

**COURTS IN THE AFTERMATH OF SEPTEMBER 11TH  
NINE-ELEVEN SUMMIT SESSIONS  
"SAFEGUARDING COURT RECORDS"**

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1           MR. HOGAN: Good afternoon and welcome to our session  
2 on -- on records and records -- and how to deal with records in  
3 a disaster. It's my very distinct pleasure -- my name, by the  
4 way, is Rick Hogan. I'm the Chief Records Manager for the  
5 Office of Court Administration.

6           It's really my pleasure to be able to introduce our  
7 moderator for a number of reasons. Just because of the fact  
8 that he is the Westchester County Executive, which in New York  
9 is an extremely important and impressive post to be in. Andy  
10 Spano [Ph.] was also a long-time friend of mine -- so good of a  
11 friend, that I lost my daughter to Westchester County, who now  
12 lives there.

13           Andy, of course, is a graduate with a Master's Degree  
14 from Fordham University, and when we first set this -- we were  
15 setting this program up, they were looking to someone to -- to  
16 moderate this, someone who was impressive to do records, and I  
17 suggested Andy and someone said, that's great, we'd love to get  
18 the Westchester County Executive, but why would -- why would he  
19 want to do -- moderate a program on records, and I said, well,  
20 he does record -- he does the county executive as a hobby, he's  
21 really a records guy.

22           And the reason why I say that is that in New York  
23 State, a number of years ago -- I think ten or more years ago,  
24 two laws were set up in -- in New York State to deal with local

1 government records. One was -- was requiring local governments  
2 to manage their records in a better format than storing them in  
3 the town garage.

4           The second one was -- was sort of a funding mechanism  
5 to pay for that. And in New York State, there's a -- a law now  
6 that any court filings or land filings -- they have a fee  
7 associated with them -- have an extra five dollar fee. The  
8 five dollars actually goes into a fund strictly to manage  
9 records, and it goes out in a series of grants that generally  
10 total between ten and fifteen million dollars a year for the  
11 State of New York. It's a self-generating fund for records,  
12 and Andy was the driving force behind getting that legislation  
13 written and getting it passed. So it's -- it's -- it's great  
14 fun to have that.

15           The -- oh, I do have to do one quote from -- from  
16 Andy, though. When we were doing -- working on the  
17 legislation, the -- well, a lot folks that were here earlier  
18 had heard about when there is a disaster, suddenly people get  
19 in -- records become important to them because they can't find  
20 them, so now it's become a heightened situation to deal with  
21 records. Back in the old days when we were trying to get  
22 records legislation, we got away with getting records  
23 legislation because nobody cared.

24           So -- but again a very impressive panel here and very

1 impressive moderator. We hope you really enjoy this session.

2 So with that, I'll turn you over to -- to Andy Spano.

3 MR. SPANO: Thank you, Rick. First of all, I'm  
4 surprised to see this large a group on a voluntary basis coming  
5 in to a panel on records.

6 I've been dealing with this topic for maybe fifteen  
7 years. I came to it rather obliquely. I got elected County  
8 Clerk of Westchester County and became the person in charge of  
9 court records and the registrar's records, etc., and noticed as  
10 I began my job that I couldn't find half the stuff, they were  
11 in boxes all over the place, and decided to do something about  
12 it, and it led to this incredible career in records management.

13 And because of that, I got elected County Executive of  
14 Westchester County -- no, that's really not true.

15 Most people could care less about records until  
16 there's a disaster or something happens to a record or until  
17 they lose it. I actually had one case, after we had developed  
18 this very sophisticated record system in Rochester where an  
19 attorney called me up -- one of our county attorneys called me  
20 up and said I'm in court and the judge wants me to produce  
21 verification that I -- we have destroyed X record. I said,  
22 well, I think we can do that.

23 She says you've got to do this. He said he's going  
24 to rule against us if we lost it, but for us if we destroyed it

1 and because we were able to produce this one slip of paper that  
2 verified that we had actually destroyed it legally and under  
3 the regulations, we won the case -- it was over a million-  
4 dollar case. And I always bring that up because when people  
5 say how much money do you spend on records management, just  
6 that one case was worth a million dollars because we had set up  
7 a particular function.

8           Today we have a very distinguished panel, and the way  
9 we're going to work this is they already introduced themselves  
10 to you. I'm going to start off with some questions, but we  
11 want some audience participation in this. We would -- we would  
12 like you to -- if you have something that hits you all of a  
13 sudden when someone says something, just put your hand up, I'll  
14 call on you, and you can ask the question, make the statement.

15           I know basically where I want to go with this. We  
16 may arrive there, we may not. It really should stay within the  
17 interests of the group and what's important to you. We hope  
18 you get some knowledge out of it from the experts, and we hope  
19 you satisfy some questions that you have. So without any  
20 further adieu, Kathleen, why don't you go first.

21           MS. FARRELL: Hi. I'm Kathleen Farrell and I'm the  
22 Clerk of the Bankruptcy Court for the Southern District of New  
23 York located here in Manhattan, and we go as far north as  
24 Poughkeepsie. We have three offices.

1           And we were a pilot program for electronic case  
2 files, and we did work with the unified state court system in  
3 developing their electronic filing system that they have in  
4 place right now. When they were first piloting it, Judge Crane  
5 and I used to do presentations side by side so people would  
6 actually see how closely related they are. And right now,  
7 we're processing Enron, Global Crossing, Adelphia  
8 Communications, World.com, and many, many other cases on  
9 electronic filings with great success. So -- Ms. Pfau?

10           MS. PFAU: Thank you. My name is Ann Pfau, I'm the  
11 Deputy Chief Administrative Judge for the courts in New York  
12 State. So we've covered this -- all of the state courts  
13 throughout the state, which is of course a lot of court  
14 records, and as the Deputy Chief Administrative Judge for  
15 Management, all of the records management of those falls within  
16 our jurisdiction.

17           As I'm sure you're all aware, we had a court that was  
18 actually located in the World Trade Center, a branch of the  
19 Court of Claims, that was entirely destroyed, so obviously all  
20 the records were destroyed. We also have many, many, many  
21 practitioners who had offices in and around the World Trade  
22 Center, so in many of our court, particularly in Manhattan and  
23 downtown Brooklyn and the metropolitan area, we had  
24 practitioners who had no access to their records. So we not

1 only were in a position of recreating court records, we were  
2 very, very much in the position of helping lawyers retrieve  
3 their records so we could proceed with litigation. Thank you.

4 MR. POTTER: Good afternoon. My name is Andy Potter.  
5 I'm an archivist with the National Archives and Records  
6 Administration. I've been with the agency for twelve years.  
7 Currently, I'm in the Northeast Region, and we are responsible  
8 for assisting federal agencies and U.S. courts throughout our  
9 region in all areas of records management, but in particular in  
10 the last year, we've certainly been doing a lot of work with  
11 vital records management and other aspects of disaster  
12 preparedness and recovery.

13 JUDGE MEDD: I'm Joel Medd from Grand Forks, North  
14 Dakota. You heard my story this morning about the flood and  
15 the fire in -- in Grand Forks. It was written in [inaudible -  
16 background noise] material, the ABA Judges Journal, it's on  
17 page 37, talks about the flood. Flooding is really -- I got  
18 this from the Red Cross Disasters, and the most common disaster  
19 they see are floods. And my -- to summarize my presentation  
20 this morning is don't put your records in the basement.

21 MR. MILLS: My name is Foster Mills. I'm the  
22 managing attorney of the New York City Law Department. We'll  
23 tell some more basement stories in a minute. I'm one of those  
24 practitioners who lost access to files. The Law Department

1 main office was across the street from the World Trade Center.  
2 We had five hundred lawyers, five hundred support staff that  
3 were driven out by the disaster. We were unable to get back  
4 into our offices and have access to those files for seven and a  
5 half months. We got better access as time went on, but at the  
6 beginning there was none and then only some. And so as Ann  
7 Pfau said, practitioners went to the courts to recreate the  
8 records, and that's some of what we had to do.

