

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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ATPAC, INC.,)
)
Plaintiffs,)
)
vs.) No.
) 2:10-CV-00294-WBS-
APTITUDE SOLUTIONS, INC., ET) KJM
AL.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF

DAN EVERS

WEDNESDAY, FEBRUARY 23, 2011

NOTICING ATTORNEY: MICHAEL THOMAS

REPORTED BY: DINA M. MARCUS, CSR NO. 8579

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THE VIDEOGRAPHER: My name is Sean McAleer. I will be videotaping this proceeding on behalf of Sacramento Legal Video Center, Incorporated at 3028 U Street in Sacramento, California.

The date is February 23rd, 2011. The time on the video monitor is 9:51 a.m. Our location is 621 Capitol Mall, 18th floor, in Sacramento, California.

We're here in the matter of AtPac, Incorporated versus Aptitude Solutions, Incorporated, et al.

This is the deposition of Dan Evers. The noticing attorney is Mike Thomas. The court reporter is Dina Marcus of Marcus Deposition Reporting.

This is a single-track recording. Overlapping voices cannot be separated. Private discussions on the record will also be recorded.

Would counsel please identify yourselves, your firms and those you represent?

MR. THOMAS: Sure. I'm Mike Thomas from the Downey Brand Law Firm and I represent the plaintiff AtPac, Inc.

MR. ABU-ASSAL: I'm Nabil Abu-Assal from the Cypress Law Firm and I represent Nevada County.

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BE IT REMEMBERED that on WEDNESDAY, FEBRUARY 23, 2011, at the hour of 9:51 a.m. of said day, at Downey Brand, LLP, 621 Capitol Mall, 18th Floor, Sacramento, California 95814-4731 before me, DINA M. MARCUS, a Certified Shorthand Reporter, personally appeared

DAN EVERS

called as a witness, after having been first duly sworn by the Certified Shorthand Reporter to tell the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION BY MR. THOMAS

Q. BY MR. THOMAS: Good morning Mr. Evers. How are you?

A. I'm good. How are you, Mike?

Q. Great, thanks. Thank you for coming in.

We are going to conduct a deposition today and you've been given an oath by the court reporter and that oath places you under penalty of perjury. Do you understand that?

A. Uh-huh.

Q. The deposition process is sort of an interesting one and I'll go over some of the ground rules, but before I do, have you ever been deposed before?

A. No.

Q. Have you attended depositions in the past?

1 A. No, not in person. I've seen them on TV.
 2 Q. Okay. Have you ever -- in your capacity as a
 3 grand juror, have you listened to witnesses be given oaths
 4 to tell the truth and then talk about facts and
 5 circumstances?
 6 A. I don't know that we ever required anyone to give
 7 an oath to it.
 8 Q. Okay.
 9 A. But I understand what's involved.
 10 Q. Okay. You understand that the testimony here
 11 you're giving today, because it's under oath and it's a
 12 deposition, it can be used in a trial as if you were
 13 testifying before a judge and jury. Do you understand that?
 14 A. Yes.
 15 Q. Okay. And so it's important that we get your
 16 best, most clear, accurate testimony. And there is a way we
 17 can do that. One is to make sure that we give audible
 18 responses. So when I ask you a question, if you have a
 19 "yes" or a "no," it -- it's important to give an audible
 20 response as opposed to a nod or shake of the head, so the
 21 court reporter can take down what you say.
 22 A. I understand, yes.
 23 Q. And another thing we can do is in a normal
 24 conversation you know exactly where I'm going with a
 25 question and you can start answering before I'm finished

1 asking the question, and that's perfectly normal. We do it
 2 all the time in normal conversation because you know what
 3 the other person's about to say and you can efficiently
 4 answer it before they are done. But in a deposition,
 5 because our court reporter, Dina Marcus, she's a very good
 6 court reporter, but still it's difficult to take down what
 7 two people are saying at the same time, as a court reporter.
 8 So we want to wait until one person is done talking before
 9 the other person talks. Okay?
 10 A. Okay.
 11 Q. If there's a time this morning when you don't
 12 understand, or today when you don't understand a question I
 13 ask, will you tell me so that I can try to clarify the
 14 question for you; will you do that?
 15 A. Absolutely.
 16 Q. Okay. I also don't want to you guess or
 17 speculate. We want your best, clear testimony. If you have
 18 a basis to give me an estimate, a reasonable estimate on a
 19 date or time or what you did at some particular point in
 20 time, I'm entitled to that. On the other hand, I don't want
 21 you to just pulling wild numbers or dates out of the air
 22 that you really don't know one way or the other. Okay?
 23 A. Okay.
 24 Q. Is there any reason today you can't give your
 25 best, clear, accurate testimony?

1 A. No.
 2 Q. Okay. And you're not under any sort of medication
 3 or substance that would prevent you from understanding my
 4 questions and providing clear, accurate, truthful answers?
 5 A. I am not.
 6 Q. Okay. Great. All right.
 7 With all that, let's start with the first
 8 question. Can you please state and spell your name?
 9 A. My name is Daniel John Evers. Last name is
 10 spelled E-V-E-R-S.
 11 Q. Okay. And what is your current address?
 12 A. 15 Ranch Court, North San Juan, California 95960.
 13 Q. Okay. And are you currently employed?
 14 A. No. I'm retired.
 15 Q. Okay. And you retired at what time, when?
 16 A. I believe it was December 4th, 2009.
 17 Q. And from what employment did you retire?
 18 A. I was a Network Systems Analyst Two, Step E, for
 19 the County of Nevada Information Systems, later called
 20 Information and General Services.
 21 Q. That was a position you held at the point in time
 22 you retired?
 23 A. That is correct.
 24 Q. When did you first start working for Nevada
 25 County?

1 A. I think it was in 1997.
 2 Q. Okay. And did you work continuously for Nevada
 3 County from 1997 until 2009, December 4th?
 4 A. Yes.
 5 Q. Did you work any other places during that time
 6 frame?
 7 A. Up until 1999 I also had a side business called
 8 Evers Electronic Services.
 9 Q. Okay. And did you work out of your house for that
 10 business?
 11 A. Yeah, yeah.
 12 Q. Other than that Evers Electronic Services, other
 13 than that, was your sole employment between 1997 and
 14 December 4, 2009 Nevada County?
 15 A. Yes.
 16 Q. Okay. Were you always employed as an IT computer
 17 person at the County?
 18 A. I was hired as a computer service technician.
 19 Later I became a programmer analyst trainee, and then I was
 20 network systems analyst, which is what I remained to until
 21 the end of my employment there.
 22 Q. When did you first become a network systems
 23 analyst?
 24 A. I'm not sure of the day.
 25 Q. Do you have an estimate; for example, a year?

1 A. Let me think a second. Approximately '99 or 2000.
 2 Q. Okay. So from approximately '99 or 2000, up until
 3 December 4, 2009, you were a network systems analyst for
 4 Nevada County?
 5 A. Uh-huh; yes.
 6 Q. Okay. With respect to today's deposition, you
 7 received a deposition subpoena --
 8 A. Yes.
 9 Q. -- that called for your attendance here today?
 10 A. Yes, I did.
 11 Q. Okay. And that deposition subpoena also had
 12 attached to it a list of documents and materials, not
 13 necessarily documents, but the documents, electronic or
 14 paper that you were asked to bring.
 15 A. Yes.
 16 Q. Did you carefully review the list of materials I
 17 asked for?
 18 A. Yes, I did.
 19 Q. And did you bring that with you?
 20 A. Yes, I did.
 21 Q. The court reporter is going to make a transcript
 22 after we're done with this deposition of everything that's
 23 said and she's also going to attach all the exhibits we mark
 24 in this deposition and you'll get -- eventually, you can get
 25 a copy of the exhibits as well as what's said --

1 A. Okay.
 2 Q. -- the transcript.
 3 Would you mind if we mark that as our first
 4 exhibit?
 5 A. No, by all means.
 6 Q. May I -- are they stapled?
 7 A. Yeah, everything is stapled together.
 8 Q. Oh, why don't we wait. I'll wait and do that
 9 another time. I would like to mark that -- well, why don't
 10 we --
 11 A. Yeah, we can just take it off now. Here, let me
 12 do it.
 13 Q. Okay. You can keep the check, though. That's for
 14 you.
 15 A. I thought that was going to the benevolent fund.
 16 Q. You can cash that or whatever you want.
 17 A. Oh, two staples. That other one was probably for
 18 the delivery people. There you go.
 19 (Whereupon Exhibit 200 was marked for
 20 identification.)
 21 MR. ABU-ASSAL: You want to -- for the record,
 22 that we skipped a few exhibits?
 23 Q. BY MR. THOMAS: That you are, Mr. Abu-Assal.
 24 Yes. We took some depositions out of town in this
 25 case earlier and I think we ended at Exhibit 190 or maybe

1 180 something, and so what we've done is we've started
 2 today's exhibit at Exhibit No. 200 to ensure that there's no
 3 duplication of exhibit numbers. So there will probably be a
 4 gap in the exhibits from the end of the last deposition to
 5 the start of this one as Exhibit 200.
 6 And so Exhibit 200, Mr. Evers, that's a copy of
 7 the subpoena with the document request you received?
 8 A. I believe it is the subpoena I received, yeah,
 9 handed to me by the service processor.
 10 Q. And that's the actual copy that you were given and
 11 brought here today?
 12 A. It's the original to me, yeah.
 13 Q. And you brought that here to your deposition
 14 today?
 15 A. Correct.
 16 Q. Okay. And it's your best estimate or
 17 understanding that you've collected all the documents in
 18 your possession, custody or control that fall within the
 19 categories listed?
 20 A. Yes.
 21 Q. Okay. Were there any documents associated with
 22 your -- associated with any -- strike that.
 23 Were there any documents related in any way to
 24 AtPac that you had in your possession, custody or control
 25 that you considered not to fall within those categories?

1 A. No.
 2 Q. Okay. Were there any documents you had concerning
 3 the Aptitude Solutions, Inc. that you thought did not fall
 4 within those categories?
 5 A. No.
 6 Q. Okay. So as far as you know, we have all your
 7 documents concerning AtPac, Aptitude Solutions.
 8 How about -- strike that.
 9 Were there any documents on the subpoena list that
 10 concerned Nevada County's Clerk-Recorder software that you
 11 haven't brought with you today to the deposition?
 12 A. Not that I'm aware of.
 13 Q. Okay. And can you describe what it is you brought
 14 here today?
 15 A. I brought my written documents which are both
 16 handwritten, some of it's handwritten, most of it is in the
 17 form of printouts. This would be -- fall into four
 18 categories. The first category of section zero of my
 19 documentation collection is personal notes which is a
 20 chronology, for instance, of the case that you brought. My
 21 research chronology that I had written out to refresh my
 22 memory on what happened, various other documentation.
 23 This next section, section one, let's see;
 24 that's -- I don't have it in front of me.
 25 Q. Right.

1 A. But the four sections are basically my notes,
2 documents that I associated with AtPac directly, including
3 legal documents that have been filed with the Federal Court
4 that I've download to look at. I've included e-mails to --
5 between us, conversational notes. There's a section for
6 Cypress, LLP, including e-mails and notes, and a section
7 called In the News, which is where this case has been talked
8 about. I think it was at YubaNet.net, a small news agency
9 that services the foothills. And that's pretty much the
10 paper collection. You'll have to refer to it directly for
11 individual documentation. I couldn't quote you what they
12 are at the moment.

13 Q. Sure. What else did you bring?

14 A. I brought a memory card and the memory card has my
15 working files. Now most of the files in there have been
16 printed out on my document collection. There may be some
17 difference between what's written and what's in the -- on
18 memory on, you know, the working stuff. Annotations, for
19 instance, that I made onto written documents that had been
20 printed out. Excuse me, printed out documents tend to be
21 more recent, more -- you know, more accuracy, corrections,
22 anything that I thought that was -- varied from my original
23 documentation.

24 There is also a DVD which should be an exact
25 duplicate of what's on the memory card as of yesterday for

1 archival purposes. And then I also had a thumb drive which
2 you have to boot off of and it's a Linux open SUSE running
3 KDE on it. I know Dave will like this: Basically, what
4 that has on it is a TAR archive of the files from the memory
5 stick. So I basically had it in three different locations.
6 Just redundancy. The last thing I wanted was for me to lose
7 one and not be able to produce it.

8 Q. So the three electronic or recorded media, the
9 stick, the --

10 A. Memory card.

11 Q. -- the memory card and the DVD, to your knowledge,
12 all contain copies of the same materials?

13 A. Yeah, they should be identical at this point in
14 time.

15 Q. Okay.

16 A. I would assume that they may change a little bit
17 if I add more notes to my case chronology, which I have no
18 idea if I'll do or not.

19 Q. Is it your sense that if one were to print out all
20 of the documents and materials on, for example, the DVD, you
21 would end up with a stack of paper not dissimilar from the
22 binder you brought? Or would it be thousands and thousands
23 of pages?

24 A. No, no, no. It would be very similar. There
25 isn't a large number of documents involved in my possession.

1 Q. Okay.

2 A. Yeah.

3 Q. Okay. And have you ever --

4 A. I would say, though -- excuse me, let me add,
5 please, is that although I haven't looked at it for a long
6 time, the e-mail archive under the directory pre-retirement,
7 I believe that might have 700 pages in it. I don't know.
8 It was whatever I was allowed to take from the County.

9 Q. Would that be your 740-some-odd-page printout?

10 A. I think so. I'm not a hundred percent sure. Like
11 I say, I haven't looked at that in a year really. It's not
12 been something I've played with.

13 Q. With respect to the 740-some-odd-page printout, is
14 that -- does that have page numbers at the bottom of each
15 page?

16 A. I have no idea how it's concatenated.

17 Q. Have you ever given the --

18 MR. ABU-ASSAL: Was what? I'm sorry, I didn't
19 hear the last part.

20 THE WITNESS: I had no idea how I've concatenated.

21 MR. ABU-ASSAL: Okay. Great word.

22 THE WITNESS: It's the only one that I know that
23 makes sense on that.

24 Q. BY MR. THOMAS: Now, with the documents that you
25 brought with you here today, both electronic and paper, have

1 you ever given those to anyone else?

2 A. I have shown some of the documents to Bob Muller
3 last week.

4 Q. Okay. Did you meet with Mr. Muller?

5 A. Yes.

6 Q. Okay. When did you meet with him, specifically?

7 A. I think it was last week, Tuesday or Wednesday,
8 I'm not sure. It's in my case chronology.

9 Q. Where did you meet with him?

10 A. I refer to that for accuracy.

11 At the County's law office, Eric Rood Center,
12 second floor, County Counsel.

13 Q. How long did that meeting last?

14 A. 3.5 hours, approximately.

15 Q. Did you take notes at that meeting?

16 A. No, I did not.

17 Q. Okay. Did you make notes of that meeting after
18 the meeting?

19 A. It's in my case chronology.

20 Q. So the answer's yes?

21 A. Yes.

22 Q. What did you discuss with Mr. Muller?

23 A. Probably everything we're going to discuss here
24 today, but -- see, I'm not trying to be flippant.

25 Q. Of course not. I understand that.

1 A. Yeah. What did we talk about? We discussed a
2 variety of different issues, including some of the technical
3 aspects of log file analysis, date correlation, what
4 documentation I had in general, some in specific such as the
5 SER document, which is the document that Kathy Barale
6 maintained primarily as her work ticket associated with the
7 Aptitude system that has been brought on line.

8 Q. What does SER stand for?

9 A. I'm not sure what it stands for.

10 Q. Did you look at a document with him that was in
11 paper form or electronic, the SER document?

12 A. That was paper form. Everything we looked at that
13 day was on paper.

14 Q. And that document contains, essentially, records
15 of work done by individuals on various days?

16 A. Yeah. It was basically part of my document.
17 The -- which one was it? Okay. I can't remember the exact
18 title of it, but it was my chronology that I kept regarding
19 this while I was a County employee.

20 Q. Okay.

21 A. And it's part of the chronology in that I did
22 screen captures and made a copy of that for archival
23 purposes which County Counsel gave me permission to take.

24 Q. Okay. All right. So this meeting lasted for
25 three-and-a-half hours. Was anyone else present for the

1 meeting?

2 A. No. Not in the room. We had one visitor who came
3 in and said hi and that was Scott McLeran, but he didn't
4 stay for any of the technical conversation.

5 Q. Did anyone participate by phone?

6 A. No. By phone?

7 Q. Or by any other means other than being physically
8 present?

9 A. No, no. It was just me and Bob.

10 Q. Okay. And was that the first time you had met
11 Mr. Muller?

12 A. Yes.

13 Q. Had you ever --

14 A. I mean in person.

15 Q. Had you talked to him before?

16 A. I may have talked to him prior to the meeting in
17 order to set up the meeting.

18 Q. Okay.

19 A. Yeah. I'm pretty sure we did.

20 Q. Other than that phone call, had you had any
21 substantive discussions other than what you now just
22 testified to?

23 A. No.

24 Q. Since that meeting, have you talked to him?

25 A. Just the other day in order to -- he told me he

1 was going to be late getting here.

2 Q. Did he ever -- did you ever discuss with him the
3 prospect of the Cypress Law Firm representing you?

4 A. No. Let me think. Let me think. Did I or did I
5 not? No, not directly. He asked me if I was going to have
6 an attorney present and I said, no. I'm just going to be
7 here myself.

8 Q. Uh-huh.

9 A. He said he would attend, too. But, you know, he
10 represents the County. They don't represent me.

11 Q. Did you ever ask the County to represent you?

12 A. No.

13 Q. How come; why not?

14 A. I'm not an employee of the County at this point in
15 time, and I'm not a defendant. I'm a participating witness,
16 I believe, is the technical term.

17 Q. I think that's right.

18 A. And so what I have is information, and it's my
19 duty to give it to you.

20 Q. So you didn't ask the County. You feel you don't
21 need a lawyer. You just feel you need to tell the truth?

22 A. No, no. That's my feeling on it.

23 Q. Yeah.

24 A. I've only consulted a lawyer one time a long time
25 ago and that was -- he's a friend of mine. I just said,

1 give me your nonbinding opinion on this, and that was it.

2 Q. Was that when we were asking you to do a
3 declaration?

4 A. Yes. And he said to wait on that.

5 Q. Okay.

6 A. You know, you -- anyway, we'll get to that later.

7 Q. Well, what did he say?

8 A. Well, he said not to sign it and to advise County
9 Counsel what was going on, and so I did so.

10 Q. Okay. And what did County Counsel tell you with
11 respect to -- strike that.

12 You then called County Counsel about the fact that
13 we had asked you to do a declaration?

14 A. I either called County Counsel or I called
15 Caroline Mankey. I forget who I talked to and what I said,
16 really. There may be some documentation to it in my case
17 chronology.

18 Q. Okay. What did Mr. Mankey say; do you recall?

19 MR. ABU-ASSAL: Assumes facts not in evidence.

20 Q. BY MR. THOMAS: He's allowed to make objections,
21 but you just go ahead and answer. Try to just block it out.

22 A. Not -- I don't recall the exact words, you know.

23 Q. What is the substance, the essence of what she
24 said, if you recall?

25 MR. ABU-ASSAL: Assumes facts not in evidence. It

1 lacks foundation.

2 THE WITNESS: Yeah. I would have to refer to --
3 actually, I'd have to refer to my notes which should be back
4 here, what, in an hour or so, so we'll look at that then.

5 Q. BY MR. THOMAS: So you don't recall right now?

6 A. No, no, it doesn't stick out for me as
7 particularly important, so I didn't commit it to my memory.

8 Q. All right. Do you remember being interviewed by
9 Ms. Mankey?

10 A. We talked over the phone on several occasions and
11 exchanged e-mails. I've never met her in person.

12 Q. Okay. Have you ever been interviewed by anyone
13 other than Ms. Mankey from the Cypress Law Firm, to your
14 knowledge? Well, other than Mr. Muller most recently?

15 A. Yeah, yeah. No, I believe they're the only two
16 I've talked to.

17 Q. Did anyone from the Cypress Law Firm ever ask you
18 to sign any declarations?

19 A. No.

20 Q. Do you recall what Ms. Mankey -- strike that.

21 Did Mr. Muller -- he asked you questions at this
22 meeting last Tuesday?

23 A. Yes.

24 Q. Did he talk to you about the case at all?

25 A. We talked about it --

1 complaint? Does that ring a bell?

2 A. I believe you did two complaints. There was the
3 first one and you did a second one later in which you
4 actually included my name several times prominently in it.

5 Q. Uh-huh.

6 A. So that I did definitely read the sections that
7 included my name in it.

8 Q. Okay. And is there a copy of that document in the
9 materials you brought?

10 A. Yes. With annotations and commentary on it that
11 I've added.

12 Q. Okay.

13 MR. ABU-ASSAL: When you're referring to those
14 documents that you brought, they're not in the room right
15 now, right?

16 THE WITNESS: No. I gave it to -- who is the gal?

17 MR. THOMAS: Are you doing your examination now,
18 Sir?

19 MR. ABU-ASSAL: No. I'm just wondering where the
20 documents are.

21 MR. THOMAS: Well, you're asking questions during
22 my examination. I need the -- you can, but you're on the
23 clock now. Go ahead.

24 MR. ABU-ASSAL: I'm asking you, Mr. Thomas, where
25 are those documents?

1 Q. Status?

2 A. -- yeah.

3 MR. ABU-ASSAL: Vague and ambiguous.

4 THE WITNESS: Yeah. I don't really recall a lot
5 of details from it.

6 Q. BY MR. THOMAS: Do you recall anything generally
7 about what he said about the case?

8 MR. ABU-ASSAL: Court reporter, could you please
9 repeat that question? I didn't quite hear it.

10 (Record read.)

11 MR. ABU-ASSAL: Vague and ambiguous, overbroad.

12 THE WITNESS: Just that it was your duty to prove
13 the items that you brought forth in the amended document;
14 that's your responsibility to prove them. Whether you can
15 or not remains to be seen. That's the only thing I remember
16 directly.

17 Q. BY MR. THOMAS: Oh, he's talking about me or your
18 duty.

19 A. Well, you, yeah, Downey Brand, whatever, you know.

20 Q. Have you read the complaint?

21 A. I read parts of it. I've skimmed through a lot of
22 it. It's in its own nomenclature. I'm not a lawyer. Just
23 because I'm real curious about the stuff and how it works
24 doesn't always mean I understand it.

25 Q. Did you read something called an amended

1 MR. THOMAS: They're being copied.

2 MR. ABU-ASSAL: Okay. That's fine.

3 MR. THOMAS: Actually, I asked you before the
4 record if you'd like a copy yourself and you said yes.

5 MR. ABU-ASSAL: I didn't know whether they were
6 the same documents.

7 Q. BY MR. THOMAS: Okay. Have you talked to any
8 County employees about this lawsuit?

9 A. Oh, yes.

10 Q. Which ones?

11 A. Well, let me just say before, my conversations
12 with people regarding the lawsuit would fall into three
13 broad categories. The most detailed of which would be
14 conversations with either counsels; with Cypress or Downey
15 Brand. You know, okay.

16 The next level which is less detailed would be
17 County employees. I worked with them and they understood
18 what was going on and it's all common knowledge and we spoke
19 of it freely.

20 Q. Uh-huh.

21 A. I have lunch with different individuals on
22 occasion and it has come up a couple times, but we haven't
23 expounded on it much at all. It was kind of like, let's not
24 really get into it.

25 Q. Uh-huh.

1 A. Most of the times I would only state what I told
2 them when I was an employee which is, you know, that I
3 created this login, et cetera, et cetera; we'll go through
4 all that later, but I kept it to stuff they're already aware
5 of.

6 Q. Okay.

7 A. Anything else would be just personal opinion.

8 And then the least level of data that I would give
9 to anybody would be friends or family, because they don't
10 care other than, you know, are you okay and the answer is
11 yes, I'm fine. So, you know, that would be the levels.

12 Q. Okay. And then so circling back to level two
13 where you're talking to County employees over lunch or other
14 meetings, I suppose, can you list for me the folks you've
15 discussed the lawsuit with?

16 A. With some probability I probably mentioned it to
17 Steve Humes, Fritz Gielow and -- you know, I'm guessing
18 because I don't remember clear conversations. Steve would
19 be the only person I know I mentioned something to on one
20 occasion, maybe Fritz, let's put it that way, and maybe Gio
21 Paredes.

22 Q. Anyone else?

23 A. I'm trying to think. Not that I can recall. I've
24 had lunch with a lot of different people, so...

25 Q. Any of the women that work at the County? Have

1 you lurched with any women?

2 A. Yeah, Lisa.

3 Q. Lisa who?

4 A. Lisa, Lisa, Lisa. I just call her Lisa. Lisa --
5 I don't know. I'll come back to that if I can remember.

6 Q. Do you remember having any discussions with Steve
7 Monaghan about the lawsuit?

8 A. No, no. I ran into Steve on one occasion at SPD
9 Market and he asked me how I was doing and I said great, and
10 that was pretty much our conversation.

11 Q. How about Scott McLeran?

12 A. No. Wait a minute. Let me think. Other than
13 about the time that we spoke in 2010, you know, early 2010.

14 Q. Yeah.

15 A. I called him and talked to him. There was a
16 couple real short conversations, not actually conversations,
17 more like, you know, I met with you guys, we talked, this is
18 kind of what we covered. And his only thing I can remember
19 him saying was it would all come out in deposition, right?
20 And I go absolutely. He goes, you're good. That was
21 basically -- it's paraphrased, but that was it. You know,
22 that's all I recall, at least.

23 Q. Lisa -- does Lisa's last name come to mind?

24 A. Because I never called her by her last name.

25 Q. Sure.

1 A. Dean and I had lunch and Lisa was there, Dean
2 Scanlan, that's right.

3 Q. Is that a County employee?

4 A. Yeah.

5 No, I can't remember.

6 Q. So circling back to Steve Hume, what did you
7 discuss about the case with Steve Hume?

8 A. Oh, I don't remember much detail or anything, just
9 that we probably mentioned, you know, hey, how's the case
10 going? You know, and that kind of thing, and very little.

11 Q. Okay.

12 A. Very little conversation. Most of our
13 conversations of any detail and substance occurred before I
14 left the County.

15 Q. Okay. And how about Fritz Gielow, what were your
16 discussions with Fritz since you left the County concerning
17 the lawsuit?

18 A. I remember no details of conversations with Fritz.
19 I just know I have lunch with him on occasion.

20 Q. How about your discussions with Gio?

21 A. Same thing.

22 Q. No recollection?

23 A. Oh, let's see; wait a minute. There was a part.

24 Let me think about it a minute. I haven't thought of this
25 since it occurred. Oh, yeah, he told me that when my name

1 showed up in the lawsuit and YubaNet.net got ahold of it and
2 plastered it all over the internet, of course people at work
3 read YubaNet.net and this -- this is just background at the
4 moment. So they found out that I was named, and he told me
5 that one of our former coworkers who had also seen it said
6 that the County's in trouble because Dan keeps records of
7 everything, and that's what he -- he was relaying what he
8 heard from somebody else, you know, and that that -- then if
9 I said something to him, it was probably just more of the
10 information that he already knew.

11 Q. And who was that somebody else?

12 A. Louise Jones, a former employee, now retired. I
13 don't think she even worked at the County when any of this
14 was happening.

15 Q. I see.

16 A. It's a small town; everybody knows everybody.

17 Q. Uh-huh.

18 A. Probably two degrees of separation from everyone.

19 Q. Did anyone at -- in any of your discussions with
20 County employees concerning the lawsuit, have any of the
21 County employees ever expressed any opinions about the
22 dispute?

23 A. No, not really. You know, nothing that sticks
24 out. If I think of something, I'll let you know.

25 Q. All right. Can you please -- are you a high

1 school graduate?

2 A. Yeah.

3 Q. When did you graduate high school?

4 A. Oh, God, way long ago. 1979, I think.

5 Q. All right. And I'd like you to describe for me
6 your educational background, if you can.

7 A. I graduated high school and then I took some
8 college -- junior college level classes, including
9 programming architecture education, you know, focused on
10 child education. And then later on I went to Heald
11 Institute of Technology and graduated with a degree in
12 electronics and computer science, associate of applied
13 science degree.

14 Q. In what year?

15 A. I believe it was '87.

16 Q. Where did you go to junior college?

17 A. Let's see; I went to Cosumnes River Junior College
18 and I also went to Sierra Junior College.

19 Q. Okay. Then in 1987, approximately, you graduated
20 from Heald?

21 A. Yeah.

22 Q. How long were you at Heald?

23 A. Approximately one-and-a-half to two years.

24 Q. So you started there --

25 A. I transferred from Westland College, that's right.

1 I started at Westland and moved over to Heald to finish.

2 Q. Where is Westland College?

3 A. They used to be down in -- I say used to be,
4 they're defunct. They don't exist anymore. But they were
5 over by Sunrise.

6 Q. Are you talking about the road Sunrise in
7 Sacramento?

8 A. Yes.

9 Q. Okay. What did you study at Westland?

10 A. Electronics.

11 Q. Did that include computer science?

12 A. Let me think. Did we do -- no, not so much. It
13 was -- a lot of that was general ed at that point. There --
14 mostly it was component level electronics, electronic
15 engineering, stuff like that.

16 Q. You said in junior college --

17 A. Math.

18 Q. You said -- you used the words programming and
19 architecture. Were those computer-related terms you were
20 using?

21 A. No. Programming back in the day was, you know,
22 like in basic on Z80 based TRS3, I think, or whatever it
23 was, you know, the Tandy Corporation, boot off a floppy
24 drive.

25 Q. You're referring to a computer program?

1 A. Yeah, yeah. Architecture as far as I was taking
2 technical drafting looking at going into architecture.

3 Q. Okay. All right. And then when you graduated
4 from Heald in 1987, what was the next educational
5 institution you attended, if any?

6 A. Let's see; I've gone to Sierra College for various
7 classes throughout the years, as well as taken professional
8 training, you know, outside of a normal academic structure.

9 Q. And what college courses did you take at Sierra
10 College following your graduation from Heald in 1987?

11 A. I took a data com class. I took C programming.
12 It's usually upper case, and --

13 Q. What else?

14 A. Internet class. God, what else did I take? I
15 don't know. Those are the ones that stick out. Probably
16 took some others, but I don't recall.

17 Q. Okay. And I think you said you started at the
18 County in 1997, roughly?

19 A. I think so.

20 Q. Were you working between 1979 and 1987?

21 A. Yeah.

22 Q. Where did you work?

23 A. I worked at a number of different places. I
24 worked as an independent contractor through my own business,
25 Evers Electronic Services.

1 I worked as a contractor through A Team
2 Engineering, electrical engineering, in Sacramento.

3 I did work for the City of Davis directly as a
4 contractor.

5 I did -- oh, my goodness. What else? I did a lot
6 of things.

7 Q. Let me stop you there for a minute. With respect
8 to your work as an electrical contractor --

9 A. Electronics.

10 Q. Electronics contractor --

11 A. Yeah.

12 Q. -- what work were you involved in?

13 A. Troubleshooting industrial control systems,
14 supervisory control and data acquisition equipment. And
15 basically wastewater treatment, water distribution, radial
16 telemetry gathering; things like that.

17 Q. All right. And you did that sort of work between
18 1987 and 1997; is that true?

19 A. Among other things, yes.

20 Q. What other things?

21 A. Let's see; I worked for Ophthalmic Imaging Systems
22 back in -- let's see, okay, I worked for Tesco Motor
23 Controls of Sacramento during and after my graduation from
24 Heald.

25 Q. For how long?

1 A. I don't know. A year, year and a half, something
2 like that, maybe two. I don't remember.

3 If I thought of it, I would have brought my
4 resume. It's real detailed.

5 Q. Sure. I bet you. Would you mind providing that
6 to us after your deposition?

7 A. Let me make a note of it.

8 I will on the qualification that I can still pull
9 it down off of Dice. If it's up there or Monster. If it's
10 still up there, I'll give it to you. Otherwise, I don't
11 want to have to recreate.

12 Q. Understood, understood.

13 MR. ABU-ASSAL: And when you say provide to me,
14 provide it to the court reporter so that we can all get a
15 copy?

16 THE WITNESS: Sure. Is that okay?

17 THE COURT REPORTER: (Nods head.)

18 THE WITNESS: Let's see; resume, if exists on --
19 it's Monster.com. It's been a long time since I looked at
20 it.

21 Q. BY MR. THOMAS: Okay.

22 A. Hopefully they haven't gotten rid of it.

23 Q. How current is the resume on Monster.com?

24 A. It's probably about three or four years ago while
25 I was still at the County.

1 Q. Okay. All right. So you were talking about where
2 you were working --

3 A. Yeah.

4 Q. -- before the County?

5 A. Yeah. Before the County I worked for Tesco Motor
6 Controls. Tesco, T-E-S-C-O, Tesco Motor Controls at South
7 Sacramento. I think they're still down there.

8 Q. All right.

9 A. I worked at Ophthalmic Imaging Systems and, let's
10 see, who else did I work for? I also contracted with them
11 and I worked for them.

12 I worked for a number of medical equipment
13 manufacturing companies, Fergie Corp, Keller Medical, Gish
14 Biomedical. I worked for Grand Patton Systems who makes --
15 or used to make -- I don't know if they're still in
16 business -- audio processing equipment for video
17 postproduction services, as well as some other stuff, radio
18 stuff.

19 Let's see; a very short stint at a place called
20 NorCal, NorCon, MorCal, I forget. That was a tiny little
21 place, less than three months. Bad place to work.

22 Let's see; and then I went to work for the County.
23 Let's see; the County was after Gish Biomedical. Yeah,
24 that's right. So not necessarily in correct sequence, but I
25 worked at a number of different places.

1 Q. All those places you worked, were you working
2 through an employment agency or a contracting agency?

3 A. No, no. I'd just go in and apply and get a job.

4 Q. Okay. All right. And you stayed at the County
5 for the balance of your professional career?

6 A. Almost 13 years.

7 Q. Okay. All right. So now circling back to the
8 County, starting in 1997, I think you had three years
9 before -- or two or three years before you became a systems
10 administrator, yes?

11 A. Yeah, that sounds about right.

12 Oh, I just want to amend just -- there's probably
13 other places I've worked at that I'm not even remembering.
14 Like I say, I need the resume.

15 Q. Fair enough. Okay. Now, with the work you
16 started to do at the County, can you please what your
17 initial -- you listed it before, but can you please describe
18 your initial position with the County and what you were
19 responsible for?

20 A. I was hired as a computer service technician and
21 my job was to go out and service PCs and help people with
22 running applications and troubleshooting hardware. But it
23 wasn't server or network; it was the end user's PCs and
24 such.

25 Q. And you did that for how long?

1 A. About a year, maybe, nine months to a year and a
2 half, I'm guessing.

3 Q. Did you have one supervisor during that time
4 frame?

5 A. No. I think I had three.

6 Q. Who were they?

7 A. The first guy was a guy named Tony, don't know his
8 last name. Second guy was a guy named Mike Panzika. And I
9 think the third person -- who was it? You know, I'm not
10 sure. Maybe it was just two. That's all I can remember at
11 the moment.

12 Q. I'd like to jump ahead just for a second. In
13 November 2008, that's when you created an account called
14 isphydoux?

15 A. Uh-huh; yes.

16 Q. Can you spell that, please?

17 A. Let me write it out. I-S-P-H-Y-D-O-U-X.

18 Q. Okay. And that's -- you created an account named
19 isphydoux?

20 A. Yes. I created it on ER-Recorder, the production
21 system. I called it ER-Recorder or ER-Recorder production.

22 Q. And when you created that, my question is, can you
23 describe for me who your supervisor was? I want you to
24 think about that point in time and I want to understand who
25 you were reporting to.

1 A. That's a good question. My supervisors have
2 changed a lot over the years. I think it was either Gary --
3 it would be one of the following: It would either be Gary
4 Spriggs or Bill Miller would be the two, I think, would have
5 it. It's a possibility that Steve Monaghan was -- I was his
6 direct report, but I think it was probably Gary Spriggs.

7 Q. And at that point in time, do you know if you were
8 reporting -- oh, wait.

9 A. I'm sorry, allergies. Valley gets me.

10 Q. Okay. Those are some sort of -- helps your eyes
11 with the allergies?

12 A. Opcon A.

13 Q. Okay. That won't affect in any way your ability
14 to hear and testify, will it?

15 A. No, no. Just makes my eyes blurry for a minute.

16 Q. Great. I just want to make sure we're clear.

17 A. Yeah.

18 Q. Was Phil Russ in the line of reporting at the
19 time?

20 A. I didn't -- I worked for -- there are different
21 divisions within the information general services agency.

22 Q. So you --

23 A. And I worked for, I believe it was, Network
24 Services at the time. I believe that's what it was called.
25 I qualify that a little bit. But, basically, our group did

1 the servers, the networking and the security.

2 Phil Russ was in charge of the information system
3 analysts at the time or the programmers, as they are
4 commonly referred to.

5 Q. Who was in charge of Network Services?

6 A. Well, that would be my boss. And, like I say, I
7 think it was Gary Spriggs. It's possibly Bill Miller.

8 Q. Okay. And --

9 A. I think it was Gary.

10 Q. And who was in charge -- and above that would have
11 been the head of IGS?

12 A. Yeah. That would be Steve Monaghan.

13 Q. Okay. So if I'm looking at an organizational
14 chart of IGS, one group is under IGS or Steve Monaghan.
15 What was his position, Monaghan's?

16 A. I believe he was the agency manager.

17 Q. Okay. And so this is for Nevada County, yes?

18 A. Yeah. There was a period of time -- you know, let
19 me think a second. Diana Carolyn, that's right. Diana
20 Carolyn, also one of the managers there, was in charge of
21 Network Services, Technical Services -- whatever we were
22 called at the time -- for a while, too. And I don't
23 know -- so it's possible she was my boss.

24 Q. And whoever your boss was, your belief is they
25 would have reported to Steve Monaghan?

1 A. Oh, everyone reports to Steve Monaghan. Steve was
2 actually my boss for a period of time, too. You know, I
3 think it was later, though, not during the creation time.

4 Q. All right.

5 A. After Bill Miller retired, I think he took it over
6 before Craig Porter showed up.

7 Q. But whoever your boss was in Network Services,
8 that person reported to Steve Monaghan?

9 A. Yes.

10 Q. Okay. And then that's one group. Network
11 Services was one division of IGS?

12 A. Right.

13 Q. What other divisions were there at that time,
14 November 2008?

15 A. Yeah. Let's see; there was Desktop Services,
16 where the computer service techs or CSTs worked.

17 Q. All right.

18 A. There was GIS, yeah, Graphical Informations
19 Services or Systems.

20 Q. What else?

21 A. You know, under IGS they ended up -- when they
22 changed the name to IGS from Information Services, I believe
23 they also took over the Library Systems. I didn't really
24 work with them directly. And they also took over Buildings
25 and Grounds.

1 Q. Okay.

2 A. And if they had anything else, I don't recall.

3 Q. So what other employees were there within Network
4 Services in November 2008, to your knowledge?

5 A. Let's see; there would be Fritz Gielow.

6 Q. Can you spell list name, please?

7 A. Oh, no. Not -- maybe -- not necessarily accurate.
8 I think it's like G-I-E-L-O-W.

9 Q. Okay.

10 A. But it may be G-E-I-L-O-W.

11 Q. Okay. Who else do you recall being employed in
12 Network Services in or about November 2008?

13 A. Steve Humes.

14 Q. And anyone else?

15 A. Art Porebski. I'm sorry, I said that badly. Art
16 Porebski, P-O-R-E-B-S-K-I, I think.

17 Q. Anyone else?

18 A. Yeah, let me think here. At that point in time,
19 it was me, Fritz, Steve, Art, Dan Hanna.

20 Q. How do you spell his last name?

21 A. I couldn't tell you if it has an "H" or an "A" at
22 the end.

23 Q. Okay. Anyone else? I know you said Dan Evers is
24 one of them.

25 A. Yeah, me. Yeah, I worked there.

1 Q. Okay. Who else? We're focused on Network
2 Services in November 2008.

3 A. Yeah. Because the personnel changed a little bit,
4 but I think that was later. That's all I recall at that
5 time.

6 Q. Okay.

7 A. If I think otherwise, I'll let you know.

8 Q. All right. Now, you mentioned another group, the
9 IS or programmers group?

10 A. Yeah.

11 Q. And that was headed up by Phil Russ?

12 A. Yes, at the time.

13 Q. And that's Philippe Russ, yes?

14 A. Yeah, I believe so.

15 Q. Did he go by Phil or Philippe?

16 A. We called him Phil.

17 Q. And R-U-S-S?

18 A. Yeah, I believe so. I think it's like Russ. I
19 think we always called it Russ.

20 Q. Okay. And do you know who was employed in that
21 group in November 2008?

22 A. I know some of them. Let's see; there is a Marie
23 McCluskey, who at the time was running the Aptitude program.
24 Kathy Barale, who took it over. John Jackson. Who else was
25 in there? Bruce -- Bruce, Bruce, what's Bruce's name? I'm

1 blanking on his last name.

2 Q. All right?

3 A. I don't -- Sandy Romero.

4 Q. Who else?

5 A. I can see this guy, but I can't remember his name.
6 Darn it. There is another person, but I can't remember that
7 person's name.

8 Q. Okay. So that's the sum total of who you can
9 recall at the moment working in the programmers group?

10 A. Yeah. I said John Jackson?

11 Q. Yes.

12 A. Okay.

13 Q. And circling back to Network Services, can you
14 describe in more detail what that group was responsible for
15 doing?

16 A. We were responsible for network security and
17 developing policy and procedures called the NCSP Collection,
18 Nevada County Security Policies/Procedures. We just called
19 it NCSP. You can interpret it either way.

20 We were responsible for server administration,
21 network administration, both wired and wireless. Mostly it
22 was systems and hardware on the server side of things. One
23 of those responsibilities would include backups, mail
24 administration; e-mail administration specifically, not
25 paper mail. We did a lot of things. Telephone

1 administration.

2 (MR. MULLER JOINS PROCEEDINGS.)

3 THE WITNESS: Because by then the telephone was IP
4 based.

5 Q. BY MR. THOMAS: Okay.

6 A. You know, basically, assisting other departments
7 as needed, you know, in research, recommendations, whatever
8 we could do. That's the gist of it.

9 Q. You talked about the NCSP collection that was
10 developed?

11 A. Yes.

12 Q. When was that developed?

13 A. It was developed over a number of years. I can't
14 tell you when it started, but it started after I got there,
15 because I wrote the majority of them.

16 Q. Okay. Do you know -- and NCSP stands for what?

17 A. Nevada County Security Policy or Nevada County
18 Security Procedures. They're actually integrated together.

19 Q. Okay. Do you know if there is an NCSP policy
20 associated with scrubbing or wiping and cleaning servers?

21 A. Yeah; yes, there is.

22 Q. Before they leave the County?

23 A. Yeah; yes.

24 Q. And do you know what the policy number is?

25 A. Not off the top of my head. However, that -- the

1 information that I gave you has a pretty complete collection
2 as of when I left of NCSP collections. And there's an NCSP
3 called NCSP-001 which is the master index and security
4 policy. If you go to that and look it up, it will give you
5 the NCSP -- you know, associated with destructive data --
6 what is it called? data destruction requirements. I forget
7 the exact -- and there may be some duplication because
8 there's also a body of NCSPs that deal with HIPAA and we
9 segregated HIPAA NCSPs from standard NCSPs where needed. So
10 there may be some duplication.

11 Q. Kathy Barale talked about some -- in some fashion
12 she talked about scrubbing of servers to a Department of
13 Defense standard. Does that --

14 A. That might be in the NCSP, yeah.

15 Q. Do you know who wrote that standard?

16 A. The standard was probably written by, I'm
17 assuming, DOD, Department of Defense.

18 Q. Do you know who within the County adopted that
19 standard?

20 A. The standards in the NCSPs were ratified through a
21 process called the ISSB -- Information Systems Steering
22 Board, I believe, is what it was called -- which was made up
23 of various department heads and Steve Monaghan.

24 Q. Okay.

25 A. And when you look at NCSP-001, you'll see an

1 active date and a mention of the ISB and its adoption date.

2 Q. With respect to the NCSP dealing with scrubbing of
3 servers, do you know which department within IS would have
4 been responsible for implementing that?

5 A. For servers?

6 Q. Yes.

7 A. It probably would fall to Network Services. It's
8 possible that it could be also done by Desktop, depending on
9 the individual and the situation.

10 Q. Okay.

11 A. It -- I don't know whether it's required by the
12 NCSP that's it's done by one person or one group or another.

13 Q. And do you know when that policy was adopted?

14 A. No, I don't. I have to look it up.

15 Q. When you worked for Nevada County, did you ever
16 have to scrub a server?

17 A. Yes, I did. Once.

18 Q. Okay.

19 A. That I recall.

20 Q. And what did you do?

21 A. This was before the NCSP was written, and we
22 destructively dismantled the hard drives and put holes
23 through them.

24 Q. Okay.

25 A. It was pretty thorough, yeah.

1 Q. Do you know what the -- do you know what the NCSP
2 protocol was that was adopted with respect to scrubbing of
3 servers? Do you know the content of that protocol?

4 A. Not off the top of my head. I'd have to read the
5 document again.

6 Q. That's in your collection?

7 A. I believe it is. We'll have to look to see for
8 sure.

9 Q. Do you have any understanding of any substance of
10 what it called for?

11 A. What I remember is that you would run a program
12 that would repeatedly override and wipe the hard drive so
13 that the data couldn't be retrieved through normal methods.
14 Not to say it couldn't be retrieved, but most people
15 wouldn't have the technology to be able to do so.

16 Q. When you say they couldn't, have you ever tried to
17 retrieve data off a hard drive scrubbed by Nevada County?

18 A. Not that I recall. Most systems that got scrubbed
19 tended to be PCs, end users machines. Desktop Services did
20 that a lot so they could reuse the systems, reload the
21 operating system on them.

22 Q. And was the purpose to write over unused disk
23 space on the servers?

24 A. Well --

25 MR. ABU-ASSAL: Vague and ambiguous.

1 THE WITNESS: -- I'm not sure what you mean.

2 Q. BY MR. THOMAS: Okay.

3 A. I would also like to add regarding -- the NCSP
4 could also, I believe, be implemented -- well, I need to
5 read it to know for sure. But we hired -- we, the County,
6 hired a destructive services company that we would put media
7 in and have them grind it up.

8 Q. Uh-huh.

9 A. You know, take it offsite and lock it up and take
10 it offsite and destroy it. And they -- who was that, that
11 did that. Recall, I think, was one of them. They may have
12 used some other company, too.

13 Q. And since you've left the County --

14 A. Excuse me, that's probably how most of the servers
15 were handled, was through destructive means.

16 Q. Since you've left the County, have you made it --
17 have you taken it upon yourself to continue -- strike that.

18 Since you left the County on December 4, 2009,
19 have you kept yourself updated and informed as to what the
20 NCSP policies are in Nevada County?

21 A. No.

22 Q. So to the extent NCSP policies were followed in
23 Nevada County in the year 2010, would you know what policies
24 were performed?

