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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN CIVIL LIBERTIES : CIVIL ACTION
UNION, ET AL :
 :
 PLAINTIFF :
 :
 :
 VS. :
 :
 :
 ALBERTO R. GONZALES, :
 IN HIS OFFICIAL CAPACITY AS :
 ATTORNEY GENERAL OF THE :
 UNITED STATES :
 :
 DEFENDANT : NO. 98-05591

WEDNESDAY, NOVEMBER 1, 2006
COURTROOM 17-A
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE LOWELL A. REED, JR. SJ

NON-JURY TRIAL
DAY 7

APPEARANCES:

CHRISTOPHER A. HANSEN, ESQUIRE
ADEN J. FINE, ESQUIRE
BEN WIZNER, ESQUIRE
CATHERINE CRUMP, ESQUIRE
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 BROAD STREET
NEW YORK, NY 10004-2400
(212)549-2606 FOR THE PLAINTIFFS

SUZANNE R. WHITE, CM
FEDERAL CERTIFIED REALTIME REPORTER
FIRST FLOOR U. S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA. 19106
(215)627-1882

PROCEEDINGS RECORDED BY STENOTYPE-COMPUTER,
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1 APPEARANCES: (CONTINUED)

2 CHRISTOPHER HARRIS, ESQUIRE
3 KATHARINE MARSHALL, ESQUIRE
4 BENJAMIN SAHL, ESQUIRE
5 JEROEN VAN KWAWEGEN, ESQUIRE
6 ADDISON F. GOLLODAY, ESQUIRE
7 BENJAMIN SAHL, ESQUIRE
8 STEFANIE LAUGHLIN, ESQUIRE
9 LATHAM & WATKINS
10 53RD AT THIRD, 885 THIRD AVENUE
11 SUITE 1000
12 NEW YORK, NY 10022
13 (212) 906-1200

FOR THE PLAINTIFFS

9 U.S. DEPARTMENT OF JUSTICE
10 CIVIL DIVISION
11 RAPHAEL O. GOMEZ, ESQUIRE
12 THEODORE HIRT, ESQUIRE
13 ERIC J. BEANE, ESQUIRE
14 KENNETH E. SEALLS, ESQUIRE
15 TAMARA ULRICH, ESQUIRE
16 JOEL MCELVAIN, ESQUIRE
17 JAMES TODD, ESQUIRE
18 ERIC J. BEANE, ESQUIRE
19 ISAAC R. CAMPBELL, ESQUIRE
20 ROOM 6144
21 20 MASSACHUSETTS AVENUE, NW
22 WASHINGTON, DC 20530
23 (202)514-1318

FOR THE DEFENDANT

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1 (THE CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING, EVERYONE.

3 ALL COUNSEL: GOOD MORNING.

4 THE COURT: MISS WHITE, GOOD MORNING.

5 THE COURT REPORTER: GOOD MORNING.

6 THE COURT: BE SEATED.

7 THE TRIAL SHALL RESUME. WE ARE WITH THE

8 PLAINTIFFS' WITNESS.

9 MS. MARSHALL: PLAINTIFFS CALL MISS

10 BARBARA DEGENEVIEVE.

11 THE COURT: YOU MAY.

12 MR. BEANE: YOUR HONOR.

13 THE COURT: YES.

14 MR. BEANE: AS WITH MISS SMITH AND MISS

15 LEWIS, DEFENDANT RESTATES HIS OBJECTIONS TO THIS

16 WITNESS.

17 THE COURT: THE COURT INCORPORATES ITS

18 OMNIBUS RULINGS PRIOR TO TRIAL, AND THERE WILL BE AN

19 OMNIBUS RULING ON A GROUP OF PLAINTIFFS' WITNESSES IN

20 WRITING TO SUPPLEMENT THOSE REASONS SHORTLY.

21 WITH RESPECT TO ANY ISSUES SUCH AS

22 HEARSAY OR OBJECTIONS THAT GO SPECIFICALLY TO THE

23 SPECIFIC TESTIMONY, THE DEFENSE WILL HAVE TO MAKE SUCH

24 OBJECTIONS AS THEY DEEM APPROPRIATE. THANK YOU.

25 BARBARA DEGENEVIEVE, PLAINTIFFS' WITNESS,

1 AFFIRMS.

2 THE CLERK: STATE AND SPELL YOUR FULL
3 NAME FOR THE RECORD, PLEASE.

4 THE WITNESS: MY NAME IS BARBARA
5 DEGENEVIEVE, D-E-G-E-N-E-V-I-E-V-E.

6 THE COURT: EXCUSE ME FOR INTERRUPTING.
7 WAS THIS ONE OF THE WITNESSES THAT I SUGGESTED THEY
8 INTERVIEW OR WERE THOSE THE LIBRARIANS?

9 MS. MARSHALL: I BELIEVE THESE WERE THE
10 LIBRARIANS.

11 THE COURT: SORRY.

12 DIRECT EXAMINATION

13 BY MS. MARSHALL:

14 Q. GOOD MORNING, MISS DEGENEVIEVE.

15 A. GOOD MORNING.

16 Q. ARE YOU CURRENTLY EMPLOYED?

17 A. YES, I AM.

18 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

19 A. THE SCHOOL OF THE ART INSTITUTE IN CHICAGO.

20 Q. IS THAT COMMONLY REFERRED TO AS SAIC?

21 A. YES, IT IS.

22 Q. AND IS THAT SCHOOL AFFILIATED WITH THE MUSEUM IN
23 CHICAGO, THE ART INSTITUTE OF CHICAGO?

24 A. YES.

25 Q. HOW LONG HAVE YOU BEEN EMPLOYED AT SAIC?

1 A. SINCE 1994.

2 Q. WHAT POSITION DO YOU CURRENTLY HOLD THERE?

3 A. I'M A FULL PROFESSOR WITH TENURE AND I CHAIR THE
4 DEPARTMENT OF PHOTOGRAPHY.

5 Q. YOU ARE A PROFESSOR PRESUMABLY IN THE DEPARTMENT
6 OF PHOTOGRAPHY?

7 A. YOU ARE TENURED TO THE SCHOOL AS OPPOSED TO A
8 DEPARTMENT, BUT YES, I'M IN THE DEPARTMENT OF
9 PHOTOGRAPHY.

10 Q. HOW LONG HAVE YOU BEEN A PROFESSOR AT SAIC?

11 A. SINCE 1994. I CAME WITH TENURE.

12 Q. WHAT ARE YOUR RESPONSIBILITIES AS A PROFESSOR?

13 A. AS A PROFESSOR, TO TEACH THREE CLASSES EACH
14 SEMESTER UNLESS THERE IS A REASON NOT TO, SUCH AS BEING
15 THE CHAIR, SO I TEACH THREE CLASSES TWICE A YEAR.

16 Q. HOW LONG HAVE YOU BEEN CHAIR OF THE DEPARTMENT
17 OF PHOTOGRAPHY?

18 A. I HAVE BEEN CHAIR FOR A COUPLE OF MONTHS THIS
19 ROUND. WE ROTATE THE CHAIR SO I HAVE BEEN CHAIR FOR --
20 THIS WILL BE MY FIFTH YEAR AS CHAIR. I WILL BE CHAIRING
21 FOR THE NEXT THREE YEARS.

22 Q. WHAT ARE YOUR RESPONSIBILITIES AS CHAIR OF THE
23 DEPARTMENT OF PHOTOGRAPHY?

24 A. TO MAKE SURE EVERYTHING RUNS RELATIVELY SMOOTHLY
25 AND TO DO CURRICULAR ORGANIZATION, TO SCHEDULE CLASSES,

1 TO WORK WITH THE BUDGET, GENERALLY TO KEEP EVERYTHING
2 RUNNING WELL, TO GO TO THE FACULTY MEETINGS AND TO GO TO
3 DEPARTMENTAL MEETINGS, TO GO TO ADMINISTRATIVE MEETINGS.

4 Q. PROFESSOR DEGENEVIEVE, DO YOU CONSIDER YOURSELF
5 AN ARTIST?

6 A. YES, I DO.

7 Q. WHAT ARTISTIC MEDIUMS DO YOU WORK IN?

8 A. I WORK PRIMARILY NOW IN VIDEO, ALTHOUGH ONE OF
9 THE OTHER MEDIA THAT I HAVE ALWAYS WORKED IN IS
10 PHOTOGRAPHY.

11 THE COURT: STILL PHOTOGRAPHY?

12 THE WITNESS: IT'S STILL PHOTOGRAPHY. I
13 TEACH IN THE PHOTOGRAPHY DEPARTMENT, BUT IT'S AN
14 INTERDISCIPLINARY SCHOOL SO I WORK ACROSS DISCIPLINES.
15 I HAVE DONE SOME PERFORMANCE WORK AS WELL.

16 BY MS. MARSHALL:

17 Q. WE ARE GOING TO TALK ABOUT YOUR ART IN MORE
18 DETAIL A LITTLE LATER ON BUT FOR NOW, I WOULD LIKE TO
19 PROVIDE THE COURT WITH A GENERAL OVERVIEW, SORT OF AN
20 INTRODUCTION OF THE TYPE OF ART YOU CREATE.

21 A. YES.

22 Q. DOES YOUR WORK FOCUS ON ANY PARTICULAR SUBJECT?

23 A. I WOULD SAY GENERALLY I'M INTERESTED IN ISSUES
24 OF SEXUALITY AND GENDER, BUT IN REGARD TO THAT, I'M
25 INTERESTED IN CHALLENGING CULTURAL NORMS ABOUT SEXUALITY

1 AND GENDER, ALSO MORE RECENTLY ABOUT ISSUES OF POWER,
2 CLASS AND RACE.

3 Q. GENERALLY SPEAKING, DO YOU CREATE ART THAT IS
4 SEXUALLY EXPLICIT?

5 A. YES.

6 Q. DOES YOUR ART WORK CONTAIN NUDDITY?

7 A. YES, IT DOES.

8 Q. DOES YOUR ART WORK CONTAIN DEPICTIONS OR
9 DESCRIPTION OF GENITALS?

10 A. YES.

11 Q. AND GENERALLY SPEAKING, DOES YOUR ART DEPICT OR
12 DESCRIBE ACTUAL OR SIMULATED SEXUAL ACTS?

13 A. YES.

14 Q. I WOULD LIKE TO DISCUSS NOW A LITTLE BIT ABOUT
15 YOUR ACADEMIC AND PROFESSIONAL CAREER.

16 A. YES.

17 Q. DO YOU HAVE A GRADUATE DEGREE?

18 A. YES, I DO.

19 Q. WHAT IS IT IN?

20 A. I HAVE ONE GRADUATE DEGREE IN ART EDUCATION AND
21 ONE IN PHOTOGRAPHY, AN MS IN ART EDUCATION, AND AN MFA
22 IN PHOTOGRAPHY.

23 Q. WHERE DID YOU GET YOUR MS DEGREE?

24 A. SOUTHERN CONNECTICUT STATE UNIVERSITY.

25 Q. WHERE DID YOU GET YOUR MASTERS IN FINE ARTS

1 DEGREE?

2 A. AT THE UNIVERSITY OF NEW MEXICO.

3 Q. WHEN WAS THAT RECEIVED?

4 A. I LEFT IN 1980. MY DISSERTATION WAS FINISHED IN
5 1987, BUT I GOT A JOB RIGHT OUT OF GRAD SCHOOL SO
6 ESSENTIALLY 1980.

7 Q. BEFORE BEGINNING THE MASTERS OF FINE ARTS
8 PROGRAM AT THE UNIVERSITY OF NEW MEXICO, WERE YOU
9 EMPLOYED AS A TEACHER?

10 A. YES.

11 Q. WHERE?

12 A. DO YOU WANT THE WHOLE HISTORY?

13 Q. JUST GENERALLY.

14 A. I TAUGHT BEFORE THAT AT SAN JOSE STATE
15 UNIVERSITY FROM 1989 TO 1994.

16 Q. BEFORE YOU ENTERED THE MFA PROGRAM AT THE
17 UNIVERSITY OF NEW MEXICO?

18 A. I'M SORRY, YES. I TAUGHT IN PUBLIC SCHOOLS FROM
19 1969 UNTIL I ENTERED THE MFA PROGRAM.

20 Q. WHAT DID YOU TEACH IN THE PUBLIC SCHOOLS?

21 A. ART.

22 Q. TO WHAT GRADES OR YEARS?

23 A. I STARTED WITH FIRST THROUGH SIXTH GRADE. I
24 ALSO DID TWO YEARS IN JUNIOR HIGH SCHOOL, 7TH AND 8TH,
25 AND ANOTHER TWO YEARS AS A HIGH SCHOOL TEACHER.

1 Q. NOW, GETTING BACK TO WHERE YOU WERE GOING
2 BEFORE. AFTER LEAVING THE PROGRAM AT THE UNIVERSITY OF
3 NEW MEXICO IN 1980, WHAT DID YOU DO?

4 A. I WAS HIRED AS AN ASSISTANT PROFESSOR AT THE
5 UNIVERSITY OF ILLINOIS IN CHAMPAIGN/URBANA.

6 Q. WHAT DID YOU TEACH THERE?

7 A. PHOTOGRAPHY.

8 Q. HOW LONG WERE YOU EMPLOYED BY THE UNIVERSITY OF
9 ILLINOIS?

10 A. UNTIL 1989.

11 Q. WHAT DID YOU DO AFTER THAT?

12 A. I WAS HIRED AS A PROFESSOR AT SAN JOSE STATE
13 UNIVERSITY IN SAN JOSE, CALIFORNIA.

14 Q. AND WHAT DID YOU TEACH AT SAN JOSE STATE
15 UNIVERSITY?

16 A. PHOTOGRAPHY, THEORY, MIXED MEDIA CLASSES.

17 Q. HOW LONG DID YOU TEACH THERE?

18 A. FIVE YEARS.

19 Q. WHAT DID YOU DO AFTER THAT?

20 A. I WAS HIRED AT THE SCHOOL OF THE ART INSTITUTE.

21 Q. THAT IS WHEN YOU BEGAN YOUR TENURED
22 PROFESSORSHIP AT SAIC?

23 A. YES.

24 Q. WHILE YOU WERE EMPLOYED AT SAN JOSE STATE, DID
25 YOU ALSO TEACH AT OTHER UNIVERSITIES?

1 A. I DID SEVERAL VISITING ARTIST CLASSES AT THE ART
2 INSTITUTE IN SAN FRANCISCO AND AT THE CALIFORNIA COLLEGE
3 OF ARTS.

4 Q. I WOULD LIKE TO TALK A LITTLE BIT NOW, PROFESSOR
5 DEGENEVIEVE, ABOUT GRANTS AND FELLOWSHIPS YOU MAY HAVE
6 RECEIVED. IN YOUR PROFESSIONAL CAREER, HAVE YOU
7 RECEIVED ANY FEDERAL GRANTS OR FELLOWSHIPS TO PURSUE
8 YOUR ART?

9 A. YES. I RECEIVED A NATIONAL ENDOWMENT FOR THE
10 ARTS GRANT IN 1988, AND I WAS AWARDED ONE IN 1994 THAT
11 WAS REVOKED BY THE NATIONAL COUNCIL ON THE ARTS.

12 Q. WE ARE GOING TO TALK ABOUT THAT IN A LITTLE MORE
13 DETAIL LATER ON.

14 A. OKAY.

15 Q. HAVE YOU RECEIVED ANY GRANTS FROM THE STATE OF
16 ILLINOIS?

17 A. YES. I RECEIVED THREE GRANTS FROM THE ILLINOIS
18 ARTS COUNCIL.

19 Q. HAVE YOU RECEIVED ANY OTHER GRANTS, FELLOWSHIPS
20 OR RESIDENCIES TO PURSUE YOUR ART WORK?

21 A. I HAVE RECEIVED AN ART MATTERS GRANT, AND THAT
22 WAS AFTER THE NEA REVOCATION. I HAVE DONE SEVERAL
23 ARTIST'S RESIDENCES IN DIFFERENT PLACES. LAST ONE WAS
24 THE ROGER BROWN RESIDENCY IN NEW BUFFALO, MICHIGAN. I
25 HAD A TWO WEEK INTERNATIONAL TRAVEL RESIDENCY TO

1 PINGHAO, CHINA TO ATTEND THE INTERNATIONAL PHOTOGRAPHY
2 CONFERENCE THERE.

3 Q. CAN YOU SPELL PING YAO FOR THE COURT REPORTER?

4 A. P-I-N-G-Y-A-O.

5 Q. I DID NOT MEAN TO INTERRUPT YOU. ARE THERE ANY
6 OTHER NOTEWORTHY GRANTS OR FELLOWSHIPS OR RESIDENCES YOU
7 RECEIVED?

8 A. I HAD A THREE-MONTH RESIDENCY AT VILLA MONTALVO,
9 M-O-N-T-A-L-V-O, IN SARATOGA, CALIFORNIA.

10 THE COURT: WHAT STATE WAS THAT IN?

11 THE WITNESS: CALIFORNIA.

12 THE COURT: THANK YOU.

13 THE WITNESS: AND I HAD A CHICAGO
14 INTERNATIONAL ARTIST TRAVEL GRANT TO BARCELONA, SPAIN.
15 THE EARLIEST ONE WAS A WILLIAM AND FLORA HEWLETT SUMMER
16 INTERNATIONAL TRAVEL GRANT IN WHICH I TRAVELLED FOR
17 ABOUT THREE MONTHS IN EUROPE DOING RESEARCH IN 1987.

18 Q. HAVE YOU EXHIBITED YOUR ART WORK?

19 A. YES.

20 Q. I DON'T WANT TO GET INTO EVERY EXHIBIT YOU HAD
21 BECAUSE I KNOW YOUR CURRICULUM VITAE IS QUITE LENGTHY,
22 BUT APPROXIMATELY HOW MANY EXHIBITIONS HAVE YOU HAD IN
23 JUST THE LAST SIX YEARS?

24 A. APPROXIMATELY 15 OR 16.

25 Q. WERE ALL OF THEM IN CHICAGO?

1 A. NO.

2 Q. WHERE IN ADDITION TO CHICAGO HAVE YOU EXHIBITED
3 YOUR WORK?

4 A. SOMEWHAT INTERNATIONALLY, BUT THE LAST ONE WAS A
5 ONE-PERSON SHOW IN CHICAGO, BUT I HAVE EXHIBITED AT
6 TYLER IN PHILADELPHIA, I HAVE HAD A SHOW AT THE
7 UNIVERSITY OF ILLINOIS IN CHAMPAIGN, PROVIDENCE, RHODE
8 ISLAND AT THE RHODE ISLAND SCHOOL OF DESIGN, OXFORD,
9 OHIO, SAN FRANCISCO, DENVER, TUCSON, TEXAS, ANOTHER IN
10 PHILADELPHIA, ONE IN NEW YORK.

11 Q. ANY ABROAD?

12 A. YES. THERE WAS A SHOW IN LONDON.

13 Q. DO YOU RECEIVE INCOME FROM EXHIBITING YOUR WORK?

14 A. NOT UNLESS I SELL SOMETHING, BUT VERY OFTEN THE
15 SHOWS GENERATE LECTURES. PEOPLE ASK ME TO COME TO THE
16 SCHOOL AND LECTURE AND THAT IS WHERE A LOT OF REVENUE
17 THAT IS GENERATED THAT IS NOT GENERATED BY THE SALE OF
18 MY WORK.

19 Q. DOES YOUR WORK APPEAR IN ANY PUBLIC COLLECTIONS?

20 A. YES. IT WAS JUST ACCEPTED INTO THE PERMANENT
21 COLLECTION OF THE MUSEUM OF CONTEMPORARY PHOTOGRAPHY IN
22 CHICAGO. IT'S ALSO IN THE COLLECTION AT THE TOKYO.

23 MR. BEANE: OBJECTION, YOUR HONOR. THE
24 WITNESS IS REFERRING TO A DOCUMENT. THE DEFENDANT ASKS
25 THAT THAT BE INTRODUCED FOR THE RECORD.

1 THE COURT: LET'S FIND OUT WHAT IT IS.

2 THE WITNESS: MY RESUME.

3 MS. MARSHALL: THE WITNESS IS REFERRING
4 TO HER RESUME. I DO HAVE COPIES IF YOU LIKE TO SEE THEM.
5 I DID NOT INTEND TO OFFER THE RESUME INTO EVIDENCE. WE
6 CAN CERTAINLY DO THAT IF DEFENSE WOULD LIKE US TO.

7 THE COURT: TO YOUR KNOWLEDGE, DOES THE
8 DEFENSE HAVE A COPY?

9 MS. MARSHALL: THERE WAS A COPY -- THERE
10 IS A COPY AVAILABLE ON HER WEBSITE. I HAVE NOT PROVIDED
11 DEFENSE WITH A COPY.

12 THE COURT: WELL, IF THE WITNESS IS GOING
13 TO REFER AND HAS REFERRED TO IT, YOU OUGHT TO IDENTIFY
14 IT FOR THE RECORD.
15 BY MS. MARSHALL:

16 Q. PROFESSOR DEGENEVIEVE, YOU HAVE BEEN REFERRING
17 TO A DOCUMENT BEFORE YOU. CAN YOU TELL US WHAT THE
18 DOCUMENT IS?

19 A. IT IS MY RESUME.

20 MS. MARSHALL: YOUR HONOR, IF YOU WOULD
21 LIKE A COPY, I COULD APPROACH WITH ONE.

22 THE COURT: I DON'T NEED A COPY. I HAVE
23 AN OBJECTION AND I AM NOT GOING TO LET HER TESTIFY WITH
24 THE DOCUMENT ANYMORE UNTIL YOU IDENTIFY IT FOR THE
25 RECORD, SO THE DEFENSE KNOWS THAT THEY CAN USE TO CROSS

1 EXAMINE HER WITH, AMONG OTHER THINGS.

2 BY MS. MARSHALL:

3 Q. IS THIS AN ACCURATE COPY OF YOUR RESUME?

4 A. IT IS NOT QUITE UPDATED, BUT WITHIN THE LAST
5 SEVERAL MONTHS I HAVE ADDED A FEW THINGS BUT YES, IT IS
6 AN ACCURATE REPRESENTATION OF MY RESUME.

7 THE COURT: DOES IT HAVE A NOMINAL DATE
8 ON IT, SO WE KNOW WHAT VERSION YOU ARE DEALING WITH?

9 THE WITNESS: THERE ARE JUST PROBABLY ONE
10 OR TWO THINGS THAT NEED TO BE ADDED THAT ARE VERY
11 RECENT.

12 THE COURT: THAT IS NOT MY QUESTION. DO
13 YOU USE A STYLE THAT HAS A DATE SOMEWHERE ON IT?

14 THE WITNESS: NO, I'M SORRY.

15 THE COURT: A LEGEND OF SOME KIND?

16 THE WITNESS: NO.

17 THE COURT: SOME PEOPLE FIND THAT
18 CONFUSING TO KNOW WHICH ONE THEY ARE DEALING WITH.

19 THE WITNESS: YEAH. I'M SORRY ABOUT
20 THAT.

21 THE COURT: HOW MANY PAGES IS IT?

22 THE WITNESS: THIS ONE IS FIVE -- FOUR
23 PAGES, FOUR FULL PAGES.

24 THE COURT: WHAT DOES IT PURPORT TO
25 COVER?

1 THE WITNESS: EDUCATION, PROFESSIONAL
2 EXPERIENCE, GRANTS, MEDIA APPEARANCES, EXHIBITIONS,
3 LECTURES AND PANELS, ARTICLES THAT I HAVE WRITTEN OR
4 ARTICLES THAT HAVE BEEN PUBLISHED THAT ARE REVIEWS OF MY
5 WORK AND THE PUBLIC COLLECTIONS THAT MY WORK APPEARS IN.

6 THE COURT: THANK YOU. OBJECTION IS
7 OVERRULED. YOU CAN GET A COPY AND CROSS EXAMINE HER
8 WITNESS IF YOU WOULD LIKE IN DUE COURSE.

9 THE WITNESS: IT IS HARD TO REMEMBER ALL
10 OF THE THINGS THAT YOU ARE ASKING ME SO I NEED TO REFER
11 TO THIS.

12 THE COURT: WE HAVE TECHNICAL RULES THAT
13 WE HAVE TO FOLLOW. WE DO THAT.

14 BY MS. MARSHALL:

15 Q. PROFESSOR DEGENEVIEVE, I BELIEVE YOU WERE
16 DISCUSSING WHERE YOUR ART WORK APPEARS IN PUBLIC
17 COLLECTIONS. I THINK YOU HAD TALKED ABOUT THE MUSEUM OF
18 CONTEMPORARY PHOTOGRAPHY IN CHICAGO?

19 A. THAT WAS THE LATEST ONE, IT WAS ENTERED INTO THE
20 COLLECTION ABOUT TWO WEEKS AGO. SO WHAT IS ON HERE NOW
21 IS THE ILLINOIS PHOTOGRAPHERS PROJECT, BUT IT'S THE
22 ACTUAL PERMANENT COLLECTION, WHICH IS A LITTLE MORE
23 PRESTIGIOUS THAN THE ILLINOIS PHOTOGRAPHERS PROJECT.
24 IT'S AT THE TOKYO METROPOLITAN MUSEUM IN TOKYO, SEATTLE
25 ART MUSEUM, CENTER FOR CREATIVE PHOTOGRAPHY IN TUCSON.

1 THE TAMARIND INSTITUTE IN ALBUQUERQUE. I DON'T KNOW IF
2 YOU WANT ME TO READ DOWN THE WHOLE LIST, BUT THOSE ARE
3 PROBABLY THE MOST IMPORTANT ONES, YES.

4 Q. HAVE YOU BEEN INVITED TO SPEAK ON TOPICS RELATED
5 TO YOUR ART WORK?

6 A. YES.

7 Q. HAVE YOU BEEN INVITED TO LECTURE AS WELL AS
8 PARTICIPATE IN PANEL DISCUSSIONS?

9 A. YES.

10 Q. WHAT TOPICS DO YOU SPEAK ABOUT?

11 A. THERE IS A VARIETY OF TOPICS. MY WORK IS
12 PROBABLY THE MAIN TOPIC THAT I SPEAK ON, BUT I SPEAK ON
13 ISSUES OF GENDER, SEXUALITY, TRANSGENDER, CENSORSHIP,
14 THOSE SORTS OF THINGS.

15 Q. IN THE LAST SIX YEARS AND JUST THE LAST SIX
16 YEARS ALONE, APPROXIMATELY HOW MANY LECTURES OR PANEL
17 DISCUSSIONS HAVE YOU PARTICIPATED IN?

18 A. 15 OR 16.

19 Q. WERE ALL OF THESE ENGAGEMENTS IN CHICAGO?

20 A. NO.

21 Q. A FEW EXAMPLES OF WHERE ELSE YOU HAVE SPOKEN?

22 A. OKAY.

23 Q. I JUST DID SOMETHING AT THE UNIVERSITY OF
24 MEMPHIS. I GAVE A LECTURE AND I DID A SEMINAR AT THE
25 PINGYAO INTERNATIONAL FESTIVAL IN CHINA. I DID A PANEL

1 ON VOYEURISM AT THE TISCH SCHOOL OF THE ARTS IN NEW
2 YORK.

3 Q. ANY OTHERS ABROAD?

4 A. YEAH. I'M TURNING THE PAGE AGAIN. I HAVE DONE
5 A PANEL DISCUSSION ON ETHICS, LEGALITY AND ART AT THE
6 ART INSTITUTE. I GAVE A LECTURE ON THE PANHANDLER
7 PROJECT AT THE INTERNATIONAL VISUAL SOCIOLOGY CONFERENCE
8 IN DUBLIN, IRELAND. I GAVE A LECTURE ON QUEER
9 PORNOGRAPHY, AT THE POLITICS OF NETPORN INTERNATIONAL
10 CONFERENCE IN AMSTERDAM. IN, LET'S SEE, TUCSON,
11 ARIZONA, LOS ANGELES, NEW MEXICO, LAS VEGAS, NEVADA.
12 CONFERENCES HAVE BEEN A BIG PART OF IT. I JUST CAME
13 BACK FROM A CONFERENCE IN OMAHA, NEBRASKA WHERE I DID
14 ANOTHER LECTURE ON THE PANHANDLER PROJECT.

15 THE COURT: THE WHAT PROJECT?

16 THE WITNESS: THE PANHANDLER PROJECT.

17 BY MS. MARSHALL:

18 Q. DO YOU RECEIVE INCOME FROM THESE SPEAKING
19 ENGAGEMENTS?

20 A. SOMETIMES YES, SOMETIMES NO.

21 Q. HAVE YOU BEEN QUOTED IN NEWSPAPERS, MAGAZINES
22 AND OTHER MEDIA OUTLETS ABOUT ART?

23 A. YES.

24 Q. HAVE YOU BEEN INVOLVED IN ANY DOCUMENTARIES?

25 A. YES.

1 Q. CAN YOU GIVE THE COURT AN EXAMPLE OR TWO?

2 A. THE ONE THAT IS NOT ON HERE IS ONE THAT IS
3 CALLED ARTDISK, WHICH IS --

4 THE COURT: WHAT?

5 THE WITNESS: ARTDISK. IT'S JUST A DVD
6 OF INTERVIEWS OF FOUR ARTISTS FROM ALL OVER THE COUNTRY,
7 AND THEY ARE EACH INTERVIEWED OR WERE EACH INTERVIEWED
8 ABOUT OUR WORK, AND IT IS BEING DISTRIBUTED
9 INTERNATIONALLY. THE ONE PRIOR TO THAT WAS CALLED
10 CENSORIOUS. IT IS A DOCUMENTARY VIDEO BY CAROL JACOBSEN
11 ABOUT WOMEN IN THE ARTS WHO HAVE BEEN CENSORED. THERE
12 WAS -- SOMETHING THAT WAS DONE BY SEXTV IN TORONTO
13 CALLED PORNOGRAPHY IN ACADEMIA. THERE WAS ONE THAT
14 AIRED MULTIPLE TIMES IN CHICAGO CALLED ART THAT OFFENDS.

15 Q. NOW, I WANT TO GO BACK AND TALK TO YOU A LITTLE
16 BIT ABOUT THE NEA GRANT. I THINK YOU MENTIONED YOU
17 RECEIVED TWO. WHEN WAS THE FIRST?

18 A. THE FIRST WAS 1988.

19 Q. WHAT DID YOU DO WITH THAT GRANT?

20 A. I PRODUCED A SERIES OF LARGE SCALE BOOKS AND
21 SMALLER SCALE BOOKS AND ALSO A LARGE SCALE PHOTOGRAPHIC
22 WORK WITH IT.

23 Q. AND WHEN YOU SAY BOOK, DO YOU ACTUALLY MEAN --

24 A. IT'S ON MY WEBSITE. IT'S PROBABLY ABOUT SIX
25 AND-A-HALF FEET HIGH, ABOUT THREE FEET WIDE.

1 Q. BUT A BOOK OF TEXT OR?

2 A. THEY WERE PHOTO LINEN PAGES, THERE WERE PROBABLY
3 LARGE PAGES IN IT. EACH HAD IMAGES, SORT OF COLLAGED
4 IMAGES ON THE PAGE. THE BOOK WAS ABOUT MY MOTHER'S
5 SUICIDE AND IT'S SORT OF AN INTERACTIVE BOOK. PEOPLE
6 HAVE TO GO IN AND TURN THE PAGES WIDE OPEN. BUT I WAS
7 REALLY INTERESTED IN LARGE SCALE WORK AND THE -- I HAD
8 NEVER SEEN A BOOK THAT WAS THAT LARGE SO I WAS
9 INTERESTED IN MAKING SOMETHING THAT PEOPLE WOULD HAVE TO
10 STRUGGLE WITH, TO INTERACT WITH IT.

11 Q. THE SECOND NEA GRANT, WHEN WAS THAT?

12 A. 1994.

13 Q. WHAT HAPPENED TO THAT GRANT?

14 A. IT WAS REVOKED BY THE NATIONAL COUNCIL ON THE
15 ARTS.

16 MR. BEANE: OBJECTION, YOUR HONOR,
17 RELEVANCE.

18 THE COURT: SINCE I DON'T HAVE THOROUGH
19 KNOWLEDGE OF WHAT ALL HER TESTIMONY IS GOING TO BE, I
20 WILL HAVE TO HAVE COUNSEL RESPOND.

21 MS. MARSHALL: WE ARE ESTABLISHING THE
22 TYPE OF ART WORK THAT MISS DEGENEVIEVE OR PROFESSOR
23 DEGENEVIEVE CREATES AND HAS CREATED, HER PERSONAL
24 EXPERIENCES WITH RESPECT TO --

25 THE COURT: YOU ARE JUST RECITING WHAT

1 YOU ARE DOING. WHAT IS THE RELEVANCE TO THIS CASE?

2 MS. MARSHALL: SHE IS GOING TO TESTIFY
3 WITH RESPECT TO HER PERSONAL EXPERIENCE IN CENSORSHIP
4 AND CONTROVERSY SURROUNDING HER ART AND HOW THAT
5 INTERPLAYS WITH HER FEAR OF PROSECUTION FOR HAVING HER
6 ART AVAILABLE ON THE INTERNET. IT LAYS A FOUNDATION FOR
7 HER FEAR AND HER STATE OF MIND HAVING THAT FEAR.

8 THE COURT: RELEVANCE HAVING A MODEST
9 BURDEN BEHIND IT. THE OBJECTION IS OVERRULED.

10 BY MS. MARSHALL:

11 Q. BEFORE I ASK YOU SOME DETAILS ABOUT THE
12 REVOCATION, CAN YOU PLEASE EXPLAIN FOR US THE
13 APPLICATION PROCESS WHEN SOMEONE APPLIES FOR AN NEA
14 GRANT.

15 A. THE APPLICATION PROCESS IS A STATEMENT ABOUT
16 YOUR WORK. YOU DON'T NEED A PROPOSAL FOR NEW WORK.
17 IT'S JUST A STATEMENT ABOUT YOUR WORK AND 20 SLIDES.

18 Q. WHO REVIEWS THE WORK?

19 A. A PEER PANEL OF ARTISTS, CURATORS, PEOPLE IN THE
20 FIELD.

21 Q. DO THEY THEN MAKE A RECOMMENDATION?

22 A. YES.

23 Q. WHO APPROVES THE RECOMMENDATION?

24 A. THE RECOMMENDATION IS APPROVED BY THE NATIONAL
25 COUNCIL ON THE ARTS AND THE DIRECTOR OF THE NEA.

1 Q. WHAT WORKS DID YOU SUBMIT WITH YOUR APPLICATION
2 IN 1994?

3 A. FOR THE MOST PART IT WAS THE WORKS THAT ARE
4 LISTED ON MY WEBSITE UNDER LARGE SCALE STRETCHED FABRIC
5 AND MACARONI TEXT.

6 Q. WAS YOUR APPLICATION APPROVED BY THE PEER PANEL?

7 A. YES, IT WAS.

8 Q. WHAT HAPPENED AFTER THAT?

9 A. APPARENTLY OVER THE LAST NUMBER OF YEARS SINCE
10 THE MAPPLETHORPE AND THE "NEA 4" CONTROVERSY FOR THE
11 NEA, THE NATIONAL COUNCIL ON THE ARTS BEGAN TO LOOK AT
12 THE APPLICATIONS TO MAKE SURE THAT THERE WAS NOTHING
13 OBJECTIONABLE. AND IT WAS DURING THAT PROCESS THAT THEY
14 VIEWED ALL OF THE APPLICATIONS THAT WERE APPROVED THAT
15 YEAR AND IT WAS AT THAT TIME THAT THREE OF THE
16 APPLICATION -- APPLICANTS WERE TAGGED FOR BASICALLY
17 DISMISSAL.

18 Q. AND YOU WERE ONE OF THEM?

19 THE COURT: TAGGED FOR WHAT?

20 THE WITNESS: FOR THE REVOCATION.

21 THE COURT: I JUST DIDN'T HEAR THE WORDS.

22 THE WITNESS: I SAID DISMISSAL, BUT I
23 PROBABLY SHOULD HAVE SAID REVOCATION.

24 BY MS. MARSHALL:

25 Q. YOU WERE ONE OF THOSE THREE ARTISTS?

1 A. YES.

2 Q. DO YOU KNOW WHY YOUR GRANT WAS WITHDRAWN?

3 THE COURT: ANSWER YES OR NO, PLEASE.

4 THE WITNESS: YES.

5 BY MS. MARSHALL:

6 Q. WHAT WERE YOU TOLD?

7 A. WE WERE TOLD --

8 MR. BEANE: OBJECTION, YOUR HONOR, CALLS

9 FOR HEARSAY.

10 THE COURT: SUSTAINED.

11 YOU HAVE TO LAY A FOUNDATION.

12 BY MS. MARSHALL:

13 Q. WHY WAS YOUR GRANT WITHDRAWN?

14 A. I BELIEVE IT WAS WITHDRAWN BECAUSE OF THE SEXUAL

15 NATURE OF THE WORK.

16 Q. DO YOU KNOW THE OTHER ARTISTS WHO HAD THEIR

17 GRANTS REVOKED THAT YEAR?

18 A. YES.

19 Q. WHO WERE THEY?

20 A. MERRY ALPERN, M-E-R-R-Y, A-L-P-E-R-N AND ANDRES

21 SERRANO, A-N-D-R-E-S, S-E-R-R-A-N-O.

22 Q. DO YOU KNOW THE NATURE OF THE WORKS THAT THEY

23 SUBMITTED WITH THEIR APPLICATIONS?

24 A. YES.

25 Q. WHAT WAS THE NATURE OF MR. SERRANO'S WORK?

1 A. HIS WORK FOR THAT APPLICATION ROUND WAS IMAGES
2 OF PRIESTS AND NUNS, AND THERE WERE SOME IMAGES THAT HE
3 HAD MADE OF THE KKK. THEY WERE ALL PORTRAITS, BASICALLY
4 HEAD SHOTS.

5 THE COURT: IMAGES OF WHAT?

6 THE WITNESS: THEY WERE PRIESTS AND NUNS.

7 THE COURT: IMAGES OF SOMETHING.

8 THE WITNESS: IMAGES OF MEMBERS OF THE
9 KKK.

10 BY MS. MARSHALL:

11 Q. WHAT WAS THE NATURE OF MISS ALPERN'S WORK?

12 A. SHE HAD DONE A BODY OF WORK CALLED DIRTY WINDOWS
13 IN WHICH SHE POSITIONED HERSELF IN THE WINDOW OF A
14 BUILDING ACROSS THE COURTYARD OR EMPTY LOT OF ANOTHER
15 BUILDING IN NEW YORK AND THE BUILDING THAT SHE WAS
16 PHOTOGRAPHING WAS A PLACE OF PROSTITUTION AND THE PEOPLE
17 SHE WAS PHOTOGRAPHING WERE PROSTITUTES AND I WOULD SAY,
18 YOU KNOW, HIGH-PROFILE CLIENTS.

19 Q. WHY DO YOU THINK THE NEA REVOKED THE GRANTS FOR
20 MR. SERRANO AND MS. ALPERN?

21 A. I THINK THERE WERE DIFFERENT REASONS IN BOTH
22 CASES. WITH HERS IT WAS THE SEXUAL CONTENT. I THINK IT
23 WAS A GROUP OF IMAGES THAT WAS VERY CRITICAL OF THE
24 NOTION THAT BUSINESSMEN ACTUALLY HAVE INTERACTIONS WITH
25 PROSTITUTES. WEDDING RINGS WERE VISIBLE. BUSINESS

1 SUITS WERE VISIBLE, FACES WERE NOT VISIBLE, BUT THE
2 PROSTITUTES WERE IN DIFFERENT STATES OF UNDRESS, AND IT
3 WAS A VERY POLITICALLY CHARGED BODY OF WORK.

4 WITH SERRANO, I DON'T THINK IT WAS THE
5 WORK ITSELF THAT WAS AT ISSUE BECAUSE THERE WAS NOTHING
6 OBJECTIONABLE ABOUT THE WORK IN ANY WAY. IT WAS HIS
7 PRIOR INTERACTIONS WITH A SORT OF PROSECUTORIAL FORMAT
8 IN THAT HE HAD -- HIS WORK, THE PISS CHRIST WORK HAD
9 BEEN VERY CONTROVERSIAL IN TERMS OF ITS "BLASPHEMOUS
10 INTENT" AND BECAUSE IT WAS SAID THAT TAXPAYERS' MONEY
11 WAS BEING WASTED ON HIS GRANTS. I THINK THEY PROBABLY
12 JUST ELIMINATED IT TO AVOID ANY FURTHER UPSET OF THE
13 PUBLIC.

14 Q. SINCE 1994, HAVE YOU APPLIED FOR ANOTHER NEA
15 GRANT?

16 A. NO.

17 Q. WHY NOT?

18 A. THE YEAR AFTER I DIDN'T THINK IT WAS GOING TO DO
19 ME ANY GOOD TO APPLY. THE YEAR AFTER THAT, THEY
20 COMPLETELY ELIMINATED INDIVIDUAL ARTISTS' GRANTS.

21 Q. PROFESSOR DEGENEVIEVE, DO YOU HAVE A WEBSITE?

22 A. YES, I DO.

23 Q. WHAT IS THE WEB ADDRESS?

24 A. WWW.DEGENEVIEVE.COM.

25 Q. WHAT CAN A VISITOR FIND ON YOUR WEBSITE?

1 A. A SELECTION OF MY WORK FROM 1978 TO THE PRESENT.

2 Q. WHAT ELSE?

3 A. ARTICLES THAT I HAVE WRITTEN THAT HAVE EITHER
4 BEEN PUBLISHED OR I HAVE GIVEN AS LECTURES. MY RESUME
5 IS ON THE WEBSITE. I USE THE WEBSITE AS A SOURCE OF
6 LINKS FOR MY STUDENTS. IF THERE IS AN ARTICLE THAT I
7 WANT MY STUDENTS TO READ AND IT IS TOO LARGE TO SEND
8 THEM IN E-MAIL, I WILL POST IT ON THE WEBSITE. THEY CAN
9 DOWNLOAD IT FROM THE WEBSITE. LET'S SEE WHAT ELSE IS
10 THERE. BASICALLY THE WORK AND THE WRITING.

11 Q. DO YOU HAVE YOUR PERSONAL CONTACT INFORMATION
12 AVAILABLE ON THE WEBSITE?

13 A. YES. YES.

14 Q. DO YOU SELL THE WORKS ON YOUR WEBSITE?

15 A. I WOULD CERTAINLY LIKE TO. THAT IS PART OF THE
16 REASON THAT THE WEBSITE EXISTS.

17 Q. WHAT IS THE PURPOSE OF THE WEBSITE?

18 A. IT'S PROMOTIONAL, TO A LARGE EXTENT. STUDENTS
19 USE IT TO DECIDE IF THEY WANT TO WORK WITH A PARTICULAR
20 PROFESSOR, IN THIS CASE, MYSELF. THEY DO A LOT OF WEB
21 RESEARCH, PARENTS DO WEB RESEARCH TO SEE WHO THEIR
22 CHILDREN WILL BE WORKING WITH WHEN THEY COME TO THE ART
23 INSTITUTE. A LOT OF PEOPLE DO RESEARCH ABOUT ARTISTS,
24 AND IT'S ONE OF THE THINGS THAT WE HAVE TO MAKE
25 OURSELVES VISIBLE TO A LARGE AUDIENCE.

1 Q. IS HAVING A WEBSITE ESSENTIAL TO MAKING YOURSELF
2 VISIBLE TO A LARGE AUDIENCE?

3 A. ABSOLUTELY.

4 Q. WHY DO YOU SAY THAT?

5 A. I HAVE A RELATIVELY DIFFICULT TIME HAVING MY
6 WORK SHOWN. IT TAKES A VERY PARTICULAR KIND OF
7 INSTITUTION OR ORGANIZATION TO I THINK AT THIS POINT IN
8 TIME RISK SHOWING MY WORK. I THINK PEOPLE FEAR THAT
9 SHOWING A GREAT DEAL OF MY WORK PUTS THEM IN JEOPARDY OF
10 COMMUNITY UPSET. AND I THINK THERE ARE INSTITUTIONS --
11 IN FACT, I KNOW THERE ARE INSTITUTIONS WHO FEAR FOR
12 THEIR OWN FUNDING WITH CERTAIN KIND OF CONTROVERSIAL
13 WORK WHICH I THINK MY WORK FALLS UNDER THAT CATEGORY.

14 Q. WHY ARE YOU TRYING TO REACH A LARGER AUDIENCE?

15 A. BECAUSE I THINK THERE ARE SOME IMPORTANT ISSUES
16 IN MY WORK THAT NEED TO BE DISCUSSED.

17 Q. DO YOU HAVE ANY FINANCIAL MOTIVATIONS FOR TRYING
18 TO REACH A LARGER AUDIENCE?

19 A. THE FINANCIAL MOTIVATIONS I THINK ARE SECONDARY
20 TO A CERTAIN EXTENT. I WOULD LOVE TO SELL MY WORK. I
21 WOULD LOVE PEOPLE TO HAVE IT IN THEIR COLLECTIONS. MORE
22 THAN ANYTHING, THE WEBSITE HELPS ME GET LECTURES, THOSE
23 SORTS OF THINGS, WHICH IS WHERE THE EXTRA FUNDING WOULD
24 COME IN TO SUPPLEMENT MY INCOME, AS OPPOSED TO SALES.
25 BUT CERTAINLY SALES ARE SOMETHING THAT I AM INTERESTED

1 IN.

2 Q. IS THAT WHY YOU HAVE CONTACT INFORMATION ON YOUR
3 WEBSITE?

4 A. YES.

5 Q. WHO CAN VIEW THE CONTENT ON YOUR WEBSITE?

6 A. ANYONE WHO COMES TO THE WEBSITE.

7 Q. DOES A VISITOR TO YOUR WEBSITE HAVE TO PAY TO
8 VIEW THE CONTENT?

9 A. NO.

10 Q. DOES A VISITOR TO YOUR WEBSITE HAVE TO PROVIDE
11 ANY IDENTIFYING INFORMATION BEFORE VIEWING THE CONTENT?

12 A. NO, THEY DON'T.

13 Q. DOES A VISITOR TO YOUR WEBSITE HAVE TO STATE HIS
14 OR HER AGE BEFORE VIEWING THE CONTENT?

15 A. NO.

16 Q. PROFESSOR DEGENEVIEVE, I WOULD LIKE TO TALK
17 ABOUT A FEW OF YOUR WORKS OF ART IN A LITTLE MORE
18 DETAIL.

19 MS. MARSHALL: YOUR HONOR, IF I MAY
20 APPROACH. I HAVE TWO DVDS FOR THE WITNESS TO IDENTIFY
21 THAT I FORGOT TO LEAVE WITH HER.

22 THE COURT: TELL US WHAT THEY ARE.

23 MS. MARSHALL: PREVIOUSLY MARKED AS
24 PLAINTIFFS' EXHIBIT 53. THERE ARE TWO DVDS.

25 THE COURT: THERE WERE TWO DVDS INSIDE

1 THIS EXHIBIT 53.

2 MS. MARSHALL: YES, SIR. YOUR HONOR, I
3 APOLOGIZE FOR THAT. THE FIRST IS ENTITLED STEVEN X AND
4 BARBARA C.

5 THE COURT: SPELL THE LAST NAME.

6 THE WITNESS: JUST THE LETTER X. CAPITAL
7 X.

8 MS. MARSHALL: AND BARBARA C WITH JUST A
9 CAPITAL LETTER C.

10 THE SECOND PLAINTIFFS' EXHIBIT, 53 0002,
11 IS A DVD ENTITLED THE PANHANDLER PROJECT.

12 THE COURT: I WANTED TO MAKE A RECORD
13 BEFORE YOU START DISCUSSING IT. PROCEED ANY WAY YOU
14 THINK APPROPRIATE.

15 MS. MARSHALL: YES, YOUR HONOR.

16 BY MS. MARSHALL:

17 Q. PROFESSOR DEGENEVIEVE, TURNING YOUR ATTENTION TO
18 THE DVD MARKED PLAINTIFFS' EXHIBIT 53 0001 ENTITLED
19 STEVEN X AND BARBARA C, DO YOU RECOGNIZE THIS DVD?

20 A. I RECOGNIZE THE INFORMATION THAT IS ON IT. I
21 ASSUME THAT THEY ARE COPIES OF WHAT I ORIGINALLY GAVE
22 YOU.

23 THE COURT: COPIES OF WHAT?

24 THE WITNESS: OF THE ORIGINAL, OF THE
25 ORIGINAL DVDS. I GAVE --

1 THE COURT: YOU HAVE A TENDENCY TO DROP
2 YOUR VOICE AT THE END.

3 THE WITNESS: I'M SORRY.

4 THE COURT: THE COURT REPORTER HAS BETTER
5 HEARING THAN I HAVE.

6 THE WITNESS: THEY ARE I WOULD ASSUME
7 COPIES OF THE ORIGINALS THAT I GAVE TO THE ACLU.

8 THE COURT: YOU GAVE TO WHOM?

9 THE WITNESS: I LOWERED MY VOICE AGAIN.

10 THE COURT: YOU DID. WHY DON'T YOU
11 ANSWER MY QUESTION? COPIES OF THE ORIGINALS THAT YOU
12 GAVE TO WHOM?

13 THE WITNESS: I GAVE TO THE ACLU.

14 BY MS. MARSHALL:

15 Q. IS STEVEN X AND BARBARA C A FILM?

16 A. IT'S A VIDEO.

17 Q. IS IT AVAILABLE ON THE INTERNET?

18 A. IT'S AVAILABLE ON MY WEBSITE IN TOTAL, AND IT'S
19 AVAILABLE ON THE SCHOOL'S WEBSITE IN EXCERPTS.

20 Q. THE SCHOOL BEING?

21 A. THE SCHOOL OF THE ART INSTITUTE.

22 Q. PLEASE DESCRIBE STEVEN X AND BARBARA C.

23 A. STEVEN X AND BARBARA C IS A VIDEO THAT OPENS
24 WITH TWO TALKING HEADS AND THE TWO TALKING HEADS REMAIN
25 ON THE SCREEN THE WHOLE TIME. THE PERSON ON THE LEFT IS

1 A MAN, THE PERSON ON THE RIGHT IS A WOMAN WHO IS MYSELF,
2 AND THE MAN SPEAKS FOR APPROXIMATELY EIGHT MINUTES. HE
3 GOES TO A STILL, AND THEN THE WOMAN SPEAKS FOR ANOTHER
4 NINE, NINE AND-A-HALF MINUTES. THEN SHE GOES TO A STILL
5 AND IT FADES TO --

6 THE COURT: WHAT DO YOU MEAN BY STILL?

7 THE WITNESS: THE IMAGE JUST BECOMES
8 STILL.

9 BY MS. MARSHALL:

10 Q. WHAT WAS YOUR PURPOSE OR MOTIVATION IN MAKING
11 THIS FILM?

12 A. I WAS PRIMARILY INTERESTED IN ADDRESSING ISSUES
13 OF FEMALE AGENCY, PARTICULARLY THE AGENCY OF YOUNG
14 WOMEN. THE SUBJECT IN QUESTION IN THE TAPE IS A
15 12-YEAR-OLD GIRL. I WAS INTERESTED IN SPEAKING ABOUT
16 THE SEXUALITY, THE POSSIBLE AGGRESSIVE SEXUALITY AND
17 VERY SOPHISTICATED SEXUALITY THAT A 12-YEAR-OLD GIRL
18 COULD ACTUALLY POSSESS.

19 MS. MARSHALL: YOUR HONOR, I WOULD LIKE
20 TO PLAY A PORTION OF THIS FILM IF I MAY. WE HAVE
21 PREPARED AN APPROXIMATELY SIX MINUTE PORTION OF THE FILM
22 SO THAT WE DON'T HAVE TO VIEW THE ENTIRE 18 MINUTES FOR
23 IDENTIFICATION PURPOSES.

24 THE COURT: ONE PROBLEM YOU HAVE AND I
25 DON'T WANT TO TAKE THE DEFENDANT'S POINT, BUT I DON'T

1 WANT TO, WITH A RESPECTFUL LOWER CASE P, POLLUTE THE
2 COURTROOM WITH SOMETHING THAT IS NOT RELEVANT. I CAN'T
3 INFER FROM HER TESTIMONY ANYTHING ABOUT WHAT IT HAS TO
4 DO WITH THE INTERNET OTHER THAN IT'S AVAILABLE ON THE
5 INTERNET. I HAVE NO IDEA WHAT THAT MEANS. DOES IT MEAN
6 YOU CAN BUY IT? IS IT VIDEO STREAMED ON THE INTERNET?
7 THERE IS NO SHOWING THAT IT DOES ANYTHING. AVAILABLE ON
8 THE INTERNET DOES NOT MEAN ANYTHING. IT'S AMBIGUOUS, IS
9 ALL I'M SAYING. I DON'T WANT TO SEE SOMETHING UNLESS IT
10 CAN BE TIED INTO THE MEDIUM THAT WE ARE TALKING ABOUT
11 HERE.

12 MS. MARSHALL: YES, YOUR HONOR.

13 BY MS. MARSHALL:

14 Q. PROFESSOR DEGENEVIEVE, A VISITOR TO YOUR
15 WEBSITE, CAN THEY WATCH THIS VIDEO ON YOUR WEBSITE?

16 A. YES.

17 Q. IF SOMEONE WERE INTERESTED IN PURCHASING THIS
18 VIDEO, CAN THEY DO THAT BY CONTACTING YOU THROUGH YOUR
19 WEBSITE?

20 A. YES.

21 Q. IF SOMEONE WERE INTERESTED IN HAVING YOU LECTURE
22 AND SHOW THIS VIDEO, CAN THEY DO THAT BY CONTACTING YOU
23 THROUGH YOUR WEBSITE?

24 A. YES.

25 THE COURT: IS IT CURRENTLY AVAILABLE ON

1 THE WEBSITE?

2 THE WITNESS: YES.

3 THE COURT: HOW LONG HAS THAT BEEN? I
4 DON'T KNOW WHEN IT WAS PRODUCED.

5 THE WITNESS: IT WAS PRODUCED IN 1989. I
6 DID THE FINAL EDIT IN 1999. I HAVE BEEN SHOWING IT
7 SINCE THAT TIME.

8 THE COURT: OKAY.

9 BY MS. MARSHALL:

10 Q. DO YOU FEAR PROSECUTION FOR HAVING THIS VIDEO ON
11 YOUR WEBSITE?

12 A. YES.

13 Q. CAN YOU TELL US A LITTLE BIT MORE ABOUT THE
14 NATURE OF THE CONTENT IN THIS VIDEO?

15 A. THE CONTENT DESCRIBES A SEXUAL INTERACTION
16 BETWEEN A 12-YEAR-OLD GIRL AND A 40-YEAR-OLD MAN AND THE
17 MONOLOGUES OF EACH ARE FAIRLY EXPLICIT.

18 MS. MARSHALL: YOUR HONOR, I WOULD NOW
19 LIKE AGAIN TO OFFER TO PLAY A SHORT CLIP OF THIS VIDEO.

20 THE COURT: FINE.

21 HOW ARE YOU GOING TO DO THAT?

22 MS. MARSHALL: WE ARE GOING TO PLAY IT ON
23 THE MONITORS, YOUR HONOR. I BELIEVE IT MAY BE A LITTLE
24 CHOPPY BECAUSE THEY ARE NOT ALL PIECED TOGETHER.

25 THE COURT: ONCE AGAIN, I SEE THAT THE

1 TASK OF THE COURT TO DETERMINE WHETHER THE MATERIAL ON
2 THE DVD CAN BE HEARD AND UNDERSTOOD, IS IT OF A QUALITY
3 OF PRESENTATION THAT SOMEONE WHO WATCHED THE VIDEO
4 STREAM ON THE INTERNET COULD SEE AND UNDERSTAND. BY
5 UNDERSTAND I MEAN PHYSICALLY HEAR THE WORDS, SO I DON'T
6 TO HAVE HEAR THE WHOLE THING. I'M ASSUMING -- UNLESS
7 THE DEFENSE WANTS THE WHOLE THING OR SOMEBODY WANTS THE
8 WHOLE THING, I'M ASSUMING THE QUALITY THAT WE LISTEN TO
9 WILL BE CONSISTENT THROUGHOUT THE REST OF THE DVD. I
10 DON'T KNOW THAT, BUT THE WITNESS CAN TELL US THAT.

11 MS. MARSHALL: YES, YOUR HONOR. TO BE
12 CLEAR, OUR INTENTION IS TO MOVE THE ENTIRE VIDEO INTO
13 EVIDENCE, NOT JUST AN EXCERPT THAT WE SHOW HERE TODAY.

14 THE COURT: I UNDERSTAND. THE DEFENSE
15 WILL MAKE SUCH OBJECTIONS. FIRST OF ALL, DOES THE
16 DEFENSE OBJECT TO DEMONSTRATING THE DVD IN THE COURTROOM
17 FOR THE PURPOSES THAT I EXPRESSED?

18 MR. BEANE: NO, YOUR HONOR, BUT THE
19 DEFENDANT RESERVES THE RIGHT TO OBJECT TO THE ADMISSION
20 OF THAT INTO EVIDENCE IF IT IS NOT A REPRESENTATIVE
21 SAMPLE OF WHAT THAT VIDEO CONTAINS.

22 THE COURT: I'LL BE LISTENING FOR THE
23 SAME THING. YOU HAVE THAT PERMISSION.

24 MS. MARSHALL: MAY WE PROCEED?

25 THE COURT: YES, YOU MAY PROCEED.

1 (VIDEO BEING PLAYED.)

2 THE COURT: LET THE RECORD SHOW MY ROUGH
3 ESTIMATE IS THAT WE LISTENED TO SIX MINUTES OF THIS
4 MATERIAL, AND THE RECORD SHOULD SHOW THAT THE VOICES
5 FROM THE PRINCIPAL PRESENTERS ON THE DVD WERE CLEARLY
6 HEARD AND COULD BE CLEARLY HEARD IN THE COURTROOM IN THE
7 MEDIUM THAT IT WAS PLAYED ON AND I DON'T KNOW ANYTHING
8 ABOUT THE REST OF THE DVD, SO THAT IS ALL I CAN SAY
9 ABOUT IT. THE CONTENT SPEAKS FOR ITSELF, OR MAY BE THE
10 SUBJECT OF ARGUMENT IN THE CASE. YOU MAY PROCEED.

11 BY MS. MARSHALL:

12 Q. PROFESSOR DEGENEVIEVE, WERE THOSE EXCERPTS OF
13 THE FILM YOU HAD DESCRIBED BEFORE WE PLAYED IT?

14 A. YES.

15 Q. ARE YOU THE WOMAN IN THE VIDEO?

16 A. YES.

17 Q. ARE YOU ALSO THE WOMAN SHOOTING THE MALE IN THE
18 VIDEO?

19 A. YES.

20 Q. DOES THE COMPLETE VERSION OF STEVEN X AND
21 BARBARA C CONTAIN ANY NUDITY?

22 A. NO, IT DOESN'T.

23 Q. DOES THE COMPLETE VERSION OF STEVEN X AND
24 BARBARA C DESCRIBE SEXUAL ACTS?

25 A. YES.

1 Q. IN ADDITION TO THE CLIP WE JUST SAW, DOES THE
2 FILM DESCRIBE OTHER SEXUAL ACTS?

3 A. YES.

4 Q. CAN YOU PLEASE DESCRIBE THEM GENERALLY FOR THE
5 COURT?

6 A. WHAT I WAS TRYING TO DO WAS ESTABLISH --
7 THE COURT: JUST DESCRIBE WHAT IS ON THE
8 VIDEO, MA'AM. THAT IS WHAT YOU WERE ASKED.

9 THE WITNESS: I WAS GOING TO.

10 THE VIDEO DESCRIBES AN INTERACTION
11 BETWEEN THE GIRL AND HER COUSIN IN WHICH THE GIRL SHOWS
12 HIM SOME IMAGES IN A MAGAZINE AND THEN PERFORMS FELLATIO
13 IN REGARD TO WHAT THEY ARE SEEING IN THE MAGAZINE. THE
14 PARENTS COME HOME, THE CAR DOOR SLAMS, AND THE
15 INTERACTION ENDS AS FAR AS THE NARRATIVE GOES.

