went down there, and we
5 arrived at the time. And Demetrius came out, and he took
6 us and we took a tour of the office. We went into a room
7 where there was a white board. And there were a lot of
8 graphics on that white board; written graphics,
9 handwritten graphics. And he proceeded to explain about
10 what he was trying to do and what he was accomplishing
11 with his new software program. And that he was working
12 with the New York Police Department and the Department of
13 Homeland Security.

14 And there were some other little squares in there,
15 which I don't remember the acronyms for, but that he was
16 very convincing in that he was ready to move forward with
17 the contract with the New York Police Department.

18 Q. Did you have an understanding about whether he was
19 going to be receiving money from that contract?

20 A. Absolutely. He said it was any day.

21 Q. And that information that you got during this
22 meeting, did that have any effect on you continuing to do
23 business with DKH?

24 A. Absolutely, it did.

25 Q. In what way?

1 A. It made me feel comfortable that he had a contract.
2 Because when you have a government contract, typically
3 they pay their bills.

4 Q. Okay. How is it that you kept track of the hours
5 that those employees were working?

6 A. I am sorry, would you repeat that?

7 Q. Yes. How is it that you kept track of the hours that
8 the employees you placed at DKH were working?

9 A. They turned in a weekly time record.

10 Q. Okay. Can I ask you to look, please, at what is
11 marked for identification as Government Exhibit 141.00.
12 Did you have a chance to review that exhibit before you
13 came into the courtroom today?

14 A. Did I review it before I came in? No, I did not.

15 Q. Okay. Let me ask you to take a look at it now. And
16 I will ask if you can identify that.

17 A. These are time billing records that we have all of
18 our employees fill out and fax in -- e-mail now. But at
19 that time, I think we had them fax it in.

20 Q. Do those particular time records pertain to
21 particular employees?

22 A. Yes. Enrico Howard and Cliff Stewart.

23 Q. And are these from their placement at DKH
24 Enterprises?

25 A. Yes.

1 MR. KIRSCH: Your Honor, I would move to admit and
2 publish Government Exhibit 141.00.

3 THE COURT: Any objection?

4 MR. ZIRPOLO: No objection.

5 THE COURT: Exhibit 141.00 will be admitted, and it
6 may be published.

7 (Exhibit No. 141.00 is admitted.)

8 MR. KIRSCH: Thank you, Your Honor.

9 Can we expand the top half of that, please?

10 Q. (BY MR. KIRSCH) Can you just explain for us,
11 Ms. Holland, the information that is reflected here? What
12 is on the screen now?

13 A. Sure. Typically we have where you fax your time
14 sheet in to. We have the employee name. We also have the
15 company name and the contact individual. The position.

16 MR. KIRSCH: Okay. And then maybe we can expand
17 the lower part of that sheet.

18 THE WITNESS: Then we have the date and time. The
19 time in. The time out. And then assignment status. Is
20 it continuing? Then we have the employee's signature.
21 Then we also have our client verify that those were the
22 hours worked --

23 Q. Okay.

24 A. -- by a signature.

25 Q. And is that signature on the screen here?

1 A. It looks like it is at the bottom.

2 Q. At the very bottom of the screen. Okay.

3 MR. KIRSCH: Thanks, Special Agent Smith.

4 Q. (BY MR. KIRSCH) Once you would receive those time
5 sheets, would they come in to your office?

6 A. Yes.

7 Q. And where is your office?

8 A. It is located at 165 South Union Boulevard in
9 Lakewood, Colorado.

10 Q. Okay. And from there, is there additional processing
11 that is done on the time cards once they are received?

12 A. Right. Once they are received over the fax, it goes
13 to our accounting department. They verify the hours.
14 Then it goes into our billing system. Then a bill is
15 produced every week.

16 Q. Well, let me go ahead and ask you about that. Can I
17 ask you to look at what is marked for identification as
18 Government Exhibit 142.00. Do you recognize the documents
19 in that exhibit?

20 A. Yes. These are our invoices that we produced.

21 Q. To DKH Enterprises?

22 A. Yes, sir.

23 MR. KIRSCH: Your Honor, I would ask the Court to
24 find that Government Exhibit 142.00 is admissible.

25 THE COURT: Any objection?

1 MR. BANKS: No objection.

2 THE COURT: Exhibit 142.00 is found admissible.

3 (Exhibit No. 142.00 is found admissible.)

4 Q. (BY MR. KIRSCH) Ms. Holland, do you know how those
5 invoices were delivered to your clients at that time?

6 A. I believe they were mailed.

7 Q. Okay. And did you also use the time records that we
8 looked at in Government Exhibit 141 to create paychecks?

9 A. Yes.

10 Q. And how is that those paychecks got delivered to
11 employees?

12 A. In this situation -- well, I will tell you what our
13 normal policy and procedure is. We usually get banking
14 information from our employee, and we direct deposit into
15 their account. That is the easiest way of doing it. The
16 second option would be to mail a check to their address or
17 home address if they didn't want to directly deposit into
18 their bank account.

19 This one was -- these individuals picked them up
20 personally every pay period.

21 Q. At the office in Lakewood?

22 A. At the office in Lakewood. So they would drive up
23 from Colorado Springs and pick up their paychecks.

24 MR. BANKS: Objection, Your Honor. It is
25 speculation whether they drove up from Colorado Springs.

1 THE COURT: Sustained.

2 Q. (BY MR. KIRSCH) Ms. Holland, were you monitoring
3 whether or not payments were coming in on these invoices?

4 A. Yes, I was.

5 Q. And were there payments coming on these invoices?

6 A. No.

7 Q. Did you do anything about that when you determined
8 that there weren't payments being made?

9 A. Yes. I started delivering a dialog to Mr. Harper
10 about payment and when we were going to receive it and
11 when we could expect payment.

12 Q. How was it that you contacted him for that?

13 A. I called him.

14 Q. On the telephone?

15 A. Yes, sir.

16 Q. Okay. And did you get any response to those?

17 A. At first I think Mr. Harper was very agreeable, and
18 he said that any day that they were going to get payment,
19 and that he would make payment, and that he would get us
20 paid. And I reiterated that it was very important to keep
21 the relationship going; that I wanted to be supportive,
22 but that I needed some payment.

23 Q. When you first started having these conversations
24 with Mr. Harper, did you still have those two employees
25 working at DKH?

1 A. Yes.

2 Q. Did the statements that he made to you have any
3 effect on your decision to keep those employees there?

4 A. Yes.

5 Q. In what way?

6 A. He was very convincing in the fact that he said that
7 he had money coming in. Even in one conversation
8 Mr. Banks was -- in that conversation on the speaker
9 phone, and said that they were waiting for payment and
10 they would ensure we would get paid.

11 Q. Did they give you any information about the party
12 from whom they were waiting for payment?

13 A. I believe, and I am not a hundred percent sure, but
14 he kept saying the New York.

15 MR. ZIRPOLO: Objection, speculation.

16 THE COURT: Sustained.

17 Q. (BY MR. KIRSCH) Were there any government agencies
18 mentioned during the course of the conversations you had
19 with Mr. Harper about the payment he was expecting to be
20 able to make?

21 A. Yes.

22 Q. What agency or agencies were mentioned?

23 A. New York Police Department.

24 Q. I would like to direct your attention now to what is
25 marked for identification as Government Exhibit 146.01.

1 And I specifically want to have you look at page 2 of that
2 exhibit, please. Ignore page 1 for our purposes right
3 now. Do you recognize page 2 of that exhibit?

4 A. Yes, I do.

5 Q. Can you identify that, please?

6 A. This is a letter in response to the updates
7 concerning payment, putting DKH on a payment plan so we
8 could start receiving payments on a consistent basis.

9 Q. Did you receive this letter during the course of
10 these discussions that you have been describing?

11 A. Yes.

12 MR. KIRSCH: Your Honor, I would move to admit page
13 2 of Government Exhibit 146.01.

14 THE COURT: Any objection?

15 MR. ZIRPOLO: No objection.

16 THE COURT: Page 2 of Exhibit 146.01 will be
17 admitted.

18 (Exhibit No. 146.01 - page 2 is admitted.)

19 MR. KIRSCH: Can we publish that page 2, Your
20 Honor?

21 THE COURT: You may.

22 Q. (BY MR. KIRSCH) There are several agencies or
23 entities referenced in the first paragraph of this letter,
24 Ms. Holland. Had you heard previous references to those
25 agencies?

- 1 A. Yes.
- 2 Q. There is also a reference to an outstanding invoice
3 total of over \$122,000. Does that appear accurate to you
4 at this time?
- 5 A. Outstanding invoices, yes.
- 6 Q. Did you get any of the payments on the schedule that
7 was set forth in this letter?
- 8 A. No.
- 9 Q. Did you take any other steps to try to assure that
10 you would receive payment from DKH?
- 11 A. Yes. I had talked to Mr. Harper, and I had asked for
12 a personal guaranty.
- 13 Q. And did you get one?
- 14 A. Yes.
- 15 Q. Can I ask you to look at what is marked for
16 identification as Government Exhibit 146.03. I will ask
17 you if you recognize that exhibit.
- 18 A. Yes, it is the personal guaranty.
- 19 Q. Okay. And the first page of that exhibit is what?
- 20 A. It is a fax going to Demetrius Harper.
- 21 Q. Is it to Mr. Harper or from Mr. Harper?
- 22 A. Oh, from, to me. From Mr. Harper.
- 23 Q. And is that -- did that accompany the personal
24 guaranty?
- 25 A. Yes.

1 MR. KIRSCH: I would move to admit 146.03.

2 THE COURT: Any objection?

3 MR. ZIRPOLO: No objection.

4 THE COURT: Exhibit 146.03 will be admitted.

5 (Exhibit No. 146.03 is admitted.)

6 MR. KIRSCH: May we publish that, please, Your
7 Honor?

8 THE COURT: You may.

9 MR. KIRSCH: Page 2, Special Agent.

10 Q. (BY MR. KIRSCH) What is the date there, Ms. Holland,
11 are you able to tell?

12 A. Yes, February 25th of 2004.

13 Q. Did you still have people working there at that time?

14 A. Yes.

15 Q. Did this guarantee have any effect on your decision
16 to continue to keep employees there?

17 A. Yes.

18 Q. In what way?

19 A. That it ensured that from a personal guaranty, that
20 we would be able to, if we didn't get paid, to go after
21 their money from a personal guaranty; their houses,
22 whatever. So it made it very comfortable for me to, you
23 know, feel like they were really trying.

24 Q. All right. At some point did you decide to terminate
25 the relationship with DKH?

1 A. Yes.

2 Q. And did you notify Mr. Harper about that?

3 A. Yes.

4 Q. How did you notify him?

5 A. Phone call.

6 Q. Do you remember his response when you told him that

7 you were going to terminate that relationship?

8 A. Well, he was upset. We talked about it. I told him

9 that I couldn't continue doing business with him if he

10 wasn't going to honor his obligations by paying his

11 invoices. I had been very fair with him in putting him on

12 a payment plan that we both discussed, that he agreed to.

13 Also, from the personal guaranty, I just said I couldn't

14 extend any more credit to somebody that was not willing to

15 do their part.

16 Q. And how did he respond?

17 A. He turned around and said, "How dare you question my

18 ethics and integrity."

19 Q. Did your company ever collect any money from DKH?

20 A. No.

21 Q. What was the total amount of outstanding invoices

22 when all was said and done?

23 A. Over \$200,000.

24 Q. And how did that compare to the gross revenues for

25 your company at that time?

1 A. Well, I think when you are a small business and you
2 always pay your people first before you receive payment
3 from your clients, it has a significant impact on your
4 cash flow. You have to borrow money in order to make that
5 payroll. So I would say it had a significant financial
6 impact on how we managed our money.

7 MR. KIRSCH: May I have just a moment, Your Honor?

8 THE COURT: You may.

9 MR. KIRSCH: Your Honor, I don't think I have
10 anything else.

11 Thank you, Ms. Holland.

12 THE COURT: Cross-examination?

13 MR. WALKER: Yes, Your Honor.

14 THE COURT: Mr. Walker?

15 **CROSS-EXAMINATION**

16 **BY MR. WALKER:**

17 Q. Hello, Ms. Holland.

18 A. Hello.

19 Q. You stated early in your relationship and discussions
20 with Demetrius Harper, he stated to you that they were
21 working with him. And he was very convincing and also
22 said that they anticipated closing business any day; is
23 that correct?

24 A. Yes.

25 Q. But a little bit later you stated that he said they

1 had a contract with NYPD, and that made you feel
2 comfortable?

3 A. Uh-huh.

4 Q. Can you reconcile those two statements? Which did he
5 tell you, that they had a contract or working toward one?

6 A. In the beginning he said they were working with NYPD.
7 Later conversations he said he had a contract.

8 Q. In these written communications with you -- in the
9 e-mails, which of those two statements did he convey to
10 you?

11 A. I'm sorry, I don't recall. I don't remember that.

12 Q. And later in your interactions with Mr. Harper, you
13 also said that you asked him to sign a personal guaranty?

14 A. Yes.

15 Q. And can you explain what a personal guaranty is?

16 A. That they're personally guaranteeing that if anything
17 -- if they don't get paid, that you have a personal
18 guaranty that they will pay their bills.

19 Q. Okay. And going back to his earlier statements to
20 you saying he was very convincing and made you feel
21 comfortable, and that coupled with his signing of the
22 personal guaranty, did that reinforce your confidence in
23 his assurance that he would be able to pay?

24 A. Repeat that, please?

25 Q. Did the fact that Mr. Harper signed a personal

1 guaranty, in addition to the statements he made about
2 working with NYPD, and he was very convincing and
3 confident, did those continue to give you a feeling of
4 confidence that he believed he would be able to pay?

