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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
No. 1:10-cv-00569-RJA

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PAUL D. CEGLIA,

Plaintiff,

vs.

MARK ELLIOT ZUCKERBERG,
Individually, and
FACEBOOK, INC.,

Defendants.

-----x

June 28, 2012

10:05 a.m.

Videotaped deposition of NEIL BROOM,
held at the offices of Gibson, Dunn &
Crutcher LLP, 200 Park Avenue, New York,
New York, pursuant to notice, before
Cary N. Bigelow, Court Reporter, a Notary
Public of the State of New York.

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

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BY: ALEXANDER H. SOUTHWELL, ESQ.
MATTHEW BENJAMIN, ESQ.
AMANDA AYCOCK, ESQ.

ALSO PRESENT :

MICHAEL F. McGOWAN (Stroz Friedberg)
DANIEL McCLUTCHEY, Videographer

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THE VIDEOGRAPHER: Good morning. We are now on the record.

Please note that the microphones are sensitive and may pick up whispering and private conversation. Please turn off all cell phones or place them away from the mics as they can interfere with the deposition audio. Recording will continue until all parties agree to go off the record.

My name is Daniel McClutchey representing Veritext, New York. The date today is June 28, 2012, and the time is approximately 10:05 a.m. This deposition is being held at the office of Gibson, Dunn & Crutcher located at 200 Park Avenue in New York, New York.

The caption of this case is Paul Ceglia versus Mark Elliot Zuckerberg and Facebook, Inc., this case is filed in the U.S. District Court, Western District of New York, case number 1:10-cv-00569-RJA. The name of the witness is Neil Broom.

At this time the attorneys present will identify themselves and the parties they

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represent after which our court reporter, Cary Bigelow, representing Veritext, will swear in the witness and we can proceed.

MR. SOUTHWELL: Thank you.

Alexander Southwell from Gibson, Dunn representing the defendants; with me is Matthew Benjamin and Amanda Aycock also of Gibson, Dunn, and Michael McGowan of Stroz Friedberg.

MR. BOLAND: Dean Boland representing the plaintiff, Paul Ceglia, and Neil Broom, the witness, is one of his experts.

N E I L B R O O M, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. SOUTHWELL:

Q. Mr. Broom, good morning.

A. Good morning.

Q. Have you been deposed before?

A. Yes, I have.

Q. The judge presiding over this case has some particular rules that I need to tell you about.

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N. Broom

If you need clarification, a definition, explanation of any words, questions or documents throughout the deposition, you are to ask me as opposing counsel rather than your own counsel or counsel for the plaintiff.

Do you understand that?

A. Yes, I do.

Q. Another rule the judge has is you and counsel cannot engage in private conversation during the deposition or during any break except to determine whether to assert a privilege.

Do you understand that?

A. Yes, I do.

Q. The only other thing I would ask is that you try not to talk over the questions and I will try not to talk over any answers, okay?

A. Yes, sir.

Q. In preparation for your deposition today, did you meet with Mr. Boland?

A. In person, no, sir.

Q. You met with him over the phone?

A. Yes, sir.

Q. Did you meet with Mr. Argentieri to prepare for the deposition?

1 N. Broom

2 A. Never talked to him.

3 Q. How about Paul Ceglia, have you met
4 with him to prepare for the deposition?

5 A. Not specifically to prepare for the
6 deposition. I have talked to Mr. Ceglia one
7 time.

8 Q. But not related to the deposition?

9 A. No, sir.

10 Q. And how about Carmine Ceglia, have you
11 met with him to prepare for the deposition?

12 A. I have never met with him or talked
13 with him.

14 Q. How about Vera Ceglia, have you ever
15 met her to prepare for the deposition?

16 A. No, I have not.

17 Q. Have you ever met her?

18 A. Never met her either.

19 Q. How about Jerry Grant, did you meet
20 with him to prepare for the deposition?

21 A. Who is Jerry Grant?

22 Q. Okay.

23 Then I guess the answer is you didn't.

24 A. No, sir.

25 Q. And you are the CEO of Technical

1 N. Broom

2 Resource Center; is that correct?

3 A. Yes, sir.

4 Q. How many employees does the Technical
5 Resource Center have?

6 A. Three including myself.

7 Q. And what are the names of the other
8 two?

9 A. Will Dean and Brad Reneinger,
10 R-e-n-e-i-n-g-e-r.

11 Q. And when was the company founded?

12 A. November of 2000.

13 Q. By whom?

14 A. Myself.

15 Q. Is it headquartered in Atlanta?

16 A. It's headquartered in Atlanta.

17 Q. What's the address there?

18 A. 795 Hammond Drive, Suite 1806, Atlanta,
19 Georgia 30328.

20 Q. Does TRC have any other offices?

21 A. I currently have an office in Los
22 Angeles that I work out of my home, but we are a
23 California corporation as well as an Atlanta,
24 Georgia corporation.

25 Q. So the Los Angeles office is the home

1 N. Broom

2 office?

3 A. Correct.

4 Q. And is the Atlanta location also a home
5 office?

6 A. No, it's not.

7 Q. What type of office, is that an office
8 building or --

9 A. Condominium building, high-rise
10 condominium.

11 Q. So it's an office location in a
12 condominium building?

13 A. Correct.

14 Q. What services does TRC provide?

15 A. Computer forensics investigations.

16 Q. Do the other employees and you divide
17 up your attention to different areas that you
18 provide in terms of services or do you all sort
19 of do the same thing?

20 A. We all do the same thing.

21 Q. Who are your typical clients?

22 A. Law firms.

23 Q. And roughly how many cases do you do a
24 year?

25 A. 30.

1 N. Broom

2 Q. And you mentioned computer forensic --
3 actually, let me ask you again.

4 Can you say exactly what the service is
5 that you provide?

6 A. Computer forensics investigation.

7 Q. And what about training or consulting,
8 is that also part of what you offer?

9 A. In the past I have done an extensive
10 amount of training, in the last four years I have
11 not.

12 Q. And what do you do in a typical
13 computer forensic engagement?

14 A. Preserve evidence first, find out from
15 the customer attorney what it is the relevant
16 investigation is concerning and then we will
17 perform a computer forensics analysis on any of
18 the evidence that has been preserved.

19 Q. When you mentioned the investigation
20 side of it, is it investigation of the digital
21 forensics or is there any other type of
22 investigation that occurs?

23 A. There can be any type of investigation.
24 We are all licensed Georgia private investigators,
25 everybody who worked for me is a licensed private

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N. Broom

investigator.

Q. So you might do a more traditional type of investigation as part of an engagement?

A. Typically not, but we can.

Q. Were you asked to do any investigative work in this case?

A. Could you please clarify that?

Q. Were you asked to do any more traditional investigative work as opposed to computer forensics work in this case?

A. No, we were not.

Q. And within the computer forensics realm are there particular types of cases that you specialize in?

A. We obtain quite a few employment litigation type cases where an employee steals information when they leave one company and takes it to another, that seems to be one type of case we have quite a bit of work in. We've had a couple very large cases that were criminal in nature, a very large FCPA violation, Foreign Corrupt Practices Act, that we did in 2007 in which the results of our investigation went to several federal agencies and several foreign

1 N. Broom

2 governments, but the majority of the cases we
3 work would have to be litigation dealing with
4 employment law.

5 Q. And to take that FCPA case as an
6 example, what was the nature -- I don't want to
7 get into the details of the case, but what was
8 the nature of the work that was done? It was
9 preservation of evidence and it was production
10 like e-discovery production or was there some
11 other forensic aspect to it?

12 A. You are correct in each of the things
13 you said so far, and in addition to the
14 traditional e-discovery we also did specific
15 investigation of extracting information from
16 e-mails, et cetera, that were used as part of the
17 investigation.

18 Q. What percentage of your practice these
19 days is focused on what I would term e-discovery?

20 A. What's your definition of e-discovery?

21 Q. Well, let me ask you.

22 How would you define e-discovery
23 services that you provide?

24 A. Would it be okay with you if I give you
25 my standard definition between the difference of

1 N. Broom

2 computer forensics and e-discovery?

3 Q. Sure.

4 A. The way I like to define e-discovery is
5 we can find whatever information is on the
6 computer and available the same as if the user
7 was looking for that information. Computer
8 forensics, on the other hand, allows us to find
9 what that user tried to get rid of.

10 Q. And between those two types of services
11 are you engaged sometimes just for e-discovery
12 services and sometimes just for the forensics,
13 computer forensics?

14 A. I never attempt to promote us as an
15 e-discovery company, I promote us as a computer
16 forensics company. There are other firms out
17 there that do a probably more efficient
18 e-discovery type of investigation and I like to
19 pride ourselves on the ability to do computer
20 forensics investigations that actually discover a
21 lot more information than the e-discovery
22 companies can find; in other words, a technician
23 doing e-discovery is not a trained investigator
24 and they have limitations to what they can find.

25 Q. Your actual title is CEO, senior

1 N. Broom

2 investigator and laboratory director; is that
3 correct?

4 A. That's correct.

5 Q. What are your duties and
6 responsibilities in that role?

7 A. In every role, I run the company, it's
8 my company, I am the sole owner of the company,
9 so any responsibilities for the entire company
10 are mine.

11 Q. The other employees, are they employees
12 that you supervise?

13 A. Yes.

14 Q. In what capacity?

15 A. Mr. Will Dean is a licensed private
16 investigator and he is the quality manager for
17 the lab and he is a junior investigator. He is
18 still in training, he does not work any cases on
19 his own, but he will assist on cases under
20 Mr. Reneinger.

21 Mr. Reneinger is a senior investigator
22 in our lab and is certified and trained as a
23 licensed private investigator.

24 Q. What did you do before founding TRC?

25 A. How far back would you like me to go?

1 N. Broom

2 Q. Immediately before.

3 A. I worked for a startup company out of
4 San Jose, California, as a senior security
5 examiner.

6 Q. For approximately how long did you do
7 that?

8 A. Six months.

9 Q. And then before that?

10 A. Can I start the other direction? That
11 would be a lot easier.

12 Q. Sure.

13 A. I spent six years in the military, I
14 was submarine electrician, went to the University
15 of Florida and became a cop in Gainesville,
16 Florida for four years.

17 I left Gainesville and went to Atlanta,
18 ran an outsourcing company for one year with
19 about 200 employees working for me; then I went
20 to work for doing some private investigations
21 when I was training to get in the IT field; then
22 I went and worked for a company called Security
23 First Technologies. The S1 Corporation actually
24 invented the concept of Internet banking and had
25 the very first bank on the Internet, and the

1 N. Broom

2 reason that's significant is I was a junior
3 systems administrator in the location where money
4 was first exchanged on the Internet, so that's
5 how I got to learn the technology side.

6 I left S1 Corporation and went to ISS,
7 Internet Security Systems, as a security trainer,
8 and I trained CIA, NSA, FBI, large banks,
9 commercial organizations how to secure their
10 networks, how to use the Internet security suite
11 of products and after ISS I went to the Internet
12 startup that I referred to and then they were
13 purchased.

14 Q. And what educational degrees have you
15 attained?

16 A. I have an associate of arts from the
17 University of Florida and I am currently
18 attending Champlain College in Burlington,
19 Vermont, working on a bachelor of science in
20 computer forensics and digital investigation and
21 a master's in forensics investigation lab
22 management.

23 Q. And that's the Champlain College in
24 Burlington; is that right?

25 A. That's correct.

1 N. Broom

2 Q. That's an online or correspondence
3 program; is that right?

4 A. It is an Internet-based education
5 program.

6 Q. So you currently do not yet have a
7 bachelor's degree?

8 A. That's correct.

9 Q. On your CV you have a section called
10 "Publications"; right?

11 A. Yes, sir.

12 Q. And under that section you list some
13 course material and exam questions that you
14 developed; correct?

15 A. Yes, sir.

16 Q. And you also list a book that you were
17 a co-author and technical editor of called
18 "Computer Forensics JumpStart"; correct?

19 A. Yes, sir.

20 Q. And that book is a popular guide to
21 tools, practices, information needed to launch a
22 career in computer forensics; is that right?

23 A. Yes, sir.

24 Q. You helped author the book?

25 A. Yes, sir.

1 N. Broom

2 Q. And you served as its technical editor
3 at least for the second edition?

4 A. That is correct.

5 Q. And that means that you were
6 responsible for editing the technical information
7 in the book; right?

8 A. Yes, sir.

9 Q. You also authored some sidebars called
10 "Tales From the Trenches"; is that right?

11 A. Yes, sir.

12 Q. And you testified earlier that you had
13 roughly 30 cases a year in terms of digital
14 forensics engagements, just roughly speaking; is
15 that right?

16 A. Very roughly, yes, sir.

17 Q. And how many computers, roughly, have
18 you performed forensic work on?

19 A. Several hundred, but I don't know the
20 exact number.

21 Q. Any particular types of machines that
22 you've focused on?

23 A. Clarification, please.

24 Q. PCs, Apple, just talking general types
25 of machines that those several hundred comprise.

1 N. Broom

2 A. PCs.

3 Q. And out of those several hundred
4 computer forensics investigations how many have
5 resulted in expert reports, roughly speaking?

6 A. Can you give me your definition of
7 expert report?

8 Q. A report submitted to a court.

9 A. The typical case that we work never has
10 a report made at all. The reports that do get
11 made are typically affidavits; each of the
12 affidavits that I have done are attached as part
13 of my CV and so you can count them, if you'd
14 like.

15 Q. I'm sorry, say that last part.

16 Each of the reports --

17 A. Each of the affidavits I have submitted
18 are attached to my CV.

19 Q. Do you mean listed in your CV or --

20 A. I apologize, yes, listed in my CV.

21 Q. We will get to the report in a minute.

22 So the listing in the last three pages
23 of your CV is the entirety of any expert witness
24 testimony affidavits you have prepared; is that
25 correct?

1 N. Broom

2 A. Yes, sir.

3 Q. And were any of these cases child
4 pornography cases?

5 A. Yes, sir.

6 Q. About how many?

7 A. Probably four, five.

8 Q. Okay.

9 Were any of these cases e-forgery
10 cases?

11 A. In what respect?

12 Q. Meaning they had issues about the
13 alleged fraudulent nature of an electronic
14 document and whether the document was real or
15 forged or authentic.

16 A. I do not have any recollection of any
17 of those.

18 Q. In your 16 years of doing computer
19 forensics experience have you handled any
20 e-forgery cases?

21 A. None that I can recall.

22 Q. And in the child pornography cases that
23 you have worked on are you aware of a common
24 defense advanced that might be termed a virus
25 defense?

1 N. Broom

2 A. I'm aware of it.

3 Q. And that defense claims that a virus
4 has allowed remote access to a computer?

5 A. Yes.

6 Q. And that defense might raise questions
7 of how contrabands got on a computer; is that
8 right?

9 A. Is that your question?

10 Q. The nature of the defense is how to
11 raise reasonable doubt about how contraband got
12 on the computer; is that right?

13 A. That's my understanding of the defense.

14 Q. And a virus might be able to do that if
15 in fact it is located on the computer and has
16 infected it, theoretically, at least; right?

17 A. Theoretically.

18 Q. And in the listing you have provided of
19 where you provided expert testimony, have you
20 been qualified as an expert in all those cases?

21 A. I have been qualified in a couple --
22 three or four cases, but I have not been
23 qualified simply because it never resulted in
24 actual testimony.

25 Q. In what areas were you qualified as an

1 N. Broom

2 expert?

3 A. Computer forensics.

4 Q. Have you ever been -- has your
5 testimony in computer forensics ever been
6 rejected?

7 A. No, it has not.

8 Can I do one clarification? Would that
9 be appropriate?

10 Q. Okay.

11 A. You earlier asked me how many child
12 pornography cases I had worked and then you asked
13 me if I was aware of the viruses and Trojans
14 defense. I have never raised that in any of the
15 cases I have worked.

16 Q. But you are familiar with it?

17 A. I am familiar with it, but I've never
18 attempted to raise that issue on any of the
19 computer forensics cases that I have worked in
20 child pornography.

21 Q. If I may have just a moment.

22 A. Yes, sir.

23 MR. SOUTHWELL: If I could ask this to
24 be marked as Defendants' Exhibit 1, please.

25 (Defendants' Exhibit 1, declaration of

1 N. Broom

2 Neil Broom, marked for identification, as of
3 this date.)

4 Q. I show you what's been marked as
5 Defendants' Exhibit 1.

6 This is your report; correct?

7 A. Yes, sir.

8 Q. If I could just keep your attention
9 directed to page 35, is that your signature there
10 on page 35 of Defendants' Exhibit 1?

11 A. Yes, it is.

12 Q. This report in this case contains all
13 of your opinions that you are offering to the
14 court; correct?

15 A. Yes, sir.

16 Q. The report is your work product; is
17 that right?

18 A. Yes, sir.

19 Q. You drafted the entire report?

20 A. Yes, sir.

21 Q. You are responsible for all of the
22 citations; right?

23 A. Yes, sir.

24 Q. And you included citations of all
25 source material whether paraphrased or quoted

1 N. Broom

2 directly; is that accurate?

3 A. With the assistance of Mr. Boland.

4 Q. So the drafting was with the assistance
5 of Mr. Boland?

6 A. Correct.

7 Q. Anybody else assist you?

8 A. No, sir. Mr. Boland and myself.

9 Q. And how long did it take to write the
10 report?

11 A. The entire amount of time that I worked
12 on this case was 14 days and I would say that the
13 drafting of the report was done throughout the
14 process, it wasn't a I sat down and started
15 writing the report, it was during the entire 14
16 days, that's when I drafted it.

17 Q. How many drafts did you produce?

18 A. There's one final draft.

19 Q. There were not intermediate drafts?

20 A. There were working products going back
21 and forth, but there was not -- I never printed
22 an intermediate draft.

23 Q. Did anyone else other than Mr. Boland
24 review the report before it was final and signed
25 and delivered to the Court?

1 N. Broom

2 A. From my side only, my two employees,
3 they were -- they read the report, they read it
4 electronically. I don't know about on
5 Mr. Boland's side.

6 Q. And in preparing the report did you
7 follow your guidance in the book that you
8 contributed to, "JumpStart," in terms of
9 preparing your report?

10 A. Somewhat. That obviously has been --
11 that guidance has been updated over the years.
12 That book was originally written in 2004, so new
13 things have been added.

14 MR. SOUTHWELL: Let's go ahead and I
15 would like to ask this to be marked, please,
16 as Defendants' Exhibit 2.

17 (Defendants' Exhibit 2, book entitled
18 "Computer Forensics JumpStart," second
19 edition, marked for identification, as of
20 this date.)

21 Q. I show you Defendants' Exhibit 2.
22 Is that the book that we've been
23 referring to, "Computer Forensics JumpStart"
24 second edition?

25 A. Yes, sir.

1 N. Broom

2 Q. At various times I may refer to various
3 pages of the report during the deposition,
4 Mr. Boland will provide you with some copies of
5 the pages if you'd like, but I want to ask you
6 some questions just about the guidance in the
7 book about drafting reports.

8 In the book it's noted that one of the
9 top priorities in preparing a report is to
10 properly document all steps taken during the
11 evidence-gathering process.

12 Do you agree with that priority?

13 A. Yes, sir.

14 Q. And did you follow that in preparing
15 this report?

16 A. Yes, sir.

17 Q. The book at page 215 also includes an
18 imperative that all electronic evidence be
19 documented systematically.

20 Is that right?

21 A. You didn't ask a question, you made a
22 statement.

23 Q. I was asking if that's right, that the
24 book includes the imperative that all electronic
25 evidence be documented systematically.

1 N. Broom

2 A. Yes, sir.

3 Q. And you mentioned this is the second
4 edition.

5 When was the second edition released?

6 A. 2011.

7 Q. At page 216 the book advises that every
8 report should begin with a clear and concise
9 summary of the facts of the case and the evidence
10 gathered; is that right?

11 A. That is correct.

12 Q. And at page 226 the book states that
13 every report should contain a list of items
14 examined; correct?

15 A. Yes, sir, it does.

16 Q. And it is also important in drafting
17 reports to maintain an objective professional
18 tone; correct?

19 A. Yes, sir.

20 Q. As you noted in your report it's very
21 important for a computer forensics investigator
22 to keep an open mind; right?

23 A. Yes, sir.

24 Q. In fact, you noted at page 241 or it is
25 noted in your book that as a computer forensics

1 N. Broom

2 professional you collect evidence for the sole
3 purpose of discovering the truth; is that right?

4 A. Yes, that's what it says on 241.

5 Q. And at page 126 the book notes that it
6 is important to authenticate evidence before
7 analyzing given the fact that criminals often try
8 to hide their behaviors and obscure evidence;
9 right?

10 A. Yes, sir, it does.

11 Q. Now, Mr. Broom, I want to turn to the
12 circumstances of your retention in this case.

13 When were you retained?

14 A. May 3rd, 2012.

15 Q. And in considering that question you
16 were referring to a notebook that's in front of
17 you.

18 May I ask you what that notebook is?

19 A. The Stroz Friedberg report.

20 Q. So you were looking at the Stroz
21 Friedberg report for when you were retained in
22 the case?

23 A. I was looking at extra items I had
24 attached to the book.

25 Q. I see.

1 N. Broom

2 And what are those extra items?

3 A. Listing of the computer forensics
4 evidence that I examined, a listing of the
5 viruses discovered on the computer, a letter
6 between you and Mr. Boland, a virus printout, a
7 printout of the StreetFax document that I
8 referred to in my report and the Work For Hire
9 document.

10 Q. Sorry, I was just trying to remember
11 the date because it went out of my head after you
12 said it.

13 You said May 3, 2011 was the date of
14 your -- sorry, 2012.

15 A. May 3rd, 2012.

16 Q. Thank you. That was the confusion I
17 had.

18 And who approached you initially?

19 A. Mr. Boland.

20 Q. Who retained you?

21 A. Mr. Boland.

22 Q. Are you being compensated for your
23 services in this matter?

24 A. I have already received compensation
25 for the time that I have worked on this case.

1 N. Broom

2 Q. And what is your fee arrangement?

3 A. \$2,000 per day.

4 Q. Are you paid daily for a particular
5 amount of hours that you work?

6 A. I charged a flat rate of \$2,000 a day.

7 Q. For however many days it takes?

8 A. Correct.

9 Q. Are you paid on a contingent basis in
10 any way?

11 A. I was paid on a -- yes.

12 Q. Can you explain that?

13 A. I received a \$10,000 retainer, after
14 that retainer was used up I reloaded the
15 retainer.

16 Q. And is the retainer applied against
17 your daily rate or --

18 A. Yes, sir.

19 Q. Are there rates for anybody else
20 working on the project?

21 A. No, sir.

22 Q. Is anybody else working on the project?

23 A. No, sir.

24 Q. Are there any other fees or expenses
25 covered in the compensation agreement?

1 N. Broom

2 A. Such as --

3 Q. Reimbursements for expenses.

4 A. Yes, sir.

5 Q. Or is that covered in the \$2,000?

6 A. No, sir, that would be in addition to.

7 Q. And what is the arrangement?

8 A. To be reimbursed for expenses and any
9 additional time I would dedicate to the case.

10 Q. Who is obligated to pay you?

11 A. Mr. Boland.

12 Q. What are the terms in terms of how
13 quickly -- well, let me ask in a different way.

14 Are you paid in advance and then you
15 mentioned a retainer and then it was reloaded, so
16 are you paid in advance of the time incurred or
17 are you paid after the time is incurred?

18 A. The arrangements I made with Mr. Boland
19 was to be paid in advance of doing the services,
20 toward the end of the time prior to submitting
21 the report I worked an extra four days prior to
22 being compensated and since then I have been
23 compensated for that time.

24 Q. How much have you been paid?

25 A. \$28,000.

1 N. Broom

2 Q. And is that payment current now?

3 A. Yes, sir.

4 Q. Are there any other aspects of a
5 payment such as an incentive payment or a bonus
6 or anything like that in the fee arrangement?

7 A. No, sir.

8 Q. Are you aware that Mr. Ceglia has filed
9 other expert reports in this case?

10 A. I'm aware of that.

11 Q. Have you reviewed them?

12 A. I have read -- I'm sorry, I don't have
13 their names, but yes, I have read other reports
14 in this case on the document examiners' reports.

15 Q. Have you read the reports of
16 plaintiff's experts or the reports of defendants'
17 experts or both?

18 A. Plaintiff's experts.

19 I have to, I guess, clarify that.

20 If we are talking about the document
21 examiners, I have read the plaintiff's experts.
22 If we are talking about computer forensics
23 examiners, I obviously have read the Stroz
24 Friedberg report.

25 Q. Earlier you said that you did not know

1 N. Broom

2 who Jerry Grant was; is that right?

3 A. Correct.

4 Q. Have you reviewed a report or
5 declaration of another computer forensics expert
6 for the plaintiff?

7 A. No, I haven't.

8 Q. Are you aware that Jerry Grant is a
9 computer forensics expert for plaintiff?

10 A. May I clarify with Mr. Boland?

11 Q. No. You can answer the question.

12 A. I am not.

13 What I was going to ask is is he the
14 person that looked at the floppy disk, that's the
15 only other person that I know that's involved in
16 the case.

17 Q. Have you reviewed a report about the
18 floppy disks?

19 A. No, I have not.

20 Q. What are you aware of in terms of
21 somebody who's reviewed floppy disks?

22 A. That somebody reviewed floppy disks.

23 Q. Are you aware of what their findings
24 were with respect to those floppy disks?

25 A. No, I'm not.

1 N. Broom

2 Q. Did you ask about what the findings
3 were with respect to the floppy disks?

4 A. No, sir.

5 Q. Are you aware of what the relevance is
6 of the floppy desks to the work that you did or
7 to the case?

8 A. I examined two floppy disks as part of
9 the work that I did.

10 Q. Are you aware of whether those are the
11 same floppy disks that were reviewed by this
12 other individual?

13 A. I would assume they are, but I am not a
14 hundred percent certain about that.

15 Q. And in terms of your retention what
16 were you actually asked to do?

17 A. To review the Stroz Friedberg report
18 and determine if there is anything in this report
19 that overreached in the decisions, overreached in
20 their statements, anything that there could have
21 been, other explanations for how something
22 occurred other than what was written in their
23 report.

24 Q. And you testified that May 3, 2012 was
25 when you were retained; right?

1 N. Broom

2 A. Yes, sir.

3 Q. And your report is dated June 4, 2012?

4 A. That is correct.

5 Q. And you've testified that you worked on
6 this case for 14 days in between that time;
7 correct?

8 A. That is correct.

9 Q. So other than those 14 days --

10 MR. SOUTHWELL: Strike that.

11 Q. Those 14 days is the entirety of the
12 time that you worked on this matter; correct?

13 A. That is correct.

14 Q. Are you aware the Stroz Friedberg
15 report was issued in March, on March 26, 2012?

16 A. Yes, I am.

17 Q. And you were retained on May 3rd, more
18 than one month after the Stroz Friedberg report
19 was issued; is that correct?

20 A. That is correct.

21 Q. Are you aware that that's also 10
22 months after the Court authorized forensic
23 examination of Mr. Ceglia's computer?

24 A. I was not aware of that.

25 Q. You have reviewed the whole Stroz

1 N. Broom

2 Friedberg report; correct?

3 A. Yes, I have.

4 Q. You are familiar with all of the
5 evidence described in that report?

6 A. Yes, I am.

7 Q. How did you decide what to address in
8 your report?

9 A. I simply started at the beginning of
10 the report, went through the items that I felt I
11 could successful comment on in the period of time
12 that I had to conduct my examination and I
13 limited the discussion to those areas that I
14 could address within the time period that I had
15 allotted.

16 Q. Did you work with any other experts in
17 deciding what to address while preparing your
18 report?

19 A. No, sir.

20 Q. Did you interact with anyone from
21 Project Leadership Associates such as John Evans?

22 A. I don't know who that is.

23 Q. Did you interact with anyone from the
24 Sirens Group such as John Jorgensen,
25 J-o-r-g-e-n-s-e-n?

1 N. Broom

2 A. No, sir.

3 Q. Did you interact with anyone from
4 Capsecum?

5 A. I don't know who that is either.

6 There was one organization that I spoke
7 with a young lady, I don't recall her name, and
8 it was to try to obtain a piece of evidence in
9 the case.

10 Q. In this case?

11 A. Yes.

12 Mr. Boland can clarify that, I just
13 don't remember her name.

14 Q. Was it another expert for the
15 plaintiff -- was it your understanding that that
16 was somebody affiliated with another expert for
17 the plaintiff?

18 A. Yes, sir, who was in possession of a
19 piece of evidence.

20 Q. And the piece of evidence you are
21 referring to was an electronic piece of evidence?

22 A. That's correct.

23 Q. Do you remember what the piece of
24 evidence was you were trying to acquire?

25 A. I do not.

1 N. Broom

2 Q. Were you successful in getting access
3 to it?

4 A. I was not.

5 Q. And you don't remember what it was that
6 you didn't get access to?

7 A. I believe it was a forensics image of
8 some CDs, but I did not get them in time to
9 publish this report.

10 Q. Your report also contains your analysis
11 of the media forensically imaged by Stroz
12 Friedberg as part of the court-authorized
13 expedited discovery process; correct?

14 A. Yes, sir.

15 Q. How many items of electronic evidence
16 did Stroz Friedberg review?

17 A. It appears to be six hard drives, it
18 says 174 floppy disks, 1,087 CDs and one DVD.

19 Q. Do you understand who produced those
20 items to Stroz Friedberg?

21 A. No, I don't know the exact -- I have
22 never seen the chain of custodies for each of
23 those items, no, sir.

24 Q. Did you read the report?

25 A. In the report I have the information;

1 N. Broom

2 I haven't read the actual chains of custodies to
3 verify that.

4 Q. And based on the report, who do you
5 understand produced those items of electronic
6 evidence?

7 A. Mr. Ceglia and other people associated
8 with Mr. Ceglia and I would say, if I am not
9 mistaken, there was something from one of the
10 attorneys.

11 MR. BOLAND: Are you asking him to read
12 a part of the report? Is that what you're
13 saying?

14 MR. SOUTHWELL: I am asking for his
15 understanding of who produced the documents
16 based on his review of the report, which he
17 said he did.

18 Q. What's your understanding about why
19 those items of electronic evidence were produced
20 to Stroz Friedberg?

21 A. My assumption is because they asked for
22 them, the judge ordered them to be turned over.

23 Q. Did you review the Stroz Friedberg
24 inventories of the electronic evidence?

25 A. What do you mean by inventories?

1 N. Broom

2 Is there a separate document other than
3 the report that you are referring to?

4 Q. Are you aware there were inventories of
5 the items that were forensically imaged pursuant
6 to the court order that were provided to the
7 plaintiff's experts?

8 A. I do not have anything like that
9 provided by Stroz.

10 Q. Did you ask for those?

11 A. No, I did not.

12 Q. How many items of electronic evidence
13 did you review?

14 A. Eight computer forensics images.

15 Q. And what specifically were those?

16 A. One forensics image that was labeled
17 "Ceglia laptop.E01," one labeled "Ceglia new LT
18 HDD.E01," one labeled "Ceglia-loose.E01," an item
19 labeled "EDEL110394-1.E01," another item labeled
20 "EDEL110394-5.E01," one labeled "NY02.001," one
21 labeled "FD013.E01," and one labeled "FD014.E04."

22 Q. And were you just reading off a
23 document, a multipage document that says at the
24 top "List of all media presented to Plaintiff's
25 computer forensics experts for inspection"?

1 N. Broom

2 A. Yes, sir.

3 MR. SOUTHWELL: I would like this to be
4 marked as Defendants' Exhibit 3, please.

5 (Defendants' Exhibit 3, multipage
6 document entitled "List of all media
7 presented to Plaintiff's computer forensics
8 experts for inspection," marked for
9 identification, as of this date.)

10 Q. Mr. Broom, you've just reviewed
11 Defendants' Exhibit 3, the list you were just
12 reading off, the inventory of items that you
13 reviewed that you have produced in this case?

14 A. Yes, sir.

15 Q. So you did not review all of the
16 electronic media that Stroz Friedberg reviewed;
17 correct?

18 A. Absolutely not.

19 Q. And in your report did you list all the
20 items of electronic evidence that you reviewed?

21 A. I did it in a supplement that was based
22 on a letter requested by you.

23 Q. So in the report itself you did not
24 list the items of electronic evidence that you
25 reviewed; correct?

1 N. Broom

2 A. No, sir.

3 Q. And in the book "JumpStart" at page 216
4 it is advised that every report should begin with
5 a clear and concise summary of the facts of the
6 case and evidence gathered; is that right?

7 A. Yes, sir.

8 Q. And it's also stated that the report
9 should contain a list of the items examined;
10 right?

11 A. Yes, sir.

12 Q. But you did not include that in your
13 report; correct?

14 A. In the initial report, no, sir.

15 Q. And in preparation for the deposition
16 defendants requested and you prepared and then
17 provided this inventory of electronic items that
18 you received and analyzed that's been marked
19 Defendants' Exhibit 3; correct?

20 A. Correct.

21 Q. And to be clear, on the first page
22 there is a box with eight items and then it goes
23 on for a number of other pages, including an
24 index of message files.

25 Is that a rough approximate explanation

1 N. Broom

2 of this document?

3 A. Yes, sir.

4 Q. And to the left column of that first
5 box under TRC item number, that is your internal
6 control number; is that right?

7 A. Yes, sir.

8 Q. What's the numbering convention that
9 you follow?

10 A. Two-digit year, three-digit case
11 number, and then the letter designation starting
12 with AA working up through the alphabet for each
13 item of evidence.

