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2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF NEW YORK  
4

5 PAUL D. CEGLIA, )

6 Plaintiff, )

7 vs. )

No. 1:10-cv-00569

(RJA)

8 MARK ELLIOT ZUCKERBERG, )

Individually, and )

9 FACEBOOK, INC., )

10 Defendants. )

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12  
13  
14  
15  
16 August 3, 2012

17 10:56 a.m.

18  
19 Deposition of PETER V. TYTELL, held at  
20 the offices of Gibson, Dunn & Crutcher LLP,  
21 200 Park Avenue, New York, New York, before  
22 Laurie A. Collins, a Registered Professional  
23 Reporter and Notary Public of the State of New  
24 York.  
25

A P P E A R A N C E S:

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(Mr. Tytell not yet present.)

MR. SOUTHWELL: It's Alex Southwell. Laurie Collins is here from Veritext. I'm going to ask that she go on the record and then let's just go through a few things, and then we can proceed.

MR. BOLAND: That sounds good.

MR. SOUTHWELL: So I guess just a few things so that it's clear, you know. Dr. McMenamin is here and available. You sent an e-mail last night at about 8 p.m. that seemed to cancel that deposition, although, frankly, it was never really explicit. I find that often your e-mails don't specifically respond to the issues. And so, you know, you didn't ever explicitly say you did not want to proceed with Dr. McMenamin. He's here, in any event, and Mr. Tytell is also here.

I presume you do not want to proceed with Dr. McMenamin; is that right?

MR. BOLAND: Yes, my understanding was we were going to try and do Mr. Tytell's deposition today because he is traveling after the 13th; right?

## Proceedings

1  
2 MR. SOUTHWELL: Yeah, but you had asked  
3 for half days for both, so theoretically you  
4 could have done both. I take it you don't  
5 want to proceed with Dr. McMenamin, and that's  
6 your right. We will still be billing you for  
7 his appearance fee and travel costs.

8 Now, we did rearrange schedules, and we  
9 have Mr. Tytell here. You know, obviously you  
10 had -- he had been noticed for Thursday, and  
11 you canceled that one midnight the night  
12 before, due to the travel difficulties you  
13 had. And so we have rearranged things so that  
14 he is here.

15 We made the copies that you have just  
16 asked for, but we need to discuss his fee,  
17 which we talked about. His fee is \$3400.  
18 There is a cancellation fee from his having  
19 canceled yesterday. So are you prepared to --  
20 how do you want to arrange for the payment of  
21 this?

22 MR. BOLAND: Well, as I said in the  
23 e-mail -- by the way, Mr. LaPorte should have  
24 received his payment by now. Have you gotten  
25 confirmation from him that he received his

Proceedings

check?

MR. SOUTHWELL: Yes, we did get that.  
Thank you.

MR. BOLAND: Okay. Good. The day you  
had sent me an e-mail saying please send it  
overnight mail, give me a confirmation number,  
that e-mail didn't get to me before the check  
went out in regular mail. But he got it,  
which is the point.

I propose that the fee that Mr. Tytell  
indicated was his fee for his deposition, as  
soon as the deposition is over, I will go and  
do that one overnight mail, FedEx, and send  
you the confirmation number so that you'll  
have it and he'll have it. And then he'll get  
it by -- well, actually if it's -- he'll get  
it by Monday, because there's not going to be  
on Saturday, typically.

The cancellation fee, I don't -- this  
is the first I'm hearing of a cancellation  
fee, so I don't know what to tell you about  
that. I will have to confer with my client  
and co-counsel.

MR. SOUTHWELL: I mean it's fairly

## Proceedings

1  
2 typical, if you reserve an expert witness to  
3 be available for deposition and they're not  
4 deposed, that they charge either the full fee  
5 of half fee. His fee is the half fee. So we  
6 would ask that you pay that as well.

7 Maybe you can confer during the course  
8 of the deposition and then you can make -- as  
9 I understand it, you're making -- you're  
10 representing on the record that you will pay  
11 at a minimum his \$3400 fee and that you will  
12 put that in a check -- immediately on a check  
13 and in a FedEx overnight to Mr. Tytell's  
14 direction at the address on his report  
15 immediately following this deposition;  
16 correct?

17 MR. BOLAND: Yes, I will do that, and I  
18 will even send an e-mail to you so you have  
19 the confirmation number that you need as well  
20 for the FedEx. That's not a problem.

21 MR. SOUTHWELL: The cancellation fee is  
22 an additional \$1700. I would ask that you  
23 consult about that. We would ask that you pay  
24 that as well. We won't charge you for the  
25 cost of this phone call for the deposition,

1 Tytell

2 but I would ask that you do that. So why  
3 don't you ask -- inquire into that and let us  
4 know as we get to the end.

5 I'm going to release Dr. McMenamin, and  
6 I'm going to bring Mr. Tytell in and you can  
7 proceed. Okay.

8 MR. BOLAND: Very well.

9 MR. SOUTHWELL: All right. Stand by.

10 (Pause.)

11 (Mr. Tytell joins proceedings.)

12 P E T E R V. T Y T E L L ,  
13 called as a witness, having been duly sworn  
14 by the notary public, was examined and  
15 testified as follows:

16 EXAMINATION BY

17 MR. BOLAND:

18 Q. Mr. Tytell, this is Dean Boland. I  
19 represent Paul Ceglia in this matter. I think we  
20 have at least been in the same room once before at  
21 Gibson, Dunn's offices; right?

22 A. Yes.

23 Q. And since we're doing this by telephone  
24 today, if at any point because of technological  
25 issues you can't hear my complete question, please

1 Tytell

2 let me know and we'll figure out that problem and  
3 make sure you can hear everything I'm saying.

4 Can you hear me at this point?

5 A. Yes, I can. Thank you.

6 Q. If I need to speak up or I'm speaking  
7 too loudly, let me know, since I can't hear what  
8 you're hearing on that side, obviously.

9 A. Okay. I'm sure that the technology  
10 will be good to us.

11 Q. Let's hope.

12 I wanted to talk about -- if the court  
13 reporter can hand the witness your report,  
14 Mr. Tytell, document Number 330, I believe it is.

15 MR. SOUTHWELL: Just a minute. We're  
16 getting it out.

17 MR. BOLAND: What was that, Alex?

18 MR. SOUTHWELL: I said just a minute,  
19 we're getting it out to hand to the court  
20 reporter.

21 (Tytell Exhibit 1, expert report of  
22 Tytell, marked for identification.)

23 MR. SOUTHWELL: Mr. Boland, just for  
24 the record, this is document 330 in the court  
25 file, which is the report of Mr. Tytell.



1 Tytell

2 MR. BOLAND: It's Mr. Tytell's report,  
3 Alex?

4 MR. SOUTHWELL: Yes, document 330.

5 MR. BOLAND: Very good. Very good.

6 Q. And if he could just identify that for  
7 the record when he has it.

8 A. Yes, I have this document. There's a  
9 front page that says Exhibit F.

10 Q. Is that the report that you submitted  
11 in support of the defendants' motion to dismiss?

12 A. I'm looking through. I'll be with you  
13 just one sec.

14 Q. Very well.

15 (Pause.)

16 A. Okay, Mr. Boland.

17 Q. Yes.

18 A. Just because of the distance here, I  
19 can't tell if, you know -- I want to catch your  
20 attention there.

21 With respect to the document that I  
22 have before me marked Tytell 1, on page 10  
23 somewhere below the middle of the page, there's a  
24 blank space, and the word "redacted" appears  
25 there. That was not -- that's not how it was on

1 Tytell

2 page 10 of the report that I submitted.

3 Q. To make this easier, Mr. Tytell, I  
4 think both defense counsel and I would agree that  
5 for some of the expert reports that they provided  
6 and some that we had provided, because of court  
7 orders, we have gone ahead and redacted portions  
8 of those reports.

9 And I would acknowledge that the report  
10 actually filed by you, as my recollection, had  
11 portions of it redacted that were not redacted by  
12 you. So that's not -- that's not an issue.

13 Other than those redactions, is there  
14 anything else that looks incomplete about the  
15 report you have in front of you?

16 A. Well, I was going to add that at the  
17 top of the various pages of the report and of the  
18 attached exhibits, there is a line that says Case  
19 1:10-cv, et cetera, et cetera -- I'm sure you know  
20 what that line is -- and the date --

21 Q. Yes.

22 A. -- and then some pagination. So that  
23 was not present on the document that I submitted.  
24 I'm sure you're aware of that.

25 Q. Yes.

1 Tytell

2 A. Okay. And then also what I'm looking  
3 at is obviously a printout of some document that  
4 was, I guess -- this line at the top -- I don't  
5 know if that was put on by the attorneys or the  
6 courthouse or some other system for the documents.

7 But the document I'm looking at  
8 obviously has had some changes made to it since I  
9 submitted my report. And then after those changes  
10 were made, this document has also been printed  
11 out. So this is not really exactly the thing that  
12 I submitted.

13 Q. Did you submit your report to the  
14 defendants in electronic form? Is that what  
15 you're saying?

16 A. Yes.

17 Q. And other than those comments you made  
18 about the redaction and the printed material  
19 across the top of the page, are there any other --  
20 and that the document is printed versus  
21 electronic, any other differences between the  
22 content of that Tytell Exhibit 1 and your report  
23 other than those things?

24 A. Without actually doing a side-by-side  
25 comparison, I believe that all the words that are

1 Tytell

2 here are words that were in my report, except for  
3 the redacted ones, of course, and the heading that  
4 we've discussed.

5 Q. Very well.

6 Mr. Tytell, are you a qualified  
7 forensic document examiner?

8 A. Yes.

9 MR. SOUTHWELL: Objection to the form.

10 THE WITNESS: I'm sorry.

11 MR. SOUTHWELL: Just wait for my  
12 objection.

13 Q. And are you a trained or qualified  
14 handwriting examiner?

15 A. I have been so accepted by courts.

16 Q. And about how many times have you --  
17 let's break it up.

18 How many times have you actually done  
19 handwriting analysis, whether or not you actually  
20 had to submit it to a court?

21 A. By "handwriting analysis," what do you  
22 mean by that term, please?

23 Q. Well, since I'm a layperson, I'll look  
24 at it this way: How many times have you been  
25 hired by a client to compare a signature on a

1 Tytell

2 document with known signatures of that person to  
3 see if they are consistent with each other?

4 A. Okay. I couldn't count them for you,  
5 but certainly many hundreds if not thousands of  
6 signatures over the years.

7 Q. And have you been asked to do  
8 comparisons of other types of handwriting other  
9 than signatures?

10 A. In the past.

11 Q. Yes.

12 A. We're talking about sort of generally  
13 my history here, I think?

14 Q. Yes, sir.

15 A. Okay. And the answer would be yes.

16 Q. And about how many years have you been  
17 doing those types of analyses, comparing  
18 signatures or comparing a handwriting sample with  
19 a known handwriting sample, that kind of thing?

20 A. Well, going to court for those purposes  
21 is 42 years next month for my first court  
22 appearance, and obviously training and some  
23 casework prior to that. So a long time.

24 Q. Had you had any professional  
25 relationship with any of the defendants' experts

1 Tytell

2 before they became part of this case on the  
3 defendants' side?

4 A. Okay, could you tell me which -- could  
5 you give me a list of defendants' experts so I can  
6 check that off?

7 Q. Sure. Let me ask you, have you read  
8 other expert reports involved in this case on  
9 either side?

10 A. Yes, I have.

11 Q. Which of the defendants' experts  
12 reports have you read?

13 A. Professor Romano and Mr. Lesnevich.

14 Q. Have you had conversations with the  
15 other experts whose reports you have not read?

16 A. Which experts would they be, please?

17 Q. Gerald LaPorte?

18 A. Well, I've had conversations with  
19 Mr. LaPorte, many of them, not necessarily about  
20 this case.

21 Q. Albert Lyter?

22 A. Well, what kind of conversations are  
23 you asking about? Hi, how are you, how was the  
24 flight?

25 Q. No, I'm asking if you had conversations

1 Tytell

2 with Albert Lyter about his report, since you've  
3 indicated that is not one of the ones you've read.

4 A. Oh. No.

5 Q. Have you had conversations with Albert  
6 Lyter about your report and the conclusions and  
7 results that are in it?

8 A. No.

9 Q. Have you had conversations with any of  
10 the other experts from the case about the contents  
11 of your report?

12 A. Again, could you be a little more  
13 specific, please?

14 Q. Did you discuss with Gerald LaPorte the  
15 contents of your report?

16 A. No.

17 Q. Did you discuss it with Frank Romano?

18 A. This would be after I had written the  
19 report, I assume, because how could I discuss the  
20 contents until the report was finished. Would  
21 that be correct?

22 Q. Yes.

23 A. So the answer -- well, my report was  
24 March 25th. I don't think I've had the pleasure  
25 of Professor Romano's company since then. So I

1 Tytell

2 couldn't have discussed it with him.

3 Q. And when were you first contacted by  
4 anyone on behalf of the defendants to participate  
5 as an expert in this case?

6 A. That would have been almost two years  
7 ago now.

8 Q. And when you were contacted -- after  
9 you were contacted, how long did it take before  
10 you were retained by the defendants?

11 A. Well, the formal retention would have  
12 come about two-thirds of a year later.

13 Q. And what was your understanding at that  
14 time as to why you were being retained in this  
15 case?

16 A. My initial understanding was that I was  
17 being retained to look at the typography, if you  
18 will, the printed portions of a two-page document  
19 headed "work for hire" -- "work for hire," in  
20 quotation marks, contract.

21 Q. And had you done that kind of analysis  
22 of the typography, as you put it, in prior cases?

23 A. Yes.

24 Q. Did there come a time, before you did  
25 your analysis of the typography in this case, that



1 Tytell

2 you had a conversation with defendants' counsel?

3 I'm not asking about the contents of it. I'm

4 asking did you speak with them before you actually

5 did your analysis of the contract in this case.

6 A. There was an initial phone call to ask

7 if I would be willing to undertake some work on

8 behalf of that client.

9 Q. Do you remember, again, not what was  
10 said but who the person was you spoke to from the  
11 defendants' attorneys during that conversation?

12 A. This would be the first conversation  
13 that I had or subsequent?

14 Q. The first one.

15 A. A Mr. Orin Snyder, I believe.

16 Q. And have you had conversations with any  
17 of the other lawyers from Gibson, Dunn, again,  
18 without telling me what was said? I just want to  
19 know who else you spoke to.

20 A. Well, looking at the people in the  
21 room, I would say the four people sitting here.

22 Q. Would that include Alex Southwell?

23 A. That would include Alex Southwell.

24 Q. Matthew Benjamin?

25 A. Matthew Benjamin would also be

1 Tytell

2 included.

3 Q. Amanda Aycock?

4 A. Yes, she would also be included.

5 Q. You said there were four people. Who  
6 else was in the room? I can't see, obviously.

7 A. Sripriya Nara --

8 MR. SOUTHWELL: Narasimhan.

9 A. Narasimhan. It's easier in Hungarian.

10 Q. At different times since you've been  
11 retained in this case, you've had conversations  
12 with those individuals from Gibson, Dunn?

13 A. Yes, I have.

14 Q. Do you have a written agreement with  
15 the defendants for your work in this case?

16 A. I have submitted to the defendants my  
17 standard terms and conditions, as I do with  
18 everyone who inquires about retaining me. And  
19 generally if I am retained and I assume those  
20 standard terms and conditions apply. And I  
21 believe there was also a letter from Gibson, Dunn  
22 which would I guess be their standard document.

23 Q. Mr. Tytell, do you know --

24 A. Excuse me, you're breaking up now. The  
25 technology is not being as kind as we had hoped.

1 Tytell

2 Can you please repeat that?

3 Q. Yes. Can you hear me a little better  
4 now?

5 A. Yes, indeed.

6 Q. Do you know if any other of -- well,  
7 let me just ask you specifically. Do you know at  
8 the time you were retained by the defendants was  
9 Gerald LaPorte already retained by them, if you  
10 know?

11 A. I don't know.

12 Q. How about Mr. Lesnevich, was he already  
13 retained by them, if you know?

14 A. I believe he was.

15 Q. And then Albert Lyter, was he already  
16 retained?

17 A. I do not know.

18 Q. And before working on this case, did  
19 you know who Mr. Lesnevich was?

20 A. Yes.

21 Q. And is he also a qualified forensic  
22 document examiner like you are?

23 A. I don't know about the "like I am"  
24 part, but I know that he certainly is a qualified  
25 document examiner. I would, you know, say yes.

1 Tytell

2 Q. Do you know if he has any  
3 qualifications to analyze handwriting similar to  
4 the questions I asked you about yourself earlier?

5 A. I know that he has been trained in that  
6 field and has been accepted as an expert in courts  
7 on numerous occasions.

8 Q. Have you ever been on the opposite side  
9 in a case with Mr. Lesnevich specifically dealing  
10 with an analysis of handwriting?

11 A. Probably.

12 Q. Do you recall what case or cases that  
13 might have been?

14 A. I think there was a case maybe 30 years  
15 ago that involved a signature.

16 Q. Is that all you can remember about  
17 that?

18 A. I remember that we looked at different  
19 known samples of the person's handwriting.

20 Q. I'm assuming a 30-year old case you  
21 don't remember a lot of the details about it?

22 A. That would be correct.

23 You're breaking up again, Mr. Boland.  
24 I don't mean to interrupt you, but you obviously  
25 can't hear what's going on at this end. I may

1 Tytell

2 have to interject when --

3 MR. SOUTHWELL: Mr. Boland, it sounds  
4 like it sort of cuts in and out as if you're  
5 on a cell phone or a hand -- some sort of  
6 other device. Is that right or...

7 MR. BOLAND: Well, I have a headset  
8 connected to my phone so I can sort of type  
9 and talk at the same time, and that might be  
10 causing a problem.

11 MR. SOUTHWELL: Yeah, I don't know if  
12 you're moving around at that point and maybe  
13 that's causing it to break up. But it sort of  
14 comes in and out. So we'll just have to let  
15 you know when it occurs.

16 THE WITNESS: It sorts of sounds as if  
17 you're gargling while speaking.

18 Q. Well, Mr. Tytell, I don't take it as  
19 rude at all if you interrupt me because you can't  
20 hear. I want to make sure you hear the question.  
21 So that's not a problem at all.

22 A. Okay. Good.

23 Q. Now, can you hear me clearly at this  
24 point?

25 A. No, it's that jagged kind of

1 Tytell  
2 interruption again. But maybe --

3 MR. BOLAND: Alex, can you give me the  
4 number to the conference room there? I will  
5 switch devices and call right back.

6 (Pause.)

7 Q. Mr. Tytell, did either your assignment  
8 or your tasks that you were given in this case  
9 change at any point from the time you were  
10 retained to when you eventually produced your  
11 report?

12 A. I would say so, yes.

13 Q. And can you describe how that change  
14 occurred?

15 A. That change occurred about -- shortly  
16 after 9 a.m. on July 14th, because I was there to  
17 examine the document, mainly with an eye towards  
18 the printing on the document. And when the  
19 document showed up, it presented an entire new set  
20 of issues that had not been anticipated.

21 Q. And what were those issues? What would  
22 you summarize those to be?

23 A. That the -- well, prior to seeing this  
24 document, I had the opportunity to review copies  
25 of a two-page document headed "work for hire"

1 Tytell

2 contract, and these were copies that had been  
3 filed with the original papers filed in this  
4 matter in I guess mid 2010.

5 I had also seen copies that were  
6 attached to the declarations of Mr. Osborn,  
7 Mr. John Paul Osborn, and Dr. Valery Aginsky. And  
8 based on the copies I had seen, I had formed an  
9 impression of what the document should look like  
10 or would look like when I actually saw the  
11 original.

12 And when I saw the original on the  
13 morning of July 14th, it did not look like the  
14 document that I had anticipated. I had  
15 anticipated a document with handwriting and  
16 signatures and initials and dates in black  
17 ballpoint pen.

18 That black ballpoint pen part was based  
19 not just on reviewing the documents but also on  
20 reading the declaration of Dr. Aginsky from I  
21 guess it was sometime in mid 2011 that that  
22 declaration was dated, but prior to July 14th.

23 So based on Dr. Aginsky's description  
24 of the writing as being black ballpoint ink and  
25 based on the images I had seen, I had expected to

1 Tytell

2 see black ballpoint ink. And when the document  
3 was presented, it was immediately obvious that the  
4 ink was not black.

5 So that raised a whole new set of  
6 issues about whether or not this was actually the  
7 same document that had been viewed and scanned by  
8 Mr. Osborn and Dr. Aginsky, did this agree with  
9 the document -- with the images that had been  
10 filed, with the initial paperwork -- "paperwork" I  
11 guess is a wrong phrase for filing, but I hope  
12 you'll understand what I'm talking about, the  
13 moving papers, the first papers in the case from  
14 mid 2010.

15 And that whole issue then opened up as  
16 soon as I saw the ink as to what had happened to  
17 the document in that -- prior to its showing up in  
18 Buffalo on the morning I guess about 9 -- a little  
19 bit after 9 a.m. on the morning of July 14th. So  
20 that's when things changed for me very much so.

21 Q. And what tasks did you then decide you  
22 had to perform that were different than before?

23 A. Could you repeat that again? I think I  
24 lost the second word there after "what."

25 Q. Yeah, what tasks did you then decide



1 Tytell

2 you needed to perform that you before that didn't  
3 think you were going to have to do?

4 A. Okay. I have tasks, T-A-S-K-S, what  
5 tasks?

6 Q. Yes.

7 A. Okay. I don't mean to repeat it; I'm  
8 just trying to make sure we got -- we understand  
9 what's going on here.

10 Okay. What tasks did I then add? I  
11 then inquired about getting earlier images of the  
12 document for comparison with the actual document  
13 that was present. I tried to figure out why the  
14 ink looked like this, could it have looked like  
15 this previously when the document was scanned for  
16 the images that were filed with the moving papers  
17 in mid 2010.

18 And then the additional tasks at that  
19 stage -- we're now -- we haven't gotten even till  
20 9:30 in the morning of July 14th in terms of  
21 additional tasks -- would be of course the  
22 documentation of this very unusual appearance of  
23 the ink, to document it.

24 The scanning of the document that  
25 morning was not really an additional task; that

1 Tytell

2 was a routine task. But subsequently I understood  
3 that documentation of the ink in particular would  
4 be useful.

5 Q. And what was your opinion of the  
6 condition of the document other than the ink?

7 A. Well, that would bring us to about --  
8 well, almost two hours later, around 11 in the  
9 morning, when I first examined the document with  
10 ultraviolet illumination and saw that the paper  
11 had a very strange reaction under ultraviolet  
12 illumination; that the front of the page was dark,  
13 nonfluorescing, absorbing under ultraviolet,  
14 pretty much uniformly on both pages; and that the  
15 reverse, the nontext side of the page, was by  
16 contrast brightly fluorescent, which is a normal  
17 reaction for most of the paper that you use in  
18 copy machines and laser printers and so on; but  
19 that this very unusual front dark reverse brightly  
20 fluorescing reaction, that sort of added another  
21 task.

22 Plus within that overall unusual  
23 reaction, on the front of both pages there were  
24 little rectangles at the top of each page, two  
25 rectangles at the top of each page, which were not

Tytell

dark like the rest of the face of the page but were brightly fluorescing as the back of the page; and that also on the reverse of page 1 in the corner -- the corner with -- well, on the front it would be the top left corner. When you turn the page over, of course, that becomes the top right corner. That that corner, which was folded over and had a crease that created a triangle there in that corner, that on the reverse of the page that corner was dark, like the front of the page, and not fluorescent.

So those issues all just popped up at that point.

Associated with these light and dark front/back tabs triangle on the back was also an overall I guess ivory- or cream-colored cast to the paper on the front, except for the tabs, as opposed to white on the back, just a contrast in the shade of the page. But that was all coterminous with this very unusual reaction under ultraviolet.

So that observation, those facts, presented another set of issues that had to be documented, further examined, during the course of

1 Tytell

2 the time in Buffalo.

3 Q. And you were present when Mr. Lesnevich  
4 arrived on July 15th?

5 A. Present where?

6 Q. At the Buffalo analysis in the offices  
7 of Harris Beach.

8 A. Yes, I was there that morning when  
9 Mr. Lesnevich was present.

10 Q. Did you observe him scanning the "work  
11 for hire" document or otherwise making images of  
12 it?

13 A. I know that the document was scanned by  
14 Mr. Lesnevich and his associate. I'm not sure  
15 which one of them actually was driving the  
16 machine, if you will, was operating the scanner.

