

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ROBERT G. SWOFFORD, JR., et al.,

Plaintiffs,

vs.

CASE NO.: 6:08-cv-00066-MSS-DAB

DONALD ESLINGER, et al.,

Defendants.

**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR
SANCTIONS AGAINST DEFENDANTS FOR SPOILIATION OF EVIDENCE**

The Plaintiffs, Robert G. Swofford, Jr., and Sharon L. Swofford ("the Swoffords"), pursuant to the Court's Endorsed Order (Doc. 53) dated December 19, 2008, file their Reply Memorandum in Support of their Motion for Sanctions Against Defendants for Spoliation of Evidence ("Motion").

I. Laptop and E-mails

Defendants breached what has come to be known as the "*Zubulake* Duty" to preserve evidence. In their response to Plaintiffs' motion for sanctions ("Response," Doc. 50"), Defendants state that Plaintiffs have not carried their burden of demonstrating that Remus' first MCT (or laptop) was lost or destroyed in bad faith. Defendants also say that the personnel who would have performed this task *were unaware of a request or need to keep Remus' laptop*. Finally, Defendants say that "it is important for the Court to realize that at the time of the shooting, and even at the time of the [litigation hold] letters from Plaintiffs'

counsel to the agency concerning preservation of evidence, *the agency was not in the practice of saving e-mails.*"

Defendants' Response ignores the fact that notwithstanding Defendants' normal practices or policies, Defendants had a duty to preserve electronic evidence as of the time they were put on notice of the pending litigation. *See Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003) ("*Zubulake IV*") ("The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation." And once a party reasonably anticipates litigation, it must issue a "litigation hold," suspend any contrary document retention policy, and preserve relevant documents.); *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004) ("*Zubulake V*")¹; *see also Qualcomm Inc. v. Broadcom Corp.*, 2008 WL 66932 (S.D. Cal. Jan. 7, 2008) (NO. 05CV1958-B (BLM)) *vacated on other grounds in Qualcomm Inc. v. Broadcom Corp.*, 2008 WL 638108, *88 U.S.P.Q.2d 1169 (S.D. Cal. Mar. 5, 2008) (NO. 05-CV-1958-RMB (BLM)) (recognizing in-house counsel's role in maintaining and preserving electronic discovery).

A. The Duty to Preserve Attached At Least in August 2006 and Required Affirmative Action to Preserve Evidence.

Like in the *Zubulake* cases, here the trigger date for Defendants' duty to preserve was when the Sheriff received the first litigation hold letter from attorney Woodard (August or

¹ Documents to be preserved include: (1) Documents prepared by or for individuals likely to have discoverable information that the disclosing party may use to support its claims ("key individuals"); (2) Documents containing information that is relevant to the claims or defenses of any party; and (3) Documents containing information which is relevant to the subject matter involved in the action. *Zubulake (IV)*, 220 F.R.D. at 217-18.

September 2006) and no later than attorney Tellechea's letter (February, 2007).² There is no question that Defendants had an obligation to preserve evidence at that point, even if the duty did not attach upon receipt of the earlier letter.

B. Defendants Breached the Duty to Preserve the Laptop and Emails.

A party's discovery obligations do not end with the implementation of a "litigation hold"-- to the contrary, that's only the beginning. *Zubulake (V)*, 229 F.R.D. at 432. Counsel must oversee compliance with the litigation hold, monitoring the party's efforts to retain and produce the relevant documents. *Id.* Once a "litigation hold" is in place, a party must make certain that all sources of potentially relevant information are identified and placed "on hold," to the extent required in *Zubulake IV. Id.*

Defendants breached the "*Zubulake* Duty" by failing to preserve Remus' laptop, which was disposed of 14 months after the date of the first hold letter and 10 months after the second hold letter that specifically instructed Defendants to preserve it. The Sheriff's in-house counsel, David Lane, failed to communicate with "key individual" Deputy Remus or the SCSO's IT personnel, as he was required to do under *Zubulake* and failed to take any steps to preserve e-mails on the SCSO server and storage network. Defendants now attempt to shift any blame for the failure to produce emails to the SCSO's email procedures by saying in their response that "the agency was not in the practice of saving e-mails." Not only is this statement irrelevant under *Zubulake*, it is also inaccurate.

