

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 5)

---

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 9:00 a.m. on the 30th day of September 2011, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

**FOR THE PLAINTIFF:**

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

**FOR THE DEFENDANTS:**

Pro Se

I N D E XWITNESSES :PAGE**KATHY OLSON**

DIRECT EXAMINATION BY MR. KIRSCH	726
CROSS-EXAMINATION BY MR. BANKS	748
CROSS-EXAMINATION BY MR. HARPER	763
REDIRECT EXAMINATION BY MR. KIRSCH	770

**SUSAN SLAKEY**

DIRECT EXAMINATION BY MS. HAZRA	772
CROSS-EXAMINATION BY MR. BANKS	795
REDIRECT EXAMINATION BY MS. HAZRA	810
RECROSS-EXAMINATION BY MR. BANKS	811

E X H I B I T SNO.ADMITTED

4.00	739
5.00	787
8.00	741
10.00	790
370.02	731
130.01	778
130.03	779
131.00	784
136.01	793
371.00	735
376.00	746
376.02	761

No.ADMISSIBLE

130.02	779
132.00	788
133.00	786
372.00	737
373.00	738

1                                   **SEPTEMBER 30, 2011**

2                                   (Proceedings commence at 9:00 a.m.)

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

5                                   THE COURT: You may be seated.

6                                   Well, good morning. Are there any matters that  
7 need to be brought to my attention before we call in the  
8 jury?

9                                   MR. KIRSCH: Not for the Government, Your Honor.

10                                  MR. BANKS: Not from us, Your Honor.

11                                  THE COURT: All right. Ms. Barnes, would you  
12 please bring in the jury.

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

15                                  THE COURT: All right. You may be seated. Good  
16 morning. Welcome back.

17                                  All right. The Government may call its next  
18 witness.

19                                  MR. KIRSCH: Thank you, Your Honor. The Government  
20 calls Kathy Olson.

21                                  COURTROOM DEPUTY: Your attention, please.

22   **KATHY OLSON**

23 having been first duly sworn, testified as follows:

24                                  COURTROOM DEPUTY: Please be seated.

25                                  Please state your name, and spell your first and

1 last names for the record.

2 THE WITNESS: Kathy Olson, K-A-T-H-Y O-L-S-O-N.

3 THE COURT: You may proceed.

4 MR. KIRSCH: Thank you, Your Honor.

5 **DIRECT EXAMINATION**

6 **BY MR. KIRSCH:**

7 Q. Good morning, Ms. Olson.

8 A. Good morning.

9 Q. Can you tell the jury where you work, please.

10 A. I currently work for a staffing company called  
11 Manpower.

12 Q. In what office?

13 A. In the Fort Collins, Colorado, office.

14 Q. And what is your position there?

15 A. Branch manager.

16 Q. How long have you done that?

17 A. For 5-and-a-half years.

18 Q. Before you took that position with Manpower, did you  
19 work at a different staffing company?

20 A. Yes, sir.

21 Q. What was that?

22 A. Staffmark.

23 Q. How long were you the at Staffmark?

24 A. On two different occasions, but for a total of 12  
25 years.

1 Q. In the time period of 2004, were you with Staffmark?

2 A. Yes, sir.

3 Q. What was your position during that time?

4 A. I was the branch manager there.

5 Q. Where was that branch located?

6 A. In Westminster, Colorado.

7 Q. And what sort of work did Staffmark do?

8 A. We were a fully staffing firm. We would do technical  
9 placement, administrative placements, general labor,  
10 accounting. I mean full scope staffing.

11 Q. Did Staffmark provide a service called payrolling or  
12 wage mastering?

13 A. Yes, sir.

14 Q. Can you explain what that service was?

15 A. Payrolling is when a client contacts us for whatever  
16 reason. They have already identified the candidates they  
17 want to employ. We offer a lower discounted mark-up for  
18 that reason. And, basically, we take them through the  
19 application, verify that they have the legal right to work  
20 in the United States. Then we basically pay them on a  
21 weekly basis, and we bill our client accordingly based on  
22 the mark-up within our contract.

23 Q. When you create a payrolling arrangement like that,  
24 whose employees are those people that your client had  
25 identified?

1 A. They are actually our employees since we are cutting  
2 their paycheck.

3 Q. Okay. Then how do you get back the profit and the  
4 mark-up that you've described?

5 A. The invoices have to be paid.

6 Q. Okay. That is from the client?

7 A. Yes, sir.

8 Q. All right. Now, when you were with Staffmark in  
9 2004, did that company do business with another company  
10 called IRP?

11 A. Yes, we did.

12 Q. And did you participate in getting that business set  
13 up during that time?

14 A. Yes, I did.

15 Q. Do you remember when -- roughly when in 2004 that  
16 was?

17 A. To the best of my recollection, July, August time  
18 frame. It was in the summer.

19 Q. Okay. And how is it that you -- did you have direct  
20 contact with someone from IRP?

21 A. I was contacted directly by IRP Solutions.

22 Q. Was there a particular person that contacted you?

23 A. Yes, sir, Ken Harper.

24 Q. Ken Harper?

25 A. Yes, sir.

1 Q. Did you have -- did you meet with Mr. Harper in  
2 person, or was this done over the telephone?

3 A. We initially had a phone conversation. He asked, you  
4 know, would we have a level of interest in doing business.  
5 He shared with me what the business was. And from there,  
6 I went down and I met with Ken Harper, along with the  
7 individuals that we were going to payroll to process all  
8 of the paperwork, dropped off the contract and the credit  
9 application.

10 Q. Okay. So that meeting occurred before the time their  
11 relationship had been formalized then; is that right, or  
12 at the time that it was formalized?

13 A. I think at the time it was formalized. I think we  
14 did it all in one shot, where I was in Westminster and  
15 they were in Colorado Springs. The distance created -- we  
16 just did it when we met.

17 Q. All right. Do you recall where you met?

18 A. In the IRP Solutions office in Colorado Springs.

19 Q. Okay. And during that meeting, or prior to that  
20 meeting, you said that you got an explanation from  
21 Mr. Harper about the business that IRP was engaged in?

22 A. That's correct.

23 Q. What did he tell you about that?

24 A. He told me that they were looking to payroll some  
25 software programmers; that they had a contract in place

1 with Homeland Security, and that they were going to  
2 utilize these software programmers to do enhancements to  
3 that program in order to be able to, I guess, deliver the  
4 product.

5 Q. And did you have any understanding about how that  
6 contract with the Department of Homeland Security related  
7 to payment that Staffmark would receive for the payrolled  
8 employees?

9 A. Well, basically -- I mean, in the initial  
10 discussions, obviously they had gotten investors involved  
11 to get their business running. But with the contract, I  
12 mean, typically -- no offense, the federal government can  
13 pay slow. And so, you know, the concern was, I guess --  
14 how do I want to put it? The concern was waiting to get  
15 payment from the federal government based on this  
16 contract.

17 Q. All right. And that concern was whose?

18 A. Well, mine, in the sense that -- you know, in the  
19 contract that we wrote -- and I have been made privy to a  
20 copy of that recent contract to refresh my memory -- I did  
21 extend payment terms. Our typical contract was net due  
22 upon receipt. I agreed to net 30 days based on the  
23 requirement and request of IRP to extend those terms, just  
24 because of the concern of the influx of cash from the  
25 government based on that contract.



1 Q. Okay. You just mentioned a contract. Let me ask you  
2 to look at what is marked for identification as Government  
3 Exhibit 370.02. For right now it should be in one of  
4 those folders in front of you.

5 A. Okay. 370.02. Okay.

6 Q. Let me know when you have had a chance to look at  
7 that.

8 A. Okay.

9 Q. Do you recognize that exhibit?

10 A. Yes, sir. That is the contract that we had between  
11 IRP Solutions and Staffmark.

12 Q. All right. And does it also include -- is that all  
13 considered part of the contract, or are there some other  
14 documents that you obtained when you were setting up the  
15 relationship in there?

16 A. No. I believe that this is the full disclosure of  
17 the contract. It is the actual service agreement and the  
18 credit application, which is standard for payrolling.

19 Q. Okay.

20 MR. KIRSCH: Your Honor, at this time I would move  
21 to admit and publish Government Exhibit 370.02.

22 THE COURT: Any objection?

23 MR. ZIRPOLO: No objection.

24 THE COURT: Exhibit 370.02 will be admitted.

25 (Exhibit No. 370.02 is admitted.)

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

2 THE COURT: You may.

3 MR. KIRSCH: Thank you.

4 Can you just do the top half of that agreement,  
5 please, Special Agent Smith.

6 Q. (BY MR. KIRSCH) Ms. Olson, a minute ago you  
7 referenced a change to your regular payment terms?

8 A. Yes, sir.

9 Q. Is that change reflected on the screen right now?

10 A. Yes, it is, in Section 2.

11 Q. Where is that?

12 A. Section 2 of the contract.

13 Q. And is that your writing there?

14 A. Yes, sir, it is.

15 MR. KIRSCH: Okay. Can we go to the second page of  
16 that contract now and expand the signature portion,  
17 please.

18 Q. (BY MR. KIRSCH) Who signed this on behalf of IRP?

19 A. Al Stewart.

20 Q. Do you recall meeting with an Al Stewart?

21 A. I do not.

22 MR. KIRSCH: Okay. If we can go to page 4 of that  
23 exhibit now, please. And then can you expand the top half  
24 of that first, please.

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

1 the form is, Ms. Olson? Is there another change to the  
2 payment term there?

3 A. Yes, sir. It is kind of hard to read. But, yes,  
4 sir. It is 30, and that is my signature.

5 Q. Okay. And then signed by Alfred Stewart again?

6 A. Yes, sir.

7 MR. KIRSCH: Can we expand the lower part of that  
8 page?

9 Q. (BY MR. KIRSCH) Can you tell the jury what this part  
10 of the agreement is?

11 A. This is a personal guaranty. It was a standard  
12 portion of the contract with Staffmark. Basically, what  
13 this meant was that if for some reason the business could  
14 not pay the outstanding debt, that there was a personal  
15 guaranty by Mr. Banks that he would pay out of personal  
16 funds for any debt incurred.

17 Q. Was Mr. Banks a person that you met during any of  
18 your contact with IRP?

19 A. I left voice mails and had e-mail contact, but I  
20 don't recall ever personally meeting Mr. Banks.

21 MR. KIRSCH: All right. Thank you, Special Agent  
22 Smith.

23 Q. (BY MR. KIRSCH) You obtained -- you got this  
24 contract, and you obtained the credit information here.  
25 Did your company do some sort of a credit check on IRP?

1 A. I honestly don't recall from 6 years ago what the  
2 process was, if it was required for the branch to do it or  
3 we were required to send the credit application to our  
4 corporate offices. So whether or not the corporate  
5 offices actually checked the credit references, I'm not  
6 certain.

7 Q. All right. Once the agreement got into place, how  
8 did Staffmark keep track of the hours that the employees  
9 placed at IRP were working?

10 A. Standard policy was to turn in a weekly time sheet of  
11 the hours worked per employee. So those were either faxed  
12 or e-mailed. I don't remember which process was used.  
13 Based on that, we had a signature from someone at IRP  
14 stating the hours were valid, and authorized us to pay  
15 those individuals those hours. And that, alternatively,  
16 created the invoices associated with those hours.

17 Q. All right. Can I ask you now to look at what is  
18 marked for identification as Government Exhibit 371.00.

19 A. Do you want me to look through all of these? It  
20 looks like they were time sheets.

21 Q. Is that a document you had a chance to review at some  
22 point before you came to court today?

23 A. Yes, sir.

24 Q. Based on reviewing that, are you able to identify  
25 that exhibit?

1 A. Yes. This is a standard time card that would have  
2 been used with any client that we work with. Time in.  
3 Time out. Less hours. Total hours. And then the total  
4 hours on the time sheet. Signature of the employee.  
5 Signature of the customer.

6 Q. Can I stop you for just a minute, just about the  
7 specifics?

8 A. Yes, sir.

9 Q. Is this a set of time sheets?

10 A. Yes.

11 Q. And are these -- does this set of time sheets relate  
12 to the employees that were payrolled at IRP?

13 A. Yes, they do.

14 MR. KIRSCH: Your Honor, I would move to admit and  
15 publish Government Exhibit 371.00.

16 THE COURT: Any objection?

17 MR. ZIRPOLO: No objection.

18 THE COURT: Exhibit 371.00 will be admitted, and it  
19 may be published.

20 (Exhibit No. 371.00 is admitted.)