25 A. I have no idea what they have done since I left.

1 Q. You wouldn't know what the substance of any of the
2 policies are in 2010?

3 A. No.

4 Q. Okay. All right. Circling back to your work in
5 the Network Group, were you assigned to be the administrator
6 of certain servers within the County?

7 A. Yes.

8 Q. And at the point in time when you finished your
9 employment with the County in December of 2009, up until
10 that point -- at that point in time, what servers were you
11 responsible for administrating, if you know?

12 A. I was responsible for -- let me think. By the end
13 their Linux -- I should qualify this. Linux was being
14 phased out as an operating system, and most of the systems
15 that I had would be -- that were still operational would be
16 a system called L-BUS, Linux backup server. That was a
17 server whose job was to go out and get configuration
18 information and log information off of my other Linux boxes.
19 That was my backup system.

20 And I was -- there was a thing called ER-Global,
21 ER-Global is how it was referred to.

22 Q. Were there some servers --

23 A. That was for Health Department, by the way.

24 Q. Okay, ER-Global.

25 Were there some servers that were designated as

1 vendor maintained?

2 A. Yes.

3 Q. Okay. And was that true in 2009?

4 A. Yes.

5 Q. Was that true in 2008?

6 A. Yes, I believe so.

7 Q. Okay. What servers, to your knowledge, as of 2009
8 when you were at the County, were vendor maintained?

9 A. Well, the ER-Recorder Systems were vendor
10 maintained.

11 Q. And what was that?

12 A. That was -- the ER-Recorder was the document
13 recording system used by the Clerk-Recorder's Office.

14 Q. And that was vendor maintained?

15 A. Yeah; yes.

16 Q. All right. What does mean, vendor maintained?

17 A. That was an understanding between me and -- in
18 this particular case, because every case is different, you
19 know -- let me back up a second. Were there other systems
20 that were vendor maintained? Off the top of my head, I
21 can't think of any. However, there are systems like
22 ER-Global which I maintained as administrator, but the
23 application was maintained by the vendor. There's many
24 cases where a vendor maintains not the entire system, but a
25 component that resides on the system in the form of an

1 application.

2 Now ER-Recorder was a little different. It was --
3 the operating system was maintained by AtPac as well as the
4 application.

5 Q. What was the operating system?

6 A. I believe it's a Red Hat Linux 5.

7 Q. And what does it mean to be a system
8 administrator?

9 A. You have access to the internals on the system in
10 such a way that you can modify and maintain the system as
11 needed.

12 Q. Is it your understanding that the system
13 administrator has complete access to all areas of the
14 system?

15 A. To be a system administrator implies that you have
16 the root password to the system. If you have the root
17 password to the system -- root is also referred to as SU or
18 super user -- you are what's also called God on the system.
19 You can completely modify the system in any way and it will
20 not argue with you. It will let you do what you need to do.

21 Q. And it's your understanding that with respect to
22 the ER-Recorder server, AtPac was the system administrator?

23 A. Yes.

24 Q. And what's your understanding based on?

25 A. Historical experience with AtPac and David Krugle,

1 in particular.

2 Of course, Dave just walks out for the second I
3 mention his name. Come back, Dave.

4 Q. When you say historical experience with AtPac and
5 David Krugle, what was that experience?

6 A. As best as I can recall -- now, I can't guarantee
7 you a hundred percent accuracy on this, but basically the
8 previous versions of the AtPac server started originally as
9 a Santa Cruz operation UNIX or SCO UNIX system. This was my
10 first experience with the AtPac System when it was first
11 installed or my first experience with it, I should say. I
12 don't know when it was installed directly.

13 Q. When was your first experience with the AtPac
14 System?

15 A. It was probably between '99 and 2002. I couldn't
16 tell you exactly when. I know it's a large range, but, you
17 know --

18 Q. Okay. I'm sorry, but you --

19 A. It was originally administrated by Gary Spriggs at
20 that stage, not me.

21 Q. And then you said -- you were talking about your
22 bases for understanding that.

23 A. It's vendor maintained.

24 Q. Yes.

25 A. Sorry, I'm not supposed to finish your sentences.

1 Q. Please continue with describing your basis for
2 understanding that the AtPac ER-Recorder server was vendor
3 maintained.

4 A. Over time there was some contention between AtPac
5 and the County regarding backups, reliable backups. This
6 was on a previous version of ER-Recorder before the current
7 version under question. That was probably running Red Hat
8 3, possibly 4. I don't know which version it was.

9 We were -- we being -- my division were
10 responsible for doing the backups. Gary Spriggs operated
11 the backups on that at that time. The backups went to tape
12 or to mass storage, and it wasn't reliable, we were having
13 trouble.

14 AtPac did a number of things -- tried to get FTP
15 to work between AtPac and -- I mean, their location and the
16 County in order to transfer data for backup.

17 I don't know how it all came about, but basically
18 they weren't happy with the backups, and so the current
19 system was installed. And during this same time period to
20 get better backups, it was agreed that the system would be
21 maintained by AtPac and not the County, as far as like doing
22 system -- normal system administration duties, applying
23 patches to the operating system, which is something that an
24 administrator would normally do. And basically it became
25 understood, mostly by this time between me and Dave Krugle,

1 that, you know, I wouldn't add any patches to the system and
2 he would take care of administering the system and I would
3 act on his behalf when he needed my assistance, which on
4 occasion he did and he would call me, I would go into the
5 system.

6 Normally, I would not go into that system, except
7 that there was an issue with networking -- the NCSP-106
8 actually states that as an administrator I can go in there
9 for a number of different reasons. But tended to not go
10 into that box unless asked to. If we couldn't get ahold of
11 AtPac, we might do something drastic like reboot it, but we
12 tried not to because of damaging the application.

13 Q. And that was based on your understanding with
14 Mr. Krugle?

15 A. Right. And it was common knowledge within the
16 IS -- my division in IS that AtPac was vendor maintained and
17 we didn't mess with it.

18 Q. Without asking Mr. Krugle?

19 A. Yeah. Except for extenuating circumstances. If
20 something went wrong and he wasn't available, we would, of
21 course, be the next in line to take a look at it. It wasn't
22 like we were uneducated and couldn't deal with the system.
23 It's just that we wanted Dave to deal with it. He was the
24 primary administrator and we were like secondaries.

25 Q. He was -- have you ever heard the term first

1 responder? Have you ever heard that term?

2 A. Yes, I have. In -- yes, I've heard of it.

3 Q. What does that term mean -- well, did you
4 understand Mr. Krugle of AtPac was the first responder with
5 respect to the ER-Recorder server?

6 A. I never heard it particularly used, but that would
7 be applicable.

8 Q. Was it Mr. Krugle who was responsible for creation
9 of user accounts on ER-Recorder server?

10 A. Yes.

11 Q. And Mr. Krugle was responsible for system
12 maintenance and updates on the ER-Recorder server?

13 A. Yes, as per my earlier statement.

14 Q. And when that server was first initiated or
15 configured, who did that?

16 A. David did it, David Krugle.

17 Q. And that was an AtPac employee?

18 A. Yes.

19 Q. Was the server given to him to do that or did he
20 do that on site?

21 A. I believe we gave it to him, because I remember
22 taking it out of his car and helping him carry it back into
23 the office.

24 Q. Okay. So the County -- just so I have this
25 straight. The County gave the ER-Recorder server to

1 Mr. Krugle of AtPac to configure it in a manner that he felt
2 was necessary to run AtPac software; is that your
3 understanding?

4 A. Yes. He took it offsite, put it on the operating
5 system -- or I'm assuming he did or someone from AtPac did.
6 When it came back, it was a fully functional piece of
7 equipment as opposed to just a piece of hardware.

8 Q. Okay. And did you have an understanding what the
9 purpose or use of ER-Recorder server was?

10 A. Yes.

11 Q. What is that?

12 A. Its job is to basically scan in documentation and
13 associated database with metadata information to the images.

14 Q. And do you understand that ER-Recorder was where
15 AtPac software resided?

16 A. Yes, I assumed that the application was on there.

17 Q. Okay. Well, did you understand that AtPac
18 software was anywhere else in the County besides
19 ER-Recorder?

20 A. It was in its predecessor and it was on backup
21 tapes. I would assume -- wait, wait. Let me back up.

22 I know that it existed on the previous version of
23 ER-Recorder.

24 Q. How do you know that?

25 A. Because it operated as ER-Recorder before we put

1 in its new piece of hardware.

2 Q. Understood.

3 A. Yeah.

4 Q. When was the most recent version of ER-Recorder
5 configured and put into service?

6 A. I don't know the date and time that was.

7 Q. Do you have a --

8 A. It was when he -- that's when Dave brought the
9 equipment back to install, but I don't remember when that
10 was.

11 Q. Do you have an estimate of the year?

12 A. No, I don't. I couldn't be -- plus and minus two
13 years. You know, 2000 -- between 2006 and 2008 would be a
14 guess, but it's a guess. You'd have to look at the records.

15 Q. Some number of years before you retired in
16 December of 2009?

17 A. Yes, yes.

18 Q. Okay. Now, given that Mr. Krugle of AtPac was the
19 system administrator for the ER-Recorder server, you
20 understood that he had the -- through AtPac, the ability to
21 access all areas of that server, correct?

22 A. Yes.

23 Q. As a system administrator?

24 A. Yes.

25 Q. Okay.

1 A. I know that we both had the root login password.
 2 Q. And did he give you the root login password?
 3 A. When we set it up, we agreed on what it would be.
 4 Q. Okay. And you -- and the understanding was that
 5 you could use it in the event of an emergency?
 6 A. Or as needed.
 7 Q. Did you ever need to use it other than in an
 8 emergency?
 9 A. I don't recall any particular instance, but it's
 10 very possible. If there was a network connection or
 11 communication issue between the AtPac PCs where the indexing
 12 information and scan stations occurred and the server, it's
 13 possible that I had gone in there if Dave was not available.
 14 Q. Okay. So --
 15 A. I don't recall, though, doing so.
 16 Q. So let me back up. With respect to the root
 17 account then, I asked you if the understanding was that you
 18 would use it in the event of an emergency and you said or as
 19 needed.
 20 A. Yeah.
 21 Q. So just to sum that up, you had the root account
 22 from for the ER-Recorder server to use it in the event of an
 23 emergency and if Mr. Krugle was unable to address whatever
 24 concern needed to be addressed?
 25 A. What constitutes an emergency is subjective, but

1 yes, yes.
 2 Q. Okay. So you would only have used the ER-Recorder
 3 server root account if Mr. Krugle was unavailable, yes?
 4 A. No. It's possible that we wanted to go in there
 5 for security reasons and do a security audit, would be one
 6 possible use of accessing the system. It's also possible
 7 that we'd want to go in there and check the TCPIP stack to
 8 make sure that it's not causing communications issues on the
 9 network.
 10 There are a number of possible reasons to go in
 11 that box that don't have anything to do with normal
 12 operation of that server. I might do it and one of the
 13 other network service systems analysts may have done it. I
 14 can't say. I don't recall doing that, but it's possible.
 15 You know, when you're trying to localize a
 16 networking issue, you look at all possible avenues and in a
 17 case like this, I wouldn't probably call Dave and say, I'm
 18 going to go into the system. I probably would, but it's
 19 possible that I wouldn't. You know what I mean? We had the
 20 leeway to do that according to NCSP-102.
 21 Q. Did you ever discuss that with Mr. Krugle?
 22 A. I do know -- oh, there was a time that I went in
 23 there, because Dave contacted me or we talked at a later
 24 date and Dave said oh, I saw you were in the system on such
 25 and such a date doing such and such, because David looks at

1 logs. So he knew that I or somebody went into the system.
 2 It could have been Gary Spriggs, it could have been me, it
 3 could have been whoever, and David saw that activities were
 4 being logged in some of the login system. David is very
 5 thorough about looking at his logs, at least my experience
 6 has been such.
 7 Q. And what do you recall about that discussion, that
 8 Dave contacted you?
 9 A. Well, whether he contacted me or vice versa or it
 10 was just a conversation piece at another meeting, I don't
 11 recall how it occurred, but I remember Dave saying, I saw
 12 you go in -- that you were in there doing such and such.
 13 And I'm, like, yeah, I was in there. It was dah, dah, dah,
 14 dah, whatever it was, and I do not remember what it was at
 15 this time or how long ago this happened.
 16 Q. Do you remember anything else about that
 17 conversation?
 18 A. Only thing I remember is being impressed by Dave's
 19 thoroughness of looking at the log files and knowing that
 20 somebody other than, you know, he was in there mucking
 21 about.
 22 Q. I see.
 23 A. You know, perhaps mucking about's the wrong term.
 24 But, you know, looking, doing activities.
 25 MR. THOMAS: All right. I'd like to mark this

1 next in order as 201.
 2 (Whereupon Exhibit 201 was marked for
 3 identification.)
 4 MR. ABU-ASSAL: This is 201?
 5 Q. BY MR. THOMAS: So I've marked next in order,
 6 Mr. Evers, Exhibit 201, and do you recognize this as an
 7 e-mail that you sent?
 8 A. Well, it says it's from me and -- let's see; I
 9 don't recall it but, yes, I do recognize it as an e-mail I
 10 would have sent.
 11 Q. Okay. Do you believe you sent this e-mail to
 12 Scott McLeran?
 13 A. I don't have any reason not to.
 14 Q. All right.
 15 A. Yes.
 16 Q. All right. Thank you.
 17 A. Sorry.
 18 Q. It's dated December 2nd, 2009; do you see? Right
 19 below your name.
 20 A. Yes.
 21 Q. And that would have been while you were employed
 22 with the County of Nevada, right?
 23 A. Yup; yes.
 24 Q. And there's a -- you made a series of statements
 25 to Mr. McLeran. I'd like to go about halfway down the first

1 paragraph and it starts with -- I have a highlighted
2 section. See where it says, "This is..."

3 A. Oh, okay. "This is an..."

4 Q. Yeah. Can you please read that into the record?

5 THE COURT REPORTER: Slowly.

6 Q. BY MR. THOMAS: Thank you.

7 A. "This is an important point: Even though the
8 County purchased the server, it was physically given to
9 Mr. Krugle and Mr. Krugle took it offsite for loading of the
10 Red Hat Enterprise Version 5 operating system AND" -- upper
11 case -- "all associated configuration and loading of
12 software and, therefore, no one (especially not me) had
13 anything to do with configuration of this server."

14 Q. Okay. Now, you recall writing that to
15 Mr. McLeran?

16 A. Not in particular, but I'm not denying it's me
17 writing it.

18 Q. Sure. And who is Mr. McLeran, Scott McLeran?

19 A. He's a County Counsel. I think he's one of the
20 assistant County counsels.

21 Q. Okay. And was it your attempt to be as truthful
22 and accurate as you can with County Counsel?

23 A. Absolutely.

24 Q. With everybody, obviously?

25 A. Yeah, yeah.

1 Q. Okay. And what you said to him was true?

2 A. Yes, to the best of my knowledge.

3 Q. Okay.

4 A. Yes.

5 Q. I have no more questions about that document. You
6 can just set them face down.

7 Now, you mentioned that one of the things the
8 system -- the networking group did was it's responsible for
9 backups.

10 A. Yes.

11 Q. Do you know if ER-Recorder server was backed up
12 within the County of Nevada?

13 A. Well --

14 Q. At any time?

15 A. It had its own integrated tape backup system built
16 in -- thus the term integrated -- into the chassis of the
17 server itself. And its primary backups were these tapes
18 that we rotated.

19 There may have been attempts, successful or not I
20 do not know, to try to back it up to mass storage or other
21 tapes systems, but I don't know of such. You should talk to
22 Gary Spriggs about that.

23 Q. Okay. And when you said you rotated tapes,
24 where -- are these physical tapes?

25 A. Yes.

1 Q. And they insert into the server?

2 A. Yes.

3 Q. And how many tapes were there for the ER-Recorder
4 server, to your knowledge?

5 A. At this point in time, I remember there being
6 fifteen.

7 Q. Okay.

8 A. It's possible there were more, but that's what I
9 remember.

10 Q. And when you said you rotated the tapes, can you
11 please describe what you meant by that?

12 A. As per AtPac's instructions, we would go in in the
13 morning and the first thing we would do as part of your
14 morning activities would be to check that the tape on
15 ER-Recorder had been properly ejected from its tape backup
16 drive. If it had not been ejected, I would call Dave Krugle
17 and have him troubleshoot the issue in the system as needed.

18 If it had been ejected, then I would pull the tape
19 and take the next tape in the sequence of tapes and place it
20 in the drive for the next day's backup which occurred off
21 hours in the evening.

22 So every morning you'd come in and in theory, as
23 long as the tape was written to correctly and was ejected,
24 it would have the backup of, I guess, the data systems on
25 it, the images and database.

1 I don't really know what went on the tapes. I
2 just was doing what I was told as far as rotating the tapes.
3 That's what the term rotate means, go through the cycle and
4 repeat it.

5 Q. All right?

6 A. Tape rotation.

7 MR. THOMAS: Mark this next in order.

8 (Whereupon Exhibit 202 was marked for
9 identification.)

10 Q. BY MR. THOMAS: Okay. Placed before you is
11 Exhibit 202. Do you have that in front of you?

12 A. Yes, I do.

13 Q. All right. Can you please identify this for the
14 record? When I ask for that, if you could just say it's an
15 e-mail from whoever to whoever with a particular date and
16 subject.

17 A. The "from" column says "Dan Evers." The "to"
18 column says "Craig Porter" who was my supervisor at the
19 time, Scott McLeran, and it was a carbon copy to Steve
20 Monaghan and myself.

21 Q. Okay. And it says December 3rd, '09?

22 A. Yes, December 3rd, 2009.

23 Q. And was this e-mail sent while you were still an
24 employee of Nevada County?

25 A. Yes.

1 Q. And I'd like you to look at the e-mail. I'm
2 interested in the paragraph at the bottom where it says, "It
3 bears mentioning." It's about half -- actually, it's not at
4 the bottom. It's halfway down the first page.

5 A. I found it.

6 Q. Okay. Actually, the first sentence says, "As I am
7 leaving County employment on Friday December 4th;" do you
8 see that?

9 A. Yes.

10 Q. So were you employed by the County on December
11 4th?

12 A. Yes.

13 Q. And on December 5th you were not?

14 A. That is correct.

15 Q. Okay. Looking at the paragraph down at the
16 bottom, it says, "It bears mentioning," can you please read
17 that into the record?

18 A. "It bears mentioning, once again, that Dave Krugle
19 from AtPac was the server's administrator, not I. When the
20 County received this server, it was given to Mr. Krugle for
21 all of its configuration needs, both the operating system
22 and applications. Mr. Krugle later returned the server as
23 is, whereupon it was put into production. By default most
24 Linux systems, including Red Hat systems, rotate log files
25 in the var/log directory. This means that the 'log rotate'

1 service will limit the number of accumulative log files."

2 Do you want me to continue?

3 Q. Yeah.

4 A. "Related to this was the arrangement between AtPac
5 and the County as follows: Neither I nor Gary Spriggs were
6 allowed to make any changes to the AtPac ER-Recorder
7 production system without coordination and permission of
8 AtPac, and this rarely if ever happened."

9 Q. Let me stop you there. Do you recall that ever
10 happening?

11 A. No --

12 Q. Okay.

13 A. -- actually. I mean, it may have, but I don't --
14 that's why the words "rarely if ever." I just don't recall
15 it happening.

16 Item two -- that was item one. Item 2: "All new
17 user logins were authorized through either the NCSP-101 or
18 NCSP-102 security affidavits which were signed off by
19 Gregory Diaz or his authorized representatives," with an "S"
20 on that.

21 3: "I cannot remember a single time that I was
22 allowed to apply any system updates. Please note when I
23 asked Mr. Krugle about this, I was told no, (I) may not run
24 updates as doing so might break the server," end quote.

25 When I would complain about the situation with

1 management, I was always told don't worry about it, it's
2 behind a fire wall or who are we trying to protect ourselves
3 from, or AtPac is a trusted vendor, et cetera.

4 Q. Let me stop you there.

5 A. Okay.

6 Q. What do you recall complaining about?

7 A. I was concerned that proper security updates and
8 configuration requirements on ER-Recorder production were
9 not being applied. I know that the system from past
10 experience in the previous versions were sensitive to
11 patches, and that's why we agreed to let Dave handle those
12 and be vendor maintained.

13 Still, I used to be, between 2000 and 2004, the
14 chief information security officer, which is an assigned
15 task, not a position, and so I'm always paranoid about
16 security when it comes to computer systems, and that's what
17 I was complaining about.

18 Q. Okay.

19 A. Anyway, continue?

20 Q. Yeah.

21 A. Item 4: "For a vendor AtPac had an unusually high
22 level of access to our network via a special VPN server --"

23 Q. And that means --

24 A. Virtual private network.

25 "-- via a special VPN server and they had free run

1 of the various AtPac systems until they were taken off-line
2 about mid 2009."

3 And then Item 5 on the next page says, "Backup of
4 ER-Recorder production server was performed by a script
5 written by AtPac. This did not include any var/log files.
6 Mr. Krugle and I verified this during his recent site visit.
7 These tapes included three weeks of backup. Three weeks
8 times five days equals 15 tapes as per AtPac
9 specifications." So it was 15 tapes.

10 Q. Okay.

11 A. I did remember.

12 Q. Now, circling back to these five numbered
13 paragraphs you just read into the record --

14 A. Yeah.

15 Q. -- paragraph No. 1, that was a true statement,
16 yes?

17 A. Correct.

18 Q. Paragraph No. 2, those are true statements in
19 paragraph 2, yes?

20 A. Yes.

21 Q. Paragraph No. 3, were those true statements in
22 paragraph 3?

23 A. Yes.

24 Q. And paragraph 4, you believe those to be true
25 statements?

1 A. Yes.
 2 Q. Paragraph 5, those are true statements?
 3 A. Yes.
 4 Q. Okay. And nothing in paragraphs 1, 2, 3, 4, 5 is
 5 false, correct?
 6 A. Not to my knowledge.
 7 Q. Okay. All right.
 8 A. Quick question.
 9 Q. Yes, Mr. Evers.
 10 A. May we take a bathroom break?
 11 MR. THOMAS: Thank you so much for bringing that
 12 up. You're not chained to the table. We can take breaks.
 13 Counsel and I have to agree to go off the record before we
 14 go off the record.
 15 MR. ABU-ASSAL: Yeah, of course we agree.
 16 THE WITNESS: You don't need that on the record,
 17 believe me.
 18 MR. THOMAS: So let's take a break and go off the
 19 record and we'll come back in a few minutes.
 20 THE WITNESS: Okay. Thank you.
 21 THE VIDEOGRAPHER: We're going off the record at
 22 11:13 a.m. This is the end of disk No. 1.
 23 (Recess taken.)
 24 THE VIDEOGRAPHER: We're back on the record at
 25 11:24 a.m. This is the beginning of disk No. 2.

1 Q. BY MR. THOMAS: Mr. Evers, did the NCSP policies
 2 within Nevada County that you've discussed earlier, did they
 3 discuss the protocol as to how a vendor-maintained server
 4 should be administered?
 5 A. I don't believe so. I don't recall seeing such a
 6 document.
 7 Q. So the -- do they allow for servers to be vendor
 8 maintained? Is that specifically permitted in the NCSP
 9 documentation?
 10 A. Oh, man I haven't looked at it for a long time. I
 11 don't recall. It may be that it could be written in
 12 stipulation as part of the NCSP-102. It may be in the
 13 documentation in the back, but --
 14 Q. But you don't know as you sit here today?
 15 A. I don't really recall.
 16 Q. You don't remember seeing anything in the NCSP
 17 documents for Nevada County that --
 18 A. No.
 19 Q. -- provided for how a vendor-maintained server
 20 would be administered?
 21 A. No, not that I recall. In this particular case
 22 regarding ER-Recorder production to me, my recollection is
 23 it was more of a verbal understanding between us and AtPac,
 24 us being IS in general, not just me, but everyone.
 25 Q. Do the NCSP documents within Nevada County provide

1 for -- do they specify how the County IT Department can
 2 deviate from the NCSP protocols through verbal agreements
 3 with vendors?
 4 MR. ABU-ASSAL: Vague and ambiguous, lacks
 5 foundation.
 6 Q. BY MR. THOMAS: Do you recall anything like --
 7 A. No, I don't recall that.
 8 MR. THOMAS: Mark this next in order.
 9 (Whereupon Exhibit 203 was marked for
 10 identification.)
 11 Q. BY MR. THOMAS: All right. This is an e-mail that
 12 is a chain of e-mails and there is one that says it's from
 13 Dan Evers to Steve in the middle of the first page.
 14 A. Yes.
 15 Q. Do you see that?
 16 A. Yes.
 17 Q. And that's dated December 31, 2008, yes?
 18 A. Correct.
 19 Q. And Steve, who is Steve?
 20 A. I'm assuming that's Steve Monaghan.
 21 Q. Okay.
 22 A. Wait. Let me read it first, okay?
 23 Q. Yes.
 24 A. There were two Steves in the department; Steve
 25 Humes and Steve Monaghan. But I see down here that the

1 previous e-mail was Steve Monaghan, so this would be in
 2 reply, therefore I would infer that I'm replying to Steve
 3 Monaghan.
 4 Q. Okay. And the first sentence says, "I/We have
 5 never ran up2date on this box as per our agreement with the
 6 vendor AtPac. Only Dave/AtPac does this so as to avoid
 7 patches that may interfere with the CRiis system." Do you
 8 see that?
 9 A. Yes.
 10 Q. And when you referred in that sentence to this
 11 box -- let me back up. Did you send this e-mail to Steve
 12 Monaghan?
 13 A. It appears, like you said, to be a thread in that
 14 there was -- that this was part of the thread.
 15 Q. Okay. Do you believe you sent this to Steve
 16 Monaghan?
 17 A. I do, I do.
 18 Q. When you refer to "this box," what you are you
 19 referring to?
 20 A. I was referring to ER-Recorder. And since this
 21 was 2008, I would believe it was the ER-Recorder production
 22 system we are referring to in this conversation.
 23 Q. Okay. And then you say, "As per our agreement
 24 with the vendor."
 25 A. Yes.

1 Q. Is that the agreement you referred to earlier in
2 the your deposition about the vendor --

3 A. Vendor maintained, yes.

4 Q. -- maintaining that server?

5 A. Yes.

6 Q. Okay. And it says -- you refer at the end of that
7 sentence to the CRiis system; do you see that?

8 A. Yes.

9 Q. What is that?

10 A. That was the term we used for the application that
11 AtPac put on the machine that takes care of the clerk
12 recording process.

13 Q. And so in this e-mail you're indicating the CRiis
14 system is located on the ER-Recorder?

15 A. Correct. Yeah, it's -- the application is on
16 there.

17 Q. When you say application, you're talking about
18 software?

19 A. Correct.

20 Q. Okay. So it's AtPac software, yes?

21 A. Correct.

22 Q. No more questions on Exhibit 203.

23 (Whereupon Exhibit 204 was marked for
24 identification.)

25 Q. BY MR. THOMAS: All right. Do you have Exhibit

1 204?

2 A. Yes.

3 Q. And this appears to be another e-mail written by
4 you to Steve Monaghan and Craig Porter?

5 A. Correct.

6 Q. Dated October 5, 2009; do you see that?

7 A. Yes.

8 Q. Is that what this is?

9 A. It's what it appears to be.

10 Q. Do you have any reason to believe it is not what
11 it is?

12 A. No.

13 Q. There's a number of paragraphs here and you're
14 referring to Downey Brand in the first one. Do you see
15 that, a Downey Brand FOIA request; do you see that?

16 A. Correct.

17 Q. Do you remember being involved in gathering
18 documents in response to a Downey Brand Public Records Act
19 Request?

20 A. Yes.

21 Q. Okay. And what were you asked to look for?

22 A. I was given a copy of the FOIA and I read the FOIA
23 and talked with Steve Monaghan about it to confirm my
24 understanding of it. And unless I had that document in
25 front of me, I couldn't tell you exactly what I was supposed

1 to extract, but the only part I do remember was e-mails.

2 There may have been other aspects, too.

3 Q. Do you remember looking for e-mail?

4 A. Yes.

5 Q. Okay. If we go down to Paragraph 4(a), do you see
6 that, regarding ER-Recorder production and ER-Recorder old
7 servers?

8 A. Yes.

9 Q. It says, "The AtPac System was always considered a
10 'vendor' ran system and the backup of the AtPac System was
11 specified and configured by AtPac." Do you see that?

12 A. Yes.

13 Q. Okay. What's your basis for that statement?

14 A. Experience.

15 Q. Okay. When you say the backup of the AtPac System
16 was specified and configured by AtPac, you talked earlier
17 about a number of tape drives.

18 A. Correct.

19 Q. Is that what you were referring to?

20 A. The -- I believe what I'm referring to at this
21 point is the backup -- the integrated tape backup system
22 that's built into ER-Recorder production and the software
23 that operates it which was installed and configured by AtPac
24 personnel.

25 Q. Okay. Turning to Paragraph 4(c).

1 A. Okay.

2 Q. It says, "The ER-Recorder production system used
3 the built-in DLT Ultrium two-tape drive for archive
4 creation. These backup tapes were rotated in and out of the
5 drive and reused every three weeks. Three sets of five
6 tapes. Currently these tapes are located in the fire safe
7 in ISA area of the shop." Do you see that?

8 A. Yes.

9 Q. And you're referring to -- this e-mail's written
10 on October 5th, 2009.

11 A. Yes.

12 Q. How did you know those tapes were in that fire
13 safe?

14 A. The fire safe at that time was located
15 downstairs -- or located in the information and general
16 services offices, in their Rood Building. Basically, I
17 could walk to it from my desk. It was four drawers and big,
18 old heavy safe, pull it open, store your tapes.

19 Q. Did you ever look at the contents of the tapes of
20 the ER-Recorder?

21 A. The only time I recall looking at it was when Dave
22 was there and we were trying to extract log information. I
23 have no idea what went on the tapes or whether the AtPac
24 software did a validation after the backup occurred, so...

25 Q. And when you say log information, you're talking

1 about Red Hat logs?

2 A. Red Hat logs, yeah.

3 Q. The Red Hat was the --

4 A. Red Hat's the brand of Linux operating system that
5 operates that server.

6 Q. Okay. Do you know what was on those tapes other
7 than logs?

8 A. Actually, anything on those tapes, whether it be
9 logs or data, is an assumption on my part. I really don't
10 know what was backed up onto those tapes.

11 Q. Okay.

12 A. Not definitively. It's an assumption on that.

13 Q. Done with 204.

14 (Whereupon Exhibit 205 was marked for
15 identification.)

16 Q. BY MR. THOMAS: Do you have Exhibit 205?

17 A. Yes.

18 Q. What is this document?

19 A. It's an e-mail from Scott McLeran to myself, Dan
20 Evers, dated October 16th, 2009, and I'm not sure what it
21 says yet.

22 Q. I think it's a chain of e-mails. Do you see that?

23 A. Yeah. Okay. Then chains of e-mails I need to
24 start at the back and work forward. So if I go back, the
25 second page looks like a top of the e-mail that I sent to

1 Scott on October 16th, 2009, subject proposed e-mail
2 response.

3 Q. Uh-huh.

4 A. And Scott has asked me to review an e-mail prior
5 to him sending it regarding security points. I'd have to
6 read the entire text to know what I was talking about.

7 Q. Okay. If we look at the text, it says "Draft
8 e-mail to me." Do you see that?

9 A. Okay. All right.

10 Q. There's a first paragraph and there's a last
11 sentence of the first paragraph.

12 A. Starting at "I simply need authorization."

13 Q. Yeah. It says, "I simply need authorization from
14 AtPac to power the server up in order to copy the files, as
15 it was agreed that the server would not be powered on
16 without AtPac authorization." Do you see that?

17 A. Yes.

18 Q. Okay. Do you know this agreement that's
19 referenced, it was agreed that the server would not be
20 powered on without AtPac authorization, do you know how that
21 agreement was reached?

22 A. Not really. That -- my understanding, what I can
23 recall was it had to do with conversations between AtPac and
24 possibly County Counsel and Steve Monaghan.

25 Q. Were you party to those conversations?

1 A. No, not directly.

2 Q. Okay. What were you told about that agreement?

3 A. That -- what I can recall is that AtPac wanted
4 those machines off and the County agreed to keep them off
5 without their permission. I mean, keep them off unless they
6 were consulted with first to turn it back on, for whatever
7 reason.

8 Q. Do you know why the County agreed to that?

9 A. I have no clue why they agreed to it.

10 Q. Okay. Do you know if the County adhered to that
11 agreement?

12 A. I can't say they did for sure or not.

13 Q. Do you know when the last day of AtPac's -- strike
14 that.

15 Do you know when AtPac's license of its software
16 to the County terminated?

17 A. No, I don't.

18 Q. Are you familiar with the date of June 30th, 2009
19 being the last day the County had the AtPac System under
20 license from AtPac?

21 A. It rings a vague bell. I remember there was a
22 deadline coming up, but I don't know the details of it. At
23 the time I -- it sounds right, but I don't really know for
24 sure.

25 Q. Let me ask you this: Do you know if after June

1 30th, 2009 you ever powered up the ER-Recorder server
2 without telling AtPac?

3 A. We might have. I don't recall for --
4 definitively.

5 Q. And having looked at these e-mails for a bit,
6 Exhibit 205, the top one from Mr. McLeran to you, this
7 e-mail chain attached to it, did you receive this from
8 Mr. McLeran?

9 A. It looks like I did.

10 Q. Do you have any reason to think you didn't?

11 A. No.

12 Q. Okay. I'm done with 205. Can I have No. 2?

13 MR. KRUGLE: No. 2?

14 MR. THOMAS: Yes. I'm going to jump ahead a
15 little bit.

16 Let's see; next in order.

17 (Whereupon Exhibit 206 was marked for
18 identification.)

19 Q. BY MR. THOMAS: All right. I've given you what's
20 been marked as Exhibit 206. Do you have that in front of
21 you?

22 A. Yes, I do. It's an e-mail from Phil Russ to Jesse
23 Dion and Tom McGrath.

24 Q. Do you recognize the name Jesse Dion?

25 A. Yes.

1 Q. How is it you know that name?
 2 A. Though I never met him, he was the primary
 3 technical contact at Aptitude.
 4 Q. And do you recognize the name Tom McGrath?
 5 A. Yes, I met Tom McGrath.
 6 Q. Who is Tom McGrath, to your knowledge?
 7 A. An employee of Aptitude.
 8 Q. Okay. And when did you first meet him?
 9 A. I met him and a gal named Sandever, I believe.
 10 Q. Patty Sandever?
 11 A. Patty Sandever, thank you.
 12 Q. Yes.
 13 A. When they came on site to work on the Aptitude
 14 server, that was in the network systems lab, and I believe
 15 we were calling that AS-Nevada at the time.
 16 Q. And when did you first become aware there was an
 17 AS-Nevada server?
 18 A. Rumbings that would show up pre -- were around
 19 for a couple weeks and then one day an HP server arrived at
 20 the County and we were told this was the, like, R and D or
 21 staging servers, something to that effect, for Aptitude
 22 systems. And I remember it was an unusual occurrence
 23 because it was an HP server and the County is a Dell shop
 24 and Monaghan -- Steve Monaghan was unhappy that an HP server
 25 was even on the premises. I remember it showing up.

1 Q. Okay. Were you involved in configuring that
 2 server?
 3 A. Not initially. Initially the configuration
 4 occurred -- I believe it was probably Fritz Gielow did the
 5 initial configuration, loading the operating system onto it
 6 and getting it hooked up to the network and such. My
 7 involvement with it was to place on some software that would
 8 facilitate secure copy transfer of files between it and
 9 ER-Recorder. The utilities they used were PSCP and WIN-SCP.
 10 Oh, there's also probably putty, but I don't know if we used
 11 it, P-U-T-T-Y.
 12 Q. And you said your involvement was to place some
 13 software that would facilitate copy transfer of files
 14 between it and ER-Recorder. When you said "it," you mean
 15 AS-Nevada?
 16 A. Yes.
 17 Q. The Aptitude server?
 18 A. The Aptitude R and D or staging server.
 19 Q. Who asked you to put those programs to allow
 20 copies to be taken from ER-Recorder to AS-Nevada?
 21 A. The instructions, although not mentioning those
 22 applications specifically, the instructions in NCSP-102 that
 23 were associated with the Aptitude server, which were
 24 assigned by Gregory Diaz, the data owner, specifically said
 25 that we were -- this is going to be a paraphrase, but

1 basically provide the means to access the ER-Recorder server
 2 for read-only access to the document recording server,
 3 something to that effect.
 4 If you look at the NCSP-102, it will give you the
 5 details of what they requested, and in order to do that --
 6 well, excuse me. I was also told verbally by conversations
 7 with Marie McCluskey, as per the instructions of Phil Russ,
 8 her supervisor, and a manager, to stage it up so that they
 9 could copy files, so they'll be copying image files and data
 10 records over for the Aptitude system.
 11 So taking my instructions both verbal and written,
 12 I placed these applications on the server and set up the
 13 login to allow them access to ER-Recorder production.
 14 Q. So with respect to the copy application, those
 15 were instructions you received from Marie McCluskey per the
 16 instructions of Phil Russ?
 17 A. Yes.
 18 Q. Okay. And how do you know Phil Russ gave her
 19 those instructions?
 20 A. I had received a voice mail from Phil stating that
 21 the Aptitude personnel would be arriving. I don't remember
 22 which days, shortly, next day, something like that, and that
 23 sorry for the short notice. He had written me in an e-mail,
 24 you know, see Marie McCluskey for further details. You
 25 know, basically, it was Phil's way of lighting a fire under

1 me to get me to do this work ASAP right now. No matter what
 2 else I have to do, this is taking precedence.
 3 Q. So he told you to confirm with Marie McCluskey?
 4 A. Yes.
 5 Q. And she's the one who told you that he said to
 6 place applications on AS-Nevada which would allow files to
 7 be copied from ER-Recorder to AS-Nevada?
 8 A. Not exactly. She wouldn't tell me to place
 9 anything on anything. She would tell me to facilitate the
 10 transfer of, you know, the files.
 11 Q. Okay.
 12 A. I interpret that as placing software on there so
 13 that the vendor could then come in and access the target
 14 system ER-Recorder production and copy the files over.
 15 Q. So if I have this correctly, Ms. McCluskey told
 16 you the desired result and you made that happen?
 17 A. Yeah.
 18 Q. The desired result was that people would be able
 19 to pull files from ER-Recorder and copy them onto AS-Nevada,
 20 correct?
 21 A. Correct.
 22 Q. And the programs -- you installed three programs?
 23 A. I remember installing at least one for sure called
 24 WIN-SCP. But knowing me, I probably also installed the
 25 putty suite of programs, which is a group of programs which

1 include secure copy, secure FTP and putty which is a secure
2 terminal emulation program.

3 Q. Did either Ms. McCluskey or Mr. Russ tell you that
4 the request to be able to copy files from ER-Recorder to
5 AS-Nevada came from Aptitude?

6 A. Well, NCSP-102 was Aptitude's application for
7 access to our network and our systems. Our specific
8 instructions on it authorized by Gregory Diaz to allow
9 access to ER-Recorder by the vendor Aptitude. The specific
10 vendor personnel in the NCSP-102 was Jesse Dion.

11 Q. And circling back to Exhibit 206, do you have that
12 in front of you still?

13 A. Yes.

14 Q. You see an e-mail -- it's a series of e-mail
15 chains, right; do you see that?

16 A. Yes.

17 Q. And at the second page at the bottom it's an
18 e-mail from Phil Russ to Jesse Dion. It's dated October 31;
19 do you see that?

20 A. On the bottom, yeah, the second page, yes.

21 Q. It says, "Hello, Jesse. The two people who were
22 to set up access for you were both out today. Please
23 contact me on Monday and I will let you know if they are
24 back and we are able to get you what you need. Thank you,
25 Phil." Do you see that?

1 A. Yes.

2 Q. And then he responds on the 3rd of November, it
3 says, "Philippe, good morning." Do you see that?

4 A. Yes.

5 Q. "I got your e-mail Friday, wanted to touch base
6 with you in regards with getting our server accessible.
7 Some travel arrangements are pending in the server being
8 available. If it's not, then we will need to reschedule
9 those travel plans."

10 And Mr. Russ responds, "We're working on it today
11 and plan to have it ready by this afternoon. You will need
12 to use it in the test lab." Do you see that?

13 A. That's on the following Monday, November 3rd, yes.

14 Q. What's the test lab?

15 A. Well, it's the Network Services lab that he's
16 referring to or NS lab, as we called it, and that is a room
17 behind a secured door within the information systems area
18 and it's -- basically, in that area you have a small room
19 where you can set up equipment and experiment on it and it's
20 adjacent to the main computer room and the network
21 operations center at that time, which I think has moved
22 since.

23 Q. I'll get into that later, but when Aptitude came
24 on site and for the first time, Ms. Sandever and
25 Mr. McGrath, were they working in the test lab?

1 A. Yes.

2 Q. Okay. Can you describe the test -- the size of
3 the test lab for me?

4 A. I believe it's approximately 12-by-12 or maybe
5 14-by-14 feet square.

6 Q. Okay.

7 A. Has a single-door entry, no windows, force
8 ventilation through it on a raised floor.

9 Q. Okay. How many chairs?

10 A. Varies. Basically, there's usually two to three
11 chairs in there at any given time.

12 Q. Okay.

13 A. About three benches, work benches; one along each
14 wall.

15 Q. I see. Okay.

16 A. And a big white board on both ends of the room.
17 There's two white boards in there.

18 Q. Okay. Then on the next page, in the last -- first
19 page of this e-mail chain.

20 A. Okay.

21 Q. There's an e-mail from Mr. -- I believe Mr. Dion
22 to Phil; do you see that?

23 A. Yes. Yes, I see it.

24 Q. It says, "Not sure you got my e-mail earlier in
25 regards to read-only access to the AtPac database." Do you

1 see that?

2 A. Yes.

3 Q. "I had spoke with Marie in detail about it, so I
4 think she understands exactly what we need, but if you have
5 any questions or concerns, please feel free to give me a
6 call." Do you see that?

7 A. Yes.

8 Q. Did Ms. McCluskey ever talk to you about her
9 discussions with Jesse Dion?

10 A. Not that I recall.

11 Q. Okay. All right. Okay. No more questions on
12 206.

13 (Whereupon Exhibit 207 was marked for
14 identification.)

15 Q. BY MR. THOMAS: Okay. Dan, do you have 207?

16 A. Yes.

17 Q. Okay. This is another series of e-mails. Do you
18 see that?

19 A. Yes.

20 Q. And it starts in the back and it works its way up
21 to the front. This is the next day. Do you see November 4
22 on these?

23 A. Actually, the 3rd is -- the 4th is -- yeah,
24 actually it's starting at the bottom of the second page and
25 continues onto the --

1 Q. Why don't we go to the very last e-mail and work
2 our way back up through the chain. The last one in the
3 back.

4 A. Okay.

5 Q. Earliest in time. Do you see an e-mail at the
6 bottom that's -- it's from Phil Russ to hello Dan? Do you
7 see that?

8 A. Yes.

9 Q. Do you believe -- are you the Dan referred to in
10 this e-mail?

11 A. Yes.

12 Q. Did you receive this e-mail?

13 A. I believe I did.

14 Q. Okay. And it says -- this is Mr. Russ talking to
15 you, yes?

16 A. Yes.

17 Q. E-mailing you.

18 "I just spoke with Fritz and he said that I need
19 to speak with you. I will be CCISDA." What's that, if you
20 know?

21 A. CCISDA, it stands for California County
22 Information Services Directors Association.

23 Q. Okay. And he's at a conference of some kind?

24 A. Yeah.

25 Q. All right.

1 A. Yes.

2 Q. And then he says, "We have a person vendor coming
3 in who needs inquiry-only access to the AtPac data." Do you
4 see that?

5 A. Yes.

6 Q. And I don't know -- did you understand what
7 inquiry-only means?

8 A. I believe I know what they were trying to say.

9 Q. I just want to know what you understood.

10 A. What I understood was that they were trying to
11 access the data on the AtPac ER-Recorder production server.

12 The term inquiry only, that's an issue because
13 that is a misnomer. That's being -- the person speaking and
14 making the request, and this was and the NCSP-102, was
15 obviously, to me at least, a database administrator, not a
16 systems administrator who didn't understand what they were
17 really asking for in order to get access to what they
18 needed.

19 Q. What do you mean by that? I'm not sure I'm
20 understanding you.

21 A. It's a complex subject. But, basically, the
22 way -- the best I can distill it is that sure, everyone in
23 the world would like read-only access to everything. I
24 mean, every hacker in the world would love read-only access
25 to anything. Because if you can read it only, you can copy

1 it; you can do what you need to do.

2 But in reality -- let me finish. But in reality
3 if a person needs to log onto a server in order to gain the
4 access that they need, they're going to have a combination
5 of rights; both read, write and execute in order to do it.

6 To simply ask to read only is nonsensical in
7 technical nature. But I know what they were trying to do
8 because I talked to Marie. They were trying to get at the
9 AtPac data which is a combination of data in a database and
10 images associated with that database.

11 Q. And to copy it?

12 A. Absolutely. If you -- you know, if I could only
13 give them read-only access, they'd still be able to copy it.

14 Q. Understood.

15 A. Yes.

16 Q. Okay. Was this the first request you received
17 concerning creating access to ER-Recorder?

18 A. I may have been told verbally before that time,
19 but this is the first written that I can recall.

20 Q. Okay. And then it looks like you replied to him
21 up above at the top.

22 A. Yes. "Hi Phil. I'll do what I can to facilitate
23 access to the AtPac System. GDiaz or his rep will need to
24 sign off on a NCSP --" and that's a mistake. It says
25 NCSP-101. It should be NCSP-102. If there isn't already

1 one on file, which there was and I got ahold of it before I
2 did the work.

3 Q. Okay. And then the next chain and e-mail, the
4 next part of the chain says it's from Jesse Dion. Do you
5 see that?

6 A. Yes.

7 Q. It says, "Good morning guys. I'm sure you're all
8 busy with the elections going on. I just wanted to touch
9 base with you. I know someone spoke with Zahn Gamboa in
10 regards to getting the password for the box. Everything
11 okay?"

12 A. Right.

13 Q. Did you receive that e-mail?

14 A. Yes, I remember it.

15 Q. Okay. And this is from Mr. Dion at Aptitude, you
16 understand?

17 A. Yes.

18 Q. And he says, "I know someone spoke with Zahn
19 Gamboa."

20 Let me ask you, did you speak with Zahn Gamboa?

21 A. I've never heard of him before since, except
22 referenced in this one e-mail. It's a complete mystery who
23 Zahn or Jahn -- if it's Chinese, it would be pronounced
24 Jahn.