The SCSO provided deposition testimony after the filing of Plaintiffs' motion that clarified the following facts about the SCSO's email system for the period April, 2006 (the

² Tellechea's letter specifically and definitely called for preservation of the e-mails and laptop at issue in this motion.

date of the incident involving Plaintiff) up until April, 2007: **(1)** The SCSO email system had no automatic functions in place that would delete an email based on its date or on the size of the user's mailbox. *Deposition of Stephen McConnell*, December 19, 2008 ("McConnell Dep.") (portions of which are attached as Exhibit "A"), 14:7 – 14:22; **(2)** SCSO had no policies in place about when or under what circumstances they should delete email. McConnell Dep., 14:23 – 15:6; **(3)** The portions of the SCSO's SAN (Storage Area Network) used to store email were not backed up to tape or otherwise between April 2006 and April 2007. McConnell Dep., 20:17 – 21:5; **(4)** All of the email data residing in users' mailboxes that had been in the Exchange 2000 system was migrated into the Exchange 2003 system.³ McConnell Dep., 17:21 – 18:25. Therefore, it is clearly not accurate to say that the SCSO was "not in the practice of saving email." In fact, during the relevant time period, the SCSO was in the practice of saving all email by default; email was only deleted by user command.

The SCSO's breach of its "*Zubulake* Duty" occurred when it failed to instruct its email account holders not to delete any of their email that might potentially be relevant to the Swoffords' claims, and failed to communicate to its IT staff to take steps to preserve potentially relevant email. At the very least, as the Court opined in *Zubulake*, Defendants should have taken steps to preserve the e-mails of the "key individuals" in the case – Morris and Remus – by copying or creating a mirror image of their user mailboxes. But, apparently, there was no effort by the Defendants, including the Sheriff's in-house counsel, to speak with or otherwise communicate with email account holders or the IT personnel about the need to

³ In April, 2007 the SCSO upgraded from Outlook Exchange 2000 to Outlook Exchange 2003, using a new dedicated email server, and shortly thereafter implemented the Symantec Enterprise Vault archiving system. McConnell Dep., 13:3 – 14:6.

preserve e-mail. McConnell Dep., 30:13 – 31:6; 31:22 – 32:2; 35:8 – 14. As it now stands, there is virtually no possibility of retrieving any deleted emails from the server/SAN system used for email between April, 2006 and April 2007 due to the constant use of that system since that time for other applications. McConnell Dep., 25:20 – 26:12.

The Defendants' failures are a clear breach of the "*Zubulake* Duty" to preserve evidence. The *Zubulake IV* decision cited in this reply was published more than three years before the first hold letter was sent to Defendants and should have been familiar to the SCSO's in-house counsel. To say that "the agency was not in the practice of saving e-mails" or that the responsible persons "were unaware of a request or need" to keep the laptop does not validly excuse Defendants' failure to comply with the "*Zubulake* Duty" to preserve. In fact, those excuses are exactly what the "*Zubulake* Duty" is aimed to prevent.

II. Section 119, Florida Statutes

Defendants' Response tries to distinguish the Sheriff's duty to preserve documents, mainly e-mails, under Florida's Public Records Act ("Act"),⁴ by stating in their Response at footnote 9 that "personal emails sent on agency computers are not public record and there was no statutory duty to preserve them." The Act defines "public records" to mean "all documents...regardless of physical form...made or received...in connection with the transaction of official business by any agency."⁵ But Plaintiffs however, seek and asked for preservation of "all" e-mails, including those in connection with the transaction of official business by the SCSO (*i.e.* an e-mail sent or received by Sheriff Eslinger that relates to the

⁴ §119, Fla. Stats. Using Florida law as guide, "a duty to preserve evidence can arise...by statute...." *Floeter v. City of Orlando*, 2007 WL 486633, at *5 (M.D. Fla. Feb. 9, 2007)⁴.

⁵ §119.011(12), Fla. Stats.

Swofford shooting). On top of Defendants' duty to preserve evidence after it received notice of forthcoming litigation in the hold letters, Defendants were also under a statutory duty to preserve e-mails in connection with the transaction of official SCSO business.