17 Q. Have you ever seen Mr. Lesnevich's scan  
18 of the "work for hire" document that he took on  
19 July 15th, 2011?

20 MR. SOUTHWELL: Objection to the form.

21 Do you mean the actual like electronic scan?

22 MR. BOLAND: Yes, I'm asking Mr. Tytell  
23 if he's ever seen what we would call the  
24 native format electronic image, whatever you  
25 want to call it, of the scan that

1 Tytell

2 Mr. Lesnevich took of the "work for hire"  
3 document on July 15th.

4 A. I don't recall seeing that, no. I may  
5 have. I don't know.

6 Q. Have you reviewed any papers that the  
7 plaintiff has filed in this case which included  
8 exhibits of your scan on July 14th compared to  
9 Lesnevich's scan on July 15th?

10 A. I can actually hear you very clear; I  
11 just don't understand you.

12 Q. Okay.

13 Have you reviewed a pleading in this  
14 case that the plaintiffs filed which included an  
15 exhibit showing your scan of the "work for hire"  
16 document on July 14th side by side with  
17 Mr. Lesnevich's scan of the same document on July  
18 15th? Have you seen that pleading and that  
19 exhibit?

20 A. Well, when -- I'm sorry, when you say  
21 "pleading," I'm looking at my -- what's been  
22 marked as Tytell 1 for today, which says -- has a  
23 whole cover page that says Exhibit F. I assume  
24 that there was an Exhibit A, B, C, D, and E. And  
25 other than those five exhibits, there may have

1 Tytell

2 been another string of exhibits beginning with G  
3 going to the end of the alphabet and beyond.

4 So I really don't know -- and then  
5 there was I guess it would be called a pleading  
6 that was the thing to which all of these exhibits  
7 were attached.

8 So if you mean have I read the lawyers'  
9 arguments in the form of the pleading to which my  
10 report was attached, then the answer would be no,  
11 I haven't read that pleading.

12 Q. No, my question is have you read a  
13 document the plaintiffs have filed which included  
14 an exhibit comparing what your scan of the "work  
15 for hire" document looked like on July 14th to  
16 Lesnevich's scan of the same document a day later.

17 Have you seen that exhibit where we  
18 compare them?

19 A. This was filed by whom? The plaintiff  
20 or --

21 Q. Filed by the plaintiff. Have you seen  
22 that exhibit?

23 A. Oh, the plaintiff. I'm sorry, back up  
24 for a minute. I had defendants and plaintiffs  
25 confused. I know that seems weird, but you have

1 Tytell

2 to remember document examiners are not like  
3 advocates, such as yourself and the wonderful  
4 attorneys sitting here in this room, and that we  
5 tend to be advocates for the documents rather than  
6 the parties.

7 So maybe if I could look at the  
8 document to which you refer that would make it  
9 easier for me to give you a good answer, a correct  
10 answer.

11 Q. Well, just let me ask it this way: As  
12 you sit here right now, do you recall seeing a  
13 comparison, a visual comparison, of your scan of  
14 the "work for hire" document on July 14th with  
15 Mr. Lesnevich's on July 15th?

16 A. I -- I don't have anything in front of  
17 me. If maybe you could give me or supply  
18 Mr. Southwell with a document number, I'm sure  
19 that the people at Gibson, Dunn have kept copies  
20 of everything you filed. I'm sure that's the kind  
21 of thing that lawyers do for each other's  
22 paperwork.

23 Q. Yeah, that's fine. I'll take your  
24 invitation there.

25 MR. BOLAND: Alex, if you could have

1 Tytell

2 someone just print a one-page document. It's  
3 document number 263-2 that was filed in the  
4 case. And I can go on with other questions  
5 while that's happening.

6 MR. SOUTHWELL: All right. We'll do  
7 that.

8 MR. BOLAND: Thank you.

9 Q. Mr. Tytell, did you originally think  
10 when you were hired on this case that you might be  
11 asked to provide handwriting analysis?

12 A. I didn't know.

13 Q. When you say "know," do you mean  
14 K-N-O-W?

15 A. Correct, "know" with a K.

16 Q. Did you ever mention or discuss with  
17 the defendants' counsel the possibility of  
18 analyzing the handwriting on the "work for hire"  
19 document?

20 A. We're now still discussing my original  
21 retention in this matter?

22 Q. No, at any point in this case, have you  
23 discussed with the defendants' lawyers the  
24 possibility of analyzing the handwriting on the  
25 "work for hire" document?



1 Tytell

2 A. I've made some comments about  
3 handwriting.

4 Q. What were those comments -- well, no,  
5 let me back up, because that might be something  
6 that's work product that I shouldn't be asking  
7 about. So let me rephrase the question.

8 MR. SOUTHWELL: Thank you. I was about  
9 to object. Thank you.

10 MR. BOLAND: Yeah, that's fine.

11 Q. I'm not asking for the content, but  
12 just to confirm the last question I asked, is it a  
13 "yes, sir," that you have had conversations about  
14 possibly analyzing the handwriting on the "work  
15 for hire" document?

16 A. Well, I'm not sure -- what do you mean  
17 by "the possibility of analyzing"?

18 Q. How would you describe what it is you  
19 do in not this case but in previous cases when you  
20 have examined handwriting both signatures or just  
21 nonsignature handwriting and compared it to  
22 samples from a person and tried to make some sort  
23 of conclusion about whether -- who wrote some  
24 handwriting on a document? What do you call that?  
25 Is that called handwriting analysis or how would

1 Tytell

2 you describe it? What's your term?

3 A. Well, generally handwriting  
4 examination. But no, I understand what you mean  
5 by "handwriting analysis." I don't quite get the  
6 context of what you're asking about.

7 Q. Well, the way I'm looking at it is  
8 this: You have years and years, as you indicated,  
9 of handwriting examination experience. Did that  
10 topic ever come up in -- did you ever suggest to  
11 the defendants' attorneys that you might analyze  
12 the handwriting on this document, that might be  
13 something helpful for them?

14 A. Okay, well, so, I want to repeat it to  
15 make sure I'm getting this right. So did I ever  
16 suggest that, hey, I could also submit or work on  
17 the handwriting side of the matter? Is that what  
18 you're asking about?

19 Q. Yes.

20 A. No, then, I'm not looking for an extra  
21 task or an extra area in which to perform.

22 Q. Do you know if the defendants' lawyers  
23 were aware that you had qualifications to analyze  
24 or examine handwriting?

25 A. Well, I did submit my résumé to them.

1 Tytell

2 I cannot tell you whether or not they read it; but  
3 if they had, I would have hoped they would have  
4 garnered that kind of information about my  
5 background.

6 Q. And when you saw the document on July  
7 14th, you obviously noticed that along with the  
8 typography, which you were going to analyze, that  
9 the document had handwriting. You saw that?

10 A. Yes, indeed.

11 Q. Did you discuss with any of the other  
12 experts, the defendants' experts, during that  
13 examination over those several days the  
14 handwriting on the document?

15 A. Other than the ink of the handwriting,  
16 the actual letter formations, line quality,  
17 et cetera, I don't recall making -- having any  
18 conversations on that topic.

19 Q. Who did you discuss the letter quality  
20 or the line quality and all that that you just  
21 mentioned, who did you discuss that with? Which  
22 experts?

23 A. I think I just said I did not discuss  
24 that with defendants' counsel in -- on that -- in  
25 July of 2011, July 14 and 15. I'm sorry, see,

1 Tytell

2 this is where technology is not serving us well.  
3 The answer is no, I did not discuss these issues  
4 with them at that time.

5 Q. Okay. And did you -- what I'm asking  
6 is did you discuss with the other defendants'  
7 experts during the time of the examination  
8 anything about the handwriting.

9 A. I think the only things that we --  
10 basically what we discussed was who gets the piece  
11 of paper. That was most of the conversations.  
12 And the issues that were discussed I do not  
13 believe involved the kinds of topics and  
14 characteristics that one focuses on in doing the  
15 kind of handwriting examination that I believe  
16 you're referring to, topics such as line quality,  
17 formation, et cetera.

18 So I don't think those topics were  
19 included in the conversations that I might have  
20 had during that time frame.

21 Q. And did you discuss with any of the  
22 defendants' experts whether it would be a good  
23 idea or whether it could be helpful to your -- to  
24 the analysis of the document to have someone  
25 analyze or examine the handwriting?

1 Tytell

2 A. Did I discuss that -- again, I want to  
3 repeat because of what I heard. Did I discuss  
4 that with the other defendants' experts at that  
5 time? That's the question I heard; right?

6 Q. Yes.

7 A. Okay. No.

8 Q. Did you discuss that with the  
9 defendants' experts at any time?

10 A. Well -- whether or not it would be a  
11 good idea to have somebody look at the  
12 handwriting?

13 Q. Yes.

14 A. Okay. No, that's I think something  
15 that was, as they say, overtaken by events because  
16 there was some examination of the handwriting, I  
17 believe.

18 Q. And who do you believe examined -- did  
19 some of the examination of the handwriting?

20 A. Mr. Lesnevich.

21 Q. Did that examination include trying to  
22 determine if the signature on page 2, which  
23 appears to be Mark Zuckerberg, is in fact Mark  
24 Zuckerberg? Is that part of the examination  
25 you're referring to?

1 Tytell

2 A. That appears on page 2 of which  
3 document?

4 Q. The "work for hire" document.

5 A. Which "work for hire" document?

6 Q. The one you examined on July 14th and  
7 the days thereafter, the few days in Buffalo.

8 A. I believe that Mr. Lesnevich's  
9 examination addresses exactly that issue.

10 Q. Did you examine more than one document  
11 that you would call the "work for hire" document?

12 A. Yes.

13 Q. When did you -- okay. So one of them  
14 you examined starting on July 14th; correct?

15 A. Correct.

16 Q. When did you examine a second "work for  
17 hire" document?

18 A. Well, this is kind of like the line  
19 from scripture: The first shall be last, and the  
20 last shall be first. The second document was the  
21 first document.

22 Q. Can you explain that? I'm confused by  
23 your answer. What do you mean, "the second  
24 document was the first"?

25 A. I'm sorry, there are two documents

1 Tytell

2 I've -- two documents that have "work for hire" in  
3 quotes and "contract" on the top of the page. One  
4 of these I have seen only in electronic form,  
5 which is the document or the exhibit, I guess it  
6 would have been, that was attached to the moving  
7 papers from -- filed by plaintiff -- I guess  
8 plaintiff always files the original moving  
9 papers -- filed by plaintiff in mid 2010.

10 And I understand that there's also an  
11 electronic scan, two pages, I believe two TIFF,  
12 T-I-F, files that are color files that I have been  
13 informed were e-mailed by a Mr. Paul Ceglia. I  
14 think that's C-E-G-L-I-A -- to Mr. Paul  
15 Argentieri, A-R-G-E-N-T-I-E-R-I. I hope that's  
16 the correct spelling of his name.

17 So the document or the images that were  
18 e-mailed by Mr. Ceglia to Mr. Argentieri and the  
19 copy that was -- or exhibit that was appended to  
20 the moving papers, that was the first -- well, the  
21 copy appended to the moving papers from mid 2010  
22 was the first copy of the "work for hire"  
23 document, the first images, that I examined. And  
24 that seems to tie into the color scan from  
25 Mr. Ceglia to Mr. Argentieri. So I would consider

1 Tytell

2 that one "work for hire" document.

3 Then I also examined the document in  
4 Buffalo in July of 2011, and I would consider that  
5 to be another "work for hire" document.

6 Q. All right. So for the ease of us  
7 understanding what we're talking about, I'm going  
8 to refer to the document that you examined  
9 starting July 14th as the paper contract, because  
10 that was two pieces of actual physical paper that  
11 you analyzed starting July 14th; correct?

12 A. Right.

13 Q. And the other two documents you  
14 referred to, the attachment to an e-mail regarding  
15 Mr. Argentieri and the document that was attached  
16 to the complaint --

17 A. "Complaint" is the word I was looking  
18 for. Thank you.

19 Q. Yes, well, let me back up with that  
20 question.

21 The document attached to the complaint,  
22 you're not -- I don't think you have any dispute  
23 that's a photocopy. No one's arguing that's an  
24 original document itself that a party signed. You  
25 agree with me on that?



1 Tytell

2 A. Let's back up again. It's a  
3 photocopy -- well, I don't know if it's a  
4 photocopy. I've only seen it as one electronic  
5 form or another. I don't know if it's actually  
6 been through a photocopy machine.

7 Sadly or interestingly, the term  
8 "photocopy" as become to seem quaint. It's moving  
9 up there with "carbon copy." So I know that --

10 Q. (Inaudible.)

11 A. I'm sorry, please.

12 Q. I guess I'll try it again. An actual  
13 physical paper document purporting to be an  
14 original document, there's only one of those that  
15 you examined, and that was on July 14th?

16 A. Right, the Buffalo -- the Buffalo "work  
17 for hire" contract, the two physical pieces of  
18 paper with the faded ink that Mr. Argentieri  
19 brought out of a U.S. Postal Service express mail  
20 envelope just after 9 in the morning on July 14th.  
21 We actually have two physical objects to discuss  
22 there. That's great.

23 Q. The TIFF images are digital images;  
24 correct?

25 A. Correct.

1 Tytell

2 Q. Have you ever been qualified as an  
3 expert in the analysis of digital images?

4 A. I've -- let's see. I have provided  
5 expertise based upon examination of digital  
6 images.

7 Q. Have you ever been qualified to answer  
8 the question about a digital image whether it has  
9 been -- the digital image itself has been altered  
10 or not in a program like Photoshop or something  
11 similar to that?

12 A. No.

13 Q. Do you feel that you are qualified to  
14 visually examine a digital image and tell whether  
15 it has been altered in a program like Photoshop or  
16 something similar?

17 A. Within the limitations that would apply  
18 to any field of expertise that I might claim to  
19 have, I would go as far as I felt comfortable  
20 going. That would be true of my expertise in  
21 handwriting that you've referred to in the past or  
22 typography. I do not pretend to be omniscient in  
23 any field that I am actually knowledgeable in.

24 Q. As to the TIFF images that you referred  
25 to earlier, in your examination of those, were you

1 Tytell

2 able to determine if those were original images or  
3 copies of otherwise original digital images?

4 A. Well, I did receive -- actually I think  
5 it was probably one of the very first images of  
6 any document that I received in relation to this  
7 matter. And I asked about the document, and I was  
8 informed that I had received the PDF file that had  
9 been filed with the complaint -- thank you for  
10 that word -- that had been filed with the  
11 complaint as it was received by Gibson, Dunn. So  
12 I have seen that -- what has been represented to  
13 me as being that particular document -- that  
14 particular electronic file.

15 As to the -- now, that PDF file -- A,  
16 it's a PDF file; B, it's black and white -- I then  
17 saw -- it's black and white what would be called 2  
18 bit, the kind of -- the depth of it. It's just  
19 black and just white, not gray, not color.

20 I then have also received these TIFF  
21 files, which I have been informed were provided on  
22 discovery by Mr. Argentieri. So I have received  
23 what I understand to be -- I have received the  
24 files.

25 And when electronic files are moved

1 Tytell

2 from one computer to another, it is considered  
3 that you are -- no matter how many times that is  
4 copied by moving it from one file to another,  
5 that's still the original file, barring some  
6 glitch in the electronics, such as happened with  
7 your voice earlier today.

8 So I have these two TIFF files, which I  
9 have been informed are duplicate original files of  
10 the files provided by Mr. Argentieri to  
11 defendants' counsel. Now, what happened prior to  
12 Mr. Argentieri turning that file over, I have no  
13 way of knowing, and I can only accept the  
14 representation that the file provided by  
15 Argentieri is the file forwarded to me by Gibson,  
16 Dunn.

17 So to that extent I am looking at what  
18 I have been told is an original file, it is in  
19 color, 24-bit color, but I don't know if that  
20 reputation is accurate. I don't know if what was  
21 provided by Mr. Argentieri is indeed what he  
22 received.

23 Q. All right. Let me just ask you a  
24 hypothetical about TIFFs as digital images. Do  
25 you feel qualified to GIF an opinion if you were

1 Tytell

2 given -- I hired you as an expert in a case and I  
3 said, Look, Mr. Tytell, here are two TIFF images  
4 which purport to be the pages of a document that  
5 were scanned in and I want you to look at the TIFF  
6 images and tell me if these TIFF images are  
7 original -- the original digital image scans of  
8 this document or have they somehow been altered  
9 before they were created into the TIFF format that  
10 I just gave you; not the document itself but was  
11 the digital image of the scan somehow altered in  
12 Photoshop to make it look different.

13 Would you be qualified to determine  
14 what that alteration was to the digital image?

15 A. I -- based upon my knowledge of how  
16 these things work, I would attempt to aid you, to  
17 the extent that I could. I might try to look at  
18 the readily available properties of the file,  
19 creation dates, so on and so forth. I'm not sure  
20 that I could actually crack into the metadata -- I  
21 know those who can -- on a TIFF file.

22 I have done exactly what you described  
23 on PDF files that were archived for documents  
24 scanned and transmitted some years prior to the  
25 dispute arising. But you're asking about TIFF

1 Tytell

2 files, not PDF files.

3 So I have some experience with getting  
4 into the metadata of the PDF files. And just a  
5 very simple explanation of the readily available  
6 data can sometimes provide information that could  
7 resolve the kind of issue that you have raised in  
8 your hypothetical.

9 So hypothetically if somebody such as  
10 yourself were to approach me on that, I would say  
11 I can look at it, but there are certainly plenty  
12 of people around who are much more specialized and  
13 much more highly qualified than I to perform that  
14 kind of an analysis.

15 Q. What if I gave you two TIFF images that  
16 appear to be, you know, images of some landscape,  
17 the Rocky Mountains, for example, and I asked you  
18 to tell me if visually you could examine those  
19 images and tell me if anything has been altered in  
20 that apparent landscape -- rocks moved around,  
21 trees added or removed -- do you have any  
22 qualifications to do that kind of analysis?

23 A. Well, you're using the word "TIFF,"  
24 which brings us into the twenty-first century and  
25 the world of electronics, et cetera, which gives

1 Tytell

2 you some added clues.

3 But the kind of problem, the kind of  
4 photo manipulation, that you're describing  
5 hardly -- is a problem that is hardly new and is  
6 hardly something exclusive to TIFFs. This is a  
7 class or category of examination that has been  
8 performed for many, many years regarding  
9 photographs that have been altered and manipulated  
10 and photo montage.

11 Now you're talking about a landscape, a  
12 snapshot, and that actually might come into play  
13 in some kinds of cases where somebody is  
14 presenting -- you know, I couldn't have done the  
15 measured in New Jersey. Here, look at me, this is  
16 the day I was at, I don't know, someplace in the  
17 Rocky Mountains. My Rocky Mountain geography is  
18 very limited but -- just -- Vail, is Vail in the  
19 Rocky Mountains somewhere? I was skiing in Vail.  
20 Here you can see I was on the ski slopes. It just  
21 happens somebody is holding up a newspaper next to  
22 me giving the date. So I couldn't possibly have  
23 been in New Jersey doing the evil deed.

24 That's the kind of manipulation that  
25 was done in the dark room with photographs or with

1 Tytell

2 a scissors and a photocopier. And there are a  
3 number of things that you look at to try and find  
4 those manipulations. And I have had a certain  
5 amount of training in that kind of examination.  
6 And nowadays it just involves pixels, and there  
7 are things with the pixels you can look at in  
8 programs like Photoshop that might help you do  
9 that.

10 This is all very interesting as a  
11 hypothetical discussion, both in the twenty-first  
12 century and probably going back to the nineteenth  
13 century, but in this particular case it's not  
14 really that relevant to what I did or what use  
15 those TIFF files were put to.

16 Q. All right. At any point did you  
17 request of the defendants' attorneys to get  
18 samples of Defendant Zuckerberg's handwriting to  
19 do some kind of a comparison to the handwriting on  
20 the paper contract you evaluated on July 14th?

21 A. No.

22 Q. And why not?

23 A. Well, several reasons.

24 Q. Are you still there, Mr. Tytell?

25 A. Yes, I'm sorry, I'm still here.



1 Tytell

2 Q. What are those reasons why you did not  
3 seek the handwriting samples of Mr. Zuckerberg?

4 A. Well, reason one would be that I was  
5 not tasked -- excuse me one moment. It's a foggy,  
6 humid day in New York, and it's getting to my  
7 throat.

8 I was not tasked with an examination of  
9 handwriting or signatures specifically. Number  
10 two, although I was not tasked with this  
11 examination, after reading the reports of  
12 Messrs. Blanco and Stewart, I did become  
13 interested in several aspects of what they had  
14 discussed and did start taking a look at the  
15 writing on page 1 and on page 2 of the I guess  
16 we'll call it the Buffalo document or the paper  
17 document.

18 Q. Yes.

19 A. Fine, the paper document. And I looked  
20 at both the images of the paper document that I  
21 myself had captured and also at the images of the  
22 paper document that Mr. Osborn and Dr. Aginsky had  
23 captured.

24 And in looking at page 2 of the paper  
25 document, my curiosity was aroused by the complete

1 Tytell

2 lack of mention of the fact that there was a  
3 signature on that second page of somebody named  
4 Paul Ceglia.

5 And I had actually seen one other Paul  
6 Ceglia signature in Buffalo on July 14th, and that  
7 Paul Ceglia signature was on a document -- I  
8 believe it's a six-page document with a  
9 handwritten notation on page 4 that's initialed  
10 and also a signature of Mr. Ceglia or that's  
11 supposed to be Mr. Ceglia's signature and a  
12 signature of apparently Mr. Zuckerberg also, as  
13 well as some dates, that appear on page 6 of that  
14 six-page document that is called -- I think we've  
15 been calling it the specification document.

16 Do you understand what I'm talking  
17 about, a six-page specification document?

18 Q. Yes.

19 A. Okay. I mean, I don't remember what  
20 the wording is at the very top of the page. Well,  
21 I know it -- actually, that's in my report that's  
22 Tytell 1, so let me just get that. A six-page  
23 document headed "StreetFax back-end technical  
24 specification" dated April 28, 2003. Okay.

25 So that six-page document bears the

1 Tytell

2 exact same date, April 28, 2003, as the "work for  
3 hire" document, and both documents have Paul  
4 Ceglia signatures.

5 So I was interested in why nobody --  
6 why neither Mr. Stewart nor Mr. Blanco seemed to  
7 notice that there was a Paul Ceglia signature on  
8 page 2. Now, I know Mr. Blanco did collect  
9 samples of the handwriting of Mr. Ceglia. That  
10 was one of his exhibits something like Exhibit 21  
11 or 22, someplace in there. So Mr. Blanco had  
12 collected samples of Mr. Ceglia's writing. But --  
13 excuse me -- yeah, Mr. Ceglia's writing.

14 And unlike the way that samples are  
15 often collected by document examiners, Mr. Ceglia,  
16 or whoever wrote those samples, did not sign or  
17 initial any of the -- I think there were 43  
18 separate pages there. That's just a recollection.  
19 Don't hold me to it.

20 But usually when you collect exemplars  
21 from somebody, someplace on those exemplars you're  
22 going to get: ask them to please sign it, please  
23 initial it. I know that's the standard practice  
24 on the forms that many government agencies use,  
25 such as the ATF, Alcohol, Tobacco, Firearms agency

1 Tytell

2 where Mr. Blanco used to work. I know they have  
3 that on their forms.

4 Anyway, although Mr. Blanco did try to  
5 determine whether or not Mr. Ceglia had written  
6 the interlineation, we've been calling it, the  
7 words on page 1, and collected samples for that  
8 specific purpose, he didn't collect any samples of  
9 Mr. Ceglia's initials to compare to the PC  
10 initials on page 1, nor did he apparently collect  
11 any signatures of Mr. Ceglia to compare to the  
12 signature on page 2, nor any numerals and writing  
13 of dates to compare to the 4/28/03 date that  
14 appears on page 2 of the "work for hire" document.

15 So the absence of any pursuit of that  
16 issue was kind of interesting. If you accept that  
17 Mr. Ceglia just signed the document and of course  
18 he signed it, okay, well, then you could also  
19 accept that Mr. Ceglia just wrote the  
20 interlineation, if he has made that statement.

21 But if you're going to bother to look  
22 at one page to see if Mr. Ceglia actually wrote  
23 something, I would suggest it might be consistent,  
24 if nothing else, to look at the second page.

25 So I was just interested. And I looked

1 Tytell

2 at the second page of the "work for hire" paper  
3 document from Buffalo as it had been imaged by  
4 Dr. Aginsky and Mr. Osborn. And I looked at the  
5 images that I had made of the papers that showed  
6 up in July.

7 And I compared those just to the other  
8 signature of Mr. Ceglia that bore the exact same  
9 date. So it would be very contemporaneous. It's  
10 the same day. The two documents seem to be linked  
11 in terms of the fact that they both show up  
12 related to this case and to some work that one  
13 person --

14 MR. SOUTHWELL: Let's go off the  
15 record, please.

16 (Pause - telephone connection lost.)

