

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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IN THE MATTER OF:	:	
	:	
UNITED STATES OF AMERICA	:	
ex rel. HARRY BARKO,	:	
	:	
Plaintiff-	:	
Relator,	:	
	:	
v.	:	Case No.
	:	1:05-CV-
HALLIBURTON COMPANY, et al.,	:	1276 (JSG)
	:	
Defendants.	:	
	:	
	:	

Wednesday,
February 5, 2014
Washington, DC

DEPOSITION OF:

CHRISTOPHER HEINRICH

called for examination by Counsel for the
Plaintiff, pursuant to Notice of Deposition,
in the law offices of Vinson & Elkins,
located at 2200 Pennsylvania Avenue, N.W.,
when were present on behalf of the
respective parties:

APPEARANCES:

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CONTENTS

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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Christopher Heinrich

By Mr. Kohn	6	165		
				189
By Mr. Margolis	120			187

EXHIBIT NO.	DESCRIPTION	PAGE
1		20
2	email	26
3	Privilege Log	59
4	email chain	65
5		82
6		89
7		90
8	Tip	93
9	Tip	94
10	Tip	94
11	Anti-Kickback Clause	130
12	Code of Business Conduct	139
13	Barko Statement	157
14	Confidentiality Agreement	158

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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P-R-O-C-E-E-D-I-N-G-S

(1:21 p.m.)

MR. KOHN: We can go on the record.

This is a deposition of - can you please state your name for the record.

MR. HEINRICH: Chris Heinrich.

MR. KOHN: I understand your counsel would like to make a preliminary statement.

MR. MARGOLIS: Yes, just for counsel for KBR. My name is Craig Margolis for KBR with Vinson & Elkins, and with me is Kathleen Neace.

The company is producing Mr. Heinrich as a 30(b)(6) witness on the following topics from your designations: Q, U, V, and W subject to the company's claims of attorney-client privilege. So, Mr. Heinrich today will be prepared to answer questions that we believe would not call for attorney-client privileged or attorney work product. Obviously, there's a Motion to Compel pending

1 on some of those issues, so we'll take the
2 questions question by question, but I just
3 wanted to make sure that that was a threshold
4 understanding of the conditions under which
5 he's going to be sitting for deposition today.

6 MS. MARTIN: Heather Martin from
7 Quinn Emanuel on behalf of Daoud & Partners,
8 and wanted to stipulate on the record that we
9 join in the objections that KBR may make.
10 We'll keep the same objections.

11 MR. KRUG: Also so the record is
12 clear, this is Zachary Krug for Daoud &
13 Partners from Quinn Emanuel, and I'm on the
14 telephone from Los Angeles.

15 COURT REPORTER: Please raise your
16 right hand.

17 WHEREUPON,

18 CHRIS HEINRICH
19 was called as a witness and, after having been
20 first duly sworn, was examined and testified
21 as follows:

22 COURT REPORTER: Thank you.

DIRECT EXAMINATION

BY MR. KOHN:

Q What is your current title?

A Vice President of Legal for
Infrastructure, Government and Power.

Q Okay. How many Vice Presidents of
Legal are there?

A Let me think about that. I believe
there's four plus a General Counsel.

Q And to whom do you report?

A The General Counsel.

Q What are your duties and
responsibilities?

A I manage the legal process for the
Infrastructure, Government and Power Group, so
anything that comes through there in terms of
a legal issue I'm responsible for seeing that
it's dealt with.

Q Do you have a job description?

A I'm sure there's one in the
company system.

Q Have you roles and

1 responsibilities that were involved during
2 your time as VP Legal?

3 A Could you clarify that? I'm not
4 sure what you're asking.

5 Q Can you identify - do you attend
6 meetings at work?

7 A Yes.

8 Q What regularly scheduled meetings
9 do you attend?

10 A Well, on Mondays I have a series
11 of meetings with the Group President for IGP,
12 so I attend those. I attend a law department
13 staff meetings. I have monthly meetings with
14 what they call the Executive Leadership Team.
15 And I attend the Financial Disclosure
16 Committee meeting. Top of my head, those are
17 ones that are weekly or monthly. And we
18 periodically have other meetings that I get
19 called into.

20 Q Do you provide business advice to
21 KBR?

22 A I provide legal advice to the

1 senior management.

2 Q Do you provide business advice

3 MR. MARGOLIS: Objection to form of
4 the question.

5 THE WITNESS: Could you define what
6 you call business advice?

7 BY MR. KOHN:

8 Q Well, you're sitting on the staff
9 meetings, are you listening to KBR general
10 business during the course of those staff
11 meetings?

12 MR. MARGOLIS: Objection to the
13 form of the question. Also instruct the
14 witness not to answer to the extent that, by
15 his answer, he would divulge attorney-client
16 privileged information.

17 THE WITNESS: I listen to - yes, I
18 mean, the project guys talk about project
19 issues.

20 BY MR. KOHN:

21 Q Does anyone in management think
22 you have good business advice to give?

1 MR. MARGOLIS: Objection to form of
2 the question.

3 THE WITNESS: I don't know.

4 BY MR. KOHN:

5 Q How do you separate business
6 advice from legal advice? Is there any formal
7 way you go about doing that?

8 MR. MARGOLIS: Objection to form of
9 the question.

10 THE WITNESS: No.

11 BY MR. KOHN:

12 Q And business advice and legal
13 advice can often be mixed, can't it?

14 MR. MARGOLIS: Objection to form of
15 the question. If you understand, you can
16 answer.

17 THE WITNESS: I suppose it could.

18 BY MR. KOHN:

19 Q Have you ever mixed the two?

20 MR. MARGOLIS: Objection to the
21 form of the question. I'm going to ask the
22 witness not to answer the extent to which, by

1 his answer, he would reveal attorney-client
2 privileged communications.

3 THE WITNESS: I don't know. I can't
4 remember a particular instance where I may
5 have, but it's possible.

6 BY MR. KOHN:

7 Q Who have you talked with
8 concerning your - in preparation of your
9 testimony today?

10 A The lawyers.

11 Q Did you speak with anyone else?

12 A No.

13 Q What documents have you reviewed
14 in preparation of your testimony for today?

15 A I reviewed the privilege log, TIP
16 sheets, and the complaint. And I reviewed --
17 looked at the Code of Business Conduct, the
18 investigative reports.

19 Q And the investigative reports, did
20 you say?

21 A Well, the COBC investigative
22 reports.

1 Q When is the first time you
2 reviewed the COBC investigative reports?

3 A You mean in preparation for this
4 meeting?

5 Q No, just -

6 A Ever?

7 Q Ever.

8 A First time I ever reviewed an
9 investigative report?

10 Q No, the investigative reports
11 associated with this litigation.

12 A That would have been back in 2003
13 or '4.

14 Q When did your involvement with the
15 COBC investigation at issue in this case
16 begin?

17 MR. MARGOLIS: Object to the form
18 of the question. If you understand it, you can
19 answer.

20 THE WITNESS: Well, I'm not sure
21 what - do you want a particular date that I
22 did what?

1 BY MR. KOHN:

2 Q How did you first learn that a
3 Code of Business Conduct investigation would
4 be initiated or had been initiated?

5 A The process had either an
6 anonymous phone call or a letter into the COBC
7 mailbox coming in. The Director of the COBC
8 would then get that information and establish
9 - log it in, establish a file and pass it to
10 me to manage and oversee an investigation of
11 it.

12 Q And at what time period were the
13 COBC logged-in issues passed to you?

14 A Within a day or so of them being
15 logged in.

16 Q And you started doing this in what
17 year?

18 A It would have been 2003, 2004.

19 Q Can you describe - you're given a
20 log in sheet?

21 A I'm given a COBC file number and a
22 summary of what the issue is from the TIP

1 sheet.

2 Q Who prepares the summary?

3 A It would have come from Richard
4 Mize.

5 Q And who is Richard Mize?

6 A He's the Director of the Code of
7 Business Conduct, a lawyer for Halliburton
8 Company.

9 Q Are all of the TIPS that come into
10 the COBC treated in the same manner?

11 A Everything that comes in is
12 logged. It's given a file number and it is
13 either dispositioned with Richard managing it,
14 or was in those days, with Richard managing
15 it, or if it pertained to the Government
16 Contracting Group, or primarily to LOGCAP, it
17 was given to me.

18 Q Were there any written procedures
19 in place as to what you were supposed to do
20 after these things were handed to you?

21 MR. MARGOLIS: Object to the form
22 of the question. If you can understand it, you

1 can answer yes or no.

2 THE WITNESS: No.

3 BY MR. KOHN:

4 Q So, you received a summary?

5 A Sometimes I would get the TIP
6 sheet itself.

7 Q You would receive a TIP sheet or
8 the summary, and you were not given any
9 direction how to proceed from there?

10 A No.

11 Q Were there any written or
12 established procedures of how you would
13 proceed?

14 A No. Well, there was established
15 procedures in that I would consult with the
16 security manager, explain to him what we had
17 in terms of what had come in on the TIP sheet,
18 and direct him then to assign an investigator
19 to take a look at the allegations and then to
20 produce a report for me.

21 Q Who is the security manager you
22 would consult with?

1 A It could have been Harry Conklin,
2 Kerry Miller, Jim, there's another one. There
3 were several of them that I dealt with.

4 Q Richard Irving?

5 A He was a security investigator.

6 Q Jonathan Langford?

7 A An investigator.

8 Q Harold Norman?

9 A Investigator.

10 Q William Rice?

11 A He was a security manager.

12 Q So, the two security managers were
13 Harry Conklin and William Rice?

14 A Yes, Rice and there was a fellow
15 named Kerry Miller that occupied that position
16 for a while. I think there was another fellow
17 in there at one point.

18 Q Were there any procedures in place
19 as to how the security managers would go about
20 doing their investigation?

21 A Not that I'm aware of.

22 Q So, a TIP sheet comes in, you

1 review it, and then you consult with a
2 security manager?

3 A Correct.

4 Q And then what is the next step?

5 A The security manager would assign
6 an investigator to look into the matter with
7 the expectation that a report would then be
8 written and produced for me.

9 Q And you were receiving this report
10 based on - the head of the COBC program's
11 name again?

12 A COBC?

13 Q Yes.

14 A Oh, Richard Mize.

15 Q Richard Mize. So, Mr. Richard Mize
16 would give you the TIP, you would get this
17 report back. Was the report then to be shared
18 with Mr. Mize?

19 A It would be.

20 Q Was there any procedure in place
21 as to what you should do with the report once
22 it came in?

1 A No.

2 Q Was there any procedure as to who
3 you would share -

4 A We had a procedure. It wasn't a
5 written procedure if that's what you're
6 saying.

7 Q So, you had an unwritten
8 procedure.

9 A I would - yes. I mean, I would
10 consult with Richard and tell him what I had.

11 Q I show you a document that I
12 believe was previously marked as Exhibit 6 to
13 the Ritondale deposition. This is the Code of
14 Business Conduct. Have you seen this document
15 before?

16 A Yes, I have.

17 Q If you would turn to page 10 of
18 the document.

19 A Okay.

20 Q There is a numbered paragraph 8 at
21 the bottom, investigations of violations. Do
22 you see that?

1 A Yes.

2 Q Okay. In the middle of that
3 sentence it says, the person or persons
4 authorized by the Policy Committee to
5 investigate alleged violations of the Code of
6 Business Conduct, shall, as appropriate, in
7 accordance with procedures established by the
8 Policy Committee (a) evaluate such information
9 as to gravity and credibility, (b) initiate an
10 informal inquiry or a formal investigation
11 with respect thereto. It goes on with some
12 additional issues. My question is the person
13 or persons authorized by the Policy Committee
14 to investigate the allegations, who were they?

15 A It would have been the lawyers in
16 the Law Department.

17 Q Was anyone else authorized to
18 investigate the - on behalf of the Policy
19 Committee?

20 A No.

21 Q So, the investigators -

22 A All COBC investigations were

1 undertaken under the direction of a lawyer in
2 the Law Department.

3 Q And it says that the investigation
4 shall be undertaken in accordance with
5 procedures established by the Policy
6 Committee. Are there - were procedures
7 established by the Policy Committee?

8 A I'm not aware of any.

9 Q Did you ask the Policy Committee
10 whether there are any procedures?

11 A No.

12 Q If you would turn to number 9.

13 A Okay.

14 Q It's on page 11, paragraph
15 numbered 9, Disciplinary Measures. Was it your
16 understanding that the COBC, one of its main
17 functions was to determine whether
18 disciplinary measures should be taken?

19 A It was a goal of the
20 investigation, was to determine whether or not
21 any sort of disciplinary measures were
22 required, yes.

1 Q And the disciplinary measures to
2 be implemented would be based on the factual
3 determinations obtained during the
4 investigation?

5 A Yes.

6 Q And paragraph number 9 appearing
7 on page 11 again notes, pursuant to procedures
8 adopted by it, referring to the Policy
9 Committee. Are you aware what these
10 procedures are with respect to disciplinary
11 measures?

12 A No.

13 Q Was KBR's Policy Committee advised
14 of the potential for any - for taking
15 disciplinary action with respect to COBC
16 investigation?

17 MR. MARGOLIS: Objection to the
18 form of the question. And in addition, I'm
19 going to ask the witness not to answer to the
20 extent your answer would result in revealing
21 attorney-client privileged information.

22 THE WITNESS: The Policy Committee

1 was given an update of the status of the COBC
2 investigations. The Director of the COBC
3 program would present them with an update and
4 advise them of the disposition of those that
5 had been closed, including whether or not
6 employees had been disciplined.

7 BY MR. KOHN:

8 Q Do you know what role the Policy
9 Committee had with respect to what
10 disciplinary action should be taken against
11 any such employee?

12 MR. MARGOLIS: Objection to the
13 form of the question. You can answer if you
14 understand it.

15 THE WITNESS: I'm not sure what -
16 if you're saying what role.

17 BY MR. KOHN:

18 Q I'm looking at paragraph number 9.

19 A Okay.

20 Q Page 11. It says, the Policy
21 Committee shall determine the disciplinary
22 measures to be taken against such employee. My

1 question is, what is your understanding of the
2 role the Policy Committee takes with respect
3 to disciplinary actions identified through the
4 COBC process?

5 A I'm not aware that they were
6 involved in an individual COBC issue.

7 Q Paragraph 11 appearing on page 11,
8 it says, the company shall document its
9 compliance efforts and results to evidence of
10 its commitment to comply with the standards
11 and procedures set forth above. What form of
12 documentation are you aware of to determine -
13 - let me rephrase it. What documentation are
14 you aware of to identify the compliance
15 efforts and results taken with respect to a
16 COBC investigation?

17 A Well, we have the investigative
18 report and then if disciplinary action results
19 from it, we have that documented also in the
20 COBC files.

21 Q What is - is there a policy of
22 what managers are required to do if they

1 receive a report from a subordinate employee
2 indicating a COBC violation?

3 A Is there a policy? Well, I believe
4 the Code of Business Conduct says that every
5 employee has the policy, or has the
6 responsibility to report it.

7 Q The employee reports it to a
8 manager. What is the manager's
9 responsibility?

10 A Well, the manager can report it
11 into a hotline, can use the email box, can
12 pick up the phone and call somebody, can
13 report it to his or her manager. So, if there
14 is an allegation of misconduct involving the
15 COBC, they have the same reporting
16 responsibilities that everybody else has.

17 Q Is there a responsibility on the
18 part of a manager who learned of a potential
19 COBC violation to report it to the COBC
20 office?

21 A Managers are no different than any
22 other employee; they have the same obligation

1 every employee has.

2 Q Managers are held to higher
3 standards, aren't they?

4 A In what respect?

5 Q With respect to understanding and
6 following company procedures and guidelines.

7 A We hold them to the same standards
8 in terms of our COBC. We expect all our
9 employees to understand that, so we hold
10 everybody to these standards.

11 Q If a manager receives a report
12 from an employee that, on its face, indicates
13 a potential COBC violation, what should the
14 manager do?

15 MR. MARGOLIS: I'm going to stop
16 for a moment and object on the grounds that,
17 while I was certainly going to permit Mr.
18 Heinrich to answer a series of questions to
19 lay a foundation for what I believed was his
20 knowledge of the topics within - for which
21 he's been designated to appear today as a
22 30(b)(6) witness, these are outside the scope

1 of these designations. Mr. Heinrich can
2 answer, but he is not answering on behalf of
3 the company in so responding.

4 BY MR. KOHN:

5 Q Would you answer the question,
6 please?

7 A He should do as every other
8 employee is responsible to do, and that is
9 report it.

10 Q If a manager fails to report a
11 violation of the COBC to the COBC office, is
12 that an act of wrongdoing?

13 MR. MARGOLIS: I'm going to object
14 on the same grounds that, first of all, object
15 to the form of the question. But second of
16 all, that it's outside the scope of the
17 witness' - the designation - the subjects
18 for which the witness has been designated to
19 appear.

20 THE WITNESS: I can't speculate.
21 You'd have to give me the details of exactly
22 what occurred in terms of me to analyze what

1 are the facts, and then to determine if, in
2 fact, the individual employee had a
3 responsibility to report it.

4 (Whereupon, a document was marked
5 as Exhibit Heinrich 1 for
6 identification.)

7 BY MR. KOHN:

8 Q I'm going to show you a document
9 marked as Heinrich 1. Have you reviewed this
10 - have you seen these documents in
11 preparation for your deposition?

12 A I believe I have, yes.

13 Q When did you first learn of these
14 documents?

15 A Probably yesterday. No, Monday.

16 (Whereupon, a document was marked
17 as Heinrich 2 for identification.)

18 BY MR. KOHN:

19 Q Showing you a document marked as
20 Heinrich Exhibit 2, an email communication in
21 this document from -- between Mr. Barko and
22 Ms. Battles. When did you first see this

1 document?

2 MR. MARGOLIS: Objection to the
3 form of the question.

4 THE WITNESS: I'm not sure. I'm not
5 sure I've seen this one. If I did, it would
6 have been on Monday.

7 BY MR. KOHN:

8 Q I'm going to ask the witness to
9 look at the document marked earlier today as
10 Hadcock 4. Tell me when you recall seeing that
11 document.

12 MR. MARGOLIS: Objection;
13 foundation.

14 THE WITNESS: Maybe an hour ago.

15 BY MR. KOHN:

16 Q Start with respect to Heinrich
17 Exhibit 1. You've had an opportunity to review
18 this prior to your deposition. Correct?

19 A I believe I did.

20 MS. MARTIN: Are you referring to
21 Heinrich 1?

22 MR. KOHN: Yes.

1 BY MR. KOHN:

2 Q Are there assertions in this
3 document that would require that these
4 allegations be submitted to the company's COBC
5 office?

6 MR. MARGOLIS: I'm going to object
7 as to the form of the question. I'm also going
8 to object, they're outside the scope of his
9 designations.

10 THE WITNESS: There would have been
11 -- the one issue as I see it would be this
12 potential allegation of exchange of finance,
13 suppression of competition, receipts of gifts.

14 BY MR. KOHN:

15 Q And you see towards -- the second
16 to last paragraph also reports the appearance
17 of suppression of competition and personnel.
18 Would that also be a COBC issue?

19 MR. MARGOLIS: Same objections as
20 to the form of the question and outside the
21 scope of his designated subjects, topics.

22 THE WITNESS: I'm not sure what

1 that even means.

2 BY MR. KOHN:

3 Q I guess it goes up to the fourth
4 paragraph, vendors are begging to conduct
5 business with KBR at the B sites but they are
6 not invited to bid. Would that be something
7 subject - that would fall within the scope of
8 COBC investigations?

9 MR. MARGOLIS: Same objections as
10 to form of the question and outside the scope
11 of his designated topics.

12 THE WITNESS: It's not likely. It
13 may be a management issue but it doesn't in
14 and of itself rise to a COBC issue.

15 BY MR. KOHN:

16 Q Who's Arnold Palmer?

17 A He was the HR - one of the HR
18 managers in Iraq.

19 Q What is a HR manager's
20 responsibility to report potential COBC
21 violations?

22 MR. MARGOLIS: I'm going to object,

1 again outside the scope of the subjects for
2 which he's been designated to appear.

3 THE WITNESS: He has the same
4 responsibility as every other employee.

5 MR. KOHN: Go off the record.

6 (Whereupon, the above-entitled
7 matter went off the record at 2:00 p.m., and
8 resumed at 2:06 p.m.)

9 BY MR. KOHN:

10 Q If you would look at Exhibit 1 to
11 the Ritondale deposition which is the 30(b)(6)
12 Notice of Deposition, and if you would look at
13 Item V.

14 A Okay.

15 Q Item V pertains to the scope of
16 any factual information contained in or gained
17 through the course of any CBOC-related
18 investigation, goes on further, and the last
19 sentence says, in addition thereto, any other
20 internal or external investigation related to
21 Mr. Gerlach or D&P. I'd like you to look at
22 Heinrich 1 and tell me if this document

1 relates to any internal or external
2 investigation related to Mr. Gerlach or D&P?

3 MR. MARGOLIS: Well, I'm going to
4 ask the witness to answer only to the extent
5 to which he could do so without divulging
6 attorney-client privileged communications or
7 attorney work product.

8 THE WITNESS: Are you asking if we
9 did a COBC investigation based on this trail
10 of emails?

11 MR. KOHN: No. I'm asking you,
12 would you agree that the document - the sum
13 and substance of the documents appearing in
14 Heinrich 1 constitutes an internal or external
15 investigation related to Mr. Gerlach or D&P?

16 THE WITNESS: No.

17 BY MR. KOHN:

18 Q So, it's your understanding that
19 Ms. Battles did not conduct an investigation
20 related to Mr. Gerlach?

21 A That is correct.

22 Q And that she did not conduct an

1 investigation related to D&P?

2 A That is correct.

3 Q Did you talk to her?

4 A No.

5 Q Do you know what form of
6 investigation was conducted between December
7 17 and December 21, 2004 as identified in
8 Heinrich 1?

9 MR. MARGOLIS: And I object to the
10 form of the question. If you understand it,
11 you can answer, Mr. Heinrich.

12 THE WITNESS: I don't what Ms.
13 Battles did. She did not do a COBC
14 investigation.

15 BY MR. KOHN:

16 Q Did she do an internal KBR
17 investigation?

18 MR. MARGOLIS: Object to the form
19 of the question, and object to whether the
20 witness has foundation. You can answer the
21 question.

22 THE WITNESS: I don't know what she

1 did. I know what she didn't do.

2 BY MR. KOHN:

3 Q So, can managers investigate
4 potential COBC investigations on their own?

5 A No.

6 Q If there is an allegation and not
7 specific proof of a violation, can managers
8 investigate it until they have enough to prove
9 an allegation?

10 MR. MARGOLIS: I object as to the
11 form of the question. You can answer the
12 question if you can understand it. I'm also
13 going to object to the extent to which this
14 calls for testimony outside of the topics for
15 which Mr. Heinrich has been designated.

16 THE WITNESS: I don't know, and
17 you're talking in generalities and theories.
18 I would have to look at the facts.

19 BY MR. KOHN:

20 Q Okay. Based on the information
21 contained in Heinrich 1, what should have
22 occurred -

1 MR. MARGOLIS: Object to the form
2 of the question.

3 Q - with respect to the COBC
4 process?

5 MR. MARGOLIS: I'm going to object
6 to the form of the question. I'm also going to
7 object that it's outside the topics for which
8 Mr. Heinrich has been designated to appear.

9 THE WITNESS: I don't know. I have
10 no idea what she was doing here. Okay? You're
11 asking me to try to get into her mind and find
12 out what she did at that site 10 years ago,
13 and what should she have done. I don't know.
14 I don't know what she was doing. I don't know
15 what she heard. I'm looking at a document
16 that's 10 years old, that has no context, and
17 you're asking me to make a judgment. I can't
18 do that.

19 BY MR. KOHN:

20 Q If a pattern is identified where
21 an employee is not - is engaging in activity
22 outside - let me call your attention to page

1 1 of the exhibit.

2 MR. MARGOLIS: Which exhibit?

3 MR. KOHN: Heinrich 1.

4 THE WITNESS: Okay.

5 BY MR. KOHN:

6 Q Towards the bottom it says, it
7 suggests that there is a pattern to his
8 actions which are not in line with company
9 Code of Business Conduct. If a manager reaches
10 the conclusion that there's a pattern of
11 actions by a KBR employee that are not in line
12 with the company's Code of Business Conduct,
13 what is that employee to do?

14 MR. MARGOLIS: Object, that the
15 question calls for an answer outside of the
16 topics for which Mr. Heinrich has been
17 designated to appear.

18 THE WITNESS: Well, he certainly
19 had the opportunity to report it, and I
20 probably would have reported it.

21 BY MR. KOHN:

22 Q Well, the fact - and with respect

1 to Heinrich 2, on page 2 there's - in the
2 middle it says, re favoring certain
3 subcontractors. I am aware of the
4 investigation recently conducted here of B1
5 regarding allegation alleged attempts to favor
6 certain subcontractors. Do you understand that
7 Mr. Barko was referring to the COBC
8 investigation?

9 MR. MARGOLIS: Object to the form
10 of the question.

11 THE WITNESS: That's my
12 understanding, yes.

13 BY MR. KOHN:

14 Q And at the bottom of that
15 paragraph it says, I sent an email to the
16 investigator. Were you aware of the emails Mr.
17 Barko was transmitting to the investigator?

18 MR. MARGOLIS: Object to the extent
19 to which your answer - well, I'll allow you
20 to answer that question.

21 THE WITNESS: I don't recall it
22 specifically.

1 BY MR. KOHN:

2 Q Based on the information contained
3 in this email, would it have been appropriate
4 to forward this communication for a COBC
5 investigation?

6 MR. MARGOLIS: Object to the form
7 of the question. Object it's outside the
8 topics for which Mr. Heinrich has been
9 designated.

10 THE WITNESS: I don't see anything
11 that necessarily leaps out that says that, but
12 it could have. I mean, I could see a manager
13 taking it and passing it along. The fact that
14 Mr. Barko was already contacted by the
15 investigators, I would have read that to be he
16 had an opportunity to bring this up and
17 continue this conversation with the
18 investigators.

19 BY MR. KOHN:

20 Q But he says, at the time I was
21 interviewed by the investigators, I could not
22 point to any concrete evidence per se that

1 would indicate such collusion. Now we start
2 talking about events that happened after that.

3 A Right. That didn't preclude him
4 from going back to the investigators and
5 saying I'll tell you whatever I've learned.

6 Q And let's look at Hadcock 4.

7 A Do I have it?

8 Q I'll show you my copy. And the
9 first bullet which says essentially D&P's --
10 it says - you can read it. It says, the VP,
11 comma - why don't you read that first bullet
12 into the record?

13 A The VP, comma, Rami Oweis, quite
14 frankly is allowed access into our offices
15 where he easily sees pricing information on
16 our desk.

17 MR. MARGOLIS: I believe that's
18 also Heinrich 4. Right?

19 THE WITNESS: I don't know.

20 MR. MARGOLIS: All right.

21 THE WITNESS: Oh, here.

22 MR. KOHN: I think I said - I

1 think it's -

2 MR. MARGOLIS: It may be both.

3 MR. KOHN: It may be both. Okay. At
4 least they're both number 4.

5 BY MR. KOHN:

6 Q Would that implicate a COBC
7 violation?

8 MR. MARGOLIS: Object to the form
9 of the question, and also object that it's
10 outside of the topics for which Mr. Heinrich
11 has been designated to appear.

12 THE WITNESS: I think it indicates
13 probably a bad business practice, but I don't
14 necessarily see it as a COBC matter.

15 BY MR. KOHN:

16 Q Well, what about it says, it is
17 evident that the department's management has
18 too close a relationship with the D&P
19 subcontractor. That sentence taken together
20 with the bullet point, does that appear to be
21 a COBC -

22 MR. MARGOLIS: I'm going to make

1 the same objections as to form and outside of
2 the scope of the topics for which he has been
3 designated.

4 THE WITNESS: I don't necessarily
5 see that. I think it would have been
6 appropriate for management to look at that
7 because as I say, I think it's probably a bad
8 business practice.

9 BY MR. KOHN:

10 Q So, management should look at bad
11 business practices and the COBC should look at
12 COBC violations. Is that what you're saying?

13 A COBC -

14 MR. MARGOLIS: Excuse me, I'm
15 trying to - I'm again going to object to the
16 form of the question, and object it's outside
17 the topics for which Mr. Heinrich has been
18 designated to appear.

19 COURT REPORTER: Speak up, please.

20 MR. MARGOLIS: Sorry. It's outside
21 of the topics for which Mr. Heinrich has been
22 designated to appear, and I object to the form

1 of the question.

2 THE WITNESS: I don't view this as
3 being necessarily a legal issue. It is a
4 business issue.

5 BY MR. KOHN:

6 Q So, COBC violations are legal
7 issues, and management bad practices are not
8 legal issues? Is that what you're saying?

9 A I'm saying - what I said was,
10 this instance I see this as a business, bad
11 business practice.

12 Q Okay. What is the difference
13 between a bad business practice and a COBC
14 allegation?

15 MR. MARGOLIS: Object to the form
16 of the question; object that it's outside of
17 the subjects for which Mr. Heinrich has been
18 designated.