14 Q. So AA would designate the first item of
15 evidence for this case, which is case 18 for you
16 of the year 2012?

17 A. Correct.

18 Q. What does the image name come from in
19 this Defendants' Exhibit 3?

20 A. In this case they were provided by
21 whoever made each of the images; that's not my
22 naming construction.

23 Q. Provided how?

24 A. As the name of the image that I
25 actually looked at, it's physically the name of

1 N. Broom

2 the electronic file.

3 Q. It's the electronic name versus a label
4 that's affixed to the item?

5 A. When you examine the E01 file, the
6 in-case image format, there has to be a name in
7 front of the .E01. This is the name in front of
8 the .E01. Someone had named each of these cases,
9 that's not my naming structure.

10 Q. And this list of eight items includes
11 six hard drives and two floppy disks; correct?

12 A. More precise, it's the image of six --
13 it's six separate forensics images from hard
14 drives and two floppy drives, there's a slight
15 defense in the two --

16 Q. I understand.

17 And you are familiar, are you not, with
18 an item of electronic evidence that is discussed
19 in your report that you refer to and others refer
20 to as the Seagate hard drive?

21 A. Yes, sir.

22 Q. And if you would look on Defendants'
23 Exhibit 3, the line item 12-18AE --

24 MR. SOUTHWELL: Sorry, let me withdraw
25 that.

1 N. Broom

2 Q. If you look on the line item for
3 12-18AD -- do you see that?

4 A. Yes, sir.

5 Q. Do you know if that is the Seagate hard
6 drive or --

7 MR. SOUTHWELL: Strike that.

8 Q. Do you know if that is a copy of the
9 image of the Seagate hard drive that is referred
10 to throughout the reports?

11 A. Yes, sir, it is.

12 Q. And are you aware that Stroz Friedberg
13 refers to that as either the Seagate hard drive
14 or FL2?

15 A. No, sir, I wasn't aware of the FL02.
16 You are saying that AD is FL02?

17 Q. I'm asking whether you are aware of
18 that.

19 A. My answer is no, it's not, I'm not.

20 Q. And that's fine. I was, I think,
21 really trying to establish that your 18AD is what
22 we are referring to as the Seagate hard drive,
23 and there, because you each use different
24 numbering conventions --

25 A. Absolutely, I understand the concern

1 N. Broom

2 there. However, AC is also that same Seagate
3 hard drive.

4 Q. I understand that.

5 AC is the Seagate hard drive that was
6 imaged on March 29, 2011; correct?

7 A. Yes, sir.

8 Q. And AD is the Seagate hard drive that
9 was imaged on July 25th, 2011?

10 A. That's correct.

11 Q. Now, if you will refer to the third
12 page of Defendants' Exhibit 3, there are a number
13 of files that have a .wlx suffix.

14 Do you see those?

15 A. Yes, sir.

16 Q. Those files were not provided to you by
17 Stroz Friedberg; correct?

18 A. No, sir.

19 Q. Where did those files come from?

20 A. Mr. Boland provided them to me.

21 Q. What are those files?

22 A. I have no idea.

23 Q. Were you able to access and review them?

24 A. No, I was not.

25 Q. I also note that some of the message

1 N. Broom

2 files, if you will skip down a few pages, instead
3 of starting FB and then numbers it starts with
4 what appear to be dates, so 6-02-03, those
5 files -- do you see that?

6 A. Yes, sir.

7 Q. Those files were not provided to you by
8 Stroz Friedberg; correct?

9 A. No, sir.

10 Q. Where did those files come from?

11 A. Mr. Boland.

12 Q. And what are those files?

13 A. E-mail messages.

14 Q. And your inventory includes only the
15 two floppy disks that you mentioned; right?

16 A. Yes, sir.

17 Q. And does not include any CDs; correct?

18 A. Correct.

19 Q. As you said, the Stroz Friedberg
20 category contains over a thousand items, your
21 inventory has eight; is that right?

22 A. That is correct.

23 Q. You've already testified you did not
24 review all of the items that Stroz Friedberg
25 reviewed.

1 N. Broom

2 Did you have the opportunity to analyze
3 all of those items to review or you just chose
4 not to?

5 A. No, sir, I have not had that
6 opportunity.

7 Q. They were not made available to you?

8 A. No, sir, they were not.

9 Q. Did you ask to review them?

10 A. Yes, sir.

11 Q. And what were you told?

12 A. "Haven't got them yet."

13 Q. Are you aware that the items that Stroz
14 Friedberg reviewed are --

15 MR. SOUTHWELL: Strike that.

16 Q. You previously testified that you are
17 aware that the items that Stroz Friedberg got
18 were pursuant to court order production from
19 Mr. Ceglia, who is the plaintiff that you are the
20 expert for; correct?

21 A. Yes, sir.

22 Q. Did you ask Mr. Ceglia for copies of
23 these items?

24 A. I discussed with Mr. Boland getting
25 copies of these items and due to the limited time

1 N. Broom

2 that I had available to do the examination, we
3 focused on the areas most closely referred to in
4 the Stroz Friedberg report.

5 I obviously, in a one-month period of
6 time, did not have the same ability to examine
7 all of these pieces of evidence that Stroz had
8 over the length of time they had to do their
9 report.

10 Q. But you understand that Mr. Ceglia has
11 had the items for at least the 10 months since
12 the Court ordered them produced and for, really,
13 years prior to that; right?

14 A. As I've stated, I've been involved in
15 the case since May 3rd, that's the only thing I
16 can tell you about what's happened in the past.

17 Q. I understand that, and actually, since
18 May 3rd you've only worked 14 days on the case;
19 correct?

20 A. That is correct.

21 Q. Generally speaking, in the area of
22 digital forensics, you understand that issues
23 that might come up in doing a digital forensics
24 investigation might involve actual dates on which
25 a file was created, that's one of the relevant

1 N. Broom

2 issues; correct?

3 A. Yes, sir.

4 Q. And you understand there may be
5 forensic artifacts that indicate the dates on
6 which files were created, modified or used; right?

7 A. Yes, sir.

8 Q. Those artifacts may be relevant when a
9 date of the document's creation or modification
10 is at issue; right?

11 A. Yes, sir.

12 Q. An issue that arises in digital
13 forensics investigation as related to dates is
14 backdating; correct?

15 A. Yes, sir.

16 Q. When a person backdates a file he or
17 she creates a document and tries to make it
18 appear older; correct?

19 A. Yes, sir.

20 Q. So, for example, a person might set
21 back a computer system clock before creating an
22 electronic document; right?

23 A. That's a possibility, yes, sir.

24 Q. And this would also make it appear that
25 the document was created on an earlier date than

1 N. Broom

2 it actually was; right?

3 A. Yes, sir.

4 Q. And as your book "JumpStart" notes at
5 page 144, this is a common way that a criminal
6 might try to hide information; right?

7 A. Yes, sir, it does say that on 144.

8 Q. And by backdating a document created in
9 Microsoft Word setting the system clock back and
10 then saving the document; right?

11 A. Yes, sir, it does say that.

12 Q. That's a way that a criminal might try
13 to hide information; correct?

14 A. Yes, sir.

15 Q. And someone attempting to backdate a
16 file might create multiple versions of documents;
17 right?

18 A. Yes, sir.

19 Q. If someone created multiple versions of
20 a document, that person might also try to delete
21 some of those versions; right?

22 A. Yes, sir.

23 Q. That person might then take additional
24 steps to cover up the fact of the deletion such
25 as reinstalling a program or operating system;

1 N. Broom

2 right?

3 A. Yes, sir.

4 Q. In fact, as noted at page 126 of the
5 book "JumpStart," criminals often try to hide
6 their behaviors and obscure evidence; right?

7 A. Yes, sir.

8 Q. In fact, the particular example of such
9 activity described at page 126 is the
10 re-installation of the Windows operating system;
11 right?

12 A. That is correct.

13 Q. And all of that type of backdating
14 activity occurs at a more recent time than the
15 purported date of creation; is that right?

16 A. Can you clarify that?

17 Q. Well, the idea of backdating is that
18 there's a creation at a particular date that is
19 closer in time to today and the document is
20 attempted to be made to look as though it was
21 older, i.e., it's backdated.

22 A. I apologize, I think you're asking a
23 simple question making it complicated.

24 If you could say it just a little
25 clearer.

1 N. Broom

2 Q. Fine. That was not a clear question.

3 Such backdating activity such as
4 reinstalling a program operating system occurs at
5 a more recent time than the purported date of
6 creation?

7 A. Yes, sir.

8 Sorry for the confusion.

9 Q. That's all right, it was not a clear
10 question.

11 And all the evidence of the backdating
12 activity such as creation or deletion of versions
13 of document would be relevant to an assessment of
14 the dates of creation; right?

15 A. Yes, sir, could be.

16 Q. And as you noted or as is noted at page
17 144 of the book "JumpStart," sometimes a forensic
18 investigator can easily uncover the truth of when
19 someone backdates a document; right?

20 A. Yes, sir, it is, on 144.

21 Q. And you describe there one particular
22 indication of backdating; right?

23 MR. BOLAND: Objection. He didn't say
24 he wrote any part you're asking about.

25 You just said he said.

1 N. Broom

2 Q. Well, it is described in the book that
3 you co-authored, "JumpStart," that there is one
4 particular indication of backdating there, which
5 is specifically when looking at file directory
6 details, watch for discrepancies between the
7 creation or modified date shown in Windows and
8 the time date stamps in the metadata; correct?

9 A. Yes, sir, I see that.

10 Q. In preparing your expert reports what
11 materials do you typically rely on?

12 A. Can you clarify? I really don't
13 understand what you're asking in the question.

14 Q. In the course of a normal forensic,
15 digital forensic investigation what are the
16 typical materials, source materials you would
17 rely on?

18 A. Are you referring to the evidence or
19 are you referring to any outside reference?
20 That's the only part I don't understand about
21 your question.

22 Q. I'm trying to understand the scope.
23 Let me try to take that in smaller pieces.

24 So there would be the source material
25 that you would be investigating, right, that

1 N. Broom

2 would be one item of material that would be
3 something you would investigate and rely upon in
4 the course of doing a digital forensic
5 investigation; right?

6 A. That is correct, I would look at the
7 original evidence, for instance, someone's hard
8 drive.

9 Q. And as you alluded to, there might be
10 other source or resource material that might shed
11 light on certain questions; is that right?

12 A. Yes. And as an example of that, I
13 would say if we found evidence that there was a
14 thumb drive plugged into the computer, then the
15 actual thumb drive itself would be a secondary
16 source of the evidence. So the original computer
17 hard drive and if we saw there was a thumb drive,
18 then the thumb drive would be a secondary source.

19 Q. There would be other secondary sources
20 of electronic media that might be important to an
21 investigation such as thumb drives; right?

22 A. Yes, sir.

23 Q. So you might see evidence of that in
24 conducting your investigation and that would make
25 those other source materials important to

1 N. Broom

2 understanding what went on with respect to the
3 digital media; correct?

4 A. Yes, sir.

5 Q. So if you were to see evidence of a
6 thumb drive or a USB drive attached to a computer
7 it would be relevant to see that thumb drive or
8 that USB; right?

9 A. Yes, sir.

10 Q. And if you did not have access to that,
11 that would provide -- that would limit what one
12 could uncover digitally about the issue; right?

13 A. Correct.

14 Q. Other than electronic evidence, what
15 other types of materials would you typically rely
16 on in an investigation?

17 A. In the past I have been provided
18 printouts of e-mails, for instance, or printouts
19 of documents. We would use -- for instance, if I
20 was provided a contract or an employment
21 agreement we could take keywords off of that
22 document and use those to form our investigation
23 plan.

24 Q. In preparing your report in this case
25 what materials other than electronic evidence

1 N. Broom

2 that you analyzed did you rely on?

3 A. The Stroz Friedberg report.

4 Q. Anything else?

5 A. No, sir, with one clarifying statement.
6 The MSG messages that were included in my list of
7 all media presented, Defendants' Exhibit 3, I was
8 also provided with those; however, I was not able
9 to do an exhaustive review of all of those in the
10 time space that it was presented.

11 Q. Assume that's included in the list of
12 electronic evidence, so you have got your list of
13 media presented, Defendants' Exhibit 3, that's
14 the extent of all electronic evidence that you
15 analyzed or were at least provided with; correct?

16 A. Yes, sir.

17 Q. And other than that and the Stroz
18 Friedberg report you did not rely on anything
19 else in preparing your report; correct?

20 A. As referenced on Defense Exhibit 3,
21 there are two Zuckerberg contract page 1.tif and
22 Zuckerberg contract page 2.tif, those were two
23 TIFF documents that I was provided by Mr. Boland,
24 that's the extent.

25 Q. So other than the items listed on

1 N. Broom

2 Defendants' Exhibit 3 and the Stroz Friedberg
3 report you did not rely on any other materials in
4 preparing your report; correct?

5 A. No, sir, no other electronic
6 information.

7 That's not a clarifier. No, sir, I
8 have not relied on anything else.

9 Q. Let me just ask it again to be clear
10 because my question put a double negative in.

11 Did you rely on anything else besides
12 the items listed on Defendants' Exhibit 3, which
13 is the list of electronic evidence, and the Stroz
14 Friedberg report in preparing your report?

15 A. Yes, I did, and the fact that I did
16 research, if that's -- I think I'm finally
17 understanding this, the scope of your question.

18 Yes, I did, I conducted research into
19 how certain things might have happened other than
20 the information that was written in the Stroz
21 Friedberg report, so, yes, I did additional
22 research to try to see if there were other
23 plausible explanations.

24 Q. And that was in the nature of Internet
25 research into, for example, viruses and such, is

1 N. Broom

2 that right?

3 A. Correct.

4 Q. And that research that you did was in
5 fact documented in your report as sources;
6 correct?

7 A. That is correct.

8 Q. Was there anything that you did in the
9 nature of that kind of research that is not
10 documented in your report?

11 A. No, sir.

12 Q. So beyond the items that are listed in
13 Defendants' Exhibit 3, list of items presented to
14 you, and anything listed in your report and the
15 Stroz Friedberg report, did you rely on any other
16 material in preparing your report?

17 A. No, sir.

18 Q. Your training is in computer forensics;
19 correct?

20 A. Yes, sir.

21 Q. You are also a trained investigator;
22 right?

23 A. Yes, sir.

24 Q. And you previously were a police
25 officer?

1 N. Broom

2 A. Yes, sir.

3 Q. Your investigative experience includes
4 interviews with people who have committed crimes,
5 I assume?

6 A. Yes, sir.

7 Q. In your experience, do people who
8 commit crimes ever lie?

9 A. Yes, sir.

10 Q. Do they ever try to hide information?

11 A. Yes, sir.

12 Q. In fact, as noted at page 128 of the
13 book "JumpStart," criminals often try to hide
14 their behaviors and obscure evidence; right?

15 Page 129. I think I misspoke.

16 A. I think you misspoke a second time.
17 The statement is true, I just don't
18 know where in the book it's documented.

19 Q. Right. I think it's on page 126, but
20 I'll take your agreement with the statement.

21 If you could now just turn to page 140,
22 the book notes that understanding how people
23 think can be helpful --

24 A. Could you pause for a moment?

25 Q. Sure.

1 N. Broom

2 A. When you say a page number could you
3 give me a chance to get there before you ask the
4 question?

5 Q. Of course.

6 A. Okay. Please go ahead.

7 Q. I am referring to the bottom half under
8 the section "How people think."

9 "Understanding how people think can be
10 helpful. A powerful tool available to forensic
11 investigators is the ability to understand
12 motive, that is the reason a suspect committed a
13 crime. Understanding how criminals think makes
14 it possible for you to discover, analyze, and
15 reconstruct the events leading to a crime."

16 Is that what the book says?

17 A. Yes, it is.

18 Q. And you agree with that; right?

19 A. I do.

20 Q. Because you, as you acknowledge, people
21 can lie, when assessing use of a computer as a
22 digital forensics examiner, you would focus on
23 digital forensic artifacts; correct?

24 A. That's correct.

25 Q. You would not typically accept

1 N. Broom

2 someone's statements regarding use of a computer
3 at face value without further verification;
4 correct?

5 A. That is correct.

6 Q. You would also try to forensically
7 verify such statements; correct?

8 A. I attempt to, yes, sir.

9 Q. Computer forensics experts would not
10 typically rely on such statements without
11 forensic verification; correct?

12 A. Every piece of information is taken in
13 the whole, but the basic premise of your question
14 is correct.

15 Q. Right.

16 So the idea of a statement that is not
17 verified by further forensic artifacts, such a
18 statement would not be typically relied upon by
19 computer forensics experts; right?

20 A. I think it would be used as part of the
21 tool of figuring out what happened. I don't
22 think any statements made by anyone are a hundred
23 percent relied on as the truth during an
24 investigation.

25 As Reagan said, trust but verify.

1 N. Broom

2 Q. So computer forensics experts would not
3 typically rely on such statements without forensic
4 verification; correct?

5 A. Yes, sir.

6 Q. And that's because people who commit
7 crimes often make self-interested statements or,
8 as the book stated, try to hide their behaviors
9 and obscure evidence; right?

10 A. That's true.

11 Q. And so relying on computer forensic
12 evidence is obviously important in doing this
13 type of investigation, and examples of that type
14 of evidence might include the names and content
15 of electronic files; right?

16 A. That's true.

17 Q. The names of user profiles or folder
18 names; right?

19 A. Any information discovered on a
20 computer would potentially be important, if you
21 want to say a list.

22 Q. I'm just asking about user profiles and
23 folder names.

24 That would be important; right?

25 A. Yes, sir.

1 N. Broom

2 Q. And given your training as a computer
3 forensics investigator, it's that type of
4 forensic artifact that would generally be more
5 reliable than a person's statement about their
6 computer use; right?

7 A. Yes, sir.

8 Q. Computer forensics experts typically
9 would not rely solely on a person's statement
10 about their computer use; right?

11 A. Yes, sir.

12 Q. As you testified a little bit ago,
13 Mr. Ceglia produced numerous items of electronic
14 evidence to Stroz Friedberg pursuant to court
15 order, some of which you also reviewed; correct?

16 A. That's correct.

17 Q. And that production of electronic media
18 was governed by a court order; right?

19 A. That's my understanding, yes, sir.

20 Q. Have you read that court order?

21 A. No, sir, I haven't.

22 Q. Has Mr. Boland provided it to you?

23 A. No, sir.

24 Q. Did you ask for it?

25 MR. BOLAND: Just to clarify, what

1 N. Broom

2 order are you talking about? There's a
3 thousand of them in the case.

4 MR. SOUTHWELL: It's a court order
5 compelling production of electronic media,
6 the July 1st, 2011 court order.

7 MR. BOLAND: Okay.

8 Q. You've not read that order?

9 A. No, sir.

10 Q. Have you asked for it?

11 A. No, sir.

12 MR. SOUTHWELL: I'd like to mark that
13 order, the July 1st, 2011 order, please, as
14 the next exhibit.

15 (Defendants' Exhibit 4, court order
16 dated July 1, 2011, marked for
17 identification, as of this date.)

18 Q. I show you now what is marked as
19 Defendants' Exhibit 4.

20 I'll represent to you that this is the
21 July 1st, 2011 court order that compelled
22 production of Mr. Ceglia's computer's hard drive
23 and electronic media for inspection.

24 I understand you have not seen it
25 before; is that right?

1 N. Broom

2 A. That's correct.

3 Q. If I could direct your attention to
4 page 2 --

5 A. If you are going to ask me questions on
6 this I'd like time to review the whole document.

7 Q. Okay. That's fine.

8 If I might just direct your attention
9 to what I'm going to ask about and then I will
10 give you the opportunity to review it?

11 A. No, sir. Let me read the whole
12 document first and then I would be happy to
13 answer any specific questions. I don't want to
14 take something out of context.

15 Q. Fine.

16 A. This does not appear to be a complete
17 and accurate copy of the document because it says
18 in the document that there is supposed to be
19 other items attached to it, the inspection
20 protocol, electronic asset inspection protocol
21 attached hereto.

22 Do you have a more complete document
23 for me to review?

24 Q. I will get you the full version of
25 this. This has been filed as document 83 in the

1 N. Broom

2 Court, this is actually the full copy of document
3 83 which has been filed, which is a July 1st,
4 2011 order. It does refer to other protocols
5 which do govern the case, but those were not
6 actually filed as document 83.

7 A. Even where they say attached?

8 Q. That's right.

9 A. Okay.

10 Okay, sir.

11 Q. I want to direct your attention to the
12 first paragraph on the second page of Defendants'
13 Exhibit 4, which begins "Ordered that on or
14 before July 15th in sworn declaration plaintiff
15 shall identify all computers and electronic media
16 in his possession, custody and control," and then
17 it goes on to define that and certify that all
18 such computers and electronic media are being
19 produced for inspection to defendants, and you
20 can read the whole thing, that's the provision I
21 want to direct your attention to.

22 A. Yes, sir.

23 Q. Okay.

24 I recognize that you have not seen this
25 before now and you've just taken the time to read

1 N. Broom

2 it. As I've represented, this is the operative
3 court order that governs the production of
4 electronic evidence. There are other orders that
5 govern some of the details of that, including a
6 protective order and some other things, but
7 directing your attention to that provision, that
8 provision makes clear that Mr. Ceglia was to
9 produce all electronic assets in his possession,
10 custody and control; is that right?

11 A. That's what the document says.

12 MR. BOLAND: I'm going to object, it's
13 asking him to speculate what the order means.
14 It's not his order, he didn't write it.

15 I mean, you can answer if you think you
16 know what the judge meant, but this is the
17 judge's order, you're asking him to tell you
18 what it means. I think that's improper.

19 MR. SOUTHWELL: You understand the
20 Court's orders about speaking objections.
21 This is a perfectly appropriate area of
22 questioning given that he's providing
23 opinion about these assets and he hasn't
24 even read the operative court order.

25 MR. BOLAND: I will disagree that it is

1 N. Broom

2 the operative court order. You are asking
3 him to interpret what the judge meant by
4 whatever paragraph 2 is and I think that's
5 improper, but if he understands, he can
6 answer.

7 Q. I am not asking you to interpret what
8 the Court meant. I'm asking you whether that's
9 clear to you that Mr. Ceglia is to produce all
10 electronic assets in his possession, custody and
11 control for inspection.

12 A. I read the same thing you just said.

13 Q. And as a computer forensics
14 investigator, you are familiar with the concept
15 of preservation obligations?

16 A. Yes, sir.

17 Q. What is your understanding of
18 preservation obligations in the litigation
19 context?

20 A. That evidence needs to be preserved
21 once the -- I'm sorry, I lost the specific
22 word -- once litigation is anticipated.

23 Q. So once litigation is anticipated there
24 is an obligation on the parties who know of that
25 to preserve all relevant information, including

1 N. Broom

2 electronic information; correct?

3 A. That's correct.

4 Q. Are you also aware that the parties'
5 exchange of information in this case is governed
6 by a protective order?

7 A. Yes, sir; you just said that.

8 Q. Have you read a copy of the protective
9 order in this case?

10 A. No, I haven't.

11 Q. Has Mr. Boland provided that to you?

12 A. No, sir.

13 MR. SOUTHWELL: Let's take a quick
14 break, we've got to change the tape.

15 MR. BOLAND: Sure.

16 THE VIDEOGRAPHER: Going off the
17 record. The time is 11:19. This ends tape
18 number 1.

19 (Recess taken.)

20 THE VIDEOGRAPHER: We are back on the
21 record. The time is 11:27. This is tape
22 number 2.

23 BY MR. SOUTHWELL:

24 Q. Now, Mr. Broom, as we discussed,
25 Mr. Ceglia produced the Stroz Friedberg, hundreds

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2 of pieces of electronic evidence and that was
3 produced pursuant to the court order that we just
4 looked at; correct?

5 A. Yes, sir.

6 Q. And in your experience as a forensic
7 investigator, when somebody provides with you a
8 hard drive and asks that you inspect it, it is
9 fair to assume that they exercise some control
10 over it; correct?

11 A. Yes, sir.

12 Q. And it was Paul Ceglia who produced
13 that evidence to Stroz Friedberg; right?

14 A. If you say so. I mean, I wasn't there
15 to witness it and I haven't seen the chain of
16 custody paperwork, so I can't say yes to that.

17 Q. Okay.

18 Well, the Court ordered Mr. Ceglia to
19 produce all items within his possession, custody
20 and control, right, we've just established that?

21 A. The Court ordered that, but I can't say
22 Mr. Ceglia did. I wasn't there. I agree with
23 you the court order said that, but I can't say I
24 saw it happen.

25 Q. I understand, that's fair, and

1 N. Broom

2 Mr. Ceglia might have not produced everything in
3 his possession, custody and control, that is
4 equally possible?

5 A. I don't have any knowledge one way or
6 the other on it.

7 Q. Now, in your report -- you have your
8 report, okay.

9 In your report you provide an opinion
10 about Stroz Friedberg's use of the term "Ceglia
11 media," right, and you provide an opinion to the
12 court that -- this is at page 4 -- in actuality
13 the majority of items described in the report
14 belong to or were under the control of Paul's
15 parents, Vera and Carmine Ceglia; right?

16 A. That is correct, that's what the report
17 says.

18 Q. And as you previously said, you were
19 not involved in this matter before May of 2012;
20 correct?

21 A. That is correct.

22 Q. And you've never spoken to Carmine or
23 Vera Ceglia?

24 A. That's correct.

25 Q. Your report uses the phrase "belonged

1 N. Broom

2 to and under control."

3 Belonged to generally refers to
4 ownership; right?

5 A. Yes, sir.

6 Q. Under the control refers to someone's
7 ability to access or otherwise exercise control
8 over an item; right?

9 A. Yes, sir.

10 Q. And you stated that the Ceglia media
11 composed more than a thousand items of electronic
12 evidence; right?

13 A. That's correct.

14 Q. So your opinion here is that more than
15 500 items of electronic evidence that were
16 produced to Stroz Friedberg belonged to or were
17 under the control of Mr. Ceglia's parents?

18 A. Your distinction is now clear to me and
19 I will agree with your statement.

20 What I meant to say when I wrote this
21 was the media that was in my possession, and that
22 is definitely a distinction that should be made,
23 but I did not make the correct distinction of all
24 of the evidence that Stroz reported on.

25 THE WITNESS: May I refer to you as

1 N. Broom

2 Stroz Friedberg or just Stroz? Is that fine
3 for the --

4 Q. The Stroz Friedberg report.

5 A. So the Stroz report, I did not include
6 all of their items. I was referring specifically
7 to the items that I had in my possession --

8 Q. I understand.

9 A. -- and that is a distinction that
10 needed to be clarified.

11 Q. So the opinion in your report that the
12 majority of the items described in the report
13 belonged to or were under the control of Paul's
14 parents is incorrect?

15 A. It is incorrect. If we're talking
16 about the Stroz report, all of the items they
17 looked at, that is correct, it is an incorrect
18 statement.

19 Q. Let's look at page 4 of your report.
20 It begins by referring to what Stroz Friedberg
21 makes reference to the Ceglia media and then the
22 third line down reads "In actuality the majority
23 of items described in the report belonged to or
24 were under the control of Paul's parents, Vera
25 and Carmine Ceglia."

1 N. Broom

2 The report in that sentence is a
3 reference to the Stroz Friedberg report; correct?

4 A. Correct.

5 Q. And this statement is inaccurate;
6 correct?

7 A. As I've stated, yes.

8 However, it is true that not all of the
9 evidence belonged to Paul.

10 Q. Okay. Well, we're going to get to
11 that, so hold on to that thought.

12 So what you were referring to was the
13 media in your possession.

14 Which of the Ceglia media in your
15 possession belonged to or were under the control
16 of Paul Ceglia's parents?

17 A. The item that we refer to as AC or
18 Ceglia loose E01 file, this item AD or the
19 EDEL110394-1.E01 file, that is the Ceglia hard
20 drive, both of those items.

21 Q. And that's it; correct?

22 A. No, sir.

23 AF that is referred to as the NY02 and
24 AE that is referred to, the EDEL110394-5.E01
25 those also belonged to Paul's parents.

1 N. Broom

2 Q. And that's it, those four items?

3 A. Yes, sir.

4 Q. So four of the eight items that you've
5 listed on your inventory, it's your opinion that
6 they belong to the parents?

7 A. Yes, sir.

8 Q. And what is your factual basis for your
9 opinion that those belong to or were under the
10 control of Paul Ceglia's parents?

11 A. AC and AD based on the information
12 located on the hard drive itself, AF and AG based
13 on a conversation with Paul.

14 Q. So, I'm sorry, give me those again.
15 AF and AE is based on information
16 provided to you by Paul?

17 A. You are correct, AF as in Frank and AE
18 as in Edward.

19 Q. And what was the information provided?

20 A. That that computer belonged to his
21 parents.

22 Q. How was that information conveyed to
23 you?

24 A. Via telephone.

25 Q. What was stated?

N. Broom

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A. "That computer belonged to my parents."

Q. Did you ask any questions about it?

A. No.

Q. You simply accepted that statement at face value?

A. Yes.

Q. Did you forensically verify that statement in any way?

A. No, sir. I did not have time.

Q. And AC and AD you said that there was information located on the machine, that was the factual basis for your opinion?

A. Yes, sir.

Q. What specifically was there that you located?

A. E-mail specifically.

Q. Can you please be more specific?

A. No, sir.

Q. There was one e-mail, more than one e-mail?

A. A couple e-mails.

Q. A couple e-mails.

And how did that provide the basis for your opinion that they belonged to Paul Ceglia's

1 N. Broom

2 parents, the machine?

3 A. Because the e-mail program installed on
4 the computer had e-mails for Vera Ceglia.

5 Q. I just want to make sure I understand.

6 The fact basis for your opinion is you
7 located two e-mails that were e-mails from Vera
8 Ceglia on that machine?

9 A. Five e-mails from Vera Ceglia that were
10 sent through the Outlook Express.

11 Q. So you located five e-mails that you're
12 saying were sent by Vera Ceglia on that computer
13 and is that the sole basis for your opinion that
14 the machine belonged to and was under the control
15 of Paul Ceglia's parents?

16 A. In addition to Paul's statement that it
17 was under the control of his parents.

18 Q. I thought his statement was with
19 respect to AF and AE?

20 A. And another statement was him referring
21 to AC and AD.

22 Q. So he also provided a statement related
23 to AC and AD.

24 Was that in the same telephone
25 conversation?

1 N. Broom

2 A. Yes.

3 Q. And what was the statement with respect
4 to AC and AD?

5 A. That that is a single hard dive and it
6 belonged to his parents.

7 Q. And you took that statement at face
8 value as well; yes?

9 A. I took that as the basis of my start of
10 my investigation.

11 Q. Well, you accepted his statement;
12 correct?

13 A. I didn't discount it.

14 Q. You also provide an opinion that, on
15 page 5, that the Seagate hard drive was removed
16 from an HP Pavilion computer that belonged to
17 Vera and Carmine Ceglia, Paul's parents; right?

18 A. Yes, sir.

19 Q. Did you remove the Seagate hard drive
20 from that computer?

21 A. No, I did not.

22 Q. How was it removed?

23 A. I have no idea.

24 Q. Do you have any information about when
25 it was removed or by whom?

1 N. Broom

2 A. No, I do not.

3 Q. Did you receive the HP Pavilion
4 computer as part of your forensics investigation?

5 A. The actual physical computer, no, I did
6 not.

7 Q. And what is the basis for your opinion
8 here that the Seagate hard drive was removed from
9 the HP Pavilion computer that belonged to Vera
10 and Carmine Ceglia?

11 A. The statement that the computer
12 belonged to his parents from Paul first and then
13 second it is an HP Pavilion computer from
14 electronic evidence.

15 Q. What is an HP Pavilion computer?

16 A. The Seagate hard drive was an HP
17 Pavilion computer based on the electronic
18 evidence on the drive.

19 Q. You're saying the Seagate computer --
20 the Seagate hard drive, excuse me, was installed
21 in an HP Pavilion computer?

22 A. Correct. The names of the partitions
23 on that hard drive are actually HP Recovery and
24 HP Pavilion, which is indicative of a hard drive
25 that was in an HP Pavilion computer.

1 N. Broom

2 Q. So you're relying on a forensic finding
3 that the Seagate hard drive came from an HP
4 Pavilion computer, but the sole basis for your
5 opinion that it was owned by Paul Ceglia's
6 parents was Paul Ceglia's statement; correct?

7 A. Correct. And the e-mail messages from
8 Vera Ceglia that were in the sent items.

9 Q. So those are the only two pieces of
10 factual information upon which you rest that
11 information; correct?

12 A. Yes, sir.

13 Q. And the HP Pavilion computer that you
14 say the Seagate was housed in, that's a desktop
15 computer; correct?

16 A. Yes, sir.

17 Q. Later in your report you talk about a
18 computer CMOS battery?

19 A. CMOS, yes.

20 Q. CMOS battery, and that refers to this
21 computer when you are having this discussion
22 generically?

23 A. In general, yes.

24 Q. You did not analyze the HP Pavilion
25 machine?

1 N. Broom

2 A. That is correct.

3 Q. Now, your report also contains an
4 opinion regarding the accuracy of Stroz's
5 description of the Ceglia media; right?

6 A. Yes, sir.

7 Q. Referring to page 4 of your report
8 where you provide an opinion that Stroz's
9 description of the Ceglia media is, quote, "a
10 convenient oversimplification"; right?

11 A. Correct.

12 MR. SOUTHWELL: Let's mark the Stroz
13 Friedberg report just for clarity of the
14 record's sake.

15 (Defendants' Exhibit 5, Stroz Friedberg
16 report dated March 26, 2012, marked for
17 identification, as of this date.)

18 Q. Showing you now what's marked as
19 Defendants' Exhibit 5, is that the Stroz
20 Friedberg report that we've been referring to?

