

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 09-cr-00266-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

REPORTER'S PARTIAL TRANSCRIPT
(Jury Trial Day 2 - Excluding Voir Dire)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 8:30 a.m. on the 27th day of September 2011, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFF:

MATTHEW T. KIRSCH and SUNEETA HAZRA, U.S. Attorney's Office - Denver, 1225 17th St., Suite 700, Denver, CO 80202

FOR THE DEFENDANTS:

Pro Se.

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| <u>NO.</u> | <u>ADMITTED</u> |
|------------|-----------------|
| 1A | 82 |
| 30.01 | 75 |
| 30.02 | 77 |
| 31.00 | 80 |
| 32.00 | 85 |
| 35.00 | 91 |
| 150.01 | 140 |
| 151.00 | 122 |
| 151.01 | 125 |
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| <u>No.</u> | <u>ADMISSIBLE</u> |
|------------|-------------------|
| 153.00 | 126 |
| 282.00 | 161 |

1 **SEPTEMBER 27, 2011.**

2 (Proceedings commence at 8:30 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 Back on the record on the second day of trial in
7 Case No. 09-cr-00266-CMA. Court notes that all parties
8 are present.

9 First item of business, because I need to get my
10 staff busy copying, are there any objections, changes to
11 the proposed preliminary instructions?

12 MR. BANKS: No, Your Honor.

13 MR. KIRSCH: The Government does have a few
14 objections or proposed changes, Your Honor.

15 THE COURT: All right.

16 MR. KIRSCH: The first is in Instruction No. 2, in
17 the last paragraph, the sentence that begins, "Then I will
18 give you some specific rules of law." The Government
19 would propose ending that sentence after "this particular
20 case," because at least for the preliminary instructions,
21 the Court is not going to explain the procedures they
22 should follow in deliberations or the possible verdicts.

23 THE COURT: Oh, you are right. Yes, that should be
24 taken out.

25 Do the defendants have any objection to that?

1 MR. BANKS: No objection, Your Honor.

2 THE COURT: All right.

3 MR. KIRSCH: The next objection, Your Honor,
4 applies to both Instruction Nos. 14 and 15. And there are
5 two for each of those. The first is that in the
6 definition of "intent to defraud," at the bottom of each
7 of those pages, we would propose removing the word "with."
8 We think the sentence should read, "An intent to defraud
9 is accompanied ordinarily by a desire or a purpose." Then
10 the same thing at the end of the sentence, "or by a desire
11 or by a purpose."

12 THE COURT: You are right. That shouldn't be in
13 there.

14 Do the defendants have any objection to that?

15 MR. BANKS: No objection. I want to at least get
16 on the record for the moment, Your Honor, we were
17 satisfied with -- obviously we presented our definition as
18 far as "scheme to defraud" was concerned. And we would
19 ask that the -- obviously, Your Honor, that the standard
20 definition that is a part of the mail fraud Instruction 4,
21 under U.S.C. 1341(b), annotated as is in that statute.

22 And I guess we question -- this looks like a -- now
23 the Government has made what looks like a substantial
24 change to the way the statute currently reads.

25 THE COURT: Hold on. Let me get to my original

1 instructions I sent out, because I had the explanation for
2 why I chose the particular ones in that. Let me get to
3 that right now.

4 Yes, in my original instructions to you, I did
5 indicate to you what I was going to be using. I have not
6 changed this from that definition. I will take out the
7 italicized, because that was only for your information, so
8 I will delete that.

9 That was included that "The intent to defraud is
10 accompanied ordinarily by a desire or a purpose to bring
11 about some gain or benefit to ones self or to some other
12 person or by a desire or a purpose to cause a loss to some
13 person," because that is taken from Federal Jury Practice
14 Instructions, 5th Edition, Volume 1A, Section 1607.

15 The defendants' competing instruction on that
16 included lengthy definitions of "specific intent to
17 defraud" and "materiality." The specific intent proposed
18 by the defendants was "an evil ambition to deceive or
19 swindle or to deprive someone of something of value and to
20 cause financial harm." And the Court found that
21 definition to be confusing and an unnecessary substitute
22 for the Tenth Circuit Pattern Instructions, which are
23 essentially what are replicated here.

24 The Tenth Circuit has observed that "The term
25 'specific intent' is often confusing, requiring further

1 elaboration to clarify precisely what the accused must
2 know and intend." That is from United States v. Hall, 281
3 Fed. Appx. 809 Tenth Circuit, 2008 case.

4 I also found it unnecessary to include the
5 defendants' proffered instruction entitled "mistake,
6 negligence and recklessness," because it contains overly
7 broad statements of the law, and would be distracting to
8 the jury. This instruction already informs the jury that
9 to find the defendants guilty they must find that each of
10 them intended to deceive or cheat someone, and that
11 necessarily would entail mistakes, negligence or
12 recklessness, do not satisfy the mental state requirement.

13 So your objection is noted. Do you wish to make
14 any further statement for the record, Mr. Banks?

15 MR. BANKS: Yes, Your Honor. We just would make --
16 okay. I guess we'll cite our objection to this particular
17 language here. Although we do have "the defendant acted
18 with specific intent to defraud," is there any intention
19 to further define "specific intent"? I know that the --
20 both on conspiracy, mail fraud and wire fraud, are
21 considered specific intent crimes. And obviously the
22 underpinnings of our defense will be based on that
23 specific intent.

24 And the reasons we engaged in the business we
25 engaged in, the reason we engaged staffing companies in

1 the first place, obviously is going to go to the core of
2 the specific intent to defraud. We just don't think that
3 the intent to defraud clearly annotates that specific
4 intent of requirement. So that would be our objection.

5 THE COURT: All right. Thank you. The additional
6 sentence that I just added to the end of this is as far as
7 I am willing to go to further define specific intent. So
8 your objection is noted for the record. And, as I
9 indicated, we will remove the italicized text so that it
10 reads just normal text on that. All right.

11 MR. KIRSCH: Your Honor, the other objection that
12 we had to those two instructions, now Instruction Nos. 14
13 and 15, are that in the first element, the instruction we
14 think properly refers to paragraphs 5 through 9 of the
15 Indictment, but paragraphs 5 through 9 of the Indictment
16 are now nowhere in the instructions.

17 We are not asking the Court to include the entire
18 Indictment in the instructions as they were before, but we
19 do think it is appropriate to include just paragraphs 5
20 through 9 from the Indictment. Those are the five
21 paragraphs that spell out the scheme that is alleged in
22 the Indictment.

23 We don't think that the inclusion of that is
24 prejudicial to the defendants. In fact, we think that
25 that benefits the defendants and the jury by explaining to

1 them exactly what the scheme that the Government is
2 alleging is.

3 THE COURT: All right. Let me get to that, as
4 well, to see what paragraphs 5 through 9 were.

5 MR. KIRSCH: It's the "manner and means"
6 paragraphs, Your Honor. And in the original instructions,
7 they were on pages 18 and 19 in the Court's original set
8 of instructions.

9 THE COURT: Okay. So it would be beginning "On or
10 around October 2002" in paragraph 4 -- no, that is 5.
11 Manner and means.

12 MR. KIRSCH: I was proposing just beginning with
13 paragraph 5. That doesn't have the dates. We think it
14 would be -- we don't have any objection, obviously, to
15 having the dates included, but I was trying to address the
16 Court's concern and sort of give the smallest piece of the
17 Indictment that was necessary for this point in the trial.

18 THE COURT: It would make some sense to me that
19 they have some indication as to what the scheme is alleged
20 to be. And I think that would be actually helpful to the
21 defendants, but I will hear from Mr. Banks.

22 Do you object to including that? It would be just
23 a limited amount, but it would essentially mention what
24 companies we're talking about, what they're alleging you
25 all did, and it seems to me that would be helpful when the

1 jury is listening to what is coming in, to see why that
2 evidence might be relevant.

3 MR. BANKS: Yes, Your Honor. We don't object to 5
4 through 9 being a part of instruction. Obviously it
5 outlines our business activities with these particular
6 agencies, and we intend to obviously highlight a lot of
7 activities during the trial concerning this.

8 MR. WALKER: In addition to that statement, I
9 believe it would be beneficial if before reading that
10 excerpt from the Indictment, you remind the jury that the
11 Indictment is just the accusation of the charges against
12 the defendants.

13 THE COURT: Okay. So I will add that. What I
14 suggest is that -- to that Instruction No. 15, where we
15 say, first, "The defendant devised or intended to devise a
16 scheme to defraud as described in the Indictment." Then I
17 will do a parenthetical that says, "I remind you that the
18 Indictment is merely allegations --" so the standard
19 instruction there, "-- as set forth below." Does that
20 sound okay?

21 MR. BANKS: No objection.

22 MR. KIRSCH: That is fine, Your Honor. I just note
23 the Court referenced Instruction 15. I think the first
24 place that it would come up is in Instruction No. 14.

25 THE COURT: Oh, I am sorry, yes. It is in both of

1 those. So we will modify Instructions 14 and 15
2 accordingly.

3 MR. KIRSCH: And we are not asking that the Court
4 read that twice. So I don't know if in Instruction 15 you
5 would want to refer back to Instruction 14. I don't
6 really have a preference as to how the Court does that.
7 We are not asking the Court to try to read that twice. We
8 just want the jury to have that description somewhere for
9 them to refer to.

10 THE COURT: Mr. Banks, or defendants, how would you
11 prefer that I proceed with respect to reading it twice, or
12 just referring them back to No. 14?

13 MR. BANKS: Reading once would be sufficient, Your
14 Honor.

15 THE COURT: All right. Well, what I may do,
16 because this is an instruction, I may list it twice so
17 that they have the full instruction, but I will not read
18 it twice. I will just the second time on Instruction No.
19 15, I will merely indicate that they should -- that we
20 have already read it, that I am not going to repeat it.

21 MR. KIRSCH: No objection from the Government, Your
22 Honor.

23 THE COURT: All right. Anything further?

24 MR. KIRSCH: One other issue, Your Honor, that is
25 in Instruction No. 16, the Court had added the definition

1 of "knowing" from the Pattern Instructions. I think that
2 that is on page 22 of the proposed instructions. And
3 that, I believe, is the "deliberate ignorance" instruction
4 from the Tenth Circuit Pattern Instruction No. 1.37. It
5 may well be that at the conclusion of the trial we might
6 ask for the full deliberate ignorance instruction.

7 But we are concerned that at this point, we don't
8 know whether there would be evidence introduced during the
9 trial to support the deliberate ignorance portion of that
10 instruction. And, therefore, we are asking the Court to
11 shorten that definition, at least in the preliminary
12 instructions, with the idea that we could revisit it.

13 Our proposal would be that the Court give the first
14 sentence that is proposed, "Knowingly means the act was
15 done voluntarily and intentionally and not because of
16 mistake or accident." And that the second sentence then
17 say, "Knowledge on the part of the defendant cannot be
18 established merely by demonstrating that the defendant was
19 negligent, careless or foolish."

20 We would propose removing the rest of that
21 instruction for the purposes of the preliminary
22 instructions. And it is our position that that is also a
23 change that is favorable to the defendants at this point.

24 THE COURT: All right.

25 MR. WALKER: Your Honor, we agree to those

1 suggested modifications.

2 THE COURT: All right. So let me make sure I know
3 what we are talking about. In the second sentence of that
4 paragraph I will strike "although," capitalize the "k" on
5 "knowledge." And then it will read, "Knowledge on the
6 part of the defendant cannot be established merely by
7 demonstrating that the defendant was negligent, careless
8 or foolish." Strike -- then that is it? Strike the rest
9 of that paragraph?

10 MR. KIRSCH: Yes, Your Honor, that is our proposal.

11 THE COURT: All right. That would be fine. All
12 right.

13 Anything further?

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

15 THE COURT: Do the defendants have any other
16 changes they wish to make?

17 MR. BANKS: No, Your Honor.

18 THE COURT: All right. I have one additional
19 matter. Mr. Kirsch, yesterday when we were talking about
20 the use of the -- or reference to the newspaper article,
21 that telegraph, you indicated that I had issued an order
22 finding that the Government had said nothing wrong. I
23 searched. I do not recall ever making such a finding, and
24 I searched the record, and I couldn't find any such ruling
25 on my part.

1 MR. KIRSCH: Your Honor, I don't think there is a
2 written ruling to that effect. It came up in the context
3 of one of the hearings on one of the motions to suppress.
4 I will have to go back. I agree with the Court, there is
5 no written order on that issue. But --

6 THE COURT: I went back through all of my scripts,
7 too. I keep very detailed notes of any rulings. I cannot
8 find anything where I made any rulings on that disclosure
9 or the action of the Government. So I just want to let
10 you know that -- I looked at it and I had my staff look at
11 it, and we could not find anything.

12 MR. KIRSCH: I appreciate that, Your Honor.

13 I have two other questions, if I could, before the
14 jury comes in.

15 THE COURT: Ms. Barnes, could you take these
16 changes back and have Ms. Ross start making those changes.
17 I will be back to check. Make sure she also removes
18 anything that is italicized in there so that all of the
19 text is the same.

20 MR. KIRSCH: Thank you, Your Honor. Two things,
21 they should both be brief. The first is I wanted -- in
22 this configuration, I wanted to find out where it was that
23 the Court wanted or would allow us to be for the purposes
24 of opening statements.

25 THE COURT: You can step away from the podium. You

1 can come into this area between Ms. Martinez and your
2 table. You cannot proceed any closer than the edge of
3 your table, that is there.

4 MR. BANKS: The same, so we can be right in this?

5 THE COURT: Right in that area, as long as you
6 don't pass the edge of their table to the jury. That
7 invades their space. But you can come up in this area
8 here.

9 MR. BANKS: Very well.

10 MR. KIRSCH: So, as I indicated at the pretrial
11 conference, I am intending to use a Power Point.

12 THE COURT: You may turn the monitor to face you.

13 MR. KIRSCH: And I can put the computer over on the
14 end to control it?

15 THE COURT: That is fine.

16 MR. KIRSCH: And the last question I had, Your
17 Honor, again, we talked at the pretrial conference that we
18 have a number of exhibits that we don't necessarily need
19 to admit, but that they form the foundation for summary
20 exhibits that we are hoping to admit later on.

21 The problem, or the potential problem that we see
22 is that we need to demonstrate that those exhibits are
23 admissible in order to have them be the proper foundation
24 for summaries under Rule 1006. And we -- if we haven't
25 established that foundation, we need to know that when we

1 have a witness, at least from some of those staffing
2 companies.

3 What we were wondering, if the Court would
4 entertain, is a request from us during the examination of
5 those witnesses, that a particular record was admissible,
6 as opposed to asking for a ruling that it be admitted,
7 that way we would know whether or not we needed to do
8 additional work or lay additional foundation while we have
9 that witness here, and won't be put into a situation where
10 we might need to recall 25 or so witnesses at the end of
11 the trial.

12 THE COURT: My understanding of Rule 1006 was that
13 that -- the summaries could be done -- as long as you made
14 the summaries available, essentially, and there was no
15 objection to their admissibility, those would come in.
16 And I have not received any objections. And I assume you
17 did make all of those available.

18 MR. KIRSCH: We did make them all available. We
19 don't have stipulations as to them, Your Honor. And I
20 believe that the defendants have indicated that they
21 intend to object to at least some of those summaries.

22 THE COURT: Then I think the best way for you to
23 proceed is when you have the witness and you lay the
24 foundation for those, as opposed to having them admitted,
25 do as you indicated; that I make a ruling as to their

1 admissibility, so the defendants can make any objections
2 they wish to make.

3 MR. KIRSCH: All right. Thank you, Your Honor.

4 THE COURT: All right. That way you can preserve
5 that for the record, as well.

6 MR. BANKS: Okay.

7 MR. KIRSCH: And that, we at least, hope, Your
8 Honor, we will be experimenting with that a little bit,
9 but we hope at least that will prevent us from needing to
10 admit so many exhibits, and save the jury some of that
11 wear and tear at the end of the trial.

12 THE COURT: Right.

13 MR. BANKS: One more thing for the record, Your
14 Honor. We did -- the reason we did not stipulate to some
15 of the summaries, and I just want to make this a matter of
16 record, is because the Government somehow extended --
17 there were shaded areas in the particular area that gave
18 the appearance that certain staffing or time sheets, that
19 they extended longer -- for a longer period of time, by
20 the continual shading, but, actually, there was no data in
21 there.

22 But just the color of the shading, as far as the
23 juror being able to infer that, okay, I see this color,
24 this shading going on and on and on, when, in fact, there
25 is a minute amount of data in there. We thought would be

1 confusing to the jury. And that was the reason for our
2 initial objection.

3 THE COURT: And my understanding is those
4 documents, themselves, are not going to be admitted or
5 seen by the jury, it is merely going to be the summary
6 allowed under Rule 1006; is that correct?

7 MR. KIRSCH: It is correct that in most -- we are
8 going to introduce some of the documents that relate to
9 the summaries. There are other documents that relate to
10 the summaries that we don't intend to introduce.
11 Mr. Banks' objection, as I understand it, is actually
12 directed at some of the summary charts. And I believe
13 that their objection is that they contend that the summary
14 charts are somehow inaccurate or misleading.

15 The Government doesn't believe that they are. And
16 the Government intends to offer testimony through its
17 witnesses to explain how those summaries were constructed,
18 that we believe will address the concerns that the
19 defendants are raising.

20 THE COURT: All right. We'll address those when
21 they come up.

22 MR. BANKS: Very well, Your Honor.

23 THE COURT: Thank you. Anything further from
24 either side?

25 MR. WALKER: Your Honor, just a couple quick notes

1 or statements from the defense. We do, for the record,
2 endorse the Government's witnesses and witness list. And
3 from our understanding, that gives us the ability to later
4 call their witnesses.

5 THE COURT: I don't think that does. I mean, if
6 you want to later call them, you need to have subpoenaed
7 them. You can cross-examine them when they are brought
8 in. If they were will-call witnesses you can require that
9 they be brought in. But if they are may-call witnesses,
10 unless you've subpoenaed them, you don't have that
11 ability, and they are not your witnesses just because you
12 endorse them.

13 MR. WALKER: All right. And also our request is a
14 brief recess to use the restroom. I just drove in from
15 Colorado Springs, and been in the car.

16 THE COURT: Well, we will, because I need to --
17 before we can start -- the way I intend to proceed is we
18 will have the jury instructions re-done. We will make
19 copies so you all can look at those. They will be
20 distributed to the jury. So you will have copies, they
21 will have copies. I will read those to the jury first.

22 I don't intend to take a break after I read them.
23 There are only 17 instructions. We will go directly to
24 the Government's opening. And then, depending how long
25 that goes, we probably will take a break between the

1 defendants' or the Government's opening statement and the
2 defendants'.

3 All right. Then I am not sure how long you all
4 intend to take, but by that time we will have to see what
5 the timing is as to whether we break for lunch or not.