5 A. Yes.

6 Q. And when he also provided a proposed payment schedule
7 to indicate to you that he would pay in the future, was
8 that additional assurance on your part that he would still
9 be willing to pay?

10 A. Yes.

11 Q. And so would you agree with me that all of
12 Mr. Harper's statements that I just mentioned gave you a
13 feeling that he believed he would be able to pay?

14 A. He said he would pay.

15 Q. That's correct. And in working -- with his
16 statements of working with the NYPD, working with law
17 enforcement, the other agencies that are mentioned in the
18 exhibit that the Government provided, did you believe that
19 Mr. Harper was working to close business with those
20 agencies?

21 A. I believed that he had already closed the business;
22 that he had contracts.

23 Q. But yet you said that he said they were working with
24 NYPD and others?

25 A. Yes. And then that's my belief system, is that by

1 working with them, that they had actual contracts.

2 Q. So you made the assumption that working with them
3 meant they had current contracts with them?

4 A. He was very convincing in the fact that he did.

5 Q. Well, you just agreed with me that he said they were
6 working with these agencies, but you assumed that meant
7 they had contracts with these agencies?

8 MR. KIRSCH: Objection, Your Honor. I don't think
9 that is a question.

10 THE COURT: Overruled. You can answer if you know.

11 THE WITNESS: I don't know.

12 Q. (BY MR. WALKER) So, Ms. Holland, do you know what
13 your belief was when Mr. Harper said we were working with
14 the NYPD?

15 A. Say that again, please?

16 Q. Do you know what you believed at the moment that
17 Mr. Harper told you that he was working with the NYPD?

18 A. I believed he was working with the NYPD.

19 Q. And you also said a few minutes ago that you believed
20 that meant he had a contract with NYPD?

21 A. Yes.

22 Q. Thank you. Ms. Holland, you also said, in response
23 to the Government's questions about people working for DKH
24 through ETI who potentially worked other jobs, and that
25 you would have wanted to know if they were doing that.

1 A. Yes.

2 Q. Does ETI have a written policy that prohibits
3 employees from moonlighting, as you said?

4 A. Yes.

5 Q. Okay. And can you describe the details of that
6 anti-moonlighting policy?

7 A. Not the details. But that they are not to work for
8 any other client or agency or business while they are
9 employed with us during a full-time 40-hour work week.

10 Q. Does that also state, in your understanding, that
11 they are not allowed to do independent consulting?

12 A. Exactly.

13 Q. Do you know if that particular clause was included in
14 the employee contracts of employees at DKH?

15 A. I don't know, no.

16 MR. WALKER: I have no further questions, Your
17 Honor.

18 THE COURT: Anybody else. Mr. Harper?

19 **CROSS-EXAMINATION**

20 **BY MR. HARPER:**

21 Q. Good afternoon, Ms. Holland. Do you recall
22 several -- you mentioned earlier -- do you recall an
23 e-mail that you sent to myself stating that you believed
24 in me? Do you recall that?

25 A. Yes.

1 Q. Do you also recall the contents of that e-mail; that
2 you believed that I would be one of Colorado's new
3 self-made millionaires? Do you recall that e-mail?

4 A. Yes, I do.

5 Q. Okay. And that I was working diligently to pay those
6 outstanding debts that were owed, as you mentioned, over
7 \$200,000. Do you recall that?

8 A. Yes.

9 Q. Then after I explained that I was waiting for moneys,
10 to be released through working with these agencies, do you
11 recall that?

12 A. Yes.

13 Q. Okay. At any point during those conversations, did
14 you personally threaten Mr. Harper, myself?

15 A. Did I personally threaten?

16 Q. Did you threaten me in an e-mail?

17 A. No. I don't recall that. I just said that we needed
18 to get paid, and that you should be obligated and
19 responsible and accountable to pay those bills.

20 MR. HARPER: I do have a document I would like to
21 enter to refresh memory.

22 THE COURT: This is the e-mail?

23 MR. HARPER: Yes, Your Honor.

24 THE COURT: You are going to use it to refresh
25 recollection?

1 MR. HARPER: Yes.

2 THE COURT: Was this previously produced?

3 MR. KIRSCH: No, Your Honor.

4 MR. HARPER: No, it was not in discovery.

5 THE COURT: Why not?

6 MR. HARPER: It is a personal e-mail. Due to us
7 representing pro se, I did come across it. We reviewed
8 files for trial, and that is when it came across.

9 THE COURT: You didn't produce it at that time to
10 the Government?

11 MR. HARPER: No, ma'am, we did not.

12 THE COURT: Approach.

13 (A bench conference is had, and the following is
14 had outside the hearing of the jury.)

15 THE COURT: When exactly did you come across this
16 document?

17 MR. HARPER: We built our case files, I would say,
18 over the last week. This is when I identified it. We put
19 it in there. We did not know when the Government was
20 presenting this witness. But each one of our case files
21 had two staffing companies this came across. I had it in
22 my personal mail service. I had to go through and search
23 my documents.

24 THE COURT: That wasn't done before?

25 MR. HARPER: I did not find this in discovery. I

1 went to my personal computer at home.

2 THE COURT: When?

3 MR. HARPER: I would say within the last seven
4 days.

5 THE COURT: If you were intending to use it with
6 this witness, why didn't you give the Government notice?

7 MR. HARPER: My ignorance. I do apologize.

8 THE COURT: Mr. Kirsch, Ms. Hazra?

9 MS. HAZRA: Your Honor, we reviewed many e-mails
10 from the search warrant. I am trying to remember if we
11 saw it at all.

12 THE COURT: He said it was on a personal computer,
13 not on his work computer, correct?

14 MR. HARPER: Yes, ma'am.

15 THE COURT: It wouldn't have been in the search
16 warrant. They didn't take your personal computer?

17 MR. HARPER: No, they did not take my personal
18 computer.

19 MR. KIRSCH: Can I see it again, please, Your
20 Honor? I don't believe we have seen this before, Your
21 Honor. But I can't be certain given the number of e-mails
22 we have reviewed before. I am certainly bothered by this,
23 which is yet another incident in the pattern that we have
24 had of not getting to see trial exhibits before they are
25 used.

1 We have had reference to the experts in the opening
2 testimony. The jury instruction they put in this
3 afternoon says they are going to have summary exhibits.
4 We haven't seen any of those summary exhibits. It is not
5 fair to the Government to keep surprising us like this.

6 Obviously, this is exactly the kind of e-mail we
7 would have wanted to discuss with the witness in a prep
8 session had we known it was out there. I don't think it
9 is fair for the defendants to surprise the Government with
10 it at this stage.

11 MR. BANKS: Your Honor, with all due respect to
12 Mr. Kirsch, there has been a lot of various documents that
13 we have not received in a timely fashion.

14 THE COURT: Did you receive all of the exhibits
15 they are going to use before trial?

16 MR. BANKS: In a stair-step type of fashion.

17 THE COURT: You received them before trial?

18 MR. BANKS: Yes, ma'am.

19 THE COURT: Did you give them all of the documents
20 you were going to use in trial before trial?

21 MR. BANKS: That we knew about, yes.

22 THE COURT: You knew about this one and it wasn't
23 given. What other documents do you intend to introduce
24 that you have not shared with the Government?

25 MR. BANKS: I don't have any.

1 THE COURT: No summary exhibits?

2 MR. ZIRPOLO: We have planned summary exhibits. We
3 haven't constructed them.

4 THE COURT: What are they based on?

5 MR. ZIRPOLO: They are based on information
6 concerning meetings, discussions with law enforcement
7 agencies.

8 THE COURT: And those are going to be based on
9 exhibits that are admissible?

10 MR. HARPER: Yes, Your Honor.

11 THE COURT: When did you intend to prepare those
12 summary exhibits?

13 THE DEFENDANT: In coming days.

14 THE COURT: All right. It is inappropriate for you
15 not to have given this to the Government. I could exclude
16 it.

17 MR. HARPER: Okay.

18 THE COURT: And I am going to see what the
19 Government wants me to do.

20 MR. KIRSCH: Your Honor, I will not ask the Court
21 to exclude that document, but I am going to ask the -- I
22 am sorry, I am going to ask the Court to exclude the next
23 document that they attempt to offer that we have never
24 seen before.

25 THE COURT: All right. That is fair. So if you

1 have any other documents that you intend to use at trial
2 that you have not already produced, you need to give those
3 to the Government now. You need to give them to the them
4 with enough time to be able to respond to them. I don't
5 like trials by ambush.

6 MR. HARPER: Okay.

7 THE COURT: You need to have this marked for
8 identification, and we will proceed in that way. If it is
9 documents that came from the Government, you don't have
10 to. They don't need notice of that. Now, if you want to
11 use an exhibit book, it has to have been identified
12 already.

13 MR. KIRSCH: That is what I want to make clear,
14 Your Honor. We still have actual -- still, every day, are
15 being presented with new items that are being marked as
16 exhibits that haven't previously been marked as exhibits.
17 Most of them have been in the Government's discovery.
18 This one is not. But I still object to the continued
19 presentation of new exhibits throughout the course of this
20 trial.

21 THE COURT: They are for identification.
22 Impeachment exhibits, that is appropriate, you don't know
23 if you are going to use them to impeach. Those are not
24 inappropriate. But if there is anything else you know you
25 want to use at trial, it really needs to be marked as an

1 exhibit.

2 MR. HARPER: Your Honor, one more clarification.

3 Like you said, in regard to impeachment, like I said, we
4 are still searching for e-mails, things of that nature.

5 THE COURT: That should have been done before this
6 trial. You have had 2-and-a-half years. That stuff
7 should have been turned over.

8 MR. ZIRPOLO: I understand.

9 (The following is had in the hearing of the jury.)

10 THE COURT: So we need to have the document marked
11 for identification.

12 MR. BANKS: Marked as Exhibit 344, please.

13 MR. HARPER: Could I have a moment, Your Honor?

14 THE COURT: You may.

15 COURTROOM DEPUTY: Defendant's Exhibit 344.

16 Q. (BY MR. HARPER) Ms. Holland, did you have enough
17 chance to refresh your memory off that e-mail?

18 A. Yes.

19 Q. I would like to point out a few things.

20 THE COURT: First, ask her if that is an e-mail
21 that she sent.

22 Q. (BY MR. HARPER) Is this an e-mail that you recognize
23 that you sent to me?

24 A. Yes, I did.

25 Q. And the date is correct?

1 A. That is what it says right here.

2 Q. Okay. And I asked you earlier, did you ever threaten
3 me, and you had said, I am not sure. Did you say no or
4 you didn't recall?

5 A. Yes, I do. I'm reading this now. It is a threat,
6 yes.

7 Q. Okay. And in that e-mail that you sent to me, you
8 said that you had friends or people in the federal
9 government that could do damage to me or hurt me; is that
10 correct?

11 A. I said I have an excellent relationship with the
12 federal government, especially with the SBA.

13 Q. Okay. And when you said the federal government and
14 the SBA -- the federal government, who in particular
15 within the federal government do you have a relationship
16 with?

17 A. You want me to name all of them?

18 Q. Well, you were mentioning someone. I would like
19 specifics. You said you stated that you have people in
20 the federal government.

21 MR. KIRSCH: Objection, Your Honor, this is beyond
22 the scope of impeachment.

23 THE COURT: Overruled.

24 Q. (BY MR. HARPER) So my question is, who specifically
25 did you mean in this e-mail to me that -- in the federal

1 government that you were referring to? Could it have been
2 Greg Goldberg?

3 THE COURT: Let her answer the question.

4 THE WITNESS: I'm sorry, I don't -- I used federal
5 government as the agencies that we work with.

6 Q. (BY MR. HARPER) Understand. In the e-mail you also
7 state that you were going to ruin my name; is that
8 correct?

9 A. I said, "I will not only make you pay, I will make
10 sure your name is known throughout the staffing industry
11 nationwide."

12 Q. So what did you mean when you said you were going to
13 make me pay?

14 A. Make you pay what you were supposed to pay; your
15 obligation. I wanted you to pay your bills. I wanted you
16 to be accountable for what you contracted with ETI with.

17 Q. You stated earlier that it was -- in our
18 conversation, that I was going to pay that; is that
19 correct? That was my belief, that I was going to pay it.
20 And you stated it earlier; is that correct?

21 A. That was in previous conversation, yes. You said you
22 were going to make payment.

23 MR. HARPER: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 I am sorry, any other defendants?

1 MR. BANKS: No, Your Honor.

2 THE COURT: Any redirect?

3 MR. KIRSCH: Your Honor, I am sorry, could I just
4 get a look at that document again.

5 THE COURT: You may.

6 **REDIRECT EXAMINATION**

7 **BY MR. KIRSCH:**

8 Q. Ms. Holland, I am going to ask you a couple other
9 questions about this. I think this is our only copy at
10 the moment. So if you can't remember, please let me know,
11 and I will make it available to you again.

12 Did you -- do you recall whether or not you told
13 Mr. Harper that you were outraged by his lack of
14 responsible behavior?

15 A. Yes.

16 Q. Was that how you felt at that time?

17 A. I did. \$200,000 is a lot of money, and it still is
18 today.

19 Q. And do you know when this e-mail was sent in relation
20 to the conversation that you described before when
21 Mr. Harper asked you, how dare you question his integrity?

22 A. I think it was -- I don't know, a couple weeks
23 before, maybe. I don't know exactly when.

24 Q. Which was before?

25 A. Before then.

1 Q. The telephone conversation was before this e-mail?

2 A. Yes.

3 Q. Okay. And the SBA was referred to in here. Who is
4 that?

5 A. The Small Business Administration.

6 Q. Okay. That is a government agency?

7 A. It is a government agency that helps small businesses
8 procure contracts and gives them business advice. We
9 utilized them a lot during the growth of my business.

