

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.

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REPORTER'S TRANSCRIPT  
(Jury Trial Day 7)

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Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 8:58 a.m. on the 4th day of October 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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1                                   **OCTOBER 4, 2011**

2                   (Proceedings commence at 8:58 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.   Did we get the foundation laid for a  
7   number of exhibits so that we don't have to waste the  
8   jury's time?

9                   MS. HAZRA:   Yes, Your Honor, we have conferred and  
10   come up with a list of exhibits that are stipulated, first  
11   as to whether or not they can be admitted, and then a  
12   second category is whether or not they can be deemed  
13   admissible.

14                  THE COURT:   Which have been stipulated to?   Go  
15   ahead and list the admitted ones first.

16                  MS. HAZRA:   Government's Exhibit 1E.

17                  THE COURT:   All right.   1E is admitted.

18                  (Exhibit No. 1E is admitted.)

19                  MS. HAZRA:   Government's Exhibit 211.00, Your  
20   Honor.

21                  THE COURT:   All right.   211.00 is admitted.

22                  (Exhibit No. 211.00 is admitted.)

23                  MS. HAZRA:   211.01 we move to admit.

24                  THE COURT:   211.00 is admitted.

25                  (Exhibit No. 211.01 is admitted.)

1 MS. HAZRA: Then skip to the 400s -- Government  
2 401.00.  
3 THE COURT: Exhibit 401.00 is admitted.  
4 (Exhibit No. 401.00 is admitted.)  
5 MS. HAZRA: 411.00.  
6 THE COURT: Admitted?  
7 MS. HAZRA: Yes.  
8 THE COURT: Okay, admitted.  
9 (Exhibit No. 411.00 is admitted.)  
10 MS. HAZRA: 440.01 we would move to admit.  
11 THE COURT: 440.01 is admitted.  
12 (Exhibit No. 440.01 is admitted.)  
13 MS. HAZRA: 441.00.  
14 THE COURT: That's admitted.  
15 (Exhibit No. 441.00 is admitted.)  
16 MS. HAZRA: 446.02.  
17 THE COURT: 446.02 is admitted.  
18 (Exhibit No. 446.02 is admitted.)  
19 MS. HAZRA: And that is the end of the admitted  
20 documents, but I will look to Mr. Walker for confirmation.  
21 MR. WALKER: That's correct, Your Honor.  
22 THE COURT: All right. Which ones are admissible?  
23 MS. HAZRA: We'll start back at the beginning, Your  
24 Honor. Government's Exhibit 32.01.  
25 THE COURT: 32.01 is deemed admissible.

1 (Exhibit No. 32.01 is found admissible.)

2 MS. HAZRA: Then the whole from 33.00 to 33.11,  
3 that whole range of exhibits there, we would ask to be  
4 deemed admissible. So, for the record, 33.00, 33.01,  
5 33.02, 33.03, 33.04, 33.05, 33.06, 33.07, 33.08, 33.09,  
6 33.10 and 33.11.

7 THE COURT: All right. No objection from the  
8 defendants?

9 MR. WALKER: No objection, Your Honor.

10 THE COURT: All of those are deemed admissible.

11 (Exhibit Nos. 33.00, 33.01, 33.02, 33.03, 33.04,  
12 33.05, 33.06, 33.07, 33.08, 33.09, 33.10, 33.11 are found  
13 admissible.)

14 MS. HAZRA: Next, Your Honor, Government would ask  
15 that Government's Exhibit 214.00 be deemed admissible.

16 THE COURT: 214.00 is deemed admissible.

17 (Exhibit No. 214.00 is found admissible.)

18 MS. HAZRA: Government's Exhibit 402.00.

19 THE COURT: 402.00 is deemed admissible.

20 (Exhibit No. 402.00 is found admissible.)

21 MS. HAZRA: 403.00.

22 THE COURT: 403.00 is deemed admissible.

23 (Exhibit No. 403.00 is found admissible.)

24 MS. HAZRA: 412.00.

25 THE COURT: 412.00 deemed admissible.

1 (Exhibit No. 412.00 is found admissible.)

2 MS. HAZRA: 412.01.

3 THE COURT: 412.01 is deemed admissible.

4 (Exhibit No. 412.01 is found admissible.)

5 MS. HAZRA: 413.

6 THE COURT: 413.00 is deemed admissible.

7 (Exhibit No. 413.00 is found admissible.)

8 MS. HAZRA: Next, 442.00.

9 THE COURT: 442.00 is deemed admissible.

10 (Exhibit No. 442.00 is found admissible.)

11 MS. HAZRA: And 443.00.

12 THE COURT: 443.00 is deemed admissible.

13 (Exhibit No 443.00 is found admissible.)

14 MS. HAZRA: And I believe that is it, but I am  
15 going to again look to Mr. Walker.

16 THE COURT: Mr. Walker, do all agree with all of  
17 those?

18 MR. WALKER: Yes, Your Honor.

19 THE COURT: Thank you very much. I appreciate  
20 that, and the jury will definitely appreciate that.

21 All right. And I understand that Ms. Barnes has  
22 spoken to you about the chewing of gum, and the bringing  
23 of anything other than water in, and having telephones on  
24 during trial.

25 MR. BANKS: Yes, Your Honor, and we have notified



1 the people in the gallery to adhere to those rules, as  
2 well.

3 THE COURT: All right. We are going to post  
4 something. I never have posted it, but we will post it so  
5 people know. But you have need to understand, the jury  
6 are very observant. They notice what is going on around  
7 them. So people who sit in the back need to know they are  
8 being watched, as well.

9 MR. BANKS: Okay, thank you.

10 THE COURT: All right. Anything further?

11 MS. HAZRA: No, Your Honor.

12 THE COURT: Anything further from the defendants?

13 MR. BANKS: No, Your Honor.

14 THE COURT: All right. Ms. Barnes, please bring in  
15 the jury.

16 MS. HAZRA: Would you like Special Agent Smith to  
17 go to the stand now.

18 THE COURT: Yes. Why doesn't he retake the stand  
19 at this point.

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

22 THE COURT: You may be seated.

23 Welcome back.

24 THE COURT: Ms. Hazra, you may proceed.

25 MR. KIRSCH: Thank you, Your Honor.

1                   **SPECIAL AGENT JOHN SMITH**

2       having been previously duly sworn, testified as follows:

3                   **DIRECT EXAMINATION (Cont'd)**

4       **BY MS. HAZRA:**

5       Q.     Special Agent Smith, I would like to again pick up  
6       not where we left off, but moving on.

7               In the course of your investigation, did you have  
8       an opportunity to investigate the various addresses  
9       related to the entities involved?

10      A.     Yes, I did.

11              MS. HAZRA: Your Honor, at this time I would ask  
12      permission to publish Government's Exhibit 150.01, which  
13      has already been admitted.

14              THE COURT: 150.01 may be published.

15              MS. HAZRA: Mr. Kirsch, if you could highlight the  
16      address in the second portion there.

17      Q.     (BY MS. HAZRA) Special Agent, could you --

18              THE COURT: The jurors' screens are not on.

19      Q.     (BY MS. HAZRA) Special Agent, can you identify the  
20      entity we are seeing up on the screen right now?

21      A.     Yes. The entity is SWV.

22      Q.     And is there a particular address listed for that?

23      A.     Yes, there is.

24      Q.     Based on your investigation, is this entity an  
25      address supplied to several staffing companies?

1 A. Yes, it was.

2 Q. And generally on what document was it supplied?

3 A. I saw it on credit applications.

4 Q. Submitted by whom?

5 A. By DKH or IRP.

6 Q. Did you have an occasion to go to that address that  
7 is listed there?

8 A. Yes, I did.

9 Q. Specifically 7645 North Union Boulevard, Suite 441?

10 A. Yes.

11 Q. What is at that address?

12 A. That address is a UPS Store, or formerly called Mail  
13 Boxes Etc. It is a place that has post office boxes. It  
14 is not an office building with actual suites.

15 MS. HAZRA: Next, Your Honor, if I could have  
16 permission to publish Government's Exhibit 32, which has  
17 previously been admitted into evidence.

18 THE COURT: You may.

19 MS. HAZRA: Mr. Kirsch, if you could highlight the  
20 address at the top there.

21 Q. (BY MS. HAZRA) Special Agent, if you could please,  
22 for the record, identify what address is being highlighted  
23 in Government's Exhibit 32?

24 A. Yes. That is the same address, 7645 North Union  
25 Boulevard, No. 432, Colorado Springs, Colorado.

1 Q. What is the company for whom that address is being  
2 supplied?

3 A. Leading Team, Inc.

4 Q. And did you have an occasion to go to that address?

5 A. Yes, I did.

6 Q. What is that address?

7 A. The UPS Store.

8 Q. Is it the same UPS Store that had the SWV address?

9 A. Yes, it is.

10 Q. So what does No. 432 indicate?

11 A. 432 is just a P.O. Box at that UPS Store.

12 Q. And, just for the record, Special Agent, what is  
13 Government's Exhibit 32?

14 MS. HAZRA: And Mr. Kirsch, may have to back out to  
15 show you.

16 THE WITNESS: 32.00, that is an invoice from a  
17 staffing company called Adecco Technical to Leading Team  
18 at the address we just talked about.

19 MS. HAZRA: Last, Your Honor, I would ask  
20 permission to publish Government's Exhibit 440.01, which  
21 has just been admitted into evidence.

22 THE COURT: I am sorry, yes, it may be admitted  
23 into evidence.

24 MS. HAZRA: Thank you.

25 First, Mr. Kirsch, if you could highlight the

1 bottom there under "Trade References."

2 Q. (BY MS. HAZRA) Special Agent, is this the same SWV,  
3 Inc., that we were discussing in the prior exhibit?

4 A. Yes, it is.

5 Q. With the same address?

6 A. Yes.

7 Q. Is there a handwritten notation in there related to  
8 that company?

9 A. Yes, there is.

10 Q. What is that?

11 A. "L/M Sylvia McGee."

12 MS. HAZRA: And now, Mr. Kirsch, if you could back  
13 out of this that is highlighted.

14 Q. (BY MS. HAZRA) And just if you could identify what  
15 Government's Exhibit 440.01 is, for the record.

16 A. Yes. 440.01 is a credit application submitted by DKH  
17 Enterprises to The Job Store Staffing Services.

18 MS. HAZRA: And then, Mr. Kirsch, if you could  
19 highlight the top, the address with the company.

20 Q. (BY MS. HAZRA) Special Agent, did you have an  
21 opportunity to go to the address that is listed in the "A"  
22 section under "Company"?

23 A. Yes, I did.

24 Q. What is that address, and who is the entity it is  
25 associated with?

1 A. That address that is on the screen; 4164 Austin  
2 Bluffs Parkway, Suite 171, Colorado Springs, Colorado.  
3 And it is affiliated with DKH Enterprises.

4 Q. And what was at that address when you went there?

5 A. That is a UPS Store, formerly a Mail Boxes Etc. That  
6 is just a post office box. It is not an office building  
7 with a suite.

8 Q. Yesterday we were talking about your participation in  
9 a search warrant at the premises of DKH, IRP and Leading  
10 Team.

11 A. Yes.

12 Q. As part of that search, I believe the FBI came up  
13 with an identification system; is that correct?

14 A. Yes, we did.

15 Q. And what was that identification system pertaining  
16 to?

17 A. The identification system labeled offices and cube  
18 areas, so we would know -- have a unique identifier for  
19 each area.

20 Q. And what was the purpose of designating each area  
21 that was searched with a unique identifier?

22 A. That way we could label it and we would know if we  
23 took something from that area, where it came from.

24 Q. Primarily what was taken from those areas?

25 A. You know, we took paper documents relating to the

1 staffing companies and other time cards, invoices, other  
2 things related to our case.

3 Q. And did you also conduct any imaging of computers  
4 there?

5 A. Yes, we did.

6 Q. Was each area assigned a letter?

7 A. Yes, it was.

8 Q. Special Agent, what -- whose office or what area  
9 searched was related to room F?

10 A. Room F was Clinton Stewart's office.

11 Q. And what was the area that was assigned designation  
12 room N, as in Nancy?

13 A. I remember a Nancy Nancy.

14 Q. What was Nancy Nancy?

15 A. NN was David Banks' office.

16 Q. And how about room P?

17 A. Room P was the office of Gary Walker.

18 Q. And whose office was room T, as in Tom?

19 A. Room T, as in Tom, was Mr. Demetrius Harper's office.

20 Q. And how about the area associated with room Z, as in  
21 zebra?

22 A. That was the office of Amos Clark.

23 Q. As part of your search, Special Agent, were there  
24 letters assigned to receptionist areas?

25 A. Yes, there were.

1 Q. And what were the areas identified by the letters N  
2 and M, as in Mary?

3 A. The letter N, as in Nancy, was a desk of a  
4 receptionist. And the letter M, as in Mary, was an office  
5 that would have been for a receptionist.

6 Q. You just said that you took several documents related  
7 to your investigation in this case and so on during the  
8 search.

9 MS. HAZRA: I would ask at this time permission to  
10 publish Government's Exhibit 1E, Your Honor.

11 THE COURT: You may.

12 Q. (BY MS. HAZRA) What is 1E, Special Agent Smith?

13 A. Exhibit 1E is a time card from the staffing company  
14 Talent Tree for the employee that was hired by them named  
15 Gary Walker, for the customer DKH Enterprises, approved by  
16 Demetrius Harper.

17 Q. Is this one of the documents that was found during  
18 the search?

19 A. Yes, it was.

20 Q. And is the time card for a particular time period of  
21 hours worked?

22 A. Yes, it is.

23 Q. And can you identify that, if you are able to?

24 A. Yes. It is from -- the hours, as reported on this  
25 card are from -- start on 7/28/2003, and end on 8/2/2003,



1 with a week ending date in the bottom left-hand corner  
2 there of 8/3/03.

3 MS. HAZRA: Thank you, Mr. Kirsch.

4 Next, Your Honor, I would ask permission to publish  
5 stipulated Exhibit 446.02.

6 THE COURT: 446.02 may be published.

7 Q. (BY MS. HAZRA) Special Agent, was this another  
8 document that was connected to your investigation?

9 A. Yes, it was, or it is.

10 Q. And what is -- can you just please describe this  
11 document for the record.

12 A. Yes. 446.02 is a letter from DKH Enterprises, signed  
13 by Mr. Harper, president of DKH, to a staffing company  
14 representative for the staffing company Job Store, Inc.  
15 talking about outstanding invoices; \$45,000, and a payment  
16 schedule arrangement.

17 MS. HAZRA: Thank you.

18 Next, Your Honor, I would ask permission to publish  
19 Government's Exhibit 601.01, which is stipulated.

20 THE COURT: 601.01 may be published.

21 Q. (BY MS. HAZRA) Special Agent, was this a document  
22 that was found during the search?

23 A. Yes, it was.

24 THE COURT: Actually, I am sorry, 601.01, it needs  
25 to be admitted.

1           It is admitted, and it may be published.

2           (Exhibit No. 601.01 is admitted.)

3           MS. HAZRA: I apologize, Your Honor. I am so  
4   sorry.

5   Q.    (BY MS. HAZRA) What is Government's Exhibit 601.01?

6   A.    601.01 is a time card from -- kind of the middle of  
7   the screen you see it is from Professional Staffing  
8   Solutions, LLC. That is the company. The employee's name  
9   is Charlisa Stewart. And it is approved by -- well, it's  
10   company name is DKH Enterprises, and there is an approval  
11   signature. And you notice there are no hours on the card.

12   Q.    So it is a blank time card, essentially?

13   A.    Yes.

14   Q.    I believe you talked yesterday about Ms. Stewart.  
15   Based on your investigation, what role, if any, did she  
16   have with the company?

17   A.    Yes. Charlisa Stewart, she obviously was an employee  
18   there, and she is the sister of David Banks. And she is  
19   married to the gentleman we discussed yesterday, Clifford  
20   Stewart, who is the brother of Clinton Stewart.

21   Q.    And as far as we can tell, there are no hours  
22   reflected in this blank time card?

23   A.    That's correct.

24           MS. HAZRA: If I could next move to admit and  
25   publish, Your Honor, Government's stipulated Exhibit

1 608.60?

2 THE COURT: 608.80?

3 MS. HAZRA: 608.60, Your Honor.

4 THE COURT: 608.60 will be admitted, and it may be  
5 published.

6 (Exhibit No. 608.60 is admitted.)

7 MS. HAZRA: If you could highlight that top  
8 portion.

9 Q. (BY MS. HAZRA) Is this another document that was  
10 seized during the search warrant, Special Agent?

11 A. Yes, it was.

12 Q. What is Government's Exhibit 608.60?

13 A. This is an e-mail message from Demetrius Harper to  
14 Ken Barnes, with a subject of "Staffing Companies." And  
15 there is some handwritten notes on the right side that you  
16 guys can see. "Too small." "Good number." And lists  
17 some staffing companies on the left side that are typed  
18 out.

19 MS. HAZRA: Thank you.

20 I would next move to admit and publish stipulated  
21 Government's Exhibit 608.61.

22 THE COURT: It will be admitted, and may be  
23 published.

24 (Exhibit No. 608.61 is admitted.)

25 Q. (BY MS. HAZRA) And how did you come to acquire this

1 document, Special Agent?

2 A. It was seized during the search warrant.

3 Q. And what is Government's Exhibit 608.61?

4 A. It is an e-mail from Demetrius Harper to Ken Barnes,  
5 subject of "Staffing Update." And, again, it has  
6 handwritten notes on the side, and it lists some company  
7 names typed on the left.

8 Q. Is the date of this e-mail November 18, 2003?

9 A. Yes, correct.

10 MS. HAZRA: I next move to admit and publish  
11 stipulated Government's Exhibit 608.62.

12 THE COURT: 608.62 is admitted and may be  
13 published.

14 (Exhibit No. 608.62 is admitted.)

15 Q. (BY MS. HAZRA) Special Agent, how did you come to  
16 acquire 608.62?

17 A. The same way, during the search warrant.

18 Q. For the record, what is Government's Exhibit 608.62?

19 A. Yes. This is an e-mail from Demetrius Harper to Ken  
20 Barnes dated November 19, 2003. Also cc'd is Clinton  
21 Stewart. Subject "Staffing Updates." Again, it lists  
22 staffing companies on left-hand side typed out,  
23 handwritten notes on the right-hand side.

24 Q. And there is also a list of states on the bottom  
25 portion; is that right?

1 A. Yes. It talks about the American Staffing  
2 Association, and states below that.

3 MS. HAZRA: I would next move to admit and publish,  
4 Your Honor, Government's stipulated 608.63.

5 THE COURT: 608.63 will be admitted, and it may be  
6 published.

7 (Exhibit No. 608.63 is admitted.)

8 Q. (BY MS. HAZRA) And how did you come to acquire this  
9 document, Special Agent?

10 A. This document was acquired during the search warrant.

11 Q. And what is Government's Exhibit 608.63?

12 A. 608.63 is an e-mail from Demetrius Harper to Gary  
13 Walker, dated November 12, 2003, subject "Staffing  
14 Companies." That is the top e-mail. Then the bottom,  
15 that is the reply to the bottom e-mail from Gary Walker to  
16 Demetrius Harper and Ken Barnes, dated November 11, 2003,  
17 subject "Staffing Companies."

18 Q. Special Agent, do there appear to be both typed --  
19 typing and handwritten notations on this?

20 A. Yes, there does. Yes.

21 Q. And some scratching out marks?

22 A. Yes.

23 MS. HAZRA: And if you could just kind of highlight  
24 the second e-mail, just to make it easier to see,  
25 Mr. Kirsch.

1 Q. (BY MS. HAZRA) And does these appear to be  
2 handwriting right next to the scratched out names of  
3 staffing companies?

4 A. Yes.

5 Q. And this is not your handwriting, is it, Special  
6 Agent?

7 A. No.

8 MS. HAZRA: At this point in time, Your Honor, I  
9 would ask permission to -- I would move to admit and ask  
10 permission to publish stipulated Government's Exhibit  
11 608.73, but only page 7 of that exhibit?

12 THE COURT: To admit only page 7 or to publish?

13 MS. HAZRA: Admit and publish only page 7.

14 THE COURT: Any objection to only page 7 of that  
15 stipulated Exhibit 608.73?

16 MR. WALKER: May we have a moment, Your Honor?

17 THE COURT: You may.

18 MR. WALKER: No objection, Your Honor.

19 THE COURT: Page 7 of 608.73 may be admitted, and  
20 it may be published.

21 (Exhibit No. 608.73, page 7 is admitted.)

22 Q. (BY MS. HAZRA) Okay. Special Agent, if you could  
23 first direct your attention to the top, and we can maybe  
24 identify the various people listed.

25 MS. HAZRA: Mr. Kirsch, if you can highlight that

1 top paragraph.

2 Q. (BY MS. HAZRA) You see there is a "Per" there. Who  
3 is the two pers listed?

4 A. Yes. "Per Clint." And at the bottom, second  
5 sentence from the bottom, "Per Gary."

6 MS. HAZRA: And then is there a way to scroll down,  
7 Mr. Kirsch?

8 Q. (BY MS. HAZRA) And then who is the individual  
9 identified in this initial first sentence?

10 A. Yes, that individual is "To Demetrius."

11 Q. I would direct your attention to the middle of that,  
12 about the sentence that starts "After so many invoices  
13 come in -- "

14 A. Okay.

15 Q. "-- common sense tells you, they want those invoices  
16 paid." Are invoices often the term staffing companies use  
17 for their bills?

18 A. Yes.

19 Q. There is a reference to "W2 angle" and "1099." Is  
20 that right?

21 A. Yes.

22 Q. Then that last sentence, is that also part of the "To  
23 Demetrius"? "Also, everyone up here should be including  
24 over time, due to the fact, you mind (sic) as well get the  
25 most of it."

1 A. Yes.

2 Q. After that line is there a new individual identified?

3 A. Yes, there is.

4 Q. Who is the new individual that is identified below  
5 that line?

6 A. "Per David."

7 Q. And does this seem to be -- I believe Today's  
8 Staffing is referenced in this; is that correct?

9 A. Yes.

10 Q. Is that one of the staffing companies you encountered  
11 in the course of your investigation?

12 A. Yes.

13 MS. HAZRA: I would next ask for permission to  
14 publish -- to move to admit and publish Government's  
15 Exhibit 609.03. Actually, Your Honor, I believe that this  
16 has already been admitted. I apologize. May I have just  
17 one moment to check?

18 THE COURT: Yes, it is already admitted.

19 MS. HAZRA: Thank you.

20 THE COURT: 609.03?

21 MS. HAZRA: Yes. Then we can move on. I would ask  
22 permission to move into evidence and publish Government's  
23 Exhibit 609.04.

24 THE COURT: 609.04 will be admitted, and may be  
25 published.



1 (Exhibit No. 609.04 is admitted.)

2 MS. HAZRA: Thank you, Your Honor.

3 Q. (BY MS. HAZRA) Special Agent, first of all, how did  
4 Government's Exhibit 609.04 come into the Government's  
5 possession?

6 A. This item, or Exhibit 609.04 is something we seized  
7 during the search warrant.

8 Q. What is the first page of Government's Exhibit  
9 609.04?

10 A. It is an image of the item we seized. It is a folder  
11 with the name David Banks on it.

12 Q. And I would direct your attention to the second page  
13 of Government's Exhibit 609.04. What is the second page?

14 A. Yes. The second page of this exhibit is a time card  
15 from the company Robert Half Technology. The consultant  
16 that worked the hours was David Banks, who reported to  
17 Dave Zirpolo.

18 Q. And then if you continue through this Government  
19 exhibit. First of all, what is the client's name on this  
20 second page, Special Agent?

21 A. Yes. The client's name is Leading Team, Inc.

22 Q. And if you would then turn to page 11 on the same  
23 exhibit, Government's Exhibit 609.04. Just to clarify,  
24 these were all contained within this one manila folder?

25 A. Yes. So the stuff we are seeing was all in that

1 folder.

2 Q. Okay. What is this -- what is page 11 in that  
3 folder?

4 MS. HAZRA: If you could -- thank you, Mr. Kirsch.

5 Q. (BY MS. HAZRA) What is this top portion?

6 A. Yes. This is a time reporting card from the staffing  
7 company Kforce Professional Staffing, for the consultant  
8 Esther Bailey, and the company/client is Leading Team.

9 Q. And are there some hours reported there?

10 A. Yes.

11 MS. HAZRA: And this -- then, if you could scroll  
12 down to the bottom, Mr. Kirsch.

13 Q. (BY MS. HAZRA) Does this time card appear to bear  
14 any signatures?

15 A. Yes.

16 Q. And whose are the signatures that appear there?

17 A. Well, there are two signatures; the consultant,  
18 Esther Bailey, then the client or approver is David  
19 Zirpolo.

20 Q. If you could turn to the paper copy of 609.04. Are  
21 there a number of similar-type time cards like that? Are  
22 there a number of similar-type time cards from Esther  
23 Bailey approved by David Zirpolo?

24 A. Yes.

25 Q. And prior to those, in that same folder, are there a

1 number of similar time cards that we saw -- actually, no.

2 MS. HAZRA: Sorry, Mr. Kirsch, to jump around on  
3 you. If you could please turn to page 3 of Government's  
4 Exhibit 609.04.

5 Q. (BY MS. HAZRA) What is page 3 of the same exhibit,  
6 Special Agent?

7 A. Yes. Page 3 of this exhibit is an invoice from a  
8 staffing company, Robert Half Technology, sent to for  
9 payment to Gary Walker of Leading Team per the work of  
10 David Banks.

11 Q. And are there a number of similar-type pages in  
12 Government's Exhibit 609.04?

13 A. Yes.

14 Q. For different weeks?

15 A. Yes.

16 Q. And, then, Special Agent, if I could direct your  
17 attention --

18 MS. HAZRA: And, Mr. Kirsch, if you could turn to  
19 page 25 of this exhibit.

20 Q. (BY MS. HAZRA) What is on page 25 of Government's  
21 Exhibit 609.04?

22 A. Okay.

23 Q. What is the top portion? Let's start with that.

24 A. The top portion that is on the screen is a time card  
25 from the staffing company Kforce Professional Staffing.

1 Consultant is Esther Bailey. The client, Leading Team,  
2 Inc. And there is hours reported; 60 hours.

3 Q. So that is similar to the previous time card we saw?

4 A. Yes.

5 Q. If I could direct your attention to the bottom  
6 portion of that time card.

7 MS. HAZRA: Mr. Kirsch, if you could focus on the  
8 signature portion.

9 Q. (BY MS. HAZRA) Is there a difference between this  
10 page 25 that we saw in the previous Kforce time card that  
11 we saw related to Ms. Bailey?

12 A. Yes, there is.

13 Q. What is there?

14 A. There is a different approver on this time card.

15 Q. Who is that?

16 A. This one is approved by Gary Walker.

17 Q. And then last -- and, first of all, are  
18 similar-type -- is this the only -- well, strike that.  
19 Sorry, Your Honor.

20 If I can now direct your attention to page 26 of  
21 this exhibit. What is page 26 of this exhibit?

22 A. Okay. This is another time card, but the company  
23 this time is Analysts International. And the customer  
24 name is Leading Team. Then below that is the time period  
25 for Esther Bailey. This is approved by Gary Walker.

1 Q. And are there a number of similar-type time cards for  
2 Analysts International in this folder that is labeled that  
3 came from David Banks?

4 A. Yes.

5 MS. HAZRA: I would next move to admit and publish,  
6 Your Honor, stipulated Government's Exhibit 609.05.

7 THE COURT: 609.05 is stipulated. It will be  
8 admitted, and it may be published.

9 (Exhibit No. 609.05 is admitted.)

10 Q. (BY MS. HAZRA) Special Agent, how did you -- how did  
11 Government's Exhibit 609.05 come into your possession?

12 A. Yes. The same as the last one. We got this during  
13 the search warrant.

14 Q. What is the first page of Government's Exhibit  
15 609.05?

16 A. It is a copy of the outside of the folder that we  
17 seized that is labeled Gary Walker.

18 Q. And, to clarify, how would this have been known to be  
19 a folder of Gary Walker?

20 A. Well, it is labeled with his name, that is one thing.  
21 And then it would have been taken out of his office that  
22 we labeled.

23 Q. And I would direct your attention to page 3 of  
24 Government's Exhibit 609.05. And can you please identify  
25 what we find on page 3.

1 A. Yes. Page 3 is an invoice from the staffing company  
2 Robert Half Technology, sent to Leading Team, for the work  
3 done by an employee named Gary Walker.

4 Q. And are there several similar-type invoices in this  
5 folder?

6 A. I would need to get a copy.

7 MS. HAZRA: Oh, I apologize.

8 Ms. Barnes, if we could have 609.05, and 609.06.

9 THE WITNESS: Okay.

10 Q. (BY MS. HAZRA) What you are seeing there, are there  
11 several additional copies of that with different dates?

12 A. Yes. There are several copies with different time  
13 periods.

14 Q. Who is the report to supervisor for this page 3?

15 A. Right in the middle of the screen, the third column  
16 from the left, the report to is Clinton Stewart.

17 Q. I would next direct your attention to page 11 of  
18 Government's Exhibit 609.05. Can you please identify that  
19 for the record.

20 A. Yes. This is a time card from the staffing company  
21 Robert Half Technology, for the consultant. Who reported  
22 the hours on this time, was Gary Walker. Client was  
23 Leading Team. And the report to is David Zirpolo.

24 Q. Next, if I could direct your attention to page 12 of  
25 Government's Exhibit 609.05. And what is page 12 of that

1 exhibit?

2 A. Yes. Page 12 is a time card from Kforce Professional  
3 Staffing. The consultant at this time is Amos Clark. The  
4 client is LTI. And there is hours reported on here.

5 Q. And if you could scroll down to the bottom. And if  
6 you could highlight the signature portion. What  
7 signatures appear at the bottom of page 12 of this  
8 exhibit?

9 A. Yes. There are two signatures. The person that --  
10 for the hours, is Amos Clark. Then the supervisor  
11 approval is David Zirpolo.

12 Q. And are there several of these time cards contained  
13 within the folder labeled Gary Walker?

14 A. Yes.

15 Q. Different dates?

16 A. Yes, the dates are different.

17 Q. Next I would direct your attention to page 32 of  
18 Government's Exhibit 609.05. And if you could first of  
19 all identify the top portion for the record.

20 A. Yes. It is a Kforce Staffing time card. Consultant  
21 this time is Willie Pee. Client is Leading Team, Inc.  
22 And hours reported, for a total of 60 hours.

23 Q. If you could now turn to the bottom, the signature  
24 portion of that. And, again, do the signatures appear at  
25 the bottom of this time card for Willie Pee?

1 A. Yes, there are signatures at the bottom.

2 Q. And whose signatures do those appear to be?

3 A. Again, there are two signatures. The first that  
4 reported the hours is Willie Pee. And the other signature  
5 is the client supervisor, David Zirpolo.

6 Q. And I would direct your attention to the next page of  
7 Government's Exhibit 609.05, which is page 33. What is  
8 the information at the top there?

9 A. Okay. It is a Kforce time card. Consultant Willie  
10 Pee, again. And Leading Team, Inc. And hours reported,  
11 for total of 60 hours.

12 Q. I would direct your attention to the bottom portion  
13 of this time card. Does the bottom portion differ from  
14 the previous time card we saw on page 32?

