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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**MAX ZWEIZIG,**

Case No. 3:15-cv-02401-HZ

Plaintiff,

**DECLARATION OF TIMOTHY  
ROTE IN SUPPORT OF MOTION  
FOR RECONSIDERATION TO  
VACATE THE JUDGMENT FOR  
FRAUD UPON THE COURT**

v.

**TIMOTHY C. ROTE**, a citizen of the state of Oregon, **NORTHWEST DIRECT TELESERVICES, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT MARKETING OF OREGON, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT MARKETING, INC.**, an Oregon for-profit corporation, **NORTHWEST DIRECT OF IOWA, INC.**, an Iowa for-profit corporation, **ROTE ENTERPRISES, LLC**, an Oregon limited liability company, **NORTHWEST DIRECT MARKETING, INC.**, aka Northwest Direct Marketing (Delaware), Inc., a Delaware Corporation, and **DOES 1 through 5**,

Defendants.

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I, Timothy Rote, do hereby declare:

1. I represent myself in the above-captioned case. I make this declaration on personal knowledge and am competent to testify to the matters stated herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of an excerpt of the arbitration transcript between the same parties, dated May 28, 2010, pages 191-196. Zweizig admits to reformatting the 120 gig hard drive and placing the hard drive in his safe before turning it over to Defendant Rote on November 13, 2003.

3. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt of the arbitration transcript between the same parties, dated June 1, 2010, pages 36-38. The transcript further confirms Zweizig's timeline of having possession of the 120 gig hard drive and reformatting that hard drive. That entire transcript is in the record of this case as **Doc #120-1**.

4. Attached hereto as Exhibit 3 is a true and correct copy of an excerpt of the arbitration transcript between the same parties, dated June 1, 2010, pages 132-166. The transcript further confirms past testimony and Zweizig's affirmation of his possession of the 120 gig hard drive, placing material unrelated to his employer on that hard drive, placing a password to protect the hard drive while in his home and from Sandra Ware, and affirms his date of possession and use while in his home office, from January 1, 2002 through November 13, 2003. That entire transcript is in the record of this case as **Doc #120-1**.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.**

Dated: March 31, 2023

/s/ Timothy C. Rote  
Timothy C. Rote,  
Defendant *Pro Se*

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing DECLARATION OF TIMOTHY C. ROTE on:

Joel Christiansen, OSB #080561  
VOGELE & CHRISTIANSEN  
812 NW 17th Avenue  
Portland, OR 97209  
T: (503) 841-6722  
E: [joel@oremploymentlawyer.com](mailto:joel@oremploymentlawyer.com)

through the Court's electronic filing system on March 31, 2023 and by first class mail. I also served the following:

FBI HEADQUARTERS  
CRIMES AGAINST CHILDREN  
935 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20535-0001

HON. KEVIN MCCARTHY  
SPEAKER OF THE HOUSE  
H-232, THE CAPITOL  
WASHINGTON, D.C. 20515  
202-225-4000

/s/ Timothy C. Rote  
Timothy C. Rote,  
Defendant *Pro Se*

1 There was some talk about that, because I think Tim  
2 had some conversation of, you know, he liked it  
3 better to work, you know, at an office. And I'll  
4 tell you, I don't disagree with that. I mean, it's  
5 -- it's nice to go -- it's -- separation is nice,  
6 you know. It's not bad. I don't have any problem  
7 with that. It just didn't happen.

8 **MR. CROW:** So after Mr. Bower left, you  
9 had a conversation with Mr. Rote.

10 **THE WITNESS:** Um-hum.

11 **MR. CROW:** And you gave up the office in  
12 Delaware and started operating from your home?

13 **THE WITNESS:** Right. I believe I was told  
14 about the cost of the office at one time by Paul or  
15 someone. It was like \$1,200 an office a month, or  
16 11, for all the costs and everything. And -- and  
17 the drive for me, 45 minutes each way for me, cost  
18 for the office for him, all of it was not necessary.  
19 Instead of driving, I -- I can be, you know,  
20 working. I needed those hours.

21 **BY MS. MARSHALL:**

22 **Q. Okay. So sometime after that**  
23 **conversation, at least Mr. Rote was in your home**  
24 **office.**

25 **A. Right.**

1 Q. And that's when the -- the computer  
2 crashed, and you discovered the blue screen?

3 A. Yes.

4 Q. And you're not able to resurrect it again.  
5 What's the word other than resurrect?

6 A. Boot it up.

7 Q. Boot it up?

8 A. It wouldn't boot in Windows.

9 Q. You're unable to boot it up. What did you  
10 do?

11 A. I used Remote Desktop on -- on my own  
12 computer to get into the centers and finish the work  
13 for the day because I was also supposed to meet with  
14 Mr. Rote. We were supposed to have a lunch, you  
15 know. I believe Tonya was there. I believe Tonya  
16 met us.

17 Q. Okay.

18 A. And so I -- I took about three hours, I  
19 think, to get everything done, you know, and then I  
20 met Mr. Rote for lunch.

21 Q. Okay. So I take it you -- you did the  
22 rest of your work not on your own computer but the  
23 computers in Eugene?

24 A. Yeah. The work was functionally done on  
25 the computer in Eugene. I was trying to think. It

1 might have been Dyersville.

2 **Q. Well, whichever it was.**

3 A. It was one of them.

4 **Q. Whichever it was?**

5 A. It was one of them.

6 **Q. Okay. And what caused you to decide to**  
7 **put in a new hard drive?**

8 A. Well, you can't -- there's a risk with  
9 taking the -- the -- the disks that come with your  
10 computer, using a bad hard drive, and trying to  
11 repair it with the disks. You know, there's -- you  
12 know, things that are useful in that hard drive. If  
13 I can do it another way, I got permission to buy the  
14 hard drive. But, you know, if I can do it another -  
15 - I can put a new drive in there, bring it back up  
16 as a new machine, and then just copy stuff over from  
17 the other hard drive. And, I mean, I'm actively  
18 working on things at home. Yeah, it was a backup of  
19 the programming there. But, you know, I have things  
20 I'm working on all the time. It's easier to just  
21 copy them from the hard drive. That was my  
22 preferential way of doing it.

