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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:10-cv-00569
)	(RJA)
MARK ELLIOT ZUCKERBERG,)	
Individually, and)	
FACEBOOK, INC.,)	
)	
Defendants.)	
-----)	

July 26, 2012
10:14 a.m.

Deposition of GERALD M. LAPORTE, held
at the offices of Gibson, Dunn & Crutcher LLP,
200 Park Avenue, New York, New York, before
Laurie A. Collins, a Registered Professional
Reporter and Notary Public of the State of New
York.

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

BOLAND LEGAL, LLC
Attorneys for Plaintiff
1475 Warren Road
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BY: DEAN BOLAND, ESQ.

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

ALSO PRESENT :

JAMES BLANCO
LAWRENCE STEWART
PETER COOPER, Videographer

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

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

My name is Pete Cooper, representing Veritext New York. The date today is July 26, 2012, and the time is approximately 10:14 a.m.

This deposition is being held at Gibson, Dunn & Crutcher, LLP, located at 200 Park Avenue in New York, New York. The caption of this case is Paul D. Ceglia versus Mark Elliot Zuckerberg, et al. This case is filed in the United States District Court for the Western District of New York, Case Number 1:10-cv-00569. The name of the witness is Gerald LaPorte.

At this time the attorneys present in the room will identify themselves and the parties they represent.

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MR. SOUTHWELL: Alexander Southwell
from Gibson, Dunn representing the defendants.
With me is Amanda Aycock and Matthew Benjamin,
also Gibson, Dunn, representing the
defendants.

MR. BOLAND: Dean Boland representing
Paul Ceglia, the plaintiff, and along with me
are two of the plaintiff's experts, Larry
Stewart and James Blanco.

THE VIDEOGRAPHER: Thank you.

Our court reporter, Laurie Collins,
representing the Veritext, will swear in the
witness and we can proceed.

G E R A L D M. L a P O R T E ,
called as a witness, having been duly sworn
by the notary public, was examined and
testified as follows:

EXAMINATION BY

MR. BOLAND:

Q. Good morning, Mr. LaPorte.

A. Good morning.

Q. You and I have seen each other a couple
times before in these depositions; true?

A. That's correct.

1 LaPorte

2 Q. And you sat in on -- well, which
3 depositions did you sit in on, just to clarify
4 that?

5 A. I sat in on Mr. Stewart's and
6 Mr. Blanco's. Not the entirety of Mr. Blanco's; I
7 stepped out I'm not sure how far through, maybe
8 three-quarters of the way through.

9 Q. And did you hear questions that
10 defendants' counsel was asking Mr. Stewart and
11 Mr. Blanco during the deposition?

12 A. Yes, yes.

13 Q. What role, if any, did you have in
14 drafting those questions, any of those questions,
15 that he asked those two witnesses?

16 A. I had very little in the context of the
17 background information of those questions. If
18 they were technical, I had some input. But I
19 didn't necessarily draft the questions. The
20 Gibson, Dunn attorneys drafted the questions. I
21 looked them over. I concentrated more on the --
22 more on the technical questions and whether they
23 were accurate or not.

24 Q. Did you review the questions before the
25 deposition for Mr. Stewart, the questions they

1 LaPorte

2 were going to ask him?

3 A. I -- I received a copy of them, a hard
4 copy, I believe, but I -- to be perfectly frank,
5 there were pages -- numerous pages of questions,
6 so I didn't want to waste time going over sort of
7 the early background information.

8 Q. Would that be the same answer for the
9 questions that were posed to Mr. Blanco: same
10 review?

11 A. In fact, no, I never saw any questions
12 that were posed to Mr. Blanco.

13 Q. Do you know why that is?

14 A. No. It was -- I think I was focusing
15 in on the more technical aspects of Mr. Stewart's
16 examination.

17 Q. You attached a CV to your report in
18 this case.

19 A. Yes, I did.

20 Q. Is that CV current as of today? Are
21 there any additions or additional training or
22 classes or do you have a new job, anything like
23 that to add?

24 A. If I may, I'm just going to look at
25 this CV.

1 LaPorte

2 There are two activities, at least, in
3 my professional experience that are not listed on
4 here. I did do some teaching at George Washington
5 University for I believe it was two semesters.
6 That's not on this CV.

7 Q. And when was that teaching?

8 A. That would have been approximately 2007
9 and 2008. No, I'm sorry, probably later 2007,
10 2008, maybe up to early 2009.

11 Q. So that's several years ago?

12 A. Yes.

13 Q. And why is that not on your current
14 résumé that you attached to your report?

15 A. I don't know why that's not on here.
16 There are -- my office has copies of my CV that I
17 use, so I'm not sure if this was the CV -- that
18 this was an updated CV. It seemed to be fairly
19 updated. It just doesn't have that.

20 There's another -- there's a position
21 that I held which would have been from September
22 of 1998 all the way up until January of 1999. My
23 family and I moved from Texas to Virginia because
24 my wife took a position with the Federal Bureau of
25 Investigation. And I worked at a place called

1 LaPorte

2 Government Scientific Source in the interim. I
3 was waiting for my background check with the Anne
4 Arundel County Police Department in Millersville,
5 Maryland.

6 So that's it for my professional
7 experience.

8 As far as my presentations -- this goes
9 all the way up until February of 2012, where I did
10 a presentation on the artificial aging of
11 documents at the American Academy of Forensic
12 Sciences annual meeting. I'm just trying to
13 recall if I've done anything in the interim. I
14 don't believe so.

15 The professional publications, those
16 all appear to be up-to-date.

17 And court testimony, I recently gave a
18 testimony in Alaska. I don't know the exact date
19 of that.

20 Q. Was that a deposition or in a
21 courtroom?

22 A. It was court, court testimony.

23 Q. Was it during a hearing or trial?

24 A. During trial.

25 Q. Criminal or civil?

LaPorte

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A. Civil.

Q. Has the trial concluded?

A. The trial has concluded. I haven't seen any of the -- I don't know the exact outcome of the trial. I haven't seen any of the rulings or anything like that.

Q. What was the expert area that you were asked to testify about in that trial in Alaska?

A. I testified about the analysis of an ink using the phenoxyethanol testing.

Q. Did you produce a report before testifying in that Alaska case?

A. Yes, I did.

Q. And which side, plaintiff or defense, were you hired to work for in that case?

A. I don't recall if it was plaintiff or defense.

Q. Did you run essentially the same phenoxyethanol -- and just as an administrative thing, you don't mind if we abbreviate it, for the court reporter's benefit, as PE for the rest of the case?

A. I think -- I fully concur with you. I think we should spell it out for her, and then

1 LaPorte

2 we'll use "PE testing" afterword.

3 Q. Why don't you do the spelling bee for
4 her on how to spell phenoxyethanol, and we'll just
5 call it PE from now on.

6 A. So phenoxyethanol,
7 P-H-E-N-O-X-Y-E-T-H-A-N-O-L, and we'll call that
8 PE from this point on.

9 Q. Is the actual -- just one more -- it's
10 actually 2-phenoxyethanol is the compound; right?

11 A. Yes, that's the compound.

12 Q. We'll just refer to it as PE. Very
13 well.

14 So did you do essentially the same --
15 use the same method in that Alaska case as you
16 used here in this case?

17 A. I did.

18 Q. And do you recall what your results
19 were analyzing the ink in that case?

20 A. I do. When we -- hopefully it's not
21 too premature to discuss this, but when we talk
22 about the threshold levels, the threshold level
23 that I achieved in that case was close to 30
24 percent of loss of PE versus -- when comparing the
25 unheated sample with the heated sample.

1 LaPorte

2 Q. And that 30 percent loss resulted in
3 what conclusion about the age of that ink, if you
4 recall?

5 A. The document was purported to have been
6 created in 2008. I'm not sure exactly what month.
7 And the conclusion was that -- I'm not sure if
8 I -- what degree of the conclusion that I used,
9 but that it was -- it was not a definitive
10 conclusion, but that it was not created in 2008.

11 Q. Was your conclusion in that Alaska case
12 any narrower than that or just simply not 2008?
13 Did you give it a time frame, if you recall?

14 A. Yes. It was created in the past two
15 years.

16 Q. So it was a 30 percent --

17 A. I'm sorry, just to make sure we have it
18 correct. Whatever my -- whatever the qualifying
19 was that -- when I say it wasn't -- it wasn't --
20 it was done in the past two years, whatever my
21 qualifier was, if it was probable or highly
22 probable.

23 Q. You don't recall that qualifier?

24 A. I do not. I do not. I might have to
25 go -- I might have to look at the case.

1 LaPorte

2 Q. And that was a 30 percent extraction
3 you got between the heated and unheated sample;
4 right?

5 A. Correct.

6 Q. And that gave you within two years of
7 when you tested it is what your usual conclusions
8 are; right?

9 A. Yes, that's correct.

10 Q. There's cases where you have testified
11 before that you also provided as a list connected
12 to your report in this case; right?

13 A. Yes.

14 Q. And are there any -- well, we know --
15 let me ask you: Did you read any pleadings that
16 the plaintiffs filed attempting to have your
17 report removed from this case and you excluded as
18 a witness?

19 A. I recently read the judge's ruling on
20 that, which denied that motion.

21 Q. Okay.

22 A. And I saw the attached pleading as
23 well.

24 Q. You read our motion?

25 A. Yes. I don't know -- yes, I did.

1 LaPorte

2 Q. And the two cases that were -- you
3 recall there were two cases that were focused on
4 in that motion that were absent from your list of
5 cases. Do you recall what those two cases were?

6 A. No, I do not.

7 Q. Do you recall providing a report in a
8 case where one of the parties' names was R-A-G-O?
9 I don't know how you pronounce it.

10 A. Rago?

11 Q. Do you recall that case?

12 A. Yes.

13 Q. And that was not listed in your list of
14 cases; correct?

15 A. Incorrect. That's on my cases. Oh, I
16 never testified in that case, so that's why it
17 wasn't on my list.

18 Q. And then there was a case involving
19 last name Padilla, P-A-D-I-L-L-A --

20 A. Yes.

21 Q. -- that was in our motion.

22 A. Correct.

23 Q. And was that on your list of cases?

24 A. That's on my list. It's Hassoun is the
25 actual case citation. And just -- it should be on

1 LaPorte

2 here. I just want to make sure. Oh, I guess
3 number 20 on my CV, USA versus José Padilla, et
4 al.

5 Q. And that was on your CV at the time
6 that you filed it with your report?

7 A. Correct.

8 Q. Now, you have testified in the past
9 about the validity of ink age testing generally;
10 true?

11 A. No. What do you mean by "ink age
12 testing"? There's various types of ink age
13 testing.

14 Q. There are two broad categories of ink
15 age testing: dynamic and static. Is that
16 accurate or not?

17 A. Those are two general categories that
18 we talk about, yes.

19 Q. And the static category does not
20 involve -- is not where PE testing falls, in the
21 static category. Am I right?

22 A. That's correct. Static requires a
23 database of standards to compare with or
24 identifying manufacturer's ink tag and identifying
25 that as to a particular year that that ink may

1 LaPorte

2 have been produced.

3 Q. As an example so that we're clear on
4 this, if you in the static realm, static testing
5 realm, tested an ink sample, determined that the
6 formulation was first marketed commercially in
7 2010 and the individual was claiming that the
8 document on which this ink was written was written
9 in 2001, static testing would tell you that
10 they're not telling the truth. Fair enough? I
11 mean, that's a basic analysis.

12 A. Well, it's not that simple. So if you
13 have a library of standards that you're comparing
14 with, it would be impossible to have every single
15 ink that's ever been manufactured in the world.

16 So depending on how extensive that
17 database is, that would certainly -- that may be
18 evidence to support the fact that the document may
19 not have been created in 2010. But there's
20 certainly always the possibility that there's
21 another ink formulation out there that you don't
22 have in your database.

23 So you can't just draw a conclusion
24 that someone used an ink that was not -- that was
25 not commercially available.

1 LaPorte

2 Now, if you do find an ink tag, an ink
3 tag would be more concrete, if you will. So those
4 tags were introduced in certain years. So if you
5 identify an ink tag that was introduced into an
6 ink in 2003 and go back to your example and
7 it's -- you know, it's signed in two thousand
8 and -- I'm sorry, signed in two thousand -- or
9 prior to 2003, then that would be what I would
10 consider more concrete proof.

11 Q. What's your fee arrangement with the
12 defendants in this case?

13 A. I get an hourly rate of \$475 per hour
14 and an extra \$50 per hour for deposition and court
15 time.

16 Q. And what's the total you've been paid
17 so far for your work on this case?

18 A. I send all of my hours into the office.
19 I generally don't keep track of that. But as of
20 the end of June -- I believe it was June 30th or
21 so -- I had submitted -- I think I had logged a
22 total of close to 275 hours over the past year.
23 So whatever that works out to.

24 Q. And when you reference your office,
25 you're meaning your office where you do your

1 LaPorte

2 private work out of; right?

3 A. Well, we have an office in Michigan, so
4 we have an office manager. And then our firm --
5 obviously I have two partners, Mr. Riley and
6 Mr. Welch. And then we have a number of examiners
7 that work for us as well: We have an examiner
8 here in New York, we have an examiner down in
9 Mississippi, we have an examiner in Minnesota, and
10 we have another examiner that does latent
11 fingerprint examinations from Michigan. And then
12 we're -- we have partnership-type relationships
13 with an examiner in Chicago and another examiner
14 in Arizona.

15 Q. You also have a job with the federal
16 government; right?

17 A. Yes, I do.

18 Q. Is that a full-time position?

19 A. Yes, it is.

20 Q. And have you been provided
21 authorization by whoever your supervisor is there
22 to also have this private practice, essentially,
23 that you're working?

24 A. It goes far beyond my supervisor. It's
25 authorized by our office of general counsel, and

1 LaPorte

2 they authorize -- I have been authorized to do --
3 engage in civil work, not -- it can't be criminal
4 related. So I've been authorized to engage in
5 civil work.

6 I have been at the Department of
7 Justice since March of 2009. I had that agreement
8 in place with the Secret Service before I came to
9 the Department of Justice, and I had that
10 agreement in place prior to me actually starting
11 at the Department of Justice.

12 Q. When you were at your previous
13 government job?

14 A. When I was at my previous government
15 job with the Secret Service, I was authorized to
16 engage in civil work as well. So before I left
17 the Secret Service to move to the Department of
18 Justice, I did receive authorization, before
19 accepting the position, to engage in civil work.

20 Q. And do you recall how much you earned
21 in your private practice, just outside of your
22 government job, in 2011?

23 A. That's a personal question, so with all
24 due respect, I'm not going to answer that
25 question. If I'm ordered by the court to provide

1 LaPorte

2 that, I would be more than happy to.

3 MR. SOUTHWELL: I would object to
4 asking for details about that.

5 Q. Other than the PE test -- well, let's
6 talk about what are all the names of the tests
7 that you performed on the document in this case.
8 We know about the PE test. What other tests did
9 you perform?

10 MR. SOUTHWELL: Object to the form.

11 Q. If any. What other tests, if any,
12 outside of the PE test, did you perform on the
13 document?

14 A. I performed numerous tests. If I
15 can --

16 Q. Just list them. You don't have to
17 describe what they are; just list them.

18 A. I'm just going to use my report to
19 guide me so we have them in order. But all of
20 this has been outlined in the report.

21 Initially I would do a -- I performed a
22 visual or physical examination of the documents.
23 That physical examination typically includes
24 examining the document with the appropriate light
25 source, with a magnifying device, making

1 LaPorte

2 measurements, those sorts of things.

3 Then the optical examination would be
4 the examination using the video spectral
5 comparator, or the VSC, which we'll call from this
6 point on.

7 I also did an impression or indentation
8 examination using an electrostatic detection
9 device, or an EDD. In this particular case, I
10 used a trademark EDD referred to as the
11 electrostatic detection apparatus, or ESDA.

12 I then did a series of chemical
13 examinations that would include thin-layer
14 chromatography, gas chromatography/mass
15 spectrometry, and then also, to a certain extent,
16 observing the solubility of the inks and toners
17 prior to conducting the TLC analysis.

18 And then of course I have numerous
19 images that I reviewed, but I don't know if I
20 would necessarily constitute looking at the images
21 or using the images for review as testing.

22 Q. Why did you review images?

23 A. To go back over things. In most cases,
24 certainly the visual observation is the key part
25 of it, so what we were seeing visually. But the

1 LaPorte

2 images are there for reviewing, for confirming,
3 those types of things.

4 Q. Whose images did you review?

5 A. In this case certainly my -- I took
6 numerous images, hundreds. I also had images from
7 John Paul Osborn, images from Valery Aginsky, and
8 images from Peter Tytell. I reviewed images from
9 Mr. Argentieri. I believe another file of images
10 that I received, the last name of the attorney was
11 Edelson.

12 That may not be the comprehensive list.
13 There may be some others that I'm not including.

14 Q. And your report doesn't -- does your
15 report have -- other than images you captured,
16 your report doesn't have attached to it those
17 other images from other persons that you just
18 mentioned; true?

19 A. That's correct. I have literally
20 hundreds of images.

21 Q. And the images that you captured, there
22 are some in your report -- there's a few images
23 that are placed in your report, was my
24 recollection, but not hundreds.

25 A. I would qualify it more than a few.

1 LaPorte

2 Q. Okay. But not hundreds?

3 A. Not hundreds.

4 Q. Okay.

5 Did you perform any tests that the
6 results of which are not reflected in your report?

7 A. I'm in the process of reviewing some
8 materials that I don't believe I'm ready to
9 discuss conclusions about, but I've -- there's a
10 number of things that I've come across recently.

11 I never -- I never read the reports of
12 the other experts prior to issuing my report, and
13 I didn't -- I've never comprehensively read all of
14 the -- any of the reports by the other experts --
15 and when I say "the other experts," I'm referring
16 to defendants' experts. I never read those as
17 well.

18 I recently, in Mr. Stewart's
19 deposition, found some material, had the
20 opportunity to review that. But I don't believe
21 I'm in a position to offer a conclusion about
22 that. I still need to confirm some -- confirm the
23 analysis or the testing part.

24 Q. Other than the materials you mentioned
25 coming out of Mr. Stewart's deposition, what other

1 LaPorte

2 materials have you been reviewing since issuing
3 your report?

4 A. I've been reviewing images, the images
5 that we talked about earlier, from Edelson,
6 Argentieri, some of the old images from -- that
7 were provided by Osborn and Aginsky as well.

8 Q. So those are images that you reviewed
9 before you issued your report as well; true?

10 A. Yes, but I wasn't reviewing them for
11 the aspects that I'm reviewing them now for.

12 Q. What are the aspects that you're
13 reviewing them now for?

14 A. I believe there are multiple documents
15 that have been produced in this case, multiple
16 "work for hire" documents.

17 Q. How many?

18 A. I'm not sure.

19 Q. And when you say multiple "work for
20 hire" documents have been produced in this case,
21 produced by whom, do you mean?

22 A. By plaintiffs.

23 Q. "Produced" has kind of got a legal term
24 of art. Do you mean that plaintiffs have handed
25 them over in discovery or that Mr. Ceglia has

1 LaPorte

2 forged multiple documents?

3 A. I don't -- I don't determine whether
4 somebody forges a document or not. That's up to
5 the court to do that. My job is to provide a
6 scientific analysis, objective evidence, and then
7 you determine or the court determines whether
8 that's been forged or not.

9 But I believe there were multiple -- I
10 believe there's at least at this point evidence to
11 suggest that there were multiple documents that
12 have been produced as "work for hire" documents.

13 Q. Why can't you say in your report, if
14 you think a document's been forged, that it's been
15 forged? Is there a scientific rule that prevents
16 you from doing that?

17 A. That's not a scientific -- "forgery" is
18 a -- is more of a legal term. That -- that
19 actually requires intent.

20 So if my -- if I'm talking to my wife
21 over the phone and she writes a check and signs my
22 name to it and I tell her, yeah, go ahead and just
23 sign my name to it or she signs a document in my
24 name, that's not necessarily forgery. I've given
25 her permission to do that. Has she signed my

1 LaPorte

2 name? Yes. That's not my signature, but that's
3 not forgery.

4 So we don't -- it's not -- typically in
5 a scientific analysis, at least the way I approach
6 the examination, is -- which I think I have done
7 very clearly in this report -- is I've outlined my
8 observations, my results, derived conclusions from
9 that.

10 Q. Is it your position that if an expert
11 such as you does declare forgery in their report
12 that's inappropriate?

13 A. No, that's just not what I do. I mean,
14 other experts can do what they want. Also too,
15 I'm not -- I mean, that's just the way I do my
16 examinations and I issue my reports. I can't
17 speak for what other experts do and say in their
18 reports.

19 Q. I'm not asking you to speak for them.
20 I'm saying do other paper experts adhere to this
21 not mentioning forgery in their report rule that
22 you do.

23 MR. SOUTHWELL: Objection to the form.

24 A. I don't know what other experts do. I
25 mean, they can do what they choose to do. I don't

1 LaPorte

2 necessarily -- from my perspective, I don't think
3 it's wrong that they do that; it's just not the
4 way I would do that.

5 Q. Have you read other ink and paper
6 experts' reports in your career?

7 A. Yes, I have.

8 Q. Have you ever seen another expert, not
9 you, conclude in a report that the document they
10 reviewed was a forgery?

11 MR. SOUTHWELL: Objection to the form.

12 When you're referring to other expert --

13 Q. Any other expert in the world, any
14 report of an expert you have read in your field
15 that said -- have you ever read a report where any
16 other expert has concluded that a document they
17 reviewed was a forgery?

18 MR. SOUTHWELL: Objection to the form.

19 A. I'm a chemist, so typically the reports
20 that I read are chemistry related. So when we
21 talked earlier about -- about using the static
22 approach to ink dating, when we talked about the
23 manufacturer, so if you find a pen that was
24 manufactured in 2010 but the document is dated
25 2003, that would be evidence to support that the

1 LaPorte

2 document wasn't created on its purported date. It
3 doesn't -- it doesn't -- there's no conclusion to
4 lead to forgery.

5 When we talk about the ink-dating tags,
6 and that's more conclusive. Once again, the
7 document was not created on that -- you can
8 conclude the document was not created on that
9 purported date. But I don't know the
10 circumstances behind why -- why that happened.

11 Q. I understand your answer, but this is
12 my question: You've read other experts' reports
13 in your career who are in your field.

14 A. Yes.

15 Q. In reading those reports, any of them
16 in the entirety of your time in this field, have
17 you ever seen another expert in your field in a
18 report conclude that a document they reviewed was
19 a forgery?

20 A. I can't say specifically, but I'm sure
21 that there are -- I don't want to use the term
22 "many," but there are some experts that would
23 probably use that term, "forgery."

24 A lot of time the term "forgery" is
25 used more for simplicity to convey to the court

1 LaPorte

2 and jury, because they understand that word more.

3 So that may be the intent of using that word.

4 Q. But overall intent matters in
5 determining forgery, as you've indicated?

6 A. Yeah, that's a legal -- that's a legal
7 decision to be made.

8 Q. And when you talked before about
9 evidence supporting a belief that there are
10 multiple "work for hire" documents, specifically
11 are you saying multiple two-page documents or just
12 page 1 or page 2 was made multiple times?

13 A. I'm not in a position to make that
14 statement yet.

15 Q. You don't know yet?

16 A. Correct.

17 Q. And what's the evidence you're
18 referring to that leads you to think there were
19 multiple versions of the "work for hire" document
20 that were produced?

21 A. So I need to -- I think you're asking
22 the right question, and I understand --

23 Q. I appreciate your confidence. But if
24 you could just answer the question.

25 A. Right, and that's what I'm trying to

1 LaPorte

2 do. There's no need to be rude.

3 Q. Exactly.

4 A. What I'm -- I come at this from a
5 scientific perspective. So until I have concrete
6 evidence to rely on, then I'm not going to render
7 a conclusion. So it wouldn't be appropriate at
8 this time for me to tell you what I think, because
9 that's not what I'm here -- I'm here to tell you
10 what I know, not what I think.

11 Q. Well, actually you're here to answer
12 questions. My question is what documents led you
13 to say, as you said earlier, that you believe
14 there is two multiple "work for hire" documents
15 that have been produced in this case. What is the
16 evidence that you're reviewing now that's giving
17 you that -- that's supporting that testimony?

18 A. I've answered that question.

19 Q. You have not. What's the list of
20 items?

21 A. Absolutely I've answered that question.
22 If you want to go back to the record, you can see
23 how I answered the question.

24 Q. Well --

25 A. Go back to when he first asked me, and

1 LaPorte

2 you'll find out how I answered the question.

3 Q. What is the list of items you're
4 reviewing that support your testimony earlier that
5 there is evidence of multiple "work for hire"
6 documents? List the items?

7 A. Images.

8 Q. Fair enough. Anything else?

9 A. At this time it's been images.

10 Q. And as you just testified, you haven't
11 yet reached a conclusion on that. Fair enough?

12 A. Absolutely. Thank you for reiterating
13 that.

14 Q. So you're not prepared to answer any
15 questions about a conclusion related to that
16 issue?

17 A. I'm not prepared to answer questions
18 about a conclusion that I have not reached. That
19 would be speculative.

20 Q. Did you read Mr. Lesnevich's expert
21 report in this case?

22 A. I have seen portions of it, yes.

23 Q. What portions?

24 A. I've seen the portions about the -- the
25 different writing that's -- or the different

1 LaPorte

2 writing that's occurring in the interlineation on
3 various images.

4 Q. And what's your opinion about
5 Mr. Lesnevich's analysis of those different
6 writings in the interlineation?

7 MR. SOUTHWELL: Objection.

8 A. I concur with what Mr. Lesnevich is
9 saying. I'm not a handwriting expert, but there's
10 certainly -- I think there's a lot of common sense
11 when you look at the documents and what he's
12 making a conclusion about.

13 Q. Do you concur with Mr. Lesnevich's
14 conclusion that there are two documents, at least
15 two pages 1s, of the "work for hire," that have
16 existed in this case and that he was evaluating in
17 his report?

18 A. I would say I have nothing to dis -- I
19 have absolutely nothing to disagree with what
20 Mr. Lesnevich is saying about that. And I was not
21 made aware of that until long after my report was
22 filed. And certainly his findings and my findings
23 corroborate each other.

24 So I feel very -- I'm starting to feel
25 more confident about my findings.

1 LaPorte

2 Q. You weren't confident initially?

3 A. I said it was highly probable that the
4 interlineation was created within the past two
5 years. I'm more -- I'm almost definitive now,
6 based on Mr. Lesnevich's findings.

7 MR. BOLAND: Mark this LaPorte 1,
8 please.

9 (LaPorte Exhibit 1, report of LaPorte,
10 with redactions, marked for identification.)

11 Q. Mr. LaPorte, you have just been handed
12 an exhibit marked LaPorte 1. Can you identify
13 that for the record, please?

14 A. Yes, sir.

15 (Pause.)

16 A. This appears to be the report that I
17 submitted, but there's a number of redacted
18 versions -- or redacted portions in here. So I
19 don't know what's supposed to be here and what is
20 not.

21 Q. Very well.

22 Do you know who did the redactions on
23 your report?

24 A. I certainly didn't, but I can assume
25 that it was redacted for a reason by the

1 LaPorte

2 attorneys.

3 Q. And other than those redactions, does
4 that appear to be your complete report?

5 A. Actually I have a copy of my report
6 here. I just want to look at the last page.

7 Yes, it looks like -- it looks to be my
8 report.

9 Q. Okay. Looking at LaPorte 1, you cite
10 various other papers, published papers, in your
11 report.

12 A. Yes.

13 Q. True?

14 And many of them, if not all of them, I
15 think are included in footnotes; true?

16 A. I believe all of them are provided as
17 footnotes, yes.

18 Q. And why did you cite those papers
19 generally?

20 A. Generally speaking to support the
21 statements that I was making.

22 Q. So is it fair to say you consider those
23 papers and reports reliable resources in your
24 field?

25 A. I wouldn't consider -- I wouldn't just

1 LaPorte

2 generally consider an entire paper to be reliable,
3 generally speaking. Sometimes there may be
4 inaccuracies in the paper. But generally speaking
5 when I'm citing something, I'm citing to a
6 specific principle and that's what I'm -- and
7 that's what I'm using to support that principle.

8 Q. So some of these reports could have
9 unreliable information in them that you cited?

10 MR. SOUTHWELL: Objection.

11 Q. Is that what you're testifying to? I
12 don't understand your response.

13 A. No, that's not what I'm testifying to.

14 Q. Okay.

15 A. What I'm saying is I can't verify
16 everything that that particular author puts in --
17 puts in that paper. I've published a number of
18 times, so I know that there's a lot of work that
19 goes into every statement that you make in a
20 paper.

21 And so I can't -- all I'm saying is
22 generally speaking I can't say that the entire
23 paper is a hundred percent correct, I think. I
24 don't know if "reliable" is the proper word to
25 use, or "unreliable." It's the correctness or

1 LaPorte

2 trueness of the paper.

3 Q. Did you read all the sources you cited
4 in your report?

5 A. I have. I've read them at one time or
6 another, yes.

7 Q. And when you read them that one time or
8 another, did you disagree with any portions of
9 those reports?

10 A. I mean, you're asking about literally
11 maybe a dozen reports or so.

12 Q. I am.

13 A. Yeah, I can't recall each specific
14 thing about a paper that I agree or disagree with.

15 Q. So it's possible you disagree with some
16 of the information and some of the sources you
17 cited, or is that not possible?

18 A. No, I'm not saying it's possible or
19 impossible, that I agree or disagree with what
20 it's saying. Generally speaking the paper has an
21 objective, and certainly we look at the end
22 result, the conclusion, the results and the
23 conclusion on did it suffice that objective, did
24 it start off with a hypothesis, does it support
25 that hypothesis or not support that hypothesis,

1 LaPorte

2 and everything in between.

3 All I'm saying is I can't verify every
4 single thing in between.

5 Q. How about the conclusions in those
6 sources you cited, do you recall disagreeing with
7 any of those when you read those items?

8 A. You would have to be more specific. I
9 mean, if you can send -- if you can cite -- read a
10 conclusion, then I'll tell you if there's
11 something I agree with or disagree in that
12 conclusion. But that's -- that's too broad of a
13 question to answer.

14 Q. Is it possible you listed a source in a
15 report to the court that has a conclusion you
16 disagree with? Is that possible?

17 A. I'm not sure of that. I mean -- well,
18 if you could, I mean, let me know what the
19 conclusion is, and then I'll be happy to answer
20 that.

21 Q. Is it possible that some of the sources
22 cited in your report contain conclusions that you
23 disagree with?

24 MR. SOUTHWELL: Objection.

25 Q. Is that possible?

1 LaPorte

2 A. I believe I've answered that.

3 Q. So it's possible, then. Can you
4 identify --

5 MR. SOUTHWELL: Objection.

6 Q. -- identify which of the footnotes in
7 your report have conclusions you disagree with, if
8 you could?

9 A. Let's go through each one, then. Okay.
10 I'd be more than happy to start off.

11 Q. If you can just look at Footnote Number
12 1 --

13 A. Okay.

14 Q. -- and answer the question does that
15 source, which you claim to have read, contain a
16 conclusion you disagree.

17 A. Okay. I'm going to read them into the
18 record. Number 1 footnote is I have permission to
19 operate as an independent consult in consecutively
20 matters and have done so since 2008. My findings
21 and conclusions in this matter do not represent
22 the views of the United States government.

23 That's correct.

24 Number 2, the forensic document
25 community relies on ASTM E 1658-08: standard

1 LaPorte

2 terminology for expressing conclusions of forensic
3 document examiners. Highly probable, in
4 quotations, is used to describe evidence that is
5 very persuasive and the examiner is virtually
6 certain, but there's some factor that precludes
7 the examiner from reaching an absolute certainty
8 degree of confidence.

9 That's true.

10 Q. If you could just list the footnote
11 before you read it so for the record we know which
12 number you're talking about. That would help.

13 A. Okay. Number 3, E 1422-05: standard
14 guide for test methods for forensic writing ink
15 comparison, ASTM international. For annual book
16 of ASTM standards volume information, refer to the
17 standards documents summary page on the ASTM Web
18 site. For referenced ASTM international
19 standards, visit the ASTM Web site www.astm.org or
20 contact ASTM customer service at service@astm.org.

21 And I'm just going to refer to what I
22 footnoted. And I footnoted determining the type
23 and color of a writing ink is commonly reported
24 following a physical examination and is further
25 described in American Society for Testing of

1 LaPorte

2 Materials international E 1422-05: standard guide
3 for test method for writing ink comparison.

4 That's correct.

5 Q. You would agree none of those are
6 sources -- I'm sorry, none of those are articles
7 or papers that you're citing to in your report
8 that you just read?

9 A. No, those are just footnotes.

10 Q. Number 4 would be the first, it looks
11 like, of an actual article, would you agree, that
12 you cite in your report?

13 A. Yes.

14 Q. What my question is do you have any
15 conclusions -- are there any conclusions in the
16 article cited in Footnote 4 that you disagree
17 with.

18 A. So Footnote Number 4 -- I can't find
19 what Footnote 4 refers to.

20 Footnote Number 4 is not cited or it
21 doesn't have a reference that I can see.

22 Q. What do you mean by a reference you
23 don't see?

24 A. Well, it doesn't have any -- it doesn't
25 follow a sentence, unless I'm missing.

1 LaPorte

2 Q. You are missing. It's in paragraph --
3 second-to-last full paragraph on that page off in
4 the right-hand side if you look off to the right.

5 A. Oh, I'm sorry, I see it now. Yes.

6 Q. I'm asking if that source that you cite
7 contains a conclusion that you disagree with. Do
8 you understand the question?

9 A. Yeah, there's numerous conclusions.
10 We'd have to go through the conclusions in the
11 paper.

12 Q. That's fine. As you sit here today, do
13 you know of a conclusions in that cited paper that
14 you disagree with?

15 MR. SOUTHWELL: Objection, calls for
16 speculation.

17 Q. I'm asking you if you know.

18 A. I don't -- I think that's an impossible
19 question to ask without reviewing the conclusions
20 of the paper.

21 Q. I'm just asking you, as you sit here
22 today, if you know of a conclusion in that paper
23 that you disagree with.

24 A. I can't say one way or the other.

25 Q. Very well.

1 LaPorte

2 A. That wouldn't be an accurate -- I
3 couldn't provide an accurate answer to the court.

4 Q. And then I would ask the same question
5 generally to the other footnotes in your report
6 which cite to articles or papers or peer-reviewed
7 publications. As to those would your answer be
8 the same regarding your ability to tell me if
9 there are conclusions in those cited sources that
10 you disagree with?

11 A. I would have to --

12 MR. SOUTHWELL: I object to the form.

13 Can you just be more specific, what is it that
14 you're asking him with respect to all of these
15 citations?

16 Q. I'm only talking about footnotes,
17 Mr. LaPorte, that are to sources, whether they be
18 peer-reviewed publications, articles,
19 presentations, things like that. And as to those
20 footnotes that are in your report, I'm assuming
21 that your answer would be the same as you just
22 gave, that you can't answer whether there are
23 conclusions contained in those sources that you
24 disagree with?

25 A. I never said -- no, I think you're -- I

1 LaPorte

2 believe you're taking that -- you're
3 misrepresenting what I said. What I said was that
4 I would need to read those conclusions to make
5 that determination.

6 Many of these papers have many
7 conclusions, not a single conclusion. The purpose
8 of the footnote was to support the statement that
9 I was making, which would be that particular
10 sentence. I think -- I think generally speaking
11 we're all educated here and we know that's how we
12 use footnotes.