17 MR. BOLAND: Mr. Tytell was in the  
18 midst of describing his analysis of  
19 Mr. Ceglia's signature on the "work for hire"  
20 paper document with the software specification  
21 agreement, is I believe what he was describing  
22 when it disconnected.

23 MR. SOUTHWELL: Right. Okay. So  
24 please proceed.

25 A. Yeah, the technology is not being easy

1 Tytell

2 with us.

3 So I was very curious about this, and I  
4 compared the images from Mr. Osborn, who had also  
5 seen the specification document and had also  
6 captured images of the writing and initials on  
7 page 4 and the signatures on page 6 of the  
8 specification document, as well as the writing and  
9 signatures on the two pages of the "work for hire"  
10 document and also the images of the "work for  
11 hire" document captured by Dr. Aginsky as well as  
12 the images that I had captured of the "work for  
13 hire" document pages 1 and 2 and the specification  
14 document, specifically page 6, the signature of  
15 Mr. Ceglia.

16 The signature of Mr. Ceglia on page 6  
17 of the specification document is -- I guess I  
18 would compliment Mr. Ceglia on the speed and line  
19 quality of his signature: very nice line quality,  
20 rapidly, smoothly written, nice pressure  
21 variation, long tailing terminal strokes that --  
22 as they leave the page.

23 Now, I don't want to burden the record  
24 unnecessarily, but I hope that you're familiar  
25 with the term "line quality," Mr. Boland.

1 Tytell

2 Q. Yeah.

3 A. So you know that line quality is kind  
4 of the nonplus ultra of signatures, that this is  
5 the thing that you look for, and this is the  
6 giveaway, the place where a careful drawn free-  
7 hand simulation of a signature will fall down is  
8 in the line quality.

9 This is the problem that trips up  
10 people who are doing a very, very careful and  
11 precise and accurate tracing of a signature is  
12 that they may get all of the forms right but what  
13 they're going to have extreme difficulty with is  
14 the line quality.

15 So looking at Mr. Ceglia's signature on  
16 page 6 of the specification document, it is clear  
17 that Mr. Ceglia has very good line quality, the  
18 kind of line quality that is just going to play  
19 hob with an attempt at simulation or tracing.

20 Then looking at the line quality of the  
21 Paul Ceglia signature on page 2 of the paper "work  
22 for hire" document as imaged by Dr. Aginsky,  
23 Mr. Osborn, myself, that line quality is at  
24 virtually the opposite end of the scale from the  
25 signature of Mr. Ceglia on the sixth page of the

1 Tytell

2 specification document.

3 That line quality is very poor, shaky.  
4 And when you get over to the date next to it and,  
5 for instance, those very long, straight diagonals  
6 or what are supposed to be straight diagonals that  
7 separate the month, day, and year of the date,  
8 those have very poor line quality compared to the  
9 same formations, the separators between the month,  
10 day, and year in the date next to Mr. Ceglia's  
11 signature on page 6 of the "work for hire"  
12 document.

13 So this is just a contrast night and  
14 day, a contrast actually almost as great as the  
15 contrast between the fluorescent properties of the  
16 front and reverse pages of the "work for hire"  
17 document.

18 You just look at that kind of line  
19 quality that is seen on page 2 of the "work for  
20 hire" document and you say, unless there's a  
21 really good explanation for somebody who shows  
22 this fine, smooth, rapid writing with good line  
23 quality as another document dated the same day,  
24 the specification document, unless there's some  
25 explanation for that person suddenly not being



1 Tytell

2 able to write properly and yet very writing very  
3 precisely, albeit very slowly, I wouldn't even say  
4 a snail's pace -- a snail would lap you if you  
5 were writing that slowly -- that you have a clear  
6 flag, to a document examiner who looks at that,  
7 that something is severely wrong here, that the  
8 first thing that pops into the mind of somebody  
9 who's been examining signatures for a long time is  
10 this is a careful simulation or this is a careful  
11 tracing.

12 Now, the way you can usually be able to  
13 tell the difference between a simulation and a  
14 tracing, where you have such terrible line  
15 quality, is if by some happenstance you run across  
16 the model or another tracing made from the same  
17 model.

18 As I'm sure you're aware, having been  
19 involved in this case for a while and I'm sure  
20 you've studied up on the textbooks supplied to  
21 you, that people just don't sign their name  
22 exactly the same way twice.

23 We are not printing presses; we are not  
24 copy machines; we have variation. And I believe  
25 variation was something discussed by either

1 Tytell

2 Mr. Blanco or Mr. Stewart. So that is true, we  
3 have variation.

4 And when you find something that -- two  
5 signatures that have a similarity that exceeds the  
6 normal similarity of somebody signing their name  
7 twice that lacks the level of variation that would  
8 be expected comparing two naturally and freely  
9 written signatures, that you are looking at  
10 something that either is the model for that  
11 tracing or another tracing made from the same  
12 model.

13 And in comparing the Ceglia signature  
14 on page 2 of the paper copy with the Ceglia  
15 signature on page 6 -- excuse me, let me start.

16 When comparing page 2 -- the page 2  
17 signature of Paul Ceglia on the paper copy as  
18 imaged by Dr. Aginsky, for instance, with the page  
19 2 Paul Ceglia signature from the scan provided by  
20 Mr. Argentieri, the TIFF file, scanned apparently  
21 by -- or I've been informed by Mr. Ceglia himself  
22 and then sent to Mr. Argentieri as an e-mail  
23 attachment, when you compare that Paul Ceglia  
24 signature with the Paul Ceglia signature from page  
25 2 of the paper copy of the "work for hire"

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document, they are almost identical. There is almost no variation.

However, there is variation. There are differences. And the quality, the quantity, the direction in terms of left and right, up and down on the page as well as skew, if you will, the angle relative to 90 degrees or baseline.

So the quality, quantity, size, direction, rotation of the differences are not the kind of differences that one would associate with differences caused by scanning. They are, rather, the kinds of differences in quality and quantity that are typically found when comparing a tracing to its model or to another tracing made from the same model.

Having seen -- well, "clear and convincing" is a legal term, but basically essentially overwhelming evidence that the signature on page 2 of the paper copy -- the Paul Ceglia signature on page 2 of the paper copy is a tracing, it then -- and also the date next to the Paul Ceglia signature, I then also looked at the date next to the Mark Zuckerberg signature on page 2 of the paper copy in its various scanned images

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and so on and compared that to the date next to Mark Zuckerberg's signature on page 2 of the -- I guess I'll call the mid 2010 images, both the PDF from the complaint and the Ceglia to Argentieri e-mail TIFF files, and found there a number of differences; and similarly with the Zuckerberg signature on page 2, a number of differences qualitatively and quantitatively similar.

Now, Mark Zuckerberg's signature as seen on page 6 of the specification document is -- well, it's no offense to Mr. Zuckerberg, but it's not nearly as pretty as Mr. Ceglia's signature. Mr. Ceglia has a more developed signature style than Mr. Zuckerberg, more skillfully executed, let's say, more quickly executed, apparently.

However, Mr. Zuckerberg's signature on page 6 of the "work for hire" document has better line quality in terms of, let's say, the last stroke at the end of the second name, than does the signature on page 2 of the paper copy of the "work for hire" document.

And since Mr. Ceglia's signature is -- has gross characteristics of a tracing, the idea that Mr. Zuckerberg's signature is a tracing seems

1 Tytell

2 extremely plausible.

3 I also compared, just because I was in  
4 it at that point, the initials and the  
5 interlineation printing on page 1 of the paper  
6 copy with the interlineation and initials on page  
7 1 of the electronic images from mid 2010 and again  
8 found just many, many differences in detail that  
9 were not compatible with being caused by a  
10 difference in scanning.

11 So that was actually a handwriting  
12 examination, I guess, a handwriting and signature  
13 and numeral comparison that I did although I was  
14 not actually tasked with doing it.

15 Q. How did you come to do that analysis?  
16 Was that on your own you decided to embark on  
17 that?

18 A. Well, it grew out of my reading of  
19 Mr. Stewart's declaration and Mr. Blanco's  
20 declaration. They had a number of comments  
21 concerning some kind of an analysis that  
22 Mr. Lesnevich had done.

23 And I was just sort of interested  
24 because they were making -- I mean, this is really  
25 thirdhand. This is I'm looking at what Mr. Blanco

1 Tytell

2 says about what Mr. Lesnevich says about some  
3 handwriting.

4 Everything in this discussion was all  
5 about page 1, and I'm saying, Well, this is all  
6 very interesting. There's a critique -- a  
7 criticism of Mr. Lesnevich that his illustrations  
8 appear to be made from a printout.

9 And there was discussion of the yellow  
10 security dots that appear on the output of color  
11 copiers and color printers, and therefore we know  
12 that this was done using a printout rather than  
13 the original electronic file.

14 And I said, Well, okay, that's all very  
15 nice as a discussion. I'm not going to bother  
16 with any color printouts. I have access to the  
17 original electronic files. I will use them. And  
18 those are what I used.

19 Also, as I said, everybody was talking  
20 about page 1, and I'm wondering what happened to  
21 page 2. The only discussions of page 2 are -- or  
22 the handwriting on page 2 are Mr. Blanco talking  
23 about the Mark Zuckerberg signature, not talking  
24 at all about the date next to the Mark Zuckerberg  
25 signature, and not even mentioning that Paul

1 Tytell

2 Ceglia was in any way involved with anything on  
3 the second page.

4 So my curiosity was piqued, and I  
5 looked. And what I found was quite interesting, I  
6 felt.

7 Q. Have you provided a report to the  
8 defendants regarding those findings?

9 A. No.

10 Q. Have you communicated those findings to  
11 them verbally?

12 A. Yes.

13 Q. When was that conversation?

14 A. Well, it would be more than one  
15 conversation.

16 Q. When did you first communicate this to  
17 them?

18 A. After seeing the -- well, obviously  
19 after reading the early June reports of  
20 Messrs. Blanco and Stewart. So I'm trying to  
21 remember, I think those came in around the first  
22 week of June -- is that correct, sir? -- the date  
23 on Mr. Blanco's declaration? Is that like  
24 around --

25 Q. There were declarations filed June 4th

1 Tytell

2 by Mr. Blanco and Mr. Stewart. They had filed  
3 previous declarations, but the June 4th one I  
4 think is the one where Mr. Blanco -- well, he  
5 talked about the handwriting in two different  
6 declarations, one of which was June 4th, the most  
7 recent.

8 A. Okay, so --

9 Q. That's the one that --

10 A. Yes, sorry?

11 Q. Is that the one you read, June 4th,  
12 that prompted you to do this analysis?

13 A. Yes, Mr. Blanco and Mr. Stewart's  
14 declarations, both. I reviewed them -- let's say  
15 they're dated June 4th. I don't know when I  
16 actually received them, a couple of days later at  
17 the most. And then I started reading them.

18 I'm pretty -- I will acknowledge people  
19 have told me that I tend to be a bit wordy, but I  
20 was impressed with their declarations and the  
21 detail that they went into. I think one was 90  
22 pages and the other was 99.

23 And so it took me a while to go through  
24 them and to consider each of the various issues  
25 that they addressed, but, you know, given a number



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2 of days, a week or two or something thereafter,  
3 when I finally got into this.

4 So I can't give you an exact date, but  
5 it would be sometime in the weeks between, say,  
6 the second week of June and today that I've had  
7 these discussions. I don't really recall when the  
8 first one was.

9 Q. Have you been asked to provide a report  
10 on these results?

11 A. No, I have not been asked to provide a  
12 report.

13 Q. And let's talk about what was a pretty  
14 detailed answer to my question, which I  
15 appreciate, and is it your conclusion, then, from  
16 that analysis that the signature on page 2 of the  
17 paper contract, the "work for hire" contract that  
18 you analyzed, is actually not an original -- I'm  
19 talking about Paul Ceglia's signature -- is not an  
20 original signature but a tracing of his signature?  
21 Is that your position?

22 A. Well, when you say "original  
23 signature," I'm going to ask you to sort of be a  
24 little more specific about that term, because  
25 that's kind of a -- you're getting into my

1 Tytell

2 term-of-art department.

3 Q. Well, tell me how you would describe a  
4 signature that is authentic, that you determined  
5 after you looked at it the person actually wrote  
6 their signature, good line quality, et cetera, it  
7 wasn't a tracing. What would you call it? What  
8 is your term?

9 A. Okay, thank you. I would describe that  
10 as a freely, naturally written signature by the  
11 writer of the knowns, in that case the knowns  
12 being the Paul Ceglias of the knowns. We're  
13 discussing his signature.

14 Q. Did you have access to any of Paul  
15 Ceglia's knowns other than that signature on the  
16 specification agreement?

17 A. That was the only original ink  
18 signature that I had access to.

19 Q. Did you have access to any photocopies  
20 of his signature?

21 A. I had --

22 Q. Or copies --

23 A. I'm sorry, please.

24 Q. I didn't mean to use the word  
25 "photocopy" necessarily as a restrictive.

1 Tytell

2 Did you have access to any other  
3 examples of his signature?

4 A. I guess in the twenty-first century we  
5 should just say images, whether they're produced  
6 on a copy machine, a scanner, or whatever.

7 Yes, I did have access to some images  
8 of Mr. Ceglia's signatures that appeared on  
9 documents that had been filed in this case that  
10 were part of the -- I don't know if it's the  
11 record, the filings, the documents that have  
12 numbers at the top, like Tytell 1 has a document  
13 number 330 at the top.

14 Q. Is it your opinion, then, to use your  
15 terminology, that the signature on -- Paul  
16 Ceglia's signature on page 2 of the paper contract  
17 that you analyzed July 14th, starting July 14th,  
18 is not a freely written, natural signature; it's a  
19 tracing? Is that your conclusion?

20 A. Well, it's -- that's two different  
21 things that you're asking about. Number one, it  
22 is not a freely and naturally written signature.  
23 That is, I think, self-evident. We've just passed  
24 the 4th of July and Declaration of Independence.

25 I think that is self-evident from the

1 Tytell

2 signature itself of -- even from the images that  
3 were scanned or the photographic images taken by  
4 either Mr. Osborn or Dr. Aginsky, or those that  
5 were used, for instance, by Mr. Blanco in his  
6 report.

7 The line quality is terrible. It's not  
8 a freely and naturally written signature of the  
9 kind typically -- or of the kind seen in the Paul  
10 Ceglia signature on the specification document  
11 written the same day. You use that as an example  
12 of what Paul Ceglia signs like.

13 Sorry, that's a badly constructed  
14 sentence.

15 But you know how he signs by looking at  
16 his signatures, for instance, the original  
17 signature dated the exact same day on page 6 of  
18 the specification document, and you see a nice,  
19 freely written signature, and the signature on  
20 page 2 of the "work for hire" paper document does  
21 not conform to that. It is not that kind of a  
22 freely written, natural signature.

23 It is -- now, to the second part of the  
24 question, it is a signature on page 2 of the "work  
25 for hire" document, that line quality, that slow-

1 Tytell

2 drawn appearance, is a hallmark of simulated  
3 writing. It is a hallmark of a slow-drawn line  
4 quality, typically of carefully copied signatures,  
5 be they simulations looking at something next to  
6 where you are or tracings.

7 The reason that it moves to being a  
8 tracing is the conformity of that signature, the  
9 level of conformity, although it is not total  
10 precise conformity, such as one would see in a  
11 photocopy transfer or a scanned cut-and-paste  
12 transfer.

13 But the level of conformity with the  
14 signature on the images from mid 2010 is such that  
15 it would be considered a tracing. As to who  
16 traced it, that is something that you usually are  
17 unable to tell. I can't tell if it was traced by  
18 the man in the moon, John Doe, Paul Ceglia  
19 himself, anybody else.

20 Q. Did you do a similar comparison to Mark  
21 Zuckerberg's signature on page 2 of the "work for  
22 hire" agreement with Mark Zuckerberg's signature  
23 on whatever page it was on the software  
24 specification agreement, those two paper  
25 documents?

1 Tytell

2 A. That would have been page 6. Right  
3 next to the Paul Ceglia signature is where the  
4 Mark Zuckerberg signature appears. And yes, I  
5 did.

6 Q. And what was the result of that  
7 analysis?

8 A. I think I had mentioned that earlier is  
9 that the Mark Zuckerberg signature on page 6 does  
10 not have the same high level of line quality seen  
11 in the Paul Ceglia signature on page 6.

12 I don't want to use "page 6" because  
13 there's a newspaper in town here, the New York  
14 Post, that has a Page Six with -- I don't know if  
15 you've ever seen it, but it's a very specific term  
16 of art to that.

17 So on the sixth page, the last page,  
18 the signature page of the specification document,  
19 the Mark Zuckerberg signature on that page,  
20 Mr. Zuckerberg just doesn't have the same kind of  
21 writing speed and style that you see in the  
22 signature on that page of Mr. Ceglia. But the  
23 line quality there is noticeably better than the  
24 line quality on page 2 of the paper "work for  
25 hire" document.

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And the comparison of the Mark Zuckerberg signature on page 2 of the paper document with the Mark Zuckerberg signature on the page 2 of the images from mid 2010 shows the same kind of qualitative and quantitative deviations that are seen in the Paul Ceglia signature comparison of the paper document to the mid 2010 document and similarly with the date next to the Mark Zuckerberg signature, the 4.28.03.

Apparently Mr. Zuckerberg uses dots or periods rather than diagonal lines as his date separators. But the comparison of the numerals in that date next to the Zuckerberg signature gives the same result.

All -- each of the four elements that appear on page 2 of the paper "work for hire" document, the Zuckerberg signature, the dates next to the Zuckerberg signature, the Ceglia signature, the date next to the Ceglia signature, each of those four elements compared individually letter by letter, line by line, character by character, as a whole and as a collective whole of those four elements, when doing a comparison of the writing on page 2 of the "work for hire" paper document

1 Tytell

2 with the writing on page 2 of the "work for hire"  
3 mid 2010 electronic document, the results are all  
4 very consistent, and the results are all  
5 indicative of a tracing.

6 Q. So is it the same conclusion regarding  
7 Mark Zuckerberg's signature, that his signature on  
8 page 2 of the paper document, the "work for hire"  
9 contract, is also a tracing, in your opinion?

10 A. Yes. And again, I don't know who  
11 traced it. Mr. Zuckerberg could have traced it  
12 himself, Mr. Ceglia could have traced it, John Doe  
13 could have traced it. Obviously you'd have to  
14 have access to that sheet of paper to be able to  
15 do it, but that would be pretty much the only  
16 limitation.

17 Q. Do you intend on producing a report  
18 with these results to provide to the defendant?

19 A. Not at the moment.

20 Q. Did you take notes while you were doing  
21 this analysis?

22 A. I -- not so much notes as working  
23 images.

24 I'm sure you're familiar with the  
25 technique employed by Mr. Blanco in one of his



1 Tytell

2 exhibits where he took one image and then  
3 superimposed it on the other. So he did it.

4 I'm not sure that -- actually, I am  
5 sure that I didn't do it exactly the same way he  
6 did in terms of the -- well, not to get lost in  
7 the weeds of Photoshop technicalities.

8 But I did a similar kind of exercise of  
9 taking one image and superimposing it on another  
10 image of these various elements that I've spoken  
11 about on both page 2 and page 1.

12 So I have lots of those images, which  
13 essentially constitutes notes, as well as some  
14 other images that I prepared that are to compare  
15 and contrast the actual formations of, let's say,  
16 the Ceglia signature on the paper document with  
17 the mid 2010 electronic documents -- electronic  
18 images, also some comparisons of different line  
19 segments and portions of the signatures of  
20 Mr. Ceglia to compare and contrast the line  
21 quality of the Ceglia signature from page -- from  
22 the last page, the signature page, of the  
23 specification with the Ceglia signature on page 2  
24 of the paper "work for hire" document.

25 MR. SOUTHWELL: Mr. Boland, we have

1 Tytell

2 this document 262-2 that you asked for. I  
3 don't mean to interrupt, but I just wanted to  
4 let you know we have that, if you wanted it.

5 MR. BOLAND: Very well. Thank you.  
6 We'll get that in a second.

7 Q. Mr. Tytell, in your business do you  
8 carry liability insurance for the work that you do  
9 like the work you have done in this case?

10 MR. SOUTHWELL: Objection.  
11 You can answer.

12 A. Oh, I'm sorry, you objected. I didn't  
13 know if I could answer.

14 MR. SOUTHWELL: Generally you can  
15 answer unless I direct you not to.

16 THE WITNESS: Okay.  
17 No.

18 Q. And are you aware if any of the  
19 experts, while the analysis of the two-page  
20 document on July 14th was occurring, if any of  
21 them touched that document with their bare hands?

22 A. Yes.

23 Q. Do you know who touched it with their  
24 bare hands during the examination?

25 A. I did.

1 Tytell

2 Q. Did you also touch it at times with  
3 gloves on your hands?

4 A. Yes.

5 Q. And what dictates for you when you  
6 would touch a document that you're examining with  
7 gloves on versus times that it would be  
8 appropriate to touch it with no gloves on?

9 A. Well, really nothing in particular.  
10 Most documents that I've examined I haven't worn  
11 gloves.

12 Q. Were you aware of the types of analysis  
13 that the other experts were going to do on that  
14 document after July 4th -- I'm sorry, July 14th  
15 when you first had it? Did you know what was  
16 going to happen afterwards as far as the  
17 defendants' experts' analysis?

18 A. To which experts are you referring?

19 Q. Any of the other experts after you.  
20 Did you talk -- did you know -- not talk.

21 Did you know about what their analysis  
22 would be for any of the defendants' experts after  
23 you?

24 A. Well, after me I knew that an ESDA  
25 analysis was going to be performed, and I

1 Tytell

2 understood that ink samples would be taken for  
3 chemical analysis.

4 Q. And what chemicals did you understand  
5 they were going to analyze in those ink samples?

6 A. I didn't. Well, the chemical  
7 constituents of the ink, which would include the  
8 dye stuffs, the dyes that were present, and I  
9 didn't know if they were going to also examine any  
10 of the resins or solvents or other constituents of  
11 the inks.

12 Q. Do you know what those components or  
13 constituents of the inks were? Did you know what  
14 those were on July 14th when you started -- at the  
15 time when you were handling the document sometimes  
16 without gloves?

17 A. I did not --

18 MR. SOUTHWELL: Objection to the  
19 form -- or objection, mischaracterizes,  
20 rather.

21 You can answer.

22 Q. I can ask to have a clear answer. On  
23 July 14th when you first were given the document,  
24 did you know what chemical -- all the chemical  
25 components of the ink were that the other experts

1 Tytell

2 were going to analyze?

3 A. No.

4 Q. Have you read Mr. LaPorte's report?

5 A. The LaPorte report? No.

6 Q. Yes.

7 A. Yes, no, I have not read the LaPorte  
8 report.

9 Q. Okay. And I'm talking specifically  
10 about the declaration/report that he filed  
11 attached to the motion to dismiss filed by the  
12 defendants, that report. Have you read that?

13 A. You're going to have to give me a date  
14 because -- I mean, I totally understand that for  
15 you a document -- a document examiner's report is  
16 something that you stick on the back of legal  
17 arguments as an exhibit. But for me the brilliant  
18 legal arguments by either side are the  
19 miscellaneous pieces of paper that are on top of  
20 the document examiner's report.

21 So if you could give me a date for the  
22 document you're referring to or maybe a number so  
23 that somebody could show it to me, then I would be  
24 able to answer. But I just can't understand  
25 the -- I can't register what document you're

1 Tytell

2 talking about based upon it being attached to some  
3 kind of a legal paper.

4 Q. Do you know whether the report that  
5 I've had you identify as Tytell 1, do you know  
6 whether that document was ever attached to  
7 anything that was filed in this case?

8 A. Yes.

9 Q. What do you understand that it was  
10 attached to?

11 A. Some kind of a filing. I don't know if  
12 it was a motion, a response, a counter response, a  
13 reply to a response to a motion to a counter  
14 motion. I don't know. These things are like the  
15 Russian grandma dolls. They just go in layers  
16 like an onion.

17 So I couldn't tell you what the  
18 document was to which this is an Exhibit F. I'm  
19 sure that if I got the whole stack of paper and I  
20 read the little lines to the right of the heading  
21 I would be able to tell you what it was. Whether  
22 or not I actually understood what those words  
23 meant is something I couldn't promise you at this  
24 time.

25 Q. Have you read any declarations filed by

1 Tytell

2 Gerald LaPorte in this case?

3 A. I don't believe so.

4 Q. Have you been involved in the past with  
5 drafting ASTM standards?

6 A. I have.

7 Q. Do you know if there are any ASTM  
8 standards which talk about handling documents  
9 during examination and whether gloves should be  
10 worn by the examiner or gloves are optional?

