

513

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 Civil Action No. 92-1667 (DRD)

4 UNIX SYSTEM LABORATORIES, INC.,)

5 Plaintiff,)

6 v.)

7 BERKELEY SOFTWARE DESIGN, INC.,)
8 and THE REGENTS OF THE)
9 UNIVERSITY OF CALIFORNIA,)

Defendants.)

DEPOSITION

10
11
12 COPY
13
14
15

16 On Thursday, December 10, 1992, commencing at
17 10:10 a.m., the deposition of Otis L. Wilson was
18 taken in the offices of Smith Helms Mulliss & Moore,
19 First Union Tower, Greensboro, North Carolina.

20
21
22
23 DEPOSITION OF OTIS L. WILSON
24
25

A P P E A R A N C E S

James W. Kennedy
Paul, Hastings, Janofsky & Walker
399 Park Avenue
New York, New York
on behalf of the Plaintiff

Theodore M. Weitz
Senior Corporate Counsel
UNIX System Laboratories, Inc.
190 River Road
Summit, New Jersey
on behalf of the Plaintiff

Leslie A. Fithian
Heller, Ehrman, White & McAuliffe
525 University Avenue
Palo Alto, California
on behalf of Berkeley Software Design, Inc.

Carla J. Shapreau
Crosby, Heafey, Roach & May
1999 Harrison Street
Oakland, California
on behalf of The Regents of the University of
California

S T I P U L A T I O N S

It was stipulated by and between counsel representing the Plaintiff(s) and counsel representing the Defendant(s) as follows:

1. That any defect in the notice of the taking of this deposition either as to time or place or otherwise as required by the Rules of Civil Procedure, is expressly waived, and this deposition shall have the same effect as if formal notice in all respects as required by the Rules of Civil Procedure had been given and served upon the deponent and his counsel in the manner prescribed by law.

2. That this deposition is deemed open and all formalities and requirements with respect to the opening of the same, expressly including notice of the opening of this deposition, are hereby waived, and this deposition shall have the same effect as if all formalities in respect to opening the same had been complied with in detail.

3. That, except as to the form thereof, each question propounded to the witness either upon direct, cross examination or redirect or recross examination is deemed objected and excepted to in the same manner as if objections and exceptions were

1 noted and appeared of record, and the right on the
2 part of all counsel to object and except to each
3 question is reserved (except such as related to the
4 form of the questions), and such objections and
5 exceptions to each question may be made upon the
6 offering of this deposition in evidence and may be
7 passed upon by the Judge or Magistrate at that time,
8 or at any pretrial hearing thereof; in the same
9 manner and to the same extent as if statutory
10 formalities in respect to the taking of this
11 deposition had been observed in detail.

12 The answer of the witness to each question
13 propounded is deemed to have been subjected to a
14 motion to strike and exception to the ruling of each
15 such motion reserved, in the same manner as if a
16 notation or such motion to strike and exception
17 appeared of record, and the right on the part of the
18 counsel to move to strike out each answer and to
19 except to an adverse ruling on such motion at the
20 time of the offering of this deposition is reserved.

21 4. That the signature of the witness to the
22 deposition is not waived.

23 5. That all formalities and requirements of
24 the rules with respect to any formalities not herein
25 expressly waived, are hereby waived, especially

1 including the right to move for the rejection of this
2 deposition before the trial for any irregularities in
3 the taking of the same, either in whole or in part,
4 or for any other cause.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

1

2

3

WITNESS:

PAGE:

4

OTIS L. WILSON

5

EXAMINATION BY:

6

MS. FITHIAN
MS. SHAPREAU

7

88

7

8

9

EXHIBITS:

10

SEE ATTACHED KEYWORDINDEX FOR COMPLETE LISTING

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 OTIS L. WILSON, being first duly sworn, testified as
2 follows during EXAMINATION BY MS. FITHIAN:

3 Q. Would you state your name and home address for
4 record, please?

5 A. Otis L. Wilson, 5 Roundhill Court, Greensboro
6 North Carolina 27408.

7 Q. Have you ever had your deposition taken
8 before?

9 A. Yes, I have.

10 Q. How many times?

11 A. Three or four times, I guess.

12 Q. So you are pretty familiar with the procedure?

13 A. You can go over them again.

14 Q. I'll just do a very abbreviated version. You
15 are here testifying under oath today just as you
16 would be in a court of law and it has the same
17 penalties of perjury. If I ask you a question you
18 don't understand, feel free to ask for
19 clarification. Do you have any type of illness or
20 disability or are you taking any medication or
21 anything that would prevent you from testifying
22 accurately today?

23 A. No, I'm not.

24 Q. I understand you are no longer employed by
25 USL, is that correct?

1 A. That's correct.

2 Q. When did you leave USL?

3 A. Oh, March or April of last year.

4 Q. Of --

5 A. 1991.

6 Q. And what was your position when you left USL,
7 right before you left USL?

8 A. General manager of UNIX Software Laboratories.

9 Q. And how long had you held that position?

10 A. Oh, probably since 1980 in different kinds of
11 incarnations. But it was pretty much the same
12 position going back to 1980.

13 Q. Did your responsibilities remain the same from
14 1980 until the time you left?

15 A. They made a change in '83. I actually headed
16 the organization responsible for licensing out of
17 Greensboro and we had a primary office, in fact, the
18 only office, and we did all the licensing operations
19 in Greensboro and I headed that in '83.

20 Q. How did your responsibilities change in 1983
21 when you became the head of that office?

22 A. The main thrust at that time was to organize a
23 the licensing operation such that we could handle a
24 greater volume that we were seeing for the request
25 for licenses coming from the general population. Get

1 more focused on licensees.

2 Q. And what were your specific duties on a
3 day-to-day basis as the head of that licensing
4 organization from 1983 on?

5 A. Primarily responsible for the protection of
6 the property in the case of computer software
7 programs and the -- that was pretty much the same
8 primary responsibility the entire period of time.

9 Q. But in carrying out your responsibilities on a
10 daily I basis -- I'm just trying to get an idea what
11 you did in your job.

12 A. Well, I interfaced with my staff, talked about
13 licensing issues with licensees, and I would review
14 legal documents, draft language for reflecting
15 conditions the licensees wanted the licenses under.
16 So on any given day I would be with the licensing
17 staff to effect folks usage of the property and
18 software programs.

19 Q. Now, were you ever involved in communications
20 with the University of California with respect to
21 licensing of UNIX software?

22 A. Yes.

23 Q. Can you describe what involvement you had?

24 A. Primarily as a licensee of the UNIX operating
25 system and their use of the software at their

1 university.

2 Q. Did you have a lot of personal communications
3 or direct communications with the university
4 regarding licensing issues?

5 A. Yeah, from time to time I would, and as we
6 expanded I had specific folks within the organization
7 who were responsible for dealing directly with, say,
8 the educational licensees, which the University of
9 California is a part of, on kind of a daily basis.
10 But I would always be involved from the standpoint as
11 issues became crystal what folks were trying to put
12 on the table and I would be involved.

13 Q. You say when you expanded other people were
14 involved on a day-to-day basis. Who was that,
15 specifically?

16 A. Who?

17 Q. Who was involved on a day-to-day basis with
18 the university?

19 MR. KENNEDY: University of California?

20 Q. When I say "the university" in this
21 deposition, I'll be referring to the University of
22 California unless I specify otherwise.

23 A. What people at the University of California?

24 Q. What people within USL were dealing on a daily
25 basis with the University of California?

1 MS. SHAPREAU: USL or --

2 Q. I believe USL. In your prior answer you said
3 that as the organization expanded there were other
4 people, not yourself, who were dealing with the
5 University of California on a daily basis, and I'm
6 just trying to find out who the other people were you
7 were referring to, and if you can add what time frame
8 you are talking about for Ms. Shapreau's benefit.

9 MS. SHAPREAU: Thank you very much.

10 A. We have to go back to 1980. There were
11 several different names the organization which had
12 the responsibility for licensing software went
13 through. So at any given time we can talk about
14 Western Electric, AT&T, AT&T Computer Systems, UNIX
15 Software and UNIX System Laboratories. There are all
16 types of names, so in the very beginning -- not very
17 beginning, say going back to the 1980 time frame, the
18 primary interface between licensees and AT&T was
19 through a licensing negotiator, so to speak. I
20 personally handled most of those things myself.
21 There were not that many licensees, but as we grew
22 the organization was segmented with folks who could
23 answer the phone and you are on the other phone and
24 it evolved into licensing managers or individuals who
25 dealt strictly with the licensees about their issues

1 in the educational or commercial or administrative
2 area, depending on what was going on. So as we had
3 more licensees we brought more staff on to deal with
4 those specifically.

5 Q. At what point in time, approximately, did you
6 stop being the one to have all the day-to-day
7 negotiating contact? Let's narrow it down to the
8 University of California.

9 A. When I say "day-to-day," it's day-to-day with
10 licensees, not specifically the University of
11 California, because we wouldn't have day-to-day
12 issues with any given university. Probably a better
13 way to characterize it was the primary interface --
14 the first call, you come in, you get someone in the
15 licensing area and they would deal with licensees on
16 a daily basis. I also did that on a daily basis, but
17 it would be different levels of the negotiations.

18 Q. What approximate time frame did this expansion
19 occur where you had to have another layer of people
20 as primary contacts?

21 A. It was evolving. It started back in 1980 and
22 continued up until I left.

23 Q. It except expanding?

24 A. Yeah, expanding and changing, right.

25 Q. We've marked previously in the depositions in

1 this case a document as Exhibit 34, and I would like
2 you to just take a moment to review the document and
3 then I'll ask you to identify the document.

4 A. How much time do you want to spend on this?
5 It appears to be copies of at least two or three
6 documents.

7 Q. I want to focus your attention on the
8 agreement contained in Exhibit 34 that starts on the
9 third page into the exhibit, Bates number P 212.

10 A. Again, it looks to be a copy of the
11 educational software agreement with the University of
12 California at Berkeley. It has some markings I'm not
13 familiar with at the bottom and this appears to be my
14 signature.

15 Q. Do you recall signing this particular
16 agreement?

17 A. Yeah, I signed a lot of these.

18 Q. Your answer was you do recall signing this
19 particular agreement?

20 A. I recall signing these types of agreements,
21 and the way I would normally do that -- these
22 agreements when they would come back -- I notice
23 there's a paragraph that's been changed and initialed
24 by the two parties, and the way I would normally
25 verify that these were in fact the agreements I

1 signed as a matter of course, they would come back
2 with a blue book arrangement and we would make sure
3 those were together and no pages had been changed or
4 altered. There was a lot of times folks would submit
5 documents and say, "Oh, you signed this," and slide
6 things in or even change a line. So it was something
7 we always had to be very, very careful of. So we
8 would go through it page by page.

9 Q. Now, do you recall having any discussions or
10 negotiations with the University of California with
11 respect to this particular agreement?

12 A. All the agreements with the University of
13 California for UNIX software I was involved with, so
14 this among any others we had in place with them.

15 Q. Who did you deal with on this particular
16 contract at the University of California?

17 A. On this one?

18 MR. KENNEDY: Simply for clarification,
19 because there are various documents within the
20 exhibit, you are referring to the educational
21 software agreement effective July 1, 1983, production
22 number 212?

23 MS. FITHIAN: Correct.

24 MR. KENNEDY: The question is who did you
25 deal with at the university with respect to this

1 particular one.

2 Q. (BY MS. FITHIAN) If you recall.

3 A. I don't recall specifically, but going by the
4 signature, Katherine signed it. What we normally do
5 is there would be discussions, whatever those
6 discussions were, and they all would be embodied in
7 under this document that culminated in her signature
8 and my signature, whoever the signing authority would
9 be at the university and myself. So this is the
10 agreement.

11 Q. Did you ever have communications with people
12 other than -- is the last name Katherine DeLucchi?

13 A. Yes.

14 Q. Did you have discussions with anyone other
15 than Katherine DeLucchi?

16 A. At this time?

17 Q. In that time period.

18 MS. SHAPREAU: By "that time period"?

19 Q. Effective as of July 1, 1983, although I note
20 the signature is August 15, 1984 for your signature.
21 So in the time period leading up to this agreement.

22 A. Yeah, there was a lot of dialogue with the
23 university prior to this agreement and after this
24 agreement and different individuals. So there was
25 always dialogue with the University of California at

1 Berkeley. Is that too specific?

2 Q. That's fine.

3 A. So there was always dialogue before and after
4 this.

5 Q. Do you recall who --

6 A. Some of this -- like Katherine was out of the
7 administrative office lots of times and we would talk
8 to folks in the developmental lab, whoever was
9 responsible for doing development.

10 Q. Anybody else?

11 A. Primarily it was the administration folks and
12 the developers.

13 Q. What about the legal department?

14 A. Yes. I consider them under administration.

15 Q. Now, if you will look at the first page of the
16 agreement -- and when I say "the agreement," I'm
17 referring to the educational software agreement
18 contained in Exhibit D 34. The first paragraph after
19 the words "agree as follows," appears to contain a
20 definition of licensed software. Do you see that
21 portion of the agreement?

22 A. In other words, "agreed as follows, AT&T
23 grants"?

24 Q. That's the paragraph I'm referring to that
25 starts, "AT&T grants fee-free..." and if you look at

1 the third sentence which starts, "Licensed software
2 means..." and continues on. Is it your understanding
3 that that's the definition of licensed software?

4 A. No, it's not. The capitalized terms are
5 referred to a definition appendix which describes
6 that term.

7 Q. Do you see any definitional appendix in this
8 agreement?

9 A. Okay, it's defined in that paragraph.

10 Q. Can you read for the record what the
11 definition of licensed software is as defined?

12 A. In this, in other words?

13 Q. As defined on this page.

14 A. This paragraph goes on to define licensed
15 software in this particular paragraph.

16 Q. Would you read that definition?

17 A. Where do you want me to start?

18 Q. Where the definition starts.

19 A. About the middle of the paragraph it states,
20 "Licensed software means all or any portion of the
21 computer programs, other information documentation
22 listed in the attached schedule for UNIX System V VAX
23 version, and any additional schedule forwarded
24 pursuant to section 2.03 of appendix A furnished to
25 licensee by AT&T or any of its affiliated companies

1 in conjunction with any provision of support services
2 for UNIX System V or prepared by licensee as a
3 modification of or a derivative work based on any of
4 the materials so listed or furnished."

5 Q. And what you just read is the definition of
6 licensed software in this agreement?

7 MR. KENNEDY: I assume you are asking for his
8 understanding.

9 MS. FITHIAN: Of course, yes.

10 A. Yes.

11 Q. (BY MS. FITHIAN) As you understand it?

12 A. Uh-huh.

13 Q. Now, do you recall any clarifications being
14 made to that definition? Rather than test your
15 memory, let me go ahead and show you a document that
16 was marked as Exhibit 51 in a prior deposition and go
17 ahead and read through that document and let me know
18 when you are finished.

19 A. Do you want this document -- do you want to
20 look at this as regards the licensed software?

21 Q. That's the part I'm going to be focusing on,
22 but you might want to read it through once to refresh
23 your recollection on the whole document. Are you
24 finished?

25 A. Yes.

1 Q. Can you identify the document that's been
2 marked as Exhibit D 51?

3 A. Clarify what you mean by "identify."

4 Q. Let me ask it a better way. Do you recall
5 ever having seen this document before?

6 A. Yeah. In other words, let me clarify. These
7 documents, I'm sure you both know, span like a 10- or
8 12-year period and they all look very similar. I
9 look at the signature and I have to go back the way I
10 would normally to make sure it was a document I was
11 involved with and I would go back to the original
12 files. This appears to be like many of the documents
13 I dealt with. So it looks okay from the standpoint
14 of being a copy. It's in this context and not in the
15 original file and that kind of thing.

16 Q. At this point do you have any independent
17 recollection of this particular document other than
18 seeing your signature on the page?

19 A. Yeah, I remember the contents of this
20 document. In other words, this is something I'm
21 familiar with. So I remember the content of the
22 document.

23 Q. Okay.

24 A. And it's an issue that would come up with the
25 University of California as well as other licensees.

1 Q. And that is your signature on page 2 of the
2 document, is that right?

3 A. Looks like it.

4 Q. Now, looking at the third paragraph in Exhibit
5 D 51 which starts with the words, "However, for
6 clarification, AT&T proposes to amend such definition
7 by substituting the following therefor..." If you
8 look at the previous paragraph, the definition of
9 licensed software in the granting clause, and just to
10 clarify is this the granting clause? Looking back at
11 Exhibit D 34, is that the definition in the granting
12 clause that you read into the record previously?

13 A. Would you go through that again?

14 Q. I'll ask a preliminary question. Looking at
15 the second paragraph of the letter, it says,
16 "Regarding the definition of licensed software in
17 the granting clause..." and is that definition the
18 definition you just read into the record, in other
19 words, the definition of licensed software in the
20 granting clause?

21 A. The only reason I'm hesitating is we're
22 looking at some things here -- the way I would
23 operate in doing these things, I would look back at
24 the original documents. So if we want to have the
25 reporter read back the licensed software and check it

1 against the agreement, then I can say that was the
2 same thing. But licensed software is defined in the
3 Berkeley software agreement is what this is
4 referencing to, so it's putting all that in a context
5 that will be correct.

6 Q. So looking back at Exhibit D 34 on the first
7 page of the agreement itself, is that the granting
8 clause, the clause right after the words "agree as
9 follows," that paragraph, is that the granting
10 clause?

11 A. Yes, as we described it here, and the document
12 you are showing me says 34.

13 Q. I'm sorry, did I say 51?

14 A. D 34.

15 Q. We are going to be -- the D refers to
16 defendant's exhibits, which just means the exhibits
17 that defendants have been using that the reporter
18 didn't mark correctly.

19 A. It threw me off, because I couldn't see the
20 numbers.

21 MS. FITHIAN: So there's no confusion, I'll
22 go ahead and put the D on here. Is that agreeable.

23 MR. KENNEDY: Agreed.

24 MS. FITHIAN: And I'll do the same to the
25 other exhibit we have been using, Exhibit 51.

1 A. I guess for the record all these documents
2 we're looking at, can we say that they are copies of
3 official documents so I don't have to -- see, the
4 methodical way I go through these things it's hard
5 when you ask me if it's a copy of something unless we
6 all agree it's an official copy and I can move more
7 freely, because I hate to keep qualifying, which is
8 what I had to do in operations with the licensees.
9 You had to go back to the best evidence, because
10 folks would try to do things that were not with the
11 documents and have a different piece of paper or that
12 kind of thing. So could I get that?

13 MR. KENNEDY: We are willing to represent
14 that to the best of our knowledge, which includes a
15 page checking procedure carried out by staff, that
16 copies of agreements that have been produced out of
17 the files of USL from its Greensboro licensing
18 facility are true and correct copies of the documents
19 maintained in those files. Mr. Wilson, the documents
20 that have come out of USL's files bear a production
21 number at the bottom with a P in front of it. That's
22 a litigation number that's been added. I cannot make
23 any representation or enter into any stipulation with
24 respect to documents that were produced out of the
25 University of California's files. For your benefit,

1 Mr. Wilson, the documents produced by the University
2 of California bear no Bates number at the bottom. So
3 that the record is clear and you appreciate what Mr.
4 Wilson is referring to, there's a procedure, a blue
5 book procedure at USL, and from what I understand --
6 and I'm not trying to testify -- individuals would
7 actually look to see if staples had been removed to
8 ascertain whether there was any chance that new
9 documents or new pages had been submitted. That's
10 just so you understand what is the origin of the care
11 that Mr. Wilson is taking in answering his questions.

12 MS. SHAPREAU: I will say for the record that
13 the documents produced by the University of
14 California, to the best of my knowledge, are true and
15 accurate copies of documents kept in the university's
16 files.

17 A. And to make sure where I'm coming from, the
18 licensees -- and I'm not saying anybody was trying to
19 perpetrate anything -- there was a period when folks
20 wanted to have a copy for their files and they would
21 take things apart and make copies and put them back
22 together and they would be shuffled and those types
23 things. So as we go through these documents and ones
24 I've dealt with and they appear to have come from our
25 files and your files, to the best of our knowledge

1 we're not putting that here inadvertently. The way I
2 would normally do is look at these documents and
3 verify them against our file, the original for these,
4 and there would be at least two copies. The licensee
5 would have a copy and we would have a copy and then
6 we would verify page to page and line to line to make
7 sure -- in many cases it's a very high trust level --
8 and we would send the copies to the university and
9 they would send them back. A lot we did in person,
10 but a lot were done that way, so that's why I'm so
11 sensitive.