15 A. Yes.

16 Q. And what is the difference?

17 A. This time the client approver is Gary Walker. The  
18 previous one was David Zirpolo.

19 Q. Next I would direct your attention to page 34 of this  
20 exhibit. And what is on page 34 of Government's Exhibit  
21 609.05?

22 A. Yes. Page 34 is a time card from the staffing  
23 company Analysts International. The customer name is  
24 Leading Team. The consultant is Willie Pee. There is  
25 hours reported. And this was approved by Gary Walker.



1 Q. And do there appear to be several of those in this  
2 exhibit?

3 A. Yes.

4 Q. Thank you, Special Agent. I would next direct your  
5 attention?

6 MS. HAZRA: I would move to admit and publish, Your  
7 Honor, stipulated Government's Exhibit 609.06.

8 THE COURT: 609.06 will be admitted, and it may be  
9 published.

10 (Exhibit No. 609.06 is admitted.)

11 Q. (BY MS. HAZRA) Special Agent, how did you obtain  
12 Government's Exhibit 609.06?

13 A. Yes. This was obtained during the search warrant.

14 Q. And what is the first page of Government's Exhibit  
15 609.06?

16 A. Yes. It is an image of the outside of a folder, and  
17 it is labeled Demetrius Harper.

18 Q. And it is similar to the previous folders we have  
19 looked at in the last two exhibits?

20 A. Yes.

21 Q. I would direct your attention to the second page of  
22 Government's Exhibit 609.06. What is that second page?

23 A. Yes. This is an invoice from the staffing company  
24 Robert Half Technology, to the attention of Gary Walker at  
25 Leading Team, for the work done by Demetrius Harper. It

1 says "Dem Harper" here. And the report to supervisor is  
2 David Banks.

3 Q. And are there a couple of these in Demetrius Harper's  
4 folder, with different times?

5 A. Yes.

6 Q. I would next direct your attention to page 6 of this  
7 exhibit. It is not the best copy, but if you could  
8 identify what is at page 6.

9 A. Time reporting card for the company Robert Half  
10 Technology. The client is Leading Team. The person that  
11 is reporting the hours depicted in the top right is  
12 Demetrius Harper. And the report to person and the  
13 approver is Dave Zirpolo.

14 Q. And are there several similar-type documents  
15 contained within this folder?

16 A. Yes.

17 Q. I would next direct your attention to page 10 of  
18 Government's Exhibit 609.06. And if you could just  
19 identify this top portion first.

20 A. Yes. This is a time card for the staffing company  
21 Kforce Professional Staffing. The person that reported  
22 the hours on this card is Shaun Haughton. The client is  
23 Leading Team, Inc., and 34 hours.

24 Q. If I could direct your attention to the bottom  
25 portion. What are the signatures that appear at the

1 bottom?

2 A. Yes. The signatures at the bottom, the first one,  
3 Shaun Haughton, is the person that reported the work. And  
4 the approver is David Zirpolo.

5 Q. And are there a number of similar-type time cards  
6 with different dates contained within this exhibit?

7 A. Yes.

8 Q. I would next direct your attention to page 24 of the  
9 same exhibit, Government's Exhibit 609.06. Does there  
10 appear to be, at least at the top, a time card with the  
11 same individual we have been discussing, Shaun Haughton?

12 A. Yes.

13 Q. I would direct your attention to the bottom portion.  
14 Is there a difference between this time card and the ones  
15 we have previously been discussing?

16 A. Yes.

17 Q. What is that?

18 A. This one is signed by Gary Walker as the approver,  
19 and the other ones were signed by David Zirpolo.

20 Q. And then if you could turn to the next page, Special  
21 Agent, page 25 of the Government's Exhibit 609.06. What  
22 is this page?

23 A. Yes. This is a Kforce time card. The consultant  
24 this time is Michael Benjamin. And the same client  
25 Leading Team, Inc. And there are hours reported.

1 MS. HAZRA: And then if you could go down to the  
2 bottom, Mr. Kirsch.

3 Q. (BY MS. HAZRA) And I direct your attention to the  
4 bottom, Special Agent. Whose signatures appear to be at  
5 the bottom there?

6 A. Yes. The person who reported the hours is Michael  
7 Benjamin, the top signature. And the client approver is  
8 David Zirpolo.

9 Q. And are there a number of these time cards contained  
10 within this exhibit?

11 A. Yes.

12 Q. With different dates?

13 A. Yes.

14 Q. I would next direct your attention to page 30 of  
15 Government's Exhibit 609.06. Is this also a time card for  
16 Michael Benjamin?

17 A. Yes, it is.

18 Q. And what is the company that is involved?

19 A. Again --

20 Q. From Kforce?

21 A. Yes. It is a Kforce time card.

22 Q. I would direct your attention to the bottom portion,  
23 however, the signature portion. Is there a difference  
24 between this time card found on page 30, and the previous  
25 one we were looking at for Mr. Benjamin?

1 A. Yes, there is.

2 Q. What is that?

3 A. This time card is approved by Gary Walker. The  
4 previous one was approved by Mr. David Zirpolo.

5 Q. Next I direct your attention to page 31 of  
6 Government's Exhibit 609.06. What is this page?

7 A. This is a time card that relates to the staffing  
8 company Analysts International. The customer is Leading  
9 Team, Inc. Michael Benjamin is the consultant who  
10 reported the hours, approved by Mr. Gary Walker.

11 Q. So on page 31 of the Government's exhibit, it is the  
12 same consultant and same customer approver, but a  
13 different company; is that right --

14 A. Yes.

15 Q. -- as the one we just looked at?

16 A. Correct.

17 Q. And are there several of these similar-type time  
18 cards with different dates contained within this exhibit?

19 A. Yes.

20 MS. HAZRA: Could I have one moment, Your Honor?

21 THE COURT: You may.

22 Q. (BY MS. HAZRA) I am sorry, Ms. Barnes, I have a few  
23 more exhibits. If you could please get 700.05 and 700.06.

24 MS. HAZRA: Your Honor, I believe 700 .05 has  
25 already been admitted into evidence.

1 THE COURT: It has been.

2 MS. HAZRA: I would ask permission to publish it  
3 again.

4 THE COURT: Yes.

5 MS. HAZRA: Mr. Kirsch, if you could focus in first  
6 of all on the text right now.

7 Q. (BY MS. HAZRA) Special Agent Smith, what is  
8 Government's Exhibit 700.05?

9 A. Yes. 700.05 is an official document from the  
10 Secretary of State in Colorado for -- it is called  
11 Application for Authority, for the company SWV, Inc.

12 Q. And you will see --

13 MS. HAZRA: If you could scroll down, Mr. Kirsch,  
14 to the officers down there, the president and the  
15 signature at the bottom.

16 Q. (BY MS. HAZRA) What is the information contained on  
17 this highlighted portion?

18 A. Yes. These are the officers of that company, SWV,  
19 Inc., and their names and business address.

20 Q. And is that business address different from the one  
21 that you found was to be a UPS Store?

22 A. Yes, this is different.

23 Q. And I believe you've already discussed the  
24 relationship among these people, but based on your  
25 investigation, did you find documents in the search

1 warrant related to any of these people?

2 A. Yes.

3 Q. And who were those individuals?

4 A. Three of the four individuals -- I will start at the  
5 top, Lawanna Clark. Then the one listed as vice  
6 president, Yolanda Walker. And then the bottom one, I  
7 think that is treasurer, is Charlisa Stewart.

8 Q. And you found documents relating to them when you  
9 executed the search warrant on the premises of IRP?

10 A. Yes.

11 MS. HAZRA: Your Honor, at this point I ask  
12 permission to move to admit and publish certified document  
13 700.06.

14 THE COURT: Any objection from the defendants?

15 MR. WALKER: No objection, Your Honor.

16 THE COURT: 700.06 will be admitted.

17 (Exhibit No. 700.06 is admitted.)

18 MS. HAZRA: If you would highlight corporate name  
19 on down so it can be seen a little easier.

20 Q. (BY MS. HAZRA) Special Agent, could you identify  
21 Government's Exhibit 700.06.

22 A. Yes. 700.06 is another State of Colorado official  
23 record related to the company SWV, Inc.

24 Q. Has there been a change that appears concerning  
25 Ms. Lanita Pee?

1 A. Yes.

2 Q. What is that change?

3 A. It looks like -- if you see on the right-hand side,  
4 in the middle of the document, Charlisa Stewart, it looks  
5 like they made her the secretary/treasurer, and replaced  
6 Lanita Pee.

7 Q. Thank you, Special Agent. Based on your  
8 investigation, do you have any knowledge of who Lanita Pee  
9 is?

10 A. Yes, I do.

11 Q. Who is she?

12 A. She was David Banks' sister.

13 Q. Do you know if she was married or not?

14 A. Yes, I do.

15 Q. And what was the name of her spouse?

16 A. Her spouse was Willie Pee.

17 MS. HAZRA: If I could have one moment, Your Honor.  
18 I have nothing further.

19 THE COURT: All right. Thank you.

20 Mr. Banks, you may proceed.

21 MR. BANKS: Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. BANKS:**

24 Q. Mr. Smith -- Special Agent Smith, you just testified  
25 about a change in SWV of the secretary from Charlisa



1     Stewart to -- from Lanita Pee to Charlisa Stewart.

2     A.     Yes.

3     Q.     Were you aware that Lanita Pee died in 1998?

4     A.     I know that now, yes. I knew that before today.

5     Q.     So given that, would it be an issue, if a person is  
6     deceased, to change corporate executives?

7     A.     The corporation can change however they want to  
8     change it.

9     Q.     Exactly. Thank you.

10           Now, there has been -- the Government has provided,  
11     and you have provided a lot of testimony related to family  
12     relationships that you saw during the course of your  
13     investigation; is that correct?

14     A.     Yes. I became aware of these relationships during my  
15     investigation.

16     Q.     And the Government and yourself has provided  
17     continual evidence, if you will, regarding time sheets  
18     being signed by Gary Walker, Mr. Zirpolo, as related to  
19     some of these family members; is that correct?

20     A.     Yes. We had time cards that those people signed.

21     Q.     Is there something illegal with running a  
22     family-owned business?

23     A.     No.

24     Q.     Is there something illegal about families working for  
25     companies that might be ran by their family members?

1 A. Repeat that for me.

2 Q. Is it illegal for family members to work in other  
3 family members' businesses?

4 A. No.

5 Q. Okay. Now, is it also illegal -- let me get back to  
6 that.

7 During the course of your investigation, were there  
8 other individuals that worked for IRP, for Leading Team --

9 THE COURT: One at a time.

10 Q. (BY MR. BANKS) For IRP?

11 A. There were a lot of individuals that worked at IRP.

12 Q. Were these non-family individuals?

13 A. Yes.

14 Q. With regards to Leading Team, were there non-family  
15 individuals that worked for those companies?

16 A. I'm not sure about Leading Team, the records. I  
17 would have to see the time cards on that.

18 Q. Okay.

19 MR. BANKS: Your Honor, I would like to publish  
20 Exhibit 331.00 once again.

21 THE COURT: 331.00 may be published.

22 MR. BANKS: If you could scroll down, please. Go  
23 back up. Right there.

24 Q. (BY MR. BANKS) Is that -- who is the individual  
25 listed as the consultant's name on that time sheet?

- 1 A. Yes. The consultant is Jimmy D. West.
- 2 Q. Is James West related to anybody in the family of the  
3 defendants in this case?
- 4 A. Not that I am aware of.
- 5 Q. Other names I would like to see if you have any  
6 recollection. Lam Ha. Does that name ring a bell to you?
- 7 A. Yes.
- 8 Q. What about Mikel Nelson?
- 9 A. Yes.
- 10 Q. Are they related?
- 11 A. Not that I am aware of.
- 12 Q. What about David Gabrius?
- 13 A. I have never heard that name.
- 14 Q. Have you heard the name Aneeqa Rana?
- 15 A. Yes.
- 16 Q. Is she related to any of the members?
- 17 A. No.
- 18 Q. Paul Pinkney, is that name familiar to you?
- 19 A. Yes, it is.
- 20 Q. Was he a contractor at IRP?
- 21 A. Yes.
- 22 Q. Was he related?
- 23 A. Not that I am aware of.
- 24 Q. David Harrier, is that name familiar to you?
- 25 A. Yes, it is.

- 1 Q. Did he work for one of the companies?
- 2 A. Yes. He worked at DKH, Leading Team or IRP.
- 3 Q. Diane Lithwick?
- 4 A. Yes, I know that name.
- 5 Q. Did she work for any of these companies?
- 6 A. Yes. She worked for one of the three companies.
- 7 Q. Is she related to any of the defendants?
- 8 A. I'm not sure if she is related.
- 9 Q. Just a couple more names for you, then we may provide
- 10 some more a little later. Damon Curnell?
- 11 A. Yes, I know that name.
- 12 Q. Did he work and was staffed as a contract employee
- 13 with these companies?
- 14 A. Yes, he was.
- 15 Q. Abdulla Ali?
- 16 A. I'm not aware of that name.
- 17 Q. Okay. And Abhay Natsu?
- 18 A. Yes, I know that name.
- 19 Q. Did he work for IRP Solutions during the course of
- 20 them doing business?
- 21 A. He worked at one of the three companies.
- 22 Q. Okay. Now --
- 23 MR. BANKS: Could I have a moment, Your Honor?
- 24 THE COURT: You may.
- 25 Q. (BY MR. BANKS) The list of people I just mentioned

1 to you, were any of those related to the defendants in  
2 this case?

3 A. Not that I am aware of.

4 Q. Okay. Now, you have brought up the company SWV;  
5 correct?

6 A. Yes.

7 Q. Do you know what SWV does or what type of business  
8 they were in?

9 A. Not -- no.

10 Q. Did you know where their physical address was  
11 located?

12 A. I know what is on their corporation records.

13 Q. Did you go to the physical address?

14 A. I went to the address that is listed on their  
15 corporation records.

16 Q. A minute ago you said that you went to the mailing  
17 address, what I would say would be the 7645 North Union  
18 Boulevard address, and there was nothing there but a UPS  
19 Store; correct?

20 A. That is what is at that address, yes.

21 Q. So is there an issue with companies having a mailing  
22 address, in your mind, and a physical address?

23 A. No. I know companies have mailing addresses and  
24 sometimes -- have physical addresses and sometimes mailing  
25 addresses.

1 Q. So would you say in this instance, SWV had a physical  
2 address?

3 MS. HAZRA: Objection, Your Honor, lack of  
4 foundation.

5 THE COURT: Overruled.

6 THE WITNESS: I know that on their application,  
7 there was an address. And I have seen in my  
8 investigation, sometimes it is a box, but it is really --  
9 it says "suite," but it is not really a suite, it is just  
10 a mailbox. So I don't know if they had -- I just know  
11 that is the address I went and saw based on what is on  
12 their application.

13 Q. (BY MR. BANKS) You just said -- which applications,  
14 the application to the -- for the corporation? Because  
15 there was -- if you can recall, let me ask you this.

16 THE COURT: No statements just ask him a question.

17 Q. (BY MR. BANKS) Do you recall the address you saw on  
18 the State of Colorado Secretary of State application?

19 A. I would have to see it to confirm exactly which one  
20 it is. I mean, I saw that address for SWV on multiple  
21 documents.

22 Q. Which address did you see on multiple documents?

23 A. There is addresses for SWV on -- we saw it on  
24 documents that Ms. Hazra showed me. There is also one on  
25 the official Colorado records. So there is addresses. I

1 would have to see them to compare the two.

2 Q. I will bring that up for you in just a second.

3 Did you go to the physical address of SWV?

4 A. I went to the address that was listed as the address  
5 for SWV on your official State of Colorado records, and I  
6 confirmed that was a UPS Store.

7 Q. Okay.

8 MR. BANKS: May I have one moment, Your Honor?

9 THE COURT: You may.

10 MR. BANKS: Your Honor, may we move to publish  
11 700.05?

12 THE COURT: You may.

13 MR. BANKS: Could you scroll down, please. Stop  
14 right there.

15 Q. (BY MR. BANKS) Can you read the line starting the  
16 fourth -- or fifth, I am sorry.

17 A. Fifth --

18 Q. On the exhibit there in front of you.

19 A. I see.

20 MR. BANKS: He will highlight that.

21 THE WITNESS: The fifth.

22 Q. (BY MR. BANKS) What is the address there?

23 A. Yes. I know that address. 3958 North Academy, Suite  
24 104.

25 Q. Was that a physical address or mailing address?

1 A. That is a physical address.

2 Q. And did you go to that physical address?

3 A. Yes, I did.

4 MR. BANKS: Your Honor, permission to republish  
5 609.04.

6 THE COURT: You may.

7 Q. (BY MR. BANKS) Now, what is highlighted there, Agent  
8 Smith -- the address highlighted there, is that a physical  
9 address or mailing address, at least from your  
10 investigation?

11 A. I mean, the other address we just looked at, I  
12 believe, is 3958 North Academy. This is 3950 North  
13 Academy. I know the 3958 address is a physical address  
14 now. But this, I guess, is a few doors down from that.

15 Q. Did you have a chance to go to that address and  
16 verify that Leading Team had a physical address?

17 A. I went to 3958, the one on the previous screen?

18 Q. Yes.

19 A. At the time, when I would have checked this, IRP had  
20 moved to the location of the search. And this is Leading  
21 Team. And at that point it was at the other address where  
22 the search occurred.

23 Q. So the 7645 addresses that you mentioned earlier, and  
24 you say there was nothing there but a UPS Store/Mail Boxes  
25 Etc, those would be mailing addresses; is that correct, in



1 your opinion?

2 A. I know those were addresses used by the companies  
3 that said suite number. It looked like it said "suite,"  
4 but when I went there it was a UPS Store.

5 Q. Is that a common things to find boxes listed as suite  
6 numbers?

7 A. I have never seen it before this case.

8 Q. Okay. Did you interview, during the course of your  
9 investigation, any of the people we just -- I just  
10 mentioned that were not related to the members -- the  
11 defendants and/or their families in this case?

12 A. Yes, I did.

13 Q. And when did you interview them?

14 A. I don't have an exact date, but it was sometime after  
15 the initiation of the investigation.

16 Q. Is there a report on the investigation that was  
17 created for that?

18 A. Yes.

19 Q. Did you call any of these people before the grand  
20 jury?

21 MS. HAZRA: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q. (BY MR. BANKS) Now, in your mind -- or is there  
24 something wrong or illegal with patronizing your family's  
25 other business?

1 MS. HAZRA: Your Honor, I object as to the legality  
2 of this. It is seeking of legal opinion.

3 THE COURT: Sustained.

4 Q. (BY MR. BANKS) Did you, during the course of your  
5 investigation, did you find --

6 MR. BANKS: I will come back to that question, Your  
7 Honor.

8 Q. (BY MR. BANKS) When you interviewed these other  
9 individuals during the course of your investigation --  
10 we'll start with Mikel Nelson. What was his role in the  
11 company?

12 A. I don't know.

13 MS. HAZRA: Objection, Your Honor, to the extent it  
14 calls for hearsay.

15 THE COURT: Approach.

16 (A bench conference is had, and the following is  
17 had outside the hearing of the jury.)

18 THE COURT: You are going to go through each of  
19 these witnesses, one at a time?

20 MR. BANKS: I am trying to -- there is nothing in  
21 the record for these people. The Government has some  
22 selectivity in this case, and I would like to show how  
23 they were selective in their investigation with regards to  
24 this particular case.

25 THE COURT: And how is this relevant to the direct

1 examination? This seems to go beyond the scope of the  
2 direct.

3 MR. BANKS: We can bring him back in our direct --  
4 he is on our witness list -- if you like.

5 THE COURT: So do your direct of him at this time.

6 MR. BANKS: Do you want to wait and we can recall  
7 him? I will eliminate this line of questioning and we  
8 will call him back at that time.

9 MS. HAZRA: Thank you, Your Honor.

10 (The following is had in the hearing of the jury.)

11 Q. (BY MR. BANKS) Now, Special Agent Smith, you  
12 mentioned the family relationship associated here. Were  
13 there any other type of relationships that you found that  
14 tied all of these individuals together?

15 A. Yes.

16 Q. Can you explain what that is?

17 A. Yes. Through the course of the investigation, I  
18 became aware that there were lists and stuff that all  
19 these gentlemen and others that we mentioned, all attended  
20 the same church in Colorado Springs.

21 Q. Now, one final question. Did the individuals that  
22 you had admitted were not affiliated -- let me ask you  
23 this. Were the individuals listed that we just -- you  
24 just testified about, that were not related to us -- to  
25 the defendants in a family fashion, were they affiliated

1 with the church?

2 MS. HAZRA: I am going to object, Your Honor, it is  
3 beyond the scope.

4 THE COURT: I am going to overrule.

5 THE WITNESS: If you are talking about the majority  
6 of those names, I believe are not affiliated with the  
7 church.

8 Q. (BY MR. BANKS) Okay. Were those individuals --

9 MR. BANKS: That is all I have for right now, Your  
10 Honor.

11 THE COURT: Mr. Walker?

12 **CROSS-EXAMINATION**

13 **BY MR. WALKER:**

14 Q. Agent Smith, for the physical addresses that  
15 Mr. Banks just mentioned before; 3950, Suite B, North  
16 Academy Boulevard, the physical address for Leading Team,  
17 Inc., did the FBI perform surveillance at that location?

18 MS. HAZRA: Objection, Your Honor, relevance.

19 THE COURT: Response?

20 MR. WALKER: I'll rephrase my question, Your Honor.

21 THE COURT: All right.

22 Q. (BY MR. WALKER) Agent Smith, you mentioned that  
23 there was an address associated with Leading Team that you  
24 went to that was mailboxes -- a mailbox business; is that  
25 correct?

1 A. Well, the 3958, I said I went there. I don't  
2 remember going to 3950, because it had already moved to  
3 the other place. Then there was some -- as we talked  
4 about, these Mail Boxes Etc. that I don't know which  
5 companies, you know, had that. I know DKH had one. And  
6 then I don't know if I'd seen a Leading Team address for  
7 one or not.

8 Q. And in clarifying these addresses, when you performed  
9 -- prior to performing or executing the search warrant at  
10 IRP Solutions at 7350 Campus Drive, did you verify that  
11 that was the operating address for IRP Solutions?

12 A. Yes, I did.

13 Q. And prior to executing the search warrant at IRP  
14 Solutions at 7350 Campus Drive, did the FBI perform  
15 surveillance at that address?

16 MS. HAZRA: Objection, Your Honor, relevance.

17 THE COURT: What is the relevance?

18 MR. WALKER: Your Honor, we are going to get to  
19 establishing the work that was going on for the overtime  
20 hours at the business that would have been observed by the  
21 FBI.

22 THE COURT: I'll sustain.

23 Q. (BY MR. WALKER) Agent Smith, in performing your  
24 analysis on the business operations by IRP Solutions, did  
25 you in any way verify that business was being conducted at

1     that address?

2             MS. HAZRA:  Objection, Your Honor, relevance.

3             THE COURT:  I'm going to overrule just so we can  
4     move on.  You may answer.

5             THE WITNESS:  You mentioned "analysis."  And on  
6     that, I am taking it that before I could do a search of  
7     that location, I had to know it was IRP's business.  So  
8     the analysis that I would have done for the search was I  
9     drove over there.  I saw the IRP sign.  I knew it was on  
10    the second floor of that 7350 Campus Drive.  And also  
11    checked utilities, stuff like that, to confirm that IRP  
12    was physically in that location.  So that is the analysis  
13    that I did.

14    Q.     (BY MR. WALKER)  Okay.  But there was no  
15    investigation into people coming and going from that  
16    location?

17    A.     When I did -- what you are calling surveillance, when  
18    I went to that location, I did notice some things.  They  
19    are documented into a report.  But I don't have the  
20    report.  But I know I tried to maybe confirm vehicles that  
21    were related to people associated with those companies.

22    Q.     And with Leading Team being a party to the  
23    allegations, did you perform the same surveillance, or in  
24    my words, analysis for Leading Team?

25    A.     Yes.  I think these questions -- the analysis I had

1 to do to do the search was, I had to talk to all these  
2 staffing companies, also. And, you know, when you talk to  
3 these people -- you have heard them in the trial here.

4 They are telling me that Leading Team is the same as IRP.

5 So that is the analysis I did. Plus, I had the  
6 certification records and stuff like that. So that's part  
7 of the analysis that led to the execution of a search  
8 warrant.

9 Q. And given that statement, and the fact that Leading  
10 Team was associated, as we saw on exhibit -- Government's  
11 Exhibit 609.04, that listed that address for Leading Team.  
12 Did you also research that address, since it was  
13 associated with Leading Team?

14 A. Can you give me the address real quick?

15 Q. That address is 3950, Suite B, North Academy  
16 Boulevard, Colorado Springs?

17 A. The address that I had that I did the research on, as  
18 we talked about, was 3958. And the 3950, I don't remember  
19 that address.

20 MR. WALKER: Your Honor, may we republish 609.04?

21 THE COURT: You may.

22 Q. (BY MR. WALKER) That would be page 3 of that  
23 exhibit. And if you look there in the middle of the page,  
24 Agent Smith, you will see Leading Team, and then the  
25 address 3950 B, North Academy Boulevard. Is that what you

1 see, as well?

2 A. Yes, I see that address.

3 Q. And that is -- what is that document?

4 A. Well, this address 3950, I seized this document  
5 during the search warrant. So I wouldn't have done a  
6 surveillance or looked at that address before the search  
7 warrant, because this came from the search warrant.

8 Q. Okay. So given that timeline, do you now understand  
9 or agree that 3950 B was the physical address of Leading  
10 Team?

11 MS. HAZRA: Objection, Your Honor, lack of  
12 foundation.

13 THE COURT: Sustained.

14 Q. (BY MR. WALKER) Agent Smith, I'll go with your  
15 explanation that the timeline -- in the timeline --

16 THE COURT: No statements, just questions.

17 Q. (BY MR. WALKER) So given that timeline, did you,  
18 after conducting the search warrant, become aware that  
19 Leading Team had a physical address of 3950, Suite B,  
20 North Academy Boulevard?

21 A. That address is listed on this invoice. I've never  
22 -- I don't remember ever going to that address, and I  
23 can't tell you if it is physical or one of these UPS/Mail  
24 Boxes Etc. stores.

25 MR. WALKER: No further questions, Your Honor.



1 THE COURT: Anyone else? Mr. Barnes?

2 CROSS-EXAMINATION

3 BY MR. BARNES:

4 Q. Agent Smith, you mentioned seven letters that were  
5 tied to people's offices. You didn't mention where  
6 Mr. Barnes' office was. Do you know what letter that was?

7 A. Oh, absolutely.

8 Q. Can you tell me that letter?

9 A. Yeah. Your office was X, as in x-ray.

10 Q. Okay. So you showed exhibits -- there were 608.60,  
11 -.61, -.62, and they were e-mails. I think they were to  
12 Ken Barnes or from Ken Barnes. Where did you find those  
13 e-mails?

14 A. Those e-mails I looked at earlier with Ms. Hazra were  
15 from the search warrant.

16 Q. Do you remember whose office?

17 A. I would have to look at other records to tie that to  
18 the office.

19 Q. Okay. So were they from Mr. Barnes' office, if you  
20 remember?

21 MS. HAZRA: Objection, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: If I was provided with the entire set  
24 of FBI documentation from the search warrant, I could tell  
25 you where those came from.

1 Q. (BY MR. BARNES) These were not e-mails from the  
2 server, but actually printed out; correct? Since they had  
3 writing on them, you could assume they were printed out,  
4 would you agree?

5 A. Unless they were scanned into something.

6 Q. At some point somebody printed them out and somebody  
7 wrote on them. You got them in the search warrant,  
8 correct, not off the computer?

9 A. These could have been scanned into the computer.  
10 But, obviously, somebody had written on it at some point.

11 Q. Do you remember if you received those records off the  
12 computer, or were they papers that you picked up during  
13 the search warrant?

14 A. It is one of the two. They came from the --  
15 somewhere in the population of the IRP office. I could  
16 tie that to a room if I had to.

17 Q. But it is your testimony now you don't know where  
18 those came from?

19 A. I am not saying -- I couldn't tell you definitively  
20 right now what room, but there is data in the FBI file to  
21 prove what room this came from.

22 Q. So let's assume they were an e-mail. Did you see a  
23 reply to any of those e-mails from Mr. Barnes in the  
24 course of the investigation?

25 A. What do you mean assume it was an e-mail?

1 Q. Let's say, since you don't know if they were  
2 electronic or paper, you don't know how you picked them  
3 up. So if they were electronic, was -- was there a reply  
4 from Mr. Barnes for those e-mails, that you remember from  
5 the course of your investigation?

6 A. We seized a lot of documents, and you are talking  
7 about eight or nine e-mails we had up on the screen  
8 earlier. I can't tell you, off the top of my head. A  
9 reply might have been in those or somewhere in the other  
10 population of items we seized.

11 Q. So, really, you don't know where these came from, who  
12 wrote on them, what they mean, if there was any  
13 conversation going on, do you?

14 A. I don't agree with that. I know what they mean, and  
15 I know there is handwriting on there. And it can be  
16 proved through FBI documentation where they came from.

17 Q. So what do they mean?

18 A. You are talking about a lot. What do you mean  
19 "they"?

20 Q. You just said you knew what they mean?

21 THE COURT: Give him the document. You can't ask  
22 him a general question.

23 MR. BARNES: Can we publish, I think, 608.60?

24 THE COURT: All right. E-mail from Demetrius  
25 Harper to Ken Barnes, November 17, 2003.

1 Q. (BY MR. BARNES) Can you see that e-mail, Agent  
2 Smith?

3 A. Yes.

4 Q. Since -- can you explain what it means, as you said  
5 earlier?

6 A. Yeah. I mean, it is obvious from looking at it that  
7 Mr. Harper sent you an e-mail on the date that is there,  
8 talking about staffing companies. And, like I said, there  
9 is handwritten notes. And it looks like "CO." "Good,  
10 number." Maybe "too small." It is a dialog between you  
11 and Mr. Harper about staffing companies.

12 Q. Do you see -- a dialog usually means back and forth.  
13 Do you see a dialog there?

14 A. Okay. I will correct my word. It is an e-mail that  
15 you sent to Mr. Harper about staffing companies.

16 Q. And so from there, since you don't see a dialog, how  
17 are you getting meaning from that?

18 A. Can we scroll up and down?

19 Q. Sure. Can you scroll down? Is there anything higher  
20 than that?

21 A. Okay. Well, I mean, it is obvious from the e-mail  
22 that Mr. Harper sent you an e-mail to talk about staffing  
23 companies.

24 Q. So, really, would you agree there is no context to  
25 this e-mail?

- 1 A. There is absolutely context.
- 2 Q. So could you explain that context, please?
- 3 A. It's -- the context is staffing companies.
- 4 Q. The context would assume that you have some meaning
- 5 to it; that you can understand what the meaning of an
- 6 e-mail sent to Mr. Barnes means. That is what you are
- 7 saying. So if you can explain -- since you know the
- 8 context, you should be able to explain the meaning; is
- 9 that correct?
- 10 A. Yes. You are identifying staffing companies to
- 11 Mr. Harper with their names and their phone numbers.
- 12 Q. How am I identifying them to Mr. Harper? You said I
- 13 am identifying. How am I doing that?
- 14 A. Because you typed an e-mail message.
- 15 Q. I think that says from Demetrius Harper?
- 16 A. I am sorry, I apologize. From Harper to Mr. Barnes.
- 17 So Mr. Harper is identifying staffing companies to you. I
- 18 apologize.
- 19 Q. All right. And so, for instance, you just know it is
- 20 an e-mail sent to Mr. Barnes, correct?
- 21 A. To Ken Barnes.
- 22 Q. To Ken Barnes. Do you see any reply to this e-mail
- 23 at all? There was no other e-mail chain here?
- 24 A. Not in this exhibit, no.
- 25 Q. Then in the course of your investigation do you

1 remember if there was any e-mail chains to this e-mail or  
2 the other two that were shown as evidence?

