

CA1CIT1 Hearing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 CITY OF PONTIAC,

4 Plaintiff,

5 v.

11 CV 5026 (JSR)

6 LOCKHEED MARTIN,

7 Defendant.

8 -----x
9 New York, N.Y.
October 1, 2012
9:45 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 ROBBINS GELLER RUDMAN & DOWD LLP
15 Attorneys for Plaintiff
16 SAMUEL H. RUDMAN, ESQ.
EVAN J. KAUFMAN, ESQ.
17 JONAH H. GOLDSTEIN, ESQ.

18 DLA PIPER
19 Attorneys for Defendant
JAMES WAREHAM, ESQ.
20 JOHN M. HILLEBRECHT, ESQ.
JOHN BUKELL, ESQ.

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: City of Pontiac v. Lockheed Martin,
4 docket number 11 Civ. 5026. Will the parties please be seated?
5 Will everyone please be seated and will the parties please
6 identify themselves for the record?

7 MR. GOLDSTEIN: Good morning, Jonah Goldstein, Robbins
8 Geller Rudman on behalf of plaintiff, City of Pontiac.

9 MR. RUDMAN: Good morning, your Honor, Samuel Rudman,
10 Robbins Geller Rudman for the plaintiff.

11 MR. KAUFMAN: Good morning, your Honor, Evan Kaufman
12 Robbins Geller Rudman on behalf of lead plaintiff.

13 THE COURT: I'm sorry, who is the other gentleman?

14 MR. RUDMAN: I'm sorry, your Honor, this is our audio
15 visual technician.

16 MR. WAREHAM: Good morning. Jamie Wareham, DLA Piper
17 on behalf of Lockheed Martin Corporation, Bob Stevens, Bruce
18 Tanner and Linda Gooden.

19 MR. HILLEBRECHT: Good morning, your Honor. John
20 Hillebricht, also DLA Piper for the defense.

21 MR. BUKELL: Good morning, your Honor. Jonathan
22 Buckell, DLA Piper, also for defense.

23 THE COURT: All right. All witnesses should be
24 immediately excluded from the courtroom. Please call the first
25 witness.

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1 MR. GOLDSTEIN: Your Honor, the plaintiff would call
2 Mr. Kenneth Asbury to the stand, sir.

3 KENNETH ASBURY,

4 called as a witness by the Plaintiff,

5 having been duly sworn, testified as follows:

6 THE DEPUTY CLERK: Please be seated. State your name
7 and spell your last name for the record.

8 THE WITNESS: Kenneth Asbury, A-S-B-U-R-Y.

9 MR. GOLDSTEIN: Your Honor, before we begin I'm going
10 to be referencing Mr. Asbury's deposition transcript and
11 cohesive claims and some phone records that were provided by
12 his employer. I'd like the opportunity to provide that to him
13 now rather than approach each time. Would the Court object to
14 that?

15 THE COURT: No, that's fine. But let me maybe while
16 you're doing that I'll put some preliminary questions to the
17 witness.

18 Mr. Asbury, what do you do for a living?

19 THE WITNESS: Your Honor, I am the chief executive
20 officer of Arctic Slope Corporation, federal division.

21 THE COURT: Were you formerly the president of the
22 IS&GS civil segment?

23 THE WITNESS: Yes, I was.

24 THE COURT: What is that?

25 THE WITNESS: It was a division of Lockheed Martin.

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1 The IS&GS stood for Information System and Global Services.

2 THE COURT: And did you discuss with a representative
3 of the plaintiffs here the business of IS&GS prior to their
4 filing a complaint?

5 THE WITNESS: Your Honor, I had a conversation, as I
6 recall, with an investigator.

7 THE COURT: Did he identify himself?

8 THE WITNESS: Yes, sir, he did.

9 THE COURT: And what did he say?

10 THE WITNESS: He said at the time that he was
11 investigating or there had been a lawsuit filed, I believe a
12 class action lawsuit filed against Lockheed Martin regarding
13 the second quarter of 2009 earnings.

14 THE COURT: And did he ask you for information
15 regarding that?

16 THE WITNESS: The beginning of the conversation, as I
17 recall, your Honor, was me describing to him that I had
18 confidentiality and proprietary information agreements that I
19 had signed up to and that I didn't want to talk to him.

20 THE COURT: How long did you talk to him?

21 THE WITNESS: I know now, sir, from the phone records
22 that it was a fifty-minute phone conversation.

23 THE COURT: So notwithstanding your initial reluctance
24 you did discuss with him some aspects of the business?

25 THE WITNESS: Yes. In the latter part of the call, as

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1 I recall, he assured me that he was not interested in any
2 confidential or proprietary or privileged information and said
3 he had or wanted to clarify some questions that he had and
4 under those circumstances I did proceed or I did talk to him
5 about that.

6 THE COURT: Have you seen the complaint in this case?

7 THE WITNESS: Yes, sir, I have.

8 THE COURT: All right. Do you want to furnish him
9 with the complaint, counsel? Here.

10 MR. GOLDSTEIN: I have it, your Honor.

11 THE COURT: Excuse me. Here's a copy. Now, you are
12 identified in this as CW5. Turn to page 9, if you would. If
13 you look at paragraph 35 in the first sentence it says, quote,
14 "According to CW5, a former president of the IS&GS civil
15 segment, the financial projections for IS&GS's 2009 performance
16 which were formulated during 2008 were arbitrary."

17 Do you see that?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: Is that something you said?

20 THE WITNESS: No, your Honor.

21 THE COURT: Did you say anything like that?

22 THE WITNESS: I don't recall having, or saying
23 anything remotely like this.

24 THE COURT: All right. The next -- turn the page.
25 It's all the same paragraph. Quote: "CW5 stated that

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1 projections for IS&GS for 2009 were set from the top down as
2 opposed to being based on reasonable estimates from IS&GS's
3 division leaders." Did you say that?

4 THE WITNESS: No, your Honor, I did not.

5 THE COURT: Did you say anything like that?

6 THE WITNESS: I recall to one of the questions that
7 the investigator asked me around how estimates were set
8 generally describing that goals were established at the ISGS
9 level for the year and then estimates were created from each of
10 the businesses in order to meet those goals.

11 THE COURT: I don't understand that. Do you want to
12 explain that to me?

13 THE WITNESS: Yes, sir. For example, to start any
14 year, we would set a growth goal or, excuse me, ISGS or
15 corporate would set a goal of we would like to have 8 percent
16 sales growth and 8 percent profit growth. Those goals would be
17 given to each of the businesses. Each of the businesses at
18 that point would build an estimate looking at the business that
19 we had in hand, business that we thought we could win in
20 competition and depending on the nature of the year, excuse me,
21 the kind of year it was, whether it was, I'm sorry, if it
22 looked like a year where we could grow current contracts there
23 were going to be additional requirements, all that would be put
24 together into an estimate to meet those goals that were
25 established at the ISGS level.

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1 THE COURT: All right. Look at the next paragraph,
2 paragraph 36. It says in the first sentence, quote: "In
3 February 2009 it was clear to CW5 and other IS&GS leaders that
4 the full year 2009 projections for IS&GS could not be achieved
5 and CW5 and other division leaders told this to defendant
6 Gooden at the time." Did you tell that to the investigator?

7 THE WITNESS: No, sir, I did not.

8 THE COURT: Is it true?

9 THE WITNESS: It is not true.

10 THE COURT: Let's go to page 13, paragraph 45. Quote:
11 "According to CW3 and CW5, Lockheed Martin held weekly Tuesday
12 telephone conferences referred to as red program review
13 meetings during which each IS&GS program classified as red was
14 discussed." Did you tell that to the investigator?

15 THE WITNESS: Your Honor, as I recall, there's two
16 parts to this answer. The first is no, I did not describe the
17 program review meetings. The meetings that I'm familiar with
18 did not have that name. However, again, towards the -- after I
19 went through the conversation and agreed that I would answer
20 some questions for him, I did describe the general review
21 process for conducting reviews and that did describe a meeting
22 that was held on Tuesday afternoon, but it was not called a red
23 program review meeting.

24 THE COURT: These were regular Tuesday meetings?

25 THE WITNESS: They became, I would say regular, your

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1 Honor, in the sense that I think at the beginning of the year
2 they weren't as regular and became more regular as we developed
3 our internal business rhythms.

4 THE COURT: We're talking year 2009?

5 THE WITNESS: Yes, sir.

6 THE COURT: And is it correct that in these meetings
7 or at least as they developed later in the year into regular
8 meetings each IS&GS program classified as red was discussed?

9 THE WITNESS: As I recall, we would have a variety of
10 meetings. There could be as many as eight to ten per Tuesday
11 afternoon, and red programs, should they be in existence at the
12 time, they would always be on the docket. But --

13 THE COURT: Go ahead.

14 THE WITNESS: But we would also review programs that
15 were new starts or programs that may have some particular
16 technical difficulty. Those would also be in there, but they
17 wouldn't of necessity be coded as red.

18 THE COURT: All right. Go ahead, counsel.

19 MR. GOLDSTEIN: Very well.

20 DIRECT EXAMINATION

21 BY MR. GOLDSTEIN:

22 Q. Mr. Asbury, I'm just going to hand you what has been
23 previously marked as Exhibit 19, your severance agreement, I'm
24 referring to the declaration of Samuel Rudman in support of
25 summary judgment, so I'm handing you your severance agreement,

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Asbury - direct

1 your deposition which was marked as Exhibit 18 to the
2 declaration of Mr. Rudman, as well as a declaration from ASRC
3 FC containing phone records and I'll be telling you which ones
4 I'm referring to as I ask my questions. The phone records are
5 Exhibit 53 to the Rudman declaration.

6 Mr. Asbury, we met before at your deposition, right,
7 sir?

8 A. Yes, we did.

9 Q. You took an oath at that deposition and swore to tell the
10 truth, correct, sir?

11 A. Yes, sir.

12 Q. In your testimony today, sir, have you told the truth?

13 A. Yes.

14 Q. You referenced in response to the judge's question that you
15 had a conversation with plaintiff's investigator, Mr. Keatly,
16 correct?

17 A. Yes.

18 MR. HILLEBRECHT: I'm sorry to interrupt, counsel.
19 Your Honor, I'm going to object to the leading at this stage.

20 THE COURT: No. Overruled.

21 Q. Is it true you actually spoke to Mr. Keatly two times,
22 correct?

23 A. Yes.

24 Q. What happened is he called you, he spoke briefly, he told
25 you he wanted to look at your agreements and you told him that

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Asbury - direct

1 he should call you back at a certain time, correct?

2 THE COURT: Sustained. Compound.

3 Q. Let me ask you, sir, did you have an initial call with
4 Mr. Keatly?

5 A. Yes, I did.

6 Q. And did you discuss with him whether or not you had a
7 confidentiality agreement at that time?

8 A. I believe I described at that time that I had some
9 agreements that I needed to go check to understand whether I
10 had signed confidentiality agreements or not.

11 Q. And during that first call it was your testimony, was it
12 not, that you told Mr. Keatly nothing substantive whatsoever?

13 A. That is correct.

14 Q. And you agreed at the end of that first call to have
15 another call with Mr. Keatly, correct?

16 A. I believe that I told Mr. Keatly that after I checked those
17 agreements that I would call him back and tell him whether I
18 could have a conversation with him or not.

19 Q. And in fact, you did in fact return a call to Mr. Keatly at
20 a later date, correct?

21 A. Yes. September 22nd.

22 Q. At your deposition, you stated that you told him nothing
23 substantive at all during that second call, correct?

24 THE COURT: I'm not going to allow questions like that
25 unless you point the witness and counsel and the Court to the

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Asbury - direct

1 page and line number.

2 MR. GOLDSTEIN: Very well, your Honor. I'm prepared
3 to do so.

4 Q. Mr. Asbury, I'd ask you to refer to your deposition at line
5 51 of your deposition, Exhibit 18, line 51 starting at line 6.

6 MR. HILLEBRECHT: Page?

7 MR. GOLDSTEIN: Page 51, starting at line 6.

8 Q. And you were asked the following questions, sir and gave
9 the following answers.

10 A. I'm sorry, I'm not following the page number in here very
11 well.

12 THE COURT: He's not referring to the pages at the
13 bottom. He's referring to, if you look, each page of the
14 exhibit has four pages of transcript, so he's referring to the
15 page in the transcript.

16 THE WITNESS: Thank you, your Honor.

17 Q. Very well.

18 A. Okay, I see it.

19 Q. And you were asked that there were two calls and your
20 answer was yes, right?

21 A. Yes.

22 Q. Okay, and you were asked whether during the first call you
23 told him anything substantive in terms of your experience at
24 Lockheed and you said that you had not told him anything
25 substantive, correct?

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Asbury - direct

1 A. Yes.

2 Q. And during the second call, you told him nothing
3 substantive as well, correct?

4 A. Yes.

5 Q. Sir, in fact, your testimony was, let me refer to you page
6 52, line 25, through page 53, line 5. Are you there, sir?

7 A. Yes, I am.

8 Q. And I asked you whether other than telling him I've looked
9 at the agreements and I don't feel I can talk to him, what else
10 do you believe you told him if anything during that second
11 call? And your answer was those would be the things that you
12 told him. Correct, is that your testimony?

13 A. Yes.

14 Q. And your testimony, was it not, initially is, and I'll
15 refer you to your deposition starting at line 53 -- I'm sorry,
16 page 53, line 19, through page 54, line 2, but let me ask it
17 more generally, sir. Did you at your deposition testify that
18 your best estimate of the call in which you called Mr. Keatly
19 back was five minutes?

20 A. It's my recollection of that testimony was I repeatedly
21 told you I didn't have an estimate, but you asked me at the end
22 to give you my best estimate of the time and I did say five
23 minutes.

24 Q. And when in fact I asked for your best estimate, your best
25 estimate under oath at the time was five minutes, correct?

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Asbury - direct

1 A. That is correct.

2 Q. And since your deposition you've learned, have you not,
3 that in fact you spoke to Mr. Keatly during that return call
4 for a total of 50 minutes, correct?

5 A. Yes.

6 MR. HILLEBRECHT: I'm sorry, Mr. Goldstein. Your
7 Honor, just objecting because counsel has been referring the
8 witness to only portions of the relevant testimony.

9 THE COURT: Yeah, I know. I've already been saddled
10 with lots of letters on this subject. You can get into it on
11 cross.

12 MR. GOLDSTEIN: Very well.

13 THE COURT: But to cut to the chase, I guess the
14 question I have is if you talked for 50 minutes, forget about
15 whether your recollection at the time of your deposition was
16 accurate or inaccurate, if you talked for 50 minutes how could
17 you not have discussed some things that were substantive?

18 THE WITNESS: Your Honor, my recollection and probably
19 the way that I answered this answer as well is he assured me at
20 some point in time as I was trying to get off the phone that he
21 did not want any confidential proprietary or information of
22 that nature. That was the gauge I used to answer the
23 substantive question. If it wasn't proprietary information or
24 confidential information or something that would have been like
25 a trade secret, that I didn't consider it to be a substantive

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Asbury - direct

1 conversation.

2 THE COURT: So you knew that from the very beginning
3 that he was representing counsel who were bringing a class
4 action against Lockheed, right?

5 THE WITNESS: Yes, sir. He did tell me that at the
6 beginning.

7 THE COURT: So you could have just said to him I don't
8 want to talk to you at all, but you didn't. You, for, under
9 whatever circumstances and whatever guidelines you talked to
10 him for 50 minutes. So I'm trying to get at why did you do
11 that?

12 THE WITNESS: Your Honor, as I said earlier, I did
13 tell him at the very beginning that I did not want to talk to
14 him and recited my agreements and we went through a bit of
15 dialogue around that. In retrospect or in recollection I guess
16 I could only say he was better at keeping me on the phone and
17 disarming me than I was getting off of it at the time.

18 THE COURT: So I understand that that's his job is to
19 try to induce you to talk to him, but it's not, I mean, it's
20 not like you're an unsophisticated person, and you knew what
21 class actions were, right?

22 THE WITNESS: Only in the broadest general sense. I'd
23 heard of them.

24 THE COURT: You knew this was a big lawsuit against
25 Lockheed, yes?

CALCITH

Asbury - direct

1 THE WITNESS: Yes.

2 THE COURT: So did you think that you might be able to
3 provide him some assistance?

4 THE WITNESS: No, your Honor. I believe that wasn't
5 my intent in any way, shape or form.

6 THE COURT: So I'm still finding it perplexing, then,
7 you then stayed on for 50 minutes. What -- in the information
8 you gave him that was not proprietary, what were you
9 discussing?

10 THE WITNESS: Your Honor, my best recollection is we
11 discussed, as I said earlier, the review process, how the
12 reviews would work for different programs. We discussed how in
13 a sort of general sense forecasts were developed. He had some
14 prior knowledge about certain programs that he would ask about,
15 and those are the things that first come to mind. I don't have
16 a recollection of everything that he asked me.

17 THE COURT: All right, counsel, go ahead.

18 Q. The first call that you say you didn't want to help him in
19 the lawsuit, are you aware that the first call you had with
20 him, not necessarily the first call when you called him back
21 and spoke to him for 50 minutes, that you spoke for 15 minutes
22 and then the call dropped, have you seen those phone records?

23 A. I saw the phone records but I have no recollection of the
24 drop.

25 Q. Why don't you look at Exhibit 53 which is the declaration

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Asbury - direct

1 of ARLFC. I could show you the last page, we could pull it up
2 on the screen for your benefit if you would like. I want to
3 show, Mr. Asbury, according to these phone records that you
4 spoke to him for a total of 15 minutes on September 22nd from
5 2:45 p.m. to approximately 2:59 p.m. and that then you called
6 him back and spoke to him for another 36 minutes. Do you see
7 that?

8 A. Yes, I do.

9 Q. Sir, why did, if you didn't want to help him with the
10 lawsuit in any way, did you call him back after the phone call
11 dropped and talk to him for another 36 minutes?

12 A. I have no recollection of doing that. I see the data but I
13 have no recall of making the phone call back to him, the phone
14 call dropping or calling him back.

15 Q. You recall that during the conversation Mr. Keatly told you
16 that people had said that you were one of the fall guys for
17 Lockheed with respect to the allegations in the lawsuit. Do
18 you recall that testimony?

19 A. Yes, I do.

20 Q. And that that caused your blood pressure to boil, made you
21 angry, right?

22 A. I'm not sure what you're referring to, counsel.

23 Q. Let me refer you to your testimony, okay? Let's refer, if
24 you would, to page 23 starting at line 21. And this is a
25 question from Mr. HillebrichtHillebrecht and take your time to

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Asbury - direct

1 read it all. I'll try my best to summarize and if you like we
2 can refer specifically, but Mr. Hillebrecht was asking you
3 generally to describe what did you say to him and what did he
4 say to you after you had a chance to review the paperwork and
5 you described what he said and towards the end on the next
6 page, I'll just cite you to page 25, line 7. Let me know when
7 you're there.

8 Mr. Hillebrecht asked you, "And how did you end the
9 conversation?"

10 Your testimony was, "I really don't know. I think I
11 tried to do it politely because, frankly, I know my blood
12 pressure probably went up when he starts bringing that stuff
13 up." Do you see that?

14 A. Yes, I do.

15 Q. Does that refresh your memory about what you testified to?

16 A. Yes, sir.

17 Q. So Mr. Keatly brought up that you were cited by people as a
18 fall guy, it caused your blood pressure to rise?

19 THE COURT: No, I don't think that's a fair -- he says
20 his blood pressure probably went up. Unless he was -- had his
21 hand on his pulse I doubt he would know whether in fact it went
22 up.

23 MR. GOLDSTEIN: That's a fair point.

24 Q. Regardless, you believe at some point during the
25 conversation you were irritated by Mr. Keatly bringing up that

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Asbury - direct

1 people had called you the fall guy, is that fair? Is that more
2 fair?

3 A. I think that's fair.

4 Q. And you ended the call, which according to your testimony
5 was very brief, and then you called him back and spoke to him
6 for another 36 minutes, didn't you?

7 A. I have no recollection of that.

8 Q. I see. Sir, during the deposition did you -- today you've
9 testified that in fact you did provide --

10 THE COURT: Just let me pursue that for a second. Is
11 it your recollection, then, that it was a single call?

12 THE WITNESS: Your Honor, other than seeing this
13 data -- the short answer is yes.

14 THE COURT: All right. And now having looked at that,
15 do you actually recollect that it was a call, regardless of
16 whether it was one or two calls, that lasted for a substantial
17 period of time of the order of 50 minutes?

18 THE WITNESS: The first part of your question I might
19 have misunderstood --

20 THE COURT: What we're interested in is what you do
21 recollect, and now that you've had your chance to look at these
22 phone records and everything else, is it your actual
23 recollection that you talked to the investigator for something
24 of the order of 50 minutes?

25 THE WITNESS: Seeing the record, your Honor, does not

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Asbury - direct

1 tell me about the difference in the call. Had I not seen the
2 records I would not have guessed that the call went that long.
3 It just -- I don't dispute the number that is there, but it
4 just didn't feel to me or I don't recall that it was that long
5 of a call.

6 THE COURT: All right. Go ahead.

7 BY MR. GOLDSTEIN:

8 Q. Today, Mr. Asbury, you've testified under oath in response
9 to Judge Rakoff's question that you did indeed provide
10 information to Mr. Keatly, correct?

11 A. Yes, I believe I testified that I answered some questions
12 for him.

13 Q. And you told him that in fact you answered questions
14 regarding goals and setting estimates, correct?

15 A. Yes, sir. That's my recollection.

16 Q. Did you tell me during the deposition when I asked you what
17 was discussed during the phone call that you had discussed with
18 him goals and setting estimates?

19 THE COURT: Sustained. Show me the question where you
20 put that.

21 MR. GOLDSTEIN: Let me rephrase.

22 THE COURT: Otherwise it's not a fair question.

23 Q. Certainly. When I asked you whether or not you provided
24 any substantive information --

25 THE COURT: Let's go back to where that was.

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Asbury - direct

1 MR. GOLDSTEIN: Sure, your Honor.

2 Q. I'll cite you back to page 52, starting at line 25. Other
3 than -- let me read into the record what I asked you.

4 "Other than telling him I've looked at the agreements
5 and I don't feel I could talk to you, what else do you believe
6 you told him if anything during that call?"

7 Your answer was, "Those would be the things that I
8 told him," correct?

9 A. Yes, sir.

10 Q. So in response to my question when I asked you what if
11 anything -- what else do you believe you told him if anything,
12 you did not tell me that you discussed with him setting -- how
13 goals were set or estimates, correct?

14 A. At the time of the deposition on June 13, I had not thought
15 about this for a very long time. I had three months to
16 consider the conversation or to reflect upon this, and I
17 believe, I believe that what I'm telling you today is a more
18 accurate reflection of my memory.

19 Q. So is it your testimony --

20 THE COURT: Excuse me. Prior to your deposition on
21 June 13th, did you meet with counsel?

22 THE WITNESS: Yes, sir.

23 THE COURT: And that was counsel for Lockheed, yes?

24 THE WITNESS: No, sir. That would have been counsel
25 for me.

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Asbury - direct

1 THE COURT: Your own counsel?

2 THE WITNESS: Yes.

3 THE COURT: Who was that?

4 THE WITNESS: Michael Levy.

5 THE COURT: Did you, without telling us what was said,
6 how much time did you spend with Mr. Levy?

7 THE WITNESS: At that point in time, your Honor, my
8 recollection is approximately two to three hours.

9 THE COURT: Prior to your June 13th testimony, had you
10 looked at the complaint?

11 THE WITNESS: Yes, sir.

12 THE COURT: And did you know that you were the person
13 identified as CW5?

14 THE WITNESS: At the time I looked at the complaint I
15 think I did have that knowledge, yes, sir.

16 THE COURT: And you understood that the purpose of
17 your deposition was to discuss whether or not you had provided
18 the information attributed to CW5 to plaintiff's investigator,
19 yes?

20 THE WITNESS: Yes.

21 THE COURT: Go ahead, counsel.

22 Q. Mr. Asbury, in response to my question that we just
23 discussed whether there was anything else that you told him
24 during that second call, you didn't tell me that you discussed
25 programs with him, did you?

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Asbury - direct

1 A. No, I did not.

2 Q. Is it your testimony that your memory regarding what you
3 discussed with him with programs had gotten better since your
4 deposition?

5 A. I believe my testimony today is that the investigator asked
6 me about programs. I did not ask him or tell him about
7 programs.

8 Q. So let me ask you now, sir, you've admitted today that in
9 fact you did discuss with Mr. Keatly goals and estimates. What
10 else did you actually discuss with him that you now remember
11 that you didn't remember at your deposition?

12 A. I believe I testified that I discussed the way goals and
13 estimates were prepared, not actual goals and estimates. The
14 only two things of which I stated earlier to the judge's
15 question were goals and estimates and then reviews, how reviews
16 were done, as well as I was asked about some programs.

17 Q. So as I understand it, in that 50-minute call which we now
18 understand consisted of two calls, you discussed with him that
19 you had a confidentiality agreement, correct?

20 A. That is correct.

21 Q. You discussed with him some conversations about how goals
22 were set, how estimates were set, correct?

23 A. I responded to questions from the investigator on that
24 subject, yes.

25 Q. And that in fact he asked you about programs but you said

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Asbury - direct

1 no, I don't want to talk about that, right?

2 A. I don't believe that's my testimony.

3 Q. What is your testimony with respect to programs?

4 A. My testimony was that the investigator asked me questions
5 about programs.

6 Q. And your response was "I can't talk about that," right?

7 A. I don't recall the nature of all the questions, but if I
8 thought I could not talk about them, I would not talk about
9 them.

10 Q. Did you answer any questions about programs?

11 A. I don't recall specifically.

12 Q. So those topics that we just discussed, it's your testimony
13 that those were the only things that were discussed --

14 THE COURT: I think you told me earlier you
15 discussed -- maybe this is subsumed in what's just been
16 discussed, but that you discussed the Tuesday meetings.

17 THE WITNESS: Yes, your Honor. That was in the
18 context of how general reviews were conducted in the business.

19 THE COURT: That's really a subpart.

20 Q. And it's your testimony that those were the only things
21 that were discussed in a 15-minute call, when the call was
22 dropped and you called back for 36 minutes?

23 THE COURT: Sustained. Argumentative.

24 Q. Let me rephrase it. Were those the only things that were
25 discussed in the 50-minute call, sir?

CALCITH

Asbury - direct

1 A. I believe I recall one other item and I think there was a
2 question from the investigator to me about why I chose to leave
3 Lockheed Martin.

4 THE COURT: About what?

5 THE WITNESS: Why I chose to leave Lockheed Martin.

6 THE COURT: Okay. And what was the answer?

7 Q. Did you answer that question?

8 A. Yes.

9 THE COURT: And what is the answer?

10 THE WITNESS: Well, my answer was partly the nature of
11 the business was changing from what I was familiar with and I
12 had a general style difference with my boss.

13 THE COURT: What was the style difference with your
14 boss?

15 THE WITNESS: A difference in the way we would lead
16 things.

17 THE COURT: Put a little flesh on that, on those
18 bones.

19 THE WITNESS: Yes, sir. I'd be happy to. I was sort
20 of a people-oriented leader, and she was not and we found
21 ourselves increasingly in conflict over time.

22 THE COURT: There was a reference earlier to the
23 statement from the investigator about you being made the fall
24 guy, words to that effect. Was that your perception as well?

25 THE WITNESS: No, your Honor, it was not.

CALCITH

Asbury - direct

1 THE COURT: The person that you're referencing in this
2 conflict is who?

3 THE WITNESS: Mrs. Linda Gooden.

4 THE COURT: She was the person to whom you reported?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: When you say she wasn't a people person,
7 do you mean she was bossy?

8 THE WITNESS: I'm not sure that I would describe it as
9 bossy, no.

10 THE COURT: I was searching for a word, but let me get
11 your word.

12 THE WITNESS: Thank you, your Honor. I'm searching
13 for a word, too, to kind of describe that. I think that I
14 would describe it as Mrs. Gooden was very confident in her
15 abilities to decide almost in any circumstance and my style
16 would have been more that I wanted the people who were on the
17 ground closer to the customer.

18 THE COURT: She was peremptory?

19 THE WITNESS: Yes, sir, in some cases.

20 THE COURT: Was it your belief -- excuse me, was it
21 your perception that she set unreasonable goals?

22 THE WITNESS: No, your Honor. I had worked with her
23 for some three to four years in that capacity beforehand and I
24 never felt that the goals were, they were not unreasonable, no,
25 sir.

CALCITH

Asbury - direct

1 THE COURT: So I guess, give me an example of --
2 you're saying she would say X and your style would have been,
3 well, before you assume or before you decide X we ought to talk
4 to the people on the spot, yes, is that essentially what you
5 were saying before?

6 THE WITNESS: Yes, sir.

7 THE COURT: Give me -- did that make a difference is
8 what I'm trying to get at? Was she under misimpressions in
9 your view because she didn't talk to the people on the spot?

10 THE WITNESS: No, I wouldn't describe it that way. I
11 would describe it in the sense that it was, when you're
12 representing a team you want to have, you would love to have
13 all the goals of the organization all be aligned and sometimes
14 she would have different thoughts about how we should do that.
15 And in conversations, and particularly reviews, she would go
16 past the individual who was responsible for the program and go
17 deeper into the organization to ask questions and things of
18 that nature and I think it became difficult to manage the
19 expectation of people that you put in charge of particular
20 programs.

21 THE COURT: I'm still trying to get a handle on this.
22 Did you think this was, she was creating a morale problem?

23 THE WITNESS: No, I don't think so. I think it was
24 probably changing the nature -- not morale in the sense that
25 people were disenfranchised and didn't want to do things. I

CALCITH

Asbury - direct

1 think it just made it hard to have sort of an organizational
2 sense of how things worked. If she would decide to go left
3 when all the data said to go right, you'd have to go back in
4 and sort of do some things with the team that were doing work
5 to make sure they understood that, hey, this is what the boss
6 said.

7 THE COURT: But, I mean, this was sufficiently
8 problematic in your view, that was one of the reasons, not the
9 only reason, one of the reasons you left, yes?

10 THE WITNESS: Yes. I think if I could summarize, I
11 mean, the business had been fun for a long time, it was really
12 enjoyable to do this kind of work and very technically
13 challenging and when it worked, when things worked right it
14 was, frankly, it was thrilling. When you go through this, it
15 changed it a bit. We were doing more systems work than
16 services work. That became more important and I think that --
17 I don't want to make too big a deal out of it, but it was a
18 factor and I did answer that way to the investigator.