21 MR. KIRSCH: Thank you, Your Honor.

22 Can you just enlarge one of those time cards,  
23 please? The top one will be fine.

24 Q. (BY MR. KIRSCH) Ms. Olson, you were, I think,  
25 explaining some of the entries on the time sheet. Can I

1 ask you to do that again now that everybody can see it?

2 A. Yes, sir. Sorry about that.

3 Q. That's all right.

4 A. So, basically the requirement of a time card is the  
5 employee has to list their name, their Social Security  
6 number. They will list each day they worked, the time  
7 they started, the time they ended, less any lunch hour.  
8 Then the total hours would be on the far right-hand side.  
9 And at the bottom, the total hours would list how many  
10 hours we're required to pay and bill.

11 So on the very bottom is the employee's signature.

12 And on -- like three-quarters of the way down, left, is  
13 the customer's signature authorizing us to pay.

14 Q. All right. Thank you.

15 MR. KIRSCH: Then if we can expand that back.

16 Q. (BY MR. KIRSCH) Are you able to read the names of  
17 the employees that are on that sheet?

18 A. A few of them. William Williams. Kendrick --

19 Q. Here. You can look here.

20 A. Kendrick, maybe Barnes. Let me see, Barbara  
21 McKenzie, Cliff Stewart. Did I say Enrico Howard?

22 Q. All right. Five people. Is that a correct count of  
23 the --

24 A. Yes, sir.

25 Q. -- number of people that Staffmark payrolled there?

1 A. Yes, sir.

2 Q. And you mentioned a few moments ago that these time  
3 cards, I think, were used to generate invoices?

4 A. That is correct.

5 Q. Can I ask you now to look at what is marked for  
6 identification as Government Exhibit 372.00?

7 A. Okay.

8 Q. Do you recognize that exhibit?

9 A. I do.

10 Q. What does it contain?

11 A. These are actually the invoices that would have been  
12 generated based on the corresponding time cards we  
13 received for the week the employees worked.

14 MR. KIRSCH: Your Honor, I would ask that the Court  
15 find that Government Exhibit 372.00 is admissible.

16 THE COURT: Any objection?

17 MR. ZIRPOLO: No objection.

18 THE COURT: Exhibit 372.00 is found admissible.

19 (Exhibit No. 372.00 is found admissible.)

20 MR. KIRSCH: Thank you, Your Honor.

21 Q. (BY MR. KIRSCH) Then, Ms. Olson, can I ask you to  
22 look at Government Exhibit 373.00.

23 A. I am sorry, you said 373?

24 Q. 373. Can you identify what is contained in that  
25 exhibit?

1 A. Basically, these are copies of checks that were  
2 actually cut to these employees by Staffmark. And it  
3 would show the actual net amount that they earned that  
4 week. And on the bottom it would list, you know, whether  
5 they had direct deposit, their routing number, transmit,  
6 that type of things. So these are just several copies of  
7 paychecks, front and back, where the paycheck has, in  
8 fact, been endorsed by the employee for payment.

9 Q. And these particular ones relate to Kendrick Barnes?

10 A. Let me go through all of them, because I didn't.  
11 Yes, these are all related to Kendrick Barnes.

12 MR. KIRSCH: Your Honor, I would ask the Court find  
13 Government Exhibit 373.00 is admissible.

14 THE COURT: Any objection?

15 MR. ZIRPOLO: No objection.

16 THE COURT: Exhibit 373.00 will be deemed  
17 admissible.

18 (Exhibit No. 373.00 is found admissible.)

19 MR. KIRSCH: Thank you, Your Honor.

20 Q. (BY MR. KIRSCH) Ms. Olson, now I would like to  
21 direct your attention, if I could, to what is marked as  
22 Government Exhibit 4.00.

23 A. I might be missing something. Is it just maybe 4?

24 Q. Yes. Can you identify the contents of that exhibit?

25 A. This is actually a copy of a single invoice with



1 corresponding time cards that would correspond to the  
2 hours paid and the hours billed to IRP Solutions for that  
3 week ending date.

4 MR. KIRSCH: Your Honor, I move to admit and  
5 publish Government Exhibit 4.00, please.

6 THE COURT: Any objection?

7 MR. ZIRPOLO: 4.00?

8 THE COURT: Yes, Exhibit 4.

9 MR. ZIRPOLO: No objection.

10 THE COURT: Exhibit 4.00 will be admitted, and it  
11 may be published.

12 (Exhibit No. 4.00 is admitted.)

13 MR. KIRSCH: Thank you, Your Honor.

14 Can you enlarge the top half of that, please?

15 Q. (BY MR. KIRSCH) This page that we have on the screen  
16 now, this page is the invoice?

17 A. Yes, sir.

18 Q. Okay. And the rate that is reflected here, is that  
19 the pay rate for those employees, or is that the billing  
20 rate from Staffmark to IRP?

21 A. That is the billing rate from Staffmark to IRP.

22 Q. All right. And then if we could go to page 2 of that  
23 exhibit. Is this page displaying some of the time cards  
24 that related to that particular invoice?

25 A. Yes, it is.

1 Q. The invoices -- I am sorry if you said this already.

2 Did you explain where the invoices were generated?

3 A. If I recall correctly, we did payroll in our local

4 office to generate the paychecks off of the time cards.

5 But the corresponding invoices, I believe, were generated

6 from our corporate offices and mailed directly to IRP

7 Solutions.

8 Q. And where were the corporate offices?

9 A. They, at the time, were located in Fayetteville,

10 Arkansas.

11 Q. All right. I want to ask you briefly to take a look

12 at what is marked as Government Exhibit 8.00. I think it

13 just says 8 on your folder.

14 A. Got it.

15 Q. When you have had a look at that, I want to know if

16 you recognize that exhibit.

17 A. Yes, sir. Similar to the prior one.

18 Q. Okay. And meaning it is an invoice and supporting

19 time cards?

20 A. It is, just a different week ending date.

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

22 publish Government Exhibit 8.00.

23 THE COURT: Any objection?

24 MR. ZIRPOLO: No objection.

25 THE COURT: Exhibit 8 will be admitted, and it may

1 be published.

2 (Exhibit No. 8.00 is admitted.)

3 MR. KIRSCH: Thank you, Your Honor.

4 Can we actually go to page 2 of that exhibit,  
5 please, and enlarge the time card on the bottom of the  
6 page.

7 Q. (BY MR. KIRSCH) Ms. Olson, there is a time card on  
8 the screen now for Cliff Stewart that indicates that  
9 Mr. Stewart had worked 12 hours on several of the days in  
10 that week.

11 A. Uh-huh.

12 Q. Did you ever get any information while these time  
13 cards were coming in, that Mr. Stewart might have been  
14 reporting that he worked 12 hours on some of those same  
15 days to a different staffing company?

16 A. I was not aware of that at all.

17 Q. If you had gotten that information, would that have  
18 caused you to take any action?

19 A. It would have been a huge red flag. And probably --  
20 not probably, I would have called Ken Harper to understand  
21 what was happening. I mean, I truly believed that we had  
22 an exclusive relationship with this organization.

23 Q. Were you ever -- was anything ever said to you that  
24 would have suggested, or that would have said outright  
25 that some of these hours -- for instance, hours reported

1 by Mr. Stewart or hours reported by Mr. Howard, that it  
2 was, in fact, a different person who was doing that work?

3 A. I would have had no idea whether or not that was  
4 occurring or not. I took on face value that the time card  
5 that was signed, that that was the person doing the work.

6 Q. If you had learned somehow that it was a person other  
7 than that employee who was doing the work, would that have  
8 caused you any concern?

9 A. We would have had to cease and desist, because if it  
10 wasn't a person that went through our application I-9  
11 process, and it wasn't the person we were paying through  
12 that Social Security number, we could have potentially  
13 been held liable. So we would have ceased and desisted  
14 any work.

15 Q. All right. At some point did you learn the payment  
16 status of the IRP invoices?

17 A. Yes. My corporate office called me and was  
18 questioning why the bill was getting so high, and asked me  
19 to start collection activity.

20 Q. Did you do that?

21 A. I did.

22 Q. And what did you do to start that activity?

23 A. Because of my contact with Ken Harper, my first  
24 instinct was to reach out to Ken because he was the one I  
25 had met and dealt with. So phone, voice mails to Ken

1 Harper.

2 Q. And did you reach Ken Harper during any of those  
3 efforts?

4 A. I did.

5 Q. What did he say about why the invoices weren't  
6 getting paid?

7 A. He basically said that we were still waiting for  
8 money to come in from the payment on the contract. They  
9 hoped to resolve the issue soon.

10 Q. When you first got that information from Mr. Harper,  
11 did you still have employees that were being payrolled  
12 there?

13 A. Yes, sir.

14 Q. Did you keep those employees there after you got that  
15 response from him?

16 A. Yes, sir.

17 Q. Did you rely on his response in any way in deciding  
18 whether to keep the employees there?

19 A. Yes, sir.

20 Q. In what way?

21 A. I truly believed, based on my knowledge of what this  
22 organization was doing, and that they truly had a contract  
23 in place, that I felt that I was given a reasonable  
24 explanation as to why they didn't have funds yet available  
25 to pay these invoices.

1 Q. Did you ever make any attempts to contact David  
2 Banks?

3 A. Yes, I did.

4 Q. Do you recall whether you were ever able to reach him  
5 -- let's start with the telephone. Did you try to reach  
6 him on the telephone?

7 A. I did try to reach him on the telephone. To my best  
8 recollection, all I ever got was voicemail. I don't  
9 recall that I ever actually talked to David Banks.

10 Q. Was there ever an occasion when you would leave a  
11 message for David Banks and get a response from a  
12 different person?

13 A. Ken may have called me back based on that before. I  
14 do know that I started -- I got at least a response via  
15 e-mail from David Banks at one point in time.

16 Q. Okay. Let me ask you to look at what is marked for  
17 identification as Government Exhibit 376.02 -- I am sorry,  
18 376.01.

19 A. Okay.

20 Q. What is that?

21 A. Basically, the very top portion of it is me  
22 responding back to the legal counsel at Staffmark.  
23 Because they're questioning, you know, what is happening  
24 with the collection process. And I basically stated that  
25 I would forward any responses I got from IRP to them as to

1     how I was doing with the collection response. I had  
2     e-mailed David Banks basically to say, any updates on  
3     payment?

4             THE COURT: Mr. Kirsch, lay the foundation. Have  
5     it admitted before she testifies any further as to the  
6     contents.

7             MR. KIRSCH: Yes, Your Honor. Sorry.

8     Q.     (BY MR. KIRSCH) Without talking about the contents of  
9     the messages here --

10    A.     Okay.

11    Q.     -- were these messages that involved you?

12    A.     Yes.

13    Q.     Who were the other parties to the messages?

14    A.     David Banks, with IRP, and Patrick McAlpine, legal  
15    counsel for Staffmark.

16    Q.     And did these messages pertain to the collection  
17    activity that you were engaged in with IRP?

18    A.     Yes, sir.

19    Q.     And are these -- is this an accurate copy of those  
20    e-mails that were exchanged during that time?

21    A.     Yes, sir.

22             MR. KIRSCH: Your Honor, I would move to admit  
23    Government Exhibit 376.01.

24             THE COURT: Any objection?

25             MR. ZIRPOLO: No objection.

1 THE COURT: Exhibit 376.01 will be admitted and,  
2 yes, you may publish.

3 (Exhibit No. 376.00 is admitted.)

4 MR. KIRSCH: Thank you, Your Honor.

5 Can we start, please, with page 2 of that exhibit.

6 Can you enlarge the bottom half, please?

7 Q. (BY MR. KIRSCH) All right. Ms. Olson, can you see  
8 that on your screen now?

9 A. Yes, sir.

10 Q. And this message came from who?

11 A. David Banks.

12 Q. What is the date on it?

13 A. November 18, 2004.

14 Q. Do you recall whether or not people were still being  
15 payrolled by this time?

16 A. Yes.

17 Q. All right. And the information that's in the  
18 paragraph at the bottom of the screen now that begins,  
19 "Here is a little history on our company," was that  
20 consistent with the information that you had gotten from  
21 Mr. Harper before?

22 A. That is correct, yes.

23 Q. How did you understand the -- how did you understand  
24 the meaning of the phrase, "We are the solution of choice  
25 for initiatives with the Department of Homeland Security



1 and the Department of Justice."