10 Q. Then I want to clear up one other thing. You, I
11 believe, testified, or you agreed that you had told
12 Mr. Harper that it was your belief that he might be
13 Colorado's next self-made millionaire?

14 A. Yes.

15 Q. And that was your belief at the time?

16 A. That was my belief based on what we had been talking
17 about and all of the conversations we had about his
18 business.

19 Q. Did you have any basis for that belief, other than
20 the information Mr. Harper had given to you about the
21 nature of his business, the nature of sales or contracts
22 that he had, that sort of thing?

23 A. Just directly from him.

24 MR. KIRSCH: Thank you, Ms. Holland.

25 THE COURT: May this witness be excused?

1 MR. KIRSCH: Yes, please.

2 THE COURT: All right. Thank you very much,
3 Ms. Holland, you are excused.

4 We have been going for almost an hour and a half.
5 Why don't we go ahead and break at this point. We will
6 reconvene at 3:10.

7 Court will be in recess.

8 (A break is taken from 2:53 p.m. to 3:10 p.m.)

9 (The following is had in open court, outside the
10 hearing and presence of the jury.)

11 THE COURT: You may be seated.

12 All right. One of the members of the jury wrote a
13 note saying, "Members on my staff worked for Cherokee
14 Nation." I don't think it's important because the witness
15 only said her company was recently bought out. It was not
16 at all involved at the time. So I would be inclined to
17 say, "That's okay. It is not a problem." Any objection
18 to that?

19 MR. BANKS: Your Honor, I don't necessarily think
20 so. Is -- I don't know, was Ms. Holland Cherokee, and
21 this person Cherokee? Is that the understanding.

22 THE COURT: Ms. Holland's company just got bought
23 out several months ago, as I understand, by Cherokee
24 Nation. She was her own company, and now bought out by
25 Cherokee Nation.

1 MR. WALKER: I would ask, would any of those staff
2 members be family members, as well?

3 THE COURT: I guess I could call him in after we
4 conclude here. We can do the same sort of voir dire as we
5 did yesterday. But the fact of the matter is, he can't
6 discuss this case with anybody. I am not sure how members
7 of his staff would work for Cherokee Nations.

8 MR. KIRSCH: Your Honor, there has been no
9 testimony that would suggest that the Cherokee Nation
10 would have been affected in any way by any of the conduct
11 that is at issue. Ms. Holland clearly testified that this
12 was taking place in -- now I can't remember if it was 2003
13 or 2004. But she has testified that the company was
14 purchased last year, earlier this year.

15 THE COURT: Earlier this year.

16 MR. KIRSCH: And any loss would have been written
17 off by that time. There was no other testimony about the
18 Cherokee Nation. We don't expect there to be any
19 additional reference to the Cherokee Nation throughout the
20 course of the trial.

21 THE COURT: Well, think on it. We will address it
22 at the end of today, if we need to do further voir dire
23 with this juror.

24 MR. WALKER: Thank you.

25 THE COURT: But I would be inclined to say, there

1 was reference to it. I am not sure -- it really has
2 nothing to do with any party or any loss involved in this
3 case. So I would be inclined to find there is not a
4 problem. But we can put whatever concerns are on the
5 record.

6 All right. Anything else that needs to be brought
7 to my attention?

8 Ms. Barnes, can you remind me, because I sometimes
9 forget that I need to address this at the end of the day.

10 COURTROOM DEPUTY: Yes, Your Honor.

11 THE COURT: All right. Would you please bring in
12 the jury.

13 Who is our next witness? Do we have the exhibits
14 out?

15 MS. HAZRA: Your Honor, it is Ms. Greenfield. I
16 don't know if I told you, Ms. Barnes. We will need
17 Exhibits 241.00, 243 and 242, as well as 251 and 252.

18 (The following is had in open court, in the hearing
19 and presence of the jury.)

20 THE COURT: You may be seated.

21 Government may call its next witness.

22 THE COURT: Thank you, Your Honor. The Government
23 calls Leslie Ann Greenfield.

24 COURTROOM DEPUTY: Your attention, please.

25 **LESLIE GREENFIELD**

1 having been first duly sworn, testified as follows:

2 COURTROOM DEPUTY: Please be seated.

3 Please state your name, and spell your first and
4 last names for the record.

5 THE WITNESS: My name is Leslie Greenfield,
6 L-E-S-L-I-E G-R-E-E-N-F-I-E-L-D.

7 **DIRECT EXAMINATION**

8 **BY MS. HAZRA:**

9 Q. Good afternoon Ms. Greenfield. Where are you
10 currently employed?

11 A. I work for AppleOne Employment Services.

12 Q. What are your responsibilities there?

13 A. I am their branch manager. I do full-service
14 recruiting, temporary temp to hire and direct hire and
15 payroll service.

16 Q. Prior to working at AppleOne, did you work at
17 Manpower?

18 A. Yes.

19 Q. Do you recall the time period you worked for
20 Manpower?

21 A. 1996 to 2004.

22 Q. And towards the end of your time there in 2003, 2004
23 what was your position with Manpower?

24 A. I was the operations supervisor.

25 Q. For what office?

- 1 A. Colorado Springs and Denver office.
- 2 Q. And is Manpower -- what kind of business is Manpower?
- 3 A. Manpower provides employment services, as well as
- 4 temporary, temp to hire, direct hire and payroll services,
- 5 human resource services.
- 6 Q. I would like to direct your attention again to 2003.
- 7 Did you become familiar with a company called DKH
- 8 Enterprises?
- 9 A. Yes, ma'am.
- 10 Q. And how did you first get into contact with DKH?
- 11 A. I was approached by the company requesting to provide
- 12 payroll services for some of their employees.
- 13 Q. Do you recall who in the company approached you?
- 14 A. Demetrius Harper.
- 15 Q. And did he tell you what kind of work -- you got
- 16 that. How did he approach you? How was the contact?
- 17 A. He had indicated that he was in the market for --
- 18 Q. I am sorry. Sorry, I don't mean to interrupt. I
- 19 want to clarify. Was this in person or on the phone?
- 20 A. Over the phone.
- 21 Q. Sorry.
- 22 A. That's okay.
- 23 Q. In his first phone call, did Mr. Harper identify his
- 24 company?
- 25 A. Yes.

1 Q. Did he identify his position within that company?

2 A. Yes.

3 Q. What was that?

4 A. He was the owner of the company.

5 Q. I interrupted you. What was Mr. Harper saying about
6 the kind of work the company did?

7 A. He had indicated that they provide software solutions
8 for the law enforcement industry.

9 Q. Does part of this discussion with Mr. Harper identify
10 specific law enforcement agencies?

11 A. Yes.

12 Q. Do you recall which ones?

13 A. They had indicated that they had worked with the New
14 York Police Department, as well as some others; Department
15 of Defense, Federal Government, FBI.

16 Q. Did Mr. Harper make all these statements in this
17 initial phone call, or was there a follow-up meeting?

18 A. There was a follow-up meeting. We had discussed it
19 over the phone, and he had come to my office with a
20 colleague of his to discuss what they do and so see if we
21 can partner with them.

22 Q. Do you recall the name of the colleague who
23 accompanied Mr. Harper?

24 A. I do not.

25 Q. At this meeting at your office, did Mr. Harper or his

1 colleague identify the work they wanted done by these
2 payrolled employees?

3 A. Yes.

4 Q. What kind of work was that?

5 A. Software development.

6 Q. Did they indicate for whom these software developers
7 would be working?

8 A. They would be working through -- again, for their
9 customer, the New York Police Department and other
10 clients.

11 Q. Ms. Greenfield, did you actually end up entering into
12 a contract to payroll employees with DKH Enterprise?

13 A. We didn't have any formal signed agreement, but there
14 was a handshake agreement that we would provide payroll
15 services at a fee.

16 Q. And did Mr. Harper's statements about the existing
17 contracts with the New York Police Department and other
18 law enforcement agencies --

19 MR. HARPER: Objection, leading the witness.

20 THE COURT: Sustained.

21 Q. (BY MS. HAZRA) How did you arrive at your decision
22 to enter into payrolling services with DKH Enterprises?

23 A. I believed that they were a legitimate business, and
24 that we were, you know, going to provide that service, and
25 they were going to pay us for that service.

1 Q. Why did you believe they were a legitimate business,
2 on what basis?

3 A. They came to my office. They had a very nice
4 PowerPoint presentation. They discussed the wonderful
5 software that they were going to provide to the Government
6 and to law enforcement agencies, and very well put
7 together individuals, very intelligent, articulate well.
8 I believed they were a legitimate company. They had
9 business cards.

10 Q. When you say "they," again, just to clarify, who do
11 you mean?

12 A. Demetrius and his colleague.

13 Q. I believe you said you payrolled an employee. Do you
14 recall the identity of the employee you payrolled?

15 A. Yes.

16 Q. Who was that?

17 A. Her name was Kendra.

18 Q. How did Manpower keep track of the hours that Kendra
19 worked for DKH Enterprises?

20 A. Computer electronic web time, where associates enter
21 their hours into web time cards, then e-mails are
22 generated to the approving supervisor. At that point the
23 supervisor will approve that time card or not approve that
24 time card.

25 Q. If the time card is approved, what happens to it?

1 A. We then process payroll for that associate, and at
2 the same time we invoice our client.

3 Q. I would have you look at what has been marked for
4 identification purposes as Government's Exhibit 241, which
5 you can find in the folder in front of you.

6 A. Yes.

7 Q. Do you recognize Government's Exhibit 241?

8 A. Yes.

9 Q. What is this?

10 A. It is a time card.

11 Q. And does it have any relation to what we have been
12 discussing today?

13 A. Yes.

14 Q. Who is the employee the time card concerns?

15 A. Kendra.

16 MS. HAZRA: Your Honor, I ask that Government's
17 Exhibit 241 be admitted and published to the jury.

18 THE COURT: Any objection?

19 MR. ZIRPOLO: No objection.

20 THE COURT: Exhibit 241.00 will be admitted, and it
21 may be published.

22 (Exhibit No. 241.00 is admitted.)

23 Q. (BY MS. HAZRA) Special Agent, if you could highlight
24 the top portion.

25 Q. Ms. Greenfield, as you can see, it is on the screen

1 in front of you. Can you explain to the jury where they
2 can find the customer for whom Ms. Kendra Haughton was
3 working?

4 A. Right underneath the Social Security number line says
5 "Customer Name."

6 Q. And what is that name?

7 A. It has the name of the company that we have listed in
8 our database.

9 Q. Which is DKH Enterprises?

10 A. Which is DKH Enterprises.

11 Q. Is Kendra Haughton the employee that Manpower
12 payrolled for DKH Enterprises at this time?

13 A. That's correct.

14 MR. KIRSCH: Special Agent, if you can highlight
15 the bottom portion.

16 Q. (BY MR. KIRSCH) Again, just briefly, if you can
17 explain to the jury what this -- what is showing on the
18 screen in front of you here.

19 A. That is the actual time card. The information is
20 entered by the associate working. It has the date on it.
21 The time they started their job. The time they ended.
22 Whether or not they had a lunch. And total hours for the
23 day. Then at the bottom it has the total hours for the
24 week.

25 MS. HAZRA: Thank you, Special Agent.

1 Q. (BY MS. HAZRA) I believe you said that after these
2 time sheets were approved, Manpower then paid the
3 employee; is that right?

4 A. Uh-huh.

5 Q. In this case, Manpower would have paid Ms. Haughton?

6 A. Correct.

7 Q. Can you please look at what has been marked for
8 identification purposes as Government's Exhibit 243. Do
9 you recognize Government's Exhibit 243?

10 A. Yes.

11 Q. What is that?

12 A. That's a quarterly detailed report that lists the
13 gross amount the associate was paid.

14 Q. And in this case, is there a particular associate
15 this pertains to?

16 A. Uh-huh.

17 Q. Who is that?

18 A. That is Kendra Haughton.

19 MS. HAZRA: Your Honor, I ask that Government's
20 Exhibit 243 be made admissible -- found admissible.

21 THE COURT: Any objection?

22 MR. ZIRPOLO: No objection.

23 THE COURT: Exhibit 243.00 will be found
24 admissible.

25 (Exhibit No. 243.00 is found admissible.)

1 Q. (BY MS. HAZRA) Thank you, Ms. Haughton. I believe
2 you talked about this previously. What did Manpower do to
3 get paid by DKH in this case?

4 A. Well, we had contact with them on several different
5 occasions in order to collect the money.

6 Q. Let me back up a second. Sorry. Was there any
7 documentation or so on that Manpower sent to DKH itemizing
8 the amount?

9 A. Yes.

10 Q. What is that?

11 A. Those are in invoices, and they are generated weekly.

12 Q. If you could please look at what has been marked for
13 identification purposes as Government's Exhibit 242. That
14 should also be in another folder in front of you. Do you
15 recognize Government's Exhibit 242.00?

16 A. Yes.

17 Q. What is this?

18 A. It is an invoice.

19 Q. If you would look through the whole packet in 242.
20 Is there more than one invoice?

21 A. Yes.

22 Q. And do the time periods of these invoices generally
23 reflect the time period Ms. Haughton was employed by
24 Manpower?

25 A. Yes.

1 MS. HAZRA: Your Honor, I would ask that
2 Government's Exhibit 242.00 be found admissible.

3 THE WITNESS: Any objection?

4 MR. ZIRPOLO: No objection.

5 THE COURT: Exhibit 242.00 will be found
6 admissible.

7 (Exhibit No. 242.00 is found admissible.)

