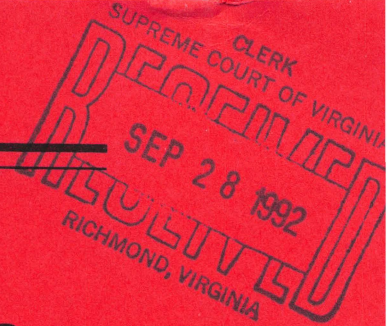


245VA 291



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 920639

TECHDYN SYSTEMS CORPORATION,

Appellant,

v.

WHITTAKER CORPORATION,

Appellee.

**JOINT APPENDIX
VOLUME IV**

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**TRIAL TESTIMONY OF
ALFRED JOHNSON**

ALFRED JOHNSON - DIRECT EXAMINATION

1871

1 Whereupon,

2 ALFRED HENRY JOHNSON

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

5 DIRECT EXAMINATION

6 BY MR. WORK:

7 Q Good morning, Mr. Johnson.

8 A Good morning.

9 Q Let me just adjust that microphone so that it will
10 be right in front of you. Will you state your full name
11 please?

12 A Alfred Henry Johnson.

13 Q Can everyone hear? Please raise your hand if you
14 cannot hear.

15 Will you state your present occupation, sir?

16 A I am a consultant.

17 Q And what is your education?

18 A I graduated from Howard University with an A.B. in
19 liberal arts, and while in the military, I was selected for
20 training with industry, and I had an intensive course in
21 engineering training with the Bell System, mainly Bell
22 Laboratories, AT&T and with the New York telephone company.

23 Q Mr. Johnson, could you move your chair over to the
24 left just a little bit, so you will be further in front of
25 that microphone?

ALFRED JOHNSON - DIRECT EXAMINATION

1878

1 BY MR. WORK:

2 Q Do you know who wrote this document?

3 A I know who prepared the cover sheet, by the
4 writing. It is Mr. Shephard's writing.

5 Q Is that Neel Shephard?

6 A Yes.

7 Q And what was his position at the time?

8 A At the time, he was the, I believe he was manager
9 of finance reporting to Mr. Hise.

10 Q Now, what does the cover sheet of this reflect?

11 A It reflects basically six items, the total
12 contract value, the cost incurred to date up to the end of
13 October 87, funds remaining at that time and the cost to
14 complete, which was a projection that I had provided. And
15 that --

16 Q And that shows cost to complete 10-26-87 to 8-31-
17 88. What is that significant of, sir?

18 A That is the date that I used to project costs in
19 the claim, to the Air Force.

20 Q As of November of 87 were you projecting a
21 completion of the program by August of 88?

22 A Yes, providing that everything was done on time.
23 In other words, that there was a time limit on the
24 implementation of the claim modification.

25 Q And then what are the other items shown on this

ALFRED JOHNSON - DIRECT EXAMINATION

1879

1 page?

2 A It says funds. It shows the funds that would be
3 added by March 28, which was the, I think, understood
4 modification that would add the 1.7, 1.9 million.

5 Q And then the last item is?

6 A The estimated profit. Now, that indicates the
7 profit that would be left on the program at completion.

8 Q And that is 312,831 dollars?

9 A That's right.

10 Q And then there is a little note below that. What
11 does that say?

12 A It says approximately 2.5 percent profit.

13 Q Was that the projected 2.5 percent profit the
14 312,000 dollar profit the subject of discussion between you
15 and Mr. Morrison at the November 1987 meeting?

16 A Yes. Mr. Morrison and Mr. Hise.

17 Q And what was said about that figure at the time?

18 A Well, he was very concerned about it --

19 Q He being whom?

20 A Mr. Morrison was very concerned and that's
21 understandable. Because the level of profit of, that was
22 negotiated was 11 percent. There had been a lot of problems
23 in the program, delays, and it looked as if this projection
24 is correct, then he would only realize, say on the
25 particular modules that effected the con -- 2.5 percent

ALFRED JOHNSON - DIRECT EXAMINATION

1880

1 profit.

2 Q And what was said on that subject?

3 A Well, he wanted me to take some steps to preclude
4 any further erosion of profit. And we were in a discussion
5 about that, and since I hadn't seen this before, I was
6 trying to get a handle on exactly what was included in the
7 document. So, I just made some quick calculations and
8 pointed out that it didn't look to me that I could make
9 those changes with the amount of resources that were
10 included in this document that I had control over.

11 Q What do you mean resources that you had control
12 of?

13 A In other words, a price includes labor, people, it
14 includes subcontracts. It includes equipment. It includes
15 a number of things. And, in this cost of completion of the
16 program, the thing that I noted that the things I had
17 control over were only about, at that time, I'd say about 20
18 percent. But as I looked at it later, it was even less than
19 that.

20 Q Who had control of the remaining 80 odd percent of
21 the contract funds available to TechDyn in this program?

22 A Well, the, this document shows that at about 25
23 percent of the cost to complete were in the funds under Mr.
24 Hise's control --

25 Q Let me just stop you for a minute. I think we

ALFRED JOHNSON - DIRECT EXAMINATION

1881

1 covered -- at this time, in addition to your duties as
2 director of technical operations and vice president for the
3 company, were you also in a particular role on the ICCE
4 program, by November 1987?

5 A Yes, I was the program manager.

6 Q So, the funds available to you, as you calculated
7 as program manger at this time were what?

8 A At this time, they actually come to about 17 or 18
9 percent.

10 Q But you indicated at that meeting?

11 A About 20 percent, I think --

12 Q And the remaining funds were available, were under
13 the control of someone else?

14 A Well, the remaining funds, the 25 percent of the
15 funds that are shown here, as I calculated, were under the
16 control of Mr. Hise as a line item of subcontract and
17 subcontract management. There were a number of dollars
18 included here in the rates that I would have no control
19 over. This is the cost of doing business. And the rates
20 were approved by the defense contract, audit agency. And I
21 had no control over those rates. Also --

22 Q The rates you are talking of, overhead rates in
23 general and administrative rates?

24 A In other words, if you take into consideration the
25 rate changes since the contract started, and this is a fixed

ALFRED JOHNSON - DIRECT EXAMINATION

1882

1 price contract, there is about a half a million dollar's
2 difference in the projected rates at the beginning of the
3 contract. And even though those costs have to be paid,
4 because they are the costs of the company doing business, it
5 has to come out of something. And it comes out of the cost
6 line that I would have to use to implement the project. And
7 since it is fixed price, those costs aren't going to change.

8 Q What was the upshot of this meeting in November of
9 87 between you and Mr. Morrison and Mr. Hise?

10 A I explained my position, but it was inconclusive.
11 We didn't come to any agreement except that he wanted to
12 insure that steps were taken and that it would be put off
13 until another meeting.

14 Q Was there another meeting on this subject?

15 A Well, there was another meeting after I got the
16 memorandum from Mr. Morrison that was directional in nature
17 that said he wanted me to take certain steps. And I thought
18 that I had better sit down again and explain that I couldn't
19 take those steps.

20 Q What steps did the memo indicate that you were to
21 take?

22 A That I was to take what necessary steps under my
23 control, to ensure that the profit was raised to five
24 percent at the completion of the contract, and that any
25 future modifications that would come in on the contract,

ALFRED JOHNSON - DIRECT EXAMINATION

1883

1 that I would ensure that the 11 percent profit that was
2 negotiate would maintained.

3 Q How can you raise profits on a program, once you
4 are underway?

5 A It is not easy, but I think what was implied here
6 was to take cuts in the program to cut back on travel, on
7 people, or whatever. These were the only things that I had
8 available to me, other than subcontract.

9 Q When did you get this memo, this follow-up memo
10 from Mr. Morrison?

11 A The memo came to me in early January of 88.

12 Q So, this was a few months after there had been
13 oral resolution.

14 A About six weeks.

15 (Continued on next page.)
16
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25

ALFRED JOHNSON - DIRECT EXAMINATION

1884

1 MR. WORK: Let me hand you Defendant's Exhibit
2 61B.

3 (Pause.)

4 BY MR. WORK:

5 Q Do you recognize that memo, sir?

6 A Yes, I do.

7 Q What is it?

8 MR. RIDDLES: What's the exhibit number?

9 MR. WORK: 61B.

10 BY MR. WORK:

11 Q What is that, sir?

12 A This is the memo that I was just discussing that I
13 received from Mr. Morrison. The subject is cost control and
14 reduction, ICCE project.

15 Q Dated 7 January 1988?

16 A Yes.

17 Q I'm going to put this on the viewgraph and I'd
18 like to cover some portions of it with you. Was this
19 memorandum the focus of discussion at a meeting with Mr.
20 Morrison?

21 MR. RIDDLES: Your Honor, has this been moved into
22 evidence?

23 JUDGE BROWN: Is it in evidence?

24 MR. WORK: No, it hasn't but one more foundational
25 question, Your Honor, and I'll move it into evidence.

ALFRED JOHNSON - DIRECT EXAMINATION

1885

1 JUDGE BROWN: All right.

2 BY MR. WORK:

3 Q Was this memo discussed at a meeting with Mr.
4 Morrison?

5 A After I received it.

6 MR. WORK: All right. I move Defendant's Exhibit
7 61B into evidence, Your Honor.

8 JUDGE BROWN: Any objection to 61B?

9 MR. RIDDLES: No, sir.

10 JUDGE BROWN: It's received.

11 (The document referred to, having
12 been previously marked for
13 identification as Defendant's
14 Exhibit 61B, was received in
15 evidence.)

16 BY MR. WORK:

17 Q Now, sir, let's look at the first paragraph of
18 this memo and I'll ask you to read, please, the first
19 sentence.

20 A "Al, as you know, I have settled our claim with
21 the Air Force under the ICCE contract except for the area of
22 provisioning and the WCCS claim in the amount of
23 \$1,719,441."

24 Q Now, would you read the second full paragraph,
25 please, to the jury?

ALFRED JOHNSON - DIRECT EXAMINATION

1886

1 A "It is absolutely mandatory that in our remaining
2 performance under this contract that this percent of profit
3 not be decreased. In fact, it is requested that you
4 institute immediately those cost controls and those cost
5 reduction actions which will not only maintain the 2.5
6 percent profit but will establish an objective to increase
7 our profit to 5 percent or more."

8 Q Now, would you read the fourth full paragraph on
9 this page, please?

10 A "Travel must be curtailed except where absolutely
11 necessary. When labor can be reduced or eliminated from the
12 project, this must be done."

13 Q Now, were these directives the subject of your
14 meeting with Mr. Morrison a few days after you received this
15 memorandum?

16 A Yes.

17 Q Who else attended that meeting?

18 A Mr. Hise.

19 Q And what was said about these directives, both by
20 Mr. Morrison and by you?

21 A Well, I think I was responding to it and I made
22 the same points that I made before with a little more
23 analysis of the previous document where I said that it was
24 about 18 percent that I had control over.

25 Q Eighteen percent of the funding available?

ALFRED JOHNSON - DIRECT EXAMINATION

1887

1 A Of the total cost to complete, not the funding
2 available. The cost to complete.

3 Q Who had control over the remaining funds?

4 A Well, the remaining funds were, as I said, the
5 rates. There were dollars in the G&A rate and dollars in
6 overhead. There were, of course, my costs which were labor,
7 travel and in some cases a request for a subcontract to do
8 some additional tasks.

9 Q So you had control over labor, travel and --

10 A Not all of it. In other words, there's a large --
11 well, to me, a large amount of money that's in here set
12 aside for contract administration and subcontract
13 administration that normally is a function of project
14 management in every other system that I've seen. However,
15 this is under the control of the other vice president, Mr.
16 Hise, and I had no control over that. I didn't see it
17 before.

18 Q Did you ever see a comparable memo to Mr. Hise
19 enjoining him to increase the profit on the program by
20 reducing labor and travel?

21 A I didn't see one.

22 Q Now, you pointed out to Mr. Morrison what at this
23 meeting, sir?

24 A I pointed out to him that, again, since we had
25 fixed costs in the G&A and overhead and since we had fixed

ALFRED JOHNSON - DIRECT EXAMINATION

1888

1 obligations with the subcontractor Whittaker and with the
2 subcontractor VEDA, when you remove those from the cost to
3 complete, it doesn't leave that much except my area to be
4 reduced.

5 Q Now, did you discuss what would happen if your
6 area was reduced, your 18 percent was reduced, to achieve
7 Mr. Morrison's increased profit objective?

8 A Well, I saw no way of completing the project.

9 Q Did you tell Mr. Morrison that?

10 A Yes, I did.

11 Q And how did he respond?

12 A Well, he just said that we have to make an attempt
13 to do that.

14 Q And what else was said at this meeting?

15 A Well, I basically left it that I didn't see any
16 way that I could be the one to do this and I left it at
17 that.

18 Q And what happened then?

19 A Well, I guess I thought it over a few days and I
20 notified Mr. Morrison that I intended to leave the company
21 and I think about a couple of weeks later I turned in my
22 resignation.

23 Q And when did that resignation become effective?

24 A About six weeks after that meeting.

25 Q And that would be when in terms of calendar

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1893

1 A My expectations, besides being a firm fixed price
2 contract, that it would be basically an off-the-shelf
3 program with minor modifications to some of the hardware and
4 to the software, "off-the-shelf" meaning that it was almost
5 pre-determined by the Air Force what type of radios they
6 wanted and most of these items that were being considered
7 were already in the inventory of the Air Force, including
8 the RADILs or the processing display equipment. I don't
9 know if that's been brought up yet, but the RADILs were
10 already in the Air Force inventory.

11 Q All right. Mr. Johnson, you mentioned your
12 expectations and I'd like to hand you a document which is an
13 excerpt from Defendant's Exhibit 41. Will you tell us what
14 that document is?

15 I'll give Mr. Riddles a copy for his convenience.
16 What is this an excerpt from?

17 A It's from one of my notebooks.

18 Q Did you maintain notes during this proposal
19 period?

20 A I maintained notes all the time.

21 Q All right. And this is a note on the left-hand
22 side bearing the date 25 July 1985?

23 A Yes.

24 Q These were notes you made at the time?

25 A They are.

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1894

1 MR. WORK: I offer this excerpt of Defendant's
2 Exhibit 41, Your Honor.

3 MR. RIDDLES: Your Honor, I want to reserve my
4 objection for just a moment. I want to see if I can find
5 the rest of the document for context.

6 (Pause.)

7 MR. RIDDLES: What's it going to be marked? What
8 is it?

9 MR. WORK: An excerpt from Defendant's Exhibit 41.

10 MR. RIDDLES: Are you just offering it? I mean,
11 are you separately marking it as a Defendant's exhibit?

12 MR. WORK: No, just Defendant's Exhibit 41
13 excerpt.

14 JUDGE BROWN: Well, we have some -- well, it looks
15 like we have 41A to L, is that? Already identified, so it
16 ought to be 41 something or other, other than A to L.

17 MR. WORK: We do have --

18 JUDGE BROWN: Not in evidence but marked in your
19 list, my clerk tells me..

20 (Pause.)

21 JUDGE BROWN: On your index of exhibits.

22 MR. WORK: Part of 41G, Your Honor.

23 JUDGE BROWN: Well, what I want to do is mark it
24 so that it doesn't get mixed up in case something is offered
25 later. So why don't we call it 41N?

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1895

1 MR. WORK: All right.

2 JUDGE BROWN: And is there any objection to 41N?

3 MR. RIDDLES: No, sir.

4 JUDGE BROWN: 41N is received.

5 (The document referred to was
6 marked for identification as
7 Defendant's Exhibit 41N and was
8 received in evidence.)

9 MR. WORK: Thank you, Your Honor.

10 BY MR. WORK:

11 Q Mr. Johnson, I hand you a copy of 41N. And I
12 simply ask you whether there is anything on this page of
13 your notes for July 25 which relates to the statement you
14 made concerning your expectations as to what type of program
15 this would be, particularly in the software area.

16 A Well, as related to the software area, note 10
17 applies.

18 Q And what does note 10 say?

19 A Note 10 says, "Software minimal at first, mod
20 later for ultimate versions."

21 Q And what does that mean?

22 A It's a response that the Air Force gave me to our
23 proposal wherein we had, I guess, more dollars or more
24 software development hours than the Air Force wanted and
25 their response was that what they expect was that the

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1896

1 software in this project would be minimal at first and if
2 they wanted more, they would do it by modification to the
3 contract at a later date.

4 Q So they would formally change the contract.

5 A Formal change to the contract to cover any new
6 requirements for software development that came up.

7 Q I see. In what context was this note taken, sir?
8 Was this in a meeting with some Air Force people?

9 A Oh, this was during factfinding and it was a
10 meeting with the Air Force technical staff and it included
11 all of the areas that they were worried about.

12 Q Did you do anything to communicate to Whittaker
13 the Air Force's statement that changes to the existing
14 software would be minimal under the contract that you were
15 then negotiating?

16 A I think it was understood by Whittaker but after
17 this particular meeting, because they had made that
18 statement about a possible option or modification later, I
19 spoke to Dr. Sutherland and Michael McCune.

20 Q All right. Both of Whittaker?

21 A Both of Whittaker.

22 Q Apart from your -- and let's just name the people
23 that were representing the Air Force in this meeting. Who
24 were they?

25 A I don't have the other sheet, but generally, it

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1897

1 was Captain Marshall, Charlie Arouchan and Ed Kalapinski,
2 who was the deputy to the system program officer and the
3 chief engineer for the Electronics Division up there.

4 Q And Marshall at the time was an ESD representative
5 and what position did he hold?

6 A He was on the staff there. He was later, after
7 the contract was awarded, appointed as project manager.

8 Q And Arouchan was who at the time?

9 A Arouchan was one of the team leaders from Mitre
10 Corporation that provides technical support to the Air Force
11 at Hanscom.

12 Q Now, let's move to TechDyn's proposal for the MOD
13 3 FOC work. When did TechDyn actually submit that proposal?

14 A That proposal, as I recall, was submitted in May
15 1985.

16 Q And what was your role in the preparation of that
17 proposal?

18 A Again, I was responsible for the proposal
19 development on the technical side and I was the point of
20 contact with our proposed subcontractor, Whittaker.

21 Q Now, with respect to the amount of the proposal,
22 do you recall the amount that TechDyn proposed for the prime
23 contract in May of 1985?

24 A Well, the price was a little over \$33 million.

25 Q And who developed that price?

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1 A Well, that price had to be put together by the
2 finance group under Mr. Hise.

3 Q What was your role in the preparation of the cost
4 proposal, the \$33 million, as opposed to the technical side
5 of the proposal?

6 A Well, I would have provided the data that would be
7 costed out for labor, materials, for subcontract work, and
8 travel -- those type things. The technical input. In other
9 words, the cost and resources for the technical side of the
10 project.

11 Q Now, after the \$33 million proposal went in in
12 May, did you receive any reaction from the Air Force
13 concerning that proposal?

14 A I got a call by the project manager at the time.
15 He was shocked.

16 Q How did he communicate that to you?

17 MR. RIDDLES: Your Honor, I'm going to object to
18 hearsay testimony.

19 MR. WORK: Not for the truth of the matter, Your
20 Honor.

21 JUDGE BROWN: Well, then I sustain the objection
22 because if it's not for the truth, it doesn't make any
23 difference. He can say what he did after he talked to the
24 man but to allow it to come into evidence I don't think it
25 would be fair for the jury to be asked to disregard it.

ALFRED JOHNSON - DIRECT EXAMINATION

1899

1 BY MR. WORK:

2 Q What happened after the submission of the initial
3 \$33 million proposal?

4 A We went into factfinding sessions to determine the
5 basis of costs versus the requirement and to go through the
6 process prior to negotiation to reduce, justify and
7 whatever.

8 Q Now, we've heard testimony from other witnesses,
9 Mr. Johnson, that that \$33 million price --

10 MR. RIDDLES: Excuse me. I have an objection to
11 raise. I object to this discussion on grounds of relevance,
12 first of all. He's talking about a preliminary proposal
13 prior to any proposal that was submitted as part of this
14 subcontract, even the formation process, and I object to it
15 as being irrelevant and immaterial and ask that it be
16 stricken.

17 MR. WORK: Mr. Morrison testified at length about
18 this.

19 JUDGE BROWN: I'll overrule the objection. But
20 don't repeat to him what the testimony has been. Just ask
21 him you question.

22 MR. WORK: Certainly.

23 BY MR. WORK:

24 Q What was TechDyn's ultimate price for the prime
25 contract in this FOC program?

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1900

1 A You're talking about the accepted price?

2 Q Yes.

3 A That was \$10.4 million.

4 Q And that was finalized when?

5 A That was finalized 30 August, I believe, 1985.

6 Q Now, what I'd like to do is focus on the period
7 from May, when TechDyn submitted a \$33 million proposal, and
8 the end of August, when a \$10 million proposal was accepted,
9 and ask you how TechDyn went from \$33 million to \$10
10 million.

11 MR. RIDDLES: Your Honor, I renew my objection on
12 parol evidence and for the basis stated earlier.

13 JUDGE BROWN: It's overruled.

14 THE WITNESS: A number of tasks that could be
15 specifically identified to costs were taken out of the
16 contract and made options that would be exercised later.

17 BY MR. WORK:

18 Q What were those options specifically?

19 A There were some ground entry stations in Iceland.
20 There was an option for Alaska, an option for Hawaii and
21 upgrading of the data link that would go to an air defense
22 unit. I won't get into that part of it.

23 Q By how much was the \$33 million price reduced by
24 the removal of that work and the conversion of that work
25 into contract options?

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1901

1 A As I recall, it got down to about \$18 million.

2 Q And then what happened?

3 A The Air Force indicated that they didn't have that
4 type of money and we started looking at other reductions.

5 Q Did the Air Force ever indicate what amount of
6 money it did have to spend on this program?

7 A Never. No. Never.

8 Q Well, how did you get down from 18 to the price of
9 \$10 million?

10 A Well, in the factfinding sessions, they found
11 other areas that weren't specifically identified that could
12 be reduced. For example, after the site survey in Iceland,
13 we determined that because of government-to-government
14 agreements with Iceland, that a contractor in the United
15 States could not do outdoor work, antenna work and antenna
16 footings and emplacements and it would have to be given to
17 an Icelandic contractor, so those tasks were removed and
18 just gradual reductions made, some of which are on Exhibit
19 41N.

20 Q All right. And then how ultimately did you get
21 down to the \$10 million?

22 A Well, we got it down to \$14 million and we had a
23 problem because the Air Force wanted further reductions and
24 I didn't really see how it could be done based on the
25 requirement as I understood it. However, a bottom line was

ALFRED JOHNSON - DIRECT EXAMINATION

1902

1 offered --

2 Q By whom?

3 A By the Air Force.

4 Q And what was that bottom line?

5 A That bottom line was around 10.4. It was a little
6 higher at first but there was an adjustment made to 10.4?

7 Q And how did TechDyn achieve that bottom line
8 price?

9 A How did they agree to it?

10 Q Yes. How did it get down to that point?

11 A Well, we had a meeting with Whittaker, the team
12 representatives, to look at everything that we could
13 possibly do to see whether or not this job could be done for
14 \$10.4 million.

15 Q When did that meeting take place?

16 A That meeting took place some time in late August
17 1985.

18 Q And where was the meeting held?

19 A It was held in the vicinity of Hanscom Air Force
20 Base. I think we were at a hotel in Burlington,
21 Massachusetts.

22 Q All right. And who participated in that meeting?

23 A Mr. Hise and his representatives were there from
24 the finance and contracts office. I was there from the
25 TechDyn side from TechDyn. From Whittaker, Dr. Sutherland,

ALFRED JOHNSON - DIRECT EXAMINATION

1903

1 Ms. Raymond, Bob Tobiason, who was the project manager
2 designate.

3 Q What happened at the meeting?

4 A Well, what I proposed to them was that we try to
5 look at this teaming arrangement or whatever would come out
6 of the subcontract as one organization and what we would try
7 to do is reduce the areas that the Air Force had been
8 pressing us on that overlapped functionally within these
9 organizations.

10 For example, they were going to do software
11 development and we had an oversight role and a staff to
12 oversee them in that. We had been pressed to not have any
13 overlaps between the prime and the subcontractor's
14 organization, so we talked about staffing changes; we talked
15 about getting the same logistics subcontractor to do
16 logistics work and this way we could take out about 18
17 persons from the staff that TechDyn had proposed for the
18 implementation of the logistics aspects of the contract.

19 Q How was this logistics arrangement to work, as you
20 understood it?

21 A Well, we were to close with the same organization
22 that would be selected to do the logistics work and in that
23 way we could effect some economies of scale.

24 Q Okay. What other arrangements were made at this
25 meeting in Burlington?

ALFRED JOHNSON - DIRECT EXAMINATION

1904

1 A We also had to really look at the procurement of
2 hardware on the program to get it within the balance that
3 was required by the Small Business Administration for a
4 prime contractor versus a sub, especially an 8A contractor.

5 Q And what was that balance, sir?

6 A The balance was over 50 percent.

7 Q For whom?

8 A Of the work for the prime contractor.

9 Q I see. So how was that achieved?

10 A Well, we made some adjustments in the items to be
11 procured, especially in the computers that were to be used
12 in the remote control element. They would be purchased by
13 TechDyn instead of being purchased by Whittaker.

14 Q What was Whittaker to do with the RCE as a result
15 of the discussions in the hotel in Burlington?

16 A Well, they were to design the RCE, as I understand
17 it, and to develop the software for it.

18 Q When you say "design the RCE", what are you
19 talking about?

20 A I'm talking about design the internal interfaces
21 for the computers that are located at the master directional
22 center that would talk to computers at the remote site and
23 provide the software for that.

24 Q All right. Were they to design any other aspect
25 of the remote control system for this CFA function?

ALFRED JOHNSON - DIRECT EXAMINATION

1905

1 A Well, the remote control element as described is
2 basically computers, computer programs, computer components,
3 which are additions within the computer to allow for
4 different capabilities and documentation for those. Also I
5 think a diagnostic program.

6 Q All right. Was there any discussion of the
7 subject of field support at this meeting in late August at
8 the hotel in Burlington?

9 A Yes, there was. That was another area of
10 reduction because in the original proposal, because of the
11 peculiar requirement within the command center in Iceland,
12 we had proposed a service technician for the PDFA and a
13 service technician for the CFA because they are completely
14 different disciplines.

15 The Air Force rejected that idea, so we decided
16 that TechDyn would provide a field service technician and he
17 would get training in diagnostics under a purchase order
18 from Whittaker.

19 Q Okay. Now, sir, with these adjustments arrived at
20 at the meeting in the Burlington Hotel, what was your
21 understanding going into the finalization or execution of
22 the MOD 3 FOC prime contract as to what the allocation of
23 responsibility for this program, this FOC program, was to be
24 as between Whittaker on the one hand and TechDyn on the
25 other?

ALFRED JOHNSON - DIRECT EXAMINATION

1906

1 A Well, my understanding was that Whittaker was
2 responsible for the provision of the PDFA requirements in
3 the statement of work and spec and that TechDyn was
4 responsible for the CFA portions unless the provision of
5 data terminal sets, which are a part of the CFA but that
6 Whittaker would procure, and for the design of the remote
7 control element.

8 Q And that remote control element being what again?

9 A Being computers, computer components, software an
10 diagnostics and the documentation for all of the above.

11 Q All right. Now, let's focus on the data terminal
12 set for a moment. What was your understanding as to how
13 that was going to be provided?

14 A When we initially went into this, the data
15 terminal sets for Iceland were to be furnished by the
16 Government, unmodified, to the contractor and the contractor
17 would provide the necessary modifications to it allow it to
18 operate in the geographical region of Iceland where you're
19 separated from unmanned stations by as much as 300 miles.
20 That never happened, that furnishing of that data terminal
21 set by the Government to the contractor.

22 Q And what was the final arrangement?

23 A The final arrangement was that in order to further
24 reduce costs prior to this bottom line understanding, the
25 Air Force wanted us to get rid of the non-recurring

ALFRED JOHNSON - DIRECT EXAMINATION

1907

1 engineering cost of modifying a data terminal set. They
2 indicated that they had data terminal sets being modified in
3 another Air Force program and that they would put it in line
4 within another program and then provide them to the ICCE
5 project by a certain date.

6 Q Now, you talked about the discussions at the
7 Burlington Hotel and what you thought the ultimate
8 allocation of work between the parties was to be based on
9 your involvement. Was that allocation of work ever reduced
10 to writing?

11 A I haven't seen those specifics reduced to writing.

12 Q Did you expect this allocation of work that had
13 been agreed upon to be reduced to writing?

14 A Yes.

15 (Continued on next page.)

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ALFRED JOHNSON - DIRECT EXAMINATION

1908

1 Q Now, sir, you talked about in this period from May
2 to August, the work being reduced to accommodate the
3 adjustment in price. Did that reduction that contemplated
4 reduction and the scope of the work on the prime contract,
5 ever get reduced to writing?

6 A Some did. Most did not.

7 Q What happened with regard to that?

8 A First, right until the signing of the contract, a
9 new statement of work was put out that reflected the
10 descopeing of the price that I had mentioned, the option.

11 Q That was the statement of work, you are saying?

12 A However, at that time, it was understood that
13 there were a number of other varieties in both the statement
14 of work and the specification. Contradictions had had to be
15 dealt with. But because of the urgency, it was to be done
16 after the statement of work.

17 Q How was it to be done?

18 A It was to be done by agreement between the
19 parties. In other words, a contract to the subcontract and
20 the Air Force would sit down and go through the statement of
21 work and subtract and bring it in line with the, all of the
22 reductions and understandings of the fact finding in the
23 negotiations.

24 Q And did that comprehensive agreement ever get
25 implemented in writing?

ALFRED JOHNSON - DIRECT EXAMINATION

1909

1 A Not completely, to my understanding, no.

2 Q Okay. Now, we brought ourselves up to August 30,
3 1985, and you have been discussing the period before that
4 time. What was Mr. Morrison's role in the period up to the
5 events you have described up to August 30, 1985?

6 A Well, during the fact finding, he was available to
7 Mr. Hise for discussions on rates and fees and what not.

8 Q Was he involved in the technical discussions at
9 all, to your knowledge?

10 A No, he wouldn't be.

11 Q Now sir, how did the Air Force allocate money to
12 this FOC MOD-3 contract, prime contract?

13 A They allocated the numbers by contract line
14 numbers, which identified the major tasks on the program.

15 Q And now, the Air Force, having done that, and I
16 assume the Air Force thus allocated the 10.4 million price
17 that had been negotiated for the MOD 3 work?

18 A Yes.

19 Q Now, how did that, that overall 10.4 million
20 dollar price get allocated between TechDyn, the prime
21 contractor, and Whittaker, the subcontractor?

22 A That would have been done between Mr. Hise and the
23 contracts manager at Whittaker.

24 Q I see. Now, sir, let's talk about the period
25 immediately after the August 30 effective date for the FOC

ALFRED JOHNSON - DIRECT EXAMINATION

1910

1 on the prime contract. Whom did TechDyn assign, actually to
2 run this project? Staring on August 30, 1985?

3 A Mr. Herbert Chisholm had been designated as
4 project manager in the April time frame, 1985.

5 Q Who appointed Mr. Chisholm?

6 A I signed the letter, but basically he was selected
7 by mr. Morrison.

8 Q What experience did Mr. Chisholm have that
9 qualified him for this position?

10 A Well, his resume and discussion that I had with
11 him was that he had experience in Iceland prior to this, or
12 prior to that time, and Saudi Arabia.

13 Q In what capacity?

14 A He was a field project manager in logistics for
15 two or three different companies during that previous
16 period?

17 Q Now, during the early months of the program, after
18 August 1985, was there a reporting relationship between Mr.
19 Chisholm and you?

20 A Yes. He reported to me.

21 Q Were you in a position to evaluate his performance
22 in the role of project manager during that period.

23 A Only during the fact finding, because right after
24 that, he went to, he moved to Iceland. During the fact
25 finding I found that during the engineering phase, the

ALFRED JOHNSON - DIRECT EXAMINATION

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1 shortcomings. So, I helped him with the logistics part of
2 it, which he felt more comfortable.

3 Q Now, that's on the project side. On the
4 contracting side, who was appointed by TechDyn to be the
5 contract administrator for this program?

6 A Mr. Hise would have been contract.

7 Q I mean specifically on a day to day basis in this
8 program, under Mr. Hise?

9 A Well, Mr. Hise was the contract administrator.
10 He had a subcontracting administrator.

11 Q Who was the subcontract administrator?

12 A Mr. Yennowine.

13 Q Now, sir, what did you do on the ICCE program
14 during the first few months following August 30, 1985?

15 A I think the first few weeks in September I was
16 going out to the west coast to Whittaker's office to one,
17 get established the logistics to find the logistics
18 subcontract team that could implement that portion of the
19 contract and discuss the overall arrangement of staffing
20 with them.

21 And immediately after that, I had to go to
22 Iceland, because we had some problems with the command there
23 on this urgent project where the Air Force had not notified
24 the command in Iceland that we had people moving out there
25 to put in the system.

ALFRED JOHNSON - DIRECT EXAMINATION

1912

1 Q Let's focus on the logistics part of it first.

2 You referenced an understanding that was reached with the
3 hotel meeting in Burlington, just before the effective date
4 of the prime contract. What happened, did not happen to
5 implement the arrangement, the agreement that had been
6 struck at that meeting?

7 A Well, once I met out in California, the agreement
8 was that we would both try to effect the subcontract with a
9 corporation called OTI, that specializes in this logistic
10 work. And I passed the information to Mr. Hise as a
11 requirement. And he said that he would close with OTI and
12 establish the subcontract.

13 Q What happened with regard to that?

14 A The negotiations broke down somehow. And I found
15 out later that while I was in Iceland, that absolutely
16 nothing was going on.

17 Q Was there an early delivery requirement for some
18 element of the logistics program under TechDyn's prime
19 contract with the Air Force?

20 A There was a requirement for deliverable 30, 60 and
21 90 days after contract award.

22 Q Did those deliverables take place? Did those
23 deliveries take place under the prime contract?

24 A No.

25 Q Why not?

ALFRED JOHNSON - DIRECT EXAMINATION

1918

1 trying to discover whether there is or is not a subcontract.
2 That is an issue for the jury. I believe it calls for -- if
3 he is going to talk about facts as to whether or not a
4 subcontract had been forwarded, that's one thing --

5 MR. WORK: Withdrawn.

6 After that PMR, did you have, excuse me, the PDR,
7 in early January 1986, did you have any discussion with Mrs.
8 Hise about the fact that some documents may not have been
9 provided to Whittaker to constitute the subcontract?

10 THE WITNESS: I did.

11 BY MR. WORK:

12 Q And what was the nature of that conversation?

13 A I told him that I had reviewed the package that
14 was sent to Whittaker, the technical portion of it. And I
15 found that there was no statement of work provided. That
16 there was no attachment 12, which were the requirements for
17 provision which were very important at that time, and that
18 the specification only included the odd numbered pages. It
19 was evidently a xerox.

20 Q This discussion with Mr. Hise took place when?

21 A That discussion took place some time between the
22 7th and the 12th, when we had the preliminary design review
23 in January 1986.

24 Q What did Mr. Hise say?

25 A He said that he would look into it .

ALFRED JOHNSON - DIRECT EXAMINATION

1919

1 Q Now, sir, again with regard to this period between
2 August and the first of 86. How did the Air Force staff the
3 program for the MOD-3, FOC effort?

4 A As far as the points of contact that I dealt with,
5 there was a complete change at the time of the contract
6 signing than existed prior to the contract.

7 Q And what were your points of contact at the Air
8 Force?

9 A My points of contact were with the chief and the
10 people in the systems program office, for this project.
11 Previously, there had been a lieutenant colonel Gentry, and
12 the project manager was a major Taylor --

13 Q That was during the fact finding and negotiation?

14 A And the preliminary discussions.

15 Q All right.

16 A After the contract was signed, new SPO came on
17 board --

18 Q SPO stands for what?

19 A Systems program officer, came on board, Colonel
20 Paschall. And the project manager, Major Taylor was
21 replaced by lieutenant, later Captain Marshall.

22 Q Did this transfer of authority from Gentry and
23 Taylor on the one hand to Paschall and Marshall on the other
24 hand have any effect on the program as the program
25 proceeded, as you personally perceived it?

ALFRED JOHNSON - DIRECT EXAMINATION

1920

1 A Yes. I saw a great difference in understanding of
2 what we thought was the program.

3 Q In what sense?

4 A Well, Colonel Paschall made it very clear that
5 they were going to consider this as a development program
6 and follow the letter of all of the requirements
7 documentation called out in order to meet the requirements
8 of the statement of work and spec, specification.

9 Q Did you tell them that approach was inconsistent
10 with what had been negotiated lading up to the contact?

11 A I did.

12 Q What was his response?

13 A His response was that we'll have time to lay all
14 of those things on the table when we review the statement of
15 work and spec, as had been understood prior to negotiation.

16 (Continued on next page.)

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ALFRED JOHNSON - DIRECT EXAMINATION

1927

A F T E R N O O N S E S S I O N

1:30 p.m.

BAILIFF: Everyone please rise. This Honorable Court is again in session. Please be seated and come to order.

JUDGE BROWN: Okay. Are we ready for the jury?

MR. WORK: Yes, Your Honor.

JUDGE BROWN: Bring them in.

(Pause while jury is seated.)

JUDGE BROWN: Okay. We're ready to go.

MR. WORK: Your Honor, as I walked out of the room, I noticed that I had forgotten to advise the jury that that chart we used with Ms. Raymond is to go at tab 12.

JUDGE BROWN: I think you said 12. I don't know whether they picked up on it.

Whereupon,

ALFRED JOHNSON

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

DIRECT EXAMINATION (Resumed)

BY MR. WORK:

Q Mr. Johnson, we were talking about turnover in the position of program manager for ICCE at TechDyn during your tenure on the program. Was there any other turnover at key functional working level positions on the ICCE program at

Heritage Reporting Corporation
(202) 628-4888

ALFRED JOHNSON - DIRECT EXAMINATION

1928

1 TechDyn?

2 A There was turnover in most of the functional
3 areas.

4 Q Could you get a little bit closer to the
5 microphone, please?

6 A There was turnover in most of the functional
7 areas.

8 Q Would you turn to tab 14 of the book in front of
9 you, please? And the jury does not have this yet. This is
10 a chart entitled "TechDyn Staffing Turnovers". Did you
11 participate in the preparation of this document, sir?

12 A Yes.

13 Q Did you have personal knowledge of all the people
14 that are listed on this chart under the various functional
15 levels?

16 A Right.

17 Q Is this chart true and correct to the best of your
18 knowledge and belief?

19 A Yes.

20 MR. WORK: May I publish this chart to the jury,
21 Your Honor?

22 JUDGE BROWN: Any objection?

23 MR. RIDDLES: Your Honor, I'd like to hear a
24 foundation for the names that are on the chart.

25 JUDGE BROWN: I think we just had that.

ALFRED JOHNSON - DIRECT EXAMINATION

1929

1 MR. WORK: We have had a foundation.

2 JUDGE BROWN: We had that foundation. Is there
3 any other objection?

4 MR. RIDDLES: No other objection, Your Honor.

5 JUDGE BROWN: Okay. You may show it to the jury
6 as an aid.

7 (Pause.)

8 BY MR. WORK:

9 Q What is shown on this chart, Mr. Johnson?

10 A What's shown here is a listing of certain of the
11 important or at least primary people that were involved in
12 various functional areas under the ICCE project.

13 Q And were the people listed people who held the
14 position, for example, of program manager or program
15 engineer at various times during the course of this program
16 at TechDyn?

17 A Yes, at various times and for various reasons.

18 Q Now, let's just focus on program engineer, Mr.
19 Thornton. To what extent did you have a role in bringing
20 Mr. Thornton into this program?

21 A I brought Mr. Thornton onboard to head up the
22 engineering just to stabilize the functions and to
23 concentrate on equipment engineering.

24 Q What about the last person listed as being head of
25 logistics support, Mr. Jones?

ALFRED JOHNSON - DIRECT EXAMINATION

1930

1 A I brought Mr. Jones onboard to take over the
2 logistics function.

3 Q All right. Now, what was the reason for the
4 amount of turnover reflected on this chart, sir, based on
5 your personal knowledge of the program?

6 A In some areas, the turnover was due to transition
7 from one specific skill level to another within the
8 functional area. In some instances, the people were found
9 not to be qualified by me.

10 Q All right. Let's talk about budget for a moment.
11 Was there an initial program budget for the ICCE program at
12 TechDyn?

13 A Can you repeat that, please?

14 Q Yes. Budget -- was there an initial ICCE program
15 budget at TechDyn for this program?

16 A Not at the price level.

17 Q Where would a budget -- in the normal course of
18 business at TechDyn, in what document would a cost related
19 budget be reflected?

20 A We had a cost status report, a monthly cost status
21 report. It would be reflected there.

22 Q And how was that monthly cost status report or
23 CSR used at TechDyn?

24 A To evaluate the progress on various projects that
25 we had.

ALFRED JOHNSON - DIRECT EXAMINATION

1931

1 Q And as a routine matter, did that show the initial
2 program budget on any given program?

3 A Normally, it showed a budget against which it was
4 measured?

5 Q And to whom was that cost status report ultimately
6 directed at TechDyn? Who received it?

7 A The president and the vice presidents.

8 Q Mr. Morrison?

9 A Yes.

10 Q Did he receive that CSR reflecting an initial
11 budget or the lack of an initial budget on a monthly basis?

12 A My copy showed hi as an addressee.

13 Q All right. And did the CSR during your tenure at
14 TechDyn, during the period that TechDyn had the ICCE
15 project, reflect any initial budget for this program?

16 A No, that did not reflect a budget.

17 Q Now, within the technical area, did you try to do
18 any budgeting on this program?

19 A I budgeted to the cost level of the resources that
20 I had available, usually similar to the manner in which you
21 would budget a cost plus contract in that what I did was
22 project cost estimates to the completion of the program.

23 Q And in what document did you reflect these
24 estimates to complete?

25 A Well, I had to report an estimate to complete to

ALFRED JOHNSON - DIRECT EXAMINATION

1932

1 the president through the vice president for management
2 support.

3 Q All right. And was there a document that you used
4 in reporting to the Government?

5 A Well, there was a price schedule status report
6 that went to the Government but it was a price report.

7 Q And did that have any bearing, the projections to
8 complete reflected in the PSSR, have any relationship to the
9 costs that were accumulated in the finance department on
10 this program?

11 A I would say it would be difficult to show a
12 relationship.

13 Q Now, let's talk about the Air Force reaction to
14 not only TechDyn's but Whittaker's performance during, say,
15 the initial three quarters of a year of work on this
16 program, starting with TechDyn. Let's say in the first nine
17 months of the program, what was the Air Force's reaction, as
18 they related it to you, to TechDyn's initial performance on
19 the ICCE program?

20 A They were very critical in a negative way.

21 Q In what particular areas?

22 MR. RIDDLES: I'm going to object to any hearsay
23 testimony, Your Honor, coming in.

24 JUDGE BROWN: Any response?

25 MR. WORK: No response.

ALFRED JOHNSON - DIRECT EXAMINATION

1933

1 JUDGE BROWN: Sustained.

2 MR. WORK: All right. We'll just use one summary
3 document.

4 (Pause.)

5 BY MR. WORK:

6 Q As an illustration, Mr. Johnson, I'll hand you
7 Defendant's Exhibit 4H for identification.

8 Mr. Johnson, do you recognize Defendant's Exhibit
9 4H?

10 A Yes, I recognize it.

11 Q What is it?

12 A It's a letter to Mr. Morrison from Colonel
13 Paschall, the director of the System Program Office.

14 Q And what's the date?

15 A The date is 21 May 1986.

16 MR. WORK: Your Honor, I offer Defendant's Exhibit
17 4H.

18 JUDGE BROWN: Any objection to 4H?

19 MR. RIDDLES: No, sir.

20 JUDGE BROWN: 4H is received.

21 (The document referred to, having
22 been previously marked for
23 identification as Defendant's
24 Exhibit 4H, was received in
25 evidence.)

