

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 09-cr-00266-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

---

REPORTER'S TRANSCRIPT  
(Jury Trial Day 13)

---

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 8:48 a.m. on the 13th day of October 2011, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

**FOR THE PLAINTIFF:**

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

I N D E X

WITNESSES :

PAGE

**SAMUEL THURMAN**

DIRECT EXAMINATION (Cont'd) BY MR. WALKER	1812
DIRECT EXAMINATION BY MR. BANKS	1840
DIRECT EXAMINATION BY MR. ZIRPOLO	1847
CROSS-EXAMINATION BY MR. KIRSCH	1849
REDIRECT EXAMINATION BY MR. BANKS	1871

**GARY HILLBERRY**

DIRECT EXAMINATION BY MR. BANKS	1879
DIRECT EXAMINATION BY MR. WALKER	1892
CROSS-EXAMINATION BY MR. KIRSCH	1894
REDIRECT EXAMINATION BY MR. BANKS	1897
REDIRECT EXAMINATION BY MR. WALKER	1899

**SPECIAL AGENT JOHN SMITH**

DIRECT EXAMINATION BY MR. BANKS	1904
DIRECT EXAMINATION BY MR. WALKER	1926
DIRECT EXAMINATION BY MR. BARNES	1932
DIRECT EXAMINATION BY MR. ZIRPOLO	1936
CROSS-EXAMINATION BY MS. HAZRA	1940
REDIRECT EXAMINATION BY MR. BANKS	1943

E X H I B I T S

NO.

ADMITTED

.....

No.

REFUSED

.....

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**SEPTEMBER 13, 2011**

(Proceedings commence at 8:48 a.m.)

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

THE COURT: You may be seated.

All right. I understand we do have some issues we need to discuss before we bring in the jury.

MR. WALKER: Your Honor, I wanted to provide first a status for witnesses appearing today. We will be completing the testimony of Sam Thurman. Mr. Gary Hillberry who is retained by IRP Solutions as a subject matter expert is also here. We would be calling Agent John Smith today, as well. And that is the extent of people we have to appear today.

We expect that to take through at least the morning, and potentially later. We have several other people who -- Don Vilfer has agreed to testify. He is available -- today is Thursday -- Friday morning. If we could get permission for him to appear telephonically. He is wrapping up business with another client late into Thursday, and would not be able to get in until Friday afternoon.

So he would be able to appear telephonically at 9 a.m. tomorrow.

THE COURT: All right. What about the other four?

1           MR. WALKER: The other four, we are still awaiting  
2 -- well, we do have a status on Steven Cooper and Bill  
3 Witherspoon. The appropriate counsel for those federal  
4 agencies have received the subpoenas. And they did return  
5 those saying they wanted additional information. In  
6 giving the turn around time, it is likely we would not be  
7 able to get them successfully served until early next  
8 week.

9           And we do have subpoenas for Mr. Vince Rosales and  
10 Mikel Nelson. The person who is coordinating that effort  
11 for us is going to give me an update here momentarily via  
12 e-mail, but I don't have that right now. My anticipation  
13 is that they would be able to also testify tomorrow  
14 morning.

15           THE COURT: That would be who?

16           MR. WALKER: That would be Vince Rosales and Mikel  
17 Nelson. And also potentially Paul Beebe and Richard  
18 Powers, but those are very tentative. I haven't gotten an  
19 update as to the status of those services and when they  
20 would appear.

21           THE COURT: All right. Who are the people you  
22 indicated you have not served?

23           MR. WALKER: Your Honor, the people who are  
24 traveling would be Tiffany Zellenbaba, Lorne Cramer, and  
25 two others. I don't have them handy right now. But one

1 is out of the country, and the other three are on  
2 vacation. We have left messages with them. One has  
3 returned our message saying they would not be able to get  
4 back until Friday. And, as I said, we haven't gotten  
5 messages from the other two.

6 THE COURT: These are people you did not subpoena  
7 and you don't intend to subpoena; is that correct?

8 MR. WALKER: No, Your Honor, we would be  
9 subpoenaing -- certainly Dwayne Fuselier, who has been  
10 subpoenaed.

11 THE COURT: Tell me who you have already  
12 subpoenaed.

13 MR. WALKER: All of the people I just mentioned.

14 THE COURT: Go over them again, because I am  
15 confused.

16 MR. WALKER: Steven W. Cooper.

17 THE COURT: When is Mr. Cooper scheduled to appear?

18 MR. WALKER: He was originally scheduled to appear  
19 tomorrow, but he's one of the gentlemen who works for the  
20 federal government, and the subpoena was returned saying  
21 send it to counsel and add additional information.

22 THE COURT: All right. So when was he supposedly  
23 served?

24 MR. WALKER: He was served last week.

25 THE COURT: If you have returns of service on any

1 of these people --

2 MR. WALKER: I don't have them with me, but I can  
3 have them sent.

4 THE COURT: They need to be docketed. Those  
5 returns of service need to be docketed if you intend to  
6 enforce them. So you did not properly serve Mr. Cooper?

7 MR. WALKER: According to DHS counsel.

8 THE COURT: When was that subpoena served?

9 MR. WALKER: I believe that was served last week.  
10 I don't have the exact date.

11 MR. KIRSCH: Your Honor, I can add a little bit of  
12 information about the two DHS witnesses based on my  
13 conversation with counsel for DHS last night.  
14 Mr. Witherspoon was served, I believe, while he was here.  
15 He was personally served. However, the date on his -- the  
16 appearance date on his original subpoena was November 2nd.  
17 Both counsel accepted or was at least served.

18 Counsel for DHS was served yesterday with copies of  
19 subpoenas for Mr. Cooper and Mr. Witherspoon, and those  
20 subpoenas demanded the appearance of Mr. Witherspoon and  
21 Mr. Cooper to testify today. And those initial requests  
22 did not comply with the Touhy Regulation. Counsel for DHS  
23 informed the defendants' representative of that fact, and  
24 counsel for DHS is attempting to see whether or not those  
25 people can be made available sooner than that.

1           It is my understanding both of them have made  
2 pre-existing arrangements and are not available -- are not  
3 available given those arrangements this week.

4           THE COURT: All right.

5           MR. KIRSCH: And Mr. Cooper -- I am sorry, Your  
6 Honor, Mr. Cooper is the last thing. According to the  
7 information I got from DHS counsel, Mr. Cooper has never  
8 been personally served.

9           THE COURT: All right.

10          MR. WALKER: Your Honor, I would agree with that.  
11 Mr. Cooper has not been personally served. There were  
12 attempts to serve him. We were unsuccessful in doing  
13 that. As Mr. Kirsch indicated, the counsel for DHS was  
14 served. I have not spoken directly with either of them.  
15 But according to our representative, Mr. Witherspoon has  
16 indicated he will not appear. And that's the latest  
17 status I have received on his appearance.

18          THE COURT: And, Mr. Kirsch, you indicated that  
19 they will appear, but they can't appear this week; is that  
20 correct?

21          MR. KIRSCH: Your Honor, I know that counsel for  
22 DHS is attempting to make them available, assuming that  
23 the requirements are -- that the legal -- the defendants  
24 comply with the legal requirements. I certainly didn't  
25 understand that Mr. Witherspoon is going to absolutely

1 refuse to appear. But I think the scheduling -- my  
2 understanding is the scheduling is potentially problematic  
3 for him, and it is even more problematic for Mr. Cooper.

4 THE COURT: So other than Mr. Cooper and  
5 Mr. Witherspoon, who else has been served with a subpoena.

6 MR. WALKER: Your Honor, we have -- Mr. Mikel  
7 Nelson has been served.

8 THE COURT: When was he served?

9 MR. WALKER: I believe he was served yesterday,  
10 Your Honor. And to the best of my understanding, he has  
11 agreed to appear tomorrow morning.

12 THE COURT: All right. Who else?

13 MR. WALKER: Mr. Don Vilfer, the expert witness.

14 THE COURT: He was served with a subpoena?

15 MR. WALKER: Yes, Your Honor. He has been  
16 subpoenaed. And, as I stated earlier, he has agreed to  
17 appear telephonically if that meets the Court's approval.

18 THE COURT: Mr. Kirsch, what is the Government's  
19 position on that since he is an expert?

20 MR. KIRSCH: Your Honor, we have to think about  
21 that some more, but my initial response is we would oppose  
22 him appearing telephonically. We have a confrontation  
23 right just as defendants do.

24 MR. WALKER: If that is the case, the earliest he  
25 could testify would be Monday morning.



1 THE COURT: All right.

2 MR. WALKER: Also, Mr. Vince Rosales was served  
3 yesterday, and to the best of my knowledge, he would be  
4 available tomorrow. But, as I said, I am awaiting  
5 definite status on that.

6 THE COURT: All right. Who else?

7 MR. WALKER: Your Honor, also Mr. Dwayne Fuselier.  
8 From what I have been told, he is away. Apparently there  
9 was no one at his home all week, and it appears they may  
10 be on vacation. So he has not been served. But we will  
11 certainly look to get his testimony.

12 THE COURT: When did you attempt -- when did you  
13 begin to make attempts to serve him?

14 MR. WALKER: Attempts began late last week, Your  
15 Honor, and have been ongoing every day since, I believe,  
16 Thursday of last week.

17 THE COURT: Mr. Fuselier is listed as somebody --  
18 as a CILC subject matter expertise. What is his role?

19 MR. WALKER: Your Honor, he was one of the former,  
20 I believe, federal agents retained by IRP Solutions to  
21 provide subject matter expertise.

22 THE COURT: Similar to Mr. Epke?

23 MR. WALKER: Yes, Your Honor.

24 THE COURT: And Mr. Hillberry?

25 MR. WALKER: Mr. Hillberry is here.

1 THE COURT: And you subpoenaed him?

2 MR. WALKER: Yes, Your Honor. He was subpoenaed.

3 THE COURT: What will Mr. Fuselier add that  
4 Mr. Epke and Hillberry will not?

5 MR. BANKS: Only thing he is going to testify to is  
6 the type of the independent contractor agreement that was  
7 actually signed, in the same capacity that Mr. Epke  
8 attested to. Mr. Hillberry has different testimony as  
9 relates to that regarding information he provided to the  
10 Government through requests for materials related to this  
11 case. So we want to question Mr. Hillberry about those  
12 types of things.

13 But I would say that Mr. Fuselier is not going to  
14 provide much more than Mr. Epke.

15 THE COURT: All right. So, therefore, his  
16 testimony would be cumulative of what Mr. Epke would  
17 provide -- has provided, rather.

18 MR. BANKS: That's correct. But we would like, if  
19 he does not -- if Mr. Fuselier did not come to testify, we  
20 would like the documents associated, as far as independent  
21 contracts, to be entered into evidence for the jury.

22 THE COURT: You can't do that unless you can lay  
23 foundation for them.

24 MR. BANKS: Then we need him to testify.

25 THE COURT: Well, then you should have had him

1 served.

2 MR. BANKS: That is where we are.

3 THE COURT: Who else?

4 MR. WALKER: That's all.

5 THE COURT: Let's go through the people you haven't  
6 subpoenaed that you indicate you need to have testify.

7 Let's begin with Tiffany Zellenbaba.

8 MR. WALKER: Tiffany Zellenbaba is -- she left a  
9 message on our answering machine. She is in Rome.

10 THE COURT: What is the -- what is the testimony  
11 that she would be providing?

12 MR. BANKS: Your Honor, Tiffany Zellenbaba worked  
13 for Robert Half. And there is significant testimony with  
14 regards to the way the contract was actually set up,  
15 actually involving, I believe, four different staffing  
16 entities; one outside of IRP and DKH or Leading Team --  
17 Leading Team and DKH at the time. So as far as --  
18 additionally, Ms. Zellenbaba --

19 THE COURT: What is the relevance of her testimony  
20 to the issues in this case?

21 MR. BANKS: First off, they're internal  
22 communications that Ms. Zellenbaba had internally  
23 regarding the engagement of --

24 THE COURT: Internal communications with whom?

25 MR. BANKS: Well, her internal communications with

1 her boss that she is going to be able to testify to that  
2 is actually in discovery. We have e-mails regarding that.  
3 We would like to question her on those e-mail  
4 communications.

5 THE COURT: And what is the relevance of those to  
6 the issues in this case?

7 MR. BANKS: It is directly related to her staffing  
8 people at Leading Team and DKH, I believe.

9 THE COURT: And what I'm trying to understand is --  
10 what I'm getting from you is that she has not been served,  
11 she is in Rome. We don't know when she is going to be  
12 back. I assume you are going to be asking for some sort  
13 of continuance. In order to get that, you have to show me  
14 who the witnesses are, what their testimony will be, how  
15 that testimony is competent and relevant, and that you  
16 used due diligence to obtain their attendance.

17 So what I am trying to determine is what is the  
18 relevance of her testimony? You are giving me  
19 generalities. I need to know specifically how she will  
20 add to your defense.

21 MR. BANKS: Your Honor, I guess my hesitation is, I  
22 guess, because the Government sits here, and he gets some  
23 sort of notice --

24 THE COURT: Well, you haven't asked for a  
25 continuance. If you are going to have to ask for a

1 continuance, you are going to have to discuss these  
2 things. If you don't want to ask a for a continuance at  
3 this point, fine, we can move on.

4 MR. BANKS: We will go ahead and discuss it.  
5 Ms. Zellenbaba had direct communications about whether or  
6 not -- with her supervisors and her managers on whether --  
7 how and why she should engage with IRP. She was also  
8 admonished by -- to some extent, at least put on notice by  
9 the credit department that this was a risky business  
10 proposition, and her motivations to move and to continue  
11 engaging with Leading Team is actually annotated in those  
12 e-mail communications.

13 THE COURT: And didn't we have someone from Robert  
14 Half's testify?

15 MR. BANKS: I don't think the Government called  
16 anybody from Robert Half.

17 MR. KIRSCH: We have not had anybody from Robert  
18 Half, and we don't have those e-mails in evidence, Your  
19 Honor, in large part because they would all be hearsay.

20 MR. BANKS: Your Honor, those e-mails were sent to  
21 the Government in the form of -- and Bates numbers were  
22 actually mentioned in the form of our proffer. As part of  
23 the representations made, we'll pull those Bates numbers  
24 and provide them to the Government.

25 MR. KIRSCH: Your Honor, I am not suggesting we

1 don't have them. What I am suggesting is that they would  
2 be inadmissible in the course of this trial because they  
3 constitute hearsay. We do have them.

4 THE COURT: All right. So when did you begin your  
5 efforts to subpoena Ms. Zellenbaba?

6 MR. WALKER: Your Honor, I am not certain of that.  
7 I believe that was last week. I am not certain of a date.

8 THE COURT: Who else?

9 MR. BANKS: Your Honor, I would like to just  
10 comment on Mr. Kirsch saying these e-mails are hearsay.  
11 These e-mails are actually Tiffany Zellenbaba's e-mail.

12 THE COURT: They are still out-of-court statements,  
13 and if you're submitting them to prove the truth of the  
14 matter asserted, they would be hearsay, unless there is  
15 some exception to them.

16 MR. BANKS: Right.

17 THE COURT: That is all Mr. Kirsch is saying, is he  
18 is going to object to them on the basis of hearsay. So  
19 unless you have an exception to that, they may be excluded  
20 as hearsay.

21 MR. BANKS: Okay.

22 THE COURT: So, you mentioned that you did serve  
23 Mr. Rosales, who had not been subpoenaed. He is with Idea  
24 Integrations. He is going to appear tomorrow?

25 MR. WALKER: Yes, Your Honor. The date and time

1 for all of these subpoenas is 9:00 a.m. tomorrow.

2 THE COURT: And, Mr. Beltran, what happened with  
3 him?

4 MR. WALKER: Your Honor, I'm not certain the status  
5 with Mr. Beltran. Let me check my file. Your Honor, I  
6 don't have the status of Mr. Beltran. But, to the best of  
7 my understanding, he has been served, and I'll request  
8 definitely a status on his subpoena.

9 THE COURT: Yesterday you told me he was.

10 MR. WALKER: I believe he has been. I need to  
11 check.

12 THE COURT: Now, you also had -- you said  
13 Witherspoon you had served. What about Krishnan,  
14 Francesconi and Hickes?

15 MR. WALKER: Your Honor, those individuals we are  
16 not going to call.

17 THE COURT: What about Mr. Pisciotta,  
18 P-I-S-C-I-O-T-T-A?

19 MR. WALKER: Your Honor, there was an attempt to  
20 serve him, and that subpoena was returned without service.

21 THE COURT: When was the attempt made?

22 MR. WALKER: That was Friday before last, Your  
23 Honor, or Thursday before last, Your Honor.

24 THE COURT: Thursday before last, meaning last  
25 Thursday the 6th?

1           MR. WALKER: I believe so. I need to find a file  
2 that has that date on it. But it would have been the end  
3 of that week.

4           THE COURT: MaryAnn McLaughlin. You said she had  
5 not been subpoenaed. What is the status of her?

6           MR. WALKER: That's correct, Your Honor. Your  
7 Honor, we are still attempting to serve her.

8           THE COURT: When was the first attempt made with  
9 Ms. McLaughlin?

10          MR. WALKER: That was made -- that was also the  
11 week before last.

12          THE COURT: Meaning?

13          MR. WALKER: On the --

14          THE COURT: October 6th or 7th?

15          MR. WALKER: It would have been the 6th.

16          THE COURT: All right. And you don't know the  
17 status of that?

18          MR. WALKER: The last status I have is she has not  
19 been served. She is not at the address we have for her.

20          THE COURT: Mr. Lam Ha?

21          MR. WALKER: Mr. Lam Ha just returned from a trip.  
22 He has been served, but we have determined his testimony  
23 would be cumulative.

24          THE COURT: You are not going to call him?

25          MR. WALKER: That's correct, Your Honor.



1 THE COURT: Mr. Nelson?

2 MR. WALKER: Mikel Nelson, he has also been served,  
3 but his testimony would also be cumulative. We will not  
4 call him.

5 THE COURT: Okay.

6 MR. WALKER: Let me double check that one, Your  
7 Honor. Let me double check that status.

8 I am sorry, Mikel Nelson has been served for  
9 appearance tomorrow morning.

10 THE COURT: All right. Ms. Harris?

11 MR. WALKER: Your Honor, we will not be calling  
12 Ms. Harris.

13 THE COURT: You said Mr. Vilfer can appear on  
14 Monday or by phone tomorrow?

15 MR. WALKER: Yes, Your Honor.

16 THE COURT: You said Mr. Rosales was served, and he  
17 will be here tomorrow.

18 MR. WALKER: Yes, Your Honor. Your Honor, we are  
19 double checking that. He was served for an appearance for  
20 tomorrow morning, and we are going to get a status on his  
21 availability.

22 MR. BANKS: Your Honor, I did notify the people, as  
23 far as the service -- return of the service on those  
24 subpoenas, and all of them will be docketed probably later  
25 on this morning.

1 THE COURT: All right. Mr. Belrose of the New York  
2 PD and Mr. Gianelli of New York PD.

3 MR. WALKER: Your Honor, we received a call from  
4 counsel at the NYPD, who had conversed with Mr. Gianelli.  
5 And in that conversation, he related that he does not have  
6 good recollection of the matters. We will be calling him  
7 during the lunch time break today to personally interview  
8 him.

9 THE COURT: Mr. Gianelli?

10 MR. WALKER: Mr. Gianelli.

11 THE COURT: Has he been subpoenaed?

12 MR. WALKER: Yes, Your Honor, he has been.

13 THE COURT: So you don't know if you are going to  
14 call him yet?

15 MR. WALKER: That's correct.

16 THE COURT: What about Mr. Belrose?

17 MR. WALKER: Mr. Belrose, Your Honor, he has not  
18 been served. And we will not be calling Mr. Belrose.

19 THE COURT: All right. Ms. Broerman?

20 MR. WALKER: Your Honor, Ms. Broerman has not yet  
21 been served.

22 THE COURT: What is the relevance of her testimony  
23 from Senator Allard's office -- former Senator Allard's  
24 office?

25 MR. WALKER: Your Honor, Senator Allard was

1 instrumental in us contacting different federal agencies  
2 about the CILC application, and also he assisted us in  
3 making contacts in Washington, D.C. That would be the  
4 extent of the involvement there.

5 THE COURT: All right. So what does Ms. Broerman  
6 know about that?

7 MR. WALKER: Your Honor, I believe that --

8 MR. BANKS: She also was, I believe, Your Honor --  
9 she interacted with the Colorado Bureau of Investigations  
10 at the time that we were involved with CBI regarding the  
11 software.

12 THE COURT: So what does she add that the other CBI  
13 officers couldn't?

14 MR. BANKS: I don't think she adds anything extra,  
15 Your Honor.

16 THE COURT: So she would be cumulative?

17 MR. BANKS: Honestly, Your Honor, we were using  
18 that witness, as far as just overall company legitimacy.  
19 I don't think she will be necessarily relevant.

20 THE COURT: All right. She has not been  
21 subpoenaed?

22 MR. WALKER: That's correct.

23 THE COURT: Have you spoken to her at all?

24 MR. WALKER: No, Your Honor. She has apparently  
25 moved on from her job, and we haven't been able to find

1 her.

2 THE COURT: Okay. Mr. Perry?

3 MR. WALKER: No, Your Honor, he has not been served  
4 at this time.

5 THE COURT: What is his role or testimony to be?

6 MR. BANKS: Your Honor, he was one of the companies  
7 that we engaged in, obviously, and determined that based  
8 on creditworthiness and communication with his business  
9 partners, that we were not creditworthy to move forward  
10 with. In addition, he could provide testimony that no  
11 mention of a contract in interactions with myself were  
12 ever mentioned to him with regards to DHS and NYPD.

13 THE COURT: But he did not -- as I understand,  
14 then, he is going to be similar to the testimony you have  
15 already submitted by one or two witnesses that they did  
16 not enter into any sort of contract arrangements with IRP  
17 or any of the other companies?

18 MR. BANKS: And we think it is important, Your  
19 Honor, that given the fact that the Government -- the  
20 Indictment has said we continued to communicate that we  
21 had current or impending contracts, this was not  
22 communicated to Mr. Perry. And it was our position that  
23 any staffing companies that can testify that we did not  
24 provide those type of communications are very relevant, as  
25 far as we're concerned, as far as our representations are

1 concerned.

2 THE COURT: All right. What efforts -- when did  
3 you begin your efforts to subpoena Mr. Perry?

4 MR. WALKER: Your Honor, that would have been the  
5 same week; on or about October 5th, 6th or 7th.

6 THE COURT: So not until late last week, as well?

7 MR. WALKER: Yes, Your Honor.

8 THE COURT: And what efforts have been made -- you  
9 said he is not subpoenaed. What efforts have been made  
10 other than going out once to try to subpoena him?

11 MR. WALKER: There have been efforts made to find  
12 his current employer. I believe that has been determined.  
13 I would need to get more details on the exact efforts that  
14 have been made. But I believe his current employer has  
15 been located. But for some reason they haven't been able  
16 to serve him there. They don't have a home address for  
17 him.

18 THE COURT: So with respect to Ms. Broerman and  
19 Mr. Perry, you haven't even pursued their location up  
20 until last week?