8 Q. (BY MS. HAZRA) I believe you were getting to what
9 happened after you sent the invoices to DKH Enterprises.
10 Did you receive payment?

11 A. No.

12 Q. What -- what efforts did you take, if any, once you
13 realized DKH was not paying on their bills?

14 A. I contacted by phone on several occasions trying to
15 collect on the money. I went to.

16 Q. Who did you contact?

17 A. Demetrius.

18 Q. Were you able to get ahold of him?

19 A. No. A couple times I was, and it was the same story;
20 that they were working on getting paid. And it was a slow
21 pay process with the government. And so once they got
22 paid, we would get paid.

23 Q. You just said it is the same story. Did Mr. Harper
24 tell you this more than once?

25 A. Yes.

1 Q. Do you recall how many times?

2 A. I don't know the exact amount of times, but it was on
3 several occasions.

4 Q. During these initial phone calls, was Manpower still
5 employing Ms. Haughton?

6 A. At first, yes.

7 Q. And did Mr. Harper's statements about the slow
8 government cycle -- Mr. Harper's statement have any effect
9 on that?

10 MR. HARPER: Objection, leading the witness.

11 THE COURT: Overruled.

12 Q. (BY MS. HAZRA) Did Mr. Harper's statement have any
13 effect on Manpower's decision to continue payrolling
14 Ms. Haughton?

15 A. Yes.

16 Q. What effect is that?

17 A. We stopped payrolling her at that time.

18 Q. Did you receive payment from DKH at this time?

19 A. No.

20 Q. Did you take any additional effort to collect?

21 A. I was a new manager at the time, and they were going
22 to write it off at my job. And at the end of the day, I
23 am a salesperson, and I get paid on commissions. And we
24 had to -- I was trying to avoid the write off with maybe a
25 good faith payment, anything to collect on the money. I

1 went to the location, and the address that was provided to
2 us was fictitious, and there was no business there. And
3 there was neighboring mailboxes --

4 MR. BANKS: Objection, speculation, fictitious.

5 THE WITNESS: There was no business there. There
6 was no address. It was a false address.

7 Q. (BY MS. HAZRA) And who provided you the address
8 where you were going?

9 A. Mr. Harper.

10 Q. What did you believe the address to be at the time
11 Mr. Harper provided it?

12 A. A legitimate business, place of business.

13 Q. Whose business?

14 A. Mr. Harper's, DKH Enterprises.

15 Q. And at the time you went to this address, what
16 happened? Where did you end up instead?

17 A. I ended up -- the number, itself, was not there. The
18 closest -- the number didn't exist. It was on Austin
19 Bluffs, and there was no business there. The closest
20 place was a post office box. I'm not saying that that was
21 a part of their business, but there was no business there,
22 that address.

23 Q. And I believe you testified earlier that Ms. Haughton
24 was let go at some point by Manpower. Did you communicate
25 that to her, or did someone else?

1 A. We communicated that to her by phone. At that point,
2 she had -- I had tried to contact her to get ahold of
3 Demetrius. She, at that point, did not call us back,
4 either. And so there was no communication from her. So
5 we ended up just leaving her a voice message, sorry, we
6 can't payroll you any longer. We are done with the
7 assignment through us.

8 Q. Did she ever respond?

9 A. She never responded. We never heard back from her.

10 Q. Ms. Greenfield, I want you to look what has been
11 marked for identification purposes at Government's Exhibit
12 252. That should be in a folder in front of you, as well.
13 Do you recognize Government's Exhibit 252?

14 A. Yes.

15 Q. And what is Government's Exhibit 252?

16 A. An invoice.

17 Q. Is there more than one?

18 A. Yes.

19 Q. And who generated these invoices, what company?

20 A. Manpower Professional.

21 Q. And who are these invoices to?

22 A. These are to IRP Solutions.

23 MS. HAZRA: Your Honor, I ask that Government's
24 Exhibit 252 be found admissible.

25 THE COURT: Any objection?

1 MR. ZIRPOLO: No objection.

2 THE COURT: Exhibit 252.00 will be found
3 admissible.

4 MS. HAZRA: I actually apologize, Your Honor, could
5 I actually move to admit these? I am sorry.

6 THE COURT: Any objection to having them admitted?

7 MR. BANKS: Objection, Your Honor. I don't -- are
8 these facts in evidence at this point?

9 THE COURT: Well, that is what she is looking to
10 do. She had her identify them as documents. This was
11 records of your company.

12 MR. BANKS: Because we have been talking about DKH.

13 THE COURT: Now moving to IRP.

14 MR. BANKS: Okay. Thank you.

15 THE COURT: Exhibit 252.00 will be admitted.

16 (Exhibit No. 252.00 is admitted.)

17 MS. HAZRA: Special Agent, if you could publish the
18 first page of that.

19 THE COURT: You may.

20 MS. HAZRA: Thank you, Your Honor.

21 Can you highlight the top half of that?

22 Q. (BY MS. HAZRA) Ms. Greenfield, I just want to have
23 you look at this for a second. What is the company that
24 Manpower is billing here?

25 A. IRP Solutions.

1 Q. And what is the date of these invoices, this first
2 one?

3 A. 2/18 of 2004.

4 Q. And the first invoice, based on your review of the
5 records in front of you, is to IRP Solutions?

6 A. Yes.

7 Q. And how does the date, the due date on this invoice
8 compare to the due date on the invoices for DKH
9 Enterprises?

10 A. We had discontinued servicing DKH Enterprises about 6
11 months prior.

12 MS. HAZRA: Thank you, Special Agent.

13 Q. (BY MS. HAZRA) Could you please look what has been
14 marked for identification purposes to Government's Exhibit
15 251. Do you recognize Government's Exhibit 251?

16 A. Yes.

17 Q. What is Government's Exhibit 251?

18 A. A time card and -- electronic time card and -- there
19 is a couple -- just one handwritten time card. They are
20 all time cards.

21 Q. Are they all time cards?

22 A. Yes.

23 Q. What is the company who is generating these time
24 cards?

25 A. Manpower Professional.

1 Q. And who is the customer that is being -- where the
2 employee is being placed?

3 A. IRP.

4 MS. HAZRA: Your Honor, I would ask Government's
5 Exhibit 251 be admitted.

6 THE COURT: Any objection?

7 MR. BANKS: No objection.

8 THE COURT: Exhibit 251.00 will be admitted.

9 (Exhibit No. 251.00 is admitted.)

10 Q. (BY MS. HAZRA) Special Agent, if you could highlight
11 the second page of Government's exhibit --

12 Your Honor, may it be published? I am sorry. I
13 apologize.

14 THE COURT: It may be published.

15 MS. HAZRA: I get going too quick.

16 If you could please look at the second page. If
17 you could highlight that top portion, Special Agent.

18 Q. (BY MS. HAZRA) Ms. Greenfield, is this time card
19 related to a particular payrolled -- a particular
20 employee?

21 A. Yes.

22 Q. Who is that employee?

23 A. John Shannon.

24 Q. I suspect it is fairly clear. Is that different from
25 the Kendra Haughton, as far as you know --

1 A. Yes, it is.

2 Q. -- that you payrolled through DKH?

3 A. Yes.

4 Q. And, again, this customer, you said, is IRP
5 Solutions?

6 A. Yes.

7 Q. Ms. Haughton, (sic) during your conversations with
8 Mr. Harper, did Mr. Harper at any point in time mention a
9 relationship between DKH and IRP?

10 A. No.

11 Q. During the time period that you were working with
12 Ms. Haughton, were you aware of any relationship between
13 DKH and IRP?

14 A. No.

15 MS. HAZRA: Your Honor, could I have one moment?

16 THE COURT: You may.

17 MS. HAZRA: I have no further questions, Your
18 Honor. Thank you.

19 THE COURT: All right. Cross-examination?

20 MR. BANKS: Yes, thank you, Your Honor.

21 THE COURT: Mr. Banks.

22 **CROSS-EXAMINATION**

23 **BY MR. BANKS:**

24 Q. Ms. Greenfield, does Manpower have different offices
25 all over the country?

- 1 A. Yes.
- 2 Q. Do you know who John Shannon is?
- 3 A. Yes.
- 4 Q. Can you explain to the Court who he is?
- 5 A. He was a payrolled associate that was hired on to
- 6 provide -- again, it was a payrolled associate. And I
- 7 vaguely remember him. Again, at that time, I was working
- 8 up in Denver, and so I just know that he was a payrolled
- 9 associate.
- 10 Q. You have never met John Shannon; is that correct?
- 11 A. I don't recall meeting him. I may have.
- 12 Q. Does the name Barry Clausen mean anything to you?
- 13 A. Barry Clausen?
- 14 Q. Are you familiar with the Manpower offices in New
- 15 York City and who runs some of those offices?
- 16 A. No.
- 17 Q. So is it conceivable in your mind that Manpower New
- 18 York may have or could have staffed John J Shannon?
- 19 A. They could have, yes.
- 20 Q. Now, you don't know where Mr. Shannon was staffed; is
- 21 that correct?
- 22 A. I don't, huh-uh.
- 23 Q. So was Mr. Shannon staffed with the office, to the
- 24 best of your knowledge, here in Colorado?
- 25 A. Yes, he was. Absolutely. I know that as a branch

1 manager I have a list of all of the associates that are
2 working on assignment for us. And I remember the name.

3 Q. Okay. Now, do you know who initiated contact to
4 staff Mr. Shannon?

5 A. No.

6 Q. You did not?

7 A. Huh-uh.

8 Q. So how do you know he was staffed in Colorado?

9 A. Because of the fact that he was on our payroll every
10 week. He was staffed in Colorado. The invoices came from
11 my branch.

12 Q. John J. Shannon was staffed, that is your testimony?

13 A. That is my testimony. He was staffed in my branch in
14 Colorado Springs. And the invoices were generated out of
15 my branch. If you look at the invoice, it has my branch
16 number on it.

17 MR. BANKS: Could I have a moment, Your Honor?

18 THE COURT: You may.

19 Q. (BY MR. BANKS) Ms. Greenfield, what is your office
20 number underneath the Manpower assignment of office
21 numbers?

22 A. 1T4.

23 Q. The invoices in question that you've reviewed for
24 Mr. Shannon has an office number of 39. Do you know what
25 office number that is attached to?

1 A. No.

2 MR. BANKS: No further questions, Your Honor.

3 MR. WALKER: Your Honor, I have additional cross.

4 **CROSS-EXAMINATION**

5 **BY MR. WALKER:**

6 Q. Hello, Ms. Greenfield. You said that Demetrius
7 Harper had told you that he had worked with NYPD and
8 others, and that in your original meeting with him there
9 was -- I thought you said a good presentation. You
10 believed they were legitimate?

11 A. Yes.

12 Q. At that presentation, and in referencing the work
13 with NYPD and others, did Mr. Harper or anyone else state
14 to you that they had a contract with the NYPD or DHS?

15 A. Yes.

16 Q. They said they had a contract?

17 A. Yes, for the NYPD.

18 Q. The NYPD. What did they tell you about that
19 contract?

20 A. That they were providing the software solutions
21 database for the law enforcement agencies that could help
22 link them together. I am not sure -- software.

23 Q. And did they tell you the value of the award of that
24 contract?

25 A. It was indicated that there was several million

1 dollars. That they were going to be sound, and the award
2 of that contract was huge.

3 Q. And so based on the statement that they had worked
4 with NYPD and others, and your belief that they had a
5 contract, you went forward on doing business on that
6 basis?

7 A. Yes. I thought they were legitimate.

8 Q. And then as you continued in the relationship with
9 DKH and payment was not made, did you reference or
10 question the payment on that contract?

11 A. On the specific contract, no. I didn't know, like,
12 every contract that they had. So, no, I didn't
13 specifically ask. They had just said, we are working with
14 the government. We do tons of business with the
15 government. And they do case loads. So, no. So it is
16 not unheard of to hear that.

17 Q. And as the aging of those invoices continued to
18 advance, did you then -- did you remember the accounts of
19 the NYPD contract that you mentioned earlier?

20 A. At the time it wasn't relevant to me. I just wanted
21 to collect the money. So however they were going to pay
22 me, I didn't care where the money came from.

23 Q. And as time advanced again and you weren't paid, did
24 you ever question the fact that they had a contract?

25 A. No. That was irrelevant to me.

1 Q. And in your e-mail communications with DKH, were
2 there ever mentions of the contract and the contract that
3 you alluded to earlier?

4 A. On collecting? Other than the government was slow
5 paying, and they will get me the money when they get paid.

6 Q. And as far as that contract is concerned, did they
7 mention what specific product they had provided to NYPD in
8 order to gain that contract?

9 A. Software. Database software.

10 Q. Database software. Did they mention a specific
11 product?

12 A. A specific product?

13 Q. Yes.

14 A. No. They may have.

15 MR. WALKER: One second, Your Honor.

16 Q. (BY MR. WALKER) And you also mentioned,
17 Ms. Greenfield, that you went to talk with Demetrius
18 Harper, and you went to what you believed was a fictitious
19 building?

20 A. Uh-huh.

21 Q. But you also mentioned that the closest address was a
22 P.O. Box?

23 A. The closest address was, like, one of those mail
24 boxes, like a UPS store that has P.O. boxes inside but no
25 physical address with that number. That was the closest

1 business. I drove all day to try to collect that money.

2 Q. Do you remember the address that you were searching
3 for?

4 A. On Austin Bluffs. I don't know the exact address at
5 the time. I mean, again it has been several years.

6 Q. Do you recall if that address had a suite number
7 associated with it?

8 A. Not that I -- it could have. I don't know the
9 address off the top of my head.

10 Q. Is it possible that the address that you were looking
11 for was the mailing address of the company rather than the
12 physical address of the company?

