

Exhibit 18

Courtroom Testimony of Richard Varn- February 10, 2009

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JULY 24, 2009

PAID

TO: MR. JOHN FODDRILL

RE: CAUSE NO. 2006-CI-06702 57TH DISTRICT COURT
FODDRILL VERSUS CITY OF SAN ANTONIO

This invoice is for excerpts from the Reporter's Record taken in the 57TH District Court on 2-10-09, testimony of Richard Varn and Hugh Miller, original and one copy.

TOTAL DUE: \$900

THANK YOU,
KAYLEEN RIVERA

PLEASE REMIT PAYMENT TO:
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57th District Court
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Bexar County Courthouse
San Antonio, Texas 78205
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2 2006-CI-06702

3 JOHN FODDRILL * IN THE JUDICIAL DISTRICT
4 V. * 57TH DISTRICT COURT
5 CITY OF SAN ANTONIO * BEXAR COUNTY, TEXAS
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11 EXCERPTS FROM THE REPORTER'S RECORD

12 TESTIMONY OF

13 RICHARD VARN AND HUGH MILLER

14 HONORABLE ANTONIA ARTEAGA

15 FEBRUARY 10, 2009

16 57TH DISTRICT COURT
17 -----

18 COPY
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21 On the 10th day of February, 2009, the
22 above-entitled cause came on to be heard before the
23 Honorable Antonia Arteaga in the 57th District Court of
24 Bexar County, Texas, whereupon the following proceedings
25 were taken by machine shorthand.

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I N D E X

TESTIMONY	DIRECT	CROSS	REDIRECT
RICHARD VARN	4	33	
HUGH MILLER	51	114	162

1 E-X-C-E-R-P-T O-F P-R-O-C-E-E-D-I-N-G-S

2 TESTIMONY OF RICHARD VARN

3 (Jury in.)

4 THE COURT: Good morning.

5 THE JURY: Morning.

6 THE COURT: Everybody well?

7 THE JURY: Yes, ma'am.

8 THE COURT: Everybody very well?

9 THE JURY: Yes.

10 THE COURT: Good job. Okay. Good
11 morning. We're going to get started.12 Good morning, Mr. Varn. I'm Judge
13 Arteaga.

14 THE WITNESS: Morning, Judge.

15 THE COURT: Thank you for coming to the
16 57th. Would you raise your right hand.

17 (Witness was sworn.)

18 THE COURT: Thank you. Ms. Klein?

19 MS. KLEIN: Yes.

20 RICHARD VARN,
21 having been sworn to tell the truth, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MS. KLEIN:

25 Q. would you please introduce yourself to the

1 jury.

2 A. My name is Richard Varn. I'm the chief
3 information officer for the city of San Antonio.

4 Q. Now, you've been the -- I'll represent to you
5 we've heard some testimony about you being chief
6 information officer. Could you tell the jury a little
7 bit about your history with the city of San Antonio?

8 A. Yeah, I first came to the city of San Antonio
9 to help fix some ailing systems that were causing a lot
10 of problems, very expensive problems for the city in
11 2005 in February, and I was on contract with the city
12 for about five months, and also my job was to try to
13 help find a permanent CIO for the city at that time.
14 They never had a CIO before, and CIO is the person in
15 charge of technology and tries to oversee it from a
16 strategic standpoint.

17 And after that five-month period, we
18 found a person and I left the city. That person decided
19 to move on from the city to Corpus Christi, and I was
20 asked to come back in May of 2007 on a six-month
21 temporary employment assignment, and then I decided to
22 treat it more like a permanent job this time, 'cause I
23 didn't like trying to come in and set things up and then
24 hand it over to someone else. I really wanted to make
25 it more permanent and started to try to improve the

1 operations here, so I was given the chance to be an
2 employee of the city November 17th of this last year,
3 and I've been on full-time staff since 2007. Be two
4 years this May, roughly.

5 Q. Okay. Now, prior to coming to the city, what
6 was your background?

7 A. I've had about 30 years in government
8 experience, most of it in the state of Washington. I
9 was a state legislator for 12 years. I worked at a
10 university for five years as their director of
11 telecommunications and director of information
12 technology production. Taught class in communications
13 studies, education, business areas.

14 I went back to work for the government of
15 Washington for four years as the state's first chief
16 information officer and got to be the director of the
17 department of technology and also the CIO for the state
18 of Washington, and did that for four years. And I've
19 been a consultant part time in my career a lot of times
20 helping non-profits and education since 1988. So I
21 decided after I left the state to take that up full
22 time, worked at federal government for about 14 months,
23 and then this opportunity came along, and I guess one of
24 their credentials I have -- I've been the senior fellow
25 for about five years I was for the center for digital

1 government, which is trying to help governments improve
2 the way they deliver technology.

3 Q. Has there been a change in the relationship
4 between governments and technology in the last, say, 10,
5 15 years?

6 A. Pretty radical change. I always felt this was
7 my calling to be in this place. I've always been
8 interested in technology and enjoyed government and
9 putting the two together and trying to help improve
10 government with technology. So much has changed. We've
11 had to step up and professionalize the way technology
12 was delivered. It's been done very casually in some
13 ways and very professionally in others, and now we
14 depend on it, so we really can't leave any of it to
15 chance, whether it's a 911 call or getting a benefit, we
16 really have to make technology work and work every day,
17 because when it's not working, we're not working. So
18 that's the main thing is we've had to really step up and
19 make everything reliable.

20 Q. In your experience working with various
21 government entities, are you sensitive to the issues of
22 ethics and propriety in relation to technology?

23 A. Well, I come from a little bit different
24 ethics environment. State of Washington, when I was a
25 legislator, helped write the ethics code of not taking

1 anything from anyone worth more than \$3, so you really
2 can't even take a car ride or a meal from somebody. So
3 the environment that I was involved with, you know, you
4 really have to be very careful about who you deal with
5 in any way. I mean, unless they're your relative, you
6 really can't have any relationship with them that's
7 financial.

8 So as far as the -- you know, as a
9 legislator and as a government official, I got a lot of
10 complaints over the years of people who felt there was
11 improper things going on in government. I was
12 investigated to my fullest to try to fix those problems
13 and to, you know, do the right thing as far as, you
14 know, weigh the laws, and the government's supposed to
15 weigh work. I haven't devoted my life to it to see it
16 be done badly.

17 Q. Now, I'd like to take you back to February of
18 2005 when you first came to work for the city as the
19 acting or the interim CIO. That was a new position with
20 the city at that time?