13 I mean, I didn't say -- my sentence
14 didn't say every conclusion in this report is
15 correct or incorrect and then cite a footnote.
16 That would be -- that would be different.

17 Q. But you read all these sources before
18 citing them here; right?

19 A. Yes. I think there's -- I think we
20 have -- I don't know if there's maybe a
21 fundamental misunderstanding, but in science not
22 every single thing that everybody writes is a
23 hundred percent accurate or correct. Generally
24 speaking we look at the comprehensive literature,
25 so there's multiple -- there's multiple authors.

1 LaPorte

2 For example, in the third paragraph on
3 page 7 of my report, I say, PE continues to
4 evaporate in the 24 months after the ink has been
5 placed on the document. And I have -- I've cited
6 5, 6, 7, 8, 9, 10, and 11. So that's seven
7 different sources.

8 So what that means is in all seven of
9 those sources you would find that everybody is
10 going to say that after 24 -- that PE continues to
11 evaporate 24 months after the ink is placed on the
12 document. That's a generally accepted fact.

13 Q. Let's talk about that sentence and
14 those cites.

15 A. Okay.

16 Q. Is it at least your position that as to
17 those sources you're citing there -- 5 -- Footnote
18 5 through 11 -- that those sources support the
19 claim that you've made in the sentence just
20 previous to those footnotes?

21 A. Yes, I would say that those citations
22 in some way support that sentence.

23 Q. Would you say that those cited sources
24 and those footnotes are reliable sources for the
25 statement made in the preceding sentence where

1 LaPorte

2 they're footnoted?

3 A. Well, if you ask about reliable, I
4 certainly -- these are -- what I've cited here are
5 individuals that have published in peer-reviewed
6 journals number -- numerous times. I know all of
7 them personally. I've interacted with all of them
8 personally.

9 I serve on a committee with Jürgen
10 Bügler from Germany. That's the International
11 Collaboration for Ink Dating Group. I serve on a
12 committee with him. I know Dr. Aginsky. I
13 know -- I serve on a committee with Luc Brazeau.
14 I serve on a committee with Marc Gaudreau. I know
15 all of these people personally.

16 But what I'm using this footnote for is
17 to provide support for that statement.

18 Q. And these people you just mentioned
19 that you both cite to and you know personally, do
20 they conduct PE testing on inks?

21 A. Yes.

22 Q. Is there only one method of PE testing
23 for ink dating?

24 A. What do you mean by "method"? What's
25 your definition of a method?

1 LaPorte

2 Q. If you were given a sample of ink to
3 test with your PE test method --

4 A. Yes.

5 Q. -- your method, and all of these other
6 individuals were given an identical sample from
7 the same pen, same paper, based on your knowing
8 them personally and citing their papers, do --
9 would they perform the PE test using the same
10 method that you use?

11 MR. SOUTHWELL: Objection.

12 A. Generally speaking, yes. I mean,
13 they're going to use GC/MS. Everybody uses GC/MS.
14 We measure the amount of phenoxyethanol.
15 Generally speaking that's the method.

16 If we talk about a TLC method, people
17 may have steps in between that are different, but
18 it's still the same method.

19 Q. And isn't it the case, though, that
20 these different experts get all kinds of different
21 results --

22 MR. SOUTHWELL: Objection.

23 Q. -- using the PE testing method?

24 MR. SOUTHWELL: Objection to the form.

25 A. No, that's not true. I mean,

1 LaPorte

2 there's -- there are different views about how to
3 draw conclusions. Some experts believe that you
4 can draw a conclusion an ink was done in between
5 three and six months, eight and twelve months.
6 They use finer gradations. I use what I consider
7 the most conservative approach. I stay with 24
8 months. That allows me for better accuracy.

9 When we talk about accuracy, think of
10 it as a target, and I'm trying to shoot for the
11 middle of the target. What I'm doing is I'm
12 taking a ring out of the target, if you will, and
13 making my target much bigger. So that provides
14 more accuracy for me.

15 So they -- there is some varying -- and
16 this is very common in science: It's common in
17 astrophysics, it's common in chemistry, it's
18 common in biology. And it's common obviously in
19 the legal world as well. But people do have
20 different views.

21 But generally speaking I would say all
22 of -- all of the citations that I have put down
23 here, generally speaking we all believe very
24 strongly in the method, believe it's a very
25 reliable method, believe it's very accurate, it's

1 LaPorte

2 precise.

3 MR. BOLAND: Can you mark this LaPorte
4 2, please.

5 (LaPorte Exhibit 2, paper titled "The
6 Identification of 2-Phenoxyethanol in
7 Ballpoint Inks Using Gas Chromatography/Mass
8 Spectrometry - Relevance to Ink Dating" by
9 LaPorte, marked for identification.)

10 Q. Mr. LaPorte, you've just been handed
11 what's been marked LaPorte 2. Can you identify
12 that exhibit for the record?

13 A. Yes. This is a paper that I published
14 titled "The Identification of 2-Phenoxyethanol in
15 Ballpoint Inks Using Gas Chromatography/Mass
16 Spectrometry - Relevance to Ink Dating." This was
17 a paper that was published in the Journal of
18 Forensic Sciences in January of 2004.

19 Q. Could you go to page 2, and do you see
20 a section there where you quote Gaudreau and
21 Brazeau's report where they say -- it's in the
22 left-hand column, the paragraph starts with the
23 words "more recently." Do you see that?

24 A. Yes.

25 Q. And you quote their report that PE in

1 LaPorte

2 ink evaporates at a high rate during the first six
3 to eight months following its application on
4 paper.

5 A. Correct.

6 Q. Did I read that correctly?

7 A. Correct.

8 Q. And on page 2, just above that, the
9 paragraph just above that, you quote Valery
10 Aginsky, one of his reports, actually, starting
11 with the words "significant aging takes place over
12 a period of about three months."

13 Do you see that?

14 A. Yes.

15 Q. If you could go to page 8 of the
16 report.

17 A. Page 8.

18 Q. I think it's numbered.

19 MR. SOUTHWELL: Mine only has five
20 pages.

21 MR. BOLAND: That's my mistake. Hold
22 on a second.

23 Q. Okay. So you cite those two sources?

24 A. Yes.

25 Q. And then on page 8 of actually LaPorte

1 LaPorte

2 1, which is your report. If you go to page 8 of
3 your report. That was my mistake.

4 A. Okay.

5 Q. And when I use the numbers, just as a
6 convention, Mr. LaPorte, I'm talking about the
7 number up in the right-hand corner, page 8 of 67.
8 That will be how I always refer to it, because
9 sometimes there are different page numbers of
10 reports.

11 A. I'm sorry, I'm looking at my other
12 report. Okay, 8 of 67. Yes.

13 Q. You see you have a quote actually right
14 after that string of footnotes: After 24 months,
15 PE no longer evaporates at a significant or
16 measurable rate.

17 A. Correct.

18 MR. BOLAND: Can you mark this report
19 3, please.

20 (LaPorte Exhibit 3, expert report of
21 LaPorte from Aequitas v. Anderson case, marked
22 for identification.)

23 Q. Can you identify what's just been
24 handed to you, Mr. LaPorte, as LaPorte 3?

25 A. Yes. I just want to make a note of

1 LaPorte

2 this.

3 Q. Can you just identify it first for the
4 record, please?

5 A. This is LaPorte 3. This is a report
6 that I issued in a case that is ongoing in this
7 matter. This case hasn't been adjudicated. I
8 don't know why you have this report. This is an
9 ongoing matter.

10 Did you pull this from the court
11 records?

12 Q. I ask the questions, Mr. LaPorte, not
13 you. If you can identify the report.

14 A. This is highly inappropriate.

15 Q. If you could just answer the question.

16 A. I refuse to answer questions about an
17 ongoing case. I can't believe that you have that
18 report.

19 MR. BOLAND: Do you want to confer with
20 your witness or we can call the court and ask
21 him to continue answering questions?

22 MR. SOUTHWELL: Well, why don't -- can
23 you explain how -- is this publicly filed?

24 MR. BOLAND: I'm not here to explain
25 anything; I'm here to ask him to identify a

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LaPorte

document.

THE WITNESS: This is highly confidential.

MR. SOUTHWELL: How do you know you haven't violated some confidentiality order by getting it?

MR. BOLAND: How do you know -- we're not going to have a debate -- we're not going to have a debate on the record with the witness this.

MR. SOUTHWELL: I don't think anything about it. If you want to explain you got it off the public record --

MR. BOLAND: I don't have to explain anything if -- I'm asking the witness to identify a document. If he's going to refuse to answer questions, then we need to take a break and let's call the court and ask the court to order the witness to continue answering questions. It's a deposition.

Q. Are you refusing to identify the document?

MR. SOUTHWELL: Mr. Boland, hold it. You need to make a record of exactly what this

1 LaPorte
2 is and your basis for it. How are you going
3 to convince the judge that you -- that it's an
4 appropriate area of inquiry if there's no
5 basis to know whether this is appropriately
6 before this witness or appropriately
7 disseminated? What was -- what court is this
8 in?

9 MR. BOLAND: Let's throw the assumption
10 back the other way. The assumption that I'm
11 involved in disseminating inappropriately
12 reports is offensive. That's not what's
13 happening. That's not what's happening --

14 MR. SOUTHWELL: That's what happened
15 with the Blanco report.

16 MR. BOLAND: -- and it doesn't exist
17 here. The witness claiming that doesn't make
18 it so. It is not inappropriate. It's a
19 report he issued in a case. That's it. I'm
20 asking him to identify the document, and I'm
21 going to ask him about his conclusions
22 regarding that report.

23 If he's going to refuse to answer,
24 let's take a break and contact the court,
25 because the witness needs to answer my

1 LaPorte

2 question, period.

3 MR. SOUTHWELL: Why don't we contact
4 the lawyers and make sure it's an appropriate
5 area of inquiry. I don't know whether --

6 MR. BOLAND: I'm in the middle --

7 MR. SOUTHWELL: I don't know whether he
8 is bound by some confidentiality order. I
9 don't know anything about this.

10 MR. BOLAND: That's the witness's job,
11 not for you to coach him.

12 Q. Are you bound by a confidentiality
13 order regarding this case?

14 A. I don't know where you got this report,
15 but this is an ongoing case, so I can't discuss my
16 conclusions.

17 Q. My question is have you signed a
18 confidentiality order in this case from which this
19 report comes.

20 A. I am bound by confidentiality with any
21 client that I engage with, unless I know where
22 this report came from, I'm not going to answer
23 questions.

24 MR. SOUTHWELL: Why don't we take a
25 break. Let me speak to Mr. LaPorte, and let

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LaPorte

me see if we can clarify this. Okay?

THE VIDEOGRAPHER: The time is approximately 11:15 a.m. This is the end of media 1. We're off the record.

(Recess taken from 11:15 to 12:07.)

THE VIDEOGRAPHER: The time is approximately 12:07 p.m. This is the beginning of Media Number 2. We are on the record.

MR. SOUTHWELL: So just so that the record is clear, before the break Mr. Boland had asked Mr. LaPorte about LaPorte 3, which is an April 17th, 2012, report in a case Aequitas Solutions versus Larry Anderson. And Mr. LaPorte was hesitant to testify about that case.

Over the break Mr. Boland and I have conferred, and I was able to speak with the lawyers handling the case to inquire about whether there were any restrictions related to confidentiality or the status of case.

They inform me that -- and obviously Mr. LaPorte is involved in many different cases, many of which do have protective

1 LaPorte

2 orders.

3 And so they informed me that there in
4 fact is a protective order in the case that
5 was applied for. It was not granted and
6 actually doesn't relate to this. So there is
7 no court record covering this that would
8 prevent Mr. LaPorte from testifying.

9 They also confirmed that in their
10 agreement with Mr. LaPorte there's no
11 confidentiality provision that would prevent
12 him from testifying.

13 So I think now, having -- Mr. LaPorte I
14 believe is now satisfied that he may and he's
15 not bound by some court or contractual
16 obligation not to speak of it, and so he's
17 happy to answer questions about it.

18 You know, I do think there's some
19 potential relevancy issues with this. It
20 depends, of course, on what exactly you ask.

21 MR. BOLAND: Very well.

22 Q. Mr. LaPorte, in the break before we
23 last were on the record, I had asked you questions
24 about LaPorte Number 3; correct?

25 A. Yes, sir.

1 LaPorte

2 Q. And isn't it the case that when we did
3 break you took a copy of that LaPorte Number 3
4 with you?

5 A. I did.

6 Q. Did you review that report on the
7 break?

8 A. I did not.

9 Q. And did you discuss the contents of
10 that report with defense counsel?

11 A. I did not.

12 Q. Other than discussions related to
13 confidentiality, did you have any other
14 discussions with defense counsel related to that
15 report?

16 A. No, just -- the only thing that we
17 discussed was just my concern that I wasn't sure
18 how I was -- what I was bound to and whether I
19 could talk about this report or not.

20 Q. Could you go to page 7 of LaPorte 3,
21 please.

22 A. Yes.

23 Q. You see the chart at the top of page 7?

24 A. Yes.

25 Q. What does this chart show?

1 LaPorte

2 A. This chart is just a demonstrative
3 representative of how phenoxyethanol decreases
4 over time.

5 Q. Could you explain the numbers going up
6 the left-hand side of the chart?

7 MR. SOUTHWELL: I'm just going to
8 object to the fact that you have provided him
9 with a 19-page report that he has not reviewed
10 and you're now proceeding to ask him specific
11 questions about it. So I want to make sure
12 the witness has adequate time to review them.

13 Obviously if your questions are like
14 this, he can answer as he answers. But I just
15 want to note for the record that he's not had
16 the opportunity to review this.

17 Q. Could you describe in that illustration
18 what the numbers are going up the left side of the
19 chart?

20 A. Just before I answer that question, can
21 I -- is there a way to verify that this was the
22 same report that was filed with the court?

23 Q. I'm the one asking the questions,
24 Mr. LaPorte. If you could just describe the
25 numbers going up the left side of the chart on

1 LaPorte

2 page 7 of the report.

3 MR. SOUTHWELL: I'm sorry, Mr. Boland,
4 I don't mean to interrupt, but that triggered
5 something in my mind which I forgot also to
6 put on the record, was that the lawyers in the
7 case did confirm that Mr. LaPorte's report had
8 been filed as an attachment to various
9 sanctions motions.

10 Mr. LaPorte did ask me on the break
11 whether we knew whether this was in fact the
12 report that was filed, and I said I don't
13 know.

14 So, you know, I don't know whether you
15 know that answer but...

16 MR. BOLAND: I'm just asking the
17 question on this illustration.

18 Q. Well, leaf through the report, if you
19 want, and tell me if there's any pages of this
20 report which appear to be -- which indicate to you
21 that it is not a report that you produced.

22 A. Okay. I appreciate that.

23 (Pause.)

24 A. Okay. To the best of my recollection,
25 this looks to be the same report that I submitted

1 LaPorte

2 in this case.

3 Q. And the first page has the logo of your
4 firm, Riley Welch & LaPorte, on it?

5 A. Yes, and page 19 has my signature.

6 Q. Very well. And every page up to 19 and
7 beyond even has the logo of your firm in the upper
8 left-hand corner?

9 A. Yes.

10 Q. Could you turn to page 7, please.

11 A. Yes, sir.

12 Q. And is it correct that you describe
13 this chart at page 7 as illustration only; true?

14 A. Yeah, I think it's footnoted on page 6,
15 number 4, where it says, The graphical
16 representation is intended to depict the
17 theoretical rate of evaporation of PE from an ink
18 because not all inks exhibit the same drying
19 rates.

20 Q. Can you explain the numbers going up
21 the left side?

22 A. Those are just arbitrary units to
23 depict the concentration of phenoxyethanol.

24 Q. So the top number where the -- the
25 topmost point of the red line on the illustration

1 LaPorte

2 is at a number that's arbitrarily just a hundred
3 thousand; right?

4 A. Correct.

5 MR. SOUTHWELL: Just to be clear, what
6 red line are you referring to?

7 MR. BOLAND: Mine's red in my document.
8 It's a black line. I apologize. It's red --

9 MR. SOUTHWELL: Meaning the line --

10 MR. BOLAND: The only line on the
11 chart.

12 MR. SOUTHWELL: The line of the example
13 data.

14 MR. BOLAND: That's correct.

15 A. We're not talking about the axis;
16 right? There's the Y axis, the X axis, and the
17 curve.

18 Q. The curve. The curve appears to start
19 at 100,000?

20 A. Correct.

21 Q. Which is an arbitrary number to just
22 establish units on the left side?

23 A. Yes.

24 Q. The next line down is 80,000?

25 A. Correct.

1 LaPorte

2 Q. If we use 100,000 as 100 percent of the
3 PE, that would be sort of at the beginning the ink
4 was put on there, and ten minutes later you tested
5 it. That's the maximum amount of ink you could
6 extract from the sample? Is that how I can read
7 this illustration or no?

8 A. No, that's all -- I have to emphasize
9 these are arbitrary units. The purpose -- I used
10 arbitrary units to get the shape of the curve to
11 show that -- the idea is to show that there's a
12 fast rate of evaporation over the first few
13 months, and then it begins to level off at a
14 certain period.

15 Q. So the illustration shows that PE
16 evaporates at a high rate during the first few
17 months, as you said, and then after 24 months PE
18 no longer evaporates at a measurable rate. Would
19 that be a fair statement, of the illustration?

20 A. Yeah, that would be a fair statement.

21 Q. Now, are you familiar -- in Footnote 9
22 of your report, which is LaPorte 1, your report in
23 this case -- I know you have multiple documents.
24 I'll give you a chance to find it.

25 A. I'll go back to that. Footnote 9.

1 LaPorte

2 Q. To get you there, it's on page 8 of
3 your report in this case, which is LaPorte 1.

4 A. I'm there.

5 Q. And you see that article that you have
6 cited there, Brazeau and Gaudreau? Do you see
7 that one?

8 A. Yes.

9 MR. BOLAND: Can you mark this as the
10 next exhibit number. I think it's 4.

11 (LaPorte Exhibit 4, article titled
12 "Ballpoint Pen Inks: The Quantitative
13 Analysis of Ink Solvents on Paper By Solid
14 Phase Microextraction" by Brazeau and
15 Gaudreau, marked for identification.)

16 Q. You have just been handed LaPorte 4.
17 Can you identify that for the record, sir?

18 A. Yes. This is titled "Ballpoint Pen
19 Inks: The Quantitative Analysis of Ink Solvents
20 on Paper By Solid Phase Microextraction." The
21 authors are Brazeau -- Luc Brazeau and Marc
22 Gaudreau.

23 Q. And could you go to what's numbered on
24 the document as page 214. There's a Figure 10 at
25 the bottom of that page. Do you see that?

LaPorte

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A. Yes.

Q. And this report has -- this figure has a curve in it, similar to the illustration we previously talked about, not identical?

A. Correct.

Q. And that curve shows on this figure that PE evaporates at a high rate during the first few months, and then it no longer evaporates at a measurable rate after about 24 months.

MR. SOUTHWELL: Objection.

Q. Is that fair to say?

A. But this is for the solid phase microextraction technique. So this is a completely different technique than using the liquid extraction.

Q. Very well. But it still shows that -- or does it not show that PE evaporates at a very rapid rate early on and then after about 24 months there's no real measurable evaporation?

A. Generally speaking, yes, that's -- that's what happens to phenoxyethanol.

Q. And what's your opinion of the two authors of this report as far as their -- in the field that you're in, are these respected

1 LaPorte

2 authors -- respected scientists in the field that
3 you're in?

4 A. I -- I respect them, yes.

5 Q. And you cited them in your report?

6 A. Yes.

7 Q. And this chart is based on actual data
8 as opposed to an illustration, if you know?

9 A. Let me confirm. I'm just looking for
10 the reference to Figure 10. Yeah, so I see the
11 reference to Figure 10 is on page 215. And this
12 does refer to the solid-phase microextraction
13 technique. So this is a different technique than
14 the liquid extractions.

15 It's very critical to understand that
16 because they're measuring the phenoxyethanol
17 directly from the paper. It's a nondestructive
18 way of measuring phenoxyethanol.

19 Q. And how does it differ from your
20 technique that you use?

21 A. It's the extraction part that differs.
22 So in this case what they're doing is -- solid-
23 phase microextraction, or SPME, S-P-M-E, is like a
24 needle-like syringe-type apparatus. And what you
25 do is you -- it has a filament on the end. So

1 LaPorte

2 when you press that out, the filament comes out of
3 the SPME and it absorbs the solvents that are in
4 the air. We call that head space, head space
5 analysis.

6 So basically what they devised was a
7 glass vial that goes over top of the document
8 directly. They then heat it to evaporate the
9 phenoxyethanol off, put the SPME in there. Then
10 they measure the amount of -- they measure the
11 amount of phenoxyethanol that's been elicited from
12 the ink. Then you inject that SPME into a gas
13 chromatograph/mass spectrometry, GC/MS, and the
14 test takes place that way.

15 Q. Is your method more or less accurate
16 than that method?

17 A. You can't compare the accuracies of the
18 method. This method would be useful for very
19 fresh inks that are -- that are -- that are still
20 evaporating from the paper.

21 Q. Now, this method that you just
22 described measures PE?

23 A. Once again, it measures the PE, if you
24 will, in the air when it's trapped off of the
25 document.

1 LaPorte

2 Q. And these two authors, Gaudreau and
3 Brazeau, they're Canadian people; right?

4 A. They're from the Canada Border Services
5 Agency.

6 Q. Do they use your method, either one of
7 those experts, if you know?

8 A. We -- when I was at Secret Service, we
9 actually had worked in concert with the Canada
10 Border Services Agency, but we -- we sort of
11 adopted, if you will -- and we worked with Germany
12 in addition -- but sort of adopted the general
13 idea of using the method of phenoxyethanol.

14 Q. But do you know if the Canadians use
15 your method?

16 A. When you say "my method," I mean...

17 Q. Did they use any other method other
18 than the one you just described, SPME? Did they
19 use any others?

20 A. Other than the SPME method?

21 Q. Yes.

22 A. Yes, they do. They use a liquid
23 extraction method as well.

24 Q. Is that your method, liquid extraction?

25 A. That would be -- yes, I use a liquid

1 LaPorte

2 extraction, yes.

3 Q. I don't mean to say it's known as your
4 method, but the liquid extraction method.

5 A. That sounds better, yes.

6 Q. Do you think the results are
7 scientifically reliable that are obtained by the
8 SPME method that you just described that the
9 Canadian -- two Canadian authors talk about in
10 this paper?

11 MR. SOUTHWELL: Object to the form.

12 Q. Is it a reliable method that's
13 described in that article?

14 A. I can't speak to the reliability of the
15 method because I don't use it. So other than that
16 I don't -- I don't know if it's reliable or not.

17 Q. Have there been peer-reviewed articles
18 regarding this method that you've read?

19 A. There was an article kind of using
20 almost a similar type approach by Andrasko -- he's
21 a Swedish author -- kind of similar to this but
22 still -- it still varies.

23 Once again, I -- I don't use the
24 method, so I can't say whether it's a valid method
25 or not.

1 LaPorte

2 Q. But you don't have any basis, sitting
3 here today, to say it isn't reliable; you just
4 don't know. Fair to say?

5 A. I just don't know. That would be
6 correct.

7 MR. BOLAND: Can you mark this, please.

8 A. When we talk about validity, I guess,
9 just to make it clear for the record, I mean, when
10 you say "valid," we're assuming that you get
11 accurate and precise results, to make it clear.
12 So I don't know if they've reproduced this a
13 number of times, how many -- how many times they
14 did it. Apparently they -- I don't know how many
15 inks they've worked with and so forth.

16 So I can't really evaluate that part of
17 it.

18 Q. Have you ever attempted, not in
19 casework, necessarily, just experimentally, to
20 conduct this method, see what results you get?

21 A. Not on inks. We did use it -- when I
22 was at Secret Service, we used it for a case that
23 involved a dog, a detection dog, making a hit on
24 some counterfeit currency. So we did utilize the
25 technique -- the SPME technique to determine if

1 LaPorte
2 you could tell the difference between counterfeit
3 currency and genuine currency, in charge -- in
4 charge amounts. The question that was posed to us
5 was what is the dog -- what is the dog
6 specifically sniffing.

7 MR. BOLAND: If you can mark this as
8 the next exhibit, please.

9 (LaPorte Exhibit 5, paper titled "Some
10 New Ideas for Dating Ballpoint Inks, a
11 Feasibility Study" by Aginsky, marked for
12 identification.)

13 (Discussion off the record.)

14 Q. Before we get to that, I have one more
15 question on this point from your report. Could
16 you go to page 9 of LaPorte 1, which is your
17 report in this case.

18 A. Okay, page 9. Yes.

19 Q. Can you tell me, in the middle of that
20 first paragraph that starts with the sentence
21 "based on extensive research by forensic
22 laboratories." Do you see that sentence? It's in
23 the middle of the paragraph.

24 A. Middle of the paragraph. Wait. We're
25 talking about page 9?

1 LaPorte

2 Q. Page 9 of your report.

3 A. Yeah, I'm there.

4 Q. You're on page 10.

5 A. Oh, I'm sorry, I'm looking at --

6 MR. SOUTHWELL: Mr. Boland refers to
7 page 9 of 67.

8 Q. Yeah, I'm using the numbers in the
9 upper right-hand corner.

10 A. I'm sorry.

11 Q. Sure. Top paragraph.

12 MR. SOUTHWELL: His page numbers are
13 also in the top right-hand corner.

14 MR. BOLAND: Oh, my mistake.

15 A. Based on --

16 Q. Extensive research. Do you see that
17 sentence?

18 MR. SOUTHWELL: Top paragraph.

19 Q. Top paragraph, starts on the right-hand
20 side about the middle of the paragraph.

21 MR. SOUTHWELL: Where the footnotes
22 are.

23 A. Okay. Yes, okay.

24 Q. So when you list Canada in that
25 sentence and -- you're referring to the SPME test

1 LaPorte

2 that they do or the PE method that you typically
3 use?

4 A. No, I'm taking -- I'm talking about --
5 the SPME -- when we talk about that SPME method,
6 there are some fundamental principles that were
7 derived from that paper. The fact is they were
8 detecting phenoxyethanol. So that's one of the
9 principles. They did research in that area, and
10 it including dating research.

11 Q. When you cite to Canada here, are you
12 citing to a particular PE method or just generally
13 to PE testing of any method by people in Canada?

14 MR. SOUTHWELL: Object to the form.

15 A. I'm saying based on research. There's
16 been research in the area of phenoxyethanol that
17 has been done by the Canadians.

18 Q. In Footnote 8 on the previous page,
19 there's a reference to another article by Gaudreau
20 and Brazeau, the Canadians, called "Ink Dating
21 Using a Solvent Loss Ratio Method." Do you see
22 that footnote?

23 A. Yes.

24 Q. Is your method considered a solvent
25 loss ratio method or no?

1 LaPorte

2 MR. SOUTHWELL: Object to the form.

3 Q. The method you use, is that considered
4 a solvent loss ratio method? Is that a term of
5 art?

6 A. That would be, yeah, the general idea,
7 yes.

8 Q. Is it fair to say that the Canadians
9 did a presentation at the sixtieth annual
10 conference in 2002 about the method that you use?

11 A. No, they did a presentation about the
12 method they use.

13 Q. So solvent loss ratio method is not a
14 way to describe the method you use? Is that what
15 you're saying?

16 A. No, I'm just saying their presentation
17 was about their method, like that -- what they did
18 in their research.

19 Q. I understand that. I'm saying is that
20 another way of describing the method you use. Can
21 I call the method you use also the solvent loss
22 ratio method or no?

23 MR. SOUTHWELL: Object to the form, the
24 method -- what --

25 MR. BOLAND: He uses.

1 LaPorte

2 MR. SOUTHWELL: -- part of the method?

3 A. We keep talking about the method. So
4 method involves different aspects.

5 Q. The ink-dating method you use, would it
6 be appropriate to describe it as a solvent loss
7 ratio method or not?

8 A. Generally speaking the underlying
9 principle is to measure how much phenoxyethanol is
10 lost when the samples are heated with, once again,
11 the underlying principle that fresh samples
12 contain a lot of phenoxyethanol, for lack of a
13 better descriptive word. But they have a
14 sufficient amount of phenoxyethanol and that when
15 you heat them you'll drive off a lot more
16 phenoxyethanol. If they're older, it has less
17 phenoxyethanol, so you'll drive off less
18 phenoxyethanol.

19 But generally speaking the methods are
20 similar.

21 Q. Do you know the method that's used in
22 the citations you make on page 9 of your report to
23 Russia, footnotes 13 and 14? What method do they
24 use? How would you describe the method that's
25 being referred to there?

1 LaPorte

2 A. I'm sorry, what-foot number is that?

3 Q. Footnotes 13 and 14, which appear right
4 after the word "Russia" in that paragraph?

5 A. Yes, that's when Dr. Aginsky was in
6 Russia and he was doing research for the Russians.
7 And I do know that -- well, I'm almost certain
8 that the Russians still utilize the phenoxyethanol
9 technique.

10 Q. But which one of the techniques? The
11 one that you typically use or the one where, like
12 you described, the Canadians putting some kind of
13 a --

14 A. SPME?

15 Q. SPME method, yeah.

16 MR. SOUTHWELL: Objection to form.

17 A. We'll call it the liquid extraction
18 approach.

19 Q. That's the method you use?

20 MR. SOUTHWELL: Objection.

21 A. Yeah.

22 MR. SOUTHWELL: It's not the method;
23 it's the approach. I'm not sure if you're
24 trying to mush it together intentionally.
25 There's an extraction approach that are

1 LaPorte

2 different. That's what I'm talking about.

3 MR. BOLAND: I'm just asking which one
4 he uses, if there was --

5 MR. SOUTHWELL: If you use "extraction
6 approach" perhaps it's clearer than "method."
7 "Method" perhaps encompasses more.

8 Q. Back to the more recent exhibit I just
9 gave you -- I think it's LaPorte 5 --

10 A. Yes.

11 Q. Are you familiar -- could you describe
12 what that is for the record?

13 A. This is a study or paper that was
14 published by Dr. Valery Aginsky, and it's titled
15 "Some New Ideas for Dating Ballpoint Inks, a
16 Feasibility Study." And this was published in
17 1993.

18 Q. And it's Footnote 13 of your report in
19 this case?

20 A. Correct.

21 Q. Could you look on the chart that's on
22 page, as the numbers go, 1138. It's Figure 4 of
23 that document. I have to get to it as well.

24 A. Yes.

25 Q. Would you agree with me that that chart

1 LaPorte

2 shows that PE evaporates at a high rate during the
3 first few months and then after 24 months PE no
4 longer evaporates at a measurable rate?

5 MR. SOUTHWELL: Object to the form.

6 A. Generally speaking, yeah.

7 Q. Do you have respect for Dr. Aginsky's
8 competence as a scientist in the area of ink
9 dating?

10 A. He's published a number of papers, so I
11 have no reason to doubt the -- some of the
12 underlying principles that he discusses. He --
13 other than that, I mean, there's -- we may have
14 some differences, but generally speaking about the
15 underlying theory, I think that we're in
16 agreement.

17 Q. And does this Figure 4 appear to be
18 illustrative or based on actual results and data?

19 A. Well, it's under -- he has aging curve
20 obtained for a Soyuz, S-O-Y-U-Z, blue violet
21 ballpoint ink using the reagent photometric
22 technique.

23 Q. What is that technique? Can you
24 describe that?

25 A. I believe he just measured the response

1 LaPorte

2 using spectroscopy of some sort to measure what
3 was happening with the ink.

4 This is an early paper done in 1993.

5 Q. And the curve on here is roughly
6 similar to the curves on the other charts we've
7 gone over so far?

8 A. I mean, he has his going out to six
9 years here, so I don't know -- and then -- this
10 appears to be a different measurement technique
11 that he's using.

12 Q. The shape of the curve, though,
13 generally the same?

14 A. Generally speaking.

15 Q. Are these charts that I've shown you by
16 Brazeau, Gaudreau, and Aginsky accurate in your
17 opinion?

18 MR. SOUTHWELL: Objection.

19 A. These are -- I don't know -- they're
20 general curves of representative samples of inks.

21 Q. You cited all these reports I've gone
22 over in your report.

23 A. Yes.

24 Q. Do you have any reason to believe those
25 charts and figures are not accurate?

1 LaPorte

2 A. In terms of the data and what they
3 represent?

4 Q. Yes.

5 A. I mean, no, I have no -- I have no
6 reason to believe that -- if you're indicating
7 that somebody falsified the quantitative values
8 and changed the curve, I have no reason to believe
9 that.

10 Q. And before you joined what is now Riley
11 Welch & LaPorte --

12 A. Yes.

13 Q. It's true it used to be Riley Welch &
14 Aginsky?

15 A. Correct.

16 Q. Do you still have any professional
17 relationship with Mr. Aginsky in this field that
18 you work in?

19 A. Mr. -- I'm sorry, Dr. Aginsky and I
20 worked together for an ASTM -- I'm sorry, the
21 scientific working group for document examiners
22 where we develop standards. So Dr. Aginsky and I
23 worked together on that group.

24 He -- we've been retained together in
25 cases. We've been retained on opposing sides in

1 LaPorte

2 cases. I would say that we have a very
3 professional relationship.

4 Q. Can you look at page 9 of your report,
5 LaPorte 1, again, and that same sentence that I
6 was talking about before that starts in the middle
7 of the top paragraph: based on extensive
8 research. Do you see that?

9 A. Yes.

10 Q. And at the end of the sentence or near
11 the end it reads, A significant decrease in the
12 level of PE by more than 25 percent after the
13 questioned sample is heated indicates the ink is
14 less than two years old.

15 A. Correct.

16 Q. Correct?

17 And after two years, as you've already
18 testified, PE is basically -- changes in PE or the
19 amount of PE just can't really be extracted
20 because it's dried off after two years?

21 A. I mean, we're speaking theoretically.
22 Generally speaking, maybe there is an ink that if
23 it's two years and two months that it continues to
24 age. But generally speaking that's what most
25 of -- that's what the literature supports.

1 LaPorte

2 Q. Have you found an ink that is -- still
3 has PE evaporating after 24 months, in your work?

4 A. I have not. I have conducted a number
5 of tests on known samples of ink, and I have never
6 had a situation where an ink was known to be more
7 than two years old and it exhibited a loss of
8 phenoxyethanol that was greater than 25 percent.

9 MR. BOLAND: Can you mark this as
10 LaPorte 6.

11 (LaPorte Exhibit 6, article titled
12 "Minimum Requirements for Application of
13 Ink-Dating Methods Based on Solvent Analysis
14 in Casework", marked for identification.)

15 Q. Mr. LaPorte, you've just been handed
16 what's been marked LaPorte 6. Can you identify
17 that for the record, please?

18 A. Yes. This is an article that was
19 published in Forensic Science International. Its
20 title is "Minimum Requirements for Application of
21 Ink-Dating Methods Based on Solvent Analysis in
22 Casework."

23 Q. What year was that published?

24 A. This was published in 2011.

25 Q. Have you seen this article before?

1 LaPorte

2 A. Yes, I have.

3 Q. Have you read it?

4 A. Yes, I have.

5 Q. Can you look on page 57, as the pages
6 are numbered, in that article -- or that paper, I
7 should say. And you see in the upper left-hand
8 corner Figure 6?

