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IN THE
Supreme Court of Virginia
AT RICHMOND



RECORD NO. 920639

TECHDYN SYSTEMS CORPORATION,

Appellant,

v.

WHITTAKER CORPORATION,

Appellee.

**JOINT APPENDIX
VOLUME II**

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**TRIAL TESTIMONY OF
DONALD ELLIS**

DONALD ELLIS - DIRECT EXAMINATION

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1 JUDGE BROWN: And we're ready for the next
2 witness, who is? Who's the next witness?

3 MR. BOEHLERT: Donald Ellis.

4 JUDGE BROWN: Donald Ellis.

5 (Pause.)

6 Whereupon,

7 DONALD ELLIS

8 having been duly sworn, was called as a witness herein and
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 MR. BOEHLERT: Good afternoon, Mr. Ellis.

12 THE WITNESS: Good afternoon.

13 MR. BOEHLERT: Good afternoon, ladies and
14 gentlemen.

15 BY MR. BOEHLERT:

16 Q Sir, would you please state your full name and
17 home address for the record?

18 A My name is Donald Ray Ellis, 10903 Battersea
19 Court, Fort Washington, Maryland 20744.

20 Q Are you currently employed?

21 A Yes.

22 Q By whom are you employed?

23 A TechDyn Systems.

24 Q And in what capacity do you serve with TechDyn?

25 A Project manager for the ICCE program.

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DONALD ELLIS - DIRECT EXAMINATION

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1 Q And is that the program that's the subject of this
2 litigation?

3 A Yes.

4 Q Mr. Ellis, before we get into your participation
5 with that, starting with your graduation from high school,
6 would you please describe your education and work experience
7 for us, sir?

8 A I came out of high school and went to Hampton
9 Institute, received a B.S. in 1955, a major in physical
10 education, minor in biology. Received an ROTC commission,
11 commission as a second lieutenant, in May of '55. Went into
12 the military service as a second lieutenant. First
13 assignment was at Fort Bliss, Texas going to officer basic
14 course. Graduated. Went to jump school at Fort Benning,
15 Georgia, followed by jump master school at Fort Benning,
16 Georgia then went on an air defense assignment, Nutley, New
17 Jersey in '55. Stayed there as a platoon leader, radar
18 platoon leader, battery executive officer, battery
19 commander, commanding about 100 troops.

20 Q What were your responsibilities as battery
21 commander?

22 A Battery commander was control, monitor, supervise
23 everything that every soldier did.

24 Q And what was your rank at that time?

25 A I was a lieutenant.

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0361

1 Q What did you do after that, sir?

2 A Left Nutley, New Jersey and went to an assignment
3 in Europe, from '57 to '60. There I was, again, a platoon
4 leader in an air defense outfit, platoon leader/battery
5 commander and battery executive officer. Did that for three
6 years.

7 Q Then what?

8 A Left there and went to an advanced course, field
9 artillery, at Fort Sill, Oklahoma. Graduated from the
10 advanced course and also prefix-5 nuclear weapons officer.
11 Left there, went to the 101st Airborne Division. Had a job
12 as a commander of about 300 troopers in the 101st Airborne
13 Division.

14 Q What did your responsibilities include?

15 A Everything -- monitor, supervise, control those
16 300 troopers. And left that assignment. Joined the G-3
17 section, 101st Airborne Division. Remained there for the
18 balance of the time. Got promoted to Captain. Left that
19 assignment and went to Korea and in Korea, I was an
20 operation officer at a battalion level, field artillery.
21 Later on, became a battery commander. Again, controlled
22 everything that all of those troopers did, again, about 100
23 people. Left that assignment, went to Fort Sill, Oklahoma.
24 Worked in S-3 operations for a while, then took another
25 battery, that's a field artillery battery. Again, 100

1 people, 155 millimeter weapons.

2 Q Approximately when was this?

3 A This is in '64 timeframe, now. Left there and
4 went to Viet Nam in '65. Spent a year in Viet Nam as an
5 operation officer in a field artillery battalion. Left Viet
6 Nam. Went to Fort Sill. Was there for a short period.
7 Selected, went to a command at General Staff College at Fort
8 Levenworth. Graduated. Went back to Fort Sill. Then went
9 to Germany, spent three years in Germany on Headquarters
10 EUCOM staff -- that's a unified command commander -- for
11 three years. Now had been promoted to major, to lieutenant
12 colonel. My records had gone through the selection process
13 and I had been selected to command at the battalion
14 commander level, which is about 7000 troops, grade
15 lieutenant colonel.

16 Q What was your responsibility for those 7000 men?

17 A The same as the 100 men. Everything that those
18 7000 men did, I was responsible for that. Finished that
19 tour. Now we're in '74 at Fort Sill. Went to an assignment
20 at Military Personnel Center. Stay there about six months.
21 My records again going through a selection process, I was
22 chosen to go to the U.S. Army War College in Carlsbad,
23 Pennsylvania. I attended that. Graduated.

24 Q What did that consist of?

25 A Surprising, the War College doesn't concentrate on

DONALD ELLIS - DIRECT EXAMINATION

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1 war. It concentrates on almost every topic other than wars:
2 strategy, politics, budget and et cetera.

3 And left that assignment; promoted to colonel.
4 Joined Department of Army staff in Deputy Chief of Staff of
5 Operations; had one division that was responsible for
6 monitoring worldwide contingencies, what was going on in the
7 world.

8 Q How many men did you command at that time?

9 A Now there were about 20 different officers and
10 civilians in that division.

11 Q And their subordinates?

12 A I'm sorry?

13 Q And their subdivisions or was that the extent of
14 it?

15 A Those were action officers in that division,
16 military and civilians.

17 Left that division to another division in same
18 Deputy Chief of Staff Operation. Stayed there for about 14
19 months, and that was responsible for documenting the
20 materials, personnel, grade structure that the respective
21 units in the Army would have, and that was being in control
22 of the Army Authorization Document System.

23 Again my records were going through a process and
24 I was selected the command at the 06 level.

25 Q What does that mean, Mr. Ellis?

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DONALD ELLIS - DIRECT EXAMINATION

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1 A Command, schooling. It's very competitive. You
2 must have pretty good records to achieve whatever that is,
3 and mine were, and I was chosen to command the Second
4 Division Artillery in Korea.

5 Q What did that involve?

6 A That, in essence, controlled about 4500 men,
7 responsible for everything those 4500 men did or didn't do.

8 Finished that tour up in '80: received an
9 assignment at the Joint Chiefs of Staff at Command and
10 Control and Communications Directorate, and there again I
11 had a division.

12 Q Was that here at the Pentagon?

13 A That's at the Pentagon. Had a division that was
14 responsible for Joint Strategic Requirements Division. In
15 essence, responsible to ensure that the National Military
16 Command Center, or the Military Command Center, Worldwide
17 Command Post had survivable, enduring communications.

18 Q Then what did you do?

19 A I essentially went to MILPERCEN for about two
20 months and then I retired as an O6 from the United States
21 Army in '83.

22 Q So is that as a full colonel?

23 A Yes.

24 Q Then what did you do?

25 A I went to work for a contractor, Analytical

DONALD ELLIS - DIRECT EXAMINATION

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1 Systems Engineering Corporation, that had our offices in
2 Crystal City.

3 Q What type of work did you do for them?

4 A I was hired as a communication analyst and in that
5 role worked on several intelligence projects; one of which
6 was ensuring or help in design, develop survivable mobil
7 communication center.

8 Q How long did you stay with them?

9 A About eight months.

10 Q Then what did you do?

11 A They ran out of money and there were a number of
12 us that were let go. Then I went to work with Androulis
13 Research Corporation in Bethesda, Maryland. Hired on as a
14 communication analyst, worked on some communications
15 projects, worked on projects that they had with the Navy
16 that primarily focused on maintainability, reliability.

17 Q How long did you stay there?

18 A I guess from August, about August of '84 to April
19 of '85, when I went to work for TechDyn Systems.

20 Q How did you become familiar with TechDyn?

21 A When I joined the Joint Staff, the person that I
22 replaced was a guy by the name of Colonel Herb Roundtree and
23 Herb shortly after retired after that and he went to work
24 for TechDyn. Herb and I maintained a relationship after he
25 had gotten out, and that's how I heard of TechDyn.

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DONALD ELLIS - DIRECT EXAMINATION

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1 Q Is Mr. Roundtree still at TechDyn?

2 A Yes.

3 Q After starting with TechDyn, what were your
4 initial duties?

5 A When I first started at TechDyn was working on a
6 contract with IBM in Roslyn, and they were supplying people
7 to assist IBM, and I was hired on and went to work every day
8 in Roslyn.

9 Q Doing what?

10 A This particular contract was looking at the
11 survivability of worldwide communications, and this group in
12 which I was a participant reviewed all of the military
13 communications, made judgments as to whether they would be
14 survivable in a nuclear war.

15 Q How long did you participate in that program?

16 A For about 14 months.

17 Q Then what did you do?

18 A Left the contract at IBM. Went to work at TechDyn
19 corporate headquarters on various intelligence contracts,
20 that, and there also came a period where I was sent to
21 Europe to help TechDyn European Office work on a particular
22 project, and I did that for about four months and then
23 returned back to the TechDyn headquarters.

24 Q Where was that project located?

25 A Which project?

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0367

DONALD ELLIS - DIRECT EXAMINATION

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1 Q The one you said you went to Europe.

2 A Wermes, Germany.

3 Q Upon returning back to TechDyn, can you give us a
4 time frame now?

5 A I think this is '86 some time. No, '87 that I
6 returned back from Europe; worked a couple months on other
7 projects and then was assigned to the ICCE project. So I
8 was assigned to the ICCE project late June or early August
9 1987.

10 Q How did it come to pass that you were assigned to
11 the ICCE project?

12 A I guess I was told that the ICCE project needed
13 help and they needed help in given areas and I was going to
14 work on the ICCE project.

15 Q How told you that?

16 A I don't remember exactly who. It could have been
17 Mr. Morrison. It could have been Mr. Johnson. But I went.

18 Q Do you recall -- was that to be a full-time
19 assignment to the ICCE project?

20 A Yes.

21 Q And do you recall in what areas you were to
22 assist?

23 A Testing and every place that I could help, but
24 principally in testing.

25 Q Okay. Mr. Ellis, have you reviewed or are you

DONALD ELLIS - DIRECT EXAMINATION

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1 aware of whether there is a prime contract between TechDyn
2 and the Air Force relating to the ICCE project?

3 A Yes.

4 Q And have you reviewed that document?

5 A Many times. Yes.

6 Q And when did you first become familiar with it?

7 A Shortly after I joined the ICCE project.

8 Q Are you familiar whether there's a written
9 subcontract between Whittaker and TechDyn relating to that
10 project?

11 A Yes.

12 Q And how did you first become familiar with that?

13 A I received a lot of briefing when I joined the
14 ICCE project. I did a lot of reading once I joined the ICCE
15 project and become familiar with the project and the
16 requirements, et cetera.

17 Q Was the subcontract one of the documents you
18 reviewed?

19 A I did not review the subcontract per se. I was
20 told that such contract existed between TechDyn and
21 Whittaker and that Whittaker was the directed subcontract to
22 do PDFA, and I read that part.

23 MR. WORK: Object. Move to strike. That's all
24 hearsay.

25 JUDGE BROWN: I will overrule the objection. This

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1 is what information he had and it's background. He can say
2 what the information that he had was.

3 MR. WORK: But not for the truth.

4 JUDGE BROWN: The truth of what he received; that
5 he really received that information, yes.

6 MR. WORK: But not for the truth of the substance
7 of what he heard.

8 JUDGE BROWN: No.

9 MR. WORK: Thank you.

10 BY MR. BOEHLERT:

11 Q Mr. Ellis, do you know whether the subcontract --
12 let me strike that.

13 What testing did you understand you would be
14 involved with?

15 A Software testing and testing that had to be
16 performed in the communications area of this contract.

17 Q Okay. Now, let's talk about the software testing.
18 What testing are you referring to?

19 A Operational testing and the contract require that
20 the support software were supposed to go through a form of
21 acceptance testing.

22 Q Do you know whether that is PDFA work or CFA work?

23 A Software was in two areas. CFA, as it relates to
24 the remote control element; and PDFA, as it related to
25 Whittaker, and Whittaker had the software.

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1 Q Do you know whether the contract speaks to what
2 software is required under the PDFA?

3 A Yes.

4 Q Mr. Ellis, I place before you a document that's
5 been previously entered into evidence as Plaintiff's Exhibit
6 22A-3, and place this document before you, and ask you by
7 referring to it can you find a section that refers to the
8 types of PDFA software that you've just referred to?

9 And I've placed in front of you and I think you're
10 reviewing modification number 3. Can you identify that?

11 MR. WORK: Your Honor, unless I'm mistaken, and I
12 may be mistaken, but I thought that Mr. Ellis said that he
13 hadn't read the subcontract. And if so, there is no basis
14 for him simply reading something into the record.

15 JUDGE BROWN: I understand he was, and he said
16 that he read the PDFA portion. Is that correct?

17 THE WITNESS: Not only did I read the PDFA part, I
18 have read the CFA part, and I have read everything in the
19 contract.

20 MR. WORK: I'll withdraw my objection. I misheard
21 him.

22 JUDGE BROWN: All right.

23 BY MR. BOEHLERT:

24 Q Okay, having that document in front of you, Mr.
25 Ellis, can you find the section of the contract which

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1 discusses what type of software is to be developed under the
2 PDFA?

3 A I am at paragraph 3.1.1.1.

4 Q Of what?

5 A Of the spec.

6 Q Okay. I'll put that on the overhead, if I may.

7 And what does that --

8 MR. WORK: Excuse me, Your Honor. There are
9 stickies in that and I don't know whether they are there to
10 prompt him as to where it is or not, but I would appreciate
11 it if there were no stickies in this document so to indicate
12 where to go. If he's going to testify as to his personal
13 knowledge, then there oughtn't be any document before him
14 that points him to where to go.

15 MR. BOEHLERT: The witness found the provision by
16 himself, Your Honor. I don't know -- Mr. Work's welcome to
17 remove anything that's appended to that. That's the
18 official record.

19 JUDGE BROWN: The document was received in
20 evidence with whatever is in it, and whatever is in it
21 remains. And you haven't added anything to it, have you,
22 since it was received in evidence?

23 MR. BOEHLERT: No.

24 JUDGE BROWN: Okay. It's received as it is.

25 BY MR. BOEHLERT:

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1 Q Mr. Ellis, referring to that paragraph, paragraph
2 3.1.1.1, what does that state about the type of software
3 that will be required for PDFA?

4 A That PDFA shall comprise -- C under this is
5 operational computer programs; and D under this is support
6 computer programs.

7 MR. WORK: Excuse me, Your Honor. We were
8 directed to go to the specification, and I don't find any
9 3.1.1.1.

10 JUDGE BROWN: Come up and look over his shoulder.
11 Actually, I think the stickies may be yours, because I think
12 that's your exhibit.

13 MR. WORK: No, they are not ours.

14 JUDGE BROWN: Okay. I don't know how they got in
15 there then. When it came in evidence, they were there.

16 MR. BOEHLERT: Your Honor, these stickies are on
17 pages that he has turned to. Now, can we take those off?

18 JUDGE BROWN: How did they get on there, Mr.
19 Boehlert?

20 MR. BOEHLERT: Did these get on when we were in
21 there?

22 This is the document. Remember there was --

23 JUDGE BROWN: Okay, take them off.

24 MR. BOEHLERT: I would be happy to take them all
25 off. I'm not prompting the witness.

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1 JUDGE BROWN: Don't anybody put any stickies on
2 any more exhibits.

3 MR. WORK: What I see, Judge Brown, is not the
4 specification. So we're confused as to what's being
5 referred to.

6 JUDGE BROWN: Well, do you see what he's referring
7 to?

8 MR. WORK: I see he's referring to the ICCE prime
9 contract statement of work.

10 JUDGE BROWN: Okay. Can you find it in your book?

11 MR. WORK: Yes, I can find that.

12 JUDGE BROWN: Okay.

13 BY MR. BOEHLERT:

14 Q Are you referring to the statement of work or the
15 specification, Mr. Ellis?

16 A I'm referring to what I just mentioned is the
17 specifications.

18 MR. WORK: If I can look at what the witness is
19 looking at.

20 (Pause.)

21 MR. WORK: I stand corrected, Your Honor. That is
22 the specification, prime contract specification.

23 BY MR. BOEHLERT:

24 Q Okay, now, what was it, Mr. Ellis, that you said
25 3.1.1.1 describes?

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1 A The process and display functionary, the PDFA
2 shall comprise, I read C under this, operational computer
3 program; and D under this, support computer programs.

4 Q Okay.

5 JUDGE BROWN: Hold on a minute.

6 Are you all having trouble hearing the witness?
7 Could you maybe speak into the microphone? I think it's on,
8 isn't it? Okay, maybe if you could speak right into the
9 microphone. You are a little bit softer voice than some of
10 the other witnesses and lawyers.

11 (Laughter.)

12 JUDGE BROWN: And judges.

13 BY MR. BOEHLERT:

14 Q Mr. Ellis, do you know whether those two types of
15 software are defined in any more detail in this document?

16 A They are.

17 Q Where is that?

18 A I refer to page 9, paragraph 3.1.1.1.3 of the
19 specification.

20 Q And what does that deal with?

21 A Operational computer programs and support computer
22 programs.

23 Q And what does 3.1.1.1.3 require?

24 A The operational computer program, the operational
25 computer program shall consist of the control application

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1 on-line diagnostic and data recording software required to
2 perform the data exchange, data translation, data control
3 and display function of the PDFA. On-line diagnostics shall
4 test all the internal and external line replaceable units
5 and provide real time equipment status to the operator.

6 Q Put in layman's terms, what does the PDFA
7 operational software do?

8 A Layman's term, this software goes to the user.
9 This is the software that drives the system that enable the
10 operators or the people that use this operator to perform
11 their mission.

12 BY MR. BOEHLERT:

13 Q Now, the next paragraph, 3.1.1.4 Corporate Support
14 Computer Programs. What does that refer to?

15 A I will read it. "The support computer programs
16 shall consist of the computer programs required to support
17 the operational program's software development test and
18 maintenance, offline hardware maintenance and the
19 pre/post-mission support function. Offline diagnostics
20 shall provide loopback to all external ports, test hardware
21 devices and ports and plugs, isolation to the LRU level."
22 In other words, the support software is the software that
23 the maintainer needs, the computer programmer needs to
24 maintain, change, modify the operational software.

25 Q Mr. Ellis, do you know whether the contract,

1 either the statement of work or specifications, prescribes
2 test requirements for the operational and the support
3 software?

4 A Yes.

5 Q Where?

6 A In the specifications as well as in the statement
7 of work.

8 Q I ask you to turn to the statement of work,
9 please. Can you find for us where it describes the test
10 requirements for operational software?

11 (Pause.)

12 MR. BOEHLERT: Since this is Defendant's version
13 of this exhibit, Your Honor, may I assist the witness just
14 in finding the statement of work itself?

15 JUDGE BROWN: You can show the witness anything
16 you want to tell him about where it is. It's in evidence
17 and if you want to refer to a particular section, just tell
18 him where it is. Sure.

19 (Pause.)

20 BY MR. BOEHLERT:

21 Q The document I've just flipped to -- do you
22 recognize that as the statement of work?

23 (Pause.)

24 A Yes.

25 Q Okay. Now, you were describing for us that

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1 there's a provision there that governs the test requirements
2 for PDFA operational software. Is that correct?

3 A Yes.

4 Q And can you find that for us?

5 (Pause.)

6 A I'm on page 22, paragraph 3.3.18 of the statement
7 of work.

8 Q And what does that paragraph of this subcontract
9 require?

10 A It deals with test and evaluation and the test
11 program is described in paragraph 3.3.18.1 Test Program.

12 Q And what does that state?

13 A "The contractor will establish an overall
14 development test and evaluation program that meets the
15 contract requirements."

16 Q Mr. Ellis, at the time that you started on the
17 ICCE project, do you know whether Whittaker had a test
18 program in place?

19 A One of the documents that I recall reviewing as I
20 was reviewing to come up to speed on this particular
21 contract was a development plan that had been submitted and
22 drawn up by Whittaker.

23 MR. BOEHLERT: I ask that Plaintiff's Exhibit 30
24 be presented to the witness, please.

25 (Pause.)

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1 MR. WORK: Are there any stickies in there?

2 MR. BOEHLERT: Loads of stickies.

3 MR. WORK: I'd like them all out, please.

4 MR. BOEHLERT: How did they get there, Mr. Work?

5 MR. WORK: It's your document.

6 I'd like to have them out, Your Honor, before he
7 gets it.

8 MR. BOEHLERT: They were there when it went into
9 evidence, Your Honor. I'd be happy to take them out.

10 JUDGE BROWN: We'll take all the stickies out.

11 That's not the word for those things -- stickies. What do
12 you call them?

13 MR. WORK: Post-Its.

14 JUDGE BROWN: Post-Its. Okay. But that's a brand
15 name, so we can't say that.

16 (Laughter.)

17 (Pause.)

18 BY MR. BOEHLERT:

19 Q I ask you, sir, to please turn to tab 30, which is
20 Plaintiff's Exhibit 30. Do you recognize this document?

21 A This looks like one of the documents that I
22 reviewed as I was getting read into this project and getting
23 read into being designated to go out to Whittaker and
24 observe testing.

25 MR. BOEHLERT: Before I ask my next question,

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1 could you please speak up, Mr. Ellis? I think the jury is
2 having a little bit of a hard time hearing.

3 THE WITNESS: Okay.

4 MR. BOEHLERT: Would you please remind me or the
5 judge if you're having a hard time? We don't want anybody
6 to go through this without hearing.

7 BY MR. BOEHLERT:

8 Q What do you recognize this document to be?

9 A I recognize this document to be Whittaker's
10 thorough understanding and the documentation as how they
11 were going to arrive at the operational software and support
12 software for the ICCE project.

13 MR. WORK: Move to strike without a foundation,
14 Your Honor.

15 JUDGE BROWN: Well, I overrule the objection. The
16 question was what was his understanding. If that's his
17 understanding then there doesn't need to be a foundation.

18 BY MR. BOEHLERT:

19 Q And you reviewed this document at or about the
20 time that you first came onto the project. Is that correct?

21 A Yes. And afterwards.

22 Q Okay. Does this document discuss testing in any
23 way, if you know?

24 A The document is basically a test thing so that in
25 just about all of the document they discuss testing.

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1 Q I ask you to turn to section 7, please. Are you
2 there, sir?

3 A I'm at section 7.

4 Q Are you familiar with that portion?

5 A Yes.

6 Q Have you reviewed that before today?

7 A Yes.

8 Q What does that section deal with?

9 A This is a Whittaker prepared document that gives
10 their testing philosophy for achieving the contractual
11 required software.

12 Q And I ask that you please turn over to page 7-2 in
13 a particular paragraph 7.2, "In-Plant Software Test
14 Approach". What does this page refer to?

15 A This page provides Whittaker's in-plant software
16 test approach.

17 Q Okay. I would ask you to turn to paragraph (a)
18 there -- paragraph 7.2(a)?

19 A Yes.

20 Q And I see a reference to computer program test and
21 evaluation, CPT&E.

22 A Yes.

23 Q Do you know what that refers to?

24 A This is what Whittaker classified their first
25 level of software testing.

1 Q The next paragraph, (b), refers to preliminary
2 qualification tests. Do you see -- what is that referring
3 to?

4 A This is, again, the Whittaker approach. "Upon
5 completion of the CPT&E testing, related program modules
6 will be combined in a functional level and merged into a
7 master program tape. This tape will be generated, checked
8 out and released by the software integration team prior to
9 its use by the independent design verification testing."
10 These are the preliminary qualification tests defined in the
11 test plan.

12 Q Okay. Turning to page 7-3, "Formal Qualification
13 Test". Do you know what that refers to?

14 A As Whittaker refers to it, it would be in
15 accordance with the test plan. "The test plan will include
16 detailed planning on each test to be performed. These tests
17 will include system level functional and performance tests
18 to verify the operational requirements, specifications and
19 characteristics stated in the contract. Online analysis to
20 verify that the PDFA will accept TADIL-A and LATERAL-TELL
21 information, distinguishing between the formats and
22 messages, and reformat information error-free from
23 transmission on the appropriate link, LATERAL-TELL or
24 TADIL-A."

25 Q Putting that again in layman's terms, what does

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1 that mean?

2 A That this was the test to show that the
3 operational software being developed was going to meet the
4 contract requirements.

5 Q Does this computer program development plan you're
6 referring to have any scheduling information?

7 A Yes.

8 Q Where is that located?

9 A There is a section here, section 16, "Scheduling
10 Milestones".

11 Q Do you know whether that section sets forth a
12 schedule for testing of PDFA operational software?

13 A Yes, it does. Among other things.

14 Q Where does it do that, Mr. Ellis?

15 (Pause.)

16 A On page 16.4, figure 16.1 of a Whittaker document
17 dated 28 August 1986. Here's an entire schedule for the
18 layout of their testing and as near as I can read, all
19 testing to meet the contract requirements are supposed to
20 end about 30 September 1986.

21 MR. WORK: Your Honor, my document shows that this
22 page that he's just been referring to is dated 28 April 1986
23 rather than 28 August.

24 THE WITNESS: If I said August, it's incorrect.
25 It's 28 April 1986.

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1 JUDGE BROWN: All right.

2 BY MR. BOEHLERT:

3 Q So, Mr. Ellis, as of September 30, 1986,
4 Whittaker's plan states that all testing -- the CPT&E and
5 the formal tests that we've discussed -- were to be done.
6 Is that correct?

7 A As I read this chart, yes.

8 Q Now, to put us in a time perspective again, when
9 was it that you first became involved in the testing on this
10 project?

11 A Testing on this project was 24 August 1987 when I
12 went to Whittaker to participate as a witness in the
13 computer program test and evaluation of 1987.

14 Q And had any formal testing been done to that
15 point?

16 A No.

17 MR. WORK: Objection. Lack of foundation. Move
18 to strike.

19 JUDGE BROWN: Sustained. You'll have to lay a
20 foundation for his knowledge.

21 BY MR. BOEHLERT:

22 Q Do you know whether any testing had been done up
23 to that point, Mr. Ellis?

24 A On the ICCE operational software?

25 Q Yes.

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1 A None.

2 MR. WORK: Objection.

3 BY MR. BOEHLERT:

4 Q And how do you know that?

5 MR. WORK: Okay. Go ahead.

6 BY MR. BOEHLERT:

7 Q And on what do you base that conclusion?

8 A If testing had been completed, then we would not
9 have been going out to do the basic testing that's outlined
10 in this plan and so we were going to witness, based on this
11 plan, CPT&E testing that was first scheduled for 24 August
12 1987.

13 MR. WORK: Objection. Move to strike. Lack of
14 foundation. The answer did not lay a foundation for the
15 question, which was whether any testing had been done.

16 JUDGE BROWN: I'll overrule the objection and
17 receive this answer. The weight that will be given to it
18 will be judged by the jury.

19 BY MR. BOEHLERT:

20 Q Did a test take place on August 24, 1987?

21 A The first CPT&E testing was 24 August through 4
22 September and CPT&E test was attempted.

23 Q Would you please tell the jury what happened on
24 that date?

25 A Not on that date, during that period. The

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1 operational software was subjected to testing based on
2 testing procedures that were drawn up by Whittaker,
3 submitted to the Government, approved by the Government and
4 these procedures were supposed to verify certain performance
5 characteristics that were in the specification.

6 Q Let me ask you sir: What period are you referring
7 to? You said during that period.

8 A All testing was done during the period 24 August
9 through 4 September 1987 using testing procedures drawn up
10 by Whittaker to verify tests or check some performance
11 verification that's required by the specification on this
12 contract.

13 Q Who attended those tests?

14 A There were two representatives from TechDyn.

15 Q Who were they?

16 A Myself and Rufus Thornton. There were several
17 witnesses from the Government. The one that I remember is
18 Judy Bottomly. And there were several Whittaker personnel.
19 Those that I remember are Harry Williams, Bob Fowler, Laurie
20 Brown.

21 Q What happened at the test?

22 A During that period, there were a number of
23 deficiencies noted in the operational software. The
24 Government declared that they would not accept that software
25 and they did not pass CPT&E.

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1 Q Did the results of that test ever get reduced to
2 writing, if you know?

3 A Yes.

4 Q And in what form?

5 A In a letter that we received from the Air Force.

6 MR. BOEHLERT: Mr. Ellis, I refer you to what's
7 been marked as Plaintiff's Exhibit 1030 for identification.

8 (Pause.)

9 BY MR. BOEHLERT:

10 Q Mr. Ellis, would you please turn to tab 1030 and
11 it consists of two documents, one a TechDyn to Whittaker
12 letter dated September 15, 1987 and another letter dated 15
13 September 1987 from the Air Force to TechDyn. And I ask if
14 you can identify these documents.

15 (Pause.)

16 A I can.

17 Q Was your answer that you can?

18 A I can.

19 Q And what are they?

20 A The first document is the second page -- this is
21 an Air Force letter dated 15 September 1987 sent to TechDyn
22 that summarizes essentially what occurred during that first
23 testing period starting 24 August and the Government
24 comments on it.

25 MR. WORK: Your Honor, an issue came up earlier in

1 connection with Mr. Riddles' objections to Government
2 documents. I am prepared to stipulate to the admissibility
3 of Government documents in this matter but I would only do
4 it on a reciprocal basis. If TechDyn is going to object to
5 our use of Government documents as hearsay, then we will
6 object to their use of Government documents as hearsay. But
7 I would be happy to have a stipulation that they are
8 authentic and proper and may come in as exceptions to the
9 hearsay rule as official records.

10 MR. BOEHLERT: Your Honor, as I am sure you are
11 aware under the Virginia Code there is a special method to
12 authenticate public documents prescribed by the Code and
13 that is to have these Air Force documents, official records,
14 authenticated by the custodian of the records and also the
15 individual to whom that custodian of the records reports.

16 Your Honor, I've already provided to counsel a
17 copy of the affidavits which have authenticated all the Air
18 Force documents we intend to use and I will proffer these
19 documents together with the affidavits to the Court which
20 will eliminate any hearsay problems with TechDyn's proffered
21 documents.

22 JUDGE BROWN: What is the Code section?

23 (Pause.)

24 MR. BOEHLERT: Do you have a copy, Your Honor?
25 it's in the judicial notice section. I think it's around

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1 the 380s. Here it is, Your Honor, 801.388 I'm sorry, 390.

2 (Pause.)

3 Let me refer the Court the case of Taylor v.
4 Maritime Overseas Operation.

5 JUDGE BROWN: Okay, and your response?

6 MR. WORK: My response is, Your Honor, we ought to
7 have one rule in this matter. The Air Force documents that
8 we're dealing with in this case have come almost
9 exclusively, almost without exception, from TechDyn. If t
10 had any question about the authenticity of those documents,
11 I think this is much, much too late in the game to raise
12 those questions.

13 JUDGE BROWN: Well, we do have one rule and our
14 rule is based on the law, so that's what we're going to
15 follow. So at least with regard to this document if it is
16 one of those that's properly authenticated here, I overrule
17 the objection.

18 Is it in this authenticated book?

19 MR. BOEHLERT: Yes, it is, Your Honor.

20 JUDGE BROWN: All right. Then I will overrule the
21 objection to that document.

22 Whether we get to other documents or not, I can't
23 say. I don't know what will happen.

24 MR. WORK: Your Honor, my point was not an
25 objection. It was just that we ought to apply the same

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1 standard to official records that are admissible under the
2 hearsay rule.

3 JUDGE BROWN: The standard that we apply is the
4 standard based on the law that I just looked at.

5 MR. BOEHLERT: Thank you, Your Honor.

6 Your Honor, I move these documents into evidence,
7 Plaintiff's Exhibit 1030.

8 JUDGE BROWN: Okay. Is there any objection to
9 1030?

10 MR. WORK: No objection.

11 JUDGE BROWN: It's received.

12 (The document referred to, having
13 been previously marked for
14 identification as Plaintiff's
15 Exhibit 1030, was received in
16 evidence.)

17 BY MR. BOEHLERT:

18 Q I ask you to turn to the second page of this
19 document, if you would, please, and that's the 15 September
20 1987 letter to TechDyn from the Air Force. Is that correct?

21 A Yes.

22 Q And I would like to read the first couple
23 sentences if I may, please.

24 "Since the partial conduct of the CPT&E which
25 began on 24 August '87, the Government has reviewed the

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1 readiness and configuration of the software under test. As
2 was demonstrated by the fact that the CPT&E could only be
3 partially conducted, it is clear that the software requires
4 recoding to fully meet system requirements. The known
5 problems have been documented as system trouble reports,
6 STRs, a large number of which remain open."

7 Mr. Ellis, are you familiar with what an STR is?

8 A Yes. The Whittaker people called a deficiency in
9 the software was a way of recording that deficiency, and
10 they called it a system trouble report.

11 MR. WORK: Objection. Hearsay. Move to strike.

12 BY MR. BOEHLERT:

13 Q During our course --

14 JUDGE BROWN: Do you have any response to that?

15 MR. BOEHLERT: Was that a comment made to you? I
16 think the witness is testifying as to his personal knowledge
17 of what a system trouble report is. The fact the Whittaker
18 people called it that doesn't mean he's not aware of what it
19 is.

20 JUDGE BROWN: Overruled.

21 MR. RIDDLES: I'm sorry, Your Honor?

22 JUDGE BROWN: I overruled the objection. He can
23 say what the thing is.

24 BY MR. BOEHLERT:

25 Q Continuing, Mr. Ellis, it states, "Also, as a

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1 result of conversations and observations of test witnesses
2 during the CPT&E, the Government has grave concerns as to
3 whether a baseline version of the software was indeed used
4 for CPT&E."

5 Do you recall that issue coming up as CPT&E?

6 A Yes.

7 Q What happened?

8 A There were so many STRs and failures as we
9 attempted to go through CPT&E that program manager from the
10 Air Force and myself requested an appointment with the then
11 president of 4Cs, or Whittaker, or whatever name they are.
12 And at that time we went in and addressed the poor state of
13 the operational software that we had observed during the
14 testing.

15 Q Who was the president at that time?

16 A Lambert, Scotty Lambert.

17 Q What was his response?

18 A He assured both the Government representative and
19 myself -- the Government representative was Captain
20 Jacobson -- that he would put appropriate assets and
21 resources to fix the software.

22 Q Paragraph 3 states, "Request TechDyn for a copy of
23 this letter to the senior management of Whittaker
24 Corporation. Request TechDyn response by 18 September '87,
25 including an assessment by Whittaker management and their

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1 get well plan."

2 Do you know whether a copy of this letter was ever
3 transmitted to Whittaker?

4 A The first page of this is a transmittal letter
5 dated 15 September 1987, is a transmittal letter of the
6 attached NADs letter 241 to Mr. Lambert, the President of
7 Whittaker.

8 Q Dated the same day that you received, or the
9 Government's letter dated, is that correct?

10 A Right.

11 Q Do you know whether Whittaker ever did provide
12 that get well plan?

13 A I don't know for certain whether Whittaker
14 provided a get well plan. I know arrangements were made to
15 go back out 12 through 17 October to do CPT&E retesting
16 again.

17 Q And was another test conducted at that time?

18 A Yes, it was.

19 Q Who attended that test, sir?

20 A Again, I don't remember all of the players, but I
21 know I was there and the other main people from Whittaker:
22 Harry Williams, Laurie Brown, Bob Fauler; and from the
23 Government, Judy Bottomly and there were others but I don't
24 remember them all.

25 Q When you say the Government, who do you mean?

1 A I mean the Air Force.

2 Q What position did Judy hold?

3 A Judy was a MIO representative, and she was the
4 Government computer expert at that time.

5 Q What happened at that test?

6 A They conditionally got through CPT&E. The
7 Government made an observation that they thought the
8 baseline had moved enough to move on into the next phase of
9 testing SQT.

10 Q What is SQT?

11 A Software qualification testing.

12 Q And what's the purpose of software qualification
13 testing?

14 A As I understand, in reviewing Whittaker's
15 development plan, they chose two methods of satisfying or
16 demonstrating, verifying that the software met operational,
17 performance requirements of the spec by dividing their
18 testing up to CPT&E and FRP, that was later changed to SQT.

19 And so SQT was their final testing to prove that
20 the software, operational software met the contract
21 requirements.

22 Q Was a software qualification test in fact held?

23 A Yes.

24 Q What happened?

25 A The first software qualification testing happened

1 in the November time frame.

2 Q November of what year, sir?

3 A '87. I think that's the right date. And lasted
4 for about a week and there were again numerous deficiencies
5 that surfaced during the testing that the Government did not
6 pass SQT.

7 Q What happened then?

8 A Whittaker assured both TechDyn and the Government
9 that they were going to repair all of these deficiencies and
10 they would be ready at another time for another SQT.

11 Q And by SQT, that's again software qualification
12 test?

13 A Right. It wasn't another one. It was a
14 continuation of the one. Procedures were developed for that
15 and they did not get through the procedures.

16 Q So we're not holding another test. It's only a
17 continuation of what wasn't completed the first time?

18 A Right.

19 Q And was that continuation held?

20 A It was, but it was not successful.

21 Q When was it held, though, Mr. Ellis?

22 A I think we're into now the early part of December
23 1987.

24 Q What happened at that test?

25 A Again, there were a number of deficiencies in this

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1 operational software that the Government did not consider it
2 acceptable and it met the contract requirements.

3 Q What happened then?

4 A We had another one, or a continuation of the first
5 one.

6 Q And when did that occur?

7 A About mid December 1987, and the outgrowth of that
8 one was the Government considered that it had reached
9 certain maturity and being that they had scheduled to have
10 certification for the first week of February 1988, they
11 conditionally accepted that software version and submitted
12 it to have certification with the understanding that
13 Whittaker was going to repair all those CPT&E deficiencies
14 and SQT deficiencies.

15 MR. WORK: Objection. Move to strike on the basis
16 of hearsay.

17 JUDGE BROWN: I will overrule the objection.
18 That's not really admitted for the truth. That is, the
19 Government may have been lying, but that's what he said and
20 that's what he told them. Maybe he wasn't telling the truth
21 so it isn't admitted for the truth. It's admitted for a
22 position taken by the Government which he heard and was
23 communicated to him.

24 MR. WORK: He didn't establish a foundation that
25 he heard it, Your Honor.

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1 JUDGE BROWN: Well, I understood that he did.

2 BY MR. BOEHLERT:

3 Q Were you at those meetings, Mr. Ellis?

4 A I was at those meetings.

5 Q Were you at every part of those meetings?

6 A I can't say that I was at every part, but I was at
7 many, many, many, many, many meetings and I was a part of
8 practically all of the software test and CPT&E and SQT.

9 Q Would you describe for us how the SQT, the
10 software qualification test is conducted?

11 A The software qualification tests in this
12 particular case was conducted from Torrence, California,
13 from the Whittaker facility in which they had the RADIL
14 hooked up, Whisper Writer, and a few other peripherals to
15 make it run. It was run through a system, a DTE and a
16 radio, and it --

17 Q What's a DTE?

18 A I'm sorry. DTS, data terminal set, and then
19 connected to a telephone system, telephone line that as near
20 as I recall ran to Tinker Air Force Base. And that was the
21 other end of the computer that was planned with a computer
22 that we had in the Whittaker facility.

23 Q And what was being tested?

24 A The operational software.

25 Q Against what?

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1 A Against a set of procedures drawn up, developed by
2 Whittaker, submitted through TechDyn to the U.S. Air Force,
3 purporting to be a document to verify all of the performance
4 characteristics that are called out in the specification.
5 This document was approved by the Air Force and used for
6 CPT&E test procedure and in SQT test procedures.

7 Q Mr. Ellis, can you tell us what version of
8 software came out of the system qualification test?

9 A 87-350.

10 Q And was that the version that still had some STRs
11 to be corrected?

12 A Yes.

13 Q Was the results of these three sessions of the
14 software qualification tests ever reduced to writing, if you
15 know?

16 A Yes.

17 Q And how was that done?

18 A It was reduced to writing and we received
19 correspondence from Air Force.

20 Q Do you know whether Whittaker ever reduced the
21 results of these tests to writing?

22 A Whittaker, just like TechDyn, is required by
23 procedure and the contract all test reports must be
24 documented, giving what happened and the accuracy of what
25 happened on all tests, submitted by Whittaker through

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1 TechDyn to -- from TechDyn to the Air Force. Whittaker
2 submitted a CPT&E report and Whittaker submitted an SQT
3 report.

4 Q I ask you please to refer to what's been marked as
5 Plaintiff's Exhibit 571 for identification. I ask you, sir,
6 to please turn to Exhibit 571 and ask you if you can
7 identify that document.

8 JUDGE BROWN: Is he going to need 1030 again?

9 MR. BOEHLERT: No, but he's going to need that
10 book, I think.

11 JUDGE BROWN: Well, let me have 1030 for now so
12 the clerk can at least mark it in.

13 BY MR. BOEHLERT:

14 Q Do you have that in front of you, Mr. Ellis?

15 A I have it in front of me a letter by Whittaker of
16 24 March 1988?

17 Q Yes.

18 A Okay.

19 Q And I would like to ask you to review the entire
20 tab and tell me if you can identify what that is.

21 (Pause.)

22 A This is a portion of a test report.

23 Q And is that for what -- CPT&E?

24 (Pause.)

25 MR. WORK: Object. The question is leading.

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1 BY MR. BOEHLERT:

2 Q Do you know what it is by reviewing it?

3 JUDGE BROWN: Sustain the objection. New question
4 asked.

5 THE WITNESS: This is the CPT&E test report. A
6 portion of it. A portion of the CPT&E test report, as I
7 recall, is classified.

8 BY MR. BOEHLERT:

9 Q Is this the unclassified portion?

10 JUDGE BROWN: Gosh, I hope so.

11 (Laughter.)

12 THE WITNESS: Yes.

13 BY MR. BOEHLERT:

14 Q Who prepared this document?

15 A Whittaker.

16 Q And did they forward it to TechDyn?

17 A As a CDRL to TechDyn and TechDyn on to the Air
18 Force.

19 MR. BOEHLERT: Your Honor, I move Plaintiff's
20 Exhibit 571 into evidence.

21 MR. WORK: No objection.

22 JUDGE BROWN: It's received.

23 (The document referred to, having
24 been previously marked for
25 identification as Plaintiff's

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1 Exhibit 571, was received in
2 evidence.)

3 JUDGE BROWN: May I have Exhibit 571? Because
4 we're going home. It's 5:00.

5 I ask you to remember, ladies and gentlemen of the
6 jury, not to discuss the case with anyone. Don't try to
7 find any information, et cetera.

8 I will tell you -- I don't remember whether I told
9 you before why we don't sit on Fridays. We don't sit on the
10 Fourth of July because it's the Fourth of July but we don't
11 sit on Fridays because on Fridays, the judges are all
12 involved in motions that are filed in various cases,
13 preliminary matters. We generally have anywhere from 40 to
14 80 cases that we hear on Fridays and so we can't bring
15 juries in to hear evidence. That's why we're not sitting on
16 Fridays. It's not because we're lazy and we don't want to
17 sit.

18 So you will come back, then, on Monday, July 8th,
19 I guess it is, this time. And I might also tell you that we
20 have -- for the moment, I will say by agreement, limited the
21 number of actual hours that the lawyers can stand up and
22 examine witnesses. And the clerk is keeping track of the
23 hours. And the limitation of the numbers of hours plus the
24 other matters that we need to do is why we say this case
25 will be done in July.

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1 P R O C E E D I N G S

2 BAILIFF: Everyone please rise. The Circuit Court
3 of Fairfax County is now in session, the Honorable J. Howe
4 Brown presiding. Please be seated and come to order.

5 JUDGE BROWN: Good morning. Are we ready for the
6 jury?

7 MR. BOEHLERT: Yes.

8 JUDGE BROWN: Okay. Bring them in.

9 (Pause while jury is seated.)

10 MR. BOEHLERT: Good morning, ladies and gentlemen.

11 Good morning, Mr. Ellis.

12 Whereupon,

13 DONALD ELLIS

14 having been previously duly sworn, was recalled as a witness
15 herein and was examined and testified further as follows:

16 DIRECT EXAMINATION (resumed)

17 BY MR. BOEHLERT:

18 Q Mr. Ellis, on Wednesday, before we had our recess,
19 you had in front of you Plaintiff's Exhibit 571. Is that
20 correct?

21 A I believe so.

22 Q And is that still in front of you?

23 A Yes, it is.

24 Q And you identified that as what, sir?

25 A CPT&E test report.

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1 Q And CPT&E stands for what?

2 A Computer program test and evaluation.

3 Q Who prepared this report?

4 A Whittaker.

5 Q And what is the purpose of the report?

6 A To portray the actual facts of what happened
7 during the conduct of the computer test and evaluation.

8 Q I ask you please to turn to page 1-1 of this
9 document, "Purpose."

10 A I have it.

11 Q Okay. And the first sentence there states, "The
12 purpose of this test report is to provide the test results
13 as derived from the computer programming test and evaluation
14 (CPT&E) testing." Do you see that?

15 A Yes.

16 Q Now, on Wednesday, you also had mentioned the term
17 software trouble report or STR. Do you recall that?

18 A Yes.

19 Q Do you know whether this report contains any
20 examples of STRs?

21 A It does and it should.

22 Q Okay. As an example, would you please turn in
23 this report to a document that is captioned "Software
24 Trouble Report No. 87-635"?

25 A 87-635?

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1 Q Yes.

2 A I have it.

3 Q Okay. You have that document. I see that's
4 captioned "System Trouble Report". Is that what we were
5 just talking about?

6 A Yes.

7 Q And does this deal with software?

8 A It deals with software and this is generally how
9 Whittaker wrote up a trouble report that occurred.

10 Q Mr. Ellis, so we can all understand as we go
11 through your testimony what a software trouble report is,
12 would you please take us through this document to explain
13 what it is, starting up at the top?

14 A Basically, this is what Whittaker used at the time
15 a deficiency or something would surface in operational
16 software.

17 Q So is this a Whittaker generated document?

18 A This is how Whittaker would portray a problem with
19 the software. And this particular problem occurred on 11
20 August '87, the category that's circled is an S which stands
21 for software. The priority -- Whittaker generally used the
22 most critical trouble reports -- 1 would be the worst thing
23 that would happen, 5 would be the lowest thing and in this
24 case, they rated this as a number 2.

25 Q STR number in block 4 -- what does that refer to?

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1 A This generally Whittaker's method of identifying
2 SQTs and I believe their quality assurance people would put
3 the number on a particular report.

4 Q And in block nine, program version? What does
5 that refer to?

6 A This is basically a program, which version of the
7 software that they were using at that particular time.

8 Q And did the versions change over time?

9 A Yes. Software versions constantly change.
10 Whittaker would generally fix some deficiencies and put it
11 in a patch and then later on drop this patch into a version
12 and that would be the new version that would come out.

13 Q So in this one, it's version 87.189.

14 A I believe so.

15 Q Do you know what that refers to?

16 A That is the software version I believe that we
17 were using at the time that this was being done.

18 Q And does the 87 refer to the year that it was
19 done?

20 A 87 refers to the year.

21 Q And the 189?

22 A Is the software version, I believe.

23 Q Now, the next block, block 10, function affected.

24 A DCS -- and this is something that occurred as
25 either Bob Fowler was running the operational software,

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1 checking it, doing the CPT&E and this event occurred as Bob
2 Fowler, that's the originator of this, was doing something
3 at Appendix G, CPT&E test procedures.

4 Q And you know that from block 11?

5 A From block 13, which is Bob Fowler is the
6 originator, and step is CPT&E Appendix G.

7 Q And then block 17, trouble description?

8 A As best as Bob could detect, this is what he
9 thought occurred.

10 Q And then in block 18, corrective action?

11 MR. WORK: Your Honor, I object. The problem
12 we're having here is the problem we had last week and that
13 is we can't distinguish between whether he's just reading
14 from a page or has any memory of these subjects at all. So
15 I object to these questions without a foundation as to
16 whether he has any present knowledge of these events. If he
17 doesn't, then that should be recognized and if this
18 refreshes his recollection, then that is another category.
19 And, finally, if he's just reading from the page in front of
20 him, that's still a third category and ought to be
21 recognized.

22 JUDGE BROWN: Just establish what category you're
23 in.

24 MR. BOEHLERT: Okay. Your Honor, I'm using this
25 for illustrative purposes so we know what a system trouble

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1 report is.

2 JUDGE BROWN: So the stipulation is he has no
3 memory of this and this isn't his and he's just reading it?

4 MR. BOEHLERT: For purposes of this, Your Honor,
5 we're just establishing what a system trouble report is and
6 I'm asking him to go through the categories and explain an
7 STR.

8 JUDGE BROWN: But he's just reading it, not based
9 on his own memory of the event.

10 MR. BOEHLERT: Not the event. I'm not asking him
11 specifically about this event but just generally how the
12 report's prepared.

13 JUDGE BROWN: Well, I haven't heard you establish
14 a foundation for how he knows how the report is prepared. I
15 thought you were just having him read it.

16 MR. BOEHLERT: All right.

17 JUDGE BROWN: Lay a foundation for whatever it is
18 you're doing.

19 BY MR. BOEHLERT:

20 Q Do you know how these reports were prepared?

21 A Having been involved with several CPT&E tests and
22 SQT tests, having discovered several deficiencies in the
23 software as we tested, I witnessed often Bob Fowler or
24 someone from Whittaker bringing in a system trouble report
25 and would fill it out.

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1 Q And would that be on a form similar to this or
2 identical to this?

3 A They consistently used a form very similar to
4 this.

5 Q So in block 18, corrective action, what would be
6 reported in that block?

7 A Generally, once this was written up it would go to
8 a computer programmer or something and he would work this
9 particular thing and would write down on a particular form
10 similar to this the corrective action.

11 Q After the CPT&E test, was Whittaker software again
12 subjected to a test?

13 A Yes.

14 Q What test was that?

15 A Software qualification testing.

16 Q When did that occur?

17 A They were basically in the October, November and
18 December timeframes of '87.

19 Q Did you participate in those tests?

20 A I participated in three of the four tests.

21 Q Okay. What was the first test that you
22 participated in?

23 A I think that the first test that I participated in
24 was in October of '87.

25 Q And where did that test occur?

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1 A Torrence, California in Whittaker's computer
2 facility.

3 Q Who attended that test?

4 A There were a large number of people -- myself and
5 Rufus Thornton from TechDyn and I think Al Johnson from
6 TechDyn. There were numerous Government witnesses and I
7 seem to recall Judy Bottomly and Linda Rosa participated
8 throughout the SQT testing.

9 Q Who was she with?

10 A She was a Mitre representative. And then there
11 were Government personnel and I don't remember all of them
12 and there were, of course, Whittaker personnel.

13 Q What was the purpose of the test?

14 A Whittaker contractually was required to conduct
15 software qualification tests and this test was to see if the
16 operational software performed as the spec and the statement
17 of work required it to perform.

18 Q How was the test conducted?

19 A The configuration for the test was the Whittaker
20 facility, Tinker Air Force Base was where the ROC simulator
21 was.

22 Q What do you mean by the ROC simulator"?

23 A It was a device that interfaced with the RADIL
24 that Whittaker was using. And Langley Air Force Base played
25 a part and I believe Tyndall Air Force Base.

1 Q What happened at the test?

2 A Whittaker did not do very well. The operational
3 software was deficient during the first SQT testing and the
4 Government did not accept it.

5 Q Was that test completed?

6 A No, it wasn't completed.

7 Q What happened?

8 A There were a number of deficiencies that occurred
9 in the testing. The Government did not accept. Whittaker
10 indicated that they were going to do some additional work on
11 the software and it was to be retested during another time
12 period.

13 Q Was another test done?

14 A Yes, it was.

15 Q When did that occur?

16 A Again, the timeframe of this one I think was early
17 December of 1987.

18 Q Did you participate in that test?

19 A I did.

20 Q What happened?

21 A Again, there were a number of deficiencies in the
22 operational software and the operational software was not
23 accepted by the Government and another testing period was
24 rescheduled.

25 Q When was it rescheduled for?

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1 A It was rescheduled for just a little bit before
2 mid-December '87.

3 Q Did that test take place?

4 A The test took place.

5 Q Did you attend the test?

6 A I did not attend that particular test.

7 Q Do you know whether the results of that test were
8 ever reduced to writing?

9 A The results of that test were reduced to writing.

10 Q Mr. Ellis, I ask you to please refer to a document
11 that has been marked as Plaintiff's Exhibit 570 for
12 identification.

13 JUDGE BROWN: Does he have that up here?

14 MR. BOEHLERT: He doesn't, Your Honor.

15 (Pause.)

16 BY MR. BOEHLERT:

17 Q Mr. Ellis, I ask that you please refer to
18 Plaintiff's Exhibit 570 for identification and tell me if
19 you can identify that document.

