

ORIGINAL

IN THE SUPREME COURT OF OHIO

Original action in mandamus; case no. 2010-2029

STATE ex rel. DATA TRACE INFORMATION SERVICES, LLC, et al.,

Relators,

-v-

RECORDER OF CUYAHOGA COUNTY, OHIO,

Respondent.

**Relators' Volume 1 of evidence: deposition transcripts of Lillian Green,
George Asfour, John Kandah, Genevieve Mitchell & Larry Patterson**

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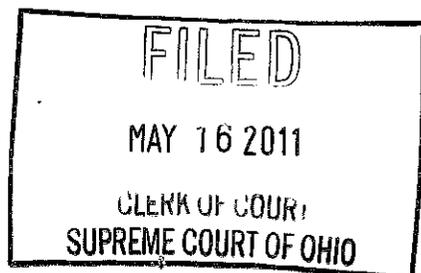
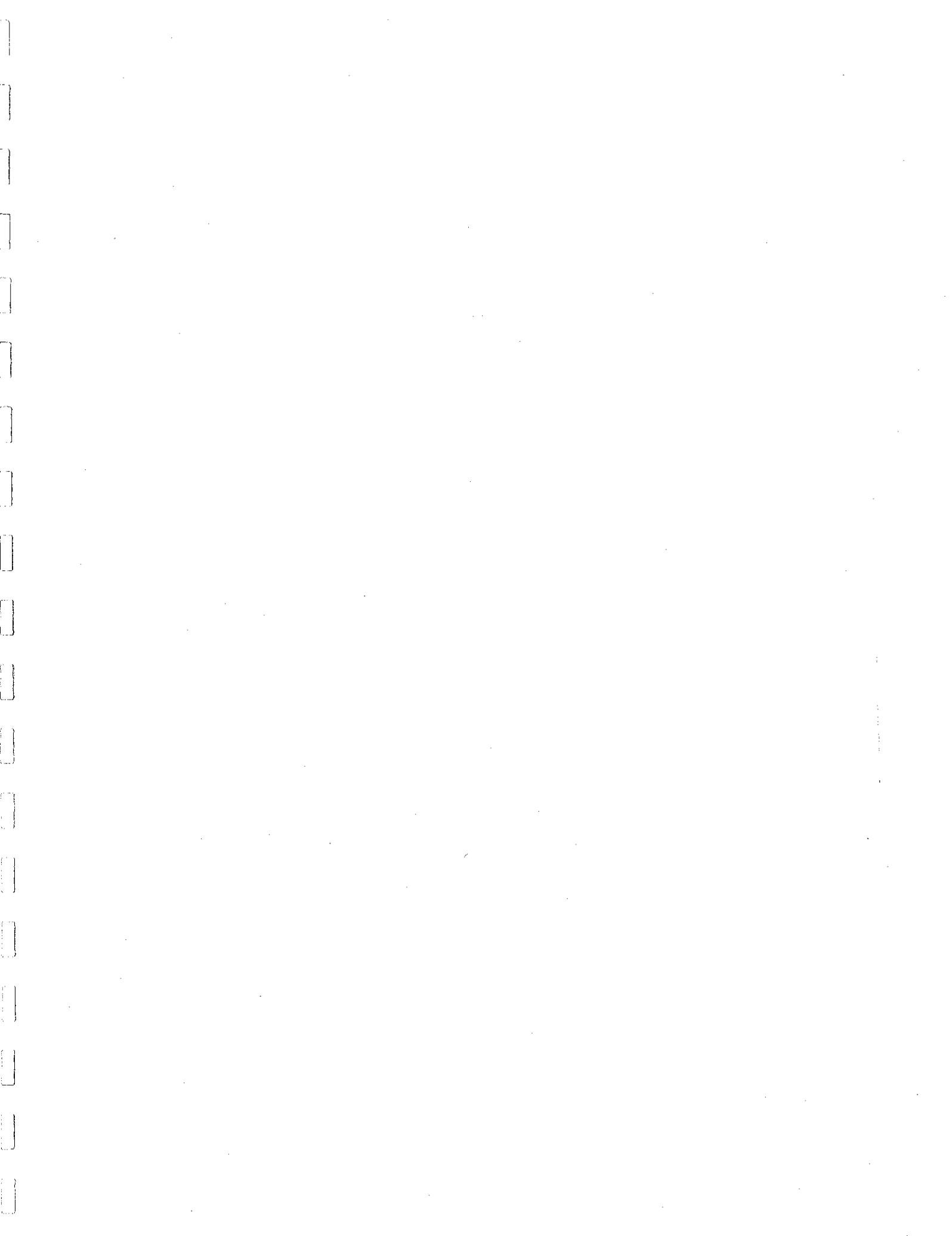


Table of Contents to Relators' Volume 1 of deposition transcripts of Lillian Green, George Asfour, John Kandah, Genevieve Mitchell & Larry Patterson

Tab	Description
A	Georges Asfour depo. (26 pages)
B	Genevieve Mitchell depo. (33 pages)
C	Lillian Greene depo. (88 pages)
1	<u>Exhibit 1 - Lillian Greene depo.:</u> Letter to Lillian Greene dated October 5, 2010, from Michael Stutzman
2	<u>Exhibit 2 - Lillian Greene depo.:</u> Letter to David Marburger dated November 16, 2010, from David T. Movius
3	<u>Exhibit 3 - Lillian Greene depo.:</u> copy of home page of Cuyahoga County Recorder's website as of Jan. 5, 2011
4	<u>Exhibit 4 - Lillian Greene depo.:</u> copy of Cuyahoga County Recorder's public records request policy from Cuyahoga County Recorder's website as of Jan. 5, 2011
D	John Kandah depo. (72 pages)
5	<u>Exhibit 5 - John Kandah depo.:</u> copy of Cuyahoga County Recorder's public records request policy from Cuyahoga County Recorder's website as of Jan. 28, 2011
E	Larry Patterson depo. (73 pages)
1	<u>Exhibit 1 - Larry Patterson depo.:</u> Example of AFN for recorded deed.



IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION IN MANDAMUS

STATE ex rel. DATA TRACE)
 INFORMATION SERVICES LLC,)
 ET AL.,)
)
 Relators,)
) Case No. 2010-2029
 vs.)
)
 RECORDER OF CUYAHOGA)
 COUNTY, OHIO,)
)
 Respondent.)

 DEPOSITION OF GEORGES ASFOUR
 Thursday, December 30, 2010

Deposition of GEORGES ASFOUR, called by the Relators for examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Rebecca L. Brown, Registered Professional Reporter, a Notary Public in and for the State of Ohio, at the offices of Baker & Hostetler LLP, 1900 East Ninth Street, Suite 3200, Cleveland, Ohio 44114, commencing at 4:05 p.m. the day and date above set forth.

1 APPEARANCES:

2 On Behalf of the Relators:

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15 EXAMINATION INDEX

17 GEORGES ASFOUR
18 BY MR. MARBURGER 3

21 OBJECTION INDEX

22 BY MR. CAVANAGH 3

25

1 GEORGES ASFOUR

2 called by the Relators for examination under the
3 Federal Rules of Civil Procedure, after having been
4 first duly sworn, as hereinafter certified, was
5 examined and testified as follows:

6 EXAMINATION

7 BY MR. MARBURGER:

8 Q I'm Dave --

9 MR. CAVANAGH: I was just
10 going to give my objection for the
11 record.

12 MR. MARBURGER: I acknowledge
13 the objection.

14 MR. CAVANAGH: So I don't
15 have to interrupt you later. I'm
16 making the same objection that I
17 made to Mr. Patterson's and Miss
18 Mitchell's deposition, the fact that
19 no 30(b)(5) notice was issued, and
20 that Mr. Asfour is here to testify
21 as an individual in accordance with
22 the subpoena that was issued.

23 MR. MARBURGER: I take
24 exception to the objection, but
25 let's proceed.

1 BY MR. MARBURGER:

2 Q Mr. Asfour, I'm an attorney. I'm here in this
3 office. I represent Data Trace Services Company and
4 Property Insight Company that are both in the title
5 insurance related business, and they have sued the
6 County Recorder because they would like to get
7 compact discs of certain day's worth of records filed
8 with the Recorder, and they would like to do it at a
9 price below -- at a fee below that which they
10 understand the Recorder's office to be charging, and
11 so they filed a suit to try to vindicate those
12 asserted rights.

13 Do you understand who I am and what I represent?

14 A Yes.

15 Q Okay. Would you spell your name for the record?

16 A Georges, G-E-O-R-G-E-S, family name A as Andre,
17 S as Susan, F as Frank, O-U-R.

18 Q How long have you been employed with the
19 Recorder's office?

20 A 13 and a half years.

21 Q So Pat O'Malley was the recorder when you were
22 hired?

23 A That's correct.

24 Q What year did you start then? I don't want to
25 do the arithmetic.

1 A 1997.

2 Q That was also Pat's first year in office, too.

3 A That's correct. I was part time before -- every
4 employee goes in for six months, give you full time
5 after six months. He has to decide either stay or
6 you go. Finally he put me as a supervisor in the
7 microfiche, microfiche department.

8 Q What is your job there now?

9 A I scan aperture card for County Engineer right
10 now.

11 Q I couldn't understand what you scanned for the
12 County Engineer.

13 A I do the plat.

14 Q Plats.

15 A This is what we call aperture card. It's a
16 special project. We have about 90,000 copies to do
17 on that particular scanner.

18 Q But are you employed by the Recorder's office?

19 A Yes.

20 Q During Pat O'Malley's tenure as Recorder, can
21 you take us through the sequence of jobs that you
22 held?

23 A I was a supervisor.

24 Q Let's start with what you started out doing and
25 take it in the order in which you did it.

1 A When I get into that department I started doing
2 manual filming with a camera and then manually
3 scanning and photocopying the image of the
4 documents.

5 Q Using a camera.

6 A Camera. That's correct.

7 Q And then what did you do?

8 A And then from the camera, when we get the film,
9 we take that film and we process it through the
10 processor machine, and then take it from there and
11 slice it into a special machine to put it on the
12 microfiche -- I'm sure you do know microfiche -- do
13 40 images on a little jacket, and we do all the
14 images in order one by one with the numbers.

15 Q And then what did you do?

16 A And then after that, in 2003 they came out with
17 a special scanner, which is -- they call it 990
18 scanner. And from the camera to 990 scanner we
19 scanned the images automatically to that scanner all
20 the documents that comes from the front office or
21 from the cashier, it goes to us. We scan them, and
22 we'll put them on imaging system.

23 Q And you were in charge of that happening?

24 A I was supervisor for ten years.

25 Q Did you continue in that role throughout Pat

1 O'Malley's tenure?

2 A That's correct.

3 Q And then under Lillian Greene's tenure did your
4 responsibilities change?

5 A Yes.

6 Q In what fashion?

7 A Doing -- I don't do that type of daily work
8 scanning no more. I do -- there's a special scanner
9 in the back to do three jobs in the same time to do
10 one, which is the scanner I'm working on now. Nobody
11 else in the building knows how to run that, so they
12 put me in charge of that machine.

13 Q Is that the one that you make the plats?

14 A I do the plat, microfilm, and microfiche. Three
15 units in one scanner.

16 Q So you scan microfilm, you scan microfiche, you
17 scan plats. And the plats are large paper documents?

18 A That's correct.

19 Q Okay. So from 2003, during Pat O'Malley's
20 tenure as Recorder, were you the supervisor of the
21 scanning department?

22 A That's correct. That's what they call that
23 department, microimaging system.

24 Q So from 2000 -- from the time you got the 990
25 scanner until Pat left office, Pat O'Malley left

1 office, were you responsible for ensuring that if a
2 paper deed came into the Recorder's office to be
3 recorded, that that deed would get scanned by the
4 electronic scanner so that you had a digital image --

5 A That's correct.

6 Q -- of the deed, and then the deed would be
7 returned to the owner?

8 A That's correct.

9 Q Okay. And at the end of each day, was it within
10 your responsibility or the people who worked with you
11 responsibility to make a compact disc copy of that
12 day's worth of recorded records?

13 A Normally that compact disc we do not do it on
14 the same day. We do that after we verify all the
15 images are on the system, nothing missing, any TIFFs
16 or any pages. That could take at least a week before
17 we verify all those images by the verifier in the
18 front and the data entry. They enter everything,
19 indexed -- there's indexing -- cashier, indexing, and
20 verifier. And when this is all done by the verifier,
21 they send it to me, and I go out and burn the CD
22 which is the master CD.

23 Q You didn't do that every day?

24 A Every other day. Every two days, every three
25 days. One master CD.

1 Q On the master CD would be everything recorded
2 that day?

3 A That day.

4 Q What about other days?

5 A Same thing. Following procedure as we go. We
6 do -- let's say today we did the 10th, in three, four
7 days after we do the 11th by the time they verify all
8 those images. I cannot make the master CD until I
9 got the okay from Annette, which is the supervisor
10 from data entry and verification.

11 Q That would be Annette Carrabello?

12 A That's correct.

13 Q And was there a time where you or people working
14 with you made compact discs of recorded data that
15 were given to title companies or companies in the
16 title business, compact discs?

17 A Not that I know of. Not my concern, my
18 knowledge. I get the okay to go ahead and burn the
19 master, one copy, which is -- that's the only copy I
20 could do, and then selling those copies to the three,
21 four title companies. US Title, I remember Chicago
22 Title, Data Trace. All those are the main to do
23 every -- I was doing the billing too, \$50 per CD.

24 Q That's what I'm asking about.

25 A Right. I've been doing this myself personally.

1 \$50 we've been charging every CD we make for that
2 date.

3 Q Okay. That's what I'm getting at. That's what
4 I'm trying -- that's really why you're here because I
5 want you to tell us about it.

6 A This is exactly what I'm giving you the answer.

7 Q Tell us -- I want to go back and make sure I
8 understand what you said because you have an accent.

9 A Yes. I speak --

10 Q I'm not --

11 A -- three, four languages in my mind. French --
12 I'm originally from Canada, so I'm French-Canadian
13 from Montreal. So I've got -- originally from
14 Lebanon, so I speak Arabic, writing Arabic too. And
15 French, same thing, fluent in French. And I've been
16 here 15 years. My wife, she's from Cleveland. All
17 my four kids are -- they were born in Canada. They
18 all still living with me, 26, 24, 22, and 17. My
19 oldest one she'll be graduating. She'll be done
20 completely by August 18th. She'll be a doctor.

21 Q Wow. Does your wife work for the Recorder's
22 office?

23 A No. For the County Auditor's.

24 Q What does she do for the county?

25 A They do -- she's a deputy clerk, deputy clerk, I

1 think.

2 Q For what part of it?

3 A They do all the dog license. They serve all the
4 licenses.

5 Q Like the Clerk of Courts?

6 A Right. Kind of. Let's say you want to have a
7 license for your cigarette license or for a store,
8 you want to open up business, she do all that. She
9 do all that kind of work.

10 Q Let's go back to making the CDs for Data Trace.
11 Did you say Data Trace, Chicago Title, and US Title?

12 A And there was another one. I forgot.

13 Q Surety?

14 A Surety Title. I completely forgot. That's been
15 a while. I didn't do that.

16 Q When you did do it, tell us what you did. Take
17 us through it real slowly step by step.

18 A I've been doing it every -- I go daily basis.

19 Q Well, you don't do that now.

20 A No. Not anymore.

21 Q But when O'Malley was the recorder you did.

22 A I was doing it every day.

23 Q What did you do every day?

24 A Track the date through my computer and make the
25 master CD and made the copies for the title

1 companies. That's about it. And charging \$50 every
2 CD.

3 Q What was on the CDs for the title companies?

4 A This is all the daily work. Whatever we
5 register on a daily basis, whatever we sign in, 1500
6 documents, 2000 documents, they're all going to be on
7 the master.

8 MR. CAVANAGH: I'm confused,
9 Georges. Is that the day you're
10 making the CD or is that what
11 happens two days before?

12 THE WITNESS: No. That's
13 the day when Annette comes to me and
14 says I'm releasing the day for you
15 to go ahead and do the master.

16 I go ahead. She give me the
17 release of the day, I put that on
18 the master, and I make a copy for
19 the title company. We sell them for
20 \$50 a copy.

21 BY MR. MARBURGER:

22 Q \$50 a CD?

23 A CD.

24 Q Did each CD have one day's worth of recorded
25 records on them or more than one day?

1 A One day per CD.

2 Q Okay. And each CD -- the idea was that each CD
3 would cover a day?

4 A That's correct.

5 Q And you tried not to miss a day?

6 A We never missed any days. That's my duty all
7 the days.

8 Q I get it.

9 A I'll be in trouble. I'll be fired.

10 Q So a typical daily -- what you're calling daily
11 work would be the documents received for recording
12 and indexing by the Recorder's office every day?

13 A That's correct.

14 Q And you used the term "daily work."

15 A That's right.

16 Q That's a term commonly used in your office for
17 that, for those records; is that right?

18 A That's right.

19 Q And, in fact, did you not -- in order to make
20 the copies, did you not actually click on an
21 electronic button or push a button that says "daily
22 work"?

23 A No.

24 Q I thought you did.

25 Was it typically then that a day might have

1 between 1,500 and 2,000 documents?

2 A There could be more sometimes.

3 Q Or more.

4 A Sometimes 2,500, 3,000.

5 Q And some proportion of those documents would be
6 more than a single page.

7 A That's correct.

8 Q And when you made the CDs for the title
9 companies, physically what did you do? Mechanically
10 physically what did you do?

11 A I just take that, track the date of that day,
12 the one I'm going to burn, for the title company, and
13 put it on the master CD. That's exactly what I do.

14 Q The master CD was the CD kept by your office?

15 A The master, yes, we keep. That's our backup
16 master. We always keep one master. We did not do
17 more than one.

18 Q When you made the master CD, you would make a
19 master CD for each day's work?

20 A That's correct.

21 Q And each CD you would label so that you could
22 tell which one was for which day.

23 A Right.

24 Q Which you would keep in a CD spindle.

25 A I used a marker, and I marked it down master,

1 by itself, takes about maybe half an hour, 40
2 minutes -- depends how big is the day; and then
3 automatically when it's done extracting all this date
4 on my computer, then the computer says it's ready to
5 burn, and I go ahead and do the master.

6 Q Okay.

7 A That's exactly what it is.

8 Q And when you did the master, would that
9 typically be at the end of your day?

10 A The end of the day, no. Don't mean the end of
11 the day. That's -- my master, that's the date it was
12 recorded. Whatever date is recorded at the front
13 office from the cashier, this is the date that
14 Annette gave to me to burn it on my master, and then
15 I make the copies.

16 Q Did you typically burn it on your master at the
17 end of the workday or did they --

18 A Always the next day or third day. Doesn't
19 matter. Doesn't have to be the same day. We do that
20 three, four days after when Annette verify all those
21 images, complete her job, she give me the okay and go
22 ahead and burn that particular date on master and
23 sell it to the title company.

24 Q When the data is being burned onto the CD, why
25 would you have to be there when that's happening?

1 A I have to make sure everything is copied on the
2 master. Make sure all the document -- the computer
3 extract the whole full day, nothing missing. That's
4 the reason I have to stay there.

5 Q But you wouldn't have to sit through the entire
6 process?

7 A Yes.

8 Q Did you always do that?

9 A I always do that.

10 Q Do you know who Shawn Roche is?

11 A Yes.

12 Q Did he also record CDs?

13 A He took my place when I took over my new
14 scanner, so he's doing that daily.

15 Q Was it ever your practice to sometimes start the
16 burning of the CD before you went home and then the
17 next morning check it?

18 A No. I never did that.

19 Q There would be no reason -- the office didn't
20 prohibit you from doing that, did it?

21 A No. But I don't take chance.

22 Q That would be your choice then?

23 A That's my choice.

24 Q Was there anything technical you had to do to
25 keep the CD recording?

1 A There's two reasons why I don't take chances.
2 If something happen to the electrical system or power
3 off, that could damage my computer; and there could
4 be wrong information in the computer. We do not do
5 that. So I have to be there sitting by the computer
6 when this is being extracted completely.

7 Q That's your choice to do that, it's not
8 something that the Recorder required you to do?

9 A Well, I'm sure right now since Greene is here,
10 my boss, Judge Greene is here, I don't do that no
11 more. That's Shawn Roche who has been doing this.
12 The only time when Shawn is not here, I do the backup
13 for him. That's it.

14 Q How long does it take for the master CD to be
15 made?

16 A That could take an hour. It depend, again --
17 you asked me the same question before.

18 Q I didn't mean to.

19 A What I meant, you asked me and I said I don't
20 know. It depends how many documents we do a day. If
21 we do 2, 3,000, it's not like we're doing 200 or 300
22 a day, so it's faster when we do have 300 documents
23 than 3,000 documents.

24 Q Okay. But if you had something like, let's say,
25 1,800, 2000 documents.

1 A That could take average hour and a half, 45,
2 between hour and a half, two hours max, by the time
3 burn that on master and do all the copies for the
4 titled companies.

5 Q Leaving the title companies out of it, just
6 doing the master and not making any other copies, how
7 long would it take?

8 A That could take -- right now with the update,
9 the new system, could take 45 minutes.

10 Q Under O'Malley's tenure, how long did it take
11 just to make the master, not copying for any title
12 companies?

13 A I couldn't give you that answer. Shawn Roche
14 could give you that.

15 Q When you did it.

16 A That could take 45 minutes.

17 Q Now, when you made the master, were you also
18 able to make -- were you able to download the same --
19 when the master CD is being burned, can you burn
20 other ones simultaneously?

21 A No.

22 Q How did you make copies -- how did you make the
23 data for the title companies?

24 A We have another tower with the seven -- we call
25 it burner, copy burner, seven CDs max.

1 Q Seven CD drives?

2 A Drives.

3 Q So seven slots for seven CDs?

4 A Seven burner drive, we'll call it. We put that
5 in the main and we press copy, and we copy the copies
6 we need.

7 Q So when you were making CDs for Data Trace,
8 Chicago Title, US Title, you could make those
9 simultaneously, all at once?

10 A All at once.

11 Q Were they being copied from the master CD?

12 A Exactly. Copy from the master onto those
13 copies.

14 Q Shawn Roche, when he's not available to make the
15 master and you're making the master, today do you
16 make CDs for any outside firms that are copies of the
17 master?

18 A No.

19 Q Do you have an understanding as to why you don't
20 do that today?

21 A My supervisor was Jim Zak in that time I was in
22 the computer department, and he said stop doing any
23 CDs for any title company, just the master.

24 Q Did he provide a reason?

25 A I can't give you the answer. I don't know.

1 Q Did he express a reason?

2 A No.

3 Q Did he say?

4 A No.

5 Q Did you ask?

6 A No.

7 Q You just did it? You just stopped?

8 A He asked me not to do it. I don't like to ask
9 questions.

10 Q What you called the tower with the seven slots,
11 do you have an understanding as to how that tower is
12 being used today?

13 A What do you mean?

14 Q Well, if you don't make the CD copies for the
15 title companies anymore --

16 A Right.

17 Q -- how --

18 A I don't use it.

19 Q What use does that tower have?

20 A We're not using it no more for title companies.
21 We use it for somebody from the computer department,
22 they come and use it. Sometimes they want to copy
23 some program. They use it on their own system.

24 Q But that tower with the seven slots isn't used
25 to record the daily work for anybody?

1 A No. That tower is a dummy machine. You put the
2 master at the bottom, and you make copies, whatever
3 you need necessarily to do, but that tower never
4 carry any information of the daily work.

5 Q But that tower is no longer used to make CD
6 copies of the daily?

7 A Absolutely not.

8 Q Have you seen it being used for any other
9 purpose?

10 A I'm not in the same department no more so I am
11 in a separate room by myself.

12 Q Is that tower in the same room as the device
13 that's used to make the master CD?

14 A Right now it is in Tom Roche's office.

15 Q Pardon me?

16 A Shawn Roche's office.

17 Q Shawn Roche.

18 A He has the computer and the tower next to him.

19 Q When you were in charge of that duty and when
20 you were performing it, did Shawn Roche also work
21 with you then?

22 A He came two years, three years probably after
23 when I got there. It's about three years difference
24 between me and him. He's ten years been working with
25 the Recorder's. He took over for me, you know.

1 Q But before Lillian Greene became the recorder,
2 did Shawn Roche perform making the master CD?

3 A No. I was the one making the master.

4 Q Did Shawn Roche sometimes make the CDs for the
5 title companies?

6 A Not when I was supervisor. When I was
7 supervisor, he was doing scanning documents. He
8 wasn't doing the master.

9 Q If you were absent -- at the time that you had
10 the job of making the CDs for the title company, if
11 you were absent, was there somebody who substituted
12 for you?

13 A Right.

14 Q Who was that?

15 A Ron Mack was doing that.

16 MR. CAVANAGH: Dave, it's
17 4:30 now.

18 MR. MARBURGER: I'm fine. I
19 may be done. Hold on.

20 MR. CAVANAGH: I just wanted
21 to bring it up.

22 BY MR. MARBURGER:

23 Q Today who is the supervisor for that job? Shawn
24 Roche does the job, but he's not the supervisor for
25 that job.

1 A No. Ron Mack. That's his supervisor.

2 MR. MARBURGER: I think I'm
3 done.

4 Q The CDs themselves, were you responsible for
5 acquiring them on behalf of the Recorder's office?

6 A Not me, no.

7 Q When you made copies of the master, the CD
8 copies for the title companies, was that something
9 that you could just push a button and attend to
10 something else?

11 A No.

12 Q You mean you stayed for that?

13 A Absolutely.

14 Q And did nothing else?

15 A Nothing else. Waiting for it.

16 Q How long did that take?

17 A Five, ten minutes.

18 Q Okay. Did your office have a photocopying
19 machine?

20 A Not in my office.

21 Q Pardon me?

22 A Not in my office.

23 Q How about the Recorder's office?

24 A I've seen them. There's quite a few.

25 Q Have you ever used them?

1 A Yes. I do once in a while.

2 Q And have you used them to make paper copies of
3 records?

4 A No. I never did that.

5 Q What do you use them to do?

6 A If I have -- when I sign for -- I'm leaving on
7 vacation time, you know, slip, vacation slip.

8 Q You make a copy of the slip?

9 A I keep it as a copy of the record.

10 Q What you keep is a paper copy?

11 A No. It's a form when you leave the office. If
12 I decide to go next week for vacation for one week,
13 there's a form in my office, I fill it out for the
14 date, I go to the copy machine, and make a copy. I
15 send that to Vanessa in the front office, and I keep
16 my copy.

17 Q But your copy is on paper?

18 A On paper. Yes.

19 Q That's what I'm asking.

20 A Yes.

21 MR. MARBURGER: Okay. I'm
22 done. Thank you very much.

23 - - - - -

24 (Deposition concluded at 4:35 p.m.)

25 - - - - -

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Georges Asfour

1 The State of Ohio,)
) SS: CERTIFICATE
2 County of Cuyahoga.)

3 I, Rebecca L. Brown, Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that the within-named
6 GEORGES ASFOUR was by me first duly sworn to testify
7 the truth, the whole truth, and nothing but the truth
8 in the cause aforesaid; that the testimony then given
9 by him/her was by me reduced to stenotypy in the
10 presence of said witness, afterwards transcribed on a
11 computer, and that the foregoing is a true and
12 correct transcript of the testimony so given by
13 him/her as aforesaid.

14 I do further certify that this deposition
15 was taken at the time and place in the foregoing
16 caption specified and was completed without
17 adjournment.

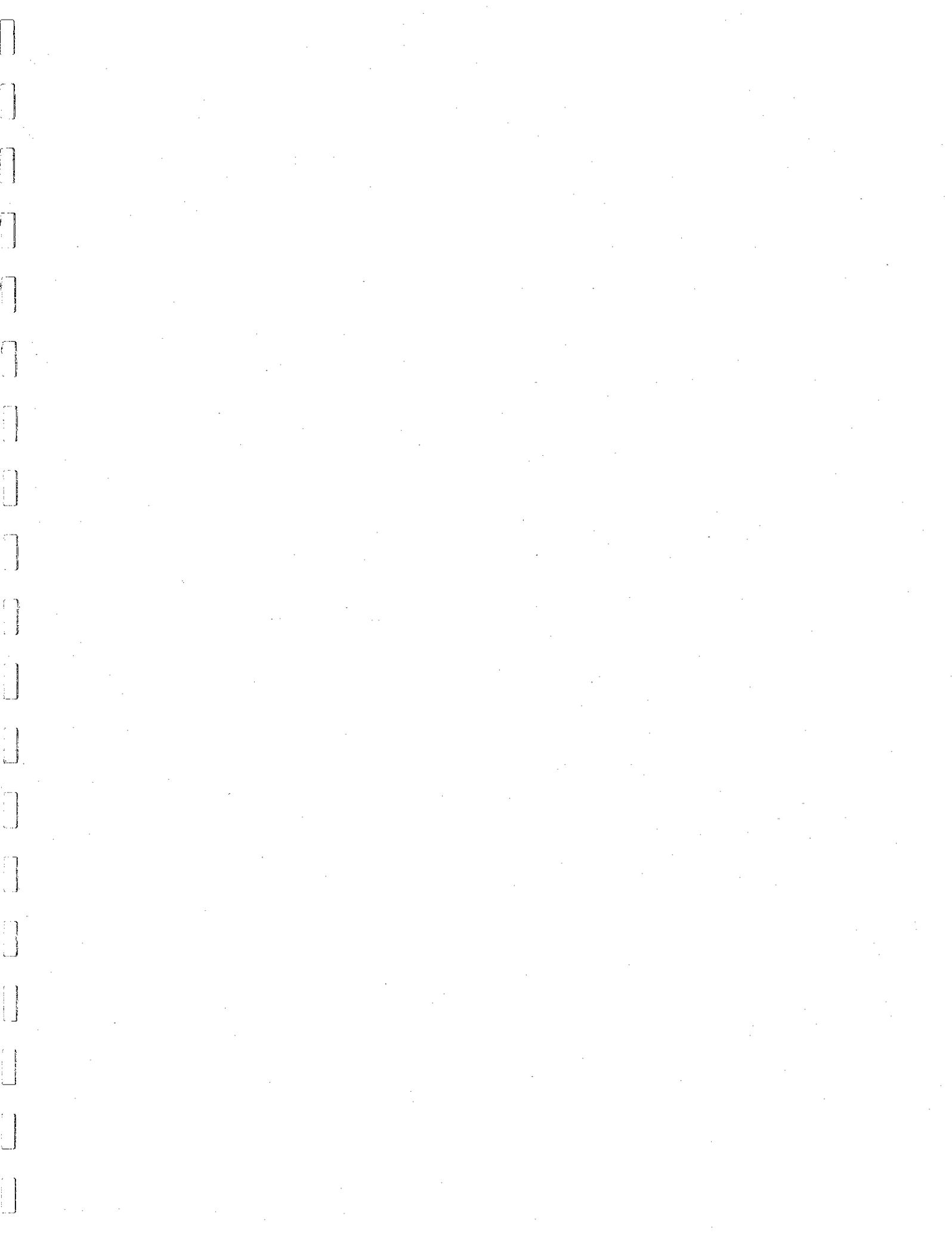
18 I do further certify that I am not a
19 relative, employee of, or attorney for any of the
20 parties in the above-captioned action; I am not a
21 relative or employee of an attorney for any of the
22 parties in the above-captioned action; I am not
23 financially interested in the action; I am not, nor
24 is the court reporting firm with which I am
25 affiliated, under a contract as defined in Civil Rule
28(D); nor am I otherwise interested in the event of
this action.

IN WITNESS WHEREOF I have hereunto set my
hand and affixed my seal of office at Cleveland, Ohio
on this 4th day of January, 2011.

Rebecca L. Brown, Notary Public
in and for the State of Ohio.

My commission expires 6/5/15.

21
22
23
24
25



IN THE SUPREME COURT OF OHIO
ORIGINAL ACTION IN MANDAMUS

STATE ex rel. DATA TRACE)
INFORMATION SERVICES LLC,)
ET AL.,)
Relators,)
vs.) Case No. 2010-2029
RECORDER OF CUYAHOGA)
COUNTY, OHIO,)
Respondent.)

DEPOSITION OF GENEVIEVE MITCHELL
Thursday, December 30, 2010

Deposition of GENEVIEVE MITCHELL, called by the Relators for examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Rebecca L. Brown, Registered Professional Reporter, a Notary Public in and for the State of Ohio, at the offices of Baker & Hostetler LLP, 1900 East Ninth Street, Suite 3200, Cleveland, Ohio 44114, commencing at 3:17 p.m. the day and date above set forth.



COURT REPORTERS
& VIDEOCONFERENCE

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EXAMINATION INDEX

GENEVIEVE MITCHELL	
BY MR. MARBURGER	5

- - - - -

OBJECTION INDEX

BY MR. CAVANAGH	17
BY MR. CAVANAGH	23
BY MR. CAVANAGH	25
BY MR. CAVANAGH	29
BY MR. CAVANAGH	30
BY MR. CAVANAGH	30

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1 GENEVIEVE MITCHELL

2 called by the Relators for examination under the
3 Federal Rules of Civil Procedure, after having been
4 first duly sworn, as hereinafter certified, was
5 examined and testified as follows:

6 EXAMINATION

7 BY MR. MARBURGER:

8 Q Would you state your name for the record,
9 please.

10 A Genevieve Mitchell.

11 Q Do you understand that I represent two companies
12 in the title insurance related business that have
13 sued the County Recorder's office under the Public
14 Record Act to gain access to copies of records filed
15 with the Recorder's office and to try to lower the
16 amount of money that they would have to pay to get
17 those?

18 A To some degree, yes.

19 Q And so I'll be asking you questions related to
20 that lawsuit.

21 A Understood.

22 Q Okay. If you don't understand what I'm asking
23 you, feel free to ask me to explain it. I'll do my
24 best. Okay?

25 A Thank you.

1 Q Do you have a title at the Recorder's office?

2 A Supervisor.

3 Q Anything more specific than that?

4 A No.

5 Q Are you a supervisor in a particular division or
6 department of the Recorder's office?

7 A Public information.

8 Q How long have you held that position?

9 A Ten and a half years.

10 Q How many people?

11 A Actually, not ten and a half years. Not that
12 position. I started as a clerk.

13 Q In that same department?

14 A Yes.

15 Q What were, in a nutshell, your duties as a
16 clerk?

17 A To provide services to the public.

18 Q What services?

19 A Documents and information.

20 Q And did you start there ten and a half years
21 ago?

22 A Yes.

23 Q So that would have been in 1999?

24 A 2000.

25 Q 2000. At that time Pat O'Malley was the County

1 Recorder?

2 A Yes.

3 Q How long did you serve as a clerk? Ballpark
4 it.

5 A About six and a half years.

6 Q Then did you become a supervisor or something in
7 between?

8 A I was the assistant supervisor.

9 Q And when did you become the supervisor?

10 A About four years ago.

11 Q You must have been an assistant for not a very
12 long time. How long were you the assistant?

13 A Oh, about a year. Maybe half a year to a year.
14 I don't remember really.

15 Q As a supervisor have you had roughly the same
16 number of people who reported directly to you?

17 Let me change the question. As supervisor does
18 anybody report directly to you?

19 A Yes.

20 Q How many people?

21 A There are four persons that are responsible for
22 reporting to me.

23 Q What positions do they hold?

24 A They're clerks.

25 Q Do you have an assistant supervisor?

1 A No.

2 Q Have you, during your tenure as supervisor, had
3 an assistant supervisor?

4 A Yes.

5 Q When did that end?

6 A Let's see. Perhaps three years ago roughly.

7 Q So most of your tenure has been without an
8 assistant supervisor, correct?

9 A I really can't say for sure.

10 Q Okay. At least within the last two years you've
11 not had an assistant?

12 A True.

13 Q Have you had four clerks report to you during
14 your entire tenure as supervisor?

15 A Basically, yes.

16 Q And you became supervisor while Pat O'Malley was
17 the Recorder?

18 A Yes.

19 Q What are your clerks' -- what's the crux of your
20 clerks' duties? Do your four clerks all have the
21 same kinds of duties or do they have different
22 responsibilities?

23 A They are basically the same.

24 Q What are their duties?

25 A Duties for the clerks are to answer phone calls,

1 faxes, mail. I'm trying to think.

2 Q Just relax. It's not vital. I'm trying to get
3 a feel for what they do.

4 A Faxes, mail, walk-in customers, phone calls,
5 Internet assistance via phone, that type of thing.

6 Q How many floors -- is the entire Recorder's
7 office located in one building?

8 A Yes.

9 Q Which building is that? The County
10 Administration Building?

11 A Yes. That's correct.

12 Q How many floors does the Recorder's office take
13 up either in whole or in part?

14 A One.

15 Q What floor is that?

16 A The second floor.

17 Q When a member of the public -- like if it were
18 our court reporter here, Rebecca, if she wanted to
19 come in and get a copy of a deed, would she encounter
20 your personnel first --

21 A Yes.

22 Q -- on your floor?

23 A Yes.

24 Q I've been up there. I remember how it looks
25 when you first come there.

1 So it's your department that the public first
2 encounters when walking into your -- into the
3 Recorder's office unless there's security or
4 something?

