

OFFICE OF SPECIAL COUNSEL

SWORN STATEMENT OF CLARENCE N. DANIELS

CASE FILE NUMBER: DI-00-1499

14 JUL 2009

Headquarters for the U. S. Army Aviation & Missile Command
Sparkman Center, Building 5300
Redstone Arsenal, Alabama

ARMY REPRESENTATIVE:

[REDACTED]

Special Assistant to the Command Counsel
U. S. Army Materiel Command
9301 Chapek Road
Fort Belvoir, VA 22060-5527

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P.O. Box 721
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256-534-9771

Enclosure 2

I N D E X

WITNESS:

PAGE NUMBER:

CLARENCE N. DANIELS

Examination by [REDACTED] [REDACTED]

3

E X H I B I T S

MARKED

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[REDACTED]: Good morning, Mr. Daniels.
My name is [REDACTED].

MR. DANIELS: Good morning.

[REDACTED]: I am a recently retired
Department of Army Civilian Attorney. In June of
this year, I was temporarily rehired for the
express purpose of conducting this interview with
you.

Assisting and here with me now is
[REDACTED], who is an Attorney with
Headquarters Army Materiel Command at Fort
Belvoir. For the record, it's 8:50 a.m., Central
Standard Time, Tuesday, 14 July 2009.

We are in Conference Room Number 5493 in
the Sparkman Building, Headquarters for the
U. S. Army Aviation and Missile Command located on
Redstone Arsenal, Huntsville, Alabama. Present
are [REDACTED], Mr. Clarence Daniels and the court
reporter, [REDACTED] and myself.

As a preliminary matter, I would ask
that you read and sign this Privacy Act Statement

1 that I have just provided you. And, I will
2 provide you a copy of the signed statement before
3 we conclude our interview whether today, or in the
4 next day or two.

5
6 (Exhibit No. 1, being a one page
7 document, entitled, "NOTIFICATION
8 OF RIGHTS AND OBLIGATIONS PRIVACY
9 ACT STATEMENT CIVILIAN," was
10 marked.)

11
12 MR. DANIELS: (Complying with request.)
13 Okay, the only question I have concerning this is,
14 it doesn't my case file, DI-09-0045. You
15 understand that?

16 [REDACTED]: Yes, I understand that,
17 yes.

18 MR. DANIELS: Okay.

19 [REDACTED]: Thank you, Mr. Daniels.
20 [REDACTED], I'd ask that sometime during the course of
21 the next few days if you'd get a copy of that and
22 provide it to Mr. Daniels and provide the original
23 to the court reporter so she can attach it to the

1 transcript. That would be great.

2 The second matter I'd like to take care
3 of, if it's not objectionable is to administer an
4 oath to take a sworn statement, if that's okay?

5 MR. DANIELS: that's fine.

6 [REDACTED]: Okay, if you would just
7 raise your right hand. Do you swear that the
8 evidence you shall give in the case now being
9 investigated shall be the truth, the whole truth,
10 and nothing but the truth?

11 MR. DANIELS: To the best of my
12 knowledge and belief, yes.

13 [REDACTED]: Thank you. First, I'd like
14 to thank you again for making yourself available
15 for this interview. I understand that the Office
16 of Special Counsel has been in touch with you and
17 informed you that I would be conducting this
18 interview.

19 MR. DANIELS: Yes.

20 [REDACTED]: It is my intention to
21 provide you the opportunity to comment on the
22 matters referred by the OSC letter of August 20th,
23 2003, to the Secretary of the Army as well as the

1 Army Report addressing those matters.

2 The Office of Special Counsel has
3 assigned File Number DI-00-1499 to this case. I
4 understand that you have been previously furnished
5 a copy of the Army report, which is contained in
6 two volumes.

7 The first volume dated 21 July, 2008,
8 addresses Counts 2, 5 and 6 of the OSC 23 August
9 '03 referral. The second volume dated 21 July
10 2009 addresses the remaining three counts, Counts
11 1, 3 and 4.

12 I have furnished you here today copies
13 of those two reports with Tabs 1 through 101. I
14 will be referring to the Volume dated 21 July 2008
15 as Army Report Number 1. And the Second Volume as
16 Army Report Number 2.

17 I have also provided to you a copy of
18 your 11 March 2009 letter addressed to the
19 Honorable William E. Reukauf, that's
20 R-e-u-k-a-u-f, Acting U. S. Special Counsel with
21 your tabs A through I.

22 As I stated, I intend to refer to these
23 documents during the interview and I wanted to

1 make sure you had these materials during the
2 course of the interview for your reference.

3 Now, I understand this morning, you also
4 brought several volumes of your own materials,
5 some of which include the reports that I just
6 mentioned, is that correct?

7 MR. DANIELS: Yes.

8 [REDACTED]: First, some housekeeping
9 matters. I'd like to start each day at
10 approximately 9 a.m. and take a one hour lunch
11 break. We can then resume the interview here
12 after lunch and continue until around 4 or 5 p.m.,
13 depending on how we progress.

14 So, I'd like to reconvene tomorrow at
15 9 a.m. with the same schedule. And, of course, we
16 do not have to rigidly adhere to these times, but
17 just for planning purposes, I thought it would be
18 helpful to both of us to have some type of
19 schedule that we could plan our days around.

20 MR. DANIELS: Yes.

21 [REDACTED]: Also, please ask for a
22 break at any time you feel you'd like to take one.
23 And, if you don't hear or understand a question,

1 please let me know. I will repeat it if you
2 didn't hear it or try to rephrase my question if
3 it was unclear or confusing.

4 And, for the sake of the reporter,
5 myself, as well as yours, we cannot all speak at
6 the same time. And, please answer verbally
7 because the reporter obviously can't capture non-
8 verbal communications such as a nod.

9 Is the plan of schedule fine with you?

10 MR. DANIELS: That's fine.

11 [REDACTED]: First, I'd like to cover a
12 little bit of background if I might and then ask
13 you some questions about the six counts contained
14 in the 20 August '03, OSC referral letter, which
15 is at Tab 2, by the way of Army Report Number 1.
16 I want you to feel free to comment on these
17 matters as we proceed through the interview.

18 So, first, if I can ask you a little bit
19 of history concerning your assignments here at
20 AMCOM. When were you first assigned here as a
21 Contract Specialist in the Acquisition Center?

22 MR. DANIELS: On February '79, I became
23 a Contract Specialist here.

1 [REDACTED] Okay. And can you provide
2 just a brief chronology to the best that you can
3 recall as to your particular assignments in the
4 Acquisition Center, particularly, as they relate
5 to the MLRS program?

6 MR. DANIELS: Well, I came to the MLRS
7 team back in January of 1989. I've been there
8 ever since. I been recently moved from that team,
9 it was about two months ago, though. But, from
10 January of 1989 until 2009, May, I was in the MLRS
11 Acquisition Team.

12 [REDACTED] Okay. And, do you recall
13 who were some of the Contracting Officers during
14 this time that you supported the MLRS program?

15 MR. DANIELS: It would be -- I had
16 various military and civilian. But, the longest
17 ones were [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED]
19 [REDACTED] [REDACTED] And, what
20 about [REDACTED]?

21 MR. DANIELS: She was a team mate.

22 [REDACTED] As I indicated earlier, I
23 provided you here today copies of the Army Report

1 to the 20 August 2003 OSC Referral.

2 MR. DANIELS: Yes.

3 [REDACTED]: When OSC referred this
4 matter to the Army back then in 2003, were you
5 provided a copy of that OSC report with the
6 attachments?

7 MR. DANIELS: You mean the two page
8 letter of the one that went to the Department of
9 the Army?

10 [REDACTED]: The one that went to the
11 Department of the Army.

12 MR. DANIELS: Yes, I have a copy of
13 that.

14 [REDACTED]: Okay, and were you provided
15 that back when it was referred to the Army in 2003
16 time frame, or thereabouts?

17 MR. DANIELS: Or, thereabouts.

18 [REDACTED]: Okay.

19 MR. DANIELS: I got the two page letter
20 in the mail and I got the one that went to the
21 Department of the Army from another source.

22 [REDACTED]: Okay. Let me begin with
23 Allegation One and again, that's at Report Number

1 Two, Army Report Number Two. And this allegation
2 deals with the unauthorized TDLs, Technical
3 Direction Letters, or TDLs.

4 On Page 3 of the OSC referral letter, it
5 states that during a negotiation session with
6 Lockheed Martin, back in 1998, you learned that
7 certain services included in the MLRS Production
8 Contract, was subsequently charged under the IES
9 contract as well, amounting to double billing.

10 I just want to be clear, the IES
11 contract you were referring to was the -- was that
12 the 98-C-0157 contract?

13 MR. DANIELS: Yes, that and the
14 predecessor contracts to that, and the In-Service
15 Contract.

16 [REDACTED]: Okay. And, in reference to
17 the production contract, in the OSC referral
18 letter, was that to the LRP Contract, 98-C-0138?

19 MR. DANIELS: And, various other
20 production and R&D contracts that were in effect
21 at the time.

22 [REDACTED]: Okay. Do you recall how
23 you first came to realize that Lockheed Martin was

1 double billing?

2 MR. DANIELS: Yes. We had a problem
3 with an ECP for a pivot bolt, where the bolts were
4 breaking and they had to do an engineering change
5 to that, to acquire a qualified new supplier for
6 that bolt.

7 By happenstance, I found out that it was
8 on a Production Contract, but the ECP they were
9 doing to produce these launchers was actually
10 being worked under an Engineering Services
11 Contract. And the Engineering Services Contract
12 being a cost-reimbursable contract.

13 But, since I knew that the Production
14 Contract was firm-fixed price and this was related
15 to producing the launchers, there should never
16 have been any charges against the cost-
17 reimbursable engineering services contract because
18 the production contract was a stand-alone
19 contract.

20 [REDACTED] Do you recall which
21 particular production contract?

22 MR. DANIELS: It was 94-CA-005, for
23 production 49.

1 [REDACTED] That was the follow-on
2 firm-fixed price production contract for the M270
3 launchers then?

4 MR. DANIELS: Yes.

5 [REDACTED] Thank you. Now, that
6 particular effort that you just described having
7 to do with a bolt of some sort?

8 MR. DANIELS: Yes, yes.

9 [REDACTED] Was that effort, that
10 particular effort included in any of the specific
11 TDLs that were referenced in the OSC referral
12 letter or was that a different matter?

13 MR. DANIELS: No, it wasn't a TDL. It
14 was a straight ECP done under that contract.

15 [REDACTED] The design for the MLRS
16 system, itself, do you know who developed that
17 design, initially?

18 MR. DANIELS: I would think it would be
19 Lockheed Martin.

20 [REDACTED] And, do you know
21 approximately what time frame?

22 MR. DANIELS: It would be in the early
23 -- late 70s, early 80s, I think.

1 [REDACTED]: Would you have worked on
2 that contract at the time?

3 MR. DANIELS: No.

4 [REDACTED]: No, okay. And, the '89
5 Production contract.

6 MR. DANIELS: 0336.

7 [REDACTED]: Thank you.

8 [REDACTED]: That was a firm-fixed price
9 contract?

10 MR. DANIELS: It was a firm-fixed price,
11 multi-year, I understand.

12 [REDACTED]: And, did you work on that?