20 (Pause.)

21 A I can.

22 Q What is it?

23 A This is Whittaker's transmittal of SQT report.

24 MR. BOEHLERT: Your Honor, I move Plaintiff's
25 Exhibit 570 into evidence.

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1 JUDGE BROWN: Any objection to 570?

2 MR. WORK: No objection.

3 JUDGE BROWN: It's received.

4 (The document referred to, having
5 been previously marked for
6 identification as Plaintiff's
7 Exhibit 570, was received in
8 evidence.)

9 BY MR. BOEHLERT:

10 Q What was the purpose of this document?

11 A As I reflected earlier on the CPT&E report, we had
12 a requirement that we were supposed to transmit to the
13 Government all testing reports and many other reports and
14 this was Whittaker's submittal to comply with the contract.

15 Q Did TechDyn forward this report to the Air Force?

16 A We did.

17 Q Did the Air Force comment on this report?

18 A Oh, yes.

19 Q Mr. Ellis, I ask that you please turn to what's
20 been marked as Plaintiff's Exhibit 1043 for identification
21 and I ask you if you can identify that document.

22 A What number again, counsellor?

23 Q 1043. It purports to be a two-part document, one
24 is a 26 April 1988 TechDyn letter to Whittaker and appended
25 to it is a Department of Air Force letter dated 20 April

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1 1988 addressed to TechDyn.

2 A I do.

3 Q What is it?

4 A As indicated earlier, Whittaker submitted their
5 SQT report to TechDyn. We in turn transmitted it to the
6 Government. The Government reviewed that report and this is
7 the Government's comments on it.

8 MR. BOEHLERT: Your Honor, I move Plaintiff's
9 Exhibit 1043 into evidence.

10 JUDGE BROWN: Any objection to 1043?

11 MR. WORK: No objection, Your Honor.

12 JUDGE BROWN: It's received.

13 (The document referred to,
14 having been previously marked
15 for identification as
16 Plaintiff's Exhibit 1043, was
17 received in evidence.)

18 BY MR. BOEHLERT:

19 Q Mr. Ellis, I ask that you turn to the second page
20 of this document, please, which is the 20 April '88 letter
21 from the Air Force.

22 A I have it.

23 Q Would you please read the first paragraph?

24 A Paragraph 1 is "The Government has reviewed the
25 subject ICCE CENTAF SQT report for the processing and

1 display functional area (PDFA) including an ICCE SQT report
2 supplement dated 1 March 1988. The Government does not
3 accept this document."

4 Q Does the Government then explain why it's not
5 accepted?

6 A Yes, they do.

7 Q And what does the Air Force say?

8 A "Overall, the test report does not thoroughly
9 document all occurrences of the SQT sessions. A number of
10 occurrences have not been included. Several of which have
11 been included are in disagreement with our records. The SQT
12 report supplemental contains a partial listing of the status
13 of a number of system trouble reports but provides no
14 evidence of closure, description or analysis of the STRs
15 generated since the end of the formal SQT which was 17
16 December 1987. The supplement also provides no analysis of
17 data recorded in reduction from the SQT. The attachment
18 provides details of the review with specific problems
19 noted."

20 Q And is there an attachment to this letter?

21 A Yes, there is.

22 Q And how many pages does that attachment consist
23 of?

24 A Mine has eight.

25 Q Eight pages?

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1 A Yes.

2 Q And what is set forth on those pages?

3 A The Government providing general comments and
4 specific comments on what they found wrong with the SQT
5 report that had been submitted by Whittaker.

6 Q I ask you to turn to page 1 of the attachment and
7 particularly paragraph 4. Do you see that?

8 A Yes.

9 Q Would you please read that paragraph?

10 A "It is necessary for the contractor to provide the
11 Government with evidence of the verification of steps that
12 were not verified during the formal SQT session. Specific
13 notation of these steps has been included in the detailed
14 comments below. Additionally, the contractor should provide
15 the closure information on STRs that remain outstanding at
16 the time of submission of this report." Do you want me to
17 go on?

18 Q Then it says "Included are" and "set forth below".
19 What are those?

20 A These are some specific deficiencies that were
21 noted during the SQT and apparently were not addressed in
22 SQT reports and the Government listed them in paragraph 4.

23 MR. WORK: Objection, Your Honor. Move to strike.

24 He said that he didn't attend that meeting, that
25 final SQT test so to testify purportedly on the basis of

1 personal knowledge is improper.

2 JUDGE BROWN: I overrule the objection. He's not
3 testifying from personal knowledge. He's testifying from
4 his interpretation of this document and I believe he's
5 qualified to do that.

6 MR. WORK: Okay. Just so that's clear.

7 BY MR. BOEHLERT:

8 Q Turning back to page 1 of this Air Force letter,
9 paragraph 3 says, "The contractor is required to revise and
10 resubmit the subject report within three weeks of receipt of
11 this letter." What, if anything, did TechDyn do with this
12 Air Force letter?

13 A We forwarded this letter to Whittaker.

14 Q And I ask that you please turn to the first page
15 of this document, which is TechDyn's 26 April 1988 letter.
16 Do you have that in front of you?

17 A I have it.

18 Q And is this a direction to Whittaker to comply
19 with that requirement to resubmit the report?

20 A Yes. This letter transmits the letter that I was
21 reading from the Government to Whittaker for action.

22 Q Does Whittaker submit a revised report?

23 A Counsellor, I really don't recall. SQT report
24 was, from its inception, a constant issue between TechDyn,
25 Whittaker and the Government. Someplace in that process,

1 they might have. However, this SQT report was not accepted
2 by the Government until May of 1991. There was a lot of
3 argument over what should and Whittaker was or was not going
4 to do; what was and what was not in the scope. Throughout
5 that whole period of time, they could have. I don't recall.

6 Q What happened in May of 1991 to signify acceptance
7 of the SQT report?

8 A We received a letter from the Government not
9 agreeing with Whittaker's interpretation that whatever the
10 Government wanted was out of scope. The Government in that
11 letter, the May 1991 letter, indicated that they didn't
12 agree with Whittaker but they were going to finally accept
13 the SQT report.

14 Q After the software qualification test, was the
15 PDFA operational software subjected to another level of
16 testing?

17 A Yes, it was.

18 Q What testing was that?

19 A Whittaker was contractually required to subject
20 their operational software to Tactical Air Force testing and
21 therefore TAF testing was conducted, I believe, 5 through 9
22 or 5 through 8 February 1989.

23 (Continued on the next page.)

24

25

1 Q What was the nature of that test?

2 A The nature of the test was, it was a test done
3 exclusively by the Air Force, with Air Force assets. Air
4 Force wrote the procedures. Whittaker provided software
5 version 8735, using assets and facilities of the Air Force,
6 and I believe Bob Falloff from Whittaker was an observer.
7 They subjected this operational software to their test to
8 see if it was tax certifiable.

9 MR. WORK: Objection and move to strike. Without
10 a foundation, Your Honor.

11 JUDGE BROWN: Do you have a foundation you can
12 lay?

13 BY MR. BOEHLERT:

14 Q Do you know whether the test was conducted?

15 JUDGE BROWN: Well, obviously he knows it because
16 he just said it. That's not the question.

17 BY MR. BOEHLERT:

18 Q How do you know that?

19 A I arranged with Whittaker and the Government for
20 this particular test to occur. It was announced.

21 Q Were the results of that test ever communicated to
22 you?

23 A Yes.

24 JUDGE BROWN: I'll overrule the objection. You
25 can cross-examine if that's not true.

DONALD ELLIS - DIRECT EXAMINATION

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1 BY MR. BOEHLERT:

2 Q When did TechDyn learn the results of this
3 meeting?

4 A Of the meeting or the test?

5 Q Of the test. I'm sorry.

6 A There was a meeting down at Langley Air Force Base
7 10 to 11 May 1988, in which there were Air Force
8 participants, Whittaker participants and TechDyn
9 participants in which the results of this test was
10 discussed.

11 Q Did you attend that meeting?

12 A Yes.

13 Q Who was there from the Air Force?

14 A Air Force, as near as I remember, is Captain
15 Jacobson, Carter and I think Lieutenant Stephenson and there
16 was someone from TAF.

17 Q And when you say "TAF," what is that?

18 A Tactical Air Force.

19 Q What was discussed at that meeting?

20 A The test results. There were a number of, as the
21 Air Force identified them, TRs, trouble reports that had
22 surfaced during TAF certification.

23 Q Did Whittaker also participate in the meeting?

24 A Whittaker personnel also participated in the
25 meeting.

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1 Q What did those discussions consist of?

2 A They basically consisted of and as near as I
3 recall I think there were 50 trouble reports that surfaced
4 during TAF certification. The Government had spreadsheets
5 and they had classified reports that indicated exactly what
6 these were.

7 We discussed for two days those trouble reports
8 that were in-scope of the contract and those trouble reports
9 that were out-of-scope of the contract. Of the 50, I
10 believe 35 were agreed to be in-scope of the contract and
11 that's Government, TechDyn and Whittaker personnel arriving
12 at this agreement, and 15 were out-of-scope of the contract
13 and Whittaker was told not to do any work on the 15 out-of-
14 scope trouble reports.

15 Q Was that agreement ever reduced to writing?

16 A Yes.

17 Q In what form?

18 A In a letter form.

19 Q Mr. Ellis, I ask that you please refer to
20 Plaintiff's Exhibit 1046 for identification, and it's a two-
21 part document. The first part is a TechDyn letter to
22 Whittaker dated 11 July 1988, and appended to that is a 5
23 July 1988 letter from the Air Force to TechDyn.

24 A I have it.

25 Q Do you recognize that document?

DONALD ELLIS - DIRECT EXAMINATION

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1 A Yes.

2 Q What is it?

3 A This is the Government's summary of what
4 transpired during the 10 to 11 May technical interchange
5 meeting at Langley Air Force Base in which Whittaker, the
6 Government and TechDyn participated.

7 MR. BOEHLERT: Your Honor, I move Plaintiff's
8 Exhibit 1046 into evidence.

9 MR. WORK: No objection.

10 JUDGE BROWN: Received.

11 (The document referred to,
12 having been previously marked
13 for identification as
14 Plaintiff's Exhibit No. 1046
15 was received into evidence.)

16 BY MR. BOEHLERT:

17 Q Turning to the second page of this document
18 please, the Air Force letter, would you read the first
19 paragraph for us, please?

20 A The second page, you mean the Air Force letter?

21 Q The Air Force letter to TechDyn.

22 A Paragraph one is, "Reference letter requests the
23 Government to provide the subject TAF TRs that are
24 considered to be within the scope of the contract. The
25 classified second TAF provides these SDRs. The first

DONALD ELLIS - DIRECT EXAMINATION

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1 attachment provides a list of all TRs from the TAF
2 certification test identified as in-scope, out-of-scope and
3 required for TAF certification and for which agreed upon in-
4 scope at the referenced BTUM. Disposition of TR 783 has not
5 yet been determined but has been included for the
6 information in event that it is determined to be within
7 scope."

8 Q What did you understand that to be saying?

9 A What?

10 Q This paragraph.

11 A This paragraph summarizes what was agreed to and
12 this provides a synopsis of what was agreed to in the 10 to
13 11 May TMs.

14 Q Agreed to by who?

15 A All parties concerned; that there were a number of
16 TRs that were uncovered, software deficiencies, in which all
17 parties agreed that some of them were in-scope and some were
18 out-of-scope.

19 Q I ask that you please turn to the attachment one
20 to this document. Do you have that?

21 A Yes.

22 Q What is this document?

23 A This is basically the summarization of what
24 transpired at our technical interchange meeting 10-11 May.
25 Across the top of this document is TR, which is the trouble

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1 report, the Air Force's way of identifying deficiencies.

2 The next column over is in-scope.

3 Q What did that mean?

4 A In-scope were these TRs were agreed by all three
5 parties -- Whittaker, TechDyn and the Government -- to be
6 within the contractual requirements of the ICCE contract,
7 and Whittaker was going to fix these.

8 Q The next columns says out-of-scope. What does
9 that mean?

10 A All three parties agreed that these trouble
11 reports were out of the scope of the contract and Whittaker
12 was not supposed to fix these.

13 Q The next column is required for TAF certification.

14 A The next column is if this software, if this
15 operational software was going to ever be Tactical Air Force
16 certified, then these trouble reports had to be fixed by
17 somebody, not Whittaker if they were not indicated to be in-
18 scope.

19 Q Do you know whether this letter was -- this Air
20 Force was ever forwarded to Whittaker?

21 A Yes.

22 Q And would you please turn to the first page of
23 this document? And is this the transmittal letter from
24 TechDyn to Whittaker?

25 A Yes.

1 Q Would you please read the second to the last
2 paragraph starting, "performance."?

3 A "Performance, in accordance with instruction
4 provided herein, is considered by TechDyn to be within the
5 scope of the existing subcontract requirements. In the
6 event that WES does not agree that these instructions are
7 within the present requirement, WES must notify TechDyn in
8 writing within 10 calendar days from receipt of this
9 letter."

10 Q Did Whittaker make any -- contact TechDyn and
11 advise them that they considered any of that work to be out-
12 of-scope?

13 A Not to my knowledge within 10 days after receipt
14 of this letter.

15 Q And what's the date of this letter?

16 A 11 July 1988.

17 Q Did Whittaker correct the STRs identified in the
18 Air Force document?

19 A Whittaker stopped work on the 21st of July 1988.

20 Q Would tell us, please, what happened?

21 A On the 21st of July 1988, there was a series of
22 meetings scheduled to be held in Carlsbad, California;
23 basically using Whittaker facilities. The first meeting was
24 an executive meeting concerning a claim issue that Whittaker
25 had submitted. The second meeting was to be PMR and the

1 third meeting was to be IAD conference.

2 Q What is a PMR, Mr. Ellis?

3 A Program management review.

4 Q And what is done at those program management
5 reviews?

6 A We are contractually required to have periodic
7 program management review, and we were due to have one. And
8 being we had all of the other meetings, all of these
9 meetings Whittaker agreed to host, and we used their
10 facilities in Carlsbad, California.

11 Q Did you attend this meeting?

12 A I attended the earlier meeting, earlier executive
13 meeting.

14 Q What happened at that meeting?

15 A At his particular meeting, as I said the purpose
16 of that was to talk about a claim. There were several
17 issues concerning TechDyn, Whittaker and the Government over
18 a previous claim that had been submitted by Whittaker. And
19 at the meeting the TechDyn representatives were Mr.
20 Morrison, Mr. Hise, myself and Mr. Thornton. The Government
21 represents, Colonel Johnson, I think Captain Banks, Colonel
22 Hedjon and a Mr. West. And as near as I recall the
23 Whittaker, Mr. Brancati, Bohler, Moeller and I believe Dave
24 Christensen.

25 Q Who did you understand Mr. Brancati to be?

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1 A I understood Mr. Brancati to be president of
2 Whittaker and I recall a letter that WCCS was no longer
3 WCCS. They were now WES. A letter about the 4th or 5th of
4 July making that organizational change effective 1 July '88.

5 Q Prior to that meeting had you met Mr. Brancati?

6 A No, I hadn't.

7 Q What happened at that meeting?

8 A At the claims meeting the discussions had started
9 taking place concerning the claim issues; those issues that
10 the Government wanted to discuss with the three parties.
11 And some place in that meeting Mr. Brancati said something
12 to the effect that, we have bigger issues to talk about
13 here. I am withdrawing that. I don't like the division of
14 money on this contract. We don't understand it. I'm
15 quitting work and get your stuff out of here.

16 Q What did he mean "get your stuff out of here"?

17 A At that particular time the test bed was set up in
18 the facility in a building owned by Whittaker. In that test
19 bed we had some ground inter-stations, basically three
20 cabinets of various communications equipment and another
21 couple of cabinets of a communication console. It was set
22 in this configuration because we were supposed to be doing
23 some testing there. So when he said, "get your equipment
24 out of here," he is referring to communications equipment
25 purchased by TechDyn to be used in testing.

DONALD ELLIS - DIRECT EXAMINATION

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1 Q Did TechDyn respond?

2 A Yes. We didn't have any choice. He told us to
3 get it out with 30 days, and started making arrangements
4 with another subcontractor that we had on this contract,
5 VEDA, Incorporated, whose facilities are in Camarella,
6 California. And I started making arrangements with him to
7 see if we could use their facility for setting up a test
8 bed.

9 Q And were arrangements made to do that?

10 A Finally arranged to do that, yes.

11 Q What response, if any, did TechDyn have to Mr.
12 Brancati's statement that Whittaker was stopping work?

13 A Basically, as I recall is that they had a valid
14 contract.

15 Q What happened next that day?

16 A Then we went on to -- there were ongoing
17 discussions between Mr. Morrison and Mr. Brancati, and the
18 Government people were later excused from that meeting. And
19 then the IADs meeting, that was already going on. Then we
20 moved into the program management review.

21 Q Who attended that meeting?

22 A A whole host of government personnel. The people
23 that I remember from Whittaker -- I might be wrong -- is
24 Dave Christensen, Ken Turry and Ms. Raymond.

25 Q And what transpired at that meeting?

1 A We discussed the program schedule as it had been
2 prepared for that meeting. However, the schedule was no
3 longer valid because they had stopped work.

4 Q Did Mr. Brancati attend that portion of the
5 meeting?

6 A Not that I recall.

7 Q Did anything else happen that day regarding the
8 stoppage of work?

9 A Well, later on we received a letter from Whittaker
10 putting in writing that what Mr. Brancati had verbalized
11 earlier.

12 Q You say later on.

13 A Later on at some period in that PMR, whether it
14 was after or -- it was in the afternoon of 21 July that a
15 letter was handed, I think, to Mr. Hise and it eventually
16 came to me and I read it.

17 Q I ask you, please, to turn to a document that's
18 been marked Plaintiff's Exhibit 1373 for identification.

19 JUDGE BROWN: May I have 1043 and 1046 while they
20 are bringing that up?

21 BY MR. BOEHLERT:

22 Q Mr. Ellis, I've placed in front of you a document
23 marked Plaintiff's Exhibit 1373 for identification. It
24 purports to be a one-page letter from Whittaker to TechDyn
25 dated July 21, 1988.

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1 Do you recognize this document?

2 A Yes, I do.

3 Q What is it?

4 A This is the letter that was received by TechDyn on
5 the afternoon of 21 July during or some time after the
6 program management review which was being conducted on 21
7 July at Whittaker facility.

8 MR. BOEHLERT: Your Honor, I moved Plaintiff's
9 Exhibit 1373 into evidence.

10 MR. WORK: No objection, Your Honor.

11 JUDGE BROWN: It's received.

12 (The document referred to, having
13 been previously marked for
14 identification as Plaintiff's
15 Exhibit No. 1373 was received into
16 evidence.)

17 BY MR. BOEHLERT:

18 Q Would you please read the first paragraph of the
19 letter?

20 A "As stated in our many discussions during the
21 course of this subcontract, the latest during the reference
22 meeting, Whittaker Electronic System, WES, feels a great
23 sense of disparity between its actual effort under the
24 subcontractor, inspected by TechDyn and the Division of
25 Funding."

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1 Q Was that one of the issues that was discussed in
2 the earlier executive meeting that day?

3 A That was one of the issues that I recall Mr.
4 Brancati verbalizing.

5 Q The next paragraph says, "On this \$15 million
6 program, WES has been awarded \$7.2 million, ostensibly
7 representing 45 percent of the effort. In reality, TechDyn
8 has assumed WES to be responsible for the major portion of
9 the effort while retaining the original division of funding.
10 WES is presently in a \$2 million loss position." Prior to
11 this letter had anyone at Whittaker ever discussed with you
12 whether or not Whittaker was losing money on the contract?

13 A Not with me, no.

14 Q Do you know whether with anybody at TechDyn?

15 A I don't know.

16 Q The next paragraph says, "The problem arises from
17 the ambiguity inherent in a contract made up predominantly
18 of whole contractual documents between the Government and
19 TechDyn without direction as to responsibilities of WES or
20 the division of effort between the two parties.

21 Prior to his letter had anyone at Whittaker ever
22 expressed that to you, that there was confusing regarding
23 the subcontract document?

24 A I think that that was also an argument that
25 Whittaker had expressed earlier as it came concerning RCE.

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1 But other than that, no.

2 Q And when did they present that argument concerning
3 RCE?

4 A Whittaker had indicated that they were having some
5 problems with the CFA-furnished equipment, and they too
6 stopped work on RCE earlier than 21 July 1988.

7 Q The last paragraph says, "It is requested that
8 TechDyn meet with Whittaker Electronic Systems as soon as
9 possible in order to reformat the contract into a mutually
10 understandable document which will allow for successful
11 completion of the program and equity as originally intended
12 by the contract."

13 Mr. Ellis, did the contract ever get reformatted
14 as requested by Mr. Bohler?

15 A Not to my knowledge.

16 Q Prior to July 21, 1988, had you ever met Mr.
17 Bohler?

18 A No.

19 Q Do you know how long he had been involved in the
20 project on behalf of Whittaker?

21 A I really don't know. However, up until this
22 meeting, having not met Mr. Bohler, all contractual type
23 issues and discussions that I had with anyone was Ms.
24 Raymond, who is sitting here.

25 (Continued on next page.)

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1 Q Subsequent to July 21, 1988, did Whittaker stop
2 work?

3 A I'm sorry?

4 Q Pursuant to this letter, did Whittaker stop work?
5 If you know. On the project.

6 A Whittaker stopped work on the RCE portion of the
7 contract and then on 21 July '88 they stopped work on the
8 whole project.

9 Q Did that have an impact on Whittaker's corrections
10 of those open STRs?

11 A Whittaker never did anything.

12 Q Did there come a time that Whittaker advised
13 TechDyn that it was resuming work on the project?

14 A Yes.

15 Q When did that occur?

16 A I think -- there were a lot of meetings and there
17 were a lot of letters and I think the official position was
18 on 30 September 1988.

19 Q 1988?

20 A 1988.

21 Q After being advised that Whittaker was resuming
22 work, do you know whether Whittaker started correcting these
23 software trouble reports?

24 A No.

25 Q You don't know or --

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1 A I know they did not.

2 Q And how are you aware of that?

3 A I spoke earlier of IADS meetings. These
4 meetings -- just a series of meetings -- in the December
5 timeframe, 1988. There was one of these meetings scheduled
6 at Petersen Air Force Base in Colorado Springs, Colorado and
7 at that particular 10 through 13 December '88 meeting, the
8 program manager of Whittaker in giving a report admitted
9 that Whittaker had not done anything on fixing any of the
10 STRs.

11 Q Do you know whether that statement was ever
12 reduced to writing?

13 A Yes.

14 Q Mr. Ellis, I place before you a document that's
15 been marked as Plaintiff's Exhibit 65 for identification. I
16 ask you to review that document and tell me if you can
17 identify it, please.

18 (Pause.)

19 A I can.

20 Q What is it?

21 A This is a Government document. During the minutes
22 of one of the working group meetings, during that December
23 '88 meeting at Petersen.

24 MR. BOEHLERT: Your Honor, I move Plaintiff's
25 Exhibit 65 into evidence.

1 JUDGE BROWN: Any objection?

2 MR. WORK: No objection, Your Honor.

3 JUDGE BROWN: It's received.

4 (The document referred to, having
5 been previously marked for
6 identification as Plaintiff's
7 Exhibit 65, was received in
8 evidence.)

9 BY MR. BOEHLERT:

10 Q I ask that you turn to the first page of this
11 document that has text on it and come down three paragraphs,
12 please.

13 A Okay.

14 Q It states -- would you please read that?

15 A "The subcontractor was asked about the status of
16 STRs. A statement for the record SFR 18-1 was made. The
17 subcontractor stated that TAF certified STRs have not yet
18 been worked on to date. The subcontractor acknowledged that
19 the STRs from March '88 correspondence was within the scope
20 of the current contract. The subcontractor supplied the
21 current status of STRs which are attachment 3 of these
22 minutes. Once the contractor has notified ESD that all STRs
23 have been completed, ESD intends to conduct an audit on the
24 attached CERT and SQT for the for the contractor. After
25 completion -- "

DONALD ELLIS - DIRECT EXAMINATION

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1 Q Okay. Reviewing the attachment, Mr. Ellis, does
2 the attachment list the open STRs related to the software?

3 A As presented by the contractor at this meeting.
4 Yes.

5 Q What reaction, if any, did TechDyn have to the
6 information that Whittaker had not worked on any STRs since
7 March of 1988?

8 MR. WORK: Object. Doesn't call for a factual
9 answer.

10 JUDGE BROWN: I don't think I understand the
11 objection.

12 MR. WORK: The question was what reaction did
13 TechDyn have, presumably what emotion did TechDyn feel.
14 That's not a factual question.

15 JUDGE BROWN: Is that what you're asking?

16 MR. BOEHLERT: Not emotion.

17 BY MR. BOEHLERT:

18 Q What, if anything, did TechDyn do in response to
19 this information?

20 A TechDyn was surprised that Whittaker had not been
21 working and the Government was also surprised that Whittaker
22 had not been working toward --

23 JUDGE BROWN: Well, I think that's what he
24 objected to. He didn't want your emotion of surprise. It's
25 not relevant --

1 MR. WORK: Move to strike that answer.

2 JUDGE BROWN: It's stricken. Then he directed his
3 question or amended the question to say what did they do,
4 not what did you feel.

5 THE WITNESS: What did we do?

6 MR. BOEHLERT: Yes.

7 THE WITNESS: I don't recall but I'm sure I had
8 conversations with Dave Christensen and I'm sure I had
9 conversations with Captain Jacobsen at the Government and I
10 am sure I tried to encourage Whittaker to go to work in
11 fixing the STRs so we could close the software issue.

12 MR. WORK: Move to strike everything after I don't
13 know.

14 JUDGE BROWN: Sustained. He can't tell us what
15 he's sure of unless he's sure of it.

16 MR. BOEHLERT: Okay.

17 BY MR. BOEHLERT:

18 Q Having thought about it, do you know whether any
19 of those conversations took place?

20 A I know those conversations took place.

21 Q Did the Air Force again address the issue of
22 closure of STRs?

23 A They did.

24 Q Mr. Ellis, I place before you a document that's
25 been marked as Plaintiff's Exhibit 1049 for identification.

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1 JUDGE BROWN: Where would that be now?

2 (Pause.)

3 THE WITNESS: 1049?

4 MR. BOEHLERT: Yes.

5 (Pause.)

6 BY MR. BOEHLERT:

7 Q Do you recognize this document?

8 A Yes.

9 Q What is it?

10 A This is a document dated January '89. It's a
11 letter that ESD, the Government, the Air Force, forwarded to
12 TechDyn requesting that we give them a status on STRs.

13 Q And what's the first page of this document?

14 A The first page of this document is a transmittal
15 letter from TechDyn transmitting NADS letter 748 to
16 Whittaker.

17 MR. BOEHLERT: I move Plaintiff's Exhibit 1049
18 into evidence.

19 MR. WORK: No objection, Your Honor.

20 JUDGE BROWN: It's received.

21 (The document referred to, having
22 been previously marked for
23 identification as Plaintiff's
24 Exhibit 1049, was received in
25 evidence.)

1 BY MR. BOEHLERT:

2 Q Would you please turn to the Air Force letter and
3 read paragraph 1?

4 A "The Government requests the current status of the
5 system trouble reports (STRs) for the software qualification
6 test and Tactical Air Force certification (TAFCERT) test,
7 reference A. Reference A statement for the record 18-1 made
8 by the subcontractor stated that the STRs had not been
9 worked to date. The subcontractor acknowledged that TAFCERT
10 STRs in reference B were within the scope of the current
11 contract. The Government previously understood that STRs
12 were open and that progress was being made to close them.
13 Please provide a current status of STRs."

14 Q Was this letter forwarded to Whittaker?

15 A Yes, it was.

16 Q And is that the first page of this document, a 24
17 January 1989 letter?

18 A Yes, transmitting this letter to Whittaker.

19 Q And does this letter also have that paragraph
20 stating "Performance in accordance with the instructions
21 provided herein is construed by TechDyn to be within the
22 scope of the existing subcontract requirements. In the
23 event that WES does not agree that these instructions are
24 within the present requirements, WES must notify TechDyn in
25 writing within ten calendar days from receipt of this

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1 letter."

2 A Yes, it does.

3 Q Did Whittaker contact TechDyn stating that any of
4 this work was outside the scope of the contract?

5 A Not to my knowledge.

6 Q What, if anything, did Whittaker do regarding the
7 fixing of STRs?

8 A Really not very much that I'm aware of. There
9 were a number of letters, a number of technical interchange
10 meetings, a number of telephone calls trying to encourage
11 Whittaker to fix the STRs that were open.

12 Q Were those STRs fixed?

13 A All of the STRs were never fixed. Some were.

14 Q Did the issue of whether or not Whittaker had a
15 test bed to fix STRs come up at about this time?

16 A An issue came up that Whittaker implied that they
17 could not fix these STRs because there was no test bed.

18 Q Do you know whether Whittaker ever conveyed that
19 to TechDyn in writing?

20 A Oh, yes.

21 Q I ask that you please refer to Plaintiff's Exhibit
22 66 for identification.

23 (Pause.)

24 JUDGE BROWN: May I have 1049 to put in?

25 (Pause.)

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1 BY MR. BOEHLERT:

2 Q Do you have that document in front of you, Mr.
3 Ellis?

4 A You said 66?

5 Q Yes. Plaintiff's Exhibit 66.

6 A I don't have it here.

7 (Pause.)

8 Q Do you have it in front of you now?

9 A I do.

10 Q Do you recognize that document?

11 A Yes.

12 Q And what is it?

13 A This is a letter submitted from Whittaker to
14 TechDyn dealing with the status of system trouble reports.

15 MR. BOEHLERT: Your Honor, I move Plaintiff's
16 Exhibit 66 into evidence.

17 JUDGE BROWN: Any objection?

18 MR. WORK: No objection, Your Honor.

19 JUDGE BROWN: It's received.

20 (The document referred to, having
21 been previously marked for
22 identification as Plaintiff's
23 Exhibit 66, was received in
24 evidence.)

25 BY MR. BOEHLERT:

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1 Q Mr. Ellis, reading from paragraph 2 of this
2 letter, it states, "As stated in reference C, WES does not
3 consider it prudent to proceed on STR corrections without a
4 CONUS test bed for verification purposes." Do you recall
5 Whittaker making that statement to TechDyn?

6 A Yes. Not only in this letter, but in other
7 letters.

8 Q Okay. Did TechDyn respond to that contention?

9 A We thought it was a fallacious argument.

10 Q Why?

11 A For a number of reasons.

12 Q Why?

13 A The first reason, if you were to review
14 Whittaker's proposal, you will find in that proposal that
15 Whittaker maintained that they had a test bed facility
16 containing all the necessary hardware and computer programs
17 and simulators to do all the software development.

18 Secondly, not to my knowledge of being on this
19 project did Whittaker ever use a CONUS test bed as I
20 identify it or they identify it for software testing.

21 Q What is a CONUS test bed?

22 A My definition of a CONUS test bed is having all of
23 the pieces of equipment, PFA equipment and CFA equipment,
24 communication functional area, established, connected in one
25 location like the configuration was prior to 21 July in

1 Carlsbad, California. All pieces of the equipment,
2 communications equipment and PDFA equipment supplied by
3 Whittaker. That is the configuration that I talk to when
4 I'm talking about software testing. At no time on this
5 contract was any software tested in that configuration.

6 Thirdly, it was Mr. Brancati that kicked us out of
7 the Whittaker facility and told us to move our software out
8 of there.

9 There are probably other reasons but I didn't
10 agree with that and neither did the Government agree with
11 that.

12 MR. WORK: Object, Your Honor. Move to strike
13 that last statement.

14 JUDGE BROWN: You have to lay a foundation for
15 that.

16 BY MR. BOEHLERT:

17 Q Do you know whether Whittaker addressed the issue
18 of the test bed with the Air Force?

19 A I know that Whittaker addressed the issue of the
20 test bed with the Air Force.

21 Q How do you know that?

22 A I know because I had a telephone communication
23 with project manager, knowing that Mr. Brancati and I
24 believe Moeller and Mr. Al Johnson, a former employee of
25 TechDyn, presented a briefing to Brigadier General Carlisle

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1 at ESD and they raised the test bed issue.

2 MR. WORK: Object. Move to strike unless there's
3 a foundation that he was there and he has personal
4 knowledge.

5 JUDGE BROWN: You can't talk about what somebody
6 told you in that telephone conversation. I have to strike
7 it.

8 You'll have to lay the foundation before you ask
9 the question.

10 BY MR. BOEHLERT:

11 Q Do you know whether the Air Force ever reduced to
12 writing its position regarding the test bed issue?

13 A Yes.

14 Q Mr. Ellis, I place before you a document that's
15 been marked as Plaintiff's Exhibit 426 for identification.

16 JUDGE BROWN: May I have 66?

17 (Pause.)

18 (Continued on the next page.)

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1 Q Plaintiff's Exhibit 426 is again a two-part
2 document. The first part being a 3 March 1989 letter from
3 TechDyn to Whittaker and attached to it is a 2 March 1989
4 letter from the Air Force addressed to TechDyn.

5 Do you recognize this document, Mr. Ellis?

6 A Yes.

7 Q What is it?

8 A This is an ESD letter summarizing a meeting
9 between Whittaker, Mr. Brancati, Mr. Moeller and Mr. Johnson
10 and headquarters ESD representative, Brigadier General
11 Cardaue, Colonel Rosen, Lieutenant Colonel Johnson, Captain
12 Chilson and Captain Jacobson.

13 Q And the cover letter here, what is that, the first
14 page of this document?

15 A The first page of this document -- I'm reading
16 from the TechDyn letter 3 March '89 -- forwarded this ESD
17 letter to Whittaker.

18 MR. BOEHLERT: Your Honor, I move Plaintiff's
19 Exhibit 426 into evidence.

20 JUDGE BROWN: Any objection to 426?

21 MR. WORK: No objection, Your Honor.

22 JUDGE BROWN: Received.

23 (The document referred to,
24 having been previously marked
25 for identification as

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3 BY MR. BOEHLERT:

8 Q Where does it do that?

15 Would you please read that?

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1 A Under paragraph two?

2 Q Yes.

3 A "In the reference WES 30 January '89 letter, 8901-
4 1332-FB/125-001, no request for amplifying SQ information
5 was made. WES simply stated that they couldn't proceed with
6 correcting SDRs until the test bed is reestablished. Based
7 on that situation, WES asked TechDyn to have the Government
8 reassess several government comments that alleged that the
9 WES SDR SQT test report was lacking in detail in the areas
10 of type service. WES's concerns are misleading for several
11 reasons."

12 Q Okay. Would you please read the next paragraph?

13 A "First, the test bed is not needed to proceed with
14 correction STRs."

15 Q Do you agree with that position of the Air Force?

16 A Definitely.

17 MR. WORK: Objection, Your Honor. There is no
18 foundation that this gentleman has any knowledge of software
19 development or software testing. And without that
20 foundation, his agreement with this has no basis.

21 MR. BOEHLERT: I believe he already gave his
22 reasons, Your Honor. He stated at least three reasons
23 himself previously why no test bed was needed.

24 MR. WORK: Well, he stated those reasons as
25 TechDyn's reason, but he has yet to qualify himself as

1 someone who has any knowledge of software testing or
2 software development.

3 MR. BOEHLERT: Your Honor, he was at these
4 meetings for purposes of verifying the test, and to monitor
5 the Whittaker correction of system trouble reports.

6 MR. WORK: He wasn't at the software qualification
7 test.

8 JUDGE BROWN: I'll overrule the objection. I
9 believe that he gave sufficient foundation for his
10 qualification in this area when he first testified, and the
11 jury can judge his ability to make these comments and you
12 can present whatever other evidence.

13 BY MR. BOEHLERT:

14 Q So do you agree with that statement, Mr. Ellis?

15 A Yes.

16 Q Would you please continue reading that paragraph?

17 A "In the past, WES has used its MV 10000
18 development bed for making software changes. WES's most
19 current SGR status listing provided by the WES program
20 manager at the 13 to 15 December '88 working group clearly
21 shows that no STR fixes on the MP 10000 have occurred since
22 April 1988 and find little, if any, work has been done since
23 then. Even if disruption of the test bed was a factor, the
24 disruption of the test bed did not occur until four months
25 after the last STR fix was made, and then 10 STRs, which

1 were fixed and awaited internal testing, never were tested
2 despite the presence of a test bed."

3 Q Would you read the next paragraph, please?

4 A "Second, WES insisted that TechDyn disrupted the
5 ICCE program by moving the test bed despite WES insistence
6 that TechDyn either pay \$20,000 a month rent or relocate the
7 test bed."

8 Q Do you know what's being referred to there about
9 the \$20,000 per month?

10 A After Mr. Brancati told us to get our equipment
11 out, we later got a letter from Whittaker that stated that
12 should our equipment remain in the Carlsbad, California
13 facility, then we would be liable for paying \$20,000 a month
14 for rent.

15 Q And up to that point had TechDyn been paying any
16 rent for that?

17 A Not to my knowledge.

18 Q Would you please continue?

19 A "Additionally, when representatives from ESD met
20 on 31 August '88 with TechDyn, the WES program manager and
21 WES head of programs/contracts, all parties were in
22 agreement that a scheduled opportunity could be realized by
23 swapping the ICCE RADIL out with the test bed RADIL."

24 Q What does that mean?

25 A After Whittaker had stopped work, the Government

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1 wanted to continue progress on this program. And in a
2 series of telephone conversations wanted us to take the
3 RADIL DTSSs and some communication suites and install it in
4 Iceland.

5 Whittaker agreed to taking the then RADIL, which
6 was in the test bed, to Iceland for the closure of CLIN 61.
7 Within this overall ICCE project, there were other tasks in
8 which Whittaker was contractually required to upgrade a
9 selected number of RADILs that were in position and being
10 utilized by the Air Force at various Air Force bases.

11 And the RADIL that was in the test bed in July of
12 '88 was one of these RADILs in the upgrade program, and
13 that's when I'm referring to CLIN 61.

14 Well, Whittaker wanted their money for CLIN 61 and
15 they agreed to take this RADIL out of the test bed and take
16 it to Iceland and install it, and we did that in the
17 October - November time frame of 1988.

18 Q And did Whittaker get paid for that work?

19 A To the best of my knowledge, yes.

20 Q Okay. Would you continue reading from the top of
21 that page?

22 A "WES agreed that the refurbishing swap out time
23 would be six to nine weeks and that" -- I'm having trouble
24 reading this because I can't make out the next few words.

25 Q I think it says, "...in that time."

1 A "...would not jeopardize the critical path and
2 would enable early DD 250 for a sizeable WES CLIN."

3 Q Was that what you were just referring to?

4 A Yes.

5 ESD contract letter 651 dated 16 August '85
6 confirmed this arrangement, and confirmed the in-scope
7 nature of this swap out. Part of the difficulty in
8 restoring the test bed falls squarely on WES, despite WES
9 receiving the ICCE RADIL in October '88 for refurbishing.
10 They had not been able to match their six weeks average for
11 refurnishing which would have had the RADIL ready by
12 December '88. Instead, by March '89, the RADIL was still
13 not ready.

14 Q Would you read the next paragraph, please?

15 A "Third, despite the fact that WES had performed
16 all previous STR test regression on ICCE software by using
17 their engineer model, they now insist that testing in an
18 environment that includes radio equipment is required.
19 Finally, WES delays with SQT regression planning on the
20 basis that the Government comments required improved clarity
21 in SQT test reports seem irrelevant in that SQT regression
22 is not dependent on SQT test report."

23 Q Did there come a time that Whittaker did any
24 further fixes on these open STRs?

25 A Yes.

1 Q What happened next?

2 A Counsel, I don't know what you mean by what
3 happened next.

4 Q Okay. Did the Air Force again address the issue
5 of STRs?

6 A Yes, a number of times in a number of letters and
7 another number of technical interchange meetings.

8 Q I ask you to refer, please, to Plaintiff's Exhibit
9 1073 for identification. This document consists of a 13
10 September 1989 TechDyn letter to Whittaker and attached to
11 that is a 6 September 1989 letter from the Air Force to
12 TechDyn.

13 Do you recognize these documents?

14 A Yes.

15 Q What are they?

16 A Again, I referred to a number of letters, and
17 there were a number of letters, and there were a number of
18 meetings held with Whittaker, TechDyn and the Government
19 trying to get the software up to where it's acceptable by
20 the Government and --

21 MR. WORK: Move to strike. That's not responsive.

22 MR. BOEHLERT: I move Plaintiff's Exhibit 1073
23 into evidence.

24 JUDGE BROWN: Well, he hasn't identified it yet.
25 He's identifying something else.

1 Overrule the motion to strike what he said.

2 MR. WORK: I do move to strike that response.

3 JUDGE BROWN: I overrule your motion.

4 Let's find out what this letter is.

5 BY MR. BOEHLERT:

6 Q Okay, would you turn, please, to the second page
7 of this document and it's an Air Force letter to TechDyn? Do
8 you recognize this document?

9 A Yes.

10 Q What is it?

11 A This is a government letter referencing some of
12 the previous technical interchange meetings that we had been
13 having on software development.

14 Q Did you attend those technical interchange
15 meetings?

16 A I attended the preponderance, and probably all of
17 the technical interchange meetings between the Government
18 and Whittaker and TechDyn concerning closing STRs and
19 getting operational software.

20 Q Do you recognize this as being an Air Force letter
21 to TechDyn?

22 A I recognize this as being an Air Force letter to
23 TechDyn.

24 Q And looking at page 1 of this document, do you
25 recognize that?

1 A Page 1, you're referring to the TechDyn letter?

2 Q Yes.

3 A Yes, this is a TechDyn letter sending this letter
4 on to Whittaker.

5 MR. BOEHLERT: Your Honor, I do move this document
6 into evidence.

7 JUDGE BROWN: Any objection?

8 MR. WORK: No objection to it.

9 JUDGE BROWN: What numbers is it? 1073?

10 MR. BOEHLERT: Yes.

11 JUDGE BROWN: It's received.

12 (The document referred to, having
13 been previously marked for
14 identification as Plaintiff's
15 Exhibit No. 1073 was received into
16 evidence.)

17 BY MR. BOEHLERT:

18 Q I want to go to the Air Force letter, please, the
19 second page, the first page of that letter. Now, up in the
20 references part of this, there are references. You see C,
21 D, E?

22 A Yes.

23 Q Do you know what that's referring to when it says,
24 "TIMs"?

25 A Again, counselor, there were a number of technical

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1 interchange meetings -- that's what we mean by TIMs -- held
2 between the three parties of trying to get operational
3 software. And these are three meetings that were held.

4 Q Did you attend those meetings?

5 A Yes.

6 Q What was discussed at those meetings?

7 A Trying to arrive at what needed to fixed to make
8 this software operational.

9 Q Were there any agreements reached?

10 A I thought that there were agreements reached. I
11 believe -- I thought that there were agreements reached.

12 Q What did you understand those agreements to be?

13 A Many of these TIMs, I thought the agreement that
14 Whittaker was going to repair, fix the TAC cert.
15 deficiencies and the SQT deficiencies.

16 Q Looking at paragraph one of this letter, would you
17 please read that?

18 A "Reference a TIMs was conducted to induce an
19 approach to software completion, an area which the
20 Government had seen no movement since February 1988. This
21 TIMs resulted in a Reference B letter in which the
22 Government outlined a plan approach to software completion,
23 including informal contract of verification in-plant in the
24 Government facilities, Government-generated test procedures,
25 a formal verification test, and in-plant Government

1 representative visit. This plan is currently in use."

2 Q There is a reference there to formal verification
3 test. What is that referring to?

4 A This is a method that both the Government and
5 TechDyn and Whittaker agreed would be the method for closing
6 the STRs, and that's within the contract. The contract say
7 software completion would be in accordance with agreed to
8 procedures between the contractor and the Government.

9 Q Did Whittaker agree to a formal verification test?

10 A Yes.

11 Q Would you please read paragraph three?

12 A "The contractor is required to fix all STRs.
13 Attached is a list of STRs remaining from the software
14 qualification test, SQT, and from the Tactical Air Force
15 certification testing, totaling 83 STRs. These STRs are
16 identified as requiring verification from one, possible two
17 of four methods: (a) explicating testing in FPT on the
18 proof of software correction through audit of code, audit of
19 documentation changes, acceptance of a contractor-initiated
20 engineering change proposal."

21 Q Would you please turn to the attachment to this
22 letter? It's captioned "Open STRs Requiring Correction."

23 A I have it.

24 Q And then right at the top there appears to be --
25 what is that describing?

1 A Open STRs requiring corrections. The asterisk,
2 explicit verification through formal verification FBT of
3 software correction, 44.

4 Q So those would be the STRs on this list that have
5 an asterisk that would be subjected to this formal
6 verification test?

7 A Right. To fix and subjecting.

8 Q Did a formal verification test take place?

9 A Two tests took place.

10 Q Tell us what happened, please.

11 A During the first FED testing Whittaker did make
12 some fixes to a software tape, delivered that tape to
13 Tindell Air Force Base, had a representative at Tindell Air
14 Force Base, Buck Fowler. I was the TechDyn representative,
15 and there were a number of Government representatives.

16 Q Did Whittaker pass the test?

17 A No.

18 Q What happened?

19 A There were some problems and deficiencies and it
20 was reschedule.

21 Q For what period?

22 A I think we're talking about November '89 time
23 frame.

24 Q Did another meeting take place during that time?

25 A Another test?

1 Q Another test.

2 A Another test did.

3 Q And where was that conducted?

4 A Again, there was a link up, but there were some
5 people at Tinker and Tindell Air Force Base. I was at
6 Tindell Air Force Base in Florida.

7 Q Did Whittaker pass that test?

8 A No.

9 Q Was the results of that test reduced to writing?

10 A Yes, they were.

11 (Continued on next page.)

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1 MR. BOEHLERT: I place before you a document
2 previously marked as Exhibit 572 for identification.

3 (Pause.)

4 JUDGE BROWN: Is that 1073?

5 (Pause.)

6 BY MR. BOEHLERT:

7 Q Do you recognize this document, Mr. Ellis?

8 A Yes.

9 Q What is it?

10 A During 1 through 2 February 1990, there was
11 another technical interchange meeting conducted out at
12 Whittaker with Government personnel, Whittaker personnel and
13 TechDyn personnel and I represented TechDyn, in which the
14 results of the FET test were discussed and the Government
15 had presented what they thought were STRs that had been
16 closed or fixed.

17 Q What is this document that's before you?

18 A This document before me summarizes that 1 through
19 2 February '90 technical interchange meeting at WES.

20 MR. BOEHLERT: Your Honor, I move Plaintiff's
21 Exhibit 572 into evidence.

22 JUDGE BROWN: Any objection to 572?

23 MR. WORK: No objection, Your Honor.

24 JUDGE BROWN: It's received.

25 (The document referred to, having

1 been previously marked for
2 identification as Plaintiff's
3 Exhibit 572, was received in
4 evidence.)

5 BY MR. BOEHLERT:

6 Q In the reference to this letter, Mr. Ellis, it
7 references a 1-2 February '90 technical interchange meeting
8 (TIM) at WES Carlsbad, California. Was that the meeting you
9 were just describing?

10 A Yes.

11 Q Tell us what happened at that meeting, please.

12 A Again, STRs were discussed and the Government and
13 had indicated their procedures -- they were confident that
14 the STRs listed under closed were closed. They had indeed
15 been fixed and the Government was no longer concerned with
16 this number of STRs. The Government on previous lists had
17 identified other STRs that they believed were still open and
18 had not been fixed. And then the untested or the
19 unwitnessed, the Government was not able to verify these
20 particular STRs during the formal verification test that
21 they had set up.

22 Q And does paragraph 2 of this document embody what
23 was discussed at that 1-2 February meeting?

24 A Yes. And in addition, the Government said that
25 there were 23 new trouble reports that had been uncovered

1 during the formal verification testing.

2 Q Okay. Reading from the document down below the
3 list of closed, open and untested STRs, what does this
4 document say?

5 A "In addition, 23 items were identified as new
6 deficiencies and designated as FET 01-23. Of those 23, the
7 contractor immediately identified FET 01-04 as their
8 responsibility."

9 Q When it says "contractor", who is that referring
10 to?

11 A Whittaker.

12 MR. WORK: Object and move to strike, Your Honor.
13 He's simply reading this document and there's no indication
14 that in this document that the contractor is Whittaker.

15 JUDGE BROWN: Lay a foundation or it will be
16 stricken.

17 BY MR. BOEHLERT:

18 Q Was that issue discussed at that 1-2 February 1990
19 meeting?

20 A There were three parties at the meeting:
21 Government personnel, Whittaker personnel and TechDyn
22 personnel.

23 Q Were you personally present?

24 A I was personally present.

25 Q Do you recall a discussion regarding the new

1 deficiencies that were identified?

2 A I recall a discussion during the new deficiencies
3 and Mr. Jack Kennedy from Whittaker stated during that
4 meeting that they would look at FET 01-2, 3 and 4.

5 MR. WORK: Your Honor, perhaps I didn't make my
6 objection clear.

7 The question was who was referred to in this
8 paragraph. This is a letter from the Air Force to TechDyn
9 and unless there is a basis in this letter which he is
10 simply reading to identify the referenced contractor as
11 Whittaker, in this letter as opposed to in some meeting,
12 then his conclusion is improper and without foundation.

13 JUDGE BROWN: I find a foundation has been laid
14 and I overrule the objection. The jury can judge this.

15 BY MR. BOEHLERT:

16 Q I ask that you please turn to section III of this
17 report, towards the back of it -- III, captioned "ICCE
18 Formal Verification Test, Summary of In-Scope STRs, Summary
19 of New System Failures."

20 A I don't understand where you want me to go.

21 Q Okay. Towards the back of this report, there is a
22 section of the report, III.

23 (Pause.)

24 Q Are you familiar with that part of this report,
25 Mr. Ellis? Take a look at it, please.

1 (Pause.)

2 A This is basically a discussion of the STRs, all of
3 those STRs in the cover letter of this, the Government's,
4 Whittaker's discussion as to whether the STRs were open or
5 closed and at that 1 through 2 February TIM, we had all the
6 STRs listed.

7 Q And does this list embody the results of that
8 meeting?

9 A Yes.

10 Q I ask that you refer to the very last STR on this
11 page, please, STR 88-414. It says "Open. Unable to
12 complete test due to repeated ICCE crash at same point."

13 MR. WORK: Excuse me. May I ask where you are,
14 please?

15 MR. BOEHLERT: Sure.

16 MR. WORK: What page?

17 MR. BOEHLERT: Section III, towards the back of
18 the report.

19 MR. WORK: All right. What page?

20 MR. BOEHLERT: It's not numbered. Let me find it
21 for you.

22 (Pause.)

23 BY MR. BOEHLERT:

24 Q Do you have it, Mr. Ellis?

25 A Yes.

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1 Q STR 88-014 open?

2 A Right.

3 Q And the comment is "Unable to complete test due to
4 repeated ICCE crash at same point." What is that referring
5 to?

6 A I don't remember where we were in the testing
7 procedures, but we would reach a given point and every time
8 we would reach that point in the testing procedure, the
9 system crashed.

10 Q What does that mean?

11 A It means that you dropped all the links and it
12 bottomed out so you had to re-initialize the system every
13 time. You had to restart.

14 Q Was that acceptable to TechDyn?

15 A No. Nor the Government.

16 Q Turning to the last page of this document, of this
17 section, it's captioned "Summary of New System Failures".

18 A Right. I have it.

19 Q Do you recognize that?

20 A Yes.

21 Q And what is on this page?

22 A I had mentioned earlier and the Government's
23 letter had mentioned earlier that there were some new system
24 failures uncovered during the FVT and Whittaker assumed
25 responsibility for fixing the first four.

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1 Q Do you know whether TechDyn forwarded this formal
2 verification report to Whittaker?

3 A Yes.

4 Q I ask that you refer, please, to what I've marked
5 as Plaintiff's Exhibit 1106 for identification.

6 (Pause.)

7 JUDGE BROWN: We'll take a 15-minute recess and
8 hopefully we'll find it.

9 (Brief recess.)

10 BAILIFF: Everyone remain seated and come to
11 order.

12 JUDGE BROWN: You can bring the jury in.

13 (Pause while jury is seated.)

14 JUDGE BROWN: We're ready to start.

15 BY MR. BOEHLERT:

16 Q Mr. Ellis, after the formal verification test
17 report was sent to Whittaker, did Whittaker fix the STRs
18 identified in the report?

19 A Whittaker agreed that they would do some work on
20 some of the STRs that surfaced during formal verification
21 testing. Whittaker did in fact fix some but they didn't fix
22 all of them.

23 Q What happened?

24 A Shortly after that 1-2 TIM in which Whittaker said
25 that they were going to fix a number of STRs, I think it was

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1 about March of '90 that they sent a CDRL delivery purporting
2 to be their operational software, the final delivery of
3 their operational software.