11 A. Could you refer me to a particular  
12 standard?

13 Q. No, sir, I'm just asking if you know of  
14 a standard; if you don't, that's fine. I'm just  
15 asking if you know of a standard that talks about  
16 the wearing of gloves when you're examining a  
17 document.

18 A. I think that there are some standards  
19 which say -- in discussing the handling of a  
20 document, is that what you're referring to?

21 Q. I'm asking if you know if there's an  
22 ASTM standard regarding whether you should wear  
23 gloves or not when you're examining a document.  
24 That's all, if you know that.

25 A. I don't think that -- I cannot recall

1 Tytell

2 standards that specifically say, Thou shalt wear  
3 gloves. I believe to my recollection now -- and  
4 again, I would like to look at the standards  
5 before giving you a definite answer.

6 I think that there's a generalized  
7 caution to handle the documents with care and that  
8 there may be an e.g., a for instance, a gratuitous  
9 example of for instance with gloves.

10 And I do recall that there was an issue  
11 of -- at one time the wording was with cotton  
12 gloves or cloth gloves, and then it was changed to  
13 not use cloth gloves.

14 So gloves are not always a good things.  
15 Gloves can sometimes did deleterious.

16 Q. What kind of negative effects can the  
17 wearing of gloves have when handling a document  
18 during an examination?

19 A. Well, the wearing of cloth gloves, some  
20 experimentation has shown, can -- I don't want to  
21 use a term like "mess up" but can have a  
22 deleterious effect on the document, disturbing the  
23 paper surface such that you don't -- that you  
24 would not be able to subsequently visualize latent  
25 impressions through the use of technology such as



1 Tytell

2 the ESDA machine -- and the ESDA, capital E,  
3 capital S, capital D, capital A, electrostatic  
4 static detection apparatus.

5 That kind of machine is used, as you  
6 may be aware, to determine latent visual  
7 impression on documents, indented writing. And  
8 there had been some research done, paper  
9 presented, that suggested that cloth gloves can be  
10 harmful and can interfere with subsequent ESDA  
11 examinations. So the ASTM recommendation  
12 regarding cloth gloves was withdrawn.

13 Q. What kind of damage can come to a  
14 document handling it during an examination with  
15 latex gloves like were used in this case?

16 A. I would -- I don't know. Are you  
17 asking me to speculate on this topic, because --

18 Q. No, only if you know. Are there any --  
19 is there any literature or any knowledge or  
20 experience you have as to the kind of damage that  
21 can be done to a document using latex gloves like  
22 were used in this case?

23 A. Well, I'm not sure that the same kind  
24 of latex gloves were used universally in this  
25 case, first of all. So can you be a little more

1 Tytell

2 specific, please?

3 Q. Do any type of latex gloves, wearing  
4 them on your hands and handling a document, have  
5 you had experience with that has caused damage to  
6 a document?

7 A. I have not had experience, but I have  
8 heard that some people have said that the kind of  
9 powder that is used on certain kinds of latex  
10 gloves might be problematic. I have not had  
11 personal experience in that area.

12 Q. But during portions of the examination  
13 of the document in this case, you did wear latex  
14 gloves; correct?

15 A. Correct.

16 Q. Do you feel that you damaged the  
17 document while wearing those latex gloves and  
18 handling it?

19 A. Could you define "damage," please?

20 Q. Did you contaminate it with some  
21 substance that wasn't originally on the document  
22 by handling it with latex gloves?

23 A. Like latex, for instance?

24 Q. Any substance at all. You're the  
25 expert. I don't know. Is there any substance you

1 Tytell

2 could have contaminated a document with by  
3 handling it with latex gloves?

4 A. I have no idea. You're asking me to  
5 speculate here. I would be happy to speculate if  
6 that's what you want.

7 Q. No, I'm just saying do you know for a  
8 fact whether you did contaminate the document by  
9 handling it with latex gloves. Do you know?

10 A. I do not know.

11 Q. What is the purpose -- why did you  
12 choose at portions during this examination to wear  
13 latex gloves while handling the document?

14 A. It seemed like a good idea at the time.

15 Q. Why did it seem like a good idea?

16 A. An excess of caution, I think.

17 Q. What were you cautioning against by  
18 wearing latex gloves?

19 A. Leaving my fingerprints on the  
20 document. That's pretty much the reason people  
21 wear latex gloves in examinations.

22 Q. Were you concerned about transferring  
23 any contaminants from your fingers, other than a  
24 fingerprint, to the document?

25 A. No, I generally approach not just the

1 Tytell

2 court but the documents with clean hands. I --  
3 the problem with fingerprints in document  
4 examination is that the ESDA machine develops  
5 fingerprints.

6 In fact, the original research in the  
7 1970s in England that led Messrs. Foster and  
8 Freeman to the discovery, if you will, for ESDA  
9 for the development of imprinted writing, the  
10 original purpose for that research was to develop  
11 fingerprints on paper.

12 This is in the midst of what is  
13 euphemistically referred to as the troubles in  
14 northern Ireland which also spilled over  
15 considerably into England. And they were -- the  
16 home office in England had a research project  
17 funded to develop fingerprints on paper, and there  
18 were many, many different techniques that were  
19 developed during this time period.

20 Among them was they were trying to  
21 develop it with the ESDA machine. And the people  
22 who were working on it said, Well, you know, we're  
23 actually getting some results on fingerprints, but  
24 we keep getting this indented writing that is sort  
25 of interfering with the fingerprints.

1 Tytell

2 And when they told that to the right  
3 person, who realized -- it wasn't quite like  
4 Fleming discovering penicillin, but they realized  
5 they had stumbled onto something extremely  
6 interesting.

7 Then they redirected their efforts to  
8 the development of latent writing as being  
9 potentially more useful than the quality of  
10 fingerprints they were getting from that side of  
11 the research.

12 So it has been known virtually from the  
13 very beginning that the ESDA technology, the ESDA  
14 machine, will develop fingerprints, and you don't  
15 want those fingerprints to interfere with your  
16 subsequent ESDA examinations.

17 And that's why document examiners -- I  
18 mean, other people in the forensic world have  
19 other reasons for doing everything. But that's  
20 the reason that we're essentially watching out for  
21 fingerprints is the problem of fingerprints on  
22 ESDA.

23 Q. Do you know of any common household  
24 products that have chemicals in them that could be  
25 transferred to a document? For example, if you

1 Tytell

2 had lotion on your hands and you touched a  
3 document, do you know if that can transfer  
4 contaminants to the document?

5 A. What kind of lotion are you referring  
6 to as the household product?

7 Q. Any kind of hand lotion. As a matter  
8 of your years and years of experience handling  
9 documents, have you ever come across a scenario  
10 where someone has something on their hand --  
11 lotion or shampoo remnants or whatever -- and they  
12 handle a document like that and transfer some of  
13 that material to the document? Can that happen?

14 A. Well, I do recall a case that was shown  
15 to me as a "hey, look at this, this is so cool  
16 kind" of case at the Scotland Yard lab back I  
17 guess it would be in the 1980s, in the early days  
18 of laser work with fingerprints, that they had  
19 found that a particular kind of hand cleaner used  
20 by car mechanics left a residue on the fingers  
21 that could be transferred to other things like  
22 steering wheels, guns, paper as well, and that  
23 this particular mechanic's hand cleaner did have a  
24 strong fluorescence when illuminated with a  
25 particular wavelength from a -- I'm trying to

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remember if it was a copper vapor laser or a frequency double Nd: YAG laser, anyway, the kind of lasers they were using back then. It worked out that this worked very well. So that would be one kind of an instance.

(Time noted: 1:00 p.m.)

1

2

A F T E R N O O N   S E S S I O N

3

(Time noted: 1:32 p.m.)

4

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8

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10

P E T E R   V.   T Y T E L L ,

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12

13

14

EXAMINATION CONTINUED BY

15

MR. BOLAND:

16

Q.     Mr. Tytell, can you hear me okay?

17

18

A.     Yes, at the moment the technology is  
being good to us.

19

Q.     Okay. Good.

20

21

22

23

I wanted to go back just a bit about  
your comment about you come to the court the same  
way you handle documents, with clean hands. Do  
you remember that?

24

25

A.     Yes. Excuse me, wait one moment,  
please. I'm not sure that is what I said exactly.



1 Tytell

2 Q. Well, let me qualify it, then. It's  
3 true that while you were handling the document in  
4 this case starting July 14th and for the several  
5 days that you were examining it you washed your  
6 hands regularly to try and be cautious about  
7 contaminating the document?

8 A. I wash my hands regularly whether or  
9 not I'm examining documents.

10 Q. But I'm focused on July 14th and the  
11 days while you handled the document. You washed  
12 your hands during that time regularly?

13 A. I washed my hands when they were -- if  
14 they were dirty or if I had been to the lavatory.

15 Q. And what kind of soap did you use?

16 A. The soap that was provided there.

17 Q. And did you wash your hands at the  
18 hotel in the morning before you came over to  
19 handle the document, I assume?

20 A. Right.

21 Q. What kind of soap did you use there?

22 A. Bar soap.

23 Q. Do you know what the ingredients were,  
24 like specifically the chemical ingredients of the  
25 soap at the hotel?

1 Tytell

2 A. No.

3 Q. Do you know what the ingredients were  
4 of the soap that was provided in the lavatory at  
5 the law firm where you were examining the  
6 document?

7 A. No.

8 Q. Are you aware of whether either one of  
9 those soaps contained a chemical called  
10 phenoxyethanol?

11 MR. SOUTHWELL: Objection. He just  
12 said he doesn't know the ingredients.

13 Q. Do you know what phenoxyethanol is,  
14 sir?

15 A. I've heard the term before.

16 Q. What do you understand it to be?

17 A. A solvent.

18 Q. Do you know if that solvent is found in  
19 soaps?

20 A. No, I don't.

21 Q. Do you know any other -- do you know  
22 where that solvent is found in products that are  
23 available to consumers?

24 A. It is my understanding that it is found  
25 in certain ballpoint pen inks.

1 Tytell

2 Q. Other than inks do you know of any  
3 other products that contain that component?

4 A. I do not know of any others, but from  
5 your questioning I understand that you might think  
6 there are.

7 Q. Well, it's not about what I think. I'm  
8 just wondering what you knew.

9 A. No, I'm only familiar with that  
10 chemical based upon my understanding that it is  
11 used in certain inks.

12 Q. When we talked earlier, you mentioned  
13 one of your concerns that causes you to be  
14 cautious when handling documents is to try and  
15 avoid putting a fingerprint on a document. Do you  
16 recall that?

17 A. Yes, because of the effect that  
18 fingerprints can have on ESDA work.

19 Q. And it's true, sir, that by putting a  
20 fingerprint on a document that happens by causing  
21 oils from the skin, in this case it would be your  
22 skin if you had accidentally done it -- I'm not  
23 saying you did or didn't -- but oils from the skin  
24 to be transferred to the document and that makes  
25 the imprint of the fingerprint; right?

1 Tytell

2 A. I am aware that that is one way that  
3 fingerprints can occur.

4 Q. What are other ways they can occur?

5 A. Well, I guess you're limiting it to  
6 documents; right?

7 Q. Yes, what are other ways fingerprints  
8 can appear on documents besides transferring the  
9 oil from someone's fingertips to the document?

10 A. I was thinking about what they're  
11 called where a fingerprint is left in a soft  
12 substance such as soft wax or clay. They're  
13 called plastic fingerprints sometimes. I didn't  
14 realize you were limiting it to only documents.

15 Q. You earlier talked about a tracing as a  
16 means by which the signatures for both Paul Ceglia  
17 and Mark Zuckerberg now appear on the second page  
18 of the "work for hire" document. Do you recall  
19 that testimony?

20 A. I recall discussing tracings and the  
21 reasons to understand that this document has all  
22 the indicia of having been a tracing, yes.

23 Q. Is it your conclusion from your  
24 analysis that those two signatures on page 2 of  
25 the paper document, the "work for hire" document,

1 Tytell

2 were created by tracing?

3 A. Everything I've seen to date points in  
4 that direction. I haven't seen anything contrary  
5 to that, but I would be interested in some further  
6 inquiry to determine whether or not that would be  
7 a final definite determination.

8 Q. And how is a tracing done, in your  
9 experience?

10 A. Well, there are a number of different  
11 ways that have been discussed in the literature  
12 for doing tracings. Would you like a catalog of  
13 those?

14 Q. Well, first, how many different ways  
15 are there to make a tracing of a signature?

16 A. I would suggest that's probably almost  
17 infinite.

18 Q. Well, would one of those be someone  
19 putting the signature of the writing they want to  
20 trace next to a blank piece of paper and then just  
21 trying to sort of mimic what they're seeing on the  
22 other piece of paper on this new blank piece of  
23 paper? Is that considered a tracing?

24 A. No. That would be considered a drawn  
25 simulation or a copied simulation. It's a subset

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2 or subcategory of free-hand simulations where --  
3 another one would be if I just remembered I've  
4 seen a signature, I'll remember what it looks  
5 like, I'm going to try and imitate it from memory.

6 I've seen a signature, it's sitting  
7 right here next to me, I'm going to copy it  
8 looking back and forth from the model signature  
9 that I'm copying to the page where I'm writing  
10 what I see on the signature.

11 There may be elements of practice  
12 involved in this kind of simulation, you know, sit  
13 and practice it for three weeks, see how good you  
14 get at it.

15 These are all different kinds of  
16 simulations, but that would be distinct  
17 methodologically from a tracing or what is called  
18 a tracing.

19 Q. Well, I'm a layperson, so tell me if  
20 this definition of tracing is what you're talking  
21 about, and that is someone having the signature  
22 they want to trace on a piece of paper and then  
23 laying the other piece of paper blank on top of  
24 that and trying to look through the top piece of  
25 paper to the one underneath and actually trace out

1 Tytell

2 what they're seeing on the underneath page.

3 Is that what you mean by "tracing"  
4 generally?

5 A. Generally, yes, that is one form of  
6 tracing, one of many.

7 Q. Are there any forms of tracing that do  
8 not involve one piece of paper on top of the  
9 other, sort of like what I described?

10 A. Yes.

11 Q. What form of tracing took place in this  
12 case? What's your opinion there?

13 A. I don't know which of the many  
14 possibilities you described -- just using the  
15 particular methodology that you mentioned  
16 previously, the model signature -- is it okay to  
17 use this term of art, the "the model signature,"  
18 the page that has the signature that you want to  
19 copy? Okay? Can you I use that so you'll  
20 understand what I mean?

21 Q. Yes.

22 A. You said you have a piece of paper with  
23 a signature on it. Let's just call that the model  
24 signature. That, of course, could be a real  
25 signature, an ink signature, or it could be a

1 Tytell

2 photocopy or anything else. But it's on a  
3 physical piece of paper.

4 So you say there's only one piece of  
5 paper on top of the model signature piece of  
6 paper. You can have two pieces of paper on top of  
7 the model signature piece of paper. You're saying  
8 you're looking through the top piece of paper, the  
9 one you're actually writing on in creating the  
10 tracing. It's not all that easy.

11 It's much easier if you have a light  
12 source behind your model signature so that it  
13 can -- it can help you see through that. And that  
14 light source could be a light box or that light  
15 source could be the window.

16 Actually you can see that in a movie  
17 called the Apprenticeship of Duddy Kravitz. If  
18 you ever happen to see that movie, there's a scene  
19 there where he traces a signature holding the  
20 model up to the window and putting the -- I think  
21 it's a check endorsement over it.

22 So that's another way to do it, to have  
23 a light source from behind.

24 Nowadays you could probably have an  
25 image of a signature on a computer screen and



1 Tytell

2 trace from that. And that's still, you know, one  
3 page on top of another.

4 Q. What is your conclusion about how the  
5 tracing occurred in this case?

6 A. Carefully.

7 Q. I mean, which one of those methods?

8 A. I have not made a determination about  
9 that. I am just of the opinion it's a careful  
10 tracing. There are also -- there's another method  
11 where you can project the signature from above  
12 onto a piece of paper, and then it doesn't matter  
13 what's underneath the page where you're tracing  
14 the signature because the signature is projected  
15 from above. And there were a number of different  
16 devices that can be used for that.

17 Q. Can you identify for me the model  
18 signature in this case that you believe was used  
19 to complete the tracings of Paul Ceglia's  
20 signature specifically? Let's just go on that  
21 one.

22 A. Well, as I said before the break, the  
23 quality and quantity of the agreements and the  
24 quality and the quantity of the differences point  
25 to the signature of Paul Ceglia on page 2 of the

1 Tytell

2 mid 2010 images of the "work for hire" document,  
3 such as the copy attached to the complaint as  
4 being either the model for the signature on page 2  
5 of the paper "work for hire" document or another  
6 tracing made from the same model.

7 And that document does exhibit, even  
8 from the copy we see, some better line quality  
9 features than are apparent in the Paul Ceglia  
10 signature on page 2 of the paper document.

11 Q. The document from which -- the model  
12 signature from which the tracing was made of Paul  
13 Ceglia's signature that now appears on the "work  
14 for hire" agreement, according to you, is the page  
15 2 of the document that was attached to the  
16 complaint in this case, or the amended complaint?

17 A. Page 2 -- well, the image, the copy  
18 that was there, could have been used, a printout  
19 of the TIFF file sent by Ceglia to Argentieri,  
20 whatever document it was that was scanned to  
21 create that TIFF file or whatever document was  
22 copied or printed out to create the attachment to  
23 the complaint.

24 You know, there's a plethora of  
25 possibilities all subsumed in this idea of a mid

1 Tytell

2 2010 document. And as I said, more than once, I'm  
3 afraid -- I am getting a bit repetitious here --  
4 as I said previously, that signature on the mid  
5 2010 document or copies thereof would be a model  
6 signature or another tracing or copy made from the  
7 same model.

8 Q. Well, where's the model -- if that is a  
9 tracing made from another model, where is that  
10 model for that tracing of the 2010 -- mid 2010 one  
11 that you're talking about?

12 A. I don't know. It could be on the  
13 document that I've seen which people call the  
14 StreetFax contract. There's another --

15 Q. I'm sorry, go ahead.

16 A. No, I didn't mean to interrupt you.

17 Q. Did you compare the second page of the  
18 so-called StreetFax contract with any other second  
19 pages of the "work for hire" contract either in  
20 paper or a digital image of it?

21 A. Yes.

22 Q. And what was the result of that  
23 comparison?

24 A. It agrees with the second page of the  
25 mid 2010 TIFF files, et cetera, et cetera. I

1 Tytell

2 mean, we have to get some kind of I guess a  
3 shortcut phrase for all of that stuff from the  
4 attachment to the complaint and the TIFF file sent  
5 by Mr. Ceglia to Mr. Argentieri. So if you  
6 understand when I say the mid 2010 images, that's  
7 what I'm talking about, if that's okay with you.

8 Q. Yes.

9 A. Okay. Good. All right. Page 2 --  
10 yes, I'm sorry?

11 Q. Let me ask some specifics. Does page 2  
12 of the StreetFax contract, based on your analysis,  
13 make match -- not match. Is it the same as page 2  
14 of Mr. Osborn's scan that you reviewed?

15 MR. SOUTHWELL: Objection. Are you  
16 asking about the signature still or are you  
17 asking a broader question? I'm not sure I  
18 understand the question.

19 Q. I'm just asking the signature on page 2  
20 of the so-called StreetFax contract of Paul  
21 Ceglia, how does that compare to Paul Ceglia's  
22 signature as it appears on page 2 of Mr. Osborn's  
23 scan of the "work for hire" document.

24 A. It differs -- okay, page 2 of the  
25 tracks differs from page 2 of the Osborn scan of

1 Tytell

2 the paper document qualitatively and  
3 quantitatively the same way, to the extent it's  
4 possible to see, as the page 2 Paul Ceglia  
5 signature from the mid 2010 images differs from  
6 the Ceglia signature on the page 2 of the Osborn  
7 scans.

8 Q. I'm asking the same question about  
9 Mr. Zuckerberg's signature on the "work for hire"  
10 paper contract that you started analyzing July  
11 14th, what -- is it the same set of documents that  
12 you believe are the potential model signatures  
13 from which that tracing of Mr. Zuckerberg's  
14 signature was created?

15 A. I'm sorry, you lost me here.

16 Q. Mr. Zuckerberg's signature on page 2 of  
17 the "work for hire" agreement that you analyzed on  
18 July 14th, starting on July 14th, you testified  
19 that you believe that's also a tracing, not his  
20 original signature, or his free-hand natural  
21 signature; right?

22 A. That's what all of the indicia point  
23 to, yes.

24 Q. And what was the model signature used  
25 to create the tracing of Mr. Zuckerberg's

1 Tytell

2 signature on that two-page paper document you  
3 analyzed starting July 14th?

4 A. Again, all of the features that I've  
5 been able to see so far point towards the Mark  
6 Zuckerberg signature on page 2 of the mid 2010  
7 images as being the model for that signature or  
8 another tracing from a common model.

9 Q. In your opinion was the StreetFax  
10 document legible enough to make a scientific  
11 conclusion about the handwriting?

12 A. To the extent that it was possible to  
13 see what could be seen, it did agree very closely  
14 with the features that I have outlined here.

15 Q. Do you know if there is any other  
16 expert for the defendants that have analyzed any  
17 handwriting on the "work for hire" agreement in  
18 this case?

19 A. Yes.

20 Q. And who else do you know has done that?

21 A. I don't know about the "else" part,  
22 since I'm not sure that I've actually done it to a  
23 completion point and I don't believe I've done it  
24 because I was asked to do it. But the -- I  
25 believe that Mr. Lesnevich has looked at the

1 Tytell

2 handwriting issues regarding the "work for hire"  
3 contract.

4 Q. Do you know if he's analyzed the  
5 signature of Paul Ceglia on that contract?

6 A. I don't know what he's done regarding  
7 page 2 of the document. I'm aware of what he has  
8 done regarding page 1.

9 Q. Other than Mr. Lesnevich, do you know  
10 of any other defendants' expert who has analyzed  
11 the handwriting on either page 1 or page 2 of the  
12 "work for hire" agreement?

13 A. Could you be a little more specific  
14 about who we're including as defendants' experts.

15 Q. Gerald LaPorte?

16 A. Okay. And we're talking --

17 Q. Has he done any analysis of the  
18 handwriting on either of the pages of the  
19 document, as you know?

20 A. Not that I'm aware of.

21 Q. Has Albert Lyter done that, if you  
22 know?

23 A. Not that I'm aware of.

24 Q. Has Frank Romano done that, if you  
25 know?

1 Tytell

2 A. Not that I'm aware of.

3 Q. Do you know all of the experts that the  
4 defendants have hired to analyze the document in  
5 this case?

6 A. I don't know if I know.

7 Q. Can you name all the ones that you're  
8 aware of the defendants have hired to analyze any  
9 part of document in this case?

10 A. Well, you mentioned several: Professor  
11 Romano, Mr. LaPorte, Mr. Lesnevich, Dr. Lyter. I  
12 became aware, because I ran into him today, of  
13 Dr. McMenamin. Let's see. LaPorte and Lyter and  
14 Lesnevich. That's the Ls. McMenamin, Romano.

15 And I'm sure that there are a host of  
16 other experts on other subjects related in some  
17 way, shape, or form to this document, but I don't  
18 know of them -- I don't know, you know, the names  
19 of the people specifically who would be involved.

20 Q. After you were retained, did you  
21 suggest to the defendants to hire any of the  
22 experts that are currently working for them that  
23 you just listed?

24 A. Let's see. Let me just run down the  
25 inventory here. Lesnevich, Lyter, LaPorte. I may



1 Tytell

2 have given them a list of all of the people I know  
3 who do ink work in the U.S. and Canada. I'm not  
4 sure if that's a recommendation. It's a fairly  
5 small number. So I would have mentioned to them.  
6 Aginsky, Lyter, LaPorte, et cetera.

7 So, I mean, that's not really a  
8 recommendation; that's a listing of everybody.

9 I may have also put them in contact or  
10 given them the contact information for  
11 Dr. McMenamin, but I don't know whether or not I  
12 did.

13 Q. When the July 14th analysis began, was  
14 there any one of you experts who was, for lack of  
15 a better word, sort of in charge of how the  
16 examination would proceed?

17 A. No, I don't think there was a chain of  
18 command situation there.

19 Q. I asked you before about handling the  
20 document without gloves. Other than yourself, did  
21 you notice any other experts handling the document  
22 without gloves on? And if you could list them,  
23 please.

24 A. Mr. Lesnevich and not -- that's the  
25 only one who I actually saw handling the document.

1 Tytell

2 Q. Do you know if he transferred any  
3 contaminants from his hands to the document when  
4 he touched it?

5 A. No.

6 Q. Is it your opinion that the document  
7 you analyzed starting July 14th in Buffalo is the  
8 same document that Mr. Aginsky scanned and that  
9 you saw a scan of that document?

