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# Transcript of Kevin Butler, Ph.D.

**Date:** June 19, 2026

**Case:** Google LLC -v- Headwater Research LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2  
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4  
5 GOOGLE LLC,

6 Petitioner,

7 v.

8 HEADWATER RESEARCH LLC,

9 Patent Owner

10  
11 IPR2026-00049

12 Patent No. 9,179,359

13  
14  
15 DEPOSITION OF

16 DR. KEVIN BUTLER

17 FRIDAY, JUNE 19, 2026

18 Remote Video Teleconference

19 6:00 a.m. PDT

20 to

21 9:11 a.m. PDT

22  
23 Stenographically Reported by:  
24 Burgundy B. Ryan, RPR,  
25 CSR No. 11373  
Job No. 638817  
Pages 1-65

A P P E A R A N C E S

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DEPOSITION SUPPORT INDEX

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REPORTER'S NOTE:

QUOTATION MARKS ARE USED FOR CLARITY AND DO NOT

NECESSARILY REFLECT A DIRECT QUOTE.

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I N D E X

PAGE

EXAMINATION BY MR. MILKEY..... 6

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E X H I B I T S

EXHIBIT DESCRIPTION PAGE

(The following previously-marked exhibits were  
discussed: Exhibits 1001, 1003, 1005, 1006, 1007 and  
1009.)

--o0o--

1 BE IT REMEMBERED that, pursuant to Notice of  
2 Taking Deposition, and on Friday, June 19, 2026,  
3 commencing at 6:00 a.m. PDT thereof, via remote video  
4 teleconference, before me, Burgundy B. Ryan, a Certified  
5 Shorthand Reporter in and for the State of California,  
6 personally appeared

7 DR. KEVIN BUTLER,  
8 a witness called on behalf of PATENT OWNER, and who,  
9 having been first duly sworn by me to testify to the  
10 truth, was examined and testified as follows:

11 COURT REPORTER: We're on the record.

12 Good morning. My name is Burgundy Brooke Ryan,  
13 California CSR License No. 11373.

14 Counsel, please introduce yourselves for the  
15 record?

16 MR. MILKEY: This is James Milkey on behalf of  
17 Patent Owner Headwater with the law firm of Russ August  
18 & Kabat.

19 MR. NEER: Good morning. This is William Neer  
20 and Alex Boyer on behalf of Petitioner Google with the  
21 law firm Finnegan.

22 COURT REPORTER: Thank you both.

23 (Whereupon, the witness was sworn.)

24 COURT REPORTER: Thank you very much.

25 Counsel, you may proceed.

1 KEVIN BUTLER,  
2 having been first duly sworn to tell the whole truth,  
3 testified as follows:

4 EXAMINATION

5 By MR. MILKEY:

6 Q. All right. Good morning, Dr. Butler.

7 Did you do anything to prepare for today's  
8 deposition?

9 A. Good morning.

10 Yes. I -- I reread my -- my declaration and  
11 the notes -- the -- the exhibits that were associated  
12 with it.

13 Q. Okay. And approximately how long did you spend  
14 preparing for today's deposition?

15 A. On the order of 12 to 15 hours or so.

16 Q. Okay. Did you do anything to prepare for  
17 today's deposition other than review your declaration  
18 and the corresponding exhibits?

19 A. I met with counsel a couple of times.

20 Q. Okay. And did you review any other materials  
21 in preparation for today's deposition?

22 A. I looked over the exhibits and I briefly had  
23 access to the previous deposition which I -- I looked  
24 over just to get myself back into remembering questions  
25 and answers.

1 Q. Okay. And do you have access to your  
2 declaration and the associated exhibits?

3 A. Yes.

4 Q. Okay. Feel free to use a clean copy of  
5 anything. I will upload a few exhibits for the  
6 benefit -- for the potential benefit of the court  
7 reporter as we go through the materials.

8 Exhibit 1001 I'm uploading is the '359 patent.  
9 Exhibit 1003 is your declaration. And Exhibit 1005 is  
10 the Shell reference. Exhibit 1006 the Cole reference.  
11 And Exhibit 1007 is the Flack reference.

12 And these are all exhibits that don't need to  
13 be marked on the transcript. These are already of  
14 record in the proceeding.

15 Okay. So, Dr. Butler, I would like to direct  
16 you to paragraph 130 of your declaration. Let me know  
17 when you're there.

18 A. Okay. Okay. Yeah.

19 Q. Okay. And do you see this is the beginning of  
20 your analysis for the -- the dependent Claim 26 in your  
21 combination of Shell and Cole?

22 A. Yes. Yes, that's right.

23 Q. Okay. And so Claim 26 recites, in part,  
24 "Processors are further configured to determine that the  
25 different application is an active application."

1           My question specifically is, what are you  
2     alleging to be the, quote, different application in your  
3     analysis in this section?

4           A.    So -- okay. Within the declaration I lay out  
5     some examples of where in Shell the application in  
6     question is a -- a different application. I can point  
7     to specific references within the declaration if that  
8     would be helpful.

9           Q.    Yeah, if you could give me an example of a  
10    different application in this context, that would be  
11    helpful.

12          A.    Sure. So in paragraph -- I will just  
13    refamiliarize myself with where -- where these are being  
14    discussed.

15                In paragraph 134 I write, "Shell describes that  
16    when a new connection request 510 is made (e.g., when a  
17    user requests the synchronization of an electronic mail  
18    account or a user places a voice call (i.e., a different  
19    application) the connection manager registers that the  
20    user interacted with the email application, which  
21    initiated the request."

22                So in this case the different application is  
23    the email synchronization when it is requested by the  
24    user or the placement of a voice call.

25          Q.    Okay. So let's talk about the situation where

1 the synchronization of an electronic mail account is the  
2 different application.

3 In this context, is -- is that synchronization  
4 of an email account requested by the email  
5 application?

6 A. As I write in this paragraph 134, "The  
7 connection manager registers that the user interacted  
8 with the email application, which initiated the  
9 request."

10 Q. Okay. And to be clear, your theory is that  
11 it's the synchronization of the electronic mail account  
12 that's the different application; correct?

13 MR. NEER: Objection. Form.

14 THE WITNESS: So the -- when a user requests  
15 the synchronization of an email -- electronic mail  
16 account, the email application initiates that request.  
17 So that -- that synchronization request is the different  
18 application when requested by the user.

19 By MR. MILKEY:

20 Q. Okay.

21 A. In this particular context, I should add,  
22 because an application can be -- yeah, I'll -- I'll --  
23 I'll stop.

24 So the answer to your question in this  
25 particular context that's -- that's how -- that's what

1 the different application would be.

2 Q. Okay. So the synchronization of the electronic  
3 email account is the different application.

4 How does the -- how does Shell's system  
5 determine whether the user interacted with the  
6 synchronization of an electronic email account?

7 A. I believe I discuss in -- in the declaration  
8 that "Shell's processor is configured to assess whether  
9 a request is coming from an application that the user is  
10 interacting with as part of the prioritization of  
11 connection requests." I mention that in paragraph 133  
12 of the declaration.

13 Q. Okay. So I understand that it is your opinion  
14 that the system determines -- for example, in paragraph  
15 134 you state that, "The connection manager registers  
16 that the user interacted with the email application."

17 My question is, how does Shell determine that  
18 the user interacted with the synchronization of an  
19 electronic mail account?

20 MR. NEER: Objection. Form.

21 THE WITNESS: Okay. I believe this is best  
22 described in the previous paragraph 133 where I talk  
23 about the user input has a way of activating an  
24 application. As I say, "In certain circumstances like a  
25 phone call or web browsing, the processor would only

1 provide these applications with an Internet connection  
2 when they are in use."

3 In particular, Shell's disclosure that  
4 "Activating a control in a user interface, for example,  
5 a button, a drop down list or other elements may  
6 initiate such requests."

7 By MR. MILKEY:

8 Q. Okay. And is it your opinion that a  
9 synchronization of an electronic email account in your  
10 proposed permeation of Shell and Cole that  
11 synchronization would be given a higher priority if the  
12 user initiated that email synchronization as opposed to  
13 if the user did not initiate that email  
14 synchronization?

15 MR. NEER: Objection. Form.

16 THE WITNESS: Again, I believe I talk about  
17 synchronization within the declaration itself when I  
18 discuss, you know, synchronization in the context of a  
19 particular or different application. I write, "Indeed"  
20 -- it's in paragraph, if I remember correctly -- just  
21 let me scroll back a couple of paragraphs here.

22 In paragraph 126 I write, "Indeed, email  
23 synchronization may be a particular or different  
24 application based on whether 'a user specifies the  
25 synchronization by activating a control in a user

1 interface.'" "

2 Q. Okay. Okay. So that's including paragraph 14  
3 of Shell; correct?

4 A. Yes, that's right.

5 Q. Okay. So if you could open up Shell -- again,  
6 that is Exhibit 1005 -- and turn to paragraph 14. And  
7 let me know when you're there.

8 A. Okay. Yeah, I'm there.

9 Q. Okay. So as I read it, paragraph 14 of Shell  
10 discloses that "A user specifying the synchronization of  
11 an electronic mail account by activating a control in a  
12 user interface" is one way that a synchronization  
13 process can be initiated.

14 Where does Shell disclose that if the user  
15 specifies the synchronization through a user interface,  
16 that synchronization will be given higher priority than  
17 if the user did not specify the synchronization in a  
18 user interface?

19 MR. NEER: Objection. Form.

20 THE WITNESS: I think this is in the context  
21 of -- of Shell further describes the assignment of  
22 priorities to a network connection requests. So -- but  
23 I think it would probably be best to look at that part  
24 of Shell to be able to fully answer your question.

25 By MR. MILKEY:

1           Q.    Yeah, if you could tell me where Shell  
2 discloses that the prioritization of the synchronization  
3 would be based on whether or not the user specified the  
4 synchronization, I would appreciate it.

5           MR. NEER:  Objection.  Form.

6           THE WITNESS:  If we look at paragraph 57 in  
7 Shell, then Shell states that "Priorities may also be  
8 assigned to connection requests based on the current  
9 state of applications associated with the connection  
10 requests.  For example, a request from an application  
11 that is currently active may be assigned a higher  
12 priority than a request from an application running in  
13 the background."

14       By MR. MILKEY:

15           Q.    Okay.  So is -- is paragraph 57 -- strike that.

16                   Is the portion of paragraph 57 that you just  
17 discussed saying that if the email application is  
18 currently active then a synchronization request  
19 initiated by that email application might be given  
20 higher priority?

21           A.    Yeah, to reiterate, what's -- what's in this  
22 paragraph, it clarifies that a request from an  
23 application that is currently active may be -- may be  
24 assigned a higher priority than a request from an  
25 application running in the background.

1           So if a user is making -- performing a  
2       synchronization through the user interface, that implies  
3       that the application is active compared to an  
4       application running in the background.

5           Q.    Okay.  It's possible for a user to be using an  
6       email application without requesting an email  
7       synchronization; correct?

8           MR. NEER:  Objection.  Form.

9           THE WITNESS:  In the context of -- in the  
10       context of Shell's disclosure, the discussions about a  
11       user specifying the synchronization of an email -- an  
12       electronic mail account by activating a control in a  
13       user interface.  So I -- I -- I can't really comment on  
14       the -- the -- every way in which an email application  
15       can be used, but it's clear that there is at least a  
16       means by which a user can specify the synchronization of  
17       that electronic mail account that belong to the -- that  
18       user interface.

19       By MR. MILKEY:

20           Q.    Okay.  I'm -- I'm not asking you to specify  
21       every way in which an email application can be used.  
22       I'm asking something fairly specific, which is whether  
23       it is possible in the context of Shell's disclosure for  
24       a user to be using an email application without  
25       specifying the synchronization of the email account

1 through a user interface?

2 MR. NEER: Objection. Form.

3 THE WITNESS: And -- and, again, in my -- my  
4 analysis of these claims was limited to considering what  
5 is -- what is disclosed with regards to user  
6 synchronization. I haven't specifically contemplated  
7 all of the ways in which a user may use an email  
8 application.

9 By MR. MILKEY:

10 Q. Okay. So I understand that you haven't  
11 contemplated all of the ways in which a user may use an  
12 email application. Is it your testimony that you  
13 haven't contemplated whether a user can be using email  
14 application without specifying the synchronization of an  
15 email account through a user interface?

16 MR. NEER: Objection. Form.

17 THE WITNESS: I have not specifically  
18 considered in the context of the claims the ways in  
19 which Shell's disclosure about -- about this paragraph  
20 discusses the claims. I haven't necessarily considered,  
21 as I said, the -- the potential many ways in which one  
22 could practice the -- the creation of the use of an  
23 email app.

24 By MR. MILKEY:

25 Q. Do you have any opinion whether in the context

1 of Shell's disclosure a user can be using an email  
2 application without specifying the synchronization of an  
3 email account through a user interface?

4 MR. NEER: Objection. Form.

5 THE WITNESS: I don't recall in Shell whether  
6 that -- whether those alternative modes of operation of  
7 the email application are disclosed.

8 What I am able to discuss is what's -- what's  
9 in the -- in the written description here of about --  
10 relating to the synchronization of an email account by  
11 activating a control in the user interface.

12 By MR. MILKEY:

13 Q. Okay. Do you have any opinion whether in the  
14 context of Shell it's possible for an email  
15 synchronization to occur without a user having specified  
16 the synchronization of the email account through a user  
17 interface?

18 MR. NEER: Objection. Form.

19 THE WITNESS: I believe I -- I discuss that  
20 elsewhere in my declaration, if -- if -- if you will let  
21 me go back to -- go back to that.

22 MR. MILKEY: Yeah, absolutely.

23 THE WITNESS: So to reiterate what I -- what I  
24 previously discussed about email synchronization, I  
25 discuss in paragraph 126, "For example, sync engine 202

1 may wish to synchronize an electronic mail, (i.e., a  
2 particular application) account only when a connection  
3 to the Internet has been established for another  
4 application (i.e., a different application). Indeed,  
5 email synchronization may be a particular or different  
6 application based on whether a user specifies the  
7 synchronization by activating a control in a user  
8 interface."

9 And further, "These disclosures reveal that  
10 Shell contemplates that certain applications (and their  
11 requests for network connection), such as email, may be  
12 initiated by the user or done automatically."

13 By MR. MILKEY:

14 Q. Okay. That's helpful.

15 So you mentioned that the email synchronization  
16 can either be initiated by the user or done  
17 automatically. Do you have any opinion as to whether in  
18 the context of Shell it is possible for an email  
19 synchronization to be done automatically while the user  
20 is reading an email message?

21 MR. NEER: Objection. Form.

22 THE WITNESS: I think that's not the -- that  
23 may be an -- an implementation detail of -- of the  
24 application but that the synchronization by activating a  
25 control in the user interface is -- is what is

1 disclosed, and that's surely the -- the -- the way in  
2 which I've opined about -- about the use of the email  
3 application.

4 By MR. MILKEY:

5 Q. Okay. Okay. I'm not sure I understand your  
6 answer because your -- your paragraph 126 says that "a  
7 request may be initiated by the user or done  
8 automatically."

9 A. Right.

10 Q. And my question specifically is whether an  
11 email synchronization request can be done automatically  
12 while the user is using the email application to read an  
13 email message.

14 MR. NEER: Objection. Form.

15 THE WITNESS: So the email synchronization in  
16 this context is -- can be based on the user activating a  
17 control in the user interface. Again, it's -- I don't  
18 want to -- I don't want to mischaracterize the -- the  
19 number of ways in which an email application can be used  
20 but it's clear that a user interacting with an email  
21 application has that application as active because they  
22 are -- they are interacting with it and so  
23 synchronization by activating a controlled user  
24 interface is a means by which the user would be -- would  
25 be interacting with that email application.

1 By MR. MILKEY:

2 Q. Okay. So you -- you agree, right, that email  
3 synchronization may be done automatically as opposed to  
4 being initiated by the user; right?

5 MR. NEER: Objection. Form.

6 THE WITNESS: I write that Shell contemplates  
7 that certain applications and their requests for network  
8 connection, such as email, may be initiated by the user  
9 and done automatically.

10 By MR. MILKEY:

11 Q. So is it your opinion that in the context of  
12 Shell email synchronization may be done automatically as  
13 opposed to being initiated by the user?

14 MR. NEER: Objection. Form.

15 THE WITNESS: And this is really context  
16 dependent in terms of how the -- with the particular  
17 implementation of the email program. But the larger  
18 point is that if I'm a user -- if a user has interacted  
19 with their email application to synchronize an  
20 email, then that is -- that is something that is --  
21 was -- what was initiated by the user. And, yes, it  
22 is -- certain applications may have activities that  
23 are -- that are done automatically as well.

24 By MR. MILKEY:

25 Q. Okay. In the context of -- strike that.

1 Do you know whether Shell discloses whether or  
2 not an email synchronization can be done automatically?

3 MR. NEER: Objection. Form.

4 THE WITNESS: I believe that Shell -- and if  
5 I -- I went back to Shell and the disclosures that are  
6 in there to best answer your question.

7 So Shell contemplates -- Shell describes that  
8 applications can run in the background, in particular,  
9 paragraph 57. "For example, a request from an  
10 application that is currently active may be assigned a  
11 higher priority than a request from an application  
12 running in the background."

13 And email is an example of an application that  
14 can run on Shell. And there Shell discloses application  
15 modules such as a messaging application. So given that  
16 email is an application that runs on Shell and Shell  
17 describes applications running in the background, the --  
18 an email application running in the background seems to  
19 be generally in the scope of what would be discussed by  
20 Shell.

21 By MR. MILKEY:

22 Q. Okay. If a user is using an email application  
23 to read an email message, would the email application be  
24 currently active or would the email application be  
25 considered to be running in the background?

1 MR. NEER: Objection. Form.

2 THE WITNESS: I'm sorry, could you restate the  
3 question?

4 By MR. MILKEY:

5 Q. Yeah. I'm trying to understand what you  
6 understand Shell to mean when it distinguishes between  
7 an application being currently active or running in the  
8 background.

9 And my question is, do you have any opinion as  
10 to whether Shell's teachings would consider an email  
11 application that is being actively used by a user to  
12 read an email message to be an active application or  
13 instead to be running in the background?

14 MR. NEER: Objection. Form.

15 THE WITNESS: So I think again this is probably  
16 best answered in the context of paragraph 57 from  
17 Shell, which states, for a request an application -- a  
18 request from an application that is currently active may  
19 be assigned a higher priority than a request from an  
20 application running in the background.

21 And so, as I believe I've discussed in my  
22 declaration -- well, if a user is interacting with an  
23 application is the question that I -- and perhaps I'm a  
24 little confused here. Can you -- can you clarify what  
25 you mean by the distinguishing of active versus

1 background in the context of an email app?

2 (Court Reporter clarification.)

3 THE WITNESS: Of the active versus background  
4 with regards to the email app.

5 By MR. MILKEY:

6 Q. So my understanding is that it's -- it's your  
7 opinion that paragraph 57 of Shell discloses a  
8 distinction between applications that are currently  
9 active on one hand and applications that are running in  
10 the background on the other hand.

11 And my question is, if a user is using an email  
12 application to read an email, which of those two  
13 categories does the email application fall into, in your  
14 opinion?

15 MR. NEER: Objection. Form.

16 THE WITNESS: My opinion is if the user is  
17 actively using the email application, then the  
18 application is not running in the background. But  
19 it's not -- again, I think it's -- there -- there --  
20 there's many ways in which applications can be -- can be  
21 implemented, but there is no specific discussion  
22 of active -- with regards to application in the -- in  
23 this or in the '359 itself. So I would say though that  
24 an active -- an active application is one -- a user  
25 interacting with an -- an application would -- would

1 make that application considered to be active.

2 By MR. MILKEY:

3 Q. Okay. Okay. If you can please turn to  
4 paragraph 132 of your declaration and let me know when  
5 you're there.

6 A. Okay.

7 Q. The last sentence of your paragraph 132  
8 states, "And the currently active requests include those  
9 initiated by a user."