4 Q Did they send that to TechDyn?

5 A They sent that to TechDyn and it was rejected and
6 returned to Whittaker, saying that they had not fixed those
7 agreed-to STRs.

8 Q What happened next, Mr. Ellis?

9 A There were a series of letter writing, meetings,
10 telephone calls and a little bit of everything but finally a
11 meeting, if you will, took place between Mr. Morrison, Mr.
12 Brancati and other members from Whittaker and TechDyn.

13 Q Did you attend that meeting?

14 A Yes. In Simi Valley, California, in which they
15 met to discuss software closure.

16 Q What happened at that meeting?

17 A They talked about it and both expressed their
18 understanding and then finally Colonel Johnson from the Air
19 Force was gotten on the telephone through a speaker set and
20 then the three parties finally came to an agreement of what
21 was required to get the Air Force to accept the software.

22 Q What was that agreement?

23 A As I said earlier, all agreed-to trouble reports
24 had not been finished but the Air Force finally said if
25 software version 90-54 was bootable, could you put it into a

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1 computer and the computer didn't crash, then they would
2 accept software version 90-54. And that was the position
3 when everyone walked away on 3 August of 1990.

4 Q Do you know whether that agreement was reduced to
5 writing?

6 A Yes.

7 Q I place before you a document that has been marked
8 as Plaintiff's Exhibit --

9 A Counsellor, that was another part of that
10 agreement, that Whittaker agreed that they would do a number
11 of hours of telephonic support to assist the Air Force in
12 working with that operational software and that was the
13 consideration that they gave for the Government accepting
14 software version 90-54.

15 Q I place before you a document that's been marked
16 as Plaintiff's Exhibit 1131 for identification and ask you
17 if you can identify that document.

18 (Pause.)

19 A I can.

20 Q What is it, Mr. Ellis?

21 A It basically starts with Whittaker documenting the
22 3 August TIM that I described earlier and TechDyn in turn
23 forwarded the Whittaker letter to the Government.

24 MR. BOEHLERT: Your Honor, I move Plaintiff's
25 Exhibit 1131 into evidence.

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1 JUDGE BROWN: Any objection

2 MR. WORK: Just one second, Your Honor. I don't
3 have it here.

4 (Pause.)

5 MR. WORK: No objection.

6 JUDGE BROWN: It's received.

7 (The document referred to, having
8 been previously marked for
9 identification as Plaintiff's
10 Exhibit 1131, was received in
11 evidence.)

12 BY MR. BOEHLERT:

13 Q Turning to the third page of this document, can
14 you identify that?

15 A The 3 August 1990 Whittaker letter?

16 Q Yes.

17 A Yes.

18 Q Does this document embody the agreement that you
19 just referred to?

20 A Yes.

21 Q Paragraph 1 says, "WES will prepare and transmit
22 to TechDyn ICCE software version 90-054 on 7 August 1990."
23 Did that take place?

24 A I'm not sure that that in fact took place. On the
25 morning of 20 August 1990 Ms. Raymond brought the software

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1 over with her.

2 Q Paragraph 2 says, "This software, as agreed
3 between the parties, will not be subject to further
4 contractor supported testing." Did certain of the STRs from
5 the formal verification test remain open against this
6 version?

7 A Oh, yes.

8 Q Paragraph 3 says, "A demonstration of version
9 90-054 designed to show that the version is bootable will be
10 conducted at the test bed at VEDA during the week of 6
11 August 1990 on a mutually agreeable date." Let's talk about
12 a couple of things there. It says "if the version is
13 bootable". What does that mean?

14 A Were you're able to load it into the RADIL and
15 were you able to initialize and basically run it.

16 Q Did that take place?

17 A Yes.

18 Q When did that take place?

19 A 20 August 1990.

20 Q Paragraph 5 says, "As consideration for acceptance
21 in this manner, Whittaker engineers will provide 50 hours of
22 telephonic support to the Air Force should the Air Force
23 require assistance with the delivered software." What was
24 the purpose of that telephonic support?

25 A The purpose as I knew it, the Air Force knew that

1 software tape version 90-054 had some deficiencies in it and
2 as they were either going to repair or get it repaired or
3 what not, they might run into something in which they might
4 need to consult Whittaker personnel.

5 Q So was there a date on which the Air Force
6 accepted Whittaker's PDFA operational software as complete?

7 A The date as near as I recall was 20 August 1990.

8 Q Mr. Ellis, did I ask you to prepare a chart to set
9 forth the various milestones that we've been discussing?

10 A Yes.

11 Q And have you done that?

12 A Yes.

13 Q I present to you what's been marked as Plaintiff's
14 Exhibit 994.

15 JUDGE BROWN: Show it to Mr. Work first.

16 (Pause.)

17 MR. WORK: Well, I would certainly object to it
18 as an exhibit, Your Honor. If he wants to use it as a
19 visual, we have our visuals, too, and we wouldn't object to
20 it as a visual.

21 JUDGE BROWN: Which do you plan to do?

22 MR. BOEHLERT: I'd like to use it as a visual aid.

23 JUDGE BROWN: All right. You may.

24 BY MR. BOEHLERT:

25 Q Mr. Ellis, would you please step down and we'll

1 approach the jury with this document?

2 (Pause.)

3 MR. BOEHLERT: Can you all see these little
4 documents? We're trying to get them blown up into a
5 form --if you can't, I suggest you come down. You're
6 certainly welcome to approach.

7 (Pause.)

8 MR. BOEHLERT: Can everybody see that? Okay.

9 BY MR. BOEHLERT:

10 Q Mr. Ellis, this document is captioned "Whittaker
11 PDFEA Software Development and Testing." Did you assist in
12 the preparation of this document?

13 A I did.

14 Q And what does it show?

15 A Along here it's a time line -- when the contract
16 started. I spoke earlier as to Whittaker had done a plan
17 for the program and this is when they were supposed to do
18 the software testing as alluded in a Whittaker document.
19 This is the timeframe in which the in-plant testing was
20 supposed to take place.

21 Q What was that testing to consist of?

22 A As Whittaker projected in their schedules, CPT&E
23 testing and ultimately something was changed to be called
24 software qualification testing, contractually required to do
25 SQT and contractually required to submit the software to TAF

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1 certification.

2 Q And was there a planned date in that original
3 schedule for completion of that work?

4 A As I spoke earlier, this is the planned date --
5 9/30/86.

6 Q And now what does line down here represent, Mr.
7 Ellis?

8 A This line here represents -- this was the planned
9 schedule and then when did testing really start taking
10 place. I spoke of CPT&E unacceptable, conditionally
11 acceptable -- I spoke of SQT testing. Here are the three
12 periods of testing.

13 Q And that's in what timeframe?

14 A This is the November-December timeframe of '87 and
15 I think you focused back over here. Then I talked about TAF
16 certification in the early February '88 timeframe.

17 Then I spoke of all the meetings and the TIMs and
18 agreements and letter writing that took place and finally we
19 got to --

20 Q When did that stop work take place?

21 A The stop work took place right here, in July -- 21
22 July of 1988. And then we finally started -- this is not
23 any additional requirement, as I kept talking about, this is
24 an agreed-to disposition of the software STRs. Whittaker
25 agreed to this testing, so it's not additional. And there

1 were two periods --

2 MR. WORK: Object, Your Honor. The statement was
3 made that Whittaker agreed to it so it was not additional.
4 That implies some addition to contract. He hasn't indicated
5 any knowledge of what the contractual requirements yet and
6 therefore the statement is incompetent.

7 JUDGE BROWN: I don't think I understand the
8 objection. I think it's objectionable so I'll sustain the
9 objection for the moment. It's a comment, the "additional".
10 Now, I don't know what he's talking about -- additional to
11 what, so I'll sustain the objection.

12 BY MR. BOEHLERT:

13 Q What are you referring to, Mr. Ellis, when you say
14 this is not additional?

15 A In the contract is a paragraph that states
16 successful completion of software is final disposition of
17 these STRs by the Government and Whittaker. They chose a
18 method of arriving at this agreement through formal
19 verification testing and Whittaker agreed to formal
20 verification testing as a means of closing out these STRs.

21 Q And what does this last milestone represent?

22 A On the 20th of August, the Government accepted
23 Whittaker's operational software thusly ending the
24 development phase of software.

25 (Continued on the next page.)

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1 Q Mr. Ellis, did Whittaker's actual schedule for
2 development and testing of operational software have any
3 impact on TechDyn?

4 A Yes.

5 Q What was it?

6 A Time, money and effort.

7 Q What do you mean by time?

8 A Someone had to attend all of the technical
9 interchange meetings. Someone had to spend numerous hours
10 talking to people on the telephone. People had to answer
11 and write letters as we tried to move toward this and this
12 caused time.

13 Q Who was involved in those efforts?

14 A All of us.

15 Q Who does that include?

16 A My entire staff.

17 Q Who was on your staff, Mr. Ellis?

18 A Mr. Bell, Mr. Jones, Mr. Thornton, Mr. Rose at one
19 time, Mr. Johnson, Ernest Johnson, secretaries, draftsmen.
20 I had -- I hope I haven't forgotten anyone.

21 Q Let's talk about Mr. Bell. How was he impacted?

22 A Mr. Bell is essentially the configuration
23 management person.

24 Q What does he do?

25 A He does a lot of things. But one of the essential

1 things is Whittaker was contractually required to document
2 the software in a series of specification. Each and every
3 specification that they submitted, each and every
4 specification change was handled by Mr. Bell, and schedules
5 prepared, drafts by Mr. Bell. So Mr. Bell did a lot of
6 things.

7 Q What about Mr. Jones?

8 A Mr. Jones operated principally in the logistic
9 area, and again Whittaker was on task to prepare several
10 manuals and software did impact manuals.

11 Q What about Mr. Thornton?

12 A Mr. Thornton, a system engineer. He spent a lot
13 of time witnessing testing like I did. He too answered a
14 lot of communications, letters and that.

15 Q What about Mr. Rose?

16 A Mr. Rose was test engineer. He didn't get that
17 deeply involved on the Whittaker side, but he was system
18 engineer, testing.

19 Q What about Ernest Johnson?

20 A Ernie Johnson was the TechDyn representative that
21 was in Iceland; worked with the RADIL and worked with other
22 PDFA equipment that was installed in Iceland and the CFA
23 equipment that was installed. And he did interface with
24 personnel from Whittaker when a particular problem would
25 come up concerning the RADIL.

1 Q You mentioned draftsmen. What impact did this
2 have on draftsmen?

3 A The draftsmen principally used to do drawings.
4 Throughout my testimony I mentioned and concentrated
5 primarily on software, and wherein Whittaker's software
6 effort had little or no impact on the draftsmen, Whittaker
7 stopped work on RCE and had tremendous impact on the
8 draftsmen in the sense that all drawings that had been done
9 up to that point later on had to be changed.

10 Q Okay. Did Whittaker's actual schedule for
11 operational software have any impact on the overall project
12 schedule?

13 A Oh, yes. It stretched out everything.

14 Q You mentioned time, effort and I think money was
15 the third factor. What do you mean by money?

16 A I was always being fussed at for spending money
17 because people had to travel and do these things. Money,
18 and money in the sense that our personnel devoted to
19 checking and writing were taking away to some extent from
20 tasks that we were supposed to do on the communication
21 function side there.

22 Q Having delivered its operational software in
23 August of 1990, was Whittaker complete with its PDFA
24 software obligations?

25 A Oh, no.

1 Q What remained?

2 A As I testified earlier, Whittaker had support
3 software to deliver with this contract, and that had not
4 been delivered as of 20 August 1990.

5 Q What was the status of the support as of August
6 20, 1990?

7 A As near as I recall, Whittaker had delivered some
8 support software to Tindell Air Force Base. The Government
9 Air Force people at Tindell and some people from
10 headquarters ESD and Bob Fowler from Whittaker and myself
11 went down to do some testing of the support software at
12 Tindell Air Force Base.

13 Q When did that occur?

14 A Counselor, I might be off, but I think it was '89.

15 Q All right. What was the result of that testing?

16 A The results, the Government loaded up these
17 support tapes that Whittaker had sent and there was
18 agreement between the Whittaker representatives and
19 Government representatives and myself that there were
20 certain files that were missing.

21 When I returned from that meeting, I tried as best
22 as I could identify what the files were that were missing,
23 and forwarded that in a letter to Whittaker.

24 Q I ask you to please refer to a document that's
25 been marked as Plaintiff's Exhibit 1136 for identification.

1 Do you have that in front of you?

2 A I do.

3 Q Do you recognize this document?

4 A Yes.

5 Q What is it?

6 A This is the document that I was alluding to and I
7 was incorrect. It was 11 through 12 September '90 that this
8 party, the Government, TechDyn and Whittaker, went down to
9 compile link, load and testing, which was a CPT&E testing
10 requirement; to do that as well as to load the support
11 search code.

12 MR. BOEHLERT: Your Honor, I move Plaintiff's
13 Exhibit 1136 into evidence.

14 JUDGE BROWN: Any objection to 1136?

15 MR. WORK: No objection, Your Honor.

16 JUDGE BROWN: It's received.

17 (The document referred to, having
18 been previously marked for
19 identification as Plaintiff's
20 Exhibit No. 1136, was received into
21 evidence.)

22 BY MR. BOEHLERT:

23 Q Would you please read the first paragraph, Mr.
24 Ellis?

25 A "During reference a governmental testing was

1 performed to, (a) determine if the subcontract had met the
2 requirements of the SOW, paragraphs 3.2.1 and 3.2.1,
3 reference B, which essentially focused on providing
4 installation, integration and testing under the additional
5 hardware and software required at the ROCC, software support
6 facility, RSSF, Tindell Air Force Base, to allow software
7 support of any government-accepted modification and upgrade
8 to the present baseline and to complete the compile link
9 load and edit function, an informally CPT&E, proposed CPT&E
10 activity."

11 Q The next paragraph says, "Government personnel
12 rated both of the above-tested activities as incomplete,
13 citing the following known software yet to be delivered to
14 RSSF." And then it has a list below it and over to the next
15 page, Items A through L.

16 What are those referring to, Mr. Ellis?

17 A Again, this was the summary of the files that were
18 missing from the source files and the support files that
19 Whittaker had delivered to Tindell Air Force Base. This
20 listing is a summary of RSSF personnel listing of files that
21 were missing, other personnel files that were missing and
22 this is a listing that Whittaker represented and Bob Fowler
23 agreed.

24 Q Do you know whether the Air Force also addressed
25 this issue?

1 A Yes.

2 Q I refer your attention to a document that's been
3 marked as Plaintiff's Exhibit 1141 for identification. It's
4 a two-part document. The first part being a 16 October '90
5 letter from TechDyn to Whittaker. Attached to that is a 9
6 October 1990 letter from the Air Force to TechDyn.

7 Do you recognize these documents?

8 A Yes.

9 Q What are they?

10 A The first letter I was talking about was the
11 letter that I prepared when I got back, based on the input
12 from the parties identified.

13 This letter that I have in front of me is the
14 Government's letter documenting what occurred during the 11-
15 12 September at Tindell Air Force Base.

16 MR. BOEHLERT: I move Plaintiff's Exhibit 1141
17 into evidence.

18 MR. WORK: No objection, Your Honor.

19 JUDGE BROWN: It's received.

20 (The document referred to, having
21 been previously marked for
22 identification as Plaintiff's
23 Exhibit No. 1141 was received into
24 evidence.)

25 BY MR. BOEHLERT:

1 Q Turning to the Air Force letter, please, dated 9
2 October 1990, if you would look at the first page, please.
3 And in paragraph three, the second paragraph, it states,
4 "Thus far, at the 4702 CSS."

5 Do you know what that's referring to?

6 A That's the RSSF at Tindell Air Force Base. That's
7 the Air Force designation of that agency.

8 Q it states, "The previously delivered software has
9 been found to be missing essential components necessary to
10 accomplish this build on a day-by-day basis. A successful
11 software PCA cannot be conducted on a partial incomplete set
12 of delivered software."

13 What is "software PCA" referring to?

14 A Physical configuration of it.

15 Again, based on the contract, Whittaker and
16 TechDyn had certain PCAs and FCAs that we must go through.
17 Contractually the operational software is subjected to PCA
18 as well as FCA. And the Air Force is saying that they
19 cannot understand the operational software until we have all
20 of the support software.

21 Q Was the Air Force letter forwarded to Whittaker?

22 A Yes.

23 Q Did Whittaker respond to the Air Force letter?

24 A Yes, and essentially there was a letter that
25 essentially stated that they had provided more than they

1 were contractually required.

2 Q Mr. Ellis, I ask you to please refer to a document
3 that I marked as Plaintiff's Exhibit 1611 for
4 identification. It's a letter from Whittaker to TechDyn
5 dated 17 December 1990.

6 Q Do you recognize that document?

7 A Yes.

8 Q What is it?

9 A One of the things that I had been trying to get
10 from Whittaker was information to develop a program schedule
11 that we are contractually required to submit to the
12 Government. And I was trying to find out when they were
13 going to complete delivery of this support software to
14 Tindell Air Force Base. And in paragraph one --

15 MR. BOEHLERT: Before you get to that, Your Honor,
16 I move this document into evidence.

17 JUDGE BROWN: What's the number again?

18 MR. BOEHLERT: 1611.

19 JUDGE BROWN: Any objection to 1611?

20 MR. WORK: No objection, Your Honor.

21 JUDGE BROWN: 1611 is received.

22 (The document referred to, having
23 been previously marked for
24 identification as Plaintiff's
25 Exhibit No. 1611 was received into

1 evidence.)

2 BY MR. BOEHLERT:

3 Q What does paragraph one of this document state?

4 A Paragraph one, final submission of RSSF support
5 software and Whittaker informed TechDyn that WES has
6 delivered all support software to the RSSF and has in fact
7 delivered more than was originally envisioned and more than
8 is required.

9 Q Did TechDyn respond to that?

10 A Oh, yes.

11 Q What was TechDyn's position?

12 A That they owed additional support software to
13 RSSF.

14 Q Did the Air Force respond to that?

15 A Oh, yes.

16 Q I refer your attention to a document that I've
17 marked as Plaintiff's Exhibit 1635. Another one of these
18 two-part document: a TechDyn letter to Whittaker and
19 appended to that is a 20 February 1991 letter from the Air
20 Force to TechDyn.

21 Do you recognize these documents?

22 A Yes.

23 Q What are they, Mr. Ellis?

24 A The government, in all of the argument, finally
25 said, Whittaker, you provide in paragraph four these files.

1 If you provide these files, that will complete the software
2 support delivery.

3 Q Are you familiar with the contents of this letter?

4 A Am I?

5 Q Yes.

6 A Oh, yes.

7 MR. BOEHLERT: Your Honor, I move Plaintiff's
8 Exhibit 1635 into evidence.

9 JUDGE BROWN: Any objection to 1635?

10 MR. WORK: No objection.

11 JUDGE BROWN: It's received.

12 (The document referred to, having
13 been previously marked for
14 identification as Plaintiff's
15 Exhibit No. 1635 was received into
16 evidence.)

17 BY MR. BOEHLERT:

18 Q I would like to refer you to the first page of the
19 Air Force letter. And in the references, Reference C, does
20 that make reference to that Whittaker letter we just looked
21 at dated 17 December 1990?

22 A Yes.

23 Q Would you please read paragraph two?

24 A "in reference 1B, WES letter 1C was quoted as
25 saying that WES had delivered all support software to the

1 RSSF and has in fact delivered more than was originally
2 envisioned and more than is required. The Government takes
3 exceptions with this position and maintains its request
4 stated in reference 1A that the contractor provide a
5 complete set of all the software required to perform a
6 complete build of the ICCE executable software from source."

7 Q And what is paragraph four of this document?

8 A The Government directed us to deliver the
9 following ICCE source code in tape format to Tindell Air
10 Force Base.

11 Q And did TechDyn forward this Air Force letter to
12 Whittaker?

13 A Oh, yes.

14 (Continued on next page.)
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1 Q Was that the 6 March 1991 letter here?

2 A Yes.

3 Q Did Whittaker respond?

4 A Yes.

5 Q What happened?

6 A Counsellor, there are a number of letters and
7 there were a number of telephone calls being made on trying
8 to get the source code. In a letter that came from
9 Whittaker, Whittaker indicated that they would provide seven
10 of these nine identified files that the Government
11 identified. They would provide seven of the nine, excluding
12 MAPGEN and MAPOIGIT.

13 Q Did TechDyn communicate that position to the Air
14 Force?

15 A Yes, they did.

16 Q Did the Air Force respond?

17 A The Air Force did not agree with Whittaker's
18 interpretation that they were not supposed to provide MAPGEN
19 and MAPOIGIT but they said okay, give me the other seven.

20 Q I ask you to refer to a document that I've marked
21 as Plaintiff's Exhibit 1647.

22 (Pause.)

23 Q It's a 10 May 1991 letter from the Air Force to
24 TechDyn.

25 A Okay.

1 Q Do you recognize this document?

2 A Yes.

3 Q What is this document?

4 A This is the Government response to a series of
5 letters but in essence it -- Your Honor, I move Plaintiff's
6 Exhibit 1647 into evidence.

7 MR. WORK: No objection.

8 JUDGE BROWN: 1647 is received.

9 (The document referred to, having
10 been previously marked for
11 identification as Plaintiff's
12 Exhibit 1647, was received in
13 evidence.)

14 BY MR. BOEHLERT:

15 Q Okay. Reading paragraph 3, what does that say?

16 A "As stated in the reference, WES claimed that the
17 source code item MAPGEN and MAPOIGIT are not required
18 deliveries under this contract. The Government does not
19 concur but will consider the source code deliverable issue
20 closed when the following ICCE source code in tape format is
21 delivered to the RSSF." And it now lists the seven.

22 Q Were those seven source codes provided from
23 Whittaker to TechDyn?

24 A Whittaker had indicated that they had submitted a
25 source code to RSSF and did submit a tape. RSSF did some

1 kind of checking of that particular tape and found some
2 files missing.

3 Q What happened next?

4 A On the receipt that they sent back to Whittaker,
5 they noted that a file was missing.

6 Q Did Whittaker respond to that?

7 A Yes. We had an 18 June '91 PMR and Ms. Raymond
8 brought a tape up to TechDyn purporting to be the missing
9 file and TechDyn forwarded that file to Tyndall and as of
10 Friday had not received a receipt that they had received it
11 or anything from the Government to indicate that the
12 delivery of that file completed and closed the software
13 issue.

14 Q So as we sit here today, has the Air Force
15 accepted Whittaker's support software?

16 A No, not to my knowledge.

17 Q Mr. Ellis, did I also ask you to prepare or
18 participate in preparing a chart which would identify the
19 planned schedule and actual schedule for support software?

20 A Yes.

21 Q I show you what's been marked as Plaintiff's
22 Exhibit 997 for identification for demonstrative purposes.
23 Can you identify this document?

24 A Yes.

25 Q And what is it? I'd like to take it down in front

1 of the jury.

2 MR. WORK: Is this being presented as a visual
3 aid?

4 MR. BOEHLERT: Yes.

5 (Pause.)

6 BY MR. BOEHLERT:

7 Q Mr. Ellis, this document is captioned "Whittaker
8 Support Software Delivery, RSSF Software." Now, is this the
9 software we've been talking about now?

10 A Yes.

11 Q For the jury, what does RSSF stand for?

12 A ROC software support facility at Tyndall Air Force
13 Base.

14 Q What is the purpose of this software?

15 A The purpose of the software, as I testified
16 earlier, is to enable the people that work at the facility
17 to maintain, change, alter or modify the operational
18 software. Without support software, you can't fix the
19 operational software.

20 Q I see on your chart you have over here in 1986 --
21 is this a time line for the project up at the top?

22 A A time line with all of this. As I testified
23 earlier, it was supposed to be over here -- in the '86
24 timeframe.

25 Q Now, over here you have what's marked as actual

1 schedule. What's depicted there?

2 A What's depicted here is the September 4, 1990 that
3 I said that a tape had been delivered to Tyndall Air Force
4 Base, checked it out and found out that it was missing some
5 files.

6 Q What happened then?

7 A Whittaker was notified of the missing files by a
8 letter that I prepared once I got back to TechDyn. The data
9 used in that letter was from TechDyn, Whittaker personnel
10 and Government personnel. This was later on detailed in a
11 letter that I talked about that the Government sent us the
12 results of that. There was letter writing with Whittaker
13 saying they had sent more than they were required. The
14 bottom line is we still have no acceptance from the
15 Government as I stand here today saying that they have
16 finally accepted the support software that was supposed to
17 be delivered back here.

18 Q Back in December of 1986.

19 A Yes.

20 MR. BOEHLERT: You can resume the stand, please.

21 (Pause.)

22 BY MR. BOEHLERT:

23 Q Mr. Ellis, has that actual schedule that you just
24 showed us for delivery of support software had any impact on
25 TechDyn?

1 A Again, yes. Yes.

2 Q And what is that impact?

3 A Time, money.

4 Q Let's talk about time first. What do you mean?

5 A Again, the same thing -- someone from TechDyn had
6 to participate in all of these meetings. Somebody from
7 TechDyn had to write these letters and engage Whittaker in
8 conversation.

9 Q What about money?

10 A Again, this expenditure of funds, time and effort
11 by TechDyn on Whittaker-directed requirements by the
12 contract took away from TechDyn's effort to do their
13 communications functional area of the contract.

14 MR. WORK: Objection. Move to strike.

15 He said these were requirements of the contract
16 and there's no foundation that they were requirements of the
17 contract.

18 JUDGE BROWN: I'm going to let -- because the
19 contract, the main contract, is four volumes and I don't
20 remember how many volumes the subcontract is, I'm going to
21 allow both parties to explain their understanding of the
22 contract and he can -- at least the parties who are
23 qualified to do so -- and you can cross-examine him on it.

24 That is one of the major issues in the case, I'll
25 tell the jury, is what the contract was. Rather than have

1 you read all those pages, I'm going to let each side say
2 what they think it was and how they based it and where
3 they're finding it and cross-examine and you all will have
4 to decide. But I will overrule the objection with that
5 explanation.

6 Usually, you know, if you have a simple contract
7 you have one page -- you all would read it and say whether
8 it was there or not. We haven't got that here so they'll
9 have to say what they think it is, they'll have to say what
10 they think it is, each side say what they're basing it on
11 and you'll judge which side has the right version.

12 BY MR. BOEHLERT:

13 Q You mentioned expenditure of funds. What type of
14 expenditures of funds are you referring to?

15 A There were meetings that were required. People
16 had to travel to attend those meetings. And, counsellor,
17 other than that I'm not sure I understand your question.

18 Q All right. What personnel were involved in this
19 effort?

20 A Again, many of the same people that I spoke to and
21 of earlier -- myself and Mr. Thornton. And some very
22 valuable people that I haven't mentioned and these are the
23 clerical personnel, the support personnel.

24 (Pause.)

25 Q Since the issue arose regarding support software

1 in the contract, do you know where in the contract the
2 support software is discussed?

3 A I think I identified those paragraphs earlier.

4 Q Okay. Let me place before you a portion of the
5 subcontract and see if you can identify that.

6 (Pause.)

7 MR. WORK: Can I see what you're putting before
8 him, please?

9 MR. BOEHLERT: Sure.

10 I'm going to place before you, Mr. Ellis,
11 paragraph 3.1.1.1 of the system specification.

12 MR. WORK: Again, Your Honor, when we refer to
13 this document, I think that we have to refer to it
14 accurately. This is the ICCE prime contract system
15 specification, not the subcontract.

16 MR. BOEHLERT: Your Honor, this is a document
17 that's in evidence as the subcontract.

18 MR. WORK: It's in evidence as a collection of
19 documents.

20 MR. BOEHLERT: It's in evidence as the subcontract
21 between the parties.

22 JUDGE BROWN: Well, we have to keep track. That's
23 the argument. We understand the argument, I hope, by now.
24 At least part of it, anyway.

25 BY MR. BOEHLERT:

1 Q I place before you a document that's received in
2 evidence as Plaintiff's Exhibit 22A3 and I'm referring you
3 to modification number 3 -- this is the subcontract -- and
4 refer your attention to paragraph 3.1.1.1, "Processing and
5 Display Functional Area." Does that discuss support
6 software?

7 A It discusses four computer programs. Yes.

8 Q And are those the programs that we have just been
9 talking about?

10 A Yes.

11 Q And if I say RSSF software, would it be synonymous
12 with that software?

13 A RSSF was also the repository for the operational
14 software, so if you throw the two together -- RSSF -- yes.

15 Q Okay. Turning to the next page, please, and going
16 to paragraph 3.1.1.1.4, "Support Computer Programs" -- do
17 you see that paragraph?

18 A Yes.

19 Q And what is the significance of that paragraph?

20 A "The support computer programs shall consist of
21 the computer programs required to support the operational
22 program software development tests and maintenance." This
23 is the spec that reinforces what the support program should
24 be.

25 Q Did Whittaker submit schedules on this project to

1 TechDyn?

2 A Yes.

3 Q Mr. Ellis, I'm going to place before you a
4 document that's been marked as Plaintiff's Exhibit 1601 for
5 identification. Do you have that in front of you?

6 (Pause.)

7 Q As project manager, are you familiar with the
8 project schedules?

9 A Yes.

10 MR. WORK: Did we get this before?

11 BY MR. BOEHLERT:

12 Q Okay. I have before you a document that I marked
13 as Plaintiff's Exhibit 1601 for identification. It's dated
14 31 January 1986, captioned "Monthly Program Schedule". Do
15 you recognize this document?

16 A Counsellor, I wasn't on the program on 31 January
17 1986 but I can -- from that basis, I can talk to this
18 letter.

19 MR. WORK: Object to any testimony by this witness
20 on something that happened before he came to TechDyn.

21 JUDGE BROWN: Well, so far, you haven't laid a
22 foundation for it.

23 MR. BOEHLERT: Okay.

24 BY MR. BOEHLERT:

25 Q As project manager, are you familiar with the

1 project schedules?

2 A Yes.

3 Q And are you familiar with project schedules
4 submitted from Whittaker to TechDyn?

5 A Yes.

6 Q And on what basis are those submitted?

7 A Contractually, we're required to submit monthly
8 project program schedules to ESD and a review of documents
9 of the past indicated that Whittaker did this and during the
10 period in which I was project manager, Whittaker several
11 times provided scheduling data to me as the program manager.

12 Q As program manager, is it your responsibility to
13 monitor the schedules?

14 A Yes.

15 Q And prepare them?

16 A With inputs, yes.

17 Q Do you recognize the document that I've placed in
18 front of you as Plaintiff's Exhibit 1601?

19 MR. WORK: Object to the question. Again, this is
20 still a document that was prepared and submitted prior to
21 his time with TechDyn.

22 JUDGE BROWN: Well, I don't know that he couldn't
23 identify a document that was prepared and submitted prior to
24 his time if it's a document that came within his purview and
25 it did come and I don't know what the questions will be with

1 regard to it, so I overrule the objection with regard to the
2 foundation that's being laid.

3 BY MR. BOEHLERT:

4 Q Do you recognize that document? Please review it.

5 (Pause.)

6 A I recognize this document as containing data that
7 would normally be submitted on a monthly program schedule
8 and this is a letter 31 January 1986 from Whittaker to
9 TechDyn.

10 Q Containing scheduling information?

11 A Containing information that would normally appear
12 on a program schedule.

13 (Pause.)

14 MR. BOEHLERT: I just remembered, Your Honor.
15 This document is already in evidence, 1601. With that said,
16 might I ask the witness to refer to a portion of the
17 document?

18 JUDGE BROWN: If it's in evidence. It depends on
19 what he's going to say -- I mean, he can read it, certainly,
20 now, if it's in evidence. I take it is. I have my initials
21 on the first page of it there?

22 Okay. It's in evidence.

23 BY MR. BOEHLERT:

24 Q Mr. Ellis, turning to the schedule, do you see
25 where there's a section for software development?

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1 A Software development.

2 Q And down at the bottom of the page, the very last
3 entry, is RSSF integration?

4 A Yes.

5 Q And what do you understand that to mean?

6 A What I had talked about earlier. Whittaker's own
7 contract to provide hardware and software that would enable
8 RSSF personnel to maintain, fix, repair, modify the
9 operational software. And I'm assuming that this entry is
10 that final delivery and integration of the two at RSSF.

11 Q What do they show on that schedule?

12 A November '86.

13 Q I'd like to turn to a new area now, Mr. Ellis,
14 regarding manuals.

15 JUDGE BROWN: Well, before you turn there, can I
16 have 1611, 1635 and 1647?

17 (Pause.)

18 (Continued on the next page.)

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1 MR. BOEHLERT: Mr. Ellis, I am going to show you
2 what's already been received in evidence as TechDyn
3 subcontract of Whittaker as Exhibit 22A-3; referring you to
4 modification 3, the statement of work, paragraph 3.6.6
5 captioned "Technical Orders."

6 Are you familiar with that portion of this
7 subcontract?

8 MR. WORK: Again I object to the characterization,
9 Your Honor. This is a -- as we established the other
10 day -- this is the prime contract statement of work.

11 JUDGE BROWN: Well, the argument is pretty simple.
12 They think that's their statement of work and they don't
13 think it is. They think they have another one coming, and
14 you all have to decide. So every time they make that
15 argument they are just arguing, and you're going to have to
16 decide it. I'm not going to stop them. They don't agree on
17 what the contract is. You got that point at least, didn't
18 you?

19 MR. WORK: Okay.

20 JUDGE BROWN: I overrule the objection. You can
21 call it "Suzzie" and you can call it "Frank" and the jury
22 will decide.

23 BY MR. BOEHLERT:

24 Q 3.6.6, Technical Orders, what does that refer to,
25 Mr. Ellis?

1 A This is the statement of work, and this particular
2 paragraphs covers technical orders.

3 Q What are technical orders?

4 A Technical orders, to simply and bring this to, are
5 operational and maintenance manuals.

6 Q Would you please refer to paragraph 3.6.6.1?

7 A On the same document?

8 Q Yes, the next paragraph.

9 A Okay.

10 Q On the next page.

11 Are you familiar with that paragraph?

12 A Yes.

13 Q Would you please read it for the jury?

14 A "The contractor shall develop or select technical
15 data for operation and maintenance of PME, and contractor-
16 furnished equipment, commercial equipment, and technical
17 manuals shall be used if they are already developed and
18 comply with mil M7298C and are reviewed in accordance with
19 Air Force Regulation A-2 and T000-5-1. For those technical
20 manuals developed by the contractor, AFAD71-531-(31) shall
21 apply. All technical manuals shall be available in final
22 draft to support INCO checkout. Technical data shall be of
23 sufficient depth to allow call isolation to the circuit
24 corridor assembly or equivalent component level. The
25 contractor shall conduct in-process reviews at the 30 and 80

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1 percent completion phase and a pre-publication review prior
2 to delivery to the Government in accordance with T00-5-1.
3 The review shall complete at 60 days prior to FSCC DIM 3407A
4 and DIM 7024."

5 Q What does all that mean as it pertains to the PDFA
6 portion of the subcontract?

7 A Basically, all this means, all these relations and
8 mil standards and et cetera are the direction that you
9 should follow as you're preparing the particular manuals,
10 and then it gives a phase that these particular manuals are
11 supposed to go through, starting out as a 30 percent look at
12 by the Government, 80 percent completion look at by the
13 Government, and then they are supposed to go through
14 validation, verification and pre-pub. review and then final
15 delivery.

16 Q Has Whittaker prepared any manuals pursuant to its
17 subcontract with TechDyn?

18 A Oh, yes.

19 Q What manuals has it prepared?

20 A I'm not sure that I remember them all. They did a
21 computer programmer user's manual. They did another manual,
22 user's manual. They are currently working on PDFA O&M
23 manual and currently working on system-level manual.

24 Q Okay, let's talk about those two manuals if we
25 would, please. PDFA, you say O&M manual. What does that

1 mean?

2 A Operation and maintenance manual, which is a TO.

3 Q What's the purpose of that?

4 A The purpose is ultimately we are required to give
5 the Air Force a system that is currently being used for
6 operation. This is the manual that tell the people in the
7 Air Force, the users, how to operate this system and how to
8 maintain this system.

9 Q As we sit here today has that manual been accepted
10 by the Air Force?

11 A No.

12 Q You mentioned a systems level manual. What is
13 that?

14 A Again, this contract is broken into essentially
15 two areas. Process and the delay functional area is
16 essentially what we were directed to use Whittaker on. And
17 CFA, functional area, these are the tasks in which TechDyn
18 and TechDyn personnel are doing.

19 The Air Force wanted a manual that combined the
20 CFA and the PDFA. TechDyn had personnel preparing manuals,
21 the same series of manuals that Whittaker were preparing on
22 the PDFA side of the house. TechDyn and their personnel and
23 subcontractor were preparing CFA O&M manuals and other kind
24 of manuals.

25 The Government wanted these two manuals merged

1 into a system manual, and that's the manual that Whittaker
2 was doing.

3 Q Is that manual complete?

4 A No.

5 Q You mentioned a process by which manuals are
6 prepared, and I heard 30 percent, 80 percent. Let's take
7 that one step at a time if we could, and would you explain
8 to us what that means?

9 A Basically, the regulations, some of the
10 regulations that I read in this paragraph 3.6.6.1 tells you
11 the process that one must go through in order to develop a
12 manual that will be acceptable to the Government.
13 Contractors are required to put together essentially a draft
14 manual. They might not have all of the data to go into that
15 manual, but they have a pretty good outline and
16 representative sample as to the data that will ultimately be
17 in that manual.

18 And at a given time when they have the basics
19 together, then the Government and that contractor will sit
20 down and go, and very early the Government want to ensure
21 that you're on the right track, it's formatted correctly and
22 it's basically going to have the data that they expect to be
23 in that particular manual.

24 Q Is there a name for that step?

25 A That's an IPR, in-process review.

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1 Q At what level?

2 A At the 30 percent.

3 Q Does that mean 30 percent complete?

4 A No. It means that you -- you can be really a long
5 way into preparing your manual. However, it must have
6 achieved a certain level of completion in order to get
7 through your 30 percent. And it's time really that the
8 Government and the contractor want to get together to make
9 sure they are going down the right street and not wasting
10 time and energy and resources.

11 Q Is there another level of review?

12 A The next level of review is called 80 percent IPR.

13 Q What occurs at that level, Mr. Ellis?

14 A Again, at the 80 percent IPR contractors, some are
15 way down the line and think that they have almost a final
16 manual. The Government reviews what the contractor has put
17 in front of him, balancing what's there against appropriate
18 rates, and looking at pictures and looking at a lot of
19 things, and provide comments of that particular view.

20 Q What happens next in this process of approval?

21 A As you go through the reviews, and the Government
22 makes appropriate comments, the contractor is supposed to
23 fold these comments into the manuals and correct as you go
24 through this process.

25 Q How are those comments made?

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1 A The comments are made in the form of letters that
2 are transmitted from the Air Force down through TechDyn to
3 the respective subcontractors, and they normally went down
4 to Whittaker.

5 Q If I used the phrase "red lining session," do you
6 know what that means?

7 A Red lining session, I guess to a large extent, at
8 respective reviews as opposed to writing up a bunch of
9 comments, if there were some misspellings and this kind of
10 thing, the Government and the contractor will agree to
11 insert certain words or take out certain words in a
12 particular paragraph, and they call that red lining.

13 Q At the 80 percent in-process review, what's the
14 next level of review?

15 A The next level is validation.

16 Q What happens at validation?

17 A Essentially validation is a process in which the
18 contractor -- this is a contractor task -- and basically
19 during this task the contractor is ensuring that he has his
20 manual fairly well documented, it agrees with the drawings
21 and it agrees with the equipment that's there. And as I
22 said, this is a contractor step. However, the Government
23 reserves the right to witness the contractor validation
24 effort.

25 Q What happens after validation?

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1 A After validation, the next step is verification,
2 and the verification is the Government action in which the
3 Government personnel assemble -- they start on page one of
4 the manual and they go all the way through. And essentially
5 the equipment is sitting in front of the Government
6 personnel and verification is generally supported by the
7 contractor.

8 Q Is there a level after that?

9 A Yes. After verification, the next level is pre-
10 publication review.

11 Q What happens there?

12 A Generally, the Government wants to make sure that
13 all past deficiencies have been corrected and that these
14 manuals are good enough to be reproduced.

15 Q Then what happens?

16 A The final level is after you're going through all
17 these processes, then you make final distribution of the
18 manual.

19 Q As of January 1, 1990, what was the status of
20 Whittaker's PDFA O&M manual, the operator and maintenance
21 manual?

22 A I know it wasn't complete.

23 Q And on what do you base that conclusion?

24 A That it wasn't complete?

25 Because it isn't complete now so I know it wasn't

1 complete during that time.

2 MR. WORK: What manual are we talking about?

3 MR. BOEHLERT: The operator and maintenance
4 manual.

5 MR. WORK: For what?

6 MR. BOEHLERT: PDFA.

7 BY MR. BOEHLERT:

8 Q Do you know whether any records exist which
9 reflect the status of the manual at that time?

10 A Oh. As I went through the process, I mentioned 30
11 percent, 80 percent, validation. And I believe around that
12 time frame Whittaker had said that they were validating
13 their particular manual, and there were some problems with
14 that manual, and there was a meeting between the Whittaker
15 people and the Government people.

16 Q Were the results of that meeting reduced to
17 writing?

18 A To the best of my knowledge, yes.

19 Q Mr. Ellis, I refer your attention to a document
20 that's been marked as Plaintiff's Exhibit 1098, and ask you
21 if you can identify that document.

22 Do you have that document in front of you?

23 JUDGE BROWN: He will in a second.

24 (Pause.)

25 BY MR. BOEHLERT:

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1 Q It's a two-part document which purports to be a 3
2 March 1990 letter from TechDyn to Whittaker, and a 26
3 February 1990 letter from the Air Force to TechDyn.

4 Are you familiar with these documents?

5 A Yes.

6 Q And how did you become familiar with them?

7 A Approximately this time frame, in the late --
8 Whittaker had been experiencing difficulties in finally
9 getting their document up to snuff to be acceptable to he
10 Government. And the Government had permission from TechDyn
11 to sit down with the Whittaker personnel to discuss the
12 manual when they were out there for something other than
13 ICCE, and this documents that meeting.

14 MR. BOEHLERT: Your Honor, I move Plaintiff's
15 Exhibit 1098 into evidence.

16 JUDGE BROWN: Any objection to 1098?

17 MR. WORK: No objection.

18 JUDGE BROWN: Received.

19 (The document referred to, having
20 been previously marked for
21 identification as Plaintiff's
22 Exhibit No. 1098 was received into
23 evidence.)

24 BY MR. BOEHLERT:

25 Q Mr. Ellis, I ask that you please turn to the Air

1 Force portion of this document, and would you read paragraph
2 one, please?

3 A "During reference A," I guess that's E, "Whittaker
4 provided the Government with a copy of the validated PDFA
5 O&M manual for review. The purpose of this review was to
6 ensure that 80 percent IPR comments and the validation
7 comments were incorporated."

8 Q I ask that you please turn over to the next page
9 of this document, paragraph B, validation comments.

10 A Right.

11 Q What does the Government say about validation
12 comments?

13 A Bullet 1, "After reviewing each comment sheet,
14 reference B, we cannot find any of the comments to be
15 incorporated."

16 Q What does the next paragraph say?

17 A "We are concerned that given the lack of progress
18 on the PDFA O&M manual since the '80 percent, that the
19 contractor will have difficulty in meeting the February '91
20 contract delivery date. This manual is in the critical path
21 leading to M-demo, training, verification, and therefore all
22 installation activities."

23 Q Let 's take this last sentence. "This manual is
24 in the critical path leading to M-demo, training,
25 verification, and therefore all installation activities."

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1 Do you agree with that statement?

2 A Yes.

3 Q What is M-demo?

4 A M-demo is maintainability demonstration. We were
5 contractually required to demonstrate that the equipment
6 that we were putting on this program was reliable and
7 maintainable; that a certain level of operator from the Air
8 Force could take our manuals, following the maintenance
9 procedures that were supposed to be in the CFA O&M manuals
10 and PDFA O&M manuals, and fix problems. And we were
11 required contractually to come up with a maintainability
12 demonstration plan and demonstrate that our equipment was
13 reliable and maintainable during this demonstration.

14 Q What impact would the status of the PDFA O&M
15 manual have on training?

16 A We were contractually required to have validated,
17 red lined PDFA O&M manual and CFA O&M manual before the
18 Government would permit us to train the personnel, the Air
19 Force personnel.

20 Q Who was being trained?

21 A Air Force personnel who were to be the operators
22 of this system when it was built.

23 Q What impact would the status of the PDFA O&M
24 manual have on verification?

25 A Verification -- as I went through the process of

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1 arriving at a satisfactory manual after validation is
2 completed, then verification is the next step that you must
3 complete. And until verification is completed, which is a
4 Government activity, supported by the contractor, you cannot
5 get to a final manual.

6 (Continued on next page.)

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1 Q The next is, it talks about installation
2 activities. What are being referred to there?

3 A Being that the Government needed the equipment
4 sitting in front of them at the time that they were
5 verifying that the system was adequately described in the
6 manual, until the Government released the equipment from the
7 test bed it cannot be taken out of the test bed and
8 installed anywhere.

9 Q Did the status of Whittaker's PDFA O&M manual have
10 any impact on installation?

11 A Oh, yes.

12 Q What was that impact?

13 A The impact was that we could not pull the
14 equipment out of the test bed and take it and install it in
15 Iceland.

16 Q What time frame are we talking about?

17 A In the October 9 time frame the manuals, PDFA and
18 CFA manuals, were going through validation and verification
19 effort.

20 Q And did the lack of a PDFA O&M manual have an
21 impact on installation?

22 A Oh, yes. During that same sequence or going
23 through these efforts, the Government rejected the PDFA O&M
24 manual, and the system level manual that Whittaker was
25 preparing.

1 Q Was that rejected reduced to writing?

2 A Oh, yes.

3 Q I refer your attention to Plaintiff's Exhibit
4 1607.

5 JUDGE BROWN: Can I have the book that has 1098
6 and I'll put that away?

7 BY MR. BOEHLERT:

8 Q Do you have that in front of you?

9 MR. BOEHLERT: Oh, I'm sorry. Plaintiff's Exhibit
10 1607. Is that book up there?

11 THE WITNESS: Yes, yes.

12 BY MR. BOEHLERT:

13 Q Do you recognize that document, Mr. Ellis? It's
14 dated December 5, 1990, from the Air Force to TechDyn?

15 A I do.

16 MR. BOEHLERT: Your Honor, I move Plaintiff's
17 Exhibit 1607 into evidence.

18 MR. WORK: No objection.

19 JUDGE BROWN: Received.

20 (The document referred to, having
21 been previously marked for
22 identification as Plaintiff's
23 Exhibit No. 1607, was received into
24 evidence.)

25 BY MR. BOEHLERT:

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1 Q What is the purpose of this letter?

2 A I had said earlier that the Government had
3 previously rejected the PDFA O&M manual and the system, and
4 this letter documents this fact, that they did reject it.

5 Q Paragraph two says, "The processing and display
6 functional area of PDA operation and maintenance manual was
7 rejected due to the magnitude of problems. This manual is
8 considered a non-viable document."

9 What does that mean?

10 A The Air Force didn't think very much of the
11 manual. It was incomplete and missing too much data.

12 Q The next sentence says, "The system operation and
13 maintenance manual was rejected, PDFA portion only, because
14 its information is taking from the PDFA O&M manual."

15 What does that mean?

16 A As I said earlier, the system level manual was a
17 merging of the CFA, communications function area, and the
18 PDFA function area today into a system manual.

19 TechDyn's subcontractor, VEDA, as we were on
20 contract to do, we provided Whittaker a copy of the CFA O&M
21 manual that had passed validation to Whittaker to use to
22 prepare that communications function area part of the system
23 level manual. They were to use their PDFA part, O&M manual
24 to merge now these two documents into one document.

25 This letter is saying that the CFA part, no

1 comments on that. The basic part it was held was because it
2 was based on information out of the PDFA O&M manual which
3 the Government had rejected.

4 MR. WORK: Objection, Your Honor. The reference
5 to the system manual, I think, is not part of this lawsuit.
6 That's a separate contract altogether and it's not the
7 subject of TechDyn's claim in this proceeding.

8 I move to strike all references to the system
9 manual.

10 MR. BOEHLERT: It is, Your Honor. The preparation
11 of manuals, including the system level manual, is part of
12 this lawsuit.

13 MR. WORK: It's under a separate contract which is
14 not the subject of this lawsuit, Your Honor.

15 MR. BOEHLERT: That's for counsel to tray to
16 establish.

17 JUDGE BROWN: How do we resolve that? I guess I'm
18 going to resolve it the same way I do everything else. It's
19 up to you. He says it's not in the contract. He says it is
20 in the contract. They will have to show you. You will have
21 to decide.

22 I'll overrule the objection. You said it's not in
23 the contract. You say it is in the contract.

24 MR. WORK: I don't say it's not in the contract.
25 I simply say it's a different contract which is not part of

1 A As far as I know, they are being paid.

2 MR. WORK: I object. No foundation for his
3 knowledge, and the question is under what contract.

4 JUDGE BROWN: Sustain the objection to, "as far as
5 I know." But I overrule the objection, "it's not in the
6 contract.'

7 BY MR. BOEHLERT:

8 Q Has Whittaker ever told you that it's their
9 understanding they are not contractually bound to produce
10 this systems level manual?

11 MR. WORK: Objection. That's not the nature of
12 the objection.

13 JUDGE BROWN: I sustain the objection.

14 BY MR. BOEHLERT:

15 Q Okay, let's go back to the processing and display
16 functional area operations and maintenance manual which was
17 rejected by this letter as well. Is that correct?

18 A Right.

19 Q What, if anything, did Whittaker -- or I'm sorry.
20 Was this letter from the Air Force, this December
21 5 letter, forwarded to Whittaker?

22 A Yes.

23 Q What response, if any, did Whittaker make?

24 A Again, there were a number of letters that was
25 going on between TechDyn and Whittaker at this particular

1 time. One of these letters said, in essence, what the
2 Government wanted done was out of the scope of the contract
3 and they wanted the Government to consolidate comments.

4 Q Do you know whether the Air Force ever responded
5 to that?

6 A Oh, yes.

7 Q Would you please turn to Plaintiff's Exhibit 1616
8 which I've marked for identification, and it purports to be
9 a January 4, 1991 letter from the Air Force to TechDyn, and
10 then also a January 9, 1991 transmittal from TechDyn to
11 Whittaker?

12 A I have it.

13 Q Can you recognize this document, Mr. Ellis?

14 A Yes.

15 Q And what is it?

16 A This is one of the Government letters -- one of
17 the Whittaker letters in which they were asking for
18 consolidated type comments having passed to the Government
19 and wanted the Government to consolidate comments and et
20 cetera. And this was the Government's response to that
21 letter that had been passed to them.

22 MR. BOEHLERT: Your Honor, I move Plaintiff's
23 Exhibit 1616 in evidence.

24 MR. WORK: No objection.

25 JUDGE BROWN: 1616 is received.

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1 (The document referred to, having
2 been previously marked for
3 identification as Plaintiff's
4 Exhibit No. 1616, was received into
5 evidence.)

6 BY MR. BOEHLERT:

7 Q In paragraph number two there, the second last
8 sentence says, "In regard to reference B, which was a WES
9 letter dated 20 December 1990, WES states they provided a
10 sample manual for purposes of agreement on format. The
11 Government is unaware of such agreement or review."

12 Do you know what that's referring to?

13 A I do not.

14 Q Please read paragraph four.

15 A "Verification of the PDFA O&M manual and system
16 level manual were stopped for various reasons and was not
17 taken lightly by the Government. Every effort to continue
18 was taken but the problems they found were too great to
19 continue. It is not the Government's task or intention to
20 rewrite manuals during verification. That is the task of
21 the contractor during validation. In this case it appears
22 that inadequate validation was performed, thus resulting in
23 manuals with too many errors to allow for a proper
24 verification effort."

25 Q Do you know what the Air Force is referring to

1 there when it says "inadequate validation"?

2 A I believe, as we were getting ready for training
3 and Whittaker had said that they had completed validation
4 and had indicated earlier that this validation had
5 Government witness thereto, that was later on challenged and
6 Whittaker withdrew that, but the Government did not want to
7 hold up training beyond what was scheduled.

8 So Whittaker sent a copy of their alleged
9 validated manual to the Government. The Government looked
10 at it and said, okay, we don't want to hold up training, so
11 go ahead and use this manual and we will pick up extensive
12 comments during verification.

13 Q Did Whittaker respond to this letter?

14 A Yes. And again, it was somewhat of -- there is a
15 series of letters in here, counselor, and Whittaker
16 essentially maintained for a long while their position that
17 it had to be consolidated. But then there was --

18 Q What had to be consolidated?

19 A The comments that the Government had put together.

20 Q What did they mean by that?

21 MR. WORK: Objection.

22 JUDGE BROWN: What is the objection?

23 MR. WORK: The question was what did they mean by
24 that. He is not asking what Mr. Ellis or TechDyn meant, but
25 what somebody else meant. I don't even know who he meant.