10 A. I believe that's so. That's my opinion  
11 as of the material that I've looked at to date,  
12 that it was the same document, however, in a  
13 radically different condition.

14 Q. If you could take a look at the exhibit  
15 that the Gibson, Dunn's folks were so nice to  
16 print out for me, document 240-1. If we could  
17 mark that Tytell 2.

18 MR. SOUTHWELL: You want just 240-1?

19 MR. BOLAND: 240-1 should be a two-page  
20 document, is it not?

21 MR. SOUTHWELL: Okay, yes.

22 MR. BOLAND: I'm sorry, a three-page --

23 MR. SOUTHWELL: Yeah, it's three pages  
24 to Exhibit A and then two images of scans. I  
25 have a copy of all of 240 that we have

1 Tytell

2 printed, but if you want me to separate it  
3 out, I can do that.

4 MR. BOLAND: Yes, I just wanted 240-1.  
5 That was it.

6 (Tytell Exhibit 2, document labeled  
7 "Exhibit A", marked for identification.)

8 Q. Mr. Tytell, if you could identify that  
9 document for the record, please.

10 A. I'm looking at a document marked at the  
11 top 240-1. The first page says page 1 of 3. It  
12 is a three-page document, and the first page has  
13 "Exhibit A" printed on it, marked Tytell 2. And  
14 then the next page is some kind of an image of the  
15 "work for hire" contract marked page 2 of 3 with  
16 the faded ink on the interlineation, et cetera.  
17 And then the last page, the third page of this  
18 240-1, Tytell 2, headed page 3 of 3, is some kind  
19 of an image, apparently, of page 2 with the faded  
20 ink of the signatures -- of both signatures and  
21 both dates.

22 Q. And is it correct, sir, that these are  
23 printouts of two scans -- two scans that you took  
24 of page 1 and page 2 of the "work for hire" paper  
25 contract?

1 Tytell

2 A. I believe that's incorrect, but I don't  
3 know.

4 Q. Let's look at the other exhibit that  
5 you -- the other item there, which is -- I believe  
6 it's document 238-2.

7 A. Let's start again. 2 -- well, I have  
8 in front of me two exhibits, Tytell 1 and Tytell  
9 2; right?

10 Q. Yes. If you could --

11 A. Tytell 2 is a document 240-1. And  
12 you're asking me about another document?

13 Q. Yeah, there should be one other  
14 exhibit, if they can hand it to you, which is  
15 232-2, which was printed by Gibson, Dunn for me.

16 A. I'm sorry, I hadn't seen that yet so...

17 MR. SOUTHWELL: Hold on.

18 (Tytell Exhibit 3, document labeled  
19 "Exhibit B", marked for identification.)

20 Q. If you could just describe that  
21 document for the record, Mr. Tytell.

22 A. Okay. This is marked Exhibit B, and  
23 it's marked -- it's apparently five pages. Page 1  
24 of 5 says Exhibit B, and page 2 of 5 is some kind  
25 of image of the "work for hire" contract page 1

1 Tytell

2 with the faded ink of the interlineation. Page 3  
3 of 5 appears to be the reverse of page 1 of the  
4 paper "work for hire" document, and there does  
5 seem to be -- yeah, you can see in the upper right  
6 the darker nature of the corner there.

7 Page 4 of 5 appears to be an image of  
8 the front of page 2 of the paper "work for hire"  
9 document with the brownish, off-color, whatever,  
10 ink of the signatures of Mr. Ceglia and Zuckerberg  
11 and the dates next to them faded out ink. And  
12 then page 5 of 5 appears to be the reverse of that  
13 page.

14 So that's what I have here as Tytell 3.

15 Q. Do you recognize Tytell 3 as a printout  
16 of the scan of the "work for hire" document that  
17 you created when you first received it on July  
18 14th --

19 MR. SOUTHWELL: Objection.

20 Q. -- 2011?

21 MR. SOUTHWELL: Objection. Calls for  
22 speculation. I'm not sure how you can expect  
23 him to identify this.

24 Q. Do you recognize those as your scans of  
25 that document; "yes" or "no."

1 Tytell

2 A. Well, first of all, what I'm looking at  
3 are not scans.

4 Q. Printouts of your scans of the  
5 documents. Do you recognize them as printouts of  
6 your scans?

7 A. Well, my scans did not have this  
8 heading at the top, Case 1:10, et cetera,  
9 et cetera, page 2 of 5, page 3 of 5. So that was  
10 not part of my scan.

11 Q. Fair enough.  
12 Anything else on there that wouldn't  
13 have been part of your scan?

14 A. I have no idea whether there are  
15 additions or subtractions relative to what I had  
16 scanned, if these are indeed documents that in  
17 some way are traced back -- or traceable back to  
18 the scans that I made at -- on one of the several  
19 occasions when I did scan page 1 and 2 of the  
20 "work for hire" document. It was scanned several  
21 times during that day.

22 Q. Did you provide copies of the  
23 electronic files of those scans to the defendants'  
24 attorneys?

25 A. I provided the copies of the I guess

1 Tytell

2 what you were calling them before the raw files,  
3 the native format files, is that what --

4 Q. Yes, electronic files of those scans,  
5 did you provide those?

6 A. Right, the actual -- I'm sorry, I don't  
7 want to talk over you.

8 MR. SOUTHWELL: I want to clarify what  
9 you're referring to as "those scans," and I  
10 don't know if that's clear.

11 MR. BOLAND: I'll be clearer.

12 Q. The very -- when the document was first  
13 taken out of the envelope and placed on the table  
14 on July 14th, were you the first person to scan  
15 that two-page "work for hire" document that  
16 morning?

17 A. Yes.

18 Q. My questions now are referring to the  
19 electronic file that would have been created by  
20 those scans that we just talked about right just  
21 now in that previous question.

22 Did you give copies of the electronic  
23 file of those scans to the defendants' attorneys?

24 A. Yes.

25 Q. Do you know if the defendants'

1 Tytell

2 attorneys printed those scans as an exhibit to  
3 anything they have filed in this case, if you  
4 know?

5 A. I don't know, but -- well, I don't  
6 know.

7 Q. Looking at Tytell 3 as it's printed out  
8 in front of you, can you look at the  
9 interlineation that appears ton page 1 of that  
10 document.

11 A. Yes.

12 Q. And do you see the word, although  
13 faded, "May," as in the month of May, that is  
14 handwritten in that interlineation?

15 A. Well, when you said page 1, page 1 of 5  
16 is just the words "Exhibit B." I assume you're  
17 referring to page 2 of 5 of Tytell 3, which is  
18 some kind of an image of the front of page 1 of  
19 the "work for hire" contract?

20 Q. Yes, page 1 of the "work for hire"  
21 contract, which is part of this overall exhibit  
22 you have.

23 A. Right, which is --

24 Q. If you could look at page 1 of the  
25 contract itself.



1 Tytell

2 A. Which is mark as page 2 of 5 in the  
3 header. Okay.

4 Q. Yeah, I understand that. But you're on  
5 page 1 of the actual contract; right?

6 A. Well, I'm not on page 1 of the actual  
7 contract; I'm on page 2 of the exhibit, which is a  
8 picture of something, or an image of something.

9 Q. Yes. And do you see the interlineation  
10 that is in that -- on that page of that document?

11 A. Yes, sir.

12 Q. And do you see specifically the  
13 handwritten word "May," as in the month of May,  
14 that's in that interlineation?

15 A. Yes.

16 Q. Now, can you refer to Tytell 2, which  
17 is also, I think you would agree, appears to  
18 contain within it pages of a scan of page 1 of the  
19 "work for hire" contract?

20 A. Yes.

21 Q. Can you look at the interlineation on  
22 that Tytell 2 and the word "May" as in the month  
23 of May in that interlineation? Do you see that,  
24 sir?

25 A. I do.

1 Tytell

2 Q. How do those words, the month of May,  
3 compare as far as the fadedness of their  
4 appearance in the exhibits you have in front of  
5 you?

6 A. Well, this is comparing apples with  
7 pineapples because --

8 Q. How so?

9 A. Well, first of all, the proper  
10 comparison would be of -- if you wanted to do such  
11 a thing, first of all, I'm looking at what are  
12 apparently reduced-size images. These are not  
13 enlargements by any means.

14 These actually seem to have reduced an  
15 8.5 by 11 page to something on the order of 8 by  
16 10 or maybe even a little smaller. I don't have a  
17 ruler on me. So that makes it a little tough to  
18 compare a letter like the letter M in "May," that  
19 I do not know the source of either of these  
20 images.

21 But unless they were taken on the  
22 scanner with the same settings, albeit at two  
23 different time points, then I don't think it would  
24 be a useful exercise to compare them for the level  
25 of detail that you seem to be requesting.

1 Tytell

2 There are two different scans of the  
3 page 1 of the "work for hire" contract taken on  
4 the same scanner with the same computer at the  
5 same settings on the morning of July 14th and on  
6 the afternoon of July 14th. Those two scans would  
7 be comparable from like -- I remember 9:18 is a  
8 number that's in my report and a second scan  
9 around 1 p.m. Those would be comparable.

10 I don't think this exercise is really a  
11 valid one.

12 Q. I want to go over that so I clearly  
13 understand your answer. Is it your opinion that  
14 to compare two scans of what purport to be the  
15 same document it's important to know the model of  
16 scanner that both scans were created from?

17 A. No.

18 Q. It's not? It won't make a difference  
19 in the output of that scanning operation if it's a  
20 different type of scanner that scans the document?

21 A. Oh, it can. It certainly can.

22 Q. And how --

23 A. But, you see, that's not -- I'm sorry,  
24 Mr. Boland, but that's not what you were asking me  
25 to do. You were not asking me to compare two

1 Tytell

2 scans to I believe you're calling them native  
3 files. You're not asking me to do that. That  
4 would be an entirely different exercise.

5 You're asking me to compare a  
6 printout -- and I don't know if these were printed  
7 out on the same printer or not. I don't know what  
8 the settings might have been at one printing or  
9 another. I'm looking at two printouts.

10 Working backwards towards the  
11 underlying native format files that you had  
12 referred to, I don't know if the thing that was  
13 printed out is a PDF file that was processed by a  
14 court or other computer in Buffalo that was  
15 processing another PDF file that was submitted to  
16 that court or that court computer by some  
17 attorney, some law firm's computer, and that that  
18 PDF file in turn had been created from a PDF file  
19 that I might have submitted or somebody else might  
20 have submitted a PDF file which would have been  
21 based somewhere on another file going backwards to  
22 at some point the file that you referred to as the  
23 native format file.

24 So just comparing these two printouts,  
25 these two pieces of paper, and a very small,

1 Tytell

2 reduced detail on those printouts, not even same  
3 size as life-size, whatever that might have been,  
4 it's just not a valid exercise.

5 But I'm very happy to engage in a  
6 completely invalid exercise if that's what you  
7 want. Well, I can't say I'm really happy to do  
8 it, but I'm willing to.

9 Q. So would you say it's an unfair  
10 question, then, to ask you to compare a printout  
11 to an electronic scan of a document?

12 A. Not necessarily.

13 Q. But could it be? Would there be  
14 situations where that would not be an appropriate  
15 comparison?

16 A. We live in such a wonderfully huge and  
17 infinite universe that there are situations where  
18 virtually anything is appropriate and virtually  
19 anything is inappropriate.

20 Q. So are you comfortable -- have you ever  
21 reached a scientific conclusion in one of your  
22 reports by comparing a document that was printed  
23 versus the claim that that same document you're  
24 looking at in electronic format on a computer  
25 screen? Have you ever compared those two to try

1 Tytell

2 to make a determination about a document?

3 A. I think I've gotten lost here. I'm  
4 sorry. Could you try that again, please? I  
5 apologize.

6 Q. Let me break it down, because you went  
7 through quite a list, and I want to talk about  
8 that.

9 When comparing -- you called it apples  
10 to pineapples or some such thing. When comparing  
11 the two exhibits you have in front of you, Tytell  
12 2 and Tytell 3, you pointed out a bunch of  
13 considerations that could result in differences of  
14 what you're seeing from front of you right now  
15 there on the table; correct?

16 A. Yes.

17 Q. Do those differences make it unfair for  
18 me to ask you to compare the word "May" in those  
19 two documents and how vibrant the ink appears? Is  
20 that still -- can you still come to a  
21 scientifically valid conclusion regarding that  
22 comparison or not?

23 A. Well, I'm not sure about the fairness  
24 of it. And certainly I can look at them, although  
25 they are reduced in size and anything that small

1 Tytell

2 is the kind of thing that I would usually want to  
3 look at with magnification, just because that's my  
4 habit.

5 You can compare any two objects, and  
6 you can compare apples and pineapples. You can  
7 compare apples and oranges. And there are many  
8 points of similarity and many points of  
9 difference. Apples and pineapples both have  
10 juice.

11 But the comparison that you're asking  
12 for -- and I can do it for you, if you wish, but I  
13 just don't think that it's a meaningful comparison  
14 in terms of getting to the basic issue of whether  
15 or not the ink on the paper "work for hire"  
16 document was faded out to a very light brown or  
17 tan at the moment it was produced on the morning  
18 of July 14th.

19 Q. And when you say "faded," compared to  
20 what was that ink faded?

21 A. Compared to the image that had been --  
22 the images that had been captured in January by  
23 plaintiff's experts.

24 Q. So you compared those electronic  
25 scanned images of that "work for hire" document to

1 Tytell

2 the actual document on July 14th and concluded  
3 that the ink had faded; is that correct?

4 A. I compared some of the images that had  
5 been captured in January to the document on July  
6 14th. I compared the images that were attached to  
7 the -- I believe they were June 16th or June 17th,  
8 2011, declarations by plaintiff's experts.

9 Q. Do you feel that's a scientifically  
10 valid comparison?

11 A. Yes. For the purpose that was involved  
12 there, yes.

13 Q. And can you compare Tytell 2 and Tytell  
14 3 that you have in front of you and the letter M  
15 in the word "May" and how does -- do they look --  
16 do the ink in those two letters M in those two  
17 exhibits you have in front of you seem like one is  
18 more faded than the other?

19 A. I can do that, but this is not in any  
20 way a parallel kind of comparison. I believe I'm  
21 sitting in a room that you have sat in previously  
22 with a very beautiful view of the skyline of New  
23 York, and you're asking for a comparison at the  
24 distance of, let's say, the length of Manhattan  
25 island from midtown to the southern tip, which is



1 Tytell

2 maybe 5 miles, of a building -- one building is,  
3 let's say, 85 stories and the other building is 86  
4 stories. And you're asking me to compare a very  
5 subtle difference in a reduced image far away,  
6 when you're asking me to compare these -- let me  
7 just finish, if I might -- of Tytell 2 and 3.

8 However, the kind of difference that  
9 was apparent on July 14th would be the difference  
10 between the Empire State Building and a one-story  
11 taxpayer. The differences are order of magnitude  
12 separated. It's the difference between black,  
13 dark ink and black as the toner on the images and  
14 something that is faded to the point of almost not  
15 being there.

16 And now you would suggest that that  
17 kind of a comparison, such as -- which is the  
18 comparison that took place on July 14th, is in  
19 some way analogous to a comparison of dark-medium  
20 to medium-medium brown or tan, as these two --  
21 whatever is on these two pages. And it's just --  
22 the two kinds of comparisons are not comparable.

23 But again, if you'd like me to do it,  
24 I'd be happy to do it.

25 Q. The two exhibits in front of you, does

1 Tytell

2 the word M in "May" appear more faded in one of  
3 those exhibits than the other? That's my  
4 question. Not about buildings, not about  
5 skylines, just the letter M in those two exhibits.

6 A. I'm sure there are differences because  
7 they are two different images. However, to be  
8 able to quantify the difference without  
9 magnification, looking at these reduced images, is  
10 not something that I feel comfortable doing. But  
11 I'll try.

12 I just -- I don't -- I don't really see  
13 the details. I would look at it with  
14 magnification before I would want to venture an  
15 opinion on it but...

16 Q. I understand, sir, you would prefer to  
17 magnify. I'm saying looking at it just as it is,  
18 does the M appear more faded in one of the  
19 exhibits? Just "yes" or "no," looking at it as  
20 you can.

21 A. Well, the overall image appears darker  
22 on Tytell 2.

23 Q. The letter M, sir. The letter M. I'm  
24 referring to just the letter M, not the whole  
25 image. Does the letter M look more faded in one

1 Tytell

2 image than the next? That's it.

3 A. Portions of it appear darker on Exhibit  
4 2 than on Exhibit 3.

5 Q. Do you have any reason to account for  
6 why the M looks darker -- portions of the M looks  
7 darker in one exhibit than the other? How do you  
8 account for that?

9 A. I would suggest any one of a long list  
10 of variables, which I think -- and I think I've  
11 been over some of them so far, without being  
12 overly redundant, that some of those variables  
13 might, singly or in combination, account for the  
14 M -- portions of the M appearing darker on the  
15 scan from Tytell -- on the image which is page 2  
16 of 3 of Tytell 2 when compared to the same  
17 portions of the M from the image on page 2 of 5 in  
18 what has been marked as Tytell 3.

19 Q. And to be clear, sir, your answers  
20 previously were about the letter M in the word  
21 "May." I'm not asking about the letter M in the  
22 initials MZ; correct?

23 A. Correct.

24 Q. Okay. Now, you did some work for --  
25 you did some analysis of the paper thickness in

1 Tytell

2 this case; true?

3 A. Yes.

4 Q. Did you use a micrometer?

5 A. Yes.

6 Q. Do you know if there is an ASTM  
7 standard describing the use of a micrometer when  
8 measuring paper thickness?

9 A. I'm not sure that's a whole standard  
10 all by itself.

11 Q. Does any ASTM standard deal with, in  
12 part, the use of micrometer when measuring paper  
13 thickness?

14 A. I think there is, for document  
15 examination. I would -- well, all right, what  
16 kind of ASTM standard?

17 Q. Any kind, sir. Is there any ASTM  
18 standard which discusses, in part or in whole, the  
19 proper way to use a micrometer?

20 A. Well, there are --

21 Q. (Inaudible.)

22 A. I'm sorry, could you please -- ASTM has  
23 a set of volumes of -- of volumes of standards  
24 that occupy about half or maybe a third of a  
25 floor-to-ceiling bookshelf in the library.

1 Tytell

2 Of those thousands and thousands of  
3 standards covering many dozens of different  
4 industries, could you be a little specific about  
5 what you're talking about?

6 Q. I'm asking if you know of, from memory,  
7 obviously -- I'm not assuming you had it  
8 memorized -- but are you aware of any ASTM  
9 standards, in whole or in part, that deal with the  
10 use of a micrometer measuring paper thickness, if  
11 you know.

12 A. I know that that is discussed in one of  
13 the forensic document examination ASTM standards.  
14 And if you want to limit it to that, then I think  
15 I am aware of it.

16 Q. Did you follow that standard when you  
17 did your micrometer measurements of the two-page  
18 "work for hire" document in this case?

19 A. As I recall the standard, it suggests  
20 measuring away from the very edge of the page, and  
21 it suggests taking multiple measurements. And  
22 that is what I did.

23 Q. Did you record your results of those  
24 multiple measurements?

25 A. I did.

1 Tytell

2 Q. Do you recall how many measurements you  
3 made of page 1?

4 A. No.

5 Q. Do you recall how many measurements you  
6 made of page 2?

7 A. No.

8 Q. Did you report those findings in your  
9 report to the defendants?

10 A. No.

11 Q. Why not?

12 A. They were not clear-cut.

13 Q. What does that mean, "clear-cut"?

14 A. The unit that I used measures down --  
15 it was an electronic readout unit, and it measures  
16 down to thousandths of an inch. That would be  
17 three places to the right of the decimal point of  
18 an inch. And there was some variation where one  
19 sheet seemed a little bit thinner than the other.  
20 It was not clear-cut when I was measuring at that  
21 level.

22 I took into account the appearance of  
23 the paper, the condition of the paper at the time  
24 that I was measuring it, and I felt that this  
25 difference, while it might be a real significant

1 Tytell

2 difference, at the level of measurement I was  
3 engaging in and at the -- and given the condition  
4 of the paper that it was not enough to definitely  
5 say that the two pages were of a different caliper  
6 or a different thickness. But it was there, so  
7 that I really couldn't say that the pages were of  
8 the same thickness.

9 So having sort of equally balanced yes  
10 and no, thicker or thinner or the same, I felt  
11 that it was appropriate not to report. And -- I  
12 mean, this is pretty much what I said at the  
13 bottom of page 3, or numbered page 3, which is  
14 page 4 of Tytell Exhibit 1, that any limitations  
15 of the documents examined were evaluated and,  
16 where appropriate, are reflected in the strength  
17 of the reported opinion. And here the strength of  
18 the reported opinion is such that there was no  
19 reported opinion.

20 Q. You said you used an electronic readout  
21 unit? What does that mean?

22 A. That the micrometers measure things.  
23 And in order to read the measurement, there are  
24 several different technologies that have evolved  
25 over the years -- over the centuries, really.

1 Tytell

2 One is a Vernier caliper style of  
3 micrometer where you turn a knob and then you read  
4 marks that are engraved on the barrel that you're  
5 turning. This is the oldest style or the most  
6 traditional, if you will, style of readout.

7 Then there is a dial readout where you  
8 have usually a circular like a clock face with  
9 numbers and markings on it and a needle that will  
10 move and point to one of the numbers.

11 Sometimes you have two needles like the  
12 fancy watches that have a little watch within the  
13 watch face. So very often you'll have two  
14 different pointers within the dial face of a dial  
15 readout. Those are -- would be considered analog  
16 units.

17 And then there is the kind of unit I  
18 have where you have a little electronic display  
19 that gives you numbers, you know, 0.010, 0.003,  
20 something like that.

21 Q. Do you feel that your device is more  
22 accurate or the same inaccuracy as the other  
23 devices you mentioned?

24 A. It depends on the calibration of the  
25 given unit. There are units that read out in



1 Tytell

2 tenths of an inch, in hundreds on an inch, and in  
3 thousandths of an inch. So each of these units is  
4 calibrated to a finer level.

5 This is a standard manufacturer that I  
6 feel is accurate at the level of the readout that  
7 is provided. It has the advantage of a very long  
8 throat so that you can take measurements away from  
9 the very edge of the page. But that is just the  
10 unit that I've used.

11 Q. Have you reviewed Mr. LaPorte's  
12 findings on his micrometer measurements of the two  
13 pieces of paper of the "work for hire" contract?

14 A. I haven't -- I don't think I've read  
15 his report. I don't know if I've reviewed them.

16 Q. Do you recall seeing any other experts'  
17 micrometer measurements of the two pieces of paper  
18 of the "work for hire" contract?

19 A. I do think at some point I saw  
20 Mr. LaPorte's measurements or become aware of them  
21 in some way.

22 Q. Do you agree with what his measurements  
23 were of the two pieces of paper?

24 A. As I recall -- and I could not -- I'm  
25 not saying that I'm absolutely certain -- I recall

1 Tytell

2 he was using an instrument that was measuring in  
3 smaller increments than my instruments. I think  
4 one more decimal place to the right -- one more  
5 place to the right of the decimal point.

6 And he was able to, therefore, take a  
7 more subtle measurement than I was. And therefore  
8 he was measuring on a slightly different scale  
9 than I was. And if his results accurately reflect  
10 a difference that I did not find as clear-cut,  
11 then that's the nature of the difference in the  
12 scale of the two measuring devices.

13 Q. Do you know if he used his micrometer  
14 properly when obtaining his measurements?

15 A. I don't know.

16 Q. Now, as to the ink fade generally, you  
17 first noticed, I think your report says, that the  
18 ink on the first page -- or on either page of the  
19 "work for hire" contract was faded virtually  
20 immediately when you first looked at it on July  
21 14th. Is that fair to say?

22 A. It's -- I don't know if it's fair, but  
23 it's certainly accurate.

24 Q. And you made a scan of both pages of  
25 the document pretty soon after you first saw the

1 Tytell

2 document with your eyes that morning; correct?

3 A. Yes.

4 Q. And did you retain the metadata related  
5 to the electronic file which results from that  
6 scan of page 1 and page 2 that morning?

7 A. Whatever data was saved with the file  
8 is still with the file. I have not stripped any  
9 metadata. I think that's the technical term. I  
10 have not in any way altered the metadata.

11 Q. Did the metadata of that scan include  
12 or have embedded in it the settings of your  
13 scanner used while you were making the scan?

14 A. I don't know.

15 Q. Do you have any records saved anywhere  
16 of the settings for your scanner when it was  
17 making the initial scans of page 1 and page 2 of  
18 the "work for hire" document that morning?