6 MR. KIRSCH: Your Honor, can I just follow up on
7 the issue about the witnesses?

8 THE COURT: You may.

9 MR. KIRSCH: For those witnesses that are on our
10 will-call list, at least for those witnesses that are from
11 out of town, I know this is a little bit unusual, but what
12 we would propose is that if the defendants have -- would
13 want to call those witnesses in their case, that that --
14 that we sort of go out of order. And that once we have
15 finished our redirect examination, that the defendants
16 then call that particular witness on direct, that we
17 cross, and that they redirect.

18 Because we don't want to be in a position of having
19 to fly back these will-call witnesses from Washington or
20 Boston or some of the far-flung places where some of them
21 are.

22 THE COURT: So you are not opposed to them calling
23 them as their witness in their case as long as we take
24 them out of order?

25 MR. KIRSCH: Right. And as long as we make it

1 clear that -- we believe it should be in two parts. The
2 Government should finish its examination. The Court
3 should then explain to the jury that the next set of
4 questions is the defendants' presentation. And that the
5 defendants then be required to conduct a direct
6 examination, with non-leading questions of those
7 witnesses, as opposed to mixing it in with
8 cross-examination.

9 THE COURT: All right. But even though they are
10 calling them as their witness does not mean they are not
11 necessarily an adverse witness.

12 MR. KIRSCH: I understand that. But they need to
13 establish that first, Your Honor.

14 THE COURT: All right. With respect to those who
15 are not out-of-town witnesses, the defendants can call
16 them in their own case at whatever time they wish.

17 MR. KIRSCH: I think that that is what we would
18 propose, Your Honor, yes.

19 THE COURT: All right.

20 MR. WALKER: Your Honor, we generally agree to that
21 suggestion. But we would like to reserve the right in
22 certain circumstances, when the timing just does not fit
23 well with our witnesses, to use the timing that we would
24 like to call that particular witness.

25 THE COURT: With respect to the out-of-state

1 witnesses, however, that would pose a problem. If they
2 are going to go back, you have to bring them back here on
3 your own.

4 MR. BANKS: Your Honor, we would be willing to
5 bring a witness back on our own. To the extent that as we
6 put on our case, our case in chief, how we put that case
7 on and how cohesive our story wants to flow, we will
8 need -- possibly need to call that witness back to
9 articulate things as is through the flow of our case.

10 So I think Mr. Walker was trying to articulate
11 that. We need to be able to put on our entire case as we
12 see. We do have a strategy set forth that we are going to
13 put forward. To some extent, while we agree with
14 Mr. Kirsch, it is somewhat disruptive to how the flow of
15 our case would go. So we just want to reserve that right.
16 We understand we would have to incur the cost of flying
17 them back to Colorado.

18 THE COURT: And I would think, just out of courtesy
19 to the witnesses, if you intend to do that, you need to
20 let them know you are going to need to be calling them
21 back. You will have to give them enough time to make
22 arrangements on their end to return.

23 MR. BANKS: Understandable.

24 THE COURT: So there needs to be some notice here
25 with respect to which of those witnesses you would intend

1 to call. Government is informed, the witness is informed,
2 then you all make the arrangements to get them back here
3 if you are not going to examine them at the time they are
4 on the stand.

5 MR. BANKS: We agree with that, Your Honor.

6 THE COURT: Any objection to that, Mr. Kirsch?

7 MR. KIRSCH: No, we don't object to that, Your
8 Honor. I don't know if that also means the defendants
9 need to separately issue their own subpoenas for those
10 witnesses if they are not going to use them while they are
11 here.

12 MR. BANKS: We are issuing our own subpoenas.

13 MR. KIRSCH: Thank you, Your Honor.

14 THE COURT: All right. Anything further?

15 MR. KIRSCH: No, Your Honor. Thank you.

16 THE COURT: We will go ahead and take a recess
17 until I can make sure the jury instructions are ready to
18 go.

19 (A break is taken from 8:58 a.m. to 9:17 a.m.)

20 THE COURT: You may be seated.

21 I wanted to come back in. As we were making the
22 changes to these instructions and I was reviewing them, we
23 noticed that in Instruction No. 15 and Instruction No. 14,
24 the -- in No. 15, it is the second to the last paragraph.
25 In Instruction No. 14, it is the third to the last

1 paragraph. In one we have "a statement is material" in
2 14. And in 15 we have "a false statement in material."
3 The pattern instruction actually has "false statement" not
4 just "statement."

5 And I wanted to make sure you were all right with
6 my changing the third from the last paragraph of
7 Instruction 14 to include "A false statement is material
8 if it has a natural tendency."

9 MR. BANKS: Yeah, we would prefer that change, Your
10 Honor.

11 MR. KIRSCH: Your Honor, as the Court probably
12 remembers from our original instructions, we don't think
13 that "false" is required under the scheme to defraud. We
14 expect that we are going to be proving false statements,
15 so we are not going to be objecting to that change in the
16 context of this case. But we don't believe it is required
17 as a matter of law.

18 THE COURT: I agree. But the Pattern Instruction
19 does have it as "false statement." So I am going to make
20 that additional change to Instruction 14.

21 All right. Thank you.

22 (A break is taken from 9:18 a.m. to 9:48 a.m.)

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

25 THE COURT: Welcome back to everyone. My

1 apologies. If I had known it would have taken us this
2 long to get everything done, I would not have had you come
3 in until 10:00. I apologize for keeping you waiting. We
4 needed to get the preliminary instructions done.
5 Unfortunately, our copier is not the best of copiers, and
6 it took longer than I expected.

7 So, welcome back. We are going to begin this
8 morning with my going through these preliminary
9 instructions with you. These are only preliminary
10 instructions. And at the end of the trial I will read
11 similar instructions, although there may be some changes
12 based on what happens during the course of trial, what the
13 lawyers and the defendants may present to me, and it will
14 be the final jury instructions that will govern over these
15 instructions, if there are any differences.

16 But I believe these preliminary instructions will
17 help give you sort of the skeleton of the case you are
18 going to hear so that the evidence will make more sense to
19 you. So if you could follow along with me as I read. If
20 you would turn to page 1.

21 (Preliminary instructions read in open court, but
22 not reported per agreement of the parties.)

23 THE COURT: Now, ladies and gentlemen, in a few
24 minutes we are going to be hearing the opening statement
25 of the Government. I would encourage you -- you will have

1 these instructions with you -- to insert your initials at
2 the top so you know which are yours. You are not to take
3 these out of the courthouse. They are to stay in the jury
4 deliberation room.

5 MR. ZIRPOLO: There was a mistake in the
6 instructions that you did not correct and an omission that
7 we agreed upon.

8 THE COURT: Come forward.

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

11 MR. ZIRPOLO: Page 3, you've got "Biog" not "blog
12 post." In instructions 14 and 15, you had agreed that
13 before you read the Indictment you would indicate that the
14 Indictment is just the accusation of the charges against
15 the defendants.

16 THE COURT: I will do that. I will do that. I
17 will go back and do that.

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

19 THE COURT: Thank you very much. I do need to
20 correct one matter. I need to make sure that you
21 understand -- actually, there was a typo. Where I said
22 "biog," it is supposed to be "blog." Bottom of page 3, I
23 said, "Goggle, Biog." It should be "blog." I have
24 corrected that on mine.

25 In addition, I need to stress to you that on the

1 instruction Nos. 14 and 15, where I read to you portions
2 of the Indictment, after the first element, I need to make
3 sure that you understand, as I read to you in Jury
4 Instruction No. 1 at the top of page 2, that those are
5 only allegations. That is a description of the charges
6 made by the Government. It is not evidence of any guilt
7 or of anything else. It is merely the allegations. And I
8 was supposed to have given you that.

9 The defendants are very correct. I was supposed to
10 have given you that charge before I read either
11 Instruction 14 or 15 citing those elements. So I am
12 instructing you now, those are merely allegations. They
13 are not evidence of anything. The Government has to prove
14 everything that is set forth.

15 All right. Defendants?

16 MR. BANKS: Thank you, Your Honor.

17 THE COURT: All right. So at this point is there
18 anything else that needs to be brought to the Court's
19 attention before we move on to opening statements?

20 MR. KIRSCH: Not from the Government, Your Honor.

21 MR. BANKS: Nothing from us, Your Honor.

22 THE COURT: At this point then, Mr. Kirsch, are you
23 going to proceed with opening statements?

24 MR. KIRSCH: Yes, Your Honor. Thank you.

25 THE COURT: You may proceed.

1 (Opening statements transcribed and contained in a
2 separate transcript.)

3 THE COURT: Thank you, Mr. Banks.

4 At this time we are going to go ahead and take a
5 15-minute break. We will reconvene at 2 o'clock. Please
6 remember that you are not to discuss this case with one
7 another. But we will go ahead and take a brief recess.
8 Court will be in recess until 2 o'clock.

9 (A break is taken from 1:45 p.m. to 2:00 p.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. Any matters to be
13 brought to the Court's attention before we bring the jury
14 back?

15 MR. KIRSCH: No, Your Honor. Thank you.

16 MR. BANKS: Nothing with us, Your Honor.

17 THE COURT: All right. Ms. Barnes, you may bring
18 in 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 Mr. Kirsch, are you ready to call your first
23 witness?

24 MR. KIRSCH: We are, Your Honor. The Government
25 calls Scott Tait.

1 COURTROOM DEPUTY: Your attention, please.

2 **SCOTT TAIT**

3 having been first duly sworn, testified as follows:

4 COURTROOM DEPUTY: Please be seated.

5 Please state your name, and spell your first and
6 last names for the record.

7 THE WITNESS: My name is Scott Miles Tait. And the
8 last name is spelled T-A-I-T.

9 **DIRECT EXAMINATION**

10 **BY MR. KIRSCH:**

11 Q. Mr. Tait, could you spell your first name, as well?

12 A. My official name is S-C-O-T-T.

13 Q. Two t's?

14 A. My business name spelled is one.

15 Q. Thank you.

16 Where do you live, Mr. Tait?

17 A. I live in Golden, Colorado.

18 Q. And where do you work?

19 A. At Adecco Engineering and Technical. And the base
20 office is in the Tech Center.

21 Q. What is your position as Adecco?

22 A. Area director.

23 Q. And how long have you been with Adecco?

24 A. Since January of 2000.

25 Q. Did you work -- what kind of a -- let me start over.

1 What kind of company is Adecco?

2 A. We have a wide range of products and services that we
3 offer. We are a staffing company, number one. So we go
4 out and find clients that are looking for contractors.
5 And we find the contractors and marry the two up. We do
6 contract for hire, we do permanent placements, and we also
7 broker deals between clients and companies that do
8 specific projects.

9 THE COURT: Could I ask you to sit forward so you
10 speak into the microphone to make sure that everybody
11 hears you.

12 THE WITNESS: Okay.

13 Q. (BY MR. KIRSCH) Did you say you started with Adecco
14 in 2001?

15 A. No, 2000.

16 Q. I'm sorry, 2000.

17 A. January 2000.

18 Q. Had you worked in the staffing industry prior to
19 joining Adecco?

20 A. Ten years prior.

21 Q. You mentioned a number of the services that Adecco
22 provides. Does Adecco provide services known as either
23 staff augmentation or payrolling?

24 A. Staff augmentation is contracting, per se.

25 Q. All right.

1 A. Payrolling is where the company already knows who
2 they want to hire, they run it through us as W2'd
3 employees, so that they are covered under their insurance
4 and workman's comp, unemployment and the risk liability.

5 Q. All right. And in that circumstance, how is it that
6 Adecco makes a profit?

7 A. Well, we know what the margin is or what the burden
8 is. If they are a W2 employee, we have to pay taxes,
9 insurances. So we take that into account. And we add an
10 additional mark up to the bill rates. So --

11 Q. You make money from that mark up?

12 A. Correct. So the bill rates, minus the burden, minus
13 the pay rate gives you your profit.

14 Q. Okay. Now, does Adecco ever provide services where
15 they would place employees as independent contractors at
16 one of Adecco's clients?

17 A. We do hire 1099 folks that are run through a lot of
18 different questions, IRS requirements. And then we also
19 do hire companies that have a team of software engineers
20 or team of electrical engineers and marry them up with the
21 end client also.

22 Q. And when you do that, how is it Adecco would make a
23 profit?

24 A. Well, it is spread in between the pay and fill.

25 There is no burden.

1 Q. All right. At some point while you were working with
2 Adecco, did Adecco enter into a business relationship with
3 a company called Leading Team?

4 A. Yes, we did.

5 Q. At some point while you worked with Adecco, did
6 Adecco also enter into a business relationship with a team
7 called DKH?

8 A. We did.

9 Q. Let's start with DKH. First of all, do you remember
10 approximately when that relationship began?

11 A. Well, it started about 8 years ago. So it has been
12 awhile.

13 Q. All right. Do you remember how it is that Adecco
14 first came into contact with a company called DKH?

15 A. To my recollection, they called the office and
16 explained who they were, what they did. Said that they
17 were a software team looking for projects. I said we are
18 always recruiting, so we took down their information.

19 Q. Do you recall who it was that made that call?

20 A. I believe that was Demetrius Harper.

21 Q. At some point did Adecco receive a call from a
22 company -- a representative of Leading Team?

23 A. Yes, we did.

24 Q. Did you receive that call?

25 A. I believe I did receive that call.

1 Q. What was the timing of that call in relation to the
2 timing of the call you received from DKH?

3 A. It could have been a week or two afterwards. But it
4 was a fairly short time between the two.

5 Q. And what did the -- do you remember who called you on
6 behalf of Leading Team?

7 A. That was Mr. Banks.

8 Q. Do you know Mr. Banks' first name?

9 A. Like I said, it has been years. I don't recall.

10 Q. All right. What, if anything, did Mr. Banks tell you
11 about why he was calling Adecco?

12 A. He said he had a project that was close to
13 completion. That he needed a team of software engineers
14 to get it over the last hump so that he could bring it to
15 market.

16 Q. Did he explain anything else about what that software
17 project was?

18 A. He did. He said he had contacts within law
19 enforcement and city government, state government, that
20 wanted this type of project completed. It was right
21 after, obviously, 9/11 so security was of main concern.
22 He said he had the ends. He said he had the market, and
23 just needed to get over that last develop phase.

24 Q. You said it was right after 9/11. Is it fair to
25 conclude that that means that this was in the late part of

1 2002?

2 A. Yes, that is correct.

3 Q. These -- did Adecco agree to do business with Leading
4 Team?

5 A. We did. We signed a contract.

6 Q. To do what?

7 A. To find them either software engineers or find them a
8 company to provide those software engineers.

9 Q. And were you involved in the process of deciding
10 whether to sign that contract and whether to go forward
11 with that business?

12 A. Yes, I was.

13 Q. Were the statements that were made about the status
14 of the software project, were those statements that you
15 were considering when you made that decision?

16 A. Most definitely.

17 Q. In what way?

18 A. Well, security after 9/11 was a high priority for
19 everyone. And the information that Mr. Banks gave me, as
20 far as magazine articles tauting his software, that his
21 contacts within law enforcement and the government led me
22 to believe this was a highly sought after software and we
23 would all make money.

24 Q. Did Adecco have a process in place at that time to
25 check the credit of prospective clients?

1 A. No. We do now.

2 Q. Who is it that Adecco placed for work to satisfy this
3 agreement with Leading Team?

4 A. That would be DKH.

5 Q. DKH. So can you explain a little bit more about how
6 that arrangement worked.

7 A. Well, we set them up to have a conversation. It was
8 agreed upon that it was a good fit. So we got all of the
9 contracts signed between each party and then we set up
10 procedures to record time, approve time, and then invoice
11 and paying out DKH and billing Leading Team.

12 Q. I want to make sure that that's clear. So you had a
13 contract with DKH; is that right?

14 A. Yes, we do -- did.

15 Q. And how did the payment flow with respect to that
16 contract?

17 A. At the time, I believe it was a 30-day net pay, and
18 then a 30-day net fill.

19 Q. And let me see if I can ask my question more plainly.
20 Who paid whom in that arrangement?

21 A. Oh, okay. I paid DKH -- Adecco paid DKH.

22 Q. Okay.

23 A. And Leading Team was supposed to pay Adecco.

24 Q. All right. And how is it that Leading Team would
25 know what it was supposed to pay Adecco?

1 A. Well, time cards were sent from DKH to Leading Team,
2 and Mr. Banks would approve the time cards. They would be
3 sent to me. I would set forth payments to DKH and billing
4 to Leading Team.

5 Q. Okay. At the time that you were making these
6 arrangements between the three companies, did you have any
7 knowledge about any connection or affiliation between
8 people who were at Leading Team and people who were at
9 DKH?

10 A. I did not.

11 Q. If you had had that information at the time, would
12 that have affected your decision to create this
13 arrangement?

14 A. It would have, yes.

15 Q. How?

16 A. It would have raised red flags for me. I would have
17 to investigate more.

18 Q. Can I ask you now to take a look, please, at what is
19 in front of you marked as Government's Exhibit 30.01. It
20 should be in one of those folders near the top.

21 A. Yes.

22 Q. Do you have that in front of you now?

23 A. I do.

24 Q. Can I ask you to look through that document. And
25 when you are done with that, I will ask you if you

1 recognize it.

2 A. Yes, I do. It has my signature and Demetrius
3 Harper's signature from DKH.

4 Q. Can you explain what that document is, please?

5 A. It is a Consulting Agreement, where they would be
6 consulting for Adecco and/or one of our clients, and that
7 we would pay them according to the documents.

8 Q. Is this the written memorialization of the agreement
9 that you have been describing in your testimony so far
10 today?

11 A. Yes, exactly.

12 MR. KIRSCH: I move to admit and publish Government
13 Exhibit 30.01.

14 MR. BANKS: No objection.

15 THE COURT: Exhibit 30.01 will be admitted, and it
16 may be published.

17 (Exhibit No. 30.01 is admitted.)

18 MR. KIRSCH: Thank you, Your Honor.

19 If we can begin with the first page of that,
20 please. Can we just expand the top paragraph of that?

21 Q. (BY MR. KIRSCH) The portion that is on the screen
22 there now, Mr. Tait, that is just the very beginning of
23 the document; is that right?

24 A. Uh-huh. Yes.

25 Q. It identifies the two parties to the document?

1 A. Correct.

2 MR. KIRSCH: Okay. Could we now, please, go to
3 page 5 of that document and display it.

4 Q. (BY MR. KIRSCH) And the signatures that you
5 mentioned before, where is your signature there?

6 A. It is on the right-hand side of the page, under
7 "Adecco Technical."

8 Q. And the signature on the left you identified as
9 whose?

10 A. Demetrius Harper's.

11 Q. Do you recall where this document was signed?

12 A. To my recollection, it was at my office.

13 Q. Thank you.

14 Mr. Tait, I am going to now direct your attention
15 to what is marked for identification as Government Exhibit
16 30.02. I will ask you to look at that and then let me
17 know if you recognize that document, as well.