10 My question is, what do you mean by "currently  
11 active requests" in this sentence?

12 A. I believe this is in the context of -- of  
13 paragraph 57 of Shell as well as I discuss in this  
14 paragraph, I say, "This includes assigning priorities at  
15 least 'based on the current state of applications  
16 associated with the connection requests;' for example, a  
17 request for an application that is currently active may  
18 be assigned a higher priority than a request from an  
19 application running in the background."

20 Q. Okay. So I'm still a little confused as to  
21 what you mean by "currently active requests" in this  
22 sentence. Are -- are you meaning that to mean requests  
23 from an application that is currently active or are you  
24 intending to mean something else with that?

25 MR. NEER: Objection. Form.

1           THE WITNESS: I think the distinguishing factor  
2 here is as written in the Shell, "request from an  
3 application that is currently active may be assigned a  
4 higher priority than a request from an application  
5 running in the background." So currently active would  
6 refer to applications that are -- that -- that -- that  
7 are distinguished from applications running in the  
8 background.

9 By MR. MILKEY:

10       Q. Okay. So currently active requests then would  
11 mean requests from applications that are currently  
12 active?

13       MR. NEER: Objection. Form.

14       THE WITNESS: In this case we're discussing  
15 requests coming from applications that are currently  
16 active. So when I say and the currently active requests  
17 include those initiated by the user, it's in the context  
18 of requests from applications that are currently  
19 active.

20 By MR. MILKEY:

21       Q. Do you have any opinion as to whether Shell's  
22 disclosure allows for an email synchronization to be  
23 done automatically while the user is actively using the  
24 email application to read an email?

25       MR. NEER: Objection. Form.

1           THE WITNESS: I haven't specifically analyzed  
2 or contemplated all of the ways in which that modality  
3 would -- that could potentially occur, so I -- I would  
4 be hesitant to -- to specifically opine on it right  
5 now.

6 By MR. MILKEY:

7           Q. Okay. Okay. Okay. Could you please turn to  
8 paragraph 146 of your declaration and let me know when  
9 you're there.

10          A. Okay. I'm there.

11          Q. Okay. And you see that paragraph 146 is the  
12 beginning of your Ground 3 analysis; correct?

13          A. Yes, that's correct.

14          Q. Okay. For your Ground 3 analysis, what are you  
15 mapping to the, quote, different application of claim  
16 26?

17          A. In paragraph 147 you say?

18          Q. It -- paragraph 147 I think touches on it. I  
19 think paragraph 152 also potentially touches on it. But  
20 my question is just generally in your Ground 3 analysis,  
21 what are you alleging satisfies the, quote, different  
22 application requirement?

23          A. I think what the -- my analysis in this section  
24 is consistent with the analysis that I had with regards  
25 to those applications from previous grounds. I -- I --

1 I do specifically say as discussed above about how Shell  
2 teaches -- in paragraph 147 "teaches that a request from  
3 application (i.e., a different application) that is  
4 currently active may be assigned a higher priority than  
5 a request from a application (i.e., particular  
6 application) running in the background."

7 So there's -- I guess I'm not specifically  
8 clear on -- on your -- your ask about a specific mapping  
9 because the mappings are generally consistent with what  
10 I had previously discussed about in -- in the previous  
11 grounds.

12 Q. Okay. So I -- I guess I want to clarify. Is  
13 it your opinion that the request -- strike that.

14 I want to clarify in your -- in your Ground 3  
15 analysis whether it's the request from an application  
16 that would be the different application or whether it's  
17 the application itself that would be the different  
18 application and then that application would initiate a  
19 request?

20 MR. NEER: Objection. Form.

21 THE WITNESS: I think, again, my -- my analysis  
22 of this -- these grounds are -- are consistent with what  
23 I've described previously in that, just as I previously  
24 discussed in the declaration, that it is a -- an  
25 application could be a particular or a different

1 application depending on the context of how the  
2 application is being used.

3 By MR. MILKEY:

4 Q. Okay. So I don't think that quite answered my  
5 question. I think my question is pretty  
6 straightforward, which is, is it the request from an  
7 application that you're alleging would be the, quote,  
8 different application in your Ground 3 analysis or is it  
9 instead the application that makes the request that you  
10 allege would be the, quote, different application in  
11 your Ground 3 analysis?

12 MR. NEER: Objection. Form.

13 THE WITNESS: As I write in paragraph 147, I  
14 write, "In other words, Shell describes that the request  
15 may be based on a user's interaction with the device  
16 allowing its processor to determine that the different  
17 application is active."

18 So that -- that is my consideration with  
19 regards to the different application is a different  
20 application that is currently active.

21 By MR. MILKEY:

22 Q. Okay. So that would be a currently active  
23 application that would initiate some sort of  
24 request, not the request itself that would be the  
25 different application?

1 MR. NEER: Objection. Form.

2 THE WITNESS: I believe I discuss the  
3 applications in question that are in context of -- of  
4 what is disclosed by -- by Flack in paragraph 148 of the  
5 declaration.

6 By MR. MILKEY:

7 Q. Okay. So -- so what's an example of what --  
8 strike that.

9 What's an example of what would constitute the,  
10 quote, different application in your Ground 3 analysis?

11 A. Again, in paragraph 147 I discuss, "Shell  
12 teaches that 'a request for an application (i.e., a  
13 different application) that is currently active may be  
14 assigned a higher priority," and that, "In other words,  
15 Shell describes that the request may be made based on a  
16 user's interaction with the device allowing its  
17 processor to determine that the different application is  
18 active."

19 And then in paragraph 148 I put this in further  
20 context in -- with -- with Flack with regards to the  
21 discussion that "Some of these applications may  
22 represent user applications that a user has launched in  
23 attempting to retrieve information from the Internet,  
24 (e.g., a web browser, an email application, or an  
25 instant messaging application)."

1 By MR. MILKEY:

2 Q. Okay. So would an email application be an  
3 example of the, quote, different application in the  
4 context of your Ground 3 analysis?

5 A. Flack -- in the paragraph I further go on to  
6 say, "If the client determines that communications  
7 activity represents user actions, the client may  
8 establish network connectivity," et cetera. So the user  
9 interface in the application -- in the creation of that  
10 request constitutes the different application.

11 Q. Okay. So it's not the email application that  
12 constitutes the different application?

13 MR. NEER: Objection. Form.

14 THE WITNESS: As I say in paragraph 147, "Shell  
15 teaches that 'a request for an application (i.e., a  
16 different application) that is currently active may be  
17 assigned a higher priority.'" So the different  
18 application refers to the request from -- from an  
19 application. But that those requests "may come from a  
20 user activating a control in a user interactive  
21 interface."

22 By MR. MILKEY:

23 Q. Okay. So in your Ground 3 analysis, like in  
24 your ground -- well, I should say, your Ground 3  
25 analysis, like in your combination of Shell and Cole,

1 it's the request from the application that constitutes  
2 the different application, not an application itself  
3 that constitutes the different application?

4 MR. NEER: Objection. Mischaracterization.  
5 Form.

6 THE WITNESS: Yeah, I think I -- I -- I state  
7 it most clearly in that paragraph 147 about as  
8 discussed -- as discussed about Shell teaches that a  
9 request for an application (i.e., a different  
10 application) that is currently active may be assigned a  
11 higher priority than a request from an application  
12 running in the background."

13 So the request from the application, the  
14 application is the different application "that is  
15 currently active may be assigned a higher priority than  
16 a request from an application (i.e., a particular  
17 application) that is running in the background."

18 So, yeah, it's just -- just to ensure that we  
19 are clear, the request from the email application. The  
20 email application is a different application that is  
21 making a request compared to an application, i.e., a  
22 particular application running in the background.

23 By MR. MILKEY:

24 Q. Okay. So -- sorry to ask you another  
25 clarifying question. I think we are on the same page

1 but your answer was still a little bit confusing for me.  
2 I just want to understand.

3 In your Ground 3 analysis, is it the, quote,  
4 request from an application, unquote, that is the  
5 different application or is it the application making  
6 the request that is the, quote, different application?

7 A. Yeah, the -- the application is the application  
8 and the request is the request that comes from the  
9 application.

10 Q. Okay. So in your Ground 3 analysis, the  
11 different application is the application making the  
12 request, not the request itself?

13 A. Yeah. I think this is -- this is -- this is  
14 consistent with -- with what I've discussed in my  
15 declaration is that the -- the applications -- the  
16 particular and different applications refer to the  
17 applications and the applications make requests.

18 Q. Okay. Okay. We have been going for a little  
19 over an hour. Is now an okay time for a break?

20 A. That works for me, yeah.

21 MR. NEER: Yes.

22 COURT REPORTER: We're off the record.

23 (Recess.)

24 COURT REPORTER: We're back on the record.

25 Counsel, you may proceed.

1 MR. MILKEY: Thank you.

2 By MR. MILKEY:

3 Q. Okay. Dr. Butler, could you please turn to  
4 paragraph 149 of your declaration and let me know when  
5 you're there.

6 A. I'm there.

7 Q. Okay. So in your combination of Shell and Cole  
8 with Flack, does that combination involve implementing  
9 Flack's determination of application status based on  
10 user activity?

11 A. Yes. As I write in paragraph 149, for example,  
12 a POSITA would have implemented "Flack's 'determination  
13 that communications activity represents user actions' as  
14 part of the Shell-Cole's decision logic.

15 Q. Okay. And so I'll explore -- strike that.  
16 How does Flack actually determine whether a  
17 user is interacting with an application?

18 MR. NEER: Objection. Form.

19 THE WITNESS: I believe it's discussed in --  
20 in the -- in Flack itself. So I can go to that  
21 reference if that would be helpful.

22 By MR. MILKEY:

23 Q. Yes, that would be helpful. Thank you.

24 A. All right. So in paragraph 50 of Flack,  
25 paragraph 50 states, "The client identifies an

1 application associated with the communications activity.  
2 Identifying an application may include identifying the  
3 source of the communications activity." Further on in  
4 the paragraph, "Some of these applications may request  
5 user applications that a user has launched in an attempt  
6 to retrieve information from the Internet." It goes on  
7 to differentiate those from other -- other applications.

8 Q. Okay. And how does -- how does Flack actually  
9 determine whether an application was launched in  
10 attempting to retrieve information from the Internet as  
11 opposed to not being launched in that manner?

12 MR. NEER: Objection. Form.

13 THE WITNESS: Flack itself goes into detail  
14 about its identification routine in terms of how it  
15 identifies particular applications, for example, based  
16 on their traffic profile or identifying how the  
17 application is being used and identifying -- potentially  
18 accessing information of which communications could have  
19 represented user actions.

20 By MR. MILKEY:

21 Q. Okay. Could you clarify where in Flack that  
22 discussion takes place?

23 A. Sure. So paragraph 51 of Flack discusses that  
24 "Identifying the application may include generating a  
25 traffic profile for the communications activity (e.g.,

1 TCP port number, application layer parameter) and  
2 looking up the traffic profile in a list of  
3 applications. Paragraph 52 discusses "Identifying the  
4 applications may -- also may include identifying how the  
5 application is being used." Application -- in  
6 particular paragraph 53 states, "Identifying an  
7 application may include accessing information indicative  
8 of which communications represent user actions."

9 Q. Okay. So I think the last -- the last portion  
10 of Flack that you quoted from was in paragraph 53;  
11 correct?

12 A. Yes.

13 Q. Okay. And then paragraph -- the next sentence  
14 of paragraph 53 states, "For example, a communications  
15 configuration may indicate that a range of protocols are  
16 used by an application and that a subset of protocols  
17 within the range of protocols represents user  
18 activities."

19 Do you see that?

20 A. Yes.

21 Q. Okay. And can you please turn to paragraph 28  
22 of Flack and let me know when you're there.

23 A. Okay. I'm there.

24 Q. Okay. And actually, just for context, the very  
25 last sentence of paragraph 27 states, "Note also that

1 GUI 100 and table 200 use different traffic descriptions  
2 (e.g., port numbers) for some of the applications (e.g.,  
3 email)."

4 And so my understanding is that paragraph 28  
5 goes on to give some examples of how traffic  
6 descriptions or port numbers can be used in the context  
7 of an email application. And I want to direct you to  
8 paragraph 28 which the second sentence says, "Mail  
9 settings 210 indicate that three ports are being used  
10 (1015, 1016, and 1017) for three different activities  
11 (mailbox, send message, and receive message)."

12 Do you see that?

13 MR. NEER: Objection. Form.

14 THE WITNESS: Yes.

15 By MR. MILKEY:

16 Q. Okay. And then the following sentence  
17 says, "Mailbox communications do not represent user  
18 activities while send message and receive message are  
19 determined to represent user activities."

20 Do you see that?

21 A. Yes.

22 Q. Okay. Okay. So is it correct that Flack  
23 determines whether certain activities initiated by an  
24 application represent user activities by looking at the  
25 port numbers being used for those activities?

1 MR. NEER: Objection. Form.

2 THE WITNESS: I think that paragraph 28 in  
3 Flack gives an example of when determination of user  
4 activities.

5 By MR. MILKEY:

6 Q. Okay. So in the context of paragraph 28, if an  
7 email application is attempting to send a mailbox  
8 communication, would Flack determine that the email  
9 application is not interacting with the user?

10 MR. NEER: Objection. Form.

11 THE WITNESS: I'm sorry. To give an answer to  
12 why I didn't specifically analyze Flack in isolation, I  
13 analyzed it in the context of the Shell-Cole  
14 construction as I discussed in my -- in my  
15 declaration.

16 By MR. MILKEY:

17 Q. Okay. So you don't know in the context of  
18 Flack whether an email attempting to send a mailbox  
19 communication would be determined to be not interacting  
20 with the user; correct?

21 MR. NEER: Objection. Form.

22 THE WITNESS: So is the -- is your question  
23 with regards to Flack or with regards to the larger  
24 context of Flack as part of the Shell-Cole construction?

25 By MR. MILKEY:

1           Q.    Let's start with Flack.  I'm not quite sure how  
2           those two questions are different given that your  
3           paragraph 149 says, "A POSITA would have found it  
4           obvious to implement Flack's determination of  
5           application status based on user activity," but let's  
6           start with Flack.

7                     My question is, you don't know in the context  
8           of Flack whether an email attempting to send a mailbox  
9           communication would be determined to be not interacting  
10          with the user; correct?

11                    MR. NEER:  Objection.  Form.

12                    THE WITNESS:  I want to -- I want to go back to  
13          paragraph 149 because the -- the sentence is that "A  
14          POSITA would have found it obvious to implement Flack's  
15          determination of application status based on user  
16          activity as part of Shell-Cole's traffic policy related  
17          to regular connection requests and piggyback requests."

18                    So I think that the consideration of Flack  
19          is -- is also in the larger context of the Shell-Cole  
20          decision logic with regards to my declaration.  I'm  
21          happy to talk about Flack in isolation, but I want to  
22          just layout when I discussed it in my declaration,  
23          it's -- it's in the context of part of Shell-Cole's  
24          traffic policy.

25          By MR. MILKEY:

1           Q.    Okay.  So, yeah, let's talk about Flack as an  
2   initial owner.

3                   Do you know in the context of Flack whether an  
4   email application attempting to send a mailbox  
5   communication would be determined to be not interacting  
6   with the user?

7           MR. NEER:  Objection.  Form.

8           THE WITNESS:  That's -- that's really not an  
9   analysis that I did as part of my declaration so I  
10   wouldn't -- I wouldn't be able to -- to specifically  
11   tell you and I don't believe that interaction is in this  
12   particular paragraph --

13   By MR. MILKEY:

14           Q.    Okay.

15           A.    -- with regards to mailbox communications.

16           Q.    Okay.  So in your -- in your proposed  
17   combination, how does Flack's determination of  
18   application status -- strike that.

19                   How does Flack determine application status  
20   based on user activity?

21           A.    Well, to -- to the previous discussion, the  
22   paragraph 50 in Flack and then the subsequent paragraphs  
23   discusses the identification of applications by Flack,  
24   including the -- the identification of the application  
25   identifying how it's being used and information

1       indicative of communications representing user actions.

2           Q.     Okay.  So I understand that paragraph 50 in  
3       Flack and subsequent paragraphs talk about that there is  
4       information indicative of user actions.

5                   My question is, specifically, how does Flack  
6       make any specific determination of application status  
7       based on user activity?

8           MR. MILKEY:  Objection.  Form.

9           THE WITNESS:  I didn't specifically analyze  
10      this in my declaration, but, again, I think there --  
11      there -- there are paragraphs within Flack that discuss  
12      for different types of applications the communications  
13      that represent user actions.

14   By MR. MILKEY:

15           Q.     Okay.  That -- that's not quite my question.

16                   My question is, where does Flack describe  
17      making a specific determination of application status  
18      based on user activity?

19           MR. NEER:  Objection.  Form.

20           THE WITNESS:  Flack discusses communications  
21      that represent user actions in one -- in one example.

22   By MR. MILKEY:

23           Q.     Okay.  And it's your opinion that because  
24      certain communications represent user actions that Flack  
25      discloses making a determination of application status

1 based on user activity?

2 MR. NEER: Objection. Form.

3 THE WITNESS: Well, Flack specifically  
4 describes, and that's like right in the -- in my  
5 declaration in -- in paragraph 148 with regards to  
6 Flack. "If the client determines that communications  
7 activity represents user actions, the client may  
8 establish network connectivity by, for example,  
9 establishing a dialup connection, so that the client may  
10 support the user activity within the user application."

11 By MR. MILKEY:

12 Q. Okay. And so it's your opinion that by  
13 determining whether certain communication activities  
14 represent user activity that Flack thereby makes a  
15 determination of application status based on user  
16 activity?

17 MR. NEER: Objection. Form.

18 THE WITNESS: And maybe this is -- maybe this  
19 is better put into the context of -- of what I write in  
20 the declaration about that determination of application  
21 status based on user activity.

22 At paragraph 149 I write, "For example, a  
23 POSITA would have implemented Flack's determination that  
24 communications activity represents user actions as part  
25 of Shell-Cole's decision logic that makes priority

1 determinations based on, in-part, a request from an  
2 application that is currently active."

3 So, yes, to the extent that Flack makes a  
4 determination of a user -- user activity representing  
5 interaction between the user and -- and the activity,  
6 but that -- that -- but it would be in a larger context  
7 as part of Shell-Cole's larger decision logic. So Flack  
8 make its own determination but it's -- it is used in the  
9 context of priority determinations that -- that include  
10 other factors as well.

11 By MR. MILKEY:

12 Q. Okay. So just in the context of Flack  
13 again, setting aside the combination, it's your opinion  
14 that Flack's determining whether certain communication  
15 activities represent user activity constitutes a  
16 determination of application status based on user  
17 activity?

18 MR. NEER: Objection. Form.

19 THE WITNESS: Again, to go back to paragraph 53  
20 in Flack, Flack specifies identifying an application  
21 which may include accessing information indicative of  
22 which communications represent user actions. So a  
23 subset of protocols within the range of protocols  
24 representing user activities. So that determination of  
25 user activity is made by Flack through -- through those

1 mechanisms.

2 By MR. MILKEY:

3 Q. Okay. And specifically it's your opinion that  
4 that constitutes a determination of application status  
5 based on user activity?

6 MR. NEER: Objection. Form.

7 THE WITNESS: I would say that that constitutes  
8 Flack's determination of application status based on  
9 user activity.

10 By MR. MILKEY:

11 Q. Okay. So if we look at figure 2 of Flack --  
12 and, like, if you could turn to figure 2 and let me know  
13 when you're there.

14 A. Okay. Yep, I'm there.

15 Q. Okay. So in the context of Flack's figure 2  
16 under "Mail Settings," if the email application is  
17 receiving an email over port 1017, does that constitute  
18 a determination by Flack that the application -- the  
19 email application is an active application?

20 MR. NEER: Objection. Form.

21 THE WITNESS: I don't believe that I've -- I've  
22 opined on that in my declaration so I'd -- I'd need to  
23 give it some original -- some additional thought.