19 A. It would be the default settings.

20 Q. So do you have a record of what those  
21 settings were that morning?

22 A. No.

23 Q. What's the model or the manufacturer of  
24 the scanner you used that morning?

25 A. Epson, E-P-S-O-N.

1 Tytell

2 Q. And do you know what model of Epson  
3 scanner it was?

4 A. Perfection 500 Photo.

5 Q. Do you know what version of software  
6 was being used at the time you did those scans  
7 that morning?

8 A. No. It would have been the then more  
9 or less current edition of the Epson software for  
10 that scanner and for Windows 7.

11 Q. But you don't know the version number?

12 A. No.

13 Q. Do you know if that software has  
14 settings on it?

15 A. No.

16 Q. Do you know the model of any of the  
17 scanner that Gerald LaPorte used during his  
18 examination of the "work for hire" document when  
19 he was there in Buffalo?

20 A. No.

21 Q. Do you know the settings for his  
22 scanner?

23 A. No.

24 Q. Do you know the software that he used?

25 A. No.

1 Tytell

2 Q. Same question as to the scans that  
3 might have been made by Mr. Lesnevich of the "work  
4 for hire" document. Do you know any -- do you  
5 know the model or the make of scanner he used?

6 A. I do not know for a fact. I think that  
7 the scanner looked like a Canon scanner, but  
8 that's, you know, like saying a car looks like a  
9 Chrysler. It just -- you know, it could be  
10 another GM car. I don't know -- no, Chrysler is  
11 not a GM car. I'm sorry, I'm a New Yorker; I  
12 don't have a car.

13 No, I don't know -- for any of the  
14 other people's scanners, I don't know the make,  
15 model, software, software edition, or settings.

16 Q. As a result of that -- and this is a  
17 hypothetical -- if I gave you a scan of the "work  
18 for hire" document from one of those other  
19 experts' scanners and gave you the actual  
20 electronic file and you brought that up on your  
21 computer screen alongside the image of your scan  
22 from that morning, if those scans appear visually  
23 different, what would be your reaction to that?

24 A. Well, hypothetically that would depend.

25 Q. What would it depend on?

1 Tytell

2 A. A number of features, such as how  
3 different are they. If they are --

4 Q. I'll ask a hypothetical. What if your  
5 scan of the document, let's say page 1, appears  
6 white or slightly off-white but one of the other  
7 expert's scans taken during those four days  
8 appears yellowed, that same page appears yellowed,  
9 what would be your reaction to comparing those two  
10 scans from those different experts and different  
11 scanners?

12 A. Well, I would be very surprised if  
13 looking at any scan taken at any time that day the  
14 ink would appear white unless it was taken under  
15 infrared luminescence conditions, at which point  
16 on the 15th of July we did capture images in which  
17 the ink appeared white. But that wasn't a scan;  
18 that was a capture of an image from the VSC 400  
19 where the ink appeared white.

20 But I'm not aware even of a  
21 hypothetical condition where the ink appeared  
22 white on any of my scans. I guess there are  
23 instances where the ink is so faded it is  
24 virtually transparent. So you might consider that  
25 as white.

1 Tytell

2 Q. My question was unclear. I'm talking  
3 about the overall paper of the document, not the  
4 ink, the paper being off-white in your scan and  
5 compare it to another one of the other defendants'  
6 experts taken a day or two later and the paper of  
7 the document now appears discolored, let's say  
8 yellow.

9 What would be your reaction to that  
10 comparison? Would you agree with me that shows --  
11 if that were true, would you agree with me that  
12 shows the document became discolored while it was  
13 in the expert's possession because of the  
14 comparison of the scan?

15 A. Well, you're now asking me several  
16 questions. The answer to the last of those  
17 questions is no. The answer to the question about  
18 what my reaction would be would be not very much  
19 because the color of the paper overall is  
20 tertiary.

21 The principal issue that I would focus  
22 on as a forensic document examiner is the  
23 deteriorated condition of the ink. The second  
24 feature I would focus on, based upon the facts  
25 that were brought forth during the examination on

1 Tytell

2 the morning of July 14th, would be the reaction of  
3 the paper to ultraviolet illumination.

4 And I would consider the ultraviolet  
5 reaction to be much more significant than any  
6 subtle difference in color as recorded on two  
7 different scanners, because the very clear and  
8 gross difference in ultraviolet reaction is  
9 coterminous with the areas of yellowing of the  
10 paper and is much easier to see and much more  
11 dramatic, very clearly seen in the videos, even,  
12 as well as the photographs taken using ultraviolet  
13 illumination.

14 So I think that is a much more  
15 significant feature to focus on than a subtle  
16 difference as seen between two scans from  
17 different scanners. So my reaction to any  
18 difference, slight difference, in the images  
19 recorded on the scanners would be, well, let's  
20 take these and equalize them using the appropriate  
21 software settings and see if the differences that  
22 we're looking at between the scans are apparent  
23 differences that are artifacts of differences in  
24 the scanners or the scanning settings or if they  
25 are real differences that reflect actual



1 Tytell

2 differences in the color of the paper.

3 I would suggest to you that they are  
4 much more likely to be the former than the latter.

5 Q. Another hypothetical. If one of  
6 plaintiff's experts scanned the first page of the  
7 document days later after your examination was  
8 done and the ink appeared more vibrant than your  
9 scan on the morning of July 14th, what would your  
10 opinion be of that comparison?

11 A. Pretty much the same.

12 Q. Meaning what? What accounts for that  
13 would be scanner model, make, software settings,  
14 et cetera?

15 A. Would you define, please, qualitatively  
16 and quantitatively what you mean by "more  
17 vibrant"?

18 Q. Well, I'll use your word "faded."  
19 Let's hypothetically say the plaintiffs expert  
20 scanned page 1 of the document a week after you  
21 did on July 14th and that resulting scan showed  
22 the ink less faded than how it appears in your  
23 scan that you took July 14th.

24 What would be your reaction to that?

25 A. Well, okay, so on July 21st somebody

1 Tytell

2 scanned the document. I'm not sure -- that seems  
3 to be contrary to fact, even for a hypothetical,  
4 but okay.

5 And in that scan when you say "less  
6 faded," do you mean black like normal black  
7 ballpoint ink or do you mean a darker shade of  
8 yellow or the difference between light tan Chinos  
9 and medium tan chinos in terms of tan?

10 Can you be a little more specific here  
11 as to how much darker it is? Are we talking about  
12 subtle gradations here or are we talking about  
13 black versus almost invisible tan or yellow?

14 Q. My hypothetical, sir, is simply that  
15 when you look at these two documents side by side,  
16 your scan on July 14th and let's hypothetically  
17 say plaintiff's expert's scan a week later, to  
18 your eye the ink in the plaintiff's expert's scan  
19 appears less faded than your scan.

20 So that takes care -- you're saying in  
21 your mind when you look at it in your hypothetical  
22 that the ink looks less faded in a scan taken a  
23 week later, what would your reaction to that be in  
24 the hypothetical?

25 Would you conclude your scanner was not

1 Tytell

2 set up correctly or would you conclude that the  
3 plaintiff's scanner was not set up correctly?  
4 What would you conclude about that?

5 A. I would -- I would start by looking at  
6 the quantitative and qualitative level of  
7 difference. Your hypothetical is much too vague  
8 to really answer properly.

9 Q. Well, you used the word that the ink  
10 was faded in your report, did you not?

11 A. Yes. And then I proceeded to try to  
12 describe the level of fading, and then I included  
13 an image of the faded ink.

14 Q. And in my hypothetical I'm saying you  
15 have a scan of that image in front of you where  
16 the level of fading was less than what you  
17 described in your report. You looked at it  
18 yourself, and you said to yourself, Wow, the level  
19 of fading of this scan a week later is much less  
20 than what appears in my scan.

21 What's your reaction to that?

22 A. Well, first of all, when you say "the  
23 level of fading," it's like saying, you know, the  
24 level of water in the bathtub. What's the level  
25 of water in the bathtub? Is it flowing over the

1 Tytell

2 top or is it barely enough to get the soles of  
3 your feet wet?

4 What's the level we're talking about  
5 here? If it's a level that would cause me to say,  
6 Wow, that's a pretty big level, a wow level, and  
7 in my mind's eye I'm really having trouble  
8 imagining the level of difference that you want me  
9 to imagine. You have to give me the absolute  
10 level.

11 Q. Well, we talked about exhibit --  
12 comparing the letter M in Exhibits 2 and 3  
13 earlier. Let's go back to those exhibits. And  
14 assume that Exhibit 2, that scan of the document,  
15 was taken after the scan of the first page of the  
16 document in Exhibit 3.

17 MR. SOUTHWELL: Mr. Boland, let me just  
18 interrupt for one second. At the appropriate  
19 time, I'd like to take a comfort recess. You  
20 are also at about 3 hours and 15 minutes at  
21 this point, just so you know.

22 MR. BOLAND: Let me just finish this  
23 little bit, and then we can take a break.  
24 That's fine. Just this little area. It won't  
25 take long.

1 Tytell

2 A. Can you just repeat that, please?

3 Q. Look at exhibits Tytell 2 and 3.

4 A. Right.

5 Q. And for the hypothetical assume that  
6 Exhibit 3 is your scan of page 1 of the  
7 Facebook -- the "work for hire" contract. Just  
8 assume that.

9 A. Okay.

10 Q. And look at Exhibit 2, page 1 of the  
11 scan of the document within Exhibit 2, and assume  
12 that that scan was taken later after yours.

13 A. We're on page 2, now, of the "work for  
14 hire" document? Oh, no, I'm sorry --

15 Q. We're talking about the portion of  
16 either one of these two exhibits that depicts page  
17 1 of the "work for hire" document.

18 A. Okay. I'm with you.

19 Q. The page 1 printed in each one of them.  
20 Tytell Exhibit 3, assume that is your page 1 of  
21 the "work for hire" document, and Exhibit 2,  
22 assume that that contained a scan of page 1 of the  
23 "work for hire" document that was taken after your  
24 scan, like a day later or two days later.

25 A. Okay. And we'll just assume also that

1 Tytell

2 these are actually printouts and unknown number of  
3 steps removed from the scans when we call them the  
4 scans.

5 Q. Correct.

6 A. Okay.

7 Q. Or just assume they're both printed on  
8 the same printer, hypothetically. And I showed  
9 these to you and said, Mr. Tytell, how do you  
10 account for the fact that the letter M in "May"  
11 appears to be not as faded in Exhibit 2 as it is  
12 in Exhibit 3.

13 A. Well, the only comment I could make is  
14 that -- you're telling me now that Exhibit 3 I am  
15 to assume hypothetically is a result of the scans  
16 that I made on the morning of July 14th?

17 Q. Yes. You got it.

18 A. Okay. Got it. Thank you.

19 So all I can say about Exhibit 3 is  
20 that the scans that I made on the morning of July  
21 14th and also on the afternoon of July 14th are  
22 true, accurate, fair representations of the  
23 condition of the document, of the condition of the  
24 ink on pages 1 and 2 as it appeared to me on July  
25 14th.

1 Tytell

2 I really cannot account for what might  
3 or might not have taken place in the long and  
4 checkered history of scans and electronic files  
5 which has led to the printout before me as part of  
6 Tytell Exhibit 2.

7 Q. Well, assuming that Tytell Exhibit 2  
8 was scanned after yours and the ink on the letter  
9 M you already said looks a little less faded than  
10 yours, how do you account for that? How could the  
11 ink have gotten more vibrant over time? Ink  
12 doesn't fade the option direction, does it, it  
13 gets brighter over time, in your experience?

14 A. I'm sorry, I don't think I used the  
15 word "vibrant" or the words "less faded."  
16 Perhaps -- perhaps we could look back and see what  
17 words I actually used. But I'm fairly sure --

18 Excuse me, sir. Excuse me, Mr. Boland,  
19 please, I can't see you, so it's hard to interrupt  
20 you properly.

21 I'm fairly sure that those words "more  
22 vibrant" and "less faded" are not my words, but  
23 you're telling me now they are my words. I have  
24 no problem with my words usually, and I know there  
25 are many of them. But those I don't believe are

1 Tytell

2 among them in my description of the portion of the  
3 letter M on page 2 of 3 of Tytell Exhibit 2.

4 Q. Does the letter M on those two exhibits  
5 visually appear the same to you or different?

6 A. I think we went over this at some  
7 length previously, and if you would like to go  
8 over it again, let's start from the beginning.

9 Q. I'm just asking about the letter M.  
10 Does the letter M appear visually to you to be the  
11 same between those two? That's all.

12 A. Which letter M?

13 Q. The letter M in the word "May" that is  
14 in the interlineation.

15 A. And this is the same question we went  
16 over earlier; correct?

17 Q. No. I'm asking you if those appear  
18 similar or -- do they appear the same to you or  
19 different, the letter M in "May," on those two  
20 exhibits?

21 A. Well, the word "same" is kind of a  
22 loaded word because no two things are going to  
23 appear exactly the same unless they are exactly  
24 the same, unless they are -- I'm looking at two  
25 different pieces of paper. They're not the same.



1 Tytell

2 One is on my left; one is on my right.

3 So the word "same" here is not, I  
4 think, appropriate. Perhaps you could help me out  
5 some.

6 Q. What word would you use as an expert to  
7 compare two documents like that and look at the  
8 quality of the ink or the fadedness or not  
9 fadedness -- because you used the word "faded" in  
10 your report -- what words would you use to compare  
11 the letter M in "May" in those two exhibits?

12 A. Well, in both of the exhibits before  
13 me, the letter M in "May" does appear faded, in  
14 both of them.

15 Q. So would you say that the letter M in  
16 "May" appears faded more or less in one of them or  
17 the same, it's faded to the same degree, to your  
18 eye?

19 A. Well, you'd have to consider it -- as I  
20 said, portions of the M in one appear darker than  
21 in the other.

22 Q. In which one does it appear darker,  
23 portions of the M?

24 A. The portions of the M appear darker in  
25 Tytell 2 than they do in Tytell 3. I believe

1 Tytell

2 that's what I said previously.

3 Q. So let's focus on that, and then we can  
4 go to the break here.

5 A. Okay.

6 Q. If hypothetically the scan of this  
7 document which resulted in Tytell 2 was -- that  
8 scan was taken after the scan that is printed out  
9 in Tytell 3, how is it possible that portions of  
10 the M appear darker in the later scan?

11 A. Well, if you're telling me that they do  
12 appear darker, as part of your hypothetical, then  
13 I don't have to deal with whether or not it's  
14 possible that they appear darker, because part of  
15 your hypothetical setup is that they do appear  
16 darker.

17 So the word "possible" is inappropriate  
18 in that kind of a hypothetical. Your -- if I  
19 could try to clarify, you seem to be asking me  
20 that given hypothetically one appears darker --  
21 something, some thing, whatever it is, part of the  
22 M, part of the R -- if there's an R in there --  
23 part of some letter appears darker in one than  
24 darker in the other, it's not possible; that's a  
25 foundational part of your hypothetical.

1 Tytell

2 Then what are the possible explanations  
3 for that hypothetically factual difference. And  
4 as far as possible explanations are concerned, the  
5 break isn't going to happen until sometime  
6 tomorrow morning if you want me to actually list  
7 all of those possibilities.

8 Q. Just give me three, the three most  
9 likely possibilities that explain why portions of  
10 the M appear darker in one exhibit than the other.

11 A. I couldn't evaluate the likelihood of  
12 the possibilities. I could give you --

13 Q. Give me the first three to pop into  
14 your head.

15 A. The first three to pop into my head  
16 randomly, possibly?

17 Q. Sure.

18 A. The printer was out of ink. The yellow  
19 reservoir of ink in the cyan, magenta, yellow, and  
20 black ink cartridge in the printer, the yellow was  
21 exhausted. Or one of the other ink cartridges  
22 were exhausted.

23 So I could give you four different  
24 reasons by going one ink cartridge after another,  
25 and then we could combine maybe two of them are

1 Tytell

2 exhausted and there are two changes to run. Those  
3 are well past three different reasons.

4 Q. How about give me a difference that  
5 might have been -- that accounts for this that's  
6 related to the scanning process.

7 A. Yes, there are differences that could  
8 be related that are related to the scanning  
9 process, as you are setting up in your  
10 hypothetical, hypothetically, yes.

11 Q. So off the top of your head, could you  
12 give me two of those, two differences in scanning  
13 processes that could account for the ink appearing  
14 darker in a later scan of an image -- I mean of a  
15 document?

16 A. Scanning settings.

17 Q. Okay. What's one other one, and then  
18 we'll go to a break?

19 A. Features of the scanner other than the  
20 settings.

21 Q. Like what, for example? What do you  
22 mean by that?

23 A. I don't know what could happen.  
24 Anything. I'm sorry, I'm sort of -- I'm out of my  
25 speculating -- the speculating portion of my brain

1 Tytell

2 doesn't seem to be coming up with any speculation  
3 that I can provide to you.

4 Q. Okay. Fair enough.

5 A. I'm out of imagination.

6 MR. BOLAND: Alex, let's go ahead and  
7 take that break. How much time do you want?

8 MR. SOUTHWELL: We just need about five  
9 minutes. You only have a little less than ten  
10 minutes left. We just need to take a quick  
11 comfort recess here.

12 MR. BOLAND: Okay. Good.

13 (Recess taken from 2:55 to 3:08.)

14 Q. Mr. Tytell, I neglected to ask you at  
15 the beginning, how did you -- how are you charging  
16 the defendants for your time working on this case?

17 A. By the hour.

18 Q. Do they have a retainer on account with  
19 you or do you just bill them monthly and then they  
20 pay the bill?

21 A. I bill them monthly, and I hope they  
22 pay the bill.

23 Q. And what's your hourly rate you're  
24 charging them?

25 A. \$425 per hour.

1 Tytell

2 Q. Do you have any other type of an  
3 agreement with them other than that hourly rate?

4 A. My standard terms and conditions, which  
5 have the hourly rate. There was an initial  
6 retainer for one day, which was worked off, eight  
7 hours. And then there are other conditions in  
8 there regarding testimony, such as court testimony  
9 or depositions where there is a one-day minimum.

10 And also a standby fee for half a day  
11 for standby and a cancellation fee if something  
12 happens and I'm not informed three days prior.  
13 I'm not sure if it's days or business days,  
14 although at this point there are seven business  
15 days per week -- we've come to that -- that  
16 without three business days' prior notice there's  
17 a half-day fee.

18 Q. When you initially got the document on  
19 July 14th and noticed some of the differences that  
20 we talked about earlier, did you contact anyone  
21 from the defendants' attorneys to mention that to  
22 them before you continued with your examination?

23 A. Contact them? You mean call them from  
24 my cell phone to their cell phone when they were  
25 on the other side of the room?

1 Tytell

2 Q. Or just tell them across the other side  
3 of the room that you noticed something -- some  
4 problem with the document when you compared it to  
5 what you saw in the scans? Did you tell them  
6 before you continued your examination?

7 MR. SOUTHWELL: Objection, calls for  
8 privileged communication.

9 Q. I'm not asking what you said -- well,  
10 let me just ask. Did you stop examining the  
11 document to have any conversations with anyone  
12 when you noticed it was in a different condition  
13 than you expected?

14 A. I noticed it, and then I scanned the  
15 document front and back, both pages, to make sure  
16 that the condition of the document which I had  
17 just noticed was recorded.

18 I think in the middle there I did look  
19 at the ink of page 1 and page 2 under the  
20 stereomicroscope. I did conduct a microscopic --  
21 or an examination under the stereomicroscope.  
22 This is all within the first, I guess, 20 minutes  
23 or 25 minutes after the document was presented.

24 And then after the scanning and the  
25 looking at it, I think there was a brief

1 Tytell

2 conversation initiated by Mr. Argentieri. But I  
3 was busy looking at the document; so I hope he  
4 didn't consider me rude, but I had to break off  
5 that conversation.

6 And at that point I left the room, and  
7 so did Professor Romano leave the room; and we  
8 went to another small conference room. I guess it  
9 would be called a breakout room or some term like  
10 that. And in that room with Dr. Romano and myself  
11 were the attorneys from Gibson, Dunn.

12 And I have a feeling -- I have a  
13 feeling I should stop here, but I don't know.

14 Q. You used a VSC machine during your  
15 examination; correct?

16 A. Yes.

17 Q. And an employee of Foster Freeman was  
18 in the room having conversation with you while you  
19 were using that machine; true?

20 A. On which day are we talking about now?

21 Q. Let's say day one, July 14th.

22 A. Okay, July 14th, the answer would be  
23 yes.

24 Q. That employee of Foster Freeman in fact  
25 set up the VSC machine for your use in that room



1 Tytell

2 that morning, didn't he?

3 A. I believe so.

4 Q. And he sat next to you at times while  
5 you were using the computer connected to that  
6 machine; right?

7 A. Well, I wasn't actually using the  
8 computer connected -- well, "using the computer  
9 connected to that machine," that's like saying  
10 when you're driving a car you're using the motor  
11 connected to the car. The computer was involved  
12 in the use of the machine, yes.

13 Q. And at some point during your  
14 examination on one of those days, that machine was  
15 removed from that office and replaced with a  
16 different machine, VSC machine; right?

17 A. There was another VSC machine in use on  
18 the 15th, the second day.

19 Q. And the previous machine was taken out  
20 of the room?

21 A. I don't recall whether it was taken out  
22 of the room or not.

23 Q. And was there something malfunctioning  
24 with the machine on July 14th that you started  
25 with that had to be replaced with the new machine?

1 Tytell

2 A. The machine on July 14th had to be  
3 rebooted on one or two occasions, I think, the  
4 computer. Something -- something was problematic  
5 there. I don't exactly recall.

6 Q. Did you discuss that with the  
7 representative of Foster Freeman, the problems you  
8 were having with that VSC machine on July 14th?

9 A. Not that I recall the specifics of.

10 Q. Does that machine have the capacity to  
11 project UV -- to project UV light onto a document?

12 A. It has that capacity, although that  
13 capacity was not utilized on the 14th, or on the  
14 15th -- excuse me, or on the 15th, for that  
15 matter.

16 Q. And who are you referring to? It was  
17 not utilized by you or nobody utilized that  
18 capacity on the 14th and 15th?

19 A. Well, that capacity was not utilized on  
20 either the 14th or the 15th while any -- while  
21 either page of the "work for hire" document was in  
22 a VSC machine on the 14th. And that UV capacity  
23 was not utilized on the 15th either, that I  
24 recall, but certainly not on the --

25 Q. How do you know that fact? How do you

1 Tytell

2 know that fact?

3 A. Because when the -- when the document  
4 was in the VSC machine on the 14th, which was only  
5 for a brief -- a relatively short period on the  
6 morning of the 14th, I was operating the machine.

7 Q. Do you know how to operate that  
8 machine?

9 A. Yes.

10 Q. Was the Foster & Freeman employee  
11 giving you some advice on how to set that machine  
12 for its use?

13 A. Yes, but that wasn't my first rodeo.  
14 I've used that -- the software that controls the  
15 various VSC machines of that range, of that  
16 system, I've used those machines often.

17 Q. And does the software control the  
18 intensity of the light that is projected onto a  
19 document that's in the machine?

20 A. No. The software turns on the lights,  
21 but the lights -- the intensity doesn't really  
22 change once the lights are on.

23 Q. So there's only one setting for the  
24 intensity of the light in a VSC machine?

25 A. There are a number of different lights,

1 Tytell

2 a number of different light sources. Well, wait a  
3 second. Is there a dimmer? On the white light  
4 bulbs, there is a dimmer, and, as I recall, those  
5 bulbs are just regular clear light bulbs that are  
6 probably less powerful than the light bulb in my  
7 refrigerator. I think they are 12 or 13 watt  
8 bulbs; they are not even 20 watt bulbs, although  
9 there are several of them. But those are just  
10 regular white light bulbs, not ultraviolet.

11 Q. Do you own a VSC machine for work in  
12 your professional capacity?

13 A. I have two of them, plus the other  
14 similar machines that I have built myself, which I  
15 have several.

16 Q. You've built VSC machines?

17 A. Well, a VSC machine is a specific form  
18 of video -- it's a video camera, essentially a  
19 closed circuit video camera. The first ones went  
20 to a video monitor. Nowadays you called that an  
21 lag kind of video, like television sets used to be  
22 year ago.

23 There was a video camera with a silicon  
24 target tube that went to a screen, to a small TV  
25 monitor. And you had filters in front of the lens

1 Tytell

2 or between the lens and the camera. And I built a  
3 number of those one way or another.

4 And I participated in the design --  
5 back in the late 1970s, around '78, '79, something  
6 like that, I participated in the design of the  
7 original Foster & Freeman VSC machine. And I have  
8 given them lots of suggestions, some of which they  
9 actually acted on, on improvements in the machines  
10 over the last two or 30 years.