18 A. Yes, I do.

19 Q. What is that document?

20 A. These are work orders. Basically, it looks like a
21 statement of work. A description of the work. That they
22 were software development. Fees and payment terms, as far
23 as what we were going to be charging. Invoices. And when
24 they were due.

25 Q. And who were the parties to this agreement?

1 A. Myself and David Banks.

2 Q. Did this document memorialize the agreement you set
3 up with Leading Team that you previously testified about?

4 A. Yes.

5 MR. KIRSCH: I move to admit and publish Government
6 Exhibit 30.02.

7 MR. BANKS: No objection.

8 THE COURT: Exhibit 30.02 is admitted, and may be
9 published.

10 MR. KIRSCH: Thank you, Your Honor.

11 (Exhibit No. 30.02 is admitted.)

12 MR. KIRSCH: Can we expand the top half of that,
13 please?

14 Q. (BY MR. KIRSCH) Mr. Tait, this indicates a date of
15 October 31, 2002. Does that comport with your
16 recollection about when this happened?

17 A. Yes.

18 Q. Then you mentioned fees and payment terms. Is that
19 what is reflected there on the screen now in Section 2.1?

20 A. Correct.

21 MR. KIRSCH: If we can just scroll that down a
22 little bit, maybe we can expand section 2 again.

23 Q. (BY MR. KIRSCH) The invoices -- what it says there
24 in 2.2, can you explain what that means? What does
25 "payable on net 30 term" mean?

1 A. That means when they receive the invoice and the
2 charge had been okayed through e-mail or signature or
3 whatever time cards, they are due in 30 days.

4 Q. All right.

5 MR. KIRSCH: And then if we can go back to the full
6 page, please.

7 Q. (BY MR. KIRSCH) That is your signature again there?

8 A. Yes, it is.

9 Q. And the other signature for Leading Team is whose?

10 A. That is David Banks'.

11 Q. And what was the -- what was indicated there in the
12 title block?

13 A. For Mr. Banks?

14 Q. Yes.

15 A. Chief Operating Officer.

16 Q. Okay. Now, you mentioned before that you used time
17 cards.

18 A. We did.

19 Q. And you were beginning to explain how those time
20 cards worked. I think I may have even cut you off a
21 little bit when you were doing that. Can you do that now
22 for us? Can you explain how it is that time cards would
23 flow from Leading Team to Adecco?

24 A. Okay. So the end of every week, time cards were
25 created by the consultants, 1099s, contractors, whatever

1 you want to call them. And they were sent from DKH to
2 Leading Team. Leading Team would approve them, send them
3 to me, and I would create payments and invoices.

4 Q. When you say that Leading Team would approve them,
5 how would that occur? How would they be approved?

6 A. They would get e-mailed from Leading Team to
7 Mr. Banks. Mr. Banks would approve and send them directly
8 to me.

9 Q. And did Adecco treat -- how did Adecco treat those
10 time cards with respect to the representations about hours
11 that had been worked that were contained in the time
12 cards?

13 A. Once we got them as approved, we assumed that they
14 were; that the hours were worked and they were okayed to
15 be paid.

16 Q. All right. Let me ask you now, please, to look what
17 is marked for identification as Government Exhibit 31.

18 A. Yes.

19 Q. Have you seen those documents before?

20 A. I have. That's our electronic timecard for
21 presenting hours to clients for approval.

22 Q. And does this particular set of those cards represent
23 the time cards that were submitted on behalf of DKH or
24 Leading Team for this relationship you have been
25 describing?

1 A. Yes, these are the ones.

2 Q. These are accurate copies of those time cards?

3 A. Yes, that is correct.

4 MR. KIRSCH: Your Honor, I would move to admit and
5 publish Government Exhibit 31 00.

6 MR. BANKS: No objection at this time.

7 THE COURT: Exhibit 31 will be admitted, and it may
8 be published.

9 (Exhibit No. 31.00 is admitted.)

10 MR. KIRSCH: Thank you, Your Honor.

11 Can you just enlarge the actual time card portion
12 for us. I am sorry, all of the text on the paper.

13 Q. (BY MR. KIRSCH) All right, so, Mr. Tait, I will ask
14 you briefly to just sort of walk us through this time
15 card. The first column is "Week Ending"?

16 A. Yes. Weeks typically start on Monday and end on a
17 Sunday. So it has our office number. That is Adecco's
18 specific office, because we have numerous offices all
19 across the country. "Assignment Number." "Employee
20 Name." "Employee signature." And then time in and out
21 and lunch for each day worked. Then it would total itself
22 at the bottom.

23 Q. All right. The employee that is listed on this page
24 is someone named Lam Ha?

25 A. Correct.

1 Q. Is that one of the employees that you recall?

2 A. I do recall his name. I never have met the person
3 before.

4 MR. KIRSCH: Can we display page 2 of that exhibit,
5 please? Just expand that same set of information.

6 Q. (BY MR. KIRSCH) The employee name reflected here,
7 Ken Barnes, is that a name you recall?

8 A. I do.

9 Q. Can we go to the next page, please. The employer
10 reflected here appears to be Cliff or Clifford Stewart.
11 Is that one of the names you remember from this
12 arrangement?

13 A. Yes.

14 MR. KIRSCH: Finally, if we can show page 4,
15 please.

16 Q. (BY MR. KIRSCH) The employee named there is what?

17 A. Clint Stewart.

18 Q. And is that one of the names that you recall, as
19 well?

20 A. Yes.

21 Q. You mentioned, I think, that these got processed or
22 were transmitted electronically?

23 A. Yes.

24 Q. Did Adecco have a server that received those
25 electronic transmissions?

1 A. Correct.

2 Q. Where was that server located in?

3 A. In Melville, New York, where our corporate
4 headquarters are. Adecco North America is the site.

5 Q. All right. Could I now ask you to take a look please
6 at what is marked for identification as Government Exhibit

7 1A. Let me know when you have had a chance to review
8 that, please.

9 A. Yes.

10 Q. Do you recognize that exhibit?

11 A. I do.

12 Q. What is it, please?

13 A. It is an e-mail, basically with an attachment of the
14 documents preceding. They're time sheets. So it is the
15 approval record from David Banks to myself that the
16 attached time cards are approved for payment.

17 Q. For one set of time cards; is that right?

18 A. One week, yes.

19 MR. KIRSCH: I move to admit and publish Government
20 Exhibit 1A.

21 MR. BANKS: No objection.

22 THE COURT: Exhibit 1A will be admitted, and may be
23 published.

24 (Exhibit No. 1A is admitted.)

25 MR. KIRSCH: Thank you, Your Honor.

1 Can we actually start with the display of page 2.

2 Q. (BY MR. KIRSCH) What is on the screen now, Mr. Tait?

3 A. These are actually the time cards, the ones we just
4 went over.

5 Q. Ok.

6 A. They are spreadsheets.

7 MR. KIRSCH: If we can go to page 1 now and expand
8 lower half, starting right there.

9 Q. (BY MR. KIRSCH) Is that page 2 a continuation of
10 this message that is at the bottom of screen now?

11 A. Correct.

12 Q. All right.

13 A. It was sent from Demetrius from DKH to David Banks,
14 and then to myself as approved.

15 Q. Okay. And that is -- what is on the top of the
16 screen now, that is the message to you approving those
17 time cards?

18 A. Right. Time sheets are approved for that week
19 ending.

20 Q. If you hadn't gotten that message, what, if anything,
21 would you have done with those time sheets?

22 A. If they weren't approved they wouldn't have been
23 paid.

24 Q. If we can just display page 3 of that exhibit. Is
25 this page and the remaining pages, are those the printouts

1 of the time cards that were attached to that e-mail?

2 A. Yes, they are.

3 Q. The -- that time card that is on the screen right now
4 represents -- appears to represent 40 hours of work
5 performed by Clifford Stewart. Am I reading that
6 correctly?

7 A. Yes.

8 Q. Did it matter to you, as the Adecco representative,
9 whether it was, in fact, Clifford Stewart who performed
10 that 40 hours of work?

11 A. Yeah, it would have mattered. We pay up who is on
12 the time card.

13 Q. If a person other than Mr. Stewart had performed that
14 work, would you have wanted to know about that?

15 A. Yes.

16 Q. I want to ask you a little bit more about the
17 invoices now that you have mentioned. Adecco, in this
18 case, invoiced Leading Team; is that right?

19 A. Yes, we did.

20 Q. And how is it that the invoices were delivered from
21 Adecco to Leading Team?

22 A. I believe at the time they were electronically
23 delivered.

24 Q. Can I ask you to look at what is marked for purposes
25 of identification as Government Exhibit 32.00.

1 A. These could have been delivered via mail or e-mail.

2 It has been so long, I don't remember how they were set

3 up. But they look exactly the same.

4 Q. All right.

5 A. They would be an attachment.

6 Q. And can you, for the record, can you identify for us

7 what that exhibit is, Exhibit 32.00?

8 A. This is an invoice to Leading Team for the week

9 ending 11/10 of '02.

10 Q. If you can look through the entire package there.

11 Does it all contain similar documents?

12 A. Yes. These are all invoices.

13 Q. Are they all issued to Leading Team from Adecco?

14 A. That is correct.

15 Q. And do these, as far as you know, represent the total

16 set of the invoices that were issued by Adecco to Leading

17 Team?

18 A. To my knowledge, they are the entire set.

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

20 publish Government Exhibit 32.00.

21 MR. BANKS: No objection, Your Honor.

22 THE COURT: 32.00 will be admitted, and it may be

23 published.

24 (Exhibit No. 32.00 is admitted.)

25 MR. KIRSCH: Thank you, Your Honor.

1 If we can expand the lower half starting with the
2 itemization.

3 Q. (BY MR. KIRSCH) Mr. Tait, I just used the term
4 "itemization" to describe what is on the screen now. But
5 please tell me if I am correct or what that is that is
6 represented there.

7 A. It just gives the name of the consultant, the week
8 ending, what exactly they're doing, which is technician
9 tests, software engineering, that type of thing. What
10 type of hours; regular, straight time, over time, and what
11 the rate was. Then what the billing was for each
12 individual.

13 Q. And this -- am I correct this, then, was the first
14 invoice that Adecco issued as a part of this relationship?

15 A. I believe it was, yes.

16 Q. And if we then could display page 12 of this exhibit.

17 A. That might have been the last one.

18 Q. Can we expand that same portion again. This one
19 indicates a week worked of 1/26/2003?

20 A. Correct.

21 Q. When you said a minute ago that that might have been
22 the last one, you were referring to this page?

23 A. That's correct, yes.

24 Q. Okay. Now, at some point did you determine that --
25 whether Adecco was getting paid on these invoices?

1 A. My collections department started making calls 30
2 days after the first invoice went out letting me know no
3 payment had been given to us. So I started making
4 personal collection calls.

5 Q. Who were you -- to whom were you making those calls?

6 A. Mr. David Banks.

7 Q. And did you get a response to those calls?

8 A. He kept saying that the money was coming. It was in
9 the mail. Various answers, because it wasn't just one
10 call.

11 Q. Were you able to reach Mr. Banks when you called him?

12 A. Most of the time, yes, either through e-mail or
13 telephone.

14 Q. All right. At some point did you take any steps
15 other than telephone calls to try to collect on these
16 invoices?

17 A. I did. I made two trips down -- my office is in the
18 Tech Center. So I made two trips down to Colorado Springs
19 for in-person collections.

20 Q. Let me ask you about the first trip, to begin with.

21 A. Okay.

22 Q. Do you recall roughly when that trip was?

23 A. About a month after -- a month or 5 weeks, or
24 somewhere around there -- 5 weeks after the first invoice
25 went out.

1 Q. All right. And where is it that you went?

2 A. Well, I think I went down three times. First time we
3 went down was an address -- it was actually one of the UPS
4 stores where they have mailboxes, but it said suite
5 number. So then I kind of tracked them down. Went down
6 for a second visit. I was able to find them. Made my
7 point known that we needed to get on some kind of a
8 payment plan.

9 Q. Can I interrupt you for just a minute? I am sorry,
10 you said you were able to find them?

11 A. Correct.

12 Q. Do you recall who you had a conversation with that
13 day?

14 A. Mr. Banks.

15 Q. All right. Did you see anyone else there that you
16 could identify?

17 A. You know, it has been 8 years, but I assume a large
18 portion of them are at this table, right here.

19 MR. BANKS: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q. (BY MR. KIRSCH) I don't want you to assume.
22 Mr. Banks was there?

23 A. He was.

24 Q. The Mr. Banks that you met with today, do you see him
25 anywhere in the courtroom today?

1 A. I do.

2 Q. Can you point out where he is, and describe what he
3 is wearing, please.

4 A. Well, they are all wearing dark gray suits.

5 Q. Can you describe where he is in the courtroom?

6 A. He is sitting at this table.

7 Q. Where at that table?

8 A. At the head of the table.

9 Q. All right. Thank you.

10 MR. KIRSCH: Would the record reflect he identified
11 Mr. Banks.

12 THE COURT: The record will so reflect.

13 Q. (BY MR. KIRSCH) And what did you tell Mr. Banks
14 during this meeting?

15 A. That I was getting pressure from my corporate
16 headquarters; that he needed to start making payments on
17 the invoices, and/or to set up a payment plan.

18 Q. Did you, in this conversation, did you talk about the
19 amount of money that Leading Team owed to Adecco?

20 A. I did. At that time I believe it was 100,000 or
21 similar to that effect.

22 Q. And did you make a request that Mr. Banks pay some or
23 all of that amount?

24 A. I was looking for half at the time.

25 Q. All right. And what did Mr. Banks say in response to

1 you giving him that information?

2 A. He said he would have to go back to his backers,
3 whoever was financing the development, to, you know, get
4 approval to start the payments.

5 Q. Were there any statements made by Mr. Banks during
6 this conversation about the sale of the software to law
7 enforcement agencies?

8 A. Yes, that was brought up again.

9 Q. What did Mr. Banks say about that?

10 A. He said, you know, the whole routine of having
11 contacts within, you know the FBI, within the Webb
12 administration, within certain other -- you know, Colorado
13 Springs Police Departments, that sales were imminent, and
14 they just needed a few more weeks to wrap up, you know,
15 the beta testing.

16 Q. Just to be clear, you just referred to the Webb
17 administration. Who was that?

18 A. The Mayor.

19 Q. Former Mayor of Denver?

20 A. Correct.

21 Q. Do you recall getting a payment from Adecco -- excuse
22 me, from Leading Team after that meeting or at that
23 meeting?

24 A. I do. It was a small payment.

25 Q. Can I ask you to please look at what is marked for

1 identification as Government Exhibit 35.

2 A. Yes, that is the check.

3 Q. That is the payment that you received?

4 A. Yes, that is correct.

5 MR. KIRSCH: I move to admit and publish Government
6 Exhibit 35.00.

7 MR. BANKS: Your Honor, we can't see it on the
8 elmo.

9 THE COURT: It can't be published. Do you not have
10 your book with you?

11 MR. BANKS: We have it. Without objection.

12 THE COURT: All right. Exhibit 35 will be
13 admitted.

14 (Exhibit No. 35.00 is admitted.)

15 THE COURT: I am sorry, it may be published.

16 MR. KIRSCH: Thank you, Your Honor.

17 Q. (BY MR. KIRSCH) So what was the amount of that
18 check, Mr. Tait?

19 A. \$3,000.

20 Q. How did that compare to the outstanding debt that
21 Leading Team owed at that time?

22 A. Not very much. Not what I was expecting.

23 Q. Do you remember what the total was at that time?

24 A. When we received this check on 1/22, it had to have
25 been over 100,000, 150-.

1 Q. Do you know -- had you had any contact with the
2 person who appears to have signed that check before?

3 A. I do not know this person.

4 Q. Did Adecco ever get any payments beyond this \$3,000
5 check from Leading Team?

6 A. We did not.

7 Q. Let me go back to that first meeting for just a
8 moment. Did you continue to have the employees work at
9 this contract with Leading Team after the first meeting
10 that you have described?

11 A. Yes, we did. Obviously we got the check, it was for
12 the first invoice, which was just for a day or so, I
13 believe. So very small portion of what they owed us. I
14 was assured more checks would be forthcoming. And so we
15 continued on for another couple of weeks.

16 Q. Did the statements that Mr. Banks made to you when
17 you had that meeting with him in January, did those affect
18 your decision about whether to continue to have the
19 employees working there?

20 A. It did. Because he said it wouldn't be more than a
21 couple weeks.

22 Q. You said before that you had made another trip to
23 Colorado Springs.

24 A. I did. After, you know -- we were supposed to be
25 getting checks once a week. We were not. After that

1 \$3,000 check, I went down to Colorado Springs again, found
2 them at a different office -- don't recall the location,
3 and confronted them again.

4 Q. What -- do you recall anything about the second
5 office where you went?

6 A. It was quite grandiose; a very high-end office space.

7 Q. Was this in Colorado Springs, as well?

8 A. It was.

9 Q. And did you speak to Mr. Banks during that meeting?

10 A. I did.

11 Q. Did you speak with Mr. Banks at all about the
12 outstanding invoices?

13 A. I did.

14 Q. What did Mr. Banks tell you?

15 A. He said the checks would be coming. And I said if
16 they are not there by such and such a date, we would have
17 to end this relationship.

18 Q. Did he explain what it was that was going to allow
19 these checks to be coming?

20 A. Sale of software.

21 Q. Did you continue with the business after that
22 meeting?

23 A. I gave him a deadline date. If I did not see
24 payments by that date, then we were going to terminate the
25 relationship, at which time we did.

1 Q. You reached the deadline?

2 A. Yes.

3 Q. Had you received a payment by that time?

4 A. No, we had not.

5 Q. And then you terminated the relationship?

6 A. I did.

7 Q. Did you notify anyone when the relationship was
8 terminated?

9 A. I notified Mr. Banks and Demetrius Harper.

10 Q. Did you explain to Mr. Banks and Mr. Harper why it
11 was that you were terminating that relationship?

12 A. I did.

13 Q. What did you tell them?

14 A. I told them we had not received but \$3,000 on a
15 \$200,000 bill, and that we could not proceed.

16 MR. KIRSCH: Could I have just a moment, please,
17 Your Honor?

18 THE COURT: You may.

19 MR. KIRSCH: Your Honor, I don't think I have any
20 other questions for Mr. Tait. Thank you.

21 THE COURT: Mr. Banks?

22 **CROSS-EXAMINATION**

23 **BY MR. BANKS:**

24 Q. Hello, Mr. Tait.

25 A. Mr. Banks.

1 Q. I would like you to explain a little more about the
2 relationship between DKH, Adecco and Leading Team. Is
3 this a common type of business arrangement, as far as a
4 subcontract relationship goes, within the staffing
5 industry?