24 By MR. MILKEY:

25 Q. Okay.

1           A.    And it could be contextually dependent as  
2 well.

3           Q.    Okay. Turning to paragraph 28 of Flack. And  
4 let me know when you're there.

5           A.    Okay. I'm there.

6           Q.    And do you see -- I think it's the third  
7 sentence of this paragraph states, "Mailbox  
8 communications do not represent user activities while  
9 'send message' and 'receive message' are determined to  
10 represent user activities?"

11          A.    Yes, I see that.

12          Q.    Okay. So in -- in the context of figure 2 and  
13 paragraph 28, do you have any opinion as to whether if  
14 the email application is receiving an email over port  
15 1017, that that constitutes a determination by Flack  
16 that the email application is an active application?

17               MR. NEER: Objection. Form.

18               THE WITNESS: Once again, I didn't -- I didn't  
19 specifically opine on this in my -- in my declaration so  
20 I can only refer to what is -- what is -- what is  
21 written here in terms of send and receive message are  
22 determined to represent activities. And with the caveat  
23 that this is -- this is Flack's determination solely.  
24 And as I said, in the larger context of my declaration,  
25 Flack's determination is -- is part of the overall

1 context.

2 By MR. MILKEY:

3 Q. Okay. Under what circumstances would Flack  
4 determine that an email application is an active  
5 application?

6 MR. NEER: Objection. Form.

7 THE WITNESS: I think I discuss this in my  
8 declaration in -- in -- in paragraph 149 where I discuss  
9 "A POSITA would have implemented Flack's determination  
10 that communications activity represents user actions as  
11 part of Shell-Cole's decision logic."

12 By MR. MILKEY:

13 Q. Okay. So you agree, right, that if an email  
14 application in Flack is receiving an email over port  
15 1017 that that reception of an email represents user  
16 actions according to Flack; right?

17 A. I'd say that is part of Flack -- that is  
18 Flack's determination which would be part of the larger  
19 decision logic if implemented as part of the Shell-Cole  
20 construction.

21 Q. Okay. But sitting here today you can't --  
22 strike that.

23 Sitting here today you don't have an opinion as  
24 to whether an email application receiving an email over  
25 port 1017 would lead to a determination by Flack that

1 the email application is an active application?

2 MR. NEER: Objection. Form.

3 THE WITNESS: Once again, I didn't -- I didn't  
4 specifically analyze this aspect of -- of -- of what is  
5 discussed. I don't opine specifically on that within my  
6 declaration. I can say that Flack makes a determination  
7 that communications -- Flack's determination that  
8 communications activity represents user actions is  
9 certainly something that is done within Flack.

10 By MR. MILKEY:

11 Q. Okay.

12 A. All right. I -- I should also add that again I  
13 analyzed Flack in the context of -- of the larger  
14 combination of both Shell and Cole.

15 Q. Okay. In your proposed combination of Flack  
16 with Shell and Cole, how would the combined system  
17 determine whether synchronizing email is something that  
18 was initiated by the user or something that was done  
19 automatically?

20 MR. NEER: Objection. Form.

21 THE WITNESS: I think this becomes clear in the  
22 context of -- of my declaration so if I go back to  
23 paragraph 149 in my declaration and I talk about the  
24 decision flow described in Shell, I mention "an  
25 application that is operating in the background (i.e., a

1 particular application) would be notified of a change in  
2 availability of resources and connection status."

3 So as discussed in -- in previous, you know,  
4 with regards to the previous grounds we talked about  
5 Shell being able to make a determination of an  
6 application operating in the background versus being  
7 active and so that -- so when we consider the  
8 combination that we'd have to -- we'd have to have a  
9 consideration of the entire decision logic and  
10 associated policy.

11 By MR. MILKEY:

12 Q. How does -- how does any teaching of Flack  
13 actually change the decision logic in -- in your  
14 proposed combination -- strike that.

15 Basically what -- what I hear you saying is  
16 that Shell discloses how to do this and I don't  
17 understand what you're actually relying on from Flack to  
18 relate to any determination of whether an application is  
19 an active application. Can you clarify that?

20 MR. NEER: Objection. Form.

21 THE WITNESS: I think we've, again, with --  
22 with Flack we've really just been -- we've been focused  
23 on one -- one example of client communication but there  
24 are -- there are others that are -- that are disclosed  
25 in Flack and I think it becomes a little clearer. With

1     that being said, Flack provides -- provides  
2     implementation detail and provides additional context  
3     with regards to activities that can be used by the  
4     Shell-Cole decision logic. So I think it -- it adds --  
5     it adds to the -- to the larger context that the -- that  
6     the Shell-Cole construction would have.

7     By MR. MILKEY:

8             Q.     Okay. Other than generally adding to the  
9     larger context of the Shell-Cole combination, can you  
10    tell me specifically what you're alleging would be  
11    modified -- what in Shell would be modified in view of  
12    Flack?

13            MR. NEER: Objection. Form.

14            THE WITNESS: Again, I think as I -- as I write  
15    in paragraph 149, the implementation from Flack, it  
16    would be a part of Shell-Cole's decision logic.

17    By MR. MILKEY:

18            Q.     How?

19            A.     Well, Flack itself makes a determination --  
20    distinguishes between user applications -- give me a  
21    minute. I just want to make sure I'm providing the  
22    right words here.

23                    So again -- so again to -- to paragraph 53 of  
24    Flack, "Identifying an application which -- may --  
25    include accessing information indicative of which

1     communications represent user actions." And an example  
2     is given of certain activities, but "In contrast, other  
3     communications activity may be identified as originating  
4     from system programs (e.g., operating system updates) or  
5     from unidentified or unauthorized programs (e.g.,  
6     spyware)."

7             So, you know, a classification of user actions  
8     versus system activity would be an implementation that  
9     could be added into -- as a step within the Shell-Cole  
10    decision logic.

11    Q.     Okay. But how would the classification of user  
12    actions versus system activity be added as a step within  
13    the Cole -- the Shell-Cole decision logic?

14    A.     I'm not sure that I understand what you're --  
15    what you're asking me for. Are you asking me to use  
16    sketch an implementation or -- or code or -- or -- I'm  
17    sorry, I just need a little bit more -- more guidance  
18    today to be able to answer this question.

19    Q.     I have no idea how the Shell-Cole decision  
20    logic actually changes based on what you're proposing  
21    the combination with Flack to be. Can you -- other than  
22    just saying that certain information reflecting user  
23    activity could be taken into account in some unspecified  
24    way, can you clarify what you are actually proposing  
25    modifying in Shell based on Flack?

1 MR. NEER: Objection. Form.

2 THE WITNESS: I think even in the context of --  
3 of paragraph 53 from -- from Flack, the classification  
4 of applications present, within range, protocols  
5 representing user activities and contrasting that with  
6 other communications activity that may be identified as  
7 originating from system programs or from unauthorized  
8 programs. That -- that decision -- that determination  
9 itself could be directly implemented into the Shell-Cole  
10 decision logic.

11 For example -- and we need to get to your  
12 question about the value of this -- being able to make  
13 this determination that activities associated with an  
14 operating system update immediately tells -- immediately  
15 clarifies to the Shell-Cole application decision logic  
16 that this is a process that is a system program and --  
17 and -- and, ergo, running in the background.

18 Q. Okay. So in the context of an operating system  
19 update, is that carried out by the operating system?

20 A. Yeah. This -- this is one example of -- of a  
21 program as I say in Flack. It's -- it's an example.  
22 But the issue of system programs in general compared to  
23 activity associated with user actions is something that  
24 would be -- that could be taken into account by the  
25 Shell-Cole decision logic. As well as the unidentified

1 or unauthorized programs.

2 Q. Okay. So would -- so -- strike that.

3 In your opinion in the combination of Flack  
4 with Shell and Cole, a determination that an operating  
5 system update is occurring would inform the combined  
6 system that the operating system is running in the  
7 background?

8 MR. NEER: Objection. Form.

9 THE WITNESS: Yeah. To look at -- to look at  
10 Flack and the -- the paragraph that discusses this more  
11 generally, communications -- other communications  
12 activity may be identified as originating from system  
13 programs or from unidentified or unauthorized programs.  
14 So any type of system program activity, of which  
15 operating systems could be one, are -- would be  
16 considered system programs.

17 Now I think that there are the ways in which --  
18 if the question is, do operating system updates  
19 themselves solely identify as system programs, I think  
20 that might depend on -- there -- there could be any --  
21 other factors with that and I -- I could think of a -- I  
22 could probably think of a variety of ways in which that  
23 would be implemented but it's not something I analyzed  
24 within my declaration. But I will say that this notion  
25 of -- of -- of classification of -- of user activities

1     versus system programs or unidentified or unauthorized  
2     programs is something that Flack is -- is capable of  
3     doing and that would be --

4                     (Court Reporter clarification.)

5             COURT REPORTER:   He is frozen.

6             THE WITNESS:   -- into the Shell-Cole decision  
7     logic --

8                     (Court Reporter clarification.)

9             COURT REPORTER:   He is frozen for me.

10            THE WITNESS:   Did you get me?   I'm sorry.   Am I  
11   back?

12            MR. MILKEY:   I think the last part of that cut  
13   out a bit.   It looks like the -- the connection quality  
14   is not amazing, currently.

15            THE WITNESS:   Let me -- let me do something  
16   quickly here.   Let me see.   Hopefully the WiFi will --  
17   will help.

18   By MR. MILKEY:

19            Q.    Okay.   So let me ask -- I'm still a little  
20   confused by the combination.   Let me ask something maybe  
21   more direct.

22                    In your proposed combination of Shell and Cole  
23   with Flack, does Flack's disclosure that certain  
24   activities represent user interaction actually change  
25   the way that the combined system would determine whether

1 applications are in -- are in the background as opposed  
2 to being currently active?

3 A. Based on what we've -- what we've discussed to  
4 this point that -- that there would be an improvement,  
5 yes, from -- from that inclusion of Flack's  
6 determination of system versus user activity into  
7 Shell-Cole's decision logic and it is doing something  
8 different because of the ways in which it's making it --  
9 making those determinations.

10 Q. Can you give me an example of how Shell-Cole's  
11 decision logic is to whether an application is active  
12 versus background would be different after being  
13 modified in view of Flack?

14 A. Yeah. For sure. So an example would be use of  
15 Flack's determination of a system programmer on an  
16 unauthorized program based on its -- based on the ways  
17 in which Flack performs that determination that can  
18 effectively act as a short circuit, if you will, in the  
19 decision logic of Shell-Cole insofar as if you've made a  
20 determination that a -- that an application as a system  
21 programmer on an unauthorized program, then no further  
22 determination needs to be made about whether it is an  
23 active application running in the background.

24 Q. Okay. So other than just not performing any  
25 classification whether an application is active versus

1 background, can you give me an example of how Flack  
2 would change the Shell-Cole decision logic as to active  
3 versus background applications?

4 MR. NEER: Objection. Form.

5 THE WITNESS: Yeah. I'm sorry, I don't think I  
6 understand the question.

7 By MR. MILKEY:

8 Q. Okay. So I -- I understood your previous  
9 answer to basically say that your proposed combination  
10 of Shell and Cole with Flack would prevent Shell --  
11 would prevent the combined system from making an active  
12 versus background classification in certain instances,  
13 such as when there is an unauthorized program, you can  
14 just short circuit the determination and not make a  
15 determination as to whether it's an active application.  
16 Is that fair?

17 A. Yeah. I'm sorry, I think that's -- that's not  
18 quite the characterization I was going for.

19 What I'm -- what I was trying to convey is that  
20 it actually facilitates that -- that determination by  
21 being able to do so without having to incorporate  
22 whatever mechanism Shell-Cole uses. So this can be a  
23 means by which, if you go through Flack's determination  
24 that -- of a system or unauthorized code, you -- the  
25 Shell-Cole decision logic can immediately classify that

1 application as -- as not being active.

2 So if we can go off the record for just 10 or  
3 15 seconds. I just need to take care of something real  
4 quick.

5 MR. MILKEY: Yeah.

6 THE WITNESS: Be right back. Thanks.

7 COURT REPORTER: We're off the record.

8 (Break in proceedings.)

9 COURT REPORTER: Back on the record.

10 By MR. MILKEY:

11 Q. Okay. Why would an unauthorized program in  
12 your proposed combination be determined to be not an  
13 active application?

14 A. While I didn't specifically opine about  
15 unauthorized applications in my declaration, I think it  
16 would be clear to anybody integrating Flack into  
17 Shell-Cole that by classifying such applications as not  
18 active and then de-prioritizing their access to network  
19 resources or blocking them, that would actually be an  
20 additional benefit to the -- to the overall system.

21 Q. Okay. And would that provide a benefit to the  
22 overall system even if the user was interacting with the  
23 unauthorized application?

24 A. So, once again, with the caveat that I didn't  
25 specifically analyze this -- this particular combination

1 in my declaration, I could, as somebody looking at the  
2 overall construction, see benefit for a user -- seeing  
3 benefit for unauthorized applications being not  
4 considered active in the context of providing  
5 prioritization for network connectivity.

6 Q. Okay. Could you please turn to paragraph 117  
7 of your declaration and let me know when you're there.  
8 And while you're locating that I'm also uploading  
9 Exhibit 1009 into the chat. I think you have a copy of  
10 that but that Exhibit 1009 is the Flanagan reference.

11 A. I'm there.

12 Q. Okay. So in paragraph 117 you state,  
13 "Furthermore, APIs that allowed applications to learn of  
14 the unavailability of a connection were well known at  
15 the time of the critical date." And then you -- you go  
16 on to provide Flanagan Exhibit 1009 is providing an  
17 example of this.

18 Do you see that?

19 A. Yes.

20 Q. Okay. How does Flanagan indicate the  
21 unavailability of a connection?

22 A. As I discuss in paragraph 117 here of the  
23 declaration, I -- I discuss how the code block is  
24 written. And so within this code block there is an API  
25 called to create a socket. That is that -- that line S

1 equals new socket, et cetera, equals new data input  
2 stream.

3 The important thing is that all of this is  
4 wrapped in what's called a try-catch block. In other  
5 words, you see right before that line on -- in that code  
6 block there on page 68 of the -- of the declaration that  
7 is in paragraph 117, that there is -- there is a code  
8 "try" and then a right brace and then there's a variety  
9 of indented lines and then there's a closing brace and  
10 after that there is a line -- a catch (IOException e)  
11 this.showStatus, et cetera.

12 So as I talk about -- so that -- I tried to  
13 patchwork basically provide a means by which one can  
14 perform an operation and if the -- if the operation is  
15 not successful, then an exception is returned. So in  
16 this case if the socket fails to be established, which  
17 could happen for a number of reasons, for example,  
18 connectivity issues or other blocking, then an error is  
19 reported back to the application in the form of that  
20 IOException which is caught by that catch -- by that  
21 catch statement.

22 Q. Okay. And does an error message show -- or  
23 strike that.

24 Would an error message inform the application  
25 that a network connection is unavailable to that

1 application?

2 A. Yeah. In this case, as I write, "The details  
3 of the error are provided in text through the showStatus  
4 function." So if an exception is raised because the  
5 socket couldn't be created, then that -- that  
6 information will be reported back as an API message to  
7 the calling application.

8 Q. Okay. What -- what does the showStatus message  
9 like actually output to the -- to the application?

10 A. So it's within that -- it's within that  
11 parenthesis there. So the exception is -- is captured  
12 as a data type that's labeled e in this case. And so  
13 this -- this.showStatus(e.toString) -- sorry for the  
14 techie jargon here -- but effectively it is a string  
15 representation of the exception that is provided. So a  
16 string meaning a string of text. So that -- that  
17 stream -- that text will be -- will turn to the  
18 application that would inform it as to the nature of --  
19 of the error. For example --

20 Q. Okay.

21 A. -- a -- a socket error inability to establish a  
22 connection.

23 Q. Okay. If you could please turn to paragraph  
24 118 of your declaration.

25 A. Okay. I'm there.

1 Q. And this is the beginning of your analysis of  
2 the Shell-Cole combination regarding limitation 1e which  
3 references, quote, an Internet data service, unquote.

4 And my question is, what do you allege to be  
5 the, quote, Internet data service of limitation 1e in  
6 your Shell-Cole combination?

7 A. So I went on to discuss this in paragraph 119  
8 as an example of the teachings from Shell with regards  
9 to "synchronization of an electronic mail account (i.e.,  
10 a different application) and access to a remote web page  
11 (i.e., a particular application) using the same resource  
12 (i.e., WWAN modem) and connection (i.e., Internet data  
13 service)."

14 Q. Okay. So is -- is it your opinion that any  
15 network connection is an Internet data service in -- in  
16 the context of your combination?

17 MR. NEER: Objection. Form.

18 THE WITNESS: Within the context of the  
19 claim -- the claim 1 -- or labeled 1e here is that  
20 unavailability to -- network access condition that  
21 indicates the unavailability to the particular  
22 application of an Internet data service that is  
23 currently available via the WWAN modem to a different  
24 application but as indicated is unavailable to the  
25 particular application.

1           So the Internet data service that I'm  
2     considering is in that data service currently available  
3     via the WWAN modem.

4     By MR. MILKEY:

5           Q.    So, for example, Internet connectivity or are  
6     you referring to something else?

7           A.    In this particular example we're discussing  
8     electronic mail account and access to a remote web page.  
9     Synchronization of an electronic mail account and access  
10    to a remote webpage which would -- which would then mean  
11    that resource, that WWAN modem connecting to an Internet  
12    service.

13          Q.    Okay. So is it your opinion that the Internet  
14    data service is email synchronization, for example?

15          MR. NEER: Objection. Form.

16          THE WITNESS: The Internet data service is the  
17    connection by which the synchronization of the  
18    electronic mail account would be facilitated.

19     By MR. MILKEY:

20          Q.    Okay. So is -- would that be, for example, a  
21    network connection implemented through a socket?

22          A.    Yeah, that -- that would be -- that would be a  
23    likely implementation especially as -- at the time a  
24    standard Internet data connection would -- would involve  
25    the creation of a network socket in order to be able to

1     communicate data.

2             Q.     Okay.  Let's go off the record.

3                     COURT REPORTER:  Off the record.

4                             (Recess.)

5                     COURT REPORTER:  We're back on the record.

6                     Counsel, you may proceed.

7     By MR. MILKEY:

8             Q.     Dr. Butler, is it possible for a single  
9     application to request multiple socket connections to a  
10    network?

11            A.     Yeah, I think that there -- there are a number  
12    of ways in which network programs can be implemented and  
13    there would be nothing preventing a program from  
14    requesting multiple sockets for different types of  
15    activity.

16            Q.     Okay.  In the context of your Shell-Cole  
17    combination, would a POSITA understand that an  
18    application could a socket connection even when the  
19    application is already -- strike that.

20                    In the context of your Shell-Cole combination,  
21    would a POSITA understand that it's possible for an  
22    application to request a -- to open a socket even while  
23    that application already has an open socket using the  
24    network?

25                    MR. NEER:  Objection.  Form.

1           THE WITNESS: I didn't specifically analyze  
2     that in the context of my declaration but it's certainly  
3     possible that applications can make requests for  
4     additional network services. It would -- it would  
5     depend on the application. It's -- it's -- I would -- I  
6     would probably want to discuss, you know, a more  
7     concrete case, but in the -- in the large it is -- it is  
8     potentially possible.

9     By MR. MILKEY:

10        Q.    Okay. And if -- if that scenario were to  
11     happen, it's possible that the second request for a  
12     network connection could be rejected by the Shell-Cole  
13     decision logic even though that application is currently  
14     using the network; correct?

15        A.    Again, it's not really -- it's not really a  
16     scenario that I -- that I opined on in my declaration.  
17     So I would need to give it a bit of thought in terms of  
18     what -- what that might look like. This -- this could  
19     be an implementation in policy detail that could be part  
20     of how one would structure the overall decision policy  
21     within -- within Shell-Cole.

