

1 number of hours expended and the estimated cost
2 for that quarter developed in this ECP.

3 [REDACTED]: And, have you gone through
4 that report prior to today?

5 MR. DANIELS: Yes.

6 [REDACTED]: Okay. Can you tell me what
7 specific costs, either round number or total
8 figure based upon your review of that document
9 were associated with the ECP in question?

10 MR. DANIELS: It gives a total for all
11 the ECPs worked this quarter. It doesn't list it
12 by cost. It just gets the hours worked for that
13 quarter. Because each quarter probably has a
14 different hour rate. So, it gives a composite for
15 each -- for the total number of ECPs worked that
16 quarter.

17 All they give here are the hours that
18 were expended, which can be converted to dollars,
19 but you can't do it here because all of the
20 dollars have different.

21 [REDACTED]: Does it break out by ECP
22 the number of hours expended?

23 MR. DANIELS: Yes. That's what I gave

1 you earlier this morning.

2 [REDACTED]: You gave me a summary of --

3 MR. DANIELS: Excerpt.

4 [REDACTED]: That's what I thought,
5 thank you.

6 MR. DANIELS: It gave you the hours.

7 [REDACTED]: That's the Loral document
8 that we described this morning that Mr. Daniels is
9 now referring to.

10 MR. DANIELS: Yes, it gives you the
11 hours.

12 [REDACTED]: Do you recall, or can you,
13 by looking through that document now, indicate for
14 me what those number of hours were that are
15 associated with the ECP in question?

16 MR. DANIELS: Yeah, I need that back
17 from you for just a second. Oh, here it is. I'm
18 back with the document.

19 [REDACTED]: Okay, this is the document
20 we discussed earlier this morning from Loral
21 Vought systems, title, MLRS Thirty-Fifth Quarterly
22 ECP Cost Impact Report, dated 4 January 1993 and
23 is an excerpt that Mr. Daniels went over earlier

1 this morning of, I believe, approximately ten
2 pages.

3 [REDACTED]: But, it will be Exhibit 2 to
4 the transcript.

5 MR. DANIELS: And, for ECP 1423, which
6 was the initial VECP for the Reduced Range
7 Practice Rocket.

8 [REDACTED]: The initial VECP for the
9 Reduced Range Practice Rockets.

10 MR. DANIELS: It's 1423. The number was
11 changed for whatever reason, it was -- that was
12 1450, but was listed for 1423 in this report, is
13 showing a total for that quarter 5,599 hours
14 expended against the IES contract.

15 [REDACTED]: And, again, that's on Page
16 40 of the excerpt of the Loral document that you
17 provided us, is that correct?

18 MR. DANIELS: Yes.

19 [REDACTED]: Okay. Going back to Tab I,
20 Mr. Daniels, are there other documents in this
21 tab that address the issue regarding VECP 1450?

22 MR. DANIELS: Yes.

23 [REDACTED]: And, whether it was

1 exclusively developed under 89-C-0336?

2 MR. DANIELS: This just gives a further
3 example of what was being mischarged in the IES.
4 We have several other VECPS that were delivered
5 under this IES contract, according to the data.
6 VECP, MI-C1352 R1, MI-C1397, and there are several
7 more on the list I gave you this morning that I
8 highlighted.

9 [REDACTED]: And regarding 1450.

10 MR. DANIELS: That's also listed on the
11 list that I gave you this morning.

12 [REDACTED]: Yes. What I was referring
13 to are the other documents that are a part of Tab
14 I, there is --

15 MR. DANIELS: That's a comprehensive
16 report for all the ECPs worked on the IES from the
17 data I gave you until '97.

18 [REDACTED]: Now, is there anything in
19 this long listing that pertains specifically to
20 1450 that you'd like to point out at this time?

21 MR. DANIELS: Right. In there, it tells
22 you that 1423 was canceled and renamed as 1450.
23 That's the significance of that.

1 [REDACTED]: Of this approximate --

2 MR. DANIELS: Right, that is in there.

3 [REDACTED]: -- three quarters of an
4 inch of documents.

5 MR. DANIELS: Right. That's in there,
6 also.

7 [REDACTED]: Okay. So, the significance
8 of those documents as you said is that they showed
9 that VECP 1423.

10 MR. DANIELS: Was converted for some --
11 for whatever reason to 1450.

12 [REDACTED]: Okay. Thank you. There
13 was also some contract documents modifications,
14 actually a contract document dated 10 May 1995
15 towards the end of --

16 MR. DANIELS: No, that's related to
17 another allegation.

18 [REDACTED]: And, what allegation is
19 that related to?

20 MR. DANIELS: That had to do with the
21 rotatable spares, warranty spares.

22 [REDACTED]: Okay. Well, then we'll get
23 to that later on in the interview, if you don't

1 mind.

2 MR. DANIELS: That's fine.

3 [REDACTED]: Regarding the development
4 of the RRRP, the DA Report Number 1 at Page 13
5 asserts that, in fact, this VECP was not developed
6 under the IES Contract, but rather that Lockheed
7 Martin voluntarily expended its own resources to
8 develop this VECP. Is that an accurate statement?

9 MR. DANIELS: That is not a true
10 statement. The records clearly show that 1450 as
11 well as 1423 were worked at least under 92-C-0243
12 and 98-C-0157. Why they didn't do the auditing on
13 that to find out, to verify that, I just don't
14 know. It didn't take me long to verify it.

15 [REDACTED]: Okay, in your 11 March 2009
16 letter at Paragraph 8, you indicate that Lockheed
17 Martin falsely claimed and certified under
18 Contract 89-C-0336 that voluntary VECP 1450 A1 was
19 developed, "exclusively," at private expense.

20 And you cite the Modification 241 clause
21 "H-52," which is located at Tab 14 of the DA
22 Report 1.

23 MR. DANIELS: Yes.

1 [REDACTED]: We just looked at clause
2 H-52 and you pointed out the language in the
3 beginning of that clause that states that
4 technical data pertaining to items, components or
5 processes developed exclusively at private expense
6 and then it goes on.

7 MR. DANIELS: Yes.

8 [REDACTED]: And, that's the provision
9 of the contract in this particular modification
10 that you're pointing to?

11 MR. DANIELS: Yes.

12 [REDACTED]: If I could ask you to turn
13 to Army Report Number 1, Tab 9.

14 MR. DANIELS: Okay.

15 [REDACTED]: We looked at that early
16 this morning. And, I think we agreed that the
17 document is a Letter of Transmittal from LTV in
18 October of '91 purporting to furnish a preliminary
19 VECP 1423 to the Government.

20 MR. DANIELS: Yes.

21 [REDACTED]: That pertains to the RRPR.

22 MR. DANIELS: Yes.

23 [REDACTED]: Okay. And, Tab 12, again,

1 is Modification 111 to the 89-C-0336 Contract?

2 MR. DANIELS: Yes.

3 [REDACTED]: If we look at Paragraph A8
4 of Modification 111 at Tab 12.

5 MR. DANIELS: I must have taken it out.
6 It's just missing.

7 [REDACTED]: Okay, this is the mod that
8 we were looking at this morning. And, the one you
9 just pointed to which contains -- I'm sorry, this
10 is Mod 111, I'm sorry, that's at Tab 12. This is
11 the one that you mentioned this morning indicates
12 that the 1450 Reduced Range Training Rocket, the
13 VECP was incorporated into the 0336 Contract, is
14 that correct?

15 MR. DANIELS: Yes.

16 [REDACTED]: Okay, and that A-8, there's
17 language that indicates that the contractor
18 developed this concept under its IR&D, Independent
19 Research and Development project number 531-M
20 during fiscal years '88, '89 and '90.

21 And, I believe this morning you
22 indicated you were familiar with that provision to
23 the extent that that had language referring to

1 that Independent Research and Development, is that
2 correct?

3 MR. DANIELS: Right.

4 [REDACTED]: If, in fact, that's an
5 accurate statement, would it be your understanding
6 then that the development up to that point in time
7 by Lockheed Martin or its predecessor, that under
8 its Independent Research and Development program
9 that the data developed would have been data that
10 would have been proprietary to the contractor for
11 which it would have limited rights at that point
12 in time?

13 MR. DANIELS: I don't think I understand
14 your question.

15 [REDACTED]: What I am asking is, is it
16 your understanding that that data that's developed
17 by a contractor under IR&D, whether that data is
18 data that is proprietary to a contractor and for
19 which the Government only gets limited rights?

20 MR. DANIELS: You're saying that they
21 developed the data at their private expense?

22 [REDACTED]: Under an Independent
23 Research and Development project.

1 MR. DANIELS: Right.

2 [REDACTED]: And, then at that point,
3 that data would be considered proprietary to the
4 contractor?

5 MR. DANIELS: Yes, they would own it.
6 It has nothing to do with the Government at that
7 point.

8 [REDACTED]: Okay. If we turn back to
9 the H-52 clause that's at Tab 14, the license
10 rights provision that we just discussed with the
11 ECP, 1450 R1. At the end of that provision there
12 is language in the H-52 clause that reads as
13 follows: All technical data furnished to the
14 Government that is marked with, "Limited Rights,"
15 legend shall be marked with the following
16 additional statement.

17 And, in quotes, it says, "In addition to
18 the, 'Limited rights,' specified in paragraph (a)
19 (15) of the clause at 252.227-7013 of the contract
20 listed above, the Government has, 'Licensed
21 Rights,' as specified in Clause H-52 of said
22 contract."

23 Now, what would be -- what is your

1 understanding of that portion of the H-52 Clause
2 as far as that provision is concerned?

3 MR. DANIELS: It gives us some
4 additional rights other than what we get
5 automatically, but the only problem with that
6 whole thing is it wasn't developed at private
7 expense. And, since the Government developed or
8 co-developed, if you want to put it that way, then
9 it would be still -- it would be entitled to
10 unlimited rights to use of the data because of our
11 co-development with Lockheed.

12 But, I don't believe it was
13 co-developed. Unless, somebody does an audit and
14 says that's what happened, then I'll believe it.
15 But, see, there was no audit done, I'm only going
16 by what the papers say. They're saying it was
17 done at private expense.

18 The documentation that I have saying it
19 was not done at private expense. So, at this
20 point, without an audit, just who knows.

21 [REDACTED] And, is it your
22 understanding that if the data had been developed
23 partly at private expense and partly Government

1 expense, I think is what you just said, that the
2 Government would be entitled to unlimited rights?

3 MR. DANIELS: That's my understanding of
4 the regulations. I'm not an expert on it.

5 [REDACTED]: And this --

6 MR. DANIELS: And, to go further on
7 that, if we spend any part -- if we paid any money
8 to help develop that VECP, then the contractor
9 would not be entitled to any of the cost sharing,
10 it goes further than that.

11 It wouldn't even qualify as a VECP at
12 that point. It would be just a straight ECP.

13 [REDACTED]: And, at the time that this
14 VECP was incorporated into this particular
15 contract, by the modification that we just
16 referred to.

17 MR. DANIELS: Yes.

18 [REDACTED]: Is it your understanding
19 that the Government had funded the development at
20 that point in time?

21 MR. DANIELS: Yes, that's what the
22 documents say.

23 [REDACTED]: Under what contract would

1 the Government, do you believe the Government had
2 funded that effort?

3 MR. DANIELS: Under 92C043 ECP 1423.

4 [REDACTED]: And, that's based upon the
5 documentation that you've previously discussed
6 with us?

7 MR. DANIELS: Yes.

8 [REDACTED]: Okay, in H-52 above the
9 provision I just read to you, is language that
10 discusses Government purposes or Government
11 purpose rights to the technical data associated
12 with this VECP. Are you familiar with that?