ALFRED JOHNSON - DIRECT EXAMINATION

1934

1 BY MR. WORK:

2 Q Mr. Johnson, we're projecting the first page of
3 this letter from Colonel Paschall to Mr. Morrison and, as I
4 recall, you identified Colonel Paschall as what you called
5 the SPO, the head of the Special Project Office relating to
6 the ICCE program. Is that right?

7 A That's correct.

8 Q Would you read to the jury the first two sentences
9 of the second paragraph, please? Excuse me -- let me strike
10 that for the moment. What was the occasion for this letter?
11 Was it after some meeting or something?

12 A It was after a program review, a formal program
13 review.

14 Q All right. And would you read the first two
15 sentences of the second paragraph, please?

16 A "However, I must convey my dismay at the
17 continuing lack of cohesiveness in the management of the
18 program. Conflicting schedule data is inexcusable at this
19 point in the program."

20 Q Could you read the next sentence, too, please?

21 A "The lack of an integrated program schedule is
22 totally unacceptable."

23 Q Now, would you read the fourth full paragraph on
24 this page, please?

25 A "In summary, the review on 15 May was the worst I

ALFRED JOHNSON - DIRECT EXAMINATION

1935

1 have seen in 20 years in the Air Force. The presentations
2 were inconsistent and some approached incoherence. The lack
3 of coordination and organization might have been more
4 understandable early in the program, but not this far along.
5 TechDyn did not demonstrate the degree of professionalism
6 which I believe you wish to achieve."

7 Q Then would you read the next paragraph, please?

8 A "You have simply got to get organized and manage
9 toward success. You have got to get people who know how to
10 manage and then listen to them. You have some competent
11 people but you also have some glaring weaknesses."

12 (Pause.)

13 Q Now, sir, did you receive any reactions from the
14 Air Force concerning Whittaker's performance in the same
15 period?

16 A I didn't get anything in writing, but we had a lot
17 of meetings concerning them.

18 Q And those were oral conversations?

19 A They were oral conversations, meetings and some
20 formal events.

21 (Pause.)

22 Q Mr. Johnson, I'm putting up the chart that we have
23 used with previous witnesses entitled "Elements of the ICCE
24 Program". Are you familiar with that chart, sir?

25 A I am.

ALFRED JOHNSON - DIRECT EXAMINATION

1936

1 Q Did you have any role in the participation of that
2 chart?

3 A I assisted in it's preparation.

4 Q Is it accurate to the best of your knowledge and
5 belief in depicting the various elements of the ICCE
6 program?

7 A It does.

8 Q Now, let's talk initially -- and I think you have
9 a pointer there, Mr. Johnson, if you need it -- let's talk
10 initially about the requirements definition and design
11 period. From your position as TechDyn's director technical
12 operations and ultimately as interim program manager, what
13 happened during that period?

14 A Well, during that period, under the second column
15 that's called out as requirements definition and design,
16 after the preliminary design review and prior to the
17 critical design review, there were a number of meetings
18 between the Air Force, the user commands of the Air Force
19 and the contractor concerning the design requirements for
20 the program.

21 Q Over what period of time did those meetings last,
22 sir?

23 A They lasted from January of 1986 through July of
24 '86 and then picked up again in the fall of '86 to the end
25 of '86.

ALFRED JOHNSON - DIRECT EXAMINATION

1937

1 Q Now, can you give us in a general overview sense
2 what evolved at those meetings? From your perspective as
3 the head of the TechDyn program.

4 A What evolved at those meetings was a --

5 Q Excuse me. May I withdraw that? I'd like to ask
6 a foundational question. Did you attend those meetings,
7 sir, personally?

8 A I attended the majority of them.

9 Q About how many days, if you recall, did you spend
10 in these meetings from the beginning of January through the
11 end of the year?

12 A Well, I know that from January to about July or
13 so, I was out over 80 days.

14 Q In just that period of time?

15 A In that period of time.

16 Q Now, what happened at those meetings? And what
17 emerged as relates to the design and definition aspect of
18 this program.

19 A As far as the design definition, normally you
20 take the requirement that's in the original specification
21 and move toward a definition of the design that's being
22 offered by the contractor.

23 Q And here we're speaking moving from the A-spec to
24 the B-spec.

25 A To the B-specification. What came out in this

ALFRED JOHNSON - DIRECT EXAMINATION

1938

1 meeting or these series of meetings was the fact that there
2 was confusion among the Air Force commands as to whether or
3 not the A-specification covered all of the requirements of
4 the contract that they were looking forward to. And these
5 meetings were two-part: one, to resolve conflicts and basic
6 lack of coordination on the part of the Air Force and to try
7 to place those requirements into the contract at these
8 various meetings with the contractor and subcontractor.

9 Q What Air Force commands were represented at these
10 meetings, sir?

11 A Well, of course, they had the staff from the
12 Electronics System Division, who were the procurers, the
13 contracting agency, and then there were representatives from
14 Tactical Air Command, from Pacific Air Command, from
15 Alaska, from Iceland, from the Software Development Center
16 in Florida, from Sacramento from the logistics command and
17 several other interested parties, including the Central Air
18 Forces in South Carolina, which was to get delivery of some
19 special RADIL equipment.

20 Q Were these latter commands the user commands that
21 have been referred to in this trial?

22 A They are the user commands. They are the ones
23 that ultimately will either get the products or support the
24 products.

25 Q Why were they at these meetings?

ALFRED JOHNSON - DIRECT EXAMINATION

1939

1 A I guess by agreement with the buying command.

2 It's not something that I've seen before.

3 Q The buying command being --

4 A Electronic Systems Division.

5 Q Did you prepare a chart reflecting the various
6 commands that participated in these requirements definition
7 meetings and the various personnel that were active in this
8 program during this period?

9 A Yes.

10 Q Would you turn to chart 13, please? Is this a
11 chart that you assisted in preparing?

12 A Yes, I did.

13 Q Is this chart true and accurate to the best of
14 your knowledge and belief?

15 A It is.

16 MR. WORK: May I publish this chart, Your Honor?

17 JUDGE BROWN: Any objection?

18 MR. RIDDLES: Your Honor, subject to the
19 foundation being laid, I have no objection to the jury
20 seeing it as long as it explains the testimony.

21 JUDGE BROWN: Okay. You can show it, then.

22 MR. WORK: Thank you.

23 JUDGE BROWN: What number was it again?

24 MR. WORK: That's chart 13.

25 (Continued on next page.)

ALFRED JOHNSON - DIRECT EXAMINATION

1940

1 BY MR. WORK:

2 Q Mr. Johnson, using the pointer that I have
3 provided you, will you describe to the jury what you have
4 depicted on this chart?

5 A Will the microphone still cover?

6 Q Well, while I point, you tell the Court.

7 A In the top center of the chart is the special
8 program office. And they represent the upper echelon of the
9 staffing of the Air Force procurement activity.

10 Q And that's what we call the SPO, correct?

11 A That's SPO.

12 Q And there is an individual assigned as SPO?

13 A There's an individual assigned to SPO. And what
14 it shows here is that there were three SPOs on the contract.
15 The first one was Colonel Gentry.

16 Q All right --

17 A Colonel Paschall and Lt. Colonel, he may be a
18 colonel now, Johnson.

19 Q All right. What else do we have?

20 A We have the para command, the electronics system
21 division and the contracting officer reports to him.

22 Q Reports to whom, sir?

23 A To the command itself.

24 Q And who are the people that you have listed here?

25 A They're the various contracting officers who have

ALFRED JOHNSON - DIRECT EXAMINATION

1941

1 been on the contract.

2 Q There were a total of seven different contracting
3 officers on this program?

4 A Off and on, yes.

5 Q All right. And then what do we have down below
6 there in the blue boxes?

7 A Under project manager, we show the various
8 project managers who worked on the project up there.
9 Captain Taylor, Major Taylor, Captain Marshall. Major
10 Jacobsen. Captain Petrol, Captain Dalrymple and Mr.
11 Deforges.

12 Q And they all, at one time or another held the
13 position of project manager on the ICCE program?

14 A Yes.

15 Q What else do we show here?

16 A Under data management, Mr. Igo and Miss P.

17 Q Well, let's just do it in summary fashion now,
18 with the rest of these. These blue boxes that I am pointing
19 to, under the ESD overall box are the elements of ESD that
20 were involved in this program and the next names listed were
21 all names of individuals who from time to time held a
22 position noted above?

23 A In the case of engineering and test, they held
24 major positions within those organizations.

25 Q I see. What do we have over here on the right

ALFRED JOHNSON - DIRECT EXAMINATION

1942

1 hand side?

2 A We have three private organizations that support
3 the command enhancement in various ways. For example, Mitre
4 is a corporation that provides technical support as a non-
5 profit organization to the Air Force.

6 Q And you have listed two groups under Mitre. What
7 were those groups?

8 A They were basically people who were providing
9 project management support overall and in special situation
10 st such as software development, used as support.
11 Representing the user commands, or NORAD.

12 Q Did these people participate in the design or
13 requirements definition meetings during, throughout much of
14 1986?

15 A Yes.

16 Q And who were the other two organizations? What
17 are the other two organizations?

18 A ASEC is another organization that supports the Air
19 Force, mainly in the area of cost analysis process,
20 configuration management, and logistics management.

21 H. H. Aerospace was brought on after about a year
22 and a half to provide verification and validation of the
23 software.

24 Q And then you have listed under the title U.S. Air
25 Force user commands, and you have TAF, CENTAF, 932nd

ALFRED JOHNSON - DIRECT EXAMINATION

1943

1 Iceland, SMAL logistics, RSSF software support package,
2 PACAF and TAC. What role did they have in these
3 requirements definition meetings?

4 A These were all the systems. They sent a
5 representative from the tactical air command, which is the
6 main user for the air defense systems, both ground and air.
7 CENTAF is based in South Carolina, Shore Air Force Base and
8 they have responsibility for regional support for air
9 defense systems.

10 The 932nd, of course, is the Air Force unit that
11 was being supported in Iceland. SMALC, the Air Force
12 logistics center in Sacramento, which is responsible for re-
13 procurement and logistics and depot support activities.

14 The RSSF is a tubal Air Force in Florida, and they
15 provide support for all software for data links in the Air
16 Force. Pacific air force is a major command in the Air
17 Force, located in Hawaii. And they have representatives at
18 each meeting, along with Alaska air command, Elmendorf Air
19 Force base in Anchorage --

20 Q And then it says at the bottom of the page,
21 average U.S. Air Force attendance at technical reviews, 34.
22 What did you intend to connote with that?

23 A Well, only that they needed a big room.

24 Q What role did all of these people play in the
25 requirements definition meetings during 1986?

ALFRED JOHNSON - DIRECT EXAMINATION

1944

1 A The role that they played, in the meetings that
2 took place, brought confusion, uncertainty and
3 contradictions to the process of defining the software
4 requirements and design. The reason I say that is the
5 normal process as called out in the contract is that as
6 specifications and documents are forwarded to the buying
7 command, in the top, in the blue, they were to coordinate
8 these documents within 30 days and get a response back in
9 writing to the contractor, and signing whatever the document
10 contained.

11 And this didn't happen. They brought the people
12 along to read and review and argue at these meeting and
13 sessions.

14 Q Did all of the command representatives speak of
15 one place, or were there conflicts among them?

16 A There were many conflicts and contradictions.

17 Q What were they arguing about?

18 Q They were arguing about the definition of the
19 requirements. They were arguing about the various
20 deficiencies in the current system that they thought would
21 be overcome by this contract.

22 Q By the current system, you mean the pre-ICCE
23 programs?

24 A The pre-ICCE, RADIL, that they already had. And
25 the pre-ICCE software that they had.

ALFRED JOHNSON - DIRECT EXAMINATION

1945

1 Q Going into the contract, had you any knowledge of
2 any deficiencies?

3 A None. Not at all.

4 Q Had the Air Force come in -- had they indicated to
5 you, or to Whittaker, to your knowledge?

6 A Not to my knowledge.

7 Q Was the conduct at these meetings during the
8 requirements definition consistent with what you had
9 expected to be an off the shelf program when you entered
10 into the FOC prime contract?

11 A Not at all. I expected very little in the way of
12 the normal full scale development activities that this
13 represents.

14 Q What was the impact on TechDyn, as you understood
15 it, of this extended requirement definition process?

16 A Well, it automatically increased costs and it
17 stretched out the scheduling of the program.

18 Q Now, what was the aspect of the ICCE program that
19 was the focus of all these requirements definition meetings?

20 A The aspect was the design of the software.

21 Q The PDFA software?

22 A The PDFA software.

23 Q Were you in a position to observe what impact this
24 extended period of requirements definition meetings had on
25 Whittaker?

ALFRED JOHNSON - DIRECT EXAMINATION

1946

1 A Yes. I was there during the meetings, and it
2 caused a lot of consternation and concern on their part.

3 Q To what extent did it delay Whittaker's efforts?

4 A Well, the delay was the same. Probably the cost
5 was a lot more, because they had more people involved in the
6 preparation and the design effort.

7 Q A lot more on whom?

8 A It had been the same with a lot more cost?

9 Q To whom?

10 A Whittaker.

11 Q On Whittaker. Now, to what extent did the delays
12 in the requirements definition phase effect the subsequent
13 phases of the program, to the extent that you have personal
14 knowledge based on your involvement?

15 A Well, it would have an effect on all parts of the
16 program. If you don't have the design requirements firmed
17 up, and there are a lot of changes, and increases in
18 complexity, which actually occur during this design phase,
19 then it is going to increase the complexity of everything
20 that follows. Especially the testing, the documentation in
21 the form of manuals, and the training for the program.

22 Q Mr. Johnson, you mentioned that there were really
23 two periods of the requirements definition meetings, one
24 lasting between January and July and another taking up in
25 the fall and going through the remainder of the year. In

ALFRED JOHNSON - DIRECT EXAMINATION

1947

1 the initial phase, what happened leading up to that initial
2 phase in July?

3 A At the beginning, the Air Force took the position,
4 the SPO officers took the position that the contractor had
5 no understanding of the requirements and was totally
6 deficient in explaining his design to the various attendees
7 at these various meetings.

8 Q Did that position change?

9 A That position changed as time went on, because we
10 found out that there were elements of the Air Force's
11 requirements that were unknown to the contractor up to that
12 point. And they backed away from it slowly. But they did
13 it, in the atmosphere of really, creating bad feelings
14 between the parties, with the letters that they were
15 writing. The letters that they were writing were of total
16 incompetence.

17 They backed away from that gradually as we showed
18 them that these were requirements that were starting to
19 appear on the horizon, were out of scope, were not in the
20 contract. So, gradually, there was a change in their
21 attitude, as we approached the summer.

22 Q Then what happened?

23 A At that time, they came in with three design
24 changes that they said were critical to the contract. And
25 our position was that they were out of scope.

ALFRED JOHNSON - DIRECT EXAMINATION

1948

1 Q What were those changes?

2 A Those changes had to do with the ability of the
3 RADIL. Do we understand the RADIL?

4 Q Yes.

5 A The ability of the RADIL to deal with various
6 participating units in their network that was being used in
7 Iceland, or to be used in Iceland. Information on these
8 changes came out of an Air Force user test that occurred in
9 February 85, and were never made, the results were never
10 made available to the contractor until June 1986.

11 Based on that, there was, I think, an awareness on
12 the part of the Air Force that maybe, that something is out
13 of scope, and that they would return to Hanscom, discuss it
14 with the users, and come in with specific guidance as to
15 whether or not these items were in or out of scope and what
16 should be done about the design solutions.

17 Q And did that happen?

18 A It happened, but it was later than they had
19 promised. They left in July, said they would have an answer
20 within 30 days. We got an answer around September I think
21 it was the 17th.

22 Q A letter?

23 A A letter from the contracting officer.

24 Q I am going to hand you Defendant's Exhibit 1B for
25 identification. And I ask you if you can identify that,

ALFRED JOHNSON - DIRECT EXAMINATION

1949

1 sir?

2 (Pause.)

3 A I can identify it, yes.

4 Q What is it?

5 A This is a letter from the contract officer, Mr.
6 Smith, to the second assistant, attention Mr. Ray Hise,
7 dated September 17. And the subject is digital handovers.

8 Q And is this the letter that you were referring to
9 a moment ago?

10 A Yes. It's a letter concerning the problem I was
11 referring to.

12 MR. WORK: I offer Exhibit 1B.

13 JUDGE BROWN: Any objection to 1B?

14 MR. RIDDLES: No, sir.

15 JUDGE BROWN: Received.

16 (The document referred to, having
17 been previously marked for
18 identification as Defendant's
19 Exhibit 1B, was received in
20 evidence.)

21 BY MR. WORK:

22 Q Now sir, part of those issues or problems that you
23 have already discussed relating to the requirements
24 definition and design phase, do you recall any other
25 problems that occurred during that phase that had a negative

ALFRED JOHNSON - DIRECT EXAMINATION

1950.

1 effect on Whittaker?

2 A Aside from the cascading effect that it had on
3 other portions of the program, it pushed everything out and
4 it made the rest of the program a bit uncertain.

5 Q When did this requirement definition phase come to
6 a head? In terms of it being completed? Did it ever come
7 to an end?

8 A I think I mentioned that even after that letter
9 was published, there were other meetings that were held in
10 California, at Tyndall Air Force Base concerning solutions
11 to problems. We did reach what is called an agreed upon and
12 allocated base line in November 1986, which meant that the
13 Air Force felt comfortable that the design was understood by
14 them. It was acceptable as a design to the users and we
15 would move forward.

16 Q Let me see if I can get you to illustrate the
17 process of allocating base line.

18 Would you turn please, ladies and gentlemen, to
19 tab 11 of your books? Did you have that, Mr. Johnson?

20 A I have that.

21 Q Using that chart which is entitled ICCE program
22 specifications, can you describe to the jury what it means
23 to allocate the base line?

24 A When we receive a contract from the Government of
25 this type, you have an a specification which spells out in

ALFRED JOHNSON - DIRECT EXAMINATION

1951

1 detail, the Government's performance requirements for the
2 system. These performance requirements don't get into how
3 you solve them, or what machines you use. That spells out
4 the requirements, and it also states which of those
5 requirements are mandatory by using the word shall in the
6 specification. And that is given to you in the procurement
7 package.

8 Now, at the critical design review, you have -- by
9 the critical design review, you have to produce these
10 specification, the contractor must produce b specifications,
11 for both hardware and software, that explain how he takes
12 those requirements and transfers them --

13 Q The A requirements?

14 A The A requirements and transfers them to his
15 design. An that is allocation of the requirements.

16 Q When did the allocated base line get established
17 in the ICCE program?

18 A In November of 1986.

19 Q And the delay from the originally planned schedule
20 was primarily attributable to what, sir?

21 A The delay in the allocation of that baseline was
22 due to the Air Force failure to freeze the performance
23 requirements at the beginning of the contract, which they
24 should have done.

25 Q Well, let's talk about the final element of the

ALFRED JOHNSON - DIRECT EXAMINATION

1952

1 requirement definition and the design stage, as you listed
2 in the critical design review. When did the critical design
3 reviews for the hardware of the ICCE program take place?

4 A The critical design review for the hardware were
5 done incrementally. And the first increment was in August
6 1986, and was completed around December 86.

7 Q And when you are talking about hardware, you are
8 talking both PDFA and CDEFA?

9 A We are talking about the RADIL, and most of the
10 communication equipment, less the remote control element and
11 less the data terminal set.

12 Q Okay. And so the hardware, CFA and PDFA, critical
13 design reviews with the original remote control elements in
14 December of 86, is that right?

15 A They were originally in December 86.

16 Q When did the critical design review for the PDFA
17 software take place?

18 A The critical design review for the PDFA software
19 was in May 87.

20 Q Was there a prior critical design review for the
21 PDFA software?

22 A Yes, there was.

23 Q And when did that take place?

24 A That was January 1987.

25 Q So, one month after the hardware for the CFAs?

ALFRED JOHNSON - DIRECT EXAMINATION

1953

1 A CDR.

2 Q CDR. Sorry. I didn't mean that backward.

3 Critical design review. And what happened at that January
4 software CDR, critical design review?

5 A That's CDR was basically a failure.

6 Q In what sense and why?

7 A I was told that --

8 MR. RIDDLES: We object to what he was told.

9 JUDGE BROWN: Sustain.

10 MR. WORK: Again, Your Honor, I think on a number
11 of occasions during Mr. Riddles' case, he presented
12 evidence of what was told not for the truth of the matter as
13 to whether it passed or failed, but the TechDyn
14 representative was told by the Air Force and learned from
15 the Air Force, as a representative. Mr. Johnson --

16 JUDGE BROWN: Sometimes, the fact that something
17 was said, itself, is relevant. Sometimes the truth is. I
18 don't see that it makes any difference, unless it is
19 introduced. I sustain the objection.

20 (Continued on next page.)

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ALFRED JOHNSON - DIRECT EXAMINATION

1954

1 MR. WORK: Well, Your Honor, we unfortunately have
2 on the record at this point the statement that it was a
3 failure. Now I'm trying to get at why the Air Force took
4 that position.

5 JUDGE BROWN: I know and that's what I'm saying.
6 The fact that it didn't pass, of course, is relevant or may
7 be relevant.

8 BY MR. WORK:

9 Q Did you consider the January CDR to be a failure?

10 JUDGE BROWN: The fact that some part of the Air
11 Force said it was is not relevant unless it's for the truth
12 and so that's one objection.

13 MR. WORK: All right. Fine. We'll just
14 backtrack.

15 BY MR. WORK:

16 Q Did you consider the January CDR to be a failure,
17 Mr. Johnson?

18 A I considered it incomplete.

19 Q All right. And what needed to be completed?

20 A We really needed a quorum after the first half-day
21 of Air Force participants.

22 Q And why was there not a quorum of Air Force
23 participants?

24 MR. RIDDLES: I'm going to object again to the
25 extent that he's testifying on a hearsay basis. I'd like to

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1955

1 hear a foundation for his knowledge.

2 MR. WORK: All right. Withdrawn. Withdrawn.

3 BY MR. WORK:

4 Q Was there a quorum of Air Force participants after
5 the initial day of the January software CDR, January '87?

6 A Please repeat that one.

7 Q Was there in fact -- you were referring to the
8 fact that there wasn't a quorum after the first day of the
9 software CDR in January of '87. Was there not a quorum?

10 MR. RIDDLES: Your Honor, I'm going to renew my
11 objection. There's no foundation for this and what he's
12 trying to do is come in the back door and get in hearsay and
13 I object to it.

14 MR. WORK: Withdrawn.

15 BY MR. WORK:

16 Q Did you attend --

17 MR. RIDDLES: Wait just a minute, Mr. Work.

18 MR. WORK: It's withdrawn. There's nothing on the
19 table.

20 BY MR. WORK:

21 Q Did you attend the --

22 MR. RIDDLES: I --

23 JUDGE BROWN: If he withdraws it, there's no
24 objection that should be stated.

25 MR. RIDDLES: All right, sir.

ALFRED JOHNSON - DIRECT EXAMINATION

1956

1 BY MR. WORK:

2 Q Did you attend the January CDR?

3 A I did.

4 Q And what happened? Don't tell me what people told
5 you but just tell me what happened.

6 A It was aborted.

7 Q How so?

8 A Some of the Air Force people departed.

9 Q All right. Which had what effect on continuing
10 with the PDR?

11 A We were unable to get an understanding of the
12 design of the equipment and the software.

13 Q All right. And was there a second attempt to get
14 an Air Force quorum there to hear the design presentation of
15 the PDFA software?

16 A Yes --

17 MR. RIDDLES: I renew my objection at this point.
18 He says "was there a second attempt to get an Air Force
19 quorum". There's been no testimony based on this witness'
20 personal knowledge that there was not an Air Force quorum.

21 JUDGE BROWN: I'll overrule the objection. That
22 testimony was stated.

23 BY MR. WORK:

24 Q Go ahead, Mr. Johnson.

25 A The CDR was scheduled again in April 1987 and all

ALFRED JOHNSON - DIRECT EXAMINATION

1957

1 of the commands could not come to that so it was rescheduled
2 for early May and was conducted.

3 Q And was that successful?

4 A It was successful.

5 Q All right. Now, sir, we have heard some
6 testimony -- you've given some testimony about a TechDyn 01
7 claim. When and how did TechDyn decide to file a claim
8 against the Air Force based on what had occurred in the
9 requirements design and definition phase?

10 A I think in October 1986 Mr. Morrison wrote a
11 letter to the Air Force indicating that he didn't feel that
12 he could proceed on the program.

13 Q And what happened after Mr. Morrison sent that
14 letter to the Air Force?

15 A Some senior staff members of the Air Force came to
16 TechDyn to look into the possibility of there being some
17 sort of termination.

18 Q What kind of termination?

19 A Well, the termination that was being discussed was
20 a termination for convenience.

21 Q All right. And who attended that meeting with the
22 Air Force people?

23 A With the Air Force people?

24 Q Yes.

25 A I was there. Mr. Morrison, of course, was there.

ALFRED JOHNSON - DIRECT EXAMINATION

1958

1 Mr. Hise. I believe that was it from TechDyn.

2 Q And who attended from the Air Force?

3 A There was -- the lead person was a Mr. Salvucci,
4 who was the Assistant Deputy Commander for Acquisition.

5 Q At ESD?

6 A At ESD. And Colonel Paschall and there may have
7 been one or two other people.

8 Q And without telling what the Air Force people
9 said, which has been objected to, would you tell us what
10 happened at that meeting?

11 A The discussion was concerning TechDyn's ability to
12 continue to suffer losses in schedule and monies in an
13 effort that seemed to be going nowhere as far as the Air
14 Force's participation in these various meetings over time
15 without being able to see that this inability to define
16 requirements and other things would ever end.

17 Q What happened then?

18 A The Air Force indicated that they would look into
19 the financial viability of the company and indicated that
20 maybe in some way more funds should be provided but they
21 didn't see how they could do it under this particular
22 contract, so an audit team was sent.

23 Q And then what happened?

24 A Just before the end of December or early December,
25 I was told to assemble a group of people to write a claim

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1959

1 against the Air Force.

2 Q I have handed you, Mr. Johnson, what has
3 previously been marked as Defendant's Exhibit 53. Is that a
4 document that you're familiar with?

5 (Pause.)

6 Q Is that the product of the claim effort, sir?

7 A It is.

8 Q What role did you personally have in that effort?

9 A I provided four people to assist Mr. Hise in
10 preparing a claim.

11 Q Who was in charge of the -- who had overall charge
12 of the effort?

13 A Well, I guess I would have been responsible but I
14 had to go to the West Coast to the CDR. I put a Mr. Crummel
15 in charge of the technical side of it to work with Mr. Hise
16 and three other people.

17 Q Was Mr. Hise overall in charge of it?

18 A Yes.

19 Q Did you ever review the initial claim that was
20 submitted? I'm excluding from that the revision 1 in May of
21 '87 and the revision 2 in July of '87. Did you ever
22 personally review the initial 01 claim which was submitted
23 by Mr. Hise in February of 1987?

24 A I reviewed it.

25 Q Did you agree with the claim as presented?

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1960

1 A I didn't agree with all of it. I agreed with part
2 of it.

3 Q What part did you disagree with?

4 A I disagreed with the leaving in of claims against
5 the subcontractor with claims against the Air Force when I
6 felt that a very good story could be told against the Air
7 Force.

8 Q Let me just ask you to turn to various portions of
9 this to see whether you as the interim program manager on
10 this program agreed with certain of the statements.

11 In the initial claim, at page 22, please. And
12 there you'll see the sentence and you just follow along with
13 me as I read it out loud. Do you see that?

14 The sentence starting "Another aspect"? Do you
15 see that?

16 (Pause.)

17 THE WITNESS: How many lines down?

18 MR. WORK: It's about two-thirds of the way down
19 the page.

20 (Pause.)

21 MR. WORK: "Another aspect of factfinding
22 negotiations which was extremely misleading to TechDyn on
23 the part of the Air Force was the failure to fully disclose
24 to TechDyn the priority nature of the PDFA RADIL software
25 development aspect of the ICCE project and the emphasis the

ALFRED JOHNSON - DIRECT EXAMINATION

1961

1 Air Force would place on the software development function
2 of the project.

3 BY MR. WORK:

4 Q Based on your experience both pre-contract and
5 subsequent to the execution of the ICCE prime contract for
6 the FOC, is that a correct and accurate statement?

7 A That's true.

8 Q Now, sir, would you turn to page 37, please? And
9 there in subparagraph C under the conclusion, you see the
10 paragraph beginning with "C"? I'll read it:

11 "Representation of the ICCE project as an NDI
12 (non-developmental item) COTS (commercial off-the-shelf)
13 project which would not require the complete set of
14 software development steps and documentation thereof which
15 are required in formal development projects."

16 Is that a representation that was made to TechDyn
17 by the Air Force during the pre-contract period?

18 A Yes.

19 Q And you agree with the statement made here that
20 the Air Force mislead TechDyn about that?

21 A In its context, yes.

22 Q Then would you turn to page 18, please?

23 There in the middle of the page or just the first
24 third of the page, do you see the sentence starting "It was
25 extremely important"?

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1962

1 A Yes.

2 Q "It was extremely important to TechDyn's
3 requirements analysis for contract staffing and subsequent
4 decisionmaking that essentially acceptable software
5 associated with the RADIL existed and with relatively minor
6 modification would satisfy ICCE project requirements."

7 Is that a correct statement based on your personal
8 involvement in the ICCE program, sir?

9 A It is.

10 Q And then, sir, would you turn to page 17? Right
11 at the top.

12 "After contract award, the Air Force, however, has
13 demanded of TechDyn a management oversight responsibility
14 that was not envisioned by either party during the descoping
15 and factfinding reduction phase that led to contract
16 definition."

17 Based on your personal involvement in the program,
18 is that a correct statement?

19 A Yes.

20 Q Did you have any expectation when you got the
21 prime contract back in August of 1985 that you would be tied
22 up in a full year of requirement definition meetings?

23 A No, I didn't.

24 Q Did the Air Force insist on your presence at those
25 meetings?

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1963

1 A I was required to co-chair the meetings.

2 Q Co-chair them with whom?

3 A With the Air Force SPO, the system program office
4 director, Colonel Paschall.

5 Q And then finally, sir, with regard to two other
6 aspects of what occurred during this period that we haven't
7 discussed, would you turn to page 19? At the top. Do you
8 see that?

9 A Yes.

10 Q "At the provisioning guidance conference conducted
11 by the Air Force on 19-20 November 1985, the Government took
12 a position with regard to the level of provisioning which
13 has not been accepted by either TechDyn or its subcontract
14 as being in accordance with contract negotiations."

15 Is that a true and correct statement, based on
16 your personal involvement in this program?

17 A It is.

18 Q And then finally, on page 26, with regard to what
19 we've called the DTS -- do you see the sentence in the lower
20 third of the page, starting with "The delay"?

21 A Yes.

22 Q It says, "The delay in fielding the modified DTS
23 will directly impact the finalization of a hardware
24 allocated baseline and the conduct of requisite in-plant
25 testing, training and provisioning activities necessary to

ALFRED JOHNSON - DIRECT EXAMINATION

1964

1 achieve a final operating capability (FOC) system."

2 Is that a true and correct statement, to the best
3 of your knowledge and belief?

4 A Yes, it is.

5 Q And did in fact the Government's delay in
6 providing and making available a modified DTS have the
7 predicted impact on the program?

8 A Actually, at this time, I thought it was a bad
9 situation that got worse.

10 Q Now, based on your personal observation, sir, and
11 involvement as the chairman of these meetings and so forth
12 during the requirements definition phase, are you in a
13 position to state whether or not the factors that I just
14 read from the TechDyn claim had any impact on Whittaker?

15 A They would have all had an impact on Whittaker.

16 Q In what sense?

17 A In the sense that the first part that you talked
18 about, the software definition phase, was one of the major
19 causes of delay, notwithstanding that there were other
20 delays in the program which were brought out such as the
21 data terminal set. Any one of these would have caused the
22 program to be stretched out and the costs to go much higher
23 than were anticipated by either party and for the program
24 schedule to be made almost indeterminate.

25 Q Let's talk about the resolution of TechDyn's 01

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1965

1 claim. Did that claim contain any monies to compensate
2 Whittaker for the impacts that you have just talked about?

3 A No, it didn't.

4 Q Did the Air Force ever take a position on that?

5 A When the claim was originally submitted, the Air
6 Force indicated that they wanted all claims, whether they
7 were from subcontractors or vendors, included so that it
8 could be dealt with and disposed of.

9 Q What happened?

10 A The subcontractor submitted a claim and --

11 Q To TechDyn?

12 A To TechDyn in late May, I believe, of '87.

13 Q Did that claim ever result in compensation to
14 Whittaker from TechDyn?

15 A Not to my knowledge.

16 Q All right. Now, let's talk about the resolution
17 of TechDyn's claims for impacts on TechDyn. Do you have
18 personal knowledge of how that claim got to be resolved?

19 A Yes.

20 Q The \$1.7 million payment you described earlier --
21 will you describe that process, please?

22 A The Air Force came in on a number of factfinding
23 visits between -- I'd say May 1987 through October -- to
24 discuss the merits of the claim and the culpability or
25 responsibility that the Air Force would accept on any parts

ALFRED JOHNSON - DIRECT EXAMINATION

1966

1 of it.

2 At one point, an offer was made by Mr. Salvucci,
3 who was the Associate Director -- Deputy Commander at
4 least -- of the command up there, and that was rejected as
5 being insufficient as far as compensating TechDyn for its
6 position.

7 Q What was the offer that TechDyn rejected and when
8 did it reject it?

9 A There was more than one. I think there was one
10 for 1.5 million and later about 1.96 million.

11 Q Were there any other features -- well, let's just
12 focus on the 1.96 million --

13 MR. RIDDLES: Your Honor, I am going to object to
14 this testimony. May we approach?

15 JUDGE BROWN: Yes.

16 (Bench conference.)

17 (Continued on next page.)

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ALFRED JOHNSON - DIRECT EXAMINATION

1967

1 JUDGE BROWN: Without objection.

2 MR. WORK: I am going to try to tip toe around the
3 other one. Mr. Johnson, you mentioned that TechDyn
4 projected a settlement proposal of \$1.96 million. Were
5 there any other -- strike that.

6 When did TechDyn consider that proposal from the
7 Air Force?

8 THE WITNESS: It was given in October 1987, and
9 considered in October.

10 BY MR. WORK:

11 Q Were you present at the time that it was
12 considered?

13 A I was.

14 Q And what were the features of the proposal that
15 TechDyn considered a part from the \$1.96 million.

16 MR. RIDDLES: I believe he said he was not
17 present.

18 MR. WORK: He said he was.

19 MR. RIDDLES: I'm sorry, I thought he said he was
20 not.

21 JUDGE BROWN: I think he said he was.

22 THE WITNESS: Their other features were that it
23 was a one time offer that had to be accepted in total, or it
24 was withdrawn. And it also included a promise to give
25 TechDyn any options that were priced in the contract. And

ALFRED JOHNSON - DIRECT EXAMINATION

1968

1 that there would be no audit of the claim.

2 BY MR. WORK:

3 Q And what did TechDyn do with regard to that
4 proposal?

5 A That was rejected?

6 Q And how was the claim ultimately resolved, and I
7 think just to avoid excessive detail, you said at the
8 beginning of your testimony that the claim was orally
9 resolved by November 1987.

10 So, how did you go from rejecting a \$1.96 million
11 offer, plus some additional work to settlement of 1.7
12 million?

13 A That negotiation was conducted by Mr. Morrison. I
14 wasn't present for it.

15 Q What was the end result?

16 A The end result was that I was told by Mr. Morrison
17 and Mr. Hise that there would be a \$1.71 plus million
18 addition as a MOD to the contract of the claim.

19 Q I put up a chart, which is chart 27, entitled U.
20 S. Air Force no penalty extensions to prime contract. In
21 addition to the consideration of the \$1.7 million, TechDyn
22 accepted for the delays during the requirements definition
23 phase, was there any additional consideration in the form of
24 a no cost, no penalty scheduling statement, and if so, what
25 role did you have in that?

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1969

1 A If we are referring to scheduling extensions, the
2 addition of MOD-31 extended the schedule without any
3 penalty, just the cost of the MOD.

4 Q Let's refer to the one that we are talking, that
5 is labeled TechDyn 01 claim. Did you have any involvement
6 in negotiation of a schedule extension, no penalty schedule
7 extension relating to the events which you've described as
8 occurring during the requirements definition phase?

9 A Yes.

10 Q When did you have that discussion and what came of
11 it?

12 A After the verbal agreement to accept the claim,
13 Mr. Salvucci, Colonel Pascal and Captain Marshall, along
14 with a Mr. Jack West from ASAC, went over the elements of
15 the claim that were found to be acceptable and explained the
16 costing of it.

17 Q And did you indicate to those gentlemen what
18 additional time you believed would be required simply on the
19 basis of what had happened to that point, effecting the
20 contract?

21 A I think that was part of the claim submission, to
22 the schedule, based upon my projected cost to completion.
23 And using that schedule as a basis, for the claim itself,
24 they in turn, allocated the mileage for the claim based upon
25 the schedule.

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1970

1 Q And the schedule went out, as you discussed, to
2 the Air Force, went out when, sir?

3 A I think the document showed August 88, on that
4 schedule.

5 Q Okay. Now, sir, what, as you understood the
6 resolution of the claim, TechDyn's 01 claim, what was that
7 additional \$1.7 million to be used for?

8 A To put it in their words, you could use it for
9 anything you want to. But in their justification to me,
10 they had to explain --

11 MR. BOEHLERT: Object to --

12 MR. WORK: All right, withdrawn.

13 BY MR. WORK:

14 Q Now, sir, we come up to the point that we started
15 with, namely the oral resolution of the claim, and in your
16 meetings with Mr. Morrison on his memo regarding the
17 increases in profit.

18 And I gather, within three months, you had left
19 the program. Is that correct?

20 A That's correct.

21 (Pause.)

22 Q I don't want to go beyond the period that you were
23 with the program, but I would like to field briefly with the
24 testing issue. And specifically, what impact did the delay,
25 the expansion of the requirements definition period, have on

ALFRED JOHNSON - DIRECT EXAMINATION

1971

1 the testing and the phase of this program, based on your own
2 involvement in the program?

3 A It caused serious delays in test planning,
4 development of test procedures and concomitant delay later
5 in the conduct of the test.

6 Q Did those delays effect TechDyn?

7 A They effected TechDyn.

8 Q Did they effect Whittaker?

9 A They effected Whittaker.

10 Q Now, sir, let's talk about what you understood,
11 going into this program, that you had negotiated, to be the
12 standard for software PDFA software acceptability, up
13 through the MOD 3 FOC prime contract.

14 A The contract calls out the software qualification
15 test as being the test that completes the requirements of
16 statement of work and specification.

17 Q Can you relate the term SQT, or can you relate the
18 SQT test to the term TAF certifiable?

19 A The contract was to provide software that was
20 certifiable. And my understanding with the Air Force and
21 based on what is in the statement of work and specification,
22 that once you have passed software qualification testing,
23 and have your final software qualification test report, the
24 software was certifiable.

25 Q Now, did you attend the software, the final

ALFRED JOHNSON - DIRECT EXAMINATION

1972

1 software qualification test in this program, sir?

2 A I did.

3 Q Was Mr. Ellis in attendance at that final software
4 qualification test?

5 A He was there for the first couple of days in
6 December. And he went back and Mr. Thornton came out and
7 was there when the test was completed. Mr. Thornton came
8 out for another test review at that time.

9 Q What was the result of the final SQT test in
10 December 1986?

11 A Well, it was considered favorable and passed.

12 (Paused.)

13 MR. WORK: Ladies and gentlemen, if you would turn
14 please to TAB 21 in your books. This is a chart entitled
15 effects of testing changes. Did you have any participation
16 in the preparation for this chart, sir?

17 THE WITNESS: I did.

18 BY MR. WORK:

19 Q Would you take a moment, from your perspective, as
20 TechDyn's program manager in this program, on the SQT, and
21 explain what this is. And I will help you by pointing as
22 you proceed. Let's start with line 1. And that is
23 entitled original contract test schedule. What is depicted
24 here?

25 A What's depicted here is a testing milestone that

ALFRED JOHNSON - DIRECT EXAMINATION

1973

1 would lead to acceptance of the ICCE program, which included
2 not only a system delivered to Iceland, but two systems
3 delivered to CENTAF. And the requirement was one CENTAF
4 delivery in 15 months, one in 18 months, and the ICCE
5 system in 16 months.

6 What it shows is the implant portion testing for
7 both hardware and software, with SCT TAF and JTAO being
8 conducted concurrently within the contract as plant,
9 followed by an in-plant integration test and delivered to
10 either CENTAF or Iceland.

11 Q So, that was what was contemplated under the
12 original ICCE prime contract that TechDyn had with the
13 Government?

14 A That's correct.

15 Q Will you explain what is shown on line 2,
16 effective late U.S. Air Force delivery of modified DTS on
17 testing? What is shown there?

18 A What's shown there is the original promise and
19 delivery date for the data terminal set, and testing of the
20 system for the ICCE system. That's the modified data
21 terminal set.

22 Q What's that?

23 A The second date is the date that we received the
24 first data terminal set without documentation. The other
25 remaining --

ALFRED JOHNSON - DIRECT EXAMINATION

1974

1 Q This is --

2 A That's the modified product.

3 Q And what's the next part?

4 A The next box is the period in which the SQT wa
5 conducted?

6 Q And that's when it was actually held?

7 A That's when it was actually held.

8 Q Given the delivery date of the modified DTS in
9 June, 1987, could the SQT have been held any earlier?

10 A It couldn't have been held any earlier, because
11 the modifications on the data terminals set were required
12 modification to the software. And they had to be
13 demonstrated.

14 Q I see.

15 A There weren't any work arounds.

16 Q Now sir, what do you show on the third element of
17 this chart, entitled, effective U.S. Air Force software
18 expansion on testing. By that title, what do you mean?

19 A Well, this is the long period of time that we
20 discussed earlier, concerning the requirements definitions
21 phased that stretched out, for which the Air Force has
22 accepted responsibility. And it shows when the software
23 design was approved in May 1987, and the data terminals that
24 they integrated with the software changes, and again, the
25 SQT test scheduled.

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1975

1 Q Incidentally, when that SQT was held, was it on
2 schedule under the schedule extension that you negotiated
3 with the Air Force.

4 A Approximately. Two weeks, maybe.

5 Q Let's talk for just a moment about logistics.

6 (Pause.)

7 MR. WORK: With no objection, Your Honor, may we
8 publish Tab 22 to the jury?

9 JUDGE BROWN: Yes.

10 MR. WORK: This goes to definition.

11 (Pause.)

12 MR. WORK: Now, very briefly, Mr. Johnson, what is
13 depicted on this chart?

14 THE WITNESS: They are the major elements of a
15 logistics program, and these are applicable also to the ICCE
16 program.

17 BY MR. WORK:

18 Q And the first one is logistics planning, and then
19 under that parenthetically, logistics support analysis plan.
20 Is that the plan we were talking about that TechDyn had not
21 delivered at the start of this program?

