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1 Exhibits 1-8 Vol. 1, Pgs. 1-189
2 COMMONWEALTH OF MASSACHUSETTS
3 Suffolk, ss. Superior Court

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6 NETEZZA CORPORATION

7 Plaintiff

8 v. CA No. 09-4961-BLS1

9 INTELLIGENT INTEGRATION SYSTEMS, INC.

10 Defendant

11 -----

12

13 VIDEO DEPOSITION of PAUL DAVIS

14 Friday, April 9, 2010 - 9:49 a.m.

15 Wilmer Cutler Pickering Hale and Dorr LLP

16 60 State Street

17 Boston, Massachusetts

18

19 --- Reporter: Jill K. Ruggieri, RMR/CRR ---

20 Farmer Arsenault Brock LLC

21

22 REPORTING ON BEHALF OF:

23 Westlaw Deposition Services

24 San Francisco, California

25 [800-548-3668](tel:800-548-3668)

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1 APPEARANCES:

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20
21 Also present: Corey C. DuFresne
22 Richard Zimmerman
23 Videographer: Andy Hoffman

24
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0003

1 PROCEEDINGS

2 THE VIDEOGRAPHER: Here begins the
3 videotape deposition of Paul Davis, Tape 1,
4 Volume 1, in the matter of Netezza Corporation
5 versus Intelligent Integration Systems, Inc., in
6 the Commonwealth of Massachusetts, Superior Court,
7 Department of the Trial Court, Business Litigation
8 Session, Case No. 09-4961-BLS1.

9 Today's date is April 9, 2010, and the
10 time on the video monitor is 9:49 p -- a.m., excuse
11 me. The video operator is Andy Hoffman
12 representing the Westlaw Deposition Services.

13 Today's deposition is being taken on
14 behalf of the plaintiff, and it's taking place at
15 60 State Street, Boston, Massachusetts.

16 Counsel will please introduce themselves
17 and state whom you represent.

18 MR. KALER: Robert Kaler, McCarter &
19 English, for defendant and counterplaintiff,
20 Intelligent Integration Systems.

21 MR. CULTICE: Robert Cutice, WilmerHale,
22 for Netezza Corporation.

23 THE VIDEOGRAPHER: If the court reporter
24 would then swear in the witness.

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1 PAUL DAVIS, a witness having been duly
2 sworn, on oath deposes and says as follows:

3 EXAMINATION

4 BY MR. CULTICE:

5 Q Would you state your name for the record,
6 please.

7 A Sure. Paul Davis.

8 Q Where do you live, Mr. Davis?

9 A 126 Summer Street, Watertown.

10 Q How long have you lived there?

11 A We're there for six months.

12 Q Where did you live prior?

13 A I lived in Cambridge, Massachusetts, 65
14 Hampshire Street.

15 Q How long did you live there?

16 A I lived there for six years.

17 Q Who is your employer, Mr. Davis?

18 A Intelligent Integration Systems, Inc.

19 Q How long have you worked for that company?

20 A Five years.

21 Q Is that the company that is the defendant in
22 this lawsuit?

23 A Yes.

24 Q When was the company founded, please?

25 A August 2005.

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1 Q Who were the founders?

2 A Richard Zimmerman, Marshall Peterson and
3 myself.

4 Q What was the purpose for the formation of the
5 company?

6 A To work on database and data warehouse computer
7 system issues.

8 Q What customers did the company have when you
9 formed it, if any?

10 A We had no customers.

11 Q Where was your first place of business?

12 A Thirty Washington Street, Wellesley.

13 Q Is that in Wellesley Office Park?

14 A No.
15 Q Where is it located in Wellesley, please?
16 A Lower Falls.
17 Q How long did you occupy those offices?
18 A Approximately one year.
19 Q Where did you go next?
20 A Ten Post Office Square in Boston.
21 Q When?
22 A Must have been -- I believe it was the fall or
23 late summer of 2006.
24 Q How long has IISi been located at that
25 location?

