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MEMORANDUM

TO: MIKE MORTENSEN, DEPUTY ADMINISTRATOR
FROM: JUDY KERBY, PRETRIAL SERVICES SUPERVISOR
DATE: AUGUST 22, 1989
RE: ELECTRONIC MONITORING EQUIPMENT PROBLEMS

As you are aware, CSI merged with the Marconi Company of England and began marketing new monitors and transmitters. Since receiving this equipment, Pretrial has been experiencing daily equipment problems. Below is a brief account of difficulties:

January, 1989, Pretrial received 25 upgraded transmitters and one Marconi transmitter charger.
These began to fail - no transmissions or sporadic transmissions were received from the field.

February, 1989 - most transmitters were returned per CSI and replacements sent.
During this time period, Pretrial continued to use the old transmitters but eventually the batteries stopped and these were to be sent back to CSI per the new contract.

March, 1989 - Lake County purchased 12 units (12 monitors - 12 transmitters to be used together) based on projected program expansion. It was discovered later that faulty phone base cards from CSI were part of the problem.

In March, Pretrial moved into the new jail and continued to experience transmitter failure problems, as well as computer problems. However, at that
time we could not be sure if the physical move caused further failure of equipment. Inadequate wiring or inadequate phone lines to the new building were considered. Overall problems were compounded by the move. It was often impossible to separate or sort out the difficulties. I did have ongoing dialogue with CSI in an attempt to reach resolution. However, at several points, CSI became impatient with us as all of our attempts at problem resolution were by telephone. At no time was an offer made by CSI to visit this site.

May, 1989 - Pretrial returned to CSI 4 Marconi Units and 6 transmitters due to defective equipment. CSI sent replacements. During May, CSI discovered that there was a problem with the charger and this was causing the transmitter failures. On May 23rd, Pretrial received a new charger. Pretrial continued to experience the same problems.

July, 1989 - After more calls to CSI, Pretrial was told there were more problems with the charger and to return it for modification. It was returned to us on July 20, 1989.

In conversation with CSI between May and June, CSI informed us that the batteries within the transmitters were breaking loose and the transmitters would not "take a charge." This further complicated matters. To date, we are still experiencing this problem! Between July and August, 1989 I have requested these transmitters be replaced. CSI sent 6 to 8 replacements but still owe us several more. CSI related none were available at the time of the last call, approximately two weeks ago.

Furthermore, I believe this charger is not working properly as it becomes physically hot, but have not been able to test it as all of the transmitters on hand are being used. There are currently 4 faulty transmitters in the field at this time with a total of 32 defendants on electronic monitoring. Often, Pretrial had as many as 12 faulty transmitters in the field.
As you can see, Pretrial staff have been in constant turmoil changing transmitters as they fail in order to protect the community and continue to lend credibility to the program. There has been a tremendous amount of time lost in the exchange of equipment and replacement in the field. Inventory management has been literally a nightmare.

In summary, the monitors have functioned properly, the transmitters and the chargers have never been perfected and the technical assistance during critical times has been non-existent.

I do not believe there was one occasion that CSI informed me of any equipment problems that other agencies were experiencing. I had to continuously call CSI, describe problems, try to determine the problem myself and probe for information to get an answer. Only then did they admit that their equipment was failing elsewhere too. In July, I was beginning to have difficulty reaching personnel who would answer my questions. I had to demand to speak with someone with knowledge.

As of this date, I am waiting for replacement transmitters which I requested at least two weeks ago. I have received no communication from them since my last call.

JK: daw

cc: Robert L. Bingham
    Frank Kuzmickus
TO: Dwight Magalis, County Administrator
FROM: Judy Kerby, Pretrial Services Supervisor
DATE: February 28, 1990
RE: Electronic Monitoring System Failure Rate Criteria

Definitions: 1. What is a Failure
2. 10% Failure Rate

1. Transmitters: 42 TX
   - Battery Life - 5 years
   - Need to be recharged every 3 - 6 months

Definition of failure: Any TX that needs to be recharged prior to three months

Failure rate: 10% or 4 TX out of 42; we would expect no more than four TX's to experience failure prior to three months.

Assumption: TX should last in field at least three months.

The "rattle" - batteries breaking loose, won't "take a charge".

Definition of failure: Any TX that rattles.

Failure rate: 10% or 4 TX out of 42.

2. Monitors
   - Battery - 5 year life expectancy

Definition of failure: Any monitor battery that doesn't last the five years or maintain its power through AC regeneration. In other words, the battery dies.
Failure rate: 10% or four monitors

Unable to program monitor - assuming that all possible causes of this problem have been checked out, monitor should be able to be programmed.

Failure rate: 10% or four monitors

3. **Computer**  - software and hardware

   Possible problems include:
   
a. **Software crash**
      - indicated by key board lock up
   
b. **Lost data**
      - clients disappearing from files
      - missing log files
      - any indication of missing data
   
c. **Communication**
      - calls not received
      - calls ignored
      - phones seized

   This, of course, excludes phone line problems

d. Any missing functions, i.e. reports not received

e. **Computer hardware failure - call repair**

slh

cc: Max Cohen
    Michael Mortensen
    Frank Kuzmickus
MEMO

TO: Robert Bingham, Deputy Administrator
FROM: Judy Kerby, Pretrial Services Supervisor
DATE: March 27, 1990
RE: Electronic Monitoring

As you are aware, the test period for the "swap-out" of the electronic monitoring equipment began Monday, January 22 and was completed Friday, January 26, 1990.

At that time Ms. Sheriff, representative from CSI, suggested that we contact the phone company and terminate all Pretrial phone lines to this office and discontinue those lines to other offices/buildings thus eliminating as much line distortion as possible. As of February 7, the phone company terminated all lines to the Babcox Center. These lines are still active to Work Release (but not in use). Clean phone lines are necessary for the computer to "hear" the monitor's calling. Phone filters are now being used on the lines in the Pretrial office as well as in the field when distorted phone lines are discovered. Routine call missing messages seem to be reduced but do continue.

With the above stated, I must address the actual CSI equipment problems we have experienced and are continuing to experience. Forty-two units were exchanged and we have had an average of 32 persons being electronically monitored daily since January 26. To date, we have returned 9 units and are waiting for a 10th unit to be picked up. Two more units have failed in that the clients left and returned but the printouts did not show this. We saw them out.

Eight units showed transmitter batteries low and some continued to show this even after being recharged and placed at a second site. Batteries within two of the transmitters came loose causing the transmitter to rattle rendering them faulty. Only one returned transmitter is questionable but was returned. The units which showed batteries low did so throughout the day or two before we changed them. These signals were not isolated.
Another issue surfaced with five monitor boxes that would not call in from the field. CSI explained that new monitors may have to be "tweaked" meaning some of the contacts in the monitors themselves are flattened and have to be lifted in order for contact to be made through the phone lines. We have been doing this. This procedure did not work at the home it was installed in but four of the five worked at the next residence where it was used. One of the monitors had this happen at two residences. If we were not experiencing other problems, this might not be a large issue but combined with the other issues it is unsatisfactory and the officers spend much time reprogramming and switching the equipment in the field.

I have had phone contact with CSI on a continuing basis. They have called to check on the equipment and I have called to problem solve. CSI has replaced nine units to this date since the trial period began.

In closing, I must state that the equipment is not performing at a satisfactory level. It was agreed that a 10% failure rate was acceptable and, based on my calculations, it appears that we have experienced, at the very least, a 33% failure rate of transmitters which have been returned. This does not include the other problems stated; monitors that do not make contact with the computer; and two monitors which do not show on the slug data that clients left or returned.
TO: Robert Bingham, Deputy Administrator
FROM: Judy Kerby, Pretrial Services Supervisor
DATE: April 5, 1990
RE: Electronic Monitoring

Attached is the memo I sent to you on March 27, 1990. An update is as follows.

CSI has picked up the tenth monitor. I spoke to Wanda Sheriff on April 2, 1990 regarding two more units which she related need to be sent back. One unit has a bad memory and the other has a dead transmitter.

On the same date, Robert Thomas called me with an offer to "swap out" all the equipment once again as Marconi will be injecting foam into all the transmitters to protect them from being jarred. Bob believes this will resolve transmitter problems. I suggested he call you.

On April 4 and 5 we experienced six more equipment problems. One monitor whose light went out stopped sending messages and another that does not show client leaving or returning.

The four remaining are not functioning properly but I am waiting for a call back from CSI to diagnose the problem.