1 MR. BOEHLERT: I was talking about Whittaker
2 saying that comments had to be consolidated regarding --

3 JUDGE BROWN: I assume the objection is the form
4 of the question, what did they mean by that.

5 MR. BOEHLERT: Okay.

6 BY MR. BOEHLERT:

7 Q What did you understand those comments to mean?

8 A I understood the comments to mean that the PDFA
9 O&M manual was a very thick document. The government went
10 through this document by page and very often some comment on
11 page 1 might have also been applicable to some comment on
12 page 56 and so on throughout the process.

13 I believe Whittaker wanted the Government to
14 consolidate, if you said everything is supposed to be blue,
15 then put everything that's supposed to be blue, as an
16 example, all together. I think that is what they meant by
17 the consolidation of comments. I don't know for sure.

18 Q Did the Air Force ever respond to that issue of
19 consolidation of comments?

20 A Oh, yes. They didn't agree with Whittaker, and
21 this is -- the letter that I was just reading from is one of
22 the letters saying that they don't agree with them.

23 Q I ask you to refer to a document that's been
24 marked as Plaintiff's Exhibit 1634, please, which is a 27
25 February 1991 letter from the Air Force to TechDyn, and then

1 a 6 March 1991 letter from TechDyn to Whittaker.

2 A Yes.

3 Q Do you recognize these documents?

4 A Yes.

5 Q What are these documents?

6 A Again, as I said, there were a series of letters
7 going back and forth with Whittaker maintaining their
8 position that before we can do anything we've got to
9 consolidate these comments.

10 The Government answered again this consolidated or
11 something about some position that Whittaker had established
12 on the reason they were not going to move forward on
13 preparing these manuals, and this is another one of these
14 letters.

15 MR. BOEHLERT: Your Honor, I move Plaintiff's
16 Exhibit 1634 into evidence.

17 JUDGE BROWN: Any objection to 1634?

18 MR. WORK: No objection, Your Honor.

19 JUDGE BROWN: Received.

20 (The document referred to, having
21 been previously marked for
22 identification as Plaintiff's
23 Exhibit No. 1634, was received into
24 evidence.)

25 BY MR. BOEHLERT:

1 Q Turning to the Air Force letter regarding these
2 Whittaker PDFA O&M manual, would you please -- I'm sorry.
3 It says in paragraph two, "In addition, the Government
4 disagrees with WES, Reference B, third paragraph statement,
5 that we, the Government, have to share the responsibility
6 for the verification slippage due to not consolidating the
7 comments."

8 Is that the Government position on that matter?

9 A Right. They said that that was not their job.

10 Q Would you please read paragraph three?

11 A "The Government agrees that every effort must be
12 made to complete this program in a timely manner. We feel
13 that we have gone an extra mile already and now is the time
14 for WES to complete the manuals as required by the contract.
15 As discussed under Reference D, technical interchange
16 meeting, the appropriate way to proceed with this effort is
17 to first accomplish a true Government-witnessed validation
18 in accords with the approved plan."

19 Q What manuals is this letter referring to?

20 A We're talking about the PDFA O&M manual which a
21 hastily validation effort was done.

22 Q Would you please read paragraph four?

23 A "As stated on numerous occasions, the Government
24 wants it to be well understood that when WES revisits the
25 systems manual it needs to be looked at a true system

1 manual. As currently written, it only refers to the CFA and
2 PDFA on an independent basis and does not address the system
3 parameters. Until this issue is properly resolved, the
4 system manual will not be accepted by the Government."

5 Q Mr. Ellis, this is a 21 February 1991 letter. Was
6 it forwarded to Whittaker?

7 A Yes.

8 Q What happened next regarding the PDFA O&M manual?

9 A I think that again there were some more letters
10 and things in here. But ultimately Whittaker said, I'm
11 going to fix these comments, and I believe developed a
12 schedule and submitted the schedule to TechDyn for the
13 completion of these manuals.

14 Q Was a manual ever verified?

15 A Both the PDFA O&M manual and the system manual
16 were both verified.

17 Q When did that occur?

18 A Again, I have forgotten the exact dates. I think
19 the validated PDFA O&M manual was validated in the March
20 time frame.

21 Q March of what year?

22 A March of 1991, and passed verification in May of
23 '91. And the system manual is either in March and April of
24 '91, and finished verification in May of '91.

25 (Continued on the next page.)

1 Q Have these documents been accepted by the Air
2 Force?

3 A Oh, no.

4 Q What's their status?

5 A As I explained earlier, you have to go through
6 phase-in, so Whittaker must take comments received from the
7 Government as they are reviewed and fold these comments into
8 the manual and assure TechDyn and the Government they are
9 ready for the next phase of development, which is pre-pub
10 review.

11 Q Has that occurred yet?

12 A No.

13 Q Have you also prepared a chart to show the jury
14 what the proposed schedule for the PDFA O&M manual was and
15 what it's actual schedule has been?

16 A Yes.

17 MR. WORK: Is the testimony that he prepared the
18 chart?

19 BY MR. BOEHLERT:

20 Q Did you prepare or assist in preparing that?

21 A Assisted in the preparation.

22 MR. BOEHLERT: Now, before we break for lunch, can
23 I have the witness step down and we'll review that chart?

24 JUDGE BROWN: Show it to Mr. Work. You're using
25 it as an aid, is that right?

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1 cannot be strapped at 110 and/or 220, then they're going to
2 have to replace those peripherals with some capability to
3 meet the spec and if they do do that, then again you have
4 the part numbers that will change and the drawing numbers
5 that will change.

6 Q Anything else on PDFA that's not done?

7 A Whittaker has to go through formal qualification
8 review as well as TechDyn. As long as this project runs, we
9 are still required to submit monthly schedules and many
10 other administrative reports and Whittaker is supposed to
11 play a role in those. That's about all I can recall right
12 now.

13 Q What about on the CFA side? The TechDyn side of
14 this project. Is there work that remains to be done?

15 A Yes.

16 Q What remains to be done on the TechDyn side?

17 A We still must continue making the various
18 administrative reports that we are required to by the
19 contract. We have to complete a CFA O&M manual through
20 pre-publication review and then final delivery.

21 Q Do you know why that CFA O&M manual is not
22 complete?

23 A Yes.

24 Q Why?

25 A If we go back to the October 1990 time period, the

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1 CFA manual that had already been validated was scheduled for
2 verification. Government and TechDyn personnel and VEDA
3 personnel were assembled and they started verification of
4 the CFA O&M manual. They finished the ICCE part of that
5 manual when the Government gave TechDyn notice that they had
6 to have the CENTAF, which is the other part of this
7 contract, and the Government had provided the CENTAF
8 equipment to a test bed out in Camarillo -- that they had to
9 have the CENTAF stuff because they had to deploy it on
10 Desert Storm and they withdrew it from the test bed which
11 stopped verification and the Government had intended to give
12 us a waiver of verification. However, the waiver didn't
13 come and Desert Storm was over and the equipment was
14 returned back to the United States --

15 MR. WORK: Object. Excuse me -- you can finish.
16 I'm sorry.

17 MR. BOEHLERT: Go ahead, Mr. Ellis.

18 THE WITNESS: It was returned and through a series
19 of telephone calls with the Government, we set up
20 verification of the CENTAF part of the CFA O&M manual and
21 that occurred during the week of 24 June.

22 MR. WORK: Object and move to strike the testimony
23 regarding the Government's intention.

24 JUDGE BROWN: I really wish you would go ahead and
25 interrupt in the middle or whatever because once it's said

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1 it's sort of like -- you know the story about the green eyed
2 monkey? I don't remember the exact story, but if you tell
3 the jury don't think about the green eyed monkey, that's the
4 one think they'll concentrate on. So letting the witness go
5 through hours of testimony and then say it's stricken --
6 they'll try to strike it but it just doesn't make much sense
7 to let a witness talk for three minutes.

8 MR. WORK: Well, since he was in mid-sentence I
9 thought it was the courteous thing to do to let him stop but
10 it's clearly improper testimony about the intention of the
11 Government.

12 JUDGE BROWN: What's your response?

13 MR. BOEHLERT: Your Honor, he's talking about why
14 the CFA manual remains to be completed and he's giving an
15 explanation for that.

16 JUDGE BROWN: Well, I sustain the objection and it
17 will be stricken because he's talking about the Government
18 intended to do somewhere in there anyway and maybe a short
19 answer to the question will suffice.

20 MR. BOEHLERT: Okay.

21 BY MR. BOEHLERT:

22 Q Let's talk about what the Government did do with
23 respect to that CENTAF equipment, if you know, for purposes
24 of the CFA operator and maintenance manual.

25 A Counsellor, now I'm a little confused. I'm not

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1 sure I understand your question.

2 Q Okay. As I understood your testimony, you said
3 that the CENTAF equipment was removed from the test bed for
4 Desert Storm. Is that correct?

5 MR. WORK: Object to the question. It doesn't
6 need a preface. Just ask a question.

7 JUDGE BROWN: Ask a question.

8 BY MR. BOEHLERT:

9 Q Did there come a time that the CFA validation
10 effort was interrupted?

11 A No, the CFA validation of the O&M manual had been
12 completed prior to training.

13 Q What about the verification of that manual?

14 A The verification of the CFA O&M manual was started
15 in the September-October 1990 timeframe. The verification
16 effort had been completed on the CFA O&M manual on the ICCE
17 portion of the manual. However, the Government by letter
18 and telephone asked for the CENTAF equipment which they had
19 furnished to be packed up and returned to the Government.

20 Q What did TechDyn do in response to that?

21 A TechDyn complied by sending an individual to
22 Camarillo, California who packed up the CFA equipment from
23 the CENTAF and returned it to the Government.

24 (Continued on next page.)

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1 Q What happened next with respect to the
2 verification of the CFA manual?

3 A The verification of the CFA manual could not be
4 completed because the equipment was not there. The
5 Government, in letters to TechDyn, expressed their
6 intentions about the waiver.

7 Q Did there come a time that the equipment returned?

8 A There came a time that the equipment returned from
9 Desert Storm.

10 Q Then what happened?

11 A I was contacted by the program manager at the Air
12 Force.

13 Q When did this occur?

14 A This has to be in late May, someplace in there.
15 let me say May of -- April or May of '91.

16 Q Then what happened?

17 A We made arrangements and we told the Government
18 that we would support the verification effort at Shaw Air
19 Force Base on the CENTAF portion of the manual.

20 Q Was that done?

21 A That was done?

22 A What occurred?

23 A The Government and the TechDyn representative had
24 the CFA O&M manual and verification effort was completed.
25 There were deficiencies. There were very few. And the

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1 Exhibit 577 for identification. It purports to be a TechDyn
2 transmittal dated 8 November 1988, from TechDyn to the Air
3 Force captioned "Submittal of ICCE Program Schedule."

4 MR. WORK: I object to the question and the answer
5 because this is not a foundation for that, Your Honor. It
6 says ICCE program schedule, which is a CDRL submission.

7 MR. BOEHLERT: There is no question pending, Your
8 Honor.

9 BY MR. BOEHLERT:

10 Q Do you recognize this document, Mr. Ellis?

11 A I do.

12 Q What is it?

13 A As I testified earlier, we had a requirement to
14 submit to the Air Force program schedule on this particular
15 project.

16 Q And is this one of these program schedules?

17 A This is a program schedule that was signed by
18 myself, submitted to the Government and the date of this is
19 8 November 1988.

20 MR. BOEHLERT: Your Honor, I move Plaintiff's
21 Exhibit 577 into evidence.

22 JUDGE BROWN: Any objection to 577?

23 MR. WORK: No objection other than the objection
24 of which Your Honor is aware that we discussed in motions
25 prior to this trial relating to production of discovery.

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1 JUDGE BROWN: 577 is admitted.

2 (The document referred to, having
3 been previously marked for
4 identification as Plaintiff's
5 Exhibit No. 577, was received into
6 evidence.)

7 BY MR. BOEHLERT:

8 Q Reviewing the first page of this document, Mr.
9 Ellis, what is it?

10 A This is a letter signed by myself, delivering to
11 the Air Force a program schedule in accordance with some
12 CDRLs that I had testified to earlier, 301-35, 36 and 37,
13 and 501-35, 36 and 37.

14 Q Do you know whether the subcontract between
15 TechDyn and Whittaker also contained CDRLs 301 and 501?

16 A Yes.

17 Q Mr. Ellis, do you know how this particular
18 schedule was prepared?

19 A I had the majority of the input to schedule
20 development. I generally coordinated activities and things
21 with the Air Force and with the program manager at
22 Whittaker. So all of us had some input into the schedule,
23 but I was the principal inputter.

24 Q Does this schedule reflect a completion date for
25 the remote control element?

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1 A In the first page of this document, line number
2 nine, in-plant Ardway RCE system test to be completed
3 8 through 26 March 1989.

4 Q And when was Whittaker default terminated?

5 A I believe January 1989.

6 Q As project manager were you in a position to
7 observe the progress that Whittaker was making towards
8 completion of the remote control at the time of the default?

9 A I was.

10 Q And would you describe for us what that progress
11 was?

12 A Little or none.

13 MR. BOEHLERT: Okay, Mr. Ellis, let me take one
14 minute, if I may.

15 (Pause.)

16 MR. BOEHLERT: Thank you very much, Mr. Ellis.

17 Your Honor, I'll pass the witness.

18 JUDGE BROWN: All right. Mr. Work.

19 MR. WORK: Thank you, Your Honor.

20 Your Honor, we have done what you asked and put
21 the visuals that you had authorized into the books.

22 JUDGE BROWN: All right.

23 And not the ones that we didn't authorize.

24 MR. WORK: I'm sorry.

25 JUDGE BROWN: And not the ones that haven't been

1 authorized yet.

2 MR. WORK: That's right.

3 JUDGE BROWN: Okay.

4 MR. WORK: We hope to complete their books.

5 Ladies and gentlemen, Your Honor, I think it would
6 be helpful, if it wouldn't inconvenience the jury, if they
7 could move over there so I could put a chart up and they
8 wouldn't have to see through me to see it.

9 The charts that we will be using are, for the most
10 part, in the books, but some of them are not.

11 CROSS-EXAMINATION

12 BY MR. WORK:

13 Q You talked a lot this morning, Mr. Ellis, about
14 testing requirements, and I think, in trying to develop the
15 big picture for the jury, we ought to try to come to grips
16 with what contract we're talking about.

17 In what document or documents are TechDyn's
18 testing requirements, testing obligations to the Government
19 stated?

20 A In the same contract that I have been testifying
21 ever since I have been up here on the stand.

22 Q You mean the subcontract?

23 A To the same document that I have been testifying
24 to ever since I've been up here on the stand.

25 Q And what is that document, sir?

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1 A I have been referencing the statement of work and
2 the specification issued by the Government, and pass through
3 to Whittaker.

4 Q Well, if you could just stay with my question,
5 sir. My question is this, and I'll try to refer to your
6 last answer.

7 Your obligation, TechDyn's obligation for testing
8 to the Government, to the Air Force, is set forth in a
9 statement of work and a specification which was part of the
10 original ICCE prime contract. Is that correct?

11 A Counselor, I don't know where you're trying to
12 take me to, but I have been reading a statement of work and
13 a specification ever since I have been up here, and that is
14 where the testing requirements come from.

15 Q And I tried to follow up on that to get some
16 clarification for the jury.

17 Is that statement of work and specification a
18 statement of work and specification that was issued by the
19 Air Force in its prime contract with TechDyn that became
20 effective on August 30, 1985?

21 A The contract that I have been testifying to?

22 Q No, sir.

23 I'm asking you for the statement of work and the
24 specification you referred to just a moment ago.

25 A Yes.

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1 Q Is that statement of work and specification the
2 statement of work and specification that was contained in
3 TechDyn's prime contract with the Air Force that became
4 effective on August 30, 1985?

5 A When I answer, can I qualify the answer?

6 Q I would just like to hear the answer, please. I
7 think that's a yes or no answer after three or four tries.

8 MR. BOEHLERT: Your Honor, the witness can answer
9 anyway he sees fit.

10 JUDGE BROWN: No, actually he can't. He needs to
11 answer the question, and then if you want him to further
12 amplify on it, you can ask it. But what we want is an
13 answer to the question or the witness can say I can't answer
14 the question, and then he doesn't. But he can't explain
15 around it in response to a question on cross-examination.
16 You can ask him to explain later, but what we want now is an
17 answer to the question.

18 THE WITNESS: I will answer to question is yes.

19 MR. WORK: Okay.

20 BY MR. WORK:

21 Q Now, sir, was that prime contract specification
22 and statement of work, were those prime contract and
23 specification ever modified in the testing area?

24 A Yes.

25 Q When were they modified, sir, as relates to

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1 testing?

2 A As we worked on RCE, the contract was modified to
3 accommodate ECP-32 which was the new testing and et cetera
4 for remote control.

5 Q ECP-32 eliminated in-plant testing, didn't it?

6 A We had to do in-plant testing for the remote
7 control and we performed that testing in the March time
8 frame of 1990, when we did com. integration testing, which
9 included the remote control.

10 Q So what change did ECP-32 make, sir?

11 A I'm sorry.

12 Q What change did ECP-32 make in the prime contract
13 specification and statement of work that the Government
14 issued effective 30 August 1985?

15 A Counselor, I want to answer but I don't understand
16 your question.

17 Q You said that there was a change. I asked you
18 whether there had been a change in the prime contract
19 statement of work and specification as it relates to
20 testing. You told me that ECP-32 made a change. Now I'm
21 asking what the change was.

22 A Was to delete the remote control requirements that
23 were specified in the specification by a software-driven
24 program to control the radios. The specification had to be
25 modified throughout to work in the new design of the remote

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1 control system that TechDyn later designed, tested and was
2 implemented.

3 Q All right, sir. Prior to ECP-32, and ECP is an
4 engineering change proposal which is not a modification to
5 the contract, isn't it?

6 A ECP-32 kicks off generally if you mod. An ECP-32
7 resulted in a contract modification to this contract.

8 Q When was that, sir?

9 A As we got into the redesign of the RCE, we're into
10 the 1989 time frame.

11 Q So there was a mod in 1989. Now, let's go back.

12 A Okay.

13 Q Were there any prior mods to the prime contract
14 specification and statement of work that impacted the
15 testing area from the requirements that was stated in the
16 1985 prime contract?

17 A Off the top of my head, I can't think of any, no.

18 Q What's in P00012?

19 A I will answer if you will give me P00012,
20 counselor.

21 Q I will.

22 A There were many things in P00012.

23 Q Do you know what --

24 A I would assume.

25 Q Do you know whether P00012 affected testing at

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1 all?

2 A Counselor, I would love to answer your question.

3 If you provide me P00012, then I can talk P00012.

4 (Continued on next page.)

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1 Q I understand. I just want to know what you have
2 in your head. Is your answer that you don't know without
3 looking at the document?

4 A Counsellor, I don't know what I know until you
5 show me something. There were many modifications to this
6 contract and I will be the first one to say that I don't
7 know everything that was mod'ed on this contract.

8 Q Okay. Now, sir, let's go to the subcontract
9 level. You have mentioned that there was a statement of
10 work and a specification in the prime contract that called
11 out testing requirements. Was there any different document,
12 contractual document, that imposed testing requirements
13 under the subcontract?

14 A Counsellor, that's a broad question. Let me
15 attempt to answer that.

16 I think in the documents that I reviewed, this
17 statement of work was passed to Whittaker as MOD 3 and so
18 there is a document that I am familiar with that sent MOD 3
19 that had the spec and this out and I believe that I have
20 reviewed a document where Ms. Raymond from Whittaker
21 acknowledged that.

22 Q Are you talking about Mr. Yennowine's two-page
23 letter that said you've got certain responsibility for
24 contract line item numbers and accompanying this document
25 are certain other documents? Is that what you're talking

1 about?

2 A Counsellor, if you were to give me some
3 documents --

4 MR. WORK: I'll be happy to.

5 Would you give me what you call the subcontract
6 there, please?

7 BY MR. WORK:

8 Q Now, you're referring to Mr. Yennowine's letter of
9 November 27, 1985? Can you answer that question without my
10 showing it to you?

11 A What question?

12 Q The question is whether the document you're
13 referring to is Mr. Yennowine's two-page letter to Ms.
14 Raymond of November 27, 1985.

15 A I think that is among many documents that were
16 contract actions that flowed to Whittaker and there is a
17 companion document signed by generally Ms. Raymond
18 acknowledging receipt thereof.

19 Q Well, I show you a letter that Mr. Yennowine sent
20 to Ms. Raymond on November 27, 1987 calling out certain CLIN
21 numbers and stating "Attached please find the statement of
22 work, specifications and the corresponding exhibits and
23 attachments for the work covered by these CLINs." Is that
24 the document you were just referring to, sir?

25 A This is one of many documents that passed some

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1 modifications to Whittaker.

2 Q Okay. Now, sir. We're trying to help the jury
3 and I'm sure you are, too, and the jury, I'm sure, is yet to
4 understand whether the statement of work and specification
5 applicable to the subcontract between TechDyn and Whittaker
6 is different, is a different document or documents, from the
7 prime contract specification and statement of work that
8 became effective vis-a-vis TechDyn on August 30, 1985.

9 MR. BOEHLERT: Object to the form of that
10 question, as to what the jury does or does not understand.

11 JUDGE BROWN: I'll sustain the objection to
12 commenting on what the jury does or does not understand.
13 Only I can do that.

14 BY MR. WORK:

15 Q Do you understand my question, sir? My question
16 is whether the subcontract -- whether the subcontract
17 contained any statement of work and specification relating
18 to the testing area that you've talked about today, other
19 than the prime contract statement of work and specification.

20 A Counsellor, I have to say I don't know. I can
21 tell you that I reviewed certain things and this letter I do
22 recall and acknowledge by Whittaker.

23 Q I'll accept "I don't know." Now, sir, I want to
24 get into the testing area and the big picture area but let
25 me just ask you a couple of questions about your experience

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1 with software development and software testing prior to the
2 ICCE program. Had you had any such experience at TechDyn
3 prior to this program, sir?

4 A At TechDyn?

5 Q Yes.

6 A No.

7 Q Okay. Had you had any such experience in software
8 development and software testing in your one civilian job
9 you had prior to coming to TechDyn?

10 A No.

11 Q Okay. And had you had any experience with
12 software development in the Air Force when you were actually
13 involved in software development or observing tests?

14 A I was not in the Air Force, counsellor.

15 Q Excuse me. In the Army. I'm sorry.

16 A Yes.

17 Q The answer is yes.

18 A Yes.

19 Q And what program was that, sir?

20 A As I testified earlier, one of my assignments on
21 the Department of Army staff, I was a division chief and
22 force development director for the deputy chief of staff for
23 operations and my function was to maintain the Army
24 authorization document system.

25 Q Okay. Any other experience?

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1 A I think I testified earlier that I took the Army
2 TACFIRE system through OT&E. But in this process, I'm
3 sitting up here, counsellor, saying that I am a programmer
4 or I am a designer of software.

5 Q Okay. Now, sir, let's start with the term you
6 just used. What is OT&E?

7 A Operational test and evaluation.

8 Q And under the ICCE prime contract, what was the
9 significance of OT&E and when did it take place?

10 A OT&E was an activity that was to be conducted by
11 the Government, in this case, the user. OT&E was conducted
12 on the ICCE system -- I think about 4 April through 28 April
13 of 1991.

14 Q Was that test successfully completed, sir?

15 A I do not have a report back that said it was
16 successful. I do know that the Government finished the test
17 early and I know that they didn't run into any problems
18 while they were conducting the test.

19 Q Okay. You have what you call the subcontract book
20 before you. Let's go to the prime contract statement of
21 work at 4.1.3.2, sir.

22 A Counsellor, I have nothing in front of me.

23 MR. WORK: Well, perhaps I could help you.

24 (Pause.)

25 MR. WORK: I am handing the witness a portion of

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1 22A3 which is the prime contract specification dated 6
2 September 1985. And I ask you to refer, please, to the
3 paragraph referencing operational test and evaluation which
4 is 4.1.3.2.

5 MR. BOEHLERT: Your Honor, object to the form of
6 the question. He's handing the witness what's been received
7 in evidence as the subcontract and he's mischaracterizing it
8 as the prime contract.

9 JUDGE BROWN: Well, I sustain the objection
10 because as I thought about it on the break, the exhibit
11 marked 22A1, 2 and 3 was the document which I think on the
12 first day of trial was stipulated to be the minimum that was
13 the subcontract and we got to it because the Plaintiff tried
14 to introduce the subcontract, the Defendant said that's not
15 the subcontract. At my suggestion, the Defendant's exhibit
16 that they agreed was the subcontract was renumbered as 22A,
17 the exhibit that the Plaintiff tried to introduce having
18 been marked as 22, and that was introduced -- 22A1, 2 and 3
19 was introduced as the minimum that the parties could agree
20 constituted the subcontract.

21 So whatever is in 22A3 is at least in part part of
22 the subcontract. It may also be found somewhere else.

23 BY MR. WORK:

24 Q Is this same document the same specification in
25 the prime contract? In the August 30, 1985 prime contract.

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1 A Counsellor, now I really don't understand this
2 question.

3 JUDGE BROWN: Let me see counsel up here a minute.
4 We've spent an awful lot of time on something that seems
5 imminently simple to me and maybe I'm just missing
6 something.

7 (Bench conference.)

8 BY MR. WORK:

9 Q Now, sir, we were referring to the section of the
10 specification dated 6 September 1985 under the title
11 "Operational Test and Evaluation". Would you read that to
12 the jury, please?

13 A "4.1.3.2 Operational Test and Evaluation. OT&E
14 to determine whether the system will satisfactorily perform
15 the function for which it was designed in the mission
16 environment. The requirements for a total operational test
17 to demonstrate that the system satisfies the mission
18 requirements of 3.1.2 and is within the operational and
19 organizational concept defined in 3.1.7 would be determined
20 by the user in conjunction with the Government."

21 Q And it's your understanding, sir, that that test,
22 that operational test and evaluation, was successfully
23 completed in the spring of 1991. Is that correct?

24 A It is my understanding that a portion of OT&E was
25 completed and was successful during the timeframe that I

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1 testified to.

2 Q Now, will you turn to the prior page and follow
3 along with me as I read the definition of development test
4 and evaluation?

5 A Which page?

6 Q The prior page. Turn the page. "Section 4.1.3.1,
7 Development test and evaluation (DT&E). DT&E shall be
8 accomplished to verify that the CIs and CPCIs meet
9 performance and design requirements. DT&E shall consist of
10 formal qualification tests (FQTs) and a system level test
11 (SLT)." Incidentally, what are CIs and CPCIs, sir?

12 A These are computer driven things and if you want
13 me to refer to the glossary, I'll do that.

14 Q Okay. Now, sir, was DT&E successfully completed?

15 A DT&E took place on island and Whittaker personnel
16 was a participant of that.

17 Q Okay. Was it successfully completed, sir?

18 A We ran into problems on DT&E.

19 Q Do you feel that you have not completed DT&E in
20 this program?

21 A The Government still has not given me an okay that
22 I have finished DT&E.

23 Q But they have not given you any contrary
24 indication either, have they?

25 A No.

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1 Q Okay. Now, sir, let's just take the components of
2 the system that were part of the system that was tested by
3 TechDyn at DT&E and by the Government at OT&E. Excuse me --
4 when did the DT&E test take place?

5 A I think that was 13 or 14 February or March 1991.

6 Q And the purpose of that test is for the
7 contractor, TechDyn, to run a test that demonstrates the
8 system meets the design requirements and the system
9 requirements. Is that correct?

10 A The software version used on DT&E was 87-350.

11 Q I didn't ask you that question, sir. I asked
12 you --

13 A Yes.

14 Q So the answer to the question is that DT&E is to
15 be run by the contractor, TechDyn, to determine whether the
16 system meets contractual requirements, both design and
17 operational requirements. Is that right?

18 A That's true.

19 Q And OT&E, which was conducted about a month later,
20 is a Government test where the Government determines whether
21 or not the system meets design and systems requirements. Is
22 that correct?

23 A I would rather let the specification give the
24 purpose of DT&E and the purpose of OT&E. In your questions,
25 I think you're leaving out certain things.

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1 Q Okay. And the specification states that OT&E
2 determines whether the system will satisfactorily perform
3 the function for which it is designed in the mission
4 environment.

5 A Yes. But the second sentence, counsellor, say the
6 requirements for a total --

7 Q I think you read that, sir. Now, sir, when did
8 Whittaker deliver the PDFA software that was used in the
9 system that completed DT&E and that was used for OT&E? When
10 did Whittaker deliver the PDFA software that was used in the
11 system that was tested in those two tests?

12 A The software that was used in DT&E testing and
13 OT&E testing was software version 87-350.

14 Q And when was it delivered, sir?

15 A I don't remember the exact date. I would say it's
16 a date that was delivered for TAC testing. It was not and
17 never has been accepted --

18 MR. WORK: Move to strike. I asked a simple
19 question, when was it delivered.

20 JUDGE BROWN: He just wanted a date. If you don't
21 know the date, just tell you don't know.

22 MR. WORK: Don't know.

23 BY MR. WORK:

24 Q Okay. Would it refresh your recollection if I
25 told you that the software, the PDFA software, that was used

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1 in DT&E and OT&E was delivered in early 1988?

2 A Counsellor, you would not refresh my memory
3 because the operational software for the ICCE program was
4 not delivered and accepted until 20 August 1990.

5 MR. WORK: Move to strike, Your Honor. My simple
6 question was when was the software, the PDFa software that
7 was used for DT&E --

8 JUDGE BROWN: Sustain the objection and strike it.
9 The answer is it does not refresh his recollection.

10 BY MR. WORK:

11 Q Now, sir, when did Whittaker deliver the PDFa
12 hardware that was used in DT&E and OT&E?

13 A The RADIL and peripherals used were in the October
14 timeframe of 1988.

15 Q Would it refresh your recollection if I told you
16 in March of 1988, sir?

17 A I'm sorry?

18 Q Would it refresh your recollection if I told you
19 the PDFa hardware that was used in the system that went
20 through DT&E and OT&E was delivered in March of 1988?

21 MR. BOEHLERT: Object, Your Honor. Counsel is not
22 refreshing the witness' recollection, he is simply arguing
23 with the witness.

24 JUDGE BROWN: Well, I overrule the objection. I
25 think the jury has learned by now not to take as evidence

DONALD ELLIS - CROSS EXAMINATION

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1 what the lawyers say and if it does refresh his
2 recollection, he can say it does and if it doesn't he can
3 say it doesn't and we can move on to the next question.

4 (Continued on next page.)
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1 BY MR. BOEHLERT:

2 Q When did TechDyn deliver the CFA equipment that
3 was used in the DT&E and the OT&E?

4 A In the February time period of 1991.

5 Q Now, sir, we have talked a lot about the words B
6 spec, A spec and C spec. Now, we are talking about A
7 specifications. We're talking about a document that is
8 issued by the Government which set forth performance
9 requirements. Is that right?

10 A Among other things, true.

11 Q And when we're talking about B specifications,
12 we're talking about a document produced by a contractor that
13 sets forth design requirements. Is that right?

14 A As I understand it, true.

15 Q And when we're talking about C specifications,
16 we're talking about products definition documents. Is that
17 correct?

18 A As I understand it, that's true.

19 Q Now, sir, under TechDyn's prime contract with the
20 Air Force, in connection with what test or evaluation, were
21 the final C specifications for the PDFFA software to
22 delivered.

23 A Counsel, I don't understand that question.

24 A I'll ask it again.

25 Q Under TechDyn's prime contract with the Air Force,

DONALD ELLIS - CROSS EXAMINATION

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1 in connection with what test or evaluation, were the final C
2 specifications, the product definition documents to be
3 delivered?

4 A B specs and C specs had to be delivered on the CFA
5 side of the house and PDFA side of the house. Which side of
6 the house, counselor, do you want me --

7 Q Let me ask it again.

8 Under TechDyn's prime contract with the Air Force,
9 in connection with what test or evaluation were the final C
10 specifications for the PDFA software to be delivered?

11 A Counselor, I can't answer the question because I
12 don't know what the question is. I don't understand the
13 question.

14 Q Was there a due date relative to a particular test
15 or evaluation for the C specs for the PDFA software?

16 A All specs should have been completed a long time
17 prior to, as I remember the contract, before we got to test
18 and evaluation.

19 Q Do you see the CDRL list in this book before you,
20 sir?

21 A Do you want to reference me, counselor?

22 Q Do you know how to find it in this book?

23 A I know how to find a lot of things, but if you
24 would tell me what you're after.

25 Q Okay.

DONALD ELLIS - CROSS EXAMINATION

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1 MR. WORK: These pages are not numbered, Your
2 Honor, so it's hard to tell exactly where to look for it.

3 (Pause.)

4 BY MR. WORK:

5 Q Sir, I hand you a page of the document that is
6 part of -- can you identify this as part of the CDRL list
7 that was issued by the Government to TechDyn? It's entitled
8 Exhibit A to IOC Hardware/Software to Contract, contract
9 line item number 0003AA, contract date of requirement list
10 for ICCE, Icelandic Command and Control Enhancement, 2
11 August 1985, Hanscom Air Force Base. Don't take your finger
12 away.

13 A I won't ever find it again.

14 Q Now, sir, can you tell from this page when under
15 your contract with the Air Force the final C specifications
16 for the PDFA hardware were due?

17 And I would invite your attention to the second
18 paragraph on that page which reads indecipherably, "Drafts
19 30DA PDR to BLD 29 addresses. Government will respond 30
20 days CDR draft update prior to PCA for contractor government
21 review and markup at PCA."

22 Does that refresh your recollection that the final
23 C specs for the PDFA software were due at the final PCA for
24 review and markup?

25 A Right.

DONALD ELLIS - CROSS EXAMINATION

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1 Q Yes?

2 A Yes.

3 Q It does?

4 A Yes.

5 Q And when was the final PCA held, sir?

6 A What PCA, counselor?

7 Q The final PCA that I just referred to, sir?

8 A Of software?

9 Q The final PCA for the system.

10 A The final PCA for the system has not been yet.

11 Q Okay. How about the final PCA for the software,
12 sir?

13 A The final PCA for the software had not been yet.

14 Q Okay. So under that clause that I just read you,
15 the C specifications are not due. Is that right?

16 A Counselor, I would rather know what this CDRL
17 calls for and it isn't quite as you are asking your
18 question.

19 Q Pardon me?

20 A I would rather take a reading of block 26.

21 Q So you're saying you will accept that as the
22 schedule due date for the final C specs under your contract
23 with the Air Force. Is that correct?

24 A I have no choice but to accept this. However, as
25 you present your question to me, you are omitting some very

DONALD ELLIS - CROSS EXAMINATION

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1 key sentences on this CDRL.

2 Q Now, would you take this document, please, sir?
3 And you can put the contract aside.

4 MR. WORK: Your Honor, I have handed the witness a
5 Plaintiff's Exhibit for identification, 1615, and it appears
6 to be a letter from Mr. Ellis to Captain Dalrymple at ESD,
7 Hanscom Air Force Base dated 27 December 1990.

8 BY MR. WORK:

9 Q Is this one of the ICCE program schedules that
10 TechDyn submitted to the Government in connection with this
11 program?

12 A Yes, in conjunction with input from Whittaker.

13 Q Okay. And you signed it?

14 A I did.

15 Q And you were the principal preparer of that
16 document, sir?

17 A I was.

18 Q Okay. Now, these schedules were simply something
19 that you submitted to the Government. Is that correct?

20 A No. Schedule meant more than that. We were
21 required to, as we thought that we were ready for the
22 completion of several events, we projected those events on
23 the schedule. As you project those, there were many
24 telephone conversations and technical interchange meetings
25 at times leading up to the conduct of that event.

1 Q So basically this is a projection, it's a
2 statement of past milestones met in a projection by TechDyn
3 of future milestones in the contract. Is that right?

4 A By TechDyn based on input and received from
5 Whittaker.

6 Q Okay. And as you pointed out earlier, these
7 documents were required -- TechDyn was required to submit
8 these documents monthly, but in fact you didn't submit them
9 monthly, did you, sir?

10 A That's true. That's right.

11 Q In fact, there were large gaps between the times
12 you submitted them.

13 A That's true.

14 Q Okay. Now, sir, I would like to use another chart
15 in connection with this because I think this might help the
16 jury follow this discussion. Let's see if we have an
17 objection.

18 MR. BOEHLERT: There is no foundation for who
19 prepared it or if the dates are accurate. My only problem,
20 if you want to use it with the witness, to ascertain if it's
21 accurate, but I would ask that it not be published to the
22 jury until we establish that there is some accuracy to it.

23 MR. WORK: You object to my putting it up here so
24 that the jury can follow?

25 MR. BOEHLERT: No. I reserve the rejection if it

DONALD ELLIS - CROSS EXAMINATION

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1 turns out that the document is not either accurate or the
2 witness cannot understand it.

3 BY MR. WORK:

4 Q Now, sir, in connection with a desire to get the
5 big picture in both sides of this program, I would simply
6 like to ask you about when Whittaker and TechDyn met their
7 respective milestones in this program. And you will see how
8 it's set up with Whittaker on the top with milestones,
9 contract award; subcontract award; PDR, which is preliminary
10 design review; CDR, which is critical design review;
11 testing; training; software delivery; final hardware
12 delivery; and documentation. And then the same things for
13 TechDyn.

14 When did TechDyn complete CDR on the CFA portion
15 of the system, sir?

16 A I can't say. I was not on the program when
17 TechDyn completed their CDR time frame. I do know when CDR
18 was concluded on the RCE portion of the contract.

19 Q When was that, sir?

20 A This is in April '89 time frame, before we
21 launched into ECP-32.

22 However, counselor, this chart that you have up
23 here is labeled "completions," and I take exception with
24 several things that you have on that chart representing or
25 purporting it would be complete.

DONALD ELLIS - CROSS EXAMINATION

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1 Q Well, I'm going to go over this and you can state
2 your views.

3 MR. BOEHLERT: Your Honor, in light of that, I
4 object to having the chart published, and I ask that if he
5 has questions that perhaps he refer them to the witness and
6 if the witness has an answer --

7 JUDGE BROWN: I sustain the objection to keeping
8 the chart up until a foundation has been laid.

9 MR. WORK: All right.

10 BY MR. WORK:

11 Q So TechDyn completed its CDR requirements in April
12 of 1989, sir. Is that correct?

13 A I didn't say that, counselor. I said I was not on
14 the program when the original CFA/CDR portion of the
15 contract was completed. What I said I was on the program
16 when the CDR for the RCE portion of the contract was done.

17 Q All right. And that CDR for the new RCE was
18 completed in April of 1989. Is that correct?

19 A April or May of 1989.

20 Q Okay. And when did Whittaker complete its CDR on
21 the PDFA portion of the ICCE system?

22 A I don't recall, counselor. I know it was not
23 completed in the time frame in which their computer program
24 and development plan that I testified had indicated it would
25 be complete.

DONALD ELLIS - CROSS EXAMINATION

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1 contract calls for either Whittaker or TechDyn to
2 successfully complete an event.

3 Q Okay. And the completion of the event, as I
4 recall you're saying, is that neither the PDFA O&M manual
5 prepared by Whittaker or the CFA O&M manual prepared by
6 TechDyn, has yet to be completed and approved. Is that
7 right?

8 A As of this date, that's true.

9 Q Okay. And you know, sir, we were talking about
10 the system O&M manual. You know that that was given to
11 Whittaker by TechDyn under a separate contract, don't you?

12 A Counsellor, ask me a question and I'll tell you
13 what I know.

14 MR. WORK: Your Honor, may I have an instruction
15 to answer the question?

16 JUDGE BROWN: Did you not understand the question?

17 THE WITNESS: No, I don't understand the question.

18 MR. WORK: Okay. Let me try again.

19 BY MR. WORK:

20 Q You know, sir, that the system O&M manual that
21 you're talking about originally was a job of TechDyn but
22 TechDyn subcontracted out that work under a different
23 subcontract than the ICCE subcontract. You know that, don't
24 you?

25 A I don't know that.

1 understanding here.

2 BY MR. WORK:

3 Q I've put in front of you a document out of the
4 same statement of work we're referring to and I won't bother
5 to try to characterize it but you see on page 9 under 3.0
6 Requirements, there's a 3.3.1? Do you see that?

7 A Counsellor, now I have three things in front of
8 me.

9 Q Right here.

10 A Okay.

11 Q And I'd like you to follow along with me as I read
12 this. This is a document SOW ECI1229 dated 20 August 1985.
13 "Contractor Tasks. The contractor shall provide (design,
14 develop, modify, procure, manufacture, integrate, test and
15 install) a certifiable Tactical Air Forces (TAF) Joint
16 Tactical Operations (JTAO) system which will be
17 interoperable on a tactical digital information link A
18 (TADIL-A) with U.S. forces." Now, that was the basic
19 requirement of the prime contract statement of work, that
20 you provide a TAF certifiable, JTAO certifiable system. Is
21 that correct?

22 A That is under this SOW a part of paragraph 3.1.1.

23 Q Okay. Now, sir, when did Whittaker submit a
24 software system for the PDFA that was determined to be TAF
25 certifiable?

DONALD ELLIS - CROSS EXAMINATION

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1 A When did Whittaker deliver a system --

2 Q A PDFA software system that was determined to be
3 TAF certifiable.

4 A Never.

5 Q Sir, would you look at the first page of your
6 December 1990 schedule, Plaintiff's Exhibit 615, that we
7 have before you? Do you have the first page with your
8 handwritten numeral 1 here? Would you look at line 8 and
9 follow along with me? "Software qual test (SQT)/TAF cert."
10 And the date for that is December 1987, isn't it?

11 A The date on this schedule for line 8 is 12/87.

12 Q Okay. Now, sir, I asked you whether you knew
13 about P00012 before. I'm going to give you a copy of it.
14 Excuse me -- I've given you a copy already.

15 JUDGE BROWN: Is it an exhibit?

16 MR. WORK: It is marked as Defendant's exhibit for
17 identification 55.

18 BY MR. WORK:

19 Q And it is -- you recognize this as a modification
20 to TechDyn's prime contract with the United States Air Force
21 dated July 1987, don't you, sir?

22 A I recognize this for what it is, and it is a
23 normal form that TechDyn has used in the past and this
24 indicates that this is MOD P00012 incorporating a particular
25 TCP.

DONALD ELLIS - CROSS EXAMINATION

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1 Q The RCE.

2 A The RCE was supposed to be driven by software
3 being developed by Whittaker.

4 Q Now, in addition to the components of the RCE
5 itself, there were certain external interfaces that affected
6 and related to the RCE, weren't there?

7 A I have to say yes.

8 Q And they consisted of switches and modems, among
9 other things, didn't they?

10 A Among other things, I'm sure it did.

11 Q Now, sir, you were informed by Whittaker in the
12 spring -- and your own people, including Mr. Thornton -- in
13 the spring and early summer of 1988 that there were problems
14 not only with the Z150 computer but also problems with those
15 external interfaces, the switches and the modems, weren't
16 you?

17 A I'm not really sure I understand your question.
18 When you preface it with "problems," I don't understand your
19 question.

20 Q You were told, in fact you read reports that
21 Whittaker had submitted to you, didn't you at the time --

22 A Whittaker --

23 Q -- that in the spring and early summer of 1988,
24 there was noise on the line which was understood to be
25 caused by switches and modems being defective. Isn't that

**TRIAL TESTIMONY OF
RUFUS THORNTON**

RUFUS THORNTON - DIRECT EXAMINATION

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1 But not today. You are free to go today if you wish.
2 Whereupon,

3 RUFUS THORNTON
4 having been duly sworn, was called as a witness herein and
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BOEHLERT:

8 Q Good afternoon, Mr. Thornton.

9 A Good afternoon.

10 Q Sir, would you please state your name and home
11 address for the record?

12 A Rufus Thornton, 8400 Autumn way, Clinton,
13 Maryland.

14 Q And are you currently employed, sir?

15 A Yes, I am.

16 Q Where are you employed?

17 A TechDyn Systems Corporation, Springfield,
18 Virginia.

19 Q In what capacity?

20 A I am the senior systems engineer for the ICCE
21 contract.

22 Q We're going to talk about that, Mr. Thornton. But
23 before we do, starting with your graduation from high
24 school, sir, would you please tell us your educational and
25 work experience up to the time you joined TechDyn?

RUFUS THORNTON - DIRECT EXAMINATION

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1 A Well, I graduated from high school in 1958, Ft.
2 Gaines, Georgia; college education, Tuskegee University,
3 graduated with a B.S. Degree in engineering, 1963.

4 Q What type of engineering?

5 A Electronics engineering.

6 Also, commissioned in the U.S. Army, ROTC Program,
7 and went on active duty with the U.S. Army in 1963; a career
8 of 22 years, from 1963 to 1985 at retirement.

9 Q Okay. While you were in the military, what did
10 you do, starting in 1963, please?

11 A In 1963, for two and a half years I was assigned
12 to the U.S. Army Electronics Laboratories at Ft. Monmouth,
13 New Jersey.

14 JUDGE BROWN: Excuse me just a minute. But if you
15 would speak right into the microphone and speak up so that
16 the jury can hear you.

17 THE WITNESS: 1963, I spent from October for two
18 and a half years in the Army Signal Laboratories at Ft.
19 Monmouth, New Jersey, engineering for tactical
20 communications, radio equipment.

21 BY MR. BOEHLERT:

22 Q What did some of your projects involve?

23 A Basically that was a task. My central task during
24 that performance period was to develop an interface unit
25 between what we can FM communications equipment and single

RUFUS THORNTON - DIRECT EXAMINATION

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1 sideband communication equipment, which was a different
2 frequency spectrum, developing interface device which
3 basically turned out to be a Morris-operated relay unit.

4 Q After that, sir, what did you do?

5 A Spent a year with the Army's Materiel Command in
6 Philadelphia, Pennsylvania, special project officer to the
7 commanding officer of the Command, working on special
8 projects to expedite equipment or materiel out of the Army
9 depot system to Vietnam.

10 Q What type of projects did they consist of?

11 A Basically repair parts, expediting repair parts to
12 support field equipment, radio equipment in Vietnam, various
13 units who were preparing for deployment to Vietnam, to
14 ensure that their prescribed list of repair parts as well as
15 equipment was in A-1 condition.

16 Q What did you do after that?

17 A After that I was assigned to Vietnam for a year in
18 the Army's First Signal Brigade, headquarters in Saigon.
19 And I was project engineer for expansion of dial telephone
20 communication exchanges throughout the Vietnam theatre.

21 Q What does that mean?

22 A Dial telephone exchanges, the same, you know, in
23 the Army in the early time frame there were a lot of manual
24 switchboards for processing telephone communications traffic
25 between units and organizations. As we go into a fixed

RUFUS THORNTON - DIRECT EXAMINATION

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1 environment, we normally try to install fixed telephone
2 exchanges that allow the units to dial as opposed to having
3 operator intervention throughout the network.

4 Q I see. And what was your capacity in that
5 project?

6 A Basically to ensure that the build materials
7 required for the installation of these telephone exchanges
8 were in fact on site. We had a separate installation
9 activity. As project engineer or project officer, I had to
10 ensure that those supplies were in fact in place, that the
11 build material was consistent with the engineering
12 requirement based on the environmental situation that you
13 run into in Vietnam. You need certain types of splice cases
14 for burial, certain type of splice cases for aerial
15 construction, et cetera; the type of cable that was used as
16 well.

17 Q What was your rank at that time?

18 A Captain.

19 (Continued on next page.)

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RUFUS THORNTON - DIRECT EXAMINATION

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1 Q After that, what did you do?

2 A Well, I had attended the Army's signal advanced
3 course at Fort Monmouth, New Jersey for approximately ten
4 months.

5 Q What did that consist of?

6 A Well, basically all of the signal communications
7 doctrine was taught as well as a general military subject
8 category, which might include nuclear weapons deployment,
9 calculating yields necessary to destroy a certain area
10 without catastrophic damage to your own troops.

11 Q What's the purpose of the Signal Corps?

12 A The Signal Corps basically is the AT&T of the
13 Army.

14 Q Meaning what?

15 A Meaning it supplies all of the communication
16 requirements or it maintains all the communication
17 requirements for the Army on a worldwide basis. You have
18 various branches -- not branches but elements of the Signal
19 Corps. Some deal strictly with tactical communications,
20 that is, companies and battalions that strictly support the
21 field Army units such as the divisions, the corps on a
22 tactical basis as the units are deployed on the battlefield.
23 Then, of course, you have a fixed station element of the
24 Signal Corps, which deals primarily with your strategic
25 communications and long haul communication links of

RUFUS THORNTON - DIRECT EXAMINATION

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1 microwave, tropo, such as again the AT&T aspects -- the long
2 haul communication requirements.

3 Q Did you successfully complete that course at Fort
4 Monmouth?

5 A Yes.

6 Q Then what did you do?

7 A After the career course at Fort Monmouth, I was
8 assigned as a signal advisor to the Republic of China in
9 Taiwan. I spent one year there as the signal advisor to the
10 Taiwanese armed forces or the Chinese armed forces.

11 Q After that, Mr. Thornton, what did you do?

12 A I was assigned to Fort Bragg, North Carolina for
13 eighteen months. I received my command, company grade
14 command assignment at Fort Bragg. I had a company of 163
15 men providing tactical communications support to the 18th
16 Army Airborne Corps at Fort Bragg through higher echelons,
17 the 35th Signal Group, really.

18 Q Can you give us a timeframe? What are we up to
19 now?

20 A We are into 1969, the end of 1969 -- '70, I
21 believe.

22 Q Okay. Then what did you do?

23 A Then I was assigned to the Strategic
24 Communications Command Europe outside of Heidelberg, Germany
25 for three and a half years. I was the branch chief of the

RUFUS THORNTON - DIRECT EXAMINATION

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1 systems branch, part of the telecommunications division at
2 the headquarters.

3 Q What were your responsibilities there?

4 A As branch chief, my branch was responsible for all
5 of the long haul communication system upgrades throughout
6 Europe to include Ethiopia and Iran at the time. That long
7 haul communications consisted of high frequency
8 communication links, satellite communication links,
9 troposcatter communication links, microwave communication
10 links, linking up the major European headquarters in
11 Stuttgart, the European command at Heidelberg -- it was
12 USAEUR, U.S. Army Europe -- as well as the Navy
13 communications command in London, in England.

14 Q After finishing that, where did you go?

15 A Then I was assigned to Vint Hill Farms out here
16 near Warrenton, Virginia with the Army Security Agency. I
17 had responsibility for the bulk of that assignment for the
18 installation and upgrade of fixed intelligence communication
19 facilities throughout the world, really -- Europe, Asia.

20 Q What was your participation in that project?

21 A I was the branch chief or chief of the
22 installation division. It really was a division -- the
23 installation division. We had upwards of six teams
24 deployed, as I said, throughout the United States and
25 overseas -- Europe, Okinawa, Korea -- doing upgrades that

RUFUS THORNTON - DIRECT EXAMINATION

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1 were directed largely by the intelligence community.

2 Q And then was that all being done under your
3 direction?

4 A Yes.

5 Q Then, sir, what did you do?

6 A Then I received an assignment to Australia for two
7 and a half years as a signal officer on an exchange basis
8 with the Australian army, assigned to the equivalent of our
9 Army staff -- the U.S. Army Staff at the Pentagon. But
10 actually my assignment was in Canberra, Australia.

11 Q What did you do in Australia?

12 A I was principally the plans officer for the
13 upgrade of the Australian communication system which evolved
14 from high frequency communication links to satellite
15 communication links. Satellite communication was a new form
16 of communication at that particular point in time for the
17 Australian army so the planning and the budgeting of those
18 sorts of requirements were under my auspices. Also to
19 upgrade some of their existing communications centers which
20 processed their message traffic between organizations and
21 elements.

22 Q What was your rank at that time?

23 A I was a major.

24 Q What did you do next?

25 A After that assignment, I received an assignment to

RUFUS THORNTON - DIRECT EXAMINATION

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1 the Washington, D.C. area -- Alexandria, Virginia
2 specifically -- with the Army's Materiel Command. It was
3 called DARCOM at the time, Department of Army Research
4 and -- I forget the acronym, but anyway it was the
5 equivalent of the Army Materiel Command in Alexandria,
6 Virginia. And I was the signal officer for the headquarters
7 element which basically consisted of monitoring and managing
8 their telephone accounts; ensuring the telephone extensions,
9 if necessary, were moved around the building wherever they
10 needed to be moved; manning and operating the communications
11 center which handled all of the message traffic in and out
12 of the headquarters and facsimile transmissions and at the
13 time putting in a local area computer network.