3 A. On this -- I mean, I don't have -- obviously there is  
4 not an e-mail that applies to this. But I don't know if  
5 it is in the entire population of e-mails. And the same  
6 goes for the other two.

7 MR. BARNES: No more questions on that.

8 THE COURT: Anyone else?

9 MR. BANKS: Can we have one moment, Your Honor?

10 THE COURT: You may.

11 MR. BANKS: Nothing further, Your Honor.

12 THE COURT: All right. Redirect?

13 MS. HAZRA: Thank you, Your Honor.

14 **REDIRECT EXAMINATION**

15 **BY MS. HAZRA:**

16 Q. Special Agent Smith, based on your investigation, do  
17 you know what kind of business SWV is engaged in?

18 A. I know it is probably documented in the file, and I  
19 would have to look at something else to confirm that exact  
20 business.

21 Q. At the time that you began your investigation, did  
22 you believe that Leading Team was still an active company  
23 or not?

24 A. No, I didn't.

25 Q. And why not?

1     A.     I believed, from my investigation, that Leading Team,  
2     Inc., changed their name to IRP.

3             MS. HAZRA:   Nothing further.

4             THE COURT:   All right.   Thank you very much, you  
5     may step down.   And we are going to take a 15-minute  
6     recess.   We will reconvene at -- we'll take a little  
7     longer.   Let's reconvene at 10:45.   Court will be in  
8     recess.

9             (A break is taken from 10:26 a.m. to 10:45 a.m.)

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

12            THE COURT:   You may be seated.

13            Any matters to be brought to the Court's attention  
14   before we bring in the jury?

15            MR. KIRSCH:   No, Your Honor.

16            MR. BANKS:    No, Your Honor.

17            THE COURT:    All right.   Ms. Barnes, please bring in  
18   the jury.

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

21            THE COURT:    You may be seated.

22            Government may call its next witness.

23            MR. KIRSCH:   Your Honor, we call Michael Seeley.

24            COURTROOM DEPUTY:   Your attention, please.

25                           **MICHAEL SEELEY**

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:   Michael Seeley.   M-I-C-H-A-E-L  
6     S-E-E-L-E-Y.

7                             **DIRECT EXAMINATION**

8     **BY MR. KIRSCH:**

9     Q.     Mr. Seeley, can you tell the jury where you live,  
10    please.

11    A.     I live in Irving, Texas.

12    Q.     What do you do for a living there?

13    A.     I am a controller and IT director for a staffing  
14    company.

15    Q.     Did you previously work at a staffing company called  
16    MSX International?

17    A.     Yes, I did.

18    Q.     Approximately when was that?

19    A.     It was for about 5 years.   Around -- I am trying to  
20    remember.   I don't remember the exact dates, but I started  
21    at this company about 4-and-a-half years ago, so previous  
22    to that.

23    Q.     Were you at MSX around December of 2004 and 2005?

24    A.     Yes, I was.

25    Q.     What was your position there?



1 A. I was the national recruiting manager.

2 Q. And where were you based?

3 A. I was based in Dallas, Texas.

4 Q. How long have you worked in the staffing industry  
5 generally?

6 A. For 20-plus years.

7 Q. What sort of business was MSX? Was it in the  
8 staffing business, as well?

9 A. It was. My division was staffing contractors,  
10 primarily in the information technology field.

11 Q. Okay. And was one of the services provided by MSX  
12 payrolling?

13 A. It was, yes.

14 Q. Can you explain briefly how payrolling worked for  
15 MSX?

16 A. Typically, what would happen is a company would  
17 contact us and want us to put their employee on our  
18 payroll, which we would do. Then we would provide them  
19 with a benefits' package, as well as any other additional  
20 benefits. We would withhold all of the taxes, all of that  
21 type of thing. Then we would mark it up; you know,  
22 basically charge a fee for that, and bill them back for  
23 every hour that the employee worked.

24 Q. And in that payrolling situation, who would issue  
25 checks to the payrolled employees?

1 A. MSX would issue the checks.

2 Q. Okay. I asked you earlier about 2004, 2005. I want  
3 to direct your attention to around December of 2004. At  
4 that time, were you working in the Dallas office?

5 A. Yes.

6 Q. And at some point did you get a referral about  
7 possible business with a company called IRP?

8 A. I was contacted by our New York office that a company  
9 had contacted them wanting to run the boys through our  
10 payroll.

11 Q. Can you just explain why would that referral come --  
12 why send it to Texas?

13 A. The recruiting for the, basically, the midwest, for  
14 everything from Chicago, Dallas west, was handled out of  
15 our Dallas office, and the fact that they were overloaded,  
16 as well. But that's generally what would happen is they  
17 would move it to the closest geographic office we had.

18 Q. And did you follow up on this referral, then?

19 A. I did, yes.

20 Q. How did you do that?

21 A. It was via phone call. I picked up the phone and  
22 made a phone call to find out what the situation was and  
23 what exactly the client needed.

24 Q. Who did you speak to?

25 A. I believe I spoke to David Banks.

1 Q. And did Mr. Banks give you information about his  
2 relationship with this company IRP?

3 A. He did. If I'm not mistaken, I think he was either  
4 the president or CEO, basically in charge of the company.

5 Q. Did he tell you anything about what sort of business  
6 IRP was engaged in?

7 A. He told me they were developing a software that was  
8 specific to helping the Department of Homeland Security.  
9 And he also mentioned the New York Police Department, as  
10 well.

11 Q. Did he give you any indication about whether that  
12 software had been either sold to or implemented by any of  
13 those agencies?

14 A. I don't remember specifically what he said. But my  
15 impression was that the software had -- was in the process  
16 of being developed.

17 MR. ZIRPOLO: Objection, speculation.

18 THE COURT: Sustained. Lay more foundation.

19 MR. KIRSCH: Thank you, Your Honor.

20 Q. (BY MR. KIRSCH) Did you have conversation with  
21 Mr. Banks about that software?

22 A. Yes.

23 Q. Did Mr. Banks make statements to you about how that  
24 software was being used by the law enforcement agencies  
25 that you've mentioned?

1 A. Not that I remember specifically, how it was being  
2 used.

3 Q. Okay.

4 A. Just that it was being developed.

5 Q. Okay. Did you have any source of information about  
6 how IRP software was being used, other than your  
7 conversations with Mr. Banks?

8 A. I went to their website and looked at it. That was  
9 all of the other information I had.

10 Q. Okay. Based on those sources of information, did you  
11 have an understanding about the status of IRP's business  
12 with one or more of those government agencies?

13 A. My understanding was they were fully engaged with  
14 them.

15 Q. And can you explain what you mean by the term "fully  
16 engaged."

17 A. Fully engaged, in that they were working directly  
18 with them on a specific software product.

19 Q. All right. And was that information, or that  
20 impression, was that -- did you use that in deciding  
21 whether or not MSX should do business with IRP?

22 A. It was a factor, yes.

23 Q. And in what way?

24 A. If there was no -- if we didn't feel like there was a  
25 current relationship with a client, that there would be no

1 revenue stream for them, so we would probably not engage  
2 them to do a payroll service.

3 Q. Did you take any other steps in the process of  
4 deciding whether or not to do business with IRP?

5 A. We followed our internal process of doing a credit  
6 check.

7 Q. Okay. Do you perform that yourself?

8 A. No, I did not. It is performed by our accounting  
9 department.

10 Q. All right.

11 A. I did fill out a form to initiate the process, but  
12 didn't do the actual credit check, myself.

13 Q. Okay. And then after receiving that information and  
14 the information from Mr. Banks, did MSX decide to do  
15 business with IRP?

16 A. We did.

17 Q. Can I ask you to take a look now at what is marked  
18 for identification as Government Exhibit 1.00M. It should  
19 be in a folder there in front of you.

20 A. Okay.

21 Q. Can I ask if you recognize that document?

22 A. I do. It was our standard service agreement.

23 Q. And there are some attachments to it, as well, or  
24 related documents there also as part of that exhibit; is  
25 that right?

1 A. Yes. Normal course of business, we would do a  
2 purchase order for each individual person and what their  
3 hourly bill rate would be.

4 Q. And is this the agreement that was executed between  
5 MSX and IRP Solutions?

6 A. Yes, it is.

7 MR. KIRSCH: Your Honor, I move to admit 1.00M.

8 THE COURT: Any objection?

9 MR. ZIRPOLO: No objection.

10 THE COURT: 1.00M may be admitted.

11 (Exhibit No. 1.00M is admitted.)

12 MR. KIRSCH: May we publish that, Your Honor?

13 THE COURT: You may.

14 MR. KIRSCH: Can we start with page 2 of that,  
15 Special Agent Smith, and enlarge the signatures for us,  
16 please.

17 Q. (BY MR. KIRSCH) That doesn't appear to be your  
18 signature, Mr. Seeley, on the left side?

19 A. No, it is not.

20 Q. Who is Larry Curran?

21 A. Our regional sales manager.

22 Q. And the name on the right, is that the person that  
23 you had spoken to, to get the information about IRP?

24 A. As far as I know, yes.

25 MR. KIRSCH: Could we please publish the next page

1 of that exhibit?

2 Q. (BY MR. KIRSCH) Do you see the name there for the  
3 consultants's name, Mr. Seeley?

4 A. Yes.

5 Q. Was that one of the people that was payrolled?

6 A. Yes, it is.

7 Q. If we go to the next page, there is another name  
8 there. Is that another one of the people who was  
9 payrolled through MSX?

10 A. Yes.

11 Q. If we can go to the next page, there is another name  
12 there. Again, is that another person who was payrolled?

13 A. Yes, it is.

14 Q. And then, finally, go to the last page, please. This  
15 is the name Enrico Howard. Are those the people that were  
16 payrolled by MSX for IRP?

17 A. Yes, they are.

18 Q. Did MSX have a process in place for keeping track of  
19 the time that those four employees were working?

20 A. Yes, we did.

21 Q. Can you explain that process?

22 A. It was done through time cards. The employees would  
23 fill out a time card and then have them signed by a  
24 supervisor, and then they would submit those time cards to  
25 us, and we would process the payroll based on the time

1 cards, typically, on a weekly basis, and in some cases  
2 every two weeks.

3 Q. Can I please ask you to look now at what is marked  
4 for identification as Government Exhibit 261.00.

5 A. Okay.

6 Q. I want to ask you if you recognize the set of  
7 documents that is in that exhibit.

8 A. I do, yes.

9 Q. What are they, please?

10 A. They are standard weekly time sheets.

11 Q. Do the ones in this exhibit pertain to those four  
12 employees that were payrolled at IRP?

13 A. Yes.

14 MR. KIRSCH: Your Honor, I would move to admit and  
15 publish Government Exhibit 261.00.

16 THE COURT: Any objection?

17 MR. ZIRPOLO: No objection.

18 THE COURT: 261.00 is admitted, and it may be  
19 published.

20 (Exhibit No. 261.00 is admitted.)

21 MR. KIRSCH: Thank you, Your Honor.

22 Can you expand down to the signatures there,  
23 please.

24 Q. (BY MR. KIRSCH) Mr. Seeley, can you just help us  
25 understand the different information that is on the screen



1 for this time sheet now, please.

2 A. Sure.

3 Q. Let's just start at the top.

4 A. Okay. Do you want me to go through it?

5 Q. Yes, please, that would be great.

6 A. Basically, there is basic instructions for the

7 employee how to fill it out. The client name, the

8 consultant's name, the work location, a daytime telephone

9 number in case we needed to get ahold of them, then the

10 week ending information, as well. And then the form is

11 blank when the employee gets it, and they fill out the

12 day, the dates, the number of regular hours and overtime

13 hours they worked, then it totals out. Then at the

14 bottom, it asks for the consultant to sign the time card.

15 Q. Why do you do that?

16 A. Just to verify that the consultant agrees that that

17 is the amount of hours they worked.

18 Q. And then it looks like you have the supervisor sign,

19 as well?

20 A. That's correct.

21 Q. Why do you have that happen?

22 A. To verify from some managerial position that the

23 employee actually did work those hours.

24 Q. The name that's printed here for supervisor appears

25 to be Dave Zirpolo. Is that a name that you recall from

1 your dealings?

2 A. It is, yes.

3 Q. And for the purposes of -- for MSX's purposes in  
4 paying these employees, does MSX care whether the person  
5 whose name is reflected here is the person who is doing  
6 the work reflected in the time card?

7 A. Absolutely.

8 Q. Why is that?

9 A. Well, we want to make sure we are paying the person  
10 that is actually doing the work. It could create a number  
11 of problems, not just from a tax, you know, issue, but  
12 federal payroll laws. We're governed, you know -- in  
13 Texas, we are governed by Texas payroll laws, as well. So  
14 there would be a number of problems that occurred if we  
15 actually paid the wrong person or paid the person  
16 incorrectly.

17 MR. KIRSCH: All right. If I could publish page 10  
18 of this exhibit now, please, Special Agent Smith.

19 Q. (BY MR. KIRSCH) And can you identify -- maybe we can  
20 expand just the time portion of that. Can you identify  
21 the employee that this time card was submitted for?

22 A. It appears to be Enrico Howard.

23 Q. And this is for the week ending when?

24 A. Looks like 12/17 of 2004.

25 Q. Is that consistent with the printed dates down there?

1 A. It is. Since the -- yeah, the employee didn't work  
2 on the 18th or 19th.

3 Q. And how many hours were reported, then, for this  
4 week?

5 A. A total of 40.

6 MR. KIRSCH: Could I ask you to put that on the  
7 left side of the screen, Special Agent Smith.

8 Your Honor, I would ask permission to publish  
9 Exhibit 191, which I believe has been admitted, page 54.

10 THE COURT: Yes, you may publish.

11 MR. KIRSCH: Thank you, Your Honor.

12 Then can you expand the time card of that, please.

13 I am sorry, can we go back to Exhibi 261, page 11.

14 Q. (BY MR. KIRSCH) On the left side of the screen now,  
15 what is the week that is reflected there?

16 A. It looks like week ending 12/26.

17 Q. And then on the right side of the screen, there is a  
18 time card for another company called of The Judge Group.  
19 Have you actually heard of The Judge Group?

20 A. Actually, I have, yes.

21 Q. Do you know what kind of company that is?

22 A. My understanding is they are a staffing company, as  
23 well.

24 Q. Did you have an understanding that while MSX was  
25 payrollling Mr. Howard, that he was being also payrolled at

1     IRP Solutions by The Judge Group?

2     A.    No.  This is the first time I was made aware of that.

3     Q.    I take it you didn't know he reported 12 hours of  
4     work for your company on the 20th, 21st and 22nd, and also  
5     reported 12 hours of work for The Judge Group on each of  
6     those days?

7     A.    I absolutely did not know that.

8     Q.    Would you have been concerned to learn that  
9     Mr. Howard was reporting that he was working 24 hours a  
10    day on those days?

11    A.    I think concerned would be a mild way to put it.

12           MR. KIRSCH:  Could I now ask -- on the left side of  
13    the screen, can we please publish page 39 of Government  
14    Exhibit 261.  Expand the same portion, please.

15    Q.    (BY MR. KIRSCH)  Which employee is that MSX time card  
16    for, Mr. Seeley?

17    A.    It says for Cliff Stewart.

18    Q.    And that is for the week ending when?

19    A.    January 2nd.

20    Q.    How many hours did Mr. Stewart report to MSX that  
21    week?

22    A.    A total of 52.

23           MR. KIRSCH:  On the right side of the screen, can  
24    we please publish page 14 of Government Exhibit 191.

25    Q.    (BY MR. KIRSCH)  Did you know, Mr. Seeley, that

1 Clifford Stewart was also billing time to The Judge Group  
2 for being payrolled at IRP at the same time that he was  
3 billing time to MSX?

4 A. No, I did not.

5 Q. Would you have had a similar reaction to learning  
6 that information as you described to your reaction about  
7 learning about Mr. Howard?

8 A. Yes, I would.

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

10 Q. (BY MR. KIRSCH) Can I ask you to look now, please,  
11 Mr. Seeley, at what we marked for identification as  
12 Government Exhibit 263.00.

13 A. Okay.

14 Q. Do you have those in front of you?

15 A. I do.

16 Q. Do you recognize those?

17 A. I do.

18 Q. What are they?

19 A. It is basically a paycheck payroll register.

20 Q. Are those records from MSX International?

21 A. They are.

22 Q. Do they pertain to the payrolled employees we have  
23 been discussing?

24 A. Yes, they do.

25 MR. KIRSCH: Your Honor, I would ask the Court to

1 find that Government Exhibit 263.00 is made admissible.

2 THE COURT: Any objection?

3 MR. ZIRPOLO: No objection.

4 THE COURT: 263.00 is deemed admissible.

5 (Exhibit No. 263.00 is found admissible.)

6 Q. (BY MR. KIRSCH) Did MSX have a mechanism in place to  
7 bill IRP for the work that these employees were performing  
8 plus the markup you described before?

9 A. Yes, we did.

10 Q. How did that work?

11 A. It was all sub-tied directly to the time cards. The  
12 time cards generated a paycheck for the employee, and at  
13 the same time generated an invoice to the client.

14 Q. Do you know where the processing of that paperwork  
15 occurred?

16 A. At one point it was in New York. Then it was moved  
17 to Detroit. So at this exact place and time, I am not  
18 entirely sure which location the invoices were generated  
19 out of.

20 Q. Either Detroit or New York?

21 A. One of the two were the only two places it could have  
22 come from.

23 Q. Do you know how the invoices were transmitted to the  
24 client?

25 A. Typically via mail.

1 Q. United States Mail?

2 A. Correct.

3 Q. Okay. And can I ask you to look now at what is  
4 marked for identification as Government Exhibit 262.00.

5 A. Okay.

6 Q. Do you recognize the documents that are in that  
7 exhibit?

8 A. I do. They are standard invoices.

9 Q. Do all of the ones in this exhibit pertain to IRP  
10 Solutions Corporation?

11 A. Yes, they do.

12 Q. And, again, do they represent invoices for the  
13 payrolled employees we have been discussing?

14 A. Yes, they do.

15 MR. KIRSCH: Your Honor, I would ask the Court to  
16 find Government Exhibit 262.00 admissible.

17 THE COURT: Any objection?

18 MR. ZIRPOLO: No objection.

19 THE COURT: Exhibit 262.00 is deemed admissible.

20 (Exhibit No. 262.00 is found admissible.)

21 MR. KIRSCH: Thank you, Your Honor.

22 Q. (BY MR. KIRSCH) Then two more exhibits, Mr. Seeley.  
23 First, I want to ask you to -- they are marked as  
24 Government Exhibit 20.00 and 23.00.

25 A. Okay.

1 Q. Let's start with 20, if we could. Do you recognize  
2 that exhibit?

3 A. Yes. Again, our standard invoices, along with time  
4 sheets attached to them.

5 Q. And the invoices that MSX issued, they were tied to a  
6 particular employee; is that correct?

7 A. Correct.

8 Q. And this particular exhibit, besides the invoice, has  
9 a couple of other documents?

10 A. Yes. It has the time cards attached to it, as well.

11 Q. And are those time cards that relate to the invoice?

12 A. Let me double check here. Yes, they are.

13 MR. KIRSCH: Your Honor, I move to admit and  
14 publish Government Exhibit 20.00, please.

15 THE COURT: Any objection?

16 MR. ZIRPOLO: No objection.

17 THE COURT: 20.00 is admitted, and it may be  
18 published.

19 (Exhibit No. 20.00 is admitted.)

20 MR. KIRSCH: Thank you, Your Honor.

21 Just expand the top part of that, please.

22 Q. (BY MR. KIRSCH) We have on the screen now,  
23 Mr. Seeley, the top of the invoice; is that right?

24 A. Correct.

25 MR. KIRSCH: Okay. And then if we can scroll down.



1 Q. (BY MR. KIRSCH) This particular invoice relates to  
2 work performed by what employee?

3 A. Kendrick Barnes.

4 MR. KIRSCH: Then if we can go to page 2 of that  
5 exhibit, please.

6 Q. (BY MR. KIRSCH) Is this one of the time cards that  
7 supports that invoice? Is that one of the time cards that  
8 supports the invoice on page 1, Mr. Seeley?

9 A. Actually, looking at it, yes.

10 Q. Okay. Can I ask you to look at Government's Exhibit  
11 23 now, please.

12 A. Okay.

13 Q. What is contained in that exhibit?

14 A. Similar document. It is the MSX standard invoice,  
15 with two time sheets attached to it.

16 Q. Also for Mr. Barnes?

17 A. That's correct.

18 MR. KIRSCH: Your Honor, I would move to admit  
19 Government Exhibit 23.00.

20 THE COURT: Any objection?

21 MR. BANKS: No objection.

22 THE COURT: Exhibit 23.00 will be admitted, and it  
23 may be published.

24 (Exhibit No. 23.00 is admitted.)

25 MR. KIRSCH: Thank you, Your Honor.

1 Q. (BY MR. KIRSCH) Mr. Seeley, again, those invoices in  
2 20 and 23, did you say before those would have been mailed  
3 to the client IRP?

4 A. Typically, that is how they were delivered, yes.

5 Q. All right. Do you know, while you were at MSX,  
6 whether or not IRP made payments on any of these invoices?

7 A. My understanding is that there were no payments made.

8 Q. Did you have an understanding about the approximate  
9 amount of the total outstanding invoices?

10 A. Off the top of my head, I remember it being 144,000,  
11 something along those lines.

12 Q. Did you ever make any attempts to collect on those  
13 invoices?

14 A. I did. I placed a number of phone calls.

15 Q. To who?

16 A. Initially tried to reach David Banks.

17 Q. Were you able to reach Mr. Banks?

18 A. No, I was not.

19 Q. Do you remember anyone else that you called?

20 A. I tried to call their CFO. I don't recall his name  
21 off the top of my head. I was unable to reach him, as  
22 well.

23 Q. Did you continue to payroll the people at MSX --

24 A. No.

25 Q. -- I mean the people at IRP?

1 A. No. We stopped the service immediately.

2 Q. Did you receive any time cards after you had begun  
3 making the collection efforts?

4 A. No, we did not.

5 Q. Was that surprising to you?

6 A. It was extremely unusual, yes.

7 Q. That was unusual?

8 A. Yes.

9 MR. KIRSCH: Could I have a moment, please, Your  
10 Honor?

11 Q. (BY MR. KIRSCH) Mr. Seeley, when you tried to  
12 contact Mr. Banks, did you leave messages?

13 A. I left messages with the receptionist. I don't  
14 recall leaving messages or voice mails. I do recall  
15 leaving messages with the receptionist, though.

16 MR. KIRSCH: Thank you. No other questions.

17 THE COURT: Mr. Banks, you may proceed.

18 MR. BANKS: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. BANKS:**

21 Q. Mr. Seeley, you said you are a controller?

22 A. Right now, yes.

23 Q. Does that -- can you explain a little bit about what  
24 a controller does?

25 A. I primarily handle most of the accounting for our

1 company.

2 Q. Do you have a degree in accounting?

3 A. I do not. I have a bachelor's of business degree.

4 Q. Just curious. With regards to -- let me ask you this  
5 question first. How does the Albertini Group relate to  
6 MSX?

7 A. It doesn't. I'm currently employed by the Albertini  
8 Group. I was previously employed by MSX International.

9 Q. Okay. Thank you. I was kind of confused on that.

10 Now, what is the general credit policy of MSX?

11 A. Well, I don't know the general credit policy. I know  
12 the general credit procedure. The general credit  
13 procedure was when we had a new client, we would fill out  
14 a credit application for that client and submit it to our  
15 accounting department for approval.

16 Q. Did -- was there a credit app in this case?

17 A. There was, yes.

18 Q. Okay. What was the results of that credit app?

19 A. That it was approved. I only get whether it is  
20 approved or not approved.

21 Q. Okay. So you didn't make the decision on whether or  
22 not -- now, you didn't make the decision on whether or not  
23 to move forward or not move forward?

24 A. That's correct. Based on the credit.

25 Q. Okay. Now, does MSX have any policy that you know of

1     where they review balance sheets, bank references, any  
2     sort of financial statements prior to doing business with  
3     a customer?

4     A.    I'm not entirely sure what the policy was.  I would  
5     just fill out credit application forms with the company  
6     information on it and turn it into our accounting  
7     department.

8     Q.    Okay.  Now, you mentioned earlier in your testimony  
9     that it would have been concerning to you, at least from  
10    the Government's questioning, if somebody else was  
11    performing work?

12    A.    Correct.

13    Q.    Other than what was listed on the time sheet;  
14    correct?

15    A.    Absolutely.

16    Q.    Did you pay anyone else -- anyone else besides the  
17    person listed on the time sheet?

18    A.    No, we did not.

19    Q.    Okay.  So you would have absolutely no indication or  
20    evidence to support that another person was actually doing  
21    the work; correct?

22    A.    That's correct.

23    Q.    Now, was a part of your application process, at least  
24    on your credit application, did it include bank  
25    references?

1 A. I don't recall. I would have to look at the credit  
2 application again to see what all was on there.

3 MR. BANKS: May I have one moment, Your Honor?

4 THE COURT: You may.

5 Q. (BY MR. BANKS) Now, you said it would be concerning  
6 -- I am not sure exactly what term, but it would be  
7 gravely concerning to you if a contractor was working  
8 multiple engagements while he was a contractor with MSX;  
9 is that correct?

10 A. No, that is not correct. I said it would be  
11 concerning if they were working 24 hours a day for two  
12 different places, specifically referring to what I saw as  
13 the time sheet for a person that was working a total of 24  
14 hours in one day.

15 Q. Have you been an IT contractor?

16 A. I am not.

17 Q. Have you known contractors -- IT contractors or  
18 consultants who work multiple engagements?

19 A. Absolutely.

20 Q. Are you familiar with the term called VPN?

21 A. Yes.

22 Q. Can you explain what VPN is?

23 A. Virtual private network?

24 Q. Yes, sir.

25 A. It gives a person the ability to log into external

1 networks remotely and have it look like and feel like they  
2 are actually on site.

3 Q. Okay. Now, so a person working from home, typically,  
4 in your opinion, would use a VPN to access their company's  
5 network?

6 MR. KIRSCH: Objection, relevance and foundation.

7 THE COURT: Sustained.

8 MR. BANKS: Your Honor, what I am trying to do --

9 THE COURT: I sustained the objection. I think you  
10 asked him as many questions as you can ask him.

11 MR. BANKS: Very well. Very well.

12 Q. (BY MR. BANKS) So if a consultant chooses to work  
13 multiple projects, is there any sort of MSX policy  
14 prohibiting them from doing so?

15 A. Not that I am aware of.

16 Q. Okay. If we could --

17 MR. BANKS: Your Honor, could we publish exhibit  
18 001M, as in Mike?

19 THE COURT: Yes, you may.

20 Q. (BY MR. BANKS) Mr. Seeley, are you familiar with the  
21 services agreement of MSX?

22 A. Yes.

23 Q. Are you familiar with this language in 7A?

24 A. Yes.

25 Q. Would you agree that 7A is consistent with MSX's

1 policies concerning a business relationship?

2 A. I would say it is, yes.

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

4 THE COURT: Anyone else?

5 MR. WALKER: Can we have one moment, Your Honor?

6 THE COURT: You may.

7 MR. WALKER: No further questions, Your Honor.

8 THE COURT: All right. May this witness be  
9 excused?

10 I am sorry, any redirect?

11 MR. KIRSCH: No redirect, Your Honor.

12 THE COURT: Thank you very much. You are excused.  
13 Government may call its next witness.

14 MR. KIRSCH: Thank you, Your Honor. The Government  
15 calls Kimberly Carter.

16 She is going to need Exhibits 7, 14, then 420.01  
17 through 423.01.

18 THE COURT: Go ahead and step up into the witness  
19 box and remain standing, please. Ms. Barnes will be with  
20 you shortly.

21 COURTROOM DEPUTY: Your attention, please.

22 **KIMBERLY CARTER**

23 having been first duly sworn, testified as follows:

24 COURTROOM DEPUTY: Please be seated.

25 Please state your name, and spell your first and



1 last names for the record.

2 THE WITNESS: Kimberly Carter. K-I-M-B-E-R-L-Y  
3 C-A-R-T-E-R.

4 DIRECT EXAMINATION

5 BY MR. KIRSCH:

6 Q. Ms. Carter, are you employed now?

7 A. Yes.

8 Q. Where do you work?

9 A. Modis.

10 Q. What sort of company is Modis?

11 A. IT staffing, professional services.

12 Q. What is your position there?

13 A. I am a senior business development executive.

14 Q. How long have you been working in the staffing  
15 industry?

16 A. Over 20 years.

17 Q. Can you identify any of the other companies where  
18 you've worked?

19 A. Technisource, Spherion, Bartech.

20 Q. In 2004, were you working at Technisource?

21 A. Yes.

22 Q. What was your position at that time?

23 A. I was regional vice president.

24 Q. For what region?

25 A. Mid-Atlantic.

1 Q. Where were you based then?

2 A. Baltimore, Maryland.

3 Q. And what were your duties as the regional vice  
4 president?

5 A. I oversaw the markets, ranging from Delaware to South  
6 Carolina.

7 Q. At that time, did you go by the same last name?

8 A. No.

9 Q. What was your last name at that time?

10 A. Pillas.

11 Q. Spell that?

12 A. P-I-L-L-A-S.

13 Q. Thank you. And, Technisource, was that a staffing  
14 company?

15 A. Yes.

16 Q. Did it have a particular focus?

17 A. Yes.

18 Q. What was its focus?

19 A. IT staffing.

20 Q. Okay. Did Technisource at that time provide a  
21 service known as payrolling?

22 A. Yes.

23 Q. How is it that payrolling worked for Technisource?

24 A. We would bring on resources in an hourly W2 capacity  
25 and bill them to a specific client.

1 Q. And when you use the term "resources," is that the  
2 same?

3 A. Consultant.

4 Q. Is that, in other words, is that an employee?

5 A. Yes.

6 Q. And in a payrolling situation, typically who would  
7 identify those employees or resources?

8 A. Most often it was the client.

9 Q. Okay. Who paid them?

10 A. Technisource.

11 Q. Okay. And then how is it that Technisource profited  
12 from that arrangement?

13 A. The margin of the difference between the salaried,  
14 benefits, taxes and the bill rate to the client.

15 Q. Okay.

16 A. So cost of goods minus --

17 Q. Okay. Was payrolling, relative to other kinds of  
18 business Technisource did, was payrolling a profitable  
19 kind of business that Technisource did?

20 A. I mean, we were a for-profit company. So there would  
21 be some profit out of that.

22 Q. How did profitability of payrolling compare to  
23 profitability of other --

24 A. It was low.

25 Q. Was there typically a reason that given that lower

1 profit margin, that Technisource would engage in a  
2 payrolling arrangement?