13 MR. DANIELS: Yes, I'm familiar with the
14 language, yes.

15 [REDACTED]: And, what is your
16 understanding of Government purpose rights, in
17 general?

18 MR. DANIELS: I don't have any in
19 general.

20 [REDACTED]: Specifically, the H-52
21 clause describes particular rights that the
22 Government would have to this 1450 R1 VECP and
23 H-52, is that correct?

1 MR. DANIELS: Yes, I think so.

2 [REDACTED]: And, it says, "'Government
3 Purposes,' shall include competitive procurement
4 in the United States, but do not include any
5 rights to have or permit others to use technical
6 data for commercial purposes, or for purposes for
7 foreign manufacture or foreign procurement," to
8 quote from the H-52.

9 MR. DANIELS: Yeah, but that really
10 means nothing. There's only one source in the
11 United States. And, you know who that is, it's
12 Lockheed Martin.

13 [REDACTED]: There's only one source for
14 what?

15 MR. DANIELS: For these rockets.

16 [REDACTED]: And, why is that?

17 MR. DANIELS: They own all the equipment
18 to produce the rockets. Nobody else is going to
19 make an investment to produce, you know, MLRS
20 rockets at this point. So, there's only one
21 source in the U.S. So, that really means nothing.

22 [REDACTED]: And, are we still in
23 production on the MLRS rocket? Are we still in

1 production on the MLRS rocket, as far as you know?

2 MR. DANIELS: Only on the guided
3 portion. The basic rockets still, I think aren't
4 in production. As a matter of fact, we're
5 starting to demil some of the rockets.

6 [REDACTED]: Based upon what I just read
7 from H-52 as being Government purpose rights.

8 MR. DANIELS: Yes.

9 [REDACTED]: Is it your understanding
10 that the rights defined in H-52 as Government
11 purpose are rights that are greater than rights
12 that the Government would have if we only had
13 limited rights to that data?

14 MR. DANIELS: In the larger context, no,
15 because there's only one producer in the United
16 States, and that's Lockheed Martin. So, it's
17 meaningless, there would be no competition. And,
18 they know -- I would think they would know that.

19 [REDACTED]: But, in terms of our, the
20 Government's rights to this intellectual property,
21 the technical data associated with the 1450 R1
22 VECP, is it your understanding that the Government
23 purpose rights defined in this clause gives us a

1 greater scope of legal entitlement to use that
2 data than we would have if we had limited rights
3 to that same data?

4 MR. DANIELS: In the practical sense, no
5 because that's only one source, and that's
6 Lockheed Martin.

7 [REDACTED]: And, I understand in the
8 practical sense.

9 MR. DANIELS: The answer is no.

10 [REDACTED]: The answer is no, but
11 strictly from a definitional sense, in what the
12 Acquisition regulates is defined to be limited
13 rights and Government purpose rights. Is it your
14 understanding that Government purpose rights
15 legally grants to the Government a greater degree
16 of right to use that data than it would otherwise
17 have if we had, if the Government had solely
18 limited rights to that data?

19 MR. DANIELS: But, when you think about
20 it, though, limited rights can be negotiated. So,
21 that's kind of touchy.

22 [REDACTED]: And, if we negotiate
23 something other than limited rights...

1 MR. DANIELS: It could be over and above
2 the general purpose rights, that's all.

3 ██████████: Mr. Daniels, it's 11:30,
4 and I still have a few more questions on this
5 allegation, but you have a luncheon engagement.
6 So, if it's all right with you that we can break
7 off here and allow you to go to your luncheon
8 engagement. And, then what would be a good time
9 for us to resume.

10 MR. DANIELS: What's good for y'all, one
11 o'clock?

12 ██████████: One o'clock is fine. That
13 would be great.

14 MR. DANIELS: See you then.

15 ██████████: Thank you.

16

17 (Lunch recess.)

18

19 ██████████: This is the interview with
20 Mr. Clarence Daniels. It is 1300 on Tuesday, 14th
21 of July. And Mr. Daniels, this morning you signed
22 the Privacy Act Statement. Here's a copy for your
23 records. We have one that we have provided for

1 the court reporter for inclusion in the
2 transcript.

3 MR. DANIELS: Thank you.

4 [REDACTED]: You are welcome. Okay,
5 sir, to continue if we can, with Allegation 2,
6 regarding the LCRRPR, the DA Report Number 1, at
7 Page 17, acknowledges that the LCRRPR was
8 developed at Army expense under Army Expense at
9 TDL TR 99-001 under IES Contract 98-C-0157.

10 So, to this limited extent, it appears
11 that your position and that expressed in the DA
12 Report are consistent, that is, that this TDL was
13 developed at Army expense under the IES Contract.
14 Is that the case?

15 MR. DANIELS: Yes. We are talking about
16 the RRPR and the modification of that TDL to
17 produce a LCRRPR.

18 [REDACTED]: Now, I'm talking
19 specifically about the TDL 99-0001 that required
20 Lockheed Martin to provide us the LCRRPR under the
21 IES Contract?

22 MR. DANIELS: Yes.

23 [REDACTED]: And, what I was asking is

1 the position of the Army at, in its report, Page
2 17, appears to acknowledge, in fact, that's the
3 case as you asserted?

4 MR. DANIELS: Yes.

5 [REDACTED]: Okay. The OSC referral
6 letter on Page 5 contains an allegation that
7 Lockheed Martin demanded and received a production
8 royalty payment from the U.S.G. of five thousand
9 dollars per rocket.

10 If you wouldn't mind, can you point to
11 and discuss, and point to a document, Contract mod
12 or otherwise, or discuss why you believe that
13 Lockheed Martin demanded, in fact, received a
14 production royalty payment of five thousand
15 dollars per rocket?

16 MR. DANIELS: That was included in the
17 negotiation memorandum and both in the contract
18 mod incorporating 1450.

19 [REDACTED]: Okay, and what contract
20 mods would that be?

21 MR. DANIELS: I believe it would be the
22 settlement, that 241.

23 [REDACTED]: 241?

1 MR. DANIELS: Yes.

2 [REDACTED]: So, you are referring to
3 Tab 14 of the modification 241 to the 89-C-0336
4 contract, is that right?

5 MR. DANIELS: Right. And, it also
6 appears in the negotiation memorandum for the
7 modification because I provided a copy to the OSC.

8 [REDACTED]: Okay. And are you
9 referring to Paragraph A-7 in particular of the
10 modification that says, "The cost of the license
11 option is five million dollars per country, plus a
12 royalty of five thousand dollars per warhead
13 manufactured"?

14 MR. DANIELS: Now, that basically
15 differs from what the actual negotiation
16 memorandum.

17 [REDACTED]: Okay. Do you have a copy
18 then of the negotiation memorandum that you are
19 referring to?

20 MR. DANIELS: I can get one, but I don't
21 have one with me today, but it was provided as
22 part of the back-up to the allegation. But, I can
23 get that.

1 [REDACTED] Okay, and would it be
2 possible to bring that tomorrow with you?

3 MR. DANIELS: Yes.

4 [REDACTED] Okay, that will be great,
5 thank you. Can you speak to it now or would you
6 prefer waiting until you had the negotiation memo?

7 MR. DANIELS: Yes, for the information
8 that I have in my allegation came from the
9 negotiation memorandum.

10 [REDACTED] So, we can defer that until
11 tomorrow then when you have that?

12 MR. DANIELS: Yes.

13 [REDACTED] Okay, then that's, let's do
14 that then. Can you explain to me why you believe
15 the payment of \$300,400.00 to Lockheed Martin on
16 the modification 260, the same mod was improper?

17 MR. DANIELS: The fact that the
18 Government participated in the funding of the
19 development of the RRPR, ECP, disqualifies that
20 ECP from cost-sharing by the contractor and
21 royalty payments.

22 [REDACTED] And so if I understand you
23 correctly, your position is that since the RRPR

1 was actually developed under the IES Contract with
2 Government funding, that the acceptance of the
3 VECP under the Production Contract was improper.

4 MR. DANIELS: Absolutely.

5 [REDACTED]: And, therefore, Lockheed
6 Martin never should have been paid not just the
7 \$393,000.00, but any cost-sharing at all?

8 MR. DANIELS: Cost-sharing at all. It
9 did not qualify for a VECP at that point.

10 [REDACTED]: And that would be at the
11 point in time when the VECP was accepted by the
12 Government in Mod 111 that we discussed this
13 morning in 10 July 1991, is that your position?

14 MR. DANIELS: From the points, we don't
15 have an audit on the contract, but from the point
16 that the first charges for the development of the
17 VECP, 1423, until after that point, it did not
18 qualify at that point to be submitted back to the
19 Government as a VECP with cost-sharing and royalty
20 payments.

21 Since the Government participated in the
22 development and the risk of the development of the
23 VECP.

1 [REDACTED]: Now, I may be rehashing old
2 ground, and if I am, I apologize, but can you
3 point specifically to the IES Contract effort that
4 you believe led to the development of this VECP
5 and the RRPR technical data?

6 MR. DANIELS: Okay, without the benefit
7 of the audit of the 92-C-0243 Contract, the most I
8 can do is go back to the very first cost summary
9 report that I showed you, summary report that
10 identifies that ECP at 1423 being developed under
11 the old 92-C-033 contract. It could have even
12 been started even earlier than that.

13 I don't have the facilities to go any
14 further back than that. All I can go back and
15 argue is what the records from that date. It
16 could go back even further than that date, but I
17 don't have all of the records.

18 [REDACTED]: So, then is it your
19 understanding that that effort that is reflected
20 in the IES cost data that you showed us, that
21 that's the same effort that would have been
22 conducted to develop the RRPR VECP back in '91,
23 '92 time frame?

1 MR. DANIELS: Yes.

2 [REDACTED]: Okay. And is that, to the
3 best of your knowledge and understanding, either
4 an upgrade of that original design of the RRPR,
5 but is actually a duplication of the same effort
6 that would have been associated with the
7 development of the VECP?

8 MR. DANIELS: Right. Because the only
9 history that I could find on the 1423 piece and
10 the 1450, as far as costs are involved, track back
11 to the IES 92-C and the 98-C-0157. Without the
12 benefit of an audit of those contracts, it could
13 go back even further. It could be a predecessor
14 action under a Government Contract, I just don't
15 know.

16 And since the DA didn't do any forensic
17 auditing of these contracts, I don't know how they
18 could ever say, prove or disprove, that Lockheed
19 Martin spent so much as a dime of their money on
20 the VECP 1423 or 1450.

21 [REDACTED]: Okay. Thank you. And you
22 may have just answered this question, but I just
23 want to be clear. At Page 7 of your March 9

1 letter to OSC at Paragraph 10D.

2 MR. DANIELS: Okay.

3 [REDACTED]: You state that the IES
4 production related ECP and the voluntary IES VECP
5 were not properly researched?

6 MR. DANIELS: Absolutely.

7 [REDACTED]: What did you mean by that?

8 MR. DANIELS: What I mean by that is to
9 the best of my knowledge, there's not been a
10 single post award cost technical property audit of
11 any of the IES Contract that I questioned that
12 would be mischarged.

13 [REDACTED]: And when you say being
14 mischarged, in what sense was the mischarging
15 occurring?

16 MR. DANIELS: By being --

17 [REDACTED]: Well, what contracts were
18 being improperly charged for this effort?

19 MR. DANIELS: It would be 92-C -- I have
20 them listed here. It is on a list that the
21 Government provided in a response -- oh, I know
22 where they are. This is the list. And they would
23 be, to the best of my knowledge, 96-C-0243,

1 92-C- -- excuse me, let me start over.