22 A That's correct.

23 Q What happened with regard to that plan?

24 A That plan was deleted from the contract.

25 Q With any result to TechDyn?

ALFRED JOHNSON - DIRECT EXAMINATION

1976

1 A I think there was a penalty to both contractors.

2 Q And what impact did that, the deletion, and the
3 failure to supply the logistics support analysis plan have
4 on the other aspects of logistics for this program?

5 A It really left up in the air, the levels of
6 logistics planning that would be done in provisioning
7 manuals and training.

8 And without that plan, you are more or less an
9 open target to the Air Force community, because they
10 wouldn't know to what level provisioning would be
11 accomplished or that manuals for maintenance at, say, depot
12 or at organizations, would go. And to what extent training
13 would be needed for a system that is ill defined in this
14 logistics area.

15 Q I may have said that, put that at tab 21, if I
16 did, I mean to say Tab 22.

17 JUDGE BROWN: That's what you said.

18 MR. WORK: Thank you. Now, what was your
19 expectation going into the FOC MOD 3 contract with regard
20 tot he level of provision?

21 THE WITNESS: My expectation wa that since this is
22 an off the shelf program, that provisioning would be a very
23 minor element., with the exception of newly produced items
24 or modified items. Most of the items were already in the
25 inventory, and we would expect a large provisioning effort.

ALFRED JOHNSON - DIRECT EXAMINATION

1977

1 BY MR. WORK:

2 Q Now we saw TechDyn's 01 claim with a reference to
3 a November provisioning conference. Did that conference,
4 how did it develop as to what the Air Force, the new Air
5 Force people expected?

6 A They expected a full blown provisioning effort.
7 Notwithstanding that as an of the shelf program, but they
8 even wanted screwing of parts of existing equipments.

9 Q Did that effect TechDyn?

10 A That effected TechDyn.

11 Q Did that effect Whittaker?

12 A That effected Whittaker.

13 Q What about manuals. What was our expectations
14 going into this program, the FOC program, with regard to
15 manuals?

16 A Operation and maintenance manuals in the form of
17 one document, two parts, and an overall system level, the
18 Air Force changed that. And expanded it to have individual
19 manuals for the PDFA elements an for the CDFA elements.

20 Q In the interest of speeding this along, I just
21 want to take this down and we will take it up later.

22 (Pause.)

23 BY MR. WORK:

24 Q Now, I would like to talk about PACAF. Did you
25 have any personal involvement with the issue concerning the

ALFRED JOHNSON - DIRECT EXAMINATION

1978

1 Air Force's procurement of RADIL systems for Alaska and
2 Hawaii?

3 A I did.

4 Q Now, under the MOD3 FOC contract you negotiated,
5 wa there an option for the Alaska PACAF work?

6 A There was.

7 Q And whose option was it? In other words, who had
8 the right to exercise an option under the MOD 3 FOC prime
9 contract, as you personally negotiated it?

10 A It's an Air Force option.

11 Q Did the existence of that option, as long as it
12 existed, give TechDyn any rights, as you understood the
13 contract?

14 MR. RIDDLES: Objection. Calls for a legal
15 conclusion of this witness. You can ask him what your
16 understanding is, but you can't ask him for a legal
17 conclusion.

18 MR. WORK: Read into my question, your
19 understanding, being one of the people who negotiated this
20 contract.

21 MR. RIDDLES: I would like for him to ask the
22 question again.

23 MR. WORK: Certainly.

24 BY MR. WORK:

25 Q What was your understanding, going into the MOD 3

ALFRED JOHNSON - DIRECT EXAMINATION

1979

1 FOC contract, with regard to whether TechDyn had any rights
2 under the option that you said was an option for the Air
3 Force to exercise?

4 A If you are asking about my understanding, I didn't
5 give it a thought.

6 (Continued on next page.)

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ALFRED JOHNSON - DIRECT EXAMINATION

1980

1 MR. WORK: I'm going to hand you a portion of the
2 ICCE prime contract which is entitled P00014. It's already
3 in evidence.

4 JUDGE BROWN: What's the exhibit number?

5 MR. WORK: Exhibit 4, volume 3.

6 BY MR. WORK:

7 Q And I ask you to turn over to the page labelled
8 page 2 of 2 and ask you to read the language in the middle
9 of the page.

10 A "To be exercised no later than 87 April 30, CLINs
11 0006 and 0007; 0008 and 0009 will be exercised
12 concurrently."

13 Q And were those CLINs for the ACC/PACAF work?

14 A That's correct.

15 Q To the best of your knowledge, was that option
16 expiration date ever extended by a contractually effective
17 document?

18 MR. RIDDLES: Objection. Again, he's talking
19 about a contractually effective document. That calls for a
20 legal conclusion by the witness.

21 JUDGE BROWN: I'll overrule the objection.

22 THE WITNESS: Not to my knowledge.

23 BY MR. WORK:

24 Q Now, sir, are you aware that the Air Force issued
25 a request for proposals to TechDyn with regard to the work

ALFRED JOHNSON - DIRECT EXAMINATION

1981

1 in Alaska and Hawaii after April 30, 1987?

2 A I know they had asked for -- they provided a
3 request for the proposal. I don't recall the date right
4 offhand.

5 Q Okay. Now, prior to that request for proposal
6 and, indeed, prior to the option expiration date indicated
7 in P00014, did you personally have any conversations with
8 Air Force personnel that led you to believe that the Air
9 Force wasn't going to exercise its option under its contract
10 with TechDyn?

11 A Yes, I did.

12 MR. RIDDLES: I would object to hearsay
13 testimony.

14 JUDGE BROWN: Well, I'll overrule the objection to
15 that question. He can answer it. It's his knowledge or his
16 belief at the time that's important.

17 MR. RIDDLES: I can understand that. I thought
18 the question was, though, did he have any conversations.

19 JUDGE BROWN: Yes, and did he have anything that
20 caused him to come to a belief and he said, yes, he did.

21 MR. RIDDLES: All right.

22 BY MR. WORK:

23 Q Now, sir, I'm going to hand you Defendant's
24 Exhibit 43E for identification, which appears to be a
25 TechDyn internal form. Is this a document that you

ALFRED JOHNSON - DIRECT EXAMINATION

1982

1 recognize, sir?

2 A I recognize the form.

3 Q Do you recognize the names on this document?

4 A I do.

5 Q And what's the date of this document?

6 A 24, April '87.

7 Q And it's signed by whom?

8 A Gary Fourney.

9 Q And who was he in April of '87? What role did he
10 play at TechDyn?

11 A He was subcontract administrator, reporting to Mr.
12 Hise.

13 Q On what program?

14 A On the ICCE program.

15 Q And do you know the name Ann Ugalini, whose name
16 appears in this memo?

17 A Yes.

18 Q And who was Ann Ugalini?

19 A Her title was the buyer and she reported to the
20 contracting officer in the Air Force.

21 Q Did you know Ms. Ugalini?

22 A Yes.

23 MR. WORK: Your Honor, I offer Defendant's Exhibit
24 49E.

25 MR. RIDDLES: No objection, Your Honor.

ALFRED JOHNSON - DIRECT EXAMINATION

1983

1 JUDGE BROWN: 49E is received.

2 (The document referred to, having
3 been previously marked for
4 identification as Defendant's
5 Exhibit 49E, was received in
6 evidence.)

7 BY MR. WORK:

8 Q And I will just read 49E to save time: "I called
9 Ann --" this was written by Mr. Fourney. Is that correct?
10 Is this memo written by Mr. Fourney?

11 A I can't say.

12 Q Okay. It's signed by Mr. Fourney.

13 A I can't say that.

14 Q All right. Well, let's just read it.

15 "I called Ann to find out if the Air Force was
16 going to exercise the option on CLIN 006 and 007 and 008 and
17 009. She said that the Government was not going to
18 exercise the option. The Air Force is going to have to
19 restructure the entire contract during/after the TechDyn
20 Systems claim 125 CL01 is settled."

21 Was that statement consistent with your knowledge
22 at the time prior to the expiration of the option under
23 P00012?

24 A It is.

25 JUDGE BROWN: Let's take a 15-minute recess.

ALFRED JOHNSON - DIRECT EXAMINATION

1984

1 (Brief recess.)

2 BAILIFF: Remain seated and come to order.

3 JUDGE BROWN: Are we ready?

4 MR. WORK: Yes, Your Honor.

5 JUDGE BROWN: Is everybody ready? Mr. Morrison
6 looks very alone there.

7 (Pause.)

8 JUDGE BROWN: Well, bring the jury in and we'll
9 look for them as they come.

10 (Pause.)

11 JUDGE BROWN: We're not quite ready, I guess.
12 Where did they go?

13 (Pause.)

14 JUDGE BROWN: Here they come. Go ahead.

15 BY MR. WORK:

16 Q Mr. Johnson, I'm going to show you modification 8
17 to TechDyn's Exhibit 22A3, a letter from Mr. Yennowine to
18 Ms. Raymond dated November 4, 1986 and you'll see a
19 reference down here to section B, supplies and services and
20 it says this is a modification to the subcontract, ICCE
21 subcontract.

22 It says, "Exercise of options relating to CLINs
23 0006, 7, 8 and 9 will be changed to read 'to be exercised no
24 later than'" it's inverted but it's April 30, 1987, "CLINs
25 0006, 7, 8 and 9 will be exercised concurrently." Are those

ALFRED JOHNSON - DIRECT EXAMINATION

1985

1 the CLINS relating to the PACAF option, sir?

2 A To the PACAF Alaska options, yes.

3 Q Okay. The ACC/PACAF options. And to your
4 knowledge, was the subcontract option ever extended beyond
5 the expiration date called out in Mr. Yennowine's letter,
6 which is MOD 8 to the ICCE subcontract?

7 A Not to my knowledge.

8 Q Now, moving forward in time to November of 1987, I
9 hand you a document -- or a collection of documents which
10 has been marked as Defendant's Exhibit 49N. And I would ask
11 you -- the first page of that is a certificate. I would ask
12 you to turn to the third full page in this package which is
13 entitled "Justification Review Document" with a bunch of Air
14 Force signatures and then the next page is entitled
15 "Justification for Other Than Full and Open Competition."
16 what is this document, sir?

17 A It's an Air Force sole source document.

18 Q And the signatures on the first page, the
19 justification review document, are dated what date, sir?

20 A 16 November 1987.

21 MR. WORK: I offer Defendant's Exhibit 49N.

22 JUDGE BROWN: 49N?

23 MR. WORK: That's correct.

24 JUDGE BROWN: Any objection to 49N?

25 MR. RIDDLES: Your Honor, the copy that I have has

ALFRED JOHNSON - DIRECT EXAMINATION

1986

1 some other documents attached to it -- pleadings and so
2 forth.

3 JUDGE BROWN: What's being offered? The whole
4 thing with the attachments?

5 MR. WORK: Well, the other documents which
6 actually are not necessary are responses to requests for
7 admissions concerning the authenticity.

8 JUDGE BROWN: So you're not offering those or you
9 are offering those?

10 MR. WORK: We will not offer them and I'll just
11 take them out to speed up the process.

12 JUDGE BROWN: Take Mr. Riddles a copy of what you
13 are offering. Take him the original of what you are
14 offering and then bring that up and that's the thing that
15 will either be accepted or not.

16 (Pause.)

17 MR. RIDDLES: Your Honor, may we approach?

18 JUDGE BROWN: Yes.

19 (Bench conference.)

20 BY MR. WORK:

21 Q Mr. Johnson, have you reviewed this document prior
22 to today?

23 A Yes.

24 Q And do you have personal knowledge of what this
25 document is?

ALFRED JOHNSON - DIRECT EXAMINATION

1987

1 A Yes.

2 MR. WORK: All right. Now I offer 49N.

3 MR. BOEHLERT: Your Honor, I'd like to hear --

4 JUDGE BROWN: I don't know the basis of his
5 knowledge.

6 BY MR. WORK:

7 Q When did you review it?

8 A I reviewed it while consulting with your firm.

9 JUDGE BROWN: I sustain the objection.

10 MR. RIDDLES: Thank you.

11 MR. WORK: Okay.

12 BY MR. WORK:

13 Q When did you first become aware, Mr. Johnson that
14 the Air Force had decided not to contract with TechDyn for
15 the work in Alaska and Hawaii?

16 A In December of 1987.

17 Q Did you tell anyone else at TechDyn?

18 A I mentioned it to Mr. Hise.

19 Q Now, sir, was it before or after the November 16
20 date of the sole source justification that TechDyn submitted
21 its proposal in response to the May 1987 RFP? If you know.

22 A Is the question was the proposal submitted before
23 16 November?

24 Q Correct.

25 A No, it wasn't.

ALFRED JOHNSON - DIRECT EXAMINATION

1988

1 Q Let's turn to the RCE. What does the term RCE
2 stand for?

3 A Remote control element.

4 Q Now, you testified earlier, sir, about your
5 discussions with Whittaker representatives at a hotel in
6 Burlington, Massachusetts in the last week of October 1985.
7 Will you refresh us specifically as to what the agreement
8 struck at that meeting was as relates to the parties'
9 relative responsibilities or respective responsibilities for
10 the RCE?

11 A The agreement was that the hardware, which were
12 the computers, and a development system, which were
13 computers, graphics and some peripherals, would be procured
14 and provided the subcontractor by TechDyn and that the
15 subcontractor would develop the RCE design and software for
16 that along with documentation.

17 Q Going into the MOD 3 FOC contract, the prime
18 contract, had the RCE been defined in any formal way?

19 A Other than the specification and the statement of
20 work?

21 Q Had it been defined, for example, in a proposal
22 submitted by TechDyn to the Air Force?

23 A It was defined in a proposal in May 1985.

24 Q And who prepared what was in the proposal relating
25 to the RCE?

ALFRED JOHNSON - DIRECT EXAMINATION

1989

1 A It indicated a concept or a notion of how
2 computers would be used in a remote control element to
3 control the unmanned and distant sites located throughout
4 Iceland.

5 Q And who prepared what was in the proposal itself?

6 A In the proposal was a narrative explanation of the
7 concept of a remote control along with a design showing the
8 communications function area and the overlay of a remote
9 control on that system as it applied to the ground entry
10 station.

11 Q This was in TechDyn's proposal to the Air Force.

12 A In TechDyn's proposal to the Air Force.

13 Q And who had prepared that material that you just
14 described?

15 A That material was prepared jointly by TechDyn
16 personnel and Whittaker personnel.

17 Q Now, the allocation of responsibility for the RCE
18 that you've described as coming out of that meeting in
19 Burlington in the last week of August 1985, was that
20 allocation of responsibility ever changed while you were on
21 the program up through March of 1988?

22 A No, that allocation responsibility was basically
23 the same, though not covered in writing.

24 Q Now, sir, as you got into the FOC MOD 3 program,
25 were the actual components of the RCE ever defined? What

ALFRED JOHNSON - DIRECT EXAMINATION

1990

1 constituted the RCE for purposes of this program?

2 A Yes. They were defined in the B-run specification
3 for the remote control element.

4 Q What components were to comprise the ICCE RCE as
5 defined in that specification?

6 A There was a master control unit which was the
7 computer at the main site. There was a number of remote
8 control units which were computers to be at the unmanned
9 ground entry stations around Iceland. There were
10 diagnostic software components described. And also computer
11 program configuration items which is another way of saying
12 software for the computer itself.

13 Q Now, we have heard in this trial, Mr. Johnson, a
14 lot of discussion about problems arising with hardware items
15 like modems and switches. Were they part of the RCE as
16 defined in this program?

17 A No, they weren't.

18 Q What were they part of?

19 A They were part of the communications system which
20 the RCE was a part of but they were the external interfaces
21 that had to be used to provide paths between the computers
22 which would control elements at the ground entry stations
23 and receive status, say, at a master control station.

24 Q As you understood the allocation of responsibility
25 for the program, who had responsibility for those external

ALFRED JOHNSON - DIRECT EXAMINATION

1991

1 interfaces that weren't actually part of the RCE?

2 A TechDyn had responsibility for that.

3 Q Did Whittaker have any responsibility for those
4 modems and switches and other external interfaces?

5 A No responsibility other than to design their
6 internal interfaces to allow for ports to those external
7 interfaces.

8 (Continued on next page.)

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ALFRED JOHNSON - DIRECT EXAMINATION

1992

1 Q Let's just use this time line up here for
2 illustrative purposes. This is the original contract. And
3 when was the CR, or critical elements of this system, to be
4 held, under the original contract, before all these changes
5 took place?

6 A That CDR was to be held in March 86.

7 Q Now, when did TechDyn deliver the hardware --
8 strike that. When did TechDyn deliver the computers that,
9 to which TechDyn, excuse me, to which Whittaker design the
10 RCE software? Relative to that original CDR date?

11 A The computers arrived in May 86.

12 Q After the original CDR date?

13 A Yes.

14 Q What held them up?

15 A I guess the procurement. Our procurement section,
16 Mr. Hise's section, ordered those.

17 Q What were they? What brand of computers were
18 they?

19 A In the original concept, we were going to use IBM
20 p.c.'s. And the Air Force changed that at the PDR in
21 January to procure items that were already in their
22 inventory. That was a Zenith Z150 computer.

23 Q Did Mr. Hise, in fact, comply with the Air Force
24 request and provide, acquire, procure the Z150 computers?

25 A Yes, they did.

ALFRED JOHNSON - DIRECT EXAMINATION

1993

1 Q Did they deliver them in May for the propose of
2 Whittaker to design the software? Is that correct?

3 A Not quite.

4 Q What happened?

5 A No. I mean, they delivered them. There was
6 another set to be delivered for the design of the software.
7 A development set, which was IBM 18, along with some
8 periphery.

9 Q All right. But when was the Zenith to be used for
10 the RCE delivered by TechDyn to Whittaker?

11 A After the software was released, coding and prior
12 to testing.

13 Q And when was that?

14 A That was scheduled to be during December of 1986.

15 Q And when did it actually occur?

16 A I don't know when it occurred, to tell you the
17 truth.

18 Q Okay. Now, in this period when Whittaker was to
19 use the computers to design the RCE software, did TechDyn
20 deliver any other objects of hardware, such as the external
21 interface equipment that you have previously referred to, to
22 Whittaker?

23 A Well, in late April, or early May 1986, they
24 delivered the development system. With the graphics. And
25 about the time that the Zeniths came in, they provided some

ALFRED JOHNSON - DIRECT EXAMINATION

1994

1 of the external interface equipment in order to set up a
2 small test bed to have the computers talk to one another.

3 Q Now, sir, did you become aware, subsequent to the
4 middle of 1986, of problems that Whittaker was experiencing
5 with regard to the TechDyn supply of RCE equipment and
6 equipment that represented external interfaces to the RCE
7 hardware?

8 A I was notified in 1986 during the incremental
9 design review, that there were problems with the modems and
10 switches.

11 Q All right. And what became of those issues?

12 A The -- Air Force along with the TechDyn engineers,
13 investigated the problem, initially. And determined that
14 the switches were introducing noise into the system --

15 MR. RIDDLES: I am going to object to the extent
16 that he is bringing in hearsay testimony, as to the Air
17 Force. I would like hear foundation for his knowledge.

18 JUDGE BROWN: Sustain the objection to what the
19 Air Force found.

20 MR. WORK: Your Honor, may I please be advised as
21 to what your policy will be with regard to these
22 communications with the Air Force. I think some of them
23 have come in under objections.

24 JUDGE BROWN: I don't have a policy. I guess, I
25 am trying to follow the law, as I understand it. Which is

ALFRED JOHNSON - DIRECT EXAMINATION

1995

1 if its in the issue of the truth, then it is hearsay and
2 cannot come it. If it is not in the truth, and has some
3 relevance based on the fact that something was said, not
4 whether it is true or not, it can come in.

5 MR. WORK: Fair enough.

6 JUDGE BROWN: If it is not hearsay, but it would
7 be difficult for the jury to disregard it, and/or it is not
8 relevant without the truth, then I will allow it.

9 MR. WORK: Okay, then let me proffer to you, by my
10 offering of this information to Mr. Johnson.

11 MR. RIDDLES: Your Honor, may we do that at the
12 bench?

13 JUDGE BROWN: Yes.

14 MR. WORK: Namely to indicate TechDyn's awareness
15 of problems relating to the hardware that was accepted.

16 JUDGE BROWN: That wasn't where you were. We
17 allowed that the Air Force had problems. Then we are having
18 the Air Force investigate, and say what they found with
19 regard to it. I don't see how it is relevant as to what
20 TechDyn knew about what the Air Force thought.

21 I think what you are trying to show here is that
22 it wasn't Whittaker's problem.

23 MR. WORK: Well, I'm trying to show that TechDyn
24 knew about the different problems with the hardware they
25 sent, and were responsible for providing.

ALFRED JOHNSON - DIRECT EXAMINATION

1996

1 JUDGE BROWN: Well, it didn't do anything with it,
2 then I will sustain the objection. If they did do something
3 with that information, you can introduce what they did
4 without the information. Try to get it out of his head what
5 he has done, and I will sustain the objection.

6 MR. WORK: May I just state for the record that it
7 is my belief that it is the fact of their knowledge that is
8 relevant, and say that they are not doing anything with that
9 knowledge, but simply saying that Whittaker, you have
10 responsibility for everything.

11 JUDGE BROWN: I think you have made your point,
12 Mr. Work.

13 MR. WORK: Now, sir, just with respect to the
14 period of time that you were on the program, did you become
15 aware of any shift in TechDyn's position as relates to the
16 parties respective responsibilities with respect to the RCE
17 as you've defined it? During the time you were on the
18 program.

19 THE WITNESS: Not during the time I was on the
20 program.

21 BY MR. WORK:

22 Q Did you become aware of any shift in TechDyn's
23 responsibility with the parties relative responsibilities,
24 respective responsibilities for the external interface
25 hardware, such as the modems and switches, that you have

ALFRED JOHNSON - DIRECT EXAMINATION

1997

1 described.

2 A No.

3 Q I am going to hand you a book of Plaintiff's
4 Exhibits, some of which have been admitted into evidence.
5 And I ask you to turn please, first to Plaintiff's Exhibit
6 378, which is a Whittaker letter to TechDyn, dated July 8,
7 1988, subject subcontract 125, remote control element,
8 stoppage of work. Did you find that sir?

9 A Yes.

10 Q I am going to read you portions o this document,
11 sir, and ask you, whether or not, based on your personal
12 knowledge, that the information is consistent with your
13 information.

14 Second paragraph of this letter form Mr. Bohler of
15 Whittaker to Mr. Hise of TechDyn. The RCE has encountered
16 problems in the TechDyn hardware that have caused program
17 delays and result in cost overruns in our software
18 development efforts in support o the communication
19 functional area.

20 Is that statement true based on your personal
21 knowledge of the program?

22 A That's true.

23 Q And then in the next paragraph, the hardware
24 design installation, integration and testing is clearly
25 TechDyn's responsibility. Is that statement true or false

ALFRED JOHNSON - DIRECT EXAMINATION

1998

1 based on your personal knowledge o the program, in
2 particular, your involvement in the negotiations?

3 A That's true.

4 Q Incidentally, was Mr. Morrison involved in those
5 meetings in the hotel in Burlington where the deal was
6 struck?

7 A Not directly.

8 Q Then, one other question concerning his
9 involvement before I forget about it, in all of that period
10 of the requirements definition phase, when the meetings were
11 occurring, did Mr. Morrison attend any of those meetings, to
12 your knowledge?

13 A He was at some meetings. I don't know how many.

14 Q Do you recall what the purpose of his being there
15 was?

16 A Well, he was participating.

17 Q Now, sir, would you turn please to Exhibit 382 in
18 the same book, which is a TechDyn exhibit, admitted into
19 evidence. And I would like you to follow along with me as I
20 read on the second sentence of the third full paragraph on
21 the first page, Whittaker was awarded the subcontractual
22 responsibility --

23 MR. RIDDLES: Your Honor, I'm going to object. I
24 don't believe this exhibit is in evidence.

25 JUDGE BROWN: What's the number?

ALFRED JOHNSON - CROSS EXAMINATION

2007

1 After I got back, I think that agreement was not
2 put together and it was put together by Whittaker later.
3 Much later than these dates.

4 Q But your purpose in going out to California was to
5 work out some kind of a consulting arrangement with
6 Whittaker. Am I correct about that?

7 A That's correct.

8 Q Now, then, you did enter into a consulting
9 arrangement with them at some point in time. Am I correct?

10 A That's correct.

11 Q And you put together project notes concerning this
12 ICCE project on which you had been the project manager for
13 the TechDyn Corporation.

14 A That's right.

15 Q And you entered into a contractual relationship
16 with the Whittaker people. Am I correct?

17 A The same consulting agreement, you mean?

18 Q Yes.

19 A Yes.

20 (Pause.)

21 MR. RIDDLES: I'd like to show you now what's been
22 previously marked as Plaintiff's Exhibits 5 and Plaintiff's
23 Exhibit 6.

24 (Pause.)

25 MR. RIDDLES: Look first at Exhibit 6.

7.

ALFRED JOHNSON - CROSS EXAMINATION

2008

1 THE WITNESS: All right.

2 BY MR. RIDDLES:

3 Q Do you recognize that document, sir?

4 A I do.

5 Q What is it, please?

6 A It's a purchase order issued by Whittaker to me.

7 Q And what was that order to cover, sir?

8 A Services as stated.

9 Q And look back, please, at Exhibit 5. Do you
10 recognize Exhibit 5?

11 A I do.

12 Q And what is Exhibit 5, please?

13 A It's an outside services agreement.

14 Q Is that also from Whittaker?

15 A Issued by Whittaker.

16 Q And that would be for your services in consulting.

17 Am I correct, sir?

18 A That's correct.

19 MR. RIDDLES: Your Honor, move Plaintiff's

20 Exhibits 5 and 6 into evidence.

21 JUDGE BROWN: Any objection?

22 MR. WORK: No objection.

23 JUDGE BROWN: They're received.

24 (The documents referred to, having
25 been previously marked for

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ALFRED JOHNSON - CROSS EXAMINATION

2009

1 identification as Plaintiff's
2 Exhibit 5 and 6, were received in
3 evidence.)

4 BY MR. RIDDLES:

5 Q Let's look, please, first at Exhibit 5 for just a
6 minute. And I'm going to ask you to direct your attention
7 to the cover page of that. Do you see where it says
8 "Evaluation of the --" excuse me -- "Description of the
9 services to be performed" and then it says "Evaluation of
10 the ICCE program and recommendations for improved program
11 performance. Review of data prepared for the ICCE request
12 for equitable adjustment."

13 Do you see that, sir?

14 Q Yes, I do.

15 A And that was part of your arrangement with the
16 Whittaker Corporation?

17 Q That's correct.

18 A How much were you to be paid for these services,
19 sir?

20 Q I was to be paid during a period of performance up
21 to -- I think \$70,000 to include expenses.

22 A And these proposals were later changed, were they
23 not, and you actually received more than \$70,000.

24 MR. WORK: Objection, Your Honor. There's no
25 reference here to proposals.

ALFRED JOHNSON - CROSS EXAMINATION

2010

1 MR. RIDDLES: Well, I'll strike the term.

2 BY MR. RIDDLES:

3 Q You ultimately received more than \$70,000 from the
4 Whittaker Corporation, didn't you, sir?

5 A Yes. This just covers part of the period.

6 Q What was the total you received from the Whittaker
7 Corporation?

8 (Pause.)

9 A My recollection -- it's around \$90,000 to
10 \$100,000.

11 Q That's all?

12 A Services and expenses. That's my recollection
13 right now.

14 (Pause.)

15 Q You remember having your deposition taken. Let me
16 show you this and see if it refreshes your recollection. I
17 would invite your attention to the bottom of page 119 over
18 to the top of page 120.

19 (Pause.)

20 A Yes, I made that statement.

21 Q How much did you receive, sir? Is your
22 recollection refreshed?

23 A Not too much because this is talking about
24 estimates or my memory at that time. It says \$115,000
25 approximately but I would have to look at my actual expenses

ALFRED JOHNSON - CROSS EXAMINATION

2011

1 to see.

2 I wouldn't argue the point. It doesn't bother me.

3 Q \$115,000. That was between the period of March
4 '88 and October of 1989. Is that correct?

5 A No, it was not.

6 Q Well, sir, what time period was that?

7 A After I reviewed my records, it was for a one-year
8 period between March '88 and March '89. I finished my
9 services with Whittaker in March of '89.

10 Q So it's your testimony that in one year you
11 received approximately \$115,000?

12 A In labor and expenses.

13 Q As part of your services for that \$115,000 you had
14 occasion to make some recommendations to the Whittaker
15 Corporation concerning some problems they were having with
16 the ICCE project. Isn't that correct, sir?

17 A That is correct.

18 Q And you placed those comments in writing, didn't
19 you, sir?

20 A I did.

21 (Pause.)

22 Q I'm going to show you Plaintiff's Exhibit 11. Is
23 that before you, sir?

24 A Yes, it is.

25 Q Do you recognize Plaintiff's Exhibit 11?

ALFRED JOHNSON - CROSS EXAMINATION

2012

1 A Yes.

2 Q What is it, please, sir?

3 A It's a copy of an assessment of the ICCE program
4 that I gave to Mr. Don Moeller.

5 Q And when did you make that assessment, sir?

6 A I made that assessment -- I think it was in March
7 of 1988.

8 MR. RIDDLES: Your Honor, at this time I move
9 Plaintiff's Exhibit 11 into evidence.

10 MR. WORK: No objection.

11 JUDGE BROWN: It's received -- Exhibit 11.

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

17 BY MR. RIDDLES:

18 Q Take a look at the cover page, will you, please,
19 sir? In fact, it was on -- the request from Mr. Moeller was
20 on the 9th of March 1988. Is that correct, sir?

21 A That's right.

22 Q And you conducted a review of the ICCE program
23 with the objective of addressing -- I see these categories
24 here, one of them being the assessment of the WCCS
25 performance on the ICCE contract. Do you see that, sir?

ALFRED JOHNSON - CROSS EXAMINATION

2013

1 A Yes, I do.

2 Q I'm going to ask you to turn over, please, to
3 enclosure 2. And, in fact, I want you to turn to page 2 of
4 enclosure 2. Do you see the reference to military standard
5 490?

6 A I do.

7 Q According to this, military standard 490 is called
8 out in the contract, wasn't it, sir?

9 A Yes, it was.

10 Q 4C did not give it much attention, did they, sir?

11 A I think they gave a lot of attention to it but --

12 Q Too late, is that correct?

13 MR. WORK: Objection, Your Honor. He's in
14 mid-sentence.

15 MR. RIDDLES: You can go ahead and answer sir.

16 MR. WORK: And I ask to strike counsel's
17 interrupting comment.

18 JUDGE BROWN: I don't know what that means. You
19 can finish your answer.

20 THE WITNESS: But it related to the fact that they
21 considered 490 to be minimal at the beginning and it blew up
22 with the exposure they received during the design phase
23 expansion.

24 BY MR. RIDDLES:

25 Q As I understand it, though, military standard 490

ALFRED JOHNSON - CROSS EXAMINATION

2014

1 is a document, is that correct, sir?

2 A That's correct.

3 Q That document did not change, did it, sir?

4 A It did not change.

5 Q And it was in the original contract.

6 A It was in the contract.

7 Q And in the subcontract.

8 A In the subcontract.

9 Q Now, look at the indications here. You indicate
10 that the totality of the design documentation was grossly
11 underestimated. And that was grossly underestimated by the
12 Whittaker Corporation. Am I correct, sir?

13 A As it relates to this paragraph.

14 Q So the answer is yes.

15 A Yes.

16 Q Now, then, the quality assurance provisions in the
17 program were late in being established, particularly evident
18 in the software area. Those are your words, aren't they?

19 A And that's my assessment.

20 Q Now, I'd like for you to read to the jury the next
21 sentence, please, under that next bullet.

22 A "In order to gain time, B-level specifications
23 were submitted as strawman documents with the hope of
24 getting approval of their format."

25 Q What is a "strawman document", sir?

ALFRED JOHNSON - CROSS EXAMINATION

2015

1 A A strawman document is a framework of the
2 specification or the document being submitted that gives an
3 idea of how the content would be structured.

4 Q And the strawman document that was submitted did
5 not comply with the governing military standards of this
6 subcontract, did they, sir?

7 A I can't say as to the relevance to the subcontract
8 but to 490, yes.

9 Q They did not comply with that.

10 A They did not.

11 Q And that, in fact, cause the Government to doubt
12 that WCCS and 4C had personnel experienced in the
13 development of specifications in accordance with a military
14 standard. Am I correct about that, sir?

15 A Initially, there was doubt.

16 Q And that doubt was by -- you say the Government.

17 A By the Government.

18 Q And that's the Air Force, am I correct, sir?

19 A That's the Air Force. And Mitre. And Mitre.

20 Q And anybody else?

21 A Well, they were the relevant parties.

22 Q Now, then, you say in this next area that WCCS and
23 4C stated that a computer program development plan was in
24 existence. Do you recall that? Do you recall WCCS stating
25 that, sir?

ALFRED JOHNSON - CROSS EXAMINATION

2016

1 A Yes, I do.

2 Q When did they state that, sir?

3 A Well, they didn't state it. It was presented in
4 the data accession list.

5 Q Now, there was a software quality assurance audit
6 team that came and looked at Whittaker's computer
7 development plan. Am I correct?

8 A That was a part of the purpose of the audit.

9 (Continued on next page.)

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ALFRED JOHNSON - CROSS EXAMINATION

2017

1 Q And even though WCCS or 4C had stated that that
2 plan was in existence, it was not in existence, was it, sir?

3 A No, it wasn't produced to the team. They had an
4 internal plan.

5 Q But there was no plan that could be produced to
6 the team?

7 A It wasn't produced to the team while I was there.

8 Q And I think you say in paragraph three, this led
9 to more management oversight by ESD. Am I correct, sir?

10 A That's correct.

11 Q ESD was the electronic systems division of the Air
12 Force.

13 A Of systems command in the Air Force.

14 Q As part of your agreement with the Whittaker
15 people, you also agreed to help them in the presentation of
16 an equitable adjustment.

17 A That's correct.

18 Q And is that a claim?

19 A That's a claim.

20 Q They had a claim, Whittaker had a claim in
21 existence when you first went to meet with them in March
22 1988?

23 A When you say claim, you imply that it was in the
24 hands of somebody there, at TechDyn or somebody else. I
25 don't know. They had a document.

ALFRED JOHNSON - CROSS EXAMINATION

2018

1 Q They had a document. Anything else, are you
2 saying?

3 A They had a document in house.

4 Q And how do you know that, sir?

5 A I looked at it?

6 Q And was that when you first went out there in
7 that first week in March?

8 A No.

9 Q When was that, sir?

10 A That was after I had gone back, after the terms
11 and everything had been agreed to.

12 Q And when you looked at that document that was in
13 house, was it a claim against TechDyn and the Air Force?

14 MR. WORK: Objection, Your Honor. I think we had
15 a ruling on that subject.

16 JUDGE BROWN: What do you think the ruling is?

17 MR. WORK: May I approach the bench?

18 JUDGE BROWN: Yes.

19 (Off record discussion.)

20 BY MR. RIDDLES:

21 Q When you were providing consultation with respect
22 to Whittaker's claims, you discussed problem areas with the
23 ICCE project. And you identified, did you not, areas that
24 WCCS could improve?

25 A Yes, I did.

ALFRED JOHNSON - CROSS EXAMINATION

2019

1 Q I say WCCS --

2 A Whittaker, yes.

3 Q Okay. One of those problems was in the area of
4 management problems.

5 A Yes.

6 Q Do you recall an issue involving project managers
7 by the Whittaker corporation?

8 A That's correct.

9 Q They had in fact, five project managers in three
10 years. And that was a problem that you have identified, am
11 I correct, sir?

12 A I just want to make sure of the number.

13 Q All right.

14 (Pause.)

15 A Did you get that out of the report?

16 Q I believe sir, I am referring to your deposition,
17 but let me ask it another way. You do recognize that they
18 had five project managers in three years?

19 A I wouldn't dispute that.

20 Q And from the beginning, that was the perception
21 that that led -- strike that. Did that succession of
22 project managers give a perception of chaos to the outside
23 world, with respect to Whittaker Corporation.

24 A I wouldn't use the word chaos. It gave the
25 perception of loss of continuity in the points of contact.

ALFRED JOHNSON - CROSS EXAMINATION

2020

1 Q I believe, however, that you did use the word
2 chaos before. Could I show you your deposition, sir?

3 A Yes.

4 Q You can just read with me. What did you perceive
5 as being a problem with this change in project managers.
6 And you see your answer here. Well, it was more of a
7 problem of perception to the outside world that there is
8 chaos. See, that, sir, that was your testimony, wasn't it?

9 A That was my testimony. I think you can interpret
10 it, stated that way, differently, too.

11 Q You remember Mr. Tobiason?

12 A I do.

13 Q He was removed by Mr. Hatchett, am I correct?

14 A I don't think so.

15 Q Was there Air Force pressure on the Whittaker
16 Corporation to remove him?

17 A Yes, there was.

18 Q I am going to show you your deposition, again.

19 MR. WORK: Is this for purposes of impeachment?

20 MR. RIDDLES: Yes, it is. I am going back to this
21 question about Mr. Tobiason.

22 MR. WORK: May I have the question you are seeking
23 to impeach?

24 MR. RIDDLES: Let me ask it again. Wasn't Mr.
25 Tobiason removed by Mr. Hatchett as a result of the Air

ALFRED JOHNSON - CROSS EXAMINATION

2021

1 Force pressure.

2 THE WITNESS: I don't know if he was removed by
3 Mr. Hatchett. What happened was, Mr. Tobiason was removed
4 as the point of contact and another person replaced him.
5 And he stayed there and worked.

6 BY MR. RIDDLES:

7 Q Who was that person who replaced him?

8 A Mr. Joe Sills.

9 Q Wasn't Mr. Sills also removed?

10 A Mr. Sills was removed, but I don't know if it was
11 related to ICCE.

12 Q You do realize, however, that the Air Force was
13 putting pressure to have Mr. Sills removed?

14 A There was pressure from the Air Force on Mr.
15 Sills.

16 Q What about Mr. Seagraves? Remember him?

17 A Yes, I do.

18 Q Do you agree that he was wholly incompetent, in
19 the position he was in.

20 A I would have to agree to that.

21 Q Let me put it another way. Would you agree that
22 he was totally ineffective and that he was incompetent?

23 A As a program manager on the ICCE, he was.

24 Q He was replaced with whom, sir? Was it Mr.
25 Salyers?

ALFRED JOHNSON - CROSS EXAMINATION

2022

1 A Well, as I recall it, I think he was replaced for
2 a short period of time, by a Mr. Dave Bumstead, and then
3 Salyers.

4 Q So, then there is six project managers?

5 A Well, I don't know if he was even long enough to
6 get a title.

7 Q Okay. When you met with Mr. Salyers in March of
8 1988, would it be fair to say that he did not understand the
9 ICCE program, generally, did he sir?

10 A Well, a lot of things were unknown to him because
11 he was new to the project.

12 Q And he did not understand it, did he sir?

13 A There were certain areas of it he didn't
14 understand.

15 Q In fact, he did not understand it from A to Z, did
16 he, sir?

17 A I'll go with my previous comment, he didn't
18 understand some of the areas of the project.

19 Q Well, at your deposition taken prior, do you
20 recall that? I direct your attention to page 42. Let's
21 start right here with the questions, what were Mr. Salyers
22 problems at that time? Do you see your answer? He didn't
23 understand the program. Question: what didn't he
24 understand? Answer: A to Z. Was that your testimony, sir?

25 A That's my testimony.

ALFRED JOHNSON - CROSS EXAMINATION

2023

1 Q I am not trying to give you a hard time, I just
2 want to --

3 A I understand. I had a bad day that day.

4 Q Mr. Moeller lost confidence in Mr. Salyers at some
5 point in time, did he not, sir?

6 A Yes. I think so.

7 Q And Mr. Salyers left the project, as a result of
8 that loss of confidence by Mr. Moeller?

9 A I don't know the reason that he left the project.

10 Q Do you recall testifying that there was an Air
11 Force meeting at which Mr. Salyers made some statements and
12 Mr. Moeller was present, that caused Mr. Moeller to lose
13 confidence in Mr. Salyers?

14 A That's right. I don't recall how he left.

15 Q Then you had another project manager. Mr.
16 Christensen.

17 MR. WORK: Object to the question.

18 MR. RIDDLES: Whittaker had another project
19 manager, am I correct?

20 THE WITNESS: Yes.

21 BY MR. RIDDLES:

22 Q And that was Mr. Christensen?

23 A That's correct.

24 Q And he was the project manager while you were a
25 consultant to the Whittaker Corporation?

ALFRED JOHNSON - CROSS EXAMINATION

2024

1 A That's correct.

2 Q When did Mr. Christensen leave?

3 A I don't know.

4 Q Do you know who replaced him as the project
5 manager?

6 A I don't know.

7 Q One of the changes that you recommended to the
8 Whittaker Corporation, was in their style of program and
9 project management, do you recall that, sir?

10 A Yes, I do.

11 Q And I think you recommended to them the classical
12 method of project management?

13 A That's correct.

14 Q And as you understood that method as classical
15 method of project management, is that the project manager is
16 not only in charge, he is accountable for all his areas?

17 A That's correct.

18 Q Whittaker did not have the classical method of
19 project manager with this accountability of the project
20 manager, did they sir?

21 A They didn't have that style of management, but
22 you'll find that most aerospace companies don't.

23 Q And Whittaker, despite your recommendation, never
24 did fully follow your recommendation to employ that style of
25 management with the accountability of the project manager,

ALFRED JOHNSON - CROSS EXAMINATION

2025

1 did they, sir?

2 A I don't know, because I was not there after March
3 of 1989.

4 Q At least as of the time that you had your
5 deposition taken, though, you knew then that they had not
6 fully, had not fully followed your recommendations on the
7 style of management?

8 A No, I can't say that.

9 Q But didn't you testify that Whittaker followed
10 some of your recommendations, but that they never did fully
11 implement that management style.

12 A That was my testimony.

13 (Continued on next page.)

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ALFRED JOHNSON - REDIRECT EXAMINATION

2042

1 REDIRECT EXAMINATION

2 BY MR. WORK:

3 Q Just two questions. With regard to Mr. Tobiason,
4 and Mr. Sills, you said that there was Air Force pressure to
5 remove Mr. Tobiason. What actions or inactions of Mr.
6 Tobiason was that Air Force pressure based on, as you
7 observed it?

8 A It was based on Mr. Tobiason's initial contacts
9 with the Air Force, in which he contested against certain
10 tasks that he was required to do as being out of scope, or
11 not under subcontract.

12 Q Who was Mr. Tobiason, and what was his experience,
13 based on your knowledge?

14 A Mr. Tobiason, was an employee for some number of
15 years, with the Litton Corporation, and he had quite a bit
16 of experience in project management. Especially in the
17 areas of software development and in system level test for
18 defense contractors.

19 Q Based on your observation of Mr. Tobiason, how
20 would you assess his performance during the time that he was
21 project manager on this project?

22 A Well, I was satisfied with him and he was a good
23 point of contact for me.

24 Q Now, sir, you also indicated on cross that the Air
25 Force put pressure on Mr. Sills. Based on observation, what

**TRIAL TESTIMONY OF
GERALD J. THOMPSON**

GERALD J. THOMPSON - DIRECT EXAMINATION

2055

1 JUDGE BROWN: Your next witness, Mr. Work, is?

2 MR. WORK: Mr. Gerald J. Thompson.

3 Whereupon,

4 GERALD J. THOMPSON

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. WORK:

9 Q Good morning, Mr. Thompson.

10 A Good morning.

11 Q Would you state your full name, please?

12 A Gerald J. Thompson.

13 Q By whom are you presently employed?

14 A Coopers & Lybrand.

15 Q And will you briefly review your education,
16 please?

17 A I have a Bachelor of Science in Engineering from
18 the U.S. Naval Academy in 1952 and I have a Masters in
19 Business Administration from the Stanford Graduate School of
20 Business in the year 1960 and I am a graduate of the Defense
21 Procurement Management School in 1970.