9 A. Yes.

10 Q. And isn't it the case that this is
11 actually a chart based on data from Mr. Aginsky as
12 the description of Figure 6 shows?

13 MR. SOUTHWELL: Objection to form.

14 A. That's the reference they point to,
15 Dr. Aginsky, so I assume that's Dr. Aginsky.

16 Q. And isn't it the case that this figure
17 shows that PE evaporates at a high rate during the
18 first few months of drying and that after 24
19 months it no longer evaporates at a measurable
20 rate?

21 A. There is no -- there's not a
22 24-month -- this graph, though, is representing
23 making -- using different values to determine
24 whether an ink was done in the past zero to three
25 months, six to twelve, or some sort of gradation,

1 LaPorte

2 if you will, narrowing the range.

3 Q. The shape of the curve on this figure,
4 generally speaking the same as all the other
5 charts that you and I have talked about this
6 morning or this afternoon?

7 A. Generally speaking, the curve that
8 we're talking. It's kind of an exponential decay.

9 Q. And this figure is based on actual
10 data, not just illustrative; true?

11 A. I don't know. I'd have to go back to
12 the Aginsky paper that they reference.

13 Q. Do you see the table below?

14 A. Table 6?

15 Q. Table 5.

16 A. Table 5, yes.

17 Q. Does that appear to be some reference
18 to Aginsky in the literature; true?

19 MR. SOUTHWELL: Objection. Just
20 generic -- you're not trying to say...

21 A. Yeah, I mean, those are references. I
22 would have to see that Aginsky paper to see if
23 that's actual data or theoretical data.

24 Q. Do you have any reason to believe that
25 the data in Figure 6 is not accurate to Aginsky's

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paper?

A. I don't -- I don't use those -- I don't use those time intervals to determine if an ink was done in the past three months or six months. I use -- as I mentioned earlier, I use what I consider that conservative approach and say less than 24 months. I don't try and -- I don't try and make my conclusions any more narrower than that. Other authors do and other scientists do that.

Q. If you can go back to your report in this case, LaPorte Exhibit 1, on page 16.

A. Page 16?

Q. Yes. And we're using (indicating).

A. I'm sorry.

Q. The second full paragraph from the bottom, do you see where you wrote that I ran the PE test twice on samples from the interlineation on page 1 of the "work for hire" document? Do you see that sentence?

A. Yes.

Q. So you found an average loss of 64 percent -- correct?

A. Correct.

1 LaPorte

2 Q. -- of PE from ink in the
3 interlineation?

4 A. Correct.

5 Q. And that when we talk about an average
6 loss, that means between the unheated and the
7 heated sample?

8 A. Correct.

9 Q. Is the average. Okay.

10 A. So just to -- say that again, just to
11 make sure we've got that.

12 Q. When you're comparing the amount of
13 loss of PE, you do that by leaving one sample of
14 ink unheated and heating the other sample?

15 A. I'm sorry, compare the -- can I make it
16 simpler?

17 Q. Go right ahead. Sure.

18 A. Compare the amount of phenoxyethanol
19 that's present in the unheated sample with the
20 amount of phenoxyethanol that's present after the
21 sample has been heated, look at the difference,
22 and then come up with a percentage.

23 Q. Fair enough.

24 The cutoff of 25 percent, you then
25 indicate in the next sentence that this 64 percent

1 LaPorte

2 average is more than 2.5 times higher than the 25
3 percent cutoff level?

4 A. Correct.

5 Q. So a loss of 64 percent would be
6 considered a high rate, or high amount of
7 evaporation?

8 A. Yes.

9 Q. You previously testified that PE
10 evaporates at a high rate for the first few months
11 and becomes immeasurable after 24 months?

12 A. Just to clarify, I don't know if I ever
13 said it was immeasurable. It's still measurable;
14 it's just -- when you're comparing after 24 months
15 when the amount of -- barring the time thing, so
16 let's -- I think we should not get caught up in
17 the 24 months.

18 An ink could be six months old and
19 still have a low level of phenoxyethanol. The key
20 is when the phenoxyethanol level becomes too low
21 in the unheated sample, then trying to measure the
22 difference after it's heated can create any kind
23 of -- any kind of -- there's always -- part of any
24 procedure, there's inherent changes that can take
25 place. It's kind of what we call measurement

1 LaPorte

2 uncertainty.

3 So when you get down into the very low
4 levels, if I was measuring or comparing the amount
5 of phenoxyethanol that was present versus lost,
6 any small deviation would cause a big change,
7 because we're dealing with such small numbers.

8 So the idea is that when that level
9 becomes too low, regardless of whether it's 24
10 months, 6 months, or 3 months, just some inks will
11 age out in 3 months.

12 Q. When you say "age out," you mean --
13 what do you mean?

14 A. At that point I guess it becomes
15 impractical to measure with current technology.
16 That may change in the future, but as of now. And
17 others may do that. I'm only going to talk
18 today -- I'm only talking about what my comfort
19 level is with phenoxyethanol based on my
20 experience. So others may work at lower levels.
21 Personally I don't prefer to work with that lower
22 levels.

23 Q. The 64 percent average loss that you
24 mention here in your report, would you say that
25 that evaporation amount is consistent with ink

1 LaPorte

2 that is -- that is two years old or fresh ink?

3 A. I would say that's consistent with ink
4 that's less than two years old.

5 Q. Would you say that that evaporation
6 rate is consistent with ink that is only a few
7 months old?

8 A. I would say it's consistent with an ink
9 that's less than two years old.

10 The actual number, the percentage loss,
11 you can't take that number and apply it to a
12 certain age of an ink. It doesn't -- it doesn't
13 work that way.

14 Q. Well, how does it work?

15 A. You set a threshold level. And when it
16 surpasses that, you say it's less than -- I would
17 conclude that -- qualified conclusion that it's
18 less than 24 months.

19 Q. And on page 8 of your report, which is
20 LaPorte 1, the last full paragraph, you say that
21 after 24 months PE no longer evaporates at a
22 significant or measurable rate.

23 A. Right, generally speaking.

24 Q. Right. And 64 percent is definitely
25 measurable, wouldn't you say?

1 LaPorte

2 A. Well, it's not that 64 percent is
3 measurable, it's the difference in the values that
4 create the 64 percent that's measurable.

5 Q. Would you agree with Dr. Aginsky when
6 he says in his report that we just went over that
7 significant aging of ink takes place over a period
8 of about three months and then after this period
9 until the age of 15 years the extent of extraction
10 from the ink stays level at about 20 percent?

11 MR. SOUTHWELL: Objection. Can we just
12 specify which Aginsky you're referring to?

13 A. Can you point that out too, what
14 article?

15 Q. Sure.

16 MR. SOUTHWELL: I think you gave us two
17 Aginskys.

18 MR. BOLAND: It's the Aginsky, "Some
19 New Ideas for Dating Ballpoint Ink," I
20 believe.

21 A. What's the exhibit number?

22 MR. SOUTHWELL: I think it's 5.

23 Q. It's page 1145 as the pages are
24 numbered on that document in the upper right-hand
25 corner.

1 LaPorte

2 A. This is the 1993 paper we're talking
3 about?

4 Q. Yes, Aginsky "Dating Ballpoint Ink," is
5 a sort of abbreviation.

6 A. I'm sorry, the page number?

7 Q. 1145.

8 A. 1145.

9 Q. And I'll find the exact quote there for
10 you. Hold on. It's the first paragraph, the
11 second sentence.

12 A. Yes, okay, I see it.

13 Q. Do you agree with that statement by
14 Dr. Aginsky in that report?

15 A. I believe that this statement can be
16 refined much better. I mean, this is a statement
17 that was made almost 20 years ago. Certainly
18 we've learned a lot since. But generally speaking
19 we would all agree that an ink does age very
20 quickly in the first bit of time that it's entered
21 on the paper.

22 So I wouldn't -- I wouldn't agree
23 wholeheartedly with exactly what the statement is
24 saying.

25 Q. How would you modify it?

1 LaPorte

2 A. Also too, he's speaking to this
3 particular -- he looked at a particular blue
4 ballpoint ink, and he is making a conclusion about
5 that particular ink. So that's not a general
6 statement.

7 Q. So as to different inks, you get
8 different results, is what you're saying?

9 A. I think we've -- I think we've cleared
10 that theory up is that generally speaking inks
11 will age over the 2-year period, that 24-month
12 period. Some will age faster; some will age out
13 in three months.

14 But his sentence says, Figure 6
15 represents the aging curve obtained for Soyuz blue
16 violet ballpoint inks for the same formula. The
17 curve shows significant aging taking place over a
18 period of about three months.

19 He's speaking about that specific pen
20 and that specific ink.

21 Q. How many ink formulations are known
22 right now, would you say?

23 A. I couldn't answer that.

24 Q. Is it in the hundreds or more like the
25 thousands, if you can narrow it there?

1 LaPorte

2 A. We're talking about inks that have been
3 manufactured since -- ballpoint inks since the
4 1940s? I can't answer that. It would be a guess.
5 Your guess would be probably just as good as mine.

6 Q. Does the Secret Service have a library
7 of inks?

8 A. Yes, it does.

9 Q. And you worked for them before?

10 A. I did.

11 Q. When you worked for them, were you told
12 how many inks were in their library?

13 A. I knew how many inks were in that
14 library, yes.

15 Q. What year would you have found that
16 out?

17 A. 2009. I left in March of 2009.

18 Q. And how many inks were you told were in
19 their library then?

20 MR. SOUTHWELL: Objection.

21 A. I knew -- I oversaw the library back
22 then, and there was in the area of 10,000 inks.
23 But that was not 10,000 different formulae.

24 Q. How many different formulations do you
25 think that was in their library?

1 LaPorte

2 A. I don't know. We -- it would have been
3 impractical to even guess at the number of
4 formulations that those 10,000 inks represented,
5 but it would be safe to say that the 10,000 inks
6 represented -- it was far fewer formulations than
7 10,000, far less.

8 Q. In some inks the PE dries quickly; in
9 some inks it dries more slowly. Would that be
10 consistent with your knowledge of the area?

11 A. Absolutely. We characterize those as
12 slow-aging inks and fast-aging inks.

13 Q. Is there a library somewhere which
14 would tell you the answer to this hypothetical:
15 If I gave you a known ink formulation and I told
16 you what it was and you're trusting me that that's
17 what it is and that formulation is in a library --
18 is there a library somewhere that you could go to
19 to say, okay, I know this formulation, I now can
20 go to a library which will tell me if this is a
21 fast-aging ink or a slow-aging? Is there such a
22 library like that?

23 A. First of all, that question -- it's not
24 really practical. In order to be able to use --
25 first of all, this is a dynamic ink-aging method,

1 LaPorte

2 so it doesn't require a library of standards.

3 There's -- there's been numerous
4 published articles that talk about the dynamic
5 aging characteristics or sort of the -- the
6 underlying fundamentals of dynamic aging of inks.
7 Cantu wrote an article I believe back in 1995 that
8 sort of begun the use of that terminology,
9 "dynamic" and "static."

10 So you don't need a library at all when
11 you're doing dynamic ink-aging techniques. That
12 would be for static aging techniques.

13 Now to kind of answer your question, it
14 would be nearly impractical -- if you gave me an
15 unknown -- if I had an unknown ink for me to
16 specifically identify that exactly formulation,
17 even with the biggest library in the world,
18 because all I'm doing with -- with that library
19 all I'm measuring is the dyes or I'm assessing the
20 dyes that are present.

21 So I don't have all the information
22 about which resins are present, which volatiles
23 are present, and which other trace chemicals. So
24 I can never identify with certainty the exact same
25 formulation that I was proposed with in a

1 LaPorte

2 questioned document.

3 Q. Do some ink formulations not have PE in
4 them?

5 A. Yes, there are some of those as well.
6 Hold on. When we talk about inks, I think we
7 should make it clear for the record we're talking
8 about ballpoint inks. So there are nonballpoint
9 inks, and there are ballpoint inks.

10 There's not a lot of research in the
11 area of nonballpoint inks. When I discuss
12 nonballpoint inks, that would just gel inks,
13 roller balls, felt tips, those types of inks.
14 Those are water-based inks. Then there's
15 ballpoint inks. So we're talking about ballpoint
16 inks.

17 I know the paper that I published in
18 2004 we examined 633 inks. We determined
19 phenoxyethanol was present over 85 percent or
20 around 85 percent of blue and black ballpoint
21 inks.

22 Q. Getting back to your report, you had
23 stated that the average loss of 64 percent of the
24 PE from the ink in the interlineation. We talked
25 about that before. Do you recall those questions?

1 LaPorte

2 A. Yes.

3 Q. Now, help me with the math here. If 64
4 percent is -- is it fair to say extracted as well
5 as lost? Are those synonymous in this context?

6 A. No, no.

7 Q. Tell me what extracted means when you
8 say how much was extracted.

9 A. Extracted means you've actually taken
10 that out, you've removed it -- typically we talk
11 about extraction when we use a liquid like a
12 solvent.

13 A good example would be if you have an
14 ink stain on your shirt and you put some solvent
15 on there to -- and it gets all -- it starts
16 staining your shirt. So what you've done is
17 you've extracted the ink out there. You've turned
18 it into a liquid.

19 When we talk about extraction, we're
20 removing the components -- we're really -- I guess
21 from a lay perspective, we're taking the solid ink
22 and we're putting that into a liquid and we're
23 extracting all of the material.

24 Q. So your phrase I think you use in your
25 report is 64 percent of the phenoxyethanol from

1 LaPorte

2 the ink -- it's an average loss of 64 percent of
3 the PE?

4 A. Correct.

5 Q. And so if 64 percent is lost, then --
6 I'm doing math in my head here -- 36 percent of
7 the original amount would be remaining in the
8 sample?

9 A. No, no.

10 Q. Why is that not the case? If you have
11 100 percent to start with and you lose 64 percent,
12 why wouldn't you have 36 percent left?

13 A. Actually that's an intuitive question
14 you're asking. So when we heat the ink, we're not
15 actually taking all of the phenoxyethanol out. So
16 the general theory is that you have a temperature.
17 70 degrees is what I would consider the ideal
18 temperature. It's published in the literature in
19 a number of places.

20 But the idea is that you're heating the
21 ink at sort of a moderate temperature, 70 degrees
22 Celsius. You're not -- if I heated it at 150
23 degrees Celsius, I'll potentially drive off even
24 more phenoxyethanol. So you set the temp -- you
25 use that temperature, that 70 degrees Celsius.

1 LaPorte

2 So we haven't -- we haven't exactly
3 taken all of the phenoxyethanol out of the ink.

4 Q. Is there any correlation between the 64
5 percent loss and what PE remains in the sample?

6 A. No, no.

7 Q. Could it potentially be -- well,
8 there's no percentage, really, that applies to the
9 remaining PE that's left in the sample?

10 A. In theory you can't lose more than 100
11 percent. I know what you're thinking, well, that
12 leaves 36. But you shouldn't be able to drive
13 off -- well, I guess in -- I've never seen a
14 situation where I've driven off actually more than
15 maybe -- maybe 70 percent is the most that I've
16 ever seen.

17 Q. What I'm trying to figure out is
18 how you get -- if you get a percentage of 64
19 percent, how would there be less than 36 percent
20 remaining in the sample? Where did the -- where
21 did the rest of the less than 100 percent of PE
22 go?

23 A. Yeah, no, no, you're right, I guess.
24 Because we're driving off a percentage. So if I
25 drove off more, then I would exceed 100. I

1 LaPorte

2 shouldn't exceed 100 percent. In theory I
3 shouldn't exceed.

4 It's measurement. It's chemical
5 measurement. I could go 102 or something because
6 there's a little bit of uncertainty in there. But
7 certainly 100 percent is -- I've never seen that.

8 Q. You would agree with me, when you say
9 64 percent loss, that there would be 36 percent,
10 roughly, left of PE in the sample, or you do not
11 agree with that?

12 A. No, I mean, I guess it's a -- it's an
13 abstract concept because generally we're talking
14 about how much phenoxyethanol is driven off. Once
15 again, I've never seen that much phenoxyethanol
16 driven off, but in theory you shouldn't be able to
17 drive off more than 100 percent.

18 So if I start off with X amount, my --
19 the amount that I end up with shouldn't be more
20 than that.

21 Q. So if you drove off 64 percent, there
22 should be 36 percent left in the sample, that
23 equals 100?

24 A. I don't know if I would say there's
25 thirty -- there could be 32 left or, you know,

LaPorte

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yeah.

MR. BOLAND: All right. Well, it's 1 o'clock. Why don't we take a break for lunch.

MR. SOUTHWELL: All right. How long do you want?

MR. BOLAND: I think 45 minutes is good. So like 1:50.

THE VIDEOGRAPHER: The time is 1:03 p.m. This is the end of Media Number 2.

(Time noted: 1:03 p.m.)

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A F T E R N O O N S E S S I O N

(Time noted: 2:02 p.m.)

THE VIDEOGRAPHER: The time is approximately 2:02 p.m. This is the beginning of Media Number 3. We are on the record.

G E R A L D M. L a P O R T E ,

resumed as a witness, having been previously sworn by the notary public, was examined and testified further as follows:

EXAMINATION CONTINUED BY

MR. BOLAND:

Q. Mr. LaPorte, when we left we were talking -- we had finished up a topic -- not finished up. I had asked you some questions about the 64 percent loss --

A. Yes.

Q. -- figure that's in your report. I'm trying to understand the math of how you arrive at a 64 percent loss but it's not a certainty that 36 percent is still left in the sample.

Can you explain -- do you start with an assumption of a hundred percent PE is in the ink you're going to test, whatever that amount is, the

1 LaPorte

2 percentage? Is that how you start?

3 A. Generally speaking, yeah, your
4 assumption is there's 100 percent. I guess what
5 I'm trying -- maybe I'm being too specific. So
6 if -- what I'm saying is if we measure the rate
7 of -- we measure a rate of, say, 62 percent of
8 loss -- we're using 64 percent as an average in
9 this case.

10 Q. Yeah. I don't want to mislead anyone
11 on the record. You're right, it's an average you
12 used of the two samples, or you came up.

13 A. So I'm going to use an absolute number.
14 So let's say -- we'll use 64 as an absolute
15 number. There any -- there's a possibility that
16 it's 61, that it's 65, 66. So there could be
17 some -- some deviation.

18 I think maybe that's where maybe I'm
19 confusing the record too by that. So generally
20 speaking, yes, about 100 percent.

21 Q. All right. So I understand I think
22 what you're saying is the 64 percent -- let's use
23 the exact numbers, like you said.

24 A. Okay.

25 Q. I think one of them -- I'll find it in

1 LaPorte

2 your report. In your report you actually give us
3 the actual numbers and then the average, is my
4 recollection. Do you recall that?

5 A. That's correct.

6 Q. I don't remember what page it was on.
7 All right. So it looks like we're on -- is where
8 you give us the actual numbers and average, page
9 16 of your report, which is LaPorte 1, the second
10 full paragraph from the bottom.

11 Do you see where I'm at?

12 A. Yes.

13 Q. So the actual numbers of the two
14 samples are 66 percent and 62.

15 A. Correct.

16 Q. So is it your testimony, then, that
17 because of the precision of that measurement the
18 66 could actually be a couple percentage points
19 higher or lower in reality? Is that what you're
20 saying?

21 A. In reality -- I mean, I don't want to
22 use the word -- first of all, if you were to
23 measure precision, obviously we have very good
24 precision because I have done two different
25 measurements and achieved a 62 percent and 66

1 LaPorte

2 percent. So that's good precision.

3 But yeah, when you're talking about
4 that, the actual value, we'll say, the 66 percent
5 could have been 63 percent or -- it depends on
6 where -- you know, that's why you do multiple -- I
7 did multiple samples from the inks as well too.
8 So I'm sort of -- I'm averaging as well. I
9 shouldn't say I'm averaging, but it's being
10 averaged.

11 Q. Well, based on the average of 64
12 percent loss, would it be fair to say that it's an
13 average of about 36 percent of the PE remains in
14 the sample, not precisely but around about that
15 amount?

16 A. Approximately, sure.

17 Q. And that puts it, as you point out in
18 the next sentence, the average loss is more than
19 2.5 times the 25 percent cutoff level.

20 And what is -- that 25 percent cutoff
21 level, what does that mean?

22 A. You set the threshold at 25 percent.
23 Very -- I would -- I would equate this to like a
24 blood alcohol test. So when -- if you were
25 stopped for driving under the influence and .08 is

1 LaPorte

2 the state limit and you register a .24, you're
3 almost three -- you're three times the legal
4 limit, we'll say.

5 So that threshold is set -- the 25
6 percent threshold is set because I've -- in my
7 experience I've never seen an ink that was greater
8 than two years old that had more than 25 percent
9 loss of phenoxyethanol.

10 In fact, I would say probably the
11 highest difference that I've ever seen was maybe
12 in the like 17 -- low teen percentages for an ink
13 that was greater than two years old.

14 Q. So the cutoff level means that if you
15 have a percentage loss above 25 percent, the ink
16 is at least two years old or younger -- or newer,
17 I guess is the word?

18 A. Yes.

19 Q. And then if the amount loss is less
20 than 25 percent, you would say, based on the
21 science, that ink is probably more than two years
22 old?

23 A. No, no.

24 Q. Okay.

25 A. It would be -- I would just say that it

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LaPorte

is inclusive, because there are inks that could be less than two years old where you would get less percentage of phenoxyethanol -- less than 25 percent phenoxyethanol.

So you get to an inclusive, if you will.

Q. And you mentioned that there are slow-drying inks when it comes to PE, and fast drying; true?

A. Slow aging, fast aging.

Q. Okay, slow aging. I'll use your word, slow aging. When you are saying "slow aging," how slow is slow aging?

A. Generally slow aging is everything up to the 24 months. When we say slow aging, that would constitute that category of inks that would age until they're 24 months.

Q. When you say they'll age until they're 24 months, does that mean they will continue to lose some measurable amount of PE until they're 24 months?

A. Yeah, it's -- once again, just to make sure we're clear, even if I analyzed an ink that was four years old, I could still find a

1 LaPorte

2 measurable amount of phenoxyethanol. There's no
3 dispute about that. It's the fact of doing the --
4 looking at the percentage lost in those inks when
5 you -- once you get to a really low percentage,
6 then doing that sort of quantitative analysis can
7 become less reliable when you're dealing with very
8 low levels.

9 Q. That sounds like a qualification, and I
10 want to clarify it if that's the case.

11 On page 8 of your report, the last
12 paragraph -- I'll wait for you to get there.

13 A. Okay.

14 Q. In the second-to-last sentence, you
15 make a declaratory sentence there that ends with a
16 period that says, After 24 months PE no longer
17 evaporates at a significant or measurable rate.

18 A. Measurable.

19 Q. Right.

20 A. That's what I'm talking about is
21 measuring the difference.

22 Q. But it sounded like what you had just
23 said -- and correct me if I'm wrong -- is that you
24 still can measure it after 24 months.

25 A. No, you can still detect it.

1 LaPorte

2 Q. What's the difference between measure
3 and detect?

4 A. Okay, so when we're talking about --
5 there's -- let me give a hypothetical. If I
6 have -- if I have an ink that's three years old,
7 in theory I could determine the quantity of
8 phenoxyethanol present. I could measure that
9 phenoxyethanol.

10 But now if I want to take it to the
11 next step and look at the percentage lost, that's
12 where it becomes immeasurable, looking at those --
13 calculating that difference of PE that's lost.

14 So I guess -- the primary measurement
15 that's taking place is the difference between the
16 heated and the unheated.

17 Q. The various charts we went over --
18 actually, the chart in your report, which you
19 talked about, which is an illustration -- do you
20 remember the discussion with that?

21 A. Was that Exhibit --

22 Q. LaPorte Exhibit 1, your actual report.

23 A. Oh, my actual report, I'm sorry.

24 Q. Right. You had a chart in there that I
25 asked you about early on, and you identified it as

1 LaPorte

2 an illustration.

3 A.

4 MR. SOUTHWELL: What page are you
5 referring to?

6 A. I'm sorry, that was not in Exhibit 1;
7 that was in the other report that I issued.

8 Q. Oh, yes, you're right. Let's go look
9 at that other exhibit. I don't know what the
10 number is. It's the report from April 17th, 2012,
11 this year, and it's on page 7 of 19.

12 A. That's LaPorte 3.

13 Q. Okay.

14 I'm just using this for example
15 purposes. That curve is there, and based on the
16 numbers on the left-hand column there, would you
17 agree that at 24 months is where the curve ends
18 and it would be approximately 10,000 as an amount
19 of PE?

20 A. No, I don't want to misrepresent the
21 numbers. The numbers are arbitrary. So the
22 reason -- I mean, those numbers --

23 Q. Well, they go down by 20,000 from the
24 top to the bottom; right?

25 A. Yeah, for simplicity, when -- I use an

1 LaPorte

2 Excel spreadsheet, so putting the numbers like
3 that kind of creates that shape. So that's the
4 reason. Those numbers don't mean anything.
5 They're completely arbitrary. Obviously the
6 numbers in the time of months indicate a span of
7 time.

8 Q. Those aren't arbitrary; right?

9 A. No. I mean, obviously they're -- I
10 guess -- well, the whole -- the whole figure is
11 arbitrary, for all practical purposes, but...

12 Q. On the various charts that we went
13 through that showed that at about 24 months
14 there's no measurable rate of PE left --

15 A. I'm sorry, PE lost, I guess to be
16 clear, not PE left. Or to measure the PE that's
17 lost.

18 Q. By heating?

19 A. By heating, yes.

20 Q. Okay.

21 Once you heated that sample in this
22 case, that sample was effectively equivalent to a
23 sample that was 24 months old -- right? -- or no?

24 A. No, no, it doesn't work like that.

25 Q. The heating that you did was to

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LaPorte

artificially age the sample or no?

A. No.

Q. What was it for?

A. It's -- setting -- using that temperature, that's an established temperature, I'll say, to -- it's not meant to mimic the aging process. The purpose of it is to -- when you use that heat, that temperature, then to measure the amount that's lost, it doesn't mean that that's -- if I heated at 70 degrees that that would be similar to an ink that ages over two years. That's not -- that's not the intent of applying the temperature.

Q. And the other folks that we've talked about tonight -- today -- the Canadians: Gaudreau and Brazeau -- did they use 70 degrees Celsius, as you do?

A. Yes, I believe they're using 70 degrees Celsius. Bügler published an article later on I believe in 2008 looking at different temperatures. Seventy degrees Celsius was -- it's what we would agree -- I say "we," but the ink-dating community. I mentioned earlier that I'm part of this group, International Collaboration for Ink Dating, Ink

1 LaPorte

2 ID. But we have agreed that 70 degrees is a good
3 representative temperature to use.

4 I mean, some people could use 150
5 degrees, but then you're going to drive off a lot
6 more phenoxyethanol using that temperature.
7 Seventy is an optimal -- seems to be an optimal
8 temperature for phenoxyethanol, based on its
9 chemical properties, based on its boiling points,
10 those type of things.

11 Q. Speaking of that, what is the freezing
12 point of PE?

13 A. The freezing point? I would have to
14 reference it to be certain, but it might be in the
15 low like 11 degrees C.

16 Q. Help me out with Fahrenheit on that,
17 would you? What's Fahrenheit 11 degrees Celsius?

18 A. Now you're really trying to trick me.

19 Q. No.

20 A. 11 degrees C would be approximately --
21 20 degrees C is 70 degrees F.

22 Q. Just an approximate number.

23 A. So 11 is -- I'm not -- I'm not -- I
24 don't want to convert but...

25 Q. We'll figure out the conversion on a

1 LaPorte

2 break.

3 Does PE evaporate at the same rate
4 regardless of the temperature it's sitting at --
5 if it's in a freezer or if it's in a hot desert, I
6 would assume it doesn't evaporate at the same
7 rate; is that accurate?

8 A. I would concur with your assumption,
9 that if you put it in a freezer versus room
10 temperature, then it will evaporate at a different
11 rate.

12 Q. And is it fair from common sense to say
13 that if it's in a freezer it's going to evaporate
14 more slowly? Or maybe that's not true.

15 A. I mean, the literature -- actually,
16 there's no -- there's no literature -- or no
17 research that actually shows that that's true, in
18 fact true. But we theorize that colder
19 temperatures would slow the -- a freezing
20 temperature -- putting it in a freezer would slow
21 it down, slow the process.

22 Q. Is there any research that you know of
23 that has tested the rate of evaporation of PE at
24 different ambient temperatures?

25 A. There's a lot of research looking at

1 LaPorte

2 different -- different storage conditions. I
3 don't believe that I can recall anything
4 specifically that looks at a series of inks over a
5 series of years at different temperatures.

6 It's a -- it's a difficult experiment
7 to do because you have to truly let the inks go
8 for two years. So if you set it up today, you
9 couldn't do the testing for another two years.

10 Q. No one in the field has done that kind
11 of test yet?

12 A. I'm not aware of that test.

13 Q. The Celsius conversion --

14 A. Yes.

15 Q. -- does it sound ballpark that 11
16 degrees would be about 51 degrees Fahrenheit?

17 A. But when you say the freezing
18 temperature of phenoxyethanol, that doesn't mean
19 it freezes a -- as a solvent like as a solvent in
20 the ink matrix. So when ink goes down on paper,
21 there's phenoxyethanol that's encapsulated in that
22 ink. So it's not like it's a true liquid form.

23 I don't know the exact freezing
24 temperature of phenoxyethanol.

25 Q. So 11 degrees that you mentioned before

1 LaPorte

2 might not -- might not be it, actually?

3 A. I would say we should look that up to
4 be certain of that number.

5 Q. And where could we look something like
6 that up?

7 A. I guess in Wikipedia.

8 Q. Oh, it might be online? It might be
9 common enough to be online?

10 A. Yeah.

11 Q. I thought it maybe it was in a journal
12 article or something.

13 A. Typically we talk about boiling point,
14 not freezing temperature.

15 Q. The 64 percent loss that we were just
16 talking about before, I'm just trying -- I'm going
17 to try to do some simple math here and see if you
18 agree with me.

19 If 64 percent was a firm number, that's
20 how much was lost in the process that you used,
21 and about 36 percent is remaining, you would agree
22 with me that -- and I'm just using math here --
23 that the original amount of ink is about 2.7 times
24 more than what's now remaining? The original
25 amount you had, you took away about two-thirds, 64

1 LaPorte

2 percent. You have about 36 --

3 MR. SOUTHWELL: I object to the form.
4 There's no frame of reference for the timing
5 of when this happened. Are you talking about
6 when the ink is first put on the page?

7 MR. BOLAND: Let me clarify the
8 question.

9 Q. When you took out your samples from --
10 you took ink samples from this document; right?

11 A. Yes.

12 Q. And you heated one and then measured
13 and determined that -- I'm sorry, you heated two
14 different samples and then averaged -- the average
15 of that is about a 64 percent loss of PE after you
16 heated it.

17 A. Yes.

18 Q. And comparing the amount lost versus
19 what was in the unheated sample -- so comparing
20 those two things --

21 MR. SOUTHWELL: As of the date that the
22 sample was taken?

23 MR. BOLAND: When he's doing his
24 testing. He has now heated one sample and 64
25 percent is lost.

1 LaPorte

2 Q. You're sitting in your lab, and you now
3 have a sample with 64 percent gone and another
4 unheated sample. Comparing those two, the
5 unheated sample would have about 2.7 times the
6 amount of PE than the heated sampled because you
7 drove off 64 percent? It's just math.

8 MR. SOUTHWELL: I don't think it's just
9 math. Objection.

10 Q. 100 percent divided by 36 percent, it's
11 2.7 times.

12 MR. SOUTHWELL: 100 percent of what?

13 MR. BOLAND: I'm asking him.

14 A. No, I am completely lost by the
15 question. I'm not following it at all. You're
16 almost making the assumption that only
17 phenoxyethanol is there. There's all kinds of
18 other components in the ink too.

19 Q. No, I'm just talking about the amount
20 of PE. You've lost 64 percent of the PE. The
21 unheated sample would have more PE in it once
22 you're done with that heating process; true? The
23 unheated sample.

24 A. Would have more, yes.

25 Q. Right. And it would have approximately

1 LaPorte

2 two times as much PE in it -- a little bit more
3 than two times the amount of PE in it than the one
4 you just heated, because you lost 64 percent?

5 A. So you're taking 50 percent -- I think
6 it would be a lot easier to stick with the 64
7 percent rather than trying to convert that to a
8 fraction or ratio.

9 Q. All right. I understand that. I'm
10 just saying that there's more in the unheated than
11 the heated sample when you're done.

12 A. Yes.

13 Q. That's obviously part of the process
14 that you're doing.

15 A. I wouldn't be here today if there
16 wasn't.

17 Q. Now, isn't it true that in all these
18 charts that we went through there's -- for lack of
19 a better word, there's a dry point on that curve
20 where the PE essentially has stopped evaporating
21 for purposes of measuring it any further?

22 MR. SOUTHWELL: Objection to the form.

23 A. I think we're getting caught up on the
24 curve. So the curve is strictly meant for a
25 general aging process of the inks. So there are

1 LaPorte

2 some inks that will age faster and that curve will
3 come down a lot faster and go straight at six
4 months or four months.

5 So I think we're getting caught up on
6 this curve. But this is just meant to be a
7 generic description of what happens with inks in
8 general, not all inks but inks in general.

9 Q. Well, generally speaking, aren't all
10 the curves that we looked at today, by the time
11 they get to two years, they're pretty flat, they
12 are flat?

13 MR. SOUTHWELL: Objection to form.

14 Q. Is that the case or not?

15 A. I would agree -- yeah, the theory is
16 that at 24 months that inks slow down on the aging
17 process.

18 Q. And am I understanding your previous
19 answer before that to say different inks would
20 generate different curves?

21 A. But all of them would end up kind of at
22 the same point as this one in the 24 months.

23 Q. I understand --

24 A. There's stuff in between that's going
25 to vary.

1 LaPorte

2 Q. Yes, that's what I'm saying. I'm not
3 disputing the 24 months for the point. But
4 different inks would have a different-shaped
5 curve. It could be a more gradual sort of
6 decrease to 24 or it could be more extreme at the
7 beginning?

8 A. That's a fair comment, yes.

9 Q. You even mentioned some of them would
10 be down to almost flat in three months, some would
11 be down to almost flat in six months?

12 A. Yes.

13 Q. And others it might take all of 24
14 months before they totally flatten out?

15 A. It could, yes.

16 Q. And just to clarify a question I asked
17 earlier this morning, there is no place you can go
18 or any expert can go with a known ink formulation
19 and have the information about what the PE curve
20 would look like for that ink formulation? No one
21 keeps that data somewhere?

22 A. Well, you would -- you can have --
23 certainly you could run -- you could run known
24 inks. I mean, I have -- I actually have a number
25 of standards at home or in my lab that -- where I

1 LaPorte

2 can -- where I've tracked them through the years.
3 So I know that particular ink formulation from
4 that particular pen, I know how that ages. I have
5 that -- that's my knowledge.

6 But now to -- what I said before was if
7 I had a questioned ink, an unknown ink from a
8 questioned document, I would never -- I can't
9 imagine a circumstance where I'd be able to say
10 that the ink on that questioned document is the
11 exact same formulation as the ink that I have at
12 home.

13 I mean, it might be the same. It might
14 be a Bic. It may even be the same formulation.
15 But we don't know if it's from the same batch, and
16 there may be batch-to-batch variations where there
17 was more solvent added or resin added. I mean,
18 there's variations from batch to batch.