21 A. The city had never had a person in that
22 position. We've had that -- had directors of
23 departments. They had a director of the department of
24 technology, who was Gary Moeller, M-o-e-l-l-e-r. I
25 always had a hard time pronouncing his name. Gary was

1 the director of a department but did not sit at
2 executive level. As I did sit on the executive team
3 when Sheryl Scully, the city manager, meets with the
4 leaders that help her run the city. I'm on that team,
5 which is a best practice. We've always advocated, if
6 you're going to treat technology with the importance it
7 deserves, you really have to have a person at the table
8 when the big decisions are being made. CIO needs to
9 know what other departments and other leaders are doing
10 so they can make sure the technology is ready to meet
11 that need, so this was a new position they had that --
12 so when I was brought in for the very first time,
13 Mr. Bono was the acting city manager. He put me right
14 on the leadership team, and I've been at that table ever
15 since I came here, so it was a difference in leading it
16 from a strategic standpoint rather than just running the
17 mainframe.

18 Q. Now, as far as the city of San Antonio, the
19 issue of IT, does that cover something more than having
20 a computer on my desk and a telephone next to it?

21 A. Well, the difference between a technology
22 manager and a CIO is I'm supposed to pay attention to
23 all the business processes that we do. It's really
24 making the city run better and using technology to do
25 that as my combination of my job. So I get involved

1 with other things like what are our goals and
2 objectives, how do we achieve them, performance
3 management, changing the way we do work. You know, if
4 the process is broken, we use technology to do it fast.
5 It's just a bad process being done faster. So my job is
6 more like that rather than just running a desktop
7 machine. It's also looking at all of the systems we
8 have in the city, how they work with -- to serve our
9 citizens and how they need to be either upgraded,
10 changed or improved to deliver better service, so it's a
11 big job and I enjoy it.

12 Q. Now, when you first came to the city in
13 February of 2005, what conditions did you find the IT
14 department?

15 A. Well, I would say this is the third time I've
16 had the opportunity to come into a situation where the
17 government had not had a CIO, had not been making
18 investments in its technology, had not had the
19 opportunity for its employees to get the proper
20 training. They weren't given the right tools, and they
21 did not have the right infrastructure to do the work
22 they were being asked to do, and the third time around
23 it was kind of old hat. I knew what needed to be done,
24 and really most everything with the exception of the
25 mainframe system was either broken, needed replacement,

1 is under repair. I would say there's several things you
2 have to fix. People have to have the right skills. The
3 processes have to be right. You have to have the right
4 policies. You have to have the right policies,
5 processes, and tools have to be right as well. Their
6 tools were not right, so it's three P's and a T. They
7 were all broken.

8 Q. So what was your mission that you saw for the
9 time that you were here with the city?

10 A. Well, there are -- was an 88 million-dollar
11 way too expensive system to replace all of our
12 financials, all the things that keep track of our
13 accounting, all of the payroll. That was not being
14 implemented properly. It was busted. My main job was
15 to try to make sure that that got back on track, that it
16 started delivering what it was supposed to be able to
17 deliver, which was, you know, details. If you want 'em,
18 I'll tell you, but it wasn't doing it. The other part
19 was to try to establish best practices, what kind of
20 organization has a CIO? How does it look? What's the
21 relationship between the CIO and the departments? What
22 kind of positions -- what leadership positions do you
23 need?

24 So I had to do organization and then also
25 do an assessment of what was busted within the

1 department. Every aspect of it, whether it was their
2 billing system, the process of delivering service. You
3 come into an easement that hasn't had much attention,
4 hasn't had the right leadership, hasn't had the right
5 tools. Pretty much everything needs attention, so I
6 spent a lot of late nights and tried to fix as much as I
7 could while I was here.

8 Q. And excuse me. During the time that you were
9 the interim CIO, did you bring Mr. Hugh Miller into the
10 department to serve in a management capacity?

11 A. Yeah. Gary Moeller was planning on retiring
12 and made that announcement while I was here. Among the
13 leaders we had in the department, we decided Hugh was
14 really the most qualified, had leadership positions, had
15 both public and private experience. I like to see
16 people with both in and out of government experience to
17 take new ideas. We need a lot of fresh ideas in the
18 department, so yes, we did.

19 Q. Now, I'd like to turn your attention to
20 Mr. John -- you know Mr. Foddrill, don't you?

21 A. Yes, I know John.

22 Q. When did you first become aware of Mr.
23 Foddrill?

24 A. When I was working with the city in 2005 and
25 he was -- had a position with the city at that time.

1 Q. And did you have regular contact with him
2 during that time period?

3 A. I had some contact with him at that time. I
4 was very busy, so I had contact with a lot of people,
5 and I would say John and I met a few times on different
6 topics, and I would see him in the IT office building.

7 Q. Now, would you go by regularly, two or three
8 times a week in the evenings and sit down and chat with
9 him to get his input on how the department should be
10 reorganized?

11 A. No. No.

12 Q. Were you aware he had told people that that's
13 what you would do? That was your practice?

14 A. No, I wasn't aware of that. I was there late
15 quite a bit of the time. I mean, I would see people
16 pass in the hall, but I did not have the time to sit
17 down and talk with John three times a week. It was not
18 really -- that wasn't an area where I needed to spend
19 that much time. He wasn't in a position that I would
20 have spent that much time working with him.

21 Q. Did you discuss with him how the department
22 should be reorganized?

23 A. No. I spoke with Mr. Bono about how the
24 department should be reorganized, along with the other
25 department heads to try to make sure they had an

1 opportunity to figure out where their place was and what
2 they were told to do. I wanted to make sure all the
3 people that were there had a shot of having a position
4 they were qualified for.

5 Q. Did you ever promise Mr. Foddrill that you
6 would create a slush fund for him of monies that were
7 recouped from monies that had -- other departments had
8 made monies he could then use for whatever projects he
9 wanted?

10 A. I don't think the city's accounting system
11 allows for -- well, the word slush fund would be first
12 pretty big indicator I wouldn't want to do that. I
13 think I've talked with people before about the idea that
14 sometimes you want to be an innovator, and if you save
15 money, maybe that can be used to help fund. In fact,
16 we're doing a program like that this year on one of the
17 technology projects that's scheduled to save something
18 around maybe 9 or 10 million dollars for the city, which
19 is a really big deal. And it's either going to save or
20 earn, so we're going to use some of those funds to fund
21 other technology, but that's done with the council's
22 approval, with the budget office's approval. But in
23 general, no, we don't really have the ability to
24 reallocate savings from other departments to some other
25 purpose unless it gets through very formal budget

1 process.