III. Evidence Crucial to Swoffords' *Prima Facie* Case

A. **Firearms** – Contrary to Defendants' Response, the "trigger pull" issue is not a red herring and there is a claim in this case that the shooting could have been accidental due to improper gun maintenance. *See* Amended Complaint, ¶ 146. Defendants mischaracterize the statements given by Morris and Remus to FDLE as being "unequivocal" with regard to them intentionally firing on Mr. Swofford because he was raising a firearm.⁶ If Morris' gun accidentally discharged due to improper trigger pull, then Remus could have started firing his gun because he heard Morris accidentally fire his – starting a chain reaction. Moreover, the guns, especially Morris', are crucial to Plaintiffs' *prima facie* case because they may have been tampered with in violation of SCSO General Order #51 (weapons issuance policy).

B. **Uniforms** – Defendants' Response states there is no indication of how the uniforms are crucial to Plaintiffs' *prima facie* case. Both Morris and Remus assert that it was Mr. Swofford's fault for failing to recognize they were deputies. The exact uniforms are necessary to show the jury so they can determine the validity of the deputies defense.

For these reasons, Plaintiffs respectfully requests that the Court grant Plaintiffs' Motion for Sanctions Against Defendants for Spoliation of Evidence (Doc. 44), and award such other relief as the Court deems appropriate.

⁶ On page 7 of 8 of Defendants' Response, Ex. R, Remus' FDLE statement states: "I fired mine uh when I head (sic) Deputy Morris uh fire his. At that point I didn't know if Deputy Morris had seen the subject pulling the, his trigger or what he observed since he was in a different position than I was."

Dated: December 30th, 2008

Respectfully submitted,

s/ Michael D. Starks
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 30th day of December, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a Notice of Electronic filing to: Thomas W. Poulton, Esquire, Lakeview Office Park, 1035 S. Semoran Boulevard, Suite 1010, Winter Park, FL 32792.

5913545_v3

s/ Michael D. Starks
Michael D. Starks

EXHIBIT "A"

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ROBERT G. SWOFFORD, JR.,
an individual, and his
wife, SHARON L. SWOFFORD,
an individual,

Plaintiffs,

vs. CASE NO. 6:08-cv-00066-MSS-DAB

DONALD ESLINGER, in his official
capacity as the SHERIFF OF SEMINOLE
COUNTY, STATE OF FLORIDA; WILLIAM
MORRIS, JR., in his individual
capacity; and RONALD REMUS, in
his individual capacity,

Defendants.

DEPOSITION OF:

STEPHEN McCONNELL

December 19, 2008
3:00 o'clock p.m.
Orlando, Florida

The deposition of STEPHEN McCONNELL,
taken pursuant to Notice on behalf of the
Plaintiffs on Friday, December 19, 2008, at
the law offices of Holland & Knight, LLP,
200 S. Orange Avenue, Suite 2600, Orlando,
Florida, commencing at 3:00 o'clock p.m.,
reported by Beverly Heffelfinger, Stenograph
Shorthand Reporter and Notary Public, State
of Florida at Large.

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1 APPEARANCES:

2 SETH ROW, ESQUIRE (Via videoconferencing)
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7 (503) 243-2300

8 and

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23
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1 I N D E X
2 STIPULATIONS.....3

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3 TESTIMONY OF STEPHEN McCONNELL

4 Direct Examination by Mr. Row.....4

5 (No Cross-Examination)

6 CERTIFICATE OF REPORTER.....47

7 ERRATA SHEET.....48

* * * * *

E X H I B I T S

10 Plaintiff's Exhibit No. 1.....9

11 Plaintiff's Exhibit No. 2.....9

12 Plaintiff's Exhibit No. 3.....30

13 Plaintiff's Exhibit No. 4.....30

* * * * *

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

21 It is hereby stipulated and agreed by and between

22 counsel present for the respective parties and the deponent

23 that the reading and signing of the deposition shall not be

24 waived.

25

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1. (The witness was sworn.)