13 MR. DANIELS: No.

14 [REDACTED]: No. Are you aware then,
15 having not worked on it directly. Are you aware
16 of whether that Production Contract was a bill to
17 print requirement, or was it a performance spec
18 requirement?

19 MR. DANIELS: At that time, I think it
20 was a TDP, but I'm not sure since I didn't work on
21 it.

22 [REDACTED]: Okay, which would be a
23 build to print as I characterize it?

1 MR. DANIELS: Yes.

2 [REDACTED]: Building to a TDP,
3 Technical Data Package.

4 MR. DANIELS: Yes.

5 [REDACTED]: Okay. On Page 4 of the OSC
6 referral, it indicates that you personally
7 rejected several TDLs that you determined to be
8 out of scope of the IES Contract?

9 MR. DANIELS: Yes.

10 [REDACTED]: Again, is the contract
11 being reference to the 98-C-0157 Contract?

12 MR. DANIELS: Yes, that would be 98-C-
13 0157.

14 [REDACTED]: Okay. At Tab 20 of the
15 Army Report Number One, there's a 13 May 99
16 memorandum with your signature block on it?

17 MR. DANIELS: Yes.

18 [REDACTED]: Which, I'm assuming means
19 you prepared it, is that the case?

20 MR. DANIELS: Yes.

21 [REDACTED]: Okay, and that memorandum,
22 which is addressed to TDL Board Chairman

23 [REDACTED].

1 MR. DANIELS: [REDACTED]

2 [REDACTED]: Thank you,

3 [REDACTED], subject had to do with TDL
4 TR 99-001. And, it references the IES Contract
5 98-C-0157. This would have been one of those TDLs
6 that the OSC referral letter indicates that you
7 objected to, is that correct?

8 MR. DANIELS: Yes.

9 [REDACTED]: Okay. The first paragraph
10 of that memorandum, you indicate that there is no
11 valid Government requirement for the Low Cost
12 Reduced Range Practice Rocket or LCRRPR. What was
13 that conclusion based upon?

14 MR. DANIELS: The Government did not own
15 the technical data package for the Reduced Range
16 Practice Rocket. And, since the Government did
17 not own the Reduced Range Practice Rocket, TDP,
18 the Government had no liability in maintaining
19 that TDP or updating it.

20 And, the second thing was that this was
21 out of the scope of the IES Contract.

22 [REDACTED]: And, why do you believe it
23 was out of scope of the IES contract?

1 MR. DANIELS: Since it was a Low Cost
2 Reduced Range Practice Rocket, it appeared to be a
3 cost saving VECP, or would have been a cost
4 savings VECP to that contract. And, the only
5 VECPs we paid for under that contract would be
6 VECP that were voluntarily developed by the
7 Lockheed Martin.

8 ██████████: Under which contract, the
9 IES contract or the production contract?

10 MR. DANIELS: Under Lockheed's own
11 money. It wouldn't never have applied to a
12 Government contract. The TDP belonged to Lockheed
13 to reduce the production cost of the item. In my
14 mind, that would be a VECP, not an ECP.

15 ██████████: Okay, and it would be a
16 VECP, then Government contract?

17 MR. DANIELS: It wouldn't be because we
18 only had the voluntary VECP costs in the IES
19 contract.

20 ██████████: We only had that clause in
21 the IES contract?

22 MR. DANIELS: Right. Right. They are
23 all voluntary. We didn't pay for anything until

1 after we approved it.

2 [REDACTED] There was no VECP clause in
3 the production contracts?

4 MR. DANIELS: Yes, they were voluntary,
5 also.

6 [REDACTED] Oh, so there was VECP
7 clauses.

8 MR. DANIELS: In both contracts.

9 [REDACTED] In both contracts?

10 MR. DANIELS: They are all voluntary.

11 [REDACTED] Voluntary, which means
12 what?

13 MR. DANIELS: Lockheed Martin, the
14 contract at their private expense, can develop
15 these concepts and present them to the Government
16 for approval.

17 [REDACTED] And, I think you mentioned
18 that the LCRRPR, and I don't want to put words in
19 your mouth, so please clarify if I misstate it,
20 was a follow-on to the RRPR, is that correct?

21 MR. DANIELS: Right.

22 [REDACTED] And the RRPR, Reduced Range
23 Practice Rocket, what effort did that entail?

1 MR. DANIELS: That was the VECP also,
2 which should have been a voluntary VECP also under
3 the contractor's own money. And, we would approve
4 it afterwards, but that's not what happened.

5 [REDACTED]: What did happen with the
6 RRPR, how did that get generated and delivered to
7 the Government?

8 MR. DANIELS: It originally, it was
9 originally presented as ECP 1423.

10 [REDACTED]: Around what time frame was
11 that?

12 MR. DANIELS: It's in the tabs, I'll
13 have to look. It's 1991 or 92, I guess.

14 [REDACTED]: Okay, you need to take the
15 time to point to the particular tab.

16 MR. DANIELS: Yeah, because that's in
17 here. (Witness examining documents.)

18 [REDACTED]: While you are looking for
19 that, Mr. Daniels, did you indicate that the RRPR
20 was submitted, which conducted as an ECP rather
21 than a VECP?

22 MR. DANIELS: It was done under the ECP
23 data item of Contract 92-C-04 -- 0243. Here we

1 go. It's under Tab 9.

2 [REDACTED]: I'm looking at Tab 9 along
3 with you.

4 MR. DANIELS: Okay, but it was
5 originally submitted as MI-C1423, but that was,
6 for some reason, canceled and it re-emerged as ECP
7 1450, which was incorporated on 10 June 1992.

8 [REDACTED]: Into what contract?

9 MR. DANIELS: It appears to have been --
10 oh, let's see, 89-C-0336.

11 [REDACTED]: And that was the production
12 contract at the time?

13 MR. DANIELS: Right.

14 [REDACTED]: Okay.

15 MR. DANIELS: But, the problem was, it
16 was actually worked under 92-C-0243, of the IES
17 contract. It should be DD-250 in my comments here
18 that I provided. Under Tab I. My comment, it
19 says, that ECP for the Reduced Range Practice
20 Rockets and I want you to notice, it makes no
21 reference, whatsoever, to it being a VECP.

22 [REDACTED]: Okay, and you're referring
23 to under Tab I 24 November 1993.

1 MR. DANIELS: "Transmittal of Data".

2 [REDACTED]: "Transmittal," from Loral
3 Vought Systems.

4 MR. DANIELS: Under Contract 92-C-0243.

5 [REDACTED]: Right.

6 MR. DANIELS: And, it says it was
7 submitted and worked under the data Items A058 and
8 A060 under the IES contract 92-C-0243. And, if
9 you look under the next page, it says, "Contract
10 Data Requirements List". And, it says that under
11 this Data Item No. A058, is entitled, "Engineering
12 Change Proposals."

13 [REDACTED]: Yes.

14 MR. DANIELS: It makes no reference
15 whatsoever to VECP.

16 [REDACTED]: Can you explain for me the
17 process, in general, that takes place when a
18 contractor submits a voluntary VECP and it
19 eventually gets accepted by the Government. And,
20 take me through that process for how that gets
21 initiated and what subsequent steps take place
22 through the contracting process to accept that
23 VECP and then include it into a contract or

1 contracts.

2 MR. DANIELS: Right. The clause itself
3 explains the procedure. What should have
4 happened, the VECP should have come into the
5 Contracting Officer for signature and approval.

6 [REDACTED]: Yes.

7 MR. DANIELS: In this case, that didn't
8 happen.

9 [REDACTED]: If we go back to Tab 9,
10 which you referred to just a few minutes ago,
11 which is the 28 October 1991 submittal letter, of
12 LTV Aerospace.

13 MR. DANIELS: Right. Keep in mind now
14 that was for ECP 1423.

15 [REDACTED]: ECP or VECP?

16 MR. DANIELS: VECP 1423.

17 [REDACTED]: Okay, which is the Reduced
18 Range Training Rocket?

19 MR. DANIELS: Which was canceled for
20 whatever reason and renamed 1450. Now, that was
21 approved, but 1450 was never submitted to the
22 Contracting Office for approval.

23 [REDACTED]: So, 1423 was submitted as a

1 VECP by LTV in October of '91?

2 MR. DANIELS: Right. And, I've got the
3 dates of when that was canceled. Let's see, when
4 was that?

5 [REDACTED]: You also referred to Tab
6 12, which is a contract modification to the
7 production contract 0336.

8 MR. DANIELS: It probably has to do
9 with --

10 [REDACTED]: Well, the first provision
11 A-1 indicates that Value Engineering Change
12 Proposal 1450 entitled, "Reduced Range Training
13 Rocket," is hereby incorporated into the subject
14 contract.

15 MR. DANIELS: And, what date was that?

16 [REDACTED]: That was 10 June 1992.

17 MR. DANIELS: Okay.

18 [REDACTED]: So, then does this
19 documentation reflect a VECP being submitted by
20 the contractor and accepted by the Government
21 under the 0336 contract in 1992?

22 MR. DANIELS: Right, it does. The
23 problem was, it was never worked under that

1 contract. It was worked under 92-C-0243, and
2 that's where the problem comes in.

3 [REDACTED]: The VECP was not worked
4 under the 0336 contract?

5 MR. DANIELS: No, not according to the
6 records that the Government has and the records
7 that Lockheed submitted to us for that ECP, for
8 the development of that ECP.

9 [REDACTED]: In the normal course of
10 business, would that -- would a VECP have been
11 worked by a contractor before being accepted by
12 the Contracting Officer under a Production
13 Contract?

14 MR. DANIELS: No, all the development
15 costs up to that point would have been done at
16 private expense by the contractor.

17 [REDACTED]: Understood. And, then
18 after the contractor, at his private expense,
19 developed a VECP.

20 MR. DANIELS: Was submitted to the
21 Government for review and approval.

22 [REDACTED]: Right. In the normal
23 course of business --

1 MR. DANIELS: Right.

2 [REDACTED]: -- the VECP is reviewed by
3 the Contracting Officer, is that correct?

4 MR. DANIELS: Yes.

5 [REDACTED]: And, a determination is
6 made?

7 MR. DANIELS: Was accepted and rejected.

8 [REDACTED]: And, in this case, the
9 modification to 0336 that I just read, does that
10 indicate that the Contracting Officer accepted
11 that VECP?

12 MR. DANIELS: Yes.

13 [REDACTED]: And, your reference to Tab
14 I, and the Loral documentation?

15 MR. DANIELS: Right.

16 [REDACTED]: There is a tab to your 11
17 March 09 letter to OSC. What does that
18 documentation reflect?

19 MR. DANIELS: It reflects that the ECP
20 development cost was being charged to the
21 Government contract 92-C-0243, was in a cost-
22 reimbursable IES contract, and that never should
23 have happened.

1 [REDACTED]: It might be easier to do it
2 this way.

3 MR. DANIELS: I've got an abstract of
4 this, but this is a copy of ECP costs impact
5 monthly, quarterly report for IES Contract
6 92-C-043.

7 [REDACTED]: 0243?

8 MR. DANIELS: Yes, 0243, I'm sorry.
9 And, if you notice, there's something strange
10 here. It says, "Value Engineering and Design
11 Cost."

12 [REDACTED]: You are pointing to the
13 signature block of a [REDACTED]?