2 Q. And if you did have those monies, is that the
3 sort of thing from an executive management position that
4 you would give to a mid-level manager without any actual
5 plan or direction, what they were going to do with the
6 money? Just say, here's a quarter of a million dollars,
7 do what you can with it?

8 A. No. I mean, it's an idea, you know, we're
9 discussing is to encourage people to save money. But,
10 no, we would want to set first a list of priorities,
11 what needed to be fixed. And I believe we had -- we had
12 a lot of things needed to be fixed back then. We would
13 have set those priorities, figured out the most
14 important ones. We have a process for figuring out
15 what's the return on the investment. Does it save
16 money? Does it help something work better? Those
17 things that have the highest score get the money first,
18 so that would be where the dollars would go.

19 Q. Now, at some point in time do you recall
20 having a meeting with John Foddrill in around late June
21 where he requested a meeting with you?

22 A. Yes. Yeah, I do.

23 Q. What do you recall about his request?

24 A. What I recall is that John was very concerned
25 about -- with the way things were being run in the

1 department. He had concern about the way money was
2 being spent and the way that certain things were being
3 operated that wasn't being done in a professional manner
4 was his concern.

5 Q. Did he share that with you in an e-mail, or do
6 you recall how you first became aware of his concerns?

7 A. I'm pretty sure I had a conversation in John's
8 office once where he said he was, you know, trying to do
9 a number of things to improve the way the city's
10 telephone system -- the billings were working and that
11 he was concerned about trying to improve that and
12 that -- and I know I had one evening conversation with
13 him in my office, for sure, where he raised some issues.

14 Q. And on that evening do you recall him raising
15 the issue with you that Jose Medina had told him to
16 cover up purchases with the company named Laser Quest?

17 A. I don't even -- I don't know that company. I
18 don't remember that. I remember allegations being made
19 about something like he was concerned that Jose Medina
20 was not doing his job and that he was not handling money
21 properly was the core source of the allegation, I think.

22 Q. Did he tell you that Jose Medina told him to
23 cover up bills in a company called Santel?

24 A. I don't know that company. I don't remember
25 us doing business with either of those companies.

1 Q. When Mr. Foddrill came to you that evening and
2 talked to you about his concerns about Jose Medina, did
3 he indicate to you he thought Mr. Medina was filling his
4 own pockets with city funds?

5 A. I don't remember that. I do remember concerns
6 about that there was misuse of the funds inside some
7 fund that the city technology department had, that he
8 was concerned about that, that it was not used for
9 proper purposes related to the reason the money was
10 collected. That was the main concern I thought he had.

11 Q. And were you -- did you believe he was
12 reporting to you that Jose Medina was violating the law?

13 A. Well, I had a lot of concerns about a number
14 of things coming into a new city, not knowing whether
15 people are honest or dishonest, not knowing whether
16 they're doing the right thing, because it's easy for
17 them -- or doing the right thing or the wrong thing,
18 'cause it's easy for them to do the wrong thing and
19 they're protecting themselves, so I was very willing --
20 I'm always willing to listen to anybody that says, hey,
21 I think someone's doing something wrong. Well, tell me
22 about it. Let me look into it. So there were things
23 John alleged that were of concern to me about how the
24 money was being used by the city that was being
25 collected from departments, about those issues. Jose

1 was performing his job, how he was choosing and using
2 contractors and choosing and using city money, all those
3 were important allegations, and I looked into every one
4 of those.

5 Q. Did John share with you that some of those
6 contractors that Jose Medina was choosing to use, that
7 he also was choosing to use?

8 A. No. You know, that level of detail, you know,
9 this doesn't absorb at the time. If he told me that, I
10 just don't remember. I'm sorry.

11 Q. Okay. As a result of that conversation, did
12 you place a phone call to Hugh Miller?

13 A. Yes, I did.

14 Q. Did Hugh Miller answer that phone call?

15 A. No. I left a voicemail for Hugh.

16 Q. What was your voicemail?

17 A. Well, I pretty much proved he shouldn't make
18 decisions when you're mad at somebody, but like I needed
19 another lesson. But I did ask him, why haven't we fired
20 Jose Medina yet? Because here was John making
21 allegations. I had concerns about Jose's ability to
22 manage the telecommunications area anyway, as did I
23 about a number of employees that we had in positions
24 where they just weren't qualified for doing their job.
25 So I wanted to see him moved on, and I was very -- very

1 upset with him about something else unrelated that this
2 was sort of like was icing on the cake. If he was
3 getting allegations made against him that he was
4 stopping somebody from trying to fix something in the
5 city, then I was ready to get rid of him.

6 Q. Now, you said there were something else you
7 were upset with him at that point. What was that?

8 A. Well, it's taken us four years to figure out
9 from what he left us with. We have contracts with all
10 of the telecommunications providers, AT&T, Sprint, the
11 Time Warner, all the long distance carriers. It takes a
12 long time to pick a new vender for that. It takes
13 months, years sometimes to actually get all that,
14 because if you change any of that picture, a lot of
15 systems depend on this, it takes a long time to make
16 sure you don't disrupt service for people, and the
17 vender has time to unplug everything and the new vender
18 has time to plug everything in. So I've done several
19 telecommunications RFPs before, and they take a lot of
20 work. All of our contracts were ready to expire. I was
21 here in May. They were ready to expire that fall like
22 in October, and not one single RFP draft had been
23 prepared, so they were all going out of the ability to
24 use those in a few months.

25 Jose was the director of that area. To

1 me the number one thing is you'd have to make sure you
2 have continuity of service so that no one gets their
3 service disrupted, if you're in charge of that area, so
4 to me he showed his incompetence in that function by not
5 being able to be ready to replace every single major
6 contractor. We had our cell phone service or long
7 distance, our internet network provider phone switch,
8 everything was going to go off and he was like, oh,
9 well, so. I was like, you know, I wasn't really sure he
10 should be with the city, let alone be in that position.

11 Q. So when you picked up the phone and called
12 Hugh Miller, do you recall -- did you tell Hugh Miller
13 the reason you wanted Jose Medina fired was because he
14 had made threats against John Foddrill?