19 Q. Sort of the recipe they use to make the
20 ink --

21 A. Yes.

22 Q. -- so to speak.

23 A. Yes.

24 Q. A laymen's term.

25 How many inks do you have that you have

1 LaPorte

2 run through this test so that you know the curve,
3 the PE drying curve, is what I'm going to call it,
4 if that's acceptable? The PE drying curve, how
5 many of those do you have, would you estimate?

6 A. I have close to 20 inks that I've been
7 working with over the years that I continue to
8 monitor that I do regular analysis on.

9 Q. Is this there any published research on
10 linking ink formulations to these PE drying
11 curves?

12 A. Not that I know of. When we're talking
13 about linking ink formulations, I think this
14 actually may have come up in Mr. Stewart's
15 deposition when we talk about match. So when
16 we -- when we say that two things match, it
17 doesn't mean that they're identical; it means we
18 couldn't differentiate them based on the series of
19 tests that we did.

20 That's like a completely implausible
21 theory to think that you could match an ink
22 formulation just simply based on doing -- looking
23 at a curve and then finding another pen or...

24 MR. BOLAND: Mark this as Exhibit

25 LaPorte 7.

1 LaPorte

2 (LaPorte Exhibit 7, charts, marked for
3 identification.)

4 MR. SOUTHWELL: This is what, I'm
5 sorry, 7?

6 MR. BOLAND: Yes.

7 Q. Mr. LaPorte, I just -- you were just
8 handed Exhibit -- LaPorte Exhibit 7, and it should
9 be I think a three-page document with three of the
10 charts we've talked about already today.

11 MR. SOUTHWELL: Well, not including the
12 color.

13 Q. And you'd agree with me that --

14 MR. SOUTHWELL: Or the box with the
15 language.

16 Q. There's two colors -- colored bars at
17 the bottom of each of these charts which were not
18 in the charts as they were originally published;
19 true? Those were inserted?

20 A. Hold on. I'm just --

21 Q. That's at least one thing that was
22 inserted. And then --

23 A. So this is from the SPME article? Can
24 I just go back to the SPME article?

25 Q. Sure.

1 LaPorte

2 A. Just to...

3 Okay. I have the SPME article.

4 Q. So the chart's the same. It's larger
5 in size than what appears in the article, as far
6 as I magnified the chart; right?

7 A. Yes.

8 Q. And then the yellow and red bars that
9 appear on the chart on page 1 of that exhibit are
10 not in the original article; true?

11 A. Uh-huh.

12 Q. There's a box right smack in the middle
13 of the chart that is not in the original article?

14 A. Yes.

15 Q. This box, like a text box.

16 MR. SOUTHWELL: There's also a red
17 circle and red dots not in the original.

18 Q. There's a red circle and red dots also.

19 Thank you.

20 Look at this chart and you see the
21 bottom red bar that goes across --

22 A. Right.

23 Q. -- it meets up with -- it intersects
24 the curve at right about a little over 700 days.

25 Do you see that?

LaPorte

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A. Yes.

Q. And 700 days -- a little over 700 days, roughly -- a little more than two years, actually, a touch more than two years, or, no --

A. Touch less.

Q. A touch less than two years.

A. 730 would be two years.

Q. Right.

And two years is typically when most of these charts have ended or the curves have flattened out. Do you see the yellow bar on top of that?

A. Yes.

Q. You'd agree with me that the yellow bar looks just about twice as big as the red bar?

MR. SOUTHWELL: Objection.

A. Let's --

Q. Whether you can agree on that.

A. You're saying in the thickness?

Q. The thickness of the yellow bar is about twice as thick as the red bar?

A. Okay. I agree with that.

Q. Assume -- in our case the loss of PE in your testing was 64 percent.

LaPorte

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A. Right.

Q. And so it leaves remaining roundabout 36 percent --

MR. SOUTHWELL: Objection, that's not --

Q. You testified that it could be a little less than 36 percent or a little more than 36 percent.

A. Okay.

Q. You can see from this chart that the curve intersects that yellow bar at approximately -- a little under 100 days?

A. Yes.

Q. And so that would be the point, would it not, where if you heated that sample that was a little under 100 days old you would drive off approximately two-thirds of the PE?

MR. SOUTHWELL: Objection to form.

A. No. I mean -- I guess we should make it very clear that we're comparing two different -- two different completely -- two completely different technologies. So these are SPME measurements. So I don't know how --

Q. SPME is not the method you typically

1 LaPorte

2 use; right?

3 MR. SOUTHWELL: Objection.

4 A. Not the extraction.

5 Q. The extraction you typically use.

6 Okay?

7 MR. SOUTHWELL: Let's let the witness
8 answer, please.

9 Q. You --

10 MR. SOUTHWELL: Objection. He didn't
11 finish.

12 Q. Go ahead. Finish.

13 A. This is -- I can't even compare this
14 because it's a different extraction method. I
15 explained SPME early on. So it's completely
16 different.

17 Q. Let's go to page 2 of that exhibit.
18 And the same four items, you would agree with me,
19 have been added to this chart from the Weyermann
20 article: two different colored bars, a red
21 circle, a red dotted line, and a text box; true?

22 MR. SOUTHWELL: Which exhibit? Got it?

23 MS. AYCOCK: (Handing.)

24 A. So what exhibit is Weyermann?

25 MR. SOUTHWELL: It's LaPorte 6.

1 LaPorte

2 A. LaPorte 6?

3 MR. SOUTHWELL: Is that right,
4 Mr. Boland?

5 MR. BOLAND: Yes.

6 Q. Do you see where again this top bar
7 that's sort of yellow-orange in color and the
8 bottom bar on yours which is more red, the top bar
9 is roughly two-thirds as big as the bottom bar?

10 A. Yes.

11 Q. And the bottom bar intersects the curve
12 when the curve flattens out near what is nine or
13 ten months on this chart.

14 A. Okay.

15 Q. And that the curve intersects the
16 yellow bar just a little over three months time
17 frame. You see the red dotted line drop down from
18 there.

19 A. I mean --

20 Q. Do you see where that intersects?

21 A. Yes. But we still -- we have never
22 established that this -- whether this curve is a
23 theoretical curve or not.

24 Q. Well, let's assume that it's based on
25 actual data, and let me ask you some questions.

1 LaPorte

2 And we'll note for the record it's a hypothetical.

3 A. But I can't -- I can't compare real
4 data with hypothetical data. That's impossible to
5 do.

6 Q. Do you see the description of the
7 figure at the bottom that these are threshold
8 values proposed by Aginsky?

9 A. Yes, I do see that.

10 Q. Do you have any reason to dispute that
11 these are actual values proposed by Aginsky for
12 his measurement of ink?

13 A. Once again, I don't know if they are
14 actual values.

15 Q. I understand. I'm just saying do you
16 have any evidence of disputing them being real
17 values, threshold values. That's all.

18 MR. SOUTHWELL: Objection, asked and
19 answered.

20 A. Yeah, but what he was using for his
21 threshold values -- this is a 1996 publication I'm
22 looking at. If I recall this correctly -- if I
23 recall this paper correctly, these are theoretical
24 values.

25 Q. Let's go with that, then, the

1 LaPorte

2 theoretical values represent the curve that you
3 see in this chart; right?

4 A. Right.

5 Q. And that these theoretical values, that
6 drying time curve, intersects that yellow bar at
7 just a touch over three months. Fair to say?

8 A. I agree that that's where it touches.

9 Q. And if you had a sample that was
10 three -- a little over three months old and it was
11 this particular ink -- let's just use that
12 hypothetical -- and then you went ahead and heated
13 it, that's where you would drive off 64 percent of
14 the PE, right at that point?

15 MR. SOUTHWELL: Objection.

16 A. I'm sorry, we're comparing apples with
17 oranges here.

18 Q. Let's look at page --

19 A. I don't even know how to respond other
20 than I can't respond.

21 Q. Let's look at page 3, then. Do you
22 have any reason to dispute that the data on this
23 chart, which we talked about before, is actual
24 data provided by Aginsky?

25 A. This is the 1993 publication? Let me

1 LaPorte

2 go back to that.

3 Q. I believe it was.

4 A. Okay.

5 Q. And would you agree with me the chart
6 in the publication, which was cited in your
7 report, and this chart in this exhibit differ in
8 the same basic ways as the previous charts: There
9 are two different colored bars, a text box, a red
10 circle, and a dotted red line added to the chart?
11 Fair to say?

12 A. Yeah. We should make it clear this is
13 an aging curve for that Soyuz blue violet
14 ballpoint ink?

15 Q. Yes.

16 A. So unless the ink in this case was the
17 Soyuz blue violet ballpoint ink, once again we're
18 comparing apples and oranges.

19 Q. Was the ink in this case Soyuz blue
20 violet ballpoint ink?

21 A. I don't know if it was.

22 Q. If it was, hypothetically -- you know
23 about hypothetical questions as an expert; right?

24 A. Yes, I understand.

25 Q. Let's go with the hypothetical that the

1 LaPorte

2 ink in this case, which you don't know what it
3 was, but let's assume it was this ballpoint ink --

4 A. From Russia? This was a Russian ink.

5 Q. Let's assume that it was this ink, for
6 your hypothetical -- for the hypothetical I'm
7 asking you. You'd agree that this curve
8 intersects that yellow bar at a little over two
9 months; true?

10 A. I believe your question was kind of
11 two -- I guess it wasn't two-part, but you said --
12 I will agree that the red line intersects the bar
13 at just above two months.

14 Q. Okay.

15 A. I don't agree with -- I don't even know
16 how I can take your hypothetical. That's -- I
17 mean, I understand we work in the world of
18 hypotheticals sometimes, but then there's also the
19 fact that this is totally not realistic in any way
20 whatsoever.

21 Q. This 24-month period -- you tested the
22 ink in this case in August of 2011?

23 A. Yes.

24 Q. And your report indicates that the ink
25 is -- correct me if I'm not saying this -- is it

1 LaPorte

2 up to 24 months old from the time you tested it or
3 somewhere within 24 months old but not 24 months?

4 A. It's highly probable that it was done
5 in August of 2009 all the way up until July 13th,
6 2011. I guess that was the last time that we saw
7 that document.

8 Q. Okay. So let's --

9 A. In theory.

10 Q. Let's correct that. You're right, you
11 took your samples out of the ink of this document
12 in July of 2011?

13 A. July 16th -- oh, no, I'm sorry, the
14 phenoxyethanol testing was done in August. There
15 were two different -- there were two different
16 sets of plug removals that took place.

17 Q. That's right. One in July?

18 A. I removed July 16th, and then I
19 returned to Buffalo on August -- I'm not exactly
20 sure of the date, but later August of 2012 [sic].

21 Q. How many plugs did you take in July?

22 A. Whatever was -- whatever -- there was a
23 certain amount that we were allowed to take.

24 Q. How many did you take?

25 A. I took -- whatever our side was

1 LaPorte

2 allotted -- I'm just going to use this as an
3 example. If we were allowed to take ten, I would
4 have taken five, and the other expert, Dr. Lyter,
5 would have taken the other five.

6 Q. But do you know what that exact number
7 is that you took?

8 A. I have it in my notes, yes, but I
9 don't -- I can't give you the exact number right
10 now.

11 Q. And would you have been the one who
12 physically did take the plugs or would you have
13 relied on someone else to take the plugs and just
14 give you five?

15 A. No, I physically took them. Dr. Lyter
16 removed his plugs separately.

17 Q. And where did you take, in July, the
18 plugs from on the document that you took in July?
19 Where on the document?

20 A. So what plugs are we referring to?

21 Q. The plugs you took in July, where on
22 the document physically would you have taken those
23 plugs from?

24 A. I don't know how I can answer that
25 question without having the document. When you

1 LaPorte

2 say where on the document --

3 Q. Yeah, page 1, page 2, top, bottom,
4 left, right.

5 A. Oh, I took it from page 1 and page 2.

6 Q. Where on the page?

7 A. Generically speaking, the
8 interlineation --

9 Q. The ink of the interlineation?

10 A. The ink of the interlineation.

11 Q. Very well.

12 A. The ink of the PC initials on page 1,
13 the ink of the MZ initials on page 1. So those
14 were three -- three separate collections -- the
15 signature of Mr. Ceglia on page 2, and the
16 signature of Mr. Zuckerberg on page 2. Then I
17 took paper blanks from page 1 and page 2. I also
18 took samples from the specifications document, but
19 I don't know if we're discussing that.

20 Q. Where on the document did you take the
21 paper blanks from page 1?

22 A. I took them from the bottom of the
23 document, and then I would have taken one from the
24 interlineation area like where the writing is in
25 the area. And then I took -- I'm sorry, I took --

1 LaPorte

2 I know I took -- there were the areas that we're
3 calling the -- that I'll refer to as the white --
4 the white rectangular areas that had UV
5 fluorescence. I took two from each white area.

6 Q. And on page 2 where did you take
7 your -- the paper plugs?

8 A. Paper plugs?

9 Q. And I'm talking just in July now.

10 A. Yes, just in July. I took -- I know I
11 took two from each of the white rectangular areas.
12 So I took four -- there would be four from the
13 top, same as page 1. I believe I took some the
14 bottom as well. And then I would have taken some
15 from the written areas, like a blank from -- in
16 the written area.

17 Q. Did you test those samples for PE?

18 A. Yes. I didn't test them all, but I
19 tested the one that's from the written area. I
20 tested that for PE.

21 Q. On which page? Written area of which
22 page?

23 A. Both the interlineation and the
24 signatures on page 2.

25 Q. And are those -- results of those tests

1 LaPorte

2 from the July plugs what appear in your report?

3 A. I have it in my notes, but -- I can
4 tell you I didn't -- I mean, the actual results?
5 When we talk about the results, there's a lot
6 of -- a lot of data that goes with the results.
7 It's in my report that I tested the paper blanks
8 and so forth and I did get differences. All of
9 that's clearly in my report.

10 Q. What I'm asking is the ink plugs you
11 took from the interlineations in July on page 1,
12 did you test those using the method you use for PE
13 testing.

14 A. Yes, they would have been run. So when
15 I do the PE test, I run a paper blank, yes.

16 Q. And are those the samples that resulted
17 in the 62 percent and 66 percent loss that's
18 reported in your report, the ones from July?

19 A. I may have used the ones from July in
20 August, like for the PE -- running the paper blank
21 for the PE.

22 So I'll always run a paper -- I guess
23 to make it clear, I'll run the paper blank of the
24 sample that comes from the written area when I do
25 the PE testing.

1 LaPorte

2 Q. Why is that?

3 A. To ensure that there's not any PE or
4 other contaminants in the paper blank that's in
5 the written area.

6 Q. Let me focus my question, because I
7 don't think I was clear enough on the earlier
8 question.

9 You took both paper blanks and ink
10 plugs in July --

11 A. Yes.

12 Q. -- from the document. And you took ink
13 plugs, amongst other places, from the
14 interlineations on page 1 in July?

15 A. Yes.

16 Q. And so my question is the 66 and 62
17 percent loss figures that are in your report, did
18 those come from PE testing of the ink plugs from
19 the interlineations on page 1 that you took in
20 July.

21 MR. SOUTHWELL: Objection to the form.

22 A. I'm sorry, you lost me at the end there
23 so...

24 Q. The 66 percent and 62 percent figures
25 that are in your report --

LaPorte

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A. Yes.

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Q. -- those are percentage loss of PE from ink samples?

5

A. Correct.

6

7

Q. And they're specifically from the interlineations?

8

A. Correct.

9

10

Q. Those samples that you used to generate those two figures --

11

A. Yes.

12

Q. -- what month did you grab those plugs?

13

A. Oh, that was in August.

14

15

Q. Okay. What were the results -- let me back up.

16

17

You took -- you also took plugs in July, as we just established, from the

18

interlineations, the ink part, in July; correct?

19

A. Yes.

20

21

Q. Did you run a PE test on those ink plugs?

22

23

24

25

A. To be clear, no, I didn't run a test specifically for PE on the samples that were removed in July. I ran -- I performed a GC/MS analysis and discovered that there was a high

1 LaPorte

2 level of PE. So that -- that was -- so that
3 has -- that needs to be differentiated from the PE
4 test.

5 Once again, I think I explained that in
6 my report. I run the initial program in scan
7 mode. So I'm not necessarily looking specifically
8 for PE at the time; I'm looking for all the
9 different components.

10 The purpose of that was to compare the
11 different inks from the interlineation, the
12 initials on page 1, and the signatures on page 2.
13 So that was the purpose of that GC/MS analysis.

14 Then I discovered the PE, and then I
15 went back to Buffalo to remove additional samples.

16 Q. Is GC/MS testing destructive or
17 nondestructive?

18 A. Yes, it's -- you have -- when you take
19 the -- when you remove the ink and you put it in a
20 solvent and then you don't have any sample left.
21 So yes, you've destroyed your sample.

22 Q. Do you know the percent -- so you
23 wouldn't know a percentage loss of PE from the
24 samples you took in July because you didn't do
25 that -- you didn't determine that on the July

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samples?

A. Correct, correct.

Q. Do you have the test results from all the testing that you did of the July samples in your notes at your office, perhaps?

A. I have all of my testing results from beginning to finish -- beginning to end.

Q. Have you provided those to defendants' counsel?

A. I provided some of them. I'm not sure if I provided everything, but I've provided -- I'm not exactly sure what I provided, but I did provide some of my notes. It could have been all of them, but I'm not sure. In electronic form.

Q. Could you have run a full sort of PE test on the July plugs? Was that --

MR. SOUTHWELL: Objection to form. Can you clarify what you mean by "PE test"?

Q. The same test you ran resulting in the report here.

A. No.

Q. Why is that?

A. Because the samples have to be -- there's -- I follow a specific protocol the way I

1 LaPorte

2 remove the samples and where I remove them from.
3 When I went to Buffalo to remove the samples in
4 July, I -- there was -- there was a dispute at the
5 time about how many samples we were going to
6 remove. So that was one thing that was happening.
7 Also, the document was so damaged, I wasn't
8 expecting to do the PE testing at that time.

9 So compounded with the dispute and the
10 fact that the ink was completely degraded, I
11 didn't think that I would be able to get a
12 positive -- or I didn't think that I'd be able to
13 do the PE testing by getting a sufficient amount
14 of plugs.

15 Q. In July?

16 A. In July.

17 Q. And the document, when you saw it in
18 August, looked the same as far as the damage and
19 the faded ink; right?

20 A. Yes, compared to when I saw it on July
21 16th, yes.

22 Q. And speaking of that damage to the
23 document, have you ever compared -- are you aware
24 that Mr. Tytell took a scan or an image of the
25 document, the Facebook -- the contract we're

1 LaPorte

2 talking about, the morning that the experts first
3 were given the document to test?

4 A. Yes, I am.

5 Q. Are you aware that Mr. Lesnevich, as
6 part of his analysis of the document, took scans
7 or images of the document the morning of the
8 second day of testing?

9 A. I know that Mr. Lesnevich took scans.
10 I don't know when he took them.

11 Q. Have you ever seen those scans of
12 Tytell and Lesnevich side by side?

13 A. I've seen -- I've definitely seen the
14 Tytell images. I believe that I have seen --
15 I'm -- the Lesnevich and Tytell images. I don't
16 know if I've seen them side by side. If you want
17 to provide them to me now, I can -- just as a
18 reminder.

19 Q. No, I'm just asking if you've ever seen
20 them side by side.

21 A. I believe that I have.

22 Q. And what was your reaction to that?
23 Did they look different to you or the same?

24 A. They used different scanners. The ink
25 was degraded the same way in both of them. That

1 LaPorte

2 was -- that was certainly obvious. I believe
3 there was different coloration or the way the --
4 the way the scanner works.

5 But different scanners -- I mean, on my
6 scanner, I have a Canon wide scanner and there's a
7 D screening and D mask. And wherever that's
8 set -- those settings are there to allow more
9 light to come through the document or to reflect.
10 That's obviously going to create differences from
11 scanner to scanner and setting to setting within
12 that scanner.

13 Q. So the differences in potentials
14 scanners would cause you to conclude you can't
15 really compare those two images?

16 MR. SOUTHWELL: Objection.

17 A. I would never do a comparison of two
18 images from different scanners. That -- that --
19 that's not a -- I mean, to say -- to conclude that
20 there were actual differences in the -- in
21 strictly the coloring? You could use the scanner
22 to look at text or to look at other features that
23 are much more clearer. But to make evaluations of
24 the actual color of the paper based from a scan,
25 that -- I wouldn't do that.

1 LaPorte

2 Q. Can you say, sitting here, whether any
3 of the scans you did not take that you've
4 reviewed -- Tytell, Lesnevich, or whatever -- are
5 unaltered?

6 A. What do you mean by "altered"? What
7 does that mean, like --

8 Q. Changed in any way, just from however
9 the scanner, the image, was captured, put through
10 Photoshop or cropped or contrast. Do you have any
11 way of knowing by looking at the other experts'
12 scans whether they have altered them?

13 A. I haven't looked at their images in
14 that much detail to know that, but I can't -- I
15 can't say one way or the other if that happened or
16 didn't happen.

17 Q. The results of or the notes, I guess, I
18 think you called it, from your testing of the July
19 plugs or evaluation of the July plugs, do you have
20 any of that with you today?

21 A. I do not.

22 Q. Did you bring any of your notes or
23 anything with you to the deposition?

24 A. I did not.

25 Q. Why didn't you bring any of that stuff

1 LaPorte

2 with you?

3 A. I was instructed by the Gibson, Dunn
4 attorneys that there was an ongoing dispute and to
5 leave my notes back at my hotel.

6 Q. This GC/MS machine that you've
7 mentioned a couple times before, does it have
8 different settings on it kind of like a scanner?

9 A. I've never heard somebody compare a
10 GC/MS to a scanner, but it has settings, yes.

11 Q. What are those? Can you list them?

12 A. All of the settings?

13 Q. Well, how many are there? Let me ask
14 you that question. Maybe none of them is too big.

15 A. When you say "settings," you mean like
16 temperature, pressure?

17 Q. Anything you're able to change on that
18 device before you use it.

19 A. You mean the motion of like turning
20 knobs and that's -- that's not how -- GC/MS
21 operates by software.

22 Q. Okay. Using the software, then. What
23 are some of the settings that you can change? You
24 mentioned, for example, heating the sample at 70
25 degrees Celsius. Does the GC/MS do that?

1 LaPorte

2 A. No, that's separate from the GC/MS. So
3 the GC/MS, there are temperature settings that you
4 can adjust, pressure. There's various temperature
5 settings, if you will, in different -- well, not
6 various but in different areas of the GC/MS. So
7 we have what's called the inlet. That could be a
8 temperature. And then the temperature that you
9 set your column at or your oven. That would be a
10 different place where you could set the
11 temperatures.

12 You have pressure -- those are
13 primarily -- I guess we're talking about certain
14 types of variables. Those would be the main
15 variables.

16 Q. And how many others would you think
17 there would be, just a rough figure? I'm not
18 going to challenge you later and say, you know,
19 there's 35 and you guessed 30.

20 A. No, I know what you're asking. But
21 there are like -- I guess I'm trying to think of
22 the major parameters, and those temperature,
23 pressure, those would be the major parameters.

24 Q. These other experts in your field that
25 we've talked about, Aginsky, for example, does he

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use GC/MS?

A. Yes.

Q. Do Gaudreau and Brazeau, the Canadians, use GC/MS?

A. They do.

Q. And I don't remember the names, so forgive me, but the Russians that you referenced in your report, do they use GC/MS?

A. Aginsky was the Russian --

Q. Ah.

A. -- back in 1993. So yes, he used GC/MS.

Q. And then the Germans you mentioned there, is that Bügler?

A. Bügler.

Q. Does he use GC/MS as well?

A. They use GC/MS.

Q. And do they set these parameters the same as you when they're running their GC/MS machines?

A. I would say generally speaking we are -- we are using kind of similar parameters. I think maybe what we need to preface with or understand is that those parameters are set to

1 LaPorte

2 achieve a -- what we call good chromatography.

3 So I don't know if we have any peaks to
4 look at or anything like that, but when you do --
5 when you do gas chromatography, you get a
6 graphical representation. So those parameters
7 that you set are -- what you're aiming for is to
8 get a good peak, if you will, nice peak, a good
9 peak shape. So --

10 Q. Are there any published -- go ahead.

11 A. I was going to say, generally speaking
12 we used -- I would say we typically used similar
13 parameters.

14 Q. Are there any blind studies where these
15 parameters have been tested to determine whether
16 they affect the results from the GC/MS machine?

17 A. Well, now -- now we're actually --
18 we're getting into sort of basic chromatography
19 theory. That's -- this goes well beyond dating of
20 inks or even analyzing inks. This is basic
21 chromatography theory.

22 Yes, for example, I used to be a drug
23 chemist before I went to the Secret Service. And
24 I worked at the Anne Arundel County Police
25 Department at Millersville, Maryland, and I worked

1 LaPorte

2 at the Virginia division of forensic science.

3 We did GC/MS analysis in both places.
4 There were maybe some different parameters from
5 one GC/MS to the other, but generally speaking we
6 would achieve the same results.

7 Q. Well, are there any blind studies
8 testing whether these different settings on the
9 GC/MS can affect results of PE testing?

10 A. If you're a trained chemist, you can
11 determine whether those settings are sufficient or
12 not. When I originally starting doing GC/MS on
13 inks back in 2002, we had -- we tried different
14 types of settings. We looked for -- because those
15 settings can control the time at when the
16 phenoxyethanol is eluted from the column. So we
17 would -- we would test sort of different
18 parameters -- adjusting the pressures, adjusting
19 the temperatures -- and so forth to achieve nice
20 peak shape.

21 Also the other objective we struggle
22 for -- not struggle for but we -- we shoot for in
23 chemistry is if two compounds come out of the GC
24 column around the same time, we want good
25 resolution. So that's another critical part of

1 LaPorte

2 GC/MS is achieving good resolution.

3 Q. Are there any blind studies that have
4 been published regarding how GC/MS settings can
5 affect the outcome of the results of using that
6 machine for PE testing?

7 A. I don't know -- I think more --

8 MR. SOUTHWELL: Asked and answered.

9 A. More important than blind studies are
10 studies on known samples.

11 Q. My question is important to me. Are
12 there any known blind studies? That's just "yes"
13 or "no" what I'm looking for. I have tried it
14 three times now, and you have given me paragraphs.

15 MR. SOUTHWELL: He answered the
16 question.

17 A. I'm sorry, I'm --

18 MR. BOLAND: If you read the
19 transcript, he hasn't. He didn't say yes or
20 no, are there blind studies. That's my only
21 question.

22 MR. SOUTHWELL: Versus what?

23 Q. Are there any blind studies done as to
24 whether the settings on the GC/MS machine, if
25 they're changed, can affect the outcome of PE test

1 LaPorte

2 results?

3 A. There are probably numerous, numerous
4 studies that precede my birth that were done on
5 GC/MS to look at those types of factors. Those
6 are just -- those are very, very well-understood
7 theories in practice.

8 Q. Is it true that you, you personally,
9 first suggested the validity of PE testing, for
10 lack of a better term, what you did in this case,
11 in an article in about 2004 sometime? Is that
12 fair to say?

13 A. I'm sorry, repeat that. Am I the
14 first?

15 Q. No, that's when you first did it.
16 You're not the first person to have done it, but
17 that's the first time you published something on
18 suggesting the PE testing method, in 2004, or is
19 it earlier?

20 A. We began the work in 2002. It takes a
21 long time to publish a paper.

22 Q. When did you publish it? 2004?

23 A. I think it came out -- it was in print
24 in 2004. We were working -- I arrived at the
25 Secret Service in April of 2001, and I believe

1 LaPorte

2 that we began investigating this at least by late
3 2001, early 2002.

4 Q. Maybe this GC/MS I'm asking the wrong
5 question. Is it the case that it doesn't matter
6 how you set -- how you make the settings on the
7 GC/MS machine, it will not affect the outcome of
8 your PE testing results like you did in this case?
9 Is that true?

10 A. Oh, no, no, I never said that.

11 Q. Could it affect, depending on how
12 someone chooses to set GC/MS, the eventual results
13 they will get for PE testing? I don't know the
14 answer. I'm asking you.

15 A. If you look at -- actually if you look
16 at my figure that was in my report --

17 Q. What figure is that? Let's go to that.

18 A. Here we go. Figure L.

19 Q. What page is that on so I can get to
20 it?

21 A. That's on page 61 of 67.

22 MR. SOUTHWELL: Just so it's clear, I
23 think this is Exhibit L to Mr. LaPorte's
24 report.

25 Q. To your report?

1 LaPorte

2 A. Yes. So the peak in the rectangular
3 area is the peak for phenoxyethanol. That is what
4 I would call a very, very good chromatography. So
5 that's the peak that I'm interested in look at.

6 The peak at 4.82 -- I'm sorry, it would
7 be 4.81 on the right figure and 4.82 in the left
8 figure. This is cropped out, so you don't see the
9 exact peak height of it. But it's -- that's what
10 I call -- that's what's referred to as an internal
11 standard. So I'm comparing that peak with the
12 phenoxyethanol peak to quantitate how much is
13 there.

14 But that peak and that separation that
15 we get between those peaks, that would be --
16 that's ideal. Any chemist would look at that and
17 say this is good chromatography, so he must have
18 pretty good settings, must have the right
19 settings.

20 Q. Well, my question -- I'm not so much
21 with this question asking whether you had the
22 right settings; I'm asking if you -- if a person
23 changes the settings on a GC/MS machine does --
24 could that affect the resulting -- could that
25 affect the results of a PE test like you did in

1 LaPorte

2 this case.

3 A. Well, you can -- you can change one
4 setting -- if you -- I'm sorry, if you change one
5 setting, you could counterbalance that setting by
6 changing the other.

7 For example, if I use a different
8 temperature, maybe increase the pressure a little
9 more, that may be different. I may not
10 actually -- I may make changes, but I may not
11 create differences.

12 Q. Okay. I understand that.

13 If you used -- if you had two of the
14 same samples of ink taken from the same piece of
15 paper and let's hypothetically say you know it to
16 be -- you watched the person to put the ink on the
17 paper and you waited six months and went back to
18 it -- and you did the identical what I'm calling a
19 PE test like you did in this case on both those
20 pieces of paper and ink.

21 But as you went through the process you
22 changed a bunch of settings on the GC/MS machine
23 between these two testing runs, not trying to
24 compensate one for the other, you just made the
25 pressure super high on the machine in one and made

1 LaPorte

2 it super low on the other, would you get different
3 results -- would you report back different results
4 regarding PE because of those settings?

5 A. That would affect the testing result,
6 yea. If you change a whole bunch of settings,
7 yeah.

8 Q. I'm saying if you do it purposely to
9 try to make the PE results to come out wildly
10 different, you could do it, it could be done?

11 A. In terms -- I mean -- the only thing
12 you could potentially do is just make this a lot
13 worse, like not -- where you wouldn't even be able
14 to do -- you wouldn't even be able to interpret
15 the data.

16 But to answer your question, if you
17 make a bunch of changes, that could result in
18 another change.

19 Q. Do you feel it's important that a
20 person who's doing this PE testing properly set
21 the GC/MS machine when they're doing it?

22 A. If there's a person that's doing PE
23 testing, they should understand gas
24 chromatography/mass spectrometry, absolutely.

25 Q. And they should set the machine

1 LaPorte

2 correctly?

3 A. When you say set the machine correctly,
4 you should have enough background knowledge to
5 know that the machine is operating properly and --
6 those are important quality control questions.

7 The reason that I provided the graphic
8 in the report is so that if you have another
9 chemist they'd be able to look at that and say
10 GC/MS is not an issue here, he has very good peak
11 shape. Any chemist with any kind of adequate
12 training would be able to look at that in a second
13 and say that's fine.

14 Q. And in the other articles we've looked
15 at today, some of which were cited in your -- all
16 of which were cited in your report, they don't
17 necessarily all have GC/MS charts like the one
18 we're looking at here on page 61 of your report?

19 A. I believe that some of the articles
20 have those GC/MS charts, but I don't know for
21 certain if all of them did or did not.

22 Q. All right. If we could look at -- I
23 don't know the exhibit number. I think it was 3
24 or 4. It's the report of yours from another case,
25 April 17th, 2012, it was dated.

1 LaPorte

2 A. Yes. I think that was 3, LaPorte 3.

3 Q. LaPorte 3.

4 And just as a layman -- I'm kind of
5 summarizing this. If you don't think it's
6 accurate, let me know. This report was done to
7 determine if stock certificates had been
8 backdated? Is that a fair summary?

9 A. I'm -- I feel very uncomfortable
10 discussing the results -- or the -- other than
11 what's written in the report. I mean, you can --
12 I can read the request to you.

13 Q. That's fine. If you don't think that's
14 a fair characterization, then you can say so. I'm
15 just trying to get a summary so we're all on the
16 same page.

17 There are stock certificates that you
18 analyzed in this report?

19 A. No, there was more than that. There's
20 a whole list of the questioned documents. I
21 believe there were 25 that were listed. But there
22 was a record that went along with the stocks as
23 well, like a log, a log sheet.

24 Q. Like a ledger of some kind?

25 A. A ledger, yeah.

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LaPorte

Q. If you could look on page 13 of that document. And in the second full paragraph that starts with -- the paragraph starts with the words "after running the GC/MS." Do you see that paragraph?

A. Yes.

MR. SOUTHWELL: I'm going to object to any specific questioning about this. The witness said he hasn't reviewed this. If you want to let him review it and let him know what you're going to ask and he review it, you know, that's fine.

MR. BOLAND: There's no need to coach him. I'm asking him questions. If he's unable to answer them, he can not answer them.

MR. SOUTHWELL: I think it's fair, given what the testimony was earlier with respect to his familiarity with the report.

MR. BOLAND: Very well.

Q. In this paragraph do you see the sentence near the end of the paragraph that starts "In this case, testing on the 2003 and 2010 entries resulted in average loss of 71 percent PE."

1 LaPorte

2 MR. SOUTHWELL: I'm sorry, what
3 paragraph are you?

4 MR. BOLAND: The second full paragraph
5 on the page.

6 MR. SOUTHWELL: Oh, I see.

7 Q. You see that sentence, Mr. LaPorte?

8 A. Yes.

9 Q. And this is your report from this case;
10 right? You already said that.

11 A. Yes, to the best of my knowledge, this
12 looks to be the report.

13 Q. And 71 percent of PE, as you say in the
14 sentence, far exceeds the 25 percent threshold;
15 right?

16 A. Yes.

17 Q. You describe in the next sentence how
18 you obtained that loss of PE. You indicate that
19 it was evaporated from the ink samples after
20 having been heated; correct?

21 A. Yes.

22 Q. That's roughly -- that's not roughly;
23 that's exactly the same process you applied in
24 this case, in our case?

25 A. Yes, the same -- it was the same method

1 LaPorte

2 that I used, yes.

3 Q. Same method, right.

4 In the very next paragraph, you talk
5 about an additional -- the very first sentence, an
6 additional PE analysis you did April 12th of 2012
7 on the same sample. Do you see that?

8 A. Yes. This was at a later date --

9 Q. Right.

10 A. -- than the original PE testing.

11 Q. Right. You did an original PE test on
12 the sample. Then it looks like you went -- what's
13 the date here? It looks like you went about two
14 months later and did another test; is that right?

15 A. That I don't recall. I don't have my
16 notes to know what date I conducted those tests
17 on.

18 Q. Let's look at the bottom of page 12,
19 the previous page. You see that paragraph at the
20 bottom. It starts with: I was able to perform
21 GC/MS testing.

