

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 10)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 9:02 a.m. on the 7th day of October 2011, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

Pro Se

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OCTOBER 7, 2011

(Proceedings commence at 9:02 a.m.)

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

THE COURT: You may be seated.

All right. I want to address the issue of the expert opinions from yesterday. First, I have reviewed in more detail Exhibits 1010, 1008 and 1009. Now, under Rule 16(b)(1)(C) of the Federal Rules of Criminal Procedure, the defendants must, at the Government's request, give to the Government a written summary of any testimony that the defendant intends to use under Rule 702, 703 or 705 of the Federal Rules of Evidence as evidence at trial.

The Government made such a request. Page 6 of Document Nos. 39 through 43 and 46 indicate that. And the provisions of Rule 16 are, "intended to meet the need for counsel to learn that an expert is expected to testify by first requiring notice of the expert's qualification, which, in turn, will permit the requesting party to determine whether, in fact, the witness is an expert within the definition of Federal Rule of Evidence 702." That is taken from the Advisory Notes to Federal Rule of Criminal Procedure 16.

Next, the requesting party is entitled to a summary of the expected testimony. And, finally, and

1 perhaps most important, the requesting party is to be
2 provided with a summary of the basis for the expert's
3 opinion. That is all pursuant to Federal Rule of Criminal
4 Procedure 16.

5 Now, the deadline in this case for defendants to
6 have submitted any Rule 16 disclosures was September 30th
7 of 2010, as set forth in Document 287. The Court later,
8 however, did allow the defendants to provide their Rule 16
9 disclosures relating to a forensic computer expert, and
10 that was allowed as of October 8, 2010. That was from
11 Document No. 297.

12 The defendants filed a Rule 16 disclosure for
13 Donald E. Vilfer, V-I-L-F-E-R, on October 8, 2010, in
14 Document 298. However, that Rule 16 disclosure for
15 Mr. Vilfer was the only such disclosure that was filed by
16 the defendants in this case.

17 Yesterday, after the Government had already rested,
18 the defendants indicated that they desired to have
19 Mr. Joseph M. Thurman, Ms. Kelly A. Baucom and Mr. Andrew
20 Albarelle testify as expert witnesses, despite the fact
21 that the defendants had not submitted any Rule 16
22 disclosure with respect to these witnesses.

23 The defendants argued that Government Exhibits
24 1008, 1009 and 1010 were sufficient. Exhibits 1008 and
25 1009 are letters that were sent by Mr. Albarelle and

1 Ms. Baucom, I believe, in July of 2011, although one of
2 those letters is dated 2010. The other is dated July 18,
3 2011; that is the one from Mr. Albarelle. The other one
4 is dated July 20, 2010, from Ms. Baucom, who is with the
5 same company as Mr. Albarelle. And based on when the
6 Government received that letter, as it made it's way down
7 through the ranks of the U.S. Attorney's Office, I am
8 assuming that came in mid-July of this year; so less than
9 3 months ago.

10 And that letter -- those letters were not sent --
11 they were sent to John F. Walsh, the United States
12 Attorney for the District of Colorado. Now, the Court
13 re-affirms its prior finding yesterday, that neither the
14 Government's Exhibits 1008 or 1009 satisfy both the Rule
15 16 disclosure requirements and 702 regarding the
16 admissibility of expert testimony.

17 If a party fails to comply with Rule 16, the Court
18 may order that party to permit the discovery or
19 inspection, grant a continuance, prohibit that party from
20 introducing the undisclosed evidence, or enter any other
21 order that is just under the circumstances. And that
22 pursuant to Criminal Rule 16(d)(2)(A-D).

23 In selecting the appropriate penalty, the Court
24 should "consider the reasons for the delay, the extent of
25 the prejudice as a result of the delay, and the

1 feasibility of curing any prejudice with a continuance.

2 That is from United States v. Sarracino,

3 S-A-R-R-A-C-I-N-O, 340 F.3d 1148, Tenth Circuit, 2003.

4 Although the Court acknowledges that exclusion of
5 evidence for violating discovery orders should not be done
6 lightly, that sanction is warranted in this case with
7 respect to Documents 1008 and 1009. The defendants have
8 not offered any legitimate reasons for failing to submit
9 their Rule 16 disclosures as to these two witnesses. The
10 Court acknowledges that defendants are proceeding pro se,
11 but the Court also notes that the defendants have
12 repeatedly rejected this Court's offer to appoint stand-by
13 advisory counsel.

14 The defendants were also aware that they would be
15 required to follow the same procedural rules that govern
16 other litigants. Moreover, defendants knew, or should
17 have known, that they were expected to submit Rule 16
18 disclosures. Although the defendants indicate that they
19 were not aware of the filing by their previous attorneys
20 of the Rule 16(b) disclosure for Donald E. Vilfer, the
21 defendants, themselves, prepared responses to the
22 Government's motion in limine to exclude the testimony of
23 Mr. Vilfer, which indicates that defendants had knowledge
24 of the procedure pursuant to which an expert witness must
25 be qualified to testify at trial.

1 In addition, the Government raised this issue
2 immediately after defendants referenced the expected
3 testimony of these experts during their opening
4 statements, and defendants failed to respond in any way to
5 the Government's objection or to inform the Court that
6 this was an issue that needed to be addressed before the
7 trial began.

8 Rather, in response to the Court's inquiry
9 regarding whether Mr. Albarelle had been disclosed as an
10 expert witness with the appropriate Rule 16 disclosures,
11 the defendants responded that they "were informed that
12 they could qualify him on the stand."

13 Yet, in response to this Court's inquiry regarding
14 who had so informed them, defendants were unable or
15 unwilling to disclose the identity of this legal advice.
16 The Court finds that the mailing of Government's Exhibits
17 1008 and 1009 by Ms. Kelly A. Baucom and Mr. Andrew
18 Albarelle, directly to John Walsh, the United States
19 Attorney, as opposed to such letters being submitted by
20 the defendants to the attorneys actually prosecuting this
21 case, Mr. Kirsch and Ms. Hazra, did not constitute any
22 notice to the Government that the defendants intended to
23 offer expert testimony of these two witnesses.

24 Moreover, the proponent of expert testimony bears
25 the burden of showing that its proffered expert testimony

1 is admissible. That is pursuant to United States v.
2 Nacchio, 555 F.3d 1234, Tenth Circuit, 2009. Under Rule
3 702, the district court must satisfy itself that the
4 proposed expert testimony is both reliable and relevant.
5 That is taken from Nacchio, also.

6 Under Rule 702, the Court must first determine
7 whether the expert is qualified by knowledge, skill,
8 experience, training or education to render an opinion.
9 Second, if the expert is sufficiently qualified, the Court
10 must determine whether the expert's opinion is reliable by
11 assessing the underlying reasoning and methodology as set
12 forth in Daubert. That is taken from Nacchio, at page
13 1241.

14 The letters submitted by Mr. Albarelle and
15 Ms. Baucom do not purport to be expert reports, nor do
16 they summarize any testimony that these witnesses expected
17 to give; rather they appear to be letters of support
18 advocating on behalf of the defendants. There is no
19 indication that the testimony of these witnesses is
20 reliable under Daubert and Federal Rule of Evidence 702.

21 Thus, the contents of both those letters totally
22 fail to meet the requirement of both Rule 16 of the
23 Criminal Rules of Procedure and Rule 702 of the Federal
24 Rules of Evidence. For these reasons, the Court
25 re-affirms its prior holding with respect to the exclusion

1 of any expert testimony on the part of Ms. Kelly A. Baucom
2 and Mr. Andrew Albarelle.

3 Now, with respect to Government's Exhibit 1010, a
4 document prepared by a Mr. Joseph M. Thurman, entitled
5 "Expert Report on Staffing Industry Standards and Best
6 Practices," the Government indicates, and the defendants
7 do not dispute, that this document was not identified as a
8 Rule 16 disclosure.

9 Although this document is dated March 13, 2011, as
10 the Court understands it, this document was not submitted
11 to the Government until only a few months ago, as one of a
12 number of documents included in a stack of documents
13 produced by defendants as relevant to this case. However,
14 although it might have been submitted in a timely fashion
15 and in a seemingly surreptitious manner, it is clearly
16 entitled "Expert Report." Moreover, although not a model
17 of clarity, in Exhibit 1010, Mr. Thurman does outline the
18 areas upon which he was opining and the substance of those
19 opinions.

20 Although the defendants failed to comply with the
21 Rule 16 disclosures, and although they waited until the
22 commencement of their case to disclose that they intended
23 to offer Mr. Thurman as an expert, and did so only after
24 being required by the Court to do so, the Court finds that
25 the Government was placed on notice that the defendants

1 intended to offer Mr. Thurman as an expert in the areas
2 identified in Exhibit 1010.

3 The Government filed a motion in limine as to the
4 other experts for which defendants had given appropriate
5 notice, and the Government could have filed a similar
6 motion in limine with respect to Mr. Thurman, but chose
7 not to do so.

8 In light of the fact that the Government had some
9 knowledge that defendants sought to introduce Mr. Thurman
10 as an expert exclusion is not warranted under Rule 16.
11 Now, the Court harbors some doubt as to whether
12 Mr. Thurman's expert report suffices to qualify him as an
13 expert witness. However, the Court notes that although
14 Federal Rule of Civil Procedure 26(a)(2) requires a
15 "complete statement" of the expert's opinion, Rule 16 of
16 the Federal Rules of Criminal Procedure requires only a
17 "summary of testimony."

18 The difference between the civil and criminal rules
19 derives from the special constitutional constraints of
20 criminal proceedings. That is from United States v.
21 Mehta, M-E-H-T-A, 236 F.Supp.2d 150, a Delaware --
22 District of Maine, 2002 case.

23 Thus, the Court at this time has no basis for
24 excluding the testimony of Mr. Thurman under Rule 702.
25 However, the Government may file a motion in limine or a

1 motion to conduct a Daubert hearing outside of the
2 presence of the jury. That motion, though, because we are
3 in the middle of the trial, is going to have to be done on
4 a very expedited basis.

5 I don't know that we will need a hearing, but I
6 will require that the Government file a motion in limine,
7 if they intend to file one, by noon on Saturday. The
8 defendants shall respond by noon on Sunday, and the Court
9 will review the matter on Sunday or Monday, and we'll
10 address it early next week.

11 In addition, if, in the event that I do allow
12 Mr. Thurman to testify, I am going to allow the
13 Government, in rebuttal, to submit a counter expert with
14 respect to those issues, without having to go through all
15 of the notices, because they had no notices. I am not
16 going to say I am going to allow it, but if I do, I will
17 allow rebuttal of an expert witness by the Government, as
18 well.

19 Ms. Hazra?

20 MS. HAZRA: Yes, Your Honor, one question. If we
21 don't have Mr. Thurman's qualifications or curriculum
22 vitae, we would --

23 THE COURT: Well, on his -- the cover page of his
24 report, he says what his expertise is. Now, if the
25 defendants have any further curriculum vitae or more

1 information that they can provide to the Government, I
2 would require that to be provided by the end of business
3 today.

4 MR. BANKS: We'll have Mr. Thurman forward his CV.
5 We'll forward it to the Government.

6 THE COURT: They are to have that by close of
7 business.

8 MS. HAZRA: Thank you, Your Honor.

9 THE COURT: Anything further?

10 MR. BANKS: Yes, Your Honor. With regards to
11 Mr. Albarelle, the Government received a September 1st
12 e-mail communication notifying them of a staffing expert
13 that would be testifying on our behalf. It was sent to
14 Mr. Walsh as part of the proffer exercise, and the
15 response that came back from that, both Ms. Hazra and
16 Mr. Kirsch were cc'd on that response.

17 So we would like to -- we've identified these as
18 Defense Exhibits 320 and 321, with 320 being the actual
19 letter that was sent to the U.S. Attorney's Office, and
20 321 being the actual e-mail string or communication. And
21 we would like the Court to review those briefly, if you
22 would.

23 THE COURT: All right. If you can have them marked
24 by Ms. Barnes.

25 MR. BANKS: We've marked them already, Your Honor.

1 THE COURT: The Court is reviewing what is marked
2 as Defendants' Exhibit 321 for identification, and Exhibit
3 320 for identification.

4 MR. BANKS: And, Your Honor, if you go to the third
5 paragraph of the second page.

6 THE COURT: Which exhibit?

7 MR. BANKS: 320.

8 THE COURT: I don't see anything on the third
9 paragraph.

10 MR. BANKS: Maybe it is the fourth paragraph. It
11 says, "One of our staffing experts."

12 THE COURT: That is the third page.

13 MR. BANKS: Is it the third page?

14 THE COURT: It is unnumbered, but on my third page
15 on this one. Yes. They are out of order in my exhibit.
16 It would be the second page.

17 Now, my understanding is that Mr. Albarelle will be
18 essentially giving the same testimony with respect to
19 staffing that Mr. Thurman is going to testify, the same
20 issues; is that correct?

21 MR. BANKS: Not necessarily, Your Honor.
22 Mr. Albarelle is a CEO of a very large staffing company,
23 whereas, Mr. Thurman --

24 THE COURT: I know they may be different in their
25 qualifications, but how is Mr. Albarelle's -- how would

1 that testimony differ from what Mr. Thurman is going to
2 say? Mr. Thurman is going to, according to his opinion,
3 discuss company vendor lists and managing of staffing
4 firms, due diligence and risk management for staffing
5 firms, standard types of engagements in technology
6 consulting services, and technology consultant's billable
7 activity.

8 MR. BANKS: Well, Your Honor, Mr. Albarelle -- I
9 will say it again -- is the owner of a staffing company.

10 THE COURT: How is his testimony -- is he going to
11 cover the same areas?

12 MR. BANKS: No, he will cover --

13 THE COURT: What is he going to cover?

14 MR. BANKS: He is going to cover the billable
15 consultant area; how he is a billable consultant with his
16 own company, and he has billed out --

17 THE COURT: How is that different from technology
18 consultant's billable activities on Mr. Thurman's?

19 MR. BANKS: Mr. Thurman doesn't have knowledge, and
20 has never been a billable consultant.

21 THE COURT: Well, but it is the same area, and you
22 are putting him forward as an expert. What I am not going
23 to have is cumulative testimony on the same areas.

24 MR. BANKS: And, Your Honor, we will ensure that
25 there is no cumulative testimony. If Mr. Albarelle is

1 permitted to testify, then we'll make sure that whatever
2 line of questioning we have for Mr. Albarelle will differ
3 from Mr. Thurman.

4 THE COURT: All right. But the problem is with
5 this letter, too, is while you do make the statement, "One
6 of our staffing experts who owns multiple businesses will
7 testify that he billed himself at \$250 per hour when
8 providing services to his business," et cetera. You never
9 identify who that staffing expert was. And this is in a
10 letter sent August 22, 2011, to Mr. Walsh, in response to,
11 apparently a confidential settlement communication letter,
12 and this was your counterproposal.

13 That doesn't come close to meeting the requirements
14 of Rule 16 or Rule 702. So my ruling wouldn't change with
15 respect to even these, and it does appear to me, despite
16 what you are saying, that you have an expert that I am
17 allowing you, despite the late Rule 16 notice;
18 Mr. Thurman, who is going to give expert testimony with
19 respect to the same areas that are listed by you in this
20 letter. And the letter could just as easily refer to
21 Mr. Thurman as it could have to Mr. Albarelle.

22 MR. BANKS: Actually, Your Honor, Mr. Thurman has
23 never been a billable consultant.

24 THE COURT: The Government didn't know that. You
25 said, "a staffing expert who owns multiple businesses."

1 We don't know what the background is of Mr. Thurman,
2 because that's never been provided.

3 MR. BANKS: Okay.

4 THE COURT: So I am not going to allow cumulative
5 evidence on the same issue. I'm giving you -- I'm
6 essentially giving you one expert despite your failure to
7 comply.

8 MR. BANKS: Okay. Your Honor, I need to put some
9 things on the record in case of appeal, if I could --

10 THE COURT: You may.

11 MR. BANKS: -- just cite some case law. Your
12 Honor, it has been in -- I will start with, there is a
13 U.S. v. Finley case, F-I-N-L-E-Y, 301 F.3d 1000,
14 California Court of Appeals. Even if a disclosure -- this
15 is ruled by the California Court of Appeals. Even if a
16 disclosure violation occurred on the basis of alleged
17 failure to give proper notice in which the "defense sought
18 to introduce evidence that defendant suffered from an
19 atypical belief system, exclusion of entire testimony of
20 expert witness, imposed a too harsh remedy; any omission
21 was not willfully done to gain a tactical advantage,
22 inasmuch as basis of expert's testimony was disclosed and
23 Government failed to seek further clarification, and
24 expert's testimony was essential to the defense."

25 I would like to quote also -- and that was based on

1 the Federal Rules of Criminal. U.S. v. Duvall, 272 --
2 Duvall is spelled, D-U-V-A-L-L. That is U.S. v. Duvall,
3 272 F.3d 825. "Exclusion of expert testimony in question
4 is not the only remedy available to the district court for
5 a violation of the rules requiring the Government to
6 provide -- to provide the defendant a written summary of
7 the proposed expert testimony." Federal Rule of Criminal
8 Procedure 16(a)(1)(E), (d)(2), 18 U.S.C.