12 Q. (BY MS. FITHIAN) This particular document, D
13 34, and the agreement contained in D 34 was produced
14 by USL in this action.

15 A. Uh-huh, and the grant clause is there in the
16 first paragraph.

17 Q. And so in the letter Exhibit D 55 refers in
18 the second paragraph to the definition of licensed
19 software in the granting clause, it's referring to
20 the definition of licensed software contained in that
21 same paragraph, the first paragraph starting with
22 "AT&T grants"?

23 A. I don't have D 55.

24 Q. 51.

25 A. You referred to D 55.

1 Q. I didn't mean to if I said 55. What I'm
2 referring to -- let me reask it. We have D 34, which
3 contains an agreement dated July 1, 1988, and you
4 also have an exhibit marked D 51, which is a letter
5 of May 15, 1985?

6 A. Right.

7 Q. And the second paragraph of the letter states,
8 "Regarding the definition of licensed software in
9 the granting clause..." and I'm just trying to
10 clarify that the definition of licensed software in
11 the granting clause as referenced in this letter is
12 the definition which you read into the record
13 previously from the agreement contained in Exhibit
14 D 34. Is that your understanding?

15 A. Yeah, I have to keep these things in context.
16 The letter is the May 15 letter agreement which
17 references this July 1, 1983 document and the
18 paragraph in question refers back to the licensed
19 software definition in the '83 document, and to the
20 extent what I read into the record is what's here,
21 that's correct. I may have misspoke reading it, but
22 these two documents are tied together in that D 51
23 refers to the July 1, 1983 licensing agreement.

24 MR. KENNEDY: Counsel's question referenced a
25 July 1, 1988 agreement. I think we all agree we're

1 talking about 1988.

2 A. Let me say it's very important to keep dates
3 and things correct. I'm very sensitive to specific
4 things. We have to have them all together, because
5 otherwise they don't work.

6 Q. I'll do my best.

7 A. You say the wrong dates and we'll be going
8 back and forth all day.

9 Q. Now, looking at the letter, the third
10 paragraph of the letter marked as Exhibit D 51, it
11 states, "However, for clarification, AT&T proposes to
12 amend such definition by substituting the following
13 therefor..." and by "such definition" it's referring
14 to the definition of licensed software in the
15 granting clause of the agreement that's been marked
16 as Exhibit D 34, is that correct?

17 A. That's correct.

18 Q. Now, looking at the clarified or amended
19 definition --

20 MS. SHAPREAU: Excuse me. That's vague.

21 Q. Looking at the definition contained in the
22 letter, the definition of licensed software contained
23 in the letter marked as Exhibit D 51, and comparing
24 it to the definition of licensed software contained
25 in the agreement of Exhibit D 34, subparagraph (iii)

1 has been dropped out of the definition, is that
2 correct?

3 MR. KENNEDY: Counsel, I assume you are only
4 asking that as a predicate to another question.

5 MS. FITHIAN: Yes.

6 MR. KENNEDY: And with that in mind I won't
7 object to its form. In fact, maybe we could reach an
8 agreement that will allow me to limit form
9 objections. To the extent you are going to ask Mr.
10 Wilson about these documents, I would like to have a
11 standing objection to form to the extent it calls for
12 a legal conclusion.

13 MS. FITHIAN: Fine.

14 MR. KENNEDY: If you want to ask about his
15 understanding or what he intended by something to the
16 extent he was involved in drafting it --

17 MS. FITHIAN: All of my questions are
18 intended to be asking for his understanding. To the
19 extent I ask him about the meaning of a particular
20 document, I'm asking the meaning as he understands
21 it, and I'm not asking him to give a legal or expert
22 opinion.

23 MR. KENNEDY: Do you want to know what he
24 understands today or what he understood at the time,
25 if he can recall what he understood at the time?

1 MS. FITHIAN: We may do both. I will
2 specify.

3 MR. KENNEDY: Then I'll try to rely on you to
4 specify, and, Mr. Wilson, you will have to listen
5 carefully.

6 MS. FITHIAN: And ask for a clarification if
7 you are confused.

8 MR. KENNEDY: I don't want to put that burden
9 on him. As long as we understand I don't need to
10 lodge objections to form as long as the objection is
11 you are calling for legal conclusions. Do I have
12 that agreement?

13 MS. FITHIAN: Yes.

14 MR. KENNEDY: Thank you. Do I have your
15 agreement, Ms. Shapreau, with respect to Ms.
16 Fithian's questions?

17 MS. SHAPREAU: Yes, you do.

18 MR. KENNEDY: I don't want to amend the
19 federal rules too much. Will you read back the last
20 question?

21 (The reporter read back the last question.)

22 A. The licensed software definition in Exhibit D
23 51 replaces that which is in the software agreement,
24 and whether it's one (i) or (ii) or (iii) they both
25 stand alone. It's not that we dropped (iii) and put

1 this in. This definition in the May 15 letter is
2 substituted for the other. So whether (iii) is in
3 there or not, it's --

4 Q. Well, looking at (iii) in the agreement,
5 Exhibit D 34, it states, "prepared by licensee as a
6 modification of or a derivative work based on any of
7 the materials so listed or furnished," and if you
8 refer back to the beginning of the sentence that
9 that's modifying, it says, "Licensed software means
10 all or any portion of the computer programs, other
11 information and documentation..." subparagraph (iii),
12 "prepared by licensee as a modification of or a
13 derivative work based on any of the materials so
14 listed or furnished," and that particular language
15 and subparagraph (iii) do not appear in the amended
16 definition, do they?

17 MR. KENNEDY: That exact language?

18 MS. FITHIAN: Exactly. That's what I'm
19 asking now.

20 A. One is replacing the other. So I'm not quite
21 sure what you are asking. Are you asking me
22 literally to look at these things?

23 Q. (BY MS. FITHIAN) At this point, yes. Are
24 those --

25 A. There is no (iii) on the other one and there

1 is a (iii) on this one, but the content -- I mean,
2 I'm not following how we're going to do that.

3 Q. We'll get to that as the next question. This
4 is just a preliminary question whether or not --

5 A. Those words.

6 Q. Those exact words?

7 A. Yeah, the exact words shown under (iii) don't
8 show up in the -- it's like a verbatim match, but I
9 think the intent is preserved. I don't think there's
10 any change -- there's no change in these two
11 definitions. It's a clarification of the intent.

12 Q. But focusing just on the words, those words
13 were removed. Those specific words of subparagraph
14 (iii) were removed in the amended definition, is that
15 right?

16 A. Yeah, with regard to the educational software
17 agreement, paragraph (iii), those specific words as
18 opposed to the others were dropped. The specific
19 sequence of words was dropped.

20 Q. Okay. In looking at subparagraph (1) in the
21 agreement and comparing that with subparagraph (1) in
22 the letter of D 51, do you see any difference in that
23 subparagraph?

24 A. No.

25 Q. Looking at subparagraph (ii) do you see any

1 difference between the Exhibit D 34 agreement and the
2 letter in Exhibit D 51?

3 A. This is part of a continuing sentence with
4 regard to the educational agreement and it's the end
5 of the sentence, end of the sentence on the May 15
6 letter, Exhibit D 51.

7 Q. And other than that do you see any difference
8 in subparagraph (ii)?

9 A. No.

10 Q. So is it accurate to say that the amendment to
11 the definition was specific to subparagraph (iii)?

12 A. It appears that one was changed. In other
13 words, that's the only area of that paragraph that
14 changed. The intent behind all of these agreements
15 is to protect the intellectual property but still
16 providing the licensees the latitude to use it as
17 they define their usage. The university wanted to
18 make sure they had the proper grants to use it as
19 they saw it consistent with our licensing agreements,
20 and they were very cooperative, by the way. The
21 universities dealt with sharing of information
22 between intellectuals and so they also always wanted
23 to keep it protected. So the intent is to protect
24 that which was ours and that which was theirs and we
25 wanted to make sure we protected our information. By

1 the same token, we didn't want to take any of their
2 information. So if it was theirs, it was theirs, and
3 if it was ours, it was ours.

4 Q. So is this particular clarification meant to
5 distinguish between what was theirs and what was
6 yours, referring to AT&T?

7 A. That was the intent, yes.

8 Q. Do you recall who you dealt with in connection
9 with this amendment or this clarification?

10 A. I would have to say it was Katherine, because
11 her signature appears on the document. So the final
12 agreement was reached with her. There were other
13 folks involved, I'm sure, the attorneys and who have
14 you.

15 Q. Do you have any specific recollection of any
16 conversations you had with Katherine DeLucchi
17 regarding that clarification, or are you just basing
18 it on the fact that you see her signature?

19 A. Oh, this is back in 1984, so I have -- I mean,
20 I can remember the office and place and those things,
21 but the content of what was discussed comes back to
22 mind.

23 Q. Do you recall any specific discussions?

24 A. Yeah, we were -- yeah, we talked about our
25 ownership rights and the university's ownership

1 rights.

2 Q. When you say "we," you mean?

3 A. It was Katherine and there was the developer
4 -- I can't recall his name right now -- and there
5 was an attorney there.

6 Q. Do you know who the attorney was?

7 A. I'll check. It was probably Mary McDonald
8 about that time. I would have to check with the
9 files to be exactly sure. But at this time -- we are
10 saying "this time" back in the 1984 time frame as
11 well as later on, the atmosphere was such that we
12 wanted to make sure, both sides to make sure, the
13 agreements reflected our understandings, and we were
14 consistent in our intent to protect the property, and
15 the university wanted to make sure they protected
16 theirs, and Katherine had the responsibility of
17 making sure the developer is kept in tune with the
18 licensing agreements, because lots of times we would
19 have to go back and bring those folks in because they
20 were not familiar with the legal document and the
21 attorney would be involved and say, "This is what
22 this means." So we had to deal with the legal
23 interpretation as well.

24 Q. Did this clarification letter come about as a
25 result of a request by the university for an

1 amendment or clarification of the agreement?

2 A. Yes.

3 Q. Do you recall whether --

4 A. And I say yes because of the fact that we
5 worked very, very hard and diligently trying to put
6 together a good licensing document. But there would
7 always be folks come back and say, "Can you clarify
8 this?" and sometimes just a dialogue would suffice.
9 But in some cases they would say, "Let's reduce that
10 to writing." So I put it in a generic category.

11 These types of changes were at the request of the
12 licensee or licensees from the standpoint if there
13 was a lot of folks bringing the same type of issue it
14 would end up in one of these clarification letters.

15 Q. Do you recall who came up with the language
16 that was used in the amended definition?

17 A. The language evolved through the negotiation
18 process back and forth between myself and Katherine
19 and the attorneys and coming to something that we
20 could all agree upon. So what language you see here
21 is the result of all the participating parties coming
22 to an agreement as evidenced by our two signatures.

23 Q. Do you recall the specifics of any discussion
24 regarding the language of the amended definition,
25 referring now still to Exhibit D 51, the May 15, 1985

1 letter?

2 A. I'm not sure how to answer that. I mean,
3 specifically I remember the conversations and how we
4 arrived -- what we actually said in those meetings
5 back that many years ago, I don't remember exactly
6 what was said. I know there was a lot of dialogue,
7 because we spent a lot of time out there and on the
8 telephone and we had lots of licensees -- you know,
9 we had to deal with all of them and we would always
10 try to reduce our understandings to writing.

11 Q. I realize this is many years ago.

12 A. Yeah.

13 Q. And people often don't recall the specifics of
14 conversations that long ago. But I was just trying
15 to see whether you did, in case you happened to
16 recall. But as I understand it, you don't recall
17 specific discussions?

18 A. Not without looking at notes or files and
19 refreshing myself.

20 Q. Do you have any general recollection of the
21 substance of what was discussed back and forth
22 between the university and you personally?

23 A. Oh, yeah.

24 Q. Can you tell me what you do recall?

25 A. I recall several discussions regarding the use

1 of the licensed software, and that's what the
2 conversation revolved around, how you use the
3 licensed software. Our intent to protect that but
4 not have any ownership of what they developed using
5 the software. There were two types of licensees,
6 those who used it as a tool and those who developed
7 other things, and we were careful that we were
8 providing the software for their use and not
9 requiring us to give them the stuff back, as some
10 licensing program would have things like a grant
11 back. We provided these under very favorable
12 financial terms to the university.

13 Q. Do you recall anything else regarding your
14 conversations back and forth with the university on
15 this amendment of Exhibit D 51 other than what you
16 have already testified to?

17 A. Not at this moment, no.

18 Q. Now, under the amended definition, the last
19 sentence that was added states, "Licensee agrees that
20 any modification or derivative work prepared by it
21 that contains any licensed software shall be treated
22 as licensed software hereunder." Is it your
23 understanding that under that sentence any
24 modification or derivative work prepared by the
25 licensee was to be treated as licensed software if it

1 contained licensed software?

2 A. You just read what it states. You read the
3 paragraph.

4 Q. Well, it wasn't --

5 A. Would you read back the last question?

6 (The reporter read back the last question.)

7 A. The intent behind that language did not change
8 from the original language. Contained, based on,
9 reference to, that was all covered by that clause.
10 That was the things we were trying to clarify. In
11 other words, you couldn't -- one of the folks had a
12 concern about once you are exposed to the technology
13 do you take things away and learn things from that,
14 and that was a situation you had to deal with. If
15 you looked at the licensed software, were exposed to
16 the licensed software, it would be very difficult to
17 go forward without taking that with you. So if they
18 had anything they developed that was based upon
19 software, contained portions of the software or even
20 putting -- we even had a thing about how we protect
21 it. That was all licensed. The intent of that
22 language is to say this is ours and that's yours, and
23 universities were -- specifically the University of
24 California -- always very clear what was AT&T
25 software and what was theirs and they were very good.

1 at protecting it by making sure the proper licensing
2 agreements were in place with any folks they were
3 dealing with. The point I'm making is there's no
4 change in intent between these two documents.

5 Q. So in your mind the words "based on" the
6 licensed software means the same thing as "contains"
7 licensed software?

8 A. Yeah, the intent is the same.

9 Q. So as the words "based on" were being used in
10 the agreement of Exhibit D 34, is it your
11 understanding that "based on" as used there was
12 limited to a derivative work that contained licensed
13 software?

14 A. No, that's what I said earlier. In other
15 words, the intent of the language was that we
16 provided them a software product, licensed software,
17 which included documentation, source code, compiled
18 binary and a unique way of structuring this
19 particular offering, and anything that was taken from
20 that -- because this was a source code which was the
21 original intellectual property as opposed to binary,
22 so you had exposure to the artist and his original
23 work, and anything that was based on that was
24 considered licensed software and you had to treat it
25 as such, and it wasn't narrowly defined to say, "You

1 can pick a piece of this and put it over there."
2 Like if you are exposed to the technology and it was
3 structured this way and you say, "I can write it a
4 different way but do the same thing," you were
5 actually using the licensed software product.

6 Q. So in your mind the words "that contains" any
7 software product are not the same as the words "based
8 on"?

9 A. No, I think the intent behind both of those
10 sets of words are the same. They are the same.

11 Q. So looking back at Exhibit D 34, the
12 agreement, the words "based on" any of the materials
13 in that agreement meant if it contained any of the
14 materials? Is that what you are saying?

15 A. Saying the whole thing. I think I said it
16 twice.

17 Q. I thought the last time when I asked you said
18 no, that's not what it meant.

19 A. Maybe I did. We can read it back.

20 Q. Go ahead and give me your answer.

21 MR. KENNEDY: Do you have a question?

22 MS. FITHIAN: Was there an answer to the last
23 question?

24 A. Read back the last question.

25 (The reporter read back the last question.)

1 A. And that's when I said that the intent -- see,
2 in other words, even by the document itself it's a
3 clarification and there was a lot of dialogue around
4 that, and the intent was that the licensed software,
5 the original work, the source code and how it was
6 structured, put together, and the documentation and
7 all the codes are part of the licensed software and
8 any of that that was defined that way belonged to
9 AT&T. So if you had a derivative work or -- that
10 wouldn't, but if you produced something that
11 contained, was based on -- a subset or superset or
12 whatever came with the licensed software and that's
13 what we were talking about. That would have to be
14 protected just like the licensed software.

15 Q. So looking back at Exhibit D 34, as far as
16 your understanding goes, one could simply remove the
17 words "based on" from that and substitute for them
18 "that contains" and it would mean exactly the same
19 thing?

20 MR. KENNEDY: Counsel, I really want to give
21 you as much leeway as possible with Mr. Wilson,
22 because he is the individual who signed these
23 agreements, but I have to object to that question on
24 the grounds of form. I think we're getting
25 argumentative.

1 MS. FITHIAN: I don't mean to be.

2 MR. KENNEDY: My objection to form has been
3 made.

4 MS. FITHIAN: That's fine. Would you read
5 back the question?

6 (The reporter read back the last question.)

7 A. The May 15 paragraph with regard to licensed
8 software for clarification replaced that in total.
9 So that's the -- I don't think you can cut it up in
10 pieces. I think you have to look at the thing as a
11 whole, and the main thing -- again, I have to keep
12 going back to this because this was the basis of
13 many, many discussions over the years -- what was the
14 intent of the parties involved? And sometimes it's
15 very difficult to get that into words. You can
16 always go back and second guess and we keep going
17 back over the words. But the intent was what's ours
18 and what's yours, and we were trying to protect both
19 parties and having language someone could look at and
20 say, "We understand the intent of the parties
21 involved." One was a clarification of the other.
22 The intent with regard to what we meant with regard
23 to the language did not change from one document to
24 the other. They were exactly the same.

25 Q. I guess that's what I was following up on. In

1 your mind, the words "based on" --

2 MR. KENNEDY: Excuse me. Were you through?

3 A. No.

4 Q. Go ahead.

5 A. In other words, it's hard for me to take a
6 little piece of that and say that it meant this and
7 this. It has to be taken as a whole. Over the years
8 folks would take bits and pieces of the document to
9 exploit some need they had, so you always had to look
10 at it in the entire contents of the document. So you
11 can't really take bites out of it, in my opinion.
12 You have to look at it as a whole as the intent of
13 the parties involved.

14 Q. Right now I'm trying to focus on the language,
15 because you testified that in your mind the words
16 "based on" and "that contains" are not different as
17 used in these two provisions, so I'm wondering if, as
18 you understand it, looking at the agreement and the
19 subparagraph (iii) if one were to use the words "that
20 contains" in place of the words "based on," would
21 that mean the same thing to you?

22 A. I would have to look at it in the whole
23 context of things. The way I look at that is what
24 was the intent of that language and not a slice of
25 two or three words and say that this word replaces

1 that. In other words, a clarification is a
2 clarification of the intent of the parties involved
3 here, and what this is going to is the grant of
4 rights and what constitutes licensed software or
5 AT&T-owned intellectual property, and that did not
6 change from one document to the other. We also were
7 trying to clarify whether someone created something
8 that was yours and not ours and we wanted to make
9 sure we were both clear that we didn't have any
10 ownership rights to anything they had and they didn't
11 have any ownership rights to anything we had. That
12 was the intent behind all this, this is yours and
13 this is mine, and we didn't want those to mingle, and
14 the intent at the time and in many, many
15 conversations was that both parties were to just make
16 sure they clarified that so they respected each
17 other's rights.

18 Q. And under this clarification, as you
19 understand it, not every derivative work prepared by
20 the licensee was required to be treated as licensed
21 software, is that right?

22 A. I did not say that.

23 Q. I'm asking you is that your understanding?

24 A. No, it's not.

25 Q. Then why in the last sentence of the amendment

1 wouldn't it simply say, "Licensee agrees that any
2 modification or derivative work prepared by it shall
3 be treated as licensed software"? What was the point
4 of the language "that contains"?

5 A. Well, we can go over this as many times as you
6 want to, but we probably need to read back the
7 sequence of questions again, because we are now
8 getting into what we call derivative works and I
9 don't know what you mean by derivative works. So I
10 think you have to qualify it.