2 A. My interpretation of that was that they had contracts  
3 with the DHS and the DOJ.

4 MR. KIRSCH: If we can now scroll up on that,  
5 please, and enlarge that next message. Please start up  
6 there.

7 Q. (BY MR. KIRSCH) Is that date accurate, as far as you  
8 know, that is on the screen now, Ms. Olson?

9 A. Yes.

10 Q. Approximately two months after the previous e-mail?

11 A. Yes.

12 Q. And you indicated there that you hadn't gotten any  
13 returned phone calls in the last two weeks?

14 A. Correct.

15 Q. I take it you had been making calls?

16 A. Correct.

17 Q. If we go, then, to the bottom of page 1, and start  
18 with where it says, "Original Message" there. Is this the  
19 response that you received to that message?

20 A. Yes.

21 Q. Had you requested at some point a meeting with  
22 Mr. Banks?

23 A. I actually offered to take him to lunch to see if we  
24 could get it resolved.

25 Q. All right. And that's the context for the response

1 about the lunch meeting and not providing additional  
2 information?

3 A. Yes.

4 Q. Did IRP satisfy its debt with your company in the  
5 near future as related to that e-mail?

6 A. No, they did not.

7 Q. As far as you know, did they ever?

8 A. To my knowledge, no.

9 Q. Do you know or do you recall what the approximate  
10 total amount of the outstanding invoices was?

11 A. To the best of my recollection, when I was still  
12 involved in it before I left Staffmark, it was around  
13 222,000.

14 MR. KIRSCH: If I could have one moment, Your  
15 Honor.

16 Thank you very much, Ms. Olson.

17 THE WITNESS: You are welcome.

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

19 MR. BANKS: Thank you.

20 **CROSS-EXAMINATION**

21 **BY MR. BANKS:**

22 Q. Ms. Olson, you just testified that you came to the  
23 office of IRP.

24 A. Yes, sir.

25 Q. And who did you say you met with?

1 A. Ken Harper.

2 Q. Did you meet with anyone else?

3 A. The other five people we were payrolling, yes, sir.

4 Q. You didn't meet with any other executives at IRP?

5 A. Not to my recollection, no.

6 Q. Can you explain -- now, the Government presented a  
7 Service Agreement that was signed by Mr. Stewart, and a  
8 personal guaranty that was signed by Mr. Banks. It is  
9 your testimony that when you came to the office, you never  
10 met with either of those people during your meeting there.  
11 You did mention you wanted to wrap up the whole  
12 transaction at that particular point in time.

13 A. That is correct. I left the contract and credit  
14 application with Ken Harper.

15 Q. Okay. Now, how did you receive that application back  
16 to you?

17 A. I would imagine they either e-mailed it or faxed it  
18 back to me, because I only went to the office one time.

19 Q. Okay. Now, I want to ask you a question. You said  
20 you were uncertain whether or not you ran a credit check  
21 on IRP Solutions.

22 A. Correct.

23 Q. What was Staffmark's general policy with extending  
24 credit to a company?

25 A. Typically, quite honestly, we would run the reference

1 checks. But for a payrolling aspect, with a personal  
2 guaranty, and in light of the fact that I felt that they  
3 had a contract with the federal government, I wasn't  
4 really concerned about being paid, quite honestly.

5 Q. Honestly, Ms. Olson, is a contract -- let me ask you  
6 this. Is the business dealings of a particular company,  
7 whether they work with a corporate customer, a government  
8 customer, is that really a decision that Staffmark makes  
9 to do business? Is it what they would consider?

10 A. I am not sure I understand the question.

11 Q. Do you use the company's credit profile to make a  
12 determination on whether to proceed with doing business,  
13 or do you just -- or do you just evaluate the customer  
14 based on the line of business they might be in?

15 A. Quite honestly, it is a decision made by the branch  
16 manager. It is a judgment call.

17 Q. So --

18 MR. BANKS: Your Honor, I would like for Ms. Olson  
19 to review credit profiles submitted to her company.

20 THE COURT: For what purpose?

21 MR. BANKS: She said that she is uncertain if she  
22 actually -- they actually did a credit review. I would  
23 like her to refresh her recollection.

24 THE COURT: So is this a report that was prepared?

25 MR. BANKS: Yes.

1 THE COURT: Have it marked for identification.

2 MR. KIRSCH: Can I see it, as well, Your Honor?

3 THE COURT: Yes. I am sorry.

4 MR. BANKS: May we have a moment, Your Honor?

5 THE COURT: You may.

6 MR. KIRSCH: I have no objection, Your Honor.

7 THE COURT: All right. Have it marked for  
8 identification.

9 COURTROOM DEPUTY: Defense Exhibit 332.

10 THE COURT: All of the other numbers we have for  
11 identification, the last one was 344. So it should be  
12 345, I believe, to stay in line with where we started.

13 COURTROOM DEPUTY: Defendants' Exhibit 345.

14 MR. BANKS: May I proceed, Your Honor?

15 THE COURT: You may.

16 Q. (BY MR. BANKS) If you would look at the highlighted  
17 sections on there.

18 A. Okay.

19 Q. Specifically, on the Experian credit report?

20 MR. KIRSCH: Objection to talking about the  
21 subject.

22 THE COURT: You are using this solely to refresh  
23 recollection of whether there was a credit check.

24 MR. BANKS: I understand, Your Honor.

25 THE COURT: So ask her if that refreshes her

1 recollection.

2 Q. (BY MR. BANKS) Does that refresh your recollection?

3 A. I have never seen this before.

4 Q. You have never seen that before.

5 Now, you did provide -- before I move on to that,  
6 you did provide a chronology of events that took place to  
7 the FBI when they contacted you; is that correct?

8 A. Yes, sir.

9 Q. And all documentation that you had associated with  
10 IRP, you provided to the Government at that time; is that  
11 correct?

12 A. I didn't personally provide it. I was no longer  
13 employed with Staffmark at that time.

14 Q. Okay. Now, did -- according to that credit report,  
15 did Staffmark run a credit report? Run a credit check?

16 MR. KIRSCH: Objection, Your Honor, lack of  
17 foundation.

18 THE COURT: If you know.

19 THE WITNESS: Could you repeat the question?

20 Q. (BY MR. BANKS) You had a chance to refresh your  
21 recollection; correct?

22 A. Yes. To refresh my memory. I don't recall if we ran  
23 a credit check or not.

24 MR. BANKS: Okay. One moment, Your Honor.

25 Q. (BY MR. BANKS) Ms. Olson, is that document

1 consistent with the type of credit check that Staffmark  
2 would usually receive?

3 A. I don't know if our corporate offices obtain these  
4 typically. These weren't sent to the branch office.

5 Q. So you have no knowledge of whether or not -- I will  
6 clarify that -- whether or not Staffmark ran a credit  
7 check on IRP Solutions?

8 A. That's true. I am not certain if that was done or  
9 not.

10 Q. You cannot testify to that, then.

11 Let's move on. Now, in your -- you have been in  
12 the staffing industry for how long?

13 A. For 20 years.

14 Q. And if a person signs a personal guaranty, what does  
15 that indicate to you?

16 A. That indicates to me that if for any reason that the  
17 company goes bankrupt, goes out of business, whatever the  
18 reason might be, that the company, meaning Staffmark, has  
19 the right to go after that person individually to collect  
20 their debt. That is the interpretation of that contract.

21 Q. Okay. Would you agree that a person signing a  
22 personal guaranty is putting his own neck on the line?

23 A. Yes.

24 Q. And his own credit on the line?

25 A. Yes.

1 Q. At such time -- when did you turn this over to  
2 collections?

3 A. Honestly, I don't recall the date that it got turned  
4 over to collections.

5 Q. Do you recall any sort of time frame; 20 days, 10  
6 days, 2 weeks?

7 A. No. It had gone out there awhile.

8 Q. What do you mean, "It had gone out there awhile"?

9 A. It had been a couple months before corporate  
10 contacted me and said, Kathy, we have no payment on this,  
11 we need to start collection activity.

12 Q. Okay. You say you are the branch manager, but you  
13 are not aware of any credit policy, whatsoever, that  
14 Staffmark has; correct?

15 A. No. What I am saying is -- I don't know if corporate  
16 is required to do it or the branch is required to do it.  
17 I mean, it's 6 years ago. My company is totally different  
18 now. So I am not going to sit here and state I am  
19 absolutely certain of the credit policy of Staffmark,  
20 because I don't recall.

21 Q. How long did you work for Staffmark?

22 A. The last juncture was for 2 years.

23 Q. And in all that time, over a 2-year period, you did  
24 not have occasion to interface with corporate on a  
25 credit -- some sort of credit review?



1 A. I am not saying that. I am saying I don't recall who  
2 ran the credit, whether it was the branch's responsibility  
3 or the corporate office's responsibility.

4 Q. But do you remember running credit checks or ever  
5 receiving a credit check, for that matter, in the 2 years  
6 you were branch manager?

7 A. I don't recall.

8 Q. Okay. Now, I want to take your attention back to  
9 Government Exhibit 376.01.

10 A. Okay.

11 MR. BANKS: Your Honor, can we publish 376.01  
12 again?

13 THE COURT: You may.

14 Q. (BY MR. BANKS) I will go ahead and ask you a  
15 question. When you contacted Mr. Banks regarding  
16 collection activities -- according to the Government's  
17 exhibit, it was on November 18, 2004 -- Mr. Banks  
18 responded to your communication.

19 A. Okay.

20 Q. Did he provide you just an overall history on his  
21 company?

22 A. I am not sure I understand the question.

23 Q. Is that what -- that reading of his e-mail just an  
24 overall history on the company? If you go to the first  
25 page.

1 A. I am sorry, go ahead.

2 Q. I am sorry. You can respond.

3 A. On page 2 of the document, he is giving me a  
4 background based on their actual solution; CILC solution,  
5 due diligence with the DHS. That they were technically  
6 aligned to be able to -- I mean, basically, "To our  
7 surprise, CILC Solution was so tightly aligned with their  
8 conceptual vision, it appeared they had literally  
9 plagiarized our intellectual capital."

10 He goes to say that they had numerous meetings with  
11 the DHS, other federal, state and local agencies. "The  
12 response is the same across all agencies; IRP Solutions  
13 has by far developed the most comprehensible investigative  
14 solution they have ever seen."

15 Q. Would you say that from reading that, it is your  
16 opinion that Mr. Banks believes in their product and what  
17 they are doing?

18 MR. KIRSCH: Objection, lack of foundation.

19 THE COURT: Calls for -- yes, sustained.

20 Q. (BY MR. BANKS) What is your opinion of that e-mail?

21 A. My opinion of that is that he is re-affirming what I  
22 was already told; that they have contracts; federal  
23 government contracts.

24 Q. And where does he mention a contract in that  
25 communication?

1 A. The specific word "contract"?

2 Q. Yes.

3 A. He doesn't.

4 Q. So if Mr. Banks believes theirs is the solution of  
5 choice, and articulates that -- let me withdraw that.

6 Would you agree Mr. Banks is fairly articulate in  
7 this e-mail and fairly detailed?

8 A. Yes.

9 Q. Okay. And if there is no mention of a contract, how  
10 do you ascertain from that that there was a contract?

11 A. I guess I interpreted it in the last paragraph on  
12 page 3, where it says, "I have attached a couple of  
13 articles from the federal government on the business we  
14 are engaged in."

15 Q. Go to the second page where it says "Our company."  
16 The paragraph starts "Our company."

17 A. On the second page of his response, sir, is that what  
18 you mean? Actually, page 3 of the document?

19 Q. Yes.

20 A. Okay.

21 Q. Are you there?

22 A. Yes, sir.

23 Q. If you go down to where it says "Revenues," about the  
24 fourth sentence.

25 A. Yes, sir.

1 Q. What exactly does that say?

2 A. It says, "Revenues are to be realized in excess of  
3 \$70 million over the next 12 months from four  
4 opportunities at the federal, state and local law  
5 enforcement areas." Which, to me, implies they are going  
6 to be receiving funds in order to be able to pay their  
7 debt. That is my perception of this article.

8 Q. Can you read on further?

9 A. "We are very close to resolving our cash flow  
10 situation through the closing of one of the contracts or  
11 negotiating satisfactory terms with new investors."

12 Q. Okay. So does that indicate a contract in place to  
13 you?

14 A. No. But the next sentence does.

15 Q. Go ahead.

16 A. "We fully expect to start satisfying invoices within  
17 the next few weeks before we get too entrenched into the  
18 holiday season."