22        Q.    Okay. So sitting here today, do you have an  
23     opinion as to whether in the Shell-Cole combination an  
24     application could be actively using the network using  
25     one connection and then separately at the same time

1 request to use the network using a second connection and  
2 have that second connection request be denied?

3 MR. NEER: Objection. Form.

4 THE WITNESS: So that's not a scenario that I  
5 specifically analyzed in my declaration. I would have  
6 to -- I would have to give it some thought as to -- as  
7 to the feasibility of that in the context of the  
8 decision policy.

9 By MR. MILKEY:

10 Q. Is it fair to say that you don't currently have  
11 an opinion as to that issue?

12 A. I haven't specifically formed an opinion in my  
13 declaration regarding that -- that particular  
14 scenario.

15 Q. Okay. Could you please turn to paragraph 139  
16 of your declaration and let me know when you're there.

17 A. Okay. I'm there.

18 Q. Okay. And please feel free to look at the --  
19 the previous page for -- for contextual reference, but  
20 do you see that this is the beginning of your analysis  
21 of limitation 1e for the Shell-Cole and Flack  
22 combination?

23 A. Yes.

24 Q. Okay. And I didn't see in your analysis for  
25 this limitation 1e a specific statement of what the,

1 quote, Internet data service was and I -- my question  
2 is, is -- is it the same Internet data service that you  
3 pointed to in your Shell-Cole combination which I  
4 believe was a -- a network connection?

5 MR. NEER: Objection. Form.

6 THE WITNESS: Are you -- just to -- to clarify,  
7 are you referring to our discussion of what I termed the  
8 claim 1e with regards to the Internet data service?

9 By MR. MILKEY:

10 Q. Correct. Is it the -- is it the same Internet  
11 data service that you're pointing to for both grounds 1  
12 and 2?

13 A. Yes, in general. Yes. An Internet data  
14 service there would be the -- the same general Internet  
15 data service I'd -- I'd be considering in both cases.

16 MR. MILKEY: Okay. Okay. I'll pass the  
17 witness.

18 MR. NEER: Nothing for us.

19 MR. MILKEY: Okay. Thank you very much.  
20 Should we go off the record.

21 COURT REPORTER: We're off the record.

22 (Proceedings concluded.)

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CERTIFICATE OF STENOGRAPHIC REPORTER

I, BURGUNDY B. RYAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition,

That DR. KEVIN BUTLER, the witness whose deposition is hereinbefore set forth, was duly sworn by me before the commencement of such deposition and that such deposition was taken virtually and is a true record of the testimony given by such witness.

I further certify that the adverse party, GOOGLE LLC, was represented by counsel at the deposition.

I further certify that the deposition of DR. KEVIN BUTLER, occurred virtually, on Friday, June 19, 2026, from 6:00 a.m. to 9:11 a.m. PDT.

I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way interested, financially or otherwise, in the

1 outcome of this matter.

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3 DATED: Friday, June 26, 2026.

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7 Burgundy B. Ryan, CSR No. 11373, RPR  
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

66

| A                 |                   |                   |                   |
|-------------------|-------------------|-------------------|-------------------|
| <b>able</b>       | <b>action</b>     | 55:4              | <b>additional</b> |
| 12:24, 16:8,      | 64:22, 64:24      | <b>actively</b>   | 42:23, 47:2,      |
| 38:10, 46:5,      | <b>actions</b>    | 21:11, 22:17,     | 54:20, 61:4       |
| 48:18, 49:12,     | 29:7, 32:13,      | 24:23, 61:24      | <b>adds</b>       |
| 53:21, 59:25      | 33:19, 34:8,      | <b>activities</b> | 47:4, 47:5        |
| <b>about</b>      | 39:1, 39:4,       | 19:22, 34:18,     | <b>adverse</b>    |
| 8:25, 10:23,      | 39:13, 39:21,     | 35:10, 35:18,     | 64:14             |
| 11:16, 14:10,     | 39:24, 40:7,      | 35:19, 35:23,     | <b>after</b>      |
| 15:19, 16:9,      | 40:24, 41:22,     | 35:24, 35:25,     | 52:12, 56:10      |
| 16:24, 18:2,      | 44:10, 44:16,     | 36:4, 40:13,      | <b>again</b>      |
| 26:1, 26:8,       | 45:8, 48:1,       | 41:15, 41:24,     | 11:16, 12:5,      |
| 26:10, 30:7,      | 48:7, 48:12,      | 43:8, 43:10,      | 15:3, 18:17,      |
| 30:8, 33:14,      | 49:23             | 43:22, 47:3,      | 21:15, 22:19,     |
| 37:21, 38:1,      | <b>activating</b> | 48:2, 49:5,       | 26:21, 28:11,     |
| 39:3, 40:20,      | 10:23, 11:4,      | 49:13, 50:25,     | 39:10, 41:13,     |
| 45:23, 46:4,      | 11:25, 12:11,     | 51:24             | 41:19, 43:18,     |
| 49:12, 52:22,     | 14:12, 16:11,     | <b>activity</b>   | 45:3, 45:12,      |
| 54:14, 56:12      | 17:7, 17:24,      | 29:7, 32:10,      | 46:21, 47:14,     |
| <b>above</b>      | 18:16, 18:23,     | 32:13, 33:1,      | 47:23, 54:24,     |
| 26:1              | 29:20             | 33:3, 33:25,      | 61:15             |
| <b>absolutely</b> | <b>active</b>     | 37:5, 37:16,      | <b>agree</b>      |
| 16:22             | 7:25, 13:11,      | 38:20, 39:7,      | 19:2, 44:13       |
| <b>access</b>     | 13:18, 13:23,     | 39:18, 40:1,      | <b>alex</b>       |
| 6:23, 7:1,        | 14:3, 18:21,      | 40:7, 40:10,      | 5:20              |
| 54:18, 58:10,     | 20:10, 20:24,     | 40:14, 40:16,     | <b>alexander</b>  |
| 58:20, 59:8,      | 21:7, 21:12,      | 40:21, 40:24,     | 2:6, 2:11         |
| 59:9              | 21:18, 21:25,     | 41:4, 41:5,       | <b>all</b>        |
| <b>accessing</b>  | 22:3, 22:9,       | 41:15, 41:17,     | 6:6, 7:12,        |
| 33:18, 34:7,      | 22:22, 22:24,     | 41:25, 42:5,      | 15:7, 15:11,      |
| 41:21, 47:25      | 23:1, 23:8,       | 42:9, 44:10,      | 25:2, 32:24,      |
| <b>according</b>  | 23:11, 23:17,     | 45:8, 48:3,       | 45:12, 56:3       |
| 44:16             | 23:21, 23:23,     | 48:8, 48:12,      | <b>allege</b>     |
| <b>account</b>    | 24:3, 24:5,       | 48:23, 49:6,      | 27:10, 58:4       |
| 8:18, 9:1, 9:4,   | 24:10, 24:12,     | 49:23, 50:12,     | <b>alleging</b>   |
| 9:11, 9:16,       | 24:16, 24:19,     | 50:14, 52:6,      | 8:2, 25:21,       |
| 10:3, 10:6,       | 26:4, 27:17,      | 60:15             | 27:7, 47:10       |
| 10:19, 11:9,      | 27:20, 27:22,     | <b>actually</b>   | <b>allowed</b>    |
| 12:11, 14:12,     | 28:13, 28:18,     | 32:16, 33:8,      | 55:13             |
| 14:17, 14:25,     | 29:16, 30:10,     | 34:24, 46:13,     | <b>allowing</b>   |
| 15:15, 16:3,      | 30:15, 41:2,      | 46:17, 48:20,     | 27:16, 28:16      |
| 16:10, 16:16,     | 42:19, 43:16,     | 48:24, 51:24,     | <b>allows</b>     |
| 17:2, 48:23,      | 44:4, 45:1,       | 53:20, 54:19,     | 24:22             |
| 49:24, 58:9,      | 46:7, 46:19,      | 57:9              | <b>already</b>    |
| 59:8, 59:9,       | 52:2, 52:11,      | <b>add</b>        | 7:13, 60:19,      |
| 59:18             | 52:23, 52:25,     | 9:21, 45:12       | 60:23             |
| <b>act</b>        | 53:2, 53:11,      | <b>added</b>      | <b>also</b>       |
| 52:18             | 53:15, 54:1,      | 48:9, 48:12       | 13:7, 25:19,      |
|                   | 54:13, 54:18,     | <b>adding</b>     | 34:4, 34:25,      |
|                   |                   | 47:8              |                   |

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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

67

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| <p>37:19, 45:12,<br/>55:8<br/><b>alternative</b><br/>16:6<br/><b>amazing</b><br/>51:14<br/><b>analysis</b><br/>7:20, 8:3,<br/>15:4, 25:12,<br/>25:14, 25:20,<br/>25:23, 25:24,<br/>26:15, 26:21,<br/>27:8, 27:11,<br/>28:10, 29:4,<br/>29:23, 29:25,<br/>31:3, 31:10,<br/>38:9, 58:1,<br/>62:20, 62:24<br/><b>analyze</b><br/>36:12, 39:9,<br/>45:4, 54:25,<br/>61:1<br/><b>analyzed</b><br/>25:1, 36:13,<br/>45:13, 50:23,<br/>62:5<br/><b>angeles</b><br/>2:18<br/><b>another</b><br/>17:3, 30:24<br/><b>answer</b><br/>3:3, 9:24,<br/>12:24, 18:6,<br/>20:6, 31:1,<br/>36:11, 48:18,<br/>53:9<br/><b>answered</b><br/>21:16, 27:4<br/><b>answers</b><br/>6:25<br/><b>any</b><br/>6:20, 15:25,<br/>16:13, 17:17,<br/>21:9, 24:21,<br/>39:6, 43:13,<br/>46:12, 46:18,<br/>50:14, 50:20,<br/>52:24, 58:14,</p> | <p>64:22, 64:23<br/><b>anybody</b><br/>54:16<br/><b>anything</b><br/>6:7, 6:16, 7:5<br/><b>api</b><br/>55:24, 57:6<br/><b>apis</b><br/>55:13<br/><b>app</b><br/>15:23, 22:1,<br/>22:4<br/><b>appeal</b><br/>1:3<br/><b>appeared</b><br/>5:6<br/><b>applications</b><br/>11:1, 13:9,<br/>17:10, 19:7,<br/>19:22, 20:8,<br/>20:17, 22:8,<br/>22:9, 22:20,<br/>23:15, 24:6,<br/>24:7, 24:11,<br/>24:15, 24:18,<br/>25:25, 28:3,<br/>28:21, 28:22,<br/>31:15, 31:16,<br/>31:17, 33:4,<br/>33:5, 33:7,<br/>33:15, 34:3,<br/>34:4, 35:2,<br/>38:23, 39:12,<br/>47:20, 49:4,<br/>52:1, 53:3,<br/>54:15, 54:17,<br/>55:3, 55:13,<br/>61:3<br/><b>appreciate</b><br/>13:4<br/><b>approximately</b><br/>6:13<br/><b>aside</b><br/>41:13<br/><b>asking</b><br/>14:20, 14:22,<br/>48:15<br/><b>aspect</b><br/>45:4</p> | <p><b>assess</b><br/>10:8<br/><b>assigned</b><br/>13:8, 13:11,<br/>13:24, 20:10,<br/>21:19, 23:18,<br/>24:3, 26:4,<br/>28:14, 29:17,<br/>30:10, 30:15<br/><b>assigning</b><br/>23:14<br/><b>assignment</b><br/>12:21<br/><b>associated</b><br/>6:11, 7:2,<br/>13:9, 23:16,<br/>33:1, 46:10,<br/>49:13, 49:23<br/><b>attempt</b><br/>33:5<br/><b>attempting</b><br/>28:23, 33:10,<br/>36:7, 36:18,<br/>37:8, 38:4<br/><b>attorney</b><br/>64:23<br/><b>august</b><br/>2:14, 5:17<br/><b>automatically</b><br/>17:12, 17:17,<br/>17:19, 18:8,<br/>18:11, 19:3,<br/>19:9, 19:12,<br/>19:23, 20:2,<br/>24:23, 45:19<br/><b>availability</b><br/>46:2<br/><b>available</b><br/>58:23, 59:2<br/><b>avenue</b><br/>2:7</p> <hr/> <p><b>B</b></p> <hr/> <p><b>back</b><br/>6:24, 11:21,<br/>16:21, 20:5,<br/>31:24, 37:12,<br/>41:19, 45:22,</p> | <p>51:11, 54:6,<br/>54:9, 56:19,<br/>57:6, 60:5<br/><b>background</b><br/>13:13, 13:25,<br/>14:4, 20:8,<br/>20:12, 20:17,<br/>20:18, 20:25,<br/>21:8, 21:13,<br/>21:20, 22:1,<br/>22:3, 22:10,<br/>22:18, 23:19,<br/>24:5, 24:8,<br/>26:6, 30:12,<br/>30:17, 30:22,<br/>45:25, 46:6,<br/>49:17, 50:7,<br/>52:1, 52:12,<br/>52:23, 53:1,<br/>53:3, 53:12<br/><b>based</b><br/>11:24, 13:3,<br/>13:8, 17:6,<br/>18:16, 23:15,<br/>27:15, 28:15,<br/>32:9, 33:15,<br/>37:5, 37:15,<br/>38:20, 39:7,<br/>39:18, 40:1,<br/>40:15, 40:21,<br/>41:1, 41:16,<br/>42:5, 42:8,<br/>48:20, 48:25,<br/>52:3, 52:16<br/><b>basically</b><br/>46:15, 53:9,<br/>56:13<br/><b>because</b><br/>9:22, 18:6,<br/>18:21, 26:9,<br/>37:13, 39:23,<br/>52:8, 57:4<br/><b>becomes</b><br/>45:21, 46:25<br/><b>been</b><br/>5:9, 6:2, 17:3,<br/>31:18, 46:22<br/><b>before</b><br/>1:3, 5:4, 56:5,</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

68

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>64:9<br/><b>beginning</b><br/>7:19, 25:12,<br/>58:1, 62:20<br/><b>behalf</b><br/>2:3, 2:13, 5:8,<br/>5:16, 5:20<br/><b>being</b><br/>8:13, 19:4,<br/>19:13, 21:7,<br/>21:11, 27:2,<br/>33:11, 33:17,<br/>34:5, 35:9,<br/>35:25, 38:25,<br/>46:5, 46:6,<br/>47:1, 49:12,<br/>52:2, 52:12,<br/>53:21, 54:1,<br/>55:3<br/><b>believe</b><br/>10:7, 10:21,<br/>11:16, 16:19,<br/>20:4, 21:21,<br/>23:12, 28:2,<br/>32:19, 38:11,<br/>42:21, 63:4<br/><b>belong</b><br/>14:17<br/><b>benefit</b><br/>7:6, 54:20,<br/>54:21, 55:2,<br/>55:3<br/><b>best</b><br/>10:21, 12:23,<br/>20:6, 21:16<br/><b>better</b><br/>40:19<br/><b>between</b><br/>21:6, 22:8,<br/>41:5, 47:20<br/><b>bit</b><br/>31:1, 48:17,<br/>51:13, 61:17<br/><b>block</b><br/>55:23, 55:24,<br/>56:4, 56:6<br/><b>blocking</b><br/>54:19, 56:18</p> | <p><b>blood</b><br/>64:22<br/><b>board</b><br/>1:3<br/><b>both</b><br/>5:22, 45:14,<br/>63:11, 63:15<br/><b>boulevard</b><br/>2:16<br/><b>boyer</b><br/>2:6, 5:20<br/><b>boyer@finnegan</b><br/>2:11<br/><b>brace</b><br/>56:8, 56:9<br/><b>break</b><br/>31:19, 54:8<br/><b>briefly</b><br/>6:22<br/><b>brooke</b><br/>5:12<br/><b>browser</b><br/>28:24<br/><b>browsing</b><br/>10:25<br/><b>burgundy</b><br/>1:27, 5:4,<br/>5:12, 64:3, 65:7<br/><b>butler</b><br/>1:16, 5:7, 6:1,<br/>6:6, 7:15, 32:3,<br/>60:8, 64:7,<br/>64:18<br/><b>button</b><br/>11:5</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>california</b><br/>2:18, 5:5, 5:13<br/><b>call</b><br/>8:18, 8:24,<br/>10:25<br/><b>called</b><br/>5:8, 55:25,<br/>56:4<br/><b>calling</b><br/>57:7<br/><b>can't</b><br/>14:13, 44:21</p> | <p><b>capable</b><br/>51:2<br/><b>captured</b><br/>57:11<br/><b>care</b><br/>54:3<br/><b>carried</b><br/>49:19<br/><b>case</b><br/>8:22, 24:14,<br/>56:16, 57:2,<br/>57:12, 61:7<br/><b>cases</b><br/>63:15<br/><b>catch</b><br/>56:10, 56:20,<br/>56:21<br/><b>categories</b><br/>22:13<br/><b>caught</b><br/>56:20<br/><b>caveat</b><br/>43:22, 54:24<br/><b>certain</b><br/>10:24, 17:10,<br/>19:7, 19:22,<br/>35:23, 39:24,<br/>40:13, 41:14,<br/>48:2, 48:22,<br/>51:23, 53:12<br/><b>certainly</b><br/>45:9, 61:2<br/><b>certificate</b><br/>64:1<br/><b>certified</b><br/>5:4, 64:3<br/><b>certify</b><br/>64:4, 64:14,<br/>64:17, 64:21<br/><b>cetera</b><br/>29:8, 56:1,<br/>56:11<br/><b>change</b><br/>46:1, 46:13,<br/>51:24, 53:2<br/><b>changes</b><br/>48:20<br/><b>characterization</b><br/>53:18</p> | <p><b>chat</b><br/>55:9<br/><b>circuit</b><br/>52:18, 53:14<br/><b>circumstances</b><br/>10:24, 44:3<br/><b>claim</b><br/>7:20, 7:23,<br/>25:15, 58:19,<br/>63:8<br/><b>claims</b><br/>15:4, 15:18,<br/>15:20<br/><b>clarification</b><br/>22:2, 51:4,<br/>51:8<br/><b>clarifies</b><br/>13:22, 49:15<br/><b>clarify</b><br/>21:24, 26:12,<br/>26:14, 33:21,<br/>46:19, 48:24,<br/>63:6<br/><b>clarifying</b><br/>30:25<br/><b>clarity</b><br/>3:24<br/><b>classification</b><br/>48:7, 48:11,<br/>49:3, 50:25,<br/>52:25, 53:12<br/><b>classify</b><br/>53:25<br/><b>classifying</b><br/>54:17<br/><b>clean</b><br/>7:4<br/><b>clear</b><br/>9:10, 14:15,<br/>18:20, 26:8,<br/>30:19, 45:21,<br/>54:16<br/><b>clearer</b><br/>46:25<br/><b>clearly</b><br/>30:7<br/><b>client</b><br/>29:6, 29:7,</p> |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