9 And in the U.S. v. Shepard case, and Shepard is
10 S-H-E-P-A-R-D, 462 F.3d 847, California -- Court of
11 Appeals, Eighth Circuit, 2006. "The District Court did
12 not abuse its discretion by allowing a police officer to
13 testify as an expert witness in a cocaine conspiracy
14 prosecution even though the Government failed to provide a
15 written summary of such testimony where the officer was
16 listed on the Government's witness list provided to the
17 defense, and the Government provided the defense with
18 copies of the officer's prior similar trial testimony."
19 Federal Rule of Criminal Procedure 16, 18 U.S.C.

20 I only have three more cases, Your Honor. U.S. v.
21 Kuenscler, K-U-E-N-S-C-L-E-R, 325 F.3d 1015. Where it was
22 noted, "To establish a right to reversal of conviction
23 based on admission of opinion testimony from witnesses who
24 had not been disclosed as experts, defendant would have to
25 show that both the Government -- show that both a

1 discovery rule was violated and the violation was
2 prejudicial." Which, we would say, would our expert
3 testimony be prejudicial in the Government's case?

4 Next case is U.S. v. Chastain, C-H-A-S-T-A-I-N, 198
5 F.3d, 1338, where allowing a customs' agent -- I am sorry,
6 that is a California -- Court of Appeals for the Eleventh
7 Circuit, 1999. "Allowing a customs' agent to testify as
8 an expert witness on drug smuggling, despite the
9 Government's failure to disclose its intent to call the
10 agent as an expert did not warrant a mistrial, absent
11 showing that a lack of disclosure adversely affected the
12 defendant's ability to present a defense. Federal Rule of
13 Criminal Procedure 16(a)(1)(E), 18 U.S.C.

14 Finally, Your Honor, U.S. v. Cuellar,
15 C-U-E-L-L-A-R, 478 F.3d 282, California Court of
16 Appeals -- Court of Appeals in Texas, 2007. "In
17 prosecution of an alleged drug courier for an
18 international money laundering, the District Court's
19 decision to admit expert testimony of a federal agent
20 regarding drug smuggling operations and methods used by
21 smugglers to transport drugs and money into and out of the
22 United States was not an abuse of discretion and did not
23 result in any substantial prejudice to the defendant of
24 any kind necessitating a new trial, notwithstanding the
25 Government's failure to disclose federal agent's

1 qualifications on the basis for his testimony in a timely
2 manner as it was obligated to do under Federal Rules of
3 Criminal Procedure governing its pretrial disclosure
4 obligations.

5 While the Government failed timely to make complete
6 disclosure required by this rule, it did notify the
7 defendant of the fact that the Government intended to call
8 an agent as an expert witness, and the subject of his
9 expected testimony and purposes of the rules were not
10 violated." Federal Rules of Criminal Procedure
11 16(a)(1)(g), 18 U.S.C.

12 Now, to sum that up, Your Honor, I would just like
13 to say, in these particular cases, there were discovery
14 violations. Obviously, the Court has broad discretion in
15 these particular matters. But we feel that not only -- it
16 would not be prejudicial to the Government. The
17 Government has called numerous staffing witnesses, and has
18 a clear understanding of the staffing industry as they
19 they've determined to put on their case.

20 Our expert would provide summaries and just general
21 background information on how the staffing and consulting
22 industry works. And with regards to -- as far as a
23 Daubert hearing, in Kumho Tire v. Carmichael, 1999, that
24 case delineated between specific scientific expertise and
25 general expertise with regards to expert testimony.

1 I don't think a Daubert hearing, obviously, would
2 be required in this case, because there is no scientific
3 or technical knowledge that the Government would have to
4 be able to provide any other expert testimony to refute.

5 But, we just feel, based on the theory of our
6 defense -- and we saw witness after witness after witness,
7 Your Honor, come up there and, as far as I'm concerned,
8 lie about the activities of the staffing industry. And we
9 feel like it is critical to our defense that our experts
10 be allowed to testify, or it would be deemed severely
11 prejudicial as far as our defense is concerned to us.

12 And, again, Your Honor, I'll say the Government
13 knows enough about the staffing industry right now to
14 effectively cross-examine Mr. Albarelle or whoever the
15 Court would deem to testify. But, for the record, I
16 wanted to put that on there and put our position with
17 regards to this matter.

18 THE COURT: And I understand that. And my ruling
19 with respect to Exhibits 1008 and 1009 is based not only
20 on Rule 16 violations, but on failure to totally meet any
21 requirement under 702. My ruling with respect to 1010 is
22 exactly why I ruled the way I did. I realize this is
23 critical to your defense, and even though you didn't
24 comply with Rule 16, you at least did submit some sort of
25 report, and that's why I am not excluding it under there,

1 and I am not sure. I am not going to pre-guess whether or
2 not this meets 702. I am going to allow the Government
3 and the defendants to brief that.

4 But, because it was critical to your defense, you
5 should have taken the appropriate steps. But that is the
6 reason I am not excluding it, because I understand that.
7 And so despite the Rule 16 violations, I have fashioned a
8 remedy, I believe, that meets the -- within my discretion,
9 would allow the defendants to put this on if, indeed, it
10 does meet 702 muster.

11 MR. BANKS: Okay. Thank you, Your Honor.

12 THE COURT: Ms. Hazra, do you wish to make any
13 further statement for the record?

14 MS. HAZRA: Just two quick points, Your Honor. One
15 is this new defense Exhibit 320, as the Court correctly
16 notes, does not identify the staffing expert. And,
17 indeed, the logical conclusion would be that it would be
18 Mr. Thurman who he is referring to, since he supplied the
19 report with him, as opposed to the other two who just sent
20 letters. But there is no, quote, unquote, expert
21 identified.

22 The other thing, Your Honor, I think that we may
23 have provided the Court our only copy of Mr. Thurman's
24 report, and I am wondering if we can?

25 THE COURT: Well, I will have -- actually, I think

1 you gave us the copies. Ms. Barnes will, at the next
2 break, make copies of all of the marked exhibits so that
3 both sides have that. So I will leave those here.

4 All right. Anything further?

5 MR. BANKS: One final thing for the record, Your
6 Honor. With regards to paragraph three of what we just
7 referenced, Mr. Thurman does not own multiple businesses.
8 So I just wanted to put that on the record as some sort of
9 identifying characteristic that that is Mr. Albarelle.

10 THE COURT: That you knew of, but the Government
11 was never made privy to, because you never provided any
12 sort of resume or curriculum vitae.

13 MR. BANKS: Well, I know Mr. Albarelle and the
14 Government's 1000 exhibits that you referenced here, did
15 give good knowledge of his background in that particular
16 letter, as far as his being over some sort of staffing
17 association for the Rocky Mountain region or something
18 along those lines. Those qualifications were in that
19 letter. So, Your Honor, I just want to make sure that
20 that is on the record.

21 THE COURT: Right. That is fine.

22 MR. BANKS: Thank you.

23 MS. HAZRA: One more point Your Honor. I just
24 wanted to reiterate what I said yesterday, that we did
25 raise this at the pretrial conference to find out whether

1 we needed to file a motion in limine. And that is also
2 why when the defendants opened on their experts, we
3 immediately raised it our first opportunity, so that if
4 they had identified anyone, we could have potentially
5 filed a motion in limine.

6 THE COURT: All right. Lesson to be learned is,
7 when in doubt, file.

8 All right. Mr. Zirpolo?

9 MR. ZIRPOLO: I have one more item to bring up.
10 With all of the staffing companies that were brought up,
11 and purporting to be experts, and this is something that
12 always happens, because they did state in their testimony,
13 this is totally out of the norm, this is not the way
14 things are done. One of our issues is we would like to
15 bring Mr. Albarelle as a rebuttal witness.

16 THE COURT: Well, the only way he can be a rebuttal
17 witness is as an expert.

18 MR. ZIRPOLO: Exactly.

19 THE COURT: And he does not qualify as an expert
20 under my ruling.

21 MR. ZIRPOLO: All right. Thank you, Your Honor.

22 THE COURT: And besides that, you don't get
23 rebuttal witnesses as the defendants in a case like this.
24 I mean, it was your case in chief, and that was something
25 you all needed to plan for.

1 Anything further?

2 MR. BANKS: No, Your Honor.

3 MS. HAZRA: No, Your Honor, thank you.

4 THE COURT: Ms. Barnes, please bring in the jury.

5 Who is the defendant's first witness?

6 MR. WALKER: Willie Williams, Your Honor.

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

9 THE COURT: You may be seated.

10 Good morning. Welcome back.

11 All right. Defendants may call their next witness.

12 MR. WALKER: Thank you, Your Honor. Defense calls
13 Willie Williams.

14 THE COURT: All right.

15 COURTROOM DEPUTY: Your attention, please.

16 **WILLIAM WILLIAMS**

17 having been first duly sworn, testified as follows:

18 COURTROOM DEPUTY: Please be seated.

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

21 THE WITNESS: My name is William Williams, Jr.

22 First name is spelled W-I-L-L-I-A-M. Last name is

23 W-I-L-L-I-A-M-S.

24 THE COURT: Mr. Williams, could I ask you to lean
25 forward and speak into the microphone.

1 Mr. Walker, you may proceed.

2 **DIRECT EXAMINATION**

3 **BY MR. WALKER:**

4 Q. What is your profession?

5 A. I am a software engineer.

6 Q. What is your educational background?

7 A. I did my undergraduate work at Appalachian State
8 University, obtained my bachelor's in computer information
9 systems. And then I did two years of post graduate work
10 in applied physics, concentration in electrical
11 engineering at that same institution.

12 THE COURT: Now, I will tell you that you speak
13 very rapidly. If you can make an effort to slow down so
14 the court reporter can get it all down, I would appreciate
15 it.

16 THE WITNESS: Would you like me to repeat?

17 THE COURT: I think she got it all. If you go very
18 long, she has trouble keeping up. Since you have that
19 tendency, I may remind you as we go forward.

20 THE WITNESS: I will slow down.

21 Q. (MR. WALKER) You said you're a professional software
22 engineer. How long have you been a software engineer?

23 A. I have been a software engineer for 17 years.

24 Q. And what are your areas of technical expertise?

25 A. I actually do development. I also do work in systems

1 engineering; setting up large scale infrastructures; what
2 we call middleware. I have also done dba work, analyst
3 work, technical architect. So, many levels. Kind of a
4 jack of all trades.

5 Q. Who do you currently work for?

6 A. Actually, I work as an engineer for one company in
7 Phoenix, Arizona. Another company I work for is located
8 in Virginia. And another company, that is also located in
9 Virginia.

10 Q. So just to clarify, you currently work for three
11 companies?

12 A. Yes, sir, I do.

13 Q. And in working for the three companies, how many
14 hours per week do you typically work?

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

16 THE COURT: Sustained.

17 Q. (BY MR. WALKER) And in working for those three
18 companies, you are doing all technical work?

19 A. Yes, I am.

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

21 THE COURT: Approach.

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

24 THE COURT: Did Mr. Williams work for IRP, DKH, or
25 Leading Team?

1 MR. WALKER: Yes, he did.

2 THE COURT: Let's get on to that. That is what is
3 relevant to this case.

4 MR. BANKS: Your Honor, background is relevant.

5 THE COURT: Only to his credibility, not as to
6 outside vendors. So his background is relevant, to the
7 extent it may be something that would -- the jury could
8 look at for his credibility. You have gone into his
9 background, his experience, that is relevant. How many
10 hours he bills for these companies is not relevant to the
11 issues in this case.

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

13 Q. (BY MR. WALKER) Mr. Williams, in your experience as
14 a computer professional, did you work for Leading Team?

15 A. Yes, I did.

16 Q. Did you also work for IRP Solutions?

17 A. Yes, I did.

18 Q. Please tell the Court what your duties and roles were
19 at, first, LTI?

20 A. At first, LTI, I was a developer. So I worked on a
21 lot of front end applications that we had. That was
22 pretty much my development task. Also, one of the tasks I
23 did is the build manager. So I actually conducted our
24 weekly builds and archived that information. So those
25 were two of my roles that I performed at Leading Team.

1 Q. And for your role at Leading Team, you mentioned
2 applications. What applications did you work on?

3 A. I actually worked on the CILC application.

4 Q. What type of application is that?

5 A. An application for law enforcement to actually gather
6 crime scene information, I would say.

7 Q. Okay. And in the course of your work for IRP
8 Solutions, what did you work on?

9 A. With IRP Solutions, it was actually, I would say, it
10 was the second version of it. It was the web-based
11 version of it. So with that team, with that organization
12 I actually worked on what is called the geocoding system.
13 So we actually had events that would roll up, and you
14 could actually see and get notification of crimes that had
15 taken place around certain areas.

16 So I actually set up the mapping data and the
17 actual engines that report the events and place it on that
18 map, so actually you could come in and see it, like a fire
19 or robbery or something like that, you could see all of
20 these active events going on.

21 Q. So you had several roles at both LTI and IRP?

22 A. Yes, I did.

23 Q. Were you able to do those roles concurrently?

24 A. Yes, I was.

25 Q. And in doing those roles, who else did you -- who

1 else did you interact with, as far as engineering
2 employees at IRP Solutions?

3 A. Just the development team. That was my development
4 manager, and then other engineers. That was pretty much
5 it.

6 Q. Okay. If you can recall, about how long did you work
7 for Leading Team?

8 A. Leading Team, I believe was around 6 months or so, I
9 believe. I'm not quite sure exactly. It has been 7
10 years, but I think that is about right.

11 Q. All right. And if you can recall, how long did you
12 work for IRP Solutions?

13 A. I'm not quite sure of the time there, but it was
14 probably an equal amount of time.

15 Q. All right. And as you stated, you had multiple
16 roles. Would you say you were very busy at IRP Solutions?

17 A. Yes, I was.

18 Q. And in doing that work, could you give us an idea of
19 the software development process and life cycle?

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

21 THE COURT: Overruled.

22 THE WITNESS: The process, actually, was we had
23 business requirements that were documented by our VA.

24 Those were -- those came to us. Managers would ask us --
25 would sit down and have time for us to -- I guess, if we

1 had any questions to clarify, you know, issues that we may
2 have. Then we would also prototype -- we had a prototype
3 engineer that created the user interface. What he
4 created, I would take over and actually write a Java code.

5 Q. (BY MR. WALKER) Let me stop you there, then I will
6 let you continue, because I want to make sure everyone
7 understands. Did you just say that a prototype engineer
8 created a screen, and then you would continue to develop
9 that from there?

10 A. Yes, I would. Yes, I would. So at that point, I
11 would have the screen, I would put all of the backing, all
12 of the business logic behind it, so it actually performs.
13 So, at that point, we would actually do a build, push it
14 off to the QA, so they could actually test it, make sure
15 it doesn't have any bugs. If any bugs were in place, it
16 did not work, or there was an error, they would come back,
17 and they would talk us through the steps that actually
18 caused the bug. So then we could reproduce it and go off
19 and try to make corrections.

20 So that is a cycle that we do. It is called a
21 software development life cycle, repeatedly refining and
22 refining and refining until you actually have a finished
23 product. So the finished product we would actually shelf
24 and have it ready for demonstration with clients and
25 things like that. And we also had those revisions up

1 and going and ready at any time.

2 Q. Let me stop you right there. So you mentioned
3 several things there. Let's go back to the requirements.

4 Are you aware of where product requirements came from?

5 A. The product requirements came from meetings that the
6 management had with other organizations. I know that
7 there was -- I did not meet the people myself, but the
8 NYPD was one of the organizations that I actually built
9 geocoding software for. So that was one of the major
10 requirements.

11 Q. You also mentioned demos?

12 A. Yes.

13 Q. Were you involved in demonstrations?

14 A. Yes, sir. I was very involved in demonstrations.
15 So, for instance, the actual geocoding system, itself,
16 that was built for the NYPD, one of the things that we had
17 to do -- and that is the New York Police Department. One
18 of the things we had to do was the data that I built had
19 all of the precincts. So I would take 50-some odd
20 precincts in New York City. So the demonstration there
21 was involving the management from IRP and representatives
22 from the NYPD, and actually showed the dynamic events
23 happening in their city. They could actually see what was
24 going on. So then they can see which precincts to go and
25 respond to. Even fire precincts could actually go and

1 respond. So you could see a fire or robbery or whatever
2 the event was.

3 Q. Did you participate in any other demos that you can
4 recall?

5 A. Yes. I did participate in one other demo here in
6 Denver; the Denver Police Department, we actually were on
7 site. We gave a brief demonstration -- well, it was not
8 that brief, but gave a demonstration there that showed
9 them the offerings that IRP Solutions offered and the
10 capabilities and how it aligned with their organization
11 and what they were trying to do, as well.

12 Q. Are you aware of any demonstrations done for the
13 Department of Homeland Security?

14 A. Yes. I was privy to that information. And that was
15 one of the big demonstrations that the guys were actually
16 targeting. But, at that point, I believe, if I remember
17 correctly, that all of the demo software was up and going,
18 so all they had to do was go to the website. So I didn't
19 have to really support them.

20 We actually had refined our process enough that it
21 was stable. So all they had to do was go to the website
22 and look up any demonstration that they wanted to at any
23 facility.

24 Q. How did you become aware of any demos that you didn't
25 directly participate in as a technical --

1 MS. HAZRA: Objection, Your Honor, hearsay.

2 THE COURT: Well, he can say how, but he can't say
3 what. So I will allow it to a certain point. Overruled.

4 THE WITNESS: The how, the management would let us
5 know. They would tell us, hey, we have a demonstration --

6 MS. HAZRA: Objection, hearsay, Your Honor.

7 THE COURT: At that point, that is hearsay. Well,
8 actually, what is the relevance of it?

9 MR. WALKER: Your Honor, it goes to the
10 communication of business processes and activities to the
11 other staff that the -- that were employed through the
12 staffing agencies.