19 Q. How does that indicate a contract to you?

20 A. I guess, in my opinion, based on my perception of how  
21 I read this, is that they believe that they are going to  
22 realize revenue in the amount of 70,000 (sic), based on  
23 prior discussions that we had with your organization, and  
24 they feel they can satisfactorily pay their debts before  
25 the holiday season. That is how I interpret that.

1 Q. So that is your interpretation?

2 A. Yes, sir.

3 Q. You cannot speak to what Mr. Banks was thinking when  
4 he wrote that e-mail, correct?

5 A. No. Because I never have personally spoken to him.  
6 So it is all about interpretation.

7 Q. You have never personally spoken to Mr. Banks?

8 A. To my knowledge, I have never personally spoken to  
9 Mr. Banks.

10 Q. Now, the Government referred you to another e-mail  
11 two months later?

12 A. Uh-huh.

13 Q. Are you aware of any communication between your legal  
14 counsel, Mr. McAlpine, between those dates?

15 A. To my knowledge and recollection, no. It could or  
16 could not have happened. I am not certain.

17 Q. If Mr. McAlpine had reached out to Mr. Banks,  
18 obviously you would not have known that, and your  
19 communication -- you were not communicating with  
20 Mr. Alpine once it gets turned over to collections; is  
21 that correct?

22 A. No. What I am saying is I don't recall whether or  
23 not there was any other communication.

24 MR. BANKS: Your Honor, I would like to provide  
25 Ms. Olson with a letter from Mr. McAlpine, their legal

1 counsel.

2 THE COURT: What is the relevance of this letter?

3 MR. BANKS: Ms. Alpine, (sic) through her -- the  
4 government testimony, has indicated that I did not contact  
5 her. There was no contact between Staffmark and IRP for  
6 two months, indicating that there was absolutely no --

7 THE COURT: So this is essentially communication to  
8 Staffmark?

9 MR. BANKS: This is from Staffmark.

10 THE COURT: Does it show you communicating to them?

11 MR. BANKS: No, it does not, Your Honor.

12 THE COURT: Then how is it relevant?

13 MR. BANKS: Because he communicated to us, and it  
14 had been turned over to collections at that particular  
15 time. And Ms. Olson did not have knowledge of what was  
16 going on between credit and collections.

17 THE COURT: How is that relevant to this case?

18 MR. BANKS: It is relevant, Your Honor, because the  
19 Government has asserted that not only has IRP not  
20 responded, but at least --

21 THE COURT: Did IRP respond to that letter?

22 MR. BANKS: Yes, but it's not in this document.

23 THE COURT: Mr. Kirsch, have you seen this  
24 document?

25 MR. KIRSCH: I have, Your Honor. We actually had

1 it marked as a Government exhibit. If Mr. Banks wants to  
2 admit it, we have no objection. It is 376.02. I think  
3 Ms. Olson already has it in front of her.

4 THE COURT: 376.02.

5 MR. BANKS: Thank you.

6 THE COURT: Do you wish to have 376.02 admitted?

7 MR. BANKS: Yes, Your Honor.

8 THE COURT: 376.02 will be admitted.

9 (Exhibit No. 376.02 is admitted.)

10 Q. (BY MR. BANKS) So, is it safe to say, Ms. Olson, you  
11 had no knowledge of corporate credit policy while you were  
12 branch manager at Staffmark? You've testified --

13 THE COURT: You have to let her answer.

14 MR. BANKS: Okay.

15 THE WITNESS: I am saying I don't recall the  
16 process since it has been almost 6 years.

17 Q. (BY MR. BANKS) Is there a standard process that  
18 branch managers understand the corporate policy of that  
19 particular company?

20 A. Again, I believe I said, based on the discretion of  
21 the branch manager, we would provide credit applications.  
22 Sometimes references are checked, sometimes they aren't,  
23 based on the decision that we make of the business that  
24 we're going after.

25 Q. Okay. So there is no set due diligence process by

1 Staffmark to ensure the creditworthiness of a particular  
2 client -- potential client?

3 A. Right.

4 Q. Okay. I want to take you back to the --

5 A. Do I not need 376.02 any more?

6 Q. I don't need that any more. -- credit report we just  
7 provided to you marked Defense Exhibit 345; is that  
8 correct?

9 COURTROOM DEPUTY: Yes.

10 Q. (BY MR. BANKS) What is highlighted in yellow on that  
11 particular credit profile?

12 A. What is highlighted is "Action. High risk."

13 MR. KIRSCH: Objection, Your Honor. That document  
14 is not in evidence.

15 THE COURT: Sustained.

16 MR. BANKS: Your Honor, the defense moves to make  
17 that document admissible.

18 MR. KIRSCH: Objection.

19 THE COURT: The problem is, you haven't laid  
20 foundation. She has never seen this document before.

21 MR. BANKS: Okay, Your Honor. Okay.

22 I have no further questions.

23 THE COURT: Anybody else?

24 MR. HARPER: Yes, Your Honor.

25 THE COURT: Mr. Harper, you may proceed.



1

**CROSS-EXAMINATION**

2

**BY MR. HARPER:**

3

Q. Good morning, Ms. Olson.

4

A. Good morning.

5

Q. Can you explain at the time that you were at

6

Staffmark, how Staffmark makes money and drives revenue?

7

A. We go out and we pursue business. Or, in the

8

situation that a business comes to us, we determine the

9

relevance of a good partnership. We put a service

10

agreement together based on our ability to fill jobs and

11

difficulty of filling them. We establish an agreed upon

12

mark-up, get the service agreement signed, and start doing

13

business.

14

THE COURT: Now, when you give an answer, slow down

15

so my court reporter can get it all down. She is good and

16

she got it all, but slow down.

17

THE WITNESS: I am sorry.

18

Q. (BY MR. HARPER) Ms. Olson, is that a standard

19

process for qualifying a new client?

20

A. When it's not a payroll position. So if I were the

21

one to have reached out to IRP Solutions, which was not

22

the case, you know, set up an appointment, do the due

23

diligence, do the research, find out about the

24

organization, and from there we would determine whether or

25

not we could have a viable partnership; an agreed upon

1 contract.

2 Q. Okay. So that process varies from client to client?

3 A. Not necessarily, unless it is a payrolling client.

4 The payrolling vendor is what we call wage mastering in  
5 our industry, and is very different.

6 Q. Okay. And you were the branch manager; correct?

7 A. Yes, sir.

8 Q. Okay. Were you also paid commission based off  
9 placement, whether it be payroll or contracting or staff  
10 augmentation?

11 A. To my recollection, I don't think that there was a  
12 percentage you had to hit in GP. So, more than likely, I  
13 probably was paid a commission.

14 Q. So you were paid commissions?

15 A. I think so.

16 Q. Okay. Now, are there any situations when you were at  
17 Staffmark where you had internal discussions about risk  
18 versus reward with doing business with a particular  
19 company?

20 A. Meaning risk versus reward on continuing to do  
21 business or earn commission, is that what you are asking?

22 Q. No, prior to. Before you engaged a new client.

23 A. Again, it is the judgment call of the branch manager.  
24 And, typically, they are the one out selling the business.  
25 And so they are the ones that are making the determination

1 of whether or not it is a good or bad risk, if you will.

2 Q. And you, being the branch manager, it was your call,  
3 so to speak?

4 A. Yes, sir.

5 Q. And at the time, just roughly, how many clients would  
6 you say your company had at the time in 2004, if you can  
7 recall?

8 A. Best guess, we might have at the time been doing  
9 business with 50 to 70 clients.

10 Q. Okay. Now, did you have any documentation of the  
11 different types of contracts and projects that all your  
12 clients were involved in at that time?

13 A. I'm not sure I understand the question.

14 Q. At the time in question, 2004, did you have  
15 documentation, or did you require documentation of your  
16 clients of the contracts and the types of projects that  
17 they were involved in?

18 A. Our requirement was to have a service agreement in  
19 place. And the purpose of that was to safeguard both  
20 parties of the agreed upon mark-up of the terms and  
21 conditions of the contract.

22 Q. Okay. Is it a prerequisite of all of your clients to  
23 have some type of active contract they are working on  
24 before you do business with them?

25 A. No.

1 Q. So, specifically to IRP, you were told that they had  
2 a government contract?

3 A. Yes, sir.

4 Q. What type of contract did they have?

5 A. To my knowledge, the way they prefaced it with me, is  
6 that they had a software program that they were working  
7 on; that they had a contract in place with Homeland  
8 Security in order to put that program -- software program  
9 in place.

10 Q. I am sorry, Ms. Olson, that is not what I asked. I  
11 asked what type of contract. You said they had a  
12 contract. So I am asking you what type of contract did  
13 they have?

14 A. I can't answer that.

15 Q. So if you didn't know what type of contract, but you  
16 just affirmed they had one -- you just said you didn't  
17 know what type.

18 A. Good point. It's how I perceived my conversations  
19 and the e-mails that I read. Based on that, I felt  
20 personally that they had, in fact, established a contract  
21 with Homeland Security.

22 Q. So your perception was that they had a contract, but  
23 they did not tell you?

24 A. I never saw an actual contract from IRP with Homeland  
25 Security.

1 Q. So you never saw a contract?

2 A. No. But why would I ask for it?

3 Q. You just stated they told you they had an active  
4 contract, but you did not want to see that contract?

5 A. I didn't say that. I said I don't -- when I start  
6 doing business with a client, I don't delve in and have  
7 them verify that they do what they say they are doing.

8 May I use an example?

9 Q. Please.

10 A. So a current client that I currently have right now,  
11 Avago Technologies, a \$2.2 million a year contract, I  
12 don't go in and ask to see their contracts of what clients  
13 they are doing business with in order to do business with  
14 them from Manpower.

15 Q. Okay. Are you familiar with the type of contract  
16 called DOA?

17 A. I don't believe so.

18 Q. Okay. Are you familiar with a contract called IDIQ?

19 A. I don't think so.

20 Q. Okay. So your basic understanding of government  
21 contracts, and the facts you are stating, that you began  
22 working with IRP based off of that assumption that they  
23 had a contract, why didn't you feel it important to get  
24 specifics about that contract?

25 A. You know, having worked for the federal government

1 prior in my career, I feel like when someone says they  
2 have a contract with the federal government, I feel pretty  
3 secure personally, my perception, that bills will get  
4 paid.

5 Q. So you didn't care if the contract was a hundred  
6 dollars or \$10 million?

7 A. But when you look at the e-mail that was presented  
8 where he stated --

9 Q. That is not the question I asked. You didn't care if  
10 the contract was a hundred dollars or \$10 million?

11 A. Yes. That would have mattered to me.

12 Q. But you didn't ask the amount of the contract?

13 A. No, sir, I did not.

14 Q. Okay. So, ultimately, whether a company has a  
15 contract with the government or is just doing an internal  
16 project that requires assistance, it doesn't matter to  
17 you?

18 A. Could you repeat that?

19 Q. Yes. So whether your company, Staffmark -- or, I am  
20 sorry, let me rephrase. Whether IRP had a contract with  
21 the government or was just doing an internal project that  
22 requires assistance on that project, it doesn't matter to  
23 you whether they have a contract or working on a project?

24 A. I guess my answer to that is I thought they did have  
25 a contract.

1 Q. And you stated earlier they had a contract. Why was  
2 there no mention in your e-mail communication with  
3 Mr. Banks that you didn't state IRP told me they had a  
4 contract?

5 A. Can't answer that. I guess it never came up.

6 Q. You were never told they had a contract, were you?

7 A. Yes. I was told by Ken Harper that they had a  
8 contract with Homeland Security.

9 Q. But you can't recall any specifics of the contract;  
10 is that correct?

11 A. Only that they had a contract with Homeland Security  
12 developing software. I believe there was even an article  
13 that was presented to me way back when that stated that  
14 IRP was working with Homeland Security. I don't know if  
15 that article is available or not.

16 Q. So you would agree that working with an agency and  
17 having a contract are two different things. Would you  
18 agree with that?