I must state that action is needed. I am sure your concerns are the same as mine. Credibility is at stake as well as liability issues. We are no longer sure who is home and who is not as well as when they are coming home, as the equipment is sending erroneous messages. The defendants and their attorneys are quick to realize we are experiencing difficulty, especially when we change equipment in one residence three times. Attempting to sort out information on 32 clients and defining the problem is, to say the least, time consuming and frustrating. Once again, as a year ago, the officers are changing equipment on a regular basis. Minimally we have changed equipment on clients twenty times over the last two and one half months. This is
probably higher due to low transmitters that we have brought back in to be recharged but have not returned to CSI.

slh

Enclosure

cc: Max Cohen, Assistant County Administrator
    Robert Zastany, Court Administrator
    Mike Mortensen, Deputy Administrator
    Frank Kuzmickus, Assistant Administrator
TO: Frank Kuzmickus, Chief of Adult Services
FROM: Judy Kerby, Pretrial Services Supervisor
RE: Electronic Monitoring Equipment
DATE: June 16, 1992

This is to follow up on my memo dated 6-1-92. I shipped 10 pieces of equipment to Florida for repair after working with CSI to problem solve. As it turns out most of these boxes were working correctly but due to some type of office phone line problem coupled with at least two phone line problems in the field we were not getting messages.

On this date, we have received all equipment in working order from CSI.

It appears that county phone lines and equipment are occasionally not compatible and we have to switch monitors around to "connect". Some equipment works fine in some residences and not in others. Sometimes equipment stops "sending" for unknown reasons. Both of the above problems seem to be phone line problems in certain residences. Problems increase as numbers using increase.

Also we should be able to test equipment in our office via the old work release line which is now Pretrial's line but for some reason this isn't working. I will pursue with Ralph the reason this isn't working. If we could use this test line it would save us time in the field. Recently, if a problem arises, I take the equipment home as I have done in the past and test it out.

The bottom line, we have enough equipment and most is working correctly.

slh

cc: Robert Bingham, Deputy Administrator
I Need to bring to your attention the fact that our current electronic monitoring equipment is wearing out and we are experiencing frequent failures. I believe the situation is near the critical level.

Since the beginning of 1992 we have shipped to CSI at least 48 units for repair - mostly dead and failing transmitters. This does not include the constant charging of the transmitters we deem saveable or reusable.

In my office, at this time, I have three units to send back for repair, six units with dead transmitters in the field (in use on defendants) and only four on the shelf that may or may not be working or will work for long. From 10-1-92 to date, 10-9-92, we have, or will change today, 12 units and hope, after recharge or return from CSI, they will work. Turnaround time from CSI is about 10 days average.

I figure at least four hours a week is spent changing equipment just from transmitters failing.

I spoke to Robert Thomas, CSI, who told me about one month ago that the transmitters are worn out and most of their life is spent. He suggested upgrading and will be sending me some options and prices. I took from this information there is nothing else to do.

I must remind you that when 10 transmitters fail or are weak, we are unable to monitor these defendants who are usually the most seriously charged offenders or are the most likely to fail to appear.
My concern is growing. I am informing the judges via the bond reports that equipment is limited and we are developing a waiting list.

slh

cc: Michael Mortensen, Deputy Administrator
    Frank Kuzmickus, Chief of Adult Services
STATE OF ILLINOIS  
COUNTY OF LAKE

IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,  
   Plaintiff,  

   vs  

JUAN RIVERA,  
   Defendant.  

REPORT OF PROCEEDINGS had in the
above-entitled cause before the HONORABLE
CHRISTOPHER C. STARCK on the 17th day of November,
A.D., 1993, a.m. proceedings.

APPEARANCES:
MR. MATTHEW CHANCEY and MR. JEFFREY PAVLETIC,
   Assistant State's Attorneys,
   appeared on behalf of the People;

MR. HENRY LAZZARO, MS. BARBRA CAHN and
   MR. SCOTT WINEBERG,
   Assistant Public Defenders,
   appeared on behalf of the defendant.

Reported by
Lauren A. Perrone-DeBoer, CSR, RPR-CM
Official Court Reporter
License No. 084-002190
18 North County Street
Waukegan, Illinois 60085
having been previously first duly sworn,
under oath, was examined and testified
further as follows:

CROSS EXAMINATION

BY MR. PAVLETIC

Q. Now, Miss Kerby, you are the supervisor of
pretrial services; is that correct, ma'am?

A. That's correct.

Q. You've been that supervisor for
approximately seven, eight years?

A. About eight years.

Q. Now, your division monitors more than simply
people who are on the electronic monitoring system;
is that correct?

A. That's correct.

Q. As a matter of fact, your people supervise
people who have some type of pretrial restriction on
them, is that correct?

A. Correct.

Q. So there are more people that your division
would supervise other than simply people on the
monitor box?

A. Right.
Q. All right. Now, at any one point while you've been supervising this division, what is the greatest number of people who would be on this monitor at any one time?

A. About 38 I think was our highest point.

Q. And in addition to the 38 people who were being supervised on this monitor box, there would then be additional people who would be supervised by your people as well, is that correct?

A. Yes.

Q. At any one time during the period of time that you've been a supervisor, up to how many people total, in other words people on the box and not on the box would be supervised by your division?

A. I think it was 138.

Q. Up to 138 people would be supervised, is that correct?

A. Correct, at one time.

Q. Now, when I state in general terms that your people would supervise these 138 people, you in fact had two people who would monitor them; is that correct?

A. With the highest number, we had had three.

Q. Three people who would monitor --
A. At that high point, correct.

Q. Three people under you would basically supervise and monitor these 138 people, is that correct?

A. That's correct.

Q. And that number would go down to as few as two people monitoring all the people who were both on the monitor system and who simply had some other type of pretrial restrictions on them, is that correct?

A. Right.

Q. Now, with respect to your duties, ma'am, all of these individuals who your field supervisors would monitor were across Lake County; is that right?

A. That's correct.

Q. In other words, these people were not concentrated in the Waukegan area or in the Waukegan/North Chicago area, this was fully across the entire County of Lake; is that right?

A. That's correct.

Q. Now, when you stated a little bit earlier in your testimony yesterday that you knew Juan Rivera, you simply meant that you knew who he was; is that correct?
A. Right. Yes.

Q. You knew that Juan Rivera had been on the electronic monitoring system, is that correct?

A. Yes.

Q. You personally did not place any type of strap or transmitter on his ankle, isn't that correct?

A. Not that I recall, no.

Q. All right. As a matter of fact, you did not personally supervise Juan Rivera's performance while he was on the monitoring system, isn't that correct?

A. No. That's correct.

Q. That performance monitoring was done by one of your two field supervisors --

A. Yes.

Q. -- is that correct?

A. Yes. Correct.

Q. Now, this monitor box, People's Exhibit No. -- or Defense Exhibit Number 30 that was shown to you, this was not the monitor that was used with Mr. Rivera, is it?

A. That one? I don't think so.

Q. All right. Now, the box or the monitor that
was used with the defendant in fact he was given
instructions as to how to take it home and how to
plug it in, is that correct?
A. I would assume that, as opposed to us taking
him home at that time.
Q. That was the normal procedure that was done
by your field officer; is that right?
A. Our office personnel.
Q. Okay. You cannot state that Juan Rivera
went home and followed those precise directions,
isn't that correct?
A. Can I state that? There's no notes to
indicate other, otherwise. Okay?
Q. Well, did you watch him plug this in --
A. No.
Q. -- to his wall socket?
A. No.
Q. Did you watch him plug this other plug into
his phone jack?
A. No, I didn't.
Q. You as a matter of fact have never been to
the defendant's house, is that correct?
A. No, no, I have not.
Q. Do you even know what street he lived on --
A. Uh-uh.

Q. -- short of checking the log?

A. No.

Q. Have you ever seen his house or seen the age of his house?

A. No.

Q. Now, when you put on this electronic monitor, which is still on Mr. Wineberg's leg by the way yesterday, you had him pull up his chair here; is that correct?

A. Yes.

Q. And you in fact showed the ladies and gentlemen of the jury how you would mark the band and then how you would then use those rivets and this crimping tool in order to attach the straps to his ankle; is that correct?

A. That's correct.

Q. Now, you noted in your testimony that there were two types of straps that were in the courtroom yesterday, is that correct?

A. That's correct.

Q. One type of strap was the strap that was put on Mr. Wineberg which is an anti-tampering strap, isn't that correct?
A. No, it's not.

Q. Okay. Is there a such thing as an anti-tampering strap?

A. I think the newer models, yes.

Q. I would like you to describe for the ladies and gentlemen of the jury what an anti-tampering strap is.

THE COURT: Would you pull the microphone over, Miss Kerby?

THE WITNESS: Okay. I didn't realize.

BY MR. PAVLETIC

Q. Describe that for the ladies and gentlemen.

A. An anti-tampering strap as I know it and saw maybe four years ago, is -- it looks exactly the same. The one I saw looks exactly the same but it has a wire in it, and it's -- if the strap is broken, cut, stretched, okay, this wire becomes broke -- breaks, and then if you're in the range of the monitor box or come in range of the monitor box, it will send a signal that it's -- I can't remember what it says. It says tampered over the computer.