11 So yeah, I've built a number of these  
12 machines.

13 I've actually -- I don't know if  
14 Mr. Blanco was there. I did a workshop on  
15 building your own video infrared system at a joint  
16 meeting of the American Society of Questioned  
17 Document Examiners, SAQTE, and SAFDE, Southwestern  
18 Association of Forensic Document Examiners.

19 There was a joint meeting in Colorado  
20 back a number of years ago where I gave a  
21 workshop -- I'm not sure, I think that Mr. Blanco  
22 attended that -- on how to build your own VSC  
23 system.

24 But we did acquire a VSC machine back  
25 in I guess the early eighties. I had worked with

1 Tytell

2 one VSC at the crime lab -- the Israeli crime lab  
3 in Jerusalem, one of the very first models. Then  
4 we subsequently got our own.

5 Then we upgraded that VSC 1 to a newer  
6 VSC 1 sometime in the -- I guess the early  
7 nineties. I think that was the same winter as the  
8 first World Trade Center bombing. That's sort of  
9 the way I keep track of time, unfortunately.

10 And then we -- and then since then I  
11 have also, just as we had in Buffalo, arranged for  
12 Foster & Freeman to either bring a VSC unit,  
13 whatever their current state-of-the-art unit was,  
14 to a location to where I would be working with  
15 documents or, alternatively, to bring the  
16 documents to Foster & Freeman's U.S. office where  
17 I would work with their big machines, like the VSC  
18 6000.

19 And actually in I guess 2009, in the  
20 fall of 2009, I spent a week with a VSC 400 on a  
21 location in Washington, D.C., where I got to use  
22 that machine. And various other times.

23 So I am familiar with the equipment.

24 MR. SOUTHWELL: Mr. Boland, we're now  
25 past three and a half hours.

1 Tytell

2 MR. BOLAND: Okay. We've got a little  
3 bit more to go.

4 MR. SOUTHWELL: All right. Hopefully a  
5 very little bit. Go ahead.

6 Q. Mr. Tytell, do you know what bulbs were  
7 in that VSC machine, the first one that was  
8 delivered to the law firm's offices?

9 A. I only know that the white light bulbs,  
10 which is what was used most of the time, were the  
11 regular bulbs, the 12 or 13 watt bulbs.

12 Q. How do you know that?

13 A. Well, that's what's in the specs. I  
14 didn't actually look under the hood and check that  
15 the bulbs that were in there were the bulbs that  
16 were in the specs.

17 Q. Are those the only bulbs that can fit  
18 in that machine, the ones that are in the specs?

19 A. I don't know. I don't know what kind  
20 of sockets they use.

21 Q. How about the replacement machine that  
22 came later, whenever that was, when the first one  
23 got hauled away, do you know what bulbs were  
24 inside of there?

25 A. Well, I don't know that the first one

1 Tytell

2 was hauled away. And the second machine that was  
3 used on the 15th, the white light bulbs there I  
4 believe are the same specification. But again, I  
5 did not --

6 Q. Did you look under the hood?

7 A. Again, I did not check under the hood  
8 to see if they had anything different there. But  
9 these are generally -- because of the sensitivity  
10 of the camera, these bulbs are really only very  
11 low wattage.

12 I mean, a one AAA battery pocket  
13 flashlight, the kind that you have on your key  
14 chain, that is more than powerful enough for most  
15 of the kinds of examinations that are done with  
16 the whited light bulbs.

17 Q. Do you agree with some of the other  
18 experts in this case that have said that on the  
19 day you got this document, July 14th, not only did  
20 the ink appear faded, which you have stated, but  
21 that the document appeared discolored? Is that  
22 your opinion as well, that the document appeared  
23 discolored?

24 A. Could you define "discolored," please?

25 Q. The common terms some of the other



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2 experts are using was "yellowed," the document was  
3 yellowed from how it appears in the Aginsky scan.  
4 Do you agree with that?

5 MR. SOUTHWELL: Objection,  
6 mischaracterizes.

7 A. Well, I don't know about other experts'  
8 opinions and agreeing with them or not. I do know  
9 that when I -- among my observations on July 14th,  
10 including the faded nature of the ink and the  
11 ultraviolet reactions, was the cream color -- or I  
12 guess "yellowish" would be an okay term -- cast of  
13 the front of the paper fairly uniformly on both  
14 pages, with the exceptions of the tabs at the top,  
15 which were white by contrast to the yellow, and  
16 then, as I mentioned, the top corner of page 1  
17 within the area delineated by the crease of the  
18 fold.

19 Q. Is it your opinion that the yellowing  
20 of the tabs of the document that you saw and the  
21 ink fading are related?

22 A. Well, they're concomitant, for sure.  
23 And the yellowing or the cast, as I mentioned  
24 previously, are coterminous with the areas of  
25 unusual lack of fluorescence or presence of normal

1 Tytell

2 fluorescence.

3 Q. My question is do you think that the  
4 same process that caused the ink to fade is also  
5 the process that resulted in the yellow cast, as  
6 you put it.

7 A. Things tend to point that way, yes.

8 Q. Now, the forensic business you run now  
9 you took over from your parents; is that true?

10 A. I'm not sure I took over their  
11 business. There was a separate -- you know,  
12 Tytell Questioned Document Labs was my mom's name  
13 for doing business, and I had a name Forensic  
14 Research. But it is certainly their practice that  
15 I have stepped into.

16 Q. And would you say your parents were  
17 pretty highly regarded in this field when they  
18 were running their business?

19 A. Certainly by me.

20 Q. I mean by the professional -- their  
21 peers.

22 A. I would hope so.

23 Q. And did they have government agencies  
24 who hired them to do work on cases?

25 A. My mother certainly -- she was much

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2 more active over the long haul, and my mom  
3 certainly appeared numerous times on behalf of the  
4 government, the U.S. attorney's office, in cases  
5 like the pizza connection or the case of the  
6 government -- the United States versus the  
7 Reverend Moon, cases like that.

8 Q. Have you retained those sort of same  
9 government contacts with your business that you're  
10 running now?

11 A. Not the same contacts. I think she  
12 worked much more in the Southern District than I  
13 have. I have appeared a number of times on cases  
14 brought by the U.S. attorney's office in the  
15 Eastern District but also on some cases brought by  
16 the U.S. attorney's office in the Southern  
17 District or in the District of New Jersey, and one  
18 a while ago in the Northern District of New York  
19 and in Vermont.

20 Q. Go ahead.

21 A. U.S. attorney's office in Vermont. But  
22 that was an attorney who had gone from Eastern  
23 District of New York to district of Vermont.

24 Q. Have you ever done any work for the  
25 CIA?

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2 A. Well, I just finished a case for the  
3 U.S. Department of State, and their legal counsel  
4 is in the offices that were formerly occupied by  
5 the CIA in the U.S. navel observatory in  
6 Washington.

7 But cases for the CIA is -- I don't  
8 think I've ever gotten a paycheck that said CIA on  
9 it or U.S. Treasury re CIA work. I think that  
10 would be a fair statement.

11 Q. Have you ever done any work for the  
12 CIA, no matter who paid you?

13 MR. SOUTHWELL: Objection to relevance.

14 A. I just don't know how to answer.

15 Q. It's "yes" or "no." That will do.

16 A. I think I would have to respectfully  
17 decline to answer.

18 Q. Did your parents ever work for the CIA?

19 MR. SOUTHWELL: Objection to the  
20 relevance. What's your point here,  
21 Mr. Boland? You're over your time, and now  
22 you're asking questions about Mr. Tytell's  
23 parents' work? I mean, come on.

24 MR. BOLAND: I am.

25 MR. SOUTHWELL: What's the relevance?

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2 MR. BOLAND: Did your parents ever work  
3 for the CIA, that's a pretty simple question.

4 MR. SOUTHWELL: What's the relevance of  
5 that?

6 MR. BOLAND: I heard your objection.  
7 The witness needs to answer the question.

8 MR. SOUTHWELL: You can answer one more  
9 of this.

10 A. Okay.

11 MR. SOUTHWELL: To the extent you can.

12 MR. BOLAND: I object to that on the  
13 record. He can answer whatever question he  
14 needs to answer, according to the rules. So  
15 that's it.

16 A. Well, then, let me ask you -- you  
17 mentioned the rules. I don't know what the rules  
18 are. But let me ask you for some clarification,  
19 if I might. What do you mean by "work for the  
20 CIA"?

21 Q. Were they ever employed by that agency?  
22 That is one way of looking at it.

23 A. Okay. As employees they were never --

24 Q. Yes.

25 A. Well, during World War II there was a

1 Tytell

2 predecessor agency to the CIA. The CIA didn't  
3 exist until sometime a couple years after World  
4 War II. So let's stick with the CIA. And I think  
5 I can safely say, no, my parents did not work for  
6 that agency.

7 Q. Are you aware of any ASTM standards  
8 relating to ink age determination?

9 A. No.

10 Q. Do you know why there isn't any of  
11 those standards, if you know?

12 A. They haven't been written yet.

13 Q. Do you know if there's agreement  
14 amongst experts in the field of ink age  
15 determination as to a standard approach to making  
16 those -- to doing that analysis, if you know?

17 A. I don't know.

18 Q. In the occasions where you participated  
19 in writing or drafting ASTM standards, do you  
20 recall questions about that?

21 A. I don't recall any questions about  
22 that.

23 Q. Okay. Have you ever been involved in  
24 drafting ASTM standards?

25 A. Ah, yes, I recall a question along

1 Tytell

2 those lines. The answer is yes.

3 Q. And if someone wants to get a new  
4 technique standardized, how do they go about that?

5 MR. SOUTHWELL: Objection to the form.

6 A. If somebody wants to get a new  
7 technique or an old technique or a middle-aged  
8 technique put into the format of an ASTM standard,  
9 that individual would first have to write a draft  
10 standard, hopefully in the appropriate stylistic  
11 form as laid out in the ASTM standard -- they have  
12 a book.

13 They call it the blue book. I think  
14 "blue book" is a word lawyers also use. There's  
15 an ASTM blue book that gives you the styling of  
16 number of paragraphs and so on.

17 And you draft up your standard, and  
18 then you put it through the appropriate  
19 subcommittee and the appropriate committee. The  
20 first step is that somebody or some group of  
21 people have to write a first draft.

22 There are a lot of documents that need  
23 to be written for every field. There are a number  
24 of drafts for questioned document standards that  
25 have been written that are -- that never made it

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2 into the ASTM process just because of the logjam,  
3 you know, the throughput, how many standards can  
4 the ASTM appropriate committee handle in a given  
5 time period.

6 But that is the process one would  
7 follow for any kind of a method or procedure,  
8 whether it's new, old, or in between.

9 Q. So before we come to an ASTM, the  
10 relative folks in the field would have to agree  
11 upon a method or methods; true?

12 A. Before those folks would have a chance  
13 to agree, somebody would actually have to write up  
14 a draft. The first step is to sit down and write  
15 a draft of the procedure that you would like  
16 everybody else to look at and decide whether or  
17 not they agree with. You need to start with a  
18 draft of the standard.

19 Q. And then once that draft goes around to  
20 the relevant experts, if they can't agree on what  
21 the standard ought to be, it's true you can't  
22 reach -- then an ASTM standard will never be  
23 established?

24 A. Well, you were asking about age of ink,  
25 and age of ink has never gotten to the point of



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2 the draft. So I have no clue what might happen if  
3 that were to be circulated among the appropriate  
4 people. You have to have a little fact somewhere  
5 in the hypothetical. This one lacks it.

6 Q. I'm just talking about ASTM standard  
7 approach in general, not ink age determination.  
8 In general if you can't get relative people in  
9 the --

10 (Unintelligible discussion interrupted  
11 by the reporter.)

12 Q. If you can't get people in the relevant  
13 field to agree on a method, then you can't create  
14 an ASTM standard; is that true or not?

15 A. That is incorrect.

16 Q. Can a single person draft a proposed  
17 ASTM standard and somehow get it incorporated into  
18 the ASTM manual by themselves without agreement of  
19 other people?

20 A. A single person can draft a standard.  
21 There's no problem. And many standards have been  
22 drafted by one person who just feels like drafting  
23 it. That standard then has to achieve a certain  
24 level of agreement. It does not need to achieve  
25 unanimity.

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2 A consensus standard requires a  
3 consensus of the people who get to vote on the  
4 standard. This voting population may not  
5 represent the entire population of people of --  
6 who are interested, although it ought to. And it  
7 does not require unanimity.

8 If somebody has an objection that they  
9 put forth and it's a valid objection, then usually  
10 the standard gets -- or the draft document gets  
11 modified. Somebody comes up and says, Gee, this  
12 is wrong and here's why; and everybody goes, Oh,  
13 my, we hadn't really thought of that, thank you  
14 very much, we'll fix it. Things get changed. And  
15 that happens quite often.

16 If, however, somebody just digs in  
17 their heels and have a particular position and  
18 say, I don't like this, I think this is wrong,  
19 full stop, and two-thirds of the people who are  
20 voting on it say, We appreciate your interest, but  
21 we think that you're not correct in your  
22 objection, then the standard moves forward.

23 So if one person writes a standard and  
24 one person can explain why that standard is  
25 correct and modify, where appropriate, and defend

1 Tytell

2 where objections are wrong, then yes, that one  
3 person can shepherd a draft document through the  
4 entire ASTM process and see it eventually included  
5 in the volumes of ASTM standards.

6 Q. I guess what I'm saying is you have to  
7 have, somewhere along the line after a draft is  
8 made, at least a majority of people in the  
9 relevant field have to agree on a standard before  
10 it becomes a standard. Fair enough?

11 A. Well, the majority of people who are  
12 involved in the subcommittee and the committee  
13 dealing with the standard have to agree, not just  
14 a majority but usually two-thirds. Sometimes it  
15 is a simple majority, yes.

16 But the first thing that's required is  
17 somebody has to commit the idea to I would like to  
18 say paper but I would say has to commit the idea  
19 to electronics, has to draft a document that could  
20 be circulated. And if you don't draft the  
21 document, then everything after that is completely  
22 moot.

23 Q. Do you own Photoshop, the photo editing  
24 software?

25 A. I do.

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2 Q. Do you use it in your work?

3 A. I have been using it recently.

4 Q. When did you start using it in your  
5 work?

6 A. Sometime I guess in the last six  
7 months.

8 Q. Have you used any photo or digital  
9 image editing software before Photoshop?

10 A. Yes.

11 Q. What was the name of it?

12 A. Oh, there were several. There's a very  
13 useful program that Nikon has I think -- I'm not  
14 sure if it's Picture Capture. It is a software  
15 that you can get with the newer Nikon digital  
16 cameras. I have been using it with the D70, the  
17 old D70, and now the D90.

18 Prior to that software, there was a  
19 software -- it seems antique now -- called Picture  
20 Publisher. I believe that came from a company  
21 called Micrografx, M-I-C-R-O-G-R-A-F-I-X, I  
22 believe. And they used to be down in Texas. They  
23 have gone, but that was a great software program  
24 for the kind of work we do: overlays and so on.  
25 I would still be using it except that it won't run

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2 on a 64-bit machine.

3 Then there's another program called  
4 ImageJ -- Image and then a capital J at the end --  
5 which I think was developed by the -- either the  
6 National Institutes of Health or the National  
7 Academies of Science. And I think that's what  
8 people call freeware. And I have used that some  
9 in the past over the last, say, I don't know, four  
10 or five years, maybe.

11 Q. Have you reviewed any of the images you  
12 captured in this case using any of that kind of  
13 image-editing software?

14 A. Yes.

15 Q. Did you keep records of any changes you  
16 might have made to the images in that software?

17 A. Well, I -- as with any enhancement of  
18 images to bring out details that might not be  
19 readily available on the surface. You never  
20 change the original image. You are always working  
21 with copy images.

22 So when you ask if I've kept any record  
23 of changes I have made to the images, there have  
24 been no changes made to the original I guess you  
25 would talk about native files.

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2 Where I have been using the Photoshop  
3 software, I believe there is a feature there  
4 called history which is always turned on so I can  
5 go back and look at step by step what adjustments  
6 have been made. And that is sort of the record  
7 that would be kept. And also I would save the  
8 images as I go so I could look at the images.

9 But I haven't done anything that's  
10 really that compound/complex that it couldn't be  
11 redone in real time in a matter of a couple of  
12 minutes. Actually that's not true. Some of the  
13 overlays -- some of the overlays require some  
14 adjustments. But the kind of adjustments to  
15 levels or brightness and contrast, those are  
16 really very basic.

17 A lot of these adjustments are pretty  
18 much the kind of adjustments that we used to do to  
19 television pictures when they had knobs on the  
20 front of televisions. I don't know if you're old  
21 enough to remember that, sir.

22 Q. I am.

23 A. Okay. Well, you remember brightness  
24 and contrast knobs on the front of the black-and-  
25 white TVs, if you're that old.

1 Tytell

2 Q. Yes.

3 A. Then when we got to color TVs, you had  
4 adjustments for tints and things like that. Those  
5 are pretty much the same adjustments that at least  
6 in this case bring out the significant details of  
7 the images.

8 For instance, using those kinds of  
9 adjustments, just brightness and contrast, you can  
10 take a look at the scans taken at 9:18 a.m. and  
11 see the two tabs at the top of page 1. You can  
12 use those simple adjustments, the kind that used  
13 to be on the old television sets, and see the  
14 darkened triangle on the reverse of page 1.

15 So, you know, it's nice to have these  
16 wonderful software tools, most of which use  
17 algorithms originally developed by NASA 30 or 40  
18 years ago. But it's nice to use all of these  
19 things, but the adjustments themselves are really  
20 very basic.

21 Q. Did you produce your report to the  
22 defendants in a PDF format?

23 A. Did I produce my -- well, produce. I  
24 sent it to them as a PDF, yes.

25 Q. And do you know what they did, if

1 Tytell

2 anything, to that report before submitting it as  
3 part of an exhibit to their motion to dismiss?  
4 Did they change it in any way, if you know?

5 A. I do not know.

6 Q. Do you know how the quality of the  
7 image that -- the images included in your report  
8 as it was filed with the court compare to the  
9 quality of those images as you have them on your  
10 copy of the report in your office?

11 A. No.

12 Q. Have you provided to the defendants the  
13 electronic files of all the images that are  
14 included in the PDF document that you eventually  
15 sent to them?

16 A. Well, since I've given them all the  
17 images that I took, that would include the  
18 start-up set of images which were included in the  
19 report.

20 Q. And do you have copies of all those  
21 images still in your office?

22 A. What do you mean by "copies of the  
23 images"? Oh, I --

24 Q. Do you have scans in electronic file  
25 format in your office?



1 Tytell

2 A. Well, in my office, yes. I have also  
3 on backup external hard drives the scans and the  
4 photographs or the images that were acquired with  
5 the scanner, the images that were acquired with  
6 the digital Nikon -- the Nikon digital camera, and  
7 the images that were acquired using the VSC 400.  
8 All of those files I have the originals of the  
9 native format files of everything, and so does  
10 counsel for defendants.

11 Q. And did you save the adjusted versions  
12 of those images? You know how you were talking  
13 about contrast and all that. Did you save those  
14 versions of the images as well?

15 A. Yes, in different file folders in  
16 completely different folders from the original  
17 images, of course.

18 Q. Did you give the defendants' lawyers  
19 those adjusted images, copies of those adjusted  
20 images?

21 A. I think I have sent PDF files of some  
22 of those to the attorneys for the defendants.

23 Q. And as part of producing your report in  
24 this case, did you review some images, if you  
25 know, that were obtained from the plaintiff's

1 Tytell

2 expert?

3 A. Yes, I did. Yes, I did. Excuse me,  
4 let me back up. Excuse me, Mr. Boland. Can you  
5 please define "plaintiff's experts" for me?

6 Q. Larry Stewart, did you review some  
7 images that you understood came from him and his  
8 scanning or imaging work of the document?

9 A. Yes.

10 Q. Jim Blanco, did you review some of his  
11 images?

12 A. Yes.

13 Q. John Osborn?

14 A. Yes.

15 Q. And Mr. Aginsky?

16 A. I believe it's Dr. Aginsky, and yes.

17 Q. And Mr. Speckin, does that ring a bell?

18 A. Erich Speckin rings a bell, and I  
19 believe that there are images that were acquired  
20 by Mr. Speckin on his VSC equipment in I believe  
21 Chicago on July 25th.

22 And as I -- it's just my recollection  
23 from the video. I think that Mr. Stewart was  
24 standing at his elbow, if you will, when they were  
25 acquired. And those images are attached as

1 Tytell

2 Exhibit C to my report, and that would be pages  
3 21, 22, 23, and 24 of document 330, which is  
4 Tytell Exhibit 1.

5 That's why I know what they were. I've  
6 got them sitting here. Those, I believe, are the  
7 Speckin images, or among the Speckin images.

8 Q. Let me clarify something. The adjusted  
9 images that you made of the scans, did you or did  
10 you not provide those to defendants?

11 A. Some.

12 Q. Counsel?

13 A. Some, some of them.

14 Q. You did? Okay. Oh, some. You said  
15 you provided some of them. Do you know which ones  
16 you provided to them?

17 A. Let's see. Yes, I do.

18 Q. Can you describe which adjusted images  
19 you provided to the defendants?

20 A. I provided defendant with images  
21 showing split channels in CYMK mode and split  
22 channels in RGB mode. And some of those kinds of  
23 images with brightness and perhaps contrast  
24 adjustments.

25 That is what I recall at the moment.

1 Tytell

2 Q. And which images -- I understand the  
3 types of adjustments that were made to those  
4 images. I'm saying which images, adjusted  
5 versions of images of page 1 of the "work for  
6 hire," page 2 of the "work for hire," the  
7 specification agreement, what images did you  
8 adjust and then send to them?

9 A. Pages 1 and 2 of the "work for hire"  
10 document, images taken from the specification  
11 document that had portions cropped to illustrate  
12 line quality of the signature of Mr. Ceglia. I  
13 think I may have used those images, but they were  
14 not necessarily adjusted.

15 Q. Did you use any of those adjusted  
16 images in your report that you filed along with  
17 the motion -- not that you filed but that the  
18 defendants filed along with the motion to dismiss?

19 A. I don't believe so.

20 MR. SOUTHWELL: Mr. Boland, we're now  
21 at four hours. Are you almost done here?

22 MR. BOLAND: Yeah.

23 Q. What's your basis for that belief,  
24 Mr. Tytell?

25 A. Exhibit Tytell 1.

1 Tytell

2 Q. You're saying you reviewed that exhibit  
3 or you reviewed your report since it was filed and  
4 that's your basis for your belief that none of  
5 your adjusted images are in your report?

6 A. Not since it was filed. But again it's  
7 unfortunate that we can't see each other or are  
8 sitting next to each other. But I'm looking at it  
9 right now as Tytell Exhibit 1.

10 Q. Right.

11 A. And on page 4 there are two images in  
12 reduced size of the scans from Exhibit -- of page  
13 1 and page 2. And those are just -- those images  
14 were dropped in.

15 On page 7 -- excuse me, on page 5,  
16 there are cropped portions of those same images at  
17 life-size. They were cut out, but they were not  
18 adjusted in any way.

19 Similarly, on page 6 there are images  
20 from my scans and from Dr. Aginsky's scans. You  
21 had referred to those earlier. They were just cut  
22 out and dropped into the Word file, into a table  
23 in Word.

24 On page 7 and page 8, there are  
25 pictures showing the UV fluorescent

1 Tytell

2 characteristics. Those are the images. I am not  
3 sure if they are cropped or not, just so they  
4 would fit into the format. But those have not  
5 been adjusted in any way.

6 Then finally on page 10 there is an  
7 image that was taken from the VSC 400 that is just  
8 that image as it was captured on the VSC 400.  
9 That's dropped in.

10 And then on page 11 there's the name  
11 Paul Ceglia from page 1 and the name Paul Ceglia  
12 from page 2. They are larger than life. But  
13 those images are just cropped from the two scans  
14 at page 1 and page 2.

15 And there I think on the picture of the  
16 Paul Ceglia from page 2 on that cropped part of  
17 the scan, because it's enlarged, you can see the  
18 fading of the ink.

19 And actually, I don't know if you have  
20 a copy of that document there, but if you take a  
21 look at my report of March 25th, 2012, filed March  
22 26, document 330, now Tytell 1, if you take a look  
23 at page 10 and you look at the right-hand Paul  
24 Ceglia image from page 2 of the paper "work for  
25 hire" document, you'll notice that there are three

1                   Tytell  
2   places where you can see ink.

3                   And the ink that goes through the final  
4   letter of Ceglia, the last A, and the ink to the  
5   right of the comma following the name Ceglia,  
6   those are what I was calling a light tan, as I see  
7   them on this printout.