13 THE COURT: So offering it for the truth of the
14 matter asserted?

15 MR. WALKER: Yes.

16 THE COURT: Then it is hearsay, so sustained.

17 Q. (BY MR. WALKER) Mr. Williams, for those
18 demonstrations that you were a part of, could you
19 characterize the software development life cycle in order
20 to deliver those particular demonstrations?

21 A. It was very similar to the software development life
22 cycle I stated previously, but gained requirements
23 specifically for that client that they were looking for.
24 We implement those in, test them, refine them based on QA
25 findings, stand up the demo, notify the manager via G-Mail

1 or Checked-in that we have the demo up and available for
2 them, provide them with the URL imports and log in --

3 THE COURT: Slow down.

4 THE WITNESS: Sorry. Provide them with the
5 information, which would be URL imports that they could
6 actually go to and see and demonstrate it. They could
7 actually see it for themselves in the office before
8 preparing to go off site.

9 Q. Is that typically a lot of work?

10 A. Yes, it was.

11 Q. Did that typically happen pretty quickly?

12 A. In some cases, yes. In some cases, it was very
13 quickly. The management would give us the requirements,
14 and so these were things that we need to get onto right
15 now. The demonstration, we do that on schedule. So we
16 would have to basically prepare ourselves to get ready for
17 that demonstration. So, in some cases, we did have to
18 halt our current development to move over and make changes
19 for the demonstration.

20 Q. Okay. So did you have development work and core
21 product work ongoing?

22 A. Yes, I did. We had several code-based lines that we
23 had to keep going. So, of course, you have the
24 foundation, which is the core, as you referred to, and
25 then we have the enhancements per client. So that does --

1 each client requires a certain bit of work, you know,
2 customization. What happens for the Denver Police
3 Department is going to be totally different for what
4 happens for the New York Police Department. Even though
5 the body of work may change, what the client requirements
6 wants is going to be different. So that takes a lot of
7 work, and it takes a lot to maintain that; environment
8 wise, engineering wise, and a lot of documentation, as
9 well, to support, so we know what changes we are making,
10 and where it is in the software and development life
11 cycle.

12 Q. And did you, in your -- as best you can recall, have
13 a demonstration with any particular client, and then as a
14 result of a demonstration and meeting the comments, make
15 changes to that software?

16 A. Yes. Yes, we did. Definitely for the -- the first
17 one that comes to mind is for New York. We had a
18 demonstration. We had software ready to go. The
19 management performed the demo. There were subsequent
20 questions and requirements that came out of that meeting.
21 That was forwarded to us in e-mail fashion. So we
22 actually made changes along those lines to accommodate
23 those requirements.

24 MR. WALKER: Can I have one second, Your Honor?

25 THE COURT: You may.

1 Q. (BY MR. WALKER) Mr. Williams, you mentioned before
2 that you had several roles that you filled at both IRP and
3 Leading Team; is that right?

4 A. Yes, sir.

5 Q. And in those several roles, were you required to be
6 able to perform the duties of multiple roles
7 simultaneously?

8 A. Yes, sir, I was.

9 Q. And how would you be able -- how did you manage those
10 simultaneous roles?

11 A. Most of the time I had tools that were available to
12 facilitate those kinds of needs. Like, for instance, if I
13 had to conduct a build, and my computer was there, I had
14 the tools there to conduct that build, monitor it as it is
15 going through, and continue my coding efforts. As that
16 was completed, I could go up and archive, to build it, tag
17 it, do the things that I need to do as far as the release
18 manual and continue to develop.

19 Q. How many hours would you typically put in in a week?

20 A. I would put in a minimum of 40 hours. But if a
21 demonstration called for more, then I would do more.

22 Q. Did you have the opportunity to consult with others
23 who supported the developers, either during hours or after
24 hours?

25 A. Yes, I did.

1 Q. And in doing those multiple roles, did that cause you
2 to in any way optimize your work habits?

3 A. Yes. Yes, it does. That is always one of the
4 practices, is that you come in, you know the software is
5 development life cycle, but it is going to be very
6 particular to the company, the culture of the company, and
7 how fast we make it move to facilitate client needs. So
8 you are going to have to streamline certain things you may
9 not have to do, and certain things you may not be able to
10 do at that time. So you have to do it a little later in
11 the day or earlier in the day, so forth and so on. So you
12 have to adjust your schedule.

13 Q. And you mentioned that some of your duties included
14 software development, software testing. Did you have any
15 duties that required you to write any type of
16 documentation?

17 A. Yes. Yes, I did. One of the documents that I had to
18 create while at Leading Team was actually the build
19 document. So how I actually conducted the build, tagged
20 the software, and actually archived it all.

21 THE COURT: Now, are you saying build, B-U-I-L-D?

22 THE WITNESS: B-U-I-L-D, yes.

23 So once you create the software, you have to do a
24 build of what we call "compile." And that is what we
25 actually push out to the servers for demonstration. So,

1 as Mr. Walker had mentioned, if you are doing several
2 lines of business, you may have one build; build A for one
3 client, and build B for another client. You need to
4 document this information. So, that way, when management
5 asks, you know that you can direct it; this is where you
6 need to go. This is the server URL to respond to it.

7 Q. (BY MR. WALKER) Now, you mentioned in your work
8 doing software development, you mentioned the CILC
9 product. Are you aware of different forms of the CILC
10 product?

11 A. There was a CILC Mobile, which is on a hand held.
12 And then the original product, the core product, that was
13 a desktop, what we call "thick client," that you deploy on
14 the machine, itself. Then there was the web version,
15 which we were continuing on, which would allow, basically,
16 you know, web access. As we know, you know, via the
17 internet, an application that you go to via a URL.

18 Q. Did you have an opportunity to work on multiple of
19 those versions of CILC?

20 A. Yes, I did. I worked on versions of the core
21 product. Then later on, the web-based product.

22 Q. And of those different version of CILC, which one was
23 the more mature?

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

25 THE COURT: Overruled.

1 in the afternoon, my time.

2 MR. BANKS: Okay. One moment, Your Honor?

3 THE COURT: Yes.

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

5 THE COURT: All right. Anybody else?

6 Any cross?

7 MS. HAZRA: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MS. HAZRA:**

10 Q. Good morning, Mr. Williams.

11 A. Good morning.

12 Q. You were payrolled by staffing companies while you
13 worked at IRP and Leading Team; isn't that right?

14 A. That's correct.

15 Q. And in the course of your work there, you made
16 \$74,417, isn't that right?

17 A. I am not quite sure. It has been quite some time.
18 It has been 7 years, so I don't know the figures.

19 Q. If the payroll records indicated that was what you
20 were paid, you wouldn't argue?

21 A. I wouldn't disagree, no. If that is what you found,
22 I am sure.

23 Q. And, Mr. Williams, do you know these defendants
24 outside of your work at IRP and Leading Team?

25 A. Yes, I do.

1 Q. How do you know them?

2 A. Actually, these are friends, colleagues. These are
3 people I have worked with before as engineers. I worked
4 on different assignments with them.

5 Q. You mentioned that you worked primarily with a
6 software development team while at IRP. Was Lawanna Clark
7 on that software development team?

8 A. No, ma'am.

9 Q. Was Esther Bailey on that software development team?

10 A. I don't know Esther Bailey.

11 Q. You don't know Esther Bailey. So it is safe to say
12 she was not on your software development team at IRP?

13 A. No. Pretty much just worked with those guys.

14 Q. Do you recall that you worked at Kforce and
15 Productive and Staffmark as the three staffing companies
16 that payrolled you at IRP --

17 A. Yes.

18 Q. -- and Leading Team?

19 A. Yes.

20 MS. HAZRA: Your Honor, could I please publish
21 Government's Exhibit 311 page 22.

22 THE COURT: You may.

23 MS. HAZRA: Actually, could I publish page 23?

24 THE COURT: You may.

25 Q. (BY MS. HAZRA) Mr. Williams, do you see your name

1 under employee name at the top there?

2 A. Yes, I do.

3 Q. Is that your signature on the bottom?

4 A. Yes, it.

5 Q. Who signed in the client's signature?

6 A. I can't make out that signature.

7 Q. You don't recognize that signature?

8 A. No, ma'am, I do not.

9 Q. It shows here you worked 84 hours?

10 A. Yes.

11 Q. Is that right?

12 A. Yes, ma'am.

13 Q. Is that for that two week period; is that right?

14 A. Yes.

15 Q. And is that when you worked some of these multiple
16 tasks you have been talking about?

17 A. Yes.

18 Q. You never billed more than 24 hours in one of those
19 days, did you?

20 A. No, ma'am.

21 Q. If we could please look at what has been --

22 MS. HAZRA: Your Honor, could I please publish
23 Government's Exhibit 211.01, page 64?

24 THE COURT: Yes, you may.

25 MS. HAZRA: Thank you, Your Honor.

1 If you could highlight first, Special Agent, just
2 the top portion of that.

3 Q. (BY MS. HAZRA) Mr. Williams, do you see your name
4 under the consultant's name again?

5 A. Yes, ma'am.

6 Q. Working for Leading Team?

7 A. Yes, ma'am.

8 Q. And you reported a total of 50 hours that week, did
9 you not?

10 A. Yes, ma'am.

11 MS. HAZRA: Special Agent, could you go down and
12 highlight the signature portion.

13 Q. (BY MS. HAZRA) Do you see your signature there
14 again?

15 A. Yes, I do.

16 Q. Who signed approving that time card for you?

17 A. David Zirpolo.

18 Q. And, again, did you work those 50 hours in the same
19 type of work you had described?

20 A. Yes, ma'am.

21 Q. You never billed more than 24 hours in any of those
22 days, either, did you?

23 A. No, ma'am.

24 Q. The date on that, you notice, is 12/23/2002?

25 A. Yes.

1 Q. And you worked for PDCS, if you can remember, in
2 April of 2004?

3 A. I'm not sure.

4 MS. HAZRA: If we can go back to that, Special
5 Agent, Exhibit 311, page 23. If you could highlight on
6 the right-hand portion the date area.

7 Q. (BY MS. HAZRA) Do you see that is May 2004, you
8 would agree?

9 A. Yes.

10 MS. HAZRA: Next, Your Honor, I would ask
11 permission to publish Government's Exhibit 8, page 2.

12 THE COURT: You may.

13 MS. HAZRA: If you could please highlight, Special
14 Agent -- that is the wrong page. Let's go to --

15 I apologize, Your Honor. Let's try Government's
16 Exhibit 4, page 3. Could you highlight the bottom time
17 card there, Special Agent.

18 Q. (BY MS. HAZRA) Do you see that is a time card for
19 you, again at Staffmark, is that right?

20 A. That's correct.

21 Q. That is when you worked there in August 2004?

22 A. That's correct.

23 Q. And do you see your signature on the bottom right
24 there?

25 A. Yes, I do.

1 Q. Who signed for you approving this time?

2 A. Clinton Stewart.

3 Q. He signed it as C. Alfred; is that right?

4 A. That's right.

5 Q. Do you see Clinton Stewart in the courtroom today?

6 A. Yes, I do.

7 Q. Can you please identify him.

8 A. The gentleman right here to my left, first one at the
9 table.

10 Q. The very first corner?

11 A. Yes.

12 MS. HAZRA: Your Honor, could the record reflect
13 the witness has identified the defendant.

14 THE COURT: The record will so reflect.

15 Q. (BY MS. HAZRA) And, again, you worked 40 hours --
16 reported 40 hours this week?

17 A. Right.

18 Q. And, again, doing the same kind of multiple intensive
19 work?

20 A. Yes.

21 Q. And you didn't work more than 24 hours in any one
22 day; right?

23 A. That's correct.

24 Q. You worked on multiple tasks?

25 A. That's right.

1 Q. Mr. Williams, you never billed more than one staffing
2 company at one time for all those multiple tasks, did you?

3 A. I'm not sure. You brought up four different time
4 sheets. I am sure there were more, weren't there?

5 Q. Well, should we go through them?

6 A. No. I am just asking. It has been quite some time,
7 so I don't know.

8 Q. So if I were to go back and review the time cards for
9 the three staffing companies that we have just shown you,
10 and none of them overlap, you would agree that you never
11 billed more than one staffing company for one time; isn't
12 that right?

13 A. That's correct.

14 Q. So even though you worked multiple engagements, you
15 only billed one staffing company at a time?

16 A. That would be correct.

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

18 THE COURT: Redirect?

19 MR. BANKS: Yes, Your Honor.

20 **REDIRECT EXAMINATION**

21 **BY MR. BANKS:**

22 Q. Mr. Williams, have you ever billed for more staffing
23 companies --

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

25 THE WITNESS: Yes, I have.

1 THE COURT: In general?

2 MR. BANKS: In general, yes, Your Honor.

3 THE COURT: I am going to allow it. Overruled.

4 Q. (BY MR. BANKS) Have you ever billed for more than
5 one staffing company at one time?

6 A. Yes. Even in my current assignments right now, I
7 have three different companies I work for.

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

9 THE COURT: I will allow it, but I will allow
10 recross.

11 Q. (BY MR. BANKS) Can you explain that, please?

12 A. Yes. I have worked several assignments where I do
13 work for several different organizations, several
14 different companies, several staffing companies. Not one
15 staffing company holds all my work. So, right now, as I
16 mentioned earlier, I work for three different companies;
17 three different assignments, three different paychecks.

18 Q. During what time of day do you bill for each of those
19 companies?

20 A. I carry a standard business day.

21 Q. And that would be?

22 A. That would be -- usually range from 8:00 to 5:00;
23 9:00 to 6:00, something along those lines.

24 Q. What you are saying is you would bill each of those
25 companies from 8:00 to 5:00 each day?

1 A. Yes, that is correct.

2 Q. And in the total hours that you would bill, would it
3 go to 24 hours or more?

4 A. Total?

5 Q. In a day with those 3 clients?

6 A. I am sorry, repeat that.

7 Q. So would you be billing more than -- 24 or more hours
8 in a day between those three clients.

9 A. No, no, no. I would bill eight hours for each
10 client.

11 Q. Eight hours for each client, which would total?

12 A. Twenty-four hours.

13 Q. In one day?

14 A. In one day.

15 MR. BANKS: Thank you, Mr. Williams.

16 MS. HAZRA: Your Honor, I don't understand how
17 Mr. Barnes has a right to redirect.

18 THE COURT: He is a defendant.

19 MS. HAZRA: He didn't do a direct, Your Honor.

20 THE COURT: I will not preclude him. He is a
21 defendant.

22 **REDIRECT EXAMINATION**

23 **BY MR. BARNES:**

24 Q. Let's clarify. You said you did multiple tasks?

25 A. Yes.

1 Q. So all those tasks that you did, would you say they
2 qualify as software engineering, software development?

3 A. Yes.

4 Q. So just say -- did you do any database administration
5 while working at IRP Solutions?

6 A. I think on occasion I may have had to do some.

7 Q. What did you do there?

8 A. In that case, I may have had to actually create the
9 database, itself, to which we are running sequel segments,
10 creating the tables, uploading data, verifying data in
11 preparation for demonstrations.

12 Q. So you basically are saying you created tables, like
13 in the local database. Did you set -- did you do the
14 installs, the Oracle installs or database software, did
15 you do any of that sort of stuff?

16 A. I don't recall right off -- I think I did do a sequel
17 server initially at Leading Team, but those are things
18 that even in my current job that I would do now.

19 Q. Also, did you do any system administration while
20 doing --

21 A. Yes, I did.

22 Q. At IRP Solutions?

23 A. Yes.

24 Q. Okay. Also, did you do any -- did you do any -- for
25 instance, like when the QA tested, did you help with

1 testing at all?

2 A. Yes.

3 Q. So you did do some -- you do see some overlap in some
4 of the jobs you do?

5 A. That's correct.

6 Q. Were you officially assigned, when you worked there,
7 to say that you were the database administrator?

8 A. No, I am just a developer.

9 Q. Was there a database administrator that you could
10 call at IRP Solutions during the time you were there?

11 A. I think at some point someone had initially done some
12 installation. I don't know who actually had that role.
13 Again, sometimes that is outside the development team, so
14 we don't know. If there is a need and they say, hey we
15 can do it.

16 Q. That is a person on another team; correct?

17 A. Yes, that's correct.

18 Q. So that person has primary responsibility for that
19 database?

20 A. That is correct.

21 Q. But they do allow you to sometimes, if you are doing
22 things locally, that you can do, just for ease, so you are
23 not -- if you can do it, you can do it?

24 A. Right.

25 Q. But you weren't responsible for -- to save backup and

1 recovery of the database?

2 A. No, sir.

3 Q. You weren't responsible for adding users to the
4 database?

5 A. No, sir.

6 Q. You do any configuration on the database?

7 A. No, sir. No, sir.

8 Q. So that is a separate job; correct?

9 A. That's correct.

10 Q. So there is a difference between tasks and job, would
11 you agree?

12 A. That's right.

13 Q. So, you did some system administration work, but were
14 you responsible for backing up the systems that you were
15 working on?

16 A. No.

17 Q. Were you responsible for configuration of those
18 systems on a mini server?

19 A. No, sir.

20 Q. If a server were to, say, crashed, run out of disk
21 space, are you the one that went there to make sure the
22 server got back up?