Q. All right.

A. Because we don't have that, but that is as I recall.
Q. So this was an updated version of the strap, is that correct?
A. What we're talking about now?
Q. Yes, ma'am.
A. Yes.
Q. In other words, a device within that plastic rubberized strap itself that would break if somebody was trying to stretch or tamper with that strap; is that correct?
A. That's correct.
Q. That feature was not on the strap that was used to attach the transistor --
A. No.
Q. -- to Mr. Rivera's leg, is that correct?
A. No.
Q. Now, as a matter of fact, while we're talking about the transistor that was strapped to Mr. Rivera's leg, that had to be changed during the course of his being on the electronic monitor; isn't that correct?
A. That's correct.
Q. Now, if I remember your testimony correctly, your testimony is the defendant was placed on the monitoring system July 15th of 1992, is that right,
A. Yes.

Q. And he was on that system for approximately two months until September 14th of 1992; is that right, ma'am?

A. Yes.

Q. And he had to have his strap and transistor and monitor box changed on July 31, 1992, is that correct?

A. That's correct.

Q. So approximately -- that would be 16 or 17 days after he was put on the system, he in fact had to have all of these items changed again; is that correct?

A. That's correct.

Q. Now, you're aware, are you not, that the reason that his strap was changed was because it had been stretched out of shape; is that correct, ma'am?

A. Pardon me? Would you repeat that?

Q. The reason that the defendant's strap was changed on July 31st of 1992 was because the condition of the strap had been distorted, stretched; is that correct?

A. I don't know that at all.
Q. You weren't involved in the changing of his strap --

A. No.

Q. -- is that correct?

A. That's correct.

Q. By the way, do you know what happened to that strap that was removed from the defendant -- the original strap that was removed from his leg?

A. No.

Q. Do you have it in your possession?

A. No.

Q. Are you --

A. Or I don't know.

Q. Are you aware that it was thrown out?

A. The procedure is to throw it out if there's not a problem with them.

Q. And is it your information that that was the procedure that was followed after the defendant's first strap was taken off of his leg on July 31st?

A. That it was thrown out?

Q. Yes, ma'am.

A. That's our procedure. I would assume it was thrown out.

Q. All right. And just one other thing about
the straps by the way. You indicated that originally when these straps were placed on a person's ankle that just one single strap was used, is that correct?

A. No, we use two whenever possible.

Q. All right. I thought it was your testimony --

A. A double strap.

Q. I thought it was your testimony that you started to go to the double strap because people would claim that they had hooked the strap --

A. Oh yeah.

Q. -- on a bumper or something like that?

A. You're correct, yeah, when we first started the program, yeah.

Q. First it was a single strap and then at some point because of some of the things that were happening, you then went to a double strap as a precaution; is that right?

A. Yes.

Q. Now, you testified as to the violations that you know of that were committed by the defendant while he was on the monitoring system, is that correct?

A. Yes, whatever was shown to me.
Q. I believe you stated that the first violation was on July 27th of 1992 when there was a violation of his leaving home, is that correct?
A. That was a written violation, yes.
Q. Now, after that violation came up, was the defendant removed from the monitoring system?
A. No.
Q. I believe your testimony was that his next violation -- correct me if I'm wrong -- was the next day on July 28, 1992; is that correct?
A. I don't remember. I remember it was -- the written violation sent was for the 27th into the 28th.
Q. All right. He had numerous violations, is that correct?
A. When I --
Q. He --
A. What I reviewed yesterday, there were several violations, correct.
Q. After his second violation on the monitor which again I believe was when he left home without permission, was he discharged from the program at that point?
A. No.
Q. How about after his third violation when he had left home without permission, was he discharged from the program after that violation?

A. We're -- no.

MS. CAHN: Judge, I'm going to object. May I have a sidebar, Judge?

(WHEREUPON the following proceedings were had outside of the hearing of the jury:)

MS. CAHN: Judge, I'm going to object to Mr. Pavletic saying that when Mr. Rivera left home. Judge, what it is is that the violations occurred when the transmitter was out of the range of the monitor box. He's giving them the impression that --

THE COURT: Sustained.

MR. PAVLETIC: That was the testimony. She said that he left home.

MS. CAHN: It's not home.

MR. PAVLETIC: These are her words. I wrote them down as she said them. That's why I'm asking it in that fashion.

MS. CAHN: And she clarified it, Judge, by saying when he was outside the range of the monitor box. It was 150 feet, and there was a 15-minute window. And
I'm going to object.

MR. PAVLETIC: Again, I'm limiting my cross to what she said on direct. And to cut things short, I can rephrase the question if you want.

THE COURT: Why don't we do that.

MR. PAVLETIC: Okay.

MS. CAHN: Thank you.

(WHEREUPON the following proceedings were had in the presence and hearing of the jury:)

MR. PAVLETIC: May I?

THE COURT: Yes.

BY MR. PAVLETIC

Q. When the defendant was committing these violations, he was not discharged from your system; is that correct?

A. That's correct.

Q. Now, if a person in general terms calls into your field supervisor and asks for permission to leave the house, is there a log for every incoming phone call from a person on the monitoring system?

A. Not for every incoming call, no.

Q. Is there any type of central log where the field supervisor will list that this defendant called
at this time and stated he was going to the laundry
for 45 minutes?

A. A central log, no.

Q. And as a matter of fact, there was no
central log kept and no notations made if the
defendant had ever called in and asked for permission
to leave his house, isn't that correct?

A. Oh yeah, there was notes given to the
officer.

Q. I am talking about whether there was a
central log where any calls from this defendant were
actually placed in this log to show when he called
and what he said.

A. No, not a central log.

Q. Now, you also stated that if there was a
violation in the mid evening time or going into the
night and the early morning hours that there would be
no field supervisor who was on duty who would then go
out and directly go to that person's house to see if
they were home or not; isn't that correct?

A. That's correct.

Q. You stated that if there was such a
violation that basically all of you would find out
about it in the morning, is that correct?
A. That's correct.

Q. And it would be no sooner than the morning hours that somebody may if they choose go to that person's house to see if in fact they were home or not, isn't that correct?

A. That's correct.

Q. Now, your testimony -- and correct me if I'm wrong -- your testimony is that if there was no printout of a violation that in fact they would assume that the equipment was working properly; is that correct?

A. (No verbal response.)

Q. Do you want me to rephrase that?

A. No. Let me think about this.

Q. Okay.

A. We would -- it's correct, because we would assume the monitor was functioning and the transmitter was in range of the monitor box.

Q. Sure.

As a matter of fact, there's a lot of assumptions that you have to make when you say that this whole system was acting correctly, is that correct?

A. Yeah, I would say that's correct.
Q. In particular, you have to assume that first of all this monitor box itself, the electronic unit is working correctly; is that correct?

A. Yes. Well, based on information.

Q. Okay.

A. Okay.

Q. Defense Exhibit Number 30 here, you have to assume that the computer boards inside of this box and all the other electronics are running properly in order for it to then send out signals; is that correct?

A. That's correct.

Q. All right. You have to then assume that the person's wall socket is of the appropriate voltage or what have you or amperage in order to send the signals; is that correct?

A. No, because this doesn't send the signal.

Q. Okay. Well, as to the phone jack, you have to have a clear phone signal and clear phone lines in order for the signal to be sent to headquarters, isn't that correct?

A. Right. That's correct.

Q. As to the transistor that has now been cut away from Mr. Wineberg's leg and I now hold in my
hand, Defense Exhibit Number 31, this transistor we have to assume was also operating correctly; is that correct?

A. Yes.

Q. Now, is there a battery that's contained within this transistor?

A. Yes.

Q. And would you state for these ladies and gentlemen a little bit what you know about the battery in that transistor.

A. I don't know much about the battery. All I know is that it's supposed to send transmissions. It sends transmissions every so many minutes, continuous signaling.

Q. Okay. That battery and that transistor is supposed to have a certain life on it, is that correct?

A. It should.

Q. Okay. It should.

What is the life that this transistor should have?

A. The company stated that the life of the transmitter should be approximately a year.

Q. Okay. As a matter of fact, at times they
said that it should be up to two years, isn't that correct?

A. Correct.

Q. And what did you find the life of these transistors to be?

A. They varied from two weeks to a month to two years, depending on the transmitter.

Q. Okay. There was unreliability as to the function of the battery in those transistors, isn't that correct?

A. That's correct.

Q. By the way, the name of this company that you would receive these monitors from and the transistors from was a company called CSI; is that correct?

A. That's correct.

Q. And that is a company that you would lease these items from, is that right?

A. We -- we purchased, the county purchased them.

Q. Okay. CSI is located in Florida?

A. Correct.

Q. And when this system started, you began by purchasing these items from CSI, is that correct?
A. That's my understanding. I wasn't involved at that point.