16 LATER ON, THERE IS ANOTHER DESCRIPTION OF
17 HER INTERACTION WITH HER BEST FRIEND WHO WAS A YOUNG
18 GIRL. HER FRIEND -- HER FRIEND'S MOTHER IS A NURSE, AND
19 SHE TALKS ABOUT SORT OF ROLE PLAY AS DOCTOR AND NURSE
20 USING A SPECULUM AND EXAMINING EACH OTHER.

21 BY MS. MARSHALL:

22 Q. HOW OLD ARE THE CHARACTERS IN YOUR FILM?

23 A. ABOUT 12.

24 Q. WHO IS YOUR -- I'M SORRY.

25 MS. MARSHALL: YOUR HONOR, AT THIS TIME I

1 WOULD LIKE TO OFFER INTO EVIDENCE PLAINTIFFS' EXHIBIT.
2 53 0001, A DVD CONTAINING THE COMPLETE VERSION OF THE
3 FILM STEVEN X AND BARBARA C.

4 MR. BEANE: YOUR HONOR, DEFENDANT HAS NO
5 OBJECTION TO THIS VIDEO BEING ADMITTED INTO EVIDENCE. I
6 THINK THE PORTIONS SHOWED TO THE COURT WERE FAIRLY
7 REPRESENTATIVE OF THE CONTENT OF THE ENTIRE VIDEO.

8 THE COURT: SO THE RECORD IS CLEAR, THE
9 DEFENSE HAS OBJECTED TO THE WITNESS IN HER ENTIRETY AND
10 THAT OBJECTION IS PRESERVED. CORRECT, COUNSEL?

11 MR. BEANE: CORRECT.

12 THE COURT: THAT IS YOUR INTENTION?

13 MR. BEANE: YES.

14 BY MS. MARSHALL:

15 Q. PROFESSOR DEGENEVIEVE, WHO'S YOUR INTENDED
16 AUDIENCE FOR STEVEN X AND BARBARA C?

17 A. ANYONE WHO WOULD WANT TO WATCH THE VIDEO.

18 Q. HAVE YOU SCREENED STEVEN X AND BARBARA C IN
19 PLACES OTHER THAN THE INTERNET?

20 A. YES.

21 Q. WHERE?

22 A. IT HAS BEEN SCREENED IN CALIFORNIA. IT HAS BEEN
23 SCREENED IN A VIDEO FESTIVAL, WOMEN IN THE DIRECTOR'S
24 CHAIR, WHICH STARTED IN CHICAGO AND TRAVELLED TO
25 DIFFERENT PLACES IN THE COUNTRY. I HAVE SHOWN IT PRETTY

1 MUCH EVERY TIME I HAVE TALKED ABOUT MY WORK IN THE LAST
2 SEVEN OR EIGHT YEARS. SO IT'S ALSO PLAYED IN NEW YORK,
3 PHILADELPHIA AND TUCSON, LONDON, IN DIFFERENT VENUES.

4 Q. HAS IT BEEN PLAYED IN CLASSROOMS?

5 A. YES.

6 Q. DID YOU PLAY IT AT A SABBATICAL SHOW IN '98?

7 A. YES. THAT IS WHERE THE FIRST SCREENING OF IT
8 WAS. IT WAS THE WORK THAT I HAD COMPLETED ON MY LAST
9 SABBATICAL.

10 Q. HOW WAS IT PRESENTED AT THAT SHOW?

11 A. IT WAS PRESENTED AS A LARGE VIDEO PROJECTION AND
12 IT WAS ON THE WALL ALMOST AS A PAINTING WOULD BE HUNG ON
13 THE WALL SO WHAT YOU WOULD SEE ARE THE TWO TALKING HEADS
14 BUT NO AUDIO. AND THERE WAS A BENCH IN FRONT OF THE
15 PROJECTION, AND TWO PEOPLE WERE ALLOWED TO SIT ON THE
16 BENCH AND HAVE EARPHONES TO LISTEN TO THE AUDIO.

17 Q. HOW HAS STEVEN X AND BARBARA C BEEN RECEIVED?

18 A. IT HAS HAD MIXED REVIEWS.

19 Q. AND WHEN YOU SAY MIXED, CAN YOU ELABORATE A
20 LITTLE BIT MORE ON THAT?

21 A. PEOPLE EITHER LIKE IT OR THEY HATE IT. AND
22 ACTUALLY THE WRITTEN REVIEWS THAT HAVE APPEARED IN
23 NEWSPAPERS HAVE BEEN RELATIVELY POSITIVE. I THINK THAT
24 WHEN I DELIVER A TALK AND SCREEN THE VIDEO, PEOPLE HAVE
25 OBJECTIONS AND DEPENDING ON THEIR, I THINK POLITICAL AND

1 PERSONAL RESPONSE TO IT, THEY WILL QUESTION ME ABOUT IT
2 AND WE WILL HAVE A DIALOGUE ABOUT IT, WHICH IS PRETTY
3 MUCH WHY MOST OF MY WORK EXISTS, FOR THAT KIND OF
4 DIALOGUE.

5 Q. WHAT IS IT ABOUT THE FILM THAT PEOPLE FIND
6 OBJECTIONABLE?

7 MR. BEANE: OBJECTION, CALLS FOR HEARSAY.

8 THE COURT: RESPONSE.

9 MS. MARSHALL: YOUR HONOR, I'M NOT
10 OFFERING IT FOR THE TRUTH OF THE MATTER, BUT FOR THE
11 ARTIST'S INTERPRETATION OF HOW HER ART IS RECEIVED BY
12 THE PUBLIC WHICH INFLUENCES HER FEAR OF PROSECUTION
13 UNDER COPA BECAUSE HER ART IS AVAILABLE ON THE INTERNET.

14 THE COURT: WHAT'S THE RELEVANCE OF HOW
15 SHE FEELS ABOUT THE CRITICISM?

16 MS. MARSHALL: YOUR HONOR, I'M
17 ESTABLISHING A FOUNDATION FOR THE FACT THAT SHE HAS A
18 GOOD, REASONABLE -- SHE HAS REASON TO BELIEVE THAT SHE
19 WILL BE PROSECUTED UNDER COPA BECAUSE SHE HAS
20 EXPERIENCED PEOPLE OBJECTING TO HER ART WORK IN
21 DIFFERENT COMMUNITIES, DIFFERENT SETTINGS.

22 THE COURT: OVERRULED.

23 BY MS. MARSHALL:

24 Q. PROFESSOR DEGENEVIEVE, WHAT IS IT ABOUT THE FILM
25 THAT OFFENDS PEOPLE?

1 A. IT'S WHAT PEOPLE DESCRIBE AS THE PEDOPHILIC
2 RELATIONSHIP BETWEEN THE 12-YEAR-OLD AND THE 40-YEAR-OLD
3 MAN.

4 Q. DO YOU BELIEVE STEVEN X AND BARBARA C HAS
5 ARTISTIC VALUE?

6 A. YES.

7 Q. WHY DO YOU SAY THAT?

8 A. I BELIEVE THAT MOST OF MY WORK HAS A VALUE IN
9 TERMS OF WHAT IT PRESENTS THE AUDIENCE. ALL OF MY WORK
10 IS INTENDED TO PRESENT THE AUDIENCE WITH QUESTIONS, NOT
11 ANSWERS. AND IT'S IN THE QUESTIONS THAT IT PRESENTS
12 THAT I BELIEVE THE ART IS CREATED. I'M NOT INTERESTED
13 IN ANY KIND OF NARRATIVE CLOSURE. I DON'T PROVIDE AN
14 ANSWER FOR PEOPLE, WHICH THEY ALWAYS WANT. THEY WANT TO
15 KNOW WHAT HAPPENED TO HIM? YOU KNOW, SO IT'S ALL ABOUT
16 THE DIALOGUE THAT IS GENERATED BETWEEN THE AUDIENCE AND
17 MYSELF.

18 Q. DO YOU BELIEVE STEVEN X AND BARBARA C HAS VALUE
19 FOR MINORS?

20 A. I DO BELIEVE IT DOES. I HAVE HAD A NUMBER OF
21 YOUNG WOMEN APPROACH ME AFTER THEY HAVE SEEN IT, AND
22 THEY HAVE SAID THAT THEY FOUND GREAT VALUE IN IT BECAUSE
23 IT AFFIRMS THEIR OWN SEXUALITY AT DIFFERENT TIMES IN
24 THEIR LIVES, PARTICULARLY THEIR YOUNGER -- AT A YOUNGER
25 AGE WHEN THEY WERE THE WAY THAT THE VIDEO DESCRIBES THIS

1 YOUNG GIRL.

2 Q. DO YOU BELIEVE THAT SOME PEOPLE MIGHT CONSIDER
3 STEVEN X AND BARBARA C HARMFUL TO MINORS?

4 A. I'M SURE SOME PEOPLE WOULD.

5 Q. I WOULD LIKE TO NOW TURN TO ONE OTHER OF YOUR
6 WORKS THAT IS AVAILABLE ON YOUR WEBSITE. THERE IS IN
7 THE SECOND DVD BEFORE YOU, PREVIOUSLY MARKED AS
8 PLAINTIFFS' EXHIBIT 53 --

9 A. YES.

10 Q. -- 002 AND WITH THE TITLE, THE PANHANDLER
11 PROJECT?

12 A. YES.

13 Q. DO YOU RECOGNIZE THIS DVD?

14 A. AS WITH THE OTHER, I ASSUME THAT IT'S A DUB OR
15 SOME SORT OF REPRESENTATION OF IT.

16 Q. IS THIS VIDEO AVAILABLE TO VIEW ON YOUR WEBSITE?

17 A. YES. THIS VIDEO -- IN ITS ENTIRETY THIS VIDEO
18 IS NEARLY 50 MINUTES LONG, AND ON THE WEBSITE I HAVE
19 EXCERPTS THAT ARE APPROXIMATELY TWO-AND-A-HALF TO THREE
20 MINUTES FOR EACH OF THE SUBJECTS IN THE VIDEO. SO IT'S
21 ONLY EXCERPTED ON THE WEBSITE.

22 Q. WHO CAN WATCH THE EXCERPTS ON YOUR WEBSITE?

23 A. ANYONE WHO COMES TO THE WEBSITE.

24 Q. IS THE VIDEO AVAILABLE ANYWHERE ELSE ON THE
25 INTERNET?

1 A. IT'S AVAILABLE IN EXCERPT FORM ALSO ON THE
2 SCHOOL WEBSITE, THE SCHOOL OF THE ART INSTITUTE'S
3 WEBSITE.

4 Q. I SHOULD CLARIFY. WHEN IF I ASK IS IT
5 AVAILABLE, CAN PEOPLE VIEW IT THERE OR EXCERPTS?

6 A. YES.

7 Q. IF SOMEONE WERE TO VIEW THE EXCERPTS ON YOUR
8 WEBSITE, COULD THEY THEN CONTACT YOU?

9 A. YES.

10 Q. ABOUT IT?

11 A. YES.

12 Q. CAN YOU DESCRIBE FOR THE COURT THE PANHANDLER
13 PROJECT?

14 A. THE PANHANDLER PROJECT IS A GROUP OF 30 IMAGES,
15 30 PHOTOGRAPHIC IMAGES AND A VIDEOTAPE OR A DVD OF THE
16 DOCUMENTATION OF THE PROCESS OF ASKING PANHANDLERS,
17 HOMELESS MEN IN CHICAGO, IF THEY WOULD MODEL NUDE FOR
18 ME. SO IT'S BASICALLY PHOTOGRAPHS THAT ARE DONE IN A
19 HOTEL ROOM THAT I PROVIDE FOR THEM AND THE PHOTOGRAPHS
20 AND VIDEO COMPRISE THE WHOLE PROJECT AND GENERALLY NEED
21 TO BE SEEN TOGETHER.

22 Q. WHAT WAS YOUR PURPOSE OR MOTIVATION IN MAKING
23 THE PANHANDLER PROJECT?

24 A. ACADEMIA, AT LEAST ART ACADEMIA AND I THINK
25 WITHIN THE KIND OF SOCIAL THEORY REALM, SPEAKS OF

1 REPRESENTATION IN TERMS OF THE IDEAS OF PROTECTION, AND
2 THERE ARE CERTAIN GROUPS THAT SEEM TO BE PROTECTED, SUCH
3 AS WOMEN AND PEOPLE OF COLOR. I THINK A LOT OF THE
4 RHETORIC THAT GOES WITH THAT PROTECTIONIST LANGUAGE IS
5 ALSO A KIND OF INFANTILIZING LANGUAGE AND IT DOES NOT
6 REALLY DO ANYTHING OTHER THAN MAKE ACADEMICS FEEL GOOD
7 ABOUT THIS IDEA OF PROTECTING CERTAIN GROUPS OF PEOPLE.

8 WHAT I WAS INTERESTED IN DOING WAS
9 CHALLENGING THAT NOTION AND IN THE PROCESS DEALING WITH
10 ISSUES OF CLASS AND RACE WHICH I WOULD SAY MOST WHITE
11 ACADEMICS DO NOT DO.

12 I WANTED TO CREATE A SITUATION IN WHICH
13 IF I WAS CHALLENGED, I WOULD HAVE A GOOD REASON FOR
14 DOING EVERYTHING THAT I DID AND PEOPLE REALLY, UNLESS
15 THEY STRETCHED IT INTO, YOU KNOW, A VERY THEORETICAL
16 REALM, COULDN'T REALLY OBJECT TO WHAT I WAS DOING. THEY
17 STILL DO, BUT MY POINT WAS TO CREATE A SITUATION IN
18 WHICH THESE MEN HAD AGENCY. THEY WERE ABLE TO GIVE
19 CONSENT FULLY, THEY PARTICIPATED FULLY. IT WAS VERY
20 CLEAR THAT THEY WERE ENJOYING WHAT THEY WERE DOING AND
21 THAT THEY WERE ACTING AS PAID MODELS TO DO THIS.

22 Q. IF A VISITOR TO YOUR WEBSITE WISHES TO VIEW THE
23 ENTIRETY OF THE PANHANDLER PROJECT, HOW CAN THEY DO
24 THAT?

25 A. THEY WOULD NEED TO CONTACT ME.

1 Q. HOW WOULD THEY GO ABOUT CONTACTING YOU?

2 A. THROUGH THE WEBSITE, THERE IS AN E-MAIL ADDRESS
3 ON THE WEBSITE.

4 MS. MARSHALL: YOUR HONOR, AGAIN I WOULD
5 LIKE TO PLAY A PORTION OF THIS VIDEO WHICH IS IN ITS
6 ENTIRETY 50 MINUTES LONG. WE HAVE REDUCED IT TO
7 APPROXIMATELY 6 MINUTES. OF COURSE, WE CAN PLAY A
8 SHORTER VERSION IF NECESSARY.

9 THE COURT: OUT OF CURIOSITY, IS THERE
10 ANY DIALOGUE ON THE DVD.

11 THE WITNESS: SUCH AS WHAT WAS IN THE
12 OTHER?

13 THE COURT: I'M NOT LIMITING IT. YOU
14 TELL ME?

15 THE WITNESS: THERE IS JUST CONVERSATION.
16 IT'S NOT SET UP IN THE WAY THAT THE OTHER ONE WAS. IT'S
17 A DOCUMENTATION OF WHAT WAS GOING ON. SO THE DIALOGUE
18 IS JUST CONVERSATION BETWEEN THE TWO OF US, THE MAN WHO
19 IS THE SUBJECT OF THAT SEGMENT AND MYSELF.

20 MR. BEANE: YOUR HONOR, AS WITH THE FIRST
21 EXHIBIT, DEFENDANT RESERVES THE RIGHT TO OBJECT IF THE
22 SEGMENTS CHOSEN BY PLAINTIFFS DON'T FAIRLY REPRESENT THE
23 CONTENT OF THE ENTIRE VIDEO.

24 THE COURT: YOUR OBJECTION IS PRESERVED.
25 YOU MAY PLAY THE VIDEO.

1 (VIDEO BEING PLAYED.)

2 MS. MARSHALL: PROFESSOR DEGENEVIEVE --

3 THE COURT: EXCUSE ME FOR INTERRUPTING.

4 YOU SHOWED APPROXIMATELY FIVE OR SIX MINUTES OF THE DVD

5 AND THE DIALOGUE AND PHOTOGRAPHS WERE CLEARLY

6 ARTICULATED AND THE DIALOGUE COULD BE CLEARLY UNDERSTOOD

7 AND THE PHOTOGRAPHS WERE CLEAR IN THEIR DEFINITION.

8 BY MS. MARSHALL:

9 Q. PROFESSOR DEGENEVIEVE, WAS WHAT WE JUST SAW AN
10 EXCERPT OF THE FILM YOU HAD DESCRIBED BEFORE YOU SHOWED
11 IT?

12 A. YES.

13 Q. ARE YOU THE PHOTOGRAPHER IN THE FILM?

14 A. I CONTROL THE WHOLE DOCUMENTATION, BUT I HAD AN
15 ASSISTANT DOING THE VIDEOGRAPHY.

16 Q. WAS THAT YOU IN THE FILM?

17 A. THAT WAS ME AS THE PHOTOGRAPHER, YES.

18 Q. HOW MANY SUBJECTS ARE IN THE FILM?

19 A. FIVE.

20 Q. DO ALL OF THE SUBJECTS APPEAR NUDE IN THE FILM?

21 A. YES, THEY DO.

22 Q. ARE ALL OF THE STILL PICTURES WHICH ARE PART OF
23 THE PROJECT NUDES?

24 A. NO. I WOULD SAY THE MAJORITY ARE, BUT SOME ARE
25 IN VARIOUS STATES OF UNDRESS.

1 MS. MARSHALL: YOUR HONOR, I WOULD LIKE
2 TO ADMIT PLAINTIFFS' EXHIBIT 53 0002, DVD ENTITLED THE
3 PANHANDLER PROJECT INTO EVIDENCE.

4 MR. BEANE: YOUR HONOR, THE PORTIONS THAT
5 PLAINTIFFS SHOWED FAIL TO SHOW ONE SEGMENT THAT I THINK
6 IS SIGNIFICANTLY DIFFERENT. ONE OF THE MODELS STATED
7 THAT HE FELT LIKE HE WAS BEING EXPLOITED BY THIS AND WAS
8 INADEQUATELY COMPENSATED. I THINK THAT WITH THAT NOTED
9 IN THE RECORD, THE REST OF IT FAIRLY REPRESENTS THE
10 CONTENT OF THE ENTIRE VIDEO.

11 THE COURT: DO WE NEED TO SEARCH FOR
12 THAT, COUNSEL FOR PLAINTIFFS, OR DO YOU ACCEPT THE
13 CHARACTERIZATION OF DEFENSE COUNSEL?

14 MS. MARSHALL: I THINK WE ACCEPT THE
15 CHARACTERIZATION OF DEFENSE COUNSEL.

16 THE WITNESS: YES.

17 THE COURT: OTHER OBJECTIONS BEING
18 PRESERVED, THE EXHIBIT 53 0002 IS RECEIVED INTO
19 EVIDENCE.

20 (P 53 0002 RECEIVED INTO EVIDENCE.)

21 BY MS. MARSHALL:

22 Q. ARE ALL THE SUBJECTS IN THE FILM AFRICAN
23 AMERICAN MALES?

24 A. YES.

25 Q. WHO IS THE INTENDED AUDIENCE FOR THE PANHANDLER

1 PROJECT?

2 A. AGAIN, ANYONE WHO WOULD WANT TO SEE IT.

3 Q. HAVE YOU SHOWN THE PANHANDLER PROJECT IN PLACES
4 OTHER THAN ON YOUR WEBSITE?

5 A. YES.

6 Q. WHERE?

7 A. IT WAS PREMIERED IN A SHOW IN FEBRUARY OF 2006
8 AT THE UNIVERSITY OF ILLINOIS, GALLERY 400 IN CHICAGO.
9 IT WILL BE THE SUBJECT OF A CONFERENCE IN 2007 AT THE
10 UNIVERSITY OF CONNECTICUT IN STORRS. I PRESENTED IT AT
11 A CONFERENCE IN IRELAND WHICH I ALREADY MENTIONED. AND
12 THE DVD, WHICH REPRESENTS BOTH THE PHOTOGRAPHS AND THE
13 VIDEO HAVE BEEN SENT OUT TO A NUMBER OF PEOPLE. BOTH
14 ARE IN THE MUSEUM COLLECTION AT THE MUSEUM OF
15 CONTEMPORARY PHOTOGRAPHY RIGHT NOW, BUT PEOPLE HAVE BEEN
16 ASKING ME FOR THE DVD TO SHOW THEIR CLASSES OR TO SHOW
17 IN OTHER VENUES AND I FREELY GIVE THEM THE DVD.

18 Q. FOR THE SHOW IN IRELAND AND THE SHOW IN FEBRUARY
19 OF 2006 -- I THINK YOU MENTIONED THAT WAS AT THE
20 UNIVERSITY OF ILLINOIS?

21 A. YES.

22 Q. WERE YOU AT BOTH OF THOSE SHOWS?

23 A. YES.

24 Q. HOW WAS THE PANHANDLER PROJECT RECEIVED?

25 A. AT THE UNIVERSITY OF ILLINOIS, THE OPENING, IT

1 SEEMED TO BE FAIRLY WELL RECEIVED. TWO OF THE MEN WERE
2 THERE. THERE WAS A PANEL DISCUSSION NOT TOO LONG AFTER
3 THAT WHILE THE SHOW WAS STILL UP. THERE WAS A
4 DISCUSSION AFTERWARDS AND THERE WERE SOME CHALLENGING
5 QUESTIONS ABOUT IT, BUT GENERALLY, IT SEEMED TO BE
6 RECEIVED FAIRLY WELL.

7 Q. I BELIEVE YOU ALSO MENTIONED THAT THE WORK IS
8 NOW AT THE MUSEUM OF CONTEMPORARY PHOTOGRAPHY IN
9 CHICAGO?

10 A. YES.

11 Q. HOW WILL IT BE USED THERE?

12 A. IT WILL BE USED IN THEIR COLLECTION FOR SCHOOL
13 GROUPS THAT COME THROUGH AND FOR MUSEUM AND GALLERY
14 CURATION. PEOPLE COME TO THE MUSEUM TO LOOK FOR WORK
15 THAT FITS INTO A PROPOSED THEME OF A GROUP SHOW OR
16 POTENTIALLY FOR ONE PERSON SHOWS OF ARTISTS' WORK.

17 Q. DO YOU BELIEVE THAT THE PANHANDLER PROJECT HAS
18 ARTISTIC VALUE?

19 A. YES.

20 Q. WHY DO YOU SAY THAT?

21 A. FOR THE SAME REASONS. I THINK IT BRINGS UP A
22 LOT OF ISSUES THAT NEED TO BE ADDRESSED BOTH IN ACADEMIA
23 AND I THINK CULTURALLY. I'M INTERESTED IN HAVING THAT
24 KIND OF DIALOGUE WITH PEOPLE.

25 THIS ONE PROBABLY MORE THAN THE OTHER

1 BRINGS UP FOR ME ISSUES OF HIGH ART, LOW CULTURE, AND
2 THE DIFFERENCES IN CLASS. I THINK -- THERE ARE A NUMBER
3 OF PEOPLE WHO GREW UP WORKING CLASS THE WAY I DID AND I
4 THINK THOSE ISSUES ARE REALLY IMPORTANT TO ADDRESS,
5 PARTICULARLY IN RELATION TO ALSO THE ISSUES OF RACE IN
6 CHICAGO. RACIAL ISSUES ARE AT A VERY HIGH LEVEL. IT'S
7 A VERY SEGREGATED CITY, AND I'M INTERESTED IN SORT OF
8 BREAKING DOWN SOME OF THOSE BARRIERS AND SPEAKING ABOUT
9 THE ISSUES PUBLICLY.

10 Q. DO YOU BELIEVE THE PANHANDLER PROJECT HAS
11 ARTISTIC VALUE FOR MINORS?

12 A. YES.

13 Q. DO YOU BELIEVE OTHERS MIGHT CONSIDER THE
14 PANHANDLER PROJECT HARMFUL TO MINORS?

15 A. I WOULD ASSUME THAT OTHERS MIGHT, YES.

16 Q. I WOULD LIKE TO NOW BRIEFLY TALK ABOUT SOME OF
17 THE OTHER WORKS AVAILABLE ON YOUR WEBSITE, OR THAT ARE
18 ON YOUR WEBSITE.

19 THE COURT: EXCUSE ME FOR INTERRUPTING.
20 I WANT TO ASK THE WITNESS, I GATHER THERE ARE STILL
21 PHOTOGRAPHS ON THE DVD?

22 THE WITNESS: YES.

23 THE COURT: HOW MANY OF THEM?

24 THE WITNESS: 30. SIX FOR EACH OF THE
25 FIVE MEN.

1 THE COURT: OKAY. THANK YOU.

2 BY MS. MARSHALL:

3 Q. DO YOU HAVE WORKS OF YOUR ART AVAILABLE FOR
4 VIEWING ON YOUR WEBSITE OTHER THAN STEVEN X AND BARBARA
5 C AND THE PANHANDLER PROJECT?

6 A. YES.

7 Q. DO OTHER WORKS THAT ARE AVAILABLE FOR VIEWING ON
8 YOUR WEBSITE CONTAIN SEXUAL CONTENT?

9 A. MOST OF IT DOES, YES.

10 Q. DO YOU HAVE ANOTHER VIDEO WORK AVAILABLE FOR
11 VIEWING ON YOUR WEBSITE?

12 A. YES, MOST RECENT, WHICH IS CALLED DESPERADO.

13 Q. DESCRIBE DESPERADO FOR THE COURT.

14 A. DESPERADO IS A DOCUMENTARY OR AT LEAST A PSEUDO
15 DOCUMENTARY ABOUT A RELATIONSHIP THAT I HAD WITH A MAN I
16 MET ON A ROAD TRIP. AND HE'S A TRUCK DRIVER AND OVER
17 THE COURSE OF A YEAR, WE MET APPROXIMATELY FIVE TIMES.
18 EACH TIME WE MET I VIDEOTAPED OUR INTERACTION INCLUDING
19 SEXUAL INTERACTIONS. THE FINAL VIDEO IS A HIGHLY EDITED
20 VERSION OF THE MANY, MANY HOURS OF FOOTAGE I GATHERED
21 INTERSPERSED WITH A KIND OF INTERVIEW OF MYSELF BY
22 ANOTHER PERSON WHO IS NOT SEEN ON CAMERA. AND THE
23 INTERVIEW ADDRESSES SOME OF THE ISSUES THAT I KNOW WILL
24 BE BROUGHT UP, BUT IT ALSO IS VERY SELF CRITICAL,
25 INTENTIONALLY SO, IN TERMS OF MY OWN ANALYSIS OF WHAT

1 I'M DOING.

2 Q. DOES DESPERADO DEPICT OR DESCRIBE SEXUAL ACTS?

3 A. YES.

4 Q. CAN YOU DESCRIBE A FEW FOR THE COURT, PLEASE.

5 A. THERE'S PROBABLY -- THE MOST EXPLICIT IS A SCENE
6 IN THE AIRPORT IN NEW ORLEANS IN WHICH I SAY GOOD BYE TO
7 DARRYL, WHO IS THE SUBJECT, BY PERFORMING FELLATIO.

8 Q. ARE THERE OTHER DEPICTIONS OR DESCRIPTIONS OF
9 SEXUAL ACTS ON THE FILM THAT CAN BE VIEWED ON YOUR
10 WEBSITE?

11 A. YES, IN DESPERADO?

12 Q. YES.

13 A. YES. THERE IS THE INITIAL INTERACTION WHICH IS
14 BASICALLY ONLY KISSING AND A SORT OF SEDUCTION SCENE AT
15 THE VERY BEGINNING. THERE IS ANOTHER HOTEL ROOM SCENE
16 IN WHICH HE IS NUDE AND I STILL HAVE MY UNDERWEAR ON IN
17 WHICH, YOU KNOW, THERE IS SOME KISSING AND OTHER SEXUAL
18 INTERACTION AND THERE IS ALSO A BATHROOM SCENE THAT IS
19 RELATIVELY MUTED IN TERMS OF THE EXPLICITNESS. AND IT'S
20 CUT VERY QUICKLY TO MUSIC BUT YOU CAN STILL SEE HIS
21 BODY, HIS PENIS AND CERTAIN OTHER SEXUAL INTERACTIONS
22 THAT WE HAVE THAT ARE QUICKLY CUT INTO THE TAPE.

23 Q. DO YOU HAVE A PIECE OF WORK ON YOUR SITE TITLED
24 THE BOYS IN ALBUQUERQUE?

25 A. YES.

1 Q. PLEASE DESCRIBE THIS WORK.

2 A. IT'S MORE JUST A CATEGORY ON THE WEBSITE THAT
3 INCLUDES TWO IMAGES FROM GRADUATE SCHOOL THAT AT CERTAIN
4 POINTS IN TIME HAD BECOME PROBLEMATIC BECAUSE THEY
5 DEPICT MALE NUDES. ONE IS FOUR NUDES, CALLED FOUR
6 GRACES, AND IT'S KIND OF A PLAY OFF ON THE PAINTING, THE
7 FOUR GRACES, AND SORT OF MYTHOLOGY AROUND THE FOUR
8 GRACES. THE OTHER IS AN IMAGE THAT'S CALLED PORTRAIT OF
9 THE ARTIST AND HER MODELS. SO THE THREE MEN ARE NUDE
10 AND I'M CLOTHED SITTING AND MAKING THE PHOTOGRAPH.

11 Q. DO THE PHOTOGRAPHS THAT CAN BE VIEWED BY
12 VISITORS ON YOUR WEBSITE CONTAINED IN THE BOYS IN
13 ALBUQUERQUE GROUP DEPICT THE MALE GENITALS?

14 A. YES.

15 Q. DO YOU HAVE A WORK ON YOUR SITE ENTITLED TRUE
16 LIFE NOVELETTES?

17 A. YES.

18 Q. GIVE US A BRIEF DESCRIPTION OF THIS WORK.

19 A. IT'S A BODY OF WORK, THERE ARE 10 IMAGES IN THIS
20 GROUP. THIS WAS THE FIRST LARGE SCALE PROJECT I HAD
21 DONE. THEY ARE APPROXIMATELY 32 INCHES WIDE BY ABOUT 40
22 INCHES HIGH AND THEY ARE BLACK AND WHITE IMAGES THAT ARE
23 HAND COLORED WITH HANDWRITTEN TEXT.

24 Q. CAN THE IMAGES BE VIEWED BY A VISITOR TO YOUR
25 WEBSITE?

1 A. YES.

2 Q. DO THESE PHOTOGRAPHS IN THIS GROUP CONTAIN
3 NUDITY?

4 A. YES, SOME OF THEM DO.

5 Q. DO SOME OF THEM IN THE TRUE LIFE NOVELETTES
6 GROUP DEPICT MALE GENITALS?

7 A. YES.

8 Q. DO YOU HAVE A WORK ON YOUR SITE ENTITLED LARGE
9 SCALE?

10 A. AGAIN, IT IS A BODY OF WORK, YES.

11 Q. CAN YOU DESCRIBE THIS BODY OF WORK BRIEFLY FOR
12 THE COURT?

13 A. IT WAS A GROUP OF WORK THAT I DID AT WHEN I WAS
14 AT THE UNIVERSITY OF ILLINOIS. THEY ARE LARGE SCALE
15 PIECES, MEDIUM FORMAT NEGATIVES, BLOWN UP TO A HEIGHT OF
16 ABOUT 40 INCHES, VARYING IN LENGTH FROM SIX FEET TO 10
17 TO 12 FEET LONG.

18 Q. CAN THE IMAGES IN THIS GROUP BE VIEWED BY ANYONE
19 VISITING YOUR WEBSITE?

20 A. YES.

21 Q. DO THESE IMAGES DEPICT SEXUAL ACTS?

22 A. YES.

23 Q. DO THESE IMAGES CONTAIN NUDITY?

24 A. YES.

25 Q. DO THESE IMAGES DEPICT MALE GENITALS?

1 A. YES.

2 Q. DO YOU HAVE A WORK ON YOUR SITE ENTITLED CLICHE
3 VEREZ?

4 A. YES. IT'S A BODY OF WORK AGAIN THAT USES A 19TH
5 CENTURY OR AT LEAST INTERPOLATES A 19TH CENTURY PROCESS
6 OF WORKING ON GLASS. THE GLASS IS SPRAY PAINTED,
7 SCRATCHED OUT SO IT LOOKS LIKE A DRAWING. NEGATIVES ARE
8 ATTACHED TO THE GLASS AND THE PIECE IS CONTACT PRINTED
9 ON A LARGER PIECE OF PAPER.

10 Q. CAN ANY OF THE VISITORS TO YOUR WEBSITE VIEW
11 THESE PIECES?

12 A. YES.

13 Q. DO THESE PIECES CONTAIN NUDITY?

14 A. YES. AGAIN, SOME OF THEM DO, SOME OF THEM
15 DON'T.

16 Q. DO SOME OF THESE PIECES DEPICT MALE GENITALS?

17 A. YES.

18 Q. DO YOU HAVE A WORK ON YOUR SITE TITLED LARGE
19 SCALE STRETCHED FABRIC AND MACARONI?

20 A. YES. YES. IT'S A BODY OF WORK AGAIN.

21 Q. CAN YOU GIVE US A BRIEF DESCRIPTION OF THIS BODY
22 OF WORK?

23 A. THIS WAS MOSTLY WHAT WAS IN THE NEA APPLICATION
24 FROM 1994. IT WAS A BODY OF WORK DONE IN THE EARLY '90S
25 AND IT'S A COMBINATION OF PHOTOGRAPHIC IMAGES, SOME OF

1 WHICH ARE ON PHOTO LINEN, OTHERS OF WHICH ARE ON
2 PHOTOGRAPHIC PAPER THAT IS MOUNTED. MOST OF THE PIECES
3 ARE IN COMBINATION WITH PIECES OF STRETCHED FABRIC THAT
4 ALSO HAVE TEXT IN IT THAT IS APPLIED AS ALPHABET
5 MACARONI.

6 Q. DO THE IMAGES AVAILABLE FOR VIEWING ON THIS SITE
7 CONTAIN NUDITY?

8 A. SOME DO.

9 Q. DO SOME OF THE IMAGES AVAILABLE FOR VIEWING IN
10 THIS GROUP DEPICT MALE GENITALS?

11 A. YES.

12 Q. DO YOU HAVE A WORK ON YOUR SITE CALLED PORN
13 POETRY?

14 A. YES.

15 THE COURT: EXCUSE ME FOR INTERRUPTING,
16 BUT WHAT IS THE PURPOSE OF GOING THROUGH SO MANY ITEMS
17 ON HER WEBSITE WHEN YOU ALREADY HAVE A DOZEN.

18 MS. MARSHALL: THIS IS THE LAST ONE, YOUR
19 HONOR.

20 THE COURT: I'M NOT OFFENDED BY ANY OF IT
21 BUT IT IS JUST TIME CONSUMING. WE HAVE SO MUCH ON HERE
22 ALREADY THAT I URGE YOU TO MOVE ON.

23 BY MS. MARSHALL:

24 Q. CAN YOU BRIEFLY DESCRIBES THE WORKS IN PORN
25 POETRY?

1 A. THEY'RE SMALL SCALE WORKS, BLACK AND WHITE
2 PHOTOGRAPHS IN COMBINATION WITH A TEXT THAT IS WRITTEN
3 IN POETIC FORM BUT IS VERY SEXUALLY EXPLICIT.

4 Q. THE TEXT IS SEXUALLY EXPLICIT OR THE
5 PHOTOGRAPHS?

6 A. THE TEXT IS SEXUALLY EXPLICIT PROBABLY MORE THAN
7 THE PHOTOGRAPHS. THERE ARE TWO IMAGES THAT CONTAIN MALE
8 GENITALS. THE OTHER TWO DON'T.

9 Q. DO YOU CONSIDER ANY OF THE WORKS ON YOUR WEBSITE
10 PORNOGRAPHY?

11 A. THAT IS A DIFFICULT QUESTION BECAUSE OF WHEN --
12 I MEAN, I HAVE WRITTEN ABOUT MY WORK BEING PORNOGRAPHY
13 BECAUSE I USE IT AS A KIND OF RHETORICAL DEVICE. MY
14 WORK HAS BEEN CALLED PORNOGRAPHY SO MANY TIMES THAT IT'S
15 IN SOME WAYS A PREEMPTIVE MOVE, BUT IN OTHER WAYS I
16 EMBRACE THE IDEA OF WHAT PORNOGRAPHY IS AS A SOCIAL AND
17 CULTURAL FORM OF IMAGE-MAKING, WHICH I DON'T FIND
18 PROBLEMATIC AT ALL EXCEPT FOR CERTAIN GENRES, I WOULD
19 SAY. I'M INTERESTED AS AN ACADEMIC, AS SOMEBODY WHO
20 DOES RESEARCH IN THIS AREA, IN EMBRACING THE NOTION OF
21 WHAT PORNOGRAPHY IS AND THE -- YOU KNOW, WHAT IT CAN BE
22 IN TERMS OF A SEXUAL FORM OF EXPRESSION.

23 Q. PROFESSOR DEGENEVIEVE, DO YOU HAVE WARNINGS ON
24 YOUR WEBSITE ABOUT THE SEXUALLY EXPLICIT NATURE OF YOUR
25 WORK?

1 A. I DON'T.

2 Q. DO YOU INTEND TO PUT UP ANY SORT OF WARNINGS OR
3 AGE RESTRICTIONS BEFORE ONE CAN ACCESS THE CONTENT ON
4 YOUR WEBSITE?

5 A. I WOULD PUT UP A WARNING BEFORE I WOULD PUT UP
6 ANY KIND OF AGE RESTRICTION, AND I DON'T HAVE ANY
7 INTENTION OF DOING THAT.

8 Q. HAVE YOU CONSIDERED -- I'M SORRY, ONE MORE
9 QUESTION. WHY DO YOU HAVE NO INTENTION OF PUTTING UP A
10 WARNING OR AN AGE RESTRICTION?

11 A. I WOULD PUT UP A WARNING IF I FELT IT WAS
12 ABSOLUTELY NECESSARY, AND IF I FELT IT WOULD SOMEHOW
13 SHIELD ME FROM PROSECUTION, BUT I'M NOT INTERESTED IN
14 PUTTING UP A CREDIT CARD BARRIER BECAUSE THAT WOULD
15 GREATLY LIMIT -- IN FACT, I THINK PROBABLY LIMIT TO THE
16 EXTENT OF MAYBE 90 TO 98 PERCENT OF THE TRAFFIC THAT
17 WOULD COME THROUGH, AND I'M NOT INTERESTED IN DOING
18 THAT.

19 Q. DO YOU THINK MINORS SHOULD BE ABLE TO ACCESS THE
20 CONTENT ON YOUR WEBSITE?

21 A. I THINK MINORS COULD ACCESS IT, MAYBE SHOULD
22 ACCESS IT WITH PARENTAL GUIDANCE. I THINK ANY KIND OF
23 SEXUAL IMAGERY AT A CERTAIN AGE WITHOUT EXPLANATION
24 BECOMES, YOU KNOW, UNREADABLE TO MINORS. I THINK THAT
25 IS PART OF THIS KIND OF CULTURAL PROBLEM ABOUT IT.

1 I WOULD SAY THAT I WOULD ENCOURAGE
2 PARENTS TO BRING MINORS TO THE SITE AND EXPLAIN WHAT IT
3 IS ABOUT, YOU KNOW, HOW IT IS BEING USED, THAT SEXUALITY
4 IS PART OF OUR LIFE AND, YOU KNOW, THIS IS ONE
5 REPRESENTATION OF IT.

6 Q. PROFESSOR DEGENEVIEVE, DO YOU KNOW OTHER ARTISTS
7 WHOSE WORK IS SIMILAR TO YOURS?

8 A. YES.

9 Q. CAN YOU PROVIDE A FEW EXAMPLES?

10 A. CAROLEE SCHNEEMAN.

11 THE COURT: SPELL IT, PLEASE.

12 THE WITNESS: C-A-R-O-L-E-E,
13 S-C-H-N-E-E-M-A-N. SHE IS A PERFORMANCE ARTIST WHO HAS
14 BEEN WORKING SINCE THE '60S, DOES A LOT OF NUDE
15 PERFORMANCES, HAS HAD A LOT OF CENSORSHIP IN HER
16 BACKGROUND AS AN ARTIST. I SHOULD HAVE WRITTEN THESE
17 DOWN BECAUSE NOW I'M BLANKING. THERE ARE A NUMBER OF
18 PEOPLE.

19 MR. BEANE: I MOVE TO STRIKE THAT ANSWER
20 AS INFAMOUS, THE LAY OPINION TESTIMONY.

21 THE COURT: WELL, IT HAS OTHER PROBLEMS
22 THAT ARE CONSISTENT WITH THAT. THE QUESTION -- THE
23 ANSWER IS WELL BEYOND THAT NECESSARY FOR HER TO ANSWER
24 THE QUESTION, SO THERE'S A LOT OF VOLUNTEERING. I WILL
25 SUSTAIN THE OBJECTION. STRIKE IT OUT. IF COUNSEL WANTS

1 TO PURSUE IT, DO IT IN THE PROPER MANNER.

2 BY MS. MARSHALL:

3 Q. PROFESSOR DEGENEVIEVE, DO YOU KNOW OF OTHER
4 ARTISTS, ARTISTS WHOSE WORK YOU WOULD CONSIDER SIMILAR
5 TO YOURS AND AVAILABLE ON THE INTERNET?

6 A. YES.

7 Q. PROFESSOR DEGENEVIEVE, ARE YOU FAMILIAR WITH THE
8 LAW BEING CHALLENGED IN THIS CASE?

9 A. YES.

10 Q. WHAT DO YOU KNOW ABOUT IT?

11 A. MY UNDERSTANDING OF IT IS THAT ANYTHING THAT CAN
12 BE DEEMED HARMFUL TO MINORS WOULD BE SUBJECT TO
13 PROSECUTION AND THAT UNLESS THERE IS A CREDIT CARD
14 BARRIER THAT CREATES AN AGE VERIFICATION SYSTEM, THAT
15 ANYTHING THAT COULD BE DEEMED HARMFUL TO MINORS WOULD
16 FALL UNDER THAT CATEGORY.

17 Q. HAVE YOU CONSULTED AN ATTORNEY ABOUT YOUR ART
18 WORKS SINCE LEARNING OF COPA?

19 A. SEVERAL TIMES.

20 Q. WHY?

21 A. I HAVE A FEAR OF THIS ACTUALLY AFFECTING ME. I
22 THINK ARTISTS HAVE FELT IMMUNE TO SUCH THINGS FOR A LONG
23 TIME AND THERE IS NO IMMUNITY ANYMORE. I THINK, YOU
24 KNOW, THE DEFINITION OF ART, THE DEFINITION OF
25 PORNOGRAPHY, ALL OF THESE DEFINITIONS ARE SO OPEN THAT'S

1 VERY DIFFICULT TO MAKE JUDGMENTS ABOUT IT. SO IN THAT
2 REGARD, SINCE I CALL MY WORK PORNOGRAPHY IN SOME CASES,
3 WHY WOULDN'T ANYBODY, YOU KNOW, CHALLENGE IT AS BEING
4 PORNOGRAPHY. AND YES, I DO -- I HAVE GREAT FEAR. MORE
5 THAN EVER.

6 Q. AFTER SPEAKING WITH THE ATTORNEY, ARE YOU STILL
7 CONCERNED?

8 A. YES.

9 Q. I THINK YOU MENTIONED THIS IN YOUR LAST ANSWER,
10 BUT JUST TO CLARIFY THE RECORD, DO YOU FEAR PROSECUTION
11 UNDER COPA?

12 A. YES.

13 Q. WHY?

14 A. BECAUSE THE WORK REALLY DOES FIT THE DESCRIPTION
15 THAT IS STATED IN THE LAW.

16 Q. HAVE YOU DECIDED WHAT YOU WOULD DO WITH YOUR
17 WEBSITE IF COPA WERE TO TAKE EFFECT?

18 A. YES, TO A CERTAIN EXTENT. I THINK I PROBABLY
19 WOULD --

20 THE COURT: EXCUSE ME. JUST WAIT UNTIL
21 THERE IS ANOTHER QUESTION.

22 THE WITNESS: OKAY. I'M SORRY.

23 BY MS. MARSHALL:

24 Q. WHAT DO YOU THINK YOU WOULD DO?

25 A. I WOULD PUT A WARNING AS AN OPENING PAGE TO IT,

1 BUT THAT IS REALLY ALL I WOULD DO.

2 MS. MARSHALL: I HAVE NO FURTHER
3 QUESTIONS AT THIS TIME, YOUR HONOR.

4 THE COURT: ALL RIGHT. WE ARE GOING TO
5 TAKE A MID-MORNING RECESS FOR 10 MINUTES. WE ARE OFF
6 THE RECORD. COUNSEL ARE EXCUSED. THE WITNESS IS
7 EXCUSED. YOU ARE FREE TO WALK ABOUT.

8 THE WITNESS: THANK YOU.

9 (BREAK TAKEN.)

10 THE COURT: WELCOME BACK, EVERYBODY,
11 PLEASE BE SEATED. CROSS EXAMINE.

12 MS. MARSHALL: YOUR HONOR, IF I MAY, JUST
13 BEFORE DEFENSE COUNSEL BEGINS, I THINK I NEGLECTED TO
14 HAVE PLAINTIFFS' EXHIBIT 53 0001, THE FIRST DVD,
15 FORMALLY MOVED INTO EVIDENCE. I KNOW I OFFERED IT. I
16 BELIEVE THE DEFENSE COUNSEL HAD NO OBJECTION, YOU KNOW,
17 COUCHED IN THE TERMS OF --

18 THE COURT: MY NOTES SAY IT IN MY STYLE,
19 RECEIVED INTO EVIDENCE. THAT IS WHAT I WROTE ON MY
20 NOTES.

21 MS. MARSHALL: THANK YOU, YOUR HONOR.

22 THE COURT: WHICH I'VE MOUTHED EVERY TIME
23 I ACCEPT AN EXHIBIT. IF THERE'S ANY DOUBT, BUT IT'S IN
24 NOW WITH THE SAME OBJECTIONS PRESERVED.

25 THE COURT: YOU MAY PROCEED.

1 CROSS EXAMINATION

2 MR. BEANE: GOOD MORNING, YOUR HONOR.

3 BY MR. BEANE:

4 Q. GOOD MORNING, MS. DEGENEVIEVE. MY NAME IS ERIC
5 BEANE. I'M COUNSEL FOR THE DEPARTMENT OF JUSTICE, THE
6 DEFENDANT.

7 A. GOOD MORNING.

8 Q. YOU WERE TESTIFYING EARLIER ABOUT YOUR WEBSITE,
9 WWW.DEGENEVIEVE.COM. IS THAT THE ONLY WEBSITE THAT YOU
10 PERSONALLY OPERATE?

11 A. YES, CURRENTLY.

12 Q. AND DO YOU PERSONALLY PLACE THE CONTENT ON THAT
13 WEBSITE?

14 A. I HAVE SOMEONE WHO PLACES CONTENT FOR ME.

15 Q. SO THAT IS THE ONLY SITE WHERE YOU REGULARLY
16 POST CONTENT TO A WEBSITE?

17 A. THE SCHOOL HAS A WEBSITE AND INFORMATION NEEDS
18 TO BE UPDATED. I GIVE THEM MORE CURRENT WORK OR
19 ANYTHING THAT I NEED TO HAVE PLACED ON THEIR WEBSITE,
20 BUT THEY DO IT. I HAVE NOT DONE THAT. THEY HAVE A
21 WEBMASTER TO DO THAT.

22 Q. I WOULD LIKE TO ASK YOU JUST A FEW QUESTIONS
23 ABOUT YOUR WEBSITE, WWW.DEGENEVIEVE.COM. YOU DON'T HAVE
24 ANY ADVERTISEMENTS ON THAT WEBSITE, DO YOU?

25 A. NO.

1 Q. NO BANNER ADS?

2 A. NO.

3 Q. NO LINKS TO OTHER WEBSITES THAT PEOPLE PAY TO
4 PLACE ON YOUR WEBSITE?

5 A. I HAVE LINKS AND I DON'T BELIEVE ANY OF THEM ARE
6 TO PAY SITES, NO.

7 Q. SO YOU ARE NOT AWARE OF ANY LINKS ON YOUR
8 WEBSITE THAT PEOPLE PAY YOU TO PLACE ON YOUR WEBSITE?

9 A. OH, NO, NO.

10 Q. YOU TESTIFIED EARLIER AT LENGTH ABOUT THE
11 DIFFERENT ART AND ESSAYS THAT YOU POST ON YOUR WEBSITE
12 BUT YOU DON'T PROPOSE A SALE FOR ANY OF THESE, ANY OF
13 THIS ART OR ANY OF THE CONTENT ON YOUR WEBSITE, DO YOU?

14 A. YES.

15 Q. DOES IT SAY ANYWHERE ON THERE THAT AN ITEM IS
16 FOR SALE OR STATE A PRICE?

17 A. NO. BUT IN TERMS OF AN ACADEMIC REALM, IT'S, I
18 THINK, ASSUMED THAT THAT IS WHY YOU HAVE A WEBSITE.
19 IT'S NOT ONLY FOR GENERAL INFORMATION TO PEOPLE WHO ARE
20 INTERESTED IN YOUR WORK, BUT IT IS ABOUT SALE, AND IT'S
21 ONE OF THE FEW WAYS ACADEMICS REALLY HAVE OF PROVIDING
22 THAT KIND OF INFORMATION, A FULL RANGE OF WHAT THEY HAVE
23 DONE, SO THAT YOU CAN SELL WHAT YOU HAVE AS WELL AS BE
24 INVITED TO GIVE LECTURES OR WORKSHOPS.

25 Q. DO YOU ACCEPT CREDIT CARDS ON YOUR WEBSITE?

1 A. NO.

2 Q. IS THERE ANYWHERE ON THE WEBSITE WHERE IT SAYS
3 MAKE CHECK PAYABLE TO AND GIVE A NAME AND ADDRESS?

4 A. WE DON'T REALLY DO IT THAT WAY. I MEAN IT'S
5 NOT -- THEY WOULD CONTACT ME, I WOULD HAVE A
6 CONVERSATION WITH THEM, WE WOULD MAKE SOME ARRANGEMENTS
7 FOR PAYMENT, PROBABLY TO VIEW THE WORK BUT NO.

8 Q. YOU DON'T HAVE ANY AGREEMENTS ON THIS WEBSITE
9 WITH A THIRD PARTY MERCHANT LIKE PAYPAL OR ANY OTHER
10 ENTITY THAT WOULD ACT AS AN INTERMEDIARY BETWEEN
11 POTENTIAL CONSUMERS AND YOU ON YOUR WEBSITE?

12 A. NO.

13 MR. BEANE: YOUR HONOR, AT THIS TIME
14 DEFENDANT MOVES TO STRIKE THE TESTIMONY OF MISS
15 DEGENEVIEVE AND THE EXHIBITS. ONE OF THE IMPORTANT
16 LIMITATIONS IN THE CHILD ON-LINE PROTECTION ACT IS THAT
17 IT APPLIES ONLY TO WEBSITES THAT OPERATE FOR A
18 COMMERCIAL PURPOSE. THERE IS NO SHOWING IN MISS
19 DEGENEVIEVE'S TESTIMONY THAT HER WEBSITE OPERATES FOR A
20 COMMERCIAL PURPOSE. IT DOES NOT PROPOSE A SALE ON
21 THERE, THERE IS NO WAY TO BUY ANY OF HER ART THERE, NONE
22 OF IT IS LISTED FOR A PRICE. HER TESTIMONY ONLY STATED
23 THAT IF YOU CLICK ON A CONTACT LINK THAT THERE IS HER
24 E-MAIL ADDRESS, AND IF YOU WENT TO THIS E-MAIL ADDRESS
25 YOU COULD TALK TO HER ABOUT BUYING ANY OF HER WORK. THE

1 WEBSITE ITSELF IS NOT ENGAGED IN THE BUSINESS OF SELLING
2 MATERIAL. IT DOES NOT CLEARLY OPERATE FOR A COMMERCIAL
3 PURPOSE. THEREFORE HER TESTIMONY IS ENTIRELY IRRELEVANT
4 AND HER FEAR OF PROSECUTION IS ILLUSORY BECAUSE COPA
5 ONLY APPLIES TO COMMERCIAL WEBSITES.

6 THE COURT: RESPONSE.

7 MS. MARSHALL: YOUR HONOR, IN THE FIRST
8 INSTANCE, AS DEFENDANT HAS MADE PAINFULLY CLEAR
9 THROUGHOUT PRETRIAL, THE STATUTE'S DEFINITIONS ARE YET
10 TO BE DETERMINED, ARE STILL VERY MUCH UP IN THE AIR, AS
11 THE DOJ HAS NO POLICIES OR PROCEDURES FOR IMPLEMENTING
12 THE STATUTE OR PROVIDING GUIDANCE ON HOW THE STATUTE IS
13 GOING TO BE ENFORCED OR INTERPRETED BY THE PROSECUTORIAL
14 ARM. SECONDLY, I BEG TO DIFFER WITH DEFENSE COUNSEL'S
15 CHARACTERIZATION OF PROFESSOR DEGENEVIEVE'S TESTIMONY IN
16 THAT SHE CLEARLY TESTIFIED TO THE COMMERCIAL PURPOSE OF
17 HER WEBSITE IN BOTH DIRECT AND JUST NOW ON CROSS, TO
18 GENERATE INCOME FOR HERSELF, TO GAIN EXPOSURE SO SHE CAN
19 SELL HER ART AND GENERATE INCOME BY LECTURING, BOTH OF
20 WHICH ARE INVITED THROUGH THE EXHIBITION OF HER ART ON
21 HER WEBSITE. AND I THINK THAT HER TESTIMONY JUST NOW
22 GIVEN IN DIRECT ALSO MADE IT PERFECTLY CLEAR THAT FOR
23 ARTISTS IN ACADEMIA, THIS IS THE WAY THEY ENGAGE IN
24 COMMERCIAL ACTIVITIES, AS OPPOSED TO DISPLAYING AN IMAGE
25 OF THE REAL PIECE OF ART WITH A PARTICULAR NUMBER NEXT

1 TO IT ON THE WEBSITE.

2 MR. BEANE: YOUR HONOR, IF I MAY RESPOND
3 BRIEFLY. IF THE MERE POSTING ON YOUR WEBSITE OF AN
4 E-MAIL ADDRESS AT WHICH YOU CAN BE CONTACTED IS
5 SUFFICIENT TO ESTABLISH THAT A WEBSITE IS OPERATING FOR
6 COMMERCIAL PURPOSES, THEN THAT INTERPRETATION WOULD
7 COMPLETELY READ THE COMMERCIAL PURPOSES LIMITATION OUT
8 OF THE STATUTE. IT IS A VERY CRITICAL LIMITATION. THAT
9 LIMITATION WAS PUT IN IN RESPONSE TO THE PORTION OF THE
10 COMMUNICATIONS DECENCY ACT THAT WAS STRUCK DOWN BY THE
11 SUPREME COURT. THIS IS AN ESSENTIAL ELEMENT OF THE
12 NARROW TAILORING OF THE CHILD ON-LINE PROTECTION ACT.
13 IF A MERE E-MAIL ADDRESS ON A WEBSITE IS SUFFICIENT,
14 THEN THAT REQUIREMENT HAS BEEN READ OUT OF THE STATUTE
15 ENTIRELY.

16 THE COURT: THE WITNESS' TESTIMONY SHOWS
17 THAT THERE IS A MODALITY OF HER MAKING INCOME IN THE
18 ACADEMIC SETTING THAT IS KNOWN AMONG THE PEOPLE WHO WANT
19 TO ENGAGE HER SERVICES AND THAT THE WEBSITE ENCOURAGES
20 THAT PROCEDURE AND THAT SHE DOES INDEED GET LECTURES AND
21 THUS EARN -- AND WORKSHOPS AND EARNS MONEY. I BELIEVE
22 THAT IN THE SENSE OF A PRIMA FACIE SHOWING, THE WITNESS'
23 TESTIMONY IS OFFERED TO TEND TO MEET THE COMMERCIAL
24 REQUIREMENTS OF THE STATUTE AND IS ADMISSIBLE INTO
25 EVIDENCE. THE ARGUMENTS THAT YOU MAKE NOW, SIR, YOU CAN

1 MAKE IN CLOSING AND SAY THAT THE TESTIMONY HAS NO VALUE
2 IN THE CASE FOR THE REASONS YOU MENTIONED, AMONG OTHER
3 REASONS YOU MAY HAVE, BUT YOU MISCHARACTERIZE HER
4 STATEMENT THAT SHE MERELY PUTS HER NAME ON IT AND
5 THEREFORE IT BECOMES COMMERCIAL. THERE IS A LOT OF
6 OTHER TESTIMONY ABOUT HOW SHE EARNS MONEY THROUGH THIS
7 WEBSITE. THE OBJECTION -- MOTION TO STRIKE IS DENIED.

8 MR. BEANE: I HAVE NO FURTHER QUESTIONS
9 FOR THIS WITNESS.

10 THE COURT: ANY REDIRECT?

11 MS. MARSHALL: NO, YOUR HONOR.

12 THE COURT: YOUR TESTIMONY IS CONCLUDED.
13 YOU ARE EXCUSED, THANK YOU.

14 THE WITNESS: THANK YOU.

15 THE COURT: BE CAREFUL GETTING DOWN.

16 THE WITNESS: OKAY.

17 (WITNESS EXCUSED.)

18 MR. VAN KWAWEGEN: PLAINTIFFS CALL TERRI
19 KIRK.

20 THE COURT: PLEASE REMAIN STANDING UNTIL
21 YOU TAKE THE OATH.

22 TERRI KIRK, DEFENSE WITNESS, AFFIRMS.

23 THE CLERK: STATE AND SPELL YOUR FULL
24 NAME FOR THE RECORD, PLEASE.

25 THE WITNESS: TERRI KIRK. T-E-R-R-I.

1 K-I-R-K.

2 DIRECT EXAMINATION

3 BY MR. VAN KWAWEGEN:

4 Q. GOOD MORNING, MISS KIRK.

5 A. GOOD MORNING.

6 THE WITNESS: GOOD MORNING, YOUR HONOR.

7 THE COURT: GOOD MORNING.

8 BY MR. VAN KWAWEGEN:

9 Q. WHAT IS YOUR CURRENT POSITION?

10 A. I'M A HIGH SCHOOL LIBRARIAN AT REIDLAND HIGH
11 SCHOOL AND THAT IS IN MCCRACKEN COUNTY, KENTUCKY.

12 THE COURT: SPELL THE NAME OF THE SCHOOL,
13 PLEASE.

14 THE WITNESS: R-E-I-D-L-A-N-D, IN
15 MCCRACKEN COUNTY, M-C-C-R-A-C-K-E-N, IN WESTERN
16 KENTUCKY.

17 BY MR. VAN KWAWEGEN:

18 Q. HOW LONG HAVE YOU BEEN A LIBRARIAN AT REIDLAND?

19 A. THIS IS MY FIFTH YEAR AT REIDLAND HIGH SCHOOL.

20 Q. CAN YOU TELL THE COURT A LITTLE BIT ABOUT YOUR
21 EDUCATIONAL BACKGROUND?

22 A. YES. I GRADUATED FROM COLLEGE IN 1979 FROM
23 WESTERN KENTUCKY UNIVERSITY IN LIBRARY SCIENCE AND
24 HISTORY. AFTER I HAD MY SON, I WENT BACK AND GOT MY
25 SCHOOL MEDIA CERTIFICATION IN 1984 SO THAT I COULD BE A

1 SCHOOL LIBRARIAN. IN 1994, I RECEIVED MY FIRST MASTER'S
2 DEGREE IN HISTORY, AND IN 1999 I RECEIVED MY SECOND A
3 MASTER'S DEGREE IN SCHOOL ADMINISTRATION AND
4 SUPERVISION.