6 A. It is not a vast majority of the business, no. It is
7 a small portion of it. It can be quite lucrative. So
8 we're always looking for individual contractors and teams
9 of contractors --

10 Q. Okay.

11 A. -- who are corporate.

12 Q. What is the size and capitalization of Adecco?

13 A. Well, we're in 76 countries. We are based in Geneva.
14 We have over 7,000 offices worldwide.

15 Q. You are a million, billion dollar company?

16 A. Forty billion.

17 Q. Okay. Now, have you had an opportunity -- you say
18 you have been in the staffing industry for -- since 2000.
19 That is quite a long time. Have you ever done business
20 with small businesses before?

21 A. Yes, I have.

22 Q. Has Adecco ever lost money before from either small
23 or large companies?

24 MR. KIRSCH: Objection, relevance.

25 THE COURT: I am going to give him some leeway. I

1 will overrule.

2 THE WITNESS: Like any other business, staffing or
3 otherwise, you are going to have to write off some losses.

4 Q. (BY MR. BANKS) Okay. Now, a minute ago, you could
5 not remember my first name when asked by Mr. Kirsch, but
6 your memory seems to be very clear about certain
7 statements, whether it is regarding the Webb
8 administration or other type of communications or
9 statements that were made to you.

10 Can you tell us in -- you said it is 2002. Can you
11 tell us some other companies you did business with in
12 2002?

13 A. Sure. Galileo International. They are called
14 Travelport right now. Did business with IBM, GE.

15 Q. Let me rephrase that or ask it a different way. Any
16 small business or start-ups? And do you have experience
17 doing business with start-ups?

18 A. We do. It is on the smaller nature. So I couldn't
19 pull a name right off the top of my head.

20 Q. Okay. Now, you mentioned the relationship and the --
21 you are in the staffing industry, of course. Now, as a
22 contract employee, who do these employees work for and who
23 are they employed by?

24 A. In the relationship that our companies had?

25 Q. Yes.

1 A. The employees -- the contractors were employees of
2 DKH.

3 Q. Okay. Do you know if, to your knowledge, if DKH
4 actually paid those people?

5 A. To my knowledge, I do not know. The checks were
6 delivered to DKH as an entity.

7 Q. Okay. Now, you mentioned earlier that you didn't
8 know the name of Lam Ha, and you are unfamiliar --

9 Let's talk a little about the payrolling
10 relationship. From a payrolling perspective, how
11 important is the identities of actual employees from that
12 business-to-business relationship?

13 A. Well, as far as who DKH employed to produce product
14 for ending clients, as long as they were listed on the
15 record sheet, and as long as the hours were approved, then
16 the payment was released.

17 Q. Very well. So, really, the actual identities -- if
18 this was an IBM, for instance, Galileo, all household
19 names, especially in the IT industry, as far as IT
20 contracting, if IBM calls you and says I need you to
21 payroll four people, you don't ask, at least from just a
22 recordkeeping perspective, so you can know who to send the
23 checks to, it is not really important -- if they say it's
24 Mike Wallace, whoever that is, you are not really
25 concerned with who Mike Wallace is; is that correct?

1 A. If they were a W2 contractor, I would need to know
2 who that person was, because I would need their Social
3 Security number. I would need to verify their I-9. If
4 they are 1099'd through a specific entity, I would not.

5 Q. If that was, say, the son of, say, the vice
6 president, whoever contacted you to engage in this
7 business, that was his son, it is really not relevant in
8 the fact that you were going to conduct business with IBM?

9 A. I still have to come back to whether they were W2 or
10 1099.

11 Q. If they were W2. Let me try to rephrase my question.

12 Is the actual -- you are going to get the name of
13 the employee for the simple fact that you have to cut a
14 check. You have to, as you said, incorporate, as far as
15 taxes are concerned, as far as any sort of benefits,
16 whatever that you may offer, to this particular W2
17 employee.

18 So just for the purpose of processing payroll or
19 performing the HR function for Adecco, outside of that
20 function, who is actually doing the work is really not
21 that important to you; is that correct?

22 A. No. That makes no sense whatsoever. There is quite
23 a distinction between a W2 and a 1099. A W2 I need to
24 know who it is because a check is cut directly to that
25 person. If it is a 1099 or a direct entity, then the

1 check is cut to the entity, and it is their responsibility
2 to pay the employees.

3 Q. Does it matter that that employee's sister is named
4 Mary?

5 A. Say it again?

6 Q. I am trying to get to a point here that it doesn't
7 really matter what relationship that person has to anybody
8 else, or he's married to the Queen of England or somebody
9 else for that matter. I am just trying to get to a
10 particular point.

11 As far as outside of recordkeeping and paperwork
12 processing, the name and the identity of that person
13 really isn't important in a payrolling type of
14 relationship.

15 A. I see your point. And as long as the time was
16 approved and the work was done, I guess I get your small
17 point.

18 Q. Okay. So this relationship between Leading Team, DKH
19 and Adecco, was a business-to-business relationship; is
20 that correct?

21 A. That is correct.

22 Q. Now, Adecco, as you mentioned, is a \$40 billion
23 company. Obviously they are not out of business as a
24 result of this particular transaction?

25 MR. KIRSCH: Objection, relevance.

1 THE COURT: Sustained.

2 Q. (BY MR. BANKS) Did Adecco go out of business?

3 MR. KIRSCH: Objection, relevance.

4 THE COURT: Sustained.

5 Q. (BY MR. BANKS) Okay. Have you ever worked for a
6 small business?

7 A. Yes, back when I was in high school and college.

8 Q. And small business operations are different than the
9 way IBM or some big corporations run; is that correct?

10 A. That is correct.

11 Q. Now, are you familiar with the term "wear many hats"?

12 A. I am.

13 Q. And you have been in business a long time. You
14 understand business. You obviously have some level of
15 sophistication, as far as business is concerned. Are you
16 aware of the fact that many -- in small businesses,
17 sometimes people have to do various -- lots of different
18 jobs?

19 A. Correct.

20 MR. BANKS: One moment, Your Honor.

21 Q. (BY MR. BANKS) Now, as a billion dollar business, is
22 it the credit policy of Adecco -- you mentioned a minute
23 ago, when Mr. Kirsch was questioning you, that your
24 company, a billion dollar corporation, does not do credit
25 checks. So it is your testimony that the Adecco

1 Corporation, the corporation does not perform credit
2 checks or any type of due diligence with regards to
3 business that they engage in?

4 A. At the time, back in 2002, it was optional. Today --
5 or actually after this incident/loss, policies were
6 changed, and credit checks are run on all corporations,
7 big or small.

8 Q. Okay. Another question then. So off of this single
9 transaction, a \$40 billion company, who loses money on a
10 routine basis -- your corporation's headquarters are in
11 New York?

12 A. Our U.S. headquarters, yes.

13 Q. U.S. headquarters. So based off of this one
14 transaction, the entire \$40 billion dollar corporation
15 changed its credit policy? Is that what you are asserting
16 here today?

17 A. Each country is its own entity. So Adecco North
18 America changed its policies regarding credit checks to
19 include all corporations after this.

20 Q. And it was a result of this?

21 A. Yes.

22 Q. You testified just a minute ago that Mr. Banks told
23 you -- showed you magazine articles about their company,
24 told you about contacts they may have had or that they had
25 within law enforcement, they talked to you about belief in

1 the market, as you articulated. And to our understanding,
2 you made a decision to engage in business based on their
3 belief in the market, belief in their product, and
4 contacts they may have had; is that correct?

5 A. That is correct.

6 Q. Do you have any reason to disbelieve -- you saw a
7 magazine article. Did you have any reason to disbelieve
8 that they did not -- that those representations were false
9 at the time?

10 MR. KIRSCH: Objection, relevance.

11 THE COURT: Overruled.

12 THE WITNESS: At the time -- I am supposed to
13 answer?

14 THE COURT: You may answer.

15 THE WITNESS: At the time, I had no reason not to
16 believe.

17 Q. (BY MR. BANKS) And there was no mention that they
18 had landed this large contract with some agency, because
19 you did not articulate that a minute ago; is that correct?

20 A. The only information that was given to me is that
21 everything was close to a sale; that the software was
22 almost completed and would be sold.

23 Q. Okay. Have you done business with the federal
24 government? Adecco is a big company, I am sure they may
25 have had some dealings with the federal government.

1 A. We do, yes.

2 Q. Is doing business -- obviously Adecco is more adept,
3 given their size and scope, to do business with the
4 Federal Government, as far as being able to deliver or
5 whatever. Have you had occasion in your career -- let me
6 ask you this. Have you personally had staffing
7 relationships with the federal government?

8 A. We have, yes, and do.

9 Q. Okay. Now, would you agree that doing business with
10 the federal government is different than doing business
11 with Galileo?

12 A. Yes.

13 MR. KIRSCH: Objection, relevance and foundation.

14 THE COURT: Overruled.

15 THE WITNESS: It is.

16 Q. (BY MR. BANKS) And can you describe some of the
17 differences?

18 A. A lot more regulation. A lot more complexity.

19 Q. Just more difficult, just as far as contracts,
20 getting things together. A lot of i's dotted and a lot of
21 t's crossed. And nobody likes government regulations.

22 MR. KIRSCH: Object to the statement, as opposed to
23 a question.

24 THE COURT: There is too much in there. Please try
25 to shorten your questions so he only has to respond to one

1 thing.

2 MR. BANKS: Will do, Your Honor.

3 THE COURT: Sustained.

4 MR. BANKS: I have nothing further.

5 MR. WALKER: Your Honor, if I may continue cross
6 for the defendants.

7 THE COURT: You may. No repetition.

8 **CROSS-EXAMINATION**

9 **BY MR. WALKER:**

10 Q. So, Mr. Tait, you stated that you were involved in
11 the decision-making process, as far as agreeing to extend
12 service to Leading Team.

13 A. Yes, I was.

14 Q. And since you stated that the -- that Adecco North
15 America did not have a credit verification process, what
16 factors came into play when your group was discussing
17 whether or not to enter into this relationship?

18 A. Mr. Banks was quite -- put on a good show. He made a
19 believer of me.

20 Q. Can you elaborate on what you mean by "he put on a
21 good show"?

22 A. He is very good at articulating where he was going to
23 go, what was going to happen, and the possibility of us
24 all making money.

25 Q. So Mr. Banks outlined to you LTI's plan for

1 successfully selling and marketing their product in order
2 to do what he said?

3 A. Yes.

4 Q. And in the process of describing to you what that
5 plan was, can you give some details on what he said would
6 be done? What was part of the good show, as you call it?

7 A. Produced magazine articles. Threw names around;
8 Mayor Webb at the time. And said he had contacts within
9 the FBI, within state and local governments.

10 Q. And so the statement that he had contacts with these
11 people, was made. Did he infer that that somehow
12 constituted a contract with the agency?

13 A. No.

14 Q. How large was that group that convened to discuss the
15 decision about bringing on or taking on the work for LTI?

16 A. Each office is its own entity. We are not
17 franchised, but each office runs its own show, with the
18 help, obviously, of their senior leadership. But at that
19 time, I made the call.

20 Q. You made the call from how many other colleagues?

21 A. Myself. I am in charge. I am the area do you.

22 Q. So you were solely responsible for that decision?

23 A. Yes.

24 Q. And in considering the proposition that Mr. Banks was
25 making to you, what thought -- did you get into the risks

1 inherent in a company you knew very little about?

2 A. Everything is risk. This was a little more risky.
3 But I felt at the time, the information given, and the
4 ending payout, that it was worth the risk.

5 Q. And subsequent to engaging in the relationship with
6 Leading Team, and not receiving payment other than the
7 \$3,000, did Adecco do any investigation into the business
8 operations of LTI?

9 MR. KIRSCH: Objection, relevance.

10 THE COURT: What is the relevance of that?

11 MR. WALKER: Your Honor, I am getting to the point
12 where we can ask a question about if there was any
13 fraudulent statements discovered that were made by
14 Mr. Banks or anyone at LTI during the course of the
15 investigation.

16 THE COURT: I am going to give some leeway. I will
17 overrule the objection. You may answer.

18 THE WITNESS: I forgot the question.

19 Q. (BY MR. WALKER) After LTI was unable to pay on the
20 bills, other than the \$3,000 and you terminated the
21 relationship with LTI, did Adecco launch any type of
22 investigation into LTI to discover more about the company

23 A. It was -- obviously I spoke with my senior leadership
24 and let them know where I was at, as far as collections
25 were. And I told them my estimation was that very

1 negatively we weren't going to get any money. So it was
2 delivered to third-party collections.

3 Q. Mr. Tait, so my question was, was there any
4 investigation or any type of inquiries made into the
5 actual business of LTI?

6 A. Not to my knowledge.

7 Q. And so given that answer, you wouldn't be able to say
8 that LTI -- what Mr. Banks represented to you about LTI's
9 business practices were not true?

10 MR. KIRSCH: Objection to the relevance, Your
11 Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Repeat, please.

14 Q. (BY MR. WALKER) I will repeat. Given there was no
15 further inquiry into the LTI company, you would not be
16 able to say that anything Mr. Banks represented to you, in
17 the so-called show, was not true?

18 A. I have no information whether it was true or false.

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

20 MR. STEWART: May I?

21 THE COURT: You may.

22 **CROSS-EXAMINATION**

23 **BY MR. STEWART:**

24 Q. Good afternoon, Mr. Tait. You stated on direct when
25 directed by Mr. Kirsch, that Adecco had a contract with

1 Leading Team. Is that a true statement?

2 A. It is. The documents are right there.

3 Q. And yet the -- well, let me back up. Are you the
4 custodian of records at --

5 A. Yes, I am.

6 Q. Okay. So you are the one that certified the records
7 entered into evidence by Mr. Kirsch?

8 A. I did.

9 Q. Okay. And the contract with Leading Team, is that
10 what we saw in the exhibit that was entered into?

11 A. It is a portion of it.

12 Q. Because what I believe we saw -- perhaps we can go to
13 page 4 of that just to verify, which is actually in
14 evidence --

15 THE COURT: Which document are we speaking of?

16 MR. STEWART: The service agreement. The first
17 exhibit entered into evidence by Mr. Kirsch.

18 MR. BANKS: 30.01, Your Honor.

19 THE COURT: All right. Exhibit 30.01.

20 Q. (BY MR. STEWART) Page 4 of that paragraph, is that,
21 indeed, the agreement with Leading Team?

22 A. Are you going to bring this up on the screen?

23 MR. KIRSCH: Your Honor, we can display the
24 document if that would help.

25 THE COURT: If you wouldn't mind. Thank you.

1 30.01, page 4.

2 Q. (BY MR. STEWART) Let's look at the first paragraph.

3 A. That is the agreement between Adecco and DKH
4 Enterprises.

5 Q. So this is not the contract with Leading Team?

6 A. There is another document in this pile between Adecco
7 and Leading Team. I just don't know what the number is;
8 whether it was introduced or not.

9 Q. So we will leave that question to be determined. So
10 at this point, we don't see an agreement between Adecco
11 and Leading Team.

12 A. You are not showing it here, but we did go through
13 it. It was one of the documents.

14 THE COURT: Is that the work order?

15 THE WITNESS: There is an agreement in this pile.
16 So I don't know if it was entered or not. But there was a
17 work order that was signed.

18 THE COURT: We have the work order. Is that what
19 you referred to? That is 30.02.

20 MR. STEWART: Okay.

21 Q. (BY MR. STEWART) Is that work order, is that
22 actually a separate agreement besides the one you have
23 seen here?

24 A. Yes. There is a boilerplate agreement between
25 Leading Team and Adecco. Then in the boilerplate

1 agreement, it does refer to the work order and/or an
2 attachment A, which describes the current project.

3 Q. Okay. So you also stated in your direct that as a
4 company executive, you would have wanted to know the
5 relationship that the two companies had, as far as the
6 business relationship; is that correct?

7 A. Yes. I did not know there was any relationship at
8 the time.

9 Q. Okay. And having put into place the new procedures,
10 based on the transaction and the risk associated, and
11 balancing the credit risk and so forth, is it fair to say
12 that you put those procedures in place now?

13 A. Yeah. They were put out to all of the offices within
14 North America.

15 Q. Okay. Where might those be articulated during the
16 course of the potential relationship with the client?

17 A. Where is it listed? Our website, procedures on how
18 to bring in a new client.

19 Q. Okay. So is that articulated somewhere in the
20 agreement?

21 A. No. It has nothing to do with the agreement.

22 Q. Okay. Page 4 of the Exhibit, 30.01, paragraph 19, if
23 I might direct your attention to that.

24 MR. KIRSCH: Is that a request to display it, Your
25 Honor?

1 THE COURT: You are asking to put 30.01, page 4?

2 MR. STEWART: Page 4. There is paragraph 19 there.

3 THE COURT: Do you want to enlarge something?

4 THE WITNESS: This is the agreement between DKH

5 enterprise and Adecco. It has nothing to do with the

6 agreement between Leading Team and Adecco.

7 Q. (BY MR. STEWART) Understood. So I just want to
8 point out in the boilerplate -- if you allow me to use
9 your term there -- of the agreement. The agreement that
10 you are asserting that was had between Leading Team and
11 Adecco, would it have been the same type of agreement you
12 had with DKH?

13 A. No. One is a consulting agreement, which is provided
14 to 1099s or companies that are an entity that I would bill
15 out and pay as an entity, rather than an individual. The
16 other agreement is between Adecco and the client, gives
17 the payment terms and all the other --

18 Q. So this paragraph 19 talked about the agreement in
19 its entirety. Would it also be included?

20 A. I don't know. Like I said, I can't find it in this
21 stack.

22 Q. Okay, fair enough. So did --

23 MR. STEWART: That's all, Your Honor. That's all I
24 have.

25 THE COURT: Thank you very much.

1 Any further questions by the defendants?

2 MR. WALKER: No more questions, Your Honor.

3 THE COURT: All right. Any redirect?

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

5 **REDIRECT EXAMINATION**

6 **BY MR. KIRSCH:**

7 Q. Mr. Tait, I want to try to be clear about this issue
8 about the agreements that Mr. Stewart was asking you
9 about. Did you have more than one agreement in place for
10 this relationship that you have been testifying about?

11 A. Yeah. There were two agreements; one with Adecco and
12 Leading Team, and one between Adecco and DKH. One is a
13 client agreement, and one is a consulting agreement. One
14 is for the workers, one is for the client.

15 Q. And the client in this case was Leading Team?

16 A. That is correct.

17 Q. And who -- and that was the entity that owed the
18 money?

19 A. That is correct.

20 Q. You were asked a number of questions about what you
21 considered when you were deciding whether you should do
22 business with Leading Team.

23 A. Yes.

24 Q. And this idea about the sale of the software -- I
25 want to know what you -- what was in your mind about the

1 timing of the software that Leading Team had?