2 They would be 92-C-0243, 96-C-0295,
3 98-C-0157, and 01-C-0141.

4 [REDACTED]: So, those four contracts,
5 are those the four contracts that you just
6 articulated, the ones that you believe were
7 improperly charged?

8 MR. DANIELS: Yes.

9 [REDACTED]: With costs associated with
10 the RRPR and the LCRRPR development work?

11 MR. DANIELS: Yes.

12 [REDACTED]: And, again, if I am
13 rehashing, I apologize. But, what leads you to
14 believe that costs were mischarged to those --
15 each of those four contracts?

16 MR. DANIELS: The consolidated ECP
17 listing of ECPs that were worked under those
18 contracts is a data item under those contracts.
19 Those VECPs and others appear on that list as
20 being worked under IES. It's come from that
21 report.

22 The quarterly cost report that I gave
23 you that had the VECP 1423, when the number of

1 hours are expended against that 0243 contract.

2 And, the fact that the DA report does not
3 reference a single audit of any of these
4 contracts, in the last then years.

5 And for them to be able to make a broad
6 statement, a statement that they were not
7 mischarged, how could they possibly say that
8 without doing an audit of those contracts? I am
9 just confused about that. When all the evidence
10 points towards, yes, we charged these ECPs under
11 this contract.

12 Both the Government data said that and
13 the Lockheed Martin data says that, in writing.

14 [REDACTED]: And can you show me where
15 that is in the report? Where the Government and
16 Lockheed Martin indicate that?

17 MR. DANIELS: The report that I provided
18 to you is a ECP report that is required by the
19 data item of the IES Contract. It's been required
20 in every single one of them, beginning with 92-C-
21 042. That consolidated list that I gave you came
22 from the Government office that collects these
23 reports.

1 Lockheed submits them to that Government
2 office. I went to that Government office and
3 requested that list. And that's the list that
4 they provided to me as being what the Government
5 identified as being charged against the IES
6 Contracts for that period.

7 [REDACTED]: And can you then -- is it
8 your understanding that those costs or hours, if
9 not actual dollars that are reflected in that
10 report, reflect this same effort that would have
11 been expended under the 0336 Contract to develop
12 the ECP for the RRPR?

13 MR. DANIELS: Absolutely. Again, absent
14 any audit of those contracts in any proof
15 whatsoever, that Lockheed Martin is spending so
16 much as a dime of their own private funds which
17 nobody to date has shown me, the only logical
18 conclusion is they will produce a hundred percent
19 of Government expense.

20 [REDACTED]: And, can I ask you, what do
21 you make of the language we read this morning in
22 the 0336 Contract that indicated and referring to
23 Paragraph A-8 where the Contracting Office

1 acknowledged that the contractor had developed the
2 RRPR concept under an R&D project that Lockheed
3 Martin and it's successor had conducted in '88,
4 '89 and '90?

5 MR. DANIELS: And if that was a true
6 statement, then those costs should be able to be
7 audited by the Government or Lockheed Martin
8 should be able to produce those costs in order to
9 perform to the Government that we can verify that
10 claim.

11 But, this report has been -- the DA ROIs
12 don't contain that and there was never an audit of
13 IES contracts to tell me exactly how much of the
14 VECPs was actually charged against the Government
15 contract.

16 [REDACTED]: Did you recall who was
17 working the 890C-0336 contract, the Contracting
18 Officers identified as [REDACTED]?

19 MR. DANIELS: [REDACTED].

20 [REDACTED]: Do you know who else in the
21 Acquisition Center was working that?

22 MR. DANIELS: It'd been various
23 different people in that time frame, since then.

1 [REDACTED]: If I turn to Mod 241 of
2 that same contract which we discussed earlier
3 today, at Tab 14, which purports to settle
4 concurrent and future contract savings. I believe
5 it also purports to settle the contractor's
6 development costs associated with generating the
7 RRPR, technical data. Do you have any
8 understanding as to where those costs came from,
9 how they were developed by the Contracting Officer
10 who signed this contract?

11 MR. DANIELS: No, all I have is a copy
12 of the negotiation memorandum for that
13 modification.

14 [REDACTED]: Is that the same
15 negotiation memorandum that you plan to bring
16 tomorrow?

17 MR. DANIELS: For tomorrow.

18 [REDACTED]: At Pages 28 and 29 of DA
19 Report 1, it discusses, the report discusses the
20 Army's finding relative to Allegation 2.

21 MR. DANIELS: Yes.

22 [REDACTED]: In summary, those findings
23 concluded that Lockheed Martin properly proposed

1 the Reduced Range Practice Round VECP and that it
2 was properly accepted and incorporated into the
3 89-C-0336 contract. Do you agree with that
4 finding?

5 MR. DANIELS: No. The evidence of
6 expenditure of funding on the IES Contract does
7 not support that statement at all.

8 [REDACTED]: And that evidence is what
9 you alluded to earlier in the --

10 MR. DANIELS: Yes, the cost reports and
11 the submittal of the ECPs under those contracts.

12 [REDACTED]: The report also found that
13 the LCRRPR was properly developed at Government
14 expense pursuant to TDL TR-99-001 under IES
15 contract 98-C-0157. And that there was no VECP
16 associated with the RRPR. Do you agree with that
17 finding or parts thereof?

18 MR. DANIELS: The reason I associated
19 that with the VECP, it specifically said low cost,
20 which means cost savings to the original RRPR, so
21 I don't agree with that statement, so it would
22 have been a cost savings.

23 He changed the Technical Data Package,

1 in other words, the purpose of it. Number one, it
2 was not within the scope of the IES Contract,
3 Number two it was a requirement which required
4 justification and approval for sole source
5 acquisition from Lockheed.

6 [REDACTED]: If I go back to Tab 20,
7 your 13 May 99 memo that we discussed this
8 morning.

9 MR. DANIELS: Yes.

10 [REDACTED]: Discussing the Low Cost
11 Reduced Range Practice Rocket.

12 MR. DANIELS: I'm there.

13 [REDACTED]: Okay. It appears to me
14 that the sentence, paragraph that precedes
15 Paragraph 2 starts off with this effort, also
16 falls under, or into, rather, the category of a
17 Value Engineering Change.

18 MR. DANIELS: Yes.

19 [REDACTED]: And could be submitted to
20 the Government as a VECP?

21 MR. DANIELS: Yes.

22 [REDACTED]: What were you referring to
23 in that memo?

1 MR. DANIELS: I was referring to if they
2 wanted to develop, further develop that PR as a
3 low cost change to it, they could do that at their
4 own expense. And if the Government wanted to
5 change the TDP on his own, they could submit a J&A
6 and justify going sole source to Lockheed and
7 handle it as a new requirement, development
8 requirement.

9 ██████████: Then, what was meant by it
10 could be resubmitted to the Government as a VECP
11 by LMVS.

12 MR. DANIELS: What I mean was, it could
13 be resubmitted if it was done at Lockheed, totally
14 Lockheed expense without a contract of any kind
15 and then resubmitted to us. Completed at private
16 expense and then resubmitted as a VECP, after it
17 was fully developed, in accordance with the costs.

18 ██████████: In accordance with what
19 clause?

20 MR. DANIELS: The voluntary VECP clause
21 and the production, Market Production Contracts.
22 At the same time this was going on, we was still
23 in the production of rockets, practice rockets.

1 They could have continued to develop the RRPR at
2 their own expense and then resubmitted it as a
3 VECP under an existing production, Rocket
4 Production Contract.

5 [REDACTED]: And which contract might
6 that have been at the time?

7 MR. DANIELS: It might have been, could
8 have even been 0036 or it could have been 94-C-
9 A005, both for producing rockets at that time, if
10 I remember correctly.

11 [REDACTED]: I'm sorry, those two
12 contracts again.

13 MR. DANIELS: 94-C-A005 and it could
14 have also been, I think, 89-C-0336. I think they
15 both were still in production of rockets at that
16 time. I'm not sure, but I think they were. And
17 they both were fixed price contracts. And
18 contained the voluntary VECP clause.

19 [REDACTED]: The DA report also found
20 that other than the nose cap drawing, and
21 specification MIS-35095/19, other than those two
22 documents that the U.S. Government secured
23 Government purpose rights through the RRPR and the

1 LCRRPR technical data.

2 Do you agree with that finding?

3 MR. DANIELS: No, I said what I meant by
4 my allegation is that since the Government at
5 least shared in the risks and the development of
6 the RRPRs, and the local RRPRs, there should be no
7 restrictions on the use of the data. Should have
8 been the unlimited rights, period.

9 [REDACTED]: Lastly, the Army Report
10 regarding Allegation 2, concluded that there was
11 no evidence that the Army paid Lockheed Martin any
12 royalty for the use of any technical data
13 associated with either the RRPR or the LCRRPR. Do
14 you agree with that finding?

15 MR. DANIELS: That goes back to the, I
16 think the report says what's the definition of a
17 royalty. Now, I can't dispute that. I don't know
18 what their definition is. But, the modification,
19 itself, called them royalties, so I will let them
20 decide what a royalty is. I just can't do it.

21 [REDACTED]: Okay. Thank you. And at
22 this time, is there anything further you'd like to
23 add regarding Allegation 2 of the 20 August 03 OSC

1 referral letter and the DA report?

2 MR. DANIELS: None at this time.

3 [REDACTED]: Okay. Let's move on to
4 Allegations 3 and 4. These allegations have to do
5 with the acceptance of non-conforming M270A1
6 launchers and the safety risks posed by fielded
7 M270A1 launchers.

8 MR. DANIELS: Yes.

9 [REDACTED]: On Page 3 of your 11 March
10 09 letter to OSC, you refer to March, 2003
11 fielding and deployment of defective and unsafe
12 MLRS M270A1 launcher systems into combat zones
13 during Operation Iraqi Freedom. Even though the
14 launcher systems were fully known to display both
15 operational and unmitigated catastrophic safety
16 hazards.

17 How did you first learn that unsafe
18 launches were being fielded in combat zones?

19 MR. DANIELS: The back-up is in my
20 allegations. But, I first learned that those
21 launchers had safety flaws based on the submittal
22 from Lockheed Martin of the safety assessment
23 report for those launchers.

1 ██████████: Okay, you're handing me
2 what is captioned M270A1 LRIP, Roman Numeral III,
3 SAR Hazard Controls Matrix. Table 1-2, Hazard
4 Risks and Control Types. And a second document
5 captioned M270A1 LRIP, Roman Numeral III, SAR
6 Hazard Controls Matrix.

7 Can you explain what these documents are
8 and where they came from?

9 MR. DANIELS: These are documents that
10 were a result of hazard risk analysis done by
11 Lockheed Martin. And, in it it describes the
12 various degrees of hazard risks and the safety and
13 the mitigation of those hazard risks. And, were
14 they hardware or software controlled?

15 ██████████: And, to the best of your
16 recollection, are those documents contained in the
17 Army report?

18 MR. DANIELS: Yes.

19 ██████████: Can we mark those as the
20 next exhibit 5? It appears that those first
21 document and second document are -- well, the
22 second document is a continuation of the first
23 document.

1 MR. DANIELS: Yes.

2 [REDACTED] So, we'll just have it
3 marked as one exhibit.

4

5 (Exhibit No. 5, being a 2 page
6 chart, entitled, "M270A1 LRIP III
7 SAR Hazard Controls Matrix," was
8 marked.)

9

10 [REDACTED]: Now, Exhibit 5, as you've
11 provided to us, does that reflect that defective
12 and unsafe launcher systems were deployed into
13 combat zones?