5 Q. WHERE DID YOU WORK BEFORE YOU WORKED AT
6 REIDLAND?

7 A. I HAVE ALWAYS BEEN IN MCCRACKEN COUNTY. IT IS A
8 DISTRICT OF 12 SCHOOLS, THREE HIGH SCHOOLS, AND I HAVE
9 ACTUALLY BEEN AT ALL THREE. I WAS AT LONE OAK, L-O-N-E
10 O-A-K, THE FIRST TWO YEARS. THEN I MOVED TO HEATH,
11 H-E-A-T-H, FOR 10 YEARS. AND THEN I MOVED TO REIDLAND
12 FOR THE LAST FIVE YEARS.

13 Q. WHAT WAS YOUR POSITION AT HEATH?

14 A. I WAS THE LIBRARIAN AT ALL OF THOSE DIFFERENT
15 SCHOOLS.

16 Q. ARE YOU A MEMBER OF ANY PROFESSIONAL
17 ORGANIZATION?

18 A. YES, I AM.

19 Q. WHICH ONES?

20 A. I'M A MEMBER OF THE KENTUCKY SCHOOL MEDIA
21 ASSOCIATION, THE KENTUCKY LIBRARY ASSOCIATION, KENTUCKY
22 EDUCATION ASSOCIATION, AND I'M ALSO A MEMBER OF THE
23 AMERICAN LIBRARY ASSOCIATION, THE AMERICAN -- AMERICAN
24 ASSOCIATION OF SCHOOL LIBRARIANS, THE YOUNG ADULT
25 LIBRARY SERVICES ASSOCIATION AND NATIONAL EDUCATION

1 ASSOCIATION. I THINK THAT IS ALL.

2 Q. DO YOU HOLD ANY SPECIAL POSITION OR WORK ON ANY
3 COMMITTEE FOR THE ALA, THE AMERICAN LIBRARY ASSOCIATION?

4 A. YES, I DO. I'M A MEMBER OF THE EXECUTIVE BOARD
5 OF THE AMERICAN LIBRARY ASSOCIATION.

6 Q. WHAT ARE YOUR FUNCTIONS AS A MEMBER OF THE
7 EXECUTIVE BOARD OF THE AMERICAN LIBRARY ASSOCIATION?

8 A. THE AMERICAN LIBRARY ASSOCIATION HAS ABOUT
9 66,000 MEMBERS AND THERE IS AN ELECTED BODY CALLED
10 COUNCIL THAT IS ABOUT 180 MEMBERS THAT SET POLICY FOR
11 THE AMERICAN LIBRARY ASSOCIATION. AND FROM COUNCIL,
12 EIGHT PEOPLE ARE ELECTED, AND THOSE PEOPLE, THE
13 EXECUTIVE BOARD, ACTUALLY MAKE THE POLICY HAPPEN. THEY
14 DIRECT THE EXECUTIVE DIRECTOR TO DO THE WORK OR THEY
15 DRAFT LETTERS OR ASK STAFF TO DO THOSE KINDS OF THINGS,
16 SO WHEN COUNCIL SETS POLICY THE EXECUTIVE BOARD TRIES TO
17 SEE THAT THOSE POLICIES ARE ENFORCED.

18 Q. ARE YOU HERE TODAY TO TESTIFY ON BEHALF OF ANY
19 OF THESE ORGANIZATIONS?

20 A. NO, I'M NOT.

21 Q. ARE YOU HERE TODAY TO TESTIFY ON BEHALF OF THE
22 SCHOOL THAT YOU WORK AT, REIDLAND?

23 A. NO, I'M NOT.

24 Q. WHAT ARE YOUR RESPONSIBILITIES AS A LIBRARIAN AT
25 REIDLAND?

1 A. WELL, I'M THE ONLY LIBRARIAN IN THE SCHOOL, SO I
2 DO ALL OF THE ORDERING, THE COLLECTION DEVELOPMENT. I
3 THINK ONE OF MY RESPONSIBILITIES IS TO SUPPORT THE
4 CURRICULUM IN ANY WAY I CAN WITH BOOKS OR WEBSITES OR
5 THINGS LIKE THAT THAT WOULD SUPPORT THE SCHOOL
6 CURRICULUM. I MANAGE THE LIBRARY, FINANCIAL, THE
7 FINANCIAL BUDGET. I ALSO AM THE SCHOOL TECHNOLOGY
8 COORDINATOR WHICH EACH SCHOOL HAS ONE OF THE THOSE, AND
9 THAT PUTS ME ON A DISTRICT TEAM OF TECHNOLOGY, THE
10 TECHNOLOGY, WITH THE TECHNOLOGY COORDINATOR. I HELP, IF
11 ANYBODY WANTS TO ORDER A COMPUTER, I DO THE WORK FOR
12 THEM TO FIND OUT HOW TO DO THAT. I HELP INSTALL
13 PRINTERS AND JUST TROUBLESHOOT.

14 Q. DO YOUR RESPONSIBILITIES INCLUDE MANAGING THE
15 LIBRARY COMPUTERS?

16 A. YES.

17 Q. DO YOU MAINTAIN A WEBSITE FOR THE LIBRARY?

18 A. I DO, AND -- YES.

19 Q. DO YOU TRAIN STUDENTS ON HOW TO USE THE
20 INTERNET?

21 A. I DO.

22 Q. HOW WOULD YOU DESCRIBE YOUR LEVEL OF COMPETENCE
23 WITH COMPUTERS IN GENERAL?

24 A. I THINK I'M VERY COMPETENT.

25 Q. HOW HAVE YOU GAINED THIS LEVEL OF COMPETENCY?

1 A. WELL, I HAVE ATTENDED WORKSHOPS. I HAVE A FUNNY
2 STORY THAT KIDS ASK ME HOW I KNOW HOW TO DO COMPUTER
3 THINGS THAT I LEARNED IN COLLEGE. I TELL THEM WE DIDN'T
4 HAVE COMPUTERS WHEN I WAS IN COLLEGE EXCEPT GREAT BIG
5 ONES IN BIG ROOMS, YOU KNOW, THE PUNCH CARD THINGS, BUT
6 THEY DON'T KNOW WHAT I'M TALKING ABOUT. BUT I HAVE BEEN
7 TO A LOT OF WORKSHOPS. THEN I THINK IT'S JUST -- I JUST
8 DO IT. I DON'T KNOW. I JUST USE THEM A LOT AND IT'S
9 JUST SOMETHING THAT I'M GOOD AT. I DON'T REALLY -- I
10 CAN'T REALLY EXPLAIN WHY I AM BECAUSE I'M NOT VERY
11 MECHANICAL NORMALLY, BUT SOMEHOW I CAN FIGURE OUT -- I
12 CAN DO COMPUTER THINGS.

13 Q. HAVE YOU TAUGHT ANY WORKSHOPS?

14 A. I HAVE.

15 Q. WHAT TYPES OF WORKSHOPS HAVE YOU TAUGHT?

16 A. WELL, I TAUGHT WORKSHOPS FOR TEACHERS WHERE --
17 PROFESSIONAL DEVELOPMENT OPPORTUNITIES ON USING THE
18 INTERNET. I HAVE TAUGHT ON USING ALL KIND OF DIFFERENT
19 PACKAGES LIKE THE MICROSOFT OFFICE PACKAGE, PUBLISHER,
20 POWERPOINT, EXCEL. I HAVE TAUGHT -- I HAD ONE WORKSHOP
21 THAT I KIND OF THOUGHT WAS HUMOROUS -- LOOKING AT IT NOW
22 THAT I TAUGHT PRINCIPALS HOW TO USE E-MAIL TO BE
23 EFFECTIVE COMMUNICATORS WITH THEIR TEACHERS, BECAUSE NOW
24 THAT SEEMS SO OBVIOUS, BUT AT ONE TIME THAT WAS NOT
25 OBVIOUS.

- 1 Q. DO YOU ADVISE TEACHERS AT REIDLAND ABOUT
2 INTERNET SAFETY OR USE OF THE INTERNET OUTSIDE OF THE
3 CLASSROOM?
- 4 A. YES.
- 5 Q. HOW DO YOU DO THAT?
- 6 A. I DON'T KNOW -- I SHOULDN'T SAY THAT -- NOT SO
7 MUCH AT REIDLAND BECAUSE SINCE I HAVE BEEN AT REIDLAND
8 PEOPLE HAVE UNDERSTOOD THAT THERE ARE DANGERS. BUT WHEN
9 THE INTERNET FIRST CAME OUT AND I WAS DOING WORKSHOPS
10 WHEN I WAS AT HEATH, THERE WERE JUST -- PEOPLE DID NOT
11 UNDERSTAND WHAT WAS THERE. SO I WOULD TRY TO GIVE
12 ADVICE ABOUT THINGS AS PARENTS MAYBE MORE THAN AS
13 TEACHERS AT THAT TIME.
- 14 Q. DESCRIBE THE DISTRICT IN WHICH YOU WORK.
- 15 A. YES. WE HAVE 7,000 STUDENTS. WE ARE A COUNTY
16 SCHOOL, SO IF YOU LIVE IN THE COUNTY, YOU GO TO OUR
17 SCHOOL. THERE IS ALSO AN INDEPENDENT SCHOOL DISTRICT
18 THERE WHICH IS THE CITY KIDS, SO WE ARE SPREAD OUT
19 ACROSS THE COUNTY FROM THE WEST TO THE EAST.
- 20 Q. HOW MANY SCHOOLS ARE IN THE DISTRICT?
- 21 A. 12.
- 22 Q. ARE THESE ALL HIGH SCHOOLS?
- 23 A. NO, SIX ELEMENTARIES, THREE MIDDLE AND THREE
24 HIGH.
- 25 Q. DOES EVERY SCHOOL HAVE A LIBRARY?

1 A. YES.

2 Q. EVERY SCHOOL HAS A LIBRARIAN?

3 A. YES.

4 Q. HOW WOULD YOU DESCRIBE REIDLAND, THE SCHOOL YOU
5 CURRENTLY WORK AT? WHAT TYPE OF SCHOOL IS IT, FOR
6 EXAMPLE?

7 A. REIDLAND IS THE -- HAS THE HIGHEST FREE AND
8 REDUCED LUNCH POPULATION, WHICH MEANS THAT THE PARENTS
9 ARE AT POVERTY LEVEL. WE HAVE ALMOST 50 PERCENT OF OUR
10 KIDS ARE IN FREE OR REDUCED LUNCH. THAT TRANSLATES THAT
11 WE DON'T HAVE A LOT OF PARENT INVOLVEMENT FROM THOSE
12 PARENTS. THAT JUST SORT OF GOES HAND-IN-HAND. THE
13 OTHER HALF OF THE KIDS ARE MIDDLE CLASS. WE HAVE LOTS
14 OF KIDS THAT LIVE IN PUBLIC HOUSING OR TRAILER PARKS.

15 Q. IS REIDLAND A HIGH SCHOOL?

16 A. YES.

17 Q. HOW DOES REIDLAND COMPARE WITH OTHER SCHOOLS IN
18 YOUR DISTRICT, FOR EXAMPLE, HEATH, WHERE YOU WORKED
19 BEFORE?

20 A. HEATH WAS AT ONE TIME THE REAL FARMING SCHOOL,
21 BUT IT HAS CHANGED SINCE THAT SIDE OF TOWN IS WHAT IS
22 GROWING. THEY HAVE PUT MALLS ON THAT SIDE SO THERE IS
23 LOTS OF DEVELOPMENT SO THAT NO LONGER WOULD BE SEEN AS
24 THE FARMING SCHOOL THERE, MORE MAYBE THE MIDDLE CLASS
25 AND THERE ARE VERY FEW POOR KIDS THERE. THERE ARE A

1 FEW, BUT NOT LIKE IT IS AT REIDLAND.

2 Q. HOW MANY LIBRARIANS ARE THERE AT REIDLAND?

3 A. JUST ME.

4 Q. WHAT SORT OF RESOURCES DOES THE LIBRARY OFFER TO
5 ITS STUDENTS?

6 A. WELL, WE HAVE A NICE COLLECTION OF BOOKS. I
7 HAVE WORKED REALLY HARD IN THE LAST FIVE YEARS TO UPDATE
8 OUR BOOK COLLECTION. WE FOCUS A LOT ON READING AT
9 REIDLAND, SO I HAVE GOTTEN A LOT OF NEW FICTION AND OLD
10 FICTION IN NEW BOOKS SO THEY LOOK NICE. WE HAVE 27
11 COMPUTERS FOR THE KIDS TO USE PLUS I HAVE THREE LAPTOPS
12 THAT IF I HAVE A CLASS OF 30 THAT -- WE HAVE WIRELESS SO
13 THE KIDS CAN -- I CAN GET THE LAPTOPS OUT AND PUT THEM
14 TO USE. WE HAVE SCANNERS AND DIGITAL CAMERAS AND
15 DIGITAL VIDEO CAMERAS THAT WE USE TO PRODUCE LITTLE ADS
16 OR CLIPS FOR DIFFERENT CLASSES. WE ALSO HAVE A COLOR
17 LASER PRINTER AND WE CAN PRODUCE THINGS LIKE BROCHURES
18 OR BOOKLETS FOR CLASSES.

19 Q. DOES THE SCHOOL HAVE ANY OTHER COMPUTERS BESIDES
20 THE ONES IN THE LIBRARY?

21 A. YES.

22 Q. WHERE ARE THEY LOCATED?

23 A. EVERY TEACHER HAS A COMPUTER IN THEIR CLASSROOM
24 THAT IS FOR THEIR USE. THEN SOME TEACHERS MAY HAVE ONE
25 OR TWO EXTRA COMPUTERS, LIKE THE ENGLISH TEACHERS MAY

1 HAVE A COUPLE OF EXTRA COMPUTERS THAT ARE SPRINKLED OUT
2 THROUGH THE BUILDING. WE HAVE ANOTHER LAB OF 30
3 COMPUTERS THAT IS NEW AND THAT WE RECEIVED BECAUSE OF
4 OUR POVERTY LEVEL. WE GOT IT FOR A GRANT. THEN THERE
5 IS A BUSINESS CLASS THAT HAS 30 COMPUTERS WHERE SHE
6 TEACHES BUSINESS CLASSES.

7 Q. HOW ARE THE COMPUTERS IN THE LIBRARY USED?

8 A. THEY ARE USED FOR AS -- CLASSES SIGN UP IN THE
9 LIBRARY, COME AS A WHOLE CLASS. SO I MIGHT HAVE A WHOLE
10 CLASS OF KIDS SIGNING UP AND USING -- WE HAVE THE ONLINE
11 CATALOG SO THEY LOOK UP BOOKS THERE IN THE INTERNET.
12 AND THEN ALSO THE OFFICE PACKAGES. WE ALSO HAVE -- I
13 MIGHT ALSO JUST HAVE KIDS THAT NEED TO COME DO SOME WORK
14 ON THEIR OWN. I MEAN, I COULD HAVE MAYBE, OUT OF 40
15 KIDS IN THE LIBRARY, 25 ARE WITH THE CLASS, AND FIVE ARE
16 COMING TO CHECK OUT A BOOK AND TWO OR THREE ARE LOOKING
17 UP SOMETHING THAT THEY NEED TO LOOK UP FOR ANOTHER CLASS
18 AND TWO OR THREE MORE MIGHT BE DOING HOMEWORK.

19 Q. CAN STUDENTS USE THESE COMPUTERS OUTSIDE OF
20 CLASS?

21 A. YES.

22 Q. WHEN?

23 A. I GET TO SCHOOL AT SEVEN O'CLOCK. AT 7:10 I
24 HAVE SOME BOYS WAITING FOR ME TO OPEN THE DOOR. THEY
25 COME IN, THEY EAT BREAKFAST, AND COME RIGHT OVER TO THE

1 LIBRARY. I HAVE ABOUT 10 BOYS THAT COME EVERY MORNING
2 TO LOOK UP THINGS ON THE COMPUTER, JUST THAT ARE THINGS
3 THEY ARE INTERESTED IN. THEY DON'T NECESSARILY HAVE TO
4 DO WITH SCHOOL.

5 Q. ARE ALL OF THE COMPUTERS ABLE TO ACCESS THE
6 INTERNET?

7 A. YES.

8 Q. THIS INCLUDES THE THREE WIRELESS LAPTOPS AS
9 WELL?

10 A. YES.

11 Q. HOW DO THESE COMPUTERS ACCESS THE INTERNET?

12 A. WE HAVE A NETWORK SERVER. IT GOES THROUGH THE
13 DISTRICT WHICH IS OUR BOARD OF EDUCATION AND THAT IS
14 CONNECTED TO THE KENTUCKY BOARD OF EDUCATION.

15 Q. DOES THE LIBRARY HAVE ACCESS TO ANY DATABASES OR
16 OTHER ONLINE RESEARCH TOOLS?

17 A. YES.

18 Q. COULD YOU GIVE A FEW EXAMPLES?

19 A. THE STATE OF KENTUCKY PROVIDES US THE KENTUCKY
20 VIRTUAL LIBRARY, WHICH HAS DATABASES THAT INCLUDE
21 MAGAZINES, ACADEMIC MAGAZINES, THINGS THAT WE THOUGHT --
22 YOU USED TO WOULD HAVE TO GO TO THE LIBRARY AND ACTUALLY
23 PULL OFF THE SHELF, ARE ON THE DATABASE. THERE'S AN
24 ENCYCLOPEDIA. IT HAS A BIOGRAPHY SET FROM ANOTHER
25 COMPANY. IT HAS A CAREER AND TECHNICAL EDUCATION SET

1 THAT WE ALL RECEIVE FREE FROM THE STATE.

2 Q. HOW WOULD YOU COMPARE USE OF THESE SPECIALIZED
3 DATABASES TO SEARCHING THE INTERNET AS A WHOLE?

4 A. I THINK KIDS A LOT OF TIMES WILL GO RIGHT TO THE
5 INTERNET, AND I HAVE TO SOMETIMES PUSH THEM INTO USING
6 THE DATABASES.

7 Q. WHY DO YOU DO THAT?

8 A. WELL, BECAUSE THE DATABASES WE KNOW HAVE BEEN
9 SELECTED. THEY ARE VERY WELL-KNOWN MAGAZINES THAT WE
10 CAN GET, AND SO I TRY TO TELL THE KIDS THAT IF THEY USE
11 THAT FIRST, THEN THEY KNOW WHAT THEY ARE GETTING IS VERY
12 GOOD SOLID INFORMATION. SOMETIMES IF YOU CAN GET -- WE
13 USE THIS AS A TEACHING TOOL TO TALK ABOUT WHAT IS ON THE
14 INTERNET SOMETIMES IS NOT ALWAYS TRUE.

15 Q. DO YOU KNOW HOW STUDENTS LOG INTO THE SCHOOL
16 COMPUTERS?

17 A. YES.

18 Q. HOW DO THEY DO THAT?

19 A. EACH STUDENT IS GIVEN A PASSWORD WHEN THEY SIGN
20 THEIR ACCEPTABLE USE FORM AND THEN I PUT THEM INTO THE
21 DATABASE AND THEY LOG IN AS THEIR YEAR OF GRADUATION,
22 FIRST INITIAL, MIDDLE INITIAL, LAST NAME AND THEN THEY
23 HAVE A SIX DIGIT PASS CODE.

24 Q. CAN STUDENTS LOG IN ANONYMOUSLY?

25 A. NO. ACTUALLY THEY CAN, BUT THEY DON'T GET

1 ANYWHERE. IF THEY LOG IN AS STUDENT, IT WON'T GO
2 ANYWHERE.

3 Q. WHAT DO YOU MEAN?

4 A. IT WILL JUST SIT ON THE SCHOOL'S WEB PAGE. IT
5 WON'T GO PAST THAT PAGE.

6 Q. DO YOU KNOW WHETHER THE SYSTEM KEEPS TRACK OF
7 STUDENT NETWORK USAGE?

8 A. THE SYSTEM DOES KEEP TRACK OF THAT.

9 Q. HOW DOES IT DO THAT?

10 A. I DON'T KNOW EXACTLY HOW IT DOES IT, BUT I KNOW
11 THAT IT CAN BE DONE. AND IF YOU WANT TO ASK FOR IT, YOU
12 CAN FIND IT, BUT IT'S NOT NECESSARILY -- I DON'T GET ANY
13 REPORTS BACK OR ANYTHING, IT DOES NOT GENERATE REPORTS
14 AND GIVE THEM BACK TO ME. I WOULD HAVE TO ASK FOR THEM.

15 Q. CAN STUDENTS USE COMPUTERS WITHOUT SUPERVISION
16 IN THE LIBRARY?

17 A. THEY CAN. I DO HAVE TO USE THE RESTROOM EVERY
18 NOW AND THEN, BUT I'M VERY RARELY OUT OF THERE. THE WAY
19 THE LIBRARY IS SET UP, IT IS AN OLD ROOM. IT WAS NOT
20 SET UP FOR COMPUTERS, SO IT'S NOT THE BEST IN THE WORLD
21 SO THERE IS -- SOMETIMES THEIR BACKS ARE -- THE COMPUTER
22 SCREENS ARE NOT WHERE I CAN SEE THEM, BUT IF A CLASS IS
23 IN THERE, AND I'M CIRCULATING THE WHOLE TIME THAT THEY
24 ARE IN THERE. IF IT'S DURING LUNCH OR DURING BEFORE
25 SCHOOL I ALWAYS HAVE THEM SIT CLOSEST TO MY DESK SO I

1 CAN SEE WHAT THEY ARE DOING.

2 Q. DO YOU TEACH RESEARCH SKILLS AND ONLINE RESEARCH
3 SKILLS TO STUDENTS?

4 A. YES.

5 Q. HOW DOES THIS TRAINING TAKE PLACE?

6 A. WELL, WHEN I FIRST STARTED, I WOULD ALWAYS TRY
7 TO GET A CLASS IN AND WE WOULD TALK ABOUT IT. MAKE UP
8 THINGS TO LOOK FOR AND I FOUND OUT THAT THAT DIDN'T TAKE
9 VERY WELL WITH STUDENTS, THAT WHEN THEY WERE COMING BACK
10 TO DO IT ON THEIR OWN, THEY DID NOT REMEMBER ANYTHING
11 THAT I SAID. SO WHAT WE DO NOW, A LOT OF TIMES I HAVE
12 THE LAPTOP SET UP ON A CART. I HAVE A PROJECTION DEVICE
13 AND I WILL PROJECT ONTO THE SCREEN THAT -- SO I'M
14 SHOWING THEM STEPS THAT I TAKE AND -- BUT I'M --
15 PROBABLY THE MAJORITY OF THE TIME I JUST SAY IT OVER AND
16 OVER AGAIN TO EACH PORTION THAT I'M TALKING TO BECAUSE
17 THEY WON'T LISTEN AS A GROUP. THAT IS JUST FOR
18 TEENAGERS, AND THAT IS BECAUSE OF THE ROOM, THE WAY IT
19 IS SET UP, TOO. IT IS HARD. IF SOMEBODY IS SITTING ON
20 THE BACK ROW OF THAT SIDE IT IS HARD TO SEE ME UP HERE.
21 SO IF I SAY, REMEMBER TO USE QUOTATION MARKS ON THAT,
22 THEN I HAVE TO SAY IT PROBABLY -- IF THERE ARE 25 KIDS
23 IN THERE, I WILL PROBABLY SAY IT 20, 30 TIMES.

24 Q. WHAT RESEARCH SKILLS DO YOU TEACH THE STUDENTS?

25 A. WELL, WE TALK ABOUT THINKING ABOUT WHAT THEY

1 LOOK UP. I THINK PEOPLE THINK THAT TEENAGERS ARE REALLY
2 GOOD WITH THE INTERNET, AND THEY ARE GOOD WITH THE
3 INTERNET BUT THEY ARE NOT GOOD AT SEARCHING, BECAUSE
4 THEY WILL JUST PUT IN SOMETHING LIKE -- IF YOU ARE
5 TALKING ABOUT THE ELECTION NEXT TUESDAY, THEY WILL PUT
6 IN VOTING AND THEY WILL GET MILLIONS OF THINGS WHEN THEY
7 REALLY WANT TO TALK ABOUT OUR CANDIDATE IN KENTUCKY,
8 INSTEAD OF PUTTING IN THAT PERSON'S NAME. SO I TRY TO
9 TALK TO THEM ABOUT THINKING ABOUT WHAT THEY DO BEFORE
10 THEY START. WHAT KIND OF NARROWING THINGS CAN YOU THINK
11 OF? HOW CAN YOU MAKE THAT MORE NARROW? SOMETIMES THEY
12 DON'T REALIZE THAT THEY'VE GOTTEN -- I SAID, YOU GOT 15
13 MILLION HITS THERE, THAT IS REALLY GOOD. NOW WHICH ONE
14 ARE YOU GOING TO PICK OUT? HOW LONG ARE YOU GOING TO
15 SIT THROUGH THAT? AND WE TALK ABOUT NARROWING YOUR
16 SEARCH DOWN AND DIFFERENT TECHNIQUES THAT I KNOW TO DO
17 THAT.

18 Q. HOW DO YOU TEACH THE STUDENTS TO NARROW THEIR
19 SEARCH?

20 A. DIFFERENT SEARCH ENGINES DO DIFFERENT THINGS,
21 AND I USE -- WHEN WE USE GOOGLE, WHICH SEEMS LIKE THEIR
22 FAVORITE ONE, I TALK TO THEM ABOUT USING A PHRASE AND
23 QUOTATION MARKS. IF YOU USE A PHRASE IN QUOTATION MARKS
24 THEN THE SEARCH ENGINE LOOKS FOR THAT PHRASE, WHICH
25 HELPS A LOT. IF YOU ARE WANTING TO TALK ABOUT

1 KENTUCKY'S ELECTION, CAROL HUBBARD, IF YOU PUT THOSE
2 WORDS IN THERE, IT'S GOING TO FIND IT. I USED TO TALK A
3 LOT ABOUT BOOLEAN SEARCHING, WHICH IS KIND OF LIBRARY
4 TERM FOR AND, OR OR NOT. I USED TO TALK ABOUT THAT
5 MORE, BUT GOOGLE AUTOMATICALLY PUTS AN AND IN SO IF YOU
6 PUT IN KENTUCKY ELECTIONS, IT IS GOING TO COME UP NOT
7 JUST KENTUCKY ELECTION, BUT IT'S GOING TO COME UP WITH
8 KENTUCKY AND ELECTION, WHICH MEANS YOU HAVE A LOT MORE
9 THINGS TO LOOK AT.

10 Q. BESIDES TEACHING THE STUDENTS HOW TO NARROW
11 THEIR SEARCH, DO YOU TEACH THEM ANYTHING ELSE WITH
12 REGARD TO HOW TO PROPERLY SEARCH ON THE INTERNET?

13 A. YES. I THINK -- ONE OF THE THINGS THAT I TALK
14 TO THEM ABOUT IS WHY YOU WOULD PICK THAT CERTAIN SITE TO
15 USE AS YOUR SOURCE. WE TALK ABOUT VALIDATING THE
16 SOURCES AND LOOKING AT THE END OF THE ADDRESSES, SEE IF
17 IT'S A COMMERCIAL SITE OR EDUCATIONAL SITE OR
18 ORGANIZATIONAL SITE AND THEN TALKING TO THEM ABOUT HOW
19 THAT IS NOT ALWAYS -- YOU CAN'T ALWAYS SAY YOU SHOULD
20 NOT USE A COMMERCIAL SITE FOR A SOURCE BECAUSE
21 NATIONALGEOGRAPHIC.COM IS A WONDERFUL SITE. SO YOU HAVE
22 TO USE YOUR HEAD. WE TALK ABOUT CRITICAL THINKING
23 SKILLS, BUT I PROBABLY WOULD NEVER SAY I'M TALKING TO
24 YOU ABOUT CRITICAL THINKING SKILLS. THEY WOULDN'T
25 PROBABLY NEVER SAY MRS. KIRK SAID I HAD TO HAVE CRITICAL

1 THINKING SKILLS. SHE WOULD SAY, USE YOUR HEAD ABOUT
2 THIS. IF THEY TYPE IN A WORD AND THEY MISSPELL IT, THEY
3 FIND THAT ON ANOTHER SITE, AND I SAY, YOU KNOW, YOU HAVE
4 MISSPELLED THIS WORD. WELL, I FOUND IT. WELL, HOW MUCH
5 DO YOU GIVE THAT PERSON -- IF THEY HAVE MISSPELLED THE
6 WORD, TOO, DO YOU THINK THEY ARE REALLY AN AUTHORITY ON
7 THAT SUBJECT? SO WE TALK A LOT ABOUT THOSE THINGS THAT
8 I GUESS WITH TEENAGERS YOU CAN JUST -- I GUESS I -- I
9 DON'T THINK I TALK DOWN TO THEM. I THINK I TALK AT
10 THEIR LEVEL. I SAY YOU HAVE TO THINK ABOUT THIS STUFF.
11 YOU CAN'T TAKE EVERYBODY'S WORD FOR THIS.

12 Q. DO YOU TEACH STUDENTS HOW TO AVOID INAPPROPRIATE
13 MATERIALS?

14 A. YES.

15 Q. HOW DO YOU DO THAT?

16 A. EACH STUDENT SIGNS AN ACCEPTABLE USE POLICY FOR
17 OUR DISTRICT AND THEIR PARENTS ALSO SIGN IT, BUT I THINK
18 THAT WHAT I TALK TO THEM ABOUT IS BEING APPROPRIATE FOR
19 SCHOOL BECAUSE I TRY TO LET THEM KNOW THAT THINGS THAT
20 THEY ARE INTERESTED IN ARE VERY NORMAL THINGS TO BE
21 INTERESTED IN, BUT IT'S JUST NOT APPROPRIATE FOR SCHOOL.
22 SO IF WE EVER HAVE SOMETHING THAT COMES UP, SAY -- I
23 DON'T KNOW, SOMETHING COMES UP THAT IS A LITTLE
24 QUESTIONABLE. THEN I SAY WELL, THIS IS, I'M NOT, I
25 DON'T REALLY GET TOO UPSET ABOUT IT BECAUSE THEY ARE

1 TEENAGERS AND THAT IS NORMAL, BUT I JUST SAY THIS IS
2 JUST NOT APPROPRIATE FOR SCHOOL AND I TALK TO THEM ABOUT
3 WHY WE HAVE THE NICE COMPUTERS THAT WE HAVE IS BECAUSE
4 THE DEPARTMENT OF EDUCATION PROVIDES IT FOR US AND THAT
5 THE DEPARTMENT OF EDUCATION IS PAID FOR OUT OF PARENT'S
6 TAX MONEY, AND THEY PROBABLY WOULD NOT WANT TO BE USING
7 THOSE. I TALK TO THEM ABOUT WASTING RESOURCES, EVEN
8 THOUGH IT'S REALLY NOT A GOOD WORD, IT IS NOT GOING TO
9 WASTE, BUT THAT IS THE WAY I EXPLAIN IT TO THEM.

10 Q. WOULD YOU SAY THAT YOU REACH ALL STUDENTS OF
11 YOUR SCHOOL AT ONE POINT OR ANOTHER?

12 A. YES.

13 Q. SO YOU TEACH ALL STUDENTS IN YOUR SCHOOL HOW TO
14 PROPERLY USE THE INTERNET?

15 A. YES.

16 Q. EARLIER YOU REFERRED TO THE ACCEPTABLE USE
17 POLICY. GENERALLY SPEAKING, WHAT'S THE ACCEPTABLE USE
18 POLICY AT REIDLAND?

19 A. IT'S A POLICY THAT WAS INTRODUCED BY THE BOARD
20 OF EDUCATION, PROBABLY BY THE DISTRICT TECHNOLOGY
21 COORDINATOR, AND IT SAYS THAT THEY AGREE THAT THEY WILL
22 NOT USE THE SCHOOL RESOURCES IN A MANNER THAT IS
23 INAPPROPRIATE FOR SCHOOL.

24 Q. ARE PARENTS REQUIRED TO SIGN THIS?

25 A. YES.

1 Q. ARE STUDENTS REQUIRED TO SIGN THIS?

2 A. YES.

3 Q. WHO IS COVERED BY THE ACCEPTABLE USE POLICY?

4 A. EVERY PERSON IN THE SCHOOL. EVERY TEACHER, ANY
5 CUSTODIAN, ANYBODY THAT HAS INTERNET ACCESS IS REQUIRED
6 TO HAVE THAT ON FILE. I ACTUALLY KEEP THAT ON FILE IN
7 MY LIBRARY.

8 Q. DOES THE ACCEPTABLE USE POLICY COVER SEXUALLY
9 EXPLICIT MATERIALS?

10 A. YES.

11 Q. HOW DOES IT COVER THIS?

12 A. I THINK THAT KIDS WOULD REALIZE THAT SEXUALLY
13 EXPLICIT MATERIAL IS INAPPROPRIATE FOR A SCHOOL
14 ACTIVITY.

15 Q. ARE THERE PENALTIES FOR STUDENTS WHO VIOLATE THE
16 ACCEPTABLE USE POLICY?

17 A. YES.

18 Q. WHAT ARE THOSE?

19 A. WELL, IT'S ACCORDING TO WHAT THE VIOLATION IS.
20 IF IT IS SOMETHING -- IF IT ACCIDENTALLY -- IF SOMEBODY
21 PUTS IN SOMETHING AND IT ACCIDENTALLY COMES UP OR THEY
22 MISTYPE OR MISSPELL SOMETHING SO IT COMES UP
23 ACCIDENTALLY THEN THE ONLY PENALTY IS I SAY TRY TO BE
24 MORE CAREFUL. I TALK TO THEM ABOUT LOOKING AT -- AND
25 THAT MIGHT BE A TIME WHEN THE .COM CONVERSATION WOULD

1 COME UP THAT, YOU CAN'T JUST PUT ANYTHING .COM AND
2 EXPECT TO GET A RELIABLE SOURCE. THE OTHER THING THAT
3 MIGHT HAPPEN IS THEY MIGHT GET -- I CALL IT GROUNDING
4 FROM THE COMPUTER BECAUSE THAT IS A WORD THAT TEENAGERS
5 USE, IF THEY GET GROUNDED FROM HOME, THEY CAN'T GO OUT.
6 SO IF THEY GET GROUNDED FROM THE COMPUTERS IT MIGHT BE
7 THAT THEY DON'T GET TO BE ON THE COMPUTERS FOR A WEEK OR
8 TWO WEEKS, OR ACCESS CAN BE TAKEN AWAY FROM THEM.

9 Q. DO YOU KNOW WHETHER THE ACCEPTABLE USE POLICIES
10 AND THE INSTRUCTION AND TEACHING THAT YOU PROVIDE REDUCE
11 INCIDENCE OF STUDENTS ACCESSING INAPPROPRIATE MATERIALS
12 ON THE SCHOOL COMPUTERS?

13 A. YES.

14 Q. HOW DO YOU KNOW THIS?

15 A. WE JUST DO NOT HAVE TOO MUCH TROUBLE WITH IT AT
16 OUR SCHOOL. I HAVE TO THINK THAT IT'S BECAUSE OF THOSE
17 THINGS.

18 Q. DO THE ACCEPTABLE USE POLICIES AND THE TRAINING
19 YOU PROVIDE REDUCE INCIDENCE OF STUDENTS ACCESSING
20 INAPPROPRIATE MATERIALS?

21 A. YES.

22 Q. DOES THE DISTRICT IN WHICH YOU WORK USE CONTENT
23 FILTERING SOFTWARE IN THE SCHOOLS?

24 A. YES.

25 Q. HOW DO YOU KNOW THAT?

1 A. BECAUSE IT'S ON EVERY COMPUTER.

2 Q. AS A LIBRARIAN, ARE YOU AWARE OF ANY FEDERAL OR
3 STATE LAWS THAT REQUIRE THE USE OF FILTERING SOFTWARE IN
4 SCHOOLS?

5 A. YES.

6 Q. WHICH ONES?

7 A. KENTUCKY HAS A LAW THAT REQUIRES US TO HAVE
8 FILTERING AND THE CIPA LAW REQUIRES FILTERING IF YOU
9 RECEIVE E RATE FUNDS, WHICH WE DO.

10 Q. WHICH PRODUCT -- CONTENT FILTERING PRODUCT DOES
11 THE DISTRICT USE?

12 A. WE USE A PRODUCT THAT IS CALLED ST. BERNARD, AND
13 IT'S CALLED IPRISM. I THINK ST. BERNARD HAS LOTS OF
14 DIFFERENT PACKAGES, BUT THE ONE FOR SCHOOL IS CALLED
15 IPRISM.

16 Q. DO YOU KNOW WHICH COMPUTERS IN THE SCHOOL ARE
17 COVERED BY THE CONTENT FILTER?

18 A. EVERY COMPUTER.

19 Q. HOW DO YOU KNOW THAT?

20 A. WELL, I ACTUALLY HAVE WORKED ON EVERY COMPUTER
21 IN THE SCHOOL AND IF THEY ARE NOT COVERED BY IT, THEN
22 THEY DON'T -- AGAIN, THEY CAN'T GET OUT TO THE INTERNET.
23 IF SOMEONE HAS UNCHECKED THE CHECK MARK IN THERE, THEN
24 THEY DON'T GO ANYWHERE BUT TO THE SCHOOL WEB PAGE AND
25 THEN THEY CAN'T GO ANY FARTHER THAN THAT.

1 Q. DO YOU KNOW IF STUDENTS CAN CIRCUMVENT THE
2 FILTER THAT IS USED?

3 A. WE HAVE NOT FOUND THAT TO BE IN OUR EXPERIENCE.

4 Q. COULDN'T A STUDENT JUST UNINSTALL THE SOFTWARE?

5 A. IF THEY DO, IF THEY TRY TO UNINSTALL THE
6 SOFTWARE, THEN IT JUST -- IT DOES NOT GO PAST THAT
7 MCCrackEN COUNTY WEB PAGE, THE SCHOOL DISTRICT'S WEB
8 PAGE. IT WON'T GO PAST THERE. IT WILL SAY, THIS PAGE
9 CANNOT BE DISPLAYED.

10 Q. HAVE YOU HAD ANY REPORTS OF STUDENTS TRYING TO
11 CIRCUMVENT THE SOFTWARE IN THE PAST THREE YEARS?

12 A. NO.

13 Q. HAVE YOU SEEN ANY EVIDENCE THAT STUDENTS HAVE
14 CIRCUMVENTED THE FILTER IN THE PAST THREE YEARS?

15 A. NO.

16 Q. LET'S TALK A LITTLE BIT MORE ABOUT THE FILTER.
17 DOES THE FILTER USED BY THE SCHOOL DISTRICT LIMIT ACCESS
18 TO THE WORLDWIDE WEB?

19 A. YES.

20 Q. DOES IT BLOCK ACCESS TO PERSONAL E-MAILS, SUCH
21 AS YAHOO E-MAIL OR LYCOS, L Y C O S?

22 A. YES.

23 Q. DOES IT BLOCK PEER-TO-PEER NETWORKS?

24 A. YES.

25 Q. DOES IT BLOCK CHAT PROGRAMS?

1 A. YES.

2 Q. DOES IT BLOCK INSTANT MESSENGER PROGRAMS?

3 A. YES.

4 Q. FROM THE USER'S PERSPECTIVE, WHAT WOULD YOU SEE
5 IF YOU ATTEMPTED TO ACCESS A SITE THAT WAS BLOCKED BY
6 THE FILTER?

7 A. IT SAYS, THIS SITE IS BLOCKED BECAUSE OF -- AND
8 IT WILL GIVE THE REASON WHY THE CATEGORY THAT THAT SITE
9 IS -- THAT SITE HAS BEEN BLOCKED. AND AT THE BOTTOM
10 PART IT WILL SAY IF YOU RECEIVE THIS MESSAGE -- IF YOU
11 BELIEVE YOU RECEIVED THIS MESSAGE IN ERROR, PLEASE
12 CONTACT, AND THEN IT HAS THE NUMBER FOR OUR LEAD
13 TECHNICIAN IN OUR DISTRICT WHERE THEY CAN CALL AND ASK
14 THAT SITE TO BE UNBLOCKED.

15 Q. DO YOU HAVE AN UNDERSTANDING OF THE DIFFERENT
16 TYPES OF CATEGORIES OF MATERIAL THAT THE FILTER IS
17 CAPABLE OF BLOCKING?

18 A. YES.

19 Q. GENERALLY SPEAKING WHAT ARE THOSE?

20 A. ANYTHING THAT IS PORNOGRAPHIC OR ADULT OR
21 SEXUALITY BUT NOT SEXUAL HEALTH, THERE IS A DIFFERENCE.
22 WE ALSO BLOCK SPYWARE, MALWARE, PHISHING DOWNLOADS AND
23 DIGITAL MUSIC, DIGITAL VIDEO AND GAMING OR GAMBLING
24 SITES. THOSE ARE SOME EXAMPLES. I KNOW THERE ARE MORE
25 THAN THAT. SOME OF THEM ARE NOT INAPPROPRIATE. THEY

1 ARE NOT BLOCKED BECAUSE THEY ARE INAPPROPRIATE. THEY
2 ARE BLOCKED BECAUSE OF BANDWIDTH. WE HAVE A RESTRICTION
3 BY THE STATE HOW MUCH BANDWIDTH EACH SCHOOL CAN HAVE.
4 THEY ARE NOT INAPPROPRIATE. THEY ARE NOT
5 TECHNOLOGICALLY AVAILABLE.

6 Q. CAN A DISTRICT CHOOSE WHICH CATEGORIES TO BLOCK?

7 A. YES.

8 Q. DO YOU KNOW WHETHER A STUDENT OR A TEACHER CAN
9 ADD OR REMOVE A WEBSITE FROM THE FILTER?

10 A. YES. NOT -- THEY CAN'T ON THEIR OWN, BUT THEY
11 CAN CONTACT THE LEAD TECHNICIAN AND HE CAN DO THAT, IF
12 HE SO CHOOSES TO.

13 Q. THESE ARE BOTH TEACHERS AND STUDENTS?

14 A. YES.

15 Q. HOW DO YOU KNOW THIS?

16 A. WELL, WE TALK PROBABLY EVERY OTHER DAY OR SO,
17 BUT -- NOT TO DO THAT, BUT HE IS VERY ACCEPTABLE TO --
18 IF HE FEELS LIKE -- IF A TEACHER FEELS LIKE SOMETHING
19 SHOULD NOT BE BLOCKED, HE CAN UNBLOCK IT WITH JUST A
20 CLICK. STUDENTS WOULD HAVE TO PROBABLY ASK THROUGH ME
21 OR THE PRINCIPAL TO ASK IT. HE PROBABLY WOULD NOT --
22 BECAUSE MOST OF WHEN PEOPLE ARE ASKING FOR IT TO BE
23 UNBLOCKED, HE TOLD ME ABOUT A FEW EXAMPLES, IT'S JUST
24 BECAUSE OF THE BANDWIDTH. THEY SAY, WELL, IT'S NOT
25 INAPPROPRIATE. I'M NOT DOING ANYTHING WRONG, AND THEY

1 ARE NOT. THEY MIGHT HAVE TO GO WITH THE EXPLANATION
2 THAT WE JUST CAN'T DO IT BECAUSE OF TECHNOLOGY. AND
3 THEN THEY ARE USUALLY VERY UNDERSTANDING ABOUT THAT.

4 Q. IS THE FILTER THE SAME FOR EVERY SCHOOL IN THE
5 DISTRICT?

6 A. YES.

7 Q. WOULD YOU SAY THAT THE FILTERING PRODUCT THAT IS
8 USED BY YOUR SCHOOL HAS REDUCED STUDENTS' ACCESS TO
9 INAPPROPRIATE MATERIALS?

10 A. YES.

11 Q. HOW DO YOU KNOW?

12 A. WELL, WE HAD AN INCIDENT IN OUR SCHOOL LAST YEAR
13 THAT WAS REALLY TRAGIC FOR OUR SCHOOL AND IT WAS A
14 TEACHER THAT HAD BEEN THERE FOR NOT THE WHOLE YEAR BUT
15 HAD -- SHE WAS A NEW TEACHER THAT YEAR, HAD BEEN IN
16 PORNOGRAPHY VIDEOS WHEN SHE WAS IN HER 20S, LIKE 10 OR
17 12 YEARS BEFORE THAT. SOMEHOW, NOT OVER THE INTERNET,
18 NOT AT SCHOOL, BUT SOMEHOW SOME STUDENTS GOT WIND OF
19 THIS AND GOT ONE OF HER MOVIES AND WATCHED IT AFTER
20 SCHOOL. WELL, TEACHERS HEARD THAT TALK AND I HEARD IT
21 FROM ANOTHER TEACHER. I THOUGHT, OH, THAT JUST CAN'T BE
22 TRUE. ANOTHER TEACHER HEARD IT FROM STUDENTS THAT FELT
23 LIKE THERE WAS SOME REAL TRUTH TO IT. SHE REPORTED IT
24 TO THE PRINCIPAL AND SURE ENOUGH, IT WAS TRUE. AND THIS
25 WOMAN HAD MADE LOTS OF VIDEOS. SO IF WE HADN'T -- SO

1 WHEN HER NAME CAME OUT AS HER STAGE NAME, THEN THERE
2 WERE LOTS OF PEOPLE TRYING TO FIND STUFF ON THE INTERNET
3 ABOUT HER.

4 Q. HOW DO YOU KNOW THAT?

5 A. BECAUSE WE JUST -- I MEAN, WE SAW IT. WE JUST
6 HAD -- IT WAS LUCKILY BLOCKED SO THEY DIDN'T SEE IT, BUT
7 WE JUST HAD TO SAY, YOU CAN'T LOOK THAT UP AT SCHOOL.
8 OF COURSE, I'M SURE THAT TEACHERS AND STUDENTS BOTH DID
9 IT AT HOME, BUT THAT WAS JUST REALLY UNFORTUNATE. IF WE
10 HAD NOT HAD THE FILTERING SOFTWARE, I THINK WE WOULD
11 PROBABLY WOULD HAVE HAD TO SHUT THE COMPUTERS DOWN FOR A
12 WHILE. BECAUSE IT IS NORMAL AND NATURAL FOR SOMETHING
13 THAT SHOCKING, KIDS ARE WANT TO LEARN ABOUT IT AND LOOK
14 AT IT AND SEE ABOUT IT. I DON'T THINK THAT IS
15 UNREASONABLE TO THINK THAT THEY WILL, BECAUSE THAT IS
16 TEENAGERS AND THEY ARE CURIOUS.

17 Q. BESIDES THE INCIDENT THAT YOU JUST DESCRIBED,
18 HAVE YOU HAD REPORTS OF STUDENTS ATTEMPTING TO ACCESS
19 INAPPROPRIATE MATERIALS DESPITE THE INTERNET CONTENT
20 FILTER THAT IS IN USE AT REIDLAND?

21 A. NOT INAPPROPRIATE IN THE PORNOGRAPHY KIND OF
22 FIELD BUT INAPPROPRIATE AS THE TECHNOLOGY WITH THE
23 BANDWIDTH. I HAVE HAD PEOPLE SAY THEY ARE TRYING TO
24 PLAY A GAME OR SOMETHING LIKE THAT.

25 Q. DURING THE PAST TWO OR THREE YEARS, HAVE YOU HAD

1 ANY REPORTS OF STUDENTS THAT WERE ACTUALLY SUCCESSFUL IN
2 ACCESSING INAPPROPRIATE MATERIAL DESPITE THE CONTENT
3 FILTER?

4 A. NO.

5 Q. HAVE YOU PERSONALLY EVER ASKED SITES OR OTHER
6 CONTENT TO BE BLOCKED DESPITE THE FILTER?

7 A. YES.

8 Q. COULD YOU GIVE --

9 A. I DON'T REMEMBER ANYTHING IN PARTICULAR BUT I
10 JUST REMEMBER -- THERE WAS SOMETHING THAT WAS, IT WAS
11 JUST REALLY, IT WASN'T PORNOGRAPHIC BUT IT WAS NASTY
12 HUMOR THAT WAS JUST DISGUSTING STUFF THAT BOYS LOVE,
13 ESPECIALLY NINTH GRADE BOYS. IT WAS STUFF THAT I DID
14 NOT FEEL WAS APPROPRIATE FOR SCHOOL. IT WAS JUST LOCKER
15 ROOM KIND OF JOKES THAT WERE JUST -- NOT EVEN NASTY LIKE
16 PORNOGRAPHY BUT JUST NASTY WITH BODY FUNCTIONS AND JUST
17 REALLY GROSS THINGS THAT THEY THOUGHT WERE HILARIOUS. I
18 DIDN'T THINK THAT WAS REALLY THAT FUNNY.

19 Q. HOW DID YOU EXPLAIN THAT YOU ASKED FOR THOSE
20 SITES TO BE BLOCKED?

21 A. I TOLD THEM IN THIS LIBRARY WE ARE PG 13. WE
22 ARE GOING TO GO WITH PG 13 ON OUR THINGS. YOU KNOW WHAT
23 THAT MEANS BECAUSE IT'S A MOVIE TERM SO ALL THE KIDS,
24 THEY CAN FIGURE OUT EXACTLY WHAT PG 13 IS.

25 Q. HAVE YOU HAD ANY REPORTS IN THE PAST TWO YEARS

1 OF STUDENTS THAT WERE NOT ABLE TO ACCESS NECESSARY AND
2 APPROPRIATE SITES BECAUSE OF THE INTERNET CONTENT FILTER
3 THAT IS IN USE AT REIDLAND?

4 A. THE OTHER DAY WE WERE -- THE PSYCHOLOGY CLASS
5 WAS IN AND WE WERE DOING SOME RESEARCH ON DIFFERENT
6 TOPICS. A GIRL WAS LOOKING UP MEDITATION AND ONE OF THE
7 SITES THAT SHE FOUND WAS BLOCKED BECAUSE IT SAID
8 ALTERNATIVE NEW AGE. AND SO I SAID LET'S SEE WHAT ELSE
9 YOU CAN FIND. SO SHE WENT DOWN THE SEARCH ENGINE ABOUT
10 FOUR MORE SITES AND FOUND PLENTY OF THINGS SO IT WAS --
11 THAT SITE WAS BLOCKED, AND I'M NOT SURE EXACTLY WHY, BUT
12 THERE WAS PROBABLY 20,000 MORE THAT SHE COULD LOOK AT
13 THAT, YOU KNOW, WE DIDN'T GET THAT MANY, BUT WE LOOKED
14 AT A LOT MORE. SO I HAVE TOLD THE KIDS IF THEY FIND
15 SOMETHING THAT IS ABSOLUTELY THE ONLY ONE THAT THEY
16 COULD EVER FIND THAT HAS THAT ON THERE, THEN WE CAN TALK
17 ABOUT UNBLOCKING IT. BUT USUALLY THERE IS SO MUCH OUT
18 THERE WE DON'T HAVE TO GO TO THAT STEP.

19 Q. WERE THERE ANY SUCH INSTANCES WHEN YOU WERE AT
20 HEATH?

21 A. YES. THIS WAS -- WE HAD A DIFFERENT FILTERING
22 SOFTWARE AND THIS WAS WHEN WE FIRST GOT IT. IN 1997 AT
23 HEATH HIGH SCHOOL THERE WAS A SCHOOL SHOOTING AND THREE
24 OF OUR STUDENTS WERE KILLED, AND FIVE OF THEM WERE
25 WOUNDED AND SO THE BLOCK ON WEAPONS, THEY RATCHETED IT

1 UP TO THE HIGHEST YOU COULD GET. THIS WAS PROBABLY TWO
2 YEARS LATER, AND I HAD A STUDENT THAT WANTED TO DO A
3 PAPER ON THE DIFFERENCE BETWEEN WHAT WEAPONS WERE
4 CARRIED BY THE SOLDIERS IN WORLD WAR II TO THE ONE THAT
5 HAD BEEN CARRIED IN VIETNAM, CAUSE THEY READ A BOOK
6 ABOUT THAT THAT THEY HAD GOTTEN M-16S OR SOMETHING THAT
7 WAS DIFFERENT THAN WHAT THEY HAD. AND SO EVERY SITE
8 THAT WE FOUND WAS BLOCKED AT THAT TIME.

9 Q. WHAT DID YOU DO?

10 A. WELL, I ACTED VERY UGLY. I CALLED THE
11 TECHNICIAN. I SAID THIS IS RIDICULOUS, THIS IS -- YOU
12 ARE DOING A KNEE JERK REACTION TO AN INCIDENT. I WAS
13 THERE. I KNOW ALL THE THINGS THAT HAPPENED WITH THE
14 SHOOTING, BUT WE CAN'T BAN GUNS IN THE SCHOOL THAT -- I
15 MEAN WE HAVE BOYS THAT HUNT, WE HAVE BOYS THAT HUNT WITH
16 THEIR FATHERS. IT'S NOT -- BECAUSE SOMEONE MISUSED IT
17 YOU DON'T WIPE IT ALL OUT.

18 Q. WOULD YOU SAY THAT YOU ARE SATISFIED WITH THE
19 CONTENT FILTERING PROGRAM THAT IS USED IN YOUR DISTRICT?

20 A. YES. I THINK THIS ONE IS MUCH BETTER THAN THE
21 ONE WE HAD BEFORE.

22 MR. VAN KWAWEGEN: NO FURTHER QUESTIONS,
23 YOUR HONOR.

24 THE COURT: CROSS EXAMINE.

25 MR. CAMPBELL: THANK YOU, YOUR HONOR.

1 CROSS EXAMINATION

2 BY MR. CAMPBELL:

3 Q. MAY IT PLEASE THE COURT, MY NAME IS ISAAC
4 CAMPBELL AND I REPRESENT, I'M AN ATTORNEY AT THE UNITED
5 STATES DEPARTMENT OF JUSTICE. I REPRESENT THE DEFENDANT
6 IN THIS MATTER.

7 GOOD AFTERNOON, MISS KIRK, HOW ARE YOU?

8 A. I'M OKAY. HOW ARE YOU.

9 Q. DOING WELL.

10 A FEW QUESTIONS FOR YOU AND LET ME SAY
11 IT'S NICE TO MEET YOU IN PERSON, HAVING SPOKEN TO YOU
12 LAST NIGHT. YOUR SCHOOL USES A FILTERING PRODUCT,
13 IPRISM, CORRECT?

14 A. YES.

15 Q. AND --

16 THE COURT: SPELL THAT PLEASE.

17 MR. CAMPBELL: LOWER CASE I, P-R-I-S-M,
18 IPRISM.

19 THE COURT: THANK YOU.

20 BY MR. CAMPBELL:

21 Q. THE IPRISM FILTERING PRODUCT YOUR SCHOOL USES IS
22 AN ENTERPRISE FILTERING PRODUCT, ISN'T IT?

23 A. I'M NOT SURE I KNOW WHAT THAT MEANS.

24 Q. WELL, YOU TESTIFIED EARLIER THAT THIS WAS A
25 PRODUCT THAT WAS MARKETED FOR SCHOOL USE, IS THAT

1 CORRECT?

2 A. YES.

3 Q. THE IPRISM FILTERING PRODUCT YOUR SCHOOL USES
4 RUNS OFF A SERVER?

5 A. A PROXY SERVER.

6 THE COURT: PROXY SERVER?

7 MR. CAMPBELL: YES. YES. YOUR HONOR.

8 BY MR. CAMPBELL:

9 Q. AND THE IPRISM FILTERING PRODUCT YOUR SCHOOL
10 USES SERVICES YOUR ENTIRE DISTRICT, DOESN'T IT?

11 A. RIGHT.

12 Q. THE SCHOOL DISTRICT YOU WORK IN HAS A LEAD
13 TECHNICIAN THAT HANDLES FILTER INSTALLATION, CORRECT?

14 A. YES.

15 Q. AND YOU MUST GO THROUGH THE LEAD TECHNICIAN TO
16 ADD OR REMOVE A RESTRICTED SITE, ISN'T THAT CORRECT?

17 A. YES.

18 Q. YOU MENTIONED THERE ARE 12 SCHOOLS IN YOUR
19 DISTRICT?

20 A. YES.

21 Q. THE 12 SCHOOLS IN YOUR AREA ALSO HAVE TWO
22 TECHNICIANS TO SERVICE THOSE SCHOOLS?

23 A. RIGHT.

24 Q. EACH SCHOOL HAS A TECHNICAL COORDINATOR, ISN'T
25 THAT CORRECT?

1 A. YES.

2 Q. YOU DON'T KNOW THE COST OF THE IPRISM PRODUCT
3 THAT YOUR SCHOOL USES, DO YOU?

4 A. NO, I DON'T.

5 Q. BUT YOU KNOW THAT THE COST OF THE PRODUCT IS NOT
6 PAID AT THE SCHOOL LEVEL?

7 A. THAT'S RIGHT. IT'S PAID AT THE CENTRAL OFFICE
8 LEVEL.

9 Q. AND SO IT IS PAID AT THE DISTRICT LEVEL?

10 A. BOARD OF EDUCATION, RIGHT.

11 Q. BEFORE YOUR SCHOOL DISTRICT BEGAN USING IPRISM,
12 THEY USED A FILTERING PRODUCT CALLED IGEAR, ISN'T THAT
13 RIGHT?

14 A. YES.

15 Q. IGEAR IS LOWER CASE I-G-E-A-R. YOU DON'T KNOW
16 WHY YOUR SCHOOL STOPPED USING IGEAR, DO YOU?

17 A. NO, I DON'T.

18 Q. AND YOU DON'T KNOW WHY YOUR SCHOOL DISTRICT
19 BEGAN USING IPRISM, DO YOU?

20 A. NO.

21 Q. BEFORE USING IGEAR, YOUR DISTRICT DID NOT USE
22 INTERNET FILTERS, DID IT?

23 A. NO, IT DID NOT.

24 Q. AND YOUR SCHOOL DIRECT CONDUCTED NO STUDIES ON
25 THE AMOUNT OF SEXUALLY EXPLICIT MATERIALS MINORS

1 ENCOUNTERED BEFORE FILTERS WERE IMPLEMENTED IN YOUR
2 DISTRICT?

3 A. NO.

4 Q. DO YOU KNOW WHAT THE TERM OVERBLOCKING MEANS?

5 A. I CAN GUESS WHAT IT MEANS.

6 Q. WILL YOU GIVE ME YOUR DEFINITION?

7 A. I WOULD SAY THAT OVERBLOCKING WOULD BE BLOCKING
8 MORE THAN NECESSARY.

9 Q. AND WHEN YOU SAY MORE THAN NECESSARY, WHAT DO
10 YOU MEAN?

11 A. SO THAT MAYBE OVERBLOCKING WOULD NOT LET YOU
12 HAVE SEXUAL HEALTH SITES OR SOMETHING LIKE THAT.

13 Q. USING YOUR DEFINITION OF OVERBLOCKING, THERE
14 HAVE BEEN NO STUDIES AT YOUR SCHOOL OF OVERBLOCKING
15 RATES SINCE THE IPRISM FILTER HAS BEEN INSTALLED, ISN'T
16 THAT CORRECT?

17 A. YES.

18 Q. THERE HAVE BEEN NO STUDIES OF OVERBLOCKING RATES
19 IN YOUR DISTRICT SINCE THE IPRISM FILTER WAS INSTALLED,
20 ISN'T THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. DO YOU KNOW WHAT THE TERM UNDERBLOCKING MEANS?

23 A. I CAN GUESS.

24 Q. AND WHAT WOULD YOU GUESS?

25 A. I WOULD SAY THAT THAT WOULD LET MORE SITES IN

1 THAT WERE INAPPROPRIATE. UNDERBLOCKING WOULD BE THAT
2 THEY WOULD NOT BLOCK ENOUGH SITES.

3 Q. USING THE DEFINITION THAT YOU JUST GAVE OF
4 UNDERBLOCKING, THERE HAVE BEEN NO STUDIES AT YOUR SCHOOL
5 OF UNDERBLOCKING RATES SINCE THE IPRISM FILTERS HAD BEEN
6 INSTALLED, ISN'T THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. THERE HAVE BEEN NO STUDIES OF UNDERBLOCKING
9 RATES OF THE IPRISM FILTER AT YOUR DISTRICT SINCE THE
10 IPRISM FILTER WAS INSTALLED?