23 **Q. Okay. So explain to us physically what --**  
24 **if we could see what you did, what would we see you**  
25 **doing.**

1 A. You'd see me drive to the store and drive  
2 back with a hard drive.

3 **Q. Okay. You've got the hard drive home.**

4 A. So I get the hard drive home, open up the  
5 computer case, remove the -- the quote, unquote, bad  
6 hard drive, and put it on the desk, put the new hard  
7 drive in, place the Windows recovery disk, if you  
8 want to call it that. It's just a disk that comes  
9 with it. Sometimes they're called recovery disks,  
10 sometimes not. You put it in the computer, and you  
11 basically shut that hard drive case, and it takes  
12 over. It boots from the -- from the DVD. It was  
13 probably a DVD at that point, not a CD. It boots  
14 from that, and then it pretty much knows what you're  
15 doing because it senses it's got a hard drive in it  
16 that has nothing, and it wants to -- you know, it  
17 asks, you know, are you setting this computer up or  
18 some question like that. You say yes, go through a  
19 few prompts, that sets up Windows, and now you have  
20 a Windows machine. So now you have to reinstall PC  
21 Anywhere on -- on it. You can't really just take  
22 the programs, like PC Anywhere, from the old hard  
23 drive and put them on the -- it wouldn't really  
24 work. So you have to reinstall things like PC  
25 Anywhere, Office, stuff like that.

1 And then anything I was working on, I put  
2 my clients directory back and all of the  
3 subdirectories under it, and I'm -- I'm back to  
4 work.

5 **Q. Okay. And then what did you do with the**  
6 **old hard drive?**

7 A. I know I stored it in the safe, and I got  
8 all the -- I got all the programs off of it.

9 **MR. CROW:** How do you get the programs off  
10 of it if you can't boot it up?

11 **THE WITNESS:** Well, on the -- you found a  
12 part of my procedure that I didn't mention. On the  
13 ribbon cable that the hard drive hooks to inside  
14 your machine, there's generally another slot on that  
15 cable, and you can put that drive in as a secondary  
16 drive and then copy everything off. So in other  
17 words, for a time you have two -- both hard drives  
18 are in the computer. Because a hard drive won't  
19 boot into Windows does not mean it's not readable.  
20 You can still read it.

21 **MR. CROW:** Thank you.

22 **THE WITNESS:** Sure.

23 **BY MS. MARSHALL:**

24 **Q. And I'm not sure whether you answered**  
25 **clearly what you did with the old hard drive. Did**

1 **you save it, or did you throw it away?**

2 A. No, no, no, no. I didn't throw it away.  
3 I, you know, got everything off it, and at some  
4 point I would have formatted it.

5 **Q. Okay. You heard Mr. Rote talk about**  
6 **developing reference documentation and manuals and**  
7 **that sort of thing?**

8 A. Certainly.

9 **Q. Did he ask you to do that?**

10 A. Yes.

11 **Q. Did you?**

12 A. Not very much.

13 **Q. Okay. Explain to us why.**

14 A. It was the timing, that I just, you know,  
15 couldn't get done. And in fact, Mr. Rote and I had  
16 a couple conversations, and I think I've seen an e-  
17 mail in this stuff somewhere that he was talking  
18 about hiring a document writer to do that, and that  
19 would have been welcome. I mean, that would have  
20 been nice. I've worked with document writers before  
21 at other companies, and they're surprising people.  
22 You know, they can sit next to you, ask you some  
23 questions. A lot of times they're -- when I say sit  
24 next to you, they're sitting next to you to ask you  
25 questions. They're not necessarily looking at your

1 have him call me. You know, I was trying to get  
2 across to Tim the urgency of this guy's not picking  
3 up the phone, you're going to have problems. But we  
4 did talk of it. I probably did most of the talking.  
5 Tim said he would have him call me. But, yeah, I  
6 was -- I was kind of up about that. I was, like,  
7 this is -- this doesn't make sense. This man needs  
8 to be on the phone with me.

9 **Q. Okay. You mentioned the 120 gigabyte hard**  
10 **drive.**

11 A. Um-hum.

12 **Q. That was the one that crashed --**

13 A. Yeah, right, right.

14 **Q. -- that there's been some testimony about.**  
15 **Had -- had you done anything to make that hard drive**  
16 **usable again?**

17 A. Oh, yes, I did. I had that hard drive --  
18 you know, I think I already told you that I put it  
19 in as a secondary drive in there and copied  
20 everything I needed off it. And it sat there for a  
21 while, because you copy everything you need off it.  
22 And just from experience, you know, if you think you  
23 have everything you need off it, and you disconnect  
24 it, you put it in the box, within 10 minutes you're  
25 going to go get that box, and you're going to bring

1 that hard drive back. You didn't realize something  
2 that you -- you didn't realize --

3 **THE WITNESS:** I will.

4 A. -- you're going to realize something that  
5 you -- you might still need off it. So I just left  
6 it sit in the computer probably for -- could have  
7 been weeks. When I was completely sure that I  
8 really didn't need anything more off of that hard  
9 drive, I took it out of the computer, I formatted it  
10 so it could be used as a regular Windows drive if  
11 ever needed again, and put it in a box, put it in a  
12 fireproof safe, and that's where it sat until Tim  
13 came over.

14 **BY MS. MARSHALL:**

15 **Q. Now, what does that mean? You formatted**  
16 **it so it could be used again?**

17 A. Well, here's the thing. Without  
18 formatting it, it can be used as a regular hard  
19 drive, but it has an issue. We know there's an  
20 issue on that hard drive. You know, you don't plug  
21 a hard drive into a computer and boot up the  
22 computer. When it used to be a bootable drive, it  
23 would make the computer work all by itself and it's  
24 going to go and crash on you, there's some file on  
25 that hard drive that is causing some grief. And

1 rather than deal with it -- I already have replaced  
2 my Windows hard drive. Rather than deal with it,  
3 you reformat it, and that takes care of all those  
4 issues. Now you can use it again for whatever you  
5 want.