15 A. You know, John did tell me that Jose had been
16 threatening him.

17 Q. Did you share that information with Hugh
18 Miller?

19 A. I don't remember if I did. I would likely
20 have.

21 Q. Okay. Did you tell Hugh Miller that that was
22 the reason that Jose Medina should be fired?

23 A. No. No. The main reason -- I mean, I had
24 already asked Hugh to consider finding a different
25 person for that job, because we needed not only somebody

1 who could run the daily operations, but somebody who
2 knew how to dig us out of the fact we were already two
3 years behind in replacing our basic contracts, and one
4 of the reasons when I came here the things were so
5 messed up with the deployment of this new financial
6 system is 'cause we didn't have a proper network. We
7 were connecting, you know, those really old 14,000 BOD
8 modems, the really tiny little modems our whole -- for
9 departments for our whole office were connected to our
10 network with just one of those little things. You know,
11 it would swamp, you know, that instantly just trying to
12 connect to this central accounting system. So our
13 network was busted. It needed millions of dollars of
14 investment to work properly to serve the city and to
15 deliver modern services. So we need that. We need
16 somebody to deliver all that, somebody to keep on top of
17 contracts, so I was -- I was convinced -- I was already
18 decided -- I mean, I didn't have full authority. I was
19 just a contracted employee. So the reason I'm calling
20 Hugh rather than taking action myself is 'cause I did
21 not have authority to implement those kind of actions.
22 So I'd already been telling Hugh, you've got to find
23 somebody to run this area who knows what they're doing,
24 who understands a modern network, and it wasn't like I
25 needed to convince him. He already knew that I was

1 looking for someone at the time.

2 Q. Okay. Now, you said that you took the
3 allegations Mr. Foddrill made and you looked into them.

4 A. Yeah.

5 Q. And what did you find out about those
6 allegations?

7 A. Well, first and most obvious one is that Jose
8 was not the right person for that position. We had
9 other people that could do the work, good qualified city
10 employees that could step in, as well as bringing
11 outside people. We needed to make that management
12 change. Secondly, that every IT department I've been
13 with, that's K12, federal government, university, and
14 state, has a basic problem in trying to distribute their
15 charges of what it costs to run the system out to
16 people. And the city had -- as most IT departments do,
17 had a kind of a broad based set of things that kind of
18 represented your rough usage. You know, it was sort of
19 like you didn't have something as accurate as cell phone
20 minutes, so you could automatically say, use this many
21 minutes, you pay this -- this much. They had to take
22 someone that was reasonably close. We do things like
23 how much storage do you use, how many transactions, how
24 many interactions do you do on the mainframe. We had to
25 take a rough approximation, how many phone lines do you

1 have, and they have assigned a dollar value to that, and
2 even after they did those big block allocations, there
3 were still things that would come up that wouldn't
4 neatly fit into one of those things that still needed to
5 be done for the city. So you would have to have some
6 way of, you know, charging things out that would pop up.
7 A department would suddenly have, you know -- they'd
8 lose a bunch of laptops or they would have a software
9 mandate that would come down from the federal
10 government, say you got to fix this right now. They had
11 to have some way of balancing their budget and serving
12 their needs. They had something called -- some kind of
13 a variable in the telephone system. They were using
14 the -- the allegation was that was being illegally used,
15 which I'm very sensitive to. If anybody's illegally
16 using money or inappropriately using money, we're going
17 to stop now and we're going to figure out a way to fix
18 it. So I went in and looked at that. What I found was
19 it was an accounting mess. It was an absolute
20 accounting mess. We had to fix the accounting mess.

21 THE COURT: Mr. Varn, I want to hear
22 about it in just a second. I need to excuse the jury
23 into the jury room for two minutes, if you could,
24 please. Would you have the jurors go into the jury room
25 for two minutes.

1 (Jury out.)

2 (Discussion off the record.)

3 (Jury in.)

4 THE COURT: My apologies. Back on the
5 record. Mr. Varn, two options, I believe, is where we
6 were.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Go right ahead.

9 THE WITNESS: The first option is to do a
10 very, very detailed accounting system that tracks every
11 single expenditure that you make on anything and then
12 tries to allocate that spending out to the person that
13 used it. It costs a couple of million dollars a year to
14 run for an organization our size, to buy the software
15 and to implement it and to track everything. It's very
16 people intensive, and places that have a lot of federal
17 dollars or that have to account for every penny in a
18 certain way, they will invest that kind of money.

19 Our second choice, which we've
20 recommended -- I recommend through the center as best
21 practice, is to find a very common unit, and we chose
22 full-time equivalent position, so because you figure
23 people won't cut people, they cut technology in a budget
24 year, but they tend to hold on to their positions well,
25 so you can't play games with the positions people want

1 and need for their department. So we charge now so much
2 per department if it's a full-time equivalent position
3 for technology. We have a standard amount for
4 everything except long distance usage and cell phone
5 minutes. So that has saved us a tremendous amount of
6 hassle in trying to build departments. Before it was a
7 nightmare. So that was the fix that we needed. We
8 needed to be direct and honest with the departments
9 about how we were billing them and exactly what the
10 money was being used for.

11 So the other side of that we changed was
12 we open up our whole process to let the customers help
13 determine what we spend our money on, so we've really
14 done a lot of those reforms to change that, so I did
15 address as best I could over the two times I've worked
16 here to fix that problem, to save us both money and do a
17 better job accounting for our funds.

18 Q. (BY MS. KLEIN) Let me ask you a question
19 about that. Based on your experience in the
20 industry, was there anything improper about using
21 this variable for getting recoupment on charges?

22 A. Well, I want to be very specific, and there's
23 nothing illegal about it. It does not violate any city
24 policies, rules, or ordinance. It doesn't violate Texas
25 law. It's a mess from an accounting standpoint. It

1 makes it very difficult to know what you're spending
2 money on and how -- and that needed to be fixed. But it
3 wasn't -- it wasn't that it was something that I had to
4 go call law enforcement. There was a couple of things I
5 did call law enforcement on over the time I've been
6 working for the city of San Antonio, and there's one
7 case an arrest was made, so we've -- you know, it wasn't
8 to that level. And the other -- in this case it was
9 more, wow, that's a mess. You guys got to figure out a
10 better way of billing. And we addressed it when I came
11 back.

12 Q. Did you have any further contact with John
13 Foddrill?

14 A. John sent me e-mails after I left, a couple
15 times. I passed along John's concerns to my successor
16 Michael Armstrong, told him he was concerned about a lot
17 of things that I had done some looking into, the things
18 that John was concerned about, that I had not found any
19 illegal acts, that I didn't -- but from my standpoint I
20 don't really trust what people tell me. I kind of trust
21 what people do. I said, you know, I think you should
22 continue to look into these issues, you know, are we
23 spending our contract money right, you know, are we
24 handing out contracts to the right people for the right
25 reasons, you know. And Michael, by the way, came from a

1 Washington position as well, ironically. He actually
2 was recruited out of the city -- I lived in Washington
3 from Des Moines, Washington, so was very used to
4 Washington ethics, which is not -- you know, a scandal
5 there would basically make the paper here, you know. So
6 he understood all that. He followed up, I think, to
7 some degree on what those concerns were.