14 Q Did you have people reporting to you?

15 A Yes.

16 Q Approximately how many?

17 A Approximately 60 -- something on that order.

18 Q What did you do next?

19 A I was promoted out of that position to lieutenant
20 colonel and was assigned for three years with the Defense
21 Engineering Center which was part of the Defense
22 Communications Agency located here in Reston, Virginia.

23 Q What years were those?

24 A That was 1980 through 1983.

25 Q What did you do there, sir?

RUFUS THORNTON - DIRECT EXAMINATION

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1 A I was the chief of the facilities and survival
2 branch. Basically, the engineering center mission and
3 responsibilities included development of standards that were
4 applicable or that would be applied throughout the
5 services -- Army, Navy, Air Force -- in the design of future
6 communication facilities. It included standards of
7 grounding, bonding and shielding for protection of equipment
8 from transients such as maybe a nuclear explosion, which
9 would create a high energy electromagnetic pulse, and
10 hardening facilities, develop standards relative to
11 hardening of facilities so that the services themselves
12 could include such budgetary requirements in their long
13 range plans for any new facilities that were going in or for
14 old facilities that would be upgraded.

15 Q What did you do in 1983?

16 A I was assigned in 1983 to Charlottesville,
17 Virginia with the Foreign Science & Technology Center.

18 Q And were you still with the Army?

19 A I was still with the Army.

20 Q What did you do down in Charlottesville?

21 A In Charlottesville, I was the operations officer
22 for the intelligence production directorate. The
23 intelligence production directorate consisted of a number of
24 separate divisions more or less broken down into a combat
25 arms division which dealt with analyzing and assessing

RUFUS THORNTON - DIRECT EXAMINATION

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1 foreign technology and foreign developments relative to
2 armor, artillery and infantry weapons. Another directorate
3 dealt with sciences such as all of the chemical -- I'm
4 sorry -- Stealth technology. I don't want to go into that
5 too much but those kinds of sciences and developments that
6 were taking place in foreign countries. The assessment of
7 those technology developments throughout the world. Reverse
8 engineering application of those types of developments to
9 U.S. Army products, to DOD products really.

10 Q Do you have a security clearance?

11 A Yes, I did.

12 Q To what level?

13 A Top Secret, Special Intelligence. And certain
14 other categories.

15 Q What did you do after Charlottesville?

16 A I retired end of November 1985.

17 Q As a lieutenant colonel?

18 A As a lieutenant colonel.

19 Q What did you do then?

20 A I relaxed for a year.

21 Q After relaxing, what did you do?

22 A I joined TechDyn Systems Corporation 27 December
23 1986 as the senior systems engineer on the ICCE project,
24 specifically for the ICCE project.

25 Q How did you become familiar with TechDyn?

RUFUS THORNTON - DIRECT EXAMINATION

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1 A Basically, I received a call from a former
2 employee with the company who indicated that the project,
3 then project manager, Mr. Al Johnson, was in need of some
4 help and assistance and basically referred me to Mr.
5 Johnson. I had an interview with Mr. Johnson and he
6 explained the position that he was interested in filling and
7 he looked over my resume and my qualifications and he felt
8 that I would be the person for the job and he made me an
9 offer.

10 Q What was that position?

11 A I was the senior systems engineer for the ICCE
12 project, he basically categorized it as project engineer.

13 Q What did that involve?

14 A That involved coordinating all of the engineering
15 aspects of the ICCE effort.

16 Q Would that include both communications aspects of
17 the project and processing display aspects?

18 A It would have included primarily the
19 communications aspects of the project, but I did have
20 monetary responsibilities relative to the processing display
21 requirements.

22 Q What were your responsibilities as they were
23 explained to you with respect to the communications
24 functional area?

25 A Mr. Johnson explained that the design of the ICCE

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1 system as we knew it or as it was explained to me, the
2 design had basically been finalized, the design was
3 completed. The critical design review had been conducted,
4 although not completed. It had been partially completed.
5 The processing computer portions of that contract
6 requirement were being addressed by a subcontractor, 4C
7 Corporation, and the critical design review for the software
8 part was being planned for the very near future, in January,
9 I believe. And that essentially the design was pretty much
10 finalized. He needed someone to basically coordinate all of
11 the engineering functions to ensure that the drawings were
12 being developed according to the requirements, to ensure
13 that the installation aspects were coordinated. If there
14 were problems arising from those types of issues, those
15 types of requirements were being addressed. He indicated
16 basically that he was spread too thin and he needed someone
17 to monitor all those activities. The test plan and
18 procedures -- that was another area that was under my
19 auspices as well.

20 Q What was your responsibility with respect to that?

21 A When I first arrived, the test plan and procedures
22 were in an embryonic stage, a very early stage of
23 development. First and second drafts had been prepared.
24 Those first and second drafts were not quite to the
25 standards that Mr. Johnson expected and wanted or expected

1 that the Government would accept.

2 Q What test plans and procedures are you referring
3 to?

4 A Well, there were several test plans and
5 procedures. They had a master test plan which had to
6 address the entirety of the contract requirements, both the
7 processing part as well as the communications part.

8 Q And who was preparing that?

9 A TechDyn Systems was preparing the master test
10 plan.

11 Q Okay. Were there other test plans?

12 A You had subordinate test plans underneath the
13 master test plan which included test plans for the computer
14 processing requirements and you had test plans and
15 procedures which dealt strictly with the communication
16 system and the integration thereof.

17 Q Let's talk about the communication side of this
18 project at the time that you were hired. What did you
19 understand the status of that to be?

20 A As I indicated earlier, the critical design and
21 review had just basically been completed, if my memory
22 serves me correctly, somewhere during the 7th or the 12th of
23 December. Mr. Johnson made available to me all of the
24 relevant specifications that were either in final form or
25 being developed, the overall system specification, the

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1 statement of work, relevant minutes of meetings, so that I
2 could be -- I could read myself into the project as rapidly
3 as possible.

4 Q Are we talking now, Mr. Thornton, after you took
5 the job?

6 A That's after I took the job. Yes.

7 Q That's after you took the job and you started
8 work. Are you describing what you did initially?

9 A Basically, yes.

10 Q Okay. Did you understand there to be a remote
11 control aspect of the communication functional area?

12 A Yes, I did.

13 Q What did you understand that to be?

14 A Well, basically, the remote control system
15 essentially was defined as the capability to remotely or to
16 from a central position control operations at the outlying
17 sites, equipment operations, maintain status of all the
18 equipment at those outlying sites and to be able to switch
19 back and forth as necessary to configure or reconfigure the
20 circuits.

21 (Continued on next page.)
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1 Q Prior to joining TechDyn, had you had any
2 experience with remote control systems?

3 A Not of any great depth, no.

4 Q What did you do upon starting to get familiar with
5 the remote control system?

6 A Well, basically I read the specifications to get
7 an understanding of how the design was being implemented,
8 how it was to be wired, what were the interfaces between the
9 various equipment items, and to understand the concept of
10 the remote control system as being implemented under this
11 contract.

12 Q Anything else that you reviewed?

13 A Well, I reviewed minutes of the CDR, reviewed
14 presentations, viewgraph-type presentations, hard copy of
15 those presentations, to get an understanding of what was
16 being briefed, the status of the development at that point
17 in time; essentially all other relevant documents which may
18 have included letters between the various parties, the
19 Government, TechDyn and 4C.

20 Q Mr. Thornton, I place before you a document that's
21 been marked as Plaintiff's Exhibit 210 for identification.
22 And I ask if you can identify it, please.

23 If you would review that for me, please, and tell
24 me if you can identify it.

25 A It appears to be a document that I would have

1 reviewed as a prime item development specification for the
2 remote control element.

3 MR. BOEHLERT: Your Honor, I move Plaintiff's
4 Exhibit 210 into evidence.

5 JUDGE BROWN: Any objection to 210?

6 MR. WORK: No objection.

7 JUDGE BROWN: It's received.

8 (The document referred to, having
9 been previously marked for
10 identification as Plaintiff's
11 Exhibit No. 210, was received into
12 evidence.)

13 BY MR. BOEHLERT:

14 Q What was the purpose of your review of this
15 document, Mr. Thornton?

16 A Basically, this being the highest level
17 specification document that was directly related to remote
18 control system, it would have defined the basic parameters,
19 the basic operating performance aspects of the RCE and would
20 have given me an overview of all of the hardware and
21 equipment used within the remote control system.

22 Q I ask you to turn to the cover page here, not the
23 transmittal letter, but the cover page. And it states, "B-1
24 Preliminary Draft, Prime Item Development Specification for
25 the Equipment of the Remote Control Element of the Iceland

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1 Command and Control Enhancement, ICCE System."

2 What does that mean, B-1? Do you know what that
3 means, Mr. Thornton?

4 A Basically the B-1 is the highest level of
5 specification. You go from your systems specification,
6 which is an A level specification. The B-1 specification is
7 the prime item development item specification. It's the
8 prime item here, and we're speaking here in terms of a
9 remote control element. It is a prime specification that
10 deals with the remote control element.

11 Q Is it the equipment that's being dealt with here?

12 A It's the equipment that's being dealt with here,
13 yes.

14 Q And who prepared this document?

15 MR. BOEHLERT: Objection, Your Honor. There is no
16 foundation for that. Mr. Thornton didn't come until about
17 nine months after this document came into existence.

18 JUDGE BROWN: You have to lay a foundation for his
19 knowledge.

20 BY MR. BOEHLERT:

21 Q Do you know who prepared this document, Mr.
22 Thornton?

23 JUDGE BROWN: Well, the fact of whether he knows
24 it or not isn't the issue. Before you could ask him the
25 question unless he know, how does he know.

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1 BY MR. BOEHLERT:

2 Q Okay, how do you know who prepared this document?

3 A Well, it's written on it. Command Control &
4 Communications Corporation, 23670 Hawthorne Boulevard,
5 Torrence, California.

6 Q And did you understand who Command Control &
7 Communications Corporation was?

8 A Yes.

9 Q Who did you understand that to be?

10 A 4C.

11 Q Were they involved in this ICCE project?

12 A Yes. They were the prime subcontractor for the
13 processing and RCE element of the contract.

14 Q I ask that you please turn to paragraph one of
15 this document on page one entitled "Scope."

16 Do you have that?

17 A Yes.

18 Q Would you read that, please?

19 A "1.1. This specification establishes that
20 performance, the design, the development and test
21 requirements for the remote control element, RCE, equipment
22 of the Iceland Command and Control Enhancement, ICCE System,
23 the RCE equipment, which is part of the communications
24 functional area (CFA) of the ICCE, shall provide and operate
25 with the capacity of controlling and monitoring remotely

1 located ground interstations, TESSs, within the CFA."

2 Q What did you understand this specification to deal
3 with?

4 A Well, basically the scope defines what it deals
5 with.

6 Q Okay, and that is what?

7 A It establishes the performance and design test
8 requirements for the RCE.

9 Q Would you please turn over to page 14 of this
10 document and I refer your attention to paragraph 3.5.3
11 captioned "Facilities and Facility equipment"?

12 Would you please read that paragraph?

13 A "4C presently has available all of the facilities
14 required to design, fabricate, integrate, test, install and
15 operate the RCE equipment. Should requirements for modified
16 facilities or faulty equipment for RCE support identified
17 during the LSA or during scheduled site surveys required
18 documentation shall be initiated to advise the Government
19 and to provide appropriate recommendations."

20 Q At the time you reviewed this document did you
21 have an understanding of who was to design the RCE
22 equipment?

23 MR. WORK: Objection. No foundation.

24 JUDGE BROWN: Any response to that?

25 MR. BOEHLERT: Well, on what did he base that?

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1 JUDGE BROWN: Okay, you may ask that question.

2 MR. WORK: Your Honor, the only basis for
3 responsibility is a contract, if he has a basis in the
4 contract.

5 JUDGE BROWN: Maybe that's his basis. The last
6 time you objected he read it from the document. I don't
7 know what the basis is, but let's find out and then we will
8 see.

9 BY MR. BOEHLERT:

10 Q Okay, what's the basis for understanding that 4C
11 had the design responsibility?

12 A Well, my basis for understanding that, sir, is
13 that I'm reading from a document that is prepared by 4C
14 Corporation. As I read throughout the document, and you
15 direct me to this specific paragraph, it implies to me that
16 4C presently has all the available facilities required to
17 design, fabricate, test, integrate, install and operate the
18 RCE. I assume that they are doing it.

19 JUDGE BROWN: I sustain the objection. It's an
20 assumption he made. You have to show it some other way. He
21 can say what they are doing, but he can't say what their
22 obligation to do is unless he bases it on something other
23 than the fact that they are doing it and his assumption.

24 BY MR. BOEHLERT:

25 Q I refer your attention please to another document

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1 which I have marked for identification and this one is
2 Plaintiff's Exhibit 211. It's in that same book. Can you
3 find that, please?

4 A Yes.

5 Q Do you recognize this document?

6 A Yes, I do.

7 Q What is it?

8 A This is a B-2 critical item development
9 specification for the master control unit and remote control
10 unit, the remote control element. It's a preliminary
11 submittal.

12 Q Did you review this at the time you went on board
13 at TechDyn?

14 A I reviewed this some time very shortly after my
15 arrival, yes.

16 MR. BOEHLERT: Your Honor, I move Plaintiff's
17 Exhibit 211 into evidence.

18 MR. WORK: No objection.

19 JUDGE BROWN: 211 is received.

20 (The document referred to, having
21 been previously marked for
22 identification as Plaintiff's
23 Exhibit No. 211, was received into
24 evidence.)

25 BY MR. BOEHLERT:

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1 Q And turning to the cover page of this document, it
2 states, "B-2, preliminary draft critical item development
3 specification for the equipment of the master control unit,
4 MCU, and remote control unit, RCU, within the remote control
5 element, RCE, of the Iceland Command and Control
6 Enhancement, ICCE System."

7 What does that mean?

8 A Well, the B-2 specification here defines the
9 hardware equipment used for the master control unit and the
10 remote control unit specifically for the remote control
11 system, the element of the ICCE system.

12 Q I refer your attention now to a document that's
13 been marked as Plaintiff's Exhibit 219 for identification.

14 Do you have that document in front of you?

15 A Yes, sir.

16 Q And it purports to be a 9 April 1986 letter from
17 4C to TechDyn, with some attachments.

18 Do you recall reviewing this document at or about
19 the time you were hired?

20 A Yes.

21 MR. BOEHLERT: Your Honor, I move Plaintiff's
22 Exhibit 219 into evidence.

23 JUDGE BROWN: Any objection to 219?

24 MR. WORK: No, objection, Your Honor.

25 JUDGE BROWN: Received.

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(The document referred to, having been previously marked for identification as Plaintiff's Exhibit No. 219, was received into evidence.)

BY MR. BOEHLERT:

Q The subject of this letter states, "Transmittal of remote control element hardware drawings for CDR presentation."

Can you tell from reviewing this document who prepared it?

A Yes.

Q Who prepared this document?

A This is 4C, Whittaker.

Q And was it submitted to TechDyn?

A It was submitted to TechDyn under the signature of the program manager at the time.

Q Would you read the first sentence, please?

A Of this letter?

Q Yes.

A "The attached drawings depict the RCE design elements and beta flow that TechDyn may use in their CFA/CDR presentation. Ernest Heath has been informed that I was sending them and is awaiting their delivery."

Q I ask you to turn to the next page, please, and

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1 I'm going to ask you if you can tell us what this refers to.

2 A This -- this is a block diagram, if you will,
3 which lays out the connectivity, the hardware used and the
4 signal flow or data flow of the remote control system that
5 is to be installed at the ground interstations at the remote
6 sites.

7 Q Do you know who prepared this document?

8 A I believe it was prepared by 4C to my knowledge.

9 MR. WORK: Objection and move to strike. No
10 foundation.

11 JUDGE BROWN: Foundation.

12 MR. BOEHLERT: Okay.

13 BY MR. BOEHLERT:

14 Q Do you have any way to determine from looking at
15 this document who prepared it?

16 A The control number used down in the lower right-
17 hand corner is the only -- is the control number that is,
18 from my understanding, was only assigned by 4C. TechDyn did
19 not use such a control number and system.

20 Q And the control number is where?

21 A It's down in the lower right-hand corner. It says
22 17049T.

23 JUDGE BROWN: I sustain the objection. I don't
24 think that's sufficient to show that they prepared it. And
25 if they say they didn't, you will have to have some proof.

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1 BY MR. BOEHLERT:

2 Q Did you discuss with anyone who prepared this
3 document?

4 A I received this document as part of -- you know,
5 as my in-briefing as part of my study information. Mr.
6 Johnson, the program manager, informed me that all of these
7 documents were prepared by 4C.

8 Q Upon your review of these various documents you've
9 described, what did you do next with respect to the remote
10 control element?

11 A Well, I had occasion to --

12 MR. WORK: Could we have a time frame, please, so
13 we know what we're talking about?

14 MR. BOEHLERT: Happily.

15 BY MR. BOEHLERT:

16 Q You said you started when, Mr. Thornton?

17 A I started, I was brought on board December 27,
18 1986. The time frame that I'm speaking to, approximately
19 two weeks of January for research and review of
20 documentation before I actually began a detailed day-to-day
21 involvement in the contract effort.

22 Q And what was your next involvement with the remote
23 control element?

24 A The next major involvement, I guess, would be I
25 made a visit to the 4C facility in Torrence, California, to

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1 observe the assembly and preliminary testing of the RCE as
2 well as the rest of the communication hardware.

3 Q When was that?

4 A That was approximately March of 1987. The exact
5 date I don't remember. It was somewhere in the 20 March
6 time frame.

7 Q Please tell us what happened at that meeting.

8 A Well, it wasn't exactly a meeting. As I
9 indicated, it was an opportunity for me to take a look at
10 the assembly of the communication functional area hardware
11 suites and to have a look and determine how the RCE
12 development was progressing.

13 Q Did you meet with anyone out there?

14 A I met with my TechDyn installer personnel, Mr.
15 Southard, Mr. Tilley, Mr. Carter. I met with 4C software
16 engineer at the time on the RCE, Mr. Ken Turry, and I
17 subsequently met with Mr. Mikki Seagraves, who was the 4C
18 project manager for the ICCE contract.

19 Q Did you have an opportunity at that time to
20 observe the RCE hardware suite?

21 A Yes, I did.

22 Q What did you observe?

23 A Well, I observed that basically it consisted of
24 the items of hardware, some of which depicted on this block
25 diagram, or schematic drawing that we just went over,

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1 Exhibit 219.

2 Q All right. If I asked you to come down to the
3 overhead projector and put that block diagram back on there,
4 can you show the jury in an abbreviated form how the remote
5 control element is to work?

6 A Yes, sir.

7 Q Okay, would you do that, please?

8 (Continued on next page.)

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1 MR. BOEHLERT: Can everyone see that?

2 BY MR. BOEHLERT:

3 Q Mr. Thornton, I'm going to ask that you please
4 take us through this in an abbreviated fashion. I think you
5 mentioned this is for the ground entry station. Is that
6 correct?

7 A Yes. This is the ground entry station and this
8 symbol down here, this box here, gives --

9 JUDGE BROWN: Can you all hear him?

10 (Pause.)

11 THE WITNESS: Gives detailed information as to how
12 these various switches up here -- there are relay actions
13 between the A and B port which would allow a single
14 communications circuit here, for example, that's coming into
15 this switch here, the switch across the bottom of 1, 2, 3,
16 the path could be through any combination of these switches
17 to eventually end up on a radio out here. The voice could
18 be switched between radio 1, 2 and 3. In the case of the
19 TADIL-A signal, which is the data signal, it would come in
20 through the data terminal set, which is shown on this side,
21 through digital switches and, again, be switched between the
22 different radios out here. For example, if you take the
23 digital signal coming in here on switch 14, switch 14 -- if
24 it was switched to the B position here, then the TADIL-A
25 data signal will go to radio 1. If it was switched to the A

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1 position, switch 13, well, then it would be have to be
2 switched to the B position to put it onto radio 2 or
3 switched to the A position to put it onto radio 3. That
4 combination could happen with all the incoming voice and
5 control circuits down here that are shown here as well.

6 BY MR. BOEHLERT:

7 Q Mr. Thornton, I see a box there with the
8 designation RCUZ150 down in the right-hand corner. Can you
9 point to that, please?

10 A This is the Zenith PC, the Z150 personal computer,
11 which is used as the remote control unit computer, personal
12 computer.

13 Q And I also see some boxes to the -- right there.
14 LSI4800 modem. What's that referring to?

15 A These are data modems that are used to transfer
16 both the TADIL-A signal or the data signal, the airborne
17 platform data signal --

18 Q You mean the AWACS by that?

19 A AWACS. Yes. The AWACS TADIL-A signal. The modem
20 allows that information to be transmitted over telephone
21 lines back to the master direction center, the signal from
22 the master direction center to be transmitted out to the
23 ground entry station and subsequently converted within the
24 data terminal set, which is this device here, and sent out
25 over the radio here to the AWACS. And of course that

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1 process is a duplex or a both way communication system. You
2 also have the modem. The modem also serves a dual function
3 here, to allow the transmission of the remote control -- I'm
4 sorry -- the Zenith PC remote control command status
5 query/response information back over telephone lines down to
6 the master direction center where the master computer is
7 located.

8 Q Is there also a diagram in that document
9 pertaining to the master control center?

10 A Yes.

11 Q And is that the next page of that document?

12 A Yes.

13 Q Would you please put that on the overhead? And if
14 you could explain what that is to us.

15 A This again is --

16 Q Before you do, Mr. Thornton, if I might -- the
17 previous one was for the remote control diagram for the
18 ground entry stations. Is that correct?

19 MR. WORK: Objection. There's no indication that
20 that's what this is. There's no foundation for this. This
21 document came in well before he came to this. It's not an
22 entitled document.

23 MR. BOEHLERT: I was only summarizing testimony he
24 had already given, Your Honor.

25 JUDGE BROWN: Well, you can ask him what it is and

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1 I rule that he may answer what it is based on his knowledge
2 of the contract.

3 MR. WORK: The implication of the question -- let
4 me just -- just so Mr. Boehlert would know and we don't
5 waste his time -- the implication of the question is that
6 the diagram that we just saw is the RCE, the diagram of the
7 RCE. Unless there is a foundation for that, it shouldn't
8 come in that way and I think Mr. Thornton knows that's not
9 the diagram of the RCE.

10 JUDGE BROWN: Well, I just ruled that he can ask
11 him what it is but don't tell him what it is and I rule he
12 may say what it is and if he's wrong, you can show it.

13 BY MR. BOEHLERT:

14 Q The prior diagram was what, Mr. Thornton?

15 A The prior diagram was the remote control unit
16 which depicted the ground entry station and the remote
17 control system. It was part of the overall remote control
18 element.

19 MR. WORK: Objection. No foundation for that,
20 Your Honor.

21 JUDGE BROWN: I'll overrule the objection.

22 BY MR. BOEHLERT:

23 Q And the document we have up here now, Mr.
24 Thornton, what is that?

25 A This is the remote control -- the master control

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1 unit which is located at the master site or the central site
2 and it is designated at MCU, as indicated right here. It's
3 a Zenith PC and this is the master control unit. The
4 hardware that's located at the master site is indicated as
5 well. Again, you have a data terminal set, which is the
6 other half of this data terminal set previously shown at the
7 ground entry station. You have again the same type of audio
8 switches, digital switches, the modems -- the LSI4800
9 modems. This is the other half, the other end of the modem,
10 if you will. And, again, the connectivity is basically
11 established through the various switch combinations out here
12 as to how these various circuits would be routed.

13 Q Would you explain to us how that works?

14 A You usually have this design to cover -- it should
15 be here -- two ground entry stations. This shows the
16 various circuits -- circuits 1 through 6 -- C1 through 6.
17 Three circuits to each ground entry station. Depending upon
18 the ground entry station the operator desires to work with,
19 communicate through, he can make entries through the master
20 control unit here and direct the switching action to
21 accomplish rerouting of these circuits in any combination or
22 any direction that he so chooses.

23 Q When we talk about switches, either now or later,
24 where are the switches on this diagram?

25 A The switches are represented by these square

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1 boxes, rectangular boxes, here in this column here as well
2 as down here. These are digital switches which -- digital
3 switches in this case, the transfer of information is in
4 a -- data terminal ready, the data terminal is set
5 previously and where they receive what we call an RS232
6 format. That's a data terminology, if you will, a digital
7 transfer terminology.

8 Q Getting more basic, though, what's the purpose of
9 a switch?

10 A Well, the purpose of a switch, basically, is to
11 allow redirection of the communication to whichever path you
12 want it in.

13 MR. BOEHLERT: Okay. Thank you very much, Mr.
14 Thornton. If you would resume the stand, please.

15 (Pause.)

16 BY MR. BOEHLERT:

17 Q During your March 1987 visit to Whittaker, did you
18 have an opportunity to observe the hardware configuration
19 for the remote control element?

20 A Yes, sir.

21 Q And how did it compare to the two diagrams we just
22 reviewed?

23 A The hardware configuration was identical.

24 Q Was the remote control element ever submitted to
25 testing?

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1 A The remote control element -- no, sir.

2 Q Was testing of the remote control element ever
3 planned?

4 A Yes.

5 Q What happened?

6 A During April of 1988, we had an opportunity -- we
7 had the test schedule to be accomplished at Carlsbad,
8 California during the month of April of 1988.

9 Q What type of test was scheduled?

10 A We had a communications integration test and we
11 had the RCE formal qualification test and the follow-on
12 system level test planned to occur during the last weeks of
13 April.

14 Q Did you travel to California for these tests?

15 A Yes, I did.

16 Q What happened?

17 A Preliminary to conduct of the test for the
18 Government, the Government has a requirement to conduct a
19 test readiness review.

20 Q What does that consist of?

21 A The test readiness review is basically to present
22 all of the outstanding problems, all of the -- any redline
23 changes that are necessary to the procedures. The
24 assumption is that you have already gone through and done a
25 dry run of your test in accordance with your procedures.

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1 There might be a minimal change to the procedures. That
2 information needs to be conveyed to the witnesses in
3 advance. You also discuss and outline your overall test
4 objectives and some sort of schedule for when the various
5 events will be conducted.

6 Q Did a test readiness review meeting take place?

7 A Yes.

8 Q Did you attend that?

9 A Yes.

10 Q Who else attended it?

11 A Principal attendees -- myself from TechDyn Systems
12 Corporation, Mr. Don Ellis from TechDyn Systems Corporation,
13 Mr. Ralph Rose from TechDyn Systems Corporation, Mr. Ken
14 Turry from the Whittaker organization. There may have been
15 others from Whittaker, I can't remember specifically now.
16 But from the Government, there was Lieutenant Dalrymple was
17 the principal witness for the Air Force. There was a Mr.
18 John Michitson who was a Mitre employee as a technical
19 representative, technical advisor to the Air Force. And
20 Mrs. Claudia Ward, who was a technical advisor from Mitre
21 also to the Air Force.

22 Q What happened at the meeting?

23 A During the discussion of the test procedures
24 relative to the RCE formal qualification, it was discovered
25 that the B-level specifications to which the test was to be

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1 conducted against had undergone some redline changes.

2 Q Who had performed those changes?

3 A Mr. Ken Turry indicated that he had made those
4 changes because the specification requirements could not be
5 met in all instances.

6 Q And who was Mr. Turry?

7 A Mr. Ken Turry was the software engineer, software
8 project engineer for the RCE.

9 Q Do you recall what those changes consisted of?

10 A Principal among those, there were some screen
11 changes. In other words, the display information was not
12 identical to what was written up in the specification but
13 principally the main change involved timing of status
14 messages which translates further to an interruption of the
15 circuit for readiness or performance of readiness test in
16 order to switch circuits back and forth.

17 Q Can you put that in more layman terms?

18 A Well, basically the changes dealt with -- from
19 what was written in the specification -- a relaxation of the
20 standard for accomplishing a transfer of the communications
21 circuit from one ground entry station to the other ground
22 entry station.

23 Q And do you know what that variance was?

24 A I believe that it went from a nominal two minutes
25 to get that accomplished to something on the order of six

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1 minutes as indicated earlier on a nominal basis but on a
2 worst case basis, it could have been as much as 13 minutes.

3 Q The specifications that were being changed -- had
4 they previously been approved by the Air Force, do you know?

5 A Yes, they had.

6 (Continued on next page.)

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1 Q What impact, if any, did these changes have on
2 that meeting?

3 A Essentially, in summary fashion, counselor, the
4 Government said that we were not prepared to test; that it
5 would not test the system against the changed baseline.

6 Q Why not?

7 A The changes were more than minor in nature and
8 that those changes, if they were to implemented, would have
9 to be submitted in the form of engineering change proposal
10 for the Air Force to review and approve or reject.

11 Q Then what happened?

12 A Basically, the Government concluded that the test
13 could not be conducted and any scheduled testing was
14 deferred, to be rescheduled.

15 Q Was an engineering change proposal ever prepared
16 concerning this timing issue?

17 A Yes, there was.

18 Q Who prepared it?

19 A We had a -- well, the government personnel was
20 still there and they decided to make maximum use of their
21 time and we had a follow-on meeting of all principals to set
22 down and review all of the changes, the justification for
23 all of the changes. The Government assisted Whittaker,
24 principally Mr. Ken Turry, in the revision language
25 necessary to format the ECP so that it would go through from

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1 administrative standpoint as rapidly as possible.

2 Q Was an ECP, engineering change proposal prepared?

3 A Yes.

4 Q By who?

5 A By Whittaker.

6 Q And did they submit it to TechDyn?

7 A Yes.

8 Q What did TechDyn do with it?

9 A We forwarded it to the Air Force in the normal
10 staffing procedures.

11 Q What happened to that proposal?

12 A It was subsequently rejected.

13 Q Why?

14 A The Air Force indicated by letter of somewhere in
15 early June 1988 that the time necessary to perform the
16 status and to perform the circuit switching was excessive
17 because of the redness test. The redness test could take up
18 to 13 minutes, and that time was totally unacceptable to the
19 Air Force.

20 Q Was that information communicated to Whittaker?

21 A Yes, sir.

22 Q What was Whittaker's response?

23 A Essentially Whittaker said that they could do
24 nothing else and they stopped working on the RCE effort.

25 Q Mr. Thornton, I place before you a document that's

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1 been marked as Plaintiff's Exhibit 378 for identification.

2 MR. BOEHLERT: Your Honor, may I ask you, I'm
3 certainly prepared to go forward with this witness as late
4 as you want. This would be a logical breaking point.

5 JUDGE BROWN: We'll stop now.

6 MR. BOEHLERT: Okay. Thank you.

7 JUDGE BROWN: And may I have 210, 211 and 219?
8 Are they in the same book?

9 The jury may go home. Remember the instruction.
10 Don't get in conversation with anybody. Leave your
11 materials here. Put the case in the back of your mind.
12 Think about something else tonight and come back tomorrow
13 refreshed and ready to go. We will see you at 9:00.

14 Everybody be ready at nine?

15 MR. BOEHLERT: Yes, sir.

16 JUDGE BROWN: See you at 9:00.

17 (Whereupon, at 5:00 p.m., the hearing was
18 recessed, to resume at 9:00 a.m., Tuesday, July 9, 1991.)

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1 we get there, though, sir, I'd like to ask you -- prior to
2 that time, did there ever arise an issue regarding the
3 reliability of the Z150 computer that we looked at yesterday
4 on the diagram.

5 A Yes, sir.

6 Q What happened?

7 A This was in, I believe, early '87, April-May
8 timeframe of '87. The Z150 was alleged to have some
9 overheating problems.

10 Q Who made that allegation?

11 A The determination was made by the 4C employees, I
12 believe Mr. Ken Turry was the principal person.

13 Q What, if anything, did TechDyn do in response to
14 that allegation?

15 A Well, basically, we tried to observe the
16 configuration that was being used for the test in the test
17 suite. There was a fan actually blowing over the whole
18 configuration to try to keep the units cool. But
19 essentially what was happening, there was a display which
20 after you select the frequency -- in other words, a display
21 which indicated that the frequency was drifting. So in
22 other words, if you selected a frequency on the radio it
23 would indicate that the frequency was drifting and this was
24 implied to be the fault of the Z150, that the Z150 was
25 overheating.

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1 Q Was it ever determined if it was the fault of the
2 Z150?

3 A Yes, it was determined not to be the case.

4 Q How was that determined?

5 A Apparently this was within the 4C sphere of
6 operations. They determined that the UHF simulator which
7 was actually presenting the frequency information apparently
8 had some internal wiring problems and it resulted that the
9 frequency stabilized and the problem never reoccurred.

10 Q Had TechDyn supplied that simulator to Whittaker?

11 A No.

12 Q Whose equipment was that?

13 A That was a Whittaker-4C developed item.

14 Q Prior to the stop work, did there ever arise an
15 issue regarding the reliability of the Kodex 4800 modems
16 that you showed us yesterday?

17 A That wasn't an issue of reliability. That was a
18 question of suitability.

19 Q What was that issue?

20 A Apparently, the Kodex LSI 4800 modem or 48I as we
21 commonly called it would not synchronize itself or
22 resynchronize. If you recall, we have ground entry
23 stations, multiple ground entry stations, and you're not
24 connected to all of those ground entry stations on a
25 simultaneous basis. As you switch from one ground entry

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1 station to another ground entry station, you have to talk to
2 that modem first so when you switch to that ground entry
3 station, the modem, if it has been in an idle state for a
4 period of time, would not synchronize.

5 Q What, if anything, did TechDyn do in response to
6 that issue?

7 A Essentially, we had several meetings with the
8 Kodex engineers who had recommended the item strongly that
9 the design was in fact suitable for resynchronization and
10 essentially they admitted that hey, we made a mistake.
11 That's not the case. It won't do it. After 90 seconds,
12 you'll have problems resynchronizing.

13 Q So what was done next?

14 A Kodex recommended another of their products,
15 another modem, namely the 2325 model which had a feature
16 that allowed it to train on any data impulse and as such
17 would synchronize.

18 Q And were those modems purchased?

19 A Yes.

20 Q By TechDyn?

21 A Yes.

22 Q And were they furnished to Whittaker?

23 A They were furnished as part of the test suite,
24 yes.

25 Q Okay. Did that solve the problem?

1 A Yes.

2 Q Now, I'd like you to take us back, please, to
3 where we were yesterday. And you said that Whittaker
4 stopped work. Under what circumstances did you understand
5 they stopped work on the remote control element?

6 A Basically, they sent a letter which inferred that
7 their reason or their cause for stopping work on the RCE was
8 faulty equipment supplied by TechDyn.

9 Q Mr. Thornton, I have placed in front of you a
10 document that's been marked as Plaintiff's Exhibit 378 for
11 identification and ask if you can identify that.

12 Mr. Thornton, that's a two-page document from
13 Whittaker to TechDyn dated 8 July 1988. Would you review
14 that, please and tell me if you recognize it?

15 A Yes, sir.

16 Q And what is it?

17 A This is the letter that advised of the stop work
18 on the RCE.

19 MR. BOEHLERT: Your Honor, I move Plaintiff's
20 Exhibit 378 into evidence.

21 JUDGE BROWN: Any objection to Exhibit 378?

22 MR. WORK: No objection.

23 JUDGE BROWN: It's received.

24 (The document referred to, having
25 been previously marked for

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1 identification as Plaintiff's
2 Exhibit 378, was received in
3 evidence.)

4 BY MR. BOEHLERT:

5 Q Would you please read the first paragraph?

6 A "Whittaker Electronic Systems herein advises
7 TechDyn systems that WES must stop work on the software
8 development and testing in support of the remote control
9 element (RCE) effective this date."

10 Q The next paragraph says, "The RCE has encountered
11 problems in the TechDyn hardware that have caused program
12 delays and resultant cost overruns in our software
13 development efforts in support of the communication
14 functional area (CFA)."

15 At the time of this letter, were you aware of any
16 hardware problems?

17 A No, sir.

18 Q The next sentence says, "Until the TechDyn
19 hardware problems are identified and resolved, continuation
20 of the software development effort is not possible."

21 Did that sentence advise you of what hardware
22 problems, if any, were being referred to?

23 A No, sir.

24 Q Anywhere in this letter does it tell you what
25 hardware problems are allegedly being experienced?

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1 A Not specifically. No, sir.

2 Q Do you know whether Whittaker did stop work on the
3 remote control element?

4 A Yes, sir, they did.

5 Q Do you know if there ever came a time that they
6 resumed work on the remote control element?

7 A To my knowledge, no, sir.

8 Q Well, what was the next involvement that you had
9 concerning Whittaker and the remote control element?

10 A I didn't have any specific involvement in a review
11 but there was an audit conducted of the C-5 specifications
12 during the July timeframe. In other words, a review
13 performed by the Government to determine the status or
14 the -- well, yes, the status of the C-5s themselves.

15 Q What were the results of that audit?

16 A Basically, the Government informed us that the
17 C-5s still required a lot of work.

18 Q After that time, did you have occasion to speak
19 with anyone at Whittaker about their efforts on the remote
20 control element?

21 A During the October timeframe of '88, I spoke with
22 Mr. Ken Turry to inquire of any activity on correcting the
23 C-5s or to bring those up to standards and Mr. Ken Turry
24 responded to my inquiry.

25 Q What did he say?

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1 A Basically that he had not done any work on the
2 C-5s and, in fact, he was told not to do anything on the RCE
3 activity.

4 Q What was TechDyn's response to that information?

5 A Well, I personally said thank you very much and
6 hung up.

7 Q Okay. Did TechDyn do anything after that with
8 respect to the remote control?

9 A Well, within the company we started to evaluate
10 and look at possible alternatives to the software driven
11 RCE.

12 Q Why were those alternatives being reviewed?

13 A Essentially, it appeared that we were not going to
14 make any significant progress. We had reached a position of
15 stalemate with Whittaker relative to continued software
16 activities in the RCE.

17 Q Did TechDyn have occasion to speak to the Air
18 Force about this issue?

19 A Oh, yes, sir, I did personally. I spoke to
20 Lieutenant Dalrymple, who was principally the lead engineer
21 at that time; Captain Petroff, who was the interim program
22 manager; and Mr. John Michitson of Mitre.

23 Q When did those meetings take place?

24 A Well, those conversations took place late
25 October/early November '88 timeframe.

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1 Q And what was discussed during that timeframe?

2 A Well, basically, I inquired of the Air Force as to
3 any -- as to their position or their feelings relative to
4 utilizing a hardware driven approach to satisfying the RCE
5 requirement under the terms of the contract.

6 Q Was that matter pursued?

7 A Yes, it was.

8 Q And how was that done?

9 A During the latter part of November/early December
10 we had occasion to visit with the people at Hanscom Air
11 Force Base, the Mitre people, the Government representatives
12 and basically I had done some research with prospective
13 vendors of what we considered a critical item of hardware to
14 be used for controlling the UHF radios. And so we went up
15 to share all of that information and to discuss the
16 ramifications of such a change.

17 Q Was Whittaker advised of those meetings?

18 A I believe they were, sir.

19 MR. WORK: Objection. No foundation.

20 JUDGE BROWN: Sustained. You have to lay a
21 foundation.

22 MR. BOEHLERT: Okay.

23 BY MR. BOEHLERT:

24 Q Do you have any personal knowledge of whether
25 Whittaker was advised of those meetings in that timeframe?

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1 A The program manager at the time, Mr. Ellis, we had
2 daily dialogue, of course, indicated that he had spoken to
3 Mr. Dave Christensen, who was the --

4 MR. WORK: Objection. Hearsay.

5 JUDGE BROWN: Sustained.

6 MR. WORK: Move to strike.

7 JUDGE BROWN: Stricken.

8 BY MR. BOEHLERT:

9 Q Were these meetings in November with the Air Force
10 or were these conversations you're talking about?

11 A During November, these were telephonic
12 conversations.

13 Q Okay. Did there come a time that you met with the
14 Air Force concerning this remote control issue?

15 A Yes, sir.

16 Q When did that occur?

17 A That occurred late December, somewhere in the 20
18 December timeframe.

19 Q Did you attend those meetings?

20 A Yes, sir, I did.

21 Q What happened?

22 A We made a presentation to the Air Force as to the
23 method that we would propose as an alternative to
24 implementing the RCE. That is, the utilization of control
25 heads associated with each one of the radios on a separate

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1 basis; the basic rack configuration of what it would look
2 like; lead times for acquisition of the various hardware
3 items and we discussed the critical item of hardware, the
4 conversion device, for using with the UHF radio.

5 Q Who attended that meeting?

6 A From the Air Force, Lieutenant Dalrymple, Captain
7 Petroff; Mr. John Michitson from Mitre; I believe Captain
8 Chris Jacobsen was there; myself from TechDyn, Don Ellis
9 from TechDyn.

10 Q Any representatives from Whittaker?

11 A Mr. Bohler -- I believe it was Mr. Bohler was at
12 Hanscom Air Force Base during that timeframe. Yes. During
13 that day.

14 Q Did he attend that meeting?

15 A Mr. Bohler attended briefly. He did not
16 participate in the whole session.

17 Q Was he precluded from participating in the whole
18 session?

19 A No, sir, he was not.

20 Q Do you know why he didn't participate in the whole
21 session?

22 A Mr. Bohler, I believe, at the time was director of
23 contracts for Whittaker and after the purpose of the meeting
24 was explained, he basically stated words to the effect that
25 I thought we were going to discuss reformatting the

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1 contract. If that's not part of this agenda, then I'm not
2 interested in discussing the RCE.

3 Q What was the purpose of the meeting that was
4 articulated to him?

5 A Well, during the meeting it was articulated to him
6 the purpose was to address a possible solution to
7 implementing the RCE for the ICCE contract.

8 Q What happened next concerning the remote control
9 element?

10 A During January of 1989, we had an occasion to host
11 a meeting at Springfield, TechDyn's corporate offices, with
12 Air Force participation. Whittaker was invited to
13 participate. During which --

14 Q Did Whittaker attend that meeting?

15 A No, sir.

16 Q Why not, if you know?

17 A I don't have firsthand knowledge, counsellor.

18 MR. WORK: Object to any further statement on the
19 subject.

20 BY MR. BOEHLERT:

21 Q Do you know whether they were invited, though?

22 A Yes, sir, they were invited.

23 Q Okay. And they did not attend.

24 A No, sir.

25 Q Okay. What happened at that January meeting?

7:

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1 A At the January meeting, we had presentations from
2 two vendors of the item that we considered most critical to
3 the design implementation. Those vendors, Grimm Corporation
4 and Raven Corporation, each vendor on a separate basis made
5 a presentation regarding the capabilities of their item of
6 hardware, during which we took the necessary notes,
7 technical specifications of the items and subsequently
8 evaluated the use of those items in our design.

9 Q Do you know whether the results of that meeting
10 were ever communicated to Whittaker?

11 A Yes, sir.

12 Q Mr. Thornton, I'm going to place in front of you a
13 document that I've marked as Plaintiff's Exhibit 410 for
14 identification.

15 (Pause.)

16 JUDGE BROWN: May I have 378 while they're doing
17 that?

18 (Pause.)

19 (Continued on next page.)

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1 MR. BOEHLERT: Mr. Thornton, after you review that
2 document, do you recognize it?

3 THE WITNESS: Yes, sir. This is the document that
4 is used to transmit the information to -- to the technical
5 meeting held at Springfield in the January 1989 time frame.

6 MR. BOEHLERT: Your Honor, I move Plaintiff's
7 Exhibit 410 into evidence.

8 JUDGE BROWN: Any objection to 410?

9 MR. WORK: No objection, Your Honor.

10 JUDGE BROWN: Proceed.

11 (The document referred to, having
12 been previously marked for
13 identification as Plaintiff's
14 Exhibit 410, was received in
15 evidence.)

16 BY MR. BOEHLERT:

17 Q What was the purpose of this letter, Mr. Thornton?

18 MR. WORK: Objection, no foundation.

19 MR. BOEHLERT: Are you familiar with this letter?

20 THE WITNESS: Yes, sir.

21 MR. BOEHLERT: And do you know the purpose of this
22 letter?

23 MR. WORK: Objection, no foundation.

24 JUDGE BROWN: Well, who is the author of the
25 letter?

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1 MR. BOEHLERT: Do you know who prepared this
2 letter?

3 THE WITNESS: Yes, sir.

4 MR. BOEHLERT: Who?

5 THE WITNESS: I prepared the memorandum to a
6 contracts, essentially to paraphrase the exact same
7 statements that I have, that's contained in this letter.

8 BY MR. BOEHLERT:

9 Q And from that, are you familiar with the contents
10 of this letter?

11 A Yes, sir.

12 Q Mr. Thornton, what was the purpose of this letter?

13

14 A This letter was used to convey the results of the
15 meeting to Whittaker and to advise, essentially, Whittaker
16 of options for implementing the RCE, utilizing hardware
17 driven remote control capability.

18 Q Reading in the first paragraph -- I'm sorry.

19 (Pause.)

20 Q I'm talking about the second paragraph. It
21 states, in response to the referenced B phone call,
22 phonecon. The data generated during the referenced A TIM,
23 and the referenced A technical interchange meeting. Is that
24 the reference A here at the top of the letter?

25 A Yes, sir.

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1 Q The January 3 and 4, 1989, meeting you just
2 described?

3 A Yes, sir.

4 Q Is enclosed herewith. Whittaker Electronics
5 Systems is requested to evaluate the options, and if so
6 desired, recommend to TechDyn a change to the contract based
7 on RCE implementation changing to a hardware approach.

8 Since RCE hardware and software development are
9 WES tests under the subject contract, it is WES's
10 responsibility to recommend RCE solutions which are
11 acceptable to TechDyn and the government.

12 Do you know whether Whittaker replied to this
13 letter?

14 A Yes, sir, they did.

15 Q Did they reply in writing, do you know?

16 A Yes, sir.

17 Q What was their response?

18 A Essentially that they did not take this 6 January
19 1989 letter as action or direction. That they would accept
20 that letter as information only.

21 Q Would you please turn to the next tab in your
22 book, the document marked as Plaintiff's Exhibit 411, for
23 identification. A two page document from Whittaker to
24 TechDyn. Do you recognize this document?

25 A Yes, sir.

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1 Q What is it?

2 A This is the letter that informed TechDyn that the
3 Altwood RCE hardware solutions was not taken by Whittaker as
4 a directed action or accepted by Whittaker as an action.

5 MR. BOEHLERT: Sir, I move Plaintiff's Exhibit 411
6 into evidence.

7 JUDGE BROWN: Any objection to 411?

8 MR. WORK: No objection, Your Honor.

9 JUDGE BROWN: Proceed.

10 (The document referred to, having
11 been previously marked for
12 identification as Plaintiff's
13 Exhibit 411, was received in
14 evidence.)

15 BY MR. BOEHLERT:

16 Q Referring to the first page of that document,
17 please, would you read the first paragraph?

18 A In reference A letter, included options developed
19 by headquarters ESD, Mitre and TechDyn to rebase line and
20 remote control element RCE period. The letter contains both
21 hardware and software options. Whittaker Electronic
22 Systems, it says, reviewed the data provided, and considered
23 that data informational in nature.

24 (Pause.)

25 Q As of this time, January 11, 1989, had Whittaker

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1 taken any further action in working on the remote control
2 element?

3 A To my knowledge, no, sir.

4 Q What response, if any, did TechDyn have to this
5 letter?

6 A I believe the next action was taken was the June
7 notice.

8 Q Mr. Thornton, I ask you please to refer to the
9 document that I've marked as Plaintiff's Exhibit 413 for
10 identification. Do you have that document?

11 A Yes, sir.

12 Q What is it?

13 A This is a ten day cure notice directed to
14 Whittaker Electronics Systems for the remote control
15 element.

16 MR. BOEHLERT: I move Plaintiff's Exhibit 413 into
17 evidence.

18 JUDGE BROWN: Any objection to 413?

19 MR. WORK: No, objection, Your Honor.

20 JUDGE BROWN: Proceed.

21 (The document referred to, having
22 been previously marked for
23 identification as Plaintiff's
24 Exhibit 413, was received in
25 evidence.)

1 (Pause.)

2 BY MR. BOEHLERT:

3 Q Would you read the first paragraph for the jury,
4 please?

5 A TechDyn Systems Corporation, in accordance with
6 the afore clauded 52.249-8, default, fixed price supply and
7 services, incorporated into the subject subcontract 125-
8 001, by section 233 R of, and modification number 3 to same,
9 is herewith issuing this ten day cure notice to Whittaker
10 Electronics System, WES, to WES's failure to make progress
11 so as to endanger performance of the subject subcontract
12 with regard to the remote control element RCE period.

13 WES was subcontracted to develop the RCE by CLIN
14 2A B and portions of CLIN 57 on the said subcontract. Due
15 to WES's failure to demonstrate satisfactory progress under
16 the above stated plans, TechDyn is considering said plans or
17 relevant portions thereof with regard to the RCE for
18 default.

19 Q Do you know whether Whittaker responded to this
20 letter?

21 A Yes, sir, they did.

22 Q Did that response contain any solutions to the
23 problems that were being experienced?

24 A No, sir.

25 Q What action, if any, did TechDyn take in response

1 to that?

2 A I believe Counselor that --

3 MR. WORK: Objection.

4 MR. BOEHLERT: What was the next thing you --

5 MR. WORK: No foundation.

6 JUDGE BROWN: No foundation for what?

7 MR. WORK: Your Honor, pursuant to your suggestion
8 -- and I apologize for interrupting you, Mr. Thornton --
9 Pursuant to your suggestion yesterday, I have tried to
10 object before --

11 JUDGE BROWN: You mean because he said I believe
12 or because of the question?

13 MR. WORK: Because he said I believe.

14 JUDGE BROWN: Okay. Thank you.

15 MR. BOEHLERT: It's all based on his belief and
16 understanding, Your Honor.

17 JUDGE BROWN: Well, it isn't all based on his
18 belief and understanding. A lot of it, he did. And if he
19 is just saying what he thinks somebody else did, then he
20 can't do it. On the other hand, some people just have a way
21 of speaking, where they say, I believe. So, what we need,
22 Mr. Thornton, is what you know from your own knowledge,
23 happened.

24 BY MR. BOEHLERT:

25 Q What is the next thing you are aware of happened

1 regarding the remote control?

2 A The termination for default was issued by the
3 company, by TechDyn, to Whittaker Corporation.

4 Q Mr. Thornton, I ask you to please refer to a
5 document that has been marked as Plaintiff's Exhibit 416 for
6 identification.

7 (Pause.)

8 MR. BOEHLERT: Sorry for the interruption, Your
9 Honor. Was this received in evidence?

10 JUDGE BROWN: Was what received in evidence?

11 MR. BOEHLERT: Plaintiff's Exhibit 416? Do you
12 recognize this document?

13 THE WITNESS: Yes, sir.

14 BY MR. BOEHLERT:

15 Q What is it?

16 A This is the partial termination for default letter
17 that I just mentioned.

18 MR. BOEHLERT: Your Honor, I move Plaintiff's
19 Exhibit 416 into evidence.

20 JUDGE BROWN: Any objection to 416?

21 MR. WORK: No objection, Your Honor.

22 JUDGE BROWN: Four-sixteen is received.

23 (The document referred to, having
24 been previously marked for
25 identification as Plaintiff's

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1 Exhibit 416, was received in
2 evidence.)

3 BY MR. BOEHLERT:

4 Q Would you please read the first paragraph of this
5 letter?

6 A TechDyn Systems Corporation, in accordance with
7 the foreclause 52.49-8, default, fixed price supply and
8 service, incorporated into the subject subcontract 125.001,
9 dated 16 July 1985, by Section 2-33 thereof, hereby
10 terminates for default, CLIN 002AB and that portion of CLIN
11 0057 pertaining to work related to the remote control
12 element RCE period.

13 This partial contract termination, partial
14 contract termination for default, is made due to the failure
15 of Whittaker Electronics Systems (WES) to make progress, so
16 as to endanger the performance of the subject subcontract as
17 it relates to the RCE, period.

18 Q After this default, sir, what next does TechDyn
19 do?

20 A The next action taken, sir, was to proceed full
21 scale, full speed, to acquire, finalize, design, prepare
22 engineering change proposal for implementing the alternate
23 solution to the RCE.

24 Q And how was that pursued?

25 A Several meetings were held with Air Force and

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1 minor representatives, to review and revise the appropriate
2 specifications necessary for the engineering change proposal
3 to be submitted and implemented. During this period of
4 time, we also initiated purchase orders to the respective
5 vendors, particularly those items that were considered long
6 lead term items.

7 Q Was an engineering change proposal prepared by
8 TechDyn?

9 A Yes, sir.

10 Q What was the purpose of that?

11 A The engineering change proposal, sir, is necessary
12 to be forwarded in order to effectively change the nature of
13 implementation of the specificity of implementing the RCE of
14 the contract.

15 Q And was an engineering change proposal submitted
16 to the Air Force?

17 A Yes, sir.

18 Q What was their response?

19 A Their response, this was over a period of time,
20 sir. Their response, first, there would be some changes,
21 wordsmithing, some corrections of further explanations. It
22 was not a one time acceptance, but eventually the
23 engineering change proposal was accepted.