11 Q. Let's ask a preliminary question. What's your
12 understanding of the meaning of the word
13 "derivative"?

14 MR. KENNEDY: Were you done?

15 A. Yeah.

16 Q. If you're not -- sometimes I do anticipate. I
17 don't intend to cut you off. What is your
18 understanding of the words "derivative work" as used
19 in -- well, let's start with today and then we'll
20 find out if that's still your understanding or the
21 understanding you had at that time.

22 MR. KENNEDY: I'm not sure if you are asking
23 him about derivative works generally or under the
24 copyright act. In respect of this agreement?

25 MS. FITHIAN: Yes.

1 A. With regard to these licensing agreements here
2 with the University of California that we're looking
3 at, my understanding of a derivative work or a
4 modification or -- it's like anything that was
5 created by the university. It's like anything that
6 they create, period. We were concerned that if in
7 creating something at the university they used the
8 licensed software. So from that standpoint you can
9 take derivative work as anything created by the
10 university. If it happened to be using the licensed
11 software as a tool or subset or what have you, then
12 we asserted certain rights with regard to that
13 creation. So it's hard.

14 Q. (BY MS. FITHIAN) And the understanding that
15 you just gave, do you recall whether that was your
16 understanding back at the time when this letter was
17 signed? And by "this letter" I'm referring to
18 Exhibit D 51.

19 A. With regard to this, when this thing was
20 signed -- see, the source of the conversations -- I
21 mean, the crux of the conversations was going to what
22 belongs to the university and what belongs to AT&T
23 and in that context you come up with a derivative
24 work, and by "derivative work" as reduced to language
25 it meant that it contained, was based on or a part of

1 the licensed software and that which they created.
2 But that was always the thing you wanted to make sure
3 you clarified, because if they created something
4 independent of the licensed software, that was
5 theirs. So I guess -- well, I don't want to say
6 that. But if you go back and say the thing that I
7 was concerned about or AT&T was concerned about was
8 those things created that contained, based on, part
9 of the licensed software. That's where we were
10 asserting our rights with regard to licensed software
11 to the degree it manifested itself in something that
12 the university came up with.

13 MS. FITHIAN: Would you read the last part of
14 his answer?

15 (The reporter read back the last question.)

16 MR. KENNEDY: I thought I heard Mr. Wilson
17 say, "Well, I don't want to say that." I think some
18 words may have been missed, and I'm laying that on
19 the record now so there's no question about it, but
20 that's what I heard.

21 A. I did.

22 Q. Why don't you clarify? You don't need to
23 repeat the entire answer if you can just --

24 A. I think what counsel said I concur in.

25 Q. I believe you said in the last answer that

1 derivative work here meant included something, that
2 was contained, that contained licensed software, that
3 was based upon licensed software or that was a part
4 of licensed software. Is that how you would define
5 derivative work in your mind as used in this
6 agreement?

7 A. You keep asking me specific things about the
8 words and --

9 Q. I was asking about your previous answer.

10 A. I understand that, but when you talk about
11 licensing agreements between two parties it's the
12 intent of the parties that's paramount here. So we
13 spent a lot of time sitting across a table talking
14 about the intent of the parties with the idea that
15 maybe somebody later would come back and look at the
16 document. But if you go to folks that were present
17 at the time, which I was present and Katherine or
18 somebody was there, you can clarify what the intent
19 of the parties meant, and to the extent those folks
20 are around, I think it will become clear the words
21 said that this is AT&T's and this is the yours. We
22 did not want to have any rights or ownership to
23 anything they created. By the same token, we wanted
24 them to protect and use anything that we provided
25 under the licensing agreement in accordance with the

1 licensing agreement. So that's the only way I can
2 deal with these. We dealt with licensees over the
3 years and it was always what you intended. It was
4 clear, but it was always difficult, the words that
5 each party was comfortable with, whether it was the
6 developer or the administration. But what was very
7 clear to me at the time and now was that that which
8 was AT&T's belonged to AT&T and the licensees agreed
9 and exercised care in protecting that. They wanted
10 to protect that which belonged to AT&T, and we always
11 wanted to clear up what that meant with regard to the
12 licensed software.

13 Q. And this last provision, the last sentence in
14 the definition in the letter agreement, was to
15 clarify what needed to be treated as licensed
16 software, is that right?

17 MR. KENNEDY: You are referring to the last
18 sentence in the paragraph that we have been focusing
19 on in Exhibit 35.

20 MS. FITHIAN: Right, the amended definition
21 of licensed software.

22 MR. KENNEDY: Objection to form. You may
23 answer.

24 A. I would say that's not correct in that it has
25 to be taken in -- it kind of takes it out of

1 context. You have to look at the entire agreement
2 with regard to licensed software to say what we meant
3 by all that.

4 Q. (BY MS. FITHIAN) I understand, but with
5 respect to modifications or derivative works prepared
6 by the licensee, that last sentence in the amended
7 definition was intended to distinguish between those
8 modifications and derivative works prepared by the
9 licensee that needed to be treated as licensed
10 software and those that did not, is that your
11 understanding?

12 MR. KENNEDY: Object to the form of the
13 question.

14 A. No, I think the -- I think the language was
15 meant to say this is AT&T's and this is yours and we
16 were trying to define which belonged to whom and
17 that's it. Both that and the software agreement and
18 this letter agreement were just trying to clarify
19 what the licensed software was.

20 Q. Right, and if a derivative work was not
21 AT&T's, then under this last sentence in the amended
22 definition it did not need to be treated as licensed
23 software, is that your understanding?

24 A. That which was created by the university
25 independent of any exposure to the licensed software

1 belonged to the university and we would have not even
2 had these types of discussions. These discussions
3 and these agreements only came up when there was
4 exposure to the licensed software. So with regard to
5 those things that were really no issue, they never
6 came up. The reason we have these documents and we
7 had discussions with the university was that they
8 were using the licensed software product. Otherwise,
9 you wouldn't be talking.

10 Q. Right, so the last sentence in the amended
11 definition of licensed software only applies to works
12 that are created as a derivative work or
13 modification, is that what you are saying?

14 A. Derivative work or modification of what?

15 Q. Of the licensed software.

16 A. All these documents are talking about the
17 licensed software that we're talking about, so yes.
18 You know, we are talking about the licensed software
19 because we are talking about documents that cover the
20 licensed software.

21 Q. In this last sentence again in D 51 the,
22 paragraph providing the amended definition of
23 licensed software, was that intended to distinguish
24 between those modifications or derivative work or --
25 let me restate the question. The last sentence of

1 the definition of licensed software contained in the
2 May 15, 1985 letter of Exhibit D 51 was intended to
3 distinguish between those modifications of the
4 licensed software or derivative works prepared by the
5 licensee that were required to be treated as licensed
6 software and those that were not, is that your
7 understanding?

8 A. My understanding is that anything created by
9 the university with exposure to the licensed
10 software, based on, contained, a part of, was a
11 derivative work with regard to these documents and
12 had to be treated as licensed software.

13 Q. So just to make sure I understand what you are
14 saying, as you understood it, any derivative work, as
15 you defined it, was required to be treated as
16 licensed software?

17 MR. KENNEDY: Objection to form. I really
18 think we're going around in circles.

19 MS. FITHIAN: Trying to understand what he is
20 saying.

21 A. Could you maybe state what you mean? I know
22 what I mean. I mean, part of the licensed software
23 belongs to AT&T.

24 Q. (BY MS. FITHIAN) You mean any part of the
25 licensed software belongs to AT&T?

1 A. As I said earlier, we can't take things out of
2 context. The only reason we're having these
3 discussions about the licensing documents, the
4 licensed software was being utilized by the licensee
5 or contemplated being used by the licensee, and
6 everything we are talking about refers to licensed
7 software, and it was clear about our intent of
8 protecting the licensed software. It was clear we
9 wanted the licensee to protect the licensed software,
10 and it was clear we didn't want to assert any
11 ownership rights to anything they created independent
12 of our licensed software, and that was our intent,
13 and the words we're trying to get to again are as
14 evidenced by having the clarification. But the
15 intent behind both sets of language is exactly the
16 same, and the university, especially the University
17 of California, in my understanding, was in agreement
18 with that to the extent they did extensive things to
19 make sure that any parties with whom they associated
20 that had any exposure to the licensed software were
21 properly licensed as they were. We covered that
22 earlier. But there was a whole procedure in how you
23 protect licensed software, and if there was an error
24 it was an error for the other side, and we go further
25 to protect the other side, to make sure the software

1 was protected, and the university in talking with
2 other parties would always verify and check that the
3 other party had a licensing agreement exactly the
4 same as theirs before they would discuss the licensed
5 software product. In some cases that was
6 overreaching, but it was better to overreach than
7 come up with something less than that. So these
8 discussions, to me, were always characterized by very
9 open dialogue. We wanted to protect ourselves and we
10 understand everything you mean with respect to
11 licensed software, so we don't violate that.

12 Q. And that was the purpose of this sentence?

13 A. You keep saying that. It's the purpose of the
14 whole program, and I can't keep taking things out of
15 context.

16 Q. So if you can say what you mean. Trying to
17 figure out why this sentence was added to the amended
18 definition, as you understand it.

19 MR. KENNEDY: Let's take a break.

20 MS. FITHIAN: I have a question pending.

21 MR. KENNEDY: Counsel --

22 MS. FITHIAN: If I can get an answer to that,
23 I'll be happy to take a break.

24 MR. KENNEDY: That's fine, but I'm going to
25 object to the form of the question.

1 A. Would you read back the question?

2 Q. (BY MS. FITHIAN) I'll just clarify it. I'm
3 trying to figure that out, and I want to know, as you
4 understand it, why was that sentence added?

5 A. Okay.

6 MR. KENNEDY: Objection to form.

7 A. We've spent several minutes, if not an hour,
8 talking about this particular issue, okay? The
9 sentence, the paragraph, the letter itself resulted
10 from a series of discussions of contents of the
11 licensing agreement. So it's not reduced down to one
12 sentence. So the reason for the issues of
13 clarification was in the context of all the things we
14 talked about earlier with regard to cooperation with
15 licensees or about how to use the licensed product
16 and that sentence is one piece and these two or three
17 documents you have here before me, you have to look
18 at it in total. You can't take just one piece out --
19 or that's my understanding. You can't take one piece
20 out depending on where you are trying to get to.
21 Folks would try to do that and say, "Oh, this is what
22 it means." Like, "Oh, I got you." But it was clear,
23 especially with the University of California, to
24 protect AT&T software by both parties, to protect
25 AT&T licensed software.

1 Q. Just one follow-up question.

2 MR. KENNEDY: Please, counsel, we've been on
3 this --

4 MS. FITHIAN: Let's take a break. If you
5 don't want him to answer that follow-up question,
6 I'll --

7 MR. KENNEDY: I'm not saying he can't answer
8 a follow-up question. Why not keep your follow-up
9 questions until --

10 MS. FITHIAN: Until after the break?

11 MR. KENNEDY: Go ahead. You can go on as
12 long as you want.

13 MS. FITHIAN: Mr. Wilson, feel free to
14 request a break at any time you want.

15 MR. KENNEDY: Go ahead and take another 20
16 minutes.

17 MS. FITHIAN: Any time you feel you need a
18 break, feel free to ask for a break and I'll give it
19 to you. There isn't a question pending, but if you
20 need a break, that's fine, and feel free to request a
21 break. If you need a break at this time, I'll be
22 more than happy.

23 MR. KENNEDY: I'm making a special request of
24 Mr. Wilson --

25 MS. FITHIAN: And if counsel needs a break,

1 I'll be more than happy.

2 MR. KENNEDY: I'm making a special request of
3 Mr. Wilson to listen to and answer your next
4 follow-up question. I don't want any adverse
5 consequences on this. So go ahead and let's go.

6 Q. (BY MS. FITHIAN) I believe you testified --
7 and correct me if I'm wrong -- that that sentence
8 also was intended to distinguish between what works
9 prepared by the university were required to be
10 treated as licensed software and what works prepared
11 by the university were not.

12 A. I would have to have that answer called back.
13 I don't recall that specific question and answer you
14 are referring to.

15 Q. Just asking it fresh now.

16 A. If you are asking it fresh, we can go back to
17 the same dialogue. It's the intent of the parties.
18 So I think we've answered that several different ways
19 what the intent means. The intent is that licensed
20 software covered those things which were owned by
21 AT&T. That's what these documents are talking about,
22 how to protect and treat the licensed software, what
23 things could be done with the licensed software. So
24 all of our dialogue has been focused on that, and in
25 dealings with licensees and lots of licensed

1 documents the only way you can deal with them is to
2 deal with the intent. The intent never changes. We
3 may come up with -- I may be in error, but we are
4 talking about educational licenses and commercial
5 licenses and there's an intent behind those programs
6 and those are consistent. Some licensees said,
7 "Let's talk about it and make sure we understand
8 that," and the results of those understandings or
9 discussions usually clarified our intent and
10 sometimes resulted in saying, "Let's write it a
11 different way and it will better reflect our
12 understanding."

13 Q. Is that what happened in this instance, that
14 these words better reflected the parties'
15 understandings?

16 A. Yeah, that was the clarification. That's what
17 the document stipulates. D 51 says "for
18 clarification," by substituting this for the other.

19 MS. FITHIAN: Let's take a break.

20 MR. KENNEDY: Are you going to a new area
21 now?

22 MS. FITHIAN: I'm not sure.

23 MR. KENNEDY: Okay.

24 (Whereupon, a recess was taken.)

25 Q. (BY MS. FITHIAN) I'm going to show you a

1 document that's been marked as Exhibit D 25 and I'll
2 tell you that this is a document that was produced by
3 the University of California from their files and it
4 does have some cover sheets of the university's. It
5 then has a letter and then after that within the
6 exhibit there's an agreement. Did you have a chance
7 to look at the agreement within the exhibit?

8 A. I glanced at it.

9 Q. I'll ask you some preliminary questions and if
10 you need time to review it further, that's fine. Can
11 you identify the agreement that's included in Exhibit
12 D 25?

13 MR. KENNEDY: Are you referring, counsel, to
14 the document which starts with page 1 of 7, agreement
15 E-Soft 00089.

16 MS. FITHIAN: And AT&T Information Systems,
17 Inc. Educational Software Agreement.

18 A. Okay. Again, to make sure we are consistent
19 with what we said earlier, I identify the document
20 the same as I stipulated earlier.

21 Q. (BY MS. FITHIAN) Subject to your comparing
22 this with the copy in your files, assuming they are
23 the same, are you familiar with this agreement?

24 A. Uh-huh.

25 MR. KENNEDY: You have to say yes for the

1 record.

2 A. Okay.

3 MR. KENNEDY: Otherwise, it will be
4 translated as uh-huh.

5 A. Okay. Yes, this document and subsequent
6 documents and previous documents, as we defined in
7 earlier testimony this morning, I want this to be the
8 same way. So as long as we stipulate that. With
9 that said, it looks like my signature, so let's go.

10 Q. Can you tell me what this document is?

11 A. Educational software agreement.

12 Q. And is this a software agreement between AT&T
13 and the University of California?

14 A. University of California-Berkeley.

15 Q. Were you involved in the negotiation of this
16 agreement?

17 A. Yes, I was.

18 Q. Can you describe your involvement in the
19 negotiation of this agreement?

20 A. With all agreements I executed I was
21 responsible for the content of the agreement with
22 regard to AT&T licensed software products or that
23 which was being provided under the agreement to the
24 licensee. So in that regard I talked to the
25 licensees and again, as I characterized earlier,

1 there was discussion between licensees, their
2 counsel, their users and the administrative office
3 with regard to the intellectual property.

4 Q. Now, is the form of the agreement used here
5 where supplements were added, was that a new form of
6 agreement at this time?

7 A. "At this time" meaning 1985?

8 Q. Yes.

9 A. You know, there's no supplements on this one.

10 Q. Not in my copy, no.

11 A. Yes, about this time one of the things that
12 was put in place was a software agreement which
13 contained the protective covenants which were the
14 same for all licensed products under this particular
15 agreement, and as previously -- well, this particular
16 agreement -- in other words, this had things which
17 were constant for all intellectual properties that
18 were contained here and the specific licensed
19 software was identified in the supplement, the idea
20 being that once we agreed on how we protect it and
21 what was covered and not covered, we wouldn't have to
22 go over and do it again.

23 Q. So it would cover whatever products were
24 identified in any supplements?

25 A. Attached to this.

1 Q. Executed by the parties?

2 A. Any supplements to this particular document.

3 Q. That's what I meant. Let's mark as the next
4 two exhibits letters which were produced by the
5 University of California. We've now marked as
6 Exhibits D 67 and D 68 two letters produced by the
7 University of California produced without Bates
8 numbers. Exhibit D 67 is a letter to Gertrude M.
9 Williams from Roy L. Towers dated August 26, 1985,
10 and Exhibit 68 is a letter to Mr. Roy Towers from
11 Gertrude Williams, and I don't see a date on Exhibit
12 D 68. Would you take a moment to look at those two
13 exhibits and let me know when you have completed
14 looking at them?

15 A. I'm waiting for you.

16 Q. Wanted to make sure you had a chance to look
17 them over. Let's start with D 67. Have you ever
18 seen that document before?

19 A. Yeah, I think so.

20 Q. Do you recall when you previously saw this
21 document?

22 A. Long time ago.

23 Q. Do you think it was about the time -- do you
24 think that you saw it around the same time as the
25 date of the document, August 26, 1985?

1 A. More than likely I did. I don't recall it
2 specifically, the time.

3 Q. Do you recall discussing with Ms. Williams the
4 content of this document, referring to Exhibit D 67?

5 A. I don't recollect a conversation specifically
6 about this document with Gertrude.

7 Q. Now, referring to Exhibit D 68, have you ever
8 seen that letter before? This was the letter from
9 Ms. Williams to Mr. Towers.

10 A. I don't recall. I would state, though, this
11 one looks like it might have been a proposal or
12 something.

13 Q. By "this one," can you clarify?

14 A. Looks like Exhibit 68 is not a final
15 document. It contains no dates and the agreement is
16 open. So it looks like -- with regard to the first
17 two pages, they are not dated and with regard to the
18 cover it starts Proposed Educational Software
19 Agreement. It's an open document. It's a document
20 that's not been processed, and with the absence of a
21 date I don't know whether there was something that
22 was just -- it's hard to say where this came from.

23 Q. Well, I can state that I received it from the
24 University of California, and my understanding is it
25 comes from their records. If you look at the second

1 page of the letter there's a signature for G. M.
2 Williams. Do you know whether that refers to
3 Gertrude M. Williams?

4 A. That appears to be Gertrude Williams'
5 signature, okay? But the document -- I'm at a loss
6 to identify the document because of the absence of
7 dates.

8 Q. If you look in Exhibit D 68 it says, "Software
9 agreement form SS-Soft-Ed 050185 (old form,
10 attachment 1) has been revised," and following the
11 letter in the first agreement is the handwritten word
12 "attachment 1." Does that --

13 A. No, I don't see that.

14 Q. May I see your copy in case it's been cut off
15 in your copy? Do you see some handwriting that you
16 can't make out at the top of the page?

17 A. Of course I see that.

18 Q. And keep going to the end of that agreement
19 and the schedules following it. There's a letter you
20 will find dated October 19, 1984 with the words
21 "attachment 2" written in the upper right-hand
22 corner. Do you see that?

23 A. Not yet.

24 Q. And then --

25 A. I do not see it.

1 Q. I'm sorry.

2 A. Looking for attachment 2.

3 Q. I think you are about there now. Do you see
4 attachment 2 written in the upper right-hand corner
5 of an October 1984 letter?

6 A. Yes.

7 Q. And if you refer back to the first page of the
8 letter, the second sentence states, "Since the
9 agreement was not executed or responded to within the
10 90-day period stated in our letter to you (see
11 attachment 2)..." and attachment 2 is a letter from
12 Gertrude M. Williams to Ms. Pamela True. Do you see
13 that?

14 A. Yeah, I see the documents you are talking
15 about.

16 Q. And right after attachment 2 there's another
17 form of agreement that has the words attachment 3
18 written in the upper right-hand corner. Do you see
19 that?