19 THE COURT: And just, and then we'll move on, when she
20 said, in the example you gave, go left when all the data said
21 go right, in your view, would you protest in effect? Would you
22 say to her, gee, I don't think that's supported by the data, or
23 anything along those lines?

24 THE WITNESS: Yes. It would depend on the
25 circumstance, of course, your Honor.

CALCITH

Asbury - direct

1 THE COURT: And do I understand that she in effect
2 said, well, I don't care.

3 THE WITNESS: Not in all cases. In some cases she
4 would have a pretty strong conviction about what we ought to
5 do, but I don't want to give the impression that that was like
6 that all the time, that we were always at polar opposites.

7 THE COURT: All right. Go ahead, counsel.

8 BY MR. GOLDSTEIN:

9 Q. Mr. Asbury, you signed a severance agreement when you left
10 Lockheed Martin, Exhibit 18, correct?

11 A. Yes, sir, I did.

12 Q. And, briefly, correct me if I'm wrong, but I understood it
13 when you left Lockheed Martin you received approximately
14 2 million in a long-term incentive plan, correct?

15 A. Yes, I had earned that over close to 27 years.

16 Q. About 600,000 in the vest program, correct?

17 A. Yes.

18 Q. And you understood that in fact if you breached the
19 severance agreement you could lose that vest program benefit
20 for 600,000 and all severance payments, correct?

21 A. The vest payments are the severance payments but yes,
22 generally correct.

23 Q. Sir, after your deposition, as far as I understood your
24 testimony, you remembered certain things that you did in fact
25 tell the investigator, correct?

CALCITH

Asbury - direct

1 A. Yes.

2 Q. And, sir, when given a chance to go back and read your
3 deposition and make any corrections --

4 THE COURT: No. The law is that aside from correcting
5 typos, you cannot correct anything substantive, so that's an
6 unfair question.

7 MR. GOLDSTEIN: Very well, your Honor.

8 Q. I guess my question is, when did your memory get better?
9 When in time did you remember these things that you weren't
10 able to remember at your deposition, the things that you
11 testified today you actually told the investigator?

12 A. I don't know how to give you a specific number. I mean,
13 I've been looking at this information, looking at the
14 deposition, thinking about this whole circumstance ever since
15 we went to it, so it's been over the course of the last three
16 months.

17 Q. When you got the phone records which were produced on
18 July 12, did you realize at the time that your estimate of five
19 minutes was incorrect?

20 A. Yes, I certainly did.

21 Q. What did you do, if anything, to notify the parties or the
22 Court that you had given an incorrect estimate under oath?

23 MR. HILLEBRECHT: Objection.

24 THE COURT: Sustained.

25 Q. At that point you realized that in fact you had spoken to

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1 him for 50 minutes and had called him back after your call had
2 dropped, right?

3 THE COURT: Well, I think he's already testified he
4 doesn't have a recollection of calling him back, but he's not
5 contesting what the record shows, is that correct?

6 THE WITNESS: That's correct, your Honor.

7 MR. GOLDSTEIN: Just give me one moment.

8 THE COURT: Yes.

9 (Pause)

10 Q. Mr. Asbury, I'm trying to understand with regard to your
11 five-minute estimate, I believe there was a submission from
12 your lawyer, Mr. Levy, in which you pointed out in your
13 submission from what I took it that you were confused by
14 earlier phone records that had been shown to you, is that fair?

15 A. Yes, I think it is.

16 Q. So is it your testimony that the records earlier caused you
17 to estimate the second call at five minutes?

18 MR. HILLEBRECHT: Objection. Again, your Honor, I
19 know you're familiar with it. I'm not sure that's a fair
20 statement of his deposition testimony.

21 THE COURT: Sustained.

22 Q. Let me ask it differently. At the time I asked you for
23 your best estimate, I told you that I didn't have a phone
24 record, correct?

25 MR. HILLEBRECHT: Objection. Again, misstates, your

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Asbury - direct

1 Honor. He'd been told that there were phone records.

2 THE COURT: If someone wants to point the witness
3 to --

4 MR. GOLDSTEIN: I'm sorry -- not to interrupt you,
5 your Honor, let me point the witness to the line and page.

6 Q. Mr. Asbury, take a look, if you would, at page 53, starting
7 at line 19 and I'll read it into the record and see if you
8 agree that I in fact informed you that I didn't have a phone
9 record when I was asking for your best estimate. The question
10 was --

11 THE COURT: You're looking, just so the record is
12 clear --

13 MR. GOLDSTEIN: Yes, your Honor, page --

14 THE COURT: It's page 53, line 19, quote:

15 "Question: All I am trying to get at, if this is all
16 that you told him, and you believe it was a brief conversation
17 to the best of your recollection -- obviously, I don't have the
18 phone records so that's all I'm trying to find out is how long
19 do you believe the call took, the best estimate that you could
20 give me under oath here.

21 "Answer: Five minutes."

22 I put aside my own doubts about the sincerity of the
23 question. Counsel, at the time you put that question you had
24 been told by your investigator that the conversation lasted
25 much more than five minutes or anything like that, correct?

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Asbury - direct

1 MR. GOLDSTEIN: That's correct, your Honor.

2 THE COURT: So when undoubtedly batting your eyes you
3 said, oh, I don't have the phone record but all I'm trying to
4 figure out is how long this took, that was less than sincere,
5 true?

6 MR. GOLDSTEIN: Your Honor, certainly that was not my
7 intent to be less than sincere.

8 THE COURT: I'm just surrounded with people today with
9 innocent intent. It's amazing. We should form a Boy Scout
10 troop.

11 MR. GOLDSTEIN: Your Honor, may I respond? I did in
12 fact ask Mr. Asbury if he recalled if when he called Mr. Keatly
13 the call was dropped and he called back. At the time we were
14 told Mr. Keatly was a wholesale fabricator and he was a liar.
15 I had his phone log, yes, but I didn't have the phone records,
16 and frankly at the time I wanted to be objective and give him
17 an opportunity to say, look, he told me it was five minutes. I
18 did not have any reason to doubt Mr. Asbury at the time in
19 terms of his testimony.

20 THE COURT: All right. So let me get more to the meat
21 and substance, Mr. Asbury. Here's what it comes down to.
22 Counsel is legitimately raising the issue that when you said
23 five minutes that you lied, and the reason he's asking the
24 Court to infer that is that according to what he had learned
25 from his investigator you had a detailed conversation on

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Asbury - direct

1 numerous points lasting many minutes, and while one can't
2 necessarily recall everything about a conversation that
3 happened well before this time, it seems strange, he's asking
4 the Court to infer, that you would even remotely say things
5 like it's just five minutes and we didn't discuss anything
6 meaningful.

7 So do you want to say -- I'm going to of course have
8 questions by defense counsel and I've received a letter from
9 your counsel, but did you want to say anything about that
10 allegation?

11 THE WITNESS: Yes, your Honor. In the morning I had
12 been shown some phone records that, and I don't know the exact
13 language that was used to describe them, but they were roughly
14 described as two calls, one on September 19th of five to six
15 minutes and another on 9/22. They were represented to me as
16 call records of a conversation between Mr. Keatly and myself.
17 At the time I felt, I was asked about the first call I
18 explained that I thought that felt about right. On the second
19 call I told them that I thought it was slightly longer than
20 that, not how long, slightly longer than what was there in the
21 record. Later on as we went through this dialogue with
22 Mr. Goldstein or the questioning with Mr. Goldstein I
23 repeatedly refused to give an estimate because I did not, I did
24 not have a feeling or a recollection or anything else.
25 Finally, I think it was after he phrased it in terms of I'd

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Asbury - direct

1 like to get your best estimate, I wasn't going to refute the
2 record that I saw that morning even despite the fact that I
3 probably felt that it was a longer call than the five minutes
4 that was represented in that record and hence my answers.

5 THE COURT: All right. So let me then put to you the
6 following: I don't want your recollection based on records
7 that someone else has shown you or things that you've seen from
8 anyone in the world. Now that you've had a time to think about
9 all this, what I want is what you can actually remember from
10 this conversation. No one remembers exact words but the
11 substance of the conversation. And other than the topics
12 you've told us about so far this morning, is there anything
13 else you remember about topics about which you spoke in this
14 conversation?

15 THE WITNESS: Your Honor, other than the things that I
16 characterized now, excuse me, earlier, I just don't recall
17 anything else that -- could there have been? Yes, sir, I think
18 there could have been, but I just don't have a recollection.

19 THE COURT: So going back to the first questions I put
20 to you, looking at, if you still have that complaint in front
21 of you, so let's look again at paragraph 35 at the bottom of
22 page 9, the first sentence is, quote, "According to CW5, former
23 president of IS&GS civil segment, the financial projections for
24 IS&GS's 2009 performance which were formulated during 2008 were
25 arbitrary."

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Asbury - direct

1 Now, do you have a recollection of discussing that
2 topic at all?

3 THE WITNESS: No, your Honor, I do not.

4 THE COURT: Are you saying that you are confident it
5 was not discussed?

6 THE WITNESS: I can't say I'm confident it is not
7 discussed. What I can say, your Honor, is that I'm confident
8 that the information contained in this line about how this is
9 done, I am very confident that I would not have said anything
10 like this.

11 THE COURT: That they were arbitrary.

12 THE WITNESS: That is correct, your Honor.

13 THE COURT: And maybe you're partly referring as well
14 to the second sentence? Let's go to that. "CW5 stated that
15 the projections for IS&GS for 2009 were set from the top down
16 as opposed to being based on reasonable estimates from IS&GS's
17 division leaders." Now, you told me a minute ago that one of
18 your difficulties with your immediate boss was that she did not
19 consult with the ISGS folks as much as you would have
20 preferred, correct?

21 THE WITNESS: No, sir, I think I would have
22 characterized what I was trying to say differently. There were
23 times when we had differences of opinion about how we would
24 proceed on things, but certainly not in this area. This was a
25 fairly commonly understood area of establishing goals for the

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Asbury - direct

1 year.

2 THE COURT: So you're saying that the problem that you
3 were referring to before had nothing to do with projections for
4 IS&GS for 2009?

5 THE WITNESS: That is correct, your Honor.

6 THE COURT: Did you say anything about this general
7 topic of the setting of projections?

8 THE WITNESS: Your Honor, this was one of the
9 conversations that, one of the questions about, a generic
10 question about how planes were developed and how forecasts were
11 done and the like, and so yes, I believe the answer is yes.

12 THE COURT: And what do you recall telling him?

13 THE WITNESS: I don't really recall specifically. I'm
14 sort of like a jukebox on this one. I know how this process
15 works very well, sir, and if somebody was to ask me the
16 question about how goals were set and how you build up
17 estimates from the bottom up, then that would be the kind of
18 language that I would use.

19 THE COURT: So while you don't have a specific
20 recollection, your best belief is you would have told him what
21 is your standard understanding of this, yes?

22 THE WITNESS: Yes, your Honor, I believe that.

23 THE COURT: And what is your standard understanding of
24 this?

25 THE WITNESS: Long answer or short answer?

CALCITH

Asbury - direct

1 THE COURT: Long enough to make me understand it,
2 short enough to allow us not to go to lunch.

3 THE WITNESS: Okay. That's a challenge, sir. Thank
4 you.

5 It starts with each year, every year, approximately in
6 the July-August time frame we would start to be thinking about
7 what the business wanted to do for the following year. That
8 would be instructed by corporate strategy. Corporate would say
9 this is the way we see the marketplace. Each individual
10 business unit, in our case I can only speak of IS&GS, we would
11 look at the market, we would look at the changes, we would look
12 at new government programs and Linda Gooden and her staff would
13 come up with a goal for the business and that could be the
14 growth goal, it could be growth goals at the top line and the
15 bottom line, meaning sales and profit. From that point each
16 business would be given that goal and they would go back to
17 what they knew about their current business states, what
18 contracts were going to be available in the market, put a
19 probability of success on winning those contracts as a way of
20 building the forecast.

21 Other factors on there would be on contract growth,
22 existing work that we knew was going to expand. For example,
23 in 2009 we knew that the census program was going to continue.
24 We were running the Sentinel Response Information System, and a
25 number of people were going to increase on that program. We

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Asbury - direct

1 wouldn't have to spend any business money to pursue it, but we
2 knew that we were going to pursue it. That would factor into
3 the baseline. From that the goals would be paired with a
4 bottoms-up estimate and the forecast would be produced from
5 that.

6 THE COURT: And your belief is that he asked, the
7 investigator asked you something about that and although you
8 don't have a specific memory about your answer that your best
9 belief is it would have been along the lines just given?

10 THE WITNESS: Yes, sir. To the best of my
11 recollection.

12 THE COURT: All right. By the way, is that not
13 proprietary information?

14 THE WITNESS: That's a good question, but I don't
15 believe so, your Honor. I believe that it's from every
16 business that I've ever been in, it's more or less the same way
17 that it worked.

18 THE COURT: And then going finally to page 13,
19 paragraph 5 of -- paragraph 45 of the complaint, quote:
20 "According to CW3 and CW5 Lockheed Martin held weekly Tuesday
21 telephone conference calls referred to as red program review
22 meetings during which each IS&GS classified as red was
23 discussed," close quote. You've already told me what you
24 remember of your portion of that conversation. Do I understand
25 it correctly that you believe you told the investigator that

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Asbury - direct

1 there were Tuesday telephone conference calls, that they became
2 more frequent as the year 2009 went on, and that, among other
3 things, they would have included discussions of programs
4 classified as red?

5 THE WITNESS: Your Honor, I think I told you that they
6 got one --

7 THE COURT: Oh, I'm sorry. That wasn't what you told
8 him, or you don't recall what you told him. That's what you
9 told me.

10 THE WITNESS: Yes. If I recall, there was some prior
11 knowledge on the part of the investigator on this topic about
12 reviews. But generally what you just described with the
13 exception of the time period at which they occurred would have
14 been the information that I would have discussed with the
15 investigator.

16 THE COURT: All right. Anything else from plaintiff's
17 counsel?

18 MR. GOLDSTEIN: No. Thank you, your Honor for the
19 opportunity.

20 THE COURT: All right. Cross-examination.
21 Examination by defense counsel. It's all cross-examination.

22 MR. HILLEBRECHT: May I inquire, your Honor?

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 BY MR. HILLEBRECHT:

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Asbury - cross

1 Q. Mr. Asbury, good morning.

2 A. Good morning.

3 Q. Let's start with one small point on the telephone records.
4 You testified that at the time of your deposition you had
5 certain phone records in front of you, correct?

6 A. Yes, sir, I did.

7 Q. And counsel had represented to you that those phone records
8 reflected the calls between you and Mr. Keatly, the
9 investigator, is that right?

10 A. As I recall, there was language like that, yes.

11 Q. Do you still have your deposition transcript in front of
12 you, sir?

13 A. Yes, I do.

14 Q. I'd ask you to turn to page 22. I'm directing you to line
15 18 of page 22.

16 A. Line 18?

17 Q. Line 18 on page 22.

18 MR. HILLEBRECHT: For the Court and counsel, we're
19 going to begin on line 18 and go over to line 4 on page 23.

20 Q. I will just ask you whether you remember being asked this
21 question and giving this answer at your deposition, referring
22 to the phone records.

23 "Q. And you'll see there's again two line entries which appear
24 to be on the date of September 22 which is three days after the
25 initial call. Does that seem to be more or less right about

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Asbury - cross

1 the time lag between the first call and the time you called the
2 investigator back?

3 "A. As I think about this, I mean, I don't actually know how
4 long I took. I know I'm pretty sure I didn't rush right home.
5 That was my first priority, but that timing looks about
6 correct."

7 Do you see that there, sir?

8 A. Yes, I do.

9 Q. At the time you were giving this deposition after you were
10 asked that question was it your understanding that the
11 telephone records that were presented to you at that time
12 included both incoming calls and, as it says here, the call
13 that you made back to the investigator, directing you to line
14 24?

15 A. Could you repeat your question again?

16 Q. Sure. You see the question of your transcript I just
17 directed you to?

18 A. Yes.

19 Q. To me it seems to indicate that the question suggested to
20 you --

21 MR. GOLDSTEIN: Object to the form, your Honor.

22 THE COURT: All of this is argument. What he's
23 focusing on is that words "and the time you called the
24 investigator back" and what he's arguing is that it would be
25 reasonable then for someone in your position to have inferred

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Asbury - cross

1 that the phone records you had seen up to that point included
2 the call back. But as I understood your testimony you don't
3 actually recall calling back, right? In your memory it was one
4 conversation.

5 THE WITNESS: No, your Honor. I believe there were
6 two calls.

7 THE COURT: I'm sorry. You don't remember that you
8 called back as opposed to him calling you?

9 THE WITNESS: I think that testimony, sir, was about
10 the dropped call on the second call between us.

11 THE COURT: All right, all right, okay. I understand
12 now. So that there's the calls reflected by the first records
13 and then there's the calls that no one had the records of at
14 the time of your deposition that were up on the screen here a
15 minute ago, is that it?

16 THE WITNESS: Yes, sir, I think that's what we're
17 talking about.

18 Q. And the question, I'm sorry, was imprecise. What I was
19 trying to get at was at the time of your deposition was it your
20 understanding that the phone records that were in front of you
21 reflected the totality of the calls between you and Mr. Keatly?

22 A. I can't honestly recall saying that I said to myself that
23 these look like the -- no, I don't believe -- I didn't remember
24 anything else going on. The time thing was the time difference
25 which I said something to at the time, but I can't tell you

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Asbury - cross

1 that I thought that was the total universe.

2 Q. Okay, very well. You can put that aside. If you would,
3 turn back to the copy of the amended complaint in front of you.
4 I'm going to ask you to turn to page 10 again, paragraph 36,
5 and direct your attention to a sentence that's on there, and
6 ask you about: "In February 2009 it was clear to CW5 and other
7 IS&GS division leaders that the full 2009 year projection for
8 IS&GS could not be achieved and CW5 and other division leaders
9 told this to Ms. Gooden at the time." Do you see that, sir?

10 A. Yes I do.

11 Q. I believe you testified a little while ago in response to
12 Judge Rakoff's questions that you did not say that and it is
13 not true. Is that your testimony?

14 A. Yes.

15 Q. Let me break that down a little bit. Did you in fact
16 believe in February of 2009 that the full year projections for
17 IS&GS could not be achieved?

18 A. No, I did not.

19 Q. In the context of IS&GS, the civil division of Lockheed
20 Martin, are you familiar with the phrase long range plan or
21 LRP?

22 A. Yes, I am.

23 Q. Can you simply and as briefly as you can fairly describe to
24 the Court what that is?

25 A. In general, it's a three-year look in time. At any

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Asbury - cross

1 particular time you would look at the next year plus two other
2 ones. The next year you would look at with a fair degree of
3 fidelity because you knew when programs were going to happen
4 and you sort of knew if you were delivering something on a
5 current program whether sales would go down or that sort of
6 thing. But each long range plan would have a three-year
7 component to it.

8 Q. Is it your understanding that long range plan, is that
9 internal plan, internal guidance?

10 A. Internal guidance meaning in terms of how we would work the
11 plan inside of the corporation or inside of IS&GS?

12 Q. Inside of the corporation.

13 A. Yes, the long range plan is an internal document.

14 Q. Are you also familiar with the fact that Lockheed Martin
15 gives external guidance to Wall Street?

16 A. Not intimately familiar, but I do know that they give
17 guidance.

18 Q. And is it your understanding that that is different and
19 distinct from the internal long range plan numbers?

20 THE COURT: Well, I think this is going beyond what
21 the scope of this hearing is about, so I'm going to cut that
22 off.

23 MR. HILLEBRECHT: Okay. Fair enough.

24 THE COURT: Picky point, not for this witness, but
25 just, I think we referred to this at an earlier conference in

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Asbury - cross

1 this case, although the amended complaint in its text adds
2 Ms. Gooden as a defendant in the caption she is not listed.
3 That needs to be fixed.

4 MR. RUDMAN: We'll take care of that, your Honor.

5 MR. HILLEBRECHT: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes.

8 Q. Mr. Asbury, I'm going to hand to you what's been marked as
9 Defense Exhibit 1 and ask you to take a look at that document
10 and tell me if you recognize it.

11 MR. GOLDSTEIN: Your Honor, may I inquire of
12 Mr. Hillebrecht if this was covered in his deposition? I have
13 not been provided and have not seen this before the hearing and
14 my knowledge is limited to the witness's phone conversations
15 and not long range planning.

16 THE COURT: That's two different objections. The
17 first one is, is this something that's been produced in
18 discovery.

19 MR. HILLEBRECHT: Absolutely, your Honor, it bears a
20 Bates number.

21 THE COURT: The second question is what does it have
22 to do with this hearing?

23 MR. HILLEBRECHT: First of all, it was a document that
24 Mr. Asbury was questioned about extensively by plaintiff's
25 counsel and the reason for showing the witness the document is

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Asbury - cross

1 to rebut the view that he told anybody in September of 2009
2 that they couldn't make the financial projections. This
3 document speaks directly to that.

4 THE COURT: Okay, go ahead.

5 Q. First, Mr. Asbury, if you could, tell us what that is.

6 A. This would be the 2009 tactical plan, which is self
7 descriptive, but if I may, after the forecast for an individual
8 year was developed and then approved, we would go before
9 Ms. Gooden and her staff and present why we felt we had a way
10 of tacking in, a plan essentially for executing on that year.

11 Q. And was this particular document, defense Exhibit 1,
12 created under your direction as president of the civil line of
13 business of IS&GS?

14 A. Yes, it would have been.

15 Q. And it was created on or about February 2009?

16 A. I'd be more comfortable telling you it was done probably in
17 January or February of 2009.

18 Q. Was it ultimately presented as the type of tactical plan
19 that you just alluded to earlier?

20 A. Yes, it would have been.

21 Q. And you recall what the date of that meeting was?

22 A. I don't recall, but I'm going to be informed by the charts.
23 I think the chart probably tells us it was February 16, 2009.

24 Q. Very well. I think just to put a little bit of context on
25 this for the Court, could you describe for us briefly how IS&GS

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1 was organized at the time, meaning February 2009, and how civil
2 fit into that IS&GS structure?

3 A. Yes. We reorganized, Linda reorganized between 2008 and
4 2009 and we had, I want to say ten to eleven different
5 companies that formed ISGS in the 2008 time frame and we were
6 transitioning to a smaller number of companies, six if I recall
7 correctly, with three of them being very large and that would
8 have been intel, civil and defense. In the case of this
9 plan -- what we would do is take the forecast, go into it in
10 great detail looking at new business, on contract growth,
11 program performance, that sort of thing and we would conduct
12 sort of risk and opportunity analysis against the forecast and
13 to look at the levers we had to pull, the things we had to
14 focus on in order to make the plan achievable.

15 Q. Referencing the February 16, 2009 tactical plan meeting did
16 the presidents on other lines of Lockheed Martin within IS&GS
17 have to demonstrate that their own plan was achievable?

18 A. Yes, they would have.

19 Q. Turn if you would to page 9 of the presentation, Defense 1?
20 There should be a page entitled 2009 commitment. Do you see
21 that there?

22 A. Yes.

23 Q. And I direct your attention particularly to the third
24 column or bar chart on the page, the 365M for million at the
25 top. Do you see that one?

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1 A. Yes, I do.

2 Q. And that's part of the chart referring to EBIT, correct?

3 A. Yes.

4 Q. Just for the record, could you tell me what EBIT stands
5 for?

6 A. Earnings before income tax.

7 Q. And if you look at the lower right hand column of that page
8 9, there's a target box and it's in green there. Do you see
9 that there? Lower right hand side?

10 A. Yes.

11 Q. The targets there, is that a reference to the long range
12 plan or LRP targets?

13 A. That would be the yearly target for this plan as a first
14 year of the long range plain.

15 Q. And specifically for civil, correct?

16 MR. GOLDSTEIN: Your Honor, may I lodge an objection?
17 Defense counsel had an opportunity to cross-examine the witness
18 at his deposition regarding this and did not ask one single
19 question about it to establish at the time. Apparently what he
20 wants to do now is show that Mr. Asbury couldn't have said that
21 to the investigator. I'm not sure what we're doing here now if
22 the issue is what was said during the deposition under oath and
23 whether or not Mr. Asbury told the truth under oath.

24 THE COURT: No. The ultimate question is whether
25 plaintiff's counsel had an adequate good-faith basis to

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1 attribute to the various confidential witnesses what's
2 attributed to them in the complaint. So as I understand what's
3 being inquired about here is evidence that makes it, defense
4 counsel would argue, very unlikely that the witness would have
5 said to the investigator what the investigator reported that is
6 reflected in the complaint because of things he had signed off
7 on in effect at an earlier date. But having said all that, I'm
8 going to give you no more than four minutes more to complete
9 this exhibit.

10 MR. HILLEBRECHT: I was just going to say, your Honor,
11 I have I think a handful of questions left so I appreciate
12 that.

13 Q. If you can, sir, you see this 365 million, there's a green
14 portion labeled challenge, \$55 million. Could you very briefly
15 explain to the Court what's meant in Lockheed Martin parlance
16 by a challenge in this context?

17 A. Yes, I'd be happy to. The rollup -- if I can, let me give
18 you a little bit of context. The rollup shown in the cylinders
19 on the left is really what our firm follow on business is. The
20 on contract growth is represented by the purple disk, meaning
21 we think we can grow contracts of that -- excuse me, we think
22 we can grow existing contracts by that amount for a year and
23 that's part of the makeup of our plan. The green here in this
24 case represents what we would get from new business add ons and
25 pursuing new business and targets and other initiatives which

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1 are those elements that aren't in firm and follow on that would
2 have to be acquired or managed during the year in order to
3 achieve the plan.

4 Q. At this point in time in February of 2009, in your opinion,
5 based on everything you knew at the time, did civil have a plan
6 in place to achieve the total of \$365 million of EBIT for the
7 full year 2009?

8 A. Yes. There certainly was a plan in place.

9 Q. Why don't you turn to the next page, please, page 10, a
10 page entitled EBIT challenge \$55 million. This is the last
11 part of the exhibit I'm going to ask about, your Honor. Do you
12 see that there, sir?

13 A. Yes, I do.

14 Q. Heading to the right hand side two columns, initiative and
15 impact. You don't have to go through every line item but
16 generally speaking could you tell the Court what's set out on
17 this page, the EBIT challenge page?

18 A. Yes. In this page, if I could step back a second, in the
19 general description of how we would do forecasting before, we
20 would look at risks and opportunities. The initiatives are
21 representing those things, sort of the actions that we would
22 take in order to close the gap on the EBIT challenge. A couple
23 of those are about rates, we were doing consolidation of the
24 business. The less expensive we made the rates, the more
25 profitable we would be on our fixed price and time and

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1 materials contracts. Same thing on we had some programs at the
2 time that we needed to try to close out with government
3 activity in order to realize, as you can see pretty large
4 scales of notes, we didn't have a precise number in terms of
5 the EBIT. And then the tire teams initiatives were sort of
6 independent groups of people going in and looking at the way
7 the organization was running to make sure we were doing it in
8 the most cost effective fashion.

9 Q. You can put aside the document.

10 THE COURT: Let me ask one question. So that chart
11 shows a total if you took all the steps and succeeded you'd
12 have a plus of between 10 million and 68 million, yes?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: So what was the basis on which you said
15 55 million? As a matter of chance it would be 30, what,
16 9 million would be the midpoint?

17 THE WITNESS: Oh, you mean just in terms of arithmetic
18 average?

19 THE COURT: Yes. What was the basis of saying 55?

20 THE WITNESS: The basis of 55 is even though MTA was a
21 zero to 36 we felt we had a higher than normal probability for
22 a claim that would be at the full extent of that number. The
23 same thing with TWIC. We had a government delay that caused us
24 to spend a lot more money over a six-month period that we
25 needed to put in a claim for.

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1 THE COURT: All right.

2 BY MR. HILLEBRECHT:

3 Q. Just following up on it briefly, Mr. Asbury, you said in an
4 earlier answer that part of the planning process included doing
5 risk assessments, applying risks and opportunities. Is that
6 part of the process that went into coming up with this tactical
7 plan?

8 A. Yes. That is correct.

9 Q. Now, did you actually present this presentation to
10 Ms. Gooden and her staff and the other presidents at the
11 tactical planning group?

12 A. Yes, I did.

13 Q. And during your presentation did you indicate whether
14 civil's 2009 LRP targets were achievable?

15 A. Yes, I did.

16 Q. And you indicated that they were?

17 A. Yes.

18 MR. GOLDSTEIN: Objection. Leading, your Honor.

19 MR. HILLEBRECHT: Bad question, I'm sorry.

20 Q. Did the presidents of the other IS&GS lines of business
21 similarly present their plan?

22 THE COURT: This is -- I get the general point and I
23 think we're not making good use of time to go there.

24 MR. HILLEBRECHT: Very well, your Honor.

25 MR. GOLDSTEIN: Your Honor, I just want to lodge an

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1 objection. I don't believe this was shown at Mr. Asbury's
2 deposition. I could be wrong, but I just want to object on the
3 record because I don't believe it was.

4 MR. HILLEBRECHT: My recollection it was. I may be
5 wrong, your Honor. I know it was shown to another witness as
6 recently as Friday, so I apologize if I'm wrong.

7 THE COURT: And my conclusion, for the record, is it's
8 completely irrelevant whether it was shown to him at his
9 deposition or not, but I appreciate filling up our record.

10 MR. HILLEBRECHT: Your Honor, may I approach the
11 witness again?

12 THE COURT: Yes.

13 MR. HILLEBRECHT: For the purpose of time, your Honor,
14 I'm going to hand the witness two exhibits marked Defense 2 and
15 3.

16 Q. Mr. Asbury, again, take a quick look at both Exhibit 2 and
17 Exhibit 3. Have you had a chance to look at those?

18 A. I'm looking at 2 now. I haven't looked at 3.

19 Q. Okay.

20 A. Okay, I've had a chance now.

21 Q. Okay, good. First, let me direct your attention to Exhibit
22 2. It seems to be an e-mail exchange between you and William
23 Parsons, is that correct?

24 A. Yes, sir.

25 Q. And the subject line, tactical planning meeting, and the

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1 date of February 17, 2009. Does this e-mail exchange refer to
2 the tactical planning meeting you've just been testifying
3 about?

4 A. Just based on what's written here and the subject matter,
5 yes, I would think so.

6 Q. In your response you say in part, "Meeting yesterday went
7 very well." Do you have a recollection of the tactical
8 planning meeting going very well?