21 A. Yes, sir.

22 Q. Let's turn to page 2 of Defendants'
23 Exhibit 5.

24 A. When you are referring to page 2, are
25 you referring to page 2 at the top or page 2 at

1 N. Broom

2 the bottom?

3 Q. Page 2 at the bottom.

4 A. Okay.

5 Q. If you can read that first bullet
6 there, which ends with the definition of Ceglia
7 media, please, out loud.

8 A. Which one?

9 Q. The first bullet on page 2.

10 A. "Stroz Friedberg did not find any exact
11 copies of the Work For Hire document on the
12 hundreds of pieces of media produced by
13 Mr. Ceglia, including three computers, three hard
14 drives, 174 floppy disks and 1,087 CDs, herein
15 the Ceglia media."

16 Q. Hereinafter the Ceglia media, right?

17 A. Sorry, hereinafter.

18 Q. So Stroz Friedberg is defining the
19 Ceglia media for purposes of its report as all of
20 this evidence that was produced by Mr. Ceglia;
21 correct?

22 A. Correct.

23 Q. And to your knowledge all of that
24 evidence was in fact produced by Mr. Ceglia;
25 right?

1 N. Broom

2 A. Yes, sir.

3 Q. And Ceglia was in fact obligated by
4 court order to produce all media in his
5 possession, custody and control; right?

6 A. I have not read the Court order that
7 said specifically that except for -- without
8 seeing the attachment to Defense Exhibit 4, the
9 answer is yes.

10 Q. Well, okay. Defendants' Exhibit 4 sets
11 out that Mr. Ceglia is to produce all electronic
12 items in his possession, custody and control;
13 right?

14 A. Yes, sir.

15 Q. Your opinion is this is a convenient
16 oversimplification.

17 By convenient, you are implying that
18 Stroz Friedberg unfairly or inaccurately
19 insinuated that these items were in Paul Ceglia's
20 control?

21 A. I think that's an accurate statement.

22 Q. And do you now see that that is in fact
23 incorrect, that he in fact produced these items
24 pursuant to court order to produce all media in
25 his possession, custody and control?

1 N. Broom

2 MR. BOLAND: I object to the form of
3 the question.

4 Q. Go ahead, you can answer.

5 A. State your question again, please.

6 Q. Isn't it correct that Stroz Friedberg
7 defined the term "Ceglia media" to include the
8 hundreds of pieces of electronic evidence that
9 were produced by Mr. Ceglia pursuant to a court
10 order?

11 A. That is correct.

12 Q. And that court order you've
13 acknowledged obligates Ceglia to produce media in
14 his possession, custody and control; right?

15 A. That is correct. However, nowhere do
16 they make reference to some of that evidence not
17 being directly under Paul's control.

18 In the case of computers that are not
19 specifically controlled or owned by him, yet I
20 had information that they were controlled by his
21 parents, I felt that was relevant.

22 Q. And that information came directly from
23 Mr. Paul Ceglia; right?

24 A. And the e-mail messages on the computer,
25 yes.

1 N. Broom

2 Q. Right, okay.

3 And the five e-mail messages that you
4 assert are from Vera Ceglia; right?

5 A. Correct.

6 Q. Other than those five e-mail messages
7 that you assert are from Vera Ceglia and the
8 statements of Paul Ceglia, you have no other
9 basis to say that any of this media was
10 controlled by anyone other than Mr. Paul Ceglia;
11 correct?

12 A. Correct.

13 Q. Now, Mr. Broom, I want to turn to a
14 discussion of your opinion about the two March
15 3rd, 2004 e-mails discussed in your report.

16 Beginning at page 11 of the Stroz
17 Friedberg report they describe these two e-mails
18 sent on March 3rd, 2004 to Jim Kole at Sidley
19 Austin; right?

20 A. I'm sorry, I didn't hear the question
21 part.

22 Q. I'm just orienting us to the concept on
23 page 11 that starts the conversation or starts
24 the aspect of the Stroz Friedberg report relating
25 to these two e-mails, and what I'm referring to

1 N. Broom

2 are the e-mails sent on March 3rd, 2004 to Jim
3 Kole at Sidley Austin, and for purposes of this
4 deposition I'm going to refer to those two e-mails
5 as the Kole e-mails.

6 Do you understand?

7 A. Yes, sir.

8 Q. You understand that it is Facebook's
9 position that Paul Ceglia sent these e-mails;
10 right?

11 A. I understand that.

12 Q. You understand that Facebook contends
13 that the e-mails, the Kole e-mails contain the
14 authentic contract between Mark Zuckerberg and
15 Paul Ceglia; right?

16 MR. BOLAND: Objection.

17 Q. You can answer.

18 A. State the question again, please.

19 Q. You understand that Facebook contends
20 that the e-mails contained the authentic contract
21 between Mark Zuckerberg and Paul Ceglia; right?

22 A. I will agree that you said that and
23 that that's their contention.

24 Q. I am just asking for your understanding
25 of their contention.

1 N. Broom

2 A. Yes, sir.

3 Q. You understand that that is Facebook's
4 contention, that the e-mails contain the
5 authentic contract between Zuckerberg and Ceglia?

6 A. Yes, sir.

7 Q. And you understand that it's Facebook's
8 contention that the existence of this authentic
9 contract in 2004 renders this case a fraud;
10 right?

11 A. That is your contention, yes.

12 Q. You understand that Facebook has called
13 this authentic contract a smoking gun; right?

14 A. Yes.

15 Q. You understand that these e-mails, the
16 Kole e-mails, were sent from an Adelphia e-mail
17 account; right?

18 A. Yes.

19 Q. And at least one of the e-mails was
20 signed by Paul; correct?

21 A. By signed you mean does it have the
22 name "Paul" typed in, yes.

23 Q. Right.

24 And the e-mails, the Kole e-mails were
25 sent to a former attorney and business partner of

1 N. Broom

2 Paul Ceglia's, Jim Kole; right?

3 A. Yes.

4 Q. And they were sent in the midst of
5 Ceglia's contractual dispute with Mr. Zuckerberg
6 over StreetFax work; correct?

7 A. I don't know that for a fact, but it
8 seems reasonable based on the time lines.

9 Q. You further understand that there were
10 partially recovered and deleted versions of the
11 TIFF attachments to the Kole e-mails found on the
12 Seagate hard drive; right?

13 A. Yes.

14 Q. Now, I want to be clear about your
15 opinion.

16 You are not offering an expert opinion
17 that the Kole e-mails were not sent in 2004;
18 correct?

19 A. That is correct.

20 Q. So you agree that the Kole e-mails were
21 sent in 2004?

22 A. I agree they could have been sent in
23 2004, yes. I don't have an opinion they were
24 definitely sent in 2004. I'm not disputing the
25 fact that you're saying that the Stroz Friedberg

1 N. Broom

2 report said they were sent in 2004.

3 Q. But you are not offering an expert
4 opinion that they were not sent in 2004; right?

5 A. That is correct.

6 Q. And you are offering an opinion that
7 they --

8 MR. SOUTHWELL: Let me strike that.

9 Q. Let's turn to the Stroz Friedberg
10 report at page 19.

11 There they present evidence of the
12 Internet headers for the Kole e-mails; right?

13 A. Yes, sir.

14 Q. And Internet headers are important
15 digital forensic artifacts; right?

16 A. Yes, sir.

17 Q. In fact at page 136 of the "JumpStart"
18 book it notes forensic investigators should
19 examine e-mail headers; is that right?

20 A. Yes, it does.

21 Q. And that's because e-mail headers
22 provide information that can corroborate
23 authenticity as they can reflect contemporaneous
24 information about the transmission of an e-mail;
25 is that right?

1 N. Broom

2 A. That is correct.

3 Q. Now turning to your report at page 18,
4 you state that the Internet header information
5 associated with the two e-mails, the Kole e-mails,
6 is legitimate; correct?

7 A. I said appears legitimate.

8 Q. Okay.

9 A. The information header information
10 would all appear legitimate because it is, and
11 that was based on an alternate method of which
12 the e-mails could have been --

13 Q. Right.

14 My question is, the e-mail header
15 information associated with the Kole e-mails is
16 legitimate, according to your opinion as you've
17 just stated it; correct?

18 A. You are taking what I said out of
19 context. However, I do not have a problem with
20 the Internet header information as presented in
21 Stroz's report. However, I have not
22 independently reviewed that information.

23 Q. Well, your opinion at page 18 is the
24 Internet header information would all appear
25 legitimate, because it is.

1 N. Broom

2 A. Did you read the page prior to that?

3 Q. Yes.

4 But I'm asking, that is your opinion,
5 that is what it states on page 18 of your report;
6 correct?

7 A. You are taking the statement out of
8 context. Read the page before that and you'll
9 have the full statement.

10 Q. I understand the full statement.

11 A. Then your question is trying to change
12 what I stated in my report.

13 My statement was based on this theory
14 was tested and validated, therefore the
15 information headers would all appear legitimate.

16 In other words, based on the theory I
17 proposed, it would all have legitimate header
18 information. I did not say the header
19 information was all legitimate. Those are two
20 separate things.

21 Q. What about the words "because it is"?
22 The words "because it is" is a statement that the
23 Internet header information is legitimate, is it
24 not?

25 A. Based on my theory. If my theory was

1 N. Broom

2 true then the headers would all be legitimate.

3 If you followed the theory that I gave
4 and that was the way that this occurred, then all
5 the headers would be legitimate.

6 The statement for all the -- the
7 Internet header information would all appear
8 legitimate was based on the theory. If the
9 theory was followed, then therefore the Internet
10 history, Internet headers would be legitimate,
11 that's the totality of that statement. You're
12 saying something different.

13 Q. I'm just reading your statement.

14 Your statement is, the Internet header
15 information would all appear legitimate, because
16 it is.

17 MR. BOLAND: I object.

18 A. If the theory was followed.

19 MR. BOLAND: I'm going to object not
20 only to the form of the question, but you've
21 asked it multiple times now.

22 A. Ask you asked the question a different
23 way I might be able to answer it, but you're
24 putting words in my report that are not there.
25 The "because it is" is referring to if you

1 N. Broom

2 followed the theory; that's totally different
3 than the way you're asking the question.

4 Q. But you don't dispute that the Internet
5 header information for the Kole e-mails is
6 legitimate; correct?

7 A. I do not dispute it and I have not had
8 an opportunity to examine it. I received that
9 information on Tuesday of this week, therefore I
10 can't comment on its legitimacy because I haven't
11 had a chance to investigate it.

12 I will say, to maybe save you a little
13 time, I have no reason to suspect it's not
14 legitimate.

15 Q. Right.

16 And you have no reason to state an
17 opinion that these Kole e-mails were not sent in
18 2004?

19 A. That is correct.

20 Q. You understand that in response to
21 Facebook's disclosing of the Kole e-mails in this
22 litigation Mr. Ceglia has said that Mr. Zuckerberg
23 was somehow responsible for sending these e-mails,
24 not Paul Ceglia; right?

25 A. I read that.

1 N. Broom

2 Q. You understand that Ceglia is claiming
3 that Zuckerberg or his agents surreptitiously
4 sent the Kole e-mails; right?

5 A. I have read that.

6 Q. And your report is being submitted in
7 support of that claim; right?

8 MR. BOLAND: Objection.

9 Q. You may answer.

10 A. My -- say the question again, please.

11 Q. Your report is being submitted in
12 support of the claim that Zuckerberg or his
13 agents surreptitiously sent the Kole e-mails.

14 A. My report is being submitted to explain
15 other possibilities that could have occurred.

16 Q. So you are not offering this court an
17 expert opinion as to who other than Paul Ceglia
18 sent these e-mails to Paul Ceglia's former
19 colleague Jim Kole?

20 MR. BOLAND: Objection.

21 Q. You can answer.

22 A. Absolutely not.

23 Q. And you are not offering this court an
24 expert opinion that Mark Zuckerberg sent the
25 e-mails; right?

1 N. Broom

2 A. No, sir.

3 Q. Just to be clear, you are not offering
4 an opinion, an expert opinion that Mark
5 Zuckerberg sent the e-mails; am I correct?

6 MR. BOLAND: Objection. This is the
7 second time that you asked the same
8 question.

9 A. Has the question changed in any form
10 from the other times?

11 Q. No.

12 A. I just want to make sure you are not
13 trying to confuse it.

14 Q. No. There was a double negative, I
15 want to just make sure it's clear.

16 You are not offering an expert
17 opinion --

18 A. Absent a video camera over somebody's
19 shoulder or an in-person witness watching
20 somebody send an e-mail, no one can say for
21 certain who sent an e-mail, the electronic
22 evidence doesn't give us that.

23 There's a saying that we have that you
24 can't put hands on keyboards or butts in seats,
25 and that works both ways on this evidence.

1 N. Broom

2 Q. I understand.

3 So you are not offering an opinion to
4 the Court that Mark Zuckerberg sent the Kole
5 e-mails?

6 A. Nowhere in my report does it say that.

7 Q. I'm just trying to clarify what your
8 report says and what it doesn't say.

9 A. I think you've clarified it 12 times,
10 and nowhere does it say, do I say that Mark
11 Zuckerberg sent the e-mail.

12 Q. You are not offering an expert opinion
13 that Gibson, Dunn sent the e-mails; correct?

14 A. Does it say anywhere in my report that
15 Gibson, Dunn sent the e-mails? You will not read
16 anything like that in my report.

17 Q. And you are not offering that expert
18 opinion; correct?

19 A. No, I'm not.

20 Q. You're not offering an expert opinion
21 that the Orrick firm sent the Kole e-mails;
22 correct?

23 A. I don't know who the Orrick firm is.

24 Q. So you're not offering that expert
25 opinion?

1 N. Broom

2 A. That's correct.

3 Q. You are not offering any expert opinion
4 that any agent of the defendants sent the Kole
5 e-mails; am I correct?

6 A. I have no idea who sent the Kole
7 e-mails, that is my statement.

8 Q. What facts can you offer the Court in
9 support of the opinion that somebody other than
10 Paul Ceglia sent the Kole e-mails?

11 A. My opinion is that there's a
12 possibility that somebody other than Paul Ceglia
13 sent the e-mail.

14 Q. And what is that possibility based on?

15 A. Of a technique that would allow the
16 e-mail messages to be placed on that computer in
17 a way other than being created directly on that
18 computer, and I'm referring to the HP Pavilion
19 that the Seagate hard drive came from.

20 Q. And what are the forensic facts that
21 you can offer in support of that theory?

22 A. That there is a testable method that
23 the e-mails could appear in the Outlook sent
24 items folder without actually being sent from
25 that computer.

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2 Q. And you are referring to the tests you
3 ran on, using a Web-based e-mail system?

4 A. That is correct.

5 I assume you're probably pretty
6 familiar with that, the basis of that test in
7 your own e-mail --

8 Q. I was going to ask you the question in
9 a moment.

10 So you are referring to pages 17 to 18
11 of your report?

12 A. Correct.

13 Q. Right. The alternate method by which
14 e-mails could have been sent to the computer?

15 A. Yes, sir.

16 Q. Just so that is clear, this theory is
17 the sole theory on which you would offer to the
18 court in support of your opinion that there's a
19 possibility that someone other than Paul Ceglia
20 sent the Kole e-mails?

21 A. Along with Paul's statement to me that
22 he did not send the e-mails from his parents'
23 computer, which was the basis for me examining
24 other alternative theories.

25 Q. I see.

1 N. Broom

2 So there's another piece of evidence
3 which is that Paul Ceglia told you that he didn't
4 send the e-mails?

5 A. Correct, during the one conversation I
6 had with Paul, that was one of the things --

7 Q. Is that referenced in your report in
8 any way?

9 A. No.

10 Q. So the main piece it seems of evidence
11 that led you to explore alternative theories is
12 Paul saying to you I didn't send them, and you
13 didn't put that in the report?

14 A. I didn't put that gravity exists
15 either, but it does.

16 Every item that potentially keyed me in
17 on what to look for was not documented in the
18 report; however, those that I had time, I
19 examined.

20 Q. And the statement of somebody about
21 whether he sent it or not was not important
22 enough for you to include?

23 A. I believe your statement earlier was
24 that statements by parties cannot always be
25 believed, so I did not necessarily put everything

1 N. Broom

2 in the report that I was told.

3 Q. Yet you are testifying now that that
4 was -- the starting point of your investigation
5 was that he told you that he did not send it;
6 correct?

7 A. That was not the starting point, but
8 that was one of the points.

9 Q. So the sole bases you have as factual
10 findings that you could offer to the Court in
11 support of your opinion that there is a
12 possibility somebody other than Paul Ceglia sent
13 the e-mails is Paul Ceglia's statement he didn't
14 and your test of how e-mails might appear to have
15 been sent from a computer; is that correct?

16 A. In addition to that, the fact that this
17 computer was his parents' computer and not his
18 own, the fact that the documents that were sent
19 don't appear to make any sense in the way that
20 they were -- the attachments were made.

21 Q. You are referring to the TIFF files?

22 A. Correct.

23 Q. Okay.

24 What else?

25 A. The numbering system for the names of

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2 the TIFF files doesn't make sense.

3 Q. Okay.

4 What else?

5 A. That's all I can think of now.

6 Q. So let me just make sure that I
7 understand what you are testifying here today.

8 The facts that you are pointing to in
9 support of this opinion that this possibility
10 that somebody other than Paul Ceglia sent the
11 e-mails are Paul Ceglia's statements, the
12 statements of Paul Ceglia about his, that this
13 was his parents' computer, your test of an
14 alternate method detailed on pages 17 and 18 of
15 your report and the fact that there are, as you
16 refer to it, the documents make no sense in the
17 TIFF files and the numbering, that's also
18 detailed in your report; is that right?

19 A. Correct.

20 Q. Is there anything else?

21 A. No.

22 Q. At page 8 of your report you refer to
23 the possibility that there is malware on the CD
24 hard drive; correct?

25 MR. BOLAND: Objection.

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2 Q. You can answer.

3 A. I would say it's not a possibility
4 there's malware on the computer, I think it's
5 confirmed there is malware on the computer, on
6 the hard drive.

7 Q. And your report includes multiple pages
8 of descriptions of various viruses and malware
9 that it's your opinion you found on the Seagate
10 hard drive; right?

11 A. Stroz also found them on the hard
12 drive, but yes.

13 Q. And much of those descriptions in your
14 report from pages 8, 9, 10 and on are straight
15 from the Internet sources that you rely on;
16 correct?

17 A. Correct.

18 Q. Your actual opinion with respect to
19 malware is at page 8 of the report, am I right,
20 where you write "It is reasonable to deduce from
21 the results of the malware detection software
22 that the Seagate hard drive was infected with
23 numerous malware files that potentially left the
24 system open for compromise from an external
25 source."

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2 A. That is correct.

3 Q. So you wrote it's reasonable to deduce
4 that the Seagate hard drive was infected.

5 So to be clear, you are not offering an
6 opinion that the Seagate hard drive was in fact
7 infected; correct?

8 A. No. The Seagate hard drive was
9 infected.

10 Q. Your statement is it is reasonable to
11 deduce that it was infected. So you are not
12 stating that it was in fact infected, you are
13 stating you found malware files on the computer,
14 but you are not providing an expert opinion that
15 it was in fact infected?

16 MR. BOLAND: Objection to the form of
17 the question.

18 Go ahead.

19 A. What is your distinction between the
20 two?

21 Q. Well, I'm asking because your statement
22 is it is reasonable to deduce, which is not a
23 statement that in fact the hard drive was
24 infected.

25 A. It's reasonable to deduce. The results

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2 of the malware detection software are the hard
3 drive was infected with numerous malware files
4 that potentially left the system open. It's
5 reason to deduce that the system was potentially
6 left open for compromise, but they definitely
7 were infected, the computer definitely was
8 infected.

9 Q. So let me be clear.

10 You are not offering an expert opinion
11 that the malware actually left the hard drive
12 open to compromise, you are simply stating it's
13 reasonable to deduce that that might have
14 happened?

15 A. That is correct.

16 Q. So you are not offering --

17 A. Can you stop for one minute? Can you
18 stop for one minute?

19 On page 8 the next sentence after what
20 we just read says a much greater or more
21 time-consuming analysis of this will be needed to
22 specifically address the impact of each of these
23 threats, so that's exactly what I was saying is I
24 don't have the answer of whether it was, I said
25 that it's reasonable to deduce that it could have

1 N. Broom

2 been.

3 Q. I understand that, we're getting to
4 that, and I just want to make it clear what you
5 are opining on and what you're not opining on.

6 So you're not offering an expert
7 opinion that any of the malware you identified
8 actually provided an opportunity for the Kole
9 e-mails to be sent by an external source in 2004;
10 correct?

11 A. That is correct. It offered the
12 potential.

13 Q. Your report does not address at all the
14 actual impact of the malware you detected;
15 correct?

16 A. That's correct.

17 Q. In fact, you know of no facts that
18 there was an actual infection allowing for remote
19 access of the hard drive; correct?

20 A. That's not accurate.

21 Q. Well, what you found was the existence
22 of malware on the hard drive; correct?

23 A. That is true.

24 What is your definition of being
25 infected or being --

1 N. Broom

2 Q. I'm getting to that, I'm getting to
3 that.

4 And it is the existence of the malware
5 that you found that is your support for your
6 opinion that it's reasonable to deduce that the
7 hard drive was infected and potentially left the
8 system open for compromise; correct?

9 A. Yes, sir.

10 Q. And as you said, you noted that a
11 greater, more time-consuming analysis is needed;
12 right?

13 A. Yes, sir.

14 Q. Now I want to turn to the malware that
15 you say you actually found on the Seagate hard
16 drive; right? You say that you identified these
17 when you ran virus-scanning programs in 2012;
18 correct?

19 A. Correct.

20 Q. You used up-to-date virus-scanning
21 software; right?

22 A. Correct.

23 Q. And you used up-to-date virus
24 definitions to search; right?

25 A. Correct.

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MR. SOUTHWELL: I would like to have this now marked as Defendants' Exhibit 6.

(Defendants' Exhibit 6, two-page document entitled "Complete list of 'malware' purportedly identified by Mr. Broom on the Seagate hard drive," marked for identification, as of this date.)

MR. BOLAND: Alex, I didn't hear what you identified that as. Can you tell me again what is Exhibit 6?

MR. SOUTHWELL: I will give you a copy. I forget how I identified it --

THE WITNESS: Complete list of malware purportedly identified by Mr. Broom on the Seagate hard drive.

Q. Mr. Broom, this is the list of the malware that you provided to defendants through plaintiff's counsel; correct?

A. Correct.

Q. And this is the complete list of the malware files that you identified on the Seagate hard drive; right?

A. Correct.

Q. The inventory includes 37 files; right?

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2 A. Yes, sir.

3 Q. Your report actually only lists 12
4 malware files; right?

5 A. What's your distinction?

6 Q. I'm just asking, your report at pages --

7 A. Oh, yes, sir, yes, sir.

8 Q. -- 7, your report at pages 7 to 12
9 lists 12 malware files that you testified you
10 located. This inventory, Defendants' Exhibit 6,
11 lists 37; correct?

12 A. That is correct, and it does state on
13 my report this is not a complete list.

14 Q. And you provided this list, Defendants'
15 Exhibit 6, to Mr. Boland on or about June 24,
16 2012, about three weeks after you submitted your
17 report; right?

18 A. That is correct.

19 Q. For this malware to be relevant to the
20 question of providing remote access so that the
21 Kole e-mails could have been sent, the malware
22 would have had to exist in 2004; correct?

23 A. State the question again.

24 Q. For the malware to have provided remote
25 access so that the Kole e-mails could have been

1 N. Broom

2 sent in 2004 the malware would have had to exist
3 in 2004; right?

4 A. The basis of your statement is true.
5 However, once a system is compromised the
6 accuracy of anything on that system is now in
7 question, and what I mean by that is hackers are
8 known to not only infect a system but then keep
9 it updated and reinfect the system with the
10 newest and latest techniques to maintain access
11 to a system. For instance, someone could have,
12 in 2004, have accessed the system and then
13 through the period of time maintained that access.

14 Q. Well, but malware files -- the only
15 malware files that were present on the Seagate
16 hard drive in March of 2004 could have allowed
17 remote access to the computer then; is that fair
18 to say?

19 A. If an attack did not exist in 2011
20 then it could not have -- excuse me, if an attack
21 did not exist in 2011 -- until 2011, it could not
22 have been used in 2004 to compromise the system,
23 I agree with that statement.

24 However, as I just stated, any
25 compromise of a system at any time after that

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does make anything on the system questionable.

Q. I understand that point, you've said it.

You did not investigate which of the files that you identified on the Seagate hard drive were actually present on that Seagate hard drive in March of 2004; correct?

A. That is correct.

Q. And in fact some of the malware files that you identified as present on the Seagate hard drive did not even exist in 2004; correct?

A. That's a totally valid statement, yes, sir.

MR. SOUTHWELL: I would like to ask this be marked as Defendants' Exhibit 7, please.

(Defendants' Exhibit 7, four-page printout from Bitdefender Resource Center Web site, marked for identification, as of this date.)

Q. I am showing you what's marked as Defendants' Exhibit 7, which is a printout of the aspects of the Trojan.Peed virus from the Bitdefender Resource Center.

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2 Do you see that?

3 A. Yes, sir.

4 Q. Do you recognize this as a description
5 of the Trojan.Peed virus that you identified on
6 the Seagate hard drive?

7 A. Yes, sir.

8 Q. And this confirms that in fact the
9 Trojan.Peed virus was discovered in 2007; correct?

10 A. That's correct.

11 MR. BOLAND: Objection.

12 MR. SOUTHWELL: I would like this to be
13 marked as Defendants' Exhibit 8, please.

14 (Defendants' Exhibit 8, 14-page
15 printout from securelist.com Web site,
16 marked for identification, as of this date.)

17 Q. I am showing you now what's been marked
18 as Defendants' Exhibit 8, which is a printout
19 from securelist.com with a description of the
20 rootkit TDSS virus.

21 Do you see this?

22 MR. BOLAND: Is this something you
23 printed out? Do we know who printed this
24 out?

25 MR. SOUTHWELL: I am asking the witness

1 N. Broom

2 if he recognizes it.

3 MR. BOLAND: It's just off of the
4 Internet somewhere?

5 A. I'm going to take the time to read it.
6 You just handed me a 14-page document asking if I
7 recognize it, and I've never seen it before.

8 Q. I'm not asking if you recognize it, I
9 didn't ask that. I am representing to you that
10 it is a printout from securelist.com which
11 contains information about the rootkit TDSS
12 software virus.

13 What I'm asking is whether this
14 describes that virus that you found on the
15 Seagate hard drive.

16 A. And now I will take the time to read it
17 to answer your question because I have no idea
18 what it contains.

19 MR. BOLAND: Are you saying you printed
20 this out?

21 MR. SOUTHWELL: I'm asking the
22 witness.

23 MR. BOLAND: I'm just asking if you're
24 going to testify about the authenticity of
25 what you printed out at some point here. We

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2 don't even know where this came from, I
3 mean, you're just throwing stuff in front of
4 him and saying does he --

5 MR. SOUTHWELL: Well, he said through
6 numerous sources related to the viruses he
7 cited, so --

8 MR. BOLAND: Very well, and you're
9 asking him -- whatever you want to ask him.

10 MR. SOUTHWELL: I'm asking the
11 questions.

12 BY MR. SOUTHWELL:

13 Q. Mr. Broom, may I ask what page you are
14 up to? I want you to have the opportunity to
15 read it.

16 The only question I'm going to ask is
17 whether this confirms that the rootkit TDSS was
18 detected in 2008.

19 MR. BOLAND: Objection. He already
20 asked for time to read the document.

21 MR. SOUTHWELL: I understand.

22 MR. BOLAND: And I need to read it as
23 well.

24 A. Okay. I'm finished reading.

25 Q. Thank you, Mr. Broom.

1 N. Broom

2 So now that you have reviewed
3 Defendants' Exhibit 8, am I correct that the
4 rootkit TDSS virus was detected in 2008?

5 A. That's correct.

6 Q. And are you also aware that the rootkit
7 agent CE virus was detected in 2006?

8 MR. BOLAND: Again objection.

9 MR. SOUTHWELL: I'm asking if he is
10 aware.

11 MR. BOLAND: But you are assuming in
12 the question that it occurred and you are
13 not an expert and not testifying.

14 MR. SOUTHWELL: I am asking if he is
15 aware.

16 A. I'm not aware of that; however, I don't
17 dispute it, I have no reason to.

18 Q. And are you aware that the Cryptor
19 virus was released in 2008?

20 A. I am not aware of that.

21 Q. Do you have any reason to dispute that?

22 A. I have no reason to dispute it.

23 Q. So a number of the malware files that
24 you identified in fact could not have, in your
25 words, left the system open for compromise from

1 N. Broom

2 an external source because they did not exist in
3 2004; correct?

4 A. That is correct.

5 Q. And in fact there is no forensic
6 evidence that the computer containing the Seagate
7 hard drive was remotely accessed on March 3rd,
8 2004; correct?

9 A. I think you're missing the point of the
10 statement.

11 Q. Answer my question.

12 Yes or no --

13 MR. BOLAND: Objection.

14 Q. -- is there any forensic evidence that
15 the computer containing the Seagate hard drive
16 was remotely accessed on March 3, 2004?

17 A. The fact that the system is compromised
18 now means that the data that's on there cannot be
19 relied upon.

20 Q. So you cannot point to any forensic
21 evidence that the computer containing the Seagate
22 hard drive was remotely accessed in March of
23 2004; correct?

24 A. Correct.

25 Q. Now, you also have included in your

1 N. Broom

2 opinion that the malware files potentially left
3 the system open for compromise. As I think you
4 said, you don't identify any of the malware that
5 actually could leave the system open and was on
6 the Seagate hard drive in 2004, and in fact some
7 of the malware files that you identified as
8 existing today on the hard drive do not actually
9 have the ability to leave the system open to
10 remote access; correct?

11 A. Correct.

12 Q. That's not what they do; right?

13 A. Correct.

14 Q. Only certain types of malware have that
15 ability; right?

16 A. Correct.

17 Q. And a number of the malware files that
18 you identified do not facilitate that kind of
19 remote access, for example, the Trojan.Shutdowner
20 on the Seagate hard drive that you cite to a
21 Microsoft Web page in 2010, that virus simply
22 shuts down the system; right?

23 A. I will take your generic definition,
24 yes. It's slightly different than that, but yes,
25 I agree, it does not allow for compromise.

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2 Q. And the rootkit.agent.CE simply hides
3 files; right?

4 A. That sounds correct.

5 Q. And the rootkit TDSS also just hides
6 files; right?

7 A. I think that's an oversimplification
8 for TDSS.

9 Q. Well, a number of the malware files
10 that you identified in fact could not leave a
11 system open for compromise from an external
12 source because that's not what they do; right?

13 A. That is correct.

14 Q. And your opinion is that it is possible
15 that an infection could have allowed remote
16 access; right?

17 A. That is correct.

18 Q. And that is simply speculation about
19 something that could have happened, not something
20 that did happen; right?

21 A. And hence the reason why I said a much
22 greater investigation needs to occur to discuss,
23 to investigate the malware.

24 Q. I am correct that that is speculation
25 about something that could have happened, not

1 N. Broom

2 something that did happen; correct?

3 A. And again, that is the reason why I
4 said a much more time-consuming investigation
5 needs to occur.

6 Q. I understand.

7 Can you answer my question, please.

8 MR. BOLAND: Objection.

9 A. I think I have, I think I said yes
10 three times.

11 Q. Thank you.

12 And to occur -- well, one would need a
13 virus that provides for remote access, actual
14 infection of that virus and that the infection
15 occurred in 2004, you would need all three of
16 those to have the possibility of allowing remote
17 access to send a file in March of 2004; correct?

18 A. Correct.

19 Q. And you have offered the Court no
20 forensic facts on any of these required facts;
21 right?

22 A. Correct.

23 Q. And if you assume that none of the
24 identified malware on the Seagate provides for
25 remote access or were around in 2004 or on the

1 N. Broom

2 machine, then you would not advance your opinion
3 that it's even possible; correct?

4 A. I think you just made an assumption
5 that I didn't make. Please state it again.

6 You said the word "assumed," so
7 please --

8 Q. I'm asking you to assume that the
9 identified malware does not provide for remote
10 access and was not on the machine in 2004.

11 If you make those assumptions, then
12 your opinion about the possibility would not be
13 accurate?

14 A. If I assume that no CD was on this
15 computer it wouldn't have allowed access either.
16 Your question doesn't make any sense.

17 You're asking me to assume that nothing
18 was on the computer, therefore nothing happened?

19 Q. No.

20 I'm asking you -- you have asserted
21 that it is possible that there could have been
22 remote access and you have identified particular
23 malware.

24 Have you identified any particular
25 malware that existed in 2004 that in fact

1 N. Broom

2 provided for remote access that in fact could
3 have allowed the accessing of this computer to
4 send the e-mail in March 2004?

5 A. No.

6 Q. So your opinion is all about the
7 possible and it's essentially speculation;
8 correct?

9 A. My opinion is that the system is now
10 compromised and anything that is on the system is
11 now suspect.

12 Q. And that opinion is equally consistent
13 with Mr. Ceglia sending the Kole e-mails;
14 correct?

15 MR. BOLAND: Objection to the form of
16 the question.

17 A. I think you're close on your question.
18 I just didn't quite understand the concept.

19 Q. Your finding about the possibility of
20 remote access is entirely consistent with
21 Mr. Ceglia himself sending the Kole e-mails;
22 right?

23 A. There is nothing to discount that,
24 correct.

25 Q. Now, you also testified that a

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N. Broom

purported factual basis for your view of the Seagate hard drive was the possibility to remotely access the Adelphia account; right?

A. I think you skipped something there.

Say that again?

You started to say one thing and then I think you switched.

Q. I'm referring to your -- I am transitioning to your opinion about the remote access to the Web-based Adelphia account; right?