8 I just basically handed him off -- handed
9 John off to him. I did tell him I thought John was a
10 little quick to judge when things were wrong, rather
11 than getting as many of the facts as he needed. I did
12 tell him that. I said he's made a lot of allegations.
13 Ones I've looked into haven't borne out what he was
14 claiming to be wrong, had a kernel of truth in it, but
15 the conclusion was wrong. It was -- the process was
16 broken. But to allege what was happening and the
17 allegations he was making, I couldn't find the evidence
18 for it.

19 Q. Now, a moment ago you also said at the start
20 of this whole discussion about the phone call that you
21 made to Hugh Miller, you made the comment that was one
22 of those lessons you learned about doing things in
23 anger. Could you explain that statement?

24 A. Well, you know, I've done that a number of
25 times in my career when you call someone and you're mad,

1 my normal policy now is, when I reach for the phone,
2 don't, you know. wait. wait until you're not mad and
3 call. But, you know, I was under a lot of stress then.
4 I was trying to get a lot of things done for the city,
5 not getting a lot of sleep and flying back and forth
6 from Washington to here to work during the week here, so
7 I was mad. I was upset. I get upset 'cause I helped
8 write the Washington whistle-blower law. I've always
9 been mad when people who do complain about the
10 government doing the wrong thing do not get treated with
11 respect. They can actually be fired in Washington, and
12 I and the Washington legislature both passed
13 whistle-blower laws about the same time for the federal
14 and state government. So when I find somebody who's
15 blocking something who's trying to do the right thing,
16 who's saying, hey, I'm trying to fix something and I got
17 this person threatening me, that makes me mad, and I
18 shouldn't have acted the way I did, but it was more than
19 just the allegation John was making. It was general
20 frustration with him doing his job.

21 Q. And the allegation that John was making that
22 Jose was blocking him, at the time that you made the
23 call, the only information you had on that was what came
24 from Mr. Foddrill, correct?

25 A. That's right. I had not had the opportunity

1 yet to look -- I did understand, I guess, about the
2 budgeting problems, 'cause I had done some looking into
3 that. But when it came back around to say, well -- and
4 there's this person who maybe isn't trusting, worrying
5 they're again at their job and they may be threatening
6 me, it's like, why is he still here? I still think it
7 was a good question.

8 Q. And you had issues about his work performance,
9 but other than John Foddrill, did you have any questions
10 at that point about his trustworthiness or honesty?

11 A. No. I never really did. I did find other
12 people that worked for the city who were later fired.
13 There were -- like I said, one case where a person was
14 actually surfing child porn during the day in the city
15 attorney's office who was arrested for doing that, and
16 his house was raided. So, I mean, we had some cases
17 where we found people doing inappropriate things. They
18 were directly sent to law enforcement. There were other
19 cases about the delivery of our complete systems which I
20 never felt were fully resolved. I did an audit on
21 those. I turned the audit over to the assistant city
22 manager, Chris Brady, at that time. When Chief McManus
23 came to the city, he used the results of that audit of
24 that police system to dismiss a number of city employees
25 who he felt at least had been derelict in their duty in

1 delivering that system properly. So, you know, I can't
2 remember the exact question, but, yeah, I did look into
3 those things and we did act on 'em, but I couldn't find
4 anything to act on.

5 Q. Okay. Let me ask you this: Are you familiar
6 with a company called Cisco?

7 A. Oh, yes.

8 Q. Okay. How do you know about Cisco?

9 A. They're a world leader in networking
10 technology and solutions.

11 Q. Do you -- is the city looking at Cisco as a
12 provider of services?

13 A. Yeah, we've learned some hard lessons about
14 how to pick venders. Over the last, you know, 15, 20
15 years I've been doing this. A number of venders, we buy
16 their equipment, we come to depend on them, and they go
17 out of business or get bought by someone else, so we end
18 up with these orphan pieces of equipment that no one
19 will support and no one knows how to fix or deal with,
20 and then you end up with a whole bunch of them in your
21 system and it really causes problems.

22 So my bias towards venders is to use
23 independent third-party people who evaluate venders, and
24 we have a contract with a company called Gardner who
25 looks at all these venders and judges them and rates

1 them kind of like consumer reports rates refrigerators,
2 whether they're a best buy or not. I try to pick
3 people -- they have a quadrant. We're in their top
4 right quadrant. Stable companies deliver what they
5 promise and are likely to be around for the long haul in
6 this business. Cisco is always in the top right
7 quadrant of Gardener's charts. We pick people like IBM,
8 Cisco, Microsoft, Adobe. You know, these are very
9 powerful too. They're companies that don't go broke.
10 My rule, if we're going to pick a down-market vender
11 who's small, it should either be done because we're
12 trying to work with -- work with small businesses -- and
13 that's important. We do that a lot, or because their
14 software is so much more powerful. Like I usually just
15 buy three or four times better than what the big market
16 uses. I don't want to shut them out, but I don't want
17 to be orphaned. I don't want to be left with them going
18 broke. And recently we've had three or four venders
19 that have filed for bankruptcy or have actually turned
20 our billing over to a collection agency -- the money we
21 owe them has been turned over to a collection bureau
22 to -- so we start getting calls from them. It's not a
23 good economic time to be investing in companies that
24 can't weather this time, so Cisco -- I've standardized
25 on them in two or three environments now and picked them

1 because they have the best technology; they invest in
2 future technology. They are able to survive as a
3 company.

4 Q. Are you familiar with a company named Nortel?

5 A. Yep. I believe they just declared bankruptcy
6 recently.

7 Q. Was the city's -- were you aware that was the
8 city's prior --

9 A. Yep. I have a long history with them when --
10 before they used to be Bay Networks, and they merged
11 with Nortel. We used to use Bay Networks with
12 equipment, and we did a lot of great work with Bay
13 Network's equipment. They merged with Nortel. Very
14 solid company for a period of time there, but they
15 tended to lose their edge, you know. It's just survival
16 of the fittest in the IT business.