14 MR. DANIELS: Yes. Now, the IES, this
15 IES contract only contained the Voluntary VECP
16 clause, period. Why would this ever be a part of
17 this cost report? And, I'm going --

18 [REDACTED]: This ECP, is that what you
19 are referring to?

20 MR. DANIELS: It is the ECP cost report,
21 but for some reason, they've got Value Engineering
22 down there, also. I want to show you something
23 here. It will take me too long to find it in

1 there. I will use my abstracts here.

2 I'm going to walk around there and show
3 you this. Here's an excerpt from this same
4 report.

5 [REDACTED]: Are you talking about the
6 Loral report that you just talked about?

7 MR. DANIELS: Yeah, I will give you a
8 copy. I'll find that particular one first.
9 Here's the first one, 1423, Retainer Rocket VECP.
10 It is estimated amount of hours had been expended
11 in estimated cost for that. That was charged to
12 that 0243 contract.

13 [REDACTED]: And, what is the connection
14 between that and the Reduced Range Practice
15 Rocket?

16 MR. DANIELS: These are one and the
17 same. Same ECP Number, 1423, which was changed to
18 1450. Trying to find that one, 1450. Now, here
19 it is, 1423. But, anyway, this one was canceled
20 and renamed to 1423. I've got the documentation
21 on that.

22 [REDACTED]: And, you will submit this
23 for us?

1 MR. DANIELS: Yes.

2

3 (Exhibit No. 2, being a 10 page
4 document, with the first page
5 entitled, "MLRS Thirty-Fifth
6 Quarterly ECP Cost Impact Report,"
7 dated 4 January 1993, was marked.)

8

9 [REDACTED] Thank you. The document
10 is, has a cover page, "Loral Vought Systems, MLRS
11 Thirty-Fifth Quarterly ECP Cost Impact Report".
12 It consists of ten pages. And, Mr. Daniels, the
13 particular reference you were discussing is on
14 Page 40 of that document?

15 MR. DANIELS: Yes.

16 [REDACTED] And, it's highlighted in
17 yellow?

18 MR. DANIELS: Yes.

19 [REDACTED] Thank you.

20 MR. DANIELS: Oh, here they are. I'm
21 also giving you -- there is also a copy of this in
22 my comments to the report. Here is ECP 1423.

23

1 (Exhibit No. 3, being a 22 page
2 document, dated Monday, September
3 28, 1998, 4:31 PM, was marked.)
4

5 [REDACTED] Just so we're clear what
6 documentation you're referring to. What document
7 is this, Mr. Daniels?

8 MR. DANIELS: I have a copy of a IES,
9 ECP report from March, 1984 through January, 1997,
10 that gives all the change requests in ECP IES
11 History. This was provided by [REDACTED]
12 from the MLRS Project Office.

13 And, it contains excerpt from the ECP
14 report that he submitted. And, I've highlighted
15 all the VECPS that were being worked on the
16 various IES contracts throughout this history of
17 the report.

18 [REDACTED] Okay, and can you explain
19 the significance of the portion of the report that
20 you're discussing?

21 MR. DANIELS: Yes, the submittal of the
22 overall report is that every ECP included in this
23 report was worked under various IES Contracts from

1 1984 until January of 1997, all done under IES
2 cost-reimbursable contract.

3 [REDACTED] And, does it indicate the
4 nature of the work that was done on these ECPs?

5 MR. DANIELS: It gives the name of the
6 ECP and the ECP number, the approval date or the
7 rejection date.

8 [REDACTED] But, not the nature of the
9 work that was done on the ECP?

10 MR. DANIELS: Just a brief description.
11 All of these would have been done under the data
12 items of the IES Contract.

13 [REDACTED] What do the data items of
14 the contract require?

15 MR. DANIELS: Complete development of
16 the ECP, what's the final product, until
17 incorporation.

18 [REDACTED] The development of the ECP.
19 Does that include the development of the technical
20 data that --

21 MR. DANIELS: Yes, if you go back and
22 look at the data item requirement for that -- let
23 me see about that. The data items require the

1 contractors to prepare these ECPs in accordance
2 with DI-CMAN80639.

3 [REDACTED]: So, the data item then
4 requires the contract to prepare an ECP?

5 MR. DANIELS: Right.

6 [REDACTED]: Does it say anything in the
7 data item about the development of the technical
8 data involving the item?

9 MR. DANIELS: Yeah, that's also included
10 in the Scope Of Work. You can track this data
11 item back to the Scope Of Work, paragraph in the
12 Scope Of Work that specifically talk about the
13 preparation of the ECP.

14 [REDACTED]: And, we're talking about
15 now, in particular, the RRPR?

16 MR. DANIELS: Yes, and all the ECPs
17 included on that list. But, I am going to show
18 you where the 1423 was canceled and reissued as
19 1450. Let me look in here. I thought I a header
20 here -- had a legend here for the dates. Oh, here
21 it is.

22 It was, according to this, this is what,
23 1423 was accepted by the Government 10 October

1 4891. "R," stands for rejected on March 0392.

2 [REDACTED]: And, what particular items
3 is that referring to?

4 MR. DANIELS: ECP 1423P, Proposed
5 Reduced Range Training Rocket.

6 [REDACTED]: Which?

7 MR. DANIELS: ECP.

8 [REDACTED]: You indicate this charge
9 was rejected on 030392?

10 MR. DANIELS: Yes.

11 [REDACTED]: Sheet 87.

12 MR. DANIELS: Okay, sheet 87 of excerpt
13 from the report.

14 [REDACTED]: If we turn back to Tab 12
15 of the Army Report, again, Paragraph A-1, states
16 that, "Value Engineering Change Proposals 1450,
17 entitled Reduced Range Training Rocket," which
18 correct me if I'm wrong in understanding this, is
19 the same item as the Reduced Range Practice
20 Rocket, just different terminology?

21 MR. DANIELS: Yes.

22 [REDACTED]: "Is hereby incorporated
23 into the subject contract." That's at A-1, Page 2

1 of the modification at Tab 12, is that right?

2 MR. DANIELS: Right.

3 [REDACTED]: And, that's dated 10 July
4 1992?

5 MR. DANIELS: Yes.

6 [REDACTED]: So, does that indicate
7 that, in fact, the Contracting Officer, at least
8 in July of '92 accepted the VECP for the Reduced
9 Range Practice Rocket?

10 MR. DANIELS: Yes.

11 [REDACTED]: Okay, they are --

12 MR. DANIELS: Therein lies the deception
13 here. These are one and the same.

14 [REDACTED]: When you say these?

15 MR. DANIELS: These 1423P and 1450P are
16 one and the same.

17 [REDACTED]: Okay.

18 MR. DANIELS: One was canceled and the
19 other one was a follow-on to the same.

20 [REDACTED]: And, those are on Sheets 87
21 and 88?

22 MR. DANIELS: On 88. And, they both
23 were worked, according to this report, and the

1 data item submittals, that they were worked on the
2 IES contracts during this time period.

3 [REDACTED]: And, they're the same item?

4 MR. DANIELS: Yes.

5 [REDACTED]: And, does the A indicate
6 that that item was accepted?

7 MR. DANIELS: Yes, March 27 '92, are
8 they the same, they're not the same.

9 [REDACTED]: Okay. Thank you. If we
10 can go back to the explanation you were providing
11 us to have the VECP process works in general. As
12 I understood what you were saying is that a
13 contractor on a voluntary VECP, under its own
14 course develops some technology, some item that
15 the contractor believes would provide a savings to
16 the Government and then submits it to the
17 Government?

18 MR. DANIELS: Yes.

19 [REDACTED]: Can you take me then from
20 that point in the process forward? What happens
21 upon submission by the contractor of its voluntary
22 VECP?

23 MR. DANIELS: Right, then comes the

1 implementation of the VECP.

2 [REDACTED]: Okay.

3 MR. DANIELS: Once we work out all the
4 other things about how much money he spent to
5 develop the VECP. How much the actual cost
6 savings are, the audits and all of that. The
7 negotiation starts at that point of how to
8 implement the ECP into the actual production
9 contracts.

10 The Government may not decide to do all
11 the quantities. It may -- there's a lot of
12 different things that have to take place before we
13 actually implement ECP into the contract.

14 [REDACTED]: ECP or VECP?

15 MR. DANIELS: VECP.

16 [REDACTED]: Okay. Now, what happens
17 upon acceptance by the Government of the voluntary
18 VECP?

19 MR. DANIELS: What in this case should
20 have happened is he should have submitted a
21 proposal, which outlines all of his private costs.
22 And, then the Government does its evaluation, how
23 much is it going to cost us to actually implement

1 the ECP into the contract. The whole thing's
2 audited because of the dollar value and then we
3 negotiate.

4 [REDACTED]: And, then after the
5 negotiations are completed, what's the next step?

6 MR. DANIELS: The actual implementation,
7 the signed mod that implements the ECP into the
8 production contract?

9 [REDACTED]: And, there's a signed
10 modification to the production contract?

11 MR. DANIELS: Yes, bilateral.

12 [REDACTED]: And, the documentation
13 associated with the VECP, does that get
14 incorporated into the Production Contract or some
15 other contract?

16 MR. DANIELS: It depends on how many
17 contract they affect.

18 [REDACTED]: Okay.

19 MR. DANIELS: In this case, I really
20 don't know what the future production would have
21 been. So, I don't know how many contracts were
22 actually involved after that point.

23 [REDACTED]: Now, would the actual

1 incorporation of the technical data that supports
2 the Value Engineering Change Proposal, the item
3 that was developed and approved by the Government,
4 would that documentation eventually become an ECP
5 to get incorporated into a contract?

6 MR. DANIELS: Once the VECP is actually
7 incorporated into the documentation, it's just a
8 change to the revision of the TDP. And, there
9 would be no further changes, once it's been
10 incorporated into the actual TDP, itself.

11 [REDACTED]: So, as I understand, a
12 revision to the TDP ...

13 MR. DANIELS: After the VECP has been --
14 and the Government agrees to accept this for life,
15 or whatever.

16 [REDACTED]: Okay.

17 MR. DANIELS: Agreed to the TDP review.

18 [REDACTED]: And how is that reflected
19 in the TDP documentation itself, as an ECP to
20 Technical Data Package?

21 MR. DANIELS: That's what the
22 modification does.

23 [REDACTED]: Okay. If I could turn back

1 to Tab 20, the 13 May 1999 memorandum which you
2 prepared regarding TR 99-001.

3 MR. DANIELS: Yes.

4 [REDACTED]: I'd like to ask you a few
5 questions about that document, starting with
6 Paragraph 1. There's a statement in Paragraph 1
7 that there is no valid Government requirement for
8 a Low Cost Reduced Range Practice Rocket, LCRRPR.
9 And any previous design effort was totally
10 voluntary on LMVS's part, that's Lockheed Martin,
11 right?

12 MR. DANIELS: Yes.

13 [REDACTED]: Okay. Are you referring to
14 there the Reduced Range Practice Rocket, VECP that
15 was submitted back in 1991 when you say that it
16 was totally voluntary?

17 MR. DANIELS: Yes.

18 [REDACTED]: And, further on in
19 Paragraph 1 where you talk about the developed
20 documentation not owned or controlled by the
21 Government. Again, would that be the
22 documentation supporting the VECP?