9 A. I don't have a recollection at all. I think if it hadn't
10 been going well I would have remembered.

11 Q. Could you turn to Exhibit 3 now?

12 A. Okay.

13 Q. It's an e-mail from you to a large distribution list
14 April 9, 2009, entitled "1Q09 results." Do you see that there?

15 A. Yes, sir.

16 Q. Could you just tell us firstly, in a general way, I don't
17 mean line by line or name by name, the distribution list, who
18 are the folks who were getting this?

19 A. It would have been the, looks like all of the business unit
20 vice presidents and a lot of members of the civil staff were
21 included on this e-mail.

22 Q. And I'm not going to look at the whole thing, but it begins
23 with you congratulating each of the folks on it on their
24 contribution of making our 1Q09 plan, right?

25 A. Yes.

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1 Q. Did civil in fact make its first quarter 2009 plan?

2 A. Yes.

3 Q. Did civil in effect beat its plan for EBIT and cash?

4 THE COURT: The exhibit speaks for itself. The
5 Exhibits 1, 2 and 3 are being received not for their truth but
6 for the state of mind of the witness.

7 (Defense Exhibits 1, 2 and 3 received in evidence)

8 Q. And if I could just show one more, your Honor, it's the
9 last Exhibit 4. One more, I apologize. Take a look at that.

10 THE COURT: Received for the same purpose.

11 (Defense Exhibit 4 received in evidence)

12 Q. Mr. Asbury, have you had a chance to look at this May 8,
13 2009 e-mail exchange between you and Ms. Gooden?

14 A. Yes.

15 Q. Do you have a recollection that on or about May 8, 2009
16 civil was on or --

17 THE COURT: I've read it.

18 MR. HILLEBRECHT: Very well, your Honor.

19 Q. Based on everything you knew at the time, sir, was it your
20 understanding on May 8, 2009 that civil was on or ahead of
21 plans for orders, EBIT and cash for the second quarter?

22 MR. GOLDSTEIN: Objection. Leading.

23 THE COURT: Overruled.

24 A. Yes.

25 Q. And as of this point, May 8, 2009, did you still believe

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1 that the full year 2009 plan was achievable?

2 MR. GOLDSTEIN: Same objection.

3 THE COURT: Overruled.

4 A. Yes.

5 MR. HILLEBRECHT: Just one moment, your Honor?

6 THE COURT: Yes.

7 MR. HILLEBRECHT: Nothing further, Judge.

8 THE COURT: Let me find out, are there further
9 questions from plaintiff?

10 MR. GOLDSTEIN: No, your Honor. I would put on the
11 record that we in fact have evidence that we could put in if
12 your Honor would allow, for example that as of February 2009
13 the internal affairs division at Lockheed Martin believed that
14 the internal plan had less than a 45 percent chance of
15 succeeding, but I don't want to burden the record. If the
16 Court is going to consider substantively, obviously, to
17 supplement the record, we do have a whole lot of evidence to
18 support that allegation.

19 THE COURT: As I said, I'm only receiving this as to
20 the witness's state of mind so what some other people thought
21 is neither here nor there as to that issue. It's to the
22 overall lawsuit, I understand.

23 Now, is Mr. Levy here?

24 MR. LEVY: I am, your Honor.

25 THE COURT: Are there any questions you want to put to

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1 your client?

2 MR. LEVY: No thank you. You did an extensive job.

3 THE COURT: All right you may step down. Call your
4 next witness.

5 MR. GOLDSTEIN: Your Honor, we call Mr. Morrison. If
6 he could leave just the complaint and if I could clean up the
7 exhibits just for lack of confusion purposes.

8 MR. LEVY: Your Honor, if I might, is Mr. Asbury now
9 free to sit in the courtroom?

10 THE COURT: Yes, but am I misremembering, wasn't he
11 the person whose schedule we accommodated by having this
12 meeting earlier? Maybe that was a different witness. Who was
13 that?

14 MR. GOLDSTEIN: It's Mr. Parsons, your Honor.

15 THE COURT: Mr. Parsons, I'm sorry. Yes, that would
16 be fine.

17 MR. GOLDSTEIN: Your Honor, we have an issue regarding
18 Mr. Asbury and a followup deposition we're seeking to take, so
19 I don't know if that influences the Court's view. We don't
20 have an objection if he wants to sit in.

21 THE COURT: Fair enough. Well, if Mr. Parsons is the
22 person with the time trouble, shouldn't you call Mr. Parsons?

23 MR. GOLDSTEIN: I'm happy to call him out of turn,
24 your Honor, absolutely.

25 THE COURT: Let's call Mr. Parsons and have the other

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1 witness go back in the witness room. So the next witness is
2 going to be Mr. Parsons. So the other witness has to go back
3 in the witness room.

4 MR. HILLEBRECHT: I'm sorry, is someone getting
5 Mr. Parsons? Okay.

6 MR. GOLDSTEIN: If I may approach and leave a copy of
7 his deposition on the witness stand.

8 THE COURT: Yes.

9 WILLIAM PARSONS,
10 called as a witness by the Plaintiff,
11 having been duly sworn, testified as follows:

12 THE DEPUTY CLERK: State your name spell your last
13 name slowly for the record.

14 THE WITNESS: William Parsons, P-a-r-s-o-n-s.

15 THE COURT: Mr. Parsons, how are you presently
16 employed?

17 THE WITNESS: I'm the president, CEO of RD Amross,
18 which is a joint venture between Rocketdyne and NPO Energomash.

19 THE COURT: In November 2009 were you a vice president
20 of strategic development of IS&GS?

21 THE WITNESS: Yes, sir, I was.

22 THE COURT: Have you read the, or looked at the
23 complaint in this case?

24 THE WITNESS: I don't know if I've looked at the
25 complaint. I've read some of the excerpts from some of my --

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1 THE COURT: Take a look. There should be a copy
2 there.

3 THE WITNESS: Is that it?

4 THE COURT: Yes. So take a look at page 10, paragraph
5 36 and you are identified as CW3.

6 THE WITNESS: Yes, sir.

7 THE COURT: And in the second sentence it says CW2 and
8 CW3, a vice president of strategic development at IS&GS also
9 stated that defendant Gooden was told at the beginning of 2009
10 that the projections for 2009 for IS&GS were overstated. Do
11 you see that sentence?

12 THE WITNESS: Yes, sir.

13 THE COURT: Did you say that?

14 THE WITNESS: No, sir. That wouldn't be terms that I
15 would use. I wouldn't know whether it was overstated or not.

16 THE COURT: You had a conversation, did you not, with
17 an investigator for the plaintiffs here?

18 THE WITNESS: Yes, sir, I did.

19 THE COURT: Did you discuss in any respect the
20 projections for 2009?

21 THE WITNESS: Yes, sir. We were told, there was a lot
22 of discussions back then about the financials and so I'm sure
23 that there was some discussions about whether we were going to
24 make our marks or not.

25 THE COURT: So did you tell the investigator that the

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1 projections were overstated?

2 THE WITNESS: No, sir. It's just not a term I would
3 have used. I'm not a financial person. I'm more a manager.

4 THE COURT: What terms would you recall using?

5 THE WITNESS: I would have said we were struggling to
6 meet our financial goals.

7 THE COURT: Why was that?

8 THE WITNESS: I think a lot of it was because we just
9 reorganized into IS&GS civil, there were a lot of programs that
10 were brand new to the organization and we were just getting to
11 know them and they were having technical or schedule
12 difficulties at that time.

13 THE COURT: Did you yourself meet with Ms. Gooden
14 about projections?

15 THE WITNESS: No, sir. I have sat in meetings with
16 Ms. Gooden only on two occasions or three occasions maybe.

17 THE COURT: What were those occasions about?

18 THE WITNESS: Usually it was to go over, the one time
19 that I can recall very vividly it was to go over a proposal
20 that we were submitting and we had to present to Ms. Gooden
21 before that proposal was submitted. And when I say, I was just
22 a bystander in that meeting.

23 THE COURT: Take a look at page 11 of the complaint,
24 paragraph 38, the last sentence of that paragraph. Quote,
25 "According to CW3, defendant Gooden and members of her staff

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1 personally reviewed each bid submitted by IS&GS and it was
2 their regular practice to revise the bids downward." Did you
3 tell that to the investigator?

4 THE WITNESS: I don't believe I would have used the
5 word "regular practice." I was pretty new to the organization,
6 but the talk was, when I say the talk amongst other people was
7 that usually if you brought a proposal bid to the management
8 group, that it would be moved downwards.

9 THE COURT: Okay. So this was, if you will,
10 conversations that you had with your fellow workers in ISGS
11 civil about what higher management would do when bids were
12 presented?

13 THE WITNESS: Yes, sir.

14 THE COURT: And when you say that they would revise
15 the bids downward, what do you mean by that?

16 THE WITNESS: Well, we called it price to win, so you
17 have to find a price that we think would win the contract, and
18 so what in most cases you started out doing was you try to put
19 everything you think of into the proposal, then you start
20 trying to pull things out to get it to a place where it was a
21 price to win.

22 THE COURT: Did you believe that the downward
23 revisions were justified?

24 THE WITNESS: I wasn't an expert enough to probably
25 say one way or the other, but we won a lot of contracts.

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1 THE COURT: Now, you yourself were not present at the
2 meetings where this defendant Gooden or her staff, where this
3 revision downward occurred, were you?

4 THE WITNESS: I've been in on meetings where the staff
5 is given direction to go scrub the numbers.

6 THE COURT: Okay. By Ms. Gooden?

7 THE WITNESS: Well, Ms. Gooden and her management
8 staff. She wouldn't be the only one in the meeting.

9 THE COURT: I understand, but she would be in the
10 meeting?

11 THE WITNESS: Well, the one or two meetings that I was
12 at, yes, sir.

13 THE COURT: And tell me, at the one or two meetings
14 you were at, tell me briefly what occurred in this regard.

15 THE WITNESS: There's presentations made, there's a
16 lot of questions from different staff members about different
17 parts of that presentation. There's comments about I don't
18 believe that that's an appropriate number or that's -- I think
19 you can get that scrubbed down a little bit, and you need to go
20 back to the drawing board on this particular area. Things like
21 that.

22 THE COURT: Okay. That was accepted?

23 THE WITNESS: Yes, sir.

24 THE COURT: Did you say anything about that at the one
25 or two meetings that you recall?

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1 THE WITNESS: No, sir.

2 THE COURT: So you were just an observer?

3 THE WITNESS: Yes, sir.

4 THE COURT: Let's go to page 13, paragraph 45, the
5 second and third sentence. Actually the whole paragraph. The
6 first sentence. "According to CW3 and CW5, Lockheed Martin
7 held weekly Tuesday telephone conference calls referred to as
8 red program review meetings during which each IS&GS program
9 classified as red was discussed." Let's stop there. Did you
10 say anything along those lines to the investigator?

11 THE WITNESS: Probably so, sir, yes, sir.

12 THE COURT: Is what is in that sentence accurate to
13 the best of your knowledge?

14 THE WITNESS: To the best of my knowledge, yes, sir.

15 THE COURT: The second sentence, "CW3 stated that
16 defendant Gooden and IS&GS program managers regularly
17 participated on these weekly red program calls." Is that what
18 you told the investigator?

19 THE WITNESS: Yes, sir.

20 THE COURT: To the best of your knowledge that's
21 accurate?

22 THE WITNESS: Yes, sir.

23 THE COURT: And the third sentence, "According to CW3,
24 it was clear from the calls that major civil segment IS&GS
25 programs were troubled in April and May 2009." Did you say

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1 that?

2 THE WITNESS: I can't recall saying exactly that. I
3 know that we had some programs that were classified red
4 programs.

5 THE COURT: And that's what you would have meant by
6 troubled?

7 THE WITNESS: Yes, sir. I wouldn't use the word
8 "troubled." Sometimes programs were classified red and we
9 didn't even completely understand why they were red, but they
10 were visible, needed to be presented.

11 THE COURT: Well, independent of that, were there
12 major civil segment IS&GS programs that in your view were
13 troubled in April and May of 2009?

14 THE WITNESS: There were a few programs that we were
15 concerned about, yes, sir.

16 THE COURT: And then the final sentence, "While CW3
17 stated that there were at least five major civil programs in
18 IS&GS in the months leading up to 2009, CW3 was not aware of
19 any IS&GS programs that unexpectedly entered red status in June
20 or July 2009." Did you say that to the investigator?

21 THE WITNESS: Yes, sir. That sounds like something I
22 would have said.

23 THE COURT: Okay. Very good.

24 Let's go on.

25 MR. HILLEBRECHT: Your Honor, I'm sorry to interrupt,

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1 it may have been intentional, but I just want to point out to
2 the Court on the previous page, page 11, Mr. Parsons is also
3 discussed in paragraph 39.

4 THE COURT: Oh. Thank you very much. Yes. Thank you
5 very much. I missed that. Let's go back for a minute to
6 paragraph 39. The first sentence. "CW3 stated that many of
7 the problems with IS&GS's financial performance in the second
8 quarter of '09, 2Q09, including margins and earnings, were due
9 to defendant Gooden's practice of submitting lowball bids to
10 win contracts." Did you say that?

11 THE WITNESS: That's just not something that would be
12 in my terminology, so I don't believe I've said anything like
13 that.

14 THE COURT: All right. And forgetting about whether
15 you said it or not, was it true?

16 THE WITNESS: Not -- I just don't, again, I don't have
17 the expertise to say that that would be true or not true.

18 THE COURT: Okay. In that regard, what were your
19 duties at this time at IS&GS?

20 THE WITNESS: I basically was brought over because of
21 my background in NASA programs and I was there to help look for
22 space-type related contracts and programs, and I was on the
23 senior staff of IS&GS civil, so I was helping with some
24 organizational kinds of things that we were doing during that
25 time.

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1 THE COURT: And just for my information, what's your
2 educational background?

3 THE WITNESS: I have an engineering degree and a
4 masters in engineering.

5 THE COURT: Within engineering did you have a
6 specialty?

7 THE WITNESS: Well, back in the early days it was
8 aerospace mechanical.

9 THE COURT: On page 14 -- oh, yes, I'm sorry, on page
10 13 -- no, I think we covered everything on paragraph 39. So
11 page 14, paragraph 49, this is like the fourth sentence of
12 paragraph 49. Quote: "According to CW3 problems with HR Access
13 were the result of poor program management which led to the
14 termination of several program managers." Did you say that?

15 THE WITNESS: Probably something along that line. I
16 don't know if I would have said it was a result of program
17 management. I just know that a number of program managers had
18 been replaced and they were having problems with HR Access.

19 THE COURT: And then in paragraph 50, second sentence,
20 quote: "According to CW3 the cyber security program for New
21 York City encountered a lot of problems including cost
22 overruns." Did you say that?

23 THE WITNESS: I believe that -- something to that
24 effect. Maybe not exactly that, sir.

25 THE COURT: And next sentence: "CW3 learned about

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1 problems with the cyber security program almost immediately
2 following the reorganization of IS&GS in January 2009, and the
3 problems with this program and other programs were discussed
4 during weekly red program review meetings participated in by
5 CW3." Did you say that?

6 THE WITNESS: I didn't participate in -- I think I
7 only sat in on two red program reviews. The only thing I did,
8 sir, sometimes was sat on the preparation portions before they
9 went to the red program review.

10 THE COURT: Would those problems in any event have, to
11 the best of your knowledge, been discussed at those meetings?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. I think that's all, unless -- I'm
14 sorry, one more. At the bottom of that page 15, paragraph 54,
15 quote: "According to CW3, IS&GS took on projects that were
16 outside its core competencies, such as contracts for state
17 governmental agencies as opposed to federal governmental
18 agencies, resulting in significant problems with the projects."
19 Did you say something along those lines to the investigator?

20 THE WITNESS: I would have said -- I don't know if I
21 would have used "outside its core competencies," but I know
22 that doing business with state agencies was much more difficult
23 than it was for doing business with federal agencies based on
24 our experience.

25 THE COURT: Okay. All right. Counsel.

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1 DIRECT EXAMINATION

2 BY MR. GOLDSTEIN:

3 Q. Mr. Parsons, you were a naval officer who carried nuclear
4 weapons?

5 A. Yes, sir.

6 Q. You also were the director of the Kennedy Space Center?

7 A. Yes, sir.

8 Q. Did you speak with Mr. Keatly?

9 A. Yes, sir.

10 Q. Did you speak with him for almost an hour?

11 A. Yes, sir.

12 Q. Was he professional?

13 A. Yes, sir.

14 Q. Was he courteous?

15 A. Yes, sir.

16 Q. Did he force you to provide any information?

17 A. No, sir.

18 Q. Did he pressure you in any way to provide information?

19 A. No, sir.

20 Q. And you worked with a lot of professionals in your time.

21 Did you believe Mr. Keatly was a professional person?

22 A. Absolutely.

23 Q. Mr. Parsons, did you -- how long did you spend at Lockheed
24 Martin?

25 A. A little over two years.

CALCIT1

Parsons - direct

1 Q. Did you sign any type of severance agreement?

2 A. No, sir.

3 Q. Is there anything that requires you to cooperate with
4 Lockheed Martin in the litigation?

5 A. No, sir.

6 Q. Is there anything that requires you not to disclose
7 confidential information you learned?

8 A. Not that I'm aware of.

9 Q. Is there anything that prohibits you from disparaging
10 Lockheed other than the other laws that might apply to
11 disparaging people?

12 A. Not that I'm aware of.

13 Q. You went through and confirmed several things that you told
14 the investigator. The first thing that your Honor asked you
15 about, in paragraph 36, your Honor, CW2, CW3 and CW5 also told
16 the investigator that they told Ms. Gooden in 2009 that the
17 projection for 2009 was overstated.

18 MR. GOLDSTEIN: I just want to bring to the Court's
19 attention that was an allegation which we notified the court
20 was a mistake with regard to CW3.

21 THE COURT: I'm sorry, I had forgotten about that.

22 MR. GOLDSTEIN: We didn't ask him at his deposition
23 because we had discovered it --

24 THE COURT: You did bring that to my attention.

25 MR. HILLEBRECHT: Just to correct the record, he was

CALCIT1

Parsons - direct

1 asked about it at his deposition because plaintiffs did not
2 inform us in time.

3 THE COURT: In any event, since we're cleaning up the
4 complaint anyway, let's make that correction as well in
5 addition to changing the caption.

6 MR. RUDMAN: Yes, your Honor.

7 THE COURT: All right.

8 BY MR. GOLDSTEIN:

9 Q. I put before you your deposition, Mr. Asbury, which was
10 Deposition Exhibit 14 to summary judgment --

11 THE COURT: I'm sorry, this is not Mr. Asbury.

12 MR. GOLDSTEIN: I'm sorry. I do apologize, your
13 Honor. Mr. Parsons.

14 Q. I put your deposition before you. Not Mr. Asbury's,
15 hopefully. Does it say William Parsons on it, I hope? If you
16 could refer to your depo at page 58?

17 A. Is that in here?

18 Q. You know what, I didn't give it to you. Let me find you
19 another. This is your deposition.

20 A. Page 58?

21 Q. Page 58.

22 A. Okay.

23 Q. I refer you to page 58, starting at line 24. Were you
24 asked at your deposition to identify particular civil programs
25 that were troubled in April or May of 2009?

CALCIT1

Parsons - direct

1 A. Okay.

2 Q. Were you asked that question?

3 A. Yes, I do, I believe I was.

4 Q. And did you identify IT Nova, HR Access, Sentinel and the
5 MTA New York security programs?

6 A. Those sound familiar to me.

7 MR. HILLEBRECHT: Object to the form of the question.

8 THE COURT: Anyway, I see it. So just for the record.

9 "Q. And looking again within the third sentence in paragraph
10 45, can you think of particular major civil segment IS&GS
11 programs that were troubled in April and May of 2009?

12 "A. Sure.

13 "Q. Which ones were those?

14 "A. I don't remember their names now, but IT Nova was one of
15 them, HR Access was one of them, Sentinel was one of them, the
16 MTA New York security program. There were a few others."

17 Go ahead.

18 Q. Mr. Parsons, Mr. Asbury is a close friend of yours,
19 correct?

20 A. Yes, he is.

21 Q. One of two people who you still talk to at Lockheed?

22 A. Yes, sir.

23 Q. I'd like to pull up in your deposition 148, lines 4 to 149,
24 2 and show you the question and answer that was asked. I'm
25 going to ask you if this was your testimony. If we could pull

CALCIT1

Parsons - direct

1 it up, please?

2 A. Say it again?

3 Q. Deposition line 148 --

4 THE COURT: I'm sorry, page 148?

5 Q. Yes, page 148, line 4, through 149, line 2.

6 MR. HILLEBRECHT: Your Honor, I'm just going to object
7 to the form of the question. I don't think there's any
8 predicate laid for just reading into the record part of the
9 deposition. I don't think there's any inconsistency.

10 MR. GOLDSTEIN: I'm happy to rephrase it, your Honor.
11 That's how Mr. Hillebrecht has shown some of the depositions.

12 THE COURT: All objections to testimony are preserved
13 in a deposition except as to form. This testimony, are you
14 offering him as a character witness?

15 MR. GOLDSTEIN: Your Honor, defense counsel asked the
16 question not me, your Honor, and they were trying to elicit --

17 THE COURT: But you're the one who is offering it now.

18 MR. GOLDSTEIN: I believe it's relevant to the
19 determination of Mr. Asbury's credibility before the Court that
20 a person who is a close friend of his when asked by defense
21 counsel in an effort to bolster his credibility answered that
22 he didn't know and couldn't say if Mr. Asbury testified
23 truthfully in his deposition because he's got a lot of loyalty
24 to Lockheed Martin, if that's relevant to Mr. Asbury's --

25 THE COURT: No, no, there was an objection.

CALCIT1

Parsons - direct

1 MR. GOLDSTEIN: Because at the time, your Honor --

2 THE COURT: And I would sustain that objection. Now,
3 if you are withdrawing the objection, that's a different
4 question.

5 MR. GOLDSTEIN: I am withdrawing the objection, your
6 Honor.

7 THE COURT: So -- all right. And I take it defense
8 counsel has no objection.

9 MR. HILLEBRECHT: Well, your Honor --

10 THE COURT: You put the question. I suppose -- and,
11 I'm sorry, there's a gentleman who is standing, I assume it's
12 not just because he wants exercise. Do you want to identify
13 yourself for the record?

14 MR. KARAM: Your Honor my name is Francis Karam. I'm
15 Mr. Parsons' counsel. I made an objection on the record and I
16 identified the basis for my objection. I do not withdraw that
17 objection.

18 THE COURT: Okay. So the objection is sustained.

19 MR. GOLDSTEIN: Very well.

20 BY MR. GOLDSTEIN:

21 Q. Did you submit an affidavit in this case, sir?

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

23 THE COURT: I want to make clear, by the way, just for
24 what it's worth, the Court sua sponte is sustaining its
25 objection to the entirety of page 148, line 4, through 25 page

CALCIT1

Parsons - direct

1 149, lines 1 and 2.

2 MR. GOLDSTEIN: Very well. The Court covered the
3 questions I was going to do with Mr. Parsons, so I pass the
4 witness.

5 THE COURT: Very good, counsel. And, by the way, that
6 ruling is only with respect to this hearing. I'm not making
7 any ruling as to any future use in some trial or whatever,
8 though I have extreme doubts about its admissibility for any
9 purpose at any time. But I'm only ruling so far as this
10 hearing is concerned.

11 MR. HILLEBRECHT: Just one moment, your Honor.

12 CROSS-EXAMINATION

13 BY MR. HILLEBRECHT:

14 Q. Good morning, Mr. Parsons, how are you?

15 A. Good morning.

16 Q. Could I ask you to take out your deposition transcript
17 which is in front of you? I direct you to page 58, almost the
18 same portion that counsel, Mr. Goldstein, referred you to. You
19 were asked questions by his Honor about an excerpt from the
20 complaint to CW3 stating that there were civil segment programs
21 troubled in April and May 2009. I want to direct your
22 attention on page 58 to line 21, your answer, where it says,
23 "Yeah, I don't, I don't remember saying April and May. It's
24 very difficult for me to narrow it down to that time frame."
25 Do you see that?

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Parsons - cross

1 A. Yes.

2 Q. In terms of the programs mentioned in your testimony, is it
3 your firm recollection that it was in April or May of 2009 or
4 could it have been June, July?

5 MR. GOLDSTEIN: Objection.

6 A. Could have been at a later time. I don't have a good
7 feeling for the time frame.

8 THE COURT: The objection is overruled.

9 MR. HILLEBRECHT: You know, Judge, your Honor covered
10 pretty much everything I was going to cover, so I have no
11 further questions.

12 THE COURT: Thank you, you may step down. Now, I have
13 a telephone conference call at noon, so much as I know you
14 would not like to take a break, we will give you a break until
15 about 12:15.

16 (Recess)

17 (Continued next page)

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1 THE COURT: Please call your next witness.

2 MR. GOLDSTEIN: Your Honor, may we raise one brief
3 matter? As an accommodation of Mr. Levy, Mr. Asbury's lawyer,
4 Mr. Levy and I had a pending issue we hoped to raise before the
5 Court today regarding Mr. Asbury's second deposition. Mr. Levy
6 is happy to stay, but I thought, in courtesy to him, perhaps
7 maybe we can raise it now or set a time tomorrow.

8 THE COURT: Go ahead.

9 MR. GOLDSTEIN: Your Honor, essentially plaintiffs had
10 on short notice responded to defendants' subpoena of Mr. Asbury
11 with relation to this case and the confidential witness issue,
12 which was taken in June. At the time they produced about 7,000
13 documents. Since then, they produced an additional
14 approximately 3500 documents, and Mr. Asbury is the key person
15 because a key allegation of ours is that the civil division was
16 the reason why they missed, and that they knew in fact that the
17 projections were --

18 THE COURT: How long was the original deposition?

19 MR. GOLDSTEIN: The original deposition, I believe,
20 your Honor -- and I don't believe it was about six hours -- I'm
21 not certain, I'd have to look at the transcript, but it didn't
22 go all day. I would certainly limit my questions to documents
23 I received after his first deposition and not retread on issues
24 I had gone over.

25 THE COURT: How long do you think that would take?

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1 MR. GOLDSTEIN: I don't know, your Honor. There are a
2 lot of documents, but if the Court is concerned as to time, I
3 can shorten it; rather than the seven hours, I can do it in
4 four, I could probably do it in four.

5 THE COURT: Let me hear from Mr. Levy.

6 MR. LEVY: Your Honor, our position is simple.
7 Mr. Asbury as you know, is not a party to the litigation, he's
8 no longer employed by Lockheed Martin. He testified for
9 virtually a full day in June at a deposition. He voluntarily
10 appeared today and testified under oath for an hour and a half.
11 I think at this point asking him to make himself available to
12 be questioned by the parties in this litigation for a third
13 time is really unduly burdensome on him. They have had plenty
14 of opportunity to ask him questions at this point.

15 THE COURT: Well, of course I'm sympathetic to
16 Mr. Asbury about the imposition on Mr. Asbury, but for better
17 or worse, I think he insinuated himself -- that's the wrong
18 word -- I think he has, through fate, become a more central
19 figure in this litigation than perhaps he ideally would have
20 desired. So I think plaintiff is entitled to one final
21 deposition, limited of course to the new documents. But I
22 don't see any reason that should take more than two hours, so I
23 will limit it to two hours.

24 MR. LEVY: Thank you, your Honor.

25 MR. GOLDSTEIN: One minor thing, your Honor -- we

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1 appreciate the ruling -- I know Mr. Levy's not available until
2 after the 10th, which is the discovery deadline day. We'd like
3 to schedule it shortly thereafter. On the 12th, I believe, we
4 reached a tentative date.

5 THE COURT: That's fine.

6 MR. GOLDSTEIN: Very well, your Honor. Thank you very
7 much.

8 MR. LEVY: Are we excused at this time?

9 THE COURT: Yes.

10 MR. LEVY: Thank you.

11 MR. GOLDSTEIN: With that, your Honor, unless defense
12 counsel has any issues, we'll call the next witness.

13 THE COURT: Yes.

14 MR. GOLDSTEIN: Very well. We'll call Mr. Morrison,
15 please.

16 VICTOR H. MORRISON, JR.,

17 called as a witness by the Plaintiff,

18 having been duly sworn, testified as follows:

19 THE DEPUTY CLERK: Please be seated. State your name
20 and spell your last name slowly for the record.

21 THE WITNESS: Victor H. Morrison, Jr. Last name
22 Morrison, M-o-r-r-i-s-o-n.

23 THE COURT: So, Mr. Morrison, how are you presently
24 employed?

25 THE WITNESS: I work for a company called CCSI.

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1 THE COURT: In what capacity?

2 THE WITNESS: I work for the Office of the Secretary
3 of Defense as the portfolio risk manager and enterprise cloud
4 subject matter expert.

5 THE COURT: Tell me the name of the company again.

6 THE WITNESS: CCSI, Creative Computing Solutions
7 Incorporated.

8 THE COURT: That's a private company, yes?

9 THE WITNESS: Yes.

10 THE COURT: And then maybe I misheard, I thought you
11 said you work for the Secretary of Defense?

12 THE WITNESS: The contract that I work on is for the
13 Office of the Secretary of Defense.

14 THE COURT: But who is your boss at CCSI?

15 THE WITNESS: My boss at CCSI is Lisa Jones.

16 THE COURT: OK. Was there a time when you were
17 employed by IS&GS?

18 THE WITNESS: That's correct.

19 THE COURT: From when till when?

20 THE WITNESS: From 2004 through 2010.

21 THE COURT: In what capacity?

22 THE WITNESS: I had various roles within my time
23 within Lockheed.

24 THE COURT: What was your capacity as of 2009?

25 THE WITNESS: I was the Federal Trade Commission Do

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1 Not Call program manager.

2 THE COURT: You need forgive me, you need to speak a
3 little louder.

4 THE WITNESS: I was the Federal Trade Commission Do
5 Not Call program manager.

6 THE COURT: The Federal Trade Commission Do Not Call
7 manager?

8 THE WITNESS: Program manager.

9 THE COURT: And what is that?

10 THE WITNESS: The national Do Not Call list of the
11 Federal Trade Commission. Try to keep telemarketers from
12 calling your house.