23 A. No, sir.

24 Q. That is a different job; correct?

25 A. That's correct.

1 Q. Not a task?

2 A. Yes.

3 Q. So, conceivably, you did tasks that encapsulated your
4 job; is that correct.

5 A. For me to be able to do my job, I would say, yes.

6 Q. So there are differences between different jobs in
7 the software development life cycle when you say tasks?

8 A. Yes.

9 Q. Someone may have been assigned, to the best of your
10 knowledge, to those different jobs and responsible for the
11 jobs?

12 A. That's correct.

13 MR. BARNES: No more questions.

14 THE COURT: All right. In the future, if you want
15 to redirect, you better do a direct.

16 All right. Mr. Zirpolo?

17 **REDIRECT EXAMINATION**

18 **BY MR. ZIRPOLO:**

19 Q. Mr. Williams, did you work with every person that
20 worked at LTI or IRP?

21 A. No, sir.

22 Q. Did you work from home at times where other people
23 were working in the office?

24 A. Yes, sir.

25 Q. Did you volunteer any of your time at IRP or LTI?

1 A. Yes, I did.

2 MR. ZIRPOLO: No further questions.

3 THE COURT: Anybody else?

4 Ms. Hazra, recross?

5 MS. HAZRA: Thank you, Your Honor.

6 **RECROSS-EXAMINATION**

7 **BY MS. HAZRA:**

8 Q. Mr. Williams, you just testified on cross that you
9 are currently billing three different staffing companies
10 for your time; is that right?

11 A. Three different companies.

12 Q. You were working through three different clients for
13 each, isn't that true?

14 A. That is correct.

15 Q. So each client gets their own individual staffing
16 company?

17 A. Well, each client -- each company, not a staffing
18 company. I am full time. So each one of those companies,
19 I give 8 hours. I have three different lap tops.

20 Q. And three different clients?

21 A. Yes.

22 Q. And you still never bill more than 24 hours in one
23 day; isn't that right?

24 A. I am a little curious how you are phrasing that. I
25 bill each client 8 hours. That is three clients. Three

1 times 8 is 24.

2 MS. HAZRA: Thank you.

3 THE COURT: May this witness be excused?

4 MR. BANKS: Yes.

5 THE COURT: Thank you very much. You are excused,
6 Mr. Williams.

7 The defense may call its next witness.

8 MR. WALKER: Your Honor, the defense calls John
9 Epke.

10 COURTROOM DEPUTY: Your attention, please.

11 **JOHN EPKE**

12 having been first duly sworn, testified as follows:

13 COURTROOM DEPUTY: Please be seated.

14 Please state your name, and spell your first and
15 last names for the record.

16 THE WITNESS: John Epke. First name is J-O-H-N.
17 Last name is E-P-K-E.

18 THE COURT: You may proceed.

19 MR. BANKS: Thank you, Your Honor.

20 **DIRECT EXAMINATION**

21 **BY MR. BANKS:**

22 Q. Good morning, Mr. Epke. What do you do for a living?

23 A. I'm retired from the FBI, but I do some consulting
24 for another government agency.

25 Q. Exactly what did your career -- what did you do with

1 the FBI?

2 A. Well, I spent 27-and-a-half years in organized crime,
3 drugs. I spent my last 10 years as a supervisor here in
4 Denver, and also in Washington, D.C.

5 Q. Now, was there a time after your retirement that you
6 were contacted by someone regarding a company called IRP
7 Solutions?

8 A. I was.

9 Q. And who was it that contacted you?

10 A. The person that originally contacted me was the
11 Assistant Special Agent in charge of the Denver FBI
12 office.

13 Q. What was the nature of that contact?

14 A. He had been contacted by an individual named David
15 Banks, who was trying to contact the Special Agent in
16 Charge, because he was trying to develop a management
17 system for the Department of Homeland Security.

18 Q. Okay. And did you -- did you ever -- did Mr. Banks
19 ever contact you?

20 A. I was given his phone number, and I contacted him.
21 Early November of 2003.

22 Q. And can you discuss a little bit about that
23 conversation, if you can recall?

24 A. From what I recall, the conversation was that he was
25 trying to develop a case management system, and he was

1 told that he needed some retired FBI managers or other
2 federal retired law enforcement managers to assist in
3 preparing this case management system.

4 Q. Okay. Now, what followed -- what actually followed
5 after that, after your initial conversation with
6 Mr. Banks?

7 A. When I called him, he wanted to know if I had a
8 colleague that was also a retired FBI manager, which I
9 told him I did, and he suggested that we meet for lunch at
10 a restaurant in Park Meadows.

11 Q. Did Mr. Banks ever tell you how he referred to the
12 FBI?

13 MR. KIRSCH: Objection, hearsay.

14 THE COURT: Sustained.

15 Q. (BY MR. BANKS) Can you describe what happened -- now
16 who was the gentleman that you contacted to meet Mr. Banks
17 for lunch?

18 A. His name is Dwayne Fuselier.

19 Q. And he is -- was he also a retired FBI agent?

20 A. He is also a retired FBI supervisor.

21 Q. Okay. During lunch, what did you and -- during
22 lunch -- what was discussed during lunch?

23 A. What was discussed was the fact that he was trying to
24 develop a case management system for both the Department
25 of Homeland Security, and he indicated also the New York

1 City Police Department.

2 Q. Okay. And at such time, did Mr. Banks engage you to
3 sign an independent contractor agreement?

4 A. He suggested that the two of us -- we talked what our
5 fees would be, and he suggested we come to his office the
6 next day to sign a contract.

7 Q. Okay. And did you eventually sign that contractor
8 agreement?

9 A. We did eventually sign it. Not the next day, but we
10 eventually signed it.

11 Q. And during your work, obviously after being engaged
12 contractually, do you remember the terms of -- the payment
13 terms of that agreement?

14 A. The original terms were he suggested that we do most
15 of our work from home, and once a month we would come to
16 his office in Colorado Springs. While we were at home
17 working, we were -- a fee was agreed upon, and a different
18 fee was agreed upon when we came to Colorado Springs.

19 Q. Okay. And can you describe a little bit about the
20 work or the work product you produced -- let's not go
21 there.

22 During -- did you have occasion, when you went to
23 the office, to meet with Mr. Banks regarding the
24 operation -- the investigative operations of the FBI?

25 A. We discussed how we and the FBI managed our cases,

1 yes.

2 Q. Okay. And during that time, did Mr. Banks ask a lot
3 of detailed questions and specifics relating to the FBI
4 investigative process?

5 A. He did.

6 MR. KIRSCH: Objection, hearsay.

7 THE COURT: Overruled.

8 Q. (BY MR. BANKS) Now, do you remember, under your
9 independent contractor agreement, what were the terms upon
10 which you would be paid for the services -- consulting
11 services that you were providing IRP?

12 A. He told us that he was attempting to sign a contract
13 with a company that would provide the funds to pay our
14 service -- pay for our services.

15 Q. I am talking about specifically, Mr. Epke, as far as
16 the independent contractor agreement. What were the terms
17 of that agreement, as far as your compensation was
18 concerned? Do you remember that?

19 A. Are you talking about how much we were getting paid?

20 Q. As far as how you would be paid and when you would be
21 paid.

22 A. We would be paid -- we were sent -- we were e-mailed
23 time sheets from him suggesting that we provide him the
24 hours that we worked and that we would in turn be paid
25 through a staffing company.

1 Q. Do you recall that there were two options upon which
2 you would be paid? One would be upon -- do you recall --
3 let me just ask you a single question.

4 Do you recall, from the contract agreement, that
5 you would be paid upon the sale of the software or when
6 engaged with a staffing company?

7 MR. KIRSCH: Objection to the leading.

8 THE COURT: Sustained.

9 MR. BANKS: Your Honor, I would like to refresh.

10 THE COURT: You haven't asked a question he needs
11 to be refreshed on. Ask him a question that is not
12 leading.

13 MR. BANKS: Okay.

14 Q. (BY MR. BANKS) What are the -- you just testified
15 that your recollection is that you would be paid upon
16 being staffed for a staffing company; correct?

17 A. Yes.

18 Q. Do you remember that language in the contract that
19 you would be paid upon the sale of the CILC software?

20 A. I don't recall that. We were under the assumption we
21 were going to get paid when we submitted our time sheets.

22 Q. Okay.

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

24 THE COURT: You may.

25 Q. (BY MR. BANKS) I am going to get back to the

1 contract here in one moment.

2 Can you describe a little bit of the work product
3 that you produced from your work there at IRP?

4 A. The two of us provided him various samples of how we
5 conducted our investigations at the FBI.

6 Q. And what was that to be used for?

7 A. For this case management system that he was
8 developing.

9 Q. Okay. Now, did you -- do you recall viewing the case
10 management system?

11 A. We were given various previews of the system when we
12 came down to the office in Colorado Springs.

13 Q. Okay. And do you recall anybody else you worked with
14 in that capacity at IRP; any other individuals at IRP that
15 you worked with?

16 A. The only other person I recall ever meeting, that was
17 on the first day, was Gary Walker.

18 Q. Okay. Do you remember a gentleman by the name of
19 Paul Pinkney?

20 A. No.

21 Q. Were you contacted during your time there at IRP
22 Solutions -- at any such time were you contacted -- let me
23 ask you this.

24 MR. BANKS: I will withdraw that, Your Honor.

25 Q. (BY MR. BANKS) Was there another person that was

1 involved in those meetings from another agency that you
2 participated in with Mr. Banks?

3 A. Yes.

4 Q. Can you say who? Do you remember who?

5 A. It was Gary Hillberry. He was a retired Special
6 Agent In Charge, a Customs' officer.

7 Q. Okay.

8 MR. BANKS: May I have a moment, Your Honor? Your
9 Honor, I would like to, at this time -- our big exhibit
10 book, I believe the Exhibit No. is 400 -- D400. I would
11 like to go to Section F. I would like to provide Mr. Epke
12 with his contractor agreement -- independent contractor
13 agreement to refresh his recollection.

14 THE COURT: As to what?

15 MR. BANKS: As to the terms of the agreement. As I
16 mentioned earlier, invoicing and payment.

17 THE COURT: All right. You may. This is marked as
18 Defense Exhibit F, or what is it?

19 MR. BANKS: D400, Your Honor.

20 MR. KIRSCH: Your Honor, I'm sorry, but just to be
21 clear, it is my understanding this binder is D400. I
22 believe we're talking about --

23 MR. BANKS: Section F.

24 MR. KIRSCH: Your Honor, I will stand to be
25 corrected, but I believe we are talking about the first

1 five pages of Section F.

2 THE COURT: First 5 pages, yes, you are right. His
3 agreement is only the first five pages. So the
4 notebook -- so I understand, the notebook is D400. And in
5 D400 are A through whatever?

6 MR. BANKS: Yes, Your Honor. And forgive us, we do
7 have an electronic version of this. We will be sure to
8 provide that the Court.

9 THE COURT: That's all right. As long as we know
10 what we are talking about on the record.

11 MR. BANKS: Okay.

12 Q. (BY MR. BANKS) Do you have that in front of you
13 Mr. Epke?

14 A. I do.

15 Q. Can you turn to page 4. Is that your signature?

16 A. It is.

17 Q. Okay. If you could go back to page 2, paragraph 6.
18 If you could refresh your recollection on that.

19 A. I see.

20 Q. Okay. If you could now -- can you read, starting at
21 "All hours," the second sentence?

22 MR. KIRSCH: Objection, Your Honor.

23 THE COURT: You first have to offer the exhibit.

24 MR. BANKS: Your Honor, I would like to admit the
25 first 5 pages of defense Exhibit D400, Section F.

1 THE COURT: Any objection?

2 MR. KIRSCH: No objection, Your Honor.

3 THE COURT: Exhibit D400, Section F, first five
4 pages are admitted.

5 (Exhibit No. D400(F), pgs.1-5 is admitted.)

6 THE COURT: Now you can ask him to read.

7 Q. (BY MR. BANKS) Can you read the "all hours,"
8 paragraph 6.

9 A. "All hours invoiced shall be paid to consultant
10 through the selected staffing company contracted by IRP
11 Solutions, the payroll consultant, or directly from IRP
12 Solutions upon receipt of revenue, from sales of CILC
13 Federal or Precinct software, whichever comes first."

14 Q. So would you say that that was an either/or?
15 Whichever comes first means you could be paid through a
16 staffing company, or you could be paid upon the sale of
17 the software, is that correct?

18 A. That is what the contract says.

19 Q. Now, I would like to take your attention to somewhere
20 around February 1, 2005. Were you contacted by Special
21 Agent Smith regarding IRP Solutions?

22 A. I recall the contact. I am not sure of the exact
23 date.

24 Q. Okay. Can you describe the nature of that contact or
25 discussion you had?

1 MR. KIRSCH: Objection, relevance.

2 THE COURT: What is the relevance?

3 MR. BANKS: Your Honor, he was contacted by the FBI
4 regarding IRP Solutions.

5 THE COURT: What is the relevance to his testimony?

6 MR. BANKS: He provided an Affidavit regarding IRP
7 Solutions and what they were actually doing.

8 THE COURT: Ask him some questions about that. If
9 it becomes relevant, you can proceed. Sustained.

10 MR. BANKS: Okay. Your Honor, I will withdraw that
11 for right now.

12 Q. (BY MR. BANKS) Mr. Epke, what was your -- you worked
13 for IRP Solutions for how long, as explained in the
14 contract here?

15 A. Well, I considered myself an independent contractor,
16 not an employee of IRP Solutions.

17 Q. Correct. How long were you an independent contractor
18 with IRP Solutions?

19 A. From approximately November of 2003 until maybe,
20 approximately 6 months later, until we found out that
21 nothing was going forward.

22 Q. When you say "nothing was going forward," can you
23 explain that?

24 A. Well, we hadn't been paid, and we were informed that
25 no contracts had been signed for this case management

1 system.

2 Q. Correct. Now, are you aware of any meetings that IRP
3 Solutions attended with the Department of Homeland
4 Security?

5 A. Only what we were telephonically advised.

6 Q. Do you remember speaking to a Melissa McRae of the
7 FBI?

8 A. No.

9 Q. Do you remember providing the FBI with information
10 about Mr. Banks telling you about Melissa McRae?

11 A. I do.

12 Q. And what did you tell the FBI with regards to Melissa
13 McRae?

14 MR. KIRSCH: Objection, relevance and hearsay.

15 THE COURT: What is the relevance?

16 MR. BANKS: Your Honor, I guess I will have to
17 refresh his recollection.

18 THE COURT: What is the relevance? What relevance
19 does that testimony have to the issues in this case?

20 MR. BANKS: That IRP was engaged with the
21 Department of Homeland Security.

22 THE COURT: And that's through Ms. McRae?

23 MR. BANKS: Ms. McRae, Your Honor.

24 THE COURT: Approach.

25 (A bench conference is had, and the following is

1 had outside the hearing of the jury.)

2 MR. BANKS: I guess Ms. McRae will be a witness
3 for -- a witness on our list. And I thought she was on
4 the list. We will double check that.

5 THE COURT: Who is Ms. McRae?

6 MR. BANKS: FBI consultant that worked for the
7 CIA's office.

8 MR. KIRSCH: She is not on the list.

9 MR. BANKS: I thought she was on the list. But
10 both of the FBI consultants will testify that they were
11 told that we attended a meeting with the Department of
12 Justice and DHS regarding our software.

13 THE COURT: All right. Whether or not someone told
14 you -- told him that, I am not sure where this was all
15 going with respect to the relevance. If you have
16 witnesses coming in to testify about that, that is fine.
17 I am trying to understand where we are going with this
18 witness.

19 MR. BANKS: We will save that for one of our
20 witnesses then, Your Honor.

21 THE COURT: Okay.

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

23 THE COURT: The objection a sustained.

24 MR. BANKS: I have no further questions, Your
25 Honor.

1 THE COURT: All right. Mr. Walker?

2 DIRECT EXAMINATION

3 BY MR. WALKER:

4 Q. Mr. Epke, you stated that you worked for IRP
5 Solutions for approximately 6 months; is that right?

6 A. Yes.

7 Q. And what did you do? What type of work did you
8 perform in those 6 months?

9 A. We provided the company with various examples of how
10 we did our work. And most of that work that we did was at
11 our residence.

12 Q. And the type of work that you did, and providing your
13 work product, in what form did your actual deliverables
14 take?

15 A. E-mail.

16 Q. They were e-mail deliveries. Were they e-mails of
17 computer documents, then; electronic documents?

18 A. They were documents that I prepared and forwarded to
19 IRP Solutions.

20 Q. And for what reason were you told that those
21 scenarios were required?

22 MR. KIRSCH: Objection, hearsay.

23 THE COURT: Overruled.

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

25 THE WITNESS: Would you repeat the question?

1 Q. (BY MR. WALKER) Why were you told that that
2 information was needed?

3 A. We were told the information was needed so he could
4 input it into his case management system that he was
5 developing.

6 Q. Okay. And did he mention any specific agencies those
7 scenarios would be applied to?

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

10 THE COURT: Overruled.

11 THE WITNESS: The agencies that he told us right
12 from the beginning initially were the Department of
13 Homeland Security and the New York Police Department.

14 Q. (BY MR. WALKER) Okay. And so you provided
15 information that would be valuable for the Department of
16 Homeland Security and New York Police Department; correct?

17 A. We provided generic information. I can only assume
18 that that is why he was contacting us. He said that is
19 why he was contacting us.

20 Q. You also mentioned that at some point -- I am sorry
21 let me withdraw.

22 You mentioned you hadn't been paid for several
23 months.

24 A. I was never paid.

25 Q. Yet you continued to work for the company for several

1 months; is that right?