9 MR. MCMILLAN: And I'm Jim McMillan with the National  
10 Center for State Courts, and in the distant past I was the IT  
11 director for the Arizona Court. I've got to say I can knock on  
12 wood, during the time I was with the courts, I never lost a  
13 court record, but last -- this September, as everybody was  
14 being -- having problems with 911 and other records, I did lose  
15 my web server to the Nimba virus. So the Net does actually  
16 impact courts these days and is something that we have to deal  
17 with in terms of our court records, too, so I have been touched  
18 with disaster, too.

19 MR. SPANO: Okay. You can see that diversity and  
20 expertise of the panel. I think that one of the things we  
21 should do before we get into very deep discussions about how to  
22 preserve records, save them, and so on, is talk about vital  
23 records a minute.

24 When you try to list your records, you want to make

1 sure you prioritize whatever you're doing, and the records you  
2 want to get to are your vital records. I would like to ask the  
3 panel if they have any kind of definition for a vital record?

4 MR. POTTER: Well, I'll jump in just quickly, drawing  
5 from the Code of Federal Regulations. There's -- NARA has an  
6 official definition out, which has actually shifted somewhat  
7 unofficially, so I'll give you the unofficial version.

8 But basically, vital records break down into your  
9 emergency operating records, first and foremost those records  
10 you need to immediately respond to the first 24 to 48 hours of  
11 any disaster or emergency. Secondly, your business resumption  
12 records which are basically those records that you need to  
13 operate the absolutely vital records that -- without which you  
14 cannot perform your mission. And then thirdly, the -- the --  
15 your rights and interest records, perhaps records that relate  
16 to visas and contracts and also the rights and interests of  
17 your constituencies, in this case the attorneys or litigants,  
18 what have you. So that sort of breaks it down into the three  
19 components.

20 Just so you know, the unofficial version of that was  
21 the business resumption records. That's sort of evolving into  
22 the official definition of what we consider vital records.

23 UNIDENTIFIED SPEAKER: Do you -- where you work, do  
24 you break those down officially right now?

1           MR. POTTER: We try -- well, that's -- they have --  
2 how you handle them has a lot to do with -- I mean if you look  
3 at those definitions, emergency operating records, obviously  
4 you need to have access to them immediately. So your approach  
5 to emergency operating records is going to be -- you're going  
6 to -- you're going to want to have access to them in the short  
7 term as opposed to, say, business resumption or rights and  
8 interest records that perhaps you can do without for a period  
9 of time while you rebuild and restore operations. So perhaps  
10 you can keep them further from your site, whereas the emergency  
11 operating records you're going to want to have in a readily  
12 accessible form.

13           MR. SPANO: [Inaudible - away from microphone] add  
14 anything to that?

15           MS. FARRELL: Just from the court's perspective, what  
16 we would give a priority to are the things that we are most  
17 comfortable having emanate from the court as opposed to, let's  
18 say, the litigants of either side -- court orders as opposed to  
19 pleadings. Court orders would get a higher priority, whereas  
20 pleadings you could recreate from the different parties.  
21 Something that there's a real integrity issue, we would give a  
22 priority to as far as the vitality of it.

23           UNIDENTIFIED SPEAKER: Anyone else?

24           MR. SPANO: I think there was a question out there?

1 UNIDENTIFIED SPEAKER: [Inaudible - away from  
2 microphone.]

3 MR. POTTER: Yeah, in 36 C.F.R. -- don't hold me  
4 this, but I think it's 1236 -- that's -- it's -- it's in the  
5 the twelve -- twelve hundreds, I'm -- I'm pretty positive.

6 UNIDENTIFIED SPEAKER: Would you say that the  
7 definition of vital records or understanding the definition of  
8 vital records is key to setting up a records list of all  
9 protection records?

10 MR. POTTER: As far as I'm concerned, the --  
11 particularly in the context of courts, what I have found is  
12 going in and looking at doing a continuity of operations plan,  
13 you start with your vital records piece and the it forms so  
14 much of the rest of the plan that -- that we -- it -- it sort  
15 of is the first chunk of the process.

16 UNIDENTIFIED SPEAKER: How [inaudible] do you do  
17 that?

18 [Inaudible - simultaneous speakers - laughter]

19 MS. PFAU: We do now. Did we do it before September  
20 11th? Did we give it the kind of priority we do now? It was  
21 something that was like a lot of things in the works. It was  
22 important, but it was more important than so many other things?

23 MR. POTTER: Sure.

24 MS. PFAU: Not now, but yes -- not then, but yes now.

1 UNIDENTIFIED SPEAKER: Why is it important to set up  
2 these vital records in these priorities?

3 MR. POTTER: Well, is it -- the question again? I  
4 don't want to --

5 [Inaudible - simultaneous speakers - laughter]

6 MR. POTTER: Well, I just want -- you know, the idea  
7 of being able to prioritize and apportion the resources to  
8 protect [inaudible] records because you're -- you're --  
9 basically, you are assigning resources to -- to the -- to the  
10 maintenance and preservation of records, and from the  
11 standpoint of assigning resources to do it, in -- in times when  
12 you can have a rational considered approach -- okay, what --  
13 what records do we absolutely need, it -- you can make the case  
14 to management to assign those resources and to protect those  
15 records in a much more considered way rather than dealing with  
16 it --

17 UNIDENTIFIED SPEAKER: So if you have paper records,  
18 you had -- I don't know, say, 2000 square feet of paper records  
19 and you had 1000 square feet on the top floor and 1000 square  
20 feet in the basement, you would make a different decision on  
21 which ones you should put in the basement and which ones you  
22 put on the top floor.

23 MR. POTTER: Absolutely. It's all about priorities.

24 [Inaudible - simultaneous speakers.]

1 MS. PFAU: Absolutely.

2 MR. POTTER: I mean, in fact this -- top end about  
3 priorities, you know, you know your first priority is going to  
4 be -- first thing you prioritize is your mission, your business  
5 processes, and then once you've prioritized your recovery times  
6 for business process, then you look at the records that inform  
7 or support that process. So it's sort of a two-step  
8 prioritizing tactic.

9 MS. PFAU: Just to supplement that from the court  
10 context, you wouldn't take necessarily a whole court file and  
11 say I have to replicate the whole court file and put it in the  
12 attic for safekeeping. I really have to choose out of that  
13 what are the vital records, what are the things that we need to  
14 make sure the court can operate tomorrow, and those are the  
15 records we want to make sure we safeguard, not just necessarily  
16 everything [inaudible].

17 UNIDENTIFIED SPEAKER: Have you dealt with --  
18 personally dealt with like two hundred years of records,  
19 they've already been stored for [inaudible - away from  
20 microphone] and going forward? Is -- is there something you  
21 can do going forward that would minimize the amount of work you  
22 would have to do in [inaudible] these records up? In other  
23 words, when you grab a whole case record --

24 MR. SPANO: Right.

1 UNIDENTIFIED SPEAKER: -- and you say that we're  
2 prioritizing this, this and this, you got to now look through  
3 this whole case and pull out various things. The time  
4 intensity is incredible and most people don't like to do that.  
5 They like systems that can -- you can use going forward, the  
6 systems you can use going backwards that would simplify that  
7 process.

8 MS. PFAU: Well, certainly you can do it concurrently  
9 as you date rather than have to go through when the records  
10 come in and you identify what's record, what's a vital record.  
11 You duplicate that and put it for safekeeping as opposed to  
12 waiting until you've got a huge Redwell [Ph.] and having to go  
13 through it. So kind of a concurrent thinking about it, which  
14 again is a new way of doing business for all of us now after  
15 911.

16 UNIDENTIFIED SPEAKER: Yeah, and you know that's  
17 something to keep in mind, that going forward, just look at  
18 that right away because that's something that you need to  
19 handle right away. So going backward, you waste -- and you may  
20 -- you've got to make that decision right away in -- in -- you  
21 know, what do you handle first, too, depending on the resource  
22 [inaudible - away from microphone]. Are we talking here about  
23 [inaudible] records, records that are photocopied, or are we  
24 talking about records that are digitized?