13 A. No. Because we are not allowed to take mailing
14 addresses from businesses. We have to have actual
15 physical addresses.

16 Q. And so if you had been exchanging e-mails with
17 Mr. Harper in the course of looking at a signature or
18 other address information about the company, would it be
19 possible that you had assumed the mailing address was the
20 physical address without knowing it?

21 A. Yeah, that could be accurate.

22 Q. And as far as making a decision to engage Manpower's
23 services for DKH, did you play a role in making that
24 decision?

25 A. Yes, I did.

1 Q. Were you the primary decision maker?

2 A. I was the decision maker, uh-huh.

3 Q. So you stated earlier that your meeting with DKH and
4 their good presentation -- would it be fair to say the
5 overall feel of the business, gave you a good positive
6 feeling that you could engage with them and extend credit
7 to them?

8 A. Absolutely.

9 Q. Did you run a Dun & Bradstreet check on them?

10 A. We did not. I don't recall if we did or not. But I,
11 as a manager, was authorized to approve credit.

12 Q. So it was at your discretion to approve credit?

13 A. I could have run it. I try to run it. It is usually
14 automatic. This database we have will automatically run a
15 D & B report on them. But I thought they were a
16 legitimate company.

17 Q. And so just to make sure I understand that, you made
18 that decision, based on your belief that they had told you
19 that they had a contract with the NYPD, rather than they
20 were working to gain a contract for the NYPD?

21 A. It was my belief that they were an established
22 company with an established business, and that the
23 likelihood of payment to us was good. I made that
24 decision as a business professional, and I believed that
25 they were going to pay us.

1 Q. So you did not run a Dun & Bradstreet check?

2 A. I could have, maybe not have. I can't validate that
3 right now.

4 Q. Did you provide them with a credit application,
5 basically listing their years in business or business
6 references or accounts?

7 A. Probably not. I don't know. Again, sometimes we do,
8 sometimes we don't. Usually, if it comes through the
9 database and approves through the database, we can
10 authorize to extend a certain amount of credit.

11 Q. And was there any other office or supervisor that
12 provided input on this decision, or was it solely your
13 decision?

14 A. No, it was solely my decision. Solely my decision.

15 MR. WALKER: No further questions.

16 MR. BANKS: Your Honor, may I ask one more
17 question?

18 THE COURT: Nope. We are done. Anybody else?

19 Mr. Zirpolo?

20 **CROSS-EXAMINATION**

21 **BY MR. ZIRPOLO:**

22 Q. Ms. Greenfield, what is the credit policy for
23 Manpower?

24 A. What is the credit policy?

25 Q. Yes.

1 A. Typically, at the time there wasn't any real
2 established credit policies. We're authorized to process
3 up to \$10,000 a month as a branch manager. For anything
4 in excess of that, we would have them fill out a credit
5 application. And then, you know, again, our database does
6 a lot spot credit checks. So as soon as you type in
7 somebody's company number, it will pop up a light credit
8 check on it. If there is not negative information, then
9 that's what comes up.

10 Q. So you just automatically approved for 10,000?

11 A. I did. Yeah, I did.

12 MR. ZIRPOLO: No further questions.

13 THE COURT: Any redirect?

14 MS. HAZRA: No, Your Honor. Thank you.

15 THE COURT: All right. Thank you very much. You
16 may step down.

17 THE WITNESS: Thank you.

18 THE COURT: Is this witness excused?

19 MS. HAZRA: Yes, Your Honor.

20 THE COURT: All right. You may be excused.

21 THE WITNESS: Thank you.

22 THE COURT: Government may call its next witness.

23 MR. KIRSCH: Thank you, Your Honor. The Government
24 calls Brenda Williams.

25 Ms. Barnes, if she could have available Exhibits

1 290.01 through 297, please.

2 COURTROOM DEPUTY: Your attention, please.

3 **BRENDA WILLIAMS**

4 having been first duly sworn, testified as follows:

5 COURTROOM DEPUTY: Please be seated.

6 Please state your name, and spell your first and
7 last names for the record.

8 THE WITNESS: Brenda Williams, B-R-E-N-D-A
9 W-I-L-L-I-A-M-S.

10 **DIRECT EXAMINATION**

11 **BY MR. KIRSCH:**

12 Q. Good afternoon, Ms. Williams. Could you tell the
13 jury where you are employed.

14 A. Right now?

15 Q. Yes.

16 A. Hire Connections.

17 Q. What sort of business is that?

18 A. It is a staffing company.

19 Q. And what is your position there?

20 A. I am the owner.

21 Q. How long have you owned that company?

22 A. For 5 years.

23 Q. What did do you before you opened up that company?

24 A. I worked at a staffing company called Personnel Plus.

25 Q. How long were you there?

- 1 A. For about 11 years.
- 2 Q. And when did you leave Personnel Plus?
- 3 A. In 2004.
- 4 Q. And what was your position towards the end of your
5 tenure with Personnel Plus?
- 6 A. I was the president/operating officer.
- 7 Q. Was that -- where was that office located?
- 8 A. That one was in the DTC.
- 9 Q. Okay. That is the Tech Center?
- 10 A. Yep. Uh-huh.
- 11 Q. And how long have you been in the staffing industry,
12 generally?
- 13 A. Since about '93.
- 14 Q. Okay. When you were at Personnel Plus, what sort of
15 services did that company provide, in terms of staffing?
- 16 A. We provided payroll services, temporary staffing for
17 administrative and accounting positions.
- 18 Q. While you were at Personnel Plus, did you ever
19 participate in setting up a relationship with a company
20 called DKH?
- 21 A. Yes.
- 22 Q. Do you recall how that relationship began?
- 23 A. They called us and wanted us to payroll two employees
24 for them.
- 25 Q. Did you at some point schedule a personal meeting

1 around the beginning of that relationship?

2 A. Yes, I did.

3 Q. Where did that occur?

4 A. In Colorado Springs, at their office.

5 Q. And do you recall who you met with at that meeting?

6 A. Yes.

7 Q. Who was that?

8 A. Demetrius.

9 Q. Do you remember Demetrius's last name?

10 A. Sorry, it escapes me. Sorry.

11 Q. Did you -- did he give you any information about what
12 kind of business DKH did?

13 A. Yes, he did.

14 Q. What did he tell you?

15 A. He told me that they were developing software to --

16 that would -- for the police stations and Homeland

17 Security that would all talk to each other, and they could
18 do searches on backgrounds instantly.

19 Q. Can you describe the place where you had the meeting,
20 where was that?

21 A. It was in Colorado Springs. It was in a four or five
22 story building, and it was a fairly large sized office. A
23 bunch of cubicles empty, as far as no people were in
24 there.

25 Q. Did you understand that that was DKH's office or

1 someone else's?

2 A. I understood that was their offices.

3 Q. Did you see other people in the office besides
4 Mr. Harper?

5 A. No. There was no one else in there.

6 Q. Did you have any conversation with Mr. Harper about
7 the lack of other people there?

8 A. I did. He told me that they were all at a
9 convention.

10 Q. Did Mr. Harper identify with any more specificity any
11 of the agencies that he said this software was going to be
12 used; that they were going to use this software?

13 A. As far as which departments -- police departments?

14 Q. Yes.

15 A. He talked about several of them. He mentioned
16 Homeland Security, Philadelphia, New York and LA.

17 Q. And did he make any statements about where his
18 company stood, in terms of the finality of any sales or
19 any business with those entities?

20 A. He said they were in the final process of it.

21 Q. Did you have any understanding about how long --

22 A. At one point he said within a week they were going to
23 be able to close on it and get on it.

24 Q. When is this that you are having this meeting, do you
25 recall?

1 A. The first meeting?

2 Q. Yes.

3 A. That was within a week of him calling me.

4 Q. Okay. And when is it that he called you? Do you

5 remember that?

6 A. As far as the specific date?

7 Q. Or at least a month.

8 A. It was in the fall. End of September, beginning of

9 October.

10 Q. And are we in 2003 or 2004?

11 A. 2003.

12 Q. Okay. Fall of 2003?

13 A. Uh-huh.

14 Q. Those statements that he made about expecting to get

15 that business, did those have any effect on your decision

16 about whether you would, in fact, payroll employees for

17 DKH?

18 A. No. Because he didn't tell me that until he was past

19 due. In the beginning, he sent me his references and his

20 bank reference, and so we did references -- we called the

21 bank, and we called the other references, and decided to

22 go ahead and start doing business with them based on

23 those.

24 Q. I see. Can I ask you to take a look at what is

25 marked for identification as Government Exhibit 290.03.

1 For right now I will ask you to look in the folders there
2 in front of you.

3 A. Okay.

4 Q. Do you see that --

5 A. Uh-huh.

6 Q. -- exhibit?

7 A. Uh-huh.

8 Q. Do you recognize that?

9 A. Uh-huh.

10 Q. What is it?

11 A. It is a request -- we were asking him to get us a
12 credit application.

13 Q. Okay. When you say "him," who are you referring to?

14 A. Demetrius.

15 Q. Okay. And is this the application that you received
16 back in response to that request?

17 A. I'm not seeing one. I'm sorry.

18 Q. Is this the application that you received from
19 Demetrius?

20 A. That is not in my file.

21 Q. 290.03?

22 A. Yes. Uh-huh.

23 Q. All right. Let's just, to make sure we are clear,
24 let's start again. Do you recognize that document?

25 A. I do.

1 Q. What is it?

2 A. It is the credit application.

3 Q. Okay. Is this a credit application you received back
4 from Mr. Harper?

5 A. Yes.

6 MR. KIRSCH: Your Honor, I move to admit and
7 publish Government Exhibit 290.03.

8 THE COURT: Any objection?

9 MR. ZIRPOLO: No objection.

10 THE COURT: Exhibit 290.03 will be admitted, and it
11 may be published.

12 (Exhibit No. 290.03 is admitted.)

13 MR. KIRSCH: Can we expand the lower half of that,
14 please, the trade references.

15 Q. (BY MR. KIRSCH) Ms. Williams did you say before that
16 you had contacted these references?

17 A. I contacted the bank references. And I think Tina
18 contacted the trade references.

19 Q. Who is Tina?

20 A. She worked for me.

21 Q. Did Mr. Harper tell you anything -- give you any
22 information that would have told you that the people who
23 ran SWV had some personal relationship with him?

24 A. He did not tell me that.

25 MR. KIRSCH: Your Honor, at this time I would ask

1 to admit the certified public record marked as Government
2 Exhibit 700.05.

3 THE COURT: Any objection.

4 MR. BANKS: Your Honor, what exactly is 700.05?

5 THE COURT: It say State of Colorado Application
6 for Authority for SWV, Inc. It is certified.

7 MR. BANKS: No objection.

8 THE COURT: 700.05 is admitted.

9 (Exhibit No. 700.05 is admitted.)

10 MR. KIRSCH: May we publish that please, Your
11 Honor?

12 THE COURT: You may.

13 MR. KIRSCH: Can we highlight the names -- go from
14 there down to the names, please. Thank you.

15 Q. (BY MR. KIRSCH) Do you see this record on the
16 screen, Ms. Williams, related to SWV, Inc.?

17 A. Uh-huh.

18 Q. If you had been told that Mr. Harper had a
19 long-standing relationship with Lawanna Clark or Yolanda
20 Walker or Charlisa Stewart, would that have affected your
21 belief about the validity of that reference?

22 A. We typically don't take references from family
23 members or relatives. So I probably would not have
24 accepted it.

25 Q. All right. Thank you. Did you agree after that

1 meeting to payroll some employees?

2 A. I did.

3 Q. Do you recall who you payrolled?

4 A. Stewart and -- I forget. Another gal.

5 Q. Okay.

6 A. Sorry.

7 Q. Let me ask you to take a look at what we have marked
8 as Government's Exhibit 291.02. Do you recognize those
9 records?

10 A. Personnel Plus time slips that we pay out.

11 Q. For what employee?

12 A. Cliff Stewart.

13 Q. Was that one of the people that you had payrolled as
14 part of this arrangement?

15 A. Yes.

16 MR. KIRSCH: Your Honor, I move to admit Government
17 Exhibit 291.00.

18 THE COURT: Any objection?

19 MR. BANKS: No objection, Your Honor.

20 THE COURT: Exhibit 291.00 will be admitted.

21 (Exhibit No. 291.00 is admitted.)

22 Q. (BY MR. KIRSCH) Ms. Williams, do you think if you
23 looked at a document that that might refresh your memory
24 about the name of the other individual?

25 A. I think I remember it. Kendra Haughton.

1 Q. Okay. The time sheets, how is it that --

2 MR. KIRSCH: Well, Your Honor, could we publish
3 Government Exhibit 291.00, please?

4 THE COURT: You may.

5 MR. KIRSCH: If you can just expand the text on
6 that for us, please.

7 Q. (BY MR. KIRSCH) Ms. Williams, can you explain, first
8 of all, what is the information that you gathered in this
9 time sheet?

10 A. So, basically, the employee's name. The company they
11 work for. Then we have them break down the hours that
12 they worked per day, and total at the end. Then we always
13 have a signature from the client.

14 Q. And is there any significance to the signatures --
15 the two signatures that are on that document?

16 A. Well, the employees sign verifying that these are
17 true hours. And the client is verifying saying they
18 agreed to them, and they were paid the hours.

19 Q. Okay. Do you use this -- these documents at all in
20 doing the payroll?

21 A. Yes.

22 Q. How do you do that?

23 A. We pay them based upon what is written in the total
24 hours.

25 Q. All right. And do you care that those hours are

1 accurate?

2 A. Absolutely.

3 MR. KIRSCH: Special Agent Smith, I am going to ask
4 you to put that exhibit on the left side of the screen,
5 please, and ask you to display page 2 of that exhibit
6 first, please.