2 A. Six months.

3 Q. And for what reason did you continue to work with the
4 company when you weren't paid?

5 A. Basically, because every time we would go to Colorado
6 Springs to meet with him, he said he was in contact with
7 staffing companies. He was waiting for the staffing
8 company to sign the contract so we could get paid.

9 Q. And what was your opinion of the software, as you
10 viewed it?

11 MR. KIRSCH: Objection, relevance.

12 THE COURT: Sustained.

13 MR. KIRSCH: And foundation.

14 Q. (BY MR. WALKER) Did you ever view demos of the
15 software you were providing input into?

16 A. Yes.

17 Q. Which software product was that that you viewed, if
18 you can recall?

19 A. I don't recall.

20 MR. WALKER: Your Honor, I don't have any further
21 questions.

22 THE COURT: All right. Mr. Zirpolo?

23 **DIRECT EXAMINATION**

24 **BY MR. ZIRPOLO:**

25 Q. Mr. Epke, did you agree to be paid for your services

1 upon sale of the software in that contract?

2 A. That is what the contract says. I just read the
3 contract. We were of the assumption we were going to get
4 paid as soon as the contract was signed with the staffing
5 company.

6 Q. Understood.

7 A. That is what we were being told every time we went to
8 Colorado Springs.

9 Q. Sir did you agree to be paid upon sale of the
10 software?

11 A. I signed the contract. So whatever I signed in the
12 contract, I would agree that that is what it was.

13 MR. ZIRPOLO: Thank you. No further questions.

14 THE COURT: Cross?

15 MR. KIRSCH: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MR. KIRSCH:**

18 Q. Good morning, Mr. Epke.

19 A. Good morning.

20 Q. When you were providing the scenarios -- actually, I
21 am sorry, let me back up.

22 When you were using the term "he" earlier in your
23 testimony, you were referring to David Banks?

24 A. I was referring to David Banks, yes.

25 Q. Was that -- is that the same person who was asking

1 you questions?

2 A. Yes.

3 Q. And you said you also met Gary Walker?

4 A. I met -- I know for a fact I met Gary Walker the
5 first time I met with David Banks. I don't recall
6 specifically talking with him on any other occasions. But
7 I am sure I ran into him when we went down to their
8 offices.

9 Q. Did you understand what Mr. Walker's role was at the
10 company?

11 A. I was told he was the CEO; Chief Executive Officer.

12 Q. Okay. And just to make sure I have the chronology
13 right. Your initial meeting, did you say that was around
14 November of 2003?

15 A. Yes.

16 Q. Now, when you were providing the information about
17 the -- about investigative steps that you would have taken
18 as an agent, you were providing that information directly
19 to Mr. Banks; is that right?

20 A. That's correct.

21 Q. You never sent information to the NYPD?

22 A. No.

23 Q. You never sent information to the Department of
24 Homeland Security?

25 A. No.

1 Q. You never sent that information to any law
2 enforcement agency; did you?

3 A. No.

4 Q. Always just to Mr. Banks?

5 A. Yes.

6 MR. KIRSCH: Your Honor, could I please ask for the
7 elmo to be activated so I can publish that portion of
8 Government (sic) Exhibit D400 that was admitted?

9 THE COURT: You may. Defendants'.

10 MR. KIRSCH: Defendants' Exhibit D400.

11 Q. (BY MR. KIRSCH) Can you see that on the monitor in
12 front of you now, Mr. Epke?

13 A. Yes.

14 Q. I will try to make it a little bit bigger for you.

15 A. I'm okay.

16 Q. We have the first page there on the screen.

17 A. Yes.

18 Q. And the bottom of the page there, does that outline
19 the rates you were supposed to be getting paid?

20 A. Yes, it does.

21 Q. \$65 per hour off site, and \$70 per hour for work
22 performed on company premises?

23 A. Yes.

24 Q. Whose idea was that to pay you less for being off
25 site than for being on site?

1 A. Basically, because we were working at home, and the
2 other was to add a little more for the drive from where I
3 lived to Colorado Springs.

4 Q. Okay. And then I want to look at the paragraph 6
5 again. This is the one that you were asked about, I
6 think, in the first set of questioning. So you were
7 supposed to invoice bi-weekly; is that correct?

8 A. Yes.

9 Q. And then it says that, "All of the hours invoiced
10 shall be paid to you through the selected staffing company
11 contracted by IRP Solutions or directly from IRP Solutions
12 upon receipt of revenue from sales of the software,
13 whichever comes first"?

14 A. Yes.

15 Q. Okay. Now, I think you testified a minute ago that
16 what is written there is different from your understanding
17 from speaking to Mr. Banks?

18 A. It is. Only to the extent that my understanding was
19 we were going to get paid when the contract was signed
20 with the staffing company.

21 Q. Okay. And did you have anything to do with setting
22 up the contract with the staffing companies?

23 A. No.

24 Q. So that was entirely within the control of Mr. Banks?

25 A. Yes.

1 Q. So it was entirely up to Mr. Banks to determine
2 whether or not, if the software hadn't been sold, whether
3 or not you got paid by placing you on the staffing
4 company?

5 A. Yes.

6 Q. And you said that you had begun having a series of
7 meetings -- you did go to the office once a month or so?

8 A. Yes.

9 Q. And did you go there in December, after your initial
10 meeting?

11 A. We did.

12 Q. And were you told anything about whether or not you
13 were going to be placed with a staffing company during
14 that meeting?

15 A. He stated he was trying to obtain a staffing company.

16 Q. As far as you know, did you get placed with a
17 staffing company then?

18 A. Never.

19 Q. Were you ever told you were in the process of getting
20 placed on other occasions?

21 A. He stated at least one time when we called that he
22 was real close to signing a contract with a staffing
23 company.

24 Q. Do you have any information about whether during this
25 time period there were a variety of staffing companies

1 that were being used during that time?

2 MR. ZIRPOLO: Objection, speculation.

3 THE COURT: Overruled.

4 THE WITNESS: I have no idea what -- I have no idea
5 about what staffing companies he was trying to contact or
6 use.

7 Q. (BY MR. KIRSCH) Did Mr. Banks ever tell you that
8 while he was trying to find a staffing company to place
9 you, that his company --

10 MR. BANKS: Objection, Your Honor, relevance.

11 THE COURT: Overruled.

12 Q. (BY MR. KIRSCH) I will start that one again,
13 Mr. Epke. Did Mr. Banks ever tell you that while he was
14 telling you he was trying to find a staffing company for
15 you, that his company was already engaged with multiple
16 other staffing companies for other people?

17 A. He did.

18 Q. Okay. So you knew that there were other staffing
19 companies being used?

20 A. Yes.

21 Q. Did Mr. Banks ever tell you that none of those other
22 staffing companies were getting paid?

23 A. I don't recall him ever telling me that.

24 MR. WALKER: Objection, relevance, Your Honor.

25 THE COURT: Sustained.

1 Q. (BY MR. KIRSCH) You wouldn't have agreed to work for
2 IRP through a staffing company if you had known that the
3 staffing company wasn't going to get paid, would you?

4 MR. HARPER: Objection, leading the witness.

5 THE COURT: Overruled. You may proceed. It's
6 cross-examination.

7 Q. (BY MR. KIRSCH) Do you remember that question?

8 A. Would you repeat it again?

9 Q. Yes. I am saying, you would have never agreed to
10 this arrangement to work through a staffing company if you
11 had understood that the staffing companies weren't going
12 -- staffing company invoices weren't going to get paid,
13 would you?

14 A. We never would have agreed to that, no.

15 Q. And I believe you said that you thought you had
16 provided services for about 6 months?

17 A. Yes.

18 Q. You were told throughout that period that you were
19 going to be placed with a staffing company?

20 A. That's correct.

21 Q. But you never were?

22 A. Never were.

23 Q. Were you ever paid a dime?

24 A. Never paid a dime.

25 Q. And at the time that you left, your understanding was

1 the software hadn't been sold to any law enforcement
2 agencies; is that right?

3 A. That was my understanding.

4 MR. KIRSCH: Thank you, Mr. Epke.

5 THE COURT: Mr. Banks?

6 **REDIRECT EXAMINATION**

7 **BY MR. BANKS:**

8 Q. Now, did Mr. Banks tell you they were working to sell
9 the software or working to gain a contract?

10 A. Every time we talked on the phone, and every time we
11 went to Colorado Springs.

12 MR. BANKS: Thank you. Nothing further from me,
13 Your Honor.

14 THE COURT: Anybody else?

15 All right. May this witness be excused?

16 MR. BANKS: Yes.

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

18 We are going to go ahead and take a break, because
19 although the jury hasn't been sitting here that long, poor
20 Ms. Martinez has been typing since about 9 o'clock --
21 actually before that. So we are going to take a 15-minute
22 recess. We will reconvene at 11 o'clock.

23 (A break is taken from 10:45 a.m. to 11:00 a.m.)

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

1 THE COURT: You may be seated.

2 Are you ready to bring the jury back in?

3 MR. BANKS: We are trying -- we know you have a 1
4 o'clock today. What do we look like, as far as planning
5 for this afternoon, as far as how long is your hearing
6 going to go?

7 THE COURT: It would be over before we would
8 reconvene. What do I have, a sentencing? We will
9 probably start at 1:45.

10 MR. BANKS: 1:45. Okay. Thank you, Your Honor.

11 THE COURT: All right. You may bring in the jury.

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

14 THE COURT: You may be seated.

15 Defendants may call their next witness.

16 MR. WALKER: Your Honor, the defendants call Sharon
17 Ruff.

18 COURTROOM DEPUTY: Your attention, please.

19 **SHARON PARKS**

20 having been first duly sworn, testified as follows:

21 COURTROOM DEPUTY: Please be seated.

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

24 THE WITNESS: Sharon Parks. S-H-A-R-O-N P-A-R-K-S.

25 THE COURT: You may proceed.

1 MR. WALKER: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. WALKER:

4 Q. Ms. Parks, your name was -- your last name was Ruff
5 at the time you were working with IRP and LTI; is that
6 correct?

7 A. That's correct.

8 Q. Just for clarification. What is your profession?

9 A. IT dba.

10 Q. You were going to add something else?

11 A. Dba work.

12 Q. What is that?

13 A. Database administration.

14 Q. And who do you currently work for?

15 A. Oracle.

16 Q. Oracle. And is that your sole source of income?

17 A. Yes. I have another job also.

18 Q. You do have another job?

19 A. Yes.

20 Q. Who else do you work for?

21 A. HSN.

22 Q. HSN. And what are your job responsibilities at
23 Oracle?

24 MR. KIRSCH: Objection to the relevance, Your
25 Honor.

1 THE COURT: What is the relevance?

2 MR. BANKS: Your Honor, qualifying her technically
3 to work at IRP and LTI.

4 THE COURT: I will give you some leeway with
5 respect to her background, but I think you need to go to
6 what was her background at the time she worked, not what
7 she is doing.

8 MR. WALKER: Yes, Your Honor. I will ask to
9 withdraw that question and ask this question.

10 Q. (BY MR. WALKER) As far as your work at LTI, what did
11 you do at Leading Team?

12 A. I did some dba work, and I did in-bound and out-bound
13 calls.

14 Q. Did you have any responsibilities that were related
15 to software testing?

16 A. Yes.

17 Q. And can you describe that?

18 A. Testing the software. Making sure for -- when there
19 is new software, you have to test different functions to
20 make sure they work correctly.

21 Q. And did you have any documentation responsibility at
22 LTI?

23 A. I also helped to write some of the documentation.

24 Q. What type of documentation did you write?

25 A. While testing the software, if there was some

1 problems with it, there was documentation that you had to
2 write, step by step, to get the -- to explain how the
3 software worked. More like instructions.

4 Q. All right. You also worked at IRP Solutions; is that
5 right?

6 A. That's correct.

7 Q. What type of roles did you fill at IRP?

8 A. There, I also did testing. And I did database
9 administrator work.

10 Q. Okay. Did you do any work related to out-bound phone
11 calls?

12 A. Yes. I also did in-bound and out-bound calls there,
13 also.

14 Q. What was the nature of the out-bound phone calls that
15 you would have made in that position?

16 A. Trying to get people to buy our software. Explaining
17 the software. Reaching out to people. For instance,
18 police departments, to let them know about our new
19 software.

20 Q. Okay. And in making those out-bound calls, would you
21 ask them to attend meetings or demonstrations?

22 A. Yes, I did.

23 Q. And how were those demonstrations to be conducted if
24 they did choose to attend one?

25 A. Over the web.

1 Q. Over the web?

2 A. Over the web.

3 Q. And in your multiple roles at IRP, did you work at
4 the office?

5 A. I worked sometimes at the office and sometimes at
6 home.

7 Q. And for your work at the office, you mentioned that
8 you worked -- excuse me -- in a couple of groups. Did you
9 interact with the team that did testing at IRP?

10 A. Yes, I did.

11 Q. As far as that testing, can you describe the process
12 for you being assigned work to do testing?

13 A. I would get the test -- some of the instructions that
14 were written from another team member, and I would
15 actually test the software. And when there was problems
16 with it, then I would write up documentation to go back to
17 the other team to let them know the problems that I found
18 and the things that needed to be fixed.

19 Q. Okay. And in the course of doing that testing, did
20 you ever make recommendations about the software?

21 A. Oh, of course.

22 Q. And so you had -- would you agree that you had a
23 broad understanding of the software?

24 A. Yes.

25 Q. And how would you -- let me rephrase.

1 Did you actually participate in demonstrations to
2 law enforcement agencies?

3 A. Over the web, I just watched.

4 Q. Would you say you monitored the demonstrations to law
5 enforcement agencies?

6 A. That's correct.

7 Q. If you can recall, how often were you aware of
8 demonstrations taking place to law enforcement agencies?

9 A. Oh, wow, I don't remember.

10 Q. Would you be able to characterize it as seldom,
11 often? Do you recall at what level?

12 A. All I know, it was on a weekly basis, but how many
13 times a week, I don't know. I can't remember.

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

15 THE COURT: You may.

16 MR. WALKER: Your Honor, no further questions from
17 me.

18 THE COURT: Mr. Zirpolo?

19 **DIRECT EXAMINATION**

20 **BY MR. ZIRPOLO:**

21 Q. Good morning, Ms. Parks.

22 A. Good morning.

23 Q. I have a couple questions on your testing activities.
24 Were you ever just told to go in and -- were you ever not
25 given any instructions for testing?

1 A. Was I ever not given any instructions for testing?

2 Q. Not step-by-step instructions, very minimal?

3 A. Okay. Are you asking me, was I given instructions on
4 how to test the software?

5 Q. Yes.

6 A. Oh, yes.

7 Q. You were always given instructions on how to test the
8 software?

9 A. Oh, yes, of course.

10 Q. Were you ever just told to go in and use it and let
11 us know what the problems are?

12 A. From time to time, yes.

13 Q. What type of user were you testing software for?

14 A. The police department; NYPD.

15 Q. That's fine. And what type of -- how would you
16 characterize that type of a user? Were you ever told what
17 the knowledge of that type of a user was?

18 MR. KIRSCH: Objection, hearsay and lack of
19 foundation.

20 THE COURT: Sustained.

21 Q. (BY MR. ZIRPOLO) When you were testing the software,
22 how would you go and do the initial testing?

23 A. I would, okay, log into the software that was given
24 to me, and go through all of the steps, from logging --
25 going through all of the steps, from logging in, the

1 password, and tested the different modules. In going
2 through some of those modules I ran into something or it
3 didn't let me in, then I would write documentation letting
4 them know this is what I was doing and this is what
5 happened.

6 Q. So functionality testing?

7 A. There is a problem here.

8 Q. So you were doing functionality testing?

9 A. Yes.

10 Q. Did you ever do what is called "use testing"?

11 A. For the user?

12 Q. Yes.

13 A. Oh, yes.

14 Q. So what were the recommendations you would have when
15 you were doing user testing?

16 A. Log in as just a user of the software.

17 Q. But if you found an issue, what would your
18 recommendation be? Would it be to -- that something
19 didn't function or that it didn't flow properly?

20 MR. ZIRPOLO: I'm trying not to lead.

21 MR. KIRSCH: Leading and relevance.

22 THE COURT: Sustained as to leading.

23 Q. (BY MR. ZIRPOLO) When you were doing the user
24 testing, what type of recommendations would you have
25 coming back to the developers?

1 A. That when a user tried to use the software, there's a
2 problem with the way it flowed or the functionality of it.

3 Q. And with that type of testing, do you always use IT
4 professionals, do you know?

5 A. I don't know. I don't know.

6 MR. ZIRPOLO: May I have a minute, Your Honor?

7 THE COURT: You may.

8 MR. ZIRPOLO: No further questions.

9 THE COURT: All right. Mr. Banks?

10 **DIRECT EXAMINATION**

11 **BY MR. BANKS:**

12 Q. Ms. Ruff, during your time at IRP, who -- or were you
13 an employee of IRP or an employee of a staffing company?

14 A. Of a staffing company.

15 Q. And during your employment with the staffing company,
16 did you have to fill out time sheets?

17 A. Yes.

18 Q. For the time sheets you filled out, did it accurately
19 reflect the hours you worked?

20 A. Of course.

21 Q. Did you ever volunteer some of your time at IRP?

22 A. Yes, I did.

23 Q. What reason would you volunteer?

24 A. Because --

25 MR. KIRSCH: Objection, relevance.

1 THE COURT: Sustained.

2 Q. (BY MR. BANKS) How often did you volunteer?

3 MR. KIRSCH: Objection, relevance.

4 THE COURT: Sustained.

5 MR. BANKS: Okay, Your Honor. One moment, Your
6 Honor, if I may.

7 THE COURT: You may.

8 Q. (BY MR. BANKS) For all the hours that you billed to
9 a staffing company, all of those hours were for the work
10 you performed; correct?