So you have theorized that it is possible to remotely access the Adelphia account from which the Kole e-mails were sent; right?

A. Correct.

Q. And you speculate that someone other than Paul Ceglia could have remotely accessed the Adelphia account using Carmine Ceglia's login credentials; right?

A. That's correct.

Q. And to be clear, you are not offering an actual expert opinion that this happened; right?

A. Correct.

Q. Please explain what information a

1 N. Broom

2 person would have needed to access Adelphia's
3 Web-based e-mail server on March 3rd, 2004.

4 A. The username and password for the
5 account.

6 Q. Anything else?

7 A. Not that I can think of.

8 Q. Is it your opinion that Mr. Zuckerberg
9 personally knew Carmine Ceglia's username and
10 password for the Adelphia account?

11 A. I'm sorry, I was distracted by
12 something at your door.

13 Say that again.

14 Q. Is it your opinion that Mr. Zuckerberg
15 personally knew Carmine Ceglia's username and
16 password for the Adelphia account?

17 A. It is my understanding -- and again,
18 this is through the telephone conversation that I
19 had with Paul Ceglia -- that the user name and
20 password for that account was the same as the
21 StreetFax account and that Mr. Zuckerberg would
22 have had access to that, that is the total
23 factual basis that I have, there's no independent
24 anything, it was just that statement.

25 Q. So the, as you said, the total factual

1 N. Broom

2 basis for this opinion is the statement of Paul
3 Ceglia that Mark Zuckerberg had access
4 credentials for a StreetFax account; right?

5 A. That is correct.

6 Q. What did Mr. Ceglia say about what
7 StreetFax account?

8 A. He didn't.

9 Q. He didn't?

10 A. He just said that my father's username
11 and password for the e-mail -- for the Adelphia
12 account was the same as for the StreetFax account
13 and then that of course Mr. Zuckerberg would have
14 had access to everybody's credentials on the
15 StreetFax account.

16 Q. What else, if anything, did Mr. Ceglia
17 say about Carmine Ceglia's Adelphia account in
18 this phone conversation?

19 A. Nothing I can recall.

20 Q. How long was this phone conversation
21 that you had with Mr. Ceglia?

22 A. Probably an hour. I don't have it
23 recorded.

24 Q. Do you have notes of the conversation?

25 A. Not specifically, no. I just -- no, I

1 N. Broom

2 don't, there are no handwritten notes or
3 anything. I was just mentally recording ideas to
4 work on and --

5 Q. Are there typed notes?

6 A. No.

7 Q. So you have no independent forensic
8 evidence that Mr. Zuckerberg knew Carmine
9 Ceglia's Adelpia login credentials; correct?

10 A. No.

11 Q. Is that correct?

12 Am I correct that --

13 A. Please say it again so I can make sure
14 you are getting the right answer. I think we are
15 on the same page, it's just --

16 Q. Yes. I'm just asking it not in as
17 precise a way as I would like to.

18 You have no independent forensic
19 evidence that Mr. Zuckerberg knew Carmine
20 Ceglia's login Adelpia credentials?

21 A. That's correct.

22 Q. Thank you.

23 And you have no independent forensic
24 evidence that Mr. Zuckerberg even knew that
25 Carmine Ceglia had an Adelpia account; right?

1 N. Broom

2 A. No, sir, I don't.

3 Q. Do you have any independent forensic
4 evidence that Mr. Zuckerberg knew who Jim Kole
5 was?

6 A. No, sir, I don't.

7 Q. The recipient of the e-mail --
8 MR. SOUTHWELL: I'll withdraw that.

9 A. It's the same question; right?

10 Q. Yes.

11 So your expert opinion is based
12 entirely on Carmine's -- I'm sorry, on Paul
13 Ceglia's say-so; right?

14 A. Say the whole statement one more time.

15 Q. Your expert opinion with respect to
16 this remote access of the Adelpia account is
17 based solely on Paul Ceglia's statements to you?

18 A. The possibility that it exists?

19 Q. Right.

20 A. The possibility exists that it could
21 have been true whether Paul would have stated
22 that or not, the possibility is there.

23 Q. Right. The possibility is anybody
24 could have accessed anything, right, that's all
25 theoretically possible; right?

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N. Broom

But your only factual basis here for this opinion with respect to the Adelpia account is Paul Ceglia's statement to you; correct?

A. Correct.

Q. Do you typically offer expert opinions entirely on the basis of a party to a lawsuit seeking large amounts of money?

A. State that again? I'm sorry, that didn't make sense.

Q. Do you typically offer an expert opinion entirely based on the statement of a party to a litigation seeking large amounts of money?

A. No, I don't typically.

Q. Now, in the Stroz Friedberg report, page 22, I want to direct your attention to that, please.

I'm sorry, first 20 and then 22.

Do you see in there the Internet header information for the Kole e-mails that's --

A. On page 20?

Q. Yeah, first page 20 and then page 22 -- sorry, 21, sorry.

A. 20 and 21, yes, I see those.

1 N. Broom

2 Q. And in both of these headers the word
3 "SMTP" appears at the bottom section and that
4 reflects the transfer, the first transfer of the
5 e-mail; correct?

6 A. I'm sorry, where are you saying?

7 Q. If you look at the third -- are you on
8 page 20?

9 A. Yes.

10 Q. Third line up all the way to the right
11 at the end SMTP ID.

12 A. Okay.

13 Q. That reflects the first transfer of the
14 e-mail; correct?

15 A. I think I see where you're going.

16 Go ahead.

17 Q. So am I correct that reflects the first
18 transfer of the e-mail in this Internet header
19 information?

20 A. What are you trying to say?

21 The first transfer is not a typical
22 term that I would use.

23 Are you just trying to say is that a
24 trail of the e-mail being sent?

25 Q. Yeah.

1 N. Broom

2 A. Yes.

3 Q. And SMTP stands for simple mail
4 transfer protocol; correct?

5 A. Correct.

6 Q. And that is used when an e-mail is
7 delivered from an e-mail client such as Outlook
8 Express; correct?

9 A. Correct. One of the ways that it could
10 be, but yes, it is.

11 Q. And when a message is sent via Webmail
12 client, the first transfer would occur via HTTP,
13 and that would be in the header, not SMTP;
14 correct?

15 A. I don't know the answer to that.

16 Q. So you don't know whether in fact the
17 Internet headers of the Kole e-mails confirm that
18 the e-mails were sent from a physical computer
19 containing the Seagate hard drive, even though
20 you've expressed an opinion about a possibility
21 that they were remotely accessed?

22 A. Again, I stated this earlier, I have
23 not had time to examine these Internet headers, I
24 received them on Tuesday, so I can't do any more
25 than read what I'm reading on this page. I can't

1 N. Broom

2 make an opinion based on anything other than
3 reading on this page.

4 Q. But you have rendered an opinion based
5 on the Stroz Friedberg report; correct?

6 A. Yes.

7 Q. This is in the Stroz Friedberg report;
8 correct?

9 A. Correct.

10 Q. And in fact you've rendered an opinion
11 about this information in your report?

12 A. That would be if this is factually
13 accurate, that's what the statement would have to
14 have been based on.

15 Now, with what you just said, that
16 leads another opinion of what could have happened
17 also, and that is just simply another SMTP client
18 could have been used, not necessarily the Web
19 interface, it could have been an SMTP client on a
20 different computer under control of somebody
21 else, that's a possibility; again, it's not -- I
22 don't have forensic facts to prove it, but it's
23 just a possibility.

24 Q. You will agree that the SMTP protocol
25 is reflective of using an e-mail client rather

1 N. Broom

2 than a Web-based interface; correct?

3 A. Yes, sir.

4 The only question that I have that I
5 don't know the answer to is I'm not sure if it
6 would have HTTP there or SMTP in the specific
7 area that you reference in the Internet header, I
8 just don't have the answer right now.

9 Q. And you also earlier acknowledged being
10 aware that Stroz Friedberg found partially
11 recovered and deleted versions of the StreetFax
12 contract TIFF files; right?

13 A. Yes.

14 Q. And they reside on the Seagate hard
15 drive; right?

16 A. Correct.

17 Q. Those files are distinct from the TIFF
18 files attached to the Kole e-mails which reside
19 in the sent Items DBX file; right?

20 A. Please explain what you mean by
21 distinct. What are you trying to say?

22 Q. Well, they're in the sent items DBX
23 file, there's e-mail message and the TIFF files,
24 and separate from that area on the Seagate hard
25 drive there are other TIFF files which were

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N. Broom

partially recoverable and deleted versions of the StreetFax contract; right?

A. There are -- the TIFF files are in another area that I can't describe how they were put there.

Q. But they are in another area?

A. They are partially there. They are recoverable, they are not active files on the drive, I believe, is a way to phrase it accurately.

Q. Right.

But they are in another area?

A. Exactly.

And as we stated, if we're going to take this in a totality, the Trojans that are currently present on the drive could have allowed somebody to place those there at a later date. So again, we've talked about various specifics, but then backing out to a larger issue, I have already stated that anything on this drive is questionable to me, so, yes, but I will agree with you that yes, those TIFFs are located in another area of the drive that is different than the sent items DBX file.

1 N. Broom

2 Q. So being in that other area of the
3 drive, they are not on the drive solely because
4 they were e-mailed from the Outlook Express
5 e-mail client; correct?

6 A. If they are to -- if you believe that
7 there was no compromise of the system, then yes,
8 but the area that they are currently located at,
9 I have not been able to ascertain what that is,
10 and Stroz did not go into detail in their report
11 and I have not been able to discover myself
12 independently what that particular area is where
13 they were located.

14 Q. Because you've only worked on the case
15 for 14 days; right?

16 A. Correct.

17 Q. But those deleted versions confirm that
18 the TIFF files were in fact created on the
19 Seagate hard drive; right?

20 A. Only if you believe that the system
21 wasn't compromised. I will agree that the
22 artifact is on the computer in a partial format,
23 but it does not -- if you don't believe that the
24 system was not compromised, then it's
25 questionable.

1 N. Broom

2 Q. Putting aside the system compromise
3 question for a second, the fact of those TIFF
4 files being in that other place on the Seagate
5 hard drive indicates that the Kole files were
6 sent from the physical computer containing the
7 Seagate hard drive; right?

8 A. I think you are reaching -- you're
9 stretching too far for me to agree with you on
10 that conclusion.

11 Q. And again, you have speculated that
12 there might have been an infection that would
13 allow for remote access, but you have no actual
14 evidence that that happened in this case; correct?

15 A. That is correct. Hence the reason why
16 I said a greater examination needs to take place.

17 I think you are about out of time on
18 the tape.

19 MR. SOUTHWELL: Why don't we take a
20 lunch break at this point, maybe try to make
21 it a quick one to keep moving, if that's all
22 right with everyone.

23 THE VIDEOGRAPHER: We are off the
24 record. The time is 12:48. This ends tape 2.

25 (Lunch recess: 12:48 p.m.)

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N. Broom

A F T E R N O O N S E S S I O N

(Time noted: 1:52 p.m.)

THE VIDEOGRAPHER: We are back on the record. The time is 1:52. This is tape number 3.

N E I L B R O O M, resumed and testified as follows:

EXAMINATION BY (Cont'd)

MR. SOUTHWELL:

Q. Good afternoon, Mr. Broom.

Over the lunch break did you discuss the case or the deposition with Mr. Boland?

A. Not at all.

Q. You earlier testified that your daily rate for the case is \$2,000 a day; is that right? Is that your rate regardless of how many hours you work on a case on that given day?

A. That's how I've done it on this particular case, yes.

Q. Is there a minimum number of hours or if you worked an hour in a day you could bill \$2,000 for the day?

A. On this particular case I billed for a day's work, approximately eight hours.

1 N. Broom

2 Q. So you actually worked a day's work in
3 order for you to bill the \$2,000; is that fair to
4 say?

5 A. I worked at least eight hours on a day.
6 This was the -- because of the nature of this
7 type of case, what I was doing was basically
8 analyzing Stroz's report, it wasn't a typical
9 processing evidence case like I normally would,
10 it was a little unique, a lot of this was mental
11 time, I guess is how you refer to it. As you've
12 seen and as you've already questioned me on,
13 coming up with alternate theories of something
14 that could have happened is not a typical
15 computer forensics case, so I was working outside
16 of the normal, you know, 8:00 to 5:00 type time
17 frame, but my \$2,000-a-day rate was agreeable to
18 my client, Mr. Boland.

19 Q. Got it, okay, right. It takes time
20 just to think about what ideas, what
21 possibilities might exist?

22 A. That's a fair way to phrase it and
23 that's what has been agreeable between the client
24 and myself.

25 Q. That makes sense, and to be able to

1 N. Broom

2 then put those ideas and that speculation into
3 your report; right?

4 A. That would be a fair way of saying it.

5 And just to clarify for you, my normal
6 bill rate is \$250 an hour and that's typically
7 how I perform computer forensic services. This
8 case has been unique, it was just more convenient
9 bill-wise and time-wise to bill the \$2,000 a day
10 rate, but that is not my norm.

11 Q. And earlier we talked about the Kole
12 e-mails and I asked you some questions about
13 whether you disputed whether they were sent in
14 2004, and you said you didn't dispute that, but
15 you didn't necessarily -- you were not able to
16 confirm it because you had not yet checked the
17 Internet header information from the actual
18 e-mail that was obtained from Sidley Austin; is
19 that right?

20 A. That is right.

21 Q. And you now have the actual e-mail from
22 Sidley Austin with the Internet header
23 information; correct?

24 A. I was provided the file on Tuesday and
25 I have not yet examined it.

1 N. Broom

2 Q. I understand that.

3 And you would examine the Internet
4 header information to determine whether it
5 appears to be legitimate to you; right?

6 A. Correct, and specifically to make sure
7 it matches with what Stroz put in their report,
8 which I have no doubt that it will, but I
9 obviously have to verify that.

10 Q. And if you verify that it matches and
11 it appears legitimate to you, then would you
12 agree that the Kole e-mails were sent on March
13 3rd, 2004?

14 A. At this point I don't have any reason
15 to disagree with that, so the answer would be yes.

16 Q. Now, you said a number of times this
17 morning that your view was that you had located
18 malware files on the Seagate hard drive and that
19 therefore it had been compromised was a phrase
20 you used.

21 A. Potentially.

22 Q. Potentially compromised.

23 What do you mean by that, potentially
24 compromised?

25 A. The fact that malware is on there means

1 N. Broom

2 that there is a likelihood that the remote access
3 to the system is possible and that was not
4 pointed out in the Stroz report and I figured
5 that it was a very normal thing -- excuse me. In
6 a forensics investigation it is very normal to do
7 a virus scan and so I conducted a virus scan and
8 discovered that many pieces of malware located on
9 the computer.

10 Q. And so you located those pieces of
11 malware and from that finding you have concluded
12 that one cannot rely on anything in terms of
13 forensic artifacts from that Seagate hard drive;
14 right?

15 A. At this point in time I've concluded
16 that a much deeper investigation has to be
17 conducted, but with the knowledge that that many
18 viruses and rootkits are on the system, anything
19 on the computer is suspect, and I think I've used
20 that word multiple times.

21 Q. Right.

22 And your position is anything is
23 suspect, so therefore you can't rely on any of
24 those pieces of evidence from the computer; right?

25 A. Yes, sir.

1 N. Broom

2 Q. And in your practice doing digital
3 forensics, you talked about doing cases that were
4 employment cases of employees alleged to have
5 taken proprietary information, something like
6 that.

7 Is that a typical sort of fact pattern
8 you might see in your practice?

9 A. Yes, sir.

10 Q. And in the course of that practice, in
11 inspecting machines, you have found malware on
12 those machines, I would assume; correct?

13 A. Not very often, and I'll tell you the
14 exact reason why, it's typically because those
15 computers are part of a corporate network and so
16 therefore malware discovery is removed prior
17 to --

18 Q. Okay.

19 But there have been some occasions
20 where you have found malware on machines?

21 A. In the past, I have found malware in
22 the past, yes.

23 Q. And were you will able to render
24 conclusions about whether there was material that
25 in that example had been taken improperly or --

1 N. Broom

2 MR. SOUTHWELL: Let me strike it.

3 Q. In those occasions when you found
4 malware were you still able to make conclusions
5 based on your forensics investigation for your
6 clients?

7 A. I have never had a case where the
8 malware affected my opinion on the computer. In
9 other words, I have never had a malware
10 infestation, infection to the point that it
11 caused me to question the validity of the data on
12 the computer such as I have in this case.

13 Q. Okay.
14 And although here you are saying the
15 existence of the malware precludes you from
16 drawing any conclusions; is that what you're
17 saying?

18 A. Concluding that additional
19 investigations need to be conducted on the
20 computer because of the malware.

21 Q. In fact, though, in your report you
22 have reached some conclusions based on evidence
23 that you have pointed to on the Seagate hard
24 drive; correct?

25 A. Correct.

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N. Broom

Q. In fact, you've reached a conclusion that Vera Ceglia was the owner of the Seagate hard drive because of the particular e-mails that you say that you saw on that hard drive; right?

A. Correct.

Q. And so the mere presence of malware on that machine has not prevented you from rendering an opinion when it's useful for you, but it has prevented you from saying that an opinion is valid when it goes against you?

A. Your point's taken.

Q. So I'm correct in that?

A. I don't know how useful it would be to say that Vera Ceglia's e-mails were on the computer, but I take the point that you're saying.

Q. Right, that you're -- so, I guess, to state it another way, the mere presence of malware files doesn't actually prevent the drawing of any conclusion about evidence on a file, it obviously is still relevant, but it doesn't prevent one from drawing conclusions based on forensic evidence on a computer; correct?

1 N. Broom

2 A. It makes the evidence questionable, and
3 if you would like to say the counter of that,
4 that it is questionable it was Vera Ceglia's
5 computer, I could agree with your conclusion.

6 Q. Right.

7 So you agree that it's questionable
8 whether it's Vera Ceglia's computer?

9 A. Yes, and I agree that any information
10 on the hard drive is questionable.

11 Q. Right.

12 But the mere existence, the mere
13 presence of malware doesn't prevent you from
14 drawing any conclusions; right?

15 A. Yes.

16 Q. Now, you also testified earlier about
17 one of the forensic artifacts that you sort of
18 pointed to and that is detailed in your report is
19 this idea that the TIFF files attached to the
20 Kole e-mails, I think your phrase was "make no
21 sense."

22 I may have stated it wrong. I think
23 that was --

24 A. You have stated it correctly.

25 Q. And you understand that the Kole

1 N. Broom

2 e-mails are two e-mails with TIFF attachments to
3 each one?

4 A. Yes.

5 Q. And on page 21 and 22 of your report
6 you talk about the quality of those TIFF files;
7 right?

8 A. Yes, sir.

9 Q. And you're not an expert in document
10 scanners; correct?

11 A. Absolutely not.

12 Q. You are not, in your words, a digital
13 imaging expert?

14 A. That is correct.

15 Q. You don't have any training or
16 expertise in document examination?

17 A. That is correct.

18 Q. You don't have any training or
19 expertise in printing or scanning technologies?

20 A. That's correct.

21 Q. You have not authored any publications
22 about printing or scanning technologies?

23 A. That is correct.

24 Q. You don't have any specialized degrees
25 in printing or scanning technologies?

1 N. Broom

2 A. That is correct.

3 Q. So this whole area about the images
4 basically is speculation outside of your area of
5 expertise; correct?

6 A. In the form of electronic evidence, a
7 TIFF file is a standard and, as I am sure you are
8 aware in the legal industry, a TIFF file is a
9 standard file format, and so I have experience
10 working with TIFF files and I'll leave it at that.

11 Q. Okay. Sure.

12 You know what a TIFF file is, you
13 understand it, but your opinion has to do with
14 the scanning or -- well, you have advanced a
15 theory about what might have happened with the
16 scan that led to the TIFF files?

17 A. Correct. And in my hypothesis and
18 testing I was able to obtain the same evidence
19 that we currently have in this case by performing
20 a certain step to get to that point --

21 Q. I understand that.

22 A. -- which, of course, presents an
23 alternate theory to what was done, and that's
24 where my expertise would stop.

25 Q. Got it.

1 N. Broom

2 So you are simply advancing an
3 alternate theory?

4 A. Yes.

5 Q. You are speculating about an alternate
6 theory?

7 A. That would be a fair assessment,
8 through the knowledge that I have of computer
9 systems and computer forensics.

10 Q. But not drawing on any expertise with
11 respect to printing or scanning technology,
12 because that's not an area that you have expertise
13 in; right?

14 A. That is true.

15 Q. Now let's spend a minute reviewing your
16 opinion.

17 You reduced, you did your alternate
18 sort of theory, you reduced an 8-1/2-by-11 piece
19 of paper, 30 percent of the original, and scanned
20 a portion of that copy; correct?

21 A. You're close. I took an original
22 document that was an 8-1/2-by-11 sheet of paper,
23 reduced it to 30 percent of its original size and
24 then set the scanner up to scan the resulting
25 area of the piece of paper that had printing on

1 N. Broom

2 it, so, in other words, I did not rescan an
3 8-1/2-by-11 sheet of paper, instead I rescanned
4 just the 30 percent size of the paper.

5 Is that -- are we clear?

6 Q. Yes, I think so.

7 And that resulting scan had a file size
8 that is approximately the same as the TIFF files
9 attached to the Kole e-mails; right?

10 A. For scan number 1 it was approximately
11 the size and for scan number 2 was exactly the
12 size.

13 Q. And from that observation you concluded
14 that the TIFF images are scans of documents that
15 are 30 percent the size of a typical 8-1/2-by-11
16 piece of paper; right?

17 A. That is one theory of how they could
18 have been there.

19 Q. Right.

20 And that is one theory that you have
21 advanced in your report?

22 A. That's correct.

23 Q. And as you said, you are speculating
24 about that theory; correct?

25 A. Exactly.

1 N. Broom

2 However, there's one more additional
3 fact that you didn't include --

4 Q. I'm getting to that.

5 A. Okay. I'll wait.

6 Q. So just to be clear, you are saying
7 that the TIFF images themselves are scans of
8 essentially postcard size documents?

9 A. I would say business card size.

10 Q. Business card size.

11 So your hypothesis is that the paper
12 documents that were unusually small in size were
13 scanned resulting in unusually small sizes?

14 A. You're close, but say it one more time.

15 Q. That paper documents that were
16 unusually small in size were scanned resulting in
17 unusually small files.

18 A. In my testing that is exactly -- that
19 occurred or that is one possibility for what
20 could have occurred.

21 Q. Right.

22 That is the alternative theory that you
23 have advanced?

24 A. Exactly.

25 Q. Okay.

1 N. Broom

2 Now, isn't it also possible to scan a
3 normal 8-1/2-by-11-inch piece of paper and then
4 reduce the file size?

5 A. Yes.

6 Q. And in fact some scanners have the
7 option to reduce the dimensions of a scan on the
8 scanner itself; correct?

9 A. Yes.

10 Q. And scanning software may have an
11 option to reduce the dimensions of a scan on the
12 computer; right?

13 A. Yes.

14 Q. You didn't consider any of those
15 explanations in your report; right?

16 A. I was giving an alternate theory;
17 obviously Stroz had already expanded on that
18 theory.

19 However, the theory you just gave
20 logically just doesn't make any sense, and my
21 point being if the argument is to be made that
22 Mr. Ceglia scanned in a document called StreetFax
23 to send to his attorney for the purpose of his
24 attorney assisting him with the case, why would
25 he shrink it down to a size that made it

1 N. Broom

2 unreasonable?

3 Q. There are several reasons why someone
4 actually might electronically reduce a file size
5 from a normal piece of paper; right? I am not
6 talking about what actually happened here --

7 A. Just in general?

8 Q. Just in general.

9 A. Absolutely.

10 Q. Users often scan documents and send
11 them in e-mail; right?

12 A. Yes.

13 Q. And so there are e-mail size limitations
14 on programs; right?

15 A. Are you asking specifically -- are you
16 talking about in the general, not in specific?

17 Q. Yes.

18 A. Yes, there are.

19 Q. And e-mail programs have different
20 limits on the file size, right, generally
21 speaking?

22 A. That's true.

23 Q. The size of a file also will affect how
24 quickly it will be transmitted; right?

25 A. That's true.

1 N. Broom

2 Q. Larger files take longer, obviously.

3 Back in 2004, many computer users were
4 still using dial-up connections; is that right?

5 A. That is true. I don't know if that was
6 the case here, but that is true.

7 Q. I understand.

8 And obviously dial-up connections are
9 much slower than today's broadband type
10 connections; right?

11 A. They are.

12 Q. Some ISPs even had time-out periods
13 where a connection would shut down if it was open
14 for an extended period of time, say, more than
15 five minutes; right?

16 A. You're still talking hypothetical?

17 Q. Mm-hm.

18 A. That's true.

19 Q. So reducing a file size would actually
20 enable, generally speaking, transmission across
21 the Internet at a faster speed; right?

22 A. Your statement is still generally true,
23 but I'll give the caveat that why send a document
24 that's going to be worthless when it gets to the
25 other end, why spend any time sending it if the

1 N. Broom

2 document is going to be so small, so distorted
3 that it's illegible when it gets to the other
4 end, it doesn't make logical sense of why you
5 would do it.

6 I agree with your statement there could
7 have been a need to shrink it down, but to shrink
8 something so small you couldn't read it doesn't
9 logically make any sense.

10 Q. Generally speaking still, though, users
11 also often will scan documents and save them on
12 to portable media; right?

13 A. Yes, sir.

14 Q. And are you aware of the fact that
15 Ceglia has stated in 2003 and 2004 he often saved
16 documents and imported e-mails to floppy disks?

17 A. The only place that I was aware of that
18 is when they talked about e-mails saved to a
19 floppy; I wasn't aware of that was his normal
20 practice or anything like that.

21 Q. Well, in fact, you examined two floppy
22 disks in this case; right?

23 A. Correct. And that's what I'm saying, I
24 was told that he saved Word documents to
25 floppies.

1 N. Broom

2 Beyond that I don't have any experience
3 or understanding of how Mr. Ceglia stores media.

4 Q. I understand.

5 The floppies that you reviewed were
6 3-1/2-inch floppy disks?

7 A. I reviewed forensics images of floppies.
8 I'm assuming that they were 3-1/2-inch floppies,
9 but that would only make sense.

10 Q. Fair enough.

11 But you are aware that a 3-1/2-inch
12 floppy has a maximum file capacity of 1.44
13 megabytes; right?

14 A. Correct.

15 Q. And in 2004 floppies were sort of a
16 more popular transfer mechanism than they are now
17 with USB flash drives; right?

18 A. Very true.

19 Q. And if one was using a 3-1/2-inch
20 floppy, you could not save a file larger than
21 1.44 megabytes on that disk; correct?

22 A. That is true.

23 Q. You noted in your report at page 21
24 that the TIFF files here are 923 and 945
25 kilobytes; right?

1 N. Broom

2 A. Correct.

3 Q. And that they were reduced by
4 approximately one third, so if they were regular
5 size they would have been --

6 A. I'm sorry, I think your number is
7 wrong.

8 What are you --

9 Q. You are saying in your alternate
10 explanation sort of experiment they were reduced
11 by -- well, no, I guess not reduced by a third,
12 they were reduced to a third of the original size?

13 A. 30 percent, specifically 30 percent.

14 Q. Fine, 30 percent.

15 A. And that's the distinction that people
16 say it sometimes wrong.

17 Q. You're right, that's more precise.

18 And at full size the TIFF files would
19 have been, you know, well over 2-1/2 megabytes?

20 A. Yes.

21 Q. In other words, they would not have fit
22 on a 3-1/2-inch floppy; correct?

23 A. Correct. But we're not talking about
24 saving files on a 3-1/2-inch floppy disk, we're
25 talking about sending it via e-mail.

1 N. Broom

2 Q. I understand.

3 I'm asking you if they would have fit
4 on a 3-1/2-inch floppy.

5 A. They would not.

6 How would somebody know that until they
7 actually did it, though, would be another
8 question I would raise. In other words, making a
9 full-size scan first and then figuring how big
10 that was that wouldn't fit on a floppy would be --

11 MR. SOUTHWELL: I move to strike the
12 answer, there was no question.

13 MR. BOLAND: Objection. He was
14 finishing his answer.

15 Q. Now, someone -- well, as you've
16 acknowledged, someone might reduce a file in size
17 in order to enable or facilitate transmission
18 across the Internet; right?

19 A. Yes, sir.

20 Q. And --

21 A. Again, you are talking 2004?

22 Q. Right. Particularly in 2004 that would
23 be more common?

24 A. Yes, sir.

25 Q. And someone might reduce the file size

1 N. Broom

2 to fit on a 3-1/2-inch floppy disk and, as you
3 stated, the floppy disks that you inspected here
4 were likely 3-1/2-inch floppy disks; right?

5 A. Yes, sir.

6 Q. Did you address any of these reasonable
7 explanations for the reduction in file size in
8 your report?

9 A. No, I did not.

10 Q. Now, you do not conclude that the TIFF
11 files attached to the Kole e-mails were not
12 scanned paper documents; right?

13 A. Double negative again, I'm sorry.

14 Q. You are not offering an opinion that
15 the TIFF files are not scanned paper documents,
16 you are not offering that opinion?

17 A. I'm sorry, you just said -- you are
18 doing a double negative and that threw me off on
19 the question.

20 Q. I just want to make sure I've clarified
21 your opinion.

22 Your opinion is that there is this
23 alternate explanation, you've speculated about
24 how this might have happened; right?

25 A. Yes, sir.

1 N. Broom

2 Q. You are not opining that the TIFF files
3 that were attached to the Kole e-mails are
4 something other than scanned paper documents?

5 A. At one point in time I believe there
6 was a scanned document, so I think I'm answering
7 your question the way you are asking it.

8 I think there was a piece of paper at
9 one time.

10 Q. Right, okay.

11 A. More correctly, two pieces of paper.

12 Q. Right.

13 The section of your report that we're
14 talking about here culminates in a rhetorical
15 question, which, paraphrasing here, it's page 22,
16 is why would Ceglia scan paper documents in a
17 manner to make them illegible.

18 Is that fair?

19 A. That's fair.

20 Q. You've already testified that you are
21 not an expert in digital imaging technology.

22 A. Yes.

23 Q. Indeed, you were referred to and spoke
24 to a different expert in digital imaging
25 technology; right?

1 N. Broom

2 A. I spoke to Mr. Boland who spoke with a
3 digital imaging expert. I personally did not
4 speak with the expert, I think that's exactly how
5 it's phrased in my report.

6 Q. Well, okay.

7 On page 22, right, it is interesting to
8 note that attorneys for the plaintiff have hired
9 a digital imaging expert and he reported that the
10 quality was too low to accurately examine.

11 So the he here is Mr. Boland, not a
12 digital imaging expert; is that right?

13 A. No, it was the digital imaging expert
14 who reported, but yes, it was -- the
15 communication was through Mr. Boland.

16 Q. So he didn't report it to you?

17 A. Correct.

18 Q. You got this through Mr. Boland?

19 A. That is correct.

20 Q. Do you have any information about the
21 qualifications of this digital imaging expert?

22 A. I think Mr. Boland would be the one
23 better to address that than myself. I didn't
24 hire him, so -- no, I did not.

25 Q. Do you have any information about the

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N. Broom

qualifications such that you put this into your report?

A. No, I did not. I was relying on the attorney's information, I wrote it exactly as is, I wrote it exactly -- I was not trying to obfuscate what was written.

I said the attorney -- attorneys for the plaintiff have hired a digital imaging expert in this case and he reported that the quality of the scans are too low to accurately examine, nothing more, nothing less than that statement.

Q. Do you know what the expert was asked to look at it?

A. The TIFF -- the scan 001.TIF and scan 002.TIF.

Q. That's all the expert was asked to look at?

A. I know he was asked to look at those two; specifically, I don't know what else.

Q. Do you know what the expert was asked to do?

A. I do not.

Q. Do you know if that expert filed a formal report in this case?

1 N. Broom

2 A. My understanding is he did not.

3 Q. Are you aware of anybody else that
4 you've gotten information about that's been put
5 in your report that did not file a formal report?

6 A. No.

7 Q. Do you know who the digital imaging
8 expert is that you were given information about?

9 A. I do not.

10 Q. You don't know the name?

11 A. No, sir.

12 Q. Now, you noted that based on your
13 experiment the scan would be illegible and
14 therefore you're sort of speculating why would
15 anybody do this; right?

16 A. You've asked a compound question.

17 Q. Sorry, right.

18 You've said that under your alternate
19 explanation theory the scan would be illegible?

20 A. If you look at page 24 of my report, I
21 think you can see it's illegible. It is not that
22 I'm saying it's illegible, I think you can see
23 it's illegible on page 24.

24 Q. And this is -- page 24 is the results
25 of your alternate explanation experiment?

1 N. Broom

2 A. Exactly.

3 Q. And you're stating it's illegible and
4 you're inviting me to look at that and conclude
5 that for myself, I understand that.

6 A. Yes, sir.

7 Q. And if you saw evidence that Jim Kole,
8 the recipient of the Kole e-mails and the TIFF
9 image, called the scan illegible, wouldn't that
10 be critical corroborating information that that
11 document was in fact sent by Mr. Ceglia to
12 Mr. Kole?

13 MR. BOLAND: Objection to the form of
14 the question, but it's a hypothetical, so
15 you can answer it.

16 A. I was just about to ask that.

17 Is that a hypothetical question or are
18 you asking me a specific question?

19 Q. I'm asking if you were aware of that
20 fact that Mr. Kole responded that the attachment
21 to the e-mail is illegible --

22 MR. BOLAND: Objection.

23 Q. -- I'm asking --

24 MR. BOLAND: That's not a fact. You
25 can't ask him a question and say it is a

1 N. Broom

2 fact when it isn't a fact, that's not
3 proper.

