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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

July 19, 2012

10:11 a.m.

Videotaped deposition of MICHAEL
F. McGOWAN, 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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MATTHEW BENJAMIN, ESQ.
AMANDA AYCOCK, ESQ.

ALSO PRESENT :

VILAN TRUB, Videographer

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THE VIDEOGRAPHER: The attorneys will state their appearances.

MR. SOUTHWELL: Alexander Southwell from Gibson, Dunn for the defendants and Matthew Benjamin for the defendants.

MR. BOLAND: Dean Boland for the plaintiff, Paul Ceglia.

THE VIDEOGRAPHER: This is day 2, tape 1.

(The witness was sworn in.)

MR. SOUTHWELL: Mr. Boland, before we start, just one thing. I am going to continue my objection to the use of this videographer and the admissibility or preserve our objections to the admissibility of the videotape, and just to clarify, this is day 1 of the deposition of Mr. McGowan rather than day 2.

MR. BOLAND: Yes.

MR. SOUTHWELL: I also want to just formally request the opportunity to review, the witness to review the transcript under Rule 40 and want to also request that for Mr. Rose as well.

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MR. BOLAND: No objection. Obviously, the rules entitle them to that, so that's fine. I'm assuming he will do that in some timely fashion before, not six weeks to do it.

MR. SOUTHWELL: Right. I think the rules set out the time frame, we will get a transcript and he will review it for accuracy and make any corrections needed.

MR. BOLAND: Fair enough.

M I C H A E L F. M c G O W A N, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. BOLAND:

Q. Good morning, Mr. McGowan.

A. Good morning.

Q. You and I have been in the same room, actually, we met before, haven't we?

A. We spoke before, yes.

Q. At the deposition of Neil Broom?

A. That's correct.

Q. And at the deposition of Jerry Grant?

1 M. McGowan

2 A. That's correct.

3 Q. Now, I have some exhibits that I used
4 with Mr. Rose, and since I am going to talk about
5 some of the similar ones with you, we left them
6 here in the room or Mr. Benjamin brought them
7 here to the room, so I'm going to go through
8 those one at a time and we'll probably just call
9 them Rose Exhibit whatever the number is and that
10 will be consistent with yesterday's transcript.

11 A. Okay.

12 Q. Can you tell me if all the information
13 you relied on in preparing your report in this
14 case is actually listed in your report?

15 A. All the information that we relied
16 upon, all the opinions that we, that we reached
17 and the bases of these opinions with respect to
18 the Ceglia media, our examination of the Ceglia
19 media are covered in our report, the Stroz report
20 from March of 2012.

21 Q. So is the answer yes, all of the
22 information you relied on in preparing your
23 reports is listed in here?

24 A. All the information we relied upon in
25 preparing the report is contained in the report,

1 M. McGowan

2 yes.

3 Q. And is your CV in the report current?

4 A. Yes.

5 Q. No new trainings that you've received
6 since submitting the report?

7 A. No new trainings, correct.

8 Q. No new certifications?

9 A. Correct.

10 Q. Let's talk about that.

11 What certifications do you have here
12 today that relate to your work on the report?

13 A. Related to computer forensics, I hold
14 an EnCase ENCE certification, that is the primary
15 certification I hold in the area of computer
16 forensics; I've received other training, but that
17 is the certification that I hold in this area.

18 Q. So just that one?

19 A. Correct.

20 Q. Have you testified as a witness at a
21 deposition in the past?

22 A. I have, yes.

23 Q. How many times would you say?

24 A. I've been deposed twice and I testified
25 at trial a number of other times.

1 M. McGowan

2 Q. Did you receive your EnCase training --
3 actually, did you ever work for the Government?

4 A. I have not, no.

5 Q. How did you receive your EnCase
6 training, in person or was it online?

7 A. In person.

8 Q. Now, you are not a certified computer
9 examiner; correct?

10 A. No.

11 Q. And you are not a certified fraud
12 expert?

13 A. No.

14 Q. And you are aware plaintiff's expert
15 has both those certifications, are you not?

16 A. Which expert is this?

17 Q. Neil Broom.

18 A. Yes, yes, I believe I saw that listed
19 on his report.

20 Q. Have you written any books about
21 computer forensics?

22 A. I have contributed to book chapters and
23 articles, I have not written any books
24 personally.

25 Q. Do you have a college degree?

1 M. McGowan

2 A. I do, yes.

3 Q. What is that degree?

4 A. I have a bachelor's from the University
5 of Chicago in economics and statistics.

6 Q. And the training that you said you
7 received beyond the EnCase certification, can you
8 list that training for me?

9 A. Sure, I can give you a summary.

10 The courses are -- the specific courses
11 are listed in my CV, but I have attended
12 periodically external training, generally
13 week-long training in topics in computer
14 forensics, digital forensics as well as, as part
15 of my employment at Stroz Friedberg there is
16 regular in-house training on topics in computer
17 forensics, mobile phones, forensics document
18 authentication and examinations, and so I have
19 participated regularly in those as well.

20 Q. So in-house training is Stroz Friedberg
21 employees teaching other Stroz Friedberg
22 employees; fair to say?

23 A. Generally, yes. Occasionally we have
24 an outside speaker, but generally it's, as you
25 said, internal Stroz Friedberg employees.

1 M. McGowan

2 Q. And what's the length of those training
3 sessions, typically?

4 A. About an hour.

5 Q. And how often do you have those?

6 A. Generally once every two weeks or so.

7 Q. Did you talk to anyone from the defense
8 attorneys' office about your deposition today
9 before coming here?

10 A. Yes.

11 Q. How many times did you speak with them?

12 A. I met with Mr. Southwell, Mr. Benjamin,
13 I believe that Ms. Aycock may have been present
14 as well, several times, I am not sure of the
15 exact number.

16 Q. When was the last time you met with any
17 of the lawyers for the defendants?

18 A. The last time I spoke with them briefly
19 was this morning before the deposition started.

20 Q. Did you speak to them yesterday after
21 Mr. Rose's deposition?

22 A. I spoke to Mr. Benjamin and Mr. Southwell
23 last night briefly in the evening time, I believe
24 that that was after Mr. Rose's deposition ended.

25 Q. Briefly is how long?

1 M. McGowan

2 A. It was, I'd say, between half an hour
3 and an hour.

4 Q. Have you spoken to Mr. Rose since the
5 conclusion of his deposition?

6 A. I have not spoken with him, I exchanged
7 e-mails with him this morning on another matter.

8 Q. Did you exchange e-mails with him about
9 his deposition yesterday?

10 A. No.

11 Q. Have you been provided a copy, either
12 an audio or print form of his deposition
13 testimony from yesterday?

14 A. I have not, no.

15 Q. Have you discussed with anyone the
16 content of his deposition yesterday?

17 A. No, I haven't.

18 Q. Have you reviewed the transcript of any
19 other witnesses who have already been deposed in
20 this case?

21 A. Yes. I've reviewed the transcripts of
22 the depositions of Mr. Grant -- portions of the
23 transcripts of Mr. Grant and Mr. Broom, the
24 deposition I attended in person as well.

25 Q. Now, the judge in this case has some

1 M. McGowan

2 specific rules about the conduct of witnesses
3 during depositions.

4 Do you know if the defense attorneys
5 went over those with you or not?

6 A. They mentioned there was a provision
7 that we are not allowed -- I am not allowed to
8 speak with them until the termination of the
9 deposition except to discuss privilege objections.

10 Q. Fair enough.

11 I'm going to hand you what's been
12 marked from yesterday Rose Exhibit 1, if you can
13 just identify that for the record.

14 A. Yes. It appears to be a printed copy
15 of the report that Stroz Friedberg filed and
16 submitted on March 26, 2012 related to our
17 examination of the Ceglia media.

18 Q. And how are you paid for your work in
19 preparing that report?

20 A. Stroz Friedberg is compensated for my
21 work, we charge on an hourly rate, my hourly rate
22 is currently \$550 an hour.

23 Q. And how many hours would you estimate
24 you put in to work on this case in any area prior
25 to submitting that report?

1 M. McGowan

2 A. I don't have a -- we have timekeeping
3 records. I don't have a specific -- it would
4 probably be measured in weeks, not days, but I
5 don't know specifically how much time I spent.

6 Q. There's somebody at the office who
7 would know that?

8 A. We -- I keep my time in a timekeeping
9 system.

10 Q. So someone has access to all the time
11 and could do a calculation of --

12 A. Of how much time I spent on this case,
13 yes.

14 Q. And the other individuals who
15 contributed to that report, their time is kept in
16 that system as well?

17 A. Yes.

18 Q. Let's just talk a ballpark.

19 Do you think it's a thousand hours you
20 spent or is it 10 working on the case?

21 I'm just trying to get some idea of how
22 much time was involved in your work on the
23 preparation of that report.

24 A. Sure.

25 Between the two, I think it's measured

1 M. McGowan

2 in, I think, multiple weeks. I don't know. The
3 work transpired over a series of months, so I
4 don't know, when you add it all up necessarily
5 what it would come to, so I'd say several,
6 several weeks of effort is my best sense.

7 Q. Can you identify or list for me the
8 electronic evidence contained in the report that
9 you personally reviewed or analyzed, whichever
10 word you choose?

11 A. Yes. I conducted searches of all of
12 the Ceglia media that we had, that we acquired
13 pursuant to the Electronic Asset Inspection
14 Protocol. I did not personally conduct searches
15 of some of the e-mail accounts that had been
16 subsequently received through subpoena or
17 consent, but I supervised that work.

18 Q. Who did analyze the e-mail accounts
19 that you didn't personally conduct searches of?

20 A. Mr. Novak, Mr. Jason Novak primarily
21 performed that work.

22 Q. Is there any part of the report that
23 you feel like you wouldn't be able to answer
24 questions about because you were not in any way
25 involved in that portion of the analysis?

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M. McGowan

A. I don't believe so. I'll let you know if any of the specific questions come up that go beyond my personal experience, but, no, I am familiar with the analyses discussed here.

Q. Do you know how much Stroz Friedberg was paid in total for the all the work that was done from the time they were hired in this case to today?

A. I don't, I generally don't see the invoices.

Q. Would somebody at Stroz Friedberg know that answer?

A. Yes.

Q. And who would that person be?

A. We have an accounting system that keeps track of what we charge our clients, so I believe that our accounting staff could query that if requested.

Q. I am going to sort of leave a line there in the deposition and ask that you work with Mr. Southwell and provide that information, and we asked Mr. Rose for it as well.

TO BE FURNISHED: _____

1 M. McGowan

2 Q. When was the last time you read your
3 report, Rose Exhibit 1, in front of you?

4 A. The last time I read it -- I read
5 portions of it last night.

6 Q. Just portions last night?

7 A. Yes.

8 Q. What portions do you recall?

9 A. Primarily the -- just refreshing my
10 recollection on the evidence considered, just
11 went over my CV again in preparation for this,
12 those are the portions I looked at last night.

13 Q. And do you still agree with all the
14 conclusions that are in that report today?

15 A. I do, yes.

16 Q. Now, you are not a certified fraud
17 examiner, we established that.

18 Do you feel that you are qualified to
19 offer an opinion on whether fraud occurred in a
20 case anyhow?

21 A. I am qualified to the extent it deals
22 with digital forensic media.

23 Q. Is there a part of your EnCase
24 certification which supports that statement you
25 just made, that you are qualified to talk about

1 M. McGowan

2 whether fraud occurred?

3 MR. SOUTHWELL: I will object to the
4 mischaracterization.

5 MR. BOLAND: I can reword it.

6 Q. Is there any part of your EnCase
7 certification which qualifies you to draw a
8 conclusion of fraud from your computer forensics
9 analysis?

10 MR. SOUTHWELL: Same objection.

11 A. Could you repeat the question? I lost
12 the train.

13 (Record read.)

14 A. Yes. Both my EnCase certification and
15 another experience I have I dealt with analyses
16 of computers, including those where there's
17 commenting on user action, including deletions,
18 forgeries, issues concerning fraud, so I would
19 say that both my EnCase certification as well as
20 my, just my broader experience and training,
21 these are issues that come up often and I do feel
22 I am qualified to speak to them.

23 Q. Was there a portion of your EnCase
24 certification where they taught you how to define
25 fraud?

1 M. McGowan

2 A. The certification itself --

3 Q. The classes you took to obtain the
4 certification, did they teach you in those
5 classes how to define fraud?

6 A. I don't recall a specific component
7 dedicated to a definition of fraud. Certainly
8 there were topics that dealt with types of
9 fraudulent activity when they occur on computers.

10 Q. Can you define fraud, please?

11 MR. SOUTHWELL: You are asking him for
12 a common-sense definition or are you asking
13 him for --

14 MR. BOLAND: I'm just asking his
15 definition. He has made a conclusion in his
16 report that fraud occurred here.

17 Q. Define fraud.

18 MR. SOUTHWELL: I'll object, that's not
19 the conclusion he drew.

20 Sorry, I will let you ask the question.

21 A. The definition of fraud, in my words,
22 fraud can take many forms, both through the use
23 of computers and otherwise, but fraud generally,
24 as I see it, deals with intentional actions by an
25 individual or a corporation to --

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M. McGowan

Q. Do you want to take a break so you can think it through and answer?

That's fine.

MR. SOUTHWELL: He was still answering.

MR. BOLAND: There was a big long pause there, so --

A. I was just trying to word it precisely.

So actions by a user corporation entity to perpetrate crime or other bad acts, for lack of a better term; examples are, there's fraudulent financial transactions, disguising information, deleting information, there's a number of forms of fraud.

Q. Is every deletion of a file by a computer user fraud?

A. No, not every deletion of a file by a computer user is fraud.

Q. In your opinion, if a person captures an image and fixes an image of their family and fixes the red eye that's in the image, is that a forgery?

A. It may depend on the context. There might be circumstances where it depends where it is being represented at, but no, in a general

1 M. McGowan

2 sense, if someone has a personal image and
3 chooses to fix the red eye I would not consider
4 that, I would not consider that fraud.

5 Q. And what's the fraud triangle, if you
6 know?

7 A. Fraud triangle, it's a term I have
8 heard most often used with respect to financial
9 fraud in terms of some of the factors that go
10 into the commission of the fraud, but I'm not
11 sure I could define all of them, all of them
12 sitting here, it's been a bit of time since I
13 have last seen, last reviewed the fraud triangle.

14 Q. And you are aware that the defendants
15 in this case are claiming that Mr. Ceglia has
16 prepared a paper, two-page paper contract which
17 is a fraud? You are aware of that claim by the
18 defendants?

19 A. Yes, I'm aware of that claim.

20 Q. And you are also aware that the
21 defendants claim that some e-mail exchanges that
22 Mr. Ceglia had with Mr. Zuckerberg are also
23 frauds?

24 A. Yes, I'm aware of that claim.

25 Q. So can you tell me what the elements

1 M. McGowan

2 are of fraud?

3 MR. SOUTHWELL: I object to the form of
4 the question.

5 Q. You used the word "fraudulent"
6 throughout the report.

7 MR. SOUTHWELL: Objection.

8 Q. Is it true that you use the word
9 "fraudulent" in your report?

10 A. I believe so.

11 Q. What do you mean by fraudulent?

12 What are the elements of proving
13 fraudulent which you are convinced occurred in
14 this case, obviously, by what you put in your
15 report?