21 MR. WALKER: Yes, Your Honor, that was pursued  
22 earlier.

23 THE COURT: Why are we just now finding out where  
24 he lives or where he can be served?

25 MR. WALKER: Your Honor, I am not certain of what

1 means were used to try to locate him. But they have been  
2 trying to locate him for --

3 THE COURT: Who has?

4 MR. WALKER: The support people who are helping us.  
5 I mentioned yesterday Lisa, and people who are assisting  
6 her.

7 THE COURT: Lisa who?

8 MR. WALKER: Lisa Stewart.

9 THE COURT: How are you aware of what efforts she's  
10 made?

11 MR. WALKER: Am I aware?

12 THE COURT: How are you aware of what efforts she  
13 has made?

14 MR. WALKER: I talked with her, and she told me she  
15 used several sources.

16 THE COURT: When did she first start her efforts to  
17 try to locate these witnesses?

18 MR. WALKER: She has been working on locating  
19 people for at least a month, Your Honor. The results --  
20 some of these people who have appeared have been found  
21 through those efforts.

22 THE COURT: All right. And Mr. Beebe, what is the  
23 status with him?

24 MR. WALKER: Mr. Beebe was out of town. And I  
25 believe that he is coming back in town tomorrow. But let

1 me check to see if I have a status on his service. No  
2 Mr. Beebe has not been served.

3 THE COURT: All right. Now, you have four, five  
4 witnesses from Philadelphia; Amy Kurland, Dan Heitzer,  
5 H-E-I-T-Z-E-R, Everett Gillison, Lorelei Larson, Shonique  
6 McCall, M-C-C-A-L-L. What is the status of those?

7 MR. BANKS: Again, Your Honor, we honestly -- we  
8 chose not to pursue them given the Court's previous  
9 position to post-2005 interactions with the Philadelphia  
10 Police Department.

11 THE COURT: So they are all post-2005  
12 communications?

13 MR. BANKS: Correct.

14 THE COURT: All right. Lorne Cramer, is that one  
15 you said would appear today --

16 MR. WALKER: Your Honor --

17 THE COURT: -- or tomorrow?

18 MR. WALKER: Your Honor, Mr. Cramer would not be  
19 available until next week, as well.

20 THE COURT: When was he subpoenaed?

21 MR. WALKER: I don't have the status on Mr. Cramer  
22 handy.

23 THE COURT: Why is he not available this week?

24 MR. WALKER: Your Honor, he was also traveling.

25 THE COURT: How was he served?

1 MR. WALKER: I am not certain, Your Honor.

2 THE COURT: Was he served?

3 MR. WALKER: Yes, Your Honor. Yes, he was served.  
4 I'm sorry, let me double check on that. I remember there  
5 was an attempt to serve him.

6 THE COURT: Yesterday you told me he had been  
7 served and he would be here today.

8 MR. WALKER: I am pretty sure he has been served.  
9 There are a lot of names in play here. Yes, Your Honor.  
10 He has been served, and we anticipate his appearance on  
11 Monday.

12 THE COURT: You told me yesterday he would be here  
13 today.

14 MR. WALKER: I have an update that it will be  
15 Monday.

16 THE COURT: Why is he not here today if you  
17 subpoenaed him?

18 MR. WALKER: Because he asserted his --

19 THE COURT: When was he served?

20 MR. WALKER: I believe he was served earlier this  
21 week.

22 THE COURT: All right. And so 48 hours, he could  
23 be here tomorrow.

24 MR. WALKER: I need to check on the status for  
25 exactly why he said he would not be able to make it. I



1 believe there was some kind of conflict.

2 THE COURT: If he's under subpoena, and it is an  
3 appropriate subpoena, then you need to proceed. If he's  
4 under valid subpoena, we'll not delay this case because of  
5 the convenience of the witnesses that have been properly  
6 served.

7 MR. WALKER: I understand. I need to get a  
8 definite status on Mr. Cramer.

9 THE COURT: Mr. Brown, Southeast Missouri State.  
10 As of yesterday, he was not subpoenaed. What is the  
11 status today?

12 MR. WALKER: Your Honor, he has still not been  
13 subpoenaed.

14 THE COURT: What efforts have been made?

15 MR. WALKER: Continuing to try to contact  
16 Mr. Brown.

17 THE COURT: What efforts?

18 MR. WALKER: Your Honor, to the best of my  
19 knowledge, they are using several services to locate him.

20 THE COURT: When did you begin the efforts to try  
21 to serve Mr. Brown the subpoena?

22 MR. WALKER: Your Honor, I am not certain when they  
23 started to try to locate Mr. Brown.

24 THE COURT: Was it late last week, as well?

25 MR. WALKER: Your Honor, that one -- he would have

1     been earlier, because he was with a law enforcement  
2     agency, and those people were given higher priority. So  
3     it would have been before that time.

4             THE COURT: All right. Rick Gonzales of the Rio  
5     Grande Sheriff's Department?

6             MR. WALKER: Your Honor, I'm not certain that we  
7     will call him.

8             THE COURT: He hasn't been subpoenaed yet?

9             MR. WALKER: I'm not certain. I need to get a  
10    status on his -- an update on his status.

11            THE COURT: All right. Mr. Moen, he was not  
12    subpoenaed as of yesterday.

13            MR. WALKER: Agent Moen will not be called by the  
14    defense.

15            THE COURT: Mr. Powers?

16            MR. WALKER: Your Honor, Mr. Powers has not been  
17    served. He has been located, but has not been served as  
18    yet. He was just located yesterday.

19            THE COURT: When were the first attempts to serve  
20    him with a subpoena?

21            MR. WALKER: Your Honor, I believe that was 3 or 4  
22    weeks ago.

23            THE COURT: And why was he not able to be located 3  
24    to 4 weeks ago?

25            MR. WALKER: To the best of my knowledge, he had

1 changed locations -- work locations, and was not at the  
2 location that we had listed for him.

3 THE COURT: And Mr. Gene Anderson?

4 MR. WALKER: Gene Anderson. There is some  
5 confusion as far as Gene Anderson. The correct identity  
6 for Gene Anderson, the original person located -- named  
7 Gene Anderson was deceased. It was determined that was  
8 not the correct Gene Anderson. So the support team  
9 started a new effort to find Gene Anderson. They believe  
10 they have the right Gene Anderson at this point, but that  
11 has not been verified yet.

12 THE COURT: He has not been served?

13 MR. WALKER: Gene Anderson has not been served.

14 THE COURT: What is the relevance of Mr. Powers'  
15 and Mr. Anderson's testimony.

16 MR. BANKS: Very relevant. Mr. Powers, at one time  
17 was a Special Agent in Charge in Denver, and he is a  
18 highly decorated FBI person that actually wrote a letter  
19 to a staffing company, I believe it was Sunny Side Temps,  
20 regarding that this was a civil matter, not a criminal  
21 matter.

22 THE COURT: His opinion?

23 MR. BANKS: Well, I don't know if it is his  
24 opinion. He was the Special Agent in Charge in Denver at  
25 the time.

1 THE COURT: All right. And what is the relevance  
2 of that to these charges?

3 MR. BANKS: Well, the Government has asserted that  
4 we engaged in criminal activity. We have always asserted  
5 that this was a civil matter. And an FBI agent who  
6 actually runs the Denver office is making those same  
7 assertions in response to a staffing company we feel is  
8 extremely relevant.

9 THE COURT: Mr. Kirsch?

10 MR. KIRSCH: Your Honor, if I could just add a  
11 little bit of context about the letter. Mr. Powers didn't  
12 write the letter. The letter was sent out under  
13 Mr. Powers' signature, in the same way that attorneys in  
14 my office send out letters underneath the name of the U.S.  
15 Attorney, John Walsh, and then sign them ourselves.

16 The letter to which Mr. Banks refers was sent out  
17 under Mr. Powers' name. It was signed by a Gene Anderson,  
18 who was a Supervisory Special Agent at the time. We would  
19 expect that Mr. Powers would have no knowledge, and  
20 probably didn't even see the letter. And that  
21 Ms. Anderson, we expect, would testify got this packet of  
22 information from the staffing company that was sent to the  
23 wrong office. It was sent to the Denver office rather  
24 than the Colorado Springs office.

25 And the package didn't come with the FBI tracking

1 number that would have allowed the Denver office to  
2 recognize that the materials were being provided in  
3 response to an ongoing investigation. That is the  
4 testimony that the Government expects that both of those  
5 witnesses would provide if they were called.

6 THE COURT: You haven't yet served her, but you  
7 have located her.

8 MR. WALKER: Yes, Your Honor.

9 THE COURT: All right.

10 MR. BANKS: Obviously, we obviously disagree with  
11 the Government's position until we have had a chance to  
12 speak with her.

13 THE COURT: I did understand correctly, you are not  
14 going to call any of the may-call witnesses other than  
15 you're still reserving the rights to call yourself?

16 MR. WALKER: That's correct, Your Honor.

17 THE COURT: All right. Mr. Kirsch, is there  
18 anything further that you have to raise?

19 MR. KIRSCH: Your Honor, there were a couple of  
20 other people that, at least the other day the defendants  
21 indicated that they were still planning to call; Shaun  
22 Haughton. I believe that's the only other person the  
23 other day they indicated they were planning to call that  
24 we didn't discuss today.

25 That is a person that, at least it is our belief,

1 would appear without a subpoena. We would expect him to  
2 be a witness friendly to the defense, and would assume  
3 that he would be available this week if the defendants  
4 did, in fact, intend to call him.

5 THE COURT: Mr. Walker?

6 MR. WALKER: Your Honor, our intention is not to  
7 call Mr. Haughton.

8 THE COURT: Okay. So, with that being said, then,  
9 I assume we probably have enough witnesses for today, with  
10 Agent Smith. I don't know. To the extent that you can  
11 get any of these other witnesses in here today, you  
12 probably need to do that. Where is Mr. Vilfer at this  
13 point?

14 MR. WALKER: Your Honor, I'm not sure of his  
15 location. His office is based out of California. He  
16 indicated that he was out of town on another case that  
17 would be wrapping up this evening.

18 THE COURT: Why can't he be here tomorrow?

19 MR. WALKER: Your Honor, he has had no preparation  
20 time, and he would -- I was on the phone with him. He was  
21 checking airline flights. And he indicated to me that the  
22 earliest he could get here is tomorrow -- I am not sure  
23 for what reasons -- would be around 3:00 p.m. so not  
24 knowing his location --

25 THE COURT: But you indicated he was willing to

1 appear by telephone tomorrow.

2 MR. WALKER: Yes, Your Honor.

3 THE COURT: If he doesn't have preparation time,  
4 then how could he appear by telephone tomorrow?

5 MR. WALKER: Well, he would be able to prep  
6 sufficiently for tomorrow morning.

7 THE COURT: If he is able to fly in, then he should  
8 fly in tomorrow.

9 MR. WALKER: I would believe it a travel issue.  
10 Not knowing his location, we need to check.

11 THE COURT: I think, in this day and age, you can  
12 get anywhere within hours' notice. If he's available --  
13 home tomorrow, he is available to fly to Colorado  
14 tomorrow.

15 MR. WALKER: Your Honor, he didn't state he would  
16 be flying home in the morning, he indicated he would be  
17 calling in in the morning.

18 THE COURT: Somebody better get ahold of him to see  
19 if he can get here tomorrow. If he can appear by phone,  
20 he can certainly appear in person. In addition, he is an  
21 expert. And so, therefore, I believe it is necessary to  
22 have him appear in person.

23 MR. WALKER: Yes, Your Honor.

24 THE COURT: All right. I have a note from my  
25 judicial assistant that one of the jurors called in. He

1 has either food poisoning or the flu. He has been up all  
2 night, has a great deal of stomach pain and nausea, and he  
3 can't come in.

4 So, Ms. Seeman, could you go do a head count to see  
5 if all of the other jurors are here.

6 COURTROOM DEPUTY: Yes, Your Honor. We do have 14.

7 THE COURT: All right. So that is why I picked  
8 four alternates. My inclination is to go ahead and  
9 proceed with trial, and we will just excuse Mr. Austin  
10 from being a juror in this case.

11 MR. KIRSCH: May I have just a moment, please, Your  
12 Honor?

13 MR. HARPER: Your Honor, for the record, whose name  
14 did you mention?

15 THE COURT: It doesn't really matter. It will be a  
16 juror I will excuse.

17 MR. HARPER: Okay.

18 MR. KIRSCH: Your Honor, our understanding is that  
19 at least as of now, that there is not a continuance being  
20 requested, and that there is not a continuance that is  
21 contemplated -- at least from what we heard, the maximum  
22 continuance that would be contemplated would be until  
23 Monday of next week. If that understanding is correct,  
24 then the Government has no objection to proceeding with  
25 and remaining with the two alternate.



1           If there was -- if there was going to be some  
2 possibility of a continuance much longer than that that  
3 would be contemplated, we would have a different position.

4           THE COURT: All right. Mr. Banks, Mr. Walker,  
5 based on what you told me about your witnesses, I am  
6 assuming that if you can get them served, we could have  
7 everybody report at the latest by Monday?

8           MR. WALKER: Yes, Your Honor.

9           THE COURT: That would probably be the longest I  
10 would extend any continuances on witnesses.

11          MR. WALKER: Your Honor, that is a continuance we  
12 were planning to request.

13          THE COURT: That, to me, would not be unreasonable.  
14 I don't want to delay the jury any longer, but if it is  
15 just the weekend -- intervening weekend. But I would  
16 expect to go forward with all of the witnesses we could  
17 today and tomorrow.

18          MR. WALKER: Yes, Your Honor, that is our plan.

19          MR. BANKS: Your Honor, we want to go as quickly as  
20 possible, too. We want to put that on the record. We  
21 want to get through this as quickly as possible. We just  
22 want to make sure that everybody that we need to testify  
23 on our behalf for our defense is available to do so.

24          THE COURT: All right. So I will expect that you  
25 all will, with all due conscientiousness, get those you

1 have not served, served, make sure that they know that  
2 they need to appear here no later than Monday. In the  
3 meantime, we are going to move forward with what witnesses  
4 we have.

5 If Mr. Vilfer can get here tomorrow, I want him  
6 tomorrow. If not, Monday. With that being said, do you  
7 have any objection to my essentially proceeding with the  
8 jury trial this morning and excusing the one juror?

9 MR. WALKER: May I have a moment, Your Honor?

10 THE COURT: You may.

11 MR. WALKER: Yes, Your Honor. We agree with that  
12 plan. I want to reiterate what I said earlier this  
13 morning, is that we anticipate the current testimony of  
14 Sam Thurman to take up probably an hour, around that time  
15 frame, maybe a little bit more. Mr. Hillberry is here to  
16 testify. We would call John Smith. And those would be  
17 our only witnesses we would call today. So we wanted to  
18 just state that again so you can plan properly.

19 THE COURT: Now, there are no other witnesses you  
20 can get here today if we finish with Mr. Smith early?

21 MR. WALKER: No, Your Honor.

22 THE COURT: What about tomorrow? Who will appear  
23 tomorrow?

24 MR. WALKER: Your Honor, the people I mentioned  
25 earlier who have been served with an appearance time of

1 9:00 a.m. tomorrow.

2 THE COURT: How long do you think they're going to  
3 take? What I don't want to do is irritate the jury by  
4 bringing them back for an hour's worth of testimony and  
5 saying you can go home. That doesn't do anybody any good.

6 MR. WALKER: Well, Your Honor, of the people lined  
7 up for tomorrow, there is no long testimony in that group.  
8 Mr. Vilfer would be the longest testimony we would  
9 anticipate, if he were to be able to testify tomorrow.

10 THE COURT: So I guess my inclination would be if  
11 there is no objection, to make sure we have enough  
12 witnesses to keep the jury going all day, is to go ahead  
13 and not have them come in tomorrow; essentially cancel  
14 tomorrow as a trial day. I don't want to bring them in  
15 for an hour, hour and a half. That will irritate them.

16 We start fresh on Monday, with the expectation -- I  
17 will hold you to this -- that you are going to subpoena  
18 the witnesses you need, and they will appear early next  
19 week, starting Monday, and we will just wrap this up.

20 MR. WALKER: Could I have one moment, Your Honor?

21 THE COURT: You may.

22 MR. WALKER: Your Honor, the only exception there,  
23 and witnesses we believe are critical, will certainly be  
24 Steven Cooper and also Bill Witherspoon of DHS.

25 THE COURT: Both of those you indicated have been

1 served.

2 MR. WALKER: Your Honor --

3 THE COURT: Their counsel has been served.

4 MR. WALKER: Their counsel has been served. I did  
5 get a notice last night saying they were not properly  
6 served, and they wanted additional information.

7 THE COURT: You need to take care of that  
8 immediately and make the appropriate arrangements.

9 MR. WALKER: That will be taken care of today.

10 MR. BANKS: Your Honor, I did receive status this  
11 morning with regard to Mr. Witherspoon. Lisa Stewart had  
12 a conference with counsel. They discussed the nature of  
13 their testimony. DHS' counsel doesn't see an issue with  
14 what they'll be testifying about. Right now, we are only  
15 dealing with the logistics of them coming. So I should  
16 have something more -- maybe something more definitive  
17 this afternoon.

18 THE COURT: It is possible, since they are more  
19 fact witnesses, and probably will be fairly short, as have  
20 the others, that you could try to do them by video  
21 conference, if it is the logistics trying to get them  
22 from -- are they in D.C.?

23 MR. BANKS: Most likely D.C.

24 THE COURT: Unless there is an objection by the  
25 Government, a good compromise would be -- if the problem

1 is logistics, we can hook up -- we have the video  
2 conference. So it is not just a telephone. The jury  
3 actually gets to see their face while they are doing it.  
4 We can have them sworn in. That is an alternative we can  
5 probably use. If, on the other hand, they make the  
6 arrangement to get them to some place where they can do  
7 video conferences --

8 MR. BANKS: Your Honor, obviously -- one moment,  
9 Your Honor.

10 THE COURT: You don't have to make that decision  
11 now. I am just telling you that is an alternative that is  
12 available that I am willing to make available. We can  
13 proceed that way. When you talk to them, if it is a  
14 problem -- now, if you subpoenaed them and you've properly  
15 subpoenaed them, you can insist that they come in person.  
16 But that is an alternative that is available if we have a  
17 problem for everybody, except for the expert witnesses,  
18 because I think expert witnesses need to be here in  
19 person.

20 MR. BANKS: Your Honor, we are not, obviously,  
21 closed to that. We will brief that issue with DHS counsel  
22 and get back to you.

23 THE COURT: That is fine. I offered it as an  
24 option in the event that is a problem that could be  
25 resolved.

1           MR. WALKER: Your Honor, I just got an update on  
2 Mr. Vilfer. In fact, he is still involved in a case  
3 tomorrow morning. He was going to call in before that  
4 case started, since it is on west coast time, and he would  
5 call in at 9 o'clock our time, 8 o'clock west coast time,  
6 and then go to the trial, whatever he is doing.

7           THE COURT: So, I think then my resolution would be  
8 that we do not conduct trial tomorrow. I would not have  
9 the jury come in at all, give them the day off, but we  
10 will start on Monday morning, and I will expect all of the  
11 defense witnesses to proceed accordingly.

12          MR. WALKER: Yes, Your Honor. That is certainly  
13 our plan.

14          THE COURT: All right. So is that satisfactory to  
15 both sides?

16          MS. HAZRA: Yes, Your Honor. I have one scheduling  
17 request, Your Honor. I had alerted the Court I had a  
18 hearing in another court tomorrow at 3:00. I filed late  
19 last night a motion to continue that. Is there a way I  
20 could let my office know they could call Judge Krieger's  
21 chambers and tell them I will be available, and she  
22 doesn't need to reschedule the hearing?

23          THE COURT: Ms. Seeman, can you have Ms. Ross call  
24 upstairs to Judge Krieger to let her know the motion  
25 filed -- do you know the case number?

1 MS. HAZRA: 10-cr-502. It is set for 3 o'clock  
2 tomorrow, and I now will be available, and I am  
3 withdrawing my motion to move it.

4 THE COURT: Tell her she is in trial, but have  
5 Ms. Ross contact her.

6 MS. HAZRA: Thank you, Your Honor.

7 THE COURT: Any objection to proceeding in that  
8 regard?

9 MR. WALKER: No, Your Honor.

10 THE COURT: So, then, I'm going to go ahead and  
11 bring the jury in. We will proceed with the 14 we have.  
12 And the juror who is ill will be excused from any further  
13 service. That still leaves us with two alternates. So  
14 hopefully we will get it done before anything happens to  
15 any other jurors.

16 Ms. Seeman, you can bring in the jury.

17 Is Mr. Thurman here?

18 MR. WALKER: Yes, Your Honor.

19 THE COURT: Why don't you go ahead and bring him  
20 in.

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

23 THE COURT: You may be seated.

24 Well, good morning, ladies and gentlemen. I  
25 apologize for keeping you waiting, but there are always

1 matters I have to take care of beforehand. So I apologize  
2 for keeping you waiting.

3 As you noted, one of your jurors is not here. He  
4 is ill, so I'm excusing him from the jury.

5 All right. We may proceed. The defense may  
6 proceed with their examination of Mr. Thurman.

7 **SAMUEL THURMAN**

8 having been previously duly sworn, testified as follows:

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

10 **BY MR. WALKER:**

11 Q. Good morning, Mr. Thurman.

12 A. Good morning.

13 Q. Okay. If you recall, we were discussing yesterday  
14 the meetings IRP Solutions had with DHS. Do you recall  
15 that testimony?

16 A. Yes, I do.

17 Q. And do you recall a meeting that included a  
18 Mr. Gilbert Trill?

19 A. I do.

20 Q. Could you, just to backtrack just a bit for the  
21 jury's memory and refreshment. Who was the meeting --  
22 what organization and entity was that meeting with where  
23 Mr. Gilbert Trill was in attendance?

24 A. That was with the Department of Homeland Security,  
25 who at the time had a working group, which was the



1 Consolidated Enforcement Environment Initiative working  
2 group.

3 Q. And the working group that that meeting was held  
4 with, did that consist of different investigative offices?

5 A. It did.

6 Q. And do you know some of the investigative units that  
7 were involved there?

8 MR. KIRSCH: Objection, Your Honor, asked and  
9 answered.

10 THE COURT: Sustained.

11 Q. (BY MR. WALKER) Mr. Thurman, what groups were  
12 represented in that meeting?

13 MR. KIRSCH: Same objection, Your Honor.

14 THE COURT: Sustained. We went over this, I  
15 believe, yesterday Mr. Walker.

16 MR. WALKER: Yes, Your Honor.

17 Q. (BY MR. WALKER) Mr. Thurman, in response to the  
18 meetings at DHS, IRP Solutions -- did IRP Solutions make  
19 enhancements to CILC?