4 Q. I'm asking if you were to --

5 A. Please hold for a minute.

6 Okay. Go ahead. Thank you.

7 Q. Let me just direct you back to page 22
8 of your report --

9 A. Yes, sir.

10 Q. -- where, as we said, you posit this
11 rhetorical question, if plaintiff was interested
12 in receiving the assistance of his attorney, you
13 know, why would he have scanned something in in
14 an illegible way.

15 A. Yes, sir.

16 Q. And if we were to learn that his
17 attorney responded that what he got was
18 illegible, wouldn't that be critical
19 corroboration of the nature of the Kole e-mails?

20 A. Are you posing a hypothetical or are
21 you referring to the specific documents in the
22 Stroz report? That's two different things.

23 Q. I'm posing a hypothetical now.

24 A. Yes.

25 Q. That that would be critical

1 N. Broom

2 corroboration?

3 A. If it's a hypothetical, then the answer
4 is yes.

5 Q. And that would be corroborative of
6 Mr. Ceglia having sent the Kole e-mails; correct?

7 A. That one's a no.

8 You just made the leap that I explained
9 earlier I can't make. I can't put hands on
10 keyboards or butts in seats. In other words, I
11 don't know who sent --

12 Q. No, I said --

13 A. No, you did say that. You said that --

14 Q. I asked if it was corroborative --

15 A. -- that Mr. Ceglia sent it. I don't
16 know who sent it.

17 Q. I understand that.

18 Is it an additional piece of evidence
19 tending to prove that Mr. Ceglia was the author
20 of the Kole e-mails?

21 A. Is it another piece of evidence?

22 Yes.

23 Q. Tending to prove that?

24 A. Yes.

25 Q. Now, you also referred to, in your

1 N. Broom

2 report, the Outlook Express e-mail account,
3 referring to page 19 of your report, you refer to
4 the Outlook Express e-mail account referenced in
5 the Stroz report; right?

6 A. Yes, sir.

7 Q. Give me just a moment.

8 Actually, let's turn to page 17 of the
9 Stroz report.

10 A. I'm there.

11 Q. And there you see figure 4, a
12 photograph of the printed March 4th to 5th, 2004
13 e-mail chain, which is a printed copy of an
14 e-mail from Mr. Kole in which --

15 MR. BOLAND: I apologize for
16 interrupting you. I think he's not looking
17 at the right page.

18 THE WITNESS: I'm there. I'm fine, I'm
19 fine.

20 MR. BOLAND: You're not looking at the
21 same page.

22 THE WITNESS: I'm fine.

23 MR. BOLAND: Okay.

24 Q. And so I asked you a question
25 previously about if you understood that Mr. Kole

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N. Broom

responded that the e-mail was -- that the attachment to the e-mail was illegible, and you agreed that that would tend to confirm that it was Mr. Ceglia who sent the e-mail, and I'm asking you now that seeing figure 4 doesn't that in fact confirm that that is just what Mr. Kole responded to Mr. Ceglia?

MR. BOLAND: Objection. You can't put facts in your question, Alex, that don't exist, it's not appropriate.

MR. SOUTHWELL: I'm asking him what --

Q. You see the document right there; right?

A. I saw the document before you asked the question and that's why I said there's a difference between the hypothetical and what you're going to -- the questions you are asking right now. This --

Q. Because you are saying that he is not --

MR. BOLAND: Objection.

Can he answer the question?

Q. -- Mr. Kole is not responding that it's illegible.

Is that what you're saying?

MR. BOLAND: Objection. You

1 N. Broom

2 interrupted his answer.

3 Go ahead.

4 A. I am saying this particular document,
5 the printout for figure 4, leads to more
6 questions than answers, the first question being
7 this is a document, a printed document from
8 Mr. Kole.

9 How did it come to be in the possession
10 of Mr. Ceglia? In other words, this was -- this
11 came from Ceglia media from what I understand --

12 Q. Did you ask him that in your phone
13 conversation? It came from his niece, that's who
14 produced it to us.

15 MR. BOLAND: Objection.

16 Q. Let me rephrase that.

17 You didn't ask him that in your phone
18 conversation, I take it?

19 A. I did not.

20 Q. Okay.

21 So you were again confronted with a
22 piece of evidence, you're coming up with
23 speculation about why it might not be real.

24 It might not be.

25 Who knows where it came from, right?

1 N. Broom

2 There's any number of alternate
3 theories here; is that what you're saying?

4 A. There are alternate theories here.

5 Q. Now let's turn to page 19 of your
6 report.

7 You referred to the Outlook Express
8 e-mail account.

9 In reality, Outlook Express is an
10 e-mail client, right, it's not an e-mail account?

11 A. That's a fair statement.

12 Q. So you were actually referring to the
13 Adelphia e-mail account; right?

14 A. That's a fair statement, yes.

15 Q. And that account is registered to
16 Carmine Ceglia; correct?

17 A. I have not reviewed the paperwork from
18 Adelphia. I'll take your premise of saying yes,
19 it is.

20 Q. Did you ask for it?

21 A. I have, and it's not been provided to
22 me yet.

23 Q. Okay.

24 What is your basis for concluding that
25 the e-mail account belonged to Vera Ceglia?

1 N. Broom

2 A. The, again, Paul's statement that it
3 was his parents' Adelpia account, Adelpia
4 computer, and the name on the account being Vera
5 Ceglia, the name of the sender of the e-mail
6 being Vera Ceglia.

7 Q. When you are referring to the name on
8 the account you are referring to the display name
9 that shows up by way of example in figure 2 of
10 the Stroz report; is that right?

11 MR. BOLAND: What page are you talking
12 about, Alex, just so we know?

13 MR. SOUTHWELL: Page 13.

14 A. That is correct.

15 Q. Right.

16 So you're saying the name Vera Ceglia
17 is on the account because that is the display
18 name that shows up here on figure 2; right?

19 A. I think we're talking two different
20 things.

21 Are you talking about the --

22 Q. I am trying to find out what your
23 factual basis is for stating that it is Vera
24 Ceglia, that the Adelpia account belonged to
25 Vera Ceglia, and what you've said is Paul

1 N. Broom

2 Ceglia's statement and the fact that the Vera
3 Ceglia name is on the account.

4 I am trying to understand what you mean
5 by on the account.

6 A. Appears in the client.

7 Q. It appears as the display name in the
8 e-mail client?

9 A. Correct.

10 Q. So is that fact plus Paul Ceglia's
11 statements to you, is that piece of information
12 plus Paul Ceglia's statements to you from which
13 you conclude that the account belonged to Vera
14 Ceglia?

15 A. Correct.

16 Q. And you have not asked for or received
17 the actual account registration information;
18 correct?

19 A. I've asked for it, I have not received
20 it.

21 Q. And you asked Mr. Boland for it, I take
22 it?

23 A. Correct.

24 Q. Now, you noted that the sent items DBX
25 file contains five sent e-mails.

1 N. Broom

2 This is page 19 of your report; right?

3 A. That is correct.

4 Q. What is a DBX file?

5 A. It's an e-mail storage container used
6 by Outlook Express.

7 Q. You are not saying that these were the
8 only e-mails sent through the Adelphia accounts;
9 correct?

10 A. They are the only files that are still
11 in the sent Items folder of the DBX.

12 Q. Right.

13 But you're not offering an expert
14 opinion that these are the only e-mails that were
15 sent through the account?

16 A. Ever?

17 Q. Yeah.

18 A. No, I'm not offering that opinion.

19 Q. Because the sent mailbox simply has the
20 sent mails that are saved, not necessarily
21 everything that was sent; right?

22 A. Wrong. They have -- all of the
23 messages would be in the sent mailbox unless they
24 were deleted.

25 Your statement was that they were

1 N. Broom

2 saved. It's not a positive action you have to
3 take place. If you send a message, it's in the
4 sent items folder, you don't have to save it, it
5 is in the sent items folder unless you remove it
6 from the sent items folder.

7 Q. I understand.

8 But just to be clear, the sent items
9 folder does not necessarily contain all e-mails
10 that were sent through the account; right?

11 A. Ever? No.

12 Q. And there are reasons why a DBX file
13 might not contain e-mails.

14 You just noted a user could delete
15 them; right?

16 A. Correct.

17 Q. A user could also send e-mails from
18 another computer, right, through the account?

19 A. Correct.

20 Q. A user could send e-mails to a Webmail
21 account; right?

22 A. But you're making the opposite
23 statement.

24 If I send it through a Webmail account
25 it will be in -- it would sync up.

1 N. Broom

2 Q. It could sync up, right, but if they
3 used a Webmail account from a different computer,
4 then it would not be in this DBX file?

5 MR. BOLAND: Objection.

6 THE WITNESS: I don't need the
7 objection.

8 A. What you're saying is you are actually
9 proving my point that's in my report.

10 My point was somebody could go to a
11 Web-based account, send the e-mail, it will then
12 be in the sent items on the Web server. The next
13 time you send an e-mail message from the client
14 it syncs up and matches those two, so you actually
15 just made my argument.

16 Q. Okay.

17 I'm just asking questions, I'm not
18 making arguments, I'm asking questions, I'm
19 trying to get out the other possible reasons why
20 the DBX file might not contain every e-mail sent.

21 So another example is a user might use
22 different e-mail accounts; right?

23 A. Yes.

24 Q. And you concluded that it was highly
25 unusual for so few sent mails, sent messages to

1 N. Broom

2 be found on a computer; right?

3 A. I did.

4 Q. And that's because it's highly unusual
5 with respect to normal e-mail usage, one would
6 expect more than five; right?

7 A. Correct.

8 Q. But as you noted, it is also possible
9 that this is not a normal usage box; right?

10 A. I did.

11 Q. And isn't it true that after scanning a
12 document some scanners automatically transmit a
13 file or open an e-mail through the e-mail client
14 software that's installed on the hard drive?

15 A. That's true.

16 Q. You also note it's highly unusual that
17 two of the five e-mails in the DBX file work to
18 disapprove the plaintiff's contentions.

19 This is page 19 of your report; right?

20 A. Yes.

21 Q. And to be clear, these files were sent
22 to the e-mail client and were saved automatically
23 in the sent items DBX file; right?

24 A. Yes.

25 Q. They were not initially retained by the

1 N. Broom

2 user; right?

3 A. I don't know what you mean by that.

4 Q. Well, your opinion is that it was
5 highly unusual that two of the five e-mails
6 worked to disapprove the plaintiff's contentions,
7 yet they were the ones that were retained.

8 I'm referring to page 19 of your report.

9 A. Yes, sir.

10 Q. There's no evidence that anyone decided
11 to retain them, they were saved automatically, as
12 you just said; right?

13 A. Correct.

14 My statement was that there's -- if
15 there's only five messages on the sent items
16 folder, it's unusual that two fifths of the
17 messages directly contradict what Mr. Ceglia says
18 is the truth.

19 Q. And by that you mean because those two
20 e-mails that we've been talking would disprove
21 plaintiff's contentions?

22 A. Correct.

23 Q. They are counter to his theory of the
24 case?

25 A. Yes.

1 N. Broom

2 Q. In fact, the existence of the Kole
3 e-mails proves that Ceglia's case is a fraud;
4 right?

5 MR. BOLAND: Objection.

6 Q. You can answer.

7 A. Ask the question again.

8 Q. The existence of the Kole e-mails
9 proves that Ceglia's case is a fraud?

10 A. No. Only if you believe that the way
11 you've argued it.

12 I'm stating that there's other possible
13 explanations of how they got there, so if you
14 believe your argument, then the answer is yes.
15 If you believe that there are alternate theories,
16 the answer is no.

17 Q. Right.

18 You are advancing various alternate
19 theories that might possibly explain what
20 happened here; correct?

21 A. Just like Stroz advanced a theory.

22 Q. Now, you are aware that Mr. Ceglia
23 filed his lawsuit in 2010; right?

24 A. I am.

25 Q. And the two Kole e-mails and attached

1 N. Broom

2 StreetFax contract didn't work to disprove his
3 contentions when they were sent in 2004; right?

4 A. I'm sorry, I don't understand the
5 question.

6 Q. Mr. Ceglia didn't have any contentions
7 about this lawsuit in 2004, as far as you know?

8 A. I don't know that.

9 Q. So the fact of having these e-mails
10 that would work to disprove one's contentions
11 only work to disprove the contentions if they
12 were sent when they were --

13 MR. SOUTHWELL: Strike that.

14 Q. The Kole e-mails in the attached
15 StreetFax contract were in fact relevant to a
16 contractual dispute that Ceglia was having with
17 Mr. Zuckerberg in 2004; right?

18 A. Yes, sir.

19 Q. And people often send legal documents
20 to their lawyers, especially if they are having a
21 contractual dispute; right?

22 A. Documents which your lawyer can read,
23 yes.

24 Q. Now let's turn to page 5 of your
25 report.

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N. Broom

You also stated that the Seagate hard drive was not owned by the plaintiff, was not used by the plaintiff and was not controlled by the plaintiff; right?

A. Yes.

Q. What is your factual basis for this statement?

A. Mr. Ceglia's statement.

Q. That's it, nothing else; right?

A. That's it.

Q. So you are making that statement to the Court based only on Paul Ceglia's statements to you; correct?

A. And again, the data that I saw on the hard drive being the e-mails from Paul's parents, not from Paul, the sent item.

Q. The sent item, one of which says, has the name "Paul" under it, but you are referring to the fact that the display name for the e-mail client is Vera Ceglia?

A. That is correct.

Q. So it's that piece of evidence plus Paul Ceglia's statements to you, those are the only pieces of facts that would support your

1 N. Broom

2 opinion that this hard drive was not owned by the
3 plaintiff, was not used by the plaintiff, was not
4 controlled by the plaintiff; right?

5 A. Yes, sir.

6 Q. You have already testified the hard
7 drive was in fact produced to Storz Friedberg
8 pursuant to the court order that compelled
9 Mr. Ceglia to produce everything in his
10 possession, custody and control and that you
11 examined this hard drive; right?

12 A. Correct.

13 Q. And when you examined, did you also
14 examine the electronic files on the Seagate hard
15 drive?

16 A. I did, some. I have not done an
17 exhaustive examination.

18 Q. And you found no documents that provide
19 evidence that it was Paul Ceglia who used the
20 drive; is that right?

21 A. That's an accurate statement.

22 MR. SOUTHWELL: I'd like this marked as
23 Defendants' Exhibit 9. This is the Storz
24 Friedberg log of presumed relevant material
25 pursuant to the expedited discovery order

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that has been provided to plaintiff.

(Defendants' Exhibit 9, 104-page listing of relevant documents, marked for identification, as of this date.)

Q. I'm going to show you Defendants' Exhibit 9, I'm going to direct your attention to the eighth page.

A. Are you asking me to comment on a document that I've never seen before?

Q. Not yet.

First I'm going to ask whether you've seen the document, whether plaintiff's counsel has provided you with a log of the presumed relevant material in this case.

MR. BOLAND: When you say presumed relevant material, I don't even know what you are referring to to even understand the question, know if there's an objection.

Presumed by whom? Relevance.

MR. SOUTHWELL: It's a defined term in the Court order that governs the expedited discovery phase in this case.

MR. BOLAND: Oh, it's what Storz Friedberg presumes is relevant.

1 N. Broom

2 A. I have never seen this before.

3 Q. So that log of the evidence from the
4 Ceglia media has not been provided to you, you
5 have not reviewed it?

6 A. Correct.

7 Are you going to ask me questions on
8 it?

9 Q. Not at the moment. I think I may.

10 A. You just admitted it.

11 Are you going to ask me questions on a
12 piece of evidence you admitted or are you just
13 admitting it so you can admit it?

14 Q. Well, I was going to ask you questions
15 about whether you had seen it. I am frankly
16 surprised that counsel has not provided it to
17 you, since it's pretty critical evidence in doing
18 a forensic examination in the case.

19 MR. BOLAND: Objection, objection.

20 Q. But I'm going to probably ask you to
21 look at it in particular relation to some items.

22 A. If I'm going to look at it, I'm going
23 to look at it, and this is a --

24 Q. I understand that, right. And that's
25 why we're not going to do it right now, so you

1 N. Broom

2 can put it to the side and we're going to come
3 back to it.

4 You testified that you did examine some
5 of the electronic files on the Seagate hard
6 drive; correct?

7 A. Yes, sir.

8 Q. Yet you found no documents that provide
9 any evidence that Paul Ceglia used the drive;
10 right?

11 A. That is correct.

12 Q. So you did not find on the Seagate hard
13 drive a file called e-mails with Mark and Jeff --

14 MR. SOUTHWELL: Strike that.

15 Q. You did not find a folder on the
16 desktop of that hard drive entitled "E-mails with
17 Mark and Jeff"?

18 A. I did not.

19 Q. You did not find a file on that Seagate
20 hard drive entitled "E-mails with Mark and Jeff
21 091803inclemaillist.doc"?

22 A. I did not.

23 Q. You did not find a folder on that
24 Seagate hard drive entitled "E-mails with Mark
25 and Jeff," and a subfolder to that entitled

1 N. Broom

2 "E-mails with Mark and Jeff"?

3 A. I did not.

4 Q. You did not find a file within those
5 subfolders --

6 A. Counsel, if it's not in my report, I
7 didn't find it. I mean, we can probably save
8 yourself a lot of reading of questions.

9 As I've stated several times, I had 14
10 days to look through the eight pieces of evidence
11 I had and it did not -- I did not conduct an
12 exhaustive investigation of the media, I just
13 simply didn't have time to conduct a complete and
14 exhaustive investigation.

15 Q. So you didn't find the multiple pieces
16 of forensic evidence that indicates Paul Ceglia's
17 use of the Seagate hard drive in your examination
18 because you didn't have enough time; is that what
19 you're saying?

20 MR. BOLAND: Objection.

21 A. The names of the files which you just
22 read to me potentially could be evidence of
23 Paul's use of the computer, it also could be
24 evidence of Paul's parents using the computer
25 opening up files that were titled. You've given

1 N. Broom

2 names of files, but that in no way says that Paul
3 was using the computer.

4 Do you understand again the
5 butts-in-seat comment?

6 Q. Sure. I've got files too.

7 A. My answer is no.

8 Q. Okay, fine. I can talk to you about
9 the files too.

10 You didn't find files on here that
11 include e-mails between Mark Zuckerberg, Paul
12 Ceglia and Karin Peterson?

13 A. I found -- I've seen e-mails, but you
14 have to remember that my log of all the things I
15 looked at was a -- the majority of pages of that
16 is a listing of e-mails that I looked at.

17 Q. Right.

18 A. So I don't know if any e-mails that
19 I've seen were on those or on where you are
20 talking about the hard drive itself, I can't
21 differentiate between the two in my mind, I'm
22 sorry.

23 The question you just asked, I have
24 seen those e-mails. Where I saw them at I can't
25 tell you that, it was either on the hard drive or

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it was on the collection of e-mails that I received as loose e-mails, but I have seen those.

Q. You have seen e-mails between Paul Ceglia and Mark Zuckerberg?

A. Yes.

Q. You are now conceding that you might have seen those on the Seagate hard drive; is that what you are saying?

A. That's a possibility, but I do not distinctly recall seeing them on the hard drive. If you asked me right now, go point to them where they are at on the hard drive, I could not do that just by walking up to the computer today, I would have to look to see.

Q. So it is a possibility that you did see in fact on the Seagate hard drive that there were e-mails between Paul Ceglia and Mark Zuckerberg, yet you did not point that out to the Court and instead asserted a contrary opinion that the hard drive was owned by Vera Ceglia without mentioning that evidence; correct?

A. I did not take note of it when I saw it, so if in fact I saw it on the computer it was not in a context where I took note of it, the

1 N. Broom

2 computer belonging to Paul.

3 Q. So you don't remember where you saw
4 those e-mails?

5 A. I remember that I've seen them in the
6 loose files, but I do not know if I also saw them
7 on the hard drive.

8 Q. And when you rendered an opinion to the
9 Court that the Seagate hard drive was owned or
10 belonged to Vera Ceglia, did you not think that
11 that was an important statement to the Court
12 filed in the federal lawsuit?

13 A. I think multiple times you've asked me
14 the same question about why I thought the
15 computer belonged to Mrs. Ceglia and I think I've
16 answered that multiple times to you.

17 Q. You are now acknowledging that there is
18 additional evidence that you saw that you did not
19 include in the report, evidence that would be
20 germane to that question, and I would submit
21 would be counter to that question.

22 MR. BOLAND: Objection.

23 A. Listen to my words very closely.

24 I do not remember if I saw those
25 e-mails on the computer or if I saw them as loose

1 N. Broom

2 e-mails; that means I don't remember. It's not
3 going to change my opinion to keep asking the
4 same question over again.

5 I don't remember if they were on the
6 hard drive or if they were on the loose file
7 e-mails. I have seen those e-mails, I just can't
8 remember which of the two places it was.

9 As many times as you ask me, I'm going
10 to give you the same answer.

11 Q. Fine.

12 So you did not find any of -- any
13 e-mails with Paul Ceglia or the file folder names
14 that I just read off plus others on the Seagate
15 hard drive; right?

16 MR. BOLAND: Objection. I mean, you
17 are asking multiple questions here, the same
18 question over again.

19 Q. You didn't find any of that on the
20 Seagate hard drive; right?

21 A. I do not remember specifically finding
22 on the hard drive. I have seen e-mails like
23 that. Where I saw them at, I cannot remember at
24 this point if it was on the hard drive or on the
25 loose files. There was a lot of e-mails to look

1 N. Broom

2 at that were loose files.

3 Q. I understand.

4 If you assume that on the Seagate hard
5 drive are e-mails between Mark Zuckerberg and
6 pale Ceglia, purported e-mails between the two,
7 that would be important information that would
8 undermine your opinion about who owns the
9 computer; correct?

10 A. When you're saying purported e-mails,
11 are you talking about MSG type messages or are
12 you talking about Word documents that have
13 cut-and-pasted documents?

14 Q. Either one.

15 A. What's your question?

16 Q. My question is, assuming you saw a
17 purported e-mail with Paul Ceglia, whether it's a
18 message file or a Word document, on the Seagate
19 hard drive, wouldn't that change your opinion
20 about who owned the Seagate hard drive?

21 A. No, it wouldn't.

22 I assume you have these messages on
23 your computer too, and that doesn't mean Paul had
24 control over the computer that belongs to Paul.
25 There are reasons why these messages would be on

1 N. Broom

2 a computer owned by Paul's mother.

3 Q. But you didn't point out the fact of
4 these e-mails existing in your report because you
5 didn't find them; right?

6 A. I didn't find it noteworthy at the
7 time, I'll say that.

8 Again, I think I've said multiple times
9 I'm not sure if I saw the e-mails on the computer
10 or I saw them as loose file e-mails, but I have
11 seen the e-mails.

12 THE WITNESS: Could you find out how
13 much time is left on the tape?

14 THE VIDEOGRAPHER: There is 25 minutes
15 left on the tape.

16 THE WITNESS: Thank you.

17 Q. So, Mr. Broom, based on what we have
18 just asked or what I've just asked about, what
19 we've just discussed, do you still feel
20 comfortable opining to the Court that Mr. Ceglia
21 did not use the Seagate hard drive?

22 A. You haven't done anything to change my
23 mind.

24 Q. So you still feel comfortable telling
25 the Court in your expert opinion that Mr. Ceglia

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did not use the Seagate computer?

A. Absent any other evidence to the contrary, yes, I feel confident in my opinion.

Again, a further review of the computer might change my mind, but at this point the answer is yes, I stick by the opinion I have with the understanding that, as I've stated throughout, I did not conduct a complete and full investigation on all of the pieces of evidence, I just didn't have time to do so.

Q. Because you didn't have time to look fully at the Seagate hard drive?

A. That's an accurate statement, at any of the evidence.

Q. And when you're giving the Court your opinion about the use of the hard drive, did you make it plain there that you hadn't yet done a complete investigation?

A. No, I did not.

Q. Wouldn't that be an important fact to have told the Court?

MR. BOLAND: Objection.

A. Yes.

Q. Now I want to ask you a few questions

1 N. Broom

2 to cover some facts in the Stroz Friedberg report
3 that you did not address.

4 A. Are you going into a new area?

5 Q. Yes. Do you want to --

6 A. I'm going to take a break, I have to
7 use the restroom.

8 MR. SOUTHWELL: Off the record.

9 THE VIDEOGRAPHER: We are going off the
10 record. The time is 2:48. This ends tape
11 number 3.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We are back on the
14 record. The time is 2:53. This is the
15 beginning of tape number 4.

16 BY MR. SOUTHWELL:

17 Q. Mr. Broom, you were retained in this
18 case on May 3rd you said; right?

19 A. Yes, sir.

20 Q. Today is June 28th; right?

21 A. Yes, sir.

22 Q. So it's close to two months ago?

23 A. Chronologically, yes, or by the
24 calendar, yes.

25 Q. And you've testified that, I think, a

1 N. Broom

2 number of times, that you didn't have enough time
3 to fully analyze the case and you only worked 14
4 days on the case in that time period; right?

5 A. Between May 3rd and June 4th, yes.

6 Q. And since June 4th how many days have
7 you worked on the case?

8 A. None.

9 Q. So since you were retained, all you did
10 was work 14 days despite the fact that there was
11 other evidence that you indicate now you wanted
12 to analyze; right?

13 A. Correct.

14 Q. Despite the fact that you were
15 submitting an expert declaration to a federal
16 judge in a litigation; correct?

17 A. What was your question?

18 You didn't ask a question on that one.

19 Q. My question was, you only worked 14
20 days of the 30 leading up to the report despite
21 the fact -- well, what I'm trying to get at, sir,
22 is you have asserted a number of times that you
23 didn't have time to do a full analysis. It sort
24 of feels like your report is like a preliminary
25 draft and not yet finished or something like

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that.

MR. BOLAND: Objection.

A. You still haven't asked a question.

Q. What was preventing you from working more on the case so that you could provide the Court with a fully formed opinion?

MR. BOLAND: Objection.

A. I began working the case on May 3rd. That doesn't mean I received the evidence on May 3rd.

Once the evidence was received it had to be preprocessed, which took a period of time, and when I got access to the evidence I had 14 days total before the deadline of June 4th that I had to submit my report.

Q. I see.

A. It was running up to the report deadline.

Q. I understand that.

So there were 30 days, but you didn't actually get any evidence to begin work until you had 14 days left before the report was due?

A. I wouldn't say that far. A period of time went by before I got the evidence, I can't remember the exact days, but then after I

1 N. Broom

2 received it a period of time went by while the
3 evidence was preprocessed so it can get into a
4 form that we can actually do a forensics
5 examination of, that doesn't happen overnight.

6 Q. And how long did that take?

7 A. Approximately five days, I'm just going
8 to throw that number out there because I'm not
9 sure of the exact number, but it takes a period
10 of time to preprocess the evidence before we can
11 actually do the examination of it.

12 Q. And how much time did you actually have
13 to do the examination?

14 A. 14 days.

15 Q. Does that include the processing or is
16 that after the processing?

17 A. You just asked the question about after
18 the processing.

19 Q. Right.

20 A. So 14 days once the processing was
21 done, 14 days.

22 Q. And did you work every day of those 14
23 days processing evidence and preparing the report?

24 A. Within the month period of time there
25 was, I think, one day that I didn't dedicate it

1 N. Broom

2 strictly to this case that I was working on
3 something else that I had a deadline on.

4 Q. And were there -- how did you divide up
5 the drafting of the report, if at all?

6 A. I didn't.

7 Q. Were there sections?

8 You said that you worked on it with
9 Mr. Boland. Were there sections that he drafted
10 versus you drafted or --

11 A. Not complete sections, no.

12 Q. Portions?

13 A. Wording, suggestions on wording.

14 Q. Can you give me some examples of them?

15 A. I can give you a section that would be
16 easy to cite, and that would be the specific
17 definitions of the rootkits viruses, those
18 cut-and-paste definitions, that was one area we
19 worked on together.

20 Just about every other area, though,
21 was almost exclusively mine and I let Mr. Boland
22 proof, I guess would be a better way of saying
23 it.

24 As a matter of fact, there is no other
25 area that I can remember that it was other than a

1 N. Broom

2 proofing exercise by Mr. Boland.

3 Q. Since you issued your report you've
4 done no further forensic examination in the case;
5 right?

6 A. That's correct.

7 Q. So you have testified today that there
8 were things that you wanted to look at, but you
9 haven't done that --

10 A. That's correct.

11 Q. -- even though there's been another
12 month that has passed, close to another month;
13 correct?

14 A. My understanding is with expedited
15 discovery I wouldn't have had an opportunity to
16 turn that evidence in should I even find anything
17 after this point, so --

18 Q. What is that understanding based on?

19 A. Expedited discovery. When expedited
20 discovery is closed, my understanding is you
21 don't turn any more evidence in.

22 Q. What's the basis for your understanding
23 that expedited discovery is closed?

24 A. The fact that this report was due on
25 June 4th and that that was the close of expedited

1 N. Broom

2 discovery.

3 Q. Was that based on a court order or was
4 that based on something Mr. Boland told you?

5 A. My understanding of the communications
6 with Mr. Boland.

7 Q. Now, there are a number of opinions in
8 the Stroz Friedberg report that you don't
9 address; correct?

10 A. Yes, sir.

11 Q. So I want to just walk through some of
12 those to make sure we're on the same page about
13 that; okay?

14 A. That's fine.

15 Q. In its report at page 10 Stroz
16 Friedberg states the Work For Hire document
17 attached to the amended complaint and upon which
18 Paul Ceglia is suing is not located on the media
19 that Ceglia produced in this case.

20 You are not offering an expert opinion
21 challenging this fact; right?

22 A. That is true.

23 Q. And just to be clear, you did not find
24 a copy of the Work For Hire document during your
25 review of the media that Ceglia produced in the

1 N. Broom

2 case; right?

3 A. That is correct.

4 Q. In its report Stroz Friedberg states
5 that a hex editor was used on the media that Paul
6 Ceglia produced.

7 You're not offering an expert opinion
8 challenging this fact; right?

9 A. Page number? 41?

10 Q. Yes.

11 A. No, I am not. I have not reviewed the
12 CD-ROMS.

13 Q. In its report Stroz Friedberg states
14 that the floppy disks produced by Paul Ceglia
15 contain relevant files deleted during the
16 pendency of the litigation.

17 You are not offering an expert opinion
18 challenging that fact; right?

19 A. Page?

20 Q. It's page 47.

21 Sorry, let me say that again.

22 A. Let me get there.

23 Q. Page 47, Stroz Friedberg states the
24 floppy disks produced by Paul Ceglia contain
25 references to relevant files deleted during the

1 N. Broom

2 pendency of the litigation.

3 You are not offering an expert opinion
4 challenging that fact; right?

5 A. I am not.

6 Q. At page 48 Stroz Friedberg states that
7 Paul Ceglia deactivated a Webmail account, the
8 content of which was subsequently deleted during
9 the pendency of the litigation.

10 You're not offering an expert opinion
11 as to that; correct?

12 A. I am not.

13 Q. In its report also at page 48 Stroz
14 Friedberg states that e-mail data was deleted
15 from the getzuck@gmail.com e-mail account.

16 You are not offering any opinion about
17 that?

18 A. I am not.

19 Q. On page 49 Stroz Friedberg states that
20 Paul Ceglia did not produce six USB devices, some
21 of which were used during the pendency of the
22 litigation.

23 You are not offering any expert opinion
24 about that?

25 A. I am not.

1 N. Broom

2 Q. And on page 50 Stroz Friedberg provides
3 an opinion that on those six USB devices that
4 were not produced were links to two files named
5 Zuckerberg contract page 1.TIF and Zuckerberg
6 contract page 2.TIF.

7 You are not offering an expert opinion
8 challenging that fact; right?

9 A. No, I'm not.

10 Q. Now, on page 51 Stroz Friedberg states
11 that Paul Ceglia did not disclose four Webmail
12 accounts pursuant to the Court's expedited
13 discovery orders.

14 You are not offering an expert opinion
15 challenging that fact; right?

16 A. I am not.

17 Q. Now I want to ask you some questions
18 about Mr. Ceglia's purported e-mails.

19 When I say purported e-mails, you
20 understand that I'm referring to the purported
21 e-mails quoting a reference in the amended
22 complaint; right?

23 A. If you can be a little bit more
24 specific, please, just because there are so
25 many --

1 N. Broom

2 Q. In Mr. Ceglia's amended complaint there
3 are quotes and references to e-mails that the
4 plaintiff purports he exchanged with
5 Mr. Zuckerberg?

6 A. Are you specifically referring to the
7 ones that are in the Word document, the cut and
8 paste?

9 Q. No. I'm referring to the amended
10 complaint.

11 A. He was shaking his head yes, you were
12 saying no. At this point I just want to make
13 sure I'm on the right set of e-mails.

14 Q. I'm first referring to the amended
15 complaint which contains quotes and references to
16 purported e-mails.

17 A. Do you have it so I can read it, just
18 so I am sure I am talking about the same thing
19 you are?

20 Q. I'll cut to the chase.

21 They were then produced in the Word
22 files and that's what we refer to as the
23 purported e-mails, and what I'm going to ask you
24 about is some of the things in your report about
25 those Word files contained in the purported

1 N. Broom

2 e-mails, so, fine.

3 A. I understand.

4 And there's three Word documents that
5 you are referring to?

6 Q. The text of the purported e-mails is
7 contained in several Microsoft Word documents,
8 right.

9 A. We are on the same page, then, yes.

10 Q. You are aware that defendants' position
11 is that these purported e-mails are fabricated?

12 A. I am aware of that position, yes, sir.

13 Q. And in its report Stroz Friedberg sets
14 forth the factual basis for its expert opinion
15 that the purported e-mails are fabricated, right,
16 pages 22 through 33?