11 A. THAT'S TRUE.

12 Q. WHEN A CHILD ATTEMPTS TO ACCESS RESTRICTED
13 MATERIAL AT YOUR SCHOOL, IF IT IS BLOCKED BY THE FILTER,
14 THE CHILD RECEIVES A WEB PAGE INDICATING THE MATERIAL IS
15 BLOCKED, CORRECT?

16 A. THAT'S RIGHT.

17 Q. YOU DON'T ROUTINELY GENERATE REPORTS OF HOW
18 OFTEN STUDENTS ARE ATTEMPTING TO ACCESS INAPPROPRIATE
19 MATERIALS?

20 A. NO.

21 Q. YOU WOULD BE AWARE OF A PORNOGRAPHIC SITE THAT
22 DID NOT GET BLOCKED ONLY IF YOU FOUND IT OR IF IT WAS
23 REPORTED TO YOU, ISN'T THAT CORRECT?

24 A. YES.

25 MR. CAMPBELL: A MOMENT TO CONFER WITH

1 COUNSEL, YOUR HONOR.

2 THE COURT: YES.

3 (CONFERRING WITH COUNSEL.)

4 MR. CAMPBELL: NO FURTHER QUESTIONS.

5 THANK YOU, MISS KIRK.

6 THE COURT: THANK YOU.

7 ANY REDIRECT?

8 MR. VAN KWAWEGEN: NO FURTHER QUESTIONS,

9 YOUR HONOR.

10 THE COURT: MISS KIRK. THANK YOU. YOU

11 ARE EXCUSED.

12 THE WITNESS: THANK YOU.

13 THE COURT: PLEASE BE CAREFUL GETTING

14 DOWN.

15 (WITNESS EXCUSED.)

16 THE COURT: NEXT WITNESS, MR. HANSEN.

17 MR. HANSEN: WE HAVE ONE FURTHER LIVE

18 WITNESS TODAY. IN ORDER TO BREAK UP THE DEPOSITION

19 READING, WE SUGGEST THAT WE DO ONE DEPOSITION

20 DESIGNATION NEXT AND CALL THE WITNESS RIGHT AFTER THAT.

21 WE ARE READY WITH THE PAYCOM DEPOSITION DESIGNATIONS.

22 THE COURT: ALL RIGHT.

23 WE WILL DO THAT.

24 THE COURT: DID YOU WORK OUT -- HAVE THE

25 PARTIES WORKED OUT ANY OBJECTIONS TO THE PAYCOM

1 DEPOSITION?

2 MR. HANSEN: WE HAVE WORKED OUT ALL OF
3 THE PROBLEMS WITH BEGINNING THE READING. I DON'T KNOW
4 FRANKLY WHETHER DEFENSE ARE GOING TO OBJECT TO ANY
5 PARTICULAR PORTION OF THE TESTIMONY BUT ALL THE
6 CONFIDENTIALITY AND THOSE KIND OF ISSUES HAVE BEEN
7 WORKED OUT.

8 THE COURT: ARE THEY MARKED UP WITH A
9 COLOR CODE?

10 MR. HANSEN: THEY ARE, YOUR HONOR.

11 THE COURT: YOU HAVE A QUESTIONER AND
12 SURROGATE?

13 MR. HANSEN: THE EXACT SAME TEAM WE HAD
14 YESTERDAY.

15 THE COURT: THEY RECOVERED FROM --

16 MR. HANSEN: JUST BARELY I THINK IS THE
17 ANSWER TO THAT QUESTION.

18 THE COURT: DEFENSE ANTICIPATE ANY
19 OBJECTIONS TO READING OF THE COLOR-CODED MATERIAL.

20 MR. GOMEZ: YOUR HONOR, IF I MAY JUST
21 HAVE ONE MOMENT.

22 THE COURT: SURE.

23 MR. GOMEZ: YOUR HONOR, THE ONLY
24 OBJECTIONS THAT THE DEFENDANT WILL HAVE ARE TO TWO
25 EXHIBITS. NOT TO THE TESTIMONY OF THIS.

1 MR. VAN KWAWEGEN: IF I MAY ADDRESS THAT
2 POINT, YOUR HONOR. THIS IS THE FIRST TIME THAT THESE
3 OBJECTIONS HAVE BEEN RAISED, YOUR HONOR, DESPITE THE
4 PRETRIAL ORDERS 26 AND 27 INDICATING THAT THE DEFENDANT
5 WAS SUPPOSED TO OBJECT TO ANY EVIDENCE THAT WAS GOING TO
6 BE MOVED TO ADMIT AT TRIAL. AND SO OTHER THAN
7 RELEVANCY, PLAINTIFFS RESPECTFULLY SUBMIT THAT ANY
8 OBJECTIONS TO THE DOCUMENTS ARE WAIVED.

9 THE COURT: I DON'T KNOW WHAT THE
10 OBJECTIONS MIGHT BE OR WHAT DOCUMENTS. WE WILL DEAL
11 WITH THOSE AS THEY COME UP SO WE HAVE IT IN CONTEXT,
12 PLEASE.

13 MR. VAN KWAWEGEN: WE HAVE A COLOR-CODED
14 COPY FOR YOUR HONOR IF I MAY APPROACH?

15 THE COURT: YES, INDEED.

16 MR. VAN KWAWEGEN: WOULD YOUR HONOR CARE
17 TO HAVE A BRIEF INTRODUCTION AS TO THE NATURE OF THE
18 DEPOSITION DESIGNATIONS?

19 THE COURT: YES, PLEASE.

20 MR. VAN KWAWEGEN: THIS IS A DEPOSITION
21 OF JEFFREY HOWARD THALER, T-H-A-L-E-R. HE IS THE
22 GENERAL COUNSEL AND DIRECTOR OF BUSINESS DEVELOPMENT FOR
23 PAYCOM. PAYCOM IS AN INTERNET PAYMENT SERVICE PROVIDER,
24 YOUR HONOR, AN INTERMEDIARY THAT PROCESSES PAYMENT CARD
25 INFORMATION ON BEHALF OF WEB MERCHANTS AND WEBMASTERS.

1 THE COURT: YOU INTEND TO PROVE THE
2 PRACTICES AND PROCEDURES THAT THEY USE, SOMETHING CLOSE
3 TO THAT.

4 MR. VAN KWAWEGEN: YES.

5 THE COURT: WOULD THE QUESTIONER PLEASE
6 IDENTIFY HIMSELF FOR THE RECORD AND IDENTIFY THE
7 SURROGATE WITNESS, PLEASE.

8 MR. DOBBS: YES, YOUR HONOR. MY NAME IS
9 ELAN DOBBS, ATTORNEY FOR THE PLAINTIFFS. THE SURROGATE
10 WITNESS IS PAUL SERRITELLA.

11 MR. VAN KWAWEGEN: FINALLY, YOUR HONOR, I
12 FORGOT TO MENTION, THIS DEPOSITION TOOK PLACE ON MARCH
13 9, 2006.

14 MR. DOBBS: THE FIRST DESIGNATION IS FROM
15 PAGE 12, LINE 14 THROUGH PAGE 13 LINE 3 DESIGNATED BY
16 THE PLAINTIFFS.

17 Q. WHAT WAS THE NEXT POSITION YOU HELD AT PAYCOM?

18 A. IN 2003, I WAS PROMOTED TO DIRECTOR OF BUSINESS
19 DEVELOPMENT, AND I BELIEVE IT WAS IN THE SPRING, LIKE
20 APRIL -- MARCH OR APRIL, SOMEWHERE AROUND THERE.

21 Q. ARE YOU STILL THE DIRECTOR OF BUSINESS
22 DEVELOPMENT AT PAYCOM?

23 A. YES.

24 Q. DO YOU HOLD ANY OTHER POSITIONS AT PAYCOM?

25 A. WELL, I'M ALSO ONE OF THE IN-HOUSE COUNSEL, SO I

1 MAINTAIN MY POSITION AS AN ATTORNEY AS WELL.

2 Q. AND HAVE YOU MAINTAINED THE POSITION OF IN-HOUSE
3 COUNSEL FOR THE ENTIRE DURATION WITH PAYCOM?

4 A. YES, IT'S NOT A TITLE BUT IT'S A JOB FUNCTION.

5 MR. DOBBS: PAGE 44, LINE 25 THROUGH PAGE
6 45, LINE 4, DESIGNATED BY THE PLAINTIFFS.

7 Q. I'M JUST TRYING TO UNDERSTAND WHY SOMEBODY IS
8 REQUESTED TO CERTIFY THAT THEY ARE 18 YEARS OF AGE OR
9 OLDER IN ADDITION TO PROVIDING A CREDIT CARD NUMBER?

10 A. WE DON'T USE CREDIT CARDS NUMBER TO CERTIFY A
11 CUSTOMER'S AGE.

12 MR. DOBBS: PAGE 57 LINE 19 THROUGH PAGE
13 5038 LINE 15, DESIGNATED BY THE PLAINTIFFS.

14 Q. WHEN WE DISCUSSED CREDIT CARDS, WHAT DO YOU
15 UNDERSTAND THOSE TO MEAN?

16 A. WELL, CREDIT CARD IS SOMETIME USED AS GENERIC
17 TERM TO REFER TO ANY TYPE OF PAYMENT CARD. THAT'S KIND
18 OF THE VERNACULAR, BUT A CREDIT CARD STRICTLY SPEAKING
19 IS A CARD THAT ISSUES A LINE OF CREDIT AND YOU CAN
20 ACCESS THAT LINE OF CREDIT TO MAKE A PURCHASE.

21 Q. AND WHEN YOU REFER TO A PAYMENT CARD, WHAT DO
22 YOU MEAN?

23 A. PAYMENT CARD IS A CARD THAT YOU CAN USE TO MAKE
24 A PURCHASE. EACH OF THE CARDS THAT YOU SEE ON THAT
25 EXHIBIT NUMBER 2 THAT YOU LIST WOULD BE DIFFERENT TYPES

1 OF PAYMENT CARDS.

2 Q. SO WOULD THAT INCLUDE A CREDIT CARD THAT YOU
3 JUST DESCRIBED?

4 A. YES.

5 Q. WOULD THAT INCLUDE DIFFERENT TYPES OF PAYMENT
6 CARDS?

7 A. DEBIT CARDS.

8 Q. WOULD THAT INCLUDE ANY PREPAID CREDIT CARDS?

9 A. YES.

10 MR. DOBBS: 58 LINE 8, THROUGH PAGE 60.
11 LINE 22, DESIGNATED BY THE PLAINTIFFS.

12 Q. SO WHEN WE RETURN TO EXHIBIT NUMBER 2 AT THE TOP
13 OF THE PAGE WHERE THE LOGO SAYS VISA, WHAT TYPES OF
14 PAYMENT CARDS DOES THAT LOGO REFER TO?

15 A. ANY TYPE OF -- ANY PAYMENT CARD WITH A VISA
16 LOGO.

17 Q. THAT WOULD INCLUDE VISA DEBIT CARDS?

18 A. YES.

19 Q. VISA PREPAID CARDS?

20 A. YES.

21 Q. WHEN IT REFERS TO MASTERCARD RIGHT NEXT TO IT,
22 WHAT TYPES OF PAYMENT CARDS DOES THAT REFER TO?

23 A. ANY PAYMENT CARD WITH A MASTERCARD LOGO.

24 Q. INCLUDING PREPAID MASTERCARD?

25 A. YES.

- 1 Q. ANY DEBIT CARDS WITH A MASTERCARD LOGO?
- 2 A. YES.
- 3 Q. REFERRING TO THE NEXT ONE, DISCOVER, WHAT TYPES
- 4 OF PAYMENT CARDS DOES THAT REFER TO?
- 5 A. ANY CARD WITH A DISCOVER LOGO?
- 6 Q. DO YOU KNOW IF DISCOVER HAS ANY DEBIT CARDS?
- 7 A. I DO NOT KNOW.
- 8 Q. DO YOU KNOW IF DISCOVER HAS ANY PREPAID CARDS?
- 9 A. I DO NOT KNOW.
- 10 Q. SIMILAR QUESTIONS WITH MASTERCARD. DO YOU KNOW
- 11 IF MASTERCARD HAS ANY DEBIT CARDS IN CIRCULATION?
- 12 A. I'M PRETTY SURE THEY DO, YEAH.
- 13 Q. DO YOU KNOW IF MASTERCARD OFFERS ANY PREPAID
- 14 CARDS?
- 15 A. YOU KNOW, I CAN'T BE A HUNDRED PERCENT CERTAIN,
- 16 BUT FROM BEING AROUND THE CREDIT INDUSTRY I KNOW THAT
- 17 PEOPLE HAVE REFERRED TO MASTERCARD PREPAID PROGRAMS
- 18 WHICH LEADS ME TO BELIEVE THEY MAY BE OFFERING SOMETHING
- 19 LIKE THAT.
- 20 Q. DO YOU KNOW IF VISA IS OFFERING PREPAID CARDS?
- 21 A. YES, IT IS.
- 22 Q. IS IT OFFERING -- IT IS OFFERING PREPAID CARDS?
- 23 A. YES.
- 24 Q. DO YOU KNOW IF VISA HAS ANY PREPAID CARDS?
- 25 A. YES.

1 MR. DOBBS: PAGE 65 LINE 15 THROUGH --
2 LINES 15 THROUGH 20.

3 Q. BRIEFLY REFERRING BACK TO -- I JUST REMEMBERED
4 THAT I FORGOT SOMETHING -- EXHIBIT NUMBER 3, I NOTICE
5 THAT IT DOES NOT PREFER TO AMERICAN EXPRESS?

6 A. CORRECT.

7 Q. WHY IS THAT?

8 A. WE DO NOT ACCEPT AMERICAN EXPRESS.

9 MR. DOBBS: PAGE 66 LINE 20 THROUGH PAGE
10 68 LINE 1.

11 THE COURT: IS THERE AN OBJECTION HERE?

12 MR. GOMEZ: YES, YOUR HONOR. THERE IS
13 ONE OBJECTION THAT THE DEFENDANT FILED IN THIS.
14 ESSENTIALLY DEFENDANT IS OBJECTING ON THE GROUND OF
15 LACKS FOUNDATION AND HEARSAY. THEY ARE TALKING ABOUT
16 MATTERS THAT IS NOT IN THE PERSONAL KNOWLEDGE OF THIS
17 PARTICULAR WITNESS.

18 THE COURT: LET ME READ IT TO MYSELF SO I
19 CAN FIGURE IT OUT.

20 LET ME HEAR FROM THE PLAINTIFF AS TO THE
21 OBJECTION. I DON'T HAVE KNOWLEDGE OF THE ENTIRE
22 DEPOSITION TRANSCRIPT SO I DON'T KNOW WHERE TO LOOK FOR
23 SOME OF THE MATERIAL THAT COUNSEL SAYS MAY NOT BE THERE.

24 MR. VAN KWAWEGEN: YES, YOUR HONOR. I
25 WILL REFER TO THE TRANSCRIPT AS WELL, BUT BRIEFLY

1 SPEAKING, MR. THALER HAS INDICATED EARLIER ON PAGES 12
2 AND 13 HE IS THE GENERAL COUNSEL AND DIRECTOR OF
3 BUSINESS DEVELOPMENT FOR PAYCOM AND PAYCOM IS AN
4 INTERNET PAYMENT SERVICE PROVIDER THAT PROVIDES PAYMENT
5 CARD SERVICES TO WEB MERCHANTS. IN ORDER TO DO SO, THE
6 PAYMENT, THE INTERNET PAYMENT SERVICE PROVIDER, THE IPSP
7 IN SHORT, WILL HAVE AN ACCOUNT WITH WHAT IS CALLED AN
8 ACQUIRING BANK. THERE WILL BE TESTIMONY LATER IN THESE
9 PROCEEDINGS, YOUR HONOR, THAT WILL IDENTIFY SPECIFICALLY
10 THE TERM OF ART, ACQUIRING BANK. HERE, MR. THALER IS
11 DISCUSSING A RELATIONSHIP BETWEEN THE CARD ASSOCIATIONS
12 AND THE ACQUIRING BANK INVOLVING FINES THAT THE CARD
13 ASSOCIATIONS MAY IMPOSE ON ACQUIRING BANKS WHICH MAY
14 THEN BE PASSED ON TO THE IPSP SUCH AS HIMSELF. AS SUCH,
15 HE HAS DIRECT KNOWLEDGE OF THOSE FINES BECAUSE HE IS
16 ACTUALLY SUBJECT TO THEM. WE THEREFORE RESPECTFULLY
17 SUBMIT, YOUR HONOR, THAT HE HAS PERSONAL KNOWLEDGE ABOUT
18 EVERYTHING THAT HE IS TESTIFYING ABOUT HERE.

19 THE COURT: IT IS AN INTERESTING
20 DISCUSSION, BUT WHERE IN THE RECORD IS THAT INFORMATION?

21 MR. VAN KWAWEGEN: IF YOUR HONOR
22 CONTINUES READING AFTER THE BLOCKED TEXT.

23 THE COURT: I READ THAT.

24 MR. VAN KWAWEGEN: SPECIFICALLY IT
25 DISCUSSES THE STRUCTURE, AND IT SAYS, ON LINE 16 -- ON

1 PAGE 67 ON LINE 16. IT SAYS, SO, UNDER THIS STRUCTURE
2 IF YOU WILL, THE ACQUIRING BANK WOULD PASS ANY FINES
3 DOWN TO THE IPSP OR THE MERCHANT, AS YOU REFERRED TO
4 BEING, FOR EXAMPLE, PAYCOM. THIS IS A QUESTION
5 OBVIOUSLY THAT WAS ASKED. IN TURN WHAT WOULD PAYCOM DO
6 WHEN FACED WITH SUCH FINES, AND THEN THE ANSWER IS, IF
7 WE HAD A FINE PASSED ONTO US -- IF WE HAD A FINE PASSED
8 TO US OR IMPOSED UPON US THAT WAS AS A RESULT OF
9 IDENTIFIABLE SPONSORED MERCHANTS, WE WOULD MOST LIKELY
10 PASS THAT FINE TO THE SPONSORED MERCHANT. AND SO, YOUR
11 HONOR, WE RESPECTFULLY SUBMIT THAT WE ARE TALKING ABOUT
12 A RELATIONSHIP BETWEEN IPSP AND ITS BANK AND THAT MR.
13 THALER HAS DIRECT KNOWLEDGE OF THAT.

14 MR. GOMEZ: YOUR HONOR, IF I MAY BE
15 HEARD.

16 THE COURT: YES.

17 MR. GOMEZ: THE SECTION THAT THE
18 PLAINTIFFS ARE ADDRESSING HERE AND THE IMPORTANT POINT
19 IS, THE WITNESS IS STATING, IT IS HIS UNDERSTANDING OF
20 WHAT VISA AND MASTERCARD DON'T EVER IMPOSE FINES. NOW
21 WHERE THEY MAY HAVE SOME KNOWLEDGE OF FINES THAT MAY
22 HAVE BEEN IMPOSED FOR ENTITIES THAT THEY HAVE
23 RELATIONSHIPS WITH OR THEMSELVES DOESN'T MEAN -- THAT IS
24 THE EXTENT OF THEIR KNOWLEDGE, AND THERE IS NO
25 FOUNDATION SHOWING THAT THEY KNOW WHETHER OR NOT VISA OR

1 MASTERCARD EVER IMPOSES SUCH FINES. THAT IS OUR
2 OBJECTION.

3 THE COURT: THE TESTIMONY OF THE WITNESS
4 AFTER THE OBJECTED MATERIAL SHOWS THAT HE HAS KNOWLEDGE
5 OF THE AREA. HE IS DIRECTOR OF DEVELOPMENT AND INSIDE
6 COUNSEL. I THINK THAT IS BROAD ENOUGH TO INCLUDE THE
7 MATERIAL HE IS TALKING ABOUT AND I LEAVE TO THE DEFENSE
8 TO ARGUE THAT THIS DOES NOT PROVE WHAT THE PLAINTIFF
9 WANTS TO PROVE WITH IT. BUT IN THE MEANTIME THE
10 OBJECTION IS OVERRULED. YOU MAY READ BEGINNING AT PAGE
11 20 LINE 66.

12 MR. DOBBS: THANK YOU, YOUR HONOR.

13 Q. TO THE BEST OF YOUR KNOWLEDGE, WOULD THERE BE
14 ANY CONSEQUENCES FOR THE ACQUIRING BANK IN THE EVENT
15 THAT YOU -- SORRY, IN THE EVENT THAT YOUR CLIENTS ARE
16 NOT OPERATING IN ACCORDANCE WITH ASSOCIATION RULES?

17 A. YES.

18 Q. WHAT WOULD THOSE CONSEQUENCES BE?

19 A. MY UNDERSTANDING OF HOW THE VISA AND MASTERCARD
20 ASSOCIATIONS OPERATE IS THAT THEY DON'T EVER IMPOSE
21 FINES ON MERCHANTS DIRECTLY BECAUSE THEY HAVE NO DIRECT
22 RELATIONSHIP WITH MERCHANTS.

23 Q. WHEN YOU SAY MERCHANTS, WOULD IT BE THE
24 SPONSORED MERCHANTS?

25 A. NO. MERCHANTS SUCH AS PAYCOM OR ANYONE ELSE

1 THAT HAS A MERCHANT ACCOUNT. AS A CONSEQUENCE, WHEN
2 THEY IMPOSE FINES, THEY IMPOSE THEM ON THE BANKS THAT
3 HAVE ISSUED THE MERCHANTS ACCOUNTS TO THE MERCHANTS.
4 THOSE BANKS THEN PASS THE FINES DOWN.

5 HOWEVER, IF THERE WAS A FINE THAT WAS IN
6 EXCESS OF THE AMOUNT OF MONEY THE BANK COULD COLLECT
7 FROM THE MERCHANT, THEN THE BANK WOULD BE RESPONSIBLE TO
8 PAY THAT AMOUNT.

9 Q. SO UNDER THIS STRUCTURE, IF YOU WILL, THE
10 ACQUIRING BANK WOULD PASS ANY FINES DOWN TO THE IPSP OR
11 THE MERCHANT AS YOU REFERRED TO BEING, FOR EXAMPLE,
12 PAYCOM.

13 IN TURN, WHAT WOULD PAYCOM DO WHEN FACED
14 WITH SUCH FINES?

15 A. IF WE HAD A FINE PASSED TO US OR IMPOSED UPON US
16 THAT WAS AS A RESULT OF IDENTIFIABLE SPONSORED
17 MERCHANTS, WE WOULD MOST LIKELY PASS THAT FINE TO THE
18 SPONSORED MERCHANT AND RECOVER WHATEVER AMOUNT OF THAT
19 -- WHATEVER PORTION OF THAT FINE THAT WE COULD.

20 MR. DOBBS: PAGE 97, LINE 14 THROUGH PAGE
21 99, LINE 13 DESIGNATED BY THE PLAINTIFFS.

22 Q. OKAY. NOW, JUST TURNING YOUR ATTENTION TO PAGE
23 4 OF 5, ITEM 14.

24 A. YES.

25 Q. DO YOU SEE WHERE IT READS "THERE CAN BE." AND

1 THEN CAPITAL N, CAPITAL O "NO WORDING TO THE EFFECT
2 OF" -- EXCUSE ME, NO WORDING TO THE EFFECT OF." CREDIT
3 CARD USE FOR AGE VERIFICATION REASONS?

4 A. YES.

5 Q. TO THE BEST OF YOUR KNOWLEDGE AND UNDERSTANDING
6 TODAY, WOULD AN ITEM SUCH AN ITEM 14 IN EXHIBIT NUMBER
7 10 ON PAGE 4 BE PART OF THE INTERNAL COMPLIANCE
8 GUIDELINES CURRENTLY IN EFFECT AT PAYCOM?

9 A. I DON'T HAVE ANY SPECIFIC KNOWLEDGE, BUT I KNOW
10 THAT'S BEEN ONE OF OUR LONGSTANDING GUIDELINES, AND I
11 HAVE NO REASON TO BELIEVE IT'S CHANGED.

12 Q. GENERALLY SPEAKING -- YOU CAN LEAVE THIS
13 DOCUMENT ASIDE -- WHAT ARE THE CONSEQUENCES IF A CLIENT,
14 A SPONSORED MERCHANT, VIOLATES THE INTERNAL RISK
15 GUIDELINES THAT WE HAVE JUST DISCUSSED?

16 A. THERE'S A WIDE RANGE OF CONSEQUENCES. THE
17 CLIENT IS IN THE PROCESS OF REGISTERING THEIR SITE AND
18 SETTING UP WITH US FOR THE FIRST TIME. WE REQUEST THAT
19 THEY REMOVE THE MATERIAL. THERE WOULD BE NO CONSEQUENCE
20 OTHER THAN THAT.

21 IF IT'S A CLIENT THAT IS CURRENTLY
22 PROCESSING AND HAS ADDED THIS TYPE OF LANGUAGE TO THE
23 SITE AFTERWARD, WE WOULD CERTAINLY REQUEST THAT THEY
24 REMOVE IT.

25 Q. I'M SORRY. WHEN YOU SAY, "THIS TYPE OF

1 LANGUAGE," WHAT LANGUAGE ARE YOU REFERRING TO?

2 A. THE LANGUAGE YOU JUST QUOTED ME ABOUT THE NO
3 CREDIT CARD FOR AGE VERIFICATION. THAT'S WHAT I THOUGHT
4 YOU WERE REFERRING TO.

5 Q. I ACTUALLY WAS REFERRING TO THE DOCUMENT ABOUT
6 THE POLICIES IN GENERAL, BUT TO THE EXTENT THAT YOU CAN
7 BE SPECIFIC TO THE AGE VERIFICATION LANGUAGE, THAT WOULD
8 BE HELPFUL.

9 A. TO THE POLICY -- WELL, ANY ONE OF THESE
10 POLICIES, INCLUDING THE AGE VERIFICATION, IT RANGES FROM
11 ASKING THE CLIENT TO REMOVE OR CORRECT WHAT THEY HAVE TO
12 TERMINATING THE CLIENT.

13 AND ANYTHING THAT FALLS IN BETWEEN THERE
14 IS SOMETHING WE CONSIDER. THE AMOUNT OF -- WHETHER IT'S
15 THE FIRST TIME THAT WE HAVE TO HAVE THESE ISSUES WITH
16 THE CLIENT OR WHETHER THIS IS SOMETHING THAT HAS
17 HAPPENED REPEATEDLY, THE SEVERITY OF THE ISSUE, IF THERE
18 APPEARS TO BE INTENT OR SIMPLE MISTAKE, THOSE THINGS ARE
19 ALL CONSIDERED. SO IT CAN RANGE FROM JUST REMOVING IT
20 AND GOING TO COMPLIANCE OR 24 HOUR TERMINATION.

21 MR. DOBBS: PAGE 101, LINE 8 THROUGH PAGE
22 103, LINE 9, DESIGNATED BY THE PLAINTIFFS.

23 Q. TURNING TO PAGE 2 OF THE EXHIBIT, DO YOU SEE
24 WHERE THE HEADING SAYS, SUBSCRIPTIONS ARE
25 NONTRANSFERABLE?

- 1 A. YES.
- 2 Q. DO YOU SEE WHERE IT SAYS, YOU MUST KEEP YOUR
3 PASSWORD STRICTLY CONFIDENTIAL, IN THAT SECTION?
- 4 A. YES.
- 5 Q. HOW DO YOU ENFORCE THIS POLICY?
- 6 A. GENERALLY WE WOULDN'T ENFORCE THAT POLICY.
- 7 Q. ARE YOU FAMILIAR WITH A PRACTICE CALLED
8 BOOKMARKING?
- 9 A. YES.
- 10 Q. WHAT WOULD YOU UNDERSTAND THAT TO BE?
- 11 A. WHEN YOU ARE USING A BROWSER TO LOOK AT INTERNET
12 WEB PAGES YOU CAN MARK A PAGE THAT YOU WANT TO GO BACK
13 TO. THEY CALL IT BOOKMARKING. AND WHEN YOU GO BACK, IT
14 WILL PROVIDE YOU A LIST OF THE PAGES YOU BOOK MARKED.
15 YOU CLICK ON THE PAGES YOU BOOKMARKED, AND IT WILL BRING
16 YOU BACK TO THAT PAGE.
- 17 Q. EARLIER TODAY WE DISCUSSED HOW THE CLIENT WILL
18 STORE A USER NAME AND PASSWORD INFORMATION ON ITS
19 SERVER, CORRECT?
- 20 A. YES, THAT'S CORRECT.
- 21 Q. THAT'S ONE POSSIBILITY. ANOTHER POSSIBILITY IS
22 THAT THE PAYCOM WILL STORE THAT INFORMATION ON ITS
23 SERVER?
- 24 A. THAT'S NOT THE WAY IT WORKS.
- 25 Q. OKAY.

1 A. WE -- THE CLIENT WILL ALWAYS STORE USER NAME AND
2 PASSWORD ON ITS SERVER, AND PAYCOM WILL KEEP TRACK OF
3 THE USER NAME AND PASSWORDS ON THE TRANSACTIONS IT HAS
4 PROCESSED ON ITS SERVERS.

5 Q. DOES PAYCOM KEEP TRACK OF THE USE OF THE USER
6 NAME AND PASSWORD APART FROM THE TRANSACTION OF
7 PROCESSING?

8 A. NO. WE LEAVE THAT TO THE CLIENT. WE DON'T HAVE
9 THE ACCESS OR THE ABILITY TO DO THAT SO WE CANNOT DO
10 THAT.

11 Q. SO TO THE EXTENT THAT A CUSTOMER WOULD BOOKMARK
12 A WEB PAGE OF A CLIENT, WOULD PAYCOM KNOW WHETHER THAT
13 CLIENT, AFTER REBOOTING THE COMPUTER, WENT THROUGH THE
14 USER NAME AND PASSWORD SCREEN OR WENT DIRECTLY TO THE
15 BOOKMARKED PAGE?

16 WOULD PAYCOM HAVE ANY WAY OF KNOWING?

17 A. WE DON'T HAVE THAT TYPE OF ACCESS TO OUR
18 CLIENT'S SERVERS TO DETERMINE THAT.

19 Q. OKAY.

20 A. THIS SECTION THAT YOU ASKED ME ABOUT SHARING
21 PASSWORDS IS SOMETHING THAT HAS TO BE ENFORCED BY THE
22 CLIENT.

23 Q. HAS TO BE ENFORCED BY THE CLIENT?

24 A. WE ARE JUST PHYSICALLY UNABLE TO DO THAT.

25 MR. DOBBS: PAGE 104, LINE 20 THROUGH

1 PAGE 105, LINE 5.

2 Q. WHEN WE TALK ABOUT TRANSACTION FEES, GENERALLY
3 SPEAKING, WOULD PAYCOM BE CHARGED A FEE PER TRANSACTION?

4 A. YES.

5 Q. AND IS THAT FEE BASED ON THE DOLLAR AMOUNT OF
6 TRANSACTION OR THE NUMBER OF TRANSACTIONS OR SOMETHING
7 ELSE?

8 A. BOTH. WE GET CHARGED A FLAT FEE, A FEW CENTS.
9 I'M NOT SURE HOW MUCH ON EACH TRANSACTION. SO THE
10 NUMBER OF TRANSACTIONS, THAT FEE IS BASED ON THE NUMBER.
11 AND THEN WE'RE ALSO CHARGED A PERCENTAGE OF THE DOLLAR
12 NUMBER WE PROCESS, SO THAT'S BASED ON VOLUME.

13 MR. DOBBS: FOR THE RECORD, BECAUSE I
14 DON'T RECALL, THE FOREGOING WAS DESIGNATED BY THE
15 PLAINTIFFS.

16 PAGE 106, LINE 24, THROUGH PAGE 107, LINE
17 14 DESIGNATED BY THE PLAINTIFFS?

18 Q. SO IN ADDITION TO THE TRANSACTION FEE, THERE IS
19 A REGISTRATION FEE, AT LEAST FOR HIGH RISK IPSP
20 PROVIDERS?

21 A. YES.

22 Q. GOING BACK BRIEFLY TO THE TRANSACTION FEE, DO
23 YOU KNOW IF THE TRANSACTION FEE PAID BY PAYCOM IS IN ANY
24 WAY DEPENDENT ON WHETHER THE MERCHANT THAT IT PROCESSES
25 ARE HIGH-RISK MERCHANTS?

1 A. YES, IT DOES.

2 Q. HOW DOES IT MAKE A DIFFERENCE?

3 A. THE WAY VISA AND MASTERCARD WORK, THERE'S A FEE
4 CALLED THE INTERCHANGE FEE. THAT'S THE RAW FEE THAT IT
5 COSTS. TO PUT TRANSACTIONS THROUGH THE NETWORK, WHICH
6 FEE IS THEN MARKED UP BEFORE A MERCHANT LIKE PAYCOM GETS
7 ITS COSTS BUT FOR DIFFERENT TYPES OF TRANSACTIONS, THERE
8 ARE DIFFERENT INTERCHANGE FEES.

9 MR. DOBBS: PAGE 108 LINES 2 THROUGH 19
10 DESIGNATED BY THE PLAINTIFFS.

11 Q. TO THE EXTENT YOU KNOW, IS THE INTERCHANGE FEE
12 CHARGED FOR HIGH-RISK MERCHANTS HIGHER OR LOWER THAN THE
13 INTERCHANGE FEE FOR NONHIGH-RISK MERCHANTS?

14 A. MY UNDERSTANDING IS, IT'S HIGHER, BUT I'M NOT
15 CERTAIN.

16 Q. GOING BACK TO EXHIBIT NUMBER 5, PAGE 8, DO YOU
17 SEE WHERE IT SAYS, HIGH-RISK SPONSORED MERCHANT?

18 A. YES.

19 Q. AND UNDERNEATH, \$500 INITIAL REGISTRATION?

20 A. YES.

21 Q. AND \$250 ANNUAL REGISTRATION?

22 A. YES.

23 Q. WHO PAYS THOSE FEES?

24 A. WELL, ULTIMATELY THE SPONSOR MERCHANT PAYS THE
25 FEES.

1 Q. WHO DOES THE SPONSORED MERCHANT PAY THE FEES TO?

2 A. PAYCOM.

3 MR. DOBBS: PAGE 109 LINE 12 THROUGH 110
4 LINE 14 DESIGNATED BY THE PLAINTIFFS.

5 Q. DO YOU KNOW IF THE ANNUAL REGISTRATION FEE HAS
6 GONE UP SINCE JULY 2002?

7 A. I DO NOT KNOW.

8 Q. TURN TO THE -- SORRY.

9 A. AGAIN, IT'S HARD FOR ME TO SAY WHETHER WE MARK
10 UP BECAUSE I BELIEVE THE BANK MAY MARK UP THESE FEES.
11 SO I KNOW WHAT WE ASK FROM OUR CLIENTS IS NOT \$500. I
12 DON'T KNOW IF THAT'S AS A RESULT OF FEE GOING UP OR THE
13 BANK HAVING MARKED IT UP OR US HAVING MARKED IT SOME
14 DEGREE AS WELL. BUT I KNOW IT'S NOT \$500.

15 Q. WITHOUT NECESSARILY DISCLOSING THE AMOUNT, DO
16 YOU TEND TO ASK MORE THAN \$500?

17 A. NO, IT'S GONE UP. IT'S MORE THAN 500.

18 Q. AND THE ANNUAL REGISTRATION, HAS THAT GONE UP
19 FROM \$250?

20 A. WELL, AGAIN, YEAH. IT'S MORE THAN 250, BUT I'M
21 NOT SURE WHERE THAT INCREASE CAME FROM.

22 Q. TURNING TO THE RIGHT SIDE OF THE DOCUMENT WHERE
23 IT SAYS FINES, DO YOU SEE THAT?

24 A. YES.

25 Q. AND THE SENTENCE READS "AN ACQUIRER THAT FAILS

1 TO COMPLY WITH REGISTRATION REQUIREMENTS FOR A HIGH-RISK
2 IPSP OR A HIGH-RISK SPONSORED MERCHANT IS ASSESSED
3 PENALTIES AS FOLLOWS: 25,000 PER HIGH-RISK SPONSORED
4 MERCHANT OR HIGH-RISK IPSP PER MONTH, 100,000 PER MONTH
5 AFTER THREE VIOLATIONS IN A CALENDAR YEAR AND/OR
6 PROHIBITION AGAINST SIGNING A HIGH-RISK SPONSORED
7 MERCHANT."

8 MR. DOBBS: PAGE 121, LINE 25 THROUGH
9 PAGE 122 LINE 6 DESIGNATED BY THE PLAINTIFFS.

10 Q. DOES PAYCOM PROCESS ANY TRANSACTIONS WHERE THE
11 END USER PUTS IN ZERO AS THE TRANSACTION VALUE? SO FOR
12 EXAMPLE, A ZERO DOLLAR TRANSACTION, WOULD PAYCOM PROCESS
13 THAT INFORMATION? WHAT I'M TRYING TO GET AT IS, IS
14 THERE A MINIMUM TRANSACTION VALUE?

15 A. I DON'T THINK WE PROCESS ANYTHING UNDER \$2
16 DOLLARS OR 1.98.

17 MR. DOBBS: PAGE 124 LINE 23 THROUGH PAGE
18 125 LINE 3, DESIGNATED BY THE PLAINTIFFS.

19 Q. IF A CLIENT OF PAYCOM IS NOT COMPLYING WITH THE
20 CHARGEBACK LIMITS SET IN SECTION 2A OF EXHIBIT E, PART
21 3, PAGE 14, COULD SUCH A CLIENT BE TERMINATED BY PAYCOM
22 PURSUANT TO THE TERMINATION SUSPENSION PROVISION IN PART
23 ONE OF EXHIBIT NUMBER 1?

24 A. YES, THAT CLIENT COULD BE TERMINATED.

25 MR. DOBBS: PAGE 128 LINE 11 THROUGH 22

1 DESIGNATED BY THE PLAINTIFFS.

2 Q. AS AN IPSP. FINALLY, ARE YOU AWARE IN ANY SHAPE
3 OR FORM WHETHER CARD HOLDERS WHO CALL AND INITIATE A
4 DISPUTE BECAUSE THEY SAY THAT THEY DID NOT INITIATE A
5 TRANSACTION, DO YOU KNOW WHETHER SUCH CALLS INCLUDED
6 CLAIMS THAT THE INITIATION WAS DONE BY UNAUTHORIZED
7 MINORS?

8 A. YES.

9 Q. WHAT IS THE BASIS FOR THIS KNOWLEDGE?

10 A. WELL, MY PRIOR JOB DUTIES, I WOULD HANDLE
11 COMPLAINTS THAT ESCALATED OUTSIDE THE SCOPE OF THE
12 CUSTOMER SERVICE DEPARTMENT AND I SAW, ON OCCASION,
13 COMPLAINTS OF THAT NATURE.

14 MR. DOBBS: PAGE 131, LINE 3 THROUGH PAGE
15 135, LINE 5, DESIGNATED BY THE DEFENDANT.

16 Q. GOOD AFTERNOON, MR. THALER.

17 A. GOOD AFTERNOON.

18 Q. I'M KENNETH SEALLS WITH THE U.S. DEPARTMENT OF
19 JUSTICE'S ON BEHALF OF THE DEFENDANT ATTORNEY GENERAL,
20 ALBERTO R. GONZALES. YOUR LAST TESTIMONY IN RESPONSE TO
21 ACLU COUNSEL'S QUESTION CONCERNED COMPLAINTS THAT
22 UNDERAGE MINORS HAVE BEEN PROCESSED THROUGH PAYCOM, IS
23 THAT CORRECT?

24 A. COMPLAINTS THAT AN UNDERAGE MINOR INITIATED A
25 TRANSACTION.

1 Q. AND BY INITIATED A TRANSACTION, ARE WE TALKING
2 ABOUT TRANSACTIONS THAT WERE ACTUALLY COMPLETED?

3 A. YES.

4 Q. HOW FREQUENTLY WOULD YOU -- AND WHEN I SAY YOU,
5 I'M TALKING ABOUT THE COMPANY, NOT SIMPLY YOU
6 INDIVIDUALLY.

7 HOW FREQUENTLY WOULD YOU BECOME AWARE OF
8 THAT SUCH HAD HAPPENED?

9 A. I CANNOT TELL YOU. I DON'T KNOW.

10 Q. WAS IT ONCE IN A BLUE MOON?

11 A. WELL, THE PROBLEM IS THE CALLS COME INTO THE
12 CALL CENTER, AND THEY DON'T INDEX THE CALLS. THEY INDEX
13 THE CALLS BASED ON CERTAIN CATEGORIES.

14 WE ACTUALLY LOOK INTO WHETHER WE COULD
15 PRODUCE THIS INFORMATION PURSUANT TO THE SUBPOENA, BUT
16 THE PROBLEM IS, THIS KIND OF INFORMATION WOULD COME IN
17 IN RAW TEXT AND SOMEBODY ENTERED IT IN A NOTE.

18 IT WAS ALMOST POSSIBLE TO DO A SEARCH
19 THROUGH THE RAW TEXT AND PULL OUT EVERY INSTANCE IN
20 WHICH WE HAD THE RIGHT -- IT HAPPENS, IT'S NOT SOMETHING
21 THAT WE ARE SURPRISED, YOU KNOW, IT'S NEVER HAPPENED.
22 WE KNOW IT HAPPENS AND I KNOW IT COMES IN, AT LEAST, ON
23 SOME KIND OF A BASIS WHERE WE SEE IT, BUT I CAN'T TELL
24 YOU THE FREQUENCY, I'M AFRAID.

25 Q. DO YOU SEE IT WEEKLY?

1 A. I'M REALLY -- SEE, THE PROBLEM IS, I'M NOT
2 QUALIFIED. I DON'T HAVE THAT KIND OF SPECIFIC KNOWLEDGE
3 BECAUSE I JUST DON'T WORK IN THE CALL CENTER SO I DON'T
4 HAVE THE FIRST-HAND KNOWLEDGE TO ANSWER THAT KIND OF
5 QUESTION.

6 Q. DID I UNDERSTAND CORRECTLY YOUR TESTIMONY THAT
7 YOU DID AT ONE POINT WORK IN THIS ARENA WHERE YOU WOULD
8 KNOW WHEN AN UNDERAGED MINOR TRANSACTION YOU RECEIVED
9 COMPLAINT OF?

10 A. NO. I WORKED -- MY JOB -- MY DUTIES USED TO
11 INCLUDE HANDLING COMPLAINTS THAT ESCALATED OUTSIDE OF
12 THE CUSTOMER SERVICE AREA. AND SO FOR THAT PERIOD OF
13 TIME WHEN THE COMPLAINT ESCALATED OUTSIDE OF SERVICE
14 AREA, MORE LIKELY THAN NOT, I WAS AWARE OF.

15 Q. FOR HOW LONG OF A TIME PERIOD DID YOU WORK IN
16 THAT CAPACITY?

17 A. THREE AND-A-HALF YEARS, MAYBE FOUR.

18 Q. DO YOU HAVE A BALL PARK NUMBER OF COMPLAINTS
19 THAT YOU PERSONALLY WERE AWARE OF CONCERNING UNDERAGE
20 MINORS WHOSE TRANSACTIONS WERE PROCESSED BY PAYCOM?

21 A. LESS THAN A DOZEN. MORE THAN THREE OR FOUR.

22 Q. HOW MANY EMPLOYEES DOES PAYCOM BILLING HAVE?

23 A. PAYCOM BILLING SERVICES?

24 Q. YES.

25 A. WHEN I SAY 170, THAT'S ACTUALLY COMBINED. THE

1 BILLING SERVICES IS JUST THE TECH DEPARTMENT, SO THAT'S
2 MAYBE 10 TO 15 OUT OF THE 170 I SAID EARLIER.

3 Q. WHAT'S THE NATURE OF YOUR BUSINESS?

4 A. WHICH ONE?

5 Q. PAYCOM?

6 A. WE'RE AN INTERNET SERVICE PROVIDER, CREDIT CARD
7 PROCESSOR FOR HIGH-RISK MERCHANTS.

8 Q. OKAY. I'VE HEARD THAT BEFORE, BUT WHEN YOU ARE
9 TALKING TO THE MAN ON THE STREET, WHAT DO YOU DESCRIBE
10 YOUR BUSINESS TO BE?

11 A. CREDIT CARD PROCESSING.

12 Q. LET ME SHOW YOU EXHIBIT NUMBER 3. IT MAY STILL
13 BE IN FRONT OF YOU. AND I DIRECT YOUR ATTENTION TO THE
14 BACK OF IT. IT'S A ONE-PAGE DOCUMENT. DO YOU SEE -- DO
15 YOU SEE THE -- PARDON ME. I'M TOLD IT IS A TWO-PAGE
16 DOCUMENT BUT THAT IS FRONT AND BACK?

17 A. YEAH.

18 Q. OKAY. WELL THEN, ON YOUR SECOND PAGE, DO YOU
19 SEE ON THE TOP WHERE THE CAPTION BEGINS -- THIS IS IN
20 THE SECOND PAGE -- I'M QUOTING "YOU ARE ABOUT TO RECEIVE
21 INSTANT ACCESS -- YOU ARE ABOUT TO RECEIVE INSTANT
22 ACCESS FOR A ONE MONTH SUBSCRIPTION TO PICTURES GALORE,"
23 END QUOTE?

24 A. YES.

25 Q. DO YOU SEE THAT?

1 A. YES.

2 Q. WHAT'S MEANT IN TERMS OF CONTENT BY THE TYPE OF
3 MATERIAL THAT WOULD BE CONTAINED IN PICTURES GALORE?

4 A. PICTURES GALORE I THINK, IS AN EXEMPLAR. IT
5 DOES NOT REFER TO ANY PARTICULAR WEBSITE A CLIENT WOULD
6 PROCESS FOR, BUT GENERALLY THAT AREA RIGHT THERE WOULD
7 GIVE YOU THE NAME OF THE WEBSITE YOU WERE GETTING ACCESS
8 TO AND THAT WEBSITE WOULD BE ADULT CONTENT.

9 Q. WITH RESPECT TO THAT TYPE OF A WEBSITE THAT
10 CONTAINS ADULT CONTENT, WHAT PERCENT OF YOUR IPSP
11 TRANSACTIONS CONCERN ADULT CONTENT WEBSITES?

12 A. VIRTUALLY ALL OF THEM.

13 MR. DOBBS: PAGE 135 LINES 5 THROUGH 12
14 DESIGNATED BY THE PLAINTIFFS AND THE DEFENDANT.

15 Q. WITH RESPECT TO YOUR GATEWAY PART OF YOUR
16 BUSINESS, WHAT PERCENT OF THE TRANSACTIONS THAT YOU
17 PROCESS CONCERN ADULT CONTENT MATERIAL?

18 A. YOU KNOW, I'M NOT SURE, BUT IT'S CONSIDERABLY
19 LESS. IT'S -- IT'S A LOT LESS BECAUSE THE IPSP BUSINESS
20 IS STRICTLY ADULT CONTENT. THAT IS MERCHANT CATEGORY
21 CODE 5967, WHEREAS THE GATEWAY, WE PERFORM THAT FOR ANY
22 TYPE OF MERCHANT.

23 MR. DOBBS: PAGE 135, LINE 13 THROUGH
24 PAGE 148 LINE 23, DESIGNATED BY THE DEFENDANT.

25 Q. IS THE MAJORITY OF THE SERVICES YOU PERFORM FOR

1 THE GATEWAY CLIENTS PERFORMED REGARDING ADULT CONTENT
2 MATERIAL?

3 A. I DON'T KNOW. I DON'T -- I DON'T KNOW.

4 Q. WHEN YOU SAY VIRTUALLY ALL OF THE IPSP
5 TRANSACTIONS INVOLVE ADULT CONTENT MATERIAL, ARE WE
6 TALKING ABOUT AT LEAST 99 PERCENT OF THE TRANSACTIONS?

7 A. PROBABLY SOMETHING LIKE THAT.

8 Q. I WANT TO DIRECT YOUR ATTENTION TO CHARGEBACKS,
9 WHICH YOU TESTIFIED JUST A FEW MINUTES AGO ABOUT. WHAT
10 PERCENTAGE OF YOUR IPSP TRANSACTIONS RESULT IN
11 CHARGEBACKS?

12 A. WELL, UNDER ONE PERCENT.

13 THE COURT: WE ARE GOING TO TAKE OUR MID
14 DAY RECESS. I THOUGHT WE'D BE FINISHED, BUT I SEE A LOT
15 MORE READING. WE WILL BE BACK AT 20 MINUTES TO 2. THE
16 COURT IS IN RECESS, COUNSEL ARE EXCUSED. WE ARE OFF THE
17 RECORD.

18 (LUNCH BREAK TAKEN.)

19 AFTERNOON SESSION

20 THE CLERK: ALL RISE. COURT IS NOW IN
21 SESSION

22 THE COURT: WELCOME BACK, EVERYBODY.

23 ALL COUNSEL: THANK YOU, YOUR HONOR.

24 THE COURT: WE NEED OUR SURROGATE AND OUR
25 QUESTIONER.

1 MR. DOBBS: YOUR HONOR, BEFORE WE RESUME,
2 I WOULD LIKE TO MAKE A CORRECTION.

3 THE COURT: GO RIGHT AHEAD.

4 MR. DOBBS: THE LINES DESIGNATED FROM
5 PAGE 65, LINES 15 THROUGH 20, WERE DESIGNATED BY THE
6 PLAINTIFFS. I BELIEVE I NEGLECTED TO MENTION THAT
7 EARLIER.

8 THE COURT: ALL RIGHT. TO ANYBODY WHO
9 WANTS TO READ THIS TRANSCRIPT, WE WILL GIVE THEM THAT
10 JOB TO FIGURE THIS OUT. WHAT PAGE ARE WE ON?

11 MR. DOBBS: 136, LINE 1.

12 THE COURT: OKAY.

13 MR. DOBBS: THIS CONTINUES, YOUR HONOR,
14 THE DEFENDANT'S DESIGNATIONS FROM PAGE 135 LINE 12
15 THROUGH PAGE 148 LINE 23.

16 THE COURT: YOU MAY PROCEED.

17 BY MR. DOBBS:

18 Q. AND THESE TRANSACTIONS, IF I UNDERSTAND
19 CORRECTLY, ARE MERCHANT CODE 596 TRANSACTIONS, CORRECT?

20 A. 5967, YES.

21 Q. 5967?

22 A. YES.

23 Q. IS MERCHANT CODE 5967 A HIGH -- DOES IT HAVE A
24 HIGHER RATE OF CHARGEBACKS THAN ANY OTHER CODE THAT YOU
25 PROCESS?

1 A. WELL, WE DON'T -- WE DON'T REALLY -- I DON'T
2 KNOW. THE MERCHANT CATEGORY OF CODE 5967 IS SUBJECT TO
3 CERTAIN CHALLENGES THAT OTHER MERCHANT CATEGORY CODES
4 AREN'T SUBJECT TO, BECAUSE VISA DOESN'T PROVIDE ANY
5 MECHANISM FROM WHICH THE MERCHANT CAN PROTECT ITSELF
6 -- VISA AND MASTERCARD, FROM WHICH A MERCHANT CAN
7 PROTECT ITSELF FROM A CHARGEBACK WHEN THE CUSTOMER SAYS
8 I DIDN'T DO IT. SO THERE IS NO MECHANISM THEY PROVIDE
9 THAT WE CAN SAY, THIS IS WHAT YOU SAID WAS SUFFICIENT
10 EVIDENCE TO SHOW THAT THE CUSTOMER REALLY DID DO IT.

11 SO FOR THAT REASON, WE'RE VERY VULNERABLE
12 TO WHAT VISA AND MASTERCARD TERM FRIENDLY FRAUD, WHICH
13 IS SOMETHING THAT WE SEE -- WE BELIEVE WE SEE QUITE
14 FREQUENTLY.

15 Q. CAN YOU GIVE ME EXAMPLES OF FRIENDLY FRAUD ON
16 THE MERCHANT CATEGORY CODE 5967?

17 A. YES.

18 Q. CATEGORY?

19 A. AN EXAMPLE OF FRIENDLY FRAUD THAT MY PEOPLE IN
20 THE -- THE PEOPLE IN THE CUSTOMER SERVICE DEPARTMENT
21 SAYS HAPPENS NOT INFREQUENTLY IS A WIFE WILL CALL UP, OR
22 A HUSBAND WILL CALL UP, AND PUT THE WIFE ON THE PHONE
23 AND SAY, WHAT IS THIS CHARGE? WE'LL EXPLAIN TO THEM
24 WHAT THE CHARGE IS. BECAUSE THE WIFE IS ON THE PHONE,
25 THE HUSBAND SAYS, WELL, HEY, I NEVER -- IT WASN'T ME. I

1 DIDN'T DO IT. I NEVER DID IT. AND THEN WE'LL GET --
2 WE'LL END UP CREDITING BACK THAT TRANSACTION.

3 BUT, IN FACT, WE BELIEVE THAT IT'S
4 VIRTUALLY CERTAIN THAT THE HUSBAND COMPLETED THE
5 TRANSACTION AND, IN FACT, ON OCCASION THEY WILL CALL US
6 BACK AND TELL US THAT THEY REALLY DID DO IT.

7 WE KNOW, FOR EXAMPLE, SOMETIMES THEY WILL
8 ACTUALLY SEND US A CHECK AND PAY US FOR THE TRANSACTIONS
9 THEY CLAIM THEY DIDN'T DO BECAUSE THEY DON'T WANT US TO
10 INVESTIGATE FURTHER TO FIND OUT WHAT REALLY HAPPENED.

11 Q. IS IT FAIR TO SAY, WHEN YOU DESCRIBE MERCHANT
12 CATEGORY CODE 5967 AS ADULT CONTENT, DOES THAT
13 NECESSARILY INCLUDE SEXUALLY EXPLICIT CONTENT?

14 A. I DON'T KNOW EVERYTHING THAT MERCHANT CATEGORY
15 CODE 5967 INCLUDES. I KNOW THAT IF IT'S SEXUALLY
16 EXPLICIT CONTENT, IT'S INCLUDED IN MERCHANT CATEGORY
17 CODE 5967. AT LEAST THAT IS MY UNDERSTANDING.

18 Q. WHAT -- I MAY HAVE ASKED THIS ALREADY, AND FOR
19 MY EAST COAST TIME, IT'S LATE IN THE DAY SO BEAR WITH
20 ME.

21 A. NO PROBLEM.

22 Q. WHAT PERCENTAGE OF PAYCOM'S BUSINESS INVOLVES
23 GATEWAY?

24 A. IT'S A SMALLER PERCENTAGE, ESPECIALLY IN TERMS
25 OF DOLLAR-WISE. BECAUSE GATEWAY BUSINESS IS CHARGED ON

1 A PER -- A SMALL FEE FOR EACH TRANSACTION, A MATTER OF
2 CENTS PER TRANSACTION, WHEREAS THE IPSP IS A PERCENTAGE.

3 SO IN TERMS OF VOLUME OF TRANSACTIONS, OF
4 RAW TRANSACTIONS, IT'S SMALLER, BUT I DON'T KNOW HOW
5 MUCH SMALLER.

6 IN TERMS OF REVENUE, IT'S SIGNIFICANTLY
7 -- I WOULD SAY MUCH, MUCH SMALLER THAN THE IPSP. I
8 CAN'T GIVE YOU EXACT NUMBERS UNFORTUNATELY.

9 Q. SURE. ROUGHLY WHAT PERCENTAGE OF YOUR REVENUE
10 COMES FROM GATEWAY?

11 A. I DON'T KNOW, BUT IT'S GOING TO BE A SMALL
12 PERCENTAGE.

13 Q. 10 PERCENT OR LESS?

14 A. I WOULD SAY 10 PERCENT OR LESS IS FAIR, BUT IT'S
15 HARD TO BE MORE SPECIFIC THAN THAT.

16 Q. IS THE BALANCE OF YOUR REVENUE IPSP RELATED?

17 A. YES.

18 Q. DO YOU SELL ANY PRODUCTS ON THE INTERNET?

19 A. WE DO NOT SELL ANY PRODUCTS.

20 Q. DO YOU SELL SUBSCRIPTIONS?

21 A. WE DO NOT OWN OR CONTROL ANY WEBSITES THAT
22 PROVIDE PRODUCT, SUBSCRIPTION CONTENT OR ANYTHING.

23 WHEN YOU ASKED WHETHER THEY SELL
24 SUBSCRIPTIONS, I SUPPOSE FOR THE IPSP MODEL WE'RE THE
25 MERCHANT OF RECORD. IT'S SLIGHTLY AMBIGUOUS.

1 WE DON'T OWN OR CONTROL ANY WEBSITES FROM
2 WHICH SOMEBODY WOULD BUY OR FOR WHICH SOMEBODY WOULD BUY
3 A SUBSCRIPTION.

4 Q. WHEN YOU USED THE TERM BEING "MERCHANT OF
5 RECORD" IN THE IPSP --

6 A. MODEL.

7 Q. -- MODEL. IS THAT ALSO CALLED A THIRD-PARTY
8 MERCHANT?

9 A. IN THE INDUSTRY, IT'S COMMONLY REFERRED TO AS
10 THIRD-PARTY BILLING.

11 Q. BILLING. ARE YOU THE LEADER IN THIRD-PARTY
12 BILLING?

13 A. YES.

14 Q. WHO'S SECOND TO YOU?

15 A. CCBILL.

16 Q. THIS ISN'T FOR 5967, RIGHT?

17 A. RIGHT. I'M SORRY. THANK YOU VERY MUCH. IT
18 DOESN'T HAVE TO BE IN 5967. THE LEADER PROBABLY OVERALL
19 IS PAYPAL. THEY ARE AN IPSP BUT FOR A HIGH-RISK IPSP,
20 IF THAT'S WHAT YOU ARE ASKING.

21 Q. WELL, THANKS. THAT ANSWERS TWO QUESTIONS.

22 AND YOU SAY CCBILL IS SECOND TO YOU --

23 A. YEAH.

24 Q. -- WITH RESPECT TO CODE 5967 THIRD-PARTY
25 BILLING?

1 A. YES.

2 Q. WHAT'S YOUR SHARE OF THE MARKET?

3 A. IT'S IMPOSSIBLE TO SAY, BECAUSE WE DON'T LET
4 THEM KNOW HOW MUCH WE BILL AND THEY DON'T LET US KNOW
5 HOW MUCH THEY BILL.

6 Q. BUT YOU DO KNOW YOUR SHARE, DON'T YOU?

7 A. NO, WE ASSUME THAT WE ARE -- FROM WHAT WE CAN
8 TELL -- THE BEST WE CAN TELL, WE'RE BOTH QUITE LARGE,
9 BUT WE BELIEVE THAT WE'RE LARGER.

10 Q. HOW LARGE WAS YOUR 2005 REVENUE?

11 A. I DON'T KNOW. DO I HAVE TO ANSWER THAT
12 QUESTION? I DON'T KNOW REVENUE. IN TERMS OF GROSS
13 DOLLARS PROCESSED OR GROSS FEES COLLECTED?

14 Q. BOTH. YOU CAN ESTIMATE?

15 A. GROSS DOLLARS PROCESSED WAS PROBABLY CLOSE TO
16 HALF A BILLION DOLLARS.

17 Q. AND THEN THE ALTERNATIVE ONE THAT YOU MENTIONED,
18 WHAT WOULD YOU ESTIMATE YOUR REVENUE WAS?

19 A. SHOOT. I DON'T KNOW. SOMEWHERE BETWEEN 50 AND
20 70 MILLION.

21 Q. YOU HAD TESTIFIED UNDER EXAMINATION FROM ACLU
22 COUNSEL, ABOUT INTERNAL COMPLIANCE RISK GUIDELINES OR
23 SOME VARIATION OF THOSE WORDS.