Q. The system started in 1986?

A. Yes.

Q. And as a matter of fact, it's still at least operational today; is that right?

A. That's correct.

Q. And you have always been with CSI; is that right?

A. That's correct.

Q. From 1986 through today in November of 1993, CSI has been the people that you have dealt with for the monitors and the transmitters and everything else involved in this; is that right?

A. That's correct. That's correct.

Q. Now, there is a manual that was printed that indicates all the problems that you can have with this monitoring system, isn't that correct?

A. Yes.

Q. And it indicates all the types of things that can affect the reliability of the monitoring system, isn't that correct?

A. Yes.

Q. All right. Well, let's talk about a few of
those things.

In older homes, if there is an excessive amount of metal or tubing within the walls, can that affect the reliability of the monitoring system?

A. It can block the signal, yes, yes.

Q. Next, if there's a poor phone connection in that house, can that affect the reliability of this monitoring system?

A. Yes.

Q. If there is poor wiring in the house, can that affect the reliability of this monitoring system?

A. Power are you saying?

Q. Wiring.

A. Wiring?

Q. Within the home.

A. Yes, I -- yes.

Q. If there is phone static, can that affect the reliability of the monitoring system?

A. Yes.

Q. You also know that if this system is set up in very old homes or older homes, that that can affect the reliability of this monitoring system?
Were you aware of that?

A. We would probably have more problem solving
to do in an older home, yes.

Q. Now, as a matter of fact, if a person has a
microwave oven in their home, that can affect the
reliability of this monitoring system; is that
correct?

A. I'm not sure about the microwave.

Q. Were you aware of the term coning effect?

A. Yes.

Q. C-O-N-I-N-G. for the record, coning
effect --

A. Yes.

Q. -- that you can have with these monitors?

A. Well, if we're talking about the same thing,
I am.

Q. Okay. Why don't you explain for the ladies
and gentlemen what you know by the term coning.

A. A coning would be that the higher up you
have the monitor, say a second floor, the broader the
base that you can leave, the broader the range you
can leave.

Q. Okay. And you are aware that the defendant
lived on the second floor of his home? Were you
aware of that, ma'am?

   A. No, I wasn't aware of that.

   Q. Okay. So in other words, according to what
you're telling us, this coning can mean that if
you are on a higher level than a first floor
location, that the signal would spread out; is that
correct?

   A. Yeah, that's my understanding.

   Q. That would mean that an individual on the
transistor -- transmitter, I'm sorry, on his leg,
would be able to go out at a further range from his
home than if he lived on the first floor and if
the monitor was on the first floor; isn't that
correct?

   A. Yes.

   Q. Now, you stated yesterday in your testimony
that the system has been in effect and that basically
I believe you were giving us the impression that this
basically was a system without problems; is that
correct?

   A. Did I say it was a system without problems?
No, I didn't say it was a system without problems.

   Q. Well, as a matter of fact, the field
supervisors and the people who you had under you as a
supervisor started telling you all the way back in the late eighties, in particular starting in 1986, all of the problems that they were experiencing with this monitoring system; isn't that correct?

A. Yes, that's correct.

Q. As a matter of fact, they were telling you about problems with the actual monitor box as well, is that -- in particular; is that correct?

A. (No verbal response.)

Q. Defense Exhibit 30 --

MS. CAHN: Objection, Judge. Can we have some foundation?

MR. PAVLETIC: I'm trying to establish that with her.

THE COURT: Okay.

BY MR. PAVLETIC

Q. Did any of your supervisors ever tell you that they were having problems with respect to the monitor boxes themselves?

A. I don't recall with the monitor boxes, no.

Q. Okay. How about with respect to the transistors, Defense Exhibit Number 31?

A. Yes, transmitters.

Q. And what did they tell you the problems
MS. CAHN: Objection, Judge. Foundation.

THE COURT: Sustained.

BY MR. PAVLETIC

Q. During the course of your supervising these individuals, you had occasion to speak to your field supervisors; is that correct?

A. Yes.

Q. Who were some of the individuals who you supervised as your field supervisors?

A. Frank Sebesta who is --

MS. CAHN: Objection, Judge. I'll withdraw the objection.

THE COURT: Go ahead.

BY MR. PAVLETIC

Q. Could you for the record spell his last name?

A. Sebesta, S-E-B-E-S-T-A.

Q. And who else did you supervise?

A. Oh, golly, Dave Sams, Terry Evans.

Q. How about a girl by the name of -- a lady by the name of Shirley Bjorkland?

A. No. No.

Q. How about Victor Geib, G-E-I-B?
A. Did I supervise them?
Q. Yes.
A. Is that your question?
Q. Yes.
A. No. No.
Q. But you were aware that they were supervisors in the program during that subsequent period of time?
A. They're my co-supervisors in the department.
Q. Okay. Okay. And these individuals who you would supervise, they would give you information as to the problems with these transmitters; is that right?
A. Could I -- yeah, they -- yes.
Q. What did they tell you?
A. Well, basically --

MS. CAHN: Objection. It's hearsay, Judge.

THE COURT: Overruled. You may answer.

THE WITNESS: Basically, I had the most experience and training with the equipment, so when we saw the print-outs in the morning, I generally saw them first, so I recognized the problems.

So when you're asking about the field officers coming to me, it's mutual, okay? Do you see
what I'm trying to say?

BY MR. PAVLETIC

Q. Okay. Well, you said when you saw the
print-outs you recognized some problems, is that
right?

A. That's correct.

Q. I would like you to tell the jurors what
type of programs that -- problems that you were
recognizing?

A. With the equipment?

Q. Yes, ma'am.

A. Basically the transmitters were --

MS. CAHN: Objection, Judge. Foundation and time
or time period that Mr. Pavletic is speaking about.

THE COURT: Sustained.

BY MR. PAVLETIC

Q. When you were noticing these problems on the
print-outs, was this during the entire period of time
that you were supervising the program?

A. Yes.

Q. And you started supervising it would that be
in 1986?

A. Yes.

Q. Tell us what type of problems that you were
finding on these print-outs.

A. Basically what I was finding was the transmitter failure problems. We would -- the transmitters, the batteries would generally, basically the battery --

MS. CAHN: Objection, Judge. May I approach?

(WHEREUPON the following proceedings were had outside of the hearing of the jury:)

MR. LAZZARO: If I may interject. I have no problem with her testifying to the problems she found, but she says we were having battery problems and she says that's during the entire time period '85 through '92, that's no problem. But when she says we are having battery problems, I think we need to clarify that was in '85 and we rectified it, and it was different problems in '87 so we are dealing with a narrative form and we need the specific times when she is dealing with these different problems so it doesn't appear that some problem that's found in '85 continues for seven years without any rectification.

MR. PAVLETIC: That's what she is trying to clarify right now.

MR. LAZZARO: Well, her answer isn't doing that.
THE COURT: I am assuming you're going to do that?

MR. PAVLETIC: Yes.

(WHEREUPON the following proceedings were had in the presence and hearing of the jury:)

MR. PAVLETIC: May I continue, Judge?

THE COURT: Yes.

BY MR. PAVLETIC

Q. What types of battery problems were you having at this time?

A. We had numerous amounts of transmitter battery failures which caused a multiple -- multiple problems. We had to keep changing the equipment because we had failures.

Q. What would constitute a failure with respect to the transmitter?

A. It would -- for one, we would either get zero transmissions which means the transmitter had completely failed and we would get no transmissions in. As we talked about transmissions yesterday, we would normally get a number. We would get zero.

Q. Now, were these -- during the period of time that you've supervised the program since 1986, what
years and times that you had problems specifically
with the transistor batteries?

A. I had trouble with the --

Q. I'm sorry, transmitter batteries.

A. We had failures the whole time for -- since
'86 on.

Q. All the way through the present, is that
correct?

A. Correct.

Q. Now, did -- through your analyzing these
print-outs, did you notice any other types of
failures and malfunctioning that had occurred?

A. Let me think for a minute. Occasionally
there would be a monitor struck by lightning or some
kind of power surge, and it would go down. I don't
remember any -- particularly with the monitor, okay.
Basically it was always the transmitter as I recall
now.

Q. When you started experiencing or coming into
knowledge that there were problems with the system,
and you began to advise your supervisors as well; is
that correct?

A. That's correct.

Q. Can you explain to us who you would notify?
A. I would notify my immediate supervisor who is Frank Kuzmickus.

Q. And is he still your immediate supervisor?

A. That's correct.

Q. Was there any period of time that he would then, to your knowledge, notify other individuals as well?

A. Yes.

Q. And who would he notify to your knowledge?

MS. CAHN: Objection.

THE COURT: Overruled. You may answer.