20 A. Yes.

21 Q. And were those enhancements for use by general  
22 police?

23 A. When you say general police, you mean local and  
24 state?

25 Q. Yes.

1 A. It would be conducive to their environments, as well.

2 Q. And would they also be conducive to DHS and federal  
3 agencies?

4 A. Yes, they would.

5 Q. Were there subsequent communications with DHS  
6 following that working group meeting and presentation?

7 A. Yes, there was.

8 Q. And what did you communicate to DHS following those  
9 meetings?

10 A. One of the things was communicating to DHS that IRP  
11 had put a "federal face" on the solution. One of the  
12 things that Mr. Cooper had requested, and felt that it  
13 would help the overall look and feel, was to put a  
14 "federal face" on it.

15 Q. What does that "federal face" mean?

16 A. Well, there were certain terms and certain  
17 operational procedures that they needed incorporated into  
18 the software. And then one of the other things, too, was  
19 CILC started off as a client server solution. And the  
20 request was made that it be web enabled so that it would  
21 be more far reaching to the user community.

22 Q. And in what you term as web enabling, did that change  
23 how DHS would potentially use the product?

24 MR. KIRSCH: Objection, lack of foundation.

25 THE COURT: Overruled.

1 THE WITNESS: Yes, it would. They wanted to have  
2 capability where folks in the field, at the field offices  
3 would be able to use it, and then even if they were out on  
4 a mission or what have you.

5 Q. (BY MR. WALKER) And as a result of these changes  
6 that you mentioned, the federal face, did the company  
7 pursue additional meetings with DHS?

8 A. Yes, IRP did pursue it.

9 Q. IRP did?

10 A. Yes, follow-up meetings.

11 Q. Did DHS grant the request for follow-up meetings?

12 A. Yes, it did.

13 Q. And what time frame -- were you involved in setting  
14 up subsequent -- a subsequent meeting?

15 A. Yes, I was.

16 Q. And who did you work with to set up a meeting  
17 subsequently at DHS?

18 A. There were three main people; Steven Cooper, Bill  
19 Witherspoon and Paul Tran.

20 Q. And were all three of these gentlemen at DHS involved  
21 in setting up the next meeting with you?

22 A. At one point or another.

23 Q. And at some point did DHS and IRP agree to a meeting  
24 day or a subsequent meeting?

25 A. Yes.

1 Q. Do you recall the time frame of that subsequent  
2 meeting?

3 A. It was probably mid 2004.

4 Q. And do you recall the location of that meeting?

5 A. It was in D.C. Washington, D.C.

6 Q. And where in Washington, D.C.?

7 A. At the -- I can't say it was DHS headquarters. It  
8 was -- I just remember I Street. There was a building on  
9 I Street. I believe that is where. I can't be totally  
10 certain.

11 Q. Would that be a DHS office, then?

12 A. DHS did have offices in there, yes.

13 Q. And what was the purpose of this meeting that was  
14 held at that location?

15 A. Again, to do a follow-up on the CILC Federal  
16 solution, and to present it to the working group, and then  
17 also just to show the enhancements that had been made to  
18 the solution.

19 Q. And you just said "the working group." Is that the  
20 same working group that was in attendance at the previous  
21 meeting, to the best of your knowledge?

22 A. There may have been different players. So I can't be  
23 certain as to any specific names of all of the folks who  
24 were there. But Mr. Cooper and Mr. Witherspoon, I  
25 believe, were in attendance, along with some of the other

1 representatives from some of the other agencies. Then a  
2 couple of defense contractor representatives were.

3 Q. And what activities were undertaken in that meeting?

4 A. Well, there was a software demonstration. And then  
5 for those who were not aware of IRP, basically, a typical  
6 presentation would include doing an overview, if you will,  
7 of the company, and what the thought process and  
8 methodology that went into developing the software, and  
9 then a software demonstration.

10 Q. Do you recall who else, other than yourself, from IRP  
11 Solutions attended that meeting?

12 A. You were there, Gary Walker, David Banks, I believe  
13 Clinton Stewart would have been there, and myself.

14 Q. And subsequent to the meeting, after its completion,  
15 did IRP Solutions have conversations with DHS  
16 representatives?

17 A. Yes.

18 Q. Did IRP Solutions have conversations with DHS in the  
19 meeting room after the conclusion of the meeting?

20 A. There were conversations in the meeting room, as well  
21 as via teleconference, e-mail.

22 Q. And were you involved in those e-mail communications  
23 with DHS subsequent to that meeting?

24 A. I was.

25 Q. And what were your -- what were your communications

1 to DHS?

2 A. At that time, DHS became particularly interested in a  
3 particular module, what was called confidential informant  
4 module. And I don't know exactly, you know, the  
5 application that -- why they were focusing in on that, but  
6 that was one of the modules that they wanted.

7 Q. And you said they wanted to start with that. Could  
8 you clarify that a little bit?

9 A. Well, Case Investigative Life Cycle -- Case  
10 Investigative Life Cycle software includes several  
11 modules. And the software is designed to take an  
12 investigator from the crime scene through the courtroom,  
13 and includes --

14 MR. KIRSCH: Your Honor, I object to this answer as  
15 non-responsive.

16 THE COURT: Sustained.

17 Q. (BY MR. WALKER) So let me repeat my question,  
18 Mr. Thurman.

19 A. Okay.

20 Q. You said that DHS wanted to start with the  
21 confidential informant module?

22 A. Correct.

23 Q. So can you clarify that statement, "start with the  
24 confidential informant module"?

25 A. Well, CILC was larger than just that one module. And

1 so they indicated they had a need --

2 MR. KIRSCH: Objection, hearsay.

3 THE COURT: Overruled. I think it's not being  
4 offered for the truth of the matter asserted, it is  
5 offered for why they did what they did. You may proceed.

6 THE WITNESS: They had a need for being able to  
7 maintain their confidential informant information. And  
8 they wanted to provide that to, I think, at the time, we  
9 were given a number of 30,000 users. And so it would give  
10 them the ability of sharing information and collaborating  
11 on the confidential informant information.

12 Q. (BY MR. WALKER) And in that communication, did DHS  
13 request that IRP Solutions deliver the confidential  
14 informant software?

15 A. DHS requested a quote for that solution.

16 Q. And did IRP Solutions deliver a quote for the  
17 confidential informant module?

18 A. We did.

19 Q. What was the quote delivered to DHS?

20 A. I believe that quote was in the neighborhood of  
21 somewhere between 7- and \$8 million.

22 MR. WALKER: Your Honor, may I have a moment?

23 THE COURT: You may.

24 MR. WALKER: Your Honor, I would like to refresh  
25 Mr. Thurman's memory on the quotation provided to DHS on

1 the confidential informant module. This quotation has  
2 already been entered into evidence by defense. I need to  
3 reference the number.

4 THE COURT: What is the number? So this has  
5 already been introduced into evidence --

6 MR. WALKER: Yes, Your Honor.

7 THE COURT: -- as opposed to marked?

8 MR. WALKER: It may have just been marked.

9 MR. KIRSCH: Your Honor, I believe they are  
10 referring to Government Exhibit 502.03 --

11 THE COURT: Is that correct?

12 MR. KIRSCH: -- which is admitted into evidence.

13 MR. WALKER: That's correct, Your Honor.

14 THE COURT: Then you may.

15 Ms. Seeman could you get 502.03?

16 MR. BANKS: Ask permission to publish that, Your  
17 Honor.

18 THE COURT: You may.

19 MR. BANKS: We'll just use the elmo.

20 THE COURT: Use it on the elmo. Okay. So if you  
21 can turn on the elmo.

22 Q. (BY MR. WALKER) Mr. Thurman, can you see that  
23 document that is being displayed?

24 A. Yes, I can.

25 Q. If you can just take a moment to look at that. And



1 once you have looked it over, let me know. I can scroll  
2 down for you.

3 A. Okay. If you can scroll down. Okay. All right.

4 Q. And after looking at that, to the best of your  
5 knowledge, is that the quotation that was provided to the  
6 Department of Homeland Security by IRP Solutions?

7 A. That looks to be correct. The only thing I see  
8 different is -- not saying it is different from what was  
9 stated, just from what I stated earlier, I indicated  
10 30,000 users, and this indicates 10,000 users. But this  
11 is --

12 Q. Were you involved in producing this quotation?

13 A. I was.

14 Q. And you said earlier, before seeing this document,  
15 you believed it was 30,000 users. And now we see it was  
16 10,000 concurrent users; is that correct?

17 A. That's correct.

18 Q. And for this quotation, did the quotation involve  
19 elements other than just software licenses?

20 A. Oh, as you showed there, support.

21 Q. Support?

22 A. Yes.

23 Q. And how was the support figure arrived at by you and  
24 IRP Solutions?

25 MR. KIRSCH: Objection, relevance.

1 THE COURT: Sustained.

2 Q. (BY MR. WALKER) And so you would agree that this  
3 quotation was delivered to the Department of Homeland  
4 Security?

5 A. Yes.

6 Q. And that was delivered at their request?

7 A. Yes.

8 Q. Is that right?

9 A. Yes, sir.

10 Q. And subsequent to delivering this quotation to the  
11 Department of Homeland Security, did IRP Solutions receive  
12 any communications from the Department of Homeland  
13 Security regarding the quotation?

14 A. Yes, IRP did.

15 Q. Were you a party to that communication?

16 A. Yes.

17 Q. And who, from DHS, communicated to you?

18 A. Bill Witherspoon was the main person that was  
19 communicating at that time.

20 Q. And what did you -- what was your conversation with  
21 Mr. Witherspoon?

22 MR. KIRSCH: Objection, hearsay.

23 THE COURT: Sustained.

24 Q. (BY MR. WALKER) And in response to Mr. Witherspoon's  
25 communications, did you have a reply or information for

1 Mr. Witherspoon?

2 A. I required us to -- the status of the quote, and from  
3 a standpoint of, you know, how far along they had gotten,  
4 based on feedback that I had gotten from Mr. Witherspoon.

5 Q. And subsequent to the quotation and your  
6 communications with Mr. Witherspoon, were there any  
7 additional meetings with the Department of Homeland  
8 Security?

9 A. There were.

10 Q. And do you recall the time frame of the next meeting  
11 with the Department of Homeland Security?

12 A. That was probably around the September 2004 time  
13 frame.

14 Q. And what was the nature of this -- I am sorry, did  
15 you say there was a meeting scheduled in the September  
16 2004 time frame?

17 A. It was around that time frame, yes.

18 Q. Were you involved in setting up that meeting in  
19 September of 2004?

20 A. I was.

21 Q. And did you work with someone at DHS to set up the  
22 September 2004 meeting?

23 A. Steven Cooper.

24 Q. Steven Cooper?

25 A. Actually, it started off Steven Cooper. He ended up

1 getting pulled away on something, and he shifted it to  
2 Bill Witherspoon. But between Bill Witherspoon and Steven  
3 Cooper, that is who I coordinated with.

4 Q. And were you aware of the purpose of this meeting in  
5 2004 between DHS and IRP?

6 A. Yes.

7 Q. And what was the purpose of this meeting?

8 A. This was another joint meeting between DHS and  
9 representatives from DOJ. They had a requirement -- not a  
10 requirement, but they were sort of shifting gears, whereby  
11 DOJ was working with DHS on a solution that could be used  
12 by all agencies together. I think it was basically the  
13 next step in the process.

14 Q. You referenced DOJ. What does DOJ mean in this  
15 context?

16 A. Department of Justice.

17 Q. Department of Justice?

18 A. Yes.

19 Q. And that meeting, September of 2004, that you say was  
20 between DOJ and DHS, was that a meeting that included  
21 management at DOJ?

22 A. Yes.

23 Q. Do you recall names of the DOJ representatives at  
24 that meeting, or their roles?

25 A. There was a Price Roe from DOJ. And then there

1 was --

2 THE COURT: ROWE?

3 THE WITNESS: P-R-I-C-E.

4 THE COURT: Last name?

5 THE WITNESS: R-O-E.

6 THE COURT: Okay.

7 THE WITNESS: And then the CIO of DOJ, whose name  
8 escapes me right now. I will have to think about that  
9 one.

10 Q. (BY MR. WALKER) Okay.

11 A. I am sorry, Van Hitch.

12 Q. Van Hitch. Could you repeat his role at DOJ?

13 A. I believe he was the CIO. I can't be certain, but I  
14 believe he was the CIO.

15 Q. And you said there were also DHS representatives  
16 there?

17 A. That one I'm not certain of who from DHS was there.  
18 I can't recall specifically the names.

19 Q. And what was presented by IRP Solutions to these two  
20 Government entities?

21 A. The CILC Federal solution again.

22 Q. And subsequent to this meeting, were you involved in  
23 any communications with attendees of the meeting?

24 A. Yes.

25 Q. And who did you communicate with subsequent to the

1 meeting?

2 A. Well, that would have been Steven Cooper, obviously,  
3 to follow up with him on that meeting, because I don't  
4 believe Steven Cooper was in attendance at that particular  
5 meeting.

6 Q. Mr. Thurman, beginning yesterday, you recounted  
7 several meetings with DHS.

8 A. Yes.

9 Q. Do you know the number of meetings to this point that  
10 IRP Solutions had with DHS?

11 A. Do you want me to state what the meetings were or  
12 just give a number?

13 Q. Just a count would be fine, Mr. Thurman.

14 A. Okay. I would say there were a minimum of five.

15 Q. A minimum of five. And to the best of your  
16 recollection, how many of those meetings involved Steven  
17 Cooper?

18 A. I would say three of those involved Steven Cooper.  
19 And if I might clarify, when I say a meeting, what  
20 constituted a meeting, in my mind, was even a one on one  
21 with Steven Cooper or a one on one with Bill Witherspoon  
22 via WebEx.

23 Q. Would you classify a phone call with Steven Cooper as  
24 a meeting?

25 A. Pretty much, yes.

1 Q. And how many of those meetings involved  
2 demonstrations of IRP Solutions' software?

3 A. Again, it could be either one on one or a group  
4 session; that would still be around five. That's just  
5 with DHS. There were other agencies that followed those  
6 meetings.

7 Q. And of those approximate five meetings, how many of  
8 those involved demonstrations where Bill Witherspoon was  
9 involved?

10 A. That would probably be, I would say a minimum of  
11 three. I'm certain there were three.

12 Q. And, to the best of your knowledge, were you in  
13 attendance at all of the meetings between DHS and IRP  
14 Solutions?

15 A. There may have been a meeting that I was not in  
16 attendance at later in 2004.

17 Q. And, Mr. Thurman, you just recounted a meeting that  
18 you say happened about the September 2004 time frame --

19 A. Right.

20 Q. -- with DHS and DOJ; is that right?

21 A. Right.

22 Q. Were there any -- were there any other meetings  
23 between IRP Solutions and DHS subsequent to that meeting?

24 A. Well, DHS was part of a large group that IRP was part  
25 of, a meeting.

1 Q. What group was that?

2 A. That was the FICMS. Acronym for Federal  
3 Investigative Case Management System.

4 Q. And there was a meeting -- I just want to clarify.  
5 There was a meeting related to the subject of FICMS that  
6 included DHS, and IRP attended that meeting?

7 A. Yes.

8 Q. Do you recall the time frame of that meeting?

9 A. That was the September/October 2004 time frame.

10 Q. Would that have been immediately after the meeting  
11 that you believe was September 2004?

12 A. In close proximity.

13 Q. And do you recall where that meeting occurred?

14 A. It was in Washington, D.C.

15 Q. And who from IRP Solutions attended that meeting?

16 A. The FICMS'?

17 Q. Yes, the FICMS' meeting?

18 A. Well, for the FICMS' RFI meeting, a request for  
19 information, that would have been yourself, Gary Walker,  
20 David Banks, Clinton Stewart and myself. And, however, if  
21 I can expound on that just a bit. Because of the limited  
22 space, the government would only allow in two  
23 representatives from each company into the session,  
24 itself. So yourself, Gary Walker and David Banks sat in  
25 on the RFI meeting.



1 Q. And although you didn't sit in on the meeting,  
2 itself, were you at the venue where the meeting was held?

3 A. Yes, sir.

4 Q. And at the FICMS' RFI meeting -- could you clarify  
5 RFI?

6 A. Request for information.

7 Q. At that FICMS' RFI meeting, did you see or meet any  
8 DOJ -- I am sorry, DHS employees at that meeting?

9 MR. KIRSCH: Objection, Your Honor, he just  
10 testified he wasn't at the meeting.

11 THE COURT: Sustained. You need to lay more  
12 foundation.

13 MR. WALKER: Yes, Your Honor.

14 Q. (BY MR. WALKER) Mr. Thurman, you just stated that  
15 myself, Mr. Walker and Mr. Banks actually entered into the  
16 meeting room; is that correct?

17 A. That's correct.

18 Q. Were you at the site, the venue where the meeting  
19 occurred?

20 A. Yes, sir.

21 Q. So you were at the building where the FICMS' RFI  
22 meeting occurred?

23 A. At the Aerospace Corporation, that's correct.

24 Q. You were not allowed into the room where the meeting  
25 occurred because of what reason?

1 A. Limited space.

2 Q. And so while you were at that venue, for the FICMS'  
3 RFI meeting, did you meet or talk to any DHS employees?

4 A. I did see Mr. Cooper.

5 Q. Did you speak with Mr. Cooper?

6 A. Briefly.

7 Q. Subsequent to this meeting that IRP Solutions  
8 attended, were there any other meetings with the  
9 Department of Homeland Security?

10 A. Not following that RFI -- the RFI session, no.

11 Q. Subsequent to that meeting, did IRP Solutions have  
12 any, or did you have any communications with DHS?

13 A. Yes.

14 Q. And who did you communicate with?

15 A. Bill Witherspoon.

16 Q. Bill Witherspoon. And do you recall the time frame  
17 of your next communication with Mr. Witherspoon?

18 A. That would have been the November time frame,  
19 November-December 2004 time frame.

20 Q. Would it be correct to say that was approximately  
21 one, or maybe two months following the FICMS' meeting you  
22 just mentioned?

23 A. That's correct.

24 Q. Before I move on, I want to go back to your statement  
25 that you did speak with Mr. Cooper at the FICMS' meeting;

1 correct?

2 A. Correct.

3 Q. And in that meeting, what were the results of that  
4 meeting with Mr. Cooper?

5 A. Prior to the FICMS' RFI -- I'm sorry, restate the  
6 question.

7 Q. Okay. I believe you said that you did meet briefly  
8 with Mr. Cooper following the FICMS' RFI meeting.

9 A. Right.

10 Q. Was that a face-to-face meeting with Mr. Cooper?

11 A. There were teleconference calls. We did have calls.

12 Q. Okay. Thank you. And what was the result of the  
13 teleconference you had with Mr. Cooper?

14 A. The Department of Homeland Security, speaking, you  
15 know, as part of the aside from the FICMS Initiative,  
16 wanted to get an additional quote.

17 MR. KIRSCH: Objection, hearsay.

18 THE COURT: I'm going to allow it, because I  
19 believe they are not offering it for the truth of what was  
20 said, but offering it to show what IRP did in response.  
21 And I don't think that is hearsay. So I am going to  
22 overrule the hearsay. I assume that is what you are  
23 offering it for.

24 MR. WALKER: That is a correct assumption, Your  
25 Honor.

1 THE WITNESS: DHS wanted to get a separate quote  
2 for its solution in the event that the FICMS Initiative  
3 didn't keep a report.

4 Q. (BY MR. WALKER) And did IRP Solutions provide a  
5 quote subsequent to your conversation with Mr. Cooper?

6 A. Yes.

7 Q. And for what software did that -- what software did  
8 that quote incorporate?

9 A. That was for CILC Federal. And, by that time, and  
10 maybe prior to that, it was being called CILC Federal  
11 Trusted, because of the security that they wanted built  
12 into it; they being DHS.

13 Q. And did IRP Solutions deliver a quote to DHS for that  
14 product?

15 A. Yes.

16 Q. And do you recall the amount of that quotation?

17 A. There were a couple. I believe one was about 87  
18 million, I think. And then I think, based on other  
19 requests that were made by DHS, there was -- I think there  
20 was a separate one that was submitted even after that.

21 But I do recall one around 80-, to 85-, \$87 million.

22 Q. And this quotation for what you called CILC Federal  
23 Trusted, is it correct that this was at the request of the  
24 Department of Homeland Security?

25 A. Yes, it was.

1 Q. And you also said there may have been two quotations  
2 delivered --

3 A. Correct.

4 Q. -- around that time frame?

5 A. Correct.

6 Q. And why were there two delivered, when you just  
7 stated there was -- they requested one quotation?

8 MR. KIRSCH: Objection, Your Honor, lack of  
9 foundation.

10 THE COURT: Sustained.

11 Q. (BY MR. WALKER) So, Mr. Thurman, were you involved  
12 in providing a quotation to the Department of Homeland  
13 Security?

14 A. I was involved in helping to compile the numbers,  
15 yes.

16 Q. And was this quote in response to a request from the  
17 Department of Homeland Security?

18 A. Yes, sir.

19 MR. KIRSCH: Objection as to vagueness, which  
20 quote?

21 THE COURT: Clarify, because we have had several  
22 quotes. I assume this is different from the one we saw  
23 previously.

24 MR. WALKER: Yes, Your Honor.

25 THE COURT: All right. Clarify.

1 Q. (BY MR. WALKER) And this would be -- would this be a  
2 quotation subsequent to the CILC confidential informant  
3 quotation that you referenced earlier?

4 A. Yes.

5 Q. So would it be fair to say this would be the second  
6 quotation provided to DHS from IRP Solutions?

7 A. I wouldn't qualify it as the second. But the one  
8 that I made reference to is the 87- or in the mid \$80  
9 million range, yes.

10 Q. Okay. You said that you were involved in preparing  
11 the quotation to DHS for the mid \$80 million quote; is  
12 that correct?

13 A. Yes.

14 Q. Subsequent to delivering the mid \$85 million quote,  
15 did DHS request any additional quotations?

16 A. Yes.

17 Q. And were you involved in conversations and the  
18 request from DHS for a subsequent quotation?

19 A. Yes.

20 Q. And this subsequent quotation, was it different in  
21 requirements from the previous quotation requested by DHS?

22 A. Yes, it was.

23 Q. And how did this quotation request differ from the  
24 previous quotation request?

25 A. Well, different requirements. Different number of

1 views. Different security requirements. Different  
2 licensing. Different support, in general. That's kind of  
3 what was driving the difference in quotes.

4 Q. Would it have been a quotation of reduced scope or  
5 increased scope?

6 A. Increased scope. Increased scope.

7 Q. Increased scope. Do you recall the price quoted for  
8 this increased scope request?

9 A. I don't remember the exact number. It was in excess  
10 of a hundred million dollars.

11 Q. And do you recall who from the Department of Homeland  
12 Security requested that quotation?

13 A. That quote was also sent to Bill Witherspoon.

14 Q. It was sent to Bill Witherspoon?

15 A. Yes.

16 Q. Was it requested by Bill Witherspoon, to the best of  
17 your knowledge?

18 A. Yes, to the best of my knowledge.

19 MR. WALKER: Could I have one moment, Your Honor?

20 THE COURT: You may.

21 MR. WALKER: Your Honor, I would ask to publish  
22 Government Exhibit 502.03, the quotation to the Department  
23 of Homeland Security from IRP Solutions.

24 THE COURT: Is that the one we just published?

25 MR. WALKER: Yes, Your Honor. That is the one we

1 just published.