6 At the time, if this was now, I would have  
7 thrown that hard drive in the trash. I would have  
8 just thrown it away. But at the time, that was, I  
9 would say, between a 400 and \$600 hard drive,  
10 because 120 gig at that time was pretty big. That  
11 was a -- that was a pretty -- pretty large hard  
12 drive. It's not my hard drive. So, you know, if  
13 our data -- my thinking at the time was if our data  
14 requirements increased to where I need a lot more  
15 space for something, we're planning to grow, you  
16 know, maybe I would and whatever, here's a -- here's  
17 a hard drive we've already paid for that I have,  
18 so...

19 **MS. MARSHALL:** I have a -- give me exhibit  
20 -- was that Exhibit 23? Exhibit 23 is another  
21 streamline CD. It's a DVD, I guess it is. And I'd  
22 like -- basically, it is a video. There's a dispute  
23 as to whether it's admissible or not. Mr. -- I  
24 would like Mr. Zweizig to authenticate it.

25 **MR. CROW:** Yes, I understand.

1 of firewalls and passwords?

2 A. I do.

3 Q. Those sorts of things. And you're  
4 familiar with anti-virus programs?

5 A. Yes, sir.

6 Q. Spyware?

7 A. Yes, sir.

8 Q. Things of that sort? And you, I assume,  
9 exercise your best judgment in putting all of those  
10 things in place on behalf of Northwest Direct when  
11 you were the IT director?

12 A. When I was there, they had some -- some  
13 issues with it starting out. But generally, yes.

14 Q. You understood that was part of your job?

15 A. At the center level, it was to implement  
16 remotely. But the responsibility of it, you know,  
17 would fall under my purview, sure.

18 Q. Okay. Well, let's just talk about your --  
19 your computer for a moment.

20 A. Okay.

21 Q. That was the Sony Vaio.

22 A. Okay. Yes, sir.

23 Q. First of all, when did -- what's your  
24 recollection as to when that was placed into  
25 service?

1 A. I don't remember. I've tried to think of  
2 that answer in preparation. I -- I don't know.

3 **Q. But initially --**

4 A. There may be a bill for it around  
5 somewhere.

6 **Q. Initially you were in the Delaware office**  
7 **when that was in place, correct?**

8 A. That's true, sir.

9 **Q. Okay.**

10 A. Yes.

11 **Q. And when it was there, did you -- did you**  
12 **have a password on it?**

13 A. I believe I would have.

14 **Q. Well, that's just common sense, correct?**

15 A. Yeah.

16 **Q. Never would leave it --**

17 A. I'm sorry. When you said that, I was  
18 trying to think of the password. Yes, I'm sure I  
19 would have a password.

20 **Q. I'm not asking you for the password.**

21 A. I know you're not.

22 **Q. Okay.**

23 A. I'm sorry.

24 **Q. So the purpose of a password is to prevent**  
25 **unauthorized access, correct?**

1 A. Yes, sir.

2 Q. Okay. So do you have any reason to  
3 believe that Mr. Bower, who you have testified  
4 earlier worked in the Delaware office with you, that  
5 he would have somehow been able to access that  
6 computer while it was under your care and protection  
7 and password protected?

8 A. I -- I can't completely answer that. I  
9 wasn't there at the computer the whole time.

10 Q. The answer is no, you don't have any  
11 evidence of that?

12 A. The answer is, I can't answer that.

13 Q. Okay. Now, the Sony Vaio you testified  
14 initially had the 120-gig hard drive in it, correct?

15 A. Yes, sir.

16 Q. Okay. And then there's been testimony  
17 about some sort of event that resulted in the 60-gig  
18 hard drive being placed into service --

19 A. Yes, sir.

20 Q. -- somewhere around March 12 of 2003,  
21 correct -- May 12, 2003; is that correct?

22 A. That is correct.

23 Q. Okay. Now, at the time that the -- well,  
24 do you recall, first of all, when you moved the  
25 machine from the Delaware office to your home?

1 A. I don't. I don't recall when I started  
2 working in -- I mean, I was there in my home a year.  
3 I don't recall exactly when that was, I'm sorry.

4 Q. Okay. Once you moved into your home  
5 office, I assume you continued to employ basic  
6 common sense security precautions regarding access  
7 to Northwest Direct's computer and its data,  
8 correct?

9 A. Yes, sir.

10 Q. Okay. That would have included password  
11 protection at a minimum, correct?

12 A. Yes, sir.

13 Q. Firewall?

14 A. Yeah. I mean, that came through a -- a  
15 network hub that -- yeah, certainly Windows firewall  
16 was on the machine, and that's what I believe I used  
17 at the time.

18 Q. And you've testified that you -- you've  
19 lived with Ms. Ware for quite some time, your  
20 fiancée?

21 A. Yes, I have.

22 Q. Okay. You didn't allow her access to that  
23 machine, did you?

24 A. No.

25 Q. Okay. You understood that machine had

1 **sensitive customer information on it?**

2 A. It had customer information on it. The  
3 sensitivity is not a huge issue. We -- we didn't  
4 have any accounts that had actual credit card  
5 numbers. These credit card numbers would be  
6 encrypted when sent to us. And when the -- when the  
7 credit card numbers would go back, it was a  
8 proprietary logarithm that the -- each client would  
9 have to be able to decrypt them so that a  
10 representative never saw it. And I could never tell  
11 what it was. Nobody could tell what it was. So  
12 there were names and addresses. There were things  
13 like that, and Social Security numbers.

14 **Q. The question is, it had customer**  
15 **information?**

16 A. It had customer information.

17 **Q. And for some of your banking clients, it**  
18 **had -- it had some additional information beyond**  
19 **just name and phone number, correct?**

20 A. Not really, no. Social Security number  
21 was not there, no.

22 **Q. Well, in any event, I take it you**  
23 **understood that preserving the integrity of that**  
24 **data was important to Northwest Direct?**

25 A. Certainly.

1 Q. And I think you've testified, but I just  
2 want you to confirm, did you ever use the Sony Vaio  
3 computer either when it had the -- the 120-gig drive  
4 or the 60-gig drive, did you ever use that for your  
5 own personal entertainment purposes?