24 A. YES.

25 YEAH, I ASSUME IF WE HAVE SOMETHING

1 SIMILAR -- I ASSUME -- I WOULD GUESS THAT WE HAVE
2 SOMETHING SIMILAR TO THE EXHIBIT BEING PRODUCED -- THAT
3 WAS PROVIDED BY ACLU COUNSEL TODAY AND I'LL GO BACK AND
4 FIND IT.

5 Q. YOU HAD ALSO MENTIONED, MR. THALER, ABOUT
6 ASSOCIATION RULES THAT YOU HAD WITH BANKS. IS IT YOUR
7 TESTIMONY THAT PAYCOM DOESN'T HAVE A COPY?

8 A. WE'VE HAD CONSULTANTS WHO HAVE BEEN ABLE TO
9 PROVIDE US PARTS OF THE RULES, BUT I DON'T BELIEVE WE
10 HAVE A FULL COPY OF THE RULES. WE MAY HAVE A FULL COPY
11 OF THE RULES. I DON'T KNOW.

12 Q. MR. THALER, WHY DOESN'T PAYCOM PROCESS AMERICAN
13 EXPRESS CREDIT CARD TRANSACTIONS?

14 A. AMERICAN EXPRESS DOES NOT PROCESS ADULT
15 TRANSACTIONS ON THE INTERNET.

16 Q. WHAT PERCENTAGE OF THE ADULT CONTENT
17 TRANSACTIONS THAT YOU PROCESS ON THE INTERNET ARE DONE
18 THROUGH VISA?

19 A. SOMEWHERE JUST BELOW 60 PERCENT IS MY
20 UNDERSTANDING.

21 Q. HOW ABOUT THROUGH MASTERCARD?

22 A. SOMEWHERE IN THE 40 PERCENT RANGE. THE OTHER
23 FORMS OF PAYMENT ARE SLIGHTLY SMALLER SO IT IS NOT
24 EXACTLY 60/40, BUT THAT IS THE RATIO.

25 Q. RIGHT. HOW ABOUT DISCOVER CARD?

1 A. YEAH, I DON'T KNOW HOW MUCH IN TERMS OF -- I
2 DON'T KNOW HOW THEY FACTOR IN DISCOVER CARD, JCB AND
3 SWITCH ARE LITTLE. THEY ARE SIGNIFICANTLY SMALLER.

4 Q. CAN YOU ESTIMATE WHAT PERCENTAGE IT IS FOR JCB,
5 OR SWITCH, OR --

6 A. NO.

7 Q. -- OR SOLO?

8 A. I CANNOT.

9 Q. IS IT LIKELY THAT THOSE THREE COMBINED ARE
10 GREATER THAN 15 PERCENT OF YOUR CREDIT CARD --

11 A. NO.

12 Q. -- PROCESSES?

13 A. NO. IT'S VERY UNLIKELY GREATER THAN 15 PERCENT.

14 Q. DIRECTING YOUR ATTENTION TO YOUR CREDIT CARDS
15 AND THE PRICING REGARDING THEM, WE'VE SPENT A LOT OF
16 TIME LOOKING AT THE AGREEMENTS THAT YOU PROVIDED. BUT
17 WHAT I'M CURIOUS ABOUT IS, IS THERE A RANGE NOT SET
18 FORTH IN ANY OF THE EXHIBITS WE'VE LOOKED AT TODAY THAT
19 YOU PRICE YOUR SERVICES TO CREDIT CARD COMPANIES?

20 A. YES, THE NUMBER I PROVIDED WAS JUST AN EXAMPLE.
21 SO 15 PERCENT IS THE -- WE NEVER DISCUSSED -- ALTHOUGH
22 IT'S IN THE EXHIBIT -- THE RATE WE CHARGE -- THE ACTUAL
23 RATE.

24 15 PERCENT IS THE RATE IF YOU'VE NEVER
25 PROCESSED ANY TRANSACTIONS THAT HAVE NO HISTORY. IT

1 GOES DOWN TO AS LOW AS, I THINK, 10 PERCENT IF YOU HAVE
2 A SIGNIFICANT VOLUME.

3 Q. SO 10 TO 15 PERCENT WOULD BE THE RANGE?

4 A. YES.

5 Q. IS THERE A RANGE OUTSIDE OF WHAT WE'VE SEEN IN
6 THE EXHIBITS TODAY OF FEES AND CHARGES THAT YOUR BANK
7 ASSESSES TO YOU FOR USING ITS SERVICES AND PROCESSING
8 THE CREDIT CARDS?

9 A. WELL, I DON'T BELIEVE SO. I BELIEVE THAT OUR
10 CHARGE ON THE MERCHANT ACCOUNT IS PRETTY MUCH -- NO, I
11 DON'T BELIEVE THERE IS ANY.

12 Q. WHAT PERCENTAGE OF YOUR CLIENTS SELL PRIMARILY
13 ON THE INTERNET?

14 A. ALL OF OUR CLIENTS ARE A HUNDRED PERCENT
15 -- EVERYTHING WE -- ANYTHING WE PROCESS -- I DON'T KNOW.
16 THEY MAY HAVE OTHER BUSINESSES WE DON'T PROCESS FOR.

17 A HUNDRED PERCENT OF THE TRANSACTIONS FOR
18 WHICH WE PROCESS ARE INTERNET-BASED TRANSACTIONS.

19 Q. AND IT'S YOUR TESTIMONY THAT VIRTUALLY ALL OF
20 THOSE INTERNET TRANSACTIONS INVOLVE ADULT CONTENT
21 WEBSITES?

22 A. FOR IPSP, YES.

23 Q. DO YOU VERIFY THE AGES OF THE CUSTOMERS WHOSE
24 CREDIT CARDS YOU PROCESS?

25 A. NO.

1 Q. DO YOU HAVE ANY AGREEMENTS WITH ANY ADULT
2 VERIFICATION SERVICES FOR SUCH VERIFICATION?

3 A. NO.

4 Q. DO YOU REVIEW THE PAGES OF YOUR CLIENTS FOR
5 THEIR CONTENT BEFORE YOU PROCESS CREDIT CARD
6 TRANSACTIONS CONCERNING THEM?

7 A. WE DO REVIEW THE CLIENT'S WEBSITES AND PAGES
8 BEFORE WE BEGIN PROCESSING FOR THEM.

9 Q. IS THAT EACH CLIENT?

10 A. EACH WEBSITE.

11 Q. MEANING IF A CLIENT HAS MULTIPLE WEBSITES, YOU
12 INCLUDE MULTIPLE?

13 A. YEAH, ANY WEBSITE FOR WHICH THEY WANT US TO
14 PROCESS A TRANSACTION MUST GO THROUGH OUR COMPLIANCE
15 DEPARTMENT PRIOR TO US PROCESSING ANY TRANSACTIONS.

16 Q. HAVE THERE EVER BEEN ANY WEBSITES THAT YOU
17 REFUSE TO PROCESS AS A RESULT OF WHAT'S ON THEIR
18 CONTENT?

19 A. YES.

20 Q. HOW FREQUENTLY OUT OF ONE HUNDRED TIMES DOES
21 THAT HAPPEN?

22 A. I REALLY COULDN'T TELL YOU. I'M JUST NOT THAT
23 INVOLVED DAY-TO-DAY. IF YOU ALLOW ME, I THINK IT
24 HAPPENS NOT TOO OFTEN, BECAUSE PEOPLE REALLY UNDERSTAND
25 -- PEOPLE HAVE A PRETTY GOOD IDEA OF THE KIND OF THINGS

1 WE WILL AND WILL NOT PROCESS FOR. SO IT DOES HAPPEN,
2 BUT I THINK IT'S PRETTY WELL UNDERSTOOD WHAT CROSSES THE
3 LINE FOR US.

4 Q. DOES IT HAPPEN MORE THAN ONCE OUT OF A HUNDRED
5 TIMES?

6 A. I DON'T --

7 Q. WOULD YOU ESTIMATE?

8 A. I JUST DON'T KNOW.

9 Q. CAN YOU ESTIMATE HOW MANY IPSP TRANSACTIONS YOU
10 PROCESS IN A GIVEN MONTH?

11 A. NO. I MEAN, YOU CAN WORK ON THE DOLLAR VOLUMES
12 BUT I CAN'T TELL YOU COUNTS OFF THE TOP OF MY HEAD.

13 Q. WOULD IT BE MORE THAN A MILLION, DO YOU THINK?

14 A. RAW TRANSACTIONS?

15 Q. YES.

16 A. NO.

17 Q. MORE THAN 100,000 A MONTH?

18 A. YES.

19 Q. AS MANY AS HALF A MILLION A MONTH?

20 A. I REALLY DON'T KNOW. THAT'S THE KIND OF
21 INFORMATION THAT'S POSSIBLE TO GET, BUT I DON'T HAVE IT
22 RIGHT NOW.

23 Q. IN AN AVERAGE MONTH, CAN YOU ESTIMATE HOW MANY
24 GATEWAY TRANSACTIONS?

25 A. I HAVE NO IDEA ON THE GATEWAY BUSINESS.

1 Q. DO YOU HAVE AN IDEA OF HOW MANY CUSTOMERS YOU
2 WILL HAVE?

3 A. PEOPLE WHO ARE ACTIVELY BEING BILLED FOR
4 WEBSITES, IS THAT WHAT YOU MEAN?

5 Q. YES.

6 A. NO.

7 Q. IS IT MORE THAN A MILLION?

8 A. I HAVE NO IDEA.

9 Q. DO YOU KNOW WHAT -- STRIKE THAT QUESTION.

10 DO YOU HAVE ANY IDEA IF YOU HAVE MORE
11 THAN A DOZEN CUSTOMERS?

12 A. YES, I HAVE. YES, WE HAVE MORE THAN A DOZEN
13 CUSTOMERS.

14 Q. DO YOU HAVE ANY IDEA IF YOU HAVE MORE THAN
15 100,000 CUSTOMERS?

16 A. THAT'S GETTING INTO A TERRITORY WHERE THE LINE
17 IS. I KNOW WE HAVE A SIGNIFICANT A NUMBER. I JUST
18 DON'T KNOW HOW SIGNIFICANT A NUMBER THAT IS.

19 Q. CAN YOU PUT A RANGE ON WHAT YOU'VE DEEMED A
20 SIGNIFICANT NUMBER, A RANGE?

21 A. NO. HONESTLY, I CAN'T, BECAUSE I -- NO, I'D
22 LIKE TO, BUT I HONESTLY DON'T HAVE THAT OPINION OR THAT
23 INFORMATION TO BE ABLE TO GIVE YOU THAT.

24 Q. LET'S TALK ABOUT EACH ONE SEPARATELY, WEBSITES
25 AND END USERS.

1 A. FOR WEBSITES, I DON'T KNOW THE NUMBER OF
2 WEBSITES, BUT FOR CLIENTS, IT'S SOMEWHERE IN THE RANGE
3 OF BETWEEN 700 AND A THOUSAND CLIENTS.

4 Q. I SEE.

5 BUT FOR CUSTOMERS, YOU JUST DON'T HAVE
6 ANY IDEA?

7 A. I DON'T HAVE THAT.

8 Q. I HAVE NO OTHER QUESTIONS AT THIS TIME.

9 THE COURT: ALL RIGHT. ARE THERE GOING
10 TO BE EXHIBITS OFFERED BECAUSE OF THIS DEPOSITION?

11 MR. VAN KWAWEGEN: YES, YOUR HONOR.
12 THERE WILL BE THREE EXHIBITS OFFERED BECAUSE OF THIS
13 DEPOSITION. I NOTICE THAT YOUR HONOR HAS -- ONE OF
14 THESE EXHIBITS IS INCOMPLETE, THE ONE WE JUST PROVIDED
15 TO YOU.

16 THE COURT: I WOULDN'T KNOW THAT.

17 MR. VAN KWAWEGEN: WITH YOUR HONOR'S
18 PERMISSION, MAY I APPROACH AND GIVE YOU THE CORRECT
19 DOCUMENT SO WE HAVE THE SAME DOCUMENT WE ARE TALKING
20 ABOUT?

21 THE COURT: YOU MAY.

22 MR. VAN KWAWEGEN: THANK YOU.

23 I'LL IDENTIFY IT AS PLAINTIFFS' EXHIBIT
24 IN A SECOND WHEN I HAVE A MOMENT TO REVIEW MY NOTES.

25 THE THREE DOCUMENTS THAT PLAINTIFFS WOULD

1 LIKE TO OFFER INTO EVIDENCE ARE DEPOSITION EXHIBIT
2 NUMBER 1, WHICH IS PLAINTIFFS' EXHIBIT 106, DEPOSITION
3 EXHIBIT NUMBER 4, WHICH I JUST PROVIDED TO YOUR HONOR,
4 WHICH IS PLAINTIFFS' EXHIBIT 155, AND PLAINTIFFS'
5 EXHIBIT -- DEPOSITION EXHIBIT NUMBER 5, WHICH IS
6 PLAINTIFFS' EXHIBIT 156, YOUR HONOR.

7 THE COURT: WHAT'S THE PLAINTIFFS'
8 EXHIBIT NUMBER FOR DEPOSITION EXHIBIT NUMBER 1, PLEASE?

9 MR. VAN KWAWEGEN: DEPOSITION EXHIBIT
10 NUMBER 1 IS PLAINTIFFS' EXHIBIT NUMBER 106, YOUR HONOR.

11 WOULD YOU LIKE ME TO DESCRIBE THEM FOR
12 THE RECORD?

13 THE COURT: JUST A MINUTE. I WAS WRITING
14 WHEN YOU WERE TALKING. YOU ARE GOING TO BE OFFERING 106
15 AND 155 AND WHAT IS THE OTHER ONE?

16 MR. VAN KWAWEGEN: 156, YOUR HONOR.

17 THE COURT: WHAT DEPOSITION EXHIBIT IS
18 THAT?

19 MR. VAN KWAWEGEN: EXHIBIT NUMBER 5, YOUR
20 HONOR.

21 THE COURT: DEPOSITION EXHIBIT NUMBER 5
22 IS PLAINTIFFS' EXHIBIT 155?

23 MR. VAN KWAWEGEN: 156, YOUR HONOR.

24 THE COURT: WHICH ONE DO YOU WANT TO
25 ARGUE FIRST, PLEASE?

1 YOU'RE OFFERING ALL THREE OF THESE?

2 MR. VAN KWAWEGEN: YES.

3 THE COURT: ANY OBJECTION?

4 MR. GOMEZ: YES, YOUR HONOR, TO THE
5 EXHIBITS THAT ARE -- AND I DON'T HAVE THE CORRESPONDING
6 PLAINTIFFS' EXHIBIT NUMBERS, BUT THE DEPOSITION EXHIBIT
7 NUMBERS WERE 5 AND 10. I BELIEVE IT WAS THE LATTER TWO.

8 MR. VAN KWAWEGEN: PLAINTIFFS WERE NOT
9 OFFERING EXHIBIT NUMBER 10 ANYMORE SO.

10 MR. GOMEZ: OH, OKAY.

11 MR. VAN KWAWEGEN: I GUESS IT IS ONLY
12 NUMBER 5 THEN.

13 MR. GOMEZ: IF I MAY HAVE -- I DON'T HAVE
14 A COPY OF -- I HAVE PLAINTIFFS' EXHIBIT, THE FIRST
15 EXHIBIT, 106.

16 THE COURT: YES. THAT IS DEPOSITION
17 EXHIBIT NUMBER 1.

18 MR. GOMEZ: AND 5 IS 156. IF I MAY JUST
19 HAVE A MOMENT, YOUR HONOR.

20 THE COURT: CORRECT. YES.

21 MR. GOMEZ: YOUR HONOR, IF I MAY JUST --
22 I DON'T HAVE A COPY OF PLAINTIFFS' EXHIBIT 155.

23 MR. VAN KWAWEGEN: THAT IS DEPOSITION
24 EXHIBIT NUMBER 4, FOR THE RECORD.

25 THE COURT: WILL YOU LOAN A CORRECT COPY

1 TO MR. GOMEZ, PLEASE. YOU HAVE TO MARK IT UP. THERE
2 ARE NO MARKS ON THAT, I GUESS. IS THERE SOME REASON WHY
3 THIS DOES NOT HAVE AN EXHIBIT STICKER ON IT, EXHIBIT 4,
4 AS PLAINTIFFS' EXHIBIT 155?

5 MR. VAN KWAWEGEN: YES, YOUR HONOR.
6 THIS IS ACTUALLY A TWO-PAGE DOCUMENT THAT WAS USED AT
7 DEPOSITION AS EXHIBIT NUMBER 4. WHEN IT WAS SCANNED IN,
8 INADVERTENTLY THE SECOND PAGE WAS NOT SCANNED IN. I
9 REPRESENT TO YOUR HONOR IT IS EXACTLY THE SAME AS IT WAS
10 USED DURING THE DEPOSITION.

11 THE COURT: YOUR OFFER IS THREE
12 DOCUMENTS. THE FIRST ONE IS DEPOSITION EXHIBIT NUMBER
13 1, PLAINTIFFS' EXHIBIT 106; DEPOSITION EXHIBIT NUMBER 4,
14 PLAINTIFFS' EXHIBIT 155; AND PLAINTIFFS' EXHIBIT 156,
15 THE DEPOSITION EXHIBIT NUMBER 5.

16 MR. VAN KWAWEGEN: THAT'S CORRECT, YOUR
17 HONOR.

18 MR. GOMEZ: YOUR HONOR, THIS PARTICULAR
19 -- THE EXHIBIT, I BELIEVE, 155.

20 THE COURT: YES, REPORTED DECLARATION OF
21 MR. THALER.

22 MR. GOMEZ: YES. YOUR HONOR, IT'S DATED
23 MARCH 2, 2006. THE PLAINTIFFS CONDUCTED THE DEPOSITION
24 OF MR. THALER ON MARCH 9TH, 2006. YOUR HONOR, ANY
25 QUESTIONS THEY MAY HAVE WANTED TO ASK MR. THALER COULD

1 BE ADDRESSED IN HIS DEPOSITION AND A SEPARATE
2 DECLARATION THE DEFENDANT WOULD SUBMIT, IS REALLY NOT --
3 NOT A MATTER -- SHOULD NOT BE A MATTER THAT IS SUBMITTED
4 AS A SEPARATE EXHIBIT.

5 THE COURT: WHAT IS THE HISTORY OF THIS
6 DOCUMENT? WHAT WENT ON HERE? WHY DO WE HAVE A
7 DECLARATION WHEN YOU TOOK HIS DEPOSITION AT SOME LENGTH?

8 MR. VAN KWAWEGEN: YOUR HONOR, THERE ARE
9 A COUPLE OF REASONS BUT BEFORE I WOULD ADDRESS THAT,
10 WITH REGARD TO -- I'M NOT SURE IF MR. GOMEZ HAS ANY
11 OBJECTIONS TO THE OTHER TWO EXHIBITS. WE BELIEVE THAT
12 THOSE OBJECTIONS HAVE BEEN WAIVED. THEY WERE NOT RAISED
13 BEFORE.

14 THE COURT: WAIT A MINUTE. I'M RUNNING
15 THE SHOW HERE. YOU ANSWER MY QUESTIONS, NOT THE ONES
16 YOU HAVE.

17 MR. VAN KWAWEGEN: SORRY, YOUR HONOR.

18 THE COURT: I CAN'T DO BOTH. IF YOU CAN
19 DO BOTH, BE MY GUEST.

20 MR. VAN KWAWEGEN: IN THE CASE OF THIS
21 SPECIFIC DOCUMENT, YOUR HONOR, PAYCOM WAS SERVED WITH A
22 SUBPOENA FOR DOCUMENTS AS A THIRD-PARTY NOT RELATED TO
23 THIS CASE, AND PAYCOM REALIZED THAT IT WAS GOING TO HAVE
24 TO GO THROUGH AN ENORMOUS AMOUNT OF DOCUMENTS IN ORDER
25 TO SATISFY THE DEMANDS OF THE DOCUMENT REQUEST. AND

1 RATHER THAN DOING THAT AND SENDING A LOT OF DOCUMENTS
2 THAT WOULD THEN BE USED DURING THE DEPOSITION, PAYCOM
3 OPTED, AND WE AGREED, TO SEND A DECLARATION WITH THE
4 NECESSARY INFORMATION INSTEAD.

5 IN THIS PARTICULAR INSTANCE, THE
6 DECLARATION DEALS WITH THE AGREEMENT THAT YOUR HONOR HAS
7 HEARD OF BEFORE BETWEEN THE ACQUIRING BANK AND PAYCOM.
8 AND THERE WAS SUCH CONFIDENTIALITY CONCERNS INVOLVED
9 THAT PAYCOM DID NOT WANT TO PRODUCE THE SPECIFIC
10 DOCUMENT AND PROMISED TO FIGHT US TOOTH AND NAIL NOT TO
11 PROVIDE THIS DOCUMENT BECAUSE THERE WERE SUCH STRONG AND
12 STRENUOUS CONFIDENTIALITY CONCERNS SURROUNDING THIS
13 DOCUMENT.

14 APPARENTLY IT IS HYPER-COMPETITIVE
15 INFORMATION TO KNOW WITH WHICH BANK AN IPSP ACTUALLY HAS
16 ITS MERCHANT ACCOUNT. AND SO INSTEAD OF PROVIDING THIS
17 DOCUMENT, YOUR HONOR -- INSTEAD OF PROVIDING THIS
18 AGREEMENT, YOUR HONOR, PAYCOM OPTED TO SEND A
19 DECLARATION DESCRIBING THE CLAUSES AND THE TERMS OF THIS
20 AGREEMENT INSTEAD SO THAT --

21 THE COURT: THE AGREEMENT INVOLVED IN
22 THIS WORK?

23 MR. VAN KWAWEGEN: YES, YOUR HONOR.

24 THE COURT: GO AHEAD.

25 MR. VAN KWAWEGEN: AND SO WE RECEIVED

1 THIS DECLARATION, WE HAVE ASKED QUESTIONS ABOUT THIS
2 DURING THE DEPOSITION. SOME OF THESE QUESTIONS WERE
3 DESIGNATED. PLAINTIFFS BELIEVE THAT IT IS IMPORTANT FOR
4 THE COURT TO SEE THE RELEVANT TERMS OF THIS AGREEMENT
5 BETWEEN THE ACQUIRING BANK AND THE IPSP, PAYCOM IN THIS
6 CASE, AND THAT IS WHY WE OFFER IT INTO EVIDENCE, YOUR
7 HONOR.

8 THE COURT: WELL, WAS THE WITNESS ASKED
9 TO VERIFY THE MATERIAL IN THE DECLARATION WHEN HE WAS
10 UNDER OATH AT HIS DEPOSITION?

11 MR. VAN KWAWEGEN: I DON'T KNOW THAT BY
12 HEART, YOUR HONOR. I KNOW THAT THE CONTENT AND SUBJECT
13 OF THE DECLARATION WAS CERTAINLY DISCUSSED. I DO NOT
14 KNOW, SINCE IT IS MARKED AS AN EXHIBIT, I INFER THAT IT
15 WAS ALSO DISCUSSED SPECIFICALLY, BUT I WOULD HAVE TO
16 LOOK THAT UP.

17 THE COURT: WELL, WE HAVE HEARD THE
18 DESIGNATED TESTIMONY. THERE WERE REFERENCES TO EXHIBITS
19 FROM TIME-TO-TIME DURING THAT DESIGNATION, BUT AT THE
20 TIME IT WAS READ INTO THE RECORD THROUGH THE SURROGATE,
21 WE DID NOT TAKE THE TIME TO COMPARE THOSE NUMBERS WITH
22 ANY DOCUMENTS, SO I CAN'T TELL YOU ANY MORE, EVEN THOUGH
23 I HEARD THEM ALL, WHAT EXHIBIT NUMBERS FOR THAT
24 DEPOSITION WERE REFERRED TO IN THE DESIGNATED TESTIMONY
25 THAT WAS PLACED IN THE RECORD HERE. ARE YOU ABLE TO DO

1 THAT?

2 MR. VAN KWAWEGEN: YES, YOUR HONOR.

3 THE COURT: WHERE WAS EXHIBIT NUMBER 4,
4 FOR INSTANCE, REFERRED TO?

5 MR. VAN KWAWEGEN: YOUR HONOR, IT IS
6 ACTUALLY ON TRANSCRIPT PAGE NUMBER 62. THIS IS NOT PART
7 OF THE DESIGNATIONS THAT WAS READ INTO THE RECORD,
8 HOWEVER.

9 THE COURT: I CAN'T REMEMBER WHETHER YOU
10 WERE PRESENT AT THE DEPOSITION. WERE YOU?

11 MR. VAN KWAWEGEN: I WAS, YOUR HONOR.

12 THE COURT: WAS A COPY OF THE DECLARATION
13 MADE AVAILABLE TO THE DEFENDANT OR PROVIDED TO THE
14 DEFENDANT AT OR BEFORE THE DEPOSITION?

15 MR. VAN KWAWEGEN: YES, YOUR HONOR.

16 THE COURT: IS THERE ANY PLACE IN THE
17 DEPOSITION WHERE MR. THALER WAS ASKED IF THE --
18 EXPRESSLY WHETHER THE FACTS SET FORTH IN HIS DECLARATION
19 WERE TRUE AND CORRECT?

20 MR. VAN KWAWEGEN: NO, YOUR HONOR.

21 THE COURT: IS THERE ANY OTHER PLACE IN
22 THE DEPOSITION TRANSCRIPT WHERE DEPOSITION EXHIBIT
23 NUMBER 4 IS REFERRED TO?

24 MR. VAN KWAWEGEN: I DON'T KNOW BY HEART,
25 YOUR HONOR. I CAN'T TELL YOU THAT NOW.

1 THE COURT: MR. VAN KWAWEGEN, DID YOU ASK
2 THE WITNESS AT THE DEPOSITION ANYTHING YOU WANTED TO ASK
3 HIM YOU THOUGHT WAS APPROPRIATE FOR YOUR CLIENT TO HAVE
4 INFORMATION ON?

5 MR. VAN KWAWEGEN: YES, YOUR HONOR.

6 THE COURT: DO YOU HAVE ANY NOTION OF
7 WHETHER THERE IS ANYTHING IN THIS DECLARATION THAT IS
8 UNIQUE OR BEYOND WHAT THE TESTIMONY WAS AT THE
9 DEPOSITION?

10 MR. VAN KWAWEGEN: WITH ALL DUE RESPECT,
11 YES, YOUR HONOR. AT THE DEPOSITION, I DID NOT ASK HIM
12 TO SPECIFICALLY READ THE TERMS OF THE AGREEMENT BETWEEN
13 PAYCOM AND ITS ACQUIRING BANK INTO THE RECORD. I HAD
14 HAD FULL OPPORTUNITY. I TOOK -- MADE USE OF THAT
15 OPPORTUNITY TO ASK QUESTIONS ABOUT THIS RELATIONSHIP AS
16 YOU HEARD DURING THE DESIGNATED TESTIMONY, YOUR HONOR,
17 BUT I THINK THAT THE NATURE OF THE TERMS THEMSELVES HAVE
18 RELEVANCE AS WELL.

19 THE COURT: WELL, YOU HAVE A PROBLEM ON
20 YOUR HANDS. I JUST WANT TO FIND OUT HOW IMPORTANT IT IS
21 TO RULE ON THIS DECLARATION, IF YOU GOT EVERYTHING IN
22 THE TRANSCRIPT THAT YOU THINK IS NECESSARY.

23 MR. VAN KWAWEGEN: IT'S NOT ESSENTIAL,
24 YOUR HONOR.

25 THE COURT: BUT YOU ARE PUSHING THE

1 ADMISSION OF THE EXHIBIT, AND UNDER VERY PECULIAR
2 CIRCUMSTANCES TO ME.

3 MR. GOMEZ, DID YOU ATTEND THIS
4 DEPOSITION?

5 MR. GOMEZ: NO, YOUR HONOR. BUT I CAN
6 SAY THAT, WITH RESPECT TO THE DECLARATION, THE DEFENDANT
7 DID NOT PARTICIPATE, NOR WAS ADVISED BY THE PLAINTIFFS
8 THAT THEY WERE OBTAINING THIS DECLARATION FROM MR.
9 THALER BEFORE THE DEPOSITION.

10 NOW, WHILE THEY BROUGHT IT TO THE
11 DEPOSITION, THEY MADE A REFERENCE TO IT, THEY DID NOT
12 MAKE ANY AUTHENTICATION OR FURTHER VERIFICATION AS TO
13 THE VALIDITY OF WHAT WAS IN THE DECLARATION. BUT AS THE
14 PLAINTIFFS' COUNSEL HIMSELF HAS SAID, HE HAD THE
15 OPPORTUNITY AND IN FACT HE DID MAKE -- DISCUSS PORTIONS
16 OF THE DECLARATION. AND INTERESTINGLY, THEY ARE NOT
17 EVEN DESIGNATED BY THE PLAINTIFFS.

18 THE GOVERNMENT WOULD SUBMIT THAT THIS
19 DECLARATION SHOULD NOT BE PERMITTED TO -- PARTICULARLY
20 IN THE INSTANCE WHERE PLAINTIFFS HAD THE OPPORTUNITY TO
21 ADDRESS ANY OF THE TERMS AND SUBSTANCE, AND IN FACT
22 APPARENTLY DID ADDRESS THEM AT THE DEPOSITION.

23 THE COURT: MR. VAN KWAWEGEN, ARE YOU
24 AWARE OF ANY CASE OR LAW OR RULE THAT ALLOWS THE COURT
25 TO RECEIVE INTO EVIDENCE A UNILATERAL DECLARATION OF A

1 WITNESS WHO IS BROUGHT TO THE TRIAL, WHETHER IN PERSON
2 OR BY DEPOSITION TRANSCRIPT?

3 MR. VAN KWAWEGEN: NO, YOUR HONOR.

4 THE COURT: THE OBJECTION IS SUSTAINED TO
5 EXHIBIT NUMBER 4, PLAINTIFFS' EXHIBIT 155.

6 156, DID WE DO THAT ONE? WHICH ONE?

7 I SHOULD ASK MR. GOMEZ.

8 MR. GOMEZ: YOUR HONOR, I BELIEVE -- I
9 JUST WANT TO BE SURE, IS DEFENDANT'S EXHIBIT 156 EXHIBIT
10 5?

11 THE COURT: YES.

12 MR. VAN KWAWEGEN: YES.

13 MR. GOMEZ: YOUR HONOR, EXHIBIT 5 IS --
14 THE DEFENDANT, BY THE WAY, YOUR HONOR, OBJECTED. THIS
15 PARTICULAR EXHIBIT WAS IDENTIFIED IN THE PRETRIAL ORDER
16 OF OCTOBER 3RD, AND PER THE COURT'S ORDER THE DEFENDANT
17 ON OCTOBER 9TH FILED HIS OBJECTION TO THE DEPOSITION AND
18 EXHIBIT IN DOCUMENT 326 ON PAGE 29 AND CITED HEARSAY
19 AS --

20 THE COURT: EXHIBIT 156, NOT 326. IT MAY
21 BE A DOCUMENT NUMBER BUT WE ARE TALKING ABOUT AN EXHIBIT
22 NUMBER.

23 MR. GOMEZ: YES, YOUR HONOR. WHAT I'M
24 REFERRING TO NOW IS THE ACTUAL OBJECTIONS THAT THE
25 DEFENDANT FILED WITH THE COURT ON OCTOBER 9TH.

1 THE COURT: I ACCEPT YOUR REPRESENTATION
2 THAT THE DEFENDANT OBJECTED TO IT AT THAT TIME.

3 MR. GOMEZ: YOUR HONOR, THE OBJECTION
4 THAT THE DEFENDANT HAS IS THAT THIS IS A DOCUMENT THAT
5 IS NOT A PAYCOM DOCUMENT. IT'S A DOCUMENT THAT IS
6 PURPORTED TO BE A VISA DOCUMENT AND THE -- WHERE THIS
7 DOCUMENT ARISES IN THE DEPOSITION TRANSCRIPT,
8 SPECIFICALLY AT PAGE 68, LINE 3, IS A SECTION OF THE
9 DEPOSITION THAT THE PLAINTIFFS THEMSELVES DID NOT
10 DESIGNATE, AND I DIRECT THE COURT'S ATTENTION --

11 THE COURT: 68?

12 MR. GOMEZ: PAGE 68.

13 THE COURT: GET IT IN FRONT OF ME,
14 PLEASE.

15 MR. GOMEZ: YES, YOUR HONOR.

16 THE COURT: OKAY. I DO.

17 MR. GOMEZ: AT LINE 2, IT SAYS:

18 QUESTION: I HAVE ANOTHER DOCUMENT TO SHOW YOU. THIS
19 WILL BE EXHIBIT NUMBER 5.

20 THEN AT LINE 8, PLAINTIFFS' COUNSEL SAYS
21 FOR THE RECORD -- THE PLAINTIFFS AND COUNSEL THEMSELVES
22 IDENTIFYING THE DOCUMENT: THIS IS A DOCUMENT ENTITLED,
23 NEW HIGH-RISK INTERNET PAYMENT SERVICE PROVIDER PROGRAM
24 INTRODUCED.

25 THIS PORTION OF THE DEPOSITION WAS NOT

1 DESIGNATED BY THE PLAINTIFFS.

2 ALSO, YOUR HONOR, THE DOCUMENT, WHEN YOU
3 READ THROUGH THE REMAINDER OF THIS PAGE ON TO PAGE 69,
4 IT'S CLEAR THAT IT'S NOT A DOCUMENT THAT CAN MEET THE
5 STANDARDS UNDER THE HEARSAY EXCEPTION FOR BUSINESS
6 RECORDS. IT APPARENTLY IS A DOCUMENT THAT MAY HAVE BEEN
7 OBTAINED AT SOME SEMINAR THAT THIS PARTICULAR WITNESS
8 HAD ATTENDED.

9 BUT IT'S INTERESTING THAT ON PAGE 69,
10 AGAIN, THE PORTION NOT DESIGNATED, THE QUESTION IS ASKED
11 IN LINE 1: IS THIS A COPY OF THE DOCUMENT THAT YOU
12 RECEIVED AND THAT YOU --

13 THE COURT: I READ THAT, AND HE SAID IT
14 IS NOT.

15 MR. GOMEZ: -- PRODUCED TO US?

16 HE SAYS NO, IT IS NOT.

17 THE COURT: HE EXPLAINED SOME MORE
18 INDIRECT RELATIONSHIP TO THE DOCUMENT.

19 MR. GOMEZ: YES, YOUR HONOR.

20 ESSENTIALLY, IT'S JUST A DOCUMENT -- IT'S NOT A DOCUMENT
21 THAT IS KEPT IN THE REGULAR COURSE. IT'S A DOCUMENT OF
22 THE COMPANY. THERE IS NO SHOWING IN THE RECORD THAT
23 IT'S KEPT IN THE REGULAR COURSE OF THE COMPANY'S
24 BUSINESS.

25 THE COURT: IT IS NOT EVEN A PAYCOM

1 DOCUMENT?

2 MR. GOMEZ: YES, YOUR HONOR. THAT IS THE
3 DEFENDANT'S OBJECTION, YOUR HONOR.

4 MR. VAN KWAWEGEN, CAN YOU BAIL YOURSELF
5 OUT OF THIS ONE?

6 MR. VAN KWAWEGEN: YOUR HONOR, I WILL
7 CERTAINLY TRY.

8 THE COURT: GIVE IT YOUR BEST SHOT.

9 MR. VAN KWAWEGEN: YOUR HONOR, ON PAGE
10 68, AS MR. GOMEZ JUST REFERRED TO YOU, MR. THALER
11 SPECIFICALLY IDENTIFIES THIS AS A DOCUMENT HE
12 RECOGNIZES. HE ACTUALLY SAYS HE ATTENDED THE SEMINAR
13 WHEN THIS DOCUMENT WAS HANDED OUT AND THAT HE HIMSELF
14 OBTAINED A COPY.

15 ON PAGE 69, HE IDENTIFIES THIS DOCUMENT
16 AS SLIGHTLY DIFFERENT FROM THE COPY THAT HE HAD BECAUSE
17 OF THE HANDWRITTEN NOTES THAT ARE ON THE DOCUMENT, AND
18 THOSE ARE NOT HIS. THAT DOES NOTHING TO CHANGE THE
19 NATURE OF THE DOCUMENT. THE DOCUMENT IS NOT OFFERED
20 WITH REGARD TO THESE HANDWRITTEN NOTATIONS. AND
21 FURTHER, PLAINTIFFS DO NOT BELIEVE THAT THIS IS A
22 HEARSAY DOCUMENT, YOUR HONOR. IT IS NOT OFFERED TO
23 PROVE --

24 THE COURT: YOU CAN SEE THIS IS A
25 DOCUMENT PRODUCED BY SOMEONE OTHER THAN MR. THALER'S

1 EMPLOYER.

2 MR. VAN KWAWEGEN: I CAN SEE THAT THIS IS
3 A DOCUMENT THAT WAS ORIGINALLY PREPARED BY SOMEBODY ELSE
4 THAN MR. THALER'S EMPLOYER, BUT I WOULD RESPECTFULLY
5 SUBMIT THAT HE IDENTIFIED THE PARTY WHO ACTUALLY
6 PRODUCED THIS DOCUMENT AND THAT HE IDENTIFIED IT AS A
7 VISA DOCUMENT, YOUR HONOR.

8 THE COURT: EVEN ASSUMING WE -- I CAN
9 TAKE INTO ACCOUNT THE TESTIMONY ON PAGES 68 AND 69 OF
10 THE DEPOSITION, IGNORING FOR THE MOMENT THAT IT WAS NOT
11 DESIGNATED, I FIND THAT THE PLAINTIFFS HAVE FAILED TO
12 PROVE THAT THIS IS A DOCUMENT KEPT IN THE ORDINARY
13 COURSE OF BUSINESS OF ANYBODY. IF ANYONE AT ALL, IT
14 WOULD BE BY WHATEVER ORGANIZATION IS CALLED THE VISA
15 ORGANIZATION; NOT BY THIS WITNESS' EMPLOYER. AND THE
16 WITNESS DID NOT VALIDATE ITS CONTENTS AS BEING A
17 BUSINESS RECORD OF HIS EMPLOYER. IT JUST DOES NOT HAVE
18 THE INDICES OF CREDIBILITY THAT THE RULES OF EVIDENCE
19 ARE TRYING TO SUPPORT BY THEIR RATHER LIBERAL METHODS OF
20 GETTING BUSINESS RECORDS IN, SO THE OBJECTION IS
21 SUSTAINED.

22 MR. HANSEN: YOUR HONOR, THERE IS ONE
23 FINAL DOCUMENT THAT I DON'T THINK MR. GOMEZ IS OBJECTING
24 TO. THAT WOULD BE DEPOSITION EXHIBIT NUMBER 1 OR
25 PLAINTIFFS' EXHIBIT 106.

1 THE COURT: MR. GOMEZ, ANY OBJECTION?
2 MR. GOMEZ: YOUR HONOR -- NO, YOUR HONOR.
3 THE COURT: DEPOSITION EXHIBIT NUMBER 1,
4 PLAINTIFFS' EXHIBIT 106, IS RECEIVED INTO EVIDENCE.
5 (PLAINTIFFS' EXHIBIT 106 RECEIVED INTO
6 EVIDENCE.)
7 THE COURT: PLAINTIFFS HAVE ANOTHER
8 WITNESS TO CALL.
9 MR. VAN KWAWEGEN: YES. PLAINTIFFS CALL
10 CLOVER TAYLOR.
11 CLOVER TAYLOR, PLAINTIFFS' WITNESS,
12 SWORN.
13 THE CLERK: STATE AND SPELL YOUR FULL
14 NAME FOR THE RECORD.
15 THE WITNESS: MY NAME IS CLOVER TAYLOR,
16 C-L-O-V-E-R, T-A-Y-L-O-R.
17 THE COURT: GOOD AFTERNOON, MISS TAYLOR.
18 THE WITNESS: GOOD AFTERNOON.
19 MR. VAN KWAWEGEN: GOOD AFTERNOON, MISS
20 TAYLOR.
21 YOUR HONOR.
22 THE COURT: DO YOU HAVE ANY EXHIBITS YOU
23 WANT TO GIVE ME?
24 MR. VAN KWAWEGEN: NO, YOUR HONOR.
25 THE COURT: I WON'T TAKE IT PERSONALLY.

1 MR. VAN KWAWEGEN: NEITHER WILL I, YOUR
2 HONOR.

3 MR. HIRT: YOUR HONOR, BEFORE COUNSEL
4 BEGINS, I JUST WANTED TO NOTE, RATHER THAN STATE THIS
5 OBJECTION AGAIN AND AGAIN, THAT THIS IS ONE OF THE
6 NONDISCLOSED WITNESSES LIKE THE OTHER TWO LIBRARIANS.
7 WE UNDERSTAND YOUR HONOR'S RULING.

8 THE COURT: THE RULING STANDS AND I KEEP
9 TELLING YOU THIS, BUT YOU WILL HAVE A WRITTEN ORDER OF
10 SOME OF THE ELEMENTS IN THAT RULING IN DUE COURSE.

11 I REMIND THE DEFENDANT THAT THE DEFENDANT
12 HAS TO OBJECT TO ANY PARTICULAR QUESTION OR MOVE TO
13 STRIKE ANY PARTICULAR LINE OF QUESTIONING AND ANSWERS
14 THAT THEY DEEM APPROPRIATE REGARDLESS OF THE SO-CALLED
15 DISCLOSURE ISSUE.

16 MR. HIRT: YES.

17 BY MR. VAN KWAWEGEN:

18 Q. MISS TAYLOR --

19 THE COURT: YOU MAY PROCEED.

20 MR. VAN KWAWEGEN: THANK YOU, YOUR HONOR.

21 DIRECT EXAMINATION.

22 BY MR. VAN KWAWEGEN:

23 Q. MISS TAYLOR, WHAT IS YOUR CURRENT POSITION?

24 A. I AM THE HEAD LIBRARIAN AT WESTERN ALBEMARLE
25 HIGH SCHOOL IN CROZET, VIRGINIA. THAT'S C-R-O-Z-E-T AND

1 A-L-B-E-M-A-R-L-E.

2 Q. HOW LONG HAVE YOU HELD YOUR PRESENT POSITION IN
3 THE HIGH SCHOOL?

4 A. THIS WILL BE MY 7TH YEAR AT WESTERN.

5 Q. TELL THE COURT A LITTLE BIT ABOUT YOUR
6 EDUCATIONAL BACKGROUND.

7 A. I RECEIVED MY BACHELOR'S DEGREE FROM THE
8 UNIVERSITY OF CHICAGO IN 1975.

9 THE COURT: DOES SOMEONE HAVE A WIRELESS
10 DEVICE?

11 TURN IT OFF, PLEASE.

12 THE COURT: YOU WERE AT WESTERN HIGH
13 SCHOOL?

14 THE WITNESS: WESTERN ALBEMARLE HIGH
15 SCHOOL. SO I RECEIVED MY BA FROM THE UNIVERSITY OF
16 CHICAGO IN ENGLISH IN 1975, AND I THEN WENT TO THE
17 UNIVERSITY OF VIRGINIA FOR A MASTER'S IN ENGLISH, WHICH
18 I RECEIVED IN 1979. THEN I TOOK SOME TIME OFF, I WORKED
19 AS A TECHNICAL WRITER AND RECEIVED -- WENT BACK TO THE
20 SCHOOL SYSTEM AND RECEIVED MY LIBRARY CERTIFICATION IN
21 1990.

22 Q. HOW LONG HAVE YOU BEEN A SCHOOL LIBRARIAN?

23 A. 15 YEARS. 12 YEARS -- 12 YEARS AS A LIBRARIAN,
24 15 IN THE SCHOOL SYSTEM. EXCUSE ME.

25 Q. WHAT DID YOU DO BEFORE YOU BECAME A LIBRARIAN?

1 A. BESIDES BEING A TECHNICAL WRITER, I WAS AN
2 ADJUNCT FACULTY MEMBER OF JAMES MADISON UNIVERSITY AND
3 THE UNIVERSITY OF VIRGINIA SCHOOL OF ENGINEERING, WHERE
4 I TAUGHT WRITING AND LITERATURE.

5 AND THEN I ALSO TAUGHT ENGLISH IN THE
6 PUBLIC SCHOOL SYSTEM, MIDDLE SCHOOL AND HIGH SCHOOL.

7 Q. ARE YOU A MEMBER OF ANY PROFESSIONAL
8 ORGANIZATIONS?

9 A. YES, I'M A MEMBER OF THE ALBEMARLE EDUCATION
10 ASSOCIATION, WHICH IS A DIVISION OF THE NATIONAL
11 EDUCATION ASSOCIATION, THE VIRGINIA EDUCATIONAL MEDIA
12 ASSOCIATION, THE AMERICAN ASSOCIATION OF SCHOOL
13 LIBRARIANS, WHICH IS A DIVISION OF ALA, AND THE VIRGINIA
14 SOCIETY FOR TECHNOLOGY AND EDUCATION.

15 Q. WHAT DOES THE VIRGINIA SOCIETY FOR TECHNOLOGY
16 AND EDUCATION DO?

17 A. THEY PROMOTE THE INTEGRATION OF TECHNOLOGY INTO
18 THE CURRICULUM, SO THEY HOLD CONFERENCES AND WORKSHOPS,
19 MAINLY PROFESSIONAL DEVELOPMENT.

20 Q. ARE YOU INVOLVED WITH ANY COMMITTEES,
21 ORGANIZATIONS AT A COUNTY LEVEL?

22 A. YES. I'M A MEMBER OF THE TECHNOLOGY ADVISORY
23 COMMITTEE FOR MY COUNTY. AND I ALSO RECEIVE A STIPEND
24 FOR BEING DATABASE CONSULTANT TO THE OTHER LIBRARIANS IN
25 MY COUNTY.

1 Q. WHAT IS THE TECHNOLOGY ADVISORY COMMITTEE?

2 A. IT HAS 25 MEMBERS CONSISTING OF SCHOOL
3 TECHNOLOGY PERSONNEL, ASSISTANT SUPERINTENDENTS, SCHOOL
4 PRINCIPALS, TEACHERS, LIBRARIANS, PARENTS, STUDENTS AND
5 COMMUNITY REPRESENTATIVES.

6 Q. HOW ARE MEMBERS OF THIS COMMITTEE SELECTED?

7 A. THE DIVISION OF TECHNOLOGY APPOINTS -- IT'S VERY
8 HIGHLY STRUCTURED. THEY APPOINT PEOPLE TO IT. THEY
9 USUALLY CONSULT WITH SCHOOL PRINCIPALS TO GET THE NAMES
10 OF TEACHERS THAT WOULD BE APPROPRIATE, OR LIBRARIANS.

11 Q. WHAT DOES THE TECHNOLOGY ADVISORY COMMITTEE DO?

12 A. THEY PROVIDE DIRECTION AND COUNSEL TO THE SCHOOL
13 SYSTEM ON ACCOMPLISHING THE DIVISION'S COMPREHENSIVE
14 TECHNOLOGY PLAN. THEY DECIDE ON WHAT TECHNOLOGY IS
15 NEEDED, WHAT TO PURCHASE, HOW TO USE THE BUDGET AND HOW
16 TO DISTRIBUTE IT EQUITABLY AMONG THE SCHOOLS.

17 Q. ARE YOU INVOLVED WITH ANY OTHER COMMITTEES
18 RELATED TO YOUR WORK AS A LIBRARIAN?

19 A. I'M THE DEPARTMENT CHAIR FOR THE LIBRARY, SO I'M
20 ON THE DEPARTMENT CHAIR COMMITTEE OF THE SCHOOL, WHICH
21 IS THE ADMINISTRATORS AND ONE CHAIR OF EACH DEPARTMENT,
22 SO WE DECIDE THE POLICIES OF THE SCHOOL.

23 Q. ARE YOU TESTIFYING TODAY ON BEHALF OF ANY OF
24 THESE ORGANIZATIONS OR COMMITTEES?

25 A. NO, I'M NOT.

1 Q. ARE YOU HERE TESTIFYING ON BEHALF OF THE WESTERN
2 ALBEMARLE HIGH SCHOOL?

3 A. NO.

4 Q. WHAT ARE YOUR RESPONSIBILITIES AS A SCHOOL
5 LIBRARIAN?

6 A. I HAVE MANY AND VARIED RESPONSIBILITIES. I
7 MANAGE A LIBRARY OF 20,000 VOLUMES, VIDEO, RECORDINGS,
8 EQUIPMENT, DIGITAL EQUIPMENT, COMPUTERS, AND 15 ONLINE
9 DATABASES. SO I'M INVOLVED IN THE COLLECTION,
10 DEVELOPMENT, SELECTION, PURCHASE, CATALOGING, PROCESSING
11 OF ALL THAT.

12 THEN I ALSO SERVE AS AN INFORMATION
13 SPECIALIST IN THE SCHOOL, SO I INSTRUCT THE STUDENTS IN
14 THE USE OF THESE RESOURCES, THE EFFECTIVE USE, AND ALSO
15 HELP ASSIST TEACHERS TO INTEGRATE THE RESOURCES INTO
16 THEIR CURRICULUM AND TO INTEGRATE TECHNOLOGY.

17 Q. HOW WOULD YOU DESCRIBE YOUR LEVEL OF COMPETENCE
18 WITH COMPUTERS IN GENERAL TERMS?

19 A. IT'S ADVANCED BUT NOT EXPERT.

20 Q. HOW DID YOU GAIN AN ADVANCED COMPETENCE WITH
21 COMPUTERS?

22 A. I ATTEND CONFERENCES FROM ALL THE ORGANIZATIONS
23 THAT I MENTIONED, AND THEY HAVE WORKSHOPS AND CONFERENCE
24 PRESENTATIONS THAT TRAIN US.

25 I HAVE ALSO TAKEN VARIOUS CLASSES OVER

1 THE YEARS IN SOFTWARE AND TROUBLESHOOTING AND
2 DREAMWEAVER.

3 Q. WHAT IS DREAMWEAVER?

4 A. THAT IS AN HTML EDITOR THAT I USE TO MAINTAIN --
5 I DESIGNED AND MAINTAIN THE SCHOOL LIBRARY WEBSITE,
6 WHICH HAS ABOUT 150 PAGES. IT GIVES 24/7 ACCESS TO OUR
7 RESOURCES.

8 Q. WHAT DO YOU DO OUTSIDE OF WORK?

9 A. WELL, I LOVE TO SING AND DANCE, SO I HAVE SUNG
10 IN A CHURCH CHOIR FOR 15 OR 20 YEARS. AND I DO
11 CONTRADANCING AND I HAVE BEEN IN SOME THEATRICAL
12 PRODUCTIONS.

13 Q. CAN YOU DESCRIBE TO THE COURT THE COUNTY IN
14 WHICH YOU WORK?

15 A. YES, IT'S A LARGE COUNTY IN CENTRAL VIRGINIA.
16 IT'S ABOUT ONE HUNDRED MILES SOUTH OF WASHINGTON, D.C.
17 AND 70 MILES WEST OF RICHMOND IN THE FOOTHILLS OF THE
18 BLUE RIDGE. I THINK IT'S 700 SOME THOUSAND SQUARE MILES
19 AND THE POPULATION IS 150,000. THE ALBEMARLE COUNTY
20 SURROUNDS THE CITY OF CHARLOTTESVILLE, WHICH IS THE
21 LOCATION OF THE UNIVERSITY OF VIRGINIA AND MONTICELLO,
22 OF COURSE. IT IS A RELATIVELY AFFLUENT COUNTY WITH A
23 HIGH STANDARD OF LIVING AND HIGH ACHIEVING SCHOOL
24 SYSTEM. IT'S VERY WELL-REGARDED SCHOOL SYSTEM.

25 Q. HOW MANY SCHOOLS ARE THERE IN YOUR COUNTY?

1 A. THERE ARE 26 SCHOOLS, THREE HIGH SCHOOLS, FIVE
2 OR SIX MIDDLE SCHOOLS -- FIVE MIDDLE SCHOOLS AND 16
3 ELEMENTARY SCHOOLS.

4 Q. DOES EVERY SCHOOL HAVE A LIBRARY?

5 A. YES.

6 Q. DOES EVERY SCHOOL HAVE A LIBRARIAN?

7 A. YES, ALTHOUGH THE SMALLER ELEMENTARY SCHOOLS
8 HAVE A PART-TIME LIBRARIAN.

9 Q. COULD YOU DESCRIBE THE WESTERN ALBEMARLE HIGH
10 SCHOOL?

11 A. YES, IT'S 10 MILES OUTSIDE OF CHARLOTTESVILLE.
12 IT HAS 1,100 STUDENTS AND ABOUT 75 FACULTY. IT IS A
13 HIGH-ACHIEVING SCHOOL. THE AREA IN WHICH IT IS LOCATED
14 IS WHERE MOST OF THE PROFESSORS LIVE AND DOCTORS, ET
15 CETERA, SO THE STUDENTS ARE VERY MOTIVATED AND ACADEMIC.
16 I THINK A QUARTER OF THEM TAKE AP CLASSES AND MOST WHO
17 GRADUATE GO TO COLLEGE.

18 Q. HOW MANY LIBRARIANS ARE THERE?

19 A. THERE ARE TWO LIBRARIANS AND A LIBRARY AIDE.

20 Q. WHAT SORT OF RESOURCES DOES THE LIBRARY PROVIDE
21 TO THE STUDENTS?

22 A. WE HAVE UP-TO-DATE PRINT RESOURCES AND A BIG
23 REFERENCE COLLECTION AND AN UP-TO-DATE FICTION
24 COLLECTION. WE HAVE 20 COMPUTERS IN THE LIBRARY. AND
25 WE ALSO HAVE EIGHT CARTS OF WIRELESS LAPTOPS THAT CAN BE

1 CHECKED OUT TO TEACHERS, AND WE SOMETIMES USE THOSE IN
2 THE LIBRARY.

3 AND THEN WE HAVE 15 DATABASES PROVIDED BY
4 THE STATE, COUNTY, AND SCHOOL WHICH I HAVE HELPED TO
5 SELECT, SINCE I WAS ON THE STATE COMMITTEE TO SELECT
6 THOSE DATABASES AND ARE ALL ON MY WEB PAGE.

7 Q. THOSE ARE ONLINE DATABASES?

8 A. YES.

9 Q. BESIDES THE COMPUTERS IN THE LIBRARY AND THE
10 CARTS WITH LAPTOPS THAT YOU DESCRIBED, DOES THE SCHOOL
11 HAVE ANY OTHER COMPUTER FACILITIES?

12 A. YES. WE HAVE A COMPUTER LAB RIGHT NEXT DOOR
13 WITH 26 COMPUTERS, I BELIEVE, THESE ARE ALL PC'S. WE
14 HAVE A MAC LAB DOWNSTAIRS. WE HAVE A BUSINESS LAB FOR
15 INSTRUCTION ON SOFTWARE.

16 Q. HOW ARE THE COMPUTERS IN THE LIBRARY AND THE
17 WIRELESS LAPTOPS USED?

18 A. THEY ARE USED FOR RESEARCH, FOR PRODUCTION,
19 MAKING -- WRITING PAPERS, DOING POWERPOINT. THEY DO
20 EDIT MOVIES ON THEM. THAT'S ABOUT IT.

21 Q. DO THE COMPUTERS IN THE LIBRARY AND THE WIRELESS
22 LAPTOPS AND COMPUTERS IN THE COMPUTER LABS HAVE ACCESS
23 TO THE INTERNET?

24 A. YES. THEY ALL HAVE ACCESS TO THE INTERNET.
25 THEY ARE ALL NETWORKED.

1 Q. WHAT DO YOU MEAN "THEY ARE ALL NETWORKED"?

2 A. WELL, THERE IS A WIDE AREA NETWORK FOR THE
3 COUNTY THAT CONNECTS ALL THE SCHOOLS. SO, FOR INSTANCE,
4 FROM WITHIN -- FROM ANY SCHOOL, I CAN ACCESS MY SCHOOL
5 LIBRARY CATALOG, FOR EXAMPLE. THAT WAN, WIDE AREA
6 NETWORK, IS PROTECTED BY A FIREWALL. AND THEN WITHIN
7 EACH SCHOOL, THERE'S A LOCAL AREA NETWORK THAT STUDENTS
8 MUST LOG INTO WITH A NUMBER AND A PASSWORD. SO THEY
9 CAN'T GET ACCESS TO THE RESOURCES WITHOUT LOGGING IN AS
10 THEMSELVES, AND THAT INFORMATION CAN BE TRACKED.

11 Q. DO THESE COMPUTERS HAVE ACCESS TO THE INTERNET
12 SEARCH TOOLS AND DIRECTORIES SUCH AS GOOGLE AND YAHOO?

13 A. YES.

14 Q. EARLIER YOU SPOKE ABOUT THE ONLINE DATABASES.
15 COULD YOU GIVE A FEW EXAMPLES TO THE COURT IN ORDER TO
16 EXPLAIN WHAT TYPES OF DATABASES THEY ARE?

17 A. WE HAVE OUTSTANDING DATABASES THAT PROVIDE
18 RELIABLE INFORMATION FOR RESEARCH, INCLUDING BRITANNICA,
19 WORLD BOOK, INFOTRACK, PROQUEST HISTORICAL NEWSPAPERS,
20 OXFORD ENGLISH DICTIONARY, ET CETERA.

21 Q. EARLIER YOU REFERRED TO THE LOG-ON CREDENTIALS
22 FOR STUDENTS, CORRECT?

23 A. YES.

24 Q. DOES THE SCHOOL TRACK STUDENT WEB USE?

25 A. NO. I DID ASK THAT QUESTION OF OUR -- WE HAVE

1 AN INSTRUCTIONAL COORDINATOR IN EACH BUILDING CALLED A
2 CURRICULUM AND TECHNOLOGY INTEGRATION PARTNER, CTIP, AND
3 I ASKED HIM IF THE TRACKING DID COVER THE INTERNET USE
4 AND IT DOES NOT.

5 Q. WITH REGARD TO THE COMPUTERS IN THE LIBRARY AND
6 THE COMPUTERS IN THE LAB, DO YOU KNOW WHETHER STUDENTS
7 CAN USE THE COMPUTERS WITHOUT SUPERVISION?

8 A. OUR ACCEPTABLE USE POLICY REQUIRES THAT STUDENTS
9 BE SUPERVISED WHENEVER THEY ARE USING COMPUTERS IN THE
10 BUILDING. AND I WOULD SAY THAT THAT IS EFFECTIVE, YOU
11 KNOW, 98 PERCENT OF THE TIME. THERE CERTAINLY ARE TIMES
12 WHEN A TEACHER WILL PUT HER CLASS IN THE LAB AND LEAVE
13 FOR A SECOND, AND TELL THEM TO BE GOOD, BUT RARELY.

14 THE COURT: RARELY ARE THEY GOOD OR
15 RARELY THAT SHE SAYS THAT?

16 THE WITNESS: RARELY DOES SHE SAY THAT.

17 GOOD POINT.

18 THE COURT: WHY DO JUDGES THINK THEY ARE
19 FUNNY? MOSTLY WE ARE NOT.

20 MR. HANSEN: SOMETIMES.

21 BY MR. VAN KWAWEGEN:

22 Q. DO YOU TEACH RESEARCH SKILLS TO STUDENTS?

23 A. YES, I TEACH INFORMATION LITERACY SKILLS.

24 Q. HOW DOES THIS TRAINING TAKE PLACE?

25 A. WHEN A CLASS SIGNS UP TO COME TO THE LIBRARY TO

1 DO RESEARCH, WE COLLABORATE WITH THE TEACHER TO PLAN HOW
2 WE WILL SUPPORT HER UNIT. AND I CREATE A PATHFINDER. I
3 OR MY CO-LIBRARIAN, WE CREATE A PATHFINDER OR A RESEARCH
4 GUIDE THAT WE POST ON THE WEBSITE THAT KIND OF GATHERS
5 THE BEST RESOURCES THAT WE HAVE FOR THAT PROJECT AND
6 RECOMMENDS CERTAIN PRINT RESOURCES AND WEBSITES AND
7 GIVES TIPS ON SEARCHING THE INTERNET FOR THAT PARTICULAR
8 PROJECT.