19 A. I would agree with that statement.

20 MR. HARPER: No further questions, Your Honor.

21 THE COURT: Okay. Anybody else?

22 MR. BANKS: No, Your Honor.

23 THE COURT: Any redirect?

24 MR. KIRSCH: Please, Your Honor.

25 Your Honor, could I ask to publish Government

1 Exhibit 376.02, please?

2 THE COURT: You may.

3 **REDIRECT EXAMINATION**

4 **BY MR. KIRSCH:**

5 Q. Ms. Olson, this is the collection -- the letter from  
6 the attorney that you were referencing; is that right?

7 A. Yes, sir.

8 Q. This references a total amount due of over \$240,000.  
9 Do you have any reason to think that that figure is  
10 incorrect, as opposed to the figure you said before, which  
11 I think was a little lower?

12 A. No. They would have had records at the corporate  
13 office of every outstanding invoice. I was just giving my  
14 best guess.

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

16 Q. (BY MR. KIRSCH) And, then, when you were being asked  
17 the questions about the existence of the contract, at one  
18 point you said, why would I ask to see the contract? Can  
19 you explain why it is that you didn't feel the need to see  
20 the actual contract?

21 A. I mean, based on my conversations with Ken Harper on  
22 what they were doing and the product that they were  
23 building, you know, Homeland Security is real and existing  
24 today, and if the statement of we are working on a  
25 software program for Homeland Security, I felt very



1 confident that there was a contract in place, and that  
2 they would be able to pay their bills accordingly. That  
3 was my interpretation of that.

4 Q. Did you have any -- were you making any assumptions  
5 at that time about whether or not Mr. Harper was being  
6 truthful with you?

7 A. I would have no reason to think he wasn't.

8 Q. When you generally do business with clients, like the  
9 ones that you described, do you generally assume that your  
10 clients are giving you accurate information?

11 A. Yes, sir.

12 MR. KIRSCH: Thank you, Ms. Olson.

13 THE COURT: All right. May this witness be  
14 excused?

15 MR. KIRSCH: Yes, please.

16 THE COURT: Thank you very much, Ms. Olson, you are  
17 excused.

18 THE WITNESS: Thank you.

19 THE COURT: How long will the next witness take?

20 MR. KIRSCH: Your Honor, I expect a similar amount  
21 of time to Ms. Olson.

22 THE COURT: Why don't we go ahead and take a short  
23 break now, as opposed to having to wait until that later  
24 time. We will be in recess until 10:25.

25 (A break is taken from 10:09 a.m. to 10:28 a.m.)

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

3 THE COURT: All right. Anything that needs to be  
4 brought to my attention?

5 MR. KIRSCH: No, Your Honor.

6 THE COURT: All right. Ms. Barnes, would you  
7 please bring in the jury.

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

10 THE COURT: You may be seated.

11 Government may call its next witness.

12 MS. HAZRA: Thank you, Your Honor. The Government  
13 calls Susan Slakey.

14 COURTROOM DEPUTY: Your attention, please.

15 **SUSAN SLAKEY**

16 having been first duly sworn, testified as follows:

17 COURTROOM DEPUTY: Please be seated.

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

20 THE WITNESS: Susan Slakey. That's S-U-S-A-N  
21 S-L-A-K-E-Y..

22 **DIRECT EXAMINATION**

23 **BY MS. HAZRA:**

24 Q. Good morning, Ms. Slakey.

25 A. Good morning.

- 1 Q. Where are you currently employed?
- 2 A. ESG Consultants.
- 3 Q. And how long have you been with ESG?
- 4 A. I started with ESG in 1997.
- 5 Q. If you could just make sure you keep your voice up so
- 6 everybody can hear you.
- 7 A. Okay.
- 8 Q. What is your position with ESG?
- 9 A. Director of corporate services.
- 10 Q. And how long have you been the director?
- 11 A. Since 2003.
- 12 Q. Where are you located?
- 13 A. Santa Clara, California.
- 14 Q. Is that where the main office of ESG is?
- 15 A. It is.
- 16 Q. What kind of business is ESG?
- 17 A. IT consulting and staffing services.
- 18 Q. What kind of staffing services does ESG provide?
- 19 A. Information technology.
- 20 Q. I would like to turn your attention to 2004.
- 21 A. Okay.
- 22 Q. At some point in time did you become aware of a
- 23 potential business opportunity with IRP?
- 24 A. I did.
- 25 Q. What was your understanding of the business

1 opportunity with IRP Solutions?

2 A. They had a project that they wanted ESG to support  
3 them with by bringing in a consultant to do some technical  
4 work for them.

5 Q. Based on this, did you follow up with IRP?

6 A. Yes.

7 Q. Who did you speak with?

8 A. David Banks.

9 Q. Did Mr. Banks tell you his connection to the company?

10 A. He did.

11 Q. What was that?

12 A. CEO.

13 Q. You did follow up with him on telephone, I suspect?

14 A. Yes.

15 Q. And in the course of this conversation, did Mr. Banks  
16 tell you what kind of work IRP did?

17 A. They were developing software for law enforcement.

18 Q. Did Mr. Banks identify specific law enforcement  
19 agencies?

20 A. Yes.

21 Q. And what were those?

22 A. Homeland Security, FBI and police.

23 Q. Did Mr. Banks tell you what they wanted in terms of  
24 staffing needs?

25 A. Yes.

1 Q. And what did he say?

2 A. The services of Kendrick Barnes.

3 Q. And what was your understanding, based on what  
4 Mr. Banks told you, what Mr. Barnes was going to do?

5 A. Some technical work.

6 Q. In addition to speaking with Mr. Banks, did you  
7 request additional information concerning IRP's financial  
8 situation?

9 A. Yes.

10 Q. And what kind of information did you request?

11 A. The completion of our credit reference form.

12 Q. And who did you ask to do that?

13 A. David Banks.

14 Q. What was Mr. Banks' reaction when you asked him that?

15 A. His initial reaction was that he did not want to  
16 provide information -- financial information, because his  
17 investors would not want to provide that information.  
18 After some discussion, eventually he completed the form,  
19 but asked that we not follow up in contacting the people.

20 Q. Did he tell you why he didn't want you to follow up  
21 to contact the people?

22 A. He said because he didn't want -- the investors did  
23 not want to provide the information; didn't want it to be  
24 public.

25 Q. Did you honor his request to keep his investors

1 non-public?

2 A. Yes, we did.

3 Q. Did Mr. Banks also supply references at your request?

4 A. Yes.

5 Q. Were those references related to IRP Solutions?

6 A. These were business references of theirs that IRP  
7 Solutions had done business with.

8 Q. Do you remember the references that Mr. Banks  
9 provided?

10 A. I remember one was a Demetrius Harper, and another  
11 was Sylvia McGhee.

12 Q. Do you remember the companies that were associated  
13 with either of those individuals?

14 A. Demetrius Harper was DHK or DKH Enterprises. And I  
15 don't remember Ms. McGhee, but it is on the form.

16 Q. In addition to getting the credit reference  
17 information and references, did you take additional steps  
18 to find out more information about IRP's business?

19 A. Yes.

20 Q. And what were those?

21 A. The two owners of ESG and I went on the internet and  
22 went onto IRP Solutions' website and confirmed on there  
23 that there was all sorts of information about law  
24 enforcement work. They were supporting police  
25 departments, and they had a contract with Homeland

1 Security.

2 Q. Based on all of this information, did you decide to  
3 go into business with IRP?

4 A. We did.

5 Q. Was this decision consistent with ESG's normal  
6 policy?

7 A. No, it was not.

8 Q. Why was it not?

9 A. ESG has a policy of not working with start-ups.

10 Q. Why did you make an exception in IRP's case?

11 A. Because after information provided by Mr. Banks, and  
12 the information that we saw on the internet, it seemed  
13 very credible that they did, in fact, have law  
14 enforcement, Homeland Security, government contracts, and  
15 they would have the funding necessary to pay us.

16 Q. I would like to show you what has been marked for  
17 identification as Government Exhibit 130.01. Do you  
18 recognize that document?

19 A. I do.

20 Q. What is this document?

21 A. This is ESG's client agreement.

22 Q. Who is the client agreement between?

23 A. ESG Consulting and IRP Solutions.

24 MS. HAZRA: Your Honor, I ask that Government  
25 Exhibit 130.01 be admitted.

1 THE COURT: Any objection?

2 MR. ZIRPOLO: No objection, Your Honor.

3 THE COURT: 130.01 will be admitted.

4 (Exhibit No. 130.01 is admitted.)

5 MS. HAZRA: May it be published?

6 THE COURT: It may.

7 MS. HAZRA: Thank you, Your Honor.

8 Special Agent, if you could go to the second page,  
9 and highlight the bottom signature area.

10 Q. (BY MS. HAZRA) The date there, does that accurately  
11 reflect the time in which ESG entered into a contract with  
12 IRP?

13 A. Yes, it does.

14 Q. And signature there for ESG Consulting, who is that  
15 individual?

16 A. Sal Safi.

17 Q. Who is that?

18 A. Owner and CEO.

19 Q. Who signed for IRP Solutions?

20 A. David Banks.

21 MS. HAZRA: Thank you Special Agent.

22 Q. (BY MS. HAZRA) If you could please look what has  
23 been marked for identification purposes as Government's  
24 Exhibit 130.02. Do you recognize 130.02?

25 A. I do.



1 Q. What is that document?

2 A. This is a statement of work.

3 Q. Between whom?

4 A. Between IRP Solutions and ESG Consulting.

5 MS. HAZRA: Your Honor, I ask that Government's  
6 Exhibit 130.02 be made admissible.

7 THE COURT: Any objection?

8 MR. BANKS: No objection, Your Honor.

9 THE COURT: 130.02 will be made admissible.

10 (Exhibit No. 130.02 is found admissible.)

11 Q. (BY MS. HAZRA) Last, if you could please look at  
12 what has been marked for identification purposes as  
13 Government Exhibit 130.03. Do you recognize that  
14 document?

15 A. I do.

16 Q. What is this document?

17 A. This is a temporary employment agreement between ESG  
18 Consulting and Kendrick Barnes.

19 MS. HAZRA: I would ask 130.03 be admitted.

20 THE COURT: Any objection?

21 MR. ZIRPOLO: No objection.

22 THE COURT: 130.03 will be admitted.

23 (Exhibit No. 130.03 is admitted.)

24 MS. HAZRA: Your Honor, may it be published?

25 THE COURT: Yes, it may.

1 MS. HAZRA: If you could highlight just that first  
2 page there.

3 Q. (BY MS. HAZRA) Does this agreement memorialize the  
4 -- does this document memorialize the agreement between  
5 ESG and Kendrick Barnes?

6 A. It does.

7 Q. Do you see his name there under "Employee  
8 Information"?

9 A. Yes.

10 Q. Whose employee was Mr. Barnes in this arrangement?

11 A. He was an employee of ESG Consultants.

12 Q. How does that work?

13 A. ESG hired him as a W2 employee, which means we were  
14 responsible for paying him, for paying all payroll taxes  
15 and statutory insurance and taxes on him. For all intents  
16 and purposes, he was employed by ESG.

17 Q. There is a "Client Information" here of IRP  
18 Solutions. What is that information?

19 A. That is the client that our employee, Kendrick  
20 Barnes, was asked to support.

21 MS. HAZRA: And if you could just turn to the  
22 second page, Special Agent. Just highlight the signature  
23 line.

24 Q. (BY MS. HAZRA) Again, is that Kendrick Barnes'  
25 signature on the right-hand side?

1 A. I believe so, yes.

2 Q. Who is the other signature?

3 A. John Landau. He was the account manager and  
4 recruiter for ESG Consulting who handled Mr. Barnes.

5 Q. In this arrangement between Mr. Barnes and ESG, who  
6 found Mr. Barnes, so to speak, to work for IRP?

7 A. Well, the recruiter that he worked with was John  
8 Landau.

9 Q. Was it your understanding that IRP suggested him or  
10 Mr. Landau independently found Mr. Barnes, if you know?

11 A. What I was told by Mr. Landau --

12 Q. And I don't want you to tell me what he told you.

13 At the time that Mr. Barnes entered this employment  
14 contract with ESG, did you have any knowledge of a  
15 personal relationship between Mr. Barnes and Mr. Banks?

16 A. No, I did not.

17 Q. And at the time that Mr. Barnes entered into this  
18 employment contract with ESG, did you have any knowledge  
19 that Mr. Barnes had worked for IRP previously with other  
20 staffing companies?

21 A. No.

22 Q. And would that fact have caused you some concerns?

23 A. Absolutely, yes.

24 Q. Why is that?

25 A. Because we would only have an employee who is doing

1 work for us, and not for someone else at the same time.

2 It wouldn't be practical.

3 Q. Okay. That is if you had known that he was working  
4 for another company at the same time he was working for  
5 ESG?