22 A. Yes.

23 Q. And then you indicate you did that on
24 some of the questioned documents on April 1st,
25 2012; right?

1 LaPorte

2 A. Okay.

3 Q. You talk about using ink A?

4 A. Yes. There were multiple formulations
5 of inks that were identified.

6 Q. Okay. And then on page 18 of this
7 report, if you can go there, at the top of the
8 page your conclusion was that it's highly probable
9 that the entire ledger of entries from entry 1
10 through the entries that correspond to certificate
11 17 were written contemporaneously on or after
12 January 23rd, 2012.

13 A. Yes.

14 Q. Do you see that?

15 A. Yes.

16 Q. So you tested it in April of 2012, did
17 your PE test; correct?

18 A. Yes.

19 Q. Got a 71 percent loss; correct?

20 A. Yes.

21 Q. And then your conclusion was -- and you
22 can correct me if my math is off. Your conclusion
23 that we just read at the top of 18 was that the
24 ink was written, at the most, 59 days earlier?

25 MR. SOUTHWELL: Objection.

1 LaPorte

2 A. That was -- this is where I'm starting
3 to get uncomfortable, because that involves a lot
4 of interpretation of the data. So I concluded
5 that there were multiple entries on this
6 particular ledger. One of them was dated 2001, I
7 believe, and then there was another one that was
8 dated 2010, and then there was a following one
9 that was dated 2012, of January.

10 So the entry in 2001 had a similar
11 level of phenoxyethanol or similar loss of
12 phenoxyethanol as the entry in 2010 and 2012.

13 So there were other findings in this
14 report as well too that corroborate that, but the
15 idea is that it would have been created -- as I
16 concluded in here, it was highly probable that it
17 would have been created on that January 23rd date
18 of 2012.

19 It's possible that it was done in April
20 of 2010, but it wouldn't make any sense because
21 all of the entries that followed April were in
22 January.

23 This is a complex case to explain.

24 Q. And you did one test on April 1st of
25 2012 -- we just talked about that from the bottom

1 LaPorte

2 of page 12 -- I'm sorry, April 1st, yeah, 2012;
3 right?

4 A. Yes.

5 Q. And then you performed a second test on
6 the samples which you called an additional PE
7 analysis --

8 A. Correct.

9 Q. -- on April 12th. So that's 11 days
10 later.

11 A. Right.

12 Q. And 11 days later, using ink A, as the
13 paragraph we're referring to on page 13 says, you
14 found then a 46 percent loss of PE; correct?

15 A. Correct.

16 Q. And 11 days earlier you'd found a 71
17 percent loss of PE?

18 MR. SOUTHWELL: Objection to the form.

19 Is it in fact the same?

20 MR. BOLAND: I'm just asking him. He
21 can answer "yes" or "no."

22 Q. It says in that same paragraph,
23 actually the paragraph above, 71 percent loss of
24 PE on April 1st --

25 MR. SOUTHWELL: Of what?

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MR. BOLAND: He can answer the question.

Q. Does the report in fact say an average loss of 71 percent of PE? That's your words in the report; true?

A. Correct.

Q. And 11 days later it says in your report you conducted an initial PE analysis April 12th and there was a 46 percent loss of PE when the levels from the unheated samples were compared with the heated samples; correct?

A. Correct.

Q. So in 11 days PE was evaporating from these samples?

A. Do you know that curve that we've been referring to? If you look on the early part of that curve, the samples decrease significantly in that time. That's what substantiates the January 23rd, 2012, is that this ink is still an aggressively fast-aging process.

And as a matter of fact, which I can let you know, which is on the record, this document was being asked for for several years and was put forth to the court in March of 2012.

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Q. And an average loss of 71 percent, as you say here, of the ink A, nearly two weeks prior to your second testing, is a strong indicator that the ink is still in the initial stages of drying; true?

A. Yes. I should also mention that I tested three other ink formulations in this case, and many of them had high levels of phenoxyethanol loss as well too.

Q. When you say something is in initial stages of drying, how many months old would that be, based on your expert opinion, the initial stages of drying is?

A. It's -- you can't define that period of initial, but when we use it for an ink -- if there's an ink that's fast-aging and it ages out within six months, that initial stage might be the first month. But if it's an ink that takes 24 months, the initial stage could be the first 6 months.

Q. Which kind of ink was this in this report?

A. I can't tell you that. I know that -- I mean, if I went back and tested it now several

1 LaPorte

2 months later, I might be able to tell you that
3 it's a fast-aging ink but...

4 Q. What kind of ink do we have in our
5 case? Fast or slow?

6 A. I can't tell. I have only made one
7 measurement.

8 Q. So you don't know?

9 A. No, you can't determine if something is
10 a fast or slow-aging ink unless you do multiple
11 measurements of it over time.

12 Q. Did you tell the defense attorneys that
13 fact?

14 A. No.

15 Q. Would you be able to determine if the
16 ink in our case is fast or slow aging if you took
17 more plugs?

18 A. At this point it's -- it's been over a
19 year now. So there's a good chance that you might
20 not even get any phenoxyethanol.

21 Q. Why --

22 A. You would have to take like regular
23 measurements, not just -- not just two
24 measurements.

25 Q. Why it being over a year since what?

1 LaPorte

2 What does it mean when you say it's been over a
3 year now?

4 A. It's been over a year since the other
5 testing was conducted. So at this point in
6 time -- I don't know. That's speculating. But
7 it's been over a year or close to a year.

8 Q. Yes. What does "over a year" mean?
9 Why is that relevant to you not being able to
10 determine if it's fast- or slow-drying -- aging
11 ink?

12 A. It could be completely aged out by this
13 point.

14 Q. How could that happen between last year
15 and this year, that it's completely dry?

16 A. Because some inks dry like in three
17 weeks; some dry in two years. So what I'm saying
18 is it's hard -- you can't just take two points.
19 You would need multiple points after time to
20 determine whether it's fast or slow aging, at
21 known intervals.

22 MR. BOLAND: All right. Let's take a
23 short break if we could.

24 THE VIDEOGRAPHER: The time is
25 approximately 3:22 p.m. This is the end of

1 LaPorte

2 Media Number 3. We're off the record.

3 (Recess taken from 3:22 to 3:45.)

4 THE VIDEOGRAPHER: The time is
5 approximately 3:45 p.m. This is the beginning
6 of Media Number 4. We are on the record.

7 Q. Mr. LaPorte, if you could look at page
8 13 of the April 17th, 2012, report. I don't know
9 exactly what exhibit number that is. Is that 6?

10 A. LaPorte 3.

11 Q. All right 3.

12 MR. SOUTHWELL: What page?

13 MR. BOLAND: Page 13, and the second
14 full paragraph.

15 Q. Isn't it the case that in that case
16 finding an average loss of 71 percent of PE you
17 termed that, in the first sentence, usually high,
18 especially for entries purported to be over eight
19 years old; correct?

20 A. I'm sorry, where is that?

21 Q. Second full paragraph, the one that
22 starts with "after running GC/MS."

23 You confirmed that the levels of PE
24 were unusually high?

25 A. Yes.

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LaPorte

MR. SOUTHWELL: Objection to the form.

Q. Right?

A. Yes.

Q. And unusually high in this case was an average loss of 71 percent?

MR. SOUTHWELL: Objection.

Q. True?

A. That's compounded with the paragraph above. So when I ran the GC/MS analysis in the full-scan mode first, it was a high level. And then I reran it in the sim mode, and it was still a high level. It was even higher.

Q. Is 71 percent as an average unusually high? Is that what you mean there?

MR. SOUTHWELL: Objection.

A. For losing the phenoxyethanol?

Q. Yes, that's what I meant. The loss of phenoxyethanol, is that unusually high?

A. In all the casework I've ever done, 71 percent is the highest, and the 64 percent I got in this case is the second highest.

Q. In fact, in the report in this case, you refer to the loss percentage as unusually high as well?

1 LaPorte

2 A. Yes.

3 Q. So still on that document you have in
4 front of you.

5 A. Yes.

6 Q. In this case your report determined,
7 based on the 71 percent loss of PE, that the
8 writing you had examined had been produced
9 anywhere within the previous 69 days?

10 MR. SOUTHWELL: Objection,
11 mischaracterizes.

12 A. No, based on the PE test alone, it was
13 produced within the past two years.

14 Q. Where does it say that in this report?

15 A. So that's -- it's in the 24-month part
16 of it but --

17 Q. What page, I'm sorry?

18 A. But taking -- well, that would be -- I
19 use the 24 months in the description part.

20 Q. What page would that be?

21 A. That would be page 7 of 19, the
22 paragraph under the chart.

23 Q. Where in that paragraph do you say that
24 the ink in this case is less than two years old?

25 A. No, I say that when it's more than 25

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LaPorte

percent it's two years -- it's less than two years old.

Q. Okay.

A. I adhere to that same standard. There were --

Q. I see that. And you're indicating that's the same standard you refer to in the report in this case?

A. I say in my conclusion 1(a) --

Q. What page is that on?

A. That's on page 17 of 19 -- it is highly probable that the inks used to produce entry one at the top of the ledger reading, in quotes, Paul turned over book. It has 20 blank share certificates in book, undecipherable initials, October 2003. And the written notations up to the amount paid thereon column in the ledger that sources to certificate 17 were not placed on the document in October 2003 and January 2010 respectively.

So that -- that conclusion goes to the two-year time frame. It's all of the other evidence, when it's all put together, that I make the conclusion that it was done or at least the

1 LaPorte

2 evidence to suggest that it was done in --
3 sometime after January 23rd, 2012.

4 Q. In that paragraph that you're referring
5 to, that 1(a), you see the sentence where you say,
6 The amount of PE detected in the samples -- and
7 the sentence goes on -- is indicative of a fresh
8 ink?

9 A. Yes.

10 Q. Is that based on the average loss of 71
11 percent?

12 MR. SOUTHWELL: Objection.

13 Q. That's the question, is it.

14 A. Fresh -- for all practical purposes, I
15 think it would be very clear if we define fresh as
16 two years old.

17 Q. Oh, a fresh ink is two years old?

18 A. Yeah, it's two years old.

19 Q. Is an ink that's two months old a fresh
20 ink?

21 A. It could be. But for definition
22 purposes, fresh is something that's still aging.
23 So it's within that two years.

24 Q. Ah, okay. Fresh means still aging?

25 A. Yes.

1 LaPorte

2 Q. Okay. So an ink that -- if you detect
3 a loss, hypothetical, of 30 percent of PE, that's
4 a fresh ink, still aging?

5 A. Yes.

6 Q. Seventy percent loss of PE, it's a
7 fresh ink, still aging?

8 A. Still aging. You can't use the
9 percentage -- the percentage doesn't correlate to
10 the age either. It doesn't work that way.
11 Because ink formulations are different, so they
12 will age at different rates.

13 Q. Well, but in this report you do
14 correlate the percentage to an age. If we look
15 back on page 13.

16 A. No, I don't correlate the percentage to
17 an age. The age is based on -- it's less than two
18 years old because the PE level is greater than 25
19 percent. That's kind of the simplest way I can
20 put it.

21 Right in paragraph 1(a) -- or, I'm
22 sorry, in Section 1(a), I have the sentence I
23 think the second-last sentence at the bottom of
24 the paragraph: This far exceeds the baseline
25 value of 25 percent which is used to indicate that

1 LaPorte

2 an ink is younger than two years.

3 Q. And that's the same standard you talked
4 about in the report in this case?

5 A. Exact same standard.

6 Q. And can you look at the top of page 18?

7 A. Yes.

8 Q. That first sentence: It is highly
9 probable that the entire ledger of entries from
10 entry one to the entries that correspond to
11 certificate 17 were written contemporaneously on
12 or after January 23rd, 2012.

13 You see that; right?

14 A. Right.

15 Q. So it's your position that those
16 entries which have an average 71 percent loss of
17 PE were written either on January 23rd, 2012, or
18 later; correct?

19 MR. SOUTHWELL: Objection, asked and
20 answered. You keep asking the same thing.
21 He's already answered it's not just that --

22 MR. BOLAND: You don't have to coach
23 him.

24 Q. And isn't that the case --

25 MR. SOUTHWELL: I'm not coaching. I'm

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LaPorte

objecting to the questions. It's getting to harassment.

Q. You're not saying two years there; you're saying on or after January 23rd, 2012; correct?

A. If you read in the third sentence in that same paragraph: Given that it is highly probable that these entries and some of the entries in between were not created on the purported dates, it is logical to deduce that they were all created in a contemporaneous time frame.

Given that the last date on that sheet was January 23rd, 2012, if they're all created contemporaneously, in theory they all could have been created contemporaneously in April of 2010. But that wouldn't make sense because the last date is January 2012. And I don't think somebody was creating something in April of 2010 and writing a January 2012 date in there.

Q. Why not? Why can't people write a date in the future on a document today?

A. They could have. That's why the opinion is highly probable. It's not a definitive conclusion with a hundred percent certainty.

1 LaPorte

2 Q. My point is you tested this ink in
3 April, and this conclusion in number 2 indicates
4 that the ink is either 69 days old or younger. Is
5 that not the case? I'm sorry --

6 MR. SOUTHWELL: Objection.

7 A. I'm sorry, I'm not getting the context
8 of the question that you're asking.

9 Q. You make a statement on page 18 of this
10 report at number 2 that the ink you tested was
11 either written 69 days before you tested it or
12 more recent than that, on or after January 23rd,
13 2012. Isn't that the case?

14 MR. SOUTHWELL: Objection,
15 mischaracterizes.

16 A. Based on a consideration of all of the
17 evidence, I concluded that it is highly probable
18 that the entire ledger of entries from entry 1
19 through the entries that correspond to certificate
20 17 were written contemporaneously on or after
21 January 23rd, 2012.

22 Q. And was your PE testing one of the
23 factors that led to that conclusion?

24 A. Yes.

25 Q. And you tested the ink twice, and the

1 LaPorte

2 second time you tested it 11 days later, there was
3 a 46 percent loss of PE; correct?

4 A. Yes.

5 Q. And even the -- and with a 46 percent
6 loss of PE, does not -- didn't change your
7 conclusion that the ink was written on January
8 23rd, 2012, or more recent than that; right? That
9 doesn't change anything; that's consistent with
10 your opinion?

11 A. It's consistent with my opinion, yes.

12 Q. And the percentage loss of the ink in
13 this case is 64 percent, the average; right?

14 A. Yes. But you can't -- you can't use
15 that percentage to indicate the exact age of the
16 ink.

17 Q. Fair enough. But we can use that
18 percentage to indicate that the ink has to be less
19 than 80 days old, because a 46 percent loss in
20 this case was 80 days old or earlier -- or more
21 recent?

22 A. The only way you can use the PE test,
23 the way that I use it, is to say that if it
24 exceeds the 25 percent threshold with a qualified
25 opinion that it is less than two years old.

1 LaPorte

2 Q. In this case here, in the Facebook
3 case --

4 A. Yes.

5 Q. -- when you got a 64 percent average
6 loss of PE, why didn't your opinion say it's
7 highly probable this ink is 80 days old or
8 younger? Why didn't you say that?

9 A. Because that -- that's what I've been
10 explaining all along. I use a conservative
11 approach. The conservative approach, that is less
12 than two years, because how am I going to -- how
13 can you take a number and then say, well, that's
14 80 days and the next time I have a case, well,
15 that's 90 days?

16 Inks are different, and they age
17 differently. We've used -- that graph, the graph
18 that we've been talking about and referring to, is
19 kind of an excellent example of you can start at a
20 certain point and you can end at a certain point
21 at 24 months. That's consistent. Everything else
22 in between, though, varies.

23 Q. Is it possible the ink in this case is
24 less than 80 days old?

25 A. No, it's -- I would never say that.

1 LaPorte

2 Q. Why is it not possible?

3 A. Well, it's -- it's less -- I can -- I'm
4 sorry. Correct, it's highly probable that it's
5 less than two years old, so 80 days falls in
6 there.

7 Q. Could be?

8 A. It's less than two years old.

9 Q. It could be ten days?

10 A. It could be ten months.

11 Q. Well, I asked about ten days. Could it
12 be ten days old?

13 A. It could be ten months. We use some
14 logic. There's some common sense we use.

15 Q. No, sir.

16 A. You look at when the document was
17 obtained the first time too. So there is some
18 logic that needs to be applied.

19 Q. So your PE results depend on when the
20 document was obtained?

21 A. No, my PE results say that it was done
22 two years -- within the past two years. I can't
23 tell you when it was done. I can't tell you the
24 exact age in between that time. That would be
25 inappropriate and unscientific.

1 LaPorte

2 Q. But in this case, this other case, you
3 did tell an exact time. You say right in the
4 report on page 18.

5 A. Exact? I said it was done after
6 January 23rd. I don't know how that is exact.
7 And I said it was highly probably.

8 Q. Highly probable within a 69-day period,
9 and in our case you can't give us a 69-day period,
10 even though the percentage is about six percentage
11 points off?

12 MR. SOUTHWELL: Objection.

13 Q. True?

14 A. You're mischaracterizing what that
15 percentage relates to. I don't know how I can
16 make it more clear. But different inks age at
17 different rates, and they will have different
18 percentages of phenoxyethanol that are lost.

19 Q. And you don't know what rate the ink in
20 this case ages at, do you?

21 A. I know that, based on all of the
22 studies that have been done over the past two
23 decades, that the inks typically at 24 months are
24 not going to age any longer.

25 Q. That's not my question.

1 LaPorte

2 A. You've pointed that out -- you've
3 pointed that out a number of times here.

4 Q. You don't know how quickly or slowly
5 the ink in this case ages, do you, sir?

6 A. No.

7 Q. You have no idea?

8 A. I don't know that.

9 Q. Right.

10 A. I can't tell you that.

11 Q. So if it ages incredibly slowly --

12 A. Up to 24 months.

13 Q. No, sir.

14 A. Yes. Yes, sir. I don't know --

15 Q. You said previously some inks age out
16 at six months.

17 A. Yes.

18 Q. Is this one of those inks? You have no
19 idea?

20 A. I don't know that. I said I can't tell
21 you whether it's a fast-aging or slow-aging ink
22 unless we took multiple measurements over multiple
23 time intervals to know that. That would be the
24 only way to determine if it's slow or fast aging.

25 Bögler published a study in 2008 where

1 LaPorte

2 he identified some inks that aged out within five
3 weeks, six weeks. Those are called fast-aging
4 inks.

5 Q. Could you have a 64 percent loss, like
6 you had the average in this case, happen in month
7 23?

8 A. Yes. That's a possibility.

9 Q. Any published studies that have
10 indicated that that's a finding that can be made?

11 A. No, but that's what -- I use that --
12 when I explained early on in my deposition about
13 using the target for accuracy, I want to -- my --
14 my ultimate objective is to be accurate. I don't
15 want to be wrong. I don't ever want to be wrong.
16 So I take a more conservative approach.

17 There are others that will use
18 different time intervals to make conclusions. I
19 don't do that. I use the 24 months.

20 It was done within the past 24 months.
21 I can't tell you when.

22 Q. Based on the 24 months, this ink, then,
23 could have been written on this document in August
24 of 2009. You already said that; right?

25 A. Yes.

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LaPorte

Q. Or in September of 2009.

A. Yes.

Q. Or in any of the months intervening there all the way up to the day before you analyzed it -- I'm sorry, took the plugs?

A. In theory, yes.

Q. In theory.

Also base on your opinion here, had you tested this ink in August of 2009, is it your position you would have had a loss of 64 percent of PE, an average loss, in that month?

MR. SOUTHWELL: Objection to the form.

A. I don't know what that level would have been.

Q. It would have been higher or lower than 64 percent?

A. I would theorize that would have been a lot higher.

Q. And two months after August of 2009, would the percentage loss have gone down or up?

A. It depends if it's a slow-aging ink because now that percentage loss doesn't go down as quickly. So it might be 75 percent, and then three months later it could go 73 percent, 71

1 LaPorte

2 percent, or it could go from 75 to 40.

3 That's -- that's exactly the point I'm
4 trying to make is we don't know the dynamics of
5 every single ink. That's why you use the first
6 point times zero on the graph and times 24 months.
7 Those are consistent. Nobody has any debate about
8 that. It's what happens in between.

9 Q. Have you seen a chart anywhere or any
10 published papers that have shown that an ink
11 that's put on paper day one and then gets tested
12 24 months later but still has the ability of loss
13 of 64 percent of PE? Have you seen that?

14 A. No, but I do know of some inks that are
15 definitely slow aging where if you test it on day
16 one -- first of all, day one is not really an
17 accurate way to start, because the ink is still --
18 it's like completely wet. It hasn't even really
19 started to polymerized yet. We'll say a couple
20 days -- two days after it's been applied to the
21 paper.

22 Certainly I've seen levels that start
23 out high and they stay high. And I've seen levels
24 that start out high and go down really fast, even
25 within a couple -- within two to three weeks.

1 LaPorte

2 Q. When you stay start out high and stay
3 high, how long do they stay at like 64 percent?
4 What would your expert opinion be on that?

5 A. I can't give you an opinion on that.
6 I'm just telling you that there are certainly
7 situations or examples of inks that will -- like
8 we keep talking about slow age.

9 Q. And if you have a slow-aging ink and
10 it's stored at a temperature where PE doesn't
11 really evaporate, it could stay high for two
12 years?

13 A. No, there's -- what kind of temperature
14 are we talking about?

15 Q. Whatever temperature PE freezes at,
16 which you and I couldn't really agree on because
17 we weren't sure. Whatever that temperature is.

18 A. No, but you're saying like PE, when we
19 talk about the liquid solution of when it freezes,
20 is not -- it doesn't work like that.

21 Q. Well, how does it work?

22 A. Water freezes at zero degrees. I think
23 we all agree on that. There is water in gas.

24 Q. I think it freezes at 32. Oh, you mean
25 zero Celsius.

1 LaPorte

2 A. I'm sorry, Celsius, 32 degrees
3 Fahrenheit.

4 Q. Right, right.

5 A. Gas has water in it, to a certain
6 extent. Gas doesn't freeze at 32 degrees, and the
7 water in the gas doesn't freeze at 32 degrees,
8 because that's the way it mixes. It doesn't -- it
9 doesn't -- there's not like a -- sort of a one-to-
10 one scenario that if something freezes at this
11 point when it's mixed into a solution of other
12 things that it freezes at that exact point.
13 That's not how it works.

14 Q. How does it work in ink? What's the
15 freezing point of PE when it's in a ballpoint ink?

16 A. I don't know that.

17 Q. Any published papers on that?

18 A. No.

19 Q. Any chance that the freezing point goes
20 higher for PE when it's involved in an ink?

21 A. I can't imagine it would, but I don't
22 know.

23 Q. And there's no studies on how much
24 lower the freezing point of PE goes when mixed
25 with ink as opposed to separated out?

1 LaPorte

2 A. No.

3 Q. Let me just be a little more detailed
4 on this about the 64 percent loss you've got in
5 our case. And the two years that you've
6 emphasized necessarily means the ink you tested
7 could be less than three months old; true? That's
8 within two years?

9 A. Yeah, it's less than 24 months.

10 Q. Any of those months within there, it
11 could be any of those? It could be less than six
12 months old?

13 A. It could be, yes.

14 Q. And less than a year old?

15 A. It could be, yes, and two years old.

16 Q. And you don't know which one of those
17 it is?

18 A. No, that's -- I mean, I think my report
19 is very clear on that.

20 Q. You've testified in a bunch of
21 different cases in the past about PE testing;
22 true? More than once, let's say, you testified
23 about it?

24 A. About PE testing in general, I mean?

25 Q. Or the use of PE testing in a

1 LaPorte

2 particular case.

3 A. Yes, I believe I have.

4 Q. And you'd agree with me that you've
5 testified before that PE testing really depends on
6 the type of document that the ink is on and its
7 storage conditions?

8 A. Yes.

9 Q. And the document that this ink was on
10 in our case that you tested, it was your testimony
11 before was somehow damaged. How would you
12 describe the damage to the document?

13 A. I'm sorry, are we talking about the
14 damage to this particular document in this case?

15 Q. Yes.

16 A. To the "work for hire" contract?

17 Q. Yes.

18 A. I would say that it was severely
19 deteriorated.

20 Q. How does that affect PE testing, the
21 damage to this document?

22 A. Well, there was -- the damage that was
23 done to this document was done to the dye
24 components within the ink. So ink consists of dye
25 components, vehicles, which include -- dye

1 LaPorte

2 components or colorants, as we'll call them, in a
3 vehicle, and the vehicle to be solvents, resins,
4 and then there's other materials in the ink.

5 So the damage that was done to this
6 particular document was done to the dye
7 components, not necessarily to the solvents.

8 Q. And PE is a solvent?

9 A. PE is a solvent.

10 Q. So it may not have been affected at all
11 by the damage to the document?

12 A. It may not have been, that's correct.

13 Q. Is there any way to know whether it's
14 been affected or not?

15 A. No.

16 Q. And what effect did the storage
17 conditions of this document have on your results?

18 A. Which storage conditions are you
19 referring to?

20 Q. The storage conditions of the two-page
21 "work for hire" document, what effect did that
22 have on your results?

23 A. What storage conditions are you
24 referring to, though, like what --

25 Q. How the two-page "work for hire"

1 LaPorte

2 document was stored, what effect did that have on
3 your results, how did you incorporate that into
4 your results.

5 A. You say "storage conditions." Which
6 storage conditions, I mean? I don't know the
7 storage conditions.

8 Q. So do you know what effect the storage
9 conditions could have had on the results of your
10 test, since you don't know what they are?

11 A. Was it stored in a freezer for eight
12 years?

13 Q. I'm asking you could you know the
14 effect of the storage conditions on the results of
15 your test if you didn't know the storage
16 conditions. That's my question.

17 A. As I mention in my report that storage
18 conditions can be considered. You also have the
19 sort of 25 percent threshold, if you will, takes
20 into account variations in storage conditions. So
21 there could be a 20 percent loss or an 18 percent
22 loss. That could still be -- those -- that
23 percentage of loss of PE could still indicate that
24 a document was fresh, if you will, less than two
25 years. But that takes -- that's why I use that 25

1 LaPorte

2 percent threshold, to allow for variations in
3 storage conditions.

4 Also that's why I express my opinion as
5 a highly probable. I'm virtually certain, but I
6 don't -- I haven't analyzed every single ink in
7 the world and I haven't -- I may not know the
8 storage conditions at the time. So -- I
9 compensate for that or I mitigate that in the
10 entire -- my entire conclusion.

11 Q. Are you aware of a declaration filed by
12 my client that describes the storage conditions of
13 the document?

14 A. I -- I recently read it, yes.

15 Q. And do those storage conditions factor
16 at all into your opinion of your results?

17 A. I think I'm -- I think I'm -- I mean,
18 when I'm shown that I'm obligated as a scientist
19 to consider those facts. Certainly there may be
20 some doubt about the veracity of the statements.
21 But as a scientist I put all that to the side. I
22 consider the facts.

23 And given those conditions, I don't
24 think -- in my opinion that has no effect -- no
25 significant effect on causing the phenoxyethanol

1 LaPorte

2 levels to stay as high as they did over a year
3 period.

4 Q. Why is that? Why did they not have an
5 effect?

6 A. Based on that declaration, the document
7 was in Buffalo. I know Buffalo experiences
8 springs and summers as well as winters. So there
9 are spring and summer times. So that's really
10 eight iterations of spring and summer, hot
11 temperatures.

12 Assume the house -- the way the
13 statement was, the house was -- there was no
14 central heating. You can assume there was no
15 central air-conditioning either. It was stored in
16 a box or a chest of some sort. So that -- that's
17 going to create a more confined area. That would
18 actually -- that may actually block, if you will,
19 or shield off some of the cold as well.

20 But given the fact the document's
21 purported to have been done in 2003, that just --
22 that doesn't make sense at all that the
23 phenoxyethanol levels would still stay that high
24 over that long a period.

25 MR. BOLAND: Mark this, please, as

1 LaPorte

2 whatever our next number.

3 (LaPorte Exhibit 8, transcript of
4 testimony of LaPorte from trial of USA v.
5 Hassoun, et al., marked for identification.)

6 Q. Mr. LaPorte, if you could identify
7 LaPorte Exhibit 8 and then describe that. Just
8 identify it for the record, please.

9 A. Yes, this appears to be a transcript
10 from a trial, the United States of America,
11 plaintiff, versus Adam Amin Hassoun, Kifah Wael
12 Jayyousi, José Padilla, et al.

13 Q. Can you go to page -- this is your
14 testimony in that case -- correct? -- a transcript
15 of your testimony in that case?

16 MR. SOUTHWELL: Objection. Do you want
17 him to read the whole thing?

18 MR. BOLAND: I'm just asking if this is
19 a transcript of his testimony in that case, if
20 it appears to be a transcript of his
21 testimony.

22 A. It appears to be a transcript of my
23 testimony. I don't know if this is my true
24 testimony, but I'm going to assume that it is.

25 MR. SOUTHWELL: Are you making that

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LaPorte

representation, Mr. Boland?

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

MR. SOUTHWELL: Okay. Do you want him to read the whole thing?

MR. BOLAND: I didn't ask him to read the whole thing, but if you want to keep coaching him, he might come up with that idea.

MR. SOUTHWELL: I'm not coaching him.

MR. BOLAND: You are. You've been coaching him the whole time, and I know why but...

MR. SOUTHWELL: All right. Well, I know why you're making that statement. All right.

MR. BOLAND: It's not a good day for you, and that's why you are upset.

MR. SOUTHWELL: Actually, it's hard to believe you're saying that, but fine. You can say what the record is --

MR. BOLAND: I'm just asking a question about --

MR. SOUTHWELL: Right. You can state what the transcript is. That might be easier

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if you can make a representation so we're not all futz around trying to figure out what this is.

MR. BOLAND: He just indicated what it was, a transcript of his testimony at that trial.

Q. Isn't it the case, sir, that if you look at page 66 at the top -- the page numbers on this document are along the bottom center.

A. Yes.

Q. Your testimony in this particular case regarding testing documents to age ink you stated, It really depends on the type of document that it's on, the storage conditions of that document, the type of ink that has been used, and so forth.

Isn't that your testimony?

A. That's fully consistent with what I've said today and fully consistent with what's in my report as well.

Q. And in our case you don't know the type of ink that we're dealing with; true?

A. No, it's a ballpoint ink. I know that.

Q. You don't know the formulation?

A. I don't need to know the formulation.

1 LaPorte

2 Q. That's not my question.

3 A. It's a dynamic aging test.

4 Q. But you don't know the formulation.

5 And before you did your -- before you turned in
6 your report -- or at the time you turned in your
7 report, you did not know the storage conditions of
8 the document; true?

9 A. I did not, as was noted in my report
10 too, that storage conditions are a factor.

11 Q. Did you ask the defendants -- did you
12 ask the attorneys for Gibson, Dunn what the
13 storage conditions of the document might have been
14 before you issued your report?

15 A. No.

16 Q. Did you ask anyone what the document's
17 storage conditions were before you issued your
18 report?

19 A. Anyone? Like who is anyone?

20 Q. Any of the experts for the defense.

21 A. No, was I supposed to call up the other
22 experts and ask them? That doesn't make any
23 sense. No, I didn't ask them.

24 Q. Do you typically issue reports when you
25 don't know things like the storage conditions of a

1 LaPorte

2 document or the ink formulation?

3 A. I believe that I explained that's why I
4 use the "highly probable" terminology, the 25
5 percent threshold, and then I put the statement in
6 my report that storage conditions can be a factor.

7 Q. Let's look at the actual circumstances
8 of this document. Let's start off with the type
9 of ink that has been used.

10 You don't know who manufactured the ink
11 that you tested from page 1 of the document;
12 correct?

13 A. Correct.

14 Q. And you don't know who manufactured the
15 ink you tested from page 2 of the document?

16 A. Correct.

17 Q. You don't know how much PE was in the
18 ink that was placed on page 1 on the moment that
19 it was placed on page 1, the amount of PE?

20 A. Not unless I was there when
21 Mr. Zuckerberg and Mr. Ceglia or Mr. Ceglia or
22 whoever signed it. I mean, I don't know that.

23 Q. And you don't know how much PE was on
24 the ink on page 2 when it was first placed on that
25 page?

1 LaPorte

2 A. No.

3 Q. Now, are there varieties of types of PE
4 itself, just that one component, or if PE is
5 present in an ink it's just a chemical? It's like
6 H2O. It's always water; it's always PE. Are there
7 different flavors of PE, to use a layman's term?

8 A. So when we speak about 2 -- we've been
9 speaking about 2-phenoxyethanol?

10 Q. Just that one, yes.

11 A. No, that's 2-phenoxyethanol. There
12 other components that could be present in the
13 2-phenoxyethanol in very minor -- like very minor
14 quantities that are just naturally in the solvent
15 as a result of the manufacturing process.

16 But no, 2-PE is 2-PE.

17 Q. And do you know how much PE is in --
18 wait. How many current ink formulations have PE,
19 if you know?

20 A. I know, based on the study that we
21 published, I mean, certainly over 85 percent of
22 black and ballpoints. But that went back to --
23 that went back all the way into the sixties or so
24 that we were testing inks.

25 I would say based on my experience it's

1 LaPorte

2 probably even over 90 percent of modern inks.

3 Q. How many back in 2003 would have had PE
4 in them? How many formulations?

5 A. I don't know how many formulations.
6 Like I said, we tested in 2003 and the 2004 study
7 that we published and over 85 -- around 85 percent
8 of black and blues had phenoxyethanol.

9 Q. Do other products besides ink that are
10 found in a home contain PE?

11 A. Phenoxyethanol might be a solvent
12 that's used in the manufacturing of it, of other
13 things, yes.

14 Q. Is it like an ingredient in some
15 products you can find around the house?

16 A. Generally speaking I don't know if it's
17 considered an ingredient, if you will, like --
18 typically -- I'm getting into an area that I'm
19 not -- I don't know exactly. But when you list
20 ingredients on a bottle of something, it usually
21 gives those main ingredients.

22 I've never come across something that
23 actually lists -- where I saw 2-phenoxyethanol on
24 the ingredients. It doesn't mean that it's not.
25 But I've never seen anything that lists that.

1 LaPorte

2 Q. And just to be clear, your report that
3 you submitted doesn't have any conclusions which
4 dispute Mr. Ceglia's claim regarding the storage
5 conditions of the document?

6 A. Say that again?

7 Q. Your report does not contain any
8 information disputing Mr. Ceglia's claim regarding
9 how the document that you tested was stored?

10 A. That's not correct.

11 Q. Okay. How -- what information in your
12 report disputes his claim about the storage
13 conditions?

14 A. He said he stored it in 2003. It
15 wasn't stored in 2003, because it wasn't created
16 until after 2009.

17 Q. And that's because of your -- the 64
18 percent PE loss calculation, et cetera?

19 A. Correct, like I said in my conclusion.

20 Q. So it's impossible that a document
21 created in 2008 under any storage conditions could
22 result in a 64 percent of loss of PE tested in
23 2011? Is that your testimony?

24 A. I never said that.

25 Q. So it is possible? Depending on how

1 LaPorte

2 it's stored, a document could be signed in 2003
3 and tested in 2011 and have 64 percent loss of PE?

4 A. If it was stored in a freezer over that
5 time.

6 Q. Where else could it be stored that
7 could create that?

8 A. I can't think of anything other than a
9 freezing temperature over a continuous time.

10 Q. Now, on the last sentence of page 67 of
11 your testimony in the Padilla case --

12 A. Yes.

13 Q. You see the last sentence: The only
14 time -- this is you talking. The only time we
15 would use that test, referring to PE, there would
16 have to be certain circumstances around that
17 document. First of all, we would use it to
18 compare.