1 UNIDENTIFIED SPEAKER: We're talking right now about  
2 paper records.

3 UNIDENTIFIED SPEAKER: [Inaudible - away from  
4 microphone] stored electronically.

5 UNIDENTIFIED SPEAKER: [Inaudible - away from  
6 microphone.]

7 MS. FARRELL: If I could say something about that.  
8 When we were first making the transition over to electronic  
9 filing, we did have all of these old paper records on the  
10 shelves and we weren't about to scan in thousands and thousands  
11 of pages, and you find out that you don't need thousands and  
12 thousands of pages. However, we did identify certain things in  
13 all of the cases that really were relevant and pertinent to the  
14 case that we really did want to preserve and make sure that it  
15 did not get destroyed and -- such as the plan and  
16 reorganization in a Chapter 11, which is just a bankruptcy  
17 term, but it is something that is common to all cases, and we  
18 decided to take those documents and identify those documents on  
19 specific cases, high-profile cases, and we did scan those in  
20 and preserve those.

21 And the other documents in the case, pretty much they  
22 -- they take place and they're closed and -- and they're really  
23 no longer needed, but the things that really we had to  
24 preserve, we did make the effort to scan in some of that stuff.

1 MR. MCMILLAN: I'd like to make one quick comment.  
2 My guru for records management is a great fellow named John  
3 Newman, who is the archivist for the state courts in Indiana,  
4 and he has wonderful statistics talking about his archives.

5 He told me one time that 99.4% of all his records  
6 that are stored in his archives are never looked at, okay? So  
7 we're dealing -- okay, now so dealing with .6% of all his  
8 records. Out of .6 of all his records, 85% of the things that  
9 are retrieved from his archives are judgments.

10 So if you do the additional document, you do the  
11 judgments, you're going to hit 99.85% of all your documents,  
12 you should be in pretty good shape. But it is interesting that  
13 those numbers have been done and that might be something you  
14 might want to do as part of your court system is to look at  
15 what's actually retrieved.

16 MR. POTTER: that -- that I throw out when I talk to  
17 folks is what I like to call the 7% solution. Absolutely no  
18 more than 7% of your records are ever going to be called or  
19 considered or treated as vital records. In fact, that  
20 percentage -- and that's the point of the process is narrowing  
21 down that selection. What do we absolutely need as opposed to  
22 what -- what is nice.

23 Like a collection of case files is very important,  
24 but you've got to look for the vital -- you know, that which

1 absolutely is required to restore operations. Because you're  
2 talking about, you know, a pretty substantial -- not just --  
3 not just case files, but also administrative records, personnel  
4 records, you know, all sorts of, you know -- and identifying  
5 that and whittling it down so that -- so that you can do this  
6 at the lowest cost possible.

7 MR. MILLS: Even if you're not a court, you're a law  
8 firm, you will find that if you don't have access to your  
9 records, 99% of them will not be retrieved even if you're  
10 sending -- people were desperate to get back in and get some of  
11 their case files after they continued to litigate. I found  
12 that even though there were boxes piled up everywhere, they  
13 could all come to Redwells under their arms and be okay for the  
14 next couple of weeks.

15 That being said, there are certain kinds of records  
16 you have to have all of and that are payroll records is the  
17 number one. You cannot get your organization back up running  
18 without your payroll records. I would suggest that is vital in  
19 every sense of the word. Personnel records, less so. There's  
20 bits and pieces of that. Your payroll records have to be safe  
21 -- have to be.

22 MR. SPANO: Any other questions?

23 UNIDENTIFIED SPEAKER: [Inaudible - away from  
24 microphone] firm or the court's business pay people, time

1 records, and all that sort of data. You know, who do you owe  
2 for office supplies [inaudible]. And then you have the records  
3 for litigants, the case files. I think the court's a little  
4 different. And then you've got record retention needs that are  
5 [inaudible - away from microphone].

6 Any thoughts about the loss or the retention of  
7 records for business versus the records to continue the current  
8 cases?

9 MS. PFAU: Well, just from the court system's point  
10 of view, we're doing the same process whether it's the  
11 administrative arm of the courts in New York City -- it's  
12 called the Office of Court Administration. Rick can tell you  
13 we're going through with each of the courts and with our own  
14 office's administrative offices this same process, identifying  
15 what are vital records and establishing a program to make sure  
16 that those records are safeguarded. So it's going to be  
17 different choices, but the process is the same regardless  
18 whether you're talking about a court or administrative office.

19 UNIDENTIFIED SPEAKER: [Inaudible - away from  
20 microphone] by law?

21 MS. PFAU: Yes.

22 MR. POTTER: Yes.

23 [Inaudible - simultaneous speakers.]

24 UNIDENTIFIED SPEAKER: Does everyone know what we're

1 talking about?

2 [Inaudible - simultaneous speakers.]

3 UNIDENTIFIED SPEAKER: Are they helpful sometimes in  
4 looking at what might be vital records and what might not?

5 MR. MILLS: I find not.

6 UNIDENTIFIED SPEAKER: Why not?

7 MR. MILLS: No. The voluntary ones -- voluntary  
8 limits -- instruction limits are usually dictated by litigators  
9 who are -- we're packrats is what we are. We keep stuff well  
10 beyond what they probably actually have to have. We keep more  
11 stuff than we absolutely have to have. As to statutory record  
12 retention, that's driven by policy, usually [inaudible]  
13 resource administration type of stuff -- welfare records --  
14 that's driven by policies other than what I would consider as  
15 the head of a business, a vital record.

16 [Inaudible - simultaneous speakers.]

17 JUDGE MEDD: Sure. We have an Administrative Rule  
18 19, for example, misdemeanors can be destroyed after fifteen  
19 years. So we destroy records as we go along.

20 [Inaudible - simultaneous speakers.]

21 MS. FARRELL: -- and as for various types of records,  
22 there's various amounts of years, but things like real estate  
23 -- anything to do with real estate is preserved for  
24 indefinitely. So that would obviously be cause -- when they do

1 title searches and what have you, they far outlive us, so  
2 they've got to be preserved and kept. So that is something  
3 that we would look at a little bit differently.

4 MR. POTTER: I've got an example of the dumbest court  
5 record rules that are out there. There's several states out  
6 there -- and this may be in yours and I apologize for calling  
7 [inaudible - laughter], but there are several states where the  
8 original court reporter notes -- you know, from the  
9 stenographic or the hand -- the shorthand are required to be  
10 preserved indefinitely, okay? Meaning you -- obviously, you  
11 can't destroy these things.

12 The problem is if you ever -- if you actually  
13 understand anything about court reporting, you know that these  
14 are individually screened exemptionaries [Ph.], and so there's  
15 no chance once this person passes away or their  
16 transcriptionist passes away that anybody [inaudible] would  
17 ever be able to read these records. So there are literally  
18 people running around these states with -- then there are  
19 basements full of these court reporters notes that are  
20 unusable. It's just -- you know, if a match happened to show  
21 up in those records, it'd be great.

22 MS. PFAU: That is the other side of the --  
23 sometimes --

24 MR. POTTER: I know people who hope for this. It's

1 not my fault.

2 MS. PFAU: You can just throw those in the basement.

3 You can just throw those in the basement.

4 [Inaudible - simultaneous speakers - laughter]

5 MR. POTTER: Use them to keep the flood waters --

6 MR. SPANO: We have every single court record in  
7 Westchester County since 1684. What should I do with it?

8 MS. PFAU: Talk to Rick.

9 MS. FARRELL: Now they [inaudible - simultaneous  
10 speakers] the documents.

11 [Inaudible - simultaneous speakers.]

12 MS. FARRELL: But now they're historical documents.

13 [Inaudible - simultaneous speakers.]

14 MR. SPANO: You have to remember that if you take --  
15 if Thomas Jefferson had taken a napkin in some, you know, diner  
16 somewhere, and drew -- draws something and accidentally put it  
17 into a book, he could have thrown it away but it didn't, but  
18 now you can't throw that away, you've got to keep the napkin,  
19 you know, and that's what happens when you keep things a long  
20 time [inaudible - away from microphone], people want them, so  
21 you really ought to look at records management and not  
22 [inaudible - simultaneous speakers] --

23 MS. FARRELL: I know we have Matthew Brady's  
24 bankruptcy files.

1 UNIDENTIFIED SPEAKER: [Inaudible - away from  
2 microphone.]

3 JUDGE MEDD: In our rule, they can be destroyed, but  
4 you first have to offer them to the historical society.

5 MR. MCMILLAN: That's what they said, but we have an  
6 archivist who works for the Department of Records. Before  
7 stuff gets churned up, he goes through it just to pull out what  
8 he thinks is [inaudible - simultaneous speakers].