5 A No. Initially they get off the elevator and
6 there is a reception area.

7 Q And then if the public person tells the
8 reception people what they want to do, they might
9 then be directed to your area if it pertains --

10 A That is correct. They're directed there.

11 Q When you say that the clerks answer calls, do
12 you mean calls that come from the outside to the
13 Recorder's office or just internal calls amongst
14 people who work in the Recorder's office?

15 A Outside.

16 Q Such as members of the public?

17 A Absolutely.

18 Q Is that principally who they deal with on the
19 phone?

20 A Yes.

21 Q And when you say that they handle mail, do you
22 mean postal service kind of mail, hard copy mail?

23 A US, PO, FedEx --

24 Q And those would be --

25 A -- UPS.

1 Q And those would be items of the Recorder's
2 business?

3 A Absolutely.

4 Q So do you get things like deeds by mail? What
5 kinds of things do you get in the mail in a generic
6 kind of way?

7 A Requests for deeds, mortgages, power of
8 attorney, liens.

9 Q And these are requests that are coming from
10 people who don't work for the county?

11 A Yes.

12 Q So private sector people?

13 A What do you mean?

14 Q People who don't work for the government are
15 asking for these.

16 A Absolutely.

17 Q Pardon me?

18 A That's correct.

19 Q And you said that they -- you said faxes. Does
20 that mean principally receiving faxes or sending
21 them?

22 A Receiving faxes.

23 Q And are those of the same nature as the hard
24 copy mail, that you get requests for various records
25 recorded with the Recorder's office?

1 A They're document requests, yes.

2 Q Typically from the same kind of sources, outside
3 companies or people?

4 A Yes. Both.

5 Q And you said Internet assistance via phone.
6 Could you elaborate on that a little bit?

7 A We assist people who are online receiving
8 documents, retrieving documents, procedural
9 assistance.

10 Q By "procedural," you mean what?

11 A Just tell them the steps that are required to
12 proceed.

13 Q Okay. Like if I got on your website and I had
14 trouble downloading something, would your office be
15 the one to help me do that or somebody else would?

16 A Yes.

17 Q Or if I wanted to print a deed from your
18 website, your office might tell me what buttons to
19 push or how to make that happen?

20 A Yes.

21 Q Okay. So the people that you're assisting via
22 Internet are not people who work for the Recorder's
23 office like a help desk, it's citizens, outsiders,
24 who are using your website to get Recorder's records?

25 A Yes. That is correct.

1 Q Could you just name for us the different
2 departments within the Recorder's office?

3 A Yes.

4 Q What are they?

5 A Cashiers, data, historical data, computers,
6 scanners, bookkeeping, public information, and
7 special projects.

8 Q Any others?

9 A Administration.

10 Q Does each of those departments have a
11 supervisor?

12 A I would say yes, most do.

13 Q Can you tell us who the supervisor is for each
14 of those, please?

15 A For as many as I can recount. Myself, public
16 info, of course. Tim Shannon for historical data.
17 Larry Patterson for computer. Annette Carrabello
18 data.

19 Q Our court reporter will need to know how to
20 spell that, if you know how to spell it.

21 A Carrabello. C-A-R-R-A-B-E-L-L-O. First name
22 was Annette, A-N-N-E-T-T-E.

23 Q Okay. Cashiers, is that Ron Mack?

24 A Ron Mack.

25 Q And scanners?

- 1 A Scanning department, I believe, Mr. Gibson,
2 Jerome Gibson.
- 3 Q Bookkeeping?
- 4 A Francine Groves.
- 5 Q How do you spell Francine's last name?
- 6 A G-R-O-V-E-S.
- 7 Q Special projects?
- 8 A Bill Lavin.
- 9 Q Phil?
- 10 A Bill.
- 11 Q Bill. How do you spell the last name?
- 12 A L-A-V-I-N.
- 13 Q Administration?
- 14 A Judge Greene, Chief Kandah, John Kandah.
- 15 Q John Kandah?
- 16 A Yes.
- 17 Q You called him "Chief," did you say? Chief
18 Kandah, did you say?
- 19 A It's an error.
- 20 Q Is he known as Chief Kandah?
- 21 A No. That's what I call him.
- 22 Q Oh, did he use to be a police chief or anything?
- 23 A No.
- 24 Q Do you have an understanding as to what special
25 projects does in a nutshell?

1 A No.

2 Q You don't?

3 A No.

4 Q How about data?

5 A Data takes information, record information, from
6 the documents.

7 Q So if I bring in a deed, somebody in Annette
8 Carrabello's department would enter into a computer
9 system who the grantor is, who the grantee is, and
10 other information from the deed?

11 A That's correct.

12 Q And what is historical data?

13 A They re-verify information and clean old
14 documents, make sure the documents are legible.

15 Q And how about scanners?

16 A They image the documents for the computer
17 system.

18 Q So if I bring in a deed, it will to be recorded,
19 it will make its way to the scanning department, and
20 the scanning department will eventually let the
21 original be returned to me?

22 A It is optically scanned at the counter.

23 Q And the original is returned to me?

24 A Yes.

25 Q And optically scanned is done by the scanning

1 department?

2 A Yes.

3 Q And once scanned, then the information that was
4 on the deed will be stored in your computer system?

5 A That's correct.

6 Q And presumably a replica of the deed is stored
7 in your computer system by virtue of the scanner?

8 A That is correct.

9 Q Now, your department, when it works with walk-in
10 customers, by "customers" you mean people from
11 outside your agency who would come in and ask for
12 copies of records that your agency records and
13 indexes?

14 A I'm sorry. Can you repeat the question?

15 Q The County Recorder's office records certain
16 kinds of records, deeds, mortgages, UCC filing
17 statements and the like. The people you described as
18 walk-in customers, they're not people who work for
19 the county, they're people who --

20 A The public.

21 Q That's what I'm getting. There's companies or
22 citizens that need copies or ask for copies of
23 records that you routinely store as the Recorder's
24 office.

25 A That is correct.

1 Q And when you get requests by mail for records --

2 (Interruption in proceedings.)

3 BY MR. MARBURGER:

4 Q When you receive in the mail a request for, say,
5 a deed, then is it routine then that you would then
6 send a copy of the deed back by mail also or not?

7 A That is correct.

8 Q And when you get a faxed request for real estate
9 records, how then do you -- do you provide those --

10 MR. CAVANAGH: David --

11 Q -- also by fax?

12 MR. CAVANAGH: -- I'm going
13 to object for the same reason I
14 objected at Mr. Patterson's
15 deposition. You're asking her
16 questions about the County
17 Recorder's procedures, and you're
18 using the word "you," and I think
19 you mean by "you" the County
20 Recorder's office.

21 MR. MARBURGER: I'll
22 clarify. I mean the County
23 Recorder's office, but this is her
24 department.

25 MR. CAVANAGH: Understood. I

1 just want to state on the record,
2 though, that she's here by subpoena,
3 and there hasn't been a Rule
4 30(b)(5) Notice of Deposition
5 issued, and so we object sort of in
6 a standing manner to the questioning
7 to the extent it seeks to elicit the
8 testimony of the Recorder's office.

9 Miss Mitchell is here as an
10 individual in accordance with the
11 subpoena that was issued.

12 MR. MARBURGER: Well, as I
13 said before, the Rules of Evidence
14 will decide what legal effect her
15 testimony has.

16 BY MR. MARBURGER:

17 Q When your department receives a request via fax
18 for records that the County Recorder's office has, is
19 there a normal way that those records are then
20 provided to the people who request by fax?

21 A We simply process them off the system and fax
22 them back.

23 Q That's what I wanted to know, how did they get
24 them.

25 A That's it.

1 Q When you fax them back -- by way of example,
2 describe -- you know how they're faxed back, right?

3 A I do.

4 Q If I requested that you fax me my deed, my
5 ex-wife's deed, and Matt's deed, just tell me -- I
6 know this is ridiculously fundamental, but tell us
7 just what mechanical steps you go through to fax to
8 me those three deeds that I asked for. Let's say I
9 gave you the automatic file number for each deed and
10 I wanted you to fax them to me, what steps would you
11 follow to do that?

12 A Just put the document number in the system.

13 Q Meaning your computer system?

14 A Yes. And download a copy, attach a fax cover
15 sheet, and send it back.

16 Q So you would dial a telephone number?

17 A Yes.

18 Q That's what I mean by rudimentary steps.

19 A Okay.

20 Q So when you download a copy from your computer
21 system, are you then printing it out?

22 A Yes.

23 Q So you'll have a paper copy?

24 A We do. We have a paper copy.

25 Q Do you put that into sort of a hopper on your

1 fax machine, some holder of the paper?

2 A Yes.

3 Q That's how rudimentary we're getting, really
4 low.

5 And then you dial the phone number you've been
6 given by the requester for the return fax; is that
7 right?

8 A That is correct.

9 Q And then the machine -- you press a button to
10 start the process.

11 A Yes.

12 Q Then does the machine move one page at a time?

13 A That is correct as well.

14 Q That is correct what?

15 A As well. Yes.

16 Q As one?

17 A As well.

18 Q As well.

19 So when you fax something -- when you fax a deed
20 to me, you're going to fax that deed one page at a
21 time to me --

22 A Yes.

23 Q -- via telephone line?

24 A Yes.

25 Q Have you personally -- I don't know if this is

1 the right word -- waited on -- I don't mean that in a
2 subservient fashion -- waited on walk-in customers?

3 A Yes.

4 Q So responded to their requests?

5 A Yes, sir.

6 Q And when they ask for a copy of a deed, you
7 typically give them what?

8 A We give them an image of their document.

9 Q And how do you get that image?

10 A We download it off of the computer.

11 Q And print it?

12 A Download it and it comes out, yes.

13 Q But when you're giving it to that person, when a
14 person comes in and says I want a copy of this deed
15 or that deed, you're giving them a paper copy?

16 A Yes.

17 Q You don't give them a compact disc --

18 A No.

19 Q -- or a flash drive?

20 A Not at all.

21 Q In fact, when a walk-in customer comes in and
22 asks for a copy of one of your recorded documents,
23 hasn't it been your experience that the copy you give
24 them is always a paper copy?

25 A Yes.

1 Q And when you respond to mail requests by sending
2 the requested copies back by mail, hasn't it been
3 your experience that you always are providing paper
4 copies as opposed to a CD or a flash drive or some
5 other kind of medium?

6 A Yes.

7 Q Has it been your experience to give members of
8 the public paper copies that you produced using some
9 machine other than downloading it from your computer
10 system and printing it out?

11 A No.

12 Q So that's the exclusive way that you've given
13 members of the public copies of deeds or mortgages or
14 the like?

15 A That is correct.

16 Q Does your office also -- or the department that
17 you're in charge of, does it also do certifications,
18 certified copies?

19 A Yes, sir.

20 Q In a nutshell, explain to our audience who will
21 be reading this what that entails, what are the steps
22 of doing that.

23 A Processing a copy of the document and attaching
24 the certification seal, printing it, stamping the
25 county seal on it, and signing it.

1 Q And you charge a fee for that?

2 A Yes, sir, we do.

3 Q Is it your department that is most responsible
4 for the public's access to recorded records via the
5 Recorder's website?

6 MR. CAVANAGH: Objection.

7 A I don't --

8 Q Let's put it this way. Instead of measuring
9 responsibility, let's change it to say can you
10 describe for us the extent of your department's
11 responsibility for the public's access to Recorder's
12 records via the Recorder's website?

13 A I still don't quite know how to respond to
14 that. The extent of my responsibility --

15 MR. CAVANAGH: It's a little
16 confusing.

17 Q What can I do to clear it up for you?

18 A I don't quite know, without implying that I have
19 some immense responsibility in conjunction with that.

20 Q I only brought it up because you said that your
21 department will assist callers who are trying to use
22 the website.

23 A That's true.

24 Q Do you have any responsibility with respect to
25 public use of the website or documents appearing on

1 the website other than answering those phone calls
2 and trying to help the public?

3 A No, we don't.

4 Q Okay. So what I was ultimately going to ask
5 you, if this related, was if the Recorder's office
6 sought to charge a fee for people to have access to
7 your records via the website, would that be a
8 decision your department would make?

9 A Absolutely not.

10 Q Okay. Do you know whose responsibility that
11 kind of decision within the Recorder's office would
12 fall within, other than the person who was the
13 Recorder themselves?

14 A That would fall under the purview of
15 administration.

16 Q Okay. Now, when members of the public or
17 outside companies ask for your department to provide
18 them copies of records, has it been your experience
19 that the kinds of records requested are typically
20 records that are recorded and indexed by the
21 Recorder's office? By way of example, deeds,
22 mortgages, UCC filing statements, releases, liens.

23 A That is correct.

24 Q Has it been your experience that your department
25 would receive requests from the public for records

1 that pertain to the way the Recorder's office is
2 administered? By way of example, personnel records
3 of people who work for the Recorder, or internal
4 memoranda amongst people within the Recorder's
5 office, or payroll records showing the salaries or
6 start and end dates of people who work there.

7 MR. CAVANAGH: Objection.

8 You can answer, if you remember
9 the question.

10 MR. MARBURGER: I'll change
11 the question if you want.

12 MR. CAVANAGH: No. I lost
13 track of it. I'm sure she did, too.

14 BY MR. MARBURGER:

15 Q Let me try again.

16 Has it been your experience to receive requests
17 from the public for records that document how the
18 Recorder's office is administered? By way of
19 example, employee evaluations.

20 A No.

21 Q So, in fact, have you ever received requests in
22 your experience from members of the public -- and by
23 members of the public I mean citizens or private
24 firms -- for records that would show how the
25 Recorder's office is itself administered?

1 A No, sir.

2 Q Would you say that your office receives requests
3 every day for records from the public or firms --

4 A Yes.

5 MR. CAVANAGH: Let him
6 finish.

7 Go ahead.

8 A I'm sorry.

9 Q That's all right.

10 Can you tell us what would be a routine day in
11 terms of the number of requests you would get from a
12 single source, a single citizen, a single firm, every
13 single day? What would be a typical day?

14 A It varies.

15 Q What's the typical range then?

16 A Could you be more specific?

17 Q For requests. Like, let's say, citizens -- if
18 we combined all the requests you get by mail, by fax,
19 by walk-in customers, how many requests would you
20 typically receive every day?

21 A Ballpark of 50 to 100, depending on what people
22 wanted.

23 Q And is it also typical that if someone makes a
24 request, is it more typical than not that the
25 requester asks for a copy of more than one document?

1 A Occasionally.

2 Q So what's the norm, requesters ask for a single
3 document or a requester asking for multiple
4 documents?

5 A Companies repetitively. Individuals singularly.

6 Q I'm trying to understand how --

7 A I guess --

8 Q Typically would an individual ask for a single
9 document?

10 A Typically, yes.

11 Q Typically a firm asks for multiple documents?

12 A This is correct.

13 Q I guess I also understood you to mean also that
14 sometimes the same firm comes back repeatedly and
15 makes repeated requests.

16 A Yes.

17 Q Where citizens tend not to do that, they tend to
18 come once or make one request. Is that true or not
19 true?

20 A Depending on the nature of the document.

21 Q What's the link between the nature of the
22 document and how many they request or how often
23 somebody would be a repeat requester?

24 A If someone has died perhaps or is preparing to
25 die and they have power of attorney and that

1 individual needs to handle business for the future
2 decedent, they would request multiple copies of a
3 single document, sometimes a deed occasionally. It
4 just depends.

5 Q When your office has certified records for
6 people, copies of records, has that always been on
7 paper?

8 A Yes.

9 Q And I take it from -- I'm concluding from what
10 you said about sometimes people have died and so
11 they'll make multiple requests related to either
12 their impending death or someone else's death, and
13 from that I'm concluding -- and you'll have to tell
14 me if this is accurate -- from time to time you're
15 aware of the purpose that the requester has in
16 seeking records --

17 A Yes.

18 Q -- because that person expresses the purpose?

19 A If it's expressed. Not automatically.

20 Q Right. Can you give us a palette of examples of
21 reasons that people have expressed as to why they
22 wanted records from your department, from the
23 Recorder's office?

24 I mean, you mentioned the decedent as an
25 example. I'm speaking in a general way. What kinds

1 of purposes have you heard people express as to why
2 they wanted records from your department?

3 A Someone has died. Someone is getting married.
4 Someone is going through a divorce. Someone is
5 checking for federal tax liens perhaps, liens against
6 their property. Someone is transferring title.
7 There are a number of reasons.

8 Q Has anybody, any requester, said to you the
9 reason they wanted to look or get copies of records
10 was to evaluate the way the Recorder's office was
11 run?

12 A No.

13 Q Now, you're familiar with the content of a deed
14 of, say, residential property, aren't you, and what
15 they typically -- what kinds of information are in
16 them?

17 A Basically, yes.

18 Q And if a member of the public wanted to evaluate
19 whether the Recorder's office was breaking the law,
20 what part of a deed would likely reveal that based on
21 your experience with the content of deeds?

22 MR. CAVANAGH: Objection.

23 A I can't -- I mean, I don't know how to respond
24 to that.

25 Q And the answer is that a deed typically wouldn't

1 reflect whether somebody in the Recorder's office was
2 crooked.

3 A No.

4 Q I mean, you agree with me that the contents of a
5 deed wouldn't show that kind of information, would
6 it?

7 MR. CAVANAGH: Objection.

8 A I can't really respond to that because it's a
9 legal question.

10 Q Okay. If somebody, some citizen, wanted to
11 evaluate whether the Recorder's office was doing an
12 excellent job or a subpar job, what part of the deed
13 would likely reveal that kind of evaluative
14 information about the Recorder's office?

15 MR. CAVANAGH: Objection.

16 A That question I would give to the
17 administration. I don't have the ability to respond
18 to that.

19 Q You don't know of any content in a deed that
20 typically would allow me to evaluate whether the
21 Recorder was doing a good job or a bad job?

22 A No, sir. I can't respond to that question at
23 all.

24 Q Have you ever heard a requester say that they
25 wanted to look at a copy -- get copy of records at

1 the Recorder's office so they could evaluate the
2 competency of the Recorder?

3 A No.

4 Q Or the honesty of the Recorder?

5 A No.

6 Q During your tenure in the department, whether as
7 a supervisor or otherwise, did it come to your
8 attention that under Mr. O'Malley's tenure as
9 Recorder your office was providing compact discs to
10 title companies of records that were filed with the
11 Recorder's office?

12 A No, sir. I don't deal with that aspect.

13 Q So you never had an understanding one way or the
14 other as to whether that occurred?

15 A Not directly, because it's not my function at
16 all.

17 Q Did you have an indirect understanding?

18 A No, I can't say that I did.

19 Q And my mentioning that to you now, is it the
20 first time that you had heard information that
21 suggested that the Recorder's office was providing
22 compact discs to title companies?

23 MR. CAVANAGH: Other than

24 what attorneys told you.

25 Q Not including attorneys. It doesn't matter. I

1 want to just be absolutely certain that before this
2 lawsuit occurred that you did not have any
3 information, from hearsay or otherwise, that the
4 Recorder's office provided compact discs of records
5 to title companies?

6 A I'm not saying that that is not so, because I
7 can't say definitively that that is not so, but it is
8 outside the purview and scope of the duties that I
9 perform, so I don't deal with that. That's a
10 function of the computer department.

11 Q No. I get that. I know you don't deal with
12 it. I'm just asking as someone who works there had
13 you ever understood from hearsay or otherwise that
14 that was going on?

15 A It's quite possible, but, again, it's outside
16 the purview of my realm of responsibility, and I
17 don't deal with that.

18 Q I get that.

19 MR. CAVANAGH: He just wants
20 to know if you know, if you knew
21 anything about it.

22 Q Let me give you an example. I'm not a janitor
23 here, but I think I have a good idea of what they do
24 from just watching them or what people told me.
25 They're not within my responsibility.

1 A I can say affirmatively, yes. I mean, I'm sure
2 that, yes, we have computer discs and things like
3 that there, but I just don't deal with that at all.

4 Q Okay. Did it come to your attention by hearsay,
5 people talking, or otherwise, that your office had
6 been providing CDs with images of recorded records on
7 them to title companies?

8 A If it does come up, in those instances it's
9 remanded to the administration to deal with.

10 Q But I don't think you're telling me whether you
11 ever heard of that happening or not. I'm just
12 asking --

13 A I'm not trying to obfuscate. It's just I don't
14 deal with that. I really don't. So if it does come
15 up or if it has come up in the past and people have
16 made mention of that, I just automatically remand
17 that to the administration.

18 MR. CAVANAGH: He's just
19 asking if you ever saw with your own
20 eyes and ears, if you have any
21 knowledge of this during that time
22 period, regardless of whether it was
23 under your scope or not.

24 Q And regardless of whether you personally did it
25 or asked anyone to do it. Had you ever heard of that

1 happening?

2 A Yes, I'm sure it has. I just don't deal with
3 it. It goes directly to the administration if
4 someone does come and inquire. I don't deal with
5 that at all.

6 Q And to whom do you report directly within the
7 Recorder's office?

8 A I report directly to John Kandah.

9 Q Do you know what his title is?

10 A He is the deputy recorder, the deputy
11 administrator there.

12 MR. MARBURGER: Okay. I'm
13 done. Thank you.

14 THE WITNESS: You're
15 welcome. Thank you, sir.

16 - - - - -

17 (Deposition concluded at 4:00 p.m.)

18 - - - - -

19

20

21

22

23

Genevieve Mitchell

24

25

The State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga.)

I, Rebecca L. Brown, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named GENEVIEVE MITCHELL was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, employee of, or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney for any of the parties in the above-captioned action; I am not financially interested in the action; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D); nor am I otherwise interested in the event of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 10th day of January, 2011.



Rebecca L. Brown, Notary Public
in and for the State of Ohio.

My commission expires 6/5/15.



IN THE SUPREME COURT OF OHIO
ORIGINAL ACTION IN MANDAMUS

STATE ex rel. DATA TRACE)
INFORMATION SERVICES LLC,)
ET AL.,)
Relators,)
vs.) Case No. 2010-2029
RECORDER OF CUYAHOGA)
COUNTY, OHIO,)
Respondent.)

DEPOSITION OF LILLIAN J. GREENE
Wednesday, January 5, 2011

Deposition of LILLIAN J. GREENE, called by the Relators for examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Rebecca L. Brown, Registered Professional Reporter, a Notary Public in and for the State of Ohio, at the offices of Baker & Hostetler LLP, 1900 East Ninth Street, Suite 3200, Cleveland, Ohio 44114, commencing at 2:44 p.m. the day and date above set forth.



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& VIDEOCONFERENCE

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EXAMINATION INDEX

LILLIAN J. GREENE	
BY MR. MARBURGER	6

EXHIBIT INDEX

	MAR
Exhibit Greene	
1	11
2	24
3	46
4	56

OBJECTION INDEX

BY MR. MOVIUS	8
BY MR. MOVIUS	9
BY MR. MOVIUS	9
BY MR. MOVIUS	12
BY MR. MOVIUS	12
BY MR. MOVIUS	13
BY MR. MOVIUS	13
BY MR. MOVIUS	15
BY MR. MOVIUS	15
BY MR. MOVIUS	16
BY MR. MOVIUS	17
BY MR. MOVIUS	18
BY MR. MOVIUS	18
BY MR. MOVIUS	19
BY MR. MOVIUS	20
BY MR. MOVIUS	27
BY MR. MOVIUS	27
BY MR. MOVIUS	27

OBJECTIONS INDEX (CONTINUED)

BY MR. MOVIUS	28
BY MR. MOVIUS	29
BY MR. MOVIUS	29
BY MR. MOVIUS	29
BY MR. MOVIUS	30
BY MR. MOVIUS	32
BY MR. MOVIUS	33
BY MR. MOVIUS	34
BY MR. MOVIUS	35
BY MR. MOVIUS	35
BY MR. MOVIUS	35
BY MR. MOVIUS	36
BY MR. MOVIUS	35
BY MR. MOVIUS	35
BY MR. MOVIUS	36
BY MR. MOVIUS	37
BY MR. MOVIUS	38
BY MR. MOVIUS	38
BY MR. MOVIUS	45
BY MR. MOVIUS	46
BY MR. MOVIUS	46
BY MR. MOVIUS	47
BY MR. MOVIUS	48
BY MR. MOVIUS	48
BY MR. MOVIUS	50
BY MR. MOVIUS	52
BY MR. MOVIUS	53
BY MR. MOVIUS	53
BY MR. MOVIUS	53
BY MR. MOVIUS	54
BY MR. MOVIUS	54
BY MR. MOVIUS	55
BY MR. MOVIUS	55
BY MR. MOVIUS	56
BY MR. MOVIUS	58
BY MR. MOVIUS	61
BY MR. MOVIUS	63
BY MR. MOVIUS	64
BY MR. MOVIUS	64
BY MR. MOVIUS	64
BY MR. MOVIUS	64
BY MR. MOVIUS	64
BY MR. MOVIUS	64
BY MR. MOVIUS	65
BY MR. MOVIUS	65
BY MR. MOVIUS	66
BY MR. MOVIUS	66
BY MR. MOVIUS	66

OBJECTION INDEX (CONTINUED)

BY MR. MOVIUS	66
BY MR. MOVIUS	67
BY MR. MOVIUS	67
BY MR. MOVIUS	67
BY MR. MOVIUS	67
BY MR. MOVIUS	67
BY MR. MOVIUS	67
BY MR. MOVIUS	67
BY MR. MOVIUS	68
BY MR. MOVIUS	68
BY MR. MOVIUS	68
BY MR. MOVIUS	68
BY MR. MOVIUS	69
BY MR. MOVIUS	69
BY MR. MOVIUS	70
BY MR. MOVIUS	70
BY MR. MOVIUS	70
BY MR. MOVIUS	70
BY MR. MOVIUS	70
BY MR. MOVIUS	70
BY MR. MOVIUS	70
BY MR. MOVIUS	71
BY MR. MOVIUS	71
BY MR. MOVIUS	71
BY MR. MOVIUS	71
BY MR. MOVIUS	72
BY MR. MOVIUS	73
BY MR. MOVIUS	73
BY MR. MOVIUS	74
BY MR. MOVIUS	74
BY MR. MOVIUS	74
BY MR. MOVIUS	75
BY MR. MOVIUS	75
BY MR. MOVIUS	78
BY MR. MOVIUS	78
BY MR. MOVIUS	80
BY MR. MOVIUS	81
BY MR. MOVIUS	82
BY MR. MOVIUS	82
BY MR. MOVIUS	83

LILLIAN J. GREENE

1
2 called by the Relators for examination under the
3 Federal Rules of Civil Procedure, after having been
4 first duly sworn, as hereinafter certified, was
5 examined and testified as follows:

6 EXAMINATION

7 BY MR. MARBURGER:

8 Q Would you please state your name for the
9 record.

10 A Lillian J. Greene.

11 Q And Greene is spelled with an E?

12 A Ends with an E. Right.

13 Q What years were you a Common Pleas Judge?

14 A From January 1987 through June 25th, 2008.

15 Q How did you become -- today you're the County
16 Recorder, at least until the 14th of the month,
17 right?

18 A Right.

19 Q How did you become the County Recorder?

20 A When Mr. O'Malley had to leave office, there was
21 that vacancy. There was some discussion about having
22 some representative in there who could withstand
23 criticism, what have you, what have you. Anyway, I
24 had the years in, so I decided that I would take -- I
25 would, you know, go for the seat.

1 Q You were appointed, though, right --

2 A Yes.

3 Q -- at first?

4 A First there was an appointment by the
5 Commissioners, then the party, and then there was an
6 election in November.

7 Q And the November election was '08?

8 A '08.

9 Q When were you -- you were appointed in '08?

10 A Right. In July.

11 Q But when were you elected?

12 A To the position of County Recorder?

13 Q Yeah.

14 A The November 2008 election. You see,
15 Mr. O'Malley was on the ballot, so the party put me
16 on in his stead on the ballot.

17 Q And before January of '87 were you a Cleveland
18 Municipal Court Judge?

19 A No.

20 Q What did you do before then?

21 A I was a referee, now called magistrate, in
22 Probate Court.

23 Q Is it fair to describe your personal conduct as
24 the Cuyahoga County Recorder as diligent?

25 A My personal conduct?

1 MR. MOVIUS: Objection.

2 A I don't understand.

3 Q The way you do your job. Would you say you do
4 your job as a County Recorder diligently? Do you
5 think that would be a fair way to describe what you
6 do?

7 A Absolutely. That's part of my oath also.

8 Q And if you understand Ohio law to require your
9 office to perform a particular duty, you, as the
10 County Recorder, try to make sure that your office
11 performs that duty; is that right?

12 A Yes.

13 Q And it's important to you, isn't it, as the
14 County Recorder to make sure that the employees of
15 the County Recorder's office perform their jobs
16 diligently, isn't it?

17 A Yes.

18 Q Do you think that as the County Recorder you try
19 to pay attention to whether the employees of your
20 office have done what you've told them to do?

21 A Yes.

22 Q And as far as you can tell as the County
23 Recorder in performing your job diligently they
24 generally do what you tell them to do, don't they,
25 the people who work for your office?

1 A I believe so.

2 Q Have you found that the employees of the County
3 Recorder's office typically have been diligent in
4 carrying out whatever responsibilities they have?

5 A Yes.

6 Q Now, last fall, the fall of 2010, Data Trace
7 Information Services and Property Insight filed the
8 lawsuit that you're here about today, and they filed
9 that in the state's highest court. Did that lawsuit
10 come to your attention within, ballpark, days after
11 the summons was served on the Recorder's office?

12 MR. MOVIUS: Objection.

13 A I don't understand.

14 Q You're aware, aren't you, that you've been --
15 your office, the County Recorder's office, has been
16 sued by Data Trace Information Services and Property
17 Insight?

18 A Yes.

19 Q And you're aware that the suit is filed
20 originally in the state's highest court?

21 A Yes.

22 Q And you're aware that the suit was filed in the
23 fall of 2010?

24 MR. MOVIUS: Objection.

25 A I think, yes. It was after October.

1 Q Okay.

2 A Okay.

3 Q And all I want to get is a ballpark of how soon
4 after the summons was served on the Recorder's office
5 would you say that the lawsuit came to your personal
6 attention.

7 A I believe I received the summons like six, seven
8 days after the file stamp on the complaint itself.

9 Q Okay. I just wanted to get an idea of when the
10 complaint itself came to your attention. It's not a
11 trick question.

12 A No.

13 Q It's not like did it come to your attention at
14 Christmas time, Thanksgiving time. I want to get an
15 idea of how long this has been served on the
16 Recorder's office before you personally knew about
17 it. That's what all I want to know.

18 A Before I personally knew? I knew about the same
19 day.

20 Q I didn't know that.

21 A But not the day it was filed, though.

22 Q I didn't ask you -- I meant the day it was
23 served. How soon after the summons was served on
24 your office did you personally become aware that
25 there was this lawsuit, or was it that day?

1 A The same day.

2 Q Okay. That's all. I don't know who signs for
3 these. I haven't seen who signed the certified mail
4 receipt so I didn't know who did that.

5 Did you read the complaint when it came to your
6 attention, the complaint in this lawsuit?

7 A Are we speaking of the second one, second
8 filing?

9 Q The suit we are here on today.

10 A We're here on today, yes.

11 Q And I assume then you read the complaint in the
12 first suit that Data Trace and Property Insight filed
13 that they eventually dismissed.

14 A Yes.

15 Q And is that because it was important to you as
16 County Recorder to know what the allegations were in
17 any suit against your office?

18 A Of course.

19 MR. MARBURGER: Now, what we
20 have here is a copy of the complaint
21 filed in this case, which I'll ask
22 you to mark as Exhibit 1, I guess.

23

24 (Exhibit Greene 1 was marked
25 for identification.)

1

- - - - -

2 BY MR. MARBURGER:

3 Q I'm going to ask you to turn to Exhibit 1 that's
4 attached at the end. And for purposes of the
5 transcript, for people who might be reading this,
6 Exhibit 1 is a two-page document.

7 And you can confirm for us, can't you, Miss
8 Greene, that it's a copy of a letter that your office
9 received in October of 2010?

10 MR. MOVIUS: Objection.

11 A It's a copy, yes. Yes.

12 Q Okay. And the first paragraph of that letter --
13 and I'm just going to read part of it into the record
14 simply so that we all know what we're talking
15 about -- the author says, "I am writing to request,
16 under Ohio Open Records Act, R.C. 149.43, electronic
17 copies of all documents publicly recorded in the
18 Cuyahoga County Recorder's Office in the months of
19 July and August 2010."

20 I've read that accurately, haven't I?

21 MR. MOVIUS: Objection.

22 A That's what's in the letter.

23 Q That's what it says.

24 And the third paragraph says, doesn't it, "Under
25 R.C. 149.43 (B) (6,) please provide copies in

1 electronic form on a compact disc (CD)."

2 I read that accurately, haven't I?

3 MR. MOVIUS: Objection.

4 A Yes. That's what it says.

5 Q And it then says, "Please produce the electronic
6 copies in a format that does not modify the original
7 document and without any type of watermark image."

8 I've read that accurately, haven't I?

9 MR. MOVIUS: Objection.

10 A Yes. That's what it says.

11 Q Now, when your office received the letter that
12 that I've just read, that is Exhibit 1 to the
13 complaint, did it occur to you that the author or the
14 company the author was working for might sue the
15 Recorder's office if the Recorder's office didn't
16 comply with the request stated in this letter?

17 A Yes.

18 Q Now, since October the 4th, 2010, the Recorder's
19 office has not provided Mr. Stutzman, whose name is
20 that of the author of this letter, with a compact
21 disc of electronic records of -- copies of records
22 filed in July and August 2010; is that right?

23 A Could you -- I don't understand your question
24 because you changed it in midstream.

25 Q I didn't mean to change it.

1 A But you did.

2 Q You understand the person that purports to be
3 the author of this letter is a guy named Michael
4 Stutzman.

5 A Yes.

6 Q And he purports to be the operations manager of
7 Data Trace.

8 A Yes.

9 Q All right. And can you confirm for us that
10 since October 5th the Recorder's office has not
11 provided Mr. Stutzman with a compact disc of
12 electronic copies of records that were recorded with
13 the Recorder's office in July and August of 2010?

14 A We have not supplied him with a disc, no.

15 Q And you haven't supplied a compact disc with the
16 records that he requested to anyone who you knew to
17 be a representative of Data Trace; is that correct?

18 A Correct.

19 Q Now, the second paragraph of this letter that is
20 Exhibit 1 to the complaint says, "Alternatively, if
21 it would be less work for you to provide us with
22 electronic copies of only the first 100 documents
23 publicly recorded on each day of July and August
24 2010, we are willing to accept electronic copies of
25 only those documents in lieu of electronic copies of

1 every document publicly recorded in July and August
2 2010."

3 Have I read that substantially accurately?

4 MR. MOVIUS: Objection.

5 A Yes. That's what it says.

6 Q And can you confirm for us that the Recorder's
7 office has not provided Mr. Stutzman with a compact
8 disc containing electronic copies of only the first
9 100 documents filed on each day of July and August
10 2010?

11 A We have not supplied him with a compact disc --

12 Q Right.

13 A -- of 100 documents, no.

14 Q And you haven't provided anybody who you knew to
15 be the representative of Data Trace with electronic
16 copies of the first 100 documents filed each day in
17 July and August of 2010 on a compact disc.

18 A I have not supplied anyone with a compact disc.

19 Q All right. Now, Exhibit 2 to the complaint, and
20 take a moment to look at that, you can confirm for
21 us, can't you, that your office received the original
22 of Exhibit 2 in October of 2010?

23 MR. MOVIUS: Objection.

24 A Yes.

25 Q And, for the record, it requests the same -- you

1 can confirm for us it requests the same electronic
2 copies on compact disc that Mr. Stutzman's letter,
3 which is Exhibit 1, had requested?

4 A It appears to be the same request, yes.

5 Q And you can confirm for us, can't you, that your
6 office has not provided the man who purports to be
7 the author of this letter, Mr. Carsella, with a
8 compact disc of electronic copies of the records that
9 he requested?

10 A I have not provided him with a compact disc of
11 any records.

12 Q Okay. Now, since October 5th have you
13 personally communicated with Mr. Stutzman orally or
14 in writing that your office would not comply with his
15 request?

16 A Did you say personally?

17 Q Yes, I did.

18 A No.

19 Q Did you direct anybody who works for the
20 Recorder's office to communicate with Mr. Stutzman
21 orally or in writing that your office would not
22 comply with his request?

23 MR. MOVIUS: Objection.

24 A No.

25 Q Do you have an understanding as to whether

1 anyone who worked for the Recorder's office since
2 October 5 of 2010 communicated to Mr. Stutzman orally
3 or in writing that your office wouldn't comply with
4 his request?

5 A No.

6 MR. MOVIUS: Objection.

7 Q And you have no understanding that anyone in
8 your office has provided a compact disc to
9 Mr. Stutzman in response to his request of October
10 5th?

11 A I have no idea.

12 Q You have no information that any compact disc
13 from your office was provided to Stutzman; is that
14 right?

15 A Correct.

16 Q And you have no information that any compact
17 disc was provided by anybody in your office to
18 Mr. Carsella, correct?