17 So we had three different vendors. We
18 had Nortel, we had Avaya, and we had some Cisco. In
19 fact, I think we had four or five vendors, and I've even
20 written papers that says you just don't do that and
21 expect your network to work properly. So you really
22 have to pick your standard and buy the tough stuff that
23 works or make the vendors promise in blood that their
24 stuff will work with the other vendors and there will be
25 no help, and you hold 'em to make that promise in

1 contracts. So we needed to kind of get rid of some of
2 those peripheral pieces of equipment and standardized --
3 and I directed Hugh to do that.

4 MS. KLEIN: We'll pass the witness.

5 THE COURT: Your witness, Ms. Gaul.

6 CROSS-EXAMINATION

7 BY MS. GAUL:

8 Q. Mr. Varn?

9 A. Yes, ma'am.

10 Q. You started your testimony with your
11 background and that you have a long history in
12 government and in public service and in private
13 industry; is that correct?

14 A. Yes, ma'am.

15 Q. And that you said investigate things to the
16 fullest and don't make quick decisions, right?

17 A. Well, sometimes I make rash judgments and lose
18 my temper, but I do try to -- before I act on it
19 finally, I do calm down and try to make the right
20 judgment on evidence.

21 Q. So how do you explain to this jury the
22 conflict in that description of your background and the
23 fact that you picked up the phone and told Hugh Miller
24 to fire Jose Medina?

25 A. It was a rash decision. Besides being, you

1 know, maybe over-tired and, you know, making a decision
2 out of losing your temper, I don't really have a better
3 explanation for it.

4 Q. well, the explanation is that you knew a lot
5 about Jose Medina already, and this was just the final
6 issue that had come up with him; isn't that correct?

7 A. well, I think that's why I might have any
8 legitimacy to suggest he shouldn't be working there, but
9 the allegation that was made at that time wouldn't have
10 made me do that. It was somebody who I was already
11 concerned about as being qualified to be the director or
12 manager of the area he was managing, so I didn't -- I
13 did not want to see him in that position. This was --
14 seemed like another reason why he shouldn't be there.

15 Q. well, and you believe that you instructed
16 Mr. Miller to find Medina another place, to get rid of
17 Mr. Medina, to replace him; is that correct?

18 A. Yeah, I had asked him to begin to look at a
19 whole bunch of things, reorganizing the whole
20 department, and finding a competent person to be in
21 charge of that area was not one of the directions I gave
22 him.

23 Q. Go in the blue notebook to tab 1, please.
24 This is a municipal integrity report, and if you could
25 turn to page 12 of that report.

1 A. The one labeled 0001112?

2 Q. That's the beginning, but I need you to turn
3 to page 12 of the actual document.

4 A. Here we go. I didn't find the numbers right
5 away. Okay.

6 Q. At the top of that page, according to
7 Mr. Miller, he did acknowledge that he had received that
8 voicemail instruction from you to fire Mr. Medina, but
9 Mr. Miller says that you didn't care for Mr. Medina, so
10 he took your voicemail in that context. Were you aware
11 of that?

12 A. Yeah, I was. In fact, he told me that the
13 next day. How come you're leaving me these nasty
14 voicemail messages? And, you know, I can't just do
15 that. And I said, yeah, I'm sorry. I lost my temper,
16 and I apologize for leaving him the voicemail and said,
17 you know, but we still have to fix the problem. We have
18 to figure out what to do. And I said, obviously I have
19 no authority here to order you to do anything. But, you
20 know, I'm going to trust you to find the right people to
21 do the work and get this problem fixed, because if not,
22 we're going to end up with no contracts to deliver
23 services to the city.

24 Q. Mr. Medina wasn't taken out of his position,
25 though, was he?

1 A. Nope. Not until recently, actually, about a
2 year and a half ago. He retired from the position.

3 Q. And at this time you said --

4 A. Well, that's not completely accurate. His
5 position was shifted, and there were other people that
6 were actually put in charge of running the
7 telecommunications systems that actually are doing a
8 good job and are deploying a very modern, very good
9 network city wide now.

10 Q. Did you do that when you came back to the
11 city?

12 A. Actually, it was underway when I returned.
13 There was a logjam. Mr. Armstrong had kind of lost the
14 trust of folks 'cause he was leaving, and they were not
15 choosing to follow his recommendations because he was on
16 his way out, so there was a big pile of decisions, one
17 of which was whether we should partner with CPS Energy
18 and use their fiber that they use for controlling the
19 electrical system -- use their fiber in a partnership
20 with them to deliver these network connections to all of
21 our city facilities, and there was a big bottleneck on
22 that big project, and it was not being decided. All the
23 work -- a lot of the work had gone into preparing to do
24 it, but here it was sitting in the manager's in box, but
25 she wasn't ready to endorse the idea because she needed

1 someone who she could trust to say, yes, this makes
2 sense and this is how we'll do it.

3 Q. You don't believe she trusted Mr. Armstrong?

4 A. Well, I don't think she had -- he did not have
5 her confidence to make that big of an investment when he
6 was leaving.

7 Q. Let's talk about -- you said that you started
8 here in February of 2005 as a contract employee; is that
9 correct?

10 A. That's correct.

11 Q. And you were here for five months.

12 A. I was a contractor. I was not actually an
13 employee at that time.

14 Q. But you were called the interim CIO, correct?

15 A. Yeah. It was a very unusual circumstance. I
16 was actually given a title rather than just being a
17 vender, which I'd be more used to.

18 Q. You would have to fly back and forth to
19 Washington on the weekends; is that correct?

20 A. Yeah, that's why that -- and I was helping a
21 school district in east Baton Rouge, Louisiana at the
22 same time, so sometimes I would go over there and work
23 with them on a grant they had gotten.

24 Q. Eventually you came back here in May of 07 --
25 a couple of years you came back in May of 07?

1 A. Correct.

2 Q. Again, temporary, and then you became
3 permanent, correct?

4 A. Right. That time was a temporary employee for
5 six months.

6 Q. So were you gone a couple of years and you
7 said, when you came back, that there were still
8 problems, or had everything been fixed while you were
9 gone?

10 A. Can I shut this?

11 Q. Sure.

12 A. There were a number of problems. A number of
13 points of progress had been made. I'd say the strongest
14 areas that had been improved was in server management,
15 was in having two very good people that were ready and
16 got launched into assistant director roles, so they
17 recruited two, and I named one long-time employee and
18 promoted another one into those positions. The network
19 had started to take shape. It had a good plan behind
20 it. They were ready to make investments in the network
21 in a proper way. They'd started to prepare the RFP to
22 get ready to replace the systems, so there'd been
23 improvement. But they had not gotten money. You can't
24 fix something with nothing. They'd gotten no major
25 capital investment. There hasn't been an

1 8 million-dollar bad project. There hadn't been any
2 money.