20 A. Yes.

21 Q. And if you compare the revision dates in the
22 upper left-hand corner of the first agreement
23 attached to the letter and attachment 3, they appear
24 to be different versions of the educational software
25 agreement.

1 MS. SHAPREAU: You didn't ask a question.

2 Q. Don't they? I'll complete the question. I
3 thought I completed it.

4 A. I don't know.

5 Q. Well, looking at the revision dates cut from
6 the upper left-hand corner on the first page of each
7 of these agreements, the first one says SS-Soft-Ed
8 050184 and attachment 3 in the same location says
9 SS-Soft-Ed 050184-070185. Does that indicate to you
10 that these are different versions of the educational
11 software agreement?

12 A. The identifiers are different, so I would have
13 to look at the two documents to see if they differ
14 and, if so, where they differ.

15 Q. Well, normally in the AT&T license agreements
16 if they have a different revision date in the upper
17 left-hand corner does that indicate that they are
18 different versions, normally?

19 A. Yes, normally. I'm kind of hesitating a
20 little bit. Normally that would indicate that the
21 original date was put together 5/1/84 with the last
22 change or modification being 7/1/85, but I have a
23 problem with these documents, because I'm unable to
24 determine what they really are, because they don't
25 have numbers on them. One has a number and one

1 doesn't have a number. They don't have any dates or
2 signatures, so I'm not sure what we're trying to do
3 with these. These are not official documents that we
4 would have between the two parties. You know, they
5 are just open documents.

6 Q. They appear to be documents that are simply
7 identified in the letter and attached to the letter
8 for reference purposes. In any event, looking at
9 back at the letter marked as Exhibit D 67, if you
10 will refer to paragraph 3 on the first page of that
11 letter, which has a heading section 2.01 (a). Do you
12 see that?

13 A. Yes.

14 Q. And the first sentence of that letter, which
15 is the letter to Gertrude Williams from Roy Towers,
16 states, "The University of California has reviewed
17 the above-referenced agreement and we hereby request
18 that the following changes be made," and paragraph 3
19 states, "In the second sentence, the words 'that
20 contain software product' should be inserted between
21 the words 'materials' and 'are,' and the words 'part
22 of the original' should be deleted." Do you see that
23 sentence?

24 A. Yes.

25 Q. And looking at D 68, the letter from Ms.

1 Williams to Mr. To yourself the first sentence
2 states, "We have reviewed your proposed changes to
3 the above-referenced agreement and our response
4 follows," and this letter also has a paragraph 3. Do
5 you see that?

6 A. Yeah. I don't know where we're going with
7 this.

8 Q. I'm getting to it.

9 A. I'm having a hard time dealing with these
10 documents. They don't look like original documents,
11 even the letters. This letter has no date on it.

12 Q. It has a signature.

13 A. Yeah, but I don't understand what this is.
14 It's a letter without a date. I don't know whether
15 it preceded it or whatever. I mean, you can imply
16 some things here, but this is not what we would use
17 trying to find something going on with this
18 particular licensee. We have to get wherever this
19 culminated.

20 Q. Right now I'm just trying to go through what
21 happened before the final agreement to the extent you
22 might have been involved.

23 A. I don't recall anything about this letter.

24 Q. And I want to put this context down first
25 before my following questions, so if you will bear

1 with me just a minute, and if you don't have any
2 knowledge of this, that's fine. So looking at
3 paragraph 3 in D 68, it also refers to section 2.01
4 (a). Do you see that?

5 A. Yes.

6 Q. And it states, "Section 2.01 (a) has been
7 revised and should satisfy your proposed
8 amendments." Do you see that?

9 A. Yes.

10 Q. Do you have any understanding as to whether
11 that is a response to the letter that's been marked
12 as Exhibit D 67 and specifically paragraph 3 of the
13 letter marked as Exhibit D 67?

14 A. I don't know.

15 Q. You don't have any understanding?

16 MR. KENNEDY: You mean any recollection?

17 MS. FITHIAN: Well, right now I'm asking his
18 understanding, and I'll ask your question as well.

19 Q. (BY MS. FITHIAN) For the moment I'll ask you
20 do you have any understanding?

21 A. I understand what the documents are talking
22 about, but whether this letter was in response --
23 again, as I stipulated earlier, we probably need to
24 go back and get our documents, because if this was in
25 response to this and went back and forth and resulted

1 in this letter, then we would have a copy in our
2 file.

3 MS. SHAPREAU: I would just like to say for
4 the record it's my understanding the documents you
5 are looking at are true and accurate copies of
6 documents in the University of California's files
7 pertaining to communications with AT&T.

8 A. This isn't marked as the ones you identified
9 to me earlier. In other words, you told me the
10 university documents would be marked a certain way.

11 MR. KENNEDY: No, the university documents
12 have no Bates number.

13 A. Okay, no Bates number.

14 MR. KENNEDY: The USL documents have a Bates
15 number, and what I understand Ms. Shapreau to be
16 saying is that this is a true and authentic copy of a
17 document which was in the University of California's
18 files. You can accept that for what you might feel
19 it's worth.

20 Q. Just so I understand. You don't have any
21 understanding as to whether this paragraph 3 in
22 Exhibit D 68 was written in response to paragraph 3
23 in Exhibit D 67?

24 A. It appears it's in response to that, but I
25 would have to look at the whole thing. I'm familiar

1 with the issues in both things, and if we are trying
2 to focus on this particular document it appears to be
3 in response to that. So that appears to be that, but
4 I would have to do -- I would have to look at all the
5 things together. In other words, I would never look
6 at something out of context like this.

7 Q. The second paragraph on page 1 of Exhibit D 68
8 says, "Software agreement form SS-Soft-Ed 050184 (old
9 form, attachment 1) has been revised." Is that
10 agreement that's been revised, as you understand it,
11 the agreement, the first agreement attached to this
12 letter, which in the upper left-hand corner there's a
13 revision date of 050184?

14 A. Would you read that again?
15 (The reporter read back the last question.)

16 Q. Let me rephrase the question. Looking at the
17 first sentence in the second paragraph in Exhibit D
18 68, that sentence says, "Software agreement form
19 SS-Soft-Ed 050184..." and then there's a
20 parenthetical that states, "old form, attachment 1
21 has been revised." Is it your understanding that
22 that refers to the agreement attached to the letter,
23 the first agreement following the letters?

24 A. The attachment I can't read?

25 Q. Right.

1 A. It appears to be, the way these are put
2 together, that refers to that which you indicated
3 earlier is attachment 1. That's what it looks like.
4 In other words, in a paragraph talks about things
5 that follow it, and there's attachment 1, 2 and 3 and
6 this is attachment 1, so it looks like that.

7 Q. Now, the second sentence of the second
8 paragraph in Exhibit D 68 says, "We are
9 submitting..." and just reading the second half, "We
10 are submitting agreement E-Soft 0089 on the new form
11 SS-Soft-Ed 050184-070185," and there's a
12 parenthetical, "new form, attachment 3." Is it your
13 understanding that that refers to the agreement that
14 has the words "attachment 3" written in the upper
15 right-hand corner?

16 A. That's what I answered to previously.

17 Q. And looking down at paragraph 3 on the first
18 page of Exhibit D 68 where it says, "Section 2.01 (a)
19 has been revised and should satisfy your proposed
20 amendments," is it your understanding that that
21 refers to the new form attachment 3 when it refers to
22 "section 2.01 has been revised"?

23 A. Again, I have to go back to what I said
24 earlier. I think we already went over that
25 question. If these two documents as presented -- it

1 appears that this one is referring -- Exhibit 68 and
2 67 are tied together and as such it appears they are
3 referring to each other and that's my understanding
4 based on what you represented to me today, if that's
5 what you mean.

6 Q. Can you look at attachment 1, the agreement
7 that has SS-Soft-Ed 050184 in the upper left-hand
8 corner?

9 A. Yes.

10 Q. Specifically at paragraph 2.01 (a)?

11 MR. KENNEDY: You are referring to paragraph
12 2.01 (a) beneath Roman numeral II, grant of rights,
13 on page 2 of 7?

14 MS. FITHIAN: That's right and attachment 1.

15 MR. KENNEDY: We have it.

16 Q. (BY MS. FITHIAN) Now, if you look at the last
17 sentence of 2.01 (a) it states, "Such right to use
18 includes the right to modify such software product
19 and to prepare derivative works based on such
20 software product, provided the resulting materials
21 are treated hereunder as part of the original
22 software product." Do you see that language?

23 A. Yes.

24 Q. And if you will, now compare that language to
25 the language in the agreement that is referenced as

1 attachment 3. Look at 2.01 (a) in attachment 3.

2 A. Okay.

3 MR. KENNEDY: With everyone's permission, I
4 would like to remove this clip for purposes of
5 comparison and put the staple back when we are done.

6 MS. FITHIAN: That's fine.

7 MR. KENNEDY: Do you mind, Mr. Wilson?

8 A. I'm just having a hard time working on this.
9 I guess it's not appropriate to ask where you are
10 going with it, but we're talking about something
11 that's not an official document.

12 MS. FITHIAN: I know.

13 (Off-the-record discussion.)

14 MR. KENNEDY: For the purposes here, what I
15 think they are trying to do is track what the
16 intermediate steps are.

17 A. Okay.

18 MR. KENNEDY: So she wants you to compare
19 2.01 (a) and 2.01 (a).

20 Q. (BY MS. FITHIAN) Let me know when you are
21 finished reviewing that. Have you completed
22 reviewing those portions?

23 A. (Witness nods head affirmatively.)

24 MR. KENNEDY: You need to say yes or no.

25 A. Yes.

1 Q. Now, in Exhibit D 68 attachment 1 paragraph
2 2.01 (a), the last sentence of the paragraph states,
3 "Such right to use includes the right to modify such
4 software product and to prepare derivative works
5 based on such software product, provided the
6 resulting materials are treated hereunder as part of
7 the original software product." And if you compare
8 that to section 2.01 (a) in attachment 3, that
9 language has changed, hasn't it?

10 A. Yes.

11 Q. And now instead of the language "provided the
12 resulting materials are treated hereunder as part of
13 the original software product," attachment 3 states,
14 "provided that any such modification or derivative
15 work that contains any part of a software product
16 subject to this agreement is treated hereunder the
17 same as such software product." Is that correct,
18 just focusing on the specific language?

19 A. That specific language, but there's also
20 another sentence, but go ahead. There's a sentence
21 that follows that.

22 Q. It states, "AT&T-IS claims no ownership
23 interest in any portion of such a modification or
24 derivative work that is not part of a software
25 product," correct?

1 A. That's correct.

2 Q. Now, were you involved at all in the revision
3 of this agreement from the 050184 version, attachment
4 1, to the 070285 version, attachment 3?

5 A. Yes.

6 Q. Can you describe your involvement?

7 A. It's something I remember from earlier. I was
8 involved in all these agreements from the standpoint
9 of coming to final language. So yes, I was involved
10 with that, among others.

11 Q. Were you involved in any discussions with the
12 University of California with respect to that
13 language in this particular agreement, attachment 3?

14 A. Yes. With University of California that
15 specific language I don't recall, but the particular
16 language that came to be in the second attachment 3.
17 The language that came to be in attachment 3
18 for it to be revised in the boilerplate-type
19 documents means we had that request from several
20 different places and said, "Okay, this is a better
21 way to state again our unchanging intent," and it
22 goes back to what we discussed earlier this morning,
23 that we claimed ownership that was ours and no
24 ownership to that which was yours. The other
25 language was somewhat confusing to some people in

1 that they thought we were trying to assert ownership
2 to anything they created, even though it contained
3 nothing of ours. So this is trying to clarify that
4 what's yours is yours and what's ours is ours.

5 Q. So you were only asserting ownership if a
6 derivative work or modification contained part of the
7 AT&T software?

8 A. You keep doing that with "contained."

9 Q. Just using the words in the agreement. I
10 think you used it in the last answer.

11 A. No, I didn't. I think --

12 MR. KENNEDY: There's no need for me to get
13 involved with this.

14 Q. You can go ahead and answer.

15 A. The intent is what I have stated many times
16 earlier. In other words, the intent is such that we
17 protect our intellectual property and assert no
18 rights in the licensee's intellectual property, and
19 you can see there was clarifications and changes and
20 they were made to try and better reflect that intent.

21 Q. And was it your understanding that attachment
22 3, that version of the educational boilerplate,
23 better reflects that intent than attachment 1?

24 A. That was the opinion of quite a few people.

25 Q. But was it your opinion?

1 A. I think they both say the same thing, because
2 I'm talking about the intent which I would clarify
3 any time I would talk to someone. To me they are
4 both the same things. We are asserting our rights
5 and not any rights to anything that's owned by one of
6 our licensees. So to me they are the same. They
7 mean the same.

8 Q. And focusing on the language which you say you
9 think means the same, you say the words "based on"
10 and "contains" mean the same thing?

11 A. It reflects the same intent. The clarifying
12 sentence at the end of paragraph 2.01 was trying to
13 be very specific. We claim no ownership interest
14 that is not a part of the software product. Now, we
15 can wordsmith those words exactly, but the intent is
16 what's yours is yours and what belongs to AT&T
17 belongs to AT&T, so we were trying to get that
18 across.

19 Q. And you weren't trying to assert restrictions
20 on the part that did not belong to AT&T?

21 A. That's correct. In other words, if you follow
22 that through, it's yours. I have no jurisdiction
23 whatsoever.

24 Q. And looking at subparagraph (b) of the same
25 document -- well, rather than look at that one let's

1 go to Exhibit D 25, which is the executed version of
2 the educational software agreement, which I believe
3 you have in the pile somewhere. There it is.

4 MR. KENNEDY: Are we through with 68?

5 MS. FITHIAN: For the time being.

6 MR. KENNEDY: At the risk of having to do
7 this again, I'll staple it back together.

8 MS. SHAPREAU: Go ahead. That's fine.

9 A. Are you going to ask questions about the same
10 thing?

11 MS. SHAPREAU: I wouldn't think of asking you
12 any of the same questions. I may have some other
13 questions.

14 A. Okay.

15 Q. (BY MS. FITHIAN) Looking now at Exhibit D 25,
16 which I believe you testified was the educational
17 software agreement that was actually executed between
18 the university and AT&T, is that right?

19 A. I don't recall that.

20 Q. Well, why don't you -- I'll ask it fresh.

21 A. Again, it appears to be those documents. You
22 don't have to keep doing that.

23 Q. With your stipulation that you would want to
24 go and check line by line with the one that's in your
25 file, but assuming you do and it ends up being the

1 same --

2 A. That the form -- are we in agreement as we go
3 through that, even if I don't state it every time?

4 Q. I'm in agreement with that.

5 MR. KENNEDY: If by any chance the documents
6 that are being presented to us are not true and
7 authentic copies of materials, then I think Mr.
8 Wilson's testimony in respect of them we would
9 reserve our right to strike it, but I don't see any
10 problem with it.

11 Q. One always has an opportunity to submit later
12 a declaration if you were to find out that this
13 really wasn't the right document.

14 A. Got you.

15 Q. You can clarify that testimony. So with that
16 understanding, does this appear to be, based on the
17 signatures, dates and title of the document, does
18 this appear to be the document, the educational
19 software agreement that was executed between the
20 University of California and AT&T?

21 A. Yes, it appears to be one of those. I know
22 there are others.

23 Q. Looking at paragraph 2.01 (a) in this
24 agreement, Exhibit D 25, is that language and by
25 "that language," starting with the words, "Such

1 right to use includes the right to modify such
2 software product and to prepare derivative works
3 based on such software product, provided that any
4 such modification or derivative work that contains
5 any part of the software product is treated hereunder
6 the same as such software product," and that is
7 followed by the sentence, "AT&T-IS claims no
8 ownership interest in any portion of such a
9 modification or derivative work that is not part of a
10 software product," is that language the same as the
11 language contained in attachment 3 to Exhibit D 68?

12 A. It appears to be.

13 Q. Now, looking at subparagraph (b) in Exhibit D
14 25, the executed agreement, that paragraph states,
15 "Educational use is limited to uses directly related
16 to teaching and degree-granting programs and uses in
17 non-commercial research by students and faculty
18 members, including any uses played in connection with
19 the development of enhancements or modifications to
20 software products," and the second states, "Such uses
21 are permitted only provided that (i) neither the
22 results of such research nor any enhancement or
23 modification so developed is intended primarily for
24 the benefit of a third party, (ii) such results,
25 enhancements and modifications (all to the extent

1 that they do not include any portion of software
2 products) are made available to anyone (including
3 AT&T-IS and its corporate affiliates) without
4 restriction on use, copying or further distribution,
5 notwithstanding any proprietary right (such as a
6 copyright or patent right) that could be asserted by
7 licensee, its employees, students or faculty
8 members." Focusing in on paragraph (ii) where it
9 states, "Such results, enhancements and modifications
10 (all to the extent that they do not include any
11 portion of the software products) are made available
12 to anyone without restriction," I want to know what
13 your understanding is as to the circumstances under
14 which enhancements and modifications were to be made
15 available to anyone under this provision.

16 A. Okay, this goes back to again the overall
17 intent of the educational licensing program and to
18 facilitate its use within the university and fully
19 realize that they may produce things using our
20 intellectual property or create things using our
21 property, and one of the conditions for us providing
22 them on very, very favorable financial terms was you
23 could not characterize like work for hire. You could
24 not be engaged in something you were being
25 remunerated for or not do something specifically for

1 a third party. Those rights were available through
2 other licensing documents, and you cannot do
3 something like that for someone under an educational
4 license. This was not the proper license. So if you
5 produced something under the educational license, you
6 had to make it available to anyone. They could say,
7 "We want to do something specific, like an Arca
8 contract," and they did things specifically for the
9 government and we would call that sponsor research
10 and it was completed but under a different type of
11 license and different terms and conditions,
12 essentially in terms of remuneration for use.

13 Q. But specifically with respect to the words
14 "enhancements and modifications" it says, "Such
15 enhancements and modifications (all to the extent
16 they do not include any portions of software
17 products) are made available to anyone." Under what
18 circumstances were enhancements or modifications to
19 the licensed software products required to be made
20 available to anyone?

21 A. Didn't I just answer that?

22 Q. I don't believe you did. It sounded like you
23 were focusing on something other than enhancements or
24 modifications to the software product. Did your
25 answer apply to modifications to the licensed

1 software or enhancements to the licensed software?

2 A. You thought I was talking about enhancements?

3 Q. No, I thought you were not. That's why I'm
4 asking you specifically regarding enhancements and
5 modifications. Under what circumstances were those
6 to be made available to anyone with reference to
7 subparagraph (ii) on page 2 of the agreement
8 contained in Exhibit D 25?

9 A. What I stated or I believe I stated was
10 paragraph (ii) goes to the fact that we knew that
11 some of our licensees were using the licensed
12 software product as a tool to create things as an
13 operating system on a particular piece of hardware of
14 which they were developing something. If that
15 something that they developed using the licensed
16 software product as a tool, whether it contained our
17 licensed software product or not, because of the
18 educational stipulation had to be made available to
19 those folks who asked for it without restriction. In
20 other words, if you have got something here you are
21 going to develop using the educational license, as a
22 requirement of the license you make it available to
23 those who ask for it without restriction as opposed
24 to doing sponsored work I think. I stipulated Arca
25 for the government or a hardware firm or software

1 firm. They say, "We want you to do some specific
2 research." These were available under a different
3 type of agreement. So this paragraph goes to the
4 fact or recognizes that they could use the software
5 as a tool, but if they use it as a tool under the
6 educational license and they created something --
7 again, we are not trying to assert ownership on
8 anything like that, just saying as a condition of
9 using our software they have to make it available.
10 By the same token, if there were any patents or
11 proprietary information created, sure, you can pass
12 that on. But if you developed it under the
13 educational license, you have to make it available.

14 Q. So is it your understanding of this paragraph
15 that if the licensee developed an enhancement or
16 modification to the licensed software but it did not
17 include any portion of the licensed software, then it
18 was to be made available to anyone?

19 MR. KENNEDY: Are you talking about an
20 enhancement to the operating system?

21 MS. FITHIAN: Enhancement to the software
22 products.

23 A. I thought I answered that.

24 Q. (BY MS. FITHIAN) Perhaps I didn't understand
25 the answer. Would you read back the answer?

1 (The reporter read back the answer.)