3 A. Because we weren't doing the recruiting piece of the  
4 business in actually finding resources or consultants, the  
5 client was bringing that piece to the table.

6 Q. All right. While you were at Technisource, did you  
7 become aware that Technisource was doing business with a  
8 company called IRP Solutions Corporation?

9 A. Yes.

10 Q. And were you responsible for initiating that  
11 relationship?

12 A. No.

13 Q. Who did that?

14 A. Randy Hayes.

15 Q. And what was Mr. Hayes' role?

16 A. He was the sales rep in the Baltimore office.

17 Q. Did you participate in executing the agreement that  
18 was ultimately signed with IRP?

19 A. I would have signed any sort of agreement with any  
20 client.

21 Q. Can I ask you to take a look at what is marked for  
22 identification purposes at Government Exhibit 420.01. It  
23 should be in a folder like this up there in front of you.  
24 420.01. Have you had a chance to look at that?

25 A. Yes.

1 Q. Do you recognize that?

2 A. Yes.

3 Q. And is that the agreement between Technisource and

4 IRP?

5 A. Yes.

6 Q. And is your signature on page 13 of that exhibit?

7 A. Yes.

8 MR. KIRSCH: I would move to admit and publish

9 Government Exhibit 420.01.

10 THE COURT: Any objection?

11 MR. ZIRPOLO: No objection.

12 THE COURT: Exhibit 420.01 is admitted, and it may

13 be published.

14 (Exhibit No. 420.01 is admitted.)

15 MR. KIRSCH: Thank you, Your Honor.

16 Special Agent Smith, can you please expand the top

17 paragraph. We'll start right there.

18 Q. (BY MR. KIRSCH) Is this page 13 on the screen now?

19 A. Yes.

20 Q. Ms. Carter, that is your signature there under

21 Technisource?

22 A. Yes.

23 Q. Did you have an understanding about who it was that

24 signed on behalf of IRP?

25 A. Yes.

1 Q. Who was that?

2 A. David Banks.

3 MR. KIRSCH: If we go to page 15 of that exhibit.

4 Just expand that text, please.

5 Q. (BY MR. KIRSCH) What is this Exhibit A?

6 A. The specific -- the specific document for a  
7 particular resource.

8 Q. Okay. And is that the person who's identified under  
9 Roman Numeral II?

10 A. That is a person who -- yes.

11 Q. Was that one of the people who was payrolled by  
12 Technisource at IRP --

13 A. Yes.

14 Q. -- Darrell Brantley?

15 MR. KIRSCH: And if we can go to page 17 of that  
16 exhibit, and Roman Numeral II.

17 Q. (BY MR. KIRSCH) Does that identify another person  
18 who was payrolled there?

19 A. Yes.

20 Q. Kendrick Barnes?

21 A. Yes.

22 MR. KIRSCH: If we go to page 19, Roman Numeral II.

23 Q. (BY MR. KIRSCH) Does that, again, identify another  
24 person who was payrolled there, Shaun Haughton?

25 A. Yes.

1           MR. KIRSCH: And then, finally, if we go to page  
2   21, Roman Numeral II.

3   Q.    (BY MR. KIRSCH) Does that identify another person  
4   who was payrolled?

5   A.    Yes.

6   Q.    Do you recall whether there were any people beyond  
7   those four that were payrolled by Technisource?

8   A.    I don't recall.

9   Q.    Did Technisource have a method for keeping track of  
10   the time that those employees were working?

11   A.    Yes.

12   Q.    And how did that work?

13   A.    Time sheets.

14   Q.    Can I ask you to look, please, at what is marked for  
15   identification as Government Exhibit 421.00. Probably the  
16   fattest envelope which you have up there. Do you have  
17   that in front of you now?

18   A.    Uh-huh.

19   Q.    Do you recognize the documents that are in that  
20   exhibit?

21   A.    They are the standard time sheets that we utilized.

22   Q.    And do these particular ones pertain to those four  
23   employees that you just identified?

24   A.    Yes.

25           MR. KIRSCH: Your Honor, I would move to admit

1 Government Exhibit 421.00.

2 THE COURT: Any objection?

3 MR. BANKS: No objection.

4 THE COURT: 421.00 is admitted.

5 (Exhibit No. 421.00 is admitted.)

6 Q. (BY MR. KIRSCH) Can I ask you now, please,  
7 Ms. Carter, to look -- we are going to come back to that  
8 document in just a minute.

9 Can I ask you to look, please, at what is marked  
10 for identification as Government Exhibit 420.04. Do you  
11 recognize that exhibit?

12 A. Yes.

13 Q. What is it?

14 A. It is an hourly consultant agreement between  
15 Technisource and a specific resource.

16 Q. And in this -- does this particular document pertain  
17 to Kendrick Barnes?

18 A. Yes.

19 MR. KIRSCH: Your Honor, I move to admit and  
20 publish Government Exhibit 420.04.

21 THE COURT: Any objection?

22 MR. ZIRPOLO: No objection.

23 THE COURT: 420.04 will be admitted, and it may be  
24 published.

25 (Exhibit No. 420.04 is admitted.)



1           MR. KIRSCH: If you would expand the top part of  
2 that please, first, Special Agent Smith.

3       Q.     (BY MR. KIRSCH) The consultant here -- I just want  
4 to make sure we got the terms rights. That is also the  
5 resource or the employee; is that correct?

6       A.     Yes.

7           MR. KIRSCH: Can we go to page 2 of that document,  
8 please. And expand paragraph 6.

9       Q.     (BY MR. KIRSCH) Does this paragraph relate to other  
10 work that can be performed by a consultant who is employed  
11 at Technisource?

12      A.     Can you ask the question again?

13      Q.     Yes. Does this paragraph pertain to other work,  
14 outside of work for Technisource, that can be employed by  
15 a consultant while he or she is employed at Technisource?

16      A.     Yes.

17      Q.     And does it allow a Technisource consultant to work  
18 for another company for a Technisource client?

19      A.     No.

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

21           Your Honor, I would like to go back to Government  
22 Exhibit 42 now and publish page 32.

23           THE COURT: You may.

24           MR. KIRSCH: Can you expand just the time portion  
25 there, please.

1 Q. (BY MR. KIRSCH) Can you see that on your screen now,  
2 Ms. Carter?

3 A. Yes.

4 Q. What employee does this record pertain to?

5 A. Kendrick Barnes.

6 Q. And this is for the week ending what?

7 A. 9/11/04.

8 Q. What were the hours that Mr. Barnes reported to  
9 Technisource for that week?

10 A. Forty-two.

11 MR. KIRSCH: Would you put that on the left side  
12 the screen, please, Special Agent Smith.

13 Then, Your Honor, I am going to ask to publish  
14 Government Exhibit 131.00, which I believe has been  
15 admitted.

16 THE COURT: Yes, it may.

17 MR. KIRSCH: Publish that on the right side,  
18 Special Agent Smith, page 12, 131.00. And enlarge that,  
19 please. Can we go back and see if we can get the time on  
20 the left side a little bit bigger, please.

21 THE WITNESS: I can see it.

22 Q. (BY MR. KIRSCH) You can see that?

23 A. Uh-huh.

24 Q. The time card that is on the right, is that for the  
25 same time period?

1 A. Yes.

2 Q. Did you have any knowledge that Mr. Barnes was  
3 reporting 43 hours to a different staffing company that he  
4 worked on behalf of IRP for the same week that he reported  
5 42 to Technisource?

6 A. No.

7 Q. What would have happened if you had learned that  
8 while Mr. Barnes was being staffed there through  
9 Technisource?

10 A. Certainly would have had a conversation and addressed  
11 it.

12 MR. KIRSCH: Okay. Can I ask you, Special Agent  
13 Smith, to leave the Technisource time card there, and on  
14 the right side of the screen publish Government Exhibit 8,  
15 page 2, which I believe has also been admitted.

16 May we do that, Your Honor?

17 THE COURT: You may.

18 Q. (BY MR. KIRSCH) Are you familiar with a company  
19 called Staffmark?

20 A. Yes, I am.

21 Q. Do you know what kind of company that is?

22 A. They are a commercial staffing company, and actually  
23 Technisource was borne out of Staffmark. Previously we  
24 were in IntelliMark.

25 Q. Can you identify the week ending on that time card,

- 1 Ms. Carter?
- 2 A. Yes.
- 3 Q. What is that?
- 4 A. 9/11/04.
- 5 Q. Is that the same week for the two other time cards we
- 6 have already looked at?
- 7 A. It is.
- 8 Q. And according to that time card, how many hours did
- 9 Mr. Barnes work for Staffmark at IRP that week?
- 10 A. Forty-two.
- 11 Q. Did you ever receive any information that Mr. Barnes
- 12 was, while he was billing time to Technisource and to ESG,
- 13 was also billing time to Staffmark?
- 14 A. No.
- 15 Q. Would that have caused any issues for you?
- 16 A. Yes.
- 17 Q. Did you -- on some of those days there, on Wednesday,
- 18 Thursday and -- at least on Wednesday and Thursday, there
- 19 were 10 hours reported on both of these cards on the
- 20 screen; is that right?
- 21 A. Yes.
- 22 Q. If we went back to the ESG card and it showed 10
- 23 hours reported on some of those days, as well, for a total
- 24 of 30 on more than one of those days, is that something
- 25 that would have caused you concern while you were working

1 at Technisource?

2 A. Yes.

3 Q. Why is that?

4 A. There is not that many hours in a day. And he's --  
5 it is obviously fraudulent.

6 MR. BANKS: Objection, Your Honor.

7 THE COURT: Overruled.

8 Q. (BY MR. KIRSCH) Ms. Carter, did Technisource have a  
9 process in place for --

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

11 Q. (BY MR. KIRSCH) -- for billing the hours that were  
12 worked by these payrolled employees at IRP?

13 A. Yes.

14 Q. How did that work?

15 A. Time cards were submitted via fax to the branch  
16 office. The branch office forwarded them to our central  
17 accounting group, which was in St. Louis, and invoices  
18 were generated and sent out to the client for payment.

19 Q. And do you know where those invoices were generated,  
20 in what office?

21 A. Our accounting department in St. Louis, I believe.

22 Q. St. Louis, Missouri?

23 A. Yes.

24 Q. Do you know how it was that they were transmitted to  
25 the clients?

- 1 A. I believe they were mailed U.S. Mail.
- 2 Q. United States Mail?
- 3 A. Yes.
- 4 Q. Can I ask you now to look, please, at what is marked
- 5 for identification as Government Exhibit 422.00.
- 6 A. What was the number again?
- 7 Q. 422.00. Have you had a chance to look at those? Do
- 8 those appear to be copies of MSX invoices -- I am sorry,
- 9 Technisource invoices?
- 10 A. Yes.
- 11 Q. And do they relate to the four payrolled employees we
- 12 have just been discussing?
- 13 A. Yes.
- 14 MR. KIRSCH: Your Honor, I would ask the Court to
- 15 find that Government Exhibit 422.00 is admissible.
- 16 THE COURT: Any objection?
- 17 MR. ZIRPOLO: No objection.
- 18 THE COURT: 422.00 is deemed admissible.
- 19 (Exhibit No. 422.00 is found admissible.)
- 20 Q. (BY MR. KIRSCH) Ms. Carter, I will ask you to look
- 21 at two more. They are marked as Government Exhibits 7 and
- 22 14.
- 23 A. What are the numbers?
- 24 Q. Exhibits 7 and 14. Do you have 7 in front of you?
- 25 A. Yes.

1 Q. Let's start with that one. What is the first page of  
2 7?

3 A. The invoice.

4 Q. Is that, again, an invoice that your company issued  
5 to IRP?

6 A. Yes.

7 Q. And then what are the remaining pages of that  
8 exhibit?

9 A. The time sheets.

10 Q. That pertain to that invoice?

11 A. Yes.

12 MR. KIRSCH: Your Honor, I would move to admit and  
13 publish Government Exhibit 7.00.

14 THE COURT: Any objection?

15 MR. ZIRPOLO: No objection.

16 THE COURT: Exhibit 7.00 is admitted, and it may be  
17 published.

18 (Exhibit No. 7.00 is admitted.)

19 MR. KIRSCH: Thank you, Your Honor.

20 Q. (BY MR. KIRSCH) The date in the upper right corner  
21 on the screen now, Ms. Carter do you know what date that  
22 would have been? Would that be the date of the invoice?

23 A. Yes.

24 Q. Okay. And then the -- whose attention did these go  
25 to?

- 1 A. David Banks.
- 2 Q. And, again, these -- this particular invoice, the  
3 person who is listed in the middle of the screen now, who  
4 is that, for the purposes of this invoice?
- 5 A. Kendrick Barnes.
- 6 Q. And Mr. Barnes was the payrolled employee?
- 7 A. Yes.
- 8 Q. I am going to direct your attention now to Government  
9 Exhibit 14. We'll start in the folder, again, if we  
10 could. Do you recognize the first page of that exhibit?
- 11 A. The first page?
- 12 Q. Yeah.
- 13 A. Yes.
- 14 Q. What is it?
- 15 A. It is an e-mail.
- 16 Q. Who sent that e-mail?
- 17 A. David Banks.
- 18 Q. And who did it go to?
- 19 A. To me.
- 20 Q. And what was the subject matter?
- 21 A. He has attached a letter, basically outlining how he  
22 was going to pay the outstanding invoices.
- 23 Q. And is the second page of the exhibit that letter?
- 24 A. Yes.
- 25 Q. Did you receive this e-mail while you were employed



1 at Technisource?

2 A. Yes.

3 MR. KIRSCH: Your Honor, I would move to admit and  
4 publish Government Exhibit 14.00.

5 THE COURT: Any objection?

6 MR. BANKS: No objection, Your Honor.

7 THE COURT: Exhibit 14.00 is admitted, and it may  
8 be published.

9 MR. KIRSCH: Thank you, Your Honor.

10 (Exhibit No. 14.00 is admitted.)

11 MR. KIRSCH: Can you just expand the top part of  
12 that, Special Agent Smith.

13 Q. (BY MR. KIRSCH) We now have the e-mail on the  
14 screen; is that right?

15 A. Yes.

16 Q. And your office, at the time that you received this  
17 e-mail, again, that was where?

18 A. Baltimore, Maryland.

19 Q. Okay. And then can we go to page 2 of that exhibit,  
20 please. Expand the text of that letter. Can you read  
21 that on the screen now, Ms. Carter?

22 A. Yes.

23 Q. I guess we jumped ahead a little bit. This letter  
24 refers to outstanding invoices. Were there outstanding  
25 invoices as of November 4, 2004?

1 A. Yes.

2 Q. Had you taken any steps to try to collect on those  
3 outstanding invoices?

4 A. Yes.

5 Q. What had you done?

6 A. Numerous repeated calls to Mr. Banks.

7 Q. And had you been able to reach Mr. Banks on those  
8 calls?

9 A. Sometimes, yes.

10 Q. On any of the calls where you reached Mr. Banks, did  
11 he give you any information about why the invoices hadn't  
12 been paid?

13 A. It had to do with the software; the piece of software  
14 they were developing for the New York City Police  
15 Department, and the delay in developing that software and  
16 the delay in their payment for that.

17 Q. Whose payment?

18 A. The New York City Police Department.

19 Q. Did you ever have a personal meeting with Mr. Banks  
20 about this topic?

21 A. I did.

22 Q. Where did that happen?

23 A. In Northern Virginia.

24 Q. And what was the occasion for that?

25 A. To meet in person and to get further clarification on

1     how and when we were going to be paid for our outstanding  
2     invoices.

3     Q.    Do you recall that that meeting would have been in  
4     relation to this letter?

5     A.    I don't.

6     Q.    Okay.  Do you recall how it is that the meeting --  
7     the personal meeting was arranged?

8     A.    Mr. Banks informed me in one of our telephone calls  
9     that he was going to be in Washington, D.C. on business,  
10    and apparently informed me the hotel that they were  
11    staying at, because my sales manager and myself showed up  
12    at the hotel to meet with him.

13    Q.    When you got to the hotel, did you try to contact  
14    Mr. Banks?

15    A.    Yes.

16    Q.    How did you do that?

17    A.    Initially, I think we tried to contact him via cell  
18    phone.  There was no response.  So we used the house phone  
19    in the lobby to call to his room.

20    Q.    Were you able to reach him?

21    A.    Yes.

22    Q.    And did you talk to Mr. Banks that day?

23    A.    Yes.

24    Q.    Did Mr. Banks tell you anything during that meeting  
25    about the status of their work with the New York Police

1 Department?

2 A. It was progressing, but it was stalled, and that is  
3 why we hadn't received payment.

4 Q. Did he tell you anything during that meeting about  
5 when IRP was going to be get paid?

6 A. I don't recall.

7 Q. Okay. The information that he gave you, did you use  
8 that information in deciding whether or not to continue to  
9 payroll employees at IRP?

10 A. Yes.

11 Q. How did you use that information?

12 A. My sales manager and I discussed that, you know, it  
13 was a positive meeting, and that we had faith and believed  
14 what Mr. Banks was telling us, and so we were going to  
15 give them a little more time to start seeing regular  
16 payment for the outstanding invoices.

17 Q. So --

18 A. We continued to allow the consultants to bill.

19 Q. Did that result in IRP having a higher liability to  
20 your company?

21 A. Yes, it did.

22 Q. Did you ever get any of the payments that are  
23 promised in this letter that is on the screen, Government  
24 Exhibit 14?

25 A. Not to my knowledge.

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

2 Q. (BY MR. KIRSCH) Did you have additional  
3 conversations with Mr. Banks after your personal meeting  
4 about the topic of the outstanding invoices?

5 A. I don't recall. Eventually, there was a conversation  
6 that took place where I said, you know, we can't -- we  
7 can't continue to provide the resources. We still haven't  
8 received any payment. And he said he understood, and that  
9 ended our relationship.

10 Q. Did you have an understanding at that point of the  
11 approximate amount of outstanding invoices from  
12 Technisource?

13 A. It was, rounding up, it was \$400,000.

14 MR. KIRSCH: Can I have a moment, please, Your  
15 Honor?

16 Sorry, Your Honor, 30 more seconds.

17 THE COURT: All right.

18 Q. (BY MR. KIRSCH) Ms. Carter, I need to ask you to  
19 look at two more exhibits, please, 423.00 and 423.01. Do  
20 you recognize those exhibits?

21 A. Yes.

22 Q. Do they contain payroll records related to the  
23 employees that were payrolled at IRP?

24 A. I mean, there are other people's.

25 Q. There are other people listed in there, as well; is

1     that correct?

2     A.     Yes.    Yes.

3             MR. KIRSCH:   Your Honor, I am going to ask that the  
4     portions of 423.00 and 423.01 that relate to the payrolled  
5     employees at IRP be deemed admissible.

6             THE COURT:   Any objection?

7             MR. BANKS:   No objection, Your Honor.

8             THE COURT:   All right.   Those portions that have  
9     just been identified of 423.00 and 423.01 are deemed  
10    admissible.

11            (Exhibit No. 423.00, 423.01 are found admissible.)

12            MR. KIRSCH:   Thank you, Your Honor.   And I have no  
13    other questions for Ms. Carter.

14            THE COURT:   All right.   Mr. Banks, you may proceed.

15            MR. BANKS:   Thank you.

16                           **CROSS-EXAMINATION**

17    **BY MR. BANKS:**

18    Q.    Ms. Carter, in engaging in a business -- initiating a  
19    business relationship with IRP Solutions, can you explain  
20    a little bit about what Technisource relied on to engage  
21    in that relationship?

22    A.    Are you asking what background we did prior to?

23    Q.    Yes, ma'am.

24    A.    From a credit -- you know, from a credit standpoint,  
25    we did a credit bureau check and a Dun & Bradstreet check.

1 Q. Okay.

2 A. That is what I did.

3 Q. And what were the results of that credit check?

4 A. There was no -- it was limited information. However,  
5 there was no derogatory information.

6 Q. Okay. And would you say Technisource relies on that  
7 information on whether or not they are going to engage in  
8 business with a client?

9 A. At the time that was a part of the process in order  
10 to begin a relationship with a new customer.

11 Q. What is the rest of the process?

12 A. As far as from the sales perspective, it's -- you  
13 know, there is a conversation with the client. There's a,  
14 you know, an understanding of what the project is going to  
15 be or what the relationship is going to be. Documents are  
16 signed, such as a service agreement.

17 Q. So just more of a familiarization with the client;  
18 what type of business they are, et cetera. Press the  
19 flesh, if you will; a hand shake, meet face to face and  
20 discuss those types of issues, correct?

21 A. It is not always a face-to-face meeting.

22 Q. Okay. Thank you. Now if, the credit came back poor,  
23 would Technisource have engaged in business with IRP?

24 A. Probably not.

25 Q. Okay. Did Mr. Banks at any time try to run from

1 Technisource or avoid meeting with Technisource with  
2 regards to the debt they had incurred?

3 A. He was not always available to take my calls, but,  
4 no.

5 Q. Now, with regards to Mr. Barnes, do you know what  
6 other projects Mr. Barnes was working at that time?

7 A. I don't.

8 Q. Are you familiar with a term "right to work"?

9 A. I am.

10 Q. Can you explain what your meaning of that term is?

11 MR. KIRSCH: Objection, lack of foundation.

12 THE COURT: Overruled. You may answer.

13 THE WITNESS: It means that you can terminate  
14 someone's employment at any time, and that as an employer,  
15 an employee can terminate their employment at any time.

16 Q. (BY MR. BANKS) Would you agree that Mr. Barnes has a  
17 right to work for whoever he wants to work for?

18 MR. KIRSCH: Objection, relevance and lack of  
19 foundation.

20 THE COURT: Overruled.

21 THE WITNESS: Not according to the contract that he  
22 signed with Technisource. He specifically could not work  
23 for another company at the same client.

24 Q. (BY MR. BANKS) Now, that is the agreement between  
25 you and Mr. Barnes; is that correct?



1 A. An agreement between Technisource and Mr. Barnes.

2 Q. Technisource and Mr. Barnes; correct?

3 A. Yes.

4 Q. That is not an agreement between IRP Solutions and  
5 Technisource; correct?

6 A. Correct.

7 Q. Do you know what Mr. Barnes' responsibilities were on  
8 the other projects?

9 A. I do not.

10 Q. Let me ask you a little something about the staffing  
11 industry in general. With 20 years of experience,  
12 hopefully you can provide answers to this.

13 If -- how do I phrase this? In standard contract  
14 engagements of a contract employee, are there typically  
15 standard terms, as far as the work week is concerned, how  
16 many hours are typically allowed for an employee on a  
17 traditional engagement?

18 A. A standard work week is 40 hours.

19 Q. Would you say that most companies hire contract  
20 employees on a 40-hour work week?

21 A. Yes.

22 MR. KIRSCH: Objection, relevance.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25 Q. (BY MR. BANKS) Okay. What did Mr. Banks tell you

1 was the reason for delayed payment?

2 A. Delayed milestones in delivering the software that  
3 was being developed to the New York City Police  
4 Department, and them not providing moneys for the work  
5 that had been done.

6 Q. Okay. Is that the same information -- I know memory  
7 -- this has been a long time. I don't want to be -- is  
8 that the same testimony you provided to the American  
9 Arbitration Association?

10 A. I don't know who the American Arbitration Association  
11 is.

12 Q. Okay. Did Mr. Banks tell you that payment was  
13 delayed due to anticipated software sales with not --  
14 well, anticipated -- not receiving anticipated revenue  
15 from a software sale of their product?

16 A. I don't understand the question.

17 Q. Did Mr. Banks tell you the reason that Technisource  
18 was not paid was because they had not received money from  
19 anticipated software sales?

20 A. No. The only discussion was around the software that  
21 was being developed, specifically for the New York City  
22 Police Department. It was my understanding that that was  
23 the beta version of a case management system that was  
24 being developed. And their goal was to sell to other law  
25 enforcement entities, you know, once the initial beta

1 version was deployed and sold.

2 MR. BANKS: Thank you. Your Honor, may we  
3 approach?

4 THE COURT: You may.

5 (A bench conference is had, and the following is  
6 had outside the hearing of the jury.)

7 MR. BANKS: Your Honor, I wanted to get with you.  
8 I don't want to be presumptive any more. I want your  
9 ruling. Technisource filed part of the contract that we  
10 saw, the arbitration clause. In the statement or  
11 information that was provided to the Arbitration  
12 Committee, she specifically said that Mr. Banks'  
13 anticipated software, Your Honor, would return in a cash  
14 infusion. That is what is reported in arbitration.  
15 I would like to refresh her recollection.

16 THE COURT: But she didn't do this. This wasn't  
17 her testimony. She doesn't even know who they are. So I  
18 don't know that this was provided by her. This was a  
19 summary of the company. I would assume that it was done  
20 by the lawyers. So unless you can lay a foundation that  
21 she made any statements -- she already said she doesn't  
22 know who the American Arbitration Association is.

23 MR. BANKS: Can I have one moment? When we go back  
24 I will take a moment.

25 THE COURT: That would be fine.

1 (The following is had in the hearing of the jury.)

2 MR. BANKS: One moment, Your Honor.

3 THE COURT: All right.

4 MR. BANKS: I have no further questions for  
5 Ms. Carter.

6 THE COURT: All right. Anybody else?

7 MR. BARNES: I have a few questions.

8 THE COURT: Mr. Barnes.

9 **CROSS-EXAMINATION**

10 **BY MR. BARNES:**

11 Q. Could you tell me how long you have been in the IT  
12 staffing business?

13 A. Since 1989.

14 Q. Would you say you are familiar with the type of IT  
15 positions you staff for clients?

16 A. Yes.

17 Q. You have kind of a working knowledge. So are you  
18 familiar -- would you say certain positions have a higher  
19 workload than other positions in pertaining to -- like,  
20 you know, for instance, an assistant administrator, would  
21 you say they have higher or less workload than, say, a  
22 developer?

23 A. No, I think it is project dependent.

24 Q. Okay. It is project dependent. So, for instance, do  
25 you understand -- first of all, do you understand the type

1 of jobs a system administrator does?

2 A. Yes.

3 Q. Okay. So would you agree that a system administrator  
4 can usually monitor, maybe configure, sets up, like, a  
5 server of some sort?

6 A. Correct.

7 Q. So usually when that server is up and running and  
8 everything is fine, is that system administrator still  
9 dealing with that one server or multiple servers, would  
10 you say?

11 A. Yes.

12 Q. Okay. How is he dealing with those servers?

13 A. Monitoring and maintaining.

14 Q. But he is not, like, typing, and he can't go -- he  
15 can get up and go to the bathroom and come back and the  
16 server is still doing its thing; correct?

17 A. I would assume so.

18 Q. So just say that system administrator is sitting  
19 there waiting to be monitoring the server, do they send  
20 him home and say, you have nothing to do, go home,  
21 usually?

22 A. No.

23 Q. He is really there for, would you agree, for, like,  
24 insurance. He can monitor the system. If there is a  
25 need, he can go do what he needs to do, let the server run

1 the way it needs to go, and then continue about what he is  
2 doing forward. Would you agree with that statement?

3 A. Depends on what is -- who is managing him and what  
4 job functions they want him performing during the day.

5 Q. Correct. So he could be very, very busy, or he could  
6 be not very, very busy; is that correct?

7 A. Yes.

8 Q. Okay. And then while he's sitting there monitoring  
9 the server, could -- is it physically possible for him to  
10 be doing another job which may demand a little more time  
11 and, basically, be available for monitoring the system and  
12 doing another job, say maybe doing development, until he  
13 is needed on the other system?

14 MR. KIRSCH: Objection, lack of foundation.

15 THE COURT: Sustained.

16 MR. BANKS: Okay.

17 Q. (BY MR. BARNES) You said if you had found out that  
18 Mr. Barnes was working other contracts, you say you would  
19 have addressed it. What do you mean by "addressed it"?

20 A. I would have asked, what is going on here? Just  
21 raised a red flag with me personally that there is  
22 something fraudulent going on.

23 Q. Who would you have addressed that to?

24 A. Most likely both the consultant and to the client.

25 Q. Okay. And what if the client didn't have a problem

1 with that consultant working multiple contracts?

2 A. I would have a problem with it.

3 Q. What would you have done?

4 A. Ended the contract.

5 Q. Also, is it possible, too, was there a requirement  
6 that the consultant had to be there at a certain time?

7 A. Not to my knowledge.

8 Q. Okay. So there also could have been work after hours  
9 possibly?

10 A. Possibly.

11 Q. Okay. But if you would have ended the contract --  
12 let me ask this question. Usually, that clause in there,  
13 would you agree, is so that you don't have competition  
14 with other staffing agencies at the client --

15 MR. KIRSCH: Objection, Your Honor, relevance.

16 THE COURT: Overruled.

17 Q. (BY MR. BARNES) You read the employment agreement,  
18 and it was saying how the client couldn't, you know,  
19 represent working there as long as they are working at  
20 Technisource?

21 A. Right. That clause is so the consultant is not being  
22 represented by another consulting company at the same  
23 client that Technisource employed them at; correct.

24 Q. And that clause really is to protect so you don't  
25 have no direct competition with another staffing agency

1 with Technisource?

2 A. Correct.

3 MR. BARNES: No further questions.

4 MR. WALKER: One moment, Your Honor.

5 THE COURT: Mr. Walker?

6 MR. WALKER: Could we have one moment?

7 Your Honor, may we republish Government Exhibit 14?

8 THE COURT: You may.

9 **CROSS-EXAMINATION**

10 **BY MR. WALKER:**

11 Q. Ms. Carter, just take a minute to glance at that so  
12 you can be aware of its contents.

13 A. Uh-huh.

14 Q. So, in this letter, Mr. Banks is proposing a payment  
15 schedule for IRP Solutions to pay your company; is that  
16 correct?

17 A. Yes.

18 Q. And in this payment schedule, he has basically  
19 outlined 6 months to repay on the outstanding invoices.  
20 Do you agree?

21 A. Yes.

22 Q. And what does this repayment -- proposed repayment  
23 schedule indicate to you, as far as the intentions of  
24 Mr. Banks?

25 MR. KIRSCH: Objection, lack of foundation.



1 THE COURT: Overruled.

2 THE WITNESS: That there was going to be an influx  
3 of cash in order for them to be able to pay the invoices.

4 Q. (BY MR. WALKER) Okay. And you would agree that he's  
5 stating that that anticipated flow of cash would come from  
6 one of the agencies that IRP Solutions is currently  
7 working to close business on?

8 A. Yes. That is what the letter says.

9 MR. WALKER: No further questions, Your Honor.

10 THE COURT: Redirect?

11 MR. KIRSCH: Thank you, Your Honor.

12 Your Honor, could we please publish 420.01,  
13 starting with page 15.

14 Can you enlarge I and II for us, Special Agent  
15 Smith.

16 **REDIRECT EXAMINATION**

17 **BY MR. KIRSCH:**

18 Q. Ms. Carter, this is the exhibit to the agreement  
19 between Technisource and IRP; is that right?

20 A. Yes.

21 Q. And this referred -- the scope of work here is  
22 network services and network administration?

23 A. Uh-huh.

24 Q. Is that the kind of service you were discussing just  
25 a minute ago with one of the people asking you questions

1 here; network administration?