16 A. I think in the report we are anchoring
17 it to specific instances of where we saw, for
18 example, backdating of files, where we would see
19 metadata anomalies in files, where we saw
20 formatting inconsistencies that pointed to the
21 manual generation of e-mail messages, those were
22 the elements, those were the instances which I
23 believe we were discussing specifically in our
24 report.

25 Q. Is it your opinion that all metadata

1 M. McGowan

2 anomalies establish fraud?

3 A. No, it's not my opinion that all
4 metadata anomalies establish fraud, some may be
5 innocuous, some may be evidence of intentional
6 user activity.

7 Q. And when you say intentional user
8 activity, you are talking about motive, right,
9 the motive to have created the anomaly?

10 A. In that case, yes.

11 Q. How about formatting inconsistencies in
12 a document?

13 If I just showed you a document, didn't
14 tell you anything else about it, and something
15 looked to you that there was formatting
16 inconsistencies between page 1 and page 2, is
17 that alone sufficient for you to conclude as an
18 expert that that document was constructed with
19 fraudulent intent?

20 A. That alone, no. Generally, in
21 formulating our expert opinion we are looking at
22 the cumulative evidence in front of us. That
23 alone, I think I'd have to know more about the
24 circumstances of the document it was proffered
25 for to be able to determine whether or not those

1 M. McGowan

2 formatting inconsistencies were significant or
3 not.

4 Q. Are you aware that Mr. Ceglia has
5 presented a two-page paper contract in this case
6 and the defendants' paper experts have evaluated
7 that contract?

8 A. Yes, I'm aware of that much. I didn't
9 participate in those inspections, but I'm aware
10 that a contract, a paper copy of a contract was
11 examined.

12 Q. And you examined the e-mail exchanges
13 between Mr. Ceglia and Mr. Zuckerberg that he has
14 also presented in this case as an attachment to
15 some pleadings?

16 A. Yes. I have examined Word documents
17 that contained excerpts of e-mail exchanges.

18 Q. Do you know if Mr. Ceglia offered his
19 parents' computer as evidence in this case so
20 far, if you know?

21 A. The materials we examined were the ones
22 that Mr. Ceglia presented for inspection starting
23 on July 15th. I'm aware that subsequent to that
24 there were comments that one of the computers --
25 I'm aware that one -- of two pieces of media, a

1 M. McGowan

2 hard drive and forensic image, that Mr. Ceglia
3 has made claims that those come from a computer
4 used by his parents.

5 Q. Well, my question is -- well, those
6 computers were produced pursuant to a court
7 order.

8 Are you aware of that?

9 A. Yes, I am aware they were produced
10 pursuant to court order.

11 Let me clarify. I said computer -- you
12 said computers in your question and I said it in
13 my answer. Strictly speaking, it was a hard
14 drive and a forensic image of it. I am not aware
15 of the computer itself having been produced.

16 Q. It was a Seagate hard drive; right?

17 A. Yes, the hard drive itself was a
18 Seagate hard drive.

19 Q. And then the forensic image of that
20 hard drive was on a Western Digital Mr. Rose had
21 told us yesterday.

22 You will agree with that?

23 A. Yes, it was.

24 Q. So to determine fraudulent in your
25 report you would agree with me that you have to

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M. McGowan

determine the person's intent for the action they took regarding the evidence?

MR. BOLAND: I'm going to object to the shaking of the head of defense counsel which is occurring right now, I interpret that as an attempt to signal the witness how to answer and I would appreciate it if you would not nod up or down or left to right, okay?

It's quite obvious that you are shaking your head yes and no in response to certain questions I'm offering and I think that's a potential to signal the witness.

MR. SOUTHWELL: We hear you, Mr. Boland. It's not intended to signal the witness, Mr. Benjamin and I are communicating about a number of things, but I understand your point and we will ensure that there is no signaling of the witness, which there hasn't been.

MR. BOLAND: Very well.

A. Could we repeat the question?

Q. Sure.

MR. BOLAND: Read it back, please.

1 M. McGowan

2 (Record read.)

3 A. Is there a specific area that we're
4 talking about here?

5 Q. That's just that question.

6 A. One of the components -- yes, intent
7 would be related to, would be a component of
8 fraudulent activity.

9 Q. What are the other components?

10 A. I don't know if I have an exhaustive
11 list, but so far the establishment of just
12 identifying the anomaly itself, the anomaly being
13 the fact in the report, so the identification of
14 it, an evaluation of how it may occur and I think
15 intent, whether this was likely to be an action
16 taking the evidence together performed by an
17 individual, that would be one of the primary
18 components, yes.

19 Q. So I heard you list motive as a factor
20 in using the word "fraudulent"; correct?

21 A. Did I? I don't know if I --

22 Q. You can correct me.

23 Is motive part of a consideration?
24 Before you used the term "fraudulent" in your
25 report.

1 M. McGowan

2 A. Motive would be a component of
3 fraudulent, yes.

4 Q. And then you said, and you can correct
5 me if I am wrong, that how the anomaly or
6 whatever may have occurred is a component of
7 determining whether it's fraudulent.

8 A. Correct.

9 Q. And then you said intent.

10 A. Yes.

11 Q. Would you agree with me that intent and
12 motive are synonymous terms?

13 A. I believe so.

14 Q. So we have two factors that underlie
15 the use of the word "fraudulent" in the report.

16 Motive and how it may have occurred,
17 let's talk about that.

18 You acknowledged earlier that every
19 deletion is not necessarily fraudulent; correct?

20 A. Correct, we discussed that there are
21 innocuous deletions and there are intentional
22 deletions that may be fraudulent.

23 Q. But if you just have a deletion and you
24 don't know the person's intent you can't conclude
25 it's fraudulent; true?

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M. McGowan

A. If you don't have a deletion --

Q. If you have a deletion, but you don't know the person's intent why they deleted that file, you can't conclude fraudulent?

A. If you do not know or you cannot discern or infer, yeah.

Q. Are you aware that expert witnesses are required to answer hypothetical questions, unlike regular witnesses?

A. I am aware of that, yes.

Q. Okay. So let's try one.

The two-page paper document that the other paper experts analyzed, let's assume that all the paper experts who analyzed it found the two-page paper document to be authentic, it's an authentic contract between the parties, okay, assume that.

A. Okay.

Q. You'd agree with me there can't possibly be any fraudulent intent regarding anything you found on Mr. Ceglia's media because the two-page paper contract is authentic, he doesn't need to commit fraud.

Would you agree with that statement?

1 M. McGowan

2 MR. SOUTHWELL: Object to the form.

3 A. So the two-page paper document -- so
4 what we are referring to as the Work For Hire
5 document is authentic in this hypothetical -- I
6 guess I'm not sure how to answer that.

7 At this point, in this case we're
8 assuming -- you are asking me to assume the
9 opposite of our findings that the digital, the
10 forensic evidence surrounding the Work For Hire
11 document, that there are multiple versions of it,
12 that there are metadata anomalies with it, that
13 there is an alternate version of it, all of these
14 things that we found in the forensic investigation,
15 so it seems like -- it seems more like
16 counterfactual than hypothetical at this point.

17 Q. I think all hypotheticals can be
18 counterfactual. It's a hypothetical and you need
19 to answer the question.

20 Assume the two-page document is
21 authentic.

22 Isn't it true that Mr. Ceglia has no
23 motive to commit fraud? He has an authentic
24 contract with Mark Zuckerberg, assume that, this
25 is a hypothetical.

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M. McGowan

Wouldn't you agree he has got no motive to commit fraud on his computer at that point; true?

MR. SOUTHWELL: Objection, asked and answered.

A. I'm not sure that's the case. I don't know -- even if the paper document is authentic in this hypothetical, I don't know what other reason someone could have for deciding to -- they wanted more proof, that they wanted -- whether they would still give rise to occasions to manipulate a forged electronic document.

Q. So is it your testimony that it's still possible for your report to be accurate in your claim of Mr. Ceglia's fraudulent behavior even if he had an authentic paper contract with Mr. Zuckerberg?

A. Is it possible for -- even if he had an authentic paper copy, I think that goes direct opposition to our conclusion.

What I was addressing was that even if there were an authentic copy of the paper, of the contract, and we don't know, in this case we're assuming it for this hypothetical, there could

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2 still be, there could still give rise to reasons
3 why someone may want to fabricate electronic
4 evidence, some of the things we discussed in our
5 report, for example, the purported e-mails.

6 The two things we looked at was the
7 contract authentic and were the purported e-mails
8 that were provided as supporting evidence, so I
9 could still see reasons why even if the authentic
10 -- even if the paper document that Mr. Ceglia
11 submitted were authentic, and we are assuming it
12 here, assuming it in this hypothetical, I could
13 still see reasons where someone may want to --
14 may choose to fabricate, for example, the
15 purported e-mails as further supporting evidence.

16 Q. You are not offering any opinion about
17 the authenticity of the paper contract in your
18 report or even today?

19 A. Correct. I have not examined any of
20 the paper documents. My opinions are opinions
21 on, as discussed in the report, concern the fact
22 that the StreetFax -- the Work For Hire document
23 and the purported e-mails both appear, there's
24 evidence that both of them have been fabricated,
25 so I'm not offering any direct opinion on -- I

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2 haven't examined the paper document.

3 I would say that there's an inference
4 which is if the electronic document is -- if the
5 electronic evidence points to the contract being
6 a forgery, then that does bear on the paper
7 evidence to some extent, but I haven't examined
8 it directly.

9 Q. And would you agree the inference goes
10 the other way as well, that if the paper contract
11 is determined to be authentic it seems to
12 implicate that the electronic StreetFax contract
13 would be a fraud?

14 A. I think with the electronic evidence
15 there also are the other fact -- there are the
16 other -- there's more evidence than just the four
17 corners of the piece of paper, there are the
18 contemporaneous e-mails, there are other copies,
19 so I think that that would still need to be
20 considered as well regarding the authenticity of
21 the electronic documents.

22 Q. I'm just asking about the inference.

23 You said before there's an inference
24 that since you've determined the two TIFF images
25 that make up the StreetFax contract are

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2 authentic, that sort of implicates that the paper
3 document is probably a fraud, fair to say, that's
4 the inference that you can draw from that was
5 your testimony?

6 A. There is an inference that that could
7 be drawn.

8 Q. And if it turns out that the paper
9 contract is authentic, the hypothetical, you
10 could draw the opposite inference that the
11 StreetFax contract is potentially fraudulent?

12 A. Just to be clear, that would not
13 address -- I would see that prong not addressing
14 the purported e-mails, I think those would be
15 properly separate items and I think if the paper
16 document were authentic, were determined to be
17 authentic, and we're just assuming it were for
18 this hypothetical, I think that would be a factor
19 in assessing the -- in assessing the electronic
20 evidence; however, I think that that would still
21 be necessary to evaluate the electronic evidence
22 on its own accord, whether it -- whether it
23 showed signs of authenticity, inauthenticity, are
24 there competing alternate versions, are there
25 contemporaneous references, are there independent

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2 verification.

3 I think that we are talking about two
4 different -- we are talking about two disciplines
5 here and I think they are both, they are both
6 valid and both important areas of examination.

7 Q. In your opinion, what's an easier
8 forgery to create, a two-page paper document with
9 both printing from a computer and handwriting
10 from ink or the forgery of a TIFF image?

11 A. I don't have enough experience, I don't
12 profess to be a paper document examiner, I don't
13 think I have enough opinion to know what goes
14 into the difficulty or ease of forging a paper
15 document, so I don't know if I could properly
16 compare the two.

17 Q. Just from your personal experience do
18 you have -- have you ever tried to write someone
19 else's signature at any point in your life just
20 for fun?

21 A. Yes.

22 Q. So you don't have any opinion on
23 whether it's easier to forge a TIFF image, a
24 digital image, or forge a two-page paper contract
25 with handwritten signatures that mimic other

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2 people?

3 A. I think that there's -- I am aware of
4 the factors that go into -- these are areas where
5 there's both -- there are expert scientific
6 disciplines.

7 I could give you some of the factors
8 that go into a digital authentication, which are
9 more than what a layperson may know, and I
10 imagine the same is true for handwriting, that
11 while, sort of as a kid you can play trying to --
12 whether friends trying to copy each other's
13 signatures, but I'm aware that there are other
14 factors that are taken into account in terms of
15 paper, ink, but I couldn't -- I don't think I
16 could do it justice, I don't know enough of them
17 to know, to be able to offer a, what I feel to be
18 a fair comparison between the two.

19 Q. If I showed you a photograph of a cover
20 of a magazine that came out yesterday, Sports
21 Illustrated, and it had a big photograph of some
22 sporting event occurring, would be willing to
23 testify then that in your opinion that photograph
24 has been unaltered just by looking at it?

25 A. Just by looking at it, no.

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2 Q. Are you a digital imaging expert, have
3 you ever been qualified as that?

4 A. I am not sure exactly what you mean by
5 digital imaging expert.

6 I've examined in my forensic work
7 digital image files, their content and metadata.

8 Q. Do you feel qualified that if you were
9 shown an array of digital images you could pick
10 out which ones were originals and which ones were
11 manipulated somehow just by looking at them?

12 A. Just by looking at them, no.

13 Q. Now, the StreetFax contract is
14 comprised of two TIFF images; correct?

15 A. Yes.

16 Q. TIFF is a common digital image format?

17 A. TIFF is a common digital file format,
18 yes.

19 Q. And a couple of others are JPEG?

20 A. Yes.

21 Q. And GIF or GIF as it is pronounced
22 sometimes, G-I-F?

23 A. That's right.

24 Q. And there's probably a few others not
25 as widely used; true?

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2 A. That's fair.

3 Q. Are you aware of the capabilities of a
4 program called Photoshop?

5 A. I'm aware of some of the capabilities,
6 Photoshop being a program that can -- it can be
7 used for photo editing, resizing, touching up or
8 manipulating an image, for example, that Sports
9 Illustrated image that you referred to probably
10 there was enhancement of it through Photoshop or
11 a similar tool before it appeared on the cover.

12 Q. And the use of Photoshop in your
13 experience analyzing digital images as you said
14 you have, can it be used in a way that doesn't
15 leave traces behind of the thing that was
16 manipulated, visual traces?

17 A. It's possible to alter an image using a
18 tool such as Photoshop such that it doesn't leave
19 traces.

20 There's further analysis that can be
21 done looking at the content of the file, the
22 structure of the bit map or image to try and
23 detect whether there are -- whether such things
24 have occurred, but it's possible to do it such
25 that a person viewing it may not detect a -- may

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2 not detect that it has been altered.

3 Q. And isn't it the case that virtually
4 every magazine cover out there these days, those
5 images have been altered? They don't just shoot
6 them and put them right up there like they are
7 unretouched, wouldn't you agree with that?

8 A. I don't know if I have any expert
9 opinion on that, but my understanding from
10 reading the newspaper and articles periodically
11 is that yes, the images that appear in magazines
12 are enhanced before putting on the cover.

13 Q. And Photoshop can edit TIFF images as
14 well?

15 A. Photoshop can edit TIFF images, yes.

16 Q. And Photoshop is not the only
17 image-editing software available to the consumer?

18 A. Correct. There's an open-source
19 version GIMP, there's others as well.

20 Q. Corel has one; are you aware of that?

21 A. I don't recall its name offhand, but I
22 believe, yes.

23 Q. And so the two TIFF images which make
24 up the StreetFax report, let's talk about those.

25 Did you read Mr. Broom's report where

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2 he discussed the measurements of those two
3 images?