3 Q. Let's talk about that. What was that
4 8 million-dollar bad project?

5 A. It was for replacing Hanson, buying Hanson,
6 which is our development services, the way we do permits
7 for people who want to build houses and do housing
8 developments. And for all of the accounting system for
9 the city, the payroll, the financial system, the
10 budgeting system, supposed to be a whole bunch of other
11 pieces that never got delivered.

12 Q. What was it called?

13 A. It was -- well, it was called ERM, which is
14 not an industry standard. It's normally called ERP,
15 enterprise resource planning system, and it was with
16 SAP, which is one of the top three vendors. But it was
17 implemented -- you know, it was a textbook case of how
18 not to do it in many ways. There were problems with the
19 implementer Deloitte and Touche, problems with the city
20 being able to respond and change its business process.
21 There was bad communications. It was too expensive for
22 what we were getting.

23 Q. How is it now?

24 A. We have undergone a review by SAP so that it
25 is actually now one of the best systems operating for

1 public sector service in the U.S. We're actually ahead
2 of Houston, and they're one of the better deployments.
3 We're ahead of Houston, our current releases, and bring
4 ourselves up to the current versions of the software.
5 It's stabilized. We're actually able to do quarterly as
6 well as monthly closes, which is a big, big thing in
7 accounting. I don't understand it fully, but when we do
8 our budget -- and you may have seen the paper recently,
9 three plus nine budget. You couldn't have done -- we
10 had to do a three plus nine budget. In order to do
11 that, you have to have a good accounting system. We can
12 do that now.

13 Q. And as of when did it get fixed?

14 A. It started to get fixed actually right when
15 Hugh took over and they started to put new people into
16 those positions and change the business processes and
17 how we supported the software.

18 Q. But when was it finally fixed?

19 A. It's never going to be finally fixed, but I
20 think that, you know, right around, you know, 07 it
21 really -- 06, 07 it started to really stabilize. There
22 weren't any more bad -- you know, before, you know, the
23 paychecks were wrong and, you know -- so late 05, early
24 06 most of the -- most, you know, things you'd get in
25 the paper were fixed, and then after a series of reviews

1 and audits and some new investments, I'd say in, you
2 know -- Hugh -- and then Hugh and I working together
3 have gotten it stabilized over the last two years.

4 Q. Now, you did -- in talking to Mr. Foddrill,
5 you learned about this variable account; is that
6 correct?

7 A. That's correct.

8 Q. Were you aware there were four variable
9 accounts at ITSD?

10 A. No. I didn't really have that level of
11 understanding the details. I just knew they had some
12 things they used to adjust charges. That's what I knew
13 about.

14 Q. You didn't know there was a telecom variable,
15 a pager variable, a cellular variable, and a wireless
16 variable.

17 A. I understood the telecom variable 'cause
18 that's the one that seemed to be the largest one that
19 was used to adjust the budgets. What I thought was just
20 really telecommunications in general. I didn't know
21 they had it broken into four sub accounts.

22 Q. Now, you said that you looked into the issues
23 that Mr. Foddrill brought to you; is that correct?

24 A. I did the best to my ability, ma'am, yes.

25 Q. And I believe you testified also that there

1 were two ways that you could have solved this variable
2 problem. You could have done detail accounting, or you
3 could do this charge that you finally come up with and
4 charge the departments, correct?

5 A. That's correct.

6 Q. And detailed accounting would be important if
7 you were dealing with federal funds, I believe your
8 testimony?

9 A. It's if you have to prove to a federal
10 agency -- as most state agencies who get federal funds
11 do, have to prove in a certain way the allocation of
12 their costs is fair and reasonable.

13 Q. Now, the city gets federal funds, right?

14 A. That's correct.

15 Q. In fact, what percentage of the federal
16 funding is from -- I mean, what percentage of the city
17 funding is from federal grants?

18 A. The primary source of the audits that the feds
19 have been doing for the last ten years or so is in
20 Medicaid, because that was the area where people were
21 kind of tending to dump -- governors were dumping -- I
22 don't know how much money we get from Medicaid. Most of
23 the other --

24 Q. That's not my question. Overall with the
25 city --

1 A. Total federal dollars. I'm sorry, I don't
2 know it off the top of my head. I would say it's
3 probably less than ten percent federal monies.

4 Q. In accounting to those federal monies, you
5 have to account for your expenses; isn't that correct?

6 A. Right. The process that you have to do is to
7 show them that whatever method you're using is a
8 reasonable -- shows a reasonable reflection of the
9 actual usage, the actual charges or drafts that entity
10 put on the system. As long as you have a fair way of
11 doing it, it's done uniformly, you charge everybody the
12 say same way, then it's okay to do that method.

13 Q. The way they were charging these different
14 departments was per phone. They were assessing their
15 phones, right?

16 A. Yeah, it may or may not. I don't know if it
17 would have passed a federal -- what happens when -- if
18 you don't pass a federal audit you have to pay some of
19 the money back with interest if you've overcharged.

20 Q. Okay. So did you look into that to make sure
21 this variable was not violating those federal --

22 A. Yeah, I did, and I didn't think it was -- you
23 know, it did get done the same way for everybody, so it
24 was a commonly confusing way of doing it, you know. It
25 was hard to track it to the exact amount, but since

1 everyone had equal access to come in and make a plea to
2 the department director to say, I have a problem this
3 year, or I have an issue with this financing, or the
4 department director would say this ended up being more
5 expensive than we thought. We have to figure out how to
6 cover the costs. Allocating it by any common way
7 probably would fall -- would get accepted by federal
8 auditors. They're really looking for somebody who's
9 dumping bunches of costs onto Medicaid and other
10 contracts to try to solve their budget problems. That's
11 not what the city was doing. The city was trying to
12 allocate costs that it really did have.

13 Q. So you know if ITSD wanted to put a trophy
14 case in that was found to go to the variable, you didn't
15 think that would be a problem with the federal grant
16 money?

17 A. You know, that's one of those golden fleece
18 kind of examples. It got my attention. You're doing
19 what with the money? When it comes down to it, the way
20 that the feds look at that is if it's a cost that you
21 incur, even if it's for an employee picnic, if it's
22 something that's appropriate, legal for the city to
23 spend money on, they don't look at that level of detail.
24 State of Washington, when I was there, had randomly
25 allocated extra money to the IT charge until a budget

1 year in a crisis and just dumped the cost onto IT with
2 no relationship to cost. When I found that out when I
3 went to the state of Washington, I immediately reported
4 it. The legislature said, this violates federal rules,
5 and we are going to have to pay this money back. You
6 guys need to start making a plan to pay it back. This
7 wasn't that problem. If it's legal to spend the
8 money -- even if it's a dumb thing to spend money on, if
9 it's legal to spend the money on, it's not to my
10 knowledge violating the federal audit rules.