17 A. Yes, sir.

18 Q. And in this section which you just
19 reviewed Stroz Friedberg states the purported
20 e-mails are contained in backdated Microsoft Word
21 documents that showed numerous metadata
22 anomalies; right?

23 A. I did see that on one of the pages.

24 Do you have a specific reference?

25 Q. It's between 24 and 25 -- it carries

1 N. Broom

2 over to 26, actually.

3 Section A on page 24 is the beginning.

4 A. I see that bullet 1 says the Word
5 document Mark e-mail July '04 has been backdated.

6 Q. Starting on page 29 there's a section
7 in which Stroz Friedberg states that the
8 purported e-mails are inconsistently formatted.

9 A. Right, I see that, sir.

10 Q. And then on page 27 there's a section
11 in which Stroz Friedberg states that the
12 purported e-mails contain the wrong time zone
13 stamps; right?

14 A. That is correct, that does say that.

15 Q. And I just want to be clear about what
16 you are offering in this case.

17 You are not offering an expert opinion
18 challenging the fact that the Microsoft Word
19 documents are backdated; right?

20 Let me state it in a different way, then.

21 You are offering an opinion regarding
22 the time zone stamps of the purported e-mails;
23 right?

24 A. That is correct.

25 Q. But you are not offering an expert

1 N. Broom

2 opinion challenging the fact the purported
3 e-mails are inconsistently formatted; right?

4 A. Inconsistently formatted, no, I did not
5 make any opinion as to the inconsistent
6 formatting.

7 Q. Right.

8 And we just --

9 A. There is one minor step to that. I did
10 make a statement in my report about when
11 formatting might have been done.

12 Are you familiar with what I'm
13 referring -- it's a minor point, but --

14 Q. Yes.

15 A. -- I just want to make sure I'm not
16 quoted as saying something that's not true.

17 Q. Okay.

18 And we are referring to the report
19 where Stroz Friedberg states that the purported
20 e-mails are contained in backdated Microsoft Word
21 documents that show numerous metadata anomalies.

22 You are not offering an expert opinion
23 challenging that opinion; correct?

24 A. Correct.

25 Q. And you are aware that Mr. Ceglia has

1 N. Broom

2 admitted that he does not have native file copies
3 of these purported e-mails; right?

4 A. I heard that, yes.

5 Q. Rather what he says is that he copied
6 and pasted the text of the purported e-mails into
7 Microsoft Word documents.

8 Is that your understanding?

9 A. That is my understanding, yes.

10 Q. And then he saved those to floppy
11 disks; right?

12 A. That's my understanding.

13 Q. And do you similarly understand that he
14 claims to have done this, both the copying,
15 pasting and saving, in the time when the e-mails
16 are purported to have occurred, in 2003 and 2004;
17 right?

18 A. That's my understanding.

19 Q. If you will turn to pages 30 and 31 of
20 the Stroz Friedberg report, I will direct your
21 attention to figures 12 and 13.

22 You reviewed these as part of your
23 review of the Stroz Friedberg report; yes?

24 A. I have read this, yes.

25 Q. And do you see there in figure 12 and

1 N. Broom

2 13 screenshots from the purported e-mails between
3 Mr. Ceglia and Mr. Zuckerberg and they appear to
4 have been sent and received through Mr. Ceglia's
5 MSN account; right?

6 A. Correct, to Mr. Zuckerberg's Harvard
7 account.

8 Q. And they appear to be sent within
9 approximately two months of each other?

10 A. Close, a couple of days off.

11 Q. Right.

12 And in the first purported e-mail
13 figure 12 the word "Tuesday" is abbreviated as
14 T-u-e in the data field; correct?

15 A. That's true.

16 Q. And in the second purported e-mail
17 figure 13 the word "Tuesday" is abbreviated as
18 T-u-e-s in the data field; correct?

19 A. That is correct.

20 Q. And this discrepancy is not consistent
21 with Ceglia's claim to have copied and pasted
22 text from his MSN account; right?

23 MR. BOLAND: Objection.

24 A. I think, if you will note, this is not
25 anything that I've discussed in my report at all,

1 N. Broom

2 this is one of the areas that I did not discuss.

3 Q. So you are offering no opinion about
4 this at all?

5 A. I think we've already said that.

6 Q. Seeing it just there in front of you --
7 I understand you are not offering an opinion, but
8 you have come to the Court offering your
9 expertise as a computer forensics expert and
10 isn't the fact that there's a different
11 abbreviation of Tuesday in two e-mails, based on
12 your experience, more consistent with someone who
13 manually typed the text?

14 A. That could be a formatting inconsistency
15 between e-mail programs, so I cannot comment on
16 that.

17 Q. It also could be someone who manually
18 typed the text; right?

19 A. I'm not saying that it couldn't be, I'm
20 saying that there are other alternatives and I
21 have not done enough research to give you a
22 correct answer on that, but there are
23 possibilities that a different e-mail program,
24 e-mail utility would display the information
25 differently.

1 N. Broom

2 Q. And it's also possible that somebody
3 manually typed the text; right?

4 A. Right.

5 And my proposed solution for finding
6 out which is the truth would be to examine the
7 Harvard e-mail system to find the defendant
8 e-mails, that's what I would suggest.

9 I always say e-mail is a two-way
10 communication and if you are having problems with
11 the one channel of the communication go look at
12 the other one.

13 Q. And don't you have the messages from
14 the Harvard e-mail account so you have the
15 ability to do that investigation?

16 A. I believe that there are more messages
17 than what were provided to me from the Harvard
18 e-mail system, different periods of time.

19 Q. What is your basis for asserting that
20 there are more?

21 A. The fact that there is no reference to
22 any of these -- there is a big block of time
23 missing in the messages I received between
24 communications that Mr. Zuckerberg and Mr. Ceglia
25 would have been having reference, just the

1 N. Broom

2 StreetFax contract, so it appears there are
3 chunks of e-mail messages missing.

4 Q. And that's the sole basis on which you
5 are asserting that you don't have what's in the
6 Harvard account?

7 A. Yes, sir.

8 Q. Do you know how many e-mails you have
9 from the Harvard e-mail account?

10 A. I don't have a number.

11 Q. Is it fair to say it's over 300?

12 MR. BOLAND: Objection. He answered
13 the question.

14 A. I just said I don't have the number.

15 Q. I'm asking if you are -- you have them;
16 right?

17 A. Yes, sir.

18 Q. I'm asking for your approximation, and
19 if I would say that there are over 300, does that
20 sound right to you?

21 A. I don't have a number.

22 Q. Did you look for whether they
23 abbreviate Tuesday T-u-e or T-u-e-s or in fact
24 spell out the word "Tuesday"?

25 A. I think this is probably the fourth

1 N. Broom

2 time I've told you that I didn't -- this was not
3 part of the investigation I conducted, so however
4 many times I can say the same thing.

5 Q. Was there a reason why you decided not
6 to make that part of your investigation in your
7 report?

8 A. The time constraints I was operating
9 under.

10 Q. Checking those, the e-mails that you
11 had looking for how the abbreviation for Tuesday
12 worked would be a pretty quick thing to do?

13 A. No, because I wouldn't stop at just
14 looking for how Tuesday was abbreviated if I were
15 going to do it.

16 Q. Let's turn to the opinion that you do
17 offer regarding the time zone stamps in the
18 purported e-mail.

19 What does a time zone stamp in an
20 e-mail reflect, generally speaking?

21 A. The time zone from which the e-mail was
22 sent, the area of the country from which the
23 e-mail was sent.

24 Q. And what system is responsible for
25 setting the time zone stamp reflected in

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N. Broom

Web-based e-mail?

A. The settings on the computer -- the times and settings on the computer from which it was sent.

Q. The sender's computer system clock; correct?

A. The receiver's computer -- as seen in my testing, the receiver's computer affects that also, so your statement doesn't -- I can't say yes to it.

In other words, I performed some testing that showed when the receiver's computer was set to -- when a computer was set to a certain time zone, that reflected how the Web-based e-mail server presented that e-mail to the person, and that's what's given in my example here.

I had a computer set incorrectly to a time zone and that time zone was what was displayed on my computer. I set a computer to the Mountain time zone that was really in the Pacific time zone, yet when I was looking at the screen it was reporting the time zone as if it was Mountain time.

1 N. Broom

2 Q. Wasn't that because that was the
3 sender's computer settings?

4 A. No, sir. It would be whoever --
5 whatever computer is looking -- I want to phrase
6 this correctly.

7 When you connect up to Gmail -- and
8 that was what I used for my testing -- when you
9 connect up to Gmail the time zone setting from
10 your Web browser is what is used by Gmail to
11 display the information.

12 Q. The time zone stamps are represented in
13 relation to Coordinated Universal Time; correct?

14 A. Yes, sir.

15 Q. That's the same as Greenwich Mean Time,
16 commonly referred to?

17 A. Yes.

18 Q. And the time zone stamp associated with
19 Eastern Standard Time is negative 0500 or five
20 hours behind Coordinated Universal Time; correct?

21 A. Standard, yes.

22 Q. The time stamp of Eastern Daylight Time
23 is negative 0400; correct?

24 A. Correct.

25 Q. Four hours behind Coordinated Universal

1 N. Broom

2 Time?

3 A. Correct.

4 Q. So e-mail sent from the Eastern time
5 zone during Standard time would normally have the
6 time stamp of 0500; right?

7 A. Yes.

8 Q. Mr. Zuckerberg, you understand,
9 attended Harvard College in 2003 and 2004; right?

10 A. Yes, sir.

11 Q. That's located in the Eastern time
12 zone?

13 A. It is.

14 Q. Mr. Ceglia maintained a residence in
15 Wellsville, New York; right?

16 Are you aware of that?

17 A. I know that he had -- that his parents
18 maintained a residence there, I do not know the
19 time zone he maintained a residence there.

20 Q. Where was he when you spoke to him?

21 A. Ireland.

22 Q. Let's look at page 28 of your report,
23 your time zone experiment, as you refer to it
24 here.

25 The first question is, the "to" line

1 N. Broom

2 here is blank.

3 Why is that?

4 A. Just the way Gmail chose to display it.

5 Q. Who did you send the e-mail to?

6 A. Myself.

7 Q. To the same e-mail address?

8 A. To a Gmail address nbroom123@gmail.com.

9 It just chose not to -- the printout from Gmail
10 just did not put anything in that field. I did
11 not edit it in any way other than copy and paste
12 directly from Gmail's interface and for whatever
13 reason it didn't put the "to" in there.

14 Q. So the e-mail here, the top e-mail was
15 sent on June 3rd, 2012, when daylight savings
16 time was in effect; correct?

17 A. Correct.

18 Q. And the sender, you were actually
19 located in California, Pacific Standard Time,
20 Pacific time zone; right?

21 A. I was, correct.

22 Q. So an accurately set system clock would
23 reflect Pacific daylight time of 0700; right?

24 A. Correct.

25 Q. The first e-mail reflects a system

1 N. Broom

2 clock with the time zone incorrectly set to
3 mountain daylight time or 0600?

4 A. That's correct. The time was correct,
5 but the time zone was incorrect.

6 Q. So your experiment reflects just simply
7 that the system clock of the user's computer may
8 be set accurately or inaccurately; right?

9 A. The system clock, are you talking about
10 the time zone setting or the system clock?

11 Q. Well, either.

12 I'm saying that what your experiment
13 shows reflects that the user's computer, the time
14 zone or system -- the system clock or time zone
15 could be set accurately or inaccurately; right?

16 A. In this case the time was set
17 correctly, the time zone setting was set
18 incorrectly on one and correctly on the other.

19 If your question is can a clock be set
20 incorrectly, absolutely.

21 Q. Right.

22 And the time zone might be set
23 incorrectly and what this shows is that if
24 settings are set incorrectly then they result in
25 incorrect readings?

1 N. Broom

2 A. Correct. Just like the Stroz Friedberg
3 report, the Sidley Austin e-mail server was set
4 incorrectly also.

5 Q. And if you can refer to page 28 of the
6 Stroz Friedberg report, please.

7 A. Yes, sir.

8 Q. Now, did you have an opportunity to
9 analyze the content of the three Microsoft Word
10 files that contained the purported e-mails in
11 this case?

12 A. I read the Word document, yes, the
13 three Word documents, I did read them, yes.

14 Q. But you did not analyze them from a
15 computer forensic standpoint?

16 A. No, sir.

17 Q. So you are not offering any opinion
18 that these are authentic e-mails; right?

19 A. I'm not.

20 Q. You are not offering any opinion that
21 these were in fact sent; right?

22 A. I'm not.

23 Q. You are not offering any opinion that
24 these were in fact actually copied and pasted
25 back in 2003 and 2004; right?

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A. The only thing I am offering is that, as I said, e-mail is a two-way communication and I feel there is a different best source of evidence other than a cut-and-pasted e-mail and that would be Mr. Zuckerberg's Harvard e-mail accounts that presumably were preserved in other litigation in the past.

Q. And which you have 300 messages from, which is the entirety of the communications between Mr. Ceglia and Mr. Zuckerberg; right?

A. Are you stating that's a fact, that that's the entirety of the communication, there is no more?

Q. I'm stating that's what the Court order provided for and that's what's been produced.

A. I can't answer that question. You are answering the question I asked --

Q. You keep coming back to the idea that you want access to the Harvard e-mail account and what I guess I'm not getting is the fact that you actually had the Harvard e-mails and you don't seem to have actually analyzed them.

A. That will be a discussion between Mr. Boland and the judge.

1 N. Broom

2 Q. But it's correct that you have not
3 analyzed those Harvard e-mails that you have, the
4 300 or so; correct?

5 A. Correct.

6 Q. Focusing here on figure 7, what are the
7 dates of these purported e-mails?

8 A. February 4, 2004.

9 Q. And what is the sender's e-mail
10 account?

11 A. Mzuckb@fas.harvard.edu.

12 Q. And the recipient e-mail account?

13 A. Paulceglia@msn.com.

14 Q. And the top half it's reversed, right,
15 the e-mail is from Mr. Ceglia and to
16 Mr. Zuckerberg; correct?

17 A. The top half of what?

18 Q. Figure 7.

19 Figure 7 has two e-mails, on the top
20 and the bottom?

21 A. Correct. The top message is from Paul
22 to Mark, the bottom one is from Mark to Paul.

23 Q. And February 4, 2004 Daylight Savings
24 Time was in effect then; correct?

25 Sorry, Daylight Savings Time was not in

1 N. Broom

2 effect, it was Standard time in February, in the
3 winter months; correct?

4 A. That makes sense, yes, sir.

5 Q. In your report you note that Paul
6 Ceglia maintains property in Nova Scotia, Canada,
7 which is in the Atlantic time zone; right?

8 A. Correct.

9 Q. What is your factual basis for that
10 assertion?

11 A. He told me he had property in Nova
12 Scotia and we talked about it.

13 Q. What specifically did he tell you about
14 that?

15 A. That he had 75 acres of property in
16 Nova Scotia with a hunting cabin and land on the
17 ocean in Nova Scotia.

18 Q. And what did he tell you about when he
19 visited there?

20 A. He didn't give me specific dates for
21 visiting, he just said that he had property
22 there.

23 Q. Did he say that he regularly was there?

24 A. No, sir.

25 Q. Did he tell you anything about when he

1 N. Broom

2 was in Nova Scotia?

3 A. No, sir.

4 Q. Did he tell you anything about when he
5 sent these purported e-mails?

6 A. No, sir, he did not.

7 Q. So he did not tell you he was in Nova
8 Scotia when he sent these e-mails?

9 A. No, sir, he did not.

10 Q. So why are you speculating that he
11 might have been in Nova Scotia when he sent
12 these?

13 A. I never speculated he was in Nova
14 Scotia when he sent these e-mails.

15 Q. You're simply pointing out the fact
16 that he owns property there?

17 A. That's correct.

18 Q. And that's part of your another sort of
19 alternative explanation that you are speculating
20 about; correct?

21 A. When people travel they often change
22 the clock on their computer to reflect the time
23 zone that they're in. It is pretty unusual for,
24 I would say, the majority of us in this room to
25 travel to the Atlantic time zone; however, most

1 N. Broom

2 people in this room are probably used to
3 traveling west and changing time zones, so I
4 specifically pointed out that there is a
5 possibility that Mr. Ceglia could have traveled
6 to the Atlantic time zone and set his clock that
7 way. That's different than the majority of us
8 would do; would you agree with that? We would go
9 west in the United States and have Eastern
10 Central, Mountain or Pacific time.

11 Q. And to be clear, though, he did not
12 tell you that in fact he traveled there, he simply
13 told you that he had property there; correct?

14 A. No. He did say he traveled there, he
15 just didn't tell me specifically when he traveled
16 there.

17 Q. So he said that he had property there
18 and that he traveled there from time to time?

19 A. That would be a fair assessment, yes.
20 He did not give me specific dates of when or how
21 long or how often.

22 Q. So you have no evidence that in fact
23 he was in the Atlantic time zone during these
24 months in 2004 when these purported e-mails were
25 purported to have occurred?

1 N. Broom

2 A. I think you are missing a slight
3 statement there.

4 I'm not saying that he was in the
5 Atlantic time zone, I'm saying his computer was
6 still set for the Atlantic time zone, a slight
7 difference in those two statements.

8 Q. I understand.

9 The time zone stamp in this date field
10 here, figure 7, is negative 0400; right?

11 A. Yes, sir.

12 Q. And it's your opinion that that
13 negative 0400 time zone stamp reflects the time
14 zone setting Atlantic Standard Time; right?

15 A. Correct.

16 Q. And I understand your point that maybe
17 he didn't reset it or something, or that's
18 your --

19 MR. SOUTHWELL: Let me strike that.

20 A. You're correct, though, your statement
21 is correct.

22 Q. Now, stepping back for a second, what
23 happens in a time zone setting when Daylight
24 Savings Time goes into effect?

25 A. In simple terms, the hour, it would

1 N. Broom

2 change by one hour, minus 500 would become minus
3 400 for the Eastern time.

4 Q. And that's a default setting to a
5 system clock would be to recognize Daylight
6 Savings Time and standard time; correct?

7 A. In Microsoft, yes, it would recognize
8 that.

9 By the same token, whatever time zone
10 you were in, it would recognize that, so, for
11 instance, if you incorrectly had your computer
12 set for Atlantic Standard Time, it would change
13 that to Atlantic Daylight Time. It wouldn't
14 switch it automatically that you are now in the
15 Eastern time zone just because you traveled to
16 New York.

17 Q. Right, I understand.

18 So when Daylight Savings Time would go
19 into effect during the summer months, April to
20 October, you know, the system clock typically
21 would move one hour closer to Coordinated
22 Universal Time; right?

23 A. Yes, sir.

24 Q. So, for example, the time stamp
25 associated with Atlantic Daylight Time would be

1 N. Broom

2 negative 0300 or one hour forward from Atlantic
3 Standard Time; right?

4 A. Yes, sir.

5 Q. Now, in 2004, Daylight Savings Time
6 went into effect on April 4th in the Atlantic
7 time zone.

8 Do you understand that to be the case?

9 A. I've reviewed that. I don't have the
10 exact information in front of me, but that sounds
11 very reasonable, I will agree with your statement
12 at this point.

13 Q. So given your opinion that the negative
14 0400 time stamp in these February 4, 2004
15 purported e-mails reflects Atlantic time, what
16 time stamp would you expect to see in a purported
17 e-mail after April 4, 2004?

18 A. The only comment I would have would be
19 it would depend on where the e-mails were sent
20 and received from. In other words, if you're
21 talking about one particular computer being used
22 consistently for everything, then you would
23 expect a consistent finding, but you have to
24 remember that if you're talking about Web-based
25 e-mail nothing says it has to have been done on

1 N. Broom

2 the same computer, and I hope I said that without
3 causing any confusion in the statement.

4 Q. What you are focused on is the
5 possibility of Web-based e-mail and accessing
6 that Web-based e-mail from different locations;
7 correct?

8 A. Yes, sir. Specifically because of the
9 msn.com account being Web-based mail service and,
10 again, I'll have to go back to Paul's comments to
11 me saying he used Web-based e-mail for the
12 majority of time. It doesn't mean he couldn't
13 have used a mail client like we discussed earlier
14 like Outlook Express, but his statement to me was
15 that he used Web-based e-mail.

16 Q. Okay.
17 But the typical situation would be
18 after April 4, 2004, an Atlantic time zone for
19 the e-mail would be 0300 or negative 0300
20 reflecting the time moving forward; correct?

21 A. For the Atlantic time zone, yes, that
22 would be correct.

23 There is one piece of information that
24 is relevant to exactly what you're asking --

25 I take it back. Go ahead. I was

1 N. Broom

2 thinking of a different piece of evidence.

3 Q. Give me just a moment, please.

4 If you would refer to Exhibit I to the
5 Stroz report, please.

6 A. Yes, sir.

7 Q. And direct your attention to the e-mail
8 in the bottom half of that first page, the April
9 6, 2004 e-mail.

10 As we discussed, you didn't analyze the
11 contents of this Word file marked emailsjuly04.doc;
12 right?

13 A. I did not.

14 Q. And the date of this purported e-mail
15 is what?

16 A. April 6, 2004.

17 Q. And the sender's e-mail account is at
18 the top of that --

19 A. The middle of the top,
20 paulceglia@msn.com.

21 Q. And the recipient's e-mail?

22 A. Mzuckb@fas.harvard.edu.

23 Q. And what's the time zone stamp on this
24 e-mail?

25 A. Minus 400.

1 N. Broom

2 Q. So the time zone stamp did not change
3 to recognize Daylight Savings Time there; correct?

4 A. Correct.

5 Again, an alternate theory could be
6 that the time zone was corrected.

7 Q. Right, I understand.

8 A. And hence the reason in my report I
9 listed that time should not be counted on absent
10 external sources because it's too easy to
11 manipulate time, and I've quoted some
12 authoritative sources from the Department of
13 Justice that says basically the same thing, that
14 time absent external trusted sources should not
15 be relied upon, and I will give you a specific
16 example that I've had in a real case.

17 I had an e-mail that I didn't trust
18 time in the case and the way I was able to
19 authenticate a particular message was I was able
20 to see a gentleman had a Hertz reservation Web
21 page that actually had a time stamp on the Web
22 page itself. We used that external source to
23 authenticate the e-mail messages in a particular
24 time setting.

25 Absent that, some external source that

1 N. Broom

2 time can be manipulated and most forensics
3 experts will agree with that.

4 Q. Right.

5 Are you stating the opinion that the
6 time zone or a time stamp is wholly irrelevant to
7 analysis?

8 A. I'm saying once it's in question then
9 it tends to further lead to more questions. If
10 nobody is questioning anything about time, then
11 most people would believe the time. Once people
12 start questioning the time then I think
13 everything needs to be questioned with reference
14 to time, so absent an external source, because
15 you've made -- excuse me, Stroz has made an
16 allegation of backdating which, to me, when I'm
17 looking at this information I think I might have
18 the same thoughts that Stroz had, but at that
19 point in time I don't think you can rely on any
20 of the dates and times on the media in question
21 because of that.

22 Q. Okay.

23 Let me just break that apart a little
24 bit.

25 So you looked at the Stroz evidence,

1 N. Broom

2 you saw what they relayed, you indicated that
3 upon seeing that you also -- let me ask it this
4 way: Did you also have concerns about backdating,
5 seeing that?

6 A. That is a fair way to say it, I had
7 concerns and I think I did a fair job in my
8 report of specifying that time is questionable.

9 Q. Right, I understand that.

10 And the concern, just to be clear, the
11 concerns were that there was indicia that there
12 could have been backdating here?

13 A. That's what I read in Stroz's report,
14 so it's not an assumption on my part. I read the
15 report first, so I went into it assuming that
16 there was a problem with time.

17 Is that a fair way of responding to you?

18 Q. But reading the report and seeing the
19 evidence that they rely on, you agree that there
20 is an indication of a problem with dates
21 suggestive of backdating; correct?

22 A. Yes.

23 Q. And your response to that is that once
24 the dates are in question we cannot rely on any
25 information about dates, that's your response?

1 N. Broom

2 A. Absent an external source for
3 validation, and that's in my report.

4 Q. I understand.

5 And isn't it the case that the date
6 information is -- let me state it a different
7 way.

8 You would agree that the date
9 information is not wholly irrelevant; in other
10 words, it is still relevant.

11 What you're seeking is some additional
12 external verification; correct?

13 A. I think any forensics expert, once the
14 dates are questioned, I think anybody would, and
15 yes, I am.

16 Q. Let me just ask you, ask it a slightly
17 different way.

18 You're not saying that the dates are
19 wholly irrelevant; correct?

20 A. That's true, yes, that's true.

21 Q. Right.

22 You're simply saying that when there's
23 a question about dates it would be preferable to
24 have some external verification?

25 A. Validation, yes.

1 N. Broom

2 Q. Validation, okay.

3 A. Yes.

4 And it's not only me that says that,
5 it's the Department of Justice.

6 Q. I understand.

7 Give me just a moment, please.

8 Let me turn to a different subject.

9 Directing your attention to pages 43
10 to 45 of the Stroz Friedberg report --

11 A. I'm there.

12 Q. So 43 to 45 of the Stroz Friedberg
13 report, in that section they describe specific
14 evidence that the system clock of the computer
15 that contained the Seagate hard drive was
16 backdated; correct?

17 A. That's what it says, yes.

18 Q. And that evidence indicates, in Stroz
19 Friedberg's opinion, that the hard drive was
20 backdated sometime between December 30, 2010 and
21 February 11, 2011; correct?

22 A. That's what it says, yes, sir.

23 Q. And that evidence includes system event
24 logs and system restore points found on the
25 Seagate hard drive; correct?

1 N. Broom

2 A. That's correct.

3 Q. And the system event logs may contain
4 error messages when a computer's system clock is
5 not synchronized to the Microsoft network time
6 server; correct?

7 A. That's correct.

8 Q. And Stroz Friedberg identified such a
9 system event log on the Seagate hard drive; right?

10 A. That's correct.

11 Q. And that log indicates that the
12 computer system clock was set to November 9, 2010
13 at a time when the Microsoft network server was
14 actually set to February 11, 2011; right?

15 A. That's what it says, yes, sir.

16 Q. And your report does not indicate that
17 these specific facts are inaccurate; correct?

18 A. I am not saying that they are
19 inaccurate.

20 Q. You are not saying that they are
21 inaccurate?

22 A. That is correct.

23 Q. You do not otherwise address these
24 specific facts in your report; correct?

25 A. No, sir.

1 N. Broom

2 Q. I'm correct?

3 A. That I do not address the specific --

4 Q. Correct.

5 A. I don't feel there is anything wrong
6 with the specific facts.

7 Q. Right.

8 You don't address them in any way in
9 your report?

10 A. Correct. Just the term "backdating" in
11 Stroz's report is referencing the concept of
12 somebody purposely setting the clock back.

13 In my report I offer an alternate
14 suggestion of how a clock can get adjusted,
15 that's the only difference.

16 I agree that the facts in the computer
17 are showing that the clock is set for a different
18 time, I don't dispute that at all.

19 Q. Sure.

20 And I understand your comments about
21 when dates are in question you seek external
22 verification.

23 Wouldn't the Microsoft network server
24 be external verification?

25 A. Yes, sir.

1 N. Broom

2 Q. Now, Windows XP operating system
3 generates limited system backups called system
4 restore points upon the occurrence of certain
5 events?

6 A. That's true.

7 Q. And that happens typically every day?

8 A. No, sir. It happens on major events on
9 a computer. If I installed major software, if I
10 get a major software update twice in a day I
11 could have two of them.

12 Newer operating systems do save it once
13 a day, a similar concept.

14 Q. And system restore points are
15 sequentially numbered as they are added to the
16 computer; right?

17 A. They are.

18 Q. So, in other words, two sequentially
19 numbered system restore points should occur in
20 chronological order?

21 A. They should.

22 Q. And Stroz Friedberg analyzed the system
23 restore points found on the forensic image of the
24 Seagate hard drive; right?

25 A. Page 45 of the report, yes, sir.

1 N. Broom

2 I have no problem about anything they
3 have on page 45.

4 Q. Right.

5 So your report is not indicating that
6 these specific facts are inaccurate?

7 A. Absolutely not.

8 Q. You are not otherwise addressing them
9 in any way?

10 A. No. I never made any comment about
11 inaccuracies on page 45 of their report.

12 Q. Now, you have offered another one of
13 your alternative explanations --

14 A. Yes, sir.

15 Q. -- here which is the CMOS battery idea
16 on page 25 of your report; correct?

17 A. Yes, sir.

18 Q. And this is again a possible
19 explanation as to how a clock could have been
20 altered?

21 A. That's a fair statement, yes, sir.

22 Q. You are -- specifically you suggest if
23 a computer had been unplugged for a long period
24 of time it's possible for the battery to drain
25 and the CMOS clock to give erroneous readings;

1 N. Broom

2 right?

3 A. That's a factual statement, yes, sir.

4 Q. How long does it take for a CMOS
5 battery to drain?

6 A. I cannot answer that question.

7 Q. Do you have any idea?

8 A. No, I cannot answer the question. Each
9 battery is different and it depends on how long
10 the battery had been in operation. If I buy a
11 brand new battery today that I charge and
12 discharge, that's one thing. If I have a battery
13 that's been used for five years it charges and
14 discharges at different rates. So I can't make a
15 generic statement about that.

16 I can say people typically don't have a
17 problem with a CMOS battery for three years when
18 they buy a motherboard, but I can't get much more
19 specific. I've had them go out within a matter
20 of weeks of buying a brand new motherboard, so
21 there are bad batteries.

22 You do realize it's just like a watch
23 battery, it's a small, thin, about the size of a
24 quarter size battery?

25 Q. I do.

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N. Broom

A. Okay.

Q. When you say erroneous readings, what you're saying is that the clock would basically be reset to the original factory settings once the battery drains; right?

A. That's not what I said.

Q. What do you mean about erroneous readings?

A. I have personally witnessed erroneous settings, I've seen times when the time was set back, I've seen times when the time was set to a number that didn't even make any sense like 1800, I've seen times where it's moved forward.

Q. Okay.

And you continue in your opinion at page 25 that the CMOS time, whether right or wrong, is what gets reported to the Windows operating system when a computer is restarted; correct?

A. Yes. And that's where I was agreeing with Stroz's analysis of the event logs.

Q. Right.

And you don't offer any facts to establish that this actually occurred on the hard

1 N. Broom

2 drive we're discussing that you analyzed; correct?

3 A. That is correct.

4 Q. You are simply speculating about this
5 theory; right?

6 A. It's there as an alternate theory, yes.

7 Q. Right.

8 You're speculating about an alternative
9 theory?

10 A. Just like they speculated that somebody
11 set the clock back.

12 Q. Okay.

13 But just so it's clear, you don't offer
14 any facts to establish this actually happened,
15 what you're doing is advancing speculation;
16 right?

17 A. They offered a theory of how they
18 thought it happened, that somebody purposely
19 backdated a clock. I offered an alternate theory
20 of how it could have happened using the same
21 exact set of facts. Their same facts that they
22 wrote about the log I agreed with, okay, and my
23 theory uses the exact same facts that they've
24 stipulated and it gets you to the same point.

25 Q. Well, but you don't actually offer any

1 N. Broom

2 facts to establish that this occurred on this
3 machine; correct? You just said that.

4 MR. BOLAND: Objection. He just said
5 what facts he used.

6 Q. What facts, if any, do you have that
7 the Seagate hard drive was unplugged and that the
8 battery drained?

9 A. I do not have any.

10 Q. You've got no facts at all to support
11 the idea that this, in fact, occurred on the hard
12 drive we've been talking about; correct?

13 A. Correct, it's an alternate theory of
14 what could have happened, just like an alternate
15 theory there's no facts that somebody changed the
16 clock. There is evidence of the time has been
17 changed, I agree to that.

18 Q. Okay.

19 A. But how the time got changed, there
20 are differing opinions of how it could have
21 happened --

22 Q. I understand.

23 A. -- using the same facts.

24 Q. I'm talking about your statements, your
25 alternative theory is not tethered to any

1 N. Broom

2 specific actual facts, it's speculation; correct?

3 A. It's an alternate theory.

4 Q. Okay.

5 And it is not tethered to any actual
6 facts about this computer; correct?

7 MR. BOLAND: Objection. He's already
8 answered the facts.

9 Q. You've already said it's not
10 tethered to any actual facts. Therefore --

11 A. You said that.

12 MR. BOLAND: Objection. He did not say
13 that.

14 A. You said that.

15 I'm telling you I've given you an
16 alternate theory of how it could have happened
17 and that's the end of my statement on that.

18 Q. Okay.

19 And I've asked you for any facts and
20 you said you had none, so you've said that there
21 are no facts to establish that it happened on
22 this machine.

23 A. You've said there's no facts. I have
24 simply said that I've offered an alternate
25 theory, the same facts that Stroz discovered

1 N. Broom

2 which are the same facts that I used to say that
3 it could have happened, there is nothing
4 different.

5 Q. Okay.

6 So what are those facts?

7 A. The system event log being off by 94
8 days is a perfect indication that something
9 changed on the system clock; I don't disagree
10 with that fact. The only thing we disagree on
11 between Stroz and I is how the time got changed
12 back, and I'm not saying I know for a fact that
13 it was the CMOS battery, I'm saying that it's one
14 of the possible alternatives.

15 Q. My question is what facts do you have
16 that the CMOS battery drained?

17 A. I do not have evidence that it -- I did
18 not examine the physical computer, the HP
19 Pavilion physical computer.

20 Q. So you did not examine the computer,
21 you have no facts that the CMOS battery in fact
22 drained; correct?

23 A. Yes.

24 Q. So when we're talking about your
25 reasonable alternative theory that it was the

1 N. Broom

2 battery draining, you have no facts to support
3 that theory; right?