2 A. No. I think he was referring more to UNIX  
3 administration.

4 Q. UNIX administration.

5 MR. KIRSCH: Can we then please go to page 19 of  
6 this exhibit. And highlight Roman Numeral I and II,  
7 please.

8 THE WITNESS: Systems administrator. That is what  
9 he was referring to.

10 Q. (BY MR. KIRSCH) That is what he was referring to.  
11 Who was the employee that was payrolled to do that work by  
12 Technisource?

13 A. According to this document, Shaun Haughton.

14 MR. KIRSCH: Could we go back to page 17 of that  
15 exhibit, please, and highlight I and II.

16 Q. (BY MR. KIRSCH) What work was Kendrick Barnes  
17 payrolled to do there?

18 A. Oracle dba.

19 Q. Not what you were talking about a minute ago; is that  
20 right?

21 A. No. It is not what I thought we were talking about.

22 Q. It is not what you understood you were talking about?

23 A. Correct.

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

25 Q. (BY MR. KIRSCH) You were asked a little bit about

1 the process that Technisource used to decide whether to  
2 improve a client -- approve a client. I think you said  
3 part of that process was the credit check process.

4 A. Yes.

5 Q. In the course of that process, did you say that you  
6 had gotten information -- do you get information about the  
7 business in which your client is engaged, as well?

8 A. From the Dun & Bradstreet there is a description.

9 Q. Okay.

10 A. We also, you know, Googled them and had an  
11 understanding what business they were engaged in from  
12 their website.

13 Q. Did your company also have information that had been  
14 provided by a representative of IRP?

15 A. Say that again? I am sorry.

16 Q. Did your company also have information at that time  
17 that had been provided by a representative of IRP?

18 A. That was my understanding.

19 Q. And was that information that your company also would  
20 have used in deciding whether to do business with IRP?

21 A. Yes.

22 Q. You were also asked a couple of questions about other  
23 projects on which Kendrick Barnes may have been working.

24 A. Uh-huh.

25 Q. Do you recall those questions? Do you know whether

1 Mr. Barnes was working on any other projects?

2 A. I don't.

3 Q. Do you know whether any other projects even existed  
4 for Mr. Barnes?

5 A. I don't.

6 Q. As a matter of fact, do you know whether Mr. Barnes  
7 actually worked the hours that he reported to  
8 Technisource?

9 MR. ZIRPOLO: Objection, speculation.

10 THE COURT: Overruled.

11 THE WITNESS: I don't.

12 MR. KIRSCH: Thank you, Ms. Carter.

13 MR. BARNES: If I may, Your Honor?

14 THE COURT: Briefly. It has to be limited to  
15 questions on redirect.

16 **RECROSS-EXAMINATION**

17 **BY MR. BARNES:**

18 Q. First off, did I state that I was a systems  
19 administrator? It was hypothetical. Did I say I was a  
20 systems administrator?

21 A. No.

22 Q. Number two, is a dba, database administrator, an  
23 administrator of database, would you say it is similar --  
24 I mean, even though they are different things, the work is  
25 you're administering the database, monitoring. Similar --

1     you do the same things but for a different product.  Would  
2     you agree with that?

3     A.    I think it is a completely different skill set.  A  
4     UNIX administrator versus an Oracle dba, database  
5     administrator.

6     Q.    So would you agree that if an Oracle database is up  
7     and running and it is doing its job, there is -- you don't  
8     have to go poke it to make sure it is still up and  
9     running; it is kind of doing its thing?

10    A.    I am not an Oracle dba.

11    Q.    That's fair.  But it is similar to -- would you agree  
12    that it is not a job to where you're just constantly --  
13    you know, that there is no free time?

14    A.    I can't answer that.

15           MR. BARNES:  Okay.  That's fine.

16           No further questions.

17           THE COURT:  All right.  May this witness be  
18    excused?

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

20           THE COURT:  Thank you very much.  You are excused.

21           All right we are going to go ahead and break for  
22    lunch.  I do have a 1:15 hearing, so I am going to give  
23    you an extra long lunch.  I don't think that will take  
24    more than half an hour.  So if you could be back at 1:45.

25           Also, I want to let you know that I really

1 appreciate your conscientiousness in being lined up, ready  
2 to come in when I tell you. Not all jurors do that. So I  
3 really appreciate the fact that you all are raring to go  
4 to hear the testimony and that we don't have to line you  
5 up; that you have already done that yourself.

6 So, remember you are not to discuss anything with  
7 anybody, not to talk about this case with anyone while you  
8 are out to lunch. Enjoy your lunch. We will see you back  
9 in about an hour and a half.

10 Court will be in recess.

11 (Lunch break is taken from 12:13 p.m. to 1:45 p.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. Are we ready to proceed?

16 MR. KIRSCH: Your Honor, could I ask one procedural  
17 question? Depending how far we get this afternoon, it is  
18 possible we will have a witness that I would want to ask a  
19 question about that Exhibit 908.01. If we do get to that  
20 point, would the Court like me to just go over and put it  
21 into view -- pick it up and bring it over to the witness'  
22 view, or how should I handle that?

23 THE COURT: You can't do it with the elmo copy?

24 MR. KIRSCH: The problem with that copy, Your  
25 Honor, is when we blow it up, it becomes illegible. It

1 was taken from too far away to begin with.

2 THE COURT: All right. Yes. When we get to that  
3 point, just ask if you can move the white board so the  
4 witness can see. Then I would say have the witness step  
5 down to address it, so that the defendants and the jury  
6 can see.

7 MR. KIRSCH: Okay. Thank you, Your Honor.

8 THE COURT: Anything from the defendants?

9 MR. BANKS: No, Your Honor.

10 THE COURT: All right. Ms. Barnes, would you  
11 please bring in the jury.

12 So we have our exhibits out for the next witness.

13 MR. KIRSCH: Next witness, if he needs any  
14 exhibits, they will already be in evidence.

15 THE COURT: Okay. Great.

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

18 THE COURT: You may be seated.

19 Government may call its next witness.

20 MR. KIRSCH: Thank you, Your Honor. The Government  
21 calls Randal Hayes.

22 COURTROOM DEPUTY: Your attention, please.

23 **RANDAL HAYES**

24 having been first duly sworn, testified as follows:

25 COURTROOM DEPUTY: Please be seated.

1           Please state your name, and spell your first and  
2           last names for the record.

3           THE WITNESS: My name is Randal Hayes. And I go by  
4           Randy. My name is spelled R-A-N-D-A-L H-A-Y-E-S.

5                               **DIRECT EXAMINATION**

6           **BY MR. KIRSCH:**

7           Q. Mr. Hayes, can you tell the jury where you work,  
8           please?

9           A. Currently at a company called Modis.

10          Q. What kind of a company is that?

11          A. An IT staffing and recruiting company.

12          Q. Did you previously work at a company called  
13          Technisource?

14          A. Yes.

15          Q. When were you with Technisource?

16          A. I was there -- I have to go back 5 years -- until  
17          2006. And I was there 7 years. So 1999 to 2006.

18          Q. In the year 2004, what was your position at  
19          Technisource?

20          A. I was an accounts' manager.

21          Q. And was there a particular Technisource office where  
22          you were based?

23          A. In Baltimore.

24          Q. While you were working at Technisource in Baltimore,  
25          did you have an occasion to arrange business between



1 Technisource and a company called IRP Solutions  
2 Corporation?

3 A. Yes, I did.

4 Q. Do you recall approximately when that process began?

5 A. It was in 2005 sometime. I don't recall dates.

6 Q. Okay. And if I could ask you to --

7 MR. KIRSCH: If I could ask to publish briefly,  
8 Your Honor, Government Exhibit, I believe it is 420.01.

9 THE COURT: Yes, you may.

10 Q. (BY MR. KIRSCH) Do you recognize that as the  
11 agreement that would have been executed as a part of that  
12 relationship, Mr. Hayes?

13 A. Yes.

14 Q. There is a date there of June 3, 2004, in the top  
15 paragraph. Does that refresh your memory about the time  
16 frame?

17 A. That would be close. Again, I am not very good at  
18 dates. I have trouble remembering my anniversary, things  
19 of that nature, so --

20 Q. Okay. No reason to dispute June 3rd of 2004?

21 A. No. Not at all.

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

23 Q. (BY MR. KIRSCH) How is it that you first came in  
24 contact with anybody related to IRP?

25 A. I, as the account manager, was processed to a call

1 from a female that was at IRP stating that she needed to  
2 see if we could do any kind of payrolling service for  
3 people that they needed at their environment at IRP.

4 Q. All right. During that conversation, did you have  
5 any discussion about the rates that Technisource would  
6 charge?

7 A. We did. I discussed that, you know, in that process,  
8 we do do things at certain percentages. What we look for  
9 is percentages of profitability to numbers. So, for  
10 example, if it is a hundred dollar bill rate, you try to  
11 get a 20 percent margin. So what you are trying to do is  
12 create margins, and we discussed that.

13 Q. Okay. Was there any point during that conversation  
14 when you suggested that the rates or that the margin for  
15 Technisource wasn't high enough?

16 A. Yes.

17 Q. What happened, if anything, after you made that  
18 suggestion?

19 A. The young lady stated that she would have to go to  
20 management to be able to get approval to go higher, but  
21 that they definitely needed the people. And if we could  
22 work something out, we could get this done. And,  
23 basically, I said our rates are pretty much  
24 non-negotiable, and you will have to work within our  
25 guidelines. And she said she would have to go to

1 management.

2 Q. All right. At some point did you speak to someone  
3 that you understood to be in the IRP management?

4 A. Yes.

5 Q. Who was that?

6 A. Mr. Banks.

7 Q. And how was it that you spoke to Mr. Banks?

8 A. Via phone call.

9 Q. Did you discuss the rates with Mr. Banks?

10 A. Rates didn't become a concern. Mr. Banks just simply  
11 stated that if we wanted to work with his company, we  
12 could get things done. All we had to do was provide the  
13 paperwork, and he would take care of the process.

14 Q. Were the rates that you proposed for Technisource  
15 ultimately agreed to?

16 A. Yes.

17 Q. When you had the conversation with Mr. Banks, did you  
18 ask him about what sort of business IRP was in?

19 A. Yes, I did.

20 Q. What did he tell you about that?

21 A. They were developing software for legal entities or  
22 police departments, or even the other -- the Departments  
23 of Commerce in D.C. So it was all a legal processing  
24 business.

25 Q. Related to law enforcement?

1 A. Exactly.

2 Q. And did Mr. Banks give you any information about sort  
3 of where that business stood with respect to any  
4 particular law enforcement agencies?

5 A. He indicated the New York Police Department process  
6 was going to be sold very quickly. And the Department of  
7 -- I want to say the Department of Justice. But that that  
8 piece was already created and done, and they were just  
9 waiting for the final signatures, and they would have that  
10 piece sold to them. Because they already had the deal in  
11 place, they just needed to get all of the final approvals.

12 Q. Was there any discussion about an entity called the  
13 Department of Homeland Security?

14 A. Yes. The Department of Homeland Security was his  
15 prime selling point. He said he would be in D.C. in the  
16 next two to three weeks to be able to close that deal  
17 finally, and all things would go forward from that point.

18 Q. During your conversations with Mr. Banks, did he give  
19 you any information that IRP had had previous  
20 relationships with staffing companies that had been  
21 terminated for nonpayment?

22 A. No indication.

23 Q. The information that he gave you about the business  
24 with the New York Police Department and the Department of  
25 Homeland Security, was that -- let me back up.

1           Did you have some role in deciding whether  
2   Technisource ought to go forward to do business with IRP?

3   A.    I did.

4   Q.    Was your input on that question influenced at all by  
5   the information you got from Mr. Banks about IRP's  
6   business?

7   A.    Yes.   Because of who they were dealing with, it was  
8   definitely influenced.

9   Q.    Did you have dealings with the particular employees  
10   that were payrolled for IRP, as well?

11   A.    Yes, I did.

12   Q.    In particular, did you ever speak to a person named  
13   Kendrick Barnes?

14   A.    Yes, on numerous occasions.

15   Q.    I want to start, I think, by asking you about  
16   conversations that you might have had at the beginning of  
17   that relationship. Did you have any conversations with  
18   Mr. Barnes about whether or not he had worked for  
19   different staffing companies?

20   A.    No, not that I recall.

21   Q.    Okay. Did Mr. Barnes give you any information that  
22   indicated that he was working for other staffing companies  
23   at IRP at the same time he was going to be working there  
24   for Technisource?

25   A.    No. I do recall him saying he had worked at IRP

1 prior --

2 Q. Okay.

3 A. -- but he was being brought back. But no indication  
4 of other companies.

5 Q. If you had gotten information about other companies,  
6 would that have had some effect on whether you wanted to  
7 payroll Mr. Barnes there?

8 A. Absolutely. You know, no company would want their  
9 employee working for multiple companies. I mean, it is  
10 not good business.

11 Q. At some point later in the relationship, did you  
12 learn that the IRP's invoices were not getting paid?

13 A. Yes.

14 Q. Did you play any role in any efforts to try to  
15 collect on those invoices?

16 A. Unfortunately, yes, because Technisource has a unique  
17 thing where their account managers are also responsible to  
18 make numerous calls on the collection of debts that aren't  
19 being paid.

20 Q. So you participated in that process with respect to  
21 IRP?

22 A. Yes.

23 Q. Did you make telephone calls, yourself?

24 A. Yes.

25 Q. And who did you try -- who did you call?

1 A. Well, primary contact would have been Mr. Banks, due  
2 to his being one of the executives of the company.

3 Q. Do you have any -- do you have a memory of how often  
4 or how frequently you were trying to call Mr. Banks?

5 A. I mean, there were some days I would make five to  
6 seven calls to the office. And other days I would miss  
7 and just not do anything on that day, and then go back the  
8 next day and do three to five calls.

9 Q. Were you ever able to reach Mr. Banks?

10 A. I don't recall reaching him after we had a problem  
11 with bills. Maybe at the very beginning I may have and he  
12 said, yeah, it's coming. Don't worry about it. We have  
13 it covered. But that was, maybe, I am going to say, three  
14 weeks in or so, when -- because what they do, the way  
15 invoices work in staffing companies, it takes 30 days for  
16 them to ever hit.

17 So after 30 days. Maybe three weeks into that  
18 period. So I am guessing maybe, you know, seven, eight  
19 weeks, and did have one conversation at that time that I  
20 recall, and him saying, don't worry. We have it covered.  
21 This sale is going through. We have no problems.

22 Q. When you were making the other calls that you  
23 described, were you leaving messages of any kind?

24 A. I left a lot of voice mails.

25 Q. Okay. And had you had occasions to try to reach

1 Mr. Banks at the beginning of the relationship when you  
2 were getting things set up?

3 A. Yes. As stated, when we had to fill out contract  
4 work and things.

5 Q. How did his availability appear at the beginning of  
6 the relationship when you would try to call him, to the  
7 end of the relationship?

8 A. I usually had no problems reaching --

9 MR. BANKS: Objection, Your Honor, relevance.

10 THE COURT: Overruled.

11 Q. (BY MR. KIRSCH) You can answer that question, sir.

12 A. I usually had no problem reaching Mr. Banks in any  
13 way, or within a day or so I would get a returned call.

14 Q. At the beginning of the relationship?

15 A. Yes.

16 MR. KIRSCH: Could I have just one moment, Your  
17 Honor?

18 THE COURT: You may.

19 MR. KIRSCH: I think those are all of my questions,  
20 Your Honor. Thank you.

21 THE COURT: All right. Mr. Banks?

22 MR. BANKS: Thank you.

23 **CROSS-EXAMINATION**

24 **BY MR. BANKS:**

25 Q. Mr. Hayes, did you run a D & B credit report on IRP



1 Solutions prior to conducting business with them?

2 A. Me personally, no. Our staff personnel Amy  
3 Golabiewski, would have been the person who would have  
4 done that.

5 Q. Would you have been alerted to the results of that  
6 credit report?

7 A. Sometimes, sometimes not. In this case she never  
8 said anything to me regarding any instance of any kind.

9 Q. So, does Technisource do business with companies who  
10 have a suspect credit rating?

11 A. I don't work for Technisource any more. So it is  
12 hard to answer that as Technisource.

13 Q. Did Technisource, when you were engaged with them and  
14 employed by them, do business with companies that had  
15 suspect credit ratings?

16 A. Generally speaking, no. But occasionally we would do  
17 it under a guideline where they had to make a pre-payment.  
18 In other words, if we knew that they were going to have a  
19 \$50,000 staffing bill, sometimes we would ask for half of  
20 it up front.

21 Q. Okay. Did you ask for half of it up front in this  
22 case?

23 A. Not that I recall.

24 Q. Okay. Now, you mentioned a minute ago that it was  
25 not good business for an employee to work for another

1 company while they were working with Technisource; is that  
2 correct?

3 A. That's correct.

4 Q. What other things -- would you consider not doing  
5 proper due diligence or proper credit not good business?

6 MR. KIRSCH: Objection, relevance.

7 THE COURT: Sustained.

8 Q. (BY MR. BANKS) If IRP had come back with a suspect  
9 credit rating, would Technisource have done business with  
10 them?

11 A. I'm not in a position to answer that. I have no way  
12 of knowing.

13 Q. Have you ever seen a company turned down due to lack  
14 of credit?

15 A. Yes.

16 Q. Now, you also said that your rates were -- that you  
17 presented to IRP Solutions were non-negotiable; correct?

18 A. For the most part, yes, that's absolutely correct.

19 Q. So for IRP to do business with you, they would have  
20 to accept your terms as it relates to the rates; correct?

21 A. With rates and all of the other things that go with  
22 it, including payment schedules, including time sheets,  
23 everything that went with it, yes.

24 Q. So would you say that Technisource was responsible  
25 for entering into business and fully responsible for

1 entering into business with IRP Solutions?

2 MR. KIRSCH: Objection, relevance and foundation.

3 THE COURT: Sustained as to foundation.

4 Q. (BY MR. BANKS) Does Technisource have a policy that  
5 governs how they enter into business with clients?

6 A. I don't know a specific policy, because I haven't  
7 worked there in over six years, but they did have a  
8 program that was sent to account managers to be able to  
9 tell them what they were responsible for to make sure they  
10 went through the due diligence to find out whether the  
11 people were viable customers.

12 Q. And do you recall what type of due diligence it was?  
13 You were an account manager; correct?

14 A. That's correct.

15 Q. Do you recall what that process was?

16 A. Well, I had to get a Dun & Bradstreet number. I had  
17 to report it to the people. I had to give them all of the  
18 information regarding the account, including telephone  
19 numbers, site of business. Usually had to provide a  
20 website for the business. Any of the relevant pieces, and  
21 who the executive management staff was, for any business  
22 we did business with.

23 Q. So it is safe to say, from -- that there was a policy  
24 in place, and unless those -- is it safe to say there was  
25 a policy in place?

1 A. Again, I never saw a written policy that stated  
2 exactly what to do for a business, other than what I was  
3 told for my part to be able to process to go to our  
4 accounts person, who was Amy.

5 Q. But somebody else, would you agree, was making  
6 decisions on whether or not the company is creditworthy or  
7 not; correct?

8 A. That, I agree.

9 Q. At any time did Mr. Banks or any other representative  
10 from IRP speak to somebody else within that credit  
11 approving entity within Technisource?

12 A. I know Kim Carter, at that time, Kim Pillas was  
13 spoken to regarding viability of the company.

14 Q. Okay. Now a minute ago you testified you were  
15 influenced by who IRP was dealing with; correct?

16 A. That's correct.

17 Q. And would you agree that every company that does  
18 business with Technisource is engaged in some sort of  
19 business activity or they wouldn't be coming to  
20 Technisource; correct?

21 A. Yes, business activity. But some people develop  
22 software. Some people are manufacturers. So it varies in  
23 activities. So the answer is they are in some kind of  
24 business.

25 Q. And how do you evaluate, say, a manufacturing

1 company, whether or not they would be a viable company?

2 A. Usually you go through credit histories. Then you  
3 also see if they have viable products, and you try to get  
4 references on if they are paying bills.

5 Q. Okay. During your interactions with IRP, who did the  
6 majority of your conversations -- the majority of your  
7 conversation was had -- you were engaged with who the  
8 majority of time when dealing with IRP?

9 A. Well, the consultant people, Mr. Banks, and the  
10 secretary's name, who initiated the conversation to start  
11 with, who I do not remember the name of. It may come back  
12 to me if you said it, but I do not remember the name.

13 Q. But you remember the name Mr. Barnes?

14 A. Yes, I do. I can also tell you Mr. Shannon's name if  
15 you like.

16 Q. Did you have a conversation with Mr. Shannon?

17 A. I did.

18 Q. Did Mr. Shannon provide you with any information  
19 about what was going on at the NYPD?

20 MR. KIRSCH: Objection, hearsay.

21 THE COURT: Overruled.

22 THE WITNESS: Could you restate the question.

23 Q. (BY MR. BANKS) Did Mr. Shannon provide you with any  
24 information about what was going on with IRP at the New  
25 York City Police Department?

1 A. No, he did not.

2 Q. Okay. Did you know Mr. Shannon was a retired veteran  
3 of the NYPD?

4 A. Yes, I did.

5 Q. Did the fact that he was engaged with IRP Solutions  
6 in their endeavor to do business at NYPD influence you in  
7 any way to do business?

8 A. It had some bearing, yes.

9 Q. Okay.

10 MR. BANKS: No further questions from me, Your  
11 Honor.

12 THE COURT: All right. Mr. Walker?

13 **CROSS-EXAMINATION**

14 **BY MR. WALKER:**

15 Q. Hello, Mr. Hayes.

16 A. Hello.

17 Q. Let's rewind to the beginning of your testimony when  
18 you were talking with Mr. Kirsch. You relayed that you  
19 were told by Mr. Banks in regards to the NYPD that the  
20 software was going to be sold very quickly at NYPD?

21 A. That's correct.

22 Q. And you also said that in regards to NYPD and DHS,  
23 that the deal -- we were close and that deal would finally  
24 be closing, and all things would go forward from that  
25 point. Is that also correct?

1 A. That's true.

2 Q. Did Mr. Banks or anyone else at IRP Solutions make  
3 any other representations as to the status of closing the  
4 dealings at NYPD or DHS?

5 A. Not that I recall.

6 MR. WALKER: Thank you. No further questions.

7 THE COURT: Anybody else?

8 Any redirect?

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

10 **REDIRECT EXAMINATION**

11 **BY MR. KIRSCH:**

12 Q. Mr. Hayes, do you recognize the name Charlisa  
13 Stewart?

14 A. Yes, I do.

15 Q. How do you recognize that name?

16 A. That would be the person that initiated the  
17 conversation to be able to do business with IRP.

18 Q. And then the due diligence process that you were  
19 describing at the beginning of a relationship, does that  
20 process include gathering information from your potential  
21 client about what the potential client's business is?

22 A. Generally speaking, yes.

23 Q. And you -- did you reference that one of the things  
24 that you would try to do is to determine whether a company  
25 had a viable product?

1 A. That's correct.

2 Q. Would you consider information that a company gave  
3 you about its sales in determining whether or not it had a  
4 viable product?

5 A. Yes.

6 Q. Did you consider that information from IRP in  
7 determining whether or not you thought it had a viable  
8 product?

9 A. It certainly came into consideration, absolutely.

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

11 Those are all of my questions.

12 THE COURT: All right. May this witness be  
13 excused.

14 MR. KIRSCH: Yes, Your Honor.

15 THE COURT: Thank you very much, Mr. Hayes, you are  
16 excused.

17 Government may call its next witness.

18 MS. HAZRA: Thank you, Your Honor. The Government  
19 calls Jennifer Stephens.

20 COURTROOM DEPUTY: Your attention, please.

21 **JENNIFER STEPHENS**

22 having been first duly sworn, testified as follows:

23 Please be seated.

24 Please state your name, and spell your first and  
25 last name for the record



1 A. Jennifer Stephens. J-E-N-N-I-F-E-R S-T-E-P-H-E-N-S.

2 THE COURT: Could I ask you to be sure you lean  
3 into the microphone because you have a very soft voice.

4 **DIRECT EXAMINATION**

5 **BY MS. HAZRA:**

6 Q. Good afternoon, Ms. Stephens. Where are you  
7 currently employed?

8 A. With Express Employment Professionals.

9 Q. At some point prior to that did you work for  
10 Spherion?

11 A. Yes.

12 Q. Do you recall when you worked there?

13 A. I believe it was 2003 to 2006.

14 Q. Were you in a particular office?

15 A. Yes.

16 Q. And where was that office?

17 A. Colorado Springs.

18 Q. What was your position there in 2004?

19 A. I was the branch manager.

20 Q. And as branch manager, what were your  
21 responsibilities?

22 A. Full P & L responsibilities; profit and loss. The  
23 full responsibility of the branch was mine.

24 Q. What kind of company is Spherion?

25 A. It is a staffing service. We provide temporary, temp

1 to hire, and direct hire staffing.

2 Q. Did you specialize in any particular staffing, or did  
3 you cover all kinds of staffing?

4 A. We were a generalist. All types of staffing.

5 Q. At some point in 2004, did you come into contact with  
6 a company known as IRP Solutions?

7 A. Yes.

8 Q. How did you first have contact with them?

9 A. They contacted me by phone.

10 Q. Do you recall who contacted you?

11 A. Sylvia.

12 Q. Did Sylvia explain what she wanted?

13 A. Yes.

14 Q. What was that?

15 A. Payrolling.

16 Q. Who did she want payrolled, or what kind of work did  
17 she want payrolled, did she say?

18 A. She talked about administrative and IT.

19 Q. Based on this initial call with Sylvia, did you  
20 follow up with anyone at IRP?

21 A. Yes, I did.

22 Q. And who was that?

23 A. David Banks.

24 Q. How did you conduct this follow-up with Mr. Banks?

25 Was it a meet in person or on the telephone?

1 A. At first it was on the phone, then it was in person,  
2 I believe.

3 Q. Where did the meeting in person occur?

4 A. At IRP's office.

5 Q. Do you recall where they were, roughly?

6 A. Campus Drive in Colorado Springs.

7 Q. When you met with Mr. Banks, was anyone else there  
8 besides the two of you?

9 A. No.

10 Q. During the course of the meeting, did Mr. Banks  
11 explain more about what IRP Solutions did?

12 A. Yes.

13 Q. What did he say?

14 A. He said they were developing a software for the NYPD.

15 Q. Did he make any statements about the timing of that  
16 software development?

17 A. He just indicated that they were getting ready to  
18 sign a contract with the NYPD.

19 Q. Did Mr. Banks explain why he was reaching out to  
20 Spherion? Did he talk more about the payrolling  
21 situation?

22 A. Yes.

23 Q. What did he say?

24 A. He asked us to move forward, and indicated that it  
25 would be a lucrative, solid relationship for both

1 companies.

2 Q. And what did he say about the lucrative relationship?  
3 What did he say, if you can recall?

4 A. The development of the software was successful, and  
5 it would be lucrative; that the business would continue.

6 Q. At some point shortly after that meeting, did you  
7 make a decision to contract with IRP?

8 A. I did.

9 Q. And provide the payrolling services?

10 A. Yes, I did.

11 Q. Did Mr Banks' statements about IRP's business and the  
12 software development have any effect on that decision?

13 A. Yes, absolutely.

14 Q. Can you please explain.

15 A. Well, the way he explained it, this was, once again,  
16 a very lucrative contract, and it would be lucrative for  
17 us to continue to do payrolling with him, as they  
18 continued to develop this software.

19 Q. At this point in time, Ms. Stephens, do you recall  
20 how many employees you agreed to payroll?

21 A. I don't remember the exact number, no. I think it  
22 was maybe 12 to 16. I'm guessing. I don't know.

23 Q. At some point early on, did you refer Mr. Banks and  
24 IRP on to anyone else in your company?

25 A. Yes, I did.

1 Q. Who was that?

2 A. Larry Mills.

3 Q. And why did you refer them to Mr. Mills?

4 A. Because Larry Mills was the director for the IT  
5 division of Spherion.

6 Q. So what kind of employees did you handle for IRP?

7 A. I did administrative and clerical, as well as some of  
8 the IT people; lower level IT people. The higher level  
9 Larry provided.

10 Q. And did Spherion supply or payroll both kinds of  
11 employees to IRP?

12 A. Yes, we did.

13 Q. At some point, you know, in the beginning of this  
14 relationship, did you discuss the pay rates for the  
15 employees that were going to be payrolled at IRP?

16 A. No. The pay rates were given to us by IRP. They  
17 made the decision.

18 Q. Based on your experience in the staffing industry,  
19 how did those pay rates seem?

20 A. They were high for the Colorado Springs market.

21 Q. And just to be clear, we are talking about the pay  
22 rate for whom?

23 A. For both the administrative, as well as the IT  
24 people. They were high in comparison to what the market  
25 bears there.

1 Q. And who paid the administrative and IT employees that  
2 were payrolled to IRP?

3 A. Spherion, my office.

4 Q. And how did Spherion know the hours upon which to pay  
5 these employees?

6 A. We were provided with a time card.

7 Q. From whom?

8 A. From the employee.

9 Q. If you could please look at what has been marked for  
10 identification purposes as Government Exhibit 361.

11 I am sorry, Ms. Barnes, we also need Government's  
12 Exhibits 362.00 and 360.02.

13 Q. (BY MS. HAZRA) If you could please look at  
14 Government's Exhibit 361.00.

15 A. Okay.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. Or these documents, I should say.

19 A. Yes, I do.

20 Q. What are these?

21 A. Time cards. Spherion time cards. And they are all  
22 time cards, it appears.

23 Q. Are these time cards for the employees that Spherion  
24 payrolled at IRP?

25 A. Yes.

1 MS. HAZRA: Your Honor, I would ask Government's  
2 Exhibit 361 be admitted.

3 THE COURT: Any objection?

4 MR. BANKS: No objection, Your Honor.

5 THE COURT: Exhibit 361.00 will be admitted.

6 (Exhibit No. 361.00 is admitted.)

7 Q. (BY MS. HAZRA) After receiving these time cards, did  
8 Spherion then bill IRP?

9 A. Yes.

10 MS. HAZRA: Actually, I will back up and ask that  
11 Government's Exhibit 361 be published?

12 THE COURT: It may.

13 MS. HAZRA: If you could highlight the next page,  
14 Special Agent Smith.

15 Q. (BY MS. HAZRA) Ms. Stephens, if you could please --  
16 this time card should be on the screen in front of you.  
17 Can you please explain -- first of all, on the left, what  
18 is the printed name on the left? Who is that supposed to  
19 be?

20 A. Charlisa Stewart.

21 Q. That is the employee that was payrolled, or one of  
22 the employees?

23 A. Yes.

24 Q. And this is for the week ending June 27, 2004?

25 A. Yes.

1 Q. There is also a printed name on the right-hand side.

2 Whose name is that?

3 A. David Banks.

4 Q. And why is that name there?

5 A. That it approves the time card for the payment.

6 Q. Does Spherion require a client to approve the time  
7 cards prior to payment?

8 A. Yes.

9 MS. HAZRA: Thank you, Special Agent.

10 Q. (BY MS. HAZRA) If you could please look at page 26  
11 of Government's Exhibit 361.

12 MS. HAZRA: And publish that, please. If you could  
13 please highlight that.

14 Q. (BY MS. HAZRA) Is that a time card for another  
15 employee that Spherion payrolled for IRP?

16 A. Yes.

17 Q. Who is that employee?

18 A. David Zirpolo.

19 Q. And does that also bear Mr. Banks' printed name on  
20 the right-hand side approving the time card?

21 A. Yes.

22 MS. HAZRA: Thank you, Special Agent.

23 Q. (BY MS. HAZRA) I believe, Ms. Stephens, your company  
24 billed IRP. What documents did Spherion send to IRP to  
25 get paid?