9 UNIDENTIFIED SPEAKER: Suppose you [inaudible - away  
10 from microphone] and you have everything in paper and you have  
11 a situation like [inaudible - away from microphone], where do  
12 you start and where do you end? I mean, you know, you're  
13 looking at [inaudible - away from microphone] looking down a  
14 long pipe there -- I mean, you've got to set parameters. How  
15 do you set these parameters?

16 UNIDENTIFIED SPEAKER: The cost if you were to scan  
17 those would be just prohibitive. It's just so -- such a  
18 massive amount -- the best thing you can hope for is the LDS to  
19 come through, but -- they're the Mormons who go and actually  
20 microfilm vital records and things.

21 [Inaudible - simultaneous speakers - laughter]

22 MR. POTTER: That's actually true.

23 UNIDENTIFIED SPEAKER: Yeah, it is. So there's a lot  
24 to think about. We're only talking about paper here, right?

1 Only talking about paper and I -- one of the things that has  
2 come along, of course, is when this whole ability now to use  
3 technology to copy documents -- scanning and other technology.

4 How do you -- is it better to migrate some of this stuff to  
5 the new technologies? Does it make it a little safer than the  
6 paper?

7 MR. POTTER: Well, I think it does. Go ahead.

8 MR. MILLS: I -- I -- a year and three weeks ago, I  
9 would have said no, paper is wonderful stuff, it never degrades  
10 -- hardly ever degrades, you can keep it just about forever as  
11 long as you don't keep it in the basement. And once it's  
12 destroyed, it's -- it's gone and the other way of storing it,  
13 while bulky, is certainly something everybody understands.  
14 There's no orphan technology issues, there's none of that.

15 But having gone through what we went through after  
16 September 11th, the fact that you can never have any -- a  
17 complete duplicate of your paper records, I think means that if  
18 you want to save [inaudible], then they have to be digitized.  
19 There's no other way to do it. And you can't go backwards,  
20 it's just too expensive. You have to start now and go  
21 forwards.

22 UNIDENTIFIED SPEAKER: Okay. How about this issue?

23 [Inaudible.]

24 MR. MILLS: Good issue. You can pull stuff out of

1 files that are ten years old, but it's -- it's gone.

2 Especially the old fax paper.

3 MR. POTTER: There is actually another --

4 UNIDENTIFIED SPEAKER: Is anyone working on national  
5 standards of [inaudible - away from microphone].

6 MR. POTTER: Well, I can [inaudible] National  
7 Archives folks.

8 [Inaudible - simultaneous speakers.]

9 MR. MILLS: Because actually what I keep doing is  
10 keep saying just keep checking with the National Archives  
11 website because that's where you [inaudible - simultaneous  
12 speakers].

13 UNIDENTIFIED SPEAKER: Aren't there ISO standards or  
14 anything like --

15 MR. POTTER: There's ISO records management  
16 standards, but it really doesn't discuss that particular  
17 element. In terms of -- I mean, the main issue that you have  
18 to consider when you're talking about digitizing records and --  
19 is that you have to look at the overall retention -- what you  
20 -- how long you want to keep them because your costs are going  
21 to go up in terms -- I mean -- in terms of a short-term record  
22 they're going to keep for, you know, six months, three years,  
23 you know, six or seven years, that -- then you're pretty safe.  
24 But once you start getting into the ten years, twenty years,

1 thirty years and -- this makes an archivist shudder -- forever,  
2 then you're talking about significant costs in terms of  
3 migrating that information forward.

4           Because you have operating systems that are obsolete  
5 in three years, you're going to have applications that are  
6 obsolete, you have storage media -- anybody here have records  
7 stored on the old eight-inch Wang floppy disk? I -- I have  
8 actually walked into a federal agency's office and they have  
9 records and I say, well, how long do you -- do you want to keep  
10 these? A hundred years. They're on an eight-inch Wang floppy  
11 disk. I'm like, okay, [inaudible - laughter].

12           So I mean that's really the -- that's -- I mean, in  
13 terms of standards, you know, the -- you want to look at going  
14 to open standard formats in terms of -- you know, where you can  
15 -- TIFF, PDF is what we call a de facto standard -- in other  
16 words, it's so present in our society that it is a de facto  
17 standard and presumably will have support for some time to  
18 come. But if you get locked into maintaining records in  
19 software standards that -- say the company went out of  
20 business, like Wang, then you're potentially looking at a  
21 substantial chunk of money in order to access the records. And  
22 if you can't access the record, you've lost the record -- it's  
23 basically destroyed.

24           MR. MCMILLAN: I think there's two issues also. I

1 mean there's the issue of how you store it -- you know, the  
2 type of media, like the eight-inch floppies -- and the outlook  
3 has actually gotten a little better now. We're now twenty  
4 years into the CD, right? Of course now we're getting all  
5 kinds of other formats, but we've still got the CD and there is  
6 actually an ISO standard for setting up that CD. Those have  
7 stayed consistent and look like they will stay consistent for a  
8 fair amount of time out there in the future just because of the  
9 music industry. Now we'll see how this migrates over the next  
10 ten years to other formats, but it seems like the CD is  
11 actually not too bad.

12           The nice thing, of course, about the CD, DVD, all  
13 that, is that it's not that hard to migrate it forward as -- in  
14 terms of the cost because obviously the media -- the type of  
15 media -- you know, going from CD to a DVD to the next  
16 generation DVDs -- is basically sticking it in one machine,  
17 hooking that machine up to the network, and sticking the other  
18 burner in the other one and copying it across.

19           So you know, the cost of, say, copying microfilm, the  
20 cost of copying paper records and things, of course, is  
21 considerably higher than that. So I don't think that media is  
22 as big a problem as it was ten years ago. I think we're  
23 actually getting enough experience there.

24           Format is also similarly getting a little better in

1 that TIFF, which is the format that fax machines use that send  
2 from one to another, has stayed pretty consistent now for about  
3 ten -- when did TIFF-5 come out? About '89, '88 -- '89 -- for  
4 about fourteen years into TIFF-5. I haven't seen TIFF-6,  
5 haven't seen TIFF-7, haven't seen TIFF-8. So it seems like  
6 TIFF-5, which is a standard for scanning, seems to be pretty  
7 solid. And like you say, I agree on PDF because --

8 MR. POTTER: Well, I -- I guess -- I guess my -- to  
9 bring it down to a nub, and I agree with a lot of what you  
10 said, but to pull it down, in terms of a program, you have to  
11 have a sense of these issues because you're going to be wanting  
12 -- I mean, particularly in terms of vital records that  
13 potentially you're going to need to access at some point in  
14 response to an emergency or disaster, you're going to want to  
15 make sure that you don't go and reach and find a format that  
16 you don't have access to anymore over time.

17 Likewise, remember I started with the three  
18 categories of vital records, you want to be careful about using  
19 identifying electronic records or electronic storage processes  
20 for emergency operating records because you have to just  
21 identify how you have access to those records because if you  
22 lose your infrastructure or you even lose power in a simple  
23 building-wide event, or you lose a server, you can't count on  
24 electronic records necessarily to be there for you in the very

1 short term.

2           So you want to take -- these are all sort of issues  
3 that you need to consider when you -- when you start looking at  
4 the overall sort of vital records program management piece of  
5 this.

6           MR. MILLS: Yeah, our experience after 911 was that  
7 the disaster was not a records issue, it was a network issue.  
8 You've got to get your network infrastructure back up. You can  
9 have all the backup tapes on any CDs in the world, if you have  
10 no way of getting it onto the screen in front of somebody so  
11 they can use it, you're dead. So it's -- network -- a  
12 redundancy is really the fundamental issue that you have to  
13 face for IT in a disaster.

14           MS. PFAU: If I could just add from kind of a bigger  
15 institutional point of view, when we talk about a records  
16 program or a records disaster recovery program, we think now in  
17 a whole different dimension than we did. It's not just paper,  
18 it's not just scanned, it's not just electronic, it's all  
19 three. And for every court that does that, you have to think  
20 of all three and have programs that are existing for all three.