19 MR. SOUTHWELL: This is on page 67?

20 MR. BOLAND: Starts on 66 and goes over
21 to 67.

22 Q. Now, you didn't do any comparing in
23 this case between multiple documents; you just had
24 one; correct?

25 A. That's not true. I compared with the

1 LaPorte

2 signatures on page 2.

3 Q. Well, that's one document.

4 A. In a relative sense, I mean, there was
5 a comparison. I mean, that was done.

6 Q. And so that's an appropriate -- that's
7 what you mean there by having -- using it to
8 compare? That's the same thing you mean here?

9 A. I think when we've reviewed LaPorte 3,
10 the report for the other case, that would be a
11 perfect example where you have multiple entries
12 purported to have been done over a long period of
13 time.

14 Q. Do you know how many other reports
15 you've offered related to PE testing where you've
16 indicated you have a highly probable conclusion?

17 MR. SOUTHWELL: Do you mean the
18 conclusion is about the PE testing?

19 Q. Just a PE test report just like you had
20 in this case where you concluded it was highly
21 probable. We talked about the April 17th one.
22 Other than those two, that one and this one in
23 this case, how many other times have you concluded
24 that it's highly probable that a particular
25 document was written on whatever date you're

1 LaPorte

2 claiming it was written on?

3 A. Can I just --

4 MR. SOUTHWELL: Objection.

5 A. If I can just not use the "highly
6 probable" because some reports may vary where I
7 would say "probable" or indications and "not
8 highly probable."

9 So are you talking about just
10 conclusions or do you want highly probable
11 conclusions?

12 Q. Highly probable conclusions. How many
13 other times have you given highly probable
14 conclusions?

15 A. I can't give you an exact number, but
16 no more than ten.

17 Q. And when's the first time you issued a
18 report regarding PE testing that was other than an
19 inconclusive result? When is the first one that
20 was not inconclusive?

21 A. I didn't issue a report, but I had a
22 client where my findings contradicted their
23 position, so no report was ever filed. That was
24 probably about four or five -- four years ago.

25 Q. So would four years ago would make it

1 LaPorte

2 2008 sometime?

3 A. That would seem about right, using the
4 highly probable conclusion.

5 Q. Well, I'm talking about a report
6 where -- have you issued -- not issued. Have you
7 generated reports in the past where your results
8 were inconclusive?

9 MR. SOUTHWELL: Do you mean a written
10 report?

11 MR. BOLAND: Yes, a written report, for
12 a client.

13 A. Yes, oh, yes.

14 Q. And so my question is when's the first
15 report you ever issued where the conclusion went
16 from inconclusive to something else --

17 A. To something other than that?

18 Q. -- conclusive: probable, highly
19 probable, however you want to phrase it.

20 A. That would have been at the Secret
21 Service I think right around two thousand and --
22 late 2002, and Mr. Stewart signed off on the
23 report.

24 Q. Let me be more specific. I think my
25 question was not clear. I'm specifically talking

1 LaPorte

2 about a report that you've issued regarding
3 results of PE testing where -- so that's what I'm
4 talking about for this question.

5 Have you ever issued a report to
6 anyone -- civil client, the government -- where
7 you conducted PE testing and the result was
8 inconclusive? Have you ever done that?

9 A. Where it was inconclusive?

10 Q. Yes, PE testing and you got
11 inconclusive results?

12 A. Yes, yes.

13 Q. Now my question is when is the first
14 time, if you can remember, even just the year,
15 that you issued a report regarding PE testing with
16 results that were conclusive -- whether it's
17 probable or highly probable, it doesn't matter --
18 but they were conclusive to some degree?

19 A. Right around 2002. Mr. Stewart signed
20 off on that report.

21 Q. So was that a report done for a
22 particular case being handled by the Secret
23 Service?

24 A. Yes.

25 Q. Was it a criminal or civil case, if you

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remember?

A. It was obviously criminal. We weren't allowed -- we didn't work -- typically work civil cases.

Q. Do you remember the case at all, the name of the case?

A. I certainly do.

Q. What was it?

A. Can't discuss it.

Q. Was it a publicly -- was it a federal case?

A. It was an intelligence case.

Q. Ah, I see, not in the criminal justice system case? That's what I'm asking about. Let me be even clearer now that you have given me that information.

A. Okay.

Q. I'm talking about a case criminal or civil in the American, you know, justice system, not top-secret stuff, where you've issued a report regarding PE testing and your result was inconclusive, something that you might not have filed it but it was involving a similar or criminal cases that you -- that has nothing to do

1 LaPorte

2 with intelligence.

3 A. Wait, you said inconclusive at the end.
4 You mean --

5 Q. Inconclusive, we're starting with that.
6 A civil case or a criminal case where you did PE
7 testing and got a result that was inconclusive?

8 A. Well, there were -- in the early part
9 like in -- I would say 2002, 2003, 2004 time
10 frame, we were doing some testing on some cases as
11 sort of supplementary to the case. But we weren't
12 including that data, if you will, in the -- in the
13 reports at the time.

14 I mean, it was -- we were -- it was
15 kind of experimenting with the procedure, if you
16 will, and trying to fine-tune it.

17 One of the things that we did work on
18 was like how do you issue conclusions like that,
19 because back then we weren't using this scale of
20 conclusions. Do you say consistent with and -- it
21 was -- we had a difficult time. We couldn't be
22 definitive -- we knew we couldn't be definitive.

23 So there was always -- we were always
24 kind of working -- it wasn't the data and the
25 results in and of itself that were in question; it

1 LaPorte

2 was how do we report this. That was more of the
3 difficulty.

4 But I don't remember the exact date.
5 It was early on in those -- in those years we were
6 certainly doing that.

7 Q. Were you doing reports like that for
8 the Secret Service that were used in casework that
9 were actually --

10 A. Yeah, we started that later on I think
11 in casework. Obviously the Rago case we
12 started -- we were using PE testing then. And I
13 think there were some other cases. I don't
14 recall.

15 You're asking me about what happened
16 six or seven years ago. I know there were some
17 other cases that we used it in; but it was
18 inconclusive and it was included as data in the
19 report.

20 Q. It was inconclusive, you said?

21 A. Yes.

22 Q. In your civil work have you ever issued
23 a report with the results of PE testing that was
24 inconclusive?

25 A. Yes.

1 LaPorte

2 Q. And when's the first time you issued a
3 report regarding results of PE testing in your
4 civil work where you had a conclusive result?
5 What year do you think that would have been?

6 A. Once again, I believe that was in 2008
7 when I identified a very high-level
8 phenoxyethanol. But the client that retained me,
9 that didn't favor their argument; so I never
10 issued a report, and I left the case.

11 Q. But your results, had you issued a
12 case, would have been conclusive to some degree of
13 probability?

14 A. Yes.

15 Q. Highly or whatever.

16 A. Yes.

17 Q. And what was causing inconclusive
18 results before 2008 in your PE testing work?

19 A. Generally speaking low levels of
20 phenoxyethanol.

21 Q. The samples tested you had low levels?

22 A. Yes, the samples we tested had a low
23 level of phenoxyethanol or they were -- so once
24 again you couldn't -- you could not accurately
25 quantitate them because they were at such low

1 LaPorte

2 levels. So that -- that would be an inconclusive.

3 It's not an indication that the
4 document's authentic or that purported age; it's
5 just it's inconclusive.

6 Q. Over the years has your approach or
7 method or procedure regarding PE testing changed?

8 A. I've refined, I would say. It's
9 certainly -- I would say the biggest change has
10 been the way I -- the way I word my conclusions.
11 So I've adapted to that ASTM conclusionary scale,
12 which I feel comfortable with now.

13 But at first there was always -- that
14 was the difficulty, like I said earlier, in how do
15 you word these conclusions, do you use "consistent
16 with." Using the scale has helped significantly.

17 Q. Do you follow the ASTM standards when
18 you issue reports?

19 A. Do I follow them? They're guidelines,
20 so I try my best to.

21 Q. And they include any sort of guidelines
22 for the use of statistics in your reports, do
23 they, the ASTM standards?

24 A. No, they do not. But they don't --
25 they don't say not to use statistics.

1 LaPorte

2 MR. BOLAND: Let's take a short break.

3 I think we're almost done.

4 THE VIDEOGRAPHER: The time is
5 approximately 4:36 p.m. We're off the record.

6 (Recess taken from 4:36 to 5:03.)

7 THE VIDEOGRAPHER: The time is
8 approximately 5:03 p.m. We're back on the
9 record.

10 Q. Mr. LaPorte, let's just agree to
11 disagree for a little bit here on when this
12 two-page document was created, and we won't talk
13 about that for a second.

14 No matter when it was created, you
15 don't know how page 1 of this document was stored
16 before you had access to it to pull your plugs?

17 A. How it was stored?

18 Q. How page 1 of the document was stored,
19 just page 1. You don't know the conditions that
20 it was stored?

21 A. No, I don't have firsthand factual
22 knowledge of how it was stored.

23 Q. And you don't know how page 2 was
24 stored?

25 A. I don't have firsthand factual

1 LaPorte

2 knowledge of how page 2 was stored.

3 Q. You don't know if page 1 was stored
4 differently than page 2?

5 A. I don't know that.

6 Q. You don't know if the document was
7 stored in proximity to other sources of PE other
8 than the ink?

9 A. Well, if that would have happened, I
10 would have detected PE in my paper blank, and I
11 didn't detect PE in my paper blank.

12 Q. How big was your paper blank? What was
13 the measurements of that?

14 A. The same size as the ink that I took
15 from 0.5 millimeters, or 1 millimeter. I used two
16 different punches.

17 Q. So in the area from where you took that
18 blank, that's the area that was essentially being
19 tested for sort of contaminant PE; right?

20 A. Yes, whenever I do the PE analysis, I
21 use paper blank from the ink area.

22 Q. And how many -- you took one paper
23 blank from somewhere near the interlineations;
24 right?

25 A. In July, yes.

1 LaPorte

2 Q. Right. Did you do that in August too?

3 A. I don't -- I don't recall -- I don't
4 have my notes, so I don't recall if I took paper
5 blanks in August from that area.

6 Q. The paper blank in July, was it near
7 the ink plug you took in August?

8 A. It was in the -- right around the
9 general -- in the same vicinity, yes.

10 Q. What would be the same vicinity?

11 A. Well, you put your fingers 6 inches
12 apart. The interlineation only runs, you know, a
13 certain -- a certain distance. I'd have to --
14 that I'd have to look in my notes. I don't
15 recall.

16 Q. Do you have pictures of before and
17 after you took either of these plugs, either July
18 or August?

19 A. I have after pictures of when I took
20 the samples in July. I don't have after pictures
21 of when I took the samples in August.

22 Q. Those notes you're referring to, you
23 don't have them with you?

24 A. I do not, no.

25 Q. You didn't bring them with you to New

1 LaPorte

2 York?

3 A. They're -- they're in my hotel.

4 Q. And you don't know how the document was
5 handled since its discovery by Mr. Ceglia; true?

6 A. What do you mean by "handled"?

7 Q. You don't know how it was handled:
8 with gloves, without gloves, near sources of PE,
9 not near sources of PE?

10 A. It was exposed to some intense sunlight
11 or some intense energy source.

12 Q. At some point; right?

13 A. At some point.

14 Q. But you don't know how else it was
15 handled?

16 A. Before July 14th?

17 Q. Correct.

18 A. It was exposed to some intense sunlight
19 or intense energy source.

20 Q. Other than that how was it handled? I
21 mean, you don't know how it was handled?

22 A. Other than that, no, I don't know.

23 Q. Now, in prior testimony you have
24 testified that the evaporation rate of PE really
25 depends on the storage conditions. Do you agree

1 LaPorte

2 with that or no?

3 A. No, did I say really depends on the
4 storage conditions?

5 Q. I'm asking you if you recall.

6 A. I don't recall that. There may have
7 been other things in there.

8 Q. Are storage conditions of a document
9 irrelevant to the amount of PE?

10 A. They don't make the PE increase.
11 Storage conditions don't cause PE to increase.

12 Q. Well, that's not always true. If the
13 storage conditions include proximity to a source
14 of PE, you've got more PE on the document from
15 that source?

16 A. You would detect that in the blank or
17 you would have to -- you would have to physically
18 press up two documents with each other. One --
19 you would have to line up the inks exactly so that
20 the inks are touching. You would probably have to
21 exert some pressure.

22 One ink would have to be fresh from the
23 other document, because it can be -- once it's --
24 once the ink's put down on the paper, after just a
25 couple days, I mean, it doesn't transfer anymore

1 LaPorte

2 that easily.

3 Q. But a nonink source of PE could come in
4 contact with the paper and deposit PE on the
5 paper.

6 A. Such as?

7 Q. Bug spray, sunscreen, shampoo,
8 hairspray?

9 A. Bug spray?

10 Q. Anything that has PE. Do you know if
11 any of those products have PE in them?

12 A. I don't know specifically if they have
13 PE in them.

14 Q. Let's assume there's 50 household
15 products that have PE, hypothetical. Those could
16 add PE to a document if they came in contact,
17 whether they got sprayed on it, if they got
18 smeared against it.

19 A. That's an unrealistic hypothetical
20 because I don't believe that many household
21 products contain phenoxyethanol.

22 Q. How many do?

23 A. I don't know, but not --

24 Q. What's your basis for believing that
25 not that many contain PE if you don't know?

1 LaPorte

2 A. Generally I actually look at the
3 ingredients on a lot of household labels. I mean,
4 I do that as a chemist. I've never really -- I
5 have never seen anything that says it has
6 phenoxyethanol.

7 Certainly I've published and I know
8 that there are some colognes that could have
9 phenoxyethanol. There are those types of things.

10 Q. Have you ever done a search for
11 household products that have PE in them, online or
12 whatever?

13 A. I haven't, no.

14 Q. Let's hypothetically say that sunblock
15 and bug spray all have -- both have PE in them.
16 All right? That's hypothetical. If those come in
17 contact with a document, they're going to add PE
18 to the document; right? If you spray bug spray
19 with PE on it on a document, it's going to add
20 PE -- right? -- as a chemist?

21 A. You would see that on a paper.

22 When you're talking about ink lines,
23 though, you're talking about applying
24 phenoxyethanol to these very, very small ink
25 lines. That doesn't seem like a reasonable --

1 LaPorte

2 like a reasonable argument. It's a -- we can't
3 eliminate every single possibility in the world,
4 but that would be a very, very, very minute
5 possibility.

6 Q. Are you aware that some of the
7 defendants' experts touched the face of this
8 document without gloves on?

9 A. I did read that early on in one of the
10 declarations.

11 Q. Did you watch any video of the other
12 experts handling the document and see that?

13 A. I did not -- I did not watch video.

14 Q. So hypothetical: Expert has some
15 substance on their fingers that has PE in it, and
16 they put their fingertips down on the face of the
17 document. It could transfer PE to the document;
18 true? As a chemist, that's a reasonable
19 assumption on that hypothetical?

20 A. That's why we run paper blanks. That's
21 part of the quality control measures. I didn't
22 see any high levels of PE in the Paul Ceglia
23 signature. I didn't see a high level of PE in the
24 Mark Zuckerberg signature. So I only saw it in
25 the interlineation and then the PC initials. I

1 LaPorte

2 didn't see it in anything else. I didn't get it
3 in the paper blanks.

4 Q. Well, and the paper blanks aren't
5 necessarily within a fingerprint's distance from
6 the ink you plugged, because you don't really know
7 where they're from, sitting here today?

8 A. Fingerprint, that -- I mean, you would
9 cover the paper. You can cover a lot of paper
10 within the distance of where you're sampling from
11 the ink with a finger. That's a lot of space.

12 Q. I understand. But you don't know
13 whether the blanks in the ink came from a space
14 that's that big, that confined?

15 A. So you're proposing this minuscule
16 possibility that somebody would actually touch the
17 ink in the exact same place that I tested for the
18 two different areas but they didn't touch any of
19 the other ink line, they didn't touch any of the
20 paper below, but it just hit that one millimeter
21 of the ink line?

22 Q. Sir, I'm just saying you don't know if
23 your paper blank and the ink from the
24 interlineations came -- you don't know the
25 proximity of those two blanks to each other that

1 LaPorte

2 you took?

3 A. I'm a hundred percent confident that
4 there wasn't any phenoxyethanol contamination. I
5 think that's the best way I can put it.

6 Q. How did you rule out contamination?

7 A. Based on the quality control samples,
8 based on the fact it didn't show up in the other
9 blanks, based on the fact that is just a very,
10 very -- that's -- just the probability of doing
11 that is just unrealistic.

12 Q. Then why do paper blanks from around
13 the ink if the probability is unrealistic? Why
14 are you checking for contamination?

15 A. So I can answer this question that
16 you're asking me.

17 Q. So probability is one thing. The
18 possibility you're not ruling out, but the
19 probability in this case you're saying is low?

20 A. I'm just saying that based on
21 consideration of everything around -- which
22 includes the quality control sample, I didn't find
23 it anywhere else. It would have to hit the exact
24 same spot where I tested, which was actually those
25 holes were 0.5 millimeters. So somebody would

1 LaPorte

2 have to touch that area, that 0.5 millimeter area.

3 Q. With their finger with some kind of
4 contaminant?

5 A. Right.

6 Q. And then you would have extra PE in
7 your test?

8 A. It doesn't seem realistic so me.

9 Q. And if your paper blank is not in that
10 same area where their thumb touched it or their
11 fingerprint touched it, your paper blank wouldn't
12 show PE but you would have a bunch of extra PE
13 where you pulled the ink plug. Fair to say?

14 A. And it only happened in the
15 interlineation but it didn't happen on anything
16 else?

17 Q. I'm just saying in the interlineation
18 for right now. That's possible?

19 A. It's improbable.

20 Q. I agree. But possible?

21 A. Improbable. I'll stay with improbable.

22 Q. You don't think it's possible, though?

23 A. It's improbable.

24 Q. Part of your report you talked about
25 the formulation of the paper, its thickness, and

1 LaPorte

2 coatings. Do you recall that?

3 A. Not exactly. I mean, I don't recall
4 exactly saying the formulation of the paper and --

5 Q. Do you recall measuring the thickness
6 of the paper?

7 A. I do recall doing that.

8 Q. And how did you do that?

9 A. I used a micrometer, and I made eight
10 measurements around the circumference of the
11 paper.

12 Q. Both pages?

13 A. Both pages.

14 Q. And is it your experience that paper
15 from a manufacturer always has uniform thickness
16 all the way around the piece of paper?

17 A. That's why you take eight measurements
18 around the circumference of the paper.

19 Q. No, my question is any random piece of
20 paper if I grab one from an office supply store
21 and gave it to you right now and you measured it
22 with a micrometer, would you expect all those
23 measurements to be identical to a thousandth of an
24 inch precision.

25 A. All my measurements were not identical.

1 LaPorte

2 My chart is included in my report, so you see my
3 exact measurements. There were some
4 differences -- they weren't exactly the same.

5 Q. My question is two pieces of paper
6 pulled out of the same ream today --

7 A. Right.

8 Q. -- from an office supply store, would
9 you, as an expert who measures paper, expect that
10 your micrometer measurements, even if you did
11 around the circumference of both of them, all
12 those -- those two pieces of paper in all those
13 locations would be the same measurement, the
14 micrometer would measure the same all the way
15 around? Is that not the case or is that the case,
16 you would expect?

17 A. No, and I didn't find that in this case
18 either.

19 Q. Right. So the difference in thickness
20 of two pieces of paper doesn't make them
21 necessarily pieces of paper that came out of a
22 different ream; they could have come out of the
23 same ream of paper; true?

24 A. I agree. My conclusion was based on
25 all of the paper testing I did. the differences

1 LaPorte

2 in the UV fluorescence, the differences in the
3 opacity, the differences in the measurement, and
4 the differences in the chemical testing use the
5 GC/MS.

6 And there were differences which I
7 didn't include in my report. There were
8 differences in the TLC results when I extracted
9 the paper blanks to do TLC.

10 Q. And this is paper that had been damaged
11 somehow before you did these tests?

12 A. Yes.

13 Q. And the micrometer you measured -- your
14 measurements were -- what was the level of
15 precision? Out to a thousandth of an inch?

16 A. One-ten-thousandth of an inch.

17 Q. One-ten-thousandth. And what other
18 things in the world have that thickness or that
19 measurement, one-ten-thousandth of an inch? Give
20 me an example of something.

21 A. Paper.

22 Q. Besides paper.

23 A. Hair.

24 Q. A piece of hair?

25 A. A piece of hair.

1 LaPorte

2 Q. Would be that wide?

3 A. No, well, it can be that -- less than
4 that amount. But there's -- I mean, there's
5 certainly a lot of thin things. You say in the
6 world.

7 Q. Just like some -- you did this
8 handheld, this device?

9 A. Yeah. It's a micrometer with a -- it's
10 a handheld micrometer, yes.

11 Q. And based on just the micrometer
12 measurements alone, leaving everything else out in
13 this hypothetical, would you be comfortable saying
14 that these two pieces of paper came from a
15 different ream of paper, based on that alone?

16 A. I would have made that conclusion with
17 strictly micrometer measurements.

18 Q. Very well.

19 Do you know what kind of fibers were
20 used to make this paper?

21 A. I do not. I have seen Dr. Rantanen's
22 report, but I don't know the fibers.

23 Q. And do you know what kind of coatings
24 were on the paper?

25 A. First of all, I guess you would

1 LaPorte

2 clarify. What paper are we talking about?

3 Q. The two pieces of paper, page 1 and 2,
4 of the document.

5 A. The "work for hire."

6 Q. Yes.

7 A. Do I know?

8 Q. Was it coated with anything, these two
9 pages?

10 A. They had an optical -- they had optical
11 brightening agents within them. In the non --
12 well, in the back -- on the back of the document
13 in the white areas that fluoresced, certainly
14 those had detectible optical brightening agents.

15 Q. Do you know what any -- were there any
16 rag fibers or cotton fibers in the paper, if you
17 know?

18 A. I don't know. That paper wasn't
19 tested.

20 Q. Do you know that? That's all I'm
21 asking is if you know, was the rag fiber or cotton
22 fiber, was there any of that in the paper?

23 A. The paper was never tested, so I don't
24 know.

25 Q. Did you test it?

1 LaPorte

2 A. For fibers?

3 Q. Yes.

4 A. No.

5 Q. Does the type of paper that ink is
6 placed on affect the evaporation rate of PE?

7 A. It can.

8 Q. In what way?

9 A. Typically glossy paper, like high-gloss
10 paper, the inks evaporate faster because they
11 don't absorb as much into the paper versus what I
12 would call sort of a typical standard copy paper.
13 I have actually done a presentation on this very
14 topic by using different types of paper.

15 So we did find with the glossy-type
16 papers that phenoxyethanol will evaporate faster.

17 Q. You mentioned something before, a term
18 that I put a note on, "the ink matrix." What does
19 that refer to?

20 A. I said the ink matrix?

21 Q. You did.

22 A. I don't recall saying the ink matrix
23 but --

24 MR. BOLAND: Is there a way you can
25 search for that answer and the word "matrix"?

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LaPorte

(Record read as follows: Question: The Celsius conversion, does it sound ballpark that 11 degrees would be about 51 degrees Fahrenheit? Answer: But when you say the freezing temperature of phenoxyethanol, that doesn't mean it freezes a -- as a solvent like as a solvent in the ink matrix.)

A. Oh, okay, okay.

Q. So you did say something about an ink matrix. If you could just define that term.

A. Ink matrix would be the entire formulation of ink, if you will: the combination of the dyes and/or pigments, the solvents, the resins, and so forth.

Q. Does cold temperatures cause that sort of -- the covering around all that ink matrix to be more brittle?

A. Would cold temperatures? I don't know -- I don't know the answer to that. I don't know.

Q. Is the ink matrix a factor in how you approach PE testing?

A. Well, it's certainly -- I mean, it's -- I don't know if I'd say it would affect the

1 LaPorte

2 approach to doing PE testing, but there's sort
3 of -- if you will, there's been a number of papers
4 that have been published in this area that talk
5 about how the entire ink dries over time, the
6 entire ink matrix. So it hardens over time, if
7 you will.

8 Q. Is there PE that gets trapped in that
9 ink matrix that will not escape during the heating
10 that you do when you do testing?

11 A. That's why I heat at 70 degrees
12 Celsius. Certainly if you got to a high-enough
13 temperature you would -- you could -- you would
14 evaporate all of the -- all of the phenoxyethanol,
15 yes.

16 Q. So heating it -- at what temperature
17 would it release all the PE?

18 A. I am not sure exactly what temperature.
19 I mean, I know there's -- in the literature
20 there's been some attempts at 200 degrees Celsius,
21 which still -- phenoxyethanol still remains even
22 after that temperature.

23 Q. And the comparison between unheated and
24 heated results, is it the case that those are done
25 to demonstrate how much PE wasn't trapped in the

1 LaPorte

2 ink's matrix that heating drove off?

3 A. I'm sorry, can you repeat that?

4 Q. The comparison between the heated and
5 unheated sample is designed to demonstrate how
6 much PE was not trapped in that ink matrix you
7 were driving off.

8 A. No, you are breaking up the ink matrix.
9 That's all part of it. So you're breaking it up
10 to some extent, but you're not completely
11 dissolving everything.

12 Q. And if you raise the temperature, you
13 break it up even more effectively, I guess, is a
14 fair word?

15 A. I wouldn't use the adverb
16 "effectively." You're breaking it up.

17 Q. And if that matrix is more brittle
18 because of storage conditions, would you get more
19 PE out of that heating process to 70 degrees
20 Celsius or would you get the same amount?

21 A. The storage conditions -- you would be
22 talking about the storage conditions immediately
23 preceding the testing. So when I say "immediately
24 preceding," if it came out of a freezer and you
25 did the testing then, that may have some effect.

1 LaPorte

2 But generally speaking I think we all
3 have to agree that the document was in we'll call
4 it sort of a standard environment, at least for --
5 at least for a few days before I tested it.

6 Q. Do you know how long it was in that
7 standard environment?

8 A. No.

9 Q. Have you done any studies on this, the
10 effect of freezing on that matrix?

11 A. I have not.

12 Q. Are there any published papers that
13 you're aware of that talks about that?

14 A. Not that I'm aware of.

15 Q. Is it possible that if the document was
16 stored in freezing conditions it could have made
17 that matrix brittle?

18 A. I don't know. I'd be speculating.

19 Q. When you took your samples, you
20 actually have to puncture a piece of the paper?

21 A. Yes.

22 Q. Does that action -- is it possible that
23 that could have cracked an already delicate matrix
24 and allowed more PE to come out when you
25 eventually ran your test?

1 LaPorte

2 A. No, because the hole is going around
3 the ink. So it's -- it goes right over the top of
4 the ink line and goes on top. So you're going
5 around the ink.

6 Q. And so the portion of your plug that's
7 in the center of that going around, as you
8 described it, would not have been punctured?

9 A. Going around but not -- you're not -- I
10 mean, the fact is we do this all the time on known
11 samples. Nobody's ever certainly published
12 anything that that would have some sort of effect
13 on the phenoxyethanol. I've never -- I've never
14 seen anything where that would -- theoretically
15 that doesn't seem to make any sense either.

16 Q. It doesn't, in your experience, sort of
17 break the ink and start emitting?

18 A. No, because you're pushing -- you're
19 actually pushing down on it. You're crimping it,
20 to a certain extent.

21 Q. And your plug is not wider than the ink
22 line in this case? You were able to stay within
23 the ink lines, essentially, when you did your
24 plug?

25 A. It's slightly wider. It's 0.5

1 LaPorte

2 millimeters, so it's slightly wider than the ink
3 line.

4 Q. So a little bit of white paper would
5 have popped through with that plug?

6 A. There might be a tiny, tiny bit.

7 Q. Now, the UV damage to this document, is
8 there any published studies on how UV damage to a
9 document affects the level of PE that gets
10 reported in tests like yours?

11 A. How do we know that the document was
12 damaged with UV?

13 Q. Fair enough. Let's assume the document
14 was damaged with UV, hypothetical. Is there
15 any -- are there any published papers or reports
16 that talk about how that could affect the results
17 of a PE test?

18 A. There's no published studies, but I
19 don't -- I can't think of how it would cause the
20 PE -- it certainly wouldn't cause the PE to
21 increase in the ink. If anything, it would --
22 maybe it would -- it would kind of cease it at the
23 time that that treatment happened.

24 Q. Well, in some of the charts we went
25 through, the PE level does actually go up and down

1 LaPorte

2 during its life span, doesn't it? The measurable
3 PE or the percentage PE does go up and down just a
4 little bit over time?

5 A. What chart are you talking about?

6 Q. Well, let's take a look at the Brazeau
7 article from 2007. I have to figure out what one
8 that is. And when you get that out, it's Figure
9 10 on page -- page 214, as the numbers go in the
10 corner. You see that figure at the bottom?

11 A. Yes.

12 Q. Would you agree with me that if you
13 actually drew the dot -- the line specifically
14 connecting those dots and not kind of going around
15 them that the data points of PE actually go up and
16 down over time?

17 A. Once again we need to understand that
18 this was using the SPME -- the SPME device, the
19 SPME extraction method.

20 Q. Which is not your method -- or not your
21 extraction method?

22 A. Yes, thank you.

23 Q. I'll agree with that. But using this
24 extraction method, would you agree with me that if
25 this line, this curve, was drawn to exactly

1 LaPorte

2 connect those dots the PE level appears to go down
3 at one point and back up a little bit and then
4 down again?

5 A. Yes. That's what we call variation.
6 It's slight variation, but it's variation.

7 Q. So there's a time when PE, under this
8 method -- which I recognize is not your method --
9 PE gets measured -- the amount of loss gets
10 measured and it's at whatever level and at a later
11 time it gets measured and that level is lower and
12 then a third time it gets measured and that level
13 goes back up a little bit?

14 A. Well, it's hard to generalize that
15 statement based on --

16 Q. I'm saying on this chart.

17 A. This is based on a single ballpoint
18 ink. You can't make a generalization off of a
19 single ballpoint ink. But the chart, yes.

20 Q. I'm saying for this ink that's depicted
21 in this chart, just this ink.

22 A. Yes.

23 Q. Is this the same ink that we have in
24 our case?

25 A. I don't know.

1 LaPorte

2 Q. Well, hypothetical, if it is the same
3 ink in our case, it would -- and they were using
4 this method, which isn't the method you used, you
5 would get the same results; right? Science is
6 science?

7 A. If this is the same ink in our case,
8 the document would have been created somewhere
9 around December of 2011.

10 Q. My point is --

11 A. But it's not. This is a different
12 ink -- I can't say for sure it's a different ink.
13 It's a completely different method.

14 Q. Let's not say for sure. You can't say
15 at all it's a different ink?

16 A. Right, I can't say at all for sure.

17 Q. Well, let's be clear. You can't say at
18 all? You don't even have a guess what ink this is
19 in this case; right? You don't do that as a
20 scientific measure?

21 A. I'm guessing that they may have said
22 what ink it was up -- back up in their methods and
23 materials.

24 Q. Oh, in this chart, yes. I'm saying the
25 ink in our case, there's no idea what ink

1 LaPorte

2 formulation we have in this case?

3 A. On the "work for hire," no. I do in
4 the specifications document.

5 Q. Have you ever run tests yourself,
6 either for casework or experimentation, using your
7 extraction method and the level of PE over time
8 goes up and down, slightly fluctuates up and down
9 that way?

10 A. I have not. Generally speaking I do --
11 I'll run samples six months apart, at least in
12 research situations.

13 In casework situations, very rarely do
14 you get to run multiple samples.

15 Q. And have you ever had cases in the past
16 where you have examined a document to conduct PE
17 testing that has been damaged by UV -- exposure to
18 UV light?

19 A. No.

20 Q. Have you read any other published
21 reports or expert reports that have conducted PE
22 testing on a document damaged by UV?

23 A. No.

24 Q. Do you know what was the source of the
25 damage to the document in this case?

1 LaPorte

2 A. Yes. I believe it was either some
3 light or some high-intensity -- say some
4 high-intensity energy source: suntan lamp, those
5 types of things.

6 Q. Do you have any opinion that it was a
7 chemical sprayed on the document?

8 A. I don't believe it was a chemical, no.

9 Q. Do you have any evidence that it was --
10 the document was placed inside of an oven and
11 baked?

12 A. That wouldn't have caused the
13 degradation on the one side and the no degradation
14 on the other. So that didn't happen.

15 Q. A sunlamp like you mentioned, that
16 would be a UV light source?

17 A. There are different -- there are some
18 sunlamps that have like a UVA and UVB, so
19 different forms of UV. I'm not sure -- I'm not
20 sure if they have infrared or not, but I don't
21 know that.

22 Q. Can you describe how the GC/MS machine
23 works to determine abundance of PE?

24 A. How the oven works, did you say? I'm
25 sorry, can you repeat --

1 LaPorte

2 Q. The GC/MS.

3 A. Oh, the GC/MS machine.

4 Q. It determines abundance, somehow, of
5 PE?

6 A. So abundance means the amount, if you
7 will, the concentration of PE. So in the gas
8 chromatograph, when we referred to that figure
9 earlier in my report with the peak. So the
10 higher -- the greater the area under that peak,
11 the higher the amount of the concentration of the
12 chemical.

13 Q. So is it true that the way this works
14 is that the GC/MS determines the relative amount
15 of multiple substances found in ink that it's
16 analyzing?

17 A. No, the GC/MS is used to determine the
18 concentration of the PE in the heated versus the
19 unheated, and then you compare how much is lost.
20 The GC/MS doesn't determine the relative amount.

21 Q. So if two samples have the same amount
22 of PE but twice as much of some other component,
23 the GC/MS would measure those as the same amount
24 of PE -- same abundance?

25 A. No, it -- just to be clear, the GC/MS

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LaPorte

2

is only measuring the PE -- or the GC. The gas

3

chromatography is for the separation of

4

components. So the component that's being

5

measured is the PE. So that area under that peak

6

or that curve represents the concentration of the

7

PE.

8

Q. But the machine's not measuring that

9

concentration sort of relative to the abundance of

10

other components in the ink?

11

A. Not relative to the other components.

12

But when I do the test, I use something called an

13

internal standard, which is a different chemical

14

that's not found in ink, cresol in this case. So

15

I am measuring it relative to the amount of -- I'm

16

using the same amount of cresol in the heated and

17

the unheated sample.

18

That's sort of standard chemistry. I

19

have something to compare relatively with from

20

sample to sample.

21

Q. So what was the primary component,

22

then, in your GC/MS tests?

23

A. It's -- I only -- the G -- when I talk

24

about the sim mode, that's set up specifically to

25

identify PE and then the internal standard cresol.

1 LaPorte

2 Q. Now, in that chart you were talking
3 about where you had the rectangular boxes, there
4 was a higher spike in the GC/MS result, far higher
5 than the PE. What is that component?

6 A. That's the cresol. That's the internal
7 standard.

8 Q. And that helps you do what? Determine
9 if your PE measurements are correct?

10 A. Yes. Well, it's help for a relative
11 measurement so that I know -- obviously I don't
12 know -- when I do the analysis, I don't know how
13 much PE is in the sample -- in the test sample. I
14 don't know that for sure, we'll say. I don't have
15 the ground truth knowledge.