1 A. Invoices.

2 Q. If you could look at 362.00. Do you recognize that  
3 document?

4 A. Yes.

5 Q. What is Government's Exhibit 362.00?

6 A. They are invoices.

7 Q. That were sent to whom?

8 A. IRP Solutions.

9 MS. HAZRA: Your Honor, I would ask that  
10 Government's Exhibit 362 be admitted.

11 THE COURT: Admitted?

12 MS. HAZRA: Yes, Your Honor.

13 THE COURT: Any objection?

14 MR. ZIRPOLO: No objection.

15 THE COURT: Exhibit 362.00 is admitted.

16 (Exhibit No. 362.00 is admitted.)

17 MS. HAZRA: May it be published?

18 THE COURT: It may.

19 MS. HAZRA: Specifically, could page 7 be  
20 published?

21 Q. (BY MS. HAZRA) I want to clarify, you talked about  
22 two sets of employees, Ms. Stephens. On page 7 here of  
23 Government's Exhibit 362.00, is this one set --

24 MS. HAZRA: Is this page 7, Special Agent?

25 Q. (BY MS. HAZRA) Is this one set of employees?

1 A. Are we looking at page 7?

2 Q. My numbers are a little different from here. I  
3 believe this would be page -- look on the screen in front  
4 of you.

5 A. Yes. Yes. I'm sorry.

6 Q. Is that one set of employees that were payrolled?

7 A. Yes.

8 MS. HAZRA: If you could go to the page before,  
9 Special Agent.

10 Q. (BY MS. HAZRA) Is that the other set of employees?  
11 You can look on the screen. That is the previous page in  
12 the exhibit.

13 A. Yes.

14 MS. HAZRA: Thank you, Special Agent.

15 Q. (BY MS. HAZRA) Did IRP pay on these invoices?

16 A. No, we were never paid.

17 Q. When you discovered that they were not paying, did  
18 you make any attempts to collect money?

19 A. Yes, I did.

20 Q. What did you do?

21 A. I made phone calls to David Banks. And then I went  
22 and visited the offices.

23 Q. What office did you visit?

24 A. The one in Colorado Springs on Campus Drive.

25 Q. What happened when you got there?

1 A. I asked to see David Banks. I was told no by two  
2 security guards and escorted from the building.

3 Q. After the security guards escorted you from the  
4 building, did Mr. Banks ever call you back?

5 A. No.

6 Q. Did you continue in your attempts to call him?

7 A. Yes.

8 Q. Were you successful?

9 A. No.

10 Q. Did IRP ever pay Spherion on these invoices?

11 A. No, we were never paid.

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

13 THE COURT: You may.

14 MS. HAZRA: I have nothing further. Thank you.

15 THE COURT: All right. Thank you.

16 Mr. Banks?

17 MR. BANKS: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. BANKS:**

20 Q. Ms. Stephens, how big is Spherion?

21 A. It is a large corporation. I'm not sure of its  
22 annual revenue.

23 Q. Would you be able to estimate; millions, billions?

24 A. I would imagine it is in the millions.

25 Q. Okay. What is Spherion's credit policy before they

1 enter into an agreement with a new client?

2 A. Generally, we rely heavily upon a Dun & Bradstreet  
3 report.

4 Q. So if the Dun & Bradstreet had came back outside of  
5 the criteria, or lower than the criteria, Spherion does  
6 not do business; is that correct?

7 A. That was a decision that was left up to each manager.  
8 But we strongly relied upon that.

9 Q. Okay. Now, in your testimony a minute ago, you  
10 mentioned that Mr. Banks said that this could be a  
11 lucrative opportunity for Spherion; is that correct?

12 A. Yes.

13 Q. You also said -- and I will ask you, lucrative if the  
14 development of the software was successful; is that  
15 correct?

16 A. I was under the impression in the meeting that the  
17 software was developed, and it was just a matter of things  
18 being signed.

19 Q. A minute ago you testified lucrative if the  
20 development of the software was successful. Do you recall  
21 that?

22 A. I don't recall saying if the software was successful.

23 Q. Okay. I would like to take you to an interview done  
24 and conducted by the FBI on January 25th of 2005. Do you  
25 recall that interview or having that interview?

1 A. Yes.

2 Q. Do you recall statements you provided that may be  
3 reported -- that are reported in here regarding IRP's  
4 business with the NYPD?

5 A. Yes.

6 Q. And what do you recall saying?

7 A. That it was a software development for the NYPD.

8 Q. Okay. Do you recall telling the FBI that IRP is  
9 trying to secure --

10 MS. HAZRA: Objection, Your Honor, to the extent he  
11 is reading from it.

12 THE COURT: Overruled.

13 Q. (BY MR. BANKS) Do you recall telling the FBI that  
14 IRP was trying to secure a contract with the NYPD?

15 A. No, I don't recall.

16 MR. BANKS: Your Honor, I just would like to use  
17 this to refresh her recollection; the FBI report of  
18 January 21st, 2005.

19 THE COURT: Has it been marked?

20 MR. BANKS: Not yet, Your Honor.

21 COURTROOM DEPUTY: Defendants' Exhibit 338.

22 THE COURT: Is there a particular paragraph you  
23 want her to refer to, Mr. Banks?

24 MR. BANKS: Yes, Your Honor, paragraph 3.

25 THE COURT: All right -- have you read that.

1 THE WITNESS: I have.

2 Q. (BY MR. BANKS) Would you say that this accurately --  
3 that this report states that IRP --

4 THE COURT: Ask her your question.

5 MR. BANKS: All right.

6 THE COURT: You asked her if she remembered. She  
7 said she didn't recall. Ask her if she recalls.

8 Q. (BY MR. BANKS) Do you recall your testimony now that  
9 you provided to the FBI?

10 A. It says that here.

11 Q. It says what?

12 A. That IRP is trying to secure a large contract with  
13 the NYPD.

14 Q. Okay. Now, do you consider Spherion an  
15 autonomous-type of organization? They are responsible for  
16 making their own decisions; correct?

17 A. Yes.

18 Q. Mr. Banks, IRP, or any other company cannot force  
19 Spherion to do anything they don't want to do; is that  
20 correct?

21 A. That would be correct.

22 Q. And based on that, Spherion, as a large corporation,  
23 has put in policies and procedures that guides its  
24 decision making with new clients; is that correct?

25 A. That would be correct, yes.

1 Q. Now, does Spherion, based on their credit report,  
2 determine how much credit they are going to extend?

3 A. It's the decision of each manager based upon the Dun  
4 & Bradstreet and the decision of that manager.

5 Q. Okay.

6 MR. BANKS: Your Honor, I have no further  
7 questions.

8 THE COURT: Anybody else?

9 MR. WALKER: No, Your Honor.

10 THE COURT: All right. Any redirect?

11 MS. HAZRA: If I can have one moment, Your Honor.

12 No, thank you, Your Honor.

13 THE COURT: May this witness be excused?

14 MS. HAZRA: Yes, Your Honor.

15 THE COURT: Thank you very much, you are excused.

16 THE WITNESS: Do I leave these items here?

17 THE COURT: Yes, please.

18 Does the Government -- you may call your next  
19 witness. But do we have exhibits first we need to get  
20 out?

21 MR. KIRSCH: We do have exhibits. They would be  
22 13, 19, 90.4, 91.01 and 92.00.

23 THE COURT: A little slower for Ms. Barnes.

24 COURTROOM DEPUTY: 90.4.

25 MR. KIRSCH: 91.01 and 92.00.

1 THE COURT: Government may call its next witness.

2 MR. KIRSCH: Your Honor, the Government calls Scott  
3 Boe.

4 COURTROOM DEPUTY: Your attention, please.

5 **SCOTT BOE**

6 having been first duly sworn, testified as follows:

7 THE WITNESS: I affirm.

8 COURTROOM DEPUTY: Please be seated. Please state  
9 your name, and spell your first and last names for the  
10 record.

11 THE WITNESS: My name is Scot Boe. S-C-O-T-T  
12 B-O-E.

13 MR. KIRSCH: Ms. Barnes, I am sorry, I didn't catch  
14 you before you sat down, but I forgot one other exhibit.  
15 Exhibit 90.01, please.

16 **DIRECT EXAMINATION**

17 **BY MR. KIRSCH:**

18 Q. Mr. Boe could you tell the jury where you work?

19 A. I work for Boecore, Inc., in Colorado Springs.

20 Q. What kind of company is Boecore?

21 A. Boecore is -- has a defense contracting arm. And  
22 then in 2007, we spun off a technical staffing company by  
23 the name of BPS.

24 Q. Let me take you back to the latter part of 2004. Did  
25 you work at the same company or some other version of the



1 company at that time?

2 A. The original company was Boecore. Yes, I worked at  
3 Boecore.

4 Q. And what sort of business was Boecore engaged in at  
5 that time?

6 A. Technical staffing.

7 Q. What was your position?

8 A. Chief operating officer.

9 Q. And how is the ownership of Boecore set up?

10 A. The ownership is Kathy Boe, my wife, owns the  
11 company. And in 2007, the staffing company was spun off  
12 as an LLC, owned by Boecore. And Kathy owns Boecore.

13 Q. Back in 2004, was it your wife that owned the single  
14 corporation Boecore?

15 A. Kathy owned the single corporation.

16 Q. And when did you start that company?

17 A. December -- she started it in December of 2000.

18 Q. And when did you join in?

19 A. September of 2001.

20 Q. And prior to joining that company, had you worked in  
21 the staffing industry?

22 A. Yes, I did.

23 Q. When did you start working in the staffing industry?

24 A. In 1995 I worked for -- we went to work for Thompson  
25 Technical Services, and worked there until 2001. For two

1 years prior to that I worked for Gemini Consulting, which  
2 was a consulting company, not staffing, per se, but still  
3 consulting.

4 Q. All right. Back in 2004, did Boecore engage in some  
5 business with a company called IRP?

6 A. Yes.

7 Q. And were you involved in setting up that business?

8 A. Yes.

9 Q. Do you recall how it was that IRP first came to the  
10 attention of Boecore?

11 A. Yes. Somebody -- I believe it was Ken Harper from  
12 IRP, contacted a Mr. Tracy Sharples asking whether or not  
13 Boecore did what was called payroll service.

14 Q. Was there an e-mail that was involved in that  
15 inquiry, as well?

16 A. There was definitely an e-mail. I believe that it  
17 went like this. There was either a phone call or an  
18 e-mail to Tracy Sharples on the 28th of September. On the  
19 29th of September, there was a phone call between -- I  
20 believe it was Ken Harper and Tracy Sharples. Then that  
21 phone call was followed up with an e-mail on the 29th of  
22 September.

23 Q. Can I ask you to look, please, at what is marked for  
24 identification as Government Exhibit 90.01. Do you  
25 recognize that exhibit?

1 A. Yeah. That is the e-mail I was talking -- or that I  
2 just mentioned from Ken Harper to Tracy Sharples on the  
3 29th of September.

4 Q. Did you ultimately receive a copy of that e-mail, as  
5 well?

6 A. Yeah. Tracy had taken some notes from, I believe,  
7 from the phone conversation with Mr. Harper, and handed me  
8 a hard copy of this e-mail with his handwritten notes.

9 MR. KIRSCH: Your Honor, I would ask to admit and  
10 publish Government's Exhibit 90.01.

11 THE COURT: Any objection?

12 MR. BANKS: No objection, Your Honor.

13 THE COURT: Exhibit 90.01 is admitted, and it may  
14 be published.

15 (Exhibit No. 90.01 is admitted.)

16 MR. KIRSCH: Can we focus on the message on the  
17 bottom there, please.

18 Q. (BY MR. KIRSCH) On the screen, am I right this is  
19 the message that came from Ken Harper?

20 A. That's correct.

21 Q. There is a -- did you end up having a telephone  
22 conversation with Mr. Harper after this e-mail?

23 A. I had a number of interactions with Mr. Harper. Some  
24 were by phone, yes, and some were by e-mail.

25 Q. Okay. There is a reference in the paragraph that is

1 on the bottom to the "added sweetener to Boecore." Do you  
2 see that?

3 A. I do.

4 Q. Did you have telephone conversations with Mr. Harper  
5 about this idea about the added sweetener?

6 A. Yes.

7 Q. Can you explain what those conversations were?

8 A. My recollection was that this was -- this payroll  
9 service opportunity was to begin our relationship. And as  
10 they had additional opportunities where we could not only  
11 do payroll services, but do the full recruiting process,  
12 that there would be additional work that we would have the  
13 opportunity to perform for IRP.

14 Q. And why is it that those kind of opportunities where  
15 you could do the full recruiting, why would that be a  
16 sweetener?

17 A. Well, one, it would just be additional business.  
18 And, two, the way that the payroll service -- oftentimes,  
19 because the staffing company doesn't do the recruiting, we  
20 charge a little bit lower fee than we do if we do the  
21 recruiting part.

22 Q. Okay. There is also a reference in the second  
23 paragraph to this solution -- investigative solution that  
24 was going to be deployed at the NYPD within the next 60  
25 days. Based on your conversations with Mr. Harper, did

1     you have any understanding about whether there was some  
2     relationship between this potential extra work and IRP's  
3     business with the New York Police Department?

4     A.    That, to me, wasn't particularly clear.  It looked  
5     like, to me, that they had a project that was being  
6     deployed.  Had a customer that was buying this product.  
7     And I wasn't sure whether it was as a result of this or  
8     other future business that would lead to the quote,  
9     unquote, sweetener.

10    Q.    I want to just make sure that I've clearly understood  
11    you about what you thought the status of the business was  
12    with the New York Police Department.

13    A.    Well, I thought they were deploying a product that  
14    had been purchased by the New York Police Department.  
15    They said they were in the implementation phase.  So, yes.

16    Q.    And when you reached that conclusion, what was the  
17    information on which you were basing that?

18    A.    That e-mail.  And, as I said, I had a number of  
19    discussions with Mr. Harper.  And in the course of those  
20    discussions, it was my understanding that they had this  
21    product that was being purchased by the New York Police  
22    Department.

23    Q.    Did you ultimately agree to have Boecore do  
24    payrolling of employees at IRP?

25    A.    Yes.

1 Q. And did you execute an agreement to that effect?

2 A. I did.

3 Q. Can I please ask you to look now at what is marked  
4 for identification as Government's Exhibit 90.04. Do you  
5 have that, sir?

6 A. I have that in front of me, yes.

7 Q. And do you recognize that document?

8 A. I do.

9 Q. What is it, please?

10 A. There two documents here. The cover sheet is a  
11 Professional Service Agreement, which is basically the  
12 document that you sign with your customer. And then the  
13 page -- the following three pages are the terms and  
14 conditions that the relationship is bound by.

15 MR. KIRSCH: Your Honor, I would move to admit and  
16 publish Government Exhibit 90.04.

17 THE COURT: Any objection?

18 MR. BANKS: No objection, Your Honor.

19 THE COURT: Exhibit 90.04 will be admitted, and it  
20 may be published.

21 (Exhibit No. 90.04 is admitted.)

22 Q. (BY MR. KIRSCH) Can you see that portion of page 1  
23 on the screen now, Mr. Boe?

24 A. I can.

25 Q. There is a date on there of October 15th of 2004.

1 Does that square with your memory about when you started  
2 this relationship?

3 A. That's correct.

4 Q. And whose signature is on the left side there?

5 A. That is my signature.

6 Q. There is a name on the other side, of David Banks.

7 Had you spoken to Mr. Banks at this point?

8 A. At this point, I do not believe I had. I believe  
9 that I had only spoken to Mr. Harper up to this point, and  
10 that there was a little bit of delay from the end of  
11 September, early October, until the 15th. And Mr. Harper  
12 said he was having -- I don't know if difficulty, but he  
13 said Mr. Banks might have been traveling or something, and  
14 taking awhile to get the agreement signed.

15 Q. Had Mr. Harper explained to you who Mr. Banks was?

16 A. Yeah. He said he was the chief operating officer.

17 MR. KIRSCH: If we could publish page 5 of this  
18 exhibit now. And, again, just enlarge that text in the  
19 box.

20 Q. (BY MR. KIRSCH) Does this page of the exhibit,  
21 Mr. Boe, identify the employees who were to be payrolled?

22 A. Yes.

23 Q. Okay. So that was the two people listed there under  
24 No. 2, "Personnel"?

25 A. That's correct.

1 Q. Did Boecore have a system in place to keep track of  
2 the hours that were being worked by Ms. McGhee and  
3 Mr. Thurman?

4 A. Yes.

5 Q. How did that work?

6 A. The hours were sent to Boecore by either fax or  
7 e-mail, and they were put into our timekeeping system  
8 within the accounting system that we use.

9 Q. Okay. Can I ask you now to look at what is marked as  
10 91.01. Do you have that exhibit in front of you?

11 A. Yes.

12 Q. And do you recognize the contents of that exhibit?

13 A. I do.

14 Q. What are they?

15 A. Those are -- first one is a time sheet from Sylvia  
16 McGhee, and it appears -- looks like there are time sheets  
17 there by week. Looks like Sam Thurman's time sheets, as  
18 well.

19 Q. So are these the time sheets for the two employees  
20 that Boecore payrolled at IRP?

21 A. That's correct.

22 MR. KIRSCH: Your Honor, I would move to admit and  
23 publish Government Exhibit 91.01.

24 MR. BANKS: No objection.

25 THE COURT: 91.01 is admitted, and it may be



1 published.

2 (Exhibit No. 91.01 is admitted.)

3 MR. KIRSCH: Thank you, Your Honor.

4 Can I ask you to expand the lower portion of that  
5 time sheet, Agent Smith.

6 Q. (BY MR. KIRSCH) Mr. Boe, there is a signature --  
7 first signature that is on the screen now. Whose  
8 signature is that supposed to be?

9 A. I believe you are talking about the top of those two?

10 Q. Yes.

11 A. That is Sylvia McGhee's signature.

12 Q. Is that where the employee is supposed to sign?

13 A. That is where the employee is supposed to sign.

14 Q. Then underneath that it looks like it says "Manager's  
15 approval"?

16 A. That's correct.

17 Q. And why is it that you have someone sign there?

18 A. Well, we need verification from somebody at the  
19 customer's site that the employee had worked those hours.  
20 So we always would have the manager of those employees  
21 sign the time sheet for that verification.

22 Q. In connection with the business at IRP, did you ever  
23 have a discussion with someone other than Mr. Harper about  
24 this process of approving time cards?

25 A. I did.

1 Q. Who was that?

2 A. David Zirpolo.

3 Q. And when did you speak to Mr. Zirpolo?

4 A. I talked to him, I believe, on the 1st of November of  
5 2004. I believe that was the first time I spoke to him.  
6 And then I had an office visit with him on, I believe it  
7 was the 12th of November 2004.

8 Q. And what was -- what happened at the office visit  
9 that you had with Mr. Zirpolo?

10 A. Well, my intent was to go and meet the customer and  
11 get to know their business a little bit better. I always  
12 like to understand more about the people that we were  
13 working with. So that was the essence. Wanted to talk a  
14 little bit and find out how the employees, Sam and Sylvia,  
15 were performing; if there were any issues. Also, for that  
16 sweetener, that additional work, to see if there were any  
17 additional opportunities left.

18 Q. Were you asked to recruit any additional employees at  
19 that time?

20 A. No.

21 Q. Did Mr. Zirpolo talk to you at all about the work  
22 that IRP was engaged in?

23 A. Yeah. Again, it was a discussion about the product  
24 being a tool for police stations to use. I don't remember  
25 the essence, exactly, about what the tool or product did.

1 But that it was being purchased by the New York Police  
2 Department. And I believe he mentioned there were other  
3 potential purchasers of that product in the works.

4 Q. I know it has been awhile, but I am going to ask you  
5 to look around the courtroom and see if you recognize the  
6 Mr. Zirpolo that you met with on that day?

7 A. I cannot say for certain that I see Mr. Zirpolo in  
8 the courtroom.

9 MR. KIRSCH: Okay.

10 Q. (BY MR. KIRSCH) At some point -- were you monitoring  
11 whether or not -- actually, before I ask that question,  
12 let me ask you about billing. Did Boecore have a process  
13 in place for billing for the services of these employees?

14 A. Yes.

15 Q. Okay. Can you explain how that worked, please?

16 A. Right. The hours were sent to us on the time sheet.  
17 Hours got entered into the accounting system. And  
18 depending upon the contract agreement, it was typically  
19 every two weeks we would invoice a customer. And then we  
20 were expecting payment within 30 days from that invoice  
21 date.

22 And so the hours that came into the timekeeping  
23 system, went into the accounting system. And at that  
24 point, we knew what the contractual relationship was for  
25 an hourly rate that we would charge a customer. So it was

1 basically a simple matter of taking rate times the hours  
2 worked, and producing an invoice and e-mailing -- not  
3 e-mailing, mailing them to our customers.

4 Q. Okay. Can I ask you to look now at what is marked  
5 for identification as Government's Exhibit 92.00. Do you  
6 have that document in front of you?

7 A. I do.

8 Q. And it is actually -- the exhibit actually contains a  
9 number of documents. Can you recognize all of those?

10 A. I do recognize them.

11 Q. What are those?

12 A. Those are invoices that were sent to our customer at  
13 IRP.

14 MR. KIRSCH: Your Honor, I would ask the Court to  
15 find Government Exhibit 92.00 admissible.

16 THE COURT: Any objection?

17 MR. BANKS: No objection.

18 THE COURT: Exhibit 92.00 is deemed admissible.

19 (Exhibit No. 92.00 is found admissible.)

20 MR. KIRSCH: Thank you, Your Honor.

21 Q. (BY MR. KIRSCH) And then, Mr. Boe, next exhibits I  
22 will ask you to look at are Government Exhibits 13 and 19.  
23 Do you have 13 in front of you now sir?

24 A. I do.

25 Q. Is that another invoice from IRP -- excuse me, from

1 Boecore to IRP?

2 A. It is.

3 Q. On page 1?

4 A. On page 1.

5 Q. Then pages 2 and 3, what are those?

6 A. Pages 2 and 3 are approved time sheets for different  
7 periods of time for Sam Thurman.

8 Q. Do those relate to the time period covered by the  
9 invoice, page 1?

10 A. That's correct.

11 MR. KIRSCH: Your Honor, I would move to admit and  
12 publish Government Exhibit 13.00.

13 THE COURT: Any objection?

14 MR. BANKS: No objection, Your Honor.

15 THE COURT: Exhibit 13.00 is admitted, and it may  
16 be published.

17 (Exhibit No. 13.00 is admitted.)

18 MR. KIRSCH: Thank you, Your Honor.

19 Can you expand the top part of that, please.

20 Q. (BY MR. KIRSCH) So the contractor that is listed on  
21 the screen now, Mr. Boe, is that the same -- is that  
22 synonymous with the employee contractor?

23 A. Yeah. The name is Samuel Thurman. And this resulted  
24 because of the hours that Samuel Thurman provided to us.

25 So, yes.

1 Q. And then there are terms, sort of on the right-hand  
2 side of the screen, that say "Net 30." What does that  
3 mean?

4 A. That is a standard billing/receiving agreement that  
5 vendors or suppliers have with their customers. It is an  
6 industry standard that says how long you would expect to  
7 be paid from the time that you invoice.

8 Q. And did I hear you say, when you were describing the  
9 invoice process, that Boecore mailed these invoices to its  
10 clients?

11 A. That's correct.

12 Q. Finally, can I ask you to look now at Government's  
13 Exhibit 19. Is that a similar group of documents to the  
14 one we just looked at?

15 A. Yes.

16 Q. Does it have an invoice and two time sheets, again,  
17 for Mr. Thurman?

18 A. Yeah, just different time periods.

19 MR. KIRSCH: Your Honor, I would move to admit  
20 Government Exhibit 19.00.

21 MR. WALKER: No objection.

22 THE COURT: Exhibit 19.00 will be admitted.

23 (Exhibit No. 19.00 is admitted.)

24 THE COURT: Do you want to publish?

25 MR. KIRSCH: I don't need to publish it, Your

1 Honor. Thank you.

2 Q. (BY MR. KIRSCH) Mr. Boe, did you ever have -- going  
3 back to the beginning of the relationship, did you have an  
4 occasion to meet the prospective payrolled employees?

5 A. Yes.

6 Q. Where did that meeting occur?

7 A. In our offices on South Cascade Avenue.

8 Q. Did you ever have an occasion to visit the IRP  
9 offices?

10 A. I did.

11 Q. Okay. Do you recall whether you met any prospective  
12 employees at that time?

13 A. They weren't prospective at the time I met them at  
14 the IRP office.

15 Q. Okay. When you met them at the IRP office, where was  
16 that sort of in the course of the relationship?

17 A. Okay. It was our practice to every two weeks deliver  
18 payrolls to our workers. And I don't remember exact  
19 dates, it probably would have been end of October and  
20 every two weeks thereafter, we would deliver payroll. And  
21 I would go up to the IRP office and ask for Sylvia and  
22 Sam. They would come out to the front, and I would talk  
23 to them for a couple of minutes and deliver paychecks.

24 Q. Okay.

25 A. And then the other time I was there was to meet

1 Mr. Zirpolo, as part of one of those paycheck delivery  
2 days.

3 Q. All right. Now, were you monitoring whether or not  
4 Boecore was being paid by IRP for these invoices?

5 A. We were.

6 Q. And was Boecore getting paid?

7 A. We weren't.

8 Q. Did you take any steps to try to figure out why  
9 Boecore wasn't getting paid?

10 A. Right.

11 Q. What did you do?

12 A. So we instituted a number of calls and e-mails to  
13 Mr. Harper, Mr. Zirpolo and Mr. Banks.

14 Q. And do you remember -- let's start with Mr. Zirpolo.  
15 Did you get any response from Mr. Zirpolo?

16 A. I believe that at one point he said that he was going  
17 to have Mr. Banks call me.

18 Q. Do you remember whether you got any responses from  
19 Mr. Harper?

20 A. I do not remember if I got -- if I got a response, it  
21 was yeah, we're about to process payment, or something  
22 along those lines.

23 Q. Do you remember getting any responses from Mr. Banks?

24 A. I do: I know that I talked to him at one point, and  
25 he said, don't worry, you are going to get your money. I



1 remember those words.

2 Q. At the time that you began making these calls, were  
3 you still payrolling Ms. McGhee and Mr. Thurman there?

4 A. Yeah. So, because of the two weeks before we  
5 invoice, and another 30 days before we are expecting  
6 payment, that took it out to really the end of November or  
7 early December before it became something that, as a  
8 matter of standard process, we would be checking our  
9 receivables.

10 So then the calls started in the, you know,  
11 beginning to middle of December saying, yeah, we would  
12 like to get paid. And so the words were kind of coming  
13 back, yeah, you are going to get paid. We have to just  
14 get through this one thing, or whatever.

15 So this went on for about three or four weeks  
16 before we decided that we may not get paid, and we were  
17 going to terminate the relationship.

18 Q. All right. So let me focus you on that sort of three  
19 to four week period. During that time, were you relying  
20 at all on the statements that Mr. Banks was making to you  
21 that you would get paid?

22 A. Absolutely.

23 Q. At some point, however, you said you decided to  
24 terminate the employees?

25 A. Yeah. At this point it was getting to, I think, the

1 middle or maybe the 20th or so of January, and we had not  
2 received any payment. It had now gone on for what,  
3 two-and-a-half or three months, and we said it was time to  
4 unilaterally terminate our side of the relationship.  
5 Because, as a small business, we didn't want to continue  
6 to rack up -- we were paying the employees, and we  
7 couldn't afford to continue to rack up that debt.

8 Q. Did you notify the employees about that?

9 A. We did.

10 THE COURT: Could you please lean forward and speak  
11 into the microphone.

12 THE WITNESS: I am sorry. We did.

13 Q. (BY MR. KIRSCH) Did you speak directly to  
14 Ms. McGhee?

15 A. I believe I did.

16 Q. What do you recall about that conversation?

17 A. That we talked -- we called both -- we called Sylvia.  
18 And what I recall is it was kind of a nonchalant, okay. I  
19 would expect -- I felt bad because we had a couple  
20 employees that we were going to have to terminate their  
21 employment. And so, you know, in our office we felt kind  
22 of bad. So when Sylvia didn't really react and was kind  
23 of nonchalant, I was kind of surprised. But I guess that  
24 was my reaction or my recollection.

25 Q. Did you ever get any payments from IRP?

1 A. No.

2 Q. And do you recall approximately what the total amount  
3 of the outstanding invoices was for your company?

4 A. 34,610, I believe.

5 MR. KIRSCH: Thank you, Mr. Boe.

6 THE COURT: Mr. Walker?

7 **CROSS-EXAMINATION**

8 **BY MR. WALKER:**

9 Q. Hello, Mr. Boe.

10 A. Hi.

11 Q. You related that in your early discussions with IRP  
12 and Mr. Harper, that he related to you that there was a  
13 project that was going to be deployed at the NYPD?

14 A. Yeah. Yep.

15 Q. And you also said that your understanding was that  
16 product had been bought by the NYPD?

17 A. That was my understanding.

18 Q. But at any time did he tell you that the NYPD had  
19 bought that particular application related to that  
20 project?

21 A. My recollection is that he had.

22 Q. He had. Okay. And so your understanding was related  
23 to his statements that the NYPD had bought it, although  
24 you didn't relay that in your early conveyance of his  
25 initial conversation, that the project was going to be

1     deployed?

2     A.     Can you repeat the question?  I am not sure I  
3     understand.

4     Q.     I understand.  It got kind of long there, so let me  
5     break that up for you.  So your understanding was based on  
6     his earlier statement that the project was being deployed  
7     at the NYPD?

8     A.     Well, through our early discussions -- early, being  
9     the first week of October of 2004.  Plus the e-mail that  
10    he sent to Mr. Sharples that said it was being  
11    implemented.

12    Q.     In your chain of conversation with IRP employees, you  
13    also said that Mr. Zirpolo had told you that there were  
14    other potential customers for the product.

15    A.     That is my recollection.

16    Q.     Did he indicate to you that any of those potential  
17    customers had bought the software associated with that  
18    project?

19    A.     That, I don't recall.

20    Q.     As the receivables for IRP began to age, did you come  
21    to a point where you believed you had to make a decision  
22    or take action, as far as those receivables not being  
23    paid?

24    A.     Yes.

25    Q.     And in the course of making that decision about how

1 to proceed with IRP, did you have conversations with any  
2 other staffing companies?

3 A. The -- I did have a conversation with another  
4 staffing company. I believe it was after the time frame  
5 when we terminated the two employees.

6 Q. Okay. So that was after you had terminated?

7 A. That is my recollection. I'm trying to remember. I  
8 believe it was after February 12th of 2005.

9 Q. Okay. But you are not certain?

10 A. I'm pretty certain, because -- I'm pretty certain.

11 Q. Pretty certain. Okay. And in that -- in making --  
12 in consulting others, do you remember the name of the  
13 person that you consulted?