4 A. Yes, I did read the portions of
5 Mr. Broom's report where he discusses the size of
6 the images in pixels.

7 Q. Did you read the portion where he
8 converted pixels using a formula into physical
9 inches in a length and width, a measurement --
10 confirming the measurement of those two TIFF
11 images, their physical size?

12 A. Yes, I read the portion where he
13 discusses -- he uses the dots per inch of the
14 image and goes through a calculation and arrives
15 at a measurement in inches.

16 Q. And did you repeat his calculation
17 using those numbers that were in his report?

18 A. I did, yes.

19 Q. And what did you come up with?

20 A. For that calculation, the numbers he
21 reports are accurate.

22 Q. Now, the two TIFF images are the image
23 of what? Two pieces of paper, would you say?

24 A. Yes. The TIFF image, each image
25 appears to be an image of a scanned, one-piece

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2 document, one-page document.

3 Q. And what's your opinion, based on
4 reading what Mr. Broom had calculated and you
5 confirmed his calculations, what's your opinion
6 as to the physical size of the pieces of paper
7 that were used that were imaged to create those
8 scanned now TIFF files that you found?

9 A. So I should specify that Mr. Broom's
10 calculations dealt with the size of the TIFF file
11 itself, they didn't speak to the -- the size of
12 the TIFF file is not necessarily tied to the size
13 of the original; for example, in scanning a
14 document one can choose to reduce it in size in
15 the scanning process or subsequently, after the
16 scanning, to reduce the size of the image, so I
17 don't believe that Mr. Broom's calculations speak
18 to that. In my opinion, it appears that the --
19 it appears most consistent that the scans were of
20 ordinary size pieces of paper.

21 Q. You just mentioned two ways that the
22 TIFF image cannot necessarily be tied to, let's
23 call it the source piece of paper that was used
24 to scan in.

25 A. Okay.

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2 Q. And one of them was the scanner could
3 be set to reduce the size of the resulting TIFF
4 image; true?

5 A. That's right, yes.

6 Q. Did you find any evidence that that
7 happened here, computer evidence of a scanner
8 being set to reduce the size of the resulting
9 TIFF image?

10 There was no evidence in your report
11 regarding that, was there?

12 A. There was no evidence in the report, we
13 did not -- we did not see evidence concerning the
14 scanner, what scanner was used or its settings.

15 Q. Actually, there is no evidence that it
16 was actually scanned, was it?

17 A. There is evidence that it was scanned.
18 I think the file names, most primarily -- the
19 fact that the file names are Scan0001 and 2, the
20 file names are indicative, the file names, the
21 appearance of the document also are indicative
22 that it -- of a scanned document.

23 Q. So this use of the scanned file name is
24 a default file name that a scanner would produce?

25 A. It's a -- it's typical of a file name a

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2 scanner would produce. I believe that we've
3 identified other files on Mr. Ceglia's media with
4 similar names.

5 Q. Are those in your report?

6 A. Those specific files aren't referenced
7 in our report, they were among the materials that
8 would have been provided to counsel for review.

9 Q. But you didn't note those in your
10 report?

11 A. We did not note those other files in
12 the report, correct.

13 Q. And the other one you talked about was
14 an image being created, whatever method, in the
15 correct size, 8-1/2 by 11, and then somehow being
16 manipulated by software afterwards, right, that's
17 another way that you could have created these
18 TIFF images but used an 8-1/2-by-11 piece of
19 paper?

20 A. You could have -- you could have
21 scanned it in and then in the process of saving
22 the TIFF file chosen to save it to a smaller size.

23 Q. And there is no evidence in your report
24 that happened either; true?

25 A. There's no evidence -- there's no

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2 evidence one way or another in terms of how the
3 scan, how the scan was scanned in.

4 Q. And would you agree with Mr. Rose that
5 there's not even any evidence that this file was
6 necessarily scanned onto this hard drive
7 originally, that it was most likely created on
8 this hard drive, placed onto this hard drive
9 after being created in another location?

10 MR. SOUTHWELL: Object to the form,
11 calls for speculation.

12 Q. If Mr. Rose said that would you agree
13 with that?

14 A. Which part was the question and which
15 part was what Mr. Rose said?

16 Q. Is it your opinion that these two TIFF
17 images were scanned directly onto this computer
18 where they were found, onto the Seagate hard
19 drive where they were found?

20 A. It's my opinion that the TIFF image
21 were either scanned directly onto this computer
22 or copied, copied from another source; I don't
23 think the forensic evidence is sufficient to rule
24 one or the other in or out.

25 Q. What's the evidence that they were

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2 scanned directly to the Seagate hard drive? Give
3 me evidence for that that you have.

4 A. We see evidence of the files on the
5 Seagate hard drive, we see their creation on the
6 morning of July -- excuse me, March 3rd, 2004,
7 shortly before they are e-mailed, so those are
8 the primary pieces of evidence that I can point
9 to for the direct scanning onto the computer.

10 Q. Hold on a second.

11 There's multiple ways a file can get
12 onto a computer, onto this Seagate hard drive;
13 true?

14 A. There are multiple ways a file can get
15 onto a hard drive, yes.

16 Q. Copy from a floppy disk, years ago,
17 when those were common?

18 A. That's one way.

19 Q. Copy from a CD, transfer from a CD onto
20 the hard drive?

21 A. Yes.

22 Q. Transfer from a USB device onto the
23 hard drive?

24 A. Yes.

25 Q. Transfer from the Internet onto the

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2 hard drive?

3 A. That's a possibility.

4 Q. Transfer from another hard drive onto
5 this hard drive?

6 A. Another internal hard drive or --

7 Q. Doesn't matter, either way, external or
8 internal, take your pick, that's another way to
9 get a file onto this hard drive?

10 A. We have not examined the -- I haven't
11 seen the computer itself, so I don't know whether
12 it was capable of having another hard drive
13 connected to it for an internal hard drive
14 transfer.

15 Q. But hard drives and computers allow
16 that to happen?

17 A. In general, yes, but I can't tell
18 specifically for the hard drive, the Seagate hard
19 drive it was in without having a chance to
20 examine it further.

21 Q. So the fact that a file was created on
22 a Seagate hard drive doesn't tell you anything
23 about which one of those ways were the ways it
24 got created on that hard drive; isn't that true?

25 A. The fact that a file was created on the

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2 hard drive, correct, that fact alone does not
3 tell us how the file came to reside on the hard
4 drive.

5 I don't know if I said one of those
6 ways. There are other ways, of course, there is
7 the scanning directly onto the computer.

8 Q. True.

9 And one other way is a person using a
10 program like GoToMyPC can get remote access to a
11 computer and place files onto the computer using
12 some software like that?

13 A. Yes, in that manner, in that method you
14 would have to have additional software installed
15 on the computer; I didn't see any evidence of
16 that in my examination of the Seagate hard drive.

17 Q. There was no GoToMyPC program installed
18 on the Seagate hard drive?

19 A. I did not note any program.

20 Q. In reading Mr. Broom's report,
21 though -- well, actually, you didn't do a virus
22 scan of any of this media in preparing your
23 report; correct?

24 A. In preparing our report, no, we did not
25 conduct a virus scan of the Ceglia media.

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2 Q. Have you done one since preparing your
3 report?

4 A. I have, yes.

5 Q. And did you do it after Mr. Broom's
6 report was provided to you?

7 A. We did, yes.

8 Q. And do you dispute any of his findings
9 as to what types of malware he says in his report
10 he found on the media? Do you disagree with him
11 about that list of malware he claims to have
12 found?

13 A. So the list that he provides in the
14 report itself is a partial listing, but I do not
15 dispute that those files were -- those files were
16 present on the Seagate hard drive and that a
17 virus scan would have -- a virus scan using the
18 programs he identified would have identified
19 them.

20 Q. When you say it's a partial list, did
21 you find even more malware than he found?

22 A. There are more -- yes, running the
23 utilities that Mr. Broom identified there would
24 be more malware files than just the listing that
25 he provided in his report. Some of these are

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2 malware files that have been captured and
3 quarantined by the antivirus programs on the hard
4 drive, but yes, we did identify a longer list
5 than was included in Mr. Broom's report.

6 Q. When you say we, who specifically did
7 the virus scan you're talking about?

8 A. I performed -- I performed the virus
9 scan, I was aided in my analysis by one of my
10 colleagues.

11 Q. Who?

12 A. Jodi Forness.

13 Q. How do you spell the last name?

14 A. F-o-r-n-e-s-s.

15 Q. And that person's CV is not attached to
16 your report; correct?

17 A. That person's CV is not attached to the
18 report. She has signed the protective order.

19 Q. And the only two people who signed the
20 report are you and Mr. Rose; true?

21 A. Yes, the only two people that signed
22 the report are Mr. Rose and me.

23 Q. But there are more people than that who
24 worked on some portion of the Ceglia media, as
25 you call it?

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2 A. There are more people that have
3 examined the Ceglia media in one way or another
4 under my supervision, yes.

5 Q. Who was the supervisor for the
6 production of this report? You?

7 A. I supervised the forensic -- I
8 performed much of the forensic analysis myself.
9 To the extent I didn't, the digital forensics
10 analysis using the forensic software, Mr. Rose
11 was -- supervised the analysis, the day-to-day
12 involvement, he himself was not sitting at the
13 keyboard using the EnCase software, for example.

14 Q. And that's because he is not certified
15 to use EnCase, is he?

16 A. That's he -- I don't believe he has
17 that certification, no.

18 Q. Does he have any certification to use
19 any forensic software?

20 A. I don't believe that -- I'm not aware
21 of any certifications that Mr. Rose has that deal
22 with the operation of forensic software.

23 Q. So he's not qualified to do the types
24 of forensic analysis that you are?

25 A. He's not -- he is not proficient in

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2 performing the technical analysis using the
3 software itself to perform the technical analysis
4 of the hard drive. He has much experience in
5 digital forensic matters, but at a -- but at a
6 higher level.

7 Q. Now getting back to the malware on the
8 computer, you would agree with me that things
9 like rootkits allow individuals to access
10 computers?

11 A. You said getting back to this computer.
12 Are we talking about this computer or
13 in general?

14 Q. Rootkits allow people to access
15 computers if they are installed on a computer?

16 A. In general? Are you asking in general?

17 Q. I am asking the question, do rootkits
18 allow individuals to access computers?

19 A. No.

20 Q. What are they for?

21 A. Rootkits, the function of the rootkit,
22 rootkits allow -- the primary function of a
23 rootkit is to, in basic terms, hide the presence
24 of other files. For example, one of the
25 publicized ones was the Sony -- Sony used one in

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2 connection with its digital rights management
3 where Sony had programs running, when you used
4 Sony CDs you had programs running that would
5 control your usage of the CDs and they included a
6 rootkit to hide the existence of those programs
7 so that if you looked at your computer and didn't
8 perform a forensic analysis you wouldn't know
9 that they were present, so that's the function of
10 rootkits.

11 Q. Do individuals have the ability to
12 remotely access computers without the
13 authorization of that computer's owner? Does
14 that ability exist in the world?

15 A. Does the ability exist?

16 Yes, it's the -- there are ways of
17 accessing it using GoToMyPC, authenticating,
18 those are what generally -- accessing it using
19 remote desktop, those are ways that generally
20 would be an authorized access. In theory, or not
21 in theory, there are ways of essentially breaking
22 into a computer as well.

23 Q. And you are aware -- you keep up on not
24 only computer forensics articles in your field
25 but even articles in the popular media about

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2 various government agencies, for example, who
3 have their computer systems accessed in an
4 unauthorized way?

5 A. I am aware, yes, that there are --
6 there have been articles reported in the media
7 about government systems being unauthorized,
8 accessed unauthorized.

9 Q. And in your opinion will there ever be
10 a computer system that will be completely
11 prevented from anyone getting unauthorized
12 access?

13 A. A computer disconnected from the
14 Internet, for example, sitting alone in a room
15 would not allow someone to remotely access it.

16 Q. How about a computer connected to the
17 Internet or a computer system connected to the
18 Internet, is there any way to fortify that
19 system, do you think there'll ever be a way to
20 fortify that system that nobody can gain
21 unauthorized access to it?

22 A. There are ways to fortify it; however,
23 at the end of the day, humans are imperfect, code
24 is complex and I think fortifying it such that it
25 is invulnerable is not achievable.

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2 Q. And for someone to get unauthorized
3 access to a computer they would have to load some
4 files onto that computer to enable that access;
5 would you agree with that?

6 A. Could you say that one more time?

7 Q. For someone to get unauthorized access,
8 remote access to a computer, they are going to
9 have to load some type of files on there to
10 enable them to get in?

11 A. I'm not sure that's the only way.

12 Q. Is that one way?

13 A. It is one way, yes.

14 Q. And could a rootkit hide those files?

15 A. Hide from whom, are we talking?

16 Q. Just hide them so nobody but the person
17 who put the files there knows that they are
18 there.

19 A. In my experience, no, that's not
20 generally -- rootkits would generally hide them
21 from the point of view of the user that is
22 sitting there at the computer.

23 However, in my experience doing a
24 forensic examination, looking -- or not
25 necessarily a forensics examination, but using

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2 utilities oftentimes you could still see those
3 files being present even if a rootkit was being
4 employed to cloak them from the user's
5 perspective.

6 Q. And that's my question, can a rootkit
7 be used to cloak those files from a user?

8 A. Yes, a rootkit can be employed to cloak
9 files from a user.

10 Q. And tell me if you agree with this
11 statement, that rootkits can crack passwords at
12 the administrative level. Is that true?

13 Or do you agree with that, let me ask
14 that question.

15 A. No, I don't, I don't agree with that.

16 Q. Can rootkits disable auditing or edit
17 event logs, would you agree with that?

18 Let me say it this way: Would you
19 agree with the statement that a rootkit can
20 disable auditing or edit event logs?

21 A. No, I wouldn't agree with that
22 statement.

23 Q. Would you agree with the statement that
24 rootkits can spread as a self-propagating
25 mechanism?

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2 A. No. Again, I described what rootkits
3 are; they by themselves can't do that either.

4 Q. And where did you learn about rootkits?
5 Did you learn about rootkits in your
6 EnCase certification classes?

7 A. Not in my EnCase certification classes,
8 other training that I had taken on computer
9 forensics, among other places, and I've also read
10 about them and done research.

11 Q. The training that you've taken
12 specifically involving rootkits was that in-house
13 training or not in-house training?

14 A. Both. Some of the external training, I
15 think there are several -- for example, there is
16 a SANS course offered by SANS that's listed in my
17 CV that discussed hacker techniques, that was one
18 of the places that I received training on rootkits.

19 Q. When you took your EnCase training,
20 it's true it was a series of classes and there
21 was some sort of proficiency testing at the end
22 of the classes; is that true?

23 A. Strictly speaking, it was one course,
24 one required course and then a written exam and
25 practical exam at the end of it, yeah.

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2 Q. So two exams, a written exam and a
3 practical exam?

4 A. Yes.

5 Q. And did you pass the written exam the
6 first time?

7 A. I did, yes.

8 Q. And the practical exam as well?

9 A. I did.

10 Q. And how many hours of training
11 specifically on Microsoft Word have you had?

12 A. By training here what are you looking
13 for?

14 Q. In-house training or non-in-house
15 training from someone teaching you about
16 Microsoft Word?

17 A. The usage of word processing or
18 forensic examination or --

19 Q. Let's break it up.

20 Training you've had in-house or not
21 in-house about how to use Microsoft Word, like a
22 typical user, have you had any training like
23 that, and how many hours?