13 THE COURT: I understand what that is, but what was
14 your job at IS&GS regarding that?

15 THE WITNESS: I was the overall program manager for
16 the contract.

17 THE COURT: Oh, this was a contract designed by IS&GS?

18 THE WITNESS: It was a contract won by IS&GS and we
19 billed the telemarketing piece, the Web piece, and implemented
20 the program. People dialed either a 1-800 number to get their
21 phone number on the national Do Not Call registry or they
22 entered their phone number through a Web interface that then
23 telemarketing companies around the United States downloaded, so
24 that that became a Do Not Call registry either for an area code
25 or for a geographic region or for the United States. From

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1 there, people were not -- telemarketers were not allowed to
2 call those people that were on the Do Not Call registry. And
3 that's the nature of the program.

4 THE COURT: All right.

5 So, you should have in front of you a copy of the
6 complaint in this case. Have you seen that before?

7 THE WITNESS: Yes.

8 THE COURT: Take a look at page 11, paragraph 39. You
9 are identified in this complaint as CW4. You spoke with the
10 investigator for the plaintiffs?

11 THE WITNESS: I spoke to someone who said that they
12 represented Lockheed Martin and Lockheed Martin's shareholders,
13 that was doing an investigation. Who they represented, I was
14 not aware.

15 THE COURT: This was a telephone call?

16 THE WITNESS: That's correct.

17 THE COURT: And it lasted approximately how long?

18 THE WITNESS: From my recollection, 30 to 45 minutes.

19 THE COURT: When this person introduced himself as
20 being a representative of Lockheed Martin -- and Lockheed
21 Martin's shareholders, you said; is that right?

22 THE WITNESS: That's correct.

23 THE COURT: So what did you understand by that?

24 THE WITNESS: That they were the investigator that was
25 looking into an issue within the Lockheed Martin corporation.

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1 THE COURT: Did he indicate that there was an actual
2 or potential lawsuit being brought?

3 THE WITNESS: I didn't understand that at the time of
4 the call.

5 THE COURT: Well, did he say anything along those
6 lines?

7 THE WITNESS: I do not recall anything like that.

8 THE COURT: So you thought this was something from the
9 parent company?

10 THE WITNESS: That's correct.

11 THE COURT: Could you tell from your telephone where
12 he was calling from?

13 THE WITNESS: No, I couldn't.

14 THE COURT: It doesn't have one of those features that
15 shows the call, where the call is coming from?

16 THE WITNESS: He called me on my mobile phone, and I
17 didn't have a smartphone at the time. It was just a clamshell
18 flip-top and it was a cold call and --

19 THE COURT: It could have been, for all you know, a
20 telemarketer?

21 THE WITNESS: Well, actually, it couldn't be because
22 the telemarketers aren't allowed to call cellphones. That's
23 handled under Federal Communications Commission Act.

24 THE COURT: That's a great relief.

25 I guess what I'm trying to get at here is: If I

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1 understand it, you believed that he was someone from, if you
2 will, within the company or calling with the company's
3 approval?

4 THE WITNESS: That's absolutely correct. I'm a
5 security professional, I've worked a lot with the federal
6 government. Everything is on a need-to-know basis, and he
7 represented himself as someone who was internal to the company
8 that was doing the investigation. That's the only reason I
9 agreed to speak with the person. So I was quite careful in
10 making sure that what I gave was -- from my understanding, I
11 was supposed to cooperate with Lockheed Martin during all
12 investigations. But then I was also guarded, being someone
13 that has a military background, on what are need-to-know items.

14 THE COURT: Did you ask him or did he tell you what
15 his investigation was about?

16 THE WITNESS: The only thing I remember was, there was
17 some irregularities in performance. And remember, this has
18 been a long time ago and that's from my memory, the gist of the
19 conversation, so that's all that I recall.

20 THE COURT: Now, if you look at paragraph 39, the
21 second sentence, you'll see that it states, "Similarly, CW4
22 stated that Defendant Gooden, along with VP of business
23 development, Tom Oles, were directly responsible for the
24 strategy of underbidding on programs." Did you say that?

25 THE WITNESS: No, I did not.

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1 THE COURT: Did you say anything about underbidding on
2 programs?

3 THE WITNESS: No, I did not.

4 THE COURT: Is there any aspect of this sentence that
5 you recall saying?

6 THE WITNESS: Yes.

7 THE COURT: What was that?

8 THE WITNESS: I stated that Linda Gooden, along with
9 vice president of business development, Tom Oles, were directly
10 responsible for the strategy of Lockheed Martin.

11 THE COURT: Strategy of what?

12 THE WITNESS: Strategy of our bidding, strategy of
13 where we -- how to focus the business. I never stated anything
14 about underbidding on programs, sir -- your Honor. I was
15 trying to point them to the people -- I'm sorry, I was trying
16 to point the investigator to the people that would be able to
17 provide the answers he was looking for.

18 THE COURT: Did the investigator ask you anything
19 about whether the bids were accurate, inaccurate, too high, too
20 low, anything like that?

21 THE WITNESS: I don't recall any questions like that.

22 THE COURT: The next sentence says, "CW4 also stated
23 IS&GS was focused on cash flow instead of profitability and
24 that IS&GS deliberately understated the cost that was required
25 for programs."

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1 Did you say any of that?

2 THE WITNESS: No, I did not.

3 THE COURT: Did he ask you anything about cash flow?

4 THE WITNESS: No.

5 THE COURT: Did he ask you anything about
6 profitability?

7 THE WITNESS: Not that I recall, no.

8 THE COURT: Did he asking anything about cost of
9 labor?

10 THE WITNESS: No.

11 THE COURT: The next sentence, quote: "CW4 added that
12 IS&GS often fired employees in order to reduce labor costs.
13 This, however, resulted in inexperienced workers being assigned
14 to projects, which caused various execution problems."

15 Did you say any of that?

16 THE WITNESS: There are two sentences here where there
17 are a divergence. The first sentence that you quoted, your
18 Honor, "CW4 added IS&GS often fired employees to reduce labor
19 costs," I did not state that. But I did state that people did
20 get laid off. That's two totally different things.

21 THE COURT: I understand. What led to you discussing
22 people being laid off?

23 THE WITNESS: Well, I got laid off. People get laid
24 off to reduce labor costs in business whenever they need to.

25 THE COURT: When, in relation to this telephone

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1 call -- when were you laid off?

2 THE WITNESS: I was laid off in July of 2010.

3 THE COURT: Were you given a reason for being laid
4 off?

5 THE WITNESS: It was just a mass reduction in labor.

6 THE COURT: Did you have an understanding as to why
7 they were doing that?

8 THE WITNESS: Well, I guess they were trying to -- my
9 understanding is, they were trying to run a successful company.

10 THE COURT: It's an economic move, yes?

11 THE WITNESS: Of course.

12 THE COURT: You were laid off before you had this
13 telephone conversation, yes?

14 THE WITNESS: Yes. I was laid off before I had the
15 telephone conversation.

16 THE COURT: So, with respect to the second sentence of
17 what we were just looking at, do you recall saying, in words or
18 substance, that whatever the reason for these layoffs, one
19 result was that it resulted in inexperienced workers being
20 assigned to projects?

21 THE WITNESS: I honestly do not recall saying that to
22 the investigator.

23 THE COURT: Whether or not you said it to the
24 investigator, is that your view of what was going on?

25 THE WITNESS: Well, sir, that would be an opinion,

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1 would it not?

2 THE COURT: It would be an opinion, and I'm asking
3 your opinion.

4 THE WITNESS: I don't have any sort of information to
5 know if inexperienced employees were assigned to projects or
6 programs because, your Honor --

7 THE COURT: Well, while you were there, did you see
8 instances in which you thought the people who were being
9 assigned to projects were not sufficiently experienced?

10 THE WITNESS: I can't make that opinion because once
11 again, I was focused in on my program, which was the Federal
12 Trade Commission's Do Not Call program, and my staff were able
13 to perform with very high excellence.

14 THE COURT: So, it certainly wasn't a problem in your
15 area?

16 THE WITNESS: We won excellence awards, we were a
17 premiere program, my program was considered one of the most
18 successful government programs in history. So --

19 THE COURT: I'm pleased to know all that, but my only
20 question was: Inexperience of employees was not a problem on
21 your program?

22 THE WITNESS: Not on my program.

23 THE COURT: OK. Now, turning to page 14, look at
24 paragraph 48, the last sentence in the paragraph. "Defendant
25 Gooden was kept apprised of developments about the Sentinel

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1 program and participated in regular conference calls with CW4
2 and others to discuss this program."

3 Do you recall that being discussed in your
4 conversation with the investigator?

5 THE WITNESS: This sentence is false. I was never in
6 any conference call with Ms. Gooden. I have only had one call
7 back in 2004, with Ms. Gooden. What was stated was Ms. Gooden
8 was kept apprised of developments about the Sentinel program
9 and participated in regular conference calls with others to
10 discuss the program. I never stated in any sort of way that I
11 was involved in any sort of Sentinel discussion.

12 THE COURT: So, do I understand you to say that you
13 did say, in words or substance, to the investigator that
14 Defendant Gooden was kept apprised of developments about the
15 Sentinel program and participated in regular conference calls
16 with others to discuss the program?

17 THE WITNESS: That's correct.

18 THE COURT: Counsel.

19 DIRECT EXAMINATION

20 BY MR. GOLDSTEIN:

21 Q. Mr. Morrison --

22 THE WITNESS: Am I talking all right?

23 THE COURT: You're fine now. That's all right.

24 MR. GOLDSTEIN: Your Honor, may I approach to point
25 out to Mr. Morrison the exhibits I intend to use, so there's no

Calkcit2

Morrison - direct

1 confusion?

2 THE COURT: Yes.

3 MR. GOLDSTEIN: Thank you.

4 BY MR. GOLDSTEIN:

5 Q. Mr. Morrison, I've handed you here a copy of your
6 deposition, which I'll identify for the record, OK?

7 A. OK.

8 Q. And we will start with that as well as a copy of your
9 affidavit, which is before you, and I will also provide
10 specific exhibit references. But when I talk about your
11 deposition, I'll be referring to that and your affidavit, I'll
12 be referring to that OK?

13 A. OK.

14 THE COURT: I'm sorry, Mr. Morrison, I did overlook
15 one question.

16 Tell me what your educational background is.

17 THE WITNESS: Do you mean college degrees or
18 certifications and accreditations?

19 THE COURT: College degrees.

20 THE WITNESS: I have a Bachelor of Science in business
21 administration and decision science from East Carolina
22 University.

23 THE COURT: OK, thank you. Go ahead.

24 MR. GOLDSTEIN: Your Honor, I believe paragraph 51
25 also has some references to Mr. Morrison. I don't know if you

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Morrison - direct

1 intended to --

2 THE COURT: Thank you. I must have missed that. Hold
3 on. Yes, OK.

4 So, Mr. Morrison, looking at paragraph 51 on page 15,
5 quote, "CW4 learned in the first and second quarters of 2009
6 about significant problems with four large IS&GS programs,
7 including a contract with the Veterans Affairs and Federal
8 Reserve in Cleveland, Ohio, the Sentinel program, HR access for
9 the TSA, and a help desk program for the National Aeronautics
10 and Space Administration."

11 Did you discuss all that with the investigator?

12 THE WITNESS: I told him the name of the programs.

13 THE COURT: Did you say that they had significant
14 problems?

15 THE WITNESS: Yes. And I believe I went ahead and
16 said that he can either Google the names of the programs or
17 look in the contractor performance assessment reporting, the
18 CPAR, the government's CPAR system, to see what the issues are.

19 THE COURT: And did you tell him that you first
20 learned about these problems in the first or second quarters of
21 2009?

22 THE WITNESS: I don't recall stating the time frame.
23 I just mentioned the program names.

24 THE COURT: Do you now know what time frame you
25 learned about those problems?

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Morrison - direct

1 THE WITNESS: I do not know, and I do not remember
2 stating the time frames.

3 THE COURT: Go ahead, Counsel.

4 BY MR. GOLDSTEIN:

5 Q. Mr. Morrison, were you ever informed by Mr. Keatly that
6 your name was going to be disclosed to Lockheed Martin?

7 A. Who is Mr. --

8 Q. Sure. Let me rephrase it. I understand you testified you
9 had a call with a plan investigator? I'll identify him -- that
10 investigator's name is Mr. Keatly -- and we spoke at length
11 about your deposition about Mr. Keatly. So the same person we
12 asked numerous questions about at your deposition, OK?

13 A. OK.

14 Q. OK. So I want to talk about -- at some point in time did
15 you receive a call from Mr. Keatly telling you that your name
16 would be disclosed to Lockheed Martin?

17 A. Yes.

18 Q. And at that time, were you concerned that disclosure of
19 your name could jeopardize your ability to get jobs in the
20 future?

21 A. Yes.

22 Q. Did you believe that if your name was disclosed, it could
23 jeopardize your ability to work with Lockheed Martin in the
24 future?

25 A. I don't know if working with Lockheed would be the concern,

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Morrison - direct

1 but it would be as a consultant or a contractor, would affect
2 my ability to work.

3 Q. And was it also a concern to you, if your name was
4 disclosed, that you would not be able to rely upon Lockheed for
5 job recommendations?

6 A. Yes.

7 Q. Now, after you spoke with the investigator -- let me get
8 this clear: It's your testimony he told you he was
9 representing Lockheed as opposed to Lockheed's shareholders?

10 A. The statement that I remember -- and I remember this quite
11 clearly because it was a qualifying question before any of the
12 other discussion -- was that he represented Lockheed Martin and
13 Lockheed Martin's shareholders doing an investigation.

14 Q. After you spoke with Mr. Keatly, did you have a meeting
15 with defense counsel, particularly Mr. Wareham or anyone
16 sitting at the table to my right?

17 A. Yes.

18 Q. And did you discuss with them what you had told Mr. Keatly
19 during that approximate, as you estimated it, half hour to
20 40-minute conversation?

21 A. I tried to go over what I remembered with him.

22 Q. Did you discuss with them whether or not you wanted to be
23 involved in the litigation?

24 A. Well, Judge, have you ever met anybody who's dying to be
25 involved in litigation?

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Morrison - direct

1 THE COURT: Well --

2 THE WITNESS: -- besides lawyers?

3 THE COURT: One of the really good things about my job
4 is I don't have to answer questions.

5 THE WITNESS: I'm sorry, it's my first time ever being
6 in court.

7 To answer your question, I have cooperated with every
8 single person who has been involved with this. I have been
9 truthful with every single person who has approached me with
10 this. And I have fully cooperated with every single individual
11 that has been a part of this. Am I happy to do it? No, I'm
12 not happy to do it, but I have fully cooperated, I've been a
13 hundred percent truthful in everything I've said.

14 Q. I appreciate your answer, Mr. Morrison. Thank you. At
15 some point, did Mr. Wareham discuss with you that his firm
16 would prepare an affidavit for you to sign?

17 A. Yes.

18 Q. Was there a suggestion to you by defense counsel that, if
19 you signed the affidavit, that you hopefully wouldn't have to
20 testify?

21 A. Yes, hopefully I wouldn't have to testify, that my
22 affidavit would be considered as a representation, a whole
23 representation, of the truth, and, as I see that most people in
24 here are in the legal profession, and my basic understanding
25 is, that an affidavit should be as a document, a document for a

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Morrison - direct

1 Court to understand that this is a truthful statement of what a
2 witness says and that hopefully that the Court or the various
3 people within a court system would take that as a document of
4 truthfulness.

5 Q. So, you were hoping that if you signed the affidavit, you
6 wouldn't have to come and testify, right?

7 A. I was hoping not to be here today, if that's the question.

8 Q. And you communicated that to Mr. Wareham, right?

9 A. Yes.

10 Q. Now, you thought that if you signed the affidavit, you'd
11 get on with your life, right?

12 A. I disagree with the question.

13 Q. Well, let me point you to your deposition testimony. Why
14 don't I refer you to line 109/21 through 110/3. We'll play for
15 you the question and answer and ask you if that was your
16 testimony under oath.

17 MR. GOLDSTEIN: If you can please play that for us.

18 (Video playback)

19 Q. That was your testimony, right, sir?

20 THE COURT: Well, there was an objection. What page
21 is this of the written record?

22 MR. GOLDSTEIN: Certainly, your Honor. It is 109,
23 starting at 21.

24 THE WITNESS: If the question is --

25 THE COURT: Excuse me. You wait until I finish.

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Morrison - direct

1 THE WITNESS: Yes, sir.

2 THE COURT: The question was: "And if a lawyer from
3 Lockheed says, hey, if you do this and you won't have to come
4 testify, you thought I should do this, right?" Mr. Hillbrecht
5 made an objection. The objection is sustained.

6 Put another question.

7 MR. GOLDSTEIN: Certainly, your Honor.

8 BY MR. GOLDSTEIN:

9 Q. At some point you had a discussion, did you not, with
10 defense counsel during the meeting where you discussed whether
11 or not you would be forced to participate, correct?

12 A. Can you repeat the question?

13 Q. Sure. Did you discuss with Mr. Wareham that if you were
14 asked to participate, you would testify, "I don't know" or say
15 nothing?

16 A. I don't recall anything like that.

17 MR. GOLDSTEIN: Your Honor, permission to approach --

18 THE COURT: Yes.

19 MR. GOLDSTEIN: -- and see if I can refresh the
20 witness' recollection?

21 THE COURT: Yes.

22 BY MR. GOLDSTEIN:

23 Q. I show to you what will be the new exhibit.

24 MR. GOLDSTEIN: Should I add a sticker? It's not in
25 the summary judgment record.

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Morrison - direct

1 THE COURT: No.

2 MR. GOLDSTEIN: I'll describe it for the record.

3 THE COURT: Well, no, I'm going to put my own little
4 sticker on it. What number would you like to call it?
5 Plaintiff's Exhibit?

6 MR. GOLDSTEIN: We can call it Plaintiff's Exhibit 1.
7 Or Morrison 1 might be easier but just for the record.

8 THE COURT: There you go.

9 MR. GOLDSTEIN: I gave him a copy. That's a copy for
10 you.

11 THE COURT: Very good.

12 BY MR. GOLDSTEIN:

13 Q. Mr. Morrison, I ask you to turn to -- before you do, I
14 represent to you this was a memo that was produced or prepared
15 by defense counsel memorializing your conversations with them
16 during a meeting and was produced in part to us by the Court.
17 I'd ask you to turn to the page ending in 250. We have put a
18 copy up here for your reference, if you'd like to look up.
19 It's LMC928250. And there's a discussion there. And here's
20 what it says: I want to see if this refreshes your memory
21 regarding whether you had a conversation with Mr. Wareham and
22 Ms. Ruffing regarding what is discussed here. "Mr. Morrison
23 stated he does not want to be part of the litigation and asked
24 rhetorically whether he could be forced to participate.
25 Mr. Morrison said if the plaintiff asked him to participate, he

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Morrison - direct

1 would testify 'I don't know' -- and that's in quotes -- "or
2 simply say nothing. Although Mr. Morrison doesn't want to be
3 involved in this litigation, he would be willing to sign an
4 affidavit or sit for a deposition."

5 Do you see that?

6 A. I see this written.

7 Q. And does that refresh your recollection as to whether or
8 not you had a conversation with defense counsel in which you
9 stated that if the plaintiff asked you to testify, you would
10 testify "I don't know" or simply say nothing?

11 A. So, this document, you're saying, was produced before the
12 deposition?

13 Q. Mr. Morrison, this was produced to us recently after your
14 deposition.

15 A. When was the time frame of this document?

16 Q. Sir, the date of it is May 7th --

17 A. So --

18 Q. -- 8th, 2012.

19 A. So then I freely, on my own will, went in and did a
20 164-page deposition.

21 Q. And I understand that, sir. My question is a little
22 different. And I appreciate you giving your testimony and your
23 willingness. It was via subpoena issued by defendants.

24 My question was simply whether or not this refreshes
25 your recollection as to a conversation you may have had with

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Morrison - direct

1 Mr. Wareham or Ms. Ruffing in which you stated, according to
2 their memo, that if the plaintiff asked you to participate, you
3 would testify "I don't know" or simply say nothing. Does that
4 refresh your recollection as to whether or not you said that to
5 defense counsel?

6 MR. HILLBRECHT: I am going to object, your Honor, to
7 the form of the question.

8 THE COURT: Overruled. You can answer.

9 THE WITNESS: I don't recall saying anything like
10 that.

11 Q. So it's your testimony you didn't say that?

12 MR. HILLBRECHT: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: My recollection is that I do not recall.
15 I was eating a chicken sandwich and having sweet tea, if I
16 remember correctly, and was more focused in on my chicken
17 sandwich.

18 Q. Well, I want to focus in on this question. Is it your
19 testimony that you don't believe you said it, or that you may
20 have said it but you just don't recall?

21 A. As I stated previously, I do not recall stating that.

22 Q. So you may have said it, you just don't remember?

23 A. That's not what I said, sir. I said I do not recall
24 stating that.

25 THE COURT: What he's asking you is: Is it your best

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Morrison - direct

1 belief you did not say it, though no one's recollection is
2 perfect; or is it that you don't recall one way or the other,
3 you could have said it but you could not have said it, you just
4 don't recall? That's the difference he's trying to get at.

5 THE WITNESS: Well, I remember stating quite a few
6 obscenities to Mr. Wareham, of having to be a part of the
7 process, so I'm pretty sure there's quite a few things that I
8 quoted to him that he may have left out and was redacted
9 because of me being a little upset. So I do not recall all of
10 the fury that I had laid onto him about doing this. But I
11 fully cooperated and provided truthful testimony to him and to
12 going through and being a part of this deposition and through
13 this process of being here today. So I have -- I think my
14 actions speak louder than what may have been happening at the
15 end of trying to understand the length and the process of which
16 we were going through. This has been open-ended for, it seems
17 like, years now, and I'm trying to figure -- I was trying to
18 figure out when does this end.

19 THE COURT: Go ahead, Counsel. I think we need to
20 move on.

21 MR. GOLDSTEIN: Very well. I'll move on, your Honor.

22 BY MR. GOLDSTEIN:

23 Q. At some point you did in fact sign an affidavit prepared by
24 Mr. Wareham's team, correct?

25 A. That's correct.

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Morrison - direct

1 Q. And I handed you your affidavit. I apologize for hitting
2 the microphone. I've handed your affidavit which has been
3 previously marked as Exhibit 16 to summary judgment Rudman
4 declaration, if you could grab your affidavit, Mr. Morrison.
5 We'll also pull that up on the screen.

6 Did you sign an affidavit -- let me refer you to
7 paragraph 17 -- in which you stated, "At no time during the
8 May 2011 call or on two subsequent calls did I tell the caller
9 that ISGS focused on cash flow instead of profitability or that
10 ISGS deliberately understated the cost of labor for programs"?
11 Do you see that?

12 A. I see it.

13 Q. And you signed that affidavit under oath, did you not --

14 A. I did.

15 Q. -- on May the 15th, right? I refer you to the last page.

16 A. Correct.

17 Q. In that statement you would agree with me that you never
18 said what follows in paragraph 17, correct, you never said it?

19 A. I never stated that.

20 Q. Sir, then less than 30 days after you signed an affidavit
21 in which you denied saying what's written in paragraph 17 to
22 the investigator, you gave a deposition and, sir, at your
23 deposition -- let me ask you: Do you recall whether or not you
24 were asked whether you ever said to Mr. Keatly that ISGS
25 focused on cash flow instead of profitability or that ISGS

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Morrison - direct

1 deliberately understated the cost of labor required for
2 programs? Do you recall being asked those questions?

3 THE COURT: Page?

4 MR. GOLDSTEIN: Your Honor, let me pull it up, your
5 Honor, and I will pull it up on the screen for you.

6 Q. Sir, at your deposition -- let me start at line 62, line
7 17 --

8 MR. HILLBRECHT: Page 62?

9 MR. GOLDSTEIN: Page 62, line 17.

10 THE COURT: Hang on.

11 Q. -- through line 63. I'd like to play this and see if you
12 recall this being asked at your deposition.

13 THE COURT: Go ahead.

14 (Video playback)

15 Q. Sir, looking at deposition 54/5 through 65/8, even after
16 Lockheed counsel showed you an affidavit in which you denied
17 making the statement, you stated that you didn't know if you
18 said it. Let's play your testimony --

19 THE WITNESS: Your Honor, I'm a little bit lost at
20 where we're at.

21 THE COURT: So what he's saying is that after you gave
22 that testimony "I do not recall," he then says, page 63/line
23 9 --

24 THE WITNESS: Page 63?

25 THE COURT: Right where we were in the deposition.

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Morrison - direct

1 MR. GOLDSTEIN: Your Honor, I'm now referring Mr. --

2 THE COURT: Excuse me.

3 MR. GOLDSTEIN: I apologize.

4 THE COURT: Are you there?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: Quote:

7 "Q. Let me direct your attention to your affidavit, paragraph
8 17. Let me ask you if that refreshes your recollection." It
9 says, "At no time during the May 2011 call or in two subsequent
10 calls did I tell the caller that IS&GS focused on cash flow
11 instead of profitability or that IS&GS deliberately understated
12 the cost of labor required for programs."

13 And then --

14 MR. GOLDSTEIN: Your Honor --

15 THE COURT: Excuse me a second.

16 -- there's an objection from Mr. Goldstein. Who is
17 Mr. Goldstein?

18 Mr. Goldstein says -- you lodged an objection?

19 MR. GOLDSTEIN: Yes, your Honor. I should have
20 indicated to the Court that I would like to withdraw the
21 objection.

22 THE COURT: No, but --

23 MR. GOLDSTEIN: This is Mr. Hillbrecht --

24 THE COURT: Excuse me, I don't understand the
25 objection. It says, quote, "I'm going to lodge an objection.

Calkcit2

Morrison - direct

1 This statement was written by counsel, not by Mr. Morrison, so
2 put that on the record."

3 So, is it your position that this Court should
4 disregard any statement made under oath in an affidavit by this
5 witness or any other witness in the world if that affidavit is
6 initially drafted by counsel?

7 MR. GOLDSTEIN: Your Honor, what I meant to say --

8 THE COURT: That's an absurd position.

9 MR. GOLDSTEIN: That is an absurd position,
10 absolutely, I agree. I should have said before, what I meant
11 is to say, leading, these words were written by counsel and
12 what I thought they were attempting to do was to get him to
13 confirm exactly what counsel had written. So that was the
14 purpose of putting that on there. I should have stated the
15 word "leading" and then said that, your Honor. In hindsight,
16 I'm sorry I did not, but I am not putting forward that
17 ridiculous proposition.

18 THE COURT: Well, the objection on the grounds of
19 leading is overruled.

20 MR. GOLDSTEIN: Very well.

21 THE COURT: So, anyway, back to you, Mr. Morrison.
22 You're then instructed, you can go ahead and answer,
23 Mr. Morrison. Mr. Goldstein insists on his purportedly leading
24 objection, stating, "Those are not his words." Mr. Hillbrecht
25 apologizes. I'm not quite sure who you're apologizing too.

Calkcit2

Morrison - direct

1 MR. HILLBRECHT: To the witness, Judge.

2 THE COURT: Question:

3 "Q. This is the affidavit you signed, right, Mr. Morrison?

4 "A. It's the affidavit I signed."

5 "Q. Yeah. And looking at the sentence I just read you, does
6 that refresh your recollection that you never told the
7 investigator the things that are in that sentence about focus
8 on cash flow instead of profitability or deliberately
9 understatement of labor costs?"

10 Mr. Goldstein: "Same objection; improper question."

11 Now, there are grounds for objecting perhaps to that,
12 namely, that it's a prior inconsistent statement offered by
13 counsel who is allied with this witness, but we won't get into
14 that because you said it was the same objection, which I now
15 know was leading. Overruled.

16 The witness: "I signed this affidavit in May, a
17 couple of weeks ago."

18 Mr. Hillbrecht, eloquent as always, says, "Uh-huh."

19 And the witness continues: "About a conversation I
20 had about a year ago, I signed this affidavit from the point of
21 view of not recalling what I said a year ago. I don't remember
22 the conversation I had with my wife last week or how she feels
23 about American Idol."

24 I think you may want to reconsider. Should we show
25 this testimony to your wife?

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Morrison - direct

1 "So I don't recall about what I said about
2 profitability or cash flow or any other strategy when it comes
3 to business. So when I signed this, it was accurate, but I do
4 not recall having any sort of conversation with them."

5 "Q. OK. And so I take it you have no recollection of ever
6 saying any of those things to the investigator; is that right?

7 "A. That's correct."

8 MR. GOLDSTEIN: I'm sorry, are you finished, your
9 Honor?

10 THE COURT: Yes.

11 BY MR. GOLDSTEIN:

12 Q. So, Mr. Morrison, let's take a look at the paragraph in
13 which you were discussing this, paragraph 17 of your affidavit.
14 The affidavit doesn't say that you don't recall saying that to
15 the investigator, does it?

16 THE WITNESS: Your Honor --

17 THE COURT: Yes, put it back on.

18 I'll rephrase the question, Mr. Morrison, because I
19 want to move this along.

20 There's the possibility that you did say this and you
21 simply don't recall it, or there's the possibility that you are
22 quite confident that you didn't say it. Those are the two
23 possibilities. Which of those is the correct possibility?

24 THE WITNESS: I'm extremely confident I did not say
25 it.

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Morrison - direct

1 THE COURT: OK.

2 THE WITNESS: And --

3 THE COURT: No, no, that's the answer.

4 MR. GOLDSTEIN: Your Honor, in an effort to move it
5 along, I would like to cite the Court to testimony where
6 Mr. Morrison, with respect to paragraph 16 of his affidavit and
7 with respect to paragraph 15 of his affidavit, he testified he
8 didn't remember. And the affidavit says, "I never." And so if
9 I could simply --

10 THE COURT: I understand. And this will be, of
11 course, for you to argue when we get to argument stage of this
12 case.

13 MR. GOLDSTEIN: OK. May I put it into the record or
14 is the Court finished with that point?

15 THE COURT: I'm through with that point.

16 MR. GOLDSTEIN: Very well, very well.

17 BY MR. GOLDSTEIN:

18 Q. Mr. Morrison, if you could, I've also put before you your
19 severance agreement or confidentiality agreement. Are you able
20 to locate that?

21 A. Yes.

22 Q. That's something that you signed at the time that you left
23 Lockheed, correct?

24 A. Correct.

25 Q. And that's something that was in effect, at least in your

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Morrison - direct

1 view, at the time that you met with defense counsel and you
2 signed the affidavit, correct?

3 MR. GOLDSTEIN: Let me withdraw the question.

4 Q. You have a confused look, and it was a bad question let me
5 move on.

6 Did you understand, Mr. Morrison, in summary form,
7 that the agreement requires you to cooperate with Lockheed, if
8 asked to, in litigation?