8                   However, if you look at the bottom of  
9   that image below the capital C, just above the  
10   printed letter M in the word "document," you'll  
11   see a bit of the top of I believe it's the capital  
12   P in Paul or the first letter of the signature.  
13   And you will see that that is quite a bit darker.

14                  So even within the same writing there  
15   are differences. There is variation in the  
16   lightening of the ink: one brown, the other tan.  
17   And brown and tan, if you go to proper color  
18   science, they'll tell you that these color names  
19   are just names of convenience, that brown and tan  
20   and all of that is a dark yellow-orange or a dark  
21   orange. But that's another story.

22                  So yeah, those are images. They were  
23   not adjusted in any way except to be enlarged  
24   slightly and dropped.

25                  And then finally the image, which is

1 Tytell

2 not one of mine, of the staple on page 12, that  
3 comes from the mid 2010 image of that version,  
4 that electronic version, of the TIFF file attached  
5 to the e-mail from Mr. Ceglia to Mr. Argentieri.

6 So my answer as to whether or not any  
7 adjusted images were used in my report is based  
8 upon looking through the copy of -- or what you  
9 have represented to me is a copy of my report  
10 which is currently marked as Tytell 1.

11 Q. We talked before about your -- you  
12 don't have any liability coverage for your work on  
13 cases, especially this case; true?

14 A. I don't know why you say "especially  
15 this case."

16 Q. I'm asking about this case. You didn't  
17 have -- you don't have any liability insurance  
18 covering your work on this document?

19 MR. SOUTHWELL: Objection, asked and  
20 answered.

21 MR. BOLAND: Okay.

22 Q. Suffice it to say, sir, if during the  
23 course of your handling of this document you  
24 damaged it it would be potentially bankrupting to  
25 you financially?



1 Tytell

2 A. Well, that's a question that would be,  
3 I consider, contrary to fact because if you  
4 consider the fading of the document and the  
5 yellowish cast of paper of the color of the paper  
6 of the two pages of the document -- let's say the  
7 fading of the ink, the discoloration of the paper,  
8 the tab marks that don't -- that do luminesce at  
9 the top of the page and the concomitant  
10 indentations that go with those tab marks, which,  
11 by the way, could not really have been made by a  
12 finger, whether it was contaminated. But there  
13 are indentations there that are not at all  
14 consistent with being made by an object shaped  
15 like a person's finger.

16 Q. Sir --

17 A. Excuse me, sir. Let me answer. If  
18 you're referring to those things as damage, they  
19 were damaged before I actually got to see the  
20 document.

21 So whether -- I don't really understand  
22 how I might have damaged a document which came  
23 predamaged.

24 Q. No, my question is if you did damage it  
25 somehow during its analysis and the document is

1 Tytell

2 worth half of whatever Facebook's worth, that's  
3 going to bankrupt you. That's my point.

4 MR. SOUTHWELL: Objection. This is  
5 harassing at this point, Mr. Boland. This is  
6 a ridiculous question.

7 A. I suppose that might depend on whether  
8 or not the document -- any so-called damage would  
9 have any actual significance, given the nature of  
10 the document, although I don't really see that  
11 there was in fact any actual damage of any kind of  
12 significance at all during the two days that I  
13 spent with the document.

14 Q. Finally, you mentioned something about  
15 printers before. I want to ask a couple last  
16 questions about that.

17 Is it true that if two documents -- if  
18 a document on your screen is printed, two copies  
19 of it are printed from the same printer, will  
20 those generally -- those documents be the same,  
21 they will look -- they will appear the same?

22 A. Well, you know, the word "the same" --  
23 you mentioned ASTM standards in the past over the  
24 course of our question and answer today, and if  
25 you look at one of the ASTM standards that

1 Tytell

2 discusses this concept, you'll see that the term  
3 "the same" -- "the same," close quote -- is a term  
4 that is discouraged when comparing two things in  
5 the forensic field.

6 And this goes back -- this borders on a  
7 philosophical point that no two things are the  
8 same, no two things are absolutely, totally  
9 identical at the most minute level. And indeed,  
10 there's a philosophical point that no object is  
11 the same as itself over time. And the ancient  
12 Greek wisecrack of the philosophers is you can  
13 never swim in the same river twice.

14 So the Exhibit Tytell 1 that was handed  
15 to me this morning and has done very little but  
16 sit in front of me and be open from time to time  
17 is not the same as it was when it was originally  
18 marked.

19 So to say the two printouts are going  
20 to be the same, besides being the wrong  
21 terminology, is almost a philosophical  
22 oxymoron.

23 So perhaps if you would say is it  
24 possible, given the proper conditions with the  
25 proper printer, that they might be

1 Tytell

2 indistinguishable at a certain level of analysis,  
3 yes. But that depends on what level of analysis  
4 you're talking about.

5 If you take two documents printed out  
6 or two pages -- you have a one-page document on  
7 your screen. You go to the "please print," and  
8 you say print me two copies and it -- the machine  
9 hums and two pieces of paper come out of the  
10 printer in compliance with your request to your  
11 computer and you then take those two pieces of  
12 paper, if you glance at them, they may look to be  
13 indistinguishable.

14 If you examined them down to a very  
15 minute level, you probably would find numerous  
16 differences between them if for no other reason  
17 than the paper they're printed on, because paper  
18 is a random matting, felting, of different fibers.

19 And if you go to -- you pick out a  
20 particular comma in the text, if it's a text  
21 document, and you look at the way the paper fibers  
22 are meshed in the area immediately above that  
23 comma, you will see that they are, under  
24 magnification, entirely different from one page to  
25 the other.

1 Tytell

2 So when you say wouldn't the two pages  
3 be the same, the answer is what do you mean by  
4 "the same."

5 Q. I mean in the sense -- and, you know --  
6 I'm sort of reluctant to ask the question again  
7 because I ask what I seem to be a simple question  
8 and I get paragraphs. That's one of the reasons  
9 we go on so long here.

10 We talk about comparing images scanned  
11 from two different scanners, and you pointed out  
12 reasons why that comparison would not be valid.  
13 Do you recall those questions?

14 A. I don't recall pointing out why the  
15 comparison would not be valid under any  
16 circumstance, no.

17 Q. You said things like scanner settings  
18 can change the resulting image that you scan,  
19 depending on the settings of the scanner. Do you  
20 remember that?

21 A. Well, I would agree that scanner  
22 settings can change the image of the scanner.  
23 That's what the nature of settings is, that they  
24 can change the resultant image, at a certain  
25 level.

1 Tytell

2 Q. And you talked about the levels of  
3 different colors of ink. I think you mentioned  
4 cyan at one point in a printer can change the  
5 resulting output that comes out of that printer.  
6 Do you remember that?

7 A. I remember mentioning cyan. I think --  
8 I didn't say the different level. I said if the  
9 computer were -- if the printer were out of cyan.  
10 I guess that would be a level. Zero is a level.  
11 I think we were discussing levels of difference in  
12 appearance when I used "levels."

13 I think with cyan -- perhaps we should  
14 just look back to the record rather than relying  
15 on my recall. But I don't think you're  
16 characterizing my answers correctly.

17 Q. My point is if the same document is  
18 printed out of two different printers and those --  
19 the way that document appears to your eye, you see  
20 some differences, like a text or different yellow  
21 text, for example, or one has what appears to be  
22 ink that's more faded than the other, those could  
23 easily be a result of those two different printers  
24 and how they have output that document; true?

25 A. If you see differences that are

1 Tytell

2 attributable to the printer are the differences  
3 that you see attributable to the printer.

4 Well, it's kind of a circular question.  
5 I think the only possible answer is yes.

6 Q. No, my question is you just see  
7 differences in the document. One has some ink  
8 that appears more faded than the other. You don't  
9 know how it happened. Someone just gave you two  
10 documents. They look identical as far as their  
11 text and the writing except one of them looks a  
12 little more faded than the other. The person  
13 tells you, Oh, by the way, they were printed on  
14 two different printers.

15 A. Wait a minute. Back up. You're  
16 talking about getting two different documents, not  
17 two different images of the same document.  
18 Because if you get two different documents that  
19 were printed on the same printer, to me that means  
20 that you have the same words that were printed out  
21 on two different printers and then as documents  
22 they may have been separately executed.

23 So you're actually -- could you please  
24 be a little more --

25 Q. Yeah, that's not what I'm saying. I'm

1 Tytell

2 saying the identical electronic file printed on  
3 two different printers. And then you're handed  
4 the output of those two different printers, and  
5 they appear visually to you to be different,  
6 meaning one has a yellow cast, one the ink looks a  
7 little faded compared to the other. Okay? That's  
8 the hypothetical.

9 Obviously one of the causes for that  
10 could be differences in how printers output  
11 documents. That's one of the potential reasons  
12 they look different; true?

13 A. Well, I think you used the word  
14 "obviously" in your question, so it's kind of a  
15 foolish thing for me to deny the obvious.

16 But -- so you're suggesting that if the  
17 same file is on my computer screen and somehow my  
18 computer is linked to two different printers are  
19 these two different printers two different -- like  
20 one is a color laser printer and the other is a  
21 color ink jet printer and I tell the file to go  
22 print one on the laser color printer and the other  
23 on the color ink jet printer and the results look  
24 different might the difference be due to the fact  
25 that two different printers are involved? That



1 Tytell

2 would be one potential answer.

3 Another potential answer could be the  
4 settings. When you have a print screen in front  
5 of you, up -- do you use Microsoft Word at all?

6 Q. Sir, you've answered the question, and  
7 that's fine. I'm just -- I was just talking about  
8 what -- if two different printers are used to  
9 print the same document that the resulting output  
10 could look different because of the printer. And  
11 is that true?

12 A. That would be one of the possible  
13 reasons, yes.

14 Q. Okay. Also the settings on -- the type  
15 of computer used and the software used on the  
16 computer could cause some differences in the  
17 output of those two different printers. Is that  
18 possible as well?

19 A. Well, if you -- if you send -- let's  
20 eliminate the second printer. Let's go with one  
21 printer. If you have software and you tell the  
22 software I'd like to readjust the entire way that  
23 I want this document to look, like, for instance,  
24 I'd like to print a two-page document so that it  
25 all fits -- I have two pages on one piece of

1 Tytell

2 paper, one side of the piece of paper, and then  
3 the other one I say, no, just one page to one  
4 page, it's going to look differently. You have  
5 adjustments that you can make to the printer  
6 preferences button in, for instance, Microsoft  
7 Word.

8 Now, I know -- so yeah, you can do any  
9 number of things that would make two things look  
10 different.

11 If you want to ask me about 11 other  
12 things that you know could possibly make things  
13 look different, okay, fine, let's go.

14 However, the problem is that when we  
15 get back to the images taken of the "work for  
16 hire" paper document in the first 20 minutes that  
17 it was available for examination on the morning of  
18 July 14th, none of this is at all relevant,  
19 because the appearance of the document as I saw it  
20 was that the ink was faded and the paper was  
21 slightly yellowed and that that appearance, as I  
22 saw it, was fairly and accurately represented by  
23 the scans that I captured at 9:18 a.m. or the  
24 files are marked 9:18 a.m. and 9:22 a.m.

25 And you can see the scans being taken

1 Tytell

2 in the video beginning at 9:15 or so on the video  
3 clock at the bottom of the screen. That records  
4 that the document was I believe your term is  
5 damaged when it got there in the morning. So that  
6 is all documented.

7 The appearance of the ultraviolet  
8 phenomena is visible on the video around 11 a.m.  
9 It was documented thoroughly later that day around  
10 I guess 5 p.m., which was the next time that a UV  
11 light was turned on, and all of that was  
12 documented and visible on the video by around 5  
13 o'clock that afternoon.

14 So whatever happened that caused that  
15 difference in the UV was thoroughly documented and  
16 thoroughly visible as early as less than two hours  
17 after Mr. Argentieri took the documents out of the  
18 envelope.

19 And the white appearance of the tabs at  
20 the tops of the two pages and the dark appearance  
21 of the triangle on the reverse of page 1 are  
22 apparent in the scans taken within the first 25  
23 minutes or so of the documents being available for  
24 examination on the morning of the 14th with the  
25 kinds of basic adjustments that you and I used to

1 Tytell

2 do back when we had analog televisions.

3 All of that stuff is on the record, and  
4 none of that stuff has really anything to do with  
5 printing a single electronic file on two different  
6 printers. But let's continue to discuss the two  
7 different printers if you wish.

8 Q. Would you agree with me that the -- by  
9 the time -- between the time you scanned the  
10 document at 9 o'clock July 14th and Mr. Lesnevich  
11 scanned the document a day later that the  
12 document's appearance changed in some respects?

13 A. Would I agree with you on that?

14 Q. Yes.

15 A. Not even a little bit. Not a  
16 scintilla.

17 Q. Have you seen a comparison side by side  
18 of Mr. Lesnevich's scan of the "work for hire"  
19 document compared to your scan a day earlier?

20 A. Your question was whether or not I  
21 would agree that the document had some change  
22 between the time I first saw it -- well, not at 9  
23 o'clock; it would be closer to 10 after -- I think  
24 11 after 9. 9:11 is kind of a charged number here  
25 in New York.

1 Tytell

2 But if there was a difference in the  
3 document between 9:11 in the morning and when  
4 Mr. Lesnevich did -- on the morning of the 14th  
5 and when Mr. Lesnevich did his scans, there was no  
6 difference in the document. And my observations,  
7 direct observations, of the document at that time  
8 would say otherwise.

9 I also took a number of photographs of  
10 the document on the afternoon of the 15th, some of  
11 them after Mr. Lesnevich had departed. And you  
12 can see the ink -- the condition of the ink of the  
13 document in those digital images on the  
14 photograph, and you can see that the ink is faded  
15 but not necessarily any more faded than it was in  
16 the scans at 9:18 and 9:22 a.m. of the 14th.

17 So I just totally -- I don't know how  
18 much more I can disagree with you than totally,  
19 but I would if I could.

20 Q. Have you seen Mr. Lesnevich's scans  
21 from the morning of the 15th of the "work for  
22 hire" document?

23 A. I don't recall seeing those irrelevant  
24 scans. I have seen images -- excuse me, I have  
25 seen images of them, I guess, that have been

1 Tytell

2 reproduced from time to time, but I don't recall  
3 seeing them per se.

4 Q. In those images of Mr. Lesnevich's  
5 scans, it's your opinion that those appear  
6 visually the same as your scans of the "work for  
7 hire" document 24 hours earlier?

8 A. I don't know what I'm supposed to be  
9 comparing here.

10 Q. I asked you if you've seen images that  
11 Mr. Lesnevich took of the "work for hire" document  
12 on July 15th. Did you see those?

13 A. I think so. I think I -- well, I don't  
14 know that I've actually seen the native files. I  
15 may have done. I don't recall at this time.

16 Q. So would it surprise you to learn that  
17 the scan that Mr. Lesnevich took 24 hours after  
18 you did appears visually different, the color of  
19 the document is different? Would that surprise  
20 you?

21 MR. SOUTHWELL: Objection,  
22 mischaracterizes.

23 Q. If that were true, would that surprise  
24 you that the color of the document between your  
25 scan on the 14th and his on the 15th is different

1 Tytell

2 visually?

3 A. I don't know whether -- I think we're  
4 going back to before as to the level of difference  
5 and the significance of the kind of difference,  
6 the qualitative and quantitative difference,  
7 between whatever might appear in Mr. Lesnevich's  
8 scan and whatever might appear in my scan, whether  
9 that would be within the kind of variation that  
10 could be expected between any two scans from the  
11 same scanner, from different scanners, and then we  
12 go through a list of the possible variables.

13 So whether or not I would be surprised  
14 would be -- depend upon whether or not there  
15 actually was any difference that was detectible  
16 and the level of significance of any difference  
17 should a difference exist.

18 Q. Would you be surprised if there was a  
19 detectible difference between how the document  
20 appeared in Mr. Lesnevich's scan 24 hours after  
21 you scanned it? Would that surprise you is the  
22 question.

23 A. It depends upon the sensitivity of the  
24 detecting device as to how large a difference  
25 might be detectible. At the electronic level? If

1 Tytell

2 we have two printouts, are you talking about  
3 differences at a subatomic quantum level or are  
4 you talking about a difference -- are you talking  
5 about a difference between black and almost  
6 invisible like the difference between the Aginsky  
7 scan and the appearance of the actual paper  
8 document when I saw it on the morning of July 11?  
9 That was a surprising difference.

10 So you would want to have a difference  
11 at that level of magnitude at this point in the  
12 game. Considering the shock and surprise that I  
13 experienced on the morning of July 11th,  
14 surprising me now would require a really, really  
15 big difference.

16 And I don't think that any difference  
17 that might be detectible between a scan taken by  
18 Mr. Lesnevich and a scan taken by myself would  
19 rise to that level of difference that would cause  
20 me to be surprised at this point after having been  
21 so surprised on the morning of July 14th.

22 Q. I'm talking about a difference that's  
23 visible to your eye, that one document appears a  
24 different color than the other document. Would it  
25 surprise you to see a scan from Mr. Lesnevich on



1 Tytell

2 the 15th where the document looks like it's a  
3 different color than the one you scanned on the  
4 14th?

5 MR. SOUTHWELL: Objection.

6 Q. Would it surprise you if that's true?

7 MR. SOUTHWELL: Objection, asked and  
8 answered.

9 MR. BOLAND: No, he did not answer.

10 MR. SOUTHWELL: He did, he did. You  
11 just don't like his answer, Mr. Boland. But  
12 he did answer it.

13 MR. BOLAND: No.

14 A. Okay. I'll try again. If one document  
15 were bright kelly green such as you see on  
16 St. Patrick's Day in New York and the other  
17 document were fire engine red, then that would be  
18 a difference that I would find somewhat  
19 surprising.

20 However, my degree of surprise would be  
21 infinitely less than the surprise which I  
22 experienced on the morning of July 14th when I saw  
23 the paper document taken out of the envelope by  
24 Mr. Argentieri and put on the table, comparing  
25 that to what I had expected, having previously

1 Tytell

2 viewed the scans of -- attached to the complaint  
3 from mid 2010 and attached to the June 16th  
4 declarations of Mr. Osborn and Dr. Aginsky.

5 That level of surprise would be what I  
6 would now consider to be surprising and would be  
7 exceedingly difficult to reach based upon the  
8 kinds of small differences which might exist  
9 between two scans in terms of shades of -- slight  
10 shades of yellow difference.

11 Q. Would you expect any change in the  
12 color of that document to occur during your and  
13 the other experts' examination of it from July  
14 14th forward? Would that examination cause the  
15 document to become discolored, yellow or green or  
16 red or whatever?

17 A. I do not believe that the examination  
18 procedures conducted on July 14th and 15th did in  
19 fact cause any significant, noticeable change in  
20 the appearance of that document.

21 Q. I'm not saying whether they did. I'm  
22 saying could they. Could the procedures employed  
23 by you and the other experts actually cause the  
24 document to change color, slightly or  
25 dramatically, either way?

1 Tytell

2 A. I don't believe that the procedures  
3 employed on those -- on that document that showed  
4 up, the actual paper document? Anything is  
5 possible, sir. Anything could happen. I do not  
6 at this moment believe that any such thing did  
7 happen, nor do I believe that the nature of the  
8 examination was such that it would have caused any  
9 such change.

10 Q. Okay. Would you agree with this  
11 statement, that there appears to be some  
12 discoloration in this document that occurred  
13 between July 14th and July 15th?

14 A. No.

15 Q. And if the court in this case made that  
16 statement on the record, you would disagree with  
17 the court, would you not?

18 MR. SOUTHWELL: Objection,  
19 mischaracterizes.

20 A. I have infinite respect for any and all  
21 courts. But if a court chose to make a statement  
22 which is contrary to fact, I would have to  
23 disagree with that statement. I would prefer to  
24 believe that no court would ever make a statement  
25 contrary to fact. But anything is possible, as

1 Tytell

2 you have asked me to agree with.

3 Q. And did you alter any of the images  
4 that you placed into your report before putting  
5 them into your report?

6 MR. SOUTHWELL: Objection, asked and  
7 answered.

8 A. I altered them by reducing them in size  
9 so they would fit into the area allotted to them,  
10 such as the overall pictures of the scans of page  
11 1 and page 2 had to be reduced considerably so  
12 they would fit side by side on -- within the  
13 margins of the page and other images were cut out,  
14 cropped, and then reproduced one to one.

15 And other images were cropped, such as  
16 the name Paul Ceglia, from page 1 and page 2 of  
17 the scans of the paper document. And they were  
18 enlarged somewhat.

19 But other than cutting them out and  
20 adjusting the overall dimensions, I made no  
21 adjustments other than that.

22 Q. No changes to the contrast in the  
23 image?

24 A. No.

25 Q. The brightness?

1 Tytell

2 A. I picked the image up; I put the image  
3 down. That was what I did with the image. Drag  
4 and drop I think is the technical term. Or insert  
5 picture is another way to do it in Word.

6 MR. BOLAND: Very well. I have no  
7 further questions.

8 EXAMINATION BY

9 MR. SOUTHWELL:

10 Q. Mr. Tytell, you were asked earlier  
11 about whether during the course of your  
12 examination -- and the question I think had --  
13 there were a series of questions, and there was  
14 some lack of precision as to dates -- whether in  
15 the course of your examination you had touched the  
16 "work for hire" document but without gloves.

17 Do you remember those general  
18 questions?

19 A. Yes.

20 Q. Are you aware of when, as in which day,  
21 that may have occurred?

22 A. Yes.

23 Q. And did that occur that you touched the  
24 "work for hire" document without gloves on July  
25 14th?

1 Tytell

2 A. No.

3 Q. When did it occur?

4 A. I think on July 15th on -- I think on  
5 the afternoon. I'm not sure of the exact time,  
6 but sometime on July 15th.

7 MR. SOUTHWELL: Nothing further.

8 MR. BOLAND: I have nothing based on  
9 that.

10 MR. SOUTHWELL: Mr. Boland, I'm just  
11 going to put our request on the record for the  
12 opportunity to review the transcript or errors  
13 and confidentiality designations and to  
14 confirm that you are going to be sending the  
15 payment out -- we sent you an e-mail with a  
16 different address to send it to. All right?

17 MR. BOLAND: You just send e-mails from  
18 Ms. Aycock or you?

19 MR. SOUTHWELL: That's correct,  
20 Ms. Aycock sent it.

21 MR. BOLAND: Okay. I'll send it to the  
22 address she gave me, and I'll put it in a  
23 FedEx envelope. I will do that at -- the last  
24 pickup is at 7. I will do it by 7 o'clock  
25 today.

1 Tytell

2 MR. SOUTHWELL: Great. It will be the  
3 full amount?

4 MR. BOLAND: Correct.

5 What's the time? Can you ask the court  
6 reporter to give us how many time we spent?

7 MR. SOUTHWELL: Do we have four and a  
8 half hours?

9 MR. BOLAND: Is someone recording it,  
10 instead of guessing, if you could?

11 (Discussion off the record.)

12 MR. SOUTHWELL: Four hours and  
13 thirty-six minutes.

14 And Mr. Boland, you will send me the  
15 tracking number for the payments, as you said  
16 you would?

17 MR. BOLAND: Yes, I will.

18 MR. SOUTHWELL: All right.

19 MR. BOLAND: By e-mail.

20 (Continued on the following page.)  
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MR. SOUTHWELL: All right, then. We're  
done.

MR. BOLAND: Okay. We're done. Thank  
you.

(Time noted: 4:25 p.m.)

---

PETER V. TYTELL

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

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Notary Public



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C E R T I F I C A T E

STATE OF NEW YORK       )  
                                      : ss.  
COUNTY OF NEW YORK    )

I, LAURIE A. COLLINS, a Registered  
Professional Reporter and Notary Public  
within and for the State of New York, do  
hereby certify:

That PETER V. TYTELL, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 7th day of August, 2012.

\_\_\_\_\_  
LAURIE A. COLLINS, RPR

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- - - - - I N D E X - - - - -

WITNESS:	EXAMINATION BY:	PAGE
Peter V. Tytell	Mr. Boland	7
	Mr. Southwell	205

----- TRANSCRIPT MARKINGS -----

DIRECTIONS:

MOTIONS:

REQUESTS:

RULINGS:

TO BE FURNISHED:

----- EXHIBITS -----

TYTELL NO.	DESCRIPTION	PAGE
Exhibit 1,	expert report of Tytell	8
Exhibit 2,	document labeled "Exhibit A"	107
Exhibit 3,	document labeled "Exhibit B"	108

ERRATA SHEET  
 VERITEXT REPORTING COMPANY  
 1250 Broadway  
 New York, New York 10001  
 (212) 279-9424

CASE: Ceglia v. Zuckerberg  
 DEPOSITION DATE: August 3, 2012  
 DEPONENT: Peter V. Tytell

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