21           UNIDENTIFIED SPEAKER: Is there any relevance to as  
22 you're changing systems to look at your system, look at your  
23 formats, look at whatever you have, and maybe maintaining the  
24 system or at least a part of the system at some off-site

1 situation so at least until you migrate, you can read --

2 SIMULTANEOUS SPEAKERS: Absolutely.

3 UNIDENTIFIED SPEAKER: [Inaudible - away from  
4 microphone.]

5 MR. MILLS: Another way of looking at it is if you  
6 throw away the machines that translates an old -- an old medium  
7 and nobody screams, that means what you've lost is not vital.

8 [Inaudible - simultaneous speakers - laughter]

9 UNIDENTIFIED SPEAKER: We're looking at all of this  
10 in light of disasters and challenges to the record systems.  
11 Have any of you any stories you can tell us.

12 MS. FARRELL: I have -- I have -- I certainly do. We  
13 have -- I have two actually. Pre-911, which is probably my  
14 bigger story, was back on New Year's Eve of 1989, we had a  
15 flood in our basement and our records weren't there, but our  
16 HVA system was there, our telephone system was there,  
17 electrical for the building was there. All of our records were  
18 -- were pretty much on paper up on the fifth floor. You  
19 couldn't get to the fifth floor.

20 So we were literally displaced from the building, but  
21 we -- in the immediate emergency, we had a pencil and we had a  
22 piece of paper and we carried on court. We had an emergency  
23 judge sitting in with kerosene lighting and portable heaters  
24 and we had clerks with pen and paper docketing orders. So

1 actually that's your vital records. That's really all you  
2 need. I mean, when worse -- when worst comes to worst, that's  
3 really all you need and you don't really need your electronic  
4 records. We did it. We eventually got some of the stuff moved  
5 over, the vital records and what we needed to carry on business  
6 to a temporary facility for three months, but -- so you've got  
7 to really think about what are the real basic things that you  
8 need to carry on the mission critical of your agency, and  
9 that's your vital records.

10           And then, of course, we had the disaster of September  
11 11th, and we were in much better shape after September 11th  
12 because we had already implemented electronic case filing, so  
13 all of our cases were -- all of our active cases were available  
14 on the Internet, and we had a replication server in,  
15 unfortunately, Washington, D.C., so it took a little bit of  
16 time -- it took a day to -- to repoint our URL just to our  
17 replicator server, but by Thursday morning at 10:30, we had our  
18 first filing from an attorney in New Jersey on the system. We  
19 were not in our building and yet we were open for business.

20           So things have changed a lot in -- in that span of  
21 time -- that thirteen years.

22           UNIDENTIFIED SPEAKER: [Inaudible - away from  
23 microphone.]

24           MS. PFAU: Actually, I would just take it from the

1 other perspective which is for the state courts, much of the  
2 data that's on our extensive database resides in Albany, so  
3 while we had all of the court calendars, we had all these  
4 things to keep the New York City Criminal Court opening, we  
5 couldn't get the information here because we couldn't use  
6 computers, we couldn't -- the network wouldn't work. So we  
7 went to the same basic human response which was rather than pen  
8 and paper, we had tech people climbing on the roof of -- not  
9 City Hall but the -- one of the big buildings downtown to get  
10 [inaudible] to the courts, setting up satellite dishes so that  
11 we could bring the information down and actually have courts  
12 running the next day.

13           But it was really the other extreme of making sure  
14 the data could get to us. [Inaudible] was so frustrating, but  
15 within a very, very short time, we actually had them all up and  
16 running.

17           UNIDENTIFIED SPEAKER: Are you rethinking how you do  
18 this stuff -- how you get the information from Albany in case  
19 that happens some other time?

20           MS. PFAU: Well, now have a more sophisticated system  
21 in place. The problem is everything was shut down at that  
22 point, so that we really -- I don't know that there would have  
23 been an alternative for something of that magnitude.

24           UNIDENTIFIED SPEAKER: [Inaudible.]

1           MR. POTTER: I'll just toss in a little story that  
2 sort of illustrates another point that we haven't really  
3 touched on, is threat assessment -- actually taking on -- you  
4 know, as part of a process -- part of this process of being,  
5 you know, in a comfortable setting and looking at the records  
6 that you want to safeguard, looking at the records you feel  
7 you're going to need, and determining what the threats are  
8 because that's a piece that we really haven't touched on.

9           And there's a lot of -- I mean, we can look at, you  
10 know -- you know, of course, weather and we look at terrorism a  
11 lot, but there's a lot of stuff that -- that potentially can  
12 happen around -- just around the building. If you are -- if  
13 you have -- if there's a building management that is not part  
14 of your organization -- in the federal government, we generally  
15 have the General Services Administration and they let out  
16 contracts for building maintenance.

17           There's an organization -- agency -- federal agency  
18 over in Newark that had a significant records disaster that  
19 occurred because there was asbestos abatement going on, on the  
20 roof of their building and there was a release and it got into  
21 the HVAC system and was circulated into their records room, and  
22 there were a hundred thousand -- a hundred thousand case files  
23 that they lost complete access to for a very significant period  
24 of time, and this is an agency much in the news and -- and

1 those were very active case files affecting individuals.

2           And so it turned into -- what -- what started as a --  
3 as -- you know, you might think, boy, that's fairly simple sort  
4 of a hazardous material and -- and they come in and -- and take  
5 care of it, turned into no access to -- to this body of records  
6 for a year. I mean because they had to basically bring in a  
7 hazardous material team and process those records page by page  
8 to clear the asbestos out before the records were released for  
9 use.

10           JUDGE MEDD: I've got -- I've got the add-on to that  
11 one. I'm one of the few people that actually reads the federal  
12 court newsletter, and this was actually reported in there that  
13 there were two courthouses in Florida that were brand new  
14 courthouses, they were all perfectly clean and nice and  
15 airtight, of course, because that's what our air conditioning  
16 systems need these days, and they brought in the old court  
17 records. The old court records were invested with mold that  
18 got into the building and created sick building syndrome.

19           They had two courthouses like this where they then  
20 had to remove the records and reclean the entire buildings so  
21 they could actually move back in. So when you talk about your  
22 archival and vital records and think, gosh, I have to look at  
23 them as almost hazardous materials because of these new sealed  
24 buildings that you have. So my -- I think the lesson learned

1 there is this is a good excuse for not moving those records  
2 into your new courthouses.

3 MR. POTTER: Well, I -- that's sort of a category I  
4 like to call quiet disasters because so often we get sort of  
5 focused on -- on, you know, the big, you know, sort of like --  
6 like the big thing that we can see and that we can sell, but if  
7 you look at the majority, I think, of -- of records disasters,  
8 probably fall into the category of quiet disasters when you  
9 might have mold growing.

10 A good example occurred to a -- the Bureau of Indian  
11 Affairs in the south -- in the southwest where they were  
12 required in response to the Kobell [Ph.] litigation in  
13 Washington, the Indian trust money accounting litigation, to  
14 provide discovery for the records accounting and their  
15 activities with these monies. A lot of these records were  
16 stored -- a site [inaudible], in warehouses, in -- you know,  
17 back out behind the office. And what they found in some cases  
18 there was -- they went to retrieve these records and they found  
19 rodent feces.

20 Well, the rodent feces were potential infected with  
21 the hantavirus, which is a significant health hazard, and they  
22 had to bring in hazardous material people -- you know, guys in  
23 the suits, to get these records and -- and they imaged them in  
24 for -- you know, for the litigation response -- the discovery

1 response, but --

2 UNIDENTIFIED SPEAKER: They didn't request the  
3 original record on that one, did they?

4 [Inaudible - simultaneous speakers - laughter]

5 MR. POTTER: They were willing to -- they were  
6 willing to accept the scanned image. But I mean it's an  
7 example where no one thinks about it, you know, unless --  
8 unless you're, you know, considering these issues, sort of, you  
9 know, as a -- you know, if you're changing facilities or you  
10 have records stored in a variety of facilities, you need to  
11 take a -- you know, take a look and do a threat assessment.

12 What potential hazards are there out there, and one  
13 of the likelihoods that are going to occur -- and put it up on  
14 a little X, Y chart and -- and then that gives you your  
15 priorities for protecting those records.