19 A Correct.

20 Q And you have no understanding that anybody from
21 your office gave a compact disc of records to Data
22 Trace generally since October?

23 A No.

24 Q I'm just doing it because we got to put this on
25 the record.

1 A Okay.

2 Q And that also goes for Property Insight. You
3 have no information that Property Insight received
4 from anybody in your office a compact disc of records
5 where the compact disc was made after October?

6 A I have no information on that.

7 Q Do you have any understanding that anybody from
8 your office communicated orally or in writing with
9 any representative of Data Trace that your office
10 would not comply with Mr. Stutzman's request of
11 October 5th?

12 MR. MOVIUS: Objection.

13 A No.

14 Q Do you have any understanding that anybody who
15 works for your office communicated orally or in
16 writing to any representative of Property Insight
17 that your office would not comply with the October
18 5th request of Mr. Carsella?

19 MR. MOVIUS: Objection.

20 Can you clarify what you mean

21 by "works for your office"?

22 Q Do you understand what I mean by anybody who
23 works for your office?

24 A If you're assuming my employees, the answer is
25 no.

1 Q What else would there be?

2 A I don't -- I don't know.

3 Q You're not claiming -- you don't understand, do
4 you, that any lawyer representing the Cuyahoga County
5 Recorder's Office communicated to a representative of
6 Data Trace that the Recorder's office wouldn't comply
7 with Mr. Stutzman's October 5 request, are you?

8 You don't have any information that that
9 happened, do you?

10 MR. MOVIUS: Objection.

11 A I don't -- I wouldn't know.

12 Q And you don't have any information that any
13 lawyer representing the Recorder's office
14 communicated to any representative of Property
15 Insight that your office wouldn't comply with the
16 October 5 request of Mr. Carsella; is that correct?

17 A I wouldn't know.

18 Q Well, you would expect, wouldn't you, if a
19 lawyer representing your office was communicating
20 with either Data Trace or Property Insight about
21 these requests that are attached to the complaint,
22 that somebody would advise you of that
23 communication? Wouldn't you expect that?

24 MR. MOVIUS: Could you read
25 the question back?

1 MR. MARBURGER: I'll say it
2 again.

3 BY MR. MARBURGER:

4 Q You would expect, wouldn't you, that if a lawyer
5 was representing the Recorder's office in responding
6 to either of the requests that are attached to the
7 complaint in terms of saying we will or won't comply,
8 you would expect to be notified of that
9 communication, wouldn't you?

10 A Yes.

11 Q And you weren't, were you?

12 MR. MOVIUS: Objection.

13 Q You weren't notified that any such communication
14 took place, were you?

15 MR. MOVIUS: Such as a lawyer
16 in this room?

17 MR. MARBURGER: Pardon me?

18 MR. MOVIUS: You know that I
19 sent that letter to you,
20 Mr. Marburger.

21 MR. MARBURGER: What letter?

22 MR. MOVIUS: I sent the
23 letter -- the first letter that I
24 sent to you in this case included
25 the second paragraph of it, a

1 paragraph saying that we were
2 providing formal written notice
3 confirming that the Recorder's
4 office would comply with the request
5 upon agreement of your clients to
6 pay the \$2 statutory fee.

7 MR. MARBURGER: I never
8 received such a letter.

9 MR. MOVIUS: Absolutely you
10 did because you sent me back a nasty
11 email in response to it, because
12 that was the first letter in which I
13 sent to you that said we were not
14 going forward with the depositions
15 that you initially noticed in the
16 case that was dismissed.

17 MR. MARBURGER: I'm sorry.
18 The only thing I remember on any
19 letter that you sent to me was that
20 you claimed that if an alternative
21 writ wasn't issued, we couldn't
22 depose anybody, and that's the only
23 thing I remember seeing.

24 MR. MOVIUS: If you would
25 like to pull your correspondence

1 file, we can go through that letter
2 and mark it as an exhibit --

3 MR. MARBURGER: We don't
4 have to do it now.

5 MR. MOVIUS: -- or I can
6 have somebody from my office
7 messenger it over. Perhaps maybe
8 that's the clarification that we
9 need.

10 I wondered why you were saying
11 that you thought that attorney fees
12 are mandatory in this case. If you
13 go back and look at the
14 correspondence file, you'll see
15 there's a specific letter that
16 includes, I believe, in the second
17 paragraph -- if I'm wrong, I
18 apologize -- that has a specific
19 citation to O.R.C. 149 saying
20 what -- providing the written notice
21 required by statute that takes this
22 case out of being a mandatory
23 attorney fee case, to being
24 discretionary, subject to reduction
25 by the Ohio Supreme Court based on

1 the factors enumerated in the
2 statute.

3 MR. MARBURGER: I'll have a
4 look. I don't mind. We can just
5 take a second and see if I have that
6 letter. I remember the thing about
7 the alternative writ. I don't
8 remember anything about what you're
9 saying, but I'm not saying it's not
10 there. I just don't remember ever
11 seeing it.

12 Is this what you're talking
13 about? And I'll give it a close
14 look while we're here. Is that it?

15 MR. MOVIUS: Yeah. That
16 would be the second paragraph there.
17 I'm sorry. It was a cite to 317
18 saying we would provide the
19 requested records upon payment of
20 the fees.

21 THE WITNESS: May I say
22 something?

23 MR. MARBURGER: If you want
24 to.

25 MR. MOVIUS: There's no

1 question pending I don't think.

2 MR. MARBURGER: You're
3 welcome to say anything you want.

4 MR. MOVIUS: You're also
5 welcome to remain silent until a
6 question is asked.

7 MR. MARBURGER: All right.
8 I want to make sure I have a copy of
9 this. Let's mark this as an
10 exhibit.

11

- - - - -

12 (Exhibit Greene 2 was marked
13 for identification.)

14

- - - - -

15 BY MR. MARBURGER:

16 Q Miss Greene, have you seen this Exhibit 2
17 before?

18 A Yes.

19 Q And do you understand it to be a letter
20 authorized by your office sent to counsel for Data
21 Trace?

22 A Yes.

23 Q And the first sentence, second paragraph, says,
24 "I confirm the Cuyahoga County Recorder's prior
25 responses that it will provide the requested

1 materials upon payment of the statutory fees required
2 under Revised Code" -- abbreviated as R.C. --
3 "317.32."

4 Have I read that correctly?

5 A You have.

6 Q Have you developed an understanding -- I know
7 you weren't the author of this, but you're shown as
8 receiving a copy at the bottom. And you have -- I
9 assume -- let me rephrase.

10 Have you seen this before the year 2011 began?

11 A Yes.

12 Q Did you see this sometime in November of 2010,
13 do you think?

14 A It could have been December.

15 Q All right. Have you developed an understanding
16 as to what the word "prior responses" refers to?

17 A I know what it refers to.

18 Q What's it refer to?

19 A My oral communication to your clients.

20 Q What oral communication to our clients?

21 A Back in April of 2010.

22 Q Describe those.

23 A I believe it was April.

24 Q Describe those communications.

25 A That this is a statutory office, the fee is \$2

1 per page, there is no statutory authority for the CD
2 you've been receiving, and it's ending, but we will
3 give you whatever you like for \$2 per page as the
4 statute requires.

5 Q So with whom did you have that oral
6 communication?

7 A I can't tell you for sure. They represented
8 themselves to be representatives of Mr. Stutzman
9 and/or it was Mr. Stutzman.

10 Q Okay. Was this in person or by phone?

11 A Once in person. Once by phone.

12 Q Both in April of 2010?

13 A Around April. That's when the issue began. I
14 believe it was April, yes

15 Q So the reference in this letter that we've
16 marked as Exhibit 2 to the statutory fees required
17 under Revised Code 317.32 is to the \$2 per page that
18 you've just talked about?

19 A Yes.

20 Q When you say \$2 per page, if it's an electronic
21 deed, let's say, and downloaded onto a CD, and the
22 deed is three pages, that would be \$2 for each of
23 those three pages? Is that what you're --

24 A No. Because we don't make electronic copies.

25 Q If you did -- that's what we asked for, though,

1 wasn't it? Didn't we ask for CDs?

2 MR. MOVIUS: Objection.

3 A No. There's a difference -- I'm sorry. There's
4 a difference. You said electronic copies, and I
5 answered you we did not provide a CD of the documents
6 requested.

7 Q I'm trying to understand. All I'm trying to do
8 is have you articulate for the record how the \$2 per
9 page fits into the notion of what would be on a CD
10 because here your representative is saying that your
11 office will provide the requested materials if the
12 required statutory fees are paid. Well, one doesn't
13 know how much to pay -- if we're going to get a
14 compact disc of every record filed in July of 2010, I
15 need to have an idea of -- are you saying that we
16 would or would not have to pay \$2 for every page of,
17 say, by way of example, a three-page deed that would
18 be on a compact disc?

19 MR. MOVIUS: Objection.

20 Q How are you applying this notion of \$2 a page?

21 A I'm applying it to paper copies of the document.

22 Q So are you saying you will not provide it on a
23 compact disc?

24 A Yes. We don't make them.

25 MR. MOVIUS: Objection.

1 Q So when you say -- let me make -- we need to
2 make this very clear here. So is it your
3 understanding that when your representative writes to
4 Data Trace's lawyer, which happens to be me, "I
5 confirm that the Cuyahoga County Recorder's prior
6 responses that it will provide the requested
7 materials upon payment of the statutory fees," you
8 don't understand that to mean that you'll provide
9 them copies on a compact disc? Am I right there?

10 MR. MOVIUS: Objection.

11 A I didn't draft this. For me, the \$2 fee is
12 payable per page paper copy.

13 Q Let me ask you this then: Will you provide Data
14 Trace with electronic copies of the records recorded
15 in July of 2010 and August of 2010 on a compact disc
16 for some fee?

17 A I can't really answer that.

18 Q Aren't you the Recorder?

19 A Yes.

20 Q Don't you set policy for the Recorder's office?

21 A Yes. But I'm not prepared to answer that
22 question right here today.

23 Q Gee, Miss Greene, you've been sued since -- for
24 a couple of months now, and your lawyer wrote this
25 letter to us copying you, and presumably with your

1 authority, surely there's an understanding here
2 whether this letter is meaning to communicate that
3 Data Trace will receive a compact disc with
4 electronic copies as Data Trace requested.

5 MR. MOVIUS: Objection.

6 Argumentative and the letter speaks
7 for itself.

8 Q I don't mean it to be argumentative as much as
9 it is astounded.

10 MR. MOVIUS: Objection.

11 Q I simply wish to know, Miss Greene, surely in
12 the time since this suit was filed and since you
13 authorized the letter that we've marked as Exhibit 2
14 to be communicated to opposing counsel, surely
15 there's an understanding as to whether the sentence
16 we've just read means or does not mean that Data
17 Trace would get a compact disc as asked in Data
18 Trace's October letter?

19 MR. MOVIUS: Same objections.

20 A Now, when I say my prior responses were that the
21 statutory fee is \$2 a page, I was referring to paper
22 copies.

23 Q Okay. But in this letter that you authorized
24 that we've marked as Exhibit 2, and upon which you
25 were copied in which you say you saw in November or

1 December of 2010, have you developed an understanding
2 as to whether your counsel acted within or outside
3 the authority that you gave your counsel?

4 MR. MOVIUS: Objection.

5 A I think he's communicating what I communicated
6 to him. My prior response is that I would do \$2 per
7 page per copy.

8 Q So if Data Trace interpreted the first sentence
9 of Exhibit 2, paragraph two -- I'm sorry. So if Data
10 Trace interpreted the first sentence of the second
11 paragraph of Exhibit 2 to mean that if it paid a
12 particular fee, it would receive a compact disc of
13 electronic copies as requested in October, such
14 interpretation would be inaccurate?

15 A I don't know. I can't answer what they would
16 interpret.

17 Q I didn't ask you what --

18 A You did.

19 Q No. I asked you whether --

20 MR. MOVIUS: Hold on. Let's
21 both -- don't talk over her
22 answers. And I'll ask you, just as
23 a favor for the reporter, don't talk
24 over his questions.

25 THE WITNESS: All right.

1 Sorry.

2 BY MR. MARBURGER:

3 Q Here's what I'm trying to get at simply, and
4 this is no lawyer trick, we need to know if you're
5 offering here to sell us a CD or not. We need to
6 know that. That's what the suit is about. That's
7 why you're here today. We need to know if this is an
8 offer to provide us with a CD of electronic copies or
9 it's not. And because you're the Recorder, you would
10 be the person to know that. That's why I want to
11 know that.

12 MR. MOVIUS: Let me offer
13 something here, and you can go on
14 with your questions or not. There
15 might be an issue of communication
16 here if you are willing to give me
17 and Miss Greene two minutes to
18 discuss, we can maybe clear this up.

19 MR. MARBURGER: That's fine.
20 I'll go to the restroom while you do
21 that. That's fine.

22

23

(Recess had at 3:18 p.m. to 3:26 p.m.)

24

25 BY MR. MARBURGER:

1 Q Now, we went off the record at about 3:18, and
2 now it's a little less than ten minutes later, and
3 during that approximately ten minutes did you and
4 your counsel confer, Miss Greene?

5 A Yes.

6 Q And have you developed an understanding as to
7 whether in November of 2010 your counsel was offering
8 to provide to Data Trace a compact disc containing
9 electronic copies of records recorded in the
10 Recorder's office?

11 A Yes.

12 Q What's the understanding you've developed as a
13 result of conferring with counsel?

14 MR. MOVIUS: Objection.

15 MR. MARBURGER: I mean, it's
16 kind of obvious. Go ahead.

17 MR. MOVIUS: I'll say there
18 was a misunderstanding as to the way
19 you were asking the questions.
20 She's more than happy to clarify on
21 that.

22 Q What did you misunderstand?

23 MR. MOVIUS: If you're
24 implying that I was coaching her to
25 tell her what something was in the

1 past, that's absolutely
2 categorically false.

3 Q What is it you didn't understand before you met
4 with your lawyer?

5 MR. MOVIUS: Repeat your
6 question.

7 A What's your question?

8 Q What is it you didn't understand?

9 A I did not want to capitulate that what your
10 clients requested were subject of Open Records Act
11 because, in my opinion, it is not, so that was
12 confusing, and I didn't want to make a statement that
13 might compromise my position on that.

14 But now I understand what you were asking, what
15 your question is. And although it is not the custom
16 or practice of our office to provide CDs for the \$2
17 fee per page, we would accommodate your client.

18 Q Meaning what?

19 A If your clients are asking for those documents
20 on a CD, we would accommodate them at \$2 a page as
21 any other customer would pay.

22 Q But you didn't understand that that's what your
23 counsel was communicating on November 16th, 2010, in
24 Exhibit 2, did you?

25 MR. MOVIUS: Objection.

1 A No. Because --

2 MR. MARBURGER: She can
3 speak.

4 MR. MOVIUS: I can object.

5 A When you say my prior responses, I know what my
6 prior responses were.

7 Q Which were no CD.

8 A Yes. And you pay \$2.

9 Q You would have to get paper copies. You have to
10 speak.

11 A Yes. I'm sorry. Yes.

12 Q See, you forget what it's like to be on the
13 witness end.

14 Back when you were speaking with the Data Trace
15 guys, Stutzman or his representative, and you
16 informed them that there would be no compact disc,
17 but there could be paper copies, did you have any
18 understanding at all as to whether your office had
19 the capacity, had the physical equipment and employee
20 manpower necessary to make paper copies of every
21 single record filed with the Recorder's office on any
22 given day?

23 MR. MOVIUS: Objection.

24 A No.

25 Q You understand, don't you, from your experience

1 not only in your office, but experience as a
2 professional, that it takes considerably longer to
3 make paper copies of records than it does to make an
4 electronic copy of the very same records if those
5 records originate in electronic form?

6 A Could you --

7 Q You understand, don't you, if you have a record
8 that's in electronic form it will take considerably
9 longer to copy every page of that electronic record
10 onto paper than it would be to download copies of
11 those records on to, say, a compact disc?

12 A I have no idea.

13 Q So you think that in your experience as the
14 County Recorder and as just a professional that you
15 don't know which would take longer, making paper
16 copies of, say, 2,000 records that start as a digital
17 image, or just copying that digital image onto
18 another electronic medium such as a compact disc?

19 MR. MOVIUS: Objection.

20 Q You don't know which would take longer?

21 MR. MOVIUS: Objection.

22 A Since you rephrased the question, I do have an
23 answer.

24 Q What's your answer?

25 A Copying the pages would take longer.

1 Q Yes.

2 A But --

3 Q And did you do anything to investigate whether
4 the Recorder's office had the physical printing
5 capability to print every page of every record filed
6 in the Recorder's office on any given day?

7 A No.

8 Q Now, part of your responsibilities as the
9 Recorder is to oversee the budget for that office;
10 isn't that right?

11 A Yes.

12 Q Do the County Commissioners ultimately approve
13 the budget?

14 MR. MOVIUS: Objection.

15 Q Is it your understanding that the County
16 Commissioners are the people who approve -- the Board
17 of County Commissioners approve your budget?

18 A Yes.

19 Q And in exercising your responsibilities as
20 County Recorder, I assume you pay attention to the
21 budget as to whether you're within it or exceeding
22 it. Am I right there?

23 A At some point I do.

24 Q And does that budget include expenses for office
25 supplies that your office either keeps or actually

1 uses?

2 A Yes.

3 Q And the compact discs that your office has that
4 are blank, do they fall within your budget, obtaining
5 those discs?

6 MR. MOVIUS: Objection.

7 A Not specifically. There's a budget for
8 equipment and software like that. Not specifics.

9 Q You mean not a line item?

10 A Right.

11 Q I see. Do you have an understanding based on
12 somebody who oversees the budget of your office about
13 what it costs for your office to acquire blank
14 compact discs?

15 A No.

16 Q Are you familiar with the responsibilities of
17 the people who work under you enough to be able to
18 say which person would have the best knowledge, the
19 most accurate knowledge, as to what it costs to
20 acquire blank CDs?

21 A Yes.

22 Q Who would that be?

23 A Tracy Morris.

24 Q Do you know what her job title is?

25 A She's my assistant, secretary/assistant.

1 Q Is she your secretary?

2 A Yes.

3 Q Do you have an understanding as to the identity
4 of the vendor who provides the blank CDs?

5 A I do not.

6 Q You've explained to us your legal analysis as to
7 why you have come to the conclusion that your office
8 doesn't have to copy electronic records onto CDs. Is
9 there any reason other than that legal analysis that
10 motivated you to stop the practice of providing CD
11 copies of records filed with your office --

12 MR. MOVIUS: Objection.

13 Q -- to title companies?

14 MR. MOVIUS: Objection.

15 A Only the statutes. We are a creation of the
16 statute, and our duties are outlined by the statute,
17 and I'm following the statute. There was no
18 authority.

19 Q It was your decision to stop the practice of
20 providing CD copies of recorded records to the title
21 companies, though, wasn't it? That was your call,
22 wasn't it?

23 A You mean your clients here when you say "the
24 title companies"?

25 Q Well, do you provide compact discs of copies

1 of the Recorder's office's records to any company
2 today?

3 A No.

4 Q And you're aware that your office had the
5 practice of selling discs of each day's worth of
6 records to companies in the title business.

7 A I'm aware of Data Trace and Property Insight.

8 Q You're not aware that at least one other company
9 also got a CD?

10 A What's the name?

11 Q Might have been Surety Title. I don't know if
12 they still exist.

13 My point is I'm not trying to be specific as to
14 companies. I'm trying to get to the generic sense
15 that -- just to be crystal clear, your office had
16 provided copies of the daily work of the Recorder's
17 office on CDs to title companies until you stopped
18 that practice; isn't that correct?

19 A In general, yes.

20 Q That's all I'm getting at.

21 Did you stop that practice -- did you ever tell
22 anybody, anybody, that one reason for stopping that
23 practice had to do with your perception that these
24 companies would try to sell the records that you gave
25 to them on CD?

1 A No.

2 Q Or that they had a commercial purpose in
3 acquiring those records?

4 A No.

5 Q Did you approve the placement of a watermark
6 image on the records recorded with the Recorder's
7 office as they could be accessed via your web, the
8 Recorder's website?

9 A Yes.

10 Q Can you tell us why you approved that?

11 A Because of fraud, because our website had been
12 mined from afar, and it brought down the system, and
13 because people present documents off of the website
14 thinking they're originals or can be used for legal
15 purposes.

16 Q Explain the fraudulent --

17 A Well, we were informed of people downloading
18 deeds from the website and changing the names and
19 bringing them in, filing, to take over -- and took
20 over people's properties.

21 Q Explain the remote.

22 A Well, someone in a remote country, India, China,
23 somewhere, they were downloading everything from our
24 website, and it brought our website down to such that
25 the public could not access it.

1 Q How would the watermark have an effect?

2 A Because they would have no use for them because
3 they could not present them as legal documents with a
4 watermark on them.

5 Q Have you come to conclude who was doing that,
6 who --

7 A No.

8 Q -- brought your website down to a standstill as
9 you -- I'm summarizing how you described it.

10 A We have no evidence of who did it.

11 Q Have you reached any conclusions as to who did
12 it?

13 A Not me.

14 Q You mean you haven't reached any conclusions?

15 A I haven't, no.

16 Q You sound as though you know someone who has.
17 Do you have an understanding that someone else has
18 concluded who has done that?

19 A Someone else thinks.

20 Q What do they think, as you understand it?

21 A Okay. Data Trace.

22 Q It wasn't Data Trace. I can assure you of that
23 right now. It was not Data Trace.

24 Who is it that understands that it was Data
25 Trace?

1 A Thinks. Not understands.

2 Q Who was it that concluded or thinks or has the
3 opinion that it was Data Trace?

4 A My IT department, the department, everybody.

5 Q Who within the department?

6 A Everybody.

7 Q John Kandah is your chief deputy; is that right?

8 A Yes.

9 Q And he functions as a chief of staff for your
10 office.

11 A Yes.

12 Q How long has he been employed with the
13 Recorder's office?

14 A Since Thanksgiving weekend 2008.

15 Q Prior to that did you know him?

16 A No. I knew of him.

17 Q How did you know -- what is your understanding
18 of what he did before?

19 A He was at Children and Family Services.

20 Q Now, the County Recorder's office maintains a
21 website, correct?

22 A Correct.

23 Q And it's maintained by people who work for your
24 office, the Recorder's office, correct?

25 A Yes.

1 Q And whoever it is that maintains that website or
2 is responsible for maintaining it, does that person
3 report directly to you?

4 A No.

5 Q Who is the person who is responsible for
6 maintaining the Recorder's office website?

7 A Now it would be Larry Patterson.

8 Q Was it Mr. Zak before then?

9 A It was.

10 Q And that would be Jim Zak, Z-A-K. But
11 Mr. Patterson doesn't report directly to you?

12 A Not directly.

13 Q Does he report directly to you through your
14 chief of staff?

15 A Yes.

16 Q Through Mr. Kandah?

17 A Right.

18 Q And from time to time since you've been the
19 Recorder have people who work in the office -- has
20 one or more people who work for the Recorder's office
21 consulted with you about the content of the website?

22 A Yes.

23 And may I add to your question previously?

24 Mr. Patterson has spoken to me directly if I happen
25 to be in his office about something.

1 Q About the website or you mean just generally?

2 A In general. I don't recall him ever -- other
3 than this mining of our web, he never -- I don't
4 remember him ever speaking directly to me about the
5 website other than that mining incident.

6 Q Were you ever present during any discussion
7 orally -- I mean, in person, or even if it was, you
8 know, written communication circulated to you, where
9 the topic discussed was whether if you provided
10 compact disc copies of the records, that might end
11 the mining that you're describing?

12 A No.

13 Q So as far as you know, that was never a topic --
14 that was never a topic of discussion orally or in
15 writing that you witnessed; is that right?

16 A No.

17 Q Has it ever occurred to you that the mining that
18 you're concerned about or that you've expressed
19 concern about might end if your office would make
20 available compact disc copies of your office's
21 records?

22 A No.

23 Q As we sit here today, does that potential occur
24 to you?

25 A No.

- 1 MR. MOVIUS: Objection.
- 2 Q Now, your website, the Recorder's office
3 website, has your picture on it, a photo of you,
4 correct?
- 5 A It does.
- 6 Q You've seen it, right?
- 7 A Yes.
- 8 Q Did you supply that photo?
- 9 A Yes.
- 10 Q And the content on the Recorder's website is
11 controlled solely by your office, isn't it?
- 12 A The content on the website? Yes.
- 13 Q And, in fact, no content can appear on your
14 website, can it, unless you approve it and put it
15 there or allow it to be put there; is that true?
- 16 A I can't necessarily say that's true.
- 17 Q By way of example, I can't put a picture of
18 myself on your website, can I?
- 19 A No.
- 20 Q Not unless you say I can, right?
- 21 A Right.
- 22 Q And I can't post little comments on your website
23 under any name unless you allow it; isn't that true?
- 24 A You could in our comment section.
- 25 Q I didn't realize you had one. Okay.

1 Recorder's Office," there is a description in text of
2 what your website is providing to the citizens of
3 Cuyahoga County and the world; isn't that right?

4 A Yes.

5 Q And those words are on there with your
6 permission, aren't they?

7 A I don't know. I have to read all of this
8 because I have asked for some of this to be changed.
9 Okay. And I would have check in my office to see if
10 the changes are on here.

11 Q In the black and white text that we're looking
12 at, there's nothing on there that you directed
13 somebody not to put on the site, is there?

14 A I don't understand your question.

15 Q Let me change it a little bit.

16 I and no one in this room, without your
17 permission, could write the text that we see on
18 Exhibit 3, your home page; is that true?

19 A That's true.

20 MR. MOVIUS: Objection.

21 Q So we can fairly conclude, can't we, that all
22 the text on Exhibit 3 and that we are now looking at
23 on your website is something that is there with the
24 authority of the Cuyahoga County Recorder's Office;
25 is that true?

1 MR. MOVIUS: Objection.

2 A As I indicated, if this is what I reviewed and
3 what I changed, yes.

4 Q Since you've been -- let's say you became the
5 Recorder in July of '08 -- let's start with since you
6 won the election in November of '08, has there been
7 any description of the Cuyahoga County Recorder's
8 Office that appeared on the website that you didn't
9 permit?

10 MR. MOVIUS: Objection.

11 A My answer is the same. I have asked them to
12 change language on this, you know, a couple different
13 times.

14 Q And have they failed to carry out your requests?

15 A I can't answer that because I need to look at my
16 notes.

17 Q Can you recall anything you've asked them to
18 change?

19 A Can I read this?

20 Q Of course.

21 A The paragraph regarding terminology and
22 verbiage.

23 Q Do you remember what you --

24 A Some -- when you go to that link, some of the
25 words there I wanted them to take out.

1 Q You mean the words on this page that we're
2 looking at as Exhibit 3, or the words that appear
3 when you click on the link?

4 A The words that appear when you click.

5 Q I see. Anything else that you notice on the
6 home page that you've asked people to change, asked
7 somebody in your office to change?

8 A On this page, not that I can recall.

9 Q Are there any other links on this page where
10 you've asked your office to change what appears on
11 the link?

12 A Yes.

13 Q Which ones?

14 A Property alert.

15 Q Property alert. Where's that on Exhibit 3?

16 A That's on the bottom.

17 Q Property alert. I don't see that.

18 A Property alert. It's the last on the side.

19 Q Property alert on the left-hand side with the
20 green background.

21 A Yes.

22 Q And you have asked for the content of that to
23 change?

24 A Yes.

25 Q And the way you get to that is you click on

1 property alert and you get some text?

2 A Something. Yes.

3 Q Anything else where there's a link on this page
4 that you've asked them to change the content within
5 the link?

6 A Maybe something in history.

7 Q Which is also one of the far left-hand green
8 backgrounds?

9 A Right.

10 Q Anything else?

11 A Public Outreach.

12 Q What do you recall you've asked them to change
13 about that?

14 A Remove forms.

15 Q You mean take forms off the link?

16 A Right.

17 Q Anything else about Public Outreach you've asked
18 them to change?

19 A That's all I can recall without looking at it.

20 Q Anything else that's listed on this home page
21 where you asked somebody in your office to change
22 what the link -- what it says when you link?

23 MR. MOVIUS: Objection.

24 A Well, it's not when you link Public Outreach,
25 it's when you pull up Public Outreach, they had forms

1 there.

2 Q Right. Leaving the technical --

3 A I don't know what links are. Links are to other
4 agencies or offices.

5 Q Like your help link, you said if you clicked on
6 help, it would take you to other content.

7 A So now you're talking about the page itself and
8 not the row of green items.

9 Q I'm talking about anything on this home page
10 where if I click on it it will take me to some other
11 content.

12 A As far as I know, I've told you what I remember.

13 Q Nothing else?

14 A Fees change or fees were probably changed.

15 Q Anything else?

16 A The survey was put on after the survey was
17 added.

18 Q Anything else?

19 A Not that I can remember.

20 Q You had told us earlier today when you first got
21 here that your employees, as far as you can tell, are
22 diligent.

23 A Yes.

24 Q As far as you can tell, they carry out your
25 directives, correct?

1 A As far as I can tell.

2 Q And how long ago did you ask for these changes
3 to be made?

4 A Oh, they have been over the two years.

5 Q You mean periodically?

6 A Right.

7 Q Not all at once?

8 A No.

9 Q You're aware, aren't you -- well, you have to
10 be -- that the website is available to county
11 taxpayers to access from their computer?

12 A Yes.

13 Q And you're aware that voters within the county
14 can access the County Recorder's website?

15 A Voters?

16 Q People who are registered to vote like --

17 A Yes.

18 Q -- me.

19 A Yes.

20 MR. MOVIUS: Assumes facts

21 not in evidence.

22 Q And that, in fact, any citizen anywhere, and as
23 you say on your website, anywhere in the world, can
24 access this website to look at records and look at
25 what we're reading right now on the home page; isn't

1 that right?

2 A Yes.

3 Q Have you been aware in a general sense as to how
4 many visitors your website gets periodically, unique
5 visitors?

6 MR. MOVIUS: Objection.

7 A I don't know, but they have that number.

8 Q Has that number ever been communicated to you in
9 even a ballpark way?

10 A No.

11 Q And you understand, don't you, that portions of
12 your website describe the policies of your office so
13 that members of the public who access your site can
14 be informed about those policies?

15 A I'm aware that there's some policies on there,
16 yes.

17 Q And isn't the purpose of putting them on the
18 website to inform the people who visit the site?

19 MR. MOVIUS: Objection.

20 Q Isn't that why you've authorized your policies
21 to be on the website?

22 MR. MOVIUS: Objection.

23 A I didn't authorize them. They were already
24 there, I think, unless I changed something.

25 Q You understand, don't you, Miss Greene, that the

1 reason that you -- that your website that contains
2 your picture as the Cuyahoga County Recorder has
3 statements of the policy of your office is so members
4 of the public can see for themselves what your policy
5 is; isn't that right?

6 MR. MOVIUS: Objection.

7 A Yes.

8 Q That's why it's there. It's not there for any
9 purpose other than to provide information to the
10 public upon which the public can rely; isn't that
11 right?

12 MR. MOVIUS: Objection.

13 A I don't know about reliance. It's there for the
14 public's information.

15 Q It's not there to mislead the public, is it,
16 ma'am?

17 A No.

18 Q You don't intend any statement of your office's
19 policy or a description of your office to mislead
20 citizens about what you do or what you expect, do
21 you?

22 A I do not.

23 Q So it's important to you, isn't it, that the
24 website that voters, taxpayers, and other people can
25 access accurately conveys what your office does?

1 Isn't that important to you as the Recorder?

2 A Yes. But it -- yes.

3 Q You don't want to misdescribe your policies, do
4 you?

5 MR. MOVIUS: Objection.

6 A No.

7 Q And whenever you have perused or looked through
8 the content of your site and saw something that you
9 thought should be corrected, you've directed somebody
10 to correct it, haven't you?

11 A Yes. If I saw something that I thought should
12 be corrected, yes.

13 Q And if you saw information on your website that
14 you knew to be false, that's one of the things you
15 would want to have corrected, wouldn't it?

16 MR. MOVIUS: Objection.

17 A Yes.

18 MR. MARBURGER: Mr. Blanton,
19 can you scroll down enough that we
20 can click on the thing that says "To
21 read our policy statement"?

22 Q Do you see that?

23 And you'll see that on the bottom of Exhibit 3
24 as well, Miss Greene, where it says "Click here to
25 read our policy statement," Mr. Blanton has just

1 clicked on it and another page has appeared, and that
2 is what we'll mark as the next number.

3

- - - - -

4

(Exhibit Greene 4 was marked
5 for identification.)

5

6

- - - - -

7

MR. MARBURGER: And,

8

Mr. Blanton, would you scroll

9

through enough of this projection of

10

the website from your laptop so that

11

all of us can compare it to what

12

we've marked as Exhibit 4?

13

MR. MOVIUS: I'll just make a

14

general objection that the document

15

marked as Exhibit 4 is not identical

16

to what's being shown on screen.

17

MR. MARBURGER: Why don't you

18

point out to us every single thing

19

that you can see, Mr. Movius, that's

20

not the same.

21

MR. MOVIUS: All right. The

22

title at the top of the page with

23

the picture in the green bar, the

24

scrolling text, the date and time.

25

MR. MARBURGER: What's

1 different about the green bar?

2 MR. MOVIUS: It's not even on
3 Exhibit 4. I don't have a green bar
4 across the top. I don't have a
5 picture. I don't have a flag. I
6 don't have a title of the page.

7 MR. MARBURGER: Let's talk
8 about the text.

9 MR. MOVIUS: The first thing
10 I see is the time and date stamp is
11 different. There's scrolling text.

12 MR. MARBURGER: Hold on.
13 Wouldn't it be different because I
14 can't print it out at the moment
15 that he pulls it up? You know that,
16 don't you, sir?

17 MR. MOVIUS: No. I know
18 there's actually many different
19 technological ways. I'd be more
20 than happy to teach you, for
21 example, how to make a pdf copy that
22 can be displayed live so it's
23 printed exactly how you have your
24 exhibit here.

25 MR. MARBURGER: Well, we

1 would have to print it right now,
2 though.

3 MR. MOVIUS: They're not the
4 same, and I'm not going to certify
5 it for you that the text is or is
6 not identical. I'm going to make my
7 objection for the record.

8 And if you would like to go
9 through, we can compare word for
10 word here, otherwise --

11 MR. MARBURGER: We actually
12 don't have to do that.

13 MR. MOVIUS: Well, we can --

14 MR. MARBURGER: What we're
15 looking --

16 MR. MOVIUS: Hold on a
17 second. You asked me what my
18 objection was and asked me to
19 explain it, and if you would let me
20 explain it, I'll make my objection
21 and we can move on.

22 My objection is the website
23 speaks for itself. The document
24 we've marked as Exhibit 4 speaks for
25 itself. A visual inspection readily

1 shows that they are not the same.

2 I think the standing objection
3 is that each speaks for themselves
4 and they're not identical. Beyond
5 that, you can do whatever you want
6 with them.

7 BY MR. MARBURGER:

8 Q Miss Greene, look at the projection up there, if
9 you would, under your picture. It has your name next
10 to your picture, right?

11 A Right.

12 Q And it has the title "Cuyahoga County Recorder"
13 under your name, right?

14 A Yes.

15 Q And underneath that, in all capital letters, it
16 says, "Public records request policy of the Cuyahoga
17 County Recorder's Office, Lillian J. Greene,
18 Recorder."

19 It says that, right?

20 A Yes.

21 Q And those words also appear in all caps on
22 Exhibit 4.

23 A Yes.

24 Q Okay. And then underneath those on the
25 projected screen it has "Introduction" underlined and

1 in bold. Do you see that?

2 A Yes.

3 Q Do you also see that identical word and font and
4 underlining on Exhibit 4?

5 A Yes.

6 MR. MARBURGER: Now, I can,
7 if we have to do it, go word for
8 word comparing the projection with
9 what Exhibit 4 says, and if that's
10 what you're going to require me to
11 do, we'll do it.

12 If you're willing to stipulate
13 that the stated policy on Exhibit 4
14 is exactly the same verbatim as what
15 we see on the computer screen, that
16 will save us about an hour.

17 Why don't you and Miss Greene
18 meet and decide which you would
19 rather do because I will do this.

20 MR. MOVIUS: There's going to
21 be no stipulation. You can conduct
22 your --

23 MR. MARBURGER: Fine.

24 BY MR. MARBURGER:

25 Q Miss Greene, take a look --

1 MR. MOVIUS: Objection.

2 MR. MARBURGER: You can

3 object --

4 MR. MOVIUS: Hold on a
5 second.

6 MR. MARBURGER: -- but no
7 speaking objection. You have no
8 reason to speak.

9 MR. MOVIUS: I have reason to
10 speak because you offered a
11 stipulation, and I was responding to
12 it, and you'll let me respond.