6 A. No, sir.

7 Q. So by that I mean, more specifically,  
8 videos and music.

9 A. No, sir.

10 Q. Okay. Did you ever use it for doing any  
11 of your eBay work?

12 A. No.

13 Q. You're sure of that?

14 A. Yeah. I mean, you know, if I had checked  
15 to see if something's, you know, sold or something  
16 like that, I may have gone onto it to look at an  
17 eBay page. But no, for posting auctions and things  
18 like that, no, certainly not.

19 Q. Okay. So not on a regular basis; just  
20 once or twice?

21 A. Well, okay. You're saying to do my eBay  
22 business. It's just like saying you're checking  
23 your e-mail or checking to see if something was --  
24 was sold, or, you know -- I mean, at work, I mean, I  
25 had looked at the Internet to check to status of

1 something maybe, to see if anything had been sold.

2 **Q. Well, you had a separate personal computer**  
3 **in your office?**

4 A. I did, correct.

5 **Q. Okay. Was that a laptop?**

6 A. At the time, I believe it was.

7 **Q. Okay. And is that -- is that the machine**  
8 **you used primarily for your eBay business?**

9 A. Yeah, yeah. I would have.

10 **Q. So the -- whatever you might have done on**  
11 **the -- on the company computer would have been a**  
12 **very small percentage of what was actually done on**  
13 **your eBay business; is that correct or --**

14 A. I -- I -- I somewhat object to you trying  
15 to classify me taking a look and seeing how  
16 something was going as doing part of my eBay  
17 business. This is not out of the realm of what I  
18 think somebody would do in their own office at work  
19 or something like that.

20 **Q. Okay. Well --**

21 **MR. CROW:** If you listen to the question  
22 and answer it, we'll get done a lot sooner.

23 **THE WITNESS:** I'm sorry. Okay.

24 **BY MR. CLIFF:**

25 **Q. Just set aside the word business, okay?**

1 A. Okay.

2 Q. I understand you're saying, well, you sold  
3 some suntanning lotion for your brother, and you  
4 sold a few pants or whatever --

5 A. Right.

6 Q. -- guitar equipment.

7 A. Um-hum.

8 Q. My question right now is focused on the  
9 fact that you did your primary eBay posting, let's  
10 just call them that --

11 A. Okay.

12 Q. -- on your own personal computer.

13 A. All of them on my own personal computer,  
14 yes.

15 Q. But you also went on -- when you went  
16 online, you went to eBay sites to do some things,  
17 whatever those things were, on the Northwest Direct  
18 computer, correct?

19 A. It's possible, yeah.

20 Q. But that was an occasional usage compared  
21 to the amount of time you spent working on your  
22 personal computer for your eBay --

23 A. Yeah. We're -- we're talking seconds,  
24 yes.

25 Q. Okay. And how many transactions are you -

1 - do you recall doing in that fashion on the  
2 Northwest Direct computer?

3 A. Transactions. I don't recall.

4 Q. Okay. Now, I want to talk a little bit  
5 about -- well, first of all, are you acquainted with  
6 the concept of file sharing as it's used, for  
7 instance, with videos and used on the Internet?

8 A. More now than then.

9 Q. Okay. But you've heard of companies like  
10 Napster and --

11 A. Sure.

12 Q. -- that sort of thing?

13 A. Um-hum.

14 Q. And you're aware of that -- you've  
15 probably heard of the litigation regarding copyright  
16 infringement issues regarding Napster, that sort of  
17 thing?

18 A. Certainly.

19 Q. You understand that those services worked  
20 by allowing one computer user access to another  
21 person's computer to essentially retrieve files from  
22 -- from the remote computer; is that correct?

23 A. Yeah.

24 Q. Okay. So it's like it goes -- information  
25 goes into a central repository and people login to

1 that to get it? One user can actually access  
2 another user's computer directly through that  
3 service; is that correct?

4 A. I understand, yes. And what you're saying  
5 is correct, right.

6 Q. Okay. Now, did you ever utilize any sort  
7 of file sharing service utilizing the Northwest  
8 Direct computer, either when it had the 120-gig  
9 drive or the 60-gig drive?

10 A. No.

11 Q. You understood that had you done so, that  
12 would have opened -- potentially opened up Northwest  
13 Direct's computers to access by outside individuals  
14 by using that service; is that correct?

15 A. I imagine it would. You've described  
16 accurately how it works.

17 Q. Okay. In fact, if you don't designate the  
18 specific files to share, isn't it possible that at  
19 times a user of one of those file sharing services  
20 can get access to the entire hard drive?

21 A. I don't know if that's possible. I just -  
22 - I can't speak to that.

23 Q. Okay. Now, I want to talk about Mr.  
24 Rote's visits to New Jersey. How many times did he  
25 visit you in New Jersey? We've heard testimony

1 **about two.**

2 A. Yeah. And I'm trying to think if there  
3 was one other than that. Delaware, yes. Jersey, I  
4 believe two. I mean, Delaware, maybe once or twice.

5 Q. Okay. But to your -- your home office,  
6 **how many times did he visit?**

7 A. Two.

8 Q. Okay. First one was on or about May 8,  
9 **2003; is that about right?**

10 A. It sounds about right.

11 Q. Okay.

12 A. I know it was the middle of May, yeah.

13 Q. Well, there's Exhibit 1, Page 24. Why  
14 **don't we go to that to make sure we're -- we've got**  
15 **our times straight.**

16 A. I did something wrong. Exhibit 1.

17 Q. **Exhibit 1. That's the very first e-mail?**

18 A. I went to Exhibit 24, I'm sorry. Okay.

19 Q. Okay. Looking at that, should we -- just  
20 **looking at the top there, there's an e-mail dated**  
21 **May 6, 2003?**

22 A. Yes, sir.

23 Q. **And Mr. Rote is replying to your last**  
24 **message to him in which you're -- you're saying that**  
25 **it's not a good time for him to visit, essentially.**

1 **And he just says, see you Thursday at 9 a.m.; do you**  
2 **see that?**

3 A. He does, yes.

4 **Q. Okay. So Thursday would be -- this was**  
5 **Tuesday, May 6. Can we conclude safely that**  
6 **Thursday would have been the 8th of May?**

7 A. I would agree with that, yes.

8 **Q. So did the meeting go as planned around 9**  
9 **a.m.?**

10 A. Well, I don't -- I don't know what time  
11 the meeting was.

12 **Q. Well, it was in the morning sometime?**

13 A. I -- I believe it was.

14 **Q. Okay. But in any event, he didn't show up**  
15 **on the 7th unexpectedly, or --**

16 A. No, no, no. It was the day it was  
17 supposed to be. I just don't remember if it was in  
18 the morning or not. It very well may have been.