0006

1 A From that time until today.
2 Q How many employees did IISi have when it
3 started?
4 A Two.
5 Q Who?
6 A Richard Zimmerman and myself.
7 Q How many employees does IISi have today?
8 A Three.
9 Q Who?
10 A Richard Zimmerman, myself and Marshall
11 Peterson.
12 Q Between the date of formation and today, has
13 IISi had any other employees?
14 A We had contractors -- no.
15 Q Who were the contractors that worked for you?
16 A Joseph Pacate, Tim Callahan.
17 Q Where does Mr. Pacate live today?
18 A Somerville, Massachusetts.
19 Q Where particularly?
20 A I'm not sure of the street address.
21 Q When did Mr. Pacate serve as a contractor for
22 IISi?
23 A 2008.
24 Q And is he still a contractor?
25 A No.

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1 Q When did he cease being a contractor?

2 A I think around the end of 2008.
3 Q What did he do for IISi?
4 A Software work on a -- software work.
5 Q On a project?
6 A Yes.
7 Q What project, please?
8 A Foxwoods Casino.
9 Q Now, I assume by your answer that Mr. Pacate
10 worked for you a matter of months; is that correct?
11 A Yes, no -- yes.
12 Q Do you recall how many months he served as a
13 contractor for IISi?
14 A In total, approximately seven to ten.
15 Q Describe the Foxwoods project you referenced.
16 A We were systems integrators where we took
17 hardware and software and made it work together.
18 Q For what purpose?
19 A So that a data center could operate it.
20 Q For what purpose?
21 A We were -- could you explain --
22 Q Did you have an agreement with Foxwoods?
23 A We had a contract to perform those services.
24 Q Did the contract describe the scope of services
25 to be rendered?

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1 A Yes.
2 Q What were the scope of services?
3 A To provide systems integration services for
4 their BSM.
5 Q For what function or what use?
6 A So that they could analyze their customer data.
7 Q Who at Foxwoods did you deal with?
8 A Principally Dan Sims.
9 Q Who did you understand Mr. Sims to be?
10 A The chief database administrator.
11 Q When did you first meet Mr. Sims?
12 A I think probably early in 2008.
13 Q In connection with this project?
14 A Yes.
15 Q Did someone refer Mr. Sims to you?

16 A I think -- I'm trying -- I can't recall.
17 Q How did you come to meet Mr. Sims?
18 A We were contacted -- we were contacted I -- I
19 have -- I do recall that I had conversations with
20 Bob Doyle at Netezza Corporation about a prospect
21 and about how to go about contacting them.
22 Q A prospect for what?
23 A A data system.
24 Q Do you now recall that it was Mr. Doyle that
25 referred you to Foxwoods?

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1 A I recall that Mr. -- Mr. Doyle who -- no, I
2 recall that Mr. Doyle had an idea.
3 Q What was Mr. Doyle's idea?
4 A That they were a good prospect.
5 Q A good prospect for what?
6 A For data center work.
7 Q For what purpose?
8 A For them to analyze their data.
9 Q What data?
10 A They have customer data relating to both casino
11 and hotel/restaurant activity.
12 Q And what was Mr. Doyle's -- who was Mr. Doyle's
13 employer at the time you spoke with him?
14 A Netezza.
15 Q What did you understand his position to be at
16 Netezza at that time?
17 A Partnership coordination.
18 Q When did you -- when did you first talk to
19 Mr. Doyle about his idea relating to Foxwoods?
20 A Late 2007, early 2008.
21 Q Do you recall the mode of the communication,
22 phone, in person or what?
23 A No, most likely telephone.
24 Q Did he call you or did you call him?
25 A I don't recall.

0010

1 Q What did he say to you and you to him about
2 Foxwoods and his idea?
3 A I don't recall.

4 Q If you don't recall specifically, do you recall
5 in words or substance?

6 A Just that, you know, good prospect.

7 Q What did you do after the conversation?

8 A Collected names both at -- both at Foxwoods and
9 at Netezza to try to figure out who would be
10 responsible at both places for the kinds of issues
11 that we would address.