2 A. They kept presenting it that it was very close to
3 being completed. Things were lined up for sale of
4 software packages, which are very expensive packages,
5 these, you know, enterprise level type of software
6 packages to state, local, FBI, and there would be a lot
7 more work to follow.

8 Q. Did you have an understanding about how the timing of
9 that sale would relate to the timing when the first
10 invoice -- the payment on the first invoice would be due?

11 A. It was always real clear that payments were due in 30
12 days.

13 Q. Okay. And I need to ask you a better question,
14 because what I am meaning to ask you is whether or not,
15 based on the statements that you got from Mr. Banks, did
16 you have an understanding about whether there would be
17 money flowing into Leading Team from the sale of the
18 software; how would that flow of money relate to the due
19 date for the first invoice 30 days afterwards?

20 A. Obviously, when those sales went through, the
21 payments would be caught up to date, is what I was
22 assured.

23 Q. Okay. And when you first agreed to do business with
24 Leading Team, did you think that Leading Team would be
25 realizing revenue from the sale of its software by the

1 time that your first invoices were going to be due?

2 A. Softwares just don't start from scratch. It is a lot
3 of time, effort, money. So it was inferred that they had
4 backers; people who were backing them from a financial
5 standpoint.

6 Q. All right. And then you were asked about whether or
7 not Adecco had suffered losses before.

8 A. Yes.

9 Q. So have particular clients of yours -- have you
10 suffered losses with respect to particular clients of
11 yours before?

12 A. People go bankrupt or companies go bankrupt, and
13 we're a creditor.

14 Q. What sort of -- what sort of -- what has been the
15 amount of losses on your clients that you have seen
16 before?

17 A. This was the highest ever out of my office.
18 Typically I write off 5- to \$10,000 a year.

19 Q. With respect to this account, you wrote off
20 approximately how much?

21 A. 200,000.

22 MR. KIRSCH: Thank you, Mr. Tait. Those are all of
23 my questions, Your Honor.

24 THE COURT: All right. May this witness be
25 excused?

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

2 THE COURT: All right. You may step down.

3 Thank you very much.

4 THE WITNESS: Thank you.

5 THE COURT: We have been going for a little more
6 than an hour. Rather than call the next witness, I think
7 we should take a short break. This one, though, would
8 only be about 12 minutes. So if we can be back at 3:20.

9 Court will be in recess.

10 (A break is taken from 3:06 p.m. to 3:21 p.m.)

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

13 THE COURT: You maybe seated.

14 We ready to bring the jury in?

15 MS. HAZRA: Yes, Your Honor.

16 MR. BANKS: Yes.

17 THE COURT: Ms. Barnes.

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

20 THE COURT: You may be seated.

21 Government may call its next witness.

22 MS. HAZRA: Thank you, Your Honor. Renee
23 Rodriguez.

24 COURTROOM DEPUTY: Your attention, please.

25 **RENEE RODRIQUEZ**

1 having been first duly sworn, testified as follows:

2

3 COURTROOM DEPUTY: Please be seated.

4 Please state your name, and spell your first and
5 last names for the record.

6 THE WITNESS: Renee Rodriquez, R-E-N-E-E

7 R-O-D-R-I-Q-U-E-Z.

8

DIRECT EXAMINATION

9 **BY MS. HAZRA:**

10 Q. Good afternoon Ms. Rodriquez.

11 A. Good afternoon.

12 Q. Where do you live, what city and state?

13 A. Pueblo, Colorado.

14 Q. Where are you currently employed?

15 A. I own Express Employment Professionals.

16 Q. How long have you owned it?

17 A. I have been a partner for about 20 years. I have
18 been the majority owner for 6.

19 Q. Is that also Express Personnel?

20 A. Correct. We did a name change.

21 Q. And when did you change your name?

22 A. Express, Inc., our franchiser changed it about 6
23 years ago.

24 Q. Around 2005?

25 A. Sounds about right.

1 Q. When you say you are the owner, are you a franchise
2 owner?

3 A. Correct. Franchise owner.

4 Q. What does that mean exactly?

5 A. Well, my company is Jurian Ventures (phonetic) doing
6 business as Express Employment Professionals. We have a
7 franchisor, which is Express Services, Inc. It means that
8 our company is a hundred percent franchised. It means
9 that I own the local franchise.

10 Q. What kind of business did Express do?

11 A. We are a staffing company. We help people find jobs,
12 and we help companies find employees.

13 Q. Is that what it has always been?

14 A. Well --

15 Q. Even before the name changes.

16 A. I have other services, like employee handbooks, HR
17 hotline, I sell payroll.

18 Q. Are you familiar with a concept known as payrolling?

19 A. Yes, I am.

20 Q. What is payrolling?

21 A. It is when a company calls us up and says they have
22 some employees, and they would like us to take care of
23 their payrolling, taxes and work comp.

24 Q. So in that arrangement, who pays the employees?

25 A. We would.

1 Q. And how does Express Personnel make its money?

2 A. We'll negotiate a price with the client company. And
3 so whatever that pay is, we'll put a percentage or dollar
4 amount on that and call it their service rate.

5 Q. So the difference between what you pay the
6 employee -- there is a mark up, and that is your profit?

7 A. Correct.

8 Q. Are you familiar with a company known as DKH
9 Enterprises?

10 A. Yes, I am.

11 Q. When did you first learn of them? Do you recall what
12 year?

13 A. The fourth quarter of 2003.

14 Q. And how did you learn about them?

15 A. One of my staffing consultants, Tonya Quintana,
16 received a call. She forwarded it to my operations
17 manager, Cheryl. And my operations manager forwarded it
18 to me, because at that time I was a client services
19 manager/partner.

20 Q. And once you received the call, what did you
21 understand that DKH wanted?

22 A. They wanted us to payroll three employees.

23 Q. Let me just -- sorry, let me back up. After learning
24 about the call, did you contact DKH?

25 A. Yes, I did.

- 1 Q. And how did you contact them?
- 2 A. Telephone.
- 3 Q. Did you set up a meeting?
- 4 A. Yes, I did.
- 5 Q. Who did you set up a meeting with at DKH?
- 6 A. Mr. Demetrius Harper.
- 7 Q. Do you recall where the meeting took place?
- 8 A. I drove to Colorado Springs.
- 9 Q. Why did you drive there?
- 10 A. That is our standard practice. If a new customer
- 11 calls us and we want to open an account for them, we like
- 12 to go visit the facility, see the environment. You know,
- 13 we make better placements that way.
- 14 Q. So did you go to DKH Enterprises' office?
- 15 A. Yes, I did.
- 16 Q. That was in Colorado Springs?
- 17 A. Correct.
- 18 Q. Who did you meet with when you got to DKH?
- 19 A. I met with Mr. Harper.
- 20 Q. Did you meet with anyone else at that first meeting?
- 21 A. No, I did not.
- 22 Q. And did Mr. Harper tell you what DKH wanted from
- 23 Express Personnel?
- 24 A. To payroll three employees.
- 25 Q. Did he explain what work he wanted them to do?

1 A. I don't recall that.

2 Q. What was your impression of the office space?

3 A. I was impressed. It was a nice, professional-looking
4 office. There were some cubicles that were empty, but I
5 was told that they were creating these positions.

6 Q. What did he tell you about the positions, when you
7 say he was creating these positions?

8 A. That is where those people would be working, and that
9 they were waiting on equipment for the work stations.

10 Q. At that meeting, did Mr. Harper tell you anything
11 about DKH Enterprises' work?

12 A. He shared that they worked with police departments.
13 Because I remember being very impressed that they were
14 working with the New York City Police Department and the
15 Colorado Springs Police Department. I saw a white board
16 there. And they go into a lot of companies, in the sense
17 it looked like a lot of projects. So I was impressed with
18 their -- what looked like their workload.

19 Q. Do you recall what he said about the nature of the
20 work they were doing for the New York Police Department?

21 A. Something with security and software.

22 Q. Did Mr. Harper's statements about the work that DKH
23 had and these contracts, have any effect on your decision
24 about whether or not to enter into a contract with DKH?

25 A. Yes.

1 Q. And what was that?

2 A. I was impressed with the departments he was working
3 with. I thought those could be good contracts.

4 Q. And why did you think that?

5 A. New York City, Colorado Springs. I come from a small
6 town, so --

7 Q. Did you then enter into a contract with DKH?

8 A. Yes, we did.

9 Q. And that contract, I believe you said, was to payroll
10 the three employees?

11 A. Correct.

12 Q. Did you then have a second or subsequent meeting with
13 Mr. Harper to follow up on the details of the employees?

14 A. I did. It was a short one, because I went there to
15 take the paperwork and drug screenings for the three
16 people that were going to be joining our company, or we
17 were going to be payrollling.

18 Q. Do you recall the names of the employees that Express
19 Personnel payrolled for DKH?

20 A. There was a gentleman and two ladies. I remember the
21 gentleman's name was Gary Walker. And if I can open this
22 folder, I remember a Huff (sic) was one of the females.
23 And I can't remember the third employees name.

24 Q. We will get to the folders in a second. How did
25 Express Personnel know the hours that the employees worked

1 for DKH Enterprises?

2 A. They would fax us the time card -- weekly time card.

3 Q. Who filled out the time cards?

4 A. It looked like the associates did, and Mr. Harper
5 signed them.

6 Q. So at this point I would have you look at what is in
7 front of you in the folder marked as Government's Exhibit
8 151.00. Let me know when you get a chance to find it and
9 look at it.

10 A. Okay.

11 Q. Do you have it? Do you recognize Government's
12 Exhibit 151?

13 A. I do. They are our time cards.

14 Q. And who -- is this form from Express Personnel?

15 A. Yes, it is.

16 Q. And who --

17 MS. HAZRA: Your Honor, I would ask that
18 Government's Exhibit 151 be admitted.

19 THE COURT: Any objection?

20 MR. BANKS: Without objection.

21 THE COURT: 151 will be admitted.

22 MS. HAZRA: Your Honor, may it be published to the
23 jury.

24 THE COURT: It may.

25 (Exhibit No. 151.00 is admitted.)

1 Q. (BY MS. HAZRA) Can you just explain what we are
2 seeing to the jury on this first page; what this first
3 page is?

4 A. The employee is responsible for taking or keeping
5 track of their own time. So they will fill it in daily;
6 in, out for lunch, back in. Anything over 40 we consider
7 overtime. They need to sign the top right saying that
8 those hours are correct. And on the bottom right-hand
9 side is where our client customer would sign authorizing
10 us to pay that time card and accepting our payment terms.

11 Q. I didn't mean to cut you off, sorry. So, in this
12 case, is the employee here Gary Walker?

13 A. Correct.

14 MS. HAZRA: Maybe, Special Agent Smith, if you can
15 narrow in on the text that would be easier.

16 THE WITNESS: And that is his signature.

17 Q. (BY MS. HAZRA) So under in this area right here,
18 that is the employee, Gary Walker, signing it?

19 A. Yes.

20 Q. And then I think you said the client authorizes it?

21 A. Correct.

22 Q. And is that down in this bottom right-hand corner?

23 A. Yes.

24 Q. And after these were authorized by Mr. Harper, were
25 they sent back to Express Personnel?

- 1 A. Yes. They were faxed to us.
- 2 Q. And what did Express Personnel do with these time
3 cards. How did they use them?
- 4 A. We enter them in our computer system there in Pueblo.
5 And we ship all of the time from all our associates to
6 Oklahoma City. It is processed there in Oklahoma City.
7 We get an electronic file, and we print the checks there
8 in our Pueblo office.
- 9 Q. So you print the checks to whom?
- 10 A. To the associates.
- 11 Q. In this case, that is the employees?
- 12 A. Correct.
- 13 Q. And how do you know what checks -- how do you know
14 the amount of checks to pay the employees?
- 15 A. Based on the time card we received from the client
16 company.
- 17 Q. So the time card is your indication of what the hours
18 are worked?
- 19 A. Yes.
- 20 Q. I would have you look at what has been marked for
21 identification purposes as Government's Exhibit 151.01.
- 22 A. I have it.
- 23 Q. Do you recognize that document?
- 24 A. Yes, I do.
- 25 Q. And what is that?

1 A. It is a time card from Sharon Ruff.

2 Q. Is the second page a time card for Judith Gordon?

3 A. Yes, it is.

4 Q. And does this refresh your recollection about the two
5 women who Express Personnel payrolled?

6 A. Yes, it does.

7 MS. HAZRA: Your Honor, I would ask 151.01 be
8 admitted?

9 MR. BANKS: Without objection.

10 THE COURT: 151.01 will be admitted.

11 (Exhibit No. 151.01 is admitted.)

12 Q. (BY MS. HAZRA) Ms. Rodriguez, you said that Express
13 Personnel would cut checks to the associates. Is that
14 what you called them?

15 A. Yes.

16 Q. I would have you look at what has been marked for
17 identification purposes as Government's Exhibit 153.

18 A. I have it.

19 Q. Do you recognize that?

20 A. Yes, I do.

21 Q. And it is a multi-page document. What is
22 Government's Exhibit 153?

23 A. They are the paychecks. And it looks like the back
24 of the check after it was cashed at the bank for
25 Mr. Walker.

1 Q. And just -- again, these are checks for Mr. Walker's
2 work through Express Personnel?

3 A. Yes.

4 MS. HAZRA: Your Honor, at this time I ask the
5 Court find Government's Exhibit 153 admissible.

6 THE COURT: Any objection?

7 MR. WALKER: No objection.

8 THE COURT: All right. Exhibit 153 will be found
9 admissible.

10 (Exhibit No. 153.00 is found admissible.)

11 Q. (BY MS. HAZRA) After Express Personnel has cut
12 checks to the associates, what did Express Personnel do to
13 get paid from DKH?

14 A. An invoice would be correct -- I am sorry, an invoice
15 will be created from Oklahoma City and mailed to the
16 client company.

17 Q. Why from Oklahoma City?

18 A. Excuse me?

19 Q. Why would it be created in Oklahoma City?

20 A. That is what they do for franchisees. They take care
21 of our accounts payable and receivables.

22 Q. And I would have you look at what has been marked for
23 identification purposes as Government Exhibit 152. Do you
24 recognize Government Exhibit 152?

25 A. Yes, I do. It is our invoice.

1 Q. And to whom is the invoice issued?

2 A. DKH Enterprises.

3 Q. On whose behalf?

4 A. On Express Services, Inc.'s behalf.

5 MS. HAZRA: I would asked Government Exhibit 152 be
6 admitted.

7 THE COURT: Be admitted?

8 MS. HAZRA: Yes, ma'am.

9 MR. BANKS: No objection.

10 THE COURT: Exhibit 152.00 will be admitted.

11 (Exhibit No. 152.00 is admitted.)

12 MS. HAZRA: Could it be published to the jury, Your
13 Honor?

14 THE COURT: It may.

15 MS. HAZRA: If you could focus in on the bottom
16 half of that.

17 Q. (BY MS. HAZRA) What is the bottom half of the first
18 page of Government Exhibit 152? Can you please explain
19 that to the jury, what is shown there?

20 A. The total amount of the invoice for the payroll for
21 that week.

22 Q. So that is for the week that each of these employees
23 worked -- the hours worked?

24 A. For week ending 11/2/2003, correct.

25 Q. Did DKH pay you on these invoices?

1 A. No.

2 Q. What did do you when they did not pay?

3 A. I reached out to them by phone and e-mail trying to
4 make arrangements.

5 Q. Who did you reach out to?

6 A. It was Yolanda. Also Mr. Harper.

7 Q. How many times did you try to contact them?

8 A. Many. I mean --

9 Q. Were you ever able to reach them?

10 A. Yes, I did.

11 Q. And what did Mr. Harper say about why DKH was not
12 paying you?

13 A. There were reasons. That he was working with the
14 government, and he was waiting on some payments. And how
15 slow the government could be. And as soon as he got
16 payments, he would pay us. I also received a certified
17 letter from him stating -- or making payment arrangements.

18 Q. Did he follow that up with payments?

19 A. No.

20 Q. What effect did his statements to you have on whether
21 or not you continued to employ the associates?

22 A. We had to put a credit limit on him because of his --
23 because of the references he gave us to do the credit
24 checks, his Dun & Bradstreet rating was low. And we were
25 advised, because they just opened the company in 2000,

1 they could be a credit risk.

2 So we put the credit limit of 15,000 on them. When
3 we didn't get a payment, that is when we decided to close
4 the account and stop doing business.

5 Q. Did you inform the employees?

6 A. Yes, we did, by certified letter.

7 Q. Did you have a chance to speak to them?

8 A. No.

9 Q. Ms. Rodriguez, can you please look at what has been
10 marked for identification purposes as Government's Exhibit
11 156.02. Do you recognize that document?

12 A. Yes, I do.

13 Q. What is that document?

14 A. It is the certified letter we received from DKH.

15 MS. HAZRA: Your Honor, I would ask that
16 Government's Exhibit 156.02 be admitted.

17 MR. BANKS: No objection, Your Honor.

18 THE COURT: Exhibit 156.02 will be admitted.

19 (Exhibit No. 156.02 is admitted.)

20 MS. HAZRA: Could it please be published to the
21 jury?

22 THE COURT: It may.

23 MS. HAZRA: Could you please turn to the second
24 page. If you could highlight the text.

25 Q. (BY MS. HAZRA) So, did you have conversation with

1 Mr. Harper concerning his statements in this letter?

2 A. Yes.

3 Q. And what specifically did he tell you about the
4 contracts that he had?

5 A. What it says in the letter, that they were slow to
6 pay.

7 MR. STEWART: Objection, foundation.

8 THE COURT: Overruled.

9 Q. (BY MS. HAZRA) And would you please look at what has
10 been marked for identification purposes as Government's
11 Exhibit 156.01. Do you recognize Exhibit 156.01?

12 A. Yes, I do. It's an e-mail from Mr. Harper to me.

13 Q. And does that also concern promises that you will be
14 paid?

15 A. Yes, it does.

16 MS. HAZRA: Your Honor, I would ask that
17 Government's Exhibit 156.01 be admitted into evidence.

18 MR. BANKS: Without objection, Your Honor.

19 THE COURT: 156.01 will be admitted.

20 (Exhibit No. 156.01 is admitted.)

21 MS. HAZRA: May it be published?

22 THE COURT: It may.

23 MS. HAZRA: Could you highlight the top, Special
24 Agent. Thank you.

25 Q. (BY MS. HAZRA) It talks about DKH being in a

1 position to remit payment. Did you receive any such
2 payment?

3 A. No.

4 Q. Did Mr. Harper ever have further discussions with you
5 about the sale cycle of those agencies that are referenced
6 in the e-mail?

7 A. Yes. He said as soon as he got paid, we would get
8 paid.

9 Q. How much money did Express Personnel lose on this
10 account?

11 A. Total invoice amount was 29,900-something dollars.
12 We had to pay interest on that. And then my franchise was
13 charged back that full amount.