19 **Q. And you have testified that while he was**  
20 **there, there was this computer event that you've**  
21 **described as the blue screen of death?**

22 A. I believe we both testified to that, yeah.

23 **Q. Well, actually, Mr. Rote testified to**  
24 **something different, didn't he, that you were typing**  
25 **away on the keyboard as if the keyboard had been**

1 **connected? The computer just froze; do you recall**  
2 **his testimony?**

3 A. Oh, okay. I was fixated on the blue  
4 screen, but yeah.

5 **Q. That was -- I'm sorry. Is it possible**  
6 **that Mr. Rote's recollection was correct, that**  
7 **that's how it happened, that it froze up as opposed**  
8 **to the blue screen?**

9 A. Oh, he said there was no blue screen? I'm  
10 sorry. I missed that. No, that's impossible.

11 **Q. Okay. And you were at the time trying --**  
12 **you were demonstrating to Mr. Rote some of your**  
13 **programming skills, correct?**

14 A. We didn't get that far.

15 **Q. Well, you were sitting down doing what?**

16 A. I was basically showing him how things  
17 were organized. I think I might have PC Anywhere'd  
18 into a center to show something, how it was  
19 organized there. I don't really remember. I just  
20 remember we didn't get that far, got the blue  
21 screen, and it destroyed the day. It was a very  
22 stressful day for me.

23 **Q. Okay. And you testified that that**  
24 **computer never worked again, correct?**

25 A. That hard drive never worked again. The

1 computer with a new hard drive worked fine. To be  
2 clear and answer your question, we did not get to  
3 looking at code. It didn't happen.

4 **Q. Okay. But the 120-gig drive failed at**  
5 **that point and never worked again, correct?**

6 A. Yes, sir.

7 **Q. Okay. And you testified that after maybe**  
8 **a week or two -- I don't recall -- some period of**  
9 **time you somehow plugged -- plugged -- I didn't**  
10 **quite understand this. You plugged a ribbon into**  
11 **the back of that drive --**

12 A. Okay.

13 **Q. -- and somehow extracted some information**  
14 **from it. How did you do that when it didn't work?**

15 A. Okay. Yeah, there's no problem. I can  
16 clear that up. What happens is, your -- I don't  
17 know if anybody's seen the inside of a computer.  
18 But there's a ribbon cable that goes into your hard  
19 drive in the computer. The ribbon cable that goes  
20 to your hard drive comes down to another connector  
21 identical to that one that's connected to that hard  
22 drive. You connect that to a second hard drive,  
23 your power supply will have extra power leads to be  
24 able to do that. You could put two hard drives on  
25 one ribbon cable in the computer. And when you go

1 into Windows Explorer, you will see the new hard  
2 drive. I'm -- to answer you the rest of the way,  
3 because a hard drive won't boot into Windows does  
4 not mean that it's unreadable. So that it can be  
5 read by normal means most likely. It can be damaged  
6 farther than that, but this one wasn't.

7 **Q. Okay. So at the time that this event**  
8 **happened, whatever it was, that hard drive had**  
9 **information on it, including program files and**  
10 **things that you had drafted, for instance, like for**  
11 **Allstate Motor Club, whoever your customers were at**  
12 **the time that you were working for? You had written**  
13 **programs that were on that hard drive, correct?**

14 A. Certainly, sir.

15 **Q. Okay. And it's your contention, I**  
16 **believe, that you were able to retrieve those files**  
17 **from the hard drive and put them on the new --**

18 A. The other hard drive, yes, sir.

19 **Q. And did you do that you're saying for all**  
20 **of the program files?**

21 A. I don't think -- I don't know if I said  
22 that. Because I may have gotten some from  
23 Dyersville, I may have gotten some from Eugene. You  
24 know, just -- just depends. I could have gotten  
25 them from the hard drive.

1 Q. Okay.

2 A. I would think if I had at least a copy of  
3 something I was working on locally, I would have  
4 certainly got it from that hard drive.

5 Q. Okay. And then after a period of a couple  
6 weeks or so, you put that 120-gig drive in the box?  
7 You put it in the fireproof safe; do you recall  
8 that?

9 A. Yes, sir.

10 Q. Okay. But it's still your firm  
11 recollection that that's what you did with it?

12 A. Yeah. I don't remember how long exactly  
13 after, but yes.

14 Q. Okay. But you didn't use it personally, I  
15 take it, for anything of any sort?

16 A. No. It sat in the box.

17 Q. And I think it was your testimony that you  
18 reformatted it before you put it in the safe; is  
19 that correct?

20 A. At some point.

21 Q. And from that point on, it would have been  
22 completely empty; is that right?

23 A. Reformatting it, as we should all know by  
24 now, doesn't remove the data from it completely. If  
25 you want to, you know, forensically try and do so.

1 And there's -- there's tools out there that you  
2 don't need to be a forensic expert that can get data  
3 back off of the formatted drive.

4 **Q. So in other words, a forensic expert could**  
5 **-- could take that drive that's been reformatted and**  
6 **fairly quickly pull up enough information to**  
7 **determine when files were created, when they were**  
8 **last accessed, that sort of thing?**

9 A. I don't know -- I've seen recovery things  
10 that even I've tried to do myself, like on a USB  
11 drive or something like that. Sometimes when you  
12 recover things, some of that information goes  
13 missing. So as far as what information you can pull  
14 off of that, I would have -- I would rather you ask  
15 an expert that because it's not always the same.