24 A. I'm sure somewhere in high school and
25 college it came up, but I have not -- I use Word

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2 regularly, I -- but I don't consider myself
3 proficient at using it. I haven't had any
4 training, official training while employed by
5 Stroz on the usage of Microsoft Word as a word
6 processing program.

7 Q. And how many hours of training have you
8 had regarding Microsoft Word from a computer
9 forensics standpoint?

10 A. I'm not sure of the exact count.

11 Microsoft Word, the analysis of its
12 documents, metadata, that's a topic that has come
13 up in several training courses I have taken, it's
14 also a topic I've conducted research in testing,
15 read articles myself in addition to the training
16 that I have taken.

17 Q. About how many hours would you say that
18 is of training you've had total on computer
19 forensics issues related to Microsoft Word?

20 A. I don't -- it's not a way I've
21 categorized it, so I am not sure I could give
22 you, I'm not sure I could tell you how many hours
23 specifically on Microsoft Word.

24 Q. Is it one hour?

25 A. I don't know.

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2 Q. Do you have any idea?

3 A. It's a topic that -- again, it's a
4 topic, Microsoft Word documents are a common type
5 to examine, so it has come up considerably, I
6 just don't -- it's not a way I've kept track of
7 the time, so I can't give you a more detailed
8 answer.

9 Q. If you could take a look at what's been
10 marked Rose Exhibit 2, page 12, that's
11 Mr. Broom's report for the plaintiff.

12 MR. SOUTHWELL: Page 12 on the top?

13 MR. BOLAND: Yes.

14 Q. And I'm using the numbers, unless I
15 tell you otherwise, on the top right-hand corner.

16 A. Okay.

17 So this is Mr. Broom's report, page 12?

18 Q. Right, and Rose Exhibit 2.

19 A. Okay.

20 Q. Do you see that statement at the top,
21 it starts with "According to the EC-Council"?

22 A. Yes. Just give me a minute to read it.

23 I see it, yes.

24 Q. Do you agree with that statement --
25 let's assume that statement's quoted correctly

1 M. McGowan

2 from the EC-Council. I'm not going to hold you
3 to that necessarily, that you know that it's an
4 EC-Council statement.

5 Let's assume that that is an accurate
6 quote.

7 Do you agree with that statement?

8 MR. SOUTHWELL: Are you referring to
9 the whole first paragraph or just the first
10 line?

11 MR. BOLAND: I'm referring to the
12 statement about what the EC-Council says.

13 MR. SOUTHWELL: The first line at the
14 top of page 12?

15 It's not clear.

16 MR. BOLAND: The first line is fine.

17 Q. Do you agree with that statement by the
18 EC-Council which is contained on the first line
19 at the top of that page?

20 A. No. As we went over earlier, it's not
21 consistent with -- it presupposes a broader, a
22 more expansive definition of what rootkits are
23 than what I believe to be the case.

24 Q. And about how many hours have you had
25 training with just on what rootkits are, if you

1 M. McGowan

2 can recall?

3 A. I don't recall the exact number.

4 Q. Is there any other electronic evidence
5 you reviewed before issuing the report that you
6 issued that's not listed in the report?

7 A. Could you repeat it one more time?

8 Q. Is there any other electronic evidence
9 you reviewed or anyone -- what I'm calling your
10 team are the four people associated with the
11 report.

12 A. Okay.

13 Q. And any others that are not listed
14 there that also worked on the analysis of
15 evidence in this case, is there any other
16 electronic evidence that anyone from Stroz
17 Friedberg reviewed related to this case and you
18 reviewed it before issuing that report, but it's
19 in the listed in that report?

20 A. Related to this case, yes. The report
21 lists the evidence that we considered and
22 reviewed related to the Ceglia media, which was
23 the purpose, which was the focus of the report.

24 Q. My question is, is there other
25 electronic evidence you reviewed related to this

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M. McGowan

case that isn't listed in that report?

A. Yes. As I said, there is other evidence related to this case more broadly that we reviewed that was not -- but that was not the -- but that was not the focus of our report which was pursuant to -- which was our analysis pursuant to the expedited discovery order of Ceglia's media, Mr. Ceglia's media.

Q. Please list what was reviewed that's not listed in the report.

A. In addition to the Ceglia media that we reviewed as part of our analysis that's described in the report, as a part of, as a different part of our work on this litigation, Ceglia v. Zuckerberg litigation, I and others at Stroz Friedberg examined assets belonging to Mr. Zuckerberg as well as the Harvard, several copies of Mr. Zuckerberg's Harvard e-mail accounts that have been described in the several Rose declarations.

Q. Anything else?

A. Not that I can recall.

Q. Can you describe the assets belonging to Mr. Zuckerberg that you just mentioned?

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M. McGowan

MR. SOUTHWELL: I'm going to object to this line as beyond the scope of the court-authorized discovery at this point.

I think you can proceed with that question, I am not sure how much more you intended to ask on it.

MR. BOLAND: Well, your objections are noted, but unless there's a privilege issue here, we're driving on.

Q. What other assets do you -- please describe the assets belonging to Mr. Zuckerberg as you just referred to it in your answer to my previous question.

A. There were approximately -- approximately 28 devices belonging to Mr. Zuckerberg that were presented to us for examination.

Q. What were those devices?

A. The devices included original hard drives as well as forensic images of devices that I understand were created during the course of prior litigations.

Q. When you say forensic images of devices, what type of devices are you referring to?

1 M. McGowan

2 A. Primarily computer hard drives.

3 Q. What else?

4 A. In addition, there was -- and I don't
5 recall if these were forensic images or if these
6 were devices, were they originals, but external
7 media such as Iomega Clik devices, it's a form of
8 storage.

9 Q. Were you the person who evaluated all
10 those, analyzed all those devices?

11 A. I analyzed -- yes, I analyzed them, I
12 had a system at work, but I was the -- I did
13 examine all of them, I was the primary person
14 conducting that examination.

15 Q. And where was that conducted?

16 A. It was conducted in San Jose,
17 California, at the offices of the McManis
18 Faulkner law firm.

19 Q. And who else was present during that
20 examination?

21 A. Also present was one of my -- a
22 colleague of mine at Stroz Friedberg.

23 Q. Who?

24 A. He has since left the firm, but his
25 name is Michael Kunkel, K-u-n-k-e-l.

1 M. McGowan

2 Q. Is he a qualified computer forensics
3 expert?

4 A. What do you mean by that term?

5 Q. Does he have an EnCase certification?

6 A. I haven't reviewed his CV in some time.
7 I consider him to be a qualified computer
8 forensics examiner.

9 Q. And where does he work now, if you
10 know?

11 A. I don't know. He moved -- for family
12 reasons he moved to Texas. I don't recall where
13 he's employed.

14 Q. Do you know if he's still in computer
15 forensics?

16 A. I believe so.

17 Q. Why did he leave Stroz Friedberg?

18 A. As I mentioned, he wanted to get back
19 to Texas for personal reasons.

20 Q. Did you take notes during your analysis
21 of these 28 devices?

22 A. We did not take written notes.

23 Q. Did you take audio notes?

24 A. No.

25 Q. Did you take any notes?

1 M. McGowan

2 A. We prepared spreadsheets identifying
3 what it was we were examining, we noted our --
4 noted our results electronically.

5 Q. How electronically? What does that
6 mean?

7 A. Part of our work included keyword
8 searches, so we would document what we searched,
9 what was the search criteria that was used and to
10 the extent that data was identified relevant to
11 the searches we made a copy, we made a copy of
12 that information.

13 Q. Do you still have the list of keyword
14 searches that you did on that media saved
15 somewhere in your files or someone else's files
16 at Stroz Friedberg?

17 A. We do, yes.

18 Q. When did this examination occur of
19 these 28 devices belonging to Mr. Zuckerberg?

20 A. In around September of 2010.

21 Q. How long did that work take in
22 California?

23 A. It was more than several days, I don't
24 recall the full length, the exact length of how
25 long it took.

1 M. McGowan

2 Q. And who paid you to do the work?

3 A. We were paid -- we conducted this work
4 for Gibson, Dunn on behalf of Facebook, I believe
5 it's Facebook that's paying our bills.

6 Q. Well, who does the check come from that
7 goes to Stroz Friedberg, from Gibson, Dunn or
8 Facebook?

9 A. I don't see the checks, but my
10 understanding is the engagement letters calls for
11 Facebook to pay our bills.

12 Q. And did you provide any reports or any
13 written results to anyone of your analysis of
14 those 28 devices belonging to Mr. Zuckerberg?

15 A. We did not prepare a written report.

16 Q. Did you communicate with anyone from
17 defense counsel after evaluating those 28 devices?

18 A. Yes.

19 Q. Can you describe how that occurred?
20 Was that a conference call or phone call on your
21 own? How did that happen?

22 A. I think it was several phone calls that
23 I had with Mr. Benjamin, counsel of Gibson, Dunn,
24 as we conducted our -- as we conducted our work,
25 so there were several of those.

1 M. McGowan

2 There may have been e-mail
3 correspondence, I don't recall which form it
4 took, but I recall that Mr. Benjamin was the
5 primary person at Gibson, Dunn with whom we were
6 in communication at that time.

7 Q. What categories of electronic evidence
8 did you find on those 28 devices?

9 A. What categories --

10 Q. Of electronic evidence did you find on
11 those 28 devices.

12 A. I guess I'm not sure --

13 Q. Was there a Web history on some of
14 them?

15 A. I'm not sure specifically about that.

16 Q. Was there instant messaging records?

17 A. Yes.

18 Q. Were there e-mails?

19 A. Yes, I believe so.

20 Q. Were there e-mails authored -- were
21 there e-mails sent by Mr. Zuckerberg?

22 A. I don't recall.

23 Q. Were there e-mails received by
24 Mr. Zuckerberg?

25 A. I don't recall.

1 M. McGowan

2 I remember that I -- primarily we
3 conducted searches using keywords designed to
4 identify copies of the contract, communications
5 with Mr. Ceglia, other issues related to this
6 case. We did not -- we didn't find any copies of
7 the contract, didn't find any correspondence with
8 Mr. Ceglia.

9 Those were our primary findings from
10 our examination of the Zuckerberg assets.

11 Q. Do you know if you found e-mails
12 between Mr. Zuckerberg and Mr. Ceglia from the
13 time period of March 2003 to June 2003?

14 A. I just said we didn't find any
15 correspondence with Mr. Ceglia.

16 Q. Were there e-mails on any of those
17 devices, stored on those devices from
18 Mr. Zuckerberg's Harvard e-mail account?

19 A. I don't recall.

20 Q. Would you have records? Would Stroz
21 Friedberg have records of what you found in your
22 analysis?

23 A. Yes.

24 Q. And who would have those?

25 A. Primarily we have the messages that we

1 M. McGowan

2 had identified or the data that we had identified
3 pursuant to the search, the search criteria,
4 that's the primary body of information that we
5 have from that, from that work.

6 Q. I'm talking about the 28 devices.

7 A. Yes.

8 Q. Were there any communications you found
9 on those 28 devices about StreetFax?

10 A. I don't recall specifically.

11 Q. Any e-mails you found on those 28
12 devices regarding Karin Peterson?

13 A. I don't recall.

14 Q. Did you find any source code related to
15 the StreetFax project that Mr. Zuckerberg worked
16 on for Mr. Ceglia on any of those 28 devices?

17 A. I don't believe so.

18 Q. Was this part of the work that you did
19 in arriving at the conclusions that are in your
20 report?

21 A. I know that the report, our report
22 was -- it was submitted -- discussing our report
23 we conducted, our examination we conducted
24 pursuant to the expedited discovery order of the
25 Ceglia media, so our report does provide a

1 M. McGowan

2 summary of the opinions we reached and the
3 materials we considered there.

4 Q. Let's throw a hypothetical at you here.
5 If you would have found e-mails
6 relevant to expedited discovery --

7 MR. BOLAND: Scratch that. Not
8 e-mails.

9 Q. Had you found any data on those 28
10 devices relevant, in your opinion, to the Court's
11 expedited discovery order would you have provided
12 that in your report, Exhibit 1 that's in front of
13 you?

14 A. What's Exhibit 1?

15 Q. It's your report.

16 A. Oh, okay, Rose Exhibit 1.

17 MR. SOUTHWELL: Objection to the form.

18 Q. Do you need the question again?

19 A. No, I'm all set there.

20 The Court's expedited discovery order,
21 as I understand it, called for us to report our
22 finding on the Ceglia media, that was the
23 specific purpose of it, and that's what we did
24 here.

25 Q. That's not my question.

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M. McGowan

My question is if in your analysis of the 28 devices had you found any information that in your opinion was contemplated by the Court's expedited discovery order, would you have put it in that report?

MR. SOUTHWELL: Objection, asked and answered.

Q. Just yes or no, would you have put it in the report?

A. I went over what my opinion of the Court's expedited discovery order calls for and in my opinion it doesn't call for -- it doesn't call for anything related to the Zuckerberg assets.

Q. So your answer is no, you would not have put it in the report, even if you thought it was contemplated by the Court's expedited discovery order you wouldn't have put it in the report?

MR. SOUTHWELL: Objection, he just said it wasn't.

Q. Let me break it down for you.

Let's say -- hypothetical time -- you found an e-mail on the 28 devices, assets that

1 M. McGowan

2 you analyzed that was from Paul Ceglia to Mark
3 Zuckerberg discussing the StreetFax business,
4 let's hypothetically say you found that e-mail on
5 one of those 28 devices, would you have put that
6 in your report?

7 A. On that alone, I'm not sure that is
8 enough of a basis in terms of -- without further
9 context for knowing what the e-mail said.

10 In this case, what we do is quite
11 clear, we're -- on the one hand we did conduct a
12 search of the Zuckerberg assets, didn't find
13 anything related to, related here, and focused on
14 the Ceglia media as properly -- as I feel
15 properly responsive to the Court's expedited
16 discovery order.

17 So I'm not sure in just an e-mail from
18 Paul Ceglia to Mark Zuckerberg, I'm not sure that
19 would give me enough basis to know whether or not
20 what it said and whether or not it's relevant,
21 but as I went over earlier, as I understand the
22 Court's expedited discovery order was for us to
23 report our examination of the Ceglia media and
24 our findings.

25 Q. So this is not my question, you are

1 M. McGowan

2 rephrasing it not how I asked it.

3 If you found an e-mail on one of those
4 28 devices between Mr. Zuckerberg and Paul
5 Ceglia -- and here's the key thing you're
6 missing -- discussing the StreetFax agreement,
7 would you have produced, would you have
8 referenced that and talked about that e-mail in
9 your report?

10 MR. SOUTHWELL: Objection. You are
11 starting to badger and harass the witness.

12 MR. BOLAND: I am not badgering.

13 MR. SOUTHWELL: He is answering your
14 questions. You may not like the answer, you
15 may not like the answer, but he is answering
16 your questions.

17 MR. BOLAND: The question he answered,
18 he answered a question of whether there was
19 an e-mail between Paul Ceglia and Mr.
20 Zuckerberg, is that enough. That's not my
21 question.

22 A. That was the earlier question.

23 Q. An e-mail between Paul Ceglia and Mark
24 Zuckerberg discussing the StreetFax business, if
25 you'd have found an e-mail like that on one of

1 M. McGowan

2 those 28 devices would you put it in the report?