25 Q. Okay. And then -- oh, I see.

1 And he's referring to getting the password for the
2 box.
3 A. Right.
4 Q. And that was the password to allow access to
5 ER-Recorder?
6 A. That was my understanding, yes.
7 Q. Okay. And then you responded to him that you had
8 created a login on ER-Recorder system and will give him the
9 details upon your arrival at our site. Do you see that?
10 A. Correct. Because I will not send a login and
11 password in an e-mail. That's not a security -- that's a
12 security risk, I should say.
13 Q. And why would you not? Tell me about that. Why
14 would it be a security risk?
15 A. If anybody intercepts an e-mail and e-mails are in
16 plain text, they would be able to, if given access to that
17 server, then access it via that login. It makes no sense to
18 give out a password or a login over an e-mail.
19 You can maybe send it in two separate e-mails.
20 You're still running a risk because e-mails on the internet
21 are sticky. They exist in multiple locations at any given
22 time. It's just not good thinking from a security
23 standpoint to do that.
24 Q. Okay. So it's your understanding that you did not
25 send the account password for ER-Recorder over e-mail to

1 Aptitude?
2 A. That is correct.
3 Q. And you gave that to them in person, instead?
4 A. Yes.
5 Q. Okay. This is dated November 4th, yes?
6 A. Yes.
7 Q. Okay. Let's turn to the next -- the first page of
8 the e-mail chain. Do you have that?
9 A. Yes.
10 Q. And there's a response from Mr. Dion; do you see
11 that?
12 A. Yes, I do.
13 Q. And it says, "Great. Thanks Dan. Tom McGrath who
14 is our VP of Development will actually be on site along with
15 Patty Sandever, our account manager in California. I have
16 included them on this e-mail. I will let them know to come
17 see you when they arrive."
18 A. Correct.
19 Q. And then it looks like you responded to him. "Is
20 there an approximate ETA on their arrival." Do you see
21 that?
22 A. Yes.
23 Q. And you sent that e-mail at 9:51, according to
24 this?
25 A. Yes.

1 Q. Does that seem right to you; that's when you sent
2 that e-mail?
3 A. Yeah. Probably in the morning, trying to keep
4 things rolling, yeah.
5 Q. Okay. And did you have any other communications
6 concerning this particular visit before the visit occurred
7 with anyone.
8 A. Just the e-mails and voice mail from Phil Russ and
9 conversations with Marie McCluskey either the day of or the
10 day before.
11 Q. Did you save the voice mail from Phil Russ?
12 A. No; no, I did not.
13 Q. Do you know if the Nevada County network --
14 somewhere in the Nevada County that voice mail would be
15 recorded?
16 A. To my -- it's technically possible. I don't
17 believe they were saving e-mails at that time. However, the
18 person you need to contact regarding that specific question
19 is Dan Hanna, who I believe is still with the County. At
20 least he was as of about six, seven months ago.
21 Q. And turning -- I'm sorry, I forgot to ask you some
22 questions about this exhibit.
23 A. Sure.
24 Q. What is it, 207?
25 A. 207.

1 Q. Yeah, 207, with respect to Exhibit 207, up at the
2 top there's a number of people copied. Your e-mail that
3 says, "Jesse, is there an approximate ETA on their arrival?
4 Dan." The one you sent at 9:51. You copied Jesse Dion, you
5 copied Phil Russ, right?
6 A. Right, correct.
7 Q. And you copied Ms. Sandever, you copied
8 Mr. McGrath, you copied Marie McCluskey?
9 A. Correct.
10 Q. And you copied Steve Monaghan?
11 A. Correct.
12 Q. And, again, who is that?
13 A. Steve Monaghan is the agency manager.
14 Q. Okay. So he's the top IT person in all of Nevada
15 County, yes?
16 A. Yes.
17 Q. So did you ever talk to him about the fact that
18 you were being asked to create a login account on
19 ER-Recorder server which houses AtPac software for Aptitude
20 Solutions?
21 A. Not that I recall. He was at the system meeting.
22 I believe he was at the system meeting that day.
23 Q. Okay. And when you -- you understood this -- what
24 did you understand the purpose of the County's involvement
25 with Aptitude to be?

1 A. Aptitude was the vendor that was going to supply
2 the replacement recording software to the Clerk-Recorder's
3 Office.

4 Q. Okay. So you understood Aptitude was a competing
5 software company with AtPac, yes?

6 A. Yes.

7 Q. Did you talk with Mr. Monaghan about that?

8 A. Mr. Monaghan was not in the office that day.

9 Q. Okay.

10 A. Mike?

11 Q. Yes.

12 A. Regarding your question for voice mail, I mean --

13 Q. Yes.

14 A. -- the County uses a digital phone system and all
15 incoming and outgoing phone conversations -- well, may not
16 be recorded, but there's a register of calls. And in my
17 chronology document there is an extract -- it's either in
18 the document or it's a file on that CD that the County let
19 me take and that County has a copy of, that has the both the
20 source and the extract file of the conversations of when
21 Phil called me and Marie that day. So that's -- that they
22 existed, you know, that they occurred is on record. Whether
23 the conversation is there or not, I doubt it.

24 Q. So that e-mail -- going back to Exhibit 207 --
25 hold on. I'm sorry, sir. Let me see that.

1 A. Sure.

2 Q. Going back to 207, if you could turn back to the
3 page above, it says, "You've created a login on ER-Recorder,
4 and we'll give you the details upon your arrival at the
5 site."

6 A. Yes.

7 Q. It's on page 2. Where were you when you created
8 that login? From what location did you do that?

9 A. Somewhere in the IS office. I could have been
10 either at my desk or I could have been at ER-Recorder via,
11 you know, one of the consoles in the back room where the
12 machine is actually mounted in its 19-inch rack.

13 Q. Okay. And before creating this particular login
14 account for ER-Recorder, how many other times had you
15 created login accounts for ER-Recorder?

16 A. I don't recall doing any others. It's possible I
17 may have done one for another employee, maybe Kathy, for
18 instance, but I don't recall really doing it. Only one I
19 know I did was isphydoux, you know.

20 Q. And who typically created new user accounts for
21 the ER-Recorder server?

22 A. Dave Krugle at AtPac has.

23 Q. That's the system administrator for ER-Recorder?

24 A. Yeah. It's also possible I made my own login
25 using the root login too, so... but it wasn't typical that I

1 would ever do that.

2 Q. Okay. On how many other occasions had you created
3 a login account for a vendor-maintained server that gave a
4 competitor of that vendor access to the vendor-maintained
5 server? How many other times had you ever done that?

6 A. It's never happened.

7 MR. ABU-ASSAL: Assumes facts not in evidence,
8 lacks foundation.

9 Go ahead.

10 THE WITNESS: To my knowledge, it's never happened
11 except for this one occasion.

12 Q. BY MR. THOMAS: Okay.

13 A. If that's what happened.

14 Q. When you say, "if that's what happened," you
15 created a login, correct?

16 A. Yeah. I'm just saying that in response to, you
17 know, whether it's proved or not, you know, the competitive
18 issues, I'm just saying that I created that login on this
19 system and, as far as I know, it's the only time that's
20 ever -- that kind of thing has ever happened.

21 Q. In your roughly 12 years experience with the
22 County?

23 A. 12 years, 9 months -- or 11 months, excuse me.

24 Q. And you gave the account a name?

25 A. Yes.

1 Q. What was the name?

2 A. Isphydoux.

3 Q. Can you spell that?

4 A. I-S-P-H-Y-D-O-U-X.

5 Q. Okay. And you just -- that was your choice to
6 select that name?

7 A. Yes.

8 Q. And did the -- why did you select that name?

9 A. Because I'm a fan of Frank Zapa.

10 Q. Okay.

11 A. And he had a character named phydoux spelled that
12 way, like the French spelling, who was a dog, a Poodle that
13 would fetch things. You know, as in isphydoux, go fetch the
14 data, here boy.

15 Q. Okay. And when you created it, did -- did the
16 account generate a password or did you create a password for
17 it?

18 A. I'm -- I originally I thought that I had done a --
19 what's called a temporary password where you then login and
20 reset it, but it's possible that I had set the password in
21 this particular case, since I was told by Marie that this
22 would be used by both IS personnel and Aptitude personnel.
23 It was a hybrid login.

24 Q. Who did you give the password to?

25 A. Well, I gave it to Patty and Tom, and it may have

1 been on the record on the NCSP-102 or it may not. It's
2 possible that they had a temporary password on it. At that
3 point, the only two people that I know had it for sure were,
4 you know, Patty Sandever and Tom McGrath, and myself. And I
5 don't recall keeping it. You know, it's not something that
6 I would normally keep, somebody else's password.

7 Q. Okay.

8 A. But I'm not saying it isn't possible either.

9 Q. You don't know?

10 A. Yeah, I don't know.

11 Q. I don't want you to speculate.

12 You know for a fact you gave Patty Sandever and
13 Tom McGrath a password to isphydoux, correct?

14 A. Yes.

15 Q. And you don't know that you kept the password,
16 correct?

17 A. That is correct.

18 Q. Okay. And without the password, you couldn't use
19 the isphydoux account to log in, correct?

20 A. Correct.

21 Q. You already had an account that would allow you to
22 access ER-Recorder, correct?

23 A. Correct. There was actually at least two ways I
24 could access the system, either directly as the root user or
25 as -- I think it was DPDan, but it could have been another

1 name such SIS/OP. It just -- I don't recall anymore, so...

2 Q. Now, when you created the password, the
3 isphydoux -- strike that.

4 If I use the words "when you created the account,"
5 is that the right terminology? When you're creating the
6 isphydoux account?

7 A. Yes, creating the account, yes.

8 Q. Okay. When you created that isphydoux account, it
9 had a password associated with it?

10 A. Yes.

11 Q. Okay. And as you sit here today, you don't
12 remember whether you gave it a password or whether you gave
13 it a one-time-user password?

14 A. Yeah, that is correct.

15 Q. Let me ask you this: Does your memory about past
16 events get better as time passes or does your memory, like
17 most people, fade over time?

18 A. It would depend on what we're talking about.
19 Every memory's different. Sometimes I have a memory that's
20 clear as can be; I'm solid with it. I'm good to say, you
21 know, that's an accurate memory. Sometimes the memory
22 becomes a little less accurate over time. And sometimes
23 I'll have a memory and then I'll realize another memory that
24 would shed light on the previous one and I realize that
25 first memory was a mistake.

1 Q. Okay.

2 A. Yeah.

3 Q. Understood.

4 A. Basically, I'm human.

5 Q. Okay. All right. There are some e-mails that are
6 duplicative of others. I'm going to try to minimize the
7 paper.

8 Can you take your binder, the white binder,
9 please, and look at what's been marked as Exhibit 10?

10 A. Okay.

11 Q. All right. Here we are at Exhibit 10. Okay.

12 Okay. Let me see here, sir. You know what? This
13 doesn't look like -- it's an exhibit that I may talk to you
14 about, but it actually is a little off topic right now. So
15 just keep the binder. You don't need to close it, because
16 I'm going to be moving around in it. We'll save that.

17 Let's go to Exhibit 3, please. Okay.

18 A. Okay. Three.

19 Q. Now, we have a -- there's a series of e-mails,
20 these are internal Aptitude e-mails, and if you turn to the
21 second page, this is dated November 6; do you see that?

22 A. Yes.

23 Q. And it's Mr. --

24 MR. MULLER: I'm sorry, which number?

25 MR. KRUGLE: Exhibit 3.

1 Q. BY MR. THOMAS: Exhibit 3 is talking about Tom
2 McGrath and it's an e-mail from Tom McGrath to Jesse Dion;
3 do you see that?

4 A. Yes.

5 Q. It says, "I will be back to Nevada County this
6 morning around 7:30 a.m., 10:30 a.m. your time."

7 Did you understand that the Aptitude folks were
8 based out of Florida?

9 A. Yes.

10 Q. There's a three-hour time difference?

11 A. Depending on the time of year, yeah.

12 Q. Okay. And it says, "I have to leave by 1:00
13 a.m. -- p.m., 2:00 p.m. your time to catch a flight and will
14 need VPN access established before I leave." Do you see
15 that?

16 A. Yes.

17 Q. "Please keep me posted on your progress and let me
18 know if you need me to get your additional resources at the
19 County." Do you see that?

20 A. Yes.

21 Q. It talks about VPN, that's virtual private
22 network?

23 A. Yes.

24 Q. Were you involved for setting up VPN access for
25 Aptitude?

1 A. No.

2 Q. Do you know who was?

3 A. It would usually fall to Art Porebski to create
4 the VPN access and his backup would be Gary Spriggs.

5 Q. Did you understand that Aptitude did obtain VPN
6 access into Nevada County's network?

7 A. I never knew firsthand.

8 Q. Okay. Well, how about second -- did anyone tell
9 you that?

10 A. No; no one ever told me that they achieved VPN
11 access.

12 Q. Okay. And then the next e-mail on the next page,
13 it's from Zahn Gamboa, Zahn Gamboa to Mr. McGrath. It says,
14 "I was able to connect to the support box using an actual
15 work station. We are good to go." Do you see that at the
16 bottom?

17 A. Yes.

18 Q. Okay. He's uses the word "support box." Did you
19 understand the word "support box" to be the Aptitude
20 AS-Nevada server?

21 A. That's what I would call it, yes.

22 Q. Yeah, there's other e-mails. Other witnesses have
23 testified about that.

24 A. Yeah. That's the same box, to my knowledge.

25 Q. Okay. And so as you interpret this e-mail, this

1 is talking about remotely connecting into the AS-Nevada box
2 from Florida?

3 A. Correct.

4 Q. Okay. And at the top it's an e-mail from Tom
5 McGrath --

6 A. Well, specifically connecting in from outside of
7 the County. I don't know where from, but yes.

8 Q. Yeah. It could be anywhere in the world, couldn't
9 it?

10 A. Yes.

11 Q. Okay. So Tom McGrath then e-mails to Mr. Barnes,
12 Zahn Gamboa and Jesse Dion -- and this is on November 6th.
13 It says, "Frank, I will be in the County at 7:30 a.m. and
14 will call you shortly thereafter."

15 And earlier -- based on those earlier e-mails you
16 understood that you first saw Mr. McGrath and Ms. Sandever
17 on the 4th, yes?

18 A. Plus and minus a day, yes, yeah.

19 Q. Okay. And then it says on the 6th, "Please get
20 with Zahn to ensure you have VPN access prior to my call. I
21 will lead you through the GUI software to connect to the
22 AtPac UNIX box and also show you where the previously copied
23 data files are on the support box." Do you see that?

24 A. Yes.

25 Q. And then it says, "The UNIX box connection

1 information." And he says, "Name, ER-Recorder IP." What
2 does "IP" mean?

3 A. Internet protocol. It's basically like an
4 address on a building.

5 Q. Okay. And then it's got the user isphydoux?
6 A. Uh-huh.

7 Q. And then it says, "password W00F-W00F"?
8 A. Oh, yes.

9 Q. Okay. Do you recognize that password W00F-W00F?
10 A. Yes.

11 Q. Do you know who created that?
12 A. Either I did or I did in coordination with
13 Aptitude, but let's assume that I did.

14 Q. Well, I don't know. I mean, I just want to know
15 whether you know you did or not.

16 A. All I can really tell you is I remember W00F-W00F.
17 That's W-0-0-F, W-0-0-F.

18 Q. And what's your recollection of it? You just
19 remember the words?

20 A. Yeah. Isphydoux, here boy, W00F-W00F. That makes
21 sense.

22 Q. Now, Mr. McGrath I guess doesn't subscribe to your
23 concern about sending passwords and e-mails?

24 A. No, he doesn't.

25 Q. Okay. Did you ever see this e-mail before?

1 A. No, I have not.

2 Q. Okay. Now, I'd like to take you back now to this
3 account that you created, the isphydoux account. When you
4 created it -- strike that.

5 With respect to the isphydoux account in this
6 particular e-mail that's referenced, he says -- again, we're
7 on Exhibit 3. He says he wants to show them where
8 previously-copied data files are on the support box. Do you
9 see that?

10 A. Yeah.

11 Q. Do you know what that's referring to?
12 A. No, I don't.

13 Q. Can you tell me on the 4th -- I think you say on
14 the 4th that you created the isphydoux account. It will be
15 ready when they arrive.

16 A. Right.

17 Q. And your instructions from Ms. McCluskey were to
18 make sure they could access ER-Recorder and full files from
19 ER-Recorder --

20 A. Yes.

21 Q. -- with the account?
22 A. Yes.

23 Q. Okay. And do you remember -- hold on a second.
24 I'm going to mark next in order a document.
25 (Whereupon Exhibit 208 was marked for

1 identification.)

2 Q. BY MR. THOMAS: This is a document we received

3 from the County of Nevada. It purports to be a transcript

4 of the conversation you and I had at your house on your

5 porch.

6 A. Okay.

7 Q. All right. And you have the audiotape somewhere

8 around here, yeah? You brought that with you?

9 A. Yes.

10 Q. Okay.

11 MR. ABU-ASSAL: Is this Exhibit 203?

12 MR. KRUGLE: 208.

13 MR. ABU-ASSAL: Oh, sorry.

14 Q. BY MR. THOMAS: 208.

15 Okay. I'd like to take you through the

16 conversation -- on page 8 -- I'd like you to turn to page 8.

17 A. I'm on page 8.

18 Q. Yeah. At the top there's some -- there's a long

19 discussion by you before.

20 At the bottom of page 7, actually. Are you at the

21 bottom of page 7? The very last line it says, "I talked to

22 Marie McCluskey." Do you see that?

23 A. Yes.

24 Q. It says, "I talked to Marie McCluskey and Marie is

25 like they are going to be the replacement for AtPac. We

1 want you to officegate (sic) --"

2 A. It should be obfuscate.

3 Q. You remember telling me that Ms. McCluskey told

4 you to obfuscate the login to ER-Recorder so that AtPac

5 wouldn't know about it.

6 A. That is correct.

7 Q. Okay. And what did she say to you specifically?

8 A. What I recall is that I went to her in the process

9 of setting up the login and she told me that the -- I needed

10 to not use a standard login type, such as VNaptitude or

11 JDion, which is how we would normally do it. VN stands for

12 vendor. All right? IS stands for information systems. So

13 when I would log into something, it's usually ISDEvers would

14 be the modern standard by the time I left.

15 Q. Uh-huh.

16 A. In this case, she did -- she was adamant that I do

17 not use a standard login, that it had to be one that AtPac

18 wouldn't notice or it wouldn't -- AtPac was not supposed to

19 be able to tell that anyone was in the system doing this

20 work.

21 The term obfuscate is probably my term. But,

22 basically, she told to obfuscate the login so it wasn't in

23 our standard format of VN, first initial, last name or name

24 of company. And that -- I was left to my own to come up

25 with isphydoux, which is how I came up with isphydoux at

1 that point.

2 I can't quote you exactly what she said, but I

3 remember her telling me not to use the regular login, to

4 make it one that AtPac wouldn't recognize.

5 Q. And you followed those instructions?

6 A. Absolutely.

7 Q. And you understood -- strike that.

8 Did you ask her why she wanted to you keep it

9 secret from AtPac?

10 A. Yes. I asked her why both that day and shortly

11 before I left the County, because I wanted to understand

12 clearly what was going on there.

13 And she told me that -- what I remember from the

14 first conversation was that they felt that AtPac wasn't

15 cooperating and they had some trust issues with them;

16 although I don't know what they were.

17 And then in a final conversation before I left the

18 County, she basically reiterated it in that AtPac was going

19 to charge a huge amount of money to extract this data and

20 that we -- oh, God, what else did she tell me? I have some

21 notes on it in my documentation. Can I look at it to answer

22 this a little more clearly?

23 Q. Okay. What documents are you looking at?

24 A. I'll let you know in a second.

25 MR. ABU-ASSAL: Do we have a copy for me of those

1 documents?

2 Thank you, even though you threw it.

3 MR. THOMAS: I'm sorry, Nabil. I really was

4 trying to get it to you faster because he's about to get

5 into it.

6 Off the record.

7 THE WITNESS: Yeah, this may take me a moment.

8 I'm not nearly as organized as I appear to be sometimes.

9 Darn it, I know it's in here. Maybe it's only in

10 electronic.

11 Q. BY MR. THOMAS: I'll tell you what, so you think

12 you have a note regarding what Ms. McCluskey said to you?

13 A. Yeah, something that -- I didn't write it at the

14 time. I wrote it much later as trying to recall the

15 conversation. But, basically, she said that -- you know,

16 reiterated, you know, there was trust issues and that they

17 didn't feel that they could wait for AtPac to extract the

18 data because of time schedule or some type of conflict

19 coming up in -- that the Recorder had to meet, something to

20 that effect. I'd have to look at the notes to remember.

21 Q. All right.

22 A. That's why I wrote them down, because it was

23 pretty vague.

24 Q. What did you say? Let me ask you, did you take

25 notes of the meeting on -- sometime on or before November

1 4th, 2008?

2 A. My notes at that point would have just been -- if
3 I did, it was all handwritten and it would have been
4 transferred into various files at some point, which later
5 became my chronology document.

6 Q. And then discarded?

7 A. Probably, yeah.

8 Q. Okay. So let me ask you this: What did you say
9 in response?

10 A. Well, I didn't have the choice of saying no,
11 because that would be insubordination, so --

12 Q. Well, was she your supervisor?

13 A. No.

14 Q. Why would that be insubordination?

15 A. Because this was an assigned duty. I had to do
16 this work. I had -- this was part of a project we were
17 assigned by management to do.

18 Q. I see.

19 A. And it doesn't matter whether if it came from Phil
20 or my immediate supervisor. It's basically coming from
21 Monaghan and I wasn't going to say no.

22 Q. Okay. And --

23 A. My response was -- I'm sorry, but you asked me.

24 Q. Yes. Thank you.

25 A. My response was I was unhappy with the situation

1 and I had a bad feeling about it and so, you know, that's
2 one of the reasons I started doing the chronology and here
3 we all sit.

4 Q. To protect yourself?

5 A. Yeah, protect myself, definitely, but also because
6 I knew this was all going to be, you know, an issue and to
7 whatever level it became.

8 Q. Okay. And did you tell her you thought it was
9 inappropriate?

10 A. I might have.

11 Q. Why did you think it was inappropriate?

12 A. We had never done it before. I don't believe
13 there's anything forbidding in NCSP-102 saying that we can't
14 make a login with a dual usage between a County user and a
15 vendor. It just had never been done before. But, in my
16 opinion, it was against standard operating procedures. We
17 just had never done it before. And standard operating
18 procedures, to some degree, my understanding is if you do
19 something a certain way for "X" amount of time -- I don't
20 know if it's a year or two, but in the County, which is a
21 union shop, it becomes, you know, regular procedure. You
22 know, it's the way you do it, the way you've always done it.
23 So to me it was not SOP, standard operating procedure, and
24 it pushed my buttons. That and the fact that I've worked
25 closely with AtPac for years and enjoyed it and I just

1 didn't like how things were going.

2 Q. Well, it's interesting you bring that up.

3 A. But that's emotional.

4 Q. You had worked with Mr. Krugle for how many years
5 up to that point in time?

6 A. Between six and eight, I'd say.

7 Q. And how often would you interact with him during
8 that six- to eight-year period?

9 A. Well, if we were doing a project together, we
10 would work closely, you know, for the periods of time, you
11 know, maybe a few months and not really have much
12 interaction for months at a time and a couple more and, you
13 know, it just depends on what we were doing.

14 Q. Now, with respect to the ER-Recorder server, which
15 housed AtPac software, you mentioned he was the system
16 administrator for the server and you were his second or
17 backup, yes?

18 A. Yeah. I'd be prefer -- it's who they would go to,
19 usually.

20 Q. And in that sense, were you the one from the
21 County who was the most involved with the ER-Recorder
22 server --

23 A. Yes.

24 Q. -- during that time frame?

25 A. Yes.

1 Q. The six- to eight-year time frame?

2 A. At first it would be Gary Spriggs, then it became
3 me later.

4 Q. Okay. And so in terms of AtPac's performance with
5 respect to the administration of that server, would you be
6 the most knowledgeable person from the County, in your mind,
7 regarding what AtPac did during that six-year period?

8 A. I would think so.

9 Q. Okay. Tell me, did you have trust issues with
10 Mr. Krugle; did you distrust him?

11 A. Not at all.

12 Q. Okay. Did you find him to be an honorable person?

13 A. Yes. We've always been able to work together and
14 if we had any disagreements, we were always able to resolve
15 them.

16 Q. Did you find Mr. Krugle to be responsive to your
17 requests or needs?

18 A. Yes.

19 Q. Did you think he was a good system administrator?

20 A. Excellent.

21 Q. Are you aware of -- did Mr. Krugle ever ignore any
22 of your requests?

23 A. Not that I can recall.

24 Q. Okay. As far as you know, did Mr. Krugle provide
25 whatever services you expected of him?

1 A. Well, yeah. Yeah, from a system administrator
2 standpoint, yes.

3 Q. Well, from any standpoint?

4 A. I didn't work with AtPac on the application side
5 of things. So my experience with him is as a fellow systems
6 administrator, not an end user. If there were problems
7 there, I wouldn't necessarily know what they were.

8 Q. Okay. But you're unaware of any problems
9 associated with the performance of Mr. Krugle or AtPac?

10 A. The -- let's see; the only complaint I had heard
11 was regarding -- this isn't Dave in particular, but that the
12 software wasn't able to redact Social Security numbers and
13 that this was a serious issue and limitation of the AtPac
14 software.

15 Q. Who said that to you?

16 A. Well, I knew that the -- I shouldn't say know for
17 sure, but it had been discussed in general at the County
18 about the redaction of Social Security numbers being
19 mandated by the State of California.

20 Q. Okay.

21 A. And as a security guy I would hear or read things
22 like that.

23 Q. Did you ever ask Dave Krugle, does the software
24 provided by AtPac have the capability of doing redaction?

25 A. No, no.

1 Q. Okay. And he never -- oh, go ahead.

2 A. I'm sorry, my hearing this didn't impact my
3 systems administration or relationship with Dave. It was
4 irrelevant to it.

5 Q. And you never undertook to investigate whether
6 that comment you received about redaction was true or false?

7 A. I had a conversation, I don't know if it was with
8 Dave or with a programmer, regarding the AtPac software once
9 where they said that it would take some major software
10 changes. But, once again, it's very vague because it's not
11 an area I would have done much work with.

12 Q. And when you say a programmer, programmer for who?

13 A. Probably an information systems analyst or Dave at
14 one point in a casual conversation. I just have a snippet
15 of a memory.

16 Q. So you don't remember if it was Dave or not?

17 A. No, I don't know who it was.

18 Q. Okay. So when you heard from -- a comment from
19 Ms. McCluskey that they had trust issues, did that strike
20 you as odd?

21 A. It struck me as sad.

22 Q. Sad?

23 A. Yeah.

24 Q. Why sad?

25 A. Like I said, we had a good working relationship

1 and it just bothers me that people can't work things out,
2 you know.

3 Q. Well, do you know if anyone from the County ever
4 told AtPac that the County, Ms. McCluskey, had a trust issue
5 with AtPac?

6 A. I didn't get that it was necessarily Marie, but
7 Marie was inferring that in general, you know, the group of
8 people that were heading this project had the issue.

9 Q. And who was that group?

10 A. She told me, basically, it was her, Phil and I
11 think Gregory Diaz.

12 Q. Yeah. Your notes say that the decision to tell
13 you to obfuscate the login and conceal it from AtPac was one
14 that was arrived at by Gregory Diaz, Mr. Russ and
15 Ms. McCluskey. Is that your recollection of what she said?

16 A. That's probably what I told you and it's probably
17 pretty accurate. I don't know if Russ was involved or not
18 at this point. I can't recall.

19 Q. Okay. And in terms of whether they had a basis to
20 actually distrust AtPac, that's not something you know?

21 A. I have no direct knowledge of that.

22 Q. What you know is you had absolutely zero basis to
23 distrust AtPac based on your long working relationship all
24 the way up until the end of your employment with the County,
25 yes?

1 A. Yes.

2 Q. And you were happy with their performance?

3 A. Yes.

4 Q. You never expressed to AtPac you thought they were
5 failing to perform under their obligations?

6 A. No. Mike, the only concern I had, which you can
7 reference in that e-mail earlier we looked at, I forget
8 which one it is, is that I was concerned about patches in
9 security and whether the system was secure enough for the
10 County's environment.

11 Q. But that never -- as far as I know -- strike that.

12 That never actually materialized into an issue
13 that you're aware of?

14 A. No. No, I was speaking as a security -- an
15 ex-security officer.

16 Q. Okay. As an ex-security officer and as a network
17 systems analyst for Nevada County, did there ever come a
18 time when you needed -- where there was a disaster where you
19 needed to use a backup of ER-Recorder server to somehow
20 replace the existing production ER-Recorder server? Did
21 that ever happen?

22 A. Not that I can clearly recall. Remember, one of
23 the reasons I stated earlier that they went to ER-Recorder
24 production, one other question, is that the earlier systems
25 backups to the County's backup systems were perceived as

1 being unreliable and that -- whether that was due to a need
2 to restore or simply a concern of AtPac's, I really couldn't
3 tell you. Most of that was handled by Gary Spriggs at the
4 time, because he was -- for the majority of the years the
5 systems was used, the system called Bright Store, what is
6 that? Novel -- it's the Novel product or -- no, it's not.
7 It's Norton.

8 Well, the previous backup system, before we went
9 to DPM, that was unreliable, terribly unreliable, and we
10 were trying to fix that. Anyway, I'm digressing, so...

11 Q. Yeah. But if I understood you correctly, the
12 concerns with respect to the old ER-Recorder and whether the
13 backups were reliable, that was addressed with the new
14 ER-Recorder?

15 A. Right. With the new tape rotation scheme, yes.

16 Q. And so with respect to the new ER-Recorder that
17 you're familiar with, do you recall there ever being an
18 instance where there was like an emergency when a backup of
19 the ER-Recorder, the server, was needed to be -- not
20 reconfigured.

21 A. No, no, not clearly. See, I can easily imagine
22 that there was, but I don't know that there was.

23 Q. Yeah. So you have no recollection of that, yes?

24 A. Correct.

25 MR. THOMAS: Okay. And I thought we would take

1 lunch in -- maybe even a late lunch at -- it's 25 to 1:00.
2 Can we take lunch at 1:00? Is that okay for you, Dina?

3 THE COURT REPORTER: (Nods head.)

4 Q. BY MR. THOMAS: Thank you.

5 Okay. Then if we go down in this -- I'm on page 8
6 of the transcript.

7 A. Okay.

8 Q. There's a comment about a quarter of the way down,
9 I'd like you to -- it actually says, "Dan," and this is you
10 talking. "That was a conversation with Marie McCluskey. I
11 said, well, who am I supposed to make them like, you know?
12 You know what that means when I say make them like?"

13 And Dave Krugle says, "Oh, yeah."

14 And then Dan says, "You know, make them like
15 AtPac, and I said okay."

16 A. Wait a second. I'm sorry, where is this?

17 Q. I'm on page 8.

18 A. Page 8.

19 Q. And --

20 A. One, two -- oh, okay. All right.

21 (Witness reading to himself.)

22 Q. And I don't have a question for you yet. I just
23 want you to read that and familiarize yourself with it.

24 A. "That was a conversation with Marie McCluskey. I
25 said, well, who am I supposed to make them like, you know?"

1 You know, what that means when I say make them like?"

2 Q. And then, Dan -- then you later -- right down
3 below you say, "you know, make them like AtPac. And I said
4 okay, and so I did that."

5 That was our conversation back at your porch.

6 A. Yeah.

7 Q. Now, I want to take you a little further. Okay.
8 I'd like to take you to page 11, about a third of the way
9 down. It says, "Oh, okay."

10 A. Okay.

11 Q. "Was that like root?"

12 And then it says, "See, I didn't know that, but
13 one specified which group to exclude to me. And so they
14 would be made like you. That's normal modus operandi, is
15 that if you're told to give someone access rights similar to
16 someone else, they get the same group membership."

17 That's you talking, yes?

18 A. Yes, that's correct.

19 Q. And then it says -- and then Mr. Krugle says,
20 "Marie McCluskey is the one that told you specifically to
21 give them the access rights like they were AtPac."

22 And you say, "Yeah, yeah."

23 Okay. So now, let's go forward. And then I want
24 to take you to -- go to the top of page 23.

25 A. Okay.

1 Q. At the top there's a comment from Dave Krugle. It
2 says, "It is, but based on the fact that Marie called you
3 and specifically told you the reason and you gave them --
4 (inaudible) CRiss, is because Marie McCluskey -- well, yeah
5 she never said AtPac and CRiss. She doesn't know what
6 she --" you're talking about AtPac and CRiis user groups
7 there?

8 A. Correct. I'm basically correcting my earlier
9 statement and clarifying it.

10 Q. Yeah. "But she said to give them, you know, make
11 them like."

12 And then you said, "You know, make them like."

13 A. Yeah.

14 Q. And Dave says, "AtPac."

15 And Dan says, "AtPac, you know."

16 Do you remember that?

17 Okay. So going forward, and this is a comment by
18 me. It's the comment by Mike. So it says, "So it makes
19 this;" do you see that?

20 A. Yes.

21 Q. So it says, "So it makes this -- so it's like
22 AtPac. So it's not -- okay. I get it. You were asked to
23 make it like AtPac. You followed the instructions."

24 "Dan: Yup."

25 Okay. And then and let's go down to the bottom of

1 page 23. Are you there?

2 A. Yeah.

3 Q. Okay. It says, "So to sum it up, really --" and
4 this is me talking -- "really, if I have it correct,
5 McCluskey, in addition to the instructions you received to
6 create this NCSP-102 signed by Mr. Diaz and then you were
7 told make it like AtPac, give them access like AtPac and
8 then you did it, because that's what you were told to do."

9 "Dan: Right."

10 And then the next comments are, "You were told
11 specifically not to -- and not to involve AtPac. Yeah. You
12 were told to keep it confidential. I was."

13 Hold on a second. Okay. Let's go down to the
14 bottom of page 23. All right?

15 A. All right.

16 Q. Actually, I'm going to come back to that. I'm
17 sorry, sir. I'll come back to that. I'll put it on the
18 bottom.

19 Okay. So let me ask you, so you had discussions
20 with Ms. McCluskey before you created the account because
21 Mr. Russ told you to talk to her?

22 A. Yes.

23 Q. And when you said that she told you to make it
24 like AtPac during our discussion, that's what she said to
25 you, yes?

1 A. Actually --

2 Q. Four times?

3 A. -- I want to address this, because I talked to you
4 about two weeks later on a Friday and it was our
5 conversation and you called in Dave on the cell phone at
6 that time. And I've also written out -- it was in my
7 statement at the time before my conversation with you, to
8 clarify.

9 Basically, Marie didn't say what I said she said
10 there. That was mistake on my part. What happened was
11 Marie gives me these instructions to create the login. So I
12 go and I did some research, looking at the ER-Recorder
13 production server, came back to her said, I'm going to make
14 them with these group memberships, AtPac and CRIis, make
15 them like AtPac. That's where that memory came from.

16 When I was talking to you that day, I hadn't given
17 that any thought until you asked me that question. So my
18 memory was incomplete and it also painted Marie in the wrong
19 light. She wouldn't know, you know, what groups to add them
20 to. I determined that, and I brought it to her and she
21 agreed. But it was irrelevant because what does she know,
22 you know, from AtPac or CRIis or any group on there? You
23 know, it was just a technical point, a minor point in our
24 conversation that I was saying -- advising them, I'm giving
25 this group access because that looks like the best access I

1 can do, and she did. Now, the exact words, I don't recall.

2 And -- anyway, I wanted to get that straight and
3 on the record, you know. It's not like she said make them
4 like this, like a normal like person would, but that's how
5 everyone else was always done, but nothing about this was
6 done the way we normally did logins. So things were out of
7 sync with that.

8 Q. All right. And you said you did some research to
9 decide what to -- what access rights to give to the
10 isphydoux account?

11 A. Yes; yes, I did.

12 Q. Okay. And what research did you do?

13 A. Well, it was tricky. I was told not to talk, not
14 to call AtPac about this specifically. During my
15 conversation with Marie, one of them, there were several
16 that morning, do not contact AtPac, do not let them know.
17 It falls in line with obfuscating the IS, you know.

18 Okay. Given the fact that I know that Dave looks
19 at log records and knows what people are doing, if I were to
20 go in there and do a lot of research and looking around and
21 jumping around and creating groups with specific access
22 rights and everything else that may be entailed with doing a
23 job like this, I know Dave would know I was in the system.

24 So what I did was I took the most direct route --

25 Q. What --

1 A. -- given me.

2 Q. Let me stop you there.

3 Why were you concerned that Dave would know you
4 were in the system?

5 A. I was told to obfuscate the login so that they
6 would not know what we were doing.

7 If Dave saw that I was creating a group and
8 assigning access rights and doing all kinds of fancy
9 administrative work that normally only he would do, that
10 would raise a flag with Dave and he would say what are you
11 doing in the system? And that would put me in a situation
12 where, you know, I would have to answer him truthfully,
13 which would then contradict the orders I was given by
14 management. So -- I mean Marie via management. Basically,
15 don't let AtPac know what you're doing.

16 So when I looked in the system -- and I don't
17 recall whether I did it from a command line or if I did it
18 from the GUI interface. You know, a pretty picture
19 interface or if I did it, you know, the hard way. I
20 basically wanted to know which groups had the highest
21 probability of allowing access to both the database
22 structure over here and the image structures over there on
23 the hard drive. They're two separate areas, right? And the
24 best that I came up with was the two groups, CRIis and
25 AtPac. And so that's how they got assigned CRIis and AtPac

1 as their groups.

2 They weren't made like AtPac, per se. They were
3 given membership into these groups called CRIis and AtPac,
4 and it's through these groups that a user gains read, write,
5 execute authority within a system.

6 Q. And when you say the highest probability of
7 allowing access to both database structures, what user
8 group, in your mind as a system administrator, would give
9 someone the highest probability of having access to two
10 separate areas of a server? What would be the highest
11 probability?

12 A. Well, the highest -- the highest access group
13 would be the root group, which is user ID0 in a Linux or
14 UNIX box.

15 Q. And why didn't you use that account?

16 A. You would never assign a user root access. Root
17 users -- normally, unless you're a system admin like David
18 or myself or another network systems analyst, you wouldn't
19 go in using root. Root's dangerous to use because you can
20 destroy the system; you can damage it. So you don't use
21 that.

22 Q. Okay.

23 A. You give a person -- normally, you give them the
24 minimal rights they need to get the job done.

25 Q. So how did you arrive at the decision that the

1 AtPac -- well, you wanted to give the user group that had
2 the highest probability of getting access to the two areas
3 you wanted to give access to.

4 A. Right.

5 Q. And how did you determine the AtPac group would
6 give that high probability of getting access to both those
7 areas of the server?

8 A. Given that I had a limited understanding of the
9 internal architecture how Dave had set up the environment
10 for security, I looked at all the names that are available
11 in groups. All right? And there is a lot of them, and they
12 do all different kinds of things.

13 Q. Okay.

14 A. But here's two that stick out like sore thumbs,
15 CRIis, AtPac. Well, CRIis, that's got to be the database,
16 logic says. And AtPac, well, let's give them that just in
17 case CRIis doesn't associate with the image system. As I
18 didn't know what the image system was based on.

19 So if it didn't work, you know, I don't know what
20 else I would have done, you know. It was a guess. It was
21 kind of a shot in the dark at that point. It was just short
22 of based on the names and the ownership of the CRIis area
23 or -- yeah.

24 Q. So when you said you assumed the CRIis user group
25 would give them access to the databases?

1 A. Yes. That is called a CRIis database.

2 Q. What was the assumption based on?

3 A. The name.

4 Q. What was -- were you able to see who had access to
5 various user groups?

6 A. I don't believe I went and looked.

7 Q. Did you have access to that?

8 A. If I wanted to continue to poke around, yes. But
9 I was instructed not to let them know what I was doing. And
10 if I started looking at files and what -- remember,
11 everything you type in there gets logged in to something
12 like the .bash underscore history file; things like that.

13 Q. And you were worried about typing in because you
14 wanted to conceal what you were doing --

15 A. Absolutely.

16 Q. -- from AtPac?

17 A. I was instructed not to let AtPac know. That
18 includes -- you know, they said don't call AtPac. But
19 knowing Dave looking at the logs, that would also infer that
20 if I do something that sets up a red flag -- you know, the
21 easiest thing to do was to create the login, pick two names
22 that look most likely to work. I believe I did look at one
23 directory and made sure that an ownership worked -- vague
24 memory -- and assigned it and moved on.

25 Q. And now with respect to the AtPac user group, you

1 talked about CRIis already. You made an assumption that
2 CRIis gave access to the CRIis database.

3 A. The database, right.

4 Q. And you understood the computer application was
5 called CRIis, right?

6 A. That's right.

7 Q. So did you assume at the time that the CRIis user
8 group would also give access to the CRIis application since
9 it's called CRIis and you were basing your decisions on
10 names?

11 A. I never gave it any thought one way or the other.
12 To me it was a question of where was the data at and what
13 would give them access to the data.

14 Whether or not the CRIis application resided in
15 the same file structure, I did not know. I did not know
16 about those files until Dave told me around the 25th, the
17 following year.

18 Q. So circling back to the AtPac user group name,
19 what did you learn in your investigation about the rights
20 AtPac would give to anyone with that user group?

21 A. At the time, nothing. It was a shot in the dark
22 to find out if that would work. It wasn't until later that
23 I found out that AtPac was associated with user ID0, which
24 is a root equivalent.

25 Q. And did you -- how many different user groups were

1 there to choose from?

2 A. I don't know. There was probably between -- well,
3 there was all kinds of user groups. There's systems user
4 groups, individual user groups.

5 In Red Hat Linux, everyone that has a login has
6 their own user group by default. So there were quite a few.
7 These are the two top highest likely to work.

8 Q. Okay. So you understood these were the top
9 highest likely user groups?

10 A. Yeah.

11 Q. And so you thought the probability was that they
12 had a broader range of access which would increase the
13 probability they'd have access to both images and the data
14 files, yes?

15 A. Correct.

16 Q. And you based that on the fact that it was called
17 AtPac?

18 A. Uh-huh.

19 Q. And you knew the system administrator was called
20 AtPac, yes?

21 A. I knew that there was a login called AtPac, but
22 that, you know, the group AtPac is not necessarily the same
23 thing.

24 Q. No. I think my question was, did you understand
25 AtPac was a system administrator for the server? I think

1 we've covered that, but I just want to make sure that was
2 your understanding.

3 A. At the time, I did not know that AtPac was the
4 equivalent to root.

5 Q. No, no.

6 A. Now, if you mean --

7 Q. I need to clarify my question.

8 A. Okay. I'm sorry.

9 Q. You understand there's a company called AtPac?

10 A. Yes.

11 Q. That was -- their employees were the system
12 administrators for the server, the ER-Recorder server?

13 A. Oh, yes, yes.

14 Q. And you selected the user name -- user group
15 called AtPac to give to Aptitude?

16 A. Yes; uh-huh.

17 Q. Okay. Did you talk with anyone about the user
18 groups you selected?

19 A. I told Marie about them.

20 Q. What did you tell her?

21 A. That I'm going to give them a -- give them access
22 via membership into CRiis and the AtPac groups. Like I say,
23 it's nonsensical to her; she doesn't know.

24 Q. Yeah. Now, I think when we interviewed you, you
25 mentioned that had you known that the AtPac user group was

1 equivalent to or similar to the root account, that you
2 wouldn't have given that to Aptitude.

3 A. Not on your life.

4 Q. Now here's my question: Why not?

5 A. You do not give users root equivalent login access
6 because they can do damage to the system. It is just not
7 proper form of system administration. You need the least
8 amount of access as possible, not the most.

9 Q. As a system administrator, had you ever in your
10 experience given a user group status to a login account that
11 you, as you've testified here, didn't know what the access
12 rights were. You just picked them and took a chance in the
13 dark?

14 A. No. I did not know -- no, I haven't. To answer
15 your question, no, I didn't do that.

16 Q. So this would reflect the very first time in your
17 life that you've created a user group for a user account
18 where you are testifying that you had no idea what access
19 rights you were given, correct?

20 A. That is correct.

21 Q. Now, did the concept -- you said you wouldn't have
22 done it had you known, because you don't give root account
23 to anyone other than the system administrator because they
24 can do damage to the system?

25 A. Correct.

1 Q. Okay. Now, let me ask you this: Did it concern
2 you at all that you had given root account access to the
3 ER-Recorder system which housed AtPac materials to a
4 competitor of AtPac? Was that part of your thought process
5 at all or did that not factor --

6 MR. ABU-ASSAL: Vague and ambiguous, assumes facts
7 not in evidence.

8 Mr. Evers, if you could just pause a little bit
9 and let me object.

10 MR. THOMAS: Mr. Abu-Assal, if you could pause. I
11 was still talking when you started objecting.

12 MR. ABU-ASSAL: Well, he started to answer.

13 MR. THOMAS: Well, you've got to wait for me to
14 finish.

15 MR. ABU-ASSAL: Okay. Both of us will pause. How
16 about that?

17 THE WITNESS: Can you rephrase that for me?

18 Q. BY MR. THOMAS: Were you concerned about giving
19 root account access to the ER-Recorder server with my
20 client's software to my client's competitor; did that
21 concern you?

22 MR. ABU-ASSAL: Vague and ambiguous, assumes facts
23 not in evidence.

24 THE WITNESS: I can, however, answer this with an
25 interesting answer. I had no knowledge I was giving them

1 root access to the system at the time I set this up.
2 Therefore, that did not enter my mind in that specific
3 framework.

4 Q. BY MR. THOMAS: And you also didn't know you were
5 giving them root access at the time, so the issue of them
6 doing damage also didn't factor into your --

7 A. That is correct.

8 MR. ABU-ASSAL: Assumes facts not in evidence.

9 Q. BY MR. THOMAS: But once you learned you had given
10 them root access, you said one reason you wouldn't have done
11 that is because you wouldn't give someone the ability to do
12 damage.

13 A. Correct.

14 Q. And that was sometime much later when you learned
15 what was on the server?

16 A. About a year later, yes.

17 Q. Now, at that point, would you also -- did it also
18 factor into your thinking that you wouldn't have given them
19 access, because you were giving access to AtPac's software
20 to AtPac's competitor? Was that another reason you wouldn't
21 have done it?

22 MR. ABU-ASSAL: Assumes facts not in evidence.

23 THE WITNESS: At the time I had no idea that
24 AtPac's application software was not binary and coded and
25 compiled.

1 Q. At what time?

2 A. At the time I created the isphydoux login.

3 Q. Okay. But my question is about when you learned
4 that you gave the root account -- at that point you also
5 were told that my client's software was on that server, yes?

6 A. Yes.

7 Q. So knowing that, is that another reason you
8 wouldn't have given Aptitude the root account access that
9 you gave them?

10 A. I would say that's correct; I would not have if I
11 had known that.

12 Q. Why not?

13 A. I'm familiar with copyright law. I'm a musician.
14 I would have raised the stink at that point.

15 Q. In what regard?

16 A. I would have said, I can't do this. I mean, you
17 know, process the login until we straighten out -- if I had
18 known there was clear text code in there, I would not have
19 done that. I would have refused to, even with consequences
20 of insubordination.