23 MR. DANIELS: Yes.

1 MR. PARISE: Now, would that be the
2 documentation that Lockheed Martin generated under
3 its independent research and development efforts?

4 MR. DANIELS: Yes, by private expense,
5 yes, belongs to them.

6 ██████████: And, was that technical
7 data that was developed by Lockheed Martin? Was
8 that the basis for their submission of the VECP on
9 the RRPR back then, is that your understanding?

10 MR. DANIELS: Yeah, that was their
11 purported submission. They reported that they
12 worked it under their own money, but the records
13 prove otherwise.

14 ██████████: And, those records that
15 prove --

16 MR. DANIELS: IES records and the IES
17 cost reports records.

18 ██████████: The ones that you just
19 showed us?

20 MR. DANIELS: Yes.

21 ██████████: Okay. Now, in Paragraph 2
22 of that same memo at Tab 19, you describe -- you
23 state that this effort, referring to the TDL Scope

1 Of Work effort, is that correct?

2 MR. DANIELS: Yes.

3 [REDACTED]: Okay. You state that,
4 "This effort also falls into the category of a
5 Value Engineering Change (production cost
6 reduction to the current RRPR), and could be
7 resubmitted to the Government as a VECP."

8 MR. DANIELS: Yes.

9 [REDACTED]: Under what contract were
10 you thinking that this effort could have been
11 submitted to the Government as a Value Engineering
12 Change Proposal?

13 MR. DANIELS: None, because none of the
14 contracts at that time had any mandatory VECP
15 provision requirements in them. So, that would
16 have had to have been done under their own
17 expense, again, as they purported.

18 [REDACTED]: But doesn't a Value
19 Engineering Change Proposal, albeit done by the
20 contractor, under their own expense, does it
21 typically get submitted to a Contracting Officer
22 for consideration of acceptance under a particular
23 contract? I think you had mentioned particularly

1 a production contract?

2 MR. DANIELS: Right.

3 [REDACTED]: Okay, so --

4 MR. DANIELS: Now, this is a TDL that is
5 being submitted directly to Lockheed Martin from
6 the Project Office. Had nothing to do with the
7 Contracting Officer. We wouldn't have known
8 anything -- I would not have known anything about
9 this had I not reviewed the TDL before it actually
10 went to Lockheed Martin.

11 [REDACTED]: So, you did review this
12 particular TDL before it went to Lockheed Martin?

13 MR. DANIELS: Yes. Otherwise, nothing
14 -- it wouldn't have happened.

15 [REDACTED]: And so what are you
16 advising, just so I am clear in Paragraph 2, that
17 Board Chairman would be a way to move forward on
18 this when you say this effort falls into a
19 category of a Value Engineering Change Cost
20 Reduction?

21 MR. DANIELS: Well, they had -- in my
22 opinion, they had two options. If it was
23 mandatory, then it would require to be new effort

1 and a J&A wouldn't have been required because of
2 the dollar value.

3 [REDACTED]: If it was mandatory?

4 MR. DANIELS: Yeah, it would have been a
5 new requirement from the Project Office to us with
6 a J&A and justification and a need for this low
7 cost. That never happened.

8 [REDACTED]: Right.

9 MR. DANIELS: The only other course of
10 action would have been that Lockheed Martin could
11 have continued as they claimed to develop the low
12 cost version of the Reduced Range Practice Rocket
13 at their own expense and resubmitted it, if they
14 wanted to as a VECF.

15 [REDACTED]: Under what contract at the
16 time would they have submitted that?

17 MR. DANIELS: Whichever one Production
18 Contract would have been producing the rockets at
19 that time, I would imagine.

20 [REDACTED]: Just so I understand, why
21 would it have been improper if the Government
22 wanted a cheaper Reduced Range Practice Rocket,
23 which I understand the Low Cost Practice Rocket

1 was intended to provide?

2 MR. DANIELS: Right.

3 [REDACTED]: Why would it have been
4 improper for the Government to have obtained that
5 effort from Lockheed Martin under the IES Contract
6 to do it as an engineering change?

7 MR. DANIELS: Number one, it's outside
8 the scope.

9 [REDACTED]: Can you expand on why you
10 believe it's outside the scope?

11 MR. DANIELS: This was purely production
12 related effort. The IES contract specifically
13 excludes the production related effort being
14 worked under the IES Contracts, in the Scope Of
15 Work, in every one that I've ever read.

16 [REDACTED]: At Tab 22, I believe, is
17 the IES statement of work?

18 MR. DANIELS: Yes.

19 [REDACTED]: Could you point to the
20 language in that statement of work that would
21 preclude the effort we just described from being
22 placed under the IES Contract?

23 MR. DANIELS: Paragraph 1.1, the very

1 last sentence. "The services called for here
2 under are not related ..." can't pronounce that
3 word "... to activities under other contracts for
4 system production, Improved Launcher Mechanical
5 System, M270A1 and Extended Range."

6 Those rockets were under production
7 under concurrent separate fixed price contracts.

8 [REDACTED]: If the Government wanted a
9 cheaper Reduced Range Practice Rocket.

10 MR. DANIELS: There was a way to do it.

11 [REDACTED]: And, what way would that
12 have been?

13 MR. DANIELS: That would have been as a
14 new requirement with a justification and approval,
15 sole source to Lockheed Martin for that
16 development. It could have been done, but it
17 could not have been done under this contract, the
18 way the Scope Of Work is written.

19 [REDACTED]: So, it could have been
20 done, if I understand you correctly.

21 MR. DANIELS: As a separate --

22 [REDACTED]: As a new development.

23 MR. DANIELS: -- effort separately from

1 IES contracts. So, my first inclination would
2 have been to compete the whole thing.

3 [REDACTED]: And, that's -- is that what
4 you are stating in Paragraph 2 of that 13 May 99
5 memo, that it should have been competed or J&A
6 prepared?

7 MR. DANIELS: Paragraph 2, oh, yes,
8 that's exactly what I meant.

9 [REDACTED]: Okay, if that was the case,
10 then, in previous paragraph above that, which we
11 have discussed, which indicates that the effort
12 also falls into a category of a VECP. How could
13 that have been done?

14 MR. DANIELS: I don't understand.

15 [REDACTED]: The previous paragraph in
16 your memo says, "This effort also falls into the
17 category of a Value Engineering Change."

18 MR. DANIELS: Right. And, it could be
19 resubmitted to the Government as a VECP.

20 MR. DANIELS: Right.

21 [REDACTED]: When you submit a VECP
22 under a -- now, when you submit a voluntary VECP,
23 does that typically require a J&A to be prepared,

1 or a competition for that?

2 MR. DANIELS: No, not when you are doing
3 it voluntarily. He's doing it at his own expense.

4 [REDACTED]: Okay.

5 MR. DANIELS: Remember, under this
6 scenario, the Government is going to reimburse
7 Lockheed to do this under the IES contract. It's
8 not within the scope of the IES contract. But,
9 there's a way to do it.

10 They can do it under their own private
11 expense and resubmit it under the appropriate
12 production contract if they want to implement the
13 ECP under, but not under IES.

14 [REDACTED]: Was the work that was done
15 as a voluntary ECP for the RRPR that was submitted
16 to the Contracting Officer under the 89 contract?

17 MR. DANIELS: Uh-huh. (Affirmative
18 response.)

19 [REDACTED]: Was that a proper way to
20 proceed for the submission of a voluntary ECP?

21 MR. DANIELS: Right, if that's actually
22 what happened.

23 [REDACTED]: [REDACTED] just passed me a note

1 that said, "Was the VECP for development or
2 production?" You're referring to the VECP for the
3 RRPR, in your understanding?

4 MR. DANIELS: Which memo are we talking
5 about, 1450?

6 [REDACTED]: Yes.

7 MR. DANIELS: Was for what now?

8 [REDACTED]: The VECP, that was
9 submitted in 1991 for the Reduced Range Practice
10 Rocket.

11 MR. DANIELS: Right.

12 [REDACTED]: Was that VECP for
13 development or production? You've distinguished,
14 I believe, between new development and VECPS that
15 properly can be done and accepted under a
16 production contract.

17 MR. DANIELS: Right. That would have
18 been a change in the production. Yes, 1450 would
19 be a change in production.

20 [REDACTED]: Can, in addition to this
21 TDL, TR 99-001, do you recall rejecting any other
22 specific TDLs as being out of scope at the time?

23 MR. DANIELS: There was at least one

1 more that had to do with obsolescence related to
2 production and I can't remember the memo right
3 off-hand. But, there was at least one more and
4 after that, I was taken off that and I don't know
5 what happened after that.

6 [REDACTED]: During this time when you
7 were looking at the TDLs and had issues with the
8 nature of the effort being in scope or out of
9 scope, did you discuss this with other folks in
10 your contracting team, if you will?

11 MR. DANIELS: Yes.

12 [REDACTED]: And, who would that have
13 been?

14 MR. DANIELS: That would have been [REDACTED]
15 [REDACTED], the Contracting Officer and [REDACTED]
16 [REDACTED].

17 [REDACTED]: And, did [REDACTED],
18 do you recall, did she share your concerns?

19 MR. DANIELS: Yes.

20 [REDACTED]: And, how were those
21 concerns conveyed? Well, how were they conveyed?

22 MR. DANIELS: Well, she also agreed with
23 rejecting the TDLs.

1 [REDACTED]: Which ones?

2 MR. DANIELS: The ones we just talked
3 about, the ones for obsolescence and one for the
4 Low Cost Practice Rocket. It's the two that I
5 recall, might have been more.

6 [REDACTED]: Okay.

7 MR. DANIELS: Well, what happened in the
8 end, they just stopped sending them over for
9 review. So, I don't know what happened after
10 that.

11 [REDACTED]: If we turn to Tab 22 again,
12 which is the IES statement of work, the Army
13 Report Number One.

14 MR. DANIELS: Uh-huh. (Affirmative
15 response.)

16 [REDACTED]: How many pages, eighteen.
17 I'm sorry, Army Report Number Two, cites the
18 specific provisions of the IES statement of work,
19 Paragraphs 2.7, 2.8 and 2.11, which the report
20 indicates support the conclusion that the TDL,
21 this TDL, 99-001 was within the IES Contract?

22 MR. DANIELS: But, they're missing the
23 main point of Paragraph 1. That has to do with

1 Production.

2 [REDACTED]: Okay. Can you expand on
3 that a little bit for me?

4 MR. DANIELS: Production means if it's
5 related to a contract that's already in
6 production, which is separate from IES. These
7 contracts in that effort was separate from IES.
8 They are already covered under the production
9 contract under a firm-fixed price contract.

10 [REDACTED]: But, what is your
11 understanding of the purpose of the IES contract
12 in terms of either LRIP full rate production
13 contracts?

14 MR. DANIELS: Basically, it's by
15 exclusion. If it's not already covered in another
16 contract, it can fall under IES.

17 [REDACTED]: Can you give me some
18 examples of the types of effort that you think
19 would properly fall under an IES contract?

20 MR. DANIELS: It's in the first
21 paragraph. Paragraph 1, "To delineate, in general
22 terms, the overall requirements of the engineering
23 services to be performed by the contractor, to

1 conduct any non-repetitive investigation,
2 inspection, analysis, test or evaluation effort
3 which will (or may likely) impact the software or
4 hardware, and support of the fielded MLRS."