22 Q How long were you in the Navy, sir?

23 A I was in the Navy 33 years, 29 of those
24 commissioned.

25 Q And at what rank did you retire?

1 MR. WORK: Your Honor, I guess the Court
2 understands our position with regard to specialized
3 Government procurement clauses. As you saw yesterday, the
4 terms and conditions of this contract are primarily flow
5 down clauses, clauses that have been taken from the Federal
6 Acquisition Regulation and, as Ms. Raymond said, applied to
7 the subcontract with the Government becoming TechDyn and
8 TechDyn becoming Whittaker in the sense that the names are
9 changed. You saw that clause yesterday saying "applied as
10 appropriate" and she interpreted it and I think Mr. Thompson
11 will interpreted it, too.

12 Thus, we have a contract that is largely a
13 contract, the terms and conditions of which are largely
14 Federal procurement clauses. The jury has no understanding
15 of those clauses. They are not part of their lives. It's a
16 subject on which there needs to be expertise. Unless the
17 Court treats it as a matter of law and simply applies the
18 Federal procurement law to interpreting those clauses, and I
19 understand that Your Honor is reluctant to do that, we feel
20 that there is a very well established body of law
21 interpreting all three clauses that we're talking about
22 here: namely, the changes clause, the two termination
23 clauses, the default termination clause and the termination
24 for convenience clause, and also the payments clause.

25 That body of law is well understood by people in

GERALD J. THOMPSON - DIRECT EXAMINATION/BENCH CONFERENCE

2069

1 this field and if it's not going to be treated solely as a
2 matter of law and the law that's been built up conveyed to
3 the jury as the principles they're to apply, then I think
4 it's very important that the jury understands how these
5 clauses are interpreted by people who work in this field.

6 JUDGE BROWN: Well, I'm sure that if the law is
7 well settled and utterly agreed upon by all people who
8 practice Government contracting law that you and Mr. Riddles
9 and Mr. Boehlert will agree on it and it will go to the jury
10 in instructions.

11 MR. WORK: Well, we don't agree on it because
12 their instructions bear no relationship to the body of law
13 that has been built up with regard to those clauses. They
14 are simply treating this contract, which is basically a
15 contract comprised of specialized clauses that have no
16 parallel in the civilian world and no parallel in Virginia
17 law and simply saying we're going to apply common law rules
18 to them. And, as you saw in the Benderson case, the
19 established law is that courts should presume that when
20 parties enter into this kind of contract using Federally
21 mandated and prescribed clauses that their intent is to
22 apply the interpretation and what Mr. Thompson will do is to
23 indicate the custom and practice in the industry with regard
24 to the interpretation of these clauses and he will say that
25 there is a well established custom and practice for

1 interpreting these clauses going back 30 years.

2 That is indispensable to the jury's understanding
3 of this case. Indispensable. And if that doesn't come in,
4 then the jury is absolutely at sea with regard to how to
5 understand the clauses that these people used in their
6 contract without negotiation -- they were just flowed down
7 without negotiation.

8 JUDGE BROWN: Well, you have brought in a new
9 concept here that you didn't say initially.

10 Let me see if I can confuse everybody by telling
11 you what my position is.

12 If there is law and if I can understand it and
13 rule on it, the law will go to the jury. And it won't go to
14 the jury through someone telling us what it is and I'll have
15 to hear argument and see whether I agree with them or agree
16 with you. I've disagreed with you on some of the
17 interpretation and you think I'm wrong.

18 Most of the law that you think is perfectly clear
19 would prevent the case from going to the jury in the first
20 place, so there's not a problem here. If I'm wrong and
21 they're wrong, the case shouldn't go to the jury and you'll
22 win and that will be the end of it.

23 But I don't think you're right in every situation
24 but who am I to judge? But there is no way that we would
25 allow an expert to tell the jury what the law is.

GERALD J. THOMPSON - DIRECT EXAMINATION/BENCH CONFERENCE

2076

1 practice, usage in the industry recognizing throughout the
2 industry that the changes clause encompasses constructive
3 change and that's the way --

4 MR. BOEHLERT: Your Honor, may I address --

5 JUDGE BROWN: I understand the point of the
6 termination. I don't understand the point of the changes in
7 Government procurement. What's the point of that in this
8 contract?

9 MR. WORK: There is a changes clause and that
10 really is at the heart of this case and the changes clause
11 encompasses not by its words but the way it's been used in
12 the industry it encompasses informal changes or what is
13 known as constructive changes and that's what he's
14 describing.

15 JUDGE BROWN: Well, what's the difference to this
16 case?

17 MR. WORK: Pardon?

18 JUDGE BROWN: What's the argument that you want to
19 make out of this for this case?

20 MR. WORK: I want the jury to understand how in
21 the custom and usage of this industry the changes clause
22 which was flowed down into this subcontract is interpreted
23 by people who operate in this industry.

24 JUDGE BROWN: Well, I want you tell me in this
25 case what your argument is. What difference does it make

1 and what is it that you think comes from this that helps
2 your case.

3 MR. WORK: What comes from this that helps our
4 case is that we have seen, Your Honor, over the last several
5 days that there was a substantial expansion of this program
6 over what was contemplated. That is, as Admiral Thompson
7 will testify as being recognized in the usage of the
8 industry of this clause, a constructive change which is
9 compensable. That is at the heart of our case. I said it
10 the first day in my opening and I'm saying it again now.

11 JUDGE BROWN: Well, I don't have to be rocket
12 scientist or a Government contract lawyer either to
13 understand that if somebody tells me to do twice as much as
14 what they told me to do in the beginning I ought to get paid
15 for it.

16 MR. WORK: Well, but there are two ways of saying
17 it. And the clause, on its face, only talks about what are
18 known as directed changes, where there is a statement of --
19 there is a contract modification before the work is done.

20 Here both with TechDyn vis-a-vis the Government
21 and Whittaker vis-a-vis TechDyn, these changes were not
22 preceded by formal contract modifications. The added work
23 was done by people insisting that -- the requirements, for
24 example, and it was an evolutionary process. It got
25 recognized in TechDyn's case in the resolution of their 01

1 claim, after it had all happened.

2 Now, that is not self-evident from the language of
3 the changes clause, that that kind of change is within the
4 purview of the changes clause. That's why we need --

5 JUDGE BROWN: It got recognized in the 01 claim
6 through making a claim against the Air Force and this one
7 might, too.

8 MR. WORK: Oh, no.

9 JUDGE BROWN: No?

10 MR. WORK: No.

11 JUDGE BROWN: Why not?

12 MR. WORK: Whittaker has no cause of action
13 against the Government.

14 JUDGE BROWN: I understand that but TechDyn does.

15 MR. WORK: Well, but --

16 MR. BOEHLERT: Your Honor, may I have one thing?

17 MR. WORK: I think he was addressing me.

18 JUDGE BROWN: Yes, just let Mr. Work finish.

19 MR. WORK: Whittaker has had a claim before
20 TechDyn in various iterations since 1987 -- it's never been
21 paid. Never gotten any relief.

22 That's what our counterclaim is all about and I'm
23 sure that Mr. Boehlert, without the background of this
24 clause, will go up to the jury in his closing and say look
25 at this clause -- this says you've got to have a formal

1 modification before you undertake any work or you're not
2 compensated.

3 Well, that's not the way the clause has been used
4 in the industry. And without this custom and practice
5 background, which Admiral Thompson describes in his summary,
6 the jury is going to be at sea and we're going to be
7 severely prejudiced.

8 MR. BOEHLERT: The subcontract, Your Honor, that
9 the parties agreed to specifically says that the agreement
10 of the parties will be governed by Virginia law. And, Your
11 Honor, consistent with that and other jury trials I've done,
12 what they're attempting to do are instructions on the law.
13 It's always been handled in jury instructions.

14 We can certainly address the doctrine of
15 constructive change and change in jury instructions. That's
16 the province of the Court. It would be grossly improper for
17 an expert to come in and purport to interpret the clause for
18 the jury.

19 MR. WORK: If I ask this man anything about the
20 law, Your Honor, you can strike me down.

21 JUDGE BROWN: Well, you're asking him to interpret
22 this contract in a way that is not self-evident from the
23 language of the contract. That's what you told me you're
24 doing.

25 MR. WORK: I'm asking him to explain the custom

GERALD J. THOMPSON - DIRECT EXAMINATION

2091

1 called?

2 A Well, it was, a subcontract, 125, something or
3 other.

4 Q Based on your reading of the contract documents,
5 do you have an opinion on whether there was any relationship
6 between Whittaker on the one hand and the Air Force on the
7 other hand?

8 A Based on my reading of the documents --

9 MR. RIDDLES: I am going to object to that, Your
10 Honor. He is asking him for a legal conclusion as to
11 whether or not the relationship between Whittaker and the
12 Air Force, and I object to it on that basis.

13 JUDGE BROWN: Any response?

14 MR. WORK: Yes, I am asking him for an opinion
15 based on his 30 years of experience in working with
16 contracts in this field.

17 JUDGE BROWN: I sustain the objection. This
18 matter of contract, whether there was or wasn't a
19 relationship. And that's not -- he need not interpret that
20 for me or the jury.

21 MR. WORK: Okay. Let's focus on the subcontract,
22 Mr. Thompson, and specifically, the responsibilities of the
23 prime contractor, or TechDyn, to its subcontractor,
24 Whittaker. And I would like your opinion, sir, based on
25 your experience with contracts such as this, as to what in

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1 general terms, those responsibilities of prime contractor to
2 the subcontractor are.

3 THE WITNESS: Prime contractor, in the federal
4 procurement field --

5 MR. RIDDLES: I renew my objection on the same
6 basis. When he talks about general responsibilities, from
7 the prime contractor to the subcontractor, again, it calls
8 for a legal conclusion as to what those responsibilities
9 might be.

10 JUDGE BROWN: I sustain the objection to generally

11
12 MR. WORK: All right, specifically, in this
13 instance, based on your understanding of relationship, do
14 you have an opinion as to what, in the administration of a
15 contract, what obligations a prime has to a sub in this type
16 of contract?

17 MR. RIDDLES: I renew my objection on the same
18 grounds.

19 JUDGE BROWN: Sustain. We are talking about this
20 contract.

21 MR. WORK: All right. Sir, specifically, with
22 respect to the development of a subcontract specifying,
23 allocating responsibility, specific responsibility to a
24 subcontractor to do a particular task, who has between, as
25 between the prime contractor and the subcontractor, his

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1 that responsibility based on your experience.

2 MR. RIDDLES: Sorry. I renew my objection on the
3 same grounds.

4 JUDGE BROWN: I sustain the objection to talking
5 about this contract.

6 MR. WORK: Mr. Thompson, do you have an opinion,
7 on in reviewing these documents, as to whether TechDyn
8 provided any specific -- strike that. Do you have an
9 opinion in reviewing these documents as to whether TechDyn
10 defined what it was that Whittaker was supposed to do in the
11 written contractual documents?

12 THE WITNESS: Based on my review of the documents,
13 I do not believe that TechDyn provided Whittaker with
14 specific guidance as to what its responsibilities were under
15 the business arrangement --

16 BY MR. WORK:

17 Q Have you ever encountered, in your experience,
18 sir, a situation like this?

19 MR. RIDDLES: I object to that, Your Honor. What
20 he encountered in his experience some place else is
21 irrelevant to the matters at issue at hand for this jury.

22 JUDGE BROWN: I go back to an original ruling that
23 I made earlier and reverse it. He may testify to what
24 generally is expected in a relationship in terms of defining
25 the contract. I overrule it.

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1 MR. WORK: Thank you, Your Honor.

2 JUDGE BROWN: I didn't understand where you were
3 going, I do now.

4 MR. WORK: Mr. Thompson, in terms of the prime
5 contractor's responsibility, what responsibility does a
6 prime contractor have to define the work to be performed by
7 a subcontractor in a written document?

8 THE WITNESS: A prime contractor has the
9 responsibility to define the work to be performed by a
10 subcontractor in a Government procurement subcontract
11 situation. Actually, it's one of his principal
12 administrative duties.

13 BY MR. WORK:

14 Q And what is the basis for that opinion, sir?

15 A My dealings with custom and practice in the
16 industry, and I also was selected to teach a course in
17 subcontracting for the national contract management
18 association. And that was one of the principals that we were
19 expected to get across to the participants in that course.

20 Q What is the basis for putting that responsibility
21 on the prime contractor?

22 A Well, --

23 MR. RIDDLES: Your Honor, I renew my objection.
24 Not to be argumentative, and take time, but again what he is
25 doing is testifying to a legal conclusion as to the

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1 responsibilities of a prime contractor in what is an arms
2 length transaction between a prime contractor and a
3 subcontractor in this case.

4 JUDGE BROWN: And I overrule the objection.

5 THE WITNESS: Would you repeat the question for
6 me, please?

7 MR. WORK: Sure, what is the basis for placing
8 that responsibility, namely the responsibility to define
9 in a subcontract document, the work, the subcontractor is to
10 do?

11 THE WITNESS: The prime contractor has the
12 responsibility to the Government to manage the effort under
13 his prime contract. And that includes both the effort that
14 he provides himself with his own direct labor, and that
15 which he passes on to lower tiers, subcontractors and
16 suppliers. And that has been my consistent understanding.

17 BY MR. WORK:

18 Q Have you ever seen a situation before in a
19 Government procurement situation, where the responsibility
20 of a subcontractors was not spelled out in a contractual
21 document?

22 A I have seen and worked in situations where they
23 were vague and some parts were vague. And perhaps parts
24 were imperfect on the record. I have never seen one where
25 the written record was so lacking in specificity as to what

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1 the subcontractors' duties were.

2 Q Based on your experience, sir, could you have
3 predicted at the outset of this program what likely would
4 happen as this program became an extended, in the absence of
5 a definition of the subcontractors' responsibilities?

6 MR. RIDDLES: I object to that, Your Honor.

7 JUDGE BROWN: I sustain the objection.

8 MR. WORK: Have you, in the situations that you
9 have seen, Mr. Thompson, where there has not, where there
10 has been an ill defined statement of the subcontractors'
11 responsibilities, what results flow from that failure of the
12 prime contractor to define the subcontractors'
13 responsibilities?

14 THE WITNESS: Well, the same would be true both if
15 the prime contract and the subcontract level. But, when the
16 duties are ill defined, it inevitably leads to problems if
17 the work does not proceed perfectly and then you get into
18 endless arguments as to whose fault it is. The work did not
19 proceed as well as it might have. And who has the
20 responsibility to fix it? And those arguments get more
21 heated between the two contracting parties, when the money
22 begins to run tight, as to, you know, on, at whose expense
23 are these challenges going to be overcome?

24 BY MR. WORK:

25 Q Based on your experiences, the rest of that

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1 eventuality that you've just described, happening are
2 greater in a off the shelf procurement, or a developmental
3 procurement?

4 A The risk of that happening is less in an off the
5 shelf procurement. The nature of the procurement means it
6 has been done before, the parties to it pretty well
7 understand what is to be delivered, because they have at
8 least, at least the actions have been completed before. In
9 a development contract, where it cannot be predicted with
10 that much assurance and when some things almost inevitably
11 go wrong, and the Government is almost always in part
12 dissatisfied in the development of the contract, in my
13 opinion, the chance of these sort of issues developing
14 between the two contracting parties gets much greater.

15 Q Let me just ask you to give us some definitions.
16 So that we understand what an off the shelf program is and a
17 development program, to understand your last answer. Based
18 on your experience, what is a commercial off the shelf
19 program?

20 A A commercial, or off the shelf program also,
21 another term is a non-developmental item, is an item that
22 has been built and put into use before --

23 MR. RIDDLES: Your Honor, I object to this
24 testimony without foundation being laid as to what his
25 knowledge is in that area.

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1 JUDGE BROWN: I overrule the objection. I find
2 the foundation has been laid.

3 THE WITNESS: An off the shelf item is one that
4 has been developed previously, has been manufactured
5 previously, has been put into use previously and has been
6 tested and presumably accepted before this particular
7 contract took place.

8 A developmental item is one that has not been
9 engineered and manufactured before, has normally not been
10 tested in its present format and is the first time it is
11 being attempted by the Government and the contractor.

12 Q Based on your reading of the ICCE prime contract,
13 including the statement of work and other documents, was
14 this, in your opinion, starting out, was this FOC MOD-3
15 program a commercial, non-developmental item, commercial off
16 the shelf program, or was it a developmental program?

17 MR. RIDDLES: I am going to object to that, Your
18 Honor. Again, he is asking for the -- information that is
19 outside the purview of this witness's ability to answer. It
20 also invades the province of the Court, Your Honor, where he
21 is asking for whether or not this particular one is an off
22 the shelf or some other kind of program.

23 JUDGE BROWN: I overrule the objection.

24 THE WITNESS: In my opinion, on, based on several
25 things within the original contract, I believe that the,

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1 both the prime contractor and the Air Force, who was the
2 customer at the start, intended this to be for the most
3 part, a non-developmental contract, an off the shelf
4 contract. Now, if I can go on from that, some things are
5 not exactly off the shelf, or exactly developmental.
6 Sometimes you take the thing that is off the shelf and you
7 make minor improvements to it, or minor changes to it.

8 And I think that was the case in this contract,
9 which means it was primarily an off the shelf contract, with
10 some development and documentation intentions. And appears
11 to me the parties understood that at the time.

12 (Continued on next page.)
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1 BY MR. WORK:

2 Q What is the basis for that opinion?

3 A Well, first of all, it was a firm fixed price
4 contract and while that's --

5 Q Let's define that term first before you explain
6 your reasoning.

7 A Well, firm fixed price means there's one price for
8 the contract. There's a specific dollar amount to be paid
9 by the Government to the contractor upon completion of the
10 contract performance.

11 In most development contracts, they're flexibly
12 priced so that the cost to make the development is
13 recognized in the final contract price.

14 There was also a tight schedule between the
15 effective date of the contract --

16 Q Could I stop you on the fixed price? What kind of
17 price would you expect to find in a developmental contract,
18 based on your experience?

19 A For the most part, you would expect to find some
20 form of cost reimbursement in a development contract.

21 Q What is that?

22 A That means that the final amount of money paid by
23 the Government to the contractor is based upon the cost of
24 the contractor in performing the work.

25 Q And when you say based on the cost of performing

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1 the work, what do you mean by that?

2 A Well, the contractor actually turns in to the
3 Government at the end of the contract the costs that he has
4 encountered, the costs that he has incurred in performing
5 this contract and under certain specialized accounting rules
6 that apply to Government contracts. The Government will
7 normally audit those invoices, if you will, and pay him an
8 amount of money that is based upon the costs the he actually
9 spent in performing the contract.

10 Q And then he gets a fee on top of that?

11 A And then he normally gets a profit on top of it.
12 A pre-set profit on top of that.

13 Q And that's the kind of pricing arrangement you
14 normally see in a developmental contract.

15 A Not always but certainly most frequently. If I
16 can expand on that, the Government in recent years has made
17 a few efforts once again to put a single fixed price on
18 large development contracts. Those contracts have by and
19 large not succeeded and the Congress has since passed
20 legislation that forbids fixed pricing a development
21 contract except when certain conditions are met.

22 Q Now, what other aspects of the ICCE contract led
23 you to the opinion that at the start it was expected to be a
24 non-developmental off-the-shelf program?

25 A As I reviewed the contract schedule between the

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1 Air Force and the prime contractor, that contract schedule
2 provided for 90 days from the effective date of the contract
3 to the preliminary design review and then another 90 days or
4 180 days in all between the effective date of the contract
5 until the critical design review and that simply doesn't
6 provide enough time to do any extensive development work on
7 the contract.

8 Q Was there any other aspect of this contract that
9 led you to your opinion that it was to be a
10 non-developmental item, a commercial off-the-shelf program
11 at the start?

12 A The specification was I would say sufficiently
13 general to where it was my opinion that both the parties to
14 the contract, the Air Force and TechDyn, must have pretty
15 well understood what was to have been supplied and that
16 leads me to believe that both of them thought they were
17 providing or acquiring an off-the-shelf previously
18 manufactured item.

19 And, finally, the record of the pricing
20 negotiations on the part of the Air Force -- they drove a
21 very tight price with TechDyn in pricing this item and I
22 think that would only have been proper in the case of a
23 previously manufactured off-the-shelf item.

24 You simply don't know the cost of development to
25 that degree -- to that relatively tight amount of funding,

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1 small amount of funding.

2 Q In your experience, sir, is it exceptional that a
3 program that -- well, let me strike that. Let me ask you
4 this question: based on your reading of the documents, what
5 did this ICCE program become, in terms of commercial
6 off-the-shelf or developmental?

7 MR. RIDDLES: I would renew my objection, Your
8 Honor, on the same grounds as previously. He's simply not
9 qualified to say what this ICCE program became and was not
10 proffered in that area.

11 JUDGE BROWN: I'll overrule the objection.

12 THE WITNESS: In my opinion, after the contract
13 was signed and after the price was set, the Air Force
14 proceeded to convert this program into largely a
15 developmental program. They expanded the amount of
16 development, the amount of documentation that they expected
17 and they allowed the final users, the people who were
18 actually going to employ it, have a role after the contract
19 was signed in the stating of the characteristics that they
20 wanted the item to have and that turned into largely a
21 development contract.

22 I tried to draw with my fingers here sort of a
23 continuum and they moved it way down the road, in my
24 opinion, from an off-the-shelf contract to a development
25 contract.

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1 that's the way you need to handle it.

2 MR. RIDDLES: Your Honor, I would ask that his
3 comments be stricken.

4 JUDGE BROWN: Strike the last comments, whatever
5 they were.

6 BY MR. WORK:

7 Q Based on your review -- well, let's do this:
8 apart from the changes process, let's just set that aside,
9 what other obligations does a prime contractor have
10 vis-a-vis its subcontractor in a procurement program that
11 evolves from an off-the-shelf to a developmental program?

12 A In my opinion, the prime contractor owes the
13 subcontractor clear technical direction. The subcontractor
14 is entitled to be told what his responsibilities are and in
15 the even that there's any redirection of those
16 responsibilities that that understanding also be given in
17 clear unambiguous language.

18 Q Do you have an opinion based on your review of the
19 documents in this case as to whether TechDyn fulfilled that
20 obligation?

21 A In my opinion, TechDyn did not fulfill that duty.

22 Q In what sense?

23 A It did not appear to me to attempt to distinguish
24 that part of the contract evolution that was clearly within
25 the original contract as compared to the technical expansion

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1 of the contractor and it did not appear to perform its duty
2 in representing Whittaker's rights in the event that it was
3 asked to do work beyond that that was intended by the
4 parties at the outset of both the contracts, the prime and
5 the sub.

6 Q Let's go back to the point you discussed
7 initially --

8 MR. RIDDLES: Your Honor, I'm going to object to
9 his testifying to what was the intention of the prime
10 contractor. It's outside the scope of his knowledge when he
11 speaks about that intent.

12 JUDGE BROWN: Why don't you all come up here a
13 minute?

14 (Bench conference.)

15 BY MR. WORK:

16 Q Mr. Thompson, let's go back to the thing you
17 discussed initially, namely, the duty to clearly define the
18 subcontractor's responsibility. In your opinion, based on
19 your reading of the documents here, did there come a time
20 during the course of this program where some clearly
21 definitive definition of responsibility was necessary to
22 make the program go forward?

23 A Yes, I believe that there were several of those
24 instances. One of those times was when the RCE portion of
25 the program appeared to run into difficulties and that they

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1 couldn't make it perform to the satisfaction of the Air
2 Force and some further effort was required.

3 It appears to me that both parties had contributed
4 to that particular portion of the Air Force in the reading
5 of the records and some of the depositions and at that point
6 in time, TechDyn's written direction to Whittaker indicated
7 this is all your responsibility, both technically and
8 financially, and it is your responsibility to correct it and
9 to incur that additional cost, if there is any.

10 Q In your opinion, did TechDyn fulfill it's
11 responsibility in taking that position with respect to the
12 RCE?

13 A In my opinion, they did not. They had to give
14 more judgment to their responsibilities as a prime
15 contractor as compared to the duties of the subcontractors
16 and sort that out and further, in my opinion, they had a
17 duty to decide if the additional work that they were asking
18 Whittaker to do was within or without the scope of their
19 original contractual understanding.

20 That's hard to do because the original technical
21 understanding between the parties is very difficult to
22 interpret on the written record.

23 Q In this instance.

24 A In this particular instance.

25 Q Why is that, in your opinion?

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1 A The bulk of the subcontract that actually took
2 place took place at what's called MOD 3 to the subcontract
3 and when you read that, this modification 3 consists of a
4 two-page document and there's a notation that other
5 documents had been attached to it and the technical
6 documents were, insofar as I could determine, simply the
7 prime contract documents that had been assembled and sent
8 forward to the subcontractor.

9 MR. RIDDLES: Object to that. That's a legal
10 conclusion he's testifying to.

11 JUDGE BROWN: I'll overrule the objection.

12 THE WITNESS: May I finish?

13 MR. WORK: Sure.

14 THE WITNESS: And as a result of that, I was
15 really unable to draw a conclusion as to what the prime
16 contractor was supposed to do and his contribution toward
17 the completion of the contract as compared to the
18 subcontractor.

19 (Continued on next page.)

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1 BY MR. WORK:

2 Q Now, sir, you talked about staffing of critical
3 program management and technical functions. Do you have an
4 opinion, based on your review of the records in this
5 program, as to whether TechDyn fulfilled that function?

6 A I have an opinion with regard to the
7 administrative and business management duties, yes.

8 Q Will you describe to the jury what that opinion
9 is, please?

10 A I do not believe that in the early portion o f
11 this contract, that they supplied to this contract, made
12 available to this contract, personnel who were competent in
13 the formulation and administration of subcontract.

14 Q What is that opinion based on?

15 A It's based on the document that they prepared,
16 principally in MOD-3 and their subsequent handling of their
17 relations with their subcontractor, Whittaker.

18 Q Now, sir, was another of TechDyn's
19 responsibilities, vis a vis its subcontractor to make
20 progress payments?

21 A According tot he contract, and there were several
22 separate articles talking about payments and progress
23 payments, but I did not really find them in conflict, and
24 yes, it had a duty as a result of this contract to make
25 progress payments to their subcontractor.

7.

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1 Q What is the concept of progress payments in
2 Government procurements, Mr. Thompson?

3 A Progress payments are a part of federal government
4 procurement that really comes from --

5 MR. RIDDLES: Your Honor, I am going to object to
6 Federal Government procurement law being introduced in this
7 subcontract between prime contractor in this case, TechDyn
8 and Whittaker. The contract speaks for itself.

9 JUDGE BROWN: Let me see the counsel up here.
10 What is peculiar about a progress payment? If you
11 make progress, you get paid.

12 MR. WORK: You don't see it very often.

13 MR. WORK: In your opinion, Mr. Thompson, did
14 TechDyn in this contract fulfill its responsibility to make
15 progress payments to Whittaker?

16 THE WITNESS: In my opinion, they did not --

17 MR. RIDDLES: I renew my objection on another
18 basis, too. To this next question, and that is that there
19 is no facts in evidence concerning progress payments. No
20 factual predicate on which this witness can testify.

21 JUDGE BROWN: Lay a foundation first for how he
22 knows this and whether it is within the statute that allows
23 an expert to testify to things outside the evidence. Or
24 tell us where it is in the evidence.

25 MR. WORK: It is in the testimony of a number of

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1 witnesses whom I cross examined, including Mr. Crider, who
2 recognized that progress payments had not been made in this
3 contract for some time. I asked him whether he was aware of
4 the fact --

5 JUDGE BROWN: I don't know where this witness
6 knows about it, that's what I'm just asking.

7 MR. WORK: Oh, all right. Well, you asked me two
8 questions. Where is it in this record. It is and among
9 others in Mr. Crider's testimony who recognized that
10 progress payments had not been made for a long period of
11 time. And then the next question, the foundational
12 question, Mr. Thompson is, what in your, what is your
13 knowledge of TechDyn's fulfillment of its responsibility to
14 make progress payments and how do you know that?

15 THE WITNESS: I reviewed a sizeable amount of the
16 correspondence, the letters that went back and forth between
17 TechDyn and Whittaker. And in several of those letters, as
18 I recall, TechDyn announces its intention to stop progress
19 payments because of some phrase reads in A that in reply to
20 that, you know, Whittaker objects to the stoppage of
21 progress payments. And that's in the first half dozen
22 pieces of correspondence back and forth between the parties
23 during that period of time.

24 BY MR. WORK:

25 Q Now, sir --

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1 A I guess --

2 Q Do you have an opinion as to whether or not
3 TechDyn fulfilled its obligations o make progress payments
4 to Whittaker, based on what you have seen?

5 A In my review --

6 MR. RIDDLES: Objection, Your Honor, those pieces
7 of paper he referred to are not in evidence.

8 MR. WORK: We have pieces of --

9 JUDGE BROWN: I overrule the objection. You can
10 cross examine him.

11 THE WITNESS: In my opinion, TechDyn did not
12 fulfill its contractual responsibilities to its
13 subcontractor Whittaker, when it stopped progress payments
14 without any of the relative few reasons that I understand
15 that they stopped the progress payments, none of which I
16 think are present here.

17 BY MR. WORK:

18 Q Based on your experience, does a subcontractor
19 have any responsibility to continue to work if progress
20 payments are being improperly fulfilled?

21 A It was my understanding over the years in having
22 really to make that decision on the advice of Government or
23 attorneys, or deal with it at the --

24 MR. RIDDLES: Your Honor, I object to him bringing
25 --

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1 JUDGE BROWN: I sustain the objection. This would
2 be a matter of contractual right, not his understanding over
3 the years. He is not an attorney.

4 MR. WORK: Would you just divorce yourself from
5 advice from Government attorneys and simply stick to your
6 own experience?

7 THE WITNESS: Yes.

8 MR. RIDDLES: The basis of my objection --

9 JUDGE BROWN: The basis of my sustaining the
10 objection is it either is or isn't in the contract, whether
11 progress payments do or do not have to be made. And that is
12 where you need to go. I sustain the objection to his
13 experience.

14 (Pause.)

15 JUDGE BROWN: I have a telephone call from
16 California about an adoption case. Since we haven't had a
17 morning recess, we will take 15 minutes now, and I will be
18 back.

19 (Brief recess.)

20 BAILIFF: Remain seated and come to order.

21 JUDGE BROWN: Okay, are we ready for the jury?

22 MR. WORK: Your Honor, I would like, just before
23 the jury comes in, ask two questions.

24 Do you still have a copy of his summary of
25 opinions?

7.

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1 JUDGE BROWN: I have pages 15, 14 and 15.

2 MR. WORK: Well, let me just -- Setting aside the
3 issue of custom and practice, and his views on that, at the
4 bottom of page 16, where he discusses the adequacy in this
5 case of the cure notice, and so forth, is not those areas
6 that he can testify about?

7 JUDGE BROWN: No. The same as I said before, I
8 cannot do anything more for you than I am doing now.

9 MR. WORK: The other question I have, when I came
10 in this morning, I tried to put these issues on the table
11 before the jury came in, frankly because of concern that it
12 was an issue likely to be controversial. Now we have spent
13 a whole morning. Will I get charged for all this time?

14 JUDGE BROWN: So far. We will see how we get down
15 to the end. Are we now ready for the jury?

16 MR. WORK: Yes, Your Honor.

17 JUDGE BROWN: Bring them in.

18 (Pause while jury is seated.)

19 MR. WORK: Mr. Thompson, of the various
20 shortcomings, deficiencies, that you have described in
21 TechDyn's performance of its responsibilities as prime
22 contractor, vis a vis the subcontractor, do you have an
23 opinion, based on your knowledge of this program, as to
24 which of the various deficiencies had the greatest impact on
25 this program?

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1 THE WITNESS: Yes.

2 BY MR. WORK:

3 Q What is that opinion?

4 A I believe that the TechDyn's failure to provide a
5 clear, statement of work between itself and its
6 subcontractor was the most important failure in its duties,
7 and in that failure, made worse some of the other things
8 that subsequently arose between the two parties.

9 Q What's the basis for that opinion?

10 A As this contract went from a off the shelf item
11 to a development contract, an understanding of what the
12 subcontractor's duties were in order to provide him a
13 technical base line, because absolutely necessary to the
14 orderly administration of this contract, or any other.

15 MR. WORK: I have no further questions.

16 JUDGE BROWN: Cross examination?

17 CROSS-EXAMINATION

18 BY MR. RIDDLES:

19 Q Mr. Thompson, I'd like to talk to you just a
20 little further about your background. You testify now, you
21 are employed now by Coopers & Lybrand, is that correct?

22 A That's correct.

23 Q And have you ever given expert testimony in a
24 trial before, sir?

25 A I've given expert testimony in one trial before

**TRIAL TESTIMONY OF
JOEL H. SILLS**

JOEL H. SILLS - DIRECT EXAMINATION

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1 to the award of the initial contract.

2 Q Front end contract?

3 A Yes. In anticipation of that contract.

4 Q What caused you to hire Mr. Tobiason for that
5 position?

6 A Well, he had over 20 years experience as a program
7 manager. He has extensive software background. And in some
8 respects, similar to mine. He had computer programming
9 experience, had been a program manager before .

10 Q With whom had he worked prior to your hiring him
11 to work --

12 A He was with Litton Systems, a company that I had
13 previously worked for. And he, like I, had been involved in
14 some very major command and control type projects.

15 Q Again, just on an overview, and I'm sorry for
16 interrupting you. Because I was seeking an overview. We
17 will get into your particular roles in more detail. But will
18 you give the jury just a general context of what you did in
19 the precontract period on the program and post contract?

20 A Also on pre-contract I was involved with the
21 negotiation, directly involved with the negotiations.
22 During the post contract period, Mr. Tobiason worked for me,
23 and I was monitoring the program through him. And at some
24 point in time, actually said, became responsible for the
25 work -- took over the program directly, as direct

JOEL H. SILLS - DIRECT EXAMINATION

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1 responsibility.

2 Q Okay. We talked about Mr. Tobiason and in your
3 hiring of him. Now focus on that portion of the pre-
4 contract period, in which you were personally involved in
5 the negotiations. When was that?

6 A That was just prior to the award of the contract.
7 During the negotiations between TechDyn, 4C and the
8 Government. The Government had, we had submitted a bid,
9 through the marketing organization, of which I was only
10 peripherally involved. The --

11 Q Is that the proposal that you sent to TechDyn
12 that, or excuse me, strike that. Go ahead.

13 A Yes. The marketing organization, I was actually
14 the operating group, if you will. I got their problems
15 after we won the contracts. And since they were, the
16 Government was pushing both 4C and TechDyn very hard to cut
17 money --

18 Q This was after the proposal?

19 A This was after the proposal that was delivered. I
20 was invited by the vice president of marketing to come on,
21 since I was going to have some problem after we got through
22 the contract, I would have to perform. And he said, you
23 ought to get involved now, just to go to do whatever
24 negotiations and be involved with negotiations. So, that's
25 how I got involved.

7

JOEL H. SILLS - DIRECT EXAMINATION

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1 Q And what facet of the negotiations and what
2 temporal facet of the negotiations were you involved in?

3 A I was involved with TechDyn in cutting back and
4 allocating the scope of work between the two companies.

5 Q This was post proposal?

6 A This was post proposal and just prior to the
7 award.

8 Q Now, the jury has heard some discussion of
9 meetings in Burlington, particularly in the evening, in
10 Burlington, in the last week of August, 1984. Were you part
11 of that?

12 A Yes, I was.

13 Q And we have heard testimony that we are not going
14 to repeat it, Ms. Raymond and Mr. Johnson, were they also
15 part of those discussions?

16 A Yes, they were.

17 Q And who else was involved in this negotiation?

18 A There was Jim Sutherland from 4C side. And I
19 don't remember most of the people from TechDyn.

20 Q Okay.

21 A Except for Val Johnson.

22 Q Without getting involved in the details, as this
23 jury has already heard from the meeting in the Burlington
24 Hotel, in general, what happened there?

25 A What we did was decide that we would cooperate

JOEL H. SILLS - DIRECT EXAMINATION

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1 very closely as a team. We had a fair amount of, or TechDyn
2 had a fair amount of management money in there, in the role
3 of a normal prime, they would have that kind of money in
4 there.

5 And that kind of money was cut out. LSA
6 management was cut back. And testing was cut back to some
7 extent. So, we, basically allocated requirements. In
8 addition, the RCE, which originally was going to be our
9 assistant Government phase of it, was moved over to TechDyn
10 along with the funds --

11 Q Moved over to whom?

12 A To TechDyn. Along with the funds, in order to
13 maintain the greater than 50 percent ratio.

14 Q Okay. So, in sum, the arrangement of the parties
15 from that described in the proposal was changed in these
16 discussions?

17 A Yes. To an extent it was.

18 Q Now, based on your own involvement, if you can,
19 what was your expectation going into this program as to what
20 the nature of the program would be? And this is at the end
21 of August 1985?

22 A That's correct. The program was fundamentally a
23 documentation program. It was the installation, it was an
24 installation program in Iceland. And there were some
25 modifications to the software, which was already operational

JOEL H. SILLS - DIRECT EXAMINATION

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1 up there. They wanted a couple of changes. It was
2 primarily a documentation installation program as far as we
3 knew.

4 Q Did you expect any great amount of software
5 change?

6 A Not more than what we had bid in the beginning,
7 which was about 6,000 hours.

8 Q 6,000 hours?

9 A Yes.

10 Q Now, sir, and let's move to the post contract
11 period. And by that, I mean the period after the effective
12 date of the prime contract, which was August 30, 1985. What
13 did you personally do, and get involved in the post
14 contract period?

15 A Well, in addition to monitoring the contracts,
16 since Bob Tobiason was working for me, I got heavily
17 involved initially in both the software quality assurance
18 controversy. What I basically got involved with was
19 controversies. As the manger, Bob did his job. AND if
20 there was any problems, I stepped in.

21 Q Before we get into the software quality assurance
22 controversy, did you get involved in the issue of the
23 formation of the subcontract after the TechDyn had received
24 its prime contract?

25 A Yes. To some extent, what other controversies did

JOEL H. SILLS - DIRECT EXAMINATION

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1 come up was, the LSA, the logistics support analysis. And I
2 was upset --

3 Q That's the LSA, you referred to earlier?

4 A Yes. I was upset about the fact that we had not
5 received a compete contract from TechDyn. There were
6 sections missing in it on the contract. And all of sudden a
7 controversy arose. I was not particularly bothered by the
8 way the contract itself had been put together, although, I
9 would have liked to have seen a statement of work arrive.
10 But it was clear to both parties that we knew what our jobs
11 were.

12 Q And it was clear on the basis of those meetings in
13 Burlington?

14 A At Burlington, and as I said before, the contracts
15 a documentation one, it was, we would build the PDFA, which
16 was the RADIL in a sense, with the changes that were
17 requested of us. And logistics support being part of the
18 documentation effort. I mean, it was, and TechDyn would do
19 the installation, and was the prime. In addition to doing
20 the RCE effort, which was a combined effort.

21 (Continued on next page.)

22

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JOEL H. SILLS - DIRECT EXAMINATION

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1 Q Were you involved in the discussions at Whittaker
2 as to whether or not given the absence of a subcontract
3 statement of work Whittaker ought to sign this contract?

4 A Well, Whittaker had signed the contract, in my
5 opinion, because we weren't getting paid. Time was moving
6 on, we were working. People were working to what people
7 understood the statement of work to be and it was time to
8 move on.

9 Q Who wasn't paying Whittaker?

10 A Whittaker wasn't being paid by TechDyn. Our
11 contract was with TechDyn.

12 Q Okay. Were there other factors that persuaded you
13 with regard to the signing of the subcontract?

14 A Yes, in part. Although I wasn't directly
15 involved in it, the company was in the process of being sold
16 to Whittaker. This was when it was 4C, actually. And that
17 was a mitigating circumstance, I think, in the signing of
18 the contract.

19 Q What was the extent of cooperation based on your
20 personal knowledge between the Whittaker side and the people
21 you had dealt with to that point in the program?

22 A At TechDyn?

23 Q Yes.

24 A Very close.

25 Q And whom had you dealt with to that point in time?

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1 A Primarily Al Johnson. My personal interface was
2 with Al Johnson but there were a number of technical people.
3 We were working as a team, as far as I was concerned.

4 Q Now, sir, you mentioned other matters that you
5 personally got involved in in the post-contract period. One
6 of them was what you referred to as the software quality
7 assurance dispute. What was that and what did you do with
8 regard to that dispute?

9 A Prior to the award of the contract, this team
10 concept, if you will, was also within the Air Force. The
11 Air Force wanted basically a commercial system to be
12 delivered to it.

13 Q When you say "commercial system" what do you mean?

14 A In other words, it was not a full MIL SPEC system.
15 We were --

16 MR. RIDDLES: Object to his testifying what the
17 Air Force wanted, sir. He can testify to the facts in
18 evidence.

19 BY MR. WORK:

20 Q Just talk about your expectation as to what the
21 Air Force wanted.

22 A We were building a commercial system.

23 Q And when you say "a commercial system" what do you
24 mean?

25 A What do I mean? I mean that the parts, many of

JOEL H. SILLS - DIRECT EXAMINATION

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1 the parts that we used, you could go down to your
2 neighborhood store and literally buy them. And, for that
3 reason, the system was relatively inexpensive when compared
4 to the full MIL SPEC systems that one hears about.

5 What the Air Force wanted was a system that was
6 commercial, that was documented to some extent so they could
7 do maintenance on it, they could maintain the software
8 after it was turned over to them fully.

9 That's basically what the whole contract, at least
10 our end of the contract, was about. This was a commercial
11 kind of system in the sense that it was commercial parts,
12 not MIL SPEC parts.

13 I'm sorry -- could you repeat --

14 Q Your involvement in the software quality assurance
15 issue.

16 A The software had been developed and what we're
17 doing now is modifying the software. The Government came
18 along and attempted to impose some new concepts that they
19 were pushing on industry. Perfectly rational concepts, if
20 you bid then.

21 Q Did you bid them?

22 A No. What they wanted was as separate quality
23 assurance organization for software. What we had done up to
24 that time was the software was maintained by the engineering
25 organization until such time as it was turned over to the

JOEL H. SILLS - DIRECT EXAMINATION

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1 test people, which was a separate organization in quality.

2 Q And that's the way you bid this program prior to
3 the prime contract?

4 A Right. If we were to add quality assurance, I
5 would be adding a whole other person to the job and we just
6 were not willing to do that at that time. And the
7 Government was upset about it.

8 Q This was at what point in time?

9 A It was in the spring, I believe, of '82.
10 Approximately.

11 Q Now, on the logistics side, you said you were
12 involved in a dispute with respect to logistics. What was
13 that issue?

14 A We had bid the job based on providing logistics
15 information and that is basically we purchase information so
16 the Government can go out without having to come to a
17 contractor and purchase repair information so if they wish
18 to set up their own repair facility they could.

19 We were down to what's called a line replaceable
20 unit.

21 Q LRU?

22 A LRU. And the Government all of a sudden came in
23 and said no, we don't want that. What we really want is
24 down to the component level, down to the piece part level.

25 Q When did the Government take that position?

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1 BY MR. WORK:

2 Q What was your assessment of Mr. Tobiason's
3 performance in the program from the time you hired him to
4 work on the ICCE program up until the time the Air Force
5 insisted that he be dismissed in May of 1986?