24 Q Do you know approximately when that was?

25 A I believe it was put on the contract during July

1 of 1989 time frame.

2 Q What does TechDyn do with respect to the remote
3 control element then?

4 A Basically, sir, we assembled all of the hardware.
5 We maintain oversight with the vendors as to expected
6 deliveries. Any problems associated with those deliveries.
7 Finalize drawings, attempt to finalize as much of the
8 drawing information as we could. We redesign our lay out of
9 equipment within the communication equipment cabinets. All
10 of those basic engineering requirements.

11 Q While TechDyn was doing that work, did there ever
12 come an occasion when the Air Force would meet and discuss
13 with TechDyn, the RCE with TechDyn?

14 A We were having program management reviews, yes,
15 sir.

16 Q Did the Air Force evaluate TechDyn's work at those
17 meetings?

18 A Well, essentially, gave us a pat on the back.
19 Yes, sir.

20 Q Were any of those program management reviews
21 reduced to writing?

22 A Yes, sir. They are all.

23 Q Mr. Thornton, I refer your attention to
24 Plaintiff's Exhibit 559 for identification.

25 A Five fifty-nine?

1 Q Yes.

2 (Pause.)

3 Q Do you have it in front of you, sir?

4 A Yes, sir.

5 Q Please turn to tab 559.

6 (Pause.)

7 Q Have you had a chance to review that document?

8 A Yes, sir.

9 Q And can you identify it?

10 A These are the minutes to the program management
11 review, which was held at TechDyn on 23 March 1989.

12 Q Did you attend that meeting?

13 A Yes, sir.

14 MR. BOEHLERT: Your Honor, I move Plaintiff's
15 Exhibit 559 into evidence.

16 JUDGE BROWN: Any objection to 559?

17 MR. WORK: No objection, Your Honor.

18 JUDGE BROWN: It is received.

19 (The document referred to, having
20 been previously marked for
21 identification as Plaintiff's
22 Exhibit 559, was received in
23 evidence.)

24 BY MR. BOEHLERT:

25 Q Mr. Thornton, I ask that you please turn to page

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1 six of these documents. As you come down the page, about
2 half way down, you see a subparagraph E.

3 MR. WORK: Objection to hearsay, Your Honor. I ask
4 that this be taken off until this issue is resolved.

5 JUDGE BROWN: Take the overhead off a moment.
6 Isn't he reading from a document in evidence.

7 MR. WORK: He's reading from a document which
8 purports to state what someone else, not at TechDyn, said.

9 JUDGE BROWN: Overrule the objection. The
10 document has been received in evidence.

11 BY MR. BOEHLERT:

12 Q Going to paragraph E there, would you please read
13 that?

14 A Mr. John Michitson, Mitre, commented that TechDyn
15 was done a great job on the RCE redesign. Captain Jacobsen
16 agreed and has added unbelievable job.

17 Q Do you recall discussions to that effect at that
18 meeting?

19 A Yes, sir, I do.

20 Q Was that the pat on the back you referred to?

21 A That's the pat on the back I referred to, yes,
22 sir.

23 Q Did TechDyn complete the remote control element
24 for this project?

25 A Yes, sir.

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1 Q Has it been accepted by the Air Force?

2 A Yes, sir.

3 Q Mr. Ellis, was there a cost to TechDyn associated
4 with performing this remote control element work?

5 A Mr. Thornton.

6 Q I'm sorry. I apologize. It's from yesterday,
7 going all day. And I do apologize, Mr. Thornton. Was there
8 a cost to TechDyn for doing that remote control element
9 work?

10 A Yes, sir, there was.

11 Q What was that cost?

12 A I prepared an original estimate for implementing
13 this concept, or this redesign, in the very early stages,
14 for the design effort. At that time, the cost was projected
15 to be, if my memory serves me correctly, in the order of
16 \$700,000. I don't remember the exact figures.

17 Q What was the nature of the cost?

18 A Major cost associated with the hardware items
19 themselves. Each of the control devices was separate items
20 of hardware, and each, of course, costing money. There were
21 spares necessary to be provided under the terms of the
22 contract. So, all of those hardware items added up to a
23 significant cost. And there were costs associated with
24 labor, for necessary redesign effort, redrawing effort.
25 There were costs associated with lead times or

1 delays for the acquisition and implementation of the
2 redesign.

3 Q And were those all costs that were actually
4 incurred by TechDyn in doing this work?

5 A Yes, sir.

6 Q Mr. Thornton, I place in front of you a document
7 that has been marked, I know I have it in my exhibits, and
8 that is why I have been scrambling here. I just can't find
9 it. But I know defendant has it in their exhibits. It's
10 20AAA, in defendant's exhibits. Which I would like to make
11 a Plaintiff's Exhibit, if I may, Your Honor, starting with
12 the 2000 series. I think 2003 or four, 2003. So, I am
13 going to mark this document -- Or would you prefer to have
14 your clerk mark it?

15 JUDGE BROWN: You can mark it 2003 there.

16 (The documents referred to were
17 marked for identification as
18 Plaintiff's Exhibit 2003.)

19 (Continued on next page.)
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1 JUDGE BROWN: What number was it, again, from
2 theirs so they can find it?

3 MR. BOEHLERT: 20AAA.

4 (Pause.)

5 BY MR. BOEHLERT:

6 Q Mr. Thornton, I place before you a document that
7 I've marked as Plaintiff's Exhibit 2003 and I ask if you can
8 identify that document.

9 A Yes, sir.

10 Q What is it?

11 A This is the -- part of this package I prepared
12 directly myself. Part of this -- the costing information is
13 supplied from our finance and accounting department of the
14 company. It is the expected or projected cost for the RCE
15 implementation.

16 Q Do you know when that document was prepared?

17 A It doesn't say here in this document itself but I
18 prepared this document, my portion of the input to this
19 document -- it was early 1989. I don't remember
20 specifically whether it was February or March timeframe but
21 it was earlier during 1989.

22 MR. BOEHLERT: Your Honor, I move Plaintiff's
23 Exhibit 2003 into evidence.

24 JUDGE BROWN: Any objection to Exhibit 2003?

25 MR. WORK: No objection, Your Honor.

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1 JUDGE BROWN: It's received.

2 (The document referred to, having
3 been previously marked for
4 identification as Plaintiff's
5 Exhibit 2003, was received in
6 evidence.)

7 BY MR. BOEHLERT:

8 Q Looking at the second page of that document -- and
9 I apologize, ladies and gentlemen, I don't have it to show
10 to you -- does that set forth an estimated cost for
11 completion of the remote control element?

12 A Yes, sir, it does.

13 Q And what is that number?

14 A \$763,808.

15 Q And turning to the next page, what's listed on
16 that page?

17 A This is cost data associated with the hardware
18 itself. This is man hours projected for testing, travel and
19 documentation.

20 Q What's set forth there?

21 A The cost figures, you mean?

22 Q Yes, sir.

23 A For hardware, the costing is projected at \$63,906.
24 Test equipment \$2000.

25 Q Was the equipment listed there actually used or

1 purchased for this project?

2 A Yes, sir. And more.

3 Q Does this also set forth an estimate for labor?

4 A It sets forth the man hours projected for labor.

5 Q What is the projection there, sir?

6 A For engineering, 600 man hours. Configuration
7 management, 300 hours. Logistics management, 250 hours.
8 Installation and assembly, 280 hours. Engineering drawings,
9 200 hours. Program management and administrative hours,
10 450.

11 Q And are you familiar with the effort that was
12 actually done to complete the remote control element?

13 A Yes, sir. I am.

14 Q How do those estimated numbers compare with what
15 was actually expended?

16 A They are very low.

17 (Pause.)

18 MR. BOEHLERT: No further questions. Thank you,
19 Mr. Thornton.

20 MR. WORK: Your Honor, we are going to call Mr.
21 Thornton as a witness and we have subpoenaed him for that
22 purpose so I will not cross-examine him.

23 JUDGE BROWN: Okay. That's fine. Then he may be
24 excused from the courtroom but you might be called again so
25 you may not remain in the courtroom. You can go wherever

**TRIAL TESTIMONY OF
JOHN MICHITSON**

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1 JUDGE BROWN: You need to in some way advise the
2 record what you're reading, too, or we'll never know. So
3 when you transfer from one page to the next, just tell us
4 where you're going.

5 MR. BOEHLERT: Your Honor, the entire deposition
6 has been marked as a trial exhibit.

7 JUDGE BROWN: Well, the entire deposition won't be
8 a trial exhibit. Come up over here and just read us the
9 page where you are and read.

10 (Pause.)

11 MR. WORK: I've got the transcript here, Mr.
12 Boehlert. You can just read off the pages.

13 JUDGE BROWN: Just tell us where you are and we'll
14 follow.

15 MR. BOEHLERT: Okay.

16 (Whereupon, the deposition of John Michitson was
17 read as follows by Mr. Boehlert and the individual on the
18 witness stand:)

19 Page 6, line 23.

20 "Your deposition has been noticed today so that I
21 have the opportunity to come in and ask you questions from
22 your knowledge as to certain issues involved in this
23 litigation. And during this process, I'm going to be asking
24 you questions and I ask that you give me the answers to the
25 best of your ability.

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1 "I want you to testify from your knowledge and
2 from your memory. If at any time you don't understand a
3 question that I'm asking, please attempt to get
4 clarification. I'll work with you. I don't want you
5 answering questions you don't understand."

6 MR. WORK: Objection. That's just a speech.
7 That's not evidence.

8 JUDGE BROWN: Were you all not going to take care
9 of the objections before we read this to the jury?

10 MR. WORK: We haven't taken care of them.

11 JUDGE BROWN: Take the jury out.

12 (Pause while jury is removed from the courtroom.)

13 JUDGE BROWN: In the first place, have you all met
14 and tried to work out your objections?

15 MR. WORK: No.

16 JUDGE BROWN: We'll take a ten-minute recess to do
17 so.

18 (Brief recess.)

19 BAILIFF: Everyone remain seated and come to
20 order.

21 JUDGE BROWN: Have we resolved all of the
22 objections?

23 MR. WORK: I'm about halfway through the document,
24 Your Honor.

25 JUDGE BROWN: Well, in the future, this will be

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1 done before nine, after five, during lunch or during a break
2 not while the jury is sitting here. No more depositions
3 without having gone over it in advance.

4 MR. BOEHLERT: I understand, Your Honor. I did
5 send it over to them Friday afternoon.

6 JUDGE BROWN: All right. Let's complete it. Just
7 get on with it.

8 MR. WORK: Your Honor, I received this document
9 late Sunday night.

10 MR. BOEHLERT: It was hand delivered to their
11 office Friday. I don't know when it was --

12 JUDGE BROWN: Well, whenever you got it, let's get
13 it done.

14 MR. WORK: Your Honor, I've got this much to go.
15 May I suggest we go on to another witness before we take the
16 jury's time because it's going to take about 15 or 20
17 minutes to read it.

18 JUDGE BROWN: Can we do that?

19 MR. BOEHLERT: Your Honor, I don't think the other
20 witness is here.

21 JUDGE BROWN: All right. This is coming out of
22 your time because it's your presentation of evidence.

23 MR. BOEHLERT: Your Honor, we'll certainly follow
24 that. It's our presentation of evidence. I sent this over
25 to counsel. There were no objections lodged. It's a de

1 bene esse deposition. No objections were made at the time.

2 MR. WORK: This document is full of opinion
3 testimony from someone who hasn't been qualified as an
4 expert. It is full of testimony that --

5 JUDGE BROWN: Well, why didn't you tell us last
6 night?

7 MR. WORK: Because frankly I hadn't read it, Your
8 Honor.

9 JUDGE BROWN: All right. Let's go.

10 MR. WORK: As I said, I received this personally
11 on Sunday night.

12 MR. BOEHLERT: I did get a letter at my office
13 yesterday from another attorney at Crowell & Moring say that
14 a couple of pages they wanted clarified and supplemented but
15 no objections were lodged.

16 MR. WORK: The letter which Ms. Mayman wrote --

17 JUDGE BROWN: Stop talking unless you're going to
18 make constructive progress toward agreeing on it and let's
19 get it done.

20 (Pause.)

21 MR. BOEHLERT: Your Honor, since I haven't even
22 had a chance to review them, I might be able to eliminate
23 portions of the deposition if it's a well founded objection.

24 JUDGE BROWN: Well, you might have but I don't
25 know why -- I mean, I made it pretty clear last night -- I

JOHN MICHITSON - DIRECT EXAMINATION

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1 thought you all would have worked out who was going to read
2 the deposition and that kind of thing. Nobody did anything
3 apparently.

4 MR. BOEHLERT: They didn't lodge any objections,
5 Your Honor. I presented this to them on Friday.

6 JUDGE BROWN: Well, we'll take them up as we go
7 along and see whether we have any objections that can be
8 made. I'm sure that neither of you will let this happen
9 again.

10 I'll overrule the objection so far made.

11 Tell us where you are.

12 MR. BOEHLERT: Okay. I'm on page 7. I don't
13 believe we got to an answer. Continuing on line 7.

14 (Whereupon, the deposition of John Michitson was
15 read as follows by Mr. Boehlert and the individual on the
16 witness stand:)

17 Q "If at any time you don't understand a question
18 that I'm asking, please attempt to get clarification. I'll
19 work with you. I don't want you answering questions you
20 don't understand."

21 A "Okay."

22 Q Page 9, line 10.

23 "Would you please state your full name and home
24 address for the record."

25 A "My name is John Arthur Michitson and my home

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1 address is 6 Claude Road, C-L-A-U-D-E, Road in Chumsford,
2 Massachusetts."

3 MR. BOEHLERT: Page 10, line 3.

4 Q "What is your current position at Mitre?"

5 A "I am a group leader."

6 Q "What do you do?"

7 A "I manage a group of electrical engineers."

8 Q "Are you involved in the ICCE project?"

9 A "I am no longer involved with it since I think the
10 end of July."

11 Q "Of 1990?"

12 A "Of 1990."

13 Q "Were you involved in the ICCE project at one
14 time?"

15 A "Yes."

16 Q "When did you become involved in the ICCE
17 project?"

18 A "August of 1987 through July of 1990."

19 Q "And in what capacities were you involved in the
20 ICCE project?"

21 A "Well, from August of 1987 until November of '88,
22 I was a staff engineer. And from November of '88 until July
23 of 1990, I was a group -- I was the task leader for the
24 project. The Mitre task leader for the ICCE project."

25 MR. BOEHLERT: Page 11, line 18.

1 Q "How long have you been with Mitre?"

2 A "I've been with Mitre since August of 1983."

3 Q "While you were staff engineer on the ICCE
4 project, did you have responsibility for any particular
5 portion of the project?"

6 A "Yes. All of the communications including the
7 remote control element."

8 MR. BOEHLERT: Page 16, line 7.

9 Q "When did you first learn about the ICCE project?"

10 A "I would say the summer of 1987. It would have
11 been either June or July. And I learned about it because I
12 went and interviewed for the position."

13 Q "What position was that?"

14 A "To be the point of contact for the communications
15 development for the ICCE project."

16 Q "Who had held that position previously?"

17 A "Frank Montalbano. I think it's
18 M-O-N-T-A-L-B-A-N-O."

19 Q "What happened to Frank?"

20 A "Frank went to work on the larger project in our
21 department, the IADS, I-A-D-S."

22 Q "Apparently you were successful in your interview,
23 correct?"

24 A "Yes."

25 Q "Mr. Michitson, would you explain to me what the

1 duties were related to that position?"

2 A "My first -- would you like me to list?"

3 Q "Yes, I would like a list. How -- the point of
4 contact with communications you said."

5 A "Yes."

6 Q "Is there a job title for that?"

7 A "No, not official, other than that I was the lead
8 for the communications aspect of the ICCE program."

9 Q "What did you do? What were your duties in that
10 capacity?"

11 A "One such duty was to monitor the development of
12 the B-1 hardware specification for the comm and I spent a
13 majority of my time overseeing the development of the remote
14 control element software, reviewing very detailed
15 specifications, B-5s and C-5s."

16 Q "Were the B-5s hardware specifications?"

17 A "Software. The remote control element software
18 specs."

19 MR. BOEHLERT: Page 18, line 4.

20 Q "You became a task leader in November of 1988?"

21 A "That's right."

22 Q "As task leader, what were your duties?"

23 A "I was responsible for the entire ICCE project as
24 far as Mitre goes. I'd like to caveat that in that I
25 handled all the day-to-day business but there was another

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1 project leader who I could go to, you know, for very
2 difficult tasks and so forth. His name is Bob Turner. He
3 was a project leader."

4 Q "And you say you were responsible for the entire
5 ICCE project as far as Mitre goes. What was your area of
6 responsibility?"

7 A "System engineering and that included
8 communications and also PDFA software development and
9 various other minor tasks. I guess another major one would
10 be tests."

11 MR. BOEHLERT: Page 26, line 10.

12 Q "What do you base the conclusion that Whittaker
13 had the responsibility for software design?"

14 MR. WORK: Objection. The answer which ensues is
15 without foundation and is based on hearsay, apparently, as
16 you can tell.

17 JUDGE BROWN: I find that that was an objection
18 that should have been made at the time of the deposition and
19 if it was not, you've waived.

20 (Whereupon, the deposition of John Michitson was
21 read as follows by Mr. Boehlert and the individual on the
22 witness stand:)

23 MR. BOEHLERT: The question on page 26, line 10.

24 Q "What do you base the conclusion that Whittaker
25 had the responsibility for software design?"

1 A "I knew that Whittaker was responsible for the
2 software design because I had done business with Whittaker
3 and I knew who the software engineer was. And I also
4 reviewed many submittals of the various documents that are
5 required during an acquisition program and they all
6 originated at Whittaker. In some cases, TechDyn would put a
7 cover letter on it. In fact, most cases, TechDyn would put
8 a cover letter on it. But the body of the important
9 information came from Whittaker."

10 MR. BOEHLERT: Page 28, line 19.

11 Q "What was the purpose of the remote control
12 element?"

13 A "It was to be able to remotely control the radios
14 and the switches so that you could change from one radio to
15 another. That's the switching factor. And as far as
16 controlling the radios, you'd control what mode you were in,
17 either data or voice. That sort of thing."

18 MR. BOEHLERT: Page 29, line 19.

19 Q "Do you recall discussion taking place at the
20 September '87 CDR meeting concerning the RCE?"

21 A "I -- my vision that meeting is a little bit
22 blurry right now but I recollect that John Campbell, one of
23 Whittaker's subcontractors -- I think they are Redondo
24 Systems -- gave a presentation on the design of the RCE."

25 Q "What do you recall about that presentation?"

1 A "That John Campbell went over detailed block
2 diagrams of how all of the -- that all of the building of
3 the software -- how they are interrelated. Essentially, he
4 reviewed block diagrams of the software design."

5 Q "Was there any discussion about his presentation?"

6 A "There was but I don't remember. About the only
7 thing I do remember is we basically had confidence in Mr.
8 Campbell. You know, he had -- we thought he had proven to
9 us that he really had a good handle on it."

10 Q "Did there come a time that he left the project?"

11 A "Yes."

12 Q "When was that?"

13 A "The best I can do for you is spring 1988. I know
14 for certain prior to April or -- either prior to April or in
15 April. That's when I became aware of it."

16 Q "What was the purpose of the September CDR meeting
17 as it relates to RCE?"

18 A "Once the CDR was accepted by the Government, that
19 basically gave the contractor the green light to go ahead
20 with their actual software coding. If the Government
21 accepted it, that means that the contractor got their
22 blessing and they were able to proceed on to the next
23 section, the next task."

24 Q "Do you know if that occurred at that meeting?"

25 A "It did not."

1 Q "What happened at the meeting?"

2 A "I think there were enough open issues -- there
3 were -- yes. There were enough open issues that needed to
4 be addressed before the CDR could be approved."

5 MR. BOEHLERT: Page 32, line 5.

6 Q "Was there any acceptance of the RCE at that CDR?"

7 A "Official."

8 Q "Yes."

9 A "No."

10 Q "What about otherwise?"

11 A "I think that the Government team, including
12 Mitre, had a pretty warm feeling that the RCE was in good
13 hands. At least that was my impression at the time."

14 MR. BOEHLERT: Line 19.

15 Q "Subsequent to the September '87 CDR meeting, what
16 happened next with respect to the RCE software?"

17 A "John Campbell was already in the coding --
18 software coding process at that time. In fact, I recall
19 that he gave us a tour of his office which showed a little
20 demonstration of how the computer could control the
21 switches. And he also gave us a sample of the software that
22 he was developing."

23 MR. BOEHLERT: Page 34, line 20.

24 Q "Well, after you left Whittaker's facilities, I
25 guess that week in September of '87, what happened next with

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1 respect to software development, RCE software development
2 and documentation?"

3 A "We were told that John Campbell was going to
4 continue developing the software."

5 MR. BOEHLERT: Page 35, line 11.

6 Q "Was there any discussion at that time during that
7 week that the hardware that was being used to develop the
8 software was inadequate?"

9 A "No."

10 (Continued on the next page.)

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1 MR. BOEHLERT: Page 37, line 9.

2 Q "Was anyone at Mitre monitoring, during the fall
3 of 1987, the development of the RCE software?"

4 A "I was, to the best of my ability."

5 (Pause.)

6 MR. BOEHLERT: Page 40, line 15.

7 Q "What was your next involvement in the RCE
8 development effort? Do you understand my question?"

9 A "Yes."

10 Q "Take all the time you need. I just want to make
11 sure you understand."

12 A "The next major task was to review three different
13 sets of procedures. The first being the remote control
14 element formal qualification test procedures. The second
15 being the COM integration test procedures, which means that
16 I'm not just interested in the RCE at that time. I am
17 interested in how the RCE plays with the hardware, the
18 actual hardware. And then finally, the system level test
19 procedures.

20 "On the first two, I was the lead. On the systems
21 level test procedures, my boss, Claudia Ward, was the lead.
22 I just reviewed them for here"

23 Q "In what time frame is this review being conducted
24 of the procedures?"

25 A "March."

1 Q "Of 1988?"

2 A "Of 1988. It could have spilled over into April,
3 or it could have been started at the end of February. But
4 March was the main effort."

5 MR. BOEHLERT: Page 42, line 5.

6 Q "Did you speak with anyone at Whittaker concerning
7 the development or documentation of software, RCE software,
8 during this time frame?"

9 A "I had a few discussions with John Campbell,
10 Redondo, but I cannot recollect exactly when or what was
11 said. But I had a warm feeling that at least John was
12 keeping going, and that he hadn't stopped work."

13 Q "What happened in April?"

14 A "Let me just go back to March for a second. I
15 spent at least the whole month reviewing those three sets of
16 test procedures. There were an awful lot of comments,
17 especially on the RCE formal qualification test procedures."

18 Q "Let's not jump to April. Let's stay in March,
19 then. Let's stay with the RCE. Was it formal verification
20 test procedures?"

21 A "Formal qualification test procedures? The FQT
22 was something else I'm sure you are going to get to."

23 Q "Probably yes. Who prepared the formal
24 qualification test procedures?"

25 A "Now we enter a grey area. I am not exactly sure

1 when Ken Turry took over for John Campbell. But I know for
2 certain, by April Ken was now the lead on that job. And
3 John was either off it, or being transferred off it. And
4 that I'm sure of in April."

5 Q "Do you know why Mr. Campbell was leaving the
6 project?"

7 A "We had no idea. My personal assumption was that
8 it had to do with money. That they didn't want to pay a
9 subcontractor."

10 MR. BOEHLERT: Page 45, line 15.

11 Q "Was it Whittaker or its consultant that prepared
12 the formal qualification test procedures?"

13 A "Yes, for TechDyn."

14 Q "They prepared them and submitted them for
15 TechDyn, is that correct?"

16 A "Yes."

17 Q "And then TechDyn forwarded them to the Air
18 Force?"

19 A "Yes."

20 Q "What did your review of those formal
21 qualification test procedures consist of?"

22 A "The first test was to verify that each of the
23 requirements of the B-5 specs were being addressed."

24 Q "Did you reach any conclusions on that?"

25 A "Yes. I had several pages of requirements that

1 were identified as not being addressed."

2 Q "Do you recall what those were?"

3 A "Not specifically, other than shall statements in
4 the B-5."

5 Q "What do you mean by shall statements?"

6 A "The requirements are dictated in the B-5's to be
7 a shall statements. For example, the system shall provide
8 the capability to communicate with an AWACS. So that's a
9 requirement. And when I refer to shall, I basically am
10 referring to requirements."

11 Q "Upon completing your review, what did you do
12 next?"

13 A "Review of the FQT."

14 Q "Yes. I'd like to stay on that. FQT. What did
15 you do with your written conclusions?"

16 A "They were sent to ESD. And ESD then put a cover
17 letter on them, and formally transmitted them to TechDyn."

18 Q "Based on your review, did you reach any
19 conclusions on the acceptability of the formal
20 qualifications test procedures?"

21 MR. WORK: Objection. Calls for incompetent
22 opinion testimony.

23 JUDGE BROWN: I will overrule the objection.

24 (Whereupon, the deposition of John Michitson was
25 read as follows by Mr. Boehlert and the individual on the

1 witness stand:)

2 MR. BOEHLERT: I am on page 47, line 9.

3 Q "Based on your review, did you reach any
4 conclusions on the acceptability of the formal qualification
5 test procedures?"

6 A "They were not acceptable at that stage."

7 Q "Did they ever become acceptable?"

8 A "No."

9 Q "What action, if any, was taken in response to the
10 comments that were submitted to TechDyn on FQT procedures?"

11 A "The comments were submitted to TechDyn, and I
12 know that they got to Whittaker, and a test redlining
13 session was scheduled for April."

14 Q "Did that ever take place?"

15 A "Yes, it did. It was supposed to be a week long
16 effort."

17 Q "Did you participate in that?"

18 A "Yes."

19 Q "Did you go to Whittaker's facility?"

20 A "Yes, I did."B

21 MR. BOEHLERT: Page 48, line 15.

22 Q "What did that discussion consist of?"

23 A "Well, we started by doing a line by line, redline
24 test procedure."

25 Q "Who was involved in that procedure -- I'm sorry,

1 in that process?"

2 A "For TechDyn, I know for sure Rufus Thornton was
3 involved."

4 Q "What was his participation?"

5 A "He was the systems engineer for TechDyn on the
6 COM portion of the contract."

7 Q "How did he participate in these, in this
8 redlining of the FQT procedures?"

9 A "He basically just listened. He didn't get
10 involved in the day to day, or the page by page redlining."

11 Q "Who did get involved in that?"

12 A "The primary people involved were myself, Ken
13 Turry of Whittaker, and a couple of associates of Ken."

14 MR. BOEHLERT: Page 49, line 16.

15 Q "Was Mr. Campbell present at that meeting?"

16 A "I don't recall."

17 Q "Was this the first time that you met Mr. Turry?"

18 A "It was the first time I met him face to face."

19 Q "When did you first talk, or meet Mr. Turry?"

20 A "I recall talking to Mr. Turry by telephone prior
21 to the redlining session. And I first met him person to
22 person at the redlining in April."

23 MR. BOEHLERT: Page 50, line 9.

24 Q "What is your knowledge of his involvement?"

25 A "Ken Turry was the initial lead for Whittaker."

1 And then at some point, Ken got off of the project and John
2 Campbell of Redondo Systems took over. And that's all I
3 know."

4 MR. BOEHLERT: Page 51, line 24.

5 Q "What happens at this redlining session for the
6 FQT procedures?"

7 A "What is supposed to happen?"

8 Q "What did happen? Well, if you want to answer
9 that, what's supposed to happen at that meeting?"

10 MR. WORK: Objection, calls for incompetent
11 opinion testimony, and it also lacks foundation. Let me
12 make an explanation of this, Your Honor, so you will
13 understand the objection. Mitre has been identified as a
14 contractor, that was a consultant to the Air Force. Whether
15 or not something was to take place, was supposed to happen,
16 or was acceptable, or was not acceptable, is not for Mitre
17 to decide. These are simply people who are working for a
18 company that has a contract.

19 JUDGE BROWN: To the extent that it would call for
20 a foundation having been laid, that objection should have
21 been made at the time, so that the foundation could have
22 been laid, if it could. And to the extent that it is, as
23 you say, incompetent opinion evidence, it will be as a
24 person qualified to give the information. And the jury can
25 judge who he is and why, given what his qualifications are,

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1 along with the rest of the people. So, I will overrule the
2 objection.

3 (Whereupon, the deposition of John Michitson was
4 read as follows by Mr. Boehlert and the individual on the
5 witness stand:)

6 MR. BOEHLERT: Back on page 52, line 3.

7 Q "What did happen? Well, if you want to answer
8 that. What is supposed to happen at this meeting?"

9 A "That the government and the contractor step
10 through the procedures on a line by line basis. And the
11 contractor and the government offer redlines. The
12 government's redlines were based on my comments. And I
13 started going through each comment one by one. And at some
14 point, some point it became obvious that the contractor had
15 deleted and altered requirements of the B-5's."

16 "They weren't hiding from that. I don't want that
17 to be --

18 Q "Do you remember what those requirements were?"

19 A "They had several redlines in the B-5
20 specifications for the RCE."

21 Q "Did you participate in those?"

22 A "Yes, but that came after. The reason why I asked
23 you what is supposed to be done, as opposed to what was
24 done, your B-5's are supposed to be essentially approved
25 before you write test procedures."

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1 Q "Was that done in this case? Were the B-5's
2 approved before these test procedures were submitted?"

3 A "As I said before, I wasn't sure if the B-5's were
4 ever officially approved. But it was my understanding that,
5 you know, that the government and the contractor had
6 essentially agreed on the contents. There was a frozen base
7 line, if you will, but I don't know if it was ever
8 authenticated."

9 Q "Was it pursuant to that, that the test procedures
10 were developed? Is that correct?"

11 A "That's correct."

12 Q "So, at this redlining session you are describing,
13 which I believe is early April 1988."

14 A "April."

15 Q "April 88?"

16 A "Yes."

17 Q "What impact does your learning of the deletion of
18 certain B-5 requirements have on the redlining session?"

19 A "Let me eliminate the term deletion, and use the
20 term modification of the B-5's."

21 Q "Who did that modification?"

22 A "The contractor."

23 Q "Whittaker?"

24 A "Yes."

25 Q "With any participation by the government, or

1 Mitre, do you know?"

2 A "No."

3 MR. BOEHLERT: Page 55, line 2.

4 Q "Did you expect that they would have been
5 modified? You said you heard about it, perhaps."

6 A "We didn't feel there was a major problem, even
7 when we heard about it. We thought maybe some insignificant
8 things were changed. Because when you write test
9 procedures, you go back to the detailed requirements. For
10 some people, that is the first time that you take a real
11 hard look at a requirement, because you have to figure out
12 how to test it.

13 "We figured that, you know, maybe there were some
14 changes. But we wouldn't have gone out for the April meeting
15 had we thought that they would be major."

16 Q "Were they major, in fact?"

17 A "Yes."

18 Q "Upon learning of these modifications, what
19 impact, if any, did that have on the redlining session that
20 was taking place?"

21 A "It ended it."

22 Q "Why?"

23 A "Because the first step in developing test
24 procedures is to identify a base line in your B-5's. Then
25 you write the test procedures relative to those. And they

1 change the requirements in the B-5's, so the new step was to
2 hear out Whittaker on the B-5 changes."

3 Q "Did that occur?"

4 A "Yes. I personally was the government
5 representative at a meeting with Ken Turry."

6 Q "Page 56, line 13. What were the modifications?"

7 A "Well, the major one, the one that sticks in my
8 mind. The major problem area was that if you look at some
9 of their proposed numbers, or let's say some of their
10 proposed requirements, and then took that information and
11 tried to determine what the time delay would be to switch
12 over to another radio when the first radio fails."

13 Q "Was that information in the original B-5's?"

14 A "It wasn't in either of the B-5's explicitly.
15 What you have to do is go through the shall statements, and
16 then determine what the time delay is. In other words,
17 there is not just one requirement that says what the time
18 delay is. You have to look at several components and come to
19 that number."

20 "My recollection is that the time delay was over
21 ten minutes, which is unacceptable.

22 Q "So, you had a meeting with Mr. Turry?"

23 A "Yes."

24 Q "To discuss that issue?"

25 A "Yes."

1 Q "Among other issues, is that correct?"

2 A "Yes."

3 Q "What happened at that meeting?"

4 A "Ken gave me a presentation of the crux of the
5 changes."

6 Q "What did he say to you?"

7 A "The best way I can describe it, is he described
8 the time delay."

9 Q "What does that mean?"

10 A "That means that he took some of the new numbers
11 that he proposed to the B-5's and applied an algorithm to
12 determine the time delay."

13 Q "You say he took some of the numbers in the B-5.
14 What numbers are you referring to?"

15 (Pause.)

16 Q "Let me just strike that last question, please.
17 Going to page 58, and starting with line 24. Based on that
18 meeting, you concluded that the timing delay would be over
19 ten minutes?"

20 A "Over ten minutes. And the number that is in my
21 mind is 13 minutes. I know that it is over ten. That's for
22 sure."

23 Q "Was that acceptable?"

24 A "Absolutely not."

25 Q "Why?"

1 A "Mitre had recommended to ESD, that it not be
2 acceptable for a couple of reasons. One is that a scenario
3 over in Iceland is that you are communicating with an
4 AWACS."

5 AIR FORCE COUNSEL (MR. RIDDLES): "Let me stop you
6 for a moment, so that we don't discuss any classified
7 information."

8 THE WITNESS: "Okay, got you. Communication with
9 an AWACS is one of the key operational capabilities. And
10 the scenario would be that, let's say you have data
11 communications with an AWACS. They, they're tracking, let's
12 say an aircraft, and you want to be able to get that same
13 information from the AWACS."

14 Q "On the ground?"

15 A "On the ground. If you did allow a ten minute,
16 let's say delay, that means that you would lose the target
17 from the AWACS, and it would take you at least ten minutes
18 to get back on line. And that an aircraft cannot be found
19 in that time."

20 Q "What was the maximum acceptable delay?"

21 A "I think we established it at somewhere between
22 two and three minutes, and that was by going back to the old
23 B-5, and again applying those timing components of timing,
24 or timing delays, to an algorithm, to come up with the final
25 time delay."

1 MR. BOEHLERT: Page 60, line 22.

2 Q "Did you ever discuss the timing issue again with
3 anyone at Whittaker?"

4 A "Yes."

5 Q "When was the next time you discussed it?"

6 A "At a July working group. It's an ICCE program
7 working group. You have all sorts of government
8 representatives there from different agencies that have some
9 impact on the ICCE project and the contractors. It was held
10 at Whittaker."

11 Q "Between the period of April 1988 meeting and then
12 the July working group, do you know whether Whittaker did
13 any work with respect to development or documentation of the
14 RCE software?"

15 A "From April through July?"

16 Q "Yes."

17 A "From my standpoint, I knew of TechDyn trying to
18 solve the problem."

19 Q "What problem?"

20 A "The timing problem. And I'll explain that."

21 Q "Okay."

22 A "The RCE design had a computer at both ends.
23 Let's say a computer at the ICCE ROC, and a computer at each
24 ground entry station. The crux of the problem was that
25 Whittaker claimed that there was a 20 second delay inherent

1 in the process for the two computers to sync up with each
2 other. And the factor there was the modems.

3 "According to Whittaker, they had to allow at
4 least 20 seconds in the software so that the modems could be
5 synced. And then, if you took that 20 seconds and applied
6 it to the algorithm, to determine what the time delay is,
7 that is how you come up with ten minutes or more.

8 MR. BOEHLERT: Page 62, line 24.

9 Q "At that time frame, did you have any conclusions
10 as to what the problem was?"

11 A "Yes. I had taken a very detailed look at it."

12 Q "And what were your conclusions?"

13 A "One conclusion that I remember was that there was
14 no justification for requiring 20 seconds to sync the
15 modems. I had talked with Kodex. They were the supplier of
16 the modems, the manufacturer of the modems."

17 MR. BOEHLERT: Page 64, line 5.

18 Q "Is there anything else in that time frame
19 concerning software documentation or development?"

20 A "Yes. As I mentioned, I can't recall if I came to
21 the conclusion that it was going to take ten minutes of that
22 meeting with Ken Turry, that meeting in April, or at a time
23 subsequent to that. But I detected the problem. As I said,
24 I let my task leader know about it, and she made sure it got
25 to the Air Force. They made sure they sent that back to the

1 contractor.

2 "I then followed that up with written specific
3 comments. And I am sure that the letter got back to the
4 originator of the B-5 changes at Whittaker."

5 Q "What were those comments?"

6 A "Well, basically I had commented on all of the
7 suggested or proposed redlines of the B-5's, proposed by
8 Whittaker. And the major issue was the timing issue of the
9 switchability, if you will, from data radio to another data
10 radio."

11 Q "What did you say about that issue?"

12 A "I said that it was unacceptable, because it
13 didn't make any sense operationally. And I recall that I
14 recommended going back after the B-5, prior to Whittaker
15 redlining, so that it would take somewhere between two and
16 three minutes, as opposed to over ten."

17 (Continued on next page.)

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1 MR. BOEHLERT: Page 69, line 15.

2 Q "My questions are now about the timing on the RCE
3 MAT which is being addressed at this July working group
4 meeting, correct?"

5 A "Yes."

6 Q "What was discussed about that?"

7 A "Well, first of all, it was reiterated that 13
8 minutes -- that 10 to 13 minutes was unacceptable."

9 Q "Did you make that statement?"

10 A "I made that statement and many others probably
11 made that statement, too. I can't tell you who else, but I
12 was the Government lead on that issue."

13 Q "Was there any response by anyone from Whittaker
14 to that comment?"

15 A "Yes."

16 Q "Who made that response?"

17 A "Ken Turry."

18 Q "What did he say?"

19 A "I can't tell you verbatim but the next thing I
20 remember was he was trying to describe the problem, trying
21 to -- trying to describe why they couldn't meet this two to
22 three minute requirement that was in the original B-5."

23 Q "Do you recall his explanation?"

24 A "Generally, I do."

25 Q "What was it?"

1 A "He tried to get into the very gory details of how
2 the software and the hardware play together. And, again, he
3 was making the assumption that it was the hardware that was
4 the problem and not the software. And him and I got into
5 quite a debate, probably for a half hour or longer on the
6 subject and --"

7 Q "What was your position on that subject?"

8 A "My position was that they had failed to convince
9 me that the problem was with the hardware, that the problem
10 was this -- that the problem was the fact that the modems
11 needed 20 seconds to synch with each other. And I asked him
12 some very detailed questions. For example, I asked him to
13 derive how long it should take, you know, based on his
14 assumptions, and the general opinion of my boss, Claudia
15 Ward of ESD -- in fact, occasionally, I'll mention this
16 now -- that I knew the details better than Ken Turry did.
17 Because of his description, I kept coming up with responses
18 to what he was saying and he couldn't defend against them."

19 MR. WORK: Your Honor, there was an objection to
20 that and I renew the objection. The objection was based on,
21 and I quite, "The witness isn't qualified to testify about
22 the opinion of ESD on this issue."

23 I renew the objection and move to strike.

24 JUDGE BROWN: Let me see the deposition and where
25 the objection is.

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1 MR. BOEHLERT: After the question was answered,
2 Your Honor.

3 (Pause.)

4 JUDGE BROWN: To the extent that the testimony was
5 based on the opinion of Claudia Ward of ESD, I sustain the
6 objection. He may state his own opinion but not the opinion
7 of somebody else. And where he said something about he knew
8 the details better, that was the opinion of ESD not his own
9 opinion and therefore I strike the comment about he knows
10 more than Ken Turry does.

11 MR. WORK: Thank you, Your Honor.

12 JUDGE BROWN: The rest of the testimony remains.

13 (Pause.)

14 (Whereupon, the deposition of John Michitson was
15 read as follows by Mr. Boehlert and the individual on the
16 witness stand:)

17 MR. BOEHLERT: Page 72, line 3.

18 Q "Did you have any conclusions as to why the delay
19 was occurring at that meeting?"

20 A "No."

21 Q "Did you discuss with him any software
22 deficiencies related to the RCE timing issue?"

23 A "Yes."

24 Q "What did you discuss with him?"

25 A "I made the statement that although I --"

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1 MR. BOEHLERT: Your Honor, I believe this
2 transcript is in error. That appears to be part of the
3 answer. May I show you that portion of the transcript?

4 MR. WORK: I don't think we should make any
5 assumptions about the transcript. There was opportunity to
6 get it corrected and it wasn't corrected. That's the
7 question.

8 (Pause.)

9 MR. BOEHLERT: Okay. I'll read it as a question.
10 (Whereupon, the deposition of John Michitson was
11 read as follows by Mr. Boehlert and the individual on the
12 witness stand:)

13 MR. BOEHLERT: Paragraph 72, line 9.

14 Q "What did you discuss with him?"

15 MR. WORK: Excuse me. Where are we?

16 MR. BOEHLERT: On page 72, line 9.

17 (Whereupon, the deposition of John Michitson was
18 read as follows by Mr. Boehlert and the individual on the
19 witness stand:)

20 Q "What did you discuss with him? I made the
21 statement that although I didn't know the specific problem I
22 still had some very specific comments on the software
23 inefficiencies. What were those, Mr. Michitson?

24 A "One example, Whittaker used a very inefficient
25 algorithm to detect when a radio was down and then select an

1 up and running radio to replace it. For example, the local
2 switch, the switch that's at the ICCE ROC has its own
3 internal diagnostics and if I recall correctly, the
4 contractor was not using that information to detect the
5 problem. That is, to detect a radio that went down or to
6 detect where the fault lies. For example, let's say the
7 fault is really in a switch that -- let's say, as compared
8 to at the radio. It would have been very simple for them to
9 first check the status of the local switch because they
10 could have gotten a response back in milliseconds. Instead
11 of going through their algorithm when they checked all the
12 modems, they checked out radios blah, blah, blah, blah,
13 blah, blah and then they checked to see which -- they
14 checked to see which circuits were up and running. That is,
15 which circuit that they could use instead of the bad radio
16 that went down."

17 MR. BOEHLERT: Page 76, line 11.

18 Q "Were there any conclusions reached at the July
19 working group meeting concerning the timing issue of RCE?"

20 A "The only conclusion that I recall is that up and
21 until that point in time the problem hadn't been solved or
22 wasn't solved."

23 Q "Did Whittaker propose any solutions to the timing
24 problem at that meeting?"

25 (Pause.)

1 Q "What's the answer, Mr. Michitson?"

2 A "None that I can recall."

3 MR. BOEHLERT: Page 77, line 5.

4 Q "Do you recall any other matters that were
5 discussed with Mr. Turry during that discussion concerning
6 the RCE software or the timing issue?"

7 A "I can probably give one specific reaction and one
8 general one. The specific is that after that half hour, I
9 still was not convinced that the major problem was that it
10 took 20 seconds to synchronize the modems. One general
11 recollection I have is that I was disappointed that Ken
12 didn't know the details of how the software worked to the
13 level that I expected."

14 (Pause.)

15 Q "Turn to page 80, please. Line 11. And during
16 that, as a result of your relationship with Mr. Turry, did
17 you draw any conclusions regarding his competence to do RCE
18 software work?"

19 (Pause.)

20 MR. WORK: There's an objection here by the Air
21 Force Counsel -- "I don't think the witness is competent to
22 give that kind of an --"

23 AIR FORCE COUNSEL (MR. RIDDLES): "I think he can
24 say whether he felt firsthand he had an understanding. I
25 don't think he could necessarily equate that to competence."

1 (Whereupon, the deposition of John Michitson was
2 read as follows by Mr. Boehlert and the individual on the
3 witness stand:)

4 Q "Let's ask that question first. Did you have any
5 conclusions concerning whether he had an understanding of
6 what was required with respect to RCE software development?"

7 MR. WORK: Then there's an objection, Your Honor.
8 And the objection, and I quote, "Required -- has no context
9 here of what was required. Doesn't mean anything to me and
10 I don't know if it means anything to the witness. I object
11 that it's vague."

12 (Whereupon, the deposition of John Michitson was
13 read as follows by Mr. Boehlert and the individual on the
14 witness stand:)

15 Q "I then ask do you understand the question, Mr.
16 Michitson?"

17 A "Yes."

18 JUDGE BROWN: Did you want me to rule on the
19 objection?

20 MR. WORK: Yes, Your Honor.

21 JUDGE BROWN: Let me see the transcript and the
22 objection.

23 (Pause.)

24 MR. WORK: I would request that before the answer
25 comes out the Court is given an opportunity to rule on the

1 objection.

2 (Pause.)

3 JUDGE BROWN: All right. The objection is
4 slightly vague and to that extent that I understand the
5 objection, I overrule it. I think he's qualified to give
6 the answer and he understood the question.

7 (Whereupon, the deposition of John Michitson was
8 read as follows by Mr. Boehlert and the individual on the
9 witness stand:)

10 MR. BOEHLERT: Going back to page 80, line 21.

11 Q "Did you have any conclusions concerning whether
12 he had an understanding of what was required with respect to
13 RCE software development?"

14 MR. BOEHLERT: Page 81, line 6.

15 Q "Do you understand the question, Mr. Michitson?"

16 A "Yes."

17 Q "What's your answer?"

18 MR. WORK: And that question, Your Honor, was
19 objected to on grounds of competence by the Air Force
20 counsel in the previous objection.

21 JUDGE BROWN: I overrule that objection.

22 (Whereupon, the deposition of John Michitson was
23 read as follows by Mr. Boehlert and the individual on the
24 witness stand:)

25 Q "What's your answer?"

1 A "There were two occasions where I came up with an
2 opinion. The first was that the redlining session in April
3 and even though we didn't get very far as far as redlining
4 goes because of the changes that Ken had proposed, I felt
5 that he had a good understanding of the details of the
6 software, that the two people he had been working under him
7 also did."

8 Q "Did that opinion ever change?"

9 A "That opinion did change at the July working
10 group. At the working group I requested that he explain the
11 Whittaker algorithm that was in question and while he was
12 describing it I had noticed some problems and I confronted
13 him with those and in a few cases he wasn't able to refute
14 what I had said. And that's when I started to question his
15 ability to be the lead on that job."

16 Q "Does anything else happen at this July working
17 meeting concerning RCE software development?"

18 A "Can you be more specific?"

19 Q "Well, it is a general question. You've discussed
20 a number of things that took place at that working meeting
21 concerning the RCE and a particular timing issue that was
22 being discussed. Do you recall anything else with respect
23 to the RCE being discussed at that July working group?"

24 A "There's one other occasion that I remember and
25 that is Ken Turry made the statement that I had approved the

1 B-5 redlines at that meeting that we had in April, the
2 meeting that him and I had to go over the B-5 changes."

3 Q "When did he make that assertion?"

4 A "In July at the working group."

5 Q "Did you respond to that?"

6 A "Yes. As a matter of fact, my boss, Claudia Ward,
7 had responded in my behalf and I guess he kind of backed
8 off."

9 Q "What was the response?"

10 A "Well, for a while he kept on saying that I had
11 already approved the B-5 changes and, of course, I was at
12 this meeting in July saying that, you know, that the changes
13 aren't good ones. We need to go back to the original specs.
14 Luckily for me I had the Government come up with a
15 memorandum for the record saying that I was only there to
16 listen to an explanation of the B-5 changes but that I had
17 no authority to approve or disapprove of those changes."

18 Q "At the time you left that April redlining
19 session, did you understand that you had approved the
20 modified B-5 specifications?"

21 A "Absolutely no. In fact, I was the one who
22 recommended to -- at that time, Lieutenant Dalrymple to
23 write this memorandum for the record so that it could cover
24 me. I've dealt with contractors in the past and I just
25 wanted to make sure that that wouldn't happen to me."

1 Q "Was that issue resolved at the July working
2 meeting?"

3 A "Well, it was resolved from the standpoint that
4 Ken stopped saying that but he never said that he was at
5 fault or that what he said wasn't true."

6 Q "As you sit here today, do you understand what he
7 said about your alleged approval of the B-5s to be untrue?"

8 A "Untrue. Absolutely."

9 MR. BOEHLERT: Page 84, line 7.

10 Q "After the July working group meeting, what next
11 happens with respect to the RCE?"

12 A "Basically, what bears do in the winter -- they
13 hibernate."

14 Q "What was doing the hibernation?"

15 A "The contractor."

16 (Pause.)

17 MR. BOEHLERT: Would you continue with the answer
18 on line 21 of page 84?

19 MR. WORK: There are several objections, Your
20 Honor.

21 MR. BOEHLERT: "Which contractor?"

22 MR. WORK: And then --

23 AIR FORCE COUNSEL (MR. RIDDLES): "Well, you know
24 what contractors."

25 MR. WORK: And then Whittaker's counsel objects:

1 "Objection. What are we talking about? Hibernation -- it's
2 vague."

3 MR. BOEHLERT: The witness is testifying. He has
4 the right to testify in any way he wants. I understand what
5 hibernation is.

6 MR. WORK: Your Honor, we're talking about a
7 situation here where there's obviously no foundation and I
8 suspect that's why Whittaker's counsel at the time said it's
9 vague.

10 JUDGE BROWN: All right. Overrule the objection.
11 While it's I suppose a bit unusual in all this high tech
12 business to talk about bears hibernating, if that's his way
13 of talking, that's his way of talking and if there was some
14 further foundation that should have been laid for the answer
15 to the question, that could have been done at the time and
16 he's waived by not raising that objection.

17 That's not the objection that I'm hearing, a
18 foundation objection. I'm hearing that it's vague and we
19 shouldn't be talking about bears, we should be talking about
20 modems but some of us understand bears better than modems.

21 (Whereupon, the deposition of John Michitson was
22 read as follows by Mr. Boehlert and the individual on the
23 witness stand:)

24 MR. BOEHLERT: On page 84, line 21.

25 Q "Continue with your answer, sir."

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1 A "I'm trying to interject a tad bit of humor into
2 the process but let me get more serious. It was my
3 recollection that from the working group until some time in
4 the fall and I can recall maybe as late as November no work
5 was done on the RCE software development. I was told at the
6 time that Whittaker had announced to TechDyn that they were
7 involved in a work stoppage."

8 MR. WORK: There's an objection to that, Your
9 Honor, by Whittaker's counsel."I will object. The last
10 answer was hearsay." And then there's an objection by Air
11 Force counsel.

12 AIR FORCE COUNSEL (MR. RIDDLES): "Unless you have
13 personal knowledge, don't spread rumors or say --"

14 JUDGE BROWN: Well, wait. Let me see that
15 objection so I can rule on it.

16 (Pause.)

17 (Continued on next page.)

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1 JUDGE BROWN: I will sustain the objection. He is
2 clearly basing it on hearsay, and we want him --

3 MR. WORK: Will you strike that prior answer, Your
4 Honor?

5 JUDGE BROWN: Strike the answer about the work
6 stoppage.

7 MR. BOEHLERT: Page 85, line 19.

8 Q "Do you know whether work was in fact stopped by
9 Whittaker on the RCE?"

10 A "We did not receive any data items. For example,
11 we didn't receive any information whatsoever that Whittaker
12 was working on the RCE."

13 Q "Was there any work to be done on the RCE at that
14 time?"

15 A "Yes."

16 Q "What was that work?"

17 A "First of all, the B5's, the B5 issues needed to
18 be resolved. Did we go back to the original base line, or
19 do we come up with another version that satisfies
20 everybody's requirements? The bottom line is the government
21 and the contractor needed to agree on a B5 base line. Then
22 the contractor had to return to the test procedures, and
23 rewrite those relative to the base line B5's."

24 Q "Any other work that could have been happening at
25 that time?"

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JOHN MICHITSON - DIRECT EXAMINATION

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1 A "As far as the RCE goes, the only other work that
2 they could have been doing was continuing software
3 development in those areas that were uncontested in the
4 B5's."

5 Q "Did there come a time that Whittaker resumed work
6 on the RCE, do you know?"

7 A "Not that I know of."

8 Q "Do you know whether TechDyn ever issued a default
9 termination to Whittaker on the RCE aspect of the project?"

10 A "Yes. I was told that by the government. And it
11 occurred either in December or January. December 88 or
12 January of 89. In that time frame."

13 Q "I think it was January 23 of 1989. Does that
14 sound right to you?"

15 A "Yes."

16 Q "Between the time that Whittaker stopped work, was
17 that in July 1988 that they stopped work, I think you
18 testified?"

19 A "Yes."

20 Q "And this default termination in, on January 23,
21 1989, did you ever discuss with anyone at Whittaker the
22 timing issue we previously discussed?"

23 A "No."

24 Q "Did you ever make any inquiries to them whether
25 work was being done on that?"

1 A "Not to Whittaker directly, but via the
2 government."

3 Q "What did you do?"

4 A "I basically requested the government to get a
5 status of what was going on relative to the RCE
6 development."

7 Q "Were you provided a status?"

8 A "I recall that I was told that there was a work
9 stoppage at Whittaker, at least relative to the RCE. And
10 from that point on, I never had any further contacts with
11 Whittaker on the RCE."