5 It has to be non-repetitive, that means
6 not included in any other concurrent on-going
7 contract. And these efforts they are talking
8 about here are already being required under a
9 fixed price contract, separate fixed price
10 contracts, production contracts, R&D contracts.

11 ██████████: The LCRRPR was already
12 required under a fixed price production contract?

13 MR. DANIELS: No, the LCRRPR was a new
14 effort not covered under IES. The LC -- the only
15 purpose of the LCRRPR would be to incorporate into
16 a production contract to reduce the acquisition
17 costs. That has nothing to do with IES because
18 that's a production contract.

19 IES was not -- the intent of IES was not
20 to support production contracts, period. I don't
21 know where they got that -- which brings a
22 question to mind, where did they get this
23 statement that they made in the introduction to

1 the Army report?

2 [REDACTED]: Well, that was 1.1, which
3 you just read of that statement of work, indicates
4 that, again, in general terms as you pointed out
5 that the IES contract is to support fielded MLRS.

6 MR. DANIELS: Yes.

7 [REDACTED]: In its component and
8 configuration variance. And, isn't the MLRS in
9 production?

10 MR. DANIELS: Yes, it's in production.

11 [REDACTED] So, then isn't support of
12 the fielded MLRS supporting production?

13 MR. DANIELS: No, but the key is --
14 remember -- to conduct any non-repetitive
15 investigation. If it's already covered under
16 existing production contract, we're not going to
17 pay for it again on a cost-reimbursable contract
18 under IES.

19 [REDACTED]: Okay, but didn't you say
20 that this effort wasn't included in the production
21 contract? And, your -- as I understand it, your
22 position is that this was out of scope of the
23 production contract. So, it wasn't --

1 MR. DANIELS: No, no, no, out of scope
2 of the IES contract. I didn't say it was out of
3 scope of the production contract.

4 [REDACTED]: And, I thought you said,
5 again, and correct me if I'm wrong, I thought you
6 said it was out of scope of the IES Contract
7 because it's not supporting the production
8 contract.

9 MR. DANIELS: No, no, no. It's out of
10 scope of the IES contract because it's in support
11 of a production contract.

12 [REDACTED]: So, the IES Contract does
13 not support -- is not there to support the
14 Production Contract?

15 MR. DANIELS: Read what comes before it.
16 "To conduct any non-repetitive investigation."
17 The fixed price Production Contracts includes a
18 voluntary Value Engineering clause in it.

19 [REDACTED]: Okay. Well, at Page 4 of
20 the OSC referral letter.

21 MR. DANIELS: Okay.

22 [REDACTED]: That letter indicates that
23 you later discovered that the Program Office

1 stopped sending TRLs to the Acquisition Center?

2 MR. DANIELS: No, TDLs.

3 [REDACTED] TDLs, thank you.

4 MR. DANIELS: Well, they stopped sending
5 them to me for review. Well, not they stopped
6 sending them, I can't say that. But, they wasn't
7 sending them to me anymore.

8 [REDACTED]: Do you know who made that
9 decision?

10 MR. DANIELS: No.

11 [REDACTED] [REDACTED]: In Army Report Number Two,
12 at Page 20, indicates that, "In 2001, [REDACTED] [REDACTED]
13 [REDACTED]" who you mentioned when we first started
14 talking as being the Contracting Officer for MLRS.

15 MR. DANIELS: Yes.

16 [REDACTED]: In fact, the Branch Chief,
17 is that correct?

18 MR. DANIELS: Yes.

19 [REDACTED]: That adheres to the policy
20 with the award of the follow-on IES Contract 01C-
21 0141 requiring Contracting Officer review and
22 approval for any TDL, is that correct?

23 MR. DANIELS: As far as I know, like I

1 say, I don't know what the process was after I
2 stopped reviewing them. How it was after that, I
3 don't know.

4 [REDACTED]: At that time, were you
5 still supporting MLRS?

6 MR. DANIELS: Not this particular
7 contract, not anything of significance, no.

8 [REDACTED]: Okay. Do you know back in
9 that time, I believe, you said '98 or '99, this
10 was the '99 time frame when you were getting TDLs,
11 but then they stopped sending them?

12 MR. DANIELS: That was when [REDACTED]
13 was the Branch Chief.

14 [REDACTED]: Do you know whether or not
15 there was any policy, either in the Acquisition
16 Center or at AMCOM, in general, that required
17 submission of TDLs to the Contracting Office?

18 MR. DANIELS: Other than good business
19 sense, no.

20 [REDACTED]: Turning to the 11 March 09
21 letter, your letter to the Office of Special
22 Counsel.

23 MR. DANIELS: Okay.

1 ██████████: Page 6, Paragraph 10-A.

2 MR. DANIELS: Okay.

3 ██████████: You state that the finding
4 in the DA report that certain MLRS System
5 Production related contract tasks and issues were
6 within scope of the Cost-Reimbursable IES
7 Contracts is false.

8 MR. DANIELS: Yes.

9 ██████████: Now, are you referring
10 again to the IES Contract 98-C-0157?

11 MR. DANIELS: And, all the questions,
12 contracts that's included in the report. They all
13 have the very same, similar language in the
14 opening statements of the Scope Of Work.

15 ██████████: Okay. Well, can you point
16 what particular production tasks you believe were
17 improperly placed under the IES Contract?

18 MR. DANIELS: You mean by TDL?

19 ██████████: By TDL or description of
20 effort, do you have a recollection of that?

21 MR. DANIELS: Well, I listed every one
22 of them in my allegation to the OSC and gave
23 copies of every one of them.

1 ██████████: Okay. And, as the Army
2 Report, I mentioned, indicates they've cited the
3 particular provisions in the statement of work
4 where they believe, the report believes, support
5 the conclusion that these TDLs were properly
6 included in the IES Contract?

7 MR. DANIELS: Well, they were wrong
8 because the reason I can say that, the one and a
9 half million dollar settlement that we made with
10 Lockheed Martin back in 2005, was based on this
11 very same premise and the very same contract
12 scope.

13 ██████████: Are you familiar with the
14 '95 settlement agreement?

15 ██████████: Yeah, I was part of it.

16 MR. DANIELS: You were part of that?

17 MR. DANIELS: Yes.

18 ██████████: What particular effort TDLs
19 that you mentioned in your --

20 MR. DANIELS: TDLs and ECPs, that
21 covered ECPs, but the concept is the same. All
22 the TDLs were production related, all the ECPs
23 were production related. And, they did not fit

1 into the Scope Of Work of the IES Contract.
2 That's why they agreed and that's why they
3 settled.

4 [REDACTED]: Just so I am clear now, the
5 settlement agreement dealt with --

6 MR. DANIELS: That simulated task being
7 worked under the ↕

8 [REDACTED]: But, not the particular
9 TDLs that are mentioned in the OSC referral
10 letter?

11 MR. DANIELS: Right. It is strictly
12 ECPS.

13 [REDACTED]: And, you supported that?

14 MR. DANIELS: Based on Paragraph 1.1 of
15 the contract.

16 [REDACTED]: I'm sorry, I wasn't clear
17 in my question, Mr. Daniels. You supported that
18 effort that led to the settlement agreement that
19 the Justice has with --

20 MR. DANIELS: Yes.

21 [REDACTED]: -- and, the Acquisition
22 Center here has with Lockheed Martin?

23 MR. DANIELS: Yes.

1 [REDACTED]: If those same issues that
2 have been captured in that settlement agreement
3 also exists in reference to the specific TDLs that
4 you cited in the OSC letter.

5 MR. DANIELS: Yes.

6 [REDACTED]: To your knowledge, why
7 hasn't the OJ pursued the --

8 MR. DANIELS: That's the hundred million
9 dollar question that I'm trying to get answered
10 here. That's why I wrote my comments back to the
11 OSC. There's something wrong here. Somebody's
12 not reading something right.

13 [REDACTED]: Let me refer to TDL LM-98-
14 03 which is at Tab 45 of the DA Report Number 2?

15 MR. DANIELS: Okay.

16 [REDACTED]: Again, in your 11 March 09
17 letter to OSC, Paragraph 10 B, you indicate that
18 the DA report falsely concluded that certain MLRS
19 systems, R&D and EMD tasks were within the scope
20 of the IES Contract.

21 Can you clarify for me which tasks you
22 believe should have been placed against an IRD
23 Contract rather than the IES Contract?

1 MR. DANIELS: It was the Improved Fire
2 Control System Contract, 92-C-0432, I think. I
3 think I mentioned that. That was the first
4 objection I had to, and the second objection I had
5 to it, this was an R&D effort that was already
6 covered in that contract.

7 [REDACTED]: Already covered in which
8 contract?

9 MR. DANIELS: IFC Contract 92-C-0432, I
10 believe.

11 [REDACTED]: That would be the FCS?

12 MR. DANIELS: Improved Fire Control
13 System Contract, yes.

14 [REDACTED]: Can you point specifically
15 to the Improved Fire Control System statement of
16 work which is at Tab 61A, do you believe would
17 have included that effort?

18 MR. DANIELS: Now, this is their listing
19 of the close-out tasks.

20 [REDACTED]: Right.

21 MR. DANIELS: You would need the entire
22 Scope Of Work to find that. You needed just the
23 close-out task. So, I would have to have the

1 entire Scope Of Work. I'm sure I highlighted that
2 area and sent it to the OSC when I submitted my
3 complaint.

4 [REDACTED]: Okay.

5 MR. DANIELS: But, I can get that.

6 [REDACTED]: The OSC referral letter
7 also mentions TDL, IL-99-01, which is at Tab 48 of
8 the DA Report Number 2. And, this TDL contained
9 five tasks, requiring Lockheed Martin to provide
10 various engineering support of the launcher?

11 MR. DANIELS: Right. And, if I remember
12 correctly, it was in -- these tasks were included
13 in the 98-C-0138 Contract. I believe that's under
14 the program support CLIN of that contract.

15 [REDACTED]: Okay, well, I believe that
16 statement of work is at Tab 52 of Army Report Two.

17 MR. DANIELS: Okay.

18 [REDACTED]: Can you point to the
19 provision of this statement of work? Do you
20 believe this effort would have been included?

21 MR. DANIELS: What was that first tab
22 again?

23 [REDACTED]: It's 52, and there's three

1 versions of the Statement of Work, apparently.

2 MR. DANIELS: What was the one referring
3 -- what was the first tab? I've lost the first
4 tab. The first Scope Of Work tab.

5 [REDACTED]: Tab 48.

6 MR. DANIELS: Is there a copy of the
7 program support Statement of Work? This is the
8 Statement of Work for the program support CLIN in
9 a separate Scope Of Work of its own.

10 [REDACTED]: That is a separate CLIN, is
11 that what you said?

12 MR. DANIELS: Yeah. It's CLIN 1020 in
13 that separate Scope Of Work.

14 [REDACTED]: But, wouldn't that effort
15 have been described in the Statement of Work,
16 itself, as opposed to the pricing CLIN?

17 MR. DANIELS: No, we had a separate CLIN
18 for program support and a separate Scope Of Work,
19 which was a cost-reimbursable CLIN.

20 [REDACTED]: Okay, so it was a cost
21 reimbursable CLIN?