69

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 32:25, 40:6,<br>40:7, 40:9,<br>46:23<br><b>closing</b><br>56:9<br><b>code</b><br>48:16, 53:24,<br>55:23, 55:24,<br>56:5, 56:7<br><b>cole</b><br>7:10, 7:21,<br>11:10, 29:25,<br>32:7, 45:14,<br>45:16, 48:13,<br>50:4, 51:22,<br>53:10<br><b>com</b><br>2:10, 2:11,<br>2:20<br><b>combination</b><br>7:21, 29:25,<br>32:7, 32:8,<br>38:17, 41:13,<br>45:14, 45:15,<br>46:8, 46:14,<br>47:9, 48:21,<br>50:3, 51:20,<br>51:22, 53:9,<br>54:12, 54:25,<br>58:2, 58:6,<br>58:16, 60:17,<br>60:20, 61:23,<br>62:22, 63:3<br><b>combined</b><br>45:16, 50:5,<br>51:25, 53:11<br><b>come</b><br>29:19<br><b>comes</b><br>31:8<br><b>coming</b><br>10:9, 24:15<br><b>commencement</b><br>64:9<br><b>commencing</b><br>5:3<br><b>comment</b><br>14:13 | <b>communicate</b><br>60:1<br><b>communication</b><br>36:8, 36:19,<br>37:9, 38:5,<br>40:13, 41:14,<br>46:23<br><b>communications</b><br>29:6, 32:13,<br>33:1, 33:3,<br>33:18, 33:25,<br>34:8, 34:14,<br>35:17, 38:15,<br>39:1, 39:12,<br>39:20, 39:24,<br>40:6, 40:24,<br>41:22, 43:8,<br>44:10, 45:7,<br>45:8, 48:1,<br>48:3, 49:6,<br>50:11<br><b>compared</b><br>14:3, 30:21,<br>49:22<br><b>concluded</b><br>63:22<br><b>concrete</b><br>61:7<br><b>condition</b><br>58:20<br><b>configuration</b><br>34:15<br><b>configured</b><br>7:24, 10:8<br><b>confused</b><br>21:24, 23:20,<br>51:20<br><b>confusing</b><br>31:1<br><b>connecting</b><br>59:11<br><b>connection</b><br>8:16, 8:19,<br>9:7, 10:11,<br>10:15, 11:1,<br>12:22, 13:8,<br>13:9, 17:2,<br>17:11, 19:8, | 23:16, 37:17,<br>40:9, 46:2,<br>51:13, 55:14,<br>55:21, 56:25,<br>57:22, 58:12,<br>58:15, 59:17,<br>59:21, 59:24,<br>60:18, 61:12,<br>61:25, 62:1,<br>62:2, 63:4<br><b>connections</b><br>60:9<br><b>connectivity</b><br>29:8, 40:8,<br>55:5, 56:18,<br>59:5<br><b>consider</b><br>21:10, 46:7<br><b>consideration</b><br>27:18, 37:18,<br>46:9<br><b>considered</b><br>15:18, 15:20,<br>20:25, 23:1,<br>50:16, 55:4<br><b>considering</b><br>15:4, 59:2,<br>63:15<br><b>consistent</b><br>25:24, 26:9,<br>26:22, 31:14<br><b>constitute</b><br>28:9, 42:17<br><b>constitutes</b><br>29:10, 29:12,<br>30:1, 30:3,<br>41:15, 42:4,<br>42:7, 43:15<br><b>construction</b><br>36:14, 36:24,<br>44:20, 47:6,<br>55:2<br><b>contemplated</b><br>15:6, 15:11,<br>15:13, 25:2<br><b>contemplates</b><br>17:10, 19:6,<br>20:7 | <b>context</b><br>8:10, 9:3,<br>9:21, 9:25,<br>11:18, 12:20,<br>14:9, 14:10,<br>14:23, 15:18,<br>15:25, 16:14,<br>17:18, 18:16,<br>19:11, 19:15,<br>19:25, 21:16,<br>22:1, 23:12,<br>24:17, 27:1,<br>28:3, 28:20,<br>29:4, 34:24,<br>35:6, 36:6,<br>36:13, 36:17,<br>36:24, 37:7,<br>37:19, 37:23,<br>38:3, 40:19,<br>41:6, 41:9,<br>41:12, 42:15,<br>43:12, 43:24,<br>44:1, 45:13,<br>45:22, 47:2,<br>47:5, 47:9,<br>49:2, 49:18,<br>55:4, 58:16,<br>58:18, 60:16,<br>60:20, 61:2,<br>62:7<br><b>contextual</b><br>62:19<br><b>contextually</b><br>43:1<br><b>contrast</b><br>48:2<br><b>contrasting</b><br>49:5<br><b>control</b><br>11:4, 11:25,<br>12:11, 14:12,<br>16:11, 17:7,<br>17:25, 18:17,<br>29:20<br><b>controlled</b><br>18:23<br><b>convey</b><br>53:19 |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

70

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>copy</b><br>7:4, 55:9<br><b>correct</b><br>9:12, 12:3,<br>14:7, 25:12,<br>25:13, 34:11,<br>35:22, 36:20,<br>37:10, 61:14,<br>63:10<br><b>correctly</b><br>11:20<br><b>corresponding</b><br>6:18<br><b>could</b><br>8:9, 12:5,<br>13:1, 15:22,<br>21:2, 25:3,<br>25:7, 26:25,<br>32:3, 33:18,<br>33:21, 42:12,<br>43:1, 48:9,<br>48:23, 49:9,<br>49:24, 50:15,<br>50:20, 50:21,<br>50:22, 55:1,<br>55:6, 56:17,<br>57:23, 60:18,<br>61:12, 61:18,<br>61:19, 61:24,<br>62:15<br><b>couldn't</b><br>57:5<br><b>counsel</b><br>5:14, 5:25,<br>6:19, 31:25,<br>60:6, 64:15<br><b>couple</b><br>6:19, 11:21<br><b>court</b><br>5:11, 5:22,<br>5:24, 7:6, 22:2,<br>31:22, 31:24,<br>51:4, 51:5,<br>51:8, 51:9,<br>54:7, 54:9,<br>60:3, 60:5,<br>63:21<br><b>create</b><br>55:25 | <b>created</b><br>57:5<br><b>creation</b><br>15:22, 29:9,<br>59:25<br><b>critical</b><br>55:15<br><b>csr</b><br>1:28, 5:13,<br>65:7<br><b>current</b><br>13:8, 23:15<br><b>currently</b><br>13:11, 13:18,<br>13:23, 20:10,<br>20:24, 21:7,<br>21:18, 22:8,<br>23:8, 23:10,<br>23:17, 23:21,<br>23:23, 24:3,<br>24:5, 24:10,<br>24:11, 24:15,<br>24:16, 24:18,<br>26:4, 27:20,<br>27:22, 28:13,<br>29:16, 30:10,<br>30:15, 41:2,<br>51:14, 52:2,<br>58:23, 59:2,<br>61:13, 62:10<br><b>cut</b><br>51:12<br><hr/> D<br><hr/> <b>data</b><br>56:1, 57:12,<br>58:3, 58:5,<br>58:12, 58:15,<br>58:22, 59:1,<br>59:2, 59:14,<br>59:16, 59:24,<br>60:1, 63:1,<br>63:2, 63:8,<br>63:11, 63:13,<br>63:15<br><b>date</b><br>55:15<br><b>dated</b><br>65:3 | <b>dc</b><br>2:8<br><b>de-prioritizing</b><br>54:18<br><b>decision</b><br>32:14, 37:20,<br>40:25, 41:7,<br>44:11, 44:19,<br>45:24, 46:9,<br>46:13, 47:4,<br>47:16, 48:10,<br>48:13, 48:19,<br>49:8, 49:10,<br>49:15, 49:25,<br>51:6, 52:7,<br>52:11, 52:19,<br>53:2, 53:25,<br>61:13, 61:20,<br>62:8<br><b>declaration</b><br>6:10, 6:17,<br>7:2, 7:9, 7:16,<br>8:4, 8:7, 10:7,<br>10:12, 11:17,<br>16:20, 21:22,<br>23:4, 25:8,<br>26:24, 28:5,<br>31:15, 32:4,<br>36:15, 37:20,<br>37:22, 38:9,<br>39:10, 40:5,<br>40:20, 42:22,<br>43:19, 43:24,<br>44:8, 45:6,<br>45:22, 45:23,<br>50:24, 54:15,<br>55:1, 55:7,<br>55:23, 56:6,<br>57:24, 61:2,<br>61:16, 62:5,<br>62:13, 62:16<br><b>denied</b><br>62:2<br><b>depend</b><br>50:20, 61:5<br><b>dependent</b><br>7:20, 19:16,<br>43:1 | <b>depending</b><br>27:1<br><b>deposition</b><br>1:15, 3:1, 5:2,<br>6:8, 6:14, 6:17,<br>6:21, 6:23,<br>64:5, 64:8,<br>64:10, 64:15,<br>64:17<br><b>describe</b><br>39:16<br><b>described</b><br>10:22, 26:23,<br>45:24<br><b>describes</b><br>8:15, 12:21,<br>20:7, 20:17,<br>27:14, 28:15,<br>40:4<br><b>description</b><br>4:8, 16:9<br><b>descriptions</b><br>35:1, 35:6<br><b>detail</b><br>17:23, 33:13,<br>47:2, 61:19<br><b>details</b><br>57:2<br><b>determination</b><br>32:9, 32:12,<br>36:3, 37:4,<br>37:15, 38:17,<br>39:6, 39:17,<br>39:25, 40:15,<br>40:20, 40:23,<br>41:4, 41:8,<br>41:16, 41:24,<br>42:4, 42:8,<br>42:18, 43:15,<br>43:23, 43:25,<br>44:9, 44:18,<br>44:25, 45:6,<br>45:7, 46:5,<br>46:18, 47:19,<br>49:8, 49:13,<br>50:4, 52:6,<br>52:15, 52:17,<br>52:20, 52:22, |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

71

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>53:14, 53:15,<br/>53:20, 53:23<br/><b>determinations</b><br/>41:1, 41:9,<br/>52:9<br/><b>determine</b><br/>7:24, 10:5,<br/>10:17, 27:16,<br/>28:17, 32:16,<br/>33:9, 36:8,<br/>38:19, 44:4,<br/>45:17, 51:25<br/><b>determined</b><br/>35:19, 36:19,<br/>37:9, 38:5,<br/>43:9, 43:22,<br/>54:12<br/><b>determines</b><br/>10:14, 29:6,<br/>35:23, 40:6<br/><b>determining</b><br/>40:13, 41:14<br/><b>device</b><br/>27:15, 28:16<br/><b>dialup</b><br/>40:9<br/><b>different</b><br/>7:25, 8:2, 8:6,<br/>8:10, 8:18,<br/>8:22, 9:2, 9:12,<br/>9:17, 10:1,<br/>10:3, 11:19,<br/>11:23, 17:4,<br/>17:5, 25:15,<br/>25:21, 26:3,<br/>26:16, 26:17,<br/>26:25, 27:8,<br/>27:10, 27:16,<br/>27:19, 27:25,<br/>28:10, 28:13,<br/>28:17, 29:3,<br/>29:10, 29:12,<br/>29:16, 29:17,<br/>30:2, 30:3,<br/>30:9, 30:14,<br/>30:20, 31:5,<br/>31:6, 31:11,<br/>31:16, 35:1,</p> | <p>35:10, 37:2,<br/>39:12, 52:8,<br/>52:12, 58:10,<br/>58:23, 60:14<br/><b>differentiate</b><br/>33:7<br/><b>direct</b><br/>3:25, 7:15,<br/>35:7, 51:21<br/><b>directly</b><br/>49:9<br/><b>disclose</b><br/>12:14<br/><b>disclosed</b><br/>15:5, 16:7,<br/>18:1, 28:4,<br/>46:24<br/><b>discloses</b><br/>12:10, 13:2,<br/>20:1, 20:14,<br/>22:7, 39:25,<br/>46:16<br/><b>disclosure</b><br/>11:3, 14:10,<br/>14:23, 15:19,<br/>16:1, 24:22,<br/>51:23<br/><b>disclosures</b><br/>17:9, 20:5<br/><b>discuss</b><br/>10:7, 11:18,<br/>16:8, 16:19,<br/>16:25, 23:13,<br/>28:2, 28:11,<br/>39:11, 44:7,<br/>44:8, 55:22,<br/>55:23, 58:7,<br/>61:6<br/><b>discussed</b><br/>4:11, 8:14,<br/>13:17, 16:24,<br/>20:19, 21:21,<br/>26:1, 26:10,<br/>26:24, 30:8,<br/>31:14, 32:19,<br/>36:14, 37:22,<br/>45:5, 46:3, 52:3<br/><b>discusses</b><br/>15:20, 33:23,</p> | <p>34:3, 38:23,<br/>39:20, 50:10<br/><b>discussing</b><br/>24:14, 59:7<br/><b>discussion</b><br/>22:21, 28:21,<br/>33:22, 38:21,<br/>63:7<br/><b>discussions</b><br/>14:10<br/><b>distinction</b><br/>22:8<br/><b>distinguished</b><br/>24:7<br/><b>distinguishes</b><br/>21:6, 47:20<br/><b>distinguishing</b><br/>21:25, 24:1<br/><b>documents</b><br/>3:8<br/><b>doing</b><br/>51:3, 52:7<br/><b>done</b><br/>17:12, 17:16,<br/>17:19, 18:7,<br/>18:11, 19:3,<br/>19:9, 19:12,<br/>19:23, 20:2,<br/>24:23, 45:9,<br/>45:18<br/><b>down</b><br/>11:5<br/><b>dr</b><br/>1:16, 5:7, 6:6,<br/>7:15, 32:3,<br/>60:8, 64:7,<br/>64:18<br/><b>drop</b><br/>11:5<br/><b>duly</b><br/>5:9, 6:2, 64:8<br/><b>dunner</b><br/>2:4<br/><hr/><b>E</b><hr/><b>e</b><br/>8:16, 28:24,<br/>33:25, 35:2,</p> | <p>48:4, 48:5,<br/>56:10<br/><b>effectively</b><br/>52:18, 57:14<br/><b>either</b><br/>17:16<br/><b>electronic</b><br/>8:17, 9:1,<br/>9:11, 9:15,<br/>10:2, 10:6,<br/>10:19, 11:9,<br/>12:11, 14:12,<br/>14:17, 17:1,<br/>58:9, 59:8,<br/>59:9, 59:18<br/><b>elements</b><br/>11:5<br/><b>else</b><br/>23:24, 59:6<br/><b>elsewhere</b><br/>16:20<br/><b>email</b><br/>8:20, 8:23,<br/>9:4, 9:8, 9:15,<br/>9:16, 10:3,<br/>10:6, 10:16,<br/>11:9, 11:12,<br/>11:13, 11:22,<br/>13:17, 13:19,<br/>14:6, 14:11,<br/>14:14, 14:21,<br/>14:24, 14:25,<br/>15:7, 15:12,<br/>15:13, 15:15,<br/>15:23, 16:1,<br/>16:3, 16:7,<br/>16:10, 16:14,<br/>16:16, 16:24,<br/>17:5, 17:11,<br/>17:15, 17:18,<br/>17:20, 18:2,<br/>18:11, 18:12,<br/>18:13, 18:15,<br/>18:19, 18:20,<br/>18:25, 19:2,<br/>19:8, 19:12,<br/>19:17, 19:19,<br/>19:20, 20:2,</p> |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

72

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20:13, 20:16,<br>20:18, 20:22,<br>20:23, 20:24,<br>21:10, 21:12,<br>22:1, 22:4,<br>22:11, 22:12,<br>22:13, 22:17,<br>24:22, 24:24,<br>28:24, 29:2,<br>29:11, 30:19,<br>30:20, 35:3,<br>35:7, 36:7,<br>36:8, 36:18,<br>37:8, 38:4,<br>42:16, 42:17,<br>42:19, 43:14,<br>43:16, 44:4,<br>44:13, 44:14,<br>44:15, 44:24,<br>45:1, 45:17,<br>59:14<br><b>employed</b><br>64:23<br><b>engine</b><br>16:25<br><b>ensure</b><br>30:18<br><b>entire</b><br>46:9<br><b>equals</b><br>56:1<br><b>ergo</b><br>49:17<br><b>error</b><br>56:18, 56:22,<br>56:24, 57:3,<br>57:19, 57:21<br><b>especially</b><br>59:23<br><b>esquire</b><br>2:5, 2:6, 2:15<br><b>establish</b><br>29:8, 40:8,<br>57:21<br><b>established</b><br>17:3, 56:16<br><b>establishing</b><br>40:9 | <b>et</b><br>29:8, 56:1,<br>56:11<br><b>even</b><br>49:2, 54:22,<br>60:18, 60:22,<br>61:13<br><b>every</b><br>14:14, 14:21<br><b>examination</b><br>4:3, 6:4<br><b>examined</b><br>5:10<br><b>example</b><br>8:9, 10:14,<br>11:4, 13:10,<br>16:25, 20:9,<br>20:13, 23:16,<br>28:7, 28:9,<br>29:3, 32:11,<br>33:15, 34:14,<br>36:3, 39:21,<br>40:8, 40:22,<br>46:23, 48:1,<br>49:11, 49:20,<br>49:21, 52:10,<br>52:14, 53:1,<br>55:17, 56:17,<br>57:19, 58:8,<br>59:5, 59:7,<br>59:14, 59:20<br><b>examples</b><br>8:5, 35:5<br><b>exception</b><br>56:15, 57:4,<br>57:11, 57:15<br><b>exhibit</b><br>4:8, 7:8, 7:9,<br>7:10, 7:11,<br>12:6, 55:9,<br>55:10, 55:16<br><b>exhibits</b><br>4:10, 4:11,<br>6:11, 6:18,<br>6:22, 7:2, 7:5,<br>7:12<br><b>explore</b><br>32:15 | <b>extent</b><br>41:3<br><hr/> <b>F</b> <hr/> <b>facilitated</b><br>59:18<br><b>facilitates</b><br>53:20<br><b>factor</b><br>24:1<br><b>factors</b><br>41:10, 50:21<br><b>fails</b><br>56:16<br><b>fair</b><br>53:16, 62:10<br><b>fairly</b><br>14:22<br><b>fall</b><br>22:13<br><b>farabow</b><br>2:4<br><b>feasibility</b><br>62:7<br><b>feel</b><br>7:4, 62:18<br><b>few</b><br>7:5<br><b>figure</b><br>42:11, 42:12,<br>42:15, 43:12<br><b>financially</b><br>64:25<br><b>finnegan</b><br>2:4, 5:21<br><b>firm</b><br>5:17, 5:21<br><b>first</b><br>5:9, 6:2<br><b>flack</b><br>7:11, 28:4,<br>28:20, 29:5,<br>32:8, 32:16,<br>32:20, 32:24,<br>33:8, 33:13,<br>33:21, 33:23,<br>34:10, 34:22,<br>35:22, 36:3, | 36:8, 36:12,<br>36:18, 36:23,<br>36:24, 37:1,<br>37:6, 37:8,<br>37:18, 37:21,<br>38:1, 38:3,<br>38:19, 38:22,<br>38:23, 39:3,<br>39:5, 39:11,<br>39:16, 39:20,<br>39:24, 40:3,<br>40:6, 40:14,<br>41:3, 41:7,<br>41:12, 41:20,<br>41:25, 42:11,<br>42:18, 43:3,<br>43:15, 44:3,<br>44:14, 44:16,<br>44:17, 44:25,<br>45:6, 45:9,<br>45:13, 45:15,<br>46:12, 46:17,<br>46:22, 46:25,<br>47:1, 47:12,<br>47:15, 47:19,<br>47:24, 48:21,<br>48:25, 49:3,<br>49:21, 50:3,<br>50:10, 51:2,<br>51:23, 52:13,<br>52:17, 53:1,<br>53:10, 54:16,<br>62:21<br><b>flack's</b><br>32:9, 32:12,<br>37:4, 37:14,<br>38:17, 40:23,<br>41:14, 42:8,<br>42:15, 43:23,<br>43:25, 44:9,<br>44:18, 45:7,<br>51:23, 52:5,<br>52:15, 53:23<br><b>flanagan</b><br>55:10, 55:16,<br>55:20<br><b>floor</b><br>2:17 |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