9 A. That's my understanding, that if there is litigation, that
10 I am supposed to cooperate with the courts.

11 Q. And that you aren't allowed to say anything to disparage
12 the company; that's part of the requirement as well?

13 MR. HILLBRECHT: Objection to the form of the
14 question; misstates the document.

15 MR. GOLDSTEIN: I can cite it -- I'm trying to move it
16 along quickly -- I can cite to you.

17 Q. Sir, why don't we take a look at the release, if you'd
18 like.

19 THE COURT: Sorry, what exhibit number is this?

20 MR. GOLDSTEIN: Your Honor, that's Exhibit 17 to
21 Mr. Rudman's declaration. And I don't intend to get into
22 specifics of the legalese.

23 Q. I want to understand, sir -- let's take a look, if you
24 would, at paragraph 9, which we'll pull up for you here. And I
25 just want to ask you if you understood that one of the things

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Morrison - direct

1 you couldn't do as a result of signing this agreement was to
2 disparage Lockheed, as it's described in that paragraph.

3 A. I'm sorry, what's the question?

4 Q. Just if you understood that this was part of your
5 obligations under this agreement, that you couldn't disparage
6 Lockheed Martin.

7 A. Once again, I'll be honest, when I signed -- I don't -- I
8 never really read or -- this is a legal document, and I was
9 being laid off. As I understand it, I read this and signed it.
10 Did I understand it completely? No. I would need a lawyer or
11 some other official to actually understand this. But I signed
12 it and I think I have a -- I think I have kept up my letter of
13 the law.

14 Q. At the time that you left Lockheed Martin, you received
15 approximately \$7,000 in severance, correct, two weeks' pay?

16 A. That sounds about right.

17 Q. And you understood, did you not, that if you breached this
18 agreement, they could try and get that money back, right?

19 A. Well, it was two weeks' pay. I don't think it was \$7,000
20 but if it is, it is, but, yes, they can get the \$7,000 back.

21 Q. We'll put into record the cites, but I won't waste your
22 time. You did testify 7,000.

23 When you signed this document, right, sir, you signed
24 it under pressure, correct?

25 A. Yes.

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Morrison - direct

1 Q. You signed it quickly because you didn't want to lose two
2 weeks' pay and the COBRA benefits, right?

3 A. Well, I don't know about the COBRA benefits, but it was a
4 very bad economy and, yes, I signed it to get the two weeks'
5 pay.

6 Q. Right, but my question was, you signed it under pressure,
7 didn't you?

8 A. That's correct.

9 MR. GOLDSTEIN: That's all I have. Thank you,
10 Mr. Morrison.

11 THE COURT: Cross-examination.

12 MR. HILLBRECHT: Your Honor, defendants have no
13 questions for Mr. Morrison.

14 THE COURT: Thank you very much. You may step down.
15 (Witness excused)

16 THE COURT: Please call your next witness.

17 THE WITNESS: Your Honor, am I released?

18 THE COURT: You're released.

19 THE WITNESS: Thank you.

20 MR. GOLDSTEIN: We would like to call Mr. Keatly.

21 THE COURT: Before we get to Mr. Keatly, are there any
22 other witnesses other than Mr. Keatly?

23 MR. GOLDSTEIN: Ms. Burns is available.

24 THE COURT: And --

25 MR. GOLDSTEIN: My examination will be very short with

Calkcit2

1 her, your Honor. Oh, Ms. Hawn as well. I apologize. We can
2 call Ms. Hawn first.

3 THE COURT: Yes, I think I'm not as concerned about --
4 well, I think it makes sense to have all these folks before we
5 hear from the investigator.

6 MR. GOLDSTEIN: We'll do it as you wish. That's fine,
7 your Honor.

8 THE COURT: Also, we should figure out when we're
9 going to have lunch. I'm not the one to ask because I can go
10 without having lunch, but somehow I think you guys may want
11 lunch. Do you want to take lunch now or after this witness or
12 whenever?

13 MR. GOLDSTEIN: As you wish, your Honor. It doesn't
14 matter to me.

15 THE COURT: Mr. Hillbrecht?

16 MR. HILLBRECHT: No preference.

17 THE COURT: Why don't we go through this witness and
18 then we'll take our lunch break.

19 MR. GOLDSTEIN: Why don't we call Ms. Burns then,
20 because would she will be quicker. Then we can do Ms. Hawn and
21 Mr. Keatly after that.

22 MR. NIEDERMAYER: Your Honor, my name is that Roy
23 Niedermayer, and I represent Ms. Burns, but I'm going to sit
24 back here in the gallery and not up front.

25 THE COURT: Yes. Thank you for identifying yourself.

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1 MR. GOLDSTEIN: Your Honor, permission to approach to
2 provide a couple summaries?

3 THE COURT: Yes, but please let's swear her in first.

4 MARGARET COLLINS BURNS,

5 called as a witness by the Plaintiff,

6 having been duly sworn, testified as follows:

7 THE DEPUTY CLERK: State your name and spell it slowly
8 for the record.

9 THE WITNESS: My name is Margaret Collins Burns,
10 M-a-r-g-a-r-e-t C-o-l-l-i-n-s B-u-r-n-s.

11 DIRECT EXAMINATION

12 BY MR. GOLDSTEIN:

13 Q. Ms. Burns, I'll approach. I am handing you what's your
14 deposition testimony and what is a copy of your affidavit.

15 A. Thank you.

16 Q. I'm going to move everything else away for confusion
17 purposes and we'll keep this here as well in case the Court has
18 questions, the amended complaint. Other than that, these will
19 be the three documents, at least for now.

20 A. Thank you.

21 Q. Thank you very much.

22 THE COURT: So, Ms. Burns, are you currently employed?

23 THE WITNESS: I am.

24 THE COURT: What is your current employment?

25 THE WITNESS: I currently work for the Xerox

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Burns - direct

1 Corporation.

2 THE COURT: And back in 2009, who did you work for?

3 THE WITNESS: I worked for Lockheed Martin.

4 THE COURT: And what was your position?

5 THE WITNESS: In 2009, early 2009, I was the vice
6 president of information and knowledge solutions.

7 THE COURT: When did you leave Lockheed Martin?

8 THE WITNESS: January 31st of 2011.

9 THE COURT: Were you laid off or did you leave
10 voluntarily or what?

11 THE WITNESS: I took the voluntary executive
12 separation program.

13 THE COURT: And subsequent to that, did you have a
14 conversation with someone who identified himself as
15 representing the plaintiffs in this lawsuit or things to that
16 effect?

17 THE WITNESS: Yes. I was contacted by a gentleman who
18 identified himself as Ken Keatly.

19 THE COURT: And who did Mr. Keatly say he was?

20 THE WITNESS: An investigator for L.R. Hodges.

21 THE COURT: For?

22 THE WITNESS: L.R. Hodges.

23 THE COURT: Did he indicate, or did you ask him, what
24 he was investigating or what his purpose was in calling?

25 THE WITNESS: He told me he was investigating on

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Burns - direct

1 behalf of some shareholders bringing a case against Lockheed
2 Martin.

3 THE COURT: A shareholders' case against Lockheed
4 Martin?

5 THE WITNESS: Yes.

6 THE COURT: So you knew it had to do with a lawsuit?

7 THE WITNESS: Yes.

8 THE COURT: And roughly how long did the conversation
9 last?

10 THE WITNESS: My recollection is that it lasted about
11 an half an hour.

12 THE COURT: Now, you should have in front of you the
13 complaint in this case. Do you have that?

14 THE WITNESS: Yes. That?

15 THE COURT: Yes, that's it.

16 THE WITNESS: OK.

17 THE COURT: And you were identified in this complaint
18 as CW1.

19 By the way, did Mr. Keatly tell you that what you were
20 saying was in confidence?

21 THE WITNESS: I don't recall him saying that
22 specifically, no.

23 THE COURT: So you knew it might not be in confidence?

24 THE WITNESS: That's hard for me to answer, your
25 Honor.

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Burns - direct

1 THE COURT: Let me put it this way: He didn't make a
2 promise either way?

3 THE WITNESS: No, he didn't.

4 THE COURT: OK, very good.

5 Look at paragraph 44. So there's, I think, the first
6 reference to you -- unless I missed one. No, I don't think so.
7 It's a fairly plain vanilla kind of thing, but it says, in I
8 guess the third sentence, "According to CW1, the ratings for
9 projects were based on objective criteria. The project rating
10 status was established by the main Lockheed Martin
11 headquarters, and every IS&GS project was evaluated on a
12 monthly basis."

13 Do you recall telling him that?

14 THE WITNESS: I did speak about the color readings,
15 and I did tell them that they were objective criteria, that
16 that criteria was established by headquarters. However, the
17 part about every project being evaluated on a monthly basis is
18 not completely accurate.

19 THE COURT: OK. Do you recall what you said in that
20 regard?

21 THE WITNESS: Yes. I told him that it was traditional
22 for every project to fill out what at the time we called a
23 six-block, which included color ratings, and that could be done
24 as often as monthly for projects of a certain size but that the
25 formal evaluations were an annual evaluation.

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Burns - direct

1 THE COURT: And by colorings, you mean red, yellow or
2 green?

3 THE WITNESS: Yes.

4 THE COURT: It goes on to state in the final
5 paragraph, if you turn the page, final sentence of that
6 paragraph, "CW1 stated that Defendant Gooden reported the
7 status of IS&GS projects to Lockheed Martin's other senior
8 executives."

9 Did you say that?

10 THE WITNESS: No, sir.

11 THE COURT: Is that true, not true, or don't you know?

12 THE WITNESS: I don't actually know for sure.

13 THE COURT: Do you have a belief?

14 THE WITNESS: I am of the belief that Ms. Gooden
15 certainly speaks about programs with other executives at
16 Lockheed Martin.

17 THE COURT: So what you're saying is you don't know
18 whether she in effect made out a formal report or something of
19 that sort?

20 THE WITNESS: Correct.

21 THE COURT: Were you present ever when she reported
22 about any of these projects to other senior executives?

23 THE WITNESS: No, sir.

24 THE COURT: So you only know this from forming an
25 impression from other conversations?

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Burns - direct

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THE WITNESS: Correct.

THE COURT: Let's go on to page 14, paragraph 48, the second sentence. "CW1 stated that the Sentinel program had problems because it had been priced at a very low rate." Did you tell that to the investigator?

THE WITNESS: I did not.

THE COURT: Do you recall saying anything about problems with Sentinel?

THE WITNESS: I did tell the investigator that the challenges on Sentinel were due to the technical nature of what we were trying to accomplish and the lack of clarity in the requirements as provided by the FBI.

(Continued on next page)

CA1FCIT3

Burns - direct

1 THE COURT: So that's what you told him?

2 THE WITNESS: Yes.

3 THE COURT: Then later on in paragraph 49, sort of
4 middle of the paragraph, quote, "According to CW1, the TSA,
5 Transportation Security Administration, was not satisfied with
6 the work performed by Lockheed Martin," close quote. Did you
7 say that?

8 A. So I don't recall precisely, sir. I may have said
9 something like that.

10 THE COURT: And what was the basis of your
11 understanding of their dissatisfaction, if you had one?

12 THE WITNESS: So in 2010, I was part of a program
13 review of that program and so at that point I had exposure to
14 the program's performance and understood what the difficulties
15 were in the program and which things had or had not satisfied
16 the TSA at that point.

17 THE COURT: Okay. Counsel.

18 BY MR. GOLDSTEIN:

19 Q. Just on a couple of the points that the Court raised.
20 Ms. Burns, it was typical, was it not, for programs to be
21 reviewed internally every month, right?

22 A. Could you define what you mean by internally, sir?

23 Q. Sure. Let me see, let me refer you to your deposition and
24 see if that will help with clarification, okay? Let me refer
25 you to your deposition at page 97, line 19. Read through line

CA1FCIT3

Burns - direct

1 98, 8 through 10.

2 THE COURT: Which exhibit?

3 MR. GOLDSTEIN: Your Honor, this is Exhibit 6 to the
4 Rudman declaration, starting again at line 97, 19. Let me make
5 sure I've given the right cite, please.

6 THE COURT: Okay.

7 Q. And I'd ask, Ms. Burns, if you could just read to yourself,
8 if you would, through line 10. Let me know when you're
9 finished and I'll pose some questions.

10 MR. HILLEBRECHT: I apologize, counsel, could you tell
11 me --

12 MR. GOLDSTEIN: Sure, it's 97, 19, to 98, 10.

13 MR. HILLEBRECHT: Thank you.

14 (Pause)

15 A. Go ahead.

16 Q. My question was, independent of the testimony you gave
17 prior, was it typical for programs to be reviewed internally on
18 a monthly basis?

19 A. Yes. The program would review itself internally, yes.

20 Q. With regard to the TSA program, is that something that
21 prior to being placed on that program you had heard from your
22 colleagues that it was a tough program?

23 A. Yes.

24 Q. So in 2009 you knew colleagues who were working on that
25 program who described it as a tough program, right?

CA1FCIT3

Burns - direct

1 A. I did not know colleagues on the program at the time but I
2 had heard the program described as tough.

3 Q. With regard to Sentinel, the Sentinel program was part of
4 your business unit, right?

5 A. Yes, it was.

6 Q. You had access to the budget?

7 A. Yes.

8 Q. And you believed that Sentinel was one of the more
9 challenging programs, correct?

10 A. Yes, Sentinel was challenging.

11 Q. While you didn't know how it was bid, you did know how it
12 was priced, meaning the price that Lockheed was charging the
13 FBI for the work, right?

14 A. I knew the budget that we had available to perform the
15 program, yes.

16 Q. And you believe those things were discussed with the
17 investigator, correct?

18 A. We did not discuss the budget, to my recollection.

19 Q. Ms. Burns, Mr. Keatly, when he first introduced himself to
20 you, he didn't tell you that he represented Lockheed Martin,
21 did he?

22 A. No, he did not.

23 Q. And he didn't tell you that he would keep everything that
24 you said to him as confidential, correct?

25 A. Correct.

CA1FCIT3

Burns - direct

1 Q. Now, Ms. Burns, when you left Lockheed Martin, you signed a
2 separation agreement, correct?

3 A. Correct.

4 Q. I could certainly show that to you, but do you have an
5 understanding as to whether under that separation agreement you
6 had to cooperate with Lockheed if asked in litigation?

7 A. Yes.

8 Q. And you had an obligation not to disclose confidential
9 information?

10 A. Yes.

11 Q. And you also had an obligation not to disparage the
12 company?

13 A. Yes.

14 Q. And did you understand that if you breached any of those
15 that they could go after any severance paid as well as any
16 severance due?

17 A. Yes.

18 Q. And when you left you received a severance package
19 somewhere between 400 and \$500,000?

20 A. Correct.

21 Q. Just as I understand it, after, at some point after you
22 spoke to the investigator, did you get a call from defense
23 counsel from Lockheed Martin?

24 A. Mr. Wareham called, yes.

25 Q. Did he ask you whether or not you'd been contacted by the

CA1FCIT3

Burns - direct

1 investigator?

2 A. I believe he did.

3 Q. And did you discuss with Mr. Wareham or did he tell you
4 that he wanted to meet with you to discuss --

5 A. Yes.

6 Q. I'm sorry to cut you off.

7 A. Yes. He said he wanted to meet with me.

8 Q. And did you tell him, yeah, I'd be happy to meet with you?

9 A. Initially that's what I told him.

10 Q. And what happened after that? You hung up the phone and
11 decided you wanted to get Mr. Niedermayer to represent you?

12 A. That is correct.

13 Q. In your first conversation with Mr. Wareham, was the
14 severance agreement discussed?

15 MR. WAREHAM: Objection.

16 A. I don't recall the severance agreement was discussed in
17 that first conversation with Mr. Wareham.

18 Q. Are you aware at any time that your lawyer discussed with
19 Mr. Wareham whether or not you should be compensated for your
20 expenses because you were abiding by your decision to
21 cooperate?

22 A. Could you repeat?

23 Q. Sure. Do you know whether or not at any time your lawyer
24 ever reached out to Mr. Wareham and asked that you be
25 compensated for your expenses because you were abiding by your

CA1FCIT3

Burns - direct

1 obligation to cooperate?

2 A. I can't say for sure that he asked, that my lawyer asked
3 Mr. Wareham to compensate me for my expenses.

4 Q. Let me show you document C, if that refreshes your
5 recollection.

6 THE COURT: I'm curious about the relevance.

7 MR. GOLDSTEIN: Your Honor, the point is, is that the
8 witness has acknowledged that she has an obligation to
9 cooperate.

10 THE COURT: Yes.

11 MR. GOLDSTEIN: And that because she's doing so, that
12 they should pay her expenses. And that's what I believe the
13 e-mail says.

14 THE COURT: Yes. So, that may be right, that may not
15 be right, but so what? What does it matter either way?

16 MR. GOLDSTEIN: I think it's certainly an
17 acknowledgment that she is cooperating and that she is doing
18 what --

19 THE COURT: You're going to have an extremely hard row
20 to hoe to convince me that Ms. Burns' testimony is anything
21 other than truthful. In fact, she's a breath of fresh air.

22 MR. GOLDSTEIN: Your Honor, we believe that she's
23 confirmed most of the things that are in the --

24 THE COURT: That may be. That's why I don't think
25 it's fruitful to go down that road.

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Burns - direct

1 MR. GOLDSTEIN: Very well. I appreciate that. No
2 further questions.

3 THE COURT: Very well. Any questions from the
4 defense?

5 MR. HILLEBRECHT: No, your Honor.

6 THE COURT: Thank you so much. You may step down.

7 (Witness excused)

8 MR. NIEDERMEYER: Your Honor, may Ms. Burns remain in
9 the courtroom if she chooses or may she be excused?

10 THE COURT: If she is foolish enough to want to watch
11 more of this, that's her option.

12 All right, maybe we'll do the one other
13 non-investigative witness now and then break for lunch. So
14 let's call the other witness.

15 MR. GOLDSTEIN: Very well. It may be more lengthy
16 just because she's the one with a number of allegations.

17 THE COURT: I see. Yes.

18 MR. GOLDSTEIN: It's up to you.

19 THE COURT: You've made a convincing argument. We'll
20 break for lunch.

21 MR. GOLDSTEIN: For once.

22 THE COURT: Can we keep it to a half hour? Is that
23 too short? Is that agreeable? So we'll reconvene at ten after
24 two.

25 (Luncheon recess)

CA1FCIT3

Burns - direct

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AFTERNOON SESSION

2:30 p.m.

THE COURT: Please be seated. Please call your next witness.

MR. GOLDSTEIN: Your Honor, plaintiff calls Ms. Hawn, Pamela Hawn.

PAMELA HAWN,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: Please be seated. State your name and spell your last name slowly for the record.

THE WITNESS: Pamela Elizabeth Hawn, H-A-W-N.

THE COURT: Ms. Hawn, pull your chair up a little closer to that microphone, if you would.

So, how are you currently employed?

THE WITNESS: I'm retired.

THE COURT: Okay. And when did you retire?

THE WITNESS: August 29, 2009.

THE COURT: Prior to that, what was your last job?

THE WITNESS: I worked as a business manager for Lockheed Martin.

THE COURT: And how long had you been at Lockheed Martin?

THE WITNESS: 32 years and eight months.

THE COURT: Did there come a time when you were

CA1FCIT3

Burns - direct

1 contacted by an investigator for the plaintiffs here?

2 THE WITNESS: Yes.

3 THE COURT: And approximately when was that? Do you
4 remember?

5 THE WITNESS: I think it was around October.

6 THE COURT: Of 2009?

7 THE WITNESS: Yes.

8 THE COURT: And how long did you talk with him?

9 THE WITNESS: Briefly.

10 THE COURT: Briefly, meaning what?

11 THE WITNESS: It was a short phone call.

12 THE COURT: What I'm trying to get at, was it like two
13 minutes, five minutes, ten minutes?

14 THE WITNESS: I don't remember.

15 THE COURT: Well, what was the most it could have
16 been?

17 THE WITNESS: Three, four minutes.

18 THE COURT: Three or four minutes, okay. Now, you
19 should have in front of you the complaint in this case. Do you
20 have that?

21 THE WITNESS: Yes.

22 THE COURT: You were identified in that complaint as
23 CW2. So turn, if you would, to page 10 and you'll see up at
24 the top the carryover of paragraph 35, but it's up at the top
25 of page 10. Quote: "According to CW2, a business area manager

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Burns - direct

1 in IS&GS's civil segment, it was clear by the end of 2008 and
2 early 2009 that 2009 was going to be a very difficult year for
3 IS&GS." Do you have that?

4 THE WITNESS: I must not be looking at the right
5 document. There's a lot of documents.

6 THE COURT: I'm sorry, the one that says "amended
7 complaint" on the front.

8 THE WITNESS: Okay, I'm sorry.

9 THE COURT: Page 10, top of the page. Do you see the
10 first full sentence begins, "According to CW2?"

11 THE WITNESS: Yes.

12 THE COURT: "According to CW2, a business area manager
13 in IS&GS's civil segment, it was clear by the end of 2008 and
14 early 2009 that 2009 was going to be a very difficult year for
15 IS&GS and that financial goals for IS&GS for 2009 could not be
16 achieved."

17 Did you tell that to the investigator?

18 THE WITNESS: I wouldn't have said that.

19 THE COURT: Do you remember what you said, if
20 anything, about goals?

21 THE WITNESS: I wasn't in a position to make a
22 statement on goals in 2008, nine.

23 THE COURT: I'm not asking whether you were in a
24 position. I'm asking did you make a statement about goals to
25 the investigator?

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Burns - direct

1 THE WITNESS: No, I did not.

2 THE COURT: Then it says, quote: "CW2 maintained a
3 report of the performance of his/her area of IS&GS compared
4 with the projections that showed that the goals were not being
5 achieved and could not be achieved." Do you see that?

6 THE WITNESS: Yes, I see it.

7 THE COURT: Did you say that?

8 THE WITNESS: No, I did not.

9 THE COURT: Did you maintain reports --

10 THE WITNESS: No, I --

11 THE COURT: I'm sorry, go ahead.

12 THE WITNESS: No.

13 THE COURT: A little later down in the next paragraph,
14 paragraph 36, it says in the second sentence, quote: "CW2 and
15 CW3, a vice president of strategic development in IS&GS also
16 stated that defendant Gooden was told at the beginning of 2009
17 that the projections for 2009 for IS&GS were overstated."

18 Did you say that?

19 THE WITNESS: No.

20 THE COURT: Was that true?

21 THE WITNESS: I don't know.

22 THE COURT: Okay. Continuing. Quote: "According to
23 CW2 while Lockheed Martin knew that the goals for IS&GS
24 couldn't be achieved, shareholders did not know this
25 information. According to CW2, defendant Stevens and Tanner

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Burns - direct

1 received information about IS&GS directly from defendant Gooden
2 and defendant Gooden's finance manager, Jeff McLaughlin.
3 According to CW --" Well, the next one is CW3.

4 Did you say any of those things that are in those two
5 sentences?

6 THE WITNESS: No, I did not.

7 THE COURT: Do you know anything from personal
8 knowledge as to how defendant Stevens and Tanner received
9 information about IS&GS?

10 THE WITNESS: No, I do not.

11 THE COURT: All right. Turn to page 11, the paragraph
12 38, second sentence. Quote: "According to CW2 Lockheed Martin
13 deliberately underbid on programs and knew it could not perform
14 the work of many programs without large cost overruns." Do you
15 see that?

16 THE WITNESS: Yes, I see it.

17 THE COURT: Did you say that?

18 THE WITNESS: No, I did not.

19 THE COURT: Do you have any information as to whether
20 there was any deliberate underbidding?

21 THE WITNESS: No, I do not.

22 THE COURT: Did you discuss bidding at all with the
23 investigator?

24 THE WITNESS: I don't believe I did.

25 THE COURT: Turn next to page 12, paragraphs 43, last

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Burns - direct

1 few lines of that paragraph. Quote: "According to CW2, due to
2 cost cutting in 2008, IS&GS primarily had low paid personnel
3 assigned to programs which negatively impacted execution,
4 performance and customer satisfaction."

5 Did you say that to the investigator?

6 THE WITNESS: No, I did not.

7 THE COURT: Did you say anything about the level of
8 pay of personnel?

9 THE WITNESS: No.

10 THE COURT: Turn to page 14, paragraph 48. "According
11 to CW2 the Sentinel program was placed into red status by early
12 2009 and problems with the Sentinel program were caused in part
13 by the inexperience of IS&GS personnel assigned to the
14 program." Do you see that?

15 THE WITNESS: Yes, I see it.

16 THE COURT: Did you say that to the investigator?

17 THE WITNESS: No, I did not.

18 THE COURT: Let me pause for a moment. In the three
19 or four moments that you spoke with the investigator, what if
20 anything do you recall discussing?

21 THE WITNESS: I started out by telling him I couldn't
22 discuss any financial information and after that, I just
23 remember the investigator did all the talking. I didn't do any
24 talking.

25 THE COURT: All right. He was trying to get you to

CA1FCIT3

Burns - direct

1 talk more?

2 THE WITNESS: Exactly.

3 THE COURT: And you declined to do so?

4 THE WITNESS: Yes.

5 THE COURT: Turning to page 15, paragraph 52, quote:

6 "According to CW2 the Mission, Integration and Development
7 (MIND) program and Geoscout program initiated by the National
8 Geospatial Intelligence Agency were two IS&GS intelligence
9 segment programs that experienced problems in early 2009."

10 Do you remember discussing that with the investigator?

11 THE WITNESS: No.

12 THE COURT: Is it true or do you have any knowledge as
13 to whether those programs experienced problems in early 2009?

14 THE WITNESS: I don't have that knowledge.

15 THE COURT: Turning to paragraph 53, the second
16 sentence. Quote: "According to CW2, there were monthly
17 corporate review meetings where the troubled status of programs
18 like the Sentinel program, Geoscout, MIND and HR Access were
19 discussed. CW2, who participated in these corporate review
20 meetings, stated among the issues discussed was the impact that
21 troubled programs would have on quarterly and year-end
22 financial results."

23 Now, did you participate in those meetings?

24 THE WITNESS: No, I did not.

25 THE COURT: And did you say anything along the lines

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Burns - direct

1 of what's in those two sentences?

2 THE WITNESS: No.

3 THE COURT: Turning to page 16, paragraph 55. "During
4 the second quarter of 2009 IS&GS also experienced problems with
5 projects for the U.S. Department of State. It experienced
6 delays in getting funded because of staffing issues. According
7 to CW2, delays in funding were due in part to inexperienced
8 personnel at Lockheed Martin and the Department of State."

9 Do you remember saying any of that?

10 THE WITNESS: I don't remember stating that.

11 THE COURT: Was there anything like that you discussed
12 with the investigator?

13 THE WITNESS: I don't remember discussing with the
14 investigator.

15 THE COURT: Is what's alleged there true?

16 THE WITNESS: There was inexperienced people at the
17 Department of State, not at Lockheed Martin.

18 THE COURT: Okay. How did you know that, by the way?

19 THE WITNESS: I worked on the special project for
20 about a month.

21 THE COURT: In paragraph 56 right below that, about
22 halfway down the paragraph, quote: "CW2 stated it was clear
23 that the inexperienced personnel at the Department of State
24 were unfamiliar with the department submittal process and did
25 not know how to submit a funding request." Do you understand

CA1FCIT3

Burns - direct

1 that you did not say that to the investigator but that is
2 nonetheless true allegations to the best of your knowledge?

3 THE WITNESS: Yes.

4 THE COURT: Next sentence. Quote: "According to CW2,
5 Lockheed Martin had forecasted revenues associated with
6 Department of State projects for 2Q09 even though there was no
7 way for revenues to be generated that quarter because funding
8 requests had not been submitted in time."

9 Was that true?

10 THE WITNESS: I don't have knowledge to that effect.

11 THE COURT: You don't know one way or the other.

12 THE WITNESS: No.

13 THE COURT: Did you ever say it to the investigator?

14 THE WITNESS: No.

15 THE COURT: Turning finally to page 18, paragraph 65,
16 quote: "For example, during March 2009 before the start of the
17 class period defendant Gooden approached CW2 and pressured CW2
18 to represent that his/her area in IS&GS had \$2 billion in
19 backlog for 2009." Did you say that?

20 THE WITNESS: No.

21 THE COURT: Is it true?

22 THE WITNESS: No.

23 THE COURT: Continuing. "CW2 told defendant Gooden
24 and others that worked with Gooden that \$2.5 billion in backlog
25 was not reasonable." Did you say that to the investigator?

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Burns - direct

1 THE WITNESS: No.

2 THE COURT: Did you have a discussion with Ms. Gooden
3 about any of this that's talked about in this paragraph?

4 THE WITNESS: No.

5 THE COURT: Then it says, quote: "Defendant Gooden
6 with the assistance of others ignored CW2's backlog report and
7 changed the backlog figure to reflect a figure much higher than
8 the backlog computed by CW2. According to CW2, defendant
9 Gooden grossly overstated the actual backlog for IS&GS." Did
10 you ever say that to the investigator?

11 THE WITNESS: No.

12 THE COURT: Was any of that true to your knowledge?

13 THE WITNESS: No.

14 THE COURT: All right. Counsel.

15 DIRECT EXAMINATION

16 BY MR. GOLDSTEIN:

17 Q. Ms. Hawn, it's your testimony here under oath that you
18 believe that the call with the investigator regarding the
19 lawsuit lasted three to four minutes.

20 A. That's what I remember.

21 Q. Let me show --

22 MR. GOLDSTEIN: If I can approach, your Honor?

23 THE COURT: Yes.

24 Q. Let me show you what was previously marked as Exhibit 4 at
25 your deposition. Refer you to the second page. The phone

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Hawn - direct

1 number that's reflected there, is that your phone number?

2 A. Yes.

3 Q. And can you tell me how long the call reflected therein is?

4 A. 64.8 minutes.

5 Q. And as I represented to you at the time of the deposition,
6 these are the phone records from Mr. Keatly, the investigator,
7 showing a call to you. Is it still your testimony that it was
8 a three to four-minute call?

9 A. It didn't seem long. It seemed short to me.

10 Q. It's still your belief that it was three to four minutes?

11 A. I answered it. It seemed short to me. It seemed that
12 long.

13 THE COURT: Let me see that record, please?

14 MR. GOLDSTEIN: Certainly, your Honor. This was
15 Exhibit 4 to Ms. Hawn's deposition, your Honor.

16 Q. Ms. Hawn --

17 THE COURT: Hold on.

18 MR. GOLDSTEIN: I'm sorry, your Honor.

19 THE COURT: This is from Mr. Keatly -- did he provide
20 this copy of his bill?

21 MR. GOLDSTEIN: That is from his carrier, your Honor.

22 THE COURT: No, I understand, but I'm asking, is this
23 a copy that he received or was it subpoenaed directly from the
24 carrier?