3 A. Sorry, which one? Is it the contract,
4 the business? What's the e-mail discussing?

5 Q. Let's break it down.

6 An e-mail between Paul Ceglia and Mark
7 Zuckerberg discussing the StreetFax business, if
8 you had found an e-mail that discusses that,
9 would you have put it in the report?

10 A. This is an e-mail that also was located
11 elsewhere in the Harvard account?

12 Q. Just all by itself, never saw it
13 before, no other e-mail like it in the world, it
14 discusses the StreetFax business between
15 Mr. Zuckerberg, Mr. Ceglia, it's on the 28
16 devices, would you have put it in the report?

17 A. I think it's hard for me to answer in
18 the abstract.

19 What we did is as we found evidence we
20 considered whether -- our charge was is it
21 reasonably related to the authenticity of the
22 StreetFax contract and the purported e-mails,
23 so --

24 Q. My question is not what your charge is,
25 it's a hypothetical question.

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M. McGowan

A. Well, I guess I --

Q. You are not answering the question, sir, and please listen to the question.

I'm not saying what was your charge, what do you think your charge was, charge was not even in my question.

Hypothetical. If you found an e-mail from Ceglia and Zuckerberg discussing the StreetFax business, would you have put that information that you found that e-mail discussing the StreetFax business in your report?

That's the question.

MR. SOUTHWELL: Objection. This is -- you are just badgering him. He's already clearly stated what he put in the report --

MR. BOLAND: You can't coach him by -- you can object to the form, Alex, but no coaching.

MR. SOUTHWELL: I'm not coaching. I'm try go make it clear. You seem to keep asking the same thing over and over again.

MR. BOLAND: Because he's not answering the question.

MR. SOUTHWELL: He is answering.

1 M. McGowan

2 MR. BOLAND: I'll ask it for the next
3 hour because it's a very clear question he
4 is refusing to answer, and I suspect I know
5 why.

6 Q. Please answer the question.

7 It's not a difficult question. The
8 hypothetical you have to assume is an e-mail --
9 we all know what that is -- between Mr. Ceglia
10 and Mr. Zuckerberg -- so far we know what that
11 is -- and it discusses the StreetFax business.

12 Assuming that existed on one of these
13 28 devices and existed nowhere else on any Ceglia
14 media, would you have reported that fact in your
15 report?

16 That's it, that's all I want to know.

17 A. And it would depend -- I think one of
18 the facts it would depend on is the content of
19 that e-mail.

20 Is it -- does it discuss -- does it
21 bear on the -- does it bear on the contract? Is
22 there information in it that either points in
23 favor or cuts against either of the contract,
24 either the version that was produced by
25 Mr. Ceglia or the version that we found on the

1 M. McGowan

2 Seagate hard drive? Is there information in that
3 e-mail that's consistent with or inconsistent
4 with any of the purported e-mails?

5 So those would be factors that I think
6 I'd need -- I think would shape -- would shape my
7 evaluation of that e-mail.

8 MR. BOLAND: All right. We'll take
9 about a 10-minute break.

10 (Recess taken.)

11 THE VIDEOGRAPHER: The tape is rolling.

12 BY MR. BOLAND:

13 Q. So we are back on the record,
14 Mr. McGowan.

15 Do you know who David Cressy is,
16 spelled C-r-e-s-s-y?

17 A. David Cressy? Without more context I'm
18 not sure I can place that name.

19 Q. Okay.

20 The 28 devices that we were talking
21 about before we broke, was there anything on
22 those 28 devices related to Paul Ceglia at all?

23 A. I don't believe so. I recall we had
24 run searches for his name, for his e-mail
25 address. I don't believe we had identified

1 M. McGowan

2 materials related to Paul Ceglia.

3 Q. That list of search terms you provided
4 for those 28 devices -- not provided.

5 The list of search terms used for those
6 28 devices, who created that list?

7 A. We created it in consultation with
8 Gibson, Dunn, we drew phrases from the contract
9 and then worked with Gibson, Dunn to develop
10 other keywords designed to get at -- designed to
11 surface what were likely to be relevant documents
12 in this case.

13 Q. And who at Gibson, Dunn worked with you
14 on creating that list of search terms?

15 A. As I mentioned, we were primarily
16 dealing with Mr. Benjamin for this portion of
17 the work.

18 Q. And did you communicate with him by
19 e-mail about -- prior to the analysis of those 28
20 devices, about the analysis of those 28 devices?

21 A. Yes.

22 Q. And if you recall, how many of those 28
23 devices were used by Mr. Zuckerberg in 2003 and
24 2004, the time frame where he had a business
25 relationship with Mr. Ceglia?

1 M. McGowan

2 A. I don't recall.

3 Q. Do you know if any of them were used by
4 him during that time frame?

5 A. Yes.

6 Q. And you just don't know the number of
7 how many?

8 A. I don't know the number.

9 Q. Were any of those computers used by him
10 much later in time or anytime after 2004, if you
11 recall?

12 A. I know one of them that sticks in my
13 mind, one of the devices had last been used in
14 2005, but I don't recall how much later devices
15 were used.

16 Q. And were some of those devices you
17 analyzed involved in the Winklevoss ConnectU
18 case, if you know?

19 A. In the ConnectU case?

20 Q. Yes.

21 A. I believe so.

22 Q. Were some of those devices involved in
23 a case between Mr. Zuckerberg and Eduardo
24 Saverin, if you know?

25 A. Do you know what the cite of that is?

1 M. McGowan

2 I think I have seen it mostly by captions.

3 Q. No, I don't know the cite off the top
4 of my head.

5 If you don't recall based on just
6 Eduardo Saverin being one of the parties, then
7 that's fine if you don't recall.

8 A. That's right, I don't recall.

9 Q. Do you realize, do you know now that
10 Paul Ceglia and Mark Zuckerberg in fact had a
11 business relationship in 2003-2004 related to
12 StreetFax that Mr. Zuckerberg is not disputing?

13 Are you aware of that?

14 A. I am aware of that.

15 Q. And do you think it's odd that you
16 didn't find any e-mail correspondence between
17 Mr. Ceglia and Mr. Zuckerberg on any of those 28
18 devices, given that they had a business
19 relationship?

20 A. I don't know if it's odd or not. I
21 don't know -- the devices were presented to me
22 for inspection. I don't know, without knowing
23 more about how they were used, when they were
24 used, I'm not sure I could -- I'm not sure I have
25 an opinion one way or another in terms of the

1 M. McGowan

2 absence of communication between the two on these
3 devices.

4 Q. You've seen the Harvard e-mails from
5 Mr. Zuckerberg's Harvard e-mail account that were
6 produced related to the expedited discovery order?

7 A. I have seen the Harvard e-mails that
8 were produced pertaining to the expedited
9 discovery order.

10 Q. Were any of those e-mails, copies of
11 them, present on those 28 devices, if you know?

12 A. I don't believe so.

13 Q. And what's the basis for your belief
14 that none of them, copies of those e-mails do not
15 appear on those 28 devices?

16 A. I know that we've conducted searches
17 for Mr. Ceglia's name and e-mail addresses, the
18 several e-mail addresses, those were in the
19 Harvard e-mails, those were the Harvard e-mails
20 that Mr. Zuckerberg and Mr. Ceglia exchanged and
21 so based on the fact that we didn't identify any
22 communications between the two of them on the
23 Zuckerberg assets, the approximately 28 devices,
24 that's my basis for -- that's my basis period.

25 Q. Did you search for e-mails in which

1 M. McGowan

2 Mr. Zuckerberg communicated with other people,
3 not Mr. Ceglia, about StreetFax?

4 A. StreetFax would have been included as
5 one of the search criteria. I don't recall the
6 full list of search criteria, sitting here, but
7 that would have been one of the terms used.

8 Q. So is your answer -- what's your answer
9 to my question?

10 Did you find any e-mails between
11 Mr. Zuckerberg and someone who is not Paul Ceglia
12 discussing StreetFax?

13 MR. SOUTHWELL: Objection.

14 A. I'm sorry, I thought your question was
15 did we search for.

16 Q. No. Did you find?

17 If it was search for, I will correct
18 myself.

19 Did you find any e-mails sent or
20 received by Mr. Zuckerberg on those 28 devices
21 but not involving sent or received from
22 Mr. Ceglia, but they discussed StreetFax?

23 A. I'm not sure one way or another on
24 that.

25 Q. The set of search terms you used to

1 M. McGowan

2 search the 28 devices, was it identical to the
3 search terms used to search the Harvard e-mail
4 account of Mr. Zuckerberg?

5 A. No.

6 Q. And did you determine by looking at
7 those 28 devices whether Mr. Zuckerberg used any
8 of those devices to access his Harvard e-mail?

9 A. We didn't reach a conclusion on that
10 point.

11 Q. Were you asked to look for that?

12 A. No.

13 Q. Did you ever speak with Mr. Zuckerberg?

14 A. I have not, no.

15 Q. Did you find any references to
16 StreetFax at all on those 28 devices?

17 A. I'm not sure the results on that one.

18 Q. So it's possible there are references
19 to StreetFax on those 28 devices?

20 A. I'm not sure on that one, one way or
21 another on that.

22 Q. I'm just asking if it's possible, since
23 you don't know.

24 Is that possible that there's
25 references to StreetFax on those 28 devices?

1 M. McGowan

2 A. It's possible. I don't -- I don't
3 recall the results of that search.

4 Q. Were any of your results of your
5 searches documented in any way or do those
6 results solely rely on your memory?

7 A. As part of the search process we
8 applied the search criteria and then obtained
9 high-level search results in terms of just how
10 many documents or how many hits per keyword, so
11 it's documented at that phase and then we
12 exported the search results and so we have a set,
13 we have the set of materials that match the
14 search criteria as well, so with the original
15 keyword list, the what I would call the keyword
16 breakdowns, keyword hit breakdowns and the
17 results themselves.

18 Q. Did you provide those to defense
19 counsel?

20 A. We did, yes.

21 Q. Do you know if Mr. Zuckerberg reviewed
22 that information?

23 A. I don't have any basis to know one way
24 or another whether he reviewed it.

25 Q. Can you name everyone that has had

1 M. McGowan

2 access to those results, everyone at Stroz
3 Friedberg that has had access to those results?

4 A. The results being the search statistics
5 or the documents that resulted?

6 Q. The entire analysis of those 28
7 devices, whatever documentation arose or was
8 generated from that analysis, who at Stroz
9 Friedberg has had access to that information that
10 you know of?

11 A. That I'm aware, that I know of, it's
12 the individuals who had been working on this
13 portion of the analysis: myself, Mr. Kunkel,
14 Mr. Rose.

15 The results themselves were made
16 available, the documents that matched the search
17 criteria were made available for review in our
18 electronic discovery search platform. I don't
19 know the names of the individuals, but there
20 would be additional individuals who would have
21 been involved in making the documents available
22 for review by Gibson, Dunn.

23 Q. And do you know who at Gibson, Dunn
24 accessed those materials?

25 A. I know that Mr. Benjamin, I believe

1 M. McGowan

2 that Mr. Benjamin did, but beyond that, I'm not
3 certain.

4 Q. Do you know if the StreetFax source
5 code is on those 28 devices?

6 A. I think you asked me that. I don't
7 believe so.

8 Q. And what's the basis for your belief
9 that it's not there?

10 A. I don't recall -- in the materials I
11 reviewed I don't recall seeing any source code,
12 any StreetFax source code.

13 Q. Did you conduct a search for StreetFax
14 source code as part of your search?

15 A. We conducted search -- the keywords
16 would have included terms such as StreetFax. We
17 did not specifically conduct a search -- I myself
18 have not seen the StreetFax -- it's not as if we
19 received it, drew search terms from it and
20 applied a search, but I believe in the searches
21 that we did conduct I'm not aware of having
22 identified it.

23 Q. And Facebook source code, did you do a
24 search for that on those 28 devices?

25 A. We did not, no.

1 M. McGowan

2 Q. Now, if the word "StreetFax" doesn't
3 appear in the StreetFax source code, then it's
4 logical you wouldn't have found the StreetFax
5 source code; true?

6 A. If the word "Street" -- it would depend
7 on whether any of the other keywords we had
8 run -- if any of the other keywords appeared then
9 it would have been surfaced through our searches.
10 If none of the word searches, none of the terms
11 appeared in the source code then it would not
12 have been returned as part of the searches.

13 Q. And so Mr. Benjamin reviewed the
14 results of this, the searches you ran on the 28
15 devices; true?

16 A. Mr. Benjamin was provided access to the
17 results.

18 Q. And would you consider that a report,
19 providing a report to him or not?

20 A. Would I consider what providing a
21 report?

22 Q. Providing him access to the results of
23 your search of the 28 devices, is that
24 equivalent, in your mind, to providing him a
25 report of your results?

1 M. McGowan

2 A. Not as I'm thinking of a report, no.

3 Q. Were you told not to take notes of your
4 analysis, handwritten notes?

5 A. No.

6 Q. Do you typically not take notes when
7 you're doing analysis?

8 A. Oftentimes I document it electronically
9 as we're conducting it just so that it's
10 available and not on a scrap of paper I'm going
11 to lose, so oftentimes it's just the electronic
12 documentation.

13 Q. And did you take electronic
14 documentation searching these 28 devices?

15 A. Yes, we went over the materials that we
16 prepared there in response to your earlier
17 questions, yes.

18 Q. Did anyone tell you to take -- make
19 that electronic documentation, using your point,
20 did anyone tell you to do that or did you just do
21 it as a matter of standard practice?

22 A. I do it as a matter of standard practice.

23 Q. Do you sometimes issue reports
24 following your analysis of electronic assets?

25 A. Yes, sometimes we issue a written

1 M. McGowan

2 report documenting our analysis.

3 Q. And were you told not to issue a report
4 relating to your analysis of the 28 devices?

5 A. No, we weren't told, we weren't told
6 not to issue a report.

7 Q. Why didn't you issue a report, then?

8 A. We weren't requested to issue a report.

9 Q. So can you just describe for me, just
10 give me a summary of exactly how you analyzed
11 these 28 devices? What process did you go
12 through?

13 A. So as I mentioned, we first identified,
14 first identified the unique assets. By that I
15 mean that the 28 devices in some cases were
16 forensic images of other devices that were
17 already included in the set. In some cases it
18 was forensic images of forensic images, like a
19 Russian nest, Russian doll through the various --
20 I understand there were various past efforts, so
21 the first step of our process was just
22 identifying among the materials that we had been
23 presented with what are the -- what are the
24 original sources or what are the unique devices
25 that we have in front of ourselves.

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M. McGowan

If a forensic image had already been created we verified it and to the extent we had an existing forensic image that already existed, we relied on that, made a copy of that as opposed to contributing to sort of the proliferation of duplicate copies.

To the extent that a device, it was an original device for which a forensic image had not already been created we attempted to create a forensic image of it and where successful verified that and included that in the results or in the set to search.

The searches themselves, we conducted searches using the EnCase forensic software and a search product called DT Search of both the active contents, the information, the active and recoverable data on the computer as well as an allocated space search, an allocated space component of the hard drives where fragments of deleted data, text fragments may exist, so that was the search process, review of the search results and making -- and then making those data available for review by Gibson, Dunn.

Q. Did you do this in the offices, the

1 M. McGowan

2 conference room or whatever of that law firm you
3 mentioned before?

4 A. Yes. That last -- all except for that
5 last stage where the results themselves were
6 taken out at our data center, they were processed
7 in a format that could be made available for
8 review, but up until that point in time the
9 identification, preservation and searching, that
10 was done at McManis Faulkner's offices.