19 THE WITNESS: This is a bad
20 business practice, and the items in the Code
21 of Business Conduct are COBC issues.

22 BY MR. KOHN:

1 Q If a KBR employee intentionally
2 allowed Mr. Oweis to access pricing
3 information so he could provide lower bids,
4 would that be a COBC violation?

5 MR. MARGOLIS: Object to the form
6 of the question. Object that it's outside the
7 topics for which Mr. Heinrich has been
8 designated.

9 THE WITNESS: I would look at that
10 and investigate it as a COBC matter.

11 BY MR. KOHN:

12 Q So, as soon as you started to look
13 at it - have you received any document,
14 written communication stating that COBC
15 investigations are to strictly fall under
16 attorney-client privilege?

17 A When I first started doing these
18 issues years ago, that was the way it was
19 described to me that it should be done.

20 Q Years ago, meaning when?

21 A 1989-90, somewhere around there.

22 Q Well, that is not the Code of

1 Business Conduct you were operating under in
2 2003 or 2004. Correct?

3 A The code from '89 or '90?

4 Q Yes.

5 A No, it had been updated several
6 times, although the basic premise was the
7 same.

8 Q The new code required procedures
9 to be in place. Correct? And oversight of it.

10 A Yes.

11 MR. MARGOLIS: Same objection,
12 outside the scope of the topics for which Mr.
13 Heinrich has been designated to appear.

14 BY MR. KOHN:

15 Q If you would look at page 9 of the
16 Business Code, paragraph 2, it says in the
17 middle, such procedures shall provide for
18 obtaining advice of legal counsel where
19 appropriate. Do you see that?

20 A Yes.

21 Q Okay. What procedures are you
22 aware of which designate when it would be

1 appropriate to obtain legal counsel and when
2 it would not?

3 MR. MARGOLIS: Object as outside of
4 the topics for which Mr. Heinrich has been
5 designated to appear.

6 THE WITNESS: The procedure is
7 every -

8 BY MR. KOHN:

9 Q I didn't ask what the procedure
10 is. I said -

11 MR. MARGOLIS: Please let Mr.
12 Heinrich answer his question.

13 THE WITNESS: Every allegation that
14 comes in came to the Law Department, to the
15 lawyer in charge of the Code of Business
16 Conduct. It was logged in, and at that point
17 an attorney was assigned to manage it. That's
18 how every one was done, so that is the
19 procedure.

20 BY MR. KOHN:

21 Q Okay. So, you're not aware of any
22 procedure issued by the Policy Committee

1 pertaining to legal counsel where appropriate.

2 MR. MARGOLIS: I'm going to object
3 to the form of the question. I'm also
4 objecting that it's beyond the scope of the
5 topics for which Mr. Heinrich has been
6 designated to appear.

7 THE WITNESS: I'm not aware of any
8 written procedure.

9 BY MR. KOHN:

10 Q You've had no communication with
11 the Policy Committee, have you?

12 MR. MARGOLIS: Objection.

13 MR. KOHN: I'll rephrase the
14 question.

15 BY MR. KOHN:

16 Q With respect to allocations of
17 responsibility procedures specified on page 9
18 of the Code of Business Conduct, have you had
19 any communications with the Policy Committee?

20 MR. MARGOLIS: Object that it's
21 outside of the topics for which Mr. Heinrich
22 has been designated to appear. Also I'm going

1 to instruct Mr. Heinrich to answer only to the
2 extent he can do so without revealing
3 attorney-client communications.

4 THE WITNESS: No.

5 BY MR. KOHN:

6 Q Were you aware that Mr. Barko's
7 laptop had been taken for duplication?

8 MR. MARGOLIS: Object to the form
9 of the question.

10 THE WITNESS: His laptop was no
11 different than any other employee's. We did
12 all of them.

13 BY MR. KOHN:

14 Q What do you mean you did all of
15 them?

16 A People that were in positions,
17 procurement folks, managers in Iraq, we tried
18 to do all of them to keep a record. We've had
19 turnover over there and in order to try to
20 maintain continuity with the databases, we
21 would scan and image the computers.

22 Q So you did that to Mr. Gerlach's

1 computer?

2 A I believe we did.

3 MR. MARGOLIS: I'm going to object
4 that again it calls for testimony beyond the
5 scope of his designation. He can answer in a
6 personal capacity if he knows. He is not
7 speaking for KBR with respect to the prior
8 question.

9 BY MR. KOHN:

10 Q Where would the mirror copy of Mr.
11 Gerlach's computer be?

12 MR. MARGOLIS: Same objections.

13 THE WITNESS: I don't know where it
14 physically resides.

15 BY MR. KOHN:

16 Q Do you know where any of them
17 physically reside?

18 A No.

19 MR. MARGOLIS: Same objections.

20 BY MR. KOHN:

21 Q Has the company produced that?

22 MR. MARGOLIS: Same objections.

1 MR. KOHN: I'm asking you.

2 MR. MARGOLIS: Well, I believe we
3 would have to go back and check. I think that
4 you have made a particular document request
5 which we've responded to by searching for
6 responsive information. But if we're going to
7 have a discussion about discovery, I suggest
8 we do it outside of the record here for a
9 witness in a deposition.

10 BY MR. KOHN:

11 Q During the course of the COBC
12 investigation, were the mirror images of
13 various individual's computers obtained?

14 MR. MARGOLIS: Objection, outside
15 of the scope of the topics for which he's been
16 designated. I'll allow Mr. Heinrich to answer
17 the question if he knows the answer.

18 THE WITNESS: I don't know.

19 BY MR. KOHN:

20 Q Who would know the answer to that
21 question?

22 MR. MARGOLIS: Same objections.

1 Objection to form.

2 THE WITNESS: I'm not sure. I'd
3 have to look in the files and see if there is
4 a notation or any kind of comment about it, or
5 if we have to ask somebody in the IT
6 Department.

7 BY MR. KOHN:

8 Q To your knowledge, did anyone
9 review the contents of Mr. Barko's computer?

10 MR. MARGOLIS: Objection to the
11 form of the question. Objection, outside the
12 scope of the topics for which he's been
13 designated.

14 THE WITNESS: I don't know.

15 MR. KOHN: Who would know the
16 answer to that?

17 MR. MARGOLIS: Same objections.

18 THE WITNESS: I'd have to ask
19 somebody in the IT Department.

20 BY MR. KOHN:

21 Q If you would look at Exhibit 1,
22 the Notice of Deposition.

1 If you would look at page 6,
2 number W which says, any investigation of Mr.
3 Barko while he was employed at KBR including
4 any investigation that led to the seizure of
5 Mr. Barko's laptop computer. Did you
6 investigate why Mr. Barko's computer had been
7 seized?

8 MR. MARGOLIS: Objection as to the
9 form, foundation. You can answer if you
10 understand it.

11 THE WITNESS: I'm not sure what you
12 mean by seize. We don't have any indication
13 that his computer was seized.

14 BY MR. KOHN:

15 Q Taken without his knowledge that
16 it was being removed for purpose of making a
17 mirrored copy?

18 A Did we do an investigation of
19 that?

20 Q Is that - is making a mirror copy
21 of an employee's computer part of your
22 investigative processes?

1 MR. MARGOLIS: Objection as to the
2 form of the question. You can answer if you
3 understand it.

4 THE WITNESS: Not with Mr. Barko.

5 MR. KOHN: With whom?

6 MR. MARGOLIS: Objection. You can
7 answer the extent to which your response will
8 not divulge attorney-client privilege or
9 attorney work product information.

10 THE WITNESS: There could be times
11 that we seize an employee's computer in the
12 course of an investigation without their
13 knowledge, but this - we never did it with
14 Barko.

15 BY MR. KOHN:

16 Q Did you inquire whether any other
17 entities within KBR outside of yourself and
18 the COBC had initiated any form of inquiry or
19 investigation into Mr. Barko?

20 A No.

21 Q And do you know why, in fact, Mr.
22 Barko's laptop computer was, without Mr.

1 Barko's knowledge, duplicated?

2 MR. MARGOLIS: Objection to the
3 form, foundation for the question. You can
4 answer if you understand it.

5 THE WITNESS: No, I don't know,
6 other than it was our standard practice to
7 image people's computers periodically.

8 MR. KOHN: How did that practice
9 work?

10 MR. MARGOLIS: Objection in terms
11 of it's outside the topics for which Mr.
12 Heinrich has been designated to appear.

13 THE WITNESS: Sometimes it would be
14 done in a remote location depending on where
15 the individual was. The imaging would be done
16 remotely. Sometimes it would be taken by just
17 taking the computer and imaging it there.

18 BY MR. KOHN:

19 Q And were the employees told that
20 their computers were being imaged, their
21 laptops?

22 A Not individually.

1 Q Who would be told?

2 A It was a general statement made to
3 the program that people's computers were being
4 imaged.

5 Q Have you ever searched through the
6 databases where employee's computers have been
7 imaged?

8 MR. MARGOLIS: Objection as outside
9 of the scope of the topics for which Mr.
10 Heinrich has been designated. Also object to
11 the form of the question, foundation that
12 you're answering. Otherwise, you may answer
13 the question, Mr. Heinrich.

14 THE WITNESS: Are you asking if I
15 personally have, or has the company?

16 BY MR. KOHN:

17 Q Have you directed anyone to search
18 that database?

19 A Barko's database?

20 Q No, the database where these
21 mirrored computer images reside.

22 A We have searched them for various

1 - looking for various documents.

2 Q Were such searches conducted
3 during the course of the COBC investigations
4 identified in letter B?

5 MR. MARGOLIS: I'm going to object.
6 I will instruct the witness not to answer.

7 MR. KOHN: What is the basis of the
8 objection?

9 MR. MARGOLIS: Attorney-client
10 privilege and work product.

11 MR. KOHN: Was anyone disciplined
12 as a result of the COBC investigation?

13 MR. MARGOLIS: I'll allow you to
14 answer that question. It's fine.

15 THE WITNESS: No.

16 MR. KOHN: What was the basis of
17 that - how was that decision made?

18 MR. MARGOLIS: Objection. Instruct
19 the witness not to answer on the grounds of
20 attorney-client privilege and attorney work
21 product.

22 MR. KOHN: So, if I understand it,

1 the results are not privileged but the basis
2 for the results are privileged. Is that what
3 I understand?

4 MR. MARGOLIS: Well, that's a
5 question for me. I'm going to allow Mr.
6 Heinrich to answer questions as to what the
7 company did or did not do following that
8 investigation, but I'm not going to allow him
9 to answer questions that would the reveal the
10 mental processes or communications or conduct
11 that took place during the course of
12 investigation.

13 MR. KOHN: What employees were the
14 subject of the COBC investigations?

15 MR. MARGOLIS: Are you asking - in
16 order to know whether or not I need to object
17 I need to understand as to which employees or
18 what matters you're inquiring about.

19 MR. KOHN: With respect to the Iraq
20 B site location during 2003 through 2005,
21 which employees were the subject of a COBC
22 investigation?

1 MR. MARGOLIS: I'm going to object
2 and instruct the witness not to answer that on
3 the grounds of attorney-client privilege and
4 attorney work product. I'll also note that
5 it's well beyond the scope of the topics for
6 which Mr. Heinrich has been designated to
7 appear.

8 MR. KOHN: Are COBC investigations
9 to be conducted with blinders or are you
10 supposed to go where the evidence takes you?

11 MR. MARGOLIS: Objection; beyond
12 the scope of the topics for which Mr. Heinrich
13 has been designated to appear. In addition, I
14 object to the form of the question. You can
15 answer if you understand.

16 THE WITNESS: I'm not sure I
17 understand what you're saying.

18 MR. KOHN: If a COBC investigation
19 comes in limited to one person and one issue,
20 and during the course of the investigation the
21 investigator stumbles upon other issues, what
22 is the process that happens during the course

1 of that COBC investigation?

2 MR. MARGOLIS: Object, beyond -

3 MR. KOHN: Is it limited to the
4 original one, or is it expanded?

5 MR. MARGOLIS: Objection, beyond
6 the scope of the topics for which Mr. Heinrich
7 has been designated to appear. I also object
8 to the form. You can answer if you understand
9 it.

10 THE WITNESS: The investigator
11 would contact me and say, in the course of my
12 investigation I've been alerted to whatever
13 the issue is, what do you want me to do with
14 this? At that point, I would generally
15 instruct them to continue on with the original
16 one and add in the new allegation and see what
17 that - if there's any reality to it.

18 MR. KOHN: Were you advised that
19 Mr. Barko was informing the investigator that
20 he had additional allegations?

21 MR. MARGOLIS: Objection. I will
22 instruct the witness not to answer on the

1 grounds of attorney-client privilege and
2 attorney work product.

3 MR. KOHN: Was Mr. Barko
4 interviewed during the course of the COBC
5 investigation?

6 MR. MARGOLIS: The record reflects,
7 and I believe Mr. Barko has already testified
8 in his own deposition that he was interviewed.
9 If there's going to be any issue or argument
10 later made by you that, by answering this
11 question we waive attorney/client privilege,
12 I'm going to instruct him to answer. If we can
13 agree that you're going to agree that by
14 answering that question, we're not waiving
15 privilege, I will allow him to answer.

16 MR. KOHN: We're not agreeing to
17 anything with respect to waiver or non-waiver
18 of an issue.

19 MR. MARGOLIS: Then I'm going to
20 instruct Mr. Heinrich not to answer whether or
21 not any witness was interviewed over the
22 course of the investigation on the grounds of

1 attorney-client privilege and attorney work
2 product.

3 (Whereupon, a document was marked
4 as Heinrich 3 for identification.)

5 BY MR. KOHN:

6 Q I'll show you a document that's
7 been marked as Heinrich 3. Earlier in your
8 testimony you mentioned reviewing the
9 Privilege Log. Is this the document you were
10 referring to?

11 A Yes.

12 Q And there's various people's names
13 appearing in this document. Ron Allen: who is
14 he?

15 A He was - well, he still is a
16 lawyer but he used to work for KBR.

17 Q And what was his role in
18 determining appropriate discipline in cases of
19 misconduct?

20 A He was assigned to our Baghdad
21 office and he was the attorney that I
22 coordinated with in the project office over

1 there.

2 Q Michael Hatch: who is he?

3 A He's an attorney, used to be with
4 KBR, was Ron Allen's predecessor.

5 Q And did he also play a role in
6 determining the appropriate discipline in
7 cases of misconduct?

8 A I would consult with him at times,
9 too.

10 Q Who was Michael Peck?

11 A He's also an attorney. He used to
12 be with KBR, and he was Ron Allen's successor.

13 Q Did he have - was he involved in
14 determining appropriate disciplinary action to
15 take?

16 A I would consult with him at times,
17 too, yes.

18 Q Did you have a reporting
19 relationship with Richard Mize?

20 A He was a fellow lawyer. I did not
21 report to him.

22 Q Was he above you in the

1 organization or below you, the same level?

2 A Equal.

3 Q And did you consult with him about
4 whether misconduct had occurred?

5 A At times, yes.

6 Q Did he supervise or direct the
7 work you performed with respect to the COBC
8 investigations?

9 A I had a responsibility to report
10 back to him on COBC matters, so yes.

11 Q And who is Richard Chapman?

12 A Another Halliburton lawyer. He
13 worked in the department for Richard Mize.

14 Q Was he assigned to the COBC?

15 A He was - he and Mize had the COBC
16 department.

17 Q Mize was the head of the
18 department?

19 A Mize was the Director, and he
20 reported to Mize.

21 Q Any discussions with Mr. Chapman
22 concerning whether misconduct had occurred?

1 A At times I would consult with him.

2 Q Was he involved in discussions
3 pertaining to potential disciplinary action?

4 A At times, yes.

5 Q Who is Kimberly Mullins?

6 A She was also - she's a KBR
7 attorney, and she was the first Director of
8 the COBC Program for KBR.

9 Q What involvement did she have in
10 the COBC investigations that are identified in
11 letter V of the Notice of Depositions?

12 A When we did the separation from
13 Halliburton, she inherited the history of all
14 of the KBR-related COBC matters. She spent
15 time with Richard Mize during the transition,
16 and then she was one that took over the
17 department.

18 Q You and Mr. Mize stayed with
19 Halliburton?

20 A Yes.

21 Q When is the last time you
22 communicated with Mr. Mize concerning these

1 COBC investigations?

2 A I don't know. Years ago.

3 Q When did Kimberly Mullins take
4 over for Mr. Mize?

5 A At the time of the separation.
6 And like I said, they did a transition some
7 time before that, but she officially took over
8 when we separated from Halliburton.

9 Q Can you give me an approximate
10 date?

11 A I think it was 2008-2009.

12 Q Who is Judy Vandiver?

13 A Vandiver. She was a secretary in
14 the department.

15 Q Which department?

16 A The COBC Group.

17 Q What role did she play in the COBC
18 Group?

19 A She was the one that organized all
20 of the files, made sure that the documents
21 were put in and properly stored and so forth,
22 anything that Richard tasked her to do.

1 Q Whose job was it to make the final
2 determination whether disciplinary action of
3 some sort should be taken?

4 MR. MARGOLIS: Object, it's beyond
5 the scope of the topics for which Mr. Heinrich
6 has been designated. You can answer if you
7 understand the question.

8 THE WITNESS: The ones that I
9 handled, I would make a determination as to
10 what I thought the discipline needed to be. I
11 would then take it to the officer of the group
12 and explain what the situation was, and then
13 advise that I thought, you know, whatever
14 discipline was appropriate. We would then
15 discuss it. The officer of the group would
16 then direct the individuals in his group to
17 carry out the discipline.

18 BY MR. KOHN:

19 Q Were the officers of the group
20 provided with any portions of the
21 investigative report?

22 A I may share that with them, I may

1 not.

2 Q I'm sorry?

3 A I may or may not share it with
4 them.

5 Q Depending on what?

6 A Depending on -

7 MR. MARGOLIS: Same objections in
8 terms of outside of the scope of the topics on
9 Mr. Heinrich has been designated to appear,
10 but you can answer.

11 THE WITNESS: Depending on if I
12 thought it was necessary for them to see it.

13 (Whereupon, a document was marked
14 as Heinrich 4 for identification.)

15 BY MR. KOHN:

16 Q I'm showing you an exhibit marked
17 as Heinrich 4.

18 MR. MARGOLIS: Don't we already
19 have a Heinrich 4? No. What are we up to?

20 THE WITNESS: Yes, I thought we had
21 a Heinrich 4 here.

22 MR. MARGOLIS: I thought Hadcock 4

1 and Heinrich 4 were made the same exhibit.

2 MR. KOHN: Yes. Do you have 5?

3 THE WITNESS: Well, I don't know.

4 They both look to be marked 4.

5 MR. MARGOLIS: Yes, didn't you mark
6 the -

7 MS. MARTIN: I think they were
8 using Hadcock 4.

9 MR. MARGOLIS: That was Hadcock 4,
10 yes.

11 MS. MARTIN: It's being marked -

12 MR. MARGOLIS: Okay, that's fine.
13 So, we'll make this Heinrich 4 and we'll refer
14 to the other document as Hadcock 4.

15 BY MR. KOHN:

16 Q Do you recall seeing this document
17 before?

18 A Yes.

19 Q Who prepared this document?

20 A There was a third party service
21 that would answer the phone and take the
22 report.

1 Q It identifies that Mr. Covelli
2 repeatedly called in. Were you aware of his
3 repeated attempts to call into the compliance
4 reporting system?

5 MR. MARGOLIS: I'm going to object
6 and instruct the witness not answer on the
7 grounds of attorney-client privilege and
8 attorney work product.

9 THE WITNESS: I would have -

10 MR. MARGOLIS: No, I've instructed
11 you not to answer, Mr. Heinrich.

12 THE WITNESS: Okay.

13 BY MR. KOHN:

14 Q So, you have this document.

15 Correct?

16 MR. MARGOLIS: Are you asking
17 whether he's holding the document now or are
18 you asking about whether he had it in -

19 MR. KOHN: You had it when it was
20 - this TIPS document was - was it handed to
21 you as - in its current form?

22 MR. MARGOLIS: When?

1 MR. KOHN: When it was created in
2 2004.

3 MR. MARGOLIS: I'm going to object
4 and instruct the witness not to answer on the
5 grounds of attorney-client privilege and
6 attorney-client communications.

7 MR. KOHN: Was Mr. Covelli ever
8 contacted?

9 MR. MARGOLIS: Objection. I'm going
10 to instruct the witness not to answer on the
11 grounds of attorney-client privilege, attorney
12 work product.

13 MR. KOHN: Is there a procedure in
14 place that requires individuals who file
15 Ethics and Compliance reports under the COBC
16 to be contacted by someone in the COBC office?

17 MR. MARGOLIS: Object as outside
18 the scope of the topics on which Mr. Heinrich
19 has been designated to appear. I also object
20 to the form of the question, but otherwise you
21 can answer.

22 THE WITNESS: No.

1 MR. KOHN: Was it your practice to
2 contact individuals who file COBC TIPS?

3 MR. MARGOLIS: I'm going to object
4 to the form of the question. I'm going to
5 object, as well, as to -- that the question is
6 outside of the scope of the topics for which
7 Mr. Heinrich has been designated to appear on
8 behalf of KBR.

9 BY MR. KOHN:

10 Q Answer the question?

11 A We did contact them at times, and
12 at times we didn't.

13 Q What would be the basis for
14 deciding whether or not to contact an
15 individual?

16 MR. MARGOLIS: Same objections,
17 outside of the scope of the topics for which
18 Mr. Heinrich has been designated to appear.
19 Also, I will object to the form of the
20 question. Also, I will ask the witness to
21 answer only to the extent he can do so without
22 disclosing attorney-client privileged

1 communications or attorney work product.

2 THE WITNESS: Well, sometimes these
3 complaints were done anonymously and we
4 wouldn't contact anybody then. And if there
5 was enough information in the complaint, and
6 we understood what it was about, felt we could
7 proceed otherwise, we wouldn't contact them.

8 BY MR. KOHN:

9 Q Are you saying it was the practice
10 that if someone contacted the TIPS program,
11 provided their contact information, their name
12 and return phone number and gave a generalized
13 but not specific enough description, you would
14 not call them back?

15 MR. MARGOLIS: Objection,
16 mischaracterizes what he testified to. It's
17 outside of the scope of the topics on which he
18 was designated to appear. Also object to the
19 form of the question.

20 THE WITNESS: No, what I said was
21 if - we look at it on a case by case basis,
22 and if there is a need to contact them back in

1 order to get clarifications or additional
2 information, we would. That was on a case by
3 case basis.

4 MR. KOHN: Was a CBOC investigation
5 initiated with respect to Heinrich 4?

6 MR. MARGOLIS: Objection. Instruct
7 the witness not to answer on the grounds of
8 attorney-client privilege and attorney work
9 product.

10 MR. KOHN: If there was no
11 investigation, then there's no privilege. I'm
12 not sure what - I'm asking him was there
13 investigation with respect to receipt of this
14 TIPS?

15 MR. MARGOLIS: I'll allow you to
16 answer that question with a simple yes or no.

17 THE WITNESS: Yes.

18 MR. KOHN: Who conducted the
19 investigation?

20 MR. MARGOLIS: I'll allow you to
21 answer that question, Mr. Heinrich.

22 THE WITNESS: It would have been

1 one of the investigators. I think it was
2 Irving.

3 MR. KOHN: Do you know whether or
4 not Mr. Covelli was contacted during the
5 course of the investigation?

6 MR. MARGOLIS: Object on the
7 grounds of attorney-client privilege and
8 attorney work product. Instruct the witness
9 not to answer.

10 MR. KOHN: I'm at a loss to
11 understand how - whether an individual who is
12 no longer employed with the company was
13 contacted is a privilege. That's a fact. I'm
14 not asking what the discussion was. I'm asking
15 if he was contacted.

16 MR. MARGOLIS: Just asking about
17 the mere fact as to whether there was a
18 contact?

19 MR. KOHN: Yes.

20 MR. MARGOLIS: I will allow Mr.
21 Heinrich to answer that question.

22 THE WITNESS: I don't know.

1 BY MR. KOHN:

2 Q Who would have the answer to that
3 question?

4 A It would be in the COBC files.

5 Q I understand that you have access
6 to those files and reviewed them prior to your
7 testimony. Correct?

8 A I didn't memorize them.

9 COURT REPORTER: Would you speak
10 up, please?

11 THE WITNESS: I didn't memorize
12 them.

13 MR. KOHN: Why don't we go off the
14 record and I'll allow you to reacquaint
15 yourself to answer the question?

16 MR. MARGOLIS: Well, I'm only going
17 to do that - what I'm not going to have us do
18 is have him look at the file and then later on
19 say he used the file to refresh his
20 recollection and therefore you're entitled to
21 get it. So, I will allow him to do that to
22 answer this question but only on the grounds

1 that we're stipulating that by so doing, we're
2 not going to have an argument that he's waived
3 attorney-client privilege or attorney work
4 product. If you can't agree to that, then I'm
5 not going to allow him to do it. It's up to
6 you.

7 MR. COLAPINTO: Let's take a break
8 and go off the record.

9 (Whereupon, the above-entitled
10 matter went off the record at 3:05 p.m. and
11 resumed at 3:18 p.m.)

12 MR. COLAPINTO: I can answer your
13 question. We're not going to agree to, if he
14 had looked at it, it wouldn't waive the
15 privilege. So you can make your decision what
16 to do on that, which I assume will be he won't
17 look at it. You won't take a break to refresh
18 his recollection in the deposition on that.

19 MR. MARGOLIS: No, we both took an
20 opportunity to do some work over the break.
21 So we've reconsidered. We've also reviewed
22 authority. Who an attorney interviews in the

1 course of an investigation, revealing that
2 information would reveal attorney work product
3 and, therefore, still instruct the witness not
4 to answer on the grounds of attorney-client
5 privilege.

6 MR. COLAPINTO: Just one more
7 comment with respect to, my understanding is,
8 from the witness' testimony earlier, that he
9 reviewed the CBOC investigative reports prior
10 to coming here today.

11 MR. MARGOLIS: Well, yes, but we
12 would not concede that it was for the purpose
13 of refreshing recollection so that he could
14 testify because we have always consistently
15 taken the position that those reports are
16 subject to the company's attorney-client
17 privilege and attorney work product.

18 MR. COLAPINTO: But he did review
19 them for the purpose of coming here today, so
20 our position is that those should be produced
21 and we would ask that they be produced. But,
22 obviously, you're not going to agree to that.

1 MR. MARGOLIS: Correct.

2 MR. COLAPINTO: And we probably
3 have to go to court --

4 MR. MARGOLIS: Well, we're also
5 not going to concede that he reviewed it for
6 the purpose of his testimony here today.

7 MR. COLAPINTO: Well, I'll turn it
8 back to Mike. Go ahead.

9 BY MR. KOHN:

10 Q Did you have any discussions with
11 Ms. Ritondale concerning her testimony?

12 A What testimony?

13 Q The testimony she gave in this
14 proceeding.

15 A Did I have discussions with her
16 when? Before or after --

17 Q Before, before.

18 A Yes.

19 Q Okay. Did you provide her with
20 documents?

21 A I don't recall. I don't know. I
22 don't recall.

1 Q Can you tell me your discussions
2 with Ms. Ritondale?

3 MR. MARGOLIS: Object on the
4 grounds of attorney-client privilege. I'll
5 instruct the witness not to answer.

6 BY MR. KOHN:

7 Q What was the reason of your
8 meeting with Ms. Ritondale prior to her
9 testifying?

10 MR. MARGOLIS: If you can answer
11 the question without revealing attorney-client
12 privileged communication or attorney work
13 product, I will allow you to answer. But I
14 also object to the form of the question.

15 THE WITNESS: She called me.

16 BY MR. KOHN:

17 Q It's my recollection from her
18 deposition she spoke with you to obtain
19 information for the purposes of testifying; is
20 that true?

21 MS. MARTIN: Objection,
22 foundation.

1 THE WITNESS: I don't know. Is
2 that what she testified to?

3 MR. KOHN: That's my recollection.

4 MR. MARGOLIS: Well, you know,
5 this witness can testify to what he recalls.
6 It's obviously well outside the scope of the
7 question, which he's been designated to appear
8 as a corporate representative. So with that
9 caveat, you can answer as to what you recall,
10 if you can do so without divulging attorney-
11 client privilege or attorney work product.

12 THE WITNESS: I don't know. She
13 called me. That's all I know.

14 BY MR. KOHN:

15 Q Did she tell you the purpose of
16 her call?

17 A I don't know. She may have. I
18 don't remember.

19 Q Can you tell me what topics you
20 discussed with Ms. Ritondale?

21 MR. MARGOLIS: Well, I'll allow
22 you to answer generally as to the subject

1 matter of the conversation.

2 THE WITNESS: I think she, I think
3 she wanted to discuss some of the operations
4 of the COBC program.

5 BY MR. KOHN:

6 Q Would you want to discuss the
7 subject matter of letter S appearing in the
8 notice of deposition?

9 MR. MARGOLIS: He'll try to answer
10 to the extent that he recalls.

11 THE WITNESS: We may have
12 mentioned that in the conversation. I don't
13 know.

14 BY MR. KOHN:

15 Q Was anyone else present during the
16 conversation?

17 A It was on the telephone, so not on
18 my end. I'm not aware of anyone.

19 Q How long did the communication
20 last?

21 A Not very long. Ten minutes maybe.

22 Q When did the conversation occur?

1 A I don't recall.

2 Q Did you take any notes during the
3 conversation?

4 A (No verbal response.)

5 Q Do you provide investigators a
6 script
7 to follow when they're going to ask questions
8 in the field?

9 MR. MARGOLIS: Objection, beyond
10 the scope of the topics for which Mr. Heinrich
11 has been designated to appear. I also object
12 to the form of the question. You can answer.