2 THE COURT: Okay. You may.

3 MR. WALKER: If you could scroll down to the actual  
4 quotation, first. Let's go to the top of the quotation,  
5 please. All of the way to the very top. Okay, thank you.  
6 Let's go back to the company information, please. Just  
7 above this. Okay. Thank you.

8 Q. (BY MR. WALKER) Mr. Thurman, is this the quotation  
9 you recall providing to the Department of Homeland  
10 Security?

11 A. That would be correct.

12 MR. WALKER: And if you could scroll down, please.

13 Q. (BY MR. WALKER) And you said earlier that this quote  
14 had expanded requirements from the previous quote, which  
15 you mentioned was about 85 million -- 85- range?

16 A. Correct.

17 Q. And what is the total you see there for the quote?

18 A. I see 93.5 million.

19 Q. And, Mr. Thurman, were you involved in any meetings  
20 with DHS subsequent to providing this quotation to the  
21 Department of Homeland Security?

22 A. Phone calls.

23 Q. And do you recall who you next spoke with at DHS on  
24 the phone?

25 A. Bill Witherspoon.



1 Q. And also do you recall in what time frame after  
2 providing this quote to DHS that that telephone call  
3 occurred?

4 A. I generally remember an immediate phone call upon  
5 sending the e-mail.

6 Q. And what information did you provide to  
7 Mr. Witherspoon?

8 A. I wanted to confirm that he received the quote, and  
9 that he check on the status.

10 Q. Did Mr. Witherspoon provide any further instruction  
11 to you in that phone call?

12 A. Mr. Witherspoon indicated that the quote was being  
13 reviewed, and that he was -- that they were looking to get  
14 it included into the next budget. They were in budget  
15 discussions at that time.

16 Q. Did Mr. Witherspoon indicate who was involved in the  
17 budget exercise?

18 A. DHS --

19 MR. KIRSCH: Objection, hearsay.

20 THE COURT: Sustained.

21 MR. WALKER: May I have one moment, Your Honor?

22 THE COURT: You may.

23 Q. (BY MR. WALKER) Mr. Thurman, who was involved in the  
24 budget exercise?

25 A. Well, Mr. Witherspoon was involved in them, according

1 to his communications.

2 Q. And subsequent to that telephone call you just  
3 related with Mr. Witherspoon, did you have any  
4 communications with the Department of Homeland Security  
5 employees?

6 A. I did.

7 Q. And who would that have been with?

8 A. Again, Mr. Witherspoon.

9 Q. And what time frame was that communication relative  
10 to the previous communication?

11 A. Late -- December 2004 to January 2005 time frame.

12 Q. And what was your communication to Mr. Witherspoon in  
13 that phone call?

14 MR. KIRSCH: Objection, hearsay.

15 THE COURT: Overruled.

16 THE WITNESS: Again, checking on the status of the  
17 budgeting process for this particular quote.

18 Q. (BY MR. WALKER) And subsequent to this phone call,  
19 did you receive any other status from the Department of  
20 Homeland Security?

21 A. The status I got around the January time frame was  
22 that they were tied up with the Presidential Inauguration.  
23 So all law enforcement agencies in Washington, D.C. were  
24 affiliated with the Presidential Inauguration, and that  
25 they would pick it up after that.

1 Q. Was that your final communication with the Department  
2 of Homeland Security in January of 2005?

3 A. I can't be certain. I may have late January of 2005.

4 Q. And to the best of your recollection, who would that  
5 communication have been with?

6 A. It would have been with Bill Witherspoon again.

7 Q. Did you have any subsequent communication with the  
8 Department of Homeland Security?

9 A. Not until later in 2005.

10 Q. What time frame? Could you narrow it down a little  
11 bit?

12 A. Probably March, April 2005.

13 Q. And what did you communicate with the Department of  
14 Homeland Security?

15 MR. KIRSCH: Objection to the relevance of that  
16 time period, Your Honor.

17 THE COURT: Sustained.

18 Q. (BY MR. WALKER) And was there any event that was the  
19 termination of your communications with DHS?

20 A. Yes. There was an impact to our communication with  
21 DHS.

22 Q. I am sorry?

23 A. There was an impact to our communication with DHS.

24 Q. What was that impact?

25 MR. KIRSCH: Objection, relevance, Your Honor.

1 THE COURT: Sustained.

2 Q. (BY MR. WALKER) Mr. Thurman, were you still working  
3 at IRP Solutions when the FBI conducted their search  
4 warrant on IRP Solutions in February 2005?

5 A. Yes.

6 Q. Did you have any communication with DHS following  
7 that?

8 MR. KIRSCH: Objection, Your Honor, relevance.

9 THE COURT: Sustained.

10 MR. WALKER: Could I have one moment, Your Honor?

11 THE COURT: You may.

12 Q. (BY MR. WALKER) Mr. Thurman, why did you stop  
13 communicating with DHS?

14 MR. KIRSCH: Objection, relevance.

15 THE COURT: Sustained.

16 MR. WALKER: Your Honor, I have no further  
17 questions for the witness.

18 THE COURT: Anybody else?

19 MR. BANKS: Yes, Your Honor.

20 THE COURT: Mr. Banks.

21 **DIRECT EXAMINATION**

22 **BY MR. BANKS:**

23 Q. Mr. Thurman, did you ever meet -- have any meetings  
24 outside of the Department of Homeland Security's office?

25 A. Yes.

1 Q. Where?

2 A. There was a meeting that we had with Steven Cooper at  
3 the -- at one of the hotels. I think it was at the JW  
4 Marriott.

5 Q. What was the nature of that meeting?

6 A. He wanted to prep us for a meeting with the DOJ,  
7 Department of Justice.

8 Q. And you had mentioned on or about. What time frame  
9 and what meeting were you referring to? You mentioned a  
10 September meeting, October meeting. In which one of those  
11 meetings did this preparatory meeting occur?

12 A. To the best of my recollection, I believe that would  
13 have been around the September time frame.

14 Q. And what were the results of that meeting?

15 A. Well, the following day we had a meeting with the  
16 Department of Justice.

17 Q. Okay. Did -- were there any -- were there any  
18 changes to your agenda as a result of that meeting?

19 MR. KIRSCH: Objection, relevance.

20 THE COURT: Have we not covered all of this?

21 MR. BANKS: We may have. I will withdraw that,  
22 Your Honor.

23 THE COURT: All right. Thank you.

24 Q. (BY MR. BANKS) Now, you had mentioned that you had  
25 numerous communications with Bill Witherspoon; correct?

1 A. Yes.

2 Q. What meetings or communications were provided to you  
3 by Mr. Witherspoon?

4 A. Telephonically, and then also via e-mail.

5 Q. Any particular -- what e-mail addresses, what  
6 telephone numbers?

7 A. I had both his government e-mail address, as well as  
8 his personal e-mail address, and his government phone  
9 number, as well as his cell phone number.

10 Q. Okay. I want to go back to Paul Tran and meetings  
11 you had with Paul Tran. Was there ever a meeting with --  
12 concerning a pilot program?

13 A. Mr. Tran spoke of the pilot program early on in our  
14 discussions.

15 Q. Okay. Do you recall how much that pilot program was  
16 for?

17 A. I believe it was 10- -- I think it was \$12 million.

18 Q. Okay. And what were the requirements for  
19 participating in that pilot program? What was required to  
20 participate in that pilot program? What was needed?

21 A. The CILC software was the focus of that pilot  
22 program.

23 Q. And what purposes would the CILC software be used in  
24 that pilot program?

25 MR. KIRSCH: Objection, relevance.

1 THE COURT: Sustained.

2 Q. (BY MR. BANKS) Mr. Thurman, during this time in the  
3 September/October time frame of 2004, what was your  
4 expectations with the business at the Department of  
5 Homeland Security?

6 MR. KIRSCH: Objection, relevance.

7 THE COURT: Sustained.

8 Q. (BY MR. BANKS) Did you have any plans to deliver  
9 software to Homeland Security?

10 MR. KIRSCH: Objection, relevance.

11 THE COURT: Sustained.

12 Q. (BY MR. BANKS) Did you anticipate gaining a contract  
13 with the Department of Homeland Security?

14 MR. KIRSCH: Objection, relevance.

15 THE COURT: I'm just going to let it go.

16 Overruled, so we can move on. You may answer.

17 THE WITNESS: Yes.

18 Q. (BY MR. BANKS) I want to take you back to a  
19 presentation -- this is in a little different area, but it  
20 is related to Homeland Security. Do you remember  
21 providing a presentation for both DHS and NYPD to a man by  
22 the name of Sammy Thompson?

23 A. Yes.

24 Q. Who was Sammy Thompson?

25 A. He was -- you mean personally, or business wise?

1 Q. Both.

2 A. He was married to my cousin. And he was a senior --  
3 former senior executive vice president of Motorola.

4 THE COURT: I am sorry?

5 THE WITNESS: A former senior executive vice  
6 president of Motorola.

7 Q. (BY MR. BANKS) And what was -- as related to DHS and  
8 NYPD business, what was Mr. Thompson's role with IRP?

9 MR. KIRSCH: Objection, relevance.

10 THE COURT: I'm going to allow some leeway here.  
11 I'll overrule.

12 THE WITNESS: Mr. Thompson was involved in mergers  
13 and acquisitions. And Motorola is a major contractor with  
14 regards to law enforcement. And he also was an investment  
15 advisor to IRP, as far as trying to determine how we can  
16 go about getting investments to further the company.

17 Q. (BY MR. BANKS) Okay. I want to go back to meetings  
18 at the NYPD.

19 A. Yes.

20 Q. How many meetings do you recall actually took place  
21 at the NYPD?

22 A. I'm going to say -- again, I'm not certain of an  
23 exact number, but I would say a minimum of three.

24 Q. Okay. Do you recall a meeting at the Millennium  
25 Hilton Hotel?



1 A. I do.

2 Q. Was this meeting regarding IRP delivering software to  
3 the NYPD?

4 A. Yes, it was.

5 MR. KIRSCH: Objection, Your Honor, asked and  
6 answered.

7 THE COURT: Sustained. You covered all of this  
8 yesterday. So if there is anything new you want to  
9 inquire about, but we will not repeat or rehash  
10 yesterday's testimony.

11 MR. BANKS: I don't recall this being --

12 THE COURT: I recall the Millennium Hotel.

13 Have you testified to this before, sir?

14 THE WITNESS: I testified to the hotel.

15 THE COURT: And about that meeting?

16 THE WITNESS: Yes, ma'am.

17 MR. BANKS: I am sorry, Your Honor.

18 THE COURT: That's all right.

19 MR. BANKS: I forgot if that was there.

20 Q. (BY MR. BANKS) Do you recall meetings with the New  
21 York State Department of Insurance?

22 THE WITNESS: I was not a part -- I do recall IRP  
23 having meetings with the New York Department of Insurance.

24 Q. (BY MR. BANKS) Do you recall any RFP that was  
25 responded to by IRP?

1 A. Yes.

2 Q. Did you participate?

3 A. I participated in the writing of that RFP response.

4 Q. Okay. Do you recall how IRP was referred to the New  
5 York State Department of Insurance?

6 MR. KIRSCH: Objection, relevance.

7 THE COURT: I'll give him some leeway. Overruled.

8 THE WITNESS: We had made several contacts with  
9 several law enforcement agencies in New York. And I don't  
10 remember specifically who, but someone within the  
11 department gave me this, and was looking out for business  
12 opportunities within New York.

13 Q. (BY MR. BANKS) What department?

14 A. NYPD.

15 Q. Okay.

16 THE COURT: Now I am confused, because I think we  
17 were talking about a different department; is that  
18 correct?

19 MR. BANKS: I was getting to, Your Honor -- the  
20 NYPD referred us to --

21 THE COURT: The Department of Insurance.

22 MR. BANKS: -- the Department of Insurance.

23 THE COURT: All right.

24 Q. (BY MR. BANKS) You don't recall who at the NYPD  
25 referred; correct?

1 A. No, I don't.

2 Q. Did you attend the meeting with --

3 MR. BANKS: May I have a second, Your Honor?

4 THE COURT: You may.

5 MR. BANKS: Your Honor, I have no further  
6 questions.

7 THE COURT: All right. Anybody else?

8 Mr. Zirpolo?

9 **DIRECT EXAMINATION**

10 **BY MR. ZIRPOLO:**

11 Q. Good morning, Mr. Thurman.

12 A. Good morning.

13 Q. I just have a few questions.

14 THE COURT: Could you speak into the microphone.

15 Q. (BY MR. ZIRPOLO) I just have a few questions. You  
16 said you have a security background?

17 A. Yes, I do.

18 Q. Did you have the opportunity to write a security  
19 procedures document for IRP?

20 A. I did.

21 MR. KIRSCH: Objection, relevance.

22 THE COURT: What is the relevance, Mr. Zirpolo?

23 MR. ZIRPOLO: Mr. Kirsch had a number of witnesses  
24 come up and talk about how it was -- the different ways  
25 they got into the building and searches.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, I did.

3 Q. (BY MR. ZIRPOLO) And in that document, what were  
4 some of the features of that document?

5 A. Entry authorization. Processes for gaining access  
6 into the facility. Also document control. So, basically,  
7 as far as going in and out, badging. Going in and out,  
8 briefcases, purses would be searched. No documentation  
9 would leave the facility with regard to software code. We  
10 had a check in/check out process for document control.

11 So, at the end of the day, developers, testers  
12 would turn their document in to document control, sign it  
13 in, lock it up. Then at the beginning of the next day,  
14 sign it out and check it out.

15 Q. And were there exception procedures so that if  
16 somebody wanted to bring something into the office or out  
17 of the office?

18 A. You had to have an authorization to do that.

19 Q. Thank you. And did you have the opportunity to  
20 implement those procedures at IRP?

21 A. Yes.

22 Q. And why did IRP implement those procedures?

23 A. Well, although IRP was not a "secured facility," in  
24 government language, the nature of the business was  
25 sensitive enough to where we wanted to protect the

1 software, proprietary data. And, then, as looking forward  
2 to engagement with law enforcement agencies, you wanted to  
3 ensure that if any of their data was on site, you wanted  
4 to protect that, as well.

5 MR. ZIRPOLO: One moment, Your Honor. No further  
6 questions, Your Honor.

7 THE COURT: All right. Anybody else? No.

8 MR. WALKER: No, Your Honor.

9 THE COURT: All right. Cross-examination?

10 MR. KIRSCH: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 **BY MR. KIRSCH:**

13 Q. Good morning, Mr. Thurman.

14 A. Good morning.

15 Q. You, Mr. Thurman, have been friends with the  
16 defendants for some time; right?

17 A. Yes.

18 Q. And your wife did some work at IRP, as well?

19 A. My wife volunteered at IRP.

20 Q. She volunteered there?

21 A. Yes.

22 Q. All right. And --

23 A. Very infrequently.

24 Q. I am sorry?

25 A. Very infrequently.

1 Q. Very infrequently. She still had a title, however?

2 A. I don't recall.

3 Q. You don't ever recall seeing any documents that  
4 listed a title for your wife there?

5 A. I don't recall what the title was.

6 Q. All right. Didn't have something to do with  
7 marketing and sales, like you were working on?

8 A. I don't recall what the title was.

9 Q. All right. Is that what she did when she volunteered  
10 there?

11 A. She did several things. As with any start-up,  
12 friends, family, help out where ever they can.

13 Q. All right. One of your sons, Samuel K., worked there  
14 for some time; is that correct?

15 A. That's correct.

16 Q. Another one of your sons, Joseph, works for a  
17 staffing company now; right?

18 A. Yes, he does.

19 Q. Now, I want to start off by asking you a little bit  
20 about the chronology of some of the events that you  
21 referred to.

22 A. Okay.

23 Q. What I understood you to say was that there was a  
24 request for a quote from the Department of Homeland  
25 Security related to the confidential informant module, and

1 that that got -- you got that in about September of 2004.

2 Did I hear that right?

3 A. I believe that -- in that time frame.

4 Q. Okay. And that after that was provided, you had  
5 another meeting, or series of meetings with folks from  
6 DHS. And after that meeting or series of meetings, you  
7 provided a separate quote for the CILC Federal program?

8 A. I didn't phrase it that way.

9 Q. Oh, you didn't?

10 A. I did not.

11 Q. I thought you said that that quote was provided  
12 sometime after the quote was provided for the confidential  
13 informant.

14 A. I am making reference to your comment about "series  
15 of meetings." I didn't state that.

16 Q. I'm sorry. I'm not attempting to misstate your  
17 testimony. Let's just focus on the time -- let's just  
18 focus on the timing.

19 A. We can do that.

20 Q. Did I correctly understand your testimony that the  
21 CILC Federal quote was provided sometime after the  
22 confidential informant module quote, as you called it, was  
23 provided?

24 A. That is correct.

25 Q. All right.

1 MR. KIRSCH: Your Honor, could I please publish  
2 again Government Exhibit 502.03?

3 THE COURT: You may.

4 MR. KIRSCH: Can we start with page 1 of that  
5 exhibit. Can you highlight that e-mail on the top,  
6 please.

7 Q. (BY MR. KIRSCH) You remember sending this e-mail,  
8 Mr. Thurman, to Mr. Witherspoon?

9 A. It looks correct, yes.

10 Q. And you see that that's dated December 9th of 2004?

11 A. I see the e-mail. I don't know what these quotations  
12 are that are attached, though.

13 Q. Well, let's look at those.

14 MR. KIRSCH: Could we please publish page 3 of this  
15 exhibit? Can you highlight the top half of that, please.  
16 Could we go down to the subtotal.

17 Q. (BY MR. KIRSCH) Do you see that now, Mr. Thurman?

18 A. I do.

19 Q. All right. And this is, in fact, the quote that you  
20 provided with respect to the confidential informant  
21 module; right?

22 A. That's correct.

23 Q. Okay. And the date on the quote is December 7, 2004?

24 A. Okay. So that was several years ago. I was off by a  
25 couple of months.



1 Q. Okay.

2 A. But that is the quote? The quote is correct?

3 Q. That is the quote?

4 A. That is the quote that DHS requested.

5 MR. KIRSCH: All right. Could we please go to page  
6 of that exhibit now, please. And highlight the top half  
7 again.

8 Q. (BY MR. KIRSCH) And this is the quote that was  
9 provided -- this is the other quote that was provided in  
10 connection with that e-mail for CILC Federal?

11 A. Correct.

12 Q. Okay. Same date?

13 A. Okay.

14 Q. Okay. So this quote wasn't provided at a different  
15 time than the quote for the confidential informant module?

16 A. Again, long time ago. And so I was off on that. But  
17 the quote was requested by DHS, and the quote was  
18 submitted.

19 Q. I just need you to answer my questions.

20 A. Okay. All right.

21 Q. My question is, both of these quotes were provided on  
22 the same date, right?

23 A. According to this, yes.

24 Q. Do you disagree with those dates?

25 A. No. This is a correct quote.

1 Q. Okay. And you are referring to these -- you used the  
2 term in your testimony "request for information"?

3 A. This has nothing to do with a request for  
4 information.

5 Q. Did you use the term "request for information" in  
6 your previous testimony?

7 A. Not related to this quote.

8 Q. Let me try it again. Did you use the term "request  
9 for information" in your previous testimony?

10 A. Not related to this quote.

11 THE COURT: Sir, answer whether you used it or not.

12 THE WITNESS: Yes, I did.

13 Q. (BY MR. KIRSCH) All right. What did you -- what do  
14 you understand the term "request for information" to mean?

15 A. Just that; a request for information. The government  
16 is requesting information.

17 Q. How is that different in your mind from a quote?

18 A. A quote is asking for dollars or the amount of money  
19 that it is going to take to deliver a product solution or  
20 service. A request for information, in my mind, is  
21 requesting information about a proven concept. For  
22 instance, we have this idea, and what is it going to take  
23 to deliver this product, service or solution?

24 Q. You don't understand -- in your mind, is a quote --  
25 are you familiar with procedures called a request for

1 proposal or a request for a quote?

2 A. I do.

3 Q. RFP or RFQ?

4 A. I am familiar with those terms.

5 Q. You are familiar with those terms. You know those  
6 are terms that the government uses in the course of doing  
7 its contracting; right?

8 A. Yes.

9 Q. You know that government contracting starts -- the  
10 process of government contracting starts with the issuance  
11 of either a request for a quote or a request for a  
12 proposal?

13 A. I am not are a contracts officer.

14 Q. So you don't know that?

15 A. I am not a contracts officer. So to say I know  
16 exactly the contracts procedure; I was following the  
17 request of DHS.

18 Q. Okay. But just to make sure, I would like to ask it  
19 again -- my question again.

20 Do you or do you not know that that's what starts  
21 the Government contracting process?

22 A. I am familiar with the terms "request for proposal"  
23 and "request for quote."

24 Q. And do you know whether the government contracting  
25 process starts with an RFQ or RFP?

1 A. I do not.

2 Q. Thank you, sir.

3 So you don't -- do you know the difference, for  
4 government contracting purposes, between a request for  
5 information and a request for quote.

6 A. I do not.

7 Q. All right. And the fact, then, that those documents  
8 are -- were titled "Quote," is because that's how IRP  
9 chose to caption it; right?

10 A. We chose that because DHS asked for a quote.

11 Q. They asked you how much the software would cost?

12 A. No, DHS asked for a quote.

13 Q. Okay. I want to ask you about a couple of other  
14 terms that you used during the testimony.

15 A. Okay.

16 Q. You used the term "meeting," didn't you?

17 A. Yes.

18 Q. And then did I correctly understand you to say that  
19 your definition of the term "meeting" includes telephone  
20 calls?

21 A. In this day and age, with technology, a meeting can  
22 be a telephone conference call.

23 Q. Okay. So just to be clear, when you talked about the  
24 five meetings that you had with DHS, that included at  
25 least one telephone call?

1 A. I said approximately five.

2 Q. Okay.

3 A. I did not give specifically, because it could have  
4 been more. It could have been --

5 Q. Did that approximately five number, give or take --  
6 let's assume it could have been more or less. Does your  
7 estimate include telephone calls?

8 A. Yes.

9 Q. All right. And you also, I believe, yesterday,  
10 used -- you said that IRP had retained outside consultants  
11 who are retired law enforcement agents. Did I hear that  
12 correctly?

13 A. I don't think I used the word "retained."

14 Q. You don't think you used the word "retained"?

15 A. If I did, we did have -- we did have on staff subject  
16 matter experts.

17 Q. Right. But they weren't paid?

18 A. I don't know.

19 Q. You don't know whether they were paid?

20 A. I don't know.

21 Q. All right. So if you used the word "retained," in  
22 your mind that doesn't necessarily connote they were paid,  
23 because you don't know if they were paid?

24 A. Correct.

25 Q. Okay. You also yesterday, I think, indicated at one

1 point that you made changes in the software to accommodate  
2 the customer. Do you recall saying that?

3 A. If you say I did.

4 Q. Well, I am asking if you remember saying that.

5 A. I don't remember those exact words.

6 Q. Okay. You don't remember saying, in response to  
7 questions about the Department of Homeland Security, that  
8 you made changes to accommodate the customer?