14 Q. Who was your franchise charged back by?

15 A. My company, my LLC.

16 Q. Could you please further explain that?

17 A. When a customer doesn't pay their invoices, our
18 franchisor will still collect that money and take it from
19 our commissions.

20 Q. So you had to pay the money back to your
21 headquarters?

22 A. Well, they took it, and allowed me to pay them back.
23 They allowed me to pay them in three months, \$10,000 a
24 month, so it wouldn't hurt my business as bad as taking
25 \$30,000 away from me.

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

2 I have no further questions, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MR. BANKS:**

5 Q. Hello.

6 A. Hello.

7 Q. There was no mention of the word "contract." I know
8 Ms. Hazra brought it up, but there was actually no mention
9 of that word "contract" by you until you were actually
10 asked that by her; is that correct?

11 A. I don't understand.

12 Q. Did Mr. Harper ever mention to you anything about
13 landing a government contract?

14 A. He said he had contracts with these companies or
15 these cities.

16 Q. He said he had contracts. Did -- in Exhibit 156.01,
17 that you just -- was actually on the elmo --

18 MR. BANKS: Gary, could you bring that up? Can you
19 see that? Can you bring that up on the elmo, please, for
20 Ms. Rodriguez?

21 MS. HAZRA: Your Honor, would you like us to
22 display it?

23 THE COURT: If you wouldn't mind.

24 MS. HAZRA: Mr. Banks, would you like us to display
25 it?

1 MR. BANKS: Yes, please.

2 Q. (BY MR. BANKS) Do you have that in front of you now,
3 Ms. Rodriguez?

4 A. Yes, I do.

5 Q. It says, "With the events of --" I would ask you to
6 read that for me if you don't mind.

7 A. "With the events of last week in Washington, D.C. and
8 New York City, IRP Solutions are diligently moving the
9 sales cycle with the agencies below. (BOP/DOJ/NYPD).
10 Upon getting a signature of the Early Adopter Agreement,
11 this approval will be taken to financial institutions for
12 lines of credit and secured loans. Upon getting that cash
13 flow generated, DKH Enterprises will be in a position to
14 remit payment on the outstanding invoices. I would like
15 to also draft a letter stating my position and to ease
16 your concern regarding Express Personnel getting payment
17 of the debt that DKH Enterprises currently owes. I will
18 fax that down to you for you to look over (by COB today).
19 In turn, you can call me to discuss in detail. Thanks for
20 your patience."

21 Q. Thank you Ms. Rodriguez. In that particular e-mail,
22 there is absolutely zero mention of a contract; correct?

23 A. This was said verbally.

24 Q. And when, exactly, was that said. It has been 8
25 years, obviously, but when exactly was that said?

1 A. When I met with him.

2 Q. When you met with him. So he didn't call you or
3 e-mail you that there was any sort of contract in place?

4 A. We talked with one staff member. She passed it to
5 the other. When I called him, I thought we could discuss
6 that when we met in person. I called and scheduled an
7 appointment to meet with him.

8 Q. Okay. Now, when, exactly, did you pull the D & B
9 report?

10 A. I didn't pull it.

11 Q. When is it customary for your company to actually
12 pull that report?

13 A. Any time somebody's invoices have gone over \$10,000.

14 Q. So yours is an after-the-fact type of deal. You
15 typically do business the old fashioned way; on a
16 handshake, typically?

17 A. We try to.

18 Q. Now, I want to make a note, the employees are
19 contract employees that work for Express Personnel?

20 A. Correct.

21 Q. They're employees of Express Personnel; is that
22 correct?

23 A. We are the employer of record.

24 Q. Okay. And as being the employer of record, you
25 created a business relationship between DKH and Express

1 Personnel; is that correct?

2 A. That's correct.

3 Q. And to memorialize that relationship, you -- did DKH
4 provide you with a contract, or did you provide DKH with
5 your contract?

6 A. We provided them with our contract.

7 Q. Okay. Now, you said you went to the office space and
8 you were impressed with the facilities; correct?

9 A. Yes.

10 Q. You have been in business a long time. You can
11 identify with you being -- you consider yourself a small
12 business?

13 A. Yes. We are a small business.

14 Q. And how long have you been -- you said 20 years, I
15 believe you have been in business?

16 A. I have been with Express 24 years.

17 Q. Twenty-four years. And the employees are responsible
18 for keeping their time. I want to get clarification on
19 that. Is that correct?

20 A. Yes, that's correct.

21 Q. And if there was something wrong or you saw something
22 suspicious with a time sheet, how would you typically
23 handle that? Or let me ask it this way. Did you see
24 anything suspicious with regards to the employees' time
25 sheets?

1 A. No.

2 Q. Okay. And Mr. Harper processes -- and this is a
3 standard business process for Express Personnel, is
4 employees submit time sheets, hours worked, and invoices
5 are sent, and that's the normal conduct of business with
6 all of your clients; is that correct?

7 A. Yes, it is.

8 Q. Now --

9 MR. BANKS: I have no further questions, Your
10 Honor.

11 MR. WALKER: Your Honor, can I continue cross?

12 THE COURT: You may.

13 **CROSS-EXAMINATION**

14 **BY MR. WALKER:**

15 Q. Ms. Rodriguez, you stated that you ran a Dun &
16 Bradstreet on DKH Enterprises?

17 A. I did not. Not me personally.

18 Q. So did Express, as a company, check the credit of DKH
19 Enterprises?

20 A. That is my understanding.

21 Q. And when your company approves bringing on a client
22 to provide services for, do they typically do a Dun &
23 Bradstreet credit check?

24 A. Only when an invoice has gone over \$10,000 or we've
25 requested it.

1 Q. So could you explain the evaluation process that
2 Express undertook at that time when a small company comes
3 in requesting your services?

4 A. Well, I will get out new account information form.
5 They will list references. Some companies don't list
6 them, but they have an attachment of companies that we can
7 call for a credit rating. We did try to make contact with
8 three of the credit references on the new account form,
9 and then looked to decide what type of credit limit, with
10 the help of our credit department, our headquarters.

11 Q. So you had established a credit limit for DKH?

12 A. Yes, we did.

13 Q. And how did you -- what factors were considered in
14 establishing that credit limit?

15 A. I sent them an e-mail talking about the kind of
16 business, the Dun & Bradstreet rating, and there was
17 something else in the e-mail, and I know I submitted that
18 information. But that is how we came to the \$15,000, with
19 the help of our headquarters.

20 Q. You also mentioned you exchanged e-mails with
21 Mr. Harper.

22 A. Correct.

23 Q. Was there any mention of contracts that were already
24 awarded or close to being awarded that weighed into that
25 decision of approving DKH for credit?

1 A. I don't recall having a conversation like that.

2 MR. WALKER: No further questions.

3 THE COURT: Mr. Zirpolo?

4 **CROSS-EXAMINATION**

5 **BY MR. ZIRPOLO:**

6 Q. Ms. Rodriguez, you just said that when you set the
7 credit limit, you sent an e-mail to your company. Was
8 part of the information the D & B?

9 A. I sent it to Mr. Harper.

10 Q. You sent the D & B to Mr. Harper?

11 A. Not the D & B, about why they came up with the
12 \$15,000 credit limit.

13 Q. You said the D & B was part of that?

14 A. That is what I was told, yes.

15 Q. Earlier you said you didn't run a D & B until after
16 they billed \$10,000.

17 A. We talked about the credit limit two weeks after.

18 Q. So you started them without having credit run?

19 A. I didn't. I am not part of that process. That was
20 my operations' manager.

21 MR. ZIRPOLO: Okay. Thank you.

22 THE COURT: Any further cross-examination?

23 MR. BANKS: Nothing further, Your Honor.

24 THE COURT: Any redirect?

25 MS. HAZRA: Yes, Your Honor.

REDIRECT EXAMINATION

1

2 **BY MS. HAZRA:**

3 Q. Ms. Rodriguez, you were asked several questions about
4 your meetings with Mr. Harper, so I want to just clarify.

5 Did you meet with Mr. Harper, you said, in October of
6 2003?

7 A. Yes.

8 Q. Is that before or after Express Personnel had entered
9 into a contract with DKH Enterprises?

10 A. Before.

11 Q. At that meeting, did Mr. Harper tell you anything
12 about DKH's business?

13 A. Yes, he did.

14 Q. What did he say about their contracts?

15 A. They did software development for police departments.

16 Q. Did he identify any specific police departments?

17 A. I remember the New York Police Department, and I
18 remember Colorado Springs.

19 Q. He told you they did software development for those
20 two police departments?

21 A. Correct.

22 Q. What effect, if any, did his statements have on your
23 decision to enter into a payrolling arrangement with DKH?

24 A. A large one. They had stable customers.

25 Q. You were asked on cross about the new account

1 information sheet that you filled out for DKH. Could you
2 please look at what has been marked for identification
3 purposes as Government's Exhibit 150.01. Do you recognize
4 Government's Exhibit 150.01?

5 A. Yes, I do. It is our new account information sheet.

6 Q. Is that the sheet that you were referring to in
7 response to one of the defendant's questions?

8 A. It is.

9 MS. HAZRA: Your Honor, I would ask that
10 Government's Exhibit 150.01 be admitted.

11 MR. BANKS: No objection.

12 THE COURT: 150.01 will be admitted.

13 (Exhibit No. 150.01 is admitted.)

14 MS. HAZRA: Can that be published to the jury?

15 THE COURT: It can.

16 Q. (BY MS. HAZRA) If we could start just with the top
17 portion. And I think you talked about much of this on
18 your cross, Ms. Rodriguez. But this is the information
19 about the new customers; is that correct?

20 A. Correct.

21 Q. And what does the net 45 mean?

22 A. That they wanted to pay our invoices after 45 days.

23 Q. And there is a checkmark and "No" box. What does
24 that mean?

25 A. He didn't accept our terms.

1 Q. And if you could go to the second half of that. You
2 testified on cross-examination about the credit
3 references. Are those credit references listed on this
4 Government's exhibit?

5 A. That's the information we received from them, yes.

6 Q. And who -- I think you just said that. Who supplied
7 the credit references for this form?

8 A. Mr. Harper.

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

11 THE COURT: You may.

12 MS. HAZRA: Again, if you could highlight that
13 bottom portion again, Special Agent.

14 Q. (BY MS. HAZRA) And I believe the second credit
15 reference down there, is that SWV, Ms. Rodriguez?

16 A. Yes, it is.

17 Q. Again, did Mr. Harper supply the address for SWV?

18 A. Yes, he did.

19 Q. And that is 7645 North Union Boulevard, Suite 411?

20 A. Correct.

21 Q. The contact is Gail Cross; is that right?

22 A. Yes, it is.

23 Q. If you could please look at what is in evidence as
24 Government's Exhibit 32, which Special Agent Smith can
25 hopefully pull up.

1 MS. HAZRA: Special Agent, I don't know if you are
2 able to focus in on the address of Leading Team at the top
3 of this invoice right there.

4 Q. (BY MS. HAZRA) Do you recognize the address that is
5 listed up there for Leading Team? Is that the same
6 address that is listed as the address for SWV? It is hard
7 to see it.

8 A. Yes, it is.

9 Q. Have you heard of Leading Team? Did Mr. Harper talk
10 about Leading Team with you at all?

11 A. No.

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

13 THE COURT: You may.

14 MS. HAZRA: I have nothing further, Your Honor.

15 MR. WALKER: Your Honor, opportunity to recross.

16 THE COURT: On the limited issue, just what was
17 brought up here, you may.

18 **REXCROSS-EXAMINATION**

19 **BY MR. WALKER:**

20 Q. Ms. Rodriguez, if you would look at the exhibit that
21 was just displayed.

22 MR. WALKER: Could we have that exhibit displayed.
23 And if we could go to the address that was just
24 highlighted for DKH Enterprises and for SWV.

25 Q. (BY MR. WALKER) You will notice that the address

1 there -- Ms. Rodriguez, could you read the address that
2 you see there?

3 A. 7645 North Union Boulevard, Suite 441.

4 Q. Do you remember the address that was listed on
5 DKH's -- for DKH -- I am sorry, for Leading Team?

6 A. 7645 North Union Boulevard, Suite 441.

7 Q. If we can bring up the exhibit for the address for
8 DKH -- I am sorry, for Leading Team, which is Exhibit 32,
9 please. So we just saw the address with the suite number
10 of 441. If we could highlight the address for Leading
11 Team. Would you read that address please, Ms. Rodriguez.

12 A. 7645 North Union Boulevard, Suite 432.

13 Q. So those are two different addresses; correct?

14 A. Two different suites.

15 Q. So two different addresses; correct?

16 A. I am a little confused. The address is the same.
17 The suite is different.

18 Q. So would those be the same location or different
19 locations? Would they be the same door?

20 A. They are different suites.

21 Q. Also, you mentioned on my original question, that DKH
22 did not say that they had contracts.

23 MS. HAZRA: Your Honor, I am going to object. This
24 is beyond the scope.

25 THE COURT: Overruled.

1 Q. (BY MR. WALKER) I will begin again. You said when I
2 originally questioned you that Mr. Harper did not say that
3 he had contracts; correct, when you communicated to him
4 via e-mail?

5 A. Via e-mail; correct.

6 Q. He instead said that the company did software for
7 police departments?

8 A. Software development, correct.

9 Q. Software development; correct. And those two
10 statements are clearly different; correct?

11 A. Yes.

12 MR. WALKER: No further questions.

13 THE COURT: All right. May this witness step down?

14 MS. HAZRA: Yes, Your Honor.

15 THE COURT: All right. Thank you very much. You
16 are excused.

17 THE WITNESS: Thank you.

18 THE COURT: All right. The Government may call its
19 next witness.

20 MR. KIRSCH: Thank you, Your Honor. The Government
21 would call Remington Green.

22 If we can have Exhibits 280.01 through 287
23 available for Mr. Green.

24 COURTROOM DEPUTY: Your attention, please.

25 **REMINGTON GREEN**

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: Remington Thomas Green. First name
6 is spelled R-E-M-I-N-G-T-O-N. Last name is spelled
7 G-R-E-E-N.

8 MR. KIRSCH: May I proceed?

9 THE COURT: You may proceed.

10 **DIRECT EXAMINATION**

11 **BY MR. KIRSCH:**

12 Q. (BY MR. KIRSCH) Mr. Green, where do you live?

13 A. Denver.

14 Q. And where do you work?

15 A. Denver.

16 Q. Do you work at a particular company?

17 A. Organic People.

18 Q. And what is your position at that company?

19 A. I was the founder and currently the president.

20 Q. What sort of company is Organic People?

21 A. We are an IT staffing company.

22 Q. And what sorts of services do you provide as part of
23 an IT staffing company?

24 A. We help companies -- we help companies find
25 resources, typically that have a technical aspect to them.

- 1 Q. All right. How big is your company?
- 2 A. It's three million.
- 3 Q. That's revenues?
- 4 A. Correct.
- 5 Q. How many people do you have that work in the office?
- 6 A. Today, I am at three.
- 7 Q. Okay. And how long have you run this company Organic
8 People?
- 9 A. Since the year 2000.
- 10 Q. Have you worked -- did you work in the IT industry
11 prior to starting that company?
- 12 A. I did.
- 13 Q. Did you work in the staffing part of the industry, or
14 did you do IT work yourself?
- 15 A. It was primarily staffing.
- 16 Q. All right. Does -- at some point did Organic People
17 have a business relationship with a company called DKH
18 Enterprises?
- 19 A. Yes.
- 20 Q. Approximately when did that relationship begin? Do
21 you remember?
- 22 A. 2003.
- 23 Q. Okay. And how is it that that relationship began, if
24 you remember?
- 25 A. We received an e-mail -- actually, one of my

1 recruiters received a phone call, followed by an e-mail,
2 with a description of what DKH was looking for.

3 Q. And did you take any further action based on that
4 e-mail?

5 A. Yeah. I called -- I called DKH to try to get more
6 background on the situation.

7 Q. Okay. Let me ask you to take a look at what is
8 marked for identification as Government Exhibit 208.01.
9 It should be in the folder there in front of you. Do you
10 see that exhibit?

11 A. Yes.

12 Q. And are you able to recognize it?

13 A. Yes.

14 Q. What is it?

15 A. This is an e-mail that was sent by DKH, with an
16 explanation of the background of the kinds of people that
17 they were going to be requesting from us in the future.

18 Q. Is this the e-mail that you referenced a minute ago
19 in your testimony that followed up the telephone call?

20 A. Yes.

21 Q. And was this an e-mail that was provided to you
22 around the time that this relationship was beginning?

23 A. Yes.

24 MR. KIRSCH: I move to admit and publish Exhibit
25 280.01.

1 THE COURT: Any objection?

2 MR. BANKS: No objection.

3 THE COURT: Exhibit 280.01 will be admitted, and it
4 may be published.

5 (Exhibit No. 280.01 is admitted.)

6 MR. KIRSCH: Thank you, Your Honor.

7 Can we expand the text of the lower e-mail there,
8 please, starting right there.

9 Q. (BY MR. KIRSCH) You said, I think, Mr. Green, that
10 you had a conversation with someone at DKH.

11 A. I did.

12 Q. Who was that?

13 A. I had conversations with Clinton Stewart and
14 Demetrius Harper.

15 Q. There is a reference to Clinton Stewart in this
16 e-mail. Was that the person that you spoke to at DKH?

17 A. It was the first person I spoke to, yes.

18 Q. Okay. And there is some -- there is information in
19 this e-mail about staffers related to technical positions.
20 Is that e-mail consistent with information you got during
21 your initial conversation with Mr. Stewart?

22 A. Yes.

23 Q. There are two people identified there; Kendra
24 Haughton and Thomas Williams. Are those names that you
25 discussed with Mr. Stewart?

1 A. Yes.

2 Q. Okay. We are finished with that. During your
3 initial conversation with Mr. Stewart, did you talk with
4 him about how it is that he had gotten the name of your
5 company?

6 A. Yes.

7 Q. What did he tell you about that?

8 A. He told me that he had heard great things about us,
9 and he had been referred to us, but he couldn't give me
10 any specific name.

11 Q. A specific name of the referral?

12 A. Correct.

13 Q. Did he explain anything to you about what sort of
14 assistance DKH needed at that time?

15 A. Just clarifying, this is in the initial conversation.

16 Q. Yes.

17 A. Yeah, he explained that they were going to have to
18 bring on a team of 20-plus people, and that he had two
19 people that he had already interviewed that he would like
20 to try to get started with.

21 Q. Okay. And did you talk about how it is that those
22 two people that had been identified would be employed
23 through Organic People?

24 A. Absolutely.

25 Q. Can you explain what that arrangement was?

1 A. So in this particular arrangement, since he had
2 already identified the people, he said he wanted to bring
3 them onto the contract first. And, you know, with the
4 remainder of potential people, he would need us to try to
5 help them find as this contract played out.