THE WITNESS: I saw some memos, so I believe he notified Robert Bingham who was --

BY MR. PAVLETIC

Q. Robert Bingham was the Deputy Administrator at that time, is that correct?

A. Right. Correct.

Q. And who else?

A. I don't remember without looking at the memos.

Q. Okay. Well, let me show you the memos, ma'am, and for the record I've previously shown these to counsel. I have marked People's Group Exhibit 186-A through 186-N as in November.
If you could, ma'am, keep those in order if you could, and look at those for a moment and tell us if you recognize those.

A. Yeah. So I've seen some of these. Yes, I've seen them.

Q. If you could just very briefly page through each of them, there are about 12 of them, and tell us if you recognize each of those.

A. Recognize, okay. Yes. Some are mine and some are ones that were sent to other people.

Q. When you say some are yours, you're saying that you were the author of some of these memos; is that right?

A. Correct.

Q. And there were some other memos that were authored by other people as well; is that correct?

A. That's correct.

Q. Now, these are all memos that you had in your possession, is that correct, or that your division had in its possession?

A. Correct. Yes, I gathered all of them up under court order.

Q. Okay. There is in fact a subpoena and then a subsequent court order that your division turn over
all internal memos as to the functioning of this monitoring system; isn't that correct?

A. That's correct.

Q. Now, these aren't actually the memos themselves; is that right?

A. That's right.

Q. These are copies of those memos?

A. Correct.

Q. Are these true and accurate copies of all the memos that were given to you and that you had in your possession?

A. They appear to be.

MR. PAVLETIC: Judge, the People would move for admission of People's Group Exhibit 186-A through 186-N.

MS. CAHN: No objection.

THE COURT: Very well. They will be admitted.

(WHEREUPON People's Exhibits 186-A-N were admitted into evidence.)

BY MR. PAVLETIC

Q. Now, in these memos, Robert Bingham had been notified of the problems in this system; is that right?

A. Yes. Yes.
Q. He again is the Deputy Administrator; is that right?
A. Yes.

Q. A Robert Zastany had been notified as well. He is the Court Administrator; is that right?
A. That's right.

Q. And M. J. Mortenson who is the Deputy Administrator had been notified of the problems; is that right?
A. Right.

Q. You mentioned that Frank Kuzmickus, your immediate supervisor, and also an assistant administrator was notified as well; is that correct?
A. Yes.

Q. There were also memos involving Cheryl Bjorkland who at the time was a field supervisor; is that right?
A. That memo is something different than -- that was a memo stating that -- I didn't read that memo, but it looks like a memo that talks about supervising probation people that are sentenced. Okay, I don't think that's a memo stating any problems.

Q. Okay.
A. Because they are co-supervisors who do not work with me.

Q. Okay. How about a Vic Geib, G-E-I-B?

A. He is a co-supervisor who does not work with me.

Q. Dwight Magalis who is the County Administrator was also notified of these problems; is that right?

A. To my knowledge, yes.

Q. And a Max Cohen who was the Assistant County Administrator under Dwight Magalis was also notified of these problems as well?

A. Yes, he was.

Q. Now, there is also a memo that you tendered as part of this court order that was from Judge Block, Judge William Block to Judge Bernard Drew, Jr.; is that right?

A. That's correct.

Q. Now, Judge Block at the time was the head of the criminal division in this county, is that correct?

A. Yes.

Q. And when I say criminal division, I mean the head of the criminal court division for Lake County,
is that right?

A. Yes, I think it was that time, during some of that time period.

Q. And Judge Drew was the chief judge in Lake County during that period of time that that memo was drawn up; is that right?

A. Yeah.

Q. They were aware of the problems, too, that this system was undergoing; is that right?

A. That's right.

MS. CAHN: Objection. I would ask for a foundation as to what problems Mr. Pavletic is speaking about.

THE COURT: Sustained.

BY MR. PAVLETIC

Q. Let's go over a few of these memos if we could. Showing you first again People's 186-A. You've indicated that you've seen that memorandum; is that right?

A. Yes.

Q. And that was a memorandum written by Bob Bingham, is that correct?

A. Yes.

Q. Okay. Bob Bingham had come into information
that you had passed on as to the problems you were
suffering with this monitoring system; is that
correct?

A. That's correct.

Q. He had indicated in this memo that was --

MS. CAHN: Objection, Judge. May I approach?

(WHEREUPON the following proceedings
were had outside of the hearing of the
jury:)

MS. CAHN: This is the second or third time that
Mr. Pavletic has made reference to this monitor
trying to connect this with Mr. Rivera. I ask that
if Mr. Pavletic is going to talk about --

THE COURT: Talk about the system.

MR. PAVLETIC: That's what I've been asking.

Every question was about the monitoring system.

MS. CAHN: He is saying "this monitor". That's
not the same thing.

MR. PAVLETIC: I might have been making a gesture
stating the monitoring system.

THE COURT: Okay. Well, that's their objection,
and I think they are right. Make sure it's about the
system.

MR. PAVLETIC: Absolutely. Okay. Just if we
could, Judge.

What I intend to do just so that -- in case there is going to be further objections, I am going to be reading portions or summarizing portions of each of the memos, not all the memos but most of them. The one memo in particular that Miss Kerby had authored, I am going to be reading a fairly large portion from. But I do intend to do that.

I have highlighted portions on my copy. The copy that's going into evidence isn't one highlighted, it's a clean copy, but in case there was going to be continued objections --

THE COURT: There will be continued objections about all of these memos that she did not author?

MS. CAHN: Yes, Judge, you know my objection, and I will be continuing to object.

THE COURT: Now, I will tell you I have got a couple of objections myself.

MR. PAVLETIC: I'm sorry.

THE COURT: I have objections myself to two of them, the one dealing with Vic Geig and the one with Cheryl Bjorkland.

MR. PAVLETIC: I won't get into that.

THE COURT: You had put those into evidence.
They are coming out of evidence now.

MR. PAVLETIC: I want to get to those.

THE COURT: She said she didn't know anything about those.

MR. PAVLETIC: If she didn't, I will ask to withdraw those.

MS. CAHN: She just said those -- I would rather just Mr. Chancey remove those.

THE COURT: Mr. Pavletic.

MS. CAHN: Remove those.

THE COURT: She said she didn't know anything about it.

MR. PAVLETIC: Unless I can clarify it, I am just going to remove --

MS. CAHN: I am going to object to clarify it.

MR. PAVLETIC: I don't think it's going to be an issue. If it is, I will approach.

THE COURT: Okay.

(WHEREUPON the following proceedings were had in the presence and hearing of the jury:)

MR. PAVLETIC: May I proceed, Judge?

THE COURT: Yes.

BY MR. PAVLETIC
Q. This memo from Robert Bingham is dated April 21st, 1989, is that correct?
A. Yes.

Q. Showing you that copy. That states in the middle portion of that memorandum that: Mike is placing great faith in these final last attempts to resolve this problem. Frank is saying, quote, okay, just one more time, unquote. But pretrial staff continue to be discouraged and frustrated about the lack of confidence that they hold in the system. We cannot fool with this one more time. Okay. I'll give in this one last time. But if we have any kind of breakdown from here on in --

MS. CAHN: Judge, I'm going to object. May I approach?

(WHEREUPON the following proceedings were had outside of the hearing of the jury:)

MS. CAHN: This is the very thing and the very reason why I was objecting to begin with. This is not specific. There is -- it's also detracts from part of the motion in limine that I entered months ago. What Mr. Pavletic is attempting to do now is to discredit the entire system.
THE COURT: Right.

MS. CAHN: And, Judge, my objection to these memos being read is, number one, they are hearsay. Number two, they are not specific. Number three, we don't know exactly what Mr. Bingham is talking about, what particular item Mr. Bingham is talking about, and what Mr. Bingham's particular concerns are.

Judge, this is totally hearsay. It's totally admissible, and I object strenuously to Mr. Pavletic reading it to the jury --

THE COURT: Okay.

MS. CAHN: -- or to it being admitted into evidence.

THE COURT: All right. You may continue.

Overruled.

MS. CAHN: Okay.

THE COURT: You may continue.

MR. PAVLETIC: Thank you, Judge.

(WHEREUPON the following proceedings were had in the presence and hearing of the jury:)

BY MR. PAVLETIC

Q. The final paragraph of that memo indicates:

"Okay. I'll give in this one last
time. But if we have any kind of breakdown from here on in, and I think we will, we have to get the CSI folks up here pronto. You can overrule Mike, but again, he is confident that we should give it one more whirl. I'll support him to that extent, but this is positively the last attempt."

Is that correct?

A. That's what he says, yes.

Q. Next showing you People's Exhibit 186-B. That is a memo on 19th Judicial Circuit letterhead from M.J. Mortenson to Robert Zastany, Court Administrator, is that correct?