9 A. I remember saying that we made changes to the  
10 software to accommodate the Department of Homeland  
11 Security's request.

12 Q. But you don't remember using the term "customer"?

13 A. I do.

14 Q. If you had used the term "customer," I take it by  
15 that word you hadn't meant somebody who had actually  
16 purchased your software?

17 A. Restate that question.

18 Q. If you used the term "customer," you didn't mean  
19 someone who had actually purchased your software, did you?

20 A. Depends on the context. A customer could mean  
21 prospective customer. You know, it depends on the  
22 context.

23 Q. Well, Mr. Thurman, I am asking about the context of  
24 your testimony yesterday.

25 A. Okay.

1 Q. For the purposes of this question, I will represent  
2 to you that you said when you were talking about the  
3 Department of Homeland Security, that you made changes to  
4 accommodate the customer?

5 A. Okay.

6 Q. Okay?

7 A. Okay.

8 Q. In that context, you couldn't have meant customer to  
9 mean someone who had purchased your software; right?

10 A. DHS had not purchased the software at that time.

11 Q. And never did?

12 A. Correct.

13 Q. Neither did the New York Police Department?

14 A. Correct.

15 Q. Neither did the New York Department of Insurance?

16 A. Correct.

17 Q. Neither did any of the various entities about which  
18 you testified there were presentations made?

19 A. Incorrect.

20 Q. Which one bought?

21 A. There was a CILC Basic solution that was purchased.

22 Q. Which entity, that you testified about, purchased  
23 that software?

24 A. I didn't -- I wasn't asked about a purchase  
25 yesterday.

1 Q. I just asked you whether any of the entities that you  
2 named yesterday purchased the software?

3 A. The entities that I mentioned yesterday, as far as  
4 the ones you just mentioned; NYPD, Department of Homeland  
5 Security -- and I didn't mention the Department of  
6 Insurance yesterday, that was mentioned today.

7 Q. I stand corrected.

8 A. You are correct in the sense, none of those  
9 purchased.

10 Q. Who purchased it?

11 A. Again, there was a CILC Basic solution that was  
12 purchased.

13 Q. Who purchased it, Mr. Thurman?

14 A. It was Kinnet County Sheriff's Department.

15 Q. How do you spell that, sir?

16 A. K-I-N-N-E-T.

17 Q. Where is that?

18 A. In Missouri.

19 Q. In Missouri?

20 A. Yes.

21 Q. Okay.

22 A. So I have another one.

23 Q. Please?

24 A. Southeastern Missouri State University. I am not  
25 sure if it is Southeastern State Missouri or Southeast



1 Missouri University.

2 Q. Who else?

3 A. There was a university -- or St. George's University.

4 Q. Where is that?

5 A. Their offices are in New York. And the university is  
6 actually in -- I'm not sure. I'm not exactly sure.

7 Grenada, I believe.

8 Q. Somewhere in the Caribbean?

9 A. I believe so.

10 Q. And those agencies actually purchased the software?

11 A. That's correct.

12 Q. They paid money to IRP, as opposed to getting it for  
13 free from IRP?

14 A. That's correct.

15 Q. Do you remember how much they paid?

16 A. That was, again, the CILC Basic solution. And so the  
17 amount of that I cannot recall exactly. The amount was  
18 small. That was our smallest solution. And we did have  
19 several sales promotions going on. And at that time,  
20 those were the first agencies that got on board, as far as  
21 purchasing. And then right after that IRP was raided.

22 Q. So give us a ballpark of how much those agencies  
23 paid?

24 A. It was probably in the neighborhood of, I don't know,  
25 a couple thousand dollars per sale.

1 Q. Per sale?

2 A. Right.

3 Q. That information, as far as you know -- I am sorry,  
4 the proceeds from those sales would have gone into the IRP  
5 bank account; right?

6 A. I'm not in finance.

7 Q. Would you have expected them to go somewhere else?

8 A. Where would you expect it --

9 Q. The way this works, Mr. Thurman, is I ask you the  
10 questions.

11 A. Okay. As far as handling of the financial part,  
12 again, I was not in finance.

13 Q. You don't know anything about that?

14 A. No, I don't.

15 MR. KIRSCH: Your Honor, could I please publish  
16 Government Exhibit 502.04?

17 THE COURT: You may.

18 MR. KIRSCH: Can you enlarge that message, Special  
19 Agent Smith.

20 Q. (BY MR. KIRSCH) Do you remember getting this e-mail  
21 from Steven Cooper, Mr. Thurman?

22 A. I do.

23 MR. KIRSCH: And if we could just go to the next  
24 page of that, please.

25 Q. (BY MR. KIRSCH) Are you able to see that on the

1 screen, or do you need it enlarged?

2 A. Enlarge it, please.

3 Q. Did that get big enough for you?

4 A. That is good.

5 Q. Do you recognize that this was the operations order  
6 that Mr. Cooper attached to that e-mail?

7 A. Yes.

8 Q. Okay. Now, yesterday you testified that Homeland  
9 Security had sent you some scenarios, and this is one of  
10 those scenarios.

11 A. This was the operation plan.

12 Q. Okay. This is one of the things they sent you?

13 A. This was one of the things they sent, yes.

14 Q. And on this e-mail, it doesn't have any directions  
15 about keeping it confidential or anything?

16 A. Not on this one. It was on the other one.

17 Q. Those are on different ones? Those directions are on  
18 other e-mails?

19 A. Correct.

20 Q. All right.

21 A. And it didn't say "keep it confidential." So, again,  
22 it said not to be released outside of IRP --

23 Q. All right.

24 A. -- or something to that effect.

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

1 I am sorry, Your Honor, I need just one moment,  
2 please. Your Honor, could I publish Government Exhibit  
3 502.01, please?

4 THE COURT: You may.

5 MR. KIRSCH: Special Agent Smith, can you expand  
6 the e-mail on the top there, please.

7 Q. (BY MR. KIRSCH) Are you able to read that e-mail  
8 now, Mr. Thurman?

9 A. Yes.

10 Q. This was an e-mail that you got from Paul Tran?

11 A. Yes.

12 Q. Right?

13 A. Yes.

14 Q. In May of 2004?

15 A. Yes.

16 Q. You testified before that someone from the Department  
17 of Homeland Security, in the fall of 2004, had talked to  
18 you about wanting to have the software included in the  
19 next round. There is a reference in this e-mail to  
20 getting IRP included on the list for the next round. And  
21 I was wondering if, perhaps, you had been mistaken about  
22 the timing of that exchange, as well?

23 A. Again, I could have been. As I have stated  
24 previously, that was a long time ago. So I'm not going to  
25 state a specific date.

1 Q. I am not being critical, Mr. Thurman, I am asking if  
2 it was possible.

3 A. You are correct. But the meeting was requested -- or  
4 the outcome of that meeting was stated.

5 Q. All right.

6 A. Yes.

7 Q. Now, your background, I think you said yesterday, is  
8 essentially in two areas; sales and security; is that  
9 right?

10 A. That's part of my background.

11 Q. Okay. Those were the two roles that I believe you  
12 said you fulfilled at IRP?

13 A. That's correct.

14 Q. Okay. You were not a technical person at IRP?

15 A. That's correct.

16 Q. In fact, did you say the other day that particularly  
17 in the presentations, that the technical questions were  
18 handled by someone other than you?

19 A. That's correct.

20 Q. Okay. Now, you know Mr. Barnes as well; right?

21 A. Yes, I do.

22 Q. And you know he is a technical person?

23 A. Yes, he is.

24 Q. He has a pretty extensive technology background;  
25 right. Do you know?

1 A. I do know he is a technical person.

2 Q. Okay. But you don't know the extent of his technical  
3 background?

4 A. I know he is very capable. As far as the extent, no,  
5 I don't know.

6 Q. Okay.

7 MR. KIRSCH: Your Honor, could we please publish  
8 Government Exhibit 608.57?

9 Can you expand that top left for me.

10 Your Honor, I am not sure the jury is able to see  
11 that yet.

12 Q. (BY MR. KIRSCH) Can you see that on the screen now,  
13 Mr. Thurman?

14 MR. WALKER: Objection Your Honor, beyond the  
15 scope.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 Q. (BY MR. KIRSCH) Okay. Do you see your name next to  
19 the position, "security engineer"?

20 A. Yes.

21 Q. Was that your position at IRP?

22 A. I did do security.

23 Q. Was your position at IRP a security engineer?

24 A. My position was not security engineer. I didn't have  
25 a title security engineer.

1 Q. Okay. Do you know why your name is next to "security  
2 engineer" on this list?

3 A. I do not.

4 Q. Do you know why Cliff Stewart is also next to the  
5 position "security engineer" under the column "alias"?

6 MR. WALKER: Your Honor, objection.

7 THE COURT: Overruled.

8 THE WITNESS: I do not.

9 Q. (BY MR. KIRSCH) You have no idea about that?

10 A. No, I don't.

11 Q. You don't know anything about anybody at IRP ever  
12 submitting time cards under different names?

13 A. No.

14 MR. KIRSCH: Your Honor, could I please publish  
15 Government Exhibit 609.01, the white board?

16 THE COURT: You may.

17 Q. (BY MR. KIRSCH) Mr. Thurman, from previous  
18 experience, I know I am going to need you to step out of  
19 the witness box and down here so everyone in the courtroom  
20 can see this. I want to make sure that you are able to  
21 see the board there.

22 A. Okay.

23 Q. Can you do that?

24 A. Yes.

25 Q. Okay. And do you see the column that says "Headway

1 Staffing," right in the middle of the board in red?

2 A. Yes.

3 Q. Do you see that there are a set of initials "DB"  
4 under "Headway Staffing"?

5 A. Yes.

6 Q. And then in parentheses after "DB" there are the  
7 initials "ST"?

8 A. Yes.

9 Q. Do you know whether or not Mr. Darrell Brantley was a  
10 payrolled employee at Headway Staffing?

11 A. I do not.

12 Q. You don't know about that?

13 A. No, I don't.

14 Q. I take it that you never submitted any time that you  
15 worked under Mr. Brantley's name to Headway Staffing?

16 A. No. I don't recall anything like that.

17 Q. You don't recall, or you didn't?

18 A. No, I didn't.

19 Q. You wouldn't have done that, would you?

20 A. No, I wouldn't.

21 Q. All right. Thank you, sir. That is what I wanted to  
22 ask you about that.

23 MR. KIRSCH: Your Honor, could I please publish  
24 Government Exhibit 158.01.

25 THE COURT: You may.



1 JUROR: Can we move the white board so we can see  
2 the witness?

3 MR. KIRSCH: I would be happy to do that, Your  
4 Honor. I apologize.

5 Q. (BY MR. KIRSCH) Have you had a chance to look at  
6 that now, Mr. Thurman?

7 A. Which part?

8 Q. Well, let's start with the date. October 28, 2003.  
9 Do you see that?

10 A. Okay.

11 Q. Do you see your name in the "To" line?

12 A. I do.

13 Q. So you would have gotten this e-mail; right?

14 A. Is that an e-mail?

15 Q. It is.

16 A. I don't know. I don't recall. It doesn't look  
17 familiar to me, but my name is there.

18 Q. Okay. We have established that you don't remember  
19 everything that occurred over this period of time; right?

20 A. Right.

21 Q. Okay. So you don't remember being told that there --  
22 this was going to be the official start date for other  
23 people at the company, including Gary Walker, and that you  
24 should act accordingly?

25 A. No, I don't.

1 Q. You don't have any idea what that means?

2 A. No, I don't.

3 MR. KIRSCH: Your Honor, can we please publish  
4 Government Exhibit 608.01?

5 THE COURT: You may.

6 MR. KIRSCH: Can we expand that, again, please.

7 Q. (BY MR. KIRSCH) You see this is another e-mail,  
8 Mr. Thurman?

9 A. Right.

10 Q. Your name is on the "To" line again?

11 A. Right.

12 Q. Dated about a month later?

13 A. Can I see the top of this?

14 MR. KIRSCH: Can you expand that entire page there.

15 Q. (BY MR. KIRSCH) Is that what you wanted to see, sir?

16 A. It is just the format there does not look like a  
17 standard e-mail format. That is why I ask. But go ahead.

18 Q. I would agree with you, it doesn't look like a  
19 standard e-mail format.

20 And this message also references to official start  
21 dates for Dave Zirpolo and Ken Barnes in November of 2003  
22 and has a direction to "act accordingly."

23 A. Okay.

24 Q. Do you remember getting this e-mail?

25 A. No, I don't.

1 Q. I take it you don't have any explanation for what  
2 "act accordingly" means in this e-mail, either?

3 A. I do not.

4 Q. Why would you have had an official start date for  
5 Dave Zirpolo and Ken Barnes when both of them had been  
6 working at the company for a year?

7 A. I wasn't in personnel, so --

8 Q. You don't know anything about that, either?

9 A. No, I don't.

10 Q. All right.

11 MR. KIRSCH: Thank you, Mr. Thurman. Those are all  
12 of my questions, Your Honor.

13 THE COURT: How long will redirect take?

14 MR. BANKS: I don't know. I would say 15 minutes.

15 THE COURT: All right.

16 MR. BANKS: Maybe shorter. I am not certain, Your  
17 Honor.

18 THE COURT: We'll proceed, then take a break after.  
19 You may proceed, Mr. Banks.

20 MR. BANKS: Your Honor, permission to republish  
21 Government Exhibit 502.03.

22 THE COURT: You may.

23 **REDIRECT EXAMINATION**

24 **BY MR. BANKS:**

25 Q. Mr. Thurman, what does the "Subject" line say on that

1 e-mail?

2 A. "Re-transmission case management pricing estimates,  
3 IRP Solutions."

4 Q. And down below, after, "Hi, Bill," what does it say?

5 A. "Per our conversation a few moments ago, this is a  
6 re-transmission of what we sent out on Tuesday. We look  
7 forward to speaking with you again soon."

8 Q. Okay. I want to take you to the FICMS' industry day,  
9 which was the RFI day.

10 A. Okay.

11 Q. How many participants did you estimate participated  
12 in the RFI process industry day?

13 A. Probably a hundred.

14 Q. Okay. Was this e-mail that you just read sent to 100  
15 people?

16 A. No.

17 Q. Was it --

18 MR. KIRSCH: Objection, lack of foundation.

19 THE COURT: Sustained.

20 Q. (BY MR. BANKS) Was this e-mail sent to you directly  
21 from Mr. Witherspoon?

22 A. "This e-mail," you mean from me to Bill Witherspoon.

23 Q. No, I am sorry, let me rephrase. Did Bill  
24 Witherspoon contact you directly and personally about the  
25 quote?

1 A. Yes.

2 Q. And what were the conversations leading up to the  
3 quote, if you can recall?

4 A. Well, they. Again, DHS wanted to have a solution in  
5 the event the FICMS Initiative did not continue to move  
6 forward. Mr. Witherspoon stated that if the DOJ doesn't  
7 do anything; DHS had to do something.

8 Q. Were you communicated to that that was part of an RFI  
9 process?

10 A. No. They requested a quote because they wanted to  
11 put it into their budget. They were having budget  
12 discussions.

13 Q. All right. Thank you. Do you know the terms of the  
14 agreement? We talked about the law enforcement  
15 consultants that worked at IRP; correct?

16 A. Correct.

17 Q. Do you know the terms of the agreement that those law  
18 enforcement consultants signed?

19 A. No, I don't personally.

20 Q. So you would have no idea what they agreed to be  
21 paid; correct?

22 A. Correct.

23 Q. Now -- that the question has been asked.

24 Why do you think DHS didn't purchase the software?

25 MR. KIRSCH: Objection, relevance.

1 THE COURT: Speculation. Lay more foundation.  
2 Sustained.

3 MR. BANKS: Your Honor, the Government opened the  
4 door and asked him --

5 THE COURT: You have to lay foundation, otherwise  
6 it is pure speculation.

7 MR. BANKS: Okay, Your Honor. I will come back to  
8 that.

9 Q. (BY MR. BANKS) You talked about -- I want to go back  
10 a little bit on the term "customer."

11 A. Right.

12 Q. You do have a sales background; is that correct?

13 A. That's correct.

14 Q. And in your -- how do you define the term "customer,"  
15 as relates to business?

16 A. A customer could be an established customer who you  
17 have a standing relationship with or agreement with, or it  
18 could be prospects. So when I use that term, it is not  
19 necessarily specific to someone who is actively buying  
20 something.

21 Q. If you are actually doing work on behalf of a  
22 company, do you consider them a customer?

23 A. Yes.

24 Q. Thank you. Now, you also talked about the type --  
25 some software of the CILC Basic solution that was

1 delivered to some agencies, and you gave a general  
2 estimate about the price of those solutions, correct?

3 A. Correct.

4 Q. Was there any other program that was implemented at  
5 IRP that was a part of that delivery?

6 A. Yes, there was.

7 Q. And what was that program?

8 A. We had sort of a bundle product or bundle offering  
9 whereby we would provide a Dell computer to the agency, as  
10 well.

11 Q. And did these companies also receive a Dell computer  
12 as a result of that purchase?

13 A. Yes.

14 Q. Now, was that program implemented between a  
15 business-to-business relationship between Dell and IRP?

16 MR. KIRSCH: Objection, relevance.

17 THE COURT: Sustained.

18 Q. (BY MR. BANKS) Now, regarding the white board, did  
19 you create that white board?

20 A. No.

21 Q. And you have no idea what that white board -- who  
22 created that white board?

23 A. That's correct.

24 Q. Do you happen to know Darrell Brantley's educational  
25 background? Are you aware of his educational background?

1 A. A little bit. Not extensive.

2 Q. What do you know about his background?

3 A. I think he has a master's degree.

4 Q. In what area?

5 A. Information technology.

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

7 THE COURT: Anybody else?

8 MR. WALKER: No, Your Honor.

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

11 MR. BANKS: Yes, Your Honor.

12 THE COURT: Thank you very much, Mr. Thurman. You  
13 are excused. We are going to go ahead and take a  
14 15-minute recess; a little longer than 15 minutes. We  
15 will reconvene at 11:30. Court will be in recess.

16 (A break is taken from 11:12 a.m. to 11:30 a.m.)

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

19 THE COURT: You may be seated.

20 All right. Let's go ahead, any matters before we  
21 bring in the jury.

22 MR. WALKER: Your Honor, just a matter of  
23 scheduling, for your information. We have Mr. Hillberry.  
24 We are ready to call him now. We anticipate that would  
25 probably be potentially only 15 minutes, direct for us.



1 We're prepared to call John Smith -- Agent Smith, I am  
2 sorry. But we would offer we could call him Monday, and  
3 just at your discretion we could recess for the day after  
4 Mr. Hillberry.

5 THE COURT: We'll proceed with Mr. Smith today, and  
6 get and as much of that done, since we will be recessing  
7 tomorrow.

8 MR. WALKER: Your Honor, we expect that to be  
9 relatively short, as well.

10 THE COURT: I did want to mention, we did receive a  
11 call on behalf of Robert Gianelli, my judicial assistant  
12 did, from Jim Conroy, who is counsel, I guess, for the  
13 NYPD -- New York City Police Department. He says  
14 Mr. Gianelli is in Florida on business, and is willing to  
15 do whatever the Court wishes, and needs some guidance. He  
16 indicated they had called you, or the last time he spoke  
17 with Mr. Walker was Tuesday -- this past Tuesday, and that  
18 you have not returned any telephone messages.

19 MR. WALKER: Your Honor, I called Mr. Conroy back.  
20 I have not been able to contact him. I will call him on  
21 break and leave him a message.

22 THE COURT: You just need to call him and discuss  
23 that.

24 Mr. Vilfer's attorney also called in, and I  
25 indicated, through my JA, that I would have you inform him

1 that Monday would be sufficient.

2 MR. WALKER: Yes, Your Honor. We have also  
3 received confirmation from the Department of Homeland  
4 Security that Mr. Witherspoon and Mr. Cooper will be here  
5 on Monday.

6 THE COURT: All right. Very good.

7 MR. KIRSCH: Your Honor, I don't think that  
8 information is accurate about the Department of Homeland  
9 Security. It is different than what we got over the  
10 break. I know that there have been discussions between  
11 someone for the defense and the Department of Homeland  
12 Security. But it is, at least not our understanding, that  
13 they will definitely be here -- that both of them will  
14 definitely be here on Monday.

15 THE COURT: All right. So you need to make sure  
16 you get that clarified, and make arrangements, however we  
17 do it, to get the witnesses here.

18 MR. WALKER: Yes, Your Honor.

19 THE COURT: Nothing further? Let's go ahead and  
20 bring in the jury so we can get the next witness done and  
21 let them go off to lunch, and let you go off to lunch.

22 Ms. Seeman.

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

25 THE COURT: You may be seated.

1 Defense may call their next witness.

2 MR. BANKS: Defense calls Gary Hillberry, Your  
3 Honor.

4 COURTROOM DEPUTY: Your attention, please.

5 **GARY HILLBERRY**

6 having been first duly sworn, testified as follows:

7 COURTROOM DEPUTY: Please be seated.

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

10 THE WITNESS: Gary Lee Hillberry. G-A-R-Y  
11 H-I-L-L-B-E-R-R-Y.

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

13 **DIRECT EXAMINATION**

14 **BY MR. BANKS:**

15 Q. Mr. Hillberry, could you start by giving us a little  
16 bit, as far as your background and job description?

17 A. I was with the United States Customs Service for 31  
18 years as a Criminal Investigator/Special Agent. I retired  
19 from that agency in January 2001. Over the last 10 years,  
20 I have been employed as a consultant working with the  
21 Department of Justice, U.S. Department of State, and the  
22 United States Treasury Department, as well as various  
23 private companies like IRP.

24 Q. Now, Mr. Hillberry, you were subpoenaed here today?

25 A. I was.

1 Q. Did you have any -- did you have any discussions with  
2 the Government regarding your testimony today?

3 A. No.

4 Q. But you did contact the Government related to the  
5 subpoena; correct?

6 A. Yes, I did.

7 MR. KIRSCH: Objection, relevance, Your Honor.

8 THE COURT: Overruled.

9 Q. (BY MR. BANKS) I want to -- after your retirement,  
10 did you have the opportunity to contract with a company  
11 called IRP Solutions?

12 A. Yes, I did.

13 Q. And what was the nature of the work you were  
14 contracted to do with IRP?

15 A. I was contracted as an expert on U.S. Border and U.S.  
16 Customs matters, to assist the IRP company in developing a  
17 software package on case management for investigative law  
18 enforcement agencies.

19 Q. Okay. And what type of work or deliverables -- work  
20 product did you provide during the course of your work for  
21 IRP?

22 A. Basically, my knowledge and background as an expert  
23 in the area of U.S. border activities. I participated in  
24 panel discussions in your office, where we reviewed a  
25 screen of some program that you had developed. And you

1 were asking for our input -- my input as to the correct  
2 terminology, how the activities of the investigative case  
3 agency operate, to assist you in developing this software  
4 program.