13 BY MR. KOHN:

14 Q And the question is with respect
15 to COBC investigation.

16 A Do I provide any script?

17 Q Yes.

18 A No.

19 Q What do you do to tell them, what
20 directions do you give them?

21 MR. MARGOLIS: Objection, beyond
22 the scope of the topics for which he's been

1 designated to appear. I object to the form
2 and also instruct the witness to answer only
3 to the extent that he can do so without
4 divulging attorney-client privilege or
5 attorney work product.

6 THE WITNESS: I give them the tip,
7 explain we need to find out what's going on
8 here. To the extent that they have a question
9 about it, if I can answer it, I answer it.
10 But, as a practical matter, these are all
11 experienced investigators, and they do their
12 investigation.

13 BY MR. KOHN:

14 Q Then the investigative reports
15 come back to you?

16 A Yes.

17 Q And what is the, do you anticipate
18 hearing anything prior to getting the
19 investigative reports back?

20 MR. MARGOLIS: Objection, outside
21 of the scope of the topics designation.
22 Object to the form of the question.

1 Otherwise, you may answer.

2 THE WITNESS: Sometimes, sometimes
3 not, depending on how complex the
4 investigation becomes.

5 BY MR. KOHN:

6 Q I'll show you a document marked as
7 Heinrich Number 5.

8 (Whereupon, the above-referred to
9 document was marked as Heinrich
10 Exhibit No. 5 for identification.)

11 BY MR. KOHN:

12 Q Do you recall seeing this document
13 before?

14 A Yes.

15 Q Did this come in through the COBC
16 program?

17 A I believe it did, and that's why
18 it has Richard and my stamp on it.

19 Q Did Mr. Mize give this document to
20 you?

21 A I don't recall.

22 Q Do you recall whether you had

1 responsibility for following up with this
2 document?

3 MR. MARGOLIS: Object to the form
4 of the question. You can answer it if you
5 understand it.

6 THE WITNESS: I don't, I don't
7 recall Mize having given it to me, so I don't
8 recall what, if I had any obligation to do
9 something with it. I'm not sure who gave it
10 to me.

11 BY MR. KOHN:

12 Q Do you recall the COBC program
13 forwarding this onto an investigator?

14 MR. MARGOLIS: Object. I'll
15 instruct the witness not to answer on the
16 grounds of attorney-client privilege and
17 attorney work product.

18 MR. KOHN: His forwarding this
19 document to investigators is privileged?

20 MR. MARGOLIS: We don't need to
21 argue about it. I object and --

22 MR. KOHN: Just making sure I

1 understand what your objection --

2 MR. MARGOLIS: -- instruct the
3 witness not to answer. Whether or not
4 documents are reviewed by counsel is certainly
5 attorney work product, and I'm going to
6 instruct the witness not to answer. In
7 addition, there's likely attorney-client
8 privilege issues.

9 MR. KOHN: Well, I guess it's been
10 waived because you produced it so --

11 MR. MARGOLIS: No. You actually
12 agreed, sir, as you know, in a letter
13 agreement that you were not, we are not
14 waiving any privilege by your acceptance of
15 these documents. That is a document, sir,
16 that you signed. So we're not even going to
17 go there. There has been no waiver. We have
18 an agreement that there's been no waiver, and
19 we can proceed, please.

20 MR. KOHN: Okay.

21 BY MR. KOHN:

22 Q Can you tell me how your handling

1 of Heinrich 4 would be different than your
2 handling of Heinrich Number 5?

3 MR. MARGOLIS: No, we can't. I'm
4 going to instruct the witness not to answer on
5 the grounds of attorney-client privilege and
6 attorney work product.

7 MR. KOHN: Well, he's already
8 answered on 4, so why is he not answering on
9 5?

10 MR. MARGOLIS: I'm not sure I
11 understand what the word "handling" means and
12 how it's handled different. So he's not going
13 to disclose anything that could implicate
14 attorney work product. Frankly, in light of
15 the fact that, although we had a signed
16 agreement about waiver, you're now making
17 allegations that certain things were waived by
18 the productions of documents. So Mr. Heinrich
19 is not going to be answering questions as to
20 how documents were handled that were part of
21 the COBC investigation.

22 BY MR. KOHN:

1 Q All right. But you've already
2 testified that number 4 was given to an
3 investigator, correct?

4 A I don't know. Did I testify to
5 that?

6 Q You can't remember?

7 MR. MARGOLIS: Sir, we don't need
8 to have an argument about what's in the record
9 and what's not in the record. I am not going
10 to allow the witness to answer questions about
11 how that document was handled.

12 BY MR. KOHN:

13 Q Was this tip identified Heinrich
14 Number 5 investigated?

15 A Yes.

16 Q Who was responsible for conducting
17 the investigation?

18 MR. MARGOLIS: I will allow you to
19 answer that question.

20 THE WITNESS: The same
21 investigator, Irving.

22 BY MR. KOHN:

1 Q Did anyone associated with the
2 COBC investigation understand that Mr. Gerlach
3 was being, was going to be terminated?

4 MR. MARGOLIS: Objection. I'm
5 going to instruct the witness not to answer on
6 the grounds of attorney-client privilege and
7 attorney work product and also object to the
8 form of the question.

9 BY MR. KOHN:

10 Q Was anyone associated with the
11 COBC involved with the decision to request
12 that Mr. Gerlach resign?

13 MR. MARGOLIS: Same objection.
14 I'm going to instruct the witness not to
15 answer.

16 BY MR. KOHN:

17 Q Do you consider disciplinary
18 action legal or a business action?

19 MR. MARGOLIS: You're asking for
20 Mr. Heinrich's personal position that's
21 outside of the scope --

22 MR. KOHN: I'll withdraw the

1 question.

2 MR. MARGOLIS: Okay.

3 BY MR. KOHN:

4 Q Who within the COBC process was
5 involved with or was consulted regarding the
6 business decision to allow Mr. Gerlach to
7 resign or request that he resign?

8 MR. MARGOLIS: Object to the form
9 of the question. I also object on the grounds
10 that it is beyond the scope of topics on which
11 he was designated and also assumes facts not
12 in evidence. Mr. Heinrich, if you understand,
13 you can answer.

14 THE WITNESS: Nobody in the COBC
15 process was consulted on the separation of Mr.
16 Gerlach.

17 BY MR. KOHN:

18 Q How did you come to learn that Mr.
19 Gerlach had been separated?

20 A I don't really recall.

21 Q I'll show you a document I'm
22 marking as Heinrich Exhibit 6.

1 (Whereupon, the above-referred to
2 document was marked as Heinrich
3 Exhibit No. 6 for identification.)

4 BY MR. KOHN:

5 Q All right. Do you recall seeing
6 this document before?

7 A Yes, it's the same one you just
8 gave me as Exhibit 5.

9 MR. MARGOLIS: Do you want him to
10 show you Exhibit 5?

11 MR. KOHN: Exhibit 6.

12 BY MR. KOHN:

13 Q Do you know who the employee who
14 wrote Exhibit 5 or Exhibit 6 is?

15 A Do I know who the employee is that
16 typed that?

17 Q Do you know who the employee who
18 raised the allegations? Did your
19 investigation identify who that employee was?

20 MR. MARGOLIS: Objection. I'm
21 going to instruct the witness not to answer on
22 the grounds of attorney-client privilege and

1 attorney work product.

2 BY MR. KOHN:

3 Q A document marked as Heinrich 7, I
4 believe.

5 (Whereupon, the above-referred to
6 document was marked as Heinrich
7 Exhibit No. 7 for identification.)

8 BY MR. KOHN:

9 Q Have you seen this document
10 before?

11 A Yes.

12 Q Was this document provided to an
13 investigator?

14 MR. MARGOLIS: Objection. I
15 instruct the witness not to answer on the
16 grounds of attorney-client privilege and work
17 product.

18 BY MR. KOHN:

19 Q Was this document investigated?
20 Were the allegations contained in the document
21 investigated?

22 MR. MARGOLIS: I'll allow the

1 witness to answer.

2 THE WITNESS: Yes.

3 BY MR. KOHN:

4 Q Who's Remo Butler?

5 A Remo Butler is a retired Army two-
6 star, three-star. He was a, he operated in
7 the operations group, maybe a project manager
8 or something for us in Iraq.

9 Q Does Mr. Butler know the identity
10 of this individual?

11 MR. MARGOLIS: Objection, lack of
12 foundation. You can answer to the extent to
13 which by so doing you do not reveal attorney-
14 client privilege or work product.

15 THE WITNESS: I don't know.

16 BY MR. KOHN:

17 Q The blacked out communication on
18 the front on top, do you know who that would
19 be to or from?

20 MR. MARGOLIS: Outside of the
21 scope for which he's been designated.

22 THE WITNESS: No.

1 BY MR. KOHN:

2 Q The blacked out communications at
3 the end of the document, do you know who
4 prepared, who that would be to or from?

5 MR. MARGOLIS: Which is the
6 question? Who prepared it or who is it to or
7 from?

8 MR. KOHN: I think they're getting
9 to the same point, who would have written or
10 responded to, who would have wrote the
11 information in the blacked-out section.

12 THE WITNESS: I don't know.

13 BY MR. KOHN:

14 Q Does Mr. Butler still work for
15 KBR?

16 A No.

17 Q Do you know how the email to Mr.
18 Butler from, the email communications
19 identified in number 7 to and from Mr. Butler
20 ended up in the COBC office?

21 A I don't recall.

22 Q Was this tip subject to

1 investigation?

2 A Yes.

3 Q And who would have investigated
4 it?

5 A I don't know.

6 Q I'm going to show you a document
7 marked as Heinrich Number 8.

8 (Whereupon, the above-referred to
9 document was marked as Heinrich
10 Exhibit No. 8 for identification.)

11 BY MR. KOHN:

12 Q Do you recall seeing this tip
13 before?

14 A Yes.

15 Q Was it investigated?

16 A Yes.

17 Q Who conducted the investigation?

18 A Irving.

19 Q I'll give you the document I am
20 marking as Heinrich Number 9.

21 (Whereupon, the above-referred to
22 document was marked as Heinrich

1 Exhibit No. 9 for identification.)

2 BY MR. KOHN:

3 Q Have you seen this tip before?

4 A Yes. Yes, I have.

5 Q Was it subject to a COBC
6 investigation?

7 A Yes.

8 Q Who investigated it?

9 A Same guy, Irving.

10 Q I'm going to show you what's been
11 marked as Heinrich Exhibit 10.

12 (Whereupon, the above-referred to
13 document was marked as Heinrich
14 Exhibit No. 10 for
15 identification.)

16 BY MR. KOHN:

17 Q This document was very recently
18 produced to us. Do you recall when you first
19 saw this one?

20 A I still think it may have been
21 Monday.

22 Q Was this tip investigated?

1 A Yes.

2 Q Who investigated it?

3 A Same guy.

4 Q The name?

5 A Irving.

6 Q Is there a reason this document
7 was not identified before the investigation
8 and was unidentified in the privileged log?

9 MR. MARGOLIS: Are you asking -- I
10 can answer. When this report was first looked
11 at, if you see under the address, it indicates
12 site D1, not B1. So it was inadvertently
13 missed in the first review. We subsequently
14 identified that, notwithstanding the site that
15 it's coded as D1, is the site that actually
16 relates to the site that's the subject of this
17 lawsuit, which is why we produced it to you.
18 If it's necessary, if you'd like us to, we can
19 obviously supplement the privilege log and
20 provide you with another privilege log that
21 has the solicit on it with respect to the
22 investigation.

1 BY MR. KOHN:

2 Q How many investigative reports did
3 Mr. Irving prepare?

4 MR. MARGOLIS: With respect to
5 what? I'm sorry.

6 MR. KOHN: To the COBC
7 investigations pertaining to Mr. Gerlach or
8 D&P.

9 THE WITNESS: I believe there may
10 have been three of them.

11 BY MR. KOHN:

12 Q So if I misstated, there was not a
13 separate investigative report with respect to
14 each of the tips?

15 A Some of the tips were combined
16 into a single report, yes.

17 Q Who were the reports sent to?

18 A Me.

19 Q And who else was copied on these
20 reports?

21 A Me. They were marked attorney-
22 client privilege, sent to me, and I dealt with

1 them with Richard Mize.

2 Q What role does the compliance and
3 audit department play with respect to
4 violations of the COBC?

5 MR. MARGOLIS: I'm going to ask
6 the witness to wait one moment. I'll object
7 to the extent that it's outside the scope of
8 the topics for which Mr. Heinrich has been
9 designated. I also object to the form of the
10 question. You may answer if you understand
11 it.

12 THE WITNESS: When you say
13 compliance department, what department are you
14 talking about?

15 BY MR. KOHN:

16 Q KBR has a compliance and auditing
17 department, correct?

18 A An auditing department. It has an
19 internal audit department, yes.

20 Q Okay. And it has some form of
21 compliance department?

22 A Well, that's what I'm trying to

1 figure out from you. What do you mean by
2 that?

3 Q In order to ensure that KBR's
4 contracting activities with the government is,
5 complies with various regulations and rules,
6 is there a department that looks at compliance
7 with respect to that aspect of KBR's business?

8 A There is what we call a government
9 compliance group, and we have a procurement
10 compliance group, so --

11 Q Okay. So what role does the
12 government compliance group or the procurement
13 compliance group play with respect to the COBC
14 investigations?

15 MR. MARGOLIS: I just ask for
16 clarification? I'm just trying to understand
17 the terms. Are you're talking about the COBC
18 investigations with respect to Mr. Gerlach and
19 partners, or are you speaking more generally?

20 MR. KOHN: Generally.

21 MR. MARGOLIS: It's, again,
22 outside the scope of the matters for which Mr.

1 Heinrich has been designated to appear today.
2 To the extent you understand the question, you
3 may answer it.

4 THE WITNESS: On a case-by-case
5 basis, we would ask for individuals out of
6 procurement compliance or government
7 compliance to assist the investigator in
8 reviewing documents and possibly providing
9 explanations of what a process should be. So
10 they would be the subject matter expert.

11 BY MR. KOHN:

12 Q Auditing and compliance has a
13 separate obligation, do they not, to ensure
14 that procedures have been complied with?

15 MR. MARGOLIS: Objection, outside
16 of the subjects for which Mr. Heinrich has
17 been designated to appear today. Objection to
18 the form of the question. You may answer it
19 if you understand it.

20 THE WITNESS: They have audit
21 functions that they will go out and
22 periodically do audits within their scope of

1 their -- whether they're government compliance
2 or procurement or internal audit, they will do
3 audits periodically, yes.

4 BY MR. KOHN:

5 Q Isn't there a responsibility that
6 they audit the operation of the COBC?

7 MR. MARGOLIS: Objection, outside
8 of the scope of the topics in which Mr.
9 Heinrich has been designated to appear. I
10 also object to the form of the question. You
11 may answer if you understand it.

12 THE WITNESS: Internal audit will
13 occasionally audit the COBC program.

14 BY MR. KOHN:

15 Q Was there any form of internal
16 audit of the COBC program concerning any of
17 the tips that we've looked at today?

18 MR. MARGOLIS: Objection, outside
19 of the scope of the designation for Mr.
20 Heinrich. I also object to the form of the
21 question. Subject to that, Mr. Heinrich can
22 answer it if he understands it.

1 THE WITNESS: I don't know.

2 BY MR. KOHN:

3 Q Do the internal, did the COBC
4 findings go to any of the compliance or
5 auditing departments?

6 MR. MARGOLIS: Outside of the --
7 excuse me just one moment. I'll object on the
8 grounds that the question is outside of the
9 scope of the matters for which Mr. Heinrich
10 has been designated to appear. I also object
11 to the form of the question. You may answer
12 it if you understand it.

13 THE WITNESS: Are you asking if we
14 send them the reports to review or something?

15 BY MR. KOHN:

16 Q Are they notified that the
17 investigation has happened, that it's been
18 completed, that they've seen the report?
19 Anything along those lines.

20 MR. MARGOLIS: Objection, compound
21 question. Object to the form. Same
22 objections, as well, as to the scope

1 designations.

2 THE WITNESS: Not as a standard
3 practice, no.

4 BY MR. KOHN:

5 Q What would be the unstandard
6 practice?

7 MR. MARGOLIS: Objection, form of
8 the question. Objection as to the question
9 being outside the scope of the topics for
10 which he's been designated to appear. You may
11 answer if you understand it.

12 THE WITNESS: If it involved one
13 of their employees and we were recommending
14 disciplinary action, then we would talk to
15 somebody in that group.

16 BY MR. KOHN:

17 Q So your testimony is the auditing
18 department and the compliance department are
19 separate from the COBC, and they are not
20 provided with the COBC findings of wrongdoing
21 has occurred?

22 MR. MARGOLIS: Object to the form

1 of the question. It misstates Mr. Heinrich's
2 testimony. It's also outside the scope of the
3 topics of which Mr. Heinrich's been designated
4 to appear. If you understand the question,
5 you may answer it.

6 THE WITNESS: Not as a standard
7 practice, no.

8 BY MR. KOHN:

9 Q During the COBC process, if it was
10 determined that the government had been
11 mischarged, what would be the internal process
12 the company would take?

13 MR. MARGOLIS: Object to the form
14 of the question, also object that it calls for
15 testimony outside the scope of his
16 designations. Otherwise, if you understand
17 the question, you may answer.

18 THE WITNESS: If I made a
19 determination that an overcharge had occurred,
20 I would contact somebody in the government
21 compliance group, explain to them what the
22 situation was, why I believe we overcharged,

1 ask them to coordinate with the accounting and
2 the operations people to confirm what the
3 overcharged amount was, and to then issue a
4 credit for it.

5 BY MR. KOHN:

6 Q What is the compliance and
7 auditing function's role to ensure that the
8 COBC process is functioning according to COBC
9 policy?

10 MR. MARGOLIS: Object again as to
11 the question being beyond the scope of the
12 topics on which Mr. Heinrich has been
13 designated to appear. If you understand it,
14 you can answer.

15 THE WITNESS: They have no other
16 role than as an employee, unless we make a
17 request that they become involved in a
18 particular investigation. But short of that,
19 they don't have a role in the COBC, other than
20 as an employee.

21 BY MR. KOHN:

22 Q Back to the COBC, we looked at

1 page nine and it said such procedures shall
2 provide for obtaining legal advice. Who had
3 the responsibility for auditing and compliance
4 with those procedures?

5 MR. MARGOLIS: Is that a question,
6 sir?

7 MR. KOHN: Yes.

8 MR. MARGOLIS: What's the
9 question?

10 MR. KOHN: Who within KBR or
11 Halliburton or in relevant time period had
12 responsibility for ensuring compliance that
13 procedures were in place?

14 MR. MARGOLIS: Outside of the
15 scope of the -- I'll object. It's outside of
16 the scope of the topics for which Mr.
17 Heinrich's been designated. Also, I object to
18 the form of the question. Mr. Heinrich, if
19 you understand it, you may answer.

20 THE WITNESS: I don't know.

21 BY MR. KOHN:

22 Q Under page ten, number five, it

1 says the Policy Committee shall take
2 reasonable steps to monitor compliance with
3 the Code of Business Conduct, including the
4 establishment of monitoring and auditing
5 systems that are reasonably designed to detect
6 conduct and violation of the Code of Business
7 Conduct by directive employees and agents of
8 the company. Do you see that?

9 A Yes.

10 Q Are you aware of any steps taken
11 to monitor or audit compliance of the Code of
12 Business Conduct?

13 MR. MARGOLIS: Once again, we'll
14 object. It's beyond the scope of the topics
15 for which Mr. Heinrich was designated to
16 appear today. I also object to the form of
17 the question. Mr. Heinrich, if you understand
18 it, you may answer.

19 THE WITNESS: I don't know.

20 BY MR. KOHN:

21 Q Have any of the activities you've
22 undertaken or been involved with with respect

1 to the COBC been subject to any form of audit
2 or compliance activity?

3 MR. MARGOLIS: Objection, it's
4 beyond the scope of the topics for which Mr.
5 Heinrich was called to testify today. I also
6 object to the form of the question. If you
7 understand it, you may answer.

8 THE WITNESS: You mean if these
9 matters involved Barko or just in general?

10 MR. KOHN: In general.

11 THE WITNESS: I don't know. It
12 may have audited the COBC department I worked
13 with Richard Mize. I don't know.

14 MR. KOHN: Let's go off the
15 record.

16 (Whereupon, the above-entitled
17 matter went off the record at 4:03 p.m. and
18 resumed at 4:11 p.m.)

19 MR. KOHN: Back on the record.

20 BY MR. KOHN:

21 Q I believe you wanted to clarify an
22 answer.

1 A Yes. When you had asked me before
2 about whether or not the COBC program had been
3 subjected to an audit by internal audit, I was
4 focusing on the period during the Halliburton
5 ownership of KBR. I don't know during that
6 period if that occurred. Subsequent to the
7 separation from Halliburton, KBR's program has
8 been audited by KBR's internal audit
9 department and it did include engaging outside
10 counsel as help in looking at the program.
11 But that occurred after the separation, so I
12 did want to make sure that we understand what
13 the difference is there.

14 MR. MARGOLIS: And just to note
15 again, this is from Mr. Heinrich's personal
16 recollection, as this was not an area on which
17 he was educated to appear as a witness on
18 behalf of KBR today or the scope of his
19 designation.

20 BY MR. KOHN:

21 Q You testified that reports that
22 were prepared by Mr. Irving were transmitted

1 to you and then you gave them to Mr. Mize,
2 correct?

3 A Yes, I would have provided Mize a
4 copy.

5 Q What did Mr. Mize do with them?

6 MR. MARGOLIS: Objection. I'll
7 instruct the witness not to answer on the
8 grounds of attorney-client privilege and
9 attorney work product.

10 BY MR. KOHN:

11 Q Do you know who Mr. Mize shared
12 the reports with?

13 MR. MARGOLIS: Same objection. I
14 instruct him not to answer.

15 BY MR. KOHN:

16 Q Can you identify who in the
17 company reviewed the reports?

18 MR. MARGOLIS: Same objection.
19 I'm going to instruct the witness not to
20 answer.

21 BY MR. KOHN:

22 Q What was the purpose of the

1 reports?

2 MR. MARGOLIS: I will allow Mr.
3 Heinrich to answer that question.

4 THE WITNESS: I'm not sure I
5 understand your question. The purpose of the
6 investigative reports? Is that what you're
7 asking?

8 MR. KOHN: I withdraw the
9 question.

10 BY MR. KOHN:

11 Q Did the investigative reports
12 contain factual information?

13 MR. MARGOLIS: I'm going to object
14 and instruct the witness not to answer on the
15 grounds of attorney-client privilege and
16 attorney work product.

17 BY MR. KOHN:

18 Q Were you provided with factual
19 information concerning the investigations that
20 were undertaken?

21 MR. MARGOLIS: Objection. I'm
22 going to instruct the witness not to answer

1 since his answer would call for revealing
2 attorney work product and attorney-client
3 privileges. Unless you're asking Mr. Heinrich
4 whether he has personal percipient knowledge
5 of what transpired, I would let him answer
6 that if he gained it outside of attorney-
7 client privilege, but I don't think that's
8 what you're asking. Do you want him to answer
9 that question?

10 BY MR. KOHN:

11 Q Did Mr. Irving obtain witness
12 statements?

13 MR. MARGOLIS: I will allow Mr.
14 Heinrich to answer that question.

15 THE WITNESS: Yes.

16 BY MR. KOHN:

17 Q Did you review the witness
18 statements?

19 MR. MARGOLIS: I will allow Mr.
20 Heinrich to answer that question.

21 THE WITNESS: Yes.

22 BY MR. KOHN:

1 Q Did anyone else review the witness
2 statements?

3 MR. MARGOLIS: Objection as to
4 lack of foundation. I will allow the witness
5 to answer, if he can do so without revealing
6 attorney-client privilege or attorney work
7 product information such as to whom the
8 reports and the witness statements were sent.
9 Can you do that, Mr. Heinrich?

10 THE WITNESS: No.

11 BY MR. KOHN:

12 Q Were the witness statements
13 signed?

14 MR. MARGOLIS: I'll allow Mr.
15 Heinrich to answer that.

16 THE WITNESS: Yes.

17 BY MR. KOHN:

18 Q Where were the witness statements
19 stored?

20 MR. MARGOLIS: I'll allow Mr.
21 Heinrich to answer that, as well.

22 THE WITNESS: The COBC files, the

1 investigative reports are filed in Houston in
2 a locked room in locked file cabinets.

3 BY MR. KOHN:

4 Q How did the reports get to
5 Houston?

6 A Electronically.

7 Q Where are those electronic files
8 stored?

9 A I don't know.

10 Q Who has access to those electronic
11 files?

12 A I don't know for sure.

13 Q Who has reviewed those electronic
14 files?

15 MR. MARGOLIS: Objection. If you
16 can answer the question without revealing
17 attorney-client communication or attorney work
18 product, you may answer, if you have the
19 foundation to do so.

20 THE WITNESS: Let me make sure I
21 understand what you're saying. When you say
22 reviewed the electronic files, you mean went

1 onto the computer and looked at them, or what
2 do you mean by reviewing it?

3 BY MR. KOHN:

4 Q Anyone who would have had --

5 A Access to Irving's computer?

6 Q Who these files were sent to. So
7 they were sent to you electronically?

8 A Let me think about that. I think
9 I got a hard copy.

10 Q So do you know who the electronic
11 files were sent to?

12 A I don't know that they were sent
13 to anyone.

14 Q Are you saying that you may have
15 only received hard copies?

16 A That's what I received, yes, a
17 hard copy.

18 Q But it's your understanding that
19 they were transmitted electronically and then
20 printed out in hard copy for you; is that what
21 you're saying?

22 A They were printed out and sent to

1 me.

2 Q They were printed out in Iraq and
3 sent to you?

4 A I don't know.

5 Q Did you ever personally meet with
6 Mr. Irving during the course of the
7 investigation prior to these reports being
8 transmitted to you?

9 A I don't recall.

10 Q Do you recall speaking with Mr.
11 Irving concerning -- how many times, from the
12 time you forwarded the tips to Mr. Irving
13 until the reports were issued, do you recall
14 speaking with Mr. Irving?

15 MR. MARGOLIS: The witness just
16 testified he doesn't recall. He doesn't know
17 whether he spoke to Mr. Irving.

18 THE WITNESS: I don't know. I
19 don't remember.

20 BY MR. KOHN:

21 Q Do you recall having any phone
22 communications with Mr. Irving?

1 A No, I don't recall.

2 Q From the time the tips were sent
3 for investigation until the investigation
4 report was issued, can you tell me the
5 individuals you recall speaking to pertaining
6 to that investigation?

7 MR. MARGOLIS: I'm going to object
8 and instruct the witness not to answer under
9 attorney-client privilege and attorney work
10 product.

11 BY MR. KOHN:

12 Q Have you ever met Mr. Irving?

13 A I'm not sure. I may have.

14 Q Did the reports include physical
15 documents? Copies of emails, copies of
16 documents?

17 MR. MARGOLIS: I'm going to
18 instruct the witness not to answer on the
19 grounds of attorney-client privilege and
20 attorney work product. I will additionally
21 represent that all responsive documents that
22 are not privileged were produced, regardless

1 of whether they were attached to a report, in
2 discovery.

3 BY MR. KOHN:

4 Q Did you wish you had any
5 communication to Mr. Irving as to how he
6 should proceed with the investigations?

7 MR. MARGOLIS: Objection. I'm
8 going to instruct the witness not to answer
9 under attorney-client privilege and attorney
10 work product.

11 BY MR. KOHN:

12 Q Do you recall having any email
13 communication with Mr. Irving?

14 MR. MARGOLIS: I'll allow the
15 witness to answer.

16 THE WITNESS: Yes, I did.

17 BY MR. KOHN:

18 Q How many such email
19 communications?

20 A I don't really recall.

21 Q Are those email communications
22 identified in the privileged log? If you'd

1 like, we can go off the record. I'm going to
2 go off the record while you're reviewing.

3 (Whereupon, the above-entitled
4 matter went off the record at 4:23 p.m. and
5 resumed at 4:25 p.m.)

6 MR. KOHN. Back on the record.
7 All right. We'll allow the privilege log to
8 speak for itself.

9 MR. MARGOLIS: Thank you.

10 BY MR. KOHN:

11 Q I ask you, on the privilege log on
12 page 4, number 11, it says, "Via William
13 Rice."

14 A Okay.

15 Q Who is William Rice?

16 A Chip Rice was the Security Manager
17 at one point for all of the security
18 operations in Iraq.

19 Q So if I understand, with respect
20 to the internal investigative reports, they
21 didn't come directly to you, they went to Mr.
22 Rice first?