14 MR. DANIELS: Yes. To the best of my
15 knowledge, those launchers were accepted on
16 condition before those safety hazards had been
17 properly mitigated by Lockheed Martin.

18 [REDACTED]: And then, to the best of
19 your knowledge, those were placed into combat
20 zones?

21 MR. DANIELS: Yes.

22 [REDACTED]: When you stated just now
23 that they were accepted on condition, are you

1 referring to the conditional material release
2 process that's described in the Army report?

3 MR. DANIELS: No, I'm referring to
4 acceptance for delivery by the Government under
5 the contracts.

6 [REDACTED]: And are there documents in
7 the Army report that reflect that conditional
8 acceptance?

9 MR. DANIELS: Yes, I provided the Army
10 with all the modifications that I knew of,
11 modification and letters that I knew of that
12 denoted assessments of these launchers by the
13 Government from Lockheed Martin.

14 [REDACTED]: Okay. Can you take the
15 time for us now to point to those documents in the
16 Army Report that reflects that?

17 MR. DANIELS: This is only maybe twenty-
18 five percent of what I have. I have a detail, it
19 will take a while.

20 [REDACTED]: Then, are in the Army
21 Report that you know of?

22 MR. DANIELS: Every -- let me say this.
23 Those documents were provided to the OSC and the

1 CID over the past six years. So, they are part of
2 the documentation that I provided. But I can get
3 you copies, I just don't have them here.

4 [REDACTED]: Those -- asking do I want
5 you to bring those documents tomorrow. If they
6 are available to you, I just assumed you would,
7 but maybe I'll just ask you would they be
8 available that you can bring tomorrow?

9 MR. DANIELS: I will look through. They
10 may already be part of the Army report somewhere,
11 but I know I provided the mods and the letters.
12 So, I should be able to bring those tomorrow. I'd
13 better write this down.

14 [REDACTED]: Thank you, I appreciate
15 that.

16 MR. DANIELS: Okay.

17 [REDACTED]: And for what period of time
18 do you believe the Army accepted and paid for
19 these defective launches that were deployed into
20 combat zones, do?

21 MR. DANIELS: If I remember correctly,
22 from the year 2000 to the year 2003.

23 [REDACTED]: And, do you have a

1 recollection or an understanding as to
2 approximately how many of those launchers were
3 accepted under those conditions?

4 MR. DANIELS: I think it was one hundred
5 fifteen or one hundred twenty-five. Somewhere
6 near that number.

7 [REDACTED]: The March 13th, 2003 AMCOM
8 Safety Office and DA Report 2, at Page 43, appears
9 to concur with the conditional release of the
10 launchers. I believe that's at Tab 86 of DA
11 Report 2. Were you aware of the Safety Office's
12 concurrence at that time?

13 MR. DANIELS: No.

14 [REDACTED]: When did you first become
15 aware of the Safety Office's concurrence to the
16 conditional release of the launchers?

17 MR. DANIELS: It would have been, I
18 would guess, some time in the year 2005, I guess.

19 [REDACTED]: When you first learned of
20 the unsafe delivery of the 270A1 launcher systems
21 being deployed into combat zones, you indicated
22 that was at what point in time?

23 MR. DANIELS: I think it was March of

1 2003.

2 [REDACTED]: And when you learned of
3 those unsafe deliveries, what at that point in
4 time did you do?

5 MR. DANIELS: I filed a complaint
6 through the OSC.

7 [REDACTED]: Are you aware of any
8 discussions at that time that were taking place
9 between the Safety Office and the Contracting
10 Office and the Program Office regarding safety
11 issues associated with the launcher including the
12 uncommanded cage movement issue?

13 MR. DANIELS: Yeah, I knew something
14 about it. And I didn't think they were going to
15 accept them, but they did. As a matter of fact,
16 I tried to talk them out of it, but of course,
17 they weren't going to listen to me.

18 [REDACTED]: And who did you try to talk
19 out of, do you recall?

20 MR. DANIELS: The Contracting Officer at
21 that time. I think it was [REDACTED] and [REDACTED]

22 [REDACTED].

23 [REDACTED]: Okay. What is your

1 understanding of a conditional material release
2 versus a full material release? The report talks
3 about a conditional material release and so does
4 the Safety Report documentation as well as the
5 subsequent full material release.

6 What's your understanding of the
7 difference between those two decision points?

8 MR. DANIELS: Now, I don't know anything
9 about those two subjects. The onliest thing I was
10 referring to was the conditional acceptance of the
11 launchers that did not conform to the contract
12 requirements.

13 [REDACTED]: That you believe were
14 deployed to Iraq?

15 MR. DANIELS: Yes. It was my contention
16 that those launchers should have never been
17 accepted by the Government in that condition. I
18 had no knowledge of any material release, I could
19 have cared less about that.

20 But my contention was if it did not
21 conform to the contract, they should have not been
22 delivered to the Government, accepted for delivery
23 to the Government.

1 [REDACTED] Okay, in June of 2003,
2 there's an indication in the DA Report that a
3 [REDACTED], Contracting Officer?

4 MR. DANIELS: Yes.

5 [REDACTED] Resumed acceptance of
6 M270A1 launchers that were earlier stopped by
7 [REDACTED], another Contracting Officer
8 in the Acquisition Center who you mentioned you
9 knew.

10 MR. DANIELS: Yes.

11 [REDACTED]: Did you agree or disagree
12 with that decision?

13 MR. DANIELS: I disagreed because those
14 launchers still hadn't been remedied. And, from
15 my understanding, they had some type of get well
16 plan, but it was a two year get well plan in the
17 future.

18 So, I've never -- me, personally, I
19 never would have resumed deliveries unless
20 considerable consideration was given back to the
21 Government for accepting the launchers in that
22 condition. But that never happened so far as I
23 know.

1 [REDACTED]: Okay. Consideration back
2 to the Government in what regards? What type of
3 consideration would you think?

4 MR. DANIELS: It would be basically
5 withholding the payments until those launchers
6 were -- met the requirements of the contract.

7 [REDACTED]: At Tab 91 is a sworn
8 statement by [REDACTED], do you know
9 [REDACTED]?

10 MR. DANIELS: Yes. Yes.

11 [REDACTED]: He was employed at the time
12 in the AMCOM Safety Office and he also worked on
13 the MLRS Safety Risk Reduction effort?

14 MR. DANIELS: Yes.

15 [REDACTED]: His statement, again, is at
16 Tab 91 of the report. If I can refer you to Tab
17 91?

18 MR. DANIELS: Yes, I am there.

19 [REDACTED]: In his statement, he
20 indicates that the allegation that unsafe
21 launchers were sent to the field is an
22 exaggeration, and further, that there have been no
23 instances noted of failures in the field.

1 I'm reading at the next to the last full
2 paragraph of [REDACTED] statement at Tab 92.
3 Do you disagree with [REDACTED] in either of
4 those two points?

5 MR. DANIELS: I disagree because that
6 disagrees with what the Safety Risk Assessment
7 says and there were instances after 2003 where the
8 launchers exhibited some of those conditions. And
9 I provided evidence of that to the OSC.

10 [REDACTED]: Okay, you mention the
11 Safety Assessment Report, I think?

12 MR. DANIELS: Yes.

13 [REDACTED]: Can you point us to --

14 MR. DANIELS: What was that exhibit, the
15 one we just marked? Exhibit 5.

16 [REDACTED]: If we can have Exhibit 5.

17 MR. DANIELS: For instance Log Number
18 H-13 of Exhibit 5. It mentions inadvertent rocket
19 missile firings. There was an incident of that
20 happening after we accepted those launchers. I
21 have documentation to that effect.

22 On H-21, uncommanded cage movement.
23 There's evidence of that happening after we

1 accepted these launchers. So, I don't agree with
2 that statement.

3 [REDACTED]: And, when you say there is
4 evidence of that. What evidence would you be
5 talking of?

6 MR. DANIELS: I have evidence from the
7 Lockheed Martin themselves in some minutes from
8 meetings that they had out at Lockheed Martin.
9 And, there's also incidents here locally in the
10 training area where that had happened.

11 [REDACTED]: And, what time frame do you
12 recall, what time frame the Lockheed Martin
13 reports about these unsafe conditions were
14 presented?

15 MR. DANIELS: I made, and I gave copies
16 of that to the OSC, but I don't remember the exact
17 dates. But it was after they were delivered,
18 after the first delivery.

19 [REDACTED]: After the first deliveries
20 and --

21 MR. DANIELS: In 2002, yes.

22 [REDACTED]: And, those deliveries
23 included deliveries that you believed were fielded

1 into combat zones?

2 MR. DANIELS: Yes. There's no
3 documentation that I could find that those safety
4 hazards had been mitigated before those launchers
5 were deployed into the field. If they have that
6 evidence, they need to produce it.

7 [REDACTED]: Are you aware of any
8 injuries or reports from the field regarding
9 safety issues with the M270A1 launcher?

10 MR. DANIELS: The only two incidents I
11 know were by word of mouth of other people. There
12 were at least two launchers that were completely
13 destroyed by fire. And I don't know the
14 circumstances. One in Iraq and one in -- I want
15 to say, Fort Sill, Oklahoma.

16 [REDACTED]: That were destroyed by
17 fire, is that what --

18 MR. DANIELS: Yes, the cause of which I
19 never could find out.

20 [REDACTED]: Reference your 11 March 09
21 letter, at Tab F,

22 MR. DANIELS: I'm there.

23 [REDACTED]: Okay, on Page 5, I'm sorry,

1 Page 3, Paragraph 5.

2 MR. DANIELS: I'm there.

3 [REDACTED]: At the top of Page 3, okay.

4 It says, "The conditional acceptance and full
5 payment for over 100 non-conforming and unsafe
6 M270A1 launchers. LMMFC is contractually
7 obligated to perform all corrective action
8 required, at no additional cost to the Government,
9 to bring all previously delivered launchers into
10 full contract compliance into FAR 52.246-2(1) of
11 fixed price production contracts, DAAH01-98-C-0138
12 and DAAH01-00-C-0109.

13 Before I continue quoting, the reference
14 to DAAH01-00-C-0138, did you intend to refer to
15 the 09 contract, as opposed to a 00 contract,
16 0138?

17 MR. DANIELS: Say that again.

18 [REDACTED]: The quote I just read
19 referred to a DAAH01-00-C-0138 contract. And what
20 I was asking was, did you intend to refer to the
21 08-0138 contract rather than a 00?

22 To continued the quotation from your 11
23 March 09 letter at Tab F, goes on to say that,

1 "LMMFC corrective action is surreptitiously being
2 performed at Government expense under Government
3 cost-type Engineering Services Contracts DAAH01-
4 00-C-0141 and other Government funded MLRS
5 Contracts."

6 Do the documents at this Tab F support
7 your allegation that the Army accepted and fielded
8 unsafe launchers? And, if so, could you point to
9 those documents that support that allegation?

10 MR. DANIELS: No, those documents had
11 already been placed in OFC report of that, those
12 -- not this part of that 05 September submission
13 that I made.

14 [REDACTED]: Okay, and are those
15 documents, documents you said you would be able to
16 bring tomorrow, or are they documents at Tab F? I
17 just wanted to be clear.

18 MR. DANIELS: Those are documents that I
19 can bring tomorrow.

20 [REDACTED]: Okay. Thank you. The Army
21 Report 2, at Page 57, found that Lockheed Martin
22 had not met its contractual obligation to deliver
23 a Safety Assessment Report under Contract

1 00-C-0109 and is pursuing a one million dollar
2 adjustment from the contractor.