12 Q Did you find out?

13 A Yes.

14 Q What were the names?

15 A Dan Sims on one side and Steve Krikorian at
16 Netezza.

17 Q Can you spell Krikorian?

18 A I believe so. K-R-I-K-O-R-I-A-N.

19 Q Did you talk to Mr. Krikorian?

20 A Yes.

21 Q When?

22 A Early 2008.

23 Q What did you say to him, he to you?

24 A He -- he specifically was psyched up and
25 thought it was a great prospect and had -- he was
0011

1 enthusiastic.

2 Q What did you understand his role to be?

3 A He's a sales coordinator at Netezza.

4 Q Was Foxwoods among the customers he called on?

5 A Sure. At that point, I -- he -- someone who
6 worked for him had previously sold Foxwoods a
7 machine.

8 Q When you say a machine, what are you referring
9 to?

10 A I believe -- I believe it was a Red Brick
11 database machine, a competitor of Netezza.

12 Q Do you recall the competitor?

13 A Red Brick.

14 Q Red Brick?

15 A I think.

16 Q Do you recall anything else Mr. Krikorian said
17 to you and you to him about the Foxwoods

18 opportunity?

19 A At that -- I don't recall.

20 Q Did you contact Mr. Sims at that point?

21 A I think we coordinated and did everything
22 together.

23 Q When you say together, what do you mean?

24 A Joint meetings.

25 Q Joint meetings among who?

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1 A IISi, Netezza and Foxwoods.

2 Q Do you recall the first such meeting?

3 A No.

4 Q Do you recall the time frame in which you
5 conducted these meetings?

6 A Approximately March 2008.

7 Q Until when, please?

8 A December 2009.

9 Q Did you did make a proposal to Foxwoods?

10 A I believe so.

11 Q Did Netezza join in that proposal?

12 A No.

13 Q What was -- was the proposal solely and
14 exclusively by IISi?

15 A Yes.

16 Q What was the proposal?

17 A That we would provide services and sell them a
18 solution that included us delivering a Netezza --
19 that we would buy to Netezza and resell to them.

20 Q Was a proposal accepted?

21 A Yes.

22 Q Who accepted it, please?

23 A I don't recall who signed the agreement.

24 Q What was the agreement called; do you remember?

25 A No.

0013

1 Q Who were the parties to the agreement?

2 A A Foxwoods entity and IISi.

3 Q Was the -- was the agreement between

4 Foxwoods -- the Foxwoods entity and IISi performed?

5 A Yes.

6 Q And what did IISi do to perform its agreement
7 with Foxwoods?

8 A It performed software work and installed
9 hardware.

10 Q Was -- did IISi buy a Netezza appliance from
11 Netezza?

12 A Yes.

13 Q And did IISi sell that Netezza appliance to
14 Foxwoods?

15 A Yes.

16 Q Foxwoods paid IISi for the equipment?

17 A Yes.

18 Q In addition, IISi provided services with
19 respect to that transaction?

20 A Yes.

21 Q What services, please?

22 A Software development services.

23 Q Was Foxwoods happy with the performance?

24 A Yes.

25 Q Was there any problem in the -- in the
0014

1 implementation of the terms and conditions of the
2 agreement between Foxwoods and IISi?

3 A No.

4 Q What was the reason for the contractor,
5 Mr. Pacate, leaving IISi when he left?

6 A Project was completed.

7 Q Has IISi done any business with Foxwoods after
8 the completion and performance of its contract?

9 A No.

10 Q Have you had any subsequent follow-up
11 conversations with Foxwoods of any type?

12 A Yes.

13 Q With who, please?

14 A Todd Williams.

15 Q And for what reason?

16 A To seek payment on the contract.

17 Q What did you say to Mr. Williams and what did
18 he say to you?

19 A He -- he said he'd look into it. I think that

20 was it.

21 Q What happened?

22 A We got paid on I think a substantial portion of
23 it, and there was a -- a part of it that was
24 unpaid.

25 Q Has the part that was then unpaid ever been
0015

1 paid?