16 **Q. So certainly, for instance, if a program**  
17 **file was on there and it was missing one piece, you**  
18 **wouldn't necessarily put that program file back into**  
19 **service for a client, would you?**

20 A. No, not --

21 **Q. That would be too dangerous, wouldn't it?**

22 A. Yeah, yeah, yeah. You wouldn't want to do  
23 that.

24 **Q. Okay.**

25 A. Yeah.

1 Q. You'd be better off to just write the  
2 thing from scratch than doing that, correct?

3 A. Not -- no, not necessarily. That's --  
4 okay. I think that's -- no.

5 Q. Well, if I have a choice between putting  
6 it into the hands of a client that's going to use it  
7 to potentially have a catastrophic failure of some  
8 sort --

9 A. What you're saying is just not quite  
10 right.

11 Q. Okay. Well, we'll get back to some of  
12 that in a bit. In any event, what -- what I  
13 understand is that you reformatted this 120-gig  
14 drive, it went into the safe, and it stayed there  
15 for the duration of your employment, correct?

16 A. Just about, a couple days, you know.

17 Q. And you handed it over to Mr. Rote when he  
18 came out in November of 2003, correct?

19 A. Yes, sir.

20 Q. Okay. And during that time, you made no  
21 use of it whatsoever?

22 A. Yes, sir. You're correct, sir.

23 Q. Okay. Now, let's talk about the November  
24 13 visit. You recall Mr. Rote told -- obviously he  
25 informed you he'd be coming out to New Jersey to

1 pick up the equipment personally; do you recall  
2 that?

3 A. He did.

4 Q. And you've seen some e-mails regarding the  
5 logistics of that?

6 A. Yes, sir.

7 Q. In that discussion, he explained that he  
8 wanted to come out and pick up the files personally,  
9 and that he didn't want to risk another crash of the  
10 system?

11 A. I remember him saying that in an e-mail,  
12 yes.

13 Q. And he directed you to make a list of the  
14 files transferred to the Eugene server, and he had  
15 made that request previously; do you recall that  
16 testimony?

17 A. Do you have an exhibit for that?

18 Q. Yeah. Let's look at Exhibit -- Page 94 of  
19 Exhibit 1. Actually, well, that's the first request  
20 so we'll do that -- we'll go there first.

21 A. Yeah. Okay. He did not ask me for a  
22 list. That's what I -- that's why I didn't remember  
23 when you said that.

24 Q. Well, okay. Maybe there's a distinction  
25 here. But on October 29, he says, "I need all

1 processing applications you used for all clients  
2 copied to the directory here in Eugene called PAPPS  
3 before 8 a.m. Pacific tomorrow."

4 A. Yes, sir.

5 Q. Did you read that?

6 A. Yes.

7 Q. Okay. Did you reply to this e-mail in any  
8 fashion?

9 A. No.

10 Q. Okay.

11 A. And I wouldn't have.

12 Q. Okay. So you didn't send Mr. Rote a  
13 response to the effect, already done, here it is.

14 Here's where you find this -- this file?

15 A. You mentioned security before, okay?

16 Q. The answer is, you did not, correct?

17 A. Correct, with an explanation.

18 Q. Well, your attorney can let you --

19 A. May I explain?

20 Q. Your attorney can let you draw the  
21 explanations.

22 A. Okay.

23 Q. I just want to verify right now --

24 A. That's fine.

25 Q. -- that you did not respond.

1 A. By e-mail, no.

2 Q. Okay. And we have seen a great number of  
3 exchanges by e-mail, and you -- you're not able to  
4 produce a single e-mail in which you ever directed  
5 Mr. Rote to a specific location of any specific  
6 programming file, are you?

7 A. No. And that point with an explanation, I  
8 have provided an e-mail that shows that I sent him  
9 the files directly at one point.

10 Q. Well, we'll talk about that. You're  
11 talking about way back in 2002?

12 A. That's fine, sir.

13 Q. April of 2002?

14 A. That's fine, sir.

15 Q. Okay. That was the last -- that's the  
16 last documented transmission we have of these  
17 programs that Mr. Rote was telling you that he was  
18 needing you to send him, correct?

19 A. I understand. In answer to your question,  
20 I believe there are two or three instances of the  
21 PAPPS e-mail where Mr. Rote asked me to transfer  
22 files. There are no e-mails in existence in reply  
23 to that for a reason, but yes.

24 Q. Okay. Thank you. Now, going to Exhibit  
25 1, Page -- I believe we now have to go to 251, if

1 **I'm not mistaken.**

2 A. Just --

3 **MR. CROW:** Before you go any further,  
4 maybe -- can we take a look at Exhibit 110?

5 **MR. CLIFF:** Exhibit 110, yeah.

6 **MR. CROW:** I believe I understood you to  
7 say the last time you sent any programs was on May  
8 8, 2002. Exhibit 110 would suggest programs and  
9 forms on May 11, 2003. Did I misunderstand what you  
10 were saying?

11 **MR. CLIFF:** You're right. I might -- I  
12 see that on the date.

13 **BY MR. CLIFF:**

14 **Q. So let's -- let's go ahead and talk about**  
15 **that.**

16 A. I'm sorry. Can you give me the exhibit  
17 number again, please.

18 **Q. It's Exhibit 110.**

19 A. Okay.

20 **Q. And I was thinking of the --**

21 **MR. CROW:** Okay. I just want to make  
22 sure.

23 **MR. CLIFF:** Thank you for clarifying that.

24 A. 110.

25 **BY MR. CLIFF:**

1 Q. Yes.

2 A. Yes, sir.

3 Q. So that was a situation -- first of all, I  
4 don't -- can you show me where the attachment would  
5 be? Is there -- I don't see a copy of an attachment  
6 here, like a zip file of any sort.

7 A. Okay. The way that I preserved the e-  
8 mails between Mr. Rote and myself was, I did a sort  
9 by my name in the inbox -- I'm sorry. I did a sort  
10 by my name on the inbox and sent folder. Then I did  
11 a sort by Tim's name on the inbox and the sent  
12 folder. So I was looking for e-mails between myself  
13 and Tim, and I preserved those e-mails.

14 This e-mail here, it's to Brett and Tim.  
15 The only reason that I even have this -- I wouldn't  
16 have had this if Tim didn't say thanks. The only  
17 reason that I have this is because after he says  
18 thanks, it becomes one of those between-Tim-and-me  
19 scenarios. So there is saying thanks for an e-mail  
20 that had the attachment as an acknowledgement that,  
21 you know, that he got it, I would think. But that's  
22 why you don't see that.

23 Q. Thank you for clarifying that.

24 A. Sure.

25 Q. So at this point, this was for current

1 forms and programs for work that has been requested.