3 At Tab 97 of Army Report 2 is a January
4 28, 2008 demand letter from [REDACTED] to Lockheed
5 Martin seeking reimbursement of those costs.

6 Do you agree with this conclusion and
7 the action being taken to recover those costs?

8 MR. DANIELS: I don't know because like
9 I say, I was shut out of this process way back in
10 2005 or so. So, I don't know what happened after
11 that.

12 [REDACTED]: Okay, this is the process
13 involving the submission of Safety Assessment
14 Report that I am referring to?

15 MR. DANIELS: Right.

16 [REDACTED]: Okay, so you are indicating
17 that you were shut out from that so you are not
18 familiar with the details of --

19 MR. DANIELS: I took part in some of
20 that, but as far as the negotiations of how much
21 was owed, and who was going to do what, that was
22 never related back to me.

23 [REDACTED]: Okay. The Army Report

1 Number 12, at Page 58, also found that AMCOM
2 erroneously expended approximately six hundred
3 thousand dollars in payments to cure the
4 uncommanded cage movement safety defect, and is
5 likewise seeking recovery from Lockheed Martin for
6 those costs as well.

7 Is that defect one of the defects that
8 you are referring to in the Exhibit 5?

9 MR. DANIELS: Yes.

10 [REDACTED]: Okay, so the uncommanded
11 cage movement safety defect is one of those
12 hazards that have been identified in that two page
13 exhibit you provided us earlier this afternoon?

14 MR. DANIELS: Yes.

15 [REDACTED]: Okay, and at Tab Number 97
16 of the 28 -- excuse me, at Tab 97 referring again
17 to the 28 January '08 letter of [REDACTED], it
18 includes a demand for the six hundred thousand
19 dollars.

20 Are you familiar with that?

21 MR. DANIELS: No.

22 [REDACTED]: Okay. The Army Report 2,
23 at Page 58 concluded that there as no violation of

1 MIL-STD-882, what we refer to as Mil Standard 882,
2 as alleged in the OSC referral letter of 20 August
3 03, at Pages 7 and 8.

4 Do you agree with that finding?

5 MR. DANIELS: No.

6 [REDACTED]: Okay, why do you believe
7 that that finding is incorrect and that, in fact,
8 there was a violation of that Mil Standard, That's
9 M-I-L Standard.

10 MR. DANIELS: The documentation from the
11 Safety Office -- the documentation that I received
12 from the Safety Office that -- said that it had
13 violated that very same MIL spec, so that's a
14 contradiction there.

15 [REDACTED]: MIL Spec or MIL Standard?

16 MR. DANIELS: MIL Standard.

17 [REDACTED]: Okay. Do you recall
18 specifically what documentation from the Safety
19 Office and is it in the DA Report?

20 MR. DANIELS: It's in the DA Report I
21 provided that e-mail and the documentation as part
22 of the OSC submission. I am unaware whether this
23 is in the report or not.

1 [REDACTED] You do not know whether
2 it's in the DA Report?

3 MR. DANIELS: No. But the Safety Office
4 themselves did make that determination at one
5 time, saying that they had both the contract and
6 that MIL Standard safety procedures.

7 [REDACTED] On the Army Report
8 Number 2.

9 MR. DANIELS: What tab?

10 [REDACTED] We are now looking at Tab
11 70 -- excuse me, 86.

12 MR. DANIELS: Tab 86 is a 13 March 2003
13 memo signed by the Chief, Missile Safety Division,
14 [REDACTED], [REDACTED], memorandum
15 to [REDACTED] in the Acquisition Center.

16 MR. DANIELS: I'm looking for an e-mail
17 from [REDACTED] that talks about that. I'm
18 hoping that was in here, but I don't see it.

19 [REDACTED] Well, to your best
20 recollection, if you're willing to say based upon
21 your best recollection, what did [REDACTED] [REDACTED]
22 e-mail indicate to you?

23 MR. DANIELS: That he, in good

1 conscience, couldn't prove that the launchers
2 complied with that MIL Standard and the
3 procedural safety requirements. I'll bring that
4 tomorrow. That's the one I'm looking for.

5 [REDACTED]: Mr. Daniels, if you think
6 you can locate that, and bring that tomorrow.
7 Then, if it's okay with you, we can defer further
8 on that until tomorrow.

9 MR. DANIELS: Okay. All right.

10 [REDACTED]: Okay. At this time, is
11 there anything more you would like to ad regarding
12 Allegations 3 and 4 of the 20 August 03, OSC
13 referral letter and the DA report, response
14 thereto?

15 MR. DANIELS: No, except that it appears
16 to be a lot of cherry picking of the information
17 that the DA was using to unsubstantiated these --
18 that's what it appeared to be, but †

19 [REDACTED]: Can you further elucidate
20 on that point? What information do you believe
21 the DA Report is ignoring when you say, "cherry
22 picking", I don't --

23 MR. DANIELS: One would be that e-mail

1 from [REDACTED] saying that these launchers
2 didn't comply with the contract or the MIL
3 Standard. So, it may be in there, and maybe I
4 just didn't see it.

5 [REDACTED]: Okay.

6 MR. DANIELS: And the fact that these --
7 and the fact that the launchers did display the
8 anomalies after they were delivered to the
9 Government, that the software hadn't been changed
10 and the get well plan hadn't been implemented
11 before those launchers was deployed to Iraq.

12 [REDACTED]: Is it your understanding
13 that those fixes that were reflected in the get-
14 well plan that are included in the DA report, that
15 they were ever addressed and those fixes were ever
16 made, or is it your understanding that those
17 offices were never made and are still open to this
18 date as far as you know?

19 MR. DANIELS: As far as I know, they may
20 have been addressed, but I have no idea whether or
21 not they were fixed, and I have no idea of what
22 the status of the get well plan is.

23 [REDACTED]: Now, at the time, were you

1 working on this particular contract and this
2 particular issue?

3 MR. DANIELS: No, I had been making sure
4 I had the process, most of the stuff I assembled
5 on my own.

6 [REDACTED]: Okay. And at the time,
7 what were your official duties, if not pertaining
8 or if not involving the safety issues of the MLRS
9 program that we just discussed?

10 MR. DANIELS: I was working on other
11 contracts.

12 [REDACTED]: Other MLRS Contracts or --

13 MR. DANIELS: Other MLRS Contracts, some
14 of them -- didn't involve Lockheed, some of them
15 did. Most -- none of major significance was
16 Lockheed, though.

17 [REDACTED]: So, none in your mind that
18 would be specifically relevant to the allegations
19 we are discussing today?

20 MR. DANIELS: No. No.

21 [REDACTED]: Okay, all right. Thank
22 you. It's 1400, two o'clock, so why don't we just
23 take a ten minute break, if that's okay with you.

1 And then we can resume after that at ten after
2 two?

3 MR. DANIELS: All right.

4 [REDACTED]: Great.

5

6 (Brief recess.)

7

8 [REDACTED]: It's two fifteen, Tuesday,
9 14 July. I'd like to resume the interview with
10 Allegation 5 of the 20 August 2003 OSC referral
11 that has to do with the acceptance of five M270A1
12 launchers lacking fire control systems, which
13 prior referred to fire control systems as FCS, as
14 we engage in this discussion.

15 In the OSC referral letter of 20 August
16 03, at Page 8, you allege that [REDACTED]
17 permitted Lockheed Martin to deliver five M270A1
18 launchers without their fire control systems and
19 without making an appropriate contract
20 adjustments. You raised similar concerns these
21 five FCS in your March 11, '09 letter to OSC at
22 Paragraph 10-E, on Page 6. And, at Tab F to your
23 11 March letter.

1 You state that these FCS were paid for
2 but never delivered as required by the fixed price
3 M270A1 launcher production contract 00-C-0109.

4 MR. DANIELS: Yes.

5 [REDACTED]: if you could turn to Tab F
6 and walk me through the documents contained there
7 and help me understand which of these documents
8 support that allegation.

9 MR. DANIELS: I think I may have looked
10 for the wrong tab there. Yeah, I may have looked
11 at the wrong tab. Well, why don't we do this?
12 I've got the attachment that should have been at
13 that tab. This is a fax and 1149 that I received
14 from the ACO, [REDACTED] and the Contract
15 Administrator for the 0109 contract, well, the top
16 administrator for all these contracts.

17 [REDACTED]: For which contracts in
18 particular?

19 MR. DANIELS: All the contracts that are
20 under this, Lockheed Martin but this pertains to
21 the HIMARS contract, DAAH01-00-C-0002.

22 [REDACTED]: And that you said is a
23 HIMARS Contract not an MLRS Contract?

1 MR. DANIELS: It is, but the HIMARS is a
2 lighter version of the MLRS system.

3 ██████████: Were there separate
4 contracts awarded to Lockheed Martin for the
5 HIMARS as opposed to the MLRS?

6 MR. DANIELS: Yes, And that is the
7 contract number here.

8 ██████████: And so, the particular
9 contract you mentioned 0002 is a contract for
10 HIMARS?

11 MR. DANIELS: HIMARS. So, what actually
12 happened in that instance, there were not any fire
13 control systems ever delivered under 0109 in
14 accordance with the letter from ██████████.

15 ██████████: I'm sorry, on the 0109?
16 The contract reference?

17 MR. DANIELS: Yes. As to the allegation
18 that we are just talking about here.

19 ██████████: So, if I understand you
20 correctly, under the 00-C-0109 contract, there
21 were five M270A1 launchers that you say were
22 delivered without fire control systems?

23 MR. DANIELS: Fire control systems.

1 [REDACTED]: Okay. So far, I'm with you
2 okay.

3 MR. DANIELS: What should have happened
4 is that those fire control systems were supposed
5 to be shipped from that contract to Red River for
6 installation on other launchers.

7 [REDACTED]: I'm sorry, were the
8 original five launchers that did not have the fire
9 control system, were they delivered to the Army at
10 Red River?

11 MR. DANIELS: Yes. Delivered to Red
12 River, yes.

13 [REDACTED]: Without the Fire Control
14 Systems?

15 MR. DANIELS: Yes.

16 [REDACTED]: And as you said, at some
17 time, Lockheed Martin was required to provide five
18 Fire Control Systems at Red River.

19 MR. DANIELS: From 0109, yes.

20 [REDACTED]: From 0109. Okay, I'm with
21 you still.

22 MR. DANIELS: But, what actually
23 happened, those five were shipped, under those

1 1149 shipment, from a HIMARS contract on a
2 completely separate contract.

3 [REDACTED]: Okay, can you explain what
4 the 1149 is?

5 MR. DANIELS: That's a shipping
6 document, internal Government shipping document to
7 transfer property from one place to the other.

8 [REDACTED]: And you say these documents
9 which you just handed me, which begin with a Fax
10 Header Sheet from DCMA to yourself on 5/28/03
11 indicating there were fifteen pages, including the
12 header sheet that these documents are shipping
13 documents?

14 MR. DANIELS: Right, for five fire
15 control systems.

16 [REDACTED]: And they pertain to which
17 contract?

18 MR. DANIELS: HIMARS Contract DAAH-02-C-
19 0002.

20 [REDACTED]: Okay, and what do these
21 documents then reflect to you in terms of the five
22 FCS components, that you indicated should have
23 been on the M270A1 launchers that were at Red

1 River?

2 MR. DANIELS: Right. These Fire Control
3 Systems were, instead shipped from this contract
4 to Red River instead of the one from 0109.

5 [REDACTED]: Okay. Why don't we have
6 these marked as Exhibit 6.

7

8 (Exhibit No. 6, being 8 pages, the
9 first page entitled, "Fax Header
10 Sheet, Date: 5-28-03," was
11 marked.)

12

13 [REDACTED]: Is this your only copy?