2 A No.

3 Q How much was left unpaid from your perspective?

4 A Approximately six or seven thousand dollars, I
5 believe.

6 Q Why was payment not made?

7 A You know, just they -- I think they had a -- a
8 different accounting, you know, understanding or
9 practice.

10 Q What was the total value of the contract?

11 A Approximately \$400,000.

12 Q When was the payment due that caused you to
13 have to follow up?

14 A A year earlier.

15 Q Was there a specific payment due date in the
16 contract?

17 A I don't recall.

18 Q Was there a cure period in the contract, if you
19 recall?

20 A I don't recall.

21 Q How long after the payment due date passed
22 before you called Foxwoods on the amount that had
23 not been paid?

24 A I think we communicated right at the time,
25 immediately.

0016

1 Q Did you ever get to a point where you had to
2 send a demand letter of some sort to Foxwoods?

3 A No.

4 Q Did you ever send any written communication to
5 Foxwoods asking for payment under the contract?

6 A I sent an invoice after I --

7 Q You sent an invoice after when?

8 A After -- after we had a discussion.

9 Q Did the discussion concern the payment?

10 A Yes.

11 Q Do I understand you correctly, Mr. Davis, that
12 initially Foxwoods didn't pay a substantial amount
13 of money to you before you talked to them about
14 payment; is that correct?

15 A No.

16 Q It was -- the only amount left unpaid was
17 always only \$7,000?

18 A No.

19 Q What was the amount due under the contract that
20 you had to follow up with Foxwoods initially?

21 A Approximately 12,000.

22 Q And in what form did your follow-up come?

23 A Discussion on the telephone.

24 Q You picked up the phone and called them?

25 A I left a message, and they returned the call.

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1 Q And the gist of your conversation was you still
2 owe me \$12,000 and when can I expect payment; is
3 that fair?

4 A Sure.

5 Q Would that be your normal way of following up
6 on a bill?

7 A Oh, sure.

8 Q Now, was -- did Netezza in any way interfere
9 with that contract?

10 A I don't know.

11 Q Did Netezza in any way interfere with your --
12 with IISI's relationship with Foxwoods in any way?

13 A I don't know.

14 Q Have you heard a claim made that Netezza in
15 some way interfered with your contractual
16 relationship with Foxwoods?

17 I'm not asking what your attorney said to
18 you. Just what you gleaned from other sources, if
19 you have?

20 A I don't know.

21 Q Do you have any information from any source

22 whatsoever other than your attorney about any type
23 of inappropriate or wrongful conduct engaged in by
24 Netezza relative to IISI's business relationship
25 with Foxwoods?

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1 A Could you repeat that question?

2 Q Sure.

3 Do you have any information from any
4 source other than your attorney that IISI -- excuse
5 me, that Netezza in any way interfered with IISI's
6 contractual relationship with Foxwoods?

7 A Yes.

8 Q What knowledge do you have?

9 A I was -- it was -- I was informed that a
10 contract that we were working on that we brought
11 into Netezza through Foxwoods, was informed by Matt
12 Rollender at Netezza that had been sourced to
13 another company that we had also introduced to
14 Netezza and that was disappointing to us.

15 Q Who provided you this information?

16 A Matt Rollender.

17 Q Can you spell his last name?

18 A I'm not for certain.

19 Q Who was his employer at the time he provided
20 this information to you?

21 A Netezza.

22 Q What was his position at Netezza at that time?

23 A He was a partnership coordinator.

24 Q And what did you understand that to mean?

25 A That his job was to help people with

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1 partnership contracts to succeed in their work with
2 Netezza.

3 Q And he said that someone at Netezza did what,
4 please, with respect to the Foxwoods situation?

5 A That Netezza apparently had assigned the work
6 on a -- on applications we were -- that we had
7 originally brought to Foxwoods to other partner
8 companies.

9 Q What other partner companies?

10 A The first one at the time was called Datanetis.

11 Q And what does Datanetis do, if you know, or
12 what did it do at that time?

13 A They -- they, you know, do I believe software
14 analytics work.

15 Q And what other partner, in quotes?

16 A The second company was a company called
17 DataFlux. I wasn't clear on what -- you know, what
18 the full project was involving, so I only had a
19 very high level description.