16 The internal standard is to understand
17 exactly how much of that internal standard is in
18 each. So then I compare the PE with the internal
19 standard for the unheated sample, and then I
20 compare the PE with the internal standard for the
21 heated sample. And then I do the relative
22 comparison.

23 So then that allows for any deviations
24 that may occur when you do the injection or how
25 much you're extracting and how much solvent you're

1 LaPorte

2 extracting with. If you use 5 microliters, it
3 could be 5.05, 4.95. But that's what the purpose
4 of the internal standard is for, to -- it's --
5 once again, it's another quality control step.

6 Q. Now, have you ever testified in a
7 case -- have you ever testified at a hearing where
8 the PE testing that you do was challenged under
9 what's known as the Dalbert criteria?

10 A. In a hearing?

11 Q. Or at trial, either one. In a
12 courtroom.

13 A. For Dalbert. No, I'm not aware of a
14 time when I testified and there was a Dalbert
15 challenge.

16 Q. Now, have you been permitted in civil
17 cases in either a state or federal court in the
18 United States to testify about the results of PE
19 testing similar to the PE testing you did in this
20 case?

21 A. The Alaska case.

22 Q. And was there a Dalbert challenge to
23 your testimony in that case?

24 A. There was not.

25 Q. Have you testified in criminal cases

1 LaPorte

2 about the results of PE testing in courtrooms in
3 the United States, federal or state, it doesn't
4 matter?

5 A. I have not testified, no.

6 Q. So it's true, then, you have never been
7 challenged under the Dalbert criteria and sort of
8 failed to meet that challenge -- right? -- because
9 it's just never happened yet?

10 A. I've never been -- it's never been
11 challenged.

12 Q. And so you've never had to testify at a
13 Dalbert hearing on your own behalf about PE
14 testing?

15 A. No, I have not.

16 Q. Have there been cases where motions, if
17 you know, have been filed challenging the
18 admissibility of PE testing like you did in this
19 case --

20 A. Yes.

21 Q. -- against you?

22 How many times has that happened, if
23 you know?

24 A. This case would be one, I believe. I
25 mean, I believe there's been a challenge. There

1 LaPorte

2 temperature, using the 70 degrees C temperature.

3 Yeah, it's been modified.

4 Q. And have you published any articles on
5 why you made those modifications to your method?

6 A. I've made those modifications based on
7 other publications.

8 Q. Do you know of any other expert in your
9 field that uses precisely the approach you use for
10 PE testing?

11 A. The approach? Yeah, there's a number
12 of people that use the approach.

13 Q. And every step of how they conduct PE
14 testing is exactly how you do it?

15 A. Now you're talking about like the step
16 by step?

17 Q. Yes.

18 A. I don't know what other -- exactly what
19 other people are doing, but we operate off the
20 same general principles so...

21 Q. But does any other scientist do it
22 exactly with the way you do it?

23 A. When you say "exactly," you mean like
24 they use the exact same amount, like the exact
25 same amount of solvent?

1 LaPorte

2 Q. Yes.

3 A. What's exactly?

4 Q. Exact solvent, same settings on GC/MS,
5 same temperature, same time of heating the sample,
6 et cetera.

7 A. I don't know for certain what other
8 people are using. I know that there are some labs
9 around the world that have been adopting the
10 procedure a little more. So I don't know exactly
11 what they've implemented.

12 Q. So your answer would be what as to my
13 question do you know of anyone who's doing it
14 precisely the way you do it?

15 A. My answer would be I don't know.

16 Q. Fair enough.

17 MR. BOLAND: I have five minutes left
18 on the tape. I don't want to break now, but
19 let's break to switch the tape.

20 MR. SOUTHWELL: Are we almost done?

21 MR. BOLAND: I think so. We'll keep
22 rolling.

23 THE VIDEOGRAPHER: The time is
24 approximately 5:44 p.m. This is the end of
25 Media Number 4. We're off the record.

1 LaPorte

2 (Recess taken from 5:44 to 5:48.)

3 THE VIDEOGRAPHER: The time is
4 approximately 5:48 p.m. This is the beginning
5 of Media Number 5. We are on the record.

6 Q. Has anyone else come into your lab and
7 observed you going through the entire process of a
8 PE test like you did in this case?

9 A. Yes.

10 Q. And who's done that?

11 A. It was a case not too long ago. I
12 don't recall exactly when. Maybe in the past six
13 months.

14 Q. Who was it that came through?

15 A. It was -- it was an attorney and --
16 there were two attorneys that watched.

17 Q. Oh, I'm sorry, I wasn't clear. Another
18 scientist in your field that has been through to
19 sort of review your whole process, someone else
20 who does PE testing as well.

21 A. Yes, Mr. Speckin came through my lab
22 and watched me do PE testing. In that case it was
23 an inconclusive result.

24 Q. When was that that he came through?

25 A. I'm not sure it was -- I can't guess

1 LaPorte

2 the date, but I would say within the past year.

3 Q. Anyone else?

4 A. No.

5 Q. Does Mr. Speckin use your method or
6 your whole set of steps in the testing?

7 A. He uses something completely different.

8 Q. Has any other expert in your field ever
9 replicated your exact methodology and then
10 published a report on it?

11 A. No, practically that doesn't happen --
12 that doesn't happen in laboratories throughout the
13 world. First of all, it takes about two years to
14 publish a report. So people will change their
15 procedures slightly, not -- I'm not aware of too
16 often when somebody publishes their entire
17 procedure step by step.

18 Even in papers that I have published in
19 the past, I don't have a step-by-step procedure in
20 there. That's not -- typically that's not what's
21 required.

22 Q. Have you, internal to your own
23 laboratory, if I can call it that, determined what
24 the error rate is of your PE testing?

25 A. Yes, so there is -- what we call --

1 LaPorte

2 just to understand what error rate is, there can
3 be false positives and false negatives. So a
4 false positive would be if you concluded the ink
5 was more than two years old and in fact it
6 wasn't -- or, I'm sorry, if you concluded the ink
7 was less than two years old and in fact it was
8 not, that it was greater than two years old, that
9 would be a false positive result.

10 Then there's what we call a false
11 negative. So if, let's say, the ink was less than
12 two years old and you concluded that it was more
13 than two years old, that would be a false
14 negative.

15 But we don't do -- we don't -- there
16 are no false negatives because we render an
17 inconclusive opinion. So you can never -- never
18 really have a false negative result.

19 In terms of all of the testing that
20 I've done, I've tested numerous known samples that
21 are greater than two years old. I have never
22 achieved a level greater than 25 percent loss in
23 PE doing that testing.

24 In casework in situations I would say
25 where if I have achieved, if you will, an

1 LaPorte

2 inconclusive result, I have never been informed
3 that I was wrong about that, or there's never been
4 any details in a case that would show that I was
5 wrong.

6 Also, I mean, the idea of using the 25
7 percent threshold does provide in the -- in the
8 highly -- the highly probable conclusion, it
9 allows some leeway, if you will, to be more
10 accurate.

11 Q. What would be the error rate of PE
12 testing, as you conduct it?

13 A. Well, I would never say that an error
14 rate is zero percent. I can say that I've never
15 experienced an error. But that doesn't mean there
16 will never, ever been an error.

17 Q. So what would you say the error rate
18 is?

19 A. Right now? Once again, I don't want to
20 say it's zero, but I have never -- I have never
21 seen an error. I mean, I have never experienced
22 an error.

23 Q. Would the rate be zero for right now?

24 A. Well, there's also -- there's
25 situations where you don't know the ground truth.

1 LaPorte

2 So it's very difficult to say what the error rate
3 is. I mean, that's based on not knowing the
4 ground -- based on all of the ground truth samples
5 that I have known, that I have run, there have not
6 been any errors. I wouldn't use that to say that
7 it's a zero percent error rate.

8 Q. Have you done some blind tests to
9 determine what the error rate is of the PE testing
10 that you conduct?

11 A. Well, using knowns. Blind testing is
12 sufficient if there's subjective evaluation that's
13 involved. Blind testing is fine if you're doing
14 quantitative values where -- doing quantitative
15 assessments where there's a false negative that
16 could be a possible error or a false positive.

17 But in this case -- like I said, I've
18 always done known samples, which is really no
19 different than blind -- blind testing. I have a
20 ground truth -- I know what the ground truth is.

21 Q. Have you done testing where someone's
22 just provided you ink written on a piece of paper
23 and said, I'm not going to tell you how long or
24 how recent this ink was put on there and I want
25 you to tell me through PE testing when this ink

1 LaPorte
2 was put on this piece of paper?

3 A. Yes, I did that in this case. I do
4 that all the time in casework. That's how
5 casework works.

6 Q. Have you had any proficiency testing of
7 your PE testing -- PE testing and all the various
8 steps you go through?

9 A. No. Although the fact is I do all my
10 known tests. So to a certain extent that would
11 qualify as testing, if you will.

12 Q. Do you know the error rates for some of
13 some of the other experts we talked about today?
14 Dr. Aginsky? Regarding PE testing, I'm saying.

15 A. No, I don't know.

16 Q. Speckin?

17 A. I don't know.

18 Q. Brazeau?

19 A. I don't know.

20 Q. Weyermann?

21 A. I don't know.

22 Q. Is there any publication which talks
23 about the error rates of PE testing done by
24 anybody? Not just you but anybody else who does
25 PE testing.

1 LaPorte

2 A. I'm certainly not aware of any
3 situation where somebody reported that they did --
4 that they conducted a PE test on a sample that was
5 known to be greater than two years old and they
6 got a false positive. I'm not aware of any study
7 that has ever said that.

8 Q. Has any forensics organization or
9 association reviewed your PE testing to somehow
10 validate it or --

11 A. Forensic organizations don't do that.

12 Q. So the answer is no?

13 A. They don't do that.

14 Q. Is there any ASTM standard for ink age
15 determination using PE text?

16 A. No. There's a lot of testing we do in
17 forensic document examination and other aspects of
18 chemistry and forensic science where there is not
19 an ASTM standard.

20 Q. Is there any other standard other than
21 ASTM that's out there governing the conducting of
22 PE testing?

23 A. No, I believe there's a patent on a
24 procedure involving phenoxyethanol testing, but
25 I'm not -- I'm not exactly sure on what that

1 LaPorte

2 patent -- how that patent -- like the steps in the
3 patent or anything like that.

4 Q. Is it a granted patent or pending?

5 A. I don't know. I don't know.

6 Q. It's not involving you? You didn't
7 file it?

8 A. No.

9 Q. Do you know who did?

10 A. No.

11 Q. Is it true that some experts with your
12 qualifications or similar qualifications have
13 questioned the validity of PE testing?

14 A. The validity of the testing?

15 Q. The reliability, scientific validity?

16 A. I expressed earlier, a lot of the
17 questions, which I concur with, a lot of the
18 debate has to do with when you're making
19 conclusions about if an ink's been done in the
20 past three months or six months and trying to
21 figure conclusion into a time frame, other than
22 using sort of the broad 24 months. That's really
23 a big -- what I will say a large part of the
24 debate.

25 Also in expressing conclusions. So

1 LaPorte

2 there are some authors that, once again, and I
3 actually concur with this too, that how do you
4 express a conclusion other than certainty.

5 That's -- that seems to be a debatable area.

6 There are some people that would say with a
7 hundred percent certainty that an ink was placed
8 down in the past two years or six months or so.

9 Q. Is it true that some experts in your
10 field have written papers detailing the problems
11 with relying on PE testing for ink age
12 determination?

13 A. Can you be more specific?

14 Q. Have experts in your field published
15 papers discussing problems that they've found with
16 PE testing for ink age determination?

17 A. Other than what I've just discussed
18 about how do you draw conclusions using time
19 frames and so forth, those to me would be, I guess
20 we'll say, debatable topics.

21 Q. Have people written papers on those
22 debatable topics?

23 A. Yes.

24 Q. Can you look at the exhibit -- I don't
25 know what the exhibit number is, but the title of

1 LaPorte

2 it is Forensic Science International. It's that
3 article, a paper from 2011.

4 Do you have that in front of you?

5 A. Yes.

6 Q. What's the exhibit number in the
7 corner?

8 A. LaPorte 6.

9 Q. Can you look on page 59, as the page
10 numbers go there, the middle of the first
11 paragraph.

12 A. Yes.

13 Q. Do you see the sentence that starts
14 with: In fact, to the present date, no two
15 laboratories that do ink dating via solvent
16 analysis use the same method.

17 Do you agree with that?

18 A. Not exactly. I mean, I don't know --
19 certainly I know Céline Weyermann. She -- I knew
20 her when she was doing her Ph.D. thesis. We
21 communicated with each other. I don't know if she
22 actually knows what every laboratory in the world
23 is doing.

24 Q. So you don't necessarily agree with
25 that?

1 LaPorte

2 A. No, I don't agree -- I don't agree with
3 it as a factual statement that she would know what
4 every laboratory in the country is doing.

5 Q. Do you know of two laboratories that do
6 ink dating via solvent analysis using the same
7 method? Can you name two?

8 A. Yes. I mean, Canada -- Canada Board
9 Services Agency and the Bavarian criminal
10 laboratory in Germany.

11 Q. Two in the United States?

12 A. Two in the United States? No. Well,
13 Dr. Aginsky and I use basically the same -- the
14 same method as well too.

15 Q. But not precisely the same method;
16 right?

17 A. We use the same method.

18 Q. He doesn't concur with your opinion
19 about inks can be aged within 24 months or
20 earlier, does he?

21 MR. SOUTHWELL: Objection.

22 A. No, that's -- that's not true.

23 Q. So has he published reports -- is it
24 your testimony he's published reports saying he
25 could determine an ink is 24 months old or

1 LaPorte

2 younger? He's done that?

3 A. Yes, oh, yes.

4 Q. Do you know what case he's done that
5 in?

6 A. He's done that in a number of cases,
7 and he has testified in the United States in those
8 cases.

9 Q. Can you name a case where he's issued a
10 report like the one you've issued here with this
11 24 months or less?

12 A. Well, he uses -- once again he uses
13 intervals. I'm not sure -- but they'll be less
14 than 24 months. Yeah, I believe there have been
15 five or six cases here in the United States where
16 he has testified in.

17 Q. Do you know the names or case numbers
18 or captions of any of those?

19 A. You would have to ask him. He's your
20 expert.

21 Q. So the answer is no, you don't know any
22 of the cases off the top of your head?

23 A. I have a list of the cases, but I don't
24 know them off the top of my head.

25 Q. And you see at the bottom of that, the

1 LaPorte

2 next paragraph, which is kind of a long paragraph,
3 the very last sentence of that paragraph starts
4 with: Brunelle and Crawford --

5 A. Yes.

6 Q. -- stated that the ink-dating
7 technology, which is based on GC/MS analysis,
8 cannot be used to date inks over six months old.
9 And Bügler, et al., recommended to analyze ink
10 with a maximum age of three to four months. And
11 then the feasibility of such dating techniques on
12 ink older than that must therefore be
13 demonstrated.

14 Do you agree with that statement?

15 A. Absolutely not.

16 Q. Is Bügler a qualified expert in the
17 field of ink --

18 (Unintelligible discussion interrupted
19 by the reporter.)

20 Q. Is Bügler a recognized expert in your
21 field of ink age analysis?

22 A. Yes, but the statement is what I
23 disagree with. Actually, I'm sorry, let me -- can
24 I first start off with the first part of the
25 statement? First of all, Brunelle and Crawford.

1 LaPorte

2 Brunelle never did any kind of PE testing. He's
3 been retired for over I think a decade now.

4 I actually wrote an article to review
5 this -- his book when I was at the Secret Service.
6 In fact, Mr. Stewart had actually reviewed that
7 article, and I was granted permission to publish
8 that, to actually talk -- to actually review that
9 statement -- to rebut that statement.

10 So that's not true.

11 And Crawford is not an ink chemist. He
12 was a document examiner I think in Texas.

13 So they're not qualified, in my
14 opinion, to even talk about GC/MS.

15 The Bügler study, which he's talking
16 about the Bügler study, is his 2005 study. So not
17 the work that he had done in 2008.

18 Q. You'd agree this is a published
19 document which is disputing -- granted, with the
20 qualifications you just made -- disputing the
21 viability of using GC/MS analysis for ink dating
22 on inks over six months old?

23 MR. SOUTHWELL: Objection.

24 Q. These experts are disputing that?

25 A. First of all, the Bügler statement is

1 LaPorte

2 about -- is not saying that you -- that you
3 perform testing on a document that's purported to
4 be three to four months old. That's not what his
5 statement is. That's not at all what it's
6 stating. It's stating that when --

7 Q. Doesn't it state, Bügler, et al.,
8 recommended to analyze ink with a maximum age of
9 three to four months; right?

10 A. That's not what a purported age is.
11 There's a purported natural age.

12 Q. No, I'm not saying purported. I'm just
13 reading it. Did I read it correctly, what it
14 says?

15 A. Yes.

16 Q. Do you agree with that statement: a
17 maximum age of three to four months?

18 A. Yes, I do, I disagree with that
19 statement. And that was in fact -- I think Bügler
20 was saying from making a definitive conclusion.

21 Q. He doesn't say that in that paragraph?

22 A. No, it does not. But if you read that
23 article. I know Bügler. I talk to him all the
24 time.

25 Q. Did you talk to him about this quote

1 LaPorte

2 right here, this reference to him right here?

3 A. No. I will see him in September,
4 though, and I'll talk to him about it then.

5 Q. And you cited Bügler in your report;
6 right?

7 A. Yes.

8 Q. Can you point to an article that
9 discusses the general acceptance of PE testing as
10 a reliable way to date ink in the scientific
11 community?

12 A. I would say over the past two and a
13 half decades or two decades -- yeah, two and a
14 half decades there have been a number of papers
15 that have discussed phenoxyethanol, the use of it
16 for ink dating, and so forth. It's been done
17 cumulatively over the past 25 years or so.

18 Q. I'm talking about the particular way in
19 which you do -- the particular way in which you do
20 PE testing, an article which has talked about that
21 and generally accepted.

22 A. Using GC/MS, using a liquid extraction?
23 Yes, that's been published over the years. There
24 are a number of articles.

25 Q. Liquid extraction is not your way of

1 LaPorte

2 extracting; right?

3 A. It is my way, liquid extraction. So
4 the SPME, right, is different.

5 Q. How many articles have been written on
6 the liquid extraction method of PE testing in the
7 scientific community saying that's a reliable way
8 to do it?

9 A. Probably more than a half dozen.

10 Q. And are those cited in your report?

11 A. Yeah, they're all cited in my report.
12 And there's more too, in addition. Those -- what
13 I was citing as the general principles that are
14 involved.

15 Q. Are you aware of cases in which PE
16 testing method generally was challenged and not
17 admitted, not permitted to be in -- the testimony
18 regarding that PE testing was not admitted?

19 A. Not -- none that I'm aware of in the
20 United States. I mean, I -- none that I'm aware
21 of here in the United States. There could have
22 been. I would assume you would actually find that
23 out much easier than me.

24 Q. Do you know why you were withdrawn as a
25 witness in a Rago case?

1 LaPorte

2 A. I wasn't withdrawn as a witness. I
3 didn't testify. I've been -- I've been subpoenaed
4 to testify in probably 100-150 different times,
5 and I haven't testified in probably about 100 --
6 close to 100.

7 Q. You submitted a report in that case?

8 A. Yes.

9 Q. After you submitted that report, isn't
10 it the case that the opposition filed a motion
11 challenging PE testing and your -- the
12 admissibility of your testimony in that case?

13 A. That's true.

14 Q. Was there ever a Dalbert hearing that
15 was held in that case?

16 A. There was not.

17 Q. Did you ever testify in that case?

18 A. There was not.

19 Q. Did a trial occur in that case?

20 A. It did.

21 Q. And did it come to a verdict?

22 A. There were -- from what I understand,
23 there were two defendants. One of them was found
24 guilty.

25 Q. And what happened to the other one?

1 LaPorte

2 A. I don't know. I assume he was found
3 not guilty.

4 Q. Would it surprise you to know his
5 entire case was dismissed after you were
6 challenged under Dalbert?

7 MR. SOUTHWELL: Objection.

8 A. That would surprise me.

9 Q. Were you prepared to give him -- give
10 expert testimony against both defendants based on
11 what was in your report?

12 A. I have no idea what defendant -- it was
13 a criminal case. I didn't have very much
14 interaction with the attorney. There were some
15 other results that I had that were not challenged
16 that corroborated the PE testing.

17 And I believe there was a strategic
18 decision that was made by the United States
19 attorney's office. And for whatever reason -- you
20 can talk to them and ask them why, but I wasn't
21 called to testify.

22 That is definitely not an unusual
23 circumstance.

24 Q. I'm sure the U.S. attorney will meet me
25 for lunch and tell me why he strategized that

1 LaPorte

2 case.

3 A. It's worth a try.

4 MR. SOUTHWELL: You can ask me. I'll
5 tell you afterwards.

6 Q. The federal government, let's talk
7 about them. You work for currently the Department
8 of Justice; right?

9 A. Yes.

10 Q. Do they permit you to use the PE test,
11 like you used in this case, in your work for the
12 Department of Justice in cases?

13 MR. SOUTHWELL: Objection.

14 A. They -- they permit me to engage in
15 civil work. That's what I'm permitted to do.

16 Q. Let me be clear. In your role as -- do
17 you testify as an expert anymore in your current
18 job at the Department of Justice?

19 A. No, I do not.

20 Q. Do you do any testing -- PE testing in
21 your current role at the Department of Justice?

22 A. There is not an entity within the
23 Department of Justice that actually does any kind
24 of ink testing, I mean any significant -- ink
25 dating, we'll say.

1 LaPorte

2 And no, the answer to your question is
3 no, I don't work in a laboratory.

4 Q. Is there a laboratory somewhere
5 underneath the Department of Justice umbrella
6 where ink dating is done?

7 A. Not ink dating, no.

8 Q. The Secret Service, you used to work
9 for them.

10 A. Yes.

11 Q. Does the Secret Service currently, if
12 you know, allow its agents to go into court and
13 testify about the age of ink based on PE testing
14 like you did in this case?

15 A. Agents don't do testing. It's a
16 civilian position. But you would have to ask the
17 Secret Service.

18 Q. Do you know if they allow that?

19 A. That's -- that's secret -- Secret
20 Service have -- they have policies and procedures,
21 so I'm sure you can inquire with them and find out
22 for sure.

23 Q. I'm sure I can. I'm asking if you know
24 the answer to that question.

25 A. I'm not at liberty to say whether they

1 LaPorte

2 do or they don't, because I don't talk about what
3 procedures they do.

4 Q. Why don't --

5 A. I assume that they perform ESDA
6 examinations, but I don't know for sure if they do
7 them or not.

8 Q. When you were with the Secret Service,
9 did you ever testify in a case in court regarding
10 the results of PE testing?

11 A. No, I obviously conducted the test for
12 the Rago case when I was at the Secret Service.

13 Q. And Mr. Stewart was not your supervisor
14 at that time of the Rago case, was he?

15 A. No, he wasn't.

16 Q. In fact, he left years before that?

17 A. He was arrested in 2004 -- I think that
18 was in May of 2004 -- and never returned
19 afterwards.

20 Q. Do you know of any federal agency that
21 allows civilian employees or agents or whomever to
22 testify in court using the PE test?

23 A. I can't speak for what other federal
24 agencies do. You would have to ask them.

25 Q. I'm just saying if you know. So if the

1 LaPorte

2 answer is you don't know, that's fine. Do you
3 know?

4 A. I don't know.

5 Q. What's the make and model of the
6 micrometer you used we were talking about before?

7 A. The micrometer? I don't recall the
8 make and model of it.

9 MR. BOLAND: Can you mark this as the
10 next document.

11 (LaPorte Exhibit 9, ASTM E 2325-05,
12 marked for identification.)

13 (Discussion off the record.)

14 Q. You've just been handed LaPorte 9. Can
15 you identify that for the record, Mr. LaPorte?

16 A. Yes. This is the ASTM international
17 standard guide for nondestructive examination of
18 paper. The designation is E 2325-05.

19 Q. That's a standard guide for
20 nondestructive examination of paper; correct?

21 A. Yes.

22 Q. Could you read at paragraph 6.31. And
23 the standard recommends, does it not, using a
24 micrometer capable of measuring in increments of
25 .02 millimeters or .001 inches?

1 LaPorte

2 A. Right.

3 Q. And .001 is commonly referred to as one
4 thousandth of an inch?

5 A. Yes.

6 Q. But in this case you measured to ten-
7 thousandths of an inch?

8 A. Yes, I did. You can't measure paper to
9 one thousandth of an inch.

10 Q. So the ASTM standard, what does that
11 mean to you?

12 A. Oh, I'm just saying that I think what
13 they're saying here is that this is a minimum to
14 use. They're not saying this is the maximum. I
15 mean, so it's not saying to be more -- that you
16 can't be more precise in using ten-thousandths of
17 an inch.

18 Q. And your measurement in your report for
19 page 1 was .0042; do you recall?

20 A. I don't have -- I have the numbers.

21 Q. It's page 11 of LaPorte 1, your report
22 in this case. It's on page 11.

23 A. Okay.

24 Q. Do you see it on page 11, your
25 measurements?

1 LaPorte

2 A. Yes.

3 Q. Page 1 you measured it at .0042;
4 correct?

5 A. Yes. That was -- I'm sorry, that was
6 the average of the eight measurements.

7 Q. Fair enough. And page 2, .0043.

8 A. Hold on, I'm missing --

9 MR. SOUTHWELL: Which page?

10 MR. BOLAND: I think it's on page --

11 MR. SOUTHWELL: It's your page 12, page
12 11 of his report. Go by the top.

13 MR. BOLAND: Ah, yes, yes. You're
14 right.

15 Q. So .0042 for page 1.

16 A. Yes.

17 Q. And .0043 for page 2.

18 A. Yes.

19 Q. And what does that mean, plus or minus
20 .00005 inches? What is that?

21 A. That's the standard deviation.

22 Q. What does a standard deviation mean?

23 A. It's the amount that's -- when you take
24 an average of a group of numbers, how much they
25 deviate from each other, how much they deviate

1 LaPorte

2 from the mean or the average.

3 Q. If you lop off the last number on each
4 one of these figures --

5 A. Yes.

6 Q. -- both of the pages would measure
7 .0004; right? If you only go out to a thousandth
8 of an inch in both your measurements, the pages
9 are identical?

10 A. That's the average thickness of papers,
11 .0004 inches. That's why when you're comparing
12 paper you have to go to 10,000 AT&T of an inch.

13 Q. Is there an ASTM standard on that,
14 going to ten-thousandths of an inch?

15 A. No, but I'm sure there is a TAPPI
16 standard that would tell you to do that.

17 Q. Do you know what that standard is?

18 A. No, I do not.

19 Q. Is that the standard you applied here?

20 A. No, I measured ten-thousandths of an
21 inch. I don't need a standard to tell me to be
22 more precise. This is a guideline, minimum
23 guideline.

24 Q. You compared the inks in this case and
25 stated that based on optical and GC/MS testing

1 LaPorte

2 they were different on the two pages?

3 A. The ink for the interlineation --

4 Q. The ink on the two pages.

5 A. Yes.

6 Q. Are you aware of Dr. Aginsky's analysis
7 where he compared the ink on page 1 and the ink on
8 page 2 and he found no evidence that the inks were
9 different?

10 A. Dr. Aginsky did an optical examination.
11 He did not do a chemical analysis.

12 Q. Are you aware of that, that report?
13 That's all I'm asking.

14 A. Yes. Well, no, he didn't say -- I'm
15 sorry, do you have his report? Do you have that
16 report, because he didn't say they were the same.

17 Q. I'm just asking whether you're aware of
18 Dr. Aginsky's report of his optical examination of
19 the inks and the results of it. If you're not
20 aware, you're not aware. That's fine.

21 A. I'm not aware of the exact wording.
22 But he never said they were the same. I do know
23 that.

24 Q. What do you recall him saying?

25 A. I don't know, but he never said they

1 LaPorte

2 were the same. That's one thing that I'm a
3 hundred percent certain of.

4 Q. Is it your testimony today that it's
5 a -- it's evidence of forgery if two different
6 inks appear on a document like this, two different
7 ink formulations?

8 A. Just to be clear, can we not use the
9 word "forgery"?

10 Q. No, that's my question. Is it an
11 indication in your mind of forgery if two
12 different inks are used?

13 A. Well, it could be an indication of
14 forgery if two different inks were used, but
15 that's not what I'm -- I'm not saying it is or it
16 isn't.

17 Q. Is it common in everyday signing of
18 contracts or signing of documents that if multiple
19 people are signing they might use different pens?

20 A. Certainly.

21 Q. So would you agree with me that two
22 different inks on a piece of paper alone is not an
23 indication that there's anything improper in the
24 way that document was prepared or executed or
25 anything like that?

1 LaPorte

2 A. It depends on -- it certainly depends
3 on the scenario, the situation.

4 Q. I'm saying that by itself. Two
5 different inks appearing on a document by itself
6 is not an indication of some improper preparation
7 of a document?

8 A. It could be, though. You're saying
9 there's -- there is an indication -- there could
10 be an indication. I'm just saying that you would
11 have to know the circumstances.

12 Q. Right. I'm saying by itself, by itself
13 is it enough.

14 MR. SOUTHWELL: Let him answer the
15 question, please.

16 A. For example, if someone was deposed and
17 they said, I used the same ink to sign all those
18 documents, and then it's different ink, that could
19 be an indication that they're lying.

20 You're asking me to make general
21 conclusions about those types of situations, and
22 that can -- it just depends on the circumstances,
23 the type of document, and the history.

24 Q. Do you know how many samples you took
25 August 27th from the interlineations --

1 LaPorte

2 interlineation, how many plugs you took in August?

3 A. I believe I took eight from the
4 inter --

5 Q. What's the basis for that belief?

6 A. For the testing that I did, and I've
7 reviewed the video.

8 Q. And do you know how many samples,
9 plugs, you took from the initials?

10 A. Two.

11 Q. And what's the basis for that?

12 A. I'm sorry, I'm not sure if it was two
13 or four. I would have to refer back to my notes
14 on that. It was either two or four.

15 Q. At some point in your report, you
16 mentioned you weren't able to perform PE testing
17 on I believe the letter P because you needed more
18 samples?

19 A. Correct, because the -- I mean, when we
20 say the PE testing, I'm talking about determining
21 the percentage of PE that's lost between heated
22 and unheated.

23 Q. Yes.

24 A. I did detect a high level of PE in the
25 staff of the P in the PC initials.

1 LaPorte

2 Q. Did you do an ESDA examination of the
3 documents as well?

4 A. Yes, I did.

5 Q. And what's that designed to determine
6 when it's done generally in a case?

7 A. Generally speaking to determine if
8 indented impressions, such as writing, were
9 transferred by writing on the top sheet and then
10 those indentations being transferred to the bottom
11 sheet.

12 Q. Did you take images of that process
13 while you were doing it?

14 A. I -- the ESDA -- I took numerous images
15 in August using side lighting, but I -- and I have
16 images of the ESDA results.

17 Q. But you didn't report on that in your
18 report --

19 A. Yes.

20 Q. -- the results of your ESDA testing?

21 A. Yes, I did.

22 Q. And what were the results?

23 A. That I couldn't conclude with any
24 certainty that the interlineation on page 1 was
25 the source of the interlineation on page 2. In

1 LaPorte

2 fact, there were some very subtle -- there were a
3 number of subtle differences that was causing me
4 to believe that that interlineation on page 1
5 wasn't the result of that impression on page 2,
6 but I couldn't say that conclusively.

7 Q. Were there indentation -- was there an
8 indentation on page 2?

9 A. Yes.

10 Q. Was there only one area of page 2 that
11 had indentations or were there indentations on
12 other areas of page 2?

13 A. Just in the area of where the
14 interlineation was.

15 Q. Did portions of that indentation seem
16 to align with the interlineation on page 1?

17 A. I couldn't be -- I couldn't be certain,
18 but there were certain letters that I could not
19 make out.

20 Q. Do you remember what letters those
21 were?

22 A. I believe it was the M in -- the M for
23 the MZ initials. I couldn't make that out
24 clearly. The Z was very difficult.

25 Q. Do you have notes of this evaluation

1 LaPorte

2 that you did?

3 A. Yes.

4 Q. Are those at your hotel as well?

5 A. Yes. And there was no -- I could not
6 overlay. I tried to overlay the interlineation
7 with the indentations, and I couldn't get a
8 perfect overlay either.

9 Q. Is that the only scenario where you
10 would report a conclusive result, if you can get a
11 perfect overlay?

12 A. No, not necessarily. There can be
13 slight deviations depending on if the paper is
14 moving. But I didn't -- the differences that I
15 was seeing I didn't think indicated paper
16 movement.

17 Q. Why is that?

18 A. Because I think there were -- once
19 again, I think there were subtle differences that
20 could not be explained simply with paper movement.

21 Q. Did you see indentations on page 2 that
22 reflected different words than what were in the
23 interlineation on page 1?

24 A. No, but there was a large portion of
25 the beginning of the interlineation that I could

1 LaPorte

2 not make out.

3 Q. Did you review Mr. Blanco's report with
4 his ESDA results?

5 A. I did not review his report.

6 Q. You know, overall -- you've had
7 disputes with Mr. Stewart in the past on an expert
8 basis, would you say, about evidence in cases?

9 A. We've been on opposing sides, yes.

10 Q. Have you been on opposing sides with
11 Mr. Blanco ever?

12 A. I have not.

13 Q. Is it your opinion that Mr. Stewart is
14 unqualified to offer opinions in the areas that he
15 offered opinions on in this case?

16 A. Mr. Stewart has made some significant
17 errors in the past three cases that I've been
18 involved with, and I think his -- I think his
19 competence and integrity is definitely in
20 question.

21 Q. Is he unqualified by training,
22 experience, background, to be an expert in the
23 area in which he offered opinions?

24 A. In certain areas, yes, I believe so.

25 Q. What areas is he unqualified in, in

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your opinion?

A. Toner analysis.

Q. What else?

A. That was not something that he was trained on when he was at the Secret Service. He -- based on the testing that he does. He conducted testing incorrectly in the toner analysis, for whatever reason.

Q. In this case, you're talking about?

A. In this case. In the previous case he did too.

Q. Are you trained in toner analysis?

A. Yes, I am.

Q. When did you receive that?

A. I received that at the Secret Service.

Q. When did you get that?

A. Starting in 2001.

Q. Who provided that training?

A. The Secret Service.

Q. It wasn't Mr. Stewart?

A. No, he did not provide me training. He was -- he was certainly an ink chemist when I was there. He was the lab director. And I would say that he was part of the training that I went

1 LaPorte

2 through. I did consult with him about ink testing
3 when I went through my training. I considered him
4 to be a mentor to a certain extent when I went
5 through my training as well.

6 But there were several other people
7 there that I learned from as well.

8 Q. Did he ever take training at the Secret
9 Service on toner analysis; do you know?

10 A. Not that I know of.

11 Q. Did he ever take training after he left
12 the Secret Service on toner analysis?

13 A. Not that I know of. I mean, I think
14 it's evident, first of all, he extracted the
15 toners incorrectly. You can tell just by his TLC
16 plate -- toners have pigments in them, and if you
17 look at the origins, there's no -- there's no
18 pigments at the origins. So he obviously
19 extracted those incorrectly.