11 A. That is correct.

12 Q. Did you ever work on behalf of anybody else at IRP
13 besides yourself?

14 A. No.

15 Q. And when you were paid by the staffing company --

16 MR. BANKS: I will withdraw that question, Your
17 Honor. I have no further questions.

18 THE COURT: Anybody else?

19 MR. WALKER: No, Your Honor.

20 THE COURT: Cross-examination?

21 MR. KIRSCH: Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. KIRSCH:**

24 Q. Good morning, Ms. Parks.

25 A. Good morning.

1 Q. You're currently employed for a company called
2 Oracle?

3 A. That's correct.

4 Q. You have been employed with that company for quite
5 some time, haven't you?

6 A. Yes, I have.

7 Q. For how long?

8 A. For 13 years.

9 Q. And you worked full time for Oracle throughout that
10 time period?

11 A. That's correct.

12 Q. So that -- you were employed full time at Oracle
13 while you were working through staffing companies at
14 Leading Team and IRP; is that right?

15 A. That's correct.

16 Q. And what were your hours at Oracle back in that time
17 period, 2002 through 2005?

18 A. I've been on a few shifts at Oracle. So during that
19 time, I can't remember if I was on the night shift or not.

20 Q. When does the night shift take place?

21 A. From noon to 9:00.

22 Q. Noon to 9:00?

23 A. Noon to 9:00.

24 Q. And as you sit here today, you are not sure if you
25 worked that shift at that time?

- 1 A. That's correct.
- 2 Q. What would the other option be?
- 3 A. 6:30 to 2:30. I worked that shift. And I've also
- 4 worked 8:30 to 5:30.
- 5 Q. So the three choices are 6:30 to 2:30, 8:30 to -- did
- 6 you say 5:30, or noon to 9:00?
- 7 A. That's correct.
- 8 Q. And when you were working for the various staffing
- 9 companies at IRP Solutions, you worked for several
- 10 different companies; right?
- 11 A. Correct.
- 12 Q. You worked for -- do you remember which ones you
- 13 worked for?
- 14 A. No, I don't.
- 15 Q. Do you remember working for Ajilon?
- 16 A. Yes.
- 17 Q. Do you remember working for Interactive Business
- 18 Systems?
- 19 A. Yes.
- 20 Q. Do you remember working for Express Personnel
- 21 Services?
- 22 A. Yes.
- 23 Q. Do you remember working for Kelly?
- 24 A. Yes.
- 25 Q. Do you remember working for Headway?

1 A. Yes.

2 Q. Do you remember how much money you made while you
3 were working for those different companies?

4 A. Let's see. You know, that -- you all subpoenaed my
5 bank records without -- you know, wanted my bank
6 records without --

7 MR. KIRSCH: Ms. Ruff, you are not answering my
8 questions.

9 THE COURT: Ms. Ruff. Ms. Ruff. Ms. Ruff.

10 THE WITNESS: I don't remember.

11 THE COURT: Ms. Ruff. Pay attention to me. I am
12 the Judge. I am in charge in this courtroom. You will
13 not blurt out information that is not responsive to the
14 question. The question was, do you remember how much
15 money you got paid during all that time.

16 THE WITNESS: No, I don't.

17 Q. (BY MR. KIRSCH) If I told you it was over \$71,000,
18 would you have any reason to disagree with that?

19 A. I can't disagree if I don't remember.

20 Q. Do you remember it being less than that?

21 A. I can't remember.

22 Q. You have no idea?

23 A. No.

24 Q. All right. Do you remember what hours you were
25 billing to the staffing companies?

1 A. It was various hours.

2 Q. Okay. You said during that time you were working for
3 Oracle, either from 6:30 to 2:30, or from 8:30 to 5:30, or
4 from 12:00 to 9:00; is that right?

5 A. Yes.

6 Q. Okay. And you weren't working for Oracle at the same
7 time that you were working for staffing companies, were
8 you?

9 A. Yes, I was.

10 Q. At the exact same hour?

11 A. Yes. On some of those, yes.

12 Q. Well, tell me how that works. Did you work for
13 Oracle at the office?

14 A. No, I did not.

15 Q. You worked at home?

16 A. I worked at home.

17 Q. And what is it that you did?

18 A. Technical support.

19 Q. Okay. And how is it that you could do technical
20 support and do something else?

21 A. Because you could have two computers sitting right
22 here, working simultaneously for different clients.

23 Q. Well, tell me what you are doing as a part of
24 providing technical support.

25 A. Tickets come in over the computer. I look at the

1 tickets and respond to them.

2 Q. How do you respond?

3 A. Via e-mail.

4 Q. Okay. And while you are reading a ticket and typing
5 an e-mail, how do you work on the other computer?

6 A. I go from one to the other.

7 Q. Okay. When you finish reading the e-mail and finish
8 typing on the computer, then you go to the other computer;
9 is that right?

10 A. That's correct.

11 Q. Okay. You are not doing it at the same time?

12 A. Well, actually, you are, because you are waiting for
13 a response over here, or while you are waiting for a
14 response, you can be working on something else.

15 Q. Oh, okay.

16 MR. KIRSCH: Your Honor, could I please publish
17 Government Exhibit 151.00, page 9.

18 THE COURT: You may.

19 Q. (BY MR. KIRSCH) This is your signature on that time
20 card; is that right, Ms. Ruff, now Ms. Parks?

21 A. Yes.

22 Q. But this is you at that time? And you told Express
23 Personnel Services that on these three days, I guess they
24 would have been in October of 2003, that you worked at DKH
25 from 9:30 to 6:00 or 8:00 to 5:00; right?

- 1 A. Right.
- 2 Q. So when do you think you would have been working for
3 Oracle on those days?
- 4 A. During the same time, or even in the evening or
5 earlier in the morning.
- 6 Q. Well, what about the time that you were working for
7 both Express Personnel Services and Oracle?
- 8 A. What about it?
- 9 Q. Where would you have been doing that work?
- 10 A. Where?
- 11 Q. Yeah.
- 12 A. Either at home or at the IRP building.
- 13 Q. How is it that you could work for Oracle when you
14 were at the IRP building?
- 15 A. Take my laptop.
- 16 Q. Okay. And your laptop would have had some ability to
17 connect --
- 18 A. Yes.
- 19 Q. -- to the internet?
- 20 A. That's correct.
- 21 Q. Did you have wireless back then in '03?
- 22 A. Yes.
- 23 Q. Did Express Personnel Services know you were working
24 for Oracle at the same time?
- 25 A. I don't know.

1 Q. Did you tell them?

2 A. They didn't ask.

3 MR. KIRSCH: Your Honor, can I please publish
4 Government Exhibit 201.00, page 6?

5 THE COURT: You may.

6 MR. KIRSCH: Can you expand the time card in the
7 middle on the left, please.

8 Q. (BY MR. KIRSCH) Is this your time card, Ms. Parks?

9 A. Yes, it is.

10 Q. Do you know who signed it?

11 A. No, I don't.

12 Q. You don't recognize that signature over there?

13 A. Looks like Clint Stewart, is what it looks like.

14 Q. He was one of the people who approved some of your
15 time cards, wasn't he?

16 A. Yes.

17 Q. And you knew Mr. Stewart before you started working
18 at IRP; right?

19 A. Yes.

20 Q. In fact, you knew all of the gentlemen sitting at
21 this table before you started working at IRP?

22 A. Yes.

23 Q. You were friends with all of them, weren't you?

24 A. Yes.

25 Q. Had a substantial amount of association with them

1 outside of that professional setting?

2 A. Pardon me? Say that again.

3 Q. I said, you had a substantial association with them
4 outside of that professional setting?

5 A. No.

6 Q. No?

7 A. What do you mean "substantial"?

8 Q. How often did you see them?

9 A. Maybe three, four times a week.

10 Q. Outside of IRP?

11 A. Correct.

12 Q. Okay. Do you remember what hours you were working at
13 Oracle when you told Kelly Services that you were working
14 for them from 8:00 to 5:00?

15 A. You know, because I don't remember, you know the year
16 it was.

17 Q. Did you tell Kelly Services that you were also
18 working full time at Oracle while you were reporting
19 working 40 hours a week for them?

20 A. No, I did not.

21 Q. I take it they didn't ask either?

22 A. That's correct.

23 MR. KIRSCH: Your Honor, can I please publish
24 Government Exhibit 161.00?

25 THE COURT: You may.

1 MR. KIRSCH: Can we start with page 7, please.

2 Q. (BY MR. KIRSCH) These are your time sheets, as well,
3 ma'am?

4 A. Yes.

5 Q. From a company called Headway?

6 A. Correct.

7 Q. And who approved these time sheets?

8 A. Dave Zirpolo.

9 Q. Now, you told Headway that you were working 10 hours
10 a day during these two weeks; is that right?

11 A. Yes.

12 Q. You were also working 40 hours a week for Oracle
13 during those two weeks, I take it?

14 A. Unless I was on vacation. But, if I wasn't, then,
15 yes.

16 Q. Okay. And is it fair to me to assume that you didn't
17 tell Headway you were working for Oracle, either?

18 A. That's correct.

19 Q. They didn't ask, either?

20 A. Right.

21 Q. And you didn't figure that was something they would
22 care about?

23 A. No. As long as I was getting their job done, why
24 would it matter?

25 Q. Okay. When you would -- you, as we talked about

1 here, you worked for about five different staffing
2 companies --

3 A. Yes.

4 Q. -- while you were there. Why would you stop working
5 for one and then start working for another?

6 A. I have no idea. Whatever staffing company that they
7 put me on, I went with.

8 Q. Who put you on?

9 A. Well, whoever -- the staffing company that was
10 paying, okay. I go in for the interview or position, I go
11 into the staffing company, they hired me, and that's why.

12 Q. How would you get in contact with that staffing
13 company in the first place?

14 A. Send my resume.

15 Q. And how would you know to send your resume to a
16 particular staffing company?

17 A. I send my resume to a lot of staffing companies.

18 Q. Nobody ever suggested that you ought to send it to a
19 particular one?

20 A. No.

21 Q. Mr. Harper never told you to send it to a particular
22 one?

23 A. No.

24 Q. Mr. Banks never told you to do that, either?

25 A. No.

1 Q. You were just sending your resume out there while you
2 were working full time for Oracle? You were regularly
3 sending your resume out?

4 A. That's correct.

5 Q. Okay. And when you stopped working for the first
6 company, did they tell you why? Did they tell you why
7 that contract was over?

8 A. No.

9 Q. The staffing company didn't tell you why you were
10 being terminated?

11 A. No.

12 Q. What about the second one, did they tell you why you
13 were being terminated?

14 A. I don't think so.

15 Q. Any of them?

16 A. I don't remember.

17 Q. Any of them?

18 A. I don't think so.

19 Q. You don't remember whether any of your employers told
20 you why you were being let go?

21 A. That the contract is ended, so we are letting you go.

22 Q. Do you remember that, or don't you?

23 A. I don't remember. Usually, that is how contractors
24 work.

25 Q. But in this case, you have no memory of how you were

1 told by any of those five companies about why you were
2 being terminated?

3 A. No.

4 Q. Okay. And you never had any understanding that the
5 reason you were being terminated was because their
6 invoices weren't getting paid, I take it?

7 MR. WALKER: Your Honor, that is leading.

8 THE COURT: Overruled.

9 THE WITNESS: Ask the question again.

10 Q. (BY MR. KIRSCH) The question was, I take it you
11 never had any understanding that the reason your contracts
12 were being terminated was because the invoices weren't
13 getting paid?

14 MR. ZIRPOLO: Objection, outside the scope of
15 cross.

16 THE COURT: Direct. Overruled.

17 Q. (BY MR. KIRSCH) You need the question again, ma'am?

18 A. Yes.

19 Q. The question was, you never had any idea -- you were
20 never told that the reason that each one of these
21 contracts was getting terminated was because the client,
22 IRP or DKH or Leading Team, wasn't paying the invoices?

23 A. No, I was not told that.

24 Q. You never had any knowledge about that?

25 A. No.

1 Q. Okay. Is it fair for me to say that if you had known
2 that, you wouldn't have continued to keep doing this work?

3 A. No, I would have continued.

4 Q. You would have?

5 A. Yes.

6 Q. It didn't matter to you whether those invoices were
7 getting paid?

8 A. No.

9 Q. When you would work at or when you would try to get
10 employed at a new staffing company, did you ever get any
11 instructions from anyone at DKH or IRP about not revealing
12 that you had previously worked at other staffing
13 companies?

14 A. No.

15 Q. Nobody ever told you anything like that?

16 A. No.

17 MR. KIRSCH: Sorry, Your Honor, I need just a
18 moment, please.

19 THE COURT: You may.

20 MR. KIRSCH: Your Honor, can I please publish
21 608.05?

22 THE COURT: You may.

23 MR. KIRSCH: Can you expand the top part of that,
24 please.

25 Q. (BY MR. KIRSCH) That is your name in the middle of

1 that e-mail, isn't it, ma'am?

2 A. Yes.

3 Q. It appears to me --

4 MR. ZIRPOLO: Objection.

5 Q. (BY MR. KIRSCH) -- under your name it says.

6 THE COURT: Wait.

7 MR. ZIRPOLO: There is nothing in that e-mail that
8 says it went to her.

9 THE COURT: That is not the question. Overruled.

10 MR. KIRSCH: Good idea, though, Mr. Zirpolo.

11 Q. (BY MR. KIRSCH) Do you remember whether you were on
12 a distribution list that was called CSF?

13 A. No, I'm not on a CSF distribution list.

14 Q. You are not now. I am asking you about back then.

15 A. No. No.

16 Q. You weren't?

17 A. No.

18 Q. Do you know what CSF is?

19 A. CSF can stand for many things.

20 Q. Do you know what it would stand for -- you don't have
21 any idea what it would stand for if Mr. Harper were
22 sending an e-mail to CSF?

23 A. No.

24 Q. At that time, were you a member of a church called
25 Colorado Springs Fellowship?

1 A. Yes.

2 Q. Okay. This e-mail, right underneath your former
3 name, says "So the above individuals, please take down any
4 name plates and correspondence that will associate you to
5 the building." Why would you have needed to take down a
6 name plate or a correspondence to associate you to the
7 building in connection with a meeting from Barrett
8 Business Services?

9 MR. BANKS: Objection, Your Honor. Ms. Ruff has
10 already stated that she doesn't know if she was on this
11 distribution list, so she can't testify to what she
12 doesn't know.

13 THE COURT: Overruled.

14 THE WITNESS: I don't know what this is. I have
15 never seen it. So I don't have a clue.

16 Q. (BY MR. KIRSCH) You have never seen this?

17 A. No, I have never seen this.

18 Q. You never got any direction to take down a name plate
19 or any correspondence?

20 A. No, I have not.

21 Q. Do you know why your name would be on this?

22 A. I don't know.

23 Q. Complete mystery to you; is that right?

24 A. Yes. I have never seen this.

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

1 Ms. Parks a question about 609.01, the white board.

2 Can I move that over there again?

3 THE COURT: You may.

4 MR. KIRSCH: Thank you.

5 Q. (BY MR. KIRSCH) I apologize, but I will need to ask
6 you to step out here so you can see what is on this board.

7 MR. KIRSCH: Your Honor, can I try to position it a
8 little better. I am sorry. Is that better?

9 Q. (BY MR. KIRSCH) Ms. Ruff -- Ms. Parks, is that your
10 former name listed there in the column of red names up on
11 the top right?

12 A. Yes.

13 Q. Next to where it says "dba"?

14 A. Yes.

15 Q. Then over on the left there, those are your initials,
16 or your then initials, "SR;" is that right?

17 A. Yeah, I guess.

18 Q. That would make sense, right? All of the initials on
19 the left-hand column are the same as the names that are
20 written out there in the right in red?

21 A. Right. But that is not -- that is my initials, yes.

22 Q. Okay. I am not suggesting that you wrote this.

23 A. Right.

24 Q. You didn't write it, I take it?

25 A. No, I did not.

1 Q. Okay. Do you see over there under Headway
2 Staffing -- the column Headway Staffing?

3 A. Uh-huh.

4 Q. The first set of initials under Headway Staffing, it
5 says "SR." And then in parentheses "DB"?

6 A. Uh-huh.

7 Q. Do you have any idea why the initials DB would be
8 listed after your initials there under Headway?

9 A. No, I don't.

10 Q. We looked at the Headway time cards that you signed
11 earlier; right? We looked at at least a couple of them?

12 A. Uh-huh.

13 Q. Your testimony is absolutely you worked every hour
14 that was reported to Headway; is that right?

15 A. That's correct.

16 Q. None of that time was worked by David Banks?

17 A. No.

18 Q. How about there under Blackstone? Do you see
19 under -- do you see the word "Blackstone" just to the left
20 of Headway?

21 A. Uh-huh.

22 Q. Do you see where the initials "KH" are in
23 parentheses?

24 A. Right.

25 Q. And then next to -- I am sorry, not in parentheses,

1 next to "KH," in parentheses, are the letters "SR."