20 Q And did you believe that Netezza did something
21 wrong in referring the work to the first company
22 that you mentioned?

23 A I don't know.

24 Q One way or the other, you don't know?

25 A I don't know.

0020

1 Q How about on the second instance you talked
2 about?

3 A I don't know.

4 Q Now, are you aware from any other source about
5 information or a claim that I -- excuse me, that
6 Netezza in some way interfered with a business
7 relationship, either contractual or prospective,
8 that IISi had with Foxwoods?

9 A I can't remember anything.

10 Q You've exhausted your recollection on that?

11 A At this time.

(Relevant section in black)

12 Q Mr. Davis, have you contacted any member of
13 Congress concerning the subject matter of this
14 lawsuit?

15 A No.

16 Q Have you directed anybody to contact any member
17 of Congress relating to the subject matter of this
18 lawsuit?

19 A A member of Congress contacted me.

20 Q Who is the member of Congress, please?

21 A Adam Smith.

22 Q What -- what is Mr. Smith's position?

23 A He's a Congressman from Washington state.

24 Q And when did he contact you?

25 A December of 2009.

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1 Q Why did he say he was contacting you?

2 A Because he saw a media report and recognized --
3 and recognized my name in the media report.

4 Q What did he say to you?

5 A Just was interested.

6 Q What did he say?

7 A He said he was interested.

8 Q He just said he was interested and then hung up
9 the phone?

10 A No. We actually -- we talked about I guess the
11 idea that -- the ideas that were mentioned in the
12 article, you know, generally.

13 Q What did you say to him?

14 A I said the matter's in litigation, I couldn't
15 really say very much.

16 Q Did you say anything?

17 A I made one statement, because he asked this
18 question.

19 Q An what did you say?

20 A I said I -- yes, we would be willing to meet
21 with the CIA if they wanted to meet with us.

22 Q What else did you say to him?

23 A That's what I recall saying to him.

24 Q What caused you to respond in that way to his
25 question? Or let me -- let me ask a better

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1 question.

2 What did he say to you, to which you
3 responded?

4 A I believe I answered that question.

5 Q I don't recall your answer, so you'll -- you'll
6 have to humor me for the moment.

7 A He said he saw the -- read the article.

8 Q And he said nothing about the CIA in his

9 conversation to you?

10 A No, he asked me, as I stated before, he asked
11 me if we'd be willing to talk to them.

12 Q You said yes?

13 A Yes.

14 Q And did you talk with the CIA?

15 A No.

16 Q Did he call you again, the Congressman?

17 A Yes.

18 Q When was the next time he talked with you?

19 A Probably shortly thereafter.

20 Q Can you give me a year, please?

21 A I can't, because it was at the end of the year,
22 so it might have been January, it might have been
23 December.

24 Q Is it fair that the second conversation
25 occurred either in December of 2009 or January of
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1 2010?

2 A As best I recall.

3 Q And what did he say to you and you to him on
4 the second communication?

5 And by the way, I'm assuming it was a
6 second communication, am I correct on that?

7 A Yes.

8 Q By telephone?

9 A Yes.

10 Q What did you say to him and he to you?

11 A The only thing that he said basically was he --
12 he had the -- you know, he had the impression that
13 our software was valuable.

14 He had indicated to them we were willing
15 to meet and it was sort of in the CIA's court as to
16 whether or not they were going to follow up.

17 Q Did he say anything else to you?

18 A Not that I recall.

19 Q Did he elaborate on why he thought the
20 software -- the IISi software was valuable?

21 A I don't recall.

22 Q Did he put it in context, for example, did he

23 say it was valuable to the CIA?

24 A No.

25 Q He just said it was valuable and stopped?

0024

1 A Best I recall.

2 Q How long did the conversation last?

3 A May have been, you know, ten minutes or
4 something.

5 Q The person talking to you was the Congressman
6 himself?

7 A Yes.

8 Q Not an aide?

9 A No.

10 Q Who how about the first conversation, how long
11 did that last?

12 A Probably longer.

13 Q Give me an estimate, as best you recall?

14 A Thirty minutes.

15 Q Can you recall now that we've talked about both
16 conversations, can you recall anything more that
17 occurred during the 30-minute conversation that you
18 had with the Congressman initially?