6 A I think he performed competently. I think he was
7 a good program manager. He defended the company when he had
8 to and we were getting out of scope requirements laid on us
9 and he was fighting them. It sounds like a fair fit.

10 Q Is that what a program manager is supposed to do?

11 A That's what I think he gets paid to do. If he did
12 anything else, he ought to be fired.

13 Q What impact on the program at Whittaker did the
14 insistence that Mr. Tobiason be dismissed from the program
15 have on Whittaker?

16 A Well, I was involved with a lot of other programs.
17 We were dealing with the Koreans, we were dealing with NATO,
18 we were dealing with other major prime contractors and they
19 all had their problems. Now, all of a sudden, I had to
20 concentrate much of my time on the ICCE program and I think
21 that hurts the company.

22 Bob worked on it in a reduced capacity. I
23 basically took him away from being the leader, but I had to
24 get more heavily involved in it and I think it effects the
25 company when you have to take people off who are basically

**TRIAL TESTIMONY OF
CLAUDIA JUSTIS**

CLAUDIA JUSTIS - DIRECT EXAMINATION

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1 Whereupon,

2 CLAUDIA JUSTIS

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

5 DIRECT EXAMINATION

6 MR. WORK: Ms. Justis, if you could move your
7 chair just a bit to the left then you'll be directly on line
8 with this microphone and if you would speak into the
9 microphone, because I'm aware that you have a soft voice.

10 THE WITNESS: Okay. Fine.

11 MR. WORK: Could we have a test trial?

12 THE WITNESS: Can you hear me?

13 MR. WORK: Make sure when you speak that you speak
14 facing the jury so they can hear you through the microphone.

15 JUDGE BROWN: They heard you when you said "Can
16 you hear me?" but I'm sure they didn't hear you say "Okay.
17 Fine." Be sure you keep your voice up all the time.

18 THE WITNESS: I will try to do that.

19 MR. WORK: I think the secret is to project out in
20 that direction and then the microphone will pick up your
21 voice.

22 THE WITNESS: Okay.

23 BY MR. WORK:

24 Q Would you state your full name, please?

25 A Claudia Jean Justis.

CLAUDIA JUSTIS - DIRECT EXAMINATION

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1 Q And where are you presently employed?

2 A I am consultant to Martin Marietta in Denver,
3 Colorado.

4 Q Would you briefly review your education, please?

5 A Yes. After I graduated from high school, I
6 attended San Diego State University and obtained a
7 Bachelor's degree in mathematics. I continued my education
8 after I was employed and worked on a Master's degree in
9 computer science although I never got my Master's.

10 Q And what is your work experience, Ms. Justis?

11 A Out of college, I worked for Logicon on command
12 and control systems as a software programmer. After I
13 worked for Logicon, I went to work for a company called
14 Unisys, also as a software programmer on military command
15 and control systems. After I worked for Unisys, I went to
16 work for 4C, which is the predecessor company of Whittaker.
17 I worked for them as an engineer. Left 4C, went to work for
18 Litton Industries in the San Fernando Valley on command and
19 control systems as assistant to the software manager. After
20 I left Litton Industries, I did come back to 4C, which
21 became Whittaker, and worked for them until 1990, when I
22 became a consultant at Martin Marietta.

23 Q So we can try to boil this down, can you
24 characterize your field for the jury? Your field of basic
25 experience?

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1 A I have 22 years of experience in software
2 development of command and control systems for the military.
3 I have 16 years experience in tactical digital
4 communications links, with which this program is associated.

5 Q Is another way of saying that that you have 16
6 years experience in the data link field?

7 A In the data link field. And I'm employed at
8 Martin right now as an expert in the data link field to help
9 them in an area they are not familiar with.

10 Q I think that the jury may have heard this before
11 but perhaps it bears repeating. What is the data link
12 field?

13 A The data link field is the name by which the
14 different military agencies or services communicate with
15 each other. The way that the ships talk to the aircraft,
16 talk to the land units, and there's different links that are
17 used within the United States and used within Europe. And
18 I've worked on almost all of those links.

19 Q Is the RADIL system placed in Iceland a data link
20 system?

21 A Yes, it was. It was a data link system that acted
22 as a buffer in order to translate between two services or
23 two things, I guess, that don't speak the same
24 communications language.

25 Q Now, let's get right to the heart of this matter

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1 and that's the ICCE program. What was your role on the ICCE
2 program?

3 A On the ICCE program, I was the lead engineer
4 responsible for the definition of the requirements of the
5 program and the implementation of the software, managing the
6 software effort.

7 Q And from the start of the FOC program, which we
8 have defined as August 30, 1985, for what period of time
9 beyond that did you work as the engineering chief
10 specifically on this program?

11 A Until I left the company in June of 1990.

12 Q And what was the status of the Whittaker technical
13 effort on this program at the time you left Whittaker?

14 A It was completed.

15 Q Now, going into the program, and this is just from
16 your own personal perspective, what did you understand was
17 to be done with the existing RADIL system that had been
18 fielded in the United States for the CONUS regional control
19 centers?

20 A There were two things that we were going to do.
21 The most important thing was to document the software,
22 document the whole system so that the Air Force could then
23 do the maintenance of this software and put in the rest of
24 the changes. And while we were documenting this system, the
25 second thing they wanted us to do was to bring it up to the

7.

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1 current standard that defines what the standards are between
2 this ground unit, which is the RADIL, and the aircraft.

3 The standards are always changing and so while we
4 were doing this documentation effort, they said bring it up
5 to this current standard and then we get all the
6 documentation, "we" meaning the Air Force, and we will then
7 continue doing all the updates at that time.

8 Q And going into the program, what magnitude of
9 software change did you believe was necessary to achieve
10 that second objective?

11 A Less than 5 percent. Very minimal effort.

12 Q Now, we have heard from Mr. McCune and Mr. Johnson
13 about software definition meetings that took place during
14 1986 in the requirements definition and design phase of the
15 program. Did you attend those meetings?

16 A Yes, I did.

17 Q How many of them?

18 A I attended all of the meetings dealing with the
19 requirements definition and the CDRs.

20 Q Over what period of time did those meetings take
21 place?

22 A Are these the meetings for the requirements
23 definition?

24 Q That's correct.

25 A From early in 1986 clear through to the end of the

7
CLAUDIA JUSTIS - DIRECT EXAMINATION

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1 year.

2 Q Clear to the end of 1986.

3 A Yes.

4 Q Who else from Whittaker attended those meetings?

5 A The program manager from Whittaker was always in
6 attendance at those meetings. Also, I had support from Dan
7 Emory, who was a tech writer at the time, who helped with
8 the specifications. As I needed the engineers, I would call
9 them in. They did not stay in the meetings the full time
10 but were there when we needed them.

11 Q Who attended those meetings for TechDyn as
12 TechDyn's representative?

13 A Al Johnson.

14 Q Did Mr. Morrison ever attend any of those
15 meetings?

16 A No, he did not.

17 Q Have you ever met Mr. Morrison?

18 A No, I have not.

19 Q Who attended those meetings for the Air Force?

20 A Quite a large group of people. They were attended
21 by their user group, by two different groups at Mitre, by
22 the ESD people that were represented. There were several
23 customer people there. Several Air Force people.

24 Q Now, let's just break down the three groups that
25 you've talked about and I think we've heard from other

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1 witnesses about the ESD representatives and the user group
2 representatives but let's just focus on the Mitre
3 representatives.

4 You said there were two different groups from
5 Mitre and what were those two different groups?

6 A There was a group of Mitre people that were headed
7 by a gentleman named Charlie Arouchon. He started out at
8 the very first meeting but right after that, the meetings
9 were then attended, as well as his group, by Linda Rosa and
10 her group. There were two different technical groups at
11 Mitre. Linda's group was the group that was responsible for
12 the interface with the AWACS aircraft. I'm not quite
13 certain what Charlie's group was but they were two distinct
14 groups.

15 Q We've heard about conflicts on the user side but
16 on the Mitre side, did those two groups of Mitre people
17 speak with one voice?

18 A No, they did not. They frequently argued in
19 meetings. They had different opinions about what we were to
20 be doing. They argued quite a bit, even to the extent
21 where we were dismissed several times and they had quiet
22 sessions on their own.

23 Q Now, in that period from January of 1986 on
24 through to the end of 1986 during the requirements
25 definition phase, how many meetings were there?

CLAUDIA JUSTIS - DIRECT EXAMINATION

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1 A There were a lot of meetings. My best guess would
2 be less than ten but certainly more than five. Probably in
3 the neighborhood of six.

4 Q And let's understand what those meetings were.
5 Were they single day meetings or multiple day meetings?

6 A No, they lasted for days. Some of them lasted
7 over weeks. Even over weekends. We would meet through the
8 weekends.

9 Q And so let's call them series of meetings.

10 A Okay.

11 Q Now, going into -- and those lasted from -- these
12 series of meetings lasted throughout the year of 1986?

13 A Yes, they did.

14 Q Going into the program, when you became the
15 technical director, what had been your expectation with
16 regard to the number of requirements definition meetings
17 that would take place on this program?

18 A We expected only a single meeting. What is
19 normally done is that you write the set of requirement
20 specifications, deliver them to the customer, they review
21 the set and of course they're going to find things that they
22 don't like about it or that they want to discuss.

23 They would then submit to us a set of comments
24 written down. We would go over all those comments. The
25 ones that are typographical errors, there's no sense in

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1 talking in a meeting about. We accept some of the
2 comments -- we expected that we would accept some of the
3 comments. The ones that we didn't understand or that we had
4 conflict with, then we would have a meeting with them, iron
5 out those comments, incorporate them into a final document
6 and then deliver this document as a final set of agreed upon
7 requirements.

8 Q And that's what you expected to happen?

9 A That's what we expected. Yes.

10 Q Is that what happened?

11 A No. It's not at all what happened.

12 Q Let me just ask a question. The jury has heard
13 something about these meetings but you were there at all of
14 them as --

15 MR. RIDDLES: Your Honor, I just object to what
16 the jury has heard.

17 MR. WORK: All right. Strike it. Withdrawn.

18 BY MR. WORK:

19 Q Can you just give us a sense of how these meetings
20 proceeded over the course of the year of 1986?

21 A They didn't go well. We never got the comments
22 ahead of time to look at. Everyone would show up at the
23 meeting with a different opinion. We were never given this
24 is the Air Force's position on a problem. We received it
25 from three or four different areas.

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1 The comments, like I said, never came ahead of
2 time. The people that attended the meeting were not
3 completely prepared for the review. They would come in with
4 just a portion of the document reviewed, redlines in their
5 own document and we would have to sit down and go on a
6 page-by-page review of these comments.

7 They would argue among themselves about what was
8 right and what was wrong and what should be done. And when
9 we would get to a certain point, they would say I can't go
10 on today, I haven't reviewed past it. They would ask to
11 stay in our facility after hours to read enough to get them
12 straight through the next day.

13 This went on through the meeting until we would
14 end that series and then they'd say yes, that's right --
15 incorporate all those comments, submit it and that's great.
16 They would leave, we would incorporate all the comments,
17 deliver them to the customer again for their review --

18 Q Who was the customer to whom you delivered?

19 A We always delivered our documents to TechDyn.
20 They took care of distribution to the Air Force from there.

21 We would deliver our documents updated to TechDyn
22 of what we felt was all the agreed upon comments from those
23 meetings and they would begin the review process again. And
24 what they would do was they would re-review what we had all
25 agreed upon in days of meetings and oftentimes change their

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CLAUDIA JUSTIS - DIRECT EXAMINATION

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1 minds completely and say well, yes, I guess we wanted that
2 in the meeting but now we've changed our mind. We don't
3 want it any more. We want it to go back to the original way
4 it was.

5 And then they would pick up at the point where
6 they left off with their real detailed questions and they
7 would review the next --

8 MR. RIDDLES: Your Honor, I'm going to object to
9 long narrative answers without a question being asked and
10 it's time/date specific and so forth.

11 JUDGE BROWN: I think this is responsive to the
12 question and the question is proper and I overrule the
13 objection..

14 BY MR. WORK:

15 Q Would you just continue, please, Ms. Justis?

16 A Okay. We would submit that document. They would
17 review it again, review in detail from the point that they
18 had left off. And if you go through our records, you can
19 tell that the very last meeting in December was when they
20 submitted their comments on the very last portion of our
21 document, which were the mathematical equations. So it took
22 until -- when we delivered them early on in 1986 to the
23 very, very end for them to even get to their first comment
24 about the mathematical equations.

25 So it was extremely frustrating in that we would

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1 continually update the document and they agreed this is what
2 we wanted but then they would have something that they
3 wanted in there.

4 Q Could I ask a question? You're speaking of a
5 document. Is this the draft B-spec?

6 A It was the B-specification. Yes. It was in
7 several volumes.

8 Q Okay. How much volume are we talking about that
9 it took a year to get through?

10 A There were four different volumes and the largest
11 one was probably 400 pages. The others were all less than
12 that. All told, I would guess less than 1000 pages.

13 Q Do I understand you correctly to say that it took
14 a whole year to get through that specification?

15 A Yes, it did.

16 Q Now, what did you do during the course of the
17 meetings? I'll ask you first that question and then what
18 did you do between the series of meetings.

19 A I tried to remain calm. The early meetings were
20 not as difficult as we got further on into them. But each
21 time, our goal was to get a system fielded, get the
22 requirements down, get what they wanted in a system. Areas
23 where there was a large amount of arguing on, sometimes it
24 was just simply easier for us to do what they wanted than to
25 take up the time arguing. It seemed more than what it would

CLAUDIA JUSTIS - DIRECT EXAMINATION

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1 cost for the software.

2 There were major issues, though. So each time we
3 would update our set of specifications -- and I held the
4 masters -- and then we'd publish that.

5 (Continued on next page.)

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CLAUDIA JUSTIS - DIRECT EXAMINATION

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1 Q When you updated the specifications, did you do
2 anything with regard to the existing software? By that I
3 mean the actual tape that had been developed.

4 A Because we had an existing program, an existing
5 RADIL program, that we could bring out and show you what it
6 did, after each meeting or series of meetings, I would get
7 together with the programmers, particularly the one that
8 worked in the display area, and we would go over all the
9 changes that were made. Sometimes even in the middle of the
10 meetings on a day-to-day basis, I would go over with the
11 programmers exactly what we were looking and what we were
12 doing.

13 They would immediately go off and correct the
14 program. We had a schedule to keep. It was a short term
15 program and we wanted to try and keep our schedule. So
16 sometimes even -- like we would finish a discussion in a
17 day, by the next day they had the program changes in. So
18 that as -- by the time that the customer showed up at our
19 facility the next time, in order to review the document
20 again, we had a program that incorporated the comments he
21 made last time, that we could take him down into our lab and
22 demonstrate to him.

23 So I feel that we really kept up with the
24 requirements that they wanted changed.

25 Q Let me ask you this: how much effort did you

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1 personally put in this in terms of your own personal
2 commitment of time?

3 A I put in a lot of time. The staff as well as
4 myself -- we were working seven days a week, sometimes 14 to
5 16 hour days. When we got on into the testing of the
6 software, we would work through the -- I would work through
7 the night with the test group. The programmers would come
8 in immediately in the morning, five, six o'clock, gather up
9 the trouble reports from us, run off, fix them so that we
10 had those to test with the following evening. So there was
11 a period of time there when the entire staff was working
12 very, very hard to keep up with things.

13 Q Did you observe the level of understanding of the
14 RADIL system exhibited by members of the user community that
15 would descend upon your facilities for these series of
16 meetings?

17 A The majority of them had --

18 MR. RIDDLES: Your Honor, I'm going to object to
19 her understanding of someone else's understanding or her
20 observation of someone else's understanding. It's outside
21 the purview of this witness' knowledge to say what the user
22 group's understanding of the RADIL system as.

23 JUDGE BROWN: I think she can testify to her
24 observation of that and I overrule the objection. It was
25 clear that it was her observation.

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1 THE WITNESS: During the meetings, it became
2 evident that -- they had a group at Mitre that really knew
3 the interface with the aircraft quite well and we could get
4 really good review comments from them. None of them -- the
5 majority of them -- had not seen a RADIL before and this was
6 evidenced by when they would come into our facility we would
7 demonstrate it for them.

8 In the user community, they had people from the
9 AWACS, the aircraft end of things and then they also had
10 some ROCC people there. They didn't have anyone that knew
11 how the whole interface between the ROCC ground unit and the
12 aircraft was supposed to take place and how it did in the
13 previous RADIL system.

14 There were times when we had to call Mike McCune
15 into the room to explain this is what the RADIL program
16 does. This is why you can't do this thing or that thing
17 because they're not compatible and this is what the current
18 program does.

19 So it was clear to me that of all the people that
20 attended that meeting on the customer's side there wasn't
21 anyone who had real clear knowledge of what the RADIL did,
22 the thing that we were modifying to bring up to current
23 standard and to document for them.

24 Q Ms. Justis, during the course of these meetings,
25 was there anyone on the Air Force side, be it user community

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1 or ESD or Air Force representatives like Mitre, who took
2 control over these meetings?

3 A No. They were pretty chaotic. When you got into
4 the two different groups of Mitre, they each felt they were
5 in control and the ESD people who it was my understanding
6 they were in control, at least on the customer's side, the
7 Air Force side, didn't seem to always take control of the
8 situation and say let's solve this. They may have in their
9 meetings when they threw us out of the room but that
10 happened so often that they seemed so disjointed like they
11 just didn't have common leadership.

12 Q At any time during the period of this year, did
13 the Air Force or any of these people that attended these
14 meetings reject the draft B-spec?

15 A No, they did not. Their job was to
16 authenticate -- what they call authenticate. And when they
17 authenticate the document, it means accept it for all the
18 spelling correct, everything correct. But because they're
19 going to this process of review the first part, then the
20 next part, then the next part, they would never authenticate
21 it until they got all the way through to the end and through
22 the mathematical equations. So to my knowledge, they never
23 rejected it but they never authenticated it. They just said
24 let's continue this review cycle for the rest of our lives.

25 Q Now, let's talk about the interstices, the

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1 separations between these series of meetings. Could you
2 make more clear what you and the people working for you did
3 during those periods to prepare for the next series of
4 meetings?

5 A As I had stated before, we updated the
6 specifications, incorporated all the agreed upon redline
7 changes, published the new document and also made the
8 software changes.

9 In publishing the changes to the requirements
10 specifications, because we were also creating the test
11 procedures at the same time and most of these things
12 affected the test procedures, we also had to correct that.

13 So there's a whole group of documents that got
14 corrected in the time period between the deliveries of the
15 B5-specifications.

16 Q Could you give us some sense of the relationship
17 between a change in the actual B-spec and the completion of
18 the work you've just described in terms of making the
19 changes in the tape, changing the test procedures and so
20 forth?

21 A Okay. Because the B-specifications define the
22 requirements that you're going to test to, if you change
23 something on that level, then of course you have to change
24 what you're going to test and you have to change what the
25 software does.

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1 Also, when you change the software, you have to
2 change what is called the positional handbook, which is the
3 manual that tells you how to operate the system because
4 obviously that has changed, too.

5 So there's a long process of a lot of documents
6 changed but there's also the software that is changed.
7 There are changes to individual lines of code, which changes
8 the module structure which changes the documentation of the
9 software and creates the new version.

10 Q Now, in these series of meetings, was the cast of
11 characters always the same or did it change from one series
12 to the next?

13 A On the technical staff, the Whittaker technical
14 staff, there were no changes.

15 Q How about on the Air Force side of the picture?

16 A There was some continuity on the Mitre side but
17 there was a lot of changing in the people that attended
18 meetings. The example I gave before of Charlie Arouchon and
19 the Linda Rosa group -- those people changed. I mean,
20 sometimes they would both be there, sometimes only one
21 group. Different people from the groups would be there. So
22 there was a lot of change in the participants from the Air
23 Force side.

24 Also, the Air Force people would be transferred
25 somewhere else so the ones that had started up the review of

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1 our documents, if they got transferred to another post, then
2 they weren't available and the replacement would come in and
3 then we had to go through some educational process at that
4 point to bring that person up to speed because they had
5 their own ideas of what they wanted in the system.

6 Q Did TechDyn as prime contractor to Whittaker
7 bring any order to this situation that persisted over the
8 course of the year?

9 A Not that I saw.

10 Q Now, let's talk about substantive issues that
11 arose during the course of this period of requirements
12 definition. Were there major substantive issues that stick
13 out in your mind that arose over time?

14 A As far as technical issues?

15 Q Right.

16 A Yes, there were. It appeared that the majority of
17 the people that were reviewing the document weren't aware
18 that we were just under contract to document it and put in
19 minor changes. And they ended up doing a complete review of
20 the whole mission of the RADIL and they made some very
21 substantial changes.

22 They brought in one group of changes and it was in
23 the summer of '86, the three big changes which were
24 reporting responsibility, digital handover and correlation,
25 and those weren't in the original RADIL program yet they

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1 came along and said that contractually you must do this --
2 you absolutely have to do this in order to be compliant with
3 the standard.

4 None of those things had ever been talked about
5 before nor had they been talked about in the early reviews
6 of the B5-specifications.

7 Another group of change was what's known as block
8 20/25. The changes that are made to the AWACS aircraft are
9 given names. This particular change was called block 20/25
10 which was used between Boeing and the Air Force. And there
11 were some changes --

12 Q Boeing being the manufacturer of the AWACS
13 aircraft?

14 A Yes. There were a couple of significant changes
15 in their block 20/25 that would be fielded in their AWACS
16 aircraft by the time the RADIL was expected to be fielded.
17 And they said it was important that we incorporate those
18 changes.

19 Q We won't go over those in detail because I think
20 Mr. McCune has already explained them. Now, again, based on
21 your personal observations, if you had them, what as Mitre's
22 position during the course of this period of requirements
23 definition with respect to whether or not Whittaker was
24 bound to simply do what the contract stated or beyond the
25 contract?

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1 A Mitre provided only technical guidance for the
2 people at ESD. And they had stated two or three times in
3 meetings that they didn't care what we were under contract
4 for, they didn't care what the contract said, this is what
5 you must do. So their role was clearly one of technical
6 advice to ESD without knowledge of what the contract stated.

7 Q At any time during this requirements definition
8 period did you discover that the Air Force through TechDyn
9 had not provided any pertinent information to you that bore
10 upon the work you were doing during that phase?

11 A There were three -- as I remember -- three pieces
12 of documentation that they never provided to us. Right on
13 initially, we were to upgrade to the current standard for
14 the aircraft. Well, that current standard wasn't provided
15 to us. It was months into the contract before we got that
16 standard. In fact, the first set of the interface design
17 specification -- I don't know if that's come up yet -- that
18 very first draft of that document was done to an old
19 standard simply because we didn't have the new standard in
20 hand.

21 Q This was the JCS PUB 10?

22 A Yes, it was. We asked for it several times and it
23 just took them quite a long time to get it to us.

24 The second piece of information that they took
25 quite a while to get to us was the block 20/25 changes. In

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1 you change the B5-specifications, you have essentially
2 affected everything software-wise.

3 Q Let's just enumerate. In terms of when you make
4 a change in the draft B5-spec, would you just take us
5 through specifically what other things have to get changed
6 to implement that?

7 A As far as the software? You mean change the B5,
8 change the software program?

9 Q Yes.

10 A Change the test procedures, change the operator's
11 manual. There was effort involved in coordinating with the
12 programmers so they understand the change, in getting the
13 documents out.

14 Q You mentioned the positional handbook?

15 A Yes. The manual that tells the person sitting at
16 the RADIL how to operate, what the different functions mean,
17 what the different switches mean, what they do.

18 (Continued on next page.)

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1 Q Now, in terms of what you have just described, and
2 the requirements definition phase, and I take it that went
3 all the way up to the end of 1986?

4 A Yes.

5 Q How did what happened during that period effect
6 the design and implementation testing phase?

7 A It effects it. There's a rippling effect with
8 everything that follows it. Once we added new capabilities
9 to the B5 specifications, to the requirements, they had new
10 that had to be tested so that even down to the very minute
11 part of testing, where you are just testing a reaction to
12 the switches on the console as well as the overall interface
13 between the two systems, the RADIL and metal, there, is a
14 tremendous amount of impact on testing.

15 Q And you mentioned there are test plans, test
16 procedures and test conduct.

17 A Yes.

18 Q Are those things effected by what happens in the -
19 -

20 A Yes. They are all effected. The test plan is
21 effected in that we had to set up new kinds of tests, and
22 new situations in order to test these major capabilities
23 that were changed in the system. The test procedures, which
24 go through detailed step by step, push this button, see this
25 happen, etc., obviously they are effected because we changed

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1 so much of the system.

2 And then the conducting of the test gets much
3 larger. Whereas we had not so many things to verify to
4 begin with, we now have a whole host of things These three
5 big issues, especially that have to be thoroughly tested,
6 so that it lengthened our test period considerably.

7 Q Now, let's move to the test period. And I will
8 just start by asking you, what was your understanding of the
9 measure for determining acceptability of the software under
10 the ICCE prime contract?

11 A We had to run what is called a software
12 qualifications test, which is SQT. Once we passed the SQT,
13 then, which they considered that our software was complete.
14 We did everything that we said we were going to do in the
15 requirements specification. The SQT was designed to test
16 everything stated in those B5 specification that we fought
17 about for a year.

18 Q Now, we have heard that there were several
19 iterations of software qualification testing during November
20 and December 1987. Did you attend any of those sessions?

21 A Yes, I did.

22 Q How many of them did you attend?

23 A I attended all of them.

24 Q And how were the SQT tests actually conducted?

25 A We ran a configuration where we were running with

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1 the E3 simulator out of Tinker Air Force Base in Oklahoma.
2 It simulated what the aircraft flies. We didn't have to fly
3 an airplane up to fly around in it the whole time. We used
4 the ROCC system as at Tyndall Air Force Base in Florida to
5 provide the ROCC side of the interface.

6 The RADIL, of course, was located in Torence. And
7 then we had two other people that were sort of listening in
8 to what we were going on. One was the tactical Air Force
9 command at Langley Air Force Base. They were listening to
10 the test that were going on. And listening, what I'm saying
11 is they would tap into our communication line and record
12 the messages that are translated -- that go back and forth.
13 So, they can actually see what happens.

14 There was also a period of time when the joint
15 services testing branch at Fort Monmouth, New Jersey, was
16 also listening in. So, we had these five different places
17 all around the United States all tied together on the phone
18 lines to try to get the communications to work for the SQT
19 testing.

20 Q Now, what degree of difficulty did you encounter
21 in the course of trying to perform SQT testing on the
22 various proponents of these five different commands?

23 A We had quite a bit of communications difficulty.
24 At the very beginning of the test, there was so much
25 communication difficulty with the ROCC unit at Tyndall Air

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1 Force Base was that what we had to do was dry run our test
2 procedure with Tinker and use another simulator we had
3 planted in Torenco to be the ROCC unit for us.

4 Once we could get the ROCC unit on line, we had to
5 do the same thing with E3 because they weren't available for
6 that period of the test. So, we had to simulate in house,
7 the E3 capability in order to test out communications with
8 the ROCC.

9 Once we finally got everybody to talk, then we had
10 problems with the total communication. And we found out
11 that the problem was one of these people that was just
12 listening in. Because they change personnel often at these
13 other facilities, the turn over personnel, they didn't get
14 the right information about switching and the right circuits
15 and everything else. It became very chaotic and there were
16 a lot of communications problems.

17 It took us days to get that settled down and to
18 get in a mode where we could actually do the testing. It was
19 a very, very long drawn out process.

20 Q Now, were these communications problems of the
21 various commands in hooking up a one time thing at the
22 beginning of the SQT process, or were they continuing
23 throughout the SQT process?

24 A They continued for most of the beginning of it.
25 It wasn't just one day. We got ourselves in a mode of when

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1 there was a problem, we knew who to call. We'd pick up the
2 phone and say, Fort Monmouth, you've got this switch in the
3 wrong place. We even took it to the extent where Whittaker
4 had a support group located at Fort Monmouth to call upon
5 them and say, you gotta, can you help us out any? There's
6 problems back there and we're not getting our test run
7 simply because you guys are trying to listen in on what we
8 are doing.

9 So, we called in a lot of our experts, a lot of
10 our hardware experts, to try and get us through this point
11 in the communication.

12 Once we got further down through the test, and we
13 were really going quite well, we found out that we had a
14 major interface problem with the ROCC unit. It turns out
15 that the specification they told us to develop to, that gave
16 us the message formats, was outdated, wasn't the one that
17 they used any more.

18 So, right there, in the middle of our test,
19 they're saying, change to a new standard on the ROCC side.
20 Which is something that we never planned on doing. It was
21 updated the standard to the E3. So, there were a lot of
22 problems all the way through the test.

23 Q Now, why was more than one SQT session conducted?

24 A For those reasons, and because there is so much
25 required in coordinating the effects of all these different

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1 agencies. And the tests were long.

2 We ended up having to test quite a few things more
3 than we initially thought. And in order to get through all
4 of the tests, which go on for hours and hours, that required
5 several days. Because of the problems that we found, the
6 interface with the ROCC and the problems along the way, we
7 had to correct those problems and issue new versions in the
8 middle of SQT, which had to then be tested.

9 So, it took longer than we had anticipated.

10 Q Now, to finish off the SQT process, you have to
11 get all the way through this multiple volume set of B5
12 specification?

13 A You have to get through testing all of you, going
14 through all of your procedures, you have to test every facet
15 of the B5 specifications.

16 Q Were any of these various interactions of the SQT
17 testing deemed a failure?

18 A Not to my knowledge.

19 Q And what happened at the end of, what brought the
20 SQT testing to an end?

21 A We completed all the tests.

22 Q Who deemed the test to be completed?

23 A The test director and the other participants in
24 the test. The test was run by Whittaker. Bob Fowler was our
25 test director and coordinated the effort.

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1 We also had Whittaker quality person available
2 that was also responsible for stamping the test procedures.
3 TechDyn had their representative there and the Government
4 had their representative.

5 So, every time they go through each test
6 procedure, they stamp it with their little stamp and the put
7 their signature on it and the date. So, it's a very
8 official thing. And we couldn't have said SQT is complete
9 until everybody there had stamped and agreed that yes it is
10 complete. We've gone through everything.

11 So, it's a joint effort, although run by
12 Whittaker.

13 Q I see. And the process was like the process
14 during the requirements definition? You started and you
15 went through the whole line of specifications to check out
16 whether or not the tape that was being tested was complied.

17 A Yes, there are actual steps that say do this, Mary
18 why don't you take it all and put your initials on it?

19 Q Now, were there system trouble reports coming out
20 of the completion of SQT at the end of December 1987?

21 A Yes, there were.

22 Q What is a system trouble report?

23 A It is a trouble report that documents a problem
24 with something in the system. And that can be hardware. It
25 can be software. It can be documentation. Or it can be

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1 simply, we didn't get around to writing the step yet, we
2 gotta go back and do it.

3 There's a number of things. I've even seen
4 trouble reports written against operator actions at a
5 consul, which certainly aren't capable of a software system.

6 Q And when you are talking about the system, are we
7 talking about just the system that was back in Torence,
8 California, or the system in its entirety?

9 A The whole system. The trouble reports are written
10 to say, this is what went wrong. Sometimes, they are closed
11 by simply saying the person at the E3 simulator didn't do
12 this or didn't do that. So, it's not something that is just
13 narrowed down to this one little thing you are testing.
14 It's what you saw during the test.

15 And a lot of times, when you write it, you don't
16 know what caused it. I mean, somebody could have tripped
17 over a cord on one of the simulators and pulled the plug.
18 You write a trouble report that the system went down. You
19 have to find out what it is.

20 Q So, the system, against which what these system
21 trouble reports are being written, consisted of a tape
22 being run in Torence, simulator in Oklahoma, a facility in
23 Florida, a facility in New Jersey, and so forth?

24 A Yes. Remember the people at New Jersey and
25 Langley were listening only. The other people involved at

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1 Tinker Air Force Base and in Florida, is all this having
2 scripts to follow. There was also a lot of operator
3 interaction. That can cause errors. I mean, operators
4 don't always do exactly what they are supposed to do.

5 Q Are these operators Whittaker people or are they
6 others?

7 A No, they are Air Force people.

8 Q Now, what volume of STRs came out of the
9 completion of SQT in December of 1987?

10 A From my estimation and experience in working with
11 Government systems, there was probably a small to medium low
12 trouble report. There wasn't anything we didn't expect.

13 Q Were they all related to Whittaker's software that
14 was being tested?

15 A They were related to all aspects of the system.
16 They were related to documentation. AND they were -- there
17 was a trouble report written against the interface that we
18 had with the ROCC being to the wrong specification, even
19 that's a problem.

20 So, they were all categories. They were software,
21 hardware, they were documentation. They were people
22 problems. All STRs were related.

23 Q And did you do anything to categorize these STRs?

24 A They were categorized based on those categories
25 of hardware, software documentation. They are also given a

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1 priority based on how important they are to the system. I
2 mean, obviously it's not important to correct a
3 documentation error before you put a system out in the field
4 to work. But it is important to correct something that
5 causes your system to fail.

6 Q Okay, now what was done with the STRs that came
7 out of the completed SQT in December 1987?

8 A One of my jobs at SQT was to review all of the
9 trouble reports that were written. As they were written, I
10 would review them based upon the B5 specification to see
11 what the requirements was. Because they did write trouble
12 reports that weren't part of our requirements
13 specification, stating that this doesn't work like such and
14 such, when we weren't even designed to have it work that
15 way.

16 So, I needed to verify everything to make sure
17 that yes, it was our problem. And also to determine whether
18 it was a hardware problem if we could, or a software problem
19 or a documentation problem.

20 After I reviewed the trouble reports, I
21 immediately gave them to the software program director, if
22 they were software error, in that related area and talked to
23 them as much as I could about what we had seen during the
24 test and what we thought was the problem.

25 They would then go off and repair those trouble

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1 reports, fix those problems using another system that we had
2 in house.

3 Q Was that going on during SQT as well as after SQT?

4 A Yes, it was. We were running SQT on the night
5 shift, so the programmers had their day shift to make the
6 corrections.

7 Q Okay, and what happened? How was the SQT, or STRs
8 resolved in this period and following the SQT.

9 A The ones that were major, that were important, we
10 corrected on the spot, created new versions and tested them
11 during SQT. There were STRs, left open at the close of SQT,
12 documentation ones that weren't critical.

13 Q Were there any majors?

14 A I don't remember. It's been too long.

15 Q Can you think of any?

16 A I can't. But again, it's been awhile.

17 Q How were the STRs finally resolved coming out of
18 that? Did there come a time when you wrote a test report?

19 A Yes. Test was part of the whole test process was
20 to write a report. And during, when you are running these
21 tests, at that time you are running them you are reporting
22 all the information that is going on. And after you record
23 all the information, then off line, at a different time, we
24 reduce all this kind of information. Part of the test
25 report is to just go through and you submit what your tests

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1 procedures are, the signed off copy from everybody, but you
2 also submit all the pounds, the data reduction that goes
3 along with it, so that everything can be verified.

4 And you go through our test director and gone
5 through and highlighted areas where there were problems or
6 where he could provide things. AND verified that this track
7 is reported, this aircraft was received. he would verify
8 that this was the message to the aircraft, and this is the
9 aircraft that we sent this information across.

10 It's a large process getting that test report out.
11 It was submitted probably early spring of 1988, and it
12 really marked the conclusion of SQT.

13 Q AND upon the submission of the test report,
14 marking the conclusion of SQT, was the software version
15 tested at SQT fielded?

16 A Yes, it was.

17 Q Where was it fielded?

18 A Whittaker delivered the program to the support
19 contractor. The support contractor people at Tyndall Air
20 Force Base. From there, they distributed it to the Air
21 Force facilities that they were to put the system at. THE
22 only ones that I know for sure that got them were Hawaii and
23 Alaska, because we said, we had some questions come in from
24 them about how to operate the new software. They had not
25 expected that it would be so different from RADIL it was

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1 replacing.

2 Q Okay. Now, let's move very quickly to another
3 category of testing. And that is what you call TAF testing.
4 Or tactical Air Force testing. When did that occur?

5 A It occurred early in 1988, not long after SQT.

6 Q Where did it occur?

7 A At in combining agencies all over the U.S. It was
8 run out of Langley Air Force Base in Virginia. And again,
9 it used the ROCC that was in Tyndall Air Force Base and the
10 RADIL had been shipped at that time. Also, used the E3
11 simulator at Tinker in Oklahoma. They also used in the
12 course of the test, they had a couple of ships out of sea
13 that the Navy let them tie into and talk to the ships as a
14 participant in that.

15 Q Now, did you attend the TAF testing?

16 A I wasn't allowed to go.

17 Q Who didn't allow you to go?

18 A It wasn't our test. The Government wouldn't allow
19 me to attend the test.

20 Q Okay. Did you at some point attend a meeting
21 after TAF testing to review what the Air Force perceived to
22 be the result of that testing?

23 A Yes. I did. We had a meeting at Tyndall Air
24 Force Base to resolve the trouble report that was written.
25 The process they follow is that everybody that is a

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1 participant test will write down the trouble reports that
2 they saw. So, they go through this terribly long, several
3 day meeting, trying to figure out whose problem it was and
4 if they are doing the problems, to reduce them to the set of
5 what they call Air Force trouble reports.

6 And then they give those all a number and you
7 evaluate those.

8 Q Was there a discussion of those consolidation
9 trouble reports at the meeting you attended?

10 A Yes, there was. They got it down to a list of, I
11 can't remember how many, trouble reports and they evaluated
12 each of the trouble reports, looked at them, to see which of
13 them were mandatory, absolutely had to be fixed, and the
14 others which were, you know, fixed when you get around to
15 it. You're not going to hurt the operation system.

16 Q Let's talk about the ones that were mandatory.
17 What did they relate to?

18 A They related to what the Air Force, what their
19 interpretation was of the interface with the E3 aircraft.
20 In just the E3 aircraft. There were not, the TAF
21 certification people did not care about the interface. They
22 were very concerned about the interface to the aircraft.
23 So, they would write a trouble report saying that you didn't
24 do this, or so, without any regard to what the agreed upon
25 requirement specification were for that particular system.

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1 Q And by that time, I gather, by the time of TAF
2 testing, by the time of 88, I gather, the B5 specification
3 had already been approved by the Air Force at CDR. Is that
4 correct?

5 A Yes, they had. They'd been approved. So, the
6 trouble reports written at TAF were for the most part ones
7 that would require us to make changes in the B5 specification
8 and take another look at why, what we could do to solve the
9 problem, to be in accordance with the standard, and yet
10 still get the interface correct. There were
11 incompatibilities between the two systems. So, there was
12 more that the RADII needed to get down than just passing the
13 information back and forth.

14 Q But they wanted it to do more than what you had
15 spelled out --

16 A If they wanted it to pass TAF certification, they
17 had to make some changes.

18 (Continued on next page.)

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1 Q Was there any vote taken at that meeting that you
2 attended with regard to whether or not the Air Force's user
3 testing, TAF testing, was successfully passed?

4 A Yes. It's customary at the end of all these
5 meetings, it ended up being arguments, to take a vote for
6 each of the people involved -- not individual people, but
7 each of their agencies that are represented -- to say
8 whether it should pass certification or not.

9 And they took a vote at that time. We obviously
10 weren't allowed to vote, but they took a vote and decided
11 that yes, they would field this system. They understood
12 why -- the problems they considered major were solved by the
13 program and they weren't detrimental to what was going on.

14 Q And the system they were testing was the system
15 that in fact got fielded. Is that correct?

16 A That's correct.

17 Q Now, what happened in the long run? Well, let me
18 step back. At any time after that meeting, did you become
19 aware that the vote of approval to field the system or vote
20 of approval for the software tape, the 87-350 tape, had been
21 rescinded?

22 A Yes. They changed their minds, which we had seen
23 throughout the whole contract anyway. But after they got
24 out of the room and got away and got to thinking about it,
25 they got into internal Air Force battles about what it

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1 should do and what it shouldn't do. None of it really
2 concerned us, it was their own little factions fighting
3 against each other to determine that no, the people at
4 Langley said you're going to do it our way and we're not
5 going to approve it unless you do, so they won out.

6 If it was changed after that, I don't know. They
7 went around so many times that it was hard to keep up with
8 them.

9 Q What happened in the long run with regard to this
10 Air Force TAF testing?

11 A In what respect? Was it run again? I mean -- it
12 was not conducted again. It was scheduled to be conducted
13 again but it takes months, even years to get on the schedule
14 for certification retest.

15 Q Did it ever get conducted again?

16 A Not while I was with the company. I mean, we were
17 set up to run certification several times and we didn't.

18 Q Now, I wonder if you could tell us -- I think
19 you've made it fairly clear with regard to the design
20 definition phase, but how did this phase, which was affected
21 by this one, differ from what you had expected going into
22 the program?

23 A It was much larger, much expanded. I mean,
24 obviously -- we incorporated new things that we had to do.
25 We expected a short test. We expected a few things to be

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1 reverified. I mean, after all, all we were doing was
2 documenting the system and upgrading to a new standard. So
3 we were going to concentrate on the differences between the
4 old standard and the new standard and beyond that we were
5 just going to touch upon the other areas just to show that
6 we didn't break it -- when we upgraded it, we didn't break
7 this other area.

8 What we ended up having to do was a very thorough
9 test in every area, areas as simple as did a track that got
10 reported by the ROCC system make it all the way out to the
11 E3 aircraft and vice versa, which were things we didn't want
12 to do that extensive of a test to verify that all identities
13 were transmitted. I mean, it ended up being a much more
14 detailed test, a test that you would use on a brand new
15 program because in a lot of respects, it ended up being a
16 brand new program.

17 Q Now, did the software changes that came out of the
18 requirements definition phase and also those that came out
19 of the testing phase have any impact in the logistics
20 documentation area?

21 A Yes, it did. The manuals -- the training -- when
22 we had a system to begin with that their people knew how to
23 operate, now we had a system they weren't familiar with. So
24 every change that we made rippled into training, rippled
25 into the manuals that told you how to operate the system.

7.

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1 Q Okay. Now, did there ever come a time when you
2 were asked to try to quantify the amount of impact in terms
3 of the time of your people that was caused by the expansion
4 and extension of the requirements definition phase and the
5 design and implementation and in-plant testing phase?

6 A Yes, there was.

7 Q When did that occur?

8 A It occurred when we were developing the claim.

9 Q The claim against TechDyn?

10 A Yes.

11 Q And will you describe for us how you became
12 involved in that activity?

13 A I was asked to define the areas of software and
14 software requirements definition and test where we had
15 exceeded doing what expected from the original contract.

16 Q Could you put us in context of how you got asked
17 to do that and what instructions you were given?

18 A I was asked by Marie Raymond and Jack Cannady from
19 the company, from Whittaker to --

20 Q I don't think -- everybody knows Marie Raymond but
21 I don't think the name Jack Cannady has come into this yet.
22 What is his position at Whittaker?

23 A Currently, he's -- I guess head of contracts --
24 I'm not sure. I've been gone a year.

25 Q At some point, Mr. Cannady will be able to

7.

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1 identify himself. What did Ms. Raymond and Mr. Cannady
2 instruct you to do with respect to the quantification in the
3 areas that you were in charge of?

4 A They asked me to sit down and write out a
5 definition of the work that was performed beyond what the
6 contract stated. And then they asked me to go into a
7 detailed definition of every area that we changed based on
8 that and the people that were involved and the period of
9 time that we did the work.

10 So what I did is I sat down and went through all
11 my records and I wrote down this is the work that I did and
12 this is the basis of the estimate that I'm putting forth and
13 what it cost us in engineering hours. So what I turned back
14 to them was an estimate of the engineering hours of the
15 names of the people that performed the work, their labor
16 category and the period of time that they performed that
17 work, as well as a statement of the work that they did.