2 A. That's what you said there. You said two
3 different things. First of all, you said it was
4 modification to the licensed software and then you
5 said it did not contain any licensed software. To me
6 those are contradictory. You can't have both you.
7 First you are saying it wasn't and next you said it
8 was.

9 Q. You can't have both? What do you mean?

10 A. In other words, you are saying if you made a
11 modification to the licensed software --

12 Q. Let me ask it again. Let's focus specifically
13 on subparagraph (b) and I'll note the first sentence
14 of the paragraph says, "Educational use is limited to
15 uses directly relating to teaching and degree-
16 granting programs and uses in non-commercial research
17 by students and faculty members, including any uses
18 made in connection with the development of
19 enhancements or modifications to software products."
20 And then it says, "Such uses are permitted only
21 provided that..." and under subparagraph (ii) "only
22 provided that such results, enhancements and
23 modifications (all to the extent that they do not
24 include any portion of software products) are made
25 available to anyone." So my question is is it your

1 understanding under that subparagraph (ii) that the
2 enhancements or modifications to software products as
3 referenced in the first paragraph of subparagraph (b)
4 are to be made available to anyone?

5 A. Absolutely not, because the paragraph -- the
6 phrase clarifies that.

7 Q. And that phrase that clarifies it is the
8 phrase that says "all to the extent they do not
9 include any portion of software products"?

10 A. That's correct, and that means, as I stated
11 many times this morning, that it goes back to the
12 intent, that which is ours and that which is yours,
13 and each of these words we can take in different
14 bites and the intent is behind all of them. If it
15 contains or is based on a licensed software product,
16 you treat it as licensed software product. Because
17 this is an educational license, you give up some type
18 of exclusivity as opposed to that which you can do
19 under the commercial. If you use the software in a
20 grant, you have to make it available without
21 discrimination of who can get it and who can't. So
22 you can't have sponsored research and development
23 under an educational license. You can do that if you
24 like, but it all goes back to the intent that the
25 licensed software products are covered, and that

1 which is ours is ours and that which is yours is
2 yours. But you give up a certain right with regard
3 to -- you may create something wonderful and you may
4 exploit it and make lots of dollars, but to the
5 extent you create it under this license then you have
6 given up that right.

7 Q. It sounds like you are saying that you
8 interpret the word "include" in subparagraph (b) (ii)
9 to be the same thing as "based on" again.

10 A. No, I did not say that.

11 Q. I'm just asking you.

12 A. That's what I just stated again.

13 Q. Well, I'm asking a different question. I
14 don't want to hear the previous answer. The question
15 is whether the word "include" here means the same
16 thing as the words "based on" as used in the
17 parenthetical?

18 A. What I'm trying to do is give you the benefit
19 of the dialogue that went on between licensees and
20 the licensing office with regard to the intent behind
21 the agreement.

22 Q. I appreciate that, but --

23 A. And I can't -- you keep interrupting, so it's
24 difficult to maintain a thought.

25 Q. I apologize for interrupting, but I'm under

1 something of a time limitation. I think you have
2 answered that and I'm trying to move on.

3 A. If you are under a time restraint, that's your
4 problem. I'm here and you are being paid to be here
5 and I'm sitting here spending my time trying to --

6 Q. But I would appreciate --

7 A. You cut me off again, so I think at this point
8 we're going to take a break.

9 Q. Fine. If you want a break, we'll break for
10 lunch.

11 A. I don't know where you got to get to.

12 Q. I don't have to get there right after lunch.

13 A. If that's the stipulation, I've got things
14 better to do also. Can we go off the record?

15 (Off-the-record discussion.)

16 (Whereupon, a recess was taken.)

17 EXAMINATION BY MS. SHAPREAU:

18 Q. Mr. Wilson, my name is Carla Shapreau and, as
19 you know, I represent the University of California in
20 this case and I have a few questions. First I would
21 like to follow up on some of --

22 A. Are you like a Mary McDonald role? Are you
23 employed by the university?

24 Q. I'm outside counsel.

25 A. Okay.

1 Q. First of all, I want to get some clarification
2 on the time periods of your involvement with the
3 University of California's licenses with AT&T. You
4 mentioned initially that you started working -- and
5 please correct me if I'm wrong -- in 1980 time period
6 through 1991 regarding licensing between AT&T and the
7 university, is that correct?

8 A. That's correct.

9 Q. What did you do before 1980? Were you
10 employed by AT&T or Western Electric?

11 A. Yes, I was employed by Western Electric.
12 Immediately before coming here I was at Princeton in
13 a company sponsored master's program, and I can go
14 back if you want me to.

15 Q. I don't really want to go back and get a lot
16 of details.

17 A. Essentially I was employed by Western
18 Electric/AT&T since 1963 in different capacities and
19 different locations around the country.

20 Q. In the 1970's particularly did you have any
21 involvement with licensing activities of AT&T?

22 A. Not in the context of 1980, no, I did not.

23 Q. Briefly how was it different in the 1970's?

24 A. In the 1970's I was part of Western Electric.
25 At one point I was in distribution, warehousing and

1 distribution, at one point I ran a regional data
2 center for like nine states. I worked in stock
3 acquisitions and different areas but nothing like
4 licensing. I mean as after 1980. It's a different
5 thing altogether.

6 Q. Just so I don't miss anything, I wanted to ask
7 you about some of the earlier license agreements the
8 University of California entered into with AT&T, and
9 I guess Western Electric at this time, and whether
10 you had any knowledge of these agreements or
11 communications with the university regarding that.

12 A. Prior to 1980?

13 Q. Shortly before 1980. I wanted to show you --
14 actually, this is what's been previously marked as
15 Defendant's Exhibit 10, which is a license agreement
16 between Western Electric and the regents of the
17 University of California, December 1, 1973. Do you
18 recall, Mr. Wilson, whether you had any cause to
19 review this agreement at any time, or did this
20 predate your involvement in the licensing department?

21 A. This is way before I came on board. This is
22 '73. I didn't come on board until the latter part
23 of 1980 -- in fact, the last quarter of '80.

24 Q. So when you came in 1980 and at any time
25 thereafter was this an agreement that you had any

1 reason to review from 1980 onward?

2 A. I don't recall this. It's very possibly that
3 I would have had a chance to look at it, because the
4 agreements are kind of perpetual in nature, and if
5 anything came up pertaining to this particular
6 document, even in 1980, I would go back to it and I
7 was often reviewing agreements.

8 Q. Do you have any specific recollection of any
9 direct or indirect communications with the University
10 of California regarding what's marked as Defendant's
11 Exhibit 10?

12 A. I don't recall about this specific one, no.

13 Q. And do you have any awareness of any
14 communications from anyone at AT&T regarding Exhibit
15 10, communications with the University of California
16 regarding this agreement?

17 A. No, I don't recall anything about this.

18 Q. Okay, I would like you to look at what's been
19 previously marked as Defendant's Exhibit 23, which
20 for the record has typed version 7 educational. It's
21 an agreement between Western Electric and the
22 University of California dated May 1, 1979. Do you
23 have any specific recollection of this agreement,
24 even though it predated your involvement in the
25 licensing department?

1 A. Yes, I remember seeing this.

2 Q. And in what context did you see this
3 agreement?

4 A. This was the agreement in place for the most
5 recent version of software when I came on board like
6 in 1980. There was always dialogue between licensees
7 about their agreements, and this would have been the
8 one we were talking about. In general I remember the
9 version 7 agreement. I can't recall exactly, but I
10 remember the version 7 agreement.

11 Q. Do you have any recollection whether you
12 either directly or indirectly communicated with the
13 University of California regarding any of the terms
14 and conditions in what's been marked as Defendant's
15 Exhibit 23?

16 MR. KENNEDY: Could you just clarify what you
17 mean by "indirectly"?

18 Q. Either directly firsthand or through someone
19 who might have been working with you or for you.

20 A. Yes, there was those types of communications
21 directly and also indirectly and also the version 7
22 was the beginning of the exchange program kind of
23 between licensees. Berkeley had a lot of exchange in
24 software between licensees and it came up, "If you
25 have version 7 you get this, and 32 V you get that."

1 Q. Regarding the source exchange program, just so
2 I understand, you believe it commenced about the time
3 period that this agreement was in effect?

4 A. No, I think -- no, it was in effect prior to
5 that time, but along about the late seventies or
6 early eighties the use of the software started to
7 proliferate at a more rapid rate than it had in the
8 past and there was a lot more inquiries and
9 exchanges.

10 Q. Okay. Excluding for the time being your
11 communications with the University of California
12 regarding source code exchange, do you have any
13 recollection sitting here today of communications you
14 had with the University of California regarding any
15 of the terms and conditions in this agreement which
16 has been marked as Defendant's Exhibit 23?

17 A. Other than source code exchange?

18 Q. Yes.

19 A. Not specifically in the time frame like early
20 1980's. It was relatively speaking pretty quiet,
21 there wasn't a lot of discussion other than about
22 source code exchange. That was the main thing, and I
23 can't recall anything specific that came up other
24 than those types of issues.

25 Q. At any other time other than the early

1 eighties do you have any recollection of any
2 communications with the University of California
3 regarding any of the terms and conditions in Exhibit
4 23?

5 A. This was an educational agreement. What
6 happened was as the university expanded its use of
7 the software throughout their system -- in other
8 words, in the early days it was pretty much strictly
9 in one specific lab that they were using the software
10 for reasons other than running the business of the
11 university and they were not really involved, as I
12 recall, in the early days at that time with any type
13 of specific projects with outside folks.

14 Q. Which lab was that?

15 A. Which lab? There was a lab in the
16 university. For want of a better word, their
17 operating system laboratory.

18 Q. Okay.

19 A. What started to happen is the versatility of
20 the system started to expand its uses throughout the
21 university and folks wanted to use it for different
22 things that were not covered by the educational
23 license, and eventually -- not specific times but
24 over time -- the University of California acquired
25 both educational and administrative and a commercial

1 license. So there was dialogue about what types of
2 rights they needed to use the software throughout the
3 university system.

4 Q. I would like to direct your attention to page
5 7 of what's marked as Exhibit 23, which is a
6 definitions appendix, and specifically there's a
7 definition here of licensed software. Do you have
8 any recollection of having any communication with the
9 University of California regarding your understanding
10 of this defined term in this particular agreement?

11 A. Yes. Specific dates and people I can't
12 without looking at the stuff, but there was
13 discussion about licensed software, methods and
14 concepts and those types of things with the
15 university.

16 Q. Could you tell me what you recall about those
17 communications?

18 A. Clarifying the intent of the licensing
19 agreement, what belonged to AT&T and what didn't
20 belong to AT&T, because as the use of the software
21 started to evolve and become more widely used, folks
22 started getting in situations where it was just
23 contained in one single laboratory for some specific
24 research area and that was fine. But when they
25 started to use it in the university for different

1 things, there was dialogue about what rights they
2 needed to do what they were doing. So there was
3 always pretty good rapport and people saying, "I want
4 to use it for this, but it doesn't seem like it goes
5 here. What does it cover and not cover?"

6 Q. Just trying to go step by step with this
7 particular agreement, which appears to be version 7
8 of the UNIX operating system, do you remember having
9 any personal meetings with anybody at the University
10 of California regarding the meaning of the term
11 "licensed software," face-to-face meetings?

12 A. I don't recall the specific time or the
13 individuals, but there were periodic trips out there,
14 in other words, to the university itself and also the
15 user group meetings. There was a group called Usenix
16 or a trade show where you would see individuals from
17 the university and we would discuss things at that
18 time.

19 Q. And specifically referring now to this
20 particular agreement, the 7 V agreement, do you have
21 any recollection as to the names of any of the
22 individuals who you had face-to-face communications
23 with regarding the meaning of the definition of
24 licensed software?

25 A. Specifically the University of California at

1 Berkeley?

2 Q. Only the University of California at
3 Berkeley.

4 A. I have faces that I can't put the names to. I
5 remember the early days Bill Joy was one of the guys
6 we used to talk quite a bit with. Katherine came
7 later on. Roy Towers was there, but he was kind of
8 over that part of intellectual property rights. I
9 don't recall specific names, but I can see some
10 faces.

11 Q. Again, I know it was a long time ago, but can
12 you give me the general substance of the face-to-face
13 communications that you had with Joy, Towers or other
14 individuals regarding what you considered to be the
15 meaning of licensed software as contained in the UNIX
16 operating system license?

17 A. Most of those conversations geared on what was
18 licensed software, you know, what was AT&T property,
19 what could be their property and how to better make
20 it available to other licensees. Along about this
21 time frame, late '79, '80 '81, '82 was when the
22 licensing community using our operating system
23 started to go toward, "Let's put object code versions
24 on specific processes," and they were trying to get
25 into a commercial product which was going to be

1 licensed to people in the commercial area and they
2 wanted to make sure which things could be contained
3 and not contained and who owned what, and sometimes
4 it would become integrated where the licensed product
5 along with something created by the university got
6 combined and there was clarifying again about what
7 was the intent of the agreement and if they wanted a
8 sublicense how do they do that, and there were other
9 documents saying how you license software and for
10 what vehicles.

11 Q. And focusing now on the meaning of what
12 comprised licensed software, what do you recall
13 discussing regarding just that specific question,
14 what comprised licensed software under this
15 particular agreement?

16 A. We used to talk about everything that was in
17 the box that we sent, including the box itself. That
18 was licensed software, but it was as defined in the
19 agreements and included the documentation, the source
20 code, the compiled object code version and the trade
21 secret of any methods or concepts was all considered
22 licensed software or things that you had to protect,
23 including the disclosure, how you could actually
24 share and under what conditions you could do that.

25 Q. Is there anything else that you can recall

1 sitting here today other than what you have just
2 mentioned that you discussed regarding what comprised
3 the licensed software under this agreement?

4 A. No, other than the things covered by the
5 agreement schedules, appendices and those type
6 things.

7 Q. Other than your face-to-face communications,
8 do you recall any other communications, writing or in
9 any other form, either directly or through people you
10 were working with in which the meaning of the term
11 "licensed software" in the 7 V UNIX operating system
12 license was any different than what you just
13 testified to today?

14 MR. KENNEDY: I'm sorry, would you read that
15 back?

16 MS. SHAPREAU: If you want to tell me your
17 problem, maybe I can correct the question.

18 MR. KENNEDY: I didn't raise a problem.
19 Would you read the question?

20 (The reporter read back the last question.)

21 Q. I'll restate that. I don't believe I
22 mentioned the University of California in my
23 question. My understanding is you have just given me
24 a description of your oral communications -- excuse
25 me, your personal, face-to-face communications with

1 the University of California regarding your
2 understanding of the defined term "licensed software"
3 in this agreement, and then I would like to expand
4 that question to any other communications beyond
5 face-to-face communications that you might have had
6 with someone affiliated with the University of
7 California.

8 A. Okay, in addition to my face-to-face
9 communications there was very possibly some of the
10 folks within our organization that communicated with
11 the university. There were both written and
12 telephone dialogue between the university. There
13 was, like I mentioned earlier, the Usenix group type
14 things. Often I would be called on to give a talk to
15 all licensees concerning specific aspects of the
16 license, and at other times there would be like a
17 press conference to talk about things and folks would
18 ask questions and some places there were forms where
19 lawyers would attend at these conferences and we
20 would talk specifically about license structure
21 specifically as to AT&T, how does the AT&T licensing
22 agreement work, and that would give insight to the
23 language for those folks engaged in the
24 administration and legal aspects of the licensing for
25 the entities.

1 Q. Did you personally have any communications via
2 any medium, written, oral, over the phone or in
3 person, that indicated to anyone at the University of
4 California that the components of the licensed
5 software are any different than what you have already
6 testified to today?

7 MR. KENNEDY: With respect to this
8 agreement?

9 MS. SHAPREAU: With respect to this
10 agreement, that's correct.

11 A. No, not that I recall. We were very careful
12 about always going back to the written document.

13 Q. (BY MS. SHAPREAU) What I'm interested in -- we
14 all have the written documents. Things I don't have
15 in front of me are communications, oral other
16 otherwise, that we may not be aware of.

17 A. I don't know of any other.

18 Q. I would like you to take a look at what's been
19 previously marked as Exhibit D 15, which for the
20 record is an agreement between Western Electric and
21 the regents of the University of California effective
22 April 1, 1979, and I believe this is a license for
23 32 V. Mr. Wilson, do you have any recollections of
24 any communications you had with the University of
25 California regarding the meaning of the defined term

1 "licensed software" in this 32 V agreement?

2 A. No, nothing other than what we've previously
3 stated. The licensed software definition was the
4 same in both these agreements, okay? Later on as we
5 go through you will see where they were collapsed
6 into a single agreement. At this time -- this is
7 before I got into the business -- they would have
8 different licensing agreements for each release in
9 technology and the language was pretty much the same
10 with regard to what you protect and didn't protect
11 and defined what was going to be protected and the
12 variable was the appendices describing the actual
13 technology.

14 Q. For the record, the definition of licensed
15 software in 32 V states, "Licensed software means the
16 computer programs and the documentation or any
17 portions thereof generally identified below and
18 specifically listed in the attached schedule." Then
19 it states "UNIX 32 V timesharing version 1.0." Just
20 so I understand, you previously testified regarding
21 the 7 V version of the UNIX operating system license
22 agreement and what you understood licensed software
23 to be comprised of. Did your understanding of what
24 comprised licensed software in this 32 V agreement
25 change in any way at this time, at the time this

1 agreement was entered into?

2 A. No, not the general definition, which is one
3 of the reasons we went to a single master agreement,
4 because the intent behind the language was the same
5 for both documents, but it more specifically
6 identified by the particular release what was 32 V
7 and version 7 and those specifics with regard to that
8 particular technology would vary, but as far as the
9 definition, the intent behind all of them is the
10 same.

11 Q. And the intent was what you earlier described
12 in some detail?

13 A. This morning you mean?

14 Q. Under the version 7 agreement, is that
15 correct?

16 A. The intent was like I described this morning.
17 In other words, the intent was that which was AT&T
18 intellectual property was consistent going back to
19 the earlier ones.

20 Q. And through this 32 V agreement, just so that
21 I understand, licensed software is defined and it
22 appears to include computer programs and the
23 documentation or any portions thereof identified in
24 the schedule attached to this agreement, and in your
25 mind in the early eighties what was that comprised of

1 specifically?

2 A. Okay, it was comprised of everything that we
3 provided them as defined in this appendix for this
4 particular software, including the other provisions
5 of the agreement which brings in -- actually you take
6 the physical product that was provided to them,
7 including the methods and concepts exhibited by those
8 products, which were all protected as licensed
9 software.

10 Q. So in your mind licensed software in the early
11 eighties meant AT&T source code, object code, its
12 documentation and methods and concepts?

13 A. That's correct.

14 Q. Was there anything else you believe in early
15 eighties to be included in the definition of licensed
16 software?

17 MR. KENNEDY: Other than the things he has
18 already mentioned?

19 MS. SHAPREAU: That's correct.

20 A. I don't think so. I think we have hit them
21 all.

22 Q. (BY MS. SHAPREAU) And did you at any time
23 communicate your understanding of the definition of
24 licensed software to anybody at the University of
25 California regarding 32 V in the early eighties time

1 period?

2 A. Other than the license documents? In other
3 words, we communicated, constantly communicated, and
4 then reduced those understandings to the license
5 documents.

6 Q. I understand. Just focusing on the specific
7 definition of licensed software, was that a topic of
8 communication regarding this specific agreement with
9 the University of California in the early or late '80
10 time period?

11 MR. KENNEDY: Do you mean after those
12 communications were reduced to writing or prior?

13 MS. SHAPREAU: Either before or after. Thank
14 you, Mr. Kennedy.

15 A. I don't recall anything specific, but yes, we
16 did talk about -- we would get a request from a
17 licensee and say, "Okay, is such and such available
18 and what is it and how big is it? Can we license it
19 and at what cost?" So those type things were
20 discussed and it was reduced to this. So we would
21 talk about that.

22 Q. Specifically this one definition, was there
23 ever any discussion you recall either before or after
24 the execution of this agreement?

25 A. This agreement is 32 V and the 32 V had

1 different incarnations, so to speak, so we would talk
2 about that and what they were going to get. Lots of
3 times there was dialogue about what they were going
4 to get.