A. That's correct.

Q. That is dated August 17, 1989; is that right, ma'am?

A. Yes.

Q. That memo again has to do with the functioning of the monitoring system, is that correct?

A. Yes.

Q. The same monitoring system that you've been testifying to yesterday --
MS. CAHN: Objection, Judge, foundation as to the monitoring system, what particular problems.


BY MR. PAVLETIC

Q. The same monitoring system you spoke about yesterday afternoon and this morning; is that right?

A. That's correct.

Q. In that memo, it states, and let me quote:

"The Court Services' electronic monitoring program is not working in Lake County. I'm advising you of this as I believe it is a matter of public safety. I just returned from the pretrial office where I spent three hours trying to get the system up and running. I have made countless trips in the past for the same reason. The program has been running on Band-aids ever since it began. The current monitor boxes are junk. They repeatedly fail. For every five we sent for repair, CSI only replaces two. CSI software support is, in my opinion, useless."
"Keith Cooprider is presently preparing a document systematically of listing the program's failures and shortcomings. We need a new vendor. I do not believe that the CSI system will ever work to our specifications and needs. In my opinion, the Court should be advised not to place any more persons on EMS. Current EMS users should be phased out to regular pretrial bond supervision."

Is that what that memo indicates, ma'am?

A. Yes, that's what it says.

Q. And by the way, the abbreviation EMS stands for electronic monitoring system; is that correct?

A. Yes.

Q. Now, you had testified that some of these memos are actually ones that you authored as well, is that correct?

A. That's correct.

Q. Again, let me show you another 1989 memo dated August 22, 1989 that was authored by yourself,
the Pretrial Services Supervisor, to Mike Mortenson, Deputy Administrator, and you have that before you; is that correct?

A. Yes. Yes.

Q. And that is People's Exhibit 186-C for the record.

You had an occasion a few moments ago to look at this memorandum, isn't that correct?

A. Yeah, briefly, yes.

Q. And you in fact authored this memo; is that right?

A. That's correct.

Q. And would you first explain to these ladies and gentlemen why you wrote this memorandum on August 22nd of 1989?

A. Because we were having continuing equipment problems.

Q. And why was it that you felt that it was important enough to document this by a memo?

A. Because we were spending an inordinate amount of time changing equipment. Every time there was a failure, we had to go out to the defendant's house and change it. We were spending an unusual amount of time just fooling around with the
Q. All right.
A. And also I think -- I would have to read it. Do you want me to read through this or look through it?
Q. Yes, ma'am.
A. Right. This was just with a large amount of change. Every time a system went down, we had to go back out and change it.
Q. Okay. Now, I am not going to read this word for word, but would it be fair to state that in summary in that memo you state that in January of 1989 you had received 25 upgraded transmitters, is that correct?
A. Yes.
Q. And, again, when we say transmitters, we're talking about the kind like the one in Defense Exhibit Number 31; is that correct?
A. Correct.
Q. You indicated that when you received those, that they began to fail and that no transmissions or sporadic transmissions were received from the field?
A. Correct.
Q. When you say from the field, you're
referring to the actual location where these monitors and transmitters are; is that correct?

A. Correct.

Q. Your memo also states that the following months, February of 1989, most of the transmitters were returned to CSI; is that correct?

A. That is correct.

Q. And that the -- and that you continued to use the old transmitters but eventually the batteries on those were stopping and that those were sent back to CSI as well?

A. Correct.

Q. Your memo states that in March of 1989 that Lake County had purchased 12 units, and it was discovered later that faulty phone base cards from CSI were part of the problem; is that right?

A. Yeah. It was cords as opposed to cards.

Q. Phone-based cords?

A. Yes, cords.

Q. Could you describe what you mean by the phone-base cords?

A. These cords here.

Q. Okay.

A. We had a shipment of those that were not
functioning correctly.

Q. Okay. Now, again, you're referring to the white phone cord that is attached to People's Exhibit or Defense Exhibit Number 30; is that correct?

A. That's correct.

Q. And you're stating that these cords were individually or separately sent to you?

A. Yes. Yes.

Q. And that these were faulty as well?

A. Correct.

Q. Now, I believe there's one thing that you haven't testified to yesterday or today, and that has to do with the fact that pretrial services physically moved their location here in Waukegan from one building to another; is that correct?

A. That's correct.

Q. Would you describe for the jurors what happened?

A. Well, we were in the old jail in an office and when the new facility opened, we moved to the new facility. After we moved, the phone and -- I'm assuming you mean we got in the equipment. After we moved, the phone lines were not compatible with the equipment in the computer.
Now, I'm not an expert at this. I can say that the phone lines were either too clean or too dirty, and we had to get the county people in to make some kind of adaptation with the phone lines and work with the phone company.

Q. Okay. Now, when you say that your division was in the old jail building, that was about a block north of us from where we are at this moment; is that correct?

A. Correct. Yeah.

Q. And you moved from that location into this building that we're currently in, is that correct?

A. Yes.

Q. And you stated yesterday that you are near the jail building or near the jail itself; is that correct?

A. I'm in the jail basically.

Q. All right. And you experienced transmitter problems as well as computer problems after the move; is that correct?

A. Correct.

Q. And your memo states that, is that correct?

A. Yeah.
Q. Let me begin at the top of the second page of your memo.

MS. CAHN: I'm sorry, counsel. The date on that memo?

MR. PAVLETIC: Ma'am, it is August 22, 1989.

MS. CAHN: Thank you.

BY MR. PAVLETIC

Q. You have indicated in your memo that the physical move caused further failure of equipment; is that right?

A. I said we could not be sure if the physical move caused further failure of the equipment.

Q. You continue that inadequate wiring or inadequate phone lines to the new building were considered; is that right?

A. Yeah.

Q. Overall problems were compounded by the move?

A. Yes.

Q. It was often impossible to separate or sort out the difficulties?

A. Correct.

Q. You indicated that CSI became impatient with us as all of our attempts at problem resolutions were
by phone?

A. Correct.

Q. At no time was an offer made by CSI to visit this site, is that correct?

A. Correct.

Q. You then stated further in summary in your motion that in May of 1989, you had to return four units and six transmitters due to defective equipment; is that right?

A. Yeah.

Q. You indicated that during May, CSI had discovered that there was a problem with the charger and this was causing the transmitter failures; is that right?

A. Yes.

Q. Would you describe for the jurors what a charger is?

A. When the batteries go — when the batteries become low on the transmitter, we have a charger. We place the transmitter on the charger for 12 hours — 12 to 14 hours until it recharges.

Q. Okay. That charger you found to be useless as well, isn't that correct?

A. That -- I wasn't able to sort out the
problems. It sounds like at that time that was the charger.

Q. Okay. And you were having problems with that; is that right?
A. That's correct.

Q. You indicated in your memo that on May 23rd of '89 you received a new charger, and you continued to experience the same problems; is that right?
A. That's correct.

Q. You stated then in July of 1989 that pretrial was told that there was more problems with the charger and to return it for modification; is that right?
A. I'm not following you on that.

Q. I'm referring to the exact middle of the second page of your memo, is that correct?
A. Right. That's correct.

Q. And you were concluding in this same memoranda that transmitters would not take a charge and that you were experiencing the same problems, is that correct?
A. Yes.

Q. You stated at the bottom of the second page
of your memo that:

"There are currently four faulty transmitters in the field at this time with a total of thirty-two defendants on electronic monitoring. Often pretrial has had as many as twelve faulty transmitters in the field."

Is that correct?

A. That's correct.

Q. You concluded by stating that:

"Pretrial staff have been in constant turmoil changing transmitters as they fail in order to protect the community and continue to lend credibility to the program."

Is that correct?

A. That's correct.

Q. You stated that, "Inventory management has been literally a nightmare?"

A. That's correct.

Q. You stated in the next to final paragraph that:

"I do not believe that there was one occasion that CSI informed me of any
equipment problems that other agencies were experiencing. I had to continuously call CSI, describe problems, try to determine the problem myself and probe for information to get an answer. Only then did they admit that their equipment was failing elsewhere, too."

Is that correct?

A. That's correct.

Q. Showing you next, ma'am, a memorandum dated December 8th, 1989 from Frank Kuzmickus to Robert Bingham. Do you see that?

A. Yes.

Q. And that, again, was another memorandum that you had tendered to me and the defense in the course of the court order, is that correct?

A. That's correct.

MS. CAHN: Objection, Judge.

THE COURT: Overruled.

BY MR. PAVLETIC

Q. That memo states in two sentences, and I quote:

"This is to advise that pretrial
electronic monitoring is no longer functional. We have no equipment that works entirely properly."

Is that correct?

A. That's correct.

MR. PAVLETIC: Judge, at this time I would ask leave to withdraw People's Exhibit 186-E which was the memoranda to Cheryl Bjorkland and Vic Geib.

