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Subject Rules of Evidence For Long Term Data

04-CV-186

I am writing in regard to rules about discovery of computer backups. For introduction, I note that as a nonvoting member of the ISO J4 committee, I helped write the Cobol 2002 standard, so I know something about writing rules.

I started programming 33 years ago. Since then I have seen capacity increase over a million fold. When I started out, I stored my bits by punching holes in a strip of paper. Now I can put 4.4 gigabytes on a DVD-R disk that costs 30 cents. A single LTO-3 tape holds 400 gigabytes for about \$120.

It was once impractical to keep large volumes of data for a long time, but it's not true anymore. A typical backup cycle might say that tapes are reused weekly, and once a week there's a tape that's saved for a month. However, from time to time, one set is taken out of the rotation and set aside forever. It may not be scheduled, it may not be official, but I see it happening more and more, especially at my last job where I was the one doing it.

This would be an interesting experiment. Go into a large company and tell them that they have been sued and the plaintiff wants the old backups. Then go back a week later and say it's not the plaintiff that wants this data, we want this data. I would be surprised if that didn't shake out a few more.

The standard for the 21st Century needs to be that anything worth backing up is worth saving forever. It's simply prudent practice, so there's no excuse for not having such backups.

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