2 WHEREUPON:

3 STEPHEN McCONNELL,

4 the witness herein, having been first duly

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sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ROW (via video):

8 Q. Good afternoon, Mr. McConnell. My name is Seth
9 Row. I'm an attorney with Holland & Knight. I'm in the
10 Portland, Oregon, office, as we discussed. We're here in the
11 matter of Swofford vs. Eslinger and the sheriff's office, as
12 you know.

13 Could you spell your name for the record, please.

14 A. It's Stephen, S-t-e-p-h-e-n. Do you need the
15 middle name as well?

16 Q. No, that's fine.

17 A. McConnell, M-c-C-o-n-n-e-l-l.

18 Q. Okay. What's your current position?

19 A. The I.S., Information Services, operations manager.

20 Q. With the Seminole County --

21 A. Seminole County Sheriff's Office.

22 Q. -- Sheriff's Department?

23 A. That's correct.

24 Q. Okay. Mr. McConnell, we're here today pursuant to
25 what's called a Rule 30(b)(6) Notice of Deposition, which is a

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1 deposition of a corporate representative on topics specified
2 by, in this case, by the Plaintiff. We sent a request to the
3 sheriff's office to produce somebody knowledgeable on a certain
4 list of topics. You've been designated by the sheriff's office
5 to be its representative to speak on certain of those topics
6 related to your area of expertise.

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21 Q. Okay. So in April of 2006, this Compaq server was
22 running your Outlook Exchange e-mail? That was the Outlook
23 Exchange server?

24 A. Correct.

25 Q. Okay. And so, all of the e-mail that's sent to or

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1 from users was stored on that server?

2 A. On the SAN.

3 Q. On the SAN, okay. And then I want to confirm
4 something that a Mark Schendorf made a decision at a certain
5 point to implement a new e-mail archiving system right around,
6 well, that was implemented in April of '07. I'm just trying to
7 confirm that he is the one that made that decision.

8 A. Yes. He is my supervisor.

9 Q. Okay, and his title is Deputy Director of
10 Information Services?

11 A. That's correct.

12 Q. Okay. Were there any defects or problems in the
13 Compaq server that you're aware of between April of '06 and
14 April of '07?

15 A. Not that I'm aware of.

16 Q. Okay. Did it crash during that period at all?

17 A. No. It's still in use today.

18 Q. Okay. And so, if I'm understanding the
19 interrogatory responses correctly, and please correct me if I'm
20 wrong, all that happened was that the sheriff's office stopped
21 using that server for Microsoft Exchange?

22 A. Correct.

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- 23 Q. Is that right?
- 24 A. That's right.
- 25 Q. Okay. And that was because of the migration and

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1 integration of the Symantec Enterprise Vault application into
2 the e-mail?

3 A. Yes, there were two things there. We did an
4 upgrade of the Exchange itself. It was on Exchange 2000; we
5 upgraded to Exchange 2003. And at about the same time frame,
6 we implemented the Symantec Vault System.

7 Q. I'd like you to confirm something that was stated
8 in response to one of the interrogatories about what I call
9 janitorial functions running on the Exchange server, the
10 Exchange program in April of '06, or between April of '06
11 and April of '07.

12 Were there any janitorial functions? And by that
13 I mean automatic functions that would delete e-mails on -- I
14 guess on the SAN, based on how long they had been in storage
15 or how large they were or any other criteria. Were there any
16 such functions in place between April of '06 and April of '07?

17 A. No, not that I'm aware of.

18 Q. So, hypothetically, then, a user could have
19 maintained an e-mail indefinitely? Or, in other words, they
20 could have had an Outlook e-mail sitting there that was three
21 years old; is that possible?

22 A. Yes.

23 Q. Okay. Were there any -- beyond janitorial
24 functions or automatic functions, were there any policies

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25 or procedures in place, instructions given to employees or

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1 direction given to employees about how long they should retain
2 e-mail, how large their e-mail should be, anything of that
3 nature?

4 MR. POULTON: Object to the form.

5 Go ahead and answer.

6 THE WITNESS: Nothing that I'm aware of.

7 BY MR. ROW:

8 Q. If you could go to Interrogatory No. 4 in Exhibit
9 No. 2, I'd like to draw your attention to the sentence that
10 begins at the bottom of the page that contains the question
11 No. 4, carries over to the next page, then there's another
12 sentence in that paragraph.