6 A. That's correct.

7 Q. Did you have knowledge that at the time that you  
8 employed Mr. Barnes to work at IRP, he had previously  
9 worked at IRP for other staffing companies?

10 A. No, I did not.

11 Q. Would that fact have caused you any concern?

12 A. It would have made me very curious. I would have  
13 wanted more information about why.

14 Q. And would you have wanted to know the knowledge of  
15 whether or not Mr. Barnes had a personal relationship with  
16 IRP and Mr. Banks?

17 A. Yes.

18 Q. And why is that?

19 A. Because it's -- it is outside the normal course of  
20 business.

21 Q. And how does Mr. Barnes keep track of his time for  
22 ESG, the time he is working at IRP?

23 A. He completed a time sheet on a weekly basis and had  
24 it approved by the manager, confirming the work was done.  
25 Then he faxed that time sheet to our office in California.

1 Q. And why does it require the manager to approve the  
2 time sheet?

3 A. By approving the time sheet, the manager is  
4 authorizing -- is confirming the work is done and  
5 authorizing us to bill them for it, and confirming that  
6 they approved that charge.

7 Q. So ESG bills the client based on the hours worked?

8 A. Yes.

9 Q. Does ESG bill directly that amount, or does ESG add  
10 something to that amount that they bill the client?

11 A. The total amount ESG bills the client is the amount  
12 we have to pay the employee, plus the amount that we have  
13 to add in for statutory payroll costs, insurance;  
14 payrolling costs in general, as well as a profit for the  
15 company.

16 Q. If you could please look at what has been marked for  
17 identification purposes as Government's Exhibit 131. Do  
18 you recognize Government's Exhibit 131?

19 A. I do.

20 Q. What is 131.00?

21 A. These are time sheets from Kendrick Barnes for the  
22 hours that he billed for IRP Solutions.

23 Q. And are the dates -- the week reflected there  
24 consistent with the weeks that Mr. Barnes worked at IRP  
25 Solutions for ESG Consulting?

1 A. Yes, they are.

2 MS. HAZRA: Your Honor, I would ask that  
3 Government's Exhibit 131.00 be admitted.

4 THE COURT: Any objection?

5 MR. BANKS: No objection, Your Honor.

6 THE COURT: Exhibit 131.00 will be admitted, and it  
7 may be published.

8 (Exhibit No. 131.00 is admitted.)

9 MS. HAZRA: Thank you, Your Honor.

10 Special Agent Smith, if you could highlight just  
11 the text portion of that to make it easier to see.

12 Q. (BY MS. HAZRA) If you could describe this for the  
13 jury, the various entries here.

14 A. Okay. Certainly. Well, you see his name is at the  
15 top. The employee puts their name at the top. And then  
16 at the end of each week, they input -- they list all of  
17 the hours they worked for the particular project. Then,  
18 the employee who is doing the work signs their consultant  
19 signature, again, confirming that that is correct.

20 And then the employee has his manager at the job  
21 site -- in this case, it was Mr. Barnes at IRP, I believe,  
22 although looking at this here, this could possibly have  
23 been Mr. Zirpolo's signature, I am not sure. But someone  
24 signed this particular one on behalf of IRP Solutions  
25 confirming that, yes, this is accurate, that Mr. Barnes

1 did, in fact, work the hours.

2 MR. BANKS: Objection Your Honor, she cannot  
3 reasonably read that that is Mr. Zirpolo's signature.

4 THE COURT: Sustained.

5 Q. (BY MS. HAZRA) Do you know, based on your review of  
6 the records for ESG, who was the supervisor of Mr. Barnes'  
7 hours?

8 A. Mr. Zirpolo.

9 MS. HAZRA: And, Special Agent, if you could go to  
10 page 6.

11 Q. (BY MS. HAZRA) And, Ms. Slakey there you can see  
12 some overtime hours listed; is that right?

13 A. Yes.

14 Q. Does ESG require approval for overtime hours, as  
15 well?

16 A. Yes.

17 Q. And the client has to approve those hours?

18 A. Yes.

19 MS. HAZRA: Thank you, Special Agent.

20 Q. (BY MS. HAZRA) Did ESG Consulting pay Mr. Barnes for  
21 the hours he worked?

22 A. Yes.

23 Q. If you could please look at what has been marked for  
24 identification purposes as Government's Exhibit 133. Do  
25 you recognize Government's Exhibit 133?

1 A. I do.

2 Q. What is that?

3 A. This is a copy of a payroll report. And this  
4 particular page is the payroll record of what Mr. Barnes  
5 was paid.

6 MS. HAZRA: I would ask that Government's Exhibit  
7 133.00 be made admissible.

8 THE COURT: Any objection?

9 MR. ZIRPOLO: No objection.

10 THE COURT: Exhibit 133.00 is made admissible.

11 (Exhibit No. 133.00 is found admissible.)

12 Q. (BY MS. HAZRA) Ms. Slakey, you were previously  
13 describing that after you receive the time cards, they  
14 bill, in this case, IRP; is that right?

15 A. That's right.

16 Q. Could you please look at what has been marked for  
17 identification purposes as Government's Exhibit 5. What  
18 is Government's Exhibit 5?

19 A. It is an invoice from ESG Consulting to IRP Solutions  
20 for the work performed by Kendrick Barnes.

21 Q. Is it tied to a specific week?

22 A. Yes, it is.

23 MS. HAZRA: Your Honor, I would ask Government's  
24 Exhibit 5 be admitted and published to the jury.

25 THE COURT: Any objection?



1 MR. ZIRPOLO: No objection.

2 THE COURT: Exhibit 5 will be admitted, and it may  
3 be published.

4 (Exhibit No. 5.00 is admitted.)

5 Q. (BY MS. HAZRA) And, Ms. Slakey, if you could just  
6 identify this. What week did Mr. Barnes work?

7 A. This is for week ending August 22nd of 2004.

8 Q. And how much was the total?

9 A. According to this, he worked a total of 52 hours, for  
10 a total owed to ESG for \$4,888.

11 Q. Is the second page of Government's Exhibit 5 the  
12 supporting time card?

13 A. It is.

14 Q. And does that have the necessary approvals that you  
15 said ESG requires?

16 A. It does.

17 MS. HAZRA: Thank you, Special Agent.

18 Q. (BY MS. HAZRA) How did ESG send the invoices to IRP?

19 A. U.S. Mail.

20 Q. Where were they mailed from?

21 A. From our corporate office in California.

22 Q. To IRP directly?

23 A. Yes.

24 Q. And I know there was one invoice, but if you could  
25 look generally at Government's Exhibit 132. Do you

1 recognize Government's Exhibit 132.00?

2 A. I do.

3 Q. What is that?

4 A. This is a collection of invoices paid -- I am sorry,  
5 invoices sent from ESG to IRP.

6 MS. HAZRA: Your Honor, I would ask that  
7 Government's Exhibit 132.00 be made admissible -- be found  
8 admissible.

9 THE COURT: Any objection?

10 MR. ZIRPOLO: No objection.

11 THE COURT: Exhibit 132.00 will be made admissible.

12 (Exhibit No. 132.00 is found admissible.)

13 Q. (BY MS. HAZRA) Ms. Slakey, did IRP pay ESG on these  
14 invoices?

15 A. They did not.

16 Q. At some point in time did you become aware that ESG  
17 was not receiving payment?

18 A. Yes, I did.

19 Q. Did you make any attempts to get payment?

20 A. Yes, I did.

21 Q. What did you do at first, initially?

22 A. I tried to reach the accounting department at IRP  
23 Solutions and did not have success. And then I tried to  
24 call Mr. Banks directly.

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

1 A. Not initially, but eventually.

2 Q. And what did Mr. Banks say when you spoke with him?

3 A. That funding was right around the corner. That they  
4 were awaiting some payments, and that they would be paying  
5 the invoices soon.

6 Q. And what effect did that have, if any, on your  
7 decision to continue payrolling Mr. Barnes?

8 A. I'm sorry?

9 Q. Did you continue to pay Mr. Barnes after your first  
10 initial conversation with Mr. Banks?

11 A. Yes, we did.

12 Q. Why is that?

13 A. Because Mr. Barnes was our employee. And our  
14 understanding was that he was doing the work, and he  
15 deserved to be paid.

16 Q. Did you have any expectation from Mr. Banks'  
17 statements that you would be paid?

18 A. Yes.

19 Q. Why is that?

20 A. Because he said that he had money coming in through  
21 the software they were developing for Homeland Security  
22 and other government entities.

23 Q. Did you then get paid after this conversation with  
24 Mr. Banks on the outstanding invoices?

25 A. No.

1 Q. Did you make further attempts to collect the money?

2 A. I did.

3 Q. What were those?

4 A. I continued trying to call the accounting department  
5 in IRP Solutions. I continued trying to call Mr. Banks.  
6 I tried to reach Mr. Zirpolo. I sent e-mails to  
7 Mr. Banks, as well.

8 Q. Could you please look at what has been marked for  
9 identification purposes as Government's Exhibit 10. What  
10 is Government's Exhibit 10?

11 A. It is an e-mail thread from -- between me --  
12 initially, it is an e-mail from me to Mr. Banks, and then  
13 his response, and then my response to him regarding unpaid  
14 invoices.

15 MS. HAZRA: Your Honor, I would ask that  
16 Government's Exhibit 10 be admitted and published to the  
17 jury.

18 THE COURT: Any objection?

19 MR. ZIRPOLO: No objection.

20 THE COURT: Exhibit 10 will be admitted, and it may  
21 be published.

22 (Exhibit No. 10.00 is admitted.)

23 MS. HAZRA: Special Agent, if you could start with  
24 page 2. And if you could highlight the bottom message.

25 Q. (BY MS. HAZRA) Ms. Slakey, you just said that you

1 called and e-mailed numerous times. Does this message  
2 reflect these efforts?

3 A. Yes, it does.

4 Q. And what were the assurances from various people on  
5 their staff that you would call me. What does that mean?

6 A. When I would call, several times I spoke with someone  
7 who said they were a receptionist. And I explained that I  
8 have been leaving repeated messages for Mr. Banks, and  
9 each time they weren't returned, and was he actually in  
10 the office? Was there a reason why I wasn't hearing from  
11 him? When was he expected in?

12 And I kept being told, oh, yes, he will call you.  
13 He will call you. He's in some important meeting, or he  
14 is at an important event. But he'll call you. He'll call  
15 you.

16 MS. HAZRA: And if you could scroll to the second  
17 page. If you could scroll up, Special Agent.

18 Q. (BY MS. HAZRA) Is that the end on the top there,  
19 page 2? It is a little difficult in this screen format.  
20 Is that the signature line of the message that starts on  
21 page 1?

22 A. It is.

23 MS. HAZRA: If we could turn to page 1, Special  
24 Agent. If you could highlight the bottom.

25 Q. (BY MS. HAZRA) Is this Mr. Banks' response to your

1 e-mail that we just saw?

2 A. Yes.

3 Q. And is this consistent with his paragraph at the end  
4 there about payment being released and so on? Is that  
5 consistent with what he had been saying to you?

6 A. Yes, it is.

7 MS. HAZRA: And then if you could scroll up,  
8 Special Agent.

9 Q. (BY MS. HAZRA) And is that your response to  
10 Mr. Banks?

11 A. Yes, it is.

12 Q. Is this date of September 15, is that around when you  
13 were having all of these communications you have  
14 described?

15 A. Yes.

16 Q. And did you receive the payment by September 21,  
17 2004?

18 A. No, we did not.

19 MS. HAZRA: Thank you, Special Agent.

20 Q. (BY MS. HAZRA) Ms. Slakey, where did you do all this  
21 e-mailing, including Government Exhibit 10? Where were  
22 you when you were e-mailing Mr. Banks?

23 A. At my corporate office in California.

24 Q. And do you know where ESG's e-mail servers are  
25 hosted?

1 A. New York State.

2 Q. You said you didn't receive any payment on that date.  
3 Did you continue to try to get payment from Mr. Banks and  
4 IRP Solutions?

5 A. Yes.

6 Q. If you could please look at what has been marked for  
7 identification purposes as Government's Exhibit 136.01.  
8 And I think the first two pages of that are actually  
9 Government's Exhibit 10. Do you recognize the remainder  
10 of those pages?