22 MR. DANIELS: Yes.

23 [REDACTED]: So, it is a separate

1 Statement Of Work that's not included here?

2 MR. DANIELS: It may be here, but it was
3 CLIN 1020. And, it was more than likely in that
4 CLIN.

5 [REDACTED]: So, it was for cost
6 reimbursable work included in --

7 MR. DANIELS: A separate contract. And,
8 this repeats it.

9 [REDACTED]: No, I'm talking about the
10 Scope Of Work at Tab 52.

11 MR. DANIELS: Okay, yes.

12 [REDACTED]: Which is the Production
13 Contract, right?

14 MR. DANIELS: Yes.

15 [REDACTED]: It had, that contract had a
16 separate CLIN that was --

17 MR. DANIELS: Program Support.

18 [REDACTED]: Priced on cost-
19 reimbursement.

20 MR. DANIELS: Right.

21 [REDACTED]: Basis?

22 MR. DANIELS: Yes.

23 [REDACTED]: And, is it your opinion

1 then that the work should have been done under the
2 cost-reimbursement basis of that CLIN and that
3 Production Contract, rather than the IES Contract?

4 MR. DANIELS: Yes, because this would
5 duplicate that work. So, it should have been done
6 under the 98-C-0138 Contract, which precedes this
7 contract.

8 [REDACTED] Is there any indication
9 that you're aware of that same work as described
10 in that TDL was charged against both of these
11 contracts?

12 MR. DANIELS: If this TDL was approved,
13 and it was approved and submitted to Lockheed
14 Martin, and Lockheed Martin signed it, the work
15 was done under the IES Contract. Now, whether
16 anybody went back to do the auditing of these
17 contracts, I have no idea. I don't see any
18 evidence of anybody ever going back to audit any
19 IES Contract, but if you audit the IES Contract,
20 more than likely you are going to find the work
21 was done under this contract, again, under this
22 contract.

23 [REDACTED] Under the IES Contract?

1 MR. DANIELS: Yes.

2 [REDACTED]: Well, isn't that where the
3 TDL was placed?

4 MR. DANIELS: Yes, but, like I said, out
5 of scope because it's repetitive of what was
6 already included in the separate contract. This
7 is a repetitive effort and the Paragraph 1
8 excludes repetitive effort on separate contracts.

9 [REDACTED]: At Paragraph 10-C of your
10 11 March 09 letter.

11 MR. DANIELS: Yes.

12 [REDACTED]: You state that the finding
13 of the DA report that cost-type IES Contracts were
14 issued as companion contracts to concurrent fixed
15 price MLRS Production Contracts is false. Can you
16 just qualify for me what you mean by that?

17 MR. DANIELS: What I mean by that is,
18 what is the source of that statement that IES
19 Contracts were issued as companion contracts to
20 concurrent fixed price contracts? What is the
21 source of the Government, I mean, the DA's
22 statement, just point to it?

23 [REDACTED]: What do you understand the

1 meaning of the phrase, issued as companion
2 contracts to mean?

3 MR. DANIELS: That is what I want them
4 to explain to me. That's what they put in the
5 introduction to their report. That's in their
6 report. They need to explain that. That makes no
7 sense. Doesn't make contract sense, doesn't make
8 common sense.

9 Why would anybody issue a separate fixed
10 price contract and then issue a cost-reimbursable
11 separate contract to support it? It wouldn't
12 happen.

13 [REDACTED]: Well, let me go back and
14 ask you about a conversation we had a little while
15 ago about the IES Contract in general, and the
16 nature of that type of contract. What is the
17 purpose of an Engineering Services Contract in
18 connection with ongoing production?

19 MR. DANIELS: According to Paragraph 1,
20 every single Scope Of Work of the IES Contract, it
21 tells you any non-repetitive action to issue a
22 companion IES Contract to a fixed-price contract,
23 would be duplicating what you've already paid for

1 in a fixed-price contract. There are two separate
2 contracts. That should be known duplicate tasks
3 in either contract, if you go back to the very
4 first paragraph of IES Contract.

5 [REDACTED]: And, you have read to us
6 Paragraph 1.1 of the IES Statement of Work.

7 MR. DANIELS: Which is --

8 [REDACTED] Earlier today, which has
9 language about supporting fielded MLRS and its
10 components and configuration variance.

11 MR. DANIELS: And, it specifically
12 excludes production related effort in that second
13 sentence down there.

14 MR. DANIELS: When it says,
15 "configurations not supported in other
16 engineering, manufacturing, or development
17 contracts."

18 [REDACTED]: I'm sorry, where are your
19 reading from, Mr. Daniels?

20 MR. DANIELS: From the ↕

21 [REDACTED]: What paragraph?

22 MR. DANIELS: Paragraph 1.1, let me make
23 sure we are reading the same one. I'm under Tab

1 22.

2 [REDACTED]: Yes, sir.

3 MR. DANIELS: It goes on to say here,
4 "Configurations not supported in other
5 engineering, manufacturing or development
6 contracts."

7 [REDACTED]: And, which efforts do you
8 believe were being supported in other Engineering,
9 Manufacturing or Development Contracts?

10 MR. DANIELS: The effort in this, in the
11 TDL that I mentioned in my allegations, including
12 this one.

13 [REDACTED]: Which is what one you are
14 pointing to?

15 MR. DANIELS: The one under Tab, the one
16 you just referenced under Tab 48.

17 [REDACTED]: And what's the title of
18 that TDL?

19 MR. DANIELS: The title was -- it is TDL
20 Number IL-99-01, it doesn't have a title. It
21 says, "Provide management and support to them, to
22 the M270A1 Launcher Program."

23 [REDACTED]: And, so you believe that

1 was required of a separate engineering,
2 manufacturing, or development contract?

3 MR. DANIELS: No, it's required of a
4 separate Production Contract, which was 98-C-0138.

5 [REDACTED] The 11 March 09 letter that
6 you provided to OSC contains documents at your
7 Tab A?

8 MR. DANIELS: Uh-huh. (Affirmative
9 response.)

10 [REDACTED] That seem, in part, at
11 least, to related to this allegation regarding the
12 improper use of TDLs?

13 MR. DANIELS: Yes.

14 [REDACTED] And, you also mention in
15 your 11 March 09 letter on Page 2, that documents
16 at Tab G, again of your letter contain examples of
17 improper activities regarding the IES Contract?

18 MR. DANIELS: Okay.

19 [REDACTED] Can you walk me through
20 those documents at those tabs and explain the
21 significance of those documents in terms of this
22 allegation?

23 MR. DANIELS: What was that tab again?

1 [REDACTED]: It's Tab A and Tab G.

2 MR. DANIELS: Okay, I will walk around
3 there. Under Tab A, we've got various things
4 here. First is the 7 September 99 legal
5 determination on what can and cannot be worked
6 under IES Contracts. It's dated 7 September 1999.

7 [REDACTED]: And, that's the memo that
8 was prepared by Mr. Dayn Beam?

9 MR. DANIELS: Yes, he was the attorney
10 of record for all these contracts.

11 [REDACTED]: And, can I ask you what, in
12 particular, if anything, in that September 99
13 memo, would you point to what would support your
14 position that the work under the IES Contract was
15 not properly placed?

16 MR. DANIELS: Yes, I stated in my
17 comment here. I can read from my comments, it
18 will be easier. Let's do this ↕

19 [REDACTED]: Do you have a copy of that
20 September of '99 legal memo?

21 MR. DANIELS: Yeah, that's the one in --
22 it's in the tab.

23 [REDACTED]: Do you have it in front of

1 you there?

2 MR. DANIELS: Yes. I can -- let me do
3 it this way. In here, he references both the
4 limitations of the fielded issues and he
5 references the policy guidance on what can and
6 cannot be in the IES Contract.

7 [REDACTED]: And, specifically, you're
8 pointing to what paragraphs?

9 MR. DANIELS: Paragraphs 1 and 2.

10 [REDACTED]: A-1 and A-2?

11 MR. DANIELS: A-2, yeah. A-1 and A-2.

12 [REDACTED]: And, the limitation to
13 fielded issues, is that --

14 MR. DANIELS: Yes.

15 [REDACTED]: And, what do you understand
16 that limitation to be?

17 MR. DANIELS: That it does not apply to
18 anything that's under development, or duplicated
19 in another contract. Sounds development is not
20 fielded. The M270A1 launcher at that time, keep
21 in mind that the contract I'm talking about here,
22 98-C-0138 was for the fielding of the M270A1 was
23 not fielded at that time, put into development.

1 [REDACTED]: It was, the 98-C-0138 was
2 the Element 1 and 2 contracts?

3 MR. DANIELS: Right, for the --

4 [REDACTED] The initial Production
5 Contract for the M270A1.

6 MR. DANIELS: And, they were not fielded
7 at that time, and still are in EMD.

8 [REDACTED]: So, then, would it have
9 been improper to issue any task under the IES
10 Contract that would have supported the LRIP
11 contract?

12 MR. DANIELS: For two reasons. The
13 number one reason was it was already duplicated,
14 they were duplicating taskers already in the 98-C-
15 0138 Contract. That was tasked -- the one we
16 talked about earlier were already included as part
17 of the Scope Of Work in that LRIP 1 and 2 Contract
18 for M270A1. It was a duplicate effort.

19 [REDACTED]: So, then if I understand
20 you correctly, it would have been -- would it have
21 been improper to issue an IES task to support that
22 98 LRIP Contract, is that the case?

23 MR. DANIELS: Yes, because it was

1 duplicating the effort, yes.

2 [REDACTED]: Oh, not because it wasn't
3 fielded, but because it was --

4 MR. DANIELS: Well, that was one of the
5 two reasons. Number one, it wasn't fielded,
6 number two, it was a duplicate task, two reasons.

7 [REDACTED]: And, the task was
8 duplicative of what effort?

9 MR. DANIELS: It's 98-C-0138 Contract,
10 program support effort, CLIN 1020.

11 [REDACTED]: And, that was the cost-
12 reimbursement CLIN that you mentioned?

13 MR. DANIELS: Yes.

14 [REDACTED]: Thank you. Turning further
15 in Tab A, there is an e-mail 19 July 2000?

16 MR. DANIELS: Yes.

17 [REDACTED]: From [REDACTED] to several
18 individuals, including yourself?

19 MR. DANIELS: Yes.

20 [REDACTED]: And, "Subject: Suspension
21 of TDL 00-002"?

22 MR. DANIELS: Yes.

23 [REDACTED]: Is this another TDL that

1 you specifically objected to at the time that --

2 MR. DANIELS: Yes, it has to do with
3 production obsolescence. That was the Production
4 Contract.

5 [REDACTED]: And, why do you believe the
6 funding effort to address production obsolescence
7 would have been improper?

8 MR. DANIELS: It was already covered
9 under the existing Production Contract.

10 [REDACTED]: Was this, to the best of
11 your knowledge, was this TDL ever placed against
12 the IES Contract?

13 MR. DANIELS: It was, and I do believe
14 it was canceled in the end.

15 [REDACTED]: And, do you recall why it
16 was canceled and who canceled it?

17 MR. DANIELS: For the very -- yes, for
18 the very same reason he listed in this production
19 related obsolescence.

20 [REDACTED]: Who made the decision to
21 cancel that, do you know, do you recall?

22 MR. DANIELS: It would have been Kathy
23 James.

1 [REDACTED]: Toward the end of that same
2 Tab A, there is a June 1st, 1999 memo with what
3 appears to be your signature. And, I said that
4 just to identify the document, not questioning
5 your signature.