13 Could you explain to me -- I'm a little unclear on
14 the meaning of those two sentences. Could you clarify those
15 for me?

16 MR. POULTON: Which ones are you talking about?
17 Down here?

18 THE WITNESS: Beginning with "notwithstanding"?

19 MR. ROW: Beginning with "the original rules",
20 that sentence, and then the next sentence is "as the
21 transfer".

22 MR. POULTON: Okay.

23 THE WITNESS: "The original rules for carryover
24 of e-mails from the former server/SAN to the new one,
25 utilizing the Symantec Vault System, was for e-mails

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1 were going to go to the Vault, or of a certain file size were
2 going to go to the Vault. And then is the next sentence then
3 saying that you changed the policy?

4 A. Yes, during --

5 Q. -- the settings?

6 A. During the implementation -- well, it was the first
7 test to see how much file space we would take up with mail
8 older than 90 days, and then we assumed we could actually
9 extend it longer -- actually, less, to 30 days, to actually
10 have less storage in the mail system, which increased the
11 performance of the mail system, but put more things in the
12 archive.

13 Q. Okay. So is that the setting that it's on right
14 now, that after 30 days things move to the Vault?

15 A. 30 days or two megabytes in size, so mail that has
16 large attachments would go automatically to the Vault.

17 Q. Okay. Okay, well, I appreciate that, because I had
18 been reading that to be stating sort of criteria that were used
19 to migrate e-mails from the old Exchange server to the new, I
20 guess, Office Exchange 2003 server.

21 So were all e-mails migrated from the server that
22 was used for Exchange 2000 to the new Exchange 2003 server?

23 A. Yes.

24 Q. Okay.

25 MR. POULTON: I was under the same misimpression.

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1 It's my fault for putting it together that way. I
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2 misunderstood, too.

3 THE WITNESS: We actually ran -- I believe there's
4 an upgrade import feature of the upgrade process, so we
5 upgraded all the 2000 mailboxes to the 2003 mailboxes
6 prior to the Vault going into place; then it took over
7 from there.

8 MR. ROW: I understand.

9 BY MR. ROW:

10 Q. So going back to my hypothetical, if there were an
11 e-mail user who on the old server had just kept stuff forever,
12 had never hit the delete button, had an e-mail sitting on there
13 that was three years old, when you migrated to the new system,
14 that e-mail would have migrated from Exchange 2000/Exchange
15 2003 onto the new server, the new server/SAN setup, but then
16 that e-mail would have gone directly into the Vault because
17 it was older than 90 days or 30 days; am I right about that?

18 A. At the time of the upgrade, no. Only when we
19 implemented the vault system, which was shortly after the
20 upgrade, would it have gone into the archive system.

21 Q. All right, but that e-mail would not have been
22 lost or deleted necessarily, but it would have gone -- after
23 the upgrade to the vault, it would have gone into the Vault?

24 A. That's correct.

25 Q. Okay. Have you been involved at all in collecting

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1 documents responsive to Plaintiffs' Request for Production in
2 this case?

3 A. Only this document in front of me.

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6 Q. Okay, so migrated basically wholesale to the new
7 system?

8 A. It would have deleted everything in there once it
9 imported correctly.

10 Q. To your understanding, was that an automatic
11 function of the upgrade or migration process or procedure?

12 A. That's my understanding, yes.

13 Q. Okay. Was there any discussion that you can recall
14 in your department or with anybody else about not deleting the
15 old Exchange data base?

16 A. No.

17 Q. There's a question in one of the interrogatories
18 about whether there was ever any backup made of the Compaq
19 server that was running Exchange 2000. Was that server ever
20 backed up?

21 A. The server or the SAN?

22 Q. Either one.

23 A. Portions of the SAN were backed up, and I'm not
24 sure about the server itself.

25 Q. Which portions of the SAN were backed up?

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1 A. The user folders that I mentioned earlier.