73

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>flow</b><br>45:24<br><b>focused</b><br>46:22<br><b>following</b><br>4:10, 35:16<br><b>follows</b><br>5:10, 6:3<br><b>foregoing</b><br>64:5<br><b>form</b><br>9:13, 10:20,<br>11:15, 12:19,<br>13:5, 14:8,<br>15:2, 15:16,<br>16:4, 16:18,<br>17:21, 18:14,<br>19:5, 19:14,<br>20:3, 21:1,<br>21:14, 22:15,<br>23:25, 24:13,<br>24:25, 26:20,<br>27:12, 28:1,<br>29:13, 30:5,<br>32:18, 33:12,<br>35:13, 36:1,<br>36:10, 36:21,<br>37:11, 38:7,<br>39:8, 39:19,<br>40:2, 40:17,<br>41:18, 42:6,<br>42:20, 43:17,<br>44:6, 45:2,<br>45:20, 46:20,<br>47:13, 49:1,<br>50:8, 53:4,<br>56:19, 58:17,<br>59:15, 60:25,<br>62:3, 63:5<br><b>formed</b><br>62:12<br><b>forth</b><br>64:8<br><b>found</b><br>37:3, 37:14<br><b>free</b><br>7:4, 62:18<br><b>friday</b><br>1:17, 5:2, | 64:18, 65:3<br><b>frozen</b><br>51:5, 51:9<br><b>fully</b><br>12:24<br><b>function</b><br>57:4<br><b>further</b><br>7:24, 12:21,<br>17:9, 28:19,<br>29:5, 33:3,<br>52:21, 64:14,<br>64:17, 64:21<br><b>furthermore</b><br>55:13<br><hr/> <b>G</b><br><hr/> <b>garrett</b><br>2:4<br><b>general</b><br>49:22, 63:13,<br>63:14<br><b>generally</b><br>20:19, 25:20,<br>26:9, 47:8,<br>50:11<br><b>generating</b><br>33:24<br><b>give</b><br>8:9, 35:5,<br>36:11, 42:23,<br>47:20, 52:10,<br>53:1, 61:17,<br>62:6<br><b>given</b><br>11:11, 12:16,<br>13:19, 20:15,<br>37:2, 48:2,<br>64:12<br><b>gives</b><br>36:3<br><b>go</b><br>7:7, 16:21,<br>29:5, 32:20,<br>37:12, 41:19,<br>45:22, 53:23,<br>54:2, 55:15,<br>60:2, 63:20 | <b>goes</b><br>33:6, 33:13,<br>35:5<br><b>going</b><br>31:18, 53:18<br><b>good</b><br>5:12, 5:19,<br>6:6, 6:9<br><b>google</b><br>1:5, 5:20,<br>64:15<br><b>ground</b><br>25:12, 25:14,<br>25:20, 26:14,<br>27:8, 27:11,<br>28:10, 29:4,<br>29:23, 29:24,<br>31:3, 31:10<br><b>grounds</b><br>25:25, 26:11,<br>26:22, 46:4,<br>63:11<br><b>guess</b><br>26:7, 26:12<br><b>gui</b><br>35:1<br><b>guidance</b><br>48:17<br><hr/> <b>H</b><br><hr/> <b>hand</b><br>22:9, 22:10<br><b>happen</b><br>56:17, 61:11<br><b>happy</b><br>37:21<br><b>headwater</b><br>1:8, 5:17<br><b>hear</b><br>46:15<br><b>help</b><br>51:17<br><b>helpful</b><br>8:8, 8:11,<br>17:14, 32:21,<br>32:23<br><b>henderson</b><br>2:4 | <b>here</b><br>11:21, 16:9,<br>21:24, 24:2,<br>43:21, 44:21,<br>44:23, 47:22,<br>51:16, 55:22,<br>57:14, 58:19,<br>61:22<br><b>hereby</b><br>64:4<br><b>hereinbefore</b><br>64:8<br><b>hesitant</b><br>25:4<br><b>higher</b><br>11:11, 12:16,<br>13:11, 13:20,<br>13:24, 20:11,<br>21:19, 23:18,<br>24:4, 26:4,<br>28:14, 29:17,<br>30:11, 30:15<br><b>hopefully</b><br>51:16<br><b>hour</b><br>31:19<br><b>hours</b><br>6:15<br><hr/> <b>I</b><br><hr/> <b>idea</b><br>48:19<br><b>identification</b><br>33:14, 38:23,<br>38:24<br><b>identified</b><br>48:3, 49:6,<br>50:12<br><b>identifies</b><br>32:25, 33:15<br><b>identify</b><br>50:19<br><b>identifying</b><br>33:2, 33:16,<br>33:17, 33:24,<br>34:3, 34:4,<br>34:6, 38:25,<br>41:20, 47:24 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>immediately</b><br>49:14, 53:25<br><b>implement</b><br>37:4, 37:14<br><b>implementation</b><br>17:23, 19:17,<br>47:2, 47:15,<br>48:8, 48:16,<br>59:23, 61:19<br><b>implemented</b><br>22:21, 32:12,<br>40:23, 44:9,<br>44:19, 49:9,<br>50:23, 59:21,<br>60:12<br><b>implementing</b><br>32:8<br><b>implies</b><br>14:2<br><b>important</b><br>56:3<br><b>improvement</b><br>52:4<br><b>in-part</b><br>41:1<br><b>inability</b><br>57:21<br><b>include</b><br>23:8, 24:17,<br>33:2, 33:24,<br>34:4, 34:7,<br>41:9, 41:21,<br>47:25<br><b>includes</b><br>23:14<br><b>including</b><br>12:2, 38:24<br><b>inclusion</b><br>52:5<br><b>incorporate</b><br>53:21<br><b>indeed</b><br>11:19, 11:22,<br>17:4<br><b>indented</b><br>56:9<br><b>index</b><br>3:1 | <b>indicate</b><br>34:15, 35:9,<br>55:20<br><b>indicated</b><br>58:24<br><b>indicates</b><br>58:21<br><b>indicative</b><br>34:7, 39:1,<br>39:4, 41:21,<br>47:25<br><b>inform</b><br>50:5, 56:24,<br>57:18<br><b>information</b><br>28:23, 33:6,<br>33:10, 33:18,<br>34:7, 38:25,<br>39:4, 41:21,<br>47:25, 48:22,<br>57:6<br><b>initial</b><br>38:2<br><b>initiate</b><br>11:6, 11:13,<br>26:18, 27:23<br><b>initiated</b><br>8:21, 9:8,<br>11:12, 12:13,<br>13:19, 17:12,<br>17:16, 18:7,<br>19:4, 19:8,<br>19:13, 19:21,<br>23:9, 24:17,<br>35:23, 45:18<br><b>initiates</b><br>9:16<br><b>input</b><br>10:23, 56:1<br><b>insofar</b><br>52:19<br><b>instances</b><br>53:12<br><b>instant</b><br>28:25<br><b>instead</b><br>21:13, 27:9<br><b>instructed</b><br>3:3 | <b>integrating</b><br>54:16<br><b>intending</b><br>23:24<br><b>interacted</b><br>8:20, 9:7,<br>10:5, 10:16,<br>10:18, 19:18<br><b>interacting</b><br>10:10, 18:20,<br>18:22, 18:25,<br>21:22, 22:25,<br>32:17, 36:9,<br>36:19, 37:9,<br>38:5, 54:22<br><b>interaction</b><br>27:15, 28:16,<br>38:11, 41:5,<br>51:24<br><b>interactive</b><br>29:20<br><b>interested</b><br>64:25<br><b>interface</b><br>11:4, 12:1,<br>12:12, 12:15,<br>12:18, 14:2,<br>14:13, 14:18,<br>15:1, 15:15,<br>16:3, 16:11,<br>16:17, 17:8,<br>17:25, 18:17,<br>18:24, 29:9,<br>29:21<br><b>internet</b><br>11:1, 17:3,<br>28:23, 33:6,<br>33:10, 58:3,<br>58:5, 58:12,<br>58:15, 58:22,<br>59:1, 59:5,<br>59:11, 59:13,<br>59:16, 59:24,<br>63:1, 63:2,<br>63:8, 63:10,<br>63:13, 63:14<br><b>introduce</b><br>5:14 | <b>involve</b><br>32:8, 59:24<br><b>ioexception</b><br>56:10, 56:20<br><b>ipr</b><br>1:11<br><b>isolation</b><br>36:12, 37:21<br><b>issue</b><br>49:22, 62:11<br><b>issues</b><br>56:18<br><b>itself</b><br>11:17, 22:23,<br>26:17, 27:24,<br>30:2, 31:12,<br>32:20, 33:13,<br>47:19, 49:9<br><hr/> <b>J</b><br><hr/> <b>james</b><br>2:15, 5:16<br><b>jargon</b><br>57:14<br><b>jmilkey@raklaw</b><br>2:20<br><b>job</b><br>1:29<br><b>june</b><br>1:17, 5:2,<br>64:19, 65:3<br><hr/> <b>K</b><br><hr/> <b>kabat</b><br>2:14, 5:18<br><b>kevin</b><br>1:16, 5:7, 6:1,<br>64:7, 64:18<br><b>know</b><br>7:16, 11:18,<br>12:7, 20:1,<br>23:4, 25:8,<br>32:4, 34:22,<br>36:17, 37:7,<br>38:3, 42:12,<br>43:4, 46:3,<br>48:7, 55:7,<br>61:6, 62:16 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

75

|                                                                                               |                                                                                                                                                                                                            |                                                                                                                                   |                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>known</b><br>55:14                                                                         | 3:19, 55:25,<br>56:5, 56:10                                                                                                                                                                                | 41:25, 52:19,<br>52:22                                                                                                            | <b>materials</b><br>6:20, 7:7                                                                                                                                      |
| <b>L</b>                                                                                      | <b>lines</b><br>56:9                                                                                                                                                                                       | <b>mail</b><br>8:17, 9:1,<br>9:11, 9:15,<br>10:19, 12:11,<br>14:12, 14:17,<br>17:1, 35:8,<br>42:16, 58:9,<br>59:8, 59:9,<br>59:18 | <b>matter</b><br>65:1                                                                                                                                              |
| <b>labeled</b><br>57:12, 58:19                                                                | <b>list</b><br>11:5, 34:2                                                                                                                                                                                  | <b>mailbox</b><br>35:11, 35:17,<br>36:7, 36:18,<br>37:8, 38:4,<br>38:15, 43:7                                                     | <b>maybe</b><br>40:18, 51:20                                                                                                                                       |
| <b>large</b><br>61:7                                                                          | <b>little</b><br>21:24, 23:20,<br>31:1, 31:18,<br>46:25, 48:17,<br>51:19                                                                                                                                   | <b>make</b><br>23:1, 31:17,<br>39:6, 41:8,<br>46:5, 47:21,<br>49:12, 53:14,<br>61:3                                               | <b>mean</b><br>21:6, 21:25,<br>23:10, 23:21,<br>23:22, 23:24,<br>24:11, 59:10                                                                                      |
| <b>larger</b><br>19:17, 36:23,<br>37:19, 41:6,<br>41:7, 43:24,<br>44:18, 45:13,<br>47:5, 47:9 | <b>llc</b><br>1:5, 1:8, 64:15                                                                                                                                                                              | <b>making</b><br>14:1, 30:21,<br>31:5, 31:11,<br>39:17, 39:25,<br>52:8, 52:9,<br>53:11                                            | <b>meaning</b><br>23:22, 57:16                                                                                                                                     |
| <b>last</b><br>23:7, 34:9,<br>34:25, 51:12                                                    | <b>llp</b><br>2:4                                                                                                                                                                                          | <b>manager</b><br>8:19, 9:7,<br>10:15                                                                                             | <b>means</b><br>14:16, 18:24,<br>53:23, 56:13                                                                                                                      |
| <b>launched</b><br>28:22, 33:5,<br>33:9, 33:11                                                | <b>locating</b><br>55:8                                                                                                                                                                                    | <b>manner</b><br>33:11                                                                                                            | <b>mechanism</b><br>53:22                                                                                                                                          |
| <b>law</b><br>5:17, 5:21                                                                      | <b>logic</b><br>32:14, 37:20,<br>40:25, 41:7,<br>44:11, 44:19,<br>46:9, 46:13,<br>47:4, 47:16,<br>48:10, 48:13,<br>48:20, 49:10,<br>49:15, 49:25,<br>51:7, 52:7,<br>52:11, 52:19,<br>53:2, 53:25,<br>61:13 | <b>marked</b><br>3:18, 7:13                                                                                                       | <b>mechanisms</b><br>42:1                                                                                                                                          |
| <b>lay</b><br>8:4                                                                             | <b>long</b><br>6:13                                                                                                                                                                                        | <b>marks</b><br>3:24                                                                                                              | <b>mention</b><br>10:11, 45:24                                                                                                                                     |
| <b>layer</b><br>34:1                                                                          | <b>look</b><br>12:23, 13:6,<br>42:11, 50:9,<br>61:18, 62:18                                                                                                                                                | <b>marriage</b><br>64:23                                                                                                          | <b>mentioned</b><br>17:15                                                                                                                                          |
| <b>layout</b><br>37:22                                                                        | <b>looked</b><br>6:22, 6:23                                                                                                                                                                                |                                                                                                                                   | <b>message</b><br>17:20, 18:13,<br>20:23, 21:12,<br>35:11, 35:18,<br>43:9, 43:21,<br>56:22, 56:24,<br>57:6, 57:8                                                   |
| <b>lead</b><br>44:25                                                                          | <b>looking</b><br>34:2, 35:24,<br>55:1                                                                                                                                                                     |                                                                                                                                   | <b>messaging</b><br>20:15, 28:25                                                                                                                                   |
| <b>learn</b><br>55:13                                                                         | <b>looks</b><br>51:13                                                                                                                                                                                      |                                                                                                                                   | <b>met</b><br>6:19                                                                                                                                                 |
| <b>least</b><br>14:15, 23:15                                                                  | <b>los</b><br>2:18                                                                                                                                                                                         |                                                                                                                                   | <b>might</b><br>13:19, 50:20,<br>61:18                                                                                                                             |
| <b>let's</b><br>8:25, 37:1,<br>37:5, 38:1, 60:2                                               | <b>M</b>                                                                                                                                                                                                   |                                                                                                                                   | <b>milkey</b><br>2:15, 4:3,<br>5:16, 6:5, 9:19,<br>11:7, 12:25,<br>13:14, 14:19,<br>15:9, 15:24,<br>16:12, 16:22,<br>17:13, 18:4,<br>19:1, 19:10,<br>19:24, 20:21, |
| <b>license</b><br>5:13                                                                        | <b>made</b><br>8:16, 28:15,                                                                                                                                                                                |                                                                                                                                   |                                                                                                                                                                    |
| <b>likely</b><br>59:23                                                                        |                                                                                                                                                                                                            |                                                                                                                                   |                                                                                                                                                                    |
| <b>limitation</b><br>58:2, 58:5,<br>62:21, 62:25                                              |                                                                                                                                                                                                            |                                                                                                                                   |                                                                                                                                                                    |
| <b>limited</b><br>15:4                                                                        |                                                                                                                                                                                                            |                                                                                                                                   |                                                                                                                                                                    |
| <b>line</b><br>3:4, 3:9, 3:14,                                                                |                                                                                                                                                                                                            |                                                                                                                                   |                                                                                                                                                                    |

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76

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 21:4, 22:5,<br>23:2, 24:9,<br>24:20, 25:6,<br>27:3, 27:21,<br>28:6, 29:1,<br>29:22, 30:23,<br>32:1, 32:2,<br>32:22, 33:20,<br>35:15, 36:5,<br>36:16, 36:25,<br>37:25, 38:13,<br>39:8, 39:14,<br>39:22, 40:11,<br>41:11, 42:2,<br>42:10, 42:24,<br>44:2, 44:12,<br>45:10, 46:11,<br>47:7, 47:17,<br>51:12, 51:18,<br>53:7, 54:5,<br>54:10, 59:4,<br>59:19, 60:7,<br>61:9, 62:9,<br>63:9, 63:16,<br>63:19<br><b>minute</b><br>47:21<br><b>mischaracterizat-</b><br><b>ion</b><br>30:4<br><b>mischaracterize</b><br>18:18<br><b>modality</b><br>25:2<br><b>modem</b><br>58:12, 58:23,<br>59:3, 59:11<br><b>modes</b><br>16:6<br><b>modified</b><br>47:11, 52:13<br><b>modifying</b><br>48:25<br><b>modules</b><br>20:15<br><b>more</b><br>48:17, 50:10,<br>51:21, 61:6 | <b>morning</b><br>5:12, 5:19,<br>6:6, 6:9<br><b>most</b><br>30:7<br><b>much</b><br>5:24, 63:19<br><b>multiple</b><br>60:9, 60:14<br><b>myself</b><br>6:24, 8:13<br><hr/> <b>N</b> <hr/> <b>name</b><br>5:12<br><b>nature</b><br>57:18<br><b>necessarily</b><br>3:25, 15:20<br><b>need</b><br>7:12, 42:22,<br>48:17, 49:11,<br>54:3, 61:17<br><b>needs</b><br>52:22<br><b>neer</b><br>2:5, 5:19,<br>9:13, 10:20,<br>11:15, 12:19,<br>13:5, 14:8,<br>15:2, 15:16,<br>16:4, 16:18,<br>17:21, 18:14,<br>19:5, 19:14,<br>20:3, 21:1,<br>21:14, 22:15,<br>23:25, 24:13,<br>24:25, 26:20,<br>27:12, 28:1,<br>29:13, 30:4,<br>31:21, 32:18,<br>33:12, 35:13,<br>36:1, 36:10,<br>36:21, 37:11,<br>38:7, 39:19,<br>40:2, 40:17,<br>41:18, 42:6,<br>42:20, 43:17, | 44:6, 45:2,<br>45:20, 46:20,<br>47:13, 49:1,<br>50:8, 53:4,<br>58:17, 59:15,<br>60:25, 62:3,<br>63:5, 63:18<br><b>neer@finnegan</b><br>2:10<br><b>network</b><br>12:22, 17:11,<br>19:7, 29:8,<br>40:8, 54:18,<br>55:5, 56:25,<br>58:15, 58:20,<br>59:21, 59:25,<br>60:10, 60:12,<br>60:24, 61:4,<br>61:12, 61:14,<br>61:24, 62:1,<br>63:4<br><b>new</b><br>2:7, 8:16, 56:1<br><b>next</b><br>34:13<br><b>none</b><br>3:5, 3:10,<br>3:15, 3:20<br><b>note</b><br>3:23, 34:25<br><b>notes</b><br>6:11<br><b>nothing</b><br>60:13, 63:18<br><b>notice</b><br>5:1<br><b>notified</b><br>46:1<br><b>notion</b><br>50:24<br><b>number</b><br>18:19, 34:1,<br>56:17, 60:11<br><b>numbers</b><br>35:2, 35:6,<br>35:25<br><b>nw</b><br>2:7 | <hr/> <b>O</b> <hr/> <b>objection</b><br>9:13, 10:20,<br>11:15, 12:19,<br>13:5, 14:8,<br>15:2, 15:16,<br>16:4, 16:18,<br>17:21, 18:14,<br>19:5, 19:14,<br>20:3, 21:1,<br>21:14, 22:15,<br>23:25, 24:13,<br>24:25, 26:20,<br>27:12, 28:1,<br>29:13, 30:4,<br>32:18, 33:12,<br>35:13, 36:1,<br>36:10, 36:21,<br>37:11, 38:7,<br>39:8, 39:19,<br>40:2, 40:17,<br>41:18, 42:6,<br>42:20, 43:17,<br>44:6, 45:2,<br>45:20, 46:20,<br>47:13, 49:1,<br>50:8, 53:4,<br>58:17, 59:15,<br>60:25, 62:3,<br>63:5<br><b>obvious</b><br>37:4, 37:14<br><b>occur</b><br>16:15, 25:3<br><b>occurred</b><br>64:18<br><b>occurring</b><br>50:5<br><b>office</b><br>1:1<br><b>once</b><br>43:18, 45:3,<br>54:24<br><b>one</b><br>12:12, 15:21,<br>22:9, 22:24,<br>39:21, 46:23, |
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Conducted on June 19, 2026