1 A It would have been to Rice, then
2 to me.

3 MR. KOHN: No further questions.

4 MR. MARGOLIS: I will have some
5 questions for Mr. Heinrich. I understand
6 you're -- well, Zach, are you going to have
7 some questions? Are you going to have
8 questions?

9 MR. KRUG: Maybe.

10 MR. MARGOLIS: You may or may not.
11 Okay. So why don't you go ahead and --

12 MR. KRUG: I may or may not.

13 MR. MARGOLIS: Okay.

14 MR. KRUG: Why don't you do your
15 followup, and then if I --

16 MR. MARGOLIS: All right. Fine.
17 Just give me five minutes, and then we can go
18 ahead and go back on the record.

19 (Whereupon, the above-entitled matter
20 went off the record at 4:27 p.m. and resumed
21 at 4:38 p.m.)

22 MR. MARGOLIS: Let's go

1 on the record.

2 CROSS-EXAMINATION

3 BY MR. MARGOLIS:

4 Q So, Mr. Heinrich, I'm Craig
5 Margolis. And, as you know, I represent KBR
6 in this litigation.

7 I'd like to ask you whether or not
8 you are aware that Mr. Barko has filed a
9 motion to compel seeking production of the
10 COBC documents indicated on the privilege log
11 in this litigation. Are you aware of that?

12 A I am aware of that.

13 Q And have you had an opportunity to
14 review their motion to compel?

15 A Yes.

16 Q So we are going to -- do you know
17 whether or not KBR considers the COBC
18 investigation records to be subject to its
19 attorney-client privilege?

20 MR. KOHN: Objection. Beyond the
21 scope of this deposition. If you want to
22 conduct a deposition with respect to

1 responding to a motion to compel, we'll do it
2 on your own dime, not on this deposition
3 record.

4 MR. MARGOLIS: I can answer --
5 this witness is here, and I am allowed, just
6 as you were, to ask him questions outside the
7 scope of the designations, and I am going to
8 ask him these questions, sir. You don't
9 dictate what I am going to ask -- questions of
10 witnesses who appear.

11 You asked him several questions
12 designed to try to determine whether or not
13 the Code of Business Conduct investigation is
14 privileged, and I am going to ask questions
15 establishing that they are.

16 BY MR. MARGOLIS:

17 Q So, Mr. Heinrich, can you
18 please answer my question?

19 A Can you ask it again?

20 Q Sure. Do you know whether or not
21 KBR and, before KBR was severed, Halliburton
22 considers the Code of Business Conduct

1 investigations to be privileged?

2 MR. KOHN: Objection. Leading and
3 calls for a legal conclusion.

4 BY MR. MARGOLIS:

5 Q You can answer.

6 A Yes. We consider them to be
7 privileged.

8 Q Let's back up, and I'm going to
9 ask you a little bit of background about
10 yourself, sir. You are a lawyer, is that
11 correct?

12 A That's correct.

13 Q How long have you been a lawyer at
14 Kellogg Brown & Root?

15 A Since 1987.

16 Q Was it called KBR at that time?

17 A No. It was just Brown & Root when
18 I was originally hired.

19 Q At that time, was Brown & Root
20 owned by Halliburton?

21 A Yes.

22 Q What were you hired to do?

1 A The company was starting up a
2 government contracting group, and I was
3 brought in with a cadre of folks to staff the
4 management of that unit. I handled the legal
5 issues and the government accounting issues,
6 and there are other people that handled other
7 facets of it.

8 Q At the time that you joined, did
9 Halliburton have a Code of Business Conduct?

10 A No.

11 Q Were you asked to consult in that
12 regard?

13 A I was -- I brought up the issue
14 originally to management of Brown & Root in
15 the late '80s and told them that if we were
16 going to proceed to do government work we
17 needed to have a Code of Business Conduct,
18 that in fact there was a big investigation
19 here in D.C., Operation Elwyn, and the Packard
20 Commission that came out of it and their
21 recommendations for government contractors.
22 And so we needed to be at the forefront of

1 that.

2 Q At the time, was it required by
3 law, to your knowledge, for a government
4 contractor to have a compliance program?

5 A No.

6 Q Did you assist Halliburton and KBR
7 in developing a compliance program?

8 A Yes. I went and collected the
9 code of conduct programs from several other
10 companies and reviewed them with another
11 attorney in the company. We drafted our own.
12 Each -- everybody kind of attacks the same
13 issues, and it's just a matter of, do we want
14 to do it in a chitchat fashion or a very
15 legalistic fashion or somewhere in between.
16 And so we undertook to draft the first ones,
17 pass it around management, took the input and
18 discussed it and its application throughout
19 all of Brown & Root. So that was the first
20 one that was eventually adopted by Brown &
21 Root.

22 Q Do you recall approximately when

1 that was?

2 A It would have been in -- somewhere
3 around 1989, '90, somewhere around there.

4 Q From the inception of the Code of
5 Business Conduct originally in 1989 or '90
6 until today, has the Code of Business Conduct
7 Program always been led by Director of Code of
8 Business Conduct?

9 A It was always assigned to the Law
10 Department, and an attorney headed up the
11 program, yes.

12 Q And has the Director of the Code
13 of Business Conduct always been a lawyer?

14 A Yes.

15 Q Now, there has been some
16 references, as you saw earlier today, in the
17 Halliburton Code of Business Conduct in 2003
18 to a Policy Committee. Do you recall that?

19 A Yes.

20 Q Does the General Counsel -- well,
21 excuse me, back in 2003 -- I want to make sure
22 that we get the time periods accurately here

1 -- back in 2003, was the General Counsel of
2 Halliburton a member of the Policy Committee?

3 A Yes.

4 Q Do you know whether today the
5 General Counsel of KBR is a member of the
6 Policy Committee?

7 A He is.

8 Q Have you ever been the Director of
9 the Code of Business Conduct?

10 A I have not.

11 Q So what has been your role with
12 respect to Code of Business Conduct
13 investigations? And I'm going to narrow this
14 question somewhat to relate to investigations
15 relating to LOGCAP III.

16 A My role is that when there were
17 allegations of misconduct lodged, they would
18 come in either on the hotline, via mailbox,
19 sometimes up through management, sometimes
20 lodged directly with me. I would coordinate
21 with the Director of the COBC Program. We
22 would set up a file, log it in, every

1 allegation was logged, every allegation was
2 investigated. We would get the manager in the
3 Security Department have him assign a security
4 investigator to investigate the allegations.

5 If there were issues that arose
6 during the investigation, questions that the
7 investigator might have during the
8 investigation, the need for subject matter
9 experts, whatever it might be, that came up,
10 I would be the one that was consulted, talked
11 to the investigator or the security manager in
12 term of how to deal with the issue, and then
13 eventually, when the report was written, it
14 would be sent in to me to review.

15 Q And why did you review those
16 reports?

17 A Well, there was -- the underlying
18 issue here was whether or not there was a
19 violation of law or the creation of some legal
20 liability. And so I would look at them in
21 terms of, do we have some sort of liability
22 problem as a result of this? Do we have a

1 reporting responsibility to a government
2 agency or some other agency? And make a
3 determination and then talk with the senior
4 manager of the group that was responsible,
5 generally a VP, and explain what occurred and
6 what I thought we needed to do as a result of
7 it.

8 We would come to an agreement, and
9 then he would dictate to people in his
10 organizations the actual steps to get it done.

11 Q Did you consider these
12 communications your provision of legal advice
13 to KBR and Halliburton?

14 MR. KOHN: Objection. Calls for a
15 legal conclusion.

16 BY MR. MARGOLIS:

17 Q You may answer.

18 A Yes.

19 Q You mentioned reporting
20 obligations. At the inception of LOGCAP III,
21 what do you recall were reporting obligations,
22 if any, relating to discovery of potential

1 misconduct to -- and when I say "reporting
2 obligations," I mean to federal authorities.

3 A At the beginning of the contract,
4 we were primarily -- the contract clause that
5 really controlled it was the Anti-Kickback Act
6 clause, and it required us that if we had
7 reason -- reason to believe that a violation
8 of the Anti-Kickback Act had occurred, we had
9 an obligation to report it to in this case the
10 DoD IG.

11 MR. MARGOLIS: All right. And I'm
12 going to ask the Court Reporter to please mark
13 -- I'm sorry, just one second -- mark this as
14 our next exhibit, please. I'm just going to
15 indicate that that is highlighted, the copy
16 that I have provided to the Court Reporter.

17 MR. KOHN: Have you got a
18 highlighter handy?

19 MR. MARGOLIS: I do.

20 MR. KOHN: You know what? Just
21 for consistency, can we just keep it in
22 Heinrich, just -- I think in the Heinrich

1 order, because otherwise it is going to get I
2 think confusing for us. So whatever the next
3 number is and --

4 MR. MARGOLIS: It should be 11.

5 MR. KOHN: I think it's
6 Heinrich 11.

7 (Whereupon, the above-referred to
8 document was marked as Heinrich Deposition
9 Exhibit Number 11 for identification.)

10 BY MR. MARGOLIS:

11 Q So, Mr. Heinrich, are you looking
12 now at Exhibit 11?

13 A Yes.

14 Q Do you recognize it?

15 A Yes.

16 Q What is it?

17 A It is a Federal Acquisition
18 Regulation Clause 52.203-7, known as the Anti-
19 Kickback Act procedures.

20 Q Was 52.203-7 incorporated into the
21 LOGCAP III base contract between the
22 government and KBR?

1 A Yes.

2 Q And you see there is a portion
3 highlighted there. Do you see that?

4 A Yes.

5 Q And I believe it is 52.203-7(c)(2)
6 for the record, is that correct?

7 A That's correct.

8 Q And do you see there the source of
9 the reporting obligation you have just
10 described?

11 A Yes.

12 Q I'm going to read this, and you
13 let me know if I've read it correctly. "When
14 the contractor has reasonable grounds to
15 believe that a violation described in
16 paragraph B of this clause may have occurred,
17 the contractor shall promptly report in
18 writing the possible violation. Such report
19 shall be made to the Inspector General of the
20 contracting agency, the head of the
21 contracting agency if the agency does have an
22 Inspector General, or the Department of

1 Justice." Did I read that correctly?

2 A That's correct.

3 Q Did KBR adhere to that contract
4 clause?

5 A Yes, we did.

6 Q And were there instances where KBR
7 did make disclosures pursuant to this FAR
8 clause?

9 A Yes, we did.

10 Q And to what government official
11 did KBR make such disclosures?

12 A We reported it to the DoD IG.

13 Q And in each instance, did these
14 reports follow a COBC investigation?

15 A Yes.

16 Q Has KBR ever provided a COBC
17 investigation report itself to the Department
18 of Defense Inspector General or any other
19 government agency, to your knowledge?

20 A No, we have not.

21 Q Why not?

22 A Because it is attorney-client

1 privileged, and we have asserted that with the
2 IG and to the Justice Department.

3 Q Has KBR, nonetheless, cooperated
4 in any subsequent investigations launched by
5 the Department of Defense Inspector General or
6 the Department of Justice?

7 A Yes, we have.

8 Q How has it cooperated?

9 A Well, depending on the
10 investigation, we would provide access to
11 current employees; locations, to the extent we
12 knew them, of former employees that may have
13 knowledge of the matter; documents that, you
14 know, typically Justice or even the IG would
15 issue subpoenas; and to the extent that it was
16 not privileged material we would provide
17 documents.

18 Q Was this the only reporting
19 obligation that you're aware of that existed
20 at the time that the events at issue in this
21 case took place?

22 A Yes, that's correct.

1 Q And that would be within the,
2 roughly speaking, 2003 to 2005 timeframe,
3 right?

4 A That's correct.

5 Q Do you have a rough idea of
6 approximately how many COBC complaints are
7 logged with respect to LOGCAP III? And let's
8 just take it broadly from essentially the
9 inception of the war in Iraq in 2003 through
10 the approximate end of hostilities, if they
11 actually have ever ended, in 2009 or 2010?

12 A I mean, you're probably pushing up
13 to a thousand, maybe even more.

14 Q Were you able to personally
15 investigate each such allegation?

16 A Me?

17 Q Right.

18 A No.

19 Q Why not?

20 A I mean, well, you have
21 limitations. One is the sheer volume, number
22 one. But then you have the geographic issues

1 in terms of somebody needing to be in theater
2 and talk to people at various bases and camps
3 throughout Iraq. And that's why we have
4 multiple investigators in the country, and
5 they generally handle various regions because
6 transportation between sites was sometimes
7 difficult and sometimes very, very dangerous,
8 and so we limited their movement.

9 Q And what were, generally speaking,
10 the qualifications of those investigators?

11 A They all had criminal investigator
12 backgrounds. Some of them were retired
13 military CID types. We had -- for a couple of
14 instances we had former FBI. You had former
15 police officers, detectives, so it depends on
16 who you're talking about.

17 Q Were you available to consult with
18 questions and issues as they arose from the
19 investigators who were conducting these
20 investigations?

21 A Yes. Some of them would contact
22 me directly. Some would go through their

1 manager and raise the issues. But I consulted
2 with them either directly or through their
3 manager.

4 Q The COBC investigation reports,
5 would those include findings of investigations
6 typically?

7 A Yes.

8 Q Would it include, for example,
9 whether or not the investigation -- excuse me,
10 an allegation was substantiated or not
11 substantiated?

12 A It would produce, you know, the
13 facts that were related to it, and then, yes,
14 allow us to determine whether or not a
15 violation had occurred.

16 Q And, among other things, would
17 that information be used to determine whether
18 or not the company should make a disclosure
19 pursuant to the FAR clause that we just looked
20 at?

21 A Yes.

22 Q Were these reports and other

1 communications relating to COBC investigations
2 kept confidential?

3 A Oh, yeah.

4 Q How were they kept confidential?

5 A Well, the reports were handled by
6 the Director of the COBC Program, and they
7 were -- there was a room and it was locked up,
8 with file cabinets, and they were locked --
9 locked file cabinets in a locked room.

10 And they were only really
11 addressed and talked about with senior
12 managers that were going to be in a position
13 of having to make decisions in terms of,
14 depending on what the allegations were, did
15 you have disciplinary issues, did you have
16 weaknesses in the process, whatever the issue
17 might be. Somebody -- whoever the responsible
18 VP was for the program had to take ownership
19 and whatever -- do the discipline,
20 implement/modify the processes, whatever it
21 might be.

22 Q Could business managers or other

1 business persons obtain access to the COBC
2 reports or other confidential communications
3 freely?

4 A No.

5 Q What would they have to do in
6 order to obtain access to those reports?

7 A Well, they would have to come in
8 to either Mize or myself and ask for them.

9 Q So did the Legal Department
10 control access to these confidential
11 communications and reports?

12 A Absolutely.

13 Q Was the Code of Business Conduct
14 communicated to employees that were working
15 for Halliburton and KBR under LOGCAP III in
16 this timeframe that we've discussed, 2003 and
17 2005?

18 A Yes. They -- all of the new
19 recruits had training in Houston. Then they
20 had periodic training while they were
21 overseas, generally done -- computer-based.
22 A lot of the training in Houston was live, but

1 once they were overseas it was generally
2 computer-based, although it was at times
3 supplemented by some of the individuals from
4 our Government Compliance Group over there who
5 would also get live training. And then they
6 were given a -- like a summary brochure of the
7 Code of Business Conduct, and they were given
8 a copy of that to take with them.

9 Q Did you conduct some of this
10 training yourself?

11 A I did. In the early days, I did
12 some of the training in Houston, and I did a
13 couple of them in the very early days in Iraq
14 and Baghdad.

15 MR. MARGOLIS: Let me ask you to
16 please mark this next exhibit. I think it's
17 going to be Heinrich 12.

18 (Whereupon, the above-referred to
19 document was marked as Heinrich Deposition
20 Exhibit Number 12 for identification.)

21 BY MR. MARGOLIS:

22 Q Do you recognize this document,

1 Mr. Heinrich?

2 A Yes. It is the summary of the
3 Code of Business Conduct.

4 Q Is this the summary of the Code of
5 Business Conduct that is the summary of
6 Ritondale Exhibit 6 that was referred to
7 earlier in your deposition today?

8 A Yes.

9 Q And your testimony is that this
10 summary is actually provided as a hard copy to
11 all employees who deploy to Iraq or Kuwait --

12 A That is --

13 Q -- or other locations pursuant to
14 LOGCAP III?

15 A That's correct.

16 Q Do you see on the second page of
17 the summary -- and it's -- I'll mention the
18 Bates Number is at the bottom, 032197. Do you
19 have that page, Mr. Heinrich?

20 A I do.

21 Q Do you see it says General Policy
22 Regarding Laws and Business Conduct?

1 A Yes.

2 MR. KOHN: What page are you on?

3 THE WITNESS: It's Bates -- it's
4 page 2 of the summary, and it's Bates 32197.

5 BY MR. MARGOLIS:

6 Q And is there a sentence right up
7 top that explains what the code consists of?

8 A Well, actually, the first
9 sentence. "The Code of Business Conduct of
10 Halliburton Company consists of a policy
11 relating to the ethical and legal standards of
12 conduct to be followed by directors,
13 employees, and agents of the company, in the
14 conduct of its business."

15 Q Now, if you look at the very
16 bottom of this -- well, let me ask you, too,
17 other than the introductory letter by Mr.
18 Lazar, who was at the time the Chairman and
19 CEO of Halliburton, is this the first
20 substantive page of the summary?

21 A Yes.

22 Q Okay. And who does it ask -- who

1 does it -- to whom does it direct questions
2 should be referred if there are any questions
3 about the application of the policy? I'm
4 going to direct your attention there to the
5 bottom of page 2.

6 A Yes. The last sentence on that
7 same page we just talked about says, "If a
8 director, employee, or agent has any questions
9 about the policy summarized in this booklet,
10 he or she should contact the Law Department."

11 Q Now, typically, in business -- are
12 you familiar with the concept of various
13 elements of the business organization having
14 ownership of certain types of policies and
15 process documents?

16 A Oh, yes.

17 Q Okay. What organization within
18 Halliburton and KBR had ownership of this
19 policy and process document?

20 A The Law Department.

21 Q If you turn to starting on page 15
22 of the summary, and it's Bates Number 32210

1 through 32212. Do you have that, Mr.
2 Heinrich?

3 A I do.

4 Q This portion of the summary
5 relates to reporting of code violations, is
6 that correct?

7 A That's correct.

8 Q It provides various methods by
9 which employees can report code violations?

10 A That's right.

11 Q Or alleged code violations, as it
12 is referenced here?

13 A Yes.

14 Q Do you see that?

15 A Yes.

16 Q All right. There are a number of
17 different phone numbers relating to the ethics
18 helpline. Do you see that?

19 A Yes.

20 Q What is the ethics helpline, or
21 what was the ethics helpline?

22 A Any employee can pick up the phone

1 and dial the number and say, "Look, I've
2 observed," whatever it is, "I think something
3 is going on," or "I want to file this
4 complaint," and the phone is answered 24/7.
5 It is a third party answering service. They
6 have a form that they basically go through and
7 ask questions.

8 The individual can remain
9 anonymous, can provide a name, location,
10 whatever they want to do, and the answering
11 service puts down whatever information that
12 they provide, and then they pass it on to the
13 director of the code.

14 Q The director of the code is a
15 lawyer, is that correct?

16 A That is correct.

17 Q Do you have anybody else in the
18 first instance that a hotline or helpline tip
19 is communicated to, other than the Director of
20 the Code of Business Conduct?

21 A No.

22 Q You'll see there there's a list of

1 useful telephone numbers on page 17, which is
2 the last page of the summary, 32212. Do you
3 see that?

4 A Yes.

5 Q Just generally describe for us,
6 who are the -- whose telephone numbers are
7 listed here?

8 A Well, the Executive VP and General
9 Counsel for Halliburton, clearly a lawyer, and
10 then it has the Energy Services Group lawyer,
11 and it has the number for -- actually, in
12 those days it was Jim Lahmann, a lawyer from
13 Houston, and it has my number --

14 Q Let me just stop you for one
15 moment there. At the time that this summary
16 was written, this was a summary for the
17 overall Halliburton Code of Business Conduct,
18 correct?

19 A Right.

20 Q KBR, at that time, was a
21 subsidiary, wholly-owned by Halliburton, is
22 that right?

1 A That is correct.

2 Q So the Executive Vice President
3 and General Counsel listed there would be the
4 Executive Vice President and General Counsel
5 for Halliburton, correct?

6 A That's correct.

7 Q And so one of the lawyers working
8 under the Executive Vice President and General
9 Counsel for Halliburton would be the lead
10 lawyer for the Kellogg Brown & Root
11 subsidiary, is that right?

12 A That's right.

13 Q Is that Mr. Lahmann that you
14 referred to?

15 A Yes.

16 Q And then you see right under that,
17 Law Department, Houston, Texas (KBR Government
18 Operations). Do you see that?

19 A That's it.

20 Q Whose phone number is that?

21 A That is mine.

22 Q Did you report directly to Mr.

1 Lahmann at this time?

2 A I did.

3 Q At the bottom of the list you see
4 some phone numbers of folks who are not
5 lawyers, is that correct?

6 A That's right.

7 Q But these appear as the last five
8 entries on -- the very last entry says
9 Director of Business Conduct. Is that person
10 a lawyer?

11 A That person is a lawyer.

12 Q So on this long list here there
13 are four who are not lawyers, is that correct?

14 A That's correct.

15 Q Now, from time to time, is it
16 necessary in the course of a Code of Business
17 Conduct investigation to enlist the assistance
18 of outside subject matter experts? And when
19 I say "outside," I mean outside of the Law
20 Department, to assist in the investigation?

21 A Yes.

22 Q And, generally speaking, when

1 would that happen?

2 A Well, we would typically get hold
3 of the security manager, tell him we want an
4 investigation done of whatever the allegations
5 were. At that point, depending on the nature
6 of the investigation, if it was something very
7 technical, let's say about accounting process,
8 timekeeping process, we may have the
9 investigator work with somebody out of the
10 payroll group to understand what should be
11 done, so that when they find out what is being
12 done, do we have an issue or do we not? Okay?

13 The same way if you had a
14 procurement issue. We would frequently call
15 on the Procurement Compliance Group to assist
16 the investigator in looking at the subcontract
17 files, telling him if something looked out of
18 line, out of the ordinary, pointing out
19 discrepancies or saying, no, all of this can
20 be explained. So it falls into these
21 technical areas where you may have to call on
22 people that are really the subject matter

1 experts.

2 Q Would Procurement Compliance, for
3 example, invite itself to participate in a
4 COBC investigation?

5 A They wouldn't know it was going
6 on.

7 Q So how would they become involved
8 in a COBC investigation?

9 A Only if the lawyer approached them
10 with security and said, "Hey, look, I need
11 your help here."

12 Q Would Procurement Compliance then
13 be involved in Code of Business Conduct
14 investigations in the ordinary course of
15 business?

16 A No. Only when we needed specialty
17 help.

18 Q Are there instances in the
19 ordinary course of business that you're aware
20 of from your time at KBR where there will be
21 audits performed that aren't subject to a
22 company's attorney-client privilege or are not

1 related to the COBC Program?

2 A Yes.

3 Q And what type of audits are those?

4 A Those are typically -- they come
5 up you'll have people call the hotline that
6 it becomes a dumping ground for issues, and it
7 could be "I didn't get a pay raise," "I didn't
8 get the promotion I wanted or I deserved," or
9 whatever. And so the answering service takes
10 down the information, provides it in to, let's
11 say, Richard Mize in those days, and Richard
12 would look at this and say, "That's not a code
13 issue. It may be a management issue, but it's
14 not a code issue."

15 He would then assign it out.
16 Typically, it would go into the Employee
17 Relations Group and have them -- "Hey, look,
18 somebody is complaining that they didn't get
19 a raise or that they've -- the location that
20 they're at they don't like," and they'll work
21 with the manager and find out if there is an
22 issue.

1 Q Is a defense contractor --
2 switching gears slightly, let's say the
3 Defense Contract Audit Agency -- they from
4 time to time -- DCAA would initiate an audit
5 relating to the allowability of particular
6 costs for which KBR sought remittance, is that
7 right?

8 A Oh, yes.

9 Q And is there a group within KBR
10 that is tasked to conduct its own review and
11 respond to an audit?

12 A The Government Compliance Group is
13 the primary interface with DCAA. So when DCAA
14 starts into an audit, depending on the element
15 of the cost, they may also bring in
16 Procurement Compliance to assist them in
17 dealing with DCAA and trying to justify the
18 costs that we spent.

19 Q In the ordinary course of
20 business, are those reviews subject to the
21 company's attorney-client privilege?

22 A No. Most of the time, frankly, I

1 don't even know they're going on.

2 Q So under what circumstances would
3 the company consider those reviews subject to
4 the company's attorney-client privilege?

5 A Only if in the course of
6 responding to DCAA somebody in the process, in
7 Government Compliance or Procurement
8 Compliance, believed that there was something
9 wrong here and reported it then as not only a
10 DCAA response issue, but we think we've
11 uncovered a COBC problem here.

12 And so they would report it in,
13 and they could use the hotline, they could go
14 in -- you know, directly into the lawyers,
15 same process everybody else has. But they
16 would report it, then, as a COBC matter.

17 Q And are there also instances,
18 whether either in the course of litigation or
19 relating to a COBC matter, where the Law
20 Department would consult with Government
21 Compliance to assist on a particular issue?

22 A Sure. I mean, I've done it with

1 them a number of times. When you get into
2 issues, particularly things that involve
3 accounting type transactions and trying to
4 understand what the process should be and how
5 a transaction should be handled, and then
6 compare it to what was -- what was in fact
7 done.

8 Q In those circumstances, would the
9 company consider that work done by Government
10 Compliance in our example here subject to the
11 company's attorney-client privilege?

12 A Oh, yes.

13 Q And as well as its work-product
14 protection?

15 A Right. It would be no different
16 than when you have, you know, a security
17 investigator doing it.

18 Q Now, you testified a bit today
19 about procurement compliance. Do you recall
20 that?

21 A Right.

22 Q Are there instances from time to

1 time where, for example, questions may be
2 raised as to whether or not a particular
3 procurement adhered to either the Federal
4 Acquisition Regulation or KBR's procurement
5 policies or procedures?

6 A Right.

7 Q And what group would have sort of
8 front-line responsibility in reviewing those
9 matters?

10 A Well, that would typically involve
11 the security investigator, and then we would
12 bring in Procurement Compliance to provide
13 them with advice in terms of "Look, here is
14 what the allegation is. Here is what the
15 procurement file looks like. What am I
16 looking at? Walk me through this thing and
17 explain to me what I should be seeing here."

18 Q Are there also reviews that relate
19 to procurements that don't involve the Code of
20 Business Conduct investigation process?

21 A Oh, yeah. Well, I mean, that's
22 what the department is there for, to go out

1 and do audits periodically of, you know, the
2 procurement files, pull them at random, check
3 and see, make sure people are following the
4 process. But, I mean, they do those all the
5 time. We don't know anything about it.

6 Q All right. So to your knowledge,
7 does the company typically assert attorney-
8 client privilege or work-product protection
9 over work done with the Procurement Compliance
10 Group in the ordinary course of business?

11 A No.

12 Q There was some testimony today
13 about discipline. Do you recall that?

14 A Yes.

15 Q Are there instances where, as a
16 result of a Code of Business Conduct
17 investigation, that recommendations would be
18 made with respect to employee discipline?

19 A If we were to determine that a
20 violation of the code had occurred, we
21 automatically recommend termination. I talked
22 to the Vice President involved, explained what

1 had occurred, there was a violation there, I
2 explained why I believed it was a violation
3 and what the discipline was that I would
4 recommend.

5 Q In that instance, is an employee
6 permitted to resign without being terminated?

7 A No.

8 Q Now, there has also been a little
9 bit of testimony here today about the Security
10 Department investigators conducting interviews
11 of KBR employees. Do you recall that?

12 A Yes.

13 Q Do you know whether or not those
14 KBR employees, in the ordinary course, are
15 advised that the information that they are
16 providing is going to be provided to the Law
17 Department?

18 A Typically, they are required to
19 sign a confidentiality statement where they
20 agree that they will not discuss the interview
21 with anybody else, either in the company or
22 outside the company, in order to keep the

1 sanctity of the interview. And then that
2 agreement that they have signed, the
3 confidentiality agreement, is in fact labeled
4 at the top of it attorney-client privileged.

5 Q Well, we have two different
6 documents here. One is, I'm going to
7 represent to you -- it's not Bates numbered,
8 I'm going to represent to you that this is a
9 document that was produced to KBR by Mr. Barko
10 in this litigation.

11 Can I have this marked, please?
12 This will be 13.

13 (Whereupon, the above-referred to
14 document was marked as Heinrich Deposition
15 Exhibit Number 13 for identification.)

16 A Okay.

17 Q Mr. Heinrich, do you recognize
18 this document?

19 A I have seen it before, yes.

20 Q And this document appears to be a
21 statement by Mr. Barko that was given on
22 22 November 2004. Do you see that?

1 A Yes.

2 Q I'm going to represent to you that
3 there has been testimony in this case by Mr.
4 Barko that he signed this statement. Do you
5 see a marking on the top of this statement,
6 sir?