7 I am sorry, Your Honor, can I have one moment?

8 THE COURT: You may.

9 MR. KIRSCH: Can we go back to page 1 of that
10 exhibit? Then could I ask you to enlarge the hour block.

11 Your Honor, now I would ask for permission to
12 publish what was previously admitted as Government Exhibit
13 141, page 5.

14 THE COURT: All right. Yes, 141 has been admitted.
15 You may publish page 5. Yes, it was.

16 Q. (BY MR. KIRSCH) Now, can you see that exhibit on the
17 screen, Ms. Williams?

18 A. I do.

19 Q. Do you see the name of the employee there?

20 A. Uh-huh.

21 Q. Is that the same employee as the one that was
22 represented in the time card we have up on the left?

23 A. Yes.

24 Q. And did you have any knowledge that Mr. Stewart was
25 working for ETI Professional at the same time he was

1 working for your company?

2 A. I did not.

3 MR. KIRSCH: Could you please expand the hours on
4 the right side there, Special Agent Smith.

5 Q. (BY MR. KIRSCH) Ms. Williams, how do the hours that
6 were reported during that week to Personnel Plus compare
7 to the hours that were reported on that ETI time card for
8 that week?

9 A. They are the same.

10 Q. If you had known about this time card to the other
11 company there, would that have caused you to take any
12 action?

13 A. Probably.

14 Q. What would you have done?

15 A. I probably would have called to find out what was
16 going on.

17 Q. Who would you have called?

18 A. Demetrius.

19 MR. KIRSCH: Thank you, Special Agent Smith.

20 Q. (BY MR. KIRSCH) How is it that you tried to charge
21 DKH for the services that you were providing through
22 payrolling those employees?

23 A. How did we bill them?

24 Q. Yes.

25 A. We invoiced them.

1 Q. Can I ask you to look now in another folder there.

2 It is marked as Government's Exhibit 292.00. When you
3 have had a chance to look at those, I want to know if you
4 recognize those documents.

5 A. The invoices, yes.

6 Q. And those are invoices for what?

7 A. They ask us to invoice every two weeks, which we
8 would do every week. They asked us to go every two weeks,
9 so we made this exception for them.

10 Q. These are invoices for DKH Enterprises?

11 A. Uh-huh.

12 Q. From Personnel Plus?

13 A. Yes.

14 MR. KIRSCH: Your Honor, I would ask that
15 Government's Exhibit 292.00 be considered admissible.

16 THE COURT: Any objection?

17 MR. WALKER: No objection, Your Honor.

18 THE COURT: Exhibit 292.00 is made admissible.

19 (Exhibit No. 292.00 is found admissible.)

20 Q. (BY MR. KIRSCH) Ms. Williams, did you get payment,
21 or did Personnel Plus get payment on those invoices that
22 were sent to DKH?

23 A. No.

24 Q. Did you find that out at some point?

25 A. They had not when I left.

1 Q. Okay. Now, let's go back to that time period when
2 the relationship is going on.

3 A. Uh-huh.

4 Q. During the relationship, did you find out that the
5 payments weren't getting made?

6 A. Yes.

7 Q. Did you take any action after you found that out?

8 A. Yes.

9 Q. What did you do?

10 A. A couple separate occasions called, talked to him.
11 He said he would set up a payment plan with us. That
12 didn't happen. So then we cut off -- we called and ended
13 the assignment for the two people we were payrolling.

14 Q. Do you recall approximately when you would have made
15 the first call?

16 A. Probably -- I don't exactly remember, but I would say
17 after 30 days.

18 Q. After 30 days overdue?

19 A. Probably right at 30 days. Because that means we
20 wouldn't have received payment for four weeks.

21 Q. And do you recall what Mr. Harper told you, then,
22 when you first called?

23 A. It was typically the same. We are right down to the
24 final. Waiting for the signatures. We will have money
25 within a week. We can set up a payment plan.

1 Q. When you got that information during the first call,
2 did that have any effect on your decision about whether to
3 keep payrolling the employees there?

4 A. You know, I believed him, so I kept payrolling them
5 for a bit more. Then we tried to set up a payment plan.

6 Q. And were you able to do that?

7 A. No.

8 Q. Did you ever get any payments?

9 A. No.

10 Q. Did you notify the employees that you were going to
11 terminate them at some point?

12 A. We notified them and told them. The day we notified
13 them, we said today is the last day we can payroll you.

14 Q. Do you recall how they reacted to that?

15 A. They were fine with it. They seemed fine with it.
16 They just said okay.

17 MR. BANKS: Objection, Your Honor, speculation.

18 THE COURT: Sustained. No foundation.

19 Q. (BY MR. KIRSCH) When you -- throughout the time you
20 were at Personnel Plus, were those invoices ever paid?

21 A. No.

22 Q. Did that have any effect on your pay at Personnel
23 Plus?

24 A. Yes.

25 Q. And how?

1 A. Any commissions.

2 Q. What happened to those commissions?

3 A. I didn't get any.

4 Q. And otherwise you would have?

5 A. I would have gotten a percentage, yes.

6 MR. KIRSCH: Thank you, Ms. Williams.

7 No other questions, Your Honor.

8 THE COURT: Mr. Banks, you may proceed.

9 MR. BANKS: Can I have a moment, Your Honor?

10 THE COURT: You may.

11 **CROSS-EXAMINATION**

12 **BY MR. BANKS:**

13 Q. Ms. Williams, a minute ago you had said that
14 Mr. Harper told you about contracts. Then you followed
15 that up with he didn't tell you -- he told you about
16 contracts prior to engaging in business. Then you
17 followed up after you filled out -- later on, you said he
18 filled out a credit report, and you checked his banking
19 references, et cetera. Then you said he didn't tell you
20 about contracts until he was past due. Which is it?

21 A. I didn't say he didn't tell me about contracts until
22 he was past due. He told me that they were getting ready
23 to sign the contracts. When the -- when his account was
24 past due, I called him, and he said they were getting
25 ready to sign the contracts and would be able to get me

1 payment after that.

2 Q. And it is your testimony that that is what you just
3 said a few minutes ago, correct?

4 A. That is what I believe I said, yes.

5 Q. Okay. Now, there was a reference made to a credit
6 check of SWV?

7 A. Uh-huh.

8 Q. And do you have any reason to believe that SWV was
9 not a legitimate business?

10 A. No.

11 Q. Is it illegal to -- in your opinion, is it illegal to
12 use a credit reference -- to use the appropriate credit
13 reference for his company if it isn't a valid credit
14 reference?

15 MR. KIRSCH: Object to the reference of the opinion
16 regarding the legality.

17 THE COURT: Sustained.

18 Q. (BY MR. BANKS) Do you think there is a problem with
19 using another business for a credit reference that is a
20 legitimate business?

21 A. Can you repeat that?

22 Q. Do you think there is a problem using another
23 business that is a legitimate business as a credit
24 reference?

25 MR. KIRSCH: Object to the relevance of the

1 witness' opinion.

2 THE COURT: Overruled.

3 THE WITNESS: Do I think it is a problem to use
4 another business that is legitimate as a credit reference?

5 Q. (BY MR. BANKS) Yes.

6 A. No.

7 Q. Did you communicate to Mr. Harper, either verbally or
8 in writing, that he cannot use any credit reference that
9 he might know somebody who owns the business?

10 A. I don't recall if I did.

11 Q. Do you recall the Los Angeles Police Department?

12 A. I do.

13 Q. Do you recall New York Police Department?

14 A. Uh-huh.

15 Q. But it is your testimony that you can't recall
16 whether or not you told Mr. Harper you didn't want him to
17 use a credit reference that he might know personally --
18 know personally?

19 A. Correct.

20 Q. Now, how does Personnel Plus determine whether or not
21 they are going to engage in business with a client; is it
22 credit policy or what?

23 A. We check their bank references and their, you know,
24 vendor references. And if they come back where they are a
25 good reference, we will go ahead and work with them.

1 Then, based on payment is if we will continue to work with
2 them.

3 Q. Okay. So is it correct in assuming that Mr. Harper's
4 banking references, et cetera, came back clean?

5 A. Yes.

6 Q. So, in other words, Mr. Harper had good credit?

7 A. Of what we were able to get, yes.

8 Q. Okay. And that was determinative in you moving
9 forward to engage in business; is that correct?

10 A. Yes.

11 Q. If the credit check had came back poor, would you
12 have engaged in business with Mr. Harper?

13 A. We would not have.

14 Q. Thank you.

15 MR. BANKS: I have no further questions, Your
16 Honor.

17 THE COURT: All right. Anybody else?

18 MR. WALKER: No, Your Honor.

19 THE COURT: Any redirect?

20 MR. KIRSCH: No, thank you, Your Honor.

21 THE COURT: All right. May this witness be
22 excused?

23 MR. KIRSCH: Yes, please.

24 THE COURT: Thank you very much, you are excused.

25 Government may call its next witness.

1 MR. KIRSCH: Your Honor, the Government calls
2 Gregory Krueger.

3 Ms. Barnes, if you could get Exhibits 320.01
4 through 327, please.

5 COURTROOM DEPUTY: Your attention, please.

6 **GREGORY KRUEGER**

7 having been first duly sworn, testified as follows:

8 COURTROOM DEPUTY: Please be seated.

9 Please state your name, and spell your first and
10 last names for the record.

11 THE WITNESS: Full name is Gregory Krueger.

12 G-R-E-G-O-R-Y K-R-U-E-G-E-R.

13 **DIRECT EXAMINATION**

14 **BY MR. KIRSCH:**

15 Q. Mr. Krueger, can you tell the jury where you live.

16 A. I live in Thornton, Colorado.

17 Q. And where do you work?

18 A. Today I work for a company called Agile 1.

19 Q. What sort of company is that?

20 A. Agile 1 provides work force management solutions and
21 managed service programs around contingent work forces. I
22 don't know if that is helpful or not.

23 Q. Maybe I can get you to explain a little more what a
24 contingent work force is?

25 A. Contingent work force are temporary workers that

1 companies utilize to augment their regular full-time
2 staff. Agile 1 provides a service of managing the
3 suppliers, temp staffing agencies that then are utilized
4 to bring in the temporary workers.

5 Q. Is this the first job you have had in the staffing
6 industry?

7 A. No.

8 Q. How long have you been in that industry?

9 A. For 20 years.

10 Q. Was part of that time with the company called
11 Professional Consulting Network?

12 A. Yes.

13 Q. Is that sometimes called PCN?

14 A. Yes, most commonly.

15 Q. When was it that you were with that company?

16 A. From 1992 until 2008.

17 Q. What role did you hold at the company?

18 A. Everything from a business development manager, until
19 2002, when I became an owner of the company.

20 Q. Okay. And at that time, from 2002 forward, where
21 were you working -- where was the office where you worked?

22 A. We were in Broomfield, Colorado.

23 Q. Okay. What sort of work did PCN do?

24 A. Our focus was in recruiting IT or technology-related
25 workers, both temporary and full-time placement.

1 Q. Okay. Any particular focus of those kinds of
2 workers? It was technology you said?

3 A. IT; software engineers; infrastructure support; like
4 network engineers; system administrators, as well. But
5 all of it centered around the technology industry; IT,
6 information technology.

7 Q. Did you, while you were at PCN, did you provide a
8 service called payrolling?

9 A. Yes.

10 Q. How did payrolling work for PCN?

11 A. So, typically, in a payrolling solution, our client
12 would ask us to employ a worker they had already
13 identified. It was a position that was not going to be a
14 full-time role for the client. A temporary assignment.
15 They wanted somebody to employ the person and take care of
16 withholdings and such.

17 So our solution was typically we wanted to cover
18 our employer costs, the withholdings. Then typically
19 added an additional \$5 an hour to the rate to pay for our
20 services of managing everything.

21 Q. Okay. While you were at PCN, did you participate in
22 setting up some business with a company called DKH?

23 A. Yes.

24 Q. Do you remember when that was?

25 A. It was 2002 or 2003. It has been so long. I am

1 sorry.

2 Q. That's all right. Do you remember how it is that
3 that relationship first began?

4 A. Yeah. I was made aware of a request through a
5 colleague of mine who worked in our San Fran office that
6 he had been approached by somebody from DKH that required
7 payrolling services.

8 Q. Did you get a name of that person who had made the
9 approach?

10 A. Yes.

11 Q. And do you remember that name?

12 A. Demetrius Harper.

13 Q. Okay. Did you ever have contact with a person named
14 Clinton Stewart?

15 A. Yes.

16 Q. After you got the name, did you make contact with
17 this person?

18 A. Right. So my colleague was in San Francisco, and
19 since DKH was located in Colorado, it automatically became
20 my responsibility. So I reached out directly to
21 Demetrius.

22 Q. Okay. And during those -- during that call, did you
23 get an understanding about what the business of DKH was?

24 A. Yes. They were -- yes.

25 Q. What was your understanding based on that call?

1 A. That they were developing software. I guess the best
2 way to describe it was enterprise software to assist law
3 enforcement in their work.

4 Q. Okay. Did you exchange some e-mails with the person
5 that you were talking to at DKH at the beginning, as well?

6 A. Yeah. And if I may say, I misspoke. I did
7 communicate with Clinton Stewart, not Demetrius, I think
8 at the beginning when we were talking about the need for
9 services. So my apology.

10 Q. The first conversations were with Clinton Stewart?

11 A. Yes.

12 Q. All right. Did you actually have -- at some point
13 have a meeting at the DKH office?

14 A. Yeah. I went down to Colorado Springs to meet
15 Clinton and Demetrius at their Colorado Springs' facility,
16 yes.