2 A. Okay.

3 Q. Do you have any idea why those are there?

4 A. No, I don't have a clue.

5 Q. You never reported any time under the name Kendra
6 Haughton, did you?

7 A. No. No, I did not.

8 Q. You wouldn't have done that?

9 A. No.

10 Q. Because that would have been fraud?

11 A. That's fraud.

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

13 That is all I have, Your Honor.

14 THE COURT: All right. Redirect?

15 MR. BANKS: Thank you, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. BANKS:**

18 Q. Ms. Parks, did you work at an office or cubicle?

19 A. Yes, in a cubicle.

20 Q. Do you recall if cubicles or offices had name plates?

21 A. I can't remember.

22 Q. Okay.

23 MR. BANKS: That is all I have, Your Honor.

24 THE COURT: Anything further?

25 MR. ZIRPOLO: I have one question.

REDIRECT EXAMINATION

1

2 **BY MR. ZIRPOLO:**

3 Q. You say you worked for Oracle?

4 A. Correct.

5 Q. Do you care if Oracle was paying their staffing
6 companies?

7 A. No, I don't.

8 MR. KIRSCH: Objection, relevant.

9 MR. BANKS: It is very relevant. He asked if she
10 cared if the staffing companies were being paid for IRP.

11 THE COURT: Overruled.

12 MR. ZIRPOLO: No further questions.

13 THE COURT: Anything further?

14 Thank you very much. You are excused.

15 MR. KIRSCH: Your Honor, shall I move that exhibit
16 back?

17 THE COURT: Yes, please.

18 Defendants may call their next witness.

19 MR. WALKER: Your Honor, defense calls Kendra
20 Haughton.

21 COURTROOM DEPUTY: Your attention, please.

22 **KENDRA HAUGHTON**

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: Kendra Haughton. K-E-N-D-R-A
3 H-A-U-G-H-T-O-N.

4 THE COURT: You may proceed.

5 MR. WALKER: Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 **BY MR. WALKER:**

8 Q. Ms. Haughton, what is your current profession?

9 A. Currently I am an SCM out-person for Dish Network.

10 THE COURT: Ms. Haughton, could I ask you to move
11 forward and speak into the microphone, please.

12 THE WITNESS: An SCM person for Dish Network.

13 Q. (BY MR. WALKER) SCM. Can you explain what SCM --
14 what those acronyms -- that acronym stands for, what it
15 means?

16 A. Software configuration management. And what I do is
17 actually push software code into test and development
18 environments, and test environments and production for
19 Dish Network. So I work with software development tools.

20 Q. And how long have you been at Dish Network?

21 A. For 4 years.

22 Q. And how long have you been working as an SCM?

23 A. An SCM for about 8 years.

24 Q. Prior to Dish Network, where did you work?

25 A. Prior to Dish Network, I was at MCI WorldCom, and

1 which had changed to Verizon. And that was a 2-year
2 contract, doing software test work there.

3 Q. Two years as a tester there?

4 A. Yes, that's correct.

5 Q. And for Dish Network, are you a contractor,
6 consultant, or are you full-time employed?

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

8 THE COURT: Sustained.

9 Q. (BY MR. WALKER) And prior to doing the testing work
10 at MCI Verizon, where did you work?

11 A. Prior to Verizon, I was at IRP Solutions.

12 Q. And what did you do at IRP Solutions?

13 A. I did software test work there, as well as
14 configuration management.

15 Q. And in those two roles, did you work in the office,
16 or did you work remotely?

17 A. Both.

18 Q. And for both of those roles, doing testing and doing
19 the software configuration management, what products did
20 you work on?

21 A. I've worked on the CILC Basic product, testing that.
22 Also doing software configuration management for the CILC
23 Precinct, I believe the DHS version, also. It was quite a
24 few products there.

25 Q. Okay. And as far as those products are concerned,

1 and as far as it's applied to those roles, how did you
2 familiarize yourself with the product?

3 A. By actually using it. Going inside of the tool and
4 actually using the product.

5 Q. And as well as doing hands-on work and familiarizing
6 yourself with the product, did you have access to
7 documentation about the product?

8 A. I did.

9 Q. And in your work with software tests as an SCM, did
10 you work with other groups in the company?

11 A. In IRP Solutions?

12 Q. Yes.

13 A. Some groups. The dba's.

14 Q. And how would you interact with the dba's?

15 A. As far as like doing some testing, we would have to
16 do back-end testing. So working with the dba's setting up
17 test cases to do back-end testing; create back-end test
18 cases.

19 Q. Can you just clarify what you mean by back-end for
20 the non-IT people.

21 A. Oh, actually creating test cases that would actually
22 test the data that we were actually putting into the
23 product. Just testing data.

24 Q. And for that type of testing of the products, how did
25 you come about the data that was actually put into the

1 system?

2 A. We actually -- the test group, we came together and
3 we formulated test data to actually test the product and
4 actually using the product to come up with viable test
5 data, test cases.

6 Q. And in coming up with that viable test data, did you
7 then develop an understanding of some law enforcement
8 operations while doing that?

9 A. I did.

10 MR. WALKER: May I have one minute, Your Honor?

11 THE COURT: You may.

12 MR. WALKER: Your Honor, I have no further
13 questions.

14 THE COURT: All right. Mr. Banks?

15 MR. BANKS: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 **BY MR. BANKS:**

18 Q. Mr. Haughton, in your multiple roles of software
19 configuration management testing at IRP, did you assist in
20 any other areas, as well?

21 A. Some areas I did with calling. We actually did some
22 calling to the different law enforcement agencies, doing
23 calling to set up demos.

24 Q. Would you say that your work at IRP was fairly busy
25 work, but everybody kind of worked it as a team?

1 A. Yes, I would say that.

2 Q. Now, during your time at IRP, you were staffed with
3 multiple staffing companies; is that correct?

4 A. That's correct.

5 Q. And for the hours you submitted to a staffing
6 company, you submitted accurate hours that you actually
7 worked; correct?

8 A. That's correct.

9 Q. Did anyone -- did you ever work for anyone else
10 besides yourself?

11 A. Never.

12 Q. Do you know of anyone else at the company that worked
13 for someone else?

14 A. No, not to my knowledge.

15 Q. In performing multiple roles as a contractor, how do
16 you balance two different positions, two different roles;
17 say you are doing software configuration management and
18 test engineering.

19 MS. HAZRA: Objection, Your Honor. Just if it is
20 beyond what she didn't do at IRP. Just clarification.

21 MR. BANKS: At IRP.

22 THE COURT: All right. Sustained. And then as
23 worded, as limited, overruled.

24 MR. BANKS: Will do, Your Honor. I am sorry to
25 interrupt.

1 Q. (BY MR. BANKS) In your multiple roles at IRP, did
2 you have the occasion to do some work from home?

3 A. Yes.

4 Q. And if -- let me ask you this. And you also
5 worked -- or did you work in the office, as well?

6 A. I did.

7 Q. If you're concurrently doing -- did you concurrently
8 work as an SCM and test engineering?

9 A. Yes, I did.

10 Q. Can you explain a little bit about how that's
11 accomplished?

12 A. Yes. With software configuration management, I am
13 actually doing the build for the testing. So you are
14 compounding the code for the testers to test. So they
15 can't do their job until my job is done. Once the
16 developer does his thing and puts the code into the
17 test -- into the repository; the code repository, I build
18 it. And then that package is submitted then to the
19 testers to test. So they kind of work hand in hand.

20 Q. Okay. So would you say some of the builds that you
21 just spoke about, you would actually test off of some of
22 the builds you actually created, as well?

23 A. That's correct.

24 Q. And when you say "a build," are those builds for
25 different product lines?

1 A. Yes, multiple. You can do builds for multiple lines
2 at more than -- more than one release, so, yes.

3 Q. Were you involved in any -- at your time at IRP, did
4 you arrange any sort or contact --

5 MR. BANKS: I have nothing further, Your Honor.

6 THE COURT: All right. Anybody else?

7 Mr. Zirpolo?

8 MR. ZIRPOLO: Thank you, Your Honor.

9 **DIRECT EXAMINATION**

10 **BY MR. ZIRPOLO:**

11 Q. When you are doing a build, are you able to do other
12 things while the build is running?

13 A. Yes. Multi-tasking many things.

14 Q. How long does it take a build to run?

15 A. Maybe 10 to 15 minutes, depending on the package you
16 are building.

17 Q. Could some take longer?

18 A. Some could take longer.

19 Q. During that time, you are doing other things?

20 A. Other things. You are not sitting around waiting.

21 MR. ZIRPOLO: Thank you. No further questions.

22 THE COURT: Anybody else?

23 All right. Cross-examination?

24 MS. HAZRA: Thank you, Your Honor.

25 Could I have one moment?

1 THE COURT: You may.

2 CROSS-EXAMINATION

3 BY MS. HAZRA:

4 Q. Hello, Ms. Haughton. Good morning. How many
5 staffing companies did you work for at IRP?

6 A. I don't recall the number.

7 Q. Did you work for any at the same time?

8 A. I don't recall. It's possible.

9 Q. It's possible. Do you know -- do you remember which
10 ones you worked for?

11 A. No.

12 Q. How about Manpower? Do you remember that name?

13 A. That could be possible. That was several years ago.
14 So who knows.

15 Q. You could have worked for them?

16 A. Yes.

17 Q. And how about Organic People?

18 A. I could have.

19 Q. Personnel Plus?

20 A. Again, I have already answered that. I could have.

21 Q. You could have worked for Spherion too, and Kelly and
22 Computer Merchant and The Judge Group and Blackstone
23 Technology; right?

24 A. I have already answered that question.

25 Q. So if I show you time cards from all of those

1 companies with your signature, those are the companies you
2 would agree that you worked for when you were at IRP?

3 A. If my signature is on them.

4 Q. If your signature is on them, you worked for those
5 companies. Do you recall how much you made from working
6 for those companies?

7 A. No. Again, over 7 years ago. And how many jobs have
8 I had since then?

9 Q. If I told you you made a little over \$112,000, does
10 that sound right?

11 A. Well, it is possible that you guys could know since
12 the Government decided to get my bank account without a
13 subpoena.

14 THE COURT: Ms. Haughton. Ms. Haughton. You
15 answer the question that is asked, and I don't want you
16 blurting out information that I've already ruled on. And
17 if you want to be held in contempt, you can go ahead and
18 violate that rule. Do you understand?

19 THE WITNESS: Yes.

20 THE COURT: So you answer the question that is
21 asked, and that is all. And if you continue to blurt out
22 information, we will take that up.

23 THE WITNESS: I understand.

24 Q. (BY MS. HAZRA) If the payroll records indicate that
25 you made -- were paid a little over \$112,000, you would

1 agree that those would be accurate?

2 A. Whatever it says.

3 Q. And, ma'am, did your husband work at IRP at the same
4 time you did, as well?

5 A. He has to answer questions for himself. I am not
6 Shaun Haughton, I am Kendra Haughton.

7 Q. Do you know whether or not Shaun Haughton worked at
8 IRP at the same time?

9 A. Again, you have to talk to Shaun Haughton. I am
10 Kendra Haughton.

11 Q. So you are telling me that you don't know whether or
12 not your husband worked at IRP?

13 A. I didn't tell you that. I said, I am Kendra
14 Haughton. You need to talk to Shaun Haughton.

15 THE COURT: Ms. Haughton, answer the question yes
16 or no if you know. Don't argue with the lawyer.

17 THE WITNESS: Yes, he worked for the company. He
18 did.

19 Q. (BY MS. HAZRA) Do you know, ma'am, whether or not
20 your husband worked for IRP at the same time you did?

21 A. It's possible.

22 Q. It's possible? And his name is Shaun Haughton, your
23 husband at the time; is that correct?

24 A. That's correct.

25 Q. Aside from working at IRP, do you know the gentlemen

1 that are seated here at this table?

2 A. Yes, I know them.

3 Q. How did you know them at the time you were at IRP.

4 Did you know them outside of work?

5 A. Yes, I did.

6 Q. How did you know them?

7 A. They are friends.

8 Q. How often did you see them?

9 A. Don't know. I can't put a number on it.

10 Q. Are you still friends?

11 A. Yes, I am.

12 Q. How did you get in and out of the IRP building?

13 A. What do you mean, how did I get in and out of the IRP
14 building?

15 Q. I am just curious. You said you did work there. I
16 believe you said you worked remotely and you worked at the
17 offices. How did you access the building?

18 A. I walked inside. I don't think I understand your
19 question.

20 Q. Did you need anything special to get access? Did you
21 need an access badge or anything?

22 A. I believe we had a badge. I can't remember all this.
23 I believe we had badges.

24 Q. I believe you said, Ms. Haughton, you don't remember
25 whether or not you worked for two companies -- staffing

1 companies at the same time; is that right?

2 A. I didn't say that. I said it was possible.

3 Q. It was possible?

4 A. I didn't say I didn't remember.

5 Q. Do you recall working for both the Computer Merchant
6 and Judge Technical from September 2004 until January of
7 2005?

8 A. I don't remember dates. It has been awhile.

9 MS. HAZRA: Your Honor, I would like to publish
10 Government's Exhibit 901.14.

11 THE COURT: You may.

12 MS. HAZRA: Thank you, Special Agent.

13 Q. (BY MS. HAZRA) Ms. Haughton, this is a summary of
14 hours you worked with Computer Merchant and Judge
15 Technical. Do you see that in front of you?

16 A. I do.

17 Q. Do you see how you worked identical 8 hours for both
18 companies all those days; is that right?

19 A. Yes.

20 Q. Your time cards were approved by C. Alfred Stewart.
21 Who is that?

22 A. I guess whoever C. Alfred Stewart is.

23 Q. So you don't know who approved your time cards when
24 you were working there?

25 A. I just turned it in to management.

1 Q. And how about Ken Harper, he is there listed there as
2 approving your time cards under Judge Technical. You
3 don't know who Ken Harper is?

4 A. I said, I turned my cards in to management.

5 Q. Who was management? Who was the management you
6 turned your time cards in to?

7 A. I turned my time card in to -- my current management
8 was Barbara McKenzie. And she forwarded it ahead.

9 Q. So you sent your time cards in to Ms. Barbara
10 McKenzie?

11 A. Yes.

12 Q. And you never saw -- you never saw who Ms. McKenzie
13 turned them in to?

14 A. No.

15 Q. So you are saying you never saw who approved your
16 time cards?

17 A. All I did was submit my time cards to be approved.

18 Q. And, as you can see --

19 MS. HAZRA: Special Agent, if you could turn to
20 page 2.

21 Q. (BY MS. HAZRA) It is the same summary. You worked 8
22 hours both days, except for occasionally there are some
23 outliers. You worked 17 hours and a couple of 18 hours;
24 is that right, and then an 8 hour?

25 A. Yep.

1 MS. HAZRA: And then if you could go on to the next
2 page, Special Agent.

3 Q. (BY MS. HAZRA) It is your testimony that you worked
4 all these hours for this time period; is that right?

5 A. That's correct.

6 MS. HAZRA: Your Honor, could we publish
7 Government's Exhibit 901.18?

8 THE COURT: You may.

9 Q. (BY MS. HAZRA) Again, as you can see there,
10 Ms. Haughton, it is a summary of the hours you worked for
11 both Judge Technical and Blackstone. Do you see that in
12 front of you?

13 A. I can see it.

14 Q. And you worked from this time period of January 17,
15 2005, to February 8, 2005. Do you see that?

16 A. I see it.

17 Q. Again, the same Ken Harper approved your time cards.
18 But you don't know who that is?

19 A. As I stated before, I answered your question. I
20 turned my time card in to management.

21 Q. That was not my question, ma'am. I asked you if you
22 know who Ken Harper is?

23 A. Yes, I do.

24 Q. Who is Ken Harper?

25 A. Ken Harper.

1 Q. Does he go by any other name?

2 A. I just know Ken Harper there.

3 Q. Do you see the Ken Harper you know in the courtroom
4 today?

5 A. I do.

6 Q. You do. Where do you see him?

7 A. He is sitting here.

8 Q. Can you explain where exactly he is seated?

9 A. Seated at the table.

10 Q. Where at the table?

11 A. Second person in.

12 Q. On which side?

13 A. The right side.

14 Q. Right side to me or the right side to you?

15 A. To me.

16 Q. Second person in on the right side. Okay. Does he
17 have two people -- maybe I am a little confused. You are
18 saying the second person on this side of the table or on
19 this side of the table?

20 A. You are really confusing me with your questioning.

21 Q. I am asking you.

22 THE COURT: Let me ask. You indicated on the right
23 side. The second person on the right side is Mr. Zirpolo.

24 THE WITNESS: No, on this side.

25 THE COURT: That is the left side to you?

1 THE WITNESS: Okay. Left side. I got confused.

2 MS. HAZRA: Your Honor, could the record reflect
3 the witness has identified defendant Demetrius Harper as
4 Ken Harper?

5 THE COURT: Yes, it will.

6 Q. (BY MS. HAZRA) The Blackstone time cards are
7 approved by David Zirpolo? Do you know Mr. Zirpolo?

8 A. I do.

9 Q. Let's go back. Do you know who the C. Alfred Stewart
10 is who approved your time cards for Computer Merchant?

11 MS. HAZRA: That is not on the screen. Thank you,
12 Special Agent.

13 Q. (BY MS. HAZRA) Ma'am, do you know who C. Alfred
14 Stewart is?

15 A. No. I don't know that name.

16 Q. You don't know that name. But he approved your time
17 cards for the Computer Merchant for a 4-month period; is
18 that right?