2 Q. So, in other words, not Exchange user e-mailbox
3 folders, but the storage folders for other types of files?

4 A. Yes. Prior to the Vault system, no e-mail was
5 backed up.

6 Q. Okay. How were the user folders backed up?

7 A. I believe, at the time, it was straight to tape,
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14 SAN would be \$50,000, where did that come from?

15 A. I believe that's a replacement SAN to copy
16 existing -- it was our impression that we would have to take
17 the SAN down, which would impact daily production, and to buy
18 an existing SAN, is where that figure came from.

19 Q. Okay. You mentioned that the server, the Compaq
20 server with the user folders on it, are backed up to tape -- or
21 I think you mentioned in April of '06 they were being backed up
22 to tape?

23 A. Correct.

24 Q. So am I correct in assuming then that it's not that
25 the entire server or the entire SAN is backed up, but only the

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1 user folder that is active storage is backed up?

2 A. Correct.

3 Q. So the slack space is not -- is that backed up?

4 A. The negative space?

5 Q. That's right, the negative space.

6 A. No.

7 Q. So going back to the \$50,000 figure, did the
8 \$50,000 figure come as a quote or a bid from a vendor or a
9 trade publication? What kind of source was that?

10 A. Based on recent purchases of new SANs.

11 Q. Okay. Would it be possible, if one were only
12 interested in the negative space on that server, would it be
13 possible, in your estimation, to simply image the negative
14 space on that server, copy it, without taking the server off
15 line?

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16 A. I don't believe there's a way to do that.

17 (Whereupon, there was a brief discussion held off
18 the record.)

19 BY MR. ROW:

20 Q. Going down to the next paragraph -- again, I'm
21 in the response to Interrogatory 5 in Exhibit 2 -- the first
22 sentence of that paragraph starts with, "A forensic search...
23 would be very unlikely to produce any results because of the
24 overwriting of files."

25 What do you mean by the reference to "overwriting

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1 of files"?

2 A. Well, we've added more things to the SAN and now
3 the VMware images. It also stores snapshots of itself. So
4 I believe it uses all its empty space to create space based
5 on the rate configuration, so the likelihood of something from
6 several years ago being still there after being overwritten so
7 many times is unlikely. That was our opinion.

8 Q. Okay. And when was the decision made to -- you
9 mentioned snapshots -- to implement that system, that the
10 server would store snapshots of itself, or the SAN would?

11 A. That started probably late 2007 when we began to
12 back up by disk instead of by tape.

13 MR. POULTON: Y'all are talking way over my head.

14 (Whereupon, there was a brief discussion held off
15 the record.)

16 BY MR. ROW:

17 Q. Mr. McConnell, on the next page of the response
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24 MR. ROW: Tom, have the letters from John Woodard,
25 and then from Al, the litigation letters, already been

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1 marked as exhibits?

2 MR. POULTON: They were to the first one, but if
3 you want to do it again just for consistency to this one,
4 sure.

5 MR. ROW: That's right, we're doing new numbers.

6 MR. POULTON: I tell you what, could we take a
7 quick break, just while she's marking those.

8 MR. ROW: Sure, okay.

9 (Whereupon, there was a brief recess held, and
10 Plaintiff's Exhibit Nos. 3 and 4 were marked for identification
11 by the court reporter.)

12 BY MR. ROW:

13 Q. Mr. McConnell, if you could have a look at what's
14 been marked as Exhibit No. 3, have you ever seen this letter
15 before?

16 A. No, sir.

17 Q. Okay. To your knowledge, was anybody that was
18 involved in the migration that we've talked about, the upgrade
19 from Exchange 2000 to 2003, then the implementation of Symantec
20 Vault, ever given a copy of this letter?

21 A. Not that I'm aware of.

22 Q. Were you or anyone else involved in those processes
23 that I just mentioned ever advised to not delete anything
24 because of litigation during the April of '06 to April of
25 '07 time period? Any litigation; I'm not talking specifically

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1 about Mr. Swofford or anything else.

2 A. No, sir.

3 Q. Were you personally aware of any litigation ongoing
4 involving the sheriff's office between April of '06 and April
5 of '07?