2 So Mr. Rote had been requesting this, and you were  
3 responding to that back in May of 2003?

4 A. That's true. This is the only time that  
5 Mr. Rote had requested this this way. He requested  
6 that they be zipped up and sent to him and to Brett.

7 Q. Okay. So you understood that, and you  
8 were able to honor that request at that time, and  
9 this was before -- well, already -- obviously, back  
10 in May of 2003?

11 A. Okay. I --

12 Q. Did you ever respond to Mr. Rote in a  
13 similar fashion on any of the other occasions in  
14 which he was requesting you provide these programs  
15 --

16 A. No, I -- I've already answered no with an  
17 explanation, and my attorney will give me an  
18 opportunity, I imagine.

19 Q. Okay. Now, turning back to Exhibit 251.

20 MR. CROW: Exhibit 251?

21 BY MR. CLIFF:

22 Q. I'm sorry, Exhibit 1, Page 251.

23 A. Okay.

24 Q. Mr. Rote on that occasion proposed that  
25 one -- one option would be to transfer the computer

1 files without having to physically do it?

2 A. Um-hum.

3 Q. Okay. "Just to minimize your time with  
4 me, by copying the entire contents of your hard  
5 drive and transferring it to the Eugene server."

6 Okay.

7 Now, you didn't -- you didn't do that, did  
8 you?

9 A. I may have talked to Tim about this. I  
10 don't know. But I think -- isn't there an e-mail  
11 answering this saying something about there is no  
12 transfer?

13 Q. Right, the following page.

14 A. Okay.

15 Q. You told Mr. Rote there is no transfer?

16 A. Um-hum.

17 Q. Okay. So you understood that he was  
18 coming out to preserve -- because he was concerned  
19 about the integrity of the data that you had in your  
20 possession, correct?

21 A. I understood that's what he was saying.  
22 It didn't make a lot of sense, but I understood  
23 that's what he was saying. And I have two different  
24 strings to this e-mail.

25 Q. I want you to focus on Exhibit 252.

1 A. Okay.

2 Q. You told him -- and I am sorry, Page 252.

3 All the -- all the data that -- however you  
4 pronounce it -- that exists on this computer also  
5 exists in either Dyersville or Eugene.

6 A. Okay, right.

7 Q. Now, you understand the difference between  
8 data and programming, correct?

9 A. May I have an opportunity to --

10 THE COURT REPORTER: I'm sorry. Between  
11 data and what?

12 MR. CLIFF: Programming.

13 A. Programming and data.

14 BY MR. CLIFF:

15 Q. Yes. So you were telling Mr. -- Mr. Rote  
16 was saying I want your programs, among other things,  
17 and your response was all the data that you knew  
18 exists in these locations, correct?

19 A. That is what I said.

20 Q. Okay, thank you.

21 A. With an explanation.

22 Q. Okay. Now --

23 A. Would you --

24 MR. CROW: No. You answered the question.

25 THE WITNESS: Okay.

1 BY MR. CLIFF:

2 Q. You agree that Mr. Rote did not come to  
3 your house to physically pick up the -- the  
4 equipment that you've discussed until November 13;  
5 is that correct?

6 A. Yes. Yes, sir, that's correct.

7 Q. Okay. And I assume it's your testimony  
8 that you did not delete any files from any of the  
9 equipment you had in your possession; is that  
10 correct?

11 A. That's also correct.

12 Q. Okay. And at that time, you didn't, for  
13 lack of a better term, re-reformat the 120-gig  
14 drive, correct?

15 A. Correct, sir.

16 Q. Okay. And the e-mails that you sent and  
17 received related to Northwest Direct, both when you  
18 had the -- the 120-gig drive in the machine, and  
19 also when you had the 60-gig drive, those were all  
20 sent and received on -- on the Sony Vaio machine; is  
21 that correct?

22 A. That is correct. Yes, it is.

23 Q. So when the -- when the 120-gig drive  
24 failed, you would have lost access to those e-mails,  
25 correct?

1 A. It depends what I did. I know I was asked  
2 that before. If I copy the entire PST file over,  
3 then I wouldn't have. So...

4 **Q. Well, sir, you testified in your -- do you**  
5 **recall testifying in your deposition --**

6 A. Yeah. I know I was asked about that  
7 before. And I -- I think I may not have -- because  
8 I've -- if I import the whole PST file over, then I  
9 would not have lost it. And I don't think I did any  
10 because our e-mails do go back from pretty much the  
11 time of my employment.

12 **Q. Well, that's my point, Mr. Zweizig. You**  
13 **testified in your deposition that you -- and correct**  
14 **me if I'm wrong --**

15 A. No, I know -- I know -- I know that's what  
16 you're talking about, um-hum.

17 **Q. I'm going to refer you to it -- that you**  
18 **lost -- that your e-mails were not saved anywhere**  
19 **else but on the local machines. And --**

20 A. Yeah.

21 **Q. -- that loss of the 120-gig drive resulted**  
22 **-- would have resulted in the loss of all of the e-**  
23 **mails, correct, that were on the drive at that**  
24 **point?**

25 A. Right. Mr. --

1 Q. Okay. In fact, I have an alternate  
2 explanation here, and I'm going to ask you this  
3 right now.

4 A. Okay, sir.

5 Q. Isn't it true that the 120-gig drive  
6 didn't really fail; that there was an incident that  
7 you quickly discerned hours after Mr. Rote left your  
8 house, that it was still a workable drive, and you  
9 could still get the e-mails off it; isn't that true?