THE COURT: Leave granted to withdraw.

MR. PAVLETIC: Thank you. Thank you.

Q. Referring your attention to People's Exhibit No. 186-F. That is another memo --

MS. CAHN: Judge, I'm going to object.

Relevancy --

THE COURT: Overruled.

MS. CAHN: -- and the same objections.

THE COURT: Very well. A continuing objection to all of these exhibits should be noted. Overruled.

BY MR. PAVLETIC

Q. This is a memo from yourself to Dwight Magalis, County Administrator, dated February 28, 1990; is that correct?

A. That's correct.

Q. In this memo you basically outline some of
your concerns and problems with the transmitters and
the monitors, is that correct?

A. Correct. I believe I was asked -- I think I
was asked to come up with some type of criteria for
judging the equipment when we got new updated
equipment.

Q. You indicated --
A. I think that's what this was.

Q. You indicated in that memo that there was
actually a rattle inside of the transmitters
themselves, is that correct?

A. Correct.

Q. That indicated that batteries were breaking
loose and that they would not take a charge, is that
correct?

A. Correct.

Q. You also indicate on page two of that memo
if you could flip there real briefly, there is a
heading towards the middle of the page in the middle
of the page on page two that states computer software
and hardware; is that correct?

A. Correct.

Q. Could you describe for the jurors what
you're referring to when you state computer?
A. Well, it looks like again -- All right. Again, electronic monitoring system failure rate criteria. This was to come up with some criteria to judge it. So the possible problems for the software and the hardware problems could include software crash which is indicated by a keyboard lock-up, lost data, clients disappearing from files, missing log files and indication of missing data.

Q. Okay. Those were other potential problems as well?

A. Uh-huh, that could be potential problems.

Q. Okay. Also potential problems in Subsection C under computer of possible communication problems, calls not received, calls ignored, phone seized; is that correct?

A. Phone line seized, yeah.

Q. Next showing you a memo from you to Robert Bingham, Deputy Administrator, dated March 27, 1990. Do you recall that memo?

A. Yeah.

Q. And why was it that you felt compelled to put in writing another memo to Robert Bingham?

A. I have to look through this a minute.

Q. Yes, ma'am.
A. Okay.

Q. Okay, ma'am. In that memo without reading it verbatim, in that memo you have indicated that after your move to the Babcox Center, again, the building that we're in at this point, that there were continuing phone line problems; is that correct?

A. Correct.

Q. You stated that clean lines are necessary for the computer to hear the monitors calling; is that right?

A. That's correct.

Q. You indicate in there that phone filters were now used in your office as well as in the field when distorted phone lines were discovered; is that correct?

A. Yes.

Q. All right. You indicated further in the next paragraph that you had to exchange 42 units, is that correct?

A. We did a swap-out.

Q. What's a swap-out?

A. A swap-out is we upgraded the equipment, so we then swapped out the old equipment that we were...
having difficulty with with 42 new pieces.

Q. Okay. You indicated after you mentioned that there was this swap-out for 42 new units at the conclusion of that paragraph that two more units have failed and that the clients left and returned, but the printouts did not show this. We saw them out, is that correct?

A. Yes.

Q. Now, what you mean by that is that the printout back in your headquarters showed that there had been no violation by these two individuals, is that correct?

A. That's what this says.

Q. But those two individuals who apparently were obeying the monitor and obeying the conditions in fact were seen out wandering about outside of the area that they should have been in; is that correct?

A. Okay. Let me read this last sentence.

Q. Absolutely.

A. To make sure that that's what we were saying.

Q. Sure.

A. That's correct, the printouts didn't show
them out, but we saw them out.

MS. CAHN: I'll object to the characterization that Mr. Pavletic made about them wandering about.

THE COURT: Overruled.

BY MR. PAVLETIC

Q. You continued in that March 27, 1990 memo that eight units showed transmitter batteries low and some continued to show this even after being recharged and placed at a second site; is that correct?

A. I'm sorry, what?

Q. Referring to the first sentence of the last paragraph on page one. "Eight units show transmitter batteries low?"

A. Okay.

Q. "And some continued to show this even after being recharged and placed at a second site?"

A. Correct. Correct.

Q. You indicated following that that batteries within two of the transmitters came loose causing the transmitters to rattle, rendering them faulty; is that correct?

A. That's correct.

Q. You stated in the next sentence at the top
of page two, another issue surfaced with five monitor boxes that would not call in from the field; is that correct?

A. Yes.

Q. And you concluded this memo again dated March 27, 1990 that, and I quote:

"In closing, I must state that the equipment is not performing at a satisfactory level. It was agreed that a 10 percent failure rate was acceptable, and based on my calculations, it appears that we have experienced at the very least a 33 percent failure rate of transmitters which have been returned. This does not include the other problems stated; monitors that do not make contact with the computer; and two, monitors which do not show on the including data that clients left or returned."

Is that correct?

A. That's correct.

Q. Directing your attention to People's Exhibit 186-H. That was a memo from you to Robert Bingham,
Deputy Administrator, dated April 6, 1990; is that correct?

A. That's correct.

Q. This memo basically again states that you were having continued problems with that system, is that correct?

A. Correct.

Q. And you were having these continued problems with the system after the swap-out, is that correct?

A. That's correct.

Q. Now, you had stated in that earlier memo that I believe there had been 42 units exchanged with CSI; is that correct?

A. Yes.

Q. It was your intention, was it not, to get rid of your units that you believed were failing you and getting in 42 brand new units so that the system would function properly; is that correct?

A. That's correct.

Q. And you continued to have the same problems with those brand new units after the swap-out; isn't that correct?

A. That's correct.

Q. You stated at one point in your memo in 1954...
paragraph three that:

"In order to troubleshoot the problem of a loose battery in the transmitter, that CSI injected foam into the transmitters so that they wouldn't become jarred."

Is that correct?

A. Yes.

Q. I'm sorry?

A. Yes.

Q. You indicated that on April 4th and 5th of 1990 that you experienced six more equipment problems: One monitor whose light went out, stopped sending messages, and another that does not show clients leaving or returning; is that correct?

A. That's correct.

Q. You stated the four remaining are not functional -- functioning properly, but I am waiting for a call back from CSI to diagnose the problem; is that correct?

A. Yes.

Q. You indicated in the final paragraph of that first page that:

"We are no longer sure who is home and
who is not as well as when they are coming home as the equipment is sending erroneous messages."

Is that correct?
A. That's correct.

Q. You continued:

"The defendants and their attorneys are quick to realize we are experiencing difficulty, especially when we change equipment in one residence three times attempting to sort out information on thirty-two clients, and defining the problem is to say the least time-consuming and frustrating. The officers are changing equipment on a regular basis. Minimally, we have changed equipment on clients twenty times over the last two and one-half months."

Is that correct?
A. That's correct.

Q. And all the information that you included in these memos up to this point was true and accurate, is that correct?
Q. Directing your attention to People's Exhibit 186-I. That is an April 6, 1990 memo from Robert L. Bingham to Dwight Magalis, County Administrator; is that correct?

A. Correct.

MS. CAHN: Objection.

THE COURT: Overruled.

BY MR. PAVLETIC

Q. At the very bottom of page one, it states: "In total candor, our presently installed EMS system does not work despite the repeated attempts of the vendor to correct the systems' multiple problems and breakdowns. I do not care if the faultiness is equipment or service-related. What's has been established and documented since the trial period was initiated is that the revamped system is every bit as unreliable as the previous equipment which prompted the crisis late last year."

Is that correct?
A. Yes.

Q. And lastly, the second sentence on page two states:

"However, as an agency, we are not providing the expected delivered service to the courts or the community because of the unreliability and inoperability of the CSI equipment. As painful as it may be, as difficult a pill as it is to swallow, I must recommend to you at this time the immediate cancellation of the CSI contract and to search for a replacement company."

Is that what that states, ma'am?

A. Yes.

Q. Referring your attention to 186-J, a memo from Presiding Judge William D. Block to Chief Judge Bernard E. Drew dated April 17, 1990.

MS. CAHN: Objection.

THE WITNESS: Yes.

BY MR. PAVLETIC

Q. Do you see that memo?

A. Yes.
THE COURT: Overruled.

BY MR. PAVLETIC

Q. That memo states in the middle of the single paragraph, and I quote from Judge Block:

"If the equipment we have isn't working, we should get rid of it and get different equipment immediately. There just isn't any question about this in my mind. If the equipment is working or not working the way these reports seem to indicate, I'm going to have to seriously consider not using them for people on bond, and I would not want to create that kind of a crisis or problem as far as our jail population is concerned."

You were aware of that memo as well, isn't that correct?