13 MR. MARBURGER: You said you
14 wouldn't do it.

15 MR. MOVIUS: No.

16 MR. MARBURGER: You just
17 said you wouldn't do it.

18 MR. MOVIUS: If you would
19 listen, you'd know what my full
20 response is, but you cut me off.

21 MR. MARBURGER: No is good
22 enough for me. We'll go through
23 this.

24 BY MR. MARBURGER:

25 Q Now, Miss Greene, take a look --

1 MR. MOVIUS: Hold on a
2 second.

3 I'm going to instruct you not
4 to answer until we get the full
5 response to this on the record.

6 You can continue to ask
7 questions, but we are going to wait
8 until you provide the decency, the
9 courtesy, and follow the rules about
10 conducting a deposition with
11 civility here. You can raise your
12 voice, you can cut me off, but we're
13 not going to sit here and tolerate
14 it.

15 I would ask for more respect
16 for my witness specifically and for
17 myself. That's all I'm asking for
18 is a complete and accurate record.

19 If you want an incomplete and
20 inaccurate record to present to the
21 Ohio Supreme Court, you can
22 certainly do that, but we're going
23 to wait for the opportunity to make
24 our record so our part of the record
25 is accurate and complete because I

1 think that's what the Ohio Supreme
2 Court deserves to make its decisions
3 here.

4 BY MR. MARBURGER:

5 Q Miss Greene, take a look at the projection, and
6 under the word "Introduction" it says, "It is the
7 policy of the Cuyahoga County Recorder's Office that
8 openness leads to a better informed citizenry, which
9 leads to better government and better public policy."

10 That's what it says on the screen, doesn't it?

11 A Yes.

12 Q Isn't that also the first sentence under the
13 word "Introduction" on Exhibit 4?

14 MR. MOVIUS: Objection.

15 A Yes.

16 Q Now back to the screen. It says, "It is the
17 policy of the Cuyahoga County Recorder's Office to
18 strictly adhere to the state's Public Records Act."

19 That's the next sentence on the screen, right?

20 A Yes.

21 Q And that's also the next sentence on Exhibit 4,
22 isn't it?

23 A Yes.

24 Q Now, let's look at the next sentence on the
25 screen, "All exemptions to openness are to be

1 construed in their narrowest sense and any denial of
2 public records in response to a valid request must be
3 accompanied by an explanation, including legal
4 authority, as outlined in the Ohio Revised Code."

5 Is that not what it says on the screen --

6 MR. MOVIUS: Objection.

7 Q -- that projects from your website?

8 MR. MOVIUS: Objection.

9 MR. MARBURGER: Can you make
10 it so the screen says that?

11 Q Is that not on the screen, Miss Greene?

12 MR. MOVIUS: Objection.

13 A Yes.

14 Q Is that also not the next sentence on Exhibit
15 4?

16 MR. MOVIUS: Objection.

17 A Yes.

18 Q Now, let's skip ahead to what is probably the
19 next page on your website.

20 MR. MARBURGER: Please click
21 on the next page, Mr. Blanton, on
22 the projector.

23 MR. MOVIUS: Objection.

24 MR. MARBURGER: Let's go to
25 Section 3. Let's pull that up on

1 the projected website.

2 BY MR. MARBURGER:

3 Q Now, you have no information, do you, Miss
4 Greene, that what you see on this screen is not from
5 your website?

6 MR. MOVIUS: Objection.

7 Q You don't have any information to dispute that
8 what you see on the screen here is from your website,
9 do you?

10 MR. MOVIUS: I'm going to
11 object. At the top of the website
12 page there is a flag there
13 indicating the web browser is not
14 running the proper add-on on what's
15 being shown on the screen here.

16 MR. MARBURGER: Fine. That's
17 a speaking objection.

18 BY MR. MARBURGER:

19 Q I would like to know, Miss Greene, do you have
20 any information to dispute what you're seeing on the
21 screen here is from your website?

22 A I have no reason to dispute it.

23 Q Okay. Now, look at Section 3 there where it
24 says "Costs for Public Records."

25 Do you see that?

1 A Yes.

2 Q You see that on the screen and you also see that
3 on page 3 of Exhibit 4, don't you?

4 A Yes.

5 MR. MOVIUS: Objection

6 Q And then on the screen we see, "Those seeking
7 public records will be charged only the statutory
8 cost of making copies."

9 Do you see that?

10 A Yes.

11 Q And that's also on page 3 of Exhibit 4, isn't
12 it?

13 A Yes.

14 MR. MOVIUS: Objection.

15 Q And then on the screen we see Section 3.1, "The
16 charge for paper copies of recorded documents is \$2
17 per page."

18 That's on the screen, right?

19 MR. MOVIUS: Objection.

20 A Yes.

21 Q And that's also on page 3 of Exhibit 4, correct?

22 A Yes.

23 MR. MOVIUS: Objection.

24 Q And on the screen we see Section 3.2, "The
25 charge for copies of administrative files and

1 documents is \$.05 per page."

2 That's on the screen, right?

3 A Yes.

4 MR. MOVIUS: Objection.

5 Q And on Section 3.2 of Exhibit 4, the third page,
6 says the same thing, doesn't it?

7 MR. MOVIUS: Objection.

8 A Yes.

9 Q And then Section 3.3 on the screen says, "The
10 charge for downloaded computer files to a compact
11 disc is \$1 per disc," correct?

12 MR. MOVIUS: Objection.

13 A Is that on the screen? Yes.

14 Q Yes. And isn't that also Section 3.3 on page
15 3 of Exhibit 4?

16 MR. MOVIUS: Objection.

17 A Yes.

18 Q And then it says, Section 3.4, "There's no
19 charge for documents emailed."

20 Do you see that on the screen?

21 MR. MOVIUS: Objection.

22 A Yes.

23 Q And you see the identical words as Section 3.4
24 on page 3 of Exhibit 4, correct?

25 MR. MOVIUS: Objection.

1 A Yes.

2 Q All right. So is it fair to say as someone who
3 is familiar with your office's policy and as the
4 person who's in charge of your office policy that
5 what you see on Exhibit 4, page 3, is the policy of
6 your office?

7 MR. MOVIUS: Objection.

8 A As it appears on this website.

9 Q What we've just seen?

10 A Yes.

11 Q What we just read about costs for public
12 records, that's a policy of your office, isn't it?
13 What we've just read, Sections 3.1, 3.2, 3.3, and 3.4
14 on Exhibit 4 is the policy of the Cuyahoga County
15 Recorder's Office, right?

16 MR. MOVIUS: Objection.

17 A Yes.

18 Q Okay. Am I correct that your office would not
19 provide to Data Trace for \$1 a compact disc
20 containing all of the records recorded by your office
21 on any single day in July of 2010?

22 MR. MOVIUS: Objection.

23 A Are you correct in that?

24 Q Am I correct?

25 A Yes.

1 Q You will not.

2 If Data Trace said to you right now we will pay
3 you \$1 for a compact disc with electronic copies of
4 all the records filed on July -- on a particular date
5 in July, that your office would refuse that request
6 or offer by Data Trace?

7 MR. MOVIUS: Objection.

8 A Yes.

9 Q Can you explain why when your office policy is
10 to charge \$1 per disc for downloaded computer files,
11 why you would not provide to Data Trace for \$1 per
12 disc a day's worth of computer files?

13 MR. MOVIUS: Objection.

14 A Because Data Trace is not requesting public
15 records under the Public Records Act.

16 Q Meaning what? They have certainly cited the
17 Public Records Act.

18 A Exactly. And that is why it's denied. It is
19 not a public records request.

20 Q So when you refer to the downloaded computer
21 files as public records, you mean something other
22 than deeds?

23 I'm looking now at Section 3 of your office's
24 policy called "Costs for Public Records." "Those
25 seeking public records will be charged only the

1 statutory cost of making copies." That's the part
2 I'm talking about that's page 3 of Exhibit 4.

3 Is it your understanding then that deeds are not
4 public records?

5 MR. MOVIUS: Objection.

6 Q Is that your understanding that deeds recorded
7 by your office and indexed by your office are not
8 public records?

9 A They are documents that we're required to record
10 by statute, and they are available to the public.

11 Q Well, you've just told me, Miss Greene, that you
12 would not provide Data Trace with a compact disc of
13 downloaded deeds, mortgages, and other records
14 recorded and indexed by your office for a \$1 because
15 they don't qualify as public records. Isn't that
16 what you told us?

17 MR. MOVIUS: Objection.

18 A I said they don't qualify -- the request does
19 not qualify under the Public Records Act.

20 Q Well, where it says on Section 3, "Costs for
21 Public Records," do you mean these costs to apply to
22 something other than deeds?

23 MR. MOVIUS: Objection.

24 Q Where it says "Costs for Public Records" on your
25 Section 3 of your own policy, would this schedule of

1 costs not apply to deeds?

2 A Yes, it applies to deeds.

3 Q Do you understand that Data Trace would like
4 electronic copies of deeds downloaded onto a compact
5 disc? Do you understand that that's what they would
6 like to have?

7 MR. MOVIUS: Objection.

8 A They requested these under the Public Records
9 Act and what they're asking does not meet that
10 definition.

11 Q Wait a minute. Is there some act that they
12 could request a download of your recorded deeds,
13 mortgages, and the like that in your view as the
14 Recorder would qualify under Section 3.3 as \$1 per
15 disc, downloaded computer files at \$1 per disc?

16 What would be the -- what legal authority could
17 they use to qualify under Section 3.3 to get deeds,
18 mortgages, and the like downloaded onto a compact
19 disc for a \$1 per disc?

20 MR. MOVIUS: Objection.

21 A I don't understand your question.

22 Q What don't you understand?

23 MR. MOVIUS: Objection.

24 Q Go ahead. What don't you understand?

25 A This section on the website refers to public

1 record requests.

2 Q Didn't Data Trace make a public records request?

3 A No.

4 Q Well, does this Section 3 on your website,
5 "Costs for Public Records," refer to records
6 requested under Revised Code 149.43?

7 A You mean is it cited here?

8 Q Do you understand that your policy, "Costs for
9 Public Records," is a policy that governs requests
10 made under Revised Code 149.43, the Public Records
11 Act?

12 MR. MOVIUS: Perhaps it will
13 go a little faster if you lowered
14 your voice and talked a little bit
15 slower.

16 MR. MARBURGER: Please.

17 MR. MOVIUS: You're leaning
18 in and antagonizing the witness.

19 BY MR. MARBURGER:

20 Q Miss Greene, you're an experienced judge and a
21 fantastically popular public official. Do I
22 intimidate you?

23 MR. MOVIUS: Objection

24 A You don't intimidate me.

25 MR. MOVIUS: I have fluid

1 buildup in my ears right now and
2 you're giving me a headache.

3 MR. MARBURGER: You can sit
4 over in the corner if you want to.

5 MR. MOVIUS: Thank you.

6 BY MR. MARBURGER:

7 Q Here's my question, Miss Greene -- and I think
8 we both realize the dilemma here -- we've got a
9 policy that says that your office will charge for
10 downloaded computer files to a compact disc of \$1 per
11 disc, and that's part of your office's policy of fees
12 that you'll charge for copies of public records,
13 right? Am I accurate so far?

14 MR. MOVIUS: Objection as to
15 "dilemma."

16 MR. MARBURGER: Oh, please.

17 MR. MOVIUS: You're welcome.

18 Q Am I right?

19 Doesn't this policy, Section 3, "Costs for
20 Public Records," refer to records that -- fees that
21 your office charges for people that want copies of
22 records that your office keeps? Isn't that right?

23 MR. MOVIUS: Objection.

24 A These are fees for requests under the Public
25 Records Act.

1 Q Did you not understand Data Trace to make a
2 request under the Public Records Act?

3 A They did not.

4 MR. MOVIUS: Objection

5 Q How do you figure they did not?

6 MR. MOVIUS: Objection.

7 Q I mean, do we have to pull out -- let's look --
8 if they did not, let's look at --

9 MR. MOVIUS: Do you want to
10 use the one that's marked with an
11 exhibit or the one with my notes on
12 it?

13 Q Jeez. Here's Exhibit 1 to the complaint. Does
14 it not cite Revised Code 149.43? The third
15 paragraph, "Under Revised Code 149.43 (B) (6), please
16 provide copies in electronic form on a compact disc
17 (CD)."

18 Now, you understand that sentence to be
19 referring to invoking the Public Records Act, don't
20 you?

21 A I do.

22 Q How do you figure that Data Trace, whose request
23 we just read from, was not invoking the Public
24 Records Act?

25 A Because the information they're requesting is

1 not subject of the Public Records Act.

2 Q What information did you think they were
3 requesting?

4 A What you're asking for, daily work from July and
5 August of 2010.

6 Q But don't you understand that daily work --
7 wasn't it always clear to you that all documents
8 publicly recorded in the County Recorder's office in
9 the months of July and August 2010, which I'm quoting
10 from Exhibit 1, would include every deed that you
11 recorded in those days? Wouldn't you understand
12 that?

13 MR. MOVIUS: Objection.

14 A Yes. That has nothing to do with my answer.

15 Q Let's try it this way. You understood, didn't
16 you, that the October 5 request by Data Trace, a copy
17 of which is Exhibit 1 to the complaint, asks for
18 records recorded by the Recorder's office in July and
19 August which necessarily would include whatever deeds
20 your office recorded, right?

21 A Records of those months?

22 Q Yes. You understood that if you recorded a deed
23 during those months, they were asking for an
24 electronic copy of that, right?

25 MR. MOVIUS: Objection.

1 A The letter asks for electronic copies of all
2 documents recorded in July and August of 2010. Yes.

3 Q And so if you recorded a mortgage in those
4 months, you understood Data Trace was asking for that
5 too, right?

6 A Yes. Whatever was recorded that was --

7 Q And the things that you typically --

8 MR. MOVIUS: Please allow her
9 to answer in full before you ask
10 your next question.

11 MR. MARBURGER: I'm with you
12 on that.

13 A Whatever was recorded that was permitted.

14 Q And the kinds of things that your office
15 customarily recorded are deeds, right?

16 A Right.

17 Q Mortgages, right?

18 A Correct.

19 Q Leases, right?

20 A Yes.

21 Q Uniform commercial code filings?

22 A Yes.

23 Q Powers of attorney?

24 A Yes.

25 Q You understand all those to be public records,

1 don't you?

2 A They are public documents, yes, available to the
3 public. They are documents available to the public.

4 Q Do you understand them to be then not public
5 records under the Public Records Act?

6 A Exactly.

7 Q That the Public Records Act -- that under the
8 Public Records Act a deed is not a public record? Is
9 that your understanding?

10 A Your deed, for example, would not be, no.

11 Q And, therefore, if my mortgage was recorded with
12 your office, that's not a public record under the
13 Public Records Act either?

14 A No.

15 Q Okay. And if a uniform commercial code filing
16 is recorded with your office, that's not a public
17 record under the Public Records Act either?

18 A Under the Act, no.

19 Q Now, I notice that you say that the charge for
20 paper -- Section 3.1, "The charge for paper copies of
21 recorded documents is \$2 per page." That's under
22 Exhibit 4, your policy for public records.

23 So is it your understanding then that the charge
24 for paper copies of recorded documents at \$2 a page
25 is, in fact, not a charge for copies of public

1 records as that term is used under the Public Records
2 Act; is that right?

3 MR. MOVIUS: Objection.

4 A I don't understand your question.

5 Q Let's look at Section 3, "Costs for Public
6 Records." Now, the term "public records" there, am I
7 to understand that that does not mean public records
8 as that term is used in the Public Records Act?

9 MR. MOVIUS: Objection.

10 A I don't believe that that section should be in
11 this -- I don't think that \$2 per page should be
12 there.

13 Q Because the \$2 per page applies to recorded
14 records, recorded documents, correct?

15 A Right.

16 Q And in your view, then, that is misplaced in
17 this policy because recorded documents are not public
18 records as that word is used in the Public Records
19 Act. Have I stated your position correctly?

20 A May or may not be, yes. A deed, as you said
21 before.

22 Q Is not a public record?

23 A Right.

24 Q And so Section 3.1 really doesn't belong in this
25 part of your policy; is that right?

1 A I don't believe it does.

2 Q But up to this point you never asked anybody to
3 alter the way the policy is written, have you?

4 A No, I have not, on the website.

5 Q I understand. Have you asked somebody to alter
6 it somewhere else?

7 A Yes.

8 Q Where?

9 A In the office.

10 Q What do you mean?

11 A The Public Records Act requires us to post it in
12 the office.

13 Q Post what?

14 A The requirements of the Act --

15 Q Yes.

16 A -- that was changed to comply with what it
17 should say in the office, the posting in the office.

18 Q You mean that's available to the public if they
19 just walk in?

20 A Right.

21 MR. MARBURGER: Would you
22 give Carl a call and have him go get
23 that and then come on back?

24 BY MR. MARBURGER:

25 Q So is it your view then that when Section 3.3

1 says, "The charge for downloaded computer files to a
2 computer disc is \$1 per disc," that only applies to
3 records that are not recorded with the Recorder's
4 office but otherwise kept by your office; is that
5 right?

6 MR. MOVIUS: Objection.

7 A They are records that meet the definition under
8 the Public Records Act.

9 Q Which would not be deeds?

10 A Could be.

11 Q How could it be deeds?

12 A An example, if someone had a deed in their file.

13 Q You mean in their personnel file?

14 A Right.

15 Q So it's your view then -- it's your
16 understanding that this policy of your office is that
17 the only downloaded computer files that Section 3.3
18 would apply to would be to administrative type
19 records, records of how you would administer the
20 Recorder's office, such as personnel type records,
21 payroll type records, that sort of thing?

22 A Yes. Whatever is covered under the definition
23 under the Act.

24 Q Well, leaving the Act out of it, I'm talking
25 about generically the kinds of -- to make it more

1 clear, do you see Section 3.2 says, "The charge for
2 copies of administrative files and documents is \$.05
3 per page"? Do you see that?

4 A Yes.

5 Q That's the policy of your office, right?

6 A Yes.

7 Q And administrative files and documents, it would
8 be records that you keep to administer the personnel
9 and the facilities of the Recorder's office, right?

10 MR. MOVIUS: Objection.

11 A Right.

12 Q Like your electric bills, right? Or your
13 personnel records, right?

14 A Personnel records, yes.

15 Q Or, you know, records on how you manage the
16 facility or your office, right?

17 A Right.

18 Q But it would not include the records that you
19 record as part of your duty as the Recorder to record
20 records; is that right?

21 A Yes.

22 Q And so the charge for downloaded computer files
23 to a compact disc -- the computer files that that
24 Section 3.3 refers to would be no broader in scope
25 than the administrative files that Section 3.2 refers

1 to; is that correct?

2 A Some information may be on a computer, maybe a
3 computer file --

4 Q What I mean is --

5 A -- and some information may be paper.

6 Q Well, what I'm referring to is your policy for
7 downloaded computer files to a compact disc, Section
8 3.3, applies only to those records -- those computer
9 files that would document how you administer your
10 personnel in your office, but would not include
11 downloading records that you record as the Recorder
12 and index as the Recorder; is that true?

13 A Yes.

14 Q And do you think that any member of the public
15 reading Section 3.3 would understand that simply by
16 reading Section 3?

17 MR. MOVIUS: Objection.

18 Q Is that open and obvious to us citizens?

19 MR. MOVIUS: Objection.

20 A I don't know. We're required to post the
21 policy.

22 Q How many times has it come to your attention as
23 the Recorder that somebody wanted downloaded to a
24 compact disc computer files of your administrative
25 records? How many times has that come to your

1 attention since you've been the Recorder?

2 A None, because we have none.

3 Q Well, you have administrative records, don't
4 you?

5 A You just said on computer discs.

6 Q So none of your administrative records are on
7 computer files; is that true?

8 A Right.

9 Q So your personnel records are paper records?

10 A Exactly.

11 Q And your internal memoranda are paper?

12 Memoranda between you and your subordinates are on
13 paper?

14 A Yes. Or could be email.

15 Q Well, email is not on paper unless you print it,
16 right?

17 MR. MOVIUS: Objection.

18 A It's not on a computer disc.

19 Q Well, I'm talking about Section 3.3 which says
20 the charge for downloaded computer files.

21 A Right.

22 Q So if I bring in a compact disc that's blank and
23 I said, "Would you please download computer files to
24 me of your evaluations of your personnel if you have
25 any" -- are those evaluations -- do you have

1 evaluations of your subordinates?

2 A No, I don't.

3 Q Does your office -- does anybody in your office
4 evaluate the performance?

5 A No.

6 Q Nobody does. How do you evaluate whether your
7 employees are doing a good job? How do you keep a
8 record of whether your employees are doing a good job
9 or not?

10 A I have not instituted a system of evaluation
11 because I'm not going to be there.

12 Q Okay. Give me generically what kind of
13 administrative records do you keep that Section 3.2
14 of your policy would tend to cover.

15 A Personnel files.

16 Q What else?

17 A Memos.

18 Q What else?

19 A Administrative files, monthly reports.

20 Q What are monthly reports in a nutshell?

21 A The data from each department. The numbers of
22 documents they process and so on.

23 Q What else?

24 A Notes on -- I can't think of any other
25 administrative files. Maybe some -- I said memos,

1 right?

2 Q You must have a budget.

3 A Yeah. I'm getting ready to say maybe itemized
4 budget items.

5 Q And you must have invoices from vendors.

6 A Yes. In the office. I'm sorry. I'm only
7 thinking about my office.

8 Q I'm talking about the Recorder's office.

9 A Yes, there are invoices.

10 Q So you have invoices and you have records of
11 paying invoices, right?

12 A Right. And contracts.

13 Q Contracts. These are all -- now, your memos,
14 are they typically on paper or typically digital?

15 A On paper.

16 Q Your personnel files, are they typically on
17 paper or typically digital?

18 A Paper.

19 Q Your monthly reports, are they typically on
20 paper?

21 A Paper.

22 Q Your budget records, is that typically paper?

23 A Both.

24 Q Invoices, they must come in via paper, don't
25 they?

- 1 A They're paper, yes.
- 2 Q Contracts, paper? You got to sign them.
- 3 A Some paper and some on the computer now.
- 4 Q Well, when you sign --
- 5 A When I start -- I never signed a contract.
- 6 Q You don't sign contracts?
- 7 A No.
- 8 Q Does someone with your authority sign contracts?
- 9 A In my office? That's not really the process. I
- 10 can approve -- I think the process was an RFP and all
- 11 that, but we get it approved by the Board of
- 12 Commissioners.
- 13 Q RFPs, when they come in, are they typically
- 14 electronic?
- 15 A They are now, since I've been there.
- 16 Q Had they been paper?
- 17 A They were paper prior to, yes.
- 18 Q How many times since you've been the Recorder --
- 19 and forgive me if I've asked this before, but now
- 20 that we have a little clarity of what kinds of
- 21 records you keep, memos, personnel files, monthly
- 22 reports, budget records, invoices, contracts -- it's
- 23 fair to call those administrative files; is that
- 24 true?
- 25 A I would.

1 Q Now, how many times has your office experienced,
2 to your knowledge, either hearsay or otherwise, where
3 somebody said, "Please download those administrative
4 kinds of records, memos, personnel files, monthly
5 reports, budgets, invoices, contracts, to CDs" --

6 A Never.

7 Q -- "compact discs"?

8 A Never.

9 Q How did it come about that you decided -- that
10 your office decided that Section 3.3 would be a
11 policy of your office?

12 A That came from a seminar held by the Secretary
13 of State and the Attorney General regarding the
14 Public Records Act.

15 Q Did you attend that seminar?

16 A I did not. A representative from the office.

17 Q And so a representative from the office
18 recommended that you adopt a \$1 per disc for compact
19 disc charge for downloaded computer files?

20 A No.

21 Q Then explain. How did it come about?

22 A It came from the seminar on the policy, on the
23 Act.

24 Q Yeah, but explain, how does it come from the
25 seminar?

1 A There was a form that was handed out to the
2 participants in the seminar on what should be in your
3 policy on public records.

4 Q And so Section 3.3 was derived from the
5 information provided by the AG's office?

6 A And the Secretary of State.

7 Q And the Secretary of State's office.

8 A I mean Auditor. State Auditor

9 Q The Auditor. I just want to make sure --

10 A Mary Taylor, Auditor.

11 Q That's where Section 3.3 came from, information
12 provided by the Auditor's office?

13 A From that seminar.

14 Q From that seminar.

15 MR. MARBURGER: Okay. Thank
16 you. All done.

17 MR. MOVIUS: We will read.

18 - - - - -

19 (Deposition concluded at 4:35 p.m.)

20 - - - - -

21

22

23

24

25

Lillian J. Greene

The State of Ohio,)
) SS: CERTIFICATE
 County of Cuyahoga.)

I, Rebecca L. Brown, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named LILLIAN J. GREENE was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

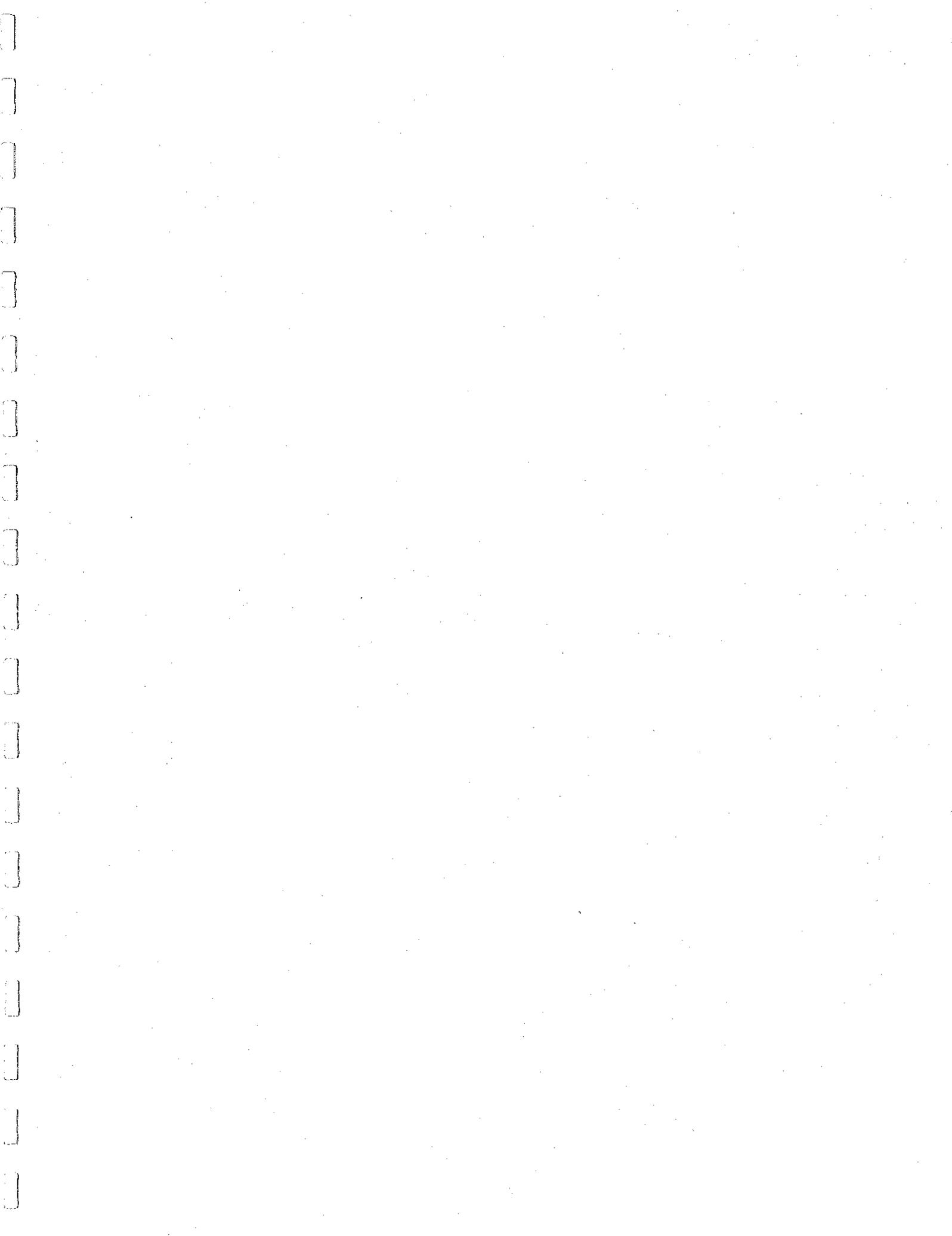
I do further certify that I am not a relative, employee of, or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney for any of the parties in the above-captioned action; I am not financially interested in the action; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D); nor am I otherwise interested in the event of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 12th day of January, 2011.



Rebecca L. Brown, Notary Public
 in and for the State of Ohio.

My commission expires 6/5/15.





First American
Data Tree



October 5, 2010

VIA FEDERAL EXPRESS

Lillian J. Greene, Cuyahoga County Recorder
Cuyahoga County Recorder's Office
1219 Ontario Street
Cleveland, Ohio 44113

Re: *Public Records Act Request*

Dear Ms. Greene:

On behalf of First American Data Tree LLC ("Data Tree") and Data Trace Information Services LLC ("Data Trace"), I am writing to request, under the Ohio Open Records Act, R.C. 149.43, electronic copies of all documents publicly recorded in the Cuyahoga County Recorder's Office in the months of July and August 2010. I understand that these documents are currently maintained by your office in electronic form. Data Tree and Data Trace do not object to you not producing military discharges recorded during those two months.

Alternatively, if it would be less work for you to provide us with electronic copies of only the first 100 documents publicly recorded on each day of July and August, 2010, we are willing to accept electronic copies of only those documents in lieu of electronic copies of every document publicly recorded in July and August, 2010.

Under R.C. 149.43(B)(6), please provide copies in electronic form on a compact disc (CD). Please produce the electronic copies in a format that does not modify the original document, and without any type of watermark image.

Your office has a policy or practice of imposing a charge for all copies of recorded documents, whether imaged or paper, of \$2.00 per page or image. This policy is contrary to Ohio law. Ohio Revised Code § 317.32(I) provides that only *photocopies*, i.e., *paper* copies of recorded documents, are subject to the \$2.00 per page copy fee. Conversely, electronic images and other *nonpaper* copies of recorded documents are subject to the general "at cost" standard under R.C. 149.43(B)(1).

Before adopting its current non-conforming policy, your office had provided electronic copies each day. Your office provided them on CD for a copying charge of \$50 per CD. Although that fee exceeds the maximum allowed under the Public Records Act, Data Tree and Data Trace are willing to resume paying it.

4 First American Way, Santa Ana, California 92707

10-01988



Lillian J. Greene, Cuyahoga County Recorder
October 5, 2010
Page 2

If your office seeks to impose a higher fee, we will insist that your office charge no more than the actual cost to your office of producing the requested electronic images. Accordingly, please consider this letter a formal demand that your office immediately amend its public record fee policy and practice to comply with Ohio law.

Finally, if you deny any part of this request, under R.C. 149.43(B)(3), please provide me with a written explanation, including legal authority, justifying your denial.

Sincerely,



Michael Stutzman

Operations Manager

7340 Shadeland Station Suite #125

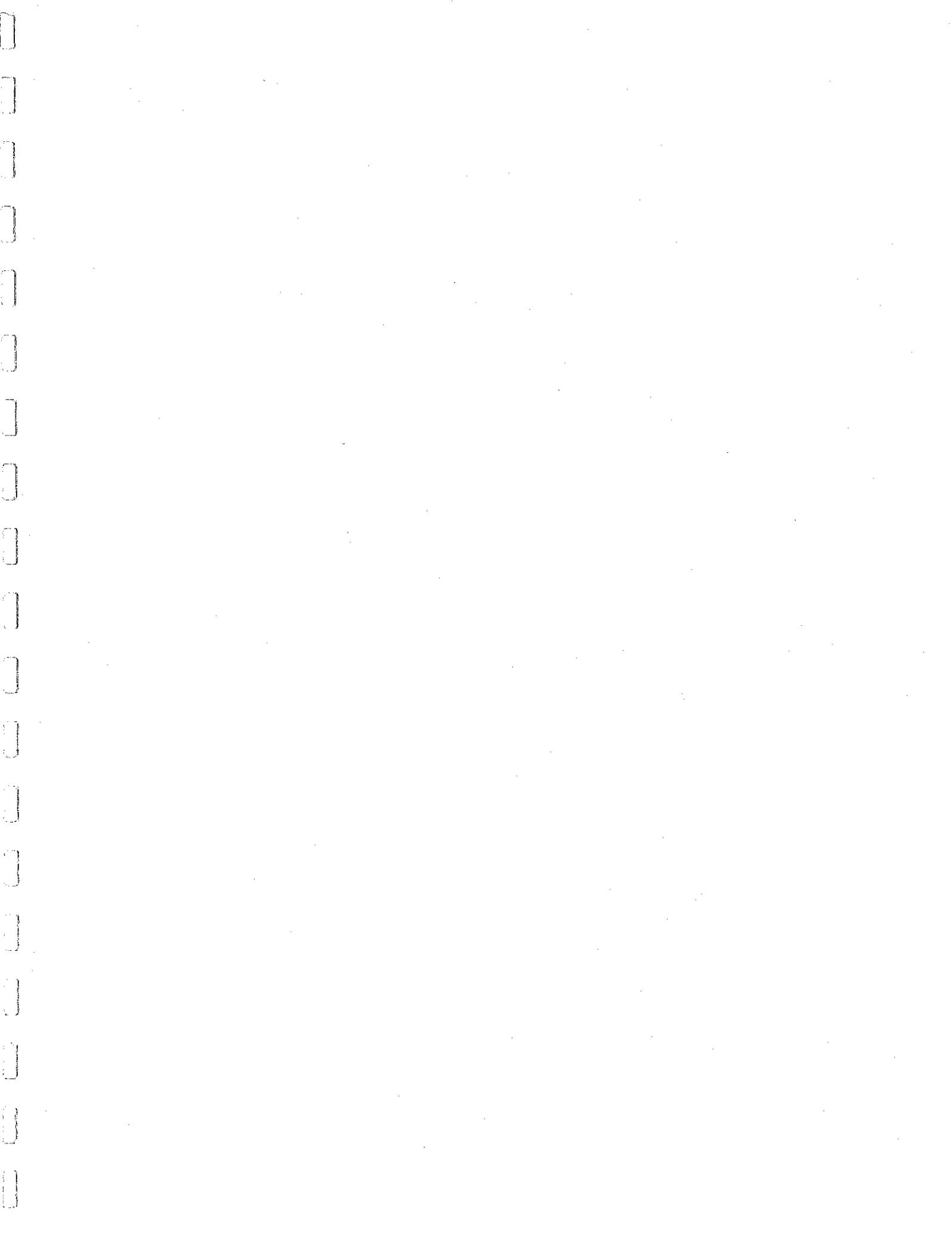
Indianapolis, Indiana 46256

Telephone (317) 863-2453 Cell (216) 780-4949

Fax (317) 598-8521

Email mstutzman@edatatrace.com

10-01988



Direct Dial: 216.430.2029
E-mail: dmovius@mcdonaldhopkins.com

P 216.348.5400
F 216.348.5474

November 16, 2010

By E-Mail and U.S. Mail

David Marburger, Esq.
Baker & Hostetler LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, Ohio 44114-3482

Re: *State ex rel Data Trace Info. Svcs., LLC, et al. v. Recorder of Cuyahoga County, Ohio*
Ohio Supreme Court Case No. 10-1823

Dear Mr. Marburger:

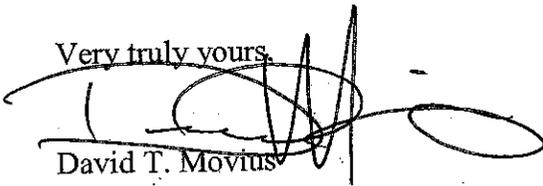
I have been retained as special counsel on behalf of the Cuyahoga County Recorder for the mandamus action initiated in the Ohio Supreme Court by Relators Data Trace Information Services, LLC and Property Insight, LLC (Case No. 10-1823). Accordingly, please direct all future correspondence regarding this matter to my attention.

I confirm the Cuyahoga County Recorder's prior responses that it will provide the requested materials upon payment of the statutory fees required under R.C. 317.32. The Ohio Open Records Act does not exempt Relators from paying those fees because the requested materials do not "document the organization, functions, policies, decisions, procedures, operations, or other activities of the office," and because RC 317.32 otherwise constitutes a legislative finding on the "actual cost" of providing the requested materials.

Also, the November 18, 2010 deposition of Larry Patterson will not go forward as noticed. That notice is untimely since an alternative writ setting a schedule has not issued. Moreover, I am unavailable on that date because the Cuyahoga County Recorder's answer is also due that day. We can discuss what discovery, if any, is warranted once the Court sets a schedule for this action.

Please feel free to contact me at your convenience if you would like to discuss this matter.