10 A. Hours after he left my house, no, that's  
11 not -- that's not -- that's not true.

12 Q. Okay. Let's just say days after he left  
13 your house.

14 A. What I'm saying -- what I'm saying to you  
15 is, I understand the exchange that Mr. Edelson and I  
16 was having -- was having. If you read that, I think  
17 I say something like, you know, I guess they would  
18 have been lost or something. I'm telling you at  
19 that time I didn't think it out enough, and it's  
20 just -- it's not representing what we have because I  
21 actually do have the e-mails from the beginning of  
22 my employment --

23 Q. Well, that's very clear. First the 25  
24 pages of --

25 A. Yeah.

1 Q. -- Exhibit 1 --

2 A. Right.

3 Q. -- are e-mails that would have been on the  
4 120-gig drive, correct?

5 A. Okay. Yes, you --

6 Q. Okay. And you've -- you've produced them,  
7 and your explanation was the 120-gig drive had  
8 failed. Now we have this ability to plug a ribbon  
9 into the back of this 120-gig drive and extract --

10 A. Right.

11 Q. -- the -- even though you can't get  
12 Windows working --

13 A. That is correct, sir. Yes, that is --  
14 that is entirely possible, and that happens in the  
15 world, yes.

16 Q. But in fact, isn't it true that you -- you  
17 accessed the 120-gig drive after Mr. Rote left, and  
18 you used it for your own purposes?

19 A. No.

20 Q. And you had the e-mail on it, and you  
21 could access it, and that's what you copied the e-  
22 mails off of when you made your CD before turning it  
23 over to Mr. Rote, correct?

24 A. There's an awful lot of pieces of what you  
25 said that just can't possibly make sense.

1 Q. Okay.

2 MR. CROW: Is your testimony that you did  
3 not use the 120-gigabyte drive for your own  
4 purposes?

5 THE WITNESS: My testimony is that.

6 BY MR. CLIFF:

7 Q. And that's the main thing I wanted to get  
8 across. Well, let me get into some more specifics.  
9 And I'm honestly not doing this -- I may not -- I'm  
10 not trying to make you uncomfortable, but I...

11 I'm going to read some -- some -- some  
12 names of songs and videos. And frankly, I'm going  
13 to leave out some of the -- the names that we really  
14 don't need to hear at this point. I'll just -- I'll  
15 represent --

16 A. Okay.

17 Q. -- to them being pornographic. But for  
18 starters, Joe Jackson, Stepping Out, an MPG file;  
19 does that sound familiar?

20 A. No.

21 MS. MARSHALL: If you're reading from an  
22 exhibit, could I ask that the --

23 MR. CROW: I don't believe he is reading  
24 from an exhibit.

25 MR. CLIFF: This is not -- I'm not making

1 this an exhibit at this time. It's not -- I'm  
2 getting his testimony. And if you --

3 **MR. CROW:** He's asking him for his  
4 recollection concerning some music, as I understand  
5 it.

6 **BY MR. CLIFF:**

7 **Q. The Clash, Rock the Casbah; does that**  
8 **sound familiar? Is that something you might have**  
9 **had on that drive?**

10 A. No.

11 **Q. Okay. Hitchhiker's Guide to the Galaxy?**

12 A. No.

13 **Q. Part 2?**

14 A. No.

15 **Q. American Juniors?**

16 A. I don't even know what that is, no.

17 **Q. Okay. Battlestar Galactic?**

18 A. No.

19 **Q. Behind the Scenes Demolition Derby?**

20 A. No.

21 **Q. Blair address to Congress. I assume**  
22 **that's Tony Blair's address to Congress.**

23 A. I don't know. No.

24 **Q. Does that sound familiar? Are these**  
25 **things you're familiar with?**

1 A. No, they're not.

2 Q. Okay. Okay. I'm just going to reference  
3 this one by name. Deep Throat, Deep Throats Again  
4 and Again?

5 A. No, sir.

6 Q. Devils Island, Hell on Earth?

7 MS. MARSHALL: Pardon me?

8 BY MR. CLIFF:

9 Q. Devils Island?

10 A. No, sir.

11 Q. You've testified you don't recall these  
12 things. I'm giving you some specifics to perhaps  
13 refresh your recollection.

14 A. Okay.

15 Q. Okay. Now, you're denying that --

16 A. Yeah.

17 Q. -- you know anything about them?

18 A. I mean, some -- some of the things that  
19 you're reading are familiar to me in the world, and  
20 some of them are not even familiar that way.

21 Q. Okay. In any event, if we were to go down  
22 this list -- Lost in Space?

23 A. No, sir.

24 Q. Okay.

25 A. I've seen the expert reports also.

1 Q. Okay. So in any event, it's your  
2 testimony that during the time period between May 12  
3 -- well, I think you said it was a couple weeks  
4 there, so -- so sometime in late May, from that time  
5 on until November -- until you turned over the  
6 computer, this hard drive was in -- was in a safe, a  
7 fireproof safe?

8 A. Yes, that's correct.

9 Q. Well, we don't need to go through all of  
10 those. Now, just going back to the e-mails for a  
11 minute, were you aware that -- you heard Mr. Rote's  
12 testimony that he accessed the -- the 60-gig drive,  
13 the Sony Vaio computer that you turned over, went  
14 back to his hotel room, and he accessed it, and  
15 there were no e-mails on it; do you recall that  
16 testimony?

17 A. He accessed it, and I -- I don't recall  
18 that testimony specifically, but okay.

19 Q. Okay. Were you aware of the -- the  
20 contention that there were no e-mails found on your  
21 -- no PST files found on your 60-gig hard drive?

22 A. I am aware of that.

23 Q. Okay. Do you have any explanation for  
24 that?

25 A. I believe that in one of the expert

1 reports -- if I should be talking about what expert  
2 reports say -- that something about repeated use of  
3 the computer or somebody installing Office, and I  
4 have had experience with this before. If you make a  
5 fresh Office install, and you're not careful, you  
6 will very quickly overwrite the PST files that  
7 contains all the e-mails, your calendar, I believe  
8 your to-do list, it encompasses all of that, and it  
9 will be gone quickly.

10 **Q. And -- well, in fact, before you turned**  
11 **over that computer, you set up a new user called**  
12 **Northwest Employ, and you had a -- isn't it true**  
13 **Outlook user; do you recall that?**

14 A. I didn't, no.

15 **Q. You don't recall doing that?**

16 A. No, I don't.

17 **Q. So you didn't do that?**

18 A. No, I didn't.

19 **Q. Okay.**

20 **MR. CROW:** The question again?

21 **BY MR. CLIFF:**

22 **Q. Did you set up a new user on Outlook on**  
23 **the 60-gig hard drive while it was installed in the**  
24 **Sony Vaio? And to be more specific, at about 27**  
25 **minutes after midnight the morning before you handed**