16 UNIDENTIFIED SPEAKER: Talk to me about [inaudible]  
17 -- about moving old records into a new building.

18 MR. MCMILLAN: In terms of -- I -- I'd try to not do  
19 it. Well, actually what I'd do --

20 UNIDENTIFIED SPEAKER: Besides what we just talked  
21 about.

22 MR. MCMILLAN: Well, one of the things I'm doing when  
23 we go out there and work on new courthouse design and  
24 renovations and things is really designing for -- you know, if

1 you use your straight line and you do your projection in terms  
2 of it, you'd rather keep all your records from here on out on  
3 paper, you know, I mean the -- this space in very expensive  
4 buildings, you know, in prime business locations, you know, and  
5 two hundred dollars plus a square foot. Well, that's a lot of  
6 money for a warehouse, you know?

7           And so you have to look -- and also we -- we have  
8 another real problem, particularly in state courts where we  
9 have the tradition which -- and rightly so, the tradition of  
10 the laws being written to say that the county seat will be the  
11 record center, meaning that, you know, you've [inaudible]  
12 access to your records. Well, those laws were written in the  
13 1700s and 1800s where transportation was a little different  
14 than we have today.

15           So for us to go and retrieve a record from a cave in  
16 North Dakota or South Dakota, wherever the caves are -- Utah --  
17 or to retrieve it from the record center across town is about  
18 the same amount of time because your transportation with FedEx  
19 and everything is about -- you know, is -- is more efficient  
20 obviously than it is coming from your county records guys.

21           So you know the point is, is that those laws are now  
22 antiquated because of the transportation system. And so we  
23 have had a real major change in infrastructure and as now can  
24 say we don't need to have this -- this statute. In fact, this

1 statute or this rule -- this court rule is actually impeding  
2 the safety of our records, and so those were things that we  
3 actually have to look at. So I actually tried to design with  
4 decreasing space of files -- physical file space and actually  
5 try to put physical file space next to places where I want to  
6 grow -- you know, I want to grow my staff and things.

7           For example, we did a courthouse -- I think it was  
8 [inaudible] or something -- where we took the library and we  
9 put it in a place where it could -- the courtroom could grow  
10 into and we saved a small area for the vital historic record.  
11 You know, that was called the -- it was in Kentucky, so it was  
12 called the Kentucky Room and that was where the vital records  
13 were. That, of course wasn't going to be touched, but the rest  
14 of the stuff we all knew was already on Lexus and Westlaw and  
15 everything, and so that was going to be our courtroom expansion  
16 space and we would just do away with that part of the library.

17           UNIDENTIFIED SPEAKER: [Inaudible - away from  
18 microphone] shelves in a warehouse somewhere on the other end  
19 of town. It's a whole different ball game. [Inaudible - away  
20 from microphone] have to look at that, especially [inaudible -  
21 away from microphone] in those facilities.

22           JUDGE MEDD: One of the things we discovered with all  
23 of those flooded records was that we hired an outfit called DMS  
24 Cat [Ph.] to haul them down to Texas, freeze dry them, and then

1 bring them back. Well, they were so -- they discovered they  
2 were so contaminated with pesticides or mold or whatever, that  
3 they couldn't use them anyway, so they scanned them in. So we  
4 did scan those records in.

5 UNIDENTIFIED SPEAKER: [Inaudible - away from  
6 microphone]. There's a whole movement now [inaudible] to  
7 migrate records to electronic filing and electronic signatures.  
8 Does that make it easier to do these things once you get into  
9 that mode to actually --

10 MS. FARRELL: You mean once you get past the hard  
11 questions?

12 UNIDENTIFIED SPEAKER: Yeah. Once you get it working  
13 perfectly.

14 MS. FARRELL: Right. Of course, just because it's a  
15 much more easily manipulable and transportable and you can take  
16 part of it and you can do so many different things with it.  
17 It's just easier to work with. In the state court system what  
18 we're dealing with, which is what I think everybody's dealing  
19 with, is the hard questions which -- what is it that goes on  
20 that electronic file, what is it that's accessible to the  
21 public, how do you deal with the Internet access? All of those  
22 hard issues.

23 UNIDENTIFIED SPEAKER: Yeah. Do you have the  
24 electronics [inaudible] that validate this [inaudible]?

1 MS. FARRELL: There's brand new legislation --

2 UNIDENTIFIED SPEAKER: That is passed?

3 MS. FARRELL: Just now.

4 MR. MILLS: Just now. The court -- the state law  
5 caught up with the federal law finally.

6 MS. FARRELL: Yeah.

7 UNIDENTIFIED SPEAKER: When was that?

8 MS. FARRELL: Very recently. Rick?

9 MR. HOGAN: Very recently. [Inaudible - away from  
10 microphone.]

11 UNIDENTIFIED SPEAKER: All right. Let's talk a  
12 little more. We talked about all the possible things that  
13 could happen to these records, and let me tell you, they could  
14 sit here and tell you more stories. Having been in a situation  
15 where I lost quite a bit [inaudible] water damage to thousands  
16 of records, I know what -- what a problem that becomes. First,  
17 how do you handle something like that [inaudible] water, you  
18 know?

19 MR. MILLS: I think the answer is as Judge Medd  
20 discussed, there are services where you could shoot this stuff,  
21 now in our case it was Illinois, not -- not Texas, where they  
22 irradiated these dry. I had no idea --

23 UNIDENTIFIED SPEAKER: Why did they have to freeze  
24 dry them?

1 MR. MILLS: To get the water out.

2 JUDGE MEDD: Take the water out.

3 MR. MILLS: Get the water out. And irradiate it so  
4 the mold doesn't grow I -- I'd never heard of this before. I  
5 thought it was only coffee that got freeze dried.

6 [Inaudible - simultaneous speakers - laughter]

7 UNIDENTIFIED SPEAKER: It would behoove someone to  
8 either have a free rein situation with [inaudible - away from  
9 microphone] --

10 MR. MILLS: It'd be nice to know where -- you could -  
11 - you could -- you can find them pretty quick. As a matter of  
12 fact, they find you as well.

13 MR. POTTER: Well, it depends on the event.

14 JUDGE MEDD: And the FEMA folks --

15 [Inaudible - simultaneous speakers.]

16 UNIDENTIFIED SPEAKER: -- major flood like you had,  
17 they would be involved right away.

18 JUDGE MEDD: Right.

19 MS. PFAU: But you also could plan for it. We had a  
20 major fire in one of our courthouses and a lot of records were  
21 affected, and, you know, because it was dependent upon who you  
22 were. If you were a records person, you were in there trying  
23 to save the records; if you were a courthouse person, you were  
24 trying to clean the place up. So you had courthouse people

1 putting records in bags of garbage, you had our records people  
2 taking the bags of garbage off the garbage truck and managing  
3 to actually salvage a good number of the records. But again,  
4 it would have made our life a lot easier if we had a definite  
5 plan in place so everybody was working towards the same end.

6 MR. POTTER: Yeah, and -- and to the planning, too.  
7 That planning [inaudible], you know, in terms of doing -- you  
8 might consider doing a -- a separate disaster recovery plan,  
9 you know, that is not necessarily part of the continuity of  
10 operations plan because they're sort of separate. And -- it  
11 might, you know, inform and go back to the plan, but there's  
12 specific pieces in terms of disaster recovery that, you know --  
13 potentially, it's -- you know, it's a different part of the  
14 house and might have different people involved than you would  
15 in the business processes. The business process people may not  
16 be as interested coming back to a disaster -- you know, it's  
17 really a records -- you know, it's the records people.

18 And some elements of that plan, you absolutely want  
19 to consider -- if not just making the acquaintance of the local  
20 sales people for the disaster vendor recovery people, you might  
21 even consider contingency contracting. And the reason that I  
22 put that forward rather than letting them come to you, which --  
23 which, you know, can work, is that you get up on the priority  
24 list. They come to you first if you have -- if you have an

1 established [inaudible - simultaneous speakers].

2 MR. MILLS: Yeah. What's the [inaudible] of letting  
3 them come to us? It's a question of who do -- you know, who  
4 [inaudible] and --

5 MR. POTTER: Right.

6 MR. MILLS: -- and it's one of the four thousand  
7 things we were doing all at once. We were -- you know, we  
8 could irradiate and freeze dry your files.