6 MR. DANIELS: Yes.

7 [REDACTED]: And, that refers to CLIN
8 1010, is that the cost-reimbursement CLIN that you
9 were referring to?

10 MR. DANIELS: It's 1020, 1020.

11 [REDACTED]: It also mentions CLIN 1020.
12 So, again, would that be the cost-reimbursement
13 CLIN that you were referring to?

14 MR. DANIELS: Yes. There were two of
15 them.

16 [REDACTED]: And, again, that's under
17 the 98-C-0138 Contract, is that correct?

18 MR. DANIELS: Yes.

19 [REDACTED]: Can you state to me what,
20 in substance, is the import of your memo here to
21 Lockheed Martin?

22 MR. DANIELS: These were tasks that were
23 not covered in the Scope Of Work of the contract.

1 Being that they were not covered in the Scope Of
2 Work of the contract and it being a firm-fixed
3 price contract, other than this CLIN, then these
4 tasks would have been the responsibility of
5 Lockheed.

6 [REDACTED]: Do you know what happened
7 to these tasks? Were they performed under any
8 contract, to the best of your knowledge?

9 MR. DANIELS: Did they keep charging, is
10 that what you are asking?

11 [REDACTED]: No, I think you indicated
12 just now that you were notifying Lockheed Martin
13 in this June 1 letter, that you did not believe
14 that these tasks should have been performed under
15 this CLIN, is that right?

16 MR. DANIELS: Right. During a program
17 review with Lockheed Martin, they presented
18 information that these particular WBS were being
19 charged to this particular CLIN, 1020. And, I
20 knew these tasks were not included as part of
21 1020.

22 [REDACTED]: Why weren't they included
23 as part of 1020?

1 MR. DANIELS: Because they were firm-
2 fixed price by exclusion. They were not included
3 in the Scope Of Work by exclusion. It went
4 forward to the other CLIN that they needed to be
5 done under that contract. And, the other CLINS
6 were firm-fixed price.

7 [REDACTED]: And, why didn't you believe
8 these were included in the CLIN for cost-
9 reimbursement work?

10 MR. DANIELS: Because that's what we
11 negotiated. We didn't negotiate putting these WBS
12 in that Scope Of Work. That was a negotiated
13 Scope Of Work. We didn't negotiate what tasks
14 would be in and out of it. And these tasks were
15 not included.

16 [REDACTED]: Was this effort eventually
17 performed by Lockheed Martin, or had it already
18 been performed?

19 MR. DANIELS: I have no idea.

20 [REDACTED]: If we can turn to Tab G, I
21 believe, it was. I will ask you to kind of go
22 through these documents and help me understand
23 what is reflected in these documents in terms of

1 Allegation 1 regarding the TDLs?

2 MR. DANIELS: This hasn't to do with the
3 TDLs, in particular. This has to do with hours
4 being mischarged as the IES Contract by Lockheed
5 Martin.

6 [REDACTED]: And, does that pertain to a
7 particular allegation in the --

8 MR. DANIELS: Right, there were rampant
9 charges going on.

10 [REDACTED]: Which allegation would that
11 be?

12 MR. DANIELS: That's Number 1, that has
13 to do with tasks charged to IES Contracts. That
14 would be Allegation 1, I do believe.

15 [REDACTED]: Okay, which was captioned
16 by OSC as unauthorized TDLs?

17 MR. DANIELS: TDLs and tasks.

18 [REDACTED]: Okay. And, what's the
19 input of this March 9th, 2000 e-mail from [REDACTED]
20 [REDACTED]?

21 MR. DANIELS: [REDACTED] is the
22 Administrative Contracting Officer for Lockheed
23 Martin, Dallas -- no, [REDACTED]. And, this is

1 her notifying us that these hours have been moved
2 from the IES Contract to wherever they need to be
3 moved. I don't know which contract they decided
4 to move them to. But they were moved from the IES
5 Contract because they had been mischarged.

6 [REDACTED]: And, do you know how this
7 was brought to the attention of [REDACTED]?

8 MR. DANIELS: As a result of the ongoing
9 effort that we were doing with the ECP settlement.
10 All of this was going on at the same time. ECPs,
11 TDLs, mischarging.

12 [REDACTED]: The ECP settlement, you're
13 referring to the Eventual Department of Justice
14 settlement in 2005, was it?

15 MR. DANIELS: Yes.

16 [REDACTED]: Okay, so back in 2000, that
17 was the --

18 MR. DANIELS: Yes, that started way back
19 when.

20 [REDACTED]: Okay. The 23 April 2003
21 memo from [REDACTED], Lockheed Martin.

22 MR. DANIELS: Right.

23 [REDACTED]: That's contained at Tab G?

1 MR. DANIELS: Yes.

2 [REDACTED]: Can you walk me through
3 that and --

4 MR. DANIELS: This is an example of how
5 Lockheed Martin was allowing Government people to
6 direct the charging and mischarging of costs
7 against the IES Contract. This is an example of
8 what was the kind of thing that was going on
9 during that time.

10 [REDACTED]: Can you walk me through
11 this and help me understand where it shows that
12 Lockheed Martin was engaged in that activity?

13 MR. DANIELS: If you read Paragraph 1,
14 it says, "I have been informally and indirectly
15 requested to provide this letter stating the facts
16 and circumstances surrounding the execution of
17 CLIN 1020, WBSs," whatever.

18 And, going to Paragraph 2, midway, he's
19 basically saying, "During the review, [REDACTED]
20 [REDACTED] instructed the CAM at the
21 completion," whatever.

22 In other words, what this is saying, if
23 they were taking direction from other than the

1 Contracting Officer in the allocation and the
2 charging of costs of this Contract 98-C-0138.
3 [REDACTED] had no authority,
4 whatsoever to direct them to do this.

5 [REDACTED]: And, what's your
6 understanding of the effect of Lockheed Martin
7 doing what [REDACTED],
8 [REDACTED] directed Lockheed Martin to do?

9 MR. DANIELS: The end result is
10 mischarging of costs to Government contracts.

11 [REDACTED]: Okay, and in this case,
12 what particular costs?

13 MR. DANIELS: CLIN 1020, WBSs, GAA and
14 GBA under contract 98-C-0138.

15 [REDACTED]: So, those are work packages
16 or work effort that was required of Lockheed
17 Martin?

18 MR. DANIELS: Yes.

19 [REDACTED]: And those were being
20 improperly charged against what effort, what
21 contract?

22 MR. DANIELS: Contract 98-C-0138, WBSs,
23 GAA and GBA, is what this letter references.

1 [REDACTED] Okay, help me understand.
2 You indicated those costs to those efforts were
3 being improperly charged. They were improperly
4 charged to what contract? Do you know?

5 MR. DANIELS: In this case, I would say
6 it would be -- I would have to see the cost
7 reports themselves to know exactly where they went
8 because he's referencing the cost report. But,
9 all indications it would have been IES Contract.

10 [REDACTED] An IES Contract?

11 MR. DANIELS: Right, Engineering
12 Services Contract.

13 [REDACTED] And, it should have been
14 charged against what contract?

15 MR. DANIELS: Firm-fixed price. It
16 should -- in one part of the cost CLINS of the
17 0138 Contract, everything else would have been
18 firm-fixed price because we had specific tasks
19 that we were cost reimbursable and the rest of the
20 tasks would have been firm-fixed priced under the
21 contract.

22 [REDACTED] So, is there some
23 indication in here that these efforts were not

1 under the cost reimbursable CLIN of this 98
2 Contract?

3 MR. DANIELS: No, it just states that
4 they were mischarging. And, the way we found out
5 is by way of the performance cost reports dated 21
6 April 2003.

7 [REDACTED]: And, where are you?

8 MR. DANIELS: Under the enclosures.
9 Under the subject enclosure one, mischarging
10 costs, performance reports.

11 [REDACTED]: And can you help me
12 understand how this actual mischarging occurred?
13 What was mischarged to what? I'm trying to
14 understand this letter.

15 MR. DANIELS: Now, I don't know what was
16 mischarged to what. But the letter says it was
17 CLIN 1020 WBS, GAA and GBA have been mischarged
18 under 98-C-0138. I don't know whether or not they
19 were being illegally charged under 1020 or being
20 illegally charged under IES.

21 But, there was a problem and they were
22 identifying it, and they were telling us that they
23 did this under the direction of [REDACTED]

1 [REDACTED]
2 [REDACTED] [REDACTED]: Just a few last points that
3 I have on Allegation 1. At Army Report Two, at
4 Pages 24 through 25, the report concluded that
5 Allegation 1 was not substantiated. The report
6 found that each questioned TDL that was placed
7 under the IES Contract 98-C-0157, was within the
8 scope of that contract and properly placed under
9 that IES Contract.

10 Do you agree with that finding?

11 MR. DANIELS: No, and I want to see the
12 source documentation that supports that because
13 it's not in any contract that I've read. Not in
14 any cost reports I've read. And where is the
15 audit that will support that?

16 [REDACTED] [REDACTED] The Army Report also found
17 that none of these tasks were within the scope of
18 either cost reimbursement R&D Contract. That is
19 being Contract 92-C-0432, which was the Fire
20 Control Contract.

21 MR. DANIELS: Right, and that's not a
22 true statement. Those tasks were included in the
23 Scope Of Work of 0432.

1 ██████████: Okay. You've given me
2 three pages, the first page being entitled at the
3 top, "Fax Header Sheet, DCMA Lockheed Martin,
4 Dallas, dated 7/10/02, addressed to Clarence
5 Daniels. Subject: IES Transfer."

6 The second page being an, "Interoffice
7 Memo, Subject: IES ECP Cost Transfer dated, 25
8 February 2000." That appears to be an interoffice
9 memo of Lockheed Martin, is that correct?

10 MR. DANIELS: Yes.

11 ██████████: And, the third page appears
12 to be a spreadsheet entitled, "Cost Transfer -
13 Contract DAAH01-98-C-0157," that has data points
14 on that document.

15 MR. DANIELS: And what this denotes is
16 that they admitted to mischarging \$152,000.00 to
17 the IES Contract.

18 ██████████: And, you are pointing to
19 the third page of the three documents I just
20 described?

21 MR. DANIELS: Right. A total of five
22 thousand, twenty-eight hours for a total of
23 \$152,000.00 of mischarged costs.

1 [REDACTED]: Okay, and this interoffice
2 memo, again, appears to be a memo signed by the
3 Contract Administrator for the Lockheed Martin on
4 the MLRS, IES Contracts?

5 MR. DANIELS: Yes. And, I'll present
6 that in support of that was a pattern, a
7 continuous pattern of mischarges under the IES
8 Contract.

9 [REDACTED]: Do you know how this memo
10 was brought to the attention of [REDACTED],
11 who as you previously mentioned was CCMA?

12 MR. DANIELS: It was a result of all
13 that was going on at the time with the allegations
14 of ECP mischarging and TDL mischarging and
15 reviewing of the costs performance reports that
16 Lockheed submitted. And, they apparently
17 voluntary -- well, I don't think it was voluntary,
18 but they went back and started looking and these
19 were some of the things that they found that were
20 being mischarged. That the ACO found that was
21 being mischarged, [REDACTED], ACO.