12 Q "After the default termination, were you involved
13 in any way with the RCE?"

14 A "Yes."

15 Q "Prior to the default termination, did Whittaker
16 evidence to you an ability to solve the timing problem?"

17 (Pause.)

18 Q "What's your answer?"

19 A "Could you repeat the question?"

20 Q "Okay. Prior to the default termination of
21 Whittaker, Whittaker's RCE effort, did Whittaker ever
22 evidence to you an ability to solve the timing problem?"

23 A "No."

24 Q "Let's talk about subsequent to the default
25 termination. You said you were again involved in the RCE

1 development. What was your next involvement?"

2 A "TechDyn had decided that they wanted to redesign
3 the RCE using off the shelf components, instead of the
4 software development effort from Whittaker."

5 Q "Did that take place?"

6 A "Yes."

7 Q "Was that accomplished through an engineering
8 change proposal?"

9 A "That is correct."

10 Q "Were you involved in that process?"

11 A "Yes, I was."

12 Q "In what way were you involved?"

13 A "I essentially reviewed the entire ECP, which
14 covered you know, maybe 15 to 20 different specifications.
15 The A spec, the B1 specification and all the C specs."

16 Q "Was that ECP ultimately approved?"

17 A "Yes."

18 MR. BOEHLERT: Page 90, line 10.

19 Q "So, would it be correct to state that the
20 hardware that TechDyn selected was to accomplish the same
21 objective that the Whittaker software was to accomplish?"

22 A "That was correct."

23 Q "What was that objective?"

24 A "To provide remote control of the circuit switches
25 and the radios in the ICCE program. That remote control

JOHN MICHITSON - CROSS EXAMINATION

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1 would be from the ICCE ROC."

2 MR. BOEHLERT: Page 92, line 5.

3 Q "Did TechDyn's mechanical solution solve the
4 timing issue that we have discussed?"

5 A "Yes."

6 Q "That's all the questions that I have, Mr.
7 Michitson. I thank you very much for coming today. Those
8 are the only questions I have. Thank you."

9 JUDGE BROWN: Nobody else has questions?

10 MR. WORK: Yes, Your Honor.

11 [Asides.]

12 MS. EASTUS: Do you have the entire --

13 THE WITNESS: Um.

14 MS. EASTUS: Or do you just have the --

15 THE WITNESS: I have this.

16 (Whereupon, the deposition of John Michitson was
17 read as follows by Ms. Eastus and the individual on the
18 witness stand:)

19 MS. EASTUS: Page 62, line 16.

20 Q "Okay, what were you told?"

21 A "I was told that Whittaker and TechDyn were trying
22 to solve the problem. Whittaker thought the problem was
23 that the modems, the actual physical hardware modems,
24 couldn't sync properly, sync up in less than 20 seconds.
25 TechDyn wasn't sure what the problem was. And that is all I

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JOHN MICHITSON - CROSS EXAMINATION

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1 can tell you between April and July.

2 MS. EASTUS: Thank you.

3 JUDGE BROWN: Okay. That concludes the
4 deposition?

5 MR. BOEHLERT: Yes, it does.

6 JUDGE BROWN: Okay, you may step down.

7 (Witness excused.)

8 JUDGE BROWN: We will take a ten minute recess.

9 We didn't have a recess. So we will take ten minutes now.

10 (Brief recess.)

11 THE CLERK: Remain seated and come to order.

12 JUDGE BROWN: Okay, are we ready?

13 MR. RIDDLES: Your Honor, we call Mr. D. E. Crider
14 as our next witness.

15 Whereupon,

16 D. E. CRIDER

17 having been duly sworn, was called as a witness herein and
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. RIDDLES:

21 Q Good morning, Mr. Crider. Would you please state
22 your full name and address for the record?

23 A Yes, my name is Greg Crider. I work for the
24 Barrington Consulting Group. Our address is 1250 24th
25 Street, Washington, D.C.

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**TRIAL TESTIMONY OF
GREGORY D. CRIDER**

GREG CRIDER - DIRECT EXAMINATION

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1 can tell you between April and July.

2 MS. EASTUS: Thank you.

3 JUDGE BROWN: Okay. That concludes the
4 deposition?

5 MR. BOEHLERT: Yes, it does.

6 JUDGE BROWN: Okay, you may step down.

7 (Witness excused.)

8 JUDGE BROWN: We will take a ten minute recess.

9 We didn't have a recess. So we will take ten minutes now.
10 (Brief recess.)

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12 JUDGE BROWN: Okay, are we ready?

13 MR. RIDDLES: Your Honor, we call Mr. D. E. Crider
14 as our next witness.

15 Whereupon,

16 D. E. CRIDER

17 having been duly sworn, was called as a witness herein and
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. RIDDLES:

21 Q Good morning, Mr. Crider. Would you please state
22 your full name and address for the record?

23 A Yes, my name is Greg Crider. I work for the
24 Barrington Consulting Group. Our address is 1250 24th
25 Street, Washington, D.C.

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GREG CRIDER - DIRECT EXAMINATION

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1 Q Mr. Crider, I would like for you to talk about
2 your background for a moment, beginning with your high
3 school education. Could you tell the jury where you
4 graduated high school, please?

5 A I graduated from high school in Lancaster,
6 Pennsylvania, from Hempfield High School.

7 Q And after high school, did you have a college
8 education, sir?

9 A Yes, I did.

10 Q By the way, the microphone, the sound microphone
11 is that one. Thank you.

12 And where did you go to college?

13 A I went to college at the Pennsylvania State
14 University.

15 Q And what was your major, sir?

16 A My major there was civil engineering.

17 Q And did you graduate from Penn State?

18 A Yes, I graduated with highest honors in 1977.

19 Q And what degree did you take, sir?

20 A Engineering, civil engineering.

21 Q What was your grade point average?

22 A Three point nine.

23 Q Now, after Penn State, did you have any other
24 education, sir?

25 A Yes, I attended graduate studies at University of

1 Maryland toward my MBA.

2 Q After you left Penn State, did you have any work
3 experience?

4 A Yes. I went to work for the Bechtel Power
5 Corporation, in Gaithersburg, Maryland.

6 Q What was your position at the Bechtel Power
7 Corporation?

8 A I was a scheduling engineer.

9 Q Can you tell us what the Bechtel Power Corporation
10 is, please, sir?

11 A Yes. Bechtel is one of the largest international
12 engineering and construction firms in the United States.

13 Q And what does the scheduling engineer do?

14 A I was responsible for developing schedules, or
15 plans for various modifications to a nuclear power plant in
16 southern Florida. That involved identifying the activities
17 that needed to be performed both in designing and
18 constructing those modifications. As well as identifying
19 the interrelationship between those activities and
20 developing a schedule showing the time frame in which each
21 of those activities was to be performed.

22 And then also, in monitoring the actual progress
23 of those modifications to make sure that they stayed on
24 schedule, or identify corrective actions to be taken.

25 Q You mentioned, I believe this was a nuclear

1 project?

2 A That's right.

3 Q And what was the nature of the work that was being
4 done on that project?

5 A This was a plant that was already in operation.
6 There were a series of modifications required, generally
7 mandated by the nuclear regulatory commission.

8 Q In doing your work of scheduling, had you had any
9 preparation, courses at Penn State in scheduling?

10 A Yes, I received training both during my
11 undergraduate education at Penn State in project management
12 and scheduling techniques, as well as additional training at
13 Bechtel in scheduling and project management techniques.

14 Q How long were you at the Bechtel Corporation?

15 A I was there from two years from 1977 to 1979.

16 Q Where did you go in 1979, sir?

17 A In 1979, I went to work for Arthur Anderson and
18 Company.

19 Q And what were your duties at the Arthur Anderson
20 Company?

21 A At Arthur Anderson, I worked in the consulting
22 division at Arthur Anderson. The consulting division
23 specializes in management and systems consulting. Within
24 that division, I specialized in the project management
25 practice area. And we worked with both owners and

1 contractors in helping them develop better project
2 management systems and procedures, as well as developing
3 management plans for large projects.

4 Q When you say systems and procedures, what do you
5 mean by that?

6 A Well, that, in many cases, involved the
7 development of software to assist management in actually
8 managing a large project, or a number of projects, to
9 provide the information they needed to effectively manage
10 those projects.

11 Q Did that management involve scheduling, or
12 scheduling, or scheduling analysis?

13 A Yes, it did.

14 Q In what way, sir?

15 A Well, an example of one of my assignment at Arthur
16 Anderson, I was providing assistance for a major defense
17 contractor who had a contract with the government of Egypt
18 to develop and install new telephone communication systems
19 throughout the major metropolitan areas in Egypt. I
20 assisted them in putting together the original plan for that
21 work, as well as developing systems and procedures to
22 monitor that plan as it proceeded further.

23 Q When you say you put together a plan, did that
24 involve the activities that were going to take place, and
25 the time in which those activities would take place?

GREG CRIDER - DIRECT EXAMINATION

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1 A That's right.

2 Q How long were you at the Arthur Anderson company?

3 A I was at Arthur Anderson for approximately eight
4 years, from 1979 to 1987.

5 Q And when you left Arthur Anderson & Company, where
6 did you go from there?

7 A From there I went to Peterson & Company.

8 Q And that was in 1987?

9 A That's right.

10 Q And what is Peterson & Company?

11 A Peterson & Company is a consulting firm that
12 specializes in the analysis of engineering financial and
13 economic aspects of disputes to assist either in resolution
14 of those disputes, or in cases such as this, in litigation.

15 Q And what were your duties at Peterson & Company?

16 A At Peterson & Company, I worked in the scheduling
17 practice area. I focussed on analysis of disputes that
18 involved delays. And that include the analysis of
19 schedules, identification of delays that occurred on
20 projects where disputes arose, and identified the cause of
21 those delays.

22 Q And when you had identified the cause of those
23 delays, did you have occasion to assess the impact of those
24 delays on an overall project schedule?

25 A Yes. Identifying the impact of those delays on

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GREG CRIDER - DIRECT EXAMINATION

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1 the overall schedule, as well as working with the financial
2 people in the firm to put a dollar impact on those delays.

3 Q Can you identify any specific projects that you
4 worked on in scheduling and delay analysis at the Peterson
5 Company?

6 A I probably worked on 15 or so projects, all
7 involving schedule analysis at Peterson & Company for a
8 variety of projects, working both for the owners on the
9 projects, as well as contractors in some cases.

10 And those projects ranged from -- worked on, for
11 the contractor, on a project involving the construction of a
12 co-generation plant to produce both steam and electricity
13 for the Norfolk Naval Ship Yard. I worked on a project for
14 a contractor involving the construction of a dam, a multiple
15 lock and dam system across the Mississippi River for the
16 United States Army Corps of Engineers.

17 I worked on a number of V.A. hospital projects,
18 including one at Salem, Virginia. I also have worked for a
19 school board in Montgomery, in Maryland, and a dispute
20 between the school board and a contractor and the
21 construction of a new high school.

22 Q When did you leave the Peterson Company, and where
23 did you go from there?

24 A Last year I left Peterson Company and went --
25 helped form the Washington office of the Barrington

1 consulting group.

2 Q And what is your position at the Barrington
3 consulting group?

4 A I am a vice president in the Washington office,
5 and I am responsible for our scheduling analysis practice in
6 Washington.

7 Q And what does Barrington Group do?

8 A Barrington Group's practice is much the same as
9 Peterson, as I described for Peterson & Company. And that
10 is the analysis of engineering, financial and economic
11 aspects of disputes and assistance of those disputes.

12 Q Can you identify any projects at the Barrington
13 Group where you provided scheduling and delay analysis?

14 A Yes. In addition to many of those that I
15 mentioned for Peterson & Company, some recent engagements
16 have included another large V.A. hospital in Portland,
17 Oregon. One of the largest in the country, a dispute
18 between the country and the United States Veterans
19 Administration.

20 Another project, I am working with a large defense
21 contractor on a dispute on the development of a command and
22 control information system for the combined forces command
23 in the Republic of Korea.

24 Q Have you ever provided testimony as an expert
25 witness in litigation or arbitration?

1 A Yes, I have. In the matter that I mentioned
2 involved in the construction of the multiple lock and dam
3 system on the Mississippi River, the United States Corps of
4 Engineers, I provided expert testimony on behalf of the
5 contractor. And in the matter that I mentioned involving
6 the dispute of the school, I provided expert testimony on
7 behalf of the school board.

8 Q And was the school board dispute, what was the
9 nature of the expert testimony that you provided.

10 A In both cases, the nature of the expert testimony
11 involved the analysis of the schedule, identification of
12 delays, and the impact of those delays on the overall
13 project.

14 MR. RIDDLES: Your Honor, at this time, I would
15 proffer Mr. Crider as an expert in the field of scheduling
16 and delay analysis.

17 JUDGE BROWN: Would you like to ask him any
18 questions about his expertise?

19 VOIR DIRE EXAMINATION

20 BY MR. WORK:

21 Q I gather from your testimony that since 1987, you
22 have been involved in the field of litigation support
23 services. Is that right?

24 A Consulting in matters related to litigation, yes,
25 that's correct?

GREG CRIDER - CROSS EXAMINATION

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1 Q And that's what Peterson does, and that's what
2 Barrington Group does? Is that correct?

3 A That's correct.

4 Q And Barrington Group was a group of people from
5 Peterson, who split off to form Barrington Group; is that
6 right?

7 A That's correct.

8 Q Now, sir, you had no prior experience before this
9 engagement with TechDyn with the work that TechDyn did, did
10 you?

11 A Could you repeat?

12 Q You had no prior experience with TechDyn?

13 A That's correct?

14 Q And would it be accurate to say that TechDyn's
15 history, prior to this project, has been in the field of the
16 installation of existing communications equipment?

17 A I believe that is correct.

18 Q Okay. TechDyn has never previously been involved
19 in any development project as a manager of such a project,
20 has it, to your knowledge?

21 MR. RIDDLES: I object to this line of
22 questioning. It is not voir dire of an expert witness. It
23 is more in the nature of a cross examination of TechDyn.

24 JUDGE BROWN: We want to know whether he is an
25 expert, not whether he has knowledge about TechDyn at this

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GREG CRIDER - DIRECT EXAMINATION

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1 link field that we're involved in.

2 JUDGE BROWN: I rule that he has sufficient
3 expertise to testify as an expert in the field proffered and
4 your questions as well as theirs will be considered by the
5 jury in deciding the weight to be given to his testimony.

6 DIRECT EXAMINATION (Resumed)

7 BY MR. RIDDLES:

8 Q Mr. Crider, are you familiar with the Iceland
9 Command and Control Enhancement project also known as ICCE?

10 A Yes, I am.

11 Q And how are you familiar with it, sir?

12 A I was asked to perform a schedule analysis on that
13 project.

14 Q On whose behalf were you asked to perform the
15 schedule analysis?

16 A On behalf of the TechDyn Corporation.

17 Q What in particular were you asked to do?

18 A Well, I was asked to do three things. First, I
19 was asked to analyze the project schedule; secondly, to
20 identify the delays that occurred on the project; and,
21 third, to identify the effect of those delays on the overall
22 project completion.

23 Q How did you go about your work?

24 A Well, I started by reviewing the six years of
25 project documentation that was available at the TechDyn

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GREG CRIDER - DIRECT EXAMINATION

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1 offices. That included all correspondence, both between
2 TechDyn and the Air Force as well as correspondence between
3 TechDyn and Whittaker and correspondence internally within
4 TechDyn between the project group and the contracts group.

5 I also reviewed the contract and all the related
6 documentation both for the prime contract between TechDyn
7 and the Air Force as well as the subcontract between TechDyn
8 and Whittaker and the associated documentation, including
9 the statement of work, the specifications, the contract
10 deliverable requirements list and those type of attachments
11 to the contract.

12 I also reviewed the meeting minutes. I reviewed
13 contract deliverables themselves. I reviewed the various
14 project schedules that were issued throughout the course of
15 the project.

16 Q Did you review the modifications to the contract
17 and to the subcontract?

18 A Yes, I did.

19 Q Other than review of documentation, what else did
20 you do, sir?

21 A I also spent very extensive time discussing the
22 project with the TechDyn people at all levels, as well as
23 discussing the project with several people from Mitre, who
24 was the Government's technical representative on the
25 project.

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GREG CRIDER - DIRECT EXAMINATION

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1 Q Did you talk to anyone from the Whittaker
2 Corporation?

3 A No, I did not. But I did review the Whittaker
4 depositions to make sure that I understood their side of the
5 story. I also reviewed the deposition of the Mitre and Air
6 Force personnel.

7 Q All this work must have taken some time.

8 A It did.

9 Q How many hours did you spend in this effort, if
10 you know?

11 A On the schedule analysis, I had one associate
12 working for me and the two of us spent a total of
13 approximately 1200 hours studying the project.

14 Q Is your company being paid for these hours of work
15 that you spent?

16 A Yes, we are.

17 Q And what are your fees that are being paid?

18 A Our total fees for the schedule analysis have
19 totaled approximately \$100,000.

20 Q Who will be paying those fees, sir?

21 A TechDyn.

22 Q After your review of this information that you
23 mentioned in these 1200 hours, what did you do next?

24 A Well, basically three things. First, I identified
25 the planned schedule; then I identified the actual schedule;

1 and then analyzed the differences between the planned
2 schedule and the actual schedule to identify the critical
3 delays.

4 Q What do you mean by the term "critical delays"?

5 A Well, not all delays on a project are critical.
6 If you are building a school that has, say, a flag pole out
7 front, who cares if the flag pole is late? A delay to the
8 flag pole will not delay the construction of the school.
9 But if there's a delay in the construction of the exterior
10 walls of the school, that's a critical delay because if you
11 can't build the walls, you can't put the roof on the school,
12 you can't put the interior finishes in the school and you
13 certainly can't put schoolchildren in the school. So a
14 delay to the walls is a critical delay. A delay to the flag
15 pole, on the other hand, would not impact overall project
16 completion.

17 Q Thank you, sir. Were you able to identify the
18 planned schedule of performance on this project?

19 A Yes, I was.

20 Q From what sources did you identify the planned
21 schedule?

22 A As I said, I looked at the original contract
23 documentation as well as identifying the original schedules
24 prepared both by Whittaker and by TechDyn.

25 Q Were you able to identify the actual schedule?

7:
GREG CRIDER - DIRECT EXAMINATION

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1 A Yes, I was.

2 Q And were you also able to identify any critical
3 delays on this project?

4 A Yes, I did.

5 Q And what were your findings with respect to the
6 critical delays?

7 A I identified critical delays in four major areas
8 of the project. The first area of critical delay involved
9 the software design. There was then a critical delay in the
10 software development, followed by a critical delay in the
11 software testing and correction and then finally in the
12 final system delivery.

13 Q Did you prepare a series of charts reflecting your
14 findings with respect to these critical delays?

15 A Yes. In conjunction with the TechDyn project
16 people, I prepared a series of charts summarizing the
17 planned schedule, the actual schedule, to facilitate
18 identification of those critical delays.

19 MR. RIDDLES: I'm going to show you in just a
20 moment Plaintiff's Exhibit 991 through 993. And 995 through
21 999.

22 MR. WORK: And I'm going to object to all of
23 those, Your Honor.

24 You'll recall a ruling that Your Honor made before
25 the start of this trial concerning witnesses, expert

GREG CRIDER - DIRECT EXAMINATION

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1 A Good afternoon.

2 Q Mr. Crider, you testified that there were four
3 critical areas of delay that you found.

4 A Yes.

5 Q Can you identify those delays and the areas in
6 which you found them, please, sir?

7 A Yes. The four critical areas of delay on this
8 project, in my opinion, were in the areas of software
9 design, software development, software testing and
10 correction and in the final delivery of the system.

11 Q Let's talk first about the critical delays that
12 you found in software design. Would you tell the jury what
13 delays you found in that area, sir?

14 A I found a total of 13 months of delay occurred in
15 the software design of the PDFA, the processing and display
16 functional area of the project.

17 Q Were you able to determine the cause of those 13
18 months of delay?

19 A Yes.

20 Q And what was that cause, sir?

21 A In my opinion, those 13 months of delay were
22 caused by the late and deficient submittal of B-level
23 specifications and C-level specifications by Whittaker.

24 Q All right, sir. Were you able to find delays in
25 the area of software development?

GREG CRIDER - DIRECT EXAMINATION

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1 A Yes, that was the next critical area of delay.

2 Q And what were the delays that you found in that
3 area?

4 A There was an additional month of delay or a total
5 of 14 months of delay that occurred in the area of software
6 development.

7 Q And were you able to determine the basis for those
8 delays? The cause of those delays?

9 A Yes.

10 Q And what was that, sir?

11 A In my opinion, as I said, the critical delay, the
12 first 13-month critical delay, in software design had set
13 the whole project back 13 months. There was an additional
14 month of delay which occurred in the actual coding
15 development of the software itself and that was due to
16 Whittaker's failure to timely complete the software
17 development.

18 Q What was -- you say the first 13 months set this
19 one back 14 months.

20 A Right.

21 Q Can you explain that to the jury, please?

22 A Yes. That's where we had identified earlier as a
23 critical delay. In our schoolhouse example, if the walls
24 are 13 months late, obviously the roof is going to be 13
25 months late getting started and in this case, there was an

GREG CRIDER - DIRECT EXAMINATION

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1 additional month of delay in putting the roof on or, in this
2 case, developing the software.

3 So the total delay through the end of software
4 development that had occurred as a result of the Whittaker
5 problems, the PDFA problems, was a total of 14 months.

6 Q Now, what was the third area of critical delay
7 that you found?

8 A The third area of critical delay was in the PDFA
9 software testing and correction.

10 Q And how much delay did you find there, sir?

11 A That was a total of -- I believe it was 42 months.

12 Q And how did you find that delay, please, sir?

13 A That delay occurred in between the time period
14 when Whittaker had completed software development to the
15 time period in which they were able to get the Government to
16 accept that software.

17 Q And then in the final delivery and installation?

18 A In the final delivery and installation, there is
19 an additional delay so that the project is delayed a total
20 of 53 months.

21 Q And were you able to determine the cause of those
22 53 months of delay?

23 A Yes.

24 Q And what was that, please, sir?

25 A In my opinion, those were caused by Whittaker's

GREG CRIDER - DIRECT EXAMINATION

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1 failure to complete delivery of critical items, the PDFA O&M
2 manual and the support software which is used by the
3 Government to maintain or make changes to the PDFA
4 operational software.

5 Q Did that delay have any other impact?

6 A Yes. The delays in the verification of the PDFA
7 O&M manual not only had a delay -- has not yet been resolved
8 but it also delayed the final installation and testing of
9 the CFA equipment in Iceland.

10 Q What effect did these four areas of critical delay
11 have on TechDyn's performance?

12 A These four critical areas of delay extended
13 TechDyn's performance on this work for a total of 53 months.

14 Q Was there any problem that you found with respect
15 to the RCE?

16 A Yes, there was also a critical delay in the area
17 of the RCE software development and testing.

18 Q And was that a contributing factor to the 53
19 months of delay to TechDyn's work?

20 A That would have also contributed to TechDyn's
21 delay, yes.

22 Q Were all of these delays to TechDyn's work that we
23 mentioned, the 53 months, attributable to the Whittaker
24 Corporation?

25 A In my opinion, yes.

GREG CRIDER - CROSS EXAMINATION

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1 Q And you know, sir, that without those data
2 terminal sets, there could be no in-house testing,
3 development of manuals or training or installation with
4 respect to this system, don't you?

5 A In fact, there was in-plant testing prior to the
6 December delivery. In-plant testing started in August of
7 1986 prior to receipt of the last two data terminal sets.
8 So obviously testing could proceed without those data
9 terminal sets and in fact did proceed. And the last two
10 data terminal sets were delivered years in advance of any
11 final delivery of manuals or training so that I concluded
12 that there was no delay caused by that late delivery.

13 Q So despite the fact that there were no data
14 terminal sets, your testimony is that this project could
15 have been completed under the original schedule? Is that
16 your testimony, sir?

17 A No. My testimony is that the data terminal sets
18 were not a critical delay on this project.

19 Q Now, sir, how much responsibility for delay did
20 the Government take when it reached an accommodation, a
21 settlement, with TechDyn under TechDyn's 01 claim?

22 A What was the question?

23 Q How much delay did the Government assume, the Air
24 Force assume responsibility for in its accommodation or
25 settlement of TechDyn's 01 claim against the Air Force?

GREG CRIDER - CROSS EXAMINATION

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1 A I don't believe the Government accepted
2 responsibility for any delay.

3 Q Would you be surprised if Mr. Morrison said the
4 Government accepted ten months delay?

5 A No, I wouldn't be surprised. The Government --
6 MR. RIDDLES: Object, Your Honor, to what some
7 other witness has testified to.

8 JUDGE BROWN: Well, I sustain the objection of
9 whether he would be surprised or not.

10 THE WITNESS: The Government paid for ten months
11 of delay --

12 JUDGE BROWN: When I sustain the objection, then
13 you don't answer that question.

14 BY MR. WORK:

15 Q Mr. Morrison never told you that the Government
16 assumed responsibility for ten months of delay?

17 A I was aware that the Government had paid for ten
18 months of delay. The way the damages are priced, TechDyn is
19 not claiming those ten months of delay. The Government --

20 Q Let's talk about where those ten months of delay
21 are. Your belief is that the original contract schedule
22 under the prime contract called for completion of the system
23 when, sir?

24 A Of the ICCE FOC system by December 31, 1986.

25 Q So that would have been here and the Government's

GREG CRIDER - CROSS EXAMINATION

1107

1 Q I'm not talking about the software. That
2 equipment, the CFA equipment, less the RCE did not pass CDR
3 in December of 1986, did it?

4 A That's correct.

5 Q And it didn't pass CDR again when it was tried
6 again, did it?

7 A I'm not sure I --

8 Q When was the next attempt by TechDyn to pass CDR
9 with its CFA equipment?

10 A As I said, there was a CDR in the fall of 1987
11 where the --

12 Q In this timeframe?

13 A Yes.

14 Q This was on the CFA equipment?

15 A Including the RCE software.

16 Q Okay. Now, sir, so the design delay that you're
17 talking about really occurred before TechDyn finished its
18 design on the CFA equipment. Is that correct?

19 A The design delay occurred before TechDyn finished
20 its design. Yes. That's correct.

21 Q And, in fact, it occurred before there were DSTs
22 available to test any equipment that was designed, wasn't
23 it?

24 A As I said, the equipment was tested without the
25 DTSSs.

GREG CRIDER - CROSS EXAMINATION

1108

1 Q What equipment was tested without the DTSSs?

2 A The PDFA equipment was tested in August. There
3 were several CPT&E, computer program test and evaluations,
4 conducted in August without the modified DTSSs that you're
5 talking about.

6 Q Now I understand our misunderstanding. I'm
7 talking about -- there was a requirement in this contract
8 for in-plant testing of the entire system, including PDFA
9 and CFA, wasn't there?

10 A Yes.

11 Q And that could not take place until you had the
12 DTSSs, which were part of the CFA equipment. Isn't that
13 right?

14 A That could not take place until you had some DTSSs
15 available.

16 Q Okay. So we have this delay of the Government in
17 providing the DTSSs, we have an acknowledged ten-month delay
18 that the Government acknowledged as being its own. You're
19 aware that at many of the meetings that took place in the
20 early winter, spring and summer of 1986 to try to define
21 what the Government wanted, that there were literally 50, 60
22 people from various user commands there trying to get their
23 wishes imbedded in this design, weren't you?

24 A I don't know how many people attended those
25 meetings.

GREG CRIDER - CROSS EXAMINATION

1110

1 A I have seen projects where there is a set of
2 specifications issued by the Government and the contractor
3 does not issue separate specifications but assigns portions
4 of those specifications to a subcontractor.

5 Q And in what contractual document, if any, did
6 TechDyn assign specific portions of the ICCE project to
7 Whittaker? What contractual document?

8 MR. RIDDLES: Object to this being beyond the
9 scope of the direct examination.

10 MR. WORK: We're talking about delays and this is
11 a delay factor that I'm sure this witness will agree on.

12 JUDGE BROWN: I overrule the objection. I don't
13 see how he knows what the various responsibilities of the
14 subcontractor is unless he has some concept of what the
15 subcontract called for and that's the inquiry being made so
16 I overrule the objection.

17 THE WITNESS: I found the schedule prepared by
18 Whittaker in January of '86 which laid out their original
19 plan and evidenced their understanding of what their scope
20 of work was.

21 BY MR. WORK:

22 Q I'm sorry, sir. I guess I didn't make my question
23 clear. My question was whether there was a contractually
24 effective document. In other words, a contract document,
25 not just a submission, a unilateral submission, but a

GREG CRIDER - CROSS EXAMINATION

1111

1 contract document in which TechDyn defined what
2 responsibilities Whittaker was to perform.

3 MR. RIDDLES: Object to that, Your Honor, because
4 he's really asking the witness for a legal conclusion as to
5 whether the schedule that he's referred to, for example, is
6 a contract document.

7 JUDGE BROWN: Well, I'll overrule the objection
8 because he said that was a document prepared by Whittaker
9 and the question is whether there is a document that runs
10 from TechDyn to Whittaker doing this and if he knows of one,
11 he can say it. If he doesn't know, he can say that or if
12 there isn't one, he can say that.

13 THE WITNESS: I believe there were some letters
14 early on that defined the scope of work and there was a
15 matrix of some sort which identified which paragraphs in the
16 statement of work and which paragraphs in the specifications
17 were assigned to Whittaker.

18 (Continued on next page.)
19
20
21
22
23
24
25

GREG CRIDER - CROSS EXAMINATION

1112

1 BY MR. WORK:

2 Q Were they contractually effective documents in the
3 sense that both parties agreed to them?

4 A I do not, I do not have an opinion on that.

5 Q You didn't investigate that issue?

6 A I investigated whether there was a delay caused by
7 that, and concluded that there was none. Because
8 Whittaker's schedule in January 1986 laid out an original
9 schedule which was consistent with what I understood the
10 original schedule to be, based on my review of the contract
11 and based on my review of TechDyn's original schedule.
12 Therefore, any misunderstanding over the scope of the work,
13 if there was any, did not effect that Whittaker had a plan.
14 The plan clearly laid out what their steps were to be and
15 they were not able to timely complete that plan.

16 Q The answer to my question is you know of no
17 mutually effective contractual documents defining
18 Whittaker's responsibility.

19 A I said I have no opinion.

20 Q And you've reviewed TechDyn's 01 claim, haven't
21 you?

22 A The 01 claim?

23 Q Right, the 01 claim.

24 A I'm not sure. Can you refresh my --

25 Q Well the claim that was first submitted on

GREG CRIDER - CROSS EXAMINATION

1125

1 Q What do you need to test an RCE? What equipment
2 do you need to test an RCE?

3 A What type of testing are you talking about?

4 Q Testing to see if it qualifies to meet the
5 contractual requirements. What equipment do you need for
6 that testing?

7 A You need the CFA equipment as well as the PDFA
8 equipment.

9 Q Okay. And you talked about Whittaker stopping
10 work, but you are aware, aren't you, sir, that there was not
11 PDFA equipment available on which to test this system from
12 August of 1988 all the way up into 1990, aren't you sir?

13 A I believe it was available, the equipment was
14 available. It had been, as you say, removed from the
15 Carlsbad facility. Because at that point, TechDyn was told
16 that they were requested to pay for space in that facility.

17 Q But we are talking about, let's talk about the
18 split in deliveries. You are aware of that, aren't you sir,
19 that the Air Force ordered a split in deliveries, the FOC 1
20 and FOC 2 in about this same time frame?

21 A No, I don't believe the Air Force ordered a split.
22 I believe the Air Force entertained discussions in light of
23 the problems with the RCE software and the problems with
24 getting PDFA software that met the requirements of the A
25 spec. The government, as I understand it, a concept evolved

GREG CRIDER - CROSS EXAMINATION

1126

1 as to an FOC 1 final operational capability 1, final
2 operational capability 2, the government said, well, we have
3 software that works. It doesn't meet our requirements, but
4 why don't we define something where we can deliver it. We
5 don't have the RCE, so we don't have a complete system.
6 But, let's break the scope of work out into an FOC 1 --

7 Q Okay. The software that the government doesn't
8 find acceptable. What version of the software was that,
9 sir, that you are talking about?

10 A I think that was the one that you had spoken about
11 earlier.

12 Q What version was that?

13 A I don't remember the version number.

14 Q The version that was tested in December 1987, and
15 passed SQT.

16 A The version that was tested in December 1987.

17 Q What version was that -- 87350, isn't that right?

18 A That sounds right.

19 Q And you are aware, sir, that that version of the
20 software has been used continuously, throughout the world,
21 at every RADIL installation?

22 A I know that it has been used on this contract.

23 Q Are you aware that it was used in Saudi Arabia, in
24 the Persian Gulf War?

25 A I was aware that the CENTAF equipment had been

GREG CRIDER - CROSS EXAMINATION

1127

1 used, yes.

2 Q And you are aware that the 87350 software was used
3 in the CENTAF equipment?

4 A I was not aware of that.

5 Q And you are aware that it has been used
6 continuously in the United States in the CONUS system?

7 A I was aware of that.

8 Q And it has been used all through this period, has
9 it not?

10 A It has been used, yes.

11 Q And even when the government got the 950 core
12 version that had all the TAF certification finished, the
13 government continued to use the 87350?

14 A As I understand it, that's because there were
15 several new deficiencies involved with 90.054, when testing
16 on it was conducted. So, the government felt more
17 comfortable with the older version of software, as I
18 understand it.

19 Q How did you get that understanding?

20 A From Don Ellis.

21 Q From Don Ellis, not from someone in the
22 government?

23 A That's correct.

24 Q You didn't read that in any government deposition?

25 A That's correct.

GREG CRIDER - CROSS EXAMINATION

1128

1 Q You didn't read that in Captain Jacobsen's
2 deposition?

3 A I did not, no.

4 Q All right, sir. Now, when was the first
5 installment, the first system that was shipped under the
6 split FOC 1 and FOC 2 deliveries, shipped to Iceland?

7 A I believe it was shipped in the fall of 1990. Are
8 you talking about the CFA equipment?

9 Q That's correct.

10 A That was in the fall of 1990.

11 Q Aren't you a year too late, sir? Wasn't it
12 shipped in the fall -- excuse me, two years too late.
13 wasn't it shipped in October 1988?

14 A There was a ground entry station shipped and
15 installed -- I'm confused as to what you are referring to as
16 the split FOC 1.

17 Q I'm referring to the FOC 1 delivery. That was
18 made --

19 A That concept was abandoned. The FOC 1, FOC 2
20 concept.

21 Q Well, then use whatever terminology you want. You
22 are aware that a ship -- a production unit was shipped to
23 Iceland in October 1988?

24 A I believe, yes. That was associated with one
25 later modifications to the contract.

GREG CRIDER - CROSS EXAMINATION

1129

1 Q And that was the system, the system that was
2 shipped in October 1988, was the system that TechDyn had
3 ripped out in August 1988, wasn't it?

4 A I believe you're right. Or the --

5 Q And after it was ripped out, and thereafter until
6 the FOC 2 system was erected, there was no CFA hardware in a
7 test bed facility in the United States in which to test any
8 RCE. Isn't that true?

9 A There was no test bed op, operational facility in
10 the continental United States.

11 Q Indeed, there was no test equipment, because it
12 had been shipped to Iceland in October 1988; isn't that
13 correct, sir?

14 A I don't believe that is correct. I believe there
15 was one ground entry station shipped to Iceland in October
16 1988. I believe there were others that were packed up and
17 shipped to Veda, and remained there until TechDyn was able
18 to get a RADIL and a DTS from Whittaker in order to re-
19 establish. At that time, a test bed was re-established, and
20 the test bed, or test facility.

21 Q So, your testimony is that from August 1988 on
22 there was a test bed that was just boxed up in Camarillo.
23 Is that your testimony?

24 A There was CFA equipment, I believe.

25 Q And you are relying on that testimony in your

GREG CRIDER - CROSS EXAMINATION

1130

1 delay analysis, aren't you, sir? You are relying on that
2 belief for your delay analysis.

3 A I believe -- my opinion, or I understand that the
4 RCE software, there were never acceptable specifications.
5 That the delays to the RCE software involved Whittaker's
6 inability to develop a solution to problems identified by
7 the government.

8 Q Are you aware of a letter that the government
9 issued on August 26, 1988, indicating that it would accept
10 the RCE as was?

11 A Can you show me this letter?

12 Q I can show it to you, sure.

13 (Pause.)

14 BY MR. WORK:

15 Q I'm handing you a letter to Mr. Hise of TechDyn.

16 MR. RIDDLES: Is there an exhibit number?

17 MR. WORK: From Captain Reginald Banks of the
18 United States Air Force dated August 26, 1988. I am not
19 going to mark that as an exhibit now, but I just ask you if
20 you are aware of the letter?

21 JUDGE BROWN: Show it to Mr. Riddles, first.

22 MR. WORK: Sure.

23 (Pause.)

24 MR. WORK: We have marked this as Defendants'
25 Exhibit 20UU for identification.

GREG CRIDER - CROSS EXAMINATION

1131

1 JUDGE BROWN: If they have their copy of it, then
2 you can bring it up.

3 MR. WORK: Okay. Does that document refresh your
4 recollection, sir, that the Air Force stated that it was
5 willing to accept the RCE with the timing problem that had
6 been identified earlier that summer?

7 THE WITNESS: See, it references that Whittaker
8 informed the government of their decision to stop work on
9 the ICCE program due to lack of direction --

10 BY MR. WORK:

11 Q Mr. Crider, I just asked you to read it to
12 yourself. I think the Judge will tell you that my intent is
13 to ask you whether that refreshes your recollection or not.
14 That's a real yes or no answer.

15 A What's the question? I remember reading this now.

16 Q Does that refresh your recollection that the Air
17 Force indicated to TechDyn on August 26, 1988, that it was
18 willing to accept the RCE, the original RCE, the software
19 based RCE with the timing problem that had been identified?

20 A No. It doesn't say that.

21 Q Okay. Now, sir. You said that you read Mr.
22 Thornton's deposition?

23 A Yes.

24 Q Then you are aware, sir, that he said that that
25 solution just got lost in the shuffle, aren't you?

SCOTT DOUGLAS GRAY - CROSS EXAMINATION

1132

1 A The solution was never made. The solution that is
2 identified in the letter is to do the circuit switch over
3 prior to doing the readiness check. It doesn't say that the
4 RCE is acceptable as is.

5 Q You are aware, however you characterized the
6 solution, that is stated in that letter, you are aware that
7 Rufus Thornton stated in his deposition that that solution
8 just got lost in the shuffle, aren't you?

9 A I read that in his deposition.

10 Q Okay. And you are aware that he said that?

11 A Yes.

12 Q Well, I am not going to finish up all of these
13 things. Incidentally, just one question with regard to the
14 last item, management process, and your occupation with
15 prosecuting claims against the Air Force and Whittaker, you
16 are aware that all of the costs, that TechDyn incurred from
17 the time it started preparing claims in October 1986, all
18 the way up until the present, have been charged to this
19 contract?

20 A I don't know that to be true.

21 Q You don't know whether or not it's true, do you?

22 A You will have to ask Scott Gray who is going to
23 testify later on --

24 Q Do you know how much money has been spent in that
25 effort of prosecuting claims against the Air Force and

GREG CRIDER - CROSS EXAMINATION

1133

1 Whittaker?

2 A No, I don't.

3 Q All right, sir, let me -- I'll get other witnesses
4 to deal with the rest of those items. But let me just ask
5 you a few things about the TechDyn side of the fences, as we
6 perceive it. You are aware, aren't you, that Mr. Thornton
7 testified in his deposition that, given the evolution of
8 this program into a development program that the original
9 schedule just wasn't realistic from the standpoint of the
10 PDFA, are you not?

11 A I read that, he said that in his opinion, in light
12 of what was required, which was different from TechDyn's
13 understanding of what was required on the PDFA.

14 Q And what was required that was different from
15 TechDyn's understanding was software development, isn't that
16 --

17 A The software development effort was much greater
18 than they were led to believe.

19 Q You are aware also that Mr. Thornton said that
20 from the CFA side, 18 month schedule wasn't realistic --

21 A I believe that's not right. I believe he
22 testified that it was realistic.

23 Q And he gave a long list of reasons, that it was
24 realistic.

25 A I believe he said it was realistic.

GREG CRIDER - CROSS EXAMINATION

1134

1 Q That's what I tried to say. I'm sorry if I
2 misspoke. He said that for the CFA side, the 18 month
3 schedule was realistic. Isn't that right?

4 A Right.

5 Q But that TechDyn hadn't met that schedule for
6 reasons unrelated to Whittaker. Do you recall that?

7 A No, I don't.

8 Q What were the reasons that Mr. Thornton gave in
9 his deposition --

10 A I said I didn't remember.

11 Q Okay.

12 A That's not my opinion.

13 Q In planning for a program of this size, strike
14 that. You're aware, sir, that this program was at least a
15 couple of times larger than any program that TechDyn
16 previously had to that point, aren't you?

17 A I believe this was one of their larger.

18 Q And you would expect a company like TechDyn to put
19 in place right at the outset of the program a budget for the
20 program, wouldn't you?

21 A Yes.

22 Q And in fact, you know that TechDyn did not have an
23 initial budget for this program, aren't you?

24 A That would be a question more appropriately
25 directed to Scott Gray, who will testify to cost and damage

GREG CRIDER - CROSS EXAMINATION

1139

1 that.

2 Q Do you remember in general that that was his
3 stated view in that deposition?

4 A No.

5 Q And you're aware sir, are you not, that after, in
6 1989, after TechDyn had gone to this new mechanical RCE,
7 that it anticipated getting deliveries from its modem
8 subcontractor, Grimm, some time in 1989, are you not?

9 A I was aware that the modems took longer than they
10 had anticipated to obtain. However, they were able to
11 develop the entire new solution to the RCE within the time
12 frame allowed in the original schedule for the original RCE
13 development --

14 Q And you are aware sir, that in fact, TechDyn did
15 not get the equipment that it needed for the mechanical RCE
16 until mid 1990, or beyond?

17 A I don't believe it was beyond. I don't believe
18 that it was 1990.

19 Q Mid-1990.

20 A Yes.

21 Q So, a year went by --

22 A No, they had enough to do testing in March, 1990,
23 successfully tested the mechanical approach to the RCE in
24 March of 1990. At that point the software had still not
25 been accepted. The PDFA software still had not been

**TRIAL TESTIMONY OF
HERBERT ROUNTREE**

HERBERT ROUNTREE - DIRECT EXAMINATION

1146

1 Roundtree.

2 JUDGE BROWN: Herbert Roundtree.

3 Whereupon,

4 HERBERT ROUNTREE

5 having been duly sworn, was called as a witness herein and
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. RIDDLES:

9 Q Good afternoon, sir.

10 A Good afternoon.

11 Q Would you please state your name and your place of
12 employment for the record, please?

13 A Herbert A. Roundtree. I'm employed at TechDyn
14 Systems Corporation.

15 Q What is your position at the TechDyn Systems
16 Corporation?

17 A I am Assistant Vice President and Director of
18 Washington Operations, with a major additional duty as
19 Director of Marketing.

20 Q Mr. Roundtree, would you tell us about your
21 education, please? Where did you attend high school?

22 A I attended high school in Jonesville, Louisiana.

23 Q And after graduation from high school, what did
24 you do then, sir?

25 A I attended college at Southern University A&M

HERBERT ROUNTREE - DIRECT EXAMINATION

1147

1 College in Baton Rouge.

2 Q What was your degree plan at the Southern
3 University in Baton Rouge?

4 A I participated in a pre-medical course. I
5 received a Bachelor of Science degree in biology.

6 Q And after your graduation from Southern
7 University, what did you do then, sir?

8 A I entered the Army. During my stay at Southern
9 University, I participated in an ROTC program and earned a
10 commission as a second lieutenant in the U.S. Army.

11 Q When did you go into the Army, sir?

12 A In October of 1954.

13 Q When you went into the Army, what was your first
14 position as a second lieutenant?

15 A I attended a basic course at Fort Sill, Oklahoma
16 and upon graduation from that, I was sent to Fort Bliss,
17 Texas to participate in an air defense radar course for
18 gunnery and radars.

19 Q And after you finished that course at Fort Bliss,
20 what did you do then, sir?

21 A I went on an air defense site in Los Angles, using
22 the radar and the guns in the defense of the Los Angeles
23 City area.

24 Q How long were you in the Los Angeles city area?

25 A Three years.

HERBERT ROUNTREE - DIRECT EXAMINATION

1148

1 Q And then from that where did you go, sir?

2 A I returned to Fort Bliss, Texas where I
3 participated in a transition course from radar and guns to
4 the Nike Ajax missile system. That's also an air defense
5 weapon.

6 Q And how long were you in that position, sir?

7 A I stayed in the Nike unit for about six months
8 after completion of school and then I went overseas to
9 Korea.

10 Q And what did you do in Korea?

11 A I was in a field artillery unit. I was staff
12 officer, communications officer, what have you, for a year.
13 For eighteen months.

14 Q After you returned from Korea, what did you do
15 then, sir?

16 A I returned to Fort Bliss and attended the surface
17 to air missile course for the Nike Hercules missile system,
18 which is about 42 weeks.

19 Q And were you an instruction at that time?

20 A No, upon completion of the school, I
21 participated -- I was assigned to the school for
22 approximately two years as an instructor.

23 Q And what was the area in which you were an
24 instructor?

25 A I taught radars. The high powered acquisition

HERBERT ROUNTREE - DIRECT EXAMINATION

1149

1 radar, low powered acquisition radar, target track, missile
2 track -- I taught all radar.

3 Q All right, sir. And then after you left as an
4 instructor from the school at Fort Bliss, what did you do
5 then, sir?

6 A I was reassigned to Germany at the Hornfelds
7 Training Center. It's an Army missile range -- it's a
8 training range.

9 Q What were your duties there, sir?

10 A I was the range officer.

11 Q How long were you in charge of that?

12 A About 19 months.

13 Q And upon completion of that tour, what did you do?

14 A I didn't complete the tour. I was promoted to
15 major and reassigned to CONUS for a training --

16 Q CONUS?

17 A To the Continental United States at Fort Campbell,
18 Kentucky, as an executive officer of a training battalion.

19 Q And how long were you executive officer of that
20 training battalion?

21 A About 18 months. And then I was assigned duties
22 as an inspector general at the 101st Airborne Division.

23 Q And what are the duties of an inspector general,
24 sir?

25 A An inspector does all the investigations, receives

HERBERT ROUNTREE - DIRECT EXAMINATION

1150

1 all the complaints and does all inspections for the
2 commanding general of a divisional sized unit.

3 Q And how long were you in that job?

4 A About three years. Part of it was at Fort
5 Campbell and the remainder of it was in Viet Nam when the
6 division moved to Viet Nam.

7 Q When were you transferred to Viet Nam, sir?

8 A In November '67. I returned in November of '68.

9 Q When you returned from Viet Nam in 1968, where did
10 you report then?

11 A I was again reassigned to Fort Bliss, Texas and
12 assigned to the Safeguard missile system. It was an anti-
13 ballistic missile system and I was assigned there as an
14 instructor and staff officer in a program that was ongoing
15 there.

16 Q What was your field of instruction?

17 A Again, it was the radar. We had two radars. We
18 had a missile track and a surveillance radar and I taught
19 those two radars.

20 Q Now, when you finished with that, what did you do,
21 sir?

22 A When I finished with that, I attended the Command
23 and General Staff College at Fort Levenworth.

24 Q Could I get you to say that slower? The
25 Commanding General Staff College?

HERBERT ROUNTREE - DIRECT EXAMINATION

1151

1 A Command and General Staff College at Fort
2 Leavenworth, Kansas.

3 Q What is that college?

4 A It's a staff officers' course. It deals with all
5 elements of staff level -- at the division or brigade and
6 division -- higher level of staff. Army staff work.

7 Q I see. And when you completed that course, what
8 did you do, sir?

9 A I was selected for the command of a battalion and
10 sent to Germany, where I commanded a Nike Hercules battalion
11 for a year and a half.

12 Q What does the commander of a Nike Hercules
13 battalion do, sir?

14 A He supervises the activities of four missile
15 batteries and each missile battery contains probably about
16 35 to 40 missiles. And their accompanying radars.

17 Q Are those missiles nuclear capable?

18 A This was a nuclear weapon. It was a larger
19 missile. It was an aerial. It was a missile designed to
20 attack airborne targets in an aerial fashion, that is, a
21 large envelope, kill a lot of targets at one time. And they
22 used a nuclear warhead.

23 Q Did you have men serving under you at that --

24 A There was about 1000 men in the battalion.

25 Q And, sir, what did you do after that?

HERBERT ROUNTREE - DIRECT EXAMINATION

1152

1 A After that, I returned to the United States and
2 was assigned to the Pentagon, to the Army staff in the
3 Pentagon, as a staff officer.

4 Q How long were you in that position, sir?

5 A I served on the Army staff for three years in the
6 operation directorate.

7 Q And then what did you do, sir?

8 A I was transferred to the Joint Chiefs of Staff or
9 the Organization of the Joint Chiefs of Staff and I served
10 on the Joint Staff.

11 Q What are the Joint Chiefs of Staff?

12 A The Joint Chiefs of Staff are the four senior
13 officers in each one of the services and supporting them is
14 a staff of about 400 people and it's called a Joint Staff
15 and they perform all the high level military decisions for
16 the Secretary of Defense and the President.

17 Q And you were on that staff of 400?

18 A I served on that staff for five years.

19 Q What was your rank at that time, sir?

20 A I was assigned to the Joint Staff as a lieutenant
21 colonel. I got promoted to colonel and the last four years
22 I was there, I served in the capacity of a full colonel.

23 Q And what were your duties as a full colonel for
24 that Joint Staff, sir?

25 A It was command and control systems analyst. We

HERBERT ROUNTREE - DIRECT EXAMINATION

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1 validated all of the communications systems for the National
2 Command Authority, which is the President and the Secretary
3 of Defense and all of the military arms reporting to those
4 personnel which are normally referred to as CINCs and we
5 have a CINCPAC who commands all the forces in the Pacific;
6 CINCEUR, all the forces in Europe and around the world like
7 that. All those people reported to the Joint Chiefs of
8 Staff and we supported them.

9 Q Now, sir, when you left that position, what did
10 you do then?

11 A I retired.

12 Q And when was that?

13 A That was 1 December 1980.

14 Q Okay. And when did you go to the TechDyn
15 Corporation?

16 A I joined TechDyn on the 13th of February 1981.

17 Q Colonel Roundtree, what were your duties at
18 TechDyn?

19 A I came to TechDyn as a command and control systems
20 analyst. I worked the worldwide military command and
21 control system projects that TechDyn was participating in at
22 that time.

23 Q And did you have any other duties later?

24 A I have done quite a few things since that time.
25 I've worked a lot of projects, I've served as program

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1 manager for numerous projects and Director of Washington
2 Operations, then Assistant Vice President and the duties are
3 advancing, I'd say.

4 Q Did there ever come a time when you became the
5 director of marketing for TechDyn?

6 A I assumed the role as a director of marketing --
7 well, not "assumed" -- I was given the job as the director
8 of marketing probably three or four years ago and I've been
9 doing that for the last three or four years.

10 Q What does a director of marketing do at TechDyn?

11 A At TechDyn, the director of marketing presents
12 TechDyn's capabilities to potential customers. He or she
13 monitors the marketplace for opportunities, for potential
14 partners that we can work with or to bid projects with and
15 presents briefings. Surveys all the journals and
16 publications that relate to the type of work that we do to
17 find opportunities for work.

18 Q And are these the duties that you did as director
19 of marketing?

20 A Yes.

21 Q Let's talk specifically about industry reports.
22 Do you review industry reports in your marketing efforts?

23 A The basic report published by the industry is "The
24 Commerce Business Daily". It's a report published by the
25 Department of Commerce that lists all of the work

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1 requirements that the various agencies in the Government
2 have. This is all of the departments and agencies
3 throughout the Government. They advertise their
4 requirements for work to be done in this document. It's
5 published daily except holidays and weekends.

6 MR. RIDDLES: All right. I'm going to ask that
7 you be shown now Plaintiff's Exhibit 507.

8 (Pause.)

9 MR. RIDDLES: I'm placing before you what's been
10 marked as Plaintiff's Exhibit 507.

11 BY MR. RIDDLES:

12 Q Do you recognize this, please, sir?

13 A These are page extracts from "The Commerce
14 Business Daily" during the period August of '85 through --
15 it looks like -- July of '90. They are maybe two-page
16 extracts from the various CBDs that were published during
17 that time.

18 Q Did these extracts come from the records of
19 TechDyn?

20 A Yes. These are -- I can see my markings on them
21 here so yes, these are ones that came from TechDyn.

22 MR. RIDDLES: Your Honor, I move Plaintiff's
23 Exhibit 507 into evidence.

24 MR. WORK: I object on several grounds, Your
25 Honor.

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1 Number one, this document has been marked up in
2 preparation for this litigation. It's got circles around a
3 lot of things and if Your Honor is interested, I can tell
4 you when those circles were put there, at least some of
5 them.