14 MR. DANIELS: No, I have another copy.

15 [REDACTED]: And so we can have this
16 copy, then?

17 MR. DANIELS: Yes.

18 [REDACTED]: Okay, thank you.

19 MR. DANIELS: And, the result of that
20 was, no fire control systems were ever eventually
21 delivered under 0109 at no additional cost to the
22 Government, since we had already paid for them up
23 front. But we accepted the stripped launchers at

1 full price.

2 That meant Lockheed owed us five fire
3 control systems at no cost some time in the
4 future. They didn't give a delivery schedule, but
5 in the future, we are owed five fire control
6 systems. That never happened.

7 [REDACTED]: Okay, Army Report 1 Volume
8 1, at Page 31 indicates that these FCS went to the
9 HIMARS Program in September '01. Is that your
10 understanding?

11 MR. DANIELS: That's what they say. I
12 have no way of knowing that.

13 [REDACTED]: Okay. Then in October '02,
14 the Department of the Army G-3 needed M270A1
15 launchers shipped to Iraq quickly to support that
16 effort?

17 MR. DANIELS: Yes.

18 [REDACTED]: Going on in Theater. And,
19 the report further indicates that five FCSs were
20 then sent to Red River to replace the five FCSs
21 that were previously diverted, if you will, to the
22 HIMARS Program back in '01?

23 [REDACTED]: Is that your understanding,

1 or do you have no knowledge of that?

2 MR. DANIELS: I have knowledge of a
3 letter that says that launchers, Fire Control
4 Systems from 0109 were to be stripped from the
5 accepted launchers and sent to Red River for
6 installation on the HIMARS program.

7 The problem was, that didn't happen.
8 The five fire control systems that were shipped to
9 Red River actually came from HIMARS Contract that
10 went back to Red River. No Fire Control Systems
11 were ever delivered at no cost on the 0109 even
12 though we paid for it.

13 [REDACTED]: Okay. Can you walk me
14 through then what your understanding was of --

15 MR. DANIELS: What my --

16 [REDACTED]: What your understanding is
17 of the sequence of events that eventually led to
18 the Army paying for five FCSs, but never getting
19 delivery of those five FCSs?

20 MR. DANIELS: According to the letter,
21 there were going to be five Fire Control Systems
22 stripped from launchers delivered under the 0109
23 and sent to Red River.

1 ██████████: According to what letter?

2 MR. DANIELS: According to the letter
3 that ██████████ signed.

4 ██████████: Okay.

5 MR. DANIELS: But, what actually
6 happened, we paid for the launchers in full as if
7 they had the fire control systems. But, what
8 actually happened was, five fire control systems
9 were sent from the HIMARS Contract by way of the
10 documentation that I sent you. to Red River for
11 installation on the launchers going to Iraq.

12 So, we're missing five fire control
13 systems that should have -- that we paid for under
14 the 0109 that were never shipped under 0109.

15 Had the fire control systems been
16 actually shipped from 0109, there would be no
17 problem, but that is not what happened. They were
18 shipped from the HIMARS Contract to Red River. We
19 paid for launchers, five launchers without fire
20 control systems but we paid for them in full as if
21 they had the fire control systems installed.

22 ██████████: So, are you saying then
23 that if the five fire control systems that were

1 eventually placed on the MLRS launchers came from
2 the HIMARS Program?

3 MR. DANIELS: Yes, that's exactly what
4 the documentation says. And what the ACO and
5 [REDACTED] and [REDACTED] confirmed in their
6 data fax to me in those documents.

7 [REDACTED]: That's the same set of
8 documents that you just gave us we make as Exhibit
9 6?

10 MR. DANIELS: Right, that's actually
11 what happened. It didn't come from 0109, even
12 though we paid for them under 0109.

13 [REDACTED]: And, do you know whether or
14 not the fire control systems that you indicated
15 came from the HIMARS Program was, they were paid
16 for by the Government?

17 MR. DANIELS: Yeah, they were already to
18 the HIMARS in the first scenario that you talked
19 about here in Paragraph 1. That did happen. They
20 did come from Red River to the HIMARS Program, but
21 they had nothing to do with the ones on 0109.

22 [REDACTED]: Let me see if I follow
23 that. Initially then, five FCS systems are taken

1 from M270A1 launchers and diverted to the HIMARS
2 Program, is that correct?

3 MR. DANIELS: Right, that's step one.

4 [REDACTED]: Okay, then Step 2, you're
5 saying, are you saying that Step 2 then is that
6 the same five FCS systems come back from the
7 HIMARS Program?

8 MR. DANIELS: To Red River.

9 [REDACTED]: To Red River to put on the
10 MLRS launches in 2002?

11 MR. DANIELS: Yes, that's what the
12 documentation says that I provided you.

13 [REDACTED]: May I see Exhibit 6,
14 please?

15 MR. DANIELS: (Complies with request.)

16 [REDACTED]: Thank you. Not being a
17 Contract Specialist, a Contracting Official, I
18 can't particularly follow you, but how did you
19 track? Can you show me how you tracked that these
20 five systems came from the --

21 MR. DANIELS: HIMARS?

22 [REDACTED]: No, no, I'm sorry. That
23 they came from the MLRS program to the HIMARS

1 Program and then back from the HIMARS Program to
2 the MLRS program?

3 MR. DANIELS: That's what the Army is
4 saying in their paragraph here. That's what they
5 are saying. Here, the Army says that.

6 [REDACTED]: Well, here -- on Page 31
7 that you are pointing to.

8 MR. DANIELS: Right.

9 [REDACTED]: Are you saying that the
10 Army report indicates that these five launchers
11 went from the M270A1 program to the HIMARS
12 Program?

13 MR. DANIELS: Yes, that's what that
14 says.

15 [REDACTED]: And, then back, again?

16 MR. DANIELS: That's what this says.

17 [REDACTED]: Okay. I'm sorry, just so
18 I'm clear, that's not what's in the DA report.
19 The first step is in the DA report.

20 MR. DANIELS: The first step is in the
21 DA report.

22 [REDACTED]: Okay, the second step which
23 you just mentioned is the FCS coming back from the

1 HIMARS Program to the Red River.

2 MR. DANIELS: Red River.

3 [REDACTED]: To the MLRS Program, you
4 indicated that second step is reflected in
5 Exhibit 6.

6 MR. DANIELS: Absolutely.

7 [REDACTED]: Okay. Can you show me then
8 in Exhibit 6.

9 MR. DANIELS: It has the contract number
10 on it. Government Contract and the charge numbers
11 that are associated with that contract. There's
12 the HIMARS Contract Number, here it appears again
13 on that one.

14 [REDACTED]: Okay, we're looking again
15 on Pages --

16 MR. DANIELS: They've got separate
17 numbers here.

18 [REDACTED]: Well, the fact number in
19 the upper left hand corner, the first page is Page
20 11 and the second page is Page 12. Is that right?

21 MR. DANIELS: Yes.

22 [REDACTED]: Okay.

23 MR. DANIELS: And, even though these

1 don't have the contract number on it, it
2 references back to the same charge number 3P08,
3 which is the HIMARS Contract Number if you will
4 notice. 3P08, also appears on those other two,
5 even though they don't have the contract number on
6 them. For some reasons on the others, it tracks
7 back to the charge numbers 3P08, they are all the
8 same.

9 [REDACTED]: And where do these
10 documents indicate that it's an FCS that's being
11 shipped?

12 MR. DANIELS: It gives the part number
13 and if you go back it matches up with the letter,
14 itself, fire control panel. If you go back to
15 [REDACTED] letter, they'll match up
16 exactly with what's in that letter, and the
17 quantities. Give the description and part
18 numbers.

19 [REDACTED]: And what description and
20 part numbers are you particularly referring to?

21 MR. DANIELS: In [REDACTED] letter,
22 if you go back and tracking back to [REDACTED]
23 letter.

1 [REDACTED]: In Exhibit 6, though, what
2 particular part numbers and description are you
3 referring to? Can you just recite that for the
4 reporter?

5 MR. DANIELS: Okay, let me read the part
6 numbers. We have LIU, Serial Number 12, 0257, a
7 WIU, Serial Number 580536; we have a PMU, Serial
8 Number 380410. We have an FCP serial number,
9 540466 and we have a boom controller serial number
10 390399.

11 [REDACTED]: And those are all on page 13
12 of Exhibit 6 that you're looking at, is that
13 correct?

14 MR. DANIELS: Yes.

15 [REDACTED]: And those five part numbers
16 that you just, the descriptions that you just
17 provided, those are all fire control systems?

18 MR. DANIELS: Yes, they all part of fire
19 control systems. And, on Page 15 of 12, we have
20 FCP Serial Number 540479.

21 [REDACTED]: And that also is a fire
22 control system, is that correct?

23 MR. DANIELS: Excuse me, that was Page

1 12, I'm sorry. Page 12 of 15. Now, on Page 11 of
2 15, we have a PSU Serial Number 170299. And, on
3 Page 10 of 15, we have FCP Serial Number 540450
4 and we have a hydraulic pump, two each, Serial
5 Numbers 240189 and 240187.

6 Now, on Page 14, of 15, we have two each
7 of the following: PSU Serial Number 170306, and
8 170307. LIU Serial Number 120249 and 120258. WIU
9 Serial Number 580526 and 580257. NPNU Serial
10 Number 380402 and 380396. We have a boom
11 controller, Serial Number 390504 and 390758. We
12 have one FCP Serial Number 540470 and I can't make
13 out -- but I do have a part number. I don't have
14 a part number, either, I can't make this out.

15 There's four each, I think is part
16 number 15009515-1. And on Page 15 of 15, we've go
17 two each PSY Serial numbers 170304 and 170256.
18 LIU Serial Numbers 120254 and 120260. WIU Serial
19 Numbers 580538 and 580535. PMU Serial Numbers
20 380404, and 380405.

21 Electrical boom box serial Number
22 A730023. Fire control panel serial number 540404.
23 Miscellaneous screws and nuts, boom controllers,

1 serial Number 935015 and 9350011. And, one hose,
2 Part Number 13213262-5.

3 [REDACTED]: And, is it your
4 understanding that those descriptions you just
5 read all pertain to fire control systems?

6 MR. DANIELS: Yes.

7 [REDACTED]: That the HIMARS Contract
8 shipped to Red River?

9 MR. DANIELS: Yes.

10 [REDACTED]: To fit onto the launches
11 that were missing the five FCS systems that were
12 previously taken off?

13 MR. DANIELS: Yes.

14 [REDACTED]: You mentioned some
15 documents that [REDACTED] had either
16 prepared or signed that connected with this
17 shipment. Can you explain to me what that
18 document is and we you have a copy of that
19 document?

20 MR. DANIELS: Yes, you have a copy of
21 that document. That letter gives an authorization
22 to do this. But, it should have been done under
23 0109, but instead it was done under 03002, the

1 HIMARS Contract.

2 [REDACTED]: And what letter,
3 specifically, is that you are referring to?

4 MR. DANIELS: I think the report
5 references that letter. It's in this report. I
6 know it is. All right, here it is. It's
7 referenced on Page 30 under Allegation 5. The 15
8 October 02 letter signed by Colleen Rodriguez.

9 [REDACTED]: And, that's at Tab 37, of
10 the DA report. Is that correct?

11 MR. DANIELS: Yes.

12 [REDACTED]: Okay, can you turn to Tab
13 37, if you don't mind?

14 MR. DANIELS: I'm there.

15 [REDACTED]: Okay, can you explain to me
16 how this letter at Tab 37, dated 15 October 2002,
17 does that support your statement that these five
18 FCS actually came from the HIMARS Program?