A. I saw that, yes, I did.

Q. Referring your attention to People's Exhibit 186-K. This is a memo from you to Max Cohen, County Administrator's office; is that correct?

A. Yes.

Q. Now, this is a memo that now brings us up to
1992, is that correct?

A. Yes.

Q. It's dated January 26th of 1992?

A. Yes.

Q. You state in the fourth paragraph on page one:

"This is a total of 10 transmitter and/or monitor problems since December 29th of 1992."

Is that correct?

A. Yes.

Q. So you stated in that memo that in less than a one month period of time that you had still as of January of 1992 had 10 more transmitter or monitor problems, is that correct?

A. Yes.

Q. All right. Referring to page two. You state in the second paragraph of page two that:

"Further, equipment failure is incredible. One piece of equipment that just failed was sent to CSI in December, returned early January, and still continues to fail."

Is that what you stated there?
Q. And that was accurate, is that correct?
A. Yes.
Q. You then continued.

"These continued problems lessen the credibility of the program, decrease the amount of persons we can recommend and possibly get released from the jail and cost the county time and money when staff have to continue driving all over the county changing or troubleshooting equipment problems."

Is that what that stated, ma'am?

A. Yes.
Q. And that was accurate when you wrote that memo, is that correct?
A. Yes.
Q. We're almost to the end here. Directing your attention to People's Exhibit No. 186-L, a memo from yourself to Frank Kuzmickus, Chief of Adult Services. Now, Kuzmickus again was your immediate supervisor --

A. Right.
Q. -- is that correct?
A. Yes.

Q. This memo is dated now in the summer of 1982 -- 1992, June 1st of 1992, is that correct?
A. Yes.

Q. This again outlines the continued problems that you were having with the equipment, is that correct?
A. Yes.

Q. You characterize in this memo as serious equipment problems, is that correct?
A. Yes.

Q. You indicate that four boxes were tested by a Florida computer and they do not work; is that right?
A. Yes.

Q. And you stated you had one more dead box in your office and that will not call out, and you had approximately four more boxes in the field that are not working correctly; is that correct?
A. That's correct.

Q. When you say that you had four more boxes in the field not working correctly, you're referring to the type of box in Defense Exhibit Number 30; is that correct?
Q. You stated the total not working at all is seven with two or three not operating correctly but coming in. CSI will not send any equipment to us until they receive ours which will be picked up from our office soon, is that correct?

A. Yes.

Q. You indicated that 29 people were on the monitoring system as of June 1st of '92, four are not coming in, and you have two pieces, maybe three to use, and that's it until you receive some back; is that correct?

A. Yes.

Q. Referring your attention to Exhibit 186-M, a memo from you again to Frank Kuzmickus dated June 16 of 1992; is that correct?

A. Yes.

Q. You were having the same problems, is that correct?

A. Let me read this.


MR. PAVLETIC: I'll clarify, Judge.
THE COURT: Very well.

BY MR. PAVLETIC

Q. You've seen that now?

A. Yes.

Q. That memo indicates that as it turns out, most of these boxes were working correctly, but due to some type of office phone line problem coupled with at least two phone line problems in the field, we were not getting messages; is that correct?

A. No. Well, I sent 10 back and they tested them and said they were operating correctly, sent them back to me and said it was a phone line problem.

Q. All right. You then indicated that it appears that county phone lines and equipment are occasionally not compatible and we have to switch monitors around to connect. Some equipment works fine in some residences and not in others. Sometimes the equipment stops sending for unknown reasons. Is that correct?

A. That's correct.

Q. All right. And lastly, let me show you a memo dated after the summer of 1992, specifically October 9th of 1992, again a memo from you to Robert Bingham; is that correct?
A. That's correct.
Q. You wrote this memo?
A. Yeah.
Q. And again, in this memo you outline continued problems; is that right?
A. That's correct.
Q. You indicate in that memo.

"I need to bring to your attention the fact that our current electronic monitoring equipment is wearing out and we are experiencing frequent failures. I believe the situation is near the critical level."

Is that correct?
A. That's correct.
Q. You stated that since the beginning of 1992, we have shipped to CSI at least 48 of units for repair, mostly dead and failing transmitters; is that correct?
A. That's correct.
Q. You state:

"In my office at this time I have three units to send back for repair, six units with dead transmitters in the..."
field and use on defendants, and only
four on the shelf that may or may not
be working or will work for a long
time -- or for long."

Is that correct?

A. That's correct.

Q. You indicate in that paragraph that there
were literally six transmitters currently on
defendants who were on home monitoring --

A. Uh-huh.

Q. -- and that those monitors that were
strapped to their ankles and that supposedly were
being used to monitor those people in fact were not
working, is that correct?

A. That's correct.

Q. You stated in your final sentence at the
bottom of that first page:

"I must remind you that when 10
transmitters fail or are weak, we are
unable to monitor these defendants who
are usually the most seriously charged
offenders or are the most likely to
fail to appear."

Is that correct?
A. That's correct.

Q. When you state, Miss Kerby, that on August 17th, 1992 when the printout states that Juan Rivera had no violations of his pretrial monitoring system, you are assuming that this equipment and the phone lines and everything else that we have spoken about was working correctly; isn't that correct?

A. I do on that piece, yes.

MR. PAVLETIC: Nothing further.

MS. CAHN: May I have a moment, Judge?

THE COURT: Sure.

REDIRECT EXAMINATION

BY MS. CAHN

Q. In 1989 when those memos began to be generated, the public wasn't aware of those memos, were they?

A. No.

Q. And when the clients were placed on the monitors, they weren't notified as to the difficulties that you were having with the monitor --

A. No.

Q. -- were they?

And when Mr. Rivera was placed on his electronic monitor on August 17th of 1992, Mr. Rivera
wasn't aware of the problems that you were having
with the equipment, was he?

A. No. I don't know.

Q. In fact, the only people that were
discussing the problems with the equipment were court
service personnel?

A. Yes.

Q. The clients had no idea of that?

MR. PAVLETIC: Objection.


BY MS. CAHN

Q. They weren't informed of that, were they?

A. No.

MR. PAVLETIC: As to what people might have
known.

THE COURT: The question was they weren't
informed of that, and then you heard the answer,
ladies and gentlemen.

BY MS. CAHN

Q. When you had the failures in the monitors or
the transmitters because of the battery being low,
you got the printout; is that true?

A. That's correct.

Q. And it would show you battery low, correct?
A. That's one of the ways it would show us.
Q. And there are other ways to show it?
A. Correct.
Q. Mr. Rivera was placed on the electronic monitoring system on July 14th?
A. 15th, I think.
Q. Or 15th of 1992. And he was off of it when?
A. September 14th.
Q. And the date of August 17th, 1992, he was on the electronic monitor?
A. Correct.
Q. There were no problems with the monitor?
A. We did not detect any problems with that piece of equipment.
Q. Or his transmitter?
A. Correct.
Q. And all the prior failures that you detected were a result of the transmissions?
A. Overall, most of the problems were with the transmitters.
Q. You didn't have any problem with Mr. Rivera's transmitter, did you?
A. There were no indications --
MR. PAVLETIC: Objection. Asked and answered.
THE COURT: Sustained.

MS. CAHN: One moment, Judge.

MR. LAZZARO: Nothing further.

MS. CAHN: I have nothing further.

THE COURT: Thank you, ma'am. You may step down.

Okay. Why don't we take a break.

MR. PAVLETIC: Judge, could we just clarify one matter? Just on one of these, Judge, just for the record?

THE COURT: All right. All right.

MR. PAVLETIC: To clarify.

RECROSS-EXAMINATION

BY MR. PAVLETIC

Q. 186-K, People's Exhibit, this memo is dated January 26th of 1992; is that correct?

A. Yes.

Q. In the body for the record on the fourth paragraph down, it states and I quote:

"This is a total of 10 transmitter and/or monitor problems since December 29, 1992."

The memo was written January 26th of '92.

MS. CAHN: Judge, I'll object to the foundation as to what monitors.

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MR. PAVLETIC: I just want to clarify. In the fourth paragraph, should that have read December 29th of '91 or '92?

MS. CAHN: Objection, Judge.

THE COURT: Overruled.

THE WITNESS: Yes. Yes. This was only 10 failures within a month so that had to be December, '91.

MR. PAVLETIC: All right. I have nothing further.

THE COURT: Anything?

MS. CAHN: Nothing further.

THE COURT: Thank you, ma'am. You may step down.

(Witness excused.)

THE COURT: Okay. Let's take our morning break, ladies and gentlemen. Don't discuss the case.

Mr. Ingram, come here a minute would you, sir.

(Here follows a short break in the proceedings.)

(WHEREUPON the following proceedings were had outside of the presence and hearing of the jury:)

MR. LAZZARO: Before we call our next witness, your Honor, we do at this time wish to make a motion