5 Q. Thank you. Did you work with any other law  
6 enforcement consultants?

7 A. On this project?

8 Q. Yes.

9 A. Yes, I did.

10 Q. And who were they?

11 A. Two gentlemen from the FBI; Mr. Fuselier and John  
12 Epke.

13 Q. Do you recall -- do you recall --

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

15 THE COURT: You may.

16 Q. (BY MR. BANKS) Do you recall what the purpose was  
17 that IRP brought both contractors from the FBI and  
18 Customs?

19 A. I assumed for the same reason. I was first contacted  
20 by Mr. Epke, and told about an opportunity to work on this  
21 project with you. And I did contact Mr. Banks at IRP. We  
22 had a discussion about the contract. I agreed to the  
23 terms, after speaking again with Mr. Epke, to find out  
24 that the terms that I was being offered were similar to  
25 the terms being offered to the two other gentlemen.

1 Q. Can you expound on what terms you agreed to work  
2 under at IRP?

3 A. I was offered a specific hourly salary that I would  
4 be on a part-time, as-needed basis, to come to the office  
5 or work on projects at my home that were devised or  
6 developed from our discussions at the office, and that I  
7 would subsequently be paid -- I would not be paid until  
8 either IRP found a funding source or got their first  
9 contract. Those were the terms, I believe, of the  
10 contract.

11 Q. Either or, correct?

12 A. Either or.

13 Q. Do you recall being contacted by Special Agent John  
14 Smith as related to this case?

15 A. I don't remember the names. If you are referring to  
16 an FBI agent, yes, I did speak with an FBI agent.

17 Q. And did you provide information to the FBI?

18 A. Yes, I did.

19 Q. Do you recall the nature or what information you  
20 provided to the FBI regarding IRP Solutions?

21 A. Basically, what I have just told you about my  
22 contract responsibility, and the contract agreement for  
23 payment. That's about the total involvement that I had  
24 with IRP over a 6-month period.

25 Q. Now, do you recall a time when you had not yet been

1 paid by IRP Solutions?

2 A. Yes, I do.

3 Q. Do you recall a meeting that you had with  
4 Mr. Fuselier and Mr. Epke regarding that?

5 A. Since Mr. Fuselier, Epke and I were from the Denver  
6 area, we would drive together to your office per our  
7 assigned dates and meeting dates. We would discuss the  
8 fact we were not being paid.

9 Q. Okay.

10 A. And we would bring that up with you, Mr. Banks, on a  
11 regular basis after the first few days of work that was  
12 being provided. And if you are referring to a specific  
13 meeting, I don't necessarily recall a specific meeting.  
14 But I do recall we did speak to you about it on a number  
15 of occasions.

16 Q. Do you recall why you continued to work after you  
17 were dissatisfied with regards to your payment?

18 A. Because you would always tell us that you were  
19 honorable men, and that you would make good on the  
20 required compensation to us and future work.

21 Q. Did you have any discussions about the viability of  
22 the product as a reason for staying?

23 A. Initially, when I first began working for IRP, I  
24 listened to your presentations, and saw your work product  
25 at the time. And if, in fact, it could be developed, I

1 thought it could be a viable program for law enforcement  
2 agencies.

3 Q. Now, at any time did you have a meeting with Mr. Epke  
4 and Mr. Fuselier that you would agree to stay on because  
5 you thought we would gain a contract, or IRP would gain a  
6 contract?

7 A. Yeah. You would tell us you were close to a contract  
8 with the NYPD and other federal agencies. I believe even  
9 Philadelphia law enforcement agencies. And that was  
10 incentive to us to continue in the program.

11 Q. Did you have a discussion specifically,  
12 Mr. Hillberry, about your belief that the software was  
13 good enough to gain state and federal contracts?

14 A. I don't remember having a specific discussion with  
15 them about that, but it's possible that we did. That's  
16 why I stuck -- stayed, because I thought that, one, I've  
17 already invested in this with no income, no payment. I  
18 might as well stay and ride it out and see if I can get  
19 paid. Quite frankly, my decision was as soon as I got my  
20 first paycheck, I was going to terminate my contract with  
21 IRP.

22 Q. Are you aware of the raid that took place on IRP?

23 A. Not really. Only the fact that there was going to be  
24 law enforcement action involving IRP. And that was all  
25 the extent of what I knew and know to this day.



1 Q. Would you expect IRP to continue to conduct business  
2 under that umbrella?

3 MR. KIRSCH: Objection, relevance. Lack of  
4 foundation.

5 THE COURT: Sustained.

6 MR. BANKS: Your Honor, I would like to refresh  
7 Mr. Hillberry's recollection of an Affidavit he signed  
8 concerning conversations between him and Mr. Fuselier and  
9 Mr. Epke.

10 THE COURT: Well, there is nothing to refresh as of  
11 this point. You need to ask him a question. If he  
12 doesn't remember, then you can refresh.

13 Q. (BY MR. BANKS) Do you recall specifically a meeting  
14 with John Epke and Dwayne Fuselier where it was your  
15 position that IRP Solutions had a viable law enforcement  
16 product?

17 MR. KIRSCH: Your Honor, object to Mr. Banks  
18 reading from the document.

19 THE COURT: Sustained. Ask him if he recalls a  
20 specific -- I think you already did. I think he didn't  
21 know. But lay some foundation without reading from the  
22 document.

23 MR. BANKS: Very well, Your Honor.

24 Q. (BY MR. BANKS) Do you recall a meeting with Epke and  
25 Fuselier related to the viability of IRP's product and the

1 ability, with that product, to gain contracts at the state  
2 and federal level?

3 A. I don't recall a specific meeting. However, we did  
4 talk about this on many occasions when we were driving  
5 from Denver down to the Springs. When we were in our  
6 office and you were not available or you had something  
7 else, we would talk about it. We approached you about  
8 this, about the program, and why we were staying on and  
9 when we would be paid.

10 But I may have said something -- you, apparently,  
11 are referring to something I may have stated or written.  
12 I don't recall a specific date. But we did talk about it  
13 on a number of occasions, and we did think you had a  
14 viable product. But I never saw the end product. I never  
15 saw a full presentation of the product.

16 Q. Would you agree that you were there to support the  
17 development of that product at the federal level?

18 A. That was what my contract was, was to provide  
19 information to allow you to get to that point.

20 Q. Did you have any conversations with anybody else  
21 outside of Mr. Epke and Mr. Fuselier related to IRP's  
22 product?

23 MR. KIRSCH: Objection, relevance and hearsay.

24 THE COURT: Overruled.

25 THE WITNESS: The FBI, when they interviewed me.

1 And I believe there might have been someone several years  
2 ago who contacted me as a representative of the court  
3 saying they were collecting information to assist in  
4 preparation for the trial that IRP was proceeding on. But  
5 I can't recall who that person was, but it was, I believe,  
6 a representative of the court at that time.

7 Q. (BY MR. BANKS) So I am going to ask, just for  
8 clarification, I will ask this one more time. Did you  
9 believe IRP had a viable product capable of acquiring  
10 contracts at the state and federal level? Was that your  
11 belief?

12 A. When I initially started with IRP, yes.

13 Q. And when did you start with IRP?

14 A. It was either -- I had no time to refresh myself on  
15 the files I maintained, they are in storage. But I  
16 believe it was November or December 2003, sometime into  
17 the spring of 2004. I believe that was the period I was  
18 involved.

19 Q. Do you recall when the date of your Affidavit was  
20 where you may have communicated to the FBI about IRP's  
21 product viability?

22 A. The FBI interviewed me months after we were basically  
23 separated from any further involvement with IRP because of  
24 the investigation involving IRP. The FBI contacted me. I  
25 met with them. They asked me to write down what I

1 believed I was doing there. And I did, and provided it to  
2 them.

3 MR. BANKS: Your Honor, I would like at this point  
4 to provide greater recollection to Mr. Hillberry regarding  
5 his statements.

6 THE COURT: Ask him specific questions. If he  
7 doesn't understand, then you can refresh recollection.

8 MR. BANKS: He has already.

9 THE COURT: But I haven't heard him say he didn't  
10 remember anything.

11 MR. BANKS: Okay.

12 Q. (BY MR. BANKS) Do you remember -- again, I will put  
13 a different term in here. Do you remember, again, your  
14 conversation with Dwayne Fuselier and Mr. Epke that IRP  
15 and their product had the ability to gain federal and  
16 state contracts?

17 A. I don't remember the exact context of that  
18 conversation, but it probably occurred.

19 Q. You don't remember what you said to the FBI in your  
20 Affidavit?

21 A. No, I don't.

22 MR. BANKS: Your Honor, permission to refresh his  
23 recollection.

24 THE COURT: You may, although I think you asked him  
25 and he answered this question. But you may have it marked

1 for identification.

2 MR. BANKS: Do you have a copy of this, Mr. Kirsch?

3 MR. KIRSCH: I do, thank you, Mr. Banks.

4 COURTROOM DEPUTY: I have marked this as  
5 Defendants' Exhibit D405.

6 THE COURT: Okay. That has been marked for  
7 identification as D405.

8 Q. (BY MR. BANKS) Mr. Hillberry, if you could go to the  
9 second page, third paragraph, and privately refresh your  
10 recollection.

11 A. Yes, sir.

12 Q. Now, would you agree that you stayed on with IRP  
13 Solutions because they had software that was viable enough  
14 to acquire state and federal contracts, and that was your  
15 reason for continuing, correct?

16 A. Well, I can take from my own comment here, which is  
17 in an Affidavit I signed in January of '05 to the FBI,  
18 that we had many private discussions, which I state, and  
19 that I believed you had a viable program, and it was  
20 moving forward. I agreed to that. But I stayed on, in  
21 addition to thinking you had a product, to get paid,  
22 because you kept telling us, as the paragraph preceding  
23 that states, that you are an honorable man. That you are  
24 going to make good on payment to us. So that was another  
25 incentive for me to stay, because I had money invested

1 that I did not get paid for.

2 Q. Did you not sign a contract to get paid upon the sale  
3 of the software?

4 A. Correct. You kept telling us you had one with the  
5 NYPD imminently, and possibly Philadelphia and other  
6 federal agencies. So I believed that.

7 Q. And were you aware of meetings that we were engaged  
8 in at both Homeland Security and the New York City Police  
9 Department?

10 A. Only to what you told us, yes.

11 Q. Okay.

12 A. I had no personal knowledge that there were such  
13 meetings.

14 Q. So you had no reason to doubt at the time that we  
15 were not engaged in significant meetings with those  
16 agencies?

17 A. I was starting to lose doubt in that. I took you at  
18 your word that you were an honorable man. Ultimately, I  
19 chose to believe this was not going to work. And about at  
20 the same time is when the FBI apparently conducted a  
21 search of your office.

22 Q. You would agree that there is nothing predictable  
23 about business; correct?

24 A. I'm not a businessman, so I really can't say.

25 Q. Predictable about life?

1 A. I agree with that.

2 Q. Now, you stopped -- I have brief question. You  
3 stopped short at moving forward. It appeared to be moving  
4 forward.

5 A. Okay.

6 Q. What did IRP agree to move forward, in your opinion,  
7 in accordance with your Affidavit?

8 A. When we would meet with you and we would confront you  
9 about not being paid, you would tell us about your final  
10 days and final closings with the NYPD, which would result  
11 in a contract.

12 Q. Excuse me, Mr. Hillberry I am relating specifically  
13 to your sworn Affidavit to the FBI.

14 A. Yes. I thought I answered that, but --

15 MR. BANKS: Your Honor, can I move to have this  
16 document deemed admissible?

17 THE COURT: No, you may not.

18 Q. (BY MR. BANKS) So, does your statement read --

19 THE COURT: I should tell you, you may move its  
20 admission, but I deny it.

21 MR. KIRSCH: Your Honor, I object to Mr. Banks  
22 reading from the document, however.

23 MR. BANKS: May I have Mr. Hillberry read the  
24 language from the Affidavit?

25 THE COURT: Ask him a question. If he gives you an

1 answer -- no, it is not admitted. You can't read from the  
2 document. That is why he is here, for you to ask him the  
3 questions you want to ask him, and have him testify today.

4 Q. (BY MR. BANKS) Did you agree, based on your  
5 testimony -- or your Affidavit to the FBI, that IRP was  
6 moving forward to acquire state and federal contracts?

7 A. That's in my Affidavit, yes, it is.

8 MR. BANKS: Thank you. I have no further  
9 questions.

10 THE COURT: All right. Anybody else?

11 MR. WALKER: Yes, Your Honor.

12 THE COURT: All right. Mr. Walker.

13 **DIRECT EXAMINATION**

14 **BY MR. WALKER:**

15 Q. Mr. Hillberry, you stated earlier that in the course  
16 of providing your expertise -- your expertise to IRP  
17 Solutions, you also viewed the product that was being  
18 built by the company; is that correct?

19 A. Yes.

20 Q. Do you recall on how many occasions you viewed the  
21 product, itself?

22 A. Three or four.

23 Q. And in those viewings that you had, did you see  
24 advancement in the product in reference to the  
25 recommendations that you were making about the product?



1 A. I did. But when we reviewed the product, after a  
2 previous meeting and made recommendations, the language  
3 from the drop downs that were being discussed would be in  
4 there, with some other language that we may not -- at  
5 least I did not necessarily agree with, but discussed that  
6 to kind of clean that up.

7 But what I sensed out of this is that from meeting  
8 to meeting -- and I probably only attended 10 sessions at  
9 your office. But over those sessions, it really wasn't  
10 moving much. You were developing a few screens, but  
11 that's --

12 Q. Let me stop you there. You would agree that  
13 recommendations that you made, you did see in the product;  
14 is that right?

15 A. Yes.

16 Q. And you also stated that you believed that IRP  
17 Solutions had a viable product for state, local and  
18 federal; is that correct?

19 MR. KIRSCH: Objection, Your Honor, asked and  
20 answered.

21 THE COURT: Sustained.

22 Q. (BY MR. WALKER) Did you believe IRP had a viable  
23 product?

24 MR. KIRSCH: Objection.

25 THE COURT: Sustained. We covered this many times,

1 Mr. Walker.

2 Q. (BY MR. WALKER) And given those statements, would  
3 you believe that an FBI investigation would hamper IRP's  
4 business prospects?

5 MR. KIRSCH: Objection, relevance.

6 THE COURT: Speculation, lack of foundation.

7 Sustained.

8 MR. WALKER: No further questions for the witness,  
9 Your Honor.

10 THE COURT: Anybody else?

11 MR. BANKS: No, Your Honor.

12 THE COURT: All right. Cross?

13 MR. KIRSCH: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 **BY MR. KIRSCH:**

16 Q. Mr. Hillberry, it sounded like you hadn't finished  
17 your answer about the movement that you saw in the  
18 software from meeting to meeting. Can you go ahead and  
19 explain what you saw there, please.

20 A. I didn't feel it was moving quickly enough to get to  
21 ultimately be presented in the near future to a law  
22 enforcement agency. I never did see a full product. We  
23 were working in pieces each time I was there. And they  
24 would talk with us, and we would try to give them our  
25 guidance as to the right language and how many spaces are

1 needed for case numbers, and that would occur. We would  
2 see that in the next session. But I thought we should  
3 have moved a lot quicker.

4 Q. All right. Now, you said, I think, several times, in  
5 fact, that you believed, at least at one point, that IRP  
6 had a viable product?

7 A. Early on, yes, sir, I did.

8 Q. Okay. Now, when you say "early on," did that belief  
9 change at some point?

10 A. Yes.

11 Q. When was that?

12 A. When I never saw the product moving forward or seeing  
13 the full product that was being discussed. I never saw  
14 that.

15 Q. And when is it that you were there?

16 A. My best recollection is like November, December of  
17 2003, through probably March, April, 2004. And then I was  
18 notified that the FBI had served a warrant at their  
19 office.

20 Q. And so it was -- am I right that it was in the second  
21 half, at least, of your time at IRP, that your belief  
22 about the viability of their product changed?

23 A. That's correct.

24 Q. Now, you said, I think, that you were a custom's  
25 agent for over 30 years; is that right?

1 A. Thirty-one.

2 Q. I take it you conducted some interviews during that  
3 time?

4 A. Yes, I have.

5 Q. How many interviews do you think you have conducted?

6 A. Thousands.

7 MR. BANKS: Objection, Your Honor, relevance.

8 THE COURT: Overruled.

9 Q. (BY MR. KIRSCH) Was one of the things that you tried  
10 to do over the course of those interviews, in your career,  
11 was determine whether or not people were telling you the  
12 truth?

13 A. Yes, sir.

14 Q. And when Mr. Banks told you that repeatedly; told you  
15 that they were close to signing a contract with the New  
16 York Police Department or the Philadelphia Police  
17 Department or a federal agency, did you believe him?

18 A. Initially, yes, I did.

19 Q. Okay. And the basis for your belief initially that  
20 they had a viable product, what was that basis?

21 A. Because of our discussions; what their approach was  
22 to be, to develop a virtual case management product.  
23 Having been in management in my agency, I knew that would  
24 be something of interest to an agency. But I never saw it  
25 move forward.

1 Q. So, again, the basis for your belief that it was a  
2 viable product was what Mr. Banks told you?

3 A. That's correct.

4 MR. KIRSCH: Thank you, sir.

5 THE COURT: Redirect?

6 MR. BANKS: Yes, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. BANKS:**

9 Q. You said a minute ago, Mr. Hillberry, you were not  
10 aware of meetings that IRP representatives had with the  
11 Department of Homeland Security; is that correct?

12 A. That's correct.

13 Q. So you would not have known what requirements, if  
14 any, the company was doing on behalf of the Department of  
15 Homeland Security; is that correct?

16 A. I don't recall ever hearing a discussion about  
17 Homeland Security.

18 Q. You said a moment ago that you were aware of -- that  
19 Mr. Banks told you about meetings they were having with  
20 Homeland Security and the NYPD; correct?

21 A. No. If I said Homeland Security, I was mistaken. It  
22 was the NYPD, I believe Philadelphia, and other federal  
23 agencies. But I didn't know the name of the agencies.

24 Q. What purpose were you there if it was not for federal  
25 purposes?

1 A. I was there to provide expertise and help you devise  
2 the software package that you were developing and to give  
3 the right language the law enforcement people speak. And  
4 then with the type of affidavits and the numbers and the  
5 actual case names and numbers of things we do in our daily  
6 work.

7 Q. You were a federal agent; correct?

8 A. That's correct, as were the other two gentlemen.

9 Q. All right. Thank you. Can you testify conclusively  
10 to what Mr. Banks believed?

11 A. I don't understand the question.

12 Q. You don't know what Mr. Banks believed in his own  
13 mind as it related to closing business with those  
14 agencies; correct?

15 A. No, I don't.

16 Q. Are you a technology person?

17 A. No, I'm not.

18 Q. Do you know what it takes to implement software code  
19 for a law enforcement product of this nature?

20 A. No, I don't.

21 Q. Do you know the time element involved in delivering  
22 this type of capability or preparing this type of  
23 capability for presentation?

24 A. No, I don't.

25 Q. And, again, you were unaware of what the requirements

1 were that DHS provided to IRP; correct?

2 MR. KIRSCH: Objection, asked and answered.

3 THE COURT: Sustained.

4 Q. (BY MR. KIRSCH) Now, you talked about -- you started  
5 with IRP sometime in 2004; correct -- Early 2004?

6 A. I believe I said November, December 2003 through  
7 spring, April of 2004.

8 Q. Okay. So if your independent contractor agreement  
9 was January of 2004, you wouldn't have any reason to  
10 dispute that, would you?

11 A. No, I don't. Again, as I mentioned, I have not had a  
12 chance to review any files on this prior to arriving  
13 today. They are in storage.

14 Q. Okay. You would agree that you submitted your  
15 Affidavit regarding IRP Solutions on 1/18/05, correct?

16 MR. KIRSCH: Objection, beyond the scope of cross.

17 THE COURT: Sustained.

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

19 THE COURT: Anybody else?

20 MR. WALKER: Yes, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. WALKER:**

23 Q. Mr. Hillberry, you said that you had ended your  
24 engagement with IRP Solutions about summer of 2004; is  
25 that right?

1 A. Spring.

2 Q. Spring of 2004. And so given that, you wouldn't have  
3 had any opportunity to view the software past that day,  
4 would you?

5 A. That's correct.

6 Q. And you would have no knowledge of any improvements  
7 made on the federal product after that date, would you?

8 A. That's correct.

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

10 THE COURT: All right. May this witness be  
11 excused?

12 MR. BANKS: Yes, Your Honor.

13 THE COURT: Thank you very much, Mr. Hillberry, you  
14 are excused.

15 Parties please approach.

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

18 THE COURT: You all said your examination of Agent  
19 Smith is going to be relatively short?

20 MR. BANKS: Very possible.

21 THE COURT: Because what I don't want to do is send  
22 the jury away, have them come back, then 15 minutes after  
23 they are back say you can go home. So I just --

24 MR. BANKS: It should be brief.

25 THE COURT: Should we keep them here, call him, and



1 I can let them go for the rest of the day?

2 MR. BANKS: Your Honor, it is my suggestion to send  
3 them home. We don't know how involved --

4 THE COURT: I am not sending them home. So we do  
5 it now or we go through until 1:00, then I let them go  
6 home, or, take lunch and come back.

7 MR. WALKER: Can we have a moment, Your Honor?

8 THE COURT: I don't have a problem with recessing  
9 now, but we have to do his testimony today. We can come  
10 back.

11 MR. BANKS: I don't want to do it, either, Your  
12 Honor, at this point.

13 THE COURT: Well, if you think it is going to take  
14 longer than half an hour, I don't want to cut you short,  
15 so I think we should recess for lunch.

16 MR. BANKS: Minimum of half hour.

17 THE COURT: Then let's recess for lunch.

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

19 THE COURT: All right. Ladies and gentlemen, we  
20 are going to go ahead and recess for lunch now. It is  
21 12:09. If we can reconvene at 1:15.

22 COURTROOM DEPUTY: Your Honor, we have a 1 o'clock  
23 telephone status conference.

24 THE COURT: That won't take long, though. Let's  
25 make it 1:30, because I don't want to keep you waiting

1 unnecessarily. But I don't think that will take very  
2 long. We will reconvene at 1:30 for the next witness.

3 So, remember not to discuss this with anybody else.  
4 Go out, enjoy lunch, and be back ready to go. Hopefully  
5 we won't keep you waiting, and we will get going at 1:30.  
6 Court will be in recess.

7 The jury may leave. The parties remain. I do have  
8 one matter to discuss with you.

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

11 THE COURT: All right. You may be seated. I  
12 wanted to make sure I know -- I will forget if I wait  
13 until later on this afternoon. I suspect we will be  
14 wrapping this up sometime next week. With that in mind, I  
15 need to get the final jury instructions.

16 So, I wanted to let you know, that it is my  
17 intention that the preliminary instructions that I gave,  
18 with only perhaps minor changes on some of the things, no  
19 other substantive changes, but including the instruction  
20 on the Indictment, the instruction on jury deliberations  
21 and the instruction on communication with the Court, that  
22 is what I would give as the final jury instructions right  
23 now.

24 You all need to get to me any additional  
25 instructions that you think are merited based on what

1 happened here in the trial, I would like to have those, if  
2 we could, by noon on Sunday, so that I can review those  
3 and we can be ready to go. I can work on those on Sunday  
4 afternoon, and make sure we will have as close to a final  
5 version so we can have a charging conference with respect  
6 to those as soon as the parties close.