19 MR. DANIELS: Yes. If you look, first
20 paragraph, the FCP LIU, WIU and PSU and PNU were
21 all shipped under the 1149 I presented to you in
22 the quantities I stated in this letter. During
23 the time frame of this letter.

1 [REDACTED]: I'm sorry, I didn't follow
2 that --

3 MR. DANIELS: The Re references here,
4 the FCP, LIU, WIU, are all included on the
5 shipping documents I provided to you under Exhibit
6 6.

7 [REDACTED]: But how do they
8 specifically connect to the HIMARS Contract?

9 MR. DANIELS: They shouldn't. That's my
10 point. They shouldn't.

11 [REDACTED]: I'm just asking the 15
12 October 2002 letter, what in that letter leads you
13 to conclude that the hardware she's talking about
14 is coming from the HIMARS Program? The
15 nomenclature you just read from those shipping
16 documents has a bunch of serial numbers,
17 descriptions and this document does not.

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

20 [REDACTED]: It just refers to as you
21 read FCP, LIU, et cetera. So, what I'm asking is,
22 what in this letter, if anything, led you to
23 conclude that the PCO was talking about HIMARS

1 hardware versus some other hardware?

2 MR. DANIELS: You don't. That's where
3 the -- therein lies the deception. You don't.

4 [REDACTED]: And, who is engaged in the
5 deception, then? It would be the Contracting
6 Officer in this case?

7 MR. DANIELS: I really don't know the
8 extent of these people's involvement in this.
9 But, I do know the time frames, the items that
10 were listed and the explanation that I got from
11 the ACO and probably the administrator at Lockheed
12 Martin, this is what resulted. This is what
13 resulted as a result of this letter.

14 This is what I referenced, this is what
15 they sent me.

16 [REDACTED] This being Exhibit 6.

17 MR. DANIELS: Exhibit 6. This is
18 actually what happened. Now, who's deceiving who,
19 I can't tell you. I didn't investigate because I
20 had no authority to investigate. But I do know
21 this is what they sent me as a result of this
22 letter being sent.

23 [REDACTED]: And when you say, "This is

1 what they sent me," you refer to --

2 MR. DANIELS: The ACO.

3 [REDACTED]: The DCMA and ACO.

4 MR. DANIELS: And, the Property
5 Administrator. And, the names are on the exhibit.

6 [REDACTED]: At this point in time, is
7 there anything further you'd like to add regarding
8 Allegation 5?

9 MR. DANIELS: There's also an e-mail
10 change order that is part of Exhibit 6 that I just
11 wanted to make sure is noted here.

12 [REDACTED]: Are you referring to an
13 October 17th, 2002 e-mail?

14 MR. DANIELS: Yes.

15 [REDACTED]: From a [REDACTED] to a
16 [REDACTED]?

17 MR. DANIELS: Yes. And it went from --
18 originally, it came from [REDACTED], but
19 originally it was sent to [REDACTED] by [REDACTED]
20 [REDACTED]. And, in this thing, it only references
21 Contract DAAH01-00-C-0109. I just want to make
22 note of that. It has no reference, whatsoever to
23 the HIMARS Contract.

1 And, I also want to enter a copy of that
2 letter -- I mean, a copy of the attachment to the
3 e-mail that gives the serial numbers and the part
4 numbers that involve that transfer.

5
6 (Exhibit No. 7, being a 3 page
7 document, the first page a letter
8 being address to Mr. [REDACTED]
9 from [REDACTED], dated 15
10 October 2002, was marked.)

11
12 MR. PARISE: Okay, you've just handed me
13 a copy of the 15 October 2002 letter from [REDACTED]
14 [REDACTED], which we just discussed as well as two
15 additional pages, which are a listing of part
16 numbers and serial numbers of various equipment.
17 And, it appears to be faxed pages that the
18 documents indicate are from DCMA, is that correct?

19 MR. DANIELS: Right.

20 [REDACTED]: And, both of those
21 documents have a date at the top of May 28th, '03?

22 Mr. Daniels, are these attachments to
23 Exhibit 6, or part of Exhibit 6, or are these

1 separate exhibits?

2 MR. DANIELS: I would like to make them
3 separate. That will be easier to identify.

4 [REDACTED]: Okay. That will be Exhibit
5 7.

6 MR. DANIELS: They were separate
7 actions.

8 [REDACTED]: Is the information you just
9 discussed with us provided anywhere in the DA
10 report, to the best of your knowledge?

11 MR. DANIELS: Yes.

12 [REDACTED]: And, where would that be,
13 other than the October 15th, 2002 letter that was
14 signed by [REDACTED]. The other information
15 that you just provided us today?

16 MR. DANIELS: Yes, it should have been
17 provided as part of my original allegations and in
18 my response, somewhere. I just can't remember
19 what tab I mislabeled it under.

20 [REDACTED]: So, you believe it would
21 have been in your 11 March 09 letter?

22 MR. DANIELS: Right. I just lost track
23 of that tab. I put the wrong tab number there.

1 ██████████: Okay, Mr. Daniels, anything
2 further regarding Allegation 5 that you would like
3 to mention at this time?

4 MR. DANIELS: Right. According to the
5 report, there were an additional six fire control
6 systems delivered under 0109 by Lockheed Martin.
7 However, they were not at no cost. So, as of
8 today, we are still -- Lockheed still owed the
9 Government five fire control systems at no
10 additional cost to the Government, since we did
11 not ever receive them under the 0109 contract. We
12 paid for it in full, but we never received it at
13 no cost.

14 ██████████: And, is that consistent
15 with your previous allegations?

16 MR. DANIELS: Right, because the five --
17 the records show that the five fire control
18 systems that were actually delivered to Red River
19 did not come from 0109, it came from the HIMARS
20 Contract, which the Government already owned those
21 assets.

22 And, the six that the report talks about
23 being delivered somewhere in January '08, I think,

1 or '09 or whenever they were delivered, they were
2 delivered at additional costs to the Government
3 and they should not have been.

4 [REDACTED] Well, hypothetically, let
5 me ask you this. And, I say hypothetically. If
6 there were five SES systems that were initially
7 diverted from the MLRS program to the HIMARS
8 Program, and those HIMARS were deployed with the
9 FCS and then subsequent to that, five FCS were
10 returned to Red River to replace the five that
11 were taken from those launchers, would the Army be
12 still owed five no-cost FCS launchers from
13 Lockheed?

14 MR. DANIELS: If you eliminate 0109 from
15 the equation completely, that would be correct.
16 If you read through what they said happened, there
17 was absolutely no reason to ever involve 0109 in
18 shipping anything short. If they stripped five
19 and sent to the HIMARS program and they sent five
20 back from the HIMARS program, everybody's
21 satisfied, but that didn't happen.

22 They took five from the HIMARS program,
23 sent five back and they stripped five more that we

1 paid for, but nobody can account for.

2 [REDACTED]: So, that five additional
3 FCS that no one can account for, you are saying,
4 "We don't know where they are."

5 MR. DANIELS: I don't know where they
6 are. I know we paid for them and I have yet to
7 see a no-cost delivery, subsequent to that letter
8 being sent by [REDACTED] of us accepting
9 five fire control systems from Lockheed Martin
10 under 0109 at no additional costs.

11 [REDACTED]: Do you have anything
12 further that you'd like to discuss under
13 Allegation 5 at this time?

14 MR. DANIELS: No.

15 [REDACTED]: Okay, why don't we move to
16 Allegation 6, which deals with the unauthorized
17 use of warranty spare launcher parts.

18 MR. DANIELS: Yes.

19 [REDACTED]: In your March 11 09 letter
20 to OSC, at Paragraph 10F, at Page 6, you state,
21 and I'll quote again, "The DA, ROI finding that
22 specific residual warranty spares purchased under
23 Contract DAAH01-94-C-A005 modification PZ0008, did

1 not become property of the Government at the end
2 of the Lockheed period is false."

3 Paragraph A-11 of PZ-0008 specifically
4 states the same. Can you point me to the portion
5 of the DA report and referring through above in
6 that quotation that contains the false statement?

7 MR. DANIELS: Yes.

8 [REDACTED] And, I believe it may be
9 around Page 37 of Report 1 that the DA report
10 addresses this subject matter.

11 MR. DANIELS: I've covered it. That
12 would be on Page 37, second paragraph.

13 [REDACTED] Can you read that for me,
14 please, the portion of the second paragraph that
15 you're referring to?

16 MR. DANIELS: Let's see. Oh, it's the
17 first sentence here. "Neither Contract No.
18 DAAH01-94-C-A005 nor Modification PZ0008 contains
19 a separate line item for warranty administration
20 and neither further addresses the warranty
21 spares."

22 That is incorrect.

23 Paragraph, if we go back to the mod,

1 itself, Paragraph E †

2 ██████████: Are you referring to Tab
3 43A when you refer to the modification, itself?

4 MR. DANIELS: Yes, Paragraph E-19.

5 Where does that tab begin †

6 ██████████: 43A.

7 MR. DANIELS: Yes, this warranty clause
8 requires complete warranty administration by
9 Lockheed Martin. And, it also requires on Page 48
10 of PZ0008, Paragraph 3-C-1. This, in effect, only
11 gives the Contracting Officer the authority to
12 invoke the warranty.

13 Consequently, without Contracting
14 Officer approval, the row of spares listed on
15 Attachment 11 cannot be utilized by Lockheed
16 Martin without the Government invoking the
17 warranty.

18 ██████████: Can you, I believe you are
19 talking about the administration of the warranty,
20 now.

21 MR. DANIELS: Absolutely.

22 ██████████: My question and we'll
23 discuss the administration in a few moments, but

1 my question I just asked and the quote I just read
2 had to do with the assertion that the warranty
3 spares purchased under the contract did not become
4 the property of the Government at the end of the
5 warranty contract. You said --

6 MR. DANIELS: That's in Paragraph --
7 [REDACTED] -- is false?

8 MR. DANIELS: Yeah. That's on the first
9 page of the mod, itself. Let's go to the mod,
10 itself.

11 MR. DANIELS: Okay, Page 4 of
12 Modification PZ8, Paragraph A-11.

13 [REDACTED] And, that's at Paragraph
14 43A again?

15 MR. DANIELS: Yes. Attachment entitled,
16 "List of rotatable spares. The spares shall become
17 the property of the Government at the end of the
18 contract warranty period. Spares not consumed in
19 the performance of the warranty requirements shall
20 be subject to delivery of the Government, 'As Is,'
21 as defined by the Government property clause."

22 Lockheed Martin only provided two
23 instances of which warranty spares were used under

1 this contract.

2 [REDACTED]: And, we'll discuss that in
3 just a minute. But, again, I want to go back to
4 your March 11, 09 letter to OSC in which you
5 stated that the DA report findings that the spares
6 did not become a property of the Government at the
7 end of the warranty contract period is false.

8 MR. DANIELS: And, that's what this
9 says. "The spares shall become the property of
10 the Government at the end of the contract warranty
11 period." First sentence.

12 [REDACTED]: And, you believe that on
13 Page 37 at the top of that page that you read to
14 me just a few minutes ago, that that's
15 inconsistent with what's in the warranty
16 provision? You just read about the modification
17 contains a separate line item for warranty
18 administration and neither further addresses the
19 warranty spares. That's what you just read to me.

20 MR. DANIELS: Right.

21 [REDACTED]: What I want to bring to
22 your attention, though, is the language at the end
23 of that page, on Paragraph 37 of the Army Report.

1 And, I'll read it to you.

2 "Only upon warranty expiration was
3 Lockheed required to transfer spare parts
4 remaining, 'on hand,' to the Government in, 'as
5 is,' condition; only then did the transferred
6 spares become Government property."