77

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>49:20, 50:15,<br/>56:13, 61:20,<br/>61:25<br/><b>only</b><br/>10:25, 17:2,<br/>43:20<br/><b>open</b><br/>12:5, 60:22,<br/>60:23<br/><b>operating</b><br/>45:25, 46:6,<br/>48:4, 49:14,<br/>49:18, 49:19,<br/>50:4, 50:6,<br/>50:15, 50:18<br/><b>operation</b><br/>16:6, 56:14<br/><b>opine</b><br/>25:4, 43:19,<br/>45:5, 54:14<br/><b>opined</b><br/>18:2, 42:22,<br/>61:16<br/><b>opinion</b><br/>10:13, 11:8,<br/>15:25, 16:13,<br/>17:17, 19:11,<br/>21:9, 22:7,<br/>22:14, 22:16,<br/>24:21, 26:13,<br/>39:23, 40:12,<br/>41:13, 42:3,<br/>43:13, 44:23,<br/>50:3, 58:14,<br/>59:13, 61:23,<br/>62:11, 62:12<br/><b>opposed</b><br/>11:12, 19:3,<br/>19:13, 33:11,<br/>52:1<br/><b>order</b><br/>6:15, 59:25<br/><b>original</b><br/>42:23<br/><b>originating</b><br/>48:3, 49:7,<br/>50:12<br/><b>other</b><br/>6:17, 6:20,</p> | <p>11:5, 22:10,<br/>27:14, 28:14,<br/>33:7, 41:10,<br/>47:8, 48:2,<br/>48:21, 49:6,<br/>50:11, 50:21,<br/>52:24, 56:4,<br/>56:18<br/><b>others</b><br/>46:24<br/><b>otherwise</b><br/>64:25<br/><b>out</b><br/>8:4, 49:19,<br/>51:13<br/><b>outcome</b><br/>65:1<br/><b>output</b><br/>57:9<br/><b>over</b><br/>6:22, 6:24,<br/>31:19, 42:17,<br/>43:14, 44:14,<br/>44:24<br/><b>overall</b><br/>43:25, 54:20,<br/>54:22, 55:2,<br/>61:20<br/><b>own</b><br/>41:8<br/><b>owner</b><br/>1:9, 2:13, 5:8,<br/>5:17, 38:2</p> <hr/> <p><b>P</b></p> <hr/> <p><b>page</b><br/>3:4, 3:9, 3:14,<br/>3:19, 4:2, 4:8,<br/>30:25, 56:6,<br/>58:10, 59:8,<br/>62:19<br/><b>pages</b><br/>1:30<br/><b>paragraph</b><br/>7:16, 8:12,<br/>8:15, 9:6,<br/>10:11, 10:14,<br/>10:22, 11:20,</p> | <p>11:22, 12:2,<br/>12:6, 12:9,<br/>13:6, 13:15,<br/>13:16, 13:22,<br/>15:19, 16:25,<br/>18:6, 20:9,<br/>21:16, 22:7,<br/>23:4, 23:7,<br/>23:13, 23:14,<br/>25:8, 25:11,<br/>25:17, 25:18,<br/>25:19, 26:2,<br/>27:13, 28:4,<br/>28:11, 28:19,<br/>29:5, 29:14,<br/>30:7, 32:4,<br/>32:11, 32:24,<br/>32:25, 33:4,<br/>33:23, 34:3,<br/>34:6, 34:10,<br/>34:13, 34:14,<br/>34:21, 34:25,<br/>35:4, 35:8,<br/>36:2, 36:6,<br/>37:3, 37:13,<br/>38:12, 38:22,<br/>39:2, 40:5,<br/>40:22, 41:19,<br/>43:3, 43:7,<br/>43:13, 44:8,<br/>45:23, 47:15,<br/>47:23, 49:3,<br/>50:10, 55:6,<br/>55:12, 55:22,<br/>56:7, 57:23,<br/>58:7, 62:15<br/><b>paragraphs</b><br/>11:21, 38:22,<br/>39:3, 39:11<br/><b>parameter</b><br/>34:1<br/><b>parenthesis</b><br/>57:11<br/><b>part</b><br/>7:23, 10:10,<br/>12:23, 32:14,<br/>36:24, 37:16,<br/>37:23, 38:9,</p> | <p>40:24, 41:7,<br/>43:25, 44:11,<br/>44:17, 44:18,<br/>44:19, 47:16,<br/>51:12, 61:19<br/><b>particular</b><br/>9:21, 9:25,<br/>11:3, 11:19,<br/>11:23, 17:2,<br/>17:5, 19:16,<br/>20:8, 26:5,<br/>26:25, 30:16,<br/>30:22, 31:16,<br/>33:15, 34:6,<br/>38:12, 46:1,<br/>54:25, 58:11,<br/>58:21, 58:25,<br/>59:7, 62:13<br/><b>parties</b><br/>64:22, 64:24<br/><b>party</b><br/>64:14<br/><b>pass</b><br/>63:16<br/><b>patchwork</b><br/>56:13<br/><b>patent</b><br/>1:1, 1:3, 1:9,<br/>1:12, 2:13, 5:8,<br/>5:17, 7:8<br/><b>pdt</b><br/>1:20, 1:24,<br/>5:3, 64:19<br/><b>perform</b><br/>56:14<br/><b>performing</b><br/>14:1, 52:24<br/><b>performs</b><br/>52:17<br/><b>perhaps</b><br/>21:23<br/><b>permeation</b><br/>11:10<br/><b>personally</b><br/>5:6<br/><b>petitioner</b><br/>1:6, 2:3, 5:20<br/><b>phone</b><br/>10:25</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

78

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>piggyback</b><br/>37:17<br/><b>place</b><br/>33:22<br/><b>placement</b><br/>8:24<br/><b>places</b><br/>8:18<br/><b>please</b><br/>5:14, 23:3,<br/>25:7, 32:3,<br/>34:21, 55:6,<br/>57:23, 62:15,<br/>62:18<br/><b>point</b><br/>8:6, 19:18,<br/>52:4<br/><b>pointed</b><br/>63:3<br/><b>pointing</b><br/>63:11<br/><b>policy</b><br/>37:16, 37:24,<br/>46:10, 61:19,<br/>61:20, 62:8<br/><b>port</b><br/>34:1, 35:2,<br/>35:6, 35:25,<br/>42:17, 43:14,<br/>44:14, 44:25<br/><b>portion</b><br/>13:16, 34:9<br/><b>ports</b><br/>35:9<br/><b>posita</b><br/>32:12, 37:3,<br/>37:14, 40:23,<br/>44:9, 60:17,<br/>60:21<br/><b>possible</b><br/>14:5, 14:23,<br/>16:14, 17:18,<br/>60:8, 60:21,<br/>61:3, 61:8,<br/>61:11<br/><b>potential</b><br/>7:6, 15:21<br/><b>potentially</b><br/>25:3, 25:19,</p> | <p>33:17, 61:8<br/><b>practice</b><br/>15:22<br/><b>preparation</b><br/>6:21<br/><b>prepare</b><br/>6:7, 6:16<br/><b>preparing</b><br/>6:14<br/><b>present</b><br/>49:4<br/><b>pretty</b><br/>27:5<br/><b>prevent</b><br/>53:10, 53:11<br/><b>preventing</b><br/>60:13<br/><b>previous</b><br/>6:23, 10:22,<br/>25:25, 26:10,<br/>38:21, 46:3,<br/>46:4, 53:8,<br/>62:19<br/><b>previously</b><br/>16:24, 26:10,<br/>26:23<br/><b>previously-marked</b><br/>4:10<br/><b>priorities</b><br/>12:22, 13:7,<br/>23:14<br/><b>prioritization</b><br/>10:10, 13:2,<br/>55:5<br/><b>priority</b><br/>11:11, 12:16,<br/>13:12, 13:20,<br/>13:24, 20:11,<br/>21:19, 23:18,<br/>24:4, 26:4,<br/>28:14, 29:17,<br/>30:11, 30:15,<br/>40:25, 41:9<br/><b>probably</b><br/>12:23, 21:15,<br/>50:22, 61:6<br/><b>proceed</b><br/>5:25, 31:25,</p> | <p>60:6<br/><b>proceeding</b><br/>7:14<br/><b>proceedings</b><br/>54:8, 63:22<br/><b>process</b><br/>12:13, 49:16<br/><b>processor</b><br/>10:8, 10:25,<br/>27:16, 28:17<br/><b>processors</b><br/>7:24<br/><b>production</b><br/>3:8<br/><b>profile</b><br/>33:16, 33:25,<br/>34:2<br/><b>program</b><br/>19:17, 49:16,<br/>49:21, 50:14,<br/>52:16, 52:21,<br/>53:13, 54:11,<br/>60:13<br/><b>programmer</b><br/>52:15, 52:21<br/><b>programs</b><br/>48:4, 48:5,<br/>49:7, 49:8,<br/>49:22, 50:1,<br/>50:13, 50:16,<br/>50:19, 51:1,<br/>51:2, 60:12<br/><b>proposed</b><br/>11:10, 38:16,<br/>45:15, 46:14,<br/>51:22, 53:9,<br/>54:12<br/><b>proposing</b><br/>48:20, 48:24<br/><b>protocols</b><br/>34:15, 34:16,<br/>34:17, 41:23,<br/>49:4<br/><b>provide</b><br/>11:1, 54:21,<br/>55:16, 56:13<br/><b>provided</b><br/>57:3, 57:15</p> | <p><b>provides</b><br/>47:1, 47:2<br/><b>providing</b><br/>47:21, 55:4,<br/>55:16<br/><b>pursuant</b><br/>5:1<br/><b>put</b><br/>28:19, 40:19</p> <hr/> <p><b>Q</b></p> <hr/> <p><b>quality</b><br/>51:13<br/><b>question</b><br/>8:1, 8:6, 9:24,<br/>10:17, 12:24,<br/>18:10, 20:6,<br/>21:3, 21:9,<br/>21:23, 22:11,<br/>23:10, 25:20,<br/>27:5, 28:3,<br/>30:25, 36:22,<br/>37:7, 39:5,<br/>39:15, 39:16,<br/>48:18, 49:12,<br/>50:18, 53:6,<br/>58:4, 63:1<br/><b>questions</b><br/>3:3, 3:18,<br/>6:24, 37:2<br/><b>quick</b><br/>54:4<br/><b>quickly</b><br/>51:16<br/><b>quite</b><br/>27:4, 37:1,<br/>39:15, 53:18<br/><b>quotation</b><br/>3:24<br/><b>quote</b><br/>3:25, 8:2,<br/>25:15, 25:21,<br/>27:7, 27:10,<br/>28:10, 29:3,<br/>31:3, 31:6,<br/>58:3, 58:5, 63:1<br/><b>quoted</b><br/>34:10</p> |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

79

| R                    |                    |                       |                    |
|----------------------|--------------------|-----------------------|--------------------|
| <b>raised</b>        | <b>reference</b>   | 58:10, 59:8,          | 23:17, 23:18,      |
| 57:4                 | 7:10, 7:11,        | 59:10                 | 24:2, 24:4,        |
| <b>range</b>         | 32:21, 55:10,      | <b>reported</b>       | 26:2, 26:5,        |
| 34:15, 34:17,        | 62:19              | 1:26, 56:19,          | 26:13, 26:15,      |
| 41:23, 49:4          | <b>references</b>  | 57:6                  | 26:19, 27:6,       |
| <b>read</b>          | 8:7, 58:3          | <b>reporter</b>       | 27:9, 27:14,       |
| 12:9, 18:12,         | <b>referring</b>   | 5:5, 5:11,            | 27:24, 28:12,      |
| 20:23, 21:12,        | 59:6, 63:7         | 5:22, 5:24, 7:7,      | 28:15, 29:10,      |
| 22:12, 24:24         | <b>refers</b>      | 22:2, 31:22,          | 29:15, 29:18,      |
| <b>reading</b>       | 29:18              | 31:24, 51:4,          | 30:1, 30:9,        |
| 17:20                | <b>reflect</b>     | 51:5, 51:8,           | 30:11, 30:13,      |
| <b>real</b>          | 3:25               | 51:9, 54:7,           | 30:16, 30:19,      |
| 54:3                 | <b>reflecting</b>  | 54:9, 60:3,           | 30:21, 31:4,       |
| <b>really</b>        | 48:22              | 60:5, 63:21,          | 31:6, 31:8,        |
| 14:13, 19:15,        | <b>regarding</b>   | 64:1, 64:4            | 31:12, 33:4,       |
| 38:8, 46:22,         | 58:2, 62:13        | <b>reporter's</b>     | 41:1, 60:9,        |
| 61:15                | <b>regards</b>     | 3:23                  | 60:22, 61:11,      |
| <b>reasons</b>       | 15:5, 22:4,        | <b>represent</b>      | 62:1, 62:2         |
| 56:17                | 22:22, 25:24,      | 28:22, 34:8,          | <b>requested</b>   |
| <b>recall</b>        | 27:19, 28:20,      | 35:17, 35:19,         | 8:23, 9:4, 9:18    |
| 16:5                 | 36:23, 37:20,      | 35:24, 39:13,         | <b>requesting</b>  |
| <b>receive</b>       | 38:15, 40:5,       | 39:21, 39:24,         | 14:6, 60:14        |
| 35:11, 35:18,        | 46:4, 47:3,        | 40:14, 41:15,         | <b>requests</b>    |
| 43:9, 43:21          | 58:8, 63:8         | 41:22, 43:8,          | 8:17, 9:14,        |
| <b>receiving</b>     | <b>registers</b>   | 43:10, 43:22,         | 10:11, 11:6,       |
| 42:17, 43:14,        | 8:19, 9:7,         | 48:1, 51:24           | 12:22, 13:8,       |
| 44:14, 44:24         | 10:15              | <b>representation</b> | 13:10, 17:11,      |
| <b>reception</b>     | <b>regular</b>     | 57:15                 | 19:7, 23:8,        |
| 44:15                | 37:17              | <b>represented</b>    | 23:11, 23:16,      |
| <b>recess</b>        | <b>reiterate</b>   | 33:19, 64:15          | 23:21, 23:22,      |
| 31:23, 60:4          | 13:21, 16:23       | <b>representing</b>   | 24:10, 24:11,      |
| <b>recites</b>       | <b>rejected</b>    | 39:1, 41:4,           | 24:15, 24:16,      |
| 7:23                 | 61:12              | 41:24, 49:5           | 24:18, 29:19,      |
| <b>record</b>        | <b>relate</b>      | <b>represents</b>     | 31:17, 37:17,      |
| 5:11, 5:15,          | 46:18              | 29:7, 32:13,          | 61:3               |
| 7:14, 31:22,         | <b>related</b>     | 34:17, 40:7,          | <b>requirement</b> |
| 31:24, 54:2,         | 37:16, 64:21       | 40:24, 44:10,         | 25:22              |
| 54:7, 54:9,          | <b>relating</b>    | 44:15, 45:8           | <b>reread</b>      |
| 60:2, 60:3,          | 16:10              | <b>request</b>        | 6:10               |
| 60:5, 63:20,         | <b>relying</b>     | 3:8, 8:16,            | <b>research</b>    |
| 63:21, 64:11         | 46:17              | 8:21, 9:9, 9:16,      | 1:8                |
| <b>refamiliarize</b> | <b>remember</b>    | 9:17, 10:9,           | <b>resource</b>    |
| 8:13                 | 11:20              | 13:10, 13:12,         | 58:11, 59:11       |
| <b>refer</b>         | <b>remembered</b>  | 13:18, 13:22,         | <b>resources</b>   |
| 24:6, 31:16,         | 5:1                | 13:24, 18:7,          | 46:2, 54:19        |
| 43:20                | <b>remembering</b> | 18:11, 20:9,          | <b>restate</b>     |
|                      | 6:24               | 20:11, 21:17,         | 21:2               |
|                      | <b>remote</b>      | 21:18, 21:19,         | <b>retrieve</b>    |
|                      | 1:18, 5:3,         |                       | 28:23, 33:6,       |

Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

80

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 33:10<br><b>returned</b><br>56:15<br><b>reveal</b><br>17:9<br><b>review</b><br>6:17, 6:20<br><b>right</b><br>6:6, 7:22,<br>12:4, 18:9,<br>19:2, 19:4,<br>25:4, 32:24,<br>40:4, 44:13,<br>44:16, 45:12,<br>47:22, 54:6,<br>56:5, 56:8<br><b>routine</b><br>33:14<br><b>rpr</b><br>1:27, 65:7<br><b>run</b><br>20:8, 20:14<br><b>running</b><br>13:12, 13:25,<br>14:4, 20:12,<br>20:17, 20:18,<br>20:25, 21:7,<br>21:13, 21:20,<br>22:9, 22:18,<br>23:19, 24:5,<br>24:7, 26:6,<br>30:12, 30:17,<br>30:22, 49:17,<br>50:6, 52:23<br><b>runs</b><br>20:16<br><b>russ</b><br>2:14, 5:17<br><b>ryan</b><br>1:27, 5:4,<br>5:12, 64:3, 65:7<br><hr/> <b>S</b><br><hr/> <b>said</b><br>15:21, 43:24,<br>47:1<br><b>same</b><br>30:25, 58:11, | 61:25, 63:2,<br>63:10, 63:14<br><b>satisfies</b><br>25:21<br><b>say</b><br>10:24, 22:23,<br>23:14, 24:16,<br>25:17, 26:1,<br>29:6, 29:14,<br>29:24, 42:7,<br>44:17, 45:6,<br>49:21, 50:24,<br>53:9, 62:10<br><b>saying</b><br>13:17, 46:15,<br>48:22<br><b>says</b><br>18:6, 35:8,<br>35:17, 37:3<br><b>scenario</b><br>61:10, 61:16,<br>62:4, 62:14<br><b>scope</b><br>20:19<br><b>scroll</b><br>11:21<br><b>second</b><br>35:8, 61:11,<br>62:1, 62:2<br><b>seconds</b><br>54:3<br><b>section</b><br>8:3, 25:23<br><b>see</b><br>7:19, 25:11,<br>34:19, 35:12,<br>35:20, 43:6,<br>43:11, 51:16,<br>55:2, 55:18,<br>56:5, 62:20,<br>62:24<br><b>seeing</b><br>55:2<br><b>seems</b><br>20:18<br><b>send</b><br>35:11, 35:18,<br>36:7, 36:18, | 37:8, 38:4,<br>43:9, 43:21<br><b>sentence</b><br>23:7, 23:11,<br>23:22, 34:13,<br>34:25, 35:8,<br>35:16, 37:13,<br>43:7<br><b>separately</b><br>61:25<br><b>service</b><br>58:3, 58:5,<br>58:13, 58:15,<br>58:22, 59:1,<br>59:2, 59:12,<br>59:14, 59:16,<br>63:1, 63:2,<br>63:8, 63:11,<br>63:14, 63:15<br><b>services</b><br>61:4<br><b>set</b><br>64:8<br><b>setting</b><br>41:13<br><b>settings</b><br>35:9, 42:16<br><b>shell</b><br>7:10, 7:21,<br>8:5, 8:15,<br>10:17, 11:10,<br>12:3, 12:5,<br>12:9, 12:14,<br>12:21, 12:24,<br>13:1, 13:7,<br>16:5, 16:14,<br>17:10, 17:18,<br>19:6, 19:12,<br>20:1, 20:4,<br>20:5, 20:7,<br>20:14, 20:16,<br>20:20, 21:6,<br>21:17, 22:7,<br>23:13, 24:2,<br>26:1, 27:14,<br>28:11, 28:15,<br>29:14, 29:25,<br>30:8, 32:7, | 45:14, 45:16,<br>45:24, 46:5,<br>46:16, 47:11,<br>48:25, 50:4,<br>51:22, 53:10,<br>58:8<br><b>shell's</b><br>10:4, 10:8,<br>11:3, 14:10,<br>14:23, 15:19,<br>16:1, 21:10,<br>24:21<br><b>shell-cole</b><br>36:13, 36:24,<br>37:19, 44:19,<br>47:4, 47:6,<br>47:9, 48:9,<br>48:13, 48:19,<br>49:9, 49:15,<br>49:25, 51:6,<br>52:19, 53:2,<br>53:22, 53:25,<br>54:17, 58:2,<br>58:6, 60:16,<br>60:20, 61:12,<br>61:21, 61:23,<br>62:21, 63:3<br><b>shell-cole's</b><br>32:14, 37:16,<br>37:23, 40:25,<br>41:7, 44:11,<br>47:16, 52:7,<br>52:10<br><b>short</b><br>52:18, 53:14<br><b>shorthand</b><br>5:5, 64:3<br><b>should</b><br>9:21, 29:24,<br>45:12, 63:20<br><b>show</b><br>56:22<br><b>showstatus</b><br>56:11, 57:3,<br>57:8<br><b>showstatus (e</b><br>57:13<br><b>signature-plkal</b><br>65:4 |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