7 A Yes.

8 Q What does it say?

9 A Attorney-client privileged
10 information.

11 Q Now, you did testify just a moment
12 ago about a confidentiality statement,
13 providing a copy -- a redacted version of a
14 confidentiality statement.

15 I'd ask that this be marked as
16 Heinrich 14, please.

17 (Whereupon, the above-referred to
18 document was marked as Heinrich Deposition
19 Exhibit Number 14 for identification.)

20 A Okay.

21 Q Do you recognize this document?

22 A Yes. This is -- this is the

1 standard requirement for an employee going
2 through an interview to sign the
3 confidentiality and warning them not to
4 discuss the interview outside of the interview
5 itself.

6 Q All right. So you initially
7 testified a moment ago, without the document
8 in front of you, that it bore an attorney-
9 client privileged marker. Do you see that --

10 A Right. It does not.

11 Q It does not. Okay. But do you
12 see a reference in this confidentiality
13 statement to the KBR General Counsel?

14 A Yes, in the second paragraph.

15 Q And it states, "I understand that
16 in order to protect the integrity of this
17 review I am prohibited from discussing any
18 particulars regarding this interview and the
19 subject matter discussed during the interview
20 without the specific advance authorization of
21 KBR General Counsel." Did I read that
22 correctly?

1 A That's correct.

2 Q And do you recall whether there
3 were any requests that were made to
4 essentially waive the protections of this
5 confidentiality statement so that this
6 information could be shared?

7 A No, there weren't any.

8 Q Now, we've talked a little bit
9 about disclosures that have been made with
10 respect to the Anti-Kickback Act FAR clause.
11 Do you recall that?

12 A Yes.

13 Q Have there also been instances in
14 association with or in conjunction with such
15 disclosures that the company has offered
16 credits to the United States Army under the
17 LOGCAP III contract?

18 A Yes, we have.

19 Q And, generally speaking, what are
20 the circumstances under which that happen?

21 A Typically, if somebody had taken a
22 kickback, we had evidence of it or reason to

1 believe that it occurred, we would go ahead
2 and issue a credit for the amount of the
3 kickback or the bribe, and issue it as part of
4 our billing process to the government.

5 Q Now, I've permitted you testify
6 here today of the fact that certain hotline
7 complaints or tips relating to Mr. Gerlach and
8 Daoud & Partners were investigated pursuant to
9 the COBC Program, is that correct?

10 A That's correct.

11 Q And that there were reports of
12 investigation that were done relating to those
13 tips, is that correct?

14 A That's correct.

15 Q And those were assigned -- excuse
16 me, were sent to you. Is that correct?

17 A That's correct.

18 Q Now, you've testified that in
19 other instances where there were COBC
20 investigations those COBC investigations have
21 resulted in disclosures to the DoD IG pursuant
22 to the Anti-Kickback Act FAR clause, correct?

1 A That's correct.

2 Q And, in some instances, have
3 resulted in credits being offered to the
4 United States Government pursuant to the
5 LOGCAP contract, correct?

6 A Correct.

7 Q And as we have shown you earlier
8 today, the trigger under the FAR clause is
9 whether there is reasonable grounds to believe
10 that there has been a violation or disclosure,
11 is that correct?

12 A That's correct.

13 Q With respect to the matters that
14 we have testified about and that are indicated
15 on the privilege log, did KBR make a
16 disclosure to the Department of Defense
17 Inspector General that there was reasonable
18 grounds to believe that a kickback had been
19 paid or received?

20 A No.

21 Q Did KBR offer or tender any credit
22 to the United States Government relating to

1 the COBC investigations about which you have
2 -- well, excuse me, that are listed on the
3 privilege log and that there has been some
4 testimony about here today?

5 A No.

6 Q Give me one moment here, please.

7 (Pause.)

8 Now, before coming here today, did
9 you have an opportunity to review portions of
10 Mr. Gerlach's personnel file?

11 A Yes.

12 Q Did that personnel file indicate
13 whether or not he was permitted to resign?

14 A It did.

15 Q Was he permitted to resign?

16 A Yes.

17 Q Now, is there discipline that
18 occurs within KBR based on your knowledge of
19 the company that is not related to the Code of
20 Business Conduct investigations or reviews?
21 Or asked another way, all -- is all discipline
22 that is undertaken against any KBR employee

1 the result of a finding in COBC -- of a COBC
2 investigation or report that there has been a
3 violation?

4 A No. No. There is -- I mean, they
5 can amount to anything, but there are times
6 when a manager will just determine that an
7 employee is just not doing his job and have
8 them terminated. If they, you know, for any
9 reason think that they are just no longer
10 performing, they can do anything in terms of,
11 you know, giving a warning, giving an oral
12 consultation, all the way up to a termination.

13 Q Is loss of confidence a ground for
14 termination outside of a Code of Business
15 Conduct investigation, to your knowledge?

16 A It is.

17 Q Are the receipt of allegations
18 themselves sufficient to trigger a reporting
19 obligation under the Anti-Kickback Act FAR
20 clause?

21 A No.

22 MR. KOHN: Objection. Calls for a

1 legal conclusion.

2 BY MR. MARGOLIS:

3 Q Has it been KBR's position at any
4 time that the receipt of allegations
5 themselves are sufficient to constitute
6 reasonable grounds to believe that a violation
7 may have occurred, and, therefore, triggered
8 an Anti-Kickback Act disclosure?

9 A No.

10 MR. MARGOLIS: Give me one second,
11 please. We don't have any more -- excuse me,
12 further questions for Mr. Heinrich.

13 MR. KOHN: Does D&P have questions
14 at this time?

15 MR. KRUG: No. We do not have any
16 questions at this time. Thank you.

17 REDIRECT EXAMINATION

18 BY MR. KOHN:

19 Q How does an employee's termination
20 affect a COBC investigation?

21 MR. MARGOLIS: Object to the form
22 of the question. I'm also going to object

1 that, to the extent to which he is going to
2 testify, outside of the scope of the matters
3 for which it has been designated he is not
4 speaking for KBR.

5 With those caveats, you may
6 answer.

7 BY MR. KOHN:

8 Q A question -- the answers you gave
9 in response to KBR's counsel's questions, were
10 you speaking on behalf of KBR, or were you
11 speaking in your personal capacity?

12 A On behalf of KBR.

13 Q So on behalf of KBR, if a COBC
14 investigation is ongoing, and an employee is
15 terminated, what happens to the COBC
16 investigation? Does it terminate as well?

17 A It depends. It depends on what
18 the facts are -- if that was the only employee
19 involved, there may be other employees
20 involved. So it strictly depends on the
21 facts.

22 Q Was the investigation of Mr.

1 Gerlach terminated, the COBC investigation?

2 MR. MARGOLIS: The witness is
3 instructed not to answer on the grounds of
4 attorney-client privilege and attorney work
5 product.

6 BY MR. KOHN:

7 Q Did you investigate whether
8 kickbacks had been paid or received on behalf
9 of Mr. Gerlach?

10 MR. MARGOLIS: I'm sorry. Can you
11 ask the question again?

12 BY MR. KOHN:

13 Q Did you investigate whether a
14 kickback had been paid or received by Mr.
15 Gerlach?

16 MR. MARGOLIS: I'm not going to
17 permit the witness to answer that question on
18 the grounds of attorney-client privilege and
19 attorney work product. He has testified that
20 the tips that are already in the record were
21 the subject of a COBC investigation.

22 MR. KOHN: I believe you opened

1 this entire line up in your questioning. So
2 you are instructing him not -- that I can't
3 ask followup questions based on what you did?

4 MR. MARGOLIS: You can ask
5 followup questions. I don't believe it opened
6 it up. We don't need to have a debate about
7 it now.

8 I also wanted to note for the
9 record this -- we did not designate Mr.
10 Heinrich as a 30 -- I understand his answer.
11 We obviously did not designate Mr. Heinrich as
12 a 30(b)(6) witness. But to the extent to
13 which, in a subsequent battle with respect to
14 a motion to compel, Mr. Heinrich is a
15 declarant, I wanted to give -- to establish a
16 testimonial record that gives you the
17 opportunity to ask him questions with respect
18 to the matters that I've raised.

19 BY MR. KOHN:

20 Q You said you looked at Mr.
21 Gerlach's personnel file and saw that he was
22 permitted to resign. Why was he permitted to

1 resign?

2 MR. MARGOLIS: You can answer to
3 the extent you know.

4 THE WITNESS: I don't know.

5 BY MR. KOHN:

6 Q What is the coordination that is
7 done within the company, if an ongoing -- let
8 me rephrase it. Before an individual is
9 terminated or resigns, there is an HR process
10 that takes place, correct?

11 A Yes.

12 Q Okay. Who is responsible for
13 carrying out the HR process?

14 MR. MARGOLIS: Object to the form
15 of the question. You can answer if you
16 understand. I do have to -- unless -- well --

17 MR. KOHN: I'll rephrase the
18 question.

19 BY MR. KOHN:

20 Q Is there any communication between
21 the HR office and the COBC office about
22 whether or not an individual should be

1 terminated, or whether or not the COBC
2 investigation should go forward?

3 A It strictly depends on -- it's on
4 a case-by-case basis. I mean, you have people
5 quit every day and you don't contact COBC to
6 --

7 Q And when did you learn that Mr.
8 Gerlach had been terminated?

9 A Never.

10 Q When did you learn he had
11 resigned?

12 A Oh, I don't -- I don't recall.

13 Q Did you learn he had resigned
14 before or after the COBC investigations had
15 commenced?

16 MR. MARGOLIS: Mr. Kohn, can I --
17 I can either make a standing objection that
18 questions that are being asked are beyond the
19 scope of the designations, or I can object
20 question by question. I'm not trying to make
21 it more difficult for you.

22 MR. COLAPINTO: It's recross. I

1 mean, it's reasonable to --

2 MR. MARGOLIS: I understand, but I
3 just have to preserve it. So --

4 MR. COLAPINTO: Okay.

5 MR. MARGOLIS: -- do you want me
6 to preserve it question by question, or can we
7 just say there is a standing objection? It's
8 up to you.

9 MR. KOHN: You can have a standing
10 objection.

11 MR. MARGOLIS: Okay. That is just
12 going to make things easier. So unless -- the
13 extent to which it's within, you know, one of
14 the particular topic matters, I just don't
15 want to keep making the same objection every
16 time. Okay. Thank you.

17 BY MR. KOHN:

18 Q Did you learn that Mr. Gerlach had
19 resigned before or after you received the
20 investigative reports?

21 A I do not recall.

22 Q Was an investigative report issued

1 with respect to Mr. Gerlach?

2 A All the matters in the privilege
3 log had an investigative report done. Yes.
4 So it did involve Gerlach, yes.

5 Q What consultations were done with
6 HR with respect to Mr. Gerlach's resignation?

7 MR. MARGOLIS: Consultations by
8 whom, counsel?

9 MR. KOHN: By anyone, that you're
10 aware of.

11 MR. MARGOLIS: Object to the form
12 of the question.

13 THE WITNESS: I don't know.

14 MR. MARGOLIS: And foundation.

15 BY MR. KOHN:

16 Q Is HR advised that COBC
17 investigations are being undertaken?

18 MR. MARGOLIS: Object to the form
19 of the question.

20 THE WITNESS: Not typically when
21 they're -- when they're ongoing, no.

22 BY MR. KOHN:

1 Q How about when they are being
2 initiated?

3 A Not typically.

4 MR. MARGOLIS: Same objection.
5 You may answer.

6 BY MR. KOHN:

7 Q Have you met with anyone on the
8 Halliburton or KBR Board of Directors
9 pertaining to the scope of attorney-client
10 privilege under the COBC?

11 MR. MARGOLIS: I'll allow you to
12 answer.

13 THE WITNESS: I don't believe so.

14 BY MR. KOHN:

15 Q Have you received any direction
16 from any member of the Board of Directors or
17 the Policy Committee concerning the scope of
18 the attorney-client privilege under the COBC?

19 A Have I received what now?

20 Q Any direction.

21 A Direction. Okay. Yes. A member
22 of the Policy Committee is my boss, General

1 Counsel. So we have talked about privilege
2 and how to maintain it, yes.

3 Q With respect to the conduct of
4 business code identified as Exhibit 12, does
5 it state that investigation or any aspect of
6 the Code of Business Conduct is covered by the
7 attorney-client privilege?

8 A Does the summary say that?

9 Q Anywhere. Does the word
10 "attorney-client privilege" appear in the
11 document?

12 A I --

13 Q Are you aware of it appearing
14 anywhere in the document?

15 MR. MARGOLIS: I don't believe
16 he's trying to argue with you, sir. I think
17 he is just trying to clarify that that's the
18 summary and not the Code of Business Conduct.
19 If you're asking him whether it appears in the
20 summary, please, Mr. Heinrich, go ahead and
21 answers.

22 THE WITNESS: I don't believe it

1 does.

2 BY MR. KOHN:

3 Q Okay. Well, then, how about the
4 Code of Business Conduct, does it appear
5 anywhere in the Code of Business Conduct?

6 A I'm not aware of it.

7 Q And does it appear anywhere on
8 KBR's website that there is an expected
9 attorney-client privilege communication?

10 A I don't think so.

11 Q So with respect to the training,
12 is there -- withdraw that. I'll call your
13 attention to Heinrich Exhibit Number 14. Do
14 you have that in front of you?

15 A Yes.

16 Q Did this document come out of the
17 investigative files pertaining to this case?

18 A I believe it did.

19 Q Why wasn't Mr. Barko provided a
20 confidentiality statement?

21 MR. MARGOLIS: You know, objection.

22 We're -- assumes a fact most certainly not in

1 evidence. I'm also going to instruct the
2 witness not to answer if so by doing you are
3 going to reveal the existence of any documents
4 that are within the Code of Business Conduct
5 file.

6 MR. KOHN: So --

7 MR. MARGOLIS: You might want to
8 ask Mr. Barko if he signed such a statement.

9 BY MR. KOHN:

10 Q So this document appears, as
11 you're saying, in the Code of Business files,
12 pertaining to the investigations identified in
13 the privilege log?

14 A A form of this document is in
15 there, yes.

16 Q And is there a form of this
17 document signed by every person who was
18 interviewed?

19 MR. MARGOLIS: Objection. I'm not
20 going to allow the witness to answer as to
21 what was in or not in, other than generally
22 speaking what is in the Code of Business

1 Conduct file.

2 BY MR. KOHN:

3 Q When was this confidentiality
4 statement prepared?

5 MR. MARGOLIS: If you're referring
6 to the document generically --

7 BY MR. KOHN:

8 Q The generic document.

9 A Oh, I don't know.

10 Q Did you prepare it?

11 A No.

12 Q When did you first see it?

13 A The generic one?

14 Q Yes.

15 A Years ago. I don't remember
16 exactly when.

17 Q Who prepared it?

18 A I don't know for sure.

19 Q What was the purpose of preparing
20 it?

21 A I don't know, other than to lay
22 out exactly what it is. I suspect it was done

1 by Richard Mize.

2 Q Does the confidentiality statement
3 identify that the information being provided
4 by the witness was covered by the attorney-
5 client privilege?

6 A No. It does instruct the
7 individual that if they want to discuss it
8 they have to get KBR General Counsel approval.

9 Q And if I'm reading this correctly,
10 if the individual wants to discuss any of the
11 information they told to the investigator,
12 they would need to get the Legal Department to
13 privilege. Isn't that what it says?

14 A They are prohibited from
15 discussing any particulars regarding this
16 interview, and the -- and the subject matter
17 discussed in the interview.

18 Q Right. So if I called up a KBR
19 employee who had given an interview, and I was
20 asking them about what was -- not what was
21 discussed but just the underlying facts, under
22 this they wouldn't be allowed -- under

1 Heinrich Number 14, they wouldn't be allowed
2 to tell me that or they would be violating
3 this confidentiality statement, correct?

4 MR. MARGOLIS: It calls for a
5 legal conclusion.

6 THE WITNESS: When you say --

7 MR. MARGOLIS: Objection.

8 THE WITNESS: -- "you called up
9 the individual" --

10 MR. KOHN: Yes.

11 THE WITNESS: So you're just --
12 somebody calling employees at random?

13 BY MR. KOHN:

14 Q I'm calling an individual and
15 saying, "I have a question. Did Mr. Gerlach
16 accept a bribe?" If that was the subject
17 matter of their interview, could they provide
18 me the answer?

19 A They are not supposed to discuss
20 it unless they get the approval of KBR General
21 Counsel.

22 Q The reporting requirements under

1 the Code of Business Conduct also relates to
2 Securities and Exchange Commission violations,
3 doesn't it?

4 A Yes.

5 Q And it relates to violations that
6 shareholders need to know about, doesn't it?

7 A Such as?

8 Q Such as the company made false
9 representations somewhere.

10 MR. MARGOLIS: Objection to the
11 form of the question. You can answer if you
12 know.

13 THE WITNESS: That's a
14 hypothetical. I'm not really sure what that
15 means. But if there is -- if the employee has
16 what they believe -- has observed or
17 participated in what they believe is
18 misconduct, then, yes, they are supposed to
19 report it. It is not just limited to
20 government projects.

21 BY MR. KOHN:

22 Q Now, you indicated there was 1,000

1 tips filed under LOGCAP III?

2 A There were a lot of them.

3 Q Do you know the exact number?

4 A No.

5 Q What is your estimate?

6 A Over the 10 years?

7 Q Yes.

8 A A thousand, maybe more.

9 Q So that's 100 a year?

10 A Roughly.

11 Q And how many are the -- the term
12 you used, but like the throwaway complaints,
13 what percentage?

14 MR. MARGOLIS: Objection.

15 BY MR. KOHN:

16 Q The ones that deal with HR that
17 you are not going to do through the COBC.

18 A No. Those are just the COBC ones.

19 Q Those are the ones that come in
20 through the COBC.

21 A No. Those are the ones that are
22 logged in as COBC matters.

1 Q And how many of these complaints
2 do you -- how often do you receive multiple
3 COBC complaints concerning the same
4 individual?

5 A I don't know.

6 Q Can you think of any other time?

7 A Off the top of my head, I'm sure
8 we have, but I can't just recite it for you.

9 Q Now, the investigators were
10 responsible for conducting the investigation,
11 correct?

12 A Correct.

13 Q And they produced an investigative
14 report to you, correct?

15 A Correct.

16 Q Were they asked to make any
17 determination whether a violation had occurred
18 or not?

19 MR. MARGOLIS: Are you talking
20 about in this specific instance?

21 MR. KOHN: Generically.

22 MR. MARGOLIS: Generically? I'll

1 allow the witness to answer.

2 THE WITNESS: No.

3 BY MR. KOHN:

4 Q So who was responsible for
5 reviewing the investigative reports to
6 determine whether or not a violation had
7 occurred?

8 A Me.

9 Q Anyone else?

10 A I would generally discuss it with
11 Richard Mize.

12 Q Anyone else?

13 A I mean, there may have been an
14 instance where I talked about it with another
15 lawyer, if there was a question on my mind
16 that I wasn't sure about, but generally it was
17 myself and Richard Mize.

18 Q With respect to the COBC
19 investigations here, was there anyone else
20 other than you and Mr. Mize?

21 MR. MARGOLIS: I'm not going to
22 allow the witness to answer that on attorney-

1 client privilege and attorney work product
2 grounds.

3 BY MR. KOHN:

4 Q Is there any document, policy, or
5 procedure which identifies your responsibility
6 for reporting the allegations or findings of
7 the COBC to either the Board of Directors or
8 the Policy Committee?

9 MR. MARGOLIS: Are you asking Mr.
10 Heinrich personally when you use the word
11 "you"? Are you talking about the company who
12 he --

13 MR. KOHN: Both.

14 MR. MARGOLIS: Well, then I'm going
15 to object on the compound question. If you can
16 sort out that, Mr. Heinrich, you can answer.

17 THE WITNESS: So you're wanting to
18 know if there is any policies or procedures
19 for KBR to report to the Board of Directors or
20 if I individually had to report to the Board
21 of Directors?

22 BY MR. KOHN:

1 Q I'll rephrase the question. Are
2 you aware of any requirement, policy, or
3 procedure that required a COBC finding to be
4 provided to the Board of Directors or the
5 Policy Committee?

6 A I'm not aware of any.

7 Q Have you ever made a report
8 pertaining to a COBC investigation to the
9 Board or the Policy Committee?

10 A Well, I have made reports to my
11 boss before in terms of telling him what
12 occurred in a COBC report and investigation.
13 I don't know if he has sent that on to the
14 Board or not. I don't know. Under KBR's
15 process, there is a quarterly meeting with the
16 Board of Directors that the Director of the
17 Code of Business Conduct has to go and make a
18 presentation at and explain all of the cases
19 that have been logged, where they stand, and
20 the disposition of them. I don't know what
21 Halliburton did.

22 Q And what is the purpose of that?

1 A So that the Board is up to date on
2 if there is issues that they need to know
3 about.

4 Q Was the Board apprised of the
5 investigations identified in your privilege
6 log --

7 MR. MARGOLIS: Objection.

8 BY MR. KOHN:

9 Q -- in the confidential privilege
10 log?

11 MR. MARGOLIS: I'm going to
12 instruct the witness not to answer on
13 attorney-client privilege and attorney work
14 product grounds.

15 MR. KOHN: Let's go off the record.

16 (Whereupon, the above-entitled
17 matter went off the record at 5:49 p.m. and
18 resumed at 5:51 p.m.)

19 MR. KOHN: No further questions.

20 MR. MARGOLIS: Two more. Well,
21 I'll try to make it two more. You always
22 worry when a lawyer says just two more.

RECROSS-EXAMINATION

BY MR. MARGOLIS:

1 Q Mr. Heinrich, you received a
2
3 number of questions on redirect with respect
4
5 to whether or not the Code of Business Conduct
6 -- there are instances where Code of Business
7 Conduct investigations are continued, or even
8 initiated, after an employee has separated.
9 Do you recall that?

10 A Yes.

11 Q Are there instances that you can
12 recall where an investigation has either
13 continued or was even initiated after an
14 employee's separation from KBR?

15 A It is on a case-by-case basis,
16 but, for instance, two of the disclosures that
17 we made to the IG -- the one with Mazon and
18 the one with Siemens, those were both done
19 after both people had left the company.

20 Q Now, you also received some
21 questions about -- on redirect about Heinrich
22 Number 14, the confidentiality statement. Do

1 you recall that?

2 A Yes.

3 Q And do you recall Mr. Kohn asked
4 you some questions about whether or not this
5 agreement would prohibit a former employee
6 from discussing the subject matter of an
7 investigation, is that right?

8 A That's right.

9 Q Do you recall, in all of your time
10 with KBR, whether or not this agreement has
11 ever been invoked by KBR to prevent a witness
12 from being interviewed about the facts
13 relating to a matter?

14 A No, we have never done that.

15 Q Are you aware of any instance
16 where this agreement has been invoked to
17 prevent a witness -- to attempt to prevent a
18 witness from being deposed with respect to any
19 facts relating to a matter?

20 A No.

21 Q This agreement is invoked only to
22 prevent what types --

1 MR. KOHN: Objection. Leading.

2 MR. MARGOLIS: I am allowed to
3 finish my question.

4 BY MR. MARGOLIS:

5 Q This agreement is invoked only to
6 prevent what types of communications?

7 A Privileged communications. That's
8 what the main driver is is to preserve it.

9 MR. MARGOLIS: I have no further
10 questions.

11 FURTHER REDIRECT-EXAMINATION

12 BY MR. KOHN:

13 Q And is there a reason that nowhere
14 in the document, Heinrich Number 14, that it
15 mentions privileged communications?

16 MR. MARGOLIS: Objection.
17 Argumentative. Object to the form of the
18 question.

19 You can answer if you --

20 THE WITNESS: I don't know.

21 BY MR. KOHN:

22 Q Is there any reason why, in the

1 Code of Business Conduct, in your
2 confidentiality statement, in the summary of
3 the Code of Business Conduct, that nowhere in
4 any of those documents is the phrase
5 "attorney-client communication" or "attorney-
6 client privilege" mentioned?

7 MR. MARGOLIS: Same objection.
8 It's also outside the scope of my recross.

9 But if you can answer, please go
10 ahead.

11 THE WITNESS: I don't know.

12 MR. KOHN: No further questions.

13 MS. MARTIN: I'll defer to Zach on
14 whether or not there are any questions.

15 MR. KRUG: We have no further
16 questions.

17 MR. MARGOLIS: I think that
18 concludes the deposition. Thank you.

19 (Whereupon, at 5:54 p.m., the
20 taking of the deposition in the above-entitled
21 matter was concluded, signature NOT having
22 been waived.)

A				
able 134:14	adopted 20:8 124:20	164:17 165:4 184:6	69:21 71:7,16,21 72:9,21 73:2,15 73:22 74:12 75:4 77:5,10,13 78:9 78:22 79:9 80:12 81:2,9,9 82:1 83:4 83:15 84:3,6 85:4 86:10,19 87:5,15 88:13 89:21 90:15 91:1,12 95:10 97:10 99:3,18 100:11,22 101:11 102:11 103:5,17 104:14 105:19 106:18 107:7,22 109:7,14,20 110:3 110:14,22 111:1,5 111:8,14,20 112:5 112:15,21 113:16 113:18 116:8,18 117:8,15 121:4,18 122:5 128:17 166:6 167:3,17 168:10 169:2,15 173:5,12 176:2,20 179:18 180:11 183:1,22 184:16 186:12 189:19 190:9	39:11,20 40:18,22 43:13 44:5 45:6 45:22 52:12 56:7 56:13 57:7 65:9 68:19 69:7,18 70:18 78:7 80:11 81:1 99:1,17 100:9 101:10 102:10 103:4 104:13 106:16 108:17 121:10 147:7 174:10 175:4,7
above-entitled 30:6 74:9 107:16 118:3 119:19 186:16 190:20	advance 159:20	alleged 18:5 36:5 143:11	86:10,18 88:6 90:22 110:2 111:13,19 112:4 112:14,20 117:14 118:7 136:14 173:11 176:20 183:1,22	appearance 28:16
above-referred 82:8 89:1 90:5 93:8,21 94:12 130:7 139:18 157:13 158:17	advice 7:20,22 8:2 8:6,22 9:6,6,12,13 43:18 105:2 128:12 154:13	Allen 59:13	112:5 178:22 179:1 189:2	APPEARANCES 2:1
absolutely 138:12	advise 21:4 64:13	Allen's 60:4,12	allowability 151:5	appearing 20:6 22:7 31:13 59:13 79:7 174:13
accept 179:16	advised 20:13 57:18 156:15 172:16	allocations 45:16	allowed 38:14 42:2 121:5 178:22 179:1 189:2	appears 157:20 174:19 176:10
acceptance 84:14	affect 165:20	allow 36:19 48:16 54:13 55:5,8 58:15 71:15,20 72:20 73:14,21 74:5 77:13 78:21 86:10,18 88:6 90:22 110:2 111:13,19 112:4 112:14,20 117:14 118:7 136:14 173:11 176:20 183:1,22	AMERICA 1:5	application 124:18 142:3
access 38:14 42:2 73:5 113:10 114:5 133:10 138:1,6,10	agency 128:2,2 131:20,21,21 132:19 151:3	amount 104:3 161:2 164:5	analyze 25:22	apprised 186:4
accounting 104:1 123:5 148:7 153:3	agent 142:8	analyze 25:22	Angela 2:16 5:14	approached 149:9
accurately 125:22	agents 106:7 141:13	analogous 12:6 144:9	anonymous 12:6 144:9	appropriate 18:6 37:3 40:6 43:19 44:1 45:1 59:18 60:6,14 64:14
Acquisition 130:17 154:4	ago 27:14 34:12 42:18,20 63:2 158:12 159:7 177:15	anonymously 70:3	answered 85:8 144:4	approval 178:8 179:20
act 25:12 129:5,8 130:19 160:10 161:22 164:19 165:8	agree 31:12 58:13 58:13 74:4,13 75:22 156:20	answer 4:19 8:14 8:15 9:16,22 10:1 11:19 14:1 20:19 20:20 21:13 24:18 25:2,5 31:4 32:11 32:20 33:11 35:15 36:19,20 44:12 46:1 47:5 48:16 48:17,20 49:16 50:9 51:2,7 52:4 53:12 54:6,14,19 55:6,9 56:2,15 57:8,22 58:12,15 58:20 64:6 65:10 66:21 67:6,11 68:4,10,21 69:10	answering 25:2 53:12 58:10,14 85:8,19 144:5,10 150:9	approximate 63:9 134:10
action 20:15 21:10 22:18 60:14 62:3 64:2 87:18,18 102:14	agreed 84:12	answers 166:8 174:21	Anti 130:18	approximately 124:22 134:6
actions 22:3 35:8 35:11	agreeing 58:16	Anti-Kickback 3:19 129:5,8 160:10 161:22 164:19 165:8	anticipate 81:17	area 108:16
activities 98:4 106:21	agreement 3:22 84:13,18 85:16 128:8 157:2,3 188:5,10,16,21 189:5	anybody 70:4 144:17 156:21	appear 24:21 25:19 30:2 34:8 35:17	areas 148:21
activity 34:21 107:2	ahead 76:8 119:11 119:18 161:1 174:20 190:10			argue 83:21 174:16
actual 128:10	al 1:9			argument 58:9 74:2 86:8
add 57:16	alerted 57:12			Argumentative 189:17
addition 20:18 30:19 56:13 84:7	allegation 23:14 28:12 33:6,9 36:5 41:14 44:13 57:16 127:1,1 134:15 136:10 154:14			Army 91:5 160:16
additional 18:12 57:20 71:1	allegations 14:19 18:14 28:4 57:20 85:17 89:18 90:20 126:17 127:4 137:14 148:4			Arnold 29:16
additionally 116:20				arose 127:5 135:18
address 95:11				asked 108:1 121:11 123:11 163:21
addressed 137:11				
adhere 132:3				
adhered 154:3				