6 A. No.

7 MR. ROW: Tom, I'd like to ask about the people
8 that are handwritten up in the top, right corner.

9 MR. POULTON: Sure, I can tell you who they are.

10 MR. ROW: Well, I'd like the deponent --

11 MR. POULTON: Oh, I'm sorry.

12 MR. ROW: Has this already been covered with
13 another witness?

14 MR. POULTON: Well, actually, no, not with a
15 witness. I don't know if you've seen the Response to the
16 Motion for Spoliation Sanctions, but there's an affidavit
17 that goes through who's who. But if you want to ask him,
18 too, if he knows who individual people are, that's fine.

19 MR. ROW: Yes, actually, I would.

20 MR. POULTON: Okay.

21 BY MR. ROW:

22 Q. Let's actually get them both in the record.

23 Mr. McConnell, if you could look at what's been marked as
24 Exhibit 4, that's the February of '07 letter; have you ever
25 seen this document before?

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1 A. No, I haven't.

2 Q. Okay. So going back to Exhibit 3, there's some
3 handwritten names up in the top right corner, starting with
4 Captain --

5 A. Captain Linnekugel.

6 Q. And who is he?

7 A. He is in charge of Internal Affairs and training.

8 Q. And Captain -- the next name is Captain Pittman?

9 A. Pittman.

10 Q. And who is that?

11 A. He is the captain of the DIS group, Diversified
12 Investigation Services.

13 Q. What does that mean?

14 A. Those are basically the detectives that work at the
15 sheriff's office.

16 Q. And the next name down, is that Mona Rumph,
17 R-u-m-p-h?

18 A. Mona Rumph, correct.

19 Q. Who is she?

20 A. She is the supervisor of the Com Center.

21 Q. That's the Communications Center?

22 A. Communications Center/911.

23 Q. Is she part of your -- sort of your department?

24 A. She reports to the same manager, yes.

25 Q. Okay. And then the next person down, is that Ann

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2 Q. Okay, and then is that again Captain --

3 A. Linnekugel.

4 Q. Okay. And then the next name looks to me to be
5 Manager Ann Mallory. Is that the same Ann Mallory we were just
6 talking about?

7 A. Yes, sir.

8 Q. And Lieutenant Bill Morris, to your understanding
9 is that William Morris who's named as a Defendant in this case?

10 A. I believe this is Lieutenant Bill, is the older
11 gentleman. He is in charge of training.

12 Q. Ah, thank you for clarifying. I'm a neophyte to
13 the details of this case, as you can tell.

14 A. Right, he's a lieutenant. I believe the other
15 Morris is a deputy.

16 Q. All right. And I'm sorry, did you say he's in
17 charge of training?

18 A. Training.

19 Q. Okay. Then the next name, is that -- well, can you
20 tell me what the next name is?

21 A. Manager Ramona Rumph.

22 Q. Is that the same Ramona Rumph we were just talking
23 about?

24 A. Yes, sir.

25 Q. And the next name, what is that, if you can tell

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1 me?

2 A. Looks like Senior Manager Eileen Long.

3 Q. who is she?

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4 A. She's in charge of Human Resources.

5 Q. Okay. Do you have any idea whose handwriting this
6 is on this document?

7 A. No, I don't.

8 Q. Thank you. After the date of this letter, and
9 this is February 6th of '07, a couple of months before
10 implementation of Symantec Vault, did any of these people
11 copied on this list, including Mona Rumph, communicate with you
12 about any need or idea to preserve any kind of document or data
13 due to litigation?

14 A. No.

15 Q. Going back to Exhibit 2, and specifically looking
16 at Interrogatory No. 3, looking at the second paragraph of
17 the answer, the first sentence refers to Mark Schendorf
18 learning through trade magazines and professional articles.
19 Did you have any role in reviewing these trade magazines or
20 professional articles that are referred to here in the first
21 sentence of that paragraph?

22 A. Not that I'm aware of.

23 Q. Did Mr. Schendorf discuss with you the information
24 that's being discussed here about new standards and
25 requirements?

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1 A. Yes.

2 Q. And what do you recall being communicated to you
3 from Mr. Schendorf?

4 A. That the rumors in the magazines were that a new
5 law was going into effect that would require us to save e-mail