25 MR. GOLDSTEIN: It was provided to us from

CA1FCIT3

Hawn - direct

1 Mr. Keatly's firm. They requested it from the carrier and it
2 was provided to counsel at Ms. Hawn's deposition. And it's
3 been redacted to take out other calls.

4 THE COURT: What I'm saying -- I guess I'm not being
5 clear. This is a copy of his bill, phone bill with everything
6 irrelevant redacted.

7 MR. GOLDSTEIN: Correct.

8 THE COURT: He didn't still have a copy of it, he
9 requested it from the carrier, is that it?

10 MR. GOLDSTEIN: Frankly, your Honor, I don't know.

11 THE COURT: All right, we'll ask him.

12 MR. GOLDSTEIN: I apologize. I received it prior to
13 the deposition and I questioned Ms. Hawn with it at the
14 deposition.

15 THE COURT: All right. So, Ms. Hawn, it's difficult
16 for me to understand how if this is an accurate bill how a
17 conversation that in fact lasted over an hour could be
18 remembered by you as having lasted three to four minutes.

19 THE WITNESS: Because I remember answering the phone
20 and I don't exactly remember his first question, but it had to
21 do with Lockheed, that there was a suit, lawsuit, and my
22 immediate response was that I couldn't discuss anything with
23 him and I wanted to go, end it, and he just kept on talking.

24 THE COURT: For an hour?

25 THE WITNESS: I don't remember. He said he wanted to

CA1FCIT3

Hawn - direct

1 confirm some stuff that other people had to say. I guess I
2 listened and that was my mistake, but I honestly, it's like I
3 blocked it out. I don't remember the call. I just remember me
4 saying I don't have anything to say.

5 THE COURT: Well, when you say, for example, if he
6 said I want to confirm X, and then you would give something, do
7 you recall saying yes, no, or not responding at all?

8 THE WITNESS: I remember that I kept saying over and
9 over, "I cannot give you any information. I can't say
10 anything."

11 THE COURT: All right. Go ahead, counsel.

12 BY MR. GOLDSTEIN:

13 Q. Ms. Hawn, are you able to tell me a single question that he
14 asked you during the conversation that you believe is three to
15 four minutes?

16 A. No, because I told him that I wasn't in a position to
17 answer anything during the time frame he was interested in.

18 Q. And so is it your testimony that what happened was
19 Mr. Keatly asked questions for over an hour and you just kept
20 saying that you couldn't answer his questions?

21 A. Right. He referenced programs that I didn't work on. He
22 referenced stuff that I didn't have any information on. So
23 that's why I don't remember it. It didn't mean anything to me.

24 Q. Are you able to remember anything other than what you've
25 told us about the conversation, anything else?

CA1FCIT3

Hawn - direct

1 A. I remember my career at Lockheed, yes.

2 Q. I'm talking about what you discussed with the investigator.
3 Anything else?

4 A. Not really.

5 Q. Did you submit an affidavit in the case?

6 A. I signed an affidavit stating things that I did not say.

7 Q. And what you did is before you signed it is you glanced it
8 over, right?

9 A. Right.

10 Q. And you signed it saying that things in the declaration or
11 the affidavit were true, correct?

12 A. Some things, yes.

13 Q. Well, did you sign it saying that some things in there were
14 true and some things in there were not true?

15 A. At first I signed it because, as you stated, I glanced over
16 it. I didn't take it serious enough. And then later on at
17 deposition there were things that were mixed up, lines were
18 confused, and so we corrected it.

19 Q. And at the deposition you admitted that there were numerous
20 paragraphs that were untrue, correct?

21 A. There were numerous paragraphs that were confused.

22 MR. KARAM: I object to the characterization of
23 "numerous".

24 Q. Let me refer you to a page in your deposition.

25 THE COURT: Ground?

CA1FCIT3

Hawn - direct

1 MR. KARAM: Mischaracterized.

2 THE COURT: How many in your view were there?

3 MR. KARAM: I remember there were one or two, three or
4 four.

5 THE COURT: If it's two, it's numerous.

6 MR. KARAM: Your Honor, my objection is that counsel
7 should use the number of instances where there were
8 inconsistencies and not characterize them as numerous.

9 THE COURT: I appreciate the objection. The objection
10 is overruled.

11 Q. Let me refer you to your deposition testimony. We can pull
12 it up, Hawn deposition, which is Exhibit 10. Page 185, lines
13 18 through 20. If you look here, we can play it for you,
14 ma'am, and I ask you whether these are the questions and
15 answers you gave under oath.

16 THE COURT: I'm sorry, which exhibit?

17 MR. GOLDSTEIN: It is Exhibit 10 to the Rudman
18 declaration, your Honor. Refer your Honor to 185, lines 13 to
19 20.

20 (Audio played).

21 Q. That was your testimony under oath, ma'am, wasn't it?

22 A. Yes.

23 Q. Now, you also admitted, have you not --

24 THE COURT: Wait a minute. That doesn't really answer
25 the -- because there was an objection interposed at that time.

CA1FCIT3

Hawn - direct

1 So -- where is her affidavit?

2 MR. GOLDSTEIN: Your Honor, it is at Exhibit 11 to the
3 deposition.

4 THE COURT: Show me where in the deposition there were
5 various incorrect statements admitted.

6 MR. GOLDSTEIN: Sure, and that was a predicate to
7 doing it, your Honor, but I'll point out the ones we believe
8 were most important.

9 THE COURT: Okay.

10 MR. GOLDSTEIN: If you look at the paragraph 17, 18
11 and 19 and 20, they describe three calls, each as brief. At
12 the deposition at 165, 8, to 166, 11, I believe in our view
13 that that establishes that she admitted that they were not
14 brief.

15 THE COURT: All right, that's the one we already were
16 focused on. What else?

17 MR. GOLDSTEIN: Your Honor, that was the most
18 important one. We're trying to establish the fact that there
19 was an admission prior to today's testimony, that at the time
20 statements of estimates of being brief and not long were in
21 fact incorrect. The rest of the corrections at this point are
22 more to the substance and less major things than that. That
23 was just a predicate question.

24 MR. HILLEBRECHT: Your Honor, if I could just address
25 that.

CA1FCIT3

Hawn - direct

1 THE COURT: Yes.

2 MR. HILLEBRECHT: I think Mr. Goldstein is confusing
3 two things. One, her actual recollection of how long the call
4 was in the deposition testimony in which she's acknowledging,
5 and I don't think she's disputing it that the call record
6 indicates it's 64 whatever minutes. On 166, line 12, it was,
7 "Wasn't it that's what that shows? Right, that's what it
8 shows, yes."

9 So my only point is, like an earlier witness, I
10 believe Ms. Hawn is certainly not disputing the call was as
11 long as it was, but I think she's giving her honest
12 recollection, albeit incorrect with the phone records, that
13 that was how long the call was.

14 MR. GOLDSTEIN: May I respond?

15 THE COURT: No. I will hear your response in a
16 second, but what I'm trying to get at is this: First, and this
17 is addressed to the witness, did you receive three telephone
18 calls from the investigator?

19 THE WITNESS: Yes.

20 THE COURT: So not just this one that's reflected in
21 the phone records.

22 THE WITNESS: True.

23 THE COURT: Okay. And let me ask plaintiff's counsel,
24 show me which statements in her affidavit that you say she
25 admitted at her deposition were erroneous.

CA1FCIT3

Hawn - direct

1 MR. GOLDSTEIN: I believe, your Honor, when I asked
2 her --

3 THE COURT: Show me the place -- first I want to know
4 the place in the affidavit and then the admission in the
5 deposition.

6 MR. GOLDSTEIN: Very well. Your Honor, the place in
7 the affidavit is where she refers in paragraph 20 to the
8 last --

9 THE COURT: What paragraph?

10 MR. GOLDSTEIN: Paragraph 20, your Honor, paragraph 20
11 of the affidavit.

12 THE COURT: Yes?

13 MR. GOLDSTEIN: The last of our brief conversations.

14 THE COURT: Okay.

15 MR. GOLDSTEIN: She referred to all the conversations
16 as brief. I believe I asked her earlier if she described all
17 the conversations as brief.

18 THE COURT: And so is there anything other than the
19 reference -- then the use of the statement brief that you, that
20 she corrected at her deposition?

21 MR. GOLDSTEIN: Your Honor, there are other things
22 that she corrected.

23 THE COURT: What?

24 MR. GOLDSTEIN: Your Honor, I would have to go back,
25 because some of them are not of import to some of the

CA1FCIT3

Hawn - direct

1 allegations, but as well as her title. The other one that I
2 believe that she admitted was in fact inaccurate was she
3 discussed at paragraph 19 that she answered one substantive
4 question and later on in the deposition, your Honor, at page
5 196, line 6 through 14, where I believe it establishes that she
6 admitted that she answered another question other than the one
7 question which was referred to in her affidavit.

8 THE COURT: I don't see where you get that. Page 196.

9 MR. GOLDSTEIN: Sure, your Honor.

10 THE COURT: Line six.

11 "Q. Okay, so you did tell Mr. Keatly that you started on the
12 west coast, right?

13 "A. Yes.

14 "Q. So you did answer some of his questions, right?

15 "A. I might have answered that.

16 "Q. Okay, so that's one other question that you answered?

17 "A. Yes.

18 "Q. Okay, so we know at least two questions that you answered,
19 one regarding changing the numbers or cooking the books, as is
20 put in the declaration and now another question about where you
21 came from."

22 I do not regard that as substantive.

23 MR. GOLDSTEIN: Very well, I'll move on.

24 THE COURT: So I come back to the objection that
25 Ms. Hawn's counsel raised about the word numerous. And it does

CA1FCIT3

Hawn - direct

1 not appear from what I heard so far that there was more than
2 one correction of any materiality whatsoever which was, of
3 course, the one about the time. And even there, of course,
4 it's not because she's testified to a change in memory, it's
5 because she's testifying to an acceptance of the records
6 provided by plaintiff's counsel.

7 So maybe there are others. You haven't shown them to
8 me yet.

9 MR. GOLDSTEIN: Your Honor, if I could do it while
10 Mr. Hillebrecht is questioning, I'll identify for you the
11 various different things that were corrected on her affidavit.
12 If I could be given that opportunity.

13 THE COURT: Well, I'm concerned about this, because
14 I'm concerned as to whether this witness is easily led, being
15 frank. So you showed me a few minutes ago about -- I can't
16 find the page right now, but where she, where you had admitted,
17 she admitted to many numerous corrections or words to that
18 effect. I'm not sure that question had an adequate predicate.

19 (Continued next page)
20
21
22
23
24
25

Calkcit4

Hawn - direct

1 MR. GOLDSTEIN: Well, your Honor, I would ask I would
2 have an opportunity to point that out to you. I apologize, and
3 I'm not --

4 THE COURT: Very good. Move on.

5 MR. GOLDSTEIN: But I will do so after the
6 questioning, if you would give me the opportunity.

7 BY MR. GOLDSTEIN:

8 Q. Ms. Hawn, there is reference in your declaration or in your
9 affidavit to one question on paragraph 19 of your affidavit, to
10 which you provided a substantive response regarding cooking the
11 books. Are you with me in that paragraph?

12 A. Yes.

13 Q. And did you recall today answering one question, providing
14 a substantive response regarding cooking the books?

15 A. From who?

16 Q. A question that was posed to you by Mr. Keatly, the
17 investigator, that you're discussing here in paragraph 19 of
18 your affidavit?

19 THE COURT: He's saying, as you sit here today, do you
20 have a recollection of what Mr. Keatly asked you in that
21 regard, if anything?

22 THE WITNESS: A little bit.

23 Q. Tell me what you remember.

24 A. He asked if anyone had ever asked me if I changed numbers.

25 THE COURT: And what did you say?

Calkcit4

Hawn - direct

1 THE WITNESS: And I said yes, but that I did not.

2 THE COURT: So someone had asked you that before but
3 you had told that person you had not changed the numbers, yes?

4 THE WITNESS: Right.

5 THE COURT: Who is that person who had asked you that?

6 THE WITNESS: The business manager above me.

7 THE COURT: Named who?

8 THE WITNESS: The name of him?

9 THE COURT: Yes.

10 THE WITNESS: Steve ***Berglin.

11 THE COURT: Do you know why he asked that?

12 THE WITNESS: No, I don't.

13 THE COURT: Now, tell me a little bit more about what
14 your duties were during the period around 2009.

15 THE WITNESS: 2009? I didn't have much in the way of
16 responsibilities.

17 THE COURT: Well, did you work 9:00 to 5:00?

18 THE WITNESS: I worked 9:00 to 5:00, and I was just
19 doing special assignments, whatever my director wanted me to
20 do.

21 THE COURT: Prior to that 2008, when was the last time
22 before 2009 you had, if you will, a regular assignment?

23 THE WITNESS: The end of 2007 and the first few
24 months, three months maybe, of 2008.

25 THE COURT: And what was that?

Calkcit4

Hawn - direct

1 THE WITNESS: I was business manager on the IATI
2 program.

3 THE COURT: To be business manager on a program means
4 what?

5 THE WITNESS: You were responsible for the finance and
6 scheduling of the program.

7 THE COURT: So you were, if you will, on the money end
8 of things?

9 THE WITNESS: Yes, the scheduling.

10 THE COURT: And the scheduling. OK, very good.

11 Go ahead, Counsel.

12 BY MR. GOLDSTEIN:

13 Q. Ms. Hawn, did you ever discuss whether anyone asked you to
14 change the numbers, with counsel for defendants in this case?

15 A. Yes.

16 Q. And what did you tell them?

17 A. I started to tell them that I had been asked -- they asked
18 me if anyone ever asked me to change the numbers, and I said
19 yes.

20 Q. And what happened?

21 A. They were specifically looking for the years 2008 and 2009.

22 Q. What, if anything, did they say to you after, specifically
23 if you recall, after you told them that that you had been asked
24 to change the numbers?

25 A. I just told you, they were looking for 2008 and 2009, and I

Calkcit4

Hawn - direct

1 said no one asked me to change any numbers during that time
2 period.

3 THE COURT: Someone asked you to change numbers at an
4 earlier time?

5 THE WITNESS: Yes.

6 THE COURT: When?

7 THE WITNESS: 2004-'5 time frame.

8 THE COURT: OK. Go ahead, Counsel.

9 Did you do so?

10 THE WITNESS: No.

11 THE COURT: Was this person a superior of yours?

12 THE WITNESS: Yes.

13 THE COURT: Who?

14 THE WITNESS: Steve Berglin.

15 THE COURT: Oh, that's the conversation you referred
16 to?

17 THE WITNESS: Right.

18 THE COURT: OK.

19 BY MR. GOLDSTEIN:

20 Q. Ms. Hawn, let me refer, if you would, to your severance
21 agreement. It was previously marked in your deposition as Hawn
22 Exhibit 3.

23 Q. You worked at Lockheed for over 30 years, correct?

24 A. Correct.

25 Q. You can put it down.

Calkcit4

Hawn - direct

1 When you left, did you receive approximately \$78,000,
2 as reflected in the first page of the agreement?

3 A. Yes.

4 Q. And this agreement, did you want to consult with a lawyer
5 prior to signing it?

6 A. I did not consult with a lawyer.

7 Q. My question is a little different. Did you want to?

8 A. Yes.

9 Q. Were you able to?

10 A. No.

11 Q. Explain why you were not able to, please.

12 A. I received the agreement on -- I don't remember which day
13 it was, but I had to get the agreement back within five days,
14 and I could not get with my attorneys during that time period.

15 THE COURT: Did you ask for an extension of time?

16 THE WITNESS: I told my boss that my lawyers could not
17 see me until it was like the seventh day, and my boss said we
18 have to have this signed.

19 THE COURT: And who was your boss?

20 THE WITNESS: Dave Valore.

21 THE COURT: Dave?

22 THE WITNESS: Valore, V-a-l-o-r-e.

23 Q. Ms. Hawn, other than the things we discussed today, do you
24 remember speaking with Mr. Keatly about -- let me just start
25 over.

Calkcit4

Hawn - direct

1 Other than what you have discussed today, and what you
2 believe to have been a three- to four-minute conversation with
3 Mr. Keatly, is there anything else that you remember
4 specifically about that conversation?

5 A. No.

6 MR. GOLDSTEIN: That's all I have, your Honor.

7 THE COURT: All right. Defense counsel?

8 CROSS-EXAMINATION

9 BY MR. HILLBRECHT:

10 Q. Ms. Hawn, good afternoon. Do you still have the amended
11 complaint, the first thing his Honor started asking you about,
12 in front of you?

13 A. Is that -- yes.

14 Q. You do? Great.

15 Could you flip to page 7. Particularly in paragraph
16 24, the paragraph, I don't think a judge asked you about that.

17 THE COURT: Thank you for catching it.

18 A. OK.

19 Q. Look at paragraph 24, which reads -- it's the very last
20 sentence starting at the bottom of page 4 -- "CW2 had regular
21 interactions with Defendant Gooden and other business area
22 managers."

23 During 2008 or 2009, did you in fact have regular
24 interactions with Linda Gooden?

25 A. No.

calkcit4

Hawn - cross

1 Q. Did you have any interactions at all with Linda Gooden in
2 2008 and 2009?

3 A. No.

4 Q. Would you have known Linda Gooden if you saw her walking
5 down the hall?

6 A. No.

7 Q. Did Ms. Gooden in some other fashion instruct you to change
8 backlog numbers?

9 A. No.

10 MR. HILLBRECHT: Thanks very much. That's it, Judge.

11 THE COURT: Anything else?

12 MR. GOLDSTEIN: No, your Honor.

13 THE COURT: OK. Thank you very much. You may step
14 down.

15 (Witness excused)

16 THE COURT: Other than Mr. Keatly, do we have anyone
17 else?

18 MR. GOLDSTEIN: That's it, your Honor.

19 THE COURT: So I'm going to give you a ten-minute
20 break while I take another very short matter that I have to
21 take now, and then we will resume with his testimony in ten
22 minutes.

23 MR. GOLDSTEIN: Very well.

24 THE COURT: You can leave your stuff at the tables but
25 you'll need to vacate the tables.

calkcit4

1 MR. KARAM: Your Honor, may Ms. Hawn be excused?

2 THE COURT: Yes.

3 (Recess)

4 THE COURT: Please call your next witness.

5 MR. GOLDSTEIN: The plaintiffs call Mr. Ken Keatly.

6 KEN KEATLY,

7 called as a witness by the Plaintiff,

8 having been duly sworn, testified as follows:

9 THE DEPUTY CLERK: State your name and spell it slowly
10 for the record.

11 THE WITNESS: Ken Keatly, K-e-n K-e-a-t-l-y.

12 THE COURT: Counsel.

13 MR. GOLDSTEIN: Very well, your Honor.

14 DIRECT EXAMINATION

15 BY MR. GOLDSTEIN:

16 Q. Mr. Keatly, were you honorably discharged from the
17 U.S. Army?

18 A. That's correct, yes.

19 Q. Have you served as an investigator for a period of time?

20 A. Yes, I have.

21 Q. How long?

22 A. Almost 13 years.

23 Q. And have you conducted numerous investigations?

24 A. That's correct.

25 Q. I want to talk about the contact with certain witnesses in

calkcit4

Keatly - direct

1 this case.

2 Did you contact certain confidential witnesses in this
3 case, particularly Mr. Asbury, Ms. Hawn, Mr. Morrison,
4 Ms. Burns, and Mr. Parsons?

5 A. I did.

6 Q. And when you spoke to those people, did you speak to them
7 alone on the telephone or with another person?

8 A. I spoke with them alone on the phone.

9 THE COURT: Why?

10 THE WITNESS: Your Honor, it's the practice of our
11 firm, L.R. Hodges & Associates, to conduct these telephone
12 interviews individually, for one primary consideration, being
13 the logistical difficulty of having two investigators always
14 available when a witness is available, which is, often we're
15 often contacting them by way of a cold call where we don't know
16 if they will or will not be available. And also the
17 consideration is the cost factor that that entails for our firm
18 to pass that cost as a billable item to our client is something
19 we may not be able to pass along.

20 THE COURT: If I remember correctly, you take notes of
21 your conversations?

22 THE WITNESS: Correct.

23 THE COURT: You take them by hand or you type them as
24 you're listening, or how?

25 THE WITNESS: I take them by hand while I'm listening,

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Keatly - direct

1 your Honor.

2 THE COURT: Are you trained as a stenographer?

3 THE WITNESS: I am not, your Honor.

4 THE COURT: So, it may be that occasionally you make a
5 mistake?

6 THE WITNESS: Anything is possible, your Honor, yes.

7 THE COURT: Well, in your experience, have you ever
8 looked at your notes and said, oh, no, I got that wrong?

9 THE WITNESS: I'm trying to think of an example that
10 would answer your question precisely, your Honor, and I can't
11 think of an example that would -- there may be an occasion
12 where I couldn't read my handwriting or recollect exactly what
13 the witness said.

14 THE COURT: My point is, that by not having someone
15 else on the phone, don't you increase the possibility that
16 mistakes will be made?

17 THE WITNESS: I don't -- I can't say if the
18 possibility of mistakes being increased would arise by only
19 having one investigator on the phone.

20 THE COURT: Because you have a pin perfect memory?

21 THE WITNESS: Not because I have a pin perfect memory
22 but also because I have been in situations, I think, your
23 Honor, where there have been either other investigators or
24 attorneys present during an interview where I have also seen
25 where there might be a difference in recollection or a

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Keatly - direct

1 difference in notes that were taken. There was that
2 possibility too.

3 THE COURT: How soon after you have these
4 conversations do you prepare your report about what that
5 witness said?

6 THE WITNESS: I try to do it as timely as I can, often
7 starting the same day and sometimes the next day. There are
8 occasions where it might be a little longer but nearly -- as
9 quickly as I can after the interview has been conducted, your
10 Honor.

11 THE COURT: So, there again, depending on the amount
12 of time, there might be a possibility of a mistake, yes?

13 THE WITNESS: Anything is possible, your Honor, yes.

14 THE COURT: You say that as if you are not yourself,
15 from your experience, aware of such things?

16 THE WITNESS: I can't think of a particular example in
17 this setting now, your Honor, where I may have made -- where it
18 became known to me that I made a mistake in the notes that I
19 took and in the summary that I drafted, that that was not what
20 the witness said.

21 THE COURT: So, as far as your knowledge and
22 recollection is concerned, over the many years that you have
23 been an investigator, you've never made an mistake?

24 THE WITNESS: I'm not saying that, your Honor. I just
25 can't think of a specific example. It may have happened but I

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Keatly - direct

1 cannot think of such an example at this time.

2 THE COURT: Now, you talked about that you have
3 observed situations where there have been several witnesses to
4 a conversation and even shortly after the conversation they
5 have differing recollections, yes?

6 THE WITNESS: That's been my experience in the past.

7 THE COURT: Right. So you know from that, that even
8 the short-term recollection of the human memory is somewhat
9 fallible, yes?

10 THE WITNESS: I do think that the human memory is
11 fallible, your Honor. May I explain why I think there were
12 discrepancies in those instances?

13 THE COURT: Yes.

14 THE WITNESS: I think one of the reasons why there
15 were discrepancies in the example -- in the scenarios that I
16 was referring to would be, for instance, if one person had been
17 doing all of the questioning but had not been taking the notes
18 of the discussion, so that they were, you might say
19 free-associating while they were asking the questions but the
20 notetaker was taking the notes and there could have been a
21 divergence interest in what was asked and what was written
22 down.

23 THE COURT: Well, when you're writing down, you have
24 have to focus to some extent on what you're writing down, yes?

25 THE WITNESS: I would agree with that, your Honor.

calkcit4

Keatly - direct

1 THE COURT: So if the witness is continuing to talk
2 you might miss something the witness was saying?

3 THE WITNESS: That is possible, your Honor.

4 THE COURT: Now, have you ever asked a client whether
5 they would prefer to have two people on the phone?

6 THE WITNESS: I have not asked a client if they would
7 prefer to have two people on the phone.

8 THE COURT: So you're saying, if I understood what you
9 were saying before, there were two reasons you don't do it; one
10 is that since you don't know whether a witness is going to
11 respond to a cold call, you don't want to have to have two
12 people on the phone every time you make a call, and, second was
13 the cost factor, yes?

14 THE WITNESS: That's correct, your Honor.

15 THE COURT: So, as to the latter, though, it would
16 presumably be a question for the client, right?

17 THE WITNESS: It could be a question for the client
18 and also for the president of the firm to consider with those
19 clients.

20 THE COURT: A large corporation might well have said,
21 if given the option, "we'd rather have two people on the phone
22 even though it's going to double our cost or maybe triple our
23 costs," in my hypothetical, "because it'll give us much greater
24 security of accuracy"?

25 THE WITNESS: I understand your question, your Honor,

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Keatly - direct

1 and I can't disagree with it. It's a valid hypothetical to
2 pose.

3 THE COURT: All right, Counsel, go ahead.

4 BY MR. GOLDSTEIN:

5 Q. Mr. Keatly, when you contacted these witnesses, could you
6 describe for the judge, if you did, the general procedure that
7 you went through or your introductions that you made to them,
8 please?

9 A. Yes, I can. Your Honor, at the outset of the calls, I
10 introduced myself by my name, the identity of my firm,
11 explaining that we were a private investigation firm, that we
12 had been hired by the law firms representing the shareholders
13 of Lockheed Martin who were pursuing a shareholder class action
14 complaint against the company and certain individual defendants
15 who had been named, and that the purpose of my call was to try
16 to develop additional information to support the allegations in
17 the complaint.

18 THE COURT: Now --

19 Q. Did you --

20 THE COURT: Excuse me.

21 -- did any of the witnesses in this investigation ask
22 what's a class action or indicate some follow-up question about
23 the litigation?

24 THE WITNESS: To my recollection, none of the
25 witnesses asked, for instance, what is a class action. They

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Keatly - direct

1 seemed to understand.

2 THE COURT: All right. Go ahead.

3 Q. During the course of your introduction or during the course
4 of your interview, do you ever assure the witnesses that the
5 information they provide to you will remain confidential?

6 A. I do not.

7 Q. Can you explain what, if anything, you say in that regard?

8 A. I would explain to the witnesses regarding how information
9 that they impart is going to be used, is that typically if it
10 were to be used in a pleading, the name of the individual would
11 not be cited but that there would be some description of the
12 individual's job title and job duties; having said that,
13 though, if we were successful in overcoming the motion to
14 dismiss, that I couldn't guarantee to those individuals that
15 their names might not be revealed later as the litigation
16 progresses. It was also possible that further involvement
17 would be obliged of them as the case progresses in discovery.

18 Q. When you actually reach a witness, what, if anything, do
19 you do with regard to the length of the call?

20 A. I'm not sure I understand your question.

21 Q. Let me ask more pointedly: Do you keep a phone log in
22 order to record the length of the time you speak to a certain
23 witness?

24 A. I do.

25 Q. What's the purpose of that?

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Keatly - direct

1 A. The purpose of the phone call -- of the phone log is to
2 make sure that I have a record indicating when the call took
3 place, if I had previously attempted the witness -- to also
4 know the previous contact attempts, and generally to be able to
5 keep track of that telephonic activity.

6 THE COURT: So let me show you what was marked as
7 Exhibit No. 4 at the deposition. Is that your phone bill?

8 THE WITNESS: I believe it is our phone bill, your
9 Honor, yes.

10 THE COURT: So, is that something you had saved, or
11 did you have to obtain it again, so to speak, for the purposes
12 of these depositions?

13 THE WITNESS: Your Honor, I understand that these
14 TelePacific bills, some of them had to be obtained in order to
15 get activity of incoming calls received to our firm.

16 THE COURT: And who obtained those?

17 THE WITNESS: These were obtained by our office
18 manager, Susan Bowen.

19 THE COURT: How did she go about doing that?

20 THE WITNESS: I'm not fully informed of every step she
21 took, but I know it was somewhat of an arduous undertaking, to
22 get some of these records from TelePacific.

23 THE COURT: Let me have that back.

24 So, Counsel, just so that I don't forget it, these
25 phone records are obviously a very material part of the

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Keatly - direct

1 evidence in this hearing. If for any reason -- and I have no
2 reason to believe this is at all a problem, but if for any
3 reason either counsel feels the need to get directly from the
4 phone company the relevant records, I will be happy to sign a
5 court subpoena and make it a court subpoena that is returnable
6 on very short notice, enforceable by contempt of court, so we
7 don't have to wait around. I know phone companies typically
8 receive many requests and they give priority to the squeaky
9 wheel, so I'm prepared to squeak.

10 Anyway, go ahead.

11 BY MR. GOLDSTEIN:

12 Q. Let me show you --

13 MR. GOLDSTEIN: If I may approach, your Honor.

14 Q. -- what was marked as Exhibit 1 to your deposition,
15 Mr. Keatly. Do you recognize -- actually, I gave you the wrong
16 thing.

17 MR. GOLDSTEIN: My apologies. Sorry, your Honor.

18 Q. Let me ask you, did in fact you provide a phone log in this
19 case?

20 A. I'm sorry, again, I didn't hear your question.

21 Q. I believe I did give you the right exhibit. Do you
22 recognize this document?

23 A. I do.

24 Q. What is it?

25 A. It's a redacted copy of my phone log.

calkcit4

Keatly - direct

1 Q. And is this something that you do in everybody single case?

2 A. It's my practice to do it in every case.

3 Q. And, for example, with respect to -- let's look at a couple
4 of the witnesses. Let's turn to the page, the second page,
5 there's an entry for Mr. Asbury. Explain to me what those two
6 entries of the page ending 484 reflect and how those were
7 entered.

8 MR. GOLDSTEIN: And if we can pull them up on the
9 screen for ease, highlighting the ones for Mr. Asbury at the
10 bottom of the page.

11 A. The first entry, where the time is six minutes, that's
12 where I had attempted to call him at the time we had arranged,
13 following an earlier preliminary discussion a couple of days
14 prior. He had not been available, and I left a message with
15 his receptionist, that I was trying to reach him for our
16 scheduled discussion.

17 Q. What does the second entry show, the one that has 50
18 minutes, two calls? What does that reflect?

19 A. The second entry is reflecting that for a total of 50
20 minutes there were two calls. The two calls reflect that one
21 of the calls was a dropped and then at that time -- but the
22 substance was that I had conducted the scheduled interview.