19 A. If that is what it says. Like I said, I turned my
20 time card in to management.

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

22 THE COURT: You may.

23 Q. (BY MS. HAZRA) Ms. Haughton, do you know why you
24 worked for -- let's see. Do you know why you worked for
25 eight different companies while you were at IRP? Why you

1 were payrolled by eight different staffing companies while
2 you were at IRP?

3 A. My contract ended.

4 Q. Your contract ended, so then you moved on?

5 A. I didn't move on, the contract -- my contract ended.

6 Q. So that's why you worked for eight -- you were
7 payrolled by eight different staffing companies?

8 A. However, I was contacted by a staffing company for a
9 position to work.

10 Q. So the staffing companies contacted you to work at
11 IRP?

12 A. Yes.

13 Q. You never -- okay. For each eight times the staffing
14 company contacted you?

15 A. Yes. I was contacted by a staffing agency.

16 Q. And did you ever ask anyone at IRP why you kept being
17 contacted by a new staffing company?

18 A. No, because contracts end. I've worked in the IT
19 industry for 15 years as a contractor and as a permanent
20 employee. Contracts end.

21 Q. Were you ever doing the same kind of work with one
22 staffing company that you had done with a previous one?

23 A. Yes.

24 Q. So when you say the contract ended, the same work was
25 still going on?

1 A. Yes.

2 Q. Do you know a Clinton Stewart, ma'am?

3 A. I do.

4 Q. And do you see him in the courtroom today?

5 A. I do.

6 MS. HAZRA: One more minute.

7 I don't know the name of the white board exhibit.

8 I wanted to briefly show that. Is it 609?

9 MR. KIRSCH: 609.

10 THE COURT: Mr. Kirsch, you may get it.

11 Q. (BY MS. HAZRA) Ms. Haughton, I apologize, I will ask
12 you to come off the witness stand for a brief moment and
13 just come over to what is marked for identification
14 purposes as 609.01. And I would direct your attention --
15 do you see "Blackstone" written in red over there towards
16 the left?

17 A. I do.

18 Q. And do you see "KH," your initials?

19 A. Those are not necessarily my initials. Those could
20 be anybody's initials.

21 Q. Are your initials "KH"?

22 A. My middle name is "L." I see "KH" there. That could
23 be anybody's initials.

24 Q. That is a fair point, ma'am. But your first name is
25 Kendra, and that begins with a K?

1 A. It does.

2 Q. And Haughton begins with an H?

3 A. It does.

4 Q. And you worked for Blackstone, or so you were
5 testifying; is that correct? You were payrolled by
6 Blackstone?

7 A. I guess I was.

8 Q. And do you see initials in parentheses --

9 A. I do.

10 Q. -- next to the initials KH?

11 A. Yes.

12 Q. And are those initials "SR"?

13 A. I guess that is an R. I don't know. I can't read
14 that too well.

15 Q. Is your testimony today, Ms. Haughton, that you
16 worked each and every hour that you reported that you
17 worked at Blackstone?

18 A. I did.

19 Q. And is that the same for these other eight companies
20 that payrolled you?

21 A. Yes.

22 MS. HAZRA: I have no further questions, Your
23 Honor.

24 THE COURT: All right.

25 THE WITNESS: Do I go back here?

1 THE COURT: Yes. You may be seated.

2 Redirect?

3 MR. BANKS: Can we move the board, Your Honor?

4 THE COURT: You may.

5 MS. HAZRA: I will move it.

6 THE COURT: Ms. Hazra will take care of it. Thank
7 you.

8 **REDIRECT EXAMINATION**

9 **BY MR. BANKS:**

10 Q. Ms. Haughton, are you still with Shaun Haughton?

11 A. No, we're separated.

12 Q. That is all I wanted to know. Thank you.

13 You testified a minute ago that contracts end and
14 that's the nature of the contracting business.

15 A. That's correct.

16 Q. And over the course of -- you would say there is
17 nothing unusual in your career for contracts to end;
18 correct? End early?

19 A. That's correct.

20 Q. And do sometimes contracts get extended?

21 A. Yes, they do.

22 Q. Okay. And are they typically extended for the same
23 work that you were typically performing?

24 A. That's correct.

25 MR. BANKS: Your Honor, I have no further

1 questions.

2 THE COURT: All right. Anybody else?

3 May this witness be excused?

4 MR. BANKS: Yes, Your Honor.

5 THE COURT: Ms. Haughton, you are excused.

6 We are going to go ahead and recess for lunch. I
7 have a 1 o'clock. I think it should be fairly short. So
8 you are going to have a little bit longer lunch. If you
9 could be back by 1:30, hopefully we can pick up. I
10 anticipate that, because it's Friday afternoon, and for
11 some people Monday is a holiday, that traffic is going to
12 be pretty bad this afternoon. So we are going to go
13 ahead -- I need to recess for another meeting at 3:00. So
14 we will probably excuse the jury if we can get through the
15 next witness, before 3:00 or earlier.

16 So the jury can anticipate going home earlier
17 today, and hopefully that will help with traffic. All
18 right. So the jury is excused. I need to have the
19 parties remain.

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

22 THE COURT: You may be seated.

23 All right. I don't know if your witnesses are just
24 out of control or whether this was part of the plan, but
25 if another witness tries to bring in evidence by blurting

1 out things that I have already excluded, somebody is going
2 to be held responsible. Is that made clear?

3 MR. WALKER: Your Honor, we are completely shocked.

4 THE COURT: Well, you need to tell your witnesses
5 that they had better just answer the questions and not
6 blurt out information that is not relevant and which I
7 have already ruled on.

8 MR. BANKS: Yes, Your Honor. We will handle that
9 forthwith.

10 THE COURT: You can also tell them they are not
11 helping you by being as obstinate and as negative as they
12 are being.

13 MR. BANKS: We agree, Your Honor. Obviously with
14 the Shaun Haughton thing, that is a marital situation.
15 So -- but, again, we will definitely tell them to stick to
16 whatever is being asked and answered. And we apologize
17 for our witnesses with regard to that, Your Honor.

18 THE COURT: All right. We'll see you back at 1:30.
19 Court will be in recess.

20 (Lunch break is taken from 12:08 p.m. to 1:30 p.m.)

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

23 THE COURT: You may be seated. Any matters to be
24 brought to the Court's attention before we bring in the
25 jury?

1 MR. ZIRPOLO: Your Honor, I would like you to
2 direct Mr. Kirsch to please continue the respect that we
3 have shown him during the trial, because during his
4 cross-examination when I made an objection, he turned
5 around and made a snide remark, "Nice try, Mr. Zirpolo."

6 THE COURT: Private comments like that should be
7 kept to themselves. So I will expect that we will not
8 have any extraneous comments being made by either side.

9 MR. ZIRPOLO: Thank you.

10 THE COURT: All right. Anything else?

11 MR. WALKER: Yes, Your Honor. In our planning we
12 only have one witness left for today.

13 THE COURT: I think the jury will probably be happy
14 to go home early. But I do want to make sure that for the
15 future that you have a full day scheduled, because we
16 don't know how fast or how slowly they are going to go.

17 MR. WALKER: Yes, Your Honor. We will on the
18 following days.

19 MR. BANKS: Yes, Your Honor, and to that end,
20 actually we were expecting a couple witnesses to be able
21 to testify that took us into next week. And at this point
22 we have been able to roll our schedule forward to start
23 getting everybody here for the full week.

24 THE COURT: All right. That's fine. I want to
25 make clear, too, I have briefing that is due in by the

1 Government by -- did I say noon on Saturday?

2 MR. KIRSCH: You did.

3 THE COURT: That needs to be filed in CM-ECF with
4 notice, so that the defendants can get their responses in
5 by noon on Sunday, filed through CM-ECF so that I have
6 notice and access.

7 MR. WALKER: Your Honor, all our communications
8 will either come by e-mail or U.S. Mail. I don't believe
9 we have access to the other system.

10 THE COURT: You have access. To be in this case,
11 you have to have access to CM-ECF.

12 MR. BANKS: We don't.

13 THE COURT: To Pacer, I think.

14 MR. BANKS: We have access to view documents in
15 Pacer. I don't know if we have access to upload documents
16 in Pacer or not. What we will do, as we provide -- we
17 normally provide an e-mail to Mr. Kirsch with our
18 response. We will cc the Court on the e-mail, as well as
19 fax the clerk's office our response.

20 THE COURT: As long as everybody gets notice of
21 everything, that will be fine, because then I will have
22 both briefs to review before we start back on Tuesday.

23 MR. BANKS: Very well, Your Honor.

24 THE COURT: All right. Thank you.

25 Anything further?

1 Ms. Barnes, would you please bring in the jury.

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

4 THE COURT: You may be seated.

5 Defendants may call their next witness.

6 MR. WALKER: Your Honor, defense calls June Wright.

7 COURTROOM DEPUTY: Your attention, please.

8 **JUNE JENKINS**

9 having been first duly sworn, testified as follows:

10 COURTROOM DEPUTY: Please be seated.

11 Please state your name, and spell your first and
12 last names for the record.

13 THE WITNESS: June Jenkins, J-E-N-K-I-N-S.

14 **DIRECT EXAMINATION**

15 **BY MR. WALKER:**

16 Q. Ms. Jenkins, was your last name formerly Wright?

17 A. Yes.

18 Q. Why did you have a name change?

19 A. Divorce.

20 Q. Okay. Where do you currently work?

21 A. At Honeywell Technologies in Colorado Springs.

22 Q. And how long have you been there?

23 A. Oh, slightly over a year.

24 Q. And what do you do at Honeywell?

25 A. I'm a mission project analyst, and I do cost account

1 management.

2 Q. Can you explain that first job, mission -- what was
3 that again?

4 A. Mission project analyst. I analyze financials. I
5 work with the budget, with keeping hours necessary for
6 projects, making sure people are working using charged
7 numbers that they have been given relevant to the work
8 that they are doing. I prepare -- help prepare the budget
9 for the next year. If there are budget cuts, I have to
10 choose where those cuts need to be done. And analyzing
11 financials every month to see where we are over running or
12 under running, and what measures I need to improve in
13 those areas.

14 Q. Thank you. Is that the same -- let me withdraw that.
15 Where did you work before Honeywell?

16 A. I have worked at several different jobs. And I have
17 done grant writing. Grant -- finding grants for
18 organizations. Analyzing grants, or reviewing grants for
19 Hewlett Packard. Educational grants. Micro enterprise
20 grants. I have also done sales, sales support. And
21 that's just a few. I have also worked at Fort Carson at
22 the library.

23 Q. At some time in the past did you work for IRP
24 Solutions?

25 A. Yes, I did.

1 Q. And what work did you do at IRP?

2 A. I did out-bound calls to police agencies around the
3 United States. And I did it on a voluntary basis, because
4 I believed in what was --

5 MS. HAZRA: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q. (BY MR. WALKER) So you worked there as a volunteer,
8 and you did not get paid?

9 A. Yes.

10 Q. You did not work for a staffing company?

11 A. No, I did not. Not only did I volunteer, but I gave
12 funds. I gave my own money --

13 MS. HAZRA: Objection.

14 THE WITNESS: -- to help.

15 MR. WALKER: Could you repeat that?

16 MS. HAZRA: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q. (BY MR. WALKER) At any time did you do work under
19 anyone else's name -- report work on anyone else's time
20 card?

21 A. No.

22 Q. At any time did anyone else work and claim that work
23 -- I am sorry, let me correct. Did anyone else work there
24 on your behalf?

25 A. No. I worked because I believed in what was going on

1 at IRP. I believed they were doing work to help the
2 country.

3 MR. KIRSCH: Objection, Your Honor.

4 THE WITNESS: And it was good work.

5 THE COURT: We had a discussion about this.

6 MR. WALKER: Yes.

7 THE COURT: Ms. Wright -- or Ms. Jenkins, if the
8 question asks for a yes or no answer, you give a yes or no
9 answer. I don't want any extra evidence trying to be
10 gotten onto this record. Do I make myself clear?

11 THE WITNESS: Yes.

12 THE COURT: All right.

13 Q. (BY MR. WALKER) And your position, again, you were
14 working as a volunteer?

15 A. Yes.

16 Q. And what work were you doing there?

17 A. I made out-bound calls to set up demos and to ask if
18 agencies wanted to purchase the solution -- the IRP
19 Solutions product.

20 Q. You were basically making sales calls?

21 A. Yes.

22 Q. And the demos that you are talking, what type of
23 demos were these that you were making appointments for?

24 A. The demo would show the product, the software that
25 would help police agencies and police organizations around

1 the United States. It was one area where they could --
2 the software was a solution in which they could enter
3 their information, everything in one software package and
4 it would be -- everything would come together. And it was
5 a great product, and I believed in it.

6 Q. Did you ever attend any of those demos?

7 A. Yes.

8 MR. WALKER: Your Honor, I have no further
9 questions.

10 THE COURT: All right. Mr. Banks?

11 MR. BANKS: Just a couple. Your Honor.

12 **DIRECT EXAMINATION**

13 **BY MR. BANKS:**

14 Q. Ms. Jenkins, at any time were you approached by
15 anyone in an effort to have you staffed for the work that
16 you did at IRP?

17 A. No.

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

19 THE COURT: Anybody else?

20 Cross?

21 MS. HAZRA: Nothing, for this witness, Your Honor.

22 THE COURT: All right. May this witness be
23 excused?

24 MR. BANKS: Yes, Your Honor.

25 THE COURT: All right. I had anticipated this was

1 going to take longer. You all will really be able to get
2 back home today. My understanding is that we are prepared
3 to recess for the day; is that correct?

4 MR. WALKER: Yes, Your Honor.

5 THE COURT: You have no other witnesses.

6 All right. Ladies and gentlemen, you will be able
7 to go home today, relax, enjoy the weekend. You don't
8 have to report back until Tuesday because it is a holiday
9 for the Federal Government on Monday.

10 Remember, you are not to do any independent
11 research. You are not to discuss this case with anybody.
12 All right. Thank you very much. We'll see you at 9
13 o'clock on Tuesday morning. The jury is excused.

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

16 THE COURT: All right. You may be seated. All
17 right. I think the jury is wondering why we brought them
18 back. But next week it will be better, right?

19 MR. WALKER: Yes, Your Honor.

20 MR. BANKS: Your Honor, we apologize.

21 THE COURT: We will recess then today. I will see
22 you all -- let me see what I have on my calendar. I would
23 like for you all to be back at 8:30 on Tuesday so that if
24 I'm prepared to make a ruling, I can make a ruling, and
25 then be able to move forward and bring the jury in at

1 9:00. So 8:30 for the parties back here on Tuesday
2 morning. All right.

3 MR. KIRSCH: Your Honor, just so the Court is
4 aware, we haven't yet decided whether we'll file a 702
5 challenge with respect to Mr. Thurman. But, obviously, we
6 will file it by noon if we are going to. But if there has
7 been nothing filed --

8 THE COURT: If nothing is filed by noon, I will
9 assume, then, that it is not going to be filed, and the
10 defendants don't have to worry about filing a reply.

11 MR. KIRSCH: Thank you, Your Honor.

12 THE COURT: Actually, though, that does -- if you
13 don't -- I have given you the ability to present rebuttal
14 testimony. If you are going to do so, then I would need
15 to have at least some reasonable time, and the disclosure
16 being made to the defendants with respect to any rebuttal
17 witnesses.

18 MR. KIRSCH: Your Honor, we will have to talk about
19 that a little bit more, too, but I would -- right now I
20 would say that that is unlikely.

21 THE COURT: All right. Well, just in the event it
22 is, I want some sort of reasonable notice.

23 MR. KIRSCH: We would be in a position, I think, to
24 probably provide that notice on Tuesday, don't you think?

25 THE COURT: All right. That sounds good.

1 Mr. Zirpolo.

2 MR. ZIRPOLO: Mr. Kirsch, when do you need the CV?

3 THE COURT: That, he needs by close of business
4 today. Because they need that to make a decision on
5 whether they are going to file.

6 MR. ZIRPOLO: 5 o'clock?

7 THE COURT: 5 o'clock. Okay. Anything further?

8 MR. KIRSCH: Could we ask, Your Honor -- and we can
9 do this outside. But in the event we were going to have a
10 rebuttal, it would help us to have at least a guess about
11 when that case might occur. If we could ask the
12 defendants if they have a prediction about how many days
13 they are going to use next week, or if they are going to
14 be using all of next week for the remainder of their
15 witnesses.

16 MR. BANKS: Next week will not accommodate all of
17 our witnesses. We expect it is a possibility we could end
18 next week, but not very likely. We are expecting to
19 probably go mid week after that, as far as scheduling is
20 concerned.

21 THE COURT: All right. Not any more gaps, though.
22 You will have to have people lined up, whether you think
23 they are going to testify that day or the next day, they
24 need to be ready to go, so that we don't have these gaps
25 and the jury isn't kept waiting.

1 MR. BANKS: Understood, Your Honor.

2 THE COURT: Anything further?

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

4 THE COURT: Thank you, and have a great weekend.

5 We will see you Tuesday at 8:30.

6 Court is in recess.

7 (Court is in recess at 1:43 p.m.)

8

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

10

11 I, Darlene M. Martinez, Official Certified
12 shorthand Reporter for the United States District Court,
13 District of Colorado, do hereby certify that the foregoing
14 is a true and accurate transcript of the proceedings had
15 as taken stenographically by me at the time and place
16 aforementioned.

17

18 Dated this 5th day of December, 2011.

19

20

21 _____
s/Darlene M. Martinez

22 RMR, CRR

23

24

25