17 Q. Can you describe that office?

18 A. It looked like, you know, any other office. There
19 was individual private offices. There was an open space.
20 And then there was a larger space and a cafeteria. But
21 the larger space I was told was being prepared for
22 cubicles, as they were planning on growing and adding more
23 people.

24 Q. Okay. During this meeting, I think you just said you
25 met with Clinton Stewart and Demetrius Harper?

- 1 A. Correct.
- 2 Q. Did they explain to you what their relationship was
3 with DKH?
- 4 A. That they were, I guess, principals or, certainly,
5 you know, employees of DKH.
- 6 Q. Was there any discussion during this meeting about a
7 company called IRP?
- 8 A. Yes. And they were -- would you like me to explain?
- 9 Q. Please.
- 10 A. So they were providing software engineering
11 consulting services to IRP, was my understanding.
- 12 Q. "They," meaning DKH?
- 13 A. Yes. I am sorry, yes.
- 14 Q. Was there any discussion during that meeting with the
15 status of any contracts for business that DKH might have
16 had?
- 17 A. Yes.
- 18 Q. What was said about that?
- 19 A. So there was discussion about being engaged with
20 Homeland Security, the FBI. And as I recall, there was --
21 they were in New York at one time and engaged with law
22 enforcement in New York.
- 23 Q. Did they name a specific agency in New York that you
24 remember?
- 25 A. I want to say NYPD, but I might not recollect that.

1 Q. All right. Was there any specific discussion about
2 whether any of those contracts were actually in place?

3 A. That they were -- that they were certainly engaged in
4 the work. So my assumption was that they were -- you
5 know, that the business was being done today, and that
6 they are engaging in getting more.

7 MR. ZIRPOLO: Objection, speculation.

8 THE COURT: As worded, sustained.

9 Q. (BY MR. KIRSCH) Did you -- what did you say that --
10 what did you say was told to you about the current status
11 of or about what they were doing at that time? Can you
12 explain that again, please?

13 A. That they were engaged in doing business with
14 Homeland Security and the FBI and a law enforcement
15 organization in New York.

16 Q. Okay. And at some point did you agree to have PCN do
17 business with DKH?

18 A. Yes.

19 Q. And that business was payrolling employees?

20 A. Yes.

21 Q. Was that decision made before or after the meeting
22 that you had at the office, do you remember?

23 A. That decision to do business was done after that
24 meeting.

25 Q. Did the information that you got about the business,

1 in which DKH said they were engaged, did that have any
2 effect on your decision about whether to do business with
3 them?

4 A. Certainly.

5 Q. Can you explain how that played into your decision?

6 A. Well, if they were -- I mean, if they were actually
7 in business and engaging in a source of revenue, then we
8 knew we were going to be paid for providing our payrolling
9 service.

10 Q. Did you have any meetings with the employees that you
11 payrolled there?

12 A. Yes.

13 Q. Do you remember where those happened?

14 A. So one was down at the -- two people I met and signed
15 contractual agreements with, employment agreements with at
16 the DKH or -- it was described as the IRP offices --

17 Q. Okay.

18 A. -- where they were performing the work. And then one
19 of the workers came to my office in Broomfield to sign his
20 employment agreement.

21 Q. Do you remember the names of those employees?

22 A. I want to say Ms. Banks. I can't remember her first
23 name.

24 Q. I don't want to make it a memory test for you. Let
25 me ask you -- we will come back to that in just a minute.

1 Did you -- how is it that PCN kept track of the time that
2 those employees worked?

3 A. Each employee was given a paper time card, basically,
4 which they would write down the number of hours they
5 worked for each day, and then were required to have an
6 authorized person sign off on those hours, and that
7 constituted -- their signature constituted that the work
8 was performed and was satisfactory. And we took those
9 hours and turned that into an invoice.

10 Q. Okay. Let me ask you to look -- there should be a
11 folder up there marked with the number 321.00.

12 A. 321.00?

13 Q. Yes. There is a document or set of documents marked
14 as government exhibits with that number in that folder.

15 Can I ask you to look at those? And I want to know if you
16 recognize those documents.

17 A. Yes, I do recognize them.

18 Q. What are those documents?

19 A. These are the time cards.

20 Q. Is it for the employees that PCN payrolled at DKH?

21 A. Correct.

22 MR. KIRSCH: Your Honor, I move to admit Government
23 Exhibit 321.

24 THE COURT: Any objection?

25 MR. BANKS: No objection, Your Honor.

1 THE COURT: Exhibit 321.00 will be admitted.

2 (Exhibit No. 321.00 is admitted.)

3 MR. KIRSCH: Can we publish the first page of that,
4 please, Your Honor?

5 THE COURT: You may.

6 Q. (BY MR. KIRSCH) We are going to put that up on the
7 screen for you now, Mr. Krueger. And this -- over there
8 where it says "Contractor Name," is that one of the people
9 that you payrolled there?

10 A. Yes.

11 Q. Now, it says "Contractor." Before you had described
12 those people as employees of PCN. Is there a discrepancy
13 there?

14 A. It's an interchangeable -- tends to be an
15 interchangeable term. But they did sign -- you know, they
16 signed an employment agreement. We issued W2s.

17 Q. Okay. And then how does the -- how do the time
18 sheets works, in terms of the hours reported there?

19 A. Yeah. So we invoiced twice a month and paid twice a
20 month. So they would report hours the 1st through the
21 15th, and then the 16th through the end of the month.

22 Q. Okay. And on this form there are circles around the
23 numbers and the dates. Just to make sure we understand
24 how this works --

25 A. So, in this instance, the employee worked the 21st,

1 22nd, 23rd of the month of July that first row. And then,
2 obviously, the other dates until the end of the month for
3 the second row. And then it is totaled for number of
4 hours in that two-week period, for the 15-day period.

5 Q. As you looked through that exhibit, did that refresh
6 your memory about the names of the other employees who
7 were payrolled?

8 A. Yes.

9 Q. Who?

10 A. Willie Pee and Esther Banks and Ken Barnes.

11 Q. And these time sheets, how is it that they actually
12 got processed by PCN, the physical processing?

13 A. Once they are signed, the person was to give a copy
14 to the authorized person so they would have a record of
15 it. And then it would be faxed to the San Francisco
16 office, where our back office operations handled it from
17 there. They would collect the hours, submit that to
18 payroll, and then obviously create an invoice to be
19 generated and then sent to the client.

20 Q. Before we talk about the invoices, I want to ask you
21 just a little bit more about the time cards and the
22 payroll. Did you ever get any information while this
23 relationship was happening that Mr. Barnes was working
24 full time at another staffing company?

25 A. No.

1 Q. If you had gotten that information, would that have
2 had any effect on what you were doing in terms of
3 payrolling him?

4 A. Yeah. I would have some questions.

5 Q. What would you have done about those questions?

6 A. Well, I guess first and foremost, I would want to
7 know if the client knows this, because they identified the
8 person that they wanted us to payroll. So I would want to
9 make sure that was satisfactory; that was all square and
10 everyone was on board. Outside of that, I wouldn't have
11 any significant concern if the client was aware of this.

12 Q. All right. You mentioned that the time cards got
13 used to create invoices, too, as well, I think?

14 A. Yes.

15 Q. Can I ask you to look at what is marked for
16 identification as Government Exhibit 322.00.

17 A. Okay.

18 Q. Do you recognize those documents?

19 A. Yes.

20 Q. What are these?

21 A. These are invoices.

22 Q. Did they come from PCN?

23 A. Yes.

24 Q. Were they sent to DKH as a part of this business you
25 have been describing?

1 A. Yes.

2 MR. KIRSCH: Your Honor, I would ask the Court to
3 find that Government Exhibit 322 is admissible.

4 THE COURT: Any objection?

5 MR. BANKS: No objection.

6 THE COURT: Exhibit 322.00 will be found
7 admissible.

8 MR. KIRSCH: Thank you, Your Honor.

9 Q. (BY MR. KIRSCH) Those invoices, did you say that
10 those were handled in the California office, as well?

11 A. Yes. They are generated there, then they were
12 mailed.

13 Q. Mailed to the clients?

14 A. To the client, yes.

15 Q. At some point did you learn -- get any information
16 about whether or not DKH was paying these invoices?

17 A. Yeah. I was made aware by my business partners that
18 we had outstanding payments.

19 Q. When you got that information, did you take any
20 additional steps?

21 A. Phone calls and e-mails.

22 Q. Who did you direct those to?

23 A. To Demetrius and to Clinton.

24 Q. Do you remember when that started?

25 A. 2003. Gosh, I am sorry, I don't remember the month.

1 Q. Okay. Let's see if we can tie it to something else.

2 A. Yes.

3 Q. Are you able to tie that in any way to, say, a due
4 date of the first invoice -- due date of the invoice on
5 the first payment?

6 A. Yeah. Well, when anything went past 30 days, we were
7 made aware that, you know, that something had gone past.
8 And then, you know, that is when we would make a quick
9 phone call, just to make sure that everything is in
10 process for payment to be made.

11 Q. Did you get an immediate response from Mr. Harper
12 when you started making those calls?

13 A. No.

14 Q. At some point did you get a response from Mr. Harper?

15 A. Yes.

16 Q. And did he give you any information about when he
17 expected to pay during that conversation?

18 A. It was a letter. And the conversation or the message
19 was that it was a lengthy procurement process, or some
20 issue with the agency that they were engaged with in
21 paying them.

22 Q. Can I ask you to take a look at what is marked for
23 identification as Government Exhibit 326.01.

24 A. All right.

25 Q. Do you recognize that?

1 A. Yes.

2 Q. Is that the writing that you were just describing?

3 A. Yes.

4 MR. KIRSCH: Your Honor, I move to admit Government
5 Exhibit 326.01.

6 THE COURT: Any objection?

7 MR. BANKS: Could I have one moment, Your Honor?

8 THE COURT: You may.

9 MR. BANKS: No objection.

10 THE COURT: Exhibit 326.01 is admitted.

11 (Exhibit No. 326.01 is admitted.)

12 MR. KIRSCH: May we publish it, please, Your Honor?

13 THE COURT: You may.

14 Q. (BY MR. KIRSCH) Mr. Krueger, this letter is
15 addressed to Stewart McNab. Do you know who that is?

16 A. Yes. He was an attorney that we engaged to help us
17 in our collection.

18 Q. Okay. And then you made a reference to something
19 about slow payments. Can you explain where that is in the
20 letter here?

21 A. In the second paragraph.

22 THE COURT: There is a stylus on the top of that.

23 THE WITNESS: It is kind of hard to read here some
24 of that. So they talk about "it is a well known and
25 accepted fact that companies doing business with the

1 government can be subjected to slow payments." So this
2 area here.

3 Q. (BY MR. KIRSCH) You are in the middle of the second
4 paragraph?

5 A. Yes.

6 MR. KIRSCH: And can we scroll that down just a
7 little bit, please, Special Agent Smith. I am sorry,
8 scroll it up.

9 Q. (BY MR. KIRSCH) That's December 23, 2003.

10 A. Okay.

11 Q. And, from looking at the time cards, it appeared that
12 that one we had up on the screen was from July of 2003?

13 A. Right.

14 Q. Did you have an understanding in July of 2003 that
15 the procurement process wouldn't have been done by
16 December of 2003?

17 A. No.

18 Q. Did, at some point -- were any payments made in
19 accordance with this schedule?

20 A. No.

21 Q. The total of the outstanding invoices there, \$67,000,
22 does that comport with your memory of the total?

23 A. No, that was -- this number is less.

24 Q. This number is lower than the ultimate total?

25 A. Correct.

1 THE COURT: Ms. Barnes, how does he erase that?

2 COURTROOM DEPUTY: Bottom right-hand corner, just
3 touch it.

4 THE WITNESS: Sorry.

5 Q. (BY MR. KIRSCH) At some point did you terminate the
6 PCN relationship with DKH?

7 A. Yes.

8 Q. And did you notify the employees that they were being
9 terminated?

10 A. Yes.

11 Q. Did you have a conversation with Mr. Barnes when you
12 notified him about that?

13 A. Yes.

14 Q. Do you recall Mr. Barnes' response when you told him
15 that he was going to be terminated?

16 A. Yes.

17 Q. What did he say?

18 A. Well, I had asked him if he knew what the issue was,
19 and us not getting paid, since he was at the client site.

20 Q. What did he tell you?

21 A. He said he didn't know any issues whatsoever.

22 Q. Did you ever make a trip to the DKH office as a part
23 of your collection efforts?

24 A. Yes.

25 Q. Do you remember approximately when that was?

1 A. So, that was -- looking at and seeing those dates
2 now, that was probably in -- after that point in time or
3 right around that time we approached an attorney. After
4 we -- so, I'll back up.

5 When we -- prior to reaching out to an attorney to
6 help with our collection, I called and said I was coming
7 down, I want to talk to you about the situation.

8 Q. Who did you call?

9 A. I called Demetrius on that one.

10 Q. Did you actually speak to Mr. Harper?

11 A. No.

12 Q. Did you leave a message?

13 A. Yeah.

14 Q. How did you leave message? Was it on a voicemail,
15 receptionist? Do you remember?

16 A. It was most likely voicemail.

17 Q. Okay. Did you, in fact -- did you tell him the day
18 and time you were coming?

19 A. I told him I was coming down that afternoon.

20 Q. Okay. Did you, in fact, go there that afternoon?

21 A. Yes.

22 Q. What happened when you got there?

23 A. The -- there is a lobby and then secured doors into
24 the offices. So I rang -- I think they had a phone out
25 there, as I recall. I rang. I don't recall getting

1 anybody, but decided I would just wait in the lobby until
2 someone came out, or came in, and might be able to direct
3 me to Demetrius or Clinton to have a conversation about
4 what is happening and why is this -- why are we not
5 getting paid.