11 Q. Did you ask the feds about whether they
12 thought it was okay to buy trophy cases and remodel the
13 ITSD --

14 A. I have actually visited with a number of
15 federal officials in Washington asking them about --

16 Q. You did ask them about --

17 A. I didn't ask them about that, no. I didn't
18 ask 'em about trophy cases.

19 Q. And you didn't go into a level of detail
20 investigating that variable at that time; is that
21 correct?

22 A. I didn't ask 'em -- ask the federal officials
23 if they thought it was a good idea to buy a trophy case,
24 no.

25 Q. Did you stop the process of the variable when

1 you found out about it in 05?

2 A. No. There was no alternative. I did ask them
3 to start developing an alternative billing process, and
4 I left it on my list, you know. It was like handing off
5 the bible over to Michael Armstrong saying, here's a big
6 list of things. I'm sorry. You have to fix your
7 billing system.

8 Q. Were you also -- you testified you like Cisco
9 and it's a big company and you can rely on it. Were you
10 aware of how Cisco was being courted at the time by
11 Mr. Miller and his ITSD group?

12 A. I don't -- could you explain what you mean by
13 courted?

14 Q. Were you aware of the weekly meetings that
15 they held with Cisco representatives for a while?

16 A. I was aware that Hugh had told me that he had
17 been talking to Cisco, yes.

18 Q. Were you aware of the municipal integrity
19 investigation where Mr. Miller had stopped ordering from
20 the vender and was starting to order from Cisco?

21 A. I was made aware of that later. I don't think
22 the timing -- the municipal integrity investigation -- I
23 believe it happened between when I was here the first
24 time and when I came back the second time. Is that
25 correct?

1 Q. Yes.

2 A. The timing? So I was made aware of that
3 investigation that was going on. When I was told about
4 it, I mean, I had directed Hugh -- I said -- when we
5 talked about this, he said, well, this is what I'm
6 thinking of doing. I'm thinking of standardizing on
7 Cisco and moving that direction. I said, well, why
8 aren't you already? You need to be doing that. We have
9 to get off of these, you know, Heinz 57 platforms and
10 get on a solid one.

11 Q. There's a process for doing that; is that
12 correct?

13 A. We have two. One is an open and competitive
14 bidding process. The second one we do by research and
15 analysis and setting a standard for what we want to use
16 as a city. And we can choose by that to standardize our
17 purchasing around one system. We're buying our new
18 computer dispatch system for 911. We're buying it
19 without competitive process. We've already purchased it
20 because Austin, Fort Worth, and Dallas use the same
21 system, and we're on the I-35 corridor, so because of
22 that reason we did not do a competitive process. We did
23 a research process which determined what we will buy.

24 Q. But Hugh Miller as the director of ITSD can't
25 just say, stop using Avaya contract and use Cisco.

1 There is a process, correct?

2 A. Well, actually, under -- there's an
3 administrative directive that gives the director of
4 information technology the power to determine exactly
5 what to purchase by their own decision. By determining
6 that's what they want to standardize on, they can choose
7 that. I had the same power as the IT director in the
8 state of Washington.

9 Q. I'm confused. You just told the jury there's
10 two processes you have to go through, competitive
11 bidding or research. But then now there's three, or you
12 could just decide what you want?

13 A. The way the research process gets implemented
14 is a decision by the director to choose to buy that.
15 That decision must be validated by the city council
16 because we cannot buy anything over \$50,000 unless the
17 council agrees that vender is a proper one to buy them
18 from.

19 Q. So I'll ask my question again. Mr. Miller
20 cannot just decide without a process to stop buying from
21 the contractor Avaya and buy from Cisco.

22 A. The director of IT under the city rules can
23 choose under their discretion to use the contracts that
24 are available to them. If they had an IT contract that
25 let us buy from Cisco, then that contract can be used.

1 Any vending purchases have to go to council for
2 approval.

3 Q. And were you aware at that particular time it
4 was \$25,000 or more that had --

5 A. At that time it's been raised, yes.

6 Q. It's been raised since Mr. Foddrill was
7 terminated, correct?

8 A. That's correct.

9 Q. Okay. I'll have you turn in the blue notebook
10 one more time to Exhibit 11.

11 A. I'm there.

12 Q. Did you know Sharon De La Garza from human
13 resources?

14 A. Yes, ma'am.

15 Q. And according to this e-mail, she basically
16 says that you could have started the process for
17 terminating Mr. Medina, if you'll look in the middle
18 paragraph.

19 A. The one that begins I would suggest?

20 Q. Yes. No, I'm sorry, the next paragraph. I
21 apologize. It was -- she says it was inappropriate for
22 you to direct Hugh to terminate an employee. However,
23 you were operating as the de facto chief information
24 officer, and as such you could have initiated
25 termination proceedings against Mr. Medina himself. Do

1 you see that?

2 A. Yeah. And I think with other people signing
3 and agreeing to, but I really had -- you know, CIO and
4 chief technology officer, CIO looks at the strategy and
5 tries to tell you the right direction to go. He had to
6 live with implementing it. If he need him -- if he
7 needed to make use of him, I don't like to undercut my
8 chief technology officers and who has to use it, so I
9 left it up to him to decide. And I still do that. I
10 make suggestions, but I don't direct him who to hire or
11 fire.

12 MS. GAUL: Pass the witness. Thank you.

13 MS. KLEIN: We have nothing further.

14 THE COURT: Thank you so much for coming
15 in, Mr. Varn. You've been excused. However, remember
16 you're still under the rule, which means that you can't
17 speak to anybody regarding your testimony today.

18 THE WITNESS: Right.

19 THE COURT: Thank you.

20 (End of excerpt.)
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1 STATE OF TEXAS

2 COUNTY OF BEXAR

3

4 I, Kayleen Rivera, Certified Court Reporter in
5 and for Bexar County, State of Texas, do hereby
6 certify that the above and foregoing contains a true
7 and correct transcription of the proceedings
8 requested by counsel in the above-styled and numbered
9 cause, all of which occurred in open court or in
10 chambers and were reported by me.

11 I further certify that the total cost for the
12 preparation of this Reporter's Record is \$ _____
13 and was paid by _____.

14 To which I certify on this the _____ day
15 of _____, 2009.

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