22 [REDACTED]: So, are you uncertain as to
23 how this interoffice memo came to the attention of

1 the Government and DCMA, in particular?

2 MR. DANIELS: Right, but I would assume
3 that it was part of the ongoing investigation of
4 ECP and TDL mischarging by Lockheed Martin. All
5 of that was going on at the time.

6 [REDACTED]: And, did you indicate that
7 while you had your doubts, this could have been a
8 voluntary disclosure by Lockheed Martin?

9 MR. DANIELS: I don't think it was
10 voluntary. No, I had no doubt that it was not
11 voluntary.

12 [REDACTED]: Before we move on to
13 Allegation 2 and we'll take a break in a few
14 minutes, Mr. Daniels, if that's okay. Is there
15 anything else pertaining to Allegation 1 of the
16 OSC report that you'd like to mention at this
17 time? And, of course, doesn't preclude you from
18 raising it later during the interview.

19 MR. DANIELS: Right.

20 [REDACTED]: But, at this point in time,
21 based upon our discussion, is there anything
22 further right now that you would like to mention?

23 MR. DANIELS: What I'm particularly

1 disappointed at is that there does not appear to
2 be any sign of any post-award audits of the IES
3 Contracts since I made this allegation. Now, to
4 me, that's totally unacceptable.

5 You can't find out anything unless you
6 do an audit of what he has been charging. Now,
7 why the DA hadn't done that is a mystery to me.

8 [REDACTED]: So, you are making a note
9 of that?

10 [REDACTED]: Yes, I am.

11 [REDACTED]: Thank you. Okay, other
12 than that, at this point in time, Mr. Daniels,
13 anything further regarding Allegation 1?

14 MR. DANIELS: No.

15 [REDACTED]: Okay, so why don't we take
16 a ten minute break? As I understand, you have a
17 lunch engagement at 11:30?

18 MR. DANIELS: Yes.

19 [REDACTED]: So, we'll come back at say,
20 5 to 11, if that's okay and then cover what we can
21 until around 11:30 and then break for lunch.

22 MR. DANIELS: Sounds good.

23 [REDACTED]: Thank you.

1 (Brief recess.)

2
3 [REDACTED] It's 10:55 and we are
4 resuming the interview with Mr. Clarence Daniels.
5 I'd like to turn now to Allegation 2, which is
6 found in Report Number, DA Report Number 1, which
7 deals with the reimbursement for voluntary value
8 engineering concepts.

9 I know we've touched upon it somewhat in
10 our earlier discussions. So, I don't want to
11 duplicate the previous discussions. But, I'd like
12 to go through this with you and where we've
13 already discussed the matter, maybe we can move
14 on, but I want to make sure we cover this
15 particular allegation thoroughly.

16 The OSC report, at Page 4, states and I
17 am going to quote the report. Excuse me, that's
18 the referral letter, the OSC referral letter of
19 August, 2003.

20 "Mr. Daniels explains that the RRPR and
21 the LCRRPR were developed solely at Government
22 expense under IES Contracts DAAH01-92-C0243,
23 DAAH01-96-C-0295, DAAH01-98-C-0157 and DAAH01-C01-

1 0141."

2 And, I think in a couple of cases, the
3 nomenclature wasn't exactly right, but it was a
4 quote from the OSC referral letter, so I didn't
5 want to change it, but I believe you are familiar
6 with the contracts that were referenced.

7 Additionally, Paragraph 10D of your 11
8 March 09 letter to OSC states that, and again,
9 I'll quote, "The DA, ROI's," that's capital
10 letters, "Report of Investigation, finding that
11 contractor voluntary VECP 1450 was exclusively
12 developed and delivered under fixed price contract
13 DAAH01-89-C-0336 is false." You also reference
14 the documents at your Tab H to support this
15 position, Tab H to your 11 March 09 letter.

16 First, can you point me to the portion
17 of the DA Report that's referenced in the referral
18 that states that this VECP was exclusively
19 developed and delivered under the 89-C-0336
20 Contract?

21 MR. DANIELS: Yes. That was stated in
22 several different places. The first that I found
23 was on Page 13 of the report dated 21 July of

1 2008.

2 [REDACTED]: And, that would be the
3 report I'm referring to as DA Report 1?

4 MR. DANIELS: Yes.

5 [REDACTED]: Page 13, did you say?

6 MR. DANIELS: Yeah, 13, second
7 paragraph. "The RRPR was not developed under an
8 IES Contract as Mr. Daniels alleged. Rather,
9 between 1989 and 1991, Lockheed Martin voluntarily
10 is spending its own resources to develop a VECP,"
11 Tab 9, which is 1423.

12 [REDACTED]: Okay. My question was,
13 where in the report did it indicate that --

14 MR. DANIELS: Second page.

15 [REDACTED]: It had been exclusively
16 developed by Lockheed Martin?

17 MR. DANIELS: Second paragraph there.

18 [REDACTED]: And where is the phrase,
19 "exclusively developed"?

20 MR. DANIELS: The phrase, "exclusively
21 developed," is in the modification, itself under
22 when it was incorporated.

23 [REDACTED]: Can we point to that

1 modification, then?

2 MR. DANIELS: It will be Modification --

3 [REDACTED]: I believe you might be
4 referring to Modification 0241, that's at Tab 14,
5 that has the H provision?

6 MR. DANIELS: Yes.

7 [REDACTED]: Okay, that would be at Tab
8 14, I believe.

9 MR. DANIELS: Okay, let's go to the
10 second page. It's Clause H-52, where he is
11 certifying it by including this clause.
12 "Technical data pertaining to items, components or
13 processes developed exclusively at private
14 expense."

15 [REDACTED]: So, that's the phrase that
16 you are pointing to?

17 MR. DANIELS: Right.

18 [REDACTED]: This is H-52 being a
19 special contract provision?

20 MR. DANIELS: Yes.

21 [REDACTED]: That was included in the
22 89-C-0336 Production Contract by Modification 241,
23 is that correct?

1 MR. DANIELS: Yes.

2 [REDACTED]: And, refers to VECP 1450
3 R1. The title of the H-52 clause you were just
4 referring to?

5 MR. DANIELS: Yes.

6 [REDACTED]: Okay. Can we then turn to
7 Tab H if you don't mind?

8 MR. DANIELS: H of my response?

9 [REDACTED]: Yes, of your 11 March 09
10 letter to OSC?

11 MR. DANIELS: Yeah, I've got it.

12 [REDACTED]: And, I would ask if you can
13 point out to me the portions of Tab H that support
14 the position that VECP 1450 was exclusively
15 developed and delivered under fixed price contract
16 89-C-0336 as being false?

17 MR. DANIELS: Tab H, is that what I
18 referenced in my response? I've referenced Tab I,
19 let's see -- oh, I referenced Tab I on that
20 response. That goes back to --

21 [REDACTED]: I was referring to
22 Paragraph 10-D of your 11 March 09 letter.

23 MR. DANIELS: 10-D.

1 [REDACTED]: On Page 6. Is a reference
2 to see Tab H?

3 MR. DANIELS: That was a misplace,
4 should have been I.

5 [REDACTED]: Thank you, that --

6 MR. DANIELS: Should have been I.

7 [REDACTED]: So, the reference should
8 have been to Tab I?

9 MR. DANIELS: Yes.

10 [REDACTED]: Okay, let's turn to Tab I,
11 then.

12 MR. DANIELS: It's what we talked about
13 earlier. This is the -- this is a transmittal of
14 data of the ECP 1450.

15 [REDACTED]: Yes.

16 MR. DANIELS: Under Contract 92-C-0243.

17 [REDACTED]: There appears to be at
18 least two documents entitled, "Transmittal of
19 Data." One dated November 24th, 1993. And then
20 the second one dated October 15th, 1993?

21 MR. DANIELS: Yes, these are further
22 examples of VECPS that were illegally worked under
23 the IES Contract. And after I reviewed the

1 comprehensive listing, there were even more.

2 [REDACTED]: And, is it the November
3 24th letter that refers specifically to 1450?

4 MR. DANIELS: Yes.

5 [REDACTED]: Okay. And, that consists
6 of the -- one page transmittal letter, itself, the
7 contract data requirement lists excerpt that's
8 attached?

9 MR. DANIELS: Right. These are records
10 are only transmittal letters.

11 [REDACTED]: Two pages?

12 MR. DANIELS: Yes.

13 [REDACTED]: And, could you help me
14 understand how these documents support that
15 allegation?

16 MR. DANIELS: It says this is a
17 transmittal of the ECP data, itself. And, it also
18 tells you what particular data item the data was
19 developed under the IES Contract and under the
20 remarks.

21 [REDACTED]: You said it is a
22 transmittal of the ECP data, itself?

23 MR. DANIELS: Yes.

1 [REDACTED]: Is there anything in these
2 documents, at least, that indicate that Lockheed
3 Martin developed that data under this particular
4 Contract 92-C-0243?

5 MR. DANIELS: Okay, go down to the
6 remarks section.

7 [REDACTED]: Yes.

8 MR. DANIELS: It says, "Items 1 and 2
9 are submitted under the contract data item
10 requirements. A058 and A060. And, it lists the
11 data item requirement which is DI-CMAN-0642 and
12 DI-CMAN-80639." It is also referenced in the IES
13 Scope Of Work.

14 [REDACTED]: Right. And those data
15 requirements list items require what from Lockheed
16 Martin?

17 MR. DANIELS: Required the data -- this
18 ECP to be developed under these data item
19 requirements.

20 [REDACTED]: And can you point to where
21 it requires them to be developed as opposed to --

22 MR. DANIELS: These data items
23 themselves give the requirements for the

1 preparation of these ECPs.

2 [REDACTED]: The preparation of -- an
3 ECP is an Engineering Change Proposal, is that
4 right?

5 MR. DANIELS: Yes.

6 [REDACTED]: And, what is an Engineering
7 Change Proposal? What does that documentation
8 include?

9 MR. DANIELS: It includes anything from
10 the test and development of the technical data for
11 that change.

12 [REDACTED]: Does it necessarily mean
13 that all the data that's reflected in the
14 Engineering Change Proposal that's submitted under
15 this data item was actually developed under that
16 contract or that it was submitted as an ECP under
17 this contract?

18 MR. DANIELS: What it means is under
19 this data item, there are certain requirements
20 under this data item. These give the requirements
21 for that data item, which is also cross referenced
22 in the Scope Of Work. Everything that is required
23 him to do what's in this data item.

1 Which means, according to this the Scope
2 Of Work, it's from the beginning to the end, for
3 acceptance by the Government, you have to do these
4 certain tasks. The specific tasks are spelled out
5 in the data items, DI-CMAN, the first one, the
6 first reference. These are huge documents because
7 they reference other documents.

8 That, along with the Scope Of Work tells
9 him everything he has to do to present this ECP as
10 a complete ECP to the Government. That entails
11 everything from beginning to end of the ECP.

12 And, to further show that these costs
13 were incurred under this particular IES Contract,
14 first it's listed in the comprehensive listing of
15 the ECPs worked in the IES that I gave you
16 earlier.

17 Second, it shows up in the cost summary
18 report, the quarterlies cost summary report for
19 IES charges for this ECP.

20 [REDACTED]: Does the report describe
21 the nature of the work associated with those
22 costs?

23 MR. DANIELS: No, it just gives the