19 A I can.

20 Q Please relate it.

21 A The two of us had both gone through difficult
22 times. We're personal family friends. And we were
23 hospitalized at exactly the same time, when he had
24 serious lung and cardiovascular problems and I
25 suffered a heart attack.

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1 Q When was that, please?

2 A It was approximately October 1st to
3 October 15th of 2009.

4 Q I'm sorry you had health problems. Hopefully
5 you're feeling better now?

6 A I'm feeling better.

7 Q What else did he say to you and you to him
8 during that initial conversation?

9 A I mean, he was concerned for my health. He
10 knew that I had suffered a heart attack. When he

11 read the article, he immediately associated the
12 article with the heart attack.

13 Q And you believe that's why he called you?

14 A I believe the reason that a United States
15 Congressman who is a friend called me so quickly
16 after seeing an article was because he was more
17 concerned about health than the issue.

18 Q And did he then bring up the lawsuit or did
19 you?

20 A He brought up the article.

21 Q Do you recall anything else that was said
22 during that first conversation?

23 A Not at this time.

24 Q How about the second conversation?

25 A Not at this time.

0026

1 Q Did you have any other conversations with the
2 Congressman about the subject matter of the
3 lawsuit?

4 A I've had no conversations since then.

5 Q Have you had any conversations with any member
6 of his staff since then?

7 A No conversations.

8 Q Did the Congressman send you anything in
9 writing?

10 A No.

11 Q Did you send him anything in writing?

12 A I don't believe so.

13 Q Are you aware of any other -- are you aware of
14 any Congressional inquiries on the subject matter
15 of the lawsuit?

16 A Could you -- could you define -- would you
17 consider a phone call like the one from the
18 Congressman to be an inquiry?

19 Q Yes.

20 A Well, then obviously I'm aware that I was
21 called.

22 Q How about any other inquiries from any other
23 person?

24 A No, that I recall.

25 Q Are you aware of any type of formal proceedings
0027

1 that Congress initiated?

2 A No.

3 Q Do you know whether or not the Congressman
4 called any representative at Netezza?

5 A No.

6 Q Do you have any other knowledge about the
7 subject matter that you and the Congressman
8 discussed other than what you've related to me?

9 A Yes.

10 Q What?

11 A I read the New York Times and The Wall Street
12 Journal.

13 Q And what is it about The New York Times or Wall
14 Street Journal that you relate to the Congressman?

15 A I just -- I read articles that relate to the
16 general subject of the CIA.

17 Q I'm -- I'm not so much interested in general
18 subject matter of the CIA but only as it relates to
19 this lawsuit.

20 A I don't -- I can't make a determination what
21 does and doesn't -- I don't have enough
22 information.

23 Q What do you have in mind in the New York Times,
24 for example, that causes you to respond to my
25 question the way you did?

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1 A I don't have anything specific in mind. I just
2 read articles on the subjects.

3 Q On what subjects?

4 A CIA-related subjects.

5 Q CIA-related subjects to your software?

6 A No.

7 Q To a Netezza data appliance?

8 A I don't know.

9 Q How about The Wall Street Journal, same thing,
10 just general CIA information but nothing in
11 particular related to the subject matter of the
12 lawsuit?

13 A Well, yes -- I don't know -- I can't
14 definitively state what's possibly related to this
15 lawsuit.

16 Q But nothing struck you as related to the
17 lawsuit?

18 A I -- I -- you know, nothing specific struck me.

19 Q All right.

20 Anything general?

21 A Lots of things general.

22 Q Like what? Just give me an example. I don't
23 want to go into a lot of time on this, but just
24 tell me what you're talking about?

25 A If it -- if it relates to the CIA, it captures
0029

1 my attention, because right now, I'm involved in
2 litigation where the CIA is mentioned.

3 Q That's the extent?

4 A That's the extent that occurred to me at this
5 time.