11 Q. If you know, were these 28 devices
12 being stored at that law firm prior to you
13 analyzing them or were they brought to that law
14 firm from some other location for you to analyze?

15 A. I believe that most if not all of the
16 devices had been -- were being stored, stored at
17 that law firm had been brought out for our
18 inspection.

19 Q. Do you know how they were stored?

20 A. I do not know.

21 Q. Can you take a look at Rose Exhibit 1,
22 page 90, please.

23 A. Okay.

24 Q. And hold that page for a second.

25 Are you aware that there are electronic

1 M. McGowan

2 assets being held by a company called Parmet &
3 Associates related to this case?

4 A. Being held by them?

5 Q. Yes.

6 A. No, I'm not aware of that.

7 Q. Did you search any assets provided by a
8 company called Parmet & Associates?

9 A. Provided by them?

10 Q. Or being held by them, let's put it
11 that way.

12 Did you search any assets that are
13 currently being held by Parmet & Associates?

14 A. Not held by Parmet, no.

15 Q. Have you ever been to the offices of
16 Parmet & Associates?

17 A. No.

18 Q. Did you see a chain of custody document
19 for the 28 devices that you were given to analyze
20 at the law firm that we just mentioned?

21 A. There was forensic documentation on the
22 hard drive itself about the imaging, but not a
23 written chain of custody form.

24 Q. And are you aware that there's
25 electronic assets potentially related to this

1 M. McGowan

2 case being held by Parmet & Associates?

3 A. I think you asked me that.

4 No, I'm not.

5 Q. Has anyone from Stroz Friedberg, to
6 your knowledge, gained access to those assets to
7 analyze them, the ones at Parmet & Associates?

8 A. Among the devices that we had been
9 presented, presented to us, I believe there was
10 references to Parmet, but we have not been
11 provided -- those would have been at McManis'
12 offices, we haven't -- to my knowledge, no one
13 has been provided access to assets directly held
14 by Parmet & Associates.

15 Q. What are the references to Parmet &
16 Associates you just mentioned, what does that
17 mean?

18 A. That among the 28 devices were some
19 that, according to the documentation, had been
20 preserved by Parmet & Associates in the past and
21 were presently being held by McManis Faulkner.

22 Q. Documentation, was it paper
23 documentation you are talking about or
24 documentation on the drives themselves?

25 A. I was thinking of the drives

1 M. McGowan

2 themselves, yes.

3 Q. And so just to be clear, when you
4 analyzed these 28 devices, you had no chain of
5 custody related to those devices, they just
6 landed on that table and you analyzed them, you
7 don't know where they came from before that time
8 as far as in a written documentation form?

9 A. There was no chain of custody
10 documentation. There was -- I had reviewed
11 declarations that had been filed in a prior case
12 that described, that described the media of where
13 they had come from, so there is some written
14 documentation, but in that format.

15 Q. Did those declarations have hash values
16 for all of those 28 devices so you could confirm
17 you were looking at the same thing?

18 A. I am not sure the declarations did.
19 The hash values would have been among the
20 electronic media, the materials that I referred
21 to on the drives.

22 Q. And isn't it a better practice if you
23 can have it, is to have chain of custody for
24 assets that you're going to analyze in a computer
25 forensics analysis?

1 M. McGowan

2 A. A better practice than --

3 Q. When you got EnCase certified, wasn't
4 it -- weren't you taught that you would ask, you
5 would ask for a chain of custody for any evidence
6 you were analyzing, if you can get it?

7 A. I think having a chain of custody is
8 good practice.

9 Q. All right.

10 On page -- what page did I tell you to
11 go to? 90? I think I told you page 90.

12 A. Page 90, yes.

13 Q. That is, if I am correct, page 2 -- no,
14 I'm sorry, page 1 of the StreetFax contract as
15 you identify it in your report; true?

16 MR. SOUTHWELL: I'm going to object to
17 the document that's before the witness,
18 which is, as we stated yesterday, is
19 different than what was actually filed in
20 the Stroz report, so I just want to make
21 that clear.

22 MR. BOLAND: Very well.

23 Q. So it's a smaller than 8-1/2-by-11 size
24 print of the TIFF image that is page 1 of the
25 StreetFax contract, as you identify in your

1 M. McGowan

2 report; is that true on that page?

3 A. On this page, yes, what you have handed
4 me is a smaller version of it.

5 Q. And page 2, I think, is another exhibit
6 in your attachments there, I think it's Exhibit
7 F, I thought it was.

8 A. Okay.

9 Q. Perhaps I'm wrong.

10 Let's look at Exhibit F, see if that's
11 page 2.

12 A. Right, Exhibit F, yes.

13 Q. You would agree with me that that TIFF
14 image is an image of a paper document, that's the
15 contention that's being made in your report,
16 that's an image of a paper document?

17 A. It appears to be yes. This is -- I'm
18 pausing because the version that you are showing
19 me is much smaller than the version of the
20 StreetFax contract that I am accustomed to seeing
21 in print.

22 Q. But you don't dispute -- we already got
23 your testimony earlier -- that's the actual size,
24 physical size of that file, the measurements are
25 in Mr. Broom's report and you conceded those

1 M. McGowan

2 measurements were accurate.

3 MR. SOUTHWELL: Objection,
4 mischaracterizes.

5 Q. Do you disagree with me that that's the
6 actual size, physical size of that file as you
7 found it?

8 A. I think to be clear here we're talking
9 about -- there's a couple of different things,
10 there's the size of the original, there's the
11 size of the TIFF image and then there would be
12 the size when printed out, so the measurements
13 pertain to the dimensions of the TIFF image, the
14 TIFF image as it's displayed, as it's displayed
15 electronically.

16 Q. Right. I'm talking about do you
17 disagree that the size of this TIFF image is 2.4
18 by 3.2 inches?

19 Is there some other measurement for
20 this TIFF that you think, a different size that
21 you determined it was?

22 A. I think it's -- so the measurements,
23 they are going to depend on -- the size is
24 measured in pixels and how that appears, for
25 example, the size that appears on your laptop

1 M. McGowan

2 monitor versus a big screen versus a CRT, all of
3 that is going to depend on the dots-per-inch that
4 your monitor is set for.

5 Q. No, sir, we're going to go back --

6 MR. SOUTHWELL: He was not finished
7 with his answer.

8 Q. Go right ahead, but -- we'll clear this
9 up.

10 Go ahead.

11 A. So that size, the physical size is
12 going to be dependent both upon -- I mean, the
13 size of a TIFF image is measured in pixels. If
14 you want to translate into dimensions it's going
15 to depend on what the pixels are and also the
16 dots per inch that it's presently being displayed
17 at.

18 Q. Do you disagree with me, sir, that the
19 metadata associated with these two TIFF images
20 indicates that they were 480 by 646 pixels at 200
21 DPI? Do you disagree with that?

22 A. I think one of them was smaller than
23 the other, I don't think they were both the same
24 size.

25 Q. Okay.

1 M. McGowan

2 What's your basis for that?

3 A. I think just that area that you're
4 speaking of right there, I've been -- the place
5 we have it most handy is the Broom report on page
6 21 where Scan0001 was 480 by 646 and Scan0002 was
7 480 by 657, so they are slightly different size.

8 Q. Do you disagree with those numbers that
9 Mr. Broom put in his report?

10 A. I do not disagree with those numbers.

11 Q. And the 200 DPI, do you disagree with
12 that, as embedded in the metadata?

13 A. No. The 200 DPI is the resolution of
14 the TIFF image.

15 Q. Of the TIFF image, right.

16 So I don't care what a monitor
17 resolution is for this question.

18 The resolution of the TIFF image is 200
19 DPI; correct?

20 A. Of the TIFF image, yes.

21 Q. And you previously testified you do not
22 disagree with Mr. Broom's conversion from pixels
23 to inches; correct?

24 A. From that measurement, no, I do not
25 disagree.

1 M. McGowan

2 Q. Right. These are the pixels, we just
3 acknowledged, we agreed these are the pixels, the
4 measurements of those two TIFF images and he
5 converted them to 2.4 by 3.2 inches, which is the
6 physical size of that file, you would agree with
7 that?

8 A. It's an electronic file.

9 Q. Right.

10 A. That would be the size at the -- that
11 would be the size of the image without any --
12 that would be the size of the image --

13 Q. At a hundred percent resolution?

14 A. -- at a hundred percent resolution at
15 200 DPI.

16 Q. Right.

17 So anything else, if that image is
18 printed out in any other size other than 2.4 by
19 3.2 inches, that's not a hundred percent
20 resolution, is it?

21 A. Well, printing is something -- is
22 something different.

23 Q. Listen to my question.

24 If you printed it at exactly a hundred
25 percent resolution, so I don't care what printer

1 M. McGowan

2 you use, what monitor, it's irrelevant. If you
3 print this image at a hundred percent resolution,
4 when you measure it with a ruler on that printed
5 page, that image is going to be 2.4 by 3.2 inches
6 in dimension; is it not, sir?

7 A. I'm not sure it is because it's the
8 pixels, pixels is defined, it's the smallest
9 addressable unit.

10 Q. But it's already been converted to
11 inches and you've agreed to the conversion to
12 inches, so if you print the image at a hundred
13 percent resolution, that image measured with a
14 ruler on the printed page is going to be 2.4 for
15 scan 1, 2.4 by 3.2 inches, is it not?

16 And sir, if you don't know, it's an
17 acceptable answer. If you don't know, you don't
18 know.

19 A. So if you print -- if you print the
20 image --

21 Q. At a hundred percent resolution.

22 A. And leaving aside differences between
23 printer size pixels and the images of the digital
24 pixels and then add a hundred percent resolution,
25 it would be -- if you were using a program and

1 M. McGowan

2 were able to -- and printed it at that it would
3 be those, it would be those measurements.

4 Q. All right.

5 So for scan 1 the measurement of the
6 printed image of scan 1 TIFF printed at a hundred
7 percent resolution would be 2.4 by 3.2 inches;
8 true?

9 And I'm reading right from page 21 of
10 Broom's report, I'm not trying to trick you with
11 the numbers.

12 Is that correct, sir, that's what you
13 just said?

14 A. No, I -- that's if you print it at a
15 hundred percent resolution --

16 Q. Yes.

17 A. -- which there's, by default wouldn't
18 be how an image would be printed. Windows
19 provides the ability, when you print, the options
20 you get are to expand it, so the TIFF images
21 would generally be -- printed TIFF images would
22 generally be expanded to fit the size of a page.

23 Q. Right.

24 But I'm not talking about that, I'm
25 talking about a hundred percent resolution.

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M. McGowan

So you'd agree with me the hundred percent resolution, the first Scan0001.tif, if printed, would be 2.4 inches by 3.2 inches as you measure it on the page?

A. If printed at 100 percent resolution.

Q. And then Scan0002.tif, if printed at a hundred percent resolution, would measure 3.23 inches by 2.4 inches?

MR. SOUTHWELL: Where are you getting that from?

MR. BOLAND: I'm just asking him the question.

Q. It would measure 2.4 inches by 3.23 inches?

MR. BOLAND: Actually, let me withdraw that question.

Q. Since the Scan002.tif is slightly larger --

A. Right.

Q. -- by it looks like 11 pixels, you would expect the printed size of that image at a hundred percent resolution to be fairly close to 2.4 times 3.2 inches; wouldn't you agree? 11 pixels isn't that much.

1 M. McGowan

2 A. Yes, if printed at a hundred percent
3 resolution.

4 Q. Right.

5 You can print TIFF images at larger
6 resolution: 200 percent, 300 percent and so
7 forth; correct? You can set your printer to
8 print it at a larger resolution?

9 A. Either your printer or the software,
10 for example, but generally it's oftentimes not
11 just by percentages, but if you used the default
12 program in Microsoft Windows, you'd hit Print,
13 your first two options, the options presented to
14 you will be to scale to fit the size of the page.

15 Q. Okay.

16 The two printed versions of the TIFF
17 images, Exhibit F, I think, and then the one on
18 page 90, whatever that was, Exhibit --

19 A. Exhibit H is the one that's on.

20 Q. Right.

21 Do those appear to be approximately 2.4
22 by 3.2 inches?

23 I'm not asking you to say exactly, but
24 do they appear to be about 2-1/2 inches and a
25 little over three inches tall, as printed?

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M. McGowan

A. Not having a ruler here, but it appears to be approximately those dimensions to me.

Q. Fair enough. And I'll note, of course, you don't have a ruler and I'm not asking you to say exactly.

So this is an image of a paper document.

You are not a paper document expert; correct?

A. I am not, yes.

Q. So you have nothing to say about the authenticity of any paper documents in this case; correct?

A. I haven't examined any paper documents in this case.

The only thing that, as we discussed earlier, it's only to the extent that it's -- the only inferences I have are to the extent that it's a paper document of -- it's a paper copy of a document which I examined electronically and reached opinions about it that way.

Q. I'm asking about the paper document of which this is an image of a paper document.

You don't have any evidence to offer,

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M. McGowan

you don't have any qualifications to testify about the authenticity of the paper document from which this image was made; correct, sir?

A. Does that paper image, does that paper document exist?

I am not aware of --

Q. Please just answer the question.

You have nothing, no testimony to offer about the paper document from which this image was created because you are not a paper document expert; correct?

A. I don't have any -- I don't have any opinions to offer. I don't believe that document, I am not aware of that document existing, but I don't have any opinions to offer about it.

Q. Very good.

And likewise, if I gave you a picture of the Brooklyn Bridge --

Are you familiar with the Brooklyn Bridge?

A. Yes.

Q. If I gave you a picture of the Brooklyn Bridge, I think you would agree with me you are

1 M. McGowan

2 not qualified to talk about, based on that
3 picture, the structural integrity of the Brooklyn
4 Bridge?

5 A. That's correct, I am not qualified to
6 talk about the structural integrity of the
7 Brooklyn Bridge.

8 Q. And have you ever seen the paper
9 document -- you've never seen the paper document
10 from which that image was made?

11 A. Yes. It's my understanding that it
12 doesn't exist.

13 Q. You've never seen it?

14 A. I have never seen it.

15 Q. So your testimony, your conclusions in
16 your report are solely about the TIFF image
17 that's contained in your report, not about the
18 underlying paper document from which the TIFF
19 image was created; right?

20 A. Could I clarify one thing?

21 We were speaking -- I mentioned I am
22 not aware of it existing. We were actually
23 speaking about the second page. I believe the
24 second page of the Work For Hire, the Work For
25 Hire document and the StreetFax contract are the

1 M. McGowan

2 same.

3 When I was speaking about I'm not aware
4 of it having existed I was talking specifically
5 about the first page of the StreetFax contract
6 which I'm not aware of, I'm not aware of it
7 existing in print format.

8 Q. So it's your opinion, based on your
9 analysis, that the second page of the StreetFax
10 contract is the same as the second page of the
11 paper contract which the paper experts have
12 evaluated in this case; is that true?

13 A. I haven't conducted a paper -- I
14 haven't conducted a paper document analysis of
15 it. From my review of the text I believe that
16 the content is the same on the second page.

17 Q. Did you review the signatures that
18 appear on the second page of the TIFF, the
19 StreetFax contract, and the second page of the
20 paper contract, at least if you have seen a scan
21 of it, did you review those signatures? Do you
22 think those look the same to you?

23 A. I -- earlier on, I think when it was
24 first identified in August of 2011 I recall
25 looking at the two of them together. I don't

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M. McGowan

recall, but it's been a while, so I don't recall details, the details of how the two appear.