9 MR. POTTER: Yeah, yeah.

10 MR. MILLS: In our case, we had a stream running  
11 through the basement of -- under Church Street which  
12 requires --

13 UNIDENTIFIED SPEAKER: How quickly did they get there  
14 from Texas? [Inaudible - away from microphone.]

15 JUDGE MEDD: I -- I guess I don't recall exactly how  
16 long it took to get them back. Couple weeks.

17 UNIDENTIFIED SPEAKER: My experience is they  
18 [inaudible] right away. They just get on the plane and  
19 [inaudible - simultaneous speakers].

20 JUDGE MEDD: Well, they -- they trucked them down,  
21 then they trucked them back. I think it was about a couple of  
22 weeks.

23 UNIDENTIFIED SPEAKER: Is there anything you can do  
24 in preparation for something like this?

1 UNIDENTIFIED SPEAKER: I heard one time you're  
2 supposed to just keep them in water; that once they become wet,  
3 it's better to keep them wet. Now is that true?

4 [Inaudible - simultaneous speakers.]

5 JUDGE MEDD: Not for paper. Paper will dissolve.

6 [Inaudible - simultaneous speakers.]

7 MR. POTTER: I think the trucks were -- were  
8 refrigerated trucks that they actually took them down in. And  
9 -- and that's another part of that -- coming back to the  
10 disaster recovery plan. That's another part of it. There --  
11 that's another vendor to consider. Identify refrigerated  
12 trucks -- freezer trucks. Identify, you know -- one time I was  
13 in a wet records disaster and we had as part of our recovery  
14 plan identified the only cold storage -- and get this -- the  
15 only cold storage we could identify in Seattle, guess what else  
16 was stored in there?

17 UNIDENTIFIED SPEAKER: Fish.

18 MR. POTTER: It was fish. And I was like -- so here  
19 I am putting a pallet of -- a pallet of stacked wet records I  
20 wanted to freeze, you know, to stabilize them next to a pallet  
21 of frozen fish sticks. But this thing is that's not the  
22 optimum. You want to -- if you possibly avoid storing records  
23 next to food, they kind of want to avoid that. But you know --

24 [Inaudible - simultaneous speakers.]

1           MR. POTTER: How'd we get the records there? We --  
2 we had -- it was a relatively small event, and a lot of these  
3 are going to be relatively small events, where you have maybe  
4 twenty -- I mean if you're talking about paper records, twenty  
5 boxes, thirty boxes, you have a leak in the roof overnight and  
6 -- and you had a, you know -- you know, a shelving system that  
7 allowed some records -- you know, six boxes. So we just put  
8 them in a van and drove them over there and then -- and then  
9 stacked them on pallets.

10           UNIDENTIFIED SPEAKER: [Inaudible - away from  
11 microphone.]

12           MR. POTTER: Milk cartons. And that's another -- and  
13 it comes back to it, you know? You -- you identify a source  
14 for milk cartons in your plan. You know, who do we call if we  
15 need the supplies. You identify all the supplies that you  
16 could potentially use in a recovery situation, and depending on  
17 how much -- and there are vendors who do this and in a large-  
18 scale situation, I absolutely say use vendors. But if you're  
19 talking about, you know, one to, say, a hundred or two hundred  
20 boxes of records, you might have a difficult time justifying  
21 bringing in -- I mean depending on -- once again, it also comes  
22 back to a value determination of those records, and you want to  
23 have that sort of pre-identified as well so that you can look  
24 at -- you come in and you assess the situation, you assess the

1 damage, and part of that assessment is, hey, do we really need  
2 these records, what -- you know, what's the value of these  
3 records or, you know, potentially -- you know, are they past  
4 their retention? So if they're past their retention, let's  
5 consider throwing them away now and then you can decide are  
6 heroic efforts required to recover these records and that's  
7 expensive.

8 MS. FARRELL: Can -- can I --

9 UNIDENTIFIED SPEAKER: [Inaudible - simultaneous  
10 speakers.]

11 MR. POTTER: Just real quickly, I'll point you to the  
12 NARA web site. It's [www.archives.gov](http://www.archives.gov) and we have in our --  
13 there's a tab over on the side you can click on, it says  
14 "Records Management." I mean, you can sort of [inaudible] down  
15 from there. It's relatively easy. I can't give you the exact  
16 URL. We have a primer for vital records and disaster  
17 preparedness and recovery, and in there it includes a complete  
18 list of supplies and -- and, you know, how to's to do records  
19 recovery.

20 MS. FARRELL: Can I add something to that?

21 MR. SPANO: Anything you want.

22 MS. FARRELL: In your materials, I believe it's on  
23 the CD-ROM, there's some things that you can do for disaster  
24 recovery immediately, like for wet paper, bring down the

1 temperature of the room, circulate the air to try to preserve  
2 it, and minimize the damage, and then get the professionals in  
3 to help you with it. There's also a list of disaster recovery  
4 web sites, NARA's web site is in there, and a list of several  
5 other agencies that give very good information, and that's -- I  
6 think it's on the CD. I sent it over and I think it's on the  
7 CD.

8 JUDGE MEDD: One thing I learned -- just -- just an  
9 interesting little tidbit is that after we sent the records to  
10 be freeze dried, dried out, [inaudible], and sent back to me,  
11 you get more records back than you sent because the --

12 MR. POTTER: They expand, absolutely.

13 JUDGE MEDD: And -- and so don't -- don't plan on  
14 putting them in the same amount of space when they -- when they  
15 come back.

16 MR. POTTER: Once -- once a record gets damaged, it's  
17 -- there's always going to be a -- you're always going to pull  
18 that record out and it's going to be -- it's going to look like  
19 it was damaged. And you might recover the information, but,  
20 you know, the paper's never going to be the same [inaudible -  
21 voice too low] -- the paper record.

22 MS. PFAU: One other thing just -- again, on a  
23 statewide basis, if you're an organization that has a lot of  
24 different entities -- we have three hundred courts throughout

1 the state -- and we have a central web site [inaudible] from  
2 that for all of the courts and we have on our intranet site the  
3 outline for disaster recovery plan and all of the safeguard  
4 kinds of things we've -- we've talked about. So if I'm a court  
5 up in Orleans (ph) which is far from New York City, they just  
6 click on the web site and know what I should do as the basis  
7 for my disaster recovery plan if I can't reach Rick for some  
8 reason. It works very well.

9 MR. SPANO: Let's talk a minute about electronic  
10 records, too. They -- they have to be handled -- some  
11 preparation before and what happens if you have a situation.

12 MR. POTTER: Well, there's -- I think you got to --  
13 we've got a different [inaudible] between the various different  
14 types of electronic records. You know, mostly we've been kind  
15 of focusing on documents and we have a couple of standards that  
16 aren't too bad for documents right now. The bigger problem is  
17 all this old data [inaudible - voice too low] he's got twenty-  
18 five, thirty years worth of data on your mainframe, and  
19 [inaudible] at some point, you know, we have some hope that Ken  
20 will, you know, be getting a new system some day.

21 So -- I mean, but you know, you have all this  
22 archival data and, you know, some of this may be applicable for  
23 your new system and some of it may not and things. What I've  
24 actually been telling people lately -- and this -- this just

1 struck me in the last two years -- and this is actually  
2 following up on some reading I've done with actual -- actually  
3 on the National Archives site, is that new data standard called  
4 XML has been endorsed by the National Archives as the permanent  
5 record format for data, meaning that it's all done in standard  
6 no characters.

7           And what I've been telling folks to do is when they  
8 put in their new system is to go ahead and spend your time  
9 migrating your active cases. It's well worthwhile to migrate  
10 your active cases. But on your archival, your historical cases  
11 that you have in your case management systems and things, it's  
12 actually better to write them out into what's called this XML  
13 format.

14           What XML format gives you is everything is still  
15 searchable and it's still searchable by field names and the  
16 values that you assigned into that data at that time, but  
17 you're not cluttering up your new perfectly good data system,  
18 but you still have all your data and things, and it's still --  
19 they have new -- they have these things called XML databases,  
20 they work kind of basically like everybody uses Google or one  
21 of those -- or Yahoo. It basically works just like that. You  
22 put in the value and you instantaneously retrieve that  
23 information. So it's not like you have to sit there and churn  
24 through stuff and you can actually then probably store most of

1 this stuff on a PC. And it's just how tightly you want to tie  
2 it to your new system.

3           So you know, that's kind of a new approach to the --  
4 I've been kind of putting out that I'm starting to see not only  
5 our business in the courts, but other people, too.