Very truly yours,

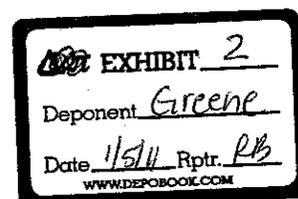

David T. Movius

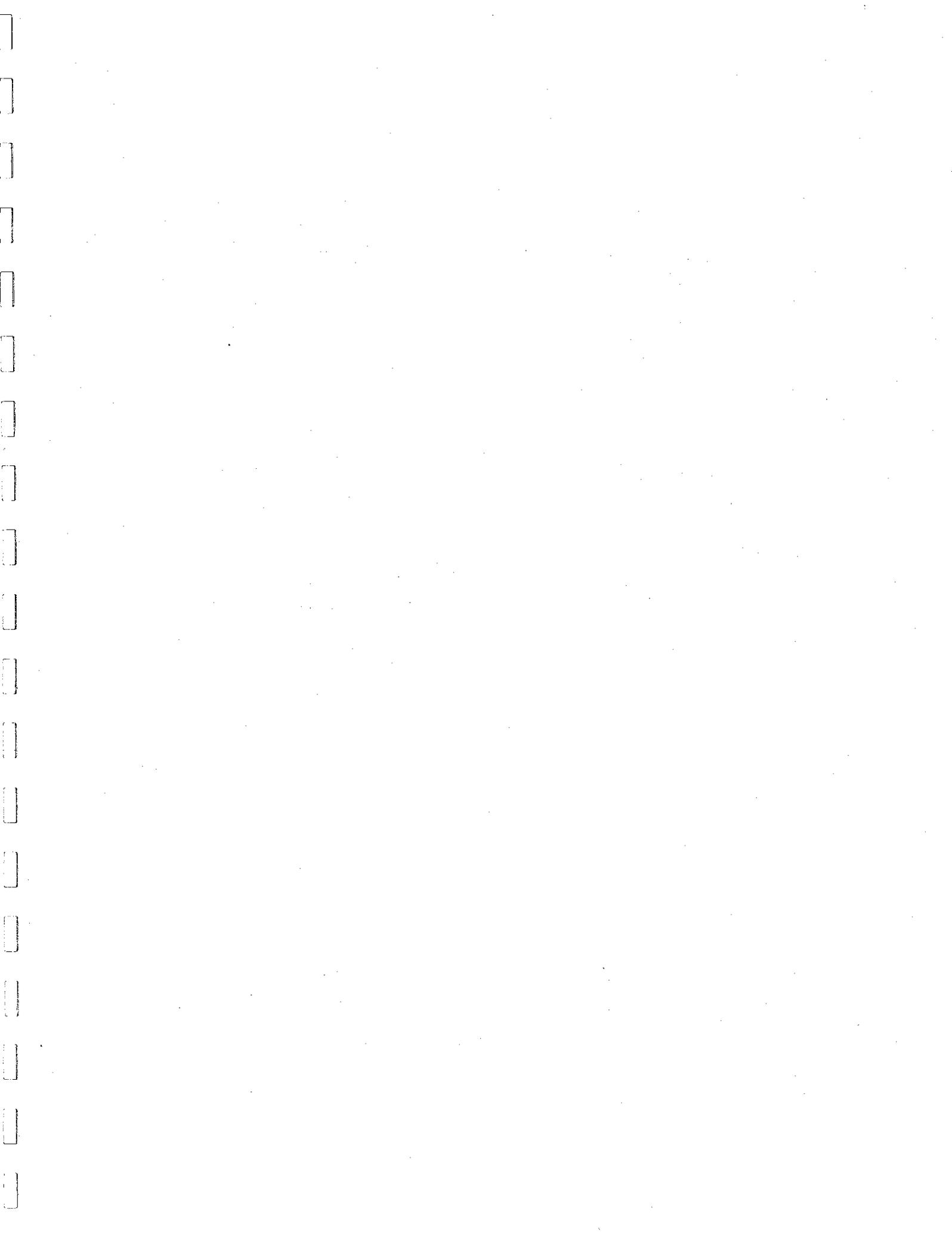
cc: The Honorable Lillian Green, Cuyahoga County Recorder
David Lambert, Esq.
Matthew Cavanagh, Esq.

{2475704:}

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LILLIAN J. GREENE

Cuyahoga County Recorder

1:16:26 PM Wed, Jan 5th

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Welcome to the Web Site for the Cuyahoga County Recorder's Office.

The Standardization of Forms law has changed as of December 28, 2009. You may select the above link or call the Recorders Public Information Department at 216.443.5898 for further details.

This site is provided to allow the citizens of Cuyahoga County, and the world, access to information housed at our office. Here you will find data on all the documents filed at the Recorder's office from 1810 until present day. You will discover that this site is the most comprehensive land data base in the world. We have endeavored to make your visit to our web site as "user-friendly" as possible and we are constantly working to improve user interaction.

You are able to search for a document by various criteria, and then view an image of the original document as it is stored in our state-of-the-art database system. To perform a search of the database, click the [Search Database](#) link.

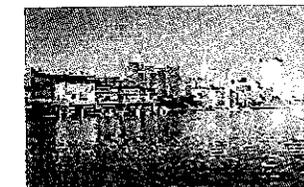
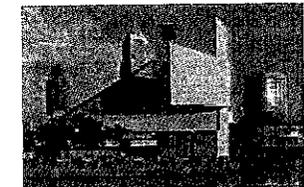
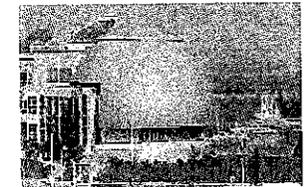
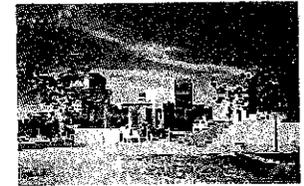
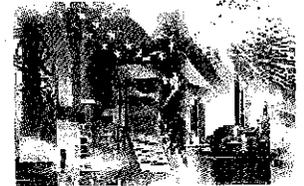
Also available is help on the terminology and verbiage used in the recording of documents. If you have any questions about this site or its content, click on the [Help](#) link.

Above all, we at the Recorder's office are looking for better ways to serve our clients. If you would like us to respond to your questions, select this [Contact](#) link and call us at any of the telephone numbers that are listed.

The use of automatic extraction methods from this site is considered abusive. If you or your company utilizes this method you may be banned without notice.

Notice: The Cuyahoga County Recorder's does not accept cover

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- Information ▶
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- Links
- Veteran Grave Sites
- Forms
- Survey
- Fees & Filings
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PUBLIC RECORDS REQUEST POLICY

OF

THE CUYAHOGA COUNTY RECORDER'S OFFICE

LILLIAN J. GREENE, RECORDER

Introduction:

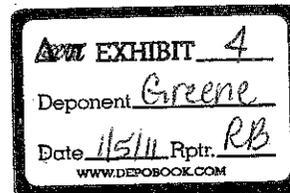
It is the policy of the Cuyahoga County Recorder's Office that openness leads to a better informed citizenry, which leads to better government and better public policy. It is the policy of the Cuyahoga County Recorder's Office to strictly adhere to the state's Public Records Act. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code. If the request is in writing, the explanation must also be in writing.

Section 1. Public records

This office, in accordance with the Ohio Revised Code, defines records as including the following: Any document – paper, electronic (including, but not limited to, e-mail), or other format – that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. All records of the Cuyahoga County Recorder's Office are public unless they are specifically exempt from disclosure under the Ohio Revised Code.

Section 1.1

It is the policy of the Cuyahoga County Recorder's Office that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying (See Section 4 for the e-mail record policy). Record retention schedules are to be updated regularly and posted prominently.



Section 2. Record requests

Each request for public records should be evaluated for a response using the following guidelines:

Section 2.1

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If it is not clear what records are being sought, the records custodian must contact the requester for clarification, and should assist the requestor in revising the request by informing the requestor of the manner in which the office keeps its records.

Section 2.2

The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. It is this office's general policy that this information is not to be requested.

Section 2.3

Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

Section 2.4

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes (both in draft and final form), budgets, salary information, forms and applications, personnel rosters, recorded documents, etc. If fewer than 20 pages of copies are requested or if the records are readily available in an electronic format that can be e-mailed or downloaded easily, these should be made as quickly as the equipment allows.

All requests for public records must either be satisfied (see Section 2.4) or be acknowledged in writing by the (public office) within a reasonable time following the office's receipt of the request. If a request is deemed significantly beyond "routine," such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include the following:

Section 2.4a – An estimated number of business days it will take to satisfy the request.

Section 2.4b – An estimated cost if copies are requested.

Section 2.4c – Any items within the request that may be exempt from disclosure.

Section 2.5

Any denial of public records requested must include an explanation, including legal authority. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

Section 3. Costs for Public Records

Those seeking public records will be charged only the statutory cost of making copies.

Section 3.1 The charge for paper copies of recorded documents is \$2.00 per page.

Section 3.2 The charge for copies of administrative files and documents is \$.05 per page.

Section 3.3 The charge for downloaded computer files to a compact disc is \$1.00 per disc.

Section 3.4 There is no charge for documents e-mailed.

Section 3.4

Requesters may ask that documents be mailed to them. They will be charged the actual cost of the postage and mailing supplies.

Section 4. E-mail

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. E-mail is to be treated in the same fashion as records in other formats and should follow the same retention schedules.

Section 4.1 – Records in private e-mail accounts used to conduct public business are subject to disclosure, and all employees or representatives of this office are instructed to retain their e-mails that relate to public business (see Section 1 Public Records) and to copy them to their business e-mail accounts and/or to the office's records custodian.

Section 4.2 – The records custodian is to treat the e-mails from private accounts as records of the public office, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

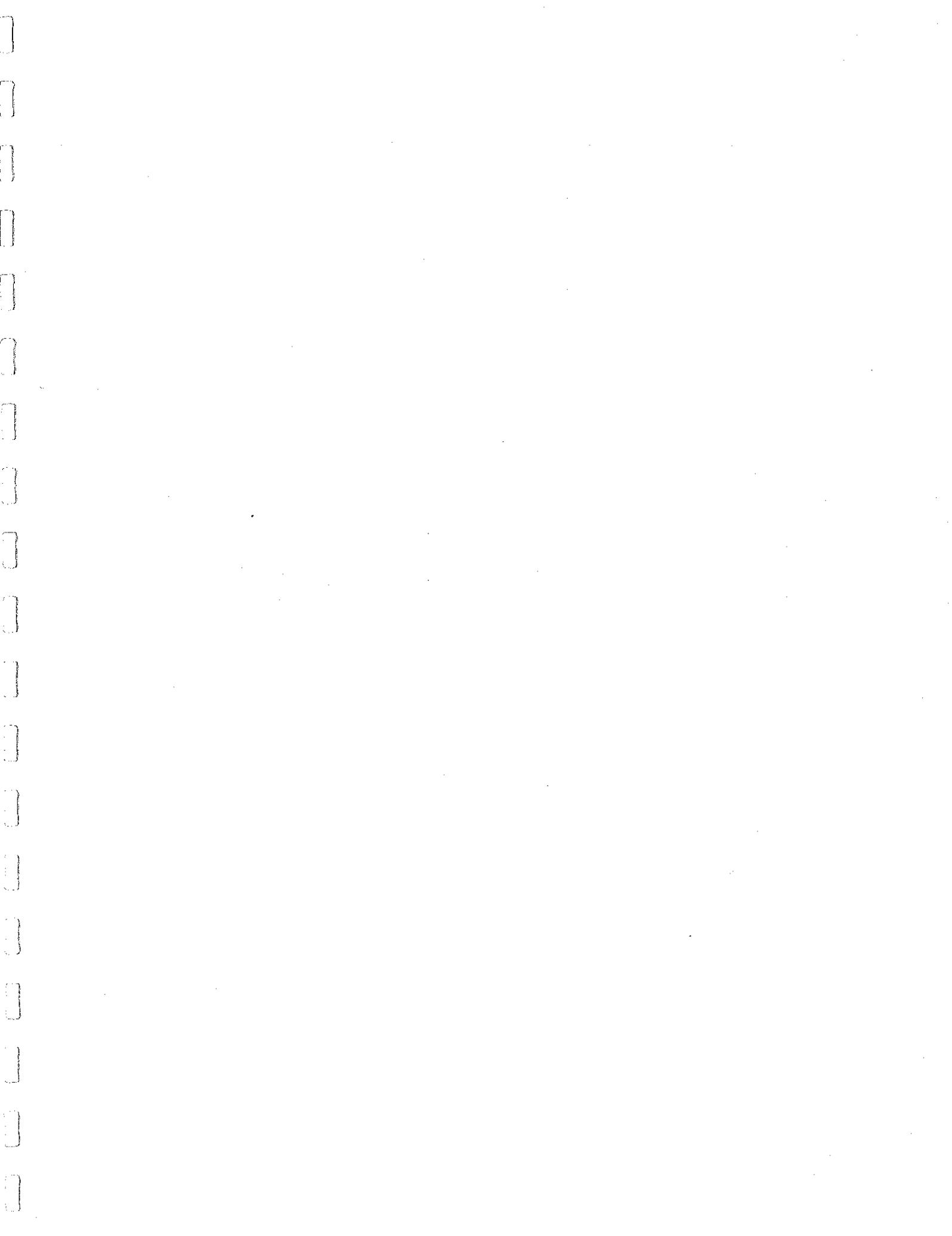
Section 5. Failure to respond to a public records request

The Cuyahoga County Recorder's Office recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the Cuyahoga County Recorder's Offices' failure to comply with a request may result in a court ordering the Cuyahoga County Recorder's Office to comply with the law and to pay the requester attorney's fees and damages.

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BEFORE THE OHIO SUPREME COURT

STATE EX REL. DATA TRACE)
LLC, ET AL.,)
Relator(s),)
vs.) Case No. 10-2029
RECORDER OF CUYAHOGA)
COUNTY, OHIO,)
Respondent(s).)

DEPOSITION OF JOHN KANDAH
Friday, January 28, 2011

Deposition of JOHN KANDAH, called by the Relators
for examination under the Ohio Rules of Civil
Procedure, taken before me, the undersigned, Cheryl L.
Baker, RPR, a Notary Public in and for the State of
Ohio, at the offices of Baker Hostetler, 1900 East
Ninth Street, Suite 3200, Cleveland, Ohio, commencing
at 1:40 p.m. the day and date above set forth.



COURT REPORTERS
& VIDEOCONFERENCE

The IMG Center
1360 East 9th St · Suite 1010
Cleveland, OH 44114
phone: 216.241.5950
toll free: 866.241.5950

APPEARANCES:

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600 Superior Avenue East
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Cleveland, OH 44114
216-348-5400
dmovius@mcdonaldhopkins.com

EXAMINATION INDEX

John Kandah

CROSS BY MR. MARBURGER 5

EXHIBIT INDEX

Deposition

Marked

5 Cuyahoga County Recorder's Office
Public Records Policy

69

OBJECTION INDEX

BY MR. MOVIUS	6
BY MR. MOVIUS	8
BY MR. MOVIUS	15
BY MR. MOVIUS	25
BY MR. MOVIUS	27
BY MR. MOVIUS	28
BY MR. MOVIUS	42
BY MR. MOVIUS	43
BY MR. MOVIUS	44
BY MR. MOVIUS	45
BY MR. MOVIUS	47
BY MR. MOVIUS	53
BY MR. MOVIUS	54
BY MR. MOVIUS	55
BY MR. MOVIUS	55
BY MR. MOVIUS	57
BY MR. MOVIUS	58
BY MR. MOVIUS	60
BY MR. MOVIUS	61
BY MR. MOVIUS	61
BY MR. MOVIUS	62
BY MR. MOVIUS	63
BY MR. MOVIUS	63
BY MR. MOVIUS	64
BY MR. MOVIUS	64
BY MR. MOVIUS	65
BY MR. MOVIUS	65
BY MR. MOVIUS	66
BY MR. MOVIUS	66
BY MR. MOVIUS	67
BY MR. MOVIUS	67
BY MR. MOVIUS	68
BY MR. MOVIUS	68
BY MR. MOVIUS	69
BY MR. MOVIUS	69

1

JOHN KANDAH

2

A Witness herein, called by the Relators for

3

cross-examination under the Ohio Rules of Civil

4

Procedure, after having been first duly sworn, as

5

hereinafter certified, was examined and testified as

6

follows:

7

CROSS-EXAMINATION

8

BY MR. MARBURGER:

9

Q Would you state your name for the record,

10

please.

11

A John Kandah.

12

Q And your last name is K-a-n-d-a-h?

13

A Correct.

14

Q Do you have a title --

15

A I'm chief of staff.

16

Q You have to let -- you can't talk while I'm

17

talking because she can't get it when -- she has to

18

write down what we say.

19

A All right. I'm sorry.

20

Q So you kind of have to wait till I'm done, and I

21

have to wait till you're done.

22

A Okay.

23

Q Did you join the Recorder's Office in November of

24

2008?

25

A Correct.

1 Q And before that, did you work for the County
2 Department of Children and Family Services?

3 A That's correct.

4 Q What did you do in that department?

5 A I was a supervisor.

6 Q Of what?

7 A Independent living department.

8 Q Is that for either the disabled or the elderly
9 that have to --

10 A They were for teens who were about to age out of
11 the system.

12 Q Did you have responsibilities from an
13 administrative standpoint similar to what you have in
14 the Recorder's Office where you administer how a
15 department or agency runs?

16 MR. MOVIUS: Objection.

17 MR. MARBURGER: What's the
18 problem with that question? How
19 would I rephrase? What's your
20 objection to it?

21 MR. MOVIUS: Assumes facts not
22 in evidence.

23 Q In that job, did you have administrative duties?

24 A Yes.

25 Q Are they similar to the kinds of administrative

1 duties you have today?

2 A Some aspects.

3 Q Like what aspects?

4 A Personnel issues.

5 Q What's personnel -- I'm merely asking you to
6 articulate what you mean by that.

7 A We would -- my job was to oversee a department,
8 and make sure the employees were all doing the work
9 that they were hired to do, and to monitor the work
10 flow, write policy for the department, for the agency
11 pertaining to my position. And basically to supervise
12 the staff to make sure they were where they were
13 supposed to be, and those types of things.

14 Q In a general sense, do those same duties apply to
15 you in the Recorder's Office?

16 A Yes.

17 Q Were you hired in November of 2008 to be chief of
18 staff in the Recorder's Office?

19 A Yes.

20 Q So you've held the same position throughout your
21 tenure at the Recorder's Office?

22 A Yes.

23 Q And did Lillian Greene hire you?

24 A Yes.

25 Q About how many employees are there in the

1 Recorder's Office today, if you know how many?

2 A 68, the best of my knowledge.

3 Q And has that number of employees been roughly the
4 same throughout your tenure as chief of staff?

5 A To the best of my knowledge, there were 107
6 employees when I started.

7 Q This is not at all vital, but because I think our
8 audience will want to know, how did it come from 107
9 to 68 in such a short time? What can you do to
10 explain that?

11 MR. MOVIUS: Objection.

12 Q Do you know why it went from 107 to 68?

13 A Yes.

14 Q Why?

15 A Attrition was part of it. Inefficiency was part
16 of it. We had duplication of services.

17 Q So when you had duplication of services, that
18 caused you to eliminate some positions?

19 A Correct.

20 Q Would you describe for us the responsibilities
21 that you've had as chief of staff from the time that
22 you became chief of staff through today? And if those
23 responsibilities came and went during your tenure, if
24 you could tell us that, too.

25 A The day I was hired until present day, my

1 position is to oversee the day-to-day operations of
2 the Recorder's Office administrative functions.

3 Q How do those duties relate to the personnel of
4 the Recorder's Office?

5 A That's pretty general. How do they relate?

6 Q I can narrow it down. I'm just trying to get at
7 the heart of what you do rather than an overall. I'm
8 trying to get -- for example, do you recommend hiring
9 people? Do you recommend firing people?

10 A I have not hired anybody since my -- in my tenure
11 there. I don't believe -- and I have not fired
12 anybody. It is within my job description to do both
13 if that were to be, you know -- if we ever had to hire
14 or to fire.

15 Q But I thought because of duplicating services,
16 you had to let some people go.

17 A Uh-huh.

18 Q You have to speak rather than saying uh-huh.

19 A I'm sorry. They were laid off or --

20 Q Okay. But terminating personnel whether by
21 layoff, by firing is something that you --

22 A Absolutely. That would be under my authority.

23 Q Okay. And with that in -- would that include
24 anybody who is an employee of the Recorder's Office or
25 just certain departments?

1 A Anybody included in the Recorder's Office.

2 Q Do you have any responsibilities as to executing
3 or administrating the budget of the Recorder's Office?

4 A Yes.

5 Q In terms of how the Recorder's Office spends its
6 money?

7 A Yes.

8 Q In a nutshell, what is your responsibility as to
9 the budget?

10 A Primarily, I would start with budget projections;
11 how much money it's going to take the agency to run
12 over the next year. Submit a budget based on
13 calculations from different departments, the needs,
14 and prepare the budget and submit the budget.

15 Q And are all of the employees of the Recorder's
16 Office protected by Civil Service; do you know? Does
17 Civil Service apply to them?

18 A I don't know.

19 Q Well, if somebody has to be disciplined, is there
20 an administrative agency that would have to approve of
21 that discipline, like the State Personnel Board of
22 Review or something like that?

23 A Right. It would be the State Board of Review.
24 The only reason I'm not being specific, because of the
25 recent change in government, new -- there's new

1 policies. They were private elected officials -- they
2 went by different policies for discipline purposes, so
3 they wouldn't have to go through the chain, like they
4 do now -- like we do now. Human resources is just
5 under one umbrella versus many little umbrellas for
6 elected officials.

7 Q I guess before we had the change in County
8 Government -- all I'm getting at is whether before we
9 had the change in County Government you had
10 responsibility to either discipline or recommend
11 discipline for employees in the Recorder's Office.

12 A Yes.

13 Q And did you also have responsibility for setting
14 or recommending pay raises for people within the
15 Recorder's Office?

16 A Theoretically, yes.

17 Q Why do you just say, "theoretically"? What is
18 the distinction between real authority and
19 theoretically?

20 A It hasn't happened.

21 Q You mean nobody has gotten a raise in --

22 A To my knowledge, no, I don't think there were any
23 raises given.

24 Q Since Thanksgiving of '08?

25 A Absolutely. No, no raises.

1 Q Did you have authority or do you now have
2 authority to recommend pay cuts, a wage decrease for
3 anyone?

4 A No.

5 Q Did anybody in your office have that authority,
6 to your knowledge?

7 A It would be the Recorder to make that decision.

8 Q Lillian Greene. Do your responsibilities
9 preclude you from making a recommendation that
10 somebody get a pay cut, prohibit you from making a
11 recommendation?

12 A No.

13 Q Would you say that you serve as an advisor to
14 Lillian Greene about the administration of the
15 office -- or not Lillian Greene today, necessarily,
16 but to whoever has the function as being the County
17 Recorder?

18 A Yes.

19 Q Had you ever worked in any County Recorder's
20 Office before November of 2008?

21 A No.

22 Q So was it -- when you first came on board in
23 2008, did you have to learn what the Recorder's
24 Office's functions were?

25 A Yes.

1 Q Was it important to you to acquaint yourself with
2 the functions of each component of the Recorder's
3 Office?

4 A Yes.

5 Q And one of the people who I deposed in this
6 case -- maybe it was Larry Patterson -- somebody
7 described the way the department worked as teams. For
8 example, he is in charge of people that he described
9 as being part of his team. Is that consistent with
10 your understanding of how the departments function, as
11 sort of a team leader with team subordinates?

12 A Yes.

13 Q Within the office, do you describe those groups
14 of people, of personnel, as teams or as departments or
15 some other way?

16 A Both. I mean, I set a team atmosphere. I
17 believe in teamwork. I guess if I'm preparing
18 reports, I would use departments for the official.

19 Q I only bring that up because I want to make sure
20 that when you and I talk, if I use the word
21 "department", I'm going to be communicating with you.

22 A Understood.

23 Q So if I talk about the computer department, I'm
24 meaning to say the department that Larry Patterson is
25 the team leader of. Do you understand that?

1 A Yes.

2 Q And if I talk about the cashier's department, I'm
3 meaning to say the team that Ron Mack is the leader
4 of. Do you understand that?

5 A Yes.

6 Q Do you consider yourself to be a conscientious
7 chief of staff?

8 A Yes.

9 Q And somebody who has devoted a lot of your
10 intellect and your time to mastering an understanding
11 of what each department is supposed -- the function of
12 each department?

13 A Understanding the --

14 Q What they're supposed to do?

15 A Yes.

16 Q Okay. And, of course, you would have to have
17 that, a high level of familiarity with the functions
18 of each department in order to be able to administer
19 budget, in order to be able to administer personnel,
20 in order to make recommendations; isn't that right?

21 A Correct.

22 Q And have you also as a conscientious chief of
23 staff familiarized yourself with the sort of the
24 overall mission of the County Recorder's Office or the
25 overall functions of the County Recorder's Office as a

1 public office?

2 A Yes.

3 Q And so do you have an understanding as a result
4 of the knowledge that you've acquired as chief of
5 staff as to the function of the Recorder's Office as
6 it would apply to the general public? By that I mean
7 the general public receives information from the
8 Recorder's Office and -- let me rephrase the
9 question.

10 Have you become familiar with the role of the
11 Recorder's Office in interacting with the public?

12 A Yes.

13 Q And you have familiarized yourself, I assume,
14 with the ways in which the Recorder's Office provides
15 information to the public?

16 A To a point.

17 Q Well, is there something about the way the
18 Recorder's Office provides information to the public
19 that you don't know?

20 MR. MOVIUS: Objection.

21 A There are some extreme technical processes that I
22 might not be able to understand.

23 Q Okay. Sure. But you -- and I'm not really
24 talking about anything so minute. And I'm sorry for
25 not making that clearer.

1 By way of example, you know that the Recorder's
2 Office has a website that the public can access, don't
3 you?

4 A I know there's a website, correct.

5 Q And you know that the Recorder's Office can
6 provide copies of information -- of records by fax to
7 members of the public. Are you aware that the
8 Recorder's Office can do that?

9 A No.

10 Q Are you aware -- tell us then in what -- let me
11 go back a minute.

12 What kinds of information have you understood
13 that the Recorder's Office makes available to members
14 of the public?

15 A Mortgage searches, you know, deeds. Similar
16 services that you could get walking into the
17 Recorder's Office you would be able to get from your
18 own PC at home.

19 Q To cut to the chase then, is it true that you
20 understand that the Recorder's Office would provide
21 copies of deeds to people who might walk in and ask
22 for a copy of a particular deed?

23 A Yes.

24 Q And the same if a citizen came in and said can I
25 have a copy of a particular mortgage, and they

1 specified what ones they wanted or gave you enough
2 information to find it that you would give them a copy
3 of a mortgage instrument or a memorandum of mortgage
4 that would be filed with the Recorder's Office?

5 A I don't know --

6 Q So you don't know that -- do you know that the
7 Recorder's Office records mortgages?

8 A Yes.

9 Q Okay. Is it a matter of the language that I'm
10 using to describe that record?

11 A No. Because I'm thinking now that I don't know
12 the answer to it. Could I go in there and ask for
13 your mortgage? Is that what you're asking me?

14 Q Could you, John, ask for my --

15 A A copy of yours?

16 Q Of whatever, if the Recorder's Office had it on
17 file.

18 A I've got to plead ignorant on that one.

19 Q Okay. If I came in and asked to look at a copy
20 of what you recorded on my own mortgage, that's
21 something you understand I could get?

22 A Yes.

23 Q So your question is whether I could get
24 Mr. Movius' mortgage or Ms. Baker's mortgage?

25 A Right.

1 Q And that's because you're unsure whether that is
2 private to that person?

3 A Right.

4 Q I get that. Okay. And you know that sometimes
5 with certain kinds of equipment people have security
6 interests in that equipment, and they file papers --
7 they record papers in your office, Uniform Commercial
8 Code forms, that evidence security interests in
9 particular kinds of equipment. Do you know that?

10 A You'd have to rephrase that. I don't understand
11 what you mean by that.

12 Q Okay. Do you know that your office records
13 certain kinds of Uniform Commercial Code papers, UCC
14 papers?

15 A UCC, right.

16 Q What's your understanding of what that is?

17 A Not too deep into the understanding of what it
18 is.

19 Q But you know they have them?

20 A Yes.

21 Q And you know that if a citizen came in and needed
22 a copy of it, that would be the kind of information
23 that your agency would provide?

24 A Right.

25 Q Okay. And you're aware, aren't you, that --

1 let's use deeds as the typical example.

2 A Uh-huh.

3 Q Deeds can be provided over the counter to someone
4 who comes to your office in person and asks for it,
5 correct?

6 A If it's --

7 Q Copies?

8 A If it's for themselves?

9 Q Well, let's assume everything I say is for
10 themselves.

11 A Okay.

12 Q If that would -- because I really am not trying
13 to establish whether -- it's a question of law not a
14 question of fact whether I can get Mr. Movius' deed.

15 A Uh-huh.

16 Q Okay. So what you say about that wouldn't
17 matter. But for purposes of -- I'm trying to get what
18 you understand.

19 A Uh-huh.

20 Q You understand that if I wanted a copy of my own
21 deed, I could come in and get it in person, right?

22 A Right.

23 Q I could get onto your website and see a digital
24 image of it through your website, right?

25 A Right.

1 Q I could ask you to mail a copy to me, and you
2 understand that your office would administer that?

3 A Yes.

4 Q But you don't know if I asked you to fax a copy
5 whether your office would fax it?

6 A I believe no, we would not fax it.

7 Q Because one of your other people said yes.

8 A I don't believe so.

9 Q Okay. Do you know of any other way if I wanted
10 to get a copy of a deed, of my own deed from you, your
11 office, any other way that that's provided to a
12 requesting citizen?

13 A If I retained you as my attorney, you could go
14 get it. If you had the proper documents that stated
15 you are there on my behalf, then you, as a
16 third-party, would be able to get it.

17 Q Okay. I didn't mean who would get it.

18 A Oh.

19 Q I meant mechanisms for getting it; mail, in
20 person.

21 A Mail, in person.

22 Q Over the website, right?

23 A To a point.

24 Q Well, what's the limit? When you say, "to a
25 point," to what point?

1 A Because the policies have changed so much as far
2 as agencies and combining agencies. I believe it's up
3 to 20 pages. And I'm not sure --

4 Q Okay. I get you. That there's some physical
5 limit?

6 A Right, right. But if the --

7 Q I get that. If we assume that each deed is --
8 that my deeds are only two pages long?

9 A Yes.

10 Q Okay. I get that. Do you know of any other way
11 I could get from you a copy -- I don't mean do you
12 know of.

13 Have you become aware of any other way that your
14 agency provides deeds to people who request them?

15 A No.

16 Q Okay. Do you regard the providing of copies of
17 recorded instruments to the public as a principal
18 function of your office?

19 A I'm sorry. Please repeat it.

20 Q Do you regard the Recorder's Office providing
21 copies of recorded instruments to the public as a
22 principal function of the Recorder's Office, as a
23 chief function of the Recorder's Office?

24 A A primary function.

25 Q Okay. And so it's important, isn't it, to be

1 able to interact with the public, to have some skills
2 at how you interact with the public if you're working
3 for the Recorder's Office?

4 A Yes.

5 Q Because there's daily interaction with the
6 public, correct?

7 A Correct.

8 Q And so do you -- in evaluating the people in your
9 office who have to interact with the public, do you
10 regard their communication skills as something that
11 matters to you in evaluating them?

12 A Yes.

13 Q And whether they are clear in talking to the
14 public?

15 A Yes.

16 Q Whether they're polite?

17 A Yes.

18 Q And, of course, it would be important to you --
19 well, let me go back a minute.

20 When you were with the Children and Family
21 Services, you said you wrote policy, didn't you?

22 A Uh-huh.

23 Q You have to speak.

24 A Yes. I'm sorry.

25 Q That's okay. Do you do that at the Recorder's

1 Office as well?

2 A Yes.

3 Q What kinds of policies have you written at the
4 Recorder's Office?

5 A How high of a heel you can have. What's
6 considered a sandal or a shoe. Let me see. Speaking
7 to media. Just basic administrative policy that is
8 common to all government agencies.

9 Q Did you approve any of the contents on the
10 Recorder's website?

11 A No.

12 Q Was it not important to you -- let me go back.
13 Was it within your responsibilities to approve
14 any of the contents on the Recorder's website?

15 A One more time.

16 Q Was it within your responsibilities as chief of
17 staff to approve any of the contents on the Recorder's
18 website?

19 A It was limited.

20 Q In what sense?

21 A Because at the time I had gotten here, it was
22 already up and running. So, I mean, there was nothing
23 for me to have approved or -- I shouldn't say
24 nothing. There was very little for me to approve at
25 that point, because the things that were on there were

1 on there.

2 Q What did you approve then or what did you
3 consider within your purview to approve?

4 A Well, the item I am referring to I just brought
5 to the attention of my boss, Recorder Greene, about
6 something I believe that needed to be in addition to
7 what was on the website. And she approved it.

8 Q What was that?

9 A It was a watermark.

10 Q And that's the watermark that appears on any deed
11 that I would download from the website?

12 A Correct.

13 Q And what was your thinking in making that
14 recommendation? What was your rationale?

15 A I had a report from my IT administrator that
16 our -- all of our sites were being drained. And we --
17 they, I guess, understood the only way for that power
18 to be drained was if we were being data mined.

19 Q Meaning what?

20 A People were stealing information in bulk.

21 Q Stealing?

22 A They were attempting to, without permission, take
23 information off of our website in a way that would
24 cause it to shut down.

25 Q Well, there's nothing on your website that the

1 public isn't allowed to look at, is there, to your
2 knowledge?

3 A To my knowledge, no.

4 Q And there's nothing on your website, to your
5 knowledge, that the public is not allowed to download
6 onto their own computers, is there, using the Internet
7 as the vehicle? You're not aware --

8 A I'm not aware of --

9 Q Right. You're not aware of any contents that I
10 couldn't copy or download or print out as a citizen;
11 is that correct?

12 A Am I aware of information that cannot be --

13 Q Cannot be.

14 A I would say I'm not aware.

15 Q You wouldn't put it on your website if it was
16 something that we weren't -- we, as citizens, weren't
17 allowed to read or copy, correct?

18 MR. MOVIUS: Objection.

19 Q You can still answer.

20 A I don't even know how to answer that.

21 Q Your IT administrator was either Jim Zack or
22 Larry Patterson, right?

23 A Correct.

24 Q And they report -- when each had their highest
25 level of responsibility in the information technology

1 department, they reported to you, right?

2 A Right.

3 Q And they had some responsibility for the contents
4 of the Recorder's website, didn't they?

5 A Yes.

6 Q And in order for you to do your job as
7 familiarizing yourself with what your subordinates
8 were doing, you would have some knowledge at least
9 through them if not from -- at least through them of
10 what was on the website, correct?

11 A Correct.

12 Q And you've accessed the website personally,
13 haven't you?

14 A Yes.

15 Q And so you've perused some of the contents on
16 that website, haven't you?

17 A Yes.

18 Q And if you saw something you objected to, you'd
19 bring that to the attention of your boss, wouldn't
20 you?

21 A Yes.

22 Q Or to your IT department, right?

23 A Yes.

24 Q And in the time that you've been chief of staff,
25 have you seen anything on the website to which you

1 objected?

2 A Not that I can recall.

3 Q And you've always understood that the purpose of
4 that website was to provide information to the general
5 public if they had a computer to access it?

6 A Yes.

7 Q It doesn't have any other purpose, does it, that
8 you know of?

9 MR. MOVIUS: Objection.

10 A No.

11 Q Now, it's important to you, isn't it, as the
12 chief of staff that the website have information on it
13 that if it originates from your office doesn't
14 misrepresent anything about your agency. Isn't that
15 true?

16 A That would be something I would think would be --
17 I would need to know or be important --

18 Q Yes.

19 A -- if it misrepresents.

20 Q And if you noticed something on the website that
21 you thought was misleading that originated from your
22 office, from the Recorder's Office, that would be
23 something you'd want to correct; isn't that right?

24 A Yes.

25 Q And you haven't corrected any information on the

1 website or caused it to be corrected since you've been
2 chief of staff?

3 A No.

4 Q And one of --

5 A Wait.

6 Q Go ahead.

7 A The watermark.

8 Q Now, let's talk about the data mining. You don't
9 understand, do you, that someone is -- the people who
10 are data mining or who data mined, that they were
11 accessing or downloading information that is of a
12 content that is illegal to access or download?

13 MR. MOVIUS: Objection.

14 A I'm not a lawyer. I believe that any person,
15 company, who pursues something within -- to attempt to
16 gain information that shuts down a government website
17 is illegal.

18 Q Okay. I'm talking about the content alone.
19 You're unaware of these data miners gathering content
20 that is illegal for them to gather. Am I right? You
21 don't have any understanding that they're gathering
22 content that's illegal to gather?

23 A It's the amount that they're gathering and the
24 amount of time that they're gathering that's illegal.

25 Q I get it. Have you developed an understanding

1 through any means as to the identities of those who
2 are doing this data mining?

3 A Well, to my knowledge, I really -- I can't answer
4 that. I believe the FBI and the Sheriff's Department
5 has done some investigation into where, and they did
6 track it. I'm not sure of the exact names, but it did
7 go from India back to one of the states. And they did
8 track it somewhere close. And I don't recall the name
9 of the company that -- I can't speak for where they're
10 at now with that investigation.

11 Q Was it you who did -- did you notify an
12 investigating agency to try to determine who was doing
13 the data mining?

14 A No. Jim Zack -- I'm not sure who notified. It
15 might have been the IT administrator, because it has
16 happened before. And the protocol is to contact the
17 authorities.