20 Q. Has he published any papers on toner
21 analysis; do you know?

22 A. I don't know.

23 Q. Have you published any on toner
24 analysis?

25 A. Yes, I have.

1 LaPorte

2 Q. When was the last one you published and
3 where was that?

4 A. I believe it was in the Journal of
5 Forensic Science in -- if I can refer to my CV.

6 Number 15 on my CV, which occurs at
7 page 35 of 67. It's LaPorte and Ramotowski, "The
8 Effects of Latent Print Processing on Questioned
9 Documents Produced By Office Machine Systems
10 Utilizing Ink Jet Technology and Toner," Journal
11 of Forensic Science, May of 2003.

12 Q. That's about fingerprint analysis?

13 A. No, we did chemical analysis after a
14 document was submitted for fingerprint analysis.

15 And I discuss it in my -- I think there
16 was a chapter that I wrote, analysis techniques
17 used for the forensic examination of writing and
18 printing inks. I don't know if we discussed that.
19 We did discuss some toner analysis as well too.

20 Q. Suffice it to say you and Mr. Stewart
21 opposed each other, disputed each other's
22 conclusions and results in a number of cases
23 before this case?

24 A. No, I mean, there was the Lake Forest
25 matter in Florida. That was one. Of course, as

1 LaPorte

2 you know, the judge in that case ruled his testing
3 not to pass a Frye standard, which I believe we
4 talk about in the community. I think Mr. Stewart
5 is the first person ever in a long time to have a
6 chemical analysis procedure kicked out on a Frye.

7 Then there was a case in Texas that I
8 did not oppose him on. I was hired as a
9 consultant, but I didn't do the analysis.

10 And there's a case I believe in
11 California last year where Mr. Stewart made a
12 number of errors in that case as well.

13 Q. These are errors in your opinion or a
14 judge found errors or what are you talking about?

15 A. They are errors -- you can -- you're
16 more than welcome to review what the judge said,
17 versus what Mr. Stewart's conclusions were. And
18 they were directly contradictory to his
19 conclusions.

20 Q. Is it your opinion if a judge disagrees
21 on an expert that the expert must have done
22 something wrong?

23 A. Everything -- there are a number of
24 things that he did that the judge specifically
25 ruled against.

LaPorte

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2 Q. That's not my question. If a judge
3 disagrees with an expert, has the expert somehow
4 done a bad job? Is that your opinion as a general
5 rule?

6 A. As a general rule, when the judge rules
7 against everything that he made conclusions about,
8 we -- we actually showed some direct evidence that
9 Mr. Stewart made some errors.

10 He concluded in that case that a Times
11 New Roman Font -- that he couldn't determine if
12 that Times New Roman Font was available in 2006.
13 If he were to have made that same conclusion in
14 this case, page 1 wouldn't have been authentic
15 based on Mr. Stewart's rule.

16 Q. Have you ever had a judge -- or have
17 you ever had a case where you testified and your
18 side hasn't won? You win every time?

19 A. I think there may have been one case
20 that I have testified in where I issued a report
21 and that side didn't win. But I don't really -- I
22 don't consider that me winning or losing or
23 anything like that. There's obviously other
24 factors in the case.

25 But barring aside the judge's ruling,

1 LaPorte

2 there were some definite errors that were made in
3 that case.

4 Of course he made an error in this case
5 too, it appears.

6 Q. Well, we know about your conclusion on
7 that for sure.

8 Has PE testing you've done always been
9 reliable since you first suggested in 2004, in
10 your opinion?

11 A. It's evolved over time. Like I said,
12 actually --

13 Q. Has it always been reliable since 2004?

14 A. Has it been reliable? You mean has it
15 been proven to be reliable? I mean, that's --

16 Q. Is it reliable in your opinion? Since
17 2004 has it been reliable?

18 A. It would have been reliable in 2004. I
19 don't know if I can say we knew that for sure. We
20 know that for sure now.

21 Q. When did it become reliable? What
22 year?

23 A. That's -- it doesn't -- it doesn't work
24 like that. There are some basic concepts.

25 Dr. Aginsky was using it in the mid nineties.

1 LaPorte

2 Q. Precisely the way you do it?

3 A. Very similar. We use a very similar
4 approach.

5 Q. And do you think the results he gets
6 are scientifically reliable?

7 A. Once again, we issue our conclusions in
8 different ways.

9 Q. Have you ever opposed him in a case?

10 A. Yes, I have.

11 Q. And have you opposed him regarding PE
12 testing results?

13 A. Actually we opposed each other in a
14 case where he did the PE testing, determined that
15 the document was I believe less than a year old,
16 and I actually found other evidence that the
17 document was less than a year old. So his -- even
18 though we opposed each other, we came to the same
19 conclusion on that particular aspect of the case.

20 Q. So do you think the way he does PE
21 testing, which is similar to yours, is reliable?

22 A. I can't speak for his testing in
23 general, whether it's reliable or not, but I have
24 not -- I have no reason to question what he --
25 what he does or how he does his work and the

1 LaPorte

2 conclusions that he comes to.

3 I certainly -- I would say that I
4 disagree with using intervals of dating, specific
5 intervals. Like to say something was done in the
6 past three to six months or the past six to twelve
7 months. Who's to say, if you're saying it's done
8 in the past three to six months, that it wasn't
9 done seven months ago.

10 Q. Or two months ago?

11 A. Or two months ago.

12 Q. What about Gaudreau and Brazeau, is the
13 way they do PE testing reliable?

14 MR. SOUTHWELL: Objection, asked and
15 answered. This is about the third time we've
16 gone through this.

17 A. I can't speak for -- there's more to
18 just reliability, like general reliability. You
19 have to do the test -- you have to be trained and
20 do the tests accurately and have quality control
21 measures. All of that is important, just as
22 important too, as reliability.

23 Q. Do you know if they have any of that,
24 the Canadians?

25 A. I don't know their specific

1 LaPorte

2 methodology.

3 Q. And how about Bügler in Germany?

4 A. I don't know their specific quality
5 control measures that they use in Germany either.

6 A test can be reliable, and you can
7 still get incorrect results if you're not -- if
8 you're not doing the test correctly.

9 MR. BOLAND: Let's just take a short
10 break. I think I'm done, five minutes.

11 MR. SOUTHWELL: You said that the last
12 two times.

13 THE VIDEOGRAPHER: The time is
14 approximately 6:36 p.m. We're off the record.

15 (Recess taken from 6:36 to 6:49.)

16 THE VIDEOGRAPHER: The time is
17 approximately 6:49 p.m. We're back on the
18 record.

19 Q. Mr. LaPorte, I asked you earlier about
20 notes you brought with you that are in your
21 hotel -- you mentioned were in your hotel. Is
22 there anything else you brought with you relative
23 to this case that's sitting in your hotel room?

24 A. Relative to the case? My notes.
25 That's -- I think -- no, that would be everything

1 LaPorte

2 relative to the case.

3 Q. Any images?

4 A. That's on my computer.

5 Q. Where is your computer?

6 A. My computer is in the other room.

7 MR. BOLAND: All right. Well, I don't
8 have any further questions at this point.
9 Alex, if you have some questions.

10 But I'm not willing to close the
11 deposition, pending seeing Mr. LaPorte's notes
12 that you told him to keep in his hotel, the
13 results of his tests from the July plugs he
14 took, the results of the tests from the August
15 plugs, and native format images of the
16 hundreds of images he indicated he captured of
17 all phases of his analysis.

18 But other than that, I don't have any
19 further questions.

20 MR. SOUTHWELL: You know, we had an
21 agreement to mutually share and turn over
22 documents in anticipation of these expert
23 declarations, and you have abrogated that
24 agreement.

25 I mean, you sandbagged us with the

1 LaPorte

2 Rantanen documents. You have not provided us
3 with any of the Stewart documents. You told
4 us that Stewart was going to provide an
5 explanation about the sampling that he did.
6 It was obvious in his deposition that he had
7 other documents that you guys were
8 withholding.

9 Something is going on that you're not
10 providing those documents. So if you're going
11 to live up to your end of the bargain, then we
12 can have a discussion about that and we can
13 provide the documents that we talked about.
14 But you have not --

15 MR. BOLAND: We asked for tons of
16 documents from the tech experts. You didn't
17 provide us any.

18 MR. SOUTHWELL: We responded. We
19 responded. We were the first --

20 MR. BOLAND: You didn't provide any
21 documents.

22 MR. SOUTHWELL: All right, now it's
23 going to be a school yard game of you did this
24 first, you did this first.

25 MR. BOLAND: No.

1 LaPorte

2 MR. SOUTHWELL: You are withholding key
3 documents from Mr. Stewart. Okay.

4 MR. BOLAND: I disagree with your
5 characterization of key anything.

6 MR. SOUTHWELL: Inventory of his
7 sampling? How the hell more important could
8 that be? He hasn't provided -- you have not
9 provided us any explanation about this.

10 MR. BOLAND: You have whatever basis
11 you have.

12 MR. SOUTHWELL: Yeah, all right.

13 MR. BOLAND: I have my record.

14 MR. SOUTHWELL: We're going to put
15 Mr. Stewart back under oath.

16 MR. BOLAND: I've made my record about
17 what we want from him, and that's all.

18 MR. SOUTHWELL: Fine. Then we can talk
19 about that.

20 EXAMINATION BY

21 MR. SOUTHWELL:

22 Q. All right. I do have a few questions.

23 Mr. LaPorte, you were asked some
24 questions, I would say a lot of questions, today
25 about phenoxyethanol, and specifically Mr. Boland

1 LaPorte

2 asked you a series of questions asking you to do
3 various math calculations in terms of taking 64
4 percent out of 100 percent.

5 Do you recall those questions?

6 A. Yes.

7 Q. Now, the 100 percent that was the basis
8 for those questions, that relates to the amount of
9 PE in the ink at the time of testing; correct?

10 A. Correct.

11 Q. That does not relate to the amount of
12 PE present in the ink at the time the pen was put
13 to paper; is that right?

14 A. Correct.

15 Q. So there could have been some PE that
16 evaporated over whatever time between when the ink
17 was put to paper and when the testing was done;
18 correct?

19 A. Yes, that's correct. That was 64
20 percent of the remaining PE.

21 Q. Right. So that 100 percent is whatever
22 was remaining at the time of the tests?

23 A. Right, correct.

24 Q. You were also asked some questions
25 about the casework you did in the Secret Service.

1 LaPorte

2 How frequently in that casework did you have the
3 opportunity to do PE testing related to ink
4 dating?

5 A. Well, in criminal cases actually you
6 don't get an opportunity to do PE testing as much
7 because a lot of times those cases aren't
8 submitted until sometimes years or two years
9 later.

10 Also too, about really one-third of all
11 ballpoint inks -- and I'll use general numbers
12 published by Bügler. But about one-third of
13 ballpoint inks are fast aging. One-third of
14 ballpoint inks have low phenoxyethanol to begin
15 with. And then the other third of the inks would
16 be more kind of what I would qualify as mid to
17 medium range type aging -- medium to slow --
18 slow-aging ink.

19 So automatically that diminishes the
20 opportunity, if you will, to do PE testing.

21 Furthermore, not all documents contain
22 ballpoint inks. So, you know, there's a number of
23 documents that when you receive them they have
24 nonballpoint inks, so you can't do anything with
25 those.

1 LaPorte

2 So we were -- we didn't -- in criminal
3 cases we didn't get the opportunity to do PE
4 testing as much as possible.

5 Q. You were also asked some questions
6 about -- I think you termed it the reliability of
7 your -- the methodology that you follow in doing
8 your PE analysis; right?

9 A. Yes.

10 Q. Could you explain how the principles
11 underlying your PE tests and your methodology
12 are -- whether they are generally accepted by the
13 scientific community and how?

14 A. Absolutely. There are a number of
15 principles that are generally accepted and have
16 been generally accepted for several years.

17 The first is that ballpoint inks -- or
18 when an ink is placed down on a piece of paper
19 that it will go through an aging process. It goes
20 all the way back into the sixties and seventies.

21 Then there's the idea that there are
22 solvents in writing inks that will evaporate over
23 time. In fact, Mr. Stewart published a study in
24 1985 showing that when ink -- I think he showed
25 the ink at times zero and the ink 30 days later

1 LaPorte

2 and showed the phenoxyethanol -- well, at the time
3 he didn't know it was phenoxyethanol, but showed
4 there were volatile solvents that decreased in
5 time.

6 Then there were studies through the
7 nineties that reinforced that concept a little
8 more and then to identify phenoxyethanol.

9 Then there's really the generally
10 accepted methodology of using GC/MS for chemical
11 analysis. That goes back all the way into the
12 fifties and past that. So that -- the GC/MS is
13 considered probably the most reliable technology
14 in the world for doing chemical analysis. So the
15 technology is reliable. The basic premise, the
16 basic concept is reliable.

17 Then we know that phenoxyethanol -- and
18 Mr. Boland has shown us today and demonstrated as
19 well -- that everybody has these curves, and these
20 curves show that after about 24 months
21 phenoxyethanol slows down and begins to -- doesn't
22 age as quickly as it does in the first time
23 period. That's obviously -- everybody's in
24 agreement with that concept too.

25 So there are these -- you know, the

1 LaPorte

2 most important thing to understand is that there
3 are fundamental concepts that are proven
4 throughout the literature and have been done for
5 the past 25 years.

6 Q. And when you're referring to everyone
7 is in agreement, are you referring to these
8 principles being published in peer-reviewed
9 literature?

10 A. Yes, that's -- I mean, every time
11 somebody does a publication, they're not expected
12 to outline a step-by-step procedure. The purpose
13 of publication is to experiment and to change
14 things to see what happens and to look into or
15 hypothesize about certain types of things too.

16 So that's been done, I mean, just --
17 that goes on today. Discussions still take place
18 about phenoxyethanol as well.

19 Q. And for how long have there been
20 peer-reviewed literature establishing the
21 scientifically -- establishing the reliability of
22 the underlying scientific principles you've just
23 spoken of?

24 A. I think that goes all the way back to
25 1985 when Mr. Stewart published that first paper

1 LaPorte

2 in this area, and then it let up and through the
3 years. It's -- there's always -- there's been
4 papers -- probably in the 2000s is when there were
5 a lot more -- a lot more researchers looking into
6 this.

7 Q. With respect to the results that you
8 obtained when you do this testing, could another
9 chemist reproduce your results?

10 A. That's an extremely important question.
11 So reproducibility is obviously -- it's important
12 in evaluating procedure or method. But there's
13 more to reproducibility than just having a
14 cookbook, if you will, of steps and giving it to
15 somebody and them reproducing it.

16 That -- there's two main aspects of all
17 of this. First of all is you're using a
18 procedure, using these generally accepted
19 principles we've discussed, but also having the
20 proper training. That's critical.

21 So there are very few examiners
22 actually throughout the world that have this
23 combination of chemistry training and then
24 forensic document examination training. I think
25 there's only five private individuals in the

1 LaPorte

2 country. I would say that -- in the U.S. There
3 may be a few more throughout the world. And then
4 there's even a handful, if you will, of government
5 examiners. It's a very niche, specialized field.

6 Q. Are the results that you obtained and
7 the methodology that you follow -- the approach
8 you follow, is it reproducible?

9 A. Yes, yes. If you're trained properly
10 and you have the exact same method -- if I gave my
11 method to somebody and I had the opportunity to
12 train them to do certain things, I have no doubt
13 at all that they would be able to reproduce my
14 results.

15 Q. How do you control for the possibility
16 of error in your methodology?

17 A. There's a number of things -- a number
18 of steps that actually took place, and quality
19 control is one of them. One of the things that
20 you have to take into consideration is whether the
21 instrument is operating correctly on the date
22 you're using it.

23 You need to make sure the GC/MS is
24 working. In this case I performed an auto tune to
25 ensure that the GC/MS was operating correctly, it

1 LaPorte

2 equipment, such as your oven or things like that,
3 that you take into account in ensuring your
4 internal control processes?

5 A. Yes. Actually when I do the
6 extraction, I use 5 microliters of solvent. The
7 pipette that I use is a calibrated pipette. I
8 have a laboratory-grade oven that I use, and it
9 has a thermometer that is accurate to 1 degree
10 Celsius. So I ensure that's at 70 degrees Celsius
11 before I put the samples in.

12 Also, one of the things is when I
13 sample the ink plugs and I'm going to heat them, I
14 make sure that they are face up. I use a ceramic
15 well dish that has 12 wells in it. So I put the
16 ink plugs facing up so that the phenoxyethanol
17 will evaporate off and not -- as opposed to
18 putting them down and the phenoxyethanol just kind
19 of evaporates but comes back onto the paper.

20 I check -- I always check my oven,
21 probably two or three times, in between that hour
22 to make sure it's still at 70 degrees.

23 So there's a whole host of steps that I
24 go through.

25 Q. You mentioned the 25 percent threshold.

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Mr. Boland asked you a series of questions about that. Is that a -- the use of that threshold, is that an element of your methodology or is that sort of an element of the interpretation of your results, if that's a clear question?

A. It's an element of the interpretation of the results, yes.

Q. What are the steps you take into account in taking into account possible unknowns in the interpretation of your results?

A. I'm sorry, can you say that again?

Q. Sorry, it was not a clear question.

When you interpret your results, what steps do you take to account for any unknowns?

A. Once again I use the highly probable opinion. I use the 25 percent threshold. So all of that's built into the interpretation, if you will. That's not -- I don't know if I would call that methodological, but it's more -- it's interpretation.

Q. You were asked some questions about -- I think the terminology was disagreement with Dr. Aginsky.

To the extent you have a disagreement

1 LaPorte

2 with him, does that relate to methodology used or
3 interpretation of results?

4 A. We have never had a disagreement about
5 methodology used.

6 Q. Can you explain the differing
7 approaches to interpretation that you and he take?

8 A. Yes. Dr. Aginsky will use the approach
9 that if there's a certain percentage lost of
10 phenoxyethanol, if it's a very high percentage,
11 for example, if it's greater than 50 percent, you
12 know -- I'm using this as an arbitrary-type value
13 because I'm not exactly sure how he -- how he
14 frames it -- but if it was greater than 50
15 percent, he might say that that ink was less than
16 12 months old. So he -- he uses those different
17 delineations in drawing conclusions.

18 We have -- we have a disagreement
19 there. I think which -- but we have -- I have
20 professional respect for Dr. Aginsky.

21 Q. And your interpretation of results, as
22 Mr. Boland asked you about, rests on this 24-month
23 period; right? So your results in this case was
24 that there was a 64 percent average loss in the PE
25 from the sample of the interlineation on page 1 of

1 LaPorte

2 the "work for hire" documents. And that led to
3 what conclusion?

4 A. That led to the conclusion that it was
5 highly probable that the interlineation was put on
6 that document sometime in the past two years from
7 the time I did the testing.

8 Q. You're not offering an opinion about a
9 specific date that the ink was put on the paper;
10 correct?

11 A. No.

12 Q. You were asked some questions about the
13 freezing rate for the solvent PE.

14 A. Yes.

15 Q. Right?

16 And you said you weren't sure what the
17 freezing rate was for that particular solvent. Is
18 the freezing rate of that particular solvent --
19 how does that relate to the possibility of
20 freezing for PE as contained in ink on paper?

21 A. I -- it's not related. There's --
22 there's other -- other components within that ink
23 formulation that would preclude you from knowing
24 for sure.

25 Q. And you were also asked some questions

1 LaPorte

2 about this other declaration that Mr. Boland
3 showed you, LaPorte 3 in this case, and in that
4 report you concluded that there was a 71 percent
5 decrease -- average decrease in the amount of PE,
6 as set forth on page 17 of that document. And to
7 be clear, that led you to a conclusion that that
8 ink was less than two years old; correct?

9 A. Yes.

10 Q. You were asked some questions about a
11 separate conclusion that you had -- well, let me
12 ask you this: On page 13 of that report, if you
13 can refer to LaPorte 3, you were asked a series of
14 questions about your statement that the level of
15 PE was unusually high.

16 A. I'm sorry, what page?

17 Q. Page 13 of 19 in the second paragraph.
18 It begins after running the GC/MS analysis.

19 A. Yes.

20 Q. The "unusually high" in that sentence
21 refers to the level of PE rather than the average
22 loss finding of PE; correct?

23 A. Correct, correct. Those are two
24 different things.

25 Q. And let's look at page 17 in the first

1 LaPorte

2 paragraph where you have the conclusions. In
3 April 2012, you measured the rates of evaporation
4 of PE in several ink entries; right?

5 A. Yes.

6 Q. And the rates of evaporation for those
7 entries were all well above 25 percent; right?

8 A. Yes.

9 Q. And based on those results alone, you
10 concluded that the various entries were written
11 within the previous 24 months, specifically that
12 they were not written on the purported dates of
13 creation, which were in 2003 and January 2010;
14 right?

15 A. Correct.

16 Q. Now let's look at paragraph 2 which is
17 on the next page, page 18. In that paragraph you
18 conclude it's highly probable that the entire
19 ledger of entries from entry 1 through the entries
20 that correspond to certificate 17 were written
21 contemporaneously on or after January 23, 2012;
22 correct?

23 A. Correct.

24 Q. You testified today about the specific
25 bases for that specific conclusion, that it's

1 LaPorte

2 highly probable the entire ledger of entries were
3 written contemporaneously on or after January
4 23rd, 2012. Do you remember those questions?

5 A. Yes.

6 Q. To be clear, the basis of that specific
7 conclusion has to do with the dates and sequence
8 of the entries on the ledger that was at issue in
9 that case; right?

10 A. Correct.

11 Q. January 23rd, 2012, is in fact the date
12 of the last entry in that ledger?

13 A. Correct.

14 Q. And your specific conclusion in
15 paragraph 2 is based on that fact and the logical
16 deductions that you drew from that fact?

17 A. Correct.

18 Q. So to be clear, the January 23rd, 2012,
19 date and your conclusion in paragraph 2 was not
20 based on the results of your PE tests disclosed --
21 discussed in paragraph 1 solely; correct?

22 A. Correct, not solely.

23 Q. One other question, I'm sorry. On
24 page -- hold on, please -- going back to page 13
25 of that exhibit, LaPorte 3. In the third

1 LaPorte

2 paragraph right before the italicized header
3 dating of ink v. entries on the ledger, see that
4 line about "since"?

5 A. Yes.

6 Q. And that line reads, Since there was an
7 average loss of 71 percent of the ink eight
8 samples for nearly two weeks prior, this is a
9 strong indicator that the ink is still in the
10 initial stages of drying.

11 Is that indicator -- what does that
12 indicator conclusion mean?

13 A. That's just -- it's in the indications.
14 It's more of a -- it's not a concrete, definitive
15 conclusion.

16 Q. Can you draw a general conclusion about
17 whether any ink in the initial stages of drying
18 based on a PE loss in the 70 percent range?

19 A. No, not solely on a single level
20 measured at a single time.

21 Q. So what specifically is an indications
22 conclusion?

23 A. Well, that's not -- that's not an
24 actual conclusion word, if you will. I mean, I'm
25 not using it as -- I would have footnoted the word

1 LaPorte

2 if it was conclusionary. So it was just
3 indications based on that.

4 Q. You were also asked some questions
5 about Mr. Stewart's role as your supervisor at the
6 Secret Service, and I think you said that you
7 reviewed his report; is that right?

8 A. Yes.

9 Q. And are you familiar with paragraphs
10 330 and 331 of his report -- well, I'll show them
11 to you.

12 A. Okay.

13 Q. Are you familiar with those paragraphs?

14 A. Yes. Would you like me to read them?

15 Q. Sure.

16 A. Paragraph 330 says, Afterwards I found
17 out that LaPorte and another of my subordinates
18 had obtained a transcript and then accused me of
19 not testifying truthfully at the earlier trial.

20 331: The substance of their accusation
21 dealt with whether I (myself) had conducted
22 forensic examinations in the case and whether I
23 had knowledge of information found in a book
24 LaPorte was writing a chapter for.

25 Q. And these paragraphs of Mr. Stewart's

1 LaPorte

2 report relate to his explanation of how he came to
3 be charged criminally with perjury for having
4 perjured himself while testifying as an ink test
5 at the Martha Stewart trial; correct?

6 A. That's correct.

7 Q. And these paragraphs allege that you
8 obtained a transcript and then accused him of not
9 testifying truthfully and alleges the substance of
10 your allegation and implies that you had a hand in
11 his being criminally charged with perjury.

12 Is that what this substance indicates?

13 A. That's what it sounds like, yes.

14 Q. Is that accurate?

15 A. That -- that is in -- just a blatant
16 lie.

17 MR. BOLAND: Objection. This is way
18 beyond the scope of what we asked.

19 A. I had nothing to do with -- I never
20 reviewed any kind of transcripts. I had no idea
21 what Mr. Stewart had testified to in trial. I had
22 no information that Mr. Stewart was being
23 investigated.

24 The first time that I found out that
25 there was anything going on was after Mr. Stewart

1 LaPorte

2 was arrested and we had a meeting and we were
3 explained that he was arrested. Even at that time
4 we weren't given any details of what was going on.

5 So I had nothing to do with that at
6 all. The only thing I was -- I was called as a
7 fact witness at the trial. That's all I was
8 called for. So I was asked if I was there on the
9 day that the examination took place. I was. They
10 asked me if Mr. Stewart was present or not. He
11 was not when that -- on that particular day.

12 And then we talked about the --
13 actually it's not a chapter in a book; it was a
14 book that Dr. Cantu and I were writing together.
15 We had a book proposal. So they asked me
16 questions about that.

17 That's all in the complaint. But that
18 is not a factual statement at all.

19 Q. And you were asked some questions about
20 the degradation of the "work for hire" document
21 and your opinion about the causes.

22 Do you also have an opinion about when
23 that degradation likely occurred?

24 A. I'm sorry, can you repeat that?

25 Q. Yes, I'm sorry, hold on a second.

1 LaPorte

2 (Pause.)

3 Q. You were asked some questions about the
4 degradation of the "work for hire" document and
5 your opinion that there was -- well, I may not
6 have it exactly right, but exposed to sunlight or
7 extreme energy source, I think.

8 What exactly is your opinion about
9 this?

10 A. That it was exposed to sunlight or some
11 high-intensity energy source over a period of
12 weeks.

13 Q. And do you have an opinion about when
14 that occurred?

15 A. That would have occurred somewhere
16 between the time that Dr. Aginsky examined the
17 document and July 14th when the document was first
18 opened in Buffalo.

19 Q. You were also asked some questions
20 about a number of articles. If you could pull out
21 LaPorte 2. Direct your attention to the middle of
22 the page. There is a quote from the Gaudreau/
23 Brazeau -- I'm sorry, on page 2 of LaPorte 2.

24 A. Okay.

25 Q. -- that Mr. Boland asked you about. I

1 LaPorte

2 believe Mr. Boland asked you whether the quote was
3 phenoxyethanol in ink evaporates at a high rate
4 during the first six to eight months following its
5 application on paper.

6 What is the rest of that quote?

7 A. It says, This process is no longer
8 significant after a period of about two years, end
9 quote.

10 Q. Sorry, what's the sentence right before
11 that? Why don't you read the whole quote, if you
12 would, please.

13 A. Okay. I'm sorry. Quotation...
14 phenoxyethanol in ink evaporates at a high rate
15 during the first six to eight months following its
16 application on paper. The rate of evaporation
17 stabilizes over a period of 6 to 18 months. This
18 process is no longer significant after a period of
19 about two years.

20 Q. You were also asked some questions
21 about LaPorte 5, which was the Aginsky article.
22 And specifically you were asked questions about
23 this so-called aging curve, Figure 4, at page 1138
24 of that article.

25 Do you recall those questions?

1 LaPorte

2 A. Yes.

3 Q. Could you read the title of the figure
4 aloud?

5 A. I'm sorry, isn't it Figure 5?

6 Q. Figure 4 on page 1138.

7 A. I'm sorry. Sensitivity to a reagent.
8 And then the caption below says Figure 4. Aging
9 curve obtained for a Soyuz blue violet ballpoint
10 ink using the reagent photometric technique.

11 Q. And if you could turn to page 1135
12 where it has the header "ink aged determination
13 using volatile chemicals."

14 Could you please review these three
15 paragraphs here to yourself?

16 MR. BOLAND: What page is that?

17 MR. SOUTHWELL: 1135.

18 A. Yeah, just so I'm following you.

19 Q. (Indicating).

20 A. I don't want to read the wrong three
21 paragraphs.

22 Q. It's the paragraphs that precede under
23 ink aged determination is involved with chemicals
24 and before it gets to experimental procedure.

25 (Pause.)

1 LaPorte

2 A. Okay.

3 Q. Let me ask you this: Does the
4 experiments or procedure and process written about
5 in this article have to do at all with GC/MS or
6 phenoxyethanol testing?

7 A. It has nothing to do with GC/MS and
8 phenoxyethanol testing.

9 Q. So the curve chart or the aging curve
10 at Figure 4 on page 1138, does that involve
11 phenoxyethanol at all?

12 A. No.

13 MR. SOUTHWELL: Nothing further at this
14 time other than to request review of the
15 transcript.

16 EXAMINATION CONTINUED BY

17 MR. BOLAND:

18 Q. Mr. LaPorte, on that question that
19 Mr. Southwell just asked you from that exhibit you
20 were just looking at, that's one of the exhibits
21 that you cite in your report -- right? -- the
22 Aginsky 1993, or is it not?

23 A. Yes.

24 Q. But it has nothing to do with PE or
25 GC/MS testing; correct?

1 LaPorte

2 A. That's incorrect.

3 Q. He just asked you that question, and
4 you said --

5 A. That chart.

6 Q. That chart we talked about has nothing
7 to do with that kind of testing; right?

8 A. No, but you see in the abstract, if I
9 can read it, he talks about different procedures
10 and number 2 is a GC method of determining the
11 extent of extraction of ink volatile components
12 that decrease as ink agents on paper. That's
13 procedure 3.

14 Q. Is he talking about the precise
15 procedure that you used in this case in this
16 article?

17 A. Once again, this is -- it's the sort of
18 basis, if you will, or it's a fundamental
19 principle of the procedure.

20 Q. Is it the precise steps that you use
21 and used in this case for PE testing?

22 A. Not this 1993 paper, no.

23 Q. You were asked some questions about
24 Mr. Stewart. Did you testify at the grand jury
25 before his indictment in that case?

1 LaPorte

2 A. I did, yes.

3 Q. Did you testify at trial?

4 A. Yes, I did.

5 Q. And was your testimony on his behalf or
6 on the government's behalf?

7 A. It was -- I was called as a fact
8 witness by the government. I wouldn't consider it
9 on behalf of anybody. I mean, they were just
10 trying to establish facts, and that's what I was
11 there for.

12 Q. They were trying to establish facts
13 against him in the case?

14 A. The -- that's what the prosecution
15 does, yes.

16 Q. He was ultimately acquitted; right?

17 A. Yes.

18 Q. Now, the technique you use that
19 Mr. Southwell was just asking you about involves
20 extraction; right?

21 A. What technique?

22 Q. The PE testing technique.

23 A. Yeah.

24 Q. There's extraction involved?

25 A. Yes.

1 LaPorte

2 Q. Do you do it precisely the same as
3 other experts like Speckin and Brazeau and those
4 guys? Do you do the extraction the same?

5 A. I wouldn't consider Speckin to be a
6 phenoxyethanol expert.

7 Q. Does he do PE testing?

8 A. He does PE testing. He does
9 something -- he just looks simply at the level of
10 PE. He doesn't look at how much is driven off the
11 ink.

12 Q. Does he do extraction as part of that;
13 do you know?

14 A. I believe he does a liquid extraction,
15 yes.

16 Q. So he doesn't do it the way you do it?

17 A. He does a liquid extraction. I'm not
18 sure what he uses for the liquid extraction.

19 Q. As far as equipment, do you know if you
20 use the same GC/MS type of equipment as, for
21 example, the Canadians use?

22 A. Yes, very similar. I mean, it's GC/MS.

23 Q. Same manufacturer? Same model?

24 A. I believe we both use Agilent GC/MS.

25 Q. And you don't use any -- okay. Very

1 LaPorte

2 well.

3 And the column that you talked about,
4 do you guys set that up the same as well?

5 A. Yes, I use an HP 5 MS column, which is
6 consistent across the board. There are other
7 people that may use a DB 5 column, but that's the
8 same chemical makeup of the column but different
9 manufacturer.

10 Q. So it's different?

11 A. Different manufacturer but same
12 chemical makeup.

13 Q. And a different name -- right? -- HP 5
14 and DB 5, two different names?

15 A. They're actually made by -- it's G&W is
16 the company that HP -- or Agilent works with.

17 Q. And they're all the same size; right?

18 A. Well, there's different size columns,
19 but, yeah, I think everybody that -- as far as I
20 know, everybody's using a 30 meter column.

21 Q. And the other measurements of the
22 column are the same for everybody?

23 A. Typically .25 millimeter diameter --
24 it's called an ID or interdiameter -- and a 25
25 micrometer layer of thickness.

1 LaPorte

2 Q. And the injection temperature everyone
3 uses the same or no?

4 A. Generally speaking I think everybody
5 uses 250 degrees C.

6 Q. I'm being specific, though. How about
7 Brazeau and Gaudreau, do they use the same?

8 A. I don't think what their injection core
9 temperature.

10 Q. Or Speckin when he does it?

11 A. I'm not sure what his injection core
12 temperature is.

13 Q. The flow rate, they set it the same,
14 everybody?

15 A. Generally speaking. I mean, the
16 whole -- once again, the whole idea is to get good
17 chromatography at the end.

18 Q. And the initial temperature, does
19 everyone use the same initial temperature, not
20 generally, specifically, do they use the same
21 temperature?

22 A. I don't -- I can't say specifically
23 what everybody is using. But temperature has to
24 do with achieving good chromatography.

25 Q. And the ramp rate, how about that?

1 LaPorte

2 A. The ramp rate could be the same.

3 Q. Or it could be different?

4 A. It could be different.

5 Q. And the final temperature?

6 A. Final temperature, I'm not sure what
7 everybody else is using, but generally speaking we
8 probably all go either to 270 degrees or 300
9 degrees Celsius at the end.

10 Q. And that, by my count, at least I have
11 asked you about eight different facets of this
12 testing. Fair to say?

13 A. There's -- the whole idea of using
14 GC/MS is to establish or to get a good peak. So
15 if we're using -- if we're getting a good peak,
16 minor deviations in a temperature, if somebody is
17 using a -- starting at 50 degrees Celsius with a
18 temperature ramp or if they're starting at 55
19 degrees Celsius, that's not a substantive
20 difference.

21 Q. Is that just your opinion it's not a
22 substantive difference or it's been tested?

23 A. That's my -- that's my -- that's 20
24 years of doing GC/MS experience.

25 Q. There's nothing published that

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LaPorte

indicates that's not a substantive difference,
would you say?

A. Absolute -- there's publications that
talk about GC/MS in achieving good chromatography.

Q. I'm talking about in the context of PE
testing.

A. There's -- but you're dividing PE
testing. This is about getting good
chromatography. It doesn't matter who I'm
analyzing, whether I'm analyzing phenoxyethanol or
whether I'm analyzing cocaine. It doesn't matter.
The idea is to achieve good chromatography.

MR. BOLAND: I don't have any further
questions.

MR. SOUTHWELL: Nothing further.

(Continued on the following page.)

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LaPorte

THE VIDEOGRAPHER: The time is approximately 7:27 p.m. This concludes Media Number 5 as well as today's deposition of Gerald LaPorte. We are off the record.

(Time noted: 7:27 p.m.)

GERALD M. LAPORTE

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, LAURIE A. COLLINS, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That GERALD M. LAPORTE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of July, 2012.

LAURIE A. COLLINS, RPR

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GERALD M. LAPORTE

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25

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