7 MR. WALKER: Yes, Your Honor. Would you like to  
8 specify a specific time as a deadline?

9 THE COURT: Noon. I thought I said noon. If I  
10 didn't --

11 MR. WALKER: I am sorry, I was typing.

12 THE COURT: Noon Sunday. That will give me the  
13 afternoon Sunday. If you can submit those the same way.  
14 Those don't need to be submitted in CM-ECF. Just send  
15 them to chambers with a copy to opposing counsel, and then  
16 the Government to the parties. But that way we will be  
17 ready to go, and I can get out, hopefully, a set to you of  
18 the final instructions, and then we can have a charging  
19 conference as soon as the defense rests.

20 All right. I just didn't want to forget it. If I  
21 don't do it now, I will forget about it. All right.  
22 Anything else that needs to be brought to my attention?

23 MR. BANKS: No, Your Honor.

24 THE COURT: All right. See you back at 1:30.

25 (Lunch break is taken from 12:12 p.m. to 1:36 p.m.)

1 THE COURT: You may be seated.

2 Are we ready to bring the jury in?

3 MR. KIRSCH: Yes, Your Honor.

4 MR. BANKS: Yes.

5 THE COURT: All right. Ms. Seeman, please bring in  
6 the jury.

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

9 THE COURT: You may be seated.

10 Defendants may call their next witness.

11 MR. BANKS: Your Honor, the defendants call Special  
12 Agent John Smith.

13 COURTROOM DEPUTY: Your attention, please.

14 **SPECIAL AGENT JOHN SMITH**

15 having been first duly sworn, testified as follows:

16 COURTROOM DEPUTY: Please be seated.

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

19 THE WITNESS: It's John Smith. J-O-H-N. Last name  
20 S-M-I-T-H.

21 THE COURT: You may proceed.

22 MR. BANKS: Thank you, Your Honor.

23 **DIRECT EXAMINATION**

24 **BY MR. BANKS:**

25 Q. I guess for the Court, can you tell the jury what you

1 do for a living.

2 A. Yes. I am a Special Agent of the FBI.

3 Q. And what does your role as a Special Agent -- what  
4 are your job duties as a Special Agent?

5 A. As a Special Agent, I investigate crimes.  
6 Investigate crimes.

7 Q. Did you -- now, during -- a standard part of your job  
8 is to conduct search warrants; execute search warrants?

9 A. Yes, that's part of our job.

10 Q. And around February of 2005, February 9, 2005, did  
11 you execute a search warrant on a company called IRP  
12 Solutions?

13 A. Yes, we did.

14 Q. And where was that search warrant conducted?

15 A. The search warrant was in Colorado Springs at the  
16 offices of IRP, Leading Team and DKH Enterprises.

17 Q. And as -- what was your role in the case associated  
18 with IRP?

19 A. At the time of the search warrant, I was the case  
20 agent for that case.

21 Q. And how long did you remain the case agent for that  
22 case?

23 A. I was the case agent from when I started the case in  
24 2004, until I moved in July -- I am sorry, end of June of  
25 2007.

1 Q. So you were replaced by another case agent, or were  
2 you still considered the case agent for this matter?

3 A. When I moved, there was a new case agent assigned  
4 from Colorado Springs.

5 Q. And do you know who that is?

6 A. I'm not -- I believe -- there were a couple case  
7 agents after me. So, yes, I know the names of those.

8 Q. And did -- after that, did you continue to provide  
9 some type of support on -- with regards to the IRP case?

10 A. Yes, I did.

11 Q. Now, can you describe a little bit what the process  
12 is to acquire a search warrant?

13 A. The process to acquire a search warrant is you have  
14 to write an affidavit that supports why you would want to  
15 search a business. And that affidavit is presented to a  
16 United States Magistrate Judge here. I brought it to this  
17 courthouse, and it is signed by a judge.

18 Q. And what type of information do you typically put in  
19 a search warrant affidavit?

20 MS. HAZRA: I'm going to object on relevance  
21 grounds, Your Honor.

22 THE COURT: Approach.

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

25 MS. HAZRA: He is asking generally about search

1 warrants. He is asking generally about search warrants,  
2 and he is not directing it to any particular case in  
3 general, either.

4 MR. BANKS: Related to IRP, Your Honor.

5 THE COURT: What is the relevance of this whole  
6 line of questioning?

7 MR. BANKS: We are going into the search warrant  
8 and execution and things that happened on the day of the  
9 search warrant.

10 THE COURT: Are you trying to challenge the search  
11 warrant?

12 MR. BANKS: Not challenge the search warrant, but  
13 the Government's activities and his creation of the search  
14 warrant and information that he will actually provide to  
15 the judge.

16 THE COURT: But that's not something that gets done  
17 here. That is something that you do as part of your  
18 challenge to the search, itself.

19 MR. BANKS: We are not challenging the search, Your  
20 Honor.

21 THE COURT: I need to know the relevance of any of  
22 that information to the defense.

23 MR. BANKS: He's contacted members of -- not only  
24 Steven Cooper, with regards to conducting the search  
25 warrant, but actually Melissa McRae and other people who

1 he contacted, he provided and utilized their testimony  
2 with regards to the search warrant.

3 THE COURT: How is that relevant to the issues to  
4 your defense?

5 MR. BANKS: The Government's motivations in this  
6 particular case is going to be brought clear as we  
7 question Mr. Smith, and the reasons that they actually  
8 started investigating this case.

9 MS. HAZRA: Your Honor, it seems to me defendant is  
10 making some sort of Franks argument -- that is what I  
11 think -- in challenging the search. That is a pretrial  
12 motion. That is not litigated in front of the jury.

13 THE COURT: Franks is a case. But if you wanted to  
14 challenge the search -- you are saying you don't want to  
15 challenge that, but that is something that needs to be  
16 done pretrial. In this particular case, I need to find --  
17 I need to understand better what the relevance is of the  
18 search warrant and what's in the search warrant to your  
19 defense.

20 You admitted, without objection, all of the fruits  
21 of that search that were offered by the Government. So I  
22 am trying to understand why this is relevant.

23 MR. BANKS: Information -- maybe I'm going about it  
24 wrong. Information Mr. Smith provided as far as the  
25 language he provided in the search warrant is inconsistent



1 with testimony he received from individuals to do that  
2 search warrant.

3 THE COURT: How do you know that?

4 MR. BANKS: Because I see the inconsistency. That  
5 is what I'm trying to lay foundation for.

6 THE COURT: I'm not sure -- if you are trying to  
7 say the information contained in the search  
8 warrant affidavit --

9 MR. BANKS: I will ask him questions why he did  
10 certain things a certain way, Your Honor.

11 THE COURT: We need to get to that. But whether or  
12 not -- it sounds to me like you are trying to challenge  
13 the search warrant.

14 MR. BANKS: Not at all.

15 THE COURT: You need to move on and ask him direct  
16 questions, but not into the validity of the search  
17 warrant, itself, because that is something that needed to  
18 be raised before trial.

19 MS. HAZRA: Seems they are calling Special Agent  
20 Smith purely to impeach him, which is improper under 608.

21 THE COURT: So ask him substantive questions, then  
22 the Government doesn't object. But if the sole question  
23 is to call him to impeach him, that should have been done  
24 on cross-examination.

25 MR. BANKS: This is all new grounds.

1           THE COURT: Remember, you have to ask him direct  
2 questions, but we will not get into the substance of the  
3 search warrant.

4           MR. BANKS: Very well, Your Honor.

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

6 Q.    (BY MR. BANKS) Mr. Smith, during your investigation,  
7 did you -- how did you -- did you actually contact  
8 staffing companies?

9 A.    Yes, I did.

10 Q.   And how did you go about contacting those staffing  
11 companies?

12 A.    I had received information from the search, and that  
13 staffing companies had lost money to DKH, IRP and Leading  
14 Team. So I researched the name of that staffing company  
15 and got their phone number and called them to figure out  
16 what the relationship was with those three companies.

17 Q.   Okay. And during the course of those -- that  
18 contact, did you request information?

19 A.    Yes, I did.

20 Q.   And what type of information did you request from the  
21 staffing companies?

22 A.    I requested all of the information that they had  
23 related to their relationships with either IRP, DKH or  
24 Leading Team, to include things such as invoices, time  
25 cards and things about the business relationship.

1 Q. Also, I want to ask you a question, are you aware of  
2 a newspaper article that was generated from the raid?

3 A. There was a newspaper article in the Colorado Springs  
4 newspaper, yes.

5 Q. Did you contribute to that article?

6 A. No, I did not.

7 Q. Did you at any time use that article in your contact  
8 with staffing companies?

9 A. Yes, I did.

10 Q. For what purpose -- now, let me back up there.

11 You said a minute ago that you wanted to -- you  
12 contacted staffing companies in an effort for them to  
13 provide you information on their dealings with IRP, DKH,  
14 et cetera, as related to the matters in this case;  
15 correct?

16 A. Yes. I called them to find out about their  
17 relationship with those three companies.

18 Q. So if you sent the newspaper -- did you send the  
19 newspaper article, then, as part of your transmissions to  
20 them to collect information?

21 A. Yeah. I would call the people first and try to  
22 determine if there was a relationship with one of the  
23 three companies. And then after I determined -- and we  
24 talked about how I had got their name from the search  
25 warrant and had documents related to their company. Yes,

1 sometimes I would send the newspaper article to them if  
2 they asked me.

3 Q. If they asked you?

4 A. Let me rephrase that. I told them a search warrant  
5 had occurred, that is how I got the documents with their  
6 names on it. And, then, to follow up with that, I would  
7 send them the newspaper article.

8 Q. And what was the purpose of sending the newspaper  
9 article?

10 A. The purpose was just to -- we had talked about it on  
11 the phone, and I told them I got their documents during a  
12 search warrant of those offices, and that I had an  
13 article. And they were happy to -- instead of looking it  
14 up on the internet, I had it, and I could send it to them,  
15 instead of -- saving them time.

16 Q. You didn't tell them just what you were investigating  
17 about, you sent them a newspaper article; correct?

18 A. Yes. I called them and told them that I had seized  
19 documents related to their company during the search  
20 warrant. And we talked a little bit to see if they had a  
21 relationship with DKH, IRP or Leading Team. And then to  
22 follow up on that phone call, sometimes I would send the  
23 newspaper article.

24 Q. Did you send the newspaper article to a gentleman by  
25 the name of Greg Goldberg, as well, during the course of

1 your investigation?

2 A. I don't remember sending it to Greg Goldberg.

3 Q. Did you have contact with Mr. Goldberg with regard to  
4 this investigation?

5 A. I don't remember having contact with him.

6 Q. You remember no contact with Greg Goldberg of Holland  
7 & Hart?

8 A. That's correct.

9 MR. BANKS: May I have a moment, Your Honor?

10 THE COURT: You may.

11 Q. (BY MR. BANKS) Would you doubt the fact that you  
12 actually sent -- you doubt that you actually sent the  
13 newspaper article to Greg Goldberg; correct?

14 A. I just said, I don't remember contacting Greg  
15 Goldberg at this time.

16 Q. In the entire -- do you recall a letter that was sent  
17 to the Government from Mr. Goldberg as information that  
18 related to some of the staffing companies he had been  
19 associated with?

20 A. Yes. I remember Greg Goldberg works -- he is a  
21 lawyer at a firm, and his firm -- he wrote a letter and  
22 sent it to the Government.

23 Q. And you are aware of the contents of that letter?

24 A. Yes.

25 MR. BANKS: Your Honor, I would like to provide

1 Mr. Smith with the FBI fax sheet sent to Greg Goldberg to  
2 refresh his recollection.

3 THE COURT: With respect to what?

4 MR. BANKS: Mr. Smith just testified he never sent  
5 anything to Mr. Goldberg.

6 THE COURT: Have it marked.

7 MS. HAZRA: May I see it?

8 MR. BANKS: You can keep that.

9 MS. HAZRA: Okay. Thank you.

10 COURTROOM DEPUTY: I have marked this as  
11 Defendants' Exhibit D406.

12 Q. (BY MR. BANKS) Let me ask you this. Did  
13 Mr. Goldberg have some affiliation with some of these  
14 staffing companies?

15 A. I remember Mr. Goldberg was an attorney at a firm in  
16 Denver. And the staffing companies had reached out -- he  
17 had accumulated data from staffing companies that had lost  
18 money to DKH, IRP and Leading Team. He compiled that  
19 data, and also the statements from the staffing companies  
20 that he had received, and sent that to the Government.  
21 And that's how this case started, because we became aware  
22 that those companies had been contacting staffing  
23 companies and not paying their bills. And he compiled the  
24 data and sent it to the Government. That is how I became  
25 aware of Mr. Goldberg.

1 Q. So what purpose -- if he had knowledge of -- and you  
2 are saying he was not participating in his attorney role,  
3 as an agent in this case or a member of the Government's  
4 case; correct?

5 A. No, that's not correct. He was an attorney, private  
6 firm. He wasn't with the United States Government.

7 Q. So what purpose did you send him the article?

8 A. I faxed him this newspaper article. He must have  
9 reached out to me about the case at some point, and I  
10 can't tell him about ongoing investigations, but I sent  
11 him an article that was public in the newspaper.

12 Q. Are you sure you didn't send the article to him and  
13 staffing companies to frame your response from the  
14 staffing companies?

15 A. I absolutely did not do that.

16 Q. Wouldn't it have been simpler to say, send me  
17 information regarding your dealings with IRP?

18 A. I told them to send me information, yes.

19 Q. Did you send this article to any businesses that IRP  
20 was doing business with during the course of your  
21 investigation?

22 MS. HAZRA: Object to the relevance of this, Your  
23 Honor.

24 THE COURT: Overbroad.

25 Q. (BY MR. BANKS) Did you send this article to IBM?

1 A. I don't remember sending it to IBM.

2 Q. Do you remember sending it to any company?

3 A. Yes. I sent it to staffing companies that I obtained  
4 data during the search warrant that I thought could have  
5 had relationships with DKH, IRP or Leading Team. And the  
6 purpose of sending it to them was to see if they had lost  
7 money to those companies and to determine their  
8 relationship.

9 Q. What were the contents of that article?

10 MS. HAZRA: Objection, Your Honor, it's hearsay.

11 THE COURT: Mr. Banks?

12 MR. BANKS: Your Honor, if the Government issued an  
13 article to --

14 THE COURT: But they didn't issue it. They sent  
15 it. The objection is hearsay.

16 MR. BANKS: Okay.

17 Q. (BY MR. BANKS) Did you have a chance to read the  
18 article?

19 A. Yes.

20 Q. And what type of information did the article contain?

21 A. I haven't read the article since it came out in the  
22 newspaper in February of 2005. But it contained  
23 information about the business activities of DKH, IRP and  
24 Leading Team.

25 Q. Do you recall the article saying that the companies



1 were doing -- it was found the companies did some  
2 development -- software development?

3 A. I haven't read the article since February of 2005.

4 Q. Would you like to read the article now to refresh  
5 your recollection?

6 A. Sure.

7 Q. It should be there in front of you in that defense  
8 exhibit we just gave you.

9 A. Okay.

10 Q. Now, at the bottom of that article, would you agree  
11 it says that "investigators found evidence that there was  
12 some software development going on"?

13 A. It's cut off here at the bottom, but it says -- it  
14 says something similar to that, yes.

15 Q. Didn't you already know that the company was  
16 developing software?

17 A. At the time of the search warrant, it was unclear  
18 what the exact business activities of DKH, IRP and Leading  
19 Team were. And people we talked to said that they were  
20 told that those companies made some kind of software. But  
21 it was uncertain on the status of the software and how far  
22 along it was. So I didn't really know how far along or  
23 what exactly they were doing.

24 Q. Well, prior to executing the raid, didn't you have an  
25 opportunity to speak to members of the Department of

1 Homeland Security; specifically Steven Cooper?

2 A. Yes.

3 Q. Did you also have an opportunity to interview an FBI  
4 agent from the CIO office of the Department of Justice by  
5 the name of Melissa McRae?

6 A. Yes, I did.

7 Q. And what was Ms. McRae's -- what was the nature -- do  
8 you know when you interviewed her?

9 A. I don't know the exact date. I don't know the exact  
10 date, no.

11 Q. Okay. What was -- what type of information did she  
12 provide you about the company?

13 MS. HAZRA: I am going to object as to hearsay,  
14 Your Honor.

15 THE COURT: Sustained.

16 Q. (BY MR. BANKS) What did you report in your FBI  
17 report of February 3, 2005? What did you report as it  
18 relates to Melissa McRae?

19 MS. HAZRA: Objection, Your Honor, hearsay.

20 THE COURT: Mr. Banks, why is that not hearsay? It  
21 is talking about her statement, not a statement he made,  
22 correct?

23 MR. BANKS: This is what the FBI annotated in their  
24 report.

25 THE COURT: About what she said?

1 MR. BANKS: About what she said.

2 THE COURT: You have to ask her what she said, not  
3 him.

4 Q. (BY MR. BANKS) What was communicated to you?

5 THE COURT: It's -- unless you have an exception to  
6 hearsay, a statement by someone who is not here in court  
7 is hearsay.

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

9 THE COURT: You may.

10 Q. (BY MR. BANKS) During your drafting of your Search  
11 Warrant Affidavit, did you include information received  
12 from Melissa McRae as a part of your Search Warrant  
13 Affidavit?

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

15 THE COURT: Discuss the relevance of that.

16 Q. (BY MR. BANKS) During the course of your  
17 investigation, did you speak to Melissa McRae?

18 A. Yes, I did.

19 Q. And who is Melissa McRae?

20 A. She's an FBI agent. At the time she was a  
21 Supervisory Special Agent at FBI headquarters.

22 Q. Are you aware if she attended any software  
23 presentations or demonstrations of IRP?

24 A. Yes, I am.

25 Q. Do you know when she attended that presentation or

1 demonstration?

2 A. Sometime in 2004, in the fall.

3 Q. Prior to the raid; correct?

4 A. Yes, prior to the search warrant.

5 Q. So you said you were unaware that IRP was developing  
6 software; correct?

7 A. That's not what I said. I said I was uncertain on  
8 the status of the software and how far along it was. I  
9 talked to various people, and we didn't know for sure at  
10 the time how far along it was or what the status was.

11 Q. But Melissa McRae is an FBI agent; correct?

12 A. Yes, she is.

13 Q. And your testimony is she attended a meeting where  
14 IRP was doing a software demonstration?

15 A. She attended a meeting. I don't know if she actually  
16 saw a software demonstration or some other type of Power  
17 Point or something similar to that.

18 Q. What about Steven Cooper? Did you speak to him  
19 concerning IRP?

20 A. Yes, I did.

21 Q. And who is Steven Cooper?

22 A. At the time, he was an executive in charge of  
23 information technology. One of the executives at the  
24 Department of Homeland Security.

25 Q. And were you aware of any interactions or meetings he

1 had with IRP?

2 A. Yes, I was.

3 Q. Do you know the nature of those meetings?

4 A. Those meetings were similar to the meeting that we  
5 just talk about with Ms. McRae, I believe. Mr. Cooper  
6 attended that meeting, also.

7 Q. Would it be safe to say you knew IRP was a software  
8 development company?

9 A. Yes, that's fair.

10 Q. Would it also be safe to say that you in your Search  
11 Warrant Affidavit, you classified them as a "purported  
12 software development company"?

13 MS. HAZRA: Objection, Your Honor, relevance.  
14 Leading.

15 THE COURT: Sustained.

16 Q. (BY MR. BANKS) Do you know a gentleman by the name  
17 of Richard Powers?

18 A. Yes, I do.

19 Q. Who is he?

20 A. He, at one point, was the Special Agent in Charge of  
21 the Denver division of the FBI.

22 Q. What about a Gene Anderson?

23 A. I know her. I don't know if I have ever met her, but  
24 I know her -- know the name.

25 Q. What does she do?

1 A. She is still an FBI agent. Somewhere else in the  
2 Bureau, but at the time I knew her, she was a supervisor  
3 in the Denver office.

4 Q. During the course of your investigation --

5 MR. BANKS: May I have a moment, Your Honor?

6 THE COURT: You may.

7 Q. (BY MR. BANKS) During the course of your  
8 investigation, was one of the staffing companies that you  
9 had that you interfaced with, was a company called Sunny  
10 Side Temps?

11 A. Yes, that's correct.

12 Q. Are you aware of any contact that either Gene  
13 Anderson or Mr. Powers had with Sunny Side Temps?

14 A. Yes, I am.

15 Q. What is your knowledge of their communications with  
16 them?

17 A. I have seen a letter in my file that was signed --  
18 the letter was actually signed by Gene Anderson. But at  
19 the bottom it has Mr. Power's name on it, because he is  
20 the Supervisory Special Agent in Charge, SAC. But  
21 Ms. Anderson signed the letter because she had the  
22 authority to do that, and she sent that letter to Sunny  
23 Side Temp.

24 Q. Do you know what the nature of that letter was?

25 A. Yes, I do.

1 Q. Can you expound on that for the Court?

2 A. Yes. I had sent a letter to Sunny Side Temp asking  
3 them to send me documents related to their interactions  
4 with IRP, DKH or Leading Team, and to get invoices,  
5 payroll records and the like; stuff like that that they  
6 had sent, the stuff they were going to send me, they sent  
7 it to the wrong address. They sent it to FBI office in  
8 Denver. I work in Colorado Springs.

9 The package of stuff made it into the Denver  
10 office, and somehow got routed to Gene Anderson, because  
11 she was the white collar supervisor at that time; in  
12 charge of white collar crime. Based on her getting that,  
13 she sent the letter back to the person at Sunny Side Temp.  
14 I didn't know anything about it at that time because it  
15 came to Denver. She sent the letter back to them.

16 Q. Do you know what the contents of that letter were?

17 A. Yes. It was just basically -- she wrote back and  
18 said that the FBI was not going to pursue the  
19 allegations -- pursue a crime against Sunny Side based on  
20 what they received from Sunny Side.

21 Q. I will ask again. You said based on what they  
22 received from Sunny Side?

23 A. Yes. Ms. Anderson got this letter and this package  
24 from Sunny Side, and did not know I had a case in Colorado  
25 Springs. She thought it was just a packet from one

1 company, and didn't realize I had an ongoing investigation  
2 with multiple companies that had lost money. She didn't  
3 understand Sunny Side was just one of these companies. So  
4 she wrote a letter back to the person at Sunny Side  
5 saying, thanks for sending us this stuff, but we are not  
6 going to pursue a federal investigation at this time.

7 Q. For what reason?

8 MS. HAZRA: Objection, Your Honor, speculation.

9 THE COURT: Overruled.

10 THE WITNESS: She did not know that I had an  
11 investigation in Colorado Springs going. So she wrote  
12 back and said -- I haven't seen the letter in awhile, but  
13 said something to the effect, thanks for sending us the  
14 stuff. We will not open an investigation. You should  
15 pursue this civilly.