Q. Is it your belief, your opinion, your expert opinion, that page 2 of the StreetFax contract is a TIFF image created from page 2 of the paper contract that was evaluated by the paper experts?

A. I don't have an expert opinion on that.

Q. And we already went through earlier you don't know how -- you can't conclude with any certainty how that TIFF image was actually created; correct?

A. Correct, I cannot conclude how the TIFF image had been created and whether, for example, it was scanned directly onto the Seagate hard drive or whether it had been introduced from another media.

Q. And do you know -- and you don't know if that TIFF image from the moment of its creation to the time it was placed onto the media where you found it was altered at any point during that time, before it got onto the location where you found it, you can't say whether it was altered at all?

1 M. McGowan

2 A. I can't say that -- I can't say, I
3 can't speak to whether it was altered prior to it
4 having arrived on the media on the Seagate hard
5 drive.

6 Q. And then how, sir, can you say that
7 that's an authentic contract between the parties
8 if you do not know whether it was altered before
9 it ended up where you found it? How is that
10 possible?

11 A. The basis of why I believe it's an
12 authentic contract is it exists on -- it exists
13 on Mr. Ceglia's media, there's an independent
14 copy that was made, that was sent to you and
15 maintained by Sidley & Austin, it's referred to
16 in contemporaneous e-mails between Mr. Ceglia and
17 Mr. Kole.

18 The payment terms of that contract are
19 consistent, they are consistent with the payment
20 terms, they are consistent with the payment terms
21 of the discussions between Mr. Ceglia and
22 Mr. Zuckerberg in subsequent e-mail
23 correspondences and in my review I didn't
24 identify any anomalies concerning the metadata of
25 that digital image, those are the reasons why we

1 M. McGowan

2 believe that the StreetFax contract is an
3 authentic document.

4 Q. I'm asking just about the TIFF image.
5 You can't authenticate the paper
6 contract, because you are not a paper expert;
7 true? We already went over that.

8 A. Again, apart from -- I can evaluate it
9 in the digital form.

10 Q. So you can't authenticate the paper
11 document from which the image was made and you
12 don't know if the TIFF image was altered before
13 it landed where you found it, so how can you say
14 the TIFF image is authentic?

15 You have no way of knowing whether it's
16 authentic or not, it could have been vastly
17 manipulated in all kinds of software we went over
18 before you saw it; isn't that true, sir?

19 A. It's possible that -- I can't speak to
20 what happened to the TIFF image before; however,
21 that's not uncommon for this kind of digital
22 authentic -- authentication case. We don't have
23 a camera sitting over the shoulder of the people
24 involved and oftentimes we are called to examine
25 and opine upon documents as they exist, and

1 M. McGowan

2 that's what we did here, and so the reasons I
3 believe it to be an authentic contract are the
4 ones I just went over, the fact that there's an
5 independent copy in a third party's possession
6 that it's referenced in contemporaneous
7 correspondence at that time and that the terms of
8 it are consistent with e-mails between Ceglia and
9 Zuckerberg, the authenticity of which is not
10 being challenged here.

11 Q. The authenticity of what, sir, what
12 part of that?

13 A. Of the e-mail messages.

14 Q. Between whom and whom are not being
15 challenged?

16 A. The e-mail messages between Mr. Ceglia
17 and Mr. Zuckerberg that reference the payment
18 terms, there are e-mail messages that are in both
19 Mr. Zuckerberg's Harvard account as well as in
20 Mr. Ceglia's files that reference the payment
21 term, that reference the amount of monies owed to
22 Mr. Zuckerberg and reference it as 18,000, which
23 is the, if you sum up the fees listed in section
24 3, I believe, of the StreetFax contract, that's
25 the payment, the payment provision.

1 M. McGowan

2 Q. And who told you those are not being
3 challenged by Mr. Ceglia?

4 A. I'm not aware -- I've reviewed the --
5 I've reviewed the reports of the digital forensic
6 examiners that Mr. Ceglia has retained; I haven't
7 seen any -- I haven't seen any challenges to
8 those, any discussions that suggests that they
9 are inauthentic.

10 Q. I am asking who told you that those
11 e-mails are not being challenged by Mr. Ceglia.

12 A. No one told me that.

13 Q. So you determined that the StreetFax
14 contract is authentic based on things other than
15 the TIFF image itself; fair to say?

16 A. It was through an examination of the
17 TIFF image as well as, as you say, other things,
18 factors, but both.

19 Q. So the TIFF image could be altered, you
20 have no way of knowing; true?

21 A. The TIFF image, I can't speak to what
22 happened to the TIFF image before it arrived on
23 this computer. However, the TIFF image on this
24 computer is the same that's in Sidley Austin's
25 possession, so there's no -- I haven't seen any

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M. McGowan

evidence through my examination of both the images found on the Ceglia -- excuse me, the Seagate hard drive and the Sidley Austin copy that there's been subsequent alterations.

Q. If I give you a TIFF image right now of anything, a TIFF image of the New York skyline, would you be able to sit here and look at it and authenticate it, assure the Court that it's not been altered in any way?

A. Not by sitting here and looking at it. I am a digital forensic examiner, that's how I -- it is through that that I proffer opinions.

Q. You listed --

MR. BOLAND: Scratch that.

Q. There's four people's names associated with the report; correct?

A. In the initial part of the report there's biographies for four people, yes.

Q. And there was one other person you mentioned earlier who had done some work with some of the evidence related to this report, I forget the person's last name.

A. Ms. Forness.

Q. Forness, that's it.

1 M. McGowan

2 Anyone else that you know of that also
3 contributed to some of the analysis or whatever
4 but is not listed in the report?

5 A. Not to the analysis, no.

6 Q. And are you aware that Mr. Zuckerberg
7 has not declared that the StreetFax contract is
8 the authentic contract between him and
9 Mr. Ceglia? Are you aware of that fact?

10 A. I'm not aware one way or another what
11 Mr. Zuckerberg has said about it.

12 Q. And are you aware that Stroz Friedberg
13 is the only expert in this entire case to claim
14 that the StreetFax contract is the authentic
15 contract between the parties?

16 A. I'm not sure, I'm not sure on that, I
17 haven't reviewed all of the other expert, all the
18 paper document expert reports in detail.

19 Q. And have you ever testified in any
20 deposition or in court regarding the authenticity
21 of a digital image other than today, of course?

22 A. Let me think.

23 I've certainly testified about digital
24 files. I'm trying to think if they --

25 Q. Not digital files. I'm being specific,

1 M. McGowan

2 digital images.

3 A. I realize, I am just trying to process,
4 go through the past cases.

5 I've analyzed digital images, I've
6 written reports about them, but in terms of
7 deposition and trial testimony, I don't believe
8 I've testified about digital images specifically
9 prior to this matter.

10 Q. Have you ever been qualified as an
11 expert in any field by a court?

12 A. Yes, I've been qualified as an expert
13 in digital forensics.

14 Q. And when you said you've analyzed
15 digital images, what does that mean?

16 A. It's come up in at least several
17 respects of my work, there have been questions
18 about what is the metadata that this image shows,
19 there have been questions about when digital
20 images have arrived on, have been used on a
21 computer, the usage, the usage pattern related to
22 them.

23 To a limited degree there's been, I
24 have conducted analyses of the content, the
25 pictorial content of digital images as well, so

1 M. McGowan

2 those are, I think, the three main ways in which
3 digital images have come up and I've analyzed
4 them in my work.

5 Q. Have you ever been qualified by a court
6 to provide an opinion as to whether a digital
7 image is altered or not?

8 A. No. As I said, it hasn't come up in
9 any of the deposition or trial testimony, so I
10 haven't had an occasion to.

11 Q. Have you had any training on how to
12 detect manipulation in digital images, the
13 content of digital images?

14 A. Much of my work is focused on the
15 files, the metadata, the content themselves of
16 digital images, it's an area that I have attended
17 a few lectures and conducted some research, but
18 the analysis of the content of digital images is
19 not an area that has come up much in my work.

20 Q. Did you bring your own copy of your
21 report to the deposition today?

22 A. Yes. There's a -- I have a copy in my
23 briefcase.

24 Q. Is the briefcase in the room?

25 A. Yes.

1 M. McGowan

2 Q. Can you pull out your copy that you
3 brought with you of the report?

4 A. Sure.

5 Q. I'm talking about the filed version of
6 the report, the one that's got the file stamp
7 across the top.

8 Is that the one you have?

9 A. It is, yes.

10 Q. Okay. Great.

11 A. All right. I have that in front of me.

12 Q. Can you look on your page of your copy
13 of the report that you have in front of you there
14 that correlates to these two TIFF images that I
15 just showed you.

16 A. Okay.

17 Looking at what would be page 86 or
18 Exhibit F and page 90 of Exhibit H.

19 Q. Right.

20 So let's start with your page 90 on
21 your copy of the report you have in front of you
22 there.

23 A. Yes.

24 Q. Do you see the size of the printed
25 version of page 1 of the TIFF image as it exists

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M. McGowan

in your report?

A. I do, yes.

Q. You would agree with me it's larger than the printed size of that same TIFF image as it appeared in Rose Exhibit 1, which you looked at before?

A. It is, yes.

Q. Does that page that you're looking at have the court information across the top, the document number and the court name and all that?

A. It appears to be truncated, but yes, it does appear to have a portion of the court's, I guess, legend, for lack of a better term, on the top.

Q. So it's true that the court-related sort of stamp that goes across every page -- I'm looking at what you are looking at in there -- that text is considerably larger than what's on the other pages, would you agree?

A. Yes.

Q. And that text is also, as you said, truncated, it's not even all present on the page; right?

A. That's right, yeah.

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M. McGowan

Q. The first portion of the designation that goes across the top of the page is missing, in fact, the first two letters that appear on the top of the page look to be G and F of that designation.

A. I believe there's an L in there.

Q. Oh, L, G, and F; right?

A. Or strictly -- and partially cut off A, but yes.

Q. And then at the far right of that much larger text is the word "file" and then the number zero and it appears the rest is cut off; would you agree?

A. I would agree.

Q. Isn't that consistent, the print of that exhibit with that image from the Rose exhibit, Rose number 1, being magnified probably two, four, five times the size of what it was in the other exhibit? Doesn't it look like that thing was magnified from the originally filed page to consume that entire page like it is now?

A. I'm not familiar with the process that affixes the caption, but based upon the size, yes, it does appear to be, appear to be

1 M. McGowan

2 magnified.

3 Q. And that TIFF image was not that size
4 at a hundred percent resolution as you found it
5 on the Ceglia media; right? It wasn't -- that's
6 not a hundred percent resolution printout of that
7 image; agreed?

8 A. This is not a 100 percent resolution
9 printout of this image, correct.

10 Q. And without quibbling about how much
11 larger it is, you would agree with me it's beyond
12 a hundred percent resolution that that's being
13 printed at so it can fit most of that 8-1/2-by-11
14 page?

15 A. That's correct, it appears to be
16 printed in the default manner to fill a page, as
17 you said.

18 Q. And the other page 2 of that TIFF which
19 appears in your copy of the report, if you can go
20 lead to that and that is Exhibit F; right?

21 A. Right.

22 Q. All the same answers to my questions
23 related to that printed version of that exhibit
24 as well, it does appear magnified well beyond a
25 hundred percent magnification as it's printed

1 M. McGowan

2 there?

3 A. Correct, it appears to be printed to
4 fill the page.

5 Q. And the information across the top is
6 much larger font and is cut off at the beginning
7 and the end from the typical information that
8 gets placed as a header across filed documents?

9 A. Yes.

10 Q. So that would not be an accurate
11 rendering of the size of that TIFF image or the
12 previous TIFF image at a hundred percent
13 resolution as you found it; true?

14 A. I think there's a couple, couple things
15 there. One is I found an electronic copy, it's
16 not a -- this is not an accurate representation
17 of what it would appear if you printed it at a
18 hundred percent resolution. It is, I think, an
19 accurate representation of what happens if you
20 hit Print and just use the defaults.

21 Q. All right.

22 And if you could look at the text
23 starting in the left-hand column at the top of
24 that document, would you say that that text is
25 legible?

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M. McGowan

A. I would say it's difficult to read.

Q. How much of it's difficult to read? Is it just a few words here and there that are hard to read or 50 percent of the words or the majority of the words that you can't read?

A. Well, leaving aside the embossed court thing, I can -- I would say most words are difficult to read; I believe that I could make out what it's saying, though, in spite of that.

Q. And could you flip to the other TIFF image as well and answer that same question.

A. Sure.

Yes, I'd say that apart from the headers, there's more difficulty, probably all of that is more difficult to read than an ordinary document, I think. I could make out -- that said, I could make out with some time what it was saying.

Q. What do you mean, with some time?

A. Meaning I can't read it, I can't read it as quickly to you as quickly as I could, for example, the wording in the Broom report, which is quite larger, but I think if I went slowly and squinted at it I could figure out what it was

1 M. McGowan

2 saying.

3 Q. Every word, you think?

4 A. I haven't tried every word. One of my
5 colleagues, as part of this, did go through and
6 prepare a transcription, so I personally haven't
7 tried every word, but based upon that I believe
8 that either every word or almost every word could
9 be made out from this.

10 Q. Who did the transcription?

11 A. One of my colleagues Karol Pacan was
12 presented with the TIFF images and made an
13 internal transcription for us to review.

14 Q. So that's like a sixth person now
15 involved in some work in preparing the report, is
16 that fair to say, we are up to six now?

17 A. I wouldn't say that this was involved
18 in the preparation of the report. It was one of
19 the things we did in our analysis, but I would
20 say that the people who were involved in the
21 preparation of this report -- I'm not sure how we
22 are up to six either. Ms. Forness' work was
23 subsequent to it, so I'd say that Jason, Mr.
24 Novak, and myself are the two individuals who
25 were primarily -- who were the individuals

1 M. McGowan

2 performing the digital forensic analysis, the
3 technical analysis, and then Mr. Friedberg and
4 Mr. Rose assisted with the day-to-day supervision
5 as well as the higher-level analysis.

6 Q. What percentage of the report would you
7 say you wrote?

8 A. I think it's difficult for me to say.
9 The drafting, the drafting process was
10 collaborative, so I don't know that I can point
11 to specific sentences.

12 Q. 50 percent would you say?

13 A. I'd say Mr. Rose was more involved in
14 the initial drafting than I was, he probably
15 wrote more of the words that initially appeared
16 here, but then with the back and forth of the
17 editing process to refine it and wanting to make
18 sure we got it right, I can't really say at the
19 end of the day how many are his, how many of --
20 sort of the division of labor, but as a general
21 matter I would say I was more involved in the
22 forensic analysis and that he took -- he took the
23 primary pass at writing it, drafting it into the
24 narrative form.

25 That said, I do -- I've reviewed and

1 M. McGowan

2 contributed and I agree with the opinions offered
3 here.

4 Q. Did you retain copies of drafts of the
5 report?

6 A. We worked -- we just worked off one
7 document, we had it up on a file on our server,
8 and so we would make changes as we went along and
9 red lined and worked off that, accept them, so we
10 have that version, but we didn't separately save
11 intermediary drafts.

12 Q. Does the software you used or the
13 process you use to do that contain versioning
14 itself, kind of click buttons and go back and
15 look at prior versions?

16 A. No, it would just have whatever was in
17 the final draft.

18 Q. And the person who did the
19 transcription of the two TIFF images, did they do
20 that accurately or did they make any errors in
21 that transcription, if you know?