18 Q But you have not contacted any authorities?

19 A No.

20 Q Since you've been -- or since Mr. Patterson has
21 been in charge of the IT department, has the website
22 shut down because of data mining?

23 A Yes -- to my knowledge, it has froze -- like --
24 they call it freezing up or shutting down or rendering
25 it useless, or whatever.

1 Q Had you drawn any conclusions or developed any
2 understanding at all as to why the data mining might
3 have taken place? What would be -- have you concluded
4 or understood why somebody would be data mining your
5 website?

6 A I would imagine to gather information.

7 Q Well, do you have an understanding as to when
8 this data mining started that shut down the website?
9 Let me start -- when you were hired as the chief of
10 staff, it was November of 2008, right?

11 A Yes.

12 Q Have you ever developed an understanding that the
13 data mining that jeopardized your website occurred
14 before you became chief of staff?

15 A Yes.

16 Q Tell us what you understand about that.

17 A Just that when it had happened during my time,
18 they knew about it, because it had happened before.
19 There are screens that the engineer can tell how much
20 information is being -- how much energy is being drawn
21 out of our computers at any one time; that it wouldn't
22 be a person trying to do it, but more of one company
23 using several computers.

24 Q But is your understanding that this jeopardy to
25 your website occurred before you became chief of

1 staff?

2 A It had occurred before I got there. Based on
3 conversations, I assumed that it had happened before,
4 because they acted like it was familiar to them.

5 Q Who did?

6 A Jim Zack, Larry Patterson.

7 Q And so the purpose of the watermark -- the
8 purpose of you're recommending the watermark was
9 what? What did that have to do with the data mining?

10 A It would -- in the opinion of my staff and
11 myself, we anticipated with the watermark it would
12 deter the mining of data because of the mark on it.

13 Q What is your conclusion or understanding as to
14 how the watermark would deter the data mining?

15 A People -- I don't know.

16 Q Well, you made the recommendation.

17 A Yeah. There's a difference between a copy and an
18 original. And when you have "copy" written across the
19 front of a page, it's a lot harder to resell than it
20 is to sell a document that does not have that word on
21 it.

22 Q What does selling have to do with it?

23 A What does selling have to do with it? Well, my
24 understanding is the information that was mined was
25 for a reason. And the reason is to resell the

1 information.

2 Q How did you come to that understanding?

3 A It was a deduction based on why would they be
4 taking the information. What reason would they
5 possibly have to take the information. That
6 information -- and in the industry, it's pretty common
7 knowledge that data miners are the ones who feed
8 companies like Amazon, ancestry.com. They sell --
9 they gather information and they sell it.

10 Q Are you talking about gathering images of deeds
11 and other recorded instruments from the website?

12 A Whatever is available.

13 Q Well, for example, the home page of the website
14 doesn't have deeds or mortgages or UCC filings on it.
15 It just has descriptions of what your office does, and
16 talks about, in a general way, what the office is.
17 You're not talking about mining that, are you?

18 A The front page of the web page or the -- the home
19 page?

20 Q Yeah.

21 A No.

22 Q No. You're talking about digital images of
23 recorded instruments, aren't you?

24 A Yes.

25 Q And it was your view that -- and I want to -- I'm

1 stating it because I'm trying to cut to the chase.

2 A Please.

3 Q That what you expected was going on was that
4 businesses that wanted digital images of recorded
5 instruments, such as deeds, to then resell that
6 information to someone else or to whoever wanted to
7 buy it; is that right?

8 A Yes.

9 Q And it was that commercial motive that you
10 attributed to the data mining; is that right?

11 A Rephrase.

12 Q It was the motive to gather information for sale
13 that you attribute to those who were undertaking what
14 you called data mining?

15 A I can't really speak to their motive. It was
16 my --

17 Q Deduction you said before.

18 A Deduction based on --

19 Q Yeah. And so when I said you attributed to them,
20 whether it was their motive or not, you deduced that
21 what was driving this data mining was that people
22 wanted digital images of deeds --

23 A Yes.

24 Q -- so they could -- and the other images so they
25 could use them commercially, sell them commercially?

1 A Correct.

2 Q And that if they didn't have that motive, you
3 probably wouldn't have the data mining?

4 A Correct.

5 Q Did you, yourself, consider that there might be
6 other ways for these businesses to get digital images
7 of your recorded instruments other than through the
8 website? There might be -- I mean, other ways that
9 you could possibly consent to?

10 A Yes.

11 Q Like what would be some of those other ways, or
12 what were some of the other ways that might --

13 A You come in, go up to the counter and make a
14 request.

15 Q Like, for example, if I were to come in -- if I
16 were Data Trace, which is who I'm the lawyer for --

17 A Yes.

18 Q -- and I came in with a blank CD to you and said,
19 "Can I have a digital image of your daily work today,"
20 that would be one way -- if you consented to that,
21 that would be one way for the Data Trace business to
22 get digital copies of recorded instruments; wouldn't
23 it?

24 A Providing that they paid what the general public
25 paid for that, they could -- sure, they could actually

1 buy it and take it. We wouldn't prohibit them from
2 taking the information as long as they paid what we
3 believed the statute dictates the price.

4 Q So your office would have no objection to any
5 business coming in and saying, Here's a blank CD.
6 Please download your daily work onto this, the daily
7 work of X, Y and Z, as long as they paid the
8 appropriate price that you think is correct?

9 A No, it's not.

10 Q What is incorrect?

11 A What I think has no bearing on it. We are a
12 statute-bearing office. The legislature sets the
13 price, not the Recorder's Office.

14 Q Okay. I didn't mean to suggest that you created
15 the law. What I meant to ask you is, is it your
16 understanding that your office would, in fact,
17 download your recorded instruments onto a blank
18 compact disc which you would then sell to whoever
19 asked for that? Is that true or not true?

20 A For the statute price per page that was
21 downloaded onto that document, I would see no reason
22 why we would not.

23 Q Okay. When you became -- when you familiarized
24 yourself with the functions of that office and what
25 all the personnel did and what all the departments

1 did, did it come to your attention that your office
2 was selling CDs of downloaded recorded instruments to
3 businesses?

4 A Yes.

5 Q And did you understand that your office was
6 selling those CDs at \$50 a CD?

7 A It became -- as time progressed, within a week
8 later from when I found out it was being done. My
9 immediate concern wasn't how much they were charging.
10 Just to find out preliminary -- my preliminary work
11 was to find out who, what, where, and why before I
12 found out what the prices were. And that took about 5
13 or 6 days of studying and researching and trying to
14 find out what was going on.

15 Q All I'm trying to get to is you eventually found
16 out that was going on?

17 A Correct, yes.

18 Q Do you think you found that out during the first
19 months of your being the chief of staff -- I mean,
20 within a month?

21 A No.

22 Q Longer?

23 A Yes. It was probably closer to -- I can't be
24 accurate. The months all go together. I want to say
25 after about my seventh month -- sixth or seventh month

1 there.

2 Q You learned that that was happening?

3 A Uh-huh.

4 Q All right. You have to speak.

5 A I'm sorry. I'm very tired. It's Friday, and I
6 had a big lunch.

7 Q You haven't had lunch?

8 A I had a big lunch.

9 Q At some point that practice stopped of providing
10 downloads of recorded instruments on compact discs to
11 businesses; is that right?

12 A Yes.

13 Q When did that stop?

14 A Five or -- I can't be sure, but about maybe five
15 or six months ago, somewhere around there.

16 Q So it stopped in 2010?

17 A Correct.

18 Q And was there some incident that caused it to
19 stop, to your knowledge?

20 A Incident?

21 Q Well, let me rephrase to make it easier.

22 Have you developed any understanding as to what
23 event or act or incident caused that practice of
24 selling the CDs to stop during 2010, when it did stop?

25 A When I became aware of what was going on, it did

1 not seem -- something seemed fishy, because -- I don't
2 recall a \$50 fee for discs anywhere in the statutes
3 that I read.

4 So I had asked Ron Mack, who was a supervisor,
5 who is pretty well-versed in what the fees are. He's
6 been there longer than I was. And when I brought it
7 up, he opened the window on the Data Trace; this is
8 why. It's been going on this long, but the
9 predecessor didn't want to do anything about it. And
10 I took it from there.

11 And then once it became clear that it began to
12 endure legal issues, my boss, Judge Greene, handled
13 all research and all -- anything to do with law, she
14 would do days of research and come up with an opinion,
15 whether or not she believed -- she handled all the
16 law.

17 Q What made you -- you said when you became aware
18 there were legal issues. What caused you to think
19 there were legal issues?

20 A Well, you know, once I became aware of this
21 incident, you know, I went back to the statutes and
22 didn't see anything in there that resembled anything
23 like what was being allowed in this transaction. I
24 guess my instinct, my public administrator's instinct
25 told me something was awry.

1 Q What triggered that instinct? What made you
2 think there was something awry?

3 A Well, I would be standing here looking at the
4 cashiers, \$28 for two pages, and a gentleman in a
5 little desk behind me handing a disc over with a whole
6 days' worth of documents on it. It would just -- it
7 just clicked something wasn't right, in my
8 professional capacity. I knew there was something
9 that just didn't seem right there.

10 And at that point, I turned it over to my boss,
11 Lillian Greene, who began researching it. And she
12 made -- she had the ability to determine -- and based
13 on her 22 years on the bench, I wasn't in any position
14 to argue, not to mention she was my boss, to go
15 against what her opinions were. And she made an
16 opinion that it was wrong.

17 Q Did you bring this CD sale issue to her
18 attention?

19 A Yes.

20 Q She didn't bring it to yours?

21 A You know, I'm sorry. I don't recall. I don't
22 recollect. I can't be sure.

23 Q So you don't really know who initiated raising
24 questions about the practice of selling the CDs to the
25 businesses. Is that fair?

1 A The closest I can recollect is during my
2 research, she found out about it through Mr. Mack, and
3 came to my office and says -- and asked me about it.
4 I did not prepare my report -- complete my report to
5 hand her before she had found out about it and asked
6 me about it.

7 And I told her I was in the middle of giving her
8 my report when I'm done with all my research and
9 investigation on it, what's happening. I gave it to
10 her a couple days later. So she kind of found out
11 about it probably within hours as she was walking the
12 floor and the cashier brought it up to him, Mr. Mack,
13 to the Judge, "Did John tell you that this is going
14 on?"

15 Q So you created a report about the fee?

16 A I believe I just jotted down some notes. And it
17 wasn't an official memo or report. I had jotted down
18 some notes about a chronology of things that had
19 happened over the past day, and who was paying, who
20 was doing the CDs, who was making them, how they were
21 getting from point A to point B, and for what reasons.

22 Q Do you still have those notes?

23 A I don't know.

24 Q Were they in writing or electronic?

25 A They were -- would have been in writing.

1 Q Handwriting?

2 A Correct.

3 Q Or hand printed, not electronic?

4 A No.

5 Q Were you ever present in a discussion -- by that
6 I mean people talking -- where an objection was raised
7 by yourself or someone else in the Recorder's Office
8 to the notion that businesses would resell electronic
9 copies of deeds and mortgages and other recorded
10 instruments?

11 A Did at any time we object to questions --

12 Q Were you ever in a conversation where you or
13 someone else in the conversation raised an objection
14 to the notion that these businesses are just going to
15 take this information and try to make a profit on it,
16 try to sell it?

17 A With the caveat that they were only getting it
18 for \$50. That was the objection. What they did
19 afterwards, that's not an issue.

20 Q Was it you that raised that objection?

21 A Which objection?

22 Q The one you said, that the objection was that
23 they were getting them for \$50.

24 A Yes. Me -- at the time I started to bring it up,
25 it set off a chain reaction of people that started --

1 Ron Mack started to come forward. He came up. And
2 the Judge caught wind of it. So it was kind of like a
3 lot of stuff. And I'm not sure exactly who was saying
4 what at what point. But the argument or thesis or the
5 core of what we were talking about was all this
6 information for \$50, period.

7 Q That the price was too low?

8 A Based on the statute.

9 Q Well, did you see anything in the statute when
10 you looked at it that allowed the Recorder's Office to
11 provide copies of recorded instruments on compact
12 discs at all?

13 A No, not that I recall.

14 Q Go ahead.

15 MR. MOVIUS: I'm going to
16 object if anything about your
17 knowledge of the statute is something
18 you obtained from counsel or that --

19 THE WITNESS: Right. I'm
20 sorry.

21 MR. MARBURGER: I didn't ask
22 him about any communication he
23 had with --

24 MR. MOVIUS: Hold on a
25 second. I'm making my objection.

1 MR. MARBURGER: There's
2 nothing to object to.

3 MR. MOVIUS: Off the record.
4 And we'll confer about privilege --

5 MR. MARBURGER: No, no.

6 MR. MOVIUS: -- because I'm
7 entitled -- then I instruct you not
8 to answer the question.

9 Q You told us, didn't you, that you personally read
10 the statute?

11 A I have.

12 Q Okay. And you told us, didn't you, that as a
13 result of reading the statute, you concluded that
14 there was no authority to charge \$50 per CD. Didn't
15 you tell us that?

16 MR. MOVIUS: And my objection
17 is to the extent it calls for
18 attorney-client privilege, meaning to
19 the extent any of your understanding
20 of the statute is through
21 communication with counsel or
22 something you did at the direction of
23 counsel, you should omit that from
24 your answer. Otherwise, if it's
25 based on your own research, you

1 and answered.

2 A I believe that's what I said.

3 Q Okay. And I'm simply asking you, when you were
4 perusing the statutory authority and drawing at least
5 tentative conclusions about it, did you see any
6 authority to download recorded instruments onto a CD
7 at all?

8 A When this subject became --

9 Q No. I asked when you personally looked at these
10 statutes, did you see anything that caused you to
11 think there was or was not authority to download
12 recorded instruments onto a CD?

13 MR. MOVIUS: I'm going to
14 object. He started to answer your
15 first question and you cut him off.

16 MR. MARBURGER: I changed the
17 question.

18 MR. MOVIUS: You cut him off.
19 He's allowed to answer the question
20 you asked. And then you started
21 raising your voice and pounding your
22 pencil on the table.

23 MR. MARBURGER: Mr. Movius,
24 you're way out of bounds.

25 Q All I want you to do is give me a straightforward

1 answer to a very straightforward question.

2 A As I recall, when I began to read on this
3 subject, it was clear to me that there was going to be
4 a serious legal issue here. And at that time, I
5 handed everything over to my boss, Judge Greene, and
6 she researched. It was out of my realm of
7 decision-making.

8 Everything was turned over to the Judge. She
9 read it. She drew the conclusions. She told me what
10 the policy would be based on her opinion of what the
11 law stated.

12 Q All right. You told us earlier today under oath
13 that as far as you could discern from your own reading
14 of the statutes, the Recorder's Office would provide
15 downloads of records onto a CD if the businesses paid
16 the price that your office believes it has the
17 authority to charge. Did you not say that today?

18 A Yes.

19 Q Now, in your own reading of the statutes, did you
20 notice anything in the statutes that said that you had
21 the authority to download recorded instruments onto a
22 CD at all? Did you personally see that?

23 A I don't recall.

24 Q All right. Did you personally see anything in
25 the statutes that you read while you were reading --

1 well, let me rephrase.

2 Did you personally see anything in the statutes
3 when you read them that said it was okay to put
4 recorded instruments on your website where the public
5 could download them? Did you see any authority for
6 that?

7 MR. MOVIUS: Objection; asked
8 and answered.

9 MR. MARBURGER: Asked and
10 answered?

11 MR. MOVIUS: Like three
12 times.

13 MR. MARBURGER: No. I've
14 never asked that question.

15 Q Did you see any authority that allowed the
16 Recorder's Office to use the Internet, create a
17 website where recorded instruments could be downloaded
18 offsite by the public? Did you see any authority for
19 that?

20 A To the point that we do not by law have to have a
21 website, I never read anything about a website in
22 law. I do know that we do not by law have to have a
23 website, period. We're just doing it -- they did it
24 before I got there.

25 The previous administration did it as a service.

1 And they always made it very clear to me that legally,
2 we don't need a website. So if it becomes too much of
3 a pain in the ass, were their words, you could shoot
4 it down, their words.

5 Q So did you suggest to the Recorder that in the
6 absence of any authority that you could find about
7 putting recorded instruments on a website, that maybe
8 the Recorder's Office should revisit whether to
9 continue with the website or at least providing
10 recorded instruments through a website? Did you raise
11 that with the Recorder's Office?

12 A I might have thrown a sentence out like this
13 really isn't worth it. She shut it down and shot it
14 down and said, "No. We're going to do what we believe
15 is for the public." She believed it was a good public
16 service.

17 Q But you did raise the issue as to whether you had
18 the statutory authority?

19 A No.

20 Q You didn't raise it.

21 Have you ever seen what I'm showing you as Greene
22 Exhibit 3? Have you ever seen -- and I might have a
23 million of these. There's no question pending.
24 Somebody put these in an order different than the one
25 I was expecting.

1 I'm going to show you what we marked in the
2 Lillian Greene deposition as Exhibit 3, and ask you if
3 you have seen this, the content of this Exhibit, on
4 the Recorder's website?

5 A I believe this is an undoctored document. It
6 looks like our website's home page.

7 Q Okay. You don't see anything on there that
8 causes you to conclude that it's not from your
9 website?

10 A I don't recall the two top right pictures being
11 in there before.

12 Q We can discuss -- we're not trying to --

13 A I know you're not.

14 Q No, no. All I'm saying is that as somebody who
15 has read the website from time to time and whose
16 responsibility includes supervising the group that
17 controls the content of the website or that has direct
18 input to the content of the website, when you look at
19 Exhibit 3, you're familiar at least in a general way
20 that Exhibit 3 replicates the content of your website
21 at least as to the words that are at issue, aren't
22 you?

23 A I am familiar with Lillian J. Greene, her face,
24 the county seal. I delegate much of my technology,
25 information technology -- I delegate much of my work

1 to supervisors, especially with information
2 technology. And prior to the Judge leaving, they
3 would go right to her with legal questions or
4 anything. But it was rarely changed. I mean, I
5 didn't have -- I didn't and I don't have a lot to do
6 with the website.

7 Q Okay.

8 MR. MOVIUS: I just want to --
9 we've been going for about an hour.
10 So when it's a convenient time, we'd
11 like to take a break.

12 MR. MARBURGER: No, not right
13 now.

14 MR. MOVIUS: As soon as
15 there's a break in the questioning,
16 we're going to take a break. We're
17 entitled to do that.

18 Q My simple question is as somebody who's been the
19 chief of staff for several years --

20 A Two years.

21 Q -- you're aware -- more than two years.

22 A Okay. I'm sorry. I stand corrected.

23 Q -- you're aware of the content of the website
24 that your own office placed on the website; aren't
25 you?

1 A I am aware of the generic contents of the
2 Recorder's Office on the website, correct.

3 Q And you're aware that the website at one time had
4 a policy that is referred to -- you understood this,
5 didn't you, looking at Exhibit 3, at the very bottom
6 it says, "Click here to read our Policy Statement,"
7 and it says, "Click to read our Legal Disclaimer"?

8 A Yes.

9 Q Okay. And you understood that if you clicked on
10 those things, on those particular links there, it
11 would take you to either the legal disclaimer or the
12 policy statement --

13 A Yes.

14 Q -- depending which one you clicked on. Yes?

15 A Yes.

16 Q And you understood, didn't you, that up until
17 some point in January of 2011, that if you clicked on
18 policy statement -- let me rephrase.

19 You understood if you clicked on "Policy
20 Statement" at one time, you would get what's marked
21 here as Exhibit 4. I don't know if this is together
22 or not. This was marked in Lillian Greene's
23 deposition as Exhibit 4. You have seen the contents
24 of Exhibit 4 before, haven't you?

25 A I don't recall. I honestly do not recall.

1 Q You don't recall whether you have -- well, you
2 haven't even looked past the first page.

3 A Oh, okay. I thought you were referring to the
4 first page. (Witness reading document.)

5 I don't know. I don't even know what you're
6 asking me.

7 Q If you don't know what I'm asking you, I'll redo
8 it. I'll ask it a different way. Are you ready for
9 me to do that?

10 A Okay. Ask a different way.

11 Q All right.

12 A Quicker way.

13 Q Well, there is no quicker way. If you don't know
14 what I'm asking you, I pretty much have to start all
15 over.

16 You can tell from reading through Exhibit 4 that
17 it purports to describe the Public Records Request of
18 the Cuyahoga County Recorder's Office,
19 Lillian J. Greene, Recorder. Would you agree with me
20 there?

21 A Yes.

22 Q And in looking it over, surely as somebody who
23 has been responsible for the policy statements of the
24 Recorder's Office as made to the public, you recognize
25 the policy as the policy that was in place at one time

1 with the Recorder's Office?

2 A Yes.

3 Q And so Exhibit 4 describes the policy that had
4 been in place at some point during your tenure as
5 chief of staff, correct?

6 MR. MOVIUS: Objection.

7 A If this was taken directly from the website, then
8 I would say yes.

9 Q Okay. I can represent to you that it was.

10 A Okay.

11 Q The policy that Exhibit 4 describes is a policy
12 that was not on the website for the Recorder's Office
13 when you initially became chief of staff. Am I
14 correct about that?

15 A I don't recall.

16 Q Did you play any role in approving -- let me
17 change this.

18 Did you ever develop an understanding as to when
19 during your tenure the policy described in Exhibit 4
20 was placed on the Recorder's Office's website?

21 A No.

22 Q Go ahead.

23 A Judge Greene handled pretty much this -- took
24 this on by herself. And she had left -- I believe
25 January 14th was her last day. And she had worked on

1 all this. I was working on a million other things.

2 Q I don't understand your answer.

3 A Okay.

4 Q When you're saying, "this," and you're using
5 words, there's no TV camera to capture what you're
6 referring to. Could you articulate --

7 A The document that you handed me would have been
8 written by -- or had been opined and written by County
9 Recorder Greene.

10 Q So the policy that Exhibit 4 describes was
11 written by Lillian Greene?

12 A Or the Ohio Revised Code. I can't tell the
13 difference. I'm not a lawyer.

14 Q Well, I'm not asking you to guess. I'm asking
15 you to give me your understanding as to who was the
16 author of what we see here on Exhibit 4.

17 MR. MOVIUS: Objection.

18 A I don't know the answer to that.

19 Q All right. When you said that Lillian Greene, I
20 believe you said, wrote it, is that --

21 A Approved it was the word I should have used.

22 Q Okay. Have you developed an understanding as to
23 who actually -- let's look at Section 1, where it
24 says, "This office, in accordance with the Ohio
25 Revised Code, defines records as including," and then

1 it goes on to provide some more verbiage.

2 Do you have an understanding that whoever wrote
3 Section 1 was somebody working for the Recorder's
4 Office?

5 MR. MOVIUS: Objection.

6 A I don't know. I do not know.

7 Q Well, let's take the introduction. "It is the
8 policy of the Cuyahoga County Recorder's Office that
9 openness leads to a better informed citizenry". Is it
10 your understanding that someone who does not work for
11 the Recorder's Office did not write the introduction?

12 MR. MOVIUS: Objection.

13 A This is long before I arrived.

14 Q How do you know that?

15 A Because it wasn't put before me for approval.
16 And there was a website up there.

17 Q Had you read the content of the website before
18 you were the chief of staff?

19 A I perused it or briefed it very quickly, because
20 I had a lot of other things that I needed to learn.
21 And I felt that since it wasn't -- that it was not a
22 statutory function of the office, that it wasn't on my
23 top -- it wasn't one of my top priorities. I knew I
24 could flick a switch and shut it down whenever I felt
25 the need.

1 Q You understand, don't you, that this -- take a
2 look in Exhibit 4, Section 3. Read Section 3 to
3 yourself, and tell me when you feel like you
4 understand what it says.

5 A I understand what it says.

6 Q Now, Section 3 has been changed during your
7 tenure as chief of staff, hasn't it?

8 A I do not know.

9 Q Well, if Section 3 were to change, isn't that
10 information that someone would be supposed to bringing
11 to your attention?

12 A It was not unusual for the Judge to change
13 anything with -- that had law mixed in with policy to
14 take it right to supervisors and have them put it in
15 without my knowledge. And I would have been briefed.
16 And I haven't been briefed on any of this.

17 If you're asking me -- are you asking me if this
18 is changed? Because I can't tell if it has or has
19 not.

20 MR. MARBURGER: Let's bring
21 up his website, the Recorder's
22 website.

23 MR. MOVIUS: And in one
24 minute, I'm taking a break.

25 MR. MARBURGER: You can take

1 it right now.

2 (Brief recess taken.)

3 Q Exhibit 4 is still in front of you, which is --
4 the page that you have open, the one that has Section
5 3 on it, isn't that the page you have open --

6 A Yes.

7 Q -- on Exhibit 4. I'll wait until you --

8 A I have read it. This is what I have. Yes,
9 you're correct.

10 Q Can you tell us if this -- when this Section 3
11 was on the Recorder's website as part of the policy
12 statement, did you not understand Section 3 as the
13 chief of staff? Was it something you didn't
14 understand?

15 MR. MOVIUS: Objection.

16 A I understand it based on what it says.

17 Q That's all I'm asking.

18 A Yes, I understand this.

19 Q I mean, when you were -- it's no longer on your
20 website. I'll represent that to you. But when it was
21 on your website, did you not understand it?

22 A I didn't -- to be honest with you, I did not read
23 this on my website -- or do not recall reading this on
24 my website.

25 Q So when you raised questions with Lillian Greene

1 about the lawfulness of charging \$50 for downloaded
2 computer files for a compact disc, you weren't aware
3 of the policy statement on your website that addressed
4 the costs for public records. Is that true?

5 A I think -- yeah, I knew that there were costs for
6 public records on our website, because that's on other
7 pages; \$2 per page, whatever.

8 But when \$50 for a disc came into play, and where
9 the wrongness started to come around was when my
10 people told me it was a day's worth -- all the
11 information that the Recorder's Office collected in
12 one day and put it on a disc.

13 Q But my question wasn't about that.

14 A Oh, sorry.

15 Q My question was, when you raised questions about
16 the correctness of charging \$50 for downloaded files
17 onto a CD, had you not understood the policy on your
18 own -- on your Recorder's website about addressing the
19 costs for public records?

20 MR. MOVIUS: Objection.

21 A This policy -- there are policies and statutory
22 documents on my desk that have this stuff on there.
23 And I don't recall if I read this in paper copy -- I
24 read a lot of material, as you can imagine, during the
25 day every day. And I'm not sure -- I could say that I

1 did not read this on our website, didn't go deep in
2 enough to know it was there. I assumed it was there
3 and left it at that.

4 I have read this either in the O.R.C. or
5 documents and pages that my boss had handed me pages
6 to read.

7 Q Let's take Section 3.3, which says, "The charge
8 for downloaded computer files to a compact disc is
9 \$1.00 per disc." Do you see that on Exhibit 4?

10 A Yes.

11 Q When did you first become aware that that
12 language was in the Recorder's Office's policy?

13 A I probably have read that at some point in the
14 first six months that I've been there.

15 Q Did you raise any questions about that policy
16 when you were raising questions about --

17 A No, I did not.

18 Q What did you understand Section 3.3 to refer to?

19 A Section 3.1.

20 Q I don't follow you there.

21 A Well, they're all 3's. There's a 1. There's a
22 2. There's a 3, and there's a 4. All together you
23 don't take 3.3 and stick it on Page 9. 3.3, to me,
24 and I'm no lawyer, has to do with -- or it assumes
25 that you have read the rest of the directions before

1 you get to 3.3. 3.3 standing alone means nothing
2 without 3.1 and 3.2.

3 Q What did you understand 3.3 to refer to when
4 you -- before January of 2011, what did you understand
5 the downloaded computer files to a compact disc to
6 refer to?

7 A I didn't have no specific reference of what it
8 referred to.

9 Q You mean you were the chief of staff and you did
10 not know what the costs per purchase records policy
11 was referring to?

12 MR. MOVIUS: Objection.

13 A Oh, I know --

14 MR. MOVIUS: You can answer.

15 Q Well, go ahead. You said you know. What did you
16 know?

17 A I know that if you -- I know that if you come
18 into our office and you ask for documents, you're
19 paying for the documents. What we -- and when you ask
20 the mode of what we're going to put that document on,
21 that's, you know -- it says there, you know, if you
22 want it on this, it's -- if it's just -- you're paying
23 the \$2 a page. And if you want the \$2 a page on disc,
24 then it's \$2 a page, and then -- plus the dollar for a
25 blank CD.

1 Q Okay. So was it your understanding that prior to
2 January of 2011, if I, as a citizen, came in to your
3 office and said, "I'd like you to download all the
4 deeds to the land that I own onto this CD," if I paid
5 \$2 a page for that, this policy would allow that?

6 MR. MOVIUS: Objection.

7 A They would pay the statutory cost.

8 Q I asked you what the policy would allow. I'm
9 sure you understood my question. Didn't you?

10 A Yes.

11 MR. MOVIUS: Objection.

12 Q I'm asking for your understanding of what this
13 policy would have allowed. You were the chief of
14 staff. This was one of the things that fell within
15 your responsibilities. You said you were
16 conscientious at familiarizing yourself with the
17 policies of the Recorder's Office. And you even
18 raised questions about this sort of policy.

19 A I was very specific --

20 MR. MOVIUS: Let him ask his

21 question.

22 Q Tell me now whether it was your understanding
23 that if, in applying Section 3 on Exhibit 4, that if I
24 came into your office and said, "Download for me,
25 please, onto a blank CD all of the deeds for the

1 property that I own," that this policy would allow you
2 to do that, but you would charge me \$1 for the CD and
3 \$2 for each page. Is that true or false?

4 MR. MOVIUS: Objection. You
5 can answer.

6 Q Objection means you can still talk. You can
7 still respond.

8 A My understanding would be yes, it would be \$2 per
9 page. And if it was 100 pages, it would be \$200 --
10 \$201.

11 Q Let's be clear. You understood Section 3.3 would
12 be applying for a downloaded electronic copy of deeds
13 or other recorded instruments that pertain to property
14 that I owned, and you would charge me \$2 per page for
15 those digital images and \$1 for the disc; is that
16 true?

17 A It's \$28 for the first two pages and then \$2 a
18 page after that.

19 Q Where does it say that on Section 3?

20 A That's what I'm saying. I don't know. This
21 isn't the full statute.

22 Q I'm asking you your understanding of your own
23 policy, Mr. Kandah.

24 A It's not my own policy.

25 Q I'm asking you -- by, "you," I don't mean you

1 personally. I mean a policy that was in place in your
2 office while you were the chief of staff.

3 You said you were conscientious. You said you
4 did a lot to familiarize yourself with how the office
5 functioned and what its policies were. Now, I'm
6 asking you -- you seem to be reluctant to address or
7 to confirm once and for all whether Section 3.3, in
8 referring to downloaded computer files to a compact
9 disc, that that referred to recorded instruments.

10 MR. MOVIUS: Objection.

11 A Because my boss handled most of this from the
12 time I was there, from everything that was read and
13 put down into the documents as far as codes or legal
14 policies that dealt with codes. And I believe I said
15 at the very beginning of this that from an
16 administrative standpoint and the day-to-day functions
17 of the operations that did not entail legalities and
18 stuff like that, which the Judge handled herself.

19 Q You understood that this policy here was a
20 policy -- Exhibit 4 was a policy promulgated by your
21 own office?

22 MR. MOVIUS: Objection.

23 Q You have to speak.

24 A I was thinking, sir.

25 Q I'm sorry.

1 A Am I allowed to think before I speak or no?

2 MR. MOVIUS: You are.

3 A I would stipulate that this did come from our
4 office.

5 Q Okay. So all I'm asking is for the understanding
6 you developed as chief of staff about Section 3.3 in
7 the context that it's written here in your policy,
8 your office's policy. You understood, didn't you,
9 that downloaded computer files to a compact disc
10 referred to downloading digital images of recorded
11 images on a compact disc?

12 MR. MOVIUS: Objection.

13 A Yes.

14 Q Okay. Thank you. In fact, can you see anything
15 in Section 3 of your policy on Exhibit 4 that would
16 signal to any reader, any citizen, that would signal
17 to a citizen or advise a citizen that downloaded
18 computer files to a compact disc would refer to
19 something -- that would refer -- that would not refer
20 to recorded instruments?

21 MR. MOVIUS: Objection.

22 A I don't know what you meant when --

23 Q Okay. Let's try it again. Is there anything
24 that you see in Section 3 that would signal to an
25 ordinary citizen, an ordinary reader, that Section 3.3

1 did not apply to recorded instruments?

2 MR. MOVIUS: Objection.

3 A I can't speak for any reader.

4 Q I'm not asking you to either. I'm asking you as
5 somebody who was the chief administrator of this
6 office to tell me if there's language in Section 3
7 that you think would signal to any reader, regardless
8 of what a reader might understand -- what language in
9 here do you see, if anything, that would signal to a
10 reader that Section 3.3 would not apply to recorded
11 instruments?

12 MR. MOVIUS: Objection, and
13 clarify for the record that he's here
14 testifying as an individual and not
15 in his capacity as an official of any
16 sort of the Recorder's Office.

17 Q Okay. Can you answer that question?

18 A Only -- I can only say that in my two-plus years
19 that I have been there, not just this line but
20 probably every line you can think of, we have people
21 coming in with interpretations that have nothing to do
22 with what is written down on that page.

23 So your answer is -- it's too -- if I read it,
24 would I think a competent person that understood
25 English who read this, would they be fine with this?

1 Is that what you're asking me? Would they understand
2 it?

3 Q No, I'm not asking that.

4 A I really don't know what you're asking.

5 Q I'll do it by analogy. Look at Exhibit 3 here.
6 Is there any language that you can see on Exhibit 3
7 that would signal to a reader that Lillian J. Greene
8 was the County Recorder?

9 MR. MOVIUS: Objection.

10 A Yes.

11 Q What language do you see that would signal --

12 A Her name.

13 Q And what's associated with her name?

14 A County Recorder.

15 Q That's what I mean by "signal." Do you
16 understand that now?

17 A Yeah, but that's a little bit of a --

18 Q Do you see any language in Section 3 of Exhibit 4
19 that would signal to a reader that downloaded computer
20 files for a compact disc would not include recorded
21 instruments?

22 MR. MOVIUS: Objection.

23 A I don't know. I do not know the answer to that.

24 Q Isn't the answer, Mr. Kandah, that you don't see
25 any language in Section 3 that would signal to a

1 reader that Section 3.3 doesn't apply to recorded
2 instruments. Isn't that the answer?

3 MR. MOVIUS: Objection; asked
4 and answered.

5 A I disagree with your assessment.

6 Q Where is the language that would signal to a
7 reader that the downloaded computer files on
8 Section 3.3 would not apply to recorded instruments
9 like deeds?

10 MR. MOVIUS: Objection.

11 Q Show me that language on Section 3 that tells
12 you --

13 MR. MOVIUS: Don't talk over
14 each other.

15 Q -- that tells you that would not apply.

16 A You showed me this as your analogy,
17 Lillian J. Greene, County Recorder. You're asking me
18 how do they know if it applies to the recorder. And I
19 say down at the bottom of the page, it does say,
20 "Cuyahoga County." Section 2.5, statutory, there's a
21 lot of different requests that tells you what you're
22 reading.

23 Are you asking if somebody goes like this, what
24 does that apply to, looking at that one line without
25 looking at the whole context? Then your analogy

1 doesn't hold any water.

2 Q Tell us for the entire policy you see on
3 Exhibit 4, point to us -- tell me, is there language
4 that signals to a reader that Section 3.3 would not
5 apply to deeds, mortgages, and other recorded
6 instruments?

7 MR. MOVIUS: Objection.

8 A I don't know the answer to that.

9 Q You don't see anything that would signal to a
10 reader, do you, that Section 3.3 would not apply to
11 recorded instruments?

12 MR. MOVIUS: Objection.

13 A Ask it one more way. Because you're kind of pro
14 and coning me here. Yes -- are you asking me -- you
15 have to ask it in a simpler way, because you're saying
16 yes in one sentence but then they don't in this
17 sentence. So it's kind of you're asking two -- you're
18 asking two questions in one. Can you put it in one
19 sentence for me?

20 Q Let's get on to the -- I want you to watch the
21 screen, if you can, up there. We have a projector
22 connected to a laptop.

23 MR. MARBURGER: Can you
24 access the Recorder's website and
25 then find this policy statement,

1 Jack, please.

2 Q Now, he's going to turn to this Section 3 in what
3 we're going to mark as Exhibit 5.

4

5 (Deposition Exhibit 5 marked for
6 identification.)

7

8 Q And what I'm going to represent to you that the
9 policy that you see described on your Exhibit 5 is the
10 same policy that you see up there on the screen. It's
11 not the same policy as Exhibit 4. They're different.

12 MR. MOVIUS: Objection.

13 MR. MARBURGER: Do you want
14 me to ask him to demonstrate that
15 they're different? We can do that.

16 Q Look at Section 3 on Exhibit 5 or on the screen.
17 It won't matter because they say the same things. But
18 you were looking at Exhibit 4 and comparing it with
19 Exhibit 5. And I'm talking about Section 3 that says,
20 "Costs for Public Records."