21 Q. When you say clear text code, you mean human
22 readable source code?

23 A. Correct. Noncompiled code.

24 Q. And you ultimately did look on ER-Recorder and
25 find noncompiled human readable code, yes?

1 MR. ABU-ASSAL: Assumes facts not in evidence,
2 lacks foundation.

3 Q. BY MR. THOMAS: You did that?

4 A. Not exactly. Dave identified certain files
5 underneath a -- what's called a WIP directory; that's all I
6 can remember. The log files would help me tell you, but
7 basically they ended .SD, and he told me that that was where
8 their code existed, and I'm taking Dave at his word.

9 Q. I see.

10 A. I've never looked at the code directly.

11 Q. But you found files that end in .SD?

12 A. Correct.

13 Q. Okay. And that was while you were an employee
14 with the County?

15 A. Correct. That was November something 2009.

16 MR. THOMAS: Okay. Why don't we do this: It's
17 close to 1:00. Let's take a lunch break.

18 THE WITNESS: Okay.

19 MR. THOMAS: I was thinking of stopping for an
20 hour. You're okay going later tonight?

21 THE WITNESS: Yeah, that's fine.

22 MR. THOMAS: Dina, are you okay?

23 THE COURT REPORTER: Uh-huh.

24 MR. MULLER: How late is late? What do you mean
25 by late?

1 MR. THOMAS: Well, I don't know. I had asked you
2 if we could go late, and you said yeah.

3 MR. MULLER: Well, delayed by 15 minutes starting,
4 but does late mean -- I mean, how late is late? What do you
5 have in mind?

6 MR. THOMAS: Well, I think we're going to go at
7 least seven hours today.

8 MR. ABU-ASSAL: Well, you only have seven hours.

9 MR. MULLER: But I just have --

10 MR. THOMAS: So whenever seven hours is up.

11 MR. ABU-ASSAL: Okay. So whenever seven hours of
12 testimony is up.

13 MR. THOMAS: It could be later. It could 7:30.
14 It depends on our break.

15 THE WITNESS: Well, let's not take a break.

16 MR. MULLER: I just have to catch a flight.

17 THE WITNESS: Hopefully, let's not take a lunch
18 longer than an hour, because it's a long drive for me home.

19 MR. THOMAS: You want to go 45 minutes?

20 MR. MULLER: Yeah, that would be great.

21 THE VIDEOGRAPHER: We're going off the record at
22 12:59 p.m. This is the end of disk No. 2.

23 (Lunch recess.)

1 EXAMINATION BY MR. THOMAS RESUMED
 2 THE VIDEOGRAPHER: We are back on the record at
 3 1:47 p.m. This is the beginning of disk No. 3.
 4 Q. BY MR. THOMAS: All right. Welcome back,
 5 Mr. Evers.
 6 A. Glad to be here.
 7 Q. Now, you understand the court reporter, the oath
 8 that she gave you this morning, that is not readministered
 9 in the afternoon, but it still applies, even though we have
 10 taken a lunch break. Do you understand that?
 11 A. Absolutely.
 12 Q. Okay. Great.
 13 These are our official exhibits. I'd like to mark
 14 next in order a binder that you brought with you and you
 15 described generally the documents you brought with you
 16 earlier in the deposition; do you remember that?
 17 A. Yeah.
 18 Q. And just so the video can see what you brought.
 19 You've brought a binder with a number of materials in it.
 20 There's even some compact disks or DVs inside the binder,
 21 yes?
 22 A. Correct.
 23 MR. THOMAS: And what I'd like to do is mark that
 24 next in order, Dina.
 25 (Whereupon Exhibit 209 was marked for

1 identification.)
 2 MR. THOMAS: I've not yet had a chance to review
 3 everything in the binder, and so for the moment I think it
 4 would be prudent, even though the court reporter -- I think
 5 the protective order requires these materials to be
 6 attorneys' eyes only for some period of time. I'm going to
 7 designate it as attorneys' eyes only, since I don't know
 8 exactly what's in it and there's no time for me to review
 9 every last page. So we're going to make that designation
 10 now.
 11 MR. ABU-ASSAL: Well, we object on that. And,
 12 once again, you're just continuing this practice of putting
 13 blanket attorneys' eyes only -- and these are documents from
 14 a former County employee. How could they possibly be
 15 attorneys' eyes only? I mean, it's just inexplicable.
 16 MR. THOMAS: Well, here's an example: This
 17 employee had access to my client's trade secrets, so to the
 18 extent any of them are in the binder, then that would be a
 19 basis to be attorneys' eyes only, yes?
 20 MR. ABU-ASSAL: No, that's not an example because
 21 your client did not have any trade secrets. That's a legal
 22 conclusion that you're drawing.
 23 MR. THOMAS: Well --
 24 MR. ABU-ASSAL: That's a complete misnomer. It
 25 assumes facts not in evidence, and you can't just like

1 willy-nelly put a blanket attorneys' eyes only designation
 2 on stuff. And at the appropriate time we will bring this to
 3 the attention of the judge.
 4 MR. THOMAS: Well, it is attorneys' eyes only and
 5 highly confidential.
 6 MR. ABU-ASSAL: We dispute that.
 7 Q. BY MR. THOMAS: All right. So, Mr. Evers, so
 8 Exhibit 209, that is your binder with the DVD in it that you
 9 brought with you, yes?
 10 A. There is a DVD and possibly two other CD ROMs in
 11 there, yes.
 12 Q. Okay. And then in addition to the binder and the
 13 CD, you brought two memory devices with you?
 14 A. Correct.
 15 Q. And it's your testimony today that those memory
 16 devices are exact copies of the DVD that you provided in the
 17 binder?
 18 A. They should be exact as of yesterday, the 22nd of
 19 February 2011.
 20 Q. Okay. And did you add anything to any of the
 21 memory devices between yesterday and today?
 22 A. I don't think I did. It's possible, but if I did
 23 it would only be an entry into my case chronology log, which
 24 you know you've got a copy of it, so you can always look.
 25 MR. ABU-ASSAL: Did we get a copy of that memory

1 device that you're talking about in our binder?
 2 MR. THOMAS: I don't know.
 3 MR. ABU-ASSAL: What does the memory device look
 4 like?
 5 MR. MULLER: I'm not sure this is the same binder.
 6 MR. THOMAS: Mr. Abu-Assal, are you asking
 7 questions now?
 8 MR. MULLER: We're just wondering if we have the
 9 same exhibits that you have.
 10 THE WITNESS: This is my working directory in a
 11 memory card. This is a memory stick which is a bootable
 12 operating system, which has an archive file of everything on
 13 this memory stick, which is also -- everything on this
 14 memory card, excuse me, is also on the DVD, which I brought
 15 too. So I have like three duplicates of information in
 16 different forms.
 17 MR. ABU-ASSAL: Well, I don't see anything in what
 18 we've been given that looks like those memory devices.
 19 MR. THOMAS: Yeah, we didn't make copies of those
 20 either.
 21 MR. ABU-ASSAL: You did not?
 22 MR. THOMAS: No.
 23 THE WITNESS: Dave made a copy of this.
 24 MR. KRUGLE: That's on my laptop.
 25 MR. THOMAS: You have to make a copy. We can't

1 duplicate --
 2 MR. ABU-ASSAL: Okay. We can put it on our
 3 computer.
 4 MR. THOMAS: Yeah.
 5 THE WITNESS: Okay.
 6 MR. ABU-ASSAL: Later.
 7 THE WITNESS: During a break.
 8 MR. ABU-ASSAL: Yeah, that's fine.
 9 And will the court reporter get -- somehow a copy
 10 of those actual memory devices?
 11 MR. THOMAS: That was not my intention.
 12 THE WITNESS: Well, not of those memory devices,
 13 but you'll have a copy of this DVD, which is -- I mean, it's
 14 a DVR, which is a copy of what's on that memory device as of
 15 yesterday.
 16 MR. ABU-ASSAL: Okay.
 17 MR. THOMAS: Are you done?
 18 MR. ABU-ASSAL: Yes.
 19 MR. THOMAS: All right. Now, going back to where
 20 we were. So what I'd like to do is mark next in order
 21 Exhibit 210.
 22 (Whereupon Exhibit 210 was marked for
 23 identification.)
 24 Q. BY MR. THOMAS: Do you have Exhibit 210 in front
 25 of you?

1 A. Yes.
 2 Q. Do you recognize this as one of the documents in
 3 your binder or from your binder?
 4 A. I recognize it as a log output from ER-Recorder.
 5 Q. It looks like a screen capture; do you see that?
 6 A. Yes, yes.
 7 Q. Did you prepare this screen capture?
 8 A. I think I did.
 9 Q. And there's a date in the bottom right-hand
 10 corner; do you see that?
 11 A. Correct.
 12 Q. November 24th?
 13 A. Correct.
 14 Q. Do you remember meeting with Mr. Krugle on
 15 November 24th, 2009?
 16 A. Yes. That's -- I may have referred to it also as
 17 November 25th, but yes, that sounds right.
 18 Q. And tell me again, what is this document?
 19 A. This is a screen capture of a session, a login
 20 session, to ER-Recorder and we were logged in as the root
 21 user and we are in the /var/log directory, and this is just
 22 a screen capture of the data displayed on that terminal
 23 window.
 24 Q. Okay. And --
 25 MR. KRUGLE: The top is not var/log. This top's

1 not var/log.
 2 Q. BY MR. THOMAS: Okay. What is the top portion of
 3 the screen capture; do you know, sir?
 4 A. The top portion -- oh, I see what -- yeah, what
 5 you're saying. It looks like we are in the
 6 AtPac/CRiis_2.5.4.0/CHriss_WIP directory.
 7 Q. Okay. And so this is --
 8 A. My mistake earlier.
 9 Q. So this is a screen capture when you're logged
 10 onto ER-Recorder --
 11 A. Yes.
 12 Q. -- production recorder?
 13 A. Correct.
 14 Q. As of November 24th, 2009?
 15 A. Correct.
 16 Q. And you're manning the keyboard at the time?
 17 A. Yes.
 18 Q. And you -- how did you do a screen capture? What
 19 command did you enter to do that?
 20 A. This is probably on a Windows box, so it was
 21 probably the print screen capture utility, I'm guessing. We
 22 also had other utilities available us to at the time.
 23 Q. Okay.
 24 MR. ABU-ASSAL: Move to strike because it calls
 25 for a speculation.

1 MR. THOMAS: Okay. Well, then the objection is --
 2 MR. ABU-ASSAL: Please don't guess, Mr. Evers.
 3 Just tell him what you exactly know.
 4 THE WITNESS: I know that it's a screen capture.
 5 I don't exactly know how I did the capture.
 6 Q. BY MR. THOMAS: Okay. And I notice there's some
 7 highlighted .SDs; do you see that?
 8 A. Yes.
 9 Q. Do you know how they became highlighted?
 10 MR. ABU-ASSAL: Lacks foundation, calls for
 11 speculation.
 12 THE WITNESS: I don't -- I mean, it's -- let me
 13 look at this a second. No, I don't know how they became
 14 highlighted.
 15 Q. BY MR. THOMAS: Okay. Is it something you did?
 16 A. It's possible.
 17 MR. ABU-ASSAL: Calls for speculation.
 18 Q. BY MR. THOMAS: Who else was manning the keyboard
 19 besides you?
 20 A. Well, no one else.
 21 Q. All right.
 22 A. What I'm trying to say is, it may have been a
 23 search function of the screen, what we were doing, but I
 24 don't know what caused them to be highlighted.
 25 Q. Okay.

1 A. It's typical of a search.
 2 Q. All right. No more questions regarding
 3 Exhibit 210.
 4 Let's make sure we keep these in order. Where's
 5 your stack of exhibits, sir?
 6 A. Right here.
 7 Q. Okay.
 8 A. Face down.
 9 Q. Now, I'd like you to go to your binder, I'd like
 10 you to turn to the tab -- I put a clip on the bottom for you
 11 so you can see it.
 12 A. Okay.
 13 Q. And, for the record, we're at S2, No. 4(a).
 14 A. Correct.
 15 Q. Upper right; do you see that?
 16 A. Section 2, No. 4(a), yes.
 17 Q. And this -- what is this document?
 18 A. Notes on -- roughed in from handwritten notes,
 19 mostly paraphrased later thoughts and comments. This a
 20 conversation between myself and Caroline Mankey on the 9th
 21 of April 2010.
 22 Q. And did you take these notes at or about the time
 23 of the conversation with Ms. Mankey?
 24 A. Yes.
 25 Q. And when did you type them up?

1 MR. MULLER: Counsel, can I clarify for the
 2 record? You're looking at -- this witness and you are
 3 looking at a binder that we don't have.
 4 MR. THOMAS: It's the one Mr. Nabil Abu-Assal
 5 complained that I threw it at him; it's the binder.
 6 MR. ABU-ASSAL: Which exhibit?
 7 MR. MULLER: This black binder here?
 8 MR. THOMAS: It's No. S-2, No. 4(a). Does it not
 9 look like the same binder, sir?
 10 MR. MULLER: This binder here?
 11 MR. THOMAS: Yeah. How is that not the same
 12 binder?
 13 MR. ABU-ASSAL: You didn't throw that one at me.
 14 You threw the --
 15 MR. MULLER: You threw the bigger one.
 16 MR. THOMAS: I don't think so. I didn't throw it
 17 at you. I gave it to you.
 18 Q. Okay. No. S2, 4(a), anyway, so these are notes
 19 you took at or about the time of your conversation with
 20 Ms. Mankey?
 21 A. Probably during the conversation.
 22 Q. Okay. And did you do your best to be accurate, as
 23 best you could?
 24 A. Yeah. It was from my own memory, yes.
 25 Q. Okay. And she's interviewing you about the issues

1 in this case; is that your understanding?
 2 A. To some degree, yes.
 3 Q. Okay. Did she call you or did you call her?
 4 A. I don't recall who called who.
 5 Q. Okay. Let's turn to the second page. There's
 6 a --
 7 MR. ABU-ASSAL: Can you identify the second page?
 8 Q. BY MR. THOMAS: S2, No. 4(b).
 9 And it says -- in about the middle, it says CM.
 10 What does CM stand for.
 11 A. Caroline Mankey.
 12 Q. Okay. And it says, "Did they change the
 13 password?" Do you see that?
 14 A. Let's see.
 15 Q. A little further.
 16 A. Okay. Yes, I see it.
 17 Q. So Caroline Mankey asked you a question. She
 18 said, "Did they change the password?"
 19 A. Yes.
 20 Q. And did she ask you that?
 21 A. Yeah.
 22 Q. Okay. And what did you say?
 23 A. They had to have changed it, as it's a single-use
 24 password. I didn't know what it was for -- it's supposed to
 25 say from that point on.

1 Q. Okay.
 2 A. And --
 3 Q. That's what you told Ms. Mankey?
 4 A. Yeah, yeah. I didn't recall whether I had changed
 5 it or not and at the time, I believe that it was a single
 6 use.
 7 Q. Well, you told her they had to have changed it,
 8 right? You didn't say you don't recall. You told her --
 9 A. I know.
 10 Q. -- they had to have changed it.
 11 A. Uh-huh.
 12 Q. Yes?
 13 A. Yes, yes.
 14 Q. Okay. Turn to the next page, S2, No. 5(a), and
 15 this is -- what is this document?
 16 A. It's a conversation, notes from me and Caroline
 17 Mankey on 12 April 2010.
 18 Q. Okay. And did you have a conversation with her on
 19 that day?
 20 A. Yes.
 21 Q. And are these notes you took from the
 22 conversation?
 23 A. Yes.
 24 Q. Okay. And did you take these at or about the time
 25 you spoke with her?

1 A. Yes.
 2 Q. Okay. And you're discussing here KB -- I'm about
 3 a third of the way down; do you see that?
 4 A. Yes.
 5 Q. KB?
 6 A. Yes.
 7 Q. Saying that she didn't have the isphydoux login,
 8 may or may not be accurate; do you see that?
 9 A. Yes.
 10 Q. Who's talking there; is that you or Ms. Mankey?
 11 A. That's a good question. I think this is -- may
 12 have been commentary that I put in --
 13 Q. Okay.
 14 A. -- after review.
 15 Q. If Mr. Barale said that she pulled files or copied
 16 files from ER-Recorder onto AS-Nevada using her own account,
 17 not the isphydoux, would you have any reason to dispute
 18 that?
 19 A. I don't know which account she used.
 20 Q. So you would have no reason to dispute her
 21 testimony?
 22 MR. ABU-ASSAL: Argumentative.
 23 THE WITNESS: I -- let me think a second.
 24 MR. ABU-ASSAL: Argumentative, calls for
 25 speculation.

1 THE WITNESS: I have no direct knowledge that she
 2 used isphydoux --
 3 Q. BY MR. THOMAS: Right.
 4 A. -- you know.
 5 Q. So if she says she didn't use it, you'd have no
 6 reason to dispute that?
 7 A. Correct.
 8 Q. Okay. And then if we read further in this column,
 9 this is you talking, it says, "That I know that someone who
 10 wasn't me copied the database from ER-Recorder, CRiis
 11 database, to AS-Nevada development box." Do you see that?
 12 A. Yes.
 13 Q. How do you know that?
 14 A. Because I know I didn't copy it and I looked --
 15 okay. I have no direct knowledge of that. It's an
 16 inference because the SER report that Kathy fills in
 17 references database maintenance at various points. And,
 18 therefore, at one point in time, to where that was written,
 19 someone would have had to have copied over information in
 20 which they would have started working on the database. So
 21 although I may not have observed it, I made that inference
 22 through the information I had in front of me.
 23 MR. ABU-ASSAL: Move to strike. It's all
 24 speculation, lacks foundation.
 25 Q. BY MR. THOMAS: So what did you mean by database?

1 A. CRiis database.
 2 Q. Okay. So you saw documents which told you it was
 3 as a system administrator for both ER -- well, no. He was
 4 the system administrator.
 5 You saw documents that told you as a network --
 6 computer network employee at Nevada County, that showed you
 7 that the CRiis database was copied from ER-Recorder to
 8 AS-Nevada; is that right?
 9 MR. ABU-ASSAL: Calls for speculation, lacks
 10 foundation and assumes facts not in evidence.
 11 THE WITNESS: It was an inference based on the SER
 12 entries by Kathy Barale.
 13 Q. BY MR. THOMAS: Okay. And you saw entries that
 14 told you that she had been -- can you go to that page,
 15 please?
 16 A. Uh-huh.
 17 Q. You saw documents which indicated to you that she
 18 had moved files -- database files from AS -- or ER-Recorder
 19 to AS-Nevada?
 20 MR. ABU-ASSAL: Calls for speculation, lacks
 21 foundation.
 22 THE WITNESS: Let me reference it. It's --
 23 Q. BY MR. THOMAS: Are you at the document that's --
 24 A. I am looking at SER 09000339.
 25 Q. Okay.

1 A. And it's the first set of screen captures that
 2 starts showing data entry, entry number 460 by Kathy Barale
 3 on the 28th of January 2009.
 4 Q. Uh-huh.
 5 A. Participate in Aptitude conference discussing
 6 AtPac data conversion status and current issues.
 7 Q. Okay.
 8 A. So to me I read that as, well, how can there be a
 9 data conversion status unless data was transferred over.
 10 MR. ABU-ASSAL: Move to strike.
 11 MR. THOMAS: Okay.
 12 MR. ABU-ASSAL: It's speculation.
 13 MR. THOMAS: Okay.
 14 THE WITNESS: Yes, yeah.
 15 MR. ABU-ASSAL: Move to strike, it's speculation.
 16 Q. BY MR. THOMAS: So is what you were saying to
 17 Ms. Mankey -- you were speculating to her; is that right?
 18 A. Yeah. It was -- to the best of my knowledge, yes.
 19 Q. Did you tell her you were speculating?
 20 A. I don't recall. I'd have to look in my notes.
 21 Q. We're going back to S2, No. 5(a). It's the one
 22 with the paper clip on it.
 23 A. Yeah.
 24 Q. Do you have it?
 25 A. Okay.

1 Q. Well, you know you didn't copy any database from
2 ER-Recorder to AS-Nevada; is that what you said to her?
3 A. That I know for -- yes.
4 Q. How do you know that?
5 A. Because I didn't copy any database information. I
6 only copied TIFF images, you know, the scanned images.
7 Q. Uh-huh. From where to where?
8 A. From ER-Recorder to -- well, it was either the
9 AS-Nevada or the OCRC production server. I -- it would -- I
10 don't remember which machine it was at this point, but...
11 Q. Okay. And did you use your own account to do
12 that?
13 A. Good question. It could have been my account. It
14 could have been root and it could have been isphydoux. I
15 don't remember using isphydoux. I don't remember using any
16 of them, but I must have used one of them. I just don't
17 know.
18 Q. Well, normally what accounts would you use during
19 the day to access ER-Recorder, for example?
20 MR. ABU-ASSAL: Objection, vague and ambiguous,
21 lacks foundation.
22 Q. BY MR. THOMAS: If you had your own accounts, what
23 reason would you ever have to use isphydoux?
24 MR. ABU-ASSAL: Calls for speculation and is a
25 hypothetical, incomplete hypothetical.

1 THE WITNESS: How would I formulate? I'm not sure
2 which one of the logins I used. I really don't have a clear
3 memory of using any particular one. But I know for a fact I
4 used something because I did; I moved them over from one
5 machine to another, the image files. Believe me, I have
6 searched my memory and tried to come up with an answer to
7 that question.
8 Q. BY MR. THOMAS: And in trying to do that, you can
9 come up with no memory that you used isphydoux ever,
10 correct?
11 A. Not a clear memory of anything. I know I had the
12 isphydoux login at one time because I helped Kathy -- she
13 wanted to know how to move files and there was a
14 conversation about doing it and that isphydoux -- they
15 wanted to use it, or Kathy did. Whether she did or not, I
16 don't know, but no one had the password at that time, and I
17 had to go and find it or look it up. Whether we got it
18 in-house or got it from Aptitude, I don't recall anymore.
19 But I didn't have it.
20 Q. Or didn't get it at all.
21 A. Yeah, I didn't have it.
22 Q. So you didn't have the password for isphydoux.
23 Okay.
24 MR. ABU-ASSAL: Misstates his testimony.
25 Q. BY MR. THOMAS: Well, when you said, "I didn't

1 have it," what were you talking about it?
2 A. Well, I didn't have the login password for
3 isphydoux at the time that Kathy wanted to learn how to do
4 the copy of the files, right? Because it was her job to do
5 that at first. I don't know if she did or not. I remember
6 telling her how to do it, showing her how to login. Whether
7 she used isphydoux or IS KBarale or what, I don't know. But
8 I showed her how to use the software and how to transfer
9 files.
10 She couldn't get around to it, so they started
11 tasking me with the job of copying files that were image
12 files from ER-Recorder to the target server which was
13 probably OCRC or whatever they were doing the main indexing
14 on, you know. I don't remember --
15 Q. Would you have logged your time to do that work?
16 A. Yes.
17 Q. Okay.
18 A. And that would be in the SER. You'll see
19 entries --
20 Q. Can you show me them?
21 A. Yes.
22 Q. Because whatever you did -- strike that.
23 Before you go there, whatever you did to transfer
24 files, you would have logged it in the SER log, correct?
25 A. Yes.

1 Q. Okay. Show me what work you did in the SER log.
2 A. Where are you?
3 MR. ABU-ASSAL: Are every one of these pages
4 numbered?
5 MR. MULLER: Yes, I'm going to get up to look so
6 we're looking at the same page.
7 THE WITNESS: This is the beginning of the SER
8 where the logs are starting to accumulate.
9 MR. MULLER: Could you flip to the page?
10 THE WITNESS: Yes. It's part of my chronology,
11 that's where we will start.
12 MR. MULLER: Thank you.
13 THE WITNESS: Now, these entries are numbered on
14 the left under row ID, and they're not always sequential,
15 but for the most part they are.
16 Q. BY MR. THOMAS: Okay.
17 A. If we turn a couple pages in to entry 736 --
18 Q. Are these numbers generally sequential?
19 A. Generally, yeah. It's the second screen capture
20 down.
21 You'll see that I mention in here where Kathy says
22 halfway down the entry, "Spoke with DEvers regarding
23 location of AtPac images, e-mailed AtPac vendor to confirm
24 location of scanned image.
25 Q. Okay.

1 A. By this time, you know, they're starting to want
2 to move images over.

3 Q. All right.

4 A. There's --

5 Q. That's on April 2nd, 2009?

6 A. Yes.

7 Q. Are you moving -- does this indicate -- if you
8 were actually doing work, though, you would have a time
9 entry of your own, correct?

10 A. Right, right. This is -- if you look over on the
11 left side, there is -- it says KBarale and Kathy Barale.

12 Q. Yes.

13 A. Those are entries. If it says Dan Evers or DEvers
14 in those two columns, that's one that I entered or I did
15 something. You'll see that my first entry here is at the
16 very bottom on entry 789, and I said, "Began transfer of
17 image files from ER-Recorder --" oh, there you go -- "to
18 OCRC using WIN-SCP," and that was on 14th of April 2009.

19 Q. Okay. And so on the 14th of April 2009, you were
20 transferring images to something called OCRC?

21 A. Right.

22 Q. What is that?

23 A. That's the -- that's the equivalent to the
24 ER-Recorder server. That's the Aptitude imaging server.

25 Q. That's different than AS-Nevada?

1 A. Yes. That was their staging RD -- whatever they
2 were calling the server, their initial server for setting
3 up.

4 Q. Does each server have a different IP address?

5 MR. ABU-ASSAL: Lacks foundation, calls for
6 speculation.

7 Q. BY MR. THOMAS: You were the system administrator
8 for many servers in the County, correct, for ten years?

9 A. Two systems cannot have the same IP address at the
10 same time.

11 Q. Okay.

12 A. They would conflict.

13 Q. All right. So moving on, so you have an entry on
14 4/14. What's the next -- you have a number of entries on
15 the 14th and the 15th?

16 A. Right. And you -- you'll see a little DJE over on
17 the right or DE, that's where I'm -- I did an entry and KB
18 with DJE underneath it means that Kathy did, but mentioned
19 me.

20 Q. Now, with respect to this transfer of files,
21 you're using WIN-SCP --

22 A. Correct.

23 Q. -- on the 14th?

24 What account did you use to do that with?

25 A. Like, that's what I was referring to earlier. I

1 don't recall, it could have been isphydoux, it could have
2 been root, it could have been DPDan. I don't recall. That
3 would be something to look at in perhaps logs or something,
4 but I know I did. I just don't know which one I used.

5 Q. Well, you testified earlier that you didn't know
6 the account -- a password for isphydoux. So how would you
7 have used isphydoux?

8 MR. ABU-ASSAL: Misstates testimony.

9 Q. BY MR. THOMAS: Mr. Abu-Assal, if you could just
10 let me finish my question first, please. I'd really
11 appreciate it. It's really disruptive.

12 Sir --

13 A. Yes.

14 Q. -- I think you testified earlier, but I don't
15 think I know. You testified earlier that you didn't know
16 the password for isphydoux.

17 A. That is correct.

18 Q. The question is, how would you use the isphydoux
19 account without knowing the password?

20 A. Remember I said earlier that as a point in time I
21 originally, you know, I didn't keep it on file or I didn't
22 remember it or whatever, and then Kathy needs to move
23 images. There was a conversation between me and Kathy about
24 how to do that. I believe isphydoux came up at that point,
25 and so we would have had to have acquired the isphydoux

1 login --

2 Q. Why?

3 A. -- in order to do that.

4 Q. If you used --

5 A. If we used it, right.

6 Q. But you don't know that you did.

7 A. Right.

8 Q. So why --

9 A. So it's a vague memory. I can't tell you it's
10 concrete.

11 Q. So if you don't know that you used the isphydoux
12 account, then you really don't know that you would have had
13 to have found the password for isphydoux, correct?

14 MR. ABU-ASSAL: Argumentative.

15 THE WITNESS: I see the logic in it.

16 Q. BY MR. THOMAS: Do you agree with me?

17 A. Uh-huh.

18 Q. That's a true statement?

19 MR. ABU-ASSAL: It's argumentative --

20 THE WITNESS: Restate it.

21 MR. ABU-ASSAL: -- and it lacks foundation.

22 Q. BY MR. THOMAS: If you don't know that you used
23 the isphydoux account, then you really don't know that you
24 would have had to have found the password for the isphydoux
25 account, correct?

1 MR. ABU-ASSAL: Argumentative, calls for
2 speculation.
3 THE WITNESS: That's correct.
4 Q. BY MR. THOMAS: And you have no reason to dispute
5 Mrs. Barale's testimony if she said, "I used IS KBarale to
6 pull files from ER-Recorder to AS-Nevada?"
7 A. That is correct.
8 Q. Do you know her to be an honest person?
9 A. Yes.
10 Q. Okay. Where would you have gotten the password if
11 you didn't remember it? How would you do that?
12 A. It would -- either by calling the vendor Aptitude.
13 It's possible that it was kept --
14 Q. Are you speculating now?
15 A. Yeah, I am. Yeah, I would probably have called
16 Aptitude would be how I would get it.
17 Q. Because you knew for a fact they had the password
18 for isphydoux.
19 A. Yes.
20 Q. Because you gave it to them?
21 A. Yeah. I do know for a fact we asked for Marie to
22 give it to us, but she said she didn't have it. We were
23 trying to get it.
24 Q. So Marie told you the isphydoux account, she
25 didn't have it --

1 A. That's correct.
2 Q. -- the password?
3 A. That's correct.
4 Q. Okay. Looking down through your time entries. I
5 see you have a number of entries in April?
6 A. Uh-huh.
7 Q. And then there's a number of -- there's some
8 entries in May; do you see those?
9 A. May, yup.
10 Q. You're copying more files from ER-Recorder to
11 OCRC, yes?
12 A. Yes.
13 Q. Okay. And turning down -- then we have some in
14 June; do you see that?
15 A. Yes.
16 Q. I see one on June 3rd?
17 A. June 3rd.
18 Q. What is that?
19 A. At KB's request, I copied over all remaining May
20 2009 images from ER-Recorder to OCRC.
21 Q. Okay. And did you do that?
22 A. Yes.
23 Q. If you said that in your time entry, then you
24 would be truthful in your time entries?
25 A. Absolutely. It's billable.

1 Q. Did you do those at or about the time you did the
2 work or close to it?
3 A. It's possible too that it was actually entered
4 after it occurred at some time. You wouldn't do it before,
5 so it may -- either is that day, which is a most likely
6 scenario. It could have also been somewhere in the previous
7 workweek. If I did it on a Friday, it said five hours. But
8 it was actually amortized over the entire week. That
9 doesn't tend to be how I do things, though.
10 Q. But it's your job, you're assigned the duty of
11 entering your time as an employee of Nevada County when you
12 entered these time entries?
13 A. Yes.
14 Q. Part your job?
15 A. Yes.
16 Q. And you a make an effort to be as accurate as you
17 can?
18 A. Yes, I did.
19 Q. Okay. So turning down -- I don't see any more on
20 this page. Let's turn to page 19. Are you there?
21 A. Yes.
22 Q. Okay. It says on the 12th, what does it say
23 there?
24 A. Let's see, entry 1077. "Well, I've not received
25 completed backup configuration information. I will attempt

1 to get OCRC onto the data or DPM system this weekend," which
2 is on your backup system we had just moved to.
3 Q. Okay. And so you're talking about OCRC?
4 A. Yes. The Aptitude server.
5 Q. The Aptitude production server?
6 A. Correct.
7 Q. Not AS-Nevada?
8 A. Correct.
9 Q. AS-Nevada would be different than the one you're
10 talking about in your 6/12/09 entry, which is 1077, yes?
11 A. Yes.
12 Q. All right. And then what's the next time you have
13 an entry for some work?
14 A. Entry at 1066, which is not sequential at the same
15 date, apparently there's two entries. I worked with Kathy
16 Barale and Jesse at Aptitude and Fritz Gielow regarding OCRC
17 backup issues, DPM jobs mostly not working.
18 Q. Okay. And so those are examples again when you're
19 working on backing up the OCRC server?
20 A. That is correct.
21 Q. Okay. And what's the next entry that has to do
22 with you?
23 A. 1078 is the row ID and it is the 17th of June,
24 continue to do an ad hoc OCRC backup of G/AtPac images and
25 G images to USB regarding pre data move.

1 Q. Okay. And what was that work?
 2 A. Pre data move? I'm not sure what I mean by pre
 3 data move at this point, but it sounds like we were trying
 4 to get a backup made onto an external drive so that we would
 5 have -- remember, earlier I was having problems with the DPM
 6 backup process. So I was manually doing a backup capture of
 7 the images files on the OCRC at this time to an external
 8 hard drive through a USB connection.
 9 Q. Okay. All right. And so OCRC, again, that's the
 10 Aptitude production server?
 11 A. Yes.
 12 Q. Different than the AS-Nevada?
 13 A. Correct.
 14 Q. And then you have another entry on the 18th of
 15 June; do you see that?
 16 A. Let me look. 18th of June, yes.
 17 Q. Continued with ad hoc backup; do you see that?
 18 A. Yes.
 19 Q. And that's again referring to ad hoc backup of
 20 OCRC?
 21 A. Correct.
 22 Q. Okay.
 23 A. Do you want me to read it?
 24 Q. Yes.
 25 A. "Continue with ad hoc backup, backup process

1 glitches when it encounters corrupted image files, requires
 2 a high level of hands-on time."
 3 Q. Okay. All right. And with respect to some of the
 4 time entries on the 18th, did you record -- did you
 5 indicate, with respect to the 1079 entry, doing any work
 6 concerning ER-Recorder?
 7 A. There's no entries to that effect.
 8 Q. Did you put any entries dealing with AS-Nevada?
 9 A. Not that I know of.
 10 Q. On the 17th, June 17th at 1079, that's No. 1078,
 11 did you put any entries dealing with any work associated
 12 with ER-Recorder?
 13 A. No. That's strictly referring to OCRC.
 14 Q. And did you put any entries on June 17th dealing
 15 with any work associated with AS-Nevada? Yes or no?
 16 A. On the 17th?
 17 Q. Yes.
 18 A. No, there's none in there.
 19 Q. Okay. And going up on the -- finally on the 12th
 20 at the top, your entry on June 12th, did you indicate any
 21 work you were doing associated with ER-Recorder?
 22 A. Well, I've not received completed backup
 23 configuration --
 24 (Witness reading to himself.)
 25 No, no entries involving that.

1 Q. And are there any entries on June 12th concerning
 2 any work associated with AS-Nevada?
 3 A. Not in this document.
 4 Q. Okay. Do you have any -- are you aware of any
 5 other document where you're indicating any work with
 6 AS-Nevada on June 12th?
 7 A. The only two locations that would possibly have
 8 that information would either be my electronic timesheet
 9 tabulation; you know, the Excel file that you saw a screen
 10 shot of. Also, the electronic -- it's possible it may have
 11 shown up in the electronic timesheet that the County
 12 maintains up in the accounting department. That's a
 13 different electronic timesheet. That's the official one,
 14 not my note one. And --
 15 Q. But you don't have a recollection of having done
 16 any work --
 17 A. No; no, I don't.
 18 Q. Let me finish.
 19 A. I'm sorry.
 20 Q. You have no recollection on June 12th, 2009 of
 21 having done any work associated with ER-Recorder or
 22 AS-Nevada, correct?
 23 A. That is correct.
 24 Q. Okay. And on June 17th, 2009, as you sit here
 25 today, you have no recollection of doing any work associated

1 with AS-Nevada or ER-Recorder on that date as well, correct?
 2 A. Correct.
 3 Q. And the time entries you entered for this
 4 particular log reflect other work, but don't include any
 5 work associated with AS-Nevada or ER-Recorder, correct?
 6 A. I'm looking at --
 7 Q. On the dates of June 12th or June 17th.
 8 A. Correct.
 9 Q. All right. Or the dates -- from June 12th through
 10 June 22nd, at least.
 11 A. Mike, let me review something very quickly, just
 12 to make sure I'm on the -- okay. That was image backup.
 13 On June 18th it's not mentioned. The --
 14 Q. Where are you? Are you reading from a document?
 15 A. Yeah. I'm reading an entry 1079. We did go over
 16 this entry. "Continue with ad hoc backup. It glitches when
 17 it encounters corrupted image files, requires a high level
 18 of hands-on time."
 19 Now, it doesn't say I went into ER-Recorder, but
 20 if I had a corrupted image, that's where I would go to get a
 21 correct image, one that isn't corrupted. So while not
 22 necessarily entered -- and I'm speculating, because I don't
 23 remember doing that, but --
 24 Q. Yeah. You don't have any recollection of going
 25 into ER-Recorder on the 18th of June, correct?

1 A. Correct.
 2 Q. All right. And your time entry doesn't reflect
 3 it, correct?
 4 A. Correct.
 5 Q. And let me ask you again, what is this log we're
 6 looking at? The front page is on 14 of 32.
 7 A. Yeah. It's probably this -- this is just part of
 8 my chronology document called AtPac versus Aptitude, a
 9 chronology by Dan Evers .doc, D-O-C.
 10 Q. I'm interested in what this document is.
 11 A. That's part it.
 12 Q. What is this, this log?
 13 A. Oh, that log is the SER -- it's the work ticket
 14 that the information systems analyst, Kathy Barale, was
 15 maintaining.
 16 Q. And work taken for what?
 17 A. For the Aptitude -- it's called "Implement
 18 Replacement RC Electronic System, Kathy Barale."
 19 Q. Okay. And so when you worked on the -- strike
 20 that.
 21 Was this work ticket her effort to track time
 22 worked on the conversion from the AtPac software to the
 23 Aptitude software?
 24 A. Yes.
 25 Q. Okay. And when you worked on that project for her

1 or with her, you entered time on that ticket?
 2 A. Correct.
 3 Q. That would be the proper place to enter the time?
 4 A. Yes.
 5 Q. Okay. Because this time is billed to a
 6 department?
 7 A. Yes.
 8 Q. So it's important to get the time entered on the
 9 right log?
 10 A. Absolutely.
 11 Q. And this would have been the right log to enter
 12 your time on?
 13 A. Yes.
 14 Q. Okay. Do you feel you were good about entering
 15 your time on the correct logs or did you make mistakes
 16 frequently as to where you logged your time?
 17 A. Oh, I'm pretty thorough about where I enter my
 18 time.
 19 Q. Okay. So if you had done work on a particular day
 20 on this project, do you believe it would be shown in this
 21 log?
 22 A. Yes.
 23 Q. All right. Now circling back to the page with the
 24 clips. I'm on S2, No. 5(a).
 25 A. Okay. I'm there.

1 Q. All right. Looking down in that paragraph we were
 2 looking at before. You mentioned there was files copied
 3 from ER-Recorder, CRIis database to AS-Nevada development
 4 box, yes? You wrote that?
 5 A. Yes, I wrote that.
 6 Q. It says, "I know I didn't do it because the only
 7 thing I copied were images files later in the year 2009."
 8 Do you see that?
 9 A. No. Where -- I'm sorry, I'm losing my place. Oh,
 10 I see. I see it. Okay. Development box.
 11 (Witness reading to himself.)
 12 Yes. This looks like me talking to Caroline and
 13 basically explaining it.
 14 Q. To the extent you did copy images in the year
 15 2009, are those the entries we saw on the SER log that you
 16 just showed us?
 17 A. Yes.
 18 Q. In April we saw them?
 19 A. Yes.
 20 Q. Okay. And you believe you copied those onto
 21 AS-Nevada? Is that what your testimony is or do you not
 22 recall?
 23 A. Let me see. Oh, did I call -- right. I see what
 24 you're saying.
 25 Q. Actually, the ones in April talk about copying

1 them to O --
 2 A. OCRC. I may have meant to say OCRC, not
 3 AS-Nevada.
 4 Q. So really, all you have a recollection of, as you
 5 sit here today, is copying files from -- strike that.
 6 All you have a recollection of is copying images
 7 from --
 8 A. Yes.
 9 Q. -- ER-Recorder to OCRC's Aptitude production
 10 server; that's your recollection?
 11 A. That's what I remember.
 12 Q. Okay. And you don't remember copying images from
 13 ER-Recorder to AS-Nevada, correct?
 14 A. No, I don't remember doing that.
 15 Q. Okay. One moment, sir. If you could turn to
 16 Exhibit 10 in your binder, please. This binder.
 17 A. Okay.
 18 Q. Do you have it?
 19 A. Yeah.
 20 Q. Turn to the second page.
 21 MR. ABU-ASSAL: Of Exhibit 10?
 22 Q. BY MR. THOMAS: Yes.
 23 At the very top, this is an e-mail that Ms. Barale
 24 was asked about. At the top it says, "The 17227.2.80 IP
 25 address is Aptitude Solution's AS-Nevada support server."

1 Do you see that?
 2 A. I do.
 3 Q. As you sit here today, do you know that that's
 4 correct? Do you have that IP address memorized?
 5 A. No, I don't. But it's -- I don't know for sure.
 6 I'd have to look at the box, but it sounds right.
 7 Q. Okay. Did you know the IP address of AS-Nevada
 8 when it was installed in Nevada County and you were working
 9 there?
 10 A. When I was there, yes, yes.
 11 Q. Okay. Do you remember us asking you if you knew
 12 what that IP address was and you telling us you didn't know;
 13 do you remember that?
 14 A. When you guys came up to talk to me?
 15 Q. Yeah. And actually when we were together in
 16 Roseville, at an office in Roseville. Do you remember that?
 17 A. Vaguely, but it sounds -- you know, like I say,
 18 I'd have to see the box to know for sure.
 19 Q. I see.
 20 A. Yeah.
 21 Q. But it does sound like the right address?
 22 A. It does.
 23 MR. THOMAS: Okay. Mark this next in order, Dina.
 24 (Whereupon Exhibit 211 was marked for
 25 identification.)

1 Q. BY MR. THOMAS: Okay. Do you have Exhibit 211 in
 2 front of you?
 3 A. Yes.
 4 Q. Please identify this document for the record.
 5 A. This is NCSP-102, Vendor End-User Security
 6 Affidavit. So it would be attachment A1 or 102A1.
 7 Q. What is this document?
 8 A. This is the document that instructed me to create
 9 the login and with proper authorization from the data owner
 10 Gregory Diaz.
 11 Q. Okay.
 12 A. On behalf of Aptitude Solutions, it's specifically
 13 Jesse Dion.
 14 Q. Okay. So it was to be created for -- it's a
 15 vendor account, yes?
 16 A. Yes. And the sponsor is the Clerk-Recorder.
 17 Q. Okay. And what did it tell you to create?
 18 A. Well, let's look.
 19 Q. Let's do it one page at a time, because I've never
 20 seen this before.
 21 A. Okay.
 22 Q. It asks for vendor information. Do you understand
 23 the vendor fills this form out; that's your experience?
 24 A. Yeah. Sometimes people will assist them, but yes,
 25 yes.

1 Q. And whose writing is at the top that says, "AtPac
 2 login"?
 3 A. Oh, that horrible handwriting is probably mine.
 4 It's my handwriting.
 5 Q. Okay. It says, "AtPac login." That means AtPac's
 6 server ER-Recorder; is that what you meant?
 7 A. Correct.
 8 Q. Okay. And when you received this document, it
 9 would have been filled out. You would have -- the part
 10 that's written in the middle, Aptitude Solutions, Jesse
 11 Dion, that would have been already written in when you
 12 received it?
 13 A. Correct.
 14 Q. Okay. And then going to the next page, it's just
 15 typewritten material?
 16 A. Correct.
 17 Q. And the next page is a number of pieces of
 18 material that are filled out; do you see that?
 19 A. Yes.
 20 Q. And it says, "Add a new vendor company account; do
 21 you see that, with a checkbox in it?"
 22 A. Yes, yes, yes.
 23 Q. So you're adding in a new account for Aptitude; is
 24 that right?
 25 A. Yes.

1 Q. Vendor company address information, and it lists
 2 the company address?
 3 A. Correct.
 4 Q. All right. It says, "Vendor end-user account
 5 information." That's on page 2120?
 6 A. Correct.
 7 Q. What is vendor user -- end user account
 8 information?
 9 A. That's the contact information, you know, where to
 10 get ahold of the vendor, who they are.
 11 Q. Okay. This the end user of the account?
 12 A. Yeah. In this case it's Jesse Dion.
 13 Q. Okay. And it says -- then there's a box that
 14 says, "Please tell NCIS why you are applying."
 15 A. Correct.
 16 Q. And that was filled out when you received this?
 17 A. Yes.
 18 Q. And then it says, "Connection type." It says,
 19 "VPN" circled, I think.
 20 A. Correct.
 21 Q. That means they wanted VPN access as well?
 22 A. Right.
 23 Q. Okay. Then the next page talks about, "Please
 24 enumerate NCIS systems you will be touching/working on." Do
 25 you see that?

1 A. Correct.
 2 Q. All right. And I think you've already talked
 3 about that, but that was written in when you received it?
 4 A. Correct.
 5 Q. And it has read-only access; do you see that?
 6 A. Correct.
 7 Q. And that means they have access to read everything
 8 and copy everything, correct?
 9 MR. ABU-ASSAL: Lacks foundation, calls for
 10 speculation and also calls for expert testimony.
 11 Q. BY MR. THOMAS: You configured the account to give
 12 them access to read and copy everything they had access to,
 13 yes?
 14 MR. ABU-ASSAL: Misstates his testimony and lacks
 15 foundation.
 16 Q. BY MR. THOMAS: Correct?
 17 A. I -- yes, correct.
 18 Q. Okay. So I didn't misstate your testimony, did I?
 19 A. No. I think you got it.
 20 Q. Thank you.
 21 And then there's a series of signatures at the
 22 bottom; do you see that?
 23 A. Yes.
 24 Q. And do you recognize anyone's signature on this
 25 page?

1 A. I recognize Gregory Diaz.
 2 Q. And how is it you recognize his signature? Have
 3 you seen it before?
 4 A. Yes. When they would add other people, yeah.
 5 Q. And you recognize this as his signature?
 6 A. Yeah.
 7 Q. All right. And then turning to the next page,
 8 there's further information. What's -- there's some
 9 handwriting on here, what is that?
 10 A. Let's see; the entry here is under Novel, active
 11 date 11/3/08 and login is Aptitude and -- oh, it looks like
 12 they put in a password Aptitude spelled with an "@" sign at
 13 the beginning and a "3" at the end, and that is the Novel
 14 login which is a prerequisite or VPN access.
 15 Q. So that's a VPN login?
 16 A. Yes. You must be a member of the Novel
 17 environment at that time in order to gain VPN access.
 18 Q. All right. And then what's the next page?
 19 A. This is the End-User Security Affidavit,
 20 NCSP-102A1.
 21 Q. Okay.
 22 A. And it's dated July 1st. The previous one was
 23 dated the 31st of October 2008. This is 1st of July 2009.
 24 Q. Okay. And then turning to the next page 2124; do
 25 you see that?