4 A. And the equivalent would be there are
5 no facts to say that somebody physically set it
6 back either.

7 Q. Okay.

8 I'm asking about your opinion, sir.

9 A. And I'm telling you what --

10 Q. Sir, can you wait for me to ask a
11 question.

12 I'm asking about your opinion. Your
13 opinion is that there is a reasonable alternative
14 that the CMOS battery explanation happened.

15 You do not have any facts to support
16 the theory that that in fact happened here;
17 correct?

18 A. The length of time this computer was in
19 operation, it's a reasonable assumption that the
20 CMOS battery would eventually wear down, that the
21 time frame -- you asked me earlier what the time
22 frame of the CMOS battery might be and I told you
23 about three years.

24 How much time was this computer in
25 operation?

1 N. Broom

2 Q. What facts do you have about how much
3 time the computer was in operation?

4 A. Well, considering that we're talking
5 about data from 2003 all the way up to 2010 or
6 2011, I think quite a few more years than three,
7 so an HP Pavilion computer in operation for that
8 many years, I think it's a reasonable assumption
9 that your CMOS battery would fail or be failing,
10 and I think most forensic examiners would give
11 you that same concept; beyond that I have no
12 other proof because I did not examine the
13 computer.

14 Q. So with respect to your alternative
15 theory that the CMOS battery drained, the only
16 fact you are pointing to that you are offering
17 the Court in support of this opinion is the
18 length of time the computer was allegedly used;
19 correct?

20 A. Yes, sir.

21 Q. You have no other facts other than
22 that; right?

23 A. No, sir.

24 Q. Now, you describe a test that you
25 performed to verify your theoretical reasonable

1 N. Broom

2 explanation, right, on page 25 of your report?

3 A. I did not conduct a test. I think
4 you're confusing the word on a test laptop.

5 Q. Okay. Fair enough.

6 You relay some information about a test
7 laptop that had been unplugged for a year and
8 then when it was turned on; right?

9 A. Yes, sir.

10 Q. That was a laptop, not a desktop;
11 correct?

12 A. That's correct.

13 Q. What kind of battery was in the laptop?

14 A. I do not have the -- I didn't take it
15 apart to look.

16 Q. You don't know whether it was lithium,
17 nickel cadmium?

18 A. I do not.

19 Q. How old was the laptop?

20 A. I think it was purchased -- it was a
21 Dell laptop purchased in approximately 2003, 2002.

22 Q. How long had it been used?

23 A. Since that time off and on.

24 Q. Had it previously been unplugged for an
25 extended period of time?

1 N. Broom

2 A. Yes, it was.

3 Q. Prior to the time that you turned it on
4 after the year that you've described in your
5 report?

6 A. Correct. Sometime last year,
7 approximately a year before I did this case, I
8 had used that laptop for a similar type function,
9 I was checking some Yahoo e-mail to see how it
10 behaved and I had to use the laptop to do it and
11 that's how I knew that approximately a year ago
12 the clock was set correctly, and then I moved and
13 had not plugged that laptop back in in that
14 period of time.

15 As you can imagine, it's not a laptop
16 that I would use, being that old.

17 Q. Had you previously changed the CMOS
18 battery in that laptop?

19 A. No. It's never been changed.

20 Q. And that computer's clock reset to a
21 time in 2003; right?

22 A. When I turned it on it said November
23 20th, 2003.

24 Q. Was that roughly the time that you
25 purchased it when it was manufactured?

1 N. Broom

2 A. No. I don't know what that time was
3 specifically, I can't tell you exactly when I
4 purchased it.

5 Q. I believe you said you had it since
6 about 2003?

7 A. I said 2002 or 2003.

8 Q. You testified earlier that you are
9 aware that Stroz Friedberg did not find an
10 electronic version of the Work For Hire document
11 and the Ceglia media; correct?

12 A. Yes.

13 Q. What they did find were seven near
14 versions of the Work For Hire document; right?

15 A. I agree with that.

16 Q. This is at page 37 of their report,
17 they set out the factual basis for their expert
18 opinion that these documents were fraudulently
19 created; right?

20 A. They did.

21 Q. And in their report they state that
22 there are seven of these versions of the Work For
23 Hire document; right?

24 A. They do.

25 Q. And they state that all seven have

1 N. Broom

2 metadata anomalies; right?

3 A. Can you point to where that
4 specifically says all seven?

5 I agree it says it, I'm just not sure
6 if it says all seven.

7 Q. I guess I'll refer you back to page 33.
8 Sorry, I got a little bit ahead of us
9 here.

10 Under section A where it reads "All
11 seven versions of the Work For Hire document
12 found on Ceglia media show metadata anomalies
13 indicative of backdating.

14 A. I'll agree that says that on page 33.

15 Q. And in the report Stroz Friedberg also
16 states that the last 10 authors metadata of,
17 quote, workforhiremz.doc, close quote, indicates
18 key forgeries; isn't that right?

19 A. Can you say the page again? I didn't
20 hear it, if you did.

21 39?

22 Q. Yeah, right.

23 A. I did not review that.

24 Q. I'm just asking, that's what their
25 opinion is, yes?

1 N. Broom

2 A. If you're asking me to read their
3 report, yes, that's what it says, but I did not
4 review that area.

5 Q. And Stroz Friedberg states that all
6 seven of these versions have significant
7 formatting inconsistencies; right?

8 A. You're going back to 33 again?

9 Q. Yeah.

10 A. They do.

11 Q. And then referring back to the last 10
12 authors metadata, did you say you did not read
13 this section?

14 A. I did not review it, it wasn't part of
15 my opinion in my report.

16 Q. So you did not review this section of
17 the Stroz Friedberg report?

18 A. I've read it, but I didn't conduct my
19 examination to cover the same material.

20 Q. Got it.

21 So in your report you don't address any
22 of this evidence; correct?

23 A. That's what I said in different words a
24 second ago, yes.

25 Q. You don't offer any expert opinions

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N. Broom

that challenge any of these opinions; correct?

A. How many times do you need me to say the exact same thing?

I just said I did not review this, I don't have an opinion on it, it's not in my report.

We've been doing this quite a while today and you have asked me the same question multiple times. I'm answering it the exact same every time.

Q. I'm asking you about this section, this discussion, which is different --

A. For the fourth time, I did not have an opinion on this section.

Q. Let me finish my question.

I'm asking you specifically about these opinions and I'm entitled to ask you questions and you need to sit here and listen to those questions and you need to answer those questions -- you're under oath -- as to whether you offered an expert opinion on these aspects that I'm asking you about.

A. And how many times do I have to tell you the same answer?

1 N. Broom

2 I did not review this and I did not
3 express an opinion on this section. It doesn't
4 change when you ask me the question multiple
5 times.

6 Q. Let me ask you some questions now about
7 your statements in your report at page 33 about
8 the reinstallation of the Windows operating
9 system.

10 Ready, Mr. Broom?

11 A. Yes.

12 Q. Okay.

13 Now, at page 33 you discuss the
14 reinstallation of the Windows operating system on
15 the Seagate and the fact that it was reinstalled
16 on at least two occasions; right?

17 A. Yes, sir. Specifically I'm referring
18 to what Stroz said.

19 Q. Okay. Understood.

20 You assert again that this hard drive
21 was not used by the plaintiff and you then go on
22 to assert that the reinstallation was done by
23 Paul's father, Carmine Ceglia.

24 Just to be clear, what you're referring
25 to here is the first reinstallation that occurred

1 N. Broom

2 before the March 29th, 2011 imaging of this
3 machine; right?

4 A. Again, this goes back to where I told
5 you I was relying on Paul's communication about
6 his father doing it, otherwise I have no way of
7 proving who did the installation, I physically
8 wasn't there, so I couldn't say it, and I do not
9 have an indication of which reinstallation we are
10 talking about, I don't have that answer.

11 Q. So what specifically is your factual
12 basis for asserting that Carmine Ceglia
13 reinstalled the operating system because the
14 computer was not working?

15 A. Paul told me that verbally during the
16 conversation we had, that his father was having
17 problems with the computer and reinstalled the
18 operating system, and he said he thinks he did it
19 multiple times, but I don't have any dates or
20 times of when that was done, just that the
21 computer was causing problems, that could have
22 been the virus that was causing the problems, and
23 that the computer operating system was
24 reinstalled, no further information than that, it
25 was a verbal Paul telling me I don't have any

1 N. Broom

2 proof of who actually did it, because your
3 computer doesn't tell you who does it when you
4 reinstall.

5 Q. The only fact, then, to support this
6 section of your report about the reinstallation
7 of the Windows system is what Paul told you about
8 what happened with the reinstallation; right?

9 A. Correct.

10 Q. And let's just look here at what is
11 written here on page 33 at the end of the first
12 paragraph.

13 You write "The reinstallation of the
14 operating system that occurred on the hard drive
15 was done by Paul's father, Carmine Ceglia,
16 because the computer was not working properly."

17 A. That's what I just said, yes, sir.

18 Q. How was the Court supposed to know that
19 this information was from Paul Ceglia?

20 MR. BOLAND: Objection as to what the
21 Court would know or not know.

22 Q. You can answer the question.

23 A. I don't have an answer for you.

24 Q. You did not disclose to the Court that
25 this was a statement that -- a factual statement

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N. Broom

that you had only sourced from Paul Ceglia, did you?

A. No, I did not.

There is no item of forensics evidence on a computer that says who installed the operating system.

Q. Well, as we agreed earlier in the day, it is important to verify statements that are provided to you, particularly by parties to a litigation; right?

A. Yes.

Q. And don't you think it would be important for the Court in assessing your report to understand that this factual assertion that you are advancing to the Court comes directly from the plaintiff, who is not before them under oath?

A. Yes.

Q. Your statement is in fact under oath to the Court; correct?

A. Yes.

Q. Are you vouching for this statement?

A. The -- yes. I'm saying that I was basing this on what I knew at the time that I

1 N. Broom

2 wrote the report and what I knew was the totality
3 of all the evidence that I'd gathered at that
4 point that includes statements from Paul.

5 Did I write in the report that this
6 statement came from Paul that it was his father
7 that reinstalled it?

8 No.

9 Q. So you are vouching under oath that
10 this is a true statement to the Court?

11 A. Based on what I knew at the time, now,
12 and when I wrote it, yes.

13 Q. But you don't disclose --

14 A. People type -- police officers type
15 what other people tell them all the time in
16 reports.

17 Q. And they source who told them --

18 MR. BOLAND: Objection.

19 He's answering the question. Let him
20 answer the question, Alex.

21 Q. Go ahead.

22 A. You take the totality of information
23 you're given and absent other information you run
24 with it and you conduct an investigation based
25 on it.

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N. Broom

In this particular instance there is no forensics evidence that tells you who installed or who reinstalled an operating system, there's not a piece of forensics evidence that does that.

In this case I was told that it was Paul's father that reinstalled the operating system, that's what I put in this report.

Could I have been clearer?

Yes.

Q. When you were a police officer were you taught to interview witnesses and then compile the witness statements on one piece of paper with no indication of who said what?

A. No.

Q. You were taught to indicate who said what, you were taking down a witness statement; correct?

A. Correct.

Q. And you are presenting to the Court, you're vouching to the Court under penalty of perjury this statement and you have not disclosed the fact that your sole basis for it is Paul Ceglia?

A. I believe I just disclosed it and when

1 N. Broom

2 I talked to Mr. Ceglia I was not conducting an
3 interrogation, I was simply talking to the person
4 who was hiring me to do work, not conducting an
5 interrogation event, I was trying to establish
6 facts just like you would with a client.

7 Q. I understand.

8 You just disclosed it to us in this
9 deposition, you haven't disclosed it to the
10 Court.

11 Don't you think you should correct the
12 statement?

13 MR. BOLAND: Objection.

14 Q. Where have you disclosed to the Court
15 that the factual premise to your report is based
16 on what Paul Ceglia told you?

17 A. Sitting right here with you. It's in
18 the record now and it will be disclosed. I have
19 no doubt that you'll disclose it.

20 I admitted to you that I should have
21 put in the statement came from Paul specifically.

22 What else do you want?

23 Q. So wherever there is a factual
24 statement that is based only on Paul, you agree
25 that you should have put in here that you got

1 N. Broom

2 that information from Paul Ceglia; yes?

3 A. I will not disagree with that
4 statement.

5 Q. Isn't it misleading to the Court to not
6 include that statement?

7 MR. BOLAND: Objection.

8 A. I'm going to answer the question one
9 last time.

10 I omitted it, I am apologizing to you
11 for doing so, and yes, I should have included it.
12 I'd be happy to include it, if I was given the
13 opportunity to make an amended statement to that,
14 then I would say that I received that piece of
15 information from Paul, there's not any other ways
16 I can say it, and that is, as I stated before,
17 the main reason is because there is no forensics
18 evidence to tell you who did a reinstall or not.

19 Q. So if there is no forensics evidence to
20 tell you who did a reinstall and the only
21 information is based on a user's statement, then
22 why speculate about it in a computer forensics
23 report submitted to a court?

24 A. It was part of my talking with Paul
25 about what might have happened on his computer,

1 N. Broom

2 and in this statement if Stroz had listed in the
3 report that the operating system was reinstalled,
4 this was just an explanation of how that might
5 have happened.

6 Q. So Paul asked you to include this
7 section in your report?

8 A. He didn't ask me to include it, it was
9 just part of what I was able to report on.

10 Q. So you're simply speculating in your
11 forensics report about something based solely on
12 what Paul said; yes?

13 MR. BOLAND: Objection. You have asked
14 this, like, 10 times, Alex.

15 Q. Correct?

16 A. How many times do I have to say the
17 same statement?

18 How do you want me to change the
19 statement I'm making? If you tell me how you
20 want me to change it --

21 Q. If you answer honestly yes, then that's
22 fine.

23 A. I've answered it I don't know how many
24 times now, I apologize for not putting in the
25 statement that Paul said the following statement,

1 N. Broom

2 that's what I left out of this report.

3 Q. Now, you acknowledge that Windows was
4 reinstalled at least two times, right, so there's
5 one before the March 29th imaging and one after;
6 do you understand that to be the case?

7 A. I assume what you are stating is when
8 the computer was first built back in 2002 or
9 2003, whenever it went into service, there was an
10 initial operating system and then at some time
11 prior to the first imaging there was a
12 reinstallation of the operating system, that
13 would be time 2?

14 Q. No.
15 Actually, I'm referring to the fact
16 that the Stroz Friedberg report states that --

17 A. Page?

18 Q. Page 46, that there were two, at least
19 two multiple reinstallations of the Windows
20 operating system during the pendency of the
21 litigation.

22 A. So if you read the second to the bottom
23 paragraph, one had the installation date of
24 December 29, 2010, that was for the image that
25 was created on March 29th.

1 N. Broom

2 Q. Right.

3 A. Is that correct?

4 Q. Yes.

5 A. Okay.

6 Then when the image was made the second
7 time it had a different installation date.

8 Are we on the same page?

9 Q. Yeah.

10 So when it was made the second time the
11 installation date was in fact earlier; correct?

12 A. That's the way I read it also, and if
13 the operating system was reinstalled and there
14 was a problem with the CMOS time, that could
15 affect why it was two days earlier as opposed to
16 a correct date and time.

17 Q. And isn't it also equally plausible
18 that if there was a reinstallation on a computer
19 that had been backdated, that could also explain
20 it?

21 A. That would give the exact same piece of
22 information, exactly.

23 Q. Did you analyze this information about
24 the reinstall about the Microsoft Windows, of the
25 operating system?

1 N. Broom

2 A. I looked at the -- I concur with
3 Stroz's information that the time, the
4 installation time was set. I did enough to
5 confirm what they wrote in the report referenced
6 the facts is accurate, the clock was set back to
7 an earlier time.

8 How that happened, I don't know, but it
9 was set back and the operating system was
10 reinstalled.

11 Now, with that said, there is something
12 to be said for once a forensics image is made of
13 a computer the person whose computer it belongs
14 to is free to continue using that computer; I
15 think most people would agree with that.

16 Once a forensics image is made for
17 spoliation purposes, the evidence has been
18 acquired. If somebody wants to reacquire it at a
19 different time, that's going to have different
20 information on it, so the first image that was
21 made on the particular date, that is the best
22 evidence of what happened years ago. Something
23 that happens from that point forward is not going
24 to give you anything that happened back in 2003
25 or 2004, and that's what I state in my report.

1 N. Broom

2 Q. I understand.

3 Isn't that a computer that is used
4 later is going to give you evidence about what
5 occurred in 2010 and 2011; correct?

6 A. Absolutely it would, but it wouldn't
7 give you any information about what occurred
8 prior to that.

9 Q. Well, it's not going to give you any
10 information --

11 A. I said that, I said anything for the
12 2003-2004 time frame.

13 Q. It would give you some information.
14 You're asserting that it's not the best
15 evidence --

16 A. It's not going to give you any new
17 information that you wouldn't have from the
18 previous image.

19 Is that a fair statement?

20 Q. Yes.

21 A. Okay.

22 Q. It's not that it's not going to give
23 you anything, it's going to give you the same as
24 before, but it's also going to give you what
25 occurred more recently, which could also be

1 N. Broom

2 germane to the question.

3 A. That is true, and if it gives you
4 anything counter that is older, then it should be
5 circumspect. If it was a date in 2003, but you
6 didn't have that on a previous image, that would
7 be a problem, right?

8 Q. Unless there was backdating on the
9 computer; correct?

10 A. Well, if there's backdating on the
11 computer, every date on the computer is
12 circumspect, I've already said that multiple
13 times.

14 I've told you on AC and AD I'm not
15 willing to believe any of the times because
16 there's too many different problems with the time
17 on these computers, including the viruses
18 rootkits and the backdating issues, it just would
19 not make me comfortable relying on anything
20 absent the external source like we've talked
21 about; for one, you gave the Sidley Austin e-mail
22 server as an external source of time.

23 Q. The Microsoft network server, that's an
24 external source?

25 A. When the clock attempted to reset

1 N. Broom

2 itself, exactly.

3 Q. Right.

4 I just want to make sure, I think that
5 you said this: You agree that Windows was
6 reinstalled on the computer after March 29, 2011;
7 correct?

8 A. Yes, sir.

9 MR. SOUTHWELL: Let's take a little
10 break.

11 THE VIDEOGRAPHER: We're going off the
12 record. The time is 4:14. This ends tape
13 number 4.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are back on the
16 record. The time is 4:43. This is tape
17 number 5.

18 BY MR. SOUTHWELL:

19 Q. Mr. Broom, did you discuss the
20 deposition or the case with Mr. Boland over the
21 break?

22 A. No.

23 Q. We have been talking about the
24 reinstallation of Windows operating systems, and
25 you would agree that the install date of an

1 N. Broom

2 operating system is an important forensic
3 artifact; correct?

4 A. Yes, sir.

5 Q. And in fact on page 126 of the book
6 "JumpStart" --

7 A. Please hold.

8 Q. I will wait until you get there.

9 A. Go ahead.

10 Q. It indicates that the operating system
11 install date is one of the, quote, "three things
12 Neil Broom always checks," close quote; correct?

13 A. Correct.

14 Q. And this evidence is critical because,
15 as the book notes, criminals -- this is at page,
16 again in that same little section 126, criminals
17 often try to hide their behaviors and obscure
18 evidence by, among other things, reinstalling
19 Windows; right?

20 A. Correct. I have no problem with that
21 statement, I have used it on cases.

22 Q. And you agree with Stroz Friedberg's
23 findings here that the Windows operating system
24 was reinstalled twice on the Seagate hard drive;
25 correct?

1 N. Broom

2 A. Yes.

3 We are talking about two different
4 images, thought, right, one Seagate hard drive
5 but as referenced by the two different images
6 that were made?

7 Q. Let me rephrase it, then, yes.

8 The Windows operating system was
9 reinstalled on two occasions as it relates to the
10 Seagate hard drive and the image of the Seagate
11 hard drive?

12 A. Images of the Seagate hard drive, yes.

13 Q. And those installations occurred during
14 the pendency of the litigation; correct?

15 A. If you believe the date on the computer
16 for the install time. I can't say that that date
17 is accurate. We've discussed that many times
18 that I don't believe the dates can be trusted,
19 but if you believe the date of reinstallation
20 was -- if you believe the clock was set correctly
21 when the reinstall occurred, then yes, it was
22 during the period of time. I don't know when the
23 accurate time of the clock was.

24 Q. Well, one of the images was created on
25 March 29, 2011; correct?

1 N. Broom

2 A. Yes.

3 Q. And the image of the machine as it
4 operated after that date was taken on July 15,
5 2011?

6 A. That is correct.

7 Q. And on the image of the machine taken
8 on July 15, 2011 there is also evidence of a
9 reinstall of the operating system; correct?

10 A. There is evidence of a reinstall
11 meaning between those two dates there was a
12 reinstallation, okay, but I can't say the
13 specific date that was given, I can't say that
14 date is accurate.

15 Q. I understand.

16 You don't know the date it occurred on,
17 but between March 29, 2011 and July 15, 2011
18 there was a reinstall on that machine?

19 A. Yes.

20 Q. And that's during the pendency of the
21 litigation?

22 A. That part, yes.

23 Q. Now, on page 33 --

24 A. Mine or theirs?

25 Q. Your report, page 33, the bottom

1 N. Broom

2 half --

3 A. Go ahead.

4 Q. -- you include some speculation about
5 what these Web searches that are in the Stroz
6 Friedberg report might relate to; correct?

7 A. Yes, sir.

8 Q. You don't have any factual basis for
9 what these Web searches were about; right?

10 A. No, sir, no more than what Stroz had in
11 their report when they said it's evidence of
12 backdating.

13 Q. Did you discuss this fact with Paul
14 Ceglia?

15 A. No.

16 Q. Did he provide you any information
17 about why these searches occurred on the machine?

18 A. No.

19 Q. And you didn't discuss that with
20 Carmine Ceglia either; right?

21 A. No, I never talked with Carmine.

22 Q. Are you aware that Carmine Ceglia
23 submitted a declaration in this case?

24 A. I believe I -- I believe knew he
25 submitted one; I did not read it.

1 N. Broom

2 Q. You did not read it or it's not been
3 provided to you?

4 A. I knew one was going to be submitted,
5 I'll put it that way.

6 Q. Did you ask for a copy of it?

7 A. I think at the time that I asked for it
8 I was just told it was going to be done, but I
9 had not heard it was completed, but I have not
10 read one.

11 Q. And previously we talked about the HP
12 Pavilion computer the hard drive was in. That
13 computer, the actual computer the hard drive was
14 in, that was not produced to you; correct?

15 A. Again, I think I've stated that
16 multiple times. No, it was not.

17 Q. Now, we've talked about a number of
18 times during the course of the deposition factual
19 information that you have gotten from Paul Ceglia
20 during this conversation you had.

21 When in the context of your retention
22 did you have the conversation?

23 A. Approximately May 28th, 29th, 30th,
24 someplace in there, the end of May.

25 Q. So a handful of days before you issued

1 N. Broom

2 your report?

3 A. Exactly. That's how I came up with the
4 date was I knew it was a handful of days before
5 the report was due.

6 Q. Approximately how many days before the
7 report, sir?

8 A. A handful.

9 Q. One hand, about five or less?

10 A. 28th, 29th, 30th, I mean, that's
11 approximately a handful.

12 Q. When did you do the majority of the
13 drafting of your report?

14 A. Shortly -- 28th, 29th, 30th I started.
15 Again, I did -- it was a continuous effort for
16 all 14 days of words on paper, but the majority
17 of the report was done towards the end.

18 Q. After speaking with Mr. Ceglia?

19 A. Yes.

20 Q. And on a few occasions during the
21 course of today I've asked whether there was
22 anything else from your conversation with Paul
23 Ceglia that you were relying on in your report
24 and you said a few times no, although later that
25 it has come to light that there were additional

1 N. Broom

2 pieces of information --

3 MR. BOLAND: Objection.

4 Q. -- from that.

5 What I'd like to just understand and
6 make sure it's clear is whether there's anything
7 else that Mr. Ceglia has told you that needs to
8 be disclosed to the Court in the nature of his
9 statements to you.

10 A. Not that I recall.

11 Q. So you have relayed today all of the
12 factual information that you have gotten from
13 Paul Ceglia; correct?

14 A. Everything I can recall.

15 Q. Were you concerned about your ability
16 to finish your report in the time frame that you
17 had?

18 A. Absolutely.

19 Q. Did you ask for any more time to
20 prepare your report?

21 A. Ask who for more time?

22 Q. Ask anyone.

23 A. I explained to Mr. Boland that this was
24 a very short time frame to try to complete the
25 task in, but my understanding was with expedited

1 N. Broom

2 discovery I had a set date, therefore it had to
3 be done by June 4th.

4 Q. Did you ask for an extension of that
5 date?

6 A. Ask who for an extension?

7 Q. Mr. Boland.

8 A. I relayed to Mr. Boland that this was a
9 very close time frame to try to complete this
10 much work and he indicated that that's his time
11 frame we were given to work in.

12 Q. Did you ask him to ask the Court for an
13 extension?

14 A. I would leave that to his discretion.
15 I told him that there was plenty more work to do
16 in this case, but he said we had a set date of
17 June 4th.

18 I'm not going to instruct an attorney
19 what to do with the Court.

20 Q. Did you ever explain that you were
21 having a hard time following the Stroz Friedberg
22 report and you needed more time to review it?

23 A. I don't think I had a hard time
24 following it.

25 Q. So you never said that to Mr. Boland

1 N. Broom

2 and asked for more time to review the Stroz
3 Friedberg report?

4 A. That I was having a hard time following
5 it?

6 No, I never said that.

7 Where did you get those words?

8 Q. And I think you said at the outset that
9 this was an unusual engagement in part because of
10 the limited time?

11 A. I did.

12 Q. Were there other reasons why this was
13 an unusual engagement?

14 A. A very high profile case, for sure.

15 Q. And isn't it also an unusual engagement
16 in that you relied to a large extent on
17 information provided to you by Mr. Ceglia?

18 A. I'd say that's a fair assessment.

19 Q. Were the circumstances difficult to get
20 the report done on time?

21 A. Yes.

22 Q. Do you wish you had not taken the
23 engagement?

24 A. No.

25 Q. And in the course of the month that you

1 N. Broom

2 relayed in your report and in your testimony
3 today you spent only 14 days actually working on
4 the assessments analysis and execution of the
5 report; correct?

6 A. Yes.

7 Q. Give me just a moment, and we are
8 almost done. If you will give me a moment to
9 just organize my thoughts we may finish sooner.

10 Off the record.

11 THE VIDEOGRAPHER: Going off the
12 record. The time is 4:54.

13 (Recess taken.)

14 THE VIDEOGRAPHER: We are back on the
15 record. The time is 5:05.

16 BY MR. SOUTHWELL:

17 Q. Mr. Broom, we're getting very close to
18 the end here.

19 So part of your engagement here was to
20 review the Stroz Friedberg report; right?

21 A. Yes.

22 Q. And part of your charge was to come up
23 with alternative possible explanations for the
24 forensic findings and conclusions that they drew;
25 correct?

1 N. Broom

2 A. Yes, sir.

3 Q. And Stroz Friedberg detailed much
4 forensic proof and then drew certain conclusions
5 and opinions from that; right?

6 A. Yes, sir.

7 Q. And you have not offered opinions about
8 many of those conclusions and opinions; right?

9 A. Yes, sir.

10 Q. And you've acknowledged today that
11 there were things, there were forensic findings
12 within the Stroz Friedberg report that standing
13 on their own might cause you concern; correct?

14 A. Yes, sir.

15 Q. So the fact that there were missing
16 USBs that had been connected to some of the
17 Ceglia media, that might be an example of
18 something that might cause you concern; right?

19 A. Yes, sir. If it was me, I would have
20 pointed out the same item.

21 Q. And that would be concern about the
22 completeness of the record in front of you in
23 terms of the, you know, missing media, shall we
24 say?

25 A. That would be a fair assessment. If I

1 N. Broom

2 knew that a piece of evidence was there, I would
3 have the desire to examine that evidence if at
4 all possible, I would have no problem with that
5 statement at all.

6 Q. That might raise a concern about
7 possible spoliation; yes?

8 A. Correct.

9 Q. And another example might be evidence
10 of deleted versions of the file, of files with
11 last access dates that predate the purported date
12 of the file?

13 A. I just didn't quite get the question.
14 You're close. I just didn't --

15 Q. Another example of a forensic fact that
16 might cause you, as a forensics investigator,
17 some concern would be if you were to see a
18 deleted file that had a last access date of, for
19 example, October of 2003, when it was purporting
20 to include e-mails from February of 2004, a later
21 date?

22 A. Yes, sir, that would cause me concern
23 too.

24 Q. That would be a concern about possible
25 backdating?

1 N. Broom

2 A. Yes, sir.

3 Q. Among other potential fraudulent
4 things; correct?

5 A. Thank you for including that part, yes,
6 sir.

7 Q. And those and other items that were
8 identified within the Stroz Friedberg report when
9 you reviewed them caused you concern; correct?

10 A. Yes, sir.

11 Q. And in doing your analysis of the
12 Ceglia media, did you in fact see those concerning
13 elements?

14 A. That's too broad a question, but yes, I
15 saw elements, as we discussed, that caused me the
16 same concern it would have caused Stroz during
17 their review.

18 Q. So you saw a number of forensic
19 artifacts in your own analysis that also caused
20 you concern about the fraudulent nature of the
21 media; correct?

22 A. Caused me to be alert that there was --
23 that there were questions. I did not dispute
24 that Stroz found what they found.

25 Q. And caused you to be alert that there

1 N. Broom

2 were questions about the accurate dates of
3 electronic evidence; is that fair to say?

4 A. That's a very fair statement.

5 Q. And therefore the authenticity of
6 particular electronic pieces of evidence; correct?

7 A. Yes, sir.

8 Q. So there was much that you agreed with
9 in terms of those findings in the Stroz report?

10 A. Oh, absolutely.

11 Q. And what your task with respect to your
12 report was to theorize or speculate about
13 alternative possibilities; correct?

14 A. For certain items, if there was a
15 plausible alternative idea that could have caused
16 something, it was to bring that to the table.

17 Q. Right.

18 And so your report included your
19 speculation about those possible alternatives;
20 correct?

21 A. Along with my testing to show that
22 those plausible explanations could in fact work
23 to provide the same information.

24 Q. Right.

25 So you did your testing to try to

1 N. Broom

2 include with your speculation; correct?

3 A. Yes, sir.

4 Q. Now, you -- based on the report and
5 based on your testimony today, you are careful
6 about what you say and put into your reports;
7 correct?

8 A. Yes, sir.

9 Q. You've done a lot of training of
10 computer forensics investigators; correct?

11 A. Yes, sir.

12 Q. Are you aware of within the computer
13 forensic investigator field a conclusion about a
14 piece of forensic evidence that there is nothing
15 to indicate fraud?

16 A. I don't understand that question. I
17 think you are asking me in a negative and I --

18 Q. Is the concept of nothing to indicate
19 fraud an accepted methodology within the computer
20 forensics industry?

21 A. Are you asking to prove a negative?

22 Q. I'm asking about that statement that
23 concept of nothing to indicate fraud.

24 Is that a phrase that you train on, that
25 you've trained computer forensics investigators

1 N. Broom

2 to review and assess?

3 A. Not as such. I've never used that
4 statement as you're phrasing it. It might be a
5 slightly different idea and your phraseology has
6 just messed me up.

7 It sounds to me like you're asking me
8 can you prove a negative, but you might be asking
9 something else.

10 Q. Have you ever heard a computer forensic
11 investigator using the phrase "nothing to
12 indicate fraud"?

13 A. Oh, I'm sorry, yes, that I've heard,
14 there's nothing to indicate fraud, I have heard
15 that statement before.

16 Q. And is that a common methodology that
17 computer forensics investigators use?

18 A. I guess it would depend on your
19 particular workplace. It's not something I
20 typically write in my reports, I don't say there
21 is no indications of fraud, that is not something
22 I opine on in my reports, but I could see where a
23 firm might have a standard that they do so; I
24 wouldn't hold it against them if they did.

25 Q. Other than what you have testified to

1 N. Broom

2 here today, are there any particular opinions
3 that you're planning to offer based on your
4 review of the Stroz Friedberg report or any other
5 expert reports?

6 A. Not at this point, but of course that's
7 reserved if we do additional investigation, get
8 the time to do additional investigation, obviously
9 there would be new information, new reports.

10 Q. But as you sit here today, you don't
11 have any other opinions that you are planning to
12 offer?

13 A. No, sir.

14 Q. And there are no particular opinions
15 that you're planning to offer that are not in
16 your report?

17 A. No, sir.

18 Q. Are there any answers that you provided
19 earlier in your deposition that you've since
20 recalled are incorrect?

21 A. No, sir.

22 Q. Have you recalled anything further that
23 could supplement any of your previous answers?

24 A. No, sir.

25 MR. SOUTHWELL: We are done for today.

1 N. Broom

2 Thank you, Mr. Broom.

3 MR. BOLAND: I am going to ask him a
4 few questions to clarify a few things.

5 All right with you?

6 MR. SOUTHWELL: Well, that depends on
7 what you are asking.

8 MR. BOLAND: You had asked him a
9 question -- well, I will ask him directly
10 and then you can object or not.

11 EXAMINATION BY

12 MR. BOLAND:

13 Q. I wanted to clarify a question you were
14 asked about the payment arrangement that you have
15 with Mr. Ceglia.

16 The word -- and I'm not saying it was
17 intentional -- the word "contingent arrangement"
18 or contingent something was thrown in the
19 question, and I want to clarify that you've been
20 paid essentially your daily rate and nothing else.