5 Q. Earlier when I was just asking you regarding
6 what you understood the components of licensed
7 software to include, you gave me your understanding,
8 and all that I want to know is did you ever discuss
9 that very specific understanding with anybody at the
10 University of California regarding this particular
11 agreement?

12 A. I'm sure I did. I don't recall.

13 Q. No specific recollection?

14 A. No.

15 MR. KENNEDY: By the way, is the university
16 contending that --

17 MS. SHAPREAU: Wait a minute. Can I
18 interrupt you? If there's going to be any legal
19 dialogue regarding contentions or other contentions,
20 I would like to do it outside the presence of the
21 witness.

22 MR. KENNEDY: I don't want to take up any
23 more of Mr. Wilson's time. I had a simple question,
24 but I'll deal with it later.

25 MS. SHAPREAU: I know you understand. I

1 really appreciate that. Thank you, Mr. Kennedy.

2 Q. (BY MS. SHAPREAU) You have used the words
3 "methods and concepts" in this deposition and I
4 would like to get your understanding of what is a
5 method and a concept as used in the license
6 agreement, particularly the 32 V agreement. I don't
7 know whether it ever changed, but let's start with
8 the 32 V license agreement.

9 A. It's how it was put together, the ideas behind
10 it that manifest itself in the technology. You can
11 never come up with a better word. That's why I used
12 methods and concepts, those things that were the
13 embryo from which this technology sprung.

14 Q. Anything else that you can think of that you
15 understood methods and concepts to include?

16 A. That's pretty much what I thought, yes.

17 Q. Did your understanding of the terms "methods
18 and concepts" ever change from the 1980 time period
19 through 1991?

20 A. No.

21 Q. Do you know whether you or anybody else at
22 AT&T ever discussed what was meant by methods and
23 concepts in the AT&T license agreements with anybody
24 at the University of California?

25 A. Say that again. Did we ever discuss that with

1 the University of California?

2 Q. Specifically what the words "methods and
3 concepts" as used in the license agreements
4 specifically meant.

5 A. I don't recall the specific time, but that was
6 something that was discussed with the University of
7 California. I mean, I remember conversations. I
8 don't -- it's hard to place them in time because they
9 would come up every so often.

10 Q. Do you know why it would have come up? Do you
11 have any recollection?

12 A. Lots of times it would come up because folks
13 would look at our licensing agreement -- we became
14 pretty proud of it because we thought we had a pretty
15 good document -- but folks would always want to talk
16 about it. "What do you mean by this or that?" Lots
17 of times it would come up out of curiosity to see
18 whether this was different or that was different, and
19 more specifically when they had a specific -- I take
20 that back, that was mainly with commercial, not very
21 much with the university, not so much with the
22 university, because they were very good about saying,
23 "Fine. If we are going to do anything with the
24 source code or licensed software, we'll make sure
25 everybody else gets a license," and that didn't come

1 up very much with the university, because they were
2 mainly educational. So it didn't come up very much.

3 Q. I'm sure you dealt with a lot of licenses.

4 A. Yeah.

5 Q. Just so I understand, do you actually have any
6 specific recollections of conversations or
7 communications with the university regarding what was
8 meant by the methods and concepts terminology used in
9 the license agreements?

10 A. Not specifically, no, I do not.

11 Q. Let me show you what's been marked as
12 Defendant's Exhibit 16 A, which is another license
13 agreement for 32 V, and it's combined academic and
14 educational between Western Electric and the regents
15 of the University of California dated August 1,
16 1981.

17 A. Okay.

18 Q. Did you have any involvement --

19 MR. WEITZ: Excuse me. I believe you said
20 combined academic and educational.

21 MS. SHAPREAU: I would like to correct
22 myself. I meant administrative and educational
23 license.

24 Q. (BY MS. SHAPREAU) Mr. Wilson, did you have any
25 involvement in the preparation of this particular

1 agreement, which is dated after your -- which I
2 believe is the first agreement I've shown you that's
3 dated after your involvement in the licensing
4 department at AT&T, is that right?

5 A. I'm not sure, because this document was
6 executed by Ed Baldwin.

7 Q. To your knowledge, did he have primary
8 responsibility for this agreement?

9 A. Yeah, at this particular time Ed Baldwin was
10 the person authorized to sign on behalf of AT&T for
11 this type document, a change letter. At that
12 particular point in time he was the individual
13 responsible at AT&T.

14 Q. Forgive me. I did interrupt you. I
15 originally asked do you recall having any involvement
16 with this particular drafting of this particular
17 agreement.

18 A. That's what I'm saying. I'm not sure. Ed
19 Baldwin was the head of the organization. I could
20 have. Lots of times these things were -- I think
21 counsel this morning pointed out something about the
22 dates, and sometimes there would be long periods of
23 time between the time the document was first drafted
24 until it was finally executed, okay? Sometimes it
25 was just lying on the desk in our office or in the

1 licensee's office. So at this particular time I'm
2 familiar with the document and what it covers, and I
3 may or may not have worked on it, because there may
4 have been other people in the organization, and I'm
5 not sure if I worked on this specific one.

6 Q. Today you have no specific recollection of
7 what's marked as Defendant's Exhibit 16 A?

8 A. But I did work on documents just like this and
9 maybe this one also, because this was in my area of
10 responsibility, but I had signature authority after
11 Mr. Baldwin.

12 Q. Do you remember having any communications with
13 anybody at the University of California regarding the
14 definition of licensed software in this specific
15 license agreement?

16 A. The short answer is no, but there again there
17 was dialogue with the university about licensed
18 software, which was a constant thing. It was like it
19 was pretty much the same and go over the same
20 territory, what licensed software meant, and then the
21 specific appendices describing what release of
22 technology they were getting. But licensed software
23 covered technology from AT&T either from licenses to
24 AT&T-IS or the subsequent names of the organization,
25 but it was AT&T intellectual property was what was

1 defined as licensed software.

2 Q. Do you have any recollection regarding the
3 last two exhibits I've just shown you, which are both
4 32 V agreements, of ever having any communication
5 with anybody at the University of California
6 regarding enhancements, modifications or derivative
7 works prepared by the University of California at
8 this time, which is the '80-'81 time period?

9 MR. KENNEDY: With respect to these 32 V
10 agreements?

11 MS. SHAPREAU: That's correct.

12 A. I remember lots of conversations regarding
13 source code exchange from the standpoint of who had
14 what licenses as opposed to what the definition
15 meant. So it was a lot of conversation, like, "We're
16 going to source code exchange 32 V. Make sure party
17 A has the proper license." There was a lot of that
18 kind of dialogue regarding licensed software from the
19 standpoint of what licensing agreement covered that,
20 and there were things in your files and ours with
21 regard to what Berkeley designation included what
22 AT&T intellectual property.

23 Q. (BY MS. SHAPREAU) I'm sorry, I missed that.

24 A. What Berkeley would have the designation for
25 intellectual property which belonged to the

1 university and what AT&T intellectual property was a
2 part of that particular product, like Berkeley 32 V,
3 what AT&T software was actually a part of that based
4 on that version. So there was -- so we had those
5 kinds of dialogue and the university would come back
6 and say, "We got this release of Berkeley and it is
7 based on version 7 or 32 V," or what have you, and
8 there was dialogue defining which parts of ours was
9 in which parts of theirs.

10 Q. My understanding -- and please correct me if
11 I'm wrong -- is that at least in the early eighties
12 time period when the University of California-
13 Berkeley developed code that was added to or enhanced
14 or modified 32 V there was a 4.1, 4.2 and 4.3 and
15 actually Tahoe product which combined both 32 V and
16 Berkeley developments, is that correct? Is that your
17 understanding? Is it terminology we can use together
18 so we're talking about the same things as I ask you
19 questions? If you have something else you would like
20 to suggest --

21 A. There was Berkeley nomenclature for software
22 that they wanted to distribute to other licensees, so
23 they would say, "This is our nomenclature and this is
24 what it means in Berkeley language and in AT&T
25 language. Berkeley 4.0 is based on 32 V, so anyone

1 who wants to receive Berkeley 4.0 has to have the 32
2 V." That may not be exact, but this is Berkeley and
3 this is what's AT&T and they are kind of synonymous
4 with regard to exchanging. In fact, they would make
5 source code exchange making sure both devices were in
6 place and that was always verified with our office at
7 least two ways. In a credit card routine, if someone
8 presented the license I mentioned earlier this
9 morning, somebody presented a piece of paper. Was
10 that a valid license or a license that was still
11 valid? So what they would do is they would after
12 preliminary check about who was really licensed for a
13 particular version and then they would verify that
14 that person is still authorized by calling in and
15 then we would verify that on a monthly basis by
16 saying, "What have you transferred and to whom?"

17 Q. So for products that were comprised of both
18 the UNIX operating system and Berkeley code, the
19 communications that you had with the university, in
20 what circumstances was Berkeley code considered to be
21 Berkeley's property -- as you have been describing it
22 today, theirs was theirs and yours was yours -- so
23 under what circumstances did you communicate --
24 excuse me, let me ask that again. When there were
25 communications with the University of California

1 regarding what portion of your combined works was
2 actually the university's property, what made that
3 specific code that was Berkeley's their property?

4 A. There was a lot of conversation like that, and
5 the way the university chose to deal with it, which
6 we were delighted with, was we didn't try to go
7 through that dialogue. They were saying, "Okay, if
8 we have 32 V and that's what's being used, where this
9 was being developed the recipient has to have a 32 V
10 license." In other words, the university didn't want
11 -- it was almost impossible to police all the
12 elements, but they knew if it had any exposure almost
13 to AT&T intellectual property they would say, "We are
14 not going to try to split hairs." So if they came to
15 the source code exchanges, they would say, "Hey, you
16 have to have a 32 V license. Just get the license."
17 So that cut off those dialogues about which piece is
18 this and which is that. The intent was the same,
19 what's ours is ours and yours is yours. But to cut
20 that up into what pieces were which, they would go to
21 other way and just say, "Hey, put the license in
22 place and that way we're all protected." They were
23 very concerned about not jeopardizing the license,
24 because the fees were getting higher and higher and
25 they had very favorable conditions. So they said,

1 "Fine. You get your license. We had to get ours
2 and you get yours."

3 Q. Are we talking in terms of communications in
4 the early eighties time period, or does this
5 characterize the communications regarding what was
6 Berkeley's property and what was AT&T's property for
7 the entire time that you were working in the
8 licensing department?

9 A. I was talking specifically about the early
10 eighties, but that was also the same characterization
11 through the later periods also. The university
12 pretty much said, "Okay, you go get the AT&T
13 license."

14 Q. Do you have any recollection of any
15 communications with anybody at the University of
16 California about the two 32 V licenses we've looked
17 at today in which modifications, enhancements and
18 derivative works developed by the university were
19 discussed in terms of Berkeley's ownership other than
20 what you have just mentioned?

21 A. No, I don't recall anything specific, because
22 what's very vivid in my mind is how the university
23 really was not concerned in dealing with what they
24 called like those microissues about --

25 Q. They were or were not?

1 A. They were not. They felt comfortable that --
2 see, they felt comfortable that AT&T had their stuff
3 and they had theirs and that was fine, and they would
4 make sure that any recipient had both licenses, so
5 that made it a lot easier to administer. So we
6 didn't get into a lot of those types of issues with
7 the university.

8 Q. And again, is that spanning the '80 through
9 '91 time period?

10 A. Yes.

11 Q. So then in terms of detailed discussions with
12 the University of California regarding when their
13 product might be a modified work, an enhanced work or
14 derivative work was their property or AT&T's
15 property, there was no real detailed discussion that
16 you recall with anybody at the University of
17 California?

18 A. No, it pretty much boiled down to version 7 or
19 32 V or whatever and, if that's the case, what
20 license you have to have. That's pretty much what it
21 boiled down to, again talking about conversations
22 with the University of California. But with them and
23 most universities they didn't have those types of
24 issues, because they said, "Hey, I can just cover
25 both licenses," and that was easy for the

1 administrators and the legal department to deal with,
2 because they knew that that covered -- it was like
3 belts and suspenders, it covered everything.

4 Q. I know with the second 32 V exhibit I showed
5 you I asked whether you had any responsibility in
6 drafting that agreement and you didn't specifically
7 recall, but you believed Mr. Baldwin was primarily
8 responsible for that agreement?

9 A. I don't know about drafting it. I'm saying
10 the content of the agreement I could have been
11 involved with. Ed Baldwin had the signatory
12 responsibility, okay? So the actual drafting of the
13 language -- and when I say "the language," talking
14 about the boilerplate administrative license, I was
15 probably involved with that during those periods, but
16 he had the ultimate responsibility to sign off. Just
17 as later on there would be folks in my staff as well
18 as lawyers working on the language, but I had the
19 ultimate responsibility.

20 Q. But sitting here today you don't have any
21 specific recollection regarding what you might have
22 done regarding drafting of the terms and conditions
23 --

24 A. Not specifically.

25 Q. -- in the 1980 time frame?

1 A. No. I didn't mean to interrupt you either.
2 Thank you.

3 Q. Now, you had mentioned during some of your
4 earlier testimony that you had talked to people in
5 development, administration, legal and in the
6 development lab. You used those words. Do you
7 recall who you communicated with? You mentioned one
8 named Mr. Joy?

9 A. I remember Bill Joy. There were different
10 people over the years, but Bill was the guy early on,
11 so we used to talk a lot and travel a lot. So I
12 remember him vividly and there are faces I can see.
13 I remember Katherine and some folks later on.

14 Q. And other than what you have already testified
15 to, do you have any specific recollection of
16 communications you had with Mr. Joy regarding when
17 Berkeley software would have been the university's
18 property and when it was AT&T's property other than
19 what you have already testified to today?

20 A. You know, the more we talk the more things
21 start to come back. Bill was almost kind of like an
22 ally for the licensing program, because we would do a
23 dog and pony show and we would go to the user groups
24 or forums and he would talk about the technical
25 content of the product and I would talk about

1 licensing terms and conditions. So in that regard he
2 was a spokesman for what I had in my software
3 intellectual property and he would give that kind of
4 talk. He would call it the Berkeley version, but
5 this is what it contained, and he would talk about
6 the technical aspects of the product and depending on
7 the situation we would sometimes do that. Most of
8 those were very high level things talking about
9 information that would be contained other than
10 non-disclosure type information, how things worked
11 and the overall attributes of what you would get from
12 this software and those type things, and I can
13 remember one time, "Get your license from AT&T," and
14 they always thought that Bill and several others were
15 --

16 Q. Thought he was on the payroll?

17 A. He always saw us as kind of a necessary
18 impediment, and it was kind of a joke, "Go get your
19 AT&T license." We had some good trips. Went to
20 Europe and traveled around quite a bit. But it ended
21 up that you had to get the AT&T license.

22 Q. Do you remember ever talking to him at the
23 times you were together personally or on the phone
24 about if Berkeley were to develop a software that
25 might have been modified, derived from or an

1 enhancement of the operating system under what
2 circumstances that product would be the university's
3 property in addition to what you have already told
4 me?

5 A. No.

6 Q. Just so that I understand, what you have been
7 talking about when it's theirs it's theirs and when
8 it's ours it's ours, in terms of ownership when you
9 have been using that terminology do you mean if the
10 university owns it that AT&T cannot restrict it in
11 any way?

12 A. If the university owns it?

13 Q. Yes.

14 A. Depends on how it came into being.

15 Q. Because you have been using that terminology
16 today about whether code is the university's and
17 whether it's AT&T's.

18 MR. KENNEDY: He answered virtually that
19 identical question. Objection to form. You can
20 answer.

21 A. See, specifically back in the early days there
22 was software coming out of AT&T and software coming
23 out of Berkeley and it was kind of like a friendly
24 type co-existence or competition or whatever you want
25 to call it, and it was characterized by, "Hey, if you

1 get the Berkeley license and AT&T license, you have
2 the best of all worlds. So let's not debate too much
3 about that. Just get the licenses and you have got
4 it." The second part of the question was?

5 Q. I was trying to understand when you said the
6 university owns it and under some circumstances AT&T
7 owns it whether when you used those words "when the
8 university owns it," do you mean that they are free
9 and clear of any restrictions by AT&T?

10 A. Right. That depended on what conditions came
11 into existence. For instance, if it came into
12 existence under the educational license, even though
13 I characterize in those cases the operating system
14 was used as a tool and you could look over here and
15 have the best of both worlds and say, "Hey, this is
16 strictly a new intellectual creation over here, but,
17 by the way, we created this on a machine using AT&T
18 licensed software under our educational agreement."
19 If that occurred, then that which was theirs was
20 clearly theirs but was developed on the educational
21 machine and the license required them to not profit
22 from that. They had to make it available. So those
23 were the kind of restrictions you could come under.
24 There was a little bit of loosening, but the
25 administrative license also had a specific grant of

1 rights and also for commercial, so over time they
2 eventually acquired all three types.

3 Q. So when you have been saying when the
4 university owns and it when AT&T owns it,
5 specifically when the university owns software under
6 an educational license, then if they are going to
7 distribute it at all they must distribute it to
8 anyone, is that what you meant?

9 A. When the university owns it and it was created
10 using our property as a tool to create that, there
11 were clauses in the educational agreement which say,
12 "Okay, what you do for one you do for all," and that
13 didn't mean everybody, it just meant you couldn't
14 just give it to Onyx Computers and not HP. So they
15 could define the category of folks they wanted to
16 give it to, but like a class action.

17 Q. Just asking it another way so I make sure I
18 understand, when the university owned software that
19 was theirs under the circumstances you earlier
20 testified to, the only restrictions that AT&T would
21 have on the university's use or distribution or
22 disclosure of that would be that they couldn't just
23 give it to one individual for their profit? If they
24 were going to give it to somebody, it had to be to
25 anyone?

1 A. When you say "anyone" -- I mean anyone that
2 also had restrictions.

3 Q. I believe the word "anyone" does come up in
4 various documents in relation to this idea.

5 A. Yeah, and probably we will define that a
6 little bit. It was a defined set of anyone's, okay?
7 Take our stuff. We didn't license in certain
8 countries, so there are things that define who anyone
9 was. But the intent was they couldn't do sponsored
10 research or work for hire. That was the intent. Any
11 time that occurred, they would raise the issue and it
12 eventually led to the different licenses, because out
13 of that concept came the commercial license to the
14 government and so on and so forth.

15 Q. So putting it in context then, even though
16 this didn't happen in the early eighties, when
17 Berkeley developed code that it combined with 32 V in
18 the circumstances in which the code that Berkeley
19 developed would have been considered theirs -- and I
20 realize that that discussion didn't specifically in
21 detail take place in the early eighties --?

22 A. That's correct, because they did it the other
23 way. They knew they created stuff and we created
24 stuff. Get both licenses, belts and suspenders, and
25 you don't have to worry about it.

1 Q. But if the university had developed software
2 during the early '80 time period that they had
3 combined with 32 V and some percentage of Berkeley's
4 software was theirs, they owned it?

5 MS. SHAPREAU: Could I finish my question?
6 Your hand is out there waving.

7 MR. KENNEDY: I don't think I've interrupted
8 you. Please continue.

9 MS. SHAPREAU: I would appreciate it if you
10 wouldn't wave your hand.

11 MR. KENNEDY: I don't think that's a fair
12 characterization.

13 Q. (BY MS. SHAPREAU) I'm trying to understand
14 what we've just been talking about in some more
15 detail. If the University of California developed
16 software that they combined with the UNIX operating
17 system in a combined product and the software that
18 was -- well, let me start over. You earlier
19 testified that there were some circumstances in which
20 the university owned some of the software that they
21 had developed and circumstances in which UNIX owned
22 software that they had developed. Now, the
23 university, if they owned this software that they had
24 developed that was a component of a combined work
25 with AT&T, is it your understanding that under the

1 educational license agreement the university had all
2 rights to the software that they owned but they had
3 to distribute it, they couldn't limit the
4 distribution to a particular entity that might
5 commercially benefit from that product, is that
6 right?

7 MR. KENNEDY: Objection to form.

8 A. Would you read that back?

9 (The reporter read back the last question.)

10 MS. SHAPREAU: I'm going to withdraw that
11 question. I think it's unclear.

12 (Off-the-record discussion.)