1 A. Yes.
 2 Q. It says, "30/06/2009, Requested Action Date,"
 3 right?
 4 A. Correct.
 5 Q. Okay. And do you know what that date signifies?
 6 A. No, actually, I don't. I don't believe I worked
 7 off of this one. No, this isn't one that I processed or had
 8 anything to do with.
 9 Q. So you never saw this document we're looking at?
 10 A. I've seen it.
 11 Q. Does it have to do with the creation of the
 12 isphydoux account?
 13 A. No, it has nothing to do with the isphydoux
 14 account. The previous document or half of the document
 15 dated 31 October 2008 was the one that you got isphydoux.
 16 Q. Okay. On what page does the isphydoux-related
 17 document end?
 18 A. It ends on page NV002123.
 19 Q. Okay.
 20 A. Yeah. No, I'm sorry, 2122.
 21 Q. Thank you.
 22 A. I'll get it.
 23 Q. Any other -- the rest of it is for the VPN access
 24 or something else?
 25 MR. ABU-ASSAL: Lacks, foundation.

1 THE WITNESS: I have no idea what this is for.
 2 Q. BY MR. THOMAS: Okay. Fine.
 3 A. VPN access was requested on the previous document,
 4 not this document.
 5 Q. Okay. Now, I thought -- maybe I misheard you, but
 6 I thought I heard you say sometime earlier that -- well, let
 7 me ask you this: Was the isphydoux account -- it was
 8 created specifically for use by Aptitude, yes?
 9 A. I was told it was being created for both internal
 10 and external use. It was a hybrid.
 11 Q. Okay. Who told you that?
 12 A. Marie.
 13 Q. When?
 14 A. During the day I set up isphydoux.
 15 Q. Okay. And is that reflected in the NCSP-102A1
 16 document?
 17 A. No. It's not verbatimly (sic) written. However,
 18 the nomenclature of IS, that's a prefix for a vendor login,
 19 indicates that it's not a standardized login. It should
 20 have been a VN, JDion or VN Aptitude.
 21 Q. Well, she told you -- she told you to obfuscate
 22 the login and that's why you labeled it IS, correct?
 23 Correct?
 24 A. Yes. That is -- that is correct.
 25 Q. All right. So where in -- so nowhere in the NCSP

1 document does it say to make this an account for both
2 internal and external use, does it? It doesn't say that
3 anywhere.

4 A. That is correct.

5 Q. Okay. And are you authorized to create accounts
6 that don't -- if the NCSP document doesn't say it should be
7 an internal and an external user account, what does the
8 policy say about you complying with that and not making it
9 an internal or external account?

10 A. It is --

11 Q. Don't you have to follow the document?

12 A. Yes, I would have. And there was no document
13 specifying that I could or could not do this. It has never
14 been done before, nor had it come up.

15 To my knowledge, all logins were segregated. If
16 you were a vendor, you would get a login. If you were an
17 internal employee, you would get a login. This is the first
18 time I had ever seen -- and the only time I had ever seen
19 one that was a hybrid of both internal and external access
20 usage.

21 Marie did tell me that it would be used by both IS
22 personnel and Aptitude personnel.

23 Q. And did you ever ask her if she used it?

24 A. Not directly, no.

25 Q. Well, indirectly in any way?

1 A. Yeah, in a way. When Kathy and I were trying to
2 get the login for it, for copying images over, she went --
3 we went to Marie -- I said go ask Marie; she might have the
4 login, and Marie did not. That's my only experience with
5 Marie regarding a login.

6 So I didn't give her the login and the password.

7 Q. And Kathy didn't have it either because she was
8 asking you to find it.

9 A. Right, right. And I didn't keep it on hand.

10 Q. Well, you didn't keep it anywhere?

11 A. Yeah. I didn't want it.

12 Q. Right. You didn't write it down and --

13 A. No, no.

14 Q. Okay. I'm done with 211.

15 Okay. Exhibit No. 3 in the binder, please. I
16 think -- yeah, let's go back to this.

17 So going back to what happened on -- I believe --
18 do you believe it was the 4th or the 5th when you had a
19 visit from Mr. McGrath and Ms. Sandever?

20 A. I'd have to look at a calendar. You know, I don't
21 remember.

22 Q. Okay.

23 A. They were there for one day.

24 Q. Yeah.

25 A. And --

1 Q. Your recollection is -- so you created the account
2 the day they -- the isphydoux account the day they were
3 there?

4 A. Either the morning they showed up or the day
5 before.

6 Q. Okay.

7 A. Yeah.

8 Q. And did you --

9 A. I think I had it set up, now that I think about
10 it, before they showed up, so I didn't set it up while they
11 were sitting there.

12 Q. Can I ask you a question? With respect to Exhibit
13 209, there's -- you don't need to look at it, but to the
14 extent there are any notes where you're recounting a
15 conversation about what people said, that's what you wrote
16 in these -- you wrote these notes.

17 A. Yeah, I did.

18 Q. Are there anyone else's notes in Exhibit 209 other
19 than yours in terms of recording or documenting
20 conversations?

21 A. I can't speak towards anything in the new section
22 of it, but if it's something that I wrote and it says it's a
23 conversation, then it's something I took -- took down.

24 If it was done from memory after the conversation,
25 you know, it may be inaccurate a little bit, but I try to be

1 accurate.

2 Q. Okay. So now going back to what happened when
3 Ms. Sandever and Mr. McGrath arrived, did you greet them at
4 the County?

5 A. I got a call that they were at the front desk.

6 Q. Okay.

7 A. And I ushered them in.

8 Q. And you walked out to see them?

9 A. Uh-huh.

10 Q. Okay. And what did you do next?

11 A. Let's see; I didn't really show them around. I
12 just brought them straight into the network -- the secured
13 area where you have to put your badge up and open the door.
14 Once we were in there, we walked into the NS lab, which is
15 up the ramp and to the right. And I showed them the lab,
16 and their AS-Nevada server was sitting on top of a foldout
17 table and there was a keyboard and a monitor there and a
18 white board above it and a couple chairs for them to sit in.

19 Q. Is this the lab that has a door with no windows?

20 A. That is correct.

21 Q. Okay. And there was a -- the AS-Nevada device was
22 in there?

23 A. Yes.

24 Q. Okay. What did you do next?

25 A. What I remember is basic introductions, greetings.

1 I said okay, here's the server. I showed them where it was.
 2 I had them login. I showed them how to use the WIN-SCP
 3 utility.
 4 Q. Where was that? That was located on AS-Nevada?
 5 A. Yeah. That's the software that I had loaded after
 6 Fritz was done configuring it.
 7 Q. Okay.
 8 A. And I probably didn't show them the other software
 9 I had loaded because, you know, people like the nice pretty
 10 GUI stuff and -- so I don't recall showing them putty or
 11 anything else. So WIN-SCP, and I showed them how to log in
 12 to ER-Recorder using isphydoux, and at that point I had
 13 access to the login.
 14 Q. So you taught them how to log in to ER-Recorder
 15 using isphydoux?
 16 A. Yes.
 17 Q. And okay. What else? What did you do when you
 18 logged in to isphydoux? Or, excuse me, when you used
 19 isphydoux to log into the ER-Recorder, what commands did you
 20 enter?
 21 A. You start up WIN-SCP and you put in your login
 22 name isphydoux, and then you put in the password. It makes
 23 a remote connection into ER-Recorder and presents you with a
 24 dual window view. On one side is your local C drive
 25 directory on your local server that you're working from.

1 Q. What was the local server in that instance?
 2 A. That was the AS-Nevada server.
 3 Q. Okay.
 4 A. And on the other side would be a representation of
 5 the file system on the target box, which in this case was
 6 ER-Recorder production.
 7 Q. So what you do is -- let me make sure I have the
 8 scene set. You're sitting at a computer. You've got a
 9 screen in front of you. Ms. Sandever and Mr. McGrath are at
 10 your side?
 11 A. Yeah. They're watching what I'm doing.
 12 Q. And you're looking at the monitor?
 13 A. Uh-huh.
 14 Q. Is it a flat-screen monitor?
 15 A. Probably.
 16 Q. Okay.
 17 A. Yeah.
 18 Q. And on the screen you have -- you've logged in
 19 using isphydoux into AS-Nevada, and from AS-Nevada you've
 20 then opened up a session on ER-Recorder?
 21 A. Uh-huh.
 22 Q. Using the isphydoux account, yes?
 23 A. Yes.
 24 Q. And then you have both the AS-Nevada screen on one
 25 side of your screen and the ER-Recorder screen on the other

1 side. You have a split screen at that point.
 2 A. Right.
 3 Q. Okay. Then what did you do?
 4 A. I don't recall that we left it open. I think --
 5 Q. So you don't know one way or the other, correct;
 6 you don't recall?
 7 A. What I recall is them saying -- let me see if I
 8 can get this right because, you know --
 9 Q. Because you're under oath.
 10 A. I know. I don't want to be a liar or a perjurer.
 11 Q. I know. You said, you know, I just want to make
 12 sure --
 13 A. I showed them how to use it. Let's say that's as
 14 far as I remember. I don't know that we -- after the use
 15 that it stayed opened or closed.
 16 Q. Showed them how to use what?
 17 A. WIN-SCP.
 18 Q. Which does what?
 19 A. Allows you to copy files to and from the server.
 20 Q. Okay. So you showed them -- you taught them how
 21 to copy files --
 22 A. Yes.
 23 Q. -- from ER-Recorder onto AS-Nevada?
 24 A. Yes.
 25 Q. And so essentially what the isphydoux account

1 allowed them to do was to log into AS-Nevada and then open
 2 up a pipeline to ER-Recorder to pull files from ER-Recorder
 3 onto AS-Nevada, correct?
 4 A. Uh-huh.
 5 Q. Using the WIN-SCP applications you installed on
 6 AS-Nevada?
 7 A. Correct.
 8 Q. And you taught them how to do that the first time
 9 you met Mr. McGrath and Ms. Sandever?
 10 A. Yes. May I say something?
 11 Q. Yes.
 12 A. I remember that I said, okay, you know, I'm going
 13 to give you the login information isphydoux. And Tom looked
 14 at me like what? You know, what is isphydoux? It's a weird
 15 sounding name.
 16 Q. Okay.
 17 A. And rather than try to spell it out, I wrote it on
 18 the white board and the password so they could copy it down
 19 and they would have it.
 20 Q. All right.
 21 A. So I know that they got it, because I gave it to
 22 them.
 23 Q. Well, yeah. He -- we saw that e-mail where he
 24 e-mailed it to his friends back in Florida.
 25 A. Right.

1 Q. Correct?

2 A. That part I remember --

3 Q. So then what happened next?

4 A. -- showed them the hardware, showed them the

5 software. I don't remember much about that, but I'm very

6 thorough. I'm not going to not show them, so, you know, I'm

7 going to -- I'm not going to give you any details because I

8 don't remember it.

9 Q. Okay. So what happened after you showed them how

10 to log in, then what happened?

11 A. We talked a little bit. I said do you need me for

12 anything? Can I get you anything? No, we're good. I said,

13 okay. The door locks behind you, so if you leave and need

14 access, you know where I work, and I'm just around the other

15 side of the wall, come get me. Because I wasn't assigned to

16 babysit them. I had other work to do.

17 Q. Okay.

18 A. So I was told to let them do their thing and off I

19 went.

20 Q. Was anyone else in the room besides you,

21 Ms. Sandever and Mr. McGrath?

22 A. Not at that time.

23 Q. Okay. And so you then left the room?

24 A. Yes.

25 Q. And so -- and the door locked behind you?

1 A. Yes.

2 Q. So then at that point --

3 A. The main door did.

4 Q. Okay. At that point you had in a closed room with

5 no windows, with the door shut, you had Tom McGrath and

6 Patty Sandever inside the room, they had a computer logged

7 into AS-Nevada with an open pipeline to ER-Recorder with an

8 application to allow them to copy files from ER-Recorder to

9 AS-Nevada, correct?

10 A. That is correct.

11 Q. Okay. When did you next return to the room?

12 A. I don't remember how many times, but I would check

13 out -- throughout the morning and early afternoon while they

14 were there, just go in and see how they're doing and -- you

15 know, random, random points, every, maybe, hour, hour and a

16 half; something like that, just guessing.

17 Q. So would you leave them for an hour, hour and a

18 half at a time by themselves?

19 A. Yeah.

20 Q. In the closed room?

21 A. Correct.

22 Q. And did you have any discussions with them when

23 you would come back into the room?

24 A. Not that I can recall.

25 Q. So you don't recall discussing anything with them?

1 A. You know, just pleasantries. There was nothing of

2 any technical nature that sticks out in my memory.

3 Q. Okay. And did you ask them what they were doing?

4 A. Not really, no.

5 Q. Do you know what Mr. McGrath's background was?

6 A. No. No one ever told me.

7 Q. Okay. Did you know -- like now do you know that

8 he was the Vice President of Technology Development for

9 Aptitude Solutions?

10 A. Yes, I found that out later.

11 Q. Okay. And do you know what Ms. Sandever's

12 position was?

13 A. No.

14 Q. Did she seem to be engaged along with him in

15 whatever it is they were doing when you came into the room?

16 Were they working together, in your view?

17 A. They seemed to get along just fine. I don't

18 recall them doing any particular work together, but then

19 again I wasn't there most of the time to observe it.

20 Q. Well, when you did come in, were they both at the

21 terminal?

22 A. You know, the only time I remember going in there

23 for sure, one of them was on the phone and I don't remember

24 what they were doing, if they were at the terminal or not.

25 Q. Okay. And do you know whether or not they copied

1 files from ER-Recorder to AS-Nevada that day?

2 A. No one ever told me. I have no knowledge of that.

3 Q. And you made no effort to check?

4 A. No, I did not make any effort to check.

5 Q. With respect to the isphydoux account you gave

6 them, did you ever monitor their use of that account?

7 A. No, I did not.

8 Q. Did you -- were you ever asked to?

9 A. No, I was not.

10 Q. Okay. Do you know if anyone else within the

11 County ever monitored Aptitude Solution's personnel's use of

12 the isphydoux account?

13 A. Not that I'm aware of.

14 Q. Okay. Do you believe in your position as a

15 network analyst for Nevada County at the time and the one

16 who created the isphydoux account, that if there was an

17 effort to monitor the use of the account, that you would

18 have been asked or been aware of that?

19 MR. ABU-ASSAL: Calls for speculation.

20 THE WITNESS: Not necessarily.

21 Q. BY MR. THOMAS: Okay.

22 A. Gary Spriggs, I believe he was the acting CS --

23 Chief Information Security Officer at the time, and that

24 type of work may have fallen underneath his jurisdiction.

25 Q. If we look at Exhibit No. 3, do you have that in

1 front you?

2 A. Yes.

3 Q. It's an e-mail from Mr. McGrath to Mr. Barnes. Do
4 you see the second sentence says, "I will lead you through
5 the GUI software to connect to the AtPac UNIX box and also
6 show you where the previously-copied data files are on the
7 support box."

8 A. Correct.

9 Q. By November 6th, 2008, had you copied any files
10 from -- well, you didn't do that at all. But do you know if
11 anyone had copied files from ER-Recorder to AS-Nevada?

12 A. No knowledge of that, no.

13 Q. Did you use GUI, a graphical user interface
14 software, to show Ms. Sandever and Mr. McGrath how to
15 navigate through to the AtPac ER-Recorder?

16 A. Yes. That's the WIN-SCP software, or it would
17 fall into a GUI category, yes.

18 Q. Let's turn to Exhibit 9, please.

19 MR. ABU-ASSAL: Nine. I think it's Exhibit 9.
20 Are we on Exhibit 9?

21 THE WITNESS: Yes.

22 Q. BY MR. THOMAS: Okay. So what is your best
23 estimate today as to the total duration that Mr. McGrath and
24 Ms. Sandever were in the closed room with the isphydoux
25 account and the computer?

1 MR. ABU-ASSAL: Vague and ambiguous, calls for
2 speculation.

3 THE WITNESS: Yeah, it would be my answer is it's
4 vague, but perhaps three hours --

5 Q. BY MR. THOMAS: When you say vague --

6 A. -- plus or minus.

7 Q. -- what's vague, my question?

8 A. No, no. My answer. I didn't keep track exactly
9 when they came and left, you know.

10 Q. Now, you said they came and left. You came and
11 left. Do you remember them leaving?

12 A. Most -- not clearly, but vaguely, yes. They had
13 to leave earlier in the afternoon rather than later. That's
14 kind of what I remember, but it's vague.

15 Q. Okay.

16 A. Yeah, I wasn't particularly paying attention.

17 Q. Well, how did the meeting end? Did you escort
18 them out?

19 A. I don't recall.

20 Q. Would they have had to turn in a badge of any
21 kind?

22 A. That's possible. They may have had a temporary
23 access badge assigned to them from the front desk.

24 Q. If guests like a vendor come to the IS department
25 and have badges and get back in to a room, is that something

1 that would be on a sign-in sheet?

2 A. Yeah, I'm pretty sure it was. I didn't
3 administrate that. That would have been the front desk
4 or -- what's her name? Pam Clemens, Pamela Clemens probably
5 would have administrated that or Patricia, the gal at the
6 front desk.

7 MR. ABU-ASSAL: Move to strike, calls for
8 speculation.

9 Q. BY MR. THOMAS: All right. If we go to -- let's
10 look at Exhibit 9; do you have that?

11 A. I'm there.

12 Q. Turn to the second page. There is an e-mail from
13 Caroline Mankey to Kathy Barale; do you see that?

14 A. Yes.

15 Q. And there's a number of numbered paragraphs and
16 below that you see an excerpt from -- do you recognize that
17 as an excerpt from a Red Hat log?

18 A. Well, it's -- it could be. It could be from any
19 Linux box, but yes that does look correct.

20 Q. Okay. And the third item says, "I have been
21 reviewing certain logs that were copied onto disks for
22 AtPac. I'm hoping you can help me interpret them. The
23 following is an example." Do you see that?

24 A. Yes.

25 Q. Did Ms. Mankey ever ask you to help her understand

1 the Red Hat logs?

2 A. We discussed it during one conversation, but it's
3 nearly impossible to do over the phone.

4 Q. Okay. So if you look at the second entry, June
5 16th, do you see that?

6 A. Uh-huh, yes.

7 Q. It says, "Accepted password for IS KBarale from
8 1727.2.80." Do you see that?

9 A. Yes.

10 Q. And you recognize that IP address; that's the
11 AS-Nevada address, yes?

12 MR. ABU-ASSAL: Lacks foundation and calls for
13 speculation.

14 THE WITNESS: I do recognize the IP address.
15 That's the one we referred to earlier.

16 Q. BY MR. THOMAS: Yes, the one Ms. Barale -- where
17 Ms. Barale was saying that was --

18 A. Yes.

19 Q. -- the address for Aptitude Solutions?

20 A. Correct.

21 Q. Okay. If you'll turn the page just one, look at
22 the top. I'll come back to this. See at the top where she
23 says that's the Aptitude Solutions IP address?

24 A. Okay.

25 Q. For AS-Nevada.

1 Okay. Let's go back to the log.
 2 A. Oh, I see. Right.
 3 Q. And so that says accepted password word for
 4 IS KBarale; do you see that?
 5 A. Yes.
 6 Q. So this would indicate a session where Ms. Barale
 7 is using her own password to log in from AS-Nevada to
 8 ER-Recorder, right?
 9 A. That is correct.
 10 MR. ABU-ASSAL: Lacks foundation.
 11 Could you please pause and let me object?
 12 Lacks foundation, calls for speculation.
 13 Q. BY MR. THOMAS: Correct?
 14 A. Correct.
 15 Q. Okay. And then you see an entry on the 17th of
 16 June; do you see that?
 17 A. Correct.
 18 Q. And it's -- the transaction number is 27874, yes?
 19 A. Correct, I see that.
 20 Q. And do you see the time, it says 5:13:02; do you
 21 see that?
 22 A. Yes.
 23 Q. Do the logs track military time; is that how that
 24 works?
 25 A. It depends on how the system is set up, but they

1 can.
 2 Q. Well --
 3 A. That would be 5:00 a.m.
 4 Q. 05?
 5 A. Yeah.
 6 Q. Okay. And was it your practice to come into work
 7 about 5:00 a.m.?
 8 A. No.
 9 Q. Okay. When did you typically get in to work?
 10 A. Usually between 6:00 and 7:00; 7:00 being the
 11 norm.
 12 Q. Okay. So normally you would get to work at 7:00
 13 a.m.?
 14 A. Yeah, I had some variance.
 15 Q. Do you know what time Ms. Barale would typically
 16 get to work?
 17 A. Probably by 8 o'clock.
 18 Q. Okay. Who in the County are you aware of that
 19 would get to work at 5:00 a.m. in the IT Department?
 20 A. No one on a regular basis.
 21 Q. Okay. And so if I understand this, it says -- on
 22 the 17th it says, "Accepted password for isphydoux from
 23 1727.2.80;" do you see that?
 24 A. Yes.
 25 Q. And that indicates someone's using the isphydoux

1 password to log into ER recorder, yes?
 2 MR. ABU-ASSAL: Lacks foundation, calls for
 3 speculation.
 4 Q. BY MR. THOMAS: Correct?
 5 A. Correct.
 6 Q. All right. If we turn down to the text below that
 7 set of logs --
 8 A. Yes.
 9 Q. -- there's a red -- do you have the red portion?
 10 A. No, I don't.
 11 Q. Okay. That's okay.
 12 A. Starting where it says "yes"?
 13 Q. Actually, yeah. Actually, if you go from the
 14 fourth line from the bottom.
 15 A. Okay.
 16 Q. And then over to the right.
 17 A. "This account"?
 18 Q. No. It says, "I was never given." To the right.
 19 A. Oh, yes, I see it.
 20 Q. Okay. It says, "I was never given access and did
 21 not even know the login ID existed until week before last
 22 when we had the telephone conference with you." Do you see
 23 that.
 24 A. Yes.
 25 Q. And do you see this is an e-mail from Caroline

1 Mankey to Kathy Barale?
 2 A. Correct.
 3 Q. And she's answering the questions.
 4 Let me actually give you a color copy, page 2 of 3
 5 of Exhibit 9. Do you have that?
 6 A. Yes.
 7 Q. Do you see the red text where Ms. Barale is
 8 answering Ms. Mankey's questions?
 9 A. Okay. Yes.
 10 Q. So she says she was never given the account, the
 11 isphydoux account; do you see that?
 12 A. I see that.
 13 Q. Do you have any reason to dispute her statement?
 14 MR. ABU-ASSAL: Lacks foundation, calls for
 15 speculation.
 16 THE WITNESS: I would have to correlate this date,
 17 this is April 12th, with my entries and her entries in the
 18 SER that indicate her copying files, but I have no reason
 19 to --
 20 MR. KRUGLE: This is 2010, not 2009.
 21 THE WITNESS: Yeah, 2010, yeah.
 22 Q. BY MR. THOMAS: As you sit here today, you have no
 23 reason to dispute Ms. Barale's statement to a lawyer for
 24 Cypress, right?
 25 MR. ABU-ASSAL: Lacks foundation.

1 THE WITNESS: Wait a minute. Let me look at the
2 dates.

3 Q. BY MR. THOMAS: Sure.

4 A. This e-mail is April 12th, 2010.

5 Q. Yes.

6 A. Who had the password for isphydoux? I'm assuming
7 that's Caroline. I don't know. This account was created
8 and access provided before I became involved with the
9 Recorder's office.

10 Q. Is that true?

11 A. I don't know whether she was involved with the
12 Recorder's office or not, but she was not the original
13 project manager; Marie McCluskey was.

14 Q. Okay.

15 A. I was never given access and did not even know the
16 login ID existed until week before last when we had the
17 teleconference with you. The week before last would be
18 in April -- that would be April -- the first week of April
19 of 2010, which is last year. Now, that doesn't jibe with my
20 memory.

21 Q. Why is that?

22 A. Because Kathy and I discussed the isphydoux
23 account regarding copying files at one point.

24 Q. Okay.

25 A. So she must have forgotten. Because she didn't --

1 like I said, I don't know that she ever used it. But she
2 did task me with copying it. So it may just be that she
3 forgot that she was exposed to it, but I don't know.

4 MR. ABU-ASSAL: We've been going about an hour.
5 Can we take like a little, short bathroom break?

6 MR. THOMAS: Let's take a ten-minute break.

7 THE VIDEOGRAPHER: We're going off the record at
8 2:59 p.m. This is the end of disk No. 3.

9 (Recess taken.)

10 THE VIDEOGRAPHER: We are back on the record at
11 3:10 p.m. This is the beginning of disk No. 4.

12 Q. BY MR. THOMAS: Okay. We're on to a page that's
13 532 of Exhibit -- what is it, 209?

14 A. 209.

15 Q. Okay. And what is this page 532, it's part of a
16 chronology you typed?

17 A. Yes.

18 Q. And you made an effort to document important facts
19 that you felt you wanted to record?

20 A. That is correct. While I was at the County, I
21 started documenting various points of interest in time.

22 Q. Okay.

23 THE VIDEOGRAPHER: Mr. Evers, your mic isn't on.

24 MR. ABU-ASSAL: What page are you on, Mr. Evers?

25 MR. THOMAS: 532.

1 THE WITNESS: 532. On the bottom right you'll see
2 it listed. It's in my chronology document.

3 MR. ABU-ASSAL: All right. Thank you.

4 THE WITNESS: You're welcome.

5 Q. BY MR. THOMAS: Okay. Let's look at the November
6 4th entry. Do you have that?

7 A. Yes.

8 Q. And you typed everything under this November 4?

9 A. Yes.

10 Q. And to the best of your recollection, that's what
11 you typed?

12 A. Correct.

13 Q. All right. And the third paragraph down says, "As
14 per Russ's request, I held off creating ER-Recorder login to
15 Aptitude until after talking with McCluskey."

16 A. Yes.

17 Q. And it says, "McCluskey instructed that I create
18 an ambiguous ER-Recorder login which begot isphydoux." So
19 she's the one who instructed you to use the IS?

20 A. Yes, correct.

21 Q. Okay. And not to use the person's name?

22 A. Correct.

23 Q. Or a company's name?

24 A. Or make it so that it would not -- yeah, I
25 couldn't -- it had to be something that would not arouse

1 suspicion in the system, and I interpreted that as being not
2 an individual's name that would be associated with Aptitude.

3 Q. When you said arouse suspicion in the system, why
4 do systems get suspicious? What do you mean by that?

5 A. What I mean by that is when you do work inside a
6 Linux box or Linux in general, you leave trails of your
7 activities in various logs called history logs.

8 Q. Okay, I understand. So --

9 A. Okay.

10 Q. So you meant is you didn't want to arouse
11 suspicion by AtPac, correct?

12 A. That is correct.

13 Q. You didn't mean systems?

14 A. Correct.

15 Q. Okay. And it then says, "When I asked McCluskey
16 why the non-standard format IS versus VN --" so you're
17 certain, based on this note, that she's the one who said use
18 IS.

19 A. She did.

20 Q. Okay. "And she told me that this was agreed upon
21 by Philippe Russ and Gregory Diaz and herself during
22 previous conversations," correct?

23 A. That's correct.

24 Q. And that's what she said to you?

25 A. That's correct.

1 Q. All right. And that they didn't trust AtPac to
2 know that Aptitude was logging into the system, right?
3 A. That is correct.
4 Q. Okay. The next one, it says, "As per NCSP-102
5 dated 31 October 2009 --" and we've looked at that now,
6 right? It's Exhibit --
7 A. Yes, yes. That's -- we went over that earlier.
8 Q. That's referring to Exhibit 211?
9 A. Correct.
10 Q. At least the first part of Exhibit 211?
11 A. Correct. The 31 October.
12 Q. Okay. And it says, "Authorization via Gregory
13 Diaz and as per Russ and McCluskey's instructions, I created
14 the isphydoux login to be used by Aptitude to access
15 ER-Recorder," correct?
16 A. Correct.
17 Q. Now, when you wrote this you didn't say it was a
18 dual use account, did you?
19 A. No, I didn't.
20 Q. No. You only said that when I asked you in the
21 deposition, and you said it was a dual use account, correct?
22 A. Yes. That's the first time you heard it from me.
23 Q. Right. The first time we heard it was here in the
24 this deposition that you said it was dual use account,
25 correct?

1 A. Right.
2 Q. And when you documented it for yourself and for
3 others, like Ms. Mankey, you didn't tell them it was a dual
4 use account. You said it was for Aptitude to access,
5 correct?
6 A. That's correct.
7 Q. Were you truthful when you took your notes?
8 A. I always try to be truthful and accurate.
9 Q. Well, are these notes truthful and accurate, yes
10 or no?
11 A. Yes.
12 Q. Why didn't you say it was a dual use account,
13 then?
14 A. I don't know.
15 Q. Wasn't that important?
16 A. Yes, it is.
17 Q. You seem to think it was important in the
18 deposition.
19 A. Absolutely.
20 Q. But you didn't put it in your notes, correct?
21 A. You're right, I didn't.
22 Q. Okay. And between the time you wrote these notes
23 and between the time you testified today, who have you
24 spoken with about these issues? You've spoken with Caroline
25 Mankey, you've spoken with Nabil Abu-Assal, and you've

1 spoken with Bob Muller, who's in the room, correct?
2 A. Correct.
3 MR. ABU-ASSAL: Misstates his testimony.
4 Q. BY MR. THOMAS: You spent three weeks with him
5 last week, correct?
6 A. I spent --
7 Q. Excuse me.
8 A. -- three hours.
9 MR. ABU-ASSAL: Vague and ambiguous.
10 THE WITNESS: I know what you mean.
11 Q. BY MR. THOMAS: You spent three hours with him
12 last week.
13 MR. ABU-ASSAL: Vague and ambiguous.
14 Q. BY MR. THOMAS: And after talking with him, now
15 you say it was a dual use account, correct? For the first
16 time, correct? That timing is correct, isn't it?
17 A. I think when I was talking to Bob, I may have
18 mentioned it too, before I talked to them.
19 Q. Well, I asked you what you talked to him about and
20 you didn't remember that. Earlier --
21 A. I didn't remember every detail.
22 Q. Are you saying you remember it now?
23 A. I'm so tired, I'm not sure what I remember, Mike.
24 Q. All right. You remember we had a discussion on
25 your porch for a number of hours a year ago.

1 A. Yes.
2 Q. And you didn't tell me then it was a dual use
3 account, did you?
4 A. No.
5 Q. All right. And I asked you what the account was
6 for and you said it was for Aptitude, correct?
7 A. Correct.
8 Q. Were you being truthful with me then?
9 A. Absolutely, to the best of my knowledge.
10 Q. And has your knowledge gotten better a year later?
11 A. One does remember things over time that was not
12 always apparent to them in an ad hoc conversation on a
13 porch.
14 Q. What do you mean ad hoc?
15 A. I had no time to prepare, consider or think about
16 what you were going to come up and talk to me about. I had
17 no idea these were even issues until you brought them up. I
18 did my best to recall them at the time. Upon later
19 reflexion, it's possible that I remember things that I
20 hadn't before.
21 Q. When you wrote your chronology, you knew it was an
22 issue because you wrote about it, correct?
23 A. Right.
24 Q. And you didn't say it was a dual use account
25 there?

1 A. Right.
 2 Q. And you knew then that it was something that was
 3 important and that you did have time to reflect on it,
 4 correct?
 5 A. Correct. If given the choice between the two, I
 6 would say the chronology is more accurate because it was
 7 closer in time to the incident.
 8 Q. Well?
 9 A. Well, there you go.
 10 Q. Then was it a dual use account or not?
 11 A. I remember her saying to me that it was going to
 12 be used by both IS and Aptitude users, but --
 13 Q. Did you remember that before or after you talked
 14 to Mr. Muller last week?
 15 A. Before.
 16 Q. When did you remember that?
 17 A. I can't place a period of time where it occurred
 18 to me.
 19 Q. Do you remember talking to Bob Muller on February
 20 18th, 2011? Would that have been last week?
 21 A. Yes, it sounds right.
 22 Q. Now, let's go down to Exhibit 8. Do you have
 23 Exhibit 8 in front of you?
 24 A. Yes, I do.
 25 Q. You see it's an e-mail from Caroline Mankey to Tom

1 McGrath at the bottom?
 2 A. Correct.
 3 Q. Okay. It says -- there's a number of statements
 4 in that e-mail. I'd like to focus on some that concern you.
 5 It says, "I have spoken several times to Dan
 6 Evers, the County's former network systems administrator."
 7 Do you see that?
 8 A. Yes.
 9 Q. It says, "Dan has told me that the isphydoux
 10 login, in that he created specifically for Aptitude, was
 11 used to access ER-Recorder on November 4th, 2008, which was
 12 the date Dan created the login." Do you see that?
 13 A. Uh-huh; yes.
 14 Q. Did you say that to her?
 15 A. Something to that effect.
 16 Q. Well, did you say that you created it specifically
 17 for Aptitude or is she misquoting you?
 18 A. Oh, I see what you're asking me.
 19 Q. Yes. I see that too, specifically for Aptitude.
 20 She's not misquoting you, is she?
 21 A. I don't think she is.
 22 Q. Right. You said that to her.
 23 A. Yeah.
 24 Q. Were you being truthful with her?
 25 A. Yes.

1 Q. Let's read the next sentence. "Dan says that he
 2 did not do a test login using isphydoux on that date
 3 because he gave it a one-time default password that would
 4 have required that the password be changed the first time
 5 the login was used." Did you say that to her?
 6 A. That sounds correct, yes; I remember that.
 7 Q. Was that truthful?
 8 A. Yes.
 9 Q. Is that what you did?
 10 A. Going on what I told her then and from the
 11 earlier -- you know, yes.
 12 Q. Okay. And so then Aptitude Solutions would be the
 13 one who selected the login password; Tom McGrath and Patty
 14 Sandever, correct?
 15 MR. ABU-ASSAL: Lacks foundation, calls for
 16 speculation.
 17 Q. BY MR. THOMAS: Well, what other possibility is
 18 there?
 19 A. Well, you know, like I said, it was possible that
 20 I set it -- set it up originally, but that --
 21 Q. Well, I don't want speculation. I want what you
 22 know. Anything's possible. A martian might have landed in
 23 Nevada County and done it, right? That's possible.
 24 A. True.
 25 Q. What I want to ask you is what you know. And what

1 you told Caroline Mankey is that you did not do a test login
 2 using the isphydoux on that date because you gave it a
 3 one-time default password that would have required the
 4 password be changed the first time the login was used.
 5 That's what you said to her.
 6 A. Correct.
 7 Q. Okay. And that's what you did, right?
 8 A. I believe so.
 9 Q. Okay. And who changed it then, Mr. McGrath or
 10 Ms. Sandever, right?
 11 A. I would think so.
 12 Q. Well, you know they were logged into ER-Recorder,
 13 you saw the screen. So they had to have changed the
 14 password.
 15 MR. ABU-ASSAL: Calls for speculation, lacks
 16 foundation, vague and ambiguous.
 17 THE WITNESS: The last log file shows that the
 18 only time the shell account was accessed, I believe, was
 19 November 4th of 2008.
 20 Q. BY MR. THOMAS: What do you mean shell account?
 21 The first --
 22 A. Shell account is -- so that -- it's like a command
 23 prompt in a Windows box. That would be when you would go in
 24 and set the password. That's the only way you're going to
 25 be able to set the password. But once it's set, you can

1 then access it by other means that won't show up in last
2 log. It will show up in other logs like, you know, the bar
3 messages and --
4 Q. Like secure FTP logs?
5 A. Yeah, such as.
6 So that would make sense that it got changed and
7 it got sent.
8 Q. And when they changed it, how would you have known
9 the password?
10 A. Either they told me or -- I didn't. Remember, I
11 didn't have it later, so we were asking about it to get it
12 from them and -- you know, for copying files over. I had
13 mentioned that earlier. So yeah, it makes sense.
14 Q. So you knew they had the password all along with
15 the isphydoux account, yes?
16 A. Absolutely, I gave -- yes.
17 Q. And when did you -- you never told anyone from
18 AtPac about it, correct, because you were instructed not to?
19 A. That is correct.
20 Q. Okay. Did you take any steps whatsoever to
21 protect AtPac's confidential information on ER-Recorder
22 server from being disclosed to Aptitude?
23 MR. ABU-ASSAL: Assumes facts not in evidence.
24 THE WITNESS: To my knowledge --
25 MR. ABU-ASSAL: Wait, wait, wait. Assumes facts

1 not in evidence, calls for a legal conclusion.
2 THE WITNESS: Yeah. I did not know that there was
3 any data that was in clear text at that time that would be
4 falling under like the CRiis database application.
5 Q. BY MR. THOMAS: Okay. I didn't ask that question.
6 My question is -- well, I'll ask a different one. Did you
7 take any steps to prevent Aptitude from accessing my
8 client's AtPac software on ER-Recorder server?
9 A. No.
10 Q. In fact, you did just the opposite; you enabled
11 Aptitude to get access to my client's software, correct?
12 MR. ABU-ASSAL: Vague and ambiguous, lacks
13 foundation.
14 Q. BY MR. THOMAS: Correct?
15 A. Not on purpose.
16 Q. Excuse me, the answer's correct?
17 A. Sure.
18 Q. Okay. Right?
19 A. Yes.
20 Q. And you concealed it from my client.
21 A. Uh-huh.
22 Q. At the instructions of Marie McCluskey?
23 A. Yes.
24 Q. Who told you that the decision to conceal that
25 information from my client came directly from Gregory Diaz,

1 correct?
2 MR. ABU-ASSAL: Lacks foundation, misstates his
3 testimony.
4 THE WITNESS: Gregory et al, yeah.
5 Q. BY MR. THOMAS: Gregory et al what? What do you
6 mean by that?
7 A. That it was -- she, Gregory and Diaz and --
8 Q. Philippe Russ?
9 A. That sounds right, yeah. One other person, there
10 was three people, I was told.
11 Q. Right. And who among those three people, Mr.
12 Russ, Ms. McCluskey or Mr. Diaz, who was the highest-ranking
13 person within the County?
14 A. That would be Gregory Diaz.
15 Q. Yes. He's an elected official, right?
16 A. Correct.
17 Q. Okay. Let's read the next sentence, "Dan said
18 that you and Patty Sandever were on site at the County on
19 November 4, 2008 and he believes that one of you would have
20 logged in using isphydoux on that date and set a new
21 password." Do you see that?
22 A. Yeah, it follows.
23 Q. Did you say that to her?
24 A. That sounds correct. It's like a paraphrase, but
25 sure.

1 Q. And is it true?
2 A. Yes.
3 Q. Okay. Exhibit 13, please. Let me ask you a
4 question. When you received that document request --
5 A. Yes.
6 Q. -- from my firm in the fall of 2009, you were
7 helping find documents?
8 A. The FOIA?
9 Q. Yes.
10 A. Yes.
11 Q. You told me you did a word search to find
12 documents on AtPac and yet I've seen documents that said you
13 made a mistakes and you meant to say Aptitude.
14 A. I thought it was Aptitude that actually -- look,
15 it's going to be either Aptitude or AtPac, right? You're
16 interested in Aptitude, so logic says I would have done
17 Aptitude.
18 Q. And that's what you told --
19 A. Yeah, I think that's what I used.
20 Q. Okay. You did a search term and you used
21 Aptitude?
22 A. Yeah. I was in a mail client that allows you to
23 pull up all files with a key term in it, you know, and so I
24 went through and that's where the 740-and-some documents
25 came up.

1 Q. Did you search for anything else other than using
2 that word search?
3 A. Not that I recall. That was -- you know, no, not
4 that I recall.
5 Q. Now, you told me that you actually read the
6 Document Request; you told me that earlier in this
7 deposition.
8 A. I did.
9 Q. And you would have then noticed that not all of
10 the requests related to just Aptitude, right?
11 A. Not that I recall. I don't remember much about
12 it. You know, part of the -- look, it wasn't my job to
13 execute your request in that it was Steve Monaghan who, you
14 know, he's going to say go ahead and search on -- do what it
15 says. And when I read it, I interpreted it to say that you
16 wanted everything involved with Aptitude.
17 Q. Let me ask you a question.
18 A. Did I miss something?
19 Q. When you said it wasn't your job to execute our
20 search request, you understand --
21 A. Or interpret it.
22 Q. -- you understood that we requested documents
23 under a state law from --
24 A. Uh-huh.
25 Q. -- Nevada County, yes?

1 A. Right.
2 Q. And that -- you were asked to look for your
3 documents associated with the categories we had searched
4 for, right?
5 A. Correct.
6 Q. And you were told to find everything you have
7 responsive to these requests, or what were you told? Just
8 look for Aptitude stuff?
9 A. Yeah. Only -- you know, can I see the FOIA?
10 Q. I don't have it. No.
11 A. It might be able to ring a bell with me. I did
12 the best search I could have. That's what I remember.
13 Q. Did you look for Placer documents?
14 A. No. I didn't even know anything about Placer at
15 the time.
16 Q. Did you know that we had asked for Placer
17 documents?
18 A. Why would I have Placer documents?
19 Q. Well, how would I know that, sir?
20 A. Yeah, exactly. I wouldn't look for something I
21 don't think I have, you know. And if I did search through
22 multiple categories, you know, the result was that 740 pages
23 worth of documentation.
24 Q. All right.
25 A. I tried to be as thorough as I possibly could.

1 Q. Exhibit 13. Now, here's a question for you:
2 Actually, I'm not ready for that.
3 A. All right.
4 Q. Some of your notes -- and we'll get to those in a
5 bit -- talk about the best way to figure out what files were
6 pulled from ER-Recorder onto AS-Nevada during those
7 multi-day FTP sessions in June of 2009.
8 A. Right.
9 Q. And you told Ms. Mankey that what you really need
10 to do is a forensic analysis of AS-Nevada and ER-Recorder.
11 Do you remember telling her that?
12 A. Yes.
13 Q. Okay. And you were clear about that with her?
14 A. Absolutely.
15 Q. Okay. And when was that conversation -- that was
16 in early 2010?
17 A. Sounds like it. It was after our meeting, I know
18 that.
19 Q. Okay. All right. Have you ever engaged in any
20 effort to conceal what was copied to AS-Nevada?
21 A. No.
22 Q. Okay. I'd like you to read the second paragraph
23 at the top from Steve Monaghan; do you see that?
24 A. On 13?
25 Q. Yes.

1 A. Okay.
2 Q. You see it's dated December 1, 2010?
3 A. Yes.
4 Q. That's just a few months ago, right?
5 A. Yes.
6 Q. Okay. And it's to Mike Jamison, that's Nevada
7 County Counsel; do you understand that, right?
8 A. Yeah, I've met Mike.
9 Q. And Scott McLeran, yes?
10 A. Yes.
11 Q. And the title is "At Evers Interview," right?
12 A. Yes.
13 Q. And you're Dan Evers, of course.
14 All right. Look at the second to the last
15 paragraph or the last paragraph in Mr. Monaghan's e-mail.
16 He's talking about AS-Nevada; do you see that?
17 A. Yes.
18 Q. What I want you to focus on is this sentence, it
19 says, "In the last few weeks --" do you see that?
20 A. Yes.
21 Q. "IS staff finally got around to removing the
22 physical server from our data center, wiping its hard drives
23 clean and shipping it back to Aptitude." Do you see that?
24 A. And he's referring to their AS-Nevada server?
25 Q. Yes.

1 A. Okay. That's news to me.
 2 Q. Yeah. It was news to me when I received this.
 3 So let me ask you a question. Did anyone -- did
 4 Mr. Muller tell you last week that Aptitude and Nevada
 5 County had agreed to wipe clean AS-Nevada during this
 6 lawsuit?
 7 A. I have never heard that.
 8 MR. ABU-ASSAL: Assumes facts not in evidence.
 9 Q. BY MR. THOMAS: Did they tell you that?
 10 A. No one has -- this is the first time, Mike, I have
 11 heard of that information.
 12 Q. What do you think of that?
 13 A. I don't know if that was very good judgment.
 14 Q. Do you think that's fair to my client?
 15 A. Not if it was something you needed to discover.
 16 Q. Well, you've testified that you told Ms. Mankey
 17 the way to know what was transferred from ER-Recorder to
 18 AS-Nevada is to do a forensic analysis on AS-Nevada, right?
 19 A. Yes.
 20 Q. Right? Well, how does that work when you wipe it
 21 clean?
 22 MR. ABU-ASSAL: Calls for speculation and expert
 23 testimony.
 24 Q. BY MR. THOMAS: You don't know? Okay. You don't
 25 know?

1 A. Oh, I have my opinion. I think it destroys the
 2 chance of doing it.
 3 MR. ABU-ASSAL: Calls for expert testimony.
 4 Q. BY MR. THOMAS: I'm sorry, you said what? I think
 5 it destroys the chance of doing it; that's what you just
 6 said.
 7 A. Yeah, it's destroys the chance of getting that
 8 information.
 9 Q. Okay. And that's based on your experience as a
 10 network specialist at Nevada County for over ten years,
 11 correct?
 12 A. Among other things, yes.
 13 Q. All right. Thank you.
 14 Let's turn to Exhibit 14.
 15 Does that make you wonder about the County's
 16 intentions and good faith in this lawsuit?
 17 MR. ABU-ASSAL: Calls for a hypothetical.
 18 Q. BY MR. THOMAS: Does it cause you to question
 19 them?
 20 MR. ABU-ASSAL: Calls for speculation and is a
 21 hypothetical.
 22 THE WITNESS: It -- I find it irritating.
 23 Q. BY MR. THOMAS: See, my sense is during this
 24 deposition you're going out of your way to say things that
 25 are helpful to the County, and I don't know if you

1 understand who's on the right side of this case and who's on
 2 the wrong side. We're on the side of truth. That's all we
 3 want is the truth.
 4 MR. ABU-ASSAL: That definitely assumes facts not
 5 in evidence --
 6 THE WITNESS: I agree with you, Mike.
 7 MR. ABU-ASSAL: -- and it's false and is
 8 argumentative.
 9 Q. BY MR. THOMAS: All right. Page 24, please.
 10 A. I'm sorry --
 11 Q. 24. Oh, we're on Exhibit 14.
 12 A. Oh, okay, 14, page 24.
 13 Q. Item 24.
 14 A. All right.
 15 Q. All right. "Dan Evers, retired County of Nevada."
 16 This is Caroline Mankey notes of her interviews with you.
 17 Do you remember being interviewed by her on March 31, 2010?
 18 A. Not that particular date. Although it may
 19 correlate with one of my entries in my log.
 20 Q. Okay. But you remember being interviewed by her
 21 over the phone?
 22 A. Talking the with her, yes.
 23 Q. Was it a cell phone call or a landline; do you
 24 remember?
 25 A. I'm landline where I live only.