14 A. I do.

15 MR. KIRSCH: Objection, relevance.

16 THE COURT: What is the relevance?

17 MR. WALKER: Your Honor, we are going to the other  
18 staffing company that told Mr. Boe about their  
19 interactions with IRP Solutions.

20 THE COURT: And what is that to this case?

21 MR. WALKER: I am sorry?

22 THE COURT: What is the relevance to this case?

23 MR. WALKER: The relevance there is the --

24 THE COURT: No, what is the relevance with whether  
25 he had any discussions with the other company?

1           MR. WALKER: Your Honor, it is for the end result  
2 of their conversation about IRP Solutions -- their  
3 interactions with IRP Solutions.

4           THE COURT: All right. I am sustaining the  
5 objection.

6 Q. (BY MR. WALKER) Mr. Boe, also continuing your  
7 conversations with IRP Solutions -- and you also mentioned  
8 that Mr. Banks told you that, don't worry, you are going  
9 to get your money?

10 A. The question, I am not sure what it is.

11 Q. Did Mr. Banks tell you that you didn't need to worry,  
12 you are going to get your money?

13 A. That's true.

14 Q. Did he give you any reason to believe you were going  
15 to get your money?

16 A. Just his word.

17 Q. I am sorry?

18 A. His word.

19 Q. Did he at that time mention any projects or potential  
20 customers that would be providing revenue at that point in  
21 time?

22 A. That didn't enter into the discussion from my  
23 recollection. My recollection was that there was an  
24 agreement, and that the agreement was signed by him, and  
25 we were living up to our portion of the agreement.

1 Q. And while preparing to bring on the prospective  
2 employees you mentioned, you did get a chance to meet  
3 Ms. McGhee and Mr. Thurman?

4 A. I did.

5 Q. And in your meeting with Mr. Thurman, was that a  
6 face-to-face meeting?

7 A. Yes.

8 Q. What would you estimate Mr. Thurman's age to be?

9 A. I would say maybe 28 or 30 years old.

10 Q. Thank you.

11 MR. WALKER: Thank you. No further questions, Your  
12 Honor.

13 THE COURT: Mr. Banks?

14 MR. BANKS: Thank you.

15 **CROSS-EXAMINATION**

16 **BY MR. BANKS:**

17 Q. Mr. Boe, how long have you owned your company -- or  
18 you and your wife, rather, Boecore Enterprises?

19 A. Well, my wife owns the company. And she has owned  
20 it -- it was started in December 2000.

21 Q. How long were you an executive with Boecore?

22 A. When I began with the company in September of 2001,  
23 to the current time.

24 Q. Okay. You have been the chief operating officer  
25 since that time?

1 A. No. I was the chief operating officer until  
2 approximately last -- 2010. April of 2010.

3 Q. Okay. So you have been intimately involved with the  
4 operations of Boecore between 2000 and 2010; is that  
5 correct?

6 A. That's correct.

7 Q. Now, in the running of Boecore, did -- has every  
8 business plan that Boecore undertook been successful?

9 MR. KIRSCH: Objection, relevance.

10 THE COURT: Sustained.

11 Q. (BY MR. BANKS) Does Boecore engage in any sort of  
12 project-based work, say, for Government entities?

13 MR. KIRSCH: Objection, relevance.

14 THE COURT: Mr. Banks, what's the relevance of this  
15 line?

16 MR. BANKS: Well, Mr. Boecore (sic) runs a company,  
17 we believe, that is engaged in the same type of business  
18 activity with IRP; engaged with government customers. He  
19 would certainly have knowledge of that information.

20 THE COURT: Ask him if he has knowledge.

21 Q. (BY MR. BANKS) Do you have knowledge of projects --  
22 information technology projects as relates to doing  
23 business with the Government?

24 A. Not as part of the staffing of Boecore.

25 Q. What about implementing a project -- a software



1 project or a solution for a government client?

2 A. The defense contracting portion of Boecore, the  
3 answer is yes. The staffing portion of Boecore, which is  
4 always just a rate times hours arrangement with a  
5 customer, that doesn't apply.

6 Q. Okay. In your experience in dealing with the federal  
7 government, is that a consistent or similar experience  
8 with dealing with a corporate client?

9 A. I'm not sure I understand the question.

10 Q. As far as doing business with the government, is it  
11 somewhat different than doing business with a corporation?

12 A. Well, on the defense contracting side, we have had  
13 one prior contract where we had a relationship, a contract  
14 directly related or with the Government, with the United  
15 States Government, and that was a situation where it was a  
16 time and material contract, and we did our work and we  
17 were paid.

18 On the commercial side, if it is in the defense  
19 arena, is still bound by Federal Acquisition Regulations.  
20 So the prime contractor is -- you know, must stay within  
21 those guidelines. And they pass those same guidelines on  
22 as a subcontractor. So on the project or the  
23 defense-related company, it's really if you are dealing  
24 directly with the government or on a government contract  
25 as a subcontractor through a prime contractor, there is

1 really little difference.

2 Q. So doing business with the government is no different  
3 than doing business with a corporate customer; correct,  
4 that is your testimony? Even as a defense contracting --  
5 defense contractor, as you said, directly with the  
6 government in a defense contracting capability, it is no  
7 different in doing anything with the government than a  
8 corporate client; correct?

9 A. As far as the rules that you must follow, the law --  
10 the law is the law, whether it is with -- directly with  
11 the government or as a subcontractor.

12 MR. BANKS: Okay. No further questions there.

13 Q. (BY MR. BANKS) Now, you said that you relied on  
14 statements made by Mr. Harper and Mr. Banks; correct?

15 A. That's correct.

16 Q. And those statements, you say, influenced you to do  
17 business; correct?

18 A. You know, the signed contract, as well as those  
19 statements, yes.

20 Q. What, in your years in business, do you consider to  
21 be determinative with regards to whether or not a company  
22 pays its bills on time? How do you determine that as a  
23 businessman?

24 A. Well, when we are providing a service, and we're  
25 expecting payment on a certain date, we watch what we call

1     our receivables; when we have been paid, versus when we  
2     expected to be paid. And that's -- I mean, that is how we  
3     know whether we get paid, if that is the question.

4     Q.     That is not the question. I will rephrase. Prior to  
5     entering into a business relationship with a new client,  
6     how do you determine whether or not that client has paid  
7     their bills or has a history of paying their bills?

8     A.     There is a number of ways. One can -- you know, if  
9     you have a large exposure, you may look at reputation of  
10    the company.

11    Q.     Can you explain "large exposure"?

12    A.     Yeah. If you had, you know, a large number of people  
13    that you were billing, you may end at higher rates, and  
14    your receivables would go up. You may say, is this some  
15    of our customers with the Northrop Grumman or L-3  
16    Communications? We, you know, have a real strong sense  
17    that we will get paid.

18    Q.     Okay. A Northrop Grumman and -- what about Lockheed  
19    Martin? Did you say Lockheed Martin?

20    A.     I said L-3, but Lockheed Martin certainly would be in  
21    that category.

22    Q.     L-3. Those are major, billion dollar corporations;  
23    correct?

24    A.     Correct.

25    Q.     How do you determine if a small business, that is not

1 a household name like a Lockheed Martin or Northrop  
2 Grumman, pays their bills or has a history of paying their  
3 bills?

4 A. How would we? We would -- we would take a look at  
5 what we're being, you know, asked to do. And if we felt  
6 that that was going to result in an undue exposure, there  
7 are tools, such as a Dun & Bradstreet, which you could do.  
8 You could go out and do references on the company, or ask  
9 the client for references. Those are tools that one could  
10 use.

11 Q. Did you use them in this case?

12 A. No.

13 Q. Would you say nobody; not IRP, not Northrop Grumman,  
14 forced Boecore to enter into any contract or relationship  
15 it doesn't want to enter into; correct?

16 A. Correct.

17 Q. Just because a company may be engaged in or is  
18 engaged with a large agency, say a federal law enforcement  
19 agency, that does not indicate that they're going to pay  
20 their bills; correct?

21 A. The strongest -- the strongest indication I had  
22 was -- if there was a signed contract. Which, in my  
23 experience, a signed contract is what would be an  
24 indication that the bill is going to be paid. As long as  
25 it is kind of a two-way street; we live up to our side of

1 the obligation, we expect our customers to live up to  
2 their side.

3 Q. Business plans don't always go, you would agree,  
4 according to plan; correct?

5 A. I mean, ours did.

6 Q. So --

7 A. Our business plan for our company went quite well.

8 Q. In your experience as a businessman, does it go well  
9 for everybody?

10 A. I'm not really -- I haven't read others business  
11 plans, so I don't know.

12 Q. Have you ever been engaged in companies that went  
13 bankrupt?

14 MR. KIRSCH: Objection, relevance.

15 THE COURT: Sustained.

16 Q. (BY MR. BANKS) Do you do business with other  
17 companies?

18 A. Yes.

19 Q. In the course of doing business with those other  
20 companies, have you lost money?

21 MR. KIRSCH: Objection, relevance.

22 THE WITNESS: No.

23 THE COURT: Overruled.

24 THE WITNESS: No.

25 Q. (BY MR. BANKS) Have you been relegated to late

1 payments by other companies?

2 A. On occasion.

3 Q. Have you ever known any company to go bankrupt?

4 MR. KIRSCH: Objection, relevance.

5 THE COURT: Where is this leading, Mr. Banks?

6 MR. BANKS: I am sorry, Your Honor, I am trying to  
7 get his knowledge on basic business that goes on in the  
8 corporate world.

9 THE COURT: People go bankrupt every day.  
10 Businesses go bankrupt every day. It is not relevant to  
11 this case.

12 MR. BANKS: Okay. Your Honor, permission to  
13 republish Exhibit 90.04.

14 THE COURT: You may.

15 MR. BANKS: Go to paragraph 16.

16 Q. (BY MR. BANKS) Mr. Boe, would you say paragraph  
17 16 -- once you have had a chance to read it -- is  
18 consistent with the policy of Boecore; that you adhere to  
19 this policy at Boecore?

20 A. That's correct.

21 Q. Would you say you're bound by this service agreement,  
22 as is IRP?

23 A. That's correct.

24 Q. Would you also say, in reference to this clause in  
25 your contract, that any prior representations are not

1 relevant to whether or not you engage in business;

2 correct?

3 A. That's correct.

4 Q. And that the contract is the governing document --  
5 the single governing document between IRP and Boecore; is  
6 that correct?

7 A. That is -- the contract is the master agreement. Of  
8 course, there are time sheets that have come subsequent to  
9 this that are also part of the record, per se, of the  
10 agreement. But, yes.

11 Q. Now, do you really care how another company  
12 manages -- say, IRP manages its internal operations?

13 A. I care, to the extent that we collect on the work  
14 that we have done as a company for IRP.

15 Q. Absolutely. So if you -- if IRP's business plan was  
16 to close business with the NYPD and you have been paid,  
17 you really wouldn't have cared how IRP conducted their  
18 business; correct?

19 A. That's correct.

20 Q. Now I'll take you back to your statement about Sylvia  
21 McGhee when you contacted her concerning the termination  
22 of her employment.

23 A. Right.

24 Q. You said that she had a nonchalant attitude; correct?

25 A. I mean, maybe that -- that was my words, yes. You

1 know, I do remember being sort of surprised at how -- it  
2 didn't seem to be a particularly large issue for somebody  
3 that had just been notified that she wouldn't be able to  
4 work that Monday.

5 Q. Was she supposed to say, oh, my god, or oh, my  
6 goodness? Is that just your interpretation of how she  
7 reacted?

8 A. My reaction is somebody would say oh, geez, is there  
9 other opportunities with your company? Is there -- you  
10 know, this job was great. Do you know what happened? I  
11 didn't hear any of that.

12 Q. Surely you can't speak to the mental state of  
13 somebody over the phone; correct?

14 A. Absolutely not.

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

16 THE COURT: Anybody else?

17 MR. HARPER: Yes, Your Honor.

18 THE COURT: Mr. Harper.

19 **CROSS-EXAMINATION**

20 **BY MR. HARPER:**

21 Q. Good afternoon, Mr. Boe.

22 A. Hi.

23 Q. You stated earlier in your testimony that the  
24 software will be deployed. Do you recall that?

25 A. Yeah.



- 1 Q. Yes or no?
- 2 A. The document said it was being deployed.
- 3 Q. That is your understanding?
- 4 A. That was my understanding.
- 5 Q. Then later you testified that you thought a contract
- 6 was in place; is that correct?
- 7 A. Can I see the testimony of that? I don't know if
- 8 that's what I said an hour ago or not.
- 9 Q. So are you stating you don't recall?
- 10 A. I don't remember the exact words. I will say that my
- 11 understanding was that there was a contract, and that IRP
- 12 was, you know, performing under that contract to the New
- 13 York Police Department.
- 14 Q. And with your extensive knowledge, as you mentioned,
- 15 on the defense side of Boecore, did you ask IRP how much
- 16 the contract was worth, since that was your belief?
- 17 A. I did not.
- 18 Q. Why didn't you? Wouldn't you want to know that
- 19 information; how large -- if it was a \$1 contract versus a
- 20 \$10 million contract?
- 21 A. Again, the business at hand was temporary staffing.
- 22 If I were trying to become a subcontractor -- and,
- 23 frankly, Boecore at the time, in 2004, wasn't doing that
- 24 type of business. It was all technical staffing rate
- 25 times hours. Then I would be interested in it, yes. But

1 given the nature of the work that we were performing in  
2 general, and specifically to IRP, you know, I didn't -- as  
3 long as we were being paid, based on the contract that we  
4 had signed, I was okay.

5 Q. Now, is it a prerequisite of all of your clients to  
6 have some type of contract or active contract they are  
7 working on before you do business with them?

8 A. No.

9 Q. So, specifically to IRP, your understanding is you  
10 were told that they had a government contract; is that  
11 correct?

12 A. You know, I was told that there was an implementation  
13 going on for the New York Police Department.

14 Q. Let me rephrase it. That is not what I asked you.  
15 So, specifically to IRP, you were told that they had a  
16 government contract; is that your testimony?

17 A. I believe I was told that there was a contract with  
18 the New York Police Department. And I guess that would be  
19 a city government, so, yeah.

20 Q. Now, again you stated your belief; is that correct?

21 A. I believe that I was told.

22 Q. Now, are you familiar with contracts such as a BOA or  
23 IDIQ?

24 A. I am familiar with those terms.

25 Q. Okay. And did you inquire what type of -- if IRP had

1 a BOA or IDIQ in place for this contract?

2 A. With their customer?

3 Q. That's correct.

4 A. I did not.

5 Q. Why didn't you?

6 A. Again, the work we were doing was staffing; rate  
7 times hours. And we had a signed contract with IRP to do  
8 that. So, really, the source of IRP's, you know, ability  
9 to pay, was not as big an issue as holding up our end of  
10 the contract and expecting IRP to hold up theirs.

11 Q. And you also mentioned, when you informed Ms. McGhee  
12 she no longer had a job, that she was nonchalant. Did you  
13 also have the same conversation with Samuel Thurman?

14 A. Yes.

15 Q. What was his reaction?

16 A. His reaction was more what I would expect to be  
17 typical. He wanted to know if there was something else  
18 that we might -- another job opportunity that we might  
19 have for somebody with his skills.

20 MR. HARPER: No further questions, Your Honor.

21 THE COURT: Anybody else?

22 MR. BANKS: Can we have one moment, Your Honor?

23 THE COURT: You may.

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

25 THE COURT: All right. Any redirect?

1           MR. KIRSCH: May I have just a minute, please, Your  
2 Honor.

3                           **REDIRECT EXAMINATION**

4   **BY MR. KIRSCH:**

5   Q.   One question, Mr. Boe. Did you say your business had  
6 never lost money in any other staffing situation?

7   A.   That's correct.

8           MR. KIRSCH: Thank you.

9           THE COURT: May this witness be excused?

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

11          THE COURT: Thank you, Mr. Boe. You are excused.

12          We will take a break. We will be in recess until  
13 3:40.

14          (A break is taken from 3:26 p.m. to 3:40 p.m.)

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          Anything that needs to be brought to our attention  
19 before we bring in the jury?

20          MR. KIRSCH: Your Honor, I wanted to make both the  
21 Court and the defendants aware, based on the rate at which  
22 we are currently proceeding, the Government expects that  
23 we will at least begin the testimony of our final witness  
24 sometime tomorrow.

25          THE COURT: Who will your final witness be?

1           MR. KIRSCH: Dana Chamberlin. We are not sure if  
2 we would finish tomorrow or the next day, but we would  
3 certainly finish the next day.

4           THE COURT: All right. We are moving well.

5           MR. KIRSCH: We are.

6           THE COURT: Mr. Banks?

7           MR. BANKS: I guess we will be able to start -- we  
8 still have to reschedule a few witnesses, but we will  
9 start to work on that ASAP for coming. We weren't sure if  
10 it would be the full 2 weeks or 3 weeks. Will start to  
11 reschedule that.

12          THE COURT: All right. Ms. Barnes, please bring in  
13 the jury.

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

16          THE COURT: You may be seated.

17          Government may call its next witness.

18          MS. HAZRA: Thank you, Your Honor. Government  
19 calls Christopher Skillman.

20          COURTROOM DEPUTY: Your attention, please.

21                   **AGENT CHRISTOPHER SKILLMAN**

22 having been first duly sworn, testified as follows:

23          COURTROOM DEPUTY: Please be seated.

24          Please state your name, and spell your first and  
25 last names for the record.

1 THE WITNESS: Christopher Skillman.

2 C-H-R-I-S-T-O-P-H-E-R S-K-I-L-L-M-A-N.

3 DIRECT EXAMINATION

4 BY MS. HAZRA:

5 Q. Good afternoon. Where are you employed?

6 A. In Birmingham, Alabama.

7 Q. And what do you do?

8 A. I'm an FBI agent.

9 Q. How long have you been an FBI agent?

10 A. For 14-and-a-half years.

11 Q. Prior to being in Birmingham, were you previously in  
12 an office out here in Colorado?

13 A. Yes, I was in Denver.

14 Q. And when were you in Denver?

15 A. From 1997 to June of 2010.

16 Q. I would like to direct your attention to February 9,  
17 2005. Did you participate in the execution of a search  
18 warrant that day?

19 A. Yes, I did.

20 Q. Where were you searching?

21 A. In Colorado Springs.

22 Q. Do you recall the business that you were searching?

23 A. IRP.

24 Q. Did you have a specific responsibility as part of  
25 that search?

1 A. Yes. I collected evidence.

2 Q. Are you part of a team? Is there a specific name for  
3 your position?

4 A. Yes. At the time I was a member of the evidence  
5 response team.

6 Q. On the day of the search, did you have certain  
7 procedures for recording where the evidence was  
8 discovered?

9 A. Yes, I did.

10 Q. Can you please briefly describe how you detailed  
11 that.

12 A. I used what is known as an Evidence Recovery Log,  
13 where we identify items of evidence, a general  
14 description, and where they were found.

15 Q. And when you say you identified where they were  
16 found, what did you use to do that?

17 A. We used a sketch that identified different rooms.

18 Q. Specific areas within the building, are they assigned  
19 an individual letter?

20 A. Yes.

21 Q. That letter is where you recorded where items were  
22 found?

23 A. Yes.

24 Q. Was all this information contained on -- I think you  
25 said it was an Evidence Recovery Log?

1 A. Yes.

2 Q. Who prepared that Evidence Recovery Log?

3 A. I did.

4 Q. And when did you prepare it?

5 A. While I was conducting the search.

6 Q. So it was ongoing?

7 A. Yes.

8 Q. I would like you to look at what has been marked for

9 identification purposes as Government's Exhibit 609.07.

10 It is probably -- there should be a number of manila

11 envelopes in front of you.

12 A. Okay. I have it.

13 Q. Do you recognize Government's Exhibit 609.07?

14 A. Yes, I do.

15 Q. Did it come into your possession before today?

16 A. During the search on February 2005.

17 Q. And how did you come to possess this item?

18 A. I collected it from one of the rooms.

19 Q. And do you recall where you found it? Did you find

20 it in the premises of IRP?

21 A. Yes. I found it in the premises of IRP.

22 MS. HAZRA: Your Honor, I would ask Government's

23 Exhibit 609.07 be admitted.

24 MR. BANKS: No objection.

25 THE COURT: Exhibit 609.07 is admitted.



1 (Exhibit No. 609.07 is admitted.)

2 Q. Next, Special Agent, if you could direct your  
3 attention to Government's Exhibit 1H.

4 A. I have it.

5 Q. Do you recognize Government's Exhibit 1H?

6 A. Yes, I do.

7 Q. And has this document come into your possession  
8 before?

9 A. Yes. I found it during the search in February of  
10 2005.

11 MS. HAZRA: Your Honor, I would ask that  
12 Government's Exhibit 1H be admitted.

13 THE COURT: Any objection?

14 MR. BANKS: No objection, Your Honor.

15 THE COURT: 1H will be admitted.

16 (Exhibit No. 1H is admitted.)

17 MS. HAZRA: May it be published?

18 THE COURT: It may.

19 MS. HAZRA: Special Agent, if you could highlight  
20 the top portion of that.

21 Q. (BY MS. HAZRA) And what is this, for the record?

22 A. It is an e-mail.

23 Q. From whom?

24 A. From Demetrius Harper.

25 Q. To?

1 A. Gary Walker.

2 Q. Is the date of that e-mail November 12, 2003?

3 A. Yes, it is.

4 Q. And are there what appear to be initials above the  
5 header line of Demetrius Harper?

6 A. Yes.

7 Q. Again, written initials?

8 A. Yes.

9 MS. HAZRA: And then if you could scroll down,  
10 Special Agent Smith, to the bottom.

11 Q. (BY MS. HAZRA) Is there another e-mail message below  
12 from Gary Walker to Demetrius Harper and Ken Barnes?

13 A. Yes, dated November 11th.

14 Q. And is that -- does that appear to have information  
15 that's gathered for staffing companies?

16 A. Yes, it does.

17 Q. Are there also a number of handwritten notes on this  
18 document?

19 A. Yes. There is a lot of handwritten notes. "Too  
20 small." "Maybe too small." What looks like phone  
21 numbers, names.

22 Q. And do you recall where this was found, Special  
23 Agent, specifically within the premises?

24 A. This was found in the room we marked T.

25 Q. Thank you. If you could please next direct your

1 attention to what has been marked for identification  
2 purposes as Government's Exhibit 606.01.

3 A. I have it.

4 Q. Do you recognize Government's Exhibit 606.01?

5 A. Yes. This is one of the items we collected during  
6 that search.

7 Q. The search of IRP?

8 A. Yes, the search of IRP.

9 Q. And you collected it?

10 A. Yes.

11 MS. HAZRA: Your Honor, I would ask that  
12 Government's Exhibit 606.01 be admitted and published.

13 THE COURT: Any objection?

14 MR. WALKER: No objection.

15 THE COURT: 606.01 will be admitted, and may be  
16 published.

17 (Exhibit No. 606.01 is admitted.)

18 Q. (BY MS. HAZRA) This first page just has "to be  
19 filed." Is that correct?

20 A. Yes, it is.

21 Q. Do you recall where this was found within the  
22 premises of IRP? Do you recall whether it was found on  
23 the receptionist desk or in an office?

24 A. I recall this was found in room N, but I believe it  
25 was a receptionist desk.

1 Q. If you could please turn to the second page, Special  
2 Agent. Is page 2 of Government's Exhibit 606.01, does  
3 that appear to be a letter from an attorney with  
4 Staffmark?

5 A. Yes, it does.

6 Q. Concerning a past due account?

7 A. Yes, it does.

8 Q. If you could please turn to page 3 of that exhibit,  
9 Special Agent. Does this appear to be another letter  
10 concerning an outstanding debt from Manpower  
11 International, addressed to Gary Walker?

12 A. Yes, it does.

13 Q. And, last, if you could turn to page 4, Special  
14 Agent. Does this appear to be a letter concerning  
15 outstanding debt IRP owed to Kelly Temporary Services?

16 A. Yes, it does.

17 Q. Thank you. And if you could go back to the first  
18 page, Special Agent, where it says, "to be filed" on the  
19 first page of Government Exhibit 606.01. Did you put that  
20 -- did you put that there?

21 A. No, I did not.

22 Q. So it was found with that designation?

23 A. Yes.

24 Q. Next, if you could look at what has been marked for  
25 identification purposes as Government's Exhibit 608.04.

1 Do you recognize Government's Exhibit 608.04?

2 A. Yes. That is also a document I collected during the  
3 search of IRP.

4 Q. And do you recall what letter room you recovered this  
5 from?

6 A. I believe it was T.

7 MS. HAZRA: Your Honor, I would ask that  
8 Government's Exhibit 608.04 be admitted.

9 THE COURT: Any objection?

10 MR. BANKS: No objection, Your Honor.

11 THE COURT: 608.04 is admitted.

12 (Exhibit No. 608.04 is admitted.)

13 MS. HAZRA: May it be published?

14 THE COURT: It may.

15 MS. HAZRA: If you could highlight the top portion,  
16 Special Agent.

17 Q. (BY MS. HAZRA) So you found this document in the  
18 office. You said that bore the letter T.

19 A. Yes.

20 Q. If you could describe the top portion here for the  
21 record. What is the header of this document?

22 A. The heading reads "Personnel Staffing Needs."

23 Q. And are there several other designations below that?

24 A. Yes. "Today's Staffing." "New company."

25 "Superior." "EDP."

1 Q. And are there what appear to be names below these  
2 company names?

3 A. Yes, there are.

4 Q. Are there also parentheses besides those names with  
5 other, either initials, or names?

6 A. Like in the case of Shaun Haughton, there is (meat).  
7 Enrico Howard, (LC). Willie Pee, (Clint).

8 Q. And then you -- and are there also job descriptions  
9 and what appears to be a number/hour?

10 A. Yes. For instance, Shaun Haughton. Systems admin.  
11 70/hr.

12 MS. HAZRA: Thank you, Special Agent Smith.

13 Q. (BY MS. HAZRA) Lastly, I will have you look at what  
14 has been marked for identification purposes as  
15 Government's Exhibit 608.76. Do you recognize that  
16 exhibit?

17 A. Yes. This is the visitor sign-in sheet that I  
18 collected during the search of IRP.

19 MS. HAZRA: Your Honor, I would ask that  
20 Government's Exhibit 608.76 be admitted.

21 THE COURT: Any objection?

22 MR. BANKS: May we have one moment, Your Honor?

23 THE COURT: You may.

24 MR. ZIRPOLO: Objection, relevancy.

25 THE COURT: Overruled. Exhibit 608.76 is admitted.

1 (Exhibit No. 608.76 is admitted.)

2 MS. HAZRA: May it be published, Your Honor?

3 THE COURT: It may.

4 MS. HAZRA: Special Agent, if you could publish  
5 page 5 initially. And if you could highlight the text  
6 portions and the top couple names to make it easier to  
7 see. Actually, if you could highlight a little bit more  
8 of the exhibit, sorry, so you can get a better sense of  
9 what the document is.

10 Q. (BY MS. HAZRA) Special Agent Skillman, what is this  
11 document, since there are many pages to it?

12 A. The document is a number of visitor sign-in sheets.

13 Q. Is this a sign-in sheet for a particular day?

14 A. Yes. This particular day is May 4th of 2004.

15 MS. HAZRA: Special Agent Smith, if you could  
16 please turn to page 43 of the Government's exhibit.

17 Q. (BY MS. HAZRA) Does the format of Government's  
18 Exhibit 608.76, does the print around it change as the  
19 exhibit goes on?

20 MS. HAZRA: If you could highlight the top half  
21 where all of the writing is, Special Agent Smith.

22 Q. (BY MS. HAZRA) So, here, does this format on page 43  
23 of Government's Exhibit 608.76 vary a little from the  
24 previous page we looked at?

25 A. Yes. There is a different number of columns, and

- 1     labeled differently.
- 2     Q.    All right.  What month does this appear to be?
- 3     A.    August.
- 4     Q.    And then is there still a column for the names?
- 5     A.    Yes, there is.
- 6     Q.    And the bottom two names, can you see what those
- 7     names are?  Are you able to read them?
- 8     A.    One is Ken Barnes, and the next is Cliff Stewart.
- 9     Q.    And is there a line for visiting?
- 10    A.    Yes, there is.
- 11    Q.    Did Mr. Barnes and Mr. Stewart appear to be visiting
- 12    the same person?
- 13    A.    Yes, Mr. Harper.
- 14    Q.    And is the person above them, Kathy Olson, also
- 15    visiting a Ken Harper?
- 16    A.    Yes.
- 17    Q.    Special Agent Skillman, this visitor sign-in sheet,
- 18    does it have a number of pages?
- 19    A.    Yes.
- 20    Q.    And when does it appear to start recording visitors?
- 21    A.    April 26th of 2004.
- 22    Q.    And when is the last page?
- 23    A.    February 2005.
- 24    Q.    And are all -- are all of the pages essentially
- 25    recording the same type of information, in terms of the



1 name, visiting, so on?

2 A. Essentially the same, yes.

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

4 Thank you, Your Honor. I have no further questions  
5 for Special Agent Skillman.

6 THE COURT: All right. Mr. Banks?

7 MR. BANKS: Thank you, Your Honor.

8 Your Honor, I would like to republish 609.07.

9 THE COURT: You may.

10 **CROSS-EXAMINATION**

11 **BY MR. BANKS:**

12 Q. Mr. Skillman, do you know what this is?

13 A. It's a disbursement detail report that contains  
14 amounts disbursed in wire fees.

15 Q. Amounts disbursed to who?

16 A. I don't know.

17 Q. So you don't know what this document was used for in  
18 any capacity whatsoever, outside of -- did you say it was  
19 used for disbursement?

20 A. It says "Total amount disbursed: \$16,481.99." But I  
21 don't know who that was disbursed to.

22 Q. Okay.

23 MR. BANKS: Your Honor, permission to republish  
24 Exhibit 1H.

25 THE COURT: You may.

1 Q. (BY MR. BANKS) Mr. Skillman, there is a lot of  
2 writing on this particular document. Do you know the  
3 meaning of any of this?

4 A. In the sense of I recognize there are names on this  
5 document, and what appear to be phone numbers. But  
6 meaning, in the sense --

7 Q. Context?

8 A. No, I do not.

9 MR. BANKS: Your Honor, permission to republish  
10 608.04.

11 THE COURT: You may.

12 MR. BANKS: Thank you.

13 Q. (BY MR. BANKS) Now, this is labeled "Personnel  
14 Staffing Needs;" correct?

15 A. Correct.

16 Q. And you mentioned earlier that you saw certain names  
17 or words or initials in parentheses; correct?

18 A. Yes.

19 Q. Do you know what those names or initials are for?

20 A. No.

21 Q. Does this document tell you anything outside of IRP  
22 looking at their personnel staffing needs?

23 A. It contains addresses, e-mail addresses, things of  
24 that nature.

25 MR. BANKS: Will you scroll down, please. Will you

1 scroll back up.

2 No further questions.

3 One more, actually, Your Honor. I have one final  
4 question. And permission to publish 608.76.

5 THE COURT: You may.

6 Q. (BY MR. BANKS) Now, you mentioned that the log, as  
7 far as the columns, changed?

8 A. Yes.

9 Q. Is there some significance to the columns changing in  
10 your mind?

11 A. I'm sorry, in my mind?

12 Q. Yeah. Because it was brought to you that you  
13 identified the columns were changed. Does that present  
14 any significance to you in your mind?