6 Q. Did you end up making contact with anybody that day?

7 A. A gentleman came out. He identified himself as David
8 Banks. And he said, what are you doing here? And I said,
9 I am here to talk to Demetrius or Clinton and to find out
10 why our company is not getting paid. And his response
11 was, you know, something along the lines of things can get
12 kind of ugly doing something like that. I don't know what
13 your issue is. They're not associated with me and IRP.
14 That is a different company. Deal with them. So
15 something to that effect. I can't remember it verbatim.

16 Q. Did you have -- end up having any conversation with
17 Mr. Banks about a company called Leading Team?

18 A. I asked about that. Yes, I asked about that.

19 Q. And what -- do you remember what you asked?

20 A. Well, I said -- as I recall, I said that, you know,
21 Clinton and you are all a part of Leading Team, as well.

22 Q. What did Mr. Banks say in response to that?

23 A. Something to the effect that that is a different
24 company and has nothing to do with what we are doing
25 today.

1 MR. KIRSCH: Thank you, Mr. Krueger.

2 THE COURT: Mr. Walker?

3 **CROSS-EXAMINATION**

4 **BY MR. WALKER:**

5 Q. Hello, Mr. Krueger.

6 A. Hi.

7 Q. You related earlier that in your first conversations
8 with Clinton Stewart and Demetrius Harper, that they
9 mentioned to you that the company was close to closing
10 contracts with the NYPD, in your words?

11 A. I don't know, did I say "close"?

12 Q. Yes. I wrote down, quote, close to closing contracts
13 with the NYPD. Would that be an accurate recollection?

14 A. I don't recall saying "close." But if I -- I don't
15 recall saying "close." I know that I was told that they
16 were in New York working to do business with the NYPD.

17 Q. Would you disagree with that restatement of your
18 recollection?

19 A. I would say that what I understood was that the
20 business with New York PD had not taken place yet.

21 Q. Thank you. You also said -- and these are from my
22 written notes. I wrote them in quotes. They were engaged
23 with the DHS, the FBI, and in New York and engaged with
24 the NYPD. Would you agree with that --

25 A. Yeah.

1 Q. -- statement -- restatement?

2 And so did anyone at the company ever express to
3 you that they had closed a contract with any of those
4 companies that we just agreed on that they were engaged
5 with?

6 A. Yes. My recollection is that there was business --
7 that a business was closed with the Department of Homeland
8 Security. That is what I recall.

9 Q. Could you repeat that?

10 A. I said that it was my recollection that I was told
11 that they closed business with the Department of Homeland
12 Security.

13 Q. Even though you said earlier that they were close to
14 closing contracts and engaged with these businesses?

15 A. I am telling you what I recollect, and that was that
16 you folks -- the company was had closed business with the
17 DHS; was engaged with those agencies to provide software.

18 Q. And could you just tell us how long you have been
19 engaged in business development or sales?

20 A. I have been in a business development role for
21 20-some years.

22 Q. And in the course of your other business development
23 experiences, when other companies told you they were
24 engaged with companies, did you take that to mean that
25 they had contracts with those companies?

1 A. Yes.

2 Q. So that led you to make the assumption in this case,
3 as well?

4 A. I don't know if it was an assumption. I was under
5 the impression that work was being done; that it was an
6 on-going business relationship.

7 Q. All right. So you were under the assumption and the
8 impression, even though that was never stated to you?

9 A. I guess I don't understand what you are trying to ask
10 me.

11 Q. I am just trying to get clarity on the statements
12 that were made by DKH, versus your assumptions or
13 impressions of those statements.

14 A. So I don't know if I can make it any clearer. But
15 everything that I heard led me to believe that the
16 business was being conducted. That you were -- that DKH
17 was invoicing a client and getting paid for the work it
18 was performing.

19 Q. Okay. Did DKH tell you that they were invoicing and
20 being paid by any of these agencies we just discussed?

21 A. I can't say that they said we are invoicing and being
22 paid.

23 Q. And in your -- in the company's decision, PCN's
24 decision to extend credit to DKH, were you involved in
25 that decision-making process?

1 A. I am sorry, could you repeat that?

2 Q. Yes. Were you involved in the decision-making
3 process of extending credit to DKH?

4 A. I was involved in the decision to determine whether
5 we were going to payroll three workers.

6 Q. Can you describe the discussion in that
7 decision-making process; what factors were considered?

8 A. Well, one was going down to the office and seeing
9 that it was a legitimate business office; that there were
10 people there and that there was a discussion about the
11 business that DKH was involved in.

12 Q. And so once you made those considerations, based on
13 what you had seen and heard, you felt that it was a good
14 decision to go forward and extend DKH credit and perform
15 the payrolling they had requested?

16 A. We didn't extend credit.

17 Q. And for PCN, then, that statement says that you don't
18 consider paying the employees pay up front and being
19 reimbursed later as a credit situation?

20 A. I don't normally think of it that way at all, no.

21 Q. What is PCN's policy for approving someone to have
22 employees payrolled on their behalf?

23 A. Well, to ensure that the company is legitimate to the
24 best of our knowledge. Typically, what we would do --

25 Q. Do you run a credit check; a Dun & Bradstreet, for

1 example?

2 A. No. Typically, we don't.

3 Q. Do you ask them to fill out a credit application?

4 A. No.

5 Q. So it is really just a subjective exercise? Yes or
6 no, would that be correct?

7 A. It is a determination of a good-faith relationship.

8 Q. And in doing that evaluation, given that no credit
9 app was filled out, that you didn't ask for any
10 information about revenues, assets, money in the bank,
11 would it be fair to say that no misrepresentations were
12 made?

13 MR. KIRSCH: Objection, lack of foundation.

14 THE COURT: Sustained.

15 Q. (BY MR. WALKER) Mr. Krueger, other than a credit
16 app, which was not filled out, did DKH make any
17 representations about revenue that they currently had?

18 A. I don't recall.

19 Q. Let's move on and go back to your statements earlier
20 about you would have been concerned -- or you would not
21 have been concerned if the client had no problem with
22 someone they were staffing or had payrolled moonlighting.
23 So is this practice something, in your experience, that
24 you have seen done from time to time in the IT world?

25 A. Well, again, if the worker is self identified by the

1 client, I would assume -- and I would want to know if the
2 -- if this worker has the permission to do something else
3 outside of what they are doing with the client that we're
4 being asked to engage with.

5 Q. Okay. So given that, is it fair to say this is
6 something that does happen in the IT world?

7 A. Yeah. Typically they are independent contractors
8 that may do that.

9 Q. Okay.

10 A. Which is separate from W2 employees.

11 Q. But that is something that is done in the IT world?

12 A. Yes.

13 Q. If you recall, on Government Exhibit 326.01 -- that
14 was the letter from Demetrius Harper. If you would look
15 at that again.

16 A. Yes.

17 Q. If you look at the middle of the second paragraph, it
18 references "slow payments during the procurement cycle."
19 Do you see that line?

20 A. Yeah.

21 Q. Tell me what that line means to you?

22 A. It means that, to me, that your invoices aren't
23 getting paid.

24 Q. Is that the way you would word that type of
25 situation?

1 MR. KIRSCH: Objection, relevance.

2 THE COURT: Sustained.

3 Q. (BY MR. WALKER) In saying that a company's invoices
4 are not being paid, is the invoicing process occurring
5 during the procurement cycle?

6 MR. KIRSCH: Objection, lack of foundation.

7 THE COURT: Sustained.

8 Q. (BY MR. WALKER) In the process of closing business
9 with customers, as an experienced salesman, you go through
10 certain steps; correct? And those steps involve
11 soliciting, providing information about your product or
12 services to the business that you are trying to close, and
13 that would be called the procurement cycle, would you
14 agree, of having that process go through and it being
15 approved to provide your services or products to that
16 client?

17 A. In certain selling cycles and selling instances, yes,
18 you are dealing with procurement.

19 Q. And then once you have been approved to provide those
20 services or products to that client, would you agree that
21 you then pass the procurement cycle?

22 A. Yes, if you have been selected.

23 Q. Okay. And so the statement, "slow payments during
24 the procurement cycle," does not really make sense?

25 MR. KIRSCH: Objection, lack of foundation.

1 THE COURT: Overruled.

2 THE WITNESS: Repeat the question, please.

3 Q. (BY MR. WALKER) So given our exercise of going
4 through the procurement cycle and saying that you
5 successfully convinced the client to purchase our services
6 or products; now we are providing those services and
7 products. You would agree we are now past the procurement
8 cycle? Does this phrase, "slow payments during the
9 procurement cycle" make sense to you?

10 A. Reading that, no, it doesn't. If you are receiving
11 invoices, you would be outside the procurement cycle.

12 Q. Thank you. And in your dealings with Mr. Harper, how
13 would you characterize your impression of his business
14 acumen?

15 A. He struck me as one of many IT contract consultants
16 that I've met in the past. Outside of that, the only
17 other thing that I would recognize about his business
18 acumen was his lack of communication and response to
19 legitimate business questions once we weren't receiving
20 payment.

21 MR. WALKER: Thank you.

22 THE COURT: Anybody else?

23 MR. BANKS: Nothing further, Your Honor.

24 THE COURT: Any redirect?

25 MR. KIRSCH: Yes, please, Your Honor.

1 **REDIRECT EXAMINATION**

2 **BY MR. KIRSCH:**

3 Q. Mr. Krueger, you mentioned in response to one of
4 those questions, I think, that you were trying to set up a
5 good-faith relationship --

6 A. Yes.

7 Q. -- with the company. When you were trying to do
8 that, do you rely on the information that is provided by
9 the other company that you are trying to do business with?

10 A. Yes.

11 Q. You were also asked about this idea about extending
12 credit. Was that the business that PCN was in?

13 A. No.

14 Q. Is that how you -- is that how you thought about the
15 idea of payrolling employees somewhere; that that was an
16 extension of credit?

17 A. No, not at all.

18 Q. You were also asked about the concept of moonlighting
19 or people working for a couple of different places.

20 A. Uh-huh.

21 Q. Have you ever, in the course of your career with
22 staffing, have you ever seen a situation in which the same
23 employee was being payrolled for the same client through
24 multiple staffing companies at the same time?

25 A. No. I have never ever seen that.

1 Q. Are you aware of any legitimate reason for a company
2 to do that?

3 A. Not at all.

4 MR. KIRSCH: Thank you, Mr. Krueger.

5 THE COURT: All right. May this witness be
6 excused?

7 MR. KIRSCH: Yes, Your Honor.

8 THE COURT: All right. Thank you very much,
9 Mr. Krueger, you are excused.

10 We are at the end of today. Remember, tomorrow we
11 will only go until noon, then you are excused for the day
12 because I have another court hearing in the afternoon. So
13 hopefully you will be able to get some rest and
14 relaxation.

15 So the jury is excused. Remember, you are not to
16 talk to anyone about this case at all, and that means -- I
17 don't know whether you got acquainted with Ms. DeJong, but
18 you do not discuss anything with her, as well, and not
19 among yourselves. No research. Go out and have a good
20 evening, and we will see you at 9 o'clock sharp tomorrow
21 morning.

22 The jury is excused.

23 (The following is had in open court, outside the
24 hearing and presence of the jury.)

25 THE COURT: You may be seated. All right. So we

1 just need to know whether or not we need to do additional
2 voir dire with the juror who indicates members of his
3 staff worked for Cherokee Nation.

4 MR. BANKS: We don't feel any need to proceed any
5 further.

6 THE COURT: Okay. That would be my inclination.

7 MR. KIRSCH: The Government agrees with that, Your
8 Honor.

9 THE COURT: All right. So at this point, we can
10 tell him there is no problem. Is that all right?

11 MR. BANKS: That is fine.

12 MR. KIRSCH: Yes, Your Honor.

13 THE COURT: Ms. Barnes, I will allow you to do
14 that, so I have no communication outside of the rest of
15 the parties.

16 All right. So anything else that needs to be
17 brought to my attention?

18 MR. KIRSCH: Your Honor, I just wanted to ask. I
19 had assumed that Ms. Martinez transcribed the supplemental
20 instruction that was given to the jury today. Am I right
21 in that assumption?

22 THE COURT: Yes, she did. I also submitted it to
23 Ms. Barnes to copy to make it part of the record as a
24 supplemental. And I also have the note from Ms. DeJong
25 that needs to be scanned and made part of the record. And

1 this note will also be scanned and made part of the
2 record.

3 MR. KIRSCH: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MR. BANKS: Not from us.

6 THE COURT: All right. I am sorry, Mr. Kirsch?

7 MR. KIRSCH: Can I ask one more scheduling
8 question, Your Honor? Do we assume that the schedule for
9 the first half of tomorrow will be standard; a mid-morning
10 break?

11 THE COURT: Yes. We can't make them sit, and we
12 can't make Ms. Martinez do more than that.

13 MR. BANKS: Thank you, Your Honor.

14 THE COURT: Anything further? All right. We'll
15 see you bright and early. Be here so we can get ready to
16 go at 9 o'clock. I appreciate the fact you were ready to
17 go 5 minutes early this morning.

18 All right. Court is in recess.

19 (Court is in recess at 4:58 p.m.)

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1 R E P O R T E R ' S C E R T I F I C A T E

2

3 I, Darlene M. Martinez, Official Certified
4 shorthand Reporter for the United States District Court,
5 District of Colorado, do hereby certify that the foregoing
6 is a true and accurate transcript of the proceedings had
7 as taken stenographically by me at the time and place
8 aforementioned.

9

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12 Dated this 5th day of December, 2011.

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17 s/Darlene M. Martinez

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RMR, CRR

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