13 Q. (BY MS. SHAPREAU) I wanted to follow up on one
14 of the questions Ms. Fithian asked earlier, and
15 forgive me if you think I'm repeating questions. Do
16 you believe that by the university's licensing of the
17 UNIX operating system and their familiarity with the
18 UNIX operating system that anything that the
19 university subsequently develops would be a product
20 that AT&T would have an interest in?

21 A. No, we were very clear. We did not want
22 ownership in that which was developed by the
23 university using our licensed software products,
24 which was somewhat different from other entities I
25 knew of that would provide software to the

1 universities under the educational-type agreement,
2 which usually was at a very favorable cost, but if
3 the university developed something you are going to
4 let us have it back. So we did not do that. The
5 only conversations I recall in kind of that vein
6 about who owned what and those type things was that
7 it's a non-issue, let's make both folks have the same
8 license. There were some conversations about who
9 pays, so the university had very few dollars that
10 they paid for the license. But someone who said,
11 "I'm going to sell some stuff," they had a
12 commercial license and we had conversations about why
13 did they have to pay for this and we said, "Well,
14 that's how we pay for the development," or what have
15 you. So there were conversations about the different
16 classes of licenses and they understood the grant of
17 rights, because their fees were so low and most fees
18 were high, and when people would come to get software
19 from the University of California, they would say,
20 "Hey, talk to AT&T. We got the license." That was
21 the cost of doing business.

22 Q. If the University of California were to
23 develop a software product that they contended was
24 their property to do with whatever they felt was
25 appropriate, regardless of AT&T, and the university,

1 as you know, has had exposure to the UNIX operating
2 system, has worked with it for many years, is it your
3 understanding that that software that the University
4 of California would develop would be subject to any
5 of the restrictions in the AT&T licensing agreement?

6 A. Absolutely. It would be.

7 Q. And why is that?

8 A. As you characterized it, you said if they had
9 developed some software with exposure to the licensed
10 software would it be subject to the AT&T agreement.
11 I'm saying absolutely that would be the case. That's
12 why they always used both. They were careful if they
13 had any exposure to the licensed software, it was a
14 given that you had to have a license from AT&T.

15 Q. So in a way if someone at the university had
16 been exposed to the UNIX operating system and had had
17 access -- mental contamination is a word that's been
18 used -- that you feel they would be mentally
19 contaminated in a way that they could not then
20 develop a software product that would not be governed
21 by the AT&T license agreement?

22 MR. KENNEDY: Objection to form. You may
23 answer.

24 A. It would make it a lot more difficult by being
25 exposed, and if they came up with something that

1 looks like it, walks like it, quacks like it, where
2 did you get that? "Oh, I was exposed back over
3 here." It's like two people getting to the patent
4 office. Go back to our early history in the Bell
5 System. We came up with the telephone. It was in
6 Europe about the same time, and once you get to the
7 patent office it's hard to say, "Oh, I did this
8 independently. Oh, I got there first." And even
9 though you may have done that, you can't assert your
10 rights. So that kind of contamination occurs. It's
11 almost like a clean room environment. You get folks
12 who have never been exposed -- if you want to be
13 clear, you get folks who have never been exposed and
14 put them in a clean environment and let them go at
15 it.

16 Q. Now, Mr. Wilson, I understand that AT&T
17 divested in the very early 1984 time period. Do you
18 have a recollection of that?

19 A. Of course. It changed all of our lives
20 forever.

21 Q. And did the marketing goals of AT&T change
22 after the divestiture?

23 A. Surely did, yes.

24 Q. Very briefly, could you describe that?

25 A. We're talking about AT&T. I mean, that's

1 very, very big. I can talk more specifically about
2 the areas.

3 Q. Actually, licensing is what I'm focusing on,
4 the UNIX operating system.

5 A. We're back to this?

6 Q. Yes.

7 MR. KENNEDY: I don't want to prevent him
8 from answering, but I wanted to suggest we might take
9 a break.

10 MS. SHAPREAU: It's just one question, so --

11 A. About this time frame we were the -- I say
12 "we" -- the UNIX software licensing organization --
13 at that time I got the position to head up that
14 organization and to take a more commercial focus to
15 our licensing program, which meant that prior to this
16 time I was talking about, you know, each agreement
17 was done in a very slow, very methodical process, not
18 that it required that each and every time, but it was
19 put on a docket and these were pretty much
20 boilerplate, because we pretty much treated folks the
21 same. There were individual situations, but the form
22 of the agreement themselves did not require this long
23 time frame to push it out. Some people said, "Wait a
24 minute. Folks won't accept our regular agreement."
25 But we were part of a legal, negotiating-type

1 operation, very high level prestigious-type folks to
2 check these agreements. So in '83 and '84 we
3 divested and we said, "Now we can be more
4 responsive." So I was tapped to head up the
5 organization, set up an organization that could do
6 that a lot quicker, and that's when we came in with
7 things like the master agreements. We actually had
8 licensing managers and we had secretaries and we had
9 all those kinds of things. Prior to this time, if
10 you see some of the earlier stuff, we would sometimes
11 make our own copies in the back room and that stuff.
12 But that just wasn't going to get it, so the new
13 folks said, "Okay, we are divested. Let's go after
14 the new business. Let's do things differently." So
15 that's what happened in that time frame.

16 Q. In terms of marketing the UNIX operating
17 system through licenses, did that change after
18 divestiture?

19 A. No, really nothing changed. Nothing changed
20 from the standpoint I could get it to you quicker,
21 but we were still -- pretty much at that time it was
22 technology. It was things that we had developed
23 internally that we wanted to protect but also make it
24 available to folks. It was not like going out and
25 buying MS-DOS with binary copy to run a machine and

1 big support network. So prior to 1983 and after that
2 for several years there were no such things like
3 support organizations where if you have a problem you
4 say, "Is this designed for a specific purpose?" "No,
5 it's technology, a trade secret of AT&T. You can
6 protect and use it and pay your fees." So that was
7 the same before and after. The big change was we had
8 more folks on the telephone streamlining the process
9 of how to create the first document. Prior to that
10 time I was part of a larger organization called
11 patenting and licensing and we had responsibility for
12 all intellectual properties.

13 Q. Wasn't it made after the divestiture to more
14 widely distribute to licensees the UNIX operating
15 system?

16 A. Not on our part. Our part was just
17 responding, getting out in front of a train that was
18 already running. We just -- you know, that's really
19 what you said first. How did AT&T change? We were
20 like this. I mean, AT&T was like this.

21 MR. KENNEDY: You need to indicate that.

22 A. We were a pimple, you know, on the proverbial
23 whatever. AT&T was so big. What we were trying to
24 do was really an individual effort of -- well, I
25 guess we were trying to get in front of what was

1 already going on. People would call and we would get
2 raked over the coals. "Why does it take for me to
3 get this same agreement Carla got last year? Why are
4 you taking so long to get it?"

5 Q. Did the issue of the fact that now AT&T might
6 be able to make more money on its products come into
7 play any way at all after the divestiture, to your
8 knowledge?

9 A. No, not at that time and not initially, but
10 very shortly after that -- like the divestiture
11 happened, and at the end of '83 or '84 -- no, the end
12 of '83 -- it was true but heavily rumored that AT&T
13 would start to sell computer hardware, a lot of stuff
14 going on internally, and that didn't occur until
15 somewhere in '84. The big change that occurred there
16 -- I always talk too much, keep giving you these
17 stories -- the big thing that occurred was folks
18 became a lot more concerned about the licensing
19 agreements. Why? Because they said here is this
20 big, huge, deep pocket company going into the
21 hardware business and there was still a kind of cult
22 following for the UNIX operating system folks doing
23 little start-ups and creative with this technology
24 and they didn't have to worry about anybody big.
25 AT&T and IBM had not stepped into the ball game. All

1 of a sudden AT&T is rumored and in fact the following
2 year goes into the hardware business and now everyone
3 is concerned that AT&T is going to take the licensed
4 software and use it on their products and give us the
5 old stuff, or our organization, the licensing
6 organization, would be an intelligence conduit for
7 licensees back to AT&T of what the competition was
8 contemplating and that we would tell everybody
9 everything. So we changed in '84 in that we are
10 autonomous, and we dealt with protecting intellectual
11 properties, treating both internal customers as well
12 as external customers the same, and we were going to
13 do it fairly, as best we could, for everybody, and if
14 I talked to you and you had a box you are creating,
15 that would be contractual information between the two
16 of us and we were not going to reveal that. But that
17 was what happened. The change was in the perception
18 of what AT&T was going to do, and to make sure
19 everybody was treated equally that was one of the
20 driving forces I would use a lot of times to keep us
21 as an outpost and we didn't get in the tooth of
22 corporate here. We said, "We are going to treat
23 everyone equally internally and externally." But
24 that's kind of what happened in '84. We could turn
25 out the documents a lot quicker, but then there was a

1 lot of discussion about clarifying what this meant
2 and that meant and those kinds of things. It became
3 a lot more dialogue.

4 (Whereupon, the witness left the room.)

5 MR. KENNEDY: My question is -- it's hardly
6 anything that's going to disclose any information
7 whatsoever to Mr. Wilson. My question is whether the
8 university is contending that the definition of
9 licensed software in the 32 V. or other agreements is
10 ambiguous.

11 MS. SHAPREAU: We're just taking discovery to
12 determine what communications existed. You know what
13 contentions the university hasn't even answered, so I
14 don't know the university can articulate its position
15 on a variety of points. We're just here to conduct
16 discovery while discovery is ongoing. That's the
17 best I can answer.

18 MR. KENNEDY: I asked because it may inform
19 -- in fact, I think it will inform the discovery
20 which we want to take of the university.

21 MS. SHAPREAU: Fine.
22 (Whereupon, a recess was taken.)

23 Q. (BY MS. SHAPREAU) Mr. Wilson, during this
24 deposition various terms have been used and I wanted
25 to get your understanding of the difference between

1 the words "modification," "enhancement" and
2 "derivative work," if there is any. Could we go
3 through those three words and you give me your
4 understanding of what those words mean and your
5 understanding as of -- well, as of the early '80 to
6 mid-'80 time period?

7 MR. KENNEDY: In relation to what?

8 MS. SHAPREAU: In relation to the license
9 agreements we've discussed today.

10 MR. KENNEDY: The one problem I have is Mr.
11 Wilson says you have to look at the agreements as a
12 whole, and I think he has resisted questions trying
13 to pinpoint precise words. If you want his general
14 understanding of things -- well, that's my
15 objection. I don't think it's appropriate.

16 Q. (BY MS. SHAPREAU) The words "modification,"
17 "enhancement" and "derivative works" have been used
18 together in the license agreements we've looked at
19 today, and I wanted to understand what you understood
20 the distinction to be between those words as used in
21 the license agreements.

22 A. Okay, in that context they all mean the same
23 to me. In other words, folks would try to use the
24 word "modify" or "derivative work" or "enhancement"
25 and they all -- once you peel the onion away it means

1 the same thing, just different ways folks try to
2 characterize the license agreement. If they add
3 something or change something, it's all the same.
4 There's dialogue over what's enhancement and
5 modification, and they all turn out to be
6 irrelevant. If you use a licensed software product
7 -- that's what we're talking about -- and you create
8 something else, that's what it means.

9 Q. So any time you used the licensed software
10 product, what you would get would be a modification,
11 enhancement or derivative work? Is that what you
12 mean?

13 A. Yeah, the context of our agreement -- what
14 would happen is folks would take the -- let me go
15 back to when folks first started using it. They
16 would take the licensed software product that ran on
17 a particular piece of hardware and they would move it
18 to another piece of hardware. Essentially everything
19 remained the same, except there were some hardware
20 functions that were different on the next machine, so
21 they had to change some things to make it work on the
22 other machine, and you could call it a modification
23 or enhancement or derivative work. They all describe
24 the same activity or enabling it to operate.

25 Q. In terms of what the words "modification,"

1 "enhancement" and "derivative work" mean, you
2 believe they all have the same general meaning and
3 that was your understanding in the early '80 time
4 period?

5 A. The idea was trying to convey the intent.
6 They could utilize the software however they wanted
7 to describe their activity and it was covered. In
8 other words, you had to protect it, but you could use
9 the software.

10 Q. You mentioned additions to the software. What
11 other types of things could you do that you felt
12 would fall within the definition of modifications,
13 enhancements or derivative work? What about if you
14 took something out of the product, deleted
15 something? Do you think that would constitute a
16 modification, enhancement or derivative work?

17 MR. KENNEDY: Objection to the form.

18 A. Yes. In other words, the licensed software
19 product was something that was delivered to you and
20 you said, "Well, I really don't need A, B and C, but
21 I'm going to use the rest." Then you would still
22 have the enhancement by taking it out or making it a
23 derivative work, because you made something more.

24 Q. If you add something original to it, that
25 would still be a derivative work?

1 A. Yes. Again going back to the original
2 description using the licensed software and some
3 people called -- some people would call it a
4 modification not enhancement because this makes it
5 work. If you fix the bug -- are you all familiar
6 with that? So if you fixed a bug, is that a
7 modification or enhancement or just making it work?
8 They are all the same. You are still using the
9 licensed software product.

10 Q. I want to ask you -- I know you have been
11 asked at great length about the contents of Exhibit D
12 34, and what I would like to ask you isn't so much
13 about the substance of it, but historically I wanted
14 to get a context. You mentioned the earlier
15 agreements before divestiture and then after
16 divestiture and it sounded as if you were trying to
17 respond more quickly to the demands of your
18 customers, and this Exhibit D 34 appears to have
19 different language than the 32 V license agreement,
20 is that correct?

21 MR. KENNEDY: Objection to form.

22 Q. In looking at the granting clause, which is
23 paragraph 2.01 --?

24 A. Yeah, as they moved forward we tried to
25 clarify or maybe simplify the structure as

1 characterized by having a separate document for every
2 piece of technical property as opposed to the old
3 days saying, "Let's have a master agreement and
4 appendices of what you receive." And as we went
5 through those evolutions, things that seemed clearer,
6 a clearer representation of our intent, would be
7 incorporated into a standard agreement that we would
8 use as our basis for starting. So depending on which
9 point in time you came in, you would see different
10 documents, but they all were covering the licensed
11 software and the intent behind the program.

12 Q. And I know again you testified at length
13 regarding this specific license agreement which is a
14 System V license agreement that was signed in the
15 1984 time period by yourself. Other than what you
16 have already testified to, do you recall any other
17 conversations, meetings or communications with the
18 University of California in which you discussed the
19 meaning of modifications, enhancements or derivative
20 works other than what you have already testified to?

21 A. I do not.

22 Q. And again, do you have any additional
23 recollection of specific conversations or
24 communications that you had with anybody at the
25 University of California regarding when a product

1 developed by the University of California would be
2 the university's property as opposed to AT&T's
3 property?

4 A. No. As I stated earlier, that was pretty much
5 a moot point with the universities, because they did
6 not want to go down that path. They said, "Let's
7 have both licenses."

8 Q. Just so you understand, the reason I'm asking
9 these questions is I want to know everything that you
10 can recall so that later I don't find out something
11 additional and that's -- I don't mean to keep
12 sounding repetitive, I just want as complete an
13 answer as I can get.

14 A. This is so long ago. If I go home and sleep,
15 next week I might recall some other.

16 Q. Sitting here today I'm asking for your best
17 recollection. So regarding the System V license
18 agreement marked as Defendant's Exhibit 34, other
19 than what you have already testified to you don't
20 remember any other communications you have had with
21 the University of California regarding when a product
22 developed by the University of California would be
23 the university's property?

24 A. I don't remember any conversations about
25 whether it was the university's property or not. It

1 was mainly associated with what license was needed,
2 because the process of trying to say which is the
3 university's and which is AT&T's, once you start to
4 mix them up it was a non-issue. The universities
5 dealt with that issue by saying, "Have both
6 licenses." So we didn't have to get into those
7 discussions.

8 Q. And there was extensive questioning earlier
9 about "contained in," "based on" and "part of."
10 Other than what you have already testified, do you
11 have any recollection today of any communications you
12 had with the University of California regarding those
13 terms as used in this System V agreement?

14 A. No, I do not.

15 Q. Do you have any recollection of any
16 communications with the University of California
17 regarding the terms "contained in," "based on" or
18 "part of" in any other educational license agreement
19 with the University of California at any time?

20 MR. KENNEDY: Other than --

21 MS. SHAPREAU: Other than what he has already
22 testified to.

23 A. See, the question focuses back on the
24 educational license. So with regard to the
25 educational license, no. But there were other

1 licenses.

2 Q. (BY MS. SHAPREAU) And other than what you have
3 already testified to regarding the terms
4 "modifications," "enhancements" and "derivative
5 works," do you have any recollection of any
6 communication with anybody at the University of
7 California regarding your understanding of the
8 meaning of those terms in any educational license
9 agreement with the University of California?

10 MR. KENNEDY: Objection to form.

11 A. We've talked earlier about educational
12 licenses and those things and those are the things --
13 there were conversations that we talked about
14 earlier. If that's what you mean, yes, we had those
15 conversations with regard to the grants under the
16 educational license, and other than that I don't
17 recall anything. But there were discussions with
18 them about the educational license.

19 Q. Now, you testified at length about the
20 specific communications and what you understood
21 certain things to mean. What I need to know is were
22 there any meetings, telephone conversations or
23 letters that you recall sitting here today in which
24 the meaning of the words "derivative works,"
25 "modifications" or "enhancements" were an issue of

1 discussion with anybody at the University of
2 California that you haven't already testified to?

3 A. No. Just to clarify, we started this morning
4 talking about things and because of the long period
5 of time and types of licenses I remembered the more
6 general things, and as we talked more and got more
7 specific, as we started to focus on specifically the
8 university license and educational, my recollections
9 became crisper with regard to how we dealt with the
10 university and those discussions about how they knew
11 the intent of the agreements. That was very, very
12 clear, and we did not have to have long conversations
13 about what was theirs and what was ours. We said,
14 "The way we'll deal with that is you just tell us
15 which AT&T software agreement folks have to have and
16 this is what they will do." So we didn't have to
17 have those detailed discussions with regard to the
18 educational license.

19 Q. And how do you know that the University of
20 California knew the intent of AT&T in its use of the
21 words "modifications," "enhancements" and "derivative
22 works" in the license agreements?

23 A. How do I know that?

24 Q. Yes.

25 A. Other than as I have already testified,

1 dialogue, talking to people across the table, on the
2 telephone, reviewing the documents themselves.
3 That's how I knew it. We would talk about things and
4 then they would execute the documents and it was -- I
5 knew it because of how they would honor our program
6 from the standpoint of making sure that source code
7 exchanges were based on intellectual property
8 agreements with AT&T. I felt very comfortable that
9 they understood the intent and the procedure for
10 utilizing the software and especially the changes in
11 the software provided to others. That's how I knew.

12 Q. And the reason you believe that the university
13 had the same understanding that you had of
14 modifications, enhancements and derivative works as
15 used in the license agreements you mentioned was that
16 they required the source exchange and that there
17 would be the license in place, but do you recall
18 specific conversations or communications in which
19 there was any disagreement by the University of
20 California regarding when a modification, enhancement
21 or derivative work developed by the university would
22 not be restricted by the AT&T license agreement for
23 use or disclosure?

24 MR. KENNEDY: Objection to form.

25 A. What was the last?

1 Q. The user disclosure of that software.

2 A. No.

3 Q. Mr. Wilson, I would like to show you what was
4 previously marked as Exhibit 35, which is a letter
5 that appears to have your signature, dated August 15,
6 1984 to the regents. Do you recognize this letter?

7 MS. SHAPREAU: Why are you shaking your head
8 no? Do you have a problem, Mr. Kennedy?

9 MR. KENNEDY: Yes, I have a problem.

10 MS. SHAPREAU: Yes?

11 MR. KENNEDY: I don't want to reveal what my
12 problem is in front of Mr. Wilson.

13 MS. SHAPREAU: I've chosen an exhibit and
14 asked the witness to review it and you are shaking
15 your head no.

16 MR. KENNEDY: Would you like me to tell you
17 what my problem is and ask Mr. Wilson to step out 30
18 seconds?

19 MS. SHAPREAU: Yes, but I think it makes this
20 process more painful than it has to be for everyone.

21 MR. KENNEDY: Don't leave. I'm not going to
22 elucidate my concerns on the record. I've made my
23 objections to form where I think they are
24 appropriate.