18 Q What's the labor category? What do you mean by
19 that?

20 A The labor category is the category under which
21 they were paid and they're used to bid in a contract.
22 It's -- I'm not sure how past that to explain it. There's a
23 category that means programmer and one that means senior
24 programmer, one that means engineer, et cetera.

25 Q Reflecting different pay levels.

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1 A Yes.

2 Q I see. And so you broke out hours that you
3 identified as additional hours not only by area but also by
4 who performed it and by pay level.

5 A Yes. We had to in order to get an accurate
6 estimate of the dollars that were involved in the extra
7 effort.

8 Q Now, how did you determine whether effort was
9 "extra" or not?

10 A By what was required by the original contract. I
11 mean, obviously, everything that we put into going into the
12 reporting responsibility, digital handover -- all those
13 issues plus the meetings -- everything that was beyond what
14 we had anticipated at the beginning of the contract was
15 extra. Was not anticipate.

16 Q Okay. And so you calculated that in the areas
17 that you were responsible for and then what did you do with
18 the determinations you made of added hours, added work
19 hours?

20 A I took all the hour information and because I have
21 the time periods that it was performed on, I divided it
22 across the period of time.

23 I turned in labor sheets or whatever you want to
24 call them that show hours in months based on the category of
25 the person that performed the work. I turned that in to

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1 Jack and Marie and they used that information to turn it
2 into dollars.

3 MR. WORK: Your Honor, just let me preface this by
4 saying that both Ms. Raymond and Mr. Cannady will be with us
5 but we have to focus on one witness at a time.

6 BY MR. WORK:

7 Q How did they turn your hours into dollars?

8 MR. BOEHLERT: Object, Your Honor. That's hearsay
9 and beyond the knowledge of this witness.

10 JUDGE BROWN: I sustain the objection. If she
11 turned it over to someone else and they did something with
12 it, we can hear from them on what they did.

13 MR. WORK: All right. Well, at that point, then,
14 Your Honor, I have no further questions.

15 JUDGE BROWN: We'll take a 15-minute recess.

16 (Brief recess.)

17 BAILIFF: Remain seated and come to order.

18 JUDGE BROWN: Okay. Are we ready?

19 MR. WORK: Yes, Your Honor.

20 MR. BOEHLERT: I'm sorry, Your Honor. My
21 documents -- they just ran them down to copy a couple of
22 them and they've got the whole stack of them.

23 If I could have about one more minute -- I've sent
24 somebody down to get them. I'm sorry.

25 JUDGE BROWN: We can't start until they come?

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1 MR. BOEHLERT: I'm sorry. I'd like to have them.
2 I think they'll be here in one second.

3 MR. RIDDLES: It'll be faster than one second -- I
4 mean slower than one second. It might be a minute. Do you
5 mind, Your Honor?

6 JUDGE BROWN: What did you say?

7 MR. RIDDLES: If we could just get those, we'll go
8 quickly.

9 (Pause.)

10 JUDGE BROWN: Bring the jury in and we'll save
11 some time.

12 (Pause while jury is seated.)

13 JUDGE BROWN: Okay. We're ready to go.

14 CROSS-EXAMINATION

15 BY MR. BOEHLERT:

16 Q Good afternoon, Ms. Justis. When did you first
17 become involved in this project?

18 A In the beginning of the project.

19 Q Were you part of the contract formation part of
20 this project?

21 A Only in a small part. I mean, I was there during
22 the proposal but I wasn't involved, obviously, in any of the
23 contract negotiations.

24 Q What did you do with respect to the proposal?

25 A Only provided estimates. Software estimates.

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1 Q Who did you provide those to?

2 A I don't remember.

3 Q Were you part of a team to do that?

4 A Yes.

5 Q Did you have a document or any specifications you
6 were referring to to do that?

7 A Since we were only going to make minor upgrades to
8 the TADIL-A interface, we had an idea of what those upgrades
9 were.

10 And, of course, the rest of the things we were
11 going to do, the documentation, was something that we knew
12 what we needed to do. We had the military standards to
13 govern us.

14 Q Well, let's talk about the upgrades. How did you
15 get an understanding of what the upgrades would be?

16 A From my contacts at other military bases.

17 Q So was it just word of mouth that you were
18 estimating?

19 A We had to rely on that because we couldn't get a
20 copy of the JCS PUB 10 that we needed.

21 Q So you didn't have a copy of the JCS PUB 10 to
22 make an estimate. Is there anything else you didn't have?

23 A That's all we understood the contract to be, was
24 the upgrade to the JCS PUB 10 and the documentation. So at
25 the onset of the program, that was all that we did not have

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1 that we thought we needed.

2 Q You're talking now about the time that a bid is
3 being put together for this project. Is that correct?

4 A That's correct.

5 Q Did you request a copy of JCS PUB 10?

6 A We requested one. I don't remember if it was at
7 the proposal time or not but we requested one.

8 Q Who did you request it from?

9 A I requested one from our contracts people and
10 then they in turn, I suspect, requested it from the
11 Government.

12 Q But you don't know that they did.

13 A I know that it came up in several meetings about
14 JCS PUB 10 and we said we still don't have one, we'd like a
15 copy of JCS PUB 10. So at least in the exchange in some of
16 the meetings they knew that we didn't have a JCS PUB 10.
17 These are the B5 meetings.

18 Q Okay. But at the time of estimating, JCS PUB 10
19 prescribed the upgrades that were going to be made to this
20 system. Is that correct?

21 A That's correct.

22 Q And those upgrades involved, to a large degree,
23 the issues of reporting responsibility, digital handover,
24 correlation, is that correct?

25 A No. Those issues are a perceived requirement out

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1 of JCS PUB 10. The updates that they wanted us to do was to
2 the current -- where they made changes to the message
3 standards so that your interface changed.

4 Now, what you did internally in your program,
5 which is what the issues of R squared and digital handover
6 and correlation involved, is what each system decides on
7 their own.

8 They dictate what you have to do to interface to
9 another agency. The PUB 10 doesn't dictate what you do
10 internally. And those issues are things that a system does
11 internally in their system.

12 Q Okay. So I want to get back, though, to see what
13 you relied on. So you knew there were going to be upgrades
14 but your understanding was just basically word of mouth as
15 to what the upgrades would consist of.

16 A We had a copy of JCS PUB 10. It wasn't to the
17 issue of the one they required. I have enough contacts at
18 other military bases to get those documents. I could see
19 them under other contracts. But we didn't have one
20 physically in house that we could work from.

21 It was enough to give us an idea of what we were
22 looking at software-wise for changes.

23 Q Is that how you came upon the decision that there
24 would be a 5 percent upgrade?

25 A Yes, it is.

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1 do recognize some of the trouble reports.

2 BY MR. BOEHLERT:

3 Q I ask you to turn to trouble report number 87-895.

4 A Okay.

5 Q Do you recognize that trouble report?

6 A Not offhand. I mean -- it's been a number of
7 years.

8 Q You see there it says, "When system time goes from
9 2400 to 0000 the DLC crashes." What does that mean?

10 A That means that when the change is made from
11 midnight to one minute after midnight, the data link
12 computer stops.

13 MR. WORK: Objection, Your Honor. This hasn't
14 been offered into evidence yet.

15 JUDGE BROWN: I don't recall it being offered. Is
16 it already in evidence?

17 MR. BOEHLERT: I'm not sure if this one is or not.
18 I don't think so.

19 (Pause.)

20 JUDGE BROWN: What number is it?

21 MR. BOEHLERT: 1036.

22 BY MR. BOEHLERT:

23 Q Do you recognize the signature on the cover page
24 of this document?

25 A Yes, I do.

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1 Q And whose signature is it?

2 A Marie E. Raymond.

3 Q And is this on Whittaker stationery?

4 A It appears so. Yes.

5 Q And you do recognize some of the trouble reports
6 contained in this document.

7 A Yes, I do. I said that I didn't recognize the
8 letter, having read it before, but I do recognize some of
9 the trouble reports.

10 MR. BOEHLERT: Your Honor, I move Plaintiff's
11 Exhibit 1036 into evidence.

12 JUDGE BROWN: Any objection?

13 MR. WORK: No objection, Your Honor.

14 JUDGE BROWN: 1036 is received.

15 (The document referred to, having
16 been previously marked for
17 identification as Plaintiff's
18 Exhibit 1036, was received in
19 evidence.)

20 BY MR. BOEHLERT:

21 Q Going back to that trouble report, 87-875, you
22 mentioned many of these STRs were minor but when a system
23 crashes, that's a major problem, isn't it?

24 A I didn't testify that they were minor. I said the
25 ones left over unfixed after SQT were. And I said that

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2265

1 there are some that are major and there are some that are
2 minor. I can turn to several pages before and find you a
3 minor one.

4 Q Okay. But this one --

5 A This one is considered a major one. Yes. And we
6 gave our attention to it right away and fixed it.

7 (Pause.)

8 Q How quickly were all of the STRs from the SQT
9 fixed?

10 A The ones that were critical that we could
11 duplicate we fixed immediately. Some of them that we had
12 difficulty duplicating would take a little bit of time. I
13 mean, obviously you can't correct something if you can't get
14 it to happen again. We worked them off as quickly as we
15 could.

16 Q So when was the last one fixed?

17 A I'm sorry. I have no idea. You mean the very
18 last one that was even documentation?

19 Q Yes.

20 A I'm sorry. I don't know. Without my records, I
21 can't tell you.

22 Q Could it have been in 1987 or 1988?

23 A It could have been at any time.

24 Q It could have been later than that -- 1989?

25 A It could have been. I don't remember.

**TRIAL TESTIMONY OF
RUFUS THORNTON - RECALLED**

7.

RUFUS THORNTON - DIRECT EXAMINATION

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1 JUDGE BROWN: Mr. Thornton was previously sworn in
2 and may take the stand.

3 MR. WORK: Your Honor, I have handed Mr. Thornton
4 a copy of his deposition for convenience purposes.

5 MR. BOEHLERT: Your Honor, I object to the counsel
6 giving him a deposition. There are no questions pending and
7 no reason he should have a deposition.

8 MR. WORK: I will take it away from him.
9 Whereupon,

10 RUFUS THORNTON
11 having previously been duly sworn, was recalled as a witness
12 herein and was reexamined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WORK:

15 Q Mr. Thornton, is it correct to say that software
16 and hardware development for the PDFA did not impact
17 progress on the CFA until the final system level test?

18 A I think that's a fair statement, yes, sir.

19 Q Is there any overlap between the CFA and the PDFA
20 portions of the contract?

21 A Is there any overlap?

22 Q Yes.

23 A Yes, sir, there's some overlap.

24 Q And what is it?

25 A At system level testing, the integration of the

RUFUS THORNTON - DIRECT EXAMINATION

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1 PDFA and CFA has to, you know, come together in order to
2 conduct al of the system level requirements.

3 Q So the overlap is only at the point of
4 integration, is that correct?

5 A Yes, sir, I believe that is correct.

6 Q I should have, and I apologize for not -- During
7 the period from December 1986 until the present, with some
8 period that you were gone, you were project manager for
9 TechDyn on this project, is that correct?

10 A That's not correct.

11 Q Excuse me, I misspoke. The project engineer.

12 A yes, sir.

13 Q When was the point of integration that you just
14 referred to?

15 A The system level test was just formally conducted
16 in Iceland in march 1991.

17 Q And prior to that time was there any time at which
18 the PDFA and CFA were ever brought together int his program?

19 A Yes, sir.

20 Q When was that?

21 A The PDFA test sweep and the CFA test sweep were
22 brought together in test assembly in Carlsbad, California
23 during April 1988.

24 Q DId the correction of TAF STRs effect the CFA
25 portion of the contract?

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1 A I don't believe so, no, sir.

2 Q Was the 18 month schedule a realistic schedule for
3 the CFA portion of the contract?

4 A Yes, sir, I believe 18 months would be reasonable.

5 Q Then why did TechDyn fail to complete its part of
6 the contract within the schedule?

7 A A number of factors, I believe, counsellor.

8 Q What were they?

9 A The delivery of the data terminal set, for one, is
10 the first issue.

11 Q That was the modified data terminal set that was
12 being development in another program called the Peace Shield
13 Program?

14 A That's correct, sir.

15 Q What else?

16 A There were other factors associated with, and this
17 is later on into the program, the finalization of the remote
18 control element, which I believe I testified to earlier.

19 Q What other factors?

20 A Those were the major factors, sir. I'm sure a
21 number of other minor issues.

22 Q There was CFA manual preparation?

23 A Yes, sir.

24 Q Operator maintenance manual requirements?

25 A Yes, sir.

RUFUS THORNTON - DIRECT EXAMINATION

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1 Q Those would not have been met in the 18 month
2 schedule, is that correct?

3 A They would not have been met in the 18 month
4 schedule in the context of the way I answered that. The
5 requirement was to redesign the RCE in which the resulting
6 change in hardware that was utilized would have effected
7 preparation of manuals.

8 Q Did the Air Force envision the ICCE program as a
9 development program?

10 A The PDFA software and the CDFA software were
11 indicated as developmental requirements, yes, sir.

12 Q But the amount of development envisioned at the
13 start of the program was not nearly as large as it turned
14 out to be, is that correct?

15 MR. BOEHLERT: I object, Your Honor. He is asking
16 this witness to testify on what the Air Force understood.

17 JUDGE BROWN: I don't hear that in the question.
18 Say the question again. Maybe I missed it.

19 MR. BOEHLERT: Going back to a prior question,
20 this is a follow on.

21 MR. WORK: The amount of development anticipated
22 by the parties at the beginning of the program, including
23 TechDyn is not nearly as large as it turned out to be, is
24 that correct?

25 MR. BOEHLERT: Object, Your Honor, that's vague.

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1 JUDGE BROWN: I overrule your objection. If you
2 can't answer it, tell us you cannot.

3 THE WITNESS: That would be I believe, I could
4 only give you an assessment. I could not give you a factual
5 answer to that, sir.

6 BY MR. WORK:

7 Q Okay, give me your assessment.

8 A I believe it would have been a greater development
9 effort than originally anticipated, based on the extensive
10 coordination necessary to finally arrive at a set of
11 development specifications, prime and development
12 specifications.

13 Q It is your position, is it not, sir, that you
14 don't have a developmental program that is starting
15 essentially at first base, trying to get to home plate in
16 six months time, is that correct?

17 A Those are my words, yes, sir.

18 Q In your view, was the amount of development work
19 that the Air Force required realistic in light of the
20 schedule for the ICCE contract?

21 A Again, that's my personal assessment, sir, I don't
22 believe so.

23 Q Did the ICCE software effort turn into a true
24 development effort?

25 A I, I believe it did, yes, sir.

RUFUS THORNTON - DIRECT EXAMINATION

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1 Q Now, let's turn to the RCE. In the case of the
2 RCE, was it clear which part, TechDyn or Whittaker, had
3 responsibility for specific tasks?

4 A In my direct involvement with that aspect, it was
5 not clear in all instances among the parties involved.
6 Myself, the, my counterpart in software engineering, the
7 personnel involved on a working basis, there were constant
8 differences of opinion as to who had responsibility for
9 what.

10 Q Was there a lack of clarity in the prime contract
11 statement of work?

12 A I am not privy, was not knowledgeable of a
13 specific statement of work developed to cover that
14 requirement.

15 Q Did the lack of clarity in the statement of work
16 cause a delay in the RCE?

17 A I don't believe a contract statement of work
18 materially contributed to the development of the RCE, or the
19 problems relative to the development of the RCE.

20 Q I am going to hand you your deposition, please.
21 Do you recall being deposed by Mr. Swinnent in October 1989?

22 A Yes, sir.

23 Q Will you turn to page 63, please?

24 (Pause.)

25 Q Line four. Do you see there the question, and

RUFUS THORNTON - DIRECT EXAMINATION

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1 where was that lack of clarity in the statement of work, or
2 in the specifications, where?

3 A Yes, sir.

4 Q And what was your answer?

5 A My answer, I would have to say that it would
6 probably reside in a statement of work to the subcontractor.

7 Q Will you go on.

8 A If I may, you know, site an example, you asked me
9 earlier in terms of the selection of RCE, who selected it,
10 who was responsible for selecting it. And I told you I
11 didn't know who was responsible for selecting it. It would
12 appear that that kind of definition would have been provided
13 somewhere, that TechDyn would be responsible for selecting
14 and providing the CFA software and specific terminology or
15 4C would select the hardware, RCE hardware, to be provided
16 by TechDyn. That kind of language to me, would have
17 clarified a lot of the problems as to finger pointing as to
18 it your equipment, no, it's your equipment.

19 Q Would it have provided a lot of those problems --
20 would it have avoided a lot of those problems that occurred?

21 A I believe it would have.

22 Q What was the result of the lack of specificity in
23 the contract? Did it cause delays, extra effort to be
24 expended, disputes?

25 A All of the above, all of the foregoing statement.

RUFUS THORNTON - DIRECT EXAMINATION

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1 Q It caused arguments and disputes?

2 A Yes. That's why we're in this court, one reason.

3 Q It caused a lot of grey hairs?

4 A Yes, sir.

5 Q Did TechDyn experience any problems with the
6 modems for the RCE?

7 A YES, sir.

8 Q And the problem was determined to be in the codex
9 modem, was it not?

10 A YES, sir.

11 Q An that codex modem is not even part of the RCE,
12 is it?

13 A It was utilized for the RCE, yes, sir.

14 Q But, it was na external interface to the RCE,
15 wasn't it?

16 A Well, I agree with that, yes, sir.

17 Q It was part of the general CFA hardware?

18 A Yes, sir.

19 Q And the problem with the modem was that the modem
20 would not maintain or re synchronize itself of conductivity
21 for some reason, would not maintain, was not maintained with
22 a similar mode, is that correct. I'll strike that, okay.

23 Is it true that no amount of internal switching
24 settings on various cards, the modem would cause that modem
25 to perform satisfactorily and subsequently TechDyn concluded

RUFUS THORNTON - DIRECT EXAMINATION

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1 that a new modem would have to be substituted?

2 A That's correct, sir.

3 Q Did the hardware contribute in any way to the
4 timing problem associated with the RCE?

5 A Which hardware?

6 A Did the hardware provided by TechDyn, both the RCE
7 hardware and the CFA hardware that was externally interfaced
8 to the RCE cause, contribute to the timing problem
9 associated with the RCE?

10 A I have seen some analysis of supposedly noise
11 being generated relative to switches. Noise being
12 introduced onto the circuit that allegedly caused the
13 necessity -- caused the requirement to re synchronize, and
14 yes, it did effect timing.

15 Q AND when you say allegedly, an analysis was
16 provided to TechDyn by Whittaker, was it not?

17 A Yes, sir.

18 Q Indicating the results of its investigation of the
19 timing problem?

20 A Yes, sir.

21 Q Did that analysis isolate the timing problem in
22 CFA hardware that was not part of the RCE, did it not?

23 A Sir, I think we are trying to split fine hairs.
24 The interface that you spoke of, the modem, yes, was part of
25 the overall communications circuitry conductivity hardware.

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1 The switches also are part of the RCE. The -- All of these
2 items interface at some point. Okay, the RCE is defined by
3 the hardware used specifically for remote control. The
4 switches, the Z150, the UHF interface units, there were some
5 other items I can't specifically recall right now.

6 But, if the switch is determined to be the source
7 of noise, then it is part of the RCE.

8 Q Is it true, sir, that the switches also external
9 interfaces to the RCE and not part of the RCE as it was
10 defined in the B spec of this program?

11 A No, sir, it was not.

12 Q you are saying that the switches were part of,
13 defined as part of RCE in the B spec?

14 A Yes, sir. I believe that to be a true statement.

15 Q And who supplied the switches?

16 A Those switches were also supplied by TechDyn from
17 IDS, International Data Sciences Corporation.

18 Q Okay. Now, sir, did the Air Force ever indicate
19 to you that it would accept the original RCE as it then
20 exited, notwithstanding the timing delay?

21 A They never indicated it to me, no, sir. Not
22 personally

23 Q But they indicated it to TechDyn and you became
24 aware of it, isn't that correct, sir?

25 A That's correct sir.

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RUFUS THORNTON - DIRECT EXAMINATION

2282

1 Q But that solution got lost in the shuffle, did it
2 not?

3 A That offer sir was an offer exclusive of the RCE
4 requirement called for under the contract. I think as I
5 stated to Mr. Swinnert, the offer was made relative to
6 payment for cost incurred, the software had in fact
7 undergone some demonstrations, successful demonstrations,
8 and it didn't quite work.

9 Q Sir, is it not true that the Air Force's
10 willingness, the solution of the Air Force's willingness to
11 accept the RCE as it then existed, got lost in the shuffle?

12 A I believe I made that statement, yes. I guess it
13 got lost in the shuffle. It never was implemented to my
14 knowledge.

15 (Continued on next page.)

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RUFUS THORNTON - DIRECT EXAMINATION

2283

1 Q What was the Grimm Company?

2 A The Grimm Company was a company based in New
3 Jersey that we acquired -- we, TechDyn acquired a
4 conversion, modem conversion piece of hardware that allowed
5 us to interface the UHF control signals from a remote
6 location out to the radios at the distant ground entry
7 stations.

8 Q And is it true that -- and this was for the new
9 mechanical RCE, was it not?

10 A That's correct, sir.

11 Q And you were ordering modems from Grimm for this
12 new mechanical RCE, correct?

13 A It's defined as a modem. Yes, sir.

14 Q And Grimm failed to perform on schedule. In fact,
15 it was months or years late, was it not, in getting its
16 hardware and documentation to you?

17 A It was months late. Yes, sir.

18 Q What caused the delay in Grimm's performance?

19 A Grimm gave the company, TechDyn, and the
20 Government representatives a briefing. They had an item
21 off-the-shelf they had previously marketed. However, they
22 were in the process of repackaging that unit or they planned
23 on repackaging that unit to a different configuration. They
24 implied that they had another customer who was interested
25 and that they were going to repackage it and they promised

RUFUS THORNTON - DIRECT EXAMINATION

2284

1 or forecasted a five-month lead time from receipt of order
2 for the production of the required units for the ICCE RCE
3 requirement.

4 Apparently the salesperson who was giving this
5 presentation either did not realize the engineering impact
6 or difficulties associated with the repackaging or the lead
7 time for certain internal components for which they had to
8 go out and acquire and subsequently there were some delays.

9 Q And, indeed, instead of delivering within five
10 months, it was well over a year that they delivered the
11 hardware and a good deal longer that they delivered the
12 documentation. Is that not true?

13 A Essentially, sir. Yes, sir.

14 MR. WORK: Okay. Let's talk about some other
15 causes of delay in this program.

16 (Pause.)

17 MR. WORK: There is a chart book in front of you,
18 Mr. Thornton and I would ask you to turn to -- you'll have a
19 hard time seeing this -- to chart 21 in there.

20 BY MR. WORK:

21 Q And look at the second line. The originally
22 contemplated delivery of the modified DTS, the DTS that the
23 Air Force was modifying in the Peace Shield program was in
24 June of 1986. Is that correct?

25 A That's what your chart says, sir. I was not with

RUFUS THORNTON - DIRECT EXAMINATION

2285

1 the company or the contract in 1986.

2 Q Okay. You were with the company in 1987 when the
3 modified DTSs got delivered in June. Isn't that correct?

4 A That's correct, sir.

5 Q And isn't it true that you couldn't hold an SQT
6 until you had the modified -- not only had the modified DTS
7 but changed the software, the PDFA software, to accommodate
8 that modified DTS?

9 A I believe that's a correct statement, sir.

10 Q Okay. Now, sir, what was Mitre's role in the
11 program?

12 A To my knowledge, sir, Mitre was technical advisor
13 to the Air Force. It's technical engineering arm, if you
14 will, for oversight of contracted issues.

15 Q And is it true that Mitre's influence with the Air
16 Force in certain cases was far in excess of what was
17 necessary to the program execution?

18 A I don't know that I could answer that, sir.

19 Q Would you turn to page -- the bottom of page 182,
20 top of 183, please, and read the answer that starts on line
21 22 of 182?

22 A Which line are we doing now, sir?

23 Q Line 22, please, sir.

24 A Okay. My answer was "I think or I feel that the
25 Mitre involvement or the Mitre influence perhaps in certain

RUFUS THORNTON - DIRECT EXAMINATION

2286

1 cases was far in excess of what was necessary to the program
2 execution."

3 Q Thank you. Now, sir, were you in meetings where
4 Mitre representatives said they did not care what the
5 contract said?

6 A No, sir. I was never in a meeting where that
7 statement was made.

8 Q But you can visualize that a certain member in
9 Mitre -- you can visualize a certain member in Mitre using
10 that statement, can't you, sir?

11 MR. BOEHLERT: Object, Your Honor.

12 JUDGE BROWN: I sustain the objection to what he
13 can visualize.

14 BY MR. WORK:

15 Q Well, turn to page 184, sir, and you can just read
16 to yourself the answer at line 5 and then I'll ask you what
17 you were referring to there. Excuse me -- line 14. I'm
18 sorry. I misspoke.

19 MR. BOEHLERT: Object, Your Honor.

20 JUDGE BROWN: I sustain the objection to asking
21 him to read something to himself and asking him what he was
22 referring to. The objection is sustained.

23 BY MR. WORK:

24 Q Mr. Thornton, was it TechDyn's view that the
25 Government had imposed engineering drawing requirements that

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2287

1 exceeded the scope of the contract?

2 A Yes, sir, I believe there were.

3 Q Did TechDyn expect to have to provide drawings to
4 the level ultimately required by Government?

5 A At the time of the contract initiation, I don't
6 believe that the assessment of the drawing requirement was
7 clearly done.

8 Q And, in fact, the Government required a level of
9 drawings, in particular CFA drawings, that was far and
10 beyond what anyone at TechDyn anticipated. Is that not
11 correct, sir?

12 A Yes, sir, I believe that's true.

13 Q With regard to testing, at what point did
14 Whittaker provide acceptable software?

15 A At what point did Whittaker provide acceptable
16 software?

17 Q Yes, sir. And by "acceptable" I mean acceptable
18 specifically under the ICCE prime contract, under the terms
19 of the ICCE prime contract.

20 A Whittaker passed a software qualification test in
21 December of 1987 -- December of 1987. That software was
22 utilized but in terms of specifically under the terms of the
23 contract, I don't believe the software has been accepted to
24 date.

25 Q Is it not true, sir, that from your perspective,

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2288

1 the 87-350 software that passed software qualification
2 testing in December of 1987 met the general requirements of
3 the contract?

4 A I believe it met the general requirements of the
5 contract. Yes, sir.

6 Q And is it not your view, sir, that the Air Force
7 would not have passed -- and they basically stated they
8 would not pass the SQT, if they did not feel the software
9 had a reasonable chance of passing the TAF certification
10 test.

11 A That's a true statement. Yes, sir.

12 Q And is not true, sir, that the SQT was considered
13 to have been successfully achieved.

14 A The SQT was conditionally -- yes. Yes, sir. It
15 was achieved.

16 Q Is it not true that the SQT was considered to have
17 been successfully achieved?

18 A It was conditional, sir.

19 Q Sir, would you turn to page 87, please, of your
20 deposition? Or, excuse me -- 88.

21 A All right.

22 Q And would you read the answer you provided at line
23 15, please?

24 A Page 88?

25 Q Eighty-nine. I'm sorry.

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2289

1 A Line 15?

2 Q Line 15 and 16.

3 A "It was considered -- the SQT was considered to
4 have been successfully achieved."

5 I think the report that went in cited the STR as
6 outstanding and the condition for acceptance was predicated
7 on finalizing some of those STR fixes. But essentially the
8 SQT, the 87-350 software considered acceptable.

9 Q Now, sir, was it unusual in a program as complex
10 as the ICCE program turned out to be for there to have been
11 retests?

12 A No, sir. I don't think so.

13 Q In fact, it's what you would expect in something
14 that developed into a developmental program. Isn't that
15 correct?

16 A That is correct.

17 Q Were there problems with the availability of test
18 equipment that was to be provided by the Air Force in
19 connection with Whittaker's software testing?

20 A Test equipment? No, sir.

21 Q Would you turn to page 145, please? And read the
22 answers that you provide there starting at line 16.

23 A "And the E-3 simulator at Tinker Air Force Base
24 could only be scheduled in certain timeframes. It was there
25 to support all kinds of TADIL-A test requirements, JTAO

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2290

1 testing requirements." JTAO is J-T-A-O or joint test --
2 some organization -- I don't remember.

3 Q Did the changes in Whittaker's corporate
4 structure affect TechDyn's performance?

5 A I didn't deal at the corporate level, sir. I
6 don't recall exactly what kind of answer I may have given at
7 that time.

8 Q All right, sir. Would you turn to page 130,
9 please? And read your answer starting at line 7 on page
10 130.

11 A Line 7: "I mean, the change in the personnel
12 didn't help continuity at all. I'll put it in that terms.
13 Impact-wise, it was just inconvenience more than anything
14 else, I guess."

15 Q Now, sir, did you ever ask within TechDyn for
16 additional help -- let me strike that. You came to this
17 program just at the end of '86. Is that correct?

18 A The very last days of '86. Yes, sir.

19 Q And Mr. Johnson left in March of '87. Is that
20 correct? Excuse me -- I'm behind a year. He left in March
21 of '88.

22 A That's correct.

23 Q Now, sir, did you ever ask within TechDyn for
24 additional help getting work done on your side of the ICCE
25 program?

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2291

1 A Yes, sir.

2 Q And, in fact, you expressed from time to time a
3 need for somebody with more than two feet and a pumpkin on
4 their shoulders, did you not?

5 A I think I made that statement, sir.

6 MR. WORK: Okay. No further questions. Thank you
7 very much.

8 JUDGE BROWN: Cross-examination?

9 MR. BOEHLERT: Just a few questions.

10 CROSS-EXAMINATION

11 BY MR. BOEHLERT:

12 Q Good afternoon, Mr. Thornton.

13 A Hello, sir.

14 Q You mentioned earlier a problem with the Kodex
15 modem. Is that correct?

16 A Yes.

17 Q And in what timeframe did that occur?

18 A That was first brought to my attention in the
19 January 1988 timeframe.

20 Q Do you know whether that problem was remedied?

21 A It was remedied by change out of the modem.

22 Q When was that done?

23 A That was effectively accomplished the later part
24 of April of '88.

25 Q Do you know when Whittaker stopped work on the

RUFUS THORNTON - CROSS EXAMINATION

2292

1 remote control?

2 A Yes, sir. July 8.

3 Q Of what year?

4 A 1988.

5 Q And do you know when the default termination took
6 place?

7 A The default termination took place in 1989. I
8 don't remember the precise date. I believe it was either
9 February or March. I don't remember exactly.

10 Q So that Kodex modem wasn't an issue at all in the
11 default, was it?

12 MR. WORK: No foundation, Your Honor.

13 JUDGE BROWN: No foundation?

14 MR. WORK: He hasn't established a foundation that
15 Mr. Thornton knows anything about the reasons for the
16 purported default termination.

17 JUDGE BROWN: Well, I think that there was
18 considerable -- I think that was a subject of his testimony
19 when he was here before so I overrule the objection.

20 MR. WORK: May I explain myself, sir?

21 JUDGE BROWN: Yes.

22 MR. WORK: The default termination was issued on
23 January 23, 1989 in a letter signed by Mr. Rosen. And there
24 are other documents indicating the decision was made at some
25 point before that to issue that letter. And the question I

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2293

1 think was asked that I am saying there's no foundation on is
2 whether Mr. Thornton was consulted with respect to that
3 default termination and the reasons for it.

4 JUDGE BROWN: I'll overrule the objection.

5 (Continued on next page.)

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RUFUS THORNTON - CROSS EXAMINATION

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1 BY MR. BOEHLERT:

2 Q The Kodex modem -- was that an issue in the
3 default, whether or not it was defective?

4 A It was not an issue from the TechDyn perspective.
5 No, sir.

6 Q You mentioned switches. Was that correct?

7 A Yes, sir.

8 Q And the fact that the switches being used in this
9 procurement made noise? Is that something that you
10 testified to?

11 A Yes, sir.

12 Q Is it uncommon for switches to make noise?

13 A No, sir. This not a solid state device. By solid
14 state, I mean it's not electronic switching. This is
15 mechanical read relays and those things make noise.

16 Q Do all switches make noise?

17 A Well, all mechanical switches. Yes, sir.

18 Q And were these mechanical switches?

19 A Yes, sir.

20 Q And how long had these switches been involved in
21 the RCE development process?

22 A Since -- well, when I came on the program, they
23 were there. In '86 some time they were acquired. The PDR
24 of December '86 specifies these particular items.

25 Q Who was developing the software to make these

RUFUS THORNTON - CROSS EXAMINATION

2295

1 switches work?

2 A 4C/Whittaker.

3 Q You mentioned the effect of modified DTSS or data
4 terminal sets on testing. Mr. Thornton, could testing occur
5 with the unmodified data terminal sets?

6 A I can't state from my personal understanding of
7 the technical details whether or not that would in fact be
8 possible. However, we did have documentation in hand from
9 4C which indicated that that was a work around option, that
10 it could be tested with the B1 data terminal set.

11 Q So it was unnecessary, then, to have the modified
12 DTS for SQT.

13 A It would have required some waivers, obviously.
14 That would not have been the system level A-spec
15 configuration.

16 Q But could those waivers have been obtained if
17 necessary?

18 MR. WORK: Objection, Your Honor. That asks for
19 speculation.

20 JUDGE BROWN: Sustained.

21 BY MR. BOEHLERT:

22 Q On that chart, it shows SQT being done in
23 September or December of 1987 and delivery of the data
24 terminal sets in June of 1987. Mr. Thornton, do you know
25 whether Whittaker was ready for the SQT test as of June

RUFUS THORNTON - CROSS EXAMINATION

2296

1 1987?

2 A No, sir, they were not ready.

3 Q Why not?

4 A The test procedures associated with the conduct of
5 the software qualification test had not been approved at
6 that time. There was another test event that had to be
7 conducted prior to the software qualification test, a CPT&E
8 or computer program test and evaluation or a performance
9 qualification test. There were some other tests that had to
10 be conducted prior to the software qualification test.

11 Q The DTSSs didn't hold that up, did it?

12 A To my knowledge, I don't know, sir. I don't
13 believe so.

14 MR. WORK: Objection. Move to strike the answer
15 because he obviously doesn't know. He said he didn't know
16 and then he said "I don't believe so."

17 JUDGE BROWN: I'll overrule the objection. You
18 can inquire into his level of knowledge if you want on
19 redirect.

20 BY MR. BOEHLERT:

21 Q Mr. Thornton, based on your experience in the
22 project, have you been able to form a conclusion as to what
23 the principal cause for delay on this project was?

24 MR. WORK: Objection. He's asking for an opinion.

25 JUDGE BROWN: And why is that a bad thing?

RUFUS THORNTON - CROSS EXAMINATION

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1 MR. WORK: Because he's not qualified as an
2 expert. He's asking for opinion testimony and he's not
3 qualified as an expert.

4 JUDGE BROWN: I'll overrule the objection. I
5 don't think it's the type of opinion ordinarily gotten from
6 an expert. I think he as the project engineer could have
7 formed such an opinion. If he has, we will receive it as
8 the opinion of the project engineer and the jury can give it
9 the weight they wish.

10 BY MR. BOEHLERT:

11 Q Have you been able to form any conclusion?

12 A Would you state the question precisely so I'll
13 make sure I understand what you're asking?

14 Q Okay. Have you been able to form a conclusion as
15 to the principal cause for delay in this project?

16 A That's very broad. There are -- I think I've made
17 it clear to counsel for defense and yourself as well that
18 there is no one thing that caused delay.

19 Q Are you aware of any Whittaker actions that
20 delayed the project?

21 A Yes, sir.

22 Q What are they?

23 A Well, essentially, the software development --

24 MR. WORK: Your Honor, it's beyond the scope of
25 the direct.

RUFUS THORNTON - CROSS EXAMINATION

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1 JUDGE BROWN: I'll overrule the objection. I
2 don't find it to be.

3 You can answer the question.

4 THE WITNESS: The software development process, as
5 we have indicated -- well, that took longer than the
6 contracted -- original contract due date. The extended
7 timeframe for receipt of the data terminal sets added delay.
8 the development of the remote control element and the
9 problems associated with that contributed delay.

10 I can't say I can place all of these in the
11 Whittaker sphere of influence or responsibility but those
12 are the three most critical things that affected the
13 completion of this program.

14 BY MR. BOEHLERT:

15 Q Which of those did Whittaker have responsibility
16 for?

17 MR. WORK: Your Honor, he's asking a question
18 based on contractual knowledge without foundation.

19 JUDGE BROWN: Overrule the objection.

20 THE WITNESS: They were contracted to develop the
21 RCE design. They were contracted to develop the PDFA
22 software against the contracted requirements. They were
23 under contract to procure the modified data terminal sets
24 from Magnavox.

25 MR. BOEHLERT: Okay. Thank you very much, Mr.

RUFUS THORNTON - REDIRECT EXAMINATION

2299

1 Thornton.

2 MR. WORK: Your Honor, I only have a few more
3 questions and then we could let Mr. Thornton go.

4 JUDGE BROWN: Okay. Go ahead.

5 MR. WORK: In fact, we're prepared to go as long
6 as you'd like.

7 JUDGE BROWN: Well, I don't want to go -- I
8 wouldn't like to go much longer.

9 MR. WORK: Okay.

10 REDIRECT EXAMINATION

11 BY MR. WORK:

12 Q Isn't it true with regard to the RCE, Mr.
13 Thornton, that the B-spec submitted to the Government by
14 TechDyn in this program defined the RCE as consisting of the
15 following equipments: (a) master control unit; (b) remote
16 control unit; (c) UHF control unit?

17 A There are different B-specs, sir. If you are
18 dealing with the software specification, 1498 I believe it
19 is, that would probably be what it would be defined as.

20 Q And the switches that you were referring to are
21 not included in any of those elements. Isn't that correct?

22 A In what you just gave me, no, sir. The master
23 control unit is the Z150 computer that's located at the
24 master site. The RCU is the remote control computer located
25 at the ground entry stations and the UHF interface device is

RUFUS THORNTON - REDIRECT EXAMINATION

2300

1 the interface between that remote RCU and the radio.

2 Q You're aware, sir, that Whittaker did a fairly
3 extensive investigation in the spring and into the early
4 summer of 1988 to determine what was causing this timing
5 problem in the switching from one remote station to another.
6 Isn't that correct?

7 A Yes, sir. There was indication that that was
8 performed.

9 Q And, in fact, it was performed in a written
10 analysis, wasn't it?

11 A I recall seeing an analysis or a memorandum
12 prepared by Mr. Ken Turry to that effect. Yes.

13 Q And isn't it true that TechDyn never performed any
14 written analysis in this period to determine what was
15 causing problems in the timing of switching from one remote
16 radio station to another?

17 A It wasn't necessary to perform a written analysis,
18 sir.

19 Q You never did it, did you?

20 A No, sir.

21 Q And nobody at TechDyn did it.

22 A To my knowledge, no one. No.

23 Q And TechDyn never hired anybody to come in and
24 analyze what was causing this problem, did they?

25 A To my knowledge, no.

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RUFUS THORNTON - REDIRECT EXAMINATION

2301

1 Q They simply said Whittaker, you go out and fix it,
2 regardless of what the problem may be, whether it's in the
3 CFA or in what you're doing, you just go out and fix it.

4 A That's not what was said.

5 Q That's not what was said?

6 A No, sir.

7 Q Isn't what was said you have the responsibility,
8 Whittaker, you go out and fix it?

9 MR. BOEHLERT: I object, Your Honor. Counsel is
10 being argumentative. He's asked and answered the question.

11 JUDGE BROWN: I sustain the objection. You just
12 asked the same question again. If you have something that
13 will refresh him, show him.

14 BY MR. WORK:

15 Q Did TechDyn take any technical action on its own
16 to fix the problem that was perceived in July of 1988 with
17 regard to the timing of switching from one remote radio
18 station to another?

19 A No, sir.

20 Q TechDyn simply didn't do anything, did it, to
21 correct that problem.

22 A That's not correct, sir.

23 Q TechDyn did nothing to fix that problem other than
24 to say to Whittaker you fix it.

25 A No, sir, that's not correct.

RUFUS THORNTON - REDIRECT EXAMINATION

2302

1 Q Did TechDyn do any technical analysis to determine
2 what was causing the problem in that timeframe, in late
3 spring/early summer of 1988?

4 A Counsellor, the problem as perceived or the
5 problem as documented in the analysis performed by Mr. Ken
6 Turry was submitted to TechDyn in documented form during the
7 month of July 1988. This was just prior to the stop work
8 notice. Preparatory to that submittal, an effort to
9 determine the feasibility of proceeding with a solution to
10 the timing delay, several options were proffered in terms of
11 software fixes -- it might have involved recoding effort --
12 it most certainly would have. Certain options and certain
13 alternatives were discussed and offered.

14 Now, technical analysis of the problem of the
15 noise causing the modems to not synchronize when they should
16 have or being able to recognize the data stream that was
17 trained on, a technical analysis no, was not performed.

18 Q You simply said to Whittaker you do something with
19 your software, right?

20 A Well, essentially, yes, sir.

21 Q But TechDyn as the prime contractor on this
22 project did nothing as a system engineer to identify what
23 was causing the problem -- was it Whittaker's work or
24 TechDyn's work. Isn't that true?

25 A I don't agree with that, sir. No.

RUFUS THORNTON - REDIRECT EXAMINATION

2303

1 Q Did TechDyn ever in this timeframe, late spring,
2 early summer, into July of 1988, do anything to determine
3 what was causing the problem?

4 A The hardware suites were set up in a functional
5 configuration in the Whittaker facility at Carlsbad,
6 California. Two separate ground entry stations, two
7 separate remote control units, one at each ground entry
8 station. A master control unit that worked between those
9 two ground entry stations. The operation was carried on --
10 the in-plant operation of those systems were carried on for
11 a long period of time to ascertain exactly how often does
12 this problem surface. It was basically a running system.
13 In terms of a -- with a bunch of test of equipment and doing
14 a constant thing, the Whittaker personnel were doing that.
15 They were duplicating --

16 Q Right. They were trying to find out what the
17 problem was.

18 A Well, they were involved. So were my people.

19 (Continued on next page.)

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RUFUS THORNTON - REDIRECT EXAMINATION

2304

1 Q Who among your people was doing anything after to
2 determine what the problem was, to identify what element of
3 this CFA system was causing the timing problem in late
4 spring early summer of 1988?

5 A During this entire period, with the exception of
6 one or two weeks at most, my chief installation team chief,
7 Dave Sutherland, was present. As well as another installer,
8 Mr. Lowell Tilly. I was out there on occasions, personally
9 on site. And we had occasion to check out various switch
10 settings on some of the MMPT, this is part of the
11 International Data Systems, it's a macro, module.

12 And to just try to get a feel for -- This happened
13 in a certain period of time, that didn't happen in a certain
14 period of time. There were indications that there might be
15 electromagnetic interference. In other words, that some
16 noise being generated from some source outside of the
17 hardware equipment. Like electric pictures.

18 Q Just a couple of questions. Mr. Tilley and Mr.
19 Sutherland were installers, they were not engineers, were
20 they?

21 A No, sir, they are not engineers.

22 Q And you never -- You're a systems engineer,
23 though, aren't you?

24 A Correct.

25 Q But you never identified specifically what the

RUFUS THORNTON - REDIRECT EXAMINATION

2305

1 problem was in the CFA system was that was causing this time
2 delay, did you, you as systems --

3 A I specifically did not.

4 Q And you know that not only Mr. Ken -- at
5 Whittaker, but Mr. Mike McCune and Mr. John Campbell spent a
6 fair amount of time trying to identify what the problem was,
7 don't you?