6           UNIDENTIFIED SPEAKER: That's my [inaudible]. What  
7 happens if the [inaudible] goes?

8           MR. POTTER: It was gone. Well, you're supposed to  
9 have your backup tapes.

10          [Inaudible - simultaneous speakers - laughter]

11          MR. MILLS: Well, we had a circumstance where we  
12 didn't have a hot, warm or cold backup system, so --

13          UNIDENTIFIED SPEAKER: You want to explain?

14          MR. MILLS: Essentially, if you -- hot, cold -- hot,  
15 warm and cold really refers to how long it takes before you  
16 backup. Hot means that you back up pretty much instantaneously  
17 because you have a backup system that pretty much mimics the  
18 main system. Data is duplicated in real time, you can turn  
19 this system off and turn that system on and you're up. Warm  
20 usually means you have servers and applications on those  
21 servers that are [inaudible], all it needs is the data to be  
22 inserted, usually with backup tapes and you're up and running  
23 and it can be anywhere from hours to a couple of days --  
24 anything more than a couple of days is really -- really

1 classified as cold in my opinion.

2           We didn't have any of that. The city was not  
3 spending a lot of money on backup for many, many years. What  
4 we found is that we could -- without a network at all, send the  
5 backup tapes off to a contractor who would then burn CD-ROMs of  
6 everyone's network drive, and so I could hand their -- their  
7 network to them on a CD-ROM. So they were pretty much by  
8 September the 19th back to where they were on September the  
9 10th. That was -- that's a long time, but given the fact that  
10 our network was just gone [inaudible - voice too low] best that  
11 we could do.

12           If money is no object, hot backup is terrific. If  
13 money is an object, then you have a lot of choices to go.

14           MR. POTTER: I guess I could jump in, in terms of the  
15 cost issue. It absolutely is dependent on -- on the amount of  
16 down time that you determine is acceptable. And going back to  
17 that prioritizing your information assets, not only do you do  
18 it with your paper records, you do it with your electronic  
19 systems, treating an electronic system as an information asset.

20           And if -- if it's determined -- for instance, here --  
21 here in New York, the financial community was bound by due  
22 diligence regulations, SEC oversight, that they have -- they  
23 have very little room to wiggle in terms of, you know, having  
24 down time in performing -- performing their trading activities,

1 performing their business processes.

2           So there is a tremendous amount of money -- for  
3 instance Deutsche Bank which -- their building is still closed  
4 across the street -- they have five buildings down in this area  
5 -- maintained a complete empty building with servers hooked up  
6 to their national -- with the -- to their international  
7 networks, with work stations, a cafeteria, parking, you know,  
8 the -- everything except there wasn't anybody there until about  
9 seven o'clock -- well, they were bringing it up round about  
10 noon on 9/11, but they had -- actually had traders in seats at  
11 seven o'clock that night performing trades. And you know, a  
12 tremendously expensive investment.

13           In the federal government with -- the Social Security  
14 Administration operates three redundant computer centers across  
15 the country. One goes down -- Wilkes-Barre, Pennsylvania, is  
16 the primary, I believe -- one goes down and another pops right  
17 up with the same information that was contained in -- in the  
18 other one. Rights and interest of individuals. You know, what  
19 would happen to the country if we couldn't process social  
20 security payments on a regular basis? So zero down time. So  
21 the expense is justified.

22           So you have to look at that priority piece and  
23 determine how much -- how important is the information, how  
24 important is it for us, you know -- statute -- you know, do we

1 have statutes that require us to operate tomorrow? If so, then  
2 we better have a pretty robust ability to bring the system up  
3 and not lose any data. That's another important piece of it.

4 MR. MILLS: Something I learned the hard and  
5 expensive way, and you should learn the cheap way, if there's a  
6 disaster and your equipment goes down, your servers go down,  
7 and you don't know what happens to them -- you know, how they  
8 powered down or if they powered down correctly, don't fire them  
9 up again and don't attach them to your network. They will  
10 crash on you and you will be spending the next three days  
11 trying to reestablish everything. Assume it dead. Start  
12 somewhere else, especially with Windows operating systems, they  
13 -- they do not do well without powered down properly.

14 Second thing that I learned very expensively is  
15 beware of heroic efforts. Don't have your people up all night  
16 trying to get stuff fired up. Right around two o'clock in the  
17 morning, they're going to start making mistakes. By the time  
18 five o'clock rolls around, they've done four days worth of  
19 damage. They don't mean to, they're doing the best they  
20 absolutely can, and I love them for the effort, but at five  
21 o'clock in the morning after they've been up all day long, you  
22 are not going to do your best work. Send them home, send them  
23 to bed, live without the system for awhile and let them get  
24 some sleep and get at it the next morning.

1           MR. SPANO: We're going to wind down now. [Inaudible  
2 - away from microphone.] If each one of you could just offer a  
3 final word of advice to the group, I think they'd appreciate  
4 it.

5           MR. MCMILLAN: I think my final word of advice is  
6 that -- I've got to agree with Andy. This is a small -- you'll  
7 probably have a small disaster before you have the big  
8 disaster. I had -- my small disaster was that my assistant  
9 state court administrator clipped off a sprinkler head and it  
10 flooded my computer room -- not on purpose, but --

11          MR. POTTER: That's when you want to know where the  
12 water shutoff is.

13          MR. MCMILLAN: Well, that took an hour to find. So  
14 number one is find out where your sprinkler turnoffs are and  
15 number two is -- I did -- and this was early on and I didn't  
16 have an emergency power shutoff for my entire room, and so I  
17 was at the restaurant and I got this phone call, and people are  
18 standing in water and they're going there's water coming in the  
19 computer room, what should I do? And I said, okay, well -- so  
20 I sort of explained to them how to shut down the computers, and  
21 they're going, no, there's water coming under the door. I said  
22 pull the plugs. That was still not a good decision, but it was  
23 the only one I could make, so I put in an emergency power  
24 shutoff.

1 MR. MILLS: There's no substitute for redundancy.  
2 None. Single single point of failure will -- will pinch you.  
3 It will happen, so make everything that you possibly can make  
4 redundant, redundant, make your decision as to how fast you  
5 have to come back up and spend whatever money and time you need  
6 to create that backup system.

7 JUDGE MEDD: I could say it again. Don't keep your  
8 records in the basement.

9 [Inaudible - simultaneous speakers - laughter]

10 JUDGE MEDD: -- develop a records retention plan.  
11 Our Clerk did this, number where all the records are  
12 specifically, siting to the rule -- Rule 19 -- as to the  
13 destruction plan and it's all in here. So develop a good  
14 records retention plan.

15 MR. SPANO: Build your dikes a little higher.

16 JUDGE MEDD: And the dikes are being build higher as  
17 we speak.

18 MR. POTTER: Well, I have to say, I was just looking  
19 at this and it warms my heart. I -- I guess my last word is  
20 the time to do it is now as opposed to when you are in the  
21 middle of an emergency. You want to -- you know, the best time  
22 to pull people together and to discuss these issues, determine  
23 the resources that you have, determine the priorities that you  
24 have, both in terms of -- in terms of business process and the

1 records that support them is -- is in a calm, rational  
2 situation around a nice conference table with coffee and  
3 doughnuts and, you know, it's -- the time not to do it is when  
4 you're trying to figure out how to invent the wheel on the fly  
5 because it's tremendous -- that's a tremendously stressful,  
6 potentially traumatic time, and -- and your decision-making  
7 reflects that.

8 MS. PFAU: I guess given the breadth of our state and  
9 what we've been through with 911 and fires and different  
10 scenarios -- and asbestos -- plan, plan, plan; expect the  
11 worst, plan for the worst, think about how you're going to  
12 function the day after the worst happens because somewhere in  
13 the state, it's happening at some point, so as hard as it is to  
14 take time to do that with everything else that goes on, move it  
15 up on the list and really plan for it.

16 MS. FARRELL: It's hard to add to all of that. The  
17 only thing I can add now is that after you've done your  
18 planning and you've got your -- your file in place and what  
19 people should do, make sure that everybody is well trained and  
20 they know instinctively what to do should the disaster happen.

21 MR. SPANO: [Inaudible - away from microphone].  
22 Thank you.

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