170:18 182:16 188:3 asking 7:4 31:8,11 34:11,17 48:1 53:14 55:15 67:16 67:18 71:12 72:14 72:14,16 87:19 95:9 101:13 110:7 111:3,8 174:19 178:20 184:9 aspect 98:7 174:5 assert 155:7 asserted 133:1 assertions 28:2 assign 14:18 16:5 127:3 150:15 assigned 44:17 59:20 61:14 125:9 161:15 assist 99:7 124:6 147:20 148:15 151:16 152:21 assistance 147:17 associated 11:11 87:1,10 association 160:14 assume 74:16 assumes 88:11 175:22 attached 117:1 attacks 124:12 attempt 188:17 attempts 36:5 67:3 attend 7:5,9,12,12 7:15 attention 34:22 142:4 175:13 attorney 4:20,21 31:7 44:17 51:9 54:20 56:4 58:2 59:1,21 60:3,11 62:7 67:8 68:11 70:1 71:8 72:8 74:3,22 75:2,17 77:12 78:10,11 81:5 83:17 84:5 85:6,14 87:7 90:1	91:13 96:21 109:9 110:16 111:2,6 112:6 113:17 116:9,20 117:9 124:11 125:10 155:7 159:8 167:4 167:19 178:4 183:22 184:1 186:13 190:5 attorney-client 4:18 8:15 10:1 20:21 31:6 42:16 46:3 51:8 54:9,20 56:3 58:1 59:1 67:7 68:5,6,11 69:22 71:8 72:7 74:3 75:4,16 77:4 77:11 81:4 83:16 84:7 85:5 87:6 89:22 90:16 109:8 110:15 111:2 112:6 113:17 116:9,19 117:9 120:19 132:22 149:22 151:21 152:4 153:11 157:4 158:9 167:4 167:18 173:9,18 174:7,10 175:9 186:13 190:5 attorney/client 58:11 audit 97:3,19 99:20 100:2,6,12,13,16 106:11 107:1 108:3,3,8 151:3,4 151:11,14 audited 107:12 108:8 auditing 97:16,18 99:12 101:5 102:17 104:7 105:3 106:4 audits 99:22 100:3 149:21 150:3 155:1 authorities 129:2	authority 74:22 authorization 159:20 authorized 18:4,13 18:17 automatically 155:21 available 135:17 Avenue 1:20 2:10 aware 15:21 19:8 20:9 22:5,12,14 36:3,16 43:22 44:21 45:7 46:6 67:2 79:18 106:10 120:8,11,12 133:19 149:19 172:10 174:13 175:6 185:2,6 188:15 <hr/> B <hr/> b 18:9 29:5 54:4 55:20 131:16 B1 36:4 95:12 back 11:12 16:17 38:4 48:3 61:10 70:14,22 76:8 81:15,19 104:22 107:19 118:6 119:18 122:8 125:21 126:1 background 122:9 backgrounds 135:12 bad 39:13 40:7,10 41:7,10,13,19 Baghdad 59:20 139:14 Barko 1:6 2:2 3:21 26:21 36:7,17 37:14 50:3 51:4 51:14,19 57:19 58:3,7 107:9 120:8 157:9,21 158:4 175:19 176:8 Barko's 46:6 49:9	50:5,6 51:22 52:1 53:19 base 130:21 based 16:10 20:2 31:9 33:20 37:2 163:18 168:3 bases 135:2 basic 43:6 basically 144:6 basis 54:7,16 55:1 69:13 70:21 71:3 99:5 170:4 187:15 Bates 140:18 141:3 141:4 142:22 157:7 battle 168:13 Battles 26:22 31:19 32:13 begging 29:4 beginning 129:3 behalf 1:21 2:2,7 2:13 5:7 18:18 25:2 69:8 108:18 166:10,12,13 167:8 believe 4:20 6:8 17:12 23:3 26:12 27:19 38:17 47:2 48:2 58:7 82:17 90:4 96:9 103:22 107:21 129:7 131:5,15 161:1 162:9,18 165:6 167:22 168:5 173:13 174:15,22 175:18 180:16,17 believed 24:19 152:8 156:2 beyond 45:4 47:4 56:5,11 57:2,5 64:4 80:9,21 88:10 104:11 106:14 107:4 120:20 170:18 bid 29:6 bids 42:3 big 123:18	billing 161:4 bit 122:9 153:18 156:9 160:8 blacked 91:17 92:2 blacked-out 92:11 blinders 56:9 Board 173:8,16 184:7,19,20 185:4 185:9,14,16 186:1 186:4 booklet 142:9 bore 159:8 boss 173:22 185:11 bottom 17:21 35:6 36:14 140:18 141:16 142:5 147:3 box 23:11 break 74:7,17,20 bribe 161:3 179:16 bring 37:16 151:15 154:12 broadly 134:8 brochure 139:6 brought 123:3,13 Brown 122:14,17 122:19 123:14 124:19,20 146:10 bullet 38:9,11 39:20 business 3:20 7:20 8:2,6,10,22 9:5,12 10:17 12:3 13:7 17:14 18:6 23:4 29:5 35:9,12 39:13 40:8,11 41:4,10,11,13,20 41:21 43:1,16 44:15 45:18 87:18 88:6 98:7 106:3,6 106:12 121:13,22 123:9,17 125:5,6 125:8,13,17 126:9 126:12 137:22 138:1,13 139:7 140:3,5,22 141:9 141:14 142:11,13
--	--	---	--	---

144:20 145:17 147:9,16 149:13 149:15,19 151:20 154:20 155:10,16 163:20 164:14 174:4,6,18 175:4 175:5 176:4,11,22 180:1 185:17 187:5,6 190:1,3 Butler 91:4,5,9 92:14,18,19	caveats 166:5 CBOC 71:4 75:9 CBOC-related 30:17 CEO 141:19 certain 36:2,6 85:17 142:14 161:6 certainly 24:17 35:18 84:4 175:22 chain 3:12 Chairman 141:18 Chapman 61:11,21 charge 44:15 check 48:3 155:2 Chip 118:16 chitchat 124:14 Chris 4:6 5:18 Christopher 1:16 3:3 CID 135:13 circumstances 152:2 153:8 160:20 claims 4:17 clarification 98:16 clarifications 71:1 clarify 7:3 107:21 174:17 clause 3:19 129:4,6 130:18 131:16 132:4,8 136:19 160:10 161:22 162:8 164:20 clear 5:12 clearly 145:9 client 4:21 78:11 91:14 96:22 111:7 155:8 159:9 178:5 184:1 190:6 close 39:18 closed 21:5 cmargolis@vela... 2:12 COBC 10:21 11:2 11:15 12:6,7,13 12:21 13:10 16:10	16:12 18:22 19:16 20:15 21:1,2 22:4 22:6,16,20 23:2 23:15,19,19 24:8 24:13 25:11,11 28:4,18 29:8,14 29:20 31:9 32:13 33:4 34:3 36:7 37:4 39:6,14,21 40:11,12,13 41:6 41:13,21 42:4,10 42:14 48:11 51:18 54:3,12 55:14,21 56:8,18 57:1 58:4 61:7,10,14,15 62:8,10,14 63:1 63:16,17 68:15,16 69:2 73:4 79:4 80:15 82:15 83:12 85:21 87:2,11 88:4,14 92:20 94:5 96:6 97:4 98:13,17 100:6,13 100:16 101:3 102:19,20 103:9 104:8,8,19,22 107:1,12 108:2 112:22 120:10,17 126:21 132:14,16 134:6 136:4 137:1 137:6 138:1 149:4 149:8 150:1 152:11,16,19 161:9,19,20 163:1 164:1,1 165:20 166:13,15 167:1 167:21 169:21 170:1,5,14 172:16 173:10,18 181:17 181:18,20,22 182:3 183:18 184:7 185:3,8,12 code 3:20 10:17 12:3 13:6 17:13 18:5 23:4 35:9,12 41:20 42:22 43:3 43:8,16 44:15	45:18 106:3,6,11 121:13,22 123:9 123:17 124:9 125:4,6,7,12,17 126:9,12 138:13 139:7 140:3,4 141:7,9 143:5,9 143:11 144:13,14 144:20 145:17 147:16 149:13 150:12,14 154:19 155:16,20 163:19 164:14 174:4,6,18 175:4,5 176:4,11 176:22 180:1 185:17 187:5,6 190:1,3 coded 95:15 Colapinto 2:4,4 74:7,12 75:6,18 76:2,7 170:22 171:4 collected 124:8 collusion 38:1 COLUMBIA 1:1 combined 96:15 come 13:3,9 14:17 81:15 82:15 88:18 118:21 126:18 128:8 138:7 150:4 175:16 181:19 comes 6:16 13:11 15:22 44:14 56:19 coming 12:7 75:10 75:19 163:8 comma 38:11,13 commenced 170:15 comment 49:4 75:7 Commission 123:20 180:2 commitment 22:10 Committee 7:16 18:4,8,13,19 19:6 19:7,9 20:9,13,22 21:9,21 22:2 44:22 45:11,19 106:1 125:18	126:2,6 173:17,22 184:8 185:5,9 communicated 62:22 138:14 144:19 communication 26:20 37:4 42:14 45:10 77:12 79:19 91:17 113:17 117:5,13 169:20 175:9 190:5 communications 10:2 31:6 45:19 46:3 55:10 68:6 70:1 92:2,18 115:22 117:19,21 128:12 137:1 138:2,11 189:6,7 189:15 companies 124:10 company 1:9 4:14 6:21 13:8 22:8 24:6 25:3 35:8 47:21 53:15 55:7 72:12 103:12 106:8 109:17 123:1 124:11 136:18 141:10,13 152:3 153:9 155:7 156:21,22 160:15 163:19 169:7 180:8 184:11 187:19 company's 4:17 28:4 35:12 75:16 149:22 151:21 152:4 153:11 compare 153:6 compel 4:22 120:9 120:14 121:1 168:14 competition 28:13 28:17 complaining 150:18 complaint 10:16 70:5 144:4
C				
CA 2:16 cabinets 113:2 137:8,9 cadre 123:3 call 4:20 7:14 8:6 12:6 23:12 34:22 67:3 70:14 78:16 98:8 111:1 148:14 148:21 150:5 175:12 called 1:17 5:19 7:19 67:2 77:15 78:13 107:5 122:16 178:18 179:8 calling 179:12,14 calls 33:14 35:15 47:4 103:14 122:3 128:14 164:22 179:4 camp 135:2 capacity 47:6 166:11 carry 64:17 carrying 169:13 case 1:8 11:15 70:21,21 71:2,3 129:9 133:21 158:3 175:17 case-by-case 99:4 170:4 187:15 cases 59:18 60:7 185:18 caveat 78:9				

complaints 70:3 134:6 161:7 181:12 182:1,3	conduct 3:20 10:17 12:3 13:7 17:14 18:6 23:4 29:4 31:19,22 35:9,12 41:21 43:1 44:16 45:18 55:10 106:3 106:6,7,12 120:22 121:13,22 123:9 123:17 124:9 125:5,6,8,13,17 126:9,12 138:13 139:7,9 140:3,5 140:22 141:9,12 141:14 144:20 145:17 147:9,17 149:13 151:10 154:20 155:16 163:20 164:15 174:3,6,18 175:4 175:5 176:4 177:1 180:1 185:17 187:5,7 190:1,3	121:22 consistency 129:21 consistently 75:14 consists 141:7,10 constitute 165:5 constitutes 31:14 consult 14:15,22 16:1 17:10 60:8 60:16 61:3 62:1 123:11 135:17 152:20 consultation 164:12 consultations 172:5 172:7 consulted 88:5,15 127:10 136:1 contact 57:11 69:2 69:11,14 70:4,7 70:11,22 72:18 103:20 135:21 142:10 170:5 contacted 37:14 68:8,16 70:10 72:4,13,15 contain 110:12 contained 30:16 33:21 37:2 90:20 contents 3:1 49:9 context 34:16 continue 37:17 57:15 continued 187:7,13 continuity 46:20 contract 129:3,4 130:21 132:3 151:3 160:17 162:5 contracting 13:16 98:4 123:2 131:20 131:21 contractor 124:4 131:14,17 151:1 contractors 123:21 control 138:10 controlled 129:5 conversation 37:17	79:1,12,16,22 80:3 cooperated 133:3,8 coordinate 104:1 126:20 coordinated 59:22 coordination 169:6 copied 96:19 copies 114:15 116:15,15 copy 38:8 47:10 50:17,20 109:4 114:9,17,20 129:15 139:8 140:10 158:13 corporate 78:8 correct 16:3 27:18 31:21 32:2 43:2,9 67:15 73:7 76:1 86:3 97:17 109:2 122:11,12 131:6,7 132:2 133:22 134:4 140:15 143:6,7 144:15,16 145:18 146:1,5,6 147:5,13,14 160:1 161:9,10,13,14,16 161:17,22 162:1,5 162:6,11,12 169:10 179:3 182:11,12,14,15 correctly 131:13 132:1 159:22 178:9 cost 151:15 costs 151:6,18 counsel 1:17 4:8,11 6:9,11 43:18 44:1 45:1 84:4 108:10 125:20 126:1,5 145:9 146:3,4,9 159:13,21 172:8 174:1 178:8 179:21 counsel's 166:9 country 135:4 couple 135:13	139:13 course 8:10 30:17 48:11 51:12 54:3 55:11 56:20,22 57:11 58:4,22 72:5 75:1 115:6 147:16 149:14,19 151:19 152:5,18 155:10 156:14 court 1:1 5:15,22 40:19 73:9 76:3 129:12,16 Covelli 67:1 68:7 72:4 covered 174:6 178:4 Craig 2:8 4:11 120:4 created 68:1 creation 127:19 credibility 18:9 credit 104:4 161:2 162:21 credits 160:16 162:3 criminal 135:11 CROSS 3:2 CROSS-EXAMI... 120:2 current 6:3 67:21 133:11
				D
				D 2:3,8,15 D&P 30:21 31:2,15 32:1 39:18 96:8 165:13 D&P's 38:9 D.C 123:19 D1 95:12,15 dangerous 135:7 Daoud 2:14 5:7,12 161:8 database 53:18,19 53:20 databases 46:20 53:6

date 11:21 63:10 186:1 DAVID 2:4 day 12:14 170:5 days 13:14 139:11 139:13 145:12 150:11 DC 1:14 2:5,11,21 DCAA 151:4,13,13 151:17 152:6,10 deal 127:12 181:16 dealing 151:17 dealt 6:18 15:3 96:22 debate 168:6 December 32:6,7 deciding 69:14 decision 54:17 74:15 87:11 88:6 decisions 137:13 declarant 168:15 Defendant 2:7,13 Defendants 1:10 defense 132:18 133:5 151:1,3 162:16 defer 190:13 define 8:5 department 7:12 18:16 19:2 44:14 49:6,19 61:13,16 61:18 62:17 63:14 63:15 97:3,13,13 97:17,18,19,21 98:6 102:18,18 107:12 108:9 125:10 127:3 131:22 132:17 133:2,5,6 138:9 142:10,20 146:17 147:20 152:20 154:22 156:10,17 162:16 178:12 department's 39:17 departments 101:5 depending 52:14 65:5,6,11 82:3	133:9 137:14 148:5 151:14 depends 135:15 166:17,17,20 170:3 deploy 140:11 deposed 188:18 deposition 1:15,18 4:4 5:5 17:13 26:11 27:18 30:11 30:12 48:9 49:22 58:8 74:18 77:18 79:8 120:21,22 121:2 130:8 139:19 140:7 157:14 158:18 190:18,20 Depositions 62:11 describe 12:19 145:5 described 42:19 131:10,15 description 3:7 6:19 70:13 deserved 150:8 designate 43:22 168:9,11 designated 24:21 25:18 28:21 29:11 30:2 33:15 34:8 35:17 37:9 39:11 40:3,18,22 41:18 42:8 43:13 44:5 45:6,22 48:16 49:13 52:12 53:10 56:6,13 57:7 64:6 65:9 68:19 69:7 69:18 70:18 78:7 80:11 81:1 88:11 91:21 97:9 99:1 99:17 100:9 101:10 102:10 103:3 104:13 105:17 106:15 166:3 designation 25:17 47:5 81:21 100:19	108:19 designations 4:16 25:1 28:9 102:1 103:16 121:7 170:19 designed 106:5 121:12 desk 38:16 details 25:21 detect 106:5 detectives 135:15 determination 64:2 64:9 103:19 128:3 182:17 determinations 20:3 determine 19:17,20 21:21 22:12 26:1 121:12 136:14,17 155:19 164:6 183:6 determined 103:10 determining 59:18 60:6,14 developing 124:7 dial 144:1 dictate 121:9 128:9 difference 41:12 108:13 different 23:21 46:11 85:1,12 143:17 153:15 157:5 difficult 135:7 170:21 dime 121:2 direct 3:2 6:1 14:18 61:6 64:16 142:1 142:4 directed 53:17 direction 14:9 19:1 173:15,20,21 directions 80:20 directive 106:7 directly 118:21 126:20 135:22 136:2 146:22	152:14 director 12:7 13:6 21:2 61:19 62:7 125:7,12 126:8,21 137:6 142:8 144:13,14,19 147:9 185:16 directors 141:12 173:8,16 184:7,19 184:21 185:4,16 disciplinary 19:15 19:18,21 20:1,10 20:15 21:10,21 22:3,18 60:14 62:3 64:2 87:17 102:14 137:15 discipline 59:18 60:6 64:10,14,17 137:19 155:13,18 156:3 163:17,21 disciplined 21:6 54:11 disclose 85:13 disclosing 69:22 disclosure 7:15 136:18 162:10,16 165:8 disclosures 132:7 132:11 160:9,15 161:21 187:16 discovery 48:7 117:2 128:22 discrepancies 148:19 discuss 64:15 79:3 79:6 156:20 159:4 178:7,10 179:19 183:10 discussed 78:20 124:18 138:16 159:19 178:17,21 discussing 159:17 178:15 188:6 discussion 48:7 72:14 discussions 61:21 62:2 76:10,15	77:1 disposition 21:4 185:20 dispositioned 13:13 DISTRICT 1:1,1 divulge 8:15 51:8 divulging 31:5 78:10 81:4 document 17:11,14 17:18 22:8 26:4,8 26:16,19,21 27:1 27:9,11 28:3 30:22 31:12 34:15 42:13 48:4 59:3,6 59:9,13 65:13 66:14,16,19 67:14 67:17,20 82:6,9 82:12,19 83:2,19 84:15 86:11 88:21 89:2,6 90:3,6,9,12 90:19,20 92:3 93:6,9,19,22 94:13,17 95:6 130:8 139:19,22 142:19 157:9,14 157:18,20 158:18 158:21 159:7 174:11,14 175:16 176:10,14,17 177:6,8 184:4 189:14 documentation 22:12,13 documented 22:19 documents 10:13 26:10,14 31:13 54:1 63:20 76:20 84:4,15 85:18,20 99:8 116:15,16,21 120:10 133:13,17 142:15 157:6 176:3 190:4 DoD 129:10 132:12 161:21 doing 9:7 12:16 15:20 34:10,14 42:17 74:1 91:13
--	---	--	---	--

153:17 164:7 176:2 draft 124:16 drafted 124:11 driver 189:8 duly 5:20 dumping 150:6 uplicated 52:1 duplication 46:7 duties 6:12	24:12 25:8 26:2 30:4 34:21 35:11 35:13 42:1 89:13 89:15,17,19 104:16,20 142:8 143:22 150:16 155:18 156:5 159:1 163:22 164:7 166:14,18 178:19 180:15 187:8 188:5	estimate 181:5 et 1:9 ethical 141:11 ethics 68:15 143:17 143:20,21 evaluate 18:8 events 38:2 133:20 eventually 124:20 127:13 everybody 23:16 24:10 124:12 152:15 evidence 22:9 37:22 56:10 88:12 160:22 176:1 evident 39:17 ex 1:6 exact 181:3 exactly 25:21 177:16,22 examination 1:17 6:1 165:17 examined 5:20 example 136:8 149:3 153:10 154:1 exchange 28:12 180:2 excuse 40:14 101:7 125:21 136:9 161:15 163:2 165:11 Executive 7:14 145:8 146:2,4,8 exhibit 3:7 17:12 26:5,20 27:17 30:10 35:1,2 49:21 65:16 66:1 82:10 88:22 89:3 89:8,10,11,14,14 90:7 93:10 94:1 94:11,14 129:14 130:9,12 139:16 139:20 140:6 157:15 158:19 174:4 175:13 existed 133:19	existence 176:3 expanded 57:4 expect 24:8 expectation 16:7 expected 175:8 experienced 81:11 expert 99:10 experts 127:9 147:18 149:1 explain 14:16 64:12 81:7 103:21 128:5 154:17 185:18 explained 148:20 155:22 156:2 explains 141:7 explanations 99:9 extent 8:14 9:22 20:20 31:4 33:13 36:18 46:2 51:7 69:21 79:10 81:3 81:8 91:12 97:7 99:2 133:11,15 166:1 168:12 169:3 171:13 external 30:20 31:1 31:14	FAR 132:7 136:19 160:10 161:22 162:8 164:19 fashion 124:14,15 favor 36:5 favoring 36:2 Fax 2:12,17,22 FBI 135:14 February 1:13 federal 129:2 130:17 154:3 fellow 15:14,16 60:20 felt 70:6 field 80:8 Figuroa 2:16 figure 98:1 file 12:9,21 13:12 68:14 69:2 73:18 73:19 113:2 126:22 137:8,9 144:3 154:15 163:10,12 168:21 176:5 177:1 filed 113:1 120:8 181:1 files 22:20 49:3 63:20 73:4,6 112:22 113:7,11 113:14,22 114:6 114:11 148:17 155:2 175:17 176:11 final 64:1 finance 28:12 Financial 7:15 find 34:11 81:7 148:11 150:21 finding 164:1 185:3 findings 101:4 102:20 136:5 184:6 fine 54:14 66:12 119:16 finish 189:3 first 5:20 11:1,8 12:2 25:14 26:13
E				
earlier 27:9 59:7 75:8 125:16 140:7 162:7 early 139:11,13 easier 171:12 easily 38:15 educated 108:17 efforts 22:9,15 either 12:5 13:13 126:18 136:2 138:8 152:18 154:3 156:21 170:17 184:7 187:12 electronic 113:7,10 113:13,22 114:10 electronically 113:6 114:7,19 element 151:14 elements 142:13 Elkins 1:19 2:9 4:12 Elwyn 123:19 email 3:10,12 23:11 26:20 36:15 37:3 92:17,18 117:12 117:18,21 emails 31:10 36:16 116:15 Emanuel 2:15,19 5:7,13 employed 50:3 72:12 employee 21:11,22 23:1,5,7,22 24:1	employee's 46:11 50:21 51:11 53:6 165:19 187:14 employees 21:6 24:9 52:19 55:13 55:17,21 102:13 106:7 133:11,12 138:14 140:11 141:13 143:9 156:11,14 166:19 179:12 ended 92:20 134:11 Energy 145:10 engaging 34:21 108:9 enlist 147:17 ensure 98:3 99:13 104:7 ensuring 105:12 entire 168:1 entities 51:17 entitled 73:20 entries 147:8 entry 147:8 Equal 61:2 ESQ 2:3,4,8,9,15 2:19 essentially 38:9 134:8 160:4 establish 12:8,9 168:15 established 14:12 14:14 18:7 19:5,7 establishing 121:15 establishment 106:4			
				F
			face 24:12 facets 123:7 fact 26:2 35:22 37:13 51:21 72:13 72:17 85:15 123:18 153:6 157:3 161:6 175:22 facts 26:1 33:18 88:11 136:13 166:18,21 178:21 188:12,19 factual 20:2 30:16 110:12,18 fails 25:10 fall 29:7 42:15 falls 148:20 false 180:8 familiar 142:12	

26:22 38:9,11 42:17 62:7 94:18 95:10,13 118:22 124:16,19 141:8 141:19 144:18 177:12 five 105:22 119:17 147:7 Floor 2:16,20 focusing 108:4 folks 46:17 123:3 147:4 follow 80:7 132:14 followed 141:12 following 4:16 24:6 55:7 83:1 155:3 follows 5:21 followup 119:15 168:3,5 forefront 123:22 form 8:3,13 9:1,8 9:14,21 11:17 13:21 20:18 21:13 22:11 25:15 27:3 28:7,20 29:10 32:5,10,18 33:11 34:1,6 36:9 37:6 39:8 40:1,16,22 41:15 42:5 45:3 46:8 49:1,11 50:9 51:2,18 52:3 53:11 56:14 57:8 67:21 68:20 69:4 69:19 70:19 77:14 80:12 81:1,22 83:3 87:8 88:8 97:9,20 99:18 100:10,15,20 101:11,21 102:7 102:22 103:13 105:18 106:16 107:1,6 144:6 165:21 169:14 172:11,18 176:14 176:16 180:11 189:17 formal 9:6 18:10	former 133:12 135:14,14 188:5 forth 22:11 63:21 forward 37:4 170:2 forwarded 115:12 forwarding 83:13 83:18 foundation 24:19 27:13 32:20 50:9 52:3 53:11 77:22 91:12 112:4 113:19 172:14 four 6:9 147:13 fourth 29:3 frankly 38:14 85:14 151:22 freely 138:3 frequently 148:14 front 91:18 159:8 175:14 front-line 154:8 function's 104:7 functioning 104:8 functions 19:17 99:21 further 30:18 119:3 165:12 186:19 189:9,11 190:12 190:15 <hr/> G <hr/> gained 30:16 111:6 gears 151:2 general 6:9,11 8:9 53:2 107:9,10 125:20 126:1,5 131:19,22 132:18 133:5 140:21 145:8 146:3,4,8 159:13,21 162:17 173:22 178:8 179:20 generalities 33:17 generalized 70:12 generally 57:14 78:22 98:19,20 128:5 135:5,9	138:21 139:1 145:5 147:22 160:19 176:21 183:10,16 generic 177:8,13 generically 177:6 182:21,22 geographic 134:22 Gerlach 30:21 31:2 31:15,20 87:2,12 88:6,16,19 96:7 98:18 161:7 167:1 167:9,15 170:8 171:18 172:1,4 179:15 Gerlach's 46:22 47:11 163:10 168:21 172:6 getting 81:18 92:8 gifts 28:13 give 8:22 16:16 25:21 63:9 80:20 81:6 82:19 93:19 119:17 163:6 165:10 168:15 given 12:19,21 13:12,17 14:8 21:1 83:7 86:2 139:6,7 157:21 178:19 gives 168:16 giving 164:11,11 go 4:3 9:7 15:19 30:5 48:3 56:10 73:13 74:8 76:3,8 84:17 99:21 101:4 107:14 118:1,2 119:11,17,18,22 135:22 144:6 150:16 152:13 154:22 161:1 170:2 174:20 185:17 186:15 190:9 goal 19:19 goes 18:11 29:3 30:18	going 5:5 9:21 20:19 24:15,17 25:13 26:8 27:8 28:6,7 29:22 31:3 33:13 34:5,6 38:4 39:22 40:15 45:2 45:22 47:3 48:6 54:5 55:5,8 56:1 58:9,12,13,19 67:5 68:3,9 69:3,4 73:16,17 74:2,5 74:13 75:22 76:5 80:7 81:7 84:5,16 85:4,12,19 86:9 87:3,5,14 89:21 93:6 94:10 97:5 109:19 110:13,22 116:7,17 117:8 118:1 119:6,7 120:16 121:7,9,14 122:8 123:16 126:13 129:12,14 130:1 131:12 137:12 139:17 142:4 144:3 149:5 152:1 156:16 157:6,8 158:2 159:1 165:22 166:1 167:16 171:12 176:1,3,20 181:17 183:21 184:14 186:11 good 8:22 government 6:5,15 13:15 98:4,8,12 99:6 100:1 103:10 103:20 123:2,5,16 123:21 124:3 128:1 130:22 132:10,19 139:4 146:17 151:12 152:7,20 153:9 161:4 162:4,22 180:20 gravity 18:9 ground 150:6 164:13	grounds 24:16 25:14 54:19 56:3 58:1,22 67:7 68:5 68:11 71:7 72:7 73:22 75:4 77:4 83:16 85:5 87:6 88:9 89:22 90:16 101:8 109:8 110:15 116:19 131:14 162:9,18 165:6 167:3,18 184:2 186:14 group 6:15 7:11 13:16 63:16,18 64:11,15,16,19 91:7 98:9,10,12 98:13 102:15 103:21 123:2 128:4 139:4 145:10 148:10,15 150:17 151:9,12 154:7 155:10 guess 29:3 84:9 guidelines 24:6 guy 94:9 95:3 guys 8:18 <hr/> H <hr/> H 2:19 Hadcock 27:10 38:6 65:22 66:8,9 66:14 Halliburton 1:9 13:7 61:12 62:13 62:19 63:8 105:11 108:4,7 121:21 122:20 123:9 124:6 125:17 126:2 128:13 138:15 141:10,19 142:18 145:9,17 145:21 146:5,9 173:8 185:21 hand 5:16 handed 13:20 67:20 handle 135:5
---	---	---	--	---