1 Q. Okay. Let's go -- now, this is -- the third
 2 bullet point says, "One morning he was told that AtPac
 3 system was going to be replaced with Aptitude. He was asked
 4 to create a login for Aptitude on the ER-Recorder box." Do
 5 you see that?
 6 A. Yes.
 7 Q. Did you say that to her?
 8 A. Yes.
 9 Q. And you didn't say it was a dual user account, did
 10 you?
 11 A. No, I didn't.
 12 Q. All right. You were being truthful with her?
 13 A. Yes.
 14 Q. All right. The next thing says, "The request for
 15 him to create a login for Aptitude was unusual because AtPac
 16 was the administrator of its system, not Dan."
 17 A. Correct.
 18 Q. You said that to her?
 19 A. I believe so.
 20 Q. Okay. And you believe that to be true?
 21 A. Yup.
 22 Q. "Dan often keeps notes because his memory is not
 23 great." Did you see that?
 24 A. Yes.
 25 Q. Did you say that to her?

1 A. It sounds like me.
 2 Q. Did you say to her, "Sometimes my memory gets
 3 better as time passes about events"? You didn't say that to
 4 her, did you? You only said that to me.
 5 A. But you're special, of course I'd say that to you.
 6 Q. No. You said that to me because you knew you were
 7 going to change things you had already told me, correct?
 8 A. No, Mike.
 9 MR. ABU-ASSAL: Misstates testimony.
 10 THE WITNESS: It's possible that I changed things
 11 because I remember things differently given time.
 12 Q. BY MR. THOMAS: Why didn't you say that to
 13 Ms. Mankey?
 14 A. I don't know.
 15 Q. You just told her your memory's not great, right?
 16 A. On occasion it isn't.
 17 MR. ABU-ASSAL: Misstates his testimony.
 18 Q. BY MR. THOMAS: Did you say that to her?
 19 A. Yeah, probably.
 20 MR. ABU-ASSAL: Mr. Evers, you need to pause and
 21 give me a chance to object. Okay? Please.
 22 Q. BY MR. THOMAS: All right. Down below it says,
 23 "You determined there were two pertinent groups; the AtPac
 24 group and the CRiis group."
 25 A. Yes.

1 Q. Did you tell her that?
 2 A. Yes.
 3 Q. All right. It says, "Marie told Dan not to talk
 4 to Dave Krugle or anyone else at AtPac about the access that
 5 was being given to Aptitude because the County did not want
 6 AtPac to know." Did you tell her that?
 7 A. Yes.
 8 Q. Is that true?
 9 A. Yes.
 10 Q. "Dan was concerned about that and felt that it was
 11 unethical. Marie explained that AtPac was not being
 12 cooperative."
 13 And the ethics of it were what? Why did you think
 14 it was unethical?
 15 A. After working with Dave all those years and AtPac,
 16 in general, I felt that if they had just been up front with
 17 them with what they wanted to do, they could have done it or
 18 facilitated doing the extraction of the database information
 19 without, you know, obfuscating what was going on or having
 20 anyone else access the box. I mean, I could have done the
 21 extraction under Dave's directions if he wanted me to.
 22 Q. And the reason you ended up giving -- the reason
 23 you ended up giving Aptitude what essentially resulted in
 24 root account access to the ER-Recorder, that was -- your
 25 testimony is -- your excuse for that is that had you had the

1 ability to talk to my client, he would have instructed you
 2 not to do that and you wouldn't have done it.
 3 MR. ABU-ASSAL: Lacks foundation, misstates his
 4 testimony.
 5 Q. BY MR. THOMAS: Is that your testimony?
 6 A. I believe that it was a factor, that if I had been
 7 given a chance to talk to Dave, that that would not have
 8 happened. Dave would have probably said set them up like
 9 such and such and give me directions or he would have done
 10 it.
 11 Q. And the reason you think Dave would have done that
 12 is because you always knew him to be cooperative with you.
 13 A. Yeah.
 14 Q. And he's trustworthy?
 15 A. Yeah.
 16 Q. And then the next bullet point on page 25 says,
 17 "Dan called and e-mailed Diaz several times." How many
 18 times did you call Mr. Diaz?
 19 A. Well, at least twice.
 20 Q. Did you leave messages?
 21 A. I may have just rung up and not gotten anybody.
 22 Q. How many times -- oh, I'm sorry. Go ahead.
 23 A. Two or three times. I don't remember leaving a
 24 message per se, but I wanted to talk to him about the
 25 situation and -- you know, like it says there, Marie told me

1 that Diaz didn't want to be involved and he never responded
 2 to me.
 3 Q. So you also e-mailed him though.
 4 A. I thought I did. I know I called. Knowing me, I
 5 tend to do both if I want to get ahold of somebody, I would
 6 think.
 7 Q. I haven't seen those e-mails. Do you think you
 8 maybe you didn't use the word AtPac or Aptitude in them?
 9 A. It's possible.
 10 Q. And then I wouldn't have them, right?
 11 A. That's possible. I don't recall one way or the
 12 other.
 13 Q. All right. But you -- well, you told Ms. Mankey
 14 you called and e-mailed.
 15 A. Yeah.
 16 Q. So you do remember e-mailing and calling.
 17 A. I don't remember what the contents was regarding
 18 the search.
 19 Q. What would you have asked him, though? You were
 20 calling him because you were concerned about what access
 21 rights to give to this account?
 22 A. Yeah, I could have -- yes, but I could have just
 23 described I have a question about a new login request. Keep
 24 it very generic.
 25 Q. I understand. But your question to him was

1 specifically related to your concern that you say you didn't
2 know what access rights to give to the isphydoux account,
3 yes?

4 A. Yeah. I was trying to feel things out.

5 Q. Okay. And he ignored you.

6 A. Correct.

7 Q. You then went to Marie with your concern that
8 Mr. Diaz was ignoring you, right?

9 A. Right.

10 Q. What were those discussions?

11 A. It was very brief. Like she said right here,
12 Marie told me that he didn't want to be involved or this
13 isn't something that he'd want to be involved with, this
14 level, something to that effect.

15 Q. But you know that he was involved with meetings
16 with her deciding to keep it confidential and secret from
17 AtPac, right; you know that?

18 A. Uh-huh.

19 Q. Because she told you that.

20 A. Yeah, that's true.

21 Q. So he wanted to be involved in implementing the
22 plan, the strategy, and then when people like you actually
23 execute the strategy, he wants to not be involved; is that
24 your sense of it?

25 A. Yes.

1 MR. ABU-ASSAL: Calls for speculation.

2 THE WITNESS: No, that -- Yeah.

3 Q. BY MR. THOMAS: That's exactly right, isn't it?

4 A. That's how I felt.

5 Q. That's not only how you felt; that's the truth,
6 right?

7 A. Yeah, it's what it looks like. And, Mike, that's
8 my way of agreeing with you. I don't know how else to
9 interpret it.

10 Q. Did you ever talk to Mr. Diaz about this issue?

11 A. No.

12 Q. "Dan was not involved in the data conversion
13 extraction migration." Do you see that?

14 A. Yes.

15 Q. Did you say that to her?

16 A. Yes.

17 Q. Is that true?

18 A. That is correct.

19 Q. Okay.

20 A. By data I'm talking database, not images.

21 Q. Now, it says that, "Dan does not know if Aptitude
22 actually accessed the server or the AtPac or CRIis groups."
23 Do you see that?

24 A. Yes.

25 Q. You know for a fact you left them in a closed room

1 with no windows with an open pipeline to ER-Recorder's
2 server using the isphydoux account, correct?

3 A. I remember showing them how to use the software.
4 Whether it was open when I left and they logged back in, I
5 don't recall.

6 Q. Well, it was open when you were with them.

7 A. Yes.

8 Q. And you gave them the password.

9 A. True.

10 Q. And they were sitting there for several -- at
11 least three hours, you've testified to.

12 A. Yes.

13 Q. What were they doing if not logged in? What else
14 was there to do in that room?

15 MR. ABU-ASSAL: Lacks foundation, calls for
16 speculation.

17 THE WITNESS: If I had walked into that room and
18 saw them using it and hooked up to it, I'd admit it in a
19 second. I never did; I never saw it.

20 Q. BY MR. THOMAS: Well, you were gone for hours at a
21 time.

22 A. Right, exactly.

23 Q. But you knew they were logged in when you were
24 there with them initially.

25 A. Yes.

1 Q. With you.

2 A. For setting up the password.

3 Q. Okay. And then once they were in the room when
4 you left, they were manning the keyboard, correct?

5 A. Correct.

6 Q. Did they man the keyboard while you were there?

7 A. I don't recall one way or the other.

8 Q. Okay. Turning to page 26, this is another phone
9 call April 9th, 2010; do you see that?

10 A. Got you.

11 Q. And do you remember talking to her again?

12 Actually, that would have been earlier than that. No,
13 excuse me, this would have been after March 31, another
14 phone call.

15 A. There were a number of phone calls.

16 Q. Yeah. For your -- yeah, there were several phone
17 calls here. There's another one, April 12th, down at the
18 bottom. So she's got three phone calls logged.

19 A. Right. I had conversations with her on the 6th of
20 April, the 9th of April, the 12th of April and the 31st of
21 April 2010.

22 Q. She hasn't given us those notes yet. We'll get
23 those.

24 A. I've got some notes in mine on it, but...

25 Q. Again, it says, "When Dan set up the isphydoux

1 login, he gave it a default password that Aptitude could
2 change." Do you see that?

3 A. I'm sorry, where are we?

4 Q. Top.

5 A. Oh, oh, top, got you.

6 Q. Once again, you've said that to her? Do you see
7 that?

8 A. Yeah.

9 Q. That's the second time you've said it to her?

10 A. Uh-huh.

11 Q. "Dan thinks he would have given the default
12 password to Jesse Dion by --" I think this is a typo. You
13 would not have given him --

14 A. That is correct. I did not, and I would never
15 tell her I would.

16 Q. And there's an e-mail to that effect, where you
17 say you'll tell him when you get there?

18 A. That's correct.

19 Q. I understand.

20 And then the fourth bullet point, "Some logs show
21 start/stop times. Someone would need to do a forensic
22 analysis comparing the logs on ER-Recorder server and the
23 logs on AS-Nevada server to determine if access was through
24 AS-Nevada." Do you see that?

25 A. Yes.

1 Q. Actually, looking at the ER -- the Red Hat logs,
2 the Red Hat logs list the IP address from the server where
3 the account is --

4 A. Originates from.

5 Q. So that's -- that's obvious from the logs
6 themselves, true?

7 A. Absolutely.

8 Q. And what did you mean when you said that to her
9 then, that you would have to do a forensic analysis to
10 determine if access was through AS-Nevada? Can't you
11 determine that just by looking at the logs?

12 A. Well, this harkens back to my earlier statement
13 where I wasn't sure that 2.80, the IP address ending in
14 that, was actually AS-Nevada. If we assume that it is,
15 then, yeah, that would give you the direct information.

16 Q. Well, if you -- okay.

17 A. So all I'm telling her to do is to check her
18 facts, get the numbers, correlate them with an IP address
19 and draw her own conclusions. I didn't want to draw them
20 for her, plus -- you know, remembering IP addresses, man, I
21 had hundreds in my head, so...

22 Q. Got it. It says, "Isphydoux did secure FTP file
23 transfers."

24 A. Correct.

25 Q. How did you know that?

1 A. Well, I'm referring to the use of WIN-SCP, which
2 is -- uses secure shell as its operating -- how do I explain
3 this? Secure FTP or SFTP is a functionality of secure
4 shell, and WIN-SCP does that. This is a little technical,
5 but you have secure shell which is -- has a family of
6 processes that it can do. Secure shell itself allows you to
7 log in like to your C prompt, like a command prompt, it's a
8 shell environment. It also has SCP secure copy and it uses
9 SFTP, secure file transfer protocol, as another way to do
10 copies that behave like FTP copies, but they're through a
11 secure encrypted file. That's all I'm talking about there.

12 Q. But you said to that to Ms. Mankey?

13 A. Yes.

14 Q. Okay. Let's look at the two bullets down. It
15 says, "Dan always;" do you see that?

16 A. Yes.

17 Q. Now, it says, quote -- why don't you read this one
18 into the record?

19 A. "Dan always used his own login to transfer files
20 to Aptitude. Does not think he used isphydoux. Maybe Kathy
21 Barale did."

22 Q. Okay.

23 A. Okay.

24 Q. Did you say that to her?

25 A. Yes, I did.

1 Q. Were you being truthful with her?

2 A. Absolutely.

3 Q. Was that the truth?

4 A. It's the truth as I remembered it at the time.

5 Q. Okay. As you sit here today when I asked you if
6 you used isphydoux, you said, gee --

7 A. It's possible that I --

8 Q. -- gee, maybe I did.

9 A. You're right.

10 Q. You didn't say that to Ms. Mankey.

11 A. No, I didn't.

12 Q. Why are you giving different stories to different
13 lawyers depending on whether it's a County lawyer asking you
14 or it's me asking you? Why are you changing your stories,
15 sir?

16 MR. ABU-ASSAL: Argumentative and you're badgering
17 the witness.

18 THE WITNESS: I deserve a little badgering on
19 this.

20 Q. BY MR. THOMAS: Why are you changing your story?
21 You're under oath.

22 A. I am.

23 Q. So what's the truth? The truth is what you said
24 to Ms. Mankey, right?

25 A. It was up to that point; that's how I understood

1 it. And then I started doubting myself and wondering
 2 whether or not I used isphydoux. Was it possible that I
 3 did? And I had mis-remembered up to that point. That's
 4 where you get the two versions from. Do I --
 5 Q. But you don't remember using it, correct?
 6 A. Not directly. No, I don't remember using it.
 7 Q. Other than in this deposition, every time
 8 someone's asked you, did you use it? Your answer is no, I
 9 used my own, correct?
 10 A. Yeah, you're right, I did. You know -- yeah.
 11 Q. Okay. Let's move two more bullet points down.
 12 "From the AS-Nevada box Aptitude could access ER-Recorder
 13 server via utilities that were put on the development box."
 14 Do you see that?
 15 A. Yeah.
 16 Q. And you said that?
 17 A. Yeah.
 18 Q. And that was true?
 19 A. That would be the putty and WIN-SCP tools, yes.
 20 Q. Okay. Two more bullets down. It says, "Aptitude
 21 had to change the password because the default password was
 22 a temporary one for one-time use only."
 23 A. I agree, yes.
 24 Q. And you said that to her?
 25 A. Yes.

1 Q. And that was true?
 2 A. I believe so. At least I'm certainly starting to
 3 think so at this point.
 4 Q. All right. Let's move on. Unless you wanted to
 5 talk about this more. I've got another exhibit for you.
 6 (Whereupon Exhibit 212 was marked for
 7 identification.)
 8 THE WITNESS: No. Mike, I can gladly move forward
 9 at any time.
 10 Q. BY MR. THOMAS: All right. Exhibit 212, you've
 11 got Exhibit 212 in front of you?
 12 A. Yes, sir.
 13 Q. All right. What is this?
 14 A. It's an e-mail from me to Scott McLeran, Craig
 15 Porter, Steve Monaghan and myself, it's a copy, subject is
 16 Dave Krugle contact report for the 24th of November 2009.
 17 Q. And you wrote this?
 18 A. Yes.
 19 Q. Okay. And you wrote this while you were an
 20 employee with Nevada County, correct?
 21 A. Yes.
 22 Q. And it was in the course and scope of your
 23 employment in the IT Department that you wrote this?
 24 A. That's correct.
 25 Q. As part of your job to do this?

1 A. Yes.
 2 Q. And you did it for Scott McLeran and yourself?
 3 A. Yeah, yeah.
 4 Q. And you made an effort to be as accurate as you
 5 possibly could be?
 6 A. Absolutely.
 7 Q. All right. Turning to the second page of
 8 Exhibit 212, do you have -- there's a table on it; do you
 9 see that?
 10 A. Yes.
 11 Q. Okay. And did you write -- did you write
 12 everything on this document, Exhibit 212?
 13 A. I wrote it myself and Dave consulted me on it to a
 14 certain degree while we were at the meeting, because Dave
 15 pointed out certain things and I said I'd write this
 16 document and get it to County Counsel so they understand
 17 what we discovered.
 18 Q. But Dave didn't tell you what to write
 19 specifically, did he?
 20 A. No. They're my words. I'm the one at the
 21 keyboard, you know.
 22 Q. Okay. And this was a meeting that you and Dave
 23 Krugle had at Nevada County?
 24 A. Yes. I was instructed to allow David access to
 25 the system to inspect logs and try to extract information

1 from the backup tapes.
 2 Q. And when you say allow him actions, you wouldn't
 3 allow him to touch the keyboard, correct?
 4 A. That's correct.
 5 Q. How did you feel about that, given that he had
 6 been a service provider to you that you trusted for ten
 7 years?
 8 A. I didn't like it, but I understood the County's
 9 position at it.
 10 Q. Okay. Now, looking at these bullet points on your
 11 log, do you see the activity log?
 12 A. Yes.
 13 Q. There's a definition up at the top. It says
 14 ER-REC(p). That means ER-Recorder production?
 15 A. Yes.
 16 Q. That's AtPac's Linux CRiis server, yes?
 17 A. Yes.
 18 Q. Okay. That's the main AtPac production server?
 19 A. That is correct.
 20 Q. All right. Okay. So going down on item No. 4, it
 21 says, "DK and DE reviewed backup routines and we determined
 22 the following: That there is no log file information on the
 23 tapes, that there is AtPac source code SD file on the tapes
 24 and ER-Recorder P server." Do you see that?
 25 A. Yes.

1 Q. Okay. And when you say SD, those are the screen
2 descriptions we saw in Exhibit 210?
3 A. Yeah, that's correct.
4 Q. And is Exhibit 210 what you were looking at to
5 confirm what you wrote on item 4?
6 A. It looks to be a larger version of a, yes, screen
7 shot associated with that.
8 Q. And in fact Exhibit 210 is the source of the
9 cropped image you have later?
10 A. That makes --
11 Q. -- in Exhibit 212, yes?
12 A. That makes sense, yes.
13 Q. Okay. Then you said, "At DK's request we
14 performed group membership inspection using the following
15 command." Do you see that?
16 A. Yes.
17 Q. And then you did #ID isphydoux.
18 A. Correct.
19 Q. And that does what? It tells you what group
20 membership is for isphydoux?
21 A. Yes.
22 Q. And that showed the group membership was both the
23 CRIis group and the AtPac group?
24 A. Correct.
25 Q. And, of course, you were doing -- you already knew

1 that, of course, because you created that?
2 A. Oh, yes, correct.
3 Q. And when that account was originally created, the
4 account -- Linux gives it a default user group that's
5 something other than CRIis and AtPac, right?
6 A. Yeah. That would be the isphydoux UID538 group,
7 538 isphydoux.
8 Q. That's the group that the default membership is.
9 A. Correct.
10 Q. Which gives it access to virtually nothing.
11 A. Yeah, correct. It's very limited.
12 Q. So you had to override the original default user
13 group and give the isphydoux account AtPac and CRIis user
14 group membership, yes?
15 A. Close. It would be supplement. But, yeah,
16 basically you have the concept correct.
17 Q. When you did that, did you -- when you created the
18 AtPac and CRIis user group, did you have to key those in or
19 was it a GUI menu where you could select buttons to select
20 what user group?
21 A. I think it was the GUI where you click on, you
22 know, which group to set it to.
23 Q. Did you make any effort to determine what user
24 groups Dave Krugle was in --
25 A. No.

1 Q. -- before you set up the isphydoux user groups?
2 A. No, I don't believe I did. I don't recall doing
3 so.
4 Q. Now, when you set up the isphydoux account, you
5 told Ms. McCluskey that you made AtPac members of the
6 isphydoux -- or, excuse me. You made the isphydoux account
7 members of AtPac and CRIis?
8 A. Yes.
9 Q. Did you discuss with her what that meant?
10 A. No.
11 Q. Why did you tell her?
12 A. Just advising her what I was doing.
13 Q. All right. And then once you determined what
14 those user groups were, it says, "This means that the AtPac
15 user isphydoux has access to all AtPac's software." Do you
16 see that?
17 A. Yes.
18 Q. What's your basis for that statement?
19 A. Dave and I were sitting at the console and we put
20 in ID isphydoux, as per Dave's request.
21 Q. Yes.
22 A. We saw the results, Dave informed me that that's
23 what it would do, and so I'm reflecting that in my notes, as
24 per Dave's commentary.
25 Q. It doesn't say that here, does it? It just says

1 this means that Aptitude user isphydoux has access to all of
2 AtPac's software, correct?
3 MR. ABU-ASSAL: Vague and ambiguous.
4 Q. BY MR. THOMAS: Correct?
5 A. Yeah, that's what it says.
6 Q. You didn't attribute that to Dave Krugle?
7 A. No, I didn't.
8 Q. Did you know that? Did you know that
9 independently of Dave Krugle?
10 A. No.
11 Q. Are you sure?
12 A. No. This is -- when we did this is when I found
13 that out. This is when I found out the association and what
14 that -- the ramifications were. This was the day that it
15 was news to me that, you know, the AtPac group -- Dave told
16 me what was going on. I have no reason to doubt Dave. He
17 tells me that -- wait, we're not communicating, are we? Go
18 ahead and ask me, Mike. What are you getting at?
19 Q. You're saying that on November 24th, 2009 Dave
20 Krugle told you that the isphydoux account gave Aptitude
21 access to all of AtPac's software, including, for example,
22 the source code you confirmed up above was on the server.
23 A. That is correct.
24 MR. ABU-ASSAL: Misstates his testimony.
25 Q. BY MR. THOMAS: You learned that on November 24th?

1 A. What I remember learning on November 24th was Dave
2 telling me that the AtPac group 500 was an equivalent root
3 and that, of course, gave them access to everything
4 everywhere.

5 Q. Okay.

6 A. Yeah. And while I knew that I had given them
7 access to AtPac group before, membership, I had no idea it
8 as the root -- that it was equivalent to root, until that
9 moment, which, of course, knocked my socks off. I did not
10 know that.

11 Q. But you learned that on November 24th; that's your
12 testimony.

13 MR. ABU-ASSAL: Vague and ambiguous.

14 THE WITNESS: Well, that's how I remember.

15 MR. ABU-ASSAL: Wait a second, let me object and
16 then you can answer.

17 It's vague and ambiguous and is misstating his
18 testimony.

19 Q. BY MR. THOMAS: Sir?

20 A. Yes.

21 Q. All right. Go ahead and keep this in front of
22 you, but I have Exhibit 208 in front for you.

23 A. All right.

24 Q. Do you recognize this as the --

25 A. Conversation.

1 Q. This is my conversation and Dave Krugle's
2 conversation with you in early 2010.

3 A. Yes.

4 Q. Correct? And this is after you were at the
5 keyboard with Dave Krugle on November 24th, right?

6 A. Oh, yes. This is when I was retired.

7 Q. Yeah. So by then you already knew -- you already
8 knew that AtPac and CRIis gave Aptitude -- well, you just
9 testified, you already understood that the AtPac and CRIis
10 user groups were like root?

11 A. That's what Dave told me.

12 Q. Right.

13 A. Well, he had told me AtPac was, CRIis wasn't.

14 Q. So he told you even more specifically that AtPac
15 was like root?

16 A. Yeah.

17 Q. Okay.

18 A. He actually said that if you had only given them
19 CRIis, they could have gotten access without having the root
20 privileges.

21 Q. Okay. And you said that it was like a God
22 account.

23 A. Yeah.

24 Q. Okay. So now what I'd like to do is look at page
25 11. This is an interview several months later, right?

1 A. Right.

2 Q. Okay. Let's look at the -- where it says oh --
3 where it says, "Dave, CRIis gave them access to the
4 databases. AtPac was like it's a God account for us." Do
5 you see that?

6 A. Yes.

7 Q. And then what did you say?

8 A. Okay. Was that like root? See, I didn't know
9 that. Oh, I see what's going on. But no one specified
10 which groups to exclude to me, which -- so they would
11 like -- would be made like you. That's normal modus
12 operandi, is that if you're told to give someone access
13 rights similar to someone else, they get the same group
14 membership. Doesn't something ever surprise you twice? But
15 I knew it back on the 24th.

16 Q. Do you want to hear -- I don't have it with me.
17 Have you listened to the recording?

18 A. Yeah, I did.

19 Q. You pretend to be extremely surprised when he says
20 that. You say, wow, was that like root? Were you acting?

21 A. Maybe I was. Maybe I was upset and startled. But
22 I knew it on the 24th, that's accuracy.

23 Q. Are you sure you weren't being honest when you
24 were with us?

25 A. I was startled. I very well may have forgotten

1 and you reminded me. I don't know.

2 Q. Tell me about being startled. What do you mean
3 you were startled? That's an interesting term; that's
4 interesting. What do you mean startled? How were you
5 startled?

6 A. When someone expects an answer to you quickly and
7 definitively, you give them an answer that makes logical
8 sense, but upon further reflexion may not be as accurate as
9 you would have liked. What I should have said at that time
10 is I found out on the 24th, but I didn't realize that until
11 I reviewed the documentation.

12 Q. See, here's what I think? I think you knew --
13 excuse me, it doesn't matter what I think; it doesn't
14 matter.

15 MR. ABU-ASSAL: Wait. Objection, you're --

16 MR. THOMAS: There's no question pending.

17 MR. ABU-ASSAL: You're taking your own deposition.
18 I thought you were taking Mr. Ever's deposition.

19 MR. THOMAS: Fair enough, Nabil. No.

20 MR. ABU-ASSAL: The rules of civil procedure must
21 bar that. You can't do both at the same time.

22 Q. BY MR. THOMAS: Yeah, I don't -- the question's
23 withdrawn.

24 A. I can't --

25 Q. There's no question pending, sir.

1 A. All right.
 2 Q. Now, that's another example where you --
 3 MR. ABU-ASSAL: Mr. Evers, do you need a break?
 4 You look like you need one.
 5 THE WITNESS: I'm -- I will admit, Mike is
 6 extremely thorough.
 7 MR. THOMAS: I'm fine taking a break. It's
 8 4 o'clock. Let's take a break.
 9 MR. ABU-ASSAL: I'm just asking him because he
 10 looks tired.
 11 THE WITNESS: Yeah, I'm okay. Let's take a break.
 12 MR. THOMAS: Yeah, let's take a break.
 13 THE VIDEOGRAPHER: We're going off the record at
 14 3:59 p.m.
 15 (Recess taken.)
 16 THE VIDEOGRAPHER: We're back on the record at
 17 4:09 p.m.
 18 Q. BY MR. THOMAS: Okay. I'd like to go back to
 19 Exhibit 212, please.
 20 A. 212.
 21 Q. It's in front of you, sir.
 22 A. Oh, sorry.
 23 Q. And going down it says -- we talked about this,
 24 where you said this means Aptitude user isphydoux has access
 25 to all of AtPac's software. Do you see that? I'm sorry,

1 it's at the bottom of the other page, page 2.
 2 A. Yes.
 3 Q. And notwithstanding your indication of surprise,
 4 when we interviewed you several months later about learning
 5 that, it's now your testimony that you learned that on
 6 November 24th?
 7 A. I think so, yes.
 8 Q. And then you were faking it in front of me and
 9 Mr. Krugle several months later, correct?
 10 MR. ABU-ASSAL: Misstates his testimony.
 11 Q. BY MR. THOMAS: With if faking is the wrong word,
 12 what's your word? You obviously pretended to be surprised,
 13 if in fact you were pretending --
 14 A. I don't --
 15 Q. -- several months later.
 16 A. Yeah. I -- that was a long conversation, correct,
 17 Mike. If I feigned surprise or I felt surprise, I can no
 18 longer recall. Does it --
 19 Q. We have an audiotape.
 20 A. May I please ask you something? Whether I knew it
 21 a couple months earlier or when you told me there, what's
 22 the relevance? What is it you're getting at with this? I
 23 mean, it makes no logical difference to me.
 24 Q. Sir, isn't it true that you knew on November 4th,
 25 2008 that you gave Aptitude access to all of my client's

1 software; isn't that the truth? You've always known that.
 2 A. No, Mike.
 3 MR. ABU-ASSAL: Lacks foundation.
 4 Q. BY MR. THOMAS: You've always known that.
 5 MR. ABU-ASSAL: Lacks foundation.
 6 THE WITNESS: Mike, as per my earlier testimony, I
 7 knew what I knew at the time. I took my best estimate on
 8 giving them access through those two membership groups.
 9 Q. BY MR. THOMAS: You gave them access using groups
 10 that you thought gave them the highest probability of having
 11 access?
 12 A. Correct.
 13 Q. And you testified already that the highest
 14 probability would be root, correct?
 15 A. I did not give them root access.
 16 Q. You testified the highest probability would be
 17 root, correct?
 18 A. That is correct.
 19 Q. And you did give them the equivalent of root
 20 access by giving them AtPac, correct?
 21 MR. ABU-ASSAL: Misstates his testimony, lacks
 22 foundation.
 23 Q. BY MR. THOMAS: Correct, correct?
 24 A. Yes, that's correct.
 25 Q. You did give them root access, didn't you?

1 A. But you asked me if I knew at the time in 2008,
 2 the answer is emphatically no.
 3 Q. Now, let's go on to the next page. It says DK --
 4 this is on the second page. It says, "DK, did I know that
 5 Aptitude had full membership to AtPac/CRIis via membership
 6 in the AtPac and CRIis groups?" Do you see that?
 7 A. Did I know -- it.
 8 (Witness reading to himself.)
 9 MR. ABU-ASSAL: You can read it to yourself.
 10 THE WITNESS: I'm reading the paragraph Mike's
 11 pointing at.
 12 "Dave Krugle, did I know that AtPac had full
 13 membership to AtPac CRIis --" and then parentheses (via it's
 14 membership in the AtPac and CRIis groups. See item five
 15 above software. While I don't remember specifically giving
 16 them this membership, you know, at the time I didn't, it
 17 doesn't surprise me as the NCSP12 Gregory Diaz authorized
 18 form granted access rights to the ER-Recorder system."
 19 Right.
 20 Q. BY MR. THOMAS: So why didn't it surprise you?
 21 Wouldn't you have been just surprised like you feigned
 22 surprise in front of me? Why wouldn't it have surprised
 23 you?
 24 MR. ABU-ASSAL: Misstates his testimony and
 25 mischaracterizes what he did.

1 Q. BY MR. THOMAS: So when you learned, according to
2 on November 24th, 2008, that CRIis and AtPac user groups
3 gave them membership to AtPac software, you said it doesn't
4 surprise you, correct?

5 MR. ABU-ASSAL: Misstates his testimony.

6 Q. BY MR. THOMAS: You said "it doesn't surprise me."
7 It's right here.

8 MR. ABU-ASSAL: It's a mischaracterization of what
9 he says.

10 THE WITNESS: I don't know.

11 Q. BY MR. THOMAS: Well, did you say that?

12 A. I believe I did.

13 Q. You wrote this at or about the time of this
14 conversation --

15 A. Yeah.

16 Q. -- you were trying to recount accurately what you
17 said.

18 A. That's right.

19 Q. And what you said is, it doesn't surprise me,
20 right?

21 A. But what isn't surprising me? Oh, oh, I see. Did
22 I know that Aptitude had full membership to AtPac CRIis
23 software? Well, I don't remember specially giving them this
24 membership, i.e., to AtPac and CRIis, because at the time
25 we were talking it wasn't at the top of my mind, I guess.

1 It doesn't surprise me as --

2 (Witness reading to himself.)

3 I don't read anything particularly ominous about
4 that statement.

5 Q. Did I say anything was ominous?

6 A. The way you're talking to me implies it. What are
7 you asking me about it? It's --

8 Q. So the bottom line is those DK and DE comments
9 below that during DK's visit to IGS, DK asked the following
10 questions of DE -- I'll paraphrase -- of interest. Do you
11 see that?

12 A. Right.

13 Q. You wrote all that?

14 A. Correct.

15 Q. And you did your best to accurately restate what
16 was said?

17 A. Absolutely.

18 Q. All right. Going on to the next page.

19 A. Okay.

20 Q. What I want to get to is on this page, this is
21 where you're identifying what you believe to be AtPac source
22 code on ER-Recorder?

23 A. Yes. As per Dave's commentary to me at that
24 situation, yeah, yeah.

25 Q. All right. And those are the SD files?

1 A. Yes.

2 Q. Okay. And do you understand SD is screen
3 description?

4 A. No. I didn't know what it actually meant.

5 Q. Okay.

6 A. I thought it meant science data basically. I was
7 just guessing, though.

8 Q. Okay. There's a comment there, "It should be
9 pointed out;" do you see that?

10 A. Okay. I see it.

11 Q. "It should be pointed out that this confirms to DK
12 what the County has already acknowledged to AtPac, that
13 Aptitude via the user isphydoux was able to access the AtPac
14 software." Do you see that?

15 A. Oh, I see, yes.

16 Q. Did you write that?

17 A. Yes.

18 Q. And let me ask you, when did the County
19 acknowledge that to AtPac before November 24th?

20 A. I thought that when we had our meetings, we talked
21 about that issue. You know, when me and Craig Porter and
22 you and Dave talked and Scott McLeran. Didn't we cover
23 that?

24 Q. Okay. So did we -- you thought that was covered
25 at that meeting?

1 A. I thought so.

2 Q. Okay. Well, let ask you this: That meeting
3 occurred before November 24th, correct?

4 A. I thought so. It was either that or --

5 Q. It was before November 24th, yes?

6 A. Okay.

7 Q. So you did know before November 24th that the
8 County had granted Aptitude AtPac -- excuse me, Aptitude
9 access to AtPac software?

10 MR. ABU-ASSAL: Vague and ambiguous.

11 Q. BY MR. THOMAS: You must have known that to write
12 that sentence.

13 A. Not the root level access.

14 Q. Well, what access to AtPac software were you
15 referring to? You're not talking about data files.

16 A. We were talking about data files and images. We
17 weren't talking about their software per se. I mean, that
18 was my understanding.

19 Q. So if you weren't talking about software, why in
20 this sentence did you say AtPac software?

21 A. That's a generic statement. It could be
22 meaning -- I see what you're staying, but I don't find it as
23 being --

24 Q. Now, so you're saying that in meetings between
25 AtPac and the County sometime shortly before this meeting

1 with you and Dave Krugle, you have some recollection of
2 telling either me or Dave Krugle that the County
3 acknowledged it gave Aptitude access to AtPac software;
4 that's your recollection?

5 A. My recollection, and it's very vague, was that
6 the -- somebody told me, that could have been Scott McLeran
7 or somebody else, that the County had stipulated to the fact
8 that they had allowed access to the -- and at the time I
9 didn't know it had source code, the software. And remember
10 software and source code are two different things. That may
11 be where we're having a problem here. I didn't know source
12 code existed until Dave told me. I knew that software was
13 on the box. Obviously it would not run without it. But
14 that's not the same as uncompiled source code. This is the
15 day that Dave told me it had uncompiled source code.

16 Q. All right. Let's go to --

17 A. Does that clear that up?

18 Q. -- third page, please, of this document. Look at
19 the very top note.

20 MR. MULLER: Which exhibit are you on now?

21 Q. BY MR. THOMAS: Same one. It's says, "DK took
22 close note of this issue as it confirms what we in the
23 County have been saying, that Aptitude has had full access
24 to AtPac ER REC P system," and that's the ER-Recorder
25 production system.

1 A. Right, right.

2 Q. You said full access.

3 A. That's correct.

4 Q. What did you mean by full access?

5 A. That through their membership they could go in
6 there and copy files and do what they needed to do.

7 Q. That's what you meant by full access?

8 A. Yeah. I mean, I'm assuming so. However, in light
9 of the fact that David also told me that that was root, that
10 could also be interpreted as being complete system access to
11 everything.

12 Q. Yeah. But your comment is -- you're summarizing
13 what the County had already been saying, right? It says,
14 "We in the County have been saying." You're referring to
15 statements that were said before November 24th, correct?

16 A. I believe so.

17 Q. And you believe before November 24th the County
18 was telling AtPac that Aptitude had full access to the
19 ER-Recorder system. That's what you're saying here, right?

20 A. Yes.

21 Q. So sometime before this meeting on November 24th,
22 you knew that Aptitude had full access to the ER-Recorder,
23 correct?

24 A. I would agree with you on the condition that you
25 understand that the level of access to their source code was

1 unknown until this point.

2 Q. But you knew they had full access, correct? You
3 said that?

4 MR. ABU-ASSAL: Vague and ambiguous.

5 Q. BY MR. THOMAS: You said full access.

6 MR. ABU-ASSAL: It's vague and ambiguous.

7 THE WITNESS: The term of full access, yeah, is a
8 matter of interpretation. I'm -- you know, it's not the
9 same as saying that they had root access. I didn't know
10 that until Dave told me.

11 Q. BY MR. THOMAS: That's your final answer?

12 A. What? Mike --

13 Q. That's your final answer?

14 A. -- seriously.

15 MR. ABU-ASSAL: It's argumentative and it's
16 badgering the witness.

17 THE WITNESS: I am not trying to obfuscate
18 anything here.

19 Q. BY MR. THOMAS: Well, you did obfuscate the
20 existence of the isphydoux account, correct?

21 MR. ABU-ASSAL: Misstates his testimony.

22 Q. BY MR. THOMAS: Correct? Correct? You're not
23 answering that one?

24 A. You know, I just feel that what you're doing -- I
25 know what you're doing psychologically.

1 Q. I'm just asking questions. I'm trying to get the
2 truth.

3 A. You're not asking for facts here.

4 Q. I'm trying to get the truth, sir.

5 A. No. You're trying to pre-interpret the truth and
6 I don't appreciate it. I have tried to give you a straight
7 answer. You have pointed out three inconsistencies in my
8 testimony that I'm aware of, and while I am not perfect and
9 I do not feel good about these inconsistencies, I would like
10 to straighten those out. Nonetheless, do not try to read
11 into my statements that which they do not mean.

12 Full access? I meant that they could get in the
13 server and move around and copy any file that they wanted.
14 To my knowledge, that would restrict them, you know, to
15 whatever AtPac and CRiis gave. Then I find out that AtPac
16 and CRiis -- or AtPac group had this super level of access
17 that I did not know. If I had known that, I would not have
18 given it to them.

19 Q. Now, if someone has full access, meaning root
20 access, and they log in using an account with full access --

21 A. Say root access, not full access. There's a
22 difference.

23 Q. Okay. Fair enough. I'm not so sure, but I'll use
24 the word root access if that's what you want.

25 A. Thank you, sir.

1 Q. If someone has root access and they login, someone
2 who's knowledgeable about computer network, and they login
3 with a root access account, they can find out pretty quickly
4 that they're on a root access account; don't you agree?

5 A. Yes. It's very easy.

6 Q. Okay. So did Aptitude ever tell you hey, you've
7 given us a root account?

8 A. No; no one ever told me.

9 Q. They never told you?

10 A. They never told me. I didn't know.

11 Q. And Aptitude could have -- the way you set the
12 account up, you enabled Aptitude to sit in Florida, people
13 could sit in the comfort of their offices in Florida, open
14 up an account in AS-Nevada in Nevada County, California,
15 open up a pipeline to ER-Recorder and pull anything they
16 wanted from ER-Recorder in the comfort of their office for
17 hours or days at a time, correct? That's the way the
18 account was set up.

19 MR. ABU-ASSAL: Calls for speculation, lacks
20 foundation, and also calls for expert testimony, totally
21 wrong.

22 THE WITNESS: That --

23 MR. THOMAS: Well, are you answering the question?
24 You just answered the question, you said totally wrong.

25 MR. ABU-ASSAL: Mischaracterizes everything that's

1 information, anything they wanted from AS -- I mean,
2 ER-Recorder to AS-Nevada. Then what they did with it from
3 there, that I don't have any knowledge of. But yeah, it's
4 possible.

5 Q. And what they did from there, you don't have
6 knowledge of because you weren't checking.

7 A. It wasn't my job.

8 Q. But you weren't checking.

9 A. That is correct.

10 Q. And to your knowledge nobody from Nevada County
11 was.

12 A. To my knowledge.

13 Q. Okay. Now, no more questions about 212. Thank
14 you. Let's now go to 213.

15 (Whereupon Exhibit 213 was marked for
16 identification.)

17 Q. BY MR. THOMAS: Okay. This is Exhibit 213. Do
18 you recognize this as your -- essentially, your chronology
19 or diary?

20 A. Yes, sir.

21 Q. Okay. There is some time entries on June 17th;
22 can you get to those, please?

23 A. Where are you, June 17th?

24 Q. June 17th.

25 A. Oh, okay. I found it.

1 been said.

2 MR. THOMAS: It's not true.

3 MR. ABU-ASSAL: And it calls for speculation,
4 lacks foundation, and calls for an expert testimony.

5 Q. BY MR. THOMAS: Sir? That's a true statement
6 isn't it? That's how you set up the account.

7 A. Would you please say it again so I can know what
8 I'm answering?

9 Q. The way you set up isphydoux allowed Aptitude
10 Solutions personnel sitting in the comfort of their offices
11 in Florida for as long as they wanted, for hours, for days
12 at a time to VPN access the AS-Nevada server within Nevada
13 County and then from their use isphydoux to up a pipeline to
14 my client's software, ER-Recorder server, and pull anything
15 and everything they wanted from ER-Recorder server onto
16 their server AS-Nevada, correct?

17 MR. ABU-ASSAL: Calls for speculation --

18 THE WITNESS: Do they have the capability to do
19 that, yes.

20 MR. ABU-ASSAL: Lacks foundation, calls for expert
21 testimony.

22 THE WITNESS: In my opinion, yes.

23 Q. BY MR. THOMAS: I'm sorry, he was talking over
24 you, what's the answer?

25 A. In my opinion, they would be able the copy

1 Q. There is some time entries here dealing with a USB
2 backup; do you see that?

3 A. Yes.

4 Q. And there's -- that's on the 17th. On the 16th,
5 you're talking about backing up the OCRC.

6 A. Correct.

7 Q. Do you remember we looked at those time entries on
8 the -- your actual official time entries?

9 A. The SER file, yes.

10 Q. And so you recall that being the backing up of the
11 OCRC?

12 A. Right, correct.

13 Q. Okay. And the same with respect to the June 12th
14 entry, you're working on backing up OCRC?

15 A. Yes, that's what it says.

16 Q. Let's turn to the -- I want to go to your SER.
17 Did I use that word --

18 A. Yes, SER.

19 Q. SER, okay. And I'm interested in this one that
20 sort of has a long entry on the bottom.

21 A. Oh.

22 Q. It's a couple pages in.

23 A. That's -- there are actually two documents here.
24 Let's see, where is it? That's this one. Okay. That's not
25 an SER. That's an HD or help desk ticket.

1 Q. Let's go down a little further than that.
 2 A. Right. That's actually a ticket that would be
 3 issued to technical services to, in this case, install the
 4 server.
 5 Q. Okay. And then this is -- there's an entry 38049;
 6 do you see that?
 7 A. Yes.
 8 Q. And that says -- and that's dated 11/4/08?
 9 A. Yes.
 10 Q. I saw a note in your binder that says that date
 11 should be 11/5/08; does that ring a bell?
 12 A. It's very possible that I entered it on the wrong
 13 date.
 14 Q. Okay.
 15 A. Yeah. I probably -- it's probably -- on one or
 16 the other. I couldn't tell you which it is. These are --
 17 actually, these dates, they're -- you can edit them when you
 18 get it. So if you're entering information a couple days
 19 after you did it, you would put in the correct date that you
 20 did it. So I've either made a mistake in my timesheet or
 21 this.
 22 Q. Okay. And then it says "for vendors," and you're
 23 talking about the Aptitude personnel?
 24 A. Yes, sir.
 25 Q. Tom McGrath and Patty Sandever?

1 A. Uh-huh.
 2 Q. It says, "Set up login isphydoux on Recorder." Do
 3 you see that?
 4 A. Yes.
 5 Q. You did that?
 6 A. Yes.
 7 Q. Got access badge?
 8 A. Yeah, I did.
 9 Q. So that would have been for them?
 10 A. Yeah.
 11 Q. Would there be a sign-in sheet for that? I asked
 12 you that before, but does this refresh your recollection?
 13 A. Yeah. Like I say, you need to ask the front desk
 14 whether or not there was a sign-in sheet per se.
 15 Q. Okay.
 16 A. They kept them in a drawer, you know, and with
 17 them showing up as expected, they may have been issued a
 18 badge and, you know, no one logged it. I don't know.
 19 Q. You explained ER-Recorder config?
 20 A. Yes.
 21 Q. Does that refresh your recollection of about what
 22 you did with them?
 23 A. My guess is that's referring to me explaining to
 24 them that CRIis is the database and that they -- how the
 25 file system worked for the images.

1 Q. All right. And then it says you installed the
 2 putty and WIN-SCP on the HP server.
 3 A. Yeah. That would be AS-Nevada.
 4 Q. And then it says "assisted vendors as needed
 5 throughout the day"?
 6 A. Yeah.
 7 Q. Do you see that? Does that refresh your
 8 recollection that maybe it was more than three hours they
 9 were in that closed room with no windows logged into my
 10 client's server, ER-Recorder, with my client's software?
 11 A. It doesn't help me, one way or the other,
 12 remembering the actual duration of their visit.
 13 Q. Would you have said throughout the day if it was
 14 only three hours?
 15 A. Yeah, it's possible. I mean they showed up in the
 16 morning and left in the afternoon.
 17 Q. So if it was from 11:00 --
 18 A. If they were just in the morning, I would have
 19 said in the morning or in the afternoon. Throughout the day
 20 would probably be the crossover for that.
 21 Q. So if it was from 11:00 to 12:30 in the afternoon,
 22 you'd say throughout the day?
 23 A. Yeah, it's possible.
 24 Q. Well, anything's possible. I don't want you to
 25 speculate.

1 A. Well, my answer to you is that it's an ambiguous
 2 statement that has no particular meaning.
 3 Q. All right. Is that how most of your time entries
 4 are, ambiguous that have no meaning?
 5 A. No.
 6 Q. That was a time entry, correct? What was that
 7 entry for?
 8 A. It's a description within a time entry. The time
 9 total is two hours. That's accurate. The description is
 10 ad hoc; whatever I had felt to write.
 11 Q. Okay. What's the time total of two hours refer
 12 to?
 13 A. Probably between my setting up the isphydoux login
 14 or finishing it, whatever -- whether I started the day
 15 before, I don't know. I got access badge, explained what's
 16 going on, installed the software on the server. Probably
 17 accounts for the entire amount of time I spent in there,
 18 either with or without them, working on this project.
 19 Q. But it wouldn't count the time they were in there
 20 by themselves because --
 21 A. No, no, no, it has nothing to do with that.
 22 That's strictly my time. Their time is not my issue.
 23 Q. Okay. And if you could turn to the SER.
 24 A. Yes.
 25 Q. And go to the page that we've looked at in your

1 binder already, it's the June 17th, '09 entry that you have
2 where you're backing up CRC.
3 MR. MULLER: Would you show me the page?
4 MR. THOMAS: It's like that.
5 THE WITNESS: That's odd. Can you tell me the
6 number associated with that on the left-hand column? 1067?
7 1067 or 76, sorry.
8 Q. BY MR. THOMAS: 1077.
9 A. Okay.
10 Q. It shows at the top.
11 A. Okay. I found it.
12 Q. Okay. And this is -- we've looked at this already
13 in your binder. I just want to make sure this is the same
14 document. You've got an entry on 6/12/09 at the top; do you
15 see that?
16 A. Yes.
17 Q. And then you had the entries on the 17th and 18th
18 of June --
19 A. 17th.
20 Q. -- below that?
21 A. Yes.
22 Q. And this is where you testified that you were
23 backing up or doing something with respect to OCRC; do you
24 remember that testimony?
25 A. Yes.