6 Secondly, this is a little like pulling out "The
7 Washington Post" for the last five years and tearing out
8 pages and saying this is evidence. This isn't any more
9 evidence than the "Washington Post" excerpts that were
10 rejected by Your Honor as not being evidence so on both of
11 those grounds, I object to this.

12 It's also hearsay in the sense that it is just out
13 of a newspaper.

14 JUDGE BROWN: I can imagine, because I'm very
15 imaginative, a foundation that could be laid for its
16 introduction. I do not know whether you can lay that
17 foundation or not in light of what Mr. Work says. But I
18 don't know whether what Mr. Work says is the fact or whether
19 my imagined foundation is the fact.

20 So at this moment, I sustain the objection and ask
21 that you lay a further foundation because if it is merely
22 clipping those and throwing them in a file, then I would
23 sustain his objection but if my imagined foundation or
24 another one that you can imagine occurs, it might be
25 admitted.

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1 MR. RIDDLES: Thank you.

2 MR. WORK: May I be a little bit clearer on the
3 basis for my objection?

4 It wasn't just clipping them and throwing them in
5 a file, it was clipping them in preparation for Mr.
6 Roundtree's deposition.

7 JUDGE BROWN: I understand. And if that is what
8 was done, they may or may not come in but that's what you
9 say it was. I haven't heard from the witness what it is so
10 that's why I'm asking that he lay a foundation.

11 BY MR. RIDDLES:

12 Q Mr. Roundtree, do you know why these came from the
13 records of TechDyn or why they were maintained by the
14 TechDyn Corporation?

15 A Okay. We --

16 JUDGE BROWN: Well, how did they get there in the
17 first place? Let's start there. How and when.

18 BY MR. RIDDLES:

19 Q Do you know how and when these records came to be
20 in the possession of the TechDyn Corporation?

21 A TechDyn subscribes to "The Commerce Business
22 Daily" and we maintain them on file for several years.

23 Q And are these examples of the ones that you
24 maintained on file?

25 A These are extracts or excerpts from our file of

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1 "Commerce Business Dailies".

2 Q And now there are -- why did you maintain these,
3 sir?

4 A Okay. I was asked to review our marketing efforts
5 over the period of '85 through '90 and come up with a list
6 of projects that we may have bid or could have bid and did
7 not bid.

8 Q And are these the extracts --

9 A These are the extracts from "The Commerce Business
10 Daily" that I reviewed -- these are the projects that I
11 deemed would fall within the category of the normal work
12 that we pursue and this is a list -- there was a list that
13 was made from these extracts.

14 JUDGE BROWN: When did you undertake that review?

15 THE WITNESS: About a year ago.

16 BY MR. RIDDLES:

17 Q Prior to that time when you undertook that review,
18 had you ever reviewed these "Commerce Business Dailies" in
19 your duties as director of marketing?

20 A We do it quite frequently, not necessarily over a
21 five-year period but over a six month or a year period, we
22 try to see where the industry is going and who's doing what
23 to whom out there, so to speak. You get a good feel for
24 what an agency is doing by looking at his advertisements.

25 (Continued on next page.)

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1 Q And did you look at these?

2 A Yes.

3 MR. RIDDLES: Your Honor, subject to that
4 qualification and with that testimony, I renew my offer of
5 this exhibit into evidence.

6 JUDGE BROWN: I'm going to declare now the
7 15-minute recess. You all take a 15-minute recess and we'll
8 stay and talk about this for a minute and I'm going to ask
9 the witness to step outside.

10 (Pause while jury and witness are excused.)

11 JUDGE BROWN: You don't have to come up because
12 nobody's here but us girls. But will you hand me the
13 exhibit so I can look at it?

14 MR. WORK: Sure.

15 (Pause.)

16 JUDGE BROWN: You wanted to state an objection?

17 MR. WORK: Yes. I've got two objections.

18 The most immediately observable objection, Your
19 Honor, is the circles.

20 JUDGE BROWN: Which he placed there a year ago.

21 MR. RIDDLES: A year ago.

22 MR. WORK: What he did -- and this comes from the
23 deposition -- and correct me if I'm wrong -- a fellow by the
24 name of Chris Ripper, who is one of their consultants, told
25 him to go out and pull these excerpts from the newspapers.

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1 And he did that, apparently. My recollection is -- and I
2 may be inaccurate -- two days before his deposition. And he
3 circled some things and I think he made some other marks on
4 these documents. And these were just excerpts from
5 newspapers they had kept. These weren't kept in a file,
6 these particular sheets. These were just out of newspapers
7 that they had stacked up there. And this is solely in
8 preparation for this litigation. And, to me, it's no
9 different than the "Washington Post" newspaper articles that
10 they objected to and Your Honor didn't admit.

11 JUDGE BROWN: Well, I don't see the connection
12 there but I see your other point.

13 What do you want to say?

14 MR. RIDDLES: Your Honor, what he has done is to
15 go through an existing file and he has marked as
16 indicated -- I don't know necessarily that it was done at
17 the direction of Mr. Ripper, but he did mark it one year ago
18 as stated in his testimony and the purpose of his marking
19 them was to see whether there were jobs available in that
20 timeframe that they would have bid but that they did not bid
21 because of the tie-up of the ICCE project and their
22 personnel on it.

23 JUDGE BROWN: Well, let me tell you what my
24 imagination was, all right?

25 I imagined that possibly through this thing he, as

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1 the marketing director, would go through and identify
2 projects on which he wanted to bid or on which he thought
3 the company might do something and that he would go to Mr.
4 Morrison or whoever and say hey, I found one in the
5 "Commerce Business Daily" here -- this Department of
6 Treasury, U.S. Customs contract -- that's right up our
7 alley. And Mr. Morrison would say gee, I wish we could bid
8 on that but Whittaker has screwed us and we can't do it and
9 that would be how it would come in.

10 Instead, what happens is a year ago in preparation
11 for trial, somebody says hmm -- I bet there were a lot of
12 contracts that we could have gotten if Whittaker hadn't
13 screwed us and so why don't you, Mr. Marketing Director, go
14 back and find some that we might have bid on.

15 Have I got that part right?

16 MR. RIDDLES: Well, I wouldn't use the same
17 terminology --

18 JUDGE BROWN: No, I'm sure you wouldn't.

19 MR. RIDDLES: But basically, you're --

20 JUDGE BROWN: And I shouldn't either but --

21 MR. RIDDLES: -- you're on the right track.

22 That's correct. Yes, sir.

23 JUDGE BROWN: All right. Well, I don't think
24 that's the way it's done. I don't think that will do it. I
25 don't think in preparation for trial I can in retrospect go

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1 back and say well, gee, I wish I'd done this, that and the
2 other thing and invent, if you will, using the term not
3 meaning to be pejorative, but invent a --

4 MR. RIDDLES: I believe that I can establish the
5 link, however, that Your Honor was talking about. Did he go
6 back and circle ones at a later time, a year ago? Yes, he
7 did. But I also think that his testimony will be that these
8 are jobs that we looked at and simply passed by during the
9 timeframe of the ICCE project.

10 MR. WORK: After two things. He testified that
11 there were some -- and I don't remember how many he said --
12 that he had spotted before but he said there were a lot that
13 he was looking at for the first time.

14 JUDGE BROWN: Well, I don't think I want to hear
15 about the ones that he now goes back and in retrospect says
16 gee, I wish we could have bid on that. I think it's got to
17 be contemporaneous because I don't think -- unless you can
18 show me some authority to the contrary -- I don't think that
19 would be -- I'm trying to think of the --

20 MR. WORK: Evidence.

21 JUDGE BROWN: Well, yes, but you know --

22 MR. WORK: Real evidence.

23 JUDGE BROWN: Good evidence. But there's a better
24 that a smarter judge than I would say it. But it's just --
25 it smacks of trial preparation as opposed to a business

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1 decision.

2 MR. RIDDLES: While we're out, may I just do this
3 with it? Here's what I want to -- I am happy to have this
4 witness testify as to where -- as to the process and not to
5 show any specific job on these sheets and to indicate that
6 there were jobs in this timeframe.

7 JUDGE BROWN: That they considered.

8 MR. RIDDLES: Without specific identification,
9 that they considered and not to identify any particular one
10 if that's a concern to the Court.

11 JUDGE BROWN: No, the concern to the Court is that
12 you're identifying ones that were not considered at the
13 time. You're going back now and saying gee, if we had time,
14 we would have done that.

15 MR. RIDDLES: I don't think there's --

16 JUDGE BROWN: I don't think you can do that.

17 MR. RIDDLES: I don't think that he can -- I agree
18 that where he has circled one, for example, Your Honor, that
19 there is a concern for the Court there.

20 What I would like to do is just to establish that
21 this is our procedure and this is what that marketing
22 procedure is and we would go from that. Then there are
23 later ones where we did identify them, where we did bid
24 them, where we circulated a routing sheet and which were
25 denied.

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1 JUDGE BROWN: Okay. Well, then we won't introduce
2 the document.

3 MR. WORK: But they aren't on this.

4 JUDGE BROWN: No. So we're not going to introduce
5 the document.

6 MR. RIDDLES: Yes, they are. Excuse me. Some of
7 them are on this.

8 JUDGE BROWN: Well, we're not going to introduce
9 the document with the circles and we're not going to talk
10 about ones that he identified a year ago in preparation for
11 litigation that he wished he'd thought of five years ago.

12 MR. WORK: Could I also ask that -- I think that
13 he has retrospectively marked -- I'm not sure of this but I
14 think he said in his deposition that he had retrospectively
15 marked those that he had looked at so I think he should have
16 to identify not from just reading the document but from his
17 recollection but not prompted by something that he's marked
18 in preparation for his deposition.

19 MR. RIDDLES: I'm not having him testify from
20 that.

21 JUDGE BROWN: Okay. I think -- what time -- the
22 jury went out about five after, can we say? So we will come
23 back at 20 after.

24 (Brief recess.)

25 BAILIFF: Everyone remain seated and come to

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1 order.

2 JUDGE BROWN: Okay. Are we ready? Bring them in.

3 (Pause while the jury is seated.)

4 BY MR. RIDDLES:

5 Q Mr. Roundtree, when you had received these
6 "Commerce Business Daily" reports, what do you do with that
7 information once you've received it, sir?

8 A The "Commerce Business Dailies" are reviewed daily
9 by me or someone else in the office to see if there's any
10 advertisements of work that we would like to do or would
11 like to bid for.

12 Q What kind of advertisements are in that document?

13 A It runs the gamut of work of Government agencies
14 from communications to all types of hardware, weapons
15 systems, janitorial, the whole bit. We normally concentrate
16 on the communications.

17 Q Are you familiar with the term RFP?

18 A RFP -- request for proposal.

19 Q And are there RFPs advertised in there?

20 A That's the basis for the advertisement, is to
21 inform the public that there's an RFP that has been prepared
22 by a governmental agency and it will be distributed if they
23 so desire. From that, they can participate in the bidding
24 process.

25 Q Are those RFPs already in existence?

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1 A Generally speaking, the advertisements in the CBD
2 or "Commerce Business Daily" are somewhat maybe a month or
3 two prior to the release of the RFP. They are kind of a
4 heads up notice that an RFP is coming and you write for it
5 and basically we write and say upon its release please send
6 us a copy of it. And when it's released, they will mail it
7 to us.

8 Q And have you ever written for those RFPs?

9 A I do it all the time.

10 Q What happens when you receive one, sir?

11 A Okay. The initial -- upon the initial receipt of
12 the RFP, I will go through it and I will try to determine
13 the requirements from the standpoint of personnel, the
14 dollar value of the work effort, get some feel for how much
15 money it will cost us to do the proposal, whether we are
16 capable of doing the proposal and if I conclude that we
17 probably can, I then call on some of the other engineers in
18 the office to give me an independent evaluation of it.

19 Q Why do you pick engineers to give you an
20 independent evaluation?

21 A Most of the projects that we are looking at are
22 technical. They are communications, they are technical
23 projects.

24 Q And what do they do, these engineers, when you ask
25 the for their --

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1 A They go through the same procedures I just said I
2 would do. I would look at it from the standpoint of
3 personnel qualifications, the work requirements, the cost,
4 the dollar value of the contract and whether or not it falls
5 within what we see as our capabilities.

6 Q Now, if you conclude that it is feasible and it
7 works for you, what do you do then?

8 A Okay. If I conclude that it's feasible, I will
9 initiate what we have as an internal document called an RFP
10 routing sheet. It is the document that we use to obtain
11 approval to proceed to develop a proposal.

12 Q And when you have that RFP routing sheet, what do
13 you do with that?

14 A I complete all of the data entries on the RFP
15 routing sheet and then it's circulated up the channel for
16 approval. It goes to Mr. Hise or Mr. Morrison for approval.

17 Q And when you have had that approval or rejection
18 from Mr. Hise or Mr. Morrison, what happens in those cases?

19 A If it's a rejection, I just file it away but if
20 it's approval, we assemble -- we try to assemble the team to
21 develop the proposal.

22 Q And who would be on your team for developing such
23 a proposal?

24 A Normally, we would get -- the engineers constitute
25 the bulk of the effort. We have cost specialists out in Mr.

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1 Hise's office that will do the cost proposal. I normally
2 participate in the management proposal. A proposal normally
3 consists of a technical section, a management section and a
4 cost section. So in our operation, the cost is usually done
5 by Mr. Hise's people, the technical is done by the engineers
6 that I can put together to work on the project if they're
7 available, and I will participate with the engineers in the
8 development of the management proposal.

9 Q Now, how long does it take to put one of these
10 proposals together?

11 A Normally, the advertisement or the RFP is
12 circulated about 30 to 45 days prior to the time that it's
13 due, so you have somewhere from -- oh, 40 to 25 days in
14 order to develop the proposal, put it together and get it
15 in.

16 Q What happens when you've got it all together?

17 A When we complete the proposal, it has a due date.
18 There's a specific due date on which it must be turned in
19 not later than and we will then deliver it to the agency or
20 wherever it's directed in that agency, to that office. We
21 will deliver the proposal, all sections, bound and sealed.

22 Q After it's delivered to that office, what happens,
23 then, sir?

24 A From our perspective, or from my point of view,
25 probably for a couple of months, nothing. The Government

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1 goes through an extended evaluation of all the proposals
2 that they have received and this takes anywhere from two to
3 four months. So the first couple of months there's almost
4 no activity that involves the bidders.

5 Once the Government has an opportunity to go
6 through the proposals to a certain extent, they discover
7 questions that they don't understand what you've said or
8 what you're doing, so we go through a series of
9 clarifications and many negotiations on each proposal.

10 Q And typically what might the clarification
11 questions involve?

12 A Qualification of personnel. The technical
13 approach is one of the very major items that we find in all
14 technical proposals that the Government will probably
15 question your technical approach against what the Government
16 had in mind to be done. If you can resolve that, then you
17 have a sound tech proposal and your entry will continue to
18 be evaluated.

19 Q Now, sir, when those clarifying questions have
20 been asked and answered, what happens then?

21 A Well, you have a -- there's another deadline in
22 which you must answer and you must respond so we create
23 another package and mail it into the Government and the
24 Government will evaluate that and, generally speaking, the
25 Government gives you one final opportunity to give them your

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1 best cost tech entry and that's called a best and final
2 offer and that appears probably a month after the
3 clarifications.

4 Q Now, after that best and final offer, what happens
5 then?

6 A You can just sit back and wait and hopefully
7 you're the lucky one.

8 Q And then there's an award, I take it.

9 A There's an award. There's a subsequent award to a
10 successful bidder.

11 Q Colonel Roundtree, are you familiar with the ICCE
12 project?

13 A Yes.

14 Q And what, if any, effect has the ICCE project had
15 on marketing of TechDyn?

16 MR. WORK: Objection. No foundation.

17 BY MR. RIDDLES:

18 Q Do you know whether the ICCE project has had an
19 effect on marketing?

20 JUDGE BROWN: I don't understand what you mean no
21 foundation -- for what? What kind of foundation?

22 MR. WORK: The only foundation that we've had from
23 Mr. Roundtree is the question are you aware of the ICCE
24 project. And then we launch into what effect has the ICCE
25 project had on your marketing activities and there is no --

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1 unless he has some knowledge of the ICCE project, he's not
2 competent to testify about that.

3 JUDGE BROWN: Foundation with regard to his
4 knowledge of the ICCE project needs to be laid.

5 BY MR. RIDDLES:

6 Q What is the knowledge that you have of the ICCE
7 project, sir?

8 A It's a project that has been operated out of the
9 corporate headquarters and the personnel that are working on
10 the ICCE project are some of the people that we have used
11 prior to their involvement with the ICCE project in our
12 marketing efforts. And this is a procedure at TechDyn.

13 We're a small company so we use our engineers to
14 assist in the marketing, evaluation of the RFPs once they're
15 received and also we use them to participate in the actual
16 development of the tech proposal. And this is common for
17 smaller companies. You use your engineers wherever you can
18 and whenever you can to enhance your marketing efforts.

19 (Continued on next page.)

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1 Q Colonel, did the ICCE project have any effect on
2 your marketing?

3 MR. WORK: Objection. Lacks foundation.

4 JUDGE BROWN: I overrule the objection.

5 THE WITNESS: There are basically two impacts from
6 the marketing aspect. First of all, the ICCE personnel, or
7 those personnel participating in the ICCE program, were
8 never available to us, or to me, to participate in the
9 evaluation of RFP's, the review of the CBD's or the actual
10 participation in the development of tech proposals once we
11 had decided to bid a project.

12 Secondly, most proposals require the inclusion of
13 resumes of personnel. And we were always hesitant to
14 include the ICCE personnel resumes, because the government
15 could plainly see if these people were tied up on this
16 project, they're not going to be available for this project,
17 when and if it is awarded. So, we almost never used those
18 people in any aspect of the marketing aspect.

19 MR. WORK: Your Honor, I have an objection. I
20 move to strike the first part of that answer. You will
21 recall that he -- I didn't want to interrupt him, so this
22 may be a little bit late. But you will recall that I asked
23 Mr. Morrison the other day what your theory of this claim
24 for the loss of new and other business, is it that the
25 people can't work on proposals. He said no, that's not the

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1 theory. Only that we couldn't name these people on
2 proposals. Now we have a moving target. Now we are
3 expanding the theory of the claim. And I think that is too
4 late in the day to do that. We have an identified theory on
5 the claim, let's focus on that and discard other new
6 theories.

7 JUDGE BROWN: If what you mean by new theory is
8 the difference between what Mr. Morrison said and what is
9 now being presented, I will overrule the objection. I think
10 that claim is stated, and that may have been Mr. Morrison's
11 understanding of what was, but if the person who was
12 actually doing it had some other understanding, and within
13 the purview of the law suit, then it can be testified to.

14 I overrule the objection.

15 BY MR. WORK:

16 Q Now you said that these personnel could not be
17 proposed for the job being sought?

18 A Right.

19 Q How did that specifically effect your bidding?

20 A Basically, the quality of the proposal, without
21 the inclusion of the best personnel, say a Don Ellis, or
22 Rufus Thornton, or somebody like that, in your proposal to
23 work the effort, just degrades it. Because you resort to
24 saying new hire, unless you have some people sitting around.
25 And again, we don't just have people that are waiting to go

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1 to work.

2 So, we would have to bid the proposal with a new
3 hire. A new hire is a limited credible entry in a proposal.

4 Q And why is that, sir?

5 A Because you have no quality there. He has no --
6 the government doesn't know who they are going to get in a
7 new hire.

8 Q I see. Were there any jobs that you bid, that you
9 feel that you did not get as a result of the ICCE program?

10 A There were several projects that we have
11 identified that we felt that the, that we lost, or we did
12 not win, because of the quality of the proposal effort.

13 MR. WORK: Your Honor, I am going to ask the Clerk
14 to mark this as Plaintiff's Exhibit 506. I've shown a copy
15 of this to Mr. Work.

16 JUDGE BROWN: Five, zero, six?

17 MR. WORK: Yes, sir.

18 (Pause.)

19 JUDGE BROWN: It isn't on the book, and it's not
20 marked, which makes me wonder if he is looking at the right
21 506. Was there another?

22 MR. WORK: Sir, it's in the book --

23 JUDGE BROWN: You don't have to explain, as long
24 as he --

25 MR. WORK: Let me make sure I have what you have.

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1 MR. RIDDLES: Let's make sure --

2 MR. WORK: Your Honor, I object to this. This is
3 a collection of routing sheets. And you will recall this is
4 yet another one of the discovery issues. We only got these.
5 We didn't get the whole mill run of routing sheets that they
6 did. And he just testified that there were a lot of them.
7 We might see others that we didn't receive in discovery that
8 would show the names of these people.

9 This is one of those areas that I think it becomes
10 very clear that they should be precluded from using just a
11 selection of documents out of their file when we asked for
12 it, and get the whole file.

13 JUDGE BROWN: Well, we are long past the discovery
14 issues. And you made your point for the record, as you
15 should do. And I overrule the objection.

16 BY MR. RIDDLES:

17 Q I show you now exhibit 506. Do you recognize
18 this, sir?

19 A Yes, this is 5 RFP routing slips for projects that
20 we actually submitted a proposal for, and did not win.

21 Q And were you the director of marketing when these
22 routing sheets were submitted?

23 A Yes.

24 MR. RIDDLES: Your Honor, I move these into
25 evidence, now.

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1 JUDGE BROWN: Other than the objection stated, is
2 there any other objection?

3 MR. WORK: No other objection.

4 JUDGE BROWN: They are received over the
5 objection.

6 (The document referred to, having
7 been previously marked for
8 identification as Plaintiff's
9 Exhibit 506, was received in
10 evidence.)

11 BY MR. RIDDLES:

12 Q And would you look, please, at the first one,
13 which is proposal number 904?

14 A Yes, I see that one.

15 Q Now, would you look at the proposal number, which
16 is at the top, number 904? What does that number signify,
17 sir?

18 A That's a cost accounting code that we used to
19 identify projects and to cost the labor or supplies against
20 it.

21 Q All right. And then you have the proposal
22 manager, Milton De Rouan, Jr.? Who was that, sir?

23 A Milton De Rouan, Jr., was the vice president for
24 European operations for TechDyn. This proposal was actually
25 initiated in Germany.

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1 Q And then beneath that, it says RFD requester.

2 A That is just a description that requested the RFD
3 from the government.

4 Q Over on that date of request, 29 December 1989,
5 and then beneath that, do you see where it says solicited?
6 What does that mean?

7 A Okay, there are two manners, or two ways in which
8 you can seek to do work with the government. You can
9 respond to an RFP that they submit, and that's solicited.
10 He solicited you.

11 If you have an idea that the government, you think
12 that you have a product that you think the government is in
13 great need of, and you do it better than anyone else, you
14 can submit a proposal to a governmental agency to do this
15 work. And that is unsolicited.

16 Q Now, are the bulk of your proposals solicited
17 proposals?

18 A Yes, solicited. We have only had a number of
19 unsolicited.

20 Q Now, let's look at the identifying data, the
21 subject of this one. Can you explain, read that line,
22 please, and explain what that is.

23 A The subject is usually, the title is taken
24 directly from the RFP. It's the O&M, operations and
25 maintenance level 486L in Turkey and Greece. This was an

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1 Air Force project, operating some switches.

2 Q Now, in the analysis section, can you explain that
3 those figures are, please, sir?

4 A The analysis section is an estimate by the
5 preparer of this form of Level S effort, it's usually an
6 estimate. They look at the requirements, statement of work,
7 and try to determine how many people, how many man hours,
8 that would be required to do the job. In some RFP's this
9 number is given to you by the government. They will give
10 you their estimate. But that's basic an estimate of the
11 amount of work that is required.

12 The duration is usually stated in the RFP. You
13 just take that directly for the RFP.

14 Q Would you look over at the next page of this
15 document, please, sir?

16 A Okay.

17 (Pause.)

18 Q All right. Where you say assessment of the
19 competition. What was that? Would you read that, and tell
20 us what that means?

21 A This was an assessment by the preparer. And it's
22 an attempt to determine, or to evaluate the competition.
23 Who was going to bid this, who was likely to bid this. Who
24 is incumbered, and from this we try to arrive at a figure of
25 about probability, or what are our chances of winning.

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1 Q That's one of the factors that goes into your
2 evaluation?

3 A Correct.

4 Q Look down, please, where it says comments. You
5 indicate that you can be price competitive, but then you
6 have, in the comments section, award is not just on the
7 basis of price. And then you have tech, management, costs,
8 in that order. Do you see that reference, sir?

9 A I see that. --

10 MR. WORK: Your Honor, excuse me. I apologize for
11 the interruption, but again we have a situation, this is a
12 proposal that originated in the Germany office. It was
13 signed by the head of the German office, that Mr. Morrison
14 talked about the other day, and yet it's from you, Mr.
15 Rountree that we are hearing about it.

16 Frankly, I don't see the relevance of a document
17 that is initiated by the German office, pertaining to a
18 German thing. If we are going to have it, let's have it
19 with Mr. De Rouan, the guy who is behind this thing.

20 MR. RIDDLES: I can clarify that, Your Honor. It
21 is TechDyn, yes, the award is not just done on the basis of
22 our price. Do you see that reference?

23 THE WITNESS: Yes.

24 BY MR. RIDDLES:

25 Q Who typed that in?

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1 A I was the preparer, Milt or I would have typed
2 that in.

3 Q Now, then you have Mr. De Rouan has tech,
4 management, cost in that order. What was your understanding
5 of what he meant by that?

6 A There is a section in the RFP, the request for
7 proposal, it's called evaluation section. And it's section
8 M. And it describes how your proposal effort will be
9 evaluated. Normally, there's a percentage factor given for
10 tech proposal, management and cost. And it will tell you in
11 what priority, or you go by percentages. If 50 percent is
12 tech, you know that it outweighs both the cost and
13 management.

14 It's usually broken down in that manner. If this
15 one had some indication in there that says that cost is not
16 the deciding factor. Tech and management will play an equal
17 part, or a major part in that. I would have to look at the
18 RFP to tell you exactly what it said.

19 Q Now, then. You the proposed contract value, and
20 below that some remarks. And if you will look at the bottom
21 of this, there is an indication that this job was bid. Do
22 you see that, where it was circled?

23 A That was the approval to bid.

24 Q I see.

25 A That is approval to bid. Mel approved it in his

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1 office, and submitted it to Mr. Hice. And Mr. Hice approved
2 it on the next line.

3 Q Mr. Hice gave the final approval?

4 A Right.

5 Q And was this job bid?

6 A This was bid.

7 Q Were you able to get this job?

8 MR. WORK: Objection. Strike that -- I apologize
9 for the interruption.

10 THE WITNESS: No, we did not win this job.

11 BY MR. RIDDLES:

12 Q Do you have any knowledge of why you did not
13 receive this job?

14 A Normally, when an award is made, all bidders that
15 bid the price will be advised as to generally why they
16 didn't win. And the letters are not too specific in many
17 cases to specifically why your proposal didn't win. But it
18 said that you were low in the technical, or the cost was
19 high or something like this.

20 This was a combination. I believe we had some
21 technical problems, and some management problems.

22 MR. WORK: I'm sorry, I'm going to have to
23 interrupt your answer, Mr. Rountree. We have tried very hard
24 to get many responses to these RFP's. We finally got one
25 from one of the procuring agencies. But, we haven't gotten

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1 any with respect to this. And if he keeps talking about
2 letters --

3 JUDGE BROWN: I sustain the objection. He is
4 testifying to a document that is not in evidence.

5 MR. RIDDLES: Well, what is the basis for your
6 indicating that you had some technical problems?

7 JUDGE BROWN: I sustain the objection to him
8 testifying that those were the reasons. Did you have,
9 during this time, when this job was bid, was this during the
10 time frame of the ICCE program?

11 MR. WORK: Objection, this is irrelevant to
12 anything in the Washington office. This is in Germany, Your
13 Honor. Bid out of the German office. How can that have any
14 relevance to this law suit.

15 JUDGE BROWN: I don't know yet, but I am not
16 willing to cut it off, yet. I overrule the objection at
17 this point.

18 MR. RIDDLES: Was this during the time frame of
19 the ICCE program?

20 THE WITNESS: Yes, this was 1989.

21 BY MR. RIDDLES:

22 Q Had it not been for the ICCE program, would Mr.
23 Ellis, or any of the other members of the ICCE program been
24 available to assist with the technical proposal for this
25 project?

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1 MR. WORK: Objection, speculation. Calls for
2 speculation.

3 JUDGE BROWN: I think we need to go back to an
4 earlier objection that Mr. Work made that maybe we didn't
5 fully address. And that is, is -- it is not clear to me
6 what knowledge he has, and what contact he had, and what
7 control he had and anything else --

8 MR. RIDDLES: I believe I asked --

9 JUDGE BROWN: -- of this proposal. So --

10 MR. RIDDLES: I did ask him, was this during --

11 JUDGE BROWN: Well, I know it was during his
12 tenure, but I don't know how it's done, or whether he has
13 any control of it, or any --

14 MR. RIDDLES: Let me clarify that. When this
15 proposal is put together by Mr. De Ruan in Germany, what
16 happens to it then?

17 THE WITNESS: It is sent to corporate. And it is
18 reviewed. The cost is done, the management is reviewed and
19 --

20 BY MR. RIDDLES:

21 Q Do you have any role in that review?

22 A Yes.

23 Q And did you review this particular one?

24 A Yes.

25 Q Did you review it when it was received from Mr.

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1 Rosen in Germany?

2 A Yes.

3 Q And did you then pass it to the other individuals
4 who are listed on this list, for example, Mr. Hice?

5 A Yes.

6 Q Now, when that is received by you, when you
7 receive that, would you, who would put together the proposal
8 for this?

9 MR. WORK: Your Honor, he has gone from the
10 specific to the general. We are not talking about a pattern
11 of business, we are talking about a particular Turkish
12 project that was bid out of the German office. And if he
13 has specific knowledge about that, and why they didn't get
14 it, then that is competent testimony.

15 JUDGE BROWN: You can ask him who put this
16 proposal --

17 MR. RIDDLES: Who put this proposal together?

18 THE WITNESS: It was a consultant in my office
19 worked on it, and some of Milton De Ruan's people worked on
20 it in Germany.

21 BY MR. RIDDLES:

22 Q Who is the consultant in your office who worked on
23 it?

24 A It's a consultant that we use periodically, John
25 Von Birdy.

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1 Q Was Mr. Ellis available to work on this at that
2 time?

3 A No.

4 MR. WORK: Objection, no foundation for that
5 either.

6 JUDGE BROWN: I overrule that objection.

7 MR. RIDDLES: Why was he not available?

8 THE WITNESS: I have never been able to utilize
9 the ICCE personnel to participate in the development of
10 proposals and they were just not available to me.

11 MR. WORK: I knew that was going to be the answer,
12 and that's why I objected earlier, Your Honor. That's not a
13 foundation for whether or not he was available on this
14 particular program. He simply said Ellis was ever
15 available. No foundation that he ever --

16 JUDGE BROWN: Well, I think that is a sufficient
17 foundation, you can cross examine on it. I think he can
18 testify to it.

19 (Continued on next page.)
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1 BY MR. RIDDLES:

2 Q None of the ICCE personnel were available to work
3 on this proposal, were they?

4 A No.

5 MR. WORK: Objection. Hearsay. Move to strike.

6 JUDGE BROWN: Overrule the objection.

7 BY MR. RIDDLES:

8 Q Let's look at the next one, please, which is
9 number 715. Who is the proposal manager of this one, sir?

10 A Okay. I'm the proposal manager of this particular
11 project.

12 Q Look at the identifying data. Can you identify
13 this one for us, sir?

14 A It's a communication traffic study. It was
15 requested by the Department of Health and Human Services.

16 Q And what was the due date for this proposal, sir?

17 A 26 January 1987.

18 Q And do you recall what this communication traffic
19 study entailed?

20 A It entailed an analysis of the communication
21 traffic out of the Department of Health and Human Services
22 between that headquarters and the other agencies that they
23 have in the Washington area; namely, Public Health Service,
24 Social Security Administration, and some other agencies.

25 Q Would you turn to the second page of this, please?

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1 A Yes.

2 Q Was a recommendation that this be bid -- I see
3 there's a bid X -- an X in that category. What does that
4 indicate to you, sir?

5 A That's my recommendation, to bid the project.

6 Q And then that is your signature, is it not?

7 A Yes, it is.

8 Q And who is the signature under the division --
9 III?

10 A That's Al Johnson's signature.

11 Q All right, sir. And then a final approval is
12 under V, and who signed that?

13 A That's Mr. Hise.

14 Q On page 1 of this, if you'll look at it, at the
15 bottom, you have a recommended proposal team and a proposal
16 level of effort. Do you see that?

17 A Yes.

18 Q And you have yourself listed?

19 A Yes.

20 Q And Willis? Who is Mr. Willis?

21 A William Willis is an employee of TechDyn's. He's
22 currently working at the Public Health Service on a project
23 similar to this. It's a communication project.

24 Q And then you have Mr. Ellis.

25 A Don Ellis.

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1 Q And was Don Ellis able to help you on this
2 proposal effort?

3 A Don Ellis contributed somewhat to this and this
4 was prior to Don's being assigned to the ICCE project. This
5 was in '87.

6 Q I see. Now, what was the impact of the ICCE
7 project on this proposal, if you know, sir?

8 A On this particular proposal, at the time on the
9 ICCE project, Al Broussard was there, I believe, at the time
10 and he was particularly adept at this type of traffic study
11 but we could not use him. Or we did not use him.

12 Q All right, sir. Would you look at 908, please?

13 A Yes.

14 Q And who is Mr. Swedlan?

15 A Jerry Swedlan is a TechDyn employee out of the
16 German -- European office.

17 MR. WORK: Object again to any reference to the
18 German office on grounds of relevance, Your Honor.

19 JUDGE BROWN: I believe the relevance will be for
20 the jury to determine.

21 BY MR. RIDDLES:

22 Q And was this proposal forwarded to you?

23 A Yes. All proposals initiated by TechDyn, any
24 field office, are approved, edited and costed out of the
25 corporate headquarters.

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1 Q This job indicates in the identifying data the
2 provision of administrative and technical support for the
3 operation of various battle simulation centers in Germany
4 and in Vincenza, Italy.

5 A Correct.

6 Q Do you recall this proposal?

7 A Yes.

8 Q Was a proposal prepared?

9 A Yes.

10 Q And what, if any, did the ICCE project have on
11 this proposal?

12 A We just had no one available to participate or to
13 assist in the preparation of the proposal or the review of
14 the RFP when it arrived.

15 Q Would you look at the second page of this, please,
16 sir, and look at the proposed contract value?

17 A Yes, I see that.

18 Q And what is that value?

19 A \$21.5 million.

20 Q What do you mean when you say in the comments "Our
21 off-site rates are very competitive in Europe"? I say when
22 "you" say that --

23 A The preparer is saying that our overhead rates
24 are, cost plus labor, that cost plus labor that we add to a
25 project or to a salary, is low or competitive. That is,

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1 it's no higher than the other companies that will probably
2 compete for this in that area. And it is different from
3 Germany to corporate.

4 Q And as a result, you submitted a proposal for
5 this?

6 A Yes.

7 Q And was your bid rejected, sir?

8 A It was.

9 MR. WORK: Objection. No foundation. How does he
10 know?

11 JUDGE BROWN: I sustain the objection.

12 BY MR. RIDDLES:

13 Q Do you know whether the proposal was submitted?

14 JUDGE BROWN: Well, he must think he knows because
15 he gave an answer but I don't know what the foundation for
16 his knowledge is and that's what we need to lay.

17 MR. RIDDLES: All right, sir.

18 BY MR. RIDDLES:

19 Q How do you know that a proposal was submitted,
20 sir?

21 JUDGE BROWN: Not submitted. Rejected, is what --

22 MR. RIDDLES: I didn't understand what the
23 objection was to.

24 JUDGE BROWN: The objection is no foundation for
25 his knowledge of whether it was accepted, rejected or

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1 otherwise.

2 BY MR. RIDDLES:

3 Q Do you know whether or not -- I take it this was
4 rejected.

5 A Yes.

6 Q How do you know that?

7 A We received a letter from the contracting officer
8 stating that our bid was not successful.

9 Q And you're not working on this project now, are
10 you?

11 A No, we're not.

12 MR. WORK: I move to strike any reference to this
13 particular RFP. We never saw such a letter. If there is a
14 letter, then it is highly relevant to this.

15 JUDGE BROWN: I'll overrule the objection to
16 receiving the information and he can say he's not working on
17 it.

18 I sustain the objection to him saying what the
19 Government did with it because we don't have any information
20 about what the Government did with it.

21 MR. RIDDLES: I'm sorry. I'm not following the
22 Court here. When you say -- I don't think I asked him a
23 question as to --

24 JUDGE BROWN: I'm not going to let him tell me
25 what's in a letter. I will look at the letter and if the

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1 letter is properly admissible, we'll consider it. But I'm
2 not going to let him tell me what's in a Government letter.

3 MR. RIDDLES: I don't believe I asked him that
4 question.

5 JUDGE BROWN: Well, you asked him whether it was
6 accepted or rejected. And he said it came out of a letter.
7 And I'm sustaining the objection and asking the jury to
8 disregard it.

9 He said he got a letter from the Government. I'm
10 saying he can't testify that he got a letter from the
11 Government because we haven't got any letter from the
12 Government.

13 MR. RIDDLES: Your Honor, may I ask the basis for
14 the Court's ruling? I'm not trying to be cute --

15 JUDGE BROWN: Because it's hearsay.

16 MR. RIDDLES: Okay. And may I be heard on that?

17 JUDGE BROWN: Yes.

18 MR. RIDDLES: I'm not asking it -- I'm asking it
19 for the basis of his understanding of it, whether the
20 Government in fact accepted or rejected it. I'm not asking
21 for the truth of the matter of what the Government said, if
22 the Court understands what I'm saying, as part of the
23 operative events that led him to believe that he -- they at
24 least received a letter from the Government.

25 JUDGE BROWN: Well, it's not relevant if it isn't

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1 introduced for the truth. And you can ask him whether he's
2 working on it.

3 MR. RIDDLES: Yes, sir.

4 JUDGE BROWN: But what the Government did with it,
5 their response --

6 MR. RIDDLES: I understand.

7 JUDGE BROWN: -- would have to come from some
8 either official document, which we've let in under the
9 exception to the hearsay rule, or a person testifying here
10 from the Government --

11 MR. RIDDLES: I understand.

12 JUDGE BROWN: Or something of that sort. Not from
13 him. We've killed that one.

14 MR. RIDDLES: I think so.

15 BY MR. RIDDLES:

16 Q You haven't received any information indicating
17 that this job was awarded to the TechDyn Corporation, have
18 you?

19 (Laughter.)

20 MR. WORK: Same objection, Your Honor.

21 JUDGE BROWN: Nice try but that's not going to do
22 it.

23 (Laughter.)

24 BY MR. RIDDLES:

25 Q You're not working on the project at this time.

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1 A No, we are not working on this project.

2 Q All right. Let's look at the next one, please,
3 001.

4 A Yes.

5 Q Do you recall this proposal? Or routing slip.

6 A 001?

7 Q Yes.

8 A Yes.

9 Q And what does this job involve?

10 A This is support for tactical data busses and it's
11 a tactical data bus interface project.

12 Q What does that mean, a data bus?

13 A A data bus is a device to interface two different
14 machines, probably. In this particular case, it was an
15 interface with avionics gear on airplanes but it's an
16 interface usually to get data in one format through this
17 device to be received and utilized by another device that is
18 somewhat dissimilar.

19 Q Who is Mr. Solobello?

20 A Mike Solobello was the director of our Fort
21 Monmouth operations at this time.

22 Q And it says here, though -- it has an X by the
23 Springfield location. Why would this have been in
24 Springfield if he was in Fort Monmouth?

25 A It was bid out of the Springfield office but he

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1 had the expertise and we brought him down and he actually
2 managed the program.

3 Q When you say "managed the program" --

4 A Managed the proposal preparation. Sorry.

5 Q Were you involved in that as well?

6 A Yes, I participated.

7 Q All right. Look at the bottom, please, where it
8 says, recommend proposal team?

9 A Yes.

10 Q Are any of these individuals that are mentioned
11 here, Mr. Solobello, Wigle, Roundtree or consultants as
12 needed -- are any of those individuals assigned to the ICCE
13 project?

14 A No.

15 Q At that time, were any of the ICCE project
16 personnel available to TechDyn for working on this proposal?

17 A No.

18 MR. WORK: Objection. No foundation.

19 JUDGE BROWN: Same ruling. Overruled.

20 BY MR. RIDDLES:

21 Q And turn this over, please, to the next page. And
22 you see a proposed contract value of \$3,880,000. Is that
23 correct?

24 A That is correct.

25 Q And is that your signature?

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1 A That is my signature, yes.

2 Q Was this job approved for bid?

3 A Yes.

4 Q Who approved it?

5 A Mr. Hise.

6 Q And was a proposal assembled?

7 A Yes.

8 Q And did it have a technical component?

9 A Yes. It had the typical technical, management and

10 cost division.

11 Q To your knowledge, is TechDyn working on this job?

12 A No.

13 Q All right. Let's look at the next one, please,

14 number 806.

15 A Yes.

16 Q And I note that you're the proposal manager on

17 this particular job.

18 A Yes.

19 Q Now, what is this job about?

20 A This is O&M -- operation and maintenance of some

21 AUTOVON switches in the Federal Republic of Germany, Italy

22 and Greece.

23 Q And why did you propose this particular proposal?

24 A It is along the lines of the work that we do in

25 Germany. We have supported the ETS system, the European

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1 Telephone System, in Germany for many years and this is a
2 similar type work. We are in the vicinity, it would be very
3 easy to staff it and manage it from our German location
4 which is well established. This is why you would bid
5 something like this.

6 Q Do you know the value of this job?

7 A We estimated about 216 man years.

8 Q When was that estimate made?

9 A It was made during the preparation of the
10 proposal, somewhere in October of 1987. When you go through
11 this, you read the synopsis or read the RFP and you try to
12 come up with an estimate of how much work there is to be
13 done.

14 Q Is this number refined at any time?

15 A It's refined when you develop the proposal. It's
16 sometimes altered considerably.

17 Q What might alter a number like that?

18 A Just find out more precisely what the requirement
19 is. This is an initial estimate and it's very imprecise
20 really.

21 Q Look at the bottom of it, please. And it has a
22 proposal team and proposal level of effort. And who are
23 Gleason or Martin?

24 A Gleason and Martin are personnel assigned to
25 TechDyn in our European operations directorate.

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1 Q And Vonbergen?

2 A He's a consultant that I use.

3 Q And what office is he in, sir?

4 A When he's employed, he works out of my office.

5 Q And Saltzman and Fourney?

6 A Saltzman is a TechDyn employee out of an IDO&E
7 project at Germantown.

8 Q How about Mr. Fourney?

9 A Germany.

10 Q And then Mr. DeRouan?

11 A Germany.

12 Q Any of these people involved in the ICCE project?

13 A No.

14 Q And I take that you did not get this job either?

15 A We are not working on that job. No.

16 Q Okay. Aside from these jobs, this impact that
17 you've identified here, did the ICCE project have any other
18 impact on your bidding?

19 A The ICCE project had probably a two-fold impact on
20 my efforts to market. As I indicated earlier in earlier
21 testimony, when the CBDs or when the RFPs are published, you
22 have 30 to 45 days. If it's a very large project, it's 45
23 days. Most projects have 30 days you have to respond. So
24 you have to respond in a timely fashion and you have to
25 muster all your expertise very quickly to get the proposal

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1 together and send it out. And we looked at a lot of things
2 that we could do along the lines that we do but personnel
3 and time -- the lack of technical personnel and time --
4 those people on the ICCE could have helped us a lot.

5 Q Did you maintain the same level of bidding during
6 the ICCE project?

7 MR. WORK: Objection. No foundation for prior
8 knowledge of bidding. He said just now that he had been
9 marketing manager for three to four years. That takes us
10 back only to 1986. He doesn't have any knowledge of --

11 JUDGE BROWN: I don't know what you're comparing
12 to so if you establish what you're comparing to then maybe
13 we can see whether the objection attains.

14 MR. RIDDLES: Let me just ask it another way, Your
15 Honor.

16 BY MR. RIDDLES:

17 Q What impact did this have on jobs that you might
18 have bid, the ICCE project, if any?

19 MR. WORK: Objection. Calls for speculation.

20 MR. RIDDLES: I think the witness --

21 JUDGE BROWN: I'll overrule the objection. I
22 can't know whether -- I don't think it necessarily calls for
23 speculation. Whether it winds up being or not, we'll see.

24 THE WITNESS: I think there were numerous projects
25 that we would have bid had we had available to us those

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1 personnel to participate in the review of the RFPs, the
2 review of the CBDs and to put out an RFP or to put a
3 proposal together in a timely fashion.

4 BY MR. RIDDLES:

5 Q Why do you think that, sir?

6 A I know the people. I know what they can do. And
7 I think they would have been a great help to us in this line
8 of what we were -- you know, in the marketing effort. They
9 could do it if they were available.

10 MR. RIDDLES: No further questions.

11 JUDGE BROWN: Cross-examination.

12 (Continued on next page.)

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1 success in bringing in business to this company, right?

2 A There is no demonstrated record of success by
3 these people because they never participated.

4 Q Well, one of them did.

5 A Okay. Then -- okay. One individual on one
6 project failed in his effort to bring business in.

7 Q Well, let me just bring up a couple of other
8 names.

9 A All right.

10 Q Do you know that Mr. Rosen worked on this project?

11 A Max Rosen is a cost accountant.

12 Q Do you know he worked on the ICCE project?

13 A He's a contract officer, yes.

14 Q And you've listed him on one of your failed RFP
15 sheets. Is that right?

16 A Yes, his name is there.

17 Q And you didn't -- and he has no track record of
18 bringing in business to this company, right?

19 A He is a contract specialist and, as I mentioned
20 earlier in my testimony, the cost proposal is developed by
21 Mr. Hise's people. Max Rosen was a contract specialist. He
22 participated in the development of the cost proposal.

23 Q Let me ask you this: Did any of these people at
24 any time during their careers with TechDyn ever get
25 listed -- before or after they joined the ICCE program --

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1 ever get listed as someone who would work on a project,
2 which project TechDyn ultimately received?

3 A I think Don Ellis worked on some efforts that we
4 had that we won before going over to the --

5 Q Which were they?

6 A Oh, we worked some projects with IBM, I believe,
7 that Don was assigned to.

8 Q Those were what you call body shop projects, where
9 you've got a pool of available people either as consultants
10 or as hirees who you send out to work at another company
11 under the other company's direction.

12 A Many of these were competed 8A projects and you
13 had to write a tech proposal for it and there was
14 competition. They were not body shops as you have
15 described, if I understand what you mean by body shop.
16 Somebody says I need a man with this skill, do you have one
17 and I send you one. That was not the case.

18 Q Isn't it true that the IBM project on which Mr.
19 Ellis worked was brought into the company before Mr. Ellis
20 ever got to the company, so he couldn't have been listed?

21 A The IBM project was a series of purchase orders
22 and many of them were competed through 8A companies and
23 there were tech proposals that had to be written almost for
24 every changing purchase order.

25 MR. WORK: May we approach the bench, Your Honor?

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1 (Bench conference.)

2 JUDGE BROWN: Why don't you take the jury out a
3 minute?

4 And may I ask you to go outside? Did we ask you
5 to do that before?

6 (Pause while jury and witness are excused.)

7 (Bench conference continues.)

8 MR. WORK: We can bring them back in?

9 JUDGE BROWN: Well -- I don't think there's any
10 point in trying to get the jury right this second. Let's
11 take a break until 25 after. That will be a three-minute
12 break.

13 (Brief recess.)

14 (Continued on next page.)

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1 THE CLERK: Remain seated and come to order.

2 JUDGE BROWN: Mr. Riddles isn't back. I forgot
3 there is only one washroom for you out there.

4 (Pause.)

5 MR. WORK: We were talking about the number of
6 people in the company, and the number of people that you are
7 talking about that you say were somehow tied up on ICCE
8 program, and you said the latter group represents two and a
9 half, three percent of the former group, the larger company
10 as a whole.

11 And in addition to the company as a whole, this
12 company was able to draw on the market place to bring in
13 other people, either as consultants and employees, and it
14 did that all the time, didn't it?

15 THE WITNESS: We have used one consultant,
16 generally speaking, throughout my stay, and we have teamed
17 with other companies where we collectively developed a
18 proposal.

19 BY MR. WORK:

20 Q And you know, for example, of the people that we
21 have been talking about on the ICCE program, that Mr.
22 Rountree was brought in specifically to work on ICCE, after
23 --

24 A No, I'm Rountree.

25 Q I'm sorry, Mr. Thornton, Mr. Rountree -- That Mr.

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1 Thornton was brought in specifically to work on the ICCE
2 program when they needed an engineer on the program. You
3 know about that, don't you sir?

4 A I know that Mr. Thornton has worked on the ICCE
5 program for several years now. And I indicated in earlier
6 testimony I never know when he is full time, part time, or
7 what have you. I don't track the project in that matter.

8 Q And Mr. Jones was brought in to work on ICCE
9 program at about the same time frame, is that correct?

10 A I think that is correct.

11 Q The late '86 time frame.

12 A I think that is correct.

13 Q And Mr. Rose was brought in specifically to work
14 on ICCE?

15 A Ralph, yes. But I don't know the time frames for
16 these. I can verify that these people have worked on the
17 program.

18 Q And if you need somebody to work on a job, there
19 is a big world of people out there, either in Germany, or
20 Jersey, or here in Washington, who can be brought in to work
21 on these projects?

22 A There are other people in the company, there are
23 other engineers in the company. A large number of these
24 people are in Germany. It is not very economical to bring
25 people back from Germany to work on a project back here.

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1 So, we are hesitant to do that.

2 Q Not very economical to take people from here to
3 Germany to work on a project in Turkey, either, is it sir?

4 A That's very economical, because you can hire
5 people. We will not, the government will not pay you
6 transportation costs, or PUI costs to send people here. Our
7 intention there was to get people in Germany, take the
8 people off the contract. All of these projects are ongoing,
9 they have incumbered. And we were going to take those
10 incumbereds and use them.

11 Q Now, sir. We have established, I think that as
12 far as you know, none of these people ever, the small group
13 of people we are talking about, the five group, the group of
14 five people we are talking about, ever brought any business
15 into this company.

16 A They never participated in the marketing program,
17 so they couldn't bring business into --

18 Q With the exception of Mr. Ellis, who did before he
19 went on the ICCE program?

20 A That is correct.

21 Q Now you say, people on the ICCE program weren't
22 available. Were they not available because they were in
23 Iceland?

24 A Sometimes.

25 Q And just as you have a job at Turkey, those people

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1 aren't available to you either, because --

2 A We don't have a job in Turkey --

3 Q Or a job in Germany, they are not available to
4 work for you here because they are in Germany?

5 A In some cases. It depends on the work, where the
6 work is planned for.

7 Q And if the job is in New Jersey, they are not
8 available to work here?

9 A It's easy to get people from New Jersey to work in
10 Washington than it is in Germany.

11 Q Okay. And Mr. Morrison had a policy of wanting
12 people to work on proposals but not paying them bonuses for
13 success, or overtime for doing it, didn't he sir?

14 A I do not know if he has a policy to that effect.
15 I can answer the question in another way, if you want to
16 direct --

17 Q He didn't pay bonuses for people bringing in
18 business, did he?

19 A I have never received a bonus from Mr. Morrison
20 for bringing in business. But I don't know if that is his
21 policy.

22 Q What is -- you don't know whether or not it is?

23 A No, I do not.

24 Q Okay, you don't know whether or not, as marketing
25 director, you don't know whether or not Mr. Morrison offers

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1 proposals for government contracts, either to prepare the
2 proposals, or to work on the proposals?

3 A That is correct.

4 Q And all you have to do, if you want to name
5 somebody to ultimately work on the project, is go out and
6 get an agreement with them. If you get the job, they'll
7 work on it. Isn't that the way it's done in this business,
8 sir?

9 A Not with TechDyn. Now, I don't know how other
10 people do it, but we don't do it that way.

11 Q Do you know it can be done that way, do you know
12 that there are a lot of people who do hold themselves out as
13 people who are available to work on projects?

14 A Sure. I agree with that. But they don't operate
15 as we operate.

16 Q Now, sir, you didn't introduce any letter, or
17 mention any letter, but you've seen the response to the
18 proposal that Mr. Sollebelllo submitted on this project,
19 haven't you?

20 A Yes.

21 (Pause.)

22 Q And Mr. Sollebelllo in your opinion, was skilled in
23 preparing these things, and had the necessary expertise to
24 prepare it, isn't that right?

25 A He was a qualified engineer. He had participated