15 A. No, it does not.

16 MR. BANKS: I have no further questions, Your  
17 Honor.

18 THE COURT: Mr. Walker?

19 **CROSS-EXAMINATION**

20 **BY MR. WALKER:**

21 Q. Agent Skillman, you related that you were part of the  
22 evidence response team on the day that IRP Solutions was  
23 searched?

24 A. Yes.

25 Q. And in -- as part of your task on the evidence

1 response team, did you have tasks other than collecting  
2 evidence that was found at the site?

3 A. I prepared the Evidence Recovery Log.

4 Q. Evidence Recovery Log. What were your other tasks  
5 for that day?

6 A. My recollection of that day was I prepared the  
7 Evidence Recovery Log and collected the evidence from  
8 various locations.

9 Q. Okay. And as part of those tasks, were you required  
10 to be armed?

11 A. I'm sure that I was.

12 Q. Is that a standard procedure for conducting search  
13 warrants for the FBI?

14 MS. HAZRA: Objection, Your Honor, relevance.

15 THE COURT: Overruled.

16 THE WITNESS: Yes, it is.

17 Q. (BY MR. WALKER) Is that the standard process for all  
18 searches of sites for search warrants?

19 A. It is standard procedure for all FBI agents to be  
20 armed when they are conducting their duties.

21 Q. And in the conducting of the searches, does the FBI  
22 have a policy for determining the number of agents that  
23 are deployed on a search?

24 MS. HAZRA: Objection, Your Honor, relevance.

25 THE COURT: What is the relevance?

1 MR. WALKER: Your Honor, we are establishing the  
2 use of force on the day of the raid by the FBI.

3 THE COURT: That goes beyond the direct.

4 MR. WALKER: Okay. Beyond cross?

5 THE COURT: I am sorry, goes beyond the scope of  
6 their direct.

7 MR. WALKER: Thank you. No further questions.

8 THE COURT: Any redirect?

9 MS. HAZRA: None, Your Honor.

10 THE COURT: All right. Thank you very much, Agent  
11 Skillman, you may step down.

12 MR. KIRSCH: Your Honor, could we confer with the  
13 defendants very briefly just before Mr. Skillman leaves.

14 THE COURT: Yes.

15 MR. KIRSCH: Thank you, Your Honor.

16 THE COURT: All right. Government may call its  
17 next witness.

18 MR. KIRSCH: Your Honor, the Government calls Jesse  
19 O'Gorman.

20 Ms. Barnes, if we can have Exhibit Nos. 1, 22 -- I  
21 am sorry, 1N, as in Nancy, 22, and then 80.01 through  
22 81.00.

23 COURTROOM DEPUTY: Your attention please.

24 **JESSE O'GORMAN**

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: Jesse O'Gorman. J-E-S-S-E  
5 O-'-G-O-R-M-A-N.

6 THE COURT: Before we start, anybody who has their  
7 phones turned on, please turn them off when you come into  
8 this courtroom. All phones are supposed to be off. We  
9 just heard a phone buzz. So turn off the phones, and  
10 don't bring them in here on again.

11 You may proceed.

12 MR. KIRSCH: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 **BY MR. KIRSCH:**

15 Q. Where do you work?

16 A. Blackstone Technology Group.

17 Q. What is your position there?

18 A. I am a partner and executive director of the  
19 government practice.

20 Q. How long have you been with Blackstone?

21 A. For 9 years and a month.

22 Q. And where is it that you office for Blackstone?

23 A. Arlington, Virginia.

24 Q. Were you also with -- I take it you were also with  
25 Blackstone in 2004 and 2005?

1 A. Correct.

2 Q. What was your role with the company at that time?

3 A. Regional manager.

4 Q. And what were your duties then as regional manager?

5 A. I was responsible for running the operations of our  
6 Arlington, Virginia, office, as well as running our  
7 management consulting, technology consulting and staff  
8 augmentation business.

9 Q. As a part of this staff augmentation business that  
10 Blackstone provided at that time, did it provide a service  
11 called payrolling?

12 A. Yes, we do.

13 Q. And prior to joining Blackstone, had you worked in  
14 the staffing or IT industry?

15 A. Yes. I started in the staffing industry in 1996.

16 Q. Okay.

17 MR. KIRSCH: Your Honor, could I please publish  
18 Government Exhibit 608.65?

19 THE COURT: You may.

20 Q. (BY MR. KIRSCH) Mr. O'Gorman --

21 MR. KIRSCH: Can we enlarge the text of that.

22 Q. (BY MR. KIRSCH) On your screen in just a moment --  
23 hopefully it is now big enough to be legible. Can you see  
24 that?

25 A. Yes.

1 Q. -- there is what appears to be a website that's  
2 highlighted or colored yellow. Do you know that website?

3 A. Yeah. That is my website.

4 Q. That is the Blackstone website?

5 A. Correct.

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

7 Q. (BY MR. KIRSCH) At some point, when you were -- when  
8 you were the regional manager at Blackstone, did you  
9 engage in business with a company called IRP?

10 A. I did.

11 Q. And do you remember when that business began?

12 A. Early January of 2005.

13 Q. And do you recall how that business began?

14 A. I picked up a call from IRP Solutions. Really,  
15 initial discussion was around if we provided  
16 payrolling-type services.

17 Q. And do you remember who that call was from?

18 A. Actually, the gentleman's name is on this document  
19 that you had up. David Zirpolo.

20 Q. David Zirpolo. Okay. And so who initiated that  
21 call?

22 A. First time I spoke with IRP and David was a call from  
23 David.

24 Q. And what did you say he -- what was he calling about?

25 A. He was inquiring if our firm provided payrolling



1 services.

2 Q. What did you tell him?

3 A. I explained our payrolling services, and that we did.

4 Q. Did you have any discussion with Mr. Zirpolo about  
5 how he got the name of your company?

6 A. I honestly don't recall every part of the discussion.  
7 But I do remember talking a bit about government  
8 contracting. That was our primary focus, from both a  
9 staffing and consulting service standpoint. And there was  
10 a connection there. So I do remember that being kind of  
11 the topic, at least of how they potentially came across  
12 our name.

13 Q. All right. Did you have any conversation at that  
14 time with Mr. Zirpolo about IRP's business?

15 A. Yes. The thing that was interesting to me was the  
16 focus of their business. My business revolves around the  
17 Homeland Security space; 80 percent of our business is  
18 Homeland Security. So as I talked to David, I learned  
19 that there was a core focus there.

20 So that was of interest to me in looking for  
21 partnership in the federal government contracting space in  
22 those areas, was interesting and exciting.

23 Q. And did you, after this telephone call, did you get a  
24 follow up e-mail from Mr. Zirpolo?

25 A. I did, yes.

1 Q. Can I ask you, please, to look now in the folders  
2 that are up there. I would like you to look at what is  
3 marked as 1N, as in Nancy.

4 A. Okay.

5 Q. Do you recognize that exhibit?

6 A. I do, yes.

7 Q. Can you identify it for us, please?

8 A. So this is the initial e-mail follow-up after our  
9 phone call stating the services that IRP was requesting  
10 from Blackstone.

11 Q. Who did this come from?

12 A. It came from David Zirpolo.

13 MR. KIRSCH: Your Honor, I would ask to admit and  
14 publish Government Exhibit 1N.

15 THE COURT: Any objection?

16 MR. ZIRPOLO: No objection.

17 THE COURT: Exhibit 1N is admitted, and it may be  
18 published.

19 (Exhibit No. 1N is admitted.)

20 MR. KIRSCH: Thank you, Your Honor.

21 And can you just expand the top half of that,  
22 Special Agent.

23 Q. (BY MR. KIRSCH) Mr. O'Gorman, there are references  
24 in the second paragraph of this e-mail to the New York  
25 Police Department and DHS. What did you understand DHS to

1 be in that e-mail?

2 A. I understood that to be a client.

3 Q. And did you know what DHS stood for?

4 A. Absolutely. That is actually my first client within  
5 the federal government within -- back in 2002.

6 Q. That is who?

7 A. Department of Homeland Security.

8 Q. Okay. Thank you. And was this information  
9 consistent with the information you had gotten on the  
10 phone from Mr. Zirpolo about IRP's business?

11 A. Yes.

12 Q. Did you have an understanding from your conversation  
13 with Mr. Zirpolo and/or this e-mail about whether or not  
14 there was a contract in place between IRP and either of  
15 those entities?

16 MR. HARPER: Objection, leading the witness.

17 THE COURT: Overruled.

18 THE WITNESS: Based on the conversation and e-mail,  
19 I felt that there was a contract in place. I didn't  
20 inquire as to what degree it was, how long it had been in  
21 place, exact services provided.

22 Q. (BY MR. KIRSCH) What was your understanding about  
23 that? Was that important to you in deciding whether or  
24 not to go forward with the payrolling relationship with  
25 IRP?

1 A. Absolutely.

2 Q. Why was that?

3 A. Well, generally in our business, if there is not a  
4 funded contract to support the service, then we wouldn't  
5 do the work.

6 Q. Do you know whether or not there was any other sort  
7 of credit check process that Blackstone used in connection  
8 with deciding whether or not to do business with IRP?

9 A. So, the way we do it at Blackstone is our corporate  
10 office handles Dun & Bradstreet checks and background  
11 checks. I don't personally. So, unfortunately, I do not  
12 know if that happened.

13 Q. All right. Do you know whether that was routine at  
14 that time?

15 A. It was routine.

16 Q. Okay. And the e-mail -- this e-mail that is on the  
17 screen, where did you receive this e-mail?

18 A. I received this e-mail in my office in Arlington.

19 Q. In Arlington, Virginia?

20 A. Yes.

21 Q. Actually, I have one other question about this.  
22 There is a reference in the third paragraph to something  
23 about an "added sweetener to Blackstone's staffing." Do  
24 you see that?

25 A. Yep.

1 Q. Had you had any conversation with Mr. Zirpolo about  
2 potential other business?

3 A. Yes. So, again, the interesting -- the opportunity  
4 for me was really more future business within the Homeland  
5 Security account. And so the payroll service was -- to be  
6 honest, it is not our core business, but it sometimes  
7 leads to other business. So the fact that IRP was doing  
8 business with the Department of Homeland Security was an  
9 added sweetener. So I was hopeful we might work together.

10 Q. Did Blackstone agree to payroll some employees at  
11 IRP?

12 A. Yes.

13 Q. And did Blackstone have a mechanism in place for  
14 keeping track of those employees' hours?

15 A. Yes. We have a time and expense system.

16 Q. What did you call it?

17 A. A time and expense system.

18 Q. How did that system work?

19 A. So once we would sign up an employee, they would get  
20 instructions for the system. And then on -- I believe at  
21 the time, on a weekly basis, those employees would be  
22 asked to enter their time. And then a manager that they  
23 reported to would approve that time. And then I would  
24 then go in as the account manager for that and approve the  
25 time.

1 Q. This process you are describing, is that all  
2 happening on the internet?

3 A. It is web based, yes.

4 Q. Okay. Can I ask you to look now, please, at what is  
5 marked for identification as Government's Exhibit 81.00.  
6 Do you have that one now? Do you recognize what is  
7 contained in that exhibit?

8 A. Yes.

9 Q. What are those?

10 A. These are copies of time cards from our system.

11 Q. And are these time cards for employees that  
12 Blackstone payrolled for IRP?

13 A. Yes, they are.

14 MR. KIRSCH: I would move to admit and publish  
15 Government Exhibit 81.00.

16 THE COURT: Any objection?

17 MR. BANKS: No objection, Your Honor.

18 THE COURT: 81.00 is admitted.

19 (Exhibit No. 81.00 is admitted.)

20 THE COURT: And it may be published.

21 MR. KIRSCH: Thank you, Your Honor.

22 Special Agent Smith, can you begin by highlighting  
23 the very lower left corner of this, the "https."

24 Q. (BY MR. KIRSCH) What is that information on the  
25 screen now, Mr. O'Gorman, that starts with "https"?

1 A. That is the URL for our time expense system.

2 Q. That is where a person would log on to enter this  
3 information?

4 A. Yes.

5 MR. KIRSCH: Can we expand that back out now.

6 Q. (BY MR. KIRSCH) Then is there a name on this sheet  
7 that identifies the employee?

8 A. Yes, on the top.

9 Q. And this sheet pertains to who?

10 A. Amos Clark.

11 Q. Could we go to page 3 of this exhibit now, please.

12 Is there a name that identifies this employee?

13 A. Yes, Barbara McKenzie.

14 Q. Then if we can go to page 2 of this exhibit, please.

15 Who is the employee whose time was recorded on this sheet?

16 A. Kendra Haughton.

17 Q. Did you know who was signing as the manager for these  
18 time sheets?

19 A. I did not.

20 MR. KIRSCH: Okay. Can we put that time sheet on  
21 the left side of the screen, please, Special Agent Smith.

22 Then, Your Honor, I will ask for permission to  
23 publish Government's Exhibit 191.00, page 39.

24 THE COURT: All right. It may be published.

25 MR. KIRSCH: Thank you, Your Honor.

1           Can we go back to the left side first, and try to  
2   expand that time section; the name and the time section.

3   Q.    (BY MR. KIRSCH) Now, do we have the Blackstone time  
4   sheet up on the left there, Mr. O'Gorman?

5   A.    Yes.

6   Q.    Are you familiar with a company called The Judge  
7   Group?

8   A.    I am.

9   Q.    Do you know whether that's a different staffing  
10   company?

11   A.    Yes, it is.

12   Q.    Did you have any information that Ms. Haughton was  
13   reporting time to The Judge Group for work at IRP on the  
14   same days that she was reporting time to Blackstone for  
15   work done at IRP?

16   A.    No, I did not.

17   Q.    If you had gotten that information, would that have  
18   concerned you at all?

19   A.    Absolutely.

20   Q.    Why is that?

21   A.    Well, we are employing Kendra to work for Blackstone.  
22   We are paying an hourly rate. So it is fairly unethical  
23   to be doing that in two locations. It costs us a lot of  
24   money to do that, as well.

25           MR. KIRSCH: Thank you Special Agent Smith.



1 Q. (BY MR. KIRSCH) Can I ask you now, Mr. O'Gorman, to  
2 look at what is marked at Government's Exhibit 22.00. Do  
3 you have that in front of you?

4 A. I do.

5 Q. Can you identify the first page of that exhibit?

6 A. It is one of our invoices.

7 Q. Does this particular one pertain to payrolled  
8 employees at IRP?

9 A. It does.

10 Q. And then the remaining three pages of the exhibits,  
11 what are those?

12 A. These are the time cards associated with the invoice.

13 MR. KIRSCH: Your Honor, I would move to admit and  
14 publish Government's Exhibit 22.00.

15 THE COURT: Any objection?

16 MR. BANKS: No objection, Your Honor.

17 THE COURT: 22.00 is admitted and may be published.  
18 (Exhibit No. 22.00 is admitted.)

19 MR. KIRSCH: Thank you, Your Honor.

20 Can you expand down to the bottom there.

21 Q. (BY MR. KIRSCH) Who was listed as the contact for  
22 Blackstone -- for IRP, Mr. O'Gorman?

23 A. David Zirpolo.

24 Q. And how is it that Blackstone transmitted invoices to  
25 its clients back in 2005?

1 A. So there are two routes. There was option for mail,  
2 and there was the option for e-mail.

3 Q. All right. What was the default option?

4 A. The default option was mail.

5 Q. United States Mail?

6 A. Yes.

7 Q. Would that mail have come from the office that is  
8 listed in the top left corner there?

9 A. Yes.

10 MR. KIRSCH: Your Honor, at this time I would like  
11 to display Government Exhibit 609.01 to this witness.

12 THE COURT: All right.

13 MR. KIRSCH: Which is the oversized exhibit.

14 THE COURT: You may approach.

15 MR. KIRSCH: May I move that? Thank you.

16 Q. (BY MR. KIRSCH) I am going to try that right here.  
17 Are you able to see that Mr. O'Gorman?

18 A. Yes.

19 MR. KIRSCH: Can you gentlemen see that, as well?

20 MR. HARPER: I can't.

21 MR. KIRSCH: Your Honor, can I ask the witness to  
22 come down and put it where we had it before, and step out  
23 towards the board for a moment.

24 THE COURT: Yes.

25 Q. (BY MR. KIRSCH) Are you able to see, Mr. O'Gorman,

1     that there is a column that appears to have the heading  
2     "Blackstone."   Do you see that?

3     A.     I do.

4     Q.     And there are a set of initials there.  "BM" is the  
5     first one.  Were those the initials of one of the  
6     employees being payrolled by Blackstone, Barbara McKenzie?

7     A.     Yes.

8     Q.     Then "KH."  Were those initials for another employee  
9     that was being payrolled?

10    A.     Yes.

11    Q.     Do you see there are also initials in parentheses  
12    next the "BM" and the "KH"?

13    A.     I do.

14    Q.     Can you make out the initials that are next to the  
15    "BM"?

16    A.     "DZ."

17    Q.     If you had learned that it was, in fact, David  
18    Zirpolo that was working the hours that were being  
19    reported for Barbara McKenzie --

20           MR. WALKER:  Objection, Your Honor, speculation.

21           THE COURT:  Speculation?

22           MR. BANKS:  Yes, Your Honor.

23           THE COURT:  Overruled.

24           MR. BANKS:  Objection, Your Honor, foundation.

25           THE COURT:  Sustained.

1 Q. (BY MR. KIRSCH) Was it ever reported to you that  
2 David Zirpolo was working the hours that were being  
3 reported under Barbara McKenzie's name?

4 A. No.

5 MR. BANKS: Objection, Your Honor, foundation.

6 THE COURT: Overruled.

7 Q. (BY MR. KIRSCH) If you had gotten that information,  
8 would that have caused you to take any action?

9 A. Yes.

10 Q. What action would you have taken?

11 A. We would have stopped the contract immediately.

12 Q. Thank you, Mr. O'Gorman. Do you know whether or not  
13 the invoices that Blackstone issued to IRP were ever paid?

14 A. They were not.

15 Q. Were you involved in any collection activity with  
16 respect to those invoices?

17 A. I was not.

18 MR. KIRSCH: May I have a moment, please, Your  
19 Honor?

20 THE COURT: You may.

21 MR. KIRSCH: Your Honor, those are all of my  
22 questions for Mr. O'Gorman.

23 THE COURT: All right. Mr. Banks?

24 **CROSS-EXAMINATION**

25 **BY MR. BANKS:**

1 Q. Mr. O'Gorman, you just looked at that exhibit there  
2 on the board with the names in parentheses.

3 MR. BANKS: And may I move up here a little bit,  
4 Your Honor, so I can see the exhibit?

5 THE COURT: You may.

6 Q. (BY MR. BANKS) You noted that next to the "KH"  
7 initials there were initials "SK"?

8 A. No, "DZ" next to "BM."

9 Q. Next to "BM" is "DZ." Do you know if that was a  
10 supervisor -- the supervisor of BM?

11 A. I do not.

12 Q. Do you know if that's the person who may substitute  
13 or be an alternate to BM?

14 A. I do not.

15 Q. Do you know if that is just a co-worker who handles  
16 work when BM is not available?

17 A. No.

18 Q. So you really don't know what those initials mean?

19 A. No.

20 Q. You could only speculate to what it might or might  
21 not be; correct?

22 A. Correct.

23 Q. Now, you mentioned that a D & B credit -- pulling a  
24 D & B credit report is a routine policy for Blackstone;  
25 correct?

1 A. Yes.

2 Q. Has there been an instance when -- where the credit  
3 department -- let me ask you this first.

4 Does the credit department determine from their  
5 D & B and their credit due diligence analysis whether the  
6 corporation wants to do business with this business?

7 A. Yes.

8 Q. What does the credit department base that on?

9 A. The Dun & Bradstreet rating.

10 Q. Now, do you know a gentleman by the name of Casey  
11 Courneen?

12 A. I do.

13 Q. Let me ask you this first. Were you the person that  
14 provided -- did you provide a copy of the Dun & Bradstreet  
15 report to the FBI upon their request?

16 A. Not to my knowledge.

17 Q. Do you know if Mr. Courneen provided that information  
18 to them?

19 A. Not to my knowledge.

20 Q. Are you familiar with what's on a Dun & Bradstreet  
21 report? Have you ever had an opportunity to view those?

22 A. I have.

23 Q. Are you familiar with their rating system?

24 A. Somewhat.

25 Q. Are you familiar with the term financial stress

1 class?

2 A. I'm not.

3 Q. Now, you've been in the staffing industry for how  
4 long?

5 A. 1996.

6 Q. I can't do math for some reason. So that is in the  
7 neighborhood of 20-plus years, correct?

8 A. Little lower.

9 Q. I'm starting from 86. So about 15 years or so?

10 A. Yes.

11 Q. Have you ever encountered a time where a contractor  
12 worked more than one project?

13 A. Not under my -- not explained up front, no.

14 Q. Are you aware that it is an industry practice that  
15 takes place?

16 A. Generally, in our staffing service business, it does  
17 not.

18 Q. Okay. But there is nothing prohibiting a person,  
19 from Blackstone policy, from engaging in two separate  
20 projects, is there?

21 A. No.

22 Q. Now, you said that a person -- and correct me if I am  
23 wrong -- working multiple contracts would cost you money.  
24 Can you explain that?

25 A. So if we are paying an individual to work for our

1 contract for our company, and that individual is charging  
2 40-plus hours a week, there is costs involved with us  
3 doing that. And if we're not paid for that, then there is  
4 additional costs associated with that.

5 Q. Okay. That is the -- that is not on the contractor,  
6 is it?

7 A. We are paying the contractor.

8 Q. You are paying the contractor, but you are not  
9 getting paid, sir. It's between you and the corporation  
10 that you signed a contract with; is that correct?

11 A. Correct.

12 Q. So IRP was responsible for costing you money, not the  
13 contractor; is that correct?

14 A. IRP was responsible for not paying invoices; correct.  
15 The contractor was responsible for submitting accurate  
16 time and doing work under our agreement.

17 Q. Do you have any information to provide to the Court  
18 that any of the contractors that were employed by  
19 Blackstone did not perform the work?

20 A. I do not.

21 Q. Do you have any complaints from the client regarding  
22 the performance of your contractors?

23 A. No.

24 Q. Now, you mentioned the prospect of doing business in  
25 the DHS space, your testimony, was interesting and



1     exciting; correct?

2     A.     Yes.

3     Q.     And because that -- would you say the DHS business is  
4     kind of an area that you like to engage and do business  
5     in?

6     A.     Absolutely.

7     Q.     Would you also say, from your own personal interest  
8     in doing business in the DHS space, that a client who is  
9     also doing business in that space, brings good synergy  
10    between Blackstone and -- for Blackstone?

11    A.     Yes.

12    Q.     Now, were you ever told directly by any person at IRP  
13    -- let me just put it by Mr. Zirpolo -- that there was a  
14    contract in place with either the New York City Police  
15    Department or the Department of Homeland Security?

16    A.     Yes.

17    Q.     And when did he tell you that?

18    A.     Initial phone call.

19    Q.     Now, would you find it curious that his e-mail  
20    communication would say something differently than what he  
21    told you on the phone?

22    A.     I would.

23    Q.     Now, it has been since 2005 that you communicated  
24    with Mr. Zirpolo; correct?

25    A.     Correct.

1 Q. And would you say that over a 6-year period or so,  
2 that it's possible your memory may have decayed some?

3 A. It is very possible it has decayed. But based on the  
4 business terms and what I know to be the discussion, it is  
5 absolutely not.

6 Q. It is absolutely not?

7 A. No.

8 MR. BANKS: May I have a moment, Your Honor?

9 THE COURT: You may.

10 MR. BANKS: One more second, Your Honor.

11 Your Honor, permission to publish 608.65.

12 THE COURT: Yes, 608.65 may be published.

13 MR. BANKS: Your Honor, I believe that is the wrong  
14 exhibit. 1N, please, Your Honor.

15 THE COURT: That may be published.

16 Q. (BY MR. BANKS) Mr. O'Gorman, can you, starting at  
17 the second sentence of the first paragraph, read what was  
18 sent to you on January 14th of 2005 in this e-mail?

19 A. "We have a great project that we will be looking to  
20 wrap up for the New York Police Department and start at  
21 DHS. Hence, that is the reason that we are reaching out  
22 to your firm."

23 Q. Okay. Did you question Mr. Zirpolo about a contract  
24 at that point that you said -- that you previously said  
25 that he told you there was a contract in place?

1 A. I did not question him.

2 Q. Is there some reason why?

3 A. I did some research while I was on the phone, as I do  
4 with most of my prospects. It was clear that IRP  
5 Solutions was doing work in that space based on what was  
6 advertised. So it made sense.

7 Q. Sorry, didn't mean to interrupt you, sir. So they  
8 were doing work in that space, at least from what you  
9 found on their internet?

10 A. Correct.

11 Q. Are you aware -- do you recall your May 26, 2009  
12 interview with the FBI?

13 A. Yes.

14 Q. Do you remember who you said called you or reached  
15 out to you during that interview?

16 A. I do not remember exactly, but I imagine it is David  
17 Zirpolo, due to the fact that is the only person I talked  
18 to.

19 MR. BANKS: Your Honor, may I provide Mr. O'Gorman  
20 with his May 26, 2009, interview to refresh his  
21 recollection?

22 THE COURT: You may have it marked by Ms. Barnes.

23 MR. BANKS: Will do.

24 COURTROOM DEPUTY: Defendants' Exhibit 339.

25 Q. (BY MR. BANKS) If you could read the second

1 paragraph.

2 THE COURT: To yourself.

3 Q. (BY MR. BANKS) To yourself. I am sorry.

4 A. The entire paragraph?

5 Q. Just the first couple of sentences.

6 THE COURT: Just read it to yourself.

7 THE WITNESS: I've read it.

8 Q. (BY MR. BANKS) Is it reported -- from what you read,  
9 do you mention Mr. Zirpolo in that sentence?

10 A. No.

11 Q. Who do you mention?

12 A. I say the person might have been Gary Walker.

13 Q. And also can you -- is it also reported that you were  
14 called by someone in the second sentence?

15 A. Yes.

16 Q. So today, in 2009, you did not remember who called  
17 you when questioned by the FBI; correct?

18 A. Correct. I couldn't remember the exact name.

19 Q. But in 2011, your memory became clearer on who called  
20 you, correct?

21 A. Correct.

22 MR. BANKS: I have no further questions for  
23 Mr. O'Gorman.

24 THE COURT: Anybody else? Mr. Zirpolo?

25 **CROSS-EXAMINATION**

1     **BY MR. ZIRPOLO:**

2     Q.     Good afternoon.

3             MR. ZIRPOLO:   Can we publish Exhibit 22, please.

4             THE COURT:   You may.

5     Q.     (BY MR. ZIRPOLO)   This is an invoice from Blackstone  
6     Technology?

7     A.     It is.

8     Q.     You stated you don't know how it was delivered to  
9     IRP.    It could have been either e-mail or U.S. Postal  
10    Mail; is that correct?

11    A.     Yes.

12    Q.     Can you tell from this how it was delivered?

13    A.     I cannot.

14             MR. ZIRPOLO:   Thank you.   No further questions.

15             THE COURT:   Anything further from the defendants?  
16             Any redirect?

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

18                             **REDIRECT EXAMINATION**

19    **BY MR. KIRSCH:**

20    Q.     Mr. O'Gorman, before you came to court today, did you  
21    have an opportunity to review a variety of documents  
22    related to Blackstone's interactions with IRP?

23    A.     Yes.

24    Q.     Did those documents help you remember the person with  
25    whom you dealt when you were talking to someone at IRP?

1 A. Yes.

2 Q. You also mentioned that you did some research while  
3 you were on the telephone. What was the -- where did you  
4 do that research?

5 A. Online. I looked up the IRP website.

6 Q. So you were relying on information you got from the  
7 IRP website?

8 A. Correct.

9 Q. You were also asked the question about synergy. Do  
10 you recall that question?

11 A. Yes.

12 Q. Is there any synergy for Blackstone to be had from a  
13 company that said it was doing business with the  
14 Department of Homeland Security but really wasn't?

15 MR. BANKS: Objection, Your Honor.

16 THE COURT: I am sorry?

17 MR. BANKS: Objection. There is no foundation.

18 THE COURT: Overruled.

19 Q. (BY MR. KIRSCH) Did you hear that question?

20 A. Can you repeat it?

21 Q. Was there any synergy to be had for Blackstone with a  
22 company that said it was doing business with the  
23 Department of Homeland Security but really wasn't?

24 A. No.

25 Q. You were also asked, with respect to that white

1 board, about the possibility of alternates. Did  
2 Blackstone employ any alternates for Ms. McKenzie?

3 A. No.

4 MR. KIRSCH: Thank you, Mr. O'Gorman.

5 MR. BANKS: Your Honor, may I?

6 THE COURT: It is already the end of the day. May  
7 this witness be excused.

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

9 THE COURT: Thank you, Mr. O'Gorman, you are  
10 excused.

11 All right. We are going to go ahead and recess for  
12 the afternoon. If the jury can be here at 9:15. I have  
13 an 8:15. So I will not have you be here until 9:15  
14 tomorrow ready to go, that way I make sure I don't keep  
15 you waiting.

16 Remember, do not talk to anyone about this case.  
17 Do not do any research on this case. Go home, relax and  
18 have a good evening. We will see you tomorrow at 9:15.

19 The jury is excused. Counsel and parties, if you  
20 will remain.

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

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

24 The reason I had you remain is, Mr. Stewart,  
25 apparently our clerk's office is saying the address they

1 have for you is wrong, and your mail is coming back. So  
2 can you stop by -- you have -- they don't close until  
3 5:00. Can you stop down there to make sure you have the  
4 correct address? And I want to make sure that is the  
5 address you have on the affidavit you submitted, as well.

6 All right. Is there anything else, Ms. Barnes, we  
7 need to take up?

8 COURTROOM DEPUTY: Stephanie also needs them to ask  
9 for her.

10 THE COURT: So when you go down, also can you ask  
11 for Stephanie Matlock. She is the person in charge of the  
12 CJA form you filled out. All right.

13 MR. KIRSCH: Your Honor, can I make it part of the  
14 record, the reason we asked to speak to the defendants  
15 when Mr. Skillman was leaving was to confirm they weren't  
16 going to need to recall him, because he is here from out  
17 of state. They confirmed they did not. So I just wanted  
18 to get that on the record.

19 THE COURT: All right. Because I did not excuse  
20 him for that purpose. But defendants, during that  
21 conference -- I figured that is what it was, was defense  
22 confirming they do not intend to call him.

23 Anything further?

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

25 MR. BANKS: No, thank you.



1 THE COURT: Thank you very much. Have a good  
2 evening. We will see you tomorrow morning at 9:15.

3 (Court is in recess at 4:50 p.m.)  
4

5 R E P O R T E R ' S C E R T I F I C A T E  
6

7 I, Darlene M. Martinez, Official Certified  
8 shorthand Reporter for the United States District Court,  
9 District of Colorado, do hereby certify that the foregoing  
10 is a true and accurate transcript of the proceedings had  
11 as taken stenographically by me at the time and place  
12 aforementioned.  
13

14 Dated this 5th day of December, 2011.  
15  
16

17 \_\_\_\_\_  
18 s/Darlene M. Martinez

19 RMR, CRR  
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