21 Is that accurate?

22 A. That's correct. I have been paid
23 \$28,000, which was my daily rate for 14 days of
24 work and at this point that is all I have
25 received.

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N. Broom

THE WITNESS: I have, obviously, my expenses for this trip, but I'm going to give them to Mr. Boland and let him deal with with you.

MR. SOUTHWELL: Fine.

THE WITNESS: And then my travel time which will be billed to Mr. Boland for my trip back and then a few minor expenses for the cost of hard drives and things like that that have not been billed, but that's the extent of all monies that I've been promised, have received and am due in any part of the case at all.

Q. And to be direct --

MR. BOLAND: I don't know if you are even disputing this or not, I want to make sure I'm clear on this.

Q. Are you aware of how lawyers sometimes -- not in this case necessarily, but in other cases, personal injury, for example -- will not charge a fee to their client and then get a percentage of whatever they recover for the client?

A. Absolutely, I'm aware of that contingency arrangement and it's totally

1 N. Broom

2 unethical for computer forensics experts or any
3 expert to be involved in that contingency
4 arrangement.

5 Q. Very well. I just wanted to make sure
6 it was clear.

7 A. Never have been, never would be
8 involved in that type of arrangement.

9 MR. SOUTHWELL: And you're not in this
10 case?

11 THE WITNESS: I am not and I never
12 would.

13 MR. BOLAND: Okay.

14 I wanted to clear that up, and I'm not
15 saying that was intentional, Alex, I just
16 remember hearing that word.

17 THE WITNESS: You did say something
18 along those lines at the very beginning of
19 the deposition.

20 MR. SOUTHWELL: I did use the word
21 "contingent," that's true.

22 THE WITNESS: Okay, so now we're clear.

23 BY MR. BOLAND:

24 Q. Mr. Southwell asked you about the
25 large, large number of things that the Stroz

1 N. Broom

2 report listed as being reviewed by their experts.

3 Do you recall those questions that he
4 asked you?

5 A. Yes.

6 Q. Did your review of the report indicate
7 their evaluation, the details of their evaluation
8 of all thousand of the CDs, for example, that
9 they possessed as evidence in this case?

10 A. My recollection of that is that they
11 noted that they had received all that
12 information, but there's obviously nothing
13 written about the vast majority of numbers of
14 items, for instance, 1,087 CDs, and yet there is
15 only discussion of a couple of them in the
16 report.

17 Q. And the other lists of computers, were
18 there more computers listed that they had access
19 to versus computers from which they actually took
20 data to put into their report or did they take
21 data from every single computer and it is
22 somewhere in the report or was it a subset? I
23 guess that's what I'm getting at.

24 A. I think it's fair to say that the fact
25 that there were 174 floppies, 1,087 CDs and then

1 N. Broom

2 additional items that in no way could they have
3 fit all of that information in a single report
4 like this, so every item that they received they
5 did not document fully, you know, complete
6 analysis of each item, that's not what's in the
7 report.

8 Q. And when you were asked some questions
9 about the TIFF images -- do you know what I'm
10 talking about, those two documents?

11 A. Yes, sir.

12 Q. Digital images, I should say, they are
13 not actual physical documents.

14 Do you have any -- did you uncover in
15 your analysis any evidence of the existence of
16 two pieces of paper which eventually became those
17 digital images?

18 A. I have never seen the two pieces of
19 paper that were those documents.

20 Q. And based on the size of those digital
21 images, the two TIFFs attached to those e-mails,
22 what would that piece of paper, what size would
23 it had to have been to make those?

24 A. As we've mentioned earlier,
25 approximately the size of a business card, a

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little bit wider, but approximately the size of a business card.

Q. Other than what's in your report do you have any evidence that the parties in this case signed a document that was the size of a business card or executed a document like that?

A. No, I do not.

Q. And when you reviewed the Stroz report did you see anything indicating there where they noted the size of the underlying document that would have caused that scan? Did they see that?

A. No, only that it was a low-resolution image was how it was phrased.

Q. And without the exact timing, necessarily, but did they have -- did Stroz Friedberg have a longer period of time than you did to have access to this evidence?

A. Yes.

Q. And did their report reflect that they did a virus scan of any of the evidence?

A. Not the report of March 26, 2012, no virus scans were mentioned in it.

Q. And what caused you to do a virus scan?

A. One, it's a standard part of most

1 N. Broom

2 investigations that we do, but specifically the
3 concept of backdating, there are alternatives to
4 how backdating, a computer's clock can be set
5 back, one of those ways is through viruses and
6 Trojans, the other one is through the BIOS date
7 and time, and a third way is through somebody
8 actually setting the clock back, so it's two of
9 the three ways it could have been done alternate
10 to what was proposed by Stroz of somebody
11 purposely backdating.

12 Q. Now, when you talk to someone like you
13 talked to Mr. Ceglia, Paul Ceglia, regarding --
14 as part of your analysis, do you necessarily just
15 believe everything that that person says, even
16 after the person will hire you?

17 A. No, I don't.

18 Q. Okay.

19 Do you think it's without value to talk
20 to the person who hired you?

21 A. No.

22 Q. Is there ever a case where you would
23 have the opportunity to talk to that person and
24 just say, Look, I don't even want to discuss with
25 you the case, the evidence?

1 N. Broom

2 A. No, sir.

3 Q. Okay.

4 Can you, in your analysis of the
5 Harvard e-mails from Zuckerberg's e-mail account --
6 Alex asked you some questions about this -- can
7 you just expand on what the factual basis is from
8 the evidence that the defendants produced that
9 led you to the conclusion that there are deleted
10 e-mails from that account that would be relevant
11 to this case?

12 A. Only that there seems to be a block of
13 time not accounted for that you would expect
14 e-mails to be there, for instance, discussing the
15 StreetFax contract in more detail around the time
16 of the, you know, the alleged StreetFax contract
17 being signed, you would expect more communications
18 to reference that and I didn't find those
19 particular e-mails either, so that would be one
20 small subset.

21 Q. And based on your experience and
22 training in computer forensics, what are the one
23 or more ways that someone like Mark Zuckerberg as
24 a student at Harvard could access his Harvard
25 e-mail account, how would he have done that in

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2003?

A. I'm sure some type of e-mail client, either on a Windows system or a UNIX-based system would have been one way, and then of course through a Web-based application they probably had one.

Q. And would that access to that kind of an e-mail system enable a user of that system to copy e-mails to whatever computer they're using?

A. Yes, that's reasonable.

Q. And did you, in your review of the Stroz Friedberg report, note whether they attempted to examine sources like that for e-mails from Mr. Zuckerberg's account?

A. I noted no place in the report where Mr. Zuckerberg's physical computers were examined. This was an examination of Mr. Ceglia's media specifically, not of Mr. Zuckerberg's media.

Q. Now, is that something as a forensic expert in a case like this you would be interested in having access to if you're the expert for the defendants in this case? Would you want to know what's on those computers e-mailwise?

1 N. Broom

2 A. Pretty much the same way that I said
3 that e-mail is a two-way communication, that you
4 would want to have both of those communications
5 if at all possible, then yes, I would also want
6 to have access to the defendants' computer hard
7 drive either as a defense expert or plaintiff's
8 expert. Having access to more information is
9 better than less information.

10 Q. In your review of the computers you
11 looked at did you find any -- well, specifically,
12 the computer that contained the TIFF images
13 attached to the Kole e-mail, were there any
14 computer applications on that machine designed to
15 alter digital images, if you recall?

16 A. I do not recall any.

17 Q. Do you know the names of some of those
18 common programs?

19 A. Are you referring to, like, Photoshop?

20 Q. Any programs capable of altering
21 digital images like Photoshop.

22 A. Photoshop is the main tool I would put
23 in that category and I am sure there is a very
24 large handful, a very large number of other types
25 of tools out there that are similar to Photoshop,

1 N. Broom

2 but no, I did not note those.

3 Q. And in the Stroz Friedberg report do
4 you recall if they noted any such software to
5 edit digital images was found on the media by way
6 of their analysis?

7 A. There's nothing in the report to
8 indicate that.

9 Q. And the two -- what's the --
10 Mr. Southwell asked you about this as well -- the
11 total capacity of a floppy disk?

12 A. 1.44 megabytes.

13 Q. And the two TIFF images attached to
14 these two e-mails, their size is much larger than
15 what could fit onto one floppy disk, the two of
16 them together?

17 A. Correct. They were 945, approximately
18 945 each, so it would have been 1.8.

19 Q. And were you able to actually even
20 confirm that a scanner was used as the tool to
21 create these two TIFF images attached to those
22 two e-mails?

23 A. Confirm, no. There is a -- as Stroz's
24 report states, there are other indications of the
25 TIFF files on the hard drive; however, I was not

1 N. Broom

2 able to confirm what those files specifically
3 were. I see that they -- the same way they
4 recovered the remnants of the TIFF files, I
5 recovered that same information; however, I
6 cannot say how that particular information got
7 onto the computer.

8 Q. All that malware that you listed in
9 your report, was any of that listed in the Stroz
10 report as well that you reviewed?

11 A. No.

12 Q. Have you run into malware as part of
13 your analysis of other computers in the past?

14 A. I have.

15 Q. Is there some source that forensic
16 experts go to enabling them to determine
17 precisely all the functions of all the types of
18 malware that exist?

19 A. No. It's a vast universe of malware
20 and different companies that provide resources
21 referencing malware. There's no one -- you don't
22 point to one company and say I'm going to go
23 there and find all of the information about
24 malware.

25 Q. And Mr. Southwell asked you about some

1 N. Broom

2 of the dates related to the malware.

3 Is it your opinion that if a piece of
4 malware was first detected in 2008 that it was
5 created in 2008?

6 A. No. That's the date that we finally
7 found out about it.

8 There's something referred to as
9 zero-day exploits and with a zero-day exploit the
10 whole idea is that we don't know about it. The
11 bad guy would use the zero-day exploit to infect
12 or to compromise systems for a period of time in
13 which nobody could defend against that attack
14 because nobody else in the world knows about it
15 except that attacker.

16 After a period of time somebody
17 discovers they've been broken into, research is
18 done in the case and now that's when they say
19 we've discovered such and such attack; in reality
20 it has existed for a period of time prior to that.

21 Q. And if the computer in this case we're
22 talking about is a computer that contained the
23 Outlook Express e-mail account which had those
24 five e-mails from Vera, that had Vera Ceglia
25 associated with them --

1 N. Broom

2 Do you recall that?

3 A. Yes.

4 Q. -- the fact that that computer had all
5 these malware programs, I guess, on it, does that
6 indicate to you that in the past those programs
7 would not have been on that computer a date prior
8 to when those first malwares showed up in the
9 Internet, let's say, in 2008, if that rootkit
10 TDSS or whatever that you were talking about with
11 Mr. Southwell first was detected in 2008, does
12 that give you confidence that that rootkit was
13 not on that computer at any point before it was
14 detected?

15 MR. SOUTHWELL: I'm going to object to
16 the form. I'm sorry, I am not really
17 following --

18 MR. BOLAND: Too confusing? All right.

19 Q. The one rootkit he asked you about that
20 was detected in 2008, do you recall those
21 questions?

22 A. Correct, it's generally reported that
23 the TDSS rootkit was first discovered by
24 researchers in the 2008 time frame.

25 THE WITNESS: Will you agree with that

1 N. Broom

2 one?

3 Okay.

4 Q. And so what date, based on that, what
5 would be your expert opinion as to what date that
6 piece of malware actually landed on that computer?

7 A. I don't have an answer to that.

8 Q. Where could we go to get that answer,
9 when it first got on that computer?

10 A. The only forensic evidence would be the
11 creation date of the particular file.

12 The only problem is, as I've stated,
13 you can no longer trust the dates on the computer,
14 because they could have been manipulated once the
15 computer was, quote, owned by an attacker.

16 Q. And can these rootkit pieces of
17 malicious code also enable the obscuring of other
18 malicious code on the computer from being known?

19 A. Yes.

20 Q. Detected, I should say?

21 A. Yes. As a matter of fact, that's the
22 function of some of the malware that was
23 installed is it obfuscates the fact that it's
24 there or other things are there.

25 Q. And do people who design malware, can

1 N. Broom

2 it be designed to evade detection even with a
3 virus scan?

4 A. Very much so. As a matter of fact, the
5 virus scan typically won't find it unless it does
6 know about it, so until it makes the virus list
7 there's a chance it can be found through
8 heuristics, but typically you don't find it until
9 it's a known virus and there's certain signatures
10 that are provided by that known virus to look
11 for, so a virus can exist on a piece of media for
12 a period of time where nobody in the world knows
13 it exists, but it's still there; that's the way
14 the attacker wrote it.

15 Q. So is it fair to say that the list of
16 malware in your report, you, as an expert, you
17 can't state that that's the complete list of all
18 the malware that's actually on that computer?

19 A. That's a fair statement.

20 Q. And is there anyone out there who has a
21 tool which overcomes this ability of malware to
22 evade virus scanning and they'll be able to find
23 it no matter what? Is there such a tool that
24 forensic experts have?

25 A. There is no one universal tool, no.

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2 Q. You talked to Mr. Southwell about the
3 ability of a person to access Vera Ceglia's
4 e-mail account from a Web-based tool.

5 Do you remember those questions?

6 A. Yes, sir.

7 Q. What would they need to access her
8 e-mail account through an Internet connection
9 from a Web-based interface?

10 A. A username and password for the account.

11 Q. Once that person -- let's say that
12 person accesses that e-mail account and then
13 sends an e-mail, do they have to hack into any
14 computer to do that, to send that e-mail?

15 A. No. Once they know the username and
16 password they are on the e-mail system through,
17 say, a Web interface, you could do that from
18 anywhere and you don't have to hack anything,
19 it's getting the username and password is all
20 you need.

21 Q. And then you talked about the
22 synchronizing he asked you about.

23 Can you describe then how that e-mail
24 and any attachments could get onto another
25 computer when that was not -- there was no

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2 hacking involved?

3 A. Again, if the e-mail client was set to
4 synchronize up to the Web-based e-mail account,
5 after you connected to the Web-based e-mail
6 account, sent an e-mail, then the e-mail client
7 would sync up and now the -- that particular
8 e-mail would be in the sent items item folder on
9 the e-mail client, in this case the Outlook
10 Express DBX.

11 Q. Mr. Southwell asked you about page 21
12 of the Stroz report.

13 Do you remember talking about that,
14 that graphic that's pasted on the top of the page
15 there?

16 A. Labeled as figure 4 on page 17 of the
17 Stroz report, yes.

18 Q. Right. And --

19 MR. SOUTHWELL: Sorry, what page?

20 THE WITNESS: Page 17 of the Stroz
21 report.

22 MR. BOLAND: I used the page in the
23 upper corner, sorry.

24 Q. Is there any forensic evidence on the
25 computer you analyzed as to who wrote the

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2 handwriting that appears on this graphic?

3 A. I have no information about the
4 handwriting at all.

5 Q. And did the Stroz Friedberg report
6 indicate their determination of who the author
7 was of that handwriting?

8 A. Based on the name James D. Kole at the
9 top they call it the Kole printout, the
10 handwritten note reads as follows, and then they
11 quote the handwriting, and it's alluded to that
12 it's Mr. Kole's writing.

13 Q. Was there any forensic evidence,
14 computer forensic evidence you found to
15 corroborate that claim that that's whose
16 handwriting that is?

17 A. No, there was not.

18 Q. And is there any way -- if you can see
19 the date on that e-mail at the top, if you could
20 read that, I know it's kind of scrunched in there.

21 A. Friday, March 5th, 2004.

22 Q. And was there any forensic evidence you
23 found as to what e-mail that e-mail is responding
24 to, like where is the e-mail that this person is
25 responding to in this e-mail?

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Did you find any evidence that connects some other e-mail to that one being the response?

A. Are you referring to the typed message --

Q. Yes.

A. -- or the handwritten message, because they appear to be different?

Q. The typed message, let's go with that first.

A. The typed message, there was a message down below that was from Paul to Mr. Kole that states "Hi, Jim. Looks good, much less threatening," et cetera.

As a matter of fact, even below that there's from Mr. Kole to Karin and Paul and then the message is cut off, you can just see that there was an initial message from Mr. Kole to Karin and Paul.

Then you see the message I just referred to from Paul to Mr. Kole and its subject is "Re Mark's undone work."

Then there's a message from Mr. Kole to Paul and it looks like Karin, subject Mark's -- reference Mark's undone work, and then this message is from --

1 N. Broom

2 Q. And when you say this, just for the
3 record, you are pointing at the very top of that
4 e-mail message?

5 A. I'm sorry, yeah, the very top of the
6 message, the final reply is from Paul to Mr. Kole
7 and it starts off "Hi, Jim."

8 Q. And based on your experience on how
9 e-mails work, is it fair to say that the e-mails
10 below are earlier messages to which this one is
11 the end of the thread, at least on this printed
12 document?

13 A. Correct. The final "Hi, Jim" was the
14 final reply in the chain.

15 Q. Is there anything in there -- okay,
16 very well.

17 So this handwriting, is there any
18 forensic evidence you found on the computer as to
19 what e-mail, if any, this handwriting is directly
20 responding to?

21 A. No, there's not.

22 Q. And then can you read Mr. Ceglia's
23 e-mail address that's contained -- or an e-mail
24 address that has his name in it, let's put it
25 that way, that's contained in the upper portion?

1 N. Broom

2 A. The final thread is from Paul Ceglia at
3 msn.com.

4 Q. Did you find any -- in your analysis,
5 did you find any evidence on the computers
6 anywhere of a response from Jim Kole to the
7 e-mail address associated with Vera Ceglia?

8 A. No, there was no response.

9 Q. Did Stroz Friedberg indicate that they
10 found an e-mail response from Jim Kole to an
11 account associated with Vera Ceglia in their
12 report?

13 A. No, there's nothing in the report to
14 show that.

15 Q. Do you think the result of you not
16 finding that is because you didn't look at
17 everything or because it's not there? Which
18 would you think?

19 A. Due to the fact I did look at the
20 messages on the Outlook Express account and I did
21 not see them either, so they didn't find it and I
22 didn't see it either, so I do not think they
23 exist.

24 Q. You were asked some questions generally
25 about backdating of files, the phrase as used

1 N. Broom

2 throughout the Stroz report, you read that in the
3 report in several locations?

4 A. Yes.

5 Q. Is there only one cause for how dates
6 associated with files can get changed?

7 A. No, there's not.

8 Q. Can you list a couple examples, one of
9 which we know is the Stroz allegation of an
10 intentional backdating to commit fraud, that is
11 one way dates can be changed on a file; correct?

12 A. Absolutely.

13 Q. What are some others?

14 A. The BIOS clock being off either
15 intentionally or through age and just not working
16 correctly, the clock could reset itself.

17 Interesting to note on that is that
18 while the computer is turned on, if you change
19 the clock, an entry will be made in the Windows
20 log that you changed the clock.

21 There was no indication in the Stroz
22 report that that activity occurred. In other
23 words, a Windows time being changed in Windows
24 would make an entry in the Windows log showing
25 the clock was changed, that was not reported as

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2 being found and I didn't find it either.

3 However, if you turn a computer off and
4 then change the clock in the BIOS, that means not
5 the hard drive booting up into Windows, but it's
6 still in the BIOS, you can change the clock there
7 and no entry will be made in the Windows log
8 until Windows tries to sync up and then it will
9 make the type of log that Stroz dictated in their
10 report.

11 Now, that can be somebody intentionally
12 changing the clock in the BIOS or that could be a
13 computer malfunction where the BIOS clock is not
14 working correctly, either of those two could
15 change the time on a computer.

16 Q. And in your review of the Stroz report
17 did you note whether they were able to rule out
18 those nonfraud causes for these dates being
19 changed on the files?

20 A. I didn't see that anywhere in the report.

21 Q. Were you able to rule out those nonfraud
22 causes for this?

23 A. No, I wasn't.

24 Q. So in your opinion is the likelihood of
25 fraud versus nonfraud being the cause for these

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50/50?

A. I wouldn't put a number on it.

Q. Now, the digital image, the one conclusion that Stroz makes in their report I wanted to ask you about as well is where they conclude -- and I don't remember the exact wording they use, we can find it, and if Mr. Southwell wants to contest my summary, we can get it, but they conclude that they believe they found the authentic contract between the parties.

Do you recall that conclusion that they made?

A. I do.

Stroz Friedberg -- it's page 56 of the Stroz report, Stroz Friedberg also found what is believed to be the authentic contract between Mr. Ceglia and Mr. Zuckerberg. The contract contains no references to Facebook.

Q. Okay.

You don't have any digital imaging expertise yourself?

A. I do not.

Q. Did you evaluate that digital image to try and determine if it was an unaltered original

1 N. Broom

2 digital image?

3 A. No, I did not.

4 Q. Have you ever done that in any report
5 in the past?

6 A. No, I have not.

7 Q. Have you ever worked on a case where
8 digital image experts were involved?

9 A. No, I have not.

10 Q. Do you know that such a specialty
11 exists?

12 A. Yes.

13 Q. Okay.

14 Has the Windows -- this was a Windows
15 operating system on the Seagate hard drive?

16 A. Yes, sir.

17 Q. Would you categorize the Windows
18 operating system as something that is without
19 security flaws since every time it comes up?

20 A. The answer is no, the Windows operating
21 system is not without security flaws or the
22 corollary of that, Windows has security flaws.

23 Q. And it's fair to say they have them on
24 a pretty regular basis; right?

25 A. Due to the fact that they have service

1 N. Broom

2 upgrades to fix the security flaws, yes, it's
3 pretty common knowledge that there are many
4 security flaws in Windows operating systems.

5 Q. And in your experience have you run
6 across security flaws in the Windows operating
7 system that, among other things, caused people's
8 data to be exposed to hackers?

9 A. Yes.

10 Q. Is there something that's ever going to
11 be fixed with software? Will there ever be a
12 hacker-proof piece of operating system software,
13 in your opinion?

14 A. I think it's the opposite of that. As
15 the operating system gets more and more
16 complicated it's leaving more and more openings
17 where data can be exposed, so it's the opposite
18 of getting more secure.

19 Q. Let me make that note. Okay.

20 MR. BOLAND: Based on that, I don't
21 have any further questions right now, Alex,
22 unless you have some follow-up.

23 MR. SOUTHWELL: I have just a few.

24 BY MR. SOUTHWELL:

25 Q. Mr. Boland asked you some questions

1 N. Broom

2 about the TIFF images and your testimony from
3 today is that the TIFF image that we've been
4 speaking about that were attached to the Kole
5 e-mails are in fact scans of paper documents;
6 correct?

7 A. Yes, sir.

8 Q. And Mr. Boland asked, you know, would
9 they have had to have been created from a paper
10 document the size of a business card and I think
11 you said yes.

12 A. According to my testing, yes, that is
13 one plausible explanation.

14 You brought forth a different
15 explanation earlier.

16 Q. Right.

17 A. I think I have one explanation and that
18 is a file was an 8-1/2-by-11 sheet of paper
19 reduced to 30 percent of the size --

20 Q. Right.

21 A. -- and I received forensics evidence
22 that was similar to what was found on the C hard
23 drive.

24 Q. I understand.

25 Mr. Boland's question, I think, was

1 N. Broom

2 aimed at is this the only option, and I think you
3 have clearly stated that that is one option that
4 you believe, but you've also acknowledged that
5 there are other options for how the paper
6 document might have been scanned in the form that
7 you find it; right?

8 A. I will agree with that statement, yes,
9 sir.

10 Q. And one option is it was a regular
11 8-1/2-by-11 paper that was scanned and reduced in
12 size; right?

13 A. Yes, sir.

14 Q. And that's equally plausible than a
15 scan of a postcard or a business-card size
16 document; right?

17 A. With the one caveat of it didn't make
18 sense on why you would send a document that small
19 to an attorney who could then not read the
20 document, that was the only caveat I had for that
21 explanation earlier.

22 Q. Right. I understand.

23 And Mr. Boland, in fact, then asked you
24 about an e-mail that has the name Jim Kole, James
25 Kole, on the top of it which includes handwriting,

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suggesting that the copy is not legible; correct?

A. That a copy of something is not legible, but it says the contracts you sent earlier or something along those lines.

Page?

Q. Page 17.

A. "Please fax me the contract as I can't read the one sent earlier to understand his or your" -- crossed-out text -- "argument."

Q. So there's handwriting saying fax me the contract because I can't read the one sent earlier?

A. I agree there's handwriting. I can't say who the handwriting belongs to, but yes, there is handwriting.

Q. And in fact Stroz Friedberg is not suggesting, is not providing an opinion as to who provided this handwriting; correct?

A. They do say Mr. Kole's printout, that's the only reference to, and I agree that it looks like Mr. Kole's printout because it's Mr. Kole's name at the very top of the document, which is how Outlook prints e-mail.

Q. Although it's not stated in the Stroz

1 N. Broom

2 report, is it a logical conclusion that if it's
3 Mr. Kole's printout that it's Mr. Kole's
4 handwriting?

5 A. That could be a logical conclusion, but
6 I cannot say because I'm not a handwriting expert
7 nor do I have any proof that he actually wrote it.

8 Q. I understand.
9 That would be reasonable to deduce?

10 A. That would be a reasonable inference,
11 however, not provable on my end.

12 Q. Now, you also had some questions about
13 the Harvard e-mails and you testified earlier
14 that you did not in fact analyze the Harvard
15 e-mails?

16 A. I did not analyze all of the Harvard
17 e-mails. I looked at some of them, but, as I've
18 said, I did not have time to go through all of
19 them, but I did go through some of them and it
20 appears to me that there are blocks of time that
21 are missing.

22 Q. And the basis for you asserting that
23 there are blocks of time are missing are because
24 you expect that there would be e-mails?

25 A. Correct.

1 N. Broom

2 Q. Do you have any factual basis to know
3 that there in fact were e-mails in that time
4 period?

5 A. Not that I can recall right now.

6 Q. Was there anything from the Ceglia
7 media that includes e-mails from Mr. Ceglia from
8 that time period?

9 A. Are you referring to the three Word
10 documents?

11 Q. Yes.

12 A. Yes.

13 Q. And so you have no factual basis -- you
14 expect that there would be e-mails, but you don't
15 in fact have a basis to know that there are
16 e-mails that should have been in this account;
17 correct?

18 A. Correct.

19 Q. And you were asked some questions about
20 the Outlook Express e-mail account and whether
21 there was a response to the March 3, 2004 e-mail
22 with the name at the bottom that is Paul to Jim
23 Kole, and you said you didn't see a response;
24 correct?

25 A. Correct.

1 N. Broom

2 And also I was asked if that had been
3 in the Stroz report and I did not see it there
4 either.

5 Q. Correct. That was going to be my next
6 question, but yes, thank you.

7 It is possible that there was a
8 response and it was deleted; correct?

9 A. That is one possibility.

10 Q. Did you see any responses in the
11 Outlook Express file, inbox file?

12 A. I do not recall the contents of the
13 Outlook Express file at this time. I know I
14 looked through it, but I can't tell you if there
15 was anything there or not and I don't have that
16 noted in my documents here.

17 Q. If you assume that there are --

18 A. Would you please hold?

19 Okay.

20 I can tell from page 12 of the Stroz
21 report there's at least one item in the inbox
22 that has not been read yet, so there is something
23 in that inbox, I just can't recall what was there
24 besides the one message, but there definitely is
25 one message there.

1 N. Broom

2 Q. You are referring to page 12, figure 1,
3 of the Stroz report; is that right?

4 A. Yes. As you can see, the Outlook --
5 excuse me, inbox, it says one, and it's still
6 highlighted, that means there was at least one
7 message in the inbox there that has not been
8 read, but, again, I do not recall -- I do not
9 remember what was in the inbox, I just can't
10 recall now.

11 Q. So you are not saying that that was a
12 response e-mail; right?

13 A. That's right.

14 Q. And you're saying that it was not read
15 because there's the little blue one next to the
16 inbox; correct?

17 A. And it's still highlighted.

18 Now, of course, there are ways that you
19 can read a message and then mark it as unread,
20 but that --

21 Q. I'm sorry, what are you referring to to
22 say that it is still highlighted?

23 A. Do you see the inbox is in a bolded
24 fashion --

25 Q. Okay.

1 N. Broom

2 So the fact that there's a 1 next to it
3 and that it's bold, that's what he's telling you,
4 that there is mail that is not read?

5 A. Correct.

6 Q. It could have been previewed in the
7 preview screen and seen but not registered as
8 read; correct?

9 A. Correct.

10 Q. But you're not offering evidence that
11 that was in fact a reply to another e-mail that
12 was sent from this account; correct?

13 A. I am not.

14 MR. SOUTHWELL: Give me just a moment,
15 please.

16 Q. Mr. Boland asked you earlier about the
17 fact of the Windows log making reference to a
18 clock changing.

19 Are you sure that that occurs with
20 Windows XP and not with Windows 7?

21 A. Please state the question again.

22 Q. You provided some comment about a
23 Windows log entry when the clock was changed.

24 Are you sure that that's not something
25 that was introduced with Windows 7 rather than

1 N. Broom

2 Windows XP?

3 A. That's a good question.

4 No, I'm not. I know it's in Windows 7,
5 and now that you've brought it to my attention,
6 but, you know, I do not recall at this time when
7 that was first brought in.

8 I know it's in Windows 7 because I have
9 another case that's currently relying on that,
10 so, no, I cannot say it was in XP, I'd have to do
11 more research.

12 Q. If it was not in Windows XP then there
13 would not be such a log entry; correct?

14 A. That makes total sense, yes, sir.

15 MR. SOUTHWELL: Nothing further.

16 MR. BOLAND: I just have one question
17 about the reasonable conclusion on page 21
18 of the Stroz report, that graphic we were
19 all talking about.

20 BY MR. BOLAND:

21 Q. I am using the page in the upper
22 corner -- sorry, I'm not doing it the way you all
23 are doing it, I'm messing everybody up.

24 Mr. Southwell asked you if it's
25 reasonable to assume that this conclusion that

1 N. Broom

2 Stroz Friedberg makes that that handwriting was
3 written by Mr. Kole.

4 MR. SOUTHWELL: Just to clarify, that's
5 not what I said nor what the report says.
6 The report lists, it just recites what the
7 handwritten note reads.

8 Q. And then at the bottom it refers to
9 what is his handwriting, I --

10 A. Thus the handwriting noted on the
11 printout of May 4-5, 2004 e-mail chain
12 corroborates the authenticity of the StreetFax
13 e-mails, that's what it says.

14 MR. SOUTHWELL: Right, yes, because it
15 refers to the contract that was filed that
16 was sent earlier, and the question to
17 Mr. Broom was whether he thought it was a
18 reasonable inference that because this was
19 printed by James Kole, apparently,
20 that it was his handwriting, and he said
21 yes.

22 BY MR. BOLAND:

23 Q. Let's talk about just briefly that this
24 Kole e-mail that was -- the defendants claim was
25 sent to Mr. Kole with the two TIFF images

1 N. Broom

2 attached was sent from Vera Ceglia's e-mail
3 account; right?

4 A. Yes.

5 Q. And this e-mail, which was printed by
6 someone and contains someone's handwriting, would
7 it be reasonable to assume that the way a person
8 typically replies to an e-mail from, let's say,
9 Vera Ceglia sends an e-mail to Jim Kole, that is
10 it reasonable to conclude that the typical way he
11 would reply to that e-mail that's supposedly from
12 Paul Ceglia would be to print out a different
13 e-mail that doesn't relate to that e-mail coming
14 from a different account and then for the lawyer
15 to handwrite his reply to the Vera Ceglia e-mail
16 and then somehow transmit that whole document
17 back to Paul Ceglia?

18 Is that a typical way people respond to
19 e-mails, reply to e-mails?

20 A. I have to add one more item to your
21 explanation.

22 This e-mail chain was printed out and
23 then somebody wrote on the piece of paper, and
24 then somehow this piece of paper was then
25 communicated back to Mr. Ceglia because this is

1 N. Broom

2 not an electronic document, this is a printed
3 piece of paper with handwriting, so I don't know
4 how the paper document requesting to resend the
5 item would have been given to Mr. Ceglia, that
6 part doesn't make sense.

7 Now, to the first part of your
8 question, no. If someone sends me a document
9 that I can't read, an attachment that I can't
10 read, I would simply hit Reply and say, Please
11 send me a document in a different form that I can
12 read.

13 I would not print out the e-mail -- not
14 even print out that e-mail, print out a different
15 e-mail, write on it and then somehow communicate
16 it back to the person.

17 From this printed document I can't tell
18 how Mr. Ceglia got a copy of this.

19 Q. And did Stroz Friedberg or you find any
20 evidence that Jim Kole not only received an
21 e-mail from Vera Ceglia, but hit Reply and
22 responded back to it, any forensic evidence at
23 all that he did that?

24 A. No.

25 MR. BOLAND: I don't have anything

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else.

BY MR. SOUTHWELL:

Q. Mr. Broom, how about the Sidley Austin e-mails?

A. He just said reply to it, hit reply to it, and that I have not -- that was as specific as you made apply.

Q. Well, he actually combined two questions, I think.

A. I understood it as one.

If you have a specific question, I will be happy to answer it, but I understood that as the reply, is there any evidence that Mr. Kole replied to the e-mail from Vera, and the answer is none.

Q. I had heard the question to be was there any evidence that Mr. Kole received the e-mail, to which, of course, the answer is yes, there's the e-mail that has been produced by Sidley Austin; correct?

A. I agree to that.

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N. Broom

MR. SOUTHWELL: Nothing further.

MR. BOLAND: Nothing.

THE VIDEOGRAPHER: Going off the
record. The time is 5:53.

(Time noted: 5:53 p.m.)

NEIL BROOM

Subscribed and sworn to before me
this ____ day of _____, 2012.

Notary Public

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