23 Q. Did Mr. Asbury call you or did you call him, with respect
24 to those two calls that are entered in the second line?

25 A. He had called me following the message that I had left for

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Keatly - direct

1 him with his receptionist.

2 Q. The call dropped and then he called you back?

3 A. That's correct.

4 Q. With regard to Mr. Asbury, did you discuss substantive
5 information about his experience at Lockheed Martin with him
6 during the initial 15-minute callback and then the following 36
7 minutes?

8 A. That's correct.

9 Q. And do you believe that what you discussed with
10 Mr. Asbury -- did you try, to the best of your ability, to
11 document what he said to you, in your notes?

12 A. I did.

13 Q. And before we get to your notes, your memoranda are
14 prepared sometime after your notes, correct?

15 A. That's correct.

16 Q. So, looking at your notes, do you believe that's the
17 closest-in-time document that would reflect any conversations
18 you had with Mr. Asbury?

19 A. The notes would be the closest in time, yes.

20 Q. And those were taken after or during the two calls that
21 comprised 50 minutes with Mr. Asbury?

22 A. They were taken during the two calls.

23 Q. And if I could, let me hand you your notes. But let me is
24 ask you before we get there: Do you recall giving a deposition
25 in this matter?

calkcit4

Keatly - direct

1 A. I do.

2 Q. Do you recall that we went over, and I will represent to
3 you, over 40 items that you believe the witnesses told you and
4 that we then asked you to identify in your notes?

5 A. I do.

6 MR. GOLDSTEIN: And I just want to put that on the
7 record, that in fact that is identified, your Honor, at
8 Exhibit 37 for the Court, each place where Mr. Keatly's notes
9 reflect what the witness told him as well as his testimony,
10 that reflects that. I'd like to bring out a couple of things,
11 your Honor, but understanding that we want to move this along,
12 I'd just like to bring out a couple things with each witness.
13 And if the Court wants to hear more, please let me know.

14 THE COURT: 37?

15 MR. GOLDSTEIN: Yes, your Honor.

16 And what it is, it lists the allegation, Mr. Keatly's
17 memo, where in Mr. Keatly's notes it's reflected, and then
18 where in his deposition he discussed it. So we went through
19 over 40 items during his deposition. And I don't want to
20 burden the Court with 40 items. I'd just like to -- I think
21 it's worth pulling out a few perhaps and then moving on.

22 BY MR. GOLDSTEIN:

23 Q. So, Mr. Keatly, did you discuss during the the phone call
24 with Mr. Asbury whether or not in his view, he believed that
25 they could make their goal for the year?

calkcit4

Keatly - direct

1 A. We did discuss that.

2 Q. What did he say to you?

3 A. He said that it was not going to be possible to meet the
4 goal for the year or words to that effect.

5 Q. Did he tell you when he believed that?

6 A. Yes, he did.

7 Q. What did he say?

8 A. I believe that he said that and that it was in February of
9 the year that they knew they were going to be able to make the
10 numbers.

11 Q. And did he tell you whether or not he told anybody his view
12 that as of February '09 he didn't believe that they were going
13 to make the year numbers?

14 A. He did.

15 Q. And who did he tell you that he informed?

16 A. I believe he informed Linda Gooden.

17 Q. And did you discuss with Mr. Asbury anything regarding the
18 word "arbitrary" in relation to growth targets? Did he discuss
19 anything like that with you?

20 A. Yes.

21 Q. What did he say?

22 A. I believe he said words to the effect that the growth
23 targets for the year were arbitrary.

24 Q. Did he make any discussion about the words "top-down" or
25 "bottoms-up"?

calkcit4

Keatly - direct

1 A. Yes, he did.

2 Q. And what did he say?

3 A. I believe he said words to the effect that the forecast was
4 a top-down process instead of a bottoms-up process.

5 Q. Was there any discussion with Mr. Asbury -- did he tell you
6 anything in the context of saying that he didn't think he could
7 make the yearlong plan? Did he give you any type of figures,
8 an example, anything like that?

9 A. Yes, he did.

10 Q. And what did he say?

11 A. He said that the targets that were set were something like
12 17 percent EBITDA growth; whereas, it would have been more
13 realistic to think of, say, 14 percent, although the numbers
14 that he offered were examples, not the exact numbers.

15 Q. Let me approach you --

16 MR. GOLDSTEIN: Your Honor, if that's OK.

17 Q. -- and provide you with a copy of your notes. These were
18 previously marked as Exhibit 4 to the Keatly deposition. Let
19 me get a copy for your Honor.

20 MR. GOLDSTEIN: I stand corrected. Your Honor,
21 actually, this is Exhibit 16 to Mr. Keatly's deposition, which
22 are his notes that he took but also the summary judgment
23 record.

24 THE COURT: Yes.

25 Q. Mr. Keatly, do you recognize what I have just handed you?

calkcit4

Keatly - direct

1 A. I do.

2 Q. What is it?

3 A. They are the notes that I took during the interviews with
4 Ken Asbury on September 22nd, 2011.

5 Q. Did you make up these notes out of whole thin air?

6 A. I did not.

7 Q. Did you take these, what appear to be almost ten or eleven
8 pages of notes during that 50-minute call?

9 A. I did.

10 Q. And there are -- refer, if you would, to the second page.
11 There are kind of lines going everywhere, and very, very
12 difficult in parts to read. Can you explain why your notes
13 that you took during the conversation with Mr. Asbury have this
14 kind of flow or lack thereof?

15 A. Well, I can try. The lines between the different segments
16 of handwritten notes are indicating the sequence of statements
17 that were being made. And the way the conversation had been
18 progressing to that point had -- for some reason, that was how
19 I ended up writing it, linking these points in that way,
20 instead of trying to write more left to right, in a linear
21 manner.

22 Q. The items that I asked you whether Mr. Asbury discussed
23 with you, with respect to knowing in February of '09 that he
24 couldn't make the yearlong plan and telling Ms. Gooden that
25 they couldn't make the plan, I refer you to page 498. Did you

calkcit4

Keatly - direct

1 identify those at your deposition as being contained in your
2 notes as No. 38?

3 A. I did.

4 Q. And did you also identify as No. 37 a portion of your notes
5 that reflected the conversation with Mr. Asbury? And for
6 reference, that's page 15497 and 15498.

7 A. Yes.

8 Q. And do you in fact you see on either of those pages any
9 reference to the fact that you discussed with Mr. Asbury that
10 the goals were arbitrary?

11 A. I do.

12 Q. And if you could identify it and read just into the record
13 what your notes say?

14 A. It's the item circled No. 37 on page ending 5497, and it
15 begins saying, "Civil, not of plan, maybe short on orders. We
16 were on plan first quarter '09, then second quarter '09 no
17 hiccups, and on plan for third quarter '09. Our problem was
18 full year due to arbitrary growth."

19 Q. Do you see on that page any discussion of the reference of
20 time of February of '09 in regards to what Mr. Asbury told you
21 whether or not he could make the plan?

22 A. I do.

23 Q. If you could identify on page 15497, at least just point to
24 it, if you could, and read into the record what it says.

25 A. That's at the bottom of the page where a star is there.

calkcit4

Keatly - direct

1 And it says, "When looked in February '09, we told we cannot
2 make year."

3 Q. And is there anything on the next page that further
4 reflects the conversation you had with Mr. Asbury regarding in
5 February of '09 looking and not believing they could make the
6 year?

7 A. There is.

8 Q. If you could read it into the record, what your notes
9 reflect regarding that conversation.

10 A. "Difference was 17 percent, some fairly large number, to 14
11 growth. Linda's response: You know the plan delivery."

12 Q. And do you have an understanding of what that last portion,
13 "Linda's response: You know the plan delivery," what that
14 referred to? Does that refresh your memory with regard to
15 anything in that conversation with Mr. Asbury?

16 A. I think, yes.

17 Q. What did Mr. Asbury tell you in that regard?

18 A. It meant that the plan had to be committed to regardless of
19 its feasibility.

20 Q. Does that indicate to you, one way or another, whether you
21 believe Mr. Asbury told you that in February of '09 he told
22 Ms. Gooden that he didn't believe that he could make the plan?

23 A. I'm sorry, could you repeat the question? I'm not sure I
24 understood.

25 Q. Did Mr. Asbury discuss with you whether or not he told

calkcit4

Keatly - direct

1 Ms. Gooden in February of '09 that he did not believe that the
2 division could make the plan?

3 A. That is correct, yes.

4 Q. And what, in your notes, reflect that he told Ms. Gooden?

5 A. The flow from the prior page, where the star is, the
6 reference to February 2009, that "we told we cannot make the
7 year" and on the following page, "Linda's response: You know
8 the plan delivery."

9 Q. How much confidence do you have, given that it's in your
10 notes, that he told you that?

11 MR. HILLBRECHT: Objection.

12 THE COURT: Sustained.

13 MR. GOLDSTEIN: OK, let me withdraw it.

14 Q. Do you recall whether or not you ever discussed with
15 Mr. Asbury, during that 50-minute call, the topics of red
16 program reviews?

17 A. I do.

18 Q. And did Mr. Asbury tell you when those program reviews took
19 place?

20 A. I think so.

21 Q. What did he say?

22 A. Without referring to my notes, I believe he said they
23 occurred on a particular day of the week, and he provided some
24 additional details regarding them.

25 Q. And do you recall what day of the week and what time?

calkcit4

Keatly - direct

1 A. Without referring to my notes, I think he said it was
2 Tuesday, and I think he said it was in the morning.

3 Q. Let's take a look, if you would, in your notes to see if
4 that will refresh your recollection as to what he said. Let's
5 take a look at your notes, page 1499, marked at No. 39. Please
6 read those out loud and then let me know if they refresh your
7 memory as to what he said.

8 A. "Red program, oh, yeah, every Tuesday afternoon." And, "No
9 one from corp. in spring. Corp. came in later for Sentinel."

10 Q. As a general practice, do you write down in your memos only
11 things that you believe would be helpful to your clients?

12 A. No.

13 Q. Why not?

14 A. I try to take as accurate and correct notes as I can of the
15 discussion that took place.

16 Q. Whether it helps or hurts your client?

17 MR. HILLBRECHT: Objection to form.

18 THE COURT: I'm sorry, I didn't hear the question.

19 Q. Is that your practice whether it helps or hurts your
20 client?

21 THE COURT: I'm sorry, was there an objection?

22 MR. HILLBRECHT: It's a slightly different question so
23 I have no objection.

24 MR. GOLDSTEIN: I rephrased to accommodate the
25 objection.

calkcit4

Keatly - direct

1 Q. Is it your practice to try and record as accurately as
2 possible what the witness said, irrespective of whether it
3 helps or hurts your client?

4 A. Yes, it is.

5 Q. And was there a discussion with Mr. Asbury regarding
6 programs?

7 A. I think so, yes.

8 Q. And did you have an understanding, at the time that you
9 spoke with Mr. Asbury, whether one of plaintiff's allegations
10 was in fact going to be that there were problems with the
11 programs? Did you have that understanding?

12 A. Yes.

13 Q. And what did Mr. Asbury say to you with regard to programs?

14 A. He said words to the effect of, don't go down the program
15 road, that the programs were not what was really the problem
16 for IS&GS.

17 Q. And did you put that in your notes?

18 A. I did.

19 Q. Did you put that in your subsequent memoranda?

20 A. I did.

21 Q. And did you put it in there irrespective of whether it
22 helped our case or not, correct?

23 A. That is correct.

24 Q. And I'd ask you just take a look, if you would, on page
25 492. Was there a discussion there -- and I see it reads,

calkcit4

Keatly - direct

1 "Civil on plan, don't go down program road, real issue is
2 around -- is something planning." Do you see that?

3 A. I do.

4 Q. Can you describe what that reflects?

5 A. It reflects what we were just discussing, that civil --
6 what was on plan, the preceding line is as of 2Q, "civil was on
7 plan, don't go down program" and the word "road" is not there
8 but it was, "don't go down the program road, real issue is
9 around planning."

10 Q. When he said the real issue is around planning, what was he
11 referring to?

12 A. I understood him to be talking about the forecast for the
13 division's performance.

14 Q. And was it your understanding that he was referring to the
15 forecast he told you in February of '09 that he didn't believe
16 he could make?

17 A. Well, he made these comments that we're looking at here
18 before he made the comments about February '09, but I
19 understand them to be the same.

20 Q. Very well.

21 Did you also conduct an interview with Pamela Hawn?

22 A. I did.

23 Q. And did you follow your practice of documenting in your
24 call log how long you spoke to Ms. Hawn for?

25 A. I did.

calkcit4

Keatly - direct

1 Q. And could you identify for us what page and what your call
2 log reflects regarding your conversation with Ms. Pamela Hawn?

3 A. The call with Pamela Hawn can be found on the page ending
4 5486, and it indicates that an interview of 65 minutes took
5 place.

6 MR. GOLDSTEIN: May I approach, your Honor?

7 THE COURT: Yes.

8 Q. Mr. Keatly, I'm handing you what's been previously marked
9 as Exhibit 7 in your deposition, a copy of your handwritten
10 notes from Ms. Hawn.

11 MR. GOLDSTEIN: A copy to you, your Honor.

12 Q. Do you recognize those?

13 A. I do.

14 Q. What are they?

15 A. They're the handwritten notes that I took during the
16 telephone interview of Pamela Hawn on September 29th, 2011.

17 Q. And did you make these notes up?

18 A. I did not.

19 Q. They're, I believe, 14 pages long. Were you writing the
20 whole time when you spoke to Ms. Hawn?

21 A. I think so, yes.

22 Q. Now, with regard to Ms. Hawn, had anybody provided you with
23 her name prior to --

24 THE COURT: Do you know when you made the squiggle on
25 page 1?

calkcit4

Keatly - direct

1 THE WITNESS: That, I don't have a clear recollection
2 of, where I made the squiggle, but it's not the only one you're
3 likely to see, your Honor.

4 THE COURT: I can see that, turning the pages.

5 Do I understand it that the circles with the numbers
6 were done later? Yes?

7 MR. GOLDSTEIN: I'm sorry, your Honor? Yes. The way
8 I went through the --

9 THE COURT: I just want to be sure I understood that.

10 MR. GOLDSTEIN: The purpose was because Mr. Keatly's
11 notes are sometimes hard to read, and to give the Court a
12 roadmap at summary judgment.

13 Q. Mr. Keatly, had you --

14 THE COURT: My law clerks will tell you that his
15 writing is infinitely clearer than the writing they regularly
16 receive to the Court.

17 Q. Did you get Ms. Hawn's name as a reference from anybody who
18 thought you might want to speak to her?

19 A. I did.

20 Q. Who was that?

21 A. It was from Karen Nimmins.

22 Q. What did Ms. Nimmins say?

23 A. Nimmins had suggested that I speak with two additional
24 subjects who might have knowledge potentially relevant to the
25 litigation.

calkcit4

Keatly - direct

1 MR. GOLDSTEIN: Your Honor, again, just for the
2 Court's record, Exhibit 32 -- I apologize, 31 --

3 THE COURT: While you're looking, I have a question
4 for the witness.

5 MR. GOLDSTEIN: Sure.

6 THE COURT: Were you aware of, or did any of the
7 witnesses you talked with make reference to, severance
8 agreements that a number of these folks had with Lockheed
9 Martin?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: So you knew that, at least in some cases,
12 if they said things that could be viewed as disparaging to the
13 company, that they might be in breach, or be threatened with
14 being in breach, of their reference agreement?

15 THE WITNESS: I was not seeking any witness to simply
16 make disparaging comments --

17 THE COURT: No, no. I'm just asking, were you aware
18 of that provision of the severance agreement?

19 THE WITNESS: I was not aware that the severance
20 agreement included a specific provision to disparagement.

21 THE COURT: Did you ever see the severance agreement?

22 THE WITNESS: I did not, your Honor.

23 THE COURT: Among the witnesses you talked to, did any
24 of them express a concern regarding the severance agreement?

25 THE WITNESS: Yes, they did, your Honor.

calkcit4

Keatly - direct

1 THE COURT: Can you remember any of those
2 conversations?

3 THE WITNESS: Yes, your Honor. The one that I would
4 refer to first was Mr. Asbury.

5 THE COURT: What did he say, as best you can recall?

6 THE WITNESS: He had said words to the effect that
7 when he had left Lockheed, he had signed some kind of an
8 agreement that was -- I think he used the phrase "so Latin with
9 boilerplate," that he felt it probably would restrict him from
10 speaking, although he hadn't gone through to actually see what
11 it said.

12 THE COURT: What did you say?

13 THE WITNESS: I said that I was not trying to
14 encourage him or induce him to violate any kind of an agreement
15 that he may have committed to with Lockheed Martin, that it was
16 also not my intention in any conversation that we would have to
17 intentionally knowingly solicit confidential or privileged or
18 proprietary information or the information that might be
19 subject to government security restrictions, but with that
20 said, would there be a possibility we might still be able to
21 have a conversation that was not violative of the agreement.

22 THE COURT: Well, many of your questions, given in the
23 lawsuit, were directed at information about what the employees
24 of the company had discussed among themselves on a confidential
25 basis that might be different from, or put the lie to,

calkcit4

Keatly - direct

1 statements that were being made publicly, yes?

2 THE WITNESS: I think that is yes, your Honor.

3 THE COURT: So, didn't you know that you were, in that
4 sense, soliciting confidential information?

5 THE WITNESS: Well, as I understood your question,
6 your Honor, and as I answered it, I knew that the word -- you
7 had used the word "confidential" in there. I did not want the
8 witnesses to reveal to me information that they believed was
9 confidential and improper for them to impart.

10 THE COURT: How could they supply you with the
11 information that you knew your client wanted to ascertain
12 without supplying you with confidential information?

13 THE WITNESS: I think, your Honor, that I did not know
14 or have reason to conclude that that information necessarily
15 had to be confidential even if it had not been publicly
16 disclosed by the company.

17 THE COURT: What's your definition of confidential?

18 THE WITNESS: I would say that confidential
19 information has been designated by the company presumably in
20 some way to where the recipient of it would know that it is
21 confidential and that it is a document that's been stamped
22 confidential perhaps.

23 THE COURT: So, for example, you're familiar with the
24 fact that because of prohibitions against insider trading, for
25 example, that most companies have prohibitions against

calkcit4

Keatly - direct

1 employees disclosing internal financial information that is not
2 disclosed to the public, yes?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: But wasn't some of the information you
5 were seeking to obtain financial information that had not been
6 disclosed to the public?

7 THE WITNESS: I think the answer is correct, your
8 Honor, because that was the substance of the litigation, which
9 was that shareholders had not been made privy to information
10 which should have been disclosed publicly.

11 THE COURT: I understand totally why you would want
12 the information and arguably why it might even be in the public
13 interest to have that information revealed. What I'm wondering
14 is, how could you not suppose that the providing of that
15 information wouldn't be a violation of the agreement that
16 people like Mr. Asbury had signed with their employers?

17 THE WITNESS: I think, your Honor, that I would also
18 say to -- that the witness is in a better position to know what
19 was confidential and/or proprietary and/or privileged
20 information that that he shouldn't impart. I'm not necessarily
21 in a position to make that determination of what is, which is
22 why I would say it's not my intention to knowingly ask for it.
23 If they don't want to answer the question or are uncomfortable,
24 they certainly are under no obligation to do so.

25 THE COURT: All right, go ahead, Counsel.

calkcit4

Keatly - direct

1 BY MR. GOLDSTEIN:

2 Q. Mr. Keatly, on that point, after your call with Mr. Asbury,
3 did you ask him whether he was comfortable with the information
4 he had given you and whether he had any concerns about
5 imparting the information?

6 A. I did.

7 Q. And what did you ask him?

8 A. Well, I noted to him that we had in fact had a lengthy
9 discussion in spite of his initial reluctance to speak. And I
10 asked him if he was indeed OK with what he had shared. And he
11 responded affirmatively, that he did not feel -- that, one,
12 that he was comfortable with what he had shared and that he
13 didn't feel he had imparted anything that was of a confidential
14 or otherwise sensitive nature.

15 Q. When did you do that, at the conclusion of the interview?

16 A. At the conclusion of the interview.

17 Q. And why?

18 A. Because, like I said, we had ended up having a conversation
19 in spite of his earlier reluctance, and I wanted to make sure
20 that in fact he was comfortable with what he had imparted and
21 that he was not imposing any restrictions on what he shared.

22 Q. Do you believe that you made such a notation in your notes
23 to reflect that discussion with Mr. Asbury or whether he had
24 any concerns about the information that he gave you?

25 A. I may have.

CA1FCIT5

Keatly - direct

1 Q. Let me refer you to page 15500. Actually, that must be an
2 error in the transcript. Let me identify it for you. Look for
3 number 47.

4 THE COURT: No, there is a page 15500.

5 MR. GOLDSTEIN: There is, your Honor. I'm looking at
6 the wrong thing. Thank you for pointing it out.

7 Q. If you could, Mr. Keatly, read for the record what it says
8 regarding your conversation with Mr. Asbury.

9 A. "Don't think said confidential or priv." That's shorthand
10 for privilege.

11 Q. Thank you very much. And did you do the same with any
12 other witness at the end of any conversation?

13 A. I did. I may or may not have always notated it.

14 Q. Very well. With regard to Ms. Hawn, I want to focus in on,
15 did Ms. Hawn discuss with you the financial goals for IS&GS?

16 A. Yes, she did.

17 Q. And did she discuss with you whether or not she had
18 knowledge as to whether or not at the beginning of the year
19 they could make the numbers?

20 A. Yes.

21 Q. And what did she say?

22 A. I believe she said words to the effect that it was known
23 internally that the forecast for the year could not be
24 achieved, but that the shareholders of Lockheed Martin were not
25 aware of that.

CA1FCIT5

Keatly - direct

1 Q. And you believe that that's reflected in your notes?

2 A. Yes.

3 Q. Refer you to page 522 of the notes. Could you identify and
4 read to the Court what you wrote when you spoke to Ms. Hawn
5 regarding making the numbers?

6 A. Which number?

7 Q. I'm sorry. It's at 518.

8 A. I think we're on the wrong page.

9 Q. 15518. I'll refresh your recollection, see if there's
10 anything on that page that reflects that conversation.

11 THE COURT: We're now in that second group of notes
12 that I gave you, the ones that begin 15516.

13 THE WITNESS: I see it now.

14 THE COURT: All right. Do you want to read that into
15 the record?

16 THE WITNESS: Sure. "Knew in beginning of 2009 won't
17 make numbers. Linda told by people internally we know it, but
18 shareholders didn't."

19 Q. Did you also discuss --

20 THE COURT: Now, let me ask you a question. When a
21 witness you're talking to would say something like Linda was
22 told by people initially, etc., would you ask the witness how
23 do you know that?

24 THE WITNESS: Your Honor, I would try to ask that if
25 the opportunity is there, given the context of the interview.

CA1FCIT5

Keatly - direct

1 It's not always possible within the context of the interview to
2 ask that question, given the nature of the flow, and that was
3 also a case here with Ms. Hawn.

4 THE COURT: So the, if a confidential witness says to
5 you defendant X, they wouldn't know it was a defendant yet, but
6 Miss X was told this, that and the other thing and never
7 volunteers how the witness knows that, it may be because the
8 witness is talking and you don't want to interrupt or because
9 you don't want to chill the conversation or whatever that you
10 will never find out during that conversation what the witness'
11 basis for those allegations are, true?

12 THE WITNESS: I think that's true, your Honor.

13 THE COURT: So I have I guess a legal question that
14 counsel may want to address at some point, which is if an
15 allegation is made in a complaint, it may be a fairly specific
16 allegation, that is based on a statement made by a confidential
17 witness that plaintiff's counsel has no way of knowing whether
18 it was hearsay or of personal knowledge, what weight, if any,
19 should that be given in the Court's evaluation of the adequacy
20 of the complaint? So you don't have to answer that now. I'm
21 just throwing that out as something that may be an issue in
22 this case. So to take an extreme example, if one called a very
23 disgruntled former employee or one called someone who was of a
24 conspiratorial or paranoid cast of mind, the latter being
25 prominent among people who write letters to the Court, and they

CA1FCIT5

Keatly - direct

1 go on and on about how president Jones knew this and that and
2 the other thing and conspired with vice president Smith to do
3 X, Y and Z, none of which are impossible on their face, but the
4 witness never explains how he or she knows all this, I have a
5 real question in my mind as to what weight in that fairly
6 extreme hypothetical should be given in evaluating the
7 sufficiency of the complaint and I'm not sure where I come out
8 on that but I raise it as an issue that may need to be raised
9 in this case in a more subtle situation.

10 So, continue.

11 BY MR. GOLDSTEIN:

12 Q. With regard to Ms. Hawn, did she discuss with you at all
13 whether or not there is anything called a tracking line?

14 A. Yes, she did.

15 Q. What did she say?

16 A. She said that there was some kind of a tracking line to
17 track I think the performance of the division.

18 Q. Was there any discussion of a president's tracking line?

19 A. Yes.

20 Q. What did she say?

21 A. She said there is also a parallel president's line which
22 provided an alternative way of looking at the performance of
23 the quarter, I believe, words to that effect.

24 Q. Is there any way for you to determine prior to speaking to
25 her whether or not Lockheed Martin maintained a president's

CA1FCIT5

Keatly - direct

1 tracking line?

2 A. There was not.

3 Q. Did you understand that to be internal information? I'll
4 rephrase it, something that was not in the public record?

5 A. It was information that I had available to me.

6 Q. Did you also discuss with Ms. Hawn the topic of
7 underbidding?

8 A. I did.

9 Q. What did she say in that regard?

10 A. I believe she said that the IS&GS program was known for
11 deliberately underbidding on programs.

12 Q. Did she discuss at all any type of, the term cost overruns?

13 A. I think so, yes.

14 Q. What did she say in that regard?

15 A. I think she said that that would be the consequence of
16 underbidding on programs is that they would use all in cost
17 overruns.

18 Q. I refer you to page 521 in your notes. Is there anything
19 in your notes there that reflect your conversation with her
20 regarding underbidding? I apologize, 518. That's Keatly
21 Exhibit 7.

22 A. Yes.

23 Q. Could you advise me or read into the record what your
24 conversation was with Ms. Hawn regarding cost overruns?

25 A. Deliberately underbid. Yes. What frustrated her

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1 deliberately lowballing knowing we couldn't do and then overrun
2 like crazy. She would not do it. I think the word is
3 arbitrarily lied to customers.

4 THE COURT: So let me ask you about the first part of
5 that. Does the word "yes" reflect a response to a question
6 from you?

7 THE WITNESS: It could, your Honor. I'm not positive,
8 but it could.

9 THE COURT: So, for example, could you have said
10 something like we've heard that there was deliberate
11 underbidding, do you know whether that is right or wrong, or
12 words to that effect, and she said, yes, it's right. I mean,
13 is that a plausible scenario of how this conversation might
14 have developed?

15 THE WITNESS: It's possible that the conversation may
16 have included questions that I was asking on specific topics
17 like underbidding, and if she had any awareness of
18 underbidding.

19 BY MR. GOLDSTEIN:

20 Q. When you discussed with her underbidding, was there a
21 discussion at all regarding firing experienced workers and
22 hiring inexperienced workers?

23 A. Yes.

24 Q. And what did she say in that regard?

25 A. I think she said in order to cut costs they had fired a

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1 higher pay grade of worker and replaced them with a lower pay
2 grade of worker.

3 Q. Did she provide you with an example of what the pay rates
4 might be?

5 THE COURT: Hang on. I have an important conversation
6 with the attorney Leonard Deitz.

7 (Pause)

8 THE COURT: Okay.

9 Q. Did she provide you actually an example of what the labor
10 rates might be?

11 A. Yes.

12 Q. What did she say?

13 A. I think she said that the highest labor rates that were
14 eliminated were about \$60 an hour and the lower rate may be \$22
15 an hour.

16 Q. Did you have labor rates in mind and provide them to her
17 and say we've heard \$60 or 22 and confirm that, or was that
18 independent information that she gave you that you would be
19 hearing for the first time?

20 A. It was the latter. It was independent information that I
21 was hearing for the first time.

22 Q. And you believe that that conversation as well as the labor
23 rate example that we just discussed is also in your notes,
24 correct?

25 A. I do.

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1 MR. GOLDSTEIN: Your Honor, I think just for purposes
2 of time I just would point the Court again to Exhibit 37 where
3 there's numerous examples. I don't want to quibble.

4 THE COURT: I'm getting the general idea, so I think
5 we can move along.

6 MR. GOLDSTEIN: And I just want to point out, there's
7 numerous examples with respect to each witness, your Honor,
8 that's elucidated for you there. If I could just have one
9 moment to conclude and then I'll be finished here.

10 THE COURT: Yes.

11 (Pause)

12 MR. GOLDSTEIN: Thank you, Mr. Keatly. That's all I
13 have. Thank you.

14 THE COURT: Cross-examination.

15 MR. HILLEBRECHT: May I, your Honor?

16 THE COURT: Please.

17 CROSS-EXAMINATION

18 BY MR. HILLEBRECHT:

19 Q. Mr. Keatly, good afternoon. In answer to some questions
20 from Mr. Goldstein, both in connection with Mr. Asbury's
21 interview and Ms. Hawn's interview, you used very similar
22 phrases about the ability to meet, quote, "the forecast for the
23 year." Do you recall using that phrase?

24 A. I believe I probably used that phrase.

25 Q. Do you understand what that phrase means?

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1 A. In a general sense I think so, yes.

2 Q. Can you articulate for us what it meant to you when you
3 were conducting these interviews and writing these notes?

4 A. I can't tell you I remember exactly what I thought at the
5 time. I can tell you what I think it means now to the best of
6 my ability.

7 Q. Sure.

8 A. I think that a forecast for the year would be the
9 projections that are being established for the division's
10 performance for the fiscal year upcoming.

11 Q. And in your mind does that mean the internal targets set as
12 an internal metric within Lockheed Martin?

13 A. As opposed to?

14 Q. As opposed to projections that were made public to the
15 vesting public.

16 A. I understand the distinction. I understood it to mean
17 these were the internal projections of the company, but would
18 have had some carryover potentially in some way to what was
19 being publicly projected.

20 Q. When you say it would have some carryover potentially, what
21 do you mean by that?

22 A. That it's potential of the internal projections as I would
23 understand about internal projections -- I'm just drawing from
24 my own thoughts on this topic -- might have included stretch
25 goals that might have deviated from the public projections, but

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1 I don't know.