8 A I believe Mr. Ken Turry and Mr. Campbell did.

9 Q And Mr. McCune as well. Correct?

10 A Mr. McCune was the director of engineering at that
11 particular point in time, and I had conversations with him
12 earlier, when we were having modem problems, that kind of
13 thing. But I did not have any involvement with him during
14 the time the purported noise was being the cause of the
15 successive circuit switch over.

16 Q Okay, I just have a couple more questions for you.
17 Just a general question about identifying problems with RCE.
18 And whether it works in switches from one radio station to
19 another. To do that, to do that testing, you not only had
20 to have the elements of the RCE that I called out and the
21 software to go with those computers, but you also had to
22 have at least a representative sweep of the actual remote
23 stations for the equipment that would be located at the
24 remote stations to determine whether you could switch from
25 one station to the other, isn't that correct?

RUFUS THORNTON - REDIRECT EXAMINATION

2306

1 A Essentially, yes, sir.

2 Q Okay. Now, just picking up for a moment on Mr.
3 Boehlert's questioning with regard to the testing. You are
4 aware that there is no reference to CPT&E, computer program
5 test and evaluation in TechDyn's prime contract for ICCE
6 with the United States Air Force aren't you?

7 A I am not aware of that, no, sir.

8 Q Do you know whether or not there is any reference
9 to CPT&E, in that statement of work that TechDyn had with
10 the Air Force?

11 A I can't specifically say I've seen it in there,
12 no, sir.

13 Q Okay, now with regard to the delivery date of the
14 modified DTS, you know that not only did that, did the DTS
15 have to be received, but then the PDFA software had to be
16 modified to accommodate it, didn't you?

17 A I'm aware of that.

18 Q If you didn't have the modified DTS, you wouldn't
19 know how to modify the PDFA software to accommodate it,
20 would you?

21 A You would know that, essentially before you had
22 the actual hardware. The modified external set changed as a
23 result of a requirement imposed in the other contract, in
24 the Peace Shield, from a five frame interface to a two frame
25 interface requirement relative to its interface of the PDFA

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1 A Essentially, yes, sir.

2 Q Okay. Now, just picking up for a moment on Mr.
3 Boehlert's questioning with regard to the testing. You are
4 aware that there is no reference to CPT&E, computer program
5 test and evaluation in TechDyn's prime contract for ICCE
6 with the United States Air Force aren't you?

7 A I am not aware of that, no, sir.

8 Q Do you know whether or not there is any reference
9 to CPT&E, in that statement of work that TechDyn had with
10 the Air Force?

11 A I can't specifically say I've seen it in there,
12 no, sir.

13 Q Okay, now with regard to the delivery date of the
14 modified DTS, you know that not only did that, did the DTS
15 have to be received, but then the PDFA software had to be
16 modified to accommodate it, didn't you?

17 A I'm aware of that.

18 Q If you didn't have the modified DTS, you wouldn't
19 know how to modify the PDFA software to accommodate it,
20 would you?

21 A You would know that, essentially before you had
22 the actual hardware. The modified external set changed as a
23 result of a requirement imposed in the other contract, in
24 the Peace Shield, from a five frame interface to a two frame
25 interface requirement relative to its interface of the PDFA

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1 RADIL.

2 In other words, the amount of preamble frame data
3 that was available in the earlier version of their internal
4 set now has frumped to a worst case of two frames. So, the
5 RADIL software had to be analyzed to determine whether that
6 two frames worth of information was adequate to interface
7 with the RADIL. Yes, sir, that was done prior to the actual
8 receipt of the internal set.

9 Q And you could not have completed SQT until you not
10 only had the modified DTS, but you had modified the PDFA
11 software to accommodate it? You could not have completed
12 SQT?

13 A I believe that is true.

14 MR. WORK: Thank you, sir, there are no further
15 questions.

16 JUDGE BROWN: Anything further?

17 RECROSS-EXAMINATION

18 BY MR. BOEHLERT:

19 Q The switches, the noisy switches we are talking
20 about Mr. Thornton, what are they, are they the IDS 900,
21 9000?

22 A 9000.

23 Q 9000. Now, after the default termination, what
24 did TechDyn do with those switches?

25 A We utilized them in the current RCE. At least

**TRIAL TESTIMONY OF
MAX STEVEN ROSEN - RECALLED**

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1 for the PDFA?"

2 Do you see your answer there, line 14?

3 A Yes, I do.

4 Q Answer: "Just the whole understanding of what
5 they are getting, of what they are being awarded over \$5
6 million for."

7 Do you see that?

8 A Yes, sir.

9 Q Was that your testimony?

10 A Yes, it was.

11 Q And yet you weren't there at the formation of the
12 subcontract, were you?

13 A That's correct.

14 Q And then where in the subcontract is that general
15 understanding, Mr. Rosen?

16 A I believe I said that I don't know that it's
17 stated in the subcontract.

18 Q Now, sir, let's talk about the system level
19 manual. Do you recall the system level manual in this
20 program?

21 A Yes, I do recall it.

22 Q Under the ICCE subcontract, the documents you have
23 before you, was Whittaker liable or responsible to provide a
24 systems level manual?.

25 A I believe they were.

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1 Q Would you turn to page 116 of your deposition,
2 please?

3 A Excuse me. Can I correct an answer?

4 Q Certainly.

5 A I don't believe that the system level manual -- if
6 memory serves me correctly, it was not part of the
7 subcontract. It was awarded to them under a separate
8 purchase order.

9 Q Okay. A separate contract.

10 A A separate purchase order. Yes.

11 Q And when was that awarded, sir?

12 A I don't recall.

13 Q It was awarded several years after the start of
14 the program, was it not?

15 A I don't know the exact timeframe. I don't recall.

16 Q And do you know the reason why TechDyn contracted
17 with Whittaker after the start of the ICCE MOD 3 FOC program
18 to do the system level manual?

19 A That I don't recall.

20 Q Okay. Starting out in the program, the system
21 level manual was TechDyn's responsibility, is that not
22 correct?

23 A I'm not sure if it was or wasn't. I don't really
24 recall.

25 JUDGE BROWN: Sir, maybe if you could -- you're

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1 not getting through all the way. If you could pull your
2 chair a little closer and speak right into the microphone
3 when you answer.

4 THE WITNESS: Yes, Your Honor.

5 MR. WORK: I think what we found is that if you
6 just speak to the jury, then your voice will project into
7 the microphone.

8 THE WITNESS: Sorry. Okay.

9 BY MR. WORK:

10 Q Now, let's talk about the FOC 1/FOC 2 matter.
11 What was the basis for initiating the FOC 1/FOC 2 concept?
12 What was the objective?

13 A As I recall, it was -- the Air Force initiated
14 that concept based on the delays that were being
15 experienced. It was their desire to get equipment up and
16 running in Iceland and by splitting it out into an FOC 1 and
17 FOC 2, what they were hoping to do was get -- I know at
18 least one of the northern ground entry stations up in
19 Iceland up and operational.

20 Q And that concept was never implemented, was it?

21 A Not as such. Parts of it were implemented.

22 Q Was it implemented in a different form?

23 A Yes, it was.

24 Q In what form?

25 A It was implemented, as I recall, in a series of

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1 modifications.

2 Q Is it true that there was a shipment of equipment
3 and installation performed at Iceland in the October 1988
4 timeframe?

5 A That sounds correct. There was an initial
6 shipment done.

7 Q And, at that time, portions of the system or all
8 of the system that had been located in Carlsbad, California
9 then temporarily moved to Camario, California was moved to
10 Iceland in October of 1988, was it not?

11 MR. BOEHLERT: Your Honor, I object to counsel
12 testifying and asking that the witness confirm his
13 testimony. He can ask him questions and see what this
14 witness knows.

15 JUDGE BROWN: I sustain the objection to the
16 leading nature of the question.

17 MR. WORK: Your Honor, I would like to treat Mr.
18 Rosen with all respect as an adverse witness since he did
19 appear on behalf of TechDyn and was a long time employee of
20 TechDyn and thus I would request permission to ask leading
21 questions.

22 JUDGE BROWN: I don't think he meets the test of
23 an adverse witness simply because he once worked for TechDyn
24 and testified for them and I have not heard yet that he is
25 adverse in the other sense of the word. So until he appears

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1 to be, I ask that you not lead him.

2 MR. WORK: All right.

3 BY MR. WORK:

4 Q Mr. Rosen, what was shipped to Iceland in October
5 of 1988?

6 A To the best of my recollection, at least one
7 ground entry station and the RADIL or a RADIL. And
8 ancillary equipment that goes along with that.

9 Q Now, sir, let's talk about the remote control
10 element. Do you remember that?

11 A Yes, I do.

12 Q What was the basis for TechDyn's default
13 termination of Whittaker on Whittaker's work with respect to
14 the RCE?

15 A The basis was their failure to make progress so as
16 to endanger performance under the contract.

17 Q This was a failure to make progress type of
18 default termination under the FAR default termination
19 clause.

20 A That's correct.

21 Q And that was the only basis for the default of the
22 termination, the FAR clause which relates to a failure to
23 make progress.

24 A That's correct.

25 (Continued on next page.)

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1 Q Was there any contractually effective delivery
2 schedule for the RCE under Whittaker's subcontract with
3 TechDyn at the time of the default termination?

4 A Could you repeat that question?

5 Q Was there any contractually effective schedule
6 applicable to Whittaker's portion of the RCE work at the
7 time TechDyn purported to default terminate Whittaker for
8 failure to make progress?

9 A I believe that tot he extent the schedule was in
10 the subcontract, it had already been overrun.

11 Q By several years?

12 A By several years.

13 Q And after the original delivery date back in 19865
14 had passed, we are talking two years alter, now, TechDyn
15 never instituted a new contractually effective schedule as
16 relates to Whittaker's aspect of the RCE work, did it?

17 A I don't recall, no.

18 Q Now still with regard tot he RCE and we'll --
19 sitting here today, sir, can you recall what the B spec for
20 the original software based RCE said the RCE consisted of?

21 A That I don't recall.

22 Q Were there problems with the hardware that TechDyn
23 supplied to Whittaker for the RCE?

24 A I do recall a problem with a modem for the RCE.

25 Q And there were also problems with the switches for

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1 the RCE?

2 MR. BOEHLERT: Object to the nature of this
3 question.

4 MR. WORK: Withdrawn.

5 Were there any problems that you recall that
6 relates to the switches that worked in the CFA system and
7 interfaced with the RCE?

8 MR. BOEHLERT: That's the same question, Your
9 Honor. I object to it.

10 JUDGE BROWN: I don't think that's leading. It
11 draws his attention to an area. It doesn't tell him what
12 the answer is, yes or no. He can answer it.

13 THE WITNESS: I recall a switching problem.
14 Whether it was with the switch itself or the software that
15 runs the switch, that I don't recall.

16 BY MR. WORK:

17 Q In the summer of 1988, do you recall TechDyn going
18 to the Air Force and asking the question, whether the RCE
19 equipment, related equipment, as it then existed, was
20 acceptable to the Air Force?

21 A That I don't recall.

22 Q Would you look please to 2-102, that's the second
23 day of 102, your testimony, please.

24 A Page 102?

25 Q Yes.

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1 A Okay.

2 Q And do you see at line 15, your answer to the
3 question that is asked at line 7?

4 A I do.

5 Q Does that refresh your recollection that indeed
6 TechDyn did go to the Air Force to ask whether the existing
7 RCE and related interface equipment was acceptable to the
8 Air Force?

9 A Without seeing the correspondence, there is
10 correspondence regarding the accounting issue. I just don't
11 recall what that correspondence said. I would have to see
12 it.

13 Q Now, sir, do you have any information that
14 indicates to you that the CFA equipment necessary to test
15 the RCE was available to Whittaker in the fall of 1988?

16 A I don't know that CFA equipment was required to
17 test the RCE.

18 Q Well, Mr. Rosen, let me just ask you this, maybe
19 this is in a technical area beyond your knowledge, did --
20 how can you test the RCE to determine whether it switches
21 from one remote site to another without having at least
22 sampled that CFA equipment to utilize in that test.

23 MR. BOEHLERT: Object, Your Honor, it's leading
24 and argumentative.

25 MR. WORK: It's not leading at all.

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1 JUDGE BROWN: I don't find it to be either. He
2 may answer.

3 THE WITNESS: Not being a technical person, I
4 don't know whether if there's a way to test it with or
5 without the equipment or not. I just don't know.

6 BY MR. WORK:

7 Q Did you ever make any effort in the fall of 1988
8 to determine whether you would have to have at least a
9 sample of the entire CFA system to test the RCE?

10 JUDGE BROWN: You mean him personally?

11 MR. WORK: Yes.

12 JUDGE BROWN: Well, I sustain the objection, he is
13 not the technical person.

14 MR. WORK: No. Maybe I misstated my question.
15 Did you ever make an effort to determine by either
16 contacting your own technical people, or the Air Force
17 technical people, or Whittaker or some consultant, to
18 determine whether you would need at least a sample of the
19 entire CFA system to test the RCE?

20 THE WITNESS: I don't recall any determination or
21 looking specifically with regard to the RCE. I do recall
22 discussing it with our technical people whether the movement
23 of the equipment to Iceland would keep Whittaker from
24 proceeding with the thing that they had to do. And the
25 answer was no, it should not.

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1 BY MR. WORK:

2 Q And whom did you talk to, sir?

3 A I should of talked with Don Ellis, the program --

4 Q Just sitting here today, who do you recall talking
5 to, not whom you thought you might have talked to?

6 A I recall Kevin Ger's discussion with Don Ellis,
7 Rufus Thornton.

8 Q And did they tell you, sir, that you can test the
9 RCE without having at least a sample of the entire CFA
10 system to determine whether or not you were switching within
11 an acceptable period of time?

12 A I don't recall those words exactly, on.

13 Q Now, sir, let's talk about the mechanical RCE that
14 replaced the old software based RCE. Did it take longer
15 than anticipated at the time that you initiated this effort
16 to procure the new RCE to complete that procurement and get
17 the new RCE installed?

18 A Did it take longer than what?

19 Q Than you anticipated at the time that you
20 initiated that.

21 A Yes, it did.

22 Q How much longer did it take, than you anticipated?

23

24 A I recall we anticipated five months, five
25 additional months to do the mechanical RCE. I don't recall

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1 what the final time frame was, when it was finished.

2 Q Would you look please at page 2175 of your
3 deposition? Do you see your answer at line four to the
4 question just asked?

5 A Yes.

6 Q Does that refresh your recollection that it took
7 possible as much as a year longer than you anticipated to
8 get a new RCE than you had expected when you embarked upon
9 that effort?

10 A It refreshes my memory that that's what I said.
11 That's probably the way I felt at that time.

12 Q What was the impact on TechDyn -- strike that. In
13 the reason for the delay in procuring this new RCE, relate
14 to delays by supplier by the name of Grimm, that was
15 supplying the modems, is that correct?

16 A Could you repeat the question?

17 Q Was it the reason for the delay of possibly a year
18 longer than you hand anticipated to obtain the new RCE
19 related to the failures of a supplier by the name of Grimm
20 that manufactured modems?

21 A That's correct.

22 Q And what impact on TechDyn did the delay in
23 supplying those modems by Grimm incur for TechDyn?

24 A The main impact was until the RCE was complete,
25 the documentation couldn't be completed, and couldn't go to

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1 training.

2 Q And of course, you couldn't install it and test it
3 either?

4 A That's correct.

5 (Pause.)

6 Q Now, sir, with respect to your performance of your
7 function as the subcontract administrator, what -- just let
8 me state my understanding. You perceived, did you perceive
9 your role as subcontract administrator, take letters that
10 you received from Whittaker and put a cover letter on them
11 and pass them on to the Air Force on the one hand, and take
12 letters that you received from the Air Force and put a cover
13 letter on them and pas them to Whittaker on the other hand?
14 Is that what, the way you preformed --

15 A Primarily so. After those letters initially when
16 through the program managers for review.

17 Q And for the most part, TechDyn never took any
18 substantive position with regard to correspondence flowing
19 either way, did it?

20 A For the most part, no.

21 Q Did TechDyn in the period after the completion of
22 the SQT test, take an position on whether system trouble
23 reports that emerged from the TAF testing, or trouble
24 reports that emerged from the TAF testing, were in or out or
25 out of scope?

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1 A I don't recall TechDyn ever took the position with
2 regard to in or out of scope. We relied on the Air Force
3 for that.

4 Q Okay, so you made no evaluation as, on that issue
5 as information flowed in either direction did you?

6 A I don't recall.

7 Q Now, based on your knowledge of TechDyn's claim in
8 the October 1990 time frame, was it your understanding that
9 TechDyn was taking the position that all ICCE activities
10 beyond the date of the original contract schedule, and
11 extended into December 1986, were Whittaker's
12 responsibility?

13 A Could you repeat the question, please?

14 Q Yes. Was it your understanding of TechDyn's
15 position in the October 1990 time frame that any expenses
16 incurred beyond the time of the cut off of the original
17 contract schedule were Whittaker's responsibility?

18 A I believe so. Yes.

19 Q Now, sir, just with respect to your own habits in
20 performing the dual roles that you described as contract
21 administrator and subcontract administrator, and I gather
22 you performed other functions as well? Is that right?

23 A That's correct.

24 Q You performed a number of functions. AND with
25 regard to your ICCE work, you didn't indicate on your time

**TRIAL TESTIMONY OF
THOMAS A. BRANCATI**

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1 exhibit has not been authenticated. The only page of it
2 that has been authenticated by the Air Force is the excerpt
3 that we proffer.

4 JUDGE BROWN: Well, as I understood, there was no
5 objection to the introduction of the entire exhibit.

6 MR. WORK: All right.

7 JUDGE BROWN: Is that correct?

8 MR. RIDDLES: That's correct, Your Honor.

9 JUDGE BROWN: Okay.

10 MR. WORK: What exhibit would this be?

11 JUDGE BROWN: Just call that --

12 MR. WORK: Defendant's Exhibit 101.

13 JUDGE BROWN: 101, all right.

14 MR. WORK: May I show this on the screen so the
15 jury can see it, Your Honor.

16 JUDGE BROWN: Yes, 101 is received, and we will
17 mark it.

18 (The document referred to, having
19 been previously marked for
20 identification as Defendant's
21 Exhibit 101, was received in
22 evidence.)

23 (Paused.)

24 MR. WORK: Can you run it up just a little bit?
25 Stop, run it down a minute. You can see the 3 February

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1 Q What features of that program caused you to
2 believe that it was in severe difficulty?

3 A In my review of the program, I found that first
4 off, from a financial standpoint, that the company was as
5 much as \$2 million in the red on the program. And was no
6 apparent means of recovering that money.

7 Secondly, the statement of work that Whittaker was
8 committed to was nonexistent. There were no real, there was
9 no way to tell when the program would end. What is it we
10 were really doing? People in Whittaker community the
11 organization that was dealing with this program, could not
12 answer the question of when is it that we are finished?

13 So, that was a major concern to me. And thirdly,
14 there was an obvious conflict that was building up with the
15 customer.

16 Q In what sense, sir?

17 A Ah --

18 Q I suppose we should define customer first.

19 A The customer was TechDyn Systems Company, and
20 that's who we had the contract with. But it seemed from the
21 information that I was getting was that TechDyn was in the
22 process of off loading some of its --

23 MR. RIDDLES: Object, Your Honor -- He says from
24 the information he is getting, it seems, it's hearsay
25 testimony.

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1 JUDGE BROWN: I sustain the objection to
2 information that he is getting from other people about what
3 TechDyn was doing.

4 MR. WORK: We will come back to that a bit later,
5 Mr. Brancati. Will you continue with what you observed in
6 your assessment of this program when you came into its
7 purview?

8 THE WITNESS: The building of the conflict was
9 evident to me in that I was hit immediately with a problem
10 where TechDyn was looking for Whittaker to provide some
11 cables, cable assemblies for their CFA, or their
12 communicational functional area. There the, area they were
13 responsible for. And when I investigate the requirement, it
14 was obvious in fact, this was not a requirement that
15 Whittaker had.

16 Whittaker had no requirement on the communication
17 functional area. Yet, TechDyn demanded of the Whittaker
18 Corporations to supply the money to do that. So, I was
19 faced with that build up of what I saw as off loading
20 responsibilities upon Whittaker. So --

21 Q What else did you observe in your assessment of
22 the program from when you became responsible for it?

23 A Well, I -- One of the conflicts that was apparent
24 to me as I -- One of the conflicts that was apparent to me
25 was in the remote control element unit of the CFA, we had a

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1 system in our building, which was a TechDyn responsibility
2 to do the systems integration, we had the system in our
3 facility. And I inquired as to why we would we have that
4 facility, and not TechDyn since it was their responsibility.

5 And the, what I determined was that it was a hand
6 shake agreement with TechDyn and it was at a no cost to
7 TechDyn to have that facility there.

8 But --

9 Q That test bed facility?

10 A Test facility. The good news of having the test
11 bed facility there was the fact I was able to observe the
12 status of the, of that test bed. And it was obvious in the
13 RCE area, there was a large problem. Both the TechDyn
14 employees and the Whittaker employees in the facility were
15 essentially at a stand still.

16 When I investigated that issue, I was told by,
17 what I observed was that TechDyn felt that the problems --

18 MR. RIDDLES: Objection to what he says TechDyn
19 felt.

20 THE WITNESS: TechDyn told me, told me that the
21 problem was in the Whittaker software.

22 MR. RIDDLES: Objection to lack of foundation,
23 Your Honor. I would like to know who at TechDyn told him.

24 JUDGE BROWN: Well you can ask him on cross
25 examination.

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1 MR. WORK: Before we get to deeply into the RCE
2 issue, let us complete the catalog of what you observed in
3 your assessment of the program when you assumed
4 responsibility for it. Were there any other aspects of the
5 program that caused you concern?

6 THE WITNESS: Well, the financial, the lack of
7 understand what work we had to do to finish the program and
8 the schedule. There was no schedule at all for the work we
9 were to do. People were working on a day to day basis with
10 no schedule in sight. So, those were the highlights of it.

11 BY MR. WORK:

12 Q Did you make any investigation, Mr. Brancati, as
13 to whether or not Whittaker had been paid for its work?

14 A Yes, as I said before, we had been, we had a
15 financial problem. And in that financial problem, we -- I,
16 I determined that we were not paid for as much as \$2 million
17 worth of work that we had done previously with the oldest
18 invoices that we submitted to TechDyn being as much as 2.5,
19 three years old. So, we weren't getting paid for the work
20 that we were doing as well, at that point.

21 (Continued on next page.)

22

23

24

25

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1 Q In terms of your taking control of this program,
2 what kind of a system did you put into place?

3 A Well, the first thing I did -- when I realized the
4 status of the program, I did what I generally do in a
5 situation like this in that I brought in a new program
6 manager to take over the responsibility of the program and
7 attempt to eliminate any biases that built up in the past.
8 So that was one step that I did and that program manager was
9 Dave Christensen.

10 Q Approximately when did you put Mr. Christensen in
11 the position?

12 A In June of 1988. So it was about six weeks after
13 I had been with the -- six to eight weeks after I had been
14 with the program.

15 Q Did you institute any system of periodic meetings
16 so you could become acquainted yourself with this program?

17 A Yes. I normally -- on all programs that the
18 company has, I hold monthly meetings. Monthly program
19 reviews where each program manager comes in and provides me
20 with a complete review of all the status and the problems
21 and what we're doing.

22 Q What did you do on this program?

23 A In the case of problem programs such as this, and
24 what I did on this program, I institute what I call sunset
25 meetings and I met for a good deal of the time every evening

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1 at 5:30 with the program manager and went over the problems
2 of the day. I interspersed that with weekly meetings. So
3 I'd say probably in the order of 50 percent of the time I
4 had daily meetings during that six to eight weeks of
5 analysis of the program.

6 Q And just put us in temporal context. When did
7 that six to eight weeks take place?

8 A It took place in early April of '88 through May
9 and into June.

10 Q All right. Now, did you do anything else at the
11 time that you assumed responsibility for this program?

12 A I decided that we needed to know technically --
13 what was our baseline technically, where we really? And I
14 asked for a technical analysis of the status -- tell me what
15 the problems were and, specifically, I focused on -- the
16 first one I focused on was on the RCE because that was the
17 highlight of the problem at that time. And I asked Mike
18 McCune to organize a team to analyze that problem and tell
19 me exactly what the problems were, whether they were
20 Whittaker or TechDyn. I wanted to know what the problems
21 were so we could cure the problems. I was the new kid on
22 the block so I had no axe to grind, no issues and I wanted
23 to make sure I established a foundation to start repairing
24 the program.

25 Q All right. Specifically, what did you ask Mr.

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1 McCune and his team to do?

2 A To technically determine the adequacy of the RCE,
3 what the problem was, if there really is a problem, what the
4 problem was, to differentiate it between the software and
5 the hardware and identify that problem down into the details
6 of the problem. I just didn't want to know whether it was a
7 hardware problem, I wanted to know exactly where the
8 hardware problem was.

9 Q And, again, did you do anything else in this time
10 period when you were assuming responsibility for the ICCE
11 program? Do you recall hiring any consultants or anything
12 of that sort?

13 A Yes. Yes. In fact, the Air Force recommended to
14 us that we look at the possibility -- and I was brand new so
15 I didn't really know any of the history but we looked at the
16 possibility of Mr. Al Johnson, who had recently left
17 TechDyn, because it would be healthy for the program if that
18 kind of history was retained on the program.

19 Q Who in the Air Force suggested that?

20 A It was Captain Paschall.

21 MR. RIDDLES: Objection, Your Honor, to bringing
22 in Air Force testimony as hearsay testimony.

23 MR. WORK: Not for the truth, Your Honor.

24 JUDGE BROWN: I overrule. It can't be a truth
25 statement. Whether that person actually said that or not,

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1 of course, is an issue and this man can be cross-examined
2 with regard to that but it's not a truth statement.

3 THE WITNESS: My thought -- when the thought was
4 raised, my thought was that Mr. Johnson would possibly help
5 us in another area.

6 One of the other things I found out during this
7 time is that a claim from Whittaker against TechDyn was
8 underway and was to be submitted to TechDyn within the next
9 30 to 60 days and there was a difficulty in establishing the
10 format of that claim between TechDyn and Whittaker.

11 BY MR. WORK:

12 Q And that was one of the reasons that you decided
13 to bring in Mr. Johnson.

14 MR. RIDDLES: Excuse me, Your Honor. I have an
15 objection that I'd like to approach the bench for.

16 JUDGE BROWN: Okay.

17 (Bench conference.)

18 BY MR. WORK:

19 Q Now, sir, with that background, let's focus on the
20 RCE issue that you were addressing in this timeframe. In
21 your investigation of the RCE issue, did you come to any
22 personal conclusion as to what equipment the RCE consisted
23 of?

24 A Yes, sir. I looked at the specifications and
25 there was no real confusion at that time. At that time, it

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1 was clear to me as in my discussions with TechDyn that
2 TechDyn's -- as I perceived TechDyn's position, what I was
3 being told by them, was that our software was just
4 non-functional. It wasn't working. So at that point, there
5 was no real issue of what the breakup of the responsibility
6 was, as I understood it. We had a software requirement, and
7 that's what we were developing, and TechDyn was providing
8 the hardware and doing the system integration as the prime
9 contractor.

10 So what I was referred to was the prime spec which
11 calls out the RCE and the RCE as I interpreted it consisted
12 of the Zenith computer, the software we were developing, and
13 the documentation and data associated with that software.
14 And the external world to that computer was TechDyn's
15 responsibility.

16 Q That was part of the CFA?

17 A That was part of the CFA, which by the way, the
18 RCE as I interpreted it was part of the CFA.

19 Q Now, sir, at some point in time in this get to
20 know the program effort, did you arrange a meeting with Mr.
21 Morrison?

22 A Yes, after getting familiar with the overall
23 problem, I called Mr. Morrison's office and arranged to meet
24 him in Washington and I did that in early June.

25 Q Of 1988.

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1 A Of 1988.

2 Q And will you describe what happened at that
3 meeting, please?

4 A It was a meeting, maybe -- perhaps for an hour or
5 so. I was impressed with Mr. Morrison, I thought we could
6 resolve the issues. My position with him was that I felt we
7 needed to identify what work was left to be done on the
8 program and we talked about an upcoming visit by him out to
9 Whittaker and an upcoming program management review in July
10 and that we would meet prior to that point so that we could
11 try and present a common position to the Air Force.

12 Q With regard to what?

13 A With regard to the program and how we were going
14 to solve the ills of this program. That was in early June
15 of 1988.

16 Q And what happened after that meeting?

17 A Well, I returned to the West Coast and we
18 proceeded on and I received the results of the McCune
19 analysis.

20 Q What did you conclude personally from those
21 results?

22 A Well, that the problem with the RCE was not the
23 software, it was the TechDyn hardware and in fact we brought
24 in -- well, when I say "we" the team brought in the actual
25 supplier of the hardware that TechDyn unilaterally selected.

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1 Q Let me just ask you a question. When you say
2 "hardware" was it what you had defined as the RCE hardware
3 or was it CFA hardware generally?

4 A No, it was the CFA. It was the CFA hardware. IN
5 fact, what it was was the modem, the Codex modem, and the
6 switches that TechDyn selected and provided to the test bed.

7 Q Did you draw any conclusion at the time -- and I
8 gather we're now in early July -- did you draw any
9 conclusion based on your experience as an engineer as to
10 what the nature of the problem was?

11 A Yes, sir. It was clearly obvious that the -- two
12 things happened. One is the modem was a properly designed
13 modem but improperly used in the system. The modem clearly
14 could not function to requirements of the system, regardless
15 of whether the software was 100 percent perfect. I mean
16 there was nothing the software could do to make that modem
17 work because the inherent design of the modem was not proper
18 for our usage. The supplier of that modem from Codex stated
19 that.

20 Q To you?

21 A To the team, to TechDyn. TechDyn was involved in
22 this. Coupled with that modem problem was the switches.

23 MR. RIDDLES: Object to that last question and
24 response, Your Honor, because it's hearsay testimony and
25 move it be stricken.

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1 JUDGE BROWN: I sustain the objection and it's
2 stricken.

3 MR. WORK: Let me just lead up to that again.

4 BY MR. WORK:

5 Q Was there any effort to bring the manufacturer to
6 your facility for a discussion with TechDyn and Whittaker?

7 A Yes.

8 Q When was that?

9 A That was in the June timeframe, 1988.

10 Q And did that discussion take place?

11 A Yes, it did.

12 Q And who were the parties to the discussion?

13 A There were -- it was a team of people which
14 included Mike McCune and Campbell --

15 Q John Campbell?

16 A John Campbell. There were TechDyn representatives
17 at the meeting and I don't recall their names. They were
18 working on the test bed.

19 Q And there were representatives --

20 A Representatives from Codex -- C-O-D-E-X.

21 Q This was the manufacturer of the modem?

22 A This was the manufacturer of the modem who was
23 given the specification and selected by TechDyn and that's
24 when it was determined that the modem could not function in
25 that system.

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1 Q Could you just explain --

2 MR. RIDDLES: Objection, Your Honor, to the last
3 expression, "that's when it was determined" without
4 foundation.

5 JUDGE BROWN: I sustain the objection to him
6 saying what Codex found or said.

7 BY MR. WORK:

8 Q Let's just try to define the piece of hardware
9 we're talking about. What is this modem and what function
10 did it serve in the CFA system?

11 A The modem is a unit that allows for the
12 communication between the RCE and the switches that select
13 the telephone lines that go out to the remote sites. It's
14 an electronic device allowing this transmission.

15 Q Now, what happened after this meeting with Codex,
16 TechDyn and Whittaker representatives?

17 A I transmitted to TechDyn -- in fact, two ways: I
18 had a telephone call with Mr. Morrison in which the real
19 emphasis was on the fact that I was checking on the status
20 of the \$2 million that we were owed and he informed me in
21 the primary discussion of that telecon that he informed me
22 that he had checked for me and \$700,000 of that money was in
23 the Government's hands and that he was working very hard
24 trying to break that free for us. And during that
25 discussion, I informed him that I felt that the problem on

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1 the RCE was the hardware, not the software.

2 Q When was this discussion with Mr. Morrison?

3 A This was very late June, the last week in June.

4 Of 1988. The reaction I got was that -- I saw a change.

5 The change was that Whittaker was no longer responsible for

6 the software. Whittaker was responsible now for the

7 software and the hardware of the RCE.

8 Q Had Mr. Morrison said anything about that in your
9 meeting with him in Washington?

10 A No, we hadn't addressed that at all. Other than
11 that we had statement of work problems and RCE problems. We
12 hadn't gone into that detail.

13 Q To your knowledge, had TechDyn ever before
14 asserted that Whittaker had broader responsibility than the
15 software?

16 A To my knowledge, which would include the previous
17 three or four months plus all the documentation that I had
18 read at that point, nowhere had we been -- had Whittaker
19 been accused of having a responsibility of the hardware
20 outside of the software development on the RCE. The first
21 that I saw that.

22 Q Did Mr. Morrison indicate that you had broader
23 responsibility for all the hardware in the CFA?

24 A No. No.

25 Q Okay. Now, sir, was there anything else that

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1 occurred during that telephone conversation that you had
2 with Mr. Morrison in the last week of June 1988?

3 A Nothing that I can recall as significant other
4 than we agreed to meet again prior to the Air Force coming
5 in on July 20th, and I think the date was pretty well
6 established that there was going to be a meeting with the
7 Air Force on July 20th.

8 Q Did you respond to Mr. Morrison's assertion that
9 you had broader responsibilities for the CFA than the RCE
10 software?

11 A Well, I was take a little aback by that and my
12 response was probably what I would characterize fairly mild
13 but I went back and once again reviewed the bidding, so to
14 speak, in terms of what we were responsible for and
15 concluded that I needed to officially send a document to Mr.
16 Morrison and to TechDyn stating clearly that regardless of
17 the software, whether -- the problem was in the hardware and
18 we were pouring money into the software trying to correct a
19 hardware problem that could never be corrected by software.
20 So we were wasting money, we were wasting Whittaker's money,
21 we were wasting TechDyn's money and we were wasting the
22 taxpayers' money trying to do this.

23 Q Was TechDyn paying you for this effort?

24 A No, we weren't getting paid. TechDyn was
25 withholding payments. As I said, they had not paid us

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1 for -- over a period of time, for as long as almost three
2 years and we were \$2 million behind at that point.

3 Q What action did you take after your conversation
4 with Mr. Morrison?

5 A I wrote a letter and we sent it through
6 contractual channels to TechDyn stating that we could not --
7 that we were going to hold the RCE software work in abeyance
8 until TechDyn addressed the hardware problem which was their
9 responsibility.

10 Q To your knowledge, did Mr. Morrison ever assert to
11 you, Mr. Brancati, that TechDyn had undertaken any analysis
12 of the problem to see where that problem lay?

13 A No. And, in fact, my analysis of the TechDyn
14 capability in this case was that it was nil. I did not talk
15 to -- I had no interface with any technical people from
16 TechDyn. My interface was with generally what I would call
17 management type people. There was no significant technical
18 output of TechDyn that I ever observed.

19 (Continued on next page.)

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1 Q In this time frame, did you see that TechDyn was
2 doing anything to move this issue forward to a resolution?

3 A No.

4 Q Let me get a document that has been marked as
5 Plaintiff's Exhibit 378. This is a letter of July 8, 1988,
6 from Mr. Bohler of Whittaker to Mr. Hise of TechDyn. Are
7 you familiar with that letter, sir? It's been previously
8 admitted into evidence.

9 A Yes, I am.

10 Q I wonder if you would please read the second
11 paragraph of that letter out loud?

12 A The RCE as it encountered problems that TechDyn
13 hardware that had caused program delays and resultant cost
14 overruns in our software development efforts in support of
15 communications functional area (CFA). Until the TechDyn
16 hardware problems are identified, and resolved, continuation
17 of the software development effort is not possible.

18 Q And then would you read the next paragraph please?

19 A Yes. The hardware design, integration,
20 installation and testing is clearly TechDyn's
21 responsibility. The lack of TechDyn's firm management in
22 these areas has placed an excessive burden upon our software
23 effort and an attempt to overcome problems caused by
24 ineffective hardware design and integration.

25 Q And then would you read the last paragraph on that

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1 page, please.

2 A In order to mitigate damages, WES will provide
3 assistance to TechDyn within the scope of its subcontractual
4 responsibilities by providing engineering data descriptive
5 of the problem by close of business 12 July 1988. Our
6 software development and testing, however, will be held in
7 abeyance until the TechDyn hardware problems are resolved.

8 Q This was the so called stop work letter, so called
9 by TechDyn. Did Whittaker in fact stop work, other than to
10 hold further effort to address the RCE problem in abeyance,
11 at that time?

12 A Well, from my perception, the only folks who
13 stopped work was TechDyn. We had a problem we identified
14 the problem, and as I said in this letter here of 12 July,
15 we would provide all the engineering data. We provided all
16 that engineering data, detailed engineering data, and it was
17 all ignored.

18 The only people who stopped work was TechDyn. We
19 could not proceed on, with the software. There was nothing
20 for us to do with the software.

21 Q Did TechDyn take any action to correct the
22 deficiency in its performance at that time?

23 A During the course of this, they took one step in
24 changing a modem. And in fact, they even changed the modem
25 that they selected could not do the job. But they never

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1 effected a change in the switches, which had so much, they
2 had some much noise on them, that they prevented the system
3 from operation.

4 Q Could you just explain to the jury how that would
5 occur?

6 A The changing of state, of the switches, changing
7 of state, going from one position to another position,
8 during the --

9 MR. RIDDLES: I object to his providing testimony
10 of that without foundation to his expertise in that area.

11 MR. WORK: Your Honor, I think he has said two
12 things. One, he has an engineering background, and two that
13 he personally investigated this problem.

14 JUDGE BROWN: I find he has sufficient expertise.
15 He can testify. The weight it is to be given will be judged
16 by the jury, and you can cross examine him.

17 THE WITNESS: The changing from one position on
18 the switch to the other position, was a mechanical movement.
19 And that caused a certain amount of interference in the
20 electronical connection to the modem. That upset the modem.
21 The modem could not process data during that time frame.
22 So, the net effect of that problem was it delayed the
23 ability to determine the state of each line as you switched.
24 And the total net effect from the system standpoint, it took
25 somewhere around 15 minutes or so, to get through the entire

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1 system, and to check its health and determine the health of
2 all the lines. And remote stations status.

3 BY MR. WORK:

4 Q Sir, this may be confusing, but you mentioned some
5 other issues in your assessment, and they appear to be woven
6 together. So, I'll just try to proceed chronologically.
7 You mentioned --

8 JUDGE BROWN: Well, we need to take a break.
9 Maybe now is a good time to do that. We will take a 15
10 minute recess.

11 (Brief recess.)

12 BAILIFF: Please remain seated and come to order.

13 JUDGE BROWN: Okay, are we ready?

14 MR. WORK: Yes, Your Honor.

15 JUDGE BROWN: Bring them in.

16 (Pause while jury is seated.)

17 MR. WORK: Thank you, Your Honor, we have a lot of
18 documents, Mr. Brancati, so I am going to try to speed up
19 here a little bit.

20 In your assessment of the program, you testified
21 that there was concern about a lack of statement of work.
22 In this July time frame, early July time frame, did
23 Whittaker try to do anything to correct that situation?

24 THE WITNESS: Yes, we actually developed a work
25 statement which, my thought was to take everything that we

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1 And I object --

2 JUDGE BROWN: I sustain the objection and ask Mr.
3 Work that all counsel describing what happened before and
4 just ask the question that you have to ask.

5 MR. WORK: Thank you, Your Honor, did there come a
6 time later in July 1988 that you had occasion to see Mr.
7 Morrison at your facility in California?

8 THE WITNESS: Yes.

9 BY MR. WORK:

10 Q And will you describe what had been scheduled for
11 that day?

12 A There were two meetings scheduled for the period
13 of July 20 and 21. The first meeting was a request by the
14 Air Force to meet with TechDyn and Whittaker together.

15 Q And was that on matters related to the RCE?

16 A No.

17 Q Then, what was the rest of the schedule?

18 A The rest of the schedule was a meeting which was a
19 normal periodic program management review, it was called the
20 PMR, and that was to take place starting at, I believe it
21 was like 1:00 on the 20th and proceed on through the 21st.
22 And that's where the program managers and the technical
23 people of the Air Force, Whittaker and TechDyn sit and
24 discuss the overall program.

25 Q Did you have any intention of attending that

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1 program manger review?

2 A No, I never attended, in fact, I never have
3 attended that. In fact that's what, as I said, my feeling
4 is the program manager is the general manager of the
5 program. It is his responsibility to handle that meeting.

6 Q And that was Mr. Christensen who --

7 A Mr. Christensen.

8 Q Now, sir, did you have occasion at any time during
9 the day, on July 21, 1988, to have a discussion with Mr.
10 Morrison?

11 A I believe the discussion was on July 20. And the,
12 as I recall, on July 20, what happened was is that the Air
13 Force called a meeting --

14 Q Well, after the Air Force meeting.

15 A Well, after the Air Force meeting. Yes, yes. We
16 had a meeting and I was in a very spiriting mood as a result
17 of the meeting.

18 Q What was the nature of the conversation?

19 A I was -- I felt like, I believe at that point that
20 when I got the full, full sort of cold water dumped on me,
21 understanding the real facts of this, of what was going on
22 and what was happening to me at that point, what I saw was
23 that Whittaker was being given the majority of the work and
24 a very small amount of the money. TechDyn was taking a
25 small amount of the work and a very large portion of the

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1 money. And I accused Mr. Morrison of that fact at that
2 meeting.

3 Q And what ensued after that statement?

4 A The, well, my accusation was, I'm sure, was, was,
5 abrupt and cold enough where the following discussion was
6 really stopped. There was no real response to that, and
7 we -- a I recall, we parted out of that meeting with the
8 understanding that -- In fact, the only other subject that
9 was discussed at that meeting, as I recall was the previous,
10 was the results of the previous Air Force meeting and what
11 TechDyn was going to do as a result of that meeting.

12 Q Okay. Now, sir, by that time, July 21, had you
13 seen any evidence at all, that TechDyn had done anything to
14 address or resolve this problem of the timing of the
15 switching on the remote control --

16 MR. RIDDLES: Object to that question. The nature
17 of it is leading and suggestive, Your Honor.

18 JUDGE BROWN: How would you ask it differently?

19 BY MR. WORK:

20 Q What, if anything, had you observed, by July 21,
21 as relates to TechDyn's activities in addressing the RCE
22 issue?

23 A We observed absolutely no effort on TechDyn's part
24 in working the RCE problem. Other than advising us that we
25 had the responsibility for it.

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1 Q All right, now later in the day, after your
2 discussion with Mr. Morrison, did you have occasion to have
3 discussion with anyone at the Air Force?

4 A Yes, I had a discussion with Colonel Johnson and
5 Captain Jacobsen.

6 Q And Colonel Johnson was who, at this period?

7 A Colonel Johnson was just, was relatively new, as I
8 was, in taking over the responsibility had Hanscom Air Force
9 Base and the program manager, who was Captain Jacobsen of
10 the ICCE program reported to Colonel Johnson.