7 MR. DANIELS: I understand that. But,
8 whether they were Government property or not, they
9 still were under the warranty administration
10 clause, which meant that they could not use those
11 spares.

12 But, without the Contracting Officer's
13 permission, the fact is that happened. They used
14 them without Government permission in accordance
15 with the warranty administration clause of the
16 contract because of what that says.

17 [REDACTED] But, I just wanted to be
18 clear on that point. And, again, we will discuss
19 the warranty administration and why you believe
20 there were limitations on what Lockheed Martin
21 could and could not do and what they were required
22 to do. I just want to be clear on that point
23 first, though.

1 Where you say that the DA report was
2 false because the DA report, as I read it on Page
3 37 seems to be consistent with A-11 and what I
4 believe you were saying in terms of when titles to
5 these warranties transferred from Lockheed to the
6 Government. And, that is it happened consistent
7 with A-11 of the modification at the end of the
8 warranty period.

9 MR. DANIELS: Later on, that would be
10 true, but absent the warranty administration, that
11 would not be a true statement.

12 ██████████: Okay, why don't you then
13 discuss with me your disagreement with the Army
14 Report concerning the administration of this
15 warranty and why you believe it was improper.

16 MR. DANIELS: The administration of this
17 warranty requires the Contracting Officer's
18 invocation of the warranty limits.

19 ██████████: Okay, is there any other
20 place in the contract or its modifications that
21 you are aware of that addresses the warranty
22 requirements of the warranty clause, itself? Are
23 they addressed anywhere else in the contract,

1 other than that provision?

2 MR. DANIELS: In the Paragraph A-1, in
3 the attachment, that's the only place that I'm
4 aware of at this time that they were addressed.

5 [REDACTED]: So, in E-19, the warranty
6 clause that you have in front of you.

7 MR. DANIELS: Right, the warranty
8 administration clause.

9 [REDACTED]: Under Tab 43-A. As far as
10 you're aware, that's the only place in the
11 contract that discusses provisions pertaining to
12 the contract warranty?

13 MR. DANIELS: Right.

14 [REDACTED]: All right. Thank you.
15 Now, if you wouldn't mind, as you were doing
16 before, explain to me why you believe the manner
17 in which the warranty spares were handled under
18 the contract was improper?

19 MR. DANIELS: Right. If you read the
20 warranty administration clause, Lockheed could not
21 have invoked or used those spares without the
22 Contracting Officer invoking the warranty. That's
23 what it says on Page 47. Let me see. Paragraph

1 3-C-1. "The Contracting Officer promptly notify
2 the Contractor of the defect in writing within 90
3 days after the defect is discovered."

4 [REDACTED]: What page are you on, I'm
5 sorry, of the modification?

6 MR. DANIELS: Page 48 of PZ0008, Page
7 48.

8 [REDACTED]: Thank you.

9 MR. DANIELS: Paragraph 3, "Remedies
10 available to the Government." 3-C-1. That
11 restricts the Contractor from invoking the
12 warranty or using those spares in Attachment 11
13 without Government invocation of the warranty.
14 They are not available to release for contracting.

15 [REDACTED]: Are you saying then that
16 the only condition under which the contractor
17 could use these parts that were covered by the
18 warranty.

19 MR. DANIELS: With Government permission
20 according to this clause. And, it also says it in
21 writing.

22 [REDACTED]: And, you believe Lockheed
23 Martin did otherwise?

1 MR. DANIELS: Yes. They've admitted
2 they had done that, otherwise. The two times that
3 they did invoke the warranty, that they sent
4 letters back to the Government, it was unilateral,
5 they wouldn't notify the Government that I would
6 know of, at least, not the Contracting Officer,
7 anyway.

8 ██████████: Were you the Contracting
9 Officer or Contracting Specialist on this
10 contract?

11 MR. DANIELS: Yes.

12 ██████████: You are at the time?

13 MR. DANIELS: At this time.

14 ██████████: At this time.

15 MR. DANIELS: As a matter of fact, I
16 offered this modification, settlement
17 modification, yes.

18 ██████████: And, the two notifications
19 that you just mentioned were provided to the
20 Government, those were provided to you?

21 MR. DANIELS: Yes. After many months of
22 trying to get them, yes.

23 ██████████: And, are those documents in

1 there?

2 MR. DANIELS: They are part of the
3 record. I sent those years ago. I could
4 reproduce them, but it would take awhile. I've
5 got a huge file of this stuff. And, the logic
6 being, if we only invoked the warranty twice for
7 several -- maybe two or three parts, and we paid
8 and bought brand new parts because that is what
9 they propose in their proposal, then everything on
10 the shelf should be in new or like new condition.

11 [REDACTED]: So, your understanding then
12 is that the use of these rotatable spares?

13 MR. DANIELS: Spare parts.

14 [REDACTED]: Could not be initiated by
15 the contractor?

16 MR. DANIELS: No, that's what the
17 warranty administration says. Whether or not they
18 were Government property at the time or not. They
19 still couldn't freely use them because we bought
20 them for a specific purpose, for the
21 administration of the warranty.

22 [REDACTED]: And, what was that purpose
23 or purposes for which we bought these?

1 MR. DANIELS: To administer the warranty
2 requirement, once we invoked them.

3 [REDACTED]: In the OSC referral letter
4 of 20 August 2003, you allege that Lockheed Martin
5 improperly used warranted spare parts to repair
6 M270s that were delivered to FMS customers.

7 MR. DANIELS: Yes.

8 [REDACTED]: And, why do you believe
9 that such use of these warranted spare parts was
10 improper?

11 MR. DANIELS: The FMS customers did not
12 purchase warranties for their contracts.

13 [REDACTED]: So, if they --

14 MR. DANIELS: They had no warranty
15 coverage.

16 [REDACTED]: So, if they had warranty
17 coverage, would Lockheed Martin's use of those
18 parts have been consistent with the warranty,
19 then?

20 MR. DANIELS: Only if the Government
21 invoked the warranty, and which they did not, in
22 any case. And, should I say Government, only if
23 the Contracting Officer according to the warranty

1 clause invoked the warranty.

2 [REDACTED]: And, at the time, you were
3 the Contracting Officer, is that right?

4 MR. DANIELS: No, it was -- it was
5 [REDACTED], his signature is on Page 1-A of the
6 modification.

7 [REDACTED]: Then, I'm sorry, I
8 misunderstood before when I asked you who the
9 Contracting Officer was.

10 MR. DANIELS: I was the Contract
11 Specialist.

12 [REDACTED]: Specialist, okay, and not
13 the Contracting Officer. Thank you.

14 At this time, is there anything further
15 you'd like to mention about the unauthorized use
16 of warranty spare parts, launcher parts in
17 Allegation 6 of the OSC referral letter?

18 MR. DANIELS: Only to make my comment
19 about cherry picking the clauses and the
20 information that I provided to them and not
21 telling the whole story about the warranty
22 administration. I mean, how could they have
23 missed that?

1 It's how many pages? Six or seven
2 pages, how could you miss that? And, there's no
3 reference to that in their findings.

4 ██████████: And, are you referring,
5 again, to the comment in the report that you read
6 from?

7 MR. DANIELS: Right that there was no
8 warranty, basically, there was no warranty
9 administration of a separate line item for
10 warranty administration. It is not required to
11 have a separate line item.

12 ██████████: If I could ask you to go
13 back to Page 37 of the Army Report. It's -- are
14 you there?

15 MR. DANIELS: Yes, sir.

16 ██████████: Okay, in the paragraph that
17 begins, "Neither contract number"-- are you with
18 me now?

19 MR. DANIELS: Yes.

20 ██████████: Okay. Five lines down
21 there is a sentence that begins, "Clause A-11."

22 MR. DANIELS: Yes.

23 ██████████: Could you read that

1 sentence and the next sentence for me, please.

2 MR. DANIELS: "Clause A-11 and
3 Attachment 11 of Modification PZ0008 set forth
4 Lockheed Martin's obligation with regard to the,
5 'rotatable warranty spares,' in its entirety." This
6 is not a true statement.

7 [REDACTED]: That's not a true
8 statement?

9 MR. DANIELS: Paragraph E-19 as we've
10 just discussed has specific warranty
11 administration for the warranty of this contract.
12 Now, how could you miss that? You found one that
13 I'd missed. That's not a true statement.

14 [REDACTED]: Turn to Paragraph A-11 of
15 that modification.

16 MR. DANIELS: Yes.

17 [REDACTED]: Is that paragraph, your
18 reading of it referring to the warranty clause
19 that you just cited, E-19, as well as the
20 attachment to that clause, which is the list of
21 rotatable spares?

22 MR. DANIELS: Yes.

23 [REDACTED]: So, A-11 then refers to the

1 warranty clause E-19 and its Attachment 11?

2 MR. DANIELS: Right.

3 [REDACTED]: So, where the Army report
4 says that Clause A-11 and Attachment 11, which you
5 indicated Clause A-11 includes the warranty clause
6 E-19?

7 MR. DANIELS: Yes.

8 [REDACTED]: That that set forth
9 Lockheed Martin's obligation with regard to the
10 rotatable warranty spares in its entirety. Why
11 wouldn't that be an accurate statement, then?

12 MR. DANIELS: Paragraph 11 goes on to
13 say in the second sentence. "Spares not consumed
14 in the performance of the warranty requirement."
15 And, one warranty requirement was identified as
16 E-19.

17 [REDACTED]: Right. Which you just
18 indicated that Clause A-11, the one we just read,
19 refers to E-19, which is the warranty provision
20 you read from?

21 MR. DANIELS: Yes.

22 [REDACTED]: So, again, if the Army
23 Report is stating that Clause A-11, which includes

1 the warranty provision, E-19, with its attachment,
2 that that sets forth Lockheed Martin's obligation,
3 which regards to rotatable spares in its entirety,
4 why would that be an inaccurate statement?

5 In essence, isn't that saying that E-19,
6 the warranty provision?

7 MR. DANIELS: No because it specifically
8 says in the paragraphs above that there was no
9 warranty administration, and that is not a true
10 statement.

11 [REDACTED]: But, the warranty
12 administration aside for a moment, the statement
13 that Lockheed Martin's obligations in terms of a
14 warranty, and I believe you just indicated that to
15 me as well are contained, as far as you know,
16 completely in E-19 and nowhere else in the
17 contract?

18 MR. DANIELS: It includes all the
19 clauses, A-11, E-19 and the Attachment.

20 [REDACTED]: But, nowhere else in the
21 contract is the warranty discussed, as far as you
22 know?

23 MR. DANIELS: As far as I know.

1 [REDACTED]: Other than in the warranty
2 clause, itself, in A-11.

3 MR. DANIELS: Yes.

4 [REDACTED]: So, that seems to me you
5 are both saying the same thing, that the warranty
6 provisions are contained in the contract in the
7 warranty clause of E-19 and Clause A-11?

8 MR. DANIELS: Read the sentence right
9 after that. Starting with, "No contract
10 requirement existed for Lockheed to maintain a
11 list of spares, document how spares were used or
12 consumed."

13 That is not true. It requires
14 notification from us to invoke the warranty. That
15 is not true. See, E-19 negates all that entire
16 sentence there. There were requirements for that.

17 [REDACTED]: There were requirements for
18 warranty administration, you're saying?

19 MR. DANIELS: Absolutely.

20 [REDACTED]: In the warranty clause.

21 MR. DANIELS: Yes.

22 [REDACTED]: And, in A-11?

23 MR. DANIELS: Right. And, that makes,