11 A. Yes, I do.

12 Q. And what do the documents in there relate to?

13 A. My attempts to collect payment.

14 Q. From IRP Solutions?

15 A. Yes.

16 MS. HAZRA: Your Honor, I would ask that actually  
17 pages 3 through 7 -- maybe for ease of it all, I will ask  
18 that all of Government's Exhibit 136.01 be admitted.

19 THE COURT: Any objection?

20 MR. ZIRPOLO: No objection.

21 THE COURT: Exhibit 136.01 will be admitted.

22 (Exhibit No. 136.01 is admitted.)

23 MS. HAZRA: May it be published?

24 THE COURT: It may.

25 MS. HAZRA: Special Agent, just to make it more

1 clear, if you could publish the first page first.

2 Q. (BY MS. HAZRA) Ms. Slakey, this first e-mail is the  
3 e-mail we have just been discussing.

4 A. Yes.

5 Q. In that first e-mail message there, the message is to  
6 Mr. Banks, do you reference a Fed Ex letter?

7 A. Yes.

8 Q. And is that letter included in later pages of  
9 Government's Exhibit 136.01?

10 A. It is.

11 MS. HAZRA: And if you could turn to page 7 --  
12 Special Agent, is there a way you can go to page 7?

13 Q. (BY MS. HAZRA) Is this the letter that you sent via  
14 Fed Ex?

15 A. Yes, it is.

16 Q. What was the purpose of this letter?

17 A. This letter is a demand for payment.

18 Q. And does the amount reflected there accurately  
19 reflect the amount that IRP Solutions owed you?

20 A. Yes.

21 Q. And you reference there that you had told Kendrick  
22 Barnes he could no longer be your employee. Do you recall  
23 when that occurred?

24 A. It would have been about the same time.

25 Q. Did you make that phone call?



1 A. No, I did not.

2 Q. Then if you could turn to page 3 of Government's  
3 Exhibit 136.01.

4 MS. HAZRA: Could you highlight the top, Special  
5 Agent?

6 Q. (BY MS. HAZRA) Ms. Slakey, why did you send this  
7 letter to Mr. Zirpolo?

8 A. Because according to our records, he was Mr. Barnes'  
9 manager on site. And I needed to make him aware --  
10 Mr. Zirpolo aware of the fact that Mr. Barnes would no  
11 longer be able to provide him services.

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

13 THE COURT: You may.

14 MS. HAZRA: No further questions, Your Honor.

15 THE COURT: Cross? Mr. Banks, you may proceed.

16 MR. BANKS: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 **BY MR. BANKS:**

19 Q. Ms. Slakey, can you give me a brief overview of your  
20 contact and communication with myself, Mr. Banks, again,  
21 just for edification.

22 A. Well, we had contact originally when ESG was  
23 considering doing business with IRP Solutions.

24 Q. I don't mean to interrupt you. If you can tell me  
25 about your contact with me.

1 A. We talked via telephone. We communicated via e-mail.

2 Q. Okay. About what time did you start communicating  
3 with Mr. Banks?

4 A. Initially, when we had -- when we were considering  
5 doing business with IRP to sign a contract.

6 Q. Signing a contract. Okay. Are you aware of an  
7 e-mail October 9, 2004, from John Landau to you, outlining  
8 his interaction with myself?

9 A. I would need to see the e-mail. It has been awhile.

10 Q. Okay. Are you also aware of the information you  
11 provided to the FBI regarding a chronology of events  
12 related to this case?

13 A. Yes.

14 Q. On or about what date did you first talk to  
15 Mr. Banks?

16 A. It would have been about the time that we were  
17 initially agreeing to contract the terms.

18 MR. BANKS: Your Honor, I would like to provide  
19 Ms. Slakey with two exhibits that she provided as e-mails  
20 from John Landau to her regarding his chronology of events  
21 that he sent to her regarding his communications and  
22 activities with me. In addition --

23 THE COURT: What exhibit number is that?

24 MR. BANKS: Gary, what is the next exhibit? 333,  
25 Your Honor.

1 THE COURT: You don't need to describe it to me if  
2 they are marked as exhibits. I don't have 333. This is  
3 for impeachment purposes?

4 MR. BANKS: Yes, ma'am.

5 THE COURT: There is nothing you asked to impeach.

6 MR. BANKS: I asked if she recalled an e-mail.

7 THE COURT: So you want to see -- is that for  
8 purposes of refreshing her recollection as to something?

9 MR. BANKS: Yes, it is.

10 MS. HAZRA: Your Honor, may I see them?

11 THE COURT: Yes.

12 MR. BANKS: Also, Your Honor, there is one more.

13 THE COURT: Show them first to Ms. Hazra.

14 So one is going to be marked as Defense 333. Give  
15 that to Ms. Barnes. The other is to be marked, I take it,  
16 334.

17 COURTROOM DEPUTY: Defendants' Exhibits 333 and  
18 334.

19 THE COURT: Mr. Banks, you may ask a question.

20 Q. (BY MR. BANKS) Is it true, Ms. Slakey, that you had  
21 absolutely zero communications with Mr. Banks until 9/15  
22 of '04, where you communicated with him via e-mail? Is  
23 that correct?

24 A. No, that is not correct.

25 Q. According to the information in that e-mail from John

1 Landau to you, he provided a full chronology of his  
2 interactions with myself; is that correct?

3 A. Yes, that's correct.

4 Q. Do you have any reason to believe that Mr. Landau is  
5 not telling the truth in that communication?

6 A. No, I do believe that this is Mr. Landau's  
7 communications. He is not talking about my  
8 communications. But this is correct for his.

9 Q. On the FBI -- on the other exhibit, 334, you provided  
10 that your company provided that to the FBI as an actual  
11 chronology of events from June until --

12 MS. HAZRA: Objection, Your Honor, is that a  
13 question?

14 THE COURT: Actually, yes, you need to ask her what  
15 her knowledge is. So you can ask her if she was aware of  
16 that chronology that was provided.

17 Q. (BY MR. BANKS) Is that chronology an accurate  
18 reflection of what you provided the FBI?

19 A. Yes.

20 Q. You've testified here just moments ago that you were  
21 involved in the contract; the initial talks with  
22 Mr. Banks. You have testified --

23 THE COURT: Now, you have to ask a question. Ask a  
24 question.

25 MR. BANKS: Okay. I'm sorry.

1 Q. (BY MR. BANKS) Did you, moments ago, say that you  
2 were involved in talks with Mr. Banks regarding the  
3 payrolling of Ken Barnes?

4 A. Yes.

5 Q. Can you explain to us why no interaction is included  
6 in the information you provided to the FBI, as far as your  
7 interaction is concerned?

8 A. This is a chronology of some of the more significant  
9 events, but it does not detail every specific conversation  
10 that happened or every specific item that happened during  
11 the course of those several months.

12 Q. Is there some reason you did not provide your  
13 information to the FBI in the transmission?

14 A. No.

15 Q. Would you agree that there is no interaction listed  
16 between yourself and Mr. Banks, according to the  
17 information in front of you, that you provided to the FBI,  
18 until September 15, 2004?

19 A. No. I don't see any of the other interactions  
20 listed.

21 Q. Okay. Explain the process that happened from initial  
22 contact with Mr. Banks until -- that you were involved in,  
23 until the demand letter of 9/14?

24 A. Could you clarify? Are you saying just the  
25 interactions between me and Mr. Banks?

1 Q. Yes.

2 A. Early on, at the time of the contract discussion, our  
3 standard contract indicates that a client would pay us  
4 immediately upon receipt of our invoice. And Mr. Banks  
5 requested that we extend terms of net payment 30 days, so  
6 they wouldn't have to pay until 30 days after receipt of  
7 invoice.

8 After much discussion, I had a discussion with  
9 Mr. Banks about that, and we agreed to make it net 10  
10 days. And I prepared an addendum reflecting that change,  
11 and sent that and provided that.

12 Q. How is it, then, that John Landau claimed he had the  
13 same discussion with me? Either you had it or I had it.  
14 Which one of -- you or Mr. Landau had the discussion,  
15 consistent with the information he provided you and the  
16 information the company provided the FBI.

17 A. There is a certain amount of overlap, as Mr. Landau  
18 is the account manager/recruiter out in the field, and I  
19 am in the corporate office. And so at some point, he will  
20 have a conversation with a client. But when it reaches a  
21 point where it is beyond what he can approve, then I might  
22 have a similar conversation or a follow-up conversation  
23 with a client.

24 Q. Ms. Landau, the information -- I will ask you again,  
25 under the penalty of perjury --

1 THE COURT: Mr. Banks --

2 MR. BANKS: I am sorry, Ms. Slakey.

3 THE COURT: If it is a question you've asked and  
4 she answered it, just move on.

5 MR. BANKS: Okay.

6 Q. (BY MR. BANKS) Would you say the FBI -- the  
7 information in that chronology is incorrect?

8 A. No.

9 MR. BANKS: Your Honor, may I publish, again,  
10 Government Exhibit 136.01?

11 THE COURT: You may.

12 MR. BANKS: One moment, Your Honor.

13 THE COURT: That is the exhibit. It is multiple  
14 pages.

15 MR. BANKS: 130.01. My apology, Your Honor.

16 THE COURT: 130.01.

17 Q. (BY MR. BANKS) Can we go to page 2, the entire  
18 agreement clause, paragraph 10. Ms. Slakey, do you have  
19 that in front of you?

20 A. Yes.

21 Q. What does the entire agreement clause mean to you?

22 A. It means that this is the entire agreement between  
23 us. And it also indicates in here that any addendum has  
24 to be signed by the client and a corporate officer of ESG.

25 Q. Can you read the part starting, "Each party," in the

1 second sentence?

2 A. "Each party agrees that there has been no other  
3 representation, promise or agreement made, orally or  
4 otherwise, by either party. And no other agreement or  
5 statement shall be valid or binding."

6 Q. So, in your opinion, does that mean that any  
7 conversations that you had prior to the signing of this  
8 agreement were invalid?

9 MS. HAZRA: Objection, Your Honor. Her opinion is  
10 irrelevant.

11 THE COURT: It calls for a legal conclusion.  
12 Sustained.

13 Q. (BY MR. BANKS) Ms. Slakey, was -- what does that  
14 sentence you read mean to you?

15 MS. HAZRA: Objection, Your Honor, irrelevant.

16 THE COURT: Sustained.

17 THE WITNESS: This agreement outlines --

18 THE COURT: When I sustain it, that means you don't  
19 answer.

20 THE WITNESS: Oh, I am sorry. Thank you.

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

22 THE COURT: You may.

23 Q. (BY MR. BANKS) Ms. Slakey, can you explain to us why  
24 that clause is in the ESG contract?

25 MS. HAZRA: Objection, Your Honor, it calls for a



1 legal conclusion.

2 THE COURT: Overruled.

3 THE WITNESS: No, I could not. I did not write  
4 that.

5 Q. (BY MR. BANKS) Now, let me move on. Explain your  
6 concept of payrolling. Explain your concept of payrolling  
7 to the Court.

8 A. I am sorry, what do you mean by "concept"?

9 Q. Explain the payrolling.

10 A. The process?

11 Q. And how you see that.

12 A. The employee/consultant submits a time sheet for the  
13 hours they have worked, which has been approved by their  
14 manager. He submits that to our payroll department. Our  
15 payroll department pays the employee.

16 Q. When a company calls you and asks you to payroll  
17 somebody, are you normally aware of who that person is?

18 A. Who the employee is?

19 Q. Yes.

20 A. Yes. We --

21 Q. How are you -- I am sorry, I didn't mean to interrupt  
22 you.

23 A. Yes.

24 Q. How are you made aware of that -- the person that  
25 wants to be payrolled, if a company calls but that person?

1 A. The recruiter would provide us with the information  
2 so that they could be set up in the payroll system.

3 Q. I am talking about from the client's perspective. If  
4 a client calls you and says, I need you to payroll a  
5 person, do they normally provide that person?

6 A. Yes.

7 Q. A minute ago, you said in your testimony that it  
8 would have been problematic if the -- if you had known  
9 that Mr. Banks knew Mr. Barnes; is that correct?

10 A. That would be because we didn't know -- that was not  
11 how it was presented to us.

12 Q. Can you explain that?

13 A. There have been occasions where a client will be up  
14 front with us and tell us they have utilized this  
15 particular person before, and for whatever reason they  
16 would like us to help them bring that person back in. And  
17 then it is an open discussion between us and all parties  
18 concerned.