22 A. I'm not aware of any errors.

23 Q. Did you review the transcription for
24 errors?

25 A. I did not conduct a line-by-line

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M. McGowan

review. The purpose of the transcription was as an aid, an aid as we were conducting this to be able to more easily refer to it.

I did look, I did compare the two together, it appeared to be -- it appeared to be accurate to me, but I did not conduct a line-by-line review of the two.

MR. BOLAND: I am going to take about a five-minute break and then I think I'm going to wrap up.

(Recess taken.)

THE VIDEOGRAPHER: The camera is rolling.

BY MR. BOLAND:

Q. All right, Mr. McGowan, we are back on the record.

What was -- can you describe Mr. Rose's involvement in the analysis of those 28 computers? 28 devices, I will use your term.

A. Yes. Mr. Rose -- I was not physically present for the analysis, and but -- and I believe that it was actually sometime during the course of the examination that he began to be more involved in the day-to-day supervision, up

1 M. McGowan

2 until that point in time it had been
3 Mr. Friedberg, but I consulted with both of them
4 in terms of the approach, discussed the keywords,
5 and they would have been involved in
6 communications with Gibson, Dunn.

7 Q. Did Mr. Rose know who was involved in
8 that examination of those 28 devices?

9 A. Did Mr. Rose know?

10 I'm not sure one way or another. He
11 began -- he got involved at some point in the
12 process, so I'm not -- it was -- Mr. Rose got
13 involved after my first trip to -- after my trip
14 to -- my trip to San Jose, so I'm not sure one
15 way or another if he knew specifically everyone
16 that was involved in that.

17 Q. How many trips did you make to San Jose
18 to analyze these 28 devices?

19 A. Just one.

20 Q. Did you make any trips anywhere else to
21 analyze these 28 devices?

22 A. No.

23 Q. And other than those 28 devices and the
24 list of items in the report, Rose Exhibit 1 for
25 this deposition, were there any other electronic

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M. McGowan

assets that anyone from Stroz Friedberg analyzed related to this case?

A. In the Harvard e-mails that we mentioned earlier that were discussed in the several Rose declarations.

I believe that's it, I believe that's the full accounting for them.

Q. And were you in consultation with Mr. Rose about the analysis of these 28 devices when you were in San Jose as well as when you returned?

A. I don't believe I was in consultation with Mr. Rose. I can't recall speaking to him when I was in San Jose.

Q. When you returned from San Jose did you have conversations with him about the analysis of those devices, those 28 devices?

A. Yes.

Q. How many conversations?

A. I don't recall.

Q. Would it surprise you to learn that Mr. Rose, when I asked him questions about analyzing these electronic assets, didn't know anything about who worked on them? Would that

1 M. McGowan

2 surprise you?

3 MR. SOUTHWELL: Objection.

4 A. No. As I mentioned, Mr. Rose began his
5 day-to-day involvement in the supervision after
6 -- after the trip to San Jose, so that doesn't,
7 it doesn't surprise me.

8 Q. Is it your testimony that you made him
9 aware of what your findings were regarding the
10 analysis of these 28 devices?

11 A. We had discussions about -- certainly
12 we discussed the analysis, we discussed -- some
13 of it -- some of it continued after he began his
14 involvement.

15 Sitting here, I can't think of a
16 conversation where we sat down and specifically
17 went over findings.

18 Q. When would those discussions have taken
19 place?

20 A. In the fall of, fall of 2010.

21 Q. So does it surprise you that Mr. Rose,
22 when asked questions about these devices, didn't
23 know anything about anything regarding these? In
24 fact, he even -- would it surprise you to know
25 that he even indicated there were 15 to 20

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M. McGowan

devices, not 28, so he was way off on the number as well?

MR. SOUTHWELL: Objection to form.

Q. Does it surprise you that he doesn't accurately know how many devices were analyzed?

MR. SOUTHWELL: Objection to form.

A. Not necessarily.

Again, it was -- he began his involvement after, after the initial searches had been conducted and then we prepared -- as I said, we documented, documented this in a spreadsheet.

I don't know one way or another if he had reviewed it, if he -- I don't -- I guess I don't expect him to have a detailed understanding of the exact devices that we searched.

MR. BOLAND: Okay. I don't have any further questions for him, Mr. Southwell.

MR. SOUTHWELL: I just have a couple, and I just need to take a two-minute break to get a document for that purpose, so just hold on for a sec.

MR. BOLAND: I will stay right here.

(Recess taken.)

THE VIDEOGRAPHER: Camera is rolling.

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M. McGowan

EXAMINATION BY

MR. SOUTHWELL:

Q. Mr. McGowan, you were asked by Mr. Boland some questions about the StreetFax, what we referred to as the StreetFax contract and the size of that file, the size of the actual TIFF file.

Do you recall that?

A. Yes.

Q. And do you recall the process by which that item was produced in this case, generally speaking?

A. Yes. That item would have been produced -- there's an Electronic Asset Inspection Protocol in place in this case that governs the production, so after we identified the TIFF files, among other things on the StreetFax, on the Seagate hard drive, we provided them to counsel for Mr. Ceglia at the time, specifically to Mr. Lake, there was a period of time which he had a chance to review them, object to them as privileged, identify them as confidential.

I think these were identified as

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M. McGowan

confidential and they were produced to you, produced to you first with a legend identifying them as confidential in early August 2011, I believe, and then subsequently the privilege, the confidentiality designation was removed, I don't recall the circumstances, and an original copy was provided.

MR. SOUTHWELL: I would ask that this be marked as McGowan Exhibit 1, please, Mr. Court Reporter.

(McGowan Exhibit 1, declaration of Alexander H. Southwell, marked for identification, as of this date.)

MR. SOUTHWELL: Here's a copy for you, Mr. Boland.

Q. I'm showing you what has been marked as McGowan Exhibit 1, which is document 111 as filed in this litigation. This is a declaration from myself submitted in support of defendants' cross-motion to compel compliance with the July 1st order.

Do you see this document in front of you?

A. I do, yes.

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M. McGowan

Q. I am going to direct your attention to --

MR. BOLAND: Alex, if you could just speak up a little, I was having trouble hearing the last part of what you said.

MR. SOUTHWELL: Okay.

MR. BOLAND: Thanks.

Q. Directing your attention to the Exhibit A, which is the sixth page in to McGowan Exhibit 1; do you see that?

A. I see it, yes.

Q. What do you recognize this as?

A. It appears to be a printed copy of the -- printed copies, rather, of the two images of what we are referring to as the StreetFax contract which were found on the hard drive, the Seagate hard drive attached to e-mail messages as -- the names were Scan0001.tif and Scan0002.tif.

Q. And is this the same StreetFax contract that we've been talking about that Mr. Boland was asking you questions about and showing you a small version of and a larger version of it?

A. It appears -- yes, it appears to be a

1 M. McGowan

2 copy of the same document.

3 Q. Can I direct your attention to the
4 upper right corner of this page that we're
5 looking at, the second to last page in McGowan
6 Exhibit 1, and you see some writing there that is
7 actually upside down.

8 A. Yes.

9 Q. Do you see that?

10 A. Yes.

11 Q. Could you read what that says?

12 A. Yes.

13 It's oriented upside down, but it says
14 "Ceglia Media Item Number 2."

15 Q. Are you aware of who affixed -- well,
16 are you aware of what that signifies?

17 A. Yes. I believe it refers to the
18 numbers, number 2 and number 4 referred to on the
19 items, the items as listed in the presumptive
20 materials log that we would have provided to
21 Mr. Lake along with his -- at the time of these
22 documents were provided to him.

23 Q. Are you aware of whether Mr. Lake or
24 someone working with him affixed the label
25 "Ceglia Media Item Number 2" to this page?

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M. McGowan

A. I'm not certain.

Q. Are you aware of whether anyone at Stroz Friedberg affixed that note?

A. I'm not fully certain one way or another. I know that we had to label the documents when they were originally provided with the confidential label; I'm not sure if we did or not, sitting here.

Q. And what is the -- how would you describe the size of these words that you are referring to, "Ceglia Media Item Number 2," in relation to the other text on the document?

A. The size of the designation Ceglia media item 2 and 4, it appears to be approximately the same size, approximately slightly larger than the text of the document, than the text in the document.

Q. And referring you back to the questions Mr. Boland asked about an image of the StreetFax contract that had cut off the court legend that was in a larger size and cut off, how would you compare the size on this document where it says "Ceglia Media Item Number 2" to that size?

A. This is significantly smaller, the

1 M. McGowan

2 legend "Ceglia Media Item Number 4" is
3 significantly smaller in size than the court
4 caption or the writing at the top of the document
5 on the other one that I looked at, it was
6 discussed with Mr. Boland that was included in
7 Rose Exhibit 1.

8 Q. Directing your attention to these last
9 two pages to the left of the legend "Ceglia Media
10 Item Number 2" and "Ceglia Media Item Number 4,"
11 do you see that court legend there?

12 A. I see the court legend there, yes, to
13 the left, yes.

14 Q. And as compared to the court legend on
15 the page that Mr. Boland asked you about, how
16 would you describe this court legend on this page
17 of McGowan Exhibit 1?

18 A. This is -- the legend on the two pages
19 that we are looking at here are significantly
20 smaller in size. They appear to be of a normal,
21 normal typewritten font size as compared to Rose
22 Exhibit 1, which was considerably larger and
23 truncated.

24 Q. And the overall size of page 1 and page
25 2 of the StreetFax contract in this exhibit is

1 M. McGowan

2 what, roughly speaking?

3 MR. BOLAND: Let me just, I think the
4 witness is confused on something. He just
5 referred to Rose Exhibit 1 as having the
6 much larger font truncated across it. He
7 was actually looking at the report you
8 brought with you when you had the larger
9 font truncated, he wasn't looking at the
10 Rose exhibit, just to clarify, and I don't
11 think you meant to try and mislead it, but
12 just we had a lot of different copies of the
13 same thing, we're getting confused.

14 THE WITNESS: Thank you for
15 clarification. Yes, I was referring to the
16 filed copy of the report which was not Rose
17 1 but my copy of the filed report which is
18 much larger in size.

19 Q. Right.

20 And then the overall appearance of page
21 1 and page 2 of the StreetFax contract here,
22 roughly speaking, what is the size?

23 A. It appears to be approximately the size
24 of a piece of paper.

25 Q. Of what size paper?

1 M. McGowan

2 A. 8-1/2-by-11 piece of paper.

3 Q. And you mentioned a court label here on
4 the top of these last pages.

5 Do you have any specific knowledge
6 about how those court legends are affixed to
7 documents that are filed with the court?

8 A. No, I don't.

9 Q. Now, you were asked some questions
10 about the file size of the TIFF image that we're
11 referring to here.

12 Are there different ways that a paper
13 document would have been scanned that would
14 result in the file size?

15 A. The file size or the image size?

16 Q. The image size, I guess, is what I
17 mean.

18 A. Yes. There are several ways. For
19 example, if one scanned a document, a full-size
20 8-1/2-by-11 document and used settings on the
21 scanner to reduce the size of the image, that's
22 one way in which a smaller, a smaller size TIFF
23 image could result.

24 Another way is subsequent to the
25 scanning, if in the -- after the paper had been

1 M. McGowan

2 fed in full size, an 8-1/2-by-11 piece of paper,
3 if the scanning software offered the option to
4 save it as a smaller size, that's another way.

5 Q. And what are some of the reasons why a
6 paper document would be scanned in a smaller
7 size?

8 MR. BOLAND: Objection to the form of
9 the question.

10 A. There are several possibilities. One
11 is when we're running out of space on the media
12 that it was being saved on, for example, the hard
13 drive, if one wanted to, for example, instead of
14 having a 12-megapixel image have a smaller one.
15 It's also possible if one needed to transport it,
16 a media such as a floppy disk that only had
17 limited capability, if one were to send it via an
18 e-mail message and wanted a smaller size either
19 because there was a hard limit on what could be
20 sent out or it would just take longer to upload,
21 send out, transmit a large size.

22 If one were posting it to a Web site
23 oftentimes the sizes of images are reduced, and I
24 guess also just inadvertently as well, if someone
25 in saving it clicks an option and chooses to save

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2 it as a smaller size.

3 Q. And you were asked some questions about
4 whether the paper documents that resulted in the
5 scan was in the two-inch by three-inch size or a
6 larger size.

7 Do you have an opinion about which is
8 the more likely possibility?

9 MR. BOLAND: Objection.

10 A. Yes.

11 Q. What is that?

12 A. It's more likely that a full-size piece
13 of -- a full-size document, 8-1/2-by-11 document
14 was scanned and subsequently reduced in size as
15 opposed to an essentially postcard-size piece of
16 document being scanned and not subsequently
17 changed in size.

18 MR. SOUTHWELL: Nothing further.

19 BY MR. BOLAND:

20 Q. Just on that, Mr. McGowan, the two
21 examples of the TIFF images that Mr. Southwell
22 just had you look at from that, I guess it's
23 McGowan Exhibit 1, those are magnified from the
24 actual size of those TIFF images; right?

25 A. The printed version appears to be

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printed and the option to scale to the size that would fit the paper, it does not appear to be printed at the electronic resolution which would be smaller in size.

Q. So it's larger than a hundred percent resolution, that printing right there?

A. This resolution is smaller than a hundred percent resolution of the two images.

Q. And Mr. Southwell asked you a bunch of questions about why a person might scan a document at a smaller size.

A. Yes.

Q. But it's your testimony that you can't say for sure how this TIFF image came into being, there's a variety of ways that image could have been created; true?

A. There are, yes, several ways the TIFF image could have been created.

Q. And you and Mr. Rose both testified that your opinion is this image was created somewhere and then placed onto the Seagate hard drive where you found it; right?

A. No. That's -- that's not my testimony. I can't speak for Mr. Rose's, but, as

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we discussed, the image, as I went over earlier, the forensic evidence is that the TIFF image was created on this computer on the morning of March 3rd, 2004, I can't say whether it was scanned directly onto this computer or if it had been created from another media, transferred from another media.

Q. Right.

So there's no evidence it was scanned directly to the Seagate hard drive?

A. There's no evidence one way or another in terms of whether it was scanned directly to the Seagate hard drive or transferred from elsewhere.

Q. Okay.

So you don't know which one of those is the case here, the origin of this TIFF image?

A. Right. There's not sufficient forensic evidence to know.

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MR. BOLAND: Okay.

No further questions, that's it.

Thank you.

MR. SOUTHWELL: Nothing further.

(Time noted: 1:46 p.m.)

MICHAEL F. MCGOWAN

Subscribed and sworn to before me
this _____ day of _____, 2012.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, CARY N. BIGELOW, Court Reporter,
a Notary Public within and for the State of
New York, do hereby certify:

That MICHAEL F. MCGOWAN, the witness
whose testimony is hereinbefore set forth,
was duly sworn by me and that such
testimony given by the witness was taken
down stenographically by me and then
transcribed.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 23rd day of July, 2012.

CARY N. BIGELOW

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ERRATA SHEET
VERITEXT REPORTING COMPANY
1250 BROADWAY
NEW YORK, NEW YORK 10001
212-279-9424

NAME OF CASE: CEGLIA VS. ZUCKERBERG
DATE OF DEPOSITION: JULY 19, 2012
NAME OF DEPONENT: MICHAEL F. MCGOWAN

PAGE	LINE(S)	CHANGE	REASON

MICHAEL F. MCGOWAN

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SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 20__.

25

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