6 Q. All right. From the perspective of your company,
7 Organic People, was there going to be any difference
8 between the profit that you could generate from the
9 employees that Mr. Stewart had identified, as compared to
10 profit you could generate from employees that your company
11 might identify?

12 A. No.

13 Q. No?

14 A. No.

15 Q. All right. At some point did you have a meeting in
16 person with people from DKH?

17 A. Yes.

18 Q. How did that get arranged?

19 A. I asked to go meet them.

20 Q. Why did you do that?

21 A. Because typically in this business, we try to meet
22 our customers and get to know them. And this one was a
23 little out of the norm, because oftentimes we're doing
24 business development and creating relationships, and this
25 one just kind of came to us. And so, you know, I wanted

1 to just make sure that they were a real ongoing business.

2 Q. All right. So you went to their business location?

3 A. Correct.

4 Q. Do you remember where that was?

5 A. Yeah. I remember having some confusion, because the
6 original address they gave me was a UPS facility. And
7 then they actually had me come down and meet them. It is
8 right off of I-25, I believe Cascade was the street.

9 Q. In what city?

10 A. In Colorado Springs.

11 Q. Okay. And when you went to this business, how was it
12 -- was it identified? Was the space identified with the
13 particular business?

14 A. You know, they had warned me that they were leasing
15 space from another company.

16 Q. Did they say what the name of that company was?

17 A. I believe it was IRP Solutions.

18 Q. All right. And do you recall Mr. Harper ever
19 mentioning any names in connection with that company, IRP
20 Solutions?

21 A. I remember the name David Banks in connection with
22 that company.

23 Q. All right. Who is it that you met with once you got
24 to this office in Colorado Springs?

25 A. The four main people I met with were Demetrius

1 Harper, Clint Stewart, and then the two employees.

2 Q. All right. Did you meet with all four of those
3 people at the beginning of the meeting, or did you meet
4 with some subset?

5 A. At the beginning of the meeting, I met with Demetrius
6 Harper and Clinton Stewart.

7 Q. Let's talk about that part of the meeting for right
8 now. During that part of the meeting, did either
9 Mr. Stewart or Mr. Harper give you an explanation about
10 what sort of work DKH was doing?

11 A. Yeah.

12 Q. What was said about that?

13 A. They talked about how they had created a prototype of
14 a piece of software that was partially implemented at -- I
15 believe it was a county in Florida. And that was -- that
16 software helped them with, like, being more -- helping
17 municipalities become more efficient at responding to
18 emergencies.

19 Q. Did you receive any sort of a presentation that day
20 as part of the meeting?

21 A. Yeah. I mean, they mapped it out on a white board
22 for me and showed me kind of, you know, an example of what
23 the software did, like what solution it did and how it
24 allowed the first responders to get the most effective car
25 to the scene first.

1 Q. Did either Mr. Stewart or Mr. Harper say anything
2 about whether or not DKH had any active contracts to
3 sell -- to sell their software to law enforcement
4 agencies?

5 A. Well, they said that they had an existing engagement
6 with a municipality in Florida, and that they had just
7 recently been awarded a contract through the Department of
8 Homeland Security. And that was what was primarily
9 driving this need for all these contractors and, thus, the
10 phone call to me.

11 Q. And these representations that were made to you about
12 their business, did those have some effect on your
13 decision about whether or not you should hire those
14 employees and place them there?

15 A. Absolutely. Once again, in my business, when we get
16 new clients, you know, it's rare to get them this easily.
17 And so I definitely had some concern. But seeing this
18 presentation and being at the point in time we were in,
19 the world with 9/11, you know, the Department of Homeland
20 Security contracts gave me comfort in doing business with
21 them, because I felt they were -- since that was something
22 already they had, then I would get paid.

23 Q. You said that at some point in the meeting you also
24 met with the people that you were actually going to hire?

25 A. Yes.

1 Q. And to be clear, did those people -- those were the
2 people whose names were on the board a minute ago; is that
3 right?

4 A. Who --

5 Q. Who were mentioned in the e-mail?

6 A. Correct.

7 Q. Okay. And did those people -- were those people
8 hired as employees of Organic People?

9 A. Yes.

10 Q. Did you get a chance to meet with -- you did get a
11 chance to meet with those employees that day?

12 A. I did.

13 Q. And did you have any concerns, after that meeting,
14 about whether or not those employees had the right skills
15 to fill those positions?

16 A. I didn't. Now, we had the initial meeting in the
17 office with the white board, and then we actually went to
18 lunch with the four of them. Then, after we came back
19 from lunch is when I met with each of them individually.

20 Q. And after that meeting, did you ever have a
21 conversation with Mr. Harper about how well those two
22 people fit the expressed needs as they had been expressed
23 to you?

24 A. I did. And the concern was whether or not they were
25 going to be the right fit. Because, you know, in my

1 business, the value we bring to the table is providing
2 somebody with the right fit. And the -- you know, the
3 explanation of what they were looking for here is pretty
4 all encompassing, and it would be very difficult to find
5 somebody with all of these skills.

6 But the response was this contract is so big, that
7 these -- you know, these two people are a good fit for
8 certain parts of what they were going to need for this
9 contract.

10 Q. Now, was there an agreement that you ultimately
11 signed with a representative of DKH?

12 A. Yes.

13 Q. Let me ask you now to look at what has been marked
14 for identification as Government Exhibit 280.02. Do you
15 recognize that document?

16 A. I do.

17 Q. What is it?

18 A. This is the agreement that -- the documentation of
19 the agreement that we had for how we were going to
20 commence our business relationship.

21 Q. Is that your signature on the last page of the
22 agreement?

23 A. Yes.

24 MR. KIRSCH: Your Honor, I move to admit Government
25 Exhibit 280.02, and publish it.

1 THE COURT: Any objection?

2 MR. BANKS: No objection.

3 MR. WALKER: Objection on relevance, Your Honor.

4 THE COURT: Overruled. 280.02 will be admitted.

5 (Exhibit No. 280.02 is admitted.)

6 MR. KIRSCH: May we publish it, Your Honor?

7 THE COURT: You may.

8 MR. KIRSCH: Thank you.

9 Can you expand the first paragraph?

10 Q. (BY MR. KIRSCH) Are you able to see that on your
11 screen now, Mr. Green?

12 A. Yes.

13 Q. The date that is referenced there, does that comport
14 with your memory about when this agreement was entered?

15 A. When the agreement was entered?

16 Q. Tell me what that date means. Let me ask it that
17 way.

18 A. That is the date the contract was written up.

19 Q. Okay. Were the people actually working by that time,
20 or did that happen a little bit later? Do you recall?

21 A. I believe they were working a little bit later.

22 MR. KIRSCH: All right. And then if we can display
23 page 5 of that agreement, please. Just expand the lower
24 part of the page.

25 Q. (BY MR. KIRSCH) The signature on the left,

1 Mr. Green, is that the signature you identified as your
2 own?

3 A. Yes.

4 Q. And then did you see this document get signed by the
5 other party?

6 A. I did.

7 Q. Was it -- who signed it?

8 A. Mr. Harper.

9 Q. Can I now direct your attention to what is marked for
10 identification as Exhibit 280.03. Do you have that
11 exhibit in front of you, 280.03?

12 A. I do.

13 Q. Do you recognize that exhibit?

14 A. I do.

15 Q. What is it?

16 A. This is the -- this is called a purchase order. And
17 it is a document that describes in a more specific way the
18 details of what's going -- what we were agreeing on.

19 Q. Was this the purchase order between Organic People
20 and DKH?

21 A. Yes.

22 MR. KIRSCH: I move to admit 280.03.

23 MR. BANKS: No objection, Your Honor.

24 THE COURT: Exhibit 280.03 will be admitted.

25 (Exhibit No. 280.03 is admitted.)

1 MR. KIRSCH: May we publish that please, Your
2 Honor?

3 THE COURT: Yes.

4 MR. KIRSCH: Then, Special Agent Smith, can you
5 please expand the text of that document down to the
6 signatures.

7 Q. (BY MR. KIRSCH) Can you see that document on your
8 screen, Mr. Green?

9 A. Yes.

10 Q. That shows a start date of July 21, 2003. Does that
11 seem about right to you?

12 A. Yes.

13 Q. Okay. And then the personnel, can you explain what
14 those entries mean there under the heading "Personnel"?

15 A. Those were the names of the people that I hired on as
16 employees to provide services to DKH with.

17 Q. And the "To Bill," is that the amount that you were
18 going to pay those employees, or is that what you were
19 going to charge DKH?

20 A. That was the amount I was going to bill DKH per hour.

21 Q. So is it fair to me to say that the employees were
22 going to be paid something less than that?

23 A. Yes.

24 Q. Did you take any other steps to try to assure
25 yourself, besides the meeting that you have described,

1 that DKH would be able to satisfy its obligations to you?

2 A. I did, yes.

3 Q. What did you do?

4 A. I had Mr. Harper sign a personal guarantee.

5 Q. Is that something that you typically did?

6 A. No.

7 Q. All right. Was that your idea?

8 A. Yes.

9 Q. How is it that once the agreement is in place and the
10 people -- your employees are working there; Thomas
11 Williams and Kendra Haughton are working there, how is it
12 that you keep track of what work is being done and what
13 you need to bill DKH?

14 A. You know, it is standard in my business, in my
15 industry that they fill out weekly time sheets, and they
16 send them in to us.

17 Q. All right. And who puts the information into those
18 time sheets?

19 A. The employees.

20 Q. And is there any verification of those time sheets
21 made by anyone else before they come to you?

22 A. You know, with different clients, sometimes the
23 managers will sign off on them.

24 Q. All right. Do you recall if that happened with DKH?

25 A. I don't.

1 Q. Okay. How is it that your company used the time
2 sheets once they were received?

3 A. We would use those to pay the employees, as well as
4 to invoice DKH.

5 Q. Okay. Can I ask you to look now at what is marked
6 for identification as Government Exhibit 282.00.

7 A. Okay.

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

9 A. Yes.

10 Q. And can you explain what those documents are?

11 A. This is the personal guarantee that I asked
12 Mr. Harper to sign.

13 Q. I am sorry, I think I intended to have you look at
14 Exhibit 282.00.

15 A. Sorry.

16 Q. That's all right.

17 A. Okay.

18 Q. Do you have that in front of you now?

19 A. You bet.

20 Q. What is that exhibit, if you know?

21 A. These are the monthly invoices that we would send
22 DKH.

23 Q. Okay. And are those all of the invoices that were
24 sent from your company to DKH, as far as you know?

25 A. Yes.

1 Q. And do they accurately reflect the amounts of money
2 that your company was owed by DKH for the work performed
3 by those two employees?

4 A. Yes.

5 MR. KIRSCH: Your Honor, I would ask the Court to
6 find that Government Exhibit 282.00 is admissible.

7 THE COURT: Any objection?

8 MR. BANKS: No objection, Your Honor.

9 THE COURT: 282.00 is found admissible.

10 (Exhibit No. 282.00 is found admissible.)

11 MR. KIRSCH: Thank you, Your Honor.

12 Q. (BY MR. KIRSCH) Mr. Green, let me ask you about
13 payments from DKH on those invoices. Did you get any?

14 A. No.

15 Q. Did you take any steps to try to find out why you
16 weren't getting payments?

17 A. Yes.

18 Q. What did you do?

19 A. I contacted DKH to try to, you know, find out why.
20 You know, to try to see when we were going to get paid.

21 Q. Who did you try to contact there?

22 A. Originally, Mr. Stewart, who then told me I needed to
23 contact Mr. Harper.

24 Q. All right. Did you talk to Mr. Harper?

25 A. I did.

1 Q. And did you explain to him why you were calling?

2 A. Absolutely.

3 Q. What did he say?

4 A. These conversations -- there were multiple of these
5 conversations.

6 Q. Okay.

7 A. And one of the conversations, the response was that
8 the government is very slow in paying. And, you know,
9 we've just got to try to be patient. They are doing the
10 best they can. In another conversation, he told me to
11 contact their bookkeeper.

12 Q. Did he give you a name for that person?

13 A. He did.

14 Q. Do you remember that name?

15 A. Off the top of my head, I believe it was -- I
16 remember the first name, Yolanda.

17 Q. Okay. Did you attempt to contact Yolanda?

18 A. I did.

19 Q. Did you get any response?

20 A. Never.

21 Q. When is it you started having these conversations
22 with Mr. Harper?

23 A. So we billed on a calendar month. We billed the
24 first day of the previous month for the calendar month.
25 You know, typically, you know, we get paid within 30 days

1 after that. So it was from the -- I would say it was 30
2 days -- in the time frame of about 30 days after the first
3 invoice.

4 Q. All right. Were Mr. Williams and Ms. Haughton, were
5 they still working there when you first started having
6 these conversations with Mr. Harper?

7 A. Yes.

8 Q. And the responses that he gave you about the slow
9 payments from the government, did those have any effect on
10 your decision to keep those employees there?

11 A. Absolutely, yes.

12 Q. What effect did they have?

13 A. You know, you have to think back to the time period,
14 and, you know, the fact that this was a new department,
15 you know, that came into play; the Department of Homeland
16 Security. And, you know, we knew they had a lot of money
17 to spend, and we knew they were spending it with DKH, you
18 know. And DKH's response was, hey, it's coming. It's
19 just a matter of -- you know, we are not in control of how
20 quickly we are going to get paid.

21 So that gave me a little bit more comfort, as a
22 business owner, that this was a risk probably worth
23 continuing to take.

24 Q. Okay. At some point did you make the decision that
25 that risk was no longer worth taking?

1 A. Yes.

2 Q. Did you notify the employees about that?

3 A. Yes.

4 Q. Did you -- do you recall notifying Ms. Haughton about
5 that?

6 A. Yes.

7 Q. How did you do that?

8 A. I called her on her cell phone.

9 Q. What did you tell her?

10 A. Now, keep in mind, in my industry, or just as a
11 general moral compass, when somebody is losing their job,
12 you know, I try to make it -- I try to make it as
13 comfortable as possible for them, and try to give them the
14 reason why, because I feel like I owe that to them as
15 their employer.

16 And when I called Ms. Haughton, I was quite
17 shocked, because I let her know that, you know, we had
18 struggled to get paid from DKH, and as a result, we were
19 going to have to let her go. And, you know, typically I
20 am expecting to have a lengthy conversation after that,
21 because, you know, these people are literally without a
22 job that day. And her response was, "Oh." And then
23 click. And, you know, that is when I just -- it just
24 didn't feel right.

25 Q. All right. Now, did you notify Mr. Harper that you

1 were going to be terminating the relationship, as well?

2 A. I did.

3 Q. And did you get a response from him by e-mail after
4 you sent that notification?

5 A. I did.

6 Q. Can I ask you to look at what is marked for
7 identification as Government Exhibit 286.02.

8 A. -02?

9 Q. Yes.

10 A. Okay.

11 Q. Do you recognize that exhibit?

12 A. Yes.

13 Q. What is it, please?

14 A. This is a cancellation acknowledgment, letting him
15 know that we were going to have to, you know, to pull the
16 consultants off of the contract.

17 Q. Does this exhibit also contain a response to that
18 acknowledgment that you described?

19 A. Yes.

20 Q. And who did that response come from?

21 A. Mr. Harper.

22 MR. KIRSCH: I move to admit and publish Government
23 Exhibit 286.02.

24 MR. BANKS: Without objection.

25 THE COURT: Exhibit 286.02 will be admitted, and it

1 may be published.

2 (Exhibit No. 286.02 is admitted.)

3 MR. KIRSCH: Thank you, Your Honor.

4 Can we expand the top half of that, please?

5 Q. (BY MR. KIRSCH) Now, Mr. Green, there is a reference
6 here in the second sentence to the "slowness of the
7 government business cycle." How does that reference
8 compare to the previous statements that you had received
9 from Mr. Harper about why payments weren't coming?

10 A. It was just consistent with the explanation for why
11 we weren't getting paid; because of the way the government
12 is slow in paying.

13 Q. Do you recall the total amount of, or the approximate
14 total amount of money that DKH owed Organic People by this
15 time?

16 A. Off the top of my head, I want to say it was in the
17 70-, \$75,000 range.

18 Q. Did you get payment -- any payments within the next
19 30 to 60 days after that e-mail on that debt?

20 A. No.

21 Q. Did you ever get any payments from DKH on that debt?

22 A. No.

23 MR. KIRSCH: Thank you, Mr. Green. Those are my
24 questions, Your Honor.

25 THE COURT: All right.

CROSS-EXAMINATION

1

2 **BY MR. BANKS:**

3 Q. Mr. Green, how long have you been in the staffing
4 industry?

5 A. Since 1987.

6 Q. 1987?

7 A. I am sorry '97.

8 Q. 1997. Okay. One quick question. Do you belong to
9 an organization called Staffing Industry Analysts?

10 A. I don't today, but I have in the past.

11 Q. And when was the last time you belonged to that
12 organization?

13 A. I believe 2007.

14 Q. Thank you. Now, you have been in business a long
15 time. That is what I am assuming; correct?

16 A. Yes.

17 Q. Now, is it uncommon for a business to have a mailing
18 address and a physical address?

19 A. Is it uncommon for -- no.

20 Q. Okay. Do you have a mailing address, or you just use
21 the same physical address as your mailing address?

22 A. I have a physical address.

23 Q. Okay.

24 A. And I have a P.O. Box.

25 Q. A P.O. Box?

1 A. But it is a mailing address.

2 Q. Thank you very much. Now, you testified about
3 calling Ms. Haughton with regards to terminating her as
4 far as her employment is concerned. And you expressed
5 your view with regard to her reaction. Surely -- are you
6 telling this Court that you -- that the way that you view
7 somebody's reaction is necessarily accurate to what
8 they're feeling?

9 A. I'm trying to make sure I understand the question.

10 Q. In other words, sir, you cannot speak to the mental
11 state of another person based on some reaction they gave
12 to you; is that correct?

13 A. Let me just repeat the question. The question is, I
14 cannot speak to the mental state of a person based on
15 their reaction they gave me?

16 Q. Let me make it a little more specific for you. You
17 said Ms. Haughton's reaction to you was something so
18 unexpected. Do you know Ms. Haughton personally? Have
19 you spent time with her?

20 A. I have spoken with Ms. Haughton on multiple
21 occasions, and I have had lunch with her.

22 Q. But do you know her personally?

23 A. I know her as personally as I can get, eating lunch
24 with --

25 Q. I am sorry, sir, I didn't mean to interrupt you.

1 A. I'm finished.

2 Q. Okay. Do you know her well enough to know how she
3 responds to different sorts of events in her life?

4 A. No.

5 Q. Thank you. Now, you mentioned that you had
6 Mr. Harper sign a personal guarantee; is that correct?

7 A. Yes.

8 Q. And why did you do that?

9 A. Because I was concerned about the viability of
10 getting paid.

11 Q. So you assumed the risk; correct, to move forward in
12 a business relationship with Mr. Harper; is that correct?

13 A. With a personal guarantee, yes.

14 Q. With a personal guarantee. So you already knew, as a
15 businessman, an owner of a company, that business is a
16 risky proposition for anyone that is actually in business;
17 is that correct?