11 Q And Colonel Johnson was the SPO who replaced
12 Colonel Haskell?

13 A He replaced Colonel Haskell. And Colonel Johnson,
14 I looked at Colonel Johnson --

15 MR. RIDDLES: I object to hearsay testimony to the
16 extent that he would talk about what Colonel Johnson --

17 MR. WORK: Don't talk about what Colonel Johnson
18 said, just tell the jury what you said.

19 THE WITNESS: As a result of, as I said, this
20 feeling that I observed at that time, or I kind of put the
21 picture together a little better, I advised Colonel Johnson
22 that we would have to take our software people, who were
23 working on the PDFFA software, and reassign them until we
24 understood and were able to sit with TechDyn and get a
25 statement of work of what we really had to do to finish this

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1 job. Because I felt that TechDyn was continually expanding
2 the program across the board now, not only on the RCE, but
3 also on the PDFA area.

4 (Continued on next page.)

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1 BY MR. WORK:

2 Q When you expanding the program, expanding the
3 program for whom?

4 A Expanding the program for Whittaker. And without
5 paying Whittaker.

6 Q After you raised the issue of payments in arrears
7 over a long period of time with Mr. Morrison, had anything
8 been done by TechDyn, to your knowledge, to resolve that
9 issue by this July 20 meeting?

10 A To my knowledge, nothing was done. I also advised
11 Colonel Johnson of that problem and I personally asked
12 Colonel Johnson for the Air Force to assist and do an audit
13 into TechDyn in terms of why they were not paying their
14 subcontractor.

15 Q All right. Did you take any other action, write
16 any other letters as a result of the events on July 20 that
17 you've described?

18 A We wrote -- I wrote a letter on July 21st which
19 stated that until we sat down and agree on the tasks
20 remaining to finish this program, that Whittaker could not
21 be spending money as it has been. Up to that point, I might
22 add, we were spending in the order of \$30,000 to \$40,000 a
23 month on tasks that were not identifiable as tasks to be
24 done in the contract because one of the things -- I talked
25 about the bad points that I observed when I took over in

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1 April of '88, but one of the good things that I observed in
2 this program was that from a technical standpoint, the
3 software worked. It was accepted at the SQT prior to me
4 ever getting to the program. So from my viewpoint, I
5 thought we had an operation that was acceptable and working.
6 The Air Force accepted the software.

7 Q And how about the hardware?

8 A And the PDFA hardware.

9 Q Let's just take a quick look at the July 20th
10 letter that you described. This is a letter that has been
11 previously been admitted as Plaintiff's Exhibit 1373. It's
12 a letter from Whittaker to TechDyn dated July 21, 1988. Is
13 that the letter that you were just referring to, sir?

14 A Yes.

15 Q I wonder if you would just read the first four
16 paragraphs to the jury, please, very quickly.

17 A "As stated in our many discussions, during the
18 course of this subcontract, the latest during the referenced
19 meeting" the referenced meeting being the July 21st program
20 management review at Whittaker Electronics Systems,
21 "Whittaker Electronic Systems feels a great sense of
22 disparity between its actual effort under the subcontract as
23 expected by TechDyn in the division of funding. On this \$15
24 million, WES has been awarded \$7.2 million, ostensibly
25 representing 45 percent of the effort. In reality, TechDyn

1 Your Honor.

2 JUDGE BROWN: Any objection to 10G?

3 MR. RIDDLES: Let me just look at it a minute.

4 (Pause.)

5 MR. RIDDLES: No, sir, I have no objection to it.

6 JUDGE BROWN: 10G is received.

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

12 BY MR. WORK:

13 Q Would you start the Whittaker response over again,
14 sir, so the jury can have the whole picture?

15 A Yes. "WES did not accept and does not find this
16 assignment of effort under CLIN 2AB or any other CLIN in the
17 subcontract. WES hereby requests TechDyn to provide the
18 specifics of this assignment to WES it claims is in the
19 subcontract."

20 Q Did TechDyn ever respond to that or provide any
21 explanation of its assertion that Whittaker had
22 responsibility for the entire RCE?

23 A No, sir.

24 Q Did TechDyn ever provide any explanation of its
25 assertion that Whittaker had responsibility for CFA

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1 equipment beyond the RCE?

2 A No, sir.

3 Q Now, continuing chronologically, I hand you a
4 document that has been marked as Defendant's Exhibit 2AA, a
5 letter from TechDyn to Whittaker dated August 12, 1988. Are
6 you familiar with that document, sir?

7 A Yes.

8 Q And what is it?

9 A It's a document which TechDyn sent to Whittaker
10 talking to the subcontract and the ICCE statement of work.

11 MR. WORK: I offer Defendant's Exhibit 2AA.

12 MR. RIDDLES: Just a minute, Your Honor.

13 MR. WORK: Here's a copy.

14 (Pause.)

15 MR. RIDDLES: I have no objection, Your Honor.

16 JUDGE BROWN: 2AA is received.

17 (The document referred to, having
18 been previously marked for
19 identification as Defendant's
20 Exhibit 2AA, was received in
21 evidence.)

22 BY MR. WORK:

23 Q Mr. Brancati, would you please read the third full
24 paragraph of this TechDyn letter to Whittaker?

25 A "In our response, we plan to propose to the Air

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1 Force that the remote control element be accepted in its
2 present configuration and with its present operational
3 capability. Therefore, it is not our intent that this
4 meeting will involve any discussions directly related to the
5 RCE."

6 Q Now, again, continuing chronologically, I hand you
7 a document that has been marked as Defendant's Exhibit 10E,
8 a Whittaker letter to TechDyn dated August 22, 1988. Do you
9 recognize that document, sir?

10 A Yes, that's a letter from Whittaker to TechDyn
11 regarding progress payments.

12 Q And other matters?

13 A And other matters.

14 MR. WORK: I offer Defendant's Exhibit 10E, Your
15 Honor.

16 JUDGE BROWN: Any objection to 10E?

17 MR. RIDDLES: Just one moment, Your Honor.

18 (Pause.)

19 MR. RIDDLES: I have no objection to it.

20 JUDGE BROWN: 10E is received.

21 (The document referred to, having
22 been previously marked for
23 identification as Defendant's
24 Exhibit 10E, was received in
25 evidence.)

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1 BY MR. WORK:

2 Q There are three matters addressed in this letter
3 and without taking the time to read them, will you just tell
4 the jury what three matters are addressed in this letter
5 from Whittaker to TechDyn dated August 22, 1988?

6 A Well, we reiterate our position on the remote
7 control element and the problem with the basic subcontract
8 and lack of the subcontract. And we are concerned that
9 TechDyn has taken that position to justify the fact that
10 they have not paid us any progress payments and they stated
11 they are stopping progress payments. And our position in
12 this was that it's appropriate to stop progress payments for
13 the future but for all the previous payments that it is
14 inappropriate for them to take that position.

15 Q And do you indicate in this letter, Mr. Brancati,
16 the amount of progress payments then in arrears as of August
17 22, 1988?

18 A Yes. The amount as was indicated here was
19 \$2,057,391.10.

20 Q And how far back do the invoices reflecting those
21 progress payments go?

22 A To August of 1986.

23 Q And this was August of 1988.

24 A Yes.

25 Q Between August of 1986 and August of 1988, to your

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1 knowledge based on your personal investigation, had
2 Whittaker made any progress in this program?

3 A Oh, yes.

4 Q What had it done?

5 A Well, for one, it developed the software to the
6 satisfaction of the SQT test, which was the acceptance test
7 from the Air Force's standpoint. It provided the hardware.
8 It accomplished the software development on the RCE.

9 (Continued on next page.)

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1456

THOMAS A. BRANCATI - DIRECT EXAMINATION

2403

1 Q Now, again proceeding chronologically, did there
2 come a time when TechDyn removed the equipment that was
3 located in your plant, the so-called test bed equipment?

4 A Yes.

5 Q Will you describe the circumstances under which
6 that occurred, sir?

7 A Whittaker was in two facilities of approximately
8 40,000 square feet apiece so about 80,000 square feet and
9 Whittaker was moving to a facility close by which was being
10 built of 40,000 square feet. So we were kind of hemmed in.
11 This was being done for economic reasons.

12 So we had no room to place the test bed which was
13 TechDyn's responsibility in the first place, we had no room
14 to put the test bed. So we advised TechDyn that they need
15 to -- that we were moving in the September/October timeframe
16 and that they needed to remove that test bed and put it
17 somewhere else. They could put it anywhere else that they
18 wished but we had no room in the new facility.

19 And we advised them that if they did not move it,
20 they would probably wind up being penalized by the owner.
21 The owner was looking for \$20,000 to \$22,000 a month for the
22 facility.

23 Q Was the facility from which you moved where
24 TechDyn's test bed had been located a facility that was
25 owned by Whittaker?

THOMAS A. BRANCATI - DIRECT EXAMINATION

2404

1 A No. No. It was not owned by Whittaker.

2 Q Did you have any control over that facility?

3 A No, we did not. We had no control of that
4 building or any control over the rent for that building.

5 Q When did you advise TechDyn that you were leaving
6 that building?

7 A I think it was -- well, TechDyn first off -- it
8 was a known fact for a year that we had to leave that
9 building but TechDyn was formally notified in July of '88
10 that we would be moving by -- we thought at that time the
11 end of August or the early part of September. But the
12 building was not ready at that point, so we were able to --

13 Q The new building.

14 A The new building. So we were pushed out another
15 30 days. We again advised TechDyn and they requested an
16 extension from mid-August to late August to move their
17 equipment. So when we were extended out because of our new
18 building being late, we granted that extension. Again, at
19 no cost.

20 Q Did you make any effort to ascertain in the
21 contractual documents whether Whittaker had any
22 responsibility to continue housing at no cost a TechDyn test
23 bed?

24 A Yes, I did.

25 Q What did you find out?

THOMAS A. BRANCATI - DIRECT EXAMINATION

2405

1 A There was no agreement, no requirement for
2 Whittaker to provide that facility other than as I
3 determined a handshake to provide it for six months.

4 Q And when was that handshake?

5 A The 1985 or '86 timeframe. It was well over the
6 six-month period.

7 Q All right, sir. Then what happened?

8 A In late August, another issue which was very
9 critical in that move is that the Air Force and TechDyn were
10 negotiating a change to the contract, to change what was
11 called the so-called split FOC -- FOC 1 and FOC 2 philosophy
12 where we would take the development test bed -- TechDyn
13 would take the development test bed and put it up in Iceland
14 without the remote control capability and then
15 subsequently -- that would be known as FOC 1 and
16 subsequently put up the full system with the remote control
17 and that would be known as FOC 2.

18 Q Was Whittaker actually involved in those
19 negotiations with the Air Force?

20 A In terms of -- we saw that as a possible vehicle
21 to again address the statement of work issue. Since there
22 was a complete change in the contract, the contract was in
23 our view, it was being changed as a consequence of taking
24 that test bed away which by contract should have been
25 available for Whittaker to do its job.

THOMAS A. BRANCATI - DIRECT EXAMINATION

2406

1 Q Let me just make sure we understand what test bed.
2 Was the test bed that you're referring to that was to go to
3 Iceland the test bed that had been in your facility?

4 A Yes.

5 Q Okay. And what happened?

6 A So the Air Force decided that that's what they
7 were going to do and they gave the direction to move the
8 test bed to Iceland.

9 Q What happened?

10 A TechDyn came in with a couple of folks which I
11 don't know -- I didn't recognize. But in any event, they
12 aggressively and very -- well, they aggressively --

13 MR. RIDDLES: I'm going to object to those kind of
14 characterizations, Your Honor. He can speak to facts
15 without color.

16 JUDGE BROWN: Sustained. You can tell what they
17 did but don't characterize it.

18 THE WITNESS: They used what I would call as --

19 MR. RIDDLES: I'm going to object for a lack of
20 foundation also until the witness has testified that he has
21 personal knowledge of these things, that he personally
22 observed them.

23 BY MR. WORK:

24 Q What is the basis for your knowledge of what
25 occurred when these TechDyn representatives entered your

THOMAS A. BRANCATI - DIRECT EXAMINATION

2407

1 plant?

2 A The Whittaker people immediately reported to me
3 that something very odd was happening.

4 MR. RIDDLES: Objection, Your Honor, that --

5 MR. WORK: He hasn't finished.

6 JUDGE BROWN: Let him finish his statement.

7 MR. RIDDLES: All right.

8 THE WITNESS: The Whittaker people reported to me
9 that something very odd was happening and I asked them to
10 take photographs of what was going on.

11 BY MR. WORK:

12 Q And did you observe those photographs?

13 A Yes, I did.

14 Q And what did you observe in the photographs?

15 MR. RIDDLES: I'm going to object to that --

16 JUDGE BROWN: I sustain the objection.

17 MR. WORK: All right.

18 BY MR. WORK:

19 Q So you didn't actually see what they were doing.

20 A No.

21 Q Did you see the results of what they had done?

22 A Yes.

23 Q And what were those results?

24 MR. RIDDLES: I'm going to object to that until he
25 testifies where he saw the results, Your Honor. If that's

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THOMAS A. BRANCATI - DIRECT EXAMINATION

2408

1 in some photographs that nobody's seen, I would object to it
2 on that basis. Lack of foundation.

3 JUDGE BROWN: Tell us where you saw it -- whether
4 you're talking about photographs or what you actually saw.

5 THE WITNESS: In the test facility which was in
6 the Whittaker facility.

7 BY MR. WORK:

8 Q You actually observed this personally?

9 A After it was done. I didn't observe it being
10 done.

11 Q What did you observe?

12 A Wires cut --

13 MR. RIDDLES: I object to, again, a lack of
14 foundation, Your Honor. No testimony that he saw -- well, I
15 guess -- I'll remove the objection.

16 JUDGE BROWN: All right.

17 MR. WORK: Thank you.

18 BY MR. WORK:

19 Q What did you personally observe when you went down
20 to the room where the test bed had been located?

21 A Cut wires. A disconnection of the system in a
22 manner which did not appear that someone was going to put it
23 back together in any reasonable time.

24 Q Have you ever been personally involved or seen the
25 moving of this test bed from one site to another?

THOMAS A. BRANCATI - DIRECT EXAMINATION

2415

1 RCE in your letter to Mr. Morrison?

2 A "As a part of the aforementioned discussions, the
3 remote control element problem was discussed and some
4 solutions offered. WES herein states its acceptance of
5 TechDyn direction regarding the RCE as given to WES in the
6 reference b correspondence.

7 Q And that's the TechDyn letter of 30 August 1988.

8 A Yes.

9 Q Could you continue?

10 A "Notwithstanding the discussions and letters
11 relating to the FOC 1 and FOC 2 change proposal, WES has not
12 been given direction by TechDyn under the change clause of
13 the subcontract for this effort and looks forward to its
14 receipt from TechDyn as indicated by you in previous
15 correspondence."

16 Q Now, sir, what responsibility were you undertaking
17 in this letter with regard to the RCE, if any?

18 A The change -- there was a change that was proposed
19 that TechDyn had forwarded to us which said that the Air
20 Force would accept the switching delay that was in the
21 present system. The Air Force in the July 20th timeframe
22 had participated in testing the RCE so they knew exactly
23 what the limitations of the present system was with the
24 present hardware. And they had proposed a small change in
25 priority which was a minor change to the system --

THOMAS A. BRANCATI - DIRECT EXAMINATION

2416

1 Q When you say "priority" what do you mean?

2 A Priority of checking the health of the system
3 versus switching for failure. So that what the Air Force
4 said -- you don't have to go through the whole check before
5 you do a failed circuit switchover. So if you have a failed
6 circuit switchover, you do it in a certain amount of minutes
7 and then you can go back to the health status, which could
8 take you up to whatever they said -- 15 minutes. That meant
9 to us that the software we had, even with that hardware that
10 the CFA possessed --

11 MR. RIDDLES: Object to hearsay testimony, Your
12 Honor.

13 MR. WORK: He's talking about what -- what did it
14 mean to you?

15 THE WITNESS: To me, what it meant was that the
16 software that was in the system with the hardware that
17 existed in the system as of that date worked and it would
18 satisfy the Air Force requirement and it was a minor effort
19 to go from there to conclude the RCE program as described in
20 the TechDyn letter they sent me on 30 August.

21 BY MR. WORK:

22 Q How much money did you expect it to take to
23 complete this RCE effort as of 9 September 1988?

24 A From Whittaker's standpoint, it was a minor amount
25 of effort, a minor amount of dollars.

THOMAS A. BRANCATI - DIRECT EXAMINATION

2417

1 Q Can you give us a ballpark of what you expected?

2 A Probably somewhere in the order of less than
3 \$100,000 where we would have been ready to accept that as a
4 close-out.

5 (Continued on next page.)

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THOMAS A. BRANCATI - DIRECT EXAMINATION

2418

1 Q How much time would it have taken under that
2 approach, as you understood it, to proceed under that
3 approach, as you understood it, to proceed to a conclusion
4 on the RCE?

5 A The actual time to do the task was not all that
6 long. Probably in about two months, it would have all been
7 finished, including the documentation.

8 Q What happened at that point, after you wrote to
9 Mr. Morrison?

10 A Nothing.

11 Q What was required to happen at that point, to
12 bring this RCE issue to closure?

13 A We would have had to been given access to the
14 hardware, to do the final wrap up of the software?

15 Q Where was that hardware?

16 A Well, we asked TechDyn where the hardware was, and
17 we were told it was at VEDA, moved to Camarillo, to a
18 company called VEDA, and that it was available there for
19 testing?

20 Q Did you check personally to see whether it was
21 available for testing?

22 A Yes, I did. I checked then and I checked many
23 times after that. And at that point in time, the hardware
24 was not at VEDA.

25 Q Where was it?

THOMAS A. BRANCATI - DIRECT EXAMINATION

2419

1 A The hardware was in a warehouse located close
2 to -- what hardware there was left, was in a warehouse close
3 to VEDA.

4 Q And where was the software?

5 A In this, at that same warehouse. It was all
6 packed away.

7 Q And then what happened?

8 A We never, well, we couldn't get the hardware -- we
9 couldn't have, we couldn't test the, we couldn't complete
10 this effort at all, so we were stopped dead. We were,
11 again, we were, we had no way to go with this, with this
12 system, under these conditions.

13 Q Did you communicate that situation to TechDyn?

14 A Yes, we communicated that many times to TechDyn.

15 Q And what happened?

16 A TechDyn just did not respond.

17 Q Now, sir, what happened at that point?

18 A Well, at that point we were advised that TechDyn
19 had received a design of a less complex, less capable system
20 to do the remote control switching from the Mitre
21 Corporation. And that they were looking at that as a
22 replacement --

23 MR. RIDDLES: I am going to object, again, to
24 hearsay testimony, Your Honor.

25 MR. WORK: It's not for the truth, here, Your

THOMAS A. BRANCATI - DIRECT EXAMINATION

2420

1 Honor.

2 JUDGE BROWN: I sustain the objection. It can't
3 be relevant if it's not for the truth.

4 MR. WORK: All right, Mr. Brancati, then what
5 happened?

6 THE WITNESS: TechDyn asked us, in a letter, to
7 quote a hardware solution. Because you, Whittaker are
8 responsible for the hardware.

9 BY MR. WORK:

10 Q Let me hand you a document. I am going to hand
11 you a document that we have marked as 20LL, it's a letter
12 from TechDyn to Whittaker dated 1986. Are you familiar with
13 that document, sir?

14 A Yes, I am.

15 MR. WORK: I offer 20LL, Your Honor.

16 MR. RIDDLES: No objection, Your Honor.

17 JUDGE BROWN: It's received.

18 (The document referred to, having
19 been previously marked for
20 identification as Defendant's
21 Exhibit 20LL, was received in
22 evidence.)

23 (Pause.)

24 MR. WORK: Mr. Brancati, I wonder if you would
25 please read from this TechDyn letter of January 16, 1989,

THOMAS A. BRANCATI - DIRECT EXAMINATION

2431

1 THE WITNESS: We made no impact on TechDyn. Their
2 position remained the same. They refused to change the RCE
3 termination of default to a termination of convenience,
4 which is the, what Whittaker desired and we felt was the
5 normal approach on an issue like this.

6 And we then started on a effort to define the
7 closure of the software.

8 BY MR. WORK:

9 Q What actions did you take in that connection, sir?

10 A I discussed, well the issue that we did as a
11 result of the taking the stand that we could not do any
12 further work until we got a definition of the tasks yet to
13 be done in regard to that software, we forced the meeting
14 between the Air Force and TechDyn and ourselves.

15 I asked the Air Force to call that meeting, they
16 did. And we sat down. And I agreed to do all the work
17 associated with all the trouble reports that we three agreed
18 with, at that meeting, and finish those. And that would
19 finish the software. I wanted someone to say, that would
20 finish the software, that's what we are buying. We are
21 buying that and that would finish the job.

22 Q This is how many years after you completed SQT?

23 A This is, finally, when we did do that, it was a
24 year and a half, two years.

25 (Continued on next page.)

1 Q What is the arrangement that you made at that
2 point?

3 A The arrangement was that we agreed on -- I believe
4 the number was 42 trouble reports.

5 Q These were trouble reports that had emerged from
6 Air Force user testing?

7 A From Air Force user testing. TechDyn had no
8 ability to check the software or test it or anything. They
9 were pass through. We did the software work, we gave it to
10 TechDyn, TechDyn gave it to the Air Force and the only check
11 on our work was the Air Force. So TechDyn never touched it.
12 So the trouble reports came out of the Air Force community
13 and we all agreed these 42 would be the ones to be fixed.

14 Ninety-nine percent of those 42 had nothing to do
15 with the software as it operated. What they had to do with
16 was documentation that the Air Force felt it needed. So the
17 greater majority of those were documentation issues that had
18 to be corrected.

19 There were some -- I forget -- a very few number
20 that had to do with really the software. There were a few
21 that were outside the scope of work that the Air Force
22 recognized at that point and funded us to do at that point.
23 And so we required the test bed to do that and what we did
24 was we made a makeshift work around for the test bed which
25 would get us at least to the point where we could finish

THOMAS A. BRANCATI - DIRECT EXAMINATION

2433

1 putting those changes into the software and testing it with
2 a crude simulation.

3 We did that and then we agreed with the Air Force
4 that since TechDyn still hadn't brought back the test bed to
5 available -- I mean, it was a year and a half of time that
6 the test bed was out of any availability to Whittaker -- the
7 Air Force agreed to test -- allow Whittaker to test the
8 software on the Air Force test bed at Tyndall Air Force
9 Base. We agreed that we would do that and that was then set
10 up for somewhere in the summer of '89.

11 Q Okay. And then what happened?

12 A We went to Tyndall Air Force Base and because of
13 Air Force priorities, they were having a lot of problems
14 with drug runners at the time and the Air Force had to use
15 that test set up for that purpose. We couldn't get on the
16 test bed. So the Air Force cancelled that at that time and
17 rescheduled three times.

18 We did get on for about three days out of a
19 two-week period we felt we required and what we did is we
20 went through all the STRs that needed to be gone through
21 with the test bed. We felt we fixed it all so we made then
22 a new baseline tape as a result of that which we called
23 90-54.

24 Q Okay. Then what happened?

25 A Then I discussed -- TechDyn would not accept that

THOMAS A. BRANCATI - DIRECT EXAMINATION

2434

1 software. As far as TechDyn was concerned, it was not an
2 acceptable package.

3 Q By this time, had TechDyn filed this lawsuit?

4 A Yes. TechDyn filed the lawsuit in -- I guess it
5 was October of '89 or thereabouts.

6 Q Had TechDyn yet obtained this new RCE to finish
7 out its work?

8 A No. No. That still was not available even
9 though -- that still was not available.

10 Q Okay. What position did TechDyn take with regard
11 to the closeout of the software at that point?

12 A Well, the Air Force agreed to accept the software
13 as it was provided I gave them 50 hours of telephonic time
14 with our engineers.

15 So what they accepted -- the Air Force accepted
16 it, we will accept that software and we will use it but what
17 we want is at least 50 hours of your engineering people's
18 time to be able to consult with them. I agreed with that
19 and we had an agreement..

20 The agreement, however, since we had no
21 contractual relationship with the Air Force, had to be
22 processed through TechDyn.

23 Q And what position did TechDyn take?

24 A TechDyn refused to accept that agreement and in
25 fact took exception to the Air Force --

THOMAS A. BRANCATI - DIRECT EXAMINATION

2435

1 MR. RIDDLES: I'm going to object to hearsay
2 testimony again as to what the Air Force may or may not have
3 said.

4 BY MR. WORK:

5 Q You don't have to say what the Air Force said, say
6 what TechDyn said.

7 A TechDyn took exception to the agreement.

8 MR. RIDDLES: I object to the characterization of
9 it as an agreement, Your Honor.

10 MR. WORK: There was testimony of this very
11 agreement by Mr. Morrison.

12 JUDGE BROWN: I'll overrule the objection.

13 BY MR. WORK:

14 Q Now, sir, had TechDyn ever in your experience on
15 this program, ever taken any substantive position with
16 regard to the acceptability or non-acceptability of software
17 prior to the time that it opposed your agreement with the
18 Air Force?

19 A No, sir. They rightfully had -- they rightfully
20 didn't because they had no capability to evaluate the
21 software.

22 Q I'm going to hand you a document that we have
23 marked as Defendant's Exhibit 104. It's a letter from --

24 JUDGE BROWN: Did you give him one already?

25 MR. WORK: Yes. Several minutes ago.

THOMAS A. BRANCATI - DIRECT EXAMINATION

2436

1 BY MR. WORK:

2 Q It's a letter from TechDyn to the Air Force dated
3 20 April 1990 signed by Mr. Hise. Do you recognize that
4 letter, sir?

5 A Yes, I do.

6 MR. RIDDLES: What did you mark this as, sir?

7 (Pause.)

8 MR. WORK: I offer Defendant's Exhibit 104.

9 JUDGE BROWN: Any objection to 104?

10 MR. RIDDLES: No, sir.

11 JUDGE BROWN: It's received.

12 (The document referred to,
13 having been previously marked
14 for identification as
15 Defendant's Exhibit 104, was
16 received in evidence.)

17 BY MR. WORK:

18 Q Let's turn to the second page of this letter.

19 I'll read from the first full paragraph:

20 "TechDyn strongly objects to the ESD suggestion
21 that it relax Whittaker's contractual obligations and accept
22 Whittaker's deficient existing software on a no-cost basis."

23 To your knowledge, sir, had TechDyn ever taken any
24 substantive position prior to this April 20 letter on
25 Whittaker's software?

THOMAS A BRANCATI - CROSS EXAMINATION

2454

1 THE WITNESS: I recognize it as the -- I seem to
2 recognize this diagram. I don't particularly recall the
3 letter.

4 BY MR. RIDDLES:

5 Q You --

6 A As you're aware, it's dated April 24, 1985.

7 Q Did you look at that when you were examining the
8 subcontract, sir, when you came on board?

9 A It's possible I did. I can't recall it. I recall
10 the diagram, but I don't recall the --

11 MR. RIDDLES: Your Honor, I proffer the exhibit
12 and offer it into evidence at this time.

13 JUDGE BROWN: Any objection to 2005?

14 MR. WORK: Not other than the one I stated
15 already, Your Honor.

16 JUDGE BROWN: That it's part of something else?

17 MR. WORK: Yes.

18 JUDGE BROWN: I overrule that objection. It
19 doesn't appear to be part of something else.

20 (The document referred to, having
21 been previously marked for
22 identification as Plaintiff's
23 Exhibit 2005, was received in
24 evidence.)

25 MR. RIDDLES: All right sir. Let's look at the

THOMAS A BRANCATI - CROSS EXAMINATION

2463

1 A Yes, it is.

2 Q And are there some things attached to it, sir?

3 A Well, the preliminary draft of a prime item
4 development specification is attached to it.

5 Q I'd like for you turn it over, sir, and do you
6 find a preliminary draft relating to the remote control
7 element, sir?

8 A Preliminary draft -- yes.

9 Q Okay. And the unsigned preliminary draft.

10 A Yes.

11 Q And it talks about a B1 -- what does B1 stand for,
12 sir?

13 A That's a product specification, system
14 specification.

15 Q I see. So that's a system specification B1 for
16 the equipment of the remote control element. Am I correct,
17 sir?

18 A Yes.

19 Q That's not the software, is it, sir?

20 A No, it's not the software.

21 Q Who prepared this document, sir?

22 A 4C.

23 Q I see.

24 A 4C had to prepare it because there was no document
25 provided. B1 is usually supplied by the prime.

THOMAS A BRANCATI - CROSS EXAMINATION

2464

1 Q I didn't ask you why, sir. I just asked you who
2 prepared it. The 4C Corporation did it, am I correct, sir?

3 A To do the job. Yes.

4 Q Would you look over, please, at page 14 of the
5 narrative? Do you find that, sir?

6 A Yes.

7 Q Do you see 3.5.3?

8 A Yes.

9 Q Would you read that, please?

10 A "4C presently has available all of the facilities
11 required to design, fabricate, integrate, test, install and
12 operate the RCE equipment. Should requirements for
13 modification facilities of faulty equipment for RCE support
14 be identified during the LSA or during scheduled site
15 surveys required documentation shall be initiated to advise
16 the Government and to provide appropriate recommendations.

17 Q And just so I understand, 4C presently has
18 available all of the facilities -- and it talks about all
19 those things to design, to fabricate, integrate, test,
20 install and operate RCE equipment. Am I correct, sir?

21 A That's what that says. Right.

22 Q That's not software, is it, sir?

23 A Well, no. It would refer to basically -- well,
24 the facilities, as it says. Which is not software.

25 Q It's hardware --

THOMAS A BRANCATI - CROSS EXAMINATION

2465

1 A Facilities.

2 Q Did you look at this --

3 A Yes.

4 Q -- when you were reviewing --

5 A Yes.

6 Q I want you to look, please, at Exhibit 219. Is

7 that in front of you?

8 A Yes.

9 (Pause.)

10 MR. RIDDLES: Let me just check something here.

11 (Pause.)

12 BY MR. RIDDLES:

13 Q Do you recognize 219?

14 A Yes.

15 Q Who was Mr. Tobiason, sir?

16 A He was the program manager at 4C.

17 Q Did you ever talk to him about this design for the

18 RCE?

19 MR. WORK: The foundation isn't there, Your Honor.

20 There's no foundation that this is a design for the RCE.

21 MR. RIDDLES: Well, let me just -- I'll rephrase

22 it.

23 BY MR. RIDDLES:

24 Q Did you ever talk to Mr. Tobiason?

25 A No, I haven't.

THOMAS A BRANCATI - CROSS EXAMINATION

2466

1 Q I see. Read the letter, please. Just read that
2 first paragraph.

3 A "The attached drawings depict the RCE design
4 elements and data flow that TechDyn may use in their CEA CDR
5 presentation. Ernest Heath has been informed that I was
6 sending them and is awaiting their delivery."

7 Q Okay. And then what's the next paragraph? Go
8 ahead and read that one, too.

9 A "If you have any technical questions regarding the
10 above, please contract Craig Smith at (213) 273-9651."

11 Q I see, sir. Okay. And then there are attachments
12 to it, are there not, sir?

13 A Yes, there are.

14 Q Would you look at those, please?

15 A Yes.

16 (Pause.)

17 Q Now, I believe I referred to this as a schematic
18 earlier and you corrected me or is that the wrong word to
19 use?

20 A Right.

21 Q What would you call this?

22 A I would refer to it as a block diagram.

23 Q A block diagram. And you see here switch control,
24 do you see that on the bottom right-hand side, sir?

25 A Yes.

THOMAS A BRANCATI - CROSS EXAMINATION

2478

1 inconsistent with WES's program manager's statement at the
2 13 - 15 December 88 IDF working group that no RCE effort had
3 occurred since April 88.

4 Do you remember these comments and Brigadier
5 General --

6 A They didn't make those comments in the General's
7 meeting. He did not make them in the meeting.

8 Q He's -- somebody's making them here.

9 A Well, I don't totally disagree with it, either.

10 Q Okay. Because, as I said in my statement, that we
11 felt the software was working. The problem was that there
12 was an argument going on, was it the software or the
13 hardware. So, there was no real effort going on in the
14 software during that period of time.

15 Q Do you agree with the statement, however, that you
16 said that the disruption to the RCE test bed prevented your
17 progress, sir?

18 A No, what I said, and I agree with that as well,
19 you are taking it out of context. What I said is without
20 the test bed, we could not resolve the RCE software. And
21 that's a true statement.

22 Q I see. Now, then, it goes on, let me just
23 continue here. In the face of TechDyn's October 88
24 notification to WES, that the test bed would be available
25 for WES RCE testing at Amarillo, California, it would have

THOMAS A BRANCATI - CROSS EXAMINATION

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1 been expected that WES would have made the design and code
2 fixes.

3 A Yes. And it just shows you, I think, the
4 inaccuracy of these comments. The letter of October 88
5 stated, by TechDyn to Whittaker that the test bed was
6 available at January. In fact, the test bed was not
7 available. I personally checked it.

8 Q I see.

9 A And in fact, wasn't made available to WES until
10 July of 1990.

11 Q Look down at paragraph 3, sir, where it says ESD,
12 TechDyn and WES on the RCE, that's a reference to your
13 comment, is that correct, sir?

14 A ESD, yes.

15 Q WES stated that while they were working in quote
16 good faith, unquote, to resolve the RCE software problem,
17 TechDyn and ESD were pursuing an alternative approach, while
18 leaving WES in the dark. Do you remember that, sir?

19 A Absolutely. It's absolutely true.

20 Q And then he goes on to explain while ESD is not
21 aware of the pursuing of an alternative RCE measure, in the
22 summer of 1988, ESD did begin discussing the possibility of
23 an RCE alternative during the October 88 Iceland
24 installation RCE RADIL.

25 A Which was exactly when we said that we would agree

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1 A There is a schedule attached to this, yes.

2 Q What's the date of this cover letter submitting
3 the schedule, sir?

4 A 8 November 1988.

5 Q What was the date of the termination for default,
6 sir?

7 A The termination was in January of 1989.

8 Q So that would have been about two months after
9 this?

10 A Yes, it was. Except this is not a schedule that
11 we would recognize.

12 Q So you don't even recognize this schedule?

13 A I recognize it. We don't recognize it as a
14 contractual schedule.

15 (Pause.)

16 MR. RIDDLES: May I have just a second here?

17 (Pause.)

18 MR. RIDDLES: I hand you what's been marked as
19 22A1 and I'd like for you to turn to page 52 of it, please.

20 THE WITNESS: 52?

21 MR. RIDDLES: Well, I know it's confusing.

22 THE WITNESS: This side here?

23 MR. RIDDLES: I'm not sure. Let me join you.

24 THE WITNESS: I see 52 here.

25 MR. RIDDLES: Let me make sure that's the right

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1 to bring it in in the same way that you were but I'm not
2 going to let them bring it in in their way either because it
3 would just add a dimension to this trial that the jury is
4 neither able nor required to decide to decide the issues.

5 Are we ready to bring the jury back in?

6 MR. RIDDLES: Yes, sir.

7 JUDGE BROWN: Okay. Would somebody -- if you'll
8 get the jury -- Mr. Boehlert, would you get the witness or
9 somebody?

10 (Pause while jury and witness are seated.)

11 BY MR. RIDDLES:

12 Q Mr. Brancati, in your testimony I believe you
13 testified that you had called out a statement of work and
14 that it was presented to Mr. Morrison. Am I correct?

15 A No, sir. We presented a statement of work to
16 TechDyn and it was presented by Mr. Don Moeller of Whittaker
17 in the TechDyn offices. I'm not sure -- perhaps Mr.
18 Morrison was there.

19 Q And the statement of work that was presented had
20 been marked up -- it was the original contract statement of
21 work and the subcontract. Am I correct, sir?

22 A It was what was called the original statement of
23 work. Yes, sir.

24 Q And Mr. Moeller had marked that up, hadn't he?

25 A Yes. For the remaining tasks as we saw it.

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1 Q And didn't he set out who he felt was responsible
2 for those tasks in that statement of work?

3 A Yes.

4 Q Whittaker on the one hand and TechDyn on the
5 other.

6 A Yes.

7 Q And TechDyn disagreed with those, didn't he, sir?

8 A TechDyn refused to negotiate them, to talk about
9 them.

10 Q My question was they disagreed with them, didn't
11 they, sir?

12 A I don't know. They refused to talk about it. I
13 don't know if they disagreed with individual items or they
14 just philosophically disagreed with the concept.

15 Q Did you see that statement of work, sir?

16 A Yes.

17 Q And did that statement of work place the
18 responsibility for CLIN 2AB, remote control hardware, on the
19 TechDyn Corporation?

20 A It placed the hardware responsibility where we
21 felt it belonged. Yes, sir. TechDyn.

22 Q And you felt it was on the TechDyn Corporation.

23 A Yes, sir.

24 Q And you know, do you not, that Mr. Morrison and
25 the people at TechDyn disagreed with your interpretation of

**TRIAL TESTIMONY OF
STEVEN JONES**

STEVEN JONES - DIRECT EXAMINATION

2501

1 JUDGE BROWN: Well, when we get there, then bring
2 it up. Documents that are on the Air Force and the Air
3 Force's position, I am letting in substitute of the Air
4 Force testifying, in effect. But, that's not that. So, I
5 will sustain the objection. You can put it in when it makes
6 sense with this witness.

7 Next witness.

8 MR. WORK: The next witness is Steven Jones.
9 Whereupon,

10 STEVEN JONES
11 having been duly sworn, was called as a witness herein and
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WORK:

15 Q Good afternoon, Mr. Jones.

16 A Good afternoon.

17 Q Will you state your full name please.

18 A Steven C. Jones.

19 Q What is your current position?

20 A Manager of off site services.

21 Q At what company?

22 A Whittaker Electronics.

23 Q So the jury will know something about you, will
24 you just give us a brief review of your education?

25 A Yes. I have five semesters of bible school, after

STEVEN JONES - DIRECT EXAMINATION

2503

1 between Lockheed and Northrop. I've also worked with
2 Northrop as a program manager on a \$2 billion program.

3 Q And your work at Lockheed was in the logistics
4 area?

5 A Yes, I was. I was a senior maintainability
6 engineer, developing the human aspects of the clocks making
7 it user friendly, making it repairable, and taking care of
8 all the items that entailed doing the manuals for the
9 system. But all the up front planning for that.

10 Q And one of the things we have not explained in
11 depth on our elements chart, and this is chart 10 in your
12 book, is the logistics and documentation and training phase
13 of the ICCE program. Did you work in that area in the ICCE
14 program?

15 A Yes, I did.

16 Q For what period of time?

17 A Through July of 84 until March of 91.

18 Q Now, sir, would you just give us a brief primer on
19 logistics and perhaps I could help you by describing this by
20 showing the jury a chart. Will you turn to chart 22 in your
21 book please? The chart entitled elements of ICCE logistics.
22 Are you familiar with this chart, sir?

23 A Yes, I am.

24 Q Is it a true and accurate depiction of the various
25 elements of the logistics program in the ICCE procurement?

STEVEN JONES - DIRECT EXAMINATION

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1 anything else -- or not training, but with testing, any
2 changes that come about to any part of the system, we're the
3 documenters, we're the ones that see the whole picture and
4 you have to give the customers something that he can repair
5 on his own. That's our responsibility. So, to have that
6 happen, I have to input all the correct data that comes
7 along. IF things keep changing, if things keep getting
8 delayed constantly, I have to keep making modifications to
9 our system.

10 Q What volume of level three drawings are we talking
11 about on this program for Whittaker alone, excluding TechDyn
12 for a moment?

13 A Probably about a size that fits in a box, maybe
14 like a moving box that you would normally see. It's
15 probably about this large.

16 Q Are these drawings computerized, or are they hand
17 done ?

18 A They are hand done.

19 Q And if there is a change in the system, what
20 happens?

21 A You have to go back and have it drafted and
22 actually get in and make those changes.

23 Q I see. Did there come a time, Mr. Jones, in the
24 course of the ICCE program, where you were asked to try and
25 quantify the impact on the logistics program of the

STEVEN JONES - DIRECT EXAMINATION

2527

1 expansion and extension of other parts of the program and
2 the deletion of the logistics support analysis plan?

3 A Yes, there was.

4 Q What was that time?

5 A That was pretty much about the time I came on
6 board with Whittaker.

7 Q And when was that?

8 A That was in July of 88.

9 Q And how was that effort initiated?

10 A It was initiated by a team of those individual
11 professionals from certain areas that had responsibility on
12 the program.

13 Q And did you receive instruction from some group,
14 or person as to what you were supposed to do?

15 A Yes. Mr. Jack Kennedy at that time was the person
16 who headed up the program. He established the ground rules
17 that we would use the system to make this a viable project.
18 WE would go into the contract files, we would verify exactly
19 what the contract said, we would determine what the level of
20 work was at that particular time.

21 Q And then do what?

22 A And then we would make an estimate of what
23 remained to be done, and we would compare what was in scope
24 and out of scope. And we would document those hours.

25 Q Now, this would have been in the 1989 time frame?

STEVEN JONES - DIRECT EXAMINATION

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1 A End of 88, beginning of 89.

2 Q And did you do that as relates to the logistics
3 area?

4 A Yes, I did. I personally did it.

5 Q And what did you do to accomplish your assignment?

6 A I got involved with the actually going through the
7 contract files, I compared that to a baseline which showed
8 all the dates of what, when these things actually happened,
9 per the contract files. I had access to the subcontract
10 data of a subcontractor who had done a lot of the works, so
11 we were able to find out exactly what he did at what
12 specific times.

13 Q That was OTI?

14 A That was OTI. And then once we determined what
15 those items that were out of scope, we went back to those
16 times to find out what those dollar amounts were that we
17 were charged by our subcontractor. So, most of the data in
18 my area was pretty much cut and dray. I didn't have to make
19 a lot of decisions. It was either an in scope or are they
20 out of scope. And those dollar amounts were right there in
21 purchase order bills from the subcontractor specifying what
22 he had done during those time period.

23 MR. BOEHLERT: I object at this time, Your Honor,
24 to any further testimony on that. Those documents were
25 requested in discovery and were not furnishes.

STEVEN JONES - DIRECT EXAMINATION

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1 JUDGE BROWN: Overrule the objection.

2 MR. WORK: Now, what was the product of this
3 effort pursuant to the instructions you received for your
4 particular area?

5 THE WITNESS: It was called an entitlement for a
6 claim. That was the document that covered all the logistics
7 areas and my area showed the final hours that the
8 subcontract dollars that had been expended in out of scope
9 items.

10 BY MR. WORK:

11 Q So, for in house work, work performed by
12 Whittaker, your product was set forth an hour?

13 A It was just in hours.

14 Q And that was hours of what?

15 A That was hours of the exact people who had done
16 the work, from going back to their actual time card data,
17 and we went back. So, it was that person's time during that
18 period of time, their exact hours of time that they used
19 during that period.

20 Q And the hours represented what you had determined
21 in your research to be work beyond the anticipated scope of
22 the logistics job, is that correct?

23 A That's correct.

24 Q Okay, now in terms of the subcontractor costs,
25 what form did your product take there?

STEVEN JONES - DIRECT EXAMINATION

2530

1 A There were the actual subcontract dollars, the
2 exact dollars that the subcontractor had billed us for.

3 Q What did you do with your product once you
4 finished this investigation and compilation?

5 A I basically just assembled it. I wrote up the
6 research that I had done. All the data that I had come up
7 with and put together a document.

8 Q And whom did you give that document to?

9 A I gave that to Marie Raymond and Jack Kennedy.

10 MR. WORK: I have no further questions, Your
11 Honor.

12 JUDGE BROWN: Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. BOEHLERT:

15 Q Good afternoon, Mr. Jones.

16 A Good afternoon.

17 Q Mr. Jones, I didn't understand from your
18 testimony, what your involvement in the ICCE program was.
19 And I'd like you to tell us, what time frames were you
20 involved with?

21 A I was involved from July 88 through March of 91.

22 Q And were you continuously involved?

23 A Yes, I was.

24 Q In what capacities?

25 A I was one of the persons who worked with the