19 Q. So that is not a requirement, though; correct?

20 A. Pardon me?

21 Q. That is not a requirement that they tell you that  
22 they know the person that they are payrolling; correct?

23 A. I don't know what you really mean by "requirement."

24 Q. It is not unusual -- I am sorry -- the fact that  
25 somebody is providing you with a payroll -- a person to

1 payroll, implies that they would already have knowledge  
2 and know that person; correct?

3 A. Yes. This particular project was not set up as a  
4 payrolling project.

5 Q. It was not. So you testified a minute ago that  
6 Mr. Banks called ESG wanting to payroll a particular  
7 individual for software development; correct?

8 A. I became aware that Mr. Banks wanted to hire --  
9 wanted us to hire Mr. Barnes. At that point I didn't  
10 realize it was just for payrolling purposes; that it was a  
11 pre-existing relationship. At that point, I didn't know  
12 that they knew each other. At that point I didn't realize  
13 that that is what we were doing.

14 Q. Well, can you explain to us again, please, because  
15 you seem to be confused. Between the staff augmentation  
16 and payroll, can you explain the difference between staff  
17 augmentation and payrolling, and how those -- that type of  
18 business comes to you?

19 A. In a payrolling situation, when all a client wants us  
20 to do is provide payrolling services, we don't find the  
21 candidate. We don't do any other work on that. Then we  
22 set it up as a payroll only. And we have a different  
23 pricing structure, because we are not doing as much work.  
24 So in that situation, our profit margin is significantly  
25 lower.

1 Q. Okay. You said you don't find the candidate. The  
2 client provides you the candidate; correct?

3 A. Yes, in a payrolling situation.

4 Q. Yes. Did ESG recruit for Mr. Barnes?

5 A. I wasn't involved in that aspect of it, so I couldn't  
6 speak to that. That was done by Mr. Landau.

7 Q. I will take you back to Exhibit 343.

8 THE COURT: 334?

9 MR. BANKS: 334. I'm dyslexic, Your Honor.

10 THE COURT: 334 is the FBI statement.

11 MR. BANKS: The e-mail.

12 THE COURT: That is 333.

13 Q. (BY MR. BANKS) In that, John Landau says that  
14 Mr. Banks --

15 MS. HAZRA: Objection, Your Honor.

16 THE COURT: I am sorry.

17 Q. (BY MR. BANKS) In that e-mail, did John Landau --

18 THE COURT: You can't say what he said. Tell her  
19 to read it, and if she has any knowledge of that.

20 Q. (BY MR. BANKS) Can you read what Mr. Landau says  
21 about --

22 THE COURT: To yourself.

23 Q. (BY MR. BANKS) -- Mr. Banks and Mr. Barnes and that  
24 interaction between Mr. Banks and Mr. Landau?

25 A. Okay.

1 Q. Does that refresh your recollection as saying  
2 Mr. Banks --

3 THE COURT: Does that refresh her recollection?

4 MR. BANKS: I am sorry.

5 Q. (BY MR. BANKS) Does that refresh your recollection?

6 A. I was not aware of that relationship at the time that  
7 this business started. I was not aware of that until  
8 after I got this e-mail. That is when I got this  
9 additional information.

10 Q. You said a moment ago that you were involved in the  
11 process from the beginning, and you had input into the  
12 process, and that you were communicating with Mr. Banks.  
13 Which is it?

14 A. I was involved. I was not aware, though, at that  
15 point -- I was involved in the contractual aspect of it  
16 with Mr. Banks. I was not involved in how Mr. Barnes came  
17 to be involved. That was something that was handled by  
18 Mr. Landau. So what I know about that, I only know from  
19 what Mr. Landau has said. I have no personal knowledge.

20 Q. Now, I take you --

21 MR. BANKS: I need one more minute, Your Honor, if  
22 I may.

23 THE COURT: You may.

24 MR. BANKS: Your Honor, we would like to publish  
25 Government Exhibit 10 again.

1 THE COURT: All right. Exhibit 10?

2 MR. BANKS: Yes.

3 Q. (BY MR. BANKS) Can we go to the top of the e-mail on  
4 that exhibit. Ms. Slakey, is it true that the contract  
5 with IRP -- between IRP and ESG has absolutely no bearing  
6 on the business they may have been engaged in -- that they  
7 were engaged in with law enforcement agencies?

8 A. It was our understanding that their source of revenue  
9 was coming from law enforcement agencies. So the source  
10 of revenue is important to us, because that told us that  
11 they would be able to pay our bills.

12 Q. So the credit app -- would you say the credit app is  
13 determinative of a company's ability to pay?

14 A. One of other factors.

15 Q. In your long career in the staffing industry, have  
16 companies went bankrupt?

17 A. Yes.

18 Q. Have you lost money due to companies going bankrupt?

19 A. Throughout my career?

20 Q. Yes.

21 A. Yes.

22 Q. Have companies -- do you normally talk to every  
23 company -- if, for instance, if company ABC calls you and  
24 just tells you a little bit about their company --

25 Let me ask you this. If the company did not pass

1 credit muster or your credit due diligence, if you will,  
2 would you have done business with them?

3 A. No.

4 Q. Now, is it also your testimony that you -- that on  
5 the IRP website, you saw that -- you saw on the website  
6 that there was a contract in place with the Department of  
7 Homeland Security. Is that your testimony?

8 A. I don't recall if it actually indicated "contract,"  
9 but it did indicate that there was law enforcement  
10 business that IRP was connected with.

11 Q. Earlier you said it mentioned a contract?

12 A. Yes. I don't know if it was actually a contract or  
13 not. I don't remember if "contract" was on the website.  
14 But I do recall there was business coming from there, yes.

15 Q. You would agree if a company does business with law  
16 enforcement, they have a law enforcement product, that  
17 that is going to be articulated on the website?

18 A. I am sorry, could you repeat that?

19 Q. It is reasonable, in your mind, that if a company is  
20 in the business of doing business with law enforcement,  
21 that that is going to be annotated on their website;  
22 correct?

23 MS. HAZRA: I am going to object, Your Honor, a  
24 lack of foundation.

25 THE COURT: Sustained.

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

2 THE COURT: Any other questions from the defense?

3 MR. WALKER: No, Your Honor.

4 THE COURT: Any redirect?

5 MS. HAZRA: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MS. HAZRA:**

8 Q. Ms. Slakey, I want to talk to you briefly about, I  
9 believe it is Defense Exhibit 334, which is the  
10 chronology. Was the purpose of that chronology to record  
11 every interaction between ESG and IRP?

12 A. No.

13 Q. Are there numerous items missing from that  
14 chronology?

15 A. Yes.

16 Q. Was your attempt to report every time ESG paid  
17 Kendrick Barnes, is that reflected on the chronology?

18 A. No.

19 Q. So was this -- was the purpose just to capture what  
20 you thought was significant?

21 A. Yes.

22 Q. What was Mr. Landau's role in setting up the initial  
23 contact with IRP? Let me rephrase that, sorry.

24 Who had the initial contact with IRP, you or  
25 Mr. Landau?



1 A. Mr. Landau.

2 Q. Did he do the initial conversations, then, since he  
3 is the initial contact?

4 A. Yes.

5 Q. When you -- you came in at the contract stage; is  
6 that right?

7 A. Yes.

8 Q. Is it important in that stage for ESG to fully  
9 understand what kind of contract situation they are  
10 getting into?

11 A. Yes.

12 Q. So that information about the employee that is being  
13 placed, is that important to your decision?

14 A. Yes.

15 Q. And do you rely on what your client tells you to help  
16 you make decisions as to whether or not to do business  
17 with them?

18 A. Yes.

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

20 THE COURT: You may.

21 MS. HAZRA: Nothing further.

22 MR. BANKS: Your Honor, can I have just one.

23 THE COURT: You may.

24 **RECROSS-EXAMINATION**

25 **BY MR. BANKS:**

1 Q. I want to refer you back to Defendant's -- Defense  
2 Exhibit 333. You just said that you came in --

3 MS. HAZRA: Objection. I didn't ask about 333.

4 THE COURT: You can only ask questions that are to  
5 the extent of what the redirect was. You can't go back.

6 MR. BANKS: She asked the question, Your Honor, did  
7 she get involved at the time when the contract was in  
8 place.

9 THE COURT: Yes.

10 MR. BANKS: The exhibit shows something different  
11 than that.

12 THE COURT: I will give you some leeway.

13 MR. BANKS: Okay.

14 Q. (BY MR. BANKS) In your reading of Exhibit 333, with  
15 John Landau's interaction, does he or does he not in that  
16 e-mail communication --

17 MS. HAZRA: I object, Your Honor, it is improper.

18 THE COURT: If you want to have Mr. Landau testify  
19 what is on there, you need to do it with Mr. Landau. You  
20 can't bring in statements he made through this witness.  
21 So if you want to ask her a question about her knowledge,  
22 you can ask that.

23 Q. (BY MR. BANKS) Ms. Landau, in that communication to  
24 you -- why do I keep saying Ms. Landau? I am so sorry  
25 Ms. Slakey.

1           Ms. Slakey, in that communication to you from  
2 Mr. Landau, did he or did he not --

3           THE COURT: You can't reference the contents of a  
4 statement that Mr. Landau made without Mr. Landau being  
5 here to testify.

6 Q.    (BY MR. BANKS) Ms. Slakey, what did Mr. Landau --

7           THE COURT: Did Mr. Landau ever tell you anything,  
8 without giving you the contents.

9 Q.    (BY MR. BANKS) Did Mr. Landau ever tell you anything  
10 about his contract talks with Mr. Banks and his  
11 communications with the EVP regarding that?

12          MS. HAZRA: EVP?

13          THE COURT: Executive vice president.

14 Q.    (BY MR. BANKS) Did you have any knowledge of -- do  
15 you have any knowledge of Mr. Landau's communication with  
16 Sal regarding the contract between IRP and ESG?

17 A.    Yes.

18 Q.    And what do you know as far -- about those  
19 communications between Mr. Landau and the EVP?

20 A.    That we were not going to -- it was a corporate  
21 decision. Our policy is that we don't work with  
22 start-ups. And Mr. Landau is requesting an exception to  
23 that. And so there were discussions about why should we  
24 make this exception? Would they be able to pay the bill?  
25 Were they strong? Did they have the financial backing?

1 That kind of thing.

2 Q. Okay. Did -- who made the final call on that  
3 decision? Was it you, or was it the executive vice  
4 president?

5 A. Our CEO.

6 MR. BANKS: Thank you.

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

9 MS. HAZRA: Yes, Your Honor. Thank you.

10 THE COURT: Thank you, Ms. Slakey, you are excused.

11 Now, it is 11:30. How long will the next witness  
12 take? Will it take more than a half an hour?

13 MR. KIRSCH: Your Honor, it depends on the length  
14 of the cross-examination.

15 THE COURT: How long will the Government take on  
16 its direct?

17 MR. KIRSCH: Your Honor, I think I can do the  
18 direct in 15 to 20 minutes.

19 THE COURT: Well, I think we probably ought not  
20 press it. I promised the jury they could go home at noon  
21 I have another hearing at 1:00.

22 MR. KIRSCH: Your Honor, we do have one other  
23 witness that may be shorter than that.

24 THE COURT: All right. If you can do one that can  
25 be done in half an hour, you can do 15 and they can do 15.

1           MR. KIRSCH: Your Honor, I guess we're not  
2 confident in that, not knowing how to anticipate the  
3 length of the cross-examination.

4           THE COURT: All right. So I think it would be  
5 wiser to just go ahead and recess. The jury gets to go  
6 home earlier than I indicated. So you are going home for  
7 the entire weekend. I need you back bright and early, 9  
8 o'clock on Monday morning.

9           Remember, you are not to speak to anyone about this  
10 case, not to talk to your spouse or your friends or anyone  
11 else, not to do any research. Go home, put it out of your  
12 minds, and just enjoy your weekend.

13           So we will be in recess until 9 o'clock Monday  
14 morning.

15           (Court is in recess at 11:30 a.m.)

16           **R E P O R T E R ' S   C E R T I F I C A T E**

17           I, Darlene M. Martinez, Official Certified  
18 shorthand Reporter for the United States District Court,  
19 District of Colorado, do hereby certify that the foregoing  
20 is a true and accurate transcript of the proceedings had  
21 as taken stenographically by me at the time and place  
22 aforementioned.

23           Dated this 5th day of December, 2011.

24

25           \_\_\_\_\_  
s/Darlene M. Martinez, RMR, CRR