handled 64:9 85:12 85:20 86:11 123:4 123:6 137:5 153:5	80:10 82:7,9 85:1 85:2,18 86:13 88:12,22 89:2 90:3,6 93:7,9,20 93:22 94:11,13 97:8 99:1,16 100:9,20,21 101:9 104:12 105:18 106:15,17 107:5 110:3 111:3,14,20 112:9,15,21 119:5 120:4 121:17 129:22,22 130:6,8 130:11 139:17,19 140:1,19 143:2 157:14,17 158:16 158:18 165:12 168:10,11,14 174:20 175:13 179:1 184:10,16 187:3,21 189:14	HR 29:17,17,19 169:9,13,21 172:6 172:16 181:16 hypothetical 180:14	128:20 134:9 include 108:9 116:14 136:5,8 including 21:5 50:3 106:3 incorporated 130:20 indicate 38:1 129:15 163:12 indicated 120:10 162:14 180:22 indicates 24:12 39:12 95:11 indicating 23:2 indication 50:12 individual 22:6 26:2 52:15 69:15 72:11 91:10 144:8 169:8,22 178:7,10 179:9,14 182:4 individual's 48:13 individually 52:22 184:20 individuals 64:16 68:14 69:2 99:5 116:5 139:3 informal 18:10 information 8:16 12:8 18:8 20:21 30:16 33:20 37:2 38:15 42:3 48:6 51:9 70:5,11 71:2 75:2 77:19 92:11 110:12,19 112:7 136:17 144:11 150:10 156:15 158:10 160:6 178:3,11 informing 57:19 Infrastructure 6:5 6:15 inherited 62:13 initially 159:6 initiate 18:9 151:4 initiated 12:4,4 51:18 71:5 173:2 187:8,13	input 124:17 inquire 51:16 inquiring 55:18 inquiry 18:10 51:18 Inspector 131:19 131:22 132:18 133:5 162:17 instance 10:4 41:10 132:13 144:18 156:5 182:20 183:14 187:16 188:15 instances 132:6 135:14 149:18 152:17 153:22 155:15 160:13 161:19 162:2 187:6,11 instruct 8:13 46:1 54:6,18 56:2 57:15,22 58:12,20 67:6 68:4,10 71:6 72:8 75:3 77:5 81:2 83:15 84:2,6 85:4 87:5,14 89:21 90:15 109:7 109:14,19 110:14 110:22 116:8,18 117:8 176:1 178:6 186:12 instructed 67:10 167:3 instructing 168:2 integrity 159:16 intentionally 42:1 interface 151:13 internal 30:20 31:1 31:14 32:16 97:19 100:2,12,15 101:3 103:11 108:3,8 118:20 interview 156:20 157:1 159:2,4,4 159:18,19 178:16 178:17,19 179:17 interviewed 37:21
handed 64:9 85:12 85:20 86:11 123:4 123:6 137:5 153:5	Heinrich 1:16 3:3 4:6,6,15,18 5:18 24:18 25:1 26:5,9 26:17,20 27:16,21 30:22 31:14 32:8 32:11 33:15,21 34:8 35:3,16 36:1 37:8 38:18 39:10 40:17,21 41:17 42:7 43:13 44:4 44:12 45:5,21 46:1 48:16 52:12 53:10,13 55:6 56:6,12 57:6 58:20 59:4,7 64:5 65:9,14,17,19,21 66:1,13 67:11 68:18 69:7,18 71:5,21 72:21	idea 34:10 134:5 identification 26:6 26:17 59:4 65:14 82:10 89:3 90:7 93:10 94:1,15 130:9 139:20 157:15 158:19 identified 22:3 32:7 34:20 54:4 62:10 86:13 92:19 95:7 95:14 117:22 174:4 176:12 186:5 identifies 67:1 184:5 identify 7:5 22:14 89:19 109:16 178:3 identity 91:9 IG 129:10 132:12 133:2,14 161:21 187:17 IGP 7:11 III 126:15 128:20 130:21 134:7 138:15 140:14 160:17 181:1 image 46:21 52:7 imaged 52:20 53:4 53:7 images 48:12 53:21 imaging 52:15,17 implement/modify 137:20 implemented 20:2 implicate 39:6 85:13 inadvertently 95:12 inception 125:4	include 108:9 116:14 136:5,8 including 21:5 50:3 106:3 incorporated 130:20 indicate 38:1 129:15 163:12 indicated 120:10 162:14 180:22 indicates 24:12 39:12 95:11 indicating 23:2 indication 50:12 individual 22:6 26:2 52:15 69:15 72:11 91:10 144:8 169:8,22 178:7,10 179:9,14 182:4 individual's 48:13 individually 52:22 184:20 individuals 64:16 68:14 69:2 99:5 116:5 139:3 informal 18:10 information 8:16 12:8 18:8 20:21 30:16 33:20 37:2 38:15 42:3 48:6 51:9 70:5,11 71:2 75:2 77:19 92:11 110:12,19 112:7 136:17 144:11 150:10 156:15 158:10 160:6 178:3,11 informing 57:19 Infrastructure 6:5 6:15 inherited 62:13 initially 159:6 initiate 18:9 151:4 initiated 12:4,4 51:18 71:5 173:2 187:8,13	Heinrich's 87:20 103:1,3 105:17 108:15 held 24:2 help 108:10 149:11 149:17 helpline 143:18,20 143:21 144:18 Hey 149:10 150:17 higher 24:2 highlighted 129:15 131:3 highlighter 129:18 hired 122:18,22 history 62:13 hold 24:7,9 148:2 holding 67:17 hostilities 134:10 hotline 23:11 126:18 144:18 150:5 152:13 161:6 hour 27:14 Houston 113:1,5 138:19,22 139:12 145:13 146:17

58:4,8,21 176:18 188:12 interviews 74:22 156:10 introductory 141:17 investigate 18:5,14 18:18 33:3,8 42:10 50:6 127:4 134:15 167:7,13 investigated 86:14 90:19,21 93:3,15 94:8,22 95:2 127:2 161:8 investigation 11:15 12:3,10 15:20 18:10 19:3,20 20:4,16 22:16 30:18,20 31:2,9 31:15,19 32:1,6 32:14,17 36:4,8 37:5 48:12 50:2,4 50:18 51:12,19 54:12 55:8,12,22 56:18,20 57:1,12 58:5,22 71:4,11 71:13,19 72:5 75:1 80:15 81:12 82:4 85:21 86:17 87:2 89:19 93:1 93:17 94:6 95:7 95:22 101:17 104:18 115:7 116:3,3,6 120:18 121:13 123:18 127:6,8 132:14,17 133:10 136:4,9 147:17,20 148:4,6 149:4,8 154:20 155:17 161:12 164:2,15 165:20 166:14,16,22 167:1,21 170:2 174:5 182:10 185:8,12 187:12 188:7 investigations	17:21 18:22 21:2 29:8 33:4 42:15 54:3 55:14 56:8 61:8 62:10 63:1 96:7 98:14,18 110:19 117:6 122:1 126:13,14 133:4 135:20 136:5 137:1 149:14 161:20,20 163:1,20 170:14 172:17 176:12 183:19 186:5 187:7 investigative 10:18 10:19,21 11:2,9 11:10 22:17 50:22 64:21 75:9 81:14 81:19 96:2,13 110:6,11 113:1 118:20 171:20,22 172:3 175:17 182:13 183:5 investigator 14:18 15:5,7,9 16:6 36:16,17 56:21 57:10,19 83:13 86:3,21 90:13 99:7 127:4,7,11 135:11 148:9,16 153:17 154:11 178:11 investigators 18:21 37:15,18,21 38:4 72:1 80:5 81:11 83:19 135:4,10,19 156:10 182:9 invite 149:3 invited 29:6 invoked 188:11,16 188:21 189:5 involve 153:2 154:10,19 172:4 involved 7:1 22:6 60:13 62:2 87:11 88:5 102:12 104:17 106:22	107:9 149:7,13 155:22 166:19,20 involvement 11:14 62:9 involving 23:14 Iraq 29:18 46:17 55:19 91:8 115:2 118:18 134:9 135:3 139:13 140:11 Irving 15:4 72:2 86:21 93:18 94:9 95:5 96:3 108:22 111:11 115:6,11 115:12,14,17,22 116:12 117:5,13 Irving's 114:5 issue 6:17 11:15 12:22 22:6 28:11 28:18 29:13,14 41:3,4 56:19 57:13 58:9,18 104:3 123:13 127:12,18 133:15 133:20 137:16 148:12,14 150:13 150:13,14,22 152:10,21 161:2,3 issued 44:22 115:13 116:4 171:22 issues 5:1 8:19 12:13 18:12 41:7 41:8,21 42:18 56:21 84:8 123:5 123:5 124:13 127:5 134:22 135:18 136:1 137:15 150:6 153:2 186:2 Item 30:13,15 items 41:20	Jonathan 15:6 JSG 1:9 judgment 34:17 Judy 63:12 Justice 132:1 133:2 133:6,14 justify 151:17	160:22 161:3 162:18 167:14 kickbacks 167:8 Kimberly 62:5 63:3 kind 49:4 124:12 knew 133:12 know 9:3 10:3 21:8 32:5,22 33:1,16 34:9,13,14,14 38:19 47:13,16 48:18,20 49:14,15 51:21 52:5 55:16 63:2 64:13 66:3 72:3,22 76:21 78:1,4,12,13,17 79:13 84:12 86:4 89:13,15,17 91:9 91:15,18 92:3,12 92:17 93:5 101:1 105:20 106:19 107:11,13 108:5 109:11 113:9,12 114:10,12 115:4 115:16,18 120:5 120:16 121:20 126:4 129:20 131:13 133:14 136:12 149:5 152:1,14 153:16 155:1,5 156:13 164:8,11 169:3,4 171:13 172:13 175:21 177:9,18 177:21 180:6,12 181:3 182:5 184:18 185:13,14 185:20 186:2 189:20 190:11 knowledge 24:20 49:8 50:15 51:13 52:1 111:4 124:3 132:19 133:13 155:6 163:18 164:15 known 130:18 knows 47:6 48:17 Kohn 2:3,4,4 3:3
			K	
			K 2:4 Kathleen 2:9 4:13 KBR 2:7 4:11,12 5:9 7:21 8:9 29:5 32:16 35:11 42:1 47:7 50:3 51:17 59:16 60:4,12 62:6,8 69:8 92:15 97:16 105:10 108:5,18 120:5,17 121:21,21 122:16 124:6 126:5 128:13 130:22 132:3,6,11,16 133:3 138:15 142:18 145:20 146:17 149:20 151:6,9 156:11,14 157:9 159:13,21 162:15,21 163:18 163:22 166:4,10 166:12,13 173:8 178:8,18 179:20 184:19 187:14 188:10,11 KBR's 20:13 98:3,7 108:7,8 154:4 165:3 166:9 175:8 185:14 KBR-related 62:14 keep 5:10 46:18 129:21 156:22 171:15 Kellogg 122:14 146:10 kept 137:2,4 Kerry 15:2,15 kickback 130:19	
			J	
		Jim 15:2 145:12 job 6:19 64:1 164:7 join 5:9 joined 123:8		

4:3,7 6:2 8:7,20 9:4,11,18 10:6 12:1 14:3 21:7,17 25:4 26:7,18 27:7 27:15,22 28:1,14 29:2,15 30:5,9 31:11,17 32:15 33:2,19 34:19 35:3,5,21 36:13 37:1,19 38:22 39:3,5,15 40:9 41:5,22 42:11 43:14 44:8,20 45:9,13,15 46:5 46:13 47:9,15,20 48:1,10,19 49:7 49:15,20 50:14 51:5,15 52:8,18 53:16 54:7,11,16 54:22 55:13,19 56:8,18 57:3,18 58:3,16 59:5 64:18 65:15 66:2 66:15 67:13,19 68:1,7,13 69:1,9 70:8 71:4,10,18 72:3,10,19 73:1 73:13 76:9 77:6 77:16 78:3,14 79:5,14 80:13 81:13 82:5,11 83:11,18,22 84:9 84:20,21 85:7,22 86:12,22 87:9,16 87:22 88:3,17 89:4,11,12 90:2,8 90:18 91:3,16 92:1,8,13 93:11 94:2,16 96:1,6,11 97:15 98:20 99:11 100:4,14 101:2,15 102:4,16 103:8 104:5,21 105:7,10 105:21 106:20 107:10,14,19,20 108:20 109:10,15 109:21 110:8,10	110:17 111:10,16 111:22 112:11,17 113:3 114:3 115:20 116:11 117:3,11,17 118:6 118:10 119:3 120:20 122:2 128:14 129:17,20 130:5 141:2 164:22 165:13,18 166:7 167:6,12,22 168:19 169:5,17 169:19 170:16 171:9,17 172:9,15 172:22 173:6,14 175:2 176:6,9 177:2,7 179:10,13 180:21 181:15 182:21 183:3 184:3,13,22 186:8 186:15,19 188:3 189:1,12,21 190:12 Krug 2:15 5:11,12 119:9,12,14 165:15 190:15 Kuwait 140:11	lawyer 13:7 19:1 44:15 59:16 60:20 61:12 122:10,13 125:13 144:15 145:9,10,12 146:10 147:10,11 149:9 183:15 186:22 lawyers 10:10 18:15 146:7 147:5 147:13 152:14 lay 24:19 177:21 Lazar 141:18 lead 146:9 Leadership 7:14 Leading 122:2 189:1 leaps 37:11 learn 12:2 26:13 88:18 170:7,10,13 171:18 learned 23:18 38:5 led 50:4 125:7 left 187:19 legal 6:4,7,14,17 7:2,22 9:6,12 41:3 41:6,8 43:18 44:1 45:1 87:18 105:2 122:3 123:4 127:19 128:12,15 138:9 141:11 165:1 178:12 179:5 legalistic 124:15 let's 38:6 74:7 107:14 119:22 122:8 134:7 148:7 150:10 151:2 186:15 letter 12:6 54:4 62:11 79:7 84:12 141:17 level 61:1 liability 127:20,21 light 85:14 limitations 134:21 limited 56:19 57:3	135:8 180:19 line 35:8,11 148:18 168:1 lines 101:19 list 144:22 147:3,12 listed 145:7 146:3 163:2 listen 8:17 listening 8:9 litigation 11:11 120:6,11 152:18 157:10 little 122:9 156:8 160:8 live 138:22 139:5 LLP 2:4,15,19 located 1:20 location 52:14 55:20 144:9 150:19 locations 133:11 140:13 locked 113:2,2 137:7,8,9,9 lodged 126:17,20 log 3:11 10:15 12:9 12:20 59:9 95:8 95:19,20 117:22 118:7,11 120:10 126:22 162:15 163:3 172:3 176:13 186:6,10 LOGCAP 13:16 126:15 128:20 130:21 134:7 138:15 140:14 160:17 162:5 181:1 logged 12:15 13:12 44:16 127:1 134:7 181:22 185:19 logged-in 12:13 long 79:19,21 122:13 147:12 longer 72:12 164:9 look 14:19 16:6 27:9 30:10,12,21	33:18 38:6 40:6 40:10,11 42:9,12 43:15 49:3,21 50:1 66:4 70:21 73:18 74:17 127:20 141:15 144:1 149:10 150:12,17 154:13 looked 10:17 74:14 95:10 100:17 104:22 114:1 136:19 148:17 168:20 looking 21:18 34:15 54:1 108:10 130:11 148:16 154:16 looks 98:6 154:15 Los 2:16 5:14 loss 72:10 164:13 lot 138:22 181:2 lower 42:3
	L			M
	labeled 157:3 lack 91:11 112:4 Lahmann 145:12 146:13 147:1 Langford 15:6 laptop 46:7,10 50:5 51:22 laptops 52:21 late 123:15 launched 133:4 law 1:19 7:12 18:16 19:2 44:14 124:3 125:9 127:19 142:10,20 146:17 147:19 152:19 156:16 Laws 140:22 lawsuit 95:17			mailbox 12:7 126:18 main 19:16 189:8 maintain 46:20 174:2 making 50:16,20 83:22 85:16 171:15 manage 6:14 12:10 44:17 management 8:1 8:21 29:13 39:17 40:6,10 41:7 123:4,14 124:17 126:19 150:13 manager 14:16,21 15:11 16:2,5 23:8 23:10,13,18 24:11 24:14 25:10 35:9 37:12 91:7 118:16 127:2,11 128:4 136:1,3 148:3 150:21 164:6

manager's 23:8 29:19	102:7,22 103:13 104:10 105:5,8,14 106:13 107:3 108:14 109:6,13 109:18 110:2,13 110:21 111:13,19 112:3,14,20 113:15 115:15 116:7,17 117:7,14 118:9 119:4,10,13 119:16,22 120:3,5 121:4,16 122:4 128:16 129:11,19 130:4,10 139:15 139:21 141:5 165:2,10,21 167:2 167:10,16 168:4 169:2,14 170:16 171:2,5,11 172:7 172:11,14,18 173:4,11 174:15 175:21 176:7,19 177:5 179:4,7 180:10 181:14 182:19,22 183:21 184:9,14 186:7,11 186:20 187:2 189:2,4,9,16 190:7,17	matter 1:4 16:6 30:7 39:14 42:10 74:10 79:1,7 81:10 99:10 107:17 118:4 119:19 124:13 127:8 133:13 147:18 148:22 152:16,19 159:19 178:16 179:17 186:17 188:6,13 188:19 190:21	mentions 189:15 mere 72:17 met 116:12 173:7 methods 143:8 Michael 2:3 60:2 60:10 middle 18:2 36:2 43:17 Mike 76:8 military 135:13 Miller 15:2,15 mind 34:11 183:15 mine 146:21 minutes 79:21 119:17 mirror 47:10 48:12 50:20 mirrored 50:17 53:21 mischaracterizes 70:16 mischarged 103:11 misconduct 23:14 59:19 60:7 61:4 61:22 126:17 129:1 180:18 missed 95:13 misstated 96:12 misstates 103:1 mixed 9:13,19 Mize 13:4,5 16:14 16:15,15,18 60:19 61:13,15,17,19,20 62:15,18,22 63:4 82:19 83:7 97:1 107:13 109:1,3,5 109:11 138:8 150:11 178:1 183:11,17,20 moment 24:16 97:6 101:7 145:15 158:11 159:7 163:6 Monday 26:15 27:6 94:21 Mondays 7:10 monitor 106:2,11	monitoring 106:4 monthly 7:13,17 motion 4:22 120:9 120:14 121:1 168:14 movement 135:8 Mullins 62:5 63:3 multiple 135:4 182:2
Margolis 2:8 3:5 4:10,11 8:3,12 9:1 9:8,14,20 11:17 13:21 20:17 21:12 24:15 25:13 27:2 27:12 28:6,19 29:9,22 31:3 32:9 32:18 33:10 34:1 34:5 35:2,14 36:9 36:18 37:6 38:17 38:20 39:2,8,22 40:14,20 41:15 42:5 43:11 44:3 44:11 45:2,12,20 46:8 47:3,12,19 47:22 48:2,14,22 49:10,17 50:8 51:1,6 52:2,10 53:8 54:5,9,13,18 55:4,15 56:1,11 57:2,5,21 58:6,19 64:4 65:7,18,22 66:5,9,12 67:5,10 67:16,22 68:3,9 68:17 69:3,16 70:15 71:6,15,20 72:6,16,20 73:16 74:19 75:11 76:1 76:4 77:3,10 78:4 78:21 79:9 80:9 80:21 81:20 83:3 83:14,20 84:2,11 85:3,10 86:7,18 87:4,13,19 88:2,8 89:9,20 90:14,22 91:11,20 92:5 95:9 96:4 97:5 98:15,21 99:15 100:7,18 101:6,20	mark 66:5 129:12 129:13 139:16 marked 17:12 26:4 26:9,16,19 27:9 59:3,7 65:13,16 66:4,11 82:6,9 89:2 90:3,6 93:7,9 93:22 94:11,13 96:21 130:8 139:19 157:11,14 158:15,18 marker 159:9 marking 88:22 93:20 158:5 Martin 2:19 5:6,6 27:20 66:7,11 77:21 190:13 material 133:16	matters 55:18 61:10 62:14 98:22 101:9 107:9 154:9 162:13 166:2 168:18 171:14 172:2 181:22 Mazon 187:17 mean 8:18 11:3 17:9 37:12 46:14 50:12 98:1 107:8 113:22 114:2 129:2 134:12,20 147:19 152:22 154:21 155:4 164:4 170:4 171:1 183:13 meaning 42:20 means 29:1 85:11 180:15 measures 19:15,18 19:21 20:1,11 21:22 meet 115:5 meeting 7:16 11:4 77:8 185:15 meetings 7:6,8,11 7:13,13,18 8:9,11 member 126:2,5 173:16,21 memorize 73:8,11 mental 55:10 mention 140:17 mentioned 59:8 79:12 128:19 190:6	mind 34:11 183:15 mine 146:21 minutes 79:21 119:17 mirror 47:10 48:12 50:20 mirrored 50:17 53:21 mischaracterizes 70:16 mischarged 103:11 misconduct 23:14 59:19 60:7 61:4 61:22 126:17 129:1 180:18 missed 95:13 misstated 96:12 misstates 103:1 mixed 9:13,19 Mize 13:4,5 16:14 16:15,15,18 60:19 61:13,15,17,19,20 62:15,18,22 63:4 82:19 83:7 97:1 107:13 109:1,3,5 109:11 138:8 150:11 178:1 183:11,17,20 moment 24:16 97:6 101:7 145:15 158:11 159:7 163:6 Monday 26:15 27:6 94:21 Mondays 7:10 monitor 106:2,11	monitoring 106:4 monthly 7:13,17 motion 4:22 120:9 120:14 121:1 168:14 movement 135:8 Mullins 62:5 63:3 multiple 135:4 182:2
N				
N.W 1:20 2:5,10 name 4:5,11 16:11 70:11 95:4 144:9 named 15:15 names 59:12 narrow 126:13 nature 148:5 Neace 2:9 4:13 necessarily 37:11 39:14 40:4 41:3 necessary 65:12 95:18 147:16 need 55:16,17 70:22 81:7 83:20 86:7 127:8 149:10 168:6 178:12 180:6 186:2 needed 64:10 123:17,22 128:6 149:16 needing 135:1 never 51:13 170:9 188:14 new 43:8 57:16 138:18 nine 105:1 non-waiver 58:17 Norman 15:8 notation 49:4 note 56:4 108:14 168:8 notes 20:7 80:2 notice 1:18 30:12 49:22 62:11 79:8 notified 101:16 notwithstanding				

95:14	110:13 116:7	48:13	158:20 159:11	44:3 45:21 48:8
November 157:22	165:21,22 169:14	obtaining 43:18	169:12 171:4,11	48:14 49:11 51:17
number 12:21	170:19 172:11,18	105:2	171:16 173:21	52:11 53:8 65:8
13:12 19:12 20:6	184:15 189:17	obviously 4:22	175:3	68:17 69:6,17
21:18 39:4 50:2	objecting 45:4	75:22 78:6 95:19	old 34:16	70:17 78:6 81:20
70:12 82:7 85:2	objection 8:3,12	168:11	once 16:21 106:13	87:21 91:20 97:7
86:2,14 92:19	9:1,8,14,20 20:17	occasionally 100:13	139:1	98:22 99:15 100:7
93:7,20 105:22	21:12 27:2,12	occupied 15:15	ones 7:17 64:8	100:18 101:6,8
118:12 130:3,9	43:11 45:12 48:14	occur 79:22	124:16 181:16,18	102:9 103:2,15
134:21 139:20	49:1,10,11 50:8	occurred 25:22	181:19,21	105:14,15 108:9
140:18 142:22	51:1,6 52:2,10	33:22 61:4,22	ongoing 166:14	111:6 121:6
143:16 144:1	53:8 54:8,18	102:21 103:19	169:7 172:21	147:18,19,19
145:11,13 146:20	56:11 57:5,21	108:6,11 128:5	opened 167:22	156:22 159:4
153:1 157:15	68:9 70:15 71:6	129:8 131:16	168:5	164:14 166:2
158:19 175:13	77:21 80:9,21	136:15 155:20	operated 91:6	190:8
179:1 181:3 187:4	81:20 84:1 87:4	156:1 161:1 165:7	operating 43:1	overall 145:17
187:22 189:14	87:13 89:20 90:14	182:17 183:7	operation 100:6	overcharge 103:19
numbered 17:20	91:11 99:15,17	185:12	123:19	overcharged
19:15 157:7	100:7,18 101:20	occurs 163:18	operations 79:3	103:22 104:3
numbers 143:17	102:7,8 107:3	offer 162:21	91:7 104:2 118:18	overseas 138:21
145:1,6 147:4	109:6,13,18	offered 160:15	146:18	139:1
NW 2:20	110:21 112:3	162:3	opportunity 27:17	oversee 12:10
	113:15 117:7	office 23:20 25:11	35:19 37:16 74:20	oversight 43:9
	120:20 122:2	28:5 59:21,22	120:13 163:9	Oweis 38:13 42:2
O	128:14 164:22	68:16 92:20	168:17	owned 122:20
object 11:17 13:21	170:17 171:7,10	169:21,21	oral 164:11	ownership 108:5
24:16 25:13,14	171:15 173:4	officer 64:11,15	order 46:19 55:16	137:18 142:14,18
28:6,8 29:22 32:9	175:21 176:19	officers 64:19	71:1 98:3 130:1	
32:18,19 33:10,13	179:7 180:10	135:15	138:6 156:22	P
34:1,5,7 35:14	181:14 186:7	offices 1:19 38:14	159:16	P 2:5
36:9,18 37:6,7	189:1,16 190:7	official 132:10	ordinary 148:18	P-R-O-C-E-E-D...
39:8,9 40:15,16	objections 5:9,10	officially 63:7	149:14,19 151:19	4:1
40:22 41:15,16	28:19 29:9 40:1	Oh 16:14 38:21	155:10 156:14	p.m 4:2 30:7,8
42:5,6 44:3 45:2	47:12,19,22 48:22	137:3 142:16	organization 61:1	74:10,11 107:17
45:20 46:8 47:3	49:17 65:7 69:16	151:8 153:12	142:13,17	107:18 118:4,5
53:10 54:5 55:16	101:22	154:21 170:12	organizations	119:20,21 186:17
56:1,14 57:2,7	obligation 23:22	177:9	128:10	186:18 190:19
64:4 67:5 68:3,17	83:8 99:13 129:9	Okay 6:6 17:19	organized 63:19	Packard 123:19
68:19 69:3,5,19	131:9 133:19	18:2 19:13 21:19	original 57:4,15	page 3:7 17:17
70:18 72:6 77:3	164:19	30:14 33:20 34:10	originally 122:18	19:14 20:7 21:20
77:14 80:11 81:1	obligations 128:20	35:4 39:3 41:12	123:14 125:5	22:7 34:22 36:1
81:22 83:3,14,21	128:21 129:2	43:21 44:21 66:12	outside 24:22 25:16	43:15 45:17 50:1
87:7 88:8,9 97:6,9	observed 144:2	67:12 76:19 84:20	28:8,20 29:10	105:1,22 118:12
100:10,20 101:7	180:16	88:2 97:20 98:11	30:1 33:14 34:7	140:16,19 141:2,4
101:10,21 102:22	obtain 44:1 77:18	118:14 119:11,13	34:22 35:15 37:7	141:20 142:5,7,21
103:13,14 104:10	111:11 138:1,6	141:22 142:17	39:10 40:1,16,20	145:1,2
105:15,17 106:14	obtained 20:3	148:12 157:16	41:16 42:6 43:12	paid 162:19 167:8
106:16 107:6				