9 AND THEN, WHEN THEY COME TO THE LIBRARY,
10 WE ACTUALLY GO OVER THAT. WE HAVE A MOUNTED LCD
11 PROJECTOR AND SCREEN. WE WILL GO OVER THAT WITH THEM
12 AND THEN WE USUALLY WILL ALSO PUT IN SOME KIND OF
13 INSTRUCTION IN ADDITION ON WHATEVER IS RELEVANT TO THAT
14 PROJECT, SUCH AS COPYRIGHT, PLAGIARISM, BIBLIOGRAPHY OR
15 POSSIBLY EVALUATING WEBSITES.

16 Q. WHAT ARE THE STUDENTS TAUGHT ABOUT PROPER
17 INTERNET USE? YOU REFERRED TO CERTAIN TIPS.

18 A. WELL, SIMILAR TO WHAT MISS KIRK SAID, WE DO TELL
19 THEM ABOUT USING QUOTATION MARKS AND WILD CARDS, AND
20 APPROPRIATE SEARCH STRINGS AND NARROWING THEIR SEARCHES.
21 AND THEN WE ALSO TALK A GREAT DEAL ABOUT EVALUATING
22 WEBSITES, ESPECIALLY WITH THE NINTH GRADERS, AND LOOKING
23 AT RELIABLE SOURCES, LOOKING FOR RELIABLE SOURCES.
24 FIRST OF ALL, WE ENCOURAGE THEM TO USE THE DATABASES
25 FIRST, BECAUSE THOSE ARE REVIEWED, WRITTEN BY EXPERTS

1 AND AUTHORITATIVE. THEN, IF THEY DO GO OUT ON THE
2 INTERNET, WE ENCOURAGE THEM TO EXAMINE THE SOURCE OF THE
3 MATERIAL.

4 Q. HOW DO YOU TEACH STUDENTS TO ANALYZE OR EVALUATE
5 WEBSITES?

6 A. WELL, WE HAVE A MNEMONIC DEVICE THAT WE
7 DEVELOPED CALLED ORCA, WHICH WAS TO PREVENT THEM FROM
8 DROWNING IN A SEA OF INFORMATION. SO THAT STANDS FOR
9 OBJECTIVITY, CURRENCY, RELEVANCE AND AUTHORITY.

10 Q. HOW DO YOU TEACH A STUDENT TO LOOK AT THE
11 OBJECTIVITY OF A WEBSITE?

12 A. WELL, WE HAVE A HANDOUT AND IT LISTS LIKE A
13 SERIES OF FIVE QUESTIONS FOR EACH OF THOSE CATEGORIES.
14 SO UNDER OBJECTIVITY, WE ASK, IS THIS MATERIAL FACTUAL
15 OR IS IT BIASED? IS THE TONE SLANTED? DOES THE AUTHOR
16 HAVE AN AXE TO GRIND?

17 AND THEN UNDER RELEVANCE --

18 Q. RELIABILITY?

19 A. PARDON ME?

20 Q. RELIABILITY?

21 A. RELEVANCE IS, DOES THIS WEBSITE REALLY PERTAIN
22 TO THEIR PROJECT. IF THEY ARE LOOKING FOR, SAY,
23 MEDIEVAL STUFF, AND THEY MIGHT FIND A PLACE THAT SELLS
24 MEDIEVAL COSTUMES. THAT IS NOT GOING TO HELP THEM WITH
25 THEIR RESEARCH ON MEDIEVAL PRACTICES IN LIFE.

1 THEN CURRENCY, WE ASK THEM TO LOOK FOR
2 THE DATE IT WAS LAST UPDATED AND IS IT CURRENT FOR THIS
3 PARTICULAR TOPIC. FOR INSTANCE, AIDS. A FIVE OR
4 TEN-YEAR OLD SITE ABOUT AIDS MAY BE OUT OF DATE AND NOT
5 ACCURATE.

6 AND LAST, THE AUTHORITY, WE TELL THEM TO
7 GO BACK TO THE HOME PAGE, LOOK AT THE AUTHOR. IS THE
8 AUTHOR LISTED. AND THEN WE OFTEN ENCOURAGE THEM TO
9 GOOGLE THAT NAME AND SEE IF THAT PERSON HAS ANY RIGHT TO
10 BE TEACHING THEM SOMETHING ABOUT THIS TOPIC.

11 AND WE ALSO HAVE THEM LOOK AT THE URL
12 DOMAIN, AGAIN AS MISS KIRK MENTIONED.

13 Q. WHY DO YOU TEACH STUDENTS THESE SKILLS?

14 A. WELL, MOST OF THEM, AS I SAID, ARE GOING ON TO
15 COLLEGE. AND THEY REALLY NEED TO KNOW HOW TO FIND
16 RELIABLE INFORMATION AND TO HAVE A RESPECTABLE
17 BIBLIOGRAPHY FOR THEIR PAPERS. AND WE TELL THEM THAT
18 COLLEGE PROFESSORS ARE NOT GOING TO ACCEPT WIKIPEDIA OR
19 SOME URL.COM FROM AOL, OR WHAT IS THAT OTHER ONE,
20 ANGELFIRE, ON THEIR BIBLIOGRAPHY, THAT THEY WILL BE
21 GRADED DOWN FOR THAT. AND SOMETIMES THE TEACHER
22 WILL ACTUALLY LET US HELP GRADE THE BIBLIOGRAPHY.

23 Q. IN YOUR EXPERIENCE, DO THESE TECHNIQUES LOWER
24 THE RISK OF STUDENTS ACCIDENTALLY COMING INTO CONTACT
25 WITH INAPPROPRIATE MATERIALS WHEN THEY ACCESS THE

1 INTERNET?

2 A. YES, BECAUSE WHEN THEY COME TO THE LIBRARY, THEY
3 ARE VERY FOCUSED ON THE TASK AT HAND, AND THE TEACHER
4 AND I OR MISS HILL, MY CO-LIBRARIAN, SPEND TIME
5 CIRCULATING AND MAKING SURE THAT THEY ARE USING THE
6 RIGHT RESOURCES. AND THEN WE WORK WITH THEM
7 INDIVIDUALLY TO FIND WHAT THEY ARE LOOKING FOR.

8 Q. HAVE YOU EVER INSTRUCTED PARENTS ON THE PROPER
9 USE OF THE INTERNET?

10 A. YES. LAST FEBRUARY, ONE OF OUR -- A MEMBER OF
11 OUR PARENT TEACHER ORGANIZATION ORGANIZED AN INTERNET
12 SAFETY PROGRAM NIGHT AND SHE INVITED THE ASSISTANT
13 ATTORNEY GENERAL OF THE STATE TO TALK TO PARENTS ABOUT
14 HOW TO KEEP THEIR CHILDREN SAFE ON THE INTERNET. AND
15 THEN SHE ASKED US TO PRESENT AS WELL ABOUT PROPER USES
16 OF THE INTERNET, HOW TO USE THE RELIABLE DATABASES AND
17 TO EXPOSE THE PARENTS TO THOSE DATABASES SO THEY COULD
18 HELP THEIR CHILDREN. AND THEN SHE ALSO ASKED ME TO
19 TEACH THE PARENTS ABOUT HOW THE FILTER WORKS. I DID
20 SOME RESEARCH ON OUR INTERNET CONTENT FILTERS SO THAT I
21 COULD INFORM THE PARENTS THAT THAT WAS ALSO PROTECTING
22 THEIR CHILDREN.

23 Q. WHEN YOU REFER TO "US," WHEN YOU EXPLAIN THAT
24 YOU WERE TEACHING THESE PARENTS ABOUT PROPER INTERNET
25 USE, WHO IS THE "US"?

1 A. MY ASSISTANT LIBRARIAN, SHE PRESENTED WITH ME.

2 Q. DOES YOUR COUNTY HAVE ANY POLICIES REGARDING THE
3 USE OF SCHOOL COMPUTERS?

4 A. YES. THERE IS A LENGTHY ACCEPTABLE USE POLICY
5 WHICH IS SIGNED AT THE BEGINNING OF THE YEAR BY EVERY
6 STUDENT AND THEIR PARENT.

7 Q. WHAT HAPPENS IF EITHER THE STUDENT OR THE PARENT
8 DOES NOT SIGN THE ACCEPTABLE USE POLICY?

9 A. THEN THAT STUDENT'S NUMBER, THEIR LOG-IN IS
10 DISABLED AND THAT STUDENT CANNOT DO HIS SCHOOL WORK,
11 WHICH IS AN EXTREMELY EFFECTIVE CONSEQUENCE BECAUSE THEY
12 WILL BE JUST BE GRADED DOWN. THEY WILL GET A ZERO ON
13 THE PROJECT.

14 Q. WHAT IS COVERED BY THE ACCEPTABLE USE POLICY?

15 A. AS I MENTIONED, IT IS LENGTHY. ONE OF THE
16 THINGS THAT IT SPECIFIES IS THAT WE WILL SUPERVISE
17 STUDENTS WHEN THEY ARE ON THE INTERNET. THEN THE
18 STUDENTS ARE EXPECTED TO USE THE COMPUTERS FOR
19 EDUCATIONAL PURPOSES, NOT TO ACCESS ANY INAPPROPRIATE,
20 OBSCENE, LIBELOUS OR INAPPROPRIATE SITES, I CAN'T
21 REMEMBER THE TERMINOLOGY. NOT TO SEND ANY THREATENING
22 OR HARASSING E-MAILS, AND IN FACT TO REPORT THOSE IF
23 THEY WERE TO RECEIVE THEM. THEY ARE REQUIRED TO REPORT
24 THEM.

25 Q. IN YOUR EXPERIENCE, ARE THESE ACCEPTABLE USE

1 POLICIES, DO THEY ASSIST IN INSURING THAT STUDENTS
2 ACCESS THE INTERNET SAFELY AND APPROPRIATELY?

3 A. YES. I BELIEVE THAT OUR SCHOOL SYSTEM HAS A
4 COMPLEX OF POLICIES THAT PROTECT THE STUDENTS. WE HAVE
5 OUR INSTRUCTION, THE ACCEPTABLE USE POLICY, THE FILTER,
6 AND A FOURTH ONE THAT I CAN'T COME UP WITH RIGHT THIS
7 MINUTE.

8 Q. WE WILL GET BACK TO THAT.

9 A. SUPERVISION. YEAH, THAT IS IT.

10 Q. YOU ARE ONE OF THE SUPERVISORS?

11 A. RIGHT.

12 Q. LET'S TALK ABOUT FILTERING.

13 DO YOU KNOW WHY INTERNET CONTENT
14 FILTERING SOFTWARE IS USED IN YOUR HIGH SCHOOL?

15 A. VIRGINIA PASSED A LAW REQUIRING INTERNET
16 FILTERING IN 2001. AND SO WE IMPLEMENTED THE FILTER
17 THAT FALL.

18 Q. WHICH PRODUCT DOES THE COUNTY USE?

19 A. IT'S CALLED WEBSense.

20 Q. DOES THE COUNTY USE ANY OTHER PRODUCTS OR
21 SERVICES TO FILTER CONTENT BESIDES WEBSense?

22 A. NO -- WELL, THEY DO HAVE AN INTERNET SPAM FILTER
23 ON THE TEACHERS' E-MAIL.

24 Q. WHO SELECTED THE USE OF WEBSense FOR THE COUNTY?

25 A. THE TECHNOLOGY ADVISORY COMMITTEE, WHICH I WAS

1 NOT A MEMBER OF AT THAT TIME, REVIEWED SEVERAL OPTIONS
2 AND THEY CHOSE WEBSense.

3 MR. HIRT: YOUR HONOR, BEFORE THIS
4 WITNESS CONTINUES I THINK THERE IS A LACK OF FOUNDATION
5 FOR HER KNOWLEDGE OF THIS EVENT.

6 THE COURT: SUSTAINED.

7 BY MR. VAN KWAWEGEN:

8 Q. IN THAT CASE, YOU SHOULD STOP. I WILL ASK YOU A
9 QUESTION. AND THIS IS ACTUALLY A YES OR NO QUESTION.
10 DO YOU KNOW WHO SELECTED THE USE OF WEBSense IN THE
11 COUNTY?

12 A. THE TECHNOLOGY ADVISORY COMMITTEE.

13 Q. HOW DO YOU KNOW THAT?

14 A. BECAUSE I -- IN PREPARATION FOR THE INTERNET
15 SAFETY PROGRAM NIGHT LAST FEBRUARY, I INTERVIEWED THE
16 CHAIR OF THAT COMMITTEE, THE COORDINATOR OF
17 INSTRUCTIONAL TECHNOLOGY, WHO ALSO MANAGES THE FILTER.

18 Q. GOING BACK TO MY ORIGINAL QUESTION. WHO
19 SELECTED THE USE OF WEBSense FOR THE COUNTY?

20 A. THE TECHNOLOGY ADVISORY COMMITTEE.

21 Q. CAN YOU PLEASE REMIND THE COURT WHO SITS ON THAT
22 COMMITTEE?

23 A. THE COORDINATOR FOR INSTRUCTIONAL TECHNOLOGY,
24 ASSISTANT SUPERINTENDENT FOR INSTRUCTION, MEDIA SERVICES
25 DIRECTOR, PARENTS, STUDENTS, LIBRARIANS, TEACHERS AND

1 SCHOOL PRINCIPALS, AND BUSINESS REPRESENTATIVES.

2 THE COURT: TOTAL NUMBER?

3 THE WITNESS: 26 -- 25.

4 THE COURT: THANK YOU.

5 THE WITNESS: YEAH.

6 BY MR. VAN KWAWEGEN:

7 Q. WHAT COMPUTERS IN THE SCHOOL ARE COVERED BY THE
8 CONTENT FILTER?

9 A. ALL THE COMPUTERS ARE COVERED.

10 Q. ARE THE WIRELESS LAPTOPS COVERED?

11 A. YES.

12 Q. HOW DO YOU KNOW?

13 A. WELL, I JUST UNDERSTAND THE WAY THE WIDE AREA
14 NETWORK WORKS. THEY ARE ALL WITHIN THE WIDE AREA
15 NETWORK AND THE FILTER IS INSTALLED ALONGSIDE THE
16 FIREWALL AT THE OUTSIDE OF THAT NETWORK.

17 Q. IS IT POSSIBLE FOR A COMPUTER NOT TO BE COVERED
18 BY THE FILTER SOMEHOW?

19 A. NO.

20 Q. WHY NOT?

21 A. WHEN YOU ARE IN THE BUILDING, YOU ARE ACCESSING
22 THE WIRELESS NETWORK THAT IS INSIDE THE FIREWALL WITH
23 THE FILTER ON IT.

24 Q. DO YOU KNOW WHETHER STUDENTS CAN CIRCUMVENT THIS
25 FILTER WHILE THEY ARE ACCESSING THE INTERNET AT SCHOOL?

1 A. THERE IS NO WAY, TO MY KNOWLEDGE, THAT THEY
2 COULD DO THAT.

3 Q. HAVE YOU HAD ANY REPORTS OF STUDENTS TRYING TO
4 CIRCUMVENT THE SOFTWARE IN THE PAST THREE YEARS?

5 A. NO.

6 Q. HAVE YOU SEEN ANY EVIDENCE THAT STUDENTS OF YOUR
7 HIGH SCHOOL HAVE CIRCUMVENTED THE FILTER IN THE PAST
8 THREE YEARS?

9 A. NO.

10 Q. DOES THE FILTER THAT IS INSTALLED IN YOUR COUNTY
11 COVER WEB BROWSING?

12 A. YES.

13 Q. DOES IT COVER AND BLOCK PEER-TO-PEER NETWORKS?

14 A. THE FILTER DOES NOT BLOCK PEER-TO-PEER NETWORKS
15 BUT THE FIREWALL DOES.

16 Q. EXPLAIN WHAT THE FIREWALL IS.

17 A. THE FIREWALL PREVENTS COMMUNICATION BETWEEN
18 COMPUTERS OUTSIDE IT AND COMPUTERS INSIDE IT.

19 SO, FOR INSTANCE, AT HOME, I CAN'T ACCESS
20 MY SCHOOL FILES OR ANY OF THE SCHOOL SERVICES OTHER THAN
21 THE DATABASES FOR WHICH I HAVE HOME ACCESS PASSWORDS.

22 SO PEER-TO-PEER NETWORKING REQUIRES FILE SHARING BETWEEN
23 COMPUTERS WITHIN THE WAN AND OUTSIDE OF IT AND THAT IS
24 NOT POSSIBLE DUE TO THE FIREWALL.

25 Q. HOW WOULD YOU DESCRIBE THE END USER'S

1 EXPERIENCE, FOR EXAMPLE, A STUDENT WHEN HE OR SHE
2 ATTEMPTS TO ACCESS A WEB PAGE THAT IS BLOCKED BY THE
3 FILTER?

4 A. THEY RECEIVE A BLANK WHITE PAGE THAT EXPLAINS
5 THE LAW, IT CITES THE LAW AND SAYS, DUE TO VIRGINIA
6 LEGISLATION, THIS SITE IS NOT ACCESSIBLE.

7 Q. ARE YOU GENERALLY AWARE OF THE TYPES OF --
8 WHETHER THERE ARE DIFFERENT CATEGORIES THAT CAN BE
9 FILTERED BY THE WEBSense PRODUCT?

10 A. YES, WEBSense HAS SEVERAL CATEGORIES THAT WE
11 COULD CHOOSE FROM. THE TECHNOLOGY ADVISORY COMMITTEE,
12 ACCORDING TO THE COORDINATOR WHO I INTERVIEWED, CHOSE TO
13 ADOPT A LEAST RESTRICTIVE ENVIRONMENT FOR OUR SCHOOL
14 SYSTEM. SO THEY CHOSE TO ONLY BLOCK CATEGORIES OF ADULT
15 MATERIAL, EXCEPT FOR SEX EDUCATION, TASTELESS AND DATING
16 AND PERSONALS.

17 THE COURT: THE LATTER ONE IS WHAT,
18 PLEASE?

19 THE WITNESS: DATING AND PERSONALS IS
20 LIKE MYSPACE AND FACEBOOK. THESE WERE ACTUALLY ADDED ON
21 IN THE PAST COUPLE OF YEARS.

22 BY MR. VAN KWAWEGEN:

23 Q. IF YOU WANTED TO ADD ON OR REMOVE A WEBSITE FROM
24 THE FILTER, COULD YOU DO THAT?

25 A. NOT PERSONALLY. TEACHERS, STUDENTS OR

1 LIBRARIANS COULD RECOMMEND A SITE FOR BLOCKING TO
2 MR. EVANS, WHOSE E-MAIL IS ON THIS PAGE THAT COMES UP
3 WHEN THEY ARE BLOCKED.

4 Q. WHO'S MR. EVANS?

5 A. HE IS THE COORDINATOR FOR INSTRUCTIONAL
6 TECHNOLOGY.

7 Q. AND IS HE THE COORDINATOR FOR THE ENTIRE COUNTY?

8 A. YES.

9 Q. SO THE FILTER AND THE CATEGORIES THAT ARE
10 BLOCKED, IS THAT THE SAME FOR EVERY SCHOOL IN THE
11 COUNTY?

12 A. YES.

13 Q. WOULD YOU SAY THAT THE WEBSense PRODUCT HAS
14 REDUCED STUDENTS' ACCESS TO INAPPROPRIATE MATERIALS ON
15 THE INTERNET?

16 MR. HIRT: YOUR HONOR, LACK OF
17 FOUNDATION.

18 THE COURT: SUSTAINED.

19 MR. VAN KWAWEGEN: WE WILL DO IT THE SAME
20 WAY.

21 BY MR. VAN KWAWEGEN:

22 Q. DO YOU KNOW -- THIS IS A YES OR NO ANSWER -- DO
23 YOU KNOW WHETHER THE PRODUCT, WEBSense PRODUCT, HAS
24 REDUCED STUDENTS' ACCESS TO INAPPROPRIATE MATERIALS ON
25 THE INTERNET?

1 THE COURT: ANSWER YES OR NO, PLEASE.

2 THE WITNESS: YES.

3 BY MR. VAN KWAWEGEN:

4 Q. HOW DO YOU KNOW THIS?

5 A. BASED ON MY DAY-TO-DAY EXPERIENCE IN THE SCHOOL
6 AND MY NETWORKING WITH COLLEAGUES.

7 Q. IN YOUR EXPERIENCE, DOES THE WEBSense PRODUCT
8 REDUCE STUDENTS' ACCESS TO INAPPROPRIATE MATERIALS ON
9 THE INTERNET?

10 A. YES.

11 Q. WHY DO YOU SAY THAT?

12 A. ONE REASON IS THAT I WAS THE LIBRARIAN AT WALTON
13 MIDDLE SCHOOL BEFORE I CAME TO WESTERN. AT THAT TIME,
14 THERE WAS NO FILTER. IN THE WALTON LIBRARY, WE DID HAVE
15 A FEW INSTANCES OF STUDENTS ACCESSING INAPPROPRIATE
16 WEBSITES, SUCH AS THE DALLAS COWBOYS CHEERLEADERS AND
17 ACCIDENTAL DISCOVERIES WHEN THEY DID A GOOGLE SEARCH.

18 ALSO, IN TALKING TO COLLEAGUES, THERE
19 WERE IMAGES THAT CAME UP THAT WERE INAPPROPRIATE. SINCE
20 THE FILTER HAS BEEN INSTALLED, THAT INSTANCE HAS BEEN
21 REDUCED TO NEAR ZERO.

22 Q. DURING THE PAST FIVE YEARS, HAVE YOU HAD ANY
23 REPORTS OF STUDENTS IN YOUR SCHOOL WHO ACCESSED
24 INAPPROPRIATE MATERIALS DESPITE THE FILTER?

25 A. NO. IN THE PAST FIVE YEARS, MYSPACE WAS

1 ACCESSED AND THEN IT WAS RECOMMENDED BY A TEACHER TO BE
2 BLOCKED AND NOW IT HAS BEEN BLOCKED. SO WITHIN THE PAST
3 FIVE YEARS, THAT HAPPENED.

4 Q. WHY ARE MYSPACE.COM AND FACEBOOK.COM BLOCKED, IF
5 YOU KNOW?

6 A. MR. EVANS EXPLAINED THAT PRIMARILY-- THAT THE
7 TEACHER REFERRED THE SITE BECAUSE OF OFF-TASK BEHAVIOR,
8 BECAUSE THE STUDENTS WERE SPENDING TIME ON THOSE
9 WEBSITES INSTEAD OF DOING THE WORK THEY SHOULD BE DOING.
10 BUT WHEN HE WENT TO REVIEW THE SITE TO DECIDE WHETHER TO
11 FILTER IT, IT WAS POSTING PORNOGRAPHY. SO IT FIT UNDER
12 THE PURVIEW OF THE LAW AND HE BLOCKED IT.

13 Q. WHEN YOU SAY "LAW," WHICH LAW DO YOU MEAN?

14 A. THE VIRGINIA LAW SPECIFICALLY STATES THAT WE
15 MUST FILTER MATERIAL THAT IS PORNOGRAPHIC, OBSCENE OR
16 HARMFUL TO JUVENILES.

17 Q. DURING THE PAST FIVE YEARS, HAVE YOU HAD ANY
18 REPORTS OF STUDENTS IN YOUR SCHOOL THAT WERE NOT ABLE TO
19 ACCESS NECESSARY AND APPROPRIATE SITES BECAUSE OF THE
20 FILTER?

21 A. COULD YOU REPEAT THAT QUESTION?

22 Q. SURE.

23 DURING THE PAST FIVE YEARS, HAVE YOU HAD
24 ANY REPORTS OF STUDENTS IN YOUR SCHOOL WHO WERE NOT ABLE
25 TO ACCESS NECESSARY AND APPROPRIATE WEBSITES BECAUSE OF

1 THE WEBSense FILTER?

2 A. NO.

3 Q. HAVE YOU PERSONALLY NOTICED ANY PROBLEMS WITH
4 WEBSense INCLUDING, FOR EXAMPLE, REDUCED COMPUTER
5 PERFORMANCE?

6 A. NONE WHATSOEVER.

7 Q. OVERALL, WOULD YOU SAY THAT YOU ARE SATISFIED
8 WITH THE WEBSense CONTENT FILTERING PROGRAM?

9 A. YES, I AM. IT MAKES MY JOB EASIER BECAUSE I
10 DON'T HAVE TO SUPERVISE STUDENTS AS CLOSELY.

11 MR. VAN KWAWEGEN: NO FURTHER QUESTIONS,
12 YOUR HONOR.

13 THE COURT: CROSS EXAMINE.

14 MR. HIRT: YES. THANK YOU, YOUR HONOR.

15 CROSS EXAMINATION

16 BY MR. HIRT:

17 Q. GOOD AFTERNOON, MISS TAYLOR. MY NAME IS TED
18 HIRT. WE SPOKE LAST EVENING.

19 IF I UNDERSTAND YOUR TESTIMONY, THE
20 WEBSense FILTER WAS INSTALLED AT YOUR SCHOOL SYSTEM IN
21 DIRECT RESPONSE TO A VIRGINIA LAW, ISN'T THAT CORRECT?

22 A. CORRECT.

23 Q. AND AS YOU JUST INFORMED PLAINTIFFS' COUNSEL,
24 THAT LAW IS DIRECTED AT OBSCENITY, PORNOGRAPHY OR
25 MATERIALS THAT ARE HARMFUL TO JUVENILES?

1 A. CORRECT.

2 Q. THAT LAW, AS YOU UNDERSTAND IT, MANDATED THE
3 INSTALLATION OF FILTERS AT ALL STATE PUBLIC SCHOOLS,
4 ISN'T THAT CORRECT?

5 A. YES.

6 Q. AND YOU WERE NOT INVOLVED IN ANY OF THE
7 DECISION-MAKING THAT WENT INTO WHY THE SPECIFIC WEBSense
8 PRODUCT WAS CHOSEN, WERE YOU?

9 A. NO.

10 Q. AND AM I CORRECT THAT THE WEBSense FILTER WORKS
11 OUT OF A CENTRAL SERVER IN DOWNTOWN CHARLOTTESVILLE?

12 A. YES.

13 Q. AND YOU HEARD MISS KIRK'S TESTIMONY EARLIER THIS
14 MORNING, I BELIEVE?

15 A. YES.

16 Q. SHE REFERRED TO THE TERM FOR HER SCHOOL SYSTEM
17 AS A PROXY SERVER. WOULD YOU AGREE THAT THAT IS THE
18 CHARACTERIZATION FOR THE SERVER IN CHARLOTTESVILLE?

19 A. I DON'T REALLY KNOW.

20 Q. OKAY.

21 IF I UNDERSTAND YOUR TESTIMONY CORRECTLY,
22 THE ONLY INDIVIDUAL IN THE SYSTEM, SCHOOL SYSTEM WHO CAN
23 MAKE A CHANGE TO HOW THAT FILTER WORKS IS YOUR
24 COORDINATOR OF INSTRUCTIONAL TECHNOLOGY AND THAT IS
25 MR. EVANS?

1 A. YES, ALTHOUGH HE CALLS WEBSense WHEN HE WANTS
2 SOMETHING BLOCKED. BUT HE DECIDES ON WHETHER A SITE
3 WILL BE BLOCKED IN CONFERENCE WITH OTHER PEOPLE THAT HE
4 WORKS WITH DOWNTOWN.

5 Q. SO IF I UNDERSTAND YOUR TESTIMONY, AFTER
6 MR. EVANS DOES THE CONSULTATION, HE CAN'T UNILATERALLY
7 CHANGE A BLOCKING. WEBSense HAS TO DO IT?

8 A. CORRECT.

9 Q. AND IF I UNDERSTAND YOUR TESTIMONY, MR. EVANS
10 HAS SET THE FILTER TO THE LEAST RESTRICTIVE SETTING THAT
11 YOU UNDERSTAND WEBSense OFFERS?

12 A. THE TECHNOLOGY ADVISORY COMMITTEE DECIDED TO
13 ADOPT A LEAST RESTRICTIVE APPROACH. SO THEY TOGETHER
14 CHOSE THOSE CATEGORIES THAT I MENTIONED.

15 Q. IF I UNDERSTAND YOUR TESTIMONY, THAT SETTING
16 APPLIES UNIFORMLY AT THE ELEMENTARY SCHOOL, THE MIDDLE
17 SCHOOL AND THE HIGH SCHOOL LEVELS?

18 A. YES.

19 Q. AND I UNDERSTAND YOUR DESCRIPTION OF THE
20 CATEGORIES, THAT IT BLOCKS THE SO-CALLED ADULT CATEGORY,
21 CORRECT?

22 A. YES, EXCEPT FOR SEX EDUCATION.

23 Q. RIGHT. EXCEPT FOR SEX EDUCATION SITES, AND IT
24 SCREENS OUT A TASTELESS CATEGORY?

25 A. CORRECT.

1 Q. AND YOU HAVE ALSO ADDED A DATING PERSONALS
2 CATEGORY, CORRECT?

3 A. YES.

4 Q. SO JUST TO -- IF I UNDERSTAND YOUR TESTIMONY, IF
5 SOMEONE IN YOUR SCHOOL SYSTEM, SUCH AS A TEACHER, WANTED
6 TO GET ACCESS TO A WEBSITE THAT IS CURRENTLY BLOCKED BY
7 THE FILTER, YOU COULD NOT DISABLE THAT FILTER YOURSELF
8 TO LOOK AT A URL OR WEBSITE?

9 A. THAT'S CORRECT.

10 Q. SIMILARLY, IF YOU FOUND A SITE THAT, IN YOUR
11 JUDGMENT, SHOULD BE BLOCKED, YOU COULD NOT ADD THAT SITE
12 TO THE BLOCK LIST YOURSELF?

13 A. CORRECT.

14 Q. NOW, MISS TAYLOR, IS IT FAIR TO SAY THAT YOU
15 YOURSELF HAVE NOT PERFORMED ANY SYSTEMATIC TESTING OF
16 THE FILTER?

17 A. NO SYSTEMATIC, BUT I HAVE MESSED AROUND WITH IT
18 AND TRIED TO SEE WHAT WOULD INVOKE IT.

19 Q. AND AS YOU DESCRIBED TO ME, WHAT YOU HAD SAID IS
20 WHEN THE FILTER -- WHEN THE FILTER WAS FIRST INSTALLED,
21 YOU WENT TO A GOOGLE SEARCH ENGINE AND TRIED TO TYPE IN
22 WORDS SUCH AS PLAYBOY AND XXX?

23 A. YES.

24 Q. AND YOU DISCOVERED THAT IT BLOCKED THOSE?

25 A. YES.

1 Q. AND YOU ARE NOT HERE TODAY TO PROVIDE ANY
2 OFFICIAL VIEW FROM YOUR SCHOOL DISTRICT AS TO THE
3 EFFECTIVENESS OF THE WEBSense FILTER?

4 A. THAT'S CORRECT.

5 Q. AND YOU HAVE NOT BROUGHT TODAY WITH YOU ANY
6 STUDIES CONDUCTED BY THE SCHOOL SYSTEM AS TO THE
7 EFFECTIVENESS OF THAT FILTER?

8 A. NO. I DO HAVE ANECDOTAL INFORMATION FROM MY
9 COLLEAGUES.

10 Q. RIGHT. I UNDERSTAND THAT, BUT I MEAN A
11 SYSTEMATIC STUDY.

12 A. NO.

13 Q. THANK YOU.

14 NOW, YOUR DESCRIPTION OF THE LIBRARY
15 SETTING, IF I CAN UNDERSTAND THIS, A CLASSROOM TEACHER
16 WILL BRING HIS OR HER STUDENTS TO YOUR LIBRARY TO DO
17 CLASS-RELATED RESEARCH, IS THAT CORRECT?

18 A. YES.

19 Q. AND IT'S YOUR UNDERSTANDING THAT THE STUDENTS
20 ALREADY HAVE THEIR ASSIGNMENTS IN HAND, IF YOU WILL,
21 BEFORE THEY ENTER YOUR LIBRARY?

22 A. DEPENDS ON THE QUALITY OF THE TEACHER, BUT MOST
23 OF THE TIME THAT IS CORRECT.

24 Q. YOUR HOPE IS AT LEAST THAT THE TEACHERS HAVE
25 PREPARED THEM BEFORE THEY COME INTO THE LIBRARY?

1 A. YES.

2 Q. AND ONCE THE STUDENTS ARE IN THE LIBRARY, THEY
3 ARE SUPERVISED BY THEIR CLASSROOM TEACHER, CORRECT?

4 A. AND BY THE LIBRARIAN WHO IS THE CO-TEACHING.

5 Q. THE CLASSROOM TEACHER ACCOMPANIES WITH AND STAYS
6 WITH THE STUDENTS DURING THAT SESSION?

7 A. EXACTLY. YES.

8 Q. IN ADDITION TO THE CLASSROOM TEACHER, YOU ARE
9 WITH THE STUDENTS AT THAT TIME?

10 A. RIGHT.

11 Q. AND IN ADDITION TO YOURSELF, YOUR ASSISTANT
12 LIBRARIAN IS WITH THE STUDENTS AT THAT TIME?

13 A. SHE MIGHT BE, ALTHOUGH SHE MIGHT NOT BE. SHE
14 MIGHT BE MANAGING THE OTHER PEOPLE IN THE LIBRARY AT
15 THAT TIME OR EVEN TEACHING ANOTHER CLASS. WE OFTEN HAVE
16 TWO AT ONCE.

17 Q. BUT IT WOULD BE FAIR TO SAY THAT THE CLASS OF
18 STUDENTS IS SUPERVISED BY TWO ADULTS DURING THIS TIME?

19 A. AT LEAST TWO ADULTS, EXACTLY.

20 Q. BASICALLY, IF I UNDERSTAND WHAT YOU TOLD ME,
21 THESE STUDENTS ARE THERE TO DO THE WORK THAT HAS BEEN
22 ASSIGNED AND THEY ARE NOT THERE TO "SURF THE NET," FOR
23 EXAMPLE?

24 A. RIGHT.

25 Q. I THINK FROM YOUR DIRECT TESTIMONY YOU INDICATED

1 THAT YOUR EVALUATION OF THE STUDENT BODY GENERALLY IS
2 THAT THESE ARE A VARIED GROUP OF HIGHLY MOTIVATED
3 -- IT'S FAIR TO SAY FROM YOUR OBSERVATION THAT THE
4 STUDENTS ARE HIGHLY MOTIVATED AND ACADEMICALLY
5 MOTIVATED. ISN'T THAT FAIR TO SAY?

6 A. LARGELY. OF COURSE, THAT IS NOT ONE HUNDRED
7 PERCENT OF THE STUDENT BODY.

8 Q. I UNDERSTAND. WHEN YOU MENTIONED THE PROGRAM
9 FOR THE PARENT TEACHER ORGANIZATION, YOU USED THE TERM
10 LAST FEBRUARY.

11 A. YES.

12 Q. BY THAT DO YOU MEAN FEBRUARY OF 2006?

13 A. YES.

14 Q. YOU ALSO INDICATED THAT PRIOR TO THE FILTER
15 THERE HAD BEEN SOME ACCIDENTAL DISCOVERIES, AND I
16 WONDERED IF YOU HAD, ADMITTEDLY PERHAPS, SECONDHAND
17 INFORMATION ABOUT WHAT SORT OF WEBSITES HAD BEEN
18 DISCOVERED.

19 A. I JUST HEARD ABOUT SOMEBODY RESEARCHING, TYPING
20 IN RANGER RICK AND PULLING UP AN INAPPROPRIATE SITE.

21 Q. AND DO YOU UNDERSTAND BY INAPPROPRIATE, IT WOULD
22 HAVE BEEN ADULT ENTERTAINMENT, TO USE THAT EUPHEMISM?

23 A. YES, ADULT -- YES, OBSCENITY, YEAH.

24 Q. NOW, MISS TAYLOR, IF I UNDERSTAND YOUR POSITION,
25 YOU SUPPORT FILTERS IN THE PUBLIC SCHOOL SETTING, ISN'T

1 THAT CORRECT?

2 A. YES.

3 Q. AND I THINK AS YOU SAID TO COUNSEL ONE OF THE
4 REASONS THAT YOU SUPPORT FILTERS IS THAT IT MEANS YOU
5 DON'T HAVE TO SUPERVISE ALL THE STUDENTS AS THEY ARE ON
6 THE NET?

7 A. EXACTLY. I MEAN, I CAN'T. I AM GRATEFUL THAT
8 IT PROTECTS THE STUDENTS WHEN I CAN'T PROTECT THEM.
9 GIVEN THE NUMBERS IN THE SCHOOL SYSTEM, THE NUMBER OF
10 TEACHERS IN RATIO TO THE STUDENTS, WE COULDN'T POSSIBLY
11 GIVE THE CLOSE SUPERVISION THAT WOULD BE NECESSARY
12 WITHOUT THE FILTER.

13 Q. I THINK IF I RECALL YOUR TESTIMONY, YOU ARE A
14 MEMBER OF THE AMERICAN ASSOCIATION OF SCHOOL LIBRARIANS,
15 IS THAT CORRECT?

16 A. YES.

17 Q. AND THAT IS THE PART OF THE AMERICAN LIBRARY
18 ASSOCIATION?

19 A. YES.

20 Q. AND I THINK YOU UNDERSTAND THAT THE AMERICAN
21 LIBRARY ASSOCIATION OPPOSES MANDATORY USE OF FILTERS IN
22 PUBLIC LIBRARIES, IS THAT CORRECT?

23 A. YES, I DO UNDERSTAND.

24 Q. YOU SUPPORT THAT POSITION AS WELL?

25 A. IN PUBLIC LIBRARIES, YES, AS OPPOSED TO SCHOOL

1 LIBRARIES.

2 Q. RIGHT. IF I UNDERSTAND YOUR OPINION YOU ALSO DO
3 NOT SUPPORT THE STATUTE AT ISSUE HERE, THE CHILD ON-LINE
4 PROTECTION ACT?

5 A. NO, I DON'T.

6 Q. THAT IS BECAUSE YOU BELIEVE IT'S INCONSISTENT
7 WITH FIRST AMENDMENT PRINCIPLES?

8 A. WELL, I BELIEVE IN FREEDOM OF INFORMATION, AND
9 SO IT VIOLATES THAT.

10 MR. HIRT: THANK YOU VERY MUCH, MISS
11 TAYLOR.

12 MR. VAN KWAWEGEN: NO FURTHER QUESTIONS,
13 YOUR HONOR.

14 THE COURT: OKAY. THE WITNESS IS
15 EXCUSED. BE CAREFUL GETTING DOWN.

16 THE WITNESS: YES.

17 (WITNESS EXCUSED.)

18 THE COURT: PLAINTIFFS HAVE ANOTHER
19 WITNESS.

20 MR. VAN KWAWEGEN: WE WILL BE READING
21 FURTHER DEPOSITION DESIGNATIONS INTO THE RECORD, THIS
22 TIME OF SURFCONTROL.

23 THE COURT: SURFCONTROL?

24 MR. VAN KWAWEGEN: YES. THE DEPOSITION
25 OF JIM MURPHY. THIS DEPOSITION TOOK PLACE ON MARCH

1 15TH, 2006. WE HAVE A COLOR-CODED COPY FOR YOU IF I MAY
2 APPROACH THE BENCH?

3 THE COURT: YOU MAY.

4 MR. VAN KWAWEGEN: YOUR HONOR, THE SAME
5 SURROGATES, MR. DOBBS AND MR. SERRITELLA.

6 THE COURT: GIVE ME A TRUNCATED OFFER OF
7 PROOF, PLEASE.

8 MR. VAN KWAWEGEN: SURFCONTROL IS A
9 FILTERING COMPANY. MR. MURPHY WAS A REPRESENTATIVE OF
10 THIS COMPANY, AND ESSENTIALLY THE TESTIMONY WILL DISCUSS
11 THE QUALITIES, CATEGORIES, AND THE NATURE OF THE
12 FILTERING PRODUCT THAT IS OFFERED BY SURFCONTROL.

13 THE COURT: WHAT WAS HIS JOB IN THE
14 COMPANY AT THE TIME HE WAS DEPOSED? DO YOU RECALL? YOU
15 SAID FURTHER DESIGNATION. MAYBE I WILL JUST WAIT.

16 MR. VAN KWAWEGEN: HE WAS THE
17 VICE-PRESIDENT OF PRODUCT MARKETING, I WAS INFORMED BY
18 MR. DOBBS.

19 MR. VAN KWAWEGEN: AT SURFCONTROL.

20 MR. DOBBS: YOUR HONOR, THE DEPOSITION OF
21 MR. MURPHY WAS DIVIDED INTO A VOLUME 1 AND A VOLUME 1 A.
22 VOLUME 1 IS THE THIN VOLUME. THERE IS ONE DESIGNATION
23 FROM VOLUME 1. THAT DESIGNATION IS ON PAGE 10, LINES 8
24 TO 10, DESIGNATED BY THE PLAINTIFFS.

25 THE COURT: YOU ARE HIDING THE PAGE

1 NUMBERS SOMEWHERE.

2 MR. DOBBS: IN THE UPPER LEFT-HAND
3 CORNER.

4 THE COURT: WHERE THE CLIP IS. YOU MAY
5 PROCEED.

6 Q. OKAY. AND WHAT IS YOUR CURRENT POSITION?

7 A. MY ROLE IS VICE-PRESIDENT OF PRODUCT MARKETING.

8 MR. DOBBS: PROCEED TO VOLUME 1 A.

9 THE COURT: I ASSUME THAT IS THE THICKER
10 ONE? BUT THERE IS NO --

11 DOES IT ALSO HAVE THE NUMBERS IN THE
12 UPPER LEFT-HAND CORNER?

13 MR. DOBBS: YES, YOUR HONOR. FOR THE
14 RECORD, THE DEPOSITION'S CALLED VOLUME 1 A ON PAGE 9 AT
15 LINE 16.

16 THE COURT: THE DEPOSITION OF MARCH 15TH,
17 2006. YOU MAY PROCEED.

18 MR. DOBBS: THE FIRST DESIGNATION IS ON
19 PAGE 17, LINES 4 THROUGH 18, DESIGNATED BY THE
20 PLAINTIFFS.

21 Q. OKAY. SO WHY DON'T YOU FIRST TELL ME ABOUT THE
22 SPIDERING PROCESS THAT YOU JUST REFERRED TO?

23 A. SO SPIDERING IS A TECHNIQUE BY WHICH YOU CAN
24 IDENTIFY SITES AND THEN IDENTIFY ALL OF THE VARIOUS
25 OTHER SITES THAT THAT SITE MIGHT BE LINKED TO, AS WELL

1 AS THE DEPTH OF THAT SITE ITSELF.

2 SO WHEN YOU FIRST IDENTIFY AN URL, YOU
3 DON'T NECESSARILY KNOW JUST WHAT -- AN INDIVIDUAL
4 WOULDN'T NECESSARILY KNOW WHAT ARE ALL THE PLACES THAT
5 THAT SITE CONTAINS, IN OTHER WORDS, PAGES OR
6 SUBCATEGORIES WITHIN THAT SITE, OR ALL OF THE OTHER
7 SITES THAT THAT SITE MIGHT LINK TO. SPIDERING
8 TECHNOLOGY MAKES IT POSSIBLE TO IDENTIFY ALL OF THAT IN
9 AN AUTOMATED FASHION SO THAT THEN YOU ARE MORE ABLE TO
10 IDENTIFY A BROAD RANGE OF SITES BASED ON AN INITIAL
11 IDENTIFICATION OF A SITE.

12 MR. DOBBS: PAGE 20, LINE 24 THROUGH PAGE
13 21, LINE 23 DESIGNATED BY THE PLAINTIFFS.

14 Q. OKAY. AND HOW OFTEN ARE THESE VARIOUS
15 TECHNIQUES THAT YOU USED, THESE VARIOUS TOOLS YOU USE TO
16 COLLECT NEW SITES, HOW OFTEN IS THAT DONE?

17 A. THE TEAM IS BASICALLY MONITORING THOSE SITES
18 CONTINUOUSLY. SO WE'RE IN KIND OF CONTINUOUS BUILD
19 PROCESS WHERE WE HAVE RESEARCHERS WHO ARE DISTRIBUTED
20 AROUND THE WORLD. WE ACTUALLY AGGREGATE AND COLLECT.
21 THE RESEARCHERS WORK FOR A DAY ON A 24-HOUR CYCLE -- LET
22 ME BACK UP.

23 WE COLLECT THE DATA THREE TIMES A DAY
24 GLOBALLY. IT IS QA'ED AND PUBLISHED FOR OUR CUSTOMERS
25 ONCE A DAY. SO THE EFFECT FOR THE END USER IS THAT

1 THEY'RE RECEIVING NEW LIST BUILDS ON A 24-HOUR CYCLE.

2 Q. YOU SAID QA. I WANT TO MAKE SURE I KNOW WHAT
3 THAT MEANS. WHAT DO YOU MEAN BY THAT?

4 A. SORRY. THAT'S ACRONYM FOR QUALITY ASSURANCE.
5 MEANING THEY'VE BEEN -- THE LIST HAS NOT ONLY BEEN
6 CONTRIBUTED TO BY THE RESEARCH TEAM, BUT IT'S GONE
7 THROUGH A TEST PROCESS TO ENSURE ITS FUNCTIONING, THAT
8 THERE AREN'T ANY ERRORS AND IT'S READY FOR THE
9 PRODUCTION ENVIRONMENT FOR OUR CUSTOMERS TO USE.

10 Q. AND SO BEFORE ANY NEW SITES ARE ADDED TO THE
11 LIST, YOU GUYS PERFORM TESTS AND QUALITY TO MAKE SURE
12 THERE'S QUALITY ASSURANCES?

13 A. CORRECT.

14 MR. DOBBS: PAGE 23, LINE 17 THROUGH PAGE
15 28, LINE 6, DESIGNATED BY THE PLAINTIFFS.

16 Q. SO FOR THOSE DIFFICULT SITES TO CATEGORIZE, YOU
17 HAVE HUMANS INVOLVED IN THE PROCESS TO MAKE SURE THE
18 CATEGORIZATIONS ARE ACCURATE?

19 A. CORRECT.

20 Q. SO WHY DON'T WE GO BACK TO -- YOU SAID YOU HAVE
21 VARIOUS AUTOMATED TOOLS THAT ARE INVOLVED IN THE
22 CATEGORIZATION PROCESS. WHAT ARE THESE TOOLS LOOKING
23 AT?

24 A. TYPICALLY -- THE PRIMARY MECHANISM FOR AUTOMATED
25 CATEGORIZATION IS GOING TO BE FIRST LOOKING FOR KEYWORDS

1 THAT WOULD INDICATE A PARTICULAR CONTENT TYPE.

2 SO AGAIN, IF WE'RE TALKING ABOUT
3 CATEGORIZING SOMETHING AS VIOLENCE OR WEAPONS-RELATED,
4 YOU CAN IMAGINE THE TYPES OF WORDS THAT MIGHT BE
5 ASSOCIATED WITH THAT EITHER IN THE SITE NAME OR IN THE
6 PAGE CONTENT ITSELF.

7 THERE ARE MORE SOPHISTICATED TOOLS THAT
8 GO BEYOND JUST KEYWORD SEARCHING, BUT AGAIN, ARE LOOKING
9 AT THE TEXT OF THE SITES TO DETERMINE IF, BASED ON
10 FREQUENCY, RELATIVE PLACEMENT OF THOSE -- OF THE TEXTUAL
11 CONTENT IN THOSE SITES, THIS SITE LOOKS SIMILAR TO OTHER
12 SITES THAT THESE ARTIFICIAL INTELLIGENCE TOOLS HAVE
13 PREVIOUSLY BEEN SEEN THAT HAVE ALREADY BEEN IDENTIFIED
14 AS BEING RELATED TO THAT PARTICULAR CATEGORY. DOES THAT
15 MAKE SENSE?

16 Q. YES. AND YOU MENTIONED THAT YOU LOOK AT KEY
17 WORDS. DO YOU ALSO LOOK AT KEY PHRASES?

18 A. YES.

19 Q. AND WHAT ABOUT METATAGS? DOES THE PRODUCT LOOK
20 AT METATAGS?

21 A. THE TEXT WITHIN THE METATAG IS CONSIDERED AS
22 PART OF THAT, YES.

23 Q. OKAY. SO -- AND ANY OTHER SCRIPT THAT'S NOT
24 VISIBLE?

25 A. YES. SO IT'S NOT LOOKING AT THE VISIBLE

1 CONTENT. IT'S LOOKING AT THE CONTENT OF THE HTML PAGE.
2 SO ALL OF THE H T M L WITHIN THE HTML PAGE, IT'S
3 IDENTIFYING THE TEXT WITHIN THE PAGE AND ANALYZING THAT.

4 Q. DOES IT ALSO LOOK AT THE URLS?

5 A. YES.

6 Q. AND WHAT ABOUT THE IP ADDRESSES?

7 A. THE IP ADDRESSES ARE CAPTURED, THEY AREN'T USED
8 TO MAKE A DETERMINATION UPON CATEGORIZATION BECAUSE THE
9 IP ADDRESS IS JUST A STRING OF NUMBERS. SO -- BUT ONCE
10 WE HAVE -- MAY ADD CATEGORIZATION WHEN WE CAPTURE THE
11 SITE FOR FILTERING PURPOSES, WE CAPTURE BOTH THE URL AND
12 THE IP ADDRESS, AND EITHER ONE OF THOSE WOULD TRIGGER
13 THE ACTION BASED UPON. SO IF AN END USER ATTEMPTED TO
14 ACCESS A SITE BY DIRECTLY ENTERING AN IP ADDRESS RATHER
15 THAN A URL, OUR PRODUCT WOULD PICK THAT UP.

16 Q. WHAT ABOUT IF THERE ARE LINKS ON THE PAGE? DOES
17 YOUR PRODUCT -- LET'S TAKE THE ADULT CATEGORY --

18 A. YES.

19 Q. -- AS AN EXAMPLE. LET'S SAY THE WEB PAGE YOU
20 COME ACROSS DOESN'T HAVE ANY GRAPHIC IMAGES OR TEXT ON
21 THE PAGE --

22 A. RIGHT.

23 Q. -- ITSELF, BUT ON THE LEFT-HAND SIDE OF THE PAGE
24 THERE ARE 100 LINKS TO KNOWN ADULT WEBSITES. WILL THE
25 PRODUCTS CATEGORIZE THAT WEB PAGE AS ADULT?

1 A. IF -- YES. THE ANSWER TO THAT QUESTION WOULD BE
2 YES.

3 Q. OKAY. AND WHAT ABOUT IF THERE ARE -- DOES THE
4 PRODUCT LOOK AT WHETHER THERE ARE IMAGES ON THE PAGE?

5 A. IMAGE ANALYSIS, FOR THE PURPOSES OF
6 CATEGORIZATION, IS PERFORMED BY HUMAN REVIEW IN OUR
7 CATEGORIZATION PROCESS. SO THE ANSWER IS SITES CAN BE
8 CATEGORIZED THAT ARE ONLY IMAGE BASED. WE DON'T HAVE
9 AUTOMATED TOOLS THAT WOULD PERFORM THAT ANALYSIS.

10 Q. YOU MENTIONED THAT THE PRODUCT LOOKS AT THE TEXT
11 ON THE PAGE, BOTH THE VISIBLE AND NOT VISIBLE. DOES THE
12 PRODUCT ALSO LOOK FOR SLANG?

13 A. THE ANSWER TO THAT WOULD BE YES. WE ARE -- WE
14 DON'T USE A DICTIONARY, A WEBSTER'S DICTIONARY, TO
15 DETERMINE WHAT TEXT WE'RE USING. SO JUST LIKE WE USE
16 VARIOUS WORDS, PHRASES IN OUR SEARCH TECHNOLOGY, THOSE
17 WORDS AND PHRASES THAT ARE BEING USED ARE KNOWN TO BE
18 COMMON USE, NOT ENGLISH-DICTIONARY BASED.

19 Q. AND WHY IS THAT?

20 A. SIMPLY BECAUSE WE KNOW THAT A LOT OF THESE SITES
21 USE NONDICTIONARY BASED TEXT TO EITHER IDENTIFY
22 THEMSELVES OR PRESENT THE INFORMATION THAT'S BEING
23 DELIVERED ON THE SITE.

24 Q. AND YOU DO THE SAME THING BECAUSE YOU WANT TO BE
25 ABLE TO COLLECT AND CATEGORIZE ALL OF THOSE WEBSITES?

1 A. CORRECT.

2 Q. AFTER THESE AUTOMATED TOOLS MAKE THESE
3 CATEGORIZATIONS, IS THERE A HUMAN REVIEW?

4 A. YEAH, ABSOLUTELY.

5 Q. OKAY. AND YOU SAY ABSOLUTELY. CAN YOU EXPLAIN
6 WHY THAT IS?

7 A. THE -- AGAIN, THE AUTOMATED TOOLS ARE POWERFUL
8 TOOLS FOR PROVIDING EFFICIENCY, BUT WHEN WE GET TO
9 ACCURACY, WE'RE TRYING TO MAXIMIZE ACCURACY. TO ENSURE
10 WE'RE MAXIMIZING ACCURACY, WE PROVIDE HUMAN REVIEW TO
11 ENSURE THAT. I GUESS I SHOULD QUALIFY MY ANSWER. THE
12 AUTOMATED TOOLS, WHEN THEY'RE USED BY OUR CONTENT TEAM
13 TO BE POPULATED INTO OUR DATABASE LISTS, DO GO THROUGH
14 HUMAN REVIEW. THESE AUTOMATED TOOLS ARE ALSO MADE
15 AVAILABLE IN THE PRODUCT AT THE END USER SITE FOR
16 IDENTIFICATIONS OF SITES THAT ARE NOT CURRENTLY IN OUR
17 LISTS. IN THAT CASE, SO THAT YOU ARE NOW IN THE DYNAMIC
18 ENVIRONMENT, THE CUSTOMER IS USING THE PRODUCT. ONE OF
19 OUR AUTOMATED TOOLS IDENTIFIES A SITE AND MAKES A
20 CATEGORIZATION ATTEMPT. OBVIOUSLY, IN THAT CASE THERE
21 WOULDN'T BE HUMAN REVIEW IN THAT CASE ON THAT
22 CATEGORIZATION, BUT FOR ALL THE SITES IN OUR LISTS THAT
23 WE PROVIDE, THERE IS HUMAN REVIEW.

24 MR. DOBBS: PAGE 28, LINE 24 THROUGH PAGE
25 29, LINE 4.

1 Q. OKAY. AND IN DOING THIS CATEGORIZATION, ARE THE
2 TOOLS LOOKING FOR NON-ENGLISH WORDS?

3 A. YES. SO WE CATEGORIZE CONTENT IN A BROAD RANGE
4 OF LANGUAGES, 70 LANGUAGES. OUR LIST CURRENTLY SUPPORTS
5 SITES THAT ARE MADE UP OF 70 DIFFERENT LANGUAGES.

6 MR. DOBBS: PAGE 29 LINE 25 THROUGH PAGE
7 32, LINE 4, DESIGNATED BY THE PLAINTIFFS.

8 Q. WHY DO YOU GUYS RELY ON SEARCH ENGINE TOOLS?

9 A. SO WE UTILIZE SEARCH ENGINE TOOLS BECAUSE WE
10 KNOW THAT MOST PEOPLE FIND SITES VIA SEARCH ENGINE
11 TOOLS. WE UTILIZE, IN RESPONSE TO THE QUESTION OF DO WE
12 TAKE INTO CONSIDERATION HOW PEOPLE USE THOSE SEARCH
13 ENGINES, WE DO REGULARLY REVIEW THE WORDS, PHRASES AND
14 KEY WORDS THAT WE USE IN OUR OWN SEARCH ENGINE TOOLS
15 BASED ON WHAT WE SEE AS BEING THE LEADING SEARCH ENGINE
16 PHRASES, WORDS BEING USED BY SEARCH ENGINE USERS.

17 Q. AND THAT, AGAIN, IS BECAUSE YOU WANT TO BE ABLE
18 TO CAPTURE AND CATEGORIZE SITES THAT USERS MAY COME
19 ACROSS?

20 A. YES.

21 Q. AND DO YOU FIND SITES, FOR EXAMPLE, BY PUTTING
22 THE PHRASE HARD CORE PORNOGRAPHY INTO SEARCH ENGINES?

23 A. THAT WOULD BE A GOOD EXAMPLE OF THE TYPE OF
24 PHRASE THAT WE MIGHT USE WHILE LOOKING FOR ADULT
25 CONTENT, YEAH.

1 Q. AND IF TODAY WE WERE TO PUT HARD CORE
2 PORNOGRAPHY INTO A SEARCH ENGINE, ARE YOU CONFIDENT THAT
3 THE SURFCONTROL PRODUCTS WOULD BLOCK, SAY, THE TOP 50
4 RESULTS?

5 A. SO I WOULD SAY THAT WE WOULD LIKELY CATCH THE
6 VAST MAJORITY OF THOSE. GIVEN THE WAY THE WEB EVOLVES
7 ON A CONTINUOUS BASIS, IT WOULD BE DIFFICULT TO SAY THAT
8 WE COULD DEFINITELY BLOCK THOSE, BUT GIVEN OUR OWN
9 SEARCH TECHNIQUES, THE METHODS WE USE FOR IDENTIFYING
10 THAT STUFF AND THE FACT THAT THOSE OVERLAP WITH SEARCH
11 ENGINE RESULTS, THERE IS A LIKELIHOOD THAT WE WOULD
12 CATCH THE MAJORITY OF THOSE SITES.

13 Q. OKAY. AND DO YOU ALSO LOOK AT INFORMATION FROM
14 OTHER SOURCES TO FIND OUT WHAT SITES ARE MOST POPULAR OR
15 WHAT SITES ARE THE MOST HEAVILY TRAFFICKED?

16 A. WE FREQUENTLY LOOK AT A NUMBER OF SOURCES ON THE
17 WEB FOR WHERE TRAFFIC IS OCCURRING, WHAT TYPES OF SITES
18 HAVE HIGH ACTIVITY. WE ALSO USE OUR OWN USER BASE SO
19 OUR USERS REPORT BACK TO US WHAT SITES THEY HAVE
20 ENCOUNTERED. SO, YEAH, THERE ARE A BROAD RANGE OF
21 TECHNIQUES BEYOND SEARCH ENGINES THAT WE USE TO IDENTIFY
22 WHERE TRAFFIC MAY BE OCCURRING.

23 Q. OKAY. AND DO YOU LOOK AT LISTS IF THERE ARE
24 SUCH LISTS, ASSUMING THERE ARE SUCH LISTS SUCH AS THE
25 TOP 10 MOST POPULAR PORNOGRAPHY SITES, DO YOU TAKE THAT

1 INFORMATION INTO ACCOUNT?

2 A. YEAH. WE TAKE THAT INTO ACCOUNT. I WOULDN'T
3 SAY WE RELY ON IT DEFINITELY.

4 Q. AND THAT'S BECAUSE YOU WANT TO BLOCK THE
5 WEBSITES THAT MAY CONTAIN MATERIAL?

6 A. CORRECT.

7 MR. DOBBS: PAGE 32 LINE 25 THROUGH PAGE
8 34 LINE 5, DESIGNATED BY THE PLAINTIFFS.

9 Q. ACTUALLY, I'M GOING TO NOW SHOW YOU A DOCUMENT
10 WE'RE GOING TO MARK AS EXHIBIT 1 WHICH IS CAPTIONED
11 METHODS EMPLOYED IN THE SEARCH FOR FRENCH WEB CONTENT,
12 PLAINTIFFS' EXHIBIT NUMBER 1 MARKED FOR IDENTIFICATION.

13 DO YOU RECOGNIZE THIS DOCUMENT?

14 A. I DO.

15 Q. AND WHAT IS IT?

16 A. THIS IS A DOCUMENT THAT SURFCONTROL PROVIDED
17 DESCRIBING VARIOUS METHODS THAT WE USE FOR
18 CATEGORIZATION OF WEBSITES.