21 You can certainly confirm for me, can't you, that
22 they don't say the same thing on Exhibit 5 as it said
23 on Exhibit 4?

24 MR. MOVIUS: Objection. I can
25 hardly read what's on there.

1 Q Well, then look at the Exhibit -- I don't know
2 how to make it clearer. Do you?

3 A Are you saying is this the same as that?
4 (Indicating.)

5 Q No, I'm not. I'm saying look at Exhibit 3 of
6 Exhibit 5.

7 A Okay.

8 Q And compare that Section 3 with Exhibit 4,
9 Section 3.

10 A Okay. So what's your question?

11 Q My question is, presumably, you noticed there's a
12 difference in language between Section 3 on Exhibit 5
13 and Section 3 on Exhibit 4?

14 A As of 30 seconds ago when you handed me Exhibit 5
15 I noticed.

16 Q That's okay. That's all I'm asking you. I'm
17 expecting that you're reading it and you see a
18 difference in language.

19 A Right.

20 Q That's all I'm doing.

21 Have you developed any understanding as to why
22 Section 3 on Exhibit 5 now has different language than
23 Section 3 on Exhibit 4 had?

24 A No.

25 Q You have not developed an understanding as to the

1 reason there was a change?

2 MR. MOVIUS: Objection.

3 A No.

4 Q Did anybody bring to your attention that there
5 was a change at all?

6 A No.

7 Q So is sitting here today the first time anyone
8 alerted you or brought to your attention that this
9 policy that we see represented on Exhibits 4 and 5 has
10 changed?

11 A To the best of my knowledge, this is the first
12 I've seen of that change.

13 Q Has anybody brought to your attention the fact
14 that there was a change, whether you saw it or not?

15 A To the best of my knowledge, no one did.

16 Q So you didn't realize until this deposition that
17 the policy on the Recorder's website as it exists now
18 is different in language than the way it existed at
19 the last time that you read the policy?

20 A That's correct.

21 Q Now, when the policy existed as shown in
22 Exhibit 4, which is a policy that you had already
23 known about, stated that there would be \$1 charged for
24 a compact disc -- that's that Section 3.3 --

25 A Yes.

1 Q -- did you develop an understanding as to how
2 that figure \$1 was arrived at by your office?

3 A I assumed it was out of the statutory -- it was a
4 statutory -- I just assumed, because, again, I was
5 not -- I wasn't the lead on anything to do with policy
6 implementation pertaining to the Revised Code. That
7 was Judge Greene all the way.

8 Q Well, I really hadn't asked you whether you were
9 the lead. Did you think I was asking you whether you
10 were the lead on that?

11 A The question you asked me, I think, somebody who
12 would have been privy to that information would have
13 been somebody close to the lead or somebody privy to
14 this project. And I was not.

15 Q My question was whether you have -- you develop a
16 lot of understanding as to how that office works when
17 you're chief of staff, don't you?

18 A Yes.

19 Q And had you developed an understanding as to how
20 this \$1 figure was arrived at for that policy?

21 A No.

22 Q Okay. All done.

23 A Really? Did you get the really? All right.

24 MR. MOVIUS: We're done.

25 MR. MARBURGER: You've got a

1 choice that your lawyer can tell you
2 about as to whether to read your
3 transcript or waive the right to sign
4 that transcript.

5 THE WITNESS: I would like to
6 read it, please. Will you mail it to
7 me?

8 MR. MARBURGER: I'm not part
9 of that.

10 THE WITNESS: Okay.

11 (Signature not waived.)

12 (Deposition concluded at 3:33 p.m.)

13

14

15

John Kandah

16

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18

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25

The State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga.)

I, Cheryl L. Baker, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named JOHN KANDAH was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, employee of, or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney for any of the parties in the above-captioned action; I am not financially interested in the action; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D); nor am I otherwise interested in the event of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 4th day of February, 2011.

Cheryl L. Baker

Cheryl L. Baker, Notary Public
in and for the State of Ohio.

My commission expires 10/10/15.



Cuyahoga County

Department of the Recorder

1:19:32 PM Fri, Jan 28th

BEWARE CUYAHOGA COUNTY RESIDENTS There

- Home
- Search Database
- History
- Documents
- Information
- Public Outreach
- Links
- Veteran Grave Sites
- Forms
- Survey
- Fees & Filings
- Microfilming Center
- Property Alert



PUBLIC RECORDS REQUEST POLICY

OF

THE CUYAHOGA COUNTY RECORDER'S OFFICE

LILLIAN J. GREENE, RECORDER

Introduction:

It is the policy of the Cuyahoga County Recorder's Office that openness leads to a better informed citizenry, which leads to better government and better public policy. It is the policy of the Cuyahoga County Recorder's Office to strictly adhere to the state's Public Records Act. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code. If the request is in writing, the explanation must also be in writing.

Section 1. Public records

This office, in accordance with the Ohio Revised Code, defines records as including the following: Any document – paper, electronic (including, but not limited to, e-mail), or other format – that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. All records of the Cuyahoga County Recorder's Office are public unless they are specifically exempt from disclosure under the Ohio Revised Code.

PENNSAID 800-631-6888

DEPOSITION
EXHIBIT

5

1/28/11 CB

KAY DATT

Section 1.1

It is the policy of the Cuyahoga County Recorder's Office that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying (See Section 4 for the e-mail record policy). Record retention schedules are to be updated regularly and posted prominently.

Section 2. Record requests

Each request for public records should be evaluated for a response using the following guidelines:

Section 2.1

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If it is not clear what records are being sought, the records custodian must contact the requester for clarification, and should assist the requestor in revising the request by informing the requestor of the manner in which the office keeps its records.

Section 2.2

The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. It is this office's general policy that this information is not to be requested.

Section 2.3

Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

Section 2.4

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes (both in draft and final form), budgets, salary information, forms and applications, personnel rosters, recorded documents, etc. If fewer than 20 pages of copies are requested or if the records are readily available in an electronic format that can be e-mailed or downloaded easily, these should be made as quickly as the equipment allows.

All requests for public records must either be satisfied (see Section 2.4) or be acknowledged in writing by the (public office) within a reasonable time following the

office's receipt of the request. If a request is deemed significantly beyond "routine," such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include the following:

Section 2.4a – An estimated number of business days it will take to satisfy the request.

Section 2.4b – An estimated cost if copies are requested.

Section 2.4c – Any items within the request that may be exempt from disclosure.

Section 2.5

Any denial of public records requested must include an explanation, including legal authority. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

Section 3. Costs for Public Records

Those seeking public records will be charged only the statutory cost of making copies.

Section 3.1 - All Public Records are available for inspection Monday – Friday from 8:30 A.M. until 4:30 P.M. Copies of such records are available upon request. The cost for copies is \$2.00 per page for recorded documents (\$17.28 for copies of sub-plats and condos) and \$.05 per page for all administrative or non-recorded documents. We may require payment of these fees prior to processing your request.

Section 3.2 - Will permit prompt inspection of public records and provide copies of such records within a reasonable amount of time. If the requested records need to be researched, retrieved, assembled or reviewed prior to release, we will let you know approximately how long it will take.

Section 3.3 - Public Records Requests pertain to any documents that document the organization, functions, policies, decisions, procedures and operations of the office, subject to certain exemptions under state and federal law.

Section 3.4 - Public Records Requests should be directed to the Cuyahoga County Recorder at 216-443-8194, or by visiting Room 211 (Administrative Offices) at the Cuyahoga County Administration Building, 1219 Ontario Street, with the request.

Section 3.5 - A copy of the complete Public Records Policy for this office can be obtained from the Records Manager in the Recorder's Administrative Offices.

Section 4. E-mail

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office. E-mail is to be treated in the

same
fashion as records in other formats and should follow the same retention schedules.

Section 4.1 – Records in private e-mail accounts used to conduct public business are subject to disclosure, and all employees or representatives of this office are instructed

to retain their e-mails that relate to public business (see Section 1 Public Records) and

to copy them to their business e-mail accounts and/or to the office's records custodian.

Section 4.2 – The records custodian is to treat the e-mails from private accounts as records of the public office, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

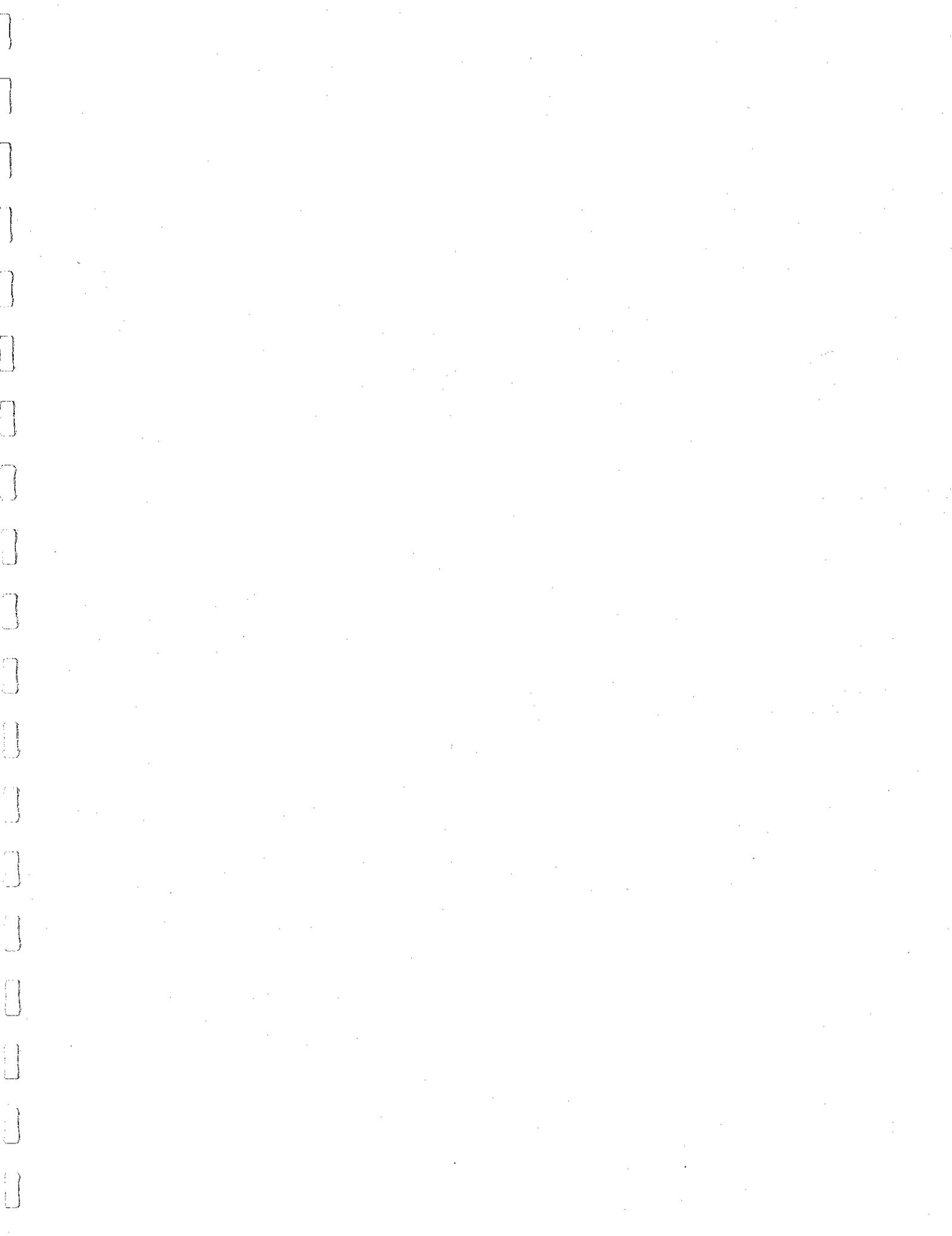
Section 5. Failure to respond to a public records request

The Cuyahoga County Recorder's Office recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the Cuyahoga County Recorder's Offices' failure to comply with a request may result in a court ordering the Cuyahoga County Recorder's Office to comply with the law and to pay the requester attorney's fees and damages.

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Click here to read our [Policy Statement](#).

Developed and Designed By Cuyahoga County Recorder's Office.



IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION IN MANDAMUS

STATE ex rel. DATA TRACE)
INFORMATION SERVICES LLC,)
ET AL.,)
)
Relators,)
)
vs.) Case No. 2010-2029
)
RECORDER OF CUYAHOGA)
COUNTY, OHIO,)
)
Respondent.)

DEPOSITION OF LAWRENCE PATTERSON
Thursday, December 30, 2010

Deposition of LAWRENCE PATTERSON, called by the Relators for examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Rebecca L. Brown, Registered Professional Reporter, a Notary Public in and for the State of Ohio, at the offices of Baker & Hostetler LLP, 1900 East Ninth Street, Suite 3200, Cleveland, Ohio 44114, commencing at 1:07 p.m. the day and date above set forth.



COURT REPORTERS
& VIDEOCONFERENCE

The IMG Center
1360 East 9th St - Suite 1010
Cleveland, OH 44114
phone: 216.241.5950
toll free: 866.241.5950

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EXAMINATION INDEX

LAWRENCE PATTERSON	
BY MR. MARBURGER	5

EXHIBIT INDEX

Patterson Exhibit	MAR
1	57

OBJECTION INDEX

BY MR. CAVANAGH	10
BY MR. CAVANAGH	11
BY MR. CAVANAGH	18
BY MR. CAVANAGH	33
BY MR. CAVANAGH	33
BY MR. CAVANAGH	35
BY MR. CAVANAGH	37
BY MR. CAVANAGH	50
BY MR. CAVANAGH	64
BY MR. CAVANAGH	68
BY MR. CAVANAGH	70

1 MR. CAVANAGH: I just want to
2 state on the record that
3 Mr. Patterson is here today solely
4 because the Relators have issued a
5 subpoena compelling him to be here
6 today for deposition. He's not here
7 under Rule 30(b)(5), and, in fact,
8 the Relators have not issued a Rule
9 30(b)(5) Notice to the Recorder in
10 this case.

11 Mr. Patterson is not testifying
12 on the Recorder's behalf here today,
13 and the Recorder has not designated
14 him to testify on its behalf today.
15 He's instead here testifying as an
16 individual.

17 It is the Relators, and not the
18 Recorder, who have chosen
19 Mr. Peterson to testify here today.
20 The Recorder therefore objects to
21 the extent the Relators attempt to
22 use Mr. Peterson's testimony as that
23 of the Recorder's office.

24 MR. MARBURGER: I take
25 exception to the objection. The

1 Rules of Evidence will decide how we
2 can use Mr. Patterson's testimony.

3 MR. CAVANAGH: I'm sorry. I
4 called you Peterson, Mr. Patterson.

5

6

LAWRENCE PATTERSON

7 called by the Relators for examination under the
8 Federal Rules of Civil Procedure, after having been
9 first duly sworn, as hereinafter certified, was
10 examined and testified as follows:

11

EXAMINATION

12 BY MR. MARBURGER:

13 Q I'm David Marburger. I represent two companies
14 that have asked for electronic copies of records that
15 are recorded with the Recorder's office and have sued
16 the Recorder to get those copies, as well as to try
17 to compel the Recorder to charge less money than the
18 Recorder had wanted to charge for electronic copies
19 of the records that these companies have asked for.
20 One is called Data Trace Services, and the other one
21 is called Property Insight.

22 Would you state your name and spell it.

23 A Lawrence Patterson, L-A-W-R-E-N-C-E --

24 Q Well, not that part, but the Patterson.

25 A Patterson, P-A-T-T-E-R-S-O-N.

1 Q How long have you been with the Recorder's
2 office?

3 A I started employment with the Recorder's office
4 January of '99.

5 Q So Pat O'Malley was the Recorder when you
6 started?

7 A That's correct.

8 Q What's your title today?

9 A Truthfully, I don't know.

10 Q What are your responsibilities today?

11 A I run most of the servers and computers for the
12 Recorder's office.

13 Q Have you run most of the servers and the
14 computers for the Recorder's office since you started
15 there in 1999?

16 A No.

17 Q Did you report to a guy named Jim Zak?

18 A Yes.

19 Q And was that his job to be responsible for the
20 computers and the servers in the Recorder's office?

21 A Was it his job?

22 Q Did you understand that that was part of his
23 responsibilities?

24 A Not in 1999, no.

25 Q Okay. Why don't you tell us what your

1 responsibilities were when you got there and take us
2 sequentially up to the present day.

3 A I started in data entry for the Recorder's
4 office.

5 Q Okay.

6 A I worked in cashiers for the Recorder's office,
7 and I worked in the computer department at the
8 Recorder's office.

9 Q Was data entry part of the computer department
10 or separate?

11 A No.

12 Q Is there a department that data entry was part
13 of?

14 A No.

15 Q Was it called data entry?

16 A Yes.

17 Q What did you do?

18 A Entered data.

19 Q Well, what kind of data?

20 A Grantors, grantees, data from documents.

21 Q Okay. So there are certain records that the
22 Recorder files as part of their duties, such as
23 mortgages, deeds, and other records that are
24 presented to the County Recorder to be filed,
25 recorded, and indexed; isn't that true?

1 You've been there since 1999.

2 A Correct.

3 Q You don't have any doubt that that's true, do
4 you?

5 A The question was a little bit long. If you
6 could just make it a little more simple.

7 Q You understand that people present records such
8 as deeds --

9 A Yes.

10 Q -- or mortgages to the Recorder's office, don't
11 you?

12 A Yes.

13 Q And that the Recorder's duty or job is to record
14 those records or the information from them and index
15 them. You understand that, don't you?

16 A I'm aware that we do.

17 Q Okay. You understand that the principal job of
18 the Recorder is to keep a record of certain kinds of
19 documents, many of which pertain to real estate. You
20 understand that, don't you?

21 A I'm not an expert of what the Recorder's job is.

22 Q Even if you're not an expert, you understand
23 what the function of that office is, don't you?

24 A I could tell you what we do in our office.

25 Q What do you do in your office?

1 A People present copies of real estate documents,
2 we index them, and make sure records are available.

3 Q To the public?

4 A Correct.

5 Q Okay. And so all I was -- the only reason for
6 asking that is that I wanted to establish what kind
7 of data you enter, and the kind of data you enter is
8 data from the records that are presented for filing
9 with the Recorder's office.

10 A Correct.

11 Q And that's distinct -- did you say yes?

12 A The data that we enter is from the documents
13 that are presented in the office.

14 Q Yes.

15 A Correct.

16 - - - - -

17 (Jack Blanton, Esq. enters proceedings.)

18 - - - - -

19 MR. MARBURGER: This is Jack
20 Blanton who's a young lawyer here,
21 and I said he's welcome to sit in
22 and watch.

23 BY MR. MARBURGER:

24 Q That's distinct from something like internal
25 payroll records, that's not the data that you were

1 entering --

2 A Correct.

3 Q -- right?

4 You're not entering like personnel records of
5 the people who work at the Recorder's office, right?
6 That's not the data you entered?

7 A Correct.

8 Q You're entering the data that pertains to the
9 official duties of the Recorder's office to index
10 records?

11 MR. CAVANAGH: Objection.

12 Q I'm not holding you to any issue of law, but
13 what you're entering is data that's being brought in
14 by members of the public that pertain to the duties
15 of the Recorder to store and index certain kinds of
16 records.

17 If we're going to spend an hour on this, we
18 will, but it's a simple enough question. My point is
19 there is two kinds of records: You could deal with
20 internal and administrative records, like your
21 payroll; or records that are coming from the outside
22 that pertain to real estate, veterans discharges, UCC
23 filing statements and the like.

24 Do you understand that?

25 A I understand what you're saying, yes.

1 Q And the data that you were entering was data
2 from records that came in from the outside that have
3 some relation to the Recorder's reason for existing,
4 the Recorder's duties?

5 MR. CAVANAGH: Objection.

6 Q Is this a hard question, Mr. Patterson?

7 MR. CAVANAGH: I think he's
8 getting hung up on the legal duty
9 part.

10 MR. MARBURGER: I don't care
11 about legal duties.

12 MR. CAVANAGH: I don't think
13 he's qualified to say what the
14 Recorder's statutory duties are.

15 MR. MARBURGER: But I'm not
16 trying to hold him to that either.

17 MR. CAVANAGH: Then ask the
18 question then.

19 BY MR. MARBURGER:

20 Q You have an understanding that the Recorder has
21 a reason for being, don't you, sir? A reason to
22 exist?

23 A I'm sure it does.

24 Q And you understand that the reason to exist, as
25 you've told us, has some relation to receiving

1 documents from people who don't work for the
2 Recorder's office and indexing those so that the
3 public can take a look at those records and use the
4 indexes for whatever purposes. You understand that
5 you are sort of a depository of records that are
6 indexed and many of which pertain to real estate.

7 A I agree that we're -- people deposit documents
8 with us for information regarding to real estate,
9 yes.

10 Q Okay. That's all I'm getting at.

11 The data you would enter would be data from
12 those records, right?

13 A Correct.

14 Q Like if Pat O'Malley writes an internal memo to
15 his chief assistant, that isn't the data you're
16 entering, right?

17 A That's correct.

18 Q That's all I'm trying to get at.

19 MR. CAVANAGH: David, in all
20 fairness, the question included a
21 statement about what the objectives
22 and goals and reasons for the
23 existence of the County Recorder's
24 office are, and he doesn't know
25 that.

- 1 MR. MARBURGER: Well, he
2 probably does know that.
- 3 Q But no one is asking you to give anything other
4 than a layperson's understanding of what the
5 Recorder's office is supposed to do.
- 6 A Thank you.
- 7 Q I'm not asking you to be the legislature.
- 8 A Thank you.
- 9 Q So in entering data like from a deed you would
10 enter what kind of data?
- 11 A Grantor, grantee, legal description.
- 12 Q Okay. And how long -- if you started there in
13 January of '99, how long was your tenure in that
14 position?
- 15 A I'm terrible with dates.
- 16 Q Ballpark it for us.
- 17 A Maybe --
- 18 Q It doesn't matter to me what the answer is. I
19 just need to have a feel for it.
- 20 A Maybe six months.
- 21 Q Okay. And then did you become in the cashier's
22 department?
- 23 A That's correct.
- 24 Q In the cashier's department, would this include
25 what your duties were, that if -- let's say I came in

1 with a deed that I wanted to record with the
2 Recorder's office, I would give that to somebody in
3 the cashier's office -- that would be the procedure,
4 correct?

5 A Yes.

6 Q -- and I would have to pay an amount of money,
7 some sort of fee, correct?

8 A Yes.

9 Q And the cashier's office would receive the fee,
10 correct?

11 A Yes.

12 Q And receive the deed that I present, correct?

13 A Yes.

14 Q Okay. And from that point the cashier's office
15 would cause it to be processed in some way so that
16 the Recorder's office could keep or collect the data
17 on that deed; is that true?

18 MR. CAVANAGH: What time
19 frame are we talking about? I don't
20 know if it changed or not, but it
21 might matter.

22 Q It doesn't matter. For my purposes, I don't
23 care what mechanism you used.

24 My point is -- if we're going to play games, why
25 don't you just tell me, when I give you the deed,

1 what was the process for handling it when you first
2 became a cashier?

3 A Wow. So when you give me a deed, what do we do
4 with it?

5 We would examine it for the requirements, count
6 the number of pages, collect the fee, sticker the
7 pages -- there was a sticker that went on the
8 pages -- and then send it for process in the scanning
9 department.

10 Q And then?

11 A I think that's it.

12 Q Well, when it was scanned, didn't you return the
13 original to the person who brought it in?

14 A When I was in the cashier's department, is that
15 the question?

16 Q Yeah.

17 A No. The cashier's department did not return the
18 document.

19 Q Was it your understanding that somebody in the
20 Recorder's office would take some steps to get the
21 original back to the person that presented it?

22 A Yes.

23 Q Okay. And when you say "scanned," you
24 understood, didn't you, that that was an electronic
25 scanning as opposed to a photocopy, or did you do

1 either?

2 A I don't know what you mean by that.

3 Q Okay. When you said "scanned," what were you
4 thinking of when you said it was sent to be processed
5 in the scanning department?

6 A We would put it in a basket, the basket was
7 delivered to the scanning department.

8 Q Did you develop any understanding in the time
9 that you've been there, since 1999 until now, which
10 is some eleven years, as to what the scanning
11 department did with it?

12 A Yes.

13 Q What was your understanding?

14 A They placed it in a scanner and scanned it, and
15 -- yeah, they placed it in the scanner and scanned
16 it.

17 Q And did you ever develop an understanding from
18 1999 to the present as to what the function of that
19 scanning was?

20 A The function? I'm not sure.

21 Q What did you think happened in the scanner?
22 Didn't know?

23 A It never even occurred to me to think about it
24 until you asked me.

25 Q So you're in the computer department now.

1 A That's correct.

2 Q And you're in charge of the computers and the
3 servers.

4 A That's correct.

5 Q But you've not developed an understanding as to
6 what a scanner does? Is that what the Ohio Supreme
7 Court should understand from your testimony?

8 A Scanners aren't computers.

9 Q Whether they are or not, you don't have any
10 understanding -- you've not ever developed an
11 understanding since 1999 of what the scanner did?

12 A What it does?

13 Q Yeah. What was its function.

14 A I've never repaired scanners or opened them.

15 Q So you don't know what they do at all, huh?

16 A I've never thought about it.

17 Q So you don't understand that they have a way of
18 recording data, do you?

19 A I've never thought about it.

20 Q So you don't really -- you're in charge of the
21 computer system and the servers, and you don't
22 know -- I want to be absolutely certain the Ohio
23 Supreme Court understands that the head of the
24 computer department in the Recorder's office has no
25 clue as to what it is to scan a document. Is that

1 really fair?

2 MR. CAVANAGH: Objection.

3 You're misrepresenting his
4 testimony. He didn't say he has no
5 idea what a scanner does.

6 MR. MARBURGER: I asked him
7 if he developed an understanding and
8 he said no.

9 BY MR. MARBURGER:

10 Q Now, you either have an understanding or you
11 don't, Mr. Patterson.

12 MR. CAVANAGH: If you know
13 what a scanner does, explain it to
14 him.

15 A How it operates?

16 Q No. I asked you what its function was.

17 A The question was did you --

18 Q No. I asked you what the function was was my
19 question.

20 A What the function of a scanner --

21 Q What's the function of that scanner at the
22 Recorder's office.

23 A Oh, okay. The function of a scanner is to
24 preserve an image of the document.

25 Q That's right. So that you'll have some

1 electronic copy of what the document said; isn't that
2 true?

3 A That's -- I don't understand exactly what you
4 mean when you say so you'll have an electronic copy.
5 I understand that we place the documents in the
6 scanner, it goes through the scanner. When it's
7 done, I have a copy.

8 Q All right. Is your hang up with the word
9 "electronic"?

10 A Yes, sir.

11 Q So you have a copy. You have some way of seeing
12 what that document said after the original's been
13 returned to the guy who presented it; isn't that
14 true?

15 A That's correct.

16 Q So your hang up is what to call it, electronic
17 or some other word; is that right? Is that what your
18 issue is?

19 You know what a copy is, right?

20 A Yes, I know what a copy is. I've always
21 referred to it as a copy.

22 Q And that copy need not be on paper, you can
23 still read it even if it's not on -- your copy isn't
24 on paper; is that true?

25 A Yes, it is.

1 Q You can see it on a computer monitor; isn't that
2 true, sir?

3 A Yes, it is.

4 Q All right. In fact, unless you see it on either
5 paper or a computer monitor, a screen of some kind,
6 you can't see it at all, can you, sir?

7 A That would be correct.

8 Q How long were you in the cashier's department?

9 A Once again, I'm bad with dates. I'm going to
10 guess probably six months.

11 Q And then after that did you join the computer
12 department?

13 A Yes, sir.

14 Q And what did you do in the computer department?

15 A Repair computers, respond to help desk phone
16 calls.

17 Q Anything else?

18 A That should probably cover everything when I
19 first started in the computer department, repair
20 computers, answer help desk calls.

21 Q Since you first started -- I didn't mean to
22 interrupt you. You were speak so quietly I didn't
23 hear you. What did you just say?

24 A Just recapping what I said originally, when I
25 first started in the computer department I repaired

1 computers, I answered help desk phone calls.

2 Q Okay. From the time that you joined the
3 computer department have you stayed in the computer
4 department?

5 A Yes, sir.

6 Q It's fair to say you've been in the computer
7 department for at least nine years?

8 A Probably.

9 Q In that time what else did you do in the
10 computer department during those nine years?

11 A Server maintenance, PC maintenance, system admin
12 duties.

13 Q Admin is abbreviated for administrative?

14 A Yeah. System administrative duties.

15 Q Anything else?

16 A That is most of -- that should cover what I do.

17 Q When you said you responded to help desk calls,
18 is that people who were employed by the Recorder's
19 office and needed help making the software do what
20 they wanted it to do?

21 A That includes that, yes.

22 Q Before you joined the Recorder's office where
23 did you work?

24 A Wow.

25 Q Immediately before.

1 A Immediately before? Wow. I held a lot of
2 little jobs. Was unemployed for a while, so I worked
3 for like a temporary agency and went out and did
4 interviews during the day.

5 Q Did you have -- I'm sorry. Go ahead.

6 A So that's why I'm trying to recollect
7 immediately before.

8 Q All I'm really getting at is did you work for
9 any -- what I was wanting to see is if you had worked
10 for any companies or agencies, governmental or
11 non-governmental, where you had to work -- where you
12 had to know anything about the technical element of a
13 computer system.

14 A No. I apologize. I've worked on computers, you
15 know, for other companies, for my family's company,
16 yes.

17 Q What's your family's company?

18 A It's a transportation company.

19 Q Does it have anything to do with developing
20 software?

21 A No.

22 Q What kinds of things did you do to work on
23 computers before for other companies before joining
24 the Recorder's office?

25 A PC repair.

1 Q Anything else?

2 A Mainly PC repair.

3 Q Do you have any formal education in computer
4 science or something related to the technical element
5 of computer systems?

6 A Yes.

7 Q What's that?

8 A I attended Akron University for programming. I
9 hold -- I am certified in Novell Administrator.

10 Q What is that?

11 A Novell is an operating system. I hold a
12 Microsoft certification. I've had training in
13 wireless systems, security.

14 Q You mean computer system security?

15 A Yes.

16 Q What else?

17 A I think that just about covers it.

18 Q What year did you -- did you graduate from Akron

19 U?

20 A No, sir.

21 Q How far did you get in your education?

22 A Three years.

23 Q So what year was the last year you attended in
24 Akron?

25 A Probably '93, I'm guessing. It was either '92,

1 '93, '94, because I'm terrible with dates, as I told
2 you.

3 Q How long have you had your current
4 responsibilities?

5 A Once again, I'm terrible with dates, so --

6 Q Zak now works for the county court system,
7 correct, Jim Zak?

8 A Yes. That sounds correct.

9 Q Have you had your current responsibilities since
10 he left?

11 A That sounds correct, yes.

12 Q Can you give us an approximate year in which he
13 left?

14 A 2010.

15 MR. CAVANAGH: Did you say
16 2010?

17 THE WITNESS: Yes. This
18 year.

19 Q I know he just went over there this year.

20 Prior to him leaving -- were your
21 responsibilities immediately prior to him leaving the
22 Recorder's office, were they sort of as his number
23 two in that department?

24 A That sounds correct.

25 Q How long did you hold those responsibilities as

1 the number two person?

2 A Probably -- I'm guessing, because I'm terrible
3 with dates, probably since maybe a year after I
4 started in the computer department.

5 Q Oh. So about eight years roughly, seven to
6 eight years, would that be right?

7 A I guess so.

8 Q Now, today if I get on to the Cuyahoga County
9 Recorder's website using my personal computer, I can
10 see deeds that have been filed and other records that
11 have been filed there; am I correct?

12 A That's correct.

13 Q And I will see -- whatever it is that I'm seeing
14 would replicate what's actually been scanned by your
15 department if it was, for example, a deed; is that
16 correct?

17 A Whatever you're seeing would replicate what was
18 actually scanned?

19 Q By your department.

20 A No.

21 Q What would the different -- what difference, if
22 any, can you identify?

23 A A watermark.

24 Q The watermark is on the image I see on my
25 computer screen, or is it on the original when you --

1 was it one of the things that was scanned -- how is
2 the watermark different? Explain that difference.

3 A There is a system in place that -- for a website
4 image that places a watermark on the image.

5 Q So if I were to print the image from your
6 website using my PC's printer, the idea is that the
7 watermark would also print?

8 A Yes.

9 Q Okay. If I went to your office personally and
10 said may I have a paper copy of my deed, it wouldn't
11 necessarily have a -- the paper copy wouldn't
12 necessarily have a watermark, would it?

13 A That's correct.

14 Q Do you understand what the purpose of the
15 watermark is for printout from the website?

16 A It's to make it identifiable as a copy from the
17 website.

18 Q Have you developed an understanding as to what
19 value that has to the Recorder's office, to have a
20 watermark more or less imbedded in the website image?

21 A It's -- let's see. It's -- I felt that I
22 explained it.

23 Q I mean, why is it a value to have a watermark on
24 the website image, but if I come in and get a paper
25 copy directly from you it wouldn't necessarily have a

1 watermark?

2 A We would like to be able to identify copies that
3 come from our website.

4 Q This is not intended to, you know, pin you down,
5 but I've got to understand this.

6 A Right.

7 Q Is the purpose of the watermark then for you, to
8 give you a sense of genuineness?

9 A It's just to identify copies from the website.
10 That is it.

11 Q Do you have an understanding as to why that is
12 valuable for your office?

13 A I believe, and you'll have to -- this is not my
14 area of expertise. You'll have to get confirmation
15 from someone else, but I believe that we want to make
16 sure that when a copy is used, that we're able to
17 identify it.

18 Q As genuine? As actually from you as opposed to
19 counterfeit?

20 A I don't know if I would say that.

21 Q What would you say?

22 A I think I would say that we -- sometimes an
23 individual will come in and say, well, I got this
24 from your website, and it's not that -- I don't think
25 it's that they're trying to provide a counterfeit

1 document of any way, but sometimes the document may
2 not be accurate.

3 Q So it's a way of verifying that it is, in fact,
4 coming from your office? Is that the purpose of the
5 watermark, as you understand it?

6 A It's a way of -- I wouldn't even say that. We
7 just want to identify it as a copy that came from the
8 website as opposed to a copy that someone came in and
9 got a certified copy of or as opposed to anything
10 else.

11 Q Well, as opposed to me just constructing my own
12 replica of a deed that would originate from me and
13 not from your office, is that a value to your office?

14 A Is that a value? It's a way of identifying.
15 It's a way of identifying.

16 Q That it came from you as opposed to some other
17 source?

18 A I don't know if that's a value or not. It's a
19 way of identifying that this is a copy and from our
20 website, yes. I don't know. The other source thing
21 or counterfeit, that bothers me. I never looked at
22 it that way.

23 Q Now, do you work Monday through Friday, you
24 personally, at the Recorder's office?

25 A Yes.

1 Q And has that been the case since you've been in
2 the computer department?

3 A Yes.

4 Q Regular business hours. When the department
5 opens and when it -- aren't your hours at the
6 Recorder's office like 8:30 to 4:30 or 8:00 to 4:30?

7 A Correct.

8 Q Do you typically work those hours in the office?

9 A No.

10 Q What do you typically do?

11 A 8:00 to 4:00.

12 Q But typically in the Recorder's office?

13 A Correct.

14 Q And since you've been in the computer
15 department, have you had an opportunity to
16 communicate with whoever your supervisor was?

17 A Yes.

18 Q And was that typically in person, by phone, by
19 email, all of those, any of those?

20 A Typically in person or over the phone.

21 Q And would you say that you converse with whoever
22 your supervisor was every day?

23 A Yes.

24 Q And did you also have an opportunity -- did you
25 also converse with the people who weren't your

1 supervisors but who also worked in the Recorder's
2 office? Did you typically do that every day?

3 A Yes.

4 Q And some of those people might be subordinate to
5 you or -- some of those people were your
6 subordinates; is that true?

7 A I wouldn't identify them as a subordinate.

8 Q They would be people who weren't your
9 supervisor.

10 A Correct.

11 Q Maybe people that you supervise.

12 A I don't envision myself as an official
13 supervisor for the Recorder's office.

14 Q Do you have anybody that reports to you in the
15 chain of command?

16 A I would say more or less I'm more like a team
17 leader than a supervisor.

18 Q Do you have people on your team then?

19 A Yes.

20 Q Did you communicate with people on your team?

21 A Yes.

22 Q Every day?

23 A Yes.

24 Q Now, were there other people who were in charge
25 of departments in the Recorder's office who weren't

1 on your team?

2 A Yes.

3 Q Did you communicate with them at least every
4 week?

5 A Yes.

6 Q So in all these communications, you've had
7 plenty of opportunity to develop an understanding as
8 to some of the basic functions of the Recorder's
9 office. Would you agree with that?

10 A Yes.

11 MR. MARBURGER: Let me take a

12 break.

13 (Recess had.)

14 BY MR. MARBURGER:

15 Q While Pat O'Malley was the Recorder, there was a
16 process implemented at the Recorder's office, wasn't
17 there, where each day's filings were -- and maybe
18 this still happens -- were recorded onto a compact
19 disc?