167:14	performing 164:10	97:3 98:13	102:3,6 103:7	90:16 91:14 95:19
Palmer 29:16	period 12:12	please 4:4 5:15 25:6	practices 40:11	95:20 96:22 109:8
paragraph 17:20	105:11 108:4,6	40:19 44:11 73:10	41:7	110:15 111:7
19:14 20:6 21:18	periodic 138:20	84:19 121:18	preclude 38:3	112:6 116:9,19
22:7 28:16 29:4	periodically 7:18	129:12,14 139:16	predecessor 60:4	117:9 118:7,11
36:15 43:16	52:7 99:22 100:3	157:11 158:16	preliminary 4:8	120:10,19 149:22
131:16 159:14	155:1	163:6 165:11	premise 43:6	151:21 152:4
part 23:18 50:21	periods 125:22	174:20 190:9	preparation 10:8	153:11 155:8
85:20 161:3	permit 24:17	plus 6:9	10:14 11:3 26:11	162:15 163:3
participate 149:3	167:17	point 15:17 37:22	prepare 96:3	167:4,18 172:2
participated	permitted 156:6	39:20 44:16 57:14	177:10	173:10,18 174:1,7
180:17	161:5 163:13,15	92:9 118:17 148:5	prepared 4:19	174:10 175:9
particular 10:4	168:22,22	pointing 148:18	66:19 92:4,6	176:13 178:5,13
11:21 48:4 104:18	person 18:3,12	police 135:15	108:22 177:4,17	184:1 186:5,9,13
151:5 152:21	56:19 147:9,11	policies 142:14	prepares 13:2	190:6
154:2 171:14	176:17	154:5 184:18	preparing 177:19	privileged 4:21
particularly 153:2	personal 47:6	policy 18:4,8,13,18	present 1:21 21:3	8:16 10:2 20:21
particulars 159:18	87:20 108:15	19:5,7,9 20:8,13	79:15	31:6 55:1,2 69:22
178:15	111:4 166:11	20:22 21:8,20	presentation	77:12 83:19 95:8
parties 1:22	personally 53:15	22:2,21 23:3,5	185:18	116:22 117:22
partners 2:14 5:7	115:5 134:14	44:22 45:11,19	preserve 171:3,6	121:14 122:1,7
5:13 98:19 161:8	184:10	104:9 106:1	189:8	133:1,16 157:4
party 66:20 144:5	personnel 28:17	125:18 126:2,6	President 6:4 7:11	158:9 159:9 189:7
pass 12:9 124:17	163:10,12 168:21	140:21 141:10	146:2,4,8 155:22	189:15
144:12	persons 18:3,13	142:3,9,19 173:17	Presidents 6:6	privileges 111:3
passed 12:13	138:1	173:22 184:4,8	prevent 188:11,17	probably 26:15
passing 37:13	pertained 13:15	185:2,5,9	188:17,22 189:6	35:20 39:13 40:7
pattern 34:20 35:7	pertaining 45:1	portion 131:2	previously 17:12	76:2 134:12
35:10	62:3 96:7 116:5	143:4	pricing 38:15 42:2	problem 127:22
Pause 163:7	173:9 175:17	portions 64:20	primarily 13:16	152:11
pay 150:7	176:12 185:8	163:9	129:4	procedure 16:20
payroll 148:10	pertains 30:15	position 15:15	primary 151:13	17:2,4,5,8 44:6,9
Peck 60:10	phone 12:6 23:12	75:15,20 87:20	printed 114:20,22	44:19,22 45:8
pending 4:22	66:21 70:12	137:12 165:3	115:2	68:13 184:5 185:3
Pennsylvania 1:20	115:21 143:17,22	positions 46:16	prior 27:18 47:7	procedures 13:18
2:10	144:4 146:20	possible 10:5	73:6 75:9 77:8	14:12,15 15:18
people 46:16 104:2	147:4	131:18	81:18 115:7	18:7 19:5,6,10
123:6 128:9 135:2	phrase 190:4	possibly 99:8	privilege 3:11 4:18	20:7,10 22:11
148:22 150:5	physical 116:14	potential 20:14	10:15 42:16 51:8	24:6 43:8,17,21
155:3 170:4	physically 47:14,17	23:18 24:13 28:12	54:10,20 56:3	45:17 99:14 105:1
187:19	pick 23:12 143:22	29:20 33:4 62:3	58:1,11,15 59:1,9	105:4,13 130:19
people's 52:7 53:3	place 13:19 15:18	128:22	67:7 68:5,11 71:8	154:5 184:18
59:12	16:20 43:9 55:11	Power 6:5,15	71:11 72:7,13	proceed 14:9,13
percentage 181:13	68:14 105:13	practical 81:10	74:3,15 75:5,17	70:7 84:19 117:6
percipient 111:4	133:21 169:10	practice 39:13 40:8	77:4 78:11 81:4	123:16
performed 61:7	Plaintiff 1:7,18 2:2	41:11,13,20 52:6	83:16 84:8,14	proceeding 76:14
149:21	play 60:5 63:17	52:8 69:1 70:9	85:5 87:6 89:22	process 6:14 12:5

22:4 34:4 56:22	108:10 124:4,7	132:7 136:19	172:12,19 179:15	reasonably 106:5
88:4,15 99:9	125:7,11 126:21	140:13 161:8,21	180:11 183:15	recall 27:10 36:21
103:9,11 104:8	137:6,18 150:1	162:4	184:15 185:1	66:16 76:21,22
137:16 142:15,19	161:9	pushing 134:12	189:3,18	78:9 80:1 82:12
148:7,8 152:6,15	program's 16:10	put 63:21	questioning 168:1	82:21,22 83:7,8
153:4 154:20	programs 124:9	puts 144:11	questions 4:19 5:2	83:12 88:20 89:5
155:4 161:4 169:9	prohibit 188:5		24:18 55:6,9 80:7	92:21 93:12 94:18
169:13 185:15	prohibited 159:17	Q	85:19 86:10 119:3	115:9,10,13,16,21
processes 50:22	178:14	qualifications	119:5,7,8 121:6,8	116:1,5 117:12,20
55:10 137:20	project 8:18,18	135:10	121:9,11,14 127:6	124:22 125:18
procurement 46:17	59:22 91:7	quarterly 185:15	135:18 142:1,2,8	128:21 153:19
98:9,12 99:6	projects 180:20	question 5:2,2 8:4	144:7 154:1	155:13 156:11
100:2 148:14,15	promotion 150:8	8:13 9:2,9,15,21	165:12,13,16	160:2,11 170:12
149:2,12 151:16	promptly 131:17	11:18 13:22 18:12	166:9 168:3,5,17	171:21 187:9,12
152:7 153:19	proof 33:7	20:18 21:13 22:1	170:18 186:19	188:1,3,9
154:3,4,12,15	properly 63:21	25:5,15 27:3 28:7	187:4,21 188:4	recalls 78:5 79:10
155:2,9	protect 159:16	28:20 29:10 32:10	189:10 190:12,14	receipt 71:13
procurements	protection 153:14	32:19,21 33:11,12	190:16	164:17 165:4
154:19	155:8	34:2,6 35:15	Quinn 2:15,19 5:7	receipts 28:13
produce 14:20	protections 160:4	36:10,20 37:7	5:13	receive 14:7 23:1
136:12	prove 33:8	39:9 40:16 41:1	quit 170:5	182:2
produced 16:8	provide 7:20,22 8:2	41:16 42:6 44:12	quite 38:13	received 14:4 42:13
47:21 75:20,21	42:3 43:17 76:19	45:3,14 46:9 47:8		114:15,16 162:19
84:10 94:18 95:17	80:5,16 95:20	48:17,21 49:11	R	167:8,14 171:19
116:22 157:9	105:2 133:10,16	51:2 52:3 53:11	raise 5:15 136:1	173:15,19 187:3
182:13	144:9,12 154:12	53:13 54:14 55:5	150:7,19	187:20
producing 4:14	179:17	56:14 58:11,14	raised 89:18 154:2	receives 24:11
product 4:21 31:7	provided 64:20	64:7 68:20 69:4,5	168:18	receiving 16:9
51:9 54:10,21	70:11 90:12	69:10,20 70:19	Rami 38:13	recite 182:8
56:4 58:2 59:2	102:20 109:3	71:16,21 72:21	random 155:2	recognize 130:14
67:8 68:12 70:1	110:18 129:16	73:3,15,22 74:13	179:12	139:22 157:17
71:9 72:8 74:4	132:16 140:10	77:11,14 78:7	reaches 35:9	158:21
75:2,17 77:13	156:16 175:19	80:12,14 81:8,22	reacquaint 73:14	recollection 73:20
78:11 81:5 83:17	178:3 185:4	83:4 86:19 87:8	read 37:15 38:10	74:18 75:13 77:17
84:5 85:6,14 87:7	provides 143:8	88:1,9 92:6 97:10	38:11 131:12,13	78:3 108:16
90:1,17 91:14	150:10	99:2,18 100:10,21	132:1 159:21	recommend 155:21
109:9 110:16	providing 99:8	101:8,11,21 102:8	reading 178:9	156:4
111:2 112:7	156:16 158:13	102:8 103:1,4,14	reality 57:17	recommendations
113:18 116:10,20	provision 128:12	103:17 104:11	really 88:20 117:20	123:21 155:17
117:10 167:5,19	pull 155:2	105:5,9,18 106:17	129:5 137:10	recommending
184:1 186:14	purpose 50:16	107:6 110:3,5,9	148:22 180:14	102:13
production 120:9	75:12,19 76:6	111:9,14,20	reason 77:7 95:6	reconsidered 74:21
productions 85:18	78:15 109:22	113:16 121:18	129:7,7 160:22	record 4:3,5 5:8,11
program 21:3 53:3	110:5 177:19	126:14 165:22	164:9 189:13,22	30:5,7 38:12
62:8 70:10 79:4	185:22	166:8 167:11,17	reasonable 106:2	46:18 48:8 58:6
82:16 83:12	purposes 77:19	169:15,18 170:20	131:14 162:9,17	73:14 74:8,10
100:13,16 108:2,7	pursuant 1:18 20:7	170:20 171:6,6	165:6 171:1	86:8,9 107:15,17

107:19 118:1,2,4 118:6 119:18,20 120:1 121:3 131:6 167:20 168:9,16 186:15,17 records 120:18 recross 3:2 170:22 190:8 RECROSS-EXA... 187:1 recruits 138:19 redacted 158:13 redirect 3:2 165:17 187:4,21 REDIRECT-EX... 189:11 refer 66:13 reference 159:12 referenced 143:12 references 125:16 referred 140:6 142:2 146:14 referring 20:8 27:20 36:7 59:10 177:5 reflects 58:6 refresh 73:19 74:17 refreshing 75:13 regard 123:12 regarding 36:5 88:5 140:22 159:18 178:15 regardless 116:22 regions 135:5 regularly 7:8 Regulation 130:18 154:4 regulations 98:5 rel 1:6 relate 126:14 154:18 related 30:20 31:2 31:15,20 32:1 136:13 150:1 163:19 relates 31:1 95:16 143:5 180:1,5	relating 126:15 128:22 137:1 141:11 143:17 151:5 152:19 161:7,12 162:22 188:13,19 Relations 150:17 relationship 39:18 60:19 Relator 1:7 relevant 105:11 remain 144:8 remember 10:4 78:18 86:6 115:19 177:15 remittance 151:6 Remo 91:4,5 remote 52:14 remotely 52:16 removed 50:16 repeated 67:3 repeatedly 67:2 rephrase 22:13 45:13 169:8,17 185:1 report 6:10 11:9 14:20 16:7,9,17 16:17,21 22:18 23:1,6,10,13,19 24:11 25:9,10 26:3 29:20 35:19 60:21 61:9 64:21 66:22 95:10 96:13 96:16 101:18 116:4 117:1 127:13 129:9 131:17,18 132:17 143:9 146:22 152:12,16 164:2 171:22 172:3 180:19 182:14 184:19,20 185:7 185:12 reported 35:20 61:20 132:12 152:9 Reporter 5:15,22	40:19 73:9 129:12 129:16 reporting 23:15 60:18 67:4 128:1 128:19,21 129:1 131:9 133:18 143:5 164:18 179:22 184:6 reports 10:18,19,22 11:2,10 23:7 28:16 68:15 75:9 75:15 81:14,19 96:2,17,20 101:14 108:21 109:12,17 110:1,6,11 112:8 113:1,4 115:7,13 116:14 118:20 127:16 132:14 136:4,22 137:5 138:2,6,11 161:11 171:20 183:5 185:10 represent 116:21 120:5 157:7,8 158:2 representations 180:9 representative 78:8 request 48:4 87:11 88:7 104:17 requests 160:3 require 28:3 required 19:22 22:22 43:8 124:2 129:6 156:18 185:3 requirement 159:1 185:2 requirements 179:22 requires 68:14 reside 47:17 53:21 resides 47:14 resign 87:12 88:7,7 156:6 163:13,15 168:22 169:1 resignation 172:6	resigned 170:11,13 171:19 resigns 169:9 respect 18:11 20:10 20:15 21:9 22:2 22:15 24:4,5 27:16 34:3 35:22 45:16 47:7 55:19 58:17 61:7 71:5 71:13 75:7 80:14 95:21 96:4,13 97:3 98:7,13,18 106:22 118:19 120:22 126:12 134:7 155:18 160:10 162:13 168:13,17 172:1,6 174:3 175:11 183:18 187:4 188:18 respective 1:22 respond 151:11 responded 48:5 92:10 responding 25:3 121:1 152:6 response 51:7 80:4 152:10 166:9 responsibilities 6:13 7:1 23:16 responsibility 23:6 23:9,17 26:3 29:20 30:4 45:17 61:9 83:1 100:5 105:3,12 128:1 154:8 184:5 responsible 6:17 25:8 86:16 128:4 137:17 169:12 182:10 183:4 responsive 48:6 116:21 result 20:20 54:12 127:22 128:6 155:16 164:1 resulted 161:21 162:3	results 22:9,15,18 55:1,2 resumed 30:8 74:11 107:18 118:5 119:20 186:18 retired 91:5 135:12 return 70:12 reveal 10:1 55:9 75:2 91:13 176:3 revealing 20:20 46:2 75:1 77:11 111:1 112:5 113:16 review 16:1 27:17 49:9 75:18 95:13 101:14 111:17 112:1 120:14 127:14,15 151:10 159:17 163:9 reviewed 10:13,15 10:16 11:2,8 26:9 73:6 74:21 75:9 76:5 84:4 109:17 113:13,22 124:10 reviewing 59:8 99:8 114:2 118:2 154:8 183:5 reviews 151:20 152:3 154:18 163:20 Rice 15:10,13,14 118:13,15,16,22 119:1 Richard 13:3,5,13 13:14 15:4 16:14 16:15,15 17:10 60:19 61:11,13 62:15 63:22 82:18 97:1 107:13 150:11,11 178:1 183:11,17 right 5:16 38:3,18 38:20 86:1 89:5 118:7 119:16 129:11 134:3,17 141:6 143:10,16
--	---	---	---	---

145:19,22 146:11 146:12,16 147:6 151:7 153:15,21 154:6 155:6 159:6 159:10 178:18 188:7,8 rise 29:14 Ritondale 17:13 30:11 76:11 77:2 77:8 78:20 140:6 role 21:8,16 22:2 59:17 60:5 63:17 97:2 98:11 104:7 104:16,19 126:11 126:16 roles 6:22 Ron 59:13 60:4,12 room 113:2 137:7,9 Root 122:14,17,19 123:14 124:19,21 146:10 rough 134:5 roughly 134:2 181:10 rules 98:5	scope 24:22 25:16 28:8,21 29:7,10 30:1,15 40:2 43:12 45:4 47:5 48:15 49:12 53:9 56:5,12 57:6 64:5 65:8 68:18 69:6 69:17 70:17 78:6 80:10,22 81:21 87:21 88:10 91:21 97:7 98:22 99:22 100:8,19 101:9,22 102:9 103:2,15 104:11 105:15,16 106:14 107:4 108:18 120:21 121:7 166:2 170:19 173:9,17 190:8 script 80:6,16 se 37:22 search 53:17 searched 53:5,22 searches 54:2 searching 48:5 second 25:15 28:15 129:13 140:16 159:14 165:10 secretary 63:13 section 92:11 Securities 180:2 security 14:16,21 15:5,11,12,19 16:2,5 118:16,17 127:3,3,11 148:3 149:10 153:16 154:11 156:9 see 17:22 26:22 28:11,15 37:10,12 39:14 40:5 41:10 43:19 49:3 57:16 65:12 95:11 106:8 131:2,3,8 140:16 140:21 143:14,18 144:22 145:3 146:16,18 147:3 155:3 157:22	158:5 159:9,12 177:12 seeing 6:17 27:10 66:16 82:12 89:5 93:12 154:17 seeking 120:9 seen 17:14 26:10 27:5 90:9 94:3 101:18 157:19 sees 38:15 seize 50:12 51:11 seized 50:7,13 seizure 50:4 send 101:14 senior 8:1 128:3 137:11 sent 36:15 96:17,22 112:8 114:6,7,11 114:12,22 115:3 116:2 127:14 161:16 185:13 sentence 18:3 30:19 39:19 141:6,9 142:6 separate 9:5 96:13 99:13 102:19 separated 63:8 88:19 187:8 separation 62:12 63:5 88:15 108:7 108:11 187:14 series 7:10 24:18 service 66:20 144:5 144:11 150:9 Services 145:10 set 22:11 126:22 severed 121:21 share 17:3 64:22 65:3 shared 16:17 109:11 160:6 shareholders 180:6 sheer 134:21 sheet 12:20 13:1 14:6,7,17 15:22 sheets 10:16 short 104:18	show 17:11 26:8 38:8 59:6 82:6 88:21 89:10 93:6 94:10 showing 26:19 65:16 shown 162:7 Siemens 187:18 sign 156:19 159:2 signature 190:21 signed 84:16 85:15 112:13 157:2 158:4 176:8,17 simple 71:16 single 96:16 sir 84:12,15 86:7 105:6 121:8 122:10 158:6 174:16 site 34:12 55:20 95:12,14,15,16 sites 29:5 135:6 sitting 5:5 8:8 situation 64:12 103:22 slightly 151:2 solicit 95:21 somebody 23:12 49:5,19 102:15 103:20 135:1 137:17 148:9 150:18 152:6 160:21 179:12 somewhat 126:14 soon 42:12 sorry 40:20 65:2 96:5 129:13 167:10 sort 19:21 64:3 127:21 154:7 184:16 sought 151:6 source 131:8 speak 10:11 40:19 73:9 118:8 speaking 47:7 98:19 115:10,14	116:5 134:2 135:9 147:22 160:19 166:4,10,11 176:22 specialty 149:16 specific 33:7 70:13 159:20 182:20 specifically 36:22 specified 45:17 speculate 25:20 spent 62:14 151:18 spoke 77:18 115:17 St 2:16 staff 7:13 8:8,10 123:3 stamp 82:18 stand 185:19 standard 52:6 102:2 103:6 159:1 standards 22:10 24:3,7,10 141:11 standing 170:17 171:7,9 star 91:6 start 27:16 38:1 started 12:16 42:12 42:17 starting 123:1 142:21 starts 151:14 state 4:5 174:5 statement 3:21 4:9 53:2 156:19 157:21 158:4,5,12 158:14 159:13 160:5 175:20 176:8 177:4 178:2 179:3 187:22 190:2 statements 111:12 111:18 112:2,8,12 112:18 states 1:1,5 159:15 160:16 162:4,22 stating 42:14 status 21:1 stayed 62:18
S				
S 2:16 79:7 sanctity 157:1 saw 94:19 125:16 168:21 saying 17:6 21:16 38:5 40:12 41:8,9 56:17 70:9 113:21 114:14,21 148:19 176:11 179:15 says 18:3 19:3 21:20 22:8 23:4 30:19 35:6 36:2 36:15 37:11,20 38:9,10,10 39:16 43:16 50:2 106:1 118:12 140:21 142:7 147:8 178:13 186:22 scan 46:21 scheduled 7:8				

step 16:4	165:5	139:8	185:11	three-star 91:6
steps 106:2,10 128:10	suggest 48:7	taken 19:18 21:10 21:22 22:15 39:19 46:7 50:15 52:16 64:3 75:15 106:10 160:21	testified 5:20 58:7 70:16 78:2 86:2 108:21 115:16 153:18 159:7 161:18 162:14 167:19	threshold 5:3
stipulate 5:8	suggests 35:7			throwaway 181:12
stipulating 74:1	Suite 2:10			time 7:2 11:1,8 12:12 37:20 62:15 62:21 63:5,7 105:11 115:12 116:2 122:16,19 123:8 124:2 125:22 133:20 141:18 145:15,20 147:1,15,15 149:20 151:4,4,22 153:22 154:1 155:5 165:4,14,16 171:16 182:6 188:9
stop 24:15 145:14	Sullivan 2:15,19	takes 22:2 56:10 150:9 169:10	testify 75:14 78:5 86:4 107:5 158:11 161:5 166:2	
stored 63:21 112:19 113:8	sum 31:12	talk 8:18 32:3 102:14 128:3 135:2	testifying 77:9,19	
Street 2:5,20	summarized 142:9	talked 10:7 127:10 137:11 142:7 155:21 160:8 174:1 183:14	testimonial 168:16	
strictly 42:15 166:20 170:3	summary 12:22 13:2 14:4,8 139:6 140:2,4,5,10,17 141:4,20 142:22 143:4 145:2,15,16 174:8,18,20 190:2	talking 33:17 38:2 97:14 98:17 135:16 182:19 184:11	testimony 10:9,14 33:14 47:4 59:8 73:7 75:8 76:6,11 76:12,13 102:17 103:2,15 140:9 155:12 156:9 158:3 163:4	
stumbles 56:21	supervise 61:6	tasked 63:22 151:10	Texas 146:17	
subcontract 148:16	supplement 95:19	Team 7:14	Thank 5:22 118:9 165:16 171:16 190:18	timeframe 134:2 138:16
subcontractor 39:19	supplemented 139:3	technical 148:7,21	theater 135:1	timekeeping 148:8
subcontractors 36:3,6	suppose 9:17	telephone 5:14 79:17 145:1,6	theories 33:17	times 43:6 51:10 60:8,16 61:5 62:1 62:4 69:11,12 115:11 139:2 153:1 164:5
subject 4:17 29:7 55:14,21 75:16 78:22 79:7 92:22 94:5 95:16 99:10 100:21 107:1 120:18 127:8 147:18 148:22 149:21 151:20 152:3 153:10 159:19 167:21 178:16 179:16 188:6	supposed 13:19 56:10 179:19 180:18	tell 17:10 27:10 30:22 38:5 77:1 78:15,19 80:19 84:22 116:4 148:3 179:2	thereto 18:11 30:19	tip 3:16,17,18 10:15 12:22 14:5 14:7,17 15:22 16:16 81:6 86:13 92:22 93:12 94:3 94:22 144:18
subjected 108:3	suppression 28:13 28:17	telling 148:17 185:11	thing 154:16	10:15 12:22 14:5 14:7,17 15:22 16:16 81:6 86:13 92:22 93:12 94:3 94:22 144:18
subjects 25:17 28:21 30:1 41:17 99:16	sure 5:3 6:20 7:4 11:20 21:15 27:4 27:5 28:22 49:2 50:11 56:16 63:20 71:12 83:9,22 85:10 108:12 110:4 113:12,20 116:13 121:20 125:21 152:22 155:3 177:18 180:14 182:7 183:16	ten 79:21 105:22	things 13:20 85:17 136:16 153:2 171:12	tips 13:9 67:20 69:2 70:10 71:14 96:14 96:15 100:17 115:12 116:2 161:7,13 167:20 181:1
submitted 28:4	switching 151:2	tender 162:21	think 6:8 8:21 15:16 38:22 39:1 39:12 40:5,7 48:3 63:11 66:7 72:1 79:2,2 92:8 94:20 111:7 114:8,8 129:22 130:2,5 139:16 144:2 152:10 164:9 174:16 175:10 182:6 190:17	
subordinate 23:1	sworn 5:20	term 127:12 181:11	third 66:20 144:5	
subpoenas 133:15	system 6:21 67:4	terminate 166:16	thought 64:10,13 65:12,20,22 128:6	
subsequent 108:6 133:4 168:13	systems 106:5	terminated 87:3 156:6 164:8 166:15 167:1 169:9 170:1,8	thousand 134:13 181:8	
subsequently 95:13		termination 155:21 164:12,14 165:19	three 96:10	
subsidiary 145:21 146:11		terms 6:16 14:17 24:8 25:22 52:10 65:8 98:17 127:21 135:1 137:13 154:13 164:10		
substance 31:13	T			
substantiated 136:10,11	take 5:1 14:19 60:15 63:3 64:11 66:21 74:7,17 80:2 103:12 106:1 134:8 137:18			
substantive 141:20				
successor 60:12				
sufficient 164:18				

163:4,8	153:3 170:20	31:18 36:12 75:7	183:6	we're 48:6 58:14,16
told 52:19 53:1	174:16,17	114:18	violations 17:21	74:1,1,13 76:4
123:15 178:11	turn 17:17 19:12	understands	18:5 29:21 40:12	84:16 175:22
top 7:16 91:18	76:7 142:21	100:22	41:6 97:4 143:5,9	we've 46:18 48:5
141:7 157:4 158:5	turnover 46:19	understood 70:6	143:11 180:2,5	74:21,21 100:17
182:7	two 9:19 15:12 91:5	undertaken 19:1,4	volume 134:21	138:16 152:10
topic 171:14	157:5 186:20,21	106:22 110:20	VP 7:2 38:10,13	160:8
topics 4:16 24:20	186:22 187:16	163:22 172:17	128:5 137:18	weaknesses 137:16
28:21 29:11 33:14	type 150:3 153:3	undertook 124:16	145:8	website 175:8
34:7 35:16 37:8	typed 89:16	unidentified 95:8		Wednesday 1:12
39:10 40:2,17,21	types 135:13	unit 123:4	W	weekly 7:17
42:7 43:12 44:4	142:14 188:22	United 1:1,5 160:16	W 4:17 50:2	went 30:7 74:10
45:5,21 48:15	189:6	162:4,22	wait 97:6	107:17 113:22
49:12 52:11 53:9	typically 133:14	unstandard 102:5	waive 58:11 74:14	118:4,21 119:20
56:5,12 57:6 64:5	136:6 142:11	unwritten 17:7	160:4	124:8 186:17
65:8 68:18 69:6	148:2 150:4,16	update 21:1,3	waived 74:2 84:10	weren't 160:7
69:17 70:17 78:19	154:10 155:7	updated 43:5	85:17 190:22	West 2:10
80:10,22 81:21	156:18 160:21	Urquhart 2:15,19	waiver 58:17 84:17	wholly-owned
88:10 97:8 100:8	172:20 173:3	use 23:11 152:13	84:18 85:16	145:21
102:9 103:3	U	184:10	waiving 58:14	William 15:10,13
104:12 105:16	U 4:16	useful 145:1	84:14	118:12,15
106:14 107:4	uncovered 152:11	V	Walk 154:16	wish 117:4
trail 31:9	underlying 127:17	v 1:8 4:17 30:13,15	want 11:21 57:13	withdraw 87:22
training 138:19,20	178:21	62:11	79:6 89:9 108:12	110:8 175:12
138:22 139:5,10	understand 4:7	Vandiver 63:12,13	111:8 120:21	witness 3:2 4:15
139:12 175:11	9:15 11:18 13:22	various 48:13	124:13 125:21	5:19 8:5,14,17 9:3
transaction 153:5	21:14 24:9 32:10	53:22 54:1 59:12	144:3,10 148:3	9:10,17,22 10:3
transactions 153:3	33:12 36:6 50:10	98:5 135:2,5	171:5,15 176:7	11:20 14:2 20:19
transition 62:15	51:3 52:4 54:22	142:12 143:8	178:7	20:22 21:15 24:22
63:6	55:3,17 56:15,17	vendors 29:4	wanted 5:3,8 79:3	25:17,18,20 27:4
transmitted 108:22	57:8 64:7 72:11	verbal 80:4	107:21 150:8	27:8,14 28:10,22
114:19 115:8	73:5 83:5 84:1	version 158:13	168:8,15	29:12 30:3 31:4,8
transmitting 36:17	85:11 87:2 88:12	Vice 6:4,6 146:2,4,8	wanting 184:17	31:16 32:12,20,22
transpired 111:5	97:10 98:16 99:2	155:22	wants 178:10	33:16 34:9 35:4
transportation	99:19 100:11	view 41:2	war 134:9	35:18 36:11,21
135:6	101:12 102:11	Vinson 1:19 2:9	warning 159:3	37:10 38:19,21
treated 13:10	103:4,16 104:13	4:12	164:11	39:12 40:4 41:2
tried 46:17	105:19 106:17	violating 179:2	Washington 1:14	41:19 42:9 44:6
trigger 162:8	107:7 108:12	violation 23:2,19	2:5,11,21	44:13 45:7 46:4
164:18	110:5 113:21	24:13 25:11 33:7	wasn't 17:4 175:19	46:10 47:13 48:9
triggered 165:7	118:19 119:5	39:7 42:4 106:6	183:16	48:18 49:2,14,18
true 77:20	148:10 153:4	127:19 129:7	way 9:7 42:18	50:11 51:4,10
try 34:11 46:19	159:15 168:10	131:15,18 136:15	148:13 163:21	52:5,13 53:14
79:9 121:12	169:16 171:2	155:20 156:1,2	164:12	54:6,15,19 56:2
186:21	understanding 5:4	162:10 164:3	we'll 5:1,10 66:13	56:16 57:10,22
trying 40:15 97:22	19:16 22:1 24:5	165:6 182:17	66:13 106:13	58:21 64:8 65:11
98:16 151:17			118:7 121:1	65:20 66:3 67:6,9

C E R T I F I C A T E

This is to certify that the foregoing transcript

Deposition of: Christopher Heinrich

In the matter of: USA v Halliburton Company

Before: US District Court

Date: 02-05-14

Place: Washington, DC

were duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings; and that I am neither counsel for, related to, nor employed by any of the parties to this action in which this deposition was taken; and further that I am not a relative nor an employee of any of the parties nor counsel employed by the parties, and I am not financially or otherwise interested in the outcome of the action.



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