19 Q. AND IS IT A TRUE AND ACCURATE COPY OF THAT
20 SURFCONTROL DOCUMENT?

21 A. TO THE BEST OF MY KNOWLEDGE, YES.

22 Q. AND WAS THIS DOCUMENT PREPARED AND MAINTAINED IN
23 THE REGULAR COURSE OF SURFCONTROL'S OPERATIONS?

24 A. YEAH. ACTUALLY, I DON'T KNOW THE ANSWER TO
25 THAT.

1 Q. ANY REASON TO BELIEVE IT WASN'T?

2 A. NO.

3 Q. WHAT DOES THIS DOCUMENT SHOW?

4 A. IT'S A BRIEF DESCRIPTION OF A VARIETY OF
5 TECHNIQUES THAT ARE USED IN THIS PROCESS THAT WE'VE BEEN
6 DISCUSSING REGARDING HOW SITES COULD BE CATEGORIZED INTO
7 OUR DATABASE THAT IS PROVIDED TO CUSTOMERS IN THE
8 PRODUCT.

9 MR. DOBBS: PAGE 35 LINES 3 THROUGH 15,
10 DESIGNATED BY THE PLAINTIFFS.

11 Q. IS IT FAIR TO SAY THAT AS SEARCH ENGINES GET
12 BETTER AT LOCATING WEBSITES ON THE WEB, THAT YOUR
13 PRODUCTS WILL ALSO GET BETTER AT LOCATING THOSE
14 WEBSITES?

15 A. YES, I THINK THAT'S A FAIR STATEMENT.

16 Q. AND THAT IF YOU CAN'T FIND A SITE ON A SEARCH
17 ENGINE THROUGH DOING A KEYWORD SEARCH -- STRIKE THAT.

18 THAT IF YOU CAN FIND A WEBSITE USING A
19 KEYWORD SEARCH ON A SEARCH ENGINE, THAT YOUR PRODUCT IS
20 LIKELY TO FIND THAT WEBSITE AS WELL?

21 A. IT'S LIKELY, YES.

22 THE COURT: DO YOU WANT TO TAKE A
23 TEN-MINUTE RECESS, MID AFTERNOON RECESS? WE ARE OFF THE
24 RECORD.

25 COUNSEL IS EXCUSED.

1 THE WITNESS MAY STEP DOWN.

2 (BREAK TAKEN.)

3 THE COURT: WELCOME TO BE SEATED.

4 MR. DOBBS: YOUR HONOR, WE RESUME ON PAGE
5 38 LINES 3 THROUGH 18, DESIGNATED BY THE PLAINTIFFS.

6 Q. OKAY. THE NEXT CATEGORY, COPERNIC,
7 C-O-P-E-R-N-I-C?

8 A. YES.

9 Q. CAN YOU EXPLAIN WHAT THAT IS?

10 A. AS JUST DESCRIBED, IT'S A METASEARCH ENGINE,
11 WHICH SIMPLY MEANS IT'S A SEARCH ENGINE THAT AGGREGATES
12 THE RESULTS OF MULTIPLE SEARCH ENGINES SIMULTANEOUSLY.

13 SO, AGAIN, RATHER THAN RESEARCHERS HAVING
14 TO GO OUT AND ON A ONE-ON-ONE TIME GO TO A NUMBER OF
15 DIFFERENT SEARCH ENGINES, THEY'RE ABLE TO USE THIS
16 SEARCH ENGINE TO MULTIPLY SEARCH A NUMBER OF SEARCH
17 ENGINES AND AGGREGATE THOSE RESULTS IN A SINGLE RESULT
18 SET.

19 Q. AND THAT'S, AGAIN, BECAUSE YOU WANT TO FIND ALL
20 THE WEBSITES THAT USERS MAY COME ACROSS?

21 A. CORRECT.

22 MR. DOBBS: PAGE 41, LINE 16, TO PAGE 44,
23 LINE 8, DESIGNATED BY THE PLAINTIFFS.

24 Q. DO YOU RECOGNIZE THIS DOCUMENT?

25 A. I DO RECOGNIZE THIS DOCUMENT.

1 Q. AND WHAT IS IT?

2 A. THIS IS A DOCUMENT THAT DESCRIBES, IN OUTLINE
3 FORM, THE CATEGORIES FOR SURFCONTROL WEB FILTER. IT
4 NAMES EACH CATEGORY AND PROVIDES A DESCRIPTION OF THE
5 CRITERIA I USE TO PUT CONTENT IN THAT CATEGORY.

6 Q. AND IS THIS A TRUE AND ACCURATE COPY OF THAT
7 DOCUMENT?

8 A. THIS IS TRUE AND ACCURATE AT THE TIME OF
9 SUBMISSION. I WOULD -- THERE ARE -- IF YOU VISITED OUR
10 WEBSITE TODAY, YOU WOULD SEE A VERY SIMILAR
11 REPRESENTATION WITH ACTUALLY LARGER NUMBERS FOR A NUMBER
12 OF THESE ITEMS. SO I MENTIONED EARLIER THAT THE PRODUCT
13 TODAY HAS 54 CATEGORIES. THIS MENTIONS THAT WE HAVE 47
14 CATEGORIES. SO THE LIST HAS BEEN GROWING SINCE THE TIME
15 OF THIS SUBMISSION. IT LISTS THAT THERE ARE OVER 11
16 MILLION SITES TODAY. WE HAVE OVER 13 MILLION SITES IN
17 THE CATEGORIZATION. THOSE ARE THE ONLY TWO IMMEDIATE
18 INACCURACIES THAT JUMP OUT. SO EVERYTHING I SEE ON HERE
19 IS ACCURATE, TO THE BEST OF MY KNOWLEDGE, WITH THE
20 EXCEPTION OF OMISSIONS DUE TO THE GROWTH OF THE DATABASE
21 SINCE THIS WAS SUBMITTED.

22 Q. OKAY. AND HAVE THE DEFINITIONS OR THE DEFINED
23 CRITERIA FOR EACH OF THE CATEGORIES CHANGED?

24 A. THERE ARE POTENTIALLY SOME SMALL CHANGES IN THE
25 GROWTH OF THESE CATEGORIES. SOME OF THE CATEGORIES HAVE

1 ACTUALLY BEEN SPLIT TO PROVIDE GREATER GRANULARITY AND
2 THEREFORE THERE MAY BE A SLIGHT CHANGE.

3 SO A GOOD EXAMPLE OF THIS WOULD BE
4 CURRENTLY IN THE DOCUMENT YOU ARE SHOWING ME, THERE'S A
5 CATEGORY THAT IS LISTED AS PROXIES AND PEER-TO-PEER. IN
6 THE PRODUCT AS IT WORKS TODAY, THERE IS A SEPARATE
7 CATEGORY FOR PROXIES AND A SEPARATE CATEGORY FOR
8 PEER-TO-PEER. THE DESCRIPTIONS ARE BASICALLY THE SAME
9 BUT THEY'RE NOW TWO SEPARATE CATEGORIES.

10 Q. OKAY. AND TURNING BACK TO THE FIRST PAGE OF
11 DEPOSITION EXHIBIT 2.

12 A. YES.

13 Q. THE FOURTH BULLET POINT DOWN?

14 A. YES.

15 Q. INTERNATIONAL CONTENT, 70 LANGUAGES, 200
16 COUNTRIES. DO YOU SEE THAT?

17 A. YES, I DO.

18 Q. AND THE 200 COUNTRIES REFERENCE, DOES THAT MEAN
19 THAT SURFCONTROL'S DATABASE HAS WEBSITES FROM OVER 200
20 COUNTRIES IN THIS?

21 A. CORRECT.

22 Q. AND THIS, AGAIN, I BELIEVE YOU MENTIONED THIS
23 EARLIER, THIS ALSO INDICATES THAT SURFCONTROL'S DATABASE
24 HAS WEBSITES FOR MORE THAN 70 DIFFERENT LANGUAGES, IS
25 THAT CORRECT?

1 A. CORRECT.

2 Q. AND JUST SO I UNDERSTAND WHAT THESE CATEGORIES
3 MEAN. THIS MEANS THAT YOUR PRODUCT WILL FILTER WEBSITES
4 THAT ARE WITHIN THE CATEGORIES LISTED HERE?

5 A. IF THE USER CONFIGURES THE PRODUCT TO HAVE A
6 BLOCKING RULE AGAINST ONE OF THESE CATEGORIES THEN THE
7 PRODUCTS WOULD DO THAT. IF -- IT WILL ALSO IDENTIFY IF
8 THERE IS NO POLICY SET. IT WOULD SIMPLIFY THAT SITE IN
9 THE REPORTING AND MONITORING CAPABILITY AS HAVING THAT
10 CATEGORIZATION. SO WE WOULD IDENTIFY THE SITE AS BEING
11 ASSOCIATED WITH A CATEGORY. WHETHER OR NOT IT WAS
12 BLOCKED OR NOT WOULD BE DEPENDENT UPON THE POLICY
13 CONFIGURATION THE END USER SET UP.

14 MR. DOBBS: PAGE 46, LINE 8, TO PAGE 47,
15 LINE 17, DESIGNATED BY THE PLAINTIFFS.

16 Q. AND DOES YOUR PRODUCT MAKE ANY JUDGMENTS AS TO
17 WHETHER A PHOTOGRAPH HAS ARTISTIC MERIT?

18 A. NO.

19 Q. DOES YOUR PRODUCT MAKE ANY VALUE JUDGEMENTS
20 ABOUT THE WEB PAGES?

21 A. WE MAKE JUDGMENTS ABOUT WHETHER OR NOT IT WOULD
22 BE INCLUDED IN THAT CATEGORY. WE DON'T MAKE JUDGMENTS
23 ABOUT WHETHER OR NOT THE CONTENT IN THAT CATEGORY WOULD
24 BE APPROPRIATE FOR ANY GIVEN VIEWER.

25 Q. OKAY. IN THE BOTTOM OF THIS CATEGORY, THERE'S A

1 SMALL PRINT. AND IT SAYS: NOTE: WE DO NOT INCLUDE
2 SITES REGARDING SEXUAL HEALTH, BREAST CANCER OR
3 SEXUALLY-TRANSMITTED DISEASES (EXCEPT IN GRAPHIC
4 EXAMPLES).

5 DO YOU SEE THAT?

6 A. YES, I DO SEE THAT.

7 Q. SO WHEN THERE ARE GRAPHIC EXAMPLES OF WEBSITES
8 REGARDING SEXUAL HEALTH, BREAST CANCER OR
9 SEXUALLY-TRANSMITTED DISEASES, YOUR PRODUCT WILL
10 CATEGORIZE THEM AS ADULT OR SEXUALLY EXPLICIT?

11 A. POTENTIALLY, YES.

12 Q. SO EVEN IF THOSE WEB PAGES HAD SOME SCIENTIFIC
13 OR EDUCATIONAL VALUE?

14 A. CORRECT.

15 WE ALSO HAVE A CATEGORY SPECIFICALLY FOR
16 ADULT OR SEXUAL EDUCATION RELATED CONTENT.

17 Q. AND THAT'S TO GIVE --

18 A. SO TYPICALLY THERE WOULD BE -- THOSE SITES WOULD
19 BE CATEGORIZED THERE RATHER THAN IN THE ADULT AND
20 SEXUALLY EXPLICIT CATEGORY.

21 Q. AND WHEREVER YOU CATEGORIZE THEM, YOU CATEGORIZE
22 THEM IN THE EVENT THAT SOME PARENTS MAY WANT TO BLOCK
23 ACCESS TO THOSE WEB PAGES?

24 A. CORRECT.

25 MR. DOBBS: PAGE 47, LINE 22, THROUGH

1 PAGE 48, LINE 12, DESIGNATED BY THE PLAINTIFFS.

2 Q. THE THIRD BULLET POINT: PAY TO SURF SITES, WHAT
3 DOES THAT MEAN?

4 A. SITES WHERE FOLKS, FOR EXAMPLE, IN AN INTERNET
5 CAFE-TYPE OF ENVIRONMENT, WHERE THEY WOULD BE -- NOT
6 NECESSARILY HAVE THEIR OWN DESIGNATED ISP, BUT INSTEAD
7 BE GAINING INTERNET ACCESS DIRECTLY THROUGH THAT SITE
8 WHERE THEY'RE PAYING MONEY FOR THAT USAGE OF THE WEB IN
9 THAT PARTICULAR INSTANCE.

10 Q. WHY DO YOU CATEGORIZE THOSE SITES?

11 A. THOSE SITES ARE CATEGORIZED LARGELY BECAUSE,
12 AGAIN, SOME USERS FEEL THAT IT'S INAPPROPRIATE THAT
13 -- OR THAT THEY WOULD WANT TO CONTROL PEOPLE'S USE OF
14 THE WEB WHERE THEY WOULD BE BILLED. THINK ABOUT IT IN
15 TERMS OF CONTROLLING ACCESS TO YOUR PHONE TO PAY PHONE
16 NUMBERS.

17 Q. OKAY.

18 MR. DOBBS: PAGE 48, LINE 21, THROUGH
19 PAGE 49, LINE 4, DESIGNATED BY THE PLAINTIFFS.

20 A. COULD DO THAT, CORRECT.

21 Q. TURNING TO THE NEXT PAGE, THE CATEGORY
22 DOWNLOADS?

23 A. YEP.

24 Q. IF A PARENT DOESN'T WANT THEIR CHILD TO BE ABLE
25 TO DOWNLOAD ANY MOVIE, VIDEO OR SOUND CLIPS, DOES YOUR

1 PRODUCT ENABLE A PARENT TO BLOCK ACCESS TO THOSE
2 WEBSITES?

3 A. THROUGH THIS CATEGORY, YES.

4 MR. DOBBS: PAGE 49, LINE 13, TO PAGE 50,
5 LINE 11, DESIGNATED BY THE PLAINTIFFS.

6 Q. AND SO IF A PARENT WANTED TO STOP THEIR CHILDREN
7 FROM BEING ABLE TO DOWNLOAD MATERIAL FROM THE WEB ON TO
8 THEIR MOBILE DEVICES, A PARENT COULD DO THAT USING YOUR
9 PRODUCT?

10 A. THEY COULD PREVENT THEM FROM DOWNLOADING IT FROM
11 THEIR PC.

12 Q. ON TO THEIR MOBILE DEVICES?

13 A. RIGHT. THERE IS A -- I'M ONLY WANTING TO BE
14 CLEAR THAT SOME OF THESE THINGS ARE ACCESSED DIRECTLY BY
15 THE MOBILE DEVICE, WHICH THIS SOFTWARE WOULD NOT PREVENT
16 THAT. IF WHAT WE'RE TALKING ABOUT IS THE DOWNLOADING
17 SOMETHING TO THEIR DESKTOP OR LAPTOP, WHICH THEY THEN
18 TRANSFER TO THEIR MOBILE DEVICE TO INSTALL, WE WOULD
19 PREVENT THAT.

20 Q. SO, FOR EXAMPLE, IF SOMEBODY WANTED TO PUT -- TO
21 GO ON THE WEB?

22 A. YES.

23 Q. AND FIND A VIDEO?

24 A. YES.

25 Q. AND THEN DOWNLOAD THAT TO THEIR COMPUTER, AND

1 THEN DOWNLOAD TO THEIR VIDEO IPOD, FOR EXAMPLE, YOUR
2 PRODUCT COULD STOP THAT?

3 A. YES.

4 MR. DOBBS: PAGE 50, LINE 21, THROUGH
5 PAGE 51, LINE 13, DESIGNATED BY THE PLAINTIFFS.

6 Q. SO IS IT CORRECT TO SAY THAT IF A PARENT WANTS
7 TO STOP THEIR CHILDREN FROM HAVING ACCESS TO WEBSITES
8 THAT PROVIDE PHOTOGRAPHS OR ONLINE PHOTO ALBUMS THAT A
9 PARENT CAN DO SO?

10 A. CORRECT.

11 Q. IF YOU TURN TO THE SECOND TO LAST PAGE, THE SEX
12 EDUCATION CATEGORY, THE FIRST BULLET: PICTURES OR TEXT
13 ADVOCATING THE PROPER USE OF CONTRACEPTIVES.

14 SO IS IT CORRECT TO SAY THAT YOUR WEBSITE
15 WILL GIVE PARENTS THE OPTION TO -- YOUR PRODUCT WILL
16 GIVE PARENTS THE OPTION TO BLOCK WEBSITES REGARDING SEX
17 EDUCATION, SUCH AS PICTURES OR TEXT ADVOCATING THE
18 PROPER USE OF CONTRACEPTIVES, IF THE PARENTS WANT TO DO
19 SO?

20 A. YES, THAT'S CORRECT.

21 Q. EVEN IF THOSE SITES MAY HAVE EDUCATIONAL VALUE?

22 A. YES.

23 MR. DOBBS: PAGE 53, LINE 21, TO PAGE 54,
24 LINE 16, DESIGNATED BY THE PLAINTIFFS.

25 Q. SO LET'S GO AHEAD AND MARK THIS AS DEPOSITION

1 EXHIBIT 3.

2 PLAINTIFFS' DEPOSITION EXHIBIT NUMBER 3
3 WAS MARKED FOR IDENTIFICATION.

4 WITNESS REVIEWS THE DOCUMENT.

5 DO YOU RECOGNIZE THIS?

6 A. I DO.

7 Q. WHAT IS IT?

8 A. IT'S A DESCRIPTION OF THE CATEGORIES INCLUDED IN
9 THE CYBERPATROL WEB FILTER PRODUCT.

10 Q. AND IS IT A TRUE AND ACCURATE COPY OF THE
11 CYBER -- OF THE SURFCONTROL DOCUMENT?

12 A. YES.

13 Q. WAS THIS DOCUMENT PREPARED AND MAINTAINED IN THE
14 REGULAR COURSE OF THE BUSINESS OPERATIONS?

15 A. THIS DOCUMENT IS MAINTAINED AS PART OF PRODUCT
16 RELEASE CYCLE. SO WITH NEW VERSIONS OF THE PRODUCT,
17 THIS PRODUCT -- THIS DOCUMENT IS RELEASED. THIS
18 PARTICULAR -- I BELIEVE THIS IS RELEASED AS PART OF
19 VERSION 7.0.

20 MR. DOBBS: PAGE 60, LINE 19, THROUGH
21 PAGE 64 -- EXCUSE ME, YOUR HONOR -- THROUGH PAGE 70,
22 LINE 18, DESIGNATED BY THE PLAINTIFFS.

23 THE COURT: IS THERE AN OBJECTION HERE?

24 MR. GOMEZ: NO OBJECTION. WE WILL
25 WITHDRAW THE OBJECTION.

1 THE COURT: THANK YOU.

2 BY MR. DOBBS:

3 Q. I WANT TO TALK TO YOU NOW A LITTLE BIT ABOUT
4 IMAGE, YOUR FILTERING OF IMAGES. AND YOU MENTIONED THAT
5 THE PRODUCT DOESN'T DO IMAGE ANALYSIS ON ITS OWN?

6 A. CORRECT.

7 Q. PURE IMAGE ANALYSIS?

8 A. CORRECT.

9 Q. DOES THE PRODUCT BLOCK IMAGES STILL, FILTER
10 IMAGES?

11 A. THE PRODUCT CAN FILTER FILE TYPES. SO IF
12 SOMEONE SETS A BLANKET RULE THAT IS FOR A PARTICULAR
13 IMAGE FILE FORMAT, IT COULD UNIVERSALLY BLOCK THAT IMAGE
14 FILE FORMAT FROM BEING DOWNLOADED OR ACCESSED.

15 AND THEN AGAIN, IF, THROUGH THE HUMAN
16 REVIEW PROCESS, WHERE WE BUILT SITES, WHERE WE BUILT OUR
17 CATEGORIZATION LIST, IF THEY WERE SITES ONLY CONTAINED
18 IMAGES BUT THEY WERE CATEGORIZED, IT WOULD BLOCK THOSE
19 IMAGES AS WELL.

20 Q. AND WHAT IF THERE'S A WEB PAGE THAT HAS AN IMAGE
21 ON IT?

22 A. YEP.

23 Q. THERE IS ALSO SOME TEXT ON IT --

24 A. YES.

25 Q. THAT CONTAINS, FOR EXAMPLE, SEXUALLY EXPLICIT

1 TEXT?

2 A. RIGHT.

3 Q. WILL THE PRODUCT FILTER THAT WEB PAGE AND THAT
4 IMAGE?

5 A. IF IT WAS TRIGGERED BY OUR DYNAMIC -- IF EITHER
6 IT WAS ALREADY A KNOWN SITE IN OUR CATEGORY DATABASE, OR
7 THE TEXT ANALYSIS IN THE DYNAMIC TOOL IDENTIFIED THAT
8 SEXUALLY EXPLICIT CONTENT AS BEING LIKELY APPROPRIATELY
9 CATEGORIZED AS SEXUALLY EXPLICIT, IT WOULD BLOCK THE
10 ENTIRE PAGE, BOTH THE IMAGE AND THE TEXT.

11 Q. SO IF THERE WAS ANY -- EITHER IN THE INITIAL
12 COLLECTION OF THAT WEB PAGE OR IN THE DYNAMIC
13 CATEGORIZATION --

14 A. YES.

15 Q. -- ON-THE-FLY FILTERING, IF THERE WAS ANY TEXT
16 ASSOCIATED WITH THAT IMAGE THAT WAS SEXUALLY EXPLICIT,
17 YOUR PRODUCT WOULD BLOCK THAT WEB PAGE?

18 A. CORRECT. AND IT WOULDN'T BE DEPENDENT UPON IT
19 BEING ASSOCIATED WITH IMAGE. IT'S DOING A FULL-PAGE
20 ANALYSIS. SO IF THE PAGE WAS CATEGORIZED AS BEING
21 SEXUALLY EXPLICIT, IT WOULD BLOCK THE ENTIRE PAGE.

22 Q. AND THE SAME THING, IF THERE WAS JUST A WEB PAGE
23 WITH A SEXUALLY EXPLICIT IMAGE, THERE WAS NO TEXT
24 VISIBLE ON THAT PAGE, BUT IN THE HIDDEN SCRIPTS OR
25 METADATA, THERE WAS SEXUALLY EXPLICIT TEXT, YOUR PRODUCT

1 WOULD BLOCK THAT IMAGE AS WELL?

2 A. WE WOULD ANALYZE THAT TEXT. AND IF IT WAS
3 APPROPRIATE -- IF IT TRIGGERED CATEGORIZATION, YES, WE'D
4 BLOCK IT.

5 Q. SO LITERALLY THE ONLY THING YOU WOULDN'T BE ABLE
6 TO CATCH IS IF THERE WAS AN IMAGE AND NOTHING ELSE ON
7 THE PAGE AND NOTHING ELSE IN THE METADATA?

8 A. SO WE -- IT DEPENDS UPON THE TECHNIQUE YOU'RE
9 DESCRIBING. WE COULD CATCH THAT IN THE CASE THAT THE
10 SITE WAS CATEGORIZED IN THE DATABASE, IN TERMS OF A
11 DYNAMIC CATEGORIZATION. IT'S TRUE THAT WE WOULD NOT
12 ANALYZE OR CATCH THAT IF IT WAS PURE IMAGE.

13 Q. BUT IF IT WASN'T A PURE IMAGE, THERE WAS SOME
14 TEXT ASSOCIATED WITH IT?

15 A. IT IS POSSIBLE WE WOULD CATCH IT.

16 Q. OKAY. AND DO YOU KNOW WHAT THE PURPOSE OF
17 METATAGS IS?

18 A. YES.

19 Q. WHAT IS IT?

20 A. TYPICALLY, THEY ARE TEXT TAGS USED TO IMPROVE A
21 SITE'S RECOGNITION BY SEARCH ENGINES WITHOUT HAVING TO
22 MAKE THAT TEXT VISIBLE TO THE END USER THAT'S REVIEWING
23 THE PAGE.

24 Q. SO BASED ON YOUR UNDERSTANDING, WEBSITES USE
25 METATAGS SO THEY CAN BE FOUND BY SEARCH ENGINES?

1 A. CORRECT.

2 Q. AND IF THE WEBSITE HAD A METATAG SO THAT IT
3 COULD BE FOUND BY A SEARCH ENGINE, IT COULD ALSO BE
4 FOUND BY YOUR PRODUCT?

5 A. THE TEXT IN THAT MESSAGE COULD BE ANALYZED BY
6 OUR PRODUCT, YES.

7 Q. OKAY. I WANT TO ASK YOU NOW, YOU MENTIONED THAT
8 PARENTS HAVE THE ABILITY TO CREATE CERTAIN SETTINGS ON
9 THE PRODUCT. CAN YOU EXPLAIN A LITTLE BIT IN MORE
10 DETAIL HOW A PARENT CAN SET UP --

11 A. SURE.

12 Q. -- THE PRODUCT?

13 A. SO THERE ARE VARIOUS RULES THAT THE PARENT CAN
14 SET UP TO CONFIGURE THE PRODUCT TO HAVE DIFFERENT RULES
15 FOR DIFFERENT USERS. SO IN A HOME ENVIRONMENT, YOU
16 COULD USE DIFFERENT POLICIES FOR DIFFERENT PEOPLE WHO
17 MIGHT BE ACCESSING THE INTERNET VIA THAT COMPUTER BASED
18 ON THEIR LOG-IN TO THE COMPUTER. THEY CAN SET UP RULES
19 BASED ON THE TIME OF DAY OR LENGTH OF TIME THAT THEY
20 MIGHT BE ACCESSING THE INTERNET. SO THERE ARE
21 TIME-BASED RULES THAT CAN BE SET UP.

22 THERE ARE OBVIOUSLY THE ABILITY TO SET UP
23 DIFFERENT RULES BASED UPON THE VARIOUS CATEGORIES. SO
24 IT'S NOT AN ALL 13 OR NONE OF THE 13. YOU CAN PICK AND
25 CHOOSE WHICH OF THE CATEGORIES YOU CAN SET UP RULES FOR.

1 THE PRODUCT CAN BE USED IN A BLOCKING CAPACITY OR IN A
2 MONITORING-ONLY CAPACITY, SO THAT WHERE SITES ARE
3 VISITED IS RECORDED BUT NOT BLOCKED OR THEY CAN BE
4 BLOCKED.

5 THERE ARE ALSO POLICY CONFIGURATIONS FOR
6 USE OF APPLICATIONS, SO PEER-TO-PEER OR INSTANT
7 MESSAGING CLIENT APPLICATIONS ARE GOOD EXAMPLES OF THE
8 TYPES OF APPLICATIONS THAT CAN BE CONTROLLED FOR WEB
9 ACCESS VIA THE PRODUCT.

10 THE PRODUCT CAN ALSO BE USED FOR USE OF
11 ALLOWING CHAT, BUT FILTERING OF WORDS WITHIN THAT CHAT.
12 SO PROFANITY, USER NAMES OR PASSWORDS, ET CETERA, CAN BE
13 FILTERED OUT OF CHAT SESSIONS.

14 Q. AND SO ALL OF THESE THINGS THAT YOU JUST
15 DISCUSSED, A PARENT CAN CHOOSE WHETHER THEY WANT TO HAVE
16 THOSE FEATURES ENABLED ON THE PRODUCT?

17 A. YEAH. THOSE ARE DYNAMIC OPTIONS THAT THE PARENT
18 CAN CONFIGURE ON A USER-BY-USER BASIS.

19 Q. SO IF A PARENT HAS A 16-YEAR OLD AND A 6-YEAR
20 OLD, THEY CAN HAVE DIFFERENT SETTINGS FOR THE 16-YEAR
21 OLD AND THE 6-YEAR OLD?

22 A. YES.

23 Q. AND CAN PARENTS ADD WEB PAGES THAT THEY WANT TO
24 BE BLOCKED?

25 A. THE PARENT CAN ADD BOTH WHITE LIST OR BLACK

1 LIST, SO THEY CAN ADD EXPLICIT SITES THEY WANT TO BE
2 BLOCKED OR EXPLICIT SITES THAT THEY WANT TO BE ALLOWED.

3 Q. AND ARE THERE LIMITS ON HOW MANY PAGES PARENTS
4 CAN ADD TO THOSE LISTS TO EITHER ALLOW OR DISALLOW?

5 A. NONE THAT I'M AWARE OF, NO.

6 Q. AND CAN A PARENT ADD WEBSITES TO BE BLOCKED AS
7 OFTEN, YOU KNOW, AS THEY WANT TO?

8 A. YES.

9 Q. AND CAN THEY DELETE AS MANY WEBSITES AS THEY
10 WANT TO?

11 A. YES.

12 Q. AND CAN PARENTS ALSO ADD CERTAIN KEY WORDS OR
13 PHRASES THAT THEY WANT TO BE BLOCKED?

14 A. YES.

15 Q. OR THAT THEY WANT TO LET COME THROUGH?

16 A. I DON'T KNOW. I DON'T BELIEVE -- I DON'T KNOW.

17 Q. AND ARE THERE ANY LIMITS ON HOW MANY KEY WORDS
18 THE PARENTS CAN ADD TO BE BLOCKED?

19 A. NO.

20 Q. AND AGAIN, WHAT'S THE -- SO IF PARENTS DON'T
21 WANT ANYTHING TO BE BLOCKED, CAN THEY JUST TURN THE
22 FILTER OFF?

23 A. THEY CAN OPERATE THE FILTER IN A MONITORING-ONLY
24 CAPABILITY SO NOTHING WOULD BE BLOCKED. THE PRODUCT
25 WOULD STILL BE ON. IN THEY DIDN'T WANT THE PRODUCT TO

1 BE ON, THEY WOULD UNINSTALL IT.

2 Q. SO THEY COULD LEAVE THE PRODUCT ON AND SIMPLY
3 SELECT THAT YOU JUST WANT MONITORING AND NO BLOCKING?

4 A. CORRECT.

5 Q. AND THAT'S FAIRLY EASY TO DO?

6 A. YES.

7 Q. AND CAN YOU EXPLAIN WHAT'S -- SO IS IT FAIR TO
8 SAY THAT A PARENT CAN CONTROL WHAT THEY WANT THEIR KIDS
9 TO SEE AND WHAT THEY DON'T WANT THEM TO SEE ON THE WEB?

10 A. YES.

11 Q. AND AGAIN, WHAT'S THE PURPOSE OF GIVING SO MUCH
12 CONTROL TO THE PARENTS?

13 A. THE PURPOSE IS TO PROVIDE -- TO BASICALLY MEET
14 THE COMMERCIAL -- FROM OUR PERSPECTIVE, IS TO MEET THE
15 COMMERCIAL DEMAND FROM PARENTS WHO WOULD LIKE TO ALLOW
16 ACCESS TO THE WEB BUT HAVE THAT ACCESS BE LIMITED WITHIN
17 CERTAIN BOUNDARIES SO IT ISN'T UNLIMITED ACCESS IS THE
18 PRIMARY PURPOSE.

19 Q. AND CAN PARENTS ALSO RECATEGORYIZE CERTAIN
20 WEBSITES?

21 A. YES. THROUGH THIS WHITE LIST AND BLACK LIST
22 FUNCTIONALITY, THEY CAN IN EFFECT RECATEGORYIZE THE SITE.
23 THEY CAN ALSO SUBMIT THE SITE AGAIN TO SURFCONTROL FOR
24 RECATEGORYIZATION OR INCLUSION, SO THAT IT WOULD BE
25 SHARED WITH OTHER USERS OF THE PRODUCT.

1 Q. LET'S SAY A FAMILY HAS THREE COMPUTERS IN THE
2 HOME. CAN THE PRODUCT BE SET UP TO WORK ON THAT HOME
3 NETWORK?

4 A. IN THE -- THE SURFCONTROL CORPORATE PRODUCT
5 WOULD SUPPORT A MULTIPLE COMPUTER NETWORK FROM A SINGLE
6 INSTANCE. IN THE CYBERPATROL PRODUCT, THE PRODUCT NEEDS
7 TO BE INSTALLED ON EACH OF THE MACHINES WHERE THE
8 FILTERING IS GOING TO OCCUR, BUT OUR LICENSING MODEL
9 SUPPORTS ONE USER TO PURCHASE MULTIPLE SUBSCRIPTIONS AND
10 INSTALL THE PRODUCT ON MULTIPLE MACHINES.

11 Q. OKAY. AND DOES THE CYBERPATROL PRODUCT, CAN
12 THAT BE SET UP TO WORK ON A LAPTOP COMPUTER?

13 A. YES.

14 Q. SO IF A CHILD HAS A LAPTOP COMPUTER, YOU CAN PUT
15 THE PRODUCT ON THAT CHILD'S LAPTOP COMPUTER?

16 A. YES.

17 Q. AND THE PRODUCT WILL WORK TO FILTER WEB ACCESS
18 EVEN IF THE CHILD CONNECTS TO THE INTERNET OUTSIDE THE
19 FAMILY HOME?

20 A. AS LONG AS IT'S VIA THAT LAPTOP COMPUTER, YES.

21 Q. EVEN IF IT'S ON A WI-FI NETWORK?

22 A. YES.

23 Q. IN LOOKING OVER SOME DOCUMENTS, I NOTICE THAT
24 SURFCONTROL HAS SOMETHING CALLED A MOBILE FILTER
25 PRODUCT?

1 A. CORRECT.

2 Q. WHAT IS THAT PRODUCT?

3 A. THAT PRODUCT IS A PRODUCT SPECIFICALLY
4 ASSOCIATED WITH THE SURFCONTROL WEB FILTER PRODUCT FOR,
5 AGAIN, CORPORATE, EDUCATIONAL AND LIBRARY CUSTOMERS.

6 MR. GOMEZ: YOUR HONOR, I JUST WANT TO
7 POINT OUT, WITH RESPECT TO THE OBJECTION NOTED ON 69,
8 LINE 5, THE DEFENDANT WITHDRAWS THE OBJECTION.

9 THE COURT: THANK YOU.

10 THE WITNESS: THAT PRODUCT HAS A SLIGHTLY
11 -- SURFCONTROL WEB FILTER HAS A SLIGHTLY DIFFERENT
12 ARCHITECTURE IN THAT THERE IS A SINGLE INSTANCE IN THE
13 PRODUCT PLACED AT THE ORGANIZATION'S NETWORK GATEWAY.
14 SO INSIDE OF AN OFFICE BUILDING, THERE'S TYPICALLY A LAN
15 WHICH PROVIDES ACCESS TO THE OUTSIDE WORLD ON THE
16 CORPORATE NETWORK.

17 MOBILE FILTER MAKES IT POSSIBLE FOR A
18 LAPTOP TO HAVE THE PRODUCT INSTALLED ON IT SO THAT
19 FILTERING OCCURS ON THAT LAPTOP INDEPENDENT OF WHETHER
20 OR NOT IT IS CONNECTING TO THE INTERNET INSIDE OF THAT
21 CORPORATE NETWORK OR ANYWHERE ELSE.

22 SO AGAIN, SOMEONE COULD CONNECT WITH THAT
23 LAPTOP TO A WIRELESS HOT SPOT, A BROADBAND CONNECTION IN
24 A HOTEL ROOM OR ANY OTHER ACCESS METHOD TO THE INTERNET
25 AND STILL HAVE FILTERING OCCUR ON THAT LAPTOP.

1 Q. OKAY. AND CONVERSELY CAN INTERNET CAFES OR
2 STARBUCKS OR ANYWHERE THAT HAS A WI-FI HOTSPOT USE THAT
3 PRODUCT AS WELL TO FILTER ACCESS TO THE WEB?

4 A. OKAY. I'M GOING TO NEED TO SPECULATE ON THIS.

5 Q. LET ME ASK YOU THIS QUESTION. WELL, I'LL GET
6 THERE. WELL, YOU CAN ANSWER. JUST GIVE ME YOUR ANSWER.

7 A. SO THE ANSWER WOULD BE THEY WOULDN'T USE THE
8 MOBILE FILTER PRODUCT, THEY WOULD USE THE CORPORATE
9 EDITION OF THE PRODUCT AND IT WOULD BE DEPENDENT UPON
10 WHAT THEIR NETWORK ARCHITECTURE WAS AS TO WHETHER OR NOT
11 THEY COULD SUCCESSFULLY IMPLEMENT THE FILTER.

12 MR. DOBBS: PAGE 71, LINE 16, THROUGH
13 PAGE 72, LINE 20, DESIGNATED BY THE PLAINTIFFS.

14 Q. AND DOES YOUR PRODUCT HAVE ANY MECHANISMS IN
15 PLACE TO ENSURE THAT CHILDREN CAN'T BYPASS THE FILTERING
16 PRODUCT?

17 A. YES, IT DOES. THE CYBERPATROL PRODUCT, TYPICAL
18 METHOD THAT PEOPLE WOULD -- A CHILD MIGHT TRY BYPASS A
19 PRODUCT IS JUST SIMPLY BY UNINSTALLING IT, AND THE
20 PRODUCT BASICALLY PREVENTS ITSELF FROM BEING -- IT CAN
21 ONLY BE UNINSTALLED WITH THE USE OF A PASSWORD, WHICH
22 TYPICALLY IS SET AT THE TIME OF INSTALLATION BY THE
23 PARENT.

24 THE PRODUCT ALSO HAS TAMPER DETECTION.
25 SO IF SOMEONE ATTEMPTED TO UNINSTALL THE PRODUCT THROUGH

1 A MORE OF A BRUTE FORCE TECHNIQUE, BY DELETING VARIOUS
2 FILES, OR MODIFYING THE SYSTEM REGISTRY, OR SOME OTHER
3 BRUTE FORCE ATTEMPT AT REMOVING THE PRODUCT, THE PRODUCT
4 WILL BASICALLY PREVENT INTERNET CONNECTIVITY ENTIRELY
5 UNTIL THE PRODUCT HAS BEEN APPROPRIATELY UNINSTALLED AND
6 REINSTALLED.

7 Q. AND TO CHANGE THE USER SETTINGS?

8 A. YES.

9 Q. FOR EXAMPLE, TO DISABLE CERTAIN CATEGORIES THAT
10 THE PARENT HAS SELECTED, DO YOU NEED A PASSWORD TO DO
11 THAT?

12 A. YEAH. YOU NEED TO ENTER -- THE PERSON WHO
13 INSTALLED THE PRODUCT WOULD ENTER THE PASSWORD THEY USED
14 FOR SETTING UP THAT ADMINISTRATIVE PRIVILEGE.

15 Q. SO THE AVERAGE 13-YEAR OLD DOESN'T HAVE THE
16 PARENT'S PASSWORD, THEY WON'T BE ABLE TO CHANGE THE USER
17 SETTINGS?

18 A. IT WOULD BE VERY DIFFICULT FOR THEM TO DO SO.

19 MR. DOBBS: PAGE 73, LINE 11, THROUGH 77,
20 LINE 3, DESIGNATED BY THE PLAINTIFFS.

21 Q. AND I WANT TO NOW ASK YOU -- YOU STARTED GOING
22 INTO THE DIFFERENT -- SOME OF THE DIFFERENT FEATURES OF
23 THE PRODUCT.

24 A. UH-HUH.

25 Q. DOES SURFCONTROL'S PRODUCTS ENABLE PARENT BLOCK,

1 FOR EXAMPLE, CHAT?

2 A. YES.

3 Q. AND WHAT ABOUT I-M, INSTANT MESSAGING?

4 A. YES.

5 Q. WHAT ABOUT PEER-TO-PEER?

6 A. YES.

7 Q. WHAT ABOUT E-MAIL?

8 A. WEB-BASED E-MAIL, YES.

9 Q. AND WITH RESPECT TO THE WEB-BASED E-MAIL, CAN A
10 PARENT SET UP THAT FILTERING FEATURE TO BLOCK JUST
11 CERTAIN WORDS FROM COMING THROUGH?

12 A. NO. WHEN THEY SET UP BLOCKING OF WEB-BASED
13 E-MAIL, IT'S ACCESSED TO THE WEB-BASED E-MAIL SITE, SO
14 IT'S ALL OR NOTHING.

15 Q. WHAT ABOUT NEWS GROUPS?

16 A. YES.

17 Q. NEWS GROUPS CAN BE BLOCKED AS WELL?

18 A. YES. BUT, AGAIN, ALL OR NOTHING.

19 Q. OKAY. AND MESSAGE BOARDS?

20 A. I DON'T KNOW. OH, MESSAGE BOARDS. I'M SORRY.
21 I MISHEARD YOU. YES, MESSAGE BOARDS CAN ALSO BE
22 BLOCKED.

23 Q. OKAY. AND YOU MENTIONED SOME TIME MANAGEMENT
24 FEATURES TO THE PRODUCT AS WELL.

25 A. YES.

1 Q. CAN YOU ELABORATE A LITTLE BIT AND EXPLAIN WHAT
2 ARE THOSE TIME MANAGEMENT FEATURES OF THE PRODUCT?

3 A. SO PRIMARILY, THEY ARE OPTIONS TO PROVIDE EITHER
4 TIME OF DAY ALLOWANCE OR LENGTH OF TIME ALLOWANCE, SO
5 YOU COULD SET UP A POLICY FOR ONE -- ONE OF YOUR USERS
6 TO ONLY HAVE ACCESS TO THE INTERNET AFTER 6 PM AND
7 BEFORE 9 PM.

8 Q. WHAT ABOUT CAN YOU SET UP TIME RESTRICTIONS BY
9 CATEGORY? CAN YOU --

10 A. THE SURFCONTROL WEB FILTER PRODUCT, YOU CAN. I
11 DO NOT KNOW IF THAT'S POSSIBLE ON THE CYBERPATROL
12 PRODUCT.

13 Q. IN THE CURRENT PRODUCT?

14 A. CORRECT.

15 Q. ANY TECHNOLOGICAL REASON YOU COULDN'T DO THAT?

16 A. NOT THAT I'M AWARE OF.

17 Q. AND DO YOU HAVE -- DOES THE PRODUCT HAVE ANY
18 SORT OF LOG TRACKING?

19 A. YES. THE PRODUCTS CAN PROVIDE MONITORING AND
20 REPORTING WHERE USERS HAVE BEEN VISITING ON THE WEB.

21 Q. AND WILL IT ALSO SHOW WHAT WEBSITES THAT A CHILD
22 HAS TRIED TO ACCESS BUT HAS BEEN BLOCKED FROM ACCESSING?

23 A. YES.

24 Q. AND BASED ON THAT REPORT, IF A PARENT DISAGREES
25 WITH THE PRODUCT'S FILTERING OF A WEBSITE, IT CAN

1 RECATEGORIZE THAT WEBSITE?

2 A. YES.

3 Q. WILL IT ALSO SHOW PARENT SITES THAT HAVE BEEN
4 ACCESSED THAT HAVE NOT BEEN BLOCKED?

5 A. YES.

6 Q. IF A PARENT DISAGREES, DOESN'T WANT THEIR KID TO
7 BE ABLE TO ACCESS THOSE WEBSITES, A PARENT CAN MANUALLY
8 ADD THOSE WEBSITES TO BE BLOCKED AS WELL?

9 A. YES.

10 Q. AND WHY HAVE ALL THOSE, YOU KNOW, TIME
11 MANAGEMENT OR MONITORING, YOU KNOW, FEATURES BEEN ADDED
12 TO THE PRODUCT?

13 A. THE -- IT'S, AGAIN, PRIMARILY BEEN DRIVEN FOR
14 PURPOSES OF COMMERCIAL VIABILITY. WE HAVE A VERY
15 HORIZONTAL TARGET MARKET, AND IT'S VERY -- THERE ARE A
16 BROAD RANGE OF REQUIREMENTS FROM OUR CUSTOMER BASE. SO
17 SOME CUSTOMERS WANT TO BE VERY RESTRICTIVE. SOME
18 CUSTOMERS WANT TO BE VERY LIBERAL. AND THAT REQUIRES
19 MAXIMUM FLEXIBILITY IN THEIR OPTIONS FOR HOW THEY
20 CONFIGURE POLICIES. SO OUR OBJECTIVE IS TO PROVIDE THAT
21 FLEXIBILITY SO THEY CAN MEET THEIR PARTICULAR NEEDS.

22 Q. SO IT'S BASED ON WHAT THE CUSTOMERS WANT?

23 A. CORRECT.

24 Q. AND YOU MENTIONED YOU CAN SET THE PRODUCT TO
25 SIMPLY MONITOR AND ALLOW ACCESS TO ALL WEBSITES?

1 A. YES.

2 Q. AND SO IF A PARENT THINKS THAT IT WOULD BE MORE
3 EFFECTIVE INSTEAD OF BLOCKING THEIR CHILD'S ACCESS TO
4 WEBSITES, JUST TO SEE WHAT WEBSITES THEY ARE LOOKING AT,
5 THEN TO TALK TO THEIR CHILD, A PARENT COULD DO THAT
6 USING YOUR PRODUCT?

7 A. CORRECT.

8 MR. DOBBS: PAGE 79, LINE 22, THROUGH
9 PAGE 82, LINE 14, DESIGNATED BY THE PLAINTIFFS.

10 Q. LET ME ASK YOU THIS QUESTION THEN. ARE THERE
11 MORE SITES BLOCKED -- DOES YOUR PRODUCT BLOCK MORE SITES
12 TODAY THAN IT DID LAST YEAR?

13 A. YES.

14 Q. THEN IT DID TWO YEARS AGO?

15 A. YES.

16 Q. THEN IT DID FIVE YEARS AGO?

17 A. YES.

18 Q. AND IS IT CORRECT TO SAY THAT SURFCONTROL'S
19 CONSTANTLY MAKING IMPROVEMENTS TO THE PRODUCT?

20 A. YES.

21 Q. AND THAT ADDITIONAL FEATURES ARE BEING
22 IMPLEMENTED?

23 A. YES.

24 Q. AND THAT THE CUSTOMIZATION FEATURES ARE NOW EVEN
25 EASIER TO USE?

1 A. YES.

2 Q. AND IS THE TECHNOLOGY THAT YOU DISCUSSED AT THE
3 BEGINNING OF THIS DEPOSITION, HOW YOU COLLECT AND
4 CATEGORIZE THOSE WEBSITES, IS IT CORRECT TO SAY THAT
5 TECHNOLOGY IS EVEN BETTER TODAY THAN IT'S EVER BEEN
6 BEFORE?

7 A. YES.

8 Q. AND IS IT CORRECT TO SAY THAT YOUR LIST OF SITES
9 THAT YOU'VE COLLECTED AND CATEGORIZED IS MORE COMPLETE
10 THAN EVER BEFORE?

11 A. YES.

12 Q. AND MORE ACCURATE THAN EVER BEFORE?

13 A. YES.

14 Q. AND ARE LESS AND LESS SITES BEING BLOCKED THAT
15 SHOULDN'T BE BLOCKED?

16 LET ME ASK YOU THIS QUESTION. IS IT
17 CORRECT TO SAY THAT THE PRODUCT IS CATEGORIZING WEBSITES
18 MORE ACCURATELY THAN IN THE PAST?

19 A. YES. I WOULD SAY THAT WE ARE -- HAVE BECOME
20 MORE ACCURATE THAN WE WERE IN THE PAST.

21 Q. AND ARE THE DYNAMIC CATEGORIZATION PROCESSES
22 THAT YOU HAVE DISCUSSED, ARE THOSE BETTER THAN THEY HAVE
23 EVER BEEN BEFORE?

24 A. YES.

25 Q. AND WHAT HAS THE RESPONSE BEEN FROM YOUR

1 CUSTOMERS TO YOUR FILTERING PRODUCTS?

2 A. IT'S A BROAD -- WE HAVE A BROAD SPECTRUM, LIKE
3 MOST COMPANIES, IN TERMS OF OUR CUSTOMER RESPONSE. I
4 THINK THE EASIEST WAY TO CAPTURE OUR CUSTOMER RESPONSES
5 ARE RELATED TO OUR DESCRIPTION MODEL.

6 SO OUR PRODUCT IS LICENSED IN A
7 DESCRIPTION BASIS, WHICH PEOPLE RENEW EVERY YEAR. AND
8 WE HAVE A GOING BUSINESS WITH A RENEWAL RATE FOR THE
9 COMPANY THAT IS IN THE MID 70S FROM A PERCENTAGE WISE OF
10 OUR CUSTOMER BASE WHO RENEW THEIR PRODUCT EVERY YEAR.
11 SO I WOULD CATEGORIZE THE CUSTOMER RESPONSE AS POSITIVE.

12 Q. WHEN YOU SAY -- I DIDN'T QUITE FOLLOW YOU. WHEN
13 YOU -- DO YOU MEAN THE RENEWAL RATE WHEN YOU SAY IN THE
14 MID 70S?

15 A. MEANING 70 TO 80 PERCENT OF OUR CUSTOMERS RENEW
16 THEIR PRODUCT EVERY YEAR.

17 Q. AND THE COMPANY IS VERY SATISFIED WITH THAT
18 RENEWAL RATE?

19 A. WELL, WE WOULD ALWAYS LIKE TO HAVE MORE BUT,
20 YES, WE ARE HAPPY WITH THAT RENEWAL RATE.

21 MR. DOBBS: PAGE 83, LINES 36 THROUGH 13,
22 DESIGNATED BY THE PLAINTIFFS.

23 Q. AND WHY ARE YOU -- WHY IS SURFCONTROL CONSTANTLY
24 MAKING IMPROVEMENTS TO ITS PRODUCTS?

25 A. LIKE OTHER TECHNOLOGY COMPANIES, IT'S NECESSARY

1 FOR SURVIVAL IN THE COMPETITIVE MARKETPLACE.

2 Q. AND IS THE CONTENT FILTERING MARKET A
3 COMPETITIVE MARKETPLACE?

4 A. CONTENT FILTERING MARKET IS A VERY COMPETITIVE
5 MARKETPLACE, YES.

6 MR. DOBBS: PAGE 84, LINES 5 THROUGH 11,
7 DESIGNATED BY THE PLAINTIFFS.

8 Q. DOES IT MAKE A DIFFERENCE TO YOUR FILTERING
9 PRODUCTS WHETHER WEBSITES ARE HOSTED IN THE UNITED
10 STATES OR OVERSEAS?

11 A. NO.

12 Q. THE PRODUCT WILL BLOCK BOTH?

13 A. IF THEY HAVE BEEN CATEGORIZED OR ARE PICKED UP
14 BY TOOLS, YES.

15 MR. DOBBS: PAGE 85, LINE 15, THROUGH
16 PAGE 86, LINE 17, DESIGNATED BY THE PLAINTIFFS.

17 Q. I WANT TO SHOW YOU A DOCUMENT NOW WE ARE GOING
18 TO MARK AS DEPOSITION EXHIBIT 6 AND ASK YOU TO TAKE A
19 LOOK AT IT.

20 PLAINTIFFS' DEPOSITION EXHIBIT NUMBER 6
21 WAS MARKED FOR IDENTIFICATION.

22 THE WITNESS REVIEWS THE DOCUMENT.

23 DO YOU RECOGNIZE THIS DOCUMENT?

24 A. I DO.

25 Q. AND WHAT IS IT?

1 A. THIS IS A DOCUMENT WHICH CHARACTERIZES THE
2 NUMBER OF ADULT SITES THAT HAVE BEEN CATEGORIZED AS
3 ADULT SITES EXPLICITLY BASED UPON THEIR COUNTRY AND
4 DOMAIN SUFFIX.

5 Q. AND IS THIS DOCUMENT -- AND IS THIS A DOCUMENT
6 THAT IS PREPARED AND MAINTAINED BY SURFCONTROL IN THE
7 REGULAR COURSE OF ITS BUSINESS OPERATIONS?

8 A. I DON'T KNOW.

9 Q. ANY REASON TO BELIEVE IT'S NOT?

10 A. NO.

11 Q. IS THIS THE DOCUMENT YOU WERE REFERRING TO THAT
12 SURFCONTROL PROVIDED IN RESPONSE TO THE SUBPOENA?

13 A. YES, IT IS.

14 Q. AND WHAT DOES THIS DOCUMENT SHOW?

15 A. THIS SHOWS THE NUMBER. IF YOU LOOK AT THE ADULT
16 CATEGORY WITHIN THE SURFCONTROL URL DATABASE, THIS SHOWS
17 HOW THE SITES WITHIN THAT ADULT CATEGORY ARE DISTRIBUTED
18 BASED UPON THE COUNTRY OF ORIGIN.

19 MR. DOBBS: PAGE 88, LINE 10, THROUGH
20 PAGE 90, LINE 3, DESIGNATED BY THE PLAINTIFF.

21 Q. DO YOU KNOW GENERALLY WHY IT WAS CREATED?

22 A. GENERALLY, WE, OTHERS, ARE INTERESTED IN
23 UNDERSTANDING WHAT THE SUBSCRIPTION OF SITES ARE FOR
24 SOURCES OF ADULT CONTENT.

25 Q. WHY IS THAT?

1 A. AGAIN, BECAUSE OUR CUSTOMERS ARE INTERESTED IN
2 US BLOCKING ADULT CONTENT, AND WE KNOW THAT ADULT
3 CONTENT COMES FROM A LOT OF PLACES. SO OUR JOB IS TO BE
4 ABLE TO IDENTIFY THAT INDEPENDENT OF WHERE IT'S COMING
5 FROM ON THE WEB.

6 Q. I'M GOING TO SHOW YOU A DOCUMENT I'M NOW GOING
7 TO MARK AS EXHIBIT 7.

8 PLAINTIFFS' DEPOSITION EXHIBIT NUMBER 7
9 WAS MARKED FOR IDENTIFICATION.

10 THE WITNESS REVIEWS THE DOCUMENT.

11 DO YOU RECOGNIZE THIS DOCUMENT?

12 A. YES, I DO.

13 Q. WHAT IS IT?

14 A. THIS LOOKS LIKE A RESPONSE TO QUESTIONS RELATED
15 TO THIS DEPOSITION PROVIDED BY SURFCONTROL.

16 Q. AND DOES THIS APPEAR TO BE A TRUE AND ACCURATE
17 COPY OF THAT RESPONSE PROVIDED BY SURFCONTROL?

18 A. YES, IT DOES.

19 Q. AND THE THIRD SENTENCE OF THE FIRST PARAGRAPH
20 SAYS: IN THE FUTURE, THERE WILL BE MORE USE OF
21 INTERNATIONAL DOMAIN NAMES (IDN) AND FROM THE LIST SIDE,
22 WE ARE PLANNING FOR THOSE CHANGES.

23 DO YOU SEE THAT?

24 A. YES, I DO.

25 Q. IS THAT AN ACCURATE STATEMENT?

1 A. YES, IT IS.

2 Q. WHAT DOES THAT MEAN?

3 A. IT MEANS THAT THE DOMAIN NAME INFRASTRUCTURE
4 THAT WAS SET UP AROUND COMMERCIAL AND ORGANIZATIONAL, IT
5 MEANS THAT AS THE INTERNET IS GROWING, INTERNATIONAL
6 DOMAIN NAMES ARE BECOMING MORE COMMON IN TERMS OF THIS
7 BEING SOURCE OF SITES, AND THAT OUR LIST DEVELOPMENT IS
8 BEING MANAGED IN ORDER TO MANAGE THAT GROWTH IN THE USE
9 OF INTERNATIONAL DOMAIN NAMES.

10 Q. AND SO GOING FORWARD, YOUR LIST IS GOING TO
11 INCLUDE EVEN MORE INTERNATIONAL DOMAIN NAMES?

12 A. CORRECT.

13 MR. DOBBS: PAGE 90, LINE 24, THROUGH
14 PAGE 92, LINE 9, DESIGNATED BY THE PLAINTIFFS.

15 Q. I'M NOW GOING TO SHOW YOU A DOCUMENT WE ARE
16 GOING TO MARK AS DEPOSITION EXHIBIT 8.

17 PLAINTIFFS' DEPOSITION EXHIBIT NUMBER 8
18 WAS MARKED FOR IDENTIFICATION.

19 THE WITNESS REVIEWS THE DOCUMENT.

20 DO YOU RECOGNIZE THIS?

21 A. YES, I DO.

22 Q. WHAT IS IT?

23 A. THIS IS A DESCRIPTION OF CATEGORIES AND THE
24 NUMBER OF SITES BASED ON VARIOUS LANGUAGES PROVIDED IN
25 THE URL CATEGORY LISTS THAT ARE -- WE MAKE AVAILABLE VIA

1 THE SOFTWARE DEVELOPMENT KIT TO OTHER VENDORS.

2 Q. AND AT THE TOP IN THE SMALL PRINT, IT SAYS:
3 LAST UPDATE, 12/03/2001?

4 A. CORRECT.

5 Q. DOES THIS INDICATE THAT THIS DOCUMENT WAS FROM
6 DECEMBER OF 2001?

7 A. CORRECT.

8 Q. AND JUST FOCUSING IN THE SECOND CHART, THE
9 SUMMARY CHART?

10 A. YEAH.

11 Q. IN THE TOP COLUMN, TOP ROW, ADULT?

12 A. YES.

13 Q. AND IN THE MIDDLE COLUMN LABELED, FOREIGN, DOES
14 THIS INDICATE THAT AS OF DECEMBER OF 2001, THERE WERE
15 76,671 FOREIGN LANGUAGE SITES WITHIN THE ADULT CATEGORY?

16 A. YES, IT DOES INDICATE THAT.

17 Q. AND SINCE DECEMBER OF 2001, HAS THAT NUMBER
18 INCREASED, THE NUMBER OF FOREIGN LANGUAGE SITES IN THE
19 SURFCONTROL URL DATABASE?

20 A. IT HAS INCREASED. I COULD NOT TELL YOU TO WHAT
21 LEVEL.

22 MR. DOBBS: PAGE 93, LINE 19, THROUGH
23 PAGE 94, LINE 10, DESIGNATED BY THE PLAINTIFFS.

24 Q. OKAY. CAN ANY OF THE SURFCONTROL WEB FILTERING
25 PRODUCTS BE USED BY SCHOOLS OR LIBRARIES?

1 A. YES.

2 Q. AND ARE THEY?

3 A. YES.

4 Q. AND IS THAT NUMBER INCREASING?

5 A. YES, THE EDUCATIONAL MARKET FOR SURFCONTROL WEB
6 FILTER IS A GROWING MARKET.

7 Q. AND WHAT HAS THE GENERAL RESPONSE BEEN FROM THE
8 SCHOOLS OR LIBRARIES WHO ARE USING SURFCONTROL'S WEB
9 FILTERING PRODUCTS?

10 A. I WOULD CHARACTERIZE IT IN THE SAME WAY THAT
11 I'VE CHARACTERIZED THE OTHER SATISFACTION QUESTIONS. WE
12 HAVE MIXED RESULTS WITH THE GENERAL CONSENSUS BEING
13 SATISFIED CUSTOMERS WHO ARE RENEWING THEIR PRODUCT.

14 MR. DOBBS: PAGE 95, LINE 16, TO PAGE 97,
15 LINE 19, DESIGNATED BY THE PLAINTIFFS.

16 Q. WHY DON'T WE ASK WHAT ABOUT JUST EVER. DO YOU
17 RECALL?

18 A. YEAH. ABSOLUTELY. WE'VE HAD CONTRACTS WITH IRS
19 WITH THE -- AT THE STATE LEVEL. WE HAVE CURRENT
20 CONTRACTS WITH THE STATE OF MICHIGAN. AT THE LOCAL
21 LEVEL, WE HAVE CONTRACTS WITH NUMEROUS COUNTIES AND CITY
22 GOVERNMENTS, INCLUDING SANTA CLARA, SANTA CRUZ. THAT
23 LIST IS LONG, VERY LONG.

24 Q. ANY COUNTIES OR CITIES IN THE STATE OF
25 PENNSYLVANIA THAT YOU ARE AWARE OF?

1 A. WE HAVE RECENTLY LICENSED A PRODUCT TO THE
2 COMMONWEALTH OF THE STATE OF PA FOR 80,000 USERS.

3 Q. AND AGAIN, WHAT HAS THE GENERAL RESPONSE BEEN
4 FROM THESE GOVERNMENTAL ENTITIES TO THE PRODUCT? HAS IT
5 WORKED AS THEY HAVE DESIRED? HAVE THEY COMMUNICATED
6 THAT TO YOU?