81

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>single</b><br>60:8<br><b>sitting</b><br>44:21, 44:23,<br>61:22<br><b>situation</b><br>8:25<br><b>sketch</b><br>48:16<br><b>socket</b><br>55:25, 56:1,<br>56:16, 57:5,<br>57:21, 59:21,<br>59:25, 60:9,<br>60:18, 60:22,<br>60:23<br><b>sockets</b><br>60:14<br><b>solely</b><br>43:23, 50:19<br><b>some</b><br>8:5, 27:23,<br>28:21, 33:4,<br>35:2, 35:5,<br>42:23, 48:23,<br>62:6<br><b>somebody</b><br>55:1<br><b>something</b><br>14:22, 19:20,<br>23:24, 45:9,<br>45:17, 45:18,<br>49:23, 50:23,<br>51:2, 51:15,<br>51:20, 52:7,<br>54:3, 59:6<br><b>sorry</b><br>21:2, 30:24,<br>36:11, 48:17,<br>51:10, 53:5,<br>53:17, 57:13<br><b>sort</b><br>27:23<br><b>source</b><br>33:3<br><b>specific</b><br>8:7, 14:22,<br>22:21, 26:8, | 39:6, 39:17,<br>62:25<br><b>specifically</b><br>8:1, 15:6,<br>15:17, 18:10,<br>25:1, 25:4,<br>26:1, 26:7,<br>36:12, 38:10,<br>39:5, 39:9,<br>40:3, 42:3,<br>43:19, 45:4,<br>45:5, 47:10,<br>54:14, 54:25,<br>61:1, 62:5,<br>62:12<br><b>specified</b><br>13:3, 16:15<br><b>specifies</b><br>11:24, 12:15,<br>17:6, 41:20<br><b>specify</b><br>12:17, 14:16,<br>14:20<br><b>specifying</b><br>12:10, 14:11,<br>14:25, 15:14,<br>16:2<br><b>spend</b><br>6:13<br><b>spyware</b><br>48:6<br><b>standard</b><br>59:24<br><b>start</b><br>37:1, 37:6<br><b>state</b><br>5:5, 10:15,<br>13:9, 23:15,<br>30:6, 55:12<br><b>statement</b><br>56:21, 62:25<br><b>states</b><br>1:1, 13:7,<br>21:17, 23:8,<br>32:25, 34:6,<br>34:14, 34:25,<br>43:7<br><b>status</b><br>32:9, 37:5, | 37:15, 38:18,<br>38:19, 39:6,<br>39:17, 39:25,<br>40:15, 40:21,<br>41:16, 42:4,<br>42:8, 46:2<br><b>stenographic</b><br>64:1<br><b>stenographically</b><br>1:26<br><b>step</b><br>48:9, 48:12<br><b>still</b><br>23:20, 31:1,<br>51:19<br><b>stipulations</b><br>3:13<br><b>stop</b><br>9:23<br><b>straightforward</b><br>27:6<br><b>stream</b><br>56:2, 57:17<br><b>strike</b><br>13:15, 19:25,<br>26:13, 28:8,<br>32:15, 38:18,<br>44:22, 46:14,<br>50:2, 56:23,<br>60:19<br><b>string</b><br>57:14, 57:16<br><b>structure</b><br>61:20<br><b>subsequent</b><br>38:22, 39:3<br><b>subset</b><br>34:16, 41:23<br><b>successful</b><br>56:15<br><b>support</b><br>3:1, 40:10<br><b>sure</b><br>8:12, 18:5,<br>33:23, 37:1,<br>47:21, 48:14,<br>52:14<br><b>surely</b><br>18:1 | <b>sworn</b><br>5:9, 5:23, 6:2,<br>64:9<br><b>sync</b><br>16:25<br><b>synchronization</b><br>8:17, 8:23,<br>9:1, 9:3, 9:11,<br>9:15, 9:17,<br>10:2, 10:6,<br>10:18, 11:9,<br>11:11, 11:12,<br>11:14, 11:17,<br>11:18, 11:23,<br>11:25, 12:10,<br>12:12, 12:15,<br>12:16, 12:17,<br>13:2, 13:4,<br>13:18, 14:2,<br>14:7, 14:11,<br>14:16, 14:25,<br>15:6, 15:14,<br>16:2, 16:10,<br>16:15, 16:16,<br>16:24, 17:5,<br>17:7, 17:15,<br>17:19, 17:24,<br>18:11, 18:15,<br>18:23, 19:3,<br>19:12, 20:2,<br>24:22, 58:9,<br>59:9, 59:14,<br>59:17<br><b>synchronize</b><br>17:1, 19:19<br><b>synchronizing</b><br>45:17<br><b>system</b><br>10:4, 10:14,<br>45:16, 48:4,<br>48:8, 48:12,<br>49:7, 49:14,<br>49:16, 49:18,<br>49:19, 49:22,<br>50:5, 50:6,<br>50:12, 50:14,<br>50:16, 50:18,<br>50:19, 51:1, |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

82

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 51:25, 52:6,<br>52:15, 52:20,<br>53:11, 53:24,<br>54:20, 54:22<br><b>systems</b><br>50:15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 43:21, 61:17<br><b>testified</b><br>5:10, 6:3<br><b>testify</b><br>5:9<br><b>testimony</b><br>15:12, 64:11<br><b>text</b><br>57:3, 57:16,<br>57:17<br><b>th</b><br>2:17<br><b>thank</b><br>5:22, 5:24,<br>32:1, 32:23,<br>63:19<br><b>thanks</b><br>54:6<br><b>themselves</b><br>50:19<br><b>theory</b><br>9:10<br><b>thereby</b><br>40:14<br><b>thereof</b><br>5:3<br><b>thing</b><br>56:3<br><b>think</b><br>12:20, 12:23,<br>17:22, 21:15,<br>22:19, 24:1,<br>25:18, 25:19,<br>25:23, 26:21,<br>27:4, 27:5,<br>30:6, 30:25,<br>31:13, 34:9,<br>36:2, 37:18,<br>39:10, 43:6,<br>44:7, 45:21,<br>46:21, 46:25,<br>47:4, 47:14,<br>49:2, 50:17,<br>50:19, 50:21,<br>50:22, 51:12,<br>53:5, 53:17,<br>54:15, 55:9,<br>60:11 | <b>third</b><br>43:6<br><b>thought</b><br>42:23, 61:17,<br>62:6<br><b>three</b><br>35:9, 35:10<br><b>through</b><br>7:7, 12:15,<br>14:2, 15:1,<br>15:15, 16:3,<br>16:16, 41:25,<br>53:23, 57:3,<br>59:21<br><b>time</b><br>31:19, 55:15,<br>59:23, 61:25<br><b>times</b><br>6:19<br><b>today</b><br>44:21, 44:23,<br>48:18, 61:22<br><b>today's</b><br>6:7, 6:14,<br>6:17, 6:21<br><b>tostring</b><br>57:13<br><b>touches</b><br>25:18, 25:19<br><b>trademark</b><br>1:1<br><b>traffic</b><br>33:16, 33:25,<br>34:2, 35:1,<br>35:5, 37:16,<br>37:24<br><b>transcript</b><br>7:13<br><b>trial</b><br>1:3<br><b>tried</b><br>56:12<br><b>true</b><br>64:11<br><b>truth</b><br>5:10, 6:2<br><b>try</b><br>56:8 | <b>try-cach</b><br>56:4<br><b>trying</b><br>21:5, 53:19<br><b>turn</b><br>12:6, 23:3,<br>25:7, 32:3,<br>34:21, 42:12,<br>55:6, 57:17,<br>57:23, 62:15<br><b>turning</b><br>43:3<br><b>two</b><br>22:12, 37:2<br><b>type</b><br>50:14, 57:12<br><b>types</b><br>39:12, 60:14                                                                                                                                                                                                                |
| <b>T</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>U</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>table</b><br>35:1<br><b>take</b><br>54:3<br><b>taken</b><br>48:23, 49:24,<br>64:10<br><b>takes</b><br>33:22<br><b>taking</b><br>5:2<br><b>talk</b><br>8:25, 10:22,<br>11:16, 37:21,<br>38:1, 39:3,<br>45:23, 56:12<br><b>talked</b><br>46:4<br><b>tcp</b><br>34:1<br><b>teaches</b><br>26:2, 28:12,<br>29:15, 30:8<br><b>teaching</b><br>46:12<br><b>teachings</b><br>21:10, 58:8<br><b>techie</b><br>57:14<br><b>teleconference</b><br>1:18, 5:4<br><b>tell</b><br>6:2, 13:1,<br>38:11, 47:10<br><b>tells</b><br>49:14<br><b>termed</b><br>63:7<br><b>terms</b><br>19:16, 33:14, |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>unauthorized</b><br>48:5, 49:7,<br>50:1, 50:13,<br>51:1, 52:16,<br>52:21, 53:13,<br>53:24, 54:11,<br>54:15, 54:23,<br>55:3<br><b>unavailability</b><br>55:14, 55:21,<br>58:20, 58:21<br><b>unavailable</b><br>56:25, 58:24<br><b>under</b><br>42:16, 44:3<br><b>understand</b><br>10:13, 15:10,<br>18:5, 21:5,<br>21:6, 31:2,<br>39:2, 46:17,<br>48:14, 53:6,<br>60:17, 60:21<br><b>understanding</b><br>22:6, 35:4<br><b>understood</b><br>53:8<br><b>unidentified</b><br>48:5, 49:25, |

Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

83

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 50:13, 51:1<br><b>united</b><br>1:1<br><b>unquote</b><br>31:4, 58:3<br><b>unspecified</b><br>48:23<br><b>update</b><br>49:14, 49:19,<br>50:5<br><b>updates</b><br>48:4, 50:18<br><b>upload</b><br>7:5<br><b>uploading</b><br>7:8, 55:8<br><b>use</b><br>7:4, 11:2,<br>15:7, 15:11,<br>15:22, 18:2,<br>35:1, 48:15,<br>52:14, 62:1<br><b>user's</b><br>27:15, 28:16<br><b>uses</b><br>53:22<br><b>using</b><br>14:5, 14:24,<br>15:13, 16:1,<br>18:12, 20:22,<br>22:11, 22:17,<br>24:23, 58:11,<br>60:23, 61:14,<br>61:24, 62:1<br><hr/> <b>V</b><br><hr/> <b>value</b><br>49:12<br><b>variety</b><br>50:22, 56:8<br><b>versus</b><br>21:25, 22:3,<br>46:6, 48:8,<br>48:12, 51:1,<br>52:6, 52:12,<br>52:25, 53:3,<br>53:12<br><b>via</b><br>5:3, 58:23, | 59:3<br><b>video</b><br>1:18, 5:3<br><b>view</b><br>47:11, 52:13<br><b>virtually</b><br>64:11, 64:18<br><b>voice</b><br>8:18, 8:24<br><hr/> <b>W</b><br><hr/> <b>want</b><br>18:18, 26:12,<br>26:14, 31:2,<br>35:7, 37:12,<br>37:21, 47:21,<br>61:6<br><b>washington</b><br>2:8<br><b>way</b><br>10:23, 12:12,<br>14:14, 14:21,<br>18:1, 48:24,<br>51:25, 64:25<br><b>ways</b><br>15:7, 15:11,<br>15:18, 15:21,<br>18:19, 22:20,<br>25:2, 50:17,<br>50:22, 52:8,<br>52:16, 60:12<br><b>we're</b><br>5:11, 24:14,<br>31:22, 31:24,<br>54:7, 59:7,<br>60:5, 63:21<br><b>we've</b><br>46:21, 46:22,<br>52:3<br><b>web</b><br>10:25, 28:24,<br>58:10, 59:8<br><b>webpage</b><br>59:10<br><b>went</b><br>20:5, 58:7<br><b>whatever</b><br>53:22 | <b>whereupon</b><br>5:23<br><b>whether</b><br>10:5, 10:8,<br>11:24, 13:3,<br>14:22, 15:13,<br>15:25, 16:5,<br>16:6, 16:13,<br>17:6, 17:17,<br>18:10, 20:1,<br>21:10, 24:21,<br>26:15, 26:16,<br>32:16, 33:9,<br>35:23, 36:18,<br>37:8, 38:3,<br>40:13, 41:14,<br>43:13, 44:24,<br>45:17, 46:18,<br>51:25, 52:11,<br>52:22, 52:25,<br>53:15, 61:23<br><b>whole</b><br>6:2<br><b>wifi</b><br>51:16<br><b>william</b><br>2:5, 2:10, 5:19<br><b>wilshire</b><br>2:16<br><b>wish</b><br>17:1<br><b>within</b><br>8:4, 8:7,<br>11:17, 34:17,<br>39:11, 40:10,<br>41:23, 45:5,<br>45:9, 48:9,<br>48:12, 49:4,<br>50:24, 55:24,<br>57:10, 58:18,<br>61:21<br><b>without</b><br>14:6, 14:24,<br>15:14, 16:2,<br>16:15, 53:21<br><b>witness</b><br>5:8, 5:23,<br>9:14, 10:21, | 11:16, 12:20,<br>13:6, 14:9,<br>15:3, 15:17,<br>16:5, 16:19,<br>16:23, 17:22,<br>18:15, 19:6,<br>19:15, 20:4,<br>21:2, 21:15,<br>22:3, 22:16,<br>24:1, 24:14,<br>25:1, 26:21,<br>27:13, 28:2,<br>29:14, 30:6,<br>32:19, 33:13,<br>35:14, 36:2,<br>36:11, 36:22,<br>37:12, 38:8,<br>39:9, 39:20,<br>40:3, 40:18,<br>41:19, 42:7,<br>42:21, 43:18,<br>44:7, 45:3,<br>45:21, 46:21,<br>47:14, 49:2,<br>50:9, 51:6,<br>51:10, 51:15,<br>53:5, 54:6,<br>58:18, 59:16,<br>61:1, 62:4,<br>63:6, 63:17,<br>64:4, 64:7,<br>64:12<br><b>words</b><br>27:14, 28:14,<br>47:22, 56:5<br><b>works</b><br>31:20<br><b>wouldn't</b><br>38:10<br><b>wrapped</b><br>56:4<br><b>write</b><br>8:15, 9:6,<br>11:19, 11:22,<br>19:6, 27:13,<br>27:14, 32:11,<br>40:19, 40:22,<br>47:14, 57:2 |
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Transcript of Kevin Butler, Ph.D.  
Conducted on June 19, 2026

84

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>written</b><br/>16:9, 24:2,<br/>43:21, 55:24</p> <p><b>wwan</b><br/>58:12, 58:23,<br/>59:3, 59:11</p> <hr/> <p><b>y</b></p> <hr/> <p><b>yeah</b><br/>7:18, 8:9,<br/>9:22, 12:8,<br/>13:1, 13:21,<br/>16:22, 21:5,<br/>30:6, 30:18,<br/>31:7, 31:13,<br/>31:20, 38:1,<br/>49:20, 50:9,<br/>52:14, 53:5,<br/>53:17, 54:5,<br/>57:2, 59:22,<br/>60:11</p> <p><b>yep</b><br/>42:14</p> <p><b>york</b><br/>2:7</p> <p><b>yourselves</b><br/>5:14</p> <hr/> <p><b>.4000</b><br/>2:9</p> <p><b>.7474</b><br/>2:19</p> <hr/> <p><b>0</b></p> <hr/> <p><b>00</b><br/>1:20, 5:3,<br/>64:19</p> <p><b>00049</b><br/>1:11</p> <hr/> <p><b>1</b></p> <hr/> <p><b>1</b><br/>1:30</p> <p><b>10</b><br/>54:2</p> <p><b>100</b><br/>35:1</p> | <p><b>1001</b><br/>4:11, 7:8</p> <p><b>1003</b><br/>4:11, 7:9</p> <p><b>1005</b><br/>4:11, 7:9, 12:6</p> <p><b>1006</b><br/>4:11, 7:10</p> <p><b>1007</b><br/>4:11, 7:11</p> <p><b>1009</b><br/>4:12, 55:9,<br/>55:10, 55:16</p> <p><b>1015</b><br/>35:10</p> <p><b>1016</b><br/>35:10</p> <p><b>1017</b><br/>35:10, 42:17,<br/>43:15, 44:15,<br/>44:25</p> <p><b>11</b><br/>1:24, 64:19</p> <p><b>11373</b><br/>1:28, 5:13,<br/>65:7</p> <p><b>117</b><br/>55:6, 55:12,<br/>55:22, 56:7</p> <p><b>118</b><br/>57:24</p> <p><b>119</b><br/>58:7</p> <p><b>12</b><br/>2:17, 6:15</p> <p><b>12424</b><br/>2:16</p> <p><b>126</b><br/>11:22, 16:25,<br/>18:6</p> <p><b>130</b><br/>7:16</p> <p><b>132</b><br/>23:4, 23:7</p> <p><b>133</b><br/>10:11, 10:22</p> <p><b>134</b><br/>8:15, 9:6,</p> | <p>10:15</p> <p><b>139</b><br/>62:15</p> <p><b>14</b><br/>12:2, 12:6,<br/>12:9</p> <p><b>146</b><br/>25:8, 25:11</p> <p><b>147</b><br/>25:17, 25:18,<br/>26:2, 27:13,<br/>28:11, 29:14,<br/>30:7</p> <p><b>148</b><br/>28:4, 28:19,<br/>40:5</p> <p><b>149</b><br/>32:4, 32:11,<br/>37:3, 37:13,<br/>40:22, 44:8,<br/>45:23, 47:15</p> <p><b>15</b><br/>6:15, 54:3</p> <p><b>152</b><br/>25:19</p> <p><b>19</b><br/>1:17, 5:2,<br/>64:19</p> <p><b>1e</b><br/>58:2, 58:5,<br/>58:19, 62:21,<br/>62:25, 63:8</p> <hr/> <p><b>2</b></p> <hr/> <p><b>20</b><br/>65:3</p> <p><b>200</b><br/>35:1</p> <p><b>20001</b><br/>2:8</p> <p><b>202</b><br/>16:25</p> <p><b>202.408</b><br/>2:9</p> <p><b>2026</b><br/>1:11, 1:17,<br/>5:2, 64:19, 65:3</p> <p><b>210</b><br/>35:9</p> | <p><b>26</b><br/>7:20, 7:23,<br/>25:16, 65:3</p> <p><b>27</b><br/>34:25</p> <p><b>28</b><br/>34:21, 35:4,<br/>35:8, 36:2,<br/>36:6, 43:3,<br/>43:13</p> <hr/> <p><b>3</b></p> <hr/> <p><b>310.826</b><br/>2:19</p> <p><b>359</b><br/>7:8, 22:23</p> <hr/> <p><b>5</b></p> <hr/> <p><b>50</b><br/>32:24, 32:25,<br/>38:22, 39:2</p> <p><b>51</b><br/>33:23</p> <p><b>510</b><br/>8:16</p> <p><b>52</b><br/>34:3</p> <p><b>53</b><br/>34:6, 34:10,<br/>34:14, 41:19,<br/>47:23, 49:3</p> <p><b>57</b><br/>13:6, 13:15,<br/>13:16, 20:9,<br/>21:16, 22:7,<br/>23:13</p> <hr/> <p><b>6</b></p> <hr/> <p><b>6</b><br/>1:20, 5:3,<br/>64:19</p> <p><b>638817</b><br/>1:29</p> <p><b>65</b><br/>1:30</p> <p><b>68</b><br/>56:6</p> <hr/> <p><b>9</b></p> <hr/> <p><b>9</b><br/>1:24, 64:19</p> |
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