2 Q. And by deviated, do you mean the internal goals would be
3 higher than the external forecasts?

4 A. I don't know, but I couldn't rule it out. That's possible.
5 I don't know if there was a -- I don't know.

6 Q. Did you ever have a conversation as part of your interview
7 with Mr. Asbury about these issues to try to clarify, make sure
8 you guys were still talking about the same terms, same issues?

9 A. I don't remember exactly.

10 Q. Do you recall trying to do that in connection with Ms. Hawn
11 or any of the other witnesses?

12 A. The issues may have come up, but I don't remember if they
13 did or didn't.

14 Q. I think it's clear now for each of these interviews of each
15 of the six confidential witnesses, let me make sure I got it
16 straight, you conducted the interview by yourself over the
17 telephone, correct?

18 A. That's correct.

19 Q. As I understand it after you conducted the interviews you
20 turn your notes into a memorandum, right?

21 A. That's correct.

22 Q. Which you then send to Robbins Geller, correct?

23 A. That's correct.

24 Q. After typing your memos but before sending them to Robbins
25 Geller, did you make any effort to confirm the accuracy of your

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1 memoranda with the witnesses you had interviewed?

2 A. I did not.

3 Q. Before the amended complaint was filed, did you make any
4 effort to confirm with the cooperating witnesses that the
5 allegations attributed to them in the amended complaint were
6 true and accurate?

7 A. I didn't know what the allegations in the amended complaint
8 were prior to its filing.

9 Q. So I take it the answer is no.

10 A. No.

11 Q. And to your knowledge did anybody else at Robbins Geller,
12 or working on Robbins Geller's behalf make any effort
13 whatsoever to confirm the accuracy of each of the allegations
14 attributed to each of those confidential witnesses before
15 filing the amended complaint?

16 A. I don't know.

17 Q. You've seen the amended complaint.

18 THE COURT: Did Robbins Geller ever run by you what
19 they were going to be putting in the complaint as attributed to
20 a given confidential witness?

21 THE WITNESS: Your Honor, I don't remember if we did
22 speak about that by phone, myself and the attorneys. It's
23 possible we may have, but I don't remember.

24 THE COURT: All right.

25 Q. At this point, you've seen the amended complaint, correct?

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1 A. I have.

2 Q. And you in fact have seen the portions of the amended
3 complaint in which the allegations of each confidential witness
4 is set forth.

5 A. I have.

6 Q. You would agree with me, would you not, it would only take
7 a handful of minutes to read to each of the confidential
8 witnesses each of their statements in the amended complaint?

9 MR. GOLDSTEIN: Objection.

10 THE COURT: Sustained.

11 Q. Let me ask it a different way. I think you articulated how
12 one of the rationales at L.R. Hodges for having you conduct
13 these interviews by yourself, no witness or other participant,
14 was cost, correct?

15 A. I think it's that in the broader term, in the broader
16 consideration is that cost is a factor, but it's also our
17 practice, the vast majority of interviews are conducted
18 individually, not just on this case but in other cases.

19 Q. Did I misunderstand your testimony? I thought you said one
20 of the reasons was cost.

21 A. Well, I think I was trying to make a distinction and you're
22 correct that it would be cost in this and every other case why
23 that's our practice of interviewing individually for the most
24 part.

25 Q. Can you spell out first a little bit the logistical

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1 difficulties, I think was the phrase you used, in having two
2 investigators on an interview?

3 A. Oh, I'd be happy to. The starting point for an
4 investigation is to have to reach out to these individuals and
5 establish contact with them. These are not individuals who are
6 expecting to receive a call from an investigator on this
7 matter. Their availability to receive such a call is
8 completely unpredictable, and there could be in the course of a
9 given investigation a given evening of an investigation where
10 we may be attempting a dozen or two dozen potential witnesses
11 in succession. One person may say, hey, I'll talk to you but
12 you're going to have to call me on Saturday morning or I'll be
13 available at this time. We've got other cases going on as
14 well, too, which require an equal amount of their own time and
15 energy from the staff that we have available to us. So that's
16 one illustration that I hope explains why it's very difficult
17 to always insure, that it would be very difficult to insure
18 always having two individuals when someone is ready to pick up
19 the phone and speak with us.

20 Q. Well, in the instance you just alluded to where a witness
21 says or potential witness says I can't talk to you now call me
22 Saturday, why can't you get together with one of your
23 colleagues and patch things together and make a conference
24 call?

25 A. I think that gets back to the cost factor too and it's been

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1 a practice of our firm that the interviews are conducted
2 individually.

3 Q. What is your billing rate?

4 A. My billing rate is 225 an hour.

5 Q. In the relative scheme of things is that high or low for
6 the investigator at L.R. Hodges?

7 A. It's the top billing rate.

8 Q. So it would have been possible to have an investigator at
9 least for the portion where you sought to confirm allegations
10 which we saw in your phone record were pretty short, at a quite
11 modest cost, right?

12 MR. GOLDSTEIN: Object to the form.

13 THE COURT: I'll sustain. I get the point. Before
14 becoming an investigator, what was your employment?

15 THE WITNESS: I was working for a scientific
16 consultancy in San Diego.

17 THE COURT: How many people are employed in your
18 company?

19 THE WITNESS: At the moment we probably have about a
20 dozen personnel, your Honor.

21 THE COURT: Do any of them have prior law enforcement
22 background?

23 THE WITNESS: At the moment we do not have anybody
24 with prior law enforcement backgrounds, but we have had
25 individuals with prior law enforcement backgrounds.

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1 THE COURT: Go ahead, counsel.

2 Q. And to clarify, I'm not sure if we elicited that here
3 today, you yourself have no law enforcement background of any
4 kind?

5 A. That's right.

6 Q. Other than training at L.R. Hodges, you have no training in
7 investigative techniques or other techniques, is that correct?

8 A. That's correct.

9 Q. As part of your standard interview technique one thing you
10 would do, in fact, is to provide substantive information or
11 allegations to the witnesses and seek to have them confirm it,
12 right?

13 A. I may ask them or tell them that we are looking into a
14 particular issue that we have been hearing about and if they
15 have, if they have information about that or if that would be a
16 topic that would be worth spending time discussing based on
17 their knowledge of it.

18 Q. It's more so than just telling them you've been hearing
19 about certain topics. You provide them detailed allegations
20 about specific individuals who are being targeted to be
21 defendants and seek to have them confirm the information you're
22 providing to them, isn't that right?

23 MR. GOLDSTEIN: Objection.

24 THE COURT: No, I'll allow it. You may answer it.

25 A. And I'm potentially not understanding your question

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1 correctly, but if you're asking if I'm asking them about the
2 individually named defendants or individuals who may be
3 potentially named as defendants, I would be asking them about
4 the defendants if I'm able to in the context of the interview.

5 Q. And you don't simply ask them in an open ended fashion like
6 what do you know about Ms. Gooden, right? You give them
7 targeted questions that include within the question specific
8 allegations of wrongdoing?

9 MR. GOLDSTEIN: Objection, your Honor.

10 THE COURT: Ground?

11 MR. GOLDSTEIN: It's compound, as well as, he can't
12 answer yes to two questions. If he can break it down, I'd
13 appreciate it.

14 THE COURT: All right. Break it down.

15 Q. In posing questions to the witnesses, isn't it a fact that
16 you include for the first time in the conversation specific
17 allegations about specific individuals in a specific time
18 frame.

19 A. I'm trying to understand your question. I want to answer
20 it accurately. I think it would be helpful for me if you could
21 rephrase it because I wasn't sure when you said "for the first
22 time."

23 Q. Okay. I take your point. What I'm suggesting is you ask
24 the question which injects into the conversation with the
25 witness for the first time a specific allegation against an

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1 individual and seek to have them simply confirm what you have
2 told them, isn't that right?

3 A. I'm going to do my utmost to answer your question. I will
4 certainly introduce a topic or an issue that I have learned
5 about in the course of the investigation in which I am seeking
6 if they can provide corroborative information about it.

7 Q. Okay. There's no mystery here, I think you know exactly
8 what I'm asking. Isn't it true that you told certain
9 witnesses, hey, witness, we heard Linda Gooden knew in early
10 2009 that IS&GS couldn't achieve its target for 2009, is that
11 right?

12 A. To my knowledge, I never asked that question the way that
13 you phrased it or in words to that effect.

14 MR. HILLEBRECHT: Can I approach, your Honor?

15 THE COURT: Yes.

16 MR. HILLEBRECHT: Handing the witness what's been
17 marked for identification as Defense Exhibit 5.

18 Q. Do you recognize that, sir?

19 A. I do.

20 Q. Is that a copy of your September 30 memoranda to Robbins
21 Geller with regard to Ms. Hawn?

22 A. It is.

23 Q. Turn to page 3, please. Bates number ending 15474. And
24 direct your attention now to the bottom, the last paragraph,
25 four lines down, sentence reading in part, "Without disclosing

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1 our sources, we asked if she could confirm information that we
2 had heard," skipping the parenthetical, "that Linda Gooden had
3 been told in February, 2009 by the IS&GS division heads that
4 there's no way that the total year goals of 2009 could be
5 achieved, even though the goals in the prior year had been
6 achieved." Do you see that, too?

7 A. I do.

8 Q. Isn't it true that you told Ms. Hawn in great detail an
9 allegation that was essentially is what ended up in the amended
10 complaint?

11 MR. GOLDSTEIN: Objection. Mischaracterizes what's
12 written.

13 THE COURT: Well, it's clear from the preceding
14 sentences that this was not being injected for the first time
15 in that the entire conversation for what had been several
16 minutes there was about cooking the books and the witness then
17 allegedly said that she meant that at the end of 2008 IS&GS had
18 been projecting performance numbers for the upcoming year that
19 it was known could not be achieved, and then Mr. Keatly asks if
20 she could confirm information that he had heard that Linda
21 Gooden had been told in February 2009 by the IS&GS division
22 heads that there was no way the total year goal for 2009 could
23 be achieved even if quarterly goals prior to the end of the
24 year might be achievable.

25 Now, it is true that if that question were asked in

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1 Court I would sustain the objection as compound, but I don't
2 think it came out of, totally out of left field in light of
3 Ms. Hawn's alleged prior statements reflected in the memo.

4 So the notes then say, Hawn responded affirmatively
5 that, quote, "We knew in the beginning of 2009 that we couldn't
6 make the numbers," close quote, and that, quote, "Linda was
7 told by people that the goals could not be achieved." As Hawn
8 put it, we knew internally that the annual goal for IS&GS could
9 not be achieved, quote, "but the shareholders didn't know,"
10 close quote. Could someone refer me to where in the Hawn notes
11 this is reflected?

12 MR. GOLDSTEIN: Certainly, your Honor. Give me one
13 second.

14 Mr. Keatly, if you could refer, and your Honor as
15 well, to Pontiac 015518 of your interview notes.

16 THE COURT: I'm looking at 015518. Is that where you
17 want me to look?

18 MR. GOLDSTEIN: That's what I understand, your Honor.

19 THE COURT: At what portion of that do you want me to
20 look; number 3 or number 20?

21 MR. GOLDSTEIN: Frankly, I believe I should probably
22 refer to Mr. Keatly because he could refer better.

23 THE COURT: Mr. Keatly, where should I look?

24 THE WITNESS: Well, number 20 is certainly saying
25 where they knew at the beginning of 2009 they won't make the

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1 numbers.

2 THE COURT: That's not what we want.

3 THE WITNESS: And the preceding statement is above it,
4 and not so much cooking, I'm not sure at this point what the
5 word is, but I think it was distributing numbers at end of the
6 year but never were or something along those, something to that
7 effect. And she'd been making --

8 THE COURT: But none of that is what you're quoting or
9 saying here.

10 THE WITNESS: Your Honor, I can't purport that my
11 notes are a verbatim transcript of the discussion as it took
12 place. There is also --

13 THE COURT: But your memorandum to plaintiff's counsel
14 purports to quote the witness, yes?

15 THE WITNESS: It purports to quote the witness in the
16 sections that have been quoted, your Honor.

17 THE COURT: Yes, so where are they in your notes?

18 MR. GOLDSTEIN: May I assist your Honor, because I
19 found it in the notes. If you could turn, your Honor, to
20 015518 circled as number 20.

21 THE COURT: Yes.

22 MR. GOLDSTEIN: As far as I understand, please Mr.
23 Keatly correct me if I'm wrong, it says, "Knew in beginning in
24 2009 wouldn't make numbers. Linda told by people internally we
25 knew it but shareholders didn't," and that's marked as number

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1 20.

2 THE COURT: What's the word that's circled right
3 before "knew"?

4 THE WITNESS: Asbury.

5 THE COURT: Isn't that a statement of what you asked
6 her?

7 THE WITNESS: It is, your Honor, and the words before
8 then, before the circled portion of number 20 I believe are
9 where she was saying, and not so much cooking, but was making
10 statements here that I believe were saying that the numbers at
11 the end of the year that were being distributed were not
12 achievable.

13 THE COURT: Wait a minute. These notes on these pages
14 are in chronological sequence, right, in the sense that you
15 wrote them as you were discussing with her?

16 THE WITNESS: That's correct, your Honor.

17 THE COURT: So you put the question to her, if she
18 could confirm information that you had heard from Asbury that
19 Linda Gooden, etc., etc., and you reflected that in your notes
20 in what's circled as Asbury and then what's right after the
21 dash, to show that that wasn't her talking, that wasn't
22 Ms. Hawn talking, that was you telling her this is what
23 Mr. Asbury had said, yes?

24 THE WITNESS: I think that's correct, your Honor. The
25 preceding sentence above the circled part is the part where I

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1 was trying to learn from her what did she mean by the term
2 "cooking the books."

3 THE COURT: Yes, all right.

4 THE WITNESS: And that's what's reflected.

5 THE COURT: I understand that, but now you put this
6 question to her, and her response, if any, would have been
7 right below, right?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: And the response, read me what it says
10 below.

11 THE WITNESS: "Knew in beginning" --

12 THE COURT: No, that's not it. I'm speaking after you
13 put the statement that is Asbury dash.

14 THE WITNESS: That's what I was about to read, your
15 Honor.

16 THE COURT: That's not what I want you to read.
17 That's the question you're putting. You're saying to her, I
18 think the only, you can tell me if I'm wrong and you wrote
19 this, but I think the reasonable inference is that you put
20 Asbury dash to show in your notes that this is where you were
21 saying to her, without revealing that it was Asbury, that could
22 she confirm that you had heard that Linda Gooden was told by
23 people in February etc. That's all that is circled against the
24 number 20. And then her response would be, if any, what's
25 below, but the next thing that follows below is HG question

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1 mark. What does that mean?

2 THE WITNESS: May I respond, your Honor?

3 THE COURT: Yes.

4 THE WITNESS: I have to respectfully disagree with the
5 inference that you've taken. The question to me, my notation
6 is Asbury period.

7 THE COURT: There's no period after Asbury.

8 THE WITNESS: Well, or the dash.

9 THE COURT: Dash. What did you mean by the dash?

10 THE WITNESS: Well, your Honor, I can't necessarily
11 reconstruct why I put a dash there.

12 THE COURT: Well, I think the common sense of it is
13 that it means that he is the source of what follows the dash.
14 Unless I learned the wrong lessons in punctuation that would be
15 the normal reading.

16 THE WITNESS: Your Honor, may I speak?

17 THE COURT: Yes.

18 THE WITNESS: Again, I have to tell you that the
19 statement, the word Asbury, whether it's followed by a dash or
20 a period or a notation --

21 THE COURT: It's not followed by a period, it's
22 followed by a dash.

23 THE WITNESS: Followed by a dash, is my notation to me
24 that I had indeed asked her about what I had learned from
25 Asbury. The words that follow are Hawn's words, they're not

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1 words that I wrote that Asbury told me that then I am saying
2 that she, that she purported to say. Those were her words,
3 your Honor.

4 THE COURT: All right. So -- looking at it that way,
5 Linda told, read me your notes in that box. Linda told by
6 people initially what?

7 THE WITNESS: Internally.

8 THE COURT: Internally what?

9 THE WITNESS: We knew it but shareholders didn't.

10 THE COURT: All right. Go ahead.

11 BY MR. HILLEBRECHT:

12 Q. But you would agree, Mr. Keatly, that the first person in
13 your conversation with Ms. Hawn who injected the concept of
14 Ms. Gooden being told in February 2009 that the IS&GS division
15 heads that they couldn't make the total for year 2009 was you,
16 right?

17 A. It may have been. I don't remember exactly how it went,
18 but it may have been.

19 Q. Let me focus on Ms. Hawn for a minute. Do you recall
20 Ms. Hawn gave her title as a business area manager, right?

21 A. Yes, sir.

22 Q. Did you make any effort after your interview with Ms. Hawn
23 to figure out where she fits in the Lockheed Martin hierarchy?

24 A. I don't remember if I did or didn't.

25 Q. As you sit here now do you have any idea what a business

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1 area manager is?

2 A. I don't.

3 Q. Do you have any idea that there are literally thousands and
4 thousands of programs at Lockheed Martin?

5 A. I do have an awareness there are quite a few programs.

6 Q. Are you equally aware there are literally thousands of
7 business area managers at Lockheed Martin?

8 A. I am not.

9 Q. You claim Ms. Hawn told you that she was pressured to
10 change her backlog figure to \$2.5 billion of backlog. Do you
11 remember that?

12 A. That's what she told me.

13 Q. Did you take any steps to determine if that figure was a
14 completely plausible figure or completely preposterous figure?

15 A. The way the conversation had been proceeding I didn't feel
16 I was in a position to ask her as many detailed questions
17 regarding her basis for her assertions. However, I had no
18 reason in the context of that interview to believe that she was
19 someone lacking in credibility.

20 Q. That's not exactly what I asked you. My question was the
21 following. Did you make any effort to figure out in the
22 context of Lockheed Martin what a supposed backlog figure
23 \$2.5 billion would mean?

24 A. And I'm sorry I'm not sure I do understand -- could you
25 repeat it, please?

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1 Q. Sure. Ms. Hawn is one of thousands of people at her level
2 in Lockheed Martin, and what I'm asking you is whether you made
3 any effort to figure out whether one person, one business area
4 manager out of the thousands of business area managers could
5 plausibly have \$2.5 billion in backlog when she is one of
6 thousands of people who have that position?

7 A. I didn't know there were thousands of business area
8 managers within Lockheed.

9 Q. Did you make any effort to determine the inherent
10 plausibility or implausibility of that \$2.5 billion figure?

11 MR. GOLDSTEIN: Judge, objection.

12 THE COURT: I would phrase that objection as asked and
13 answered. Mr. Hillebrecht, I'm going to give you whatever
14 amount of time you need, but I need to know how much more you
15 have.

16 MR. HILLEBRECHT: I think I need a few minutes, your
17 Honor.

18 THE COURT: Do you want to define few?

19 MR. HILLEBRECHT: Five. How is that?

20 MR. GOLDSTEIN: Your Honor, may I request two minutes
21 of redirect?

22 THE COURT: Yes, of course. Go ahead.

23 Q. Now, in terms of the interview technique of providing to
24 the interviewee substantive information that has not previously
25 been discussed with that individual, am I correct that you did

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1 that on more than one occasion, the occasion we've talked about
2 a minute ago and other occasions as well?

3 A. I shared information that I had learned in the course of
4 the investigation with other witnesses in the course of
5 interviewing them, yes.

6 Q. And to the extent, for example, you discussed with some of
7 the witnesses specific programs, isn't it the case that that
8 was largely because you injected those programs into the
9 interview?

10 A. Not necessarily.

11 MR. GOLDSTEIN: Objection, your Honor. Vague,
12 multiple witnesses, there's no reference to specific testimony
13 or parts of the memoranda.

14 THE COURT: Well, I get the point and we can discuss
15 that more by reference to specific memoranda and elsewhere when
16 we finish with this witness.

17 MR. HILLEBRECHT: Okay, your Honor. Less is more.

18 THE COURT: All right.

19 Q. Turn back, if you could, to the Hawn memo which I think is
20 still in front of you. Actually, do you have a copy of the
21 complaint in front of you, sir? Do you have it there, sir? If
22 you could turn to paragraph 36, sir, which is on page 10. And
23 about three quarters of the way or a little more than halfway
24 down the page is a sentence, "According to CW2." Do you recall
25 that that was Ms. Hawn?

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1 A. Yes.

2 Q. "According to CW2, defendant Stevens and Tanner received
3 information about IS&GS directly from defendant Gooden and
4 Gooden's finance manager, Jeff McLaughlin." Do you see that
5 there?

6 A. I do.

7 Q. Do you recall, sir, that in fact Ms. Hawn never told you
8 anything of the sort in your interview?

9 A. She didn't -- we discussed it and she did not know, she did
10 not know the answer to that.

11 Q. Do you remember as you sit there now what you and she
12 actually discussed about this topic and what she said to you?

13 A. I have some recollection.

14 Q. Do you want me to show you the memo or do you want to --
15 let's do this. Turn to page 4 of your memo, sir. The first
16 full paragraph there. It says, "We asked." Just so the Court
17 is aware, when you say "we" in your memorandum that means you?

18 A. Yes.

19 Q. "We asked if those at Lockheed headquarters i.e. Bob
20 Stevens and Bruce Tanner were aware that the IS&GS goals in
21 2009 were unattainable. It did not seem that Hawn actually
22 knew whether Stevens or Tanner knew, but in her opinion they
23 probably did." Do you see that there?

24 A. I do.

25 Q. Later on it says she surmised. Do you see at the bottom of

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1 that paragraph? Is "surmised" your word or her word? How did
2 that come into your memo?

3 A. That's my word.

4 Q. In fact, sir, none of the witnesses you interviewed told
5 you that Bob Stevens was aware in the first quarter of 2009
6 that the 2009 plan was unachievable, right?

7 A. I don't remember if they did or didn't.

8 THE COURT: So let me ask plaintiff's counsel. Do you
9 agree that the allegation there in paragraph 36 beginning
10 "According to CW2 defendants Stevens and Tanner," etc. is
11 inaccurate?

12 MR. RUDMAN: Your Honor, I'll speak to that because I
13 spoke to that at the last hearing. I agree that it doesn't say
14 directly, that it says "surmised." The allegation could have
15 been written differently. I mean, that's what I said the last
16 time I spoke about it.

17 THE COURT: I'm sorry, I do recall that now, and I
18 will reconfirm that I'm troubled by that allegation.

19 MR. RUDMAN: I understand that, your Honor. Well, the
20 facts also happen to be true, but putting that fact aside --

21 THE COURT: You know because you're a personal witness
22 to them, so you can't be counsel in this case because you're
23 going to testify?

24 MR. RUDMAN: No.

25 THE COURT: Then how do you know it's true? There's

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1 no way you know it's true. You have information that leads you
2 to believe it's true at best.

3 MR. RUDMAN: Yes, your Honor.

4 THE COURT: All right.

5 MR. HILLEBRECHT: Just to close the loop on that, your
6 Honor. I broke up that last question into two parts, one for
7 Bob Stevens that we just addressed but also for Bruce Tanner.

8 Q. It's true, is it not, that not a single one of the
9 witnesses that you interviewed told you that they had knowledge
10 that Bruce Tanner knew in the first quarter of 2009 that the
11 full year plan was unachievable, right?

12 A. I don't remember if they did or didn't at this point.

13 Q. Well, as we just saw now, you tried to get Ms. Hawn to
14 confirm that allegation as to Mr. Stevens and Mr. Tanner and
15 she didn't do so, right?

16 A. She believed that they did, but she could not confirm it
17 definitively.

18 MR. HILLEBRECHT: Nothing further, your Honor.

19 THE COURT: All right. Mr. Goldstein.

20 MR. GOLDSTEIN: Thank you, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. GOLDSTEIN:

23 Q. Mr. Keatly, there was a discussion about whether or not you
24 used information from other witnesses to try to get information
25 from a witness like Ms. Hawn, and in fact, did you try and hide

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1 the fact that you may have had information prior and then asked
2 a witness to confirm it?

3 A. No.

4 Q. Did you in fact put that in your memoranda?

5 A. Yes.

6 Q. And why?

7 A. To accurately convey the substance and tenor of the
8 interview as best I could.

9 Q. And with respect to Ms. Hawn, you didn't tell her
10 Mr. Asbury, the president of the division, said this?
11 According to your memo you said you did it without disclosing
12 the source, is that right?

13 A. That's correct.

14 Q. With regard to Ms. Hawn, did you have an understanding as
15 to how long she worked at the company for?

16 A. I did.

17 Q. How long?

18 A. Without referring to my notes, I believe it was fairly -- a
19 number of years, but I don't remember the exact number.

20 Q. Does the term --

21 THE COURT: Does the word "forever" ring a bell?

22 Q. Did you have an understanding as to whether or not she
23 worked there for over 30 years?

24 A. We're talking about Ms. Hawn?

25 Q. Yes.

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1 A. I think so, yes.

2 Q. And that can be fairly characterized as forever, right?

3 A. I think so.

4 Q. And had you also prior to interviewing her been told
5 anything about Ms. Hawn by any other witness?

6 A. I have.

7 Q. And who was that?

8 A. That was the witness Karen Nimmons.

9 Q. And what did she say about Ms. Hawn, and refer to your memo
10 if it helps refresh your recollection if you need.

11 A. I had asked Ms. Nimmons if she could refer me to anybody
12 who might be worthwhile reaching out to and I believe that
13 Ms. Nimmons had recommended that I speak with Peggy Burns and
14 also with Pamela Hawn who I think Nimmons said would be
15 knowledgeable regarding intelligence division programs.

16 Q. And in conclusion, Mr. Keatly, anything in your notes or
17 any memoranda did you make up yourself?

18 A. I did not.

19 Q. Were everything that's in your memoranda you believe and in
20 your notes you believe were given or provided to you by
21 witnesses?

22 A. I do.

23 Q. And is it your testimony under oath that you did your
24 absolute best to try to record them as accurately as possible?

25 A. That is my testimony.

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1 MR. GOLDSTEIN: Thank you. That's all I have.

2 THE COURT: Thank you very much. You may step down.
3 Thank you. All right. Let's discuss where we go from here,
4 bearing in mind that for a family obligation reasons I've got
5 to leave in five minutes. I think it would be very helpful to
6 the Court to have written submissions from counsel as to how
7 they think the Court should evaluate the testimony here.
8 You'll need, of course, to first get the transcript, which I
9 know you will jointly and severally order on an expedited
10 basis.

11 I have some very tentative initial impressions that
12 are easily subject to change, but I thought I would share them
13 just because we shall know where the Court is starting from.
14 As I've already indicated, I found Ms. Burns to be a credible
15 witness. I found Mr. Morrison to be a non-credible witness.
16 When I say non-credible, I'm not necessarily drawing the
17 inference that any given witness lied. It could be that the
18 Court concluded that they were not careful witnesses or have
19 been shown to have poor recollections or whatever. But if you
20 want me to believe Mr. Morrison, you have a tough row to hoe.

21 I think Mr. Parsons' testimony was largely uncontested
22 if I'm not mistaken. Though, notwithstanding the hard time I
23 gave him, I thought on the whole that Mr. Keatly's testimony
24 was credible and there may be other issues there such as the
25 ones that I flagged about what now appears to be in many cases

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1 double-triple hearsay or better can really support an
2 allegation in the complaint even for pleading purposes.

3 I have serious questions about the credibility of
4 Mr. Asbury and Ms. Hawn. To take the most obvious point just
5 as an example, it is very difficult for the Court to believe
6 that even with the passage of time those witnesses could have
7 honestly stated that they had very short conversations when in
8 fact they had conversations of 50 and 60 some minutes
9 respectively with Mr. Keatly. And it seems to me tentatively,
10 this is very tentative and a more plausible possibility that
11 they said all sorts of nasty things about the company to
12 Mr. Keatly for a variety of reasons and then chose to try to
13 cover it up when they were embarrassed by its coming out. That
14 cuts in many directions, some of which I think are ultimately
15 not questions for this Court but for the jury. For example,
16 one could I think quite reasonably infer that Miss Hawn lied at
17 length to Mr. Keatly and then lied again to the company, to
18 defense counsel and lied here again on the stand. She would
19 have motives for all those things. And ditto Mr. Asbury. But
20 I don't want to suggest that's the conclusion I'm reaching.
21 Just throwing this out as things you will want to address.

22 I don't think -- we've seen in the last, what, 30, 40
23 years this shift from a plaintiff having to allege very little
24 and a plaintiff having to allege a vast amount, and each of
25 those extremes carries its dangers, which I think this whole

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1 hearing is has in some ways pinpointed the difficulties
2 plaintiffs have in getting information that they know they're
3 going to have to get to meet the very high standard that the
4 Supreme Court has now imposed on plaintiffs in these cases, and
5 it is telling to me, at least, though irrelevant and more
6 narrow decisions that I have to make that Mr. Keatly's firm has
7 no one presently with a law enforcement background because the
8 way a lot of these interviews were conducted would not have
9 been the way a law enforcement officer would have conducted
10 them. But I don't think there's an obligation on plaintiff's
11 counsel as part of the pleading to ascertain whether a
12 confidential witness is telling them the truth, unless it is so
13 inherently implausible that they don't have a good-faith basis
14 for putting it in the complaint, but I do think in evaluating
15 that pleading for purposes of a motion to dismiss or otherwise,
16 the Court does have to look as to whether the information that
17 plaintiff in good faith relied on was, as it turns out,
18 double-triple hearsay or worse. So those are just some idle
19 thoughts to keep you busy.

20 Now, let's talk about schedule. I think it would be
21 useful to have simultaneous submissions and simultaneous
22 responses. So in view of the importance of this and the
23 interests of the issues raised, I would give you both 25 pages
24 for your initial papers and 15 pages for your response and I
25 would suggest -- Ms. Reporter, if expedited transcripts are

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1 ordered, how soon will the parties have the transcript?

2 THE REPORTER: Two hours.

3 THE COURT: Two hours. All right. So I'm tempted to
4 say okay, so you'll get me your papers later tonight. So why
5 don't we say two weeks and say two weeks for opening papers.
6 This would be, today is October 1, so that would be
7 October 15th, and two weeks for response, that's October 29th
8 and I will issue whatever rulings seem to me appropriate under
9 the circumstances.

10 All right? Anything else we need to raise today? I
11 know there are some discovery disputes, I know. I apologize
12 profusely, but it's a choice between having you mad at me or my
13 wife mad at me, but why don't you call tomorrow and we'll deal
14 with those discovery disputes over the phone.

15 MR. KAUFMAN: Yes, your Honor, we will.

16 (Adjourned)

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21	Exhibit No.	Received
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23	455
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