25 Q. (BY MS. SHAPREAU) Mr. Wilson, do you recognize

1 the signature on the second page of Exhibit 52?

2 A. Yes, I do.

3 Q. Is that your signature?

4 A. It appears to be.

5 Q. Do you remember writing this letter? Did you
6 write this letter?

7 A. Yeah, I responded to this letter.

8 Q. I want to direct your attention to the block
9 quote on page 1. The third sentence in that
10 paragraph reads, "By way of clarification, while we
11 do not require that results, enhancements and
12 modifications be made public, we do require that if
13 the material is to be released at all it must be made
14 available to anyone." Do you remember what you meant
15 by this?

16 A. Yes, I do.

17 Q. Could you tell me, please?

18 A. Again, we would have to go back and pull the
19 other agreement, because we are taking this out of
20 context. I don't have the other. It refers to two
21 different agreements, the software agreement and the
22 educational work bench.

23 Q. Does it also refer to the July 1, 1983 System
24 V agreement with the University of California?

25 A. I'll stipulate it refers to the 1985 agreement

1 and writer's work bench, the educational software
2 agreement.

3 MR. KENNEDY: I would ask that you put the
4 agreements in front of Mr. Wilson.

5 MS. SHAPREAU: My questions pertain to the
6 System V agreement, which I believe was the last
7 agreement we talked about, Exhibit 34.

8 Q. (BY MS. SHAPREAU) Just to renew my question, I
9 wanted to know --

10 A. Wait, wait, wait, wait.

11 Q. I'm sorry.

12 MR. KENNEDY: I might note that with my not
13 saying anything on the record Mr. Wilson anticipated
14 what had been my concerns.

15 MS. SHAPREAU: Good.

16 A. Can you restate the question, please?

17 Q. (BY MS. SHAPREAU) Absolutely. I wanted to
18 know what you meant when you wrote, "By way of
19 clarification, while we do not require that results,
20 enhancements and modifications be made public, we do
21 require that if the material is to be released at all
22 it must be made available to anyone," as that
23 sentence is included in your August 15, 1984 letter
24 to the regents in regard to the System V license
25 agreement, if you recall.

1 A. I do recall. I mean, I meant what I said
2 there, which references back to the agreement which
3 says the same thing. This is kind of paraphrasing
4 the same thing here, and I go back to the intent of
5 that which says, by way of example, that if you used
6 our software as a tool and you caused one of these
7 events to occur, results, enhancements or
8 modifications, whatever you did with that, it
9 couldn't be work for hire, as I described earlier, or
10 sponsored research or something specific other than
11 being made available to all people of a certain type
12 class. To the extent this was under the educational
13 license, you could do things, but you always had to
14 protect the trade secret. However, if you created
15 something using our software as a tool, then you had
16 to follow the stipulations of the educational license
17 agreement, which means you couldn't in turn give it
18 to an individual.

19 Q. And by "something" you mean results,
20 enhancements or modifications, is that right?

21 A. That's correct.

22 Q. Was there some confusion on the part of the
23 university regarding what this sentence meant?

24 A. Yes, they were concerned that if they were --
25 someone in the office came up with the idea, "Maybe I

1 can just kind of distribute this stuff and make a few
2 bucks on it."

3 Q. Which stuff is that?

4 A. Whatever they were talking about, whatever
5 they were distributing on their distribution. They
6 realized it required a license, but somebody said,
7 "Maybe we can make a few bucks." And they said,
8 "You can't do that under the educational agreement.
9 You can recover your costs but not profit."

10 Q. So to your recollection this issue came up
11 because someone wanted to make commercial profit out
12 of a result, modification or enhancement they had
13 developed using the licensed software? Is that how
14 this subject came up?

15 A. It came up because Berkeley was getting
16 increased requests for distributions, and if you read
17 further in there I think I even said it in here.
18 They were concerned about costs as they were
19 distributing this thing, because the university was
20 not set up for the distribution of intellectual
21 property. They were pretty much in the same category
22 we were in the early eighties. They weren't set up
23 for distribution every single day, and they said,
24 "How can we recover our costs?" And I said, "You
25 can do that as long as you just recover costs, but

1 you might want some third party to do this for you."
2 And what they saw as an emerging issue was they were
3 getting requests for distributions and how that would
4 work under their educational agreement.

5 Q. Was there any other communication that you
6 recall regarding clarification of this term in the
7 System V license agreement?

8 A. Not that I recall at this time, no.

9 Q. Do you remember who your communications were
10 with at the university regarding this issue that I've
11 read out of the August 15 letter from you?

12 A. Katherine.

13 Q. I'm sorry?

14 A. Katherine.

15 Q. You are speaking of Katherine DeLucchi?

16 A. That's correct.

17 Q. The term in paragraph 1.01 (a) of the System V
18 license agreement marked as Exhibit 34 has the word
19 "results" in paragraph (a) (ii). It says "such
20 results, enhancements and modifications (all to the
21 extent they do not include any portion of licensed
22 software) are made available to anyone (including
23 AT&T and its associated companies.)" Do you see
24 that?

25 A. Yes.

1 Q. What was your understanding of the word
2 "results" at the time this agreement was prepared?

3 A. That was using the licensed software as a
4 tool, okay? Just like you say, "I'm trying to figure
5 out how long it takes to get to the moon," you use a
6 calculator or computer, and that's the results, which
7 is what comes out of the algorithm. So in this case
8 the results of research or what have you using the
9 licensed software as a tool is what we're talking
10 about.

11 Q. Could that in your mind in 1985 have included
12 software?

13 A. Sure. I'm not going to talk about whose
14 software, but it could include software.

15 Q. And did you communicate your meaning of what
16 the word "result" meant with anybody at the
17 University of California at any time as used in this
18 agreement?

19 A. Yes.

20 Q. And do you recall when that was or in what
21 circumstances?

22 A. Not specifically, because we understand the
23 difference. Like when you say "software," it could
24 be like the result of an algorithm or a book somebody
25 was writing or anything.

1 Q. Mr. Wilson, I'm going to ask you about a
2 letter that is contained in what's been marked as
3 Exhibit 25 and if you could take a look at that it's
4 on the fourth page of Exhibit 25 and it's dated
5 November 12, 1985 and it appears to bear your
6 signature. Would you take a look at that, please?

7 A. Yes.

8 Q. Is that your signature?

9 A. Appears to be.

10 Q. And do you recall writing this letter or side
11 letter?

12 A. New term, "side letter."

13 Q. I'm sorry, what was that?

14 A. That's a new term, "side letter."

15 Q. What would you call this?

16 A. You said "side letter." That's the first time
17 I have heard that. What do you mean?

18 Q. Other people who work for AT&T have used that
19 term. What do you call this, a letter? Looks like a
20 letter to me.

21 A. Okay.

22 Q. Can you tell me what agreement this letter
23 pertains to?

24 A. Yes.

25 Q. Okay.

1 A. I can tell you in the opening it goes to the
2 educational agreement E-Soft 00089.

3 Q. And is that the agreement that follows this
4 letter in what's marked as Defendant's Exhibit 25. ?

5 A. This is the one I -- we talked about this one
6 earlier. It doesn't seem complete, but it appears to
7 reference that the agreement that's attached is not
8 complete.

9 Q. What is it missing?

10 A. It doesn't have the covers.

11 Q. So it's missing the schedule?

12 A. Appears to be missing the schedule, yes.

13 Q. Other than the schedule, does it appear to be
14 complete?

15 A. No, the schedule is missing, because it's so
16 obvious. I would have to check page by page, because
17 the supplement is clearly missing. The content of
18 the rest I would have to look at.

19 Q. Page 1 says 1 of 7. It appears to have seven
20 pages and I don't want to leave the impression other
21 than the schedule that the seven pages, the actual
22 text of the agreement, are part of this exhibit.

23 A. I just pointed out it was obviously
24 incomplete, because I couldn't find the schedule.

25 Q. Other than the schedule, is there anything

1 else you believe is incomplete?

2 A. I don't know without looking at it.

3 Q. Why don't you take a quick look and tell me if
4 you can determine if it's missing anything other than
5 the schedule?

6 A. I will deal with this as we stipulated
7 earlier. I'm going to take it as you saying it's
8 there. I'll go with that.

9 Q. Thank you. The first paragraph states, "This
10 is to clarify our understandings regarding certain
11 provisions in the referenced agreement and to delete
12 section 7.11." Next paragraph reads,
13 "Notwithstanding section 2.01 (b) (i), we agree that
14 you may use software products for sponsored research,
15 provided the fruits of such research are not
16 restricted by the sponsor and are published or
17 otherwise made available to the public. Regarding
18 section 2.01 (b) (ii), while we do not require that
19 results, enhancements and modifications be made
20 public, we do require that if any such material is
21 released at all, including to sponsors, it must be
22 made available to anyone." Do you remember why you
23 wrote this letter?

24 A. To clarify our understandings.

25 Q. Was this the same issue that was referenced in

1 Exhibit 52, which is the last letter we discussed
2 from you dated August 15, 1984?

3 A. Could you ask the question again?

4 Q. I'm wondering whether the clarifications that
5 you have included in the November 12, 1985 letter are
6 related to the clarification in your August 15, 1984
7 letter.

8 A. They are not.

9 Q. And how are they different?

10 A. The referenced software agreements in the
11 August 15 letter in Exhibit 52 do not include the
12 referenced software in the November 12, 1985 Exhibit
13 25. So we're talking about different agreements
14 which are defined by the statements in each of these
15 letters.

16 Q. Is it your understanding, though, that the
17 intent of AT&T regarding the clarification that
18 results, enhancements and modifications be made
19 public, modifications to the software be made public,
20 to the extent they are made public they need to be
21 made available to anyone? Did that understanding or
22 term in the System V July 1 agreement follow through
23 to the educational boilerplate agreement that's part
24 of Exhibit 25? Let me reask that. You have a
25 confused look on your face.

1 A. I think --

2 Q. I see a connection between these and maybe I'm
3 wrong.

4 A. Let me help you. The connection between the
5 two is that the intent is the same. Remember that I
6 characterized earlier on we had separate agreements
7 that covered everything or covered different
8 products. So when you actually had clarification
9 letters, the licensees would come back and say, "I
10 know you said that, but give me one for agreement A,
11 B and C." So the intent behind both documents is
12 exactly the same, but they are referencing different
13 licensing agreements that were in place with the
14 university.

15 Q. Is that why you wrote the November 12, 1985
16 letter, because the university asked for a letter
17 stating -- well, let me ask you why did you write the
18 November 12, 1985 letter, do you recall?

19 A. I don't recall specifically, but I would say
20 it was at their request, that this letter was written
21 because they had seen this letter and they said,
22 "Oh."

23 Q. And by "this letter" --

24 A. The November 12, 1985 letter, which we could
25 verify by looking at our correspondence files with

1 regard to this transaction. But I'm pretty sure it
2 was requested by the university.

3 Q. Do you know whether the University of
4 California in the November 1985 time period was
5 confused about the meaning of the terms contained in
6 2.01 (b) (i) and (ii) and that's why they had asked
7 for this letter?

8 MR. KENNEDY: Objection to form.

9 Q. Let me ask another question. Did the
10 University of California -- I'll withdraw it and ask
11 it another way. Did the University of California
12 communicate to you that they were confused about the
13 meaning of the language contained in paragraph 2.01
14 (b) (i) and (ii) in the educational software
15 agreement E-Soft 00089?

16 A. No, they did not.

17 Q. Did they voice any disagreement with AT&T's
18 clarification or --

19 A. No, just the opposite. They agreed with it
20 and requested this for their subsequent agreement.
21 In other words, the agreement covered by the November
22 12 letter, for want of a better word, was concurrence
23 with clarification received from the earlier letter.

24 Q. Do you recall whether there were any
25 communications between yourself and the University of

1 California regarding your clarification in the
2 November 12, 1985 letter?

3 A. I don't recall.

4 Q. Again, I think I have generally asked you
5 this, but I just want to make sure I haven't missed
6 anything. Do you have any recollection of any
7 communications that you have had with anybody at the
8 University of California regarding the contents and
9 the meaning of the words in paragraph 2.01 (a) and
10 (b) in the System V licensing agreement Exhibit 25
11 other than what you have already testified to today?

12 A. Would you read that to me again?

13 (The reporter read back the last question.)

14 A. 2.01 (a)?

15 Q. I'm sorry I think we're looking at two
16 different things. I'll withdraw that. Please look
17 at page 2 of 7 of the license agreement contained in
18 Exhibit 25. I'm sorry, Mr. Wilson.

19 A. Okay.

20 Q. You have testified extensively on these two
21 sections of section 2.01 in the license agreement,
22 the educational software license agreement, and I
23 just want to make sure that I am aware of the
24 communications that you have had with the university
25 regarding the meaning of the language in paragraph

1 2.01 (a) and (b). Other than what you have already
2 testified to, do you have any recollection of any
3 other communication with the University of California
4 regarding the meaning of the language in paragraph
5 2.01 (a) and (b)?

6 A. No, I do not.

7 Q. I want to have you take a quick look at
8 Exhibit 51 and ask you the same question regarding
9 the exhibit. Do you recall whether a specific
10 meeting took place which predated this letter marked
11 as D 51 in which you communicated with the university
12 regarding the substance of this exhibit? Well, let
13 me withdraw that. Do you have a recollection -- I'm
14 sorry?

15 A. Do you want me to read this first and then ask
16 the question?

17 Q. Yes. Thank you.

18 A. Okay.

19 Q. You mentioned some meetings you had earlier
20 with the University of California and I wanted to
21 know do you recall a specific meeting with the
22 University of California in which the issues
23 discussed in Exhibit D 51 were discussed
24 face-to-face?

25 A. I don't recall whether there was a specific

1 face-to-face meeting that preceded the issuance of
2 this letter.

3 Q. Other than what you have already testified to,
4 do you recall any communication of any kind with the
5 University of California regarding the issues
6 contained in Exhibit D 51 before or after the
7 preparation of Exhibit D 51?

8 A. I'm not coming up with anything new at this
9 point, the best I can recall. I may tomorrow.

10 Q. I just want to be thorough today.

11 A. I think we've pretty much covered the
12 recollections that I have at this moment.

13 Q. Now, the software license agreement that you
14 just looked at, which was Exhibit 25, a very quick
15 question for you on this. Why did AT&T change,
16 clarify or modify the language in paragraph 2.01 from
17 the earlier System V license agreement, which I
18 believe is marked as Exhibit 34? Do you have any
19 recollection of that?

20 MR. KENNEDY: Can we first focus on what the
21 language differences are? I'm not suggesting you
22 need to ask him about it, but let's get both exhibits
23 in front of Mr. Wilson.

24 MS. SHAPREAU: I believe the paragraphs are
25 numbered differently in Exhibit 34.

1 MR. KENNEDY: Why not let us know what it is
2 you are referring to?

3 Q. (BY MS. SHAPREAU) The language in the 1985
4 educational license agreement changed from the 1983
5 System V license agreement regarding the granting
6 clause and the use of the licensed software, is that
7 correct?

8 A. I don't know.

9 MR. KENNEDY: Again, would you direct us to
10 the paragraphs that you have in mind?

11 MS. SHAPREAU: Okay. Exhibit 34 on the first
12 page of the actual license agreement has a granting
13 clause that the witness has testified about earlier,
14 and it starts, "AT&T grants..." and then on the next
15 page paragraph 1.01 (a) discusses uses of licensed
16 software.

17 MR. KENNEDY: It's not the next page. You
18 are referring to Bates number 215?

19 MS. SHAPREAU: I don't have the same
20 document.

21 MR. KENNEDY: Labeled appendix A at the top,
22 "terms and conditions"?

23 MS. SHAPREAU: I have another copy. Yes,
24 it's appendix A. I'm sorry.

25 MR. KENNEDY: Just so the record is clear,

1 counsel has reference in her questions to the
2 granting clause, I think she has called it, from the
3 page with Bates number 212. Behind that are lists of
4 locations and CPU's. On page 215, appendix A,
5 there's a provision which she referred to regarding
6 uses of licensed software, all of the foregoing
7 applying to Defendant's Exhibit 34.

8 Q. (BY MS. SHAPREAU) My question is the two
9 provisions in the System V license agreement that is
10 in Exhibit 34 appear to have been clarified or
11 modified in the later educational software license
12 agreement which is contained in Exhibit 25, which I
13 believe you have in front of you.

14 MR. KENNEDY: Didn't we go through this at
15 length this morning, this same set of changes?

16 MS. SHAPREAU: I don't believe I have the
17 same question. I wanted to compare the two and ask
18 why the change was made.

19 MR. KENNEDY: Okay. I'm really not trying to
20 be obstreperous. We're talking about a granting
21 clause and then talking about the definition of
22 educational use, and I would suggest that we break
23 them down one by one, because otherwise I think it
24 gets confusing.

25 A. I'm getting tired. I think -- you know, I

1 think we might better do this in the morning. We've
2 been going a long time. I don't mind staying, but I
3 need to --

4 Q. (BY MS. SHAPREAU) How about if we take a break
5 and I'll try and speed it up?

6 A. What I have to do is -- as we have gone
7 through today, I've got to look at these things in
8 order to bring back the recollections.

9 (Off-the-record discussion.)

10 (Whereupon, a recess was taken.)

11 MS. FITHIAN: We're adjourning for the day
12 and it's our understanding that Mr. Wilson can only
13 be available at most two hours tomorrow. We think we
14 probably have another day with Mr. Wilson, so we're
15 planning to do that later.

16 MS. SHAPREAU: I also want state the reason
17 we're stopping is that Mr. Wilson is tired, and at
18 his request we're stopping.

19 MS. FITHIAN: Mr. Kennedy has given me three
20 pages out of USL's memorandum in support of their
21 motion for preliminary injunction, pages 19, 20 and
22 21, which he has redacted.

23 MR. KENNEDY: I sent you a letter respecting
24 your showing to your client the redacted portion of
25 the affidavit, and in that letter I believe I laid

1 out USL's position in an it wouldn't oppose your
2 doing so, and we take a similar position here. We're
3 not consenting to it, because we are candidly
4 concerned in view of the allegations we've made about
5 accessing material of a confidential nature.
6 However, we don't oppose your showing.

7 MS. FITHIAN: And with respect to DeFazio?

8 MR. KENNEDY: We have decided -- earlier we
9 had notified Ms. Fithian that we thought there was
10 financial confidential information included within
11 the affidavit of Michael DeFazio in support of USL's
12 motion for preliminary injunction. After obtaining
13 further information, we have decided to designate
14 that affidavit as confidential rather than financial
15 confidential under the terms of USL's proposed
16 protective order and that document may be shown to
17 BSDI personnel subject, of course, to the provisions
18 of the protective order.

19 MS. FITHIAN: I just want to also put in the
20 record that I'm not agreeing that those redactions or
21 designations are necessarily proper, but I appreciate
22 receiving your position on that point. Thank you.

23 MR. KENNEDY: You're welcome.

24 (Whereupon, the deposition was adjourned for the day
25 at 4:35 p.m.)

1 I, the undersigned, do hereby certify that I have
2 read the foregoing deposition and that any changes
3 thereto, if any, are contained in an attached errata
4 addenda.

5
6
7
8
9
10
11
12 Otis L. Wilson
13

14 Sworn to and subscribed before me,
15 this the day of , 19____
16

17
18 Notary Public

19 My Commission Expires:
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF NORTH CAROLINA)
COUNTY OF GUILFORD)

I, Earl Miller, Court Reporter and Notary Public, in and for the above-named State and County, do hereby certify that the foregoing is an accurate transcript of the deposition of Otis L. Wilson, which was taken on behalf of the Defendant(s) by me in machine shorthand and transcribed under my supervision.

I further certify that the deponent was first duly sworn by me and that the deponent and parties did not waive the signing of the deposition by the deponent.

I further certify that I am not financially interested in the outcome of this action, a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel.

This the 14th day of December, 1992.



Earl Miller
Court Reporter and Notary Public
P. O. Box 5083
Greensboro, North Carolina 27403

My Commission Expires: September 13, 1993.