18 A. Absolutely.

19 Q. Okay. Now, have you ever known of companies -- let
20 me ask you this. You were also there during the dot com
21 boom. Were you doing business in the staffing industry at
22 that time?

23 A. Yes.

24 Q. And are you aware that during the dot com boom, there
25 were a lot of companies that went out of business during

1 the dot com boom, and are you aware of that, sir?

2 A. Yes.

3 Q. Are you also aware that a lot of companies lost money
4 during that particular time?

5 A. Yes.

6 Q. Were you one of those companies?

7 A. No.

8 Q. Okay. Do you have friends that you know in the
9 staffing industry that lost money?

10 A. Yes.

11 Q. Now, you also mentioned that when you contacted
12 Mr. Harper, that you could reach him, and you did have a
13 conversation with him; is that correct?

14 A. Yes.

15 Q. Do you have any e-mail communication, outside of what
16 you remember in 2003, 8 years ago, that you recollect on
17 the exact thing Mr. Harper told you? Is there any other
18 evidence that you can provide, via e-mail or a fax or
19 something along those lines, with a particular
20 representation from Mr. Harper with regards to what -- as
21 far as what you assert as government payment cycles?
22 There is the one e-mail, as far as the government business
23 cycle is concerned?

24 A. Yes.

25 THE COURT: Mr. Banks, you have gone quite a bit.

1 Can you just narrow it down to a simple question?

2 MR. BANKS: Will do, Your Honor.

3 Q. (BY MR. BANKS) Are there any more communications,
4 e-mail communications, that you have where Mr. Harper
5 mentioned that there was a contract in place with any
6 police agency?

7 A. Not e-mail communications, no.

8 Q. And it is your testimony, after 8 years, you remember
9 clearly that Mr. Harper told you specifically he had
10 contracts in place with these agencies?

11 A. It is how I made my decision to go forward, yes.

12 Q. Okay. Thank you, sir. Did you have opportunity to
13 do an interview with Staffing Industry Analysts concerning
14 some alleged fraud that you had received at the hands of
15 Mr. Harper?

16 A. Yes.

17 Q. Now, did you personally run a D & B report on
18 Mr. Harper -- on DKH Enterprises?

19 A. I did not personally, no.

20 Q. How does your company -- because you just said
21 business is a risky proposition, how does your company
22 manage the risk?

23 A. That is a pretty wide open question. In respect to
24 what?

25 Q. Do you have a credit policy? Before you extend

1 credit, do you have a credit policy?

2 A. My company, as a general rule, primarily has done
3 business with Fortune 1000 clients. So the DKH
4 opportunity was out of the norm for us. It was
5 extraordinary.

6 Q. Okay. So you, yourself, were entering into a new
7 frontier, if you will, as far as the type of business you
8 were going to be doing; correct?

9 A. I wouldn't -- no, I wouldn't say that is correct.
10 Not the type of business, no.

11 Q. Well, you just mentioned -- I am talking about the
12 size of business; is that correct? You said you normally
13 do business with Fortune 1000 clients.

14 A. The size of business would be correct.

15 Q. So you really don't have experience dealing with
16 small businesses, or you really don't understand how they
17 actually function and the risk associated with that; is
18 that correct?

19 A. I would disagree. I think I have a lot of experience
20 there.

21 Q. But you just said you only deal with Fortune 1000
22 companies.

23 A. I owned multiple businesses, and I have other
24 businesses that do a lot of business with small entities.
25 So if your question is as it relates to Organic People --

1 Q. Yes.

2 A. -- then in the DKH situation, it was extraordinary.

3 Q. Thank you. On -- can you open up Exhibit 280.02,
4 please.

5 A. Okay.

6 Q. And can you go to Section 18.

7 A. Okay.

8 Q. Can you read Section 18 for the Court, please?

9 A. 18, "Complete agreement and amendment. This
10 amendment, including specifically the personal guarantee
11 of the end hereof, and any written purchase orders
12 executed hereunder, contain the entire agreement between
13 the parties hereto with respect to the matters covered
14 herein.

15 Client acknowledges that it is entering into this
16 agreement solely on the basis of the agreement and
17 representations contained herein. This agreement shall
18 not be modified in any way except in writing, signed by
19 both parties, and stating expressly that it constitutes a
20 modification of this agreement."

21 Q. Okay. I am going to read -- I will re-read a piece
22 there. "Client acknowledges that it is entering into this
23 agreement solely on the basis of the agreement and
24 representations contained herein." So is that correct?
25 As far as you are concerned, was that the final -- this

1 agreement was the final document, as far as the
2 relationship between you and DKH, as far as the final
3 agreement, and that all of the language contained herein
4 is what governed the entire relationship?

5 A. The final --

6 Q. Let me re-ask the question. I am sorry to confuse
7 you, Mr. Green.

8 The representations that you have -- is this final
9 contract the final representation, and no other
10 representations earlier had anything to do with you
11 engaging in business with Mr. Harper?

12 A. No. I'm not sure I understand the question. No
13 other representations earlier?

14 Q. Yeah. That's the way I am reading this language. Is
15 that the way you read this language; that the total
16 agreement is contained herein, and no other
17 representations or assumptions that were made earlier are
18 relevant except for the terms of this agreement. Is that
19 how you view this language in your contract?

20 A. I view this language as this is an explanation of how
21 we've agreed to do business together.

22 Q. I am going to read this again, then I will ask you
23 another question.

24 MR. KIRSCH: Your Honor, I object to the repeated
25 reading of the exhibit. It is already in evidence.

1 THE COURT: Are you reading the same thing you
2 already read?

3 MR. BANKS: Yes.

4 THE COURT: You have already read it. It says
5 "Client acknowledges." And client is DKH, LLC.

6 MR. BANKS: That's correct, Your Honor.

7 THE COURT: All right.

8 MR. BANKS: It says "this agreement cannot be
9 modified -- "

10 MR. KIRSCH: Your Honor, this is my objection.

11 MR. BANKS: I will move on, Your Honor.

12 Q. (BY MR. BANKS) Have you lost money from other
13 clients in the past, Mr. Green?

14 A. Not with Organic People.

15 Q. But in business, you have lost money?

16 A. Yes.

17 Q. And we understand -- how many businesses did you say
18 you owned?

19 A. Today, three.

20 Q. Have you ever owned a business and went out of
21 business?

22 MR. KIRSCH: Objection, relevance, Your Honor.

23 THE COURT: Sustained.

24 MR. BANKS: Your Honor, Mr. Green brought forward
25 that he owns multiple businesses, and I am trying to

1 establish the fact that if he's been in business and lost
2 money and lost businesses --

3 THE COURT: Okay. He already responded that in
4 this business he has not lost money.

5 MR. BANKS: I cannot ask him about his other
6 businesses?

7 THE COURT: It is getting way beyond what is at
8 issue in this case.

9 MR. BANKS: Okay. Thank you, Your Honor. I have
10 no further questions.

11 MR. WALKER: Your Honor, ability to resume cross?

12 THE COURT: You may resume cross.

13 **CROSS-EXAMINATION**

14 **BY MR. WALKER:**

15 Q. Mr. Green, you made the statement that, quote, you
16 were told or you understood that this contract was so big.
17 Do you recall making that statement?

18 A. Yeah.

19 Q. And is that a statement that you are repeating that
20 was made from -- by Mr. Harper or Mr. Stewart?

21 A. Mr. Harper, specifically.

22 Q. Can you tell us some of the other details that he
23 told you about a contract?

24 A. You know, they had a big white board in the office,
25 and as they showed kind of the end result of what the

1 software did, and how -- if there was an incident and
2 certain geography, it would alert the dispatchers, if you
3 will, to the cars that were -- the cars or vehicles that
4 were closest that had the greatest probability of being
5 able to get to that incident the quickest.

6 And then -- and then, you know, pointed out the
7 fact that the Department of Homeland Security loves this,
8 because, you know -- you know, they are trying to prepare
9 for another terrorist incident. And, as a result, they
10 have got this contract. And, as you can see in the
11 e-mail, they are going to be needing quite a few
12 resources. And those were just the first two to get the
13 contract started.

14 Q. So at the beginning of your explanation there, you
15 said that on the board was a diagram. And your
16 description is really talking about the diagram and the
17 associated program was big; correct?

18 A. Correct.

19 Q. Not that the contract was big?

20 A. So, there are two different things we are talking
21 about here. The opportunity for this was big. But the
22 contract was large enough to require 20-plus resources.

23 Q. If you could clarify for me what you mean when you
24 say the contract is big enough to need additional
25 resources?

1 A. The contract that DKH had been awarded by the
2 Department of Homeland Security that they now needed my
3 help to staff.

4 Q. And your understanding of the bigness of the
5 contract -- did anyone at DKH tell you the details of
6 monetary values, terms of the contract, how long they
7 would be in contract with DKH; I am sorry, with DHS?

8 A. No.

9 Q. So would it be fair to say that you interpreted that
10 the contract was big, given the fact what you saw on the
11 board about the application?

12 A. I would say given the fact of what I saw on the
13 board, and given the fact that you can read in the exhibit
14 the e-mail acknowledging they were going to need a large
15 number of resources.

16 Q. And, also, when you made the statement that the
17 government was slow in paying, is that a statement that
18 Mr. Harper sent to you in e-mail?

19 A. I don't remember the specific e-mail. I think it
20 said the payments -- in the e-mail, I think it said the
21 government's pay cycle was slow. I just know what he said
22 to me was that the government is slow at paying at the
23 beginning of these contracts.

24 Q. But yet in another e-mail that we saw, the wording
25 was "slowness of government business cycle." Do you

1 recall seeing that in the e-mail?

2 A. Yes.

3 Q. And can you tell me in your interpretation, slowness
4 of government business cycle, is that the same as
5 government is slow to pay?

6 A. When the content or the subject of the e-mail is
7 about getting paid, and the response is, I'm not getting
8 paid because of the slowness of the government cycle,
9 yeah, sure. For me it was easy to connect the dots.

10 Q. So in your mind it was easy to connect the dots?

11 A. Yes.

12 Q. And being an experienced businessman, you understand
13 and know the difference between a business cycle and a
14 payment cycle correct?

15 A. I think it just depends how -- I know how I would
16 define it.

17 Q. Okay. So we can agree there may be different
18 definitions or interpretations of a business cycle?

19 A. Sure.

20 Q. And Mr. Harper used the term in one e-mail, "the
21 slowness of the government business cycle," correct?

22 A. Correct.

23 Q. And in another e-mail, we see "the government is slow
24 to pay," correct?

25 A. Is that an e-mail that I have in front of me?

1 Q. Well, I am sorry, let me redirect you. You say that
2 Mr. Harper said the government was slow to pay?

3 A. Yes.

4 Q. And in the e-mail we just discussed, you saw the
5 quote is "the slowness of the government business cycle."

6 A. Correct.

7 Q. And there -- those interpretations of the term
8 "business cycle," for some could mean, I am trying to get
9 my product into the hands of the government, and others
10 might think, I am trying to get paid by the government?

11 MR. KIRSCH: Objection, lack of foundation as it
12 pertains to anyone other than the witness' interpretation.

13 THE COURT: Sustained. Asks for a conclusion.

14 Q. (BY MR. WALKER) So, Mr. Green, would you be able to
15 agree that there could be an interpretation by you
16 different from Mr. Harper of business cycle?

17 A. Yes.

18 MR. WALKER: No further questions.

19 THE COURT: Any further cross-examination for the
20 defendants?

21 MR. BANKS: Your Honor, we reserve the right to
22 recall this witness.

23 THE COURT: All right. We discussed how you need
24 to go about doing that.

25 Any further redirect?

1 MR. KIRSCH: Your Honor, I expect everyone will be
2 pleased to hear, no.

3 THE COURT: Yes, I think they will. Thank you very
4 much, you may step down.

5 All right, ladies and gentlemen, I am going to
6 recess for the day and allow you to get home. We will
7 reconvene -- and I do promise you we will start at 9:00
8 a.m. tomorrow, unless there is some catastrophe. I won't
9 bring you in and make you sit in that room and wait. So
10 if you could be back at 9 o'clock, we will start sharply
11 at 9:00.

12 Please remember my instructions. And you can read
13 it in the jury room, but do not take those home with you.
14 Your notes and the jury instructions are to stay here.
15 But, remember, you are not to talk to anyone. You are not
16 to do any research; not to get on the computer, nothing
17 like that, because everything has to be decided based on
18 what is presented in court. Have a good evening.

19 I would like for the parties to please stay. I
20 have a few -- before I do that, I need to let you know,
21 you will be happy with this, I hope, Friday I am going to
22 need to recess at noon because I have another criminal
23 matter that I need to hear in the afternoon. So you all
24 will be excused at noon on Friday.

25 All right. We will allow the jury to go, parties

1 to remain.

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

4 THE COURT: All right. You may be seated. Just a
5 couple of matters that I need to clarify. I understand
6 that there are still a couple of jury lists that are out.
7 I still need two to be returned from the defendants. You
8 need to return those tomorrow. Remember, you cannot make
9 a copy of that. That information is not to be
10 distributed. So I need those returned.

11 Also, just to make this flow easier -- and it is
12 really not appropriate to have the government have to show
13 the exhibits each time, that is your responsibility. So
14 if you are going to use exhibits, you need to have the
15 exhibits available. You can use the elmo or you can use
16 your computer. And if you need help on how to accomplish
17 that, Ms. Barnes can help you if you come in early
18 tomorrow morning.

19 MR. BANKS: Your Honor, we very much agree with
20 that. Does the elmo exist at this table?

21 THE COURT: You can plug the computer in, but you
22 need to get training on that. Ms. Barnes is already over
23 her time here, so you have to come in early tomorrow
24 morning.

25 MR. BANKS: We have received training on the elmo,

1 and we know how to use it, but we weren't sure if it was
2 actually connected at this table.

3 THE COURT: It is connected on all tables. The
4 same that the government has, the defense has.

5 MR. BANKS: Thank you, Your Honor.

6 THE COURT: It appears to me we are having some
7 documents that are admissible and some that are not. I
8 will need a jury instruction on the summary charts, Rule
9 1006. We don't need this until the end of trial. I think
10 it is necessary to explain why some were only admissible
11 and some are admitted.

12 So the Government should be thinking about proposed
13 instructions so the jury is not confused as to the
14 distinction between the two; what the summary exhibits are
15 all about.

16 All right, anything you all need to bring to my
17 attention?

18 MR. KIRSCH: I wanted to raise one issue, Your
19 Honor. During the opening statements of the defendants,
20 there were references made to -- there were no references,
21 at least that I heard, that were made to the expert
22 Mr. Vilfer, that they have given us notice about. There
23 were, however, references made to two other categories of
24 experts, neither of which we have been provided with any
25 notice about.

1 One was a person who was an expert in -- on
2 entrepreneurial studies, then several references to
3 experts who supposedly would be able to talk about
4 industry practices and similar kinds of things in the
5 staffing industry. We have received no 702 or Rule 16
6 disclosures about any such experts. We will be objecting
7 to any testimony from any such experts in any of those
8 fields, and our objection to the previously noticed expert
9 is already of record.

10 THE COURT: All right. And that will be something
11 that we will deal with if and when it is offered.

12 MR. KIRSCH: I just wanted to be on the record as
13 early as I could on that issue, Your Honor, with respect
14 to the lack of notice.

15 I did want to raise one other thing, if I could,
16 with respect to Mr. Green. I don't know this, and perhaps
17 the defendants can clarify for me, but I am guessing that
18 the reason they would want to recall him is that they
19 believe that they might be able to impeach his testimony
20 based upon an interview that he gave that Mr. Banks
21 referred to in his cross-examination.

22 If, in fact, that is the case, then I would argue
23 that it would be improper to recall him for the purposes
24 of impeachment if that is the soul purpose for which they
25 would recall him. I would ask the Court to rule right now

1 that he can't be recalled for that purpose.

2 THE COURT: All right. Is that the purpose for
3 which you will be recalling him?

4 MR. BANKS: Well, Your Honor, we did establish that
5 he has made statements regarding his particular testimony,
6 and we want to clarify if the same statements he has made
7 in this court are the same statements he made in an
8 interview to Staffing Industry Analysts.

9 THE COURT: That was examination that should have
10 been covered on cross-examination. If you are trying to
11 impeach him using a prior statement, you had to do that
12 when you were cross-examining. That is not appropriate
13 for recalling a witness later in your case.

14 MR. BANKS: But we still have the option to
15 subpoena him as a witness in our case.

16 THE COURT: As long as you are subpoenaing him for
17 putting on testimony that relates not merely for
18 cross-examination -- not merely for impeachment purposes.

19 MR. BANKS: It's not merely for impeachment
20 purposes, Your Honor. Mr. Green said a lot of things, and
21 we want to ask a lot of various questions based on the
22 evidence that we would actually have in our exhibits.

23 THE COURT: All right. But that's essentially what
24 cross-examination is for. You cannot just make a witness
25 come back to trial to question him when you want to

1 question him, unless he is going to be your witness. Now,
2 if you subpoena him -- and I am not sure where Mr. Green
3 comes from, and it was inappropriate for you to have
4 brought him in, there is nothing he is going to add to
5 your case directly, that is something you all need to do
6 on cross-examination.

7 You cannot inconvenience witnesses merely because
8 you want to do it on your own time. If it is appropriate
9 for cross-examination, then you need to do it on
10 cross-examination.

11 MR. BANKS: Very well, Your Honor.

12 THE COURT: All right. Anything further?

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

14 THE COURT: Anything further?

15 MR. BANKS: No, Your Honor.

16 THE COURT: All right. Thank you very much. We
17 will be in recess until tomorrow at 9 o'clock. If you
18 have anything that needs to be done before that, because I
19 am not going to keep this jury waiting, we will bring them
20 back in at 9:00, you need to let me know, so we will be
21 back here at 8:30 to deal with it. So I am assuming there
22 is nothing more we need to discuss at this point, and I
23 can bring the jury back in at 9:00. So you need to be
24 here on time so that the jury can walk in at 9:00, and we
25 will get going with the next witness.

1 Thank you very much. Court will be in recess.

2 (Proceedings commence at 5:03 p.m.)

3

4 **R E P O R T E R ' S C E R T I F I C A T E**

5

6 I, Darlene M. Martinez, Official Certified
7 shorthand Reporter for the United States District Court,
8 District of Colorado, do hereby certify that the foregoing
9 is a true and accurate transcript of the proceedings had
10 as taken stenographically by me at the time and place
11 aforementioned.

12

13

14

15 Dated this 5th day of December, 2011.

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s/Darlene M. Martinez

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RMR, CRR

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