1 Q. And I asked you if this said anything about doing
2 ER-Recorder or AS-Nevada work and you said no?
3 A. It doesn't ring a bell doing so.
4 Q. And it's not indicated on this document, correct?
5 A. That is correct.
6 Q. And if you were working on ER-Recorder or
7 AS-Nevada, you would have logged it in this log, yes?
8 A. Yes.
9 Q. Okay. Thank you. No more questions about that.
10 Okay. I have no more questions about that and
11 next in order.
12 (Whereupon Exhibit 214 was marked for
13 identification.)
14 Q. BY MR. THOMAS: All right. This is an e-mail from
15 you to Craig Porter; do you see that?
16 A. Yes.
17 Q. December 3rd, '09; do you see that?
18 A. Yes.
19 Q. Were you an employee of Nevada County on that day?
20 A. Yes.
21 Q. All right. And you were wrote this e-mail?
22 A. Looks like it.
23 Q. Okay. Do you have any reason to think you didn't?
24 A. No.
25 Q. All right. No more questions.

1 (Whereupon Exhibit 215 was marked for
2 identification.)
3 Q. BY MR. THOMAS: This looks like an e-mail from you
4 to Caroline Mankey. Is that dated March 31, 2010?
5 A. Yes.
6 Q. This is exhibit what --
7 A. 215.
8 Q. 215. And did you send this e-mail?
9 A. Yes.
10 Q. In this document you're saying to Ms. Mankey --
11 down at the bottom you're indicating to her that you're not
12 sure whether they -- hold on.
13 You say you don't know whether or not Aptitude
14 personnel actually used the isphydoux login to access
15 ER-Recorder. Do you see you say that?
16 A. Yeah.
17 Q. But you know for a fact that you were with them
18 when you were logged in?
19 A. You're right. I --
20 Q. And they were with you and you were showing it to
21 them and you were helping them do that, yes?
22 A. You're right.
23 Q. Okay. So that's not a correct statement, right?
24 A. That is -- that is -- I would say you are correct;
25 that's not a correct statement.

1 Q. Okay.
2 A. Yeah.
3 Q. Okay. No more questions.
4 A. I should have wrote her -- that was, I know, one
5 occasion.
6 MR. THOMAS: Next document.
7 (Whereupon Exhibit 216 was marked for
8 identification.)
9 Q. BY MR. THOMAS: Exhibit 216, I'd liked to go
10 through this e-mail. Okay?
11 A. Okay.
12 Q. "Highly confidential attorney privileged
13 communication," it says. Caroline Mankey to Nabil
14 Abu-Assal. All right.
15 It says, "Nabil, I just had a call today with Dan
16 Evers."
17 And you did talk to her on March 31, right?
18 That's -- in fact, I think you sent her the e-mail before on
19 March 31.
20 A. That would make sense, yeah.
21 Q. Okay. It says, "He followed instructions from
22 other County personnel in giving Aptitude login access to
23 AtPac's software." Did you say that to her?
24 A. I'm sorry, where is that, Mike?
25 Q. Third line down, first paragraph.

1 A. I'm sorry, first paragraph?
 2 Q. Yes.
 3 A. (Witness reading to himself.)
 4 Correct.
 5 Q. Okay. Then the next sentence says, "He does not
 6 know for sure if anyone from Aptitude actually used the
 7 login to access the software, but he can see from the logs
 8 that the login was used by someone to access the
 9 information." Do you see that?
 10 A. That's correct.
 11 Q. And you know that that's not correct in that you
 12 in fact logged in for them that day at least --
 13 A. At least one time I know that they had access and
 14 accessed the system.
 15 Q. And then -- and that's the day when you left them
 16 alone for several hours?
 17 A. Yes, sir.
 18 Q. And then it says, "Normally, AtPac created all new
 19 login accounts." Do you see that?
 20 A. Correct.
 21 Q. So the instruction for him to create this account
 22 was out of the ordinary, correct?
 23 A. Correct.
 24 Q. And that's true?
 25 A. That's very true. It's true as true can be.

1 Q. And then it says, "The account also was not
 2 assigned the vendor designation that would normally have
 3 been assigned when a third party was being given access for
 4 a limited purpose and that would have alerted AtPac to the
 5 fact that a third party was being given access to its
 6 software."
 7 A. Correct.
 8 Q. And that's a true statement?
 9 A. That's true.
 10 Q. And it says, "Then thus he felt that the County
 11 was being untruthful with AtPac and he had serious ethical
 12 concerns about it."
 13 A. I did.
 14 Q. And that was -- the ethical concerns were about
 15 the instruction that came down through Ms. McCluskey from
 16 Gregory Diaz.
 17 A. Yes, sir.
 18 Q. Do you think Gregory Diaz is unethical?
 19 A. I couldn't say.
 20 MR. ABU-ASSAL: Calls for speculation.
 21 Q. BY MR. THOMAS: Well, do you think the instruction
 22 he gave you was unethical?
 23 A. It was either unethical or -- the instructions
 24 that she gave me were either unethical or ill thought out.
 25 Q. Well, you told Ms. Mankey that you had ethical

1 concerns.
 2 A. I did.
 3 Q. So you thought it was unethical.
 4 A. Yeah, you can say that. I say that, I agree.
 5 Q. All right. No more questions about 216.
 6 (Whereupon Exhibit 217 was marked for
 7 identification.)
 8 Q. BY MR. THOMAS: All right. Got 217?
 9 A. Yes, sir.
 10 Q. And this is another e-mail from Caroline Mankey to
 11 some other people and there's one half way down I want to
 12 look at on the first page.
 13 A. Okay.
 14 Q. It says -- do you see it says, "Hi Kathy"?
 15 A. Yes.
 16 Q. And down below it says -- about the third line
 17 down.
 18 A. Starting at "Dan."
 19 Q. Yes. It says, "Dan says that he did not do a test
 20 login using isphydoux on that date because he gave her a
 21 one-time default password that would have required that the
 22 password be changed for the first time that the login was
 23 used." You said that to her?
 24 A. Yes.
 25 Q. It says, "He believes that someone from Aptitude

1 did log in using isphydoux on November 4th, 2008 and set a
 2 new password." You said that to her?
 3 A. Yes.
 4 Q. You were truthful?
 5 A. Yes.
 6 Q. "He also said that isphydoux was used on
 7 subsequent occasions to access the ER-Recorder server, but
 8 he does not know when, how many times or what the logs would
 9 show me those times of access." Do you see that?
 10 A. Yes.
 11 Q. And on April 12th, is the reason you knew
 12 isphydoux had been used is because by then you had seen the
 13 Red Hat logs? For example, I showed you Red Hat logs.
 14 A. Yes, you did. I was certainly privy to more
 15 information at that point, after Dave and I had looked at
 16 logs and retrieved them on the 25th of November -- 24th, I
 17 guess it was. Excuse me, I always misquote that. But yes,
 18 yes.
 19 Q. Before you saw the Red Hat logs showing the use of
 20 the isphydoux account in June, before you saw those for the
 21 first time sometime in the fall of 2009, had you been aware
 22 that anyone had been logging in using the isphydoux account?
 23 A. No.
 24 Q. Okay.
 25 A. No.

1 Q. Okay. Exhibit 26 in your binder, please. Oh, I'm
2 sorry, sir, the white binder.
3 A. I'm sorry.
4 Q. All right. There's an e-mail and a letter
5 attached to it.
6 A. Oh, okay.
7 Q. And it's a letter to AtPac from Gregory Diaz; do
8 you see that?
9 A. Okay.
10 Q. It's January 8th, 2009; do you see that?
11 A. Yes.
12 Q. Just looking at this here, have you ever seen this
13 letter?
14 A. No.
15 Q. Okay. If you read -- go ahead and just read the
16 letter; it looks like you're doing it anyway. Go ahead and
17 read it.
18 A. Out loud or quiet?
19 Q. No, to yourself. I just want you to know what the
20 letter says so I can talk to you about it.
21 A. Okay.
22 Q. You've read it?
23 A. Yes.
24 Q. Do you see how this letter was sent to my client;
25 I'll represent that to you. And it says that Nevada County

1 will be extracting data files -- excuse me, extracting
2 elements from individual data files.
3 A. Correct.
4 Q. And then it says, "Aptitude Solutions will only be
5 working with the extracted elements." Do you see that?
6 A. Right.
7 Q. That's not at all what you set up with the
8 isphydoux account. You gave Aptitude the right to just go
9 in and grab the files themselves, yes?
10 A. You bet.
11 Q. So this is entirely inconsistent with giving --
12 this letter is entirely inconsistent with what was actually
13 done in terms of giving Aptitude Solutions their own account
14 to the ER-Recorder server to pull whatever they wanted from
15 that server, correct?
16 MR. ABU-ASSAL: Lacks foundation, calls for
17 speculation.
18 Q. BY MR. THOMAS: Correct?
19 A. I'm still digesting it, Mike. Just a minute.
20 Q. BY MR. THOMAS: Okay.
21 MR. ABU-ASSAL: It lacks foundation. He's never
22 even seen the letter.
23 THE WITNESS: I've never seen this before.
24 Q. BY MR. THOMAS: But you're seeing it now, right?
25 You can see it now?

1 A. Yes. I mean, given the fact that they had
2 complete access to the system, you know, they were able to
3 get anything they needed off of it.
4 Q. And even your intention was to give them access to
5 pull the data files?
6 A. That was all I wanted them to do, yes.
7 Q. Well, even that would be inconsistent with this
8 letter, correct?
9 MR. ABU-ASSAL: Calls for speculation, lacks
10 foundation.
11 THE WITNESS: To be honest, Mike, I don't know.
12 Q. BY MR. THOMAS: You don't know? Okay.
13 MR. ABU-ASSAL: Mr. Evers, please pause and let me
14 object. I know it's difficult, but you've got to give me a
15 chance.
16 THE WITNESS: Yes, sir.
17 MR. THOMAS: Can we get the next thing that we
18 wanted?
19 MR. KRUGLE: What do you want to do next?
20 (Discussion off the record.)
21 MR. THOMAS: Okay. So I can just -- okay. There
22 you go, Dina.
23 (Whereupon Exhibit 218 was marked for
24 identification.)
25 MR. THOMAS: And I have --

1 MR. ABU-ASSAL: What number is this?
2 MR. THOMAS: 218.
3 MR. ABU-ASSAL: And there's --
4 MR. KRUGLE: 217.
5 MR. ABU-ASSAL: 217?
6 MR. THOMAS: No, this is 218. 217 was April 12th,
7 2010 e-mail.
8 MR. KRUGER: We didn't get those down here.
9 MR. THOMAS: Oh, okay. Well, we'll get them to
10 you soon enough.
11 MR. KRUGLE: All right.
12 MR. ABU-ASSAL: So wait a second. What exhibit
13 are we on?
14 MR. THOMAS: 218.
15 MR. ABU-ASSAL: 218. And what is 218?
16 MR. KRUGLE: Wait. Let me get you 217.
17 MR. THOMAS: It's 218. It's what we just handed
18 you.
19 MR. ABU-ASSAL: I know, but what is it?
20 MR. THOMAS: Well, let me ask the witness.
21 MR. ABU-ASSAL: Okay, okay.
22 MR. THOMAS: Don't ask me.
23 MR. ABU-ASSAL: That's okay.
24 MR. THOMAS: You're interrupting.
25 MR. ABU-ASSAL: I just want to get it identified

1 so we don't get confused.
 2 MR. THOMAS: Well, you're interrupting me from
 3 actually doing that, just that exact thing.
 4 Q. All right. Do you have Exhibit 218 in front of
 5 you?
 6 A. Yes, sir.
 7 Q. And these are documents that were produced by
 8 Nevada County and you see the title at the top, their screen
 9 captures that say "Secure 4"?
 10 A. Yes.
 11 Q. "Secure 3," "Secure 2" and "Secure 1."
 12 A. Yes.
 13 Q. And what are these?
 14 MR. ABU-ASSAL: Lacks foundation.
 15 THE WITNESS: They look like log entries.
 16 MR. ABU-ASSAL: Move to strike, speculation.
 17 Q. BY MR. THOMAS: Sir, you've seen ER-Recorder Red
 18 Hat logs before, right?
 19 A. I've seen Red Hat logs, including ER-Recorder's,
 20 yes.
 21 Q. And do you recognize these? You see the dates,
 22 June 9th through June 12th on the first page?
 23 A. Yes.
 24 Q. And you see an entry regarding -- what server is
 25 referenced here, what named server?

1 A. Okay.
 2 MR. ABU-ASSAL: Lacks foundation, calls for
 3 speculation.
 4 THE WITNESS: It says ER-Recorder as the server.
 5 Okay. Now, I see what I'm looking at now.
 6 Q. BY MR. THOMAS: And what do you think you're
 7 looking at?
 8 A. I'm looking at what appears to be a var/log
 9 messages extraction or some other log files extraction.
 10 Q. And do you understand what Secure 4, 3, 2 and 1
 11 are? Each page is a different one.
 12 A. Yes. I see that they are extractions of certain
 13 date ranges in the log file.
 14 Q. Okay. All right. All right. So if we look at
 15 the June 12th entry, do you see that?
 16 A. Yes.
 17 Q. And the -- transaction number is 15132; do you see
 18 that?
 19 A. Yes.
 20 Q. It sets a password for isphydoux.
 21 A. Correct.
 22 Q. And you recognize that IP address now. It's the
 23 one that was indicated to be AS-Nevada?
 24 A. Correct.
 25 Q. Okay. And that's at 4:21; 16:21?

1 A. Yes.
 2 Q. All right. And then the -- that session doesn't
 3 close on this particular log, right?
 4 A. It looks like it. Yeah, I don't see a closing
 5 statement.
 6 Q. And if you turn to the next Word Secure 3, the
 7 next log, do you see how it closes on the very first line
 8 entry?
 9 A. Correct.
 10 Q. That's June 15th; do you see that?
 11 A. Correct.
 12 Q. So that would indicate a three-day secured file
 13 transfer?
 14 A. It indicates that the session was open for three
 15 days. What occurred during that time, I cannot say.
 16 Q. Right.
 17 MR. ABU-ASSAL: Move to strike, speculation.
 18 Q. BY MR. THOMAS: And you can't say because you
 19 don't have access to AS-Nevada.
 20 A. Correct.
 21 Q. Yeah, none of us do because it's been destroyed.
 22 MR. ABU-ASSAL: Misstates the evidence.
 23 Q. BY MR. THOMAS: Now, let's look at the entry right
 24 below when the session 15132 closed on June 15th. Do you
 25 see that? See the entry on June 16th?

1 A. I'm looking for it, just a second.
 2 Q. Page 3.
 3 A. Page 3.
 4 Q. Secure 3.
 5 A. Secure 3, oh, yes I see it.
 6 Q. Second page.
 7 A. Right.
 8 Q. You see the June 16th entries?
 9 A. Yes.
 10 Q. And it says -- the first, it's transaction 22934?
 11 A. Correct.
 12 Q. It says accepted password for ISKBarale; do you
 13 see that?
 14 A. Yes.
 15 Q. Did you know that Ms. Barale had a password -- or
 16 not a password but an account ISKBarale?
 17 A. I believe I did.
 18 Q. Okay. It says from port 172.27.2.80?
 19 A. Correct.
 20 Q. That's the same IP address as AS-Nevada, correct?
 21 A. Correct.
 22 Q. So that's an instance where she's using her own
 23 password, yes?
 24 A. Yes.
 25 Q. At the very same time -- or excuse me, no, not at

1 the same time. One day after an isphydoux session closed,
 2 yes?
 3 A. Yes.
 4 Q. And then session, it says, closes at 9:44; do you
 5 see that?
 6 A. Yes.
 7 Q. So her session was opened for approximately five
 8 minutes?
 9 A. It looks like it, yes.
 10 Q. Okay. And then the next transaction says June
 11 17th at 5:13:02.
 12 A. Correct.
 13 Q. And that's 27874; do you see that?
 14 A. Twenty-seven -- yes.
 15 Q. And that's accepts password from isphydoux and
 16 that again is from the AS-Nevada server, yes?
 17 A. Correct.
 18 Q. Okay. And so that starts on June 17th at 5:13
 19 a.m., right?
 20 A. Correct.
 21 Q. Which is earlier than you normally get in or
 22 anyone normally gets in to the IT Department in Nevada
 23 County, yes?
 24 A. That is correct.
 25 Q. Okay. And then we see that transaction -- it

1 stays open for --
 2 MR. KRUGER: Next page.
 3 Q. BY MR. THOMAS: -- the next page, to June 22nd,
 4 for five days?
 5 A. And that's 27874. Yes.
 6 Q. That's stays open for five days, right?
 7 A. Five days.
 8 Q. All right. As a network specialist at Nevada
 9 County, over a five-day period using a secure file transfer
 10 protocol session, how much information could be moved from
 11 ER-Recorder to AS-Nevada over a five-day file transfer
 12 protocol session?
 13 MR. ABU-ASSAL: Lacks foundation, calls for expert
 14 testimony.
 15 Q. BY MR. THOMAS: Do you have a sense of that?
 16 MR. ABU-ASSAL: Speculation.
 17 THE WITNESS: I can, in general, answer you that
 18 it's a lot of information. The backbone is at least a 10-T
 19 Base 100 and possibly gigabit byte bone, so it's possible it
 20 went through there. Even if it was 10 megabits, you still
 21 could move a lot of data over that period of time. I
 22 couldn't do it -- calculate it without knowing what the
 23 through-put is through some testing and then it could be
 24 calculated pretty precisely. But a lot of data.
 25 Q. All of the server?

1 MR. ABU-ASSAL: Calls for speculation.
 2 THE WITNESS: I'd have to know -- Mike, I'd have
 3 to know the sizes, but a lot of data.
 4 Q. BY MR. THOMAS: How about all of my client's
 5 source code?
 6 A. Probably very easily. I mean, the source code's
 7 very small, from what I understand, so I don't see -- that
 8 wouldn't take a long time.
 9 MR. ABU-ASSAL: Move to strike based on
 10 speculation.
 11 Q. BY MR. THOMAS: On the same day --
 12 MR. ABU-ASSAL: Mr. Evers, don't testify unless
 13 you know something. He told you not to guess, so don't
 14 guess.
 15 THE WITNESS: Yeah, I was speculating on the
 16 numbers.
 17 Q. BY MR. THOMAS: A lot of information could be
 18 transferred off ER-Recorder to AS-Nevada in five days?
 19 MR. ABU-ASSAL: Calls for speculation.
 20 MR. THOMAS: I'm not done with my question, sir.
 21 Please stop interrupting me. And you're yelling for some
 22 reason. I don't know why. It's a quiet room. We're all
 23 here. We can hear you. You don't have to yell.
 24 MR. ABU-ASSAL: I am not yelling. And you have a
 25 weird kind of pacing that's difficult to know when you start

1 and when you stop.
 2 Q. BY MR. THOMAS: Sir, over a five-day secure file
 3 transfer protocol session using isphydoux pulling
 4 information from ER-Recorder to AS-Nevada, all of my
 5 client's source code could have been pulled to AS-Nevada
 6 during that time, correct?
 7 MR. ABU-ASSAL: Calls for speculation,
 8 hypothetical.
 9 Q. BY MR. THOMAS: Correct?
 10 A. I believe so. I don't know so, but I believe so.
 11 Q. Your belief is based on your experience of over
 12 ten years working in the Nevada IT Department?
 13 A. Yes.
 14 Q. And the fact that you were working on
 15 administering or working on these various servers from time
 16 to time.
 17 A. Correct.
 18 Q. Okay. Now, I'd like to look again at the Secure 3
 19 page.
 20 A. Okay. I have it.
 21 Q. All right. On the 18th there's a transaction that
 22 occurs; do you see that?
 23 A. Yes.
 24 Q. And that occurs while the isphydoux account is
 25 open, right? Because the isphydoux account opens on the

1 17th and closes on the 22nd.
 2 A. Correct.
 3 Q. And on the 18th there's another transaction that's
 4 occurring onto ER-Recorder; do you see that?
 5 A. On the 18th?
 6 Q. Yes, June 18th?
 7 A. I'm sorry, Mike, where was the first one you were
 8 talking? June 18th here, right?
 9 Q. Right. The very first June 18th entry.
 10 A. Okay. I see that. That's accepted password for
 11 root from 2.161.
 12 Q. Do you recognize that?
 13 A. No, I don't know what number that represented.
 14 Q. Or the port number?
 15 A. No.
 16 Q. Do you believe that was you using the root account
 17 on the 18th?
 18 A. Please let me consult my notes.
 19 Q. Sure. And you're looking at Exhibit 209?
 20 A. Yes. June 18th.
 21 The only entries I have corresponding with that
 22 date was me doing an ad hoc backup of the OCRC system. I
 23 have no entries regarding me doing any work with the system
 24 directly.
 25 Q. And because it's not in your time log entries, you

1 don't think it was you?
 2 A. I have no recollection of being in it as root at
 3 that time.
 4 Q. All right. Let's go to Secure 1. It's the last
 5 page. Are you there?
 6 A. Yes, sir.
 7 Q. I'd like you to go to the time entry that is
 8 10:36:57.
 9 A. Found it.
 10 Q. Okay. It says, "Accepted password for root;" do
 11 you see that?
 12 A. Yes.
 13 Q. Do you recognize that IP address?
 14 A. That's the same IP address as the previous one. I
 15 do not know what that corresponds to.
 16 Q. All right. Okay. I'm done with those documents,
 17 sir.
 18 Do you remember it being your job to gather the
 19 Red Hat logs for Nevada County to produce to AtPac or its
 20 lawyers? Are you the one who gathered those logs?
 21 A. I don't remember if it was me or someone else. I
 22 do remember looking at them when Dave came by because -- oh,
 23 yeah. Okay. What I remember is being tasked to look at
 24 logs at some point and what I found on the system didn't
 25 have the information we were looking for. And so Dave came

1 by on the -- you know, at least on that November and we
 2 looked at tapes to try to extract the information.
 3 (Whereupon Exhibit 219 was marked for
 4 identification.)
 5 Q. BY MR. THOMAS: Did you ever give Kathy Barale the
 6 root account access to the ER-Recorder server?
 7 A. Not that I can recall.
 8 MR. ABU-ASSAL: Court reporter, can you read that
 9 last question again and the answer.
 10 (Record read.)
 11 Q. BY MR. THOMAS: Do you have Exhibit 219?
 12 A. Yes, sir.
 13 Q. Do you know what this is?
 14 A. This is an extract from last log.
 15 Q. Okay. And let's turn to the second page. There's
 16 a reference to isphydoux, the last entry.
 17 A. Yes.
 18 Q. And it indicates a server IP address, that's
 19 AS-Nevada next to it; do you see that?
 20 A. Yes.
 21 Q. It says Tuesday, November 4th at 14:06:21; do you
 22 see that?
 23 A. Yes.
 24 Q. What does that mean?
 25 A. That corresponds to when I and Aptitude personnel

1 were in the back and that would be us setting the password.
 2 Q. Okay. So this is evidence that you did set the
 3 password that day?
 4 A. I or they did, yes.
 5 Q. Okay. And changed the password?
 6 A. Yes.
 7 Q. Okay. And what does the 800 2008 refer to you?
 8 0800, if you know.
 9 A. Well, this wouldn't be time. I'm not sure if
 10 that's duration. I'm not an expert in last log.
 11 Q. Okay.
 12 (Whereupon Exhibit 220 was marked for
 13 identification.)
 14 THE WITNESS: It has its own formatting.
 15 Q. BY MR. THOMAS: Exhibit 220, sir.
 16 A. Yes.
 17 Q. All right. This is an e-mail from Ms. Barale to
 18 Giovanni Paredes?
 19 A. Giovanni Paredes, yes.
 20 Q. Okay. And I want to -- there's an e-mail sort of
 21 in the middle from Scott McLeran to Kathy Barale; do you see
 22 that? And Caroline Mankey.
 23 A. Yeah. That's the one right below that?
 24 Q. Uh-huh.
 25 A. Yes.

1 Q. And it says, "Kathy, if you are referring to the
2 Red Hat logs, Dan Evers made copies for us months ago, so
3 perhaps they go back to June." Do you see that?
4 A. I'm sorry, I'm -- oh, I see. "If you're referring
5 to the Red Hat logs --"
6 (Witness reading to himself.)
7 Yes, I see that.
8 Q. Do you remember working with Scott McLeran to make
9 copies of Red Hat logs?
10 A. Yes.
11 Q. And does that refresh your recollection that
12 Exhibit 218 are the Red Hat logs, or at least part of them
13 that you provided?
14 A. It certainly looks like a Red Hat log from that,
15 from those extracts. I wasn't given a copy of the logs.
16 That went straight to County Counsel and you folks. And the
17 only time I ever got to look at that was when I was either
18 meeting with you or later when you asked me about it and --
19 you know, and such, so...
20 Q. So when Mr. McLeran says, "You made copies of the
21 logs for us months ago --"
22 A. Right.
23 Q. -- do you have an understanding of what he's
24 referring to -- what activity he's referring to?
25 A. I interpret that as he's talking about my burning

1 them onto a DVD or CDROM for you folks.
2 Q. I see. Now, you do you understand that when you
3 boot up the ER-Recorder server, it rolls the logs? Are you
4 familiar with that concept?
5 A. I am familiar with log rotate.
6 Q. And when logs rotate, logs earlier in time are
7 written over or lost?
8 A. Yes. If they're not backed up to tape or some
9 other media, they will get overwritten.
10 Q. And do you know if the logs to ER-Recorder were
11 backed up to tape?
12 A. I'm under the impression they were because Dave
13 and I were looking for them and we found logs on the tapes,
14 so -- but they didn't have current or old information on it.
15 They were more recent.
16 Q. Do you remember Dave Krugle coming to the County
17 on June 30th wanting to look at tapes and he wasn't allowed
18 to? Wanting to look at logs?
19 A. I remember Dave coming to the County a couple of
20 different occasions. And when was this? June...
21 Q. June 30th.
22 A. June 30th?
23 Q. That's the last day of the AtPac license
24 agreement. It's the day he came to delete everything, first
25 time. I think there were three times he did that.

1 A. Just give me a moment. I think I recall, but I
2 would need to verify the dates.
3 Dave showed up a couple different times.
4 Dave, did you show up alone or were you with
5 Jerry? Because there was two different occasions, I
6 believe, you came by and we couldn't let you work on it.
7 Q. Can I tell you something? It's a totally fair
8 question, but I do want to just get your best recollection
9 today. I don't blame you for asking.
10 A. I'm sorry.
11 Q. It's okay.
12 MR. ABU-ASSAL: If you don't know, you don't know.
13 I mean, we're having the deposition now of three people
14 instead of just one.
15 THE WITNESS: Mike, would you ask me again,
16 please?
17 Q. BY MR. THOMAS: Do you recall Mr. Krugle coming to
18 Nevada County on June 30th, 2009 to delete all of AtPac
19 software and data files from the Nevada County computer
20 networks?
21 A. I remember him coming to delete all of the data.
22 I don't remember the exact date without consulting my notes,
23 but that sounds approximately correct.
24 MR. ABU-ASSAL: Can we take a short break now?
25 MR. THOMAS: Sure.

1 MR. ABU-ASSAL: Very short break.
2 MR. THOMAS: It's okay.
3 THE VIDEOGRAPHER: We're going off the record at
4 5:06 p.m. This is the end of disk No. 4.
5 (Recess taken.)
6 THE VIDEOGRAPHER: We're back on the record at
7 5:17 p.m. This is the beginning of disk No. 5.
8 MR. THOMAS: Next in order.
9 (Whereupon Exhibit 221 was marked for
10 identification.)
11 Q. BY MR. THOMAS: All right. Mr. Evers --
12 A. Yes.
13 Q. -- you've got Exhibit 221?
14 A. Yes, sir.
15 Q. Looks like an e-mail you from to Alana Wittig; do
16 you see that?
17 A. Yes.
18 Q. Did you send this e-mail?
19 A. Yes.
20 Q. Okay. And turn to the next page. At the bottom
21 of the next page there's an e-mail from Kathy Barale to you;
22 do you see that?
23 A. Yes.
24 Q. April 14th, '09, yes?
25 A. Correct.

1 Q. And the second paragraph says, "The vendor is
2 currently on site running parallel testing between AtPac and
3 the new OnCore system, so it would be best to start this
4 copy after Alana leaves Thursday." Do you see that?

5 A. Yes.

6 Q. And this is again where they're referring to
7 copying images to OCRC, yes?

8 A. Yes.

9 Q. Okay. Do you recall there being parallel testing
10 ongoing at Nevada County in April of '09?

11 A. By parallel I believe they meant --
12 (Witness reading to himself.)

13 -- that they were running AtPac in parallel with
14 the OnCore system.

15 Q. You know what? For the record, this has our note
16 in it --

17 A. Yeah, I saw that. I can't read past the second --

18 Q. Can I give you one that's clean?

19 MR. ABU-ASSAL: I think you've waived all
20 attorney-client work product.

21 MR. THOMAS: You can have the note, Nabil. You
22 can have the document. I'll let you keep it.

23 MR. ABU-ASSAL: No, but I think it's broader than
24 that. I want all of your documents relating to whatever you
25 thought about when you were writing that note.

1 MR. THOMAS: Oh, okay. So my question is -- let's
2 see if I can give you a clean document, if I have one.

3 MR. ABU-ASSAL: And I can't see what's underneath
4 the note. Can you show us?

5 MR. THOMAS: Yeah. That's what -- does anyone
6 object to me ripping off the exhibit and putting one that's
7 clean?

8 MR. ABU-ASSAL: Yes.

9 MR. THOMAS: Do you really?

10 MR. ABU-ASSAL: No.

11 MR. THOMAS: Okay.

12 MR. ABU-ASSAL: That was a joke.

13 THE WITNESS: I don't mind, Mike.

14 Q. BY MR. THOMAS: So looking at the second page of
15 this exhibit -- let's put a paper clip on it, so it doesn't
16 get separated.

17 A. Okay.

18 Q. So the question that's on the sticky note is what
19 is your involvement in parallel testing?

20 A. None that I recall.

21 Q. What did you know about parallel testing,
22 Aptitude's parallel testing?

23 A. Very little. What I can recall was that it was
24 just a stage they were doing before they went live and that
25 was it. I really wasn't too involved or if I was, I don't

1 recall.

2 Q. Okay. Fair enough.

3 A. Okay.

4 Q. Did you ever see them doing parallel testing?

5 A. No.

6 (Whereupon Exhibit 222 was marked for
7 identification.)

8 MR. KRUGLE: Mike, do you have another copy?

9 Q. BY MR. THOMAS: We'll see. Oh, I'm sorry.
10 Do you have Exhibit 222?

11 A. Yes.

12 Q. And this is an e-mail, it looks like you wrote on
13 June 18th, 2009?

14 A. Yes.

15 Q. Okay. And this is -- the subject of this is ad
16 hoc backup of OCRC images?

17 A. Correct.

18 Q. And you said you just finished doing an OCRC or
19 backup of USB; do you see that?

20 A. Yes.

21 Q. And what is this referring to?

22 A. It ties in with the entries that correspond to
23 this in the SER document that I was doing a backup,
24 basically, not a scheduled backup, but an on-the-fly backup
25 to an external USB drive of the images information on the

1 OCRC system.

2 Q. Okay.

3 A. Because we didn't get the data protection manager
4 or DPM backup running at that time.

5 Q. Okay. And so this has nothing to do with working
6 on ER-Recorder?

7 A. No, I don't believe it does.

8 Q. It has nothing to do with working on AS-Nevada?

9 A. Correct.

10 Q. It has nothing to do with using the isphydoux
11 account?

12 A. Correct.

13 Q. Okay. No more questions on 222.

14 MR. KRUGER: That was 222?

15 MR. THOMAS: Yeah. It was 222, right.

16 THE WITNESS: Yes. Oh, where did it go? There we
17 go. That's 222.

18 MR. KRUGLE: No, no. That's --

19 THE WITNESS: Yeah. This is the one you were
20 asking about, 222.

21 MR. THOMAS: I had actually -- go ahead and put
22 that down.

23 THE WITNESS: Okay.

24 MR. KRUGLE: A new one, Mike, or an old one?

25 MR. THOMAS: We're going to -- that's 222.

1 MR. KRUGLE: Yeah, it's a copy of his.
 2 MR. THOMAS: It's just a copy of 222.
 3 Q. Can you turn to Exhibit 70 in your binder, please?
 4 Do you have that?
 5 A. Yes, sir.
 6 Q. Okay. This is an e-mail between Marie McCluskey
 7 and Kathy Barale?
 8 A. Okay.
 9 Q. Do you see that?
 10 A. Yes.
 11 Q. This is -- I guess my question is, have you ever
 12 seen this e-mail before?
 13 A. Doesn't ring a bell, no. Let's see, if we go to
 14 the beginning, I started an e-mail to Kathy.
 15 Q. Okay. What does your e-mail say?
 16 A. "I think that AtPac System does or used to do a
 17 daily FTP backup offsite to an AtPac System. We are going
 18 to audit them and make sure that all copies on/off the AtPac
 19 site have one returned to the Recorder? Does the Recorder
 20 want AtPac to keep copies of these records?"
 21 Q. And that was your belief when you wrote that?
 22 A. Yeah.
 23 Q. And did Mr. Krugle ever tell you that AtPac does
 24 back its system up offsite?
 25 A. I believe we talked about it on several occasions

1 over the years.
 2 Q. Okay. And it was your understanding that AtPac
 3 did do a daily backup of the ER-Recorder server?
 4 A. ER-Recorder production yes. I don't know about
 5 the FTP part of it, but we did that in conjunction with them
 6 using the tape system built into it.
 7 Q. Okay. And then the next page up the chain of
 8 e-mail --
 9 A. Yes.
 10 Q. -- that follows the e-mail you sent, the first
 11 e-mail at the top from Ms. McCluskey to Ms. Barale.
 12 A. Right.
 13 Q. It says, "If AtPac claims they have none of our
 14 data, then Nevada County has legal grounds to sue for breach
 15 of contract in not providing disaster recovery services."
 16 Do you see that?
 17 A. Yes.
 18 Q. Did AtPac ever claim to have none of your data, to
 19 your knowledge?
 20 A. Not to my knowledge.
 21 Q. Okay. And as far as I -- your testimony was that
 22 you never had a need for any disaster recovery services, to
 23 your recollection, with the current ER production server?
 24 A. I don't recall such a thing, no.
 25 Q. I said ER -- I meant the ER-Recorder production

1 server?
 2 A. Yes, ER-Recorder production.
 3 Q. You don't recall disaster recovery actually being
 4 necessary at any point in time?
 5 A. No, not clearly. And, I'm sorry, I don't mean to
 6 qualify it. It's just I dealt with so many restores and
 7 disaster recoveries and such, but I don't have any direct
 8 knowledge of that with AtPac.
 9 Q. Okay. Understood. That's your best recollection
 10 today?
 11 A. It is, it is.
 12 Q. And you were the person at the County of Nevada
 13 who had the most involvement with AtPac ER-Recorder server,
 14 yes?
 15 A. Yes.
 16 (Whereupon Exhibit 223 was marked for
 17 identification.)
 18 Q. BY MR. THOMAS: All right. Do you have Exhibit
 19 223?
 20 A. Yes, sir.
 21 Q. You can just --
 22 A. I'm just trying to get this out of my way. All
 23 right.
 24 Q. Do you have 223?
 25 A. Yes.

1 Q. Okay. This is an e-mail from you; do you see
 2 that?
 3 A. Yes.
 4 Q. It's an e-mail chain. Would you have sent the
 5 whole chain if you had sent the e-mail?
 6 A. Not necessarily. I may have been added later. It
 7 looks like it started with Kathy and I wasn't included and
 8 then at some point -- it looks like a couple sentences later
 9 I was included as a CC.
 10 Q. But you're the one who sent the top e-mail, yes?
 11 A. Yes.
 12 Q. So then all of the chain would have been included
 13 on your e-mail, right?
 14 A. I really don't know. I would think so, yeah. I'm
 15 going to say yes.
 16 Q. Okay. Going to the second page, there's another
 17 e-mail from you on June 25th, 2009 at 11:03 a.m.; do you see
 18 that?
 19 A. Yes.
 20 Q. And it says, "Preparation of Dave Krugle's visit
 21 next Tuesday to verify removal of AtPac application." Do
 22 you see that?
 23 A. Correct.
 24 Q. And it says, "Kathy and Steve, no one has told me
 25 exactly what files I need to delete on ER-Recorder." Do you

1 see that?
 2 A. Yes.
 3 Q. Do you know why -- who told you to delete files
 4 from the ER-Recorder server, if anyone?
 5 A. Let's see; when was this? This was June 25, 2009?
 6 Q. Uh-huh.
 7 A. Let me review this a little bit.
 8 Mike, what's your question again, please?
 9 Q. Did somebody tell you you needed to delete
 10 information from the ER-Recorder server?
 11 A. The e-mail implies it. I don't recall this.
 12 Q. All right. Do you recall there being any effort
 13 to delete and remove data files, AtPac date files and AtPac
 14 software from the County pursuant to some contractual
 15 obligation the County had; do you remember that?
 16 A. No. And actually what I recall was Dave wanting
 17 to do that and we didn't let that occur on at least one of
 18 his visits, if we're talking about same thing. He showed up
 19 and, you know, I was told to allow him to delete only
 20 application software, the CRIis software. He wanted to
 21 delete everything under a certain area which would include
 22 the database, and at that time we put a stop to it because
 23 we didn't want to lose our data.
 24 Q. Wasn't Aptitude already live with the OnCore
 25 system?

1 A. I don't know at this point. It may have been.
 2 It's about the time that it was. The exact date is not
 3 something I remember.
 4 Q. They testified they were live on June 7th, 2009.
 5 A. Okay. Then it would have been live. Then keeping
 6 it on there -- you know, I don't know the logic behind I'm
 7 not allowing them to remove it. I don't know.
 8 Q. Let's. Next in order.
 9 (Whereupon Exhibit 224 was marked for
 10 identification.)
 11 Q. BY MR. THOMAS: 224?
 12 A. Yes.
 13 Q. And is this an e-mail to you from Ms. Barale?
 14 A. I think -- yes.
 15 Q. She's a Nevada County employee, correct?
 16 A. Correct.
 17 Q. At the time?
 18 A. Information systems analyst.
 19 Q. Okay. And if you go to the e-mail below, that was
 20 copied to you also? I mean, you received it, right? You
 21 received this chain?
 22 A. Yes. That's part of it.
 23 Q. And that's an e-mail from Scott McLeran to Kathy
 24 Barale, right?
 25 A. Yes.

1 Q. If you go to the last two lines of Mr. McLeran's
 2 e-mail.
 3 A. Starting at "however"?
 4 Q. Yes. What does that say?
 5 A. "However, I have made it clear that it is our
 6 intent to maintain the data files until we are confident
 7 that the migration has been completed."
 8 Q. Okay. And was that your understanding of Nevada
 9 County's position as of September 1?
 10 A. I -- it makes sense. I don't really -- let me
 11 think a minute. Yes, it sounds as if the County was still
 12 concerned about the -- they said data files, so it wouldn't
 13 be the image files, which had been moved over, I think, by
 14 then. And so they -- it sounds like they were still
 15 concerned about the construct of the OCRC relative to the
 16 images. That's my estimate of what they were doing here.
 17 Q. And that the County wanted to keep the data files
 18 as of September 2009?
 19 A. That's what it implies, yes.
 20 Q. It says that, right?
 21 A. Yes, it says that.
 22 Q. You received this e-mail?
 23 A. Yes.
 24 Q. From who, Ms. Barale?
 25 A. From Kathy Barale.

1 Q. Did you read it?
 2 A. On September 2nd, 2009 -- I tend to read all my
 3 e-mail, but, you know, it doesn't stand out as anything.
 4 Q. Okay. I've got another exhibit for you. It's
 5 kind of messed up. It's got some words on it that are mine.
 6 I'm going to mark it as an exhibit. It's got one word.
 7 (Whereupon Exhibit 225 was marked for
 8 identification.)
 9 Q. BY MR. THOMAS: Do you have Exhibit 225?
 10 A. Yes, sir.
 11 Q. Can you please go to the second page?
 12 Sorry folks, I don't have a copy of this one.
 13 Are you at 225?
 14 A. Yes.
 15 Q. It says there's a conversation here. This is your
 16 notes of a conversation between you and Dave Krugle; is that
 17 right?
 18 A. Correct.
 19 Q. On June 30th?
 20 A. Yes.
 21 Q. So would these be your -- there is the word
 22 "confirm" on the second page in blue ink; do you see that?
 23 A. Yes.
 24 Q. That's -- that wasn't on the document originally,
 25 was it?

1 A. No, it wasn't. It looks like --
 2 Q. Those are my notes?
 3 A. Yeah, that's your handwriting.
 4 Q. Yeah. Unfortunately, it got stuck on the copy.
 5 Maybe if counsel wants, we can delete it afterward, but I
 6 want to give you the document.
 7 What does it say under the bracketed highlighted
 8 portion?
 9 MR. MULLER: Can I look over your shoulder?
 10 Q. BY MR. THOMAS: Yeah, that's fine.
 11 Go ahead and read the entry. These are your
 12 notes.
 13 A. Dan Evers: "I can't delete database files as they
 14 contain data owned by the Recorder's office. I'll need
 15 permission to do this. I've only been instructed to delete
 16 AtPac application files."
 17 Q. Okay. You refer to them as database files?
 18 A. Correct.
 19 Q. What are database files?
 20 A. Records within a database that you would --
 21 basically, it's the information that a database contains and
 22 the files associated it, containing such as tables, I would
 23 think, and such.
 24 Q. You understood those are CRIis database files?
 25 A. Yes, yes.

1 Q. All right. And that's what you wouldn't allow
 2 Mr. Krugle to delete on June 30th, yes?
 3 A. That is correct. That's not what I was instructed
 4 to do.
 5 Q. You were instructed to prevent him from deleting
 6 database files on June 30th?
 7 A. Correct. The .dat files, it says here.
 8 Q. Okay. And eventually did Nevada County delete the
 9 .dat files?
 10 A. I have no knowledge that they did. When I left, I
 11 believe they were still there.
 12 Q. And you left on --
 13 A. The 4th of December 2009.
 14 Q. Do you know if the County made any effort to
 15 delete .dat files from other servers, for example,
 16 AS-Nevada?
 17 A. Not that I'm aware of. I had no idea they were on
 18 AS-Nevada.
 19 Q. Well, did you know that Kathy Barale pulled data
 20 files from ER-Recorder to AS-Nevada?
 21 A. No, I did not know that she did that.
 22 Q. Well, wasn't that the purpose of you putting
 23 isphydoux on, to give Aptitude the ability to pull data
 24 files from ER-Recorder to AS-Nevada?
 25 A. Mike, this falls under my -- I created the login.

1 I was asked to move images. There's a period of time there
 2 where no one worked with me on this.
 3 Q. Okay.
 4 A. And it's an assumption on my part that somebody
 5 moved it, and who it was I do not know.
 6 Q. Got it. Exhibit 73 in your binder, please.
 7 Seventy-three?
 8 A. Yes, I have it. Oh, 73, sorry. I have 72. Now I
 9 have 73.
 10 Q. It's an e-mail from Ms. Barale to you?
 11 A. Yes.
 12 Q. And it says to power down the ER-Recorder server;
 13 do you see that?
 14 A. Yes.
 15 Q. And the ER-Recorder old server; do you see that?
 16 A. Correct.
 17 Q. Did you could that?
 18 A. Yes.
 19 Q. Okay. On that day?
 20 A. June 30th? I don't remember the exact date, but
 21 there may be a corresponding entry in the SER to confirm
 22 that.
 23 Q. Let's turn to Exhibit 74, the next one. You
 24 respond to her; do you see that?
 25 A. Yes. Okay. I powered down the systems, removed

1 the AC lines and placed a note on the front and back of all
 2 systems which reads "Do not power on without management
 3 directives." I remember doing that.
 4 Q. Okay.
 5 A. It says June 30th, so that's when I did it.
 6 Q. And also I see you did do that?
 7 A. Yes.
 8 Q. Can you turn to Exhibit 75 in your binder? And
 9 what is this document? It says service desk?
 10 A. Service desk, to Cathy Barale, completed service
 11 desk request HD09005200. The HD system is help desk, stands
 12 for help desk. It is the technical staff's version of an
 13 SER work ticket. This is stating from the service desk that
 14 they have marked as completed a particular service desk
 15 number.
 16 Q. Okay. And do you know who wrote this?
 17 A. It -- no. It could have been a number of people
 18 manning the service desk.
 19 Q. Okay. Did you have anything to do with this task
 20 identified here, that you know of?
 21 A. Let me read it. No.
 22 Q. Okay. Exhibit 78, please. Do you have that in
 23 front you?
 24 A. Yes, sir.
 25 Q. Okay. This is an e-mail from you to others on

1 July 9th, yes?
 2 A. Correct.
 3 Q. Did you send this e-mail?
 4 A. Yes, yes.
 5 Q. All right. And it says -- it's a chain actually.
 6 A. Yeah.
 7 Q. And at the top of the second page it's a July 16th
 8 e-mail from Ms. Barale to you?
 9 A. Correct.
 10 Q. It says, "There are a number of AtPac images that
 11 appear to not have been copied from ER-Recorder."
 12 A. Yes.
 13 Q. And it says, "Can you possibly power up the
 14 server? And if you do not have the time, I will look for a
 15 copy onto AS-Nevada images as identified within the attached
 16 files." Do you see that?
 17 A. Yes.
 18 Q. Did you power up ER-Recorder after June 30th,
 19 2009?
 20 A. Let me check. I don't recall directly. Let me
 21 look in my -- or the SER.
 22 Q. Okay. Please do.
 23 A. This would be July, July 8th? Oops, I'm in the
 24 wrong spot.
 25 (Whereupon Exhibit 226 was marked for

1 identification.)
 2 THE WITNESS: Yes, there is -- I did. There is an
 3 entry in row 1182 on page 20/32 of my document chronology,
 4 and I write in here -- it says, "My entry, initial response
 5 and investigation into reported missing image filings. Have
 6 left both e-mail, voice mail for Kathy Barale regarding
 7 further clarification. Powered ER-Recorder up with Steve
 8 Monaghan's okay. Changed SU password. Extracted file
 9 listing. Requested Gary Spriggs to power on ER NAS."
 10 Q. When you powered up ER-Recorder, how did you do
 11 that?
 12 A. Plugged in the machine physically so it would have
 13 AC power, powered it on up, waited for it to boot up and
 14 logged in.
 15 Q. When you do that, do you understand that that
 16 rolls the logs?
 17 A. It will roll the logs depending on the setting.
 18 I would say this, Mike, it could. It depends on
 19 the configure of log rotate within the system.
 20 Q. Are there ways to boot up the system and power it
 21 up without rolling the logs?
 22 A. I can't say definitively that there is. Remember,
 23 this was Red Hat 5, not a version of Red Hat I was an expert
 24 in.
 25 Q. So did you consider asking AtPac to help you boot

1 the system up?
 2 A. No, I didn't.
 3 Q. Why not?
 4 A. At this point we were, you know -- the ongoing
 5 conversation of AtPac, we were like adversarial and so it
 6 wouldn't occur to me to.
 7 Q. Do you know why it was adversarial on June 9th --
 8 excuse me, July 9th. That's only nine days after AtPac's
 9 license ended. Were you adversarial with AtPac at that
 10 point?
 11 A. Not me personally, no.
 12 Q. Who was?
 13 A. The County, because they were moving to the
 14 Aptitude server system. It follows. We were -- I was
 15 instructed not to contact AtPac. That had never been
 16 rescinded.
 17 Q. During the 2009 year, first half of the year,
 18 AtPac continued to serve as system administrator for
 19 ER-Recorder, correct?
 20 A. I didn't know that, but I believe that's true.
 21 Q. Well, they continued to provide services to the
 22 County through the first half of 2009, right?
 23 A. The parallel testing implies that that's the case,
 24 yes.
 25 Q. Well, I don't know about that. But Mr. Krugle

1 continued to be helpful and courteous and cooperative all
 2 through the first half of 2009, right?
 3 A. To my knowledge, yes. I didn't really interact
 4 with David much during that time.
 5 Q. During the first half of 2009?
 6 A. And not that I recall. I mean, it's possible we
 7 did. I know we --
 8 MR. ABU-ASSAL: Don't speculate.
 9 THE WITNESS: Yeah, I'm speculating, Mike. I
 10 don't really have a clear memory of that.
 11 Q. BY MR. THOMAS: All right.
 12 A. I know I couldn't turn it on without management's
 13 permission, and so I got management's permission to turn it
 14 on.
 15 MR. THOMAS: Okay. Did I already give you the
 16 next exhibit, Dina?
 17 THE COURT REPORTER: I did 226.
 18 Q. BY MR. THOMAS: Okay. Do you have 226 in front of
 19 you, sir?
 20 A. Yes.
 21 Q. There you go. 226, do you have that in front of
 22 you?
 23 A. Yes.
 24 I hate to ask this, but can I use the restroom
 25 again?