20 A Correct.

21 Q Do you still do that or not anymore?

22 A The images from the day are recorded onto a CD.

23 Q And it's a CD-R; is that right?

24 A I guess.

25 MR. CAVANAGH: Do you know,

1 Larry, or no?

2 Q Is it your understanding that it's a compact
3 disc that you can write on?

4 A Correct.

5 Q That's all I care about.

6 MR. CAVANAGH: There's CD

7 minus R's and CD plus R's --

8 A I don't --

9 MR. CAVANAGH: -- CD-RW.

10 Q The kind of compact disc that one might see at
11 Staples or Office Depot or OfficeMax for sale; am I
12 right?

13 A Yes.

14 Q And was it your understanding that the purpose
15 of making a record of each day's filings on a compact
16 disc was so you would have a backup of the records
17 that were otherwise stored in your computer system
18 and filed that day?

19 A Yes.

20 Q And did you sometimes refer to that CD
21 generically as like the master CD for daily work?

22 A It is referred to as that.

23 Q See, I know what's going on in that office.

24 And are those master CDs stored in like a CD
25 spindle of some kind at the Recorder's office?

1 A Yes.

2 Q And the device used to record information from
3 your computer system onto the master CD is a device
4 within the Recorder's office -- is that correct? --
5 as opposed to being in some other building somewhere?

6 A Yes.

7 Q During your tenure in the computer department at
8 the Recorder's office, has the Recorder's office had
9 photocopying machines?

10 MR. CAVANAGH: Objection.

11 Q Any photocopying machine?

12 A When you say "photocopying machine," what do you
13 mean?

14 Q Let me be -- let me make sure I understand your
15 question. You don't have an understanding of what a
16 photocopying machine is?

17 A No. I want to make sure that I answer your
18 question correctly.

19 MR. CAVANAGH: Dave, I'll
20 object to the tone of the question.
21 You make it sound like it's
22 unbelievable to you that he wouldn't
23 know what the definition of a
24 photocopy machine is.

25 MR. MARBURGER: I didn't ask

1 him to define it. I asked him if he
2 had any.

3 A When you say "photocopying machine," what do you
4 mean?

5 Q Let me be clear. The term "photocopying
6 machine" is so ambiguous that you can't picture in
7 your mind what a photocopying machine is in an office
8 setting?

9 A I just want to make sure I answer your question
10 correctly.

11 Q Well, we'll find out. If you can say yes or no,
12 I can do follow-ups, but it seems -- if you really
13 don't know in an office setting what a photocopying
14 machine is, I'd like the Ohio Supreme Court to hear
15 you say so.

16 A I just want to make sure I answer your question
17 correctly.

18 MR. CAVANAGH: There's
19 different types of photocopiers,
20 Dave.

21 MR. MARBURGER: You're
22 speaking instead of -- you're not
23 under oath. This guy is.

24 MR. CAVANAGH: I understand
25 that, but I understand what his

1 objection is. You want him to
2 answer the question, but I don't
3 think it's fair.

4 MR. MARBURGER: It's not
5 fair?

6 MR. CAVANAGH: It's not a
7 fair question. A photocopy machine
8 can be a machine that uses
9 photostatic technology, that uses
10 xerographic technology, that uses
11 scanning technology.

12 BY MR. MARBURGER:

13 Q I don't care what kind of technology it uses.
14 Has your office -- we don't have technocrats on the
15 Ohio Supreme Court. We've got people like me,
16 general guys --

17 MR. CAVANAGH: Objection.

18 Q -- or gals. I'm not really very interested in
19 what the technology element of it is. I want to
20 know --

21 MR. CAVANAGH: That's what's
22 at issue in the case, Dave.

23 MR. MARBURGER: Not in my
24 judgement.

25 BY MR. MARBURGER:

1 Q Do you have photocopying machines at the
2 Recorder's office? If you don't know what that means
3 in an office setting, please tell the Court you don't
4 know what it means in an office setting to have a
5 photocopying machine.

6 A I would like to answer your question to the best
7 of my ability.

8 Q I'm asking you to answer that.

9 A So if you could explain to me what you mean
10 by --

11 Q I'm not going to do that because I want you -- I
12 want to establish on the record that you really don't
13 know what it is. I want to establish that.

14 Now, do you know what it is or do you not know
15 what it is? Do you understand what that term means
16 in common parlance or not?

17 A Common parlance?

18 Q Common language.

19 A I'm sorry. I didn't know what that meant.

20 I understand that there are photocopying
21 machines, and there are different types of them just
22 like --

23 Q Are there any in the Recorder's office?

24 A -- there are different cars. Some of them run
25 under gas power, some of them under electric power,

1 and I'm asking if you could help me out by explaining
2 what you mean by "photocopying machines" --

3 Q That's a great point.

4 A -- instead of trying to make me feel stupid.

5 Q If you feel stupid, it's not because I'm making
6 you feel that way.

7 MR. CAVANAGH: Objection.

8 A I have self-confidence and I have no problem.

9 Q I don't think you're stupid.

10 A I think -- I don't have any problem answering
11 the question.

12 Q I think you're playing games with me.

13 MR. CAVANAGH: Dave, the word
14 "photocopying" is at issue in this
15 case, and you're asking him whether
16 something is or isn't a photocopy
17 machine, which is a legal
18 conclusion --

19 MR. MARBURGER: This isn't a
20 patent case. There's no statute
21 that defines -- where I'm asking him
22 to define technology for me. I'm
23 asking -- I want to find out from a
24 layperson's perspective, not an
25 engineer's perspective, not a

1 technician's perspective, but
2 from -- I have an idea.

3 BY MR. MARBURGER:

4 Q How about this: Have you ever heard the term
5 "photocopier" or "photocopy" used in the Recorder's
6 office by anybody?

7 A Photocopy? I'm sure in the time I've been there
8 someone has used the term.

9 Q And have you ever heard them use it in
10 referencing a particular device or machine within the
11 Recorder's office? By way of example, "can you
12 photocopy that for me?" That's an example of office
13 parlance.

14 A That particular terminology I've not witnessed.

15 Q What was the context that you've heard the term
16 "photocopy" used in the Recorder's office?

17 A I'm sure it's been used. I didn't say I
18 remembered a specific instance.

19 Q All right. But you have general understanding
20 that people have used the term "photocopy" within the
21 Recorder's office in terms of something that could be
22 done there; is that true?

23 A I'm sure it's been used. I don't remember a
24 specific instance or how it was used. I'm sure it's
25 been used.

1 Q And is it fair to say that it's been used in
2 terms of being able to copy one piece of paper onto
3 another piece of paper using a machine? No? Not
4 sure of that?

5 A I'm sure it's been used. I don't recall a
6 specific instance in which it was.

7 Q Do you have a secretary?

8 A No.

9 Q Does anybody there have a secretary?

10 A Yes.

11 Q Have you ever heard a secretary use the term
12 "photocopy"?

13 A No.

14 Q Have you ever -- do you have machines there
15 where I can put in a paper document, push a button or
16 two, and out will come copies of that paper document
17 also on paper? Do you have such a machine?

18 A Yes, sir.

19 Q What do you call that machine?

20 A Xerox.

21 Q Xerox. Is the machine made by the Xerox
22 Company? Is that why it's called Xerox?

23 A No.

24 Q So xerox, in the parlance that you've described,
25 the language that you've described, is being used

1 generically as opposed to describing a particular
2 brand; is that right?

3 A All of my life I've just known people to say
4 xerox. It's not commonplace to use the terminology
5 that you're using.

6 Q You mean it's more -- people say xerox instead
7 of photocopy?

8 A If you're referring to a type of machine where
9 you place a piece of paper on the top and press a
10 button and out comes copies of it, they usually refer
11 to it as xerox.

12 Q Have you ever heard it referred to as
13 photocopying?

14 A Not with my generation, no.

15 Q And you've never heard anybody in the Recorder's
16 office refer to that as photocopying; is that true?

17 A I don't remember any specific instance where
18 that's referred to as photocopying.

19 Q Have you ever heard it referred to as
20 photocopying in any office context?

21 A I've always heard of it as xerox.

22 Q Let me be clear: You've never heard of that
23 called photocopying; is that correct, Mr. Patterson?

24 A When people speak of using a type of machine
25 that you described, they speak of it as could you

1 make a xerox of that or could you xerox this for me.

2 Q But you've never heard them refer to that as
3 photocopying; is that correct?

4 A I'm sure it's been said. I don't remember any
5 specific instance. What I remember is it referred to
6 as xeroxing a piece of paper to make additional
7 copies.

8 Q I know. You've told us that.

9 Let's be very clear here. You've never heard
10 that process called "photocopying." Is that true or
11 false?

12 A I'm sure the term has been used by someone.

13 Q Because you've heard that or you're just
14 guessing?

15 A I do not remember a specific instance where
16 someone used the term "photocopying." My generation
17 and people around me typically refer to placing an
18 image on the top of a machine and having two or three
19 copies come out as xeroxing.

20 Q Okay. Would it be synonymous in your
21 understanding with xeroxing to call that
22 photocopying?

23 A I don't know. I don't know what the legal
24 definition of photocopying is.

25 Q I don't know if there is a legal definition.

1 I'm talking about what lay people say.

2 MR. CAVANAGH: Aren't we
3 asking the Ohio Supreme Court to
4 decide that issue?

5 MR. MARBURGER: No.

6 MR. CAVANAGH: No?

7 MR. MARBURGER: You might
8 be. I'm not.

9 MR. CAVANAGH: Why don't you
10 just call it a copy machine. Why do
11 you have to call it a photocopier?

12 BY MR. MARBURGER:

13 Q I can call it anything I want to call it. I
14 want to see if you understand what I'm talking about.

15 A I call it a xerox.

16 Q Do you happen to know the names of the units
17 that you have that xerox? Do you happen to know what
18 they are -- what brand they are and what model or
19 unit they are?

20 A I should, but right now, due to the pressure
21 that you're placing me under, it's not coming to
22 mind.

23 Q I'm not placing -- am I placing you under
24 pressure, Mr. Patterson?

25 A I think it begins with an M. I can't remember

1 currently.

2 Q Do you feel that I'm placing you under pressure?

3 MR. CAVANAGH: Be honest.

4 A Yes. This is not my normal environment. I'm
5 not a lawyer and, you know, I'm nervous that my
6 answers -- you will try to use in a way in which I
7 wouldn't intend them to be.

8 Q Well, you're in control of that. If you give us
9 an honest, forthright, clear answer, you'll decide
10 whether your testimony can be used in a strange or
11 odd way. That's up to you, not up to me.

12 A Okay.

13 Q Now, do you need a break --

14 A No, sir.

15 Q -- so that I'm not pressuring you?

16 A No.

17 Q Well, what can we do to remedy the pressure that
18 you apparently feel?

19 A You could stop trying to rephrase questions to
20 place words in my mouth.

21 Q All you have to do is say no.

22 A Okay.

23 Q If I'm phrasing it inaccurately, all you have to
24 do is say that's not the truth.

25 MR. CAVANAGH: I think he's

1 done that. He's spoken up.

2 Q Do you have any fax machines at the Recorder's
3 office?

4 A Yes.

5 Q Have you ever used -- do you have more than one?

6 A I believe there are two.

7 Q Have you ever used them yourself?

8 A Yes.

9 Q Would this generally describe how your fax
10 machines are used by a regular -- someone who's not a
11 technical person: You take the records that you want
12 to fax, which is a paper record; put it in some sort
13 of hopper; dial a phone number, which is going to be
14 the destination, the machine to which it will be
15 transmitted; and push some sort of button; and the
16 machine then takes the document from there and
17 transmits data from it?

18 Is that generally what happens with your fax
19 machine? Is that generally what happens?

20 A Generally what happens is I place paper on the
21 top of the machine, dial a number, it processes them
22 in such a way that it transmits it, and whatever fax
23 machine receives it gets a reproduced image.

24 Q And the number that you said you dial is a
25 telephone number, isn't it?

1 A That's correct.

2 Q So that the data that's being transmitted is
3 going through telephone lines. Is that your
4 understanding?

5 A Yes.

6 Q Okay. And does the Recorder's office -- do you
7 have an understanding whether the Recorder's office
8 uses a commercial telephone company to place voice
9 calls like AT&T?

10 A To answer your question how you want it
11 answered, it's my understanding that we switched to a
12 phone system that we run, that we own, but I'm sure
13 elsewhere in the building there are phones that runs
14 over AT&T.

15 Q I don't care what company, but all I'm getting
16 at is simply this: If you pick up the phone and make
17 a call to Washington, D.C. from one of the phones in
18 the County Recorder's office, would the Recorder's
19 office typically be charged more for that call than
20 if the call was here in Cleveland? Do you know?

21 A I have no idea.

22 Q Like are there long distance charges?

23 A I have no idea.

24 Q In your job as being responsible for the
25 computer systems and the servers, does that include

1 anything having to do with the fax equipment?

2 A No.

3 Q Or the telephones?

4 A No.

5 Q Do you have a budget that you are responsible
6 for?

7 A No.

8 Q Do you have input into the County Recorder's
9 budget as it would pertain to the things that you're
10 responsible for?

11 A To try to help you with the answer to your
12 question that I think you're looking for, I can
13 review computer equipment and suggest a purchase for
14 a computer or server, or I need this or I need that.

15 Q Are there outside vendors that charge the
16 Recorder's office money for things that come within
17 your responsibility? By way of example, if I get
18 onto my PC here and I log onto something called
19 Lexis, we get -- somebody gets charged for that,
20 either my firm does or the client does, or some
21 combination of the two. That's what I'm getting at.

22 Within your responsibilities, does your
23 department incur charges that the Recorder's office
24 would have to pay?

25 A Yes. We use services in which the Recorder's

1 office would have to pay. Yes.

2 Q Are any of those charges from a telephone

3 company?

4 A Yes.

5 Q And for what uses of the telephone company

6 services do you have to pay?

7 A We're talking about for like Internet access.

8 Q Okay. And those would be flat charges or are

9 they charges that fluctuate?

10 A I have no idea.

11 Q What other kinds of charges does your department

12 incur through a telephone company?

13 A That would be it.

14 Q Internet access?

15 A Correct.

16 Q Do you have an understanding as to whether the

17 phone company's charges for Internet access fluctuate

18 based on how often you use the Internet from your

19 office?

20 A No.

21 Q Okay.

22 A You know what? I don't know the answer to that

23 question. The charges for the Recorder's office

24 concerning the Internet I'm not involved with, so I

25 don't --

1 Q But you have an understanding that you get
2 charged?

3 A Yes. We get charged for the Internet. Correct.

4 Q Now, does your office sometimes send by email
5 over the Internet images known as pdf files?

6 A Do we send pdf files? I have sent people pdf
7 files, yes.

8 Q Just so our audience knows what we are talking
9 about, pdf is portable document format, right?

10 A Yes.

11 Q In effect, from a lay perspective, a pdf would
12 be an electronic image of the exact font, the exact
13 spacing, the exact graphics, the exact text of a
14 written document; is that right?

15 A I guess so.

16 Q In effect, an exact mirror of an original
17 document.

18 A I'm not an expert on pdf files, but if that's
19 what you're saying.

20 Q You've seen them, haven't you?

21 A I've seen them. Whether or not they're an exact
22 replica of the exact size and the font and everything
23 else, I don't know. I'm going with your
24 explanation. We don't use pdf files intrinsically at
25 the Recorder's office as part of our function. It's

1 not a format in which we need to know a lot about.

2 Q Okay. Do you know what a TIFF file is?

3 A Yes.

4 Q Is that a format you use frequently at the
5 Recorder's office?

6 A Yes.

7 Q And do you sometimes transmit documents to
8 remote locations in a TIFF format?

9 A No, we don't transmit.

10 Q How do use TIFF?

11 A We don't transfer documents to remote locations
12 in a TIFF document. Documents in-house are stored on
13 TIFF format.

14 Q I see. Just so our audience understands what
15 that is, would you explain it?

16 A It is a file type that holds an image.

17 Q It's analogous to pdf, isn't it, in the sense
18 that it will try to replicate what's on the image, on
19 the document?

20 A Sure. Yes.

21 Q And doesn't TIFF stand for something like tagged
22 image file format?

23 A Something like that.

24 Q And it's -- I don't need to get into TIFF. But
25 you don't transmit documents via the Internet to

1 places, let's say, outside of Cuyahoga County in a
2 TIFF format?

3 A You're right. I forgot about the website which
4 does transmit. I got caught up with the word
5 "transmit." We don't really transmit. We have files
6 there and people download them.

7 Q Like yesterday I got on my computer and I looked
8 up my ex-wife's deed, and I could see, you know, what
9 appeared to me to be exactly what a deed would look
10 like. Am I looking at a TIFF file?

11 A Yes.

12 Q Okay.

13 A Yes.

14 Q All right. And would I then be -- do you have
15 an understanding as to whether I'm looking at what is
16 functionally a copy of your electronic deed when I'm
17 looking at a particular deed?

18 I'm not looking at your original TIFF image, I'm
19 looking at a copy of it; am I not?

20 MR. CAVANAGH: Objection.

21 A So to answer your question, when you look at an
22 image --

23 Q From my computer screen.

24 A -- from your computer, you have already
25 downloaded a TIFF image.

1 Q Yeah. And it's a copy -- like a whole -- you
2 can have -- everybody in my office building could be
3 looking at the same deed on your website and we're
4 all looking at copies; is that correct?

5 A You're not looking at the original. That's
6 correct.

7 Q Okay. So would this also be true that what I'm
8 seeing on my PC here at the office is an image that
9 my PC, or whatever it's connected to, was already
10 downloaded from your website?

11 A This is correct.

12 Q So it's a copy of the image that you have stored
13 on your servers in your computer system?

14 A This is correct.

15 Q Okay. Now, I can look at that image on my PC
16 system through your website without charge from the
17 Recorder's office; is that true?

18 A This is correct.

19 Q And I can print it out on my printer and your
20 office doesn't charge me to do that either; is that
21 true?

22 A This is correct.

23 Q Okay. Those machines that you referred to as
24 xeroxing machines, have you ever known them to make
25 copies onto any medium other than paper?

1 A No.

2 Q So to the extent that they make copies at all,
3 they make paper copies; is that true?

4 A Yes.

5 Q And do you sometimes -- does your office
6 sometimes receive faxes?

7 A I'm sure we could. We have fax machines.

8 Q Have you ever seen a fax come in?

9 A I'm not in proximity to fax machines, no.

10 Q You have to have an understanding that you
11 developed over time there that when your office
12 receives a fax that is typically paper, what you
13 receive is paper?

14 A Yes.

15 Q When we were talking about seeing an image of a
16 deed that I would pull up by getting onto your
17 website, you aren't aware, are you, of the Recorder's
18 office being charged -- that you're charged for my
19 being able to see that image?

20 A I'm not familiar with the fees charged to the
21 Recorder.

22 Q Now, when you create -- when your office created
23 these masters CDs of each day's worth of filings --
24 I'm going to go into some of the mechanical procedure
25 of that in this very rudimentary sense.

1 You understand, don't you, that there's a time
2 each day where the Recorder's office will accept no
3 more documents that day for filing, even though the
4 Recorder's office is still open a little bit beyond
5 that time?

6 A Yes.

7 Q Okay. For example, in your office, four o'clock
8 is supposed to be the last time that your office will
9 accept a document to be filed, even though your
10 office will be open to the public until 4:30.

11 A Yes.

12 Q And is it true that one of the reasons for
13 accepting a document before the office closes is so
14 that you can process each day's work while personnel
15 are still in the office?

16 A That's a broad generalization, but I guess so.

17 Q Now, how many different devices are there for
18 creating the master CD of each day's worth of
19 filings?

20 A How many different devices?

21 Q Are there in the Recorder's office. Just one,
22 two, three? That's all I'm getting at.

23 A If you mean take -- I'll say one.

24 Q Okay.

25 A Yeah. I'll say one.

1 Q I mean, in effect, does it work that you take a
2 blank CD, put it in a slot, and then what do you do?

3 A You start up a program which extracts images
4 from that particular day. You start up an additional
5 program which then --

6 Q Which what?

7 A Which then burns those files to the CD.

8 Q In the machine that you use, how many CDs could
9 you record at once simultaneously?

10 A One or two.

11 Q Pardon me?

12 A One or two.

13 Q Of the same data?

14 A At once?

15 Q Like if you wanted --

16 A One.

17 Q You can't simultaneously burn the same data onto
18 more than one CD?

19 A No.

20 Q Have you personally ever observed how long it
21 takes to download one day's worth of recorded
22 documents onto your master CD?

23 A I've not personally observed that.

24 Q Have you developed an understanding as to how
25 long that process takes?

1 A I never thought about it until you asked that
2 question.

3 Q Have you developed an understanding that that
4 process is done at the end of the workday?

5 A Yes.

6 Q Because you wouldn't -- the idea is to capture
7 everything filed that day, correct?

8 A Correct.

9 Q So you would have to do it at the end of the
10 workday.

11 A Okay.

12 Q Are the people who perform that function people
13 who are on your team?

14 A No.

15 Q Whose team are they on?

16 A Cashiers.

17 Q So that Ron Mack would be their supervisor?

18 A I believe so. I'm guessing.

19 Q And Georges Asfour is one of those people?

20 A Yes, but I'm guessing.

21 Q Okay. Is it your understanding that to make
22 the -- to record each day's work -- a particular
23 day's work onto a CD, that an operator has to stand
24 by the device to make sure that it continues to
25 operate and can do no other duties?

1 A I don't have -- I've never witnessed it being
2 done.

3 Q If have you developed an understanding as to
4 approximately -- actually, before I get into -- do
5 you know what an automated file number is within the
6 Recorder's office?

7 A Yes.

8 Q And you can tell from looking at the automated
9 file number how many documents were filed on that
10 particular day, can't you, or at least you can tell
11 whether that document was the first, the second, the
12 third, or 241st, whatever?

13 A It depends, but, in general, the answer to your
14 question is yes, but it depends.

15 Q So, for example, just to give you a piece of
16 paper here --

17 A Can I just answer your question and give you
18 what you're looking for? UCC filings are not
19 sequential.

20 Q Okay. But deeds are?

21 A Correct.

22 Q Mortgages are?

23 A Correct.

24 Q So if I have a number -- and I'll write an AFN
25 number -- let's see. If this was an AFN number --

1 I've shown you a number whose digits -- actually, we
2 can make it an exhibit. Let's do that. This is for
3 illustrative purposes only.

4 MR. MARBURGER: Let's make
5 this Exhibit 1.

6 - - - - -
7 (Exhibit Patterson 1 was marked
8 for identification.)

9 - - - - -

10 BY MR. MARBURGER:

11 Q Exhibit 1 is an AFN number. It happens to be my
12 ex-wife's. Can we tell from this that the 2006 is
13 the year that the document was recorded?

14 A Yes.

15 Q 06 means it was recorded in June of that year.

16 A Yes.

17 Q 12 is the 12th of June of that year.

18 A Yes.

19 Q And then 1152 means it was the 1,152nd document
20 recorded that day.

21 A Yes.

22 Q Now, do you have a general understanding of what
23 might be typical of the number of documents recorded
24 in a given day at the Recorder's office?

25 A Not currently, no.

1 Q Do you understand that that would typically
2 exceed 1,000?

3 A I don't have a current working knowledge of
4 approximately how many documents we do a day.

5 Q Was there a time where you did have an
6 understanding --

7 A Yes.

8 Q -- covering a different period of time?

9 A Yes.

10 Q Tell us about that.

11 A Typically it could be 1300, 1400 documents --

12 Q And that was --

13 A -- or something like that.

14 Q That was the case when?

15 A I'm terrible with dates.

16 Q I mean, before you became the -- before you took
17 over Jim Zak's responsibilities?

18 A Before then.

19 Q Okay. But sometime while you were in the
20 computer department?

21 A It was -- I don't remember if I was still in
22 cashiers or not.

23 Q All I'm getting at, I'm not like -- it's not
24 that important to nail it down, but would it be fair
25 to say that that would be typical during O'Malley's

1 tenure as the County Recorder?

2 A It was during the height -- yeah, that would
3 have occurred during O'Malley's.

4 Q And when we say in the case of this automated
5 file number of 1,152nd document filed that day, that
6 doesn't tell us how many pages that document had; is
7 that correct?

8 A That's correct.

9 Q And in terms of paper pages, isn't it often the
10 case that a document filed, recorded, and indexed
11 with the Recorder is more than one page?

12 A Yes.

13 Q As a matter of fact, that's typical, isn't it?

14 A Typical that a document has more than one page?

15 Q Yes.

16 A Releases are one page. We file a lot of them.

17 Q Okay. Deeds and mortgages are examples of
18 documents that typically exceed one page; is that
19 true?

20 A Yes.

21 Q During your entire tenure with the Recorder's
22 office from the time that you joined the computer
23 department, has it been the Recorder's office
24 practice to make a master CD of each day's filings?

25 A Yes.

1 Q Was there a time during your tenure in the
2 computer department where at the same time that your
3 office was making the master CD you also made CDs in
4 order to give to companies such as Data Trace, title
5 insurance related companies?

6 A No.

7 Q That was not the case?

8 A That was not -- your question was during my time
9 in the computer department was there a time when you
10 made the master CD at the same time in which you made
11 CDs for other companies. You asked me earlier if
12 we're able to make more than one master CD at a time,
13 and my answer to that question was no. And my answer
14 to your question now, in which I believe that you're
15 trying to trick me into saying something different,
16 is we can only make one master CD at a time.

17 Q Okay. I really wasn't trying to get you to
18 contradict anything. I was just thinking in terms of
19 at the end of the day when you make the master CD,
20 did you also make at the end of the day, your office,
21 CDs that were --

22 A You said at the same time.

23 Q I meant at the same stage of the day, but I
24 understand your issue.

25 A All right.

- 1 Q Did your office also make CDs that were sold to
2 title insurance companies like Chicago Title?
- 3 A Yes.
- 4 Q Did that use the same recording device that you
5 used to make the master CD? Did you make --
- 6 A No.
- 7 Q -- the CDs for these title companies?
- 8 A No.
- 9 Q A different recording device?
- 10 A Yes.
- 11 Q Do you have any understanding as to how long it
12 took to make the CDs for the title companies?
- 13 A No.
- 14 Q But you did understand, didn't you, that the CDs
15 contained that day's particular filings?
- 16 A Yes.
- 17 Q At some point that stopped, didn't it?
- 18 A Yes.
- 19 Q Did that stop during Pat O'Malley's tenure?
- 20 A No.
- 21 Q Did that stop during the current County
22 Recorder's tenure, Lillian Greene's?
- 23 A Yes.
- 24 Q Were you instructed to cause that practice to
25 cease?

1 A You asked me earlier if the people that make the
2 master CD were on my team, and I said no. And now
3 you're asking me if I was told to cause that process
4 to stop. Once again, I think you're trying to use
5 double words. I'm not in charge of that process.

6 Q All you have to say is no.

7 A I'm not in charge of that process. I'm just
8 explaining myself.

9 Q I understand that. I merely asked if you were
10 directed to cause that process to cease.

11 A I'm not in charge of that process. No, I wasn't
12 directed to.

13 Q Okay. Have you developed an understanding as to
14 who gave the order for that process to cease?

15 A I believe it was Lillian Greene.

16 Q Have you developed an understanding of the
17 rationale -- let me make that clear. I don't expect
18 you to read anybody's mind.

19 But have you developed an understanding, based
20 on the conversations that you daily have at the
21 Recorder's office, as to what the reasoning was
22 underlying that decision?

23 A I've heard people say things.

24 Q What have you heard?

25 MR. CAVANAGH: Don't reveal

1 anything that attorneys have told
2 you.

3 Q Yeah. And I don't care about attorneys.

4 A Okay. So if I were to guess at what the
5 reasoning was --

6 MR. CAVANAGH: Don't guess.

7 He's asked if you heard anything.

8 Q You said you had heard some things so I asked
9 you to just explain that.

10 A We're not -- we're not ordered by the ORC to
11 sell the CDs, and there is no fee mandated in the ORC
12 related to selling a CD to title companies or to the
13 general public, I should say.

14 Q Have you ever developed an understanding that
15 your office made CDs for members of the general
16 public that were not acting on behalf of a business?

17 A No.

18 Q When members of the general public ask for
19 copies, they typically get a paper copy rather than a
20 CD; isn't that right?

21 A Yes.

22 Q Have you ever developed an understanding that
23 the reason for ceasing the practice of providing CD
24 copies of records was because the title companies
25 might make a profit in using the information on the

1 CDs?

2 MR. CAVANAGH: Objection.

3 MR. MARBURGER: I just asked

4 if he's heard that.

5 A My understanding was that the ORC doesn't define
6 an amount for us to charge for a CD.

7 Q Have you ever heard Lillian Greene say or seen
8 it written down --

9 A No.

10 Q -- that the fact that these companies might make
11 a profit on using that information or might attempt
12 to make a profit, that that was a reason not to
13 provide the CDs?

14 A I've never seen it written down, and I haven't
15 heard Lillian Greene say it.

16 Q At some point your office decided to charge --
17 did you understand that under O'Malley's tenure as
18 the Recorder that your office was charging -- the
19 title companies who received the CDs had to pay for
20 them? You understood that, didn't you?

21 A By way of word, yes. Not firsthand.

22 Q And you understood that the fee was 50 bucks per
23 CD, didn't you?

24 A By way of word, but not firsthand.

25 Q All right. But the answer is that was your

1 understanding.

2 A That's just what, I guess, was being charged. I
3 don't know that for sure.

4 Q At some point the Recorder's office, based on
5 whatever you understood the truth to be, decided to
6 charge more than 50 bucks a CD if a title company
7 wanted a CD; is that true?

8 A I've never heard that until you just said it.

9 Q Okay. It's never come to your attention that
10 the Recorder's office would provide the title
11 companies a CD if they paid a certain fee for it? A
12 CD meaning -- I'm using that as shorthand for --

13 A My issue is not with the term "CD." My issue
14 was I have never heard that the Recorder's office
15 will provide a CD at a rate. My understanding by way
16 of word is that the ORC does not define a fee for us
17 to charge for it. That was my understanding.

18 Q All right. Now, the device that was used to
19 make the CDs that was sold to the title companies --
20 by the way, I want to make clear, when I say "title
21 companies," I'm using that for shorthand for
22 companies that maybe don't truly insure title. The
23 guys I represent don't insure any title, but what
24 they do do is accumulate data the title insurers
25 use. So I don't want to label these guys as title

1 insurers when technically that's not what they're
2 doing, but they're in that business.

3 With that said, going back to my question, back
4 when the CDs were being sold to the title
5 companies -- and I'm using that term in the broad
6 sense -- you said a device was being used to burn
7 those CDs other than the device that was used to burn
8 the master CD that your office keeps; is that
9 correct?

10 A That is correct.

11 Q How is that device -- the device that was used
12 to make the CDs for the title companies, how is that
13 device being used now?

14 A I don't know.

15 Q Is it being used now?

16 A I don't know.

17 Q Was it your understanding that when a CD was
18 made for the master CD, that when that day's work was
19 fully -- instead of saying "burned," I'm going to say
20 "recorded" onto the CD -- that a human being had to
21 stop it or would it -- when it was done downloading
22 onto the CD, would that stop automatically, or you
23 don't know?

24 A It stops automatically.

25 Q Was it your understanding that when the master

1 CD is being created of a particular day's work, that
2 that process is begun before employees leave work,
3 but the employees don't necessarily stay there that
4 night for the job to be finished?

5 A I don't have an understanding of that. I've
6 never witnessed the process.

7 Q Has it fallen within your responsibility either
8 today or earlier in your career to acquire the blank
9 CDs to be used for the master CD?

10 A There has been an occasion where if they're out
11 of CDs they may come to me and ask me for a spindle
12 of blank CDs.

13 Q Where do you get those from?

14 A From the front office.

15 Q What's the front office?

16 A Well, from the front office. It's where the fax
17 machine is, where the secretaries are.

18 Q Within the Recorder's office?

19 A Yeah. The front office.

20 Q Have you developed an understanding as to from
21 what vendor, Staples, Office Depot, that the
22 Recorder's office always gets its CDs?

23 A No.

24 Q Have you ever developed an understanding as to
25 how much the Recorder's office pays for the CDs?

1 A No.

2 Q Have you ever developed an understanding as to
3 how the Recorder's office accounts or allocates costs
4 for CDs?

5 A No.

6 Q You said that -- I thought you said that when
7 you make the master CD, you could make another CD at
8 the same time of the same data, or you can't even
9 make a second one at the same time of the same data?

10 A I'm very clear about my answer.

11 MR. CAVANAGH: Objection.

12 Asked and answered.

13 Q I'm doing it to clarify because I thought --

14 A To clarify, you can only make one master CD at a
15 time.

16 Q Okay. You cannot make a second CD at the same
17 time you're making the master and have it contain the
18 same data? You can't record two CDs simultaneously
19 of the same data; is that true?

20 A You cannot make more than one master at the same
21 time.

22 Q Well, leaving the term "master" out of it --

23 A Okay. Let me answer the question in the way I
24 think that will benefit you. When a computer is
25 making a CD, it can only make typically -- unless

1 there may be something else out there I'm not aware
2 of; if there is, we don't use it. It can only make
3 one CD at a time.

4 Q I see. I thought you said, and -- I'm not going
5 after you, I'm just trying to understand. I thought
6 you said that there was the capability to make more
7 than one at a time, that you had more than one slot
8 or something.

9 MR. CAVANAGH: He never said
10 that.

11 A We never discussed slots.

12 Q How many slots are in your machine where you
13 could insert a blank CD to be recorded?

14 A In the machine that makes the master CD, there
15 is one drive that works to make a master CD.

16 Q Are there more CD drives than that one in that
17 machine?

18 A There is another drive in it that doesn't
19 currently -- that doesn't work and hasn't worked for
20 I don't know how long, but there are only two drives
21 in it, only one works as far as I can remember. You
22 can only make one master CD at a time.

23 Q Okay.

24 A I'm being very clear about that.

25 Q Okay. Do you know who at the Recorder's office

1 has responsibility for acquiring the CDs, blank ones,
2 from a vendor?

3 A I would guess it would be someone in the front
4 office. Probably one of the secretaries.

5 Q Who are likely candidates for that
6 responsibility?

7 A There are maybe Sandy May or maybe Tracy Morris.

8 Q Tracy Morris sounds familiar with me. I wonder
9 if she worked somewhere else in the city. I feel
10 like that's somebody I've deposed in the past.

11 Throughout your tenure at the Recorder's office,
12 have you made the record of each day's filings by
13 making a CD or by making a record some other way, a
14 backup record in some other way?

15 MR. CAVANAGH: Objection. I

16 don't understand it.

17 Q Okay. The purpose of the master CD is to have a
18 second copy of the electronic images that you scanned
19 that day; isn't that right?

20 A The purpose of the master CD is to make a second
21 copy of electronic images that we did that day.

22 Q When you scan documents that day.

23 A The purpose -- here's what I'll say. The
24 purpose of the master CD is to have a second copy of
25 images from the day. Correct. Yes.

1 Q Okay. Other than making the master CD, have you
2 ever had some other method of making copies of what
3 was filed that day since you've been with the
4 Recorder's office?

5 A Yes.

6 Q What other method did you have?

7 A Film.

8 Q Microfilm?

9 A I believe it's microfilm, yes. I have nothing
10 to do with that process so --

11 Q Does that still go on?

12 A Yes.

13 Q So do you have -- the total images that you
14 would have of everything filed today would be the
15 scanned image that you make when the deed is
16 presented, the master CD, and a microfilm copy as
17 well?

18 A We make -- we scan an image, we make a master
19 CD, and we make a film.

20 Q And does the film have everything on it the
21 master CD would have on it?

22 A Yes.

23 Q Okay. Do you have backup copies made in any
24 other medium or any other method?

25 A Yes.

1 Q What?

2 A We have backup copies of hard drives.

3 Q Any other methods?

4 A Not that I can think of currently.

5 Q In your tenure have there been any method of
6 making copies of what you took -- what was recorded
7 on a given day in addition to the methods you've just
8 described, CD, film, and backup hard drive?

9 A I missed the original question.

10 Q Since you joined the Recorder's office, have
11 there been any other methods of making duplicates of
12 records that you recorded on a given day other than
13 the ones you've just described? You described hard
14 drive backup, a CD, microfilm.

15 A Not that I can think of currently.

16 Q Okay. And have they been making the CD master
17 copies ever since you joined?

18 A I don't remember.

19 MR. MARBURGER: Okay.

20 That's it. Thanks.

21

22 (Deposition concluded at 3:00 p.m.)

23

24

25

Lawrence Patterson

The State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga.)

I, Rebecca L. Brown, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named LAWRENCE PATTERSON was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, employee of, or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney for any of the parties in the above-captioned action; I am not financially interested in the action; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D); nor am I otherwise interested in the event of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 10th day of January, 2011.



Rebecca L. Brown, Notary Public
in and for the State of Ohio.

My commission expires 6/5/15.

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2006 06 12 1652

DATA EXHIBIT	<u>1</u>
Deponent	<u>Patterson</u>
Date	<u>12/30/10</u> Rptr. <u>RB</u>
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