7 A. GENERALLY. YEAH. NO DIFFERENT THAN THE OTHER
8 CUSTOMER SEGMENTS WE HAVE DESCRIBED.

9 Q. THEY HAVE BEEN SATISFIED?

10 A. THEY HAVE BEEN SATISFIED, YES.

11 Q. DO YOU CURRENTLY SELL A WEB FILTERING PRODUCT
12 THAT CAN WORK WITH MOBILE DEVICES LIKE CELL PHONES?

13 A. NO.

14 MR. GOMEZ: YOUR HONOR, AT THIS POINT IN
15 THE TESTIMONY, THE DEFENDANT OBJECTS BOTH ON THE GROUNDS
16 OF SPECULATION AND LACK OF FOUNDATION. IF WE -- THE
17 SECTION GOES FROM PAGE 96 -- WELL, ACTUALLY IF WE PICK
18 UP LINE 14, THE SURFCONTROL WITNESS, IN RESPONSE TO A
19 QUESTION OF WHETHER THEY ACTUALLY SELL WEB FILTERING
20 PRODUCT THAT CAN BE -- WILL WITH MOBILE DEVICES, THE
21 ANSWER IS NO. THEN THERE IS A SERIES OF QUESTIONS THAT
22 RELATE TO WHETHER IT IS TECHNICALLY POSSIBLE.
23 SURFCONTROL'S COUNSEL OBJECTS TO EACH AND EVERY ONE OF
24 THESE QUESTIONS. AND THEN, WHEN THERE IS A -- PART OF
25 -- PAGE 98, LINE 2, THERE IS THE QUESTION THAT IS A

1 FOLLOWUP OR CONTINUING OF THIS DISCUSSION, WHICH IS, HAS
2 THE WITNESS ACTUALLY HAVE PERSONAL KNOWLEDGE AND BEEN
3 PARTICIPATING IN WHETHER SOME COMPANIES OR INTERNET
4 SERVICE PROVIDERS MIGHT BE INTERESTED IN THE PRODUCT.
5 HE IS ASKED THIS QUESTION AT LINE 2, PAGE 98, AND HAVE
6 THE INTERNET SERVICE PROVIDERS INDICATED THAT THEY ARE
7 INTERESTED IN SUCH A PRODUCT. LINE 4,

8 ANSWER: I WAS NOT PART OF THE DISCUSSION
9 SO I COULDN'T COMMENT ON THAT.

10 THE DEFENDANT ACTUALLY AGREES WITH THE
11 COUNSEL FOR SURFCONTROL THAT THIS IS SPECULATION AND
12 IT'S LACK OF FOUNDATION.

13 THE COURT: RESPONSE.

14 MR. VAN KWAWEGEN: YOUR HONOR, MR. MURPHY
15 IS THE VICE-PRESIDENT OF PRODUCT MARKETING. THE
16 QUESTIONS AND ANSWERS REFLECTED IN THE DESIGNATION THAT
17 IS CURRENTLY OBJECTED TO BY THE DEFENDANT SPECIFICALLY
18 RELATES TO HIS KNOWLEDGE IN DEVELOPING AND MARKETING NEW
19 PRODUCTS. AND IT IS BEEN ESTABLISHED THROUGH THE
20 TESTIMONY UP UNTIL THIS POINT THAT HE ALSO HAS
21 TECHNOLOGICAL KNOWLEDGE TO ANSWER THOSE QUESTIONS.

22 I'M IN NO POSITION TO SECOND-GUESS THE
23 OBJECTIONS AND THE REAL REASON FOR THE OBJECTIONS OF
24 COUNSEL FOR SURFCONTROL AT THE TIME OF THE DEPOSITION,
25 BUT IF YOUR HONOR READS THOSE QUESTIONS AND ANSWERS I

1 THINK IT IS VERY CLEAR THAT THIS IS DIRECTLY RELEVANT
2 FOR HIS ROLE AS PRESIDENT OF PRODUCT MARKETING AT
3 SURFCONTROL.

4 MR. GOMEZ: IF I MAY JUST ADD ONE POINT,
5 YOUR HONOR. THE REASON I WAS RAISING PAGE 98, LINE 2
6 THROUGH 5, IS THAT THIS LINE OF QUESTIONING GOES TO --
7 SURFCONTROL DOES NOT CURRENTLY HAVE OR, AT THIS
8 DEPOSITION IS STATING IT DOES NOT CURRENTLY HAVE MOBILE
9 FILTERING OR DOES NOT PROVIDE FILTERING FOR MOBILE
10 DEVICES. AND THERE IS A QUESTION OF WHETHER IT IS
11 TECHNICALLY POSSIBLE. IT GETS INTO A DISCUSSION OF
12 WHETHER THERE IS A DEMAND OR NOT, AND THE WITNESS
13 ACKNOWLEDGES THAT HE DOESN'T KNOW WHETHER THERE IS A
14 DEMAND SUFFICIENT TO WARRANT. AND SO THAT IS WHY THE
15 COUNSEL IS OBJECTING TO SPECULATION ON THAT.

16 MR. VAN KWAWEGEN: YOUR HONOR, IF I MAY
17 ADDRESS THAT POINT. ON PAGE 97, WITHIN THE DESIGNATED
18 TRANSCRIPT, THE QUESTION IS SPECIFICALLY IF THE
19 COMMERCIAL DEMAND WAS THERE, IS ON LINE 6, WOULD THE
20 COMPANY MAKE THAT INVESTMENT? AND THAT IS THE QUESTION
21 HE HAS BEEN ASKED TO ANSWER. AND THAT IS CLEARLY WITHIN
22 HIS EXPERTISE OR AT LEAST WITHIN HIS KNOWLEDGE AS
23 VICE-PRESIDENT OF PRODUCT MARKETING AND HE PROVIDES --
24 HE CONTINUES TO GIVE THAT ANSWER.

25 THE COURT: THE OBJECTION IS OVERRULED ON

1 THE GROUND THAT IT IS WITHIN THE SCOPE OF HIS KNOWLEDGE.
2 BUT I POINT OUT NOT SO MUCH AS THE FACT-FINDER BUT JUST
3 AS THE JUDGE RULING ON THE EVIDENTIARY ISSUES, IT'S VERY
4 WEAK TESTIMONY. HE DIDN'T KNOW MUCH. SO IT DOESN'T
5 HELP ANYBODY VERY MUCH. THE DEFENSE CAN ARGUE THAT FROM
6 THIS TESTIMONY AND THE PLAINTIFFS CAN ARGUE WHAT THEY
7 WANT FROM THE TESTIMONY. SO IT IS WITHIN THE REALM OF
8 HIS GENERAL KNOWLEDGE. EVERY TIME HE HAD A CHANCE TO
9 QUALIFY HIS ANSWER, HE DID. SO HE KNOWS WHAT HE DOES
10 NOT KNOW, HE KNOWS WHAT HE DOES KNOW. THAT IS MY
11 REASONS. THE OBJECTION IS OVERRULED.

12 BY MR. DOBBS:

13 Q. IS IT TECHNICALLY POSSIBLE FOR YOUR FILTERING
14 PRODUCTS TO WORK ON MOBILE DEVICES?

15 A. IT IS THEORETICALLY POSSIBLE FOR THE PRODUCTS TO
16 BE IMPLEMENTED, AND THAT WOULD WORK ON THOSE DEVICES,
17 YES.

18 Q. AND YOU SIMPLY HAVE NOT DONE SO BECAUSE THERE IS
19 NOT SUFFICIENT DEMAND?

20 A. AT THIS POINT, COMMERCIAL DEMAND HASN'T CAUSED
21 US TO MAKE THAT INVESTMENT.

22 Q. IF THE COMMERCIAL DEMAND WAS THERE, WOULD THE
23 COMPANY MAKE THAT INVESTMENT?

24 A. POSSIBLY, YES.

25 Q. AND HAVE YOU HAD ANY DISCUSSIONS -- HAS THE

1 COMPANY HAD ANY DISCUSSIONS ABOUT CREATING A PRODUCT
2 THAT WOULD WORK WITH MOBILE DEVICES LIKE CELL PHONES?

3 A. YES.

4 Q. I'M SORRY. WHAT WAS THE ANSWER?

5 A. YES. WE HAVE HAD DISCUSSIONS RELATED TO THAT.

6 MR. DOBBS: PAGE 99, LINE 2, THROUGH PAGE
7 100, LINE 22, DESIGNATED BY THE PLAINTIFFS.

8 Q. AND ARE YOU AWARE THAT SOME STATES LIKE THE
9 STATE OF UTAH HAVE PASSED REGULATIONS REQUIRING INTERNET
10 SERVICE PROVIDERS TO MAKE WEB FILTERING PRODUCTS
11 AVAILABLE TO THEIR CUSTOMERS?

12 A. I'M AWARE OF THAT GENERALLY BUT NOT FAMILIAR
13 WITH THE SPECIFICS OF THAT -- OF THAT LEGISLATION.

14 MR. GOMEZ: YOUR HONOR, AT THIS POINT,
15 THE DEFENDANT WITHDRAWS THE OBJECTION WHICH BEGINS ON
16 PAGE 99, LINE 9.

17 THE COURT: THANK YOU.

18 Q. IF THE STATE OF UTAH WERE TO -- ASSUME THIS IS
19 TRUE ABOUT THE LAW. THAT THE LAW REQUIRES THE STATE OF
20 UTAH TO PUT TOGETHER A LIST OF WEBSITES THAT FILTERS
21 MUST BLOCK. IF THE STATE OF UTAH PROVIDED THAT LIST TO
22 SURFCONTROL, WOULD SURFCONTROL REVIEW THAT LIST?

23 A. IF WE FELT THERE WAS A COMMERCIAL REASON TO
24 REVIEW THAT LIST, IN OTHER WORDS, THERE WAS MARKET AND
25 OPPORTUNITY THAT WE WERE ENGAGING IN IN UTAH, YES, WE

1 13. THE DEFENDANT WITHDRAWS THE OBJECTION.

2 THE COURT: THANK YOU, MR. GOMEZ. HOW
3 ABOUT PAGE 112, WHILE WE ARE HERE?

4 MR. GOMEZ: YES, YOUR HONOR.

5 THE COURT: THANK YOU.

6 BY MR. DOBBS:

7 Q. SO IF A PARENT WANTED TO BLOCK TO PREVENT THEIR
8 CHILDREN FROM RECEIVING E-MAIL ATTACHMENTS THAT
9 CONTAINED SEXUALLY EXPLICIT IMAGES, A PARENT COULD DO
10 THAT?

11 A. YES. THEORETICALLY THEY COULD.

12 Q. AND THE PRODUCT WOULD WORK TO BLOCK THOSE
13 ATTACHMENTS?

14 A. YES.

15 Q. AND ARE YOU AWARE, BASED ON YOUR EXPERIENCE IN
16 THE INDUSTRY, WHETHER SEXUALLY EXPLICIT MATERIAL,
17 INCLUDING PORNOGRAPHY, IS DISTRIBUTED THROUGH MEANS
18 OTHER THAN THE WORLDWIDE WEB?

19 A. YES. ABSOLUTELY.

20 Q. IN WHAT WAYS IS IT DISTRIBUTED?

21 A. IN ADDITION TO ADULT CONTENT BEING DISTRIBUTED
22 VIA WEBSITES, USERS OF OUR PRODUCTS ALSO ARE FAMILIAR
23 WITH THAT CONTENT BEING DESCRIBED VIA E-MAIL, EITHER
24 DIRECTLY EMBEDDED IN MESSAGES OR ATTACHMENTS, VIA
25 INSTANT MESSAGING TOOLS, TYPICALLY AS ATTACHMENTS RATHER

1 THAN IN THE TEXT MESSAGING, BECAUSE THOSE BEING TEXT
2 LIMITED, BUT AS PART OF INSTANT MESSAGING AND ALSO
3 INCREASINGLY VIA PEER-TO-PEER FILE SHARING NETWORKS.

4 Q. AND THESE OTHER MEANS OF DISTRIBUTION, IS
5 SURFCONTROL SEEING THAT THOSE OTHER MEANS OF
6 DISTRIBUTION ARE INCREASING?

7 A. PARTICULARLY THE PEER-TO-PEER FILE SHARING IS A
8 GROWING MEANS OF DISTRIBUTION BUT, YES, IN ALL AREAS,
9 INCLUDING THE WEB, WE SEE INCREASING ADULT CONTENT BEING
10 DISTRIBUTED.

11 Q. AND AGAIN, YOUR PRODUCT WILL BLOCK PEER-TO-PEER
12 APPLICATIONS IF THE PARENT SO DESIRES?

13 A. YES.

14 Q. OKAY. THE E-MAIL FILTER THAT YOUR PRODUCT --
15 THAT YOU JUST REFERRED TO?

16 A. UH-HUH.

17 Q. WILL THAT BLOCK CERTAIN WORDS FROM COMING
18 THROUGH IN E-MAILS?

19 A. YES. THE PRODUCTS CAN BE -- CAN BLOCK CERTAIN
20 WORDS EITHER THROUGH -- THE PRODUCT SUPPORTS A SET OF
21 DICTIONARIES WITH PREPOPULATED WORDS. ONE OF THE
22 DICTIONARIES IS OFFENSIVE CONTENT. THERE IS ADULT
23 CONTENT, DRUGS, SIMILAR TO THE CATEGORIZATION WE PROVIDE
24 FOR THE WEB NOW BASED ON TEXT DICTIONARIES.

25 THE PRODUCT CAN ALSO SUPPORT THE

1 CUSTOMERS CUSTOMIZING IT, SO THEY CAN HAVE THEIR OWN KEY
2 WORDS AND PROVIDE FILTERING BASED ON THAT.

3 Q. OKAY. AND JUST SO I UNDERSTAND THIS, SO IF YOU
4 ARE USING THE SURFCONTROL'S E-MAIL PRODUCTS, THE E-MAILS
5 WILL COME THROUGH AND JUST THE WORDS THAT YOU'VE
6 SELECTED OR THAT ARE PART OF THE DATABASE WILL BE
7 BLOCKED?

8 A. AGAIN, IT'S DEPENDENT UPON THE TYPE OF RULES YOU
9 SET UP, SO YOU COULD DELETE AN ENTIRE MESSAGE BASED ON
10 THAT. YOU COULD ISOLATE IT FOR REVIEW. YOU COULD ALLOW
11 THE MESSAGE TO GO AHEAD WITH THE WORDS BLOCKED.

12 Q. AND THAT IS UP TO THE PARENTS?

13 A. UP TO THE USER TO CONFIGURE IT.

14 Q. OKAY. AND ARE THERE ANY OTHER RELEVANT ADD-ON
15 FEATURES THAT ARE USED TO -- THE PARENTS COULD USE TO
16 BLOCK ACCESS TO WEBSITES?

17 A. THE ADD-ON COMPONENTS THAT SURFCONTROL OFFERS
18 INCLUDE THE SURFCONTROL MOBILE FILTER, WHICH WE HAVE
19 ALREADY TOUCHED ON, MAKES IT POSSIBLE FOR WEB FILTERING
20 TO OCCUR ON A LAPTOP INDEPENDENT OF BEING CONNECTED TO A
21 NETWORK. THE VIRTUAL CONTROL AGENT, WHICH IS BASICALLY
22 THE DYNAMIC WEB-FILTERING COMPONENT THAT WE DISCUSSED
23 THAT IS BASICALLY USING WORDS IN THE RELATIVE PLACEMENT
24 AND POSITION IN THE CONTEXT OF CONTENT OF WEBSITES TO
25 DETERMINE IF IT'S POSSIBLY LIKE ANOTHER -- POSSIBLY LIKE

1 ANOTHER SITE, THOSE ARE BOTH WEB-FILTERING RELATED.

2 THE VIRTUAL IMAGE AGENT, WHICH IS RELATED
3 TO THE E-MAIL FILTER PRODUCT, AND WE JUST DISCUSSED, THE
4 VIRTUAL LEARNING AGENT, WHICH IS SIMILAR TO THE VCA. IN
5 OTHER WORDS, IT'S LOOKING AT TEXT BUT RATHER THAN
6 LOOKING AT TEXT WITHIN WEB PAGES, IT'S LOOKING AT TEXT
7 WITHIN E-MAIL MESSAGES TO DETERMINE, DOES THIS E-MAIL
8 LOOK LIKE OTHER MESSAGES THAT IT'S BEEN TRAINED TO
9 RECOGNIZE IN SIMILAR CATEGORIES.

10 AND WE ALSO OFFER AN ANTIVIRUS AGENT,
11 WHICH IS BASICALLY A TYPICAL VIRUS SCANNING ENGINE THAT
12 WOULD SCAN -- AGAIN, IT'S ASSOCIATED WITH E-MAIL PRODUCT
13 AND WILL SOON BE AVAILABLE IN ASSOCIATION WITH THE WEB
14 FILTER PRODUCTS TO SCAN DOWNLOADS AND E-MAIL ATTACHMENTS
15 FOR VIRUS INFECTION.

16 MR. DOBBS: PAGE 137, LINE 3 THROUGH 9,
17 DESIGNATED BY THE DEFENDANT.

18 Q. FIRST, HOW MANY EMPLOYEES DOES SURFCONTROL HAVE?

19 A. SURFCONTROL, I DON'T KNOW THE EXACT NUMBER. BUT
20 IT'S JUST OVER 500. APPROXIMATELY 500 EMPLOYEES.

21 Q. AND HOW MANY OF THEM WORK IN THIS COUNTRY,
22 APPROXIMATELY?

23 A. APPROXIMATELY 200.

24 MR. DOBBS: PAGE 118, LINES 5 THROUGH 22,
25 DESIGNATED BY THE DEFENDANT.

1 Q. COULD YOU READ ALOUD THE SENTENCE?

2 A. YEAH. YOU BET.

3 AS OF JANUARY 2005, CYBERPATROL IS A LEAN
4 DIVISION, EMPLOYING SEVEN FULL-TIME EMPLOYEES, THREE
5 U.S., FOUR UK, AND TWO PART-TIME EMPLOYEES, UK.
6 CYBERPATROL ALSO UTILIZES SHARED FUNCTIONS OF IT FOR ALL
7 SYSTEMS AND APPLICATION SUPPORT. CONTENT FOR LIST
8 MAINTENANCE, FINANCE FOR INVOICING AND RECONCILIATION,
9 WEB DEVELOPMENT FOR...

10 AND THEN THERE IS A DROPOFF ON THE
11 SENTENCE.

12 Q. DOES CYBERPATROL STILL HAVE ABOUT SEVEN
13 FULL-TIME EMPLOYEES?

14 A. CYBERPATROL STILL HAS THIS NUMBER OF EMPLOYEES.
15 THIS IS A DIFFICULT QUESTION TO ANSWER IN THAT WE ARE IN
16 THE PROCESS OF REINTEGRATING CYBERPATROL MORE FULLY INTO
17 OUR LINE OF BUSINESSES, WHICH BASICALLY MEANS THAT THERE
18 WILL BE MORE OF THE SHARED RESOURCES, BUT, YES, THAT'S
19 AN ACCURATE --

20 MR. DOBBS: PAGE 118, LINE 23, THROUGH
21 PAGE 119, LINE, 1 DESIGNATED BY THE PLAINTIFFS.

22 Q. OKAY.

23 A. ASSESSMENT OF -- ROUGHLY DEDICATED FULL-TIME
24 EMPLOYEES OF CYBERPATROL IS APPROXIMATELY 7.

25 MR. DOBBS: PAGE 119, LINES 11 THROUGH

1 24, DESIGNATED BY THE DEFENDANT.

2 Q. BEFORE I MOVE ON TO THAT, HAS THE NUMBER OF
3 CYBERPATROL EMPLOYEES, FULL-TIME EMPLOYEES, CHANGED OVER
4 TIME DRAMATICALLY?

5 A. WHAT?

6 Q. IN THE PAST SEVEN YEARS.

7 A. YES. SO WHEN THE COMPANY WAS INITIALLY
8 ACQUIRED, IT WAS A MUCH LARGER TEAM THAT WAS FULLY
9 DEDICATED TO CYBERPATROL. BECAUSE THE COMPANY WAS JUST
10 FOCUSED -- THAT ACQUIRED COMPANY WAS ENTIRELY FOCUSED ON
11 CYBERPATROL. SO THERE HAVE BEEN A -- A GENERAL
12 REDUCTION IN THE NUMBER OF FULL-TIME EMPLOYEES DEDICATED
13 TO CYBERPATROL IN THE LAST SEVEN YEARS.

14 MR. DOBBS: PAGE 120, LINE 10, THROUGH
15 PAGE 121, LINE 1, DESIGNATED BY THE DEFENDANT.

16 Q. WHAT IS SURFCONTROL'S ANNUAL REVENUE CURRENTLY?

17 A. REVENUE -- ANNUAL REVENUE IS APPROXIMATELY ONE
18 HUNDRED MILLION.

19 Q. AND WHAT PERCENTAGE OF THAT REVENUE IS GENERATED
20 BY CYBERPATROL?

21 A. BETWEEN 1 AND 2 PERCENT.

22 Q. AND WHAT PERCENT OF THE REVENUE IS GENERATED BY
23 SURFCONTROL WEB FILTER PRODUCT?

24 A. BETWEEN 60 AND 70 PERCENT.

25 Q. WHY -- LET'S SEE, JUST TO MAKE SURE MY

1 UNDERSTAND THIS. SO CYBERPATROL PROVIDES BETWEEN 1 AND
2 2 MILLION DOLLARS OF REVENUE PER YEAR CURRENTLY?

3 A. CURRENTLY.

4 Q. AND WEB FILTER PROVIDES BETWEEN 60 AND 70
5 MILLION IN REVENUE CURRENTLY?

6 A. CORRECT.

7 MR. DOBBS: PAGE 121, LINES 2 THROUGH 5,
8 DESIGNATED BY THE PLAINTIFFS.

9 Q. HAVE THOSE NUMBERS CHANGED IN THE PAST SEVEN
10 YEARS?

11 A. THEY HAVE BOTH BEEN GROWING WITH MARKET GROWTH.

12 MR. DOBBS: PAGE 122, LINE 6 THROUGH PAGE
13 125, LINE 15 -- EXCUSE ME, YOUR HONOR, THROUGH PAGE 127,
14 LINE 13, DESIGNATED BY THE DEFENDANT.

15 Q. AND HOW MANY CYBERPATROL CUSTOMERS DO YOU HAVE
16 CURRENTLY?

17 A. WE HAVE -- WE HAVE CURRENTLY APPROXIMATELY
18 70,000 ACTIVE SUBSCRIPTIONS, WHICH MEANS THAT'S ROUGHLY
19 THE NUMBER OF DESKTOPS THAT IT'S PROTECTED.

20 Q. AND IN THE MARKETPLACE OF HOME INTERNET CONTENT
21 FILTERING PROVIDERS, ARE YOU AWARE OF WHAT THE MARKET
22 SHARE OF CYBERPATROL IS?

23 A. THE ESTIMATES -- NO ONE HAS DEFINITIVE ANSWERS
24 ON MARKET SHARE, BUT BASED ON INDUSTRY ESTIMATES AND OUR
25 OWN ESTIMATES, WE BELIEVE IT'S APPROXIMATELY 10 PERCENT.

1 Q. AND TO CLARIFY, THAT INCLUDES PRODUCTS OFFERED
2 IN THE WORLD OF INTERNET CONTENT FILTERING PRODUCTS;
3 YOUR 10 PERCENT NUMBER INCLUDES BOTH PRODUCTS SOLD
4 DIRECTLY TO CONSUMERS, SUCH AS CYBERPATROL OR I GUESS
5 USED TO BE A PRODUCT CALLED NETNANNY AND PRODUCTS
6 OFFERED THROUGH ISPS, LIKE RULESPACE ON YAHOO PREMIUM?

7 A. CORRECT. ALTHOUGH THAT GETS A LOT MORE
8 DIFFICULT TO ESTIMATE WHAT THEIR SHARE IS, BUT YES.

9 Q. OKAY. YOU SAID YOU'RE NOT AWARE OF ANY HOME
10 USERS PURCHASING THE SURFCONTROL WEB FILTER PRODUCT, IS
11 THAT CORRECT?

12 A. CORRECT, YES.

13 Q. HOW MUCH DOES THAT PRODUCT COST FOR ONE TO FOUR
14 LICENSES?

15 A. SO THAT PRODUCT --

16 Q. FOR ONE-YEAR SUBSCRIPTION.

17 A. YES. SO THE CORPORATE PRODUCT IS NOT CURRENTLY
18 AVAILABLE IN A ONE TO FOUR LICENSE MODEL. THE LOWEST
19 SEAT COUNT THAT IS AVAILABLE FOR ONE IS A 50-USER
20 LICENSE WHICH WOULD BE RETAIL AT 1,500 DOLLARS.

21 Q. PER YEAR?

22 A. PER YEAR. WELL, NO, I SHOULD QUALIFY THAT. IT
23 WOULD BE \$1,500 YOUR FIRST YEAR. YOUR RENEWAL
24 SUBSCRIPTION WOULD BE 70 PERCENT OF THAT.

25 Q. AND THEN, I BELIEVE, YOU MENTIONED SOME

1 ADDITIONAL PRODUCTS THAT WERE SOLD ALONG WITH THE WEB
2 FILTER PRODUCT, AN E-MAIL PRODUCT?

3 A. YES.

4 Q. WHAT'S THE CHEAPEST LICENSE YOU CAN PURCHASE ON
5 THE E-MAIL PRODUCT?

6 A. IT'S A MIRROR OF THE WEB FILTER, SO SAME USER
7 COUNT AND SAME PRICE PLAN.

8 Q. SO IT'S AN ADDITIONAL \$1,500 FOR THAT PRODUCT
9 EACH YEAR?

10 A. NO.

11 Q. FOR THE FIRST YEAR?

12 A. SORRY. SO, YES, FOR THE FIRST YEAR. AND YES,
13 IF THAT WAS THE ONLY PRODUCT YOU BOUGHT. THERE IS
14 DISCOUNTS IF YOU BOUGHT BOTH THE PRODUCTS TOGETHER.

15 Q. SURE.

16 A. BUT --

17 Q. WHAT WOULD A SAMPLE DISCOUNT BE IF YOU BOUGHT
18 BOTH THE E-MAIL FILTER AND THE WEB FILTER?

19 A. 30 PERCENT.

20 Q. DO YOU PROVIDE ANY KIND OF TRAINING FOR THE
21 ADMINISTRATORS OF THE SURFCONTROL WEB FILTER PRODUCT?

22 A. TRAINING PROGRAMS HAVE BEEN MADE AVAILABLE VIA
23 SOME OF OUR RESELLERS AND ON SOME CUSTOMERS' REQUESTS.
24 WE DON'T HAVE A SKU OR A REGULARLY OFFERED TRAINING
25 PROGRAM AS PART OF OUR STANDARD OFFERING.

1 Q. SURE.

2 DO YOU KNOW -- COULD YOU ESTIMATE,
3 PROVIDE AN ESTIMATE OF THE COST OF THE TRAINING? IS IT
4 FREE, OR IS IT PER COURSE?

5 A. IT'S BEEN VARIABLE. SO, AGAIN, WHERE WE'VE
6 OFFERED IT VIA OUR RESELLERS, THEY HAVE CHARGED FOR IT.
7 WHEN WE HAVE DONE IT AS PART OF SPECIFIC ENGAGEMENTS,
8 SOMETIMES IT'S INCLUDED AS PART OF PRICING. BUT AGAIN
9 BECAUSE WE DON'T HAVE A STANDARD SKU, THERE ISN'T A
10 STANDARD PRICE.

11 Q. SURE. WHEN RESELLERS HAVE OFFERED IT, DO YOU
12 HAVE AN ESTIMATE OF PRICE RANGES IT'S BEEN OFFERED FOR?

13 A. THE PRICE RANGES I'M AWARE OF IT BEING AVAILABLE
14 FOR ARE IN THE RANGE OF WHAT'S CONSIDERED FOR INDUSTRY
15 STANDARD FOR TECHNICAL TRAINING, WHICH IS ANYWHERE FROM
16 500 TO A THOUSAND DOLLARS FOR A DAY'S TRAINING.

17 Q. TELL ME ABOUT THE TESTING YOU DO ON YOUR
18 CYBERPATROL PRODUCT TO DETERMINE ITS EFFECTIVENESS RATE
19 AT SCREENING ADULT CONTENT AND OTHER COMMERCIAL
20 -- AND/OR COMMERCIAL PORNOGRAPHY?

21 A. WE DON'T HAVE ANY EXPLICIT EFFECTIVENESS TESTING
22 THAT WE ARE DOING OTHER THAN THE EXAMPLE I PROVIDED
23 EARLIER, IN WHICH WE COMPARED THE EFFECTIVENESS OF THE
24 PRODUCT'S ABILITY TO CAPTURE THE ADULT CONTENT SITES
25 THAT ARE IN THE CORPORATE PRODUCT WITH THE FULL

1 FUNCTIONALITY ENABLED ON CYBERPATROL PRODUCT.

2 MR. DOBBS: PAGE 127, LINES 4 THROUGH 13,
3 DESIGNATED BY THE DEFENDANT.

4 Q. AND I JUST WANT TO CONFIRM THAT THE CYBERPATROL
5 PRODUCT DOESN'T HAVE AN ADULT CONTENT FILTER FOR E-MAIL.

6 A. THAT IS CORRECT. THE ONLY EXCEPTION TO THAT
7 WOULD BE FOR WEB-BASED E-MAIL. SO E-MAIL COMING THROUGH
8 WEBSITES COULD BE FILTERED.

9 Q. RIGHT. BUT THEN -- BUT THAT'S AN ON/OFF
10 FEATURE. THAT'S ALL WEB-BASED FEATURE. THERE IS NO
11 ANALYSIS OF APPROPRIATE E-MAIL VERSUS INAPPROPRIATE
12 E-MAIL?

13 A. THAT'S CORRECT.

14 MR. DOBBS: TO CLARIFY, PAGE 127, LINE 14
15 WAS DESIGNATED BY THE PLAINTIFFS.

16 PAGE 142, LINES 10 THROUGH 18, DESIGNATED
17 BY THE PLAINTIFFS.

18 Q. DID YOU READ THE LAST BULLET POINT?

19 A. MY ACCOUNTS MUST BE MADE SIMPLER AND MORE
20 INTUITIVE.

21 Q. COULD YOU EXPLAIN WHAT THAT MEANS?

22 A. BASICALLY, AGAIN, IT'S THE LOOKING INTO THE
23 FUTURES ASSUMING THERE WILL CONTINUE TO BE COMPETITIVE
24 PRESSURE FOR EASE OF USE AND INTUITIVE PRODUCT
25 ENHANCEMENT FOR ADOPTION BY A BROADER AUDIENCE.

1 MR. DOBBS: PAGE 146, LINES 20 THROUGH
2 22, DESIGNATED BY DEFENDANT.

3 Q. IS THERE A REASON WHY YOU DON'T OFFICIALLY
4 SUPPORT ANY OTHER BROWSERS?

5 A. MARKET PENETRATION.

6 MR. DOBBS: PAGE 147, LINE 21, THROUGH
7 PAGE 149, LINE 20, DESIGNATED BY DEFENDANT.

8 Q. IF YOU CAN TURN TO THE SECOND PAGE, THERE IS A
9 HEADING MARKED, RELEVANCY 20 PERCENT/80 PERCENT RULE?

10 A. YES.

11 Q. COULD YOU READ THAT PARAGRAPH?

12 A. SURE.

13 Q. THE FIRST ONE.

14 A. YEP.

15 THERE ARE APPROXIMATELY 2 MILLION NEW
16 DOMAINS REGISTERED ON THE WORLDWIDE WEB EVERY MONTH.
17 THAT SAID, WE MUST BE SELECTIVE ABOUT WHAT WE LIST IN
18 OUR FILTERS. WE'RE NOT ATTEMPTING TO CATEGORIZE THE
19 ENTIRE WEB. THAT WOULD BE AN INSURMOUNTABLE TASK,
20 CREATING TONS OF OVERHEAD, NOT TO MENTION IMMENSE
21 DOWNLOADS FOR OUR CUSTOMERS. OUR MAIN GOAL IS TO
22 CATEGORIZE THE 20 PERCENT OF THE INTERNET THAT
23 GUARANTEES 80 PERCENT OF THE TRAFFIC.

24 Q. COULD YOU EXPLAIN WHAT THAT PARAGRAPH MEANS?

25 A. THE PARAGRAPH IS INTENDED TO PROVIDE GENERAL

1 GUIDANCE TO OUR TEAM ABOUT WHAT OUR OBJECTIVE IS IN
2 TERMS OF WHAT WE ARE ATTEMPTING TO FILTER, WHICH IS AS
3 IT STATES, 20 PERCENT OF THE INTERNET THAT GENERATES 80
4 PERCENT OF THE TRAFFIC.

5 Q. WHAT ABOUT THE OTHER 80 PERCENT OF THE INTERNET?

6 A. SO THE OTHER 80 PERCENT OF THE INTERNET IS FIRST
7 IN OUR MINDS, REALLY FALLS INTO TWO PIECES. THERE'S THE
8 MAJORITY OF THE INTERNET THAT CONTAINS CONTENT THAT
9 PROBABLY ISN'T OF A NATURE THAT FITS INTO WHAT WE WOULD
10 NORMALLY CATEGORIZE. SO IF YOU TOOK OUR 13 CATEGORIES
11 IN CYBERPATROL PRODUCT OR EVEN 54 CATEGORIES IN OUR WEB
12 FILTER PRODUCT, THERE IS A HUGE AMOUNT OF CONTENT ON
13 THOSE WEBSITES THAT DOES NOT NECESSARILY FIT IN ANY ONE
14 OF THOSE CATEGORIES. THERE ARE SITES RELATED TO
15 CORPORATIONS, STANDARD BUSINESS PRACTICES. THERE ARE
16 LEGAL SITES, ET CETERA. SITES THAT JUST DON'T SEEM LIKE
17 THEY FIT INTO BEING A SECURITY RISK, A PRODUCTIVITY
18 RISK, A LEGAL LIABILITY RISK OR A NETWORK BANDWIDTH
19 RISK.

20 THERE ARE ALSO SOME SITES THAT PROBABLY
21 DO FALL WITHIN ONE OF THOSE CATEGORIES, BUT RECEIVE
22 ALMOST NO TRAFFIC. THEY ARE INCREDIBLY OBSCURE OR
23 INACCESSIBLE, NOT EASILY FOUND BY A SEARCH ENGINES, ET
24 CETERA, SO THE 80 PERCENT COVERS THOSE TWO SETS OF
25 SITES.

1 Q. SO YOU ARE SAYING IN THAT 80 PERCENT THERE IS
2 GOING TO BE SOME ADULT CONTENT?

3 A. THERE COULD BE, YES.

4 MR. DOBBS: PAGE 150, LINES 3 THROUGH 19,
5 DESIGNATED BY THE PLAINTIFFS.

6 Q. I'LL START WHERE JIM JUST LEFT OFF.

7 A. OKAY.

8 Q. I JUST WANT TO UNDERSTAND WHAT YOU WERE SAYING
9 ABOUT WHY SURFCONTROL HAS ADOPTED THIS 20 PERCENT/80
10 PERCENT RULE.

11 IS THAT BECAUSE YOU ARE FOCUSING ON THE
12 PART OF THE INTERNET THAT USERS ARE MOST LIKELY TO GO
13 TO?

14 A. YES.

15 Q. AND --

16 A. WELL, LET'S CLARIFY.

17 WE ARE FOCUSED ON THE PART OF THE
18 INTERNET THAT USERS ARE MOST LIKELY TO WANT TO MANAGE
19 AND TO GO TO. SO THERE ARE DEFINITELY PLACES THAT A LOT
20 OF PEOPLE COULD GO TO THAT WE WOULD NOT NECESSARILY
21 CATEGORIZE, BECAUSE THEY AREN'T NECESSARILY FALLING INTO
22 ONE OF THESE CATEGORIES THAT WE WOULD WANT TO MANAGE.

23 MR. DOBBS: YOUR HONOR, THAT COMPLETES
24 THE DESIGNATIONS OF THE JIM MURPHY DEPOSITION.

25 THE COURT: ARE YOU GOING TO OFFER THE

1 DOCUMENTS FROM THE DEPOSITION?

2 MR. VAN KWAWEGEN: YES, YOUR HONOR. IN
3 ADDITION TO THAT, ONE CLARIFICATION FOR THE RECORD. ON
4 PAGE 28 OF THE TRANSCRIPT, LINE 24 THROUGH PAGE 29 OF
5 THE TRANSCRIPT ON LINE 4, WAS DESIGNATED BY THE
6 PLAINTIFFS. I'M NOT SURE THAT IT WAS DESIGNATED -- AND
7 IDENTIFIED AS DESIGNATED AS SUCH DURING THE READING OF
8 THE TRANSCRIPT.

9 THE COURT: WHAT DOCUMENTS ARE YOU
10 OFFERING?

11 MR. VAN KWAWEGEN: THREE DOCUMENTS, YOUR
12 HONOR, DEPOSITION EXHIBIT NUMBER 1, WHICH CORRESPONDS TO
13 PLAINTIFFS' EXHIBIT 136.

14 THE COURT: NEXT.

15 MR. VAN KWAWEGEN: DEPOSITION EXHIBIT
16 NUMBER 2, WHICH CORRESPONDS TO PLAINTIFFS' EXHIBIT 131.

17 THE COURT: NEXT.

18 MR. VAN KWAWEGEN: DEPOSITION EXHIBIT
19 NUMBER 6, WHICH CORRESPONDS TO PLAINTIFFS' EXHIBIT 133.

20 THOSE THREE DOCUMENTS ARE THE ONLY ONES,
21 YOUR HONOR.

22 THE COURT: ANY OBJECTION?

23 MR. GOMEZ: NO OBJECTION, YOUR HONOR.

24 THE COURT: PLAINTIFFS 136, 131, AND 133
25 ARE RECEIVED INTO EVIDENCE.

1 (EXHIBITS P 136, P 131 AND P 133 RECEIVED
2 INTO EVIDENCE.)

3 THE COURT: YOU ARE EXCUSED FROM THE
4 STAND, SIR.

5 OKAY. WHAT IS GOING TO HAPPEN TOMORROW,
6 MR. HANSEN?

7 MR. HANSEN: YOUR HONOR, TOMORROW THE
8 PLAINTIFFS HAVE FOUR LIVE WITNESSES PLANNED. THE FIRST
9 WITNESS IS TAVA SMATHERS. MS. SMATHERS IS A LIBRARIAN.
10 THERE WILL BE NO EXHIBITS ASSOCIATED WITH HER TESTIMONY.

11 THE SECOND WITNESS IS WAYNE SNELLEN. MR.
12 SNELLEN IS EXECUTIVE DIRECTOR OF THE LESLIE LOHMAN ART
13 GALLERY. THERE IS ONLY ONE EXHIBIT ASSOCIATED WITH HIS
14 TESTIMONY. THAT IS EXHIBIT 49.

15 THE THIRD WITNESS IS JONJIE SENA. HIS
16 FIRST NAME IS J-O-N-J-I-E, LAST NAME IS S-E-N-A.
17 MR. SENA IS WITH ACE*COMM, A MOBILE FILTERING COMPANY.
18 THE ONLY EXHIBIT WITH MR. SENA IS PLAINTIFFS' EXHIBIT
19 70.

20 AND THE FINAL WITNESS OF THE DAY WILL BE
21 HEATHER CORRINE. SHE IS A PLAINTIFF. AND THE ONLY
22 EXHIBIT ASSOCIATED WITH HER IS EXHIBIT 42.

..
..

17 MR. HANSEN: THERE ARE A COUPLE OF OTHER
18 ISSUES, I THINK, YOUR HONOR, JUST TO BRING THE COURT
19 UP-TO-DATE ON.

20 THE COURT: YES.

21 MR. HANSEN: FIRST, YOUR HONOR SUGGESTED
22 THAT THE PARTIES HAVE A DISCUSSION ABOUT WHAT TO DO
23 ABOUT THE FACT THAT WE HAVE SUBMITTED THREE SEPARATE
24 COPIES OF EXHIBITS TO YOUR HONOR AT VARIOUS TIMES, THE
25 WITNESS BOOKS AND THE HARD COPIES AND THE ELECTRONIC

1 COPIES. THE PARTIES HAVE HAD A BRIEF DISCUSSION ABOUT
2 THAT.

3 THE COURT: WE ARE PRETTY OVERWHELMED.

4 MR. HANSEN: YES.

5 THE COURT: AND THEN I GOT MORE IN COURT.

6 MR. HANSEN: OUR SUGGESTION WOULD BE THAT
7 THE PARTIES ALL TAKE BACK THE WITNESS BINDERS, AT LEAST
8 GET RID OF THAT ONE DUPLICATE COPY.

9 SECOND, AT THE END OF THE TRIAL, I THINK
10 THE PARTIES SHOULD TAKE A LOOK AT THE COURT'S COPY OF
11 THE HARD COPIES, AND I THINK WE CAN DO IT RIGHT AFTER
12 THE TRIAL ENDS, AND JUST MAKE SURE THAT EVERYTHING THAT
13 IS SUPPOSED TO BE IN THE HARD COPIES IS THERE AND THERE
14 IS NOTHING THERE THAT DOES NOT BELONG THERE.

15 AND THEN FINALLY, WE HAVE DISCUSSED THAT
16 WITHIN, SAY, 48 OR 72 HOURS OF THE END OF THE TRIAL, THE
17 PARTIES WILL PREPARE NEW ELECTRONIC COPIES. WE WILL
18 TAKE BACK ALL OF THE OLD ELECTRONIC COPIES YOU HAVE AND
19 GIVE YOU A CLEAN ELECTRONIC COPY OF THE EXHIBITS.

20 THE COURT: SOUNDS LIKE A PRODIGIOUS
21 UNDERTAKING AND ALSO QUITE A BURDEN FOR OFFICERS OF THE
22 COURT TO TELL ME THIS SIX-FOOT HIGH STACK OF PAPER WAS
23 EXACTLY WHAT WAS ADMITTED INTO EVIDENCE OVER THE LAST
24 SIX WEEKS. THAT IS QUITE A BURDEN. YOU ARE PRESUMING
25 THE EQUIPMENT ALL WORKED PERFECTLY, NO PAGES WILL BE

1 MISSING AND ALL THAT SORT OF STUFF.

2 MR. GOMEZ: YOUR HONOR, WE HAVE DISCUSSED
3 THE GENERAL PARAMETERS AND PLAINTIFFS' COUNSEL HAS LAID
4 OUT CORRECTLY WHAT WE HAD SPOKEN ABOUT. THE CONCERN
5 THAT YOU ARE RAISING IS A CONCERN THAT WE HAVE HAD AND
6 FRANKLY JUST PREPARING FOR TRIAL, THERE HAVE BEEN A
7 NUMBER OF INSTANCES, I BELIEVE, WHERE BOTH PARTIES HAVE
8 HAD TO TRY TO CORRECT A SUBMISSION OR THERE WAS
9 SOMETHING MISSING. I WOULD BE A LITTLE CONCERNED. I
10 HAVE NOT HAD THE OPPORTUNITY TO DISCUSS THIS WITH OUR
11 LITIGATION SUPPORT STAFF OF HOW LONG THIS MIGHT TAKE,
12 BUT WHILE I THINK THE CONCEPT IS GOOD --

13 THE COURT: SO DO I.

14 MR. GOMEZ: -- I'M NOT SURE OF THE TIMING
15 AND I WOULD LIKE TO JUST CONFER WITH THE LITIGATION
16 SUPPORT.

17 THE COURT: EACH SIDE WILL BE RESPONSIBLE
18 FOR THEIR OWN EXHIBITS FOR ACCURACY AND COMPILATION,
19 STACKING AND BINDING AND SAYING WORDS OF PRAISE OVER THE
20 PILE, INCANTATIONS AND THINGS.

21 MR. GOMEZ: I THINK THAT ANOTHER ISSUE
22 THAT WE HAD DISCUSSED IS THE QUALITY CONTROL ISSUE WHICH
23 I THINK THE COURT IS RAISING. ONCE WE GO THROUGH THE
24 PROCESS OF ACTUALLY CREATING A NEW SET, OBVIOUSLY BOTH
25 PARTIES WILL NEED TO EXCHANGE, YOU KNOW, THE ELECTRONIC

1 COPY WITH EACH OTHER AND WILL NEED TO GO THROUGH THAT.
2 WE WILL ALSO NEED TO GO THROUGH WHAT IS ACTUALLY SET OUT
3 IN EACH SIDE'S HARD COPY TO BE SURE AT LEAST THE OTHER
4 SIDE IS AGREEING THAT EVERYTHING IS THERE.

5 I'M NOT IMPLYING AT ALL THAT EITHER SIDE
6 WOULD INADVERTENTLY OR PURPOSELY LEAVE A PAGE OUT. IT'S
7 JUST THAT THIS IS SUCH A LARGE TASK THAT IT'S PROBABLY
8 BEST THAT WE ARE BOTH DOUBLE CHECKING TO MAKE SURE WE
9 HAVE EVERYTHING.

10 THE COURT: I WILL EXPECT GOOD QUALITY
11 CONTROL. THAT SOUNDS LIKE THE PLAN IS ALL RIGHT WITH
12 ME. THAT IS WHAT I HAD GENERALLY IN MIND. WHEN THE
13 EVIDENTIARY RECORD IS CLOSED, THEN WE WILL KNOW WHAT
14 EXHIBITS HAVE BEEN PUT INTO EVIDENCE BECAUSE I RULE ON
15 EVERY ONE AS WE GO ALONG. THE QUESTION IS WHETHER THE
16 COPY IS ACCURATE. I WON'T BE ABLE TO DETERMINE THAT.
17 YOU WILL BE.

18 MR. HANSEN: AND WE WILL, YOUR HONOR.

19 TWO OTHER MATTERS JUST BRIEFLY TO BRING
20 THE COURT UP-TO-DATE. THE FIRST WITH RESPECT TO -- AS
21 YOUR HONOR IS AWARE, THERE IS A PENDING MOTION FROM ONE
22 OF THE THIRD PARTIES, AND THAT IS VISA. IT IS MY
23 UNDERSTANDING THAT THE PLAINTIFFS HAVE RESOLVED ALL OF
24 OUR CONCERNS WITH VISA, AND THAT MOTION IS STILL PENDING
25 AWAITING THE DEFENDANT'S RESOLUTION OF THE ISSUES WITH

1 VISA.

2 THE COURT: HAS THAT BEEN FINISHED YET?

3 MR. GOMEZ: NO, YOUR HONOR. AND WE HAVE
4 ATTEMPTED TO TRY TO GET THAT RESOLVED. YOU KNOW, FOR
5 INSTANCE, THE SURFCONTROL, ONCE WE WERE ABLE TO FORWARD
6 THE COURT'S ADMONITION, WE WERE ABLE TO GET A PHONE CALL
7 FROM THEM LAST NIGHT AT 7:30, AND SO IT DEFINITELY --

8 THE COURT: I SHOULD HAVE TOLD THEM TO DO
9 IT BEFORE 6.

10 MR. GOMEZ: YES, YOUR HONOR. SO IT DID
11 HAVE A SALUTARY EFFECT ON THE THIRD PARTIES. BUT WE ARE
12 STILL TRYING TO CLOSE UP THAT ONE LAST -- SOME LAST
13 ISSUES WITH VISA. CINGULAR IS -- WE HAVE NOTIFIED THEM
14 AS TO THE COURT'S INSTRUCTION ABOUT, YOU KNOW, IF WE
15 CAN'T REACH A RESOLUTION, THEN ON MONDAY THERE WOULD BE
16 A HEARING SET.

17 FRANKLY, WE ARE A LITTLE BIT, I GUESS,
18 PERPLEXED AS TO WHY CINGULAR IS WITHHOLDING THEIR
19 APPROVAL AS TO THE PORTION THAT WE HAVE IDENTIFIED
20 BECAUSE IT APPEARS TO US TO COINCIDE WITH WHAT THEY SAID
21 WAS OKAY FOR THE PLAINTIFFS. BUT THEY HAVE NOT ENGAGED
22 US YET, YOUR HONOR. WE ARE STILL TRYING TO GET THAT
23 RESOLVED.

24 THE COURT: WELL, I WISH YOU GOOD LUCK.
25 YOU CAN USE MY NAME TO ACCELERATE ANY WORK THEY ARE

1 DOING.

2 MR. GOMEZ: YES, YOUR HONOR. AND WE
3 HAVE.

4 MR. HANSEN: THE FINAL ISSUE, YOUR HONOR,
5 I THOUGHT WE SHOULD DISCUSS THIS AFTERNOON HAS TO DO
6 WITH THE WITNESS, WESLEY MILLER. YOUR HONOR WILL RECALL
7 THAT PLAINTIFFS SEEK TO CALL MR. MILLER AS A WITNESS.
8 MR. MILLER IS AN ARTIST. HE RUNS AN ART GALLERY IN
9 PILOT POINT, TEXAS. FOR TWO YEARS HE WAS THREATENED BY
10 THE POLICE DEPARTMENT OF PILOT POINT WITH PROSECUTION
11 UNDER A STATE HARMFUL TO MINORS STATUTE FOR AN OUTDOOR
12 MURAL HE HAD WHICH INCLUDED EVE, WHO WAS NAKED FROM THE
13 WAIST UP. AS A RESULT OF THAT THREAT OF PROSECUTION,
14 THE MURAL WAS COVERED FOR ALMOST THE ENTIRE TWO YEARS.
15 IT WAS ONLY RELEASED AT THE TIME WHEN HE FILED A CIVIL
16 ACTION AGAINST THE CITY TO TRY AND ESTABLISH HIS RIGHT
17 TO SHOW THE MURAL. HE IS RELEVANT, YOUR HONOR, IN THIS
18 RESPECT --

19 THE COURT: LET'S STOP FOR A MINUTE. IS
20 HE PHYSICALLY ABLE TO COME, OR YOU WANT TO BRING HIM?

21 MR. HANSEN: HE IS PHYSICALLY ABLE TO
22 COME BUT NOT UNTIL AFTER NOVEMBER 12TH, WHICH WOULD BE
23 AFTER THE PLAINTIFFS ARE LIKELY TO REST THEIR CASE.
24 THIS IS THE GENTLEMAN WHO HAD AN INFECTION, RESULTED IN
25 SURGERY, AND HIS DOCTOR INSTRUCTED HIM NOT TO BE ABLE TO

1 FLY FOR 30 DAYS AFTER THE DATE OF HIS SURGERY. SO THAT
2 30 DAYS WILL BE UP ON NOVEMBER 12TH. HE IS PREPARED TO
3 COME. WE CAN EITHER CALL HIM IN THE MIDDLE OF THE
4 DEFENSE CASE OR WE CAN CALL HIM AS A REBUTTAL WITNESS.
5 EITHER OF THOSE WILL BE FINE WITH HIM AND FINE WITH US.
6 THE REASON WE SEEK TO CALL HIM IS THAT THE DEFENDANT, AS
7 YOUR HONOR HAS HEARD, HAVE BEEN CROSS-EXAMINING EACH OF
8 THE WITNESSES TO TALK ABOUT THEIR SPEECH. EVERY SINGLE
9 ONE OF THOSE WITNESSES THEY HAVE SAID, HAVE YOU EVER
10 BEEN THREATENED WITH PROSECUTION. WE ANTICIPATE THAT
11 THE DEFENDANTS WILL MAKE A STRONG ARGUMENT THAT NONE OF
12 THE SPEECH WITNESSES HAVE BEEN THREATENED WITH
13 PROSECUTION FOR THE KINDS OF SPEECH THEY HAVE ENGAGED
14 IN. MR. MILLER HAS BEEN THREATENED WITH PROSECUTION, OR
15 AT LEAST HAS BEEN THREATENED WITH ARREST AS A RESULT OF
16 WHAT IS SIGNIFICANTLY MORE HARMLESS SPEECH THAN MANY OF
17 THE WITNESSES HERE HAVE TESTIFIED TO. THAT IS WHY WE
18 WOULD LIKE TO BE ABLE TO CALL MR. MILLER EITHER DURING
19 THE DEFENDANT'S CASE OR AS A REBUTTAL WITNESS.

20 THE COURT: WHY IS HAVING A MURAL ON AN
21 OUTSIDE SPACE RELEVANT TO INTERNET PUBLISHING?

22 MR. HANSEN: IT GOES TO THE DEFINITION OF
23 HARMFUL TO MINORS. THAT IS, IT SAYS THAT THERE IS AN
24 OFFICIAL LAW ENFORCEMENT -- THERE IS A LAW ENFORCEMENT
25 OFFICIAL WITH AUTHORITY IN THE STATE OF TEXAS WHO HAS

1 CONCLUDED THAT THIS SPEECH IS HARMFUL TO MINORS. IT IS
2 NOT ON THE INTERNET. BUT IF THAT IS THE STANDARD FOR
3 WHAT IS HARMFUL TO MINORS, THAT STANDARD COULD JUST AS
4 EASILY BE APPLIED IN THE CONTEXT OF THE INTERNET. IT IS
5 THE SAME LANGUAGE IN THE TEXAS STATUTE AS IN COPA. IT
6 GOES TO HOW THE PROSECUTION, OR HOW THE LAW ENFORCEMENT
7 COMMUNITY WOULD DEFINE HARMFUL TO MINORS.

8 THE COURT: MR. GOMEZ.

9 MR. GOMEZ: YOUR HONOR, FIRST OF ALL, THE
10 DEFENDANT WOULD NOT AGREE TO HAVE THIS TESTIMONY DURING
11 ITS CASE. BUT, MOST IMPORTANTLY, I THINK THAT THE ISSUE
12 IS, THIS IS A WITNESS THAT IS CUMULATIVE AND MOST
13 RELEVANT IS THAT IT'S NOT RELEVANT. WHAT THE PLAINTIFFS
14 THEMSELVES ARE ADMITTING, THE INDIVIDUAL'S MURAL, THE
15 ISSUE IS NOT ON THE INTERNET. IT'S NOT AN ISSUE THAT
16 HAS ARISEN IN CONNECTION WITH THE INTERNET. IT'S NOT
17 EVEN AN ISSUE IN WHICH THERE WAS ANY PROSECUTION OF THIS
18 PARTICULAR INDIVIDUAL. IT'S SOME MATTER THAT MAY HAVE
19 ARISEN WITH SOME PARTICULAR POLICE OFFICIAL WHO MAY HAVE
20 HAD SOME CONCERN, BUT THERE IS NO EVIDENCE THAT IS GOING
21 TO BE SUBMITTED THAT ANY PROSECUTION WAS EVER INITIATED
22 AGAINST THIS PARTICULAR INDIVIDUAL. AND I JUST CANNOT
23 EMPHASIZE ENOUGH THAT WITH ALL OF THE PLAINTIFFS THAT
24 HAVE BEEN -- THAT ARE IN THE CASE WHO HAVE NOT
25 TESTIFIED, THE INDIVIDUALS THAT -- THE INDIVIDUALS THAT

1 PLAINIFFS HAVE SUBMITTED WHO ARE NOT PLAINTIFFS WHO
2 HAVE A WIDE RANGE OF BACKGROUND AND MATTERS THAT ARE IN
3 CONNECTION WITH THE INTERNET, THAT TO BRING SOMEONE IN
4 THAT HAS NO CONNECTION WHATSOEVER WITH THE INTERNET IS
5 NOT RELEVANT AND SHOULD NOT BE PERMITTED.

6 IF THERE WAS AN ISSUE -- IF WHAT
7 PLAINTIFFS ARE ADMITTING IS THAT THERE IS NO ONE THAT
8 HAS MATERIAL ON THE INTERNET THAT THEY CAN COME FORWARD
9 WITH THAT THERE HAS BEEN THREAT OF PROSECUTION FOR THEIR
10 CONTENT, THAT IS ONE THING. IF THAT IS WHAT THE
11 ADMISSION THE PLAINTIFFS ARE MAKING, IT REALLY MAKES OUR
12 CASE -- MOVES OUR CASE FORWARD DRAMATICALLY, YOUR HONOR.

13 MR. HANSEN: I CAN ADDRESS THAT ISSUE
14 DIRECTLY, YOUR HONOR. THERE HAVE BEEN APPROXIMATELY,
15 SOMEWHERE BETWEEN 6 AND 10 STATE LAWS PASSED
16 ESTABLISHING HARMFUL TO MINORS LAWS FOR THE INTERNET.
17 ALL OF THOSE STATUTES HAVE BEEN DECLARED
18 UNCONSTITUTIONAL PRIOR TO THEIR -- PRIOR TO A SINGLE DAY
19 OF ENFORCEMENT. SO THERE IS LITERALLY, AS FAR AS WE ARE
20 AWARE, THERE IS LITERALLY NEVER BEEN A STATE HARMFUL TO
21 MINORS INTERNET LAW THAT HAS EVER GONE INTO EFFECT. AS
22 A RESULT --

23 THE COURT: ISN'T THERE ONE IN VIRGINIA?

24 MR. HANSEN: THERE WAS ONE IN VIRGINIA
25 ENACTED. IT WAS CHALLENGED AND IT WAS DECLARED

1 UNCONSTITUTIONAL. AND THERE HAVE BEEN APPROXIMATELY
2 BETWEEN 6 AND 10 OTHERS THAT HAVE BEEN ENACTED AND
3 DECLARED UNCONSTITUTIONAL PRIOR TO GOING INTO EFFECT.

4 SO WE CAN'T ESTABLISH STATE INTERNET
5 PROSECUTIONS, BECAUSE NO SUCH LAWS HAVE GONE INTO
6 EFFECT. THE BEST WE CAN DO IS ESTABLISH STATE
7 NONINTERNET PROSECUTION FROM STATUTES THAT USE EXACTLY
8 THE SAME LANGUAGE THAT COPA USES.

9 THE COURT: YOU CAN DO IT WITH RESPECT TO
10 ONE STATE?

11 MR. HANSEN: I CAN DO IT WITH RESPECT TO
12 ONE WITNESS AND ONE STATE, YOUR HONOR. YES, I CAN.

13 THE COURT: I FIND THAT THE PROFFERED
14 TESTIMONY OF WESLEY MILLER IN THE CIRCUMSTANCES IN WHICH
15 HE FOUND HIMSELF IS IRRELEVANT TO THE PROCEEDING.

16 SECONDLY, NOT IN DEROGATION TO THE
17 FOREGOING, RULE 403 SUGGESTS THAT, IN LIGHT OF THE
18 PLAINTIFFS PROGRESSING WITH A LARGE MULTITUDE OF
19 WITNESSES ON MUCH MORE RELEVANT MATTERS, THE
20 PRESENTATION OF MR. MILLER'S TESTIMONY SEEMS TO BE
21 WASTEFUL OF THE PROCEEDINGS AND THE PROBATIVE VALUE
22 WOULD BE NIL.

23 SO THE OBJECTION TO THE TESTIMONY OF MR.
24 MILLER IS SUSTAINED.

25 ANYTHING ELSE?

1 MR. HANSEN: NOTHING ELSE THIS AFTERNOON,
2 YOUR HONOR, NO.

3 THE COURT: OKAY. WE ARE FINISHED FOR
4 THE DAY. COUNSEL ARE EXCUSED. WE ARE OFF THE RECORD.
5 SEE YOU TOMORROW MORNING AT 9:30.

6 ALL COUNSEL: THANK YOU, YOUR HONOR.

7 (COURT ADJOURNED AT 4:40 PM.)

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	INDEX				
	WITNESS	DIRECT	CROSS	REDIRECT	REXCROSS
1					
2	BARBARA DEGENEVIEVE	4	61		
3	TERRI KIRK	67	95		
4	CLOVER TAYLOR	154	177		
5					
6					
7	DEPOSITION EXCERPTS OF:				
8	JEFFREY H. THALER				103
9	JIM MURPHY				187
10					
11	EXHIBITS				ADMITTED
12	P 53 0002				45
13	P 106				153
14	P 136, 131, 133				251
15					
16					
17	I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT				
18	FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED				
19	MATTER.				
20					
21					
22					
23	DATE				OFFICIAL COURT REPORTER
24					
25					