16 Q. (BY MR. BANKS) So she thought it was a civil matter;  
17 correct?

18 MS. HAZRA: Your Honor, objection, speculation.

19 THE COURT: If you know what she thought.

20 THE WITNESS: I don't know what she thought.

21 Q. (BY MR. BANKS) Do you know what she wrote?

22 A. Yes.

23 Q. And what is that?

24 A. Just what I just said a minute ago.

25 Q. That it was a civil matter?



1 A. Yes. That they should pursue that civilly, yes.

2 Q. And you said she was the head of white collar crime  
3 here in Denver; correct?

4 A. She was the supervisor of a white collar squad. I  
5 don't know if there is more than one squad. She is one of  
6 the supervisors.

7 Q. Does the Colorado Springs office fall under the  
8 purview of the Denver office?

9 A. Yes. The Colorado Springs office is a sub office of  
10 the Denver office. But we have different supervisors over  
11 our squads.

12 Q. She wasn't your supervisor, was she?

13 A. No.

14 Q. Are you aware of whether or not the article was  
15 distributed over the internet?

16 A. Can you be more specific?

17 Q. Are you aware the article -- the specific article you  
18 passed to staffing companies, was also on the internet?

19 A. I believe it was on the newspaper's website.

20 Q. Was that the goal of the Government, was to smear  
21 IRP?

22 A. Absolutely not.

23 Q. So why send an article to staffing companies?

24 MS. HAZRA: Your Honor, I am going to object as  
25 asked and answered.

1 THE COURT: Sustained.

2 Q. (BY MR. BANKS) Now, did you have -- you testified a  
3 minute ago that you had no interactions with Greg  
4 Goldberg. And, specifically, you had not sent him a fax.  
5 Did you have any other communications regarding this case  
6 with Greg Goldberg?

7 A. Like I said earlier, we had got a letter in from Greg  
8 Goldberg's firm that started the case about staffing  
9 companies that had lost money to DKH, IRP or Leading Team.  
10 And then I have this fax that I sent in with the letter  
11 that you showed me earlier. And that's all I can remember  
12 about personal interaction with Greg Goldberg.

13 MR. BANKS: Your Honor, I have no further  
14 questions.

15 THE COURT: All right. Anybody else?

16 MR. WALKER: Yes, Your Honor.

17 THE COURT: Mr. Walker?

18 **DIRECT EXAMINATION**

19 **BY MR. WALKER:**

20 Q. Agent Smith, you said earlier that -- I believe you  
21 said that you weren't sure how far along the software was;  
22 is that correct?

23 A. Yes. Yes, at the time of the search, I talked to  
24 various people. And I'm not a software expert, so I  
25 didn't know how far along it was.

1 Q. And how was the presence or absence or progress of  
2 the software a factor for the FBI's investigation?

3 A. Honestly, the software -- the case was initiated  
4 because staffing companies had engaged in business with  
5 IRP, DKH and Leading Team, and they were not paying those  
6 invoices. So that was the focus of my investigation.

7 Talking to staffing companies before the search  
8 warrant, they were told that there was impending or  
9 imminent contracts, or they had contracts with NYPD or  
10 other agencies. So that is how software became involved,  
11 because they were told there were contracts for software,  
12 and that's how the invoices would be paid.

13 But my focus was to gather documents related to  
14 staffing companies and their interactions with DKH,  
15 Leading Team and IRP.

16 Q. Was the absence or presence of software a factor that  
17 would help the FBI determine whether or not there was a  
18 so-called scam?

19 A. Just the same answer to the question I had. The  
20 staffing companies said that there was an imminent sale or  
21 there was a sale of the software at NYPD. That is why  
22 they did business with those companies. So there were  
23 representations made to those companies by IRP, DKH and  
24 Leading Team.

25 Q. And at some point, would it be true that the FBI

1 determined that there was software being developed at IRP  
2 Solutions?

3 A. Yes, that's true. You know, after the search, it was  
4 obvious there were some software there.

5 Q. And is it also true that at some point the FBI  
6 determined that IRP Solutions was, in fact, attempting to  
7 sell software to the Department of Homeland Security?

8 A. They had meetings with the Department of Homeland  
9 Security about their software.

10 Q. And were those meetings in regard to selling the  
11 software to the Department of Homeland Security?

12 A. My remembering is that Homeland Security was getting  
13 information about software that was available, you know,  
14 in all of the different software products that were  
15 available, and IRP was one they were looking at to see  
16 what was available there.

17 Q. I'll ask the question again, Agent Smith. Were those  
18 meetings with DHS attempts to sell software to DHS as  
19 determined by the FBI?

20 MS. HAZRA: Your Honor, I'm going to object, either  
21 asked and answered or speculation.

22 THE COURT: I think you need to lay more foundation  
23 as to what he would know about what DKH and the others  
24 were doing. So lay more foundation. Overruled.

25 Q. (BY MR. WALKER) Agent Smith, at what time did you --

1 at what time did you leave the FBI in Denver?

2 A. I left this division -- I moved from Colorado Springs  
3 in June of 2007.

4 Q. And were you involved in the investigation of IRP  
5 Solutions up to June of 2007?

6 A. Yes.

7 Q. Did you have occasion to interview employees at the  
8 Department of Homeland Security prior to June 2007?

9 A. Yes, I did.

10 Q. And in those interviews, did DHS tell you the nature  
11 of meetings they had with IRP Solutions?

12 A. Yes, they did.

13 Q. And did they relate to you that IRP Solutions was  
14 attempting to sell their product to DHS?

15 A. Yes. They said that IRP was there to present their  
16 software, and they were there to -- DHS was trying to  
17 figure out what all of the software products were at the  
18 time.

19 Q. So that answer is a yes; correct?

20 A. I don't know if that is a yes or no.

21 Q. Let me stop you. You started your answer with yes,  
22 then you expounded. So is that a yes or is that a no?

23 A. It's a yes.

24 Q. Thank you. And in the course of your being with the  
25 FBI here in Denver, and involved in this case up until

1 June of 2007, did you have the occasion to interview  
2 anyone from the NYPD about IRP Solutions?

3 A. I know there were interviews. I don't know if I  
4 personally did them.

5 Q. Were you, up until June 2007, still the Supervisory  
6 Special Agent?

7 A. No. That is incorrect, I was not a supervisor.

8 Q. Can you just clarify your role up until June of 2007.

9 A. Yes. I was a Special Agent.

10 Q. Special Agent. And as a Special Agent, through June  
11 of 2007 on this case, did you have the opportunity to  
12 speak with anyone about interactions between IRP Solutions  
13 and the NYPD?

14 A. Yes, I did.

15 Q. And who did you discuss IRP's dealings with the NYPD  
16 with?

17 A. I remember contacting the FBI in New York City, to go  
18 out and do an interview -- do interviews at the NYPD  
19 regarding the IRP case.

20 Q. And in your discussions with the FBI in New York  
21 City, did you determine that IRP Solutions was meeting  
22 with the NYPD?

23 MS. HAZRA: I am going to object, Your Honor. This  
24 is now double hearsay.

25 THE COURT: Well, it is did you determine they were

1 meeting. I'll overrule. I'll allow it.

2 MR. WALKER: Thank you, Your Honor.

3 THE WITNESS: Yes. So an FBI agent in New York  
4 City went to the NYPD and conducted an interview with  
5 somebody at the NYPD, and determined that IRP had been in  
6 contact with NYPD.

7 Q. (BY MR. WALKER) And as a Special Agent involved in  
8 this case, did you follow up on that information provided  
9 to you?

10 A. I know -- I wasn't the Case Agent for the whole case,  
11 but I know there were follow-ups about the NYPD.

12 Q. And what is your knowledge about what was determined  
13 in those follow-ups regarding the NYPD with IRP Solutions?

14 A. I know that the NYPD never sold their software to IRP  
15 (sic).

16 Q. Okay. So you know that IRP never sold products to  
17 the NYPD. Do you also then know that IRP was attempting  
18 to sell products to NYPD?

19 A. Again, I knew that IRP -- based on the case, that IRP  
20 had contacted the NYPD and was doing software  
21 demonstrations.

22 Q. And how, specifically, do you know that IRP was doing  
23 software demonstrations at the NYPD?

24 A. I know that -- I have read interview reports that  
25 other FBI agents did from people at the NYPD that had met,

1 or at least knew about meetings with people from IRP at  
2 the NYPD.

3 Q. And so in that knowledge, do you also know that those  
4 meetings weren't philosophical, they were sales meetings?

5 A. Yes, they were meetings about software, yes.

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

7 THE COURT: Anybody else?

8 MR. BARNES: Yes, Your Honor.

9 THE COURT: Mr. Barnes.

10 **DIRECT EXAMINATION**

11 **BY MR. BARNES:**

12 Q. Agent Smith, did you have any contact with any of --  
13 anybody working at IRP prior to the raid, until you left?

14 A. I can't remember specifically. I know I didn't have  
15 contact with anybody here at this table.

16 Q. Did you have any contact with any of the subject  
17 matter experts; with your former federal agents prior to  
18 the raid in 2005?

19 A. I don't know if it was before or after the raid.  
20 But, yes, I contacted those retired federal experts, yes.

21 Q. And did they provide you information about what was  
22 going on inside IRP at the time?

23 A. Yes, they did.

24 Q. Could you explain what information you received  
25 during that -- those interactions with those former FBI



1 agents?

2 A. My memory of that is I received information from  
3 three people. I got a retired FBI agent name John Epke, a  
4 retired FBI Agent named Dwayne Fuselier, and a retired  
5 Custom's Agent named Gary Hillberry. They relayed to me  
6 that they had been contacted by IRP Solutions to be  
7 subject matter experts. They had went to IRP's offices  
8 and performed work that they were never paid for.

9 Q. Did they initiate that contact, or was that contact  
10 initiated by you?

11 A. I can't remember if they called the FBI or somehow I  
12 had seen documents and knew to call them.

13 Q. So if they called the FBI, how would they have known  
14 there was an investigation going on prior to a raid?

15 A. I don't know if they knew there was a raid. They  
16 might have just -- I can just only speculate. I don't  
17 know if they called me or I called them.

18 Q. But the question is, how would they have known any  
19 sort of legal action, investigation was going on to  
20 contact you first?

21 MS. HAZRA: Objection, Your Honor, calls for  
22 speculation.

23 THE COURT: To the extent that you would know, you  
24 may answer it. If you are speculating, you may not.

25 THE WITNESS: I don't know if I called them or if

1 they called me.

2 Q. (BY MR. BARNES) Was there any other e-mail  
3 communication, besides calling. Was there electronic  
4 communication, face-to-face, any of that happen prior to  
5 2005?

6 A. I don't know. I know the three gentlemen, they lost  
7 money -- they worked at IRP and never got paid. I don't  
8 remember the interactions with them.

9 Q. But you did get information from them about IRP  
10 Solutions; is that correct?

11 A. Yes, I did. But I don't remember how I got the  
12 information.

13 Q. Outside of those three, was there any other contact  
14 you had with any other persons; working contract or  
15 volunteer from IRP Solutions related to your  
16 investigation, prior to the raid in 2005?

17 A. Like I said, I talked to those three gentlemen at  
18 some point. And I don't remember contacting any of you  
19 gentlemen before the search warrant.

20 Q. So, for lack of a better word, were they like your  
21 spies inside of IRP?

22 A. Absolutely not spies. They were just gentlemen, just  
23 like anybody else, that had lost money -- had worked there  
24 and didn't get paid. And they relayed that to me; that  
25 they didn't get paid for services they performed.

1 Q. You didn't see the need to contact anyone at IRP to  
2 maybe question them about their, you know, dealings with  
3 staffing agencies; what they were doing prior to the raid  
4 in 2005?

5 A. That is an investigative decision, and I chose not to  
6 do that.

7 Q. But you chose to contact the former FBI agents, maybe  
8 get information from them, but not from the people who may  
9 actually know what is going on?

10 A. Like I said, I don't know if they called me or I  
11 called them. But I know I talked to them.

12 Q. About IRP Solutions; correct?

13 A. Yes. About them working at IRP, DKH or Leading Team  
14 and never getting paid.

15 Q. So, again, you testified earlier that after 2007 you  
16 were basically no longer, I guess, the case head of this  
17 investigation; is that correct?

18 A. Yes. I moved to another office and was no longer the  
19 primary case agent.

20 Q. So how far -- how far would you say you were involved  
21 with this case after 2007?

22 A. I have always maintained involvement. I have known  
23 the other case agents, and they call me with questions.  
24 And I help them on interviews and other things that they  
25 needed to help complete the investigation.

1 Q. So were you -- did you help coordinate any  
2 investigation with the Philadelphia Police Department in  
3 2009?

4 A. No, I did not.

5 Q. Were you aware that was happening?

6 A. No, I was not.

7 Q. So you are not aware of any contact with the  
8 Philadelphia Police Department at all during the course of  
9 the investigation of IRP Solutions?

10 A. No. I know that there was FBI contact with the  
11 Philadelphia Police Department. But I wasn't involved in  
12 any of that.

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

14 THE COURT: Anybody else. Mr. Zirpolo?

15 **DIRECT EXAMINATION**

16 **BY MR. ZIRPOLO:**

17 Q. Good afternoon, Agent Smith.

18 A. Good afternoon.

19 Q. Do you know what an InfraGard is, I-N-F-R-A-G-A-R-D?

20 A. Yes, I do.

21 Q. What is that?

22 A. It's an FBI program that relates to liaison contacts  
23 with members of the information technology field or  
24 community.

25 Q. Were members of IRP members of InfraGard?

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

2 THE COURT: Mr. Zirpolo?

3 MR. ZIRPOLO: Just setting a basis for his contact  
4 with some InfraGard personnel.

5 THE COURT: What is the relevance of that?

6 MR. ZIRPOLO: It shows that InfraGard accepted IRP  
7 employees as members of their group, and that IRP was  
8 actually trying to sell their software package to  
9 InfraGard.

10 THE COURT: What is the relevance of that?

11 MR. ZIRPOLO: It is going to the integrity -- or  
12 the company, and how they were going forth trying to sell  
13 their package.

14 THE COURT: Sustain the objection. Irrelevant.

15 Q. (BY MR. ZIRPOLO) Mr. Smith, do you remember  
16 testifying under oath that we wouldn't be here if we had  
17 paid the software companies?

18 A. No, I do not.

19 Q. During the James hearing on November 17th, do you  
20 remember testifying to that under oath?

21 A. No, I do not.

22 MR. ZIRPOLO: One moment, Your Honor, please. One  
23 moment, Your Honor. I'm sorry.

24 Q. (BY MR. ZIRPOLO) So let me be a little bit more  
25 specific. You were asked a question if they?

1 THE COURT: He doesn't remember. Do you have  
2 anything to refresh his recollection?

3 MR. ZIRPOLO: I have the James hearing. I don't  
4 have it printed, Your Honor.

5 THE COURT: Show him what you have. Let him read  
6 it, see if that refreshes his recollection.

7 MS. HAZRA: Will you refer me to a page?

8 THE COURT: You can hand that to Ms. Seeman. Just  
9 for the record, this is a transcript of a hearing on what  
10 date?

11 MR. ZIRPOLO: November 19, I believe it was.

12 THE COURT: Of last year?

13 MR. ZIRPOLO: Yes.

14 THE COURT: This is page?

15 MR. ZIRPOLO: 92.

16 THE COURT: 92. All right.

17 THE WITNESS: Okay.

18 Q. (BY MR. ZIRPOLO) So based off of that, if IRP was  
19 successful in selling software, we wouldn't be here today?

20 THE COURT: Ask him your question. Does he now  
21 remember making that statement?

22 Q. (BY MR. ZIRPOLO) Do you now remember testifying to  
23 that?

24 A. Just to clarify, like, I read the statement here, but  
25 I can't tell if this is me or not. What page? It is just

1 questions. It doesn't say my name.

2 Q. If we can scroll up to where he was sworn in.

3 MR. ZIRPOLO: May I approach?

4 THE COURT: Yes, you may.

5 MS. HAZRA: Your Honor, we have a paper copy we are  
6 happy to provide.

7 THE COURT: That would probably be more helpful.

8 THE WITNESS: I read it. It is fine.

9 THE COURT: Can we mark that for identification so  
10 we have it for the record?

11 MS. HAZRA: Certainly.

12 Q. (BY MR. ZIRPOLO) So, having seen that, that was you  
13 testifying; correct?

14 A. Yes.

15 Q. And so do you remember testifying to that now?

16 A. The question that is right there was, "Is it fair to  
17 say that if IRP would have paid, you never would have been  
18 called?" And I said "Yes, that's probably fair to say."

19 Q. So if IRP was -- so, in other words, if IRP was  
20 successful in selling their software, we wouldn't be here  
21 today?

22 A. If IRP was successful and had sold it and had paid  
23 the staffing companies, of course my belief is they  
24 probably wouldn't have called, because you all would have  
25 paid them, and they wouldn't be here.

1           COURTROOM DEPUTY: I am sorry to interrupt. This  
2 transcript is marked as Defendants' Exhibit D407.

3           THE COURT: All right.

4           MR. ZIRPOLO: One moment again.

5           THE COURT: You may.

6           MR. ZIRPOLO: No further questions, Your Honor.

7           THE COURT: Anybody else?

8           MR. WALKER: No, Your Honor.

9           THE COURT: All right. Cross-examination?

10                                 **CROSS-EXAMINATION**

11     **BY MS. HAZRA:**

12     Q.    Good afternoon, Special Agent Smith.

13     A.    Good afternoon.

14     Q.    You were just asked on direct examination about your  
15 statement that you think it would be fair to say you  
16 wouldn't be here, or words to that effect?

17     A.    Exactly, correct.

18     Q.    But isn't it true, Special Agent, that means,  
19 according to your testimony on direct, that the staffing  
20 agencies wouldn't have reported it to the FBI if they had  
21 gotten their money?

22     A.    Yes. That is what I would assume.

23     Q.    It doesn't mean there wouldn't have been a scheme to  
24 defraud, does it?

25     A.    No, it does not.



1 Q. It doesn't mean that the defendants -- that the  
2 defendants didn't necessarily make misrepresentations,  
3 does it?

4 A. No, it does not.

5 Q. It means the staffing companies wouldn't have  
6 reported it if they hadn't lost money?

7 A. Right.

8 Q. If they hadn't reported the crime, you wouldn't be  
9 investigating the crime?

10 A. Correct.

11 Q. You can only investigate crimes that are reported or  
12 that you have knowledge of; is that right?

13 A. Yes, that's correct.

14 Q. You were asked a series of questions about an  
15 article. I just wanted to clarify. That is a newspaper  
16 article, isn't it?

17 A. Yes, it's a newspaper article.

18 Q. That wasn't written by the FBI?

19 A. No. It was written by a newspaper person.

20 Q. I want to talk to you a little bit about the steps  
21 you took before you executed a search warrant at IRP, DKH  
22 and Leading Team.

23 A. Okay.

24 Q. In the course of that investigation, you talked to a  
25 couple retired federal law enforcement officers; is that

1 right?

2 A. Yes, I did.

3 Q. And in your sort of experience and training, do you  
4 tend to believe that they are reliable witnesses?

5 A. Yes, I do.

6 Q. Did you also talk to some people from the staffing  
7 companies?

8 A. Yes, I did.

9 Q. And, specifically, you talked to some victims of the  
10 defendants' staffing companies?

11 A. Yes, I did.

12 Q. So you talked to a couple -- several different  
13 sources in the course of your investigation?

14 A. Yes, that's correct.

15 Q. And you also talked to, eventually, people in the  
16 federal government agencies; is that right?

17 A. Yes.

18 Q. Just to be clear, you did all of these things prior  
19 to executing the search warrant?

20 A. Yes, I did.

21 Q. So you talked to all those various different sources  
22 before the FBI searched in February of 2005?

23 A. Yes, that's correct.

24 MS. HAZRA: One moment, Your Honor? I have no  
25 further questions.

1 THE COURT: Redirect?

2 MR. BANKS: Yes, Your Honor.

3 **REDIRECT EXAMINATION**

4 **BY MR. BANKS:**

5 Q. You were just asked by -- in your cross-examination,  
6 whether or not, as regarding your statements, is it fair  
7 to say you wouldn't have been contacted if the companies  
8 had been paid; correct?

9 A. Yes.

10 Q. And you also said that that doesn't mean that a  
11 scheme to defraud was not under way; correct?

12 A. Yes, I did.

13 Q. Are you aware that intent is a part of a scheme to  
14 defraud?

15 A. I'm not an attorney. I don't know the whole legal  
16 definition of a scheme to defraud, what parts.

17 Q. You know a scheme to defraud, but you don't know any  
18 more about the scheme to defraud as it applies to the law?

19 A. I know that -- can you ask me a question, please?

20 Q. Do you know what the intent to defraud is?

21 A. I mean, I could give you -- I couldn't give you an  
22 absolute legal definition.

23 Q. Just your understanding.

24 THE COURT: That is inappropriate. I instruct on  
25 the law. If he knows what it is, he can give it, but I

1     instruct on the law.

2     Q.     (BY MR. BANKS) Do you know what it is?

3     A.     I don't know the legal definition.

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

5             THE COURT: Anybody else?

6             MR. WALKER: No, Your Honor.

7             THE COURT: May this witness be excused?

8             You may step down. All right. Thank you.

9             Ladies and gentlemen, at this time I understand  
10     that we don't have any other witnesses for today. I also  
11     am going to give you a break. We are not going to convene  
12     tomorrow, so you don't have to report back until Monday  
13     morning at 9:00 a.m.

14             Now, I do want to remind you, you have your jury  
15     instructions. In particular, and I tell you this kind of  
16     very briefly every time we break, but I really want to  
17     emphasize, because you heard some testimony today about a  
18     newspaper article. It would be inappropriate for you to  
19     go try to find that newspaper article on the internet.

20             So I want to point you to the first jury  
21     instruction that tells you about you cannot engage in any  
22     outside type of research in this matter because your  
23     decision is to be based on the evidence that is received  
24     here in court. So I know the natural inclination would be  
25     because of curiosity, and I want to warn you against doing

1 anything like that.

2 So don't talk to anybody about this case. Don't do  
3 any additional research. You can have tomorrow off, and  
4 we will reconvene at 9 o'clock on Monday morning.

5 All right. The jury is excused.

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

8 THE COURT: All right. You may be seated. I want  
9 the parties here at 8:30 on Monday morning, just in the  
10 event there are matters, so we can start promptly at 9:00.  
11 And you can give me an update as to where we stand with  
12 our witnesses, okay.

13 MR. WALKER: Yes, Your Honor.

14 THE COURT: Any other matters that need to be  
15 brought to my attention before we recess until Monday.

16 MR. BANKS: Not from us, Your Honor.

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

18 THE COURT: Thank you very much, then. We will see  
19 you at 8:30 on Monday morning. Court is in recess.

20 (Court is in recess at 2:39 p.m.)

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

R E P O R T E R ' S   C E R T I F I C A T E

I, Darlene M. Martinez, Official Certified  
shorthand Reporter for the United States District Court,  
District of Colorado, do hereby certify that the foregoing  
is a true and accurate transcript of the proceedings had  
as taken stenographically by me at the time and place  
aforementioned.

Dated this 5th day of December, 2011.

---

s/Darlene M. Martinez

RMR, CRR