1 MR. THOMAS: Absolutely. Lets' take a break. Go
2 off the record.
3 THE VIDEOGRAPHER: Going off the record at 5:45
4 p.m.
5 (Recess taken.)
6 THE VIDEOGRAPHER: We are back on the record at
7 5:49 p.m.
8 Q. BY MR. THOMAS: When you told Ms. McCluskey that
9 you had given the isphydoux account, AtPac and CRIis user
10 group privileges, what did she say?
11 A. Probably that's fine. I don't remember her exact
12 response. Like I say, it was pretty much meaningless to
13 her.
14 Q. Did you get her approval?
15 A. In the sense I wanted her to know what I was doing
16 and she didn't disapprove.
17 Q. Your note says, "This action was taken after
18 discussing with the project manager and receiving her
19 consent."
20 A. Yes.
21 Q. What did you mean by "consent," if it wouldn't
22 mean anything to her? How could she consent to something
23 that she didn't understand?
24 A. That's a good legal question, but I don't know.
25 To me it was a matter of -- remember, neither one of us knew

1 the ramifications of becoming members of those groups. I
2 believe she just took it as my best judgment that that was
3 what they belonged to.
4 Q. All right. Moving on, do you have -- what exhibit
5 do you have in front of you?
6 A. 226.
7 Q. Okay. That says "Hi Phil."
8 A. Yes.
9 Q. Okay. And I just want to know, is that an e-mail
10 that you sent?
11 A. From Dan to Philippe Russ and Kathy Barale and
12 myself and Steve Monaghan, yes.
13 Q. 226.
14 A. Yes.
15 Q. Okay.
16 A. July 9th, 2009.
17 Q. No more questions about that.
18 (Whereupon Exhibit 227 was marked for
19 identification.)
20 Q. BY MR. THOMAS: Do you have 227 in front of you,
21 sir?
22 A. Yes.
23 Q. Do you recognize that as an e-mail that you sent?
24 A. Yes.
25 Q. You sent it to yourself on July 10th?

1 A. Correct.
2 Q. And what was the purpose of sending an e-mail to
3 yourself?
4 A. To document something.
5 Q. Okay. And you're documenting whatever it is you
6 wrote on this e-mail?
7 A. Oh, it's a 510 report for 10 July 2009. 510 was
8 the in-house name for a quick review of activities in the
9 recent past, you know, projects you're working on.
10 Q. Okay. Can you turn to the second page and there
11 is an entry, "AtPac visit by Dave Krugle." Do you see that?
12 A. I'm sorry, what --
13 Q. Bottom of the second page.
14 A. Oh, bottom of second page.
15 Q. "AtPac visit by Dave Krugle."
16 A. Yes, there it is.
17 Q. Did you write all that?
18 A. Yes, this is my writing.
19 Q. It says at the last sentence of the paragraph, No.
20 1, down at the bottom, it says, "I also changed the SU
21 password and have since shut down ER-Recorder."
22 A. Yes.
23 Q. What is SU password?
24 A. That's the super user password for root.
25 Q. So you changed the root account password?

1 A. Yes.
2 Q. You did that on July 9th on ER-Recorder?
3 A. Yes.
4 Q. Okay. What was the purpose of that?
5 A. It was a safety precaution in case the system was
6 brought up and we didn't want AtPac to be able to access the
7 system without our knowledge at that point.
8 (Whereupon Exhibit 228 was marked for
9 identification.)
10 Q. BY MR. THOMAS: Sir, do you have 228 in front of
11 you?
12 A. Yes, I do.
13 MR. ABU-ASSAL: Do you have copies?
14 MR. THOMAS: Can I see that exhibit, sir?
15 MR. KRUGLE: This is 228.
16 Q. BY MR. THOMAS: What is this document?
17 A. This is an e-mail from Kathy Barale to myself,
18 Steve humans, Fritz Gielow, Steve Monaghan, Philippe Russ,
19 Gregory Diaz and Scott McLeran, entitled "ER-Recorder."
20 County counsel -- it reads as follows: "County Counsel has
21 asked that I let them know once the prior AtPac server
22 ER-Recorder is either surplused and/or scrubbed to be used
23 by another application. We realize Dave Krugle has not
24 returned to the NOC" -- or Networks Operation Center or
25 NOC -- "to remove the AtPac software application from this

1 server, but independent of that task we need to inform
2 County Counsel when all the prior data files have been
3 deleted. Thank you for your help. Kathy."

4 And this was August 19th, 2009.

5 Q. Do you recall any effort after that to remove data
6 files?

7 A. I don't think it ever happened.

8 Q. All right. Exhibit 85 in your binder. You might
9 as well leave your binder open because I'm going to refer to
10 it.

11 A. Eighty-five you said?

12 Q. Yes.

13 A. There it is.

14 Q. Okay. I'd like you to just confirm, do you
15 recognize Exhibit 85? Is this an e-mail you received from
16 Scott McLeran?

17 A. Yes, it is.

18 Q. Okay. You received it in your capacity as an
19 Nevada County employee?

20 A. Correct.

21 Q. All right. No more questions on 85.

22 If you wouldn't mind just leaving the binder
23 open --

24 A. Yes, sir.

25 MR. THOMAS: Next in order, Dina.

1 leave the binder open, though.

2 (Whereupon Exhibit 230 was marked for
3 identification.)

4 THE WITNESS: So what are you talking about --

5 Q. BY MR. THOMAS: Exhibit 230?

6 A. -- cleaning up, letting Dave delete the files.

7 All right. Let's see, sorry about that. Yes.

8 Q. And this a series of e-mails between you and
9 Mr. Krugle; do you see that?

10 A. Yes.

11 Q. And this is -- if you look at the e-mail in the
12 middle, it's dated September 8th, 2009; do you see that?

13 A. Yes.

14 Q. And it's from Mr. Krugle to you, right?

15 A. Oh, I'm sorry. I must be missing something here.

16 Q. Sir?

17 A. Oh, yes, I see it.

18 Q. Okay. Do you see there is an e-mail from
19 Mr. Krugle to you on September 8th?

20 A. Yes.

21 Q. Did you receive that e-mail?

22 A. Yes, I believe so.

23 Q. Okay. It says, "Dan, this is to confirm the
24 appointment to delete the CRIis application software and
25 CRIis databases on September 17th." Do you see that?

1 (Whereupon Exhibit 229 was marked for
2 identification.)

3 Q. BY MR. THOMAS: Do you have 229 in front of you?

4 A. Yes.

5 Q. And do you recognize this as an e-mail you sent?

6 A. Yes, it is.

7 Q. And are all the people either sending or receiving
8 e-mails in this chain Nevada County employees?

9 A. Scott McLeran, Kathy Barale, Gary Spriggs,
10 Steve Humes, Fritz Gielow, Steve Monaghan, Philippe Russ,
11 Gregory Diaz and myself, yes.

12 Q. And you sent this back when you were employed by
13 the County?

14 A. Yes. On August 21st, 2009.

15 Q. Okay. No more questions on 229.

16 Can you go to Exhibit 87, please, sir? Do you
17 have Exhibit 87 in front of you?

18 A. Yeah. Eighty-seven, sorry. Eighty-seven, yes.

19 Q. All right. And Exhibit 87 is a series of e-mails
20 between you and Mr. McLeran or others?

21 A. From Scott to Kathy first and then -- then they
22 connected me into it, yes.

23 Q. Okay. And did you receive that e-mail?

24 A. Yes, I did.

25 Q. Okay. No more questions on that. You can just

1 A. Yes.

2 Q. This is -- a further attempt by Mr. Krugle to
3 delete those materials?

4 A. Yes.

5 Q. And was this another unsuccessful attempt where
6 you blocked him from deleting the databases?

7 A. Yes.

8 Q. And that was -- that occurred sometime after
9 September 8th, 2009?

10 A. Correct.

11 Q. Okay. No more questions on that one.

12 (Whereupon Exhibit 231 was marked for
13 identification.)

14 Q. BY MR. THOMAS: Exhibit 231.

15 A. Yes.

16 Q. This is an e-mail from you to Mr. Porter -- or no.
17 Mr. Porter to you?

18 A. Yes.

19 Q. All right. Did you receive this e-mail?

20 A. Yes, I believe so.

21 Q. Who's Craig Porter?

22 A. He was my supervisor.

23 Q. He was at the time of September 17th, 2009?

24 A. I believe so.

25 Q. Okay.

1 (Whereupon Exhibit 232 was marked for
2 identification.)
3 Q. BY MR. THOMAS: Do you have Exhibit 232, sir?
4 A. Yes.
5 Q. And the question is, this is an e-mail between you
6 and Scott McLeran, correct?
7 A. Correct.
8 Q. And if you -- did you receive this e-mail?
9 A. Yes.
10 Q. If you turn to the second page, there is an e-mail
11 from Scott McLeran to you in the middle of the page?
12 A. Scott McLeran -- yes. September 17th? Yeah.
13 Q. And it says, "I had made it clear to the attorney
14 with Downey Brand that he would not allow deletion of the
15 application software." Excuse me, "that he would allow
16 deletion of the application software, but not the data files
17 until we are confident that all the data had been extracted
18 and migrated."
19 A. Correct.
20 Q. Do you see that?
21 A. Yes.
22 Q. Was that your understanding of Mr. McLeran's
23 position?
24 A. Right.
25 Q. Did he tell you that personally?

1 A. I got it through the e-mails. I don't remember a
2 personal conversation.
3 Q. Did you ever -- have you ever seen a contract or
4 license between AtPac and Nevada County concerning the
5 Clerk-Recorder software?
6 A. I might have seen an excerpt either in a news
7 article or as an attachment to a legal document, but I don't
8 remember any details of it.
9 (Whereupon Exhibit 233 was marked for
10 identification.)
11 Q. BY MR. THOMAS: So you have Exhibit 233?
12 A. Yes, sir.
13 Q. All right. It says -- it's an e-mail from Dave
14 Krugle to you; do you see that?
15 A. It's to Steve Monaghan, I'm cc'd.
16 Q. Did you receive that?
17 A. Yes.
18 Q. Thank you.
19 (Whereupon Exhibit 224 was marked for
20 identification.)
21 Q. BY MR. THOMAS: That's another request by
22 Mr. Krugle to delete -- that was another request by
23 Mr. Krugle to delete the AtPac software and databases?
24 A. From Dave to me --
25 (Witness reading to himself.)

1 "I have not heard back from Steve Monaghan on my
2 request to schedule the deletion of the CRIis application
3 software and databases this Wednesday. Do you know if he's
4 out of the office today?" And that leaves that as a
5 question.
6 Q. Do you recognize this as another attempt by
7 Mr. Krugle to delete the databases?
8 A. Yes.
9 Q. And was that another attempt that was rejected?
10 A. I don't know which -- I know that he showed up on
11 at least two occasions and we wouldn't let him.
12 Q. Two occasions after June 30th?
13 A. Yes.
14 MR. ABU-ASSAL: Which is two, three, four?
15 MR. THOMAS: October 6th, 2009.
16 Q. Okay. Exhibit 17, sir.
17 A. Seventeen. Okay.
18 Q. There's an e-mail at the top from Kathy Barale to
19 Alana Wittig; do you see that?
20 A. Yes.
21 Q. This is January 11, 2010?
22 A. Okay.
23 Q. It's after you're no longer employed by the
24 County?
25 A. Correct.

1 Q. And in that e-mail it says, "We had forgotten that
2 Dan Evers had done previously, since he now is retired, but
3 they're stored in our --" or excuse me. I'm sorry, sir.
4 I'm going to start over.
5 This e-mail says, "Yes, we had CDs made of our
6 prior AtPac data and the supported images if they ever may
7 be needed in the future." Do you see that.
8 A. Correct. Yes, I see it.
9 Q. Do you know if that was done?
10 A. I have heard about CDs. I don't recall being
11 involved in the CDs.
12 Q. And then it says, "We had forgotten what Dan Evers
13 had done previously, since he now is retired, but they're
14 stored in our fireproof safe." Do you see that?
15 A. Yes.
16 Q. Does that have any impact on your memory of
17 whether you're the one who created CDs of the prior AtPac
18 data?
19 A. I don't recall creating CDs to back it up. I know
20 that I did copies to an external USB, as per our earlier
21 conversations in the documentation for the G/images files
22 and such, but I don't recall doing CDs. That would be a lot
23 of data to put on CDs. That would be a huge project. I
24 don't recall doing that.
25 MR. THOMAS: Okay. Let's take a quick break.

1 THE VIDEOGRAPHER: We're going off the record at
2 6:04 p.m.
3 (Recess taken.)
4 THE VIDEOGRAPHER: We are back on the record at
5 6:11 p.m.
6 (Whereupon Exhibit 235 was marked for
7 identification.)
8 Q. BY MR. THOMAS: Do you have 235 in front of you,
9 sir?
10 A. Yes, I do.
11 Q. And this is an e-mail. Did you send this e-mail?
12 A. Yes.
13 Q. Okay. That's all I have for you on that.
14 A. That was me collecting the data from the logs.
15 (Whereupon Exhibit 236 was marked for
16 identification.)
17 Q. BY MR. THOMAS: Do you have 236 in front of you,
18 sir?
19 A. Yes, sir.
20 Q. This is an e-mail you received from Scott McLeran?
21 A. Yes. It describes me copying log files and
22 burning them to a CDROM?
23 Q. On ER-Recorder?
24 A. From ER-Recorder to probably a PC, my PC or
25 something, but to burn.

1 Q. Okay. You did that on October 22nd?
2 A. Yes.
3 Q. And did you -- when you powered up ER-Recorder,
4 did you ever attempt to power it up in rescue mode so as not
5 to roll the logs?
6 A. No. I did not know how to do that with that box.
7 Q. Did you ask anyone?
8 A. No, I did not.
9 Q. Did you know there were -- even though you didn't
10 know specifically the methods, did you know there were
11 available methods to power up a server without rolling logs?
12 A. Yes, I believe I did.
13 Q. But you made no effort to understand those methods
14 when you powered up ER-Recorder on October 22nd?
15 A. And it never occurred to me.
16 Q. Okay. And it never occurred to you?
17 A. No, it did not.
18 Q. Okay. Can you look at -- this is an e-mail that
19 you received from Mr. McLeran, yes?
20 A. Yes.
21 Q. Okay. If you turn to the fourth page, you read --
22 read all your e-mails, right? You're thorough?
23 A. Yeah. I don't remember them all, but I --
24 Q. But you read them all?
25 A. I read them.

1 Q. All right. Go to the page that looks like this
2 (indicating).
3 A. Okay.
4 Q. And there is an e-mail in the middle to
5 Mr. McLeran, it's from me, Michael Thomas; do you see that?
6 A. Yes.
7 Q. Do you see it says, "Nevertheless, this confirms
8 again that we authorize the County and only the County to
9 access the servers as you have requested." Because he made
10 a request to gather those logs; do you remember that?
11 A. Yes.
12 Q. And then it says, "But remind the County that in
13 doing so, it must preserve all evidence concerning this
14 dispute." Do you see that?
15 A. Correct.
16 Q. And the logs were evidence in this dispute, right?
17 A. Yes.
18 Q. And so given what I had said, how come you didn't
19 consider booting up the server so as not to roll the logs?
20 A. First of all, I didn't -- it did not occur to me.
21 I thought the logs would be preserved.
22 Q. You actually had that thought?
23 A. I did, but I didn't know because I didn't set up
24 the internals in the log rotate and anything else. That was
25 up to Dave.

1 Q. Can you turn down to the next page and then the
2 next page and then there's a paragraph.
3 A. Third one down?
4 Q. About a third of the way down; do you see that?
5 A. Yes.
6 Q. And about five lines up from the bottom, it says
7 "again," over off to the right.
8 A. "Again, we remind you that you are absolutely
9 obligated to maintain all copies of data, both in hard copy
10 and electronic form, relevant to this dispute and AtPac's
11 potential claims, and ensure that any other document
12 retention and destruction protocol that might be executed by
13 the County and which would otherwise delete or overwrite
14 this information is suspended and not executed pending
15 resolution of this matter."
16 Q. Do you know -- were you ever told to preserve
17 information?
18 A. No, I wasn't.
19 Q. Okay. Do you know if anyone at the County was
20 told to preserve information concerning this dispute between
21 the County and AtPac?
22 A. I mean, in the e-mails we were told not to do so,
23 and obviously when you get a FOIA and everything else, you
24 want everything to be frozen in time.
25 Q. What steps did the County take to delete -- or

1 excuse me, to suspend, for example, logs from rotating and
 2 rolling over so that earlier log information was lost?
 3 A. I don't recall what we did regarding that
 4 particular scenario.
 5 Q. Do you recall doing anything?
 6 A. I don't recall doing anything.
 7 Q. Okay. Do you recall doing something, for example,
 8 to preserve VPN logs of access to AS-Nevada?
 9 A. That's not my area of response. I don't deal with
 10 the VPN subsystem.
 11 Q. Do you know if anyone did make any efforts to
 12 preserve VPN logs?
 13 A. Not to my knowledge. They should have existed,
 14 though. I'm speculating. That would be --
 15 MR. ABU-ASSAL: Don't speculate, please.
 16 THE WITNESS: That would be someone -- you'd want
 17 to talk to Art Porebski and possibly Gary Spriggs regarding
 18 that, whether there were logs for access or not.
 19 Q. BY MR. THOMAS: How about logs associated with
 20 transactions on the AS-Nevada server? Was any effort made
 21 to preserve those logs as of --
 22 A. I was --
 23 Q. -- October 22nd, 2009?
 24 A. I was not involved in any action to preserve any
 25 logs on AS-Nevada.

1 Q. And who was the system administrator for that
 2 server in Nevada County, to your knowledge?
 3 A. That would be Aptitude. That would be their
 4 system; they would maintain it.
 5 Q. That was a vendor-maintained server?
 6 A. Yeah. The closest that we would have as an
 7 administrator would probably be Fritz Gielow, excuse me, who
 8 did the majority of the Windows systems administration.
 9 Mine was UNIX and Linux, his was Windows.
 10 Q. Do you know if Mr. Gielow made any effort to
 11 preserve logs associated with the AS-Nevada server?
 12 A. I have no knowledge one way or the other.
 13 Q. Do you recall there being any instructions to IT
 14 to preserve logs and server records in connection with this
 15 dispute as requested in my e-mail of October?
 16 A. I believe that --
 17 Q. -- October 20th?
 18 A. I -- excuse me, yes. I believe that our attempt
 19 to do so was my extracting the logs and burning them to a
 20 CDROM.
 21 Q. Only with respect to ER-Recorder?
 22 A. Yeah, ER-Recorder.
 23 Q. You're not aware of any effort to preserve logs on
 24 AS-Nevada; you don't know about that?
 25 A. No, I know nothing about it.

1 Q. You never saw an instruction or directive
 2 regarding AS-Nevada?
 3 A. That is correct.
 4 Q. And even though you were talking to Mr. McLeran
 5 about preserving or trying to gather logs for ER-Recorder,
 6 you had no discussions with him about gathering logs or
 7 preserving logs on AS-Nevada, correct?
 8 A. That is correct, not that I recall.
 9 (Whereupon Exhibit 237 was marked for
 10 identification.)
 11 Q. BY MR. THOMAS: Do you have that?
 12 A. E-mail from me to Gary Spriggs, Greg Porter,
 13 myself and Scott McLeran, December 3rd, 2009.
 14 Q. Did you send that e-mail?
 15 A. Yes.
 16 Q. Okay. Thank you.
 17 A. I was trying to explain to them how the log rotate
 18 system might be set up and configured.
 19 (Whereupon Exhibit 238 was marked for
 20 identification.)
 21 Q. BY MR. THOMAS: Do you have 238, sir?
 22 A. Yes.
 23 Q. Bottom half of the e-mail chain on the first page
 24 of 238; is that an e-mail from you?
 25 A. Yes.

1 Q. Did you send that e-mail?
 2 A. I believe so.
 3 Q. Okay. And the last sentence says, "Also, Kathy
 4 had me install an Aptitude USB drive onto your HP server."
 5 Do you see that?
 6 A. Yes.
 7 Q. That's talking about AS-Nevada?
 8 A. It -- let's see when is this? June? It could be
 9 talking about that or -- no. I believe that this is the
 10 OCRC server they're referring to, not the AS-Nevada server.
 11 Q. And what is the USB drive?
 12 A. It's a drive for images storage, then again --
 13 (Witness reading to himself.)
 14 I believe that they were trying to get a USB --
 15 either a USB backup or image off of their box. I don't
 16 really remember the details.
 17 Q. As of June 2009, how many HP servers were there in
 18 Nevada County's IT Department?
 19 A. I believe there were two associated with this.
 20 Q. OCRC and AS-Nevada?
 21 A. Yeah. There may be other HPs, but I don't really
 22 recall them. We were a Dell shop and we didn't like HPs.
 23 (Whereupon Exhibit 239 was marked for
 24 identification.)
 25 Q. BY MR. THOMAS: Do you have Exhibit 239?

1 A. 239, e-mail from Gary Spriggs to myself, Kathy
 2 Barale, Gregory Diaz, Debra Russell, who's a computer
 3 service technician, Steve Monaghan.
 4 Q. Okay. And did you receive this e-mail?
 5 A. I believe so.
 6 Q. And there's a sentence down at the bottom. It
 7 says, "Alana has asked Dan Evers to copy all of our Aptitude
 8 images to a USB hard drive." Do you see that?
 9 A. Yes.
 10 Q. Did you ever do that?
 11 A. I believe this corresponds to my entries in --
 12 Q. The OCRC?
 13 A. The SER. Yeah, it's an OCRC activity, I believe.
 14 Q. That refers to your work on a USB hard drive with
 15 respect to the OCRC Aptitude production server?
 16 A. Let me double-check. June 18th -- on June 18th I
 17 had that entry regarding an ad hoc backup of the images and
 18 also on June 16th. This is dated June 19th. It sounds like
 19 it was all part of the same system.
 20 Q. Yes.
 21 A. Image backup.
 22 Q. And, therefore, that exhibit is not referring to
 23 doing any work on -- Exhibit 239 is not referring to any
 24 work on either ER-Recorder or AS-Nevada?
 25 A. I don't see a reference to either of those systems

1 on it.
 2 Q. Okay. So you don't believe it is, then?
 3 A. No. I believe it's part of the OCRC backup, ad
 4 hoc backup.
 5 Q. Okay.
 6 (Whereupon Exhibit 240 was marked for
 7 identification.)
 8 Q. BY MR. THOMAS: Exhibit 240.
 9 A. I have 240.
 10 Q. Okay. Do you have that in front of you?
 11 A. Yes.
 12 Q. This is an e-mail from Ms. Barale to you; do you
 13 see that?
 14 A. Yes. Regarding AS-Nevada.
 15 Q. Okay. And then the e-mail below it talks about a
 16 support box will be brought down and relocated by Nevada
 17 County IT today?
 18 A. Correct.
 19 Q. Do you see that? Did you do that?
 20 A. Let's see; from -- I don't -- I think I did, but I
 21 don't remember clearly. I think what they are referring to
 22 is moving it out of the NS lab area into a rack mount. In
 23 other words, get it out of the lab.
 24 Q. Okay.
 25 A. Whether I did it or Fritz did it, I don't recall

1 anymore.
 2 (Whereupon Exhibit 241 was marked for
 3 identification.)
 4 THE WITNESS: 241.
 5 Q. BY MR. THOMAS: Do you have 241 in front of you?
 6 A. Yes.
 7 Q. This is a sort of a combination of some of the
 8 materials you've already looked at today, I think.
 9 A. Yes.
 10 Q. And what are the -- do you recognize what this is?
 11 It says, "Services Billing Statement." Do you see that?
 12 A. Yes.
 13 Q. And this is a document Nevada County produced to
 14 us. That's the Bates stamp number at the bottom, right?
 15 A. I've not seeing this before, but it looks like an
 16 extract from the SER.
 17 Q. Let me ask you a question: If we look at this
 18 extract, there's time entries and then there's a description
 19 of the work performed, but it cuts off; do you see that?
 20 A. Yes, it does. It's truncated.
 21 Q. Is there a way to look at these that aren't
 22 truncated?
 23 A. If you can get ahold of the actual file -- let me
 24 look at something here real quick. Well, this is odd.
 25 Q. What?

1 A. I'm not sure what this is associated with. It
 2 says SER 09000339, and my document would have information in
 3 it too. Now, what I'm not seeing is entries from me in the
 4 extract. Maybe they're in there and I'm just missing them.
 5 I'm trying to find something that correlates. There is some
 6 correlation between it. I would say that if you wanted to
 7 find out what -- the work was done associated with this
 8 extract, that looking at my screen capture, the part of my
 9 chronology would give you that information, because it's not
 10 truncated. It's got the descriptions of the work done. I
 11 believe -- it looks like this is related -- I don't
 12 understand its output format. I've never dealt with them
 13 before.
 14 Q. Are there ways to print reports that include all
 15 of the work descriptions, to your knowledge?
 16 A. Not that I'm aware of. I ended up doing this with
 17 a screen capture process, so that I could get all the
 18 information.
 19 Q. Uh-huh.
 20 A. There might very well be. I mean, it's a
 21 database, therefore, there should be a way to extract the
 22 data and, you know, provide it in a logistical manner.
 23 Q. Okay. I'd like you to open up your binder, your
 24 binder.
 25 A. My binder, okay.

1 Q. Yes, your binder. Okay. So you have that?

2 A. Yes.

3 Q. All right. So what I'd like to do is turn to the
4 very first page. What is this first page?

5 A. This was a test I did on a non Red Hat system. So
6 it was just a proof of concept I was curious about. I even
7 wrote on it, "This is not a Red Hat 5 REL5 OS." It's an
8 open SUSE 11.2 O/S.

9 Q. When did you do that?

10 A. I did this recently. I was curious about stuck
11 FTP sessions. Or in this case, stuck SFTP sessions. So I
12 ran a number of tests. I was curious where in the log
13 system the activities were being recorded.

14 And what this shows is that if I look at the last
15 log file, and it shows the command that I used and I pipe it
16 out to a file, which is this file last log dot underscore
17 log .txt, basically my question was -- well, the output
18 format user port latest is -- I did a pretest login using
19 the standard telnet session, and then I did an SFTP, an SCP
20 and a shell connection. And what this told me was only the
21 shell connection was logged in the var -- excuse me. Which
22 one is it? In last log. Only thing that shows a connection
23 was the shell connection. In other words, the SFTP and the
24 SCP log entries did not show up in last log.

25 So I was curious -- I knew that there was only one

1 log entry in their last log for isphydoux, and this behaved
2 the way I expected, which is that while you may go in one
3 time and set the password initially, any other subsequent
4 connections by user will only be logged in other locations.

5 Q. When did you do this?

6 A. I did this last week, I think.

7 Q. Oh, you're doing this, what, in preparation for
8 your deposition?

9 A. Yeah. I wanted to refresh my memory on OS
10 behavior a little bit.

11 Q. What was the bottom half of the page?

12 A. The bottom half was another major log in Linux
13 systems as the var/log messages file, and that tends to
14 capture a whole lot of information. And this one, I found
15 out that if you connect to it with SFTP, SCP and shell, that
16 each one of those will be recorded in the var/log messages
17 file. So it does show up in all cases.

18 So last log will only tell you one thing and
19 that's only a shell connection and when it was last, but the
20 var/log messages file will have an account of all previous
21 logs.

22 Incidentally, you keep -- I know it's very
23 interesting that you want to know that about log rotating
24 out of information. These files tend to be archived
25 automatically to a certain depth. So even if it runs for a

1 month, at the end of the month it should produce a .0, a .1,
2 a .2, et cetera, file in order for archival reasons.

3 Depending how log rotate is set up, it will perform this
4 function as required.

5 When I made your log files and looked for it, I
6 expected to be able to find the information we were looking
7 for. I was surprised that it wasn't there, but I realized
8 what happened when we did it, that it log rotated out of
9 existence at this time. Whether it was because I booted it
10 up later or simply because there was a period of time from
11 when the activities occurred to when we shut the system down
12 towards the end of ER-Recorder's life, I couldn't say
13 definitively.

14 MR. ABU-ASSAL: Videographer, has the seven hours
15 elapsed.

16 THE VIDEOGRAPHER: We just hit seven hours.

17 MR. ABU-ASSAL: We just hit seven hours?

18 Mr. Evers, the federal rules say that we can't
19 take your deposition longer than seven hours, so we can stop
20 now.

21 Q. BY MR. THOMAS: I still have questions, if you
22 don't mind.

23 A. How much longer do you think, Mike?

24 Q. Well, I want to go through your binder. Maybe
25 another -- I actually could go with you for, like, lots of

1 hours. I could, actually. Do you want to pick it up
2 another time?

3 A. Not really. But I would want to revisit something
4 that we talked about earlier. I looked in my records in my
5 conversation --

6 Q. What are you talking about now right now?

7 A. I know there were several points of contention
8 between us regarding what I said at one point in time and
9 another and --

10 Q. Well, sir, there is no question pending right now.

11 A. Well, is there anything you would like to clear
12 up?

13 Q. Really, I would just like to -- I still have some
14 more questions to ask you.

15 MR. ABU-ASSAL: Well, it's not fair to continue
16 asking. It's late in the day, it's seven hours, we have
17 planes to catch, he's gone for a full seven hours. The
18 rules say you can only have him for seven hours and that's
19 it.

20 THE WITNESS: What time is it?

21 MR. ABU-ASSAL: It's --

22 MR. THOMAS: 6:33.

23 MR. ABU-ASSAL: It's 6:33. We've gone way past
24 the seven hours.

25 Q. BY MR. THOMAS: I think no. I still have more

1 questions if you're okay with it.

2 A. I would go to 6:45. So pick your best ones, Mike.

3 Q. Okay. Let's keep going.

4 A. I have to get home. It's a long drive and it's
5 cold up there.

6 Q. I probably still have more, but if that's the best
7 you can do, that's the best you can do.

8 MR. MULLER: You have a two-hour drive, don't you?

9 THE WITNESS: Yes. And I may have to put snow
10 chains on, so...

11 Q. BY MR. THOMAS: So I'm done with that first page.
12 Going to the next set of documents in your binder --

13 A. Yes.

14 Q. -- there is sort of a table with dates and
15 information in it.

16 A. The case chronology.

17 Q. I guess. Is that what it is?

18 A. Yeah. That first page with it -- yeah.

19 Q. Starts with date, 13 March 2010?

20 A. Right.

21 Q. Okay. And you typed all that?

22 A. Yes. It's my document. This is after I worked --
23 this is as a retired individual.

24 Q. Okay. This is your effort to document what you
25 said to people and what other people said to you?

1 A. Right. To keep track of what I was saying, what I
2 was thinking, et cetera. I strive for accuracy and while I
3 have certainly failed in a few respects, this helps me keep
4 things straight.

5 Q. Uh-huh. And that ends on --

6 A. Yes, yesterday.

7 Q. -- yesterday?

8 It says that on February 18th you met with Bob
9 Muller, Cypress, to discuss the case and various issues,
10 both general and topic, different types of user accounts,
11 types of log files, et cetera?

12 A. Yes.

13 Q. It says specific in topic, i.e. date correlation
14 between my SER activities, activities and log file entries,
15 var/log messages, et cetera. Do you see that?

16 A. Correct.

17 Q. What specifically did you do with him?

18 A. As this mentioned here, something I've been
19 curious since I had not been privy to the log files, except
20 when I'm in the presence of a lawyer, basically, either you
21 or Bob --

22 Q. What log files?

23 A. The log files I archived off ER-Recorder
24 production, the CDROM. I don't have a copy of those.

25 Q. Were they Red Hat logs?

1 A. Yeah, they're what you call the Red Hat logs.

2 Q. Was he asking whether you were responsible for the
3 the June 2009 extended FTP sessions?

4 A. I don't think he asked me that. I looked at it
5 and I wondered. I saw it.

6 Q. But we've concluded from your SER logs that --

7 A. I didn't do it.

8 Q. -- you didn't do it?

9 A. Regarding why I said one thing to you and another
10 thing to Bob regarding possible multiple use of isphydoux,
11 is I remember talking to Caroline last year, and it's in my
12 notes, you'll see it, and she asked me if I had ever used it
13 and I said no. But then I started wondering and guessing
14 whether I did or not and I started doubting whether I did.

15 But, you know, considering when I talked to you on
16 the deck and it was pretty close to the whole situation and
17 I wasn't, you know, wrapped up into it, I believe I didn't
18 use it.

19 Q. When you said you did not use --

20 A. Use isphydoux.

21 Q. So you believe you never used the isphydoux login
22 other than November 4th, right?

23 A. Yeah. See, I don't remember which one I ever
24 used, but I don't remember using that one in particular.

25 And logic, knowing me and the way I behave with logins, it's

1 not logical that I would use isphydoux since I already had
2 my own login and I knew the root login. Why would I need to
3 use a third login. And yes, I don't come in at 5:00 a.m.

4 Q. Yeah.

5 A. So I wanted to clear that up.

6 Q. People in Florida come in at 8:00 a.m., don't
7 they?

8 MR. ABU-ASSAL: Calls for speculation.

9 THE WITNESS: I have no idea when they get in to
10 work.

11 Q. BY MR. THOMAS: What's the next -- there's a set
12 of handwritten --

13 A. That's just a time line I was attempting to do,
14 trying to figure out -- refresh my memory regarding when
15 things happened. And, basically -- and, folks, this is why
16 I took typing in college and high school --

17 Q. Okay.

18 A. -- on Selectric IIs, so that I could read my
19 handwriting. But, basically, it has a date and then it goes
20 on with the help desk reference number and some highlights
21 that I thought was interesting, and the same with the SER
22 that starts a little later. Just trying to organize in my
23 mind sequence of events.

24 Q. Okay. And then there's a -- we come to a
25 typewritten document?

1 A. Yes.
 2 Q. And this is a 14-paragraph document; you typed
 3 this?
 4 A. Yes. This is in result to the document that you
 5 sent me for review.
 6 Q. This was your effort to revise it?
 7 A. Yeah. It's fairly accurate. I made just a few
 8 annotations, but at the time that I edited it and after
 9 talking with you and after our conversation two weeks later,
 10 with a few minor corrections, I thought, I thought it was
 11 pretty representative of what happened.
 12 Q. Sir, I'm just asking you what it is. I'm not
 13 asking you to characterize it.
 14 A. Okay. You get that for free.
 15 Q. Well, if you could just focus on the questions.
 16 When you wrote this, sir, this document --
 17 A. Yes.
 18 Q. -- you were at your house?
 19 A. Yes.
 20 Q. Did anyone put you under oath under penalty of
 21 perjury when you wrote it?
 22 A. Absolutely not.
 23 Q. Okay.
 24 A. This is the first time I've been under oath
 25 regarding this situation.

1 Q. And what's -- the next document says "corrections
 2 to conversation"?
 3 A. Yeah. That was when you and I were on the
 4 phone --
 5 Q. Just tell me what that is.
 6 A. This represents what we talked about.
 7 Q. Okay. And when you wrote this, were you under
 8 oath?
 9 A. No.
 10 Q. Okay. Going on to the next document, it says, "Re
 11 access rights of CIS." Do you see that? What is that
 12 document?
 13 A. Oh, yeah. I was -- that's an NCSP-102.
 14 Q. Okay.
 15 A. And I highlighted the second from the bottom
 16 because -- "The signing of this agreement you grant instant
 17 access to your systems for security auditing purposes. This
 18 may include remote security scanning systems, auditing and
 19 monitoring at your sites as required."
 20 And then on the page 3, section 5, "Vendor and
 21 vendor end user responsibility, the same policy
 22 information."
 23 It was my understanding -- basically, this says,
 24 "All vendor activities are subject to monitoring and vendor
 25 personnel have no expectation (sic) of privacy. Nevada County

1 reserves the right to review, audit and/or monitor vendor or
 2 County supplied equipment, whether it be software or
 3 hardware. "
 4 And there is also a note down there about
 5 accessing this through the system owner's -- granted by the
 6 systems owners. Basically, this is an NCSP-102, at least in
 7 my records, and it would be similar to what either AtPac or
 8 Aptitude had signed. By signing so, giving us access to
 9 that system.
 10 And the reason I pulled this out was your document
 11 supplied to the courts for the second filing made one
 12 mention or two of excess right and excess of authority, and
 13 I think this goes towards that.
 14 Q. Did you ever look at any documents AtPac signed
 15 regarding its account for the ER-Recorder server?
 16 A. You talking about the contract?
 17 Q. No. I'm talking about whatever documents would
 18 have been signed for access and accounts on ER-Recorder.
 19 Did you ever review any of those?
 20 A. I don't even remember that. It would be years ago
 21 that Dave -- or their representative would have signed it.
 22 Q. Earlier you said something AtPac would have signed
 23 would be similar to this document.
 24 A. Correct. I don't know what -- oh, well, revision
 25 date. Over the years we've had vendors sign this NCSP-102.

1 Q. Do you know if AtPac signed an NCSP-102?
 2 A. No, I don't. I'm assuming they did.
 3 Q. Okay. Well --
 4 A. That would be something you'd have to pull from
 5 the records of IS to find out if they did or not.
 6 Q. So you'd be guessing if AtPac signed anything like
 7 this, correct?
 8 A. You're correct.
 9 Q. Okay. All right. Comes to another document, it's
 10 a new tab, new color; do you see that there's a -- what is
 11 that?
 12 A. Let's see, this is Nevada County related
 13 documentation and it has my AtPac files from my "F" drive
 14 that County Counsel allowed me to take a copy of and that
 15 they have a copy of and now you have a copy of.
 16 Q. Okay.
 17 A. And just a listing of various files and various
 18 directories. My chronology which we've referred to on a
 19 number of times called AtPac versus Aptitude and chronology
 20 by Dan Evers .doc. It's got a -- it looks like a report to
 21 Scott McLeran and Craig Porter regarding our 19th of
 22 November 2009 meeting. I wrote this on the 20th of November
 23 and this is where we met you at Downey Brand at the Douglas
 24 Boulevard office.
 25 Q. Uh-huh.

1 A. And it has my remembrance of our conversations and
2 what we talked about.

3 I'm just curious, did I send you an e-mail of
4 that? Because I thought I gave you or Dave Krugle a copy
5 afterwards, because you were there. No reason I couldn't.

6 Q. I don't remember.

7 A. All right. Just curious.

8 Then there is the June 30th conversation with Dave
9 Krugle to remove AtPac software, transcribed from memory,
10 basically when Dave came in, and we wouldn't allow him to do
11 it because --

12 Q. Now, I noticed when -- after you were done working
13 for the County, when I contacted you, you would call
14 Mr. McLeran and tell him we had talked and talked to
15 Ms. Mankey about what we talked about.

16 A. Yes.

17 Q. Did you ever call me and tell me when Ms. Mankey
18 called you?

19 A. No, I didn't.

20 Q. Why not?

21 A. I'm sorry, Mike, I didn't.

22 Q. Why not? It seems like an asymmetrical situation.
23 I'm curious.

24 A. I had thought about cc 'ing each other when I'd
25 get an e-mail from either you or Caroline, so that would you

1 both see what the other one was writing, but I didn't know.
2 And I figured -- if that was appropriate or not. I figured
3 that everything I was documenting would be seen in discovery
4 anyway. I wasn't trying to hide anything. But I don't know
5 the nuances of the laws involved in this.

6 Both you and Caroline told me that no
7 conversations we had were proprietary or attorney-client
8 privilege, so that they were discoverable.

9 Q. Has anyone from the County ever offered you any
10 compensation for your testimony in this case?

11 A. No.

12 Q. Have you been threatened with any sort of legal
13 proceedings by the County or anyone suggesting to you that
14 you might have legal exposure?

15 A. No.

16 MR. ABU-ASSAL: Okay. It's 6:45.

17 Q. BY MR. THOMAS: Well, I don't know. Are you going
18 to stop or --

19 A. Yeah. I've got to stop, Mike.

20 Q. Okay. Well, I still have questions, but I
21 understand you have to leave now. So I'll just try to
22 arrange another time to meet with you. Okay?

23 A. Oh, no. I don't want to do any more deposition,
24 Mike. I'm burned out. I mean, I think you've covered
25 everything pretty dang thoroughly.

1 MR. ABU-ASSAL: And we will object to that.
2 You've gone way beyond seven hours.

3 MR. THOMAS: Well, I guess we'll adjourn for now,
4 but I do thank you for coming in today. I appreciate it.

5 THE WITNESS: You're welcome, Mike. It's my
6 responsibility --

7 MR. THOMAS: So we're off the record?

8 MR. MULLER: Before we go off the record, you're
9 entitled to --

10 MR. THOMAS: No, no, we're off the record, sir.
11 I'm off.

12 MR. ABU-ASSAL: No, we're not off the record.

13 MR. THOMAS: You just said we're past seven hours.

14 MR. ABU-ASSAL: We're not off the record.

15 MR. MULLER: We're on the record. You're
16 entitled, Dan, to have a copy of the transcript to review
17 and delivered to you by counsel, and then you can actually
18 review that transcript for correctness.

19 THE WITNESS: Well, if I do that and I read
20 through it -- and God forbid, it's huge -- and I find
21 something that's a discrepancy, what would I do?

22 MR. ABU-ASSAL: Change it.

23 MR. MULLER: You could bring it to Counsel's
24 attention.

25 MR. THOMAS: I'm not asking you to do that.

1 THE WITNESS: No.

2 MR. MULLER: It's your right under the law.

3 MR. THOMAS: Well, I'd be happy to take the
4 deposition over -- I'll be happy to ask you more questions
5 about it in deposition if you want to make changes.

6 THE WITNESS: Well, if I do that, am I then having
7 to do another deposition?

8 MR. MULLER: No.

9 MR. THOMAS: I would ask you to do another
10 deposition.

11 MR. ABU-ASSAL: No.

12 THE WITNESS: But it's not required by law,
13 correct?

14 MR. THOMAS: What's not required by a law?

15 THE WITNESS: A second deposition regarding if I
16 make any changes.

17 MR. ABU-ASSAL: Not by him, no.

18 MR. THOMAS: I will ask for another deposition.
19 Well, I'm not even done, I don't think.

20 MR. MULLER: Counsel has to ask the court for
21 permission to depose you any further.

22 MR. ABU-ASSAL: You have to have the right to --
23 you have the right to review your transcript and you should
24 because you don't even know if the court reporter took it
25 down correctly.

1 MR. THOMAS: Gentlemen, are you -- so you're not
 2 conducting the deposition. You're asking the witness
 3 questions, so this is your deposition.
 4 MR. MULLER: We're asking you on the record, are
 5 you willing to give this witness an opportunity to review
 6 the deposition?
 7 MR. THOMAS: You've been questioning the witness
 8 for five minutes.
 9 MR. MULLER: I'm entitled to ask that question.
 10 MR. THOMAS: I'm not answering your questions,
 11 sir.
 12 MR. MULLER: You won't answer that question?
 13 Okay. So the record reflects -- let the record reflect that
 14 Mr. Thomas will not give the witness a chance to review the
 15 transcript.
 16 MR. ABU-ASSAL: And, Mr. Evers, you should ask the
 17 court reporter to send you the original transcript to your
 18 address so that you can review it; you should.
 19 MR. THOMAS: So are we on or off, guys? Are we
 20 off?
 21 Are we off, Mr. Evers?
 22 MR. ABU-ASSAL: No, we're not off yet.
 23 THE WITNESS: Yeah, I would like a copy of it and
 24 if you could send it with me when you send me this, my
 25 document, I believe 209, back.

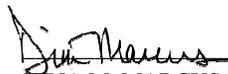
1 MR. THOMAS: Sir, she can send you a copy.
 2 MR. ABU-ASSAL: No, not a copy, the original. Ask
 3 her for the original.
 4 THE COURT REPORTER: We need to go off the record.
 5 I can't talk and be on the record.
 6 MR. THOMAS: Yeah, let's go off.
 7 THE VIDEOGRAPHER: We're going off the record at
 8 6:47 p.m.
 9 (The deposition adjourned at 6:47 p.m.)
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CERTIFICATE OF REPORTER

1
 2
 3 I certify that the witness in the foregoing deposition,
 4 DAN EVERS, was by me duly sworn to testify in the
 5 within-entitled cause; that said deposition was taken at the
 6 time and place therein named; that the testimony of said
 7 witness was reported by me, a duly Certified Shorthand
 8 Reporter of the State of California authorized to administer
 9 oaths and affirmations, and said testimony was thereafter
 10 transcribed into typewriting.

11 I further certify that I am not of counsel or attorney
 12 for either or any of the parties to said deposition, nor in
 13 any way interested in the outcome of the cause named in
 14 said deposition.

15 IN WITNESS WHEREOF, I have hereunto set my hand this
 16 26th day of February 2011.

17
 18 
 19 DINA M. MARCUS
 20 Certified Shorthand Reporter
